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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–08–AD; Amendment 39–11657; AD 2000–07–03]

RIN 2120–AA64

Airworthiness Directives; Robinson Helicopter Company Model R44 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Robinson Helicopter Company (Robinson) Model R44 helicopters, that requires inspecting the wire harness for contact with the fuel line assembly, removing and replacing the fuel line assembly if chafing has occurred, and installing spiral wrap tubing on the fuel line assembly. This amendment is prompted by four incidents of contact between the wire harness and the fuel line assembly. The actions specified by this AD are intended to prevent contact between the wire harness and the fuel line, which could result in chafing of the wire harness and a potential fire hazard.

EFFECTIVE DATE: May 11, 2000.

FOR FURTHER INFORMATION CONTACT: Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5265; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Robinson Model R44 helicopters was published in the **Federal Register** on August 11, 1999 (64 FR 43638). That action proposed inspecting the wire harness for contact with the fuel line assembly, removing and replacing the fuel line assembly if chafing has occurred, and installing spiral wrap tubing on the fuel line assembly.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The one commenter states that the proposed AD does not mention repair or replacement of the wire harness if chafing damaged the loom. The commenter also states that there are no instructions for ensuring proper clearance between the wire bundle and wrapped fuel pipe. The proposed AD would require inspection of the wire harness for chafing, and maintenance regulations require that the aircraft be restored to an airworthy condition before being returned to service. In order for the aircraft to be in an airworthy condition, a chafed wire harness must be replaced and proper clearance ensured. The FAA has therefore determined that it is not necessary to revise the requirements of the AD in response to these comments. However, for information only, a note 3 has been added to refer the reader to an acceptable method of replacing the wire harness.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 200 helicopters of U.S. registry will be affected by this AD, that it will take approximately 0.3 work hour per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $0.22 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,644.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 2000–07–03 Robinson Helicopter Company: Amendment 39–11657. Docket No. 99–SW–08–AD.

Applicability: Model R44 helicopters, serial numbers 0002 through 0462, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of

the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 100 hours time-in-service or 90 calendar days after the effective date of this AD, whichever occurs first, unless accomplished previously.

To prevent contact between the wire harness and the fuel line assembly, which could result in chafing of the wire harness and a potential fire hazard, accomplish the following:

(a) Remove the cover, part number (P/N) C474–1, from between the rear seatbacks.

(b) Inspect the wire harness, P/N C059, and the fuel line assembly, P/N C726–2, above the fuel shutoff valve for contact. If the wire harness contacts the fuel line assembly, inspect for chafing.

(c) If chafing has occurred between the wire harness and the fuel line assembly, replace the fuel line with an airworthy fuel line assembly. Torque the fuel line nuts to 110–130 in-lbs. Verify that clearance exists between the fuel line assembly and the wire harness.

(d) Install a 3-inch section of spiral wrap tubing, P/N B161–8, on the fuel line assembly as shown in Figure 1. Push the spiral wrap tubing down until it is against the fuel line fitting.

Note 2: Robinson Helicopter Company Service Bulletin SB–31, dated October 28, 1998, pertains to the subject of this AD.

Note 3: Advisory Circular 43.13–1B, Chapter 11, describes procedures acceptable for replacing the wire harness if required.

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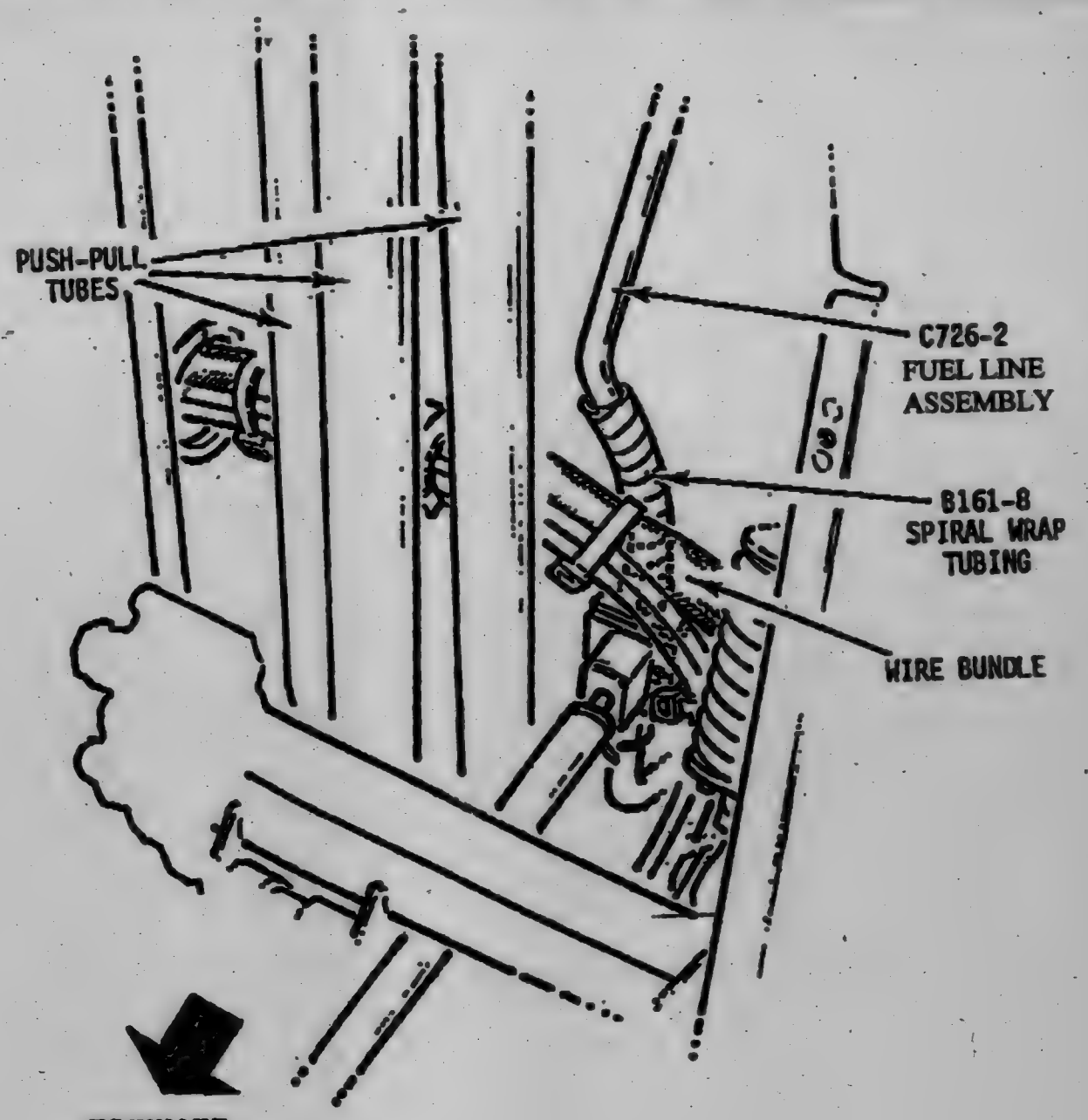

FIGURE 1

BILLING CODE 4910-13-C

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) This amendment becomes effective on May 11, 2000.

Issued in Fort Worth, Texas, on March 28, 2000.

Henry A. Armstrong,

Manager, Rotorcraft DirectorateAircraft Certification Service.

[FR Doc. 00–8519 Filed 4–5–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29977; Amdt. No. 1985]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information is some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 3 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a

regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on March 31, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTG on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs and § 97.97.35 COPTER SIAPs, identified as follows:

. . . *Effective April 20, 2000*

Chicago/Aurora, IL, Aurora Muni, VOR–A, Amdt 2
Chicago/Aurora, IL, Aurora Muni, VOR RWY 15, Orig
Chicago/Aurora, IL, Aurora Muni, VOR RWY 33, Orig
Chicago/Aurora, IL, Aurora Muni, VOR RWY 36, Amdt 3

Effective May 18, 2000

Anchorage, AK, Anchorage Intl, ILS RWY 6L, Orig

Effective June 15, 2000

Birmingham, AL, Birmingham Intl, GPS RWY 24, Orig–B
Columbus, GA, Columus Metropolitan, VOR/DME RNAV OR GPS RWY 23, Amdt 2
Jerome, ID, Jerome County, GPS RWY 8, Orig
Jerome, ID, Jerome County, GPS RWY 26, Orig
Belleville, IL, Midamerica Airport, NDB RWY 32R, Orig
Chicago, IL, Chicago Midway, NDB OR GPS RWY 4R, Amdt 12B
Chicago, IL, Chicago Midway, NDB OR GPS RWY 31C, Amdt 14B
Clinton, IA, Clinton Muni, NDB RWY 14, Amdt 5
Marshalltown, IA, Marshalltown Muni, VOR RWY 12, Amdt 1
Marshalltown, IA, Marshalltown Muni, VOR RWY 30, Amdt 1
Marshalltown, IA, Marshalltown Muni, NDB RWY 12, Amdt 8
Sioux City, IA, Sioux Gateway, GPS RWY 17, Amdt 1
Brainered, MN, Brainerd-Crow Wing Co Regional, VOR/DME OR GPS RWY 12, Amdt 9A
Brainered, MN, Brainerd-Crow Wing Co Regional, VOR OR GPS RWY 30, Amdt 13B
Brainered, MN, Brainerd-Crow Wing Co Regional, NDB OR GPS RWY 23, Amdt 5B
International Falls, MN, Falls Intl, COPTER ILS RWY 31, Orig
Cuba, MO, Cuba Muni, NDB–A, Orig
Cuba, MO, Cuba Muni, NDB OR GPS RWY 18, Amdt 2
Cuba, MO, Cuba Muni, NDB OR GPS RWY 36, Amdt 2
Glens Falls, NY, Floyd Bennet Memorial, VOR/DME OR GPS RWY 19, Amdt 6B
Dickinson, ND, Dickinson Muni, NDB RWY 32, Amdt 1
Dickinson, ND, Dickinson Muni, ILS RWY 32, Amdt 1
Dickinson, ND, Dickinson Muni, VOR/DME RNAV OR GPS RWY 14, Amdt 5, CANCELLED
Dickinson, ND, Dickinson Muni, RNAV RWY 14, Orig
Dickinson, ND, Dickinson Muni, RNAV RWY 32, Orig
Williston, ND, Sloulin Field Intl, VOR OR GPS RWY 11, Amdt 12B
Williston, ND, Sloulin Field Intl, NDB RWY 29, Amdt 2B
Cincinnati, OH, Cincinnati Muni Airport-Lunken Field, LOC BC RWY 3R, Amdt 8A
Cincinnati, OH, Cincinnati Muni Airport-Lunken Field, NDB OR GPS RWY 21L, Amdt 14A
Cleveland, OH, Cleveland-Hopkins Intl, NDB OR GPS RWY 5R, Amdt 5A
Cleveland, OH, Cleveland-Hopkins Intl, NDB OR GPS RWY 23L, Amdt 1A
Cleveland, OH, Cleveland-Hopkins Intl, VOR/DME RNAV OR GPS RWY 10 Amdt 12A
Corvallis, OR, Corvallis Muni, VOR/DME RWY 35, Amdt 11A
Hartsville, SC, Hartsville Rgnl, NDB RWY 3, Orig
Watertown, SD, Watertown Muni, LOC/DME BC RWY 17, Amdt 9A
Watertown, SD, Watertown Muni, LOC/DME BC RWY 35, Amdt 8A
Yankton, SC, Chan Gurney Muni, NDB OR GPS RWY 31, Amdt 2B
Chesapeake, VA, Chesapeake Muni, VOR/DME RWY 23, Amdt 2D
Cheyenne, WY, Cheyenne, GPS RWY 12, Amdt 1B
Cheyenne, WY, Cheyenne, GPS RWY 26, Orig
Gillette, WY, Gillette-Campbell County, LOC/DME BC RWY 16, Amdt 3A

. . . *Effective July 13, 2000*

La Grande, OR, La Grande/Union County, NDB–B, Orig
La Grande, OR, La Grande/Union County, NDB OR GPS–A, Amdt 3, CANCELLED

[FR Doc. 00–8456 Filed 4–5–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29976; Amdt. No. 1984]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight procedure Standards Branch (AMCAFS–420), Flight Technologies and programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73125) (Mail Address: P.O. Box 25082, Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on March 31, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME. VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
03/06/00	FL	Orlando	Orlando Executive	0/2249	NDB Rwy 7, Amdt 15...
03/13/00	CT	Windsor Locks	Bradley Intl	0/2439	NDB or GPS Rwy 6 Amdt 28...
03/13/00	CT	Windsor Locks	Bradley Intl	0/2442	Copter ILS 058 Degrees Amdt 2...
03/15/00	OH	Sidney	Sidney Muni	0/2543	VOR or GPS Rwy 22 Amdt 12...
03/15/00	OH	Sidney	Sidney Muni	0/2544	VOR/DME RNAV or GPS Rwy 28 Amdt 5...
03/16/00	CA	Sacramento	Sacramento Intl	0/2629	ILS Rwy 16L, Orig...
03/16/00	CA	Sacramento	Sacramento Intl	0/2630	ILS Rwy 16R (CAT I, II, & III), Amdt 13...

FDC date	State	City	Airport	FDC No.	SIAP
03/16/00	ND	Hillsboro	Hillsboro Muni	0/2609	GPS Rwy 34, Orig-A...
03/16/00	ND	Hillsboro	Hillsboro Muni	0/2610	GPS Rwy 16, Orig-A...
03/18/00	WY	Gillette	Gillette-Campbell Co	0/2660	NDB Rwy 34, Orig-A...
03/18/00	WY	Gillette	Gillette-Campbell Co	0/2663	VOR/DME or GPS Rwy 34, Orig-A...
03/18/00	WY	Gillette	Gillette-Campbell Co	0/2664	LOC/DME BC Rwy 16, Amdt 3...
03/18/00	WY	Gillette	Gillette-Campbell Co	0/2665	ILS Rwy 34, Amdt 2A...
03/18/00	WY	Gillette	Gillette-Campbell Co	0/2667	VOR or GPS Rwy 16, Amdt 6A...
03/20/00	CA	Sacramento	Sacramento Intl	0/2704	ILS Rwy 34L Amdt 5...
03/20/00	TX	Conroe	Montgomery County	0/2711	VOR/DME RNAV Rwy 32, Amdt 1A...
03/20/00	TX	Conroe	Montgomery County	0/2712	GPS Rwy 32, Orig-A...
03/20/00	TX	Conroe	Montgomery County	0/2713	NDB Rwy 14, Amdt 1A...
03/20/00	TX	Conroe	Montgomery County	0/2714	ILS Rwy 14, Amdt 1B...
03/21/00	IA	Dubuque	Dubuque Regional	0/2729	ILS Rwy 31, Amdt 10D...
03/21/00	KS	Belleville	Belleville Muni	0/2728	VOR/DME–A, Amdt 3A...
03/21/00	MN	Montevideo	Montevideo-Chippewa County	0/2769	VOR or GPS Rwy 14, Amdt 4A...
03/21/00	MO	St Joseph	Rosecrans Memorial	0/2758	LOC BC Rwy 17, Amdt 8...
03/21/00	MO	St Joseph	Rosecrans Memorial	0/2760	ILS Rwy 35, Amdt 30...
03/21/00	MO	St Joseph	Rosecrans Memorial	0/2761	NDB Rwy 17, Amdt 8A...
03/21/00	MO	St Joseph	Rosecrans Memorial	0/2765	VOR/DME RNAV or GPS Rwy 17, Amdt 4A...
03/21/00	MO	St Joseph	Rosecrans Memorial	0/2767	NDB or GPS Rwy 35, Amdt 28C...
03/21/00	WI	Land O'Lakes	King's Land O'Lakes	0/2730	NDB Rwy 32, Orig...
03/22/00	OH	Batavia	Clermont County	0/2808	NDB or GPS Rwy 22, Orig-A...
03/22/00	OH	Wapakoneta	Neil Armstrong	0/2815	GPS Rwy 8, Orig...
03/22/00	WI	Land O'Lakes	King's Land O'Lakes	0/2817	NDB or GPS Rwy 14, Amdt 9...
03/23/00	CA	San Diego	San Diego Intl-Lindbergh Field	0/2838	LOC Rwy 27 Amdt 2C...
03/23/00	FL	Orlando	Executive	0/2859	GPS Rwy 7 Orig...
03/23/00	FL	Orlando	Executive	0/2861	GPS Rwy 25 Orig-A...
03/23/00	FL	Orlando	Executive	0/2866	VOR/DME Rwy 25 Amdt 1A...
03/23/00	FL	Orlando	Executive	0/2867	LOC BC Rwy 25 Amdt 20...
03/23/00	FL	Orlando	Executive	0/2868	ILS Rwy 7 Amdt 21...
03/23/00	OR	Eugene	Mahlon Sweet Field	0/2892	GPS Rwy 34 Orig-A...
03/23/00	OR	Eugene	Mahlon Sweet Field	0/2897	VOR/DME or TA-CAN Rwy 34 Amdt 4A...
03/24/00	CA	Bakersfield	Meadows Field	0/2951	GPS Rwy 30R Orig-A...
03/24/00	CT	Hartford	Hartford-Brainard	0/2942	LDA Rwy 2 Amdt 1B...
03/24/00	FL	Cocoa	Merritt Island	0/2934	GPS Rwy 11 Amdt 1...
03/24/00	FL	Cocoa	Merritt Island	0/2935	NDB Rwy 11, Amdt 1...
03/24/00	FL	Orlando	Kissimmee Muni	0/2945	GPS Rwy 6 Orig-A...
03/24/00	FL	Orlando	Kissimmee Muni	0/2946	GPS Rwy 33 Orig-A...
03/24/00	FL	Orlando	Kissimmee Muni	0/2947	GPS Rwy 15 Orig-A...
03/24/00	FL	Orlando	Kissimmee Muni	0/2949	VOR/DME or GPS-A Orig-A...
03/24/00	FL	Titusville	Arthur Dunn Airpark	0/2932	GPS Rwy 33 Orig-A...
03/24/00	FL	Titusville	Arthur Dunn Airpark	0/2933	GPS Rwy 15 Orig-A...
03/24/00	FL	Titusville	Space Coast Regional	0/2938	ILS Rwy 36 Amdt 10...
03/27/00	FL	Melbourne	Melbourne Intl	0/3020	VOR Rwy 9R, Amdt 19C...
03/27/00	FL	Melbourne	Melbourne Intl	0/3021	ILS Rwy 9R, Amdt 10C...
03/27/00	FL	Melbourne	Melbourne Intl	0/3023	VOR or GPS Rwy 27L, Amdt 11D...
03/27/00	FL	Melbourne	Melbourne Intl	0/3024	LOC BC Rwy 27L, Amdt 8E...
03/27/00	FL	Melbourne	Melbourne Intl	0/3026	GPS Rwy 27R, Orig-A...
03/27/00	FL	Melbourne	Melbourne Intl	0/3027	NDB or GPS Rwy 9R, Amdt 14B...
03/27/00	FL	Orlando	Kissimmee Muni	0/3039	NDB Rwy 15, Orig-A...

[FR Doc. 00–8455 Filed 4–5–00; 8:45 am]
BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960–AE 96

Federal Old-Age, Survivors and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Determining Disability and Blindness; Clarification of "Age" as a Vocational Factor

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are revising the Social Security and Supplemental Security Income (SSI) disability regulations to clarify our consideration of "age" as a vocational factor at the last step of our sequential evaluation process for determining whether an individual is disabled under title II or title XVI of the Social Security Act (the Act). We are also amending our rules to better explain how we consider transferability of skills for individuals who are of "advanced age" (age 55 or older) in deciding whether such individuals can make an adjustment to other work.

DATES: These rules will be effective May 8, 2000.

FOR FURTHER INFORMATION CONTACT: Georgia E. Myers, Regulations Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, 1–410–965–3632 or TTY 1–800–966–5609 for information about these rules. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION: The Act provides, in title II, for the payment of disability benefits to persons insured under the Act. Title II also provides for the payment of child's insurance benefits for persons who become disabled before age 22, and for the payment of widow's and widower's insurance benefits for disabled widows, widowers, and surviving divorced spouses of insured persons. In addition, the Act provides, in title XVI, for SSI payments to persons who are aged, blind, or disabled and who have limited income and resources.

For adults (including persons claiming child's insurance benefits based on disability under title II), "disability" is defined in the Act under both title II and title XVI as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." Sections 223(d) and 1614(a) of the Act also state that an individual "shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work."

To implement the process for determining whether an individual is disabled based upon this statutory definition, our regulations at §§ 404.1520 and 416.920 provide for a five-step sequential evaluation process as follows:

1. Is the individual engaging in substantial gainful activity? If the individual is working and the work is substantial gainful activity (SGA), we find that he or she is not disabled. Otherwise, we proceed to step 2 of the sequence.

2. Does the individual have an impairment or combination of impairments that is severe? If the individual does not have an impairment or combination of impairments that is severe, we find that he or she is not disabled. If the individual has an impairment or combination of impairments that is severe, we proceed to step 3 of the sequence.

3. Does the individual's impairment(s) meet or equal the severity of an impairment listed in appendix 1 of subpart P of part 404 of our regulations? If so, and the duration requirement is met, we find that he or she is disabled. If not, we proceed to step 4 of the sequence.

4. Does the individual's impairment(s) prevent him or her from doing his or her past relevant work, considering his or her residual functional capacity (RFC)? If not, we find that he or she is not disabled. If so, we proceed to step 5 of the sequence.

5. Does the individual's impairment(s) prevent him or her from performing other work that exists in the national economy, considering his or her RFC together with the "vocational factors" of age, education, and work experience? If so, and if the duration requirement is met, we find that the individual is disabled. If not, we find that he or she is not disabled.

As discussed in §§ 404.1569 and 416.969, at step 5 of the sequential evaluation process we use the medical-vocational rules that are set out in appendix 2 of subpart P of part 404. (By reference, § 416.969 provides that appendix 2 is also applicable to adults claiming SSI payments based on disability.) In general, the rules in appendix 2 take administrative notice of the existence of numerous, unskilled occupations at exertional levels defined in the regulations, such as "sedentary," "light," and "medium." Based upon a consideration of an individual's RFC, age, education, and work experience, the rules either direct a conclusion as to whether an individual is disabled at step 5 of the sequential evaluation process or provide a framework for making a decision at this step. Some rules in appendix 2 also direct a conclusion when an individual has "skills" acquired from previous skilled or semiskilled work that are "transferable" to other skilled or semiskilled work.

Our rules regarding age and skills are set out in §§ 404.1563, 404.1568, 416.963, and 416.968. The rules and explanatory text of appendix 2 of subpart P of part 404 also provide guidance for considering the vocational factors of age, education, and work experience that supplement the information on consideration of these vocational factors in §§ 404.1560–404.1569a and 416.960–416.969a.

Our revisions clarify a number of our rules on the consideration of one of the vocational factors, "age," in §§ 404.1563 and 416.963. They also clarify in final §§ 404.1568(d)(4) and 416.968(d)(4) how we determine whether individuals who are of "advanced age" (*i.e.*, age 55 or older), including individuals in a subcategory of advanced age called "closely approaching retirement age" (*i.e.*, age 60–64), have skills that are transferable to other work.

Explanation of Revisions

For clarity, we refer to the changes in this notice as "final" rules and to the rules that will be changed by these final rules as the "current" rules. However, it must be remembered that these final rules do not go into effect until 30 days after the date of this publication. Therefore, the "current" rules will still be in effect for another 30 days.

Sections 404.1563 and 416.963 Your Age as a Vocational Factor

We are revising the first sentence of paragraph (a) of §§ 404.1563 and

416.963, "General," to state more clearly that "age" means chronological age. We are doing this because there has been some misunderstanding about how we consider the vocational factor of "age" at step 5 of the sequential evaluation process. In current paragraph (a) we state, in part, that "*Age* refers to how old you are (your chronological age) * * *." We use an individual's chronological age when we use the medical-vocational guidelines in appendix 2 to decide whether the individual can do other work. We do this because we built consideration of chronological age and its impact on an individual's ability to make an adjustment to other work into the medical-vocational guidelines in appendix 2. These guidelines also consider the person's education and work experience, as well as the person's physical and mental functioning (*i.e.*, RFC).

In addition to defining "age" as how old you are (your chronological age), the first sentence of paragraph (a) of current §§ 404.1563 and 416.963 explains that "age" refers to the extent to which age affects an individual's ability to adapt to a new work situation and "to do work in competition with others." We are incorporating the principle intended in this statement into a new third sentence that clarifies our intent, as explained below.

The second sentence of paragraph (a) of final §§ 404.1563 and 416.963 combines the second and third sentences of current paragraph (a). It clarifies our intent that, when we decide whether a person is disabled, we will not consider the person's age alone, but will consider his or her RFC, education, and work experience together with age.

The third sentence of paragraph (a) of final §§ 404.1563 and 416.963 explains that, when we consider the vocational factor of "age" in determining an individual's ability to adjust to other work, we consider advancing age to be an increasingly limiting factor in the ability to make such an adjustment.

The third sentence of paragraph (a) of final §§ 404.1563 and 416.963, incorporates the rule we intended in the first sentence of current §§ 404.1563(a) and 416.963(a), indicating that we consider the effects of age on an individual's ability "to do work in competition with others." Some United States Courts of Appeals have interpreted this provision of the current rules, together with a provision regarding skills that are "highly marketable" in current §§ 404.1563(d) and 416.963(d) that we are replacing, to support holdings that our regulations provide for consideration of an individual's employability. This is contrary to our intent. The circuit courts in these cases did not hold that their conclusions were required by the Act, which prohibits consideration of whether an individual would be hired if he or she applied for work. *See* sections 223(d)(2) and 1614(a)(3)(B) of the Act. Rather, the courts relied on the language in the provisions of our regulations in current §§ 404.1563(a) and (d) and 416.963(a) and (d). The changes to the regulations provided in these final rules are, therefore, necessary to clarify our intent in this area.

In the fourth sentence of §§ 404.1563(a) and 416.963(a) of the proposed rules, we had proposed replacing the current rules' reference to the ability to "do a significant number of jobs which exist in the national economy" with a reference to "the ability to do substantial gainful activity." We proposed this change to better reflect the definition of disability in the Act. In response to a comment we received on the proposed rules in which the commenter expressed the view that our proposed fourth sentence of paragraph (a) seemed inconsistent with the intent of our revisions to §§ 404.1563 and 416.963, we are revising that sentence in the final rules to read: "If you are unemployed, but you still have the ability to adjust to other work, we will find that you are not disabled."

The fifth sentence of final §§ 404.1563(a) and 416.963(a) is similar to the fifth sentence of current §§ 404.1563(a) and 416.963(a).

We are moving the last sentence of paragraph (a) of §§ 404.1563 and 416.963 of the current rules to final §§ 404.1563(b) and 416.963(b). This sentence explains that we will not apply the age categories mechanically in a borderline situation. We believe the sentence fits more logically with the provisions in new paragraph (b) of the final rules, which explains more fully how we apply the age categories.

We are adding a new paragraph (b), entitled "How we apply the age categories," to §§ 404.1563 and 416.963. The new paragraph explains that, if a person's age category changes during the period for which we are adjudicating a disability claim, we will use each of the age categories that is applicable to the person during the period for which we are deciding if the person is disabled. We also explain that in borderline age situations, we will not apply the age categories mechanically. We explain that a "borderline" situation means that the individual is "within a few days to a few months" of reaching a higher age category. This is consistent with our current policy interpretation in Social Security Ruling 83–10, "Titles II and XVI: Determining Capability To Do Other Work—The Medical-Vocational Rules of Appendix 2," Social Security Rulings (C.E. 1983, p. 174). As we explain in that Social Security Ruling, we are unable to provide "fixed" guidelines since such guidelines themselves would reflect a mechanical approach. (*See* Social Security Ruling 83–10, ibid., p. 182.)

In response to commenters' requests to clarify the provisions of the proposed rules concerning borderline age, we are changing the last sentence of paragraph (b) in final §§ 404.1563 and 416.963 to explain that "If you are within a few days to a few months of reaching an older age category, and using the older age category would result in a determination or decision that you are disabled, we will consider whether to use the older age category after evaluating the overall impact of all the factors of your case."

Because we are including a new paragraph (b) in final §§ 404.1563 and 416.963, we are redesignating the remaining paragraphs, *i.e.*, paragraphs (b) through (e) of the current rules, as paragraphs (c) through (f) in the final rules.

Paragraph (c) of final § § 404.1563 and 416.963, "Younger person," incorporates the rules for individuals who have not yet attained age 50 that are in current §§ 404.1563(b) and 416.963(b). The second sentence of current §§ 404.1563(b) and 416.963(b) explains that in some circumstances "we consider age 45 a handicap in adapting to a new work setting." The reference to "age 45" in this provision of the current rules is actually a reference to individuals who are age 45 through 49, because the category "younger person" ends upon attainment of age 50. We state this meaning plainly in the final rules by changing "age 45" to "age 45–49." We are also revising the second sentence to remove the word "handicap," to make the language of paragraphs (c), (d), and (e) of the final rules consistent and to clarify our intent; *i.e.*, to discuss the effects of age on the ability to make an adjustment to other work.

Paragraph (d) of final §§ 404.1563 and 416.963, "Person closely approaching advanced age," incorporates the rules for individuals age 50 through 54 that are in current §§ 404.1563(c) and 416.963(c). We are adding the word "closely" to the heading of this paragraph for consistency with the text of the paragraph. We are replacing the phrase at the end of the sentence in the current rule, "a significant number of jobs in the national economy," with the

phrase, "other work," for consistency of language in the provisions of paragraphs (c), (d), and (e) of final §§ 404.1563 and 416.963. This is not intended to be a change in the standard, only a change for consistency among these provisions of the regulations.

Paragraph (e) of final §§ 404.1563 and 416.963, "Person of advanced age," incorporates the rules for individuals age 55 or older that are in the first sentence of current §§ 404.1563(d) and 416.963(d). As in the preceding paragraphs, we are replacing the phrase, "ability to do substantial gainful activity," in the first sentence of the current rules with the phrase "ability to adjust to other work," so that paragraphs (c), (d), and (e) of §§ 404.1563 and 416.963 will contain consistent language.

The first sentence of paragraph (e) of final §§ 404.1563 and 416.963 reflects a change from the proposed rules. In the final rules, we use the term "age" instead of "chronological age" which was used in paragraph (e) of the proposed rules. Paragraph (a) of final §§ 404.1563 and 416.963 states that, "'Age' means your chronological age." It is unnecessary, therefore, to specify "chronological age" in the provisions of paragraph (e). This change from the proposed rules also will make the references to "age" in paragraphs (c), (d), and (e) consistent.

We are revising the second and third sentences of current §§ 404.1563(d) and 416.963(d) and moving these provisions to final §§ 404.1568(d)(4) and 416.968(d)(4). We explain these changes below, under the explanation of §§ 404.1568(d)(4) and 416.968(d)(4). We are including in §§ 404.1563(e) and 416.963(e) an appropriate cross-reference to § 404.1568(d)(4) or § 416.968(d)(4) to make it easier to find the provisions in their new location.

Sections 404.1568 and 416.968 Skill Requirements

We are adding new §§ 404.1568(d)(4) and 416.968(d)(4), "Transferability of skills for individuals of advanced age," to our final regulations addressing skills and their transferability. This paragraph incorporates and clarifies the provisions in the second and third sentences of current §§ 404.1563(d) and 416.963(d). In the current regulations, these sentences provide rules regarding skills and their transferability for individuals of "advanced age" (*i.e.*, age 55 or older) who have the RFC for no more than "sedentary" work, and for individuals who are "closely approaching retirement age" (*i.e.*, age 60–64) who have the RFC for no more than "light" work. We believe that these provisions more logically belong in the sections of our regulations that discuss our rules regarding skills and their transferability; *i.e.*, §§ 404.1568 and 416.968. We are revising these provisions to clarify our intent, to make their language consistent with current provisions in our regulations, and to be consistent with other provisions in these final rules.

The second sentence of current §§ 404.1563(d) and 416.963(d) states that if a person of advanced age has a severe impairment(s) and cannot do medium work (*i.e.*, the person is limited to light or sedentary work), the person may not be able to work unless he or she has transferable skills. We are incorporating this provision in the first sentence of final §§ 404.1568(d)(4) and 416.968(d)(4).

The first sentence of final §§ 404.1568(d)(4) and 416.968(d)(4) describes a standard that applies to a person who is of advanced age (age 55 or older) and has a severe impairment(s) that limits him or her to sedentary or light work. For such a person, we state that, "we will find that you cannot make an adjustment to other work unless you have skills that you can transfer to other skilled or semiskilled work (or you have recently completed education which provides for direct entry into skilled work) that you can do despite your impairment(s)." This provision of the final rules differs from the provision of the proposed rules which stated that, for such a person, "we will find that you cannot make an adjustment to other work unless you have skills that you can use in (transfer to) other skilled or semiskilled work that you can do despite your impairment(s)." While the standard described in the proposed rules would apply in most circumstances, it is not a completely accurate statement of our rules concerning when we will find that a person who is of advanced age and limited to sedentary or light work is unable to make an adjustment to other work; *i.e.*, is disabled. Our rules in appendix 2 to subpart P of part 404 of our regulations, the medical-vocational guidelines, provide that if such a person does not have transferable skills, a finding of disability is warranted unless the person has recently completed education which provides for direct entry into skilled work within his or her RFC. *See* § 201.00(d) and rules 201.05, 201.08, 202.05 and 202.08 of appendix 2. Accordingly, we are modifying the first sentence of §§ 404.1568 (d)(4) and 416.968 (d)(4) in these final rules to reflect our rules in appendix 2.

We are incorporating in final §§ 404.1568(d)(4) and 416.968(d)(4) provisions from §§ 201.00(f) and 202.00(f) of appendix 2 to subpart P of part 404 of our regulations. This will clarify our original intent regarding the last sentence of current §§ 404.1563(d) and 416.963(d) and will provide consistency in our rules. The revisions explain that, for an individual of advanced age (*i.e.*, age 55 or older) whose RFC permits him or her to do no more than sedentary work, we will find that such individual's skills are transferable to skilled or semiskilled sedentary work only if the sedentary work is so similar to the individual's previous work that the individual would need to make "very little, if any, vocational adjustment in terms of tools, work processes, work settings, or the industry." In addition, we are including in final §§ 404.1568(d)(4) and 416.968(d)(4) a provision to clarify how we consider the transferability of skills for a person who is of advanced age but has not attained age 60 (*i.e.*, a person age 55–59) and who has a severe impairment(s) that limits him or her to no more than light work. We explain that for such a person we will apply the rules in paragraphs (d)(1) through (d)(3) of current §§ 404.1568 and 416.968 to determine if the person has skills that are transferable to skilled or semiskilled light work. The revisions also explain that, for an individual of advanced age who is "closely approaching retirement age" (*i.e.*, age 60–64) and whose RFC permits him or her to do no more than *light* work, we will find that such individual's skills are transferable to skilled or semiskilled light work only if the light work is so similar to the individual's previous work that the individual would need to make "very little, if any, vocational adjustment in terms of tools, work processes, work settings, or the industry."

In making these revisions, we are replacing the statement in current §§ 404.1563(d) and 416.963(d), "unless you have skills which are highly marketable," with the foregoing language taken from §§ 201.00(f) and 202.00(f) of appendix 2. This will clarify our original intent that the provisions of current §§ 404.1563(d) and 416.963(d) are consistent with, and must be read in the context of, the provisions of §§ 201.00(f) and 202.00(f) of appendix 2.

There is no reference to "highly marketable" skills in the Act, which prohibits consideration of whether an individual would be hired if he or she applied for work. (*See* sections 223(d)(2) and 1614(a)(3)(B) of the Act.) The phrase was one of the additions we made to the regulations under the "common sense" recodification in 1980. (*See* 45 FR 55566, August 20, 1980.) When we issued those regulations, we

did not intend to introduce the term as a statement of a new rule or as a change in existing rules. We intended only to contribute to public understanding of the provisions regarding transferability of skills for older workers in the medical-vocational guidelines in appendix 2. (The language in appendix 2 was not changed by the "common sense" recodification in 1980.) However, by using different language in current §§ 404.1563(d) and 416.963(d) from that in appendix 2, we have inadvertently given the mistaken impression that we meant to establish a separate criterion for these individuals beyond what we already provide in appendix 2. That was not our intent. (*See, e.g.*, Social Security Ruling 82–41,"Titles II and XVI: Work Skills and Their Transferability As Intended By the Expanded Vocational Factors Regulations Effective February 26, 1979," Social Security Rulings (C.E. 1982, pp. 196, 202); Final Rules for Adjudicating Disability Claims in Which Vocational Factors Must Be Considered, 43 FR 55349, 55353–55354 (November 28, 1978).)

Public Comments: We published these regulatory provisions in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on August 4, 1999 (64 FR 42310). We provided the public a 60-day comment period. The comment period closed on October 4, 1999. We received 55 letters in response to the proposed rules. We received letters from disabled persons, attorneys, legal services organizations that represent the interests of disabled persons, and other interested parties. Four of the letters supported our proposed changes. The rest provided comments. A summary of the comments we received and our responses to the comments are set out below.

Because many comments were detailed, we have condensed, summarized, or paraphrased them. We have, however, tried to summarize each commenter's views accurately and to respond to all of the significant issues raised by commenters that are within the scope of the proposed rules.

Comment: Fifteen commenters believed that with increasing age, it becomes more difficult for individuals to adjust to other work. The commenters believed that a "highly marketable" skills standard is fair because it acknowledges that increased difficulty. One commenter stated that, "An individual, age 60, may not be able to adapt to a new situation unless the individual has skills so specialized or unique as to offset the disadvantage of advancing age." One commenter noted that removal of the "highly marketable" provision would mean that individuals having a sedentary RFC would have no different standard at ages 55–59 than at ages 60–64.

Response: Consistent with the statutory definition of disability, our regulations reflect that advancing age is an increasingly limiting factor in an individual's ability to adjust to other work.

This concept is reflected in current §§ 404.1563 and 416.963, and in final §§ 404.1563, 404.1568(d)(4), 416.963 and 416.968(d)(4). The concept is built into the rules in the medical-vocational guidelines in appendix 2. The medical-vocational guidelines consider the impact of an individual's age, together with his or her RFC, education, and work experience, on his or her ability to make an adjustment to other work.

With advancing age, it becomes increasingly more difficult for an individual to make an adjustment to other work. Our regulations recognize this by providing, among other things, for a more restrictive standard for determining transferability of skills for individuals of advanced age (age 55 or older) who can do no more than sedentary work and for individuals closely approaching retirement age (age 60–64) who can do no more than light work. Thus, the medical-vocational guidelines, as well as § § 404.1568(d)(4) and 416.968(d)(4) of the final rules, provide that for skills to be transferable to sedentary work for individuals who are age 55–64 or to light work for individuals who are age 60–64 there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

This standard for determining transferability of skills for individuals of advanced age considers the combined effects of advancing age and a restrictive RFC on an individual's ability to adjust to other work. It provides that, with advancing age (even when combined with a progressively less restrictive RFC, *i.e.*, for individuals age 60–64), past relevant work skills must fit more closely with the skill requirements of the other work that is within the individual's RFC in order to find that the individual's skills are transferable to such work. For individuals with acquired work skills, we believe that this standard gives appropriate consideration to the effect of increasing age, in combination with an individual's RFC, on an individual's ability to make an adjustment to other work. We do not agree that, as an individual becomes older, there must be a greater degree of specialized or unique skills in order for an individual with past relevant work skills to be able to adjust to other work.

We do not agree with the commenters that we must provide a distinction in our rules for individuals age 60–64 and individuals age 55–59 who are limited to sedentary exertion in the same way that we have for individuals who are able to do light exertion. We believe that our standard for transferability of skills, that is, that there be "very little, if any, vocational adjustment in terms of tools, work processes, work settings, or the industry," is an appropriately narrow rule for individuals in the age groups affected. The only rule that could be narrower would be one that requires no vocational adjustment in terms of tools, work processes, work settings, or the industry, but such a standard would have virtually no applicability. By extending our narrow standard for transferability of skills to an individual age 55–59 when the individual is limited to sedentary work, we are merely recognizing the very severe limitations and the serious impact on the ability to adjust to other work that an RFC limited to "sedentary" exertion imposes for all individuals of advanced age. Moreover, we could not use the standard of "highly marketable" skills as the commenters understand it for the reasons we have already given earlier in the preamble.

Comment: Eleven commenters indicated that the provision in the regulations that refers to highly marketable skills had been in effect for at least 20 years without controversy. The commenters believed that to remove the reference to "highly marketable" from the regulations now would be unfair and would have a severe negative impact on individuals over the age of 60 who apply for Social Security disability benefits. One commenter found it difficult to believe that regulations that have been in place for almost two decades have inadvertently created a "highly marketable" standard that we did not intend.

Response: We believe that having different interpretations of our regulations in a small number of circuits is unfair to individuals who file for disability benefits. It is not true that the terminology has not raised controversy in the past. Even though the issue of transferability of skills for individuals age 60–64 who can do no more than light work arises in only a small number of claims, there have been a number of court cases centering around the issue of the meaning of "highly marketable" skills, especially in recent years. This is why we decided that we needed to clarify the regulations to restore national

uniformity and to clarify what we have always meant by this rule.

We do not agree that removal of the language "highly marketable" skills will have a severe, negative impact on individuals over the age of 60 who apply for Social Security disability benefits. Our rules for determining disability take into account a reduced ability to adapt to other work as an individual ages. Our rules for individuals age 60–64 recognize that individuals in this age group may have greater difficulty in making an adjustment to other work than individuals under age 60. In order to find that an individual age 60–64 possesses skills that are transferable to either sedentary or light work, there must be very little, if any, adjustment required in terms of tools, work processes, work settings, or the industry. This is an appropriately narrow definition of transferability and requires that other work must be very similar to an individual's past work in order to find an ability to adjust to other work.

In response to the last comment, we first published the rules establishing the standards for transferability in 1978 (43 FR 55349, November 28, 1978). Those rules did not include the phrase "highly marketable" skills. When we published the "Operation Common Sense" revisions of our disability regulations in 1980, we indicated that our goals were primarily to rewrite the disability regulations to make them easier to read and understand. We also indicated that there were some standards that we were including in the regulations for the first time, and provided a list of those new provisions. For the new provisions in §§ 404.1563 and 416.963, we made no reference to the insertion of the language on highly marketable skills, a clear indication that the new language was not intended to be a change in our standard. Our intent is, and always has been, what we provided in § 202.00(f) of appendix 2 in 1978 and continue to provide in the same section.

Comment: Eight commenters stated that realities of employment in the United States economy are such that older workers cannot compete in the workforce. One commenter stated that at issue is not how competitive older workers are, but how valuable their skill set is to the job market. One commenter did not believe that older individuals could adapt to the technological changes in the marketplace. One commenter indicated that many individuals have been offered "early out" agreements with their companies beginning at age 50. The commenter viewed this as an indication that older workers cannot compete in the marketplace. A commenter observed that age-related health insurance costs to an employer discourage hiring of older workers. One commenter indicated that because some states have enacted early retirement programs for individuals over age 50, this is further proof that age makes it much more difficult to obtain employment. One commenter stated that employers discriminate against disabled individuals and older individuals. The commenter believed that disabled, older individuals are doubly discriminated against. One commenter stated that we must factor into our disability analysis that an older worker in a skilled trade cannot transfer to a lower paying job without violating union collective bargaining agreements.

Response: The Act precludes our consideration of such factors as the inability to get work, the condition of the job market, the hiring practices of employers, the existence of job vacancies, or the types of job openings. In applying the definition of disability under the Act at the last step of our sequential evaluation process, we consider whether an individual whose impairment(s) prevents the individual from performing his or her past relevant work, has the *ability* to do other work, considering his or her RFC, age, education and work experience. The Act requires that we consider the factors of age, education, and work experience, together with the severity of the individual's impairment(s) (RFC), in determining whether the individual is able to do "any other kind of substantial gainful work which exists in the national economy," without regard to "whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work." Sections 223(d)(2) and 1614(a)(3)(B) of the Act. These sections of the Act state that work exists in the national economy if it "exists in significant numbers either in the region where such individual lives or in several regions of the country."

Consistent with the provisions of the Act, we consider the vocational factors of age, education, and work experience, together with an individual's RFC, in determining whether an individual has the ability to make an adjustment to other work. Thus, §§ 404.1566(c) and 416.966(c) provide:

> We will determine that you are not disabled if your residual functional capacity and vocational abilities make it possible for you to do work which exists in the national economy, but you remain unemployed because of—
>
> (1) Your inability to get work;
> (2) Lack of work in your local area;
> (3) The hiring practices of employers;
> (4) Technological changes in the industry in which you have worked;
> (5) Cyclical economic conditions;
> (6) No job openings for you;
> (7) You would not actually be hired to do work you could otherwise do; or
> (8) You do not wish to do a particular type of work.

Comment: Two commenters suggested that, if we remove the "highly marketable" language in §§ 404.1563(d) and 416.963(d), we should change our explanation for transferable skills for individuals age 60–64 having an RFC for sedentary or light work. The commenters suggested that we change the standard to "In order to find transferability of skills to skilled sedentary or light work for individuals close to retirement age (60–64), there must be no vocational adjustment required in terms of tools, work processes, work settings or the industry."

Response: As we have already noted, we believe that our current language expresses an appropriate standard to account for the reduction in the ability of an individual age 60–64 to adjust to other sedentary or light work. "Very little, if any, vocational adjustment" is an appropriately narrow standard.

Comment: Four commenters had concerns that our proposed changes were inconsistent with the decisions of the courts and inconsistent with our decision to acquiesce in court of appeals' decisions in three circuits.

Response: As we noted in the preamble to the NPRM, "the circuit courts in these cases did not hold that their conclusions were required by the Act, which prohibits consideration of whether an individual would be hired if he or she applied for work. * * * Rather, the courts relied on the language in [the current] provisions of our regulations." (64 FR 42312) Therefore, in all three of our acquiescence rulings, we stated our intent to clarify the regulations at issue through the rulemaking process and to rescind these acquiescence rulings once we revised the regulations. Accordingly, because these final rules revise the regulations that were the subject of the circuit courts' holdings, we are publishing a notice in this issue of the **Federal Register** rescinding the acquiescence rulings effective as of the date the revised regulations go into effect. *See* §§ 404.985(e)(4) and 416.1485(e)(4) of our regulations.

Comment: Three commenters requested that we clarify our concept and definition of borderline age in proposed §§ 404.1563(b) and 416.963(b).

These commenters believe that "a few days to a few months" is too vague an explanation of borderline age to provide much guidance to adjudicators on this issue.

Response: As we explain earlier in this preamble and in the preamble to the NPRM, the description of a "borderline" situation as one in which the individual is "within a few days to a few months" of reaching a higher age category is consistent with our current policy interpretation in Social Security Ruling 83–10. As we explain in that Social Security Ruling, we are unable to provide "fixed" guidelines since such guidelines themselves would reflect a mechanical approach to the application of the age categories. However, we are changing the final sentence of §§ 404.1563(b) and 416.963(b) to explain that we must consider all of the factors of each case before deciding whether to use an older age category for our decision. We are considering whether there is a need to provide additional guidance on how the factors of each case should be considered in determining whether to apply a higher age category and may issue guidance in the future.

Comment: Four commenters expressed concern about our proposal to use the term "other work" in place of the phrases "a significant number of jobs which exist in the national economy," and "jobs which exist in significant numbers in the national economy" which are in the provisions of current paragraphs (b), (c), and (d), of §§ 404.1563 and 416.963. The commenters were concerned that the proposed change might result in a misunderstanding as to what is meant by "other work." They believed that it is important to stress that "other work" refers to jobs that are at the SGA level and that exist in significant numbers in the national economy.

Response: In these final rules, we use the term "other work" in place of the various phrases that are used in the current rules to refer to work which exists in the national economy. We are making this change to ensure that the terminology we use to describe such work is consistent throughout these final regulations. The change is also consistent with the language of other sections of our regulations in which we use the term "other work." *See, e.g.,* §§ 404.1505(a), 404.1520(f)(1), 404.1560(c), 404.1561, 416.905(a), 416.920(f)(1), 416.960(c) and 416.961.

We explain the meaning of "other work" in §§ 404.1560(c) and 416.960(c). These sections state that, "[b]y other work we mean jobs that exist in significant numbers in the national economy." In addition, §§ 404.1505(a) and 416.905(a), which describe the basic definition of disability for adults (including persons claiming child's insurance benefits based on disability under title II), indicate that "any other work" refers to "any other substantial gainful activity which exists in the national economy."

Comment: One commenter suggested that the sentence "If you are unemployed because of your age, but you still have the ability to do substantial gainful activity, we will find that you are not disabled" (in proposed §§ 404.1563(a) and 416.963(a)) seemed inconsistent with the intent of the revisions, which was to clarify that "employability and marketability" are not considered in establishing disability. The commenter observed that the proposed rules provided no explanation of how we would determine if a person is unemployed because of his or her age. The commenter believed that the proposed provision is also inconsistent with the other sections that use the phrase "ability to adjust to other work." The commenter suggested that we change the sentence to read, "If you are unemployed but you still have the ability to adjust to other work, we will find that you are not disabled."

Response: We adopted the comment.

Comment: One commenter believed that the legislative history leading up to the "common sense" recodification of our disability regulations in 1980 supported a more liberal definition of disability. The commenter stated that the "highly marketable" skills language is consistent with a more liberal definition of disability.

Response: The purpose of our "common sense" rewrite of the disability regulations in 1980 was to make our regulations easier to read and understand. There was no intent to liberalize or change the meaning of our regulations for determining whether an individual who is age 60–64, possesses work skills, and is limited to sedentary or light work, can make an adjustment to other work.

Comment: One commenter agreed with our proposed changes, but suggested that we include a dollar level amount for SGA.

Response: These final rules, like the proposed rules, clarify our consideration of age as a vocational factor at the last step of the sequential evaluation process for determining disability. Our rules for determining when earnings demonstrate an ability to do SGA are in §§ 404.1574 and 416.974. Effective July 1, 1999, we increased the average monthly earnings guidelines for determining whether work done by an employee is SGA from $500 to $700 per month. *See* 64 FR 18566, April 15, 1999.

Comment: One commenter disagreed with the principle in our rules that age affects ability to adapt to other work. The commenter stated that many studies have shown that productivity does not decline with age, workers age 55 and over account for only 9.7 percent of workplace injuries, and that intelligence remains constant until age 70. The commenter stated that workers 50 and over tend to have better job attendance records, and greater job commitment than younger workers. The commenter believed that our wording bolsters the erroneous attitudes of many employers who see workers age 50 and over as unable to learn, adapt and be productive and might convince a certain segment of the population that as they age they can no longer learn new skills nor contribute to society in a meaningful, productive way.

Response: As we explain earlier in this preamble, the Act requires us to consider an individual's age, education, and work experience, together with the severity of his or her impairment(s), in determining whether the individual is disabled.

Comment: Two individuals pointed out that for some impairments, age is not the most critical factor in disability. They suggested that we incorporate language into the regulations to explain that younger individuals can become disabled and may qualify for disability benefits as a result.

Response: Our existing regulations include rules for deciding that an individual is disabled based on medical considerations alone. *See, e.g.,* §§ 404.1525 and 416.925. The final regulations clarify our rules on the consideration of age as a vocational factor at the last step of the sequential evaluation process for determining disability. We consider the vocational factors of age, education, and work experience, together with an individual's RFC, only in cases in which a finding of disability cannot be made on the basis of medical considerations alone, and the individual is prevented from doing his or her previous work because of a severe impairment(s).

Comment: One commenter stated that if someone has worked at a physically demanding job all of his or her life and cannot do that job anymore, age should not make a difference.

Response: We have a special rule for determining disability for individuals who have a long work history of arduous, unskilled work and who can no longer do this work because of a severe impairment(s). This rule is

discussed in §§ 404.1520(f)(2), 404.1562, 416.920(f)(2) and 416.962.

Comment: Two commenters indicated that they believed that our NPRM is part of a trend to deny more individuals disability benefits.

Response: The purpose of our changes is to clarify the intent of our regulations and restore national uniformity to our procedures. The changes are not intended to tighten disability eligibility requirements.

Comment: One commenter indicated that SSA should provide a payment supplement to those individuals who experience reduced earning power as a result of the aging process.

Response: This is beyond the scope of our NPRM and the Act. We pay the benefits that the Act authorizes.

Comment: One commenter indicated that the disability appeals process takes far too long and believed that the disability rules should be applied uniformly from State to State.

Response: The length of the appeals process is outside the scope of the proposed rules and these final rules. We believe that the changes we are making will restore national uniformity in how age is applied as a vocational factor.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order (E.O.) 12866. Thus, they were not subject to OMB review. We have also determined that these rules meet the plain language requirement of E.O. 12866 and the President's memorandum of June 1, 1998.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These regulations impose no additional reporting or recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: March 17, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set out in the preamble, subpart P of part 404 and subpart I of part 416 of 20 CFR chapter III are amended as set forth below:

PART 404—FEDERAL OLD–AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

2. Section 404.1563 is amended by:

A. Revising paragraph (a),

B. Redesignating paragraphs (b) through (e) as paragraphs (c) through (f),

C. Adding a new paragraph (b), and

D. Revising redesignated paragraphs (c), (d) and (e) to re ad as follows:

§ 404.1563 Your age as a vocational factor.

(a) *General.* "Age" means your chronological age. When we decide whether you are disabled under § 404.1520(f)(1), we will consider your chronological age in combination with your residual functional capacity, education, and work experience; we will not consider your ability to adjust to other work on the basis of your age alone. In determining the extent to which age affects a person's ability to adjust to other work, we consider advancing age to be an increasingly limiting factor in the person's ability to make such an adjustment, as we explain in paragraphs (c) through (e) of this section. If you are unemployed but you still have the ability to adjust to other work, we will find that you are not disabled. In paragraphs (b) through (e) of this section and in appendix 2 to this subpart, we explain in more detail how we consider your age as a vocational factor.

(b) *How we apply the age categories.* When we make a finding about your ability to do other work under § 404.1520(f)(1), we will use the age categories in paragraphs (c) through (e) of this section. We will use each of the age categories that applies to you during the period for which we must determine if you are disabled. We will not apply the age categories mechanically in a borderline situation. If you are within a few days to a few months of reaching an older age category, and using the older age category would result in a determination or decision that you are disabled, we will consider whether to use the older age category after evaluating the overall impact of all the factors of your case.

(c) *Younger person.* If you are a younger person (under age 50), we generally do not consider that your age will seriously affect your ability to adjust to other work. However, in some circumstances, we consider that persons age 45–49 are more limited in their ability to adjust to other work than persons who have not attained age 45. See Rule 201.17 in appendix 2.

(d) *Person closely approaching advanced age.* If you are closely approaching advanced age (age 50–54), we will consider that your age along with a severe impairment(s) and limited work experience may seriously affect your ability to adjust to other work.

(e) *Person of advanced age.* We consider that at advanced age (age 55 or older) age significantly affects a person's ability to adjust to other work. We have special rules for persons of advanced age and for persons in this category who are closely approaching retirement age (age 60–64). See § 404.1568(d)(4).

* * * * *

3. Section 404.1568 is amended by adding a new paragraph (d)(4) to read as follows:

§ 404.1568 Skill requirements.

* * * * *

(d) *Skills that can be used in other work (transferability).* * * *

(4) *Transferability of skills for individuals of advanced age.* If you are of advanced age (age 55 or older), and you have a severe impairment(s) that limits you to *sedentary* or *light work*, we will find that you cannot make an adjustment to other work unless you have skills that you can transfer to other skilled or semiskilled work (or you have recently completed education which provides for direct entry into skilled

work) that you can do despite your impairment(s). We will decide if you have transferable skills as follows. If you are of advanced age and you have a severe impairment(s) that limits you to no more than *sedentary* work, we will find that you have skills that are transferable to skilled or semiskilled sedentary work only if the sedentary work is so similar to your previous work that you would need to make very little, if any, vocational adjustment in terms of tools, work processes, work settings, or the industry. (See § 404.1567(a) and § 201.00(f) of appendix 2.) If you are of advanced age but have not attained age 60, and you have a severe impairment(s) that limits you to no more than *light* work, we will apply the rules in paragraphs (d)(1) through (d)(3) of this section to decide if you have skills that are transferable to skilled or semiskilled light work (see § 404.1567(b)). If you are *closely approaching retirement age* (age 60–64) and you have a severe impairment(s) that limits you to no more than *light* work, we will find that you have skills that are transferable to skilled or semiskilled light work only if the light work is so similar to your previous work that you would need to make very little, if any, vocational adjustment in terms of tools, work processes, work settings, or the industry. (See § 404.1567(b) and Rule 202.00(f) of appendix 2 to this subpart.)

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

4. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a) and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

5. Section 416.963 is amended by:

A. Revising paragraph (a),

B. Redesignating paragraphs (b) through (e) as paragraphs (c) through (f),

C. Adding a new paragraph (b), and

D. Revising redesignated paragraphs (c), (d) and (e) to read as follows:

§ 416.963 Your age as a vocational factor.

(a) *General.* "Age" means your chronological age. When we decide whether you are disabled under § 416.920(f)(1), we will consider your chronological age in combination with your residual functional capacity, education, and work experience; we will not consider your ability to adjust to other work on the basis of your age alone. In determining the extent to which age affects a person's ability to adjust to other work, we consider advancing age to be an increasingly limiting factor in the person's ability to make such an adjustment, as we explain in paragraphs (c) through (e) of this section. If you are unemployed but you still have the ability to adjust to other work, we will find that you are not disabled. In paragraphs (b) through (e) of this section and in appendix 2 of subpart P of part 404 of this chapter, we explain in more detail how we consider your age as a vocational factor.

(b) *How we apply the age categories.* When we make a finding about your ability to do other work under § 416.920(f)(1), we will use the age categories in paragraphs (c) through (e) of this section. We will use each of the age categories that applies to you during the period for which we must determine if you are disabled. We will not apply the age categories mechanically in a borderline situation. If you are within a few days to a few months of reaching an older age category, and using the older age category would result in a determination or decision that you are disabled, we will consider whether to use the older age category after evaluating the overall impact of all the factors of your case.

(c) *Younger person.* If you are a younger person (under age 50), we generally do not consider that your age will seriously affect your ability to adjust to other work. However, in some circumstances, we consider that persons age 45–49 are more limited in their ability to adjust to other work than persons who have not attained age 45. See Rule 201.17 in appendix 2 of subpart P of part 404 of this chapter.

(d) *Person closely approaching advanced age.* If you are closely approaching advanced age (age 50–54), we will consider that your age along with a severe impairment(s) and limited work experience may seriously affect your ability to adjust to other work.

(e) *Person of advanced age.* We consider that at advanced age (age 55 or older) age significantly affects a person's ability to adjust to other work. We have special rules for persons of advanced age and for persons in this category who are closely approaching retirement age (age 60–64). See § 416.968(d)(4).

* * * * *

6. Section 416.968 is amended by adding a new paragraph (d)(4) to read as follows:

§ 416.968 Skill requirements.

* * * * *

(d) *Skills that can be used in other work (transferability).* * * *

(4) *Transferability of skills for individuals of advanced age.* If you are of *advanced age* (age 55 or older), and you have a severe impairment(s) that limits you to *sedentary* or *light* work, we will find that you cannot make an adjustment to other work unless you have skills that you can transfer to other skilled or semiskilled work (or you have recently completed education which provides for direct entry into skilled work) that you can do despite your impairment(s). We will decide if you have transferable skills as follows. If you are of advanced age and you have a severe impairment(s) that limits you to no more than *sedentary* work, we will find that you have skills that are transferable to skilled or semiskilled sedentary work only if the sedentary work is so similar to your previous work that you would need to make very little, if any, vocational adjustment in terms of tools, work processes, work settings, or the industry. (See § 416.967(a) and Rule 201.00(f) of appendix 2 of subpart P of part 404 of this chapter.) If you are of advanced age but have not attained age 60, and you have a severe impairment(s) that limits you to no more than *light* work, we will apply the rules in paragraphs (d)(1) through (d)(3) of this section to decide if you have skills that are transferable to skilled or semiskilled light work (see § 416.967(b)). If you are *closely approaching retirement age* (age 60–64) and you have a severe impairment(s) that limits you to no more than *light* work, we will find that you have skills that are transferable to skilled or semiskilled light work only if the light work is so similar to your previous work that you would need to make very little, if any, vocational adjustment in terms of tools, work processes, work settings, or the industry. (See § 416.967(b) and Rule 202.00(f) of appendix 2 of subpart P of part 404 of this chapter.)

[FR Doc. 00–8356 Filed 4–5–00; 8:45 am]
BILLING CODE 4191–02–U

DEPARTMENT OF EDUCATION

34 CFR Part 674

Federal Perkins Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Federal Perkins Loan Program regulations. The regulations replace all references and forms of the term "Direct Loan" in the Federal Perkins Loan

Program regulations with the acronym "NDSL" in order to eliminate confusion between the National Direct Student Loan (NDSL) Program and the William D. Ford Federal Direct Loan Program.

DATES: These regulations are effective May 8, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Vanessa Freeman, Program Specialist, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3045, Regional Office Building 3, Washington, DC 20202–5449. Telephone: (202) 708–8242.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: Regulations amending the Federal Perkins Loan Program were published in proposed form on July 29, 1999. The proposed regulations were published in conformance with Section 492 of the Higher Education Act of 1965, as amended (the HEA), which requires the Secretary to conduct a negotiated rulemaking process to develop proposed regulations. Except in certain circumstances, the HEA also requires the Secretary to publish proposed regulations that conform to consensus agreements reached during the negotiated rulemaking process. In the preamble of the proposed regulations, the Secretary made a commitment to publish a technical corrections package that would replace all references to "Direct Loan(s)" in the Federal Perkins Loan Program and Student Assistance General Provisions regulations with "National Direct Student Loan Program" or the acronym "NDSL." This commitment reflected an agreement by negotiators that such a change would clarify the regulations by eliminating the potential confusion between the National Direct Student Loan Program and the William D. Ford Federal Direct Loan Program. These final regulations replace the references to "Direct Loan(s)" in 34 CFR part 674 only. All references to "Direct Loan(s)" contained in the Student Assistance General Provisions refer correctly to the William D. Ford Federal Direct Loan Program.

Waiver of Negotiated Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these regulations merely reflect technical changes that add clarity to the regulatory provisions. The changes do not establish or affect substantive policy and are made as a result of consensus reached by all affected parties during the negotiated rulemaking procedures required under section 492 of the HEA. Therefore, under 5 U.S.C. 553(b)(B), the Secretary has determined that the use of negotiated rulemaking or proposed regulations is unnecessary and contrary to the public interest.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities.

Because these regulations reflect technical changes that add clarity to the regulatory provisions, the regulations would not have an impact on small entities.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for this program.

Assessment of Education Impact

Based on our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

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http://ocfo.ed.gov/fedreg.htm
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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at the first of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number: 84.037 Federal Perkins Loan Program)

List of Subjects in 34 CFR Part 674

Loan programs—education, Student aid, Reporting and recordkeeping requirements.

Dated: March 31, 2000.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends title 34 of the Code of Federal Regulations as follows:

PART 674—FEDERAL PERKINS LOAN PROGRAM

1. The authority for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087ii and 20 U.S.C. 421–429, unless otherwise noted.

2. Section 674.1 is amended by revising the reference to "National Direct Student Loan Program" to read "National Direct Student Loan (NDSL) Program" in paragraph (b)(1).

3. Section 674.2 is amended by removing the reference to "Direct loan" from the list of terms in paragraph (a).

4. The following sections in part 674 are amended by removing the word "Direct" and adding, in its place, "NDSL":

a. § 674.9(g)
b. § 674.19(e)(4)(iv)
c. § 674.31(b)(2)(i)(C)
d. § 674.33(b)(3)
e. § 674.40(b)
f. § 674.53 heading
g. § 674.53(a)(1)(ii)
h. § 674.53(b)(2)
i. § 674.53(c)(2)
j. § 674.56 heading
k. § 674.56(a)(2)
l. § 674.56(b)(2)
m. § 674.56(c)(2)
n. § 674.57 heading
o. § 674.57(a)(2)
p. § 674.58(a)(1)
q. § 674.61(a)
r. § 674.61(b)
s. § 674.61(d)
t. § 674.63(b)

5. The following sections in part 674 are amended by removing the words "a

Direct" and adding, in their place, "an NDSL":

a. § 674.59(b) heading
b. § 674.59(b)(1)
c. § 674.60(a)(2)

6. The following sections in part 674 are amended by removing the words "a Direct Loan" and adding, in their place, "an NDSL":

a. § 674.2 (definition of "Student loan")
b. § 674.31(b)(5)(ii)(A)
c. § 674.33(b)(6)(ii)
d. § 674.36(a)

7. The following sections in part 674 are amended by removing the words "a Direct loan" and adding, in their place, "an NDSL":

a.–b. § 674.31(b)(5)(ii)(B)
c. § 674.34(a)
d. § 674.34(c)(2)
e. § 674.37(a)(1)
f. § 674.53(a)(1)(i)

8. The following sections in part 674 are amended by removing the words "Direct loan" and adding, in their place, "NDSL":

a. § 674.9(h)(2)
b. § 674.53(b)(1) and (c)(1)
c. § 674.56(a)(1)
d. § 674.56(b)(1)
e. § 674.56(c)(1)

9. The following sections in part 674 are amended by removing the words "Direct Loan" and adding, in their place, "NDSL":

a. § 674.52(d)
b. § 674.57(a)(1)

10. The following sections in part 674 are amended by removing the words "Direct loans" and adding, in their place, "NDSLs":

a. § 674.2 (definition of "Initial grace period")
b. § 674.33(c)(2)
c. § 674.34 heading
d. § 674.36 heading
e. § 674.37 heading
f. § 674.42(c)(1)(i)
g. § 674.60 heading

11. The following sections are amended by removing the words "Direct Loans" and adding, in their place, "NDSLs":

a. § 674.12(a)
b. § 674.12(b)
c. § 674.31(b)(2)(i)(A)
d. § 674.31(b)(2)(i)(B)

12. Section 674.46 is amended by removing the words "National Direct" and adding, in their place, "NDSL" in paragraph (a)(1)(i).

[FR Doc. 00–8521 Filed 4–5–00; 8:45 am]
BILLING CODE 4000–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–107–2–7424a; FRL–6567–5]

Approval and Promulgation of Implementation Plans; Texas; Control of Air Pollution From Volatile Organic Compounds, Vent Gas Control and Offset Lithographic Printing Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action on revisions to the Texas State Implementation Plan (SIP). This rulemaking covers three separate actions: Approving the Revisions to the 30 TAC, Chapter 115, Control of Air Pollution from Volatile Organic Compounds (VOC), Subchapter B, Division 2, Vent Gas Control (bakery oven emissions) rule as meeting our Reasonably Available Control Technology (RACT) requirements for controlling the VOC emission from such major sources in the Dallas/For Worth (D/FW) ozone nonattainment area; Converting EPA's limited approval of certain sections in 30 TAC, Chapter 115, Control of Air Pollution from VOC, Subchapter B, Division 2, Vent Gas Control (bakery oven emissions) rule to a full approval as meeting the RACT requirements for controlling the VOC emission from such major sources in the D/FW ozone nonattainment area. By this approval action, we are saying that Texas will be implementing the RACT for VOC emissions resulting from operation of the bakeries in the D/FW area; and Approving that the revisions to the 30 TAC, Chapter 115, Control of Air Pollution from Volatile Organic Compounds (VOC), Subchapter E, Division 4, Offset Lithography Printing as meeting our RACT requirements for controlling the VOC emission from such major sources in the D/FW ozone nonattainment area. By this approval action, we are saying that Texas will be implementing the RACT for VOC emissions resulting from operation of the offset lithography printing sources in the D/FW area.

The EPA is approving these SIP revisions to regulate emissions of VOCs as meeting RACT in accordance with the requirements of the Federal Clean Air Act (the Act).

DATES: This rule is effective on June 5, 2000 without further notice, unless EPA receives adverse comment by May 8, 2000. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action including the Technical support Document (TSD) are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, P.E., Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6691.

SUPPLEMENTARY INFORMATION:

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Throughout this document "we," "us," and "our" means EPA.

1. What Action Is EPA Taking?

On March 16, 1999, the Governor of Texas submitted a rule revision to the Chapter 115, "Control of Air Pollution From Volatile Organic Compounds," as a revision to the SIP for bakery operations and offset lithographic printing operations. On May 22, 1997, EPA gave limited approval to sections 115.122(a)(3), 115.126(a)(4), 115.126(a)(5), 115.127(a)(5) and

115.129(2)–115.129(5) of Chapter 115 concerning to bakery operations. *See* 64 FR 3841. For bakery operations, the TNRCC submitted on March 16, 1999, revisions to sections 115.122, 115.123, and 115.126. This rulemaking will approve revisions to Sections 115.122 , 115.123, 115.126 in the D/FW ozone nonattainment area. Specifically, we are approving revisions to sections 115.122(a)(3)(B), 115.122(a)(3)(C), 115.122(a)(3)(E)(ii), 115.123(a)(1) and (2), a new section 115.126(a)(1)(C) and (D), and revisions to 115.126(a)(3)(A) and (B) concerning bakery oven emissions in the D/FW ozone nonattainment area. We are converting the limited approval to a full approval of sections 115.122(a)(3), 115.126(a)(4), 115.126(a)(5), 115.127(a)(5) and 115.129(2)–115.129(5).

For offset lithographic printing operations, this rulemaking will approve revisions to sections 115.440, 115.443, 115.446, and 115.449 in the D/FW ozone nonattainment area. We are also, approving a new section 115.440, revisions to section 115.443, removal of section 115.446(2)(D), revisions to section 115.446(8), and section 115.449(b) concerning offset lithographic printing operations in the D/FW ozone nonattainment area.

Originally, The TNRCC submitted the offset lithographic printing rules to us in August 1993, and we approved those rules in a limited approval fashion. *See* 62 FR 27964, published on May 22, 1997. Later on, we approved these rules, among many others, in a full approval fashion as a part of the 15 percent Rate of Progress contingency plan for the D/FW ozone nonattainment area. *See* 64 FR 3841, published on January 26, 1999.

Previously, the D/FW ozone nonattainment area was classified as moderate. The VOC major source threshold for a moderate area is 100 tpy. Texas submitted and we approved a declaration that there were no major (100 tpy) offset lithography printing sources in the D/FW area. *See* 61 FR 55894, published on October 30, 1996.

The D/FW is now classified as a serious ozone nonattainment area. The VOC major source threshold for a serious ozone nonattainment area is 50 tpy. Texas has now revised its VOC rules to insure that any offset lithography printing sources greater than 50 tpy will have to implement RACT.

In this document, we are now approving revisions to the Texas SIP concerning control of VOC emissions from bakery oven emissions and offset lithographic printing provisions as meeting the RACT requirements for controlling the VOC emissions from such operations in the D/FW ozone nonattainment area. For more information on the SIP revision and EPA's RACT evaluation, please refer to our TSD dated November 1999.

2. What Action Is EPA Not Taking in This Rulemaking?

In this document, we are not acting on the following: (1) attainment demonstration plan for the D/FW area, (2) RACT regulations for controlling VOCs from bakeries in ozone nonattainment areas other than D/FW area, and (3) RACT regulations for controlling VOCs from offset lithographic printing operations in ozone nonattainment areas other than D/FW area.

3. Why Do We Regulate VOCs?

Oxygen in the atmosphere reacts with VOCs and Oxides of Nitrogen to form ozone, a key component of urban smog. Inhaling even low levels of ozone can trigger a variety of health problems including chest pains, coughing, nausea, throat irritation, and congestion. It also can worsen bronchitis and asthma. Exposure to ozone can also reduce lung capacity in healthy adults.

4. Where Can I Find EPA Guidelines on Bakery Oven Emissions?

You can find our guidelines on bakery oven emissions in the document number EPA–453/R–92–017, "Alternative Control Technology for Bakery Oven Emissions." You can also refer to the Memorandum from John S. Seitz, Director of Air Quality Planning and Standards, dated February 15, 1995 (Bakery Memo), that addresses issues concerning bakery RACT requirements. We have included a copy of the Bakery Memo in our TSD dated November 1999, for reference purposes.

5. Where Can I Find EPA Guidelines on Offset Lithographic Printing?

You can find our guidelines on offset lithographic printing in the document number EPA–453/R–94–054, "Alternative Control Techniques' Document: Offset Lithographic Printing." The TNRCC submitted its Offset Lithography Printing rules to us in August 1993. We have evaluated the Texas Offset Lithography Printing rules against our guidance document and have determined that the Texas Offset Lithography Printing rules meet our RACT requirement for such sources.

6. What Are the Bakery Oven Emissions Rule Changes?

The intended purpose of this rule is to reduce VOC emissions and comply with the RACT requirements. The previously limited approved bakery rules, 62 FR 27965, May 22, 1997, called for 30 percent control in the H/G, B/PA, and D/FW areas, and we did not consider the 30 percent control as meeting the RACT.

The proposed rule revision calls for a minimum of 80 percent control in the D/FW area and we are considering the 80 percent control as meeting the RACT. Specifically, the revisions to Chapter 115 will modify the vent gas control rule by: (1) lowering the applicability threshold from 100 to 50 tpy for bakeries in the D/FW ozone nonattainment area, and (2) prohibiting the banking of emission reductions in the 30–90 percent range for major source bakeries in the D/FW ozone nonattainment area. Bakeries in the D/FW ozone nonattainment area must comply with this rule as soon as practicable, but no later than December 31, 2000. *See* 30 TAC Section 115.126(4)(A). You can find the appropriateness of a compliance date of December 31, 2000 (beyond the November 15, 1999, attainment deadline), in the VOC policy Memorandum from J. Craig Potter, Assistant Administrator for Air and Radiation, dated August 7, 1986, titled "Policy on SIP Revisions Requesting Compliance Date Extensions for VOC sources" (Extension Memo). We have included a copy of the Extension Memo in our TSD, dated November 1999, for reference purposes. The Extension Memo provides that the change in a deadline for a VOC source must be expeditious and practicable. EPA generally views two years as an acceptable time frame to implement RACT requirements. The Texas deadline is less than two years. We are of the opinion that the compliance date of December 31, 2000, time frame is practicable compared with the attainment demonstration dates of other severe ozone nonattainment areas in the country. We will closely examine and question any attempts to extend the compliance date beyond the December 31, 2000, for such VOC sources in the D/FW area in future.

Originally, we acted on the Texas 30 TAC, Chapter 115, Control of Air Pollution from Volatile Organic Compounds (VOC), Subchapter B, Division 2, Vent Gas Control (bakery oven emissions) rule in a limited approval fashion, 62 FR 27965, May 22, 1997, on the basis that the limited approval would strengthen the SIP. The May 22, 1997, final rulemaking gave limited approval to the Texas rule, which among other things, allowed 30 percent VOC control for these sources. The May 22, 1997, final rulemaking also

stated that the EPA would be publishing a determination regarding RACT in a future **Federal Register** action. In addition, the Bakery Memo states that RACT should result in VOC emissions reductions of 80 to 95 percent for large bakery operations. The Texas rule revision (a) requires a minimum of 80 percent reduction in VOC emissions from the bakery's 1990 baseline emission inventory (see Section 115.122(a)(3)(B)), and (b) prohibits the banking of emission reductions in the 30–90 percent range for major source bakeries in the D/FW ozone nonattainment area. For these reasons, we are of the opinion that this rule now meets the requirements of the RACT for the D/FW area and are approving these rule with its revisions as RACT.

For detailed evaluation of the specific provisions of the bakery oven emissions changes, please see pages 2 through 5 of our TSD dated November 1999.

7. What Are the Offset Lithographic Printing Rule Changes?

The intended purpose of this rule is to reduce VOC emissions and comply with the requirements of the RACT. Specifically, this rule applies to sources located or operating in the D/FW ozone nonattainment area. This proposed rule revision will: (1) create a new Section 115.440 concerning offset lithographic printing definitions, and (2) lower the applicability threshold from 100 to 50 tpy for offset lithographic printing operations in the D/FW ozone nonattainment area. The offset lithographic printing operations in the D/FW ozone nonattainment area must comply with this rule as soon as practicable, but no later than December 31, 2000. *See* 30 TAC Section 115.449(b). You can find the appropriateness of a compliance date of December 31, 2000 (beyond the November 15, 1999, attainment deadline), in the VOC policy Memorandum from J. Craig Potter, Assistant Administrator for Air and Radiation, dated August 7, 1986, titled "Policy on SIP Revisions Requesting Compliance date Extensions for VOC sources" (Extension Memo). We have included a copy of the Extension Memo in our TSD, dated November 1999, for reference purposes. The Extension Memo provides that the change in a deadline for a VOC source must be expeditious and practicable. EPA generally views two years as an acceptable time frame to implement RACT requirements. The Texas deadline is less than two years. We are of the opinion that the compliance date of December 31, 2000, time frame is practicable compared with the attainment demonstration dates of other severe ozone nonattainment areas in the country. We will closely examine and question any attempts to extend the compliance date beyond the December 31, 2000, for such VOC sources in the D/FW area in future.

Other revisions are administrative in nature, e.g., changing the word "section" to "division," and we are approving them for the D/FW ozone nonattainment area. As we stated in the summary section of this document, the TNRCC submitted its Offset Lithography Printing rules to us in August 1993. For rulemaking history of the Texas Offset Lithography Printing rules, please refer to section 1 of this document. For detailed evaluation of the specifics of the offset lithographic printing rule, please see pages 6 and 7 of our TSD dated November 1999.

8. What Is a Nonattainment Area?

A nonattainment area is a geographic area in which the level of a criteria air pollutant is higher than the level allowed by Federal standards. A single geographic area may have acceptable levels of one criteria air pollutant but unacceptable levels of one or more other criteria air pollutants; thus, a geographic area can be attainment for one criteria pollutant and nonattainment for another criteria pollutant at the same time. It has been estimated that 60 percent of Americans live in nonattainment areas.

9. What Are Alternative Control Techniques (ACTs)?

Section 183(c) of the Act provides that we will issue technical documents which identify alternative controls for stationary sources of VOC which emit, when uncontrolled, 25 tpy or more of this pollutant. We have to revise and update these ACT documents as needed. We generate the information in the ACT documents from our papers, literature sources and contacts, control equipment vendors, engineering firms, and Federal, State, and local regulatory agencies. States can use information in the ACT to develop their Reasonably Available Control Technology regulations. Sections 3 and 4 of this document name the titles of EPA's ACT documents for bakery oven emissions and offset lithographic printing operations.

10. What Is Reasonably Available Control Technology?

We have defined RACT as the lowest emission limitation that a particular source can meet by applying a control technique that is reasonably available considering technological and economic feasibility. *See* 44 FR 53761, September 17, 1979. A state may choose to develop its own RACT requirements on a case by case basis, considering the economic and technical circumstances of an individual source. Section 172 of the Act contains general requirements for States to implement RACT in areas that do not meet the National Ambient Air Quality Standard (NAAQS). Section 182(b)(2) of the Act contains more specific requirements for moderate and above ozone nonattainment areas.

11. What Is a State Implementation Plan?

Section 110 of the Act requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the National Ambient Air Quality Standards (NAAQS) that EPA has established. Under Section 109 of the Act, EPA established the NAAQS to protect public health. The NAAQS address six criteria pollutants. These criteria pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each State must submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each State has a SIP designed to protect air quality. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

12. What Is the Federal Approval Process for a SIP?

When a State wants to incorporate its regulations into the federally enforceable SIP, the State must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process includes a public notice, a public hearing, a public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a State adopts a rule, regulation, or control strategy, the State may submit the adopted provisions to us and request that we include these provisions in the federally enforceable SIP. We must then decide on an appropriate Federal action, provide public notice on this action, and seek additional public comment regarding this action. If we receive adverse comments, we must address them prior to a final action.

Under section 110 of the Act, when we approve all State regulations and supporting information, those State regulations and supporting information become a part of the federally approved SIP. You can find records of these SIP actions in the Code of Federal

Regulations at Title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual State regulations that we approved are not reproduced in their entirety in the CFR but are "incorporated by reference," which means that we have approved a given State regulation with a specific effective date.

13. What Does Federal Approval of a SIP Mean to Me?

A State may enforce State regulations before and after we incorporate those regulations into a federally approved SIP. After we incorporate those regulations into a federally approved SIP, both EPA and the public may also take enforcement action against violators of these regulations.

14. What Areas in Texas Will This Action Affect?

These rules we are approving today will affect the D/FW ozone nonattainment area. The D/FW area is classified as serious ozone nonattainment and includes the following counties: Collin, Dallas, Denton, and Tarrant.

If you are in one of these counties, you need to refer to these rules to find out if and how these rules will affect you.

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on June 5, 2000 without further notice unless we receive adverse comment by May 8, 2000. If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Executive 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612, "Federalism," and Executive Order 12875, "Enhancing the Intergovernmental Partnership." Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because the rule approves a State rule implementing a federal standard, and does not alter the distribution of power and responsibilities established in the Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it approves a State program.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities

because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major" rule as defined by 5 U.S.C. 804(2). This rule will be effective June 5, 2000.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 5, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2) of the Act.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 21, 2000.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

2. In § 52.2270 the table in paragraph (c) is amended under Chapter 115 by:

a. Removing the entries for "115.121–115.129" and "115.442–115.449."

b. Adding in numerical order entries for sections 115.121, 115.122, 115.123, 115.125, 115.126, 115.127, 115.129, 115.440, 115.443, 115.446, and 115.449 as RACT for the D/FW area.

c. Add the heading "Vent Gas Control" above the entry for section 115.121 under the column "Title/Subject"; and add the heading "Offset Lithographic Printing" above the entry for Section 115.440 under the column "Title/Subject".

The removal and additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State submittal/ approval date	EPA approval date	Explanation
*	*	*	*	*
Chapter 115 (Regulation 5)—Control of Air Pollution from Volatile Organic Compounds				
*	*	*	*	*
Vent Gas Control				
Section 115.121	Emission Specifications	March 21, 1999	April 6, 2000	Ref—52.2270(c)(104), Approved as RACT for the D/FW 1-hr ozone area only.
Section 115.122	Control Requirements	March 21, 1999	April 6, 2000	Ref—52.2270(c)(104), Approved as RACT for the D/FW 1-hr ozone area only.
Section 115.123	Alternate Control Requirements.	March 21, 1999	April 6, 2000	Ref—52.2270(c)(104), Approved as RACT for the D/FW 1-hr ozone area only.
Section 115.125	Testing Requirements	March 21, 1999	April 6, 2000	Ref—52.2270(c)(104), Approved as RACT for the D/FW 1-hr ozone area only.

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State submittal/ approval date	EPA approval date	Explanation
Section 115.126	Monitoring and Recordkeeping Requirements.	March 21, 1999	April 6, 2000	Ref—52.2270(c)(104), Approved as RACT for the D/FW 1-hr ozone area only.
Section 115.127	Exemptions	March 21, 1999	April 6, 2000	Ref—52.2270(c)(104), Approved as RACT for the D/FW 1-hr ozone area only.
Section 115.129	Counties and Compliance Schedule.	March 21, 1999	April 6, 2000	Ref—52.2270(c)(104), Approved as RACT for the D/FW 1-hr ozone area only.
* * *		*	*	*
Offset Lithographic Printing				
Section 115.440	Definitions	March 21, 1999	April 6, 2000	New.
* * *		*	*	*
Section 115.443	Alternate Control Requirements.	March 21, 1999	April 6, 2000	Ref—52.2270(c)(104), 52.2270(c)(105) (i)(P), Approved as RACT for the D/FW 1-hr ozone area only.
* * *		*	*	*
Section 115.446	Monitoring and Recordkeeping Requirements.	March 21, 1999	April 6, 2000	Ref—52.2270(c)(104), 52.2270(c)(105) (i)(P), Approved as RACT for the D/FW 1-hr ozone area only.
Section 115.449	Counties and Compliance Schedules.	March 21, 1999	April 6, 2000	Ref—52.2270(c)(104), 52.2270(c)(105) (i)(P), Approved as RACT for the D/FW 1-hr ozone area only.
* * *		*	*	*

[FR Doc. 00–7732 Filed 4–5–00; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6572–6]

Notice of Approval of Prevention of Significant Deterioration (PSD) Permits to Sutter Power Plant, Calpine Corporation (NSR 4–4–4, SAC 98–01), South Point Power Plant, Calpine Corporation (NSR 4–4–4, AZ 98–01), and the La Paloma Power Plant, La Paloma Generating Company (NSR 4–4–4, SJ 98–01)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: Notice is hereby given that the EPA issued PSD permits to the following applicants:

(1) The Sutter Power Plant, granting approval to construct two combustion turbine generators with waste heat recovery steam generators producing a total of 500 megawatts. The permit became effective on December 2, 1999 and includes the following emission limits: NO_X at 2.5 ppm (maximum 19 lbs/hr, normal operation), CO at 4.0 ppm (maximum 34.3 lbs/hr, normal operation), and PM10 at 11.5 lbs/hr.

(2) The South Point Power Plant granting approval to construct two combustion turbine generators with waste heat recovery steam generators and associated equipment producing a total of 500 megawatts. The permit became effective on May 24, 1999 and includes the following emission limits: NO_X at 3.0 ppm (maximum 24 lbs/hr), CO at 10 ppm (maximum 158.3 lbs/hr), and PM10 at a maximum of 22.8 lbs/hr.

(3) The La Paloma Power Plant granting approval to construct four combustion turbine generators with waste heat recovery steam generators and associated equipment producing a total of 1048 megawatts. The permit became effective on July 27, 1999 and includes the following emission limits: NO_X at 2.5 ppm (maximum 17.3 lbs/hr), CO at 6 ppm (maximum 25.3 lbs/hr) at loads above 221 megawatts and 10 ppm (maximum 34.1 lbs/hr) at loads at or below 221 megawatts, and SO_2 at 89.5 lbs/day for each gas turbine.

DATES: The PSD permits are reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by June 5, 2000.

FOR FURTHER INFORMATION CONTACT: Copies of the permits are available for public inspection upon request; address request to: Steven Barhite (AIR–3), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1260.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements at all three facilities include dry low NO_X burners and Selective Catalytic Reduction for the control of NO_X emissions, low sulfur fuels for the control of SO_2 and PM10 emissions, and good combustion design and operation for the control of PM10, CO, and VOC emissions. In addition, the Sutter and La Paloma facilities will utilize an oxidation catalyst to control CO emissions. Air quality impact modelling was required for NO_X, SO_2, CO and PM10. Continuous emission monitoring is required for NO_X and CO and all three sources are subject to New Source Performance Standards, Subparts A and GG.

Dated: March 24, 2000.

David P. Howekamp,

Director, Air Division, Region 9.

[FR Doc. 00–8537 Filed 4–5–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6572–5]

Notice of Prevention of Significant Deterioration (PSD) Final Determination for Delta Energy Center, Pittsburg, CA

AGENCY: Environmental Protection Agency.

ACTION: Notice of final action.

SUMMARY: The purpose of this document is to announce that on February 9, 2000, the U.S. Environmental Protection Agency (EPA) Environmental Appeals Board (Board) dismissed a petition for review of a permit issued for the Delta Energy Center by the Bay Area Air Quality Management District (District) pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations under 40 CFR 52.21.

DATES: The effective date for the Board's decision is February 9, 2000.

FOR FURTHER INFORMATION CONTACT: Martha Larson, Permits Office, Air Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1170.

SUPPLEMENTARY INFORMATION: On October 21, 1999, the District issued a Final Determination of Compliance (Application Number 19414) to Delta Energy Center for the construction of a new power plant in Pittsburg, CA. The Final Determination of Compliance also constituted a final PSD Permit under 40 CFR 52.21 and the terms of the District's delegation of authority from the U.S. EPA under 40 CFR 52.21(u). On November 16, 1999, Californians for Renewable Energy, Inc. ("CRE") petitioned the Board to review this permit. On February 9, 2000, the Board dismissed CRE's petition due to failure to meet the standing requirements necessary for obtaining review of PSD permits as set forth in 40 CFR part 124 (see *In re: Delta Energy Center*, PSD Appeal No. 99–76).

Pursuant to 40 CFR 124.19(f)(2), for purposes of judicial review, final Agency action occurs when a final PSD permit is issued and Agency review procedures are exhausted. This notice, being published today in the FR, constitutes notice of the final Agency action denying review of the PSD permit. If available, judicial review of these determinations under section 307(b)(1) of the CAA may be sought only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which this determination is published in the FR. Under section 307(b)(2) of this Act, this determination shall not be subject to later judicial review in any civil or criminal proceedings for enforcement.

Dated: March 24, 2000.

David P. Howekamp,

Director, Air Division, Region IX.

[FR Doc. 00–8538 Filed 4–5–00; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 65, No. 67
Thursday, April 6, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 71 and 73

RIN 3150-AG41

Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking: Reopening of comment period.

SUMMARY: The Nuclear Regulatory Commission (NRC) published for public comment an advanced notice of proposed rulemaking (ANPR) on December 21, 1999 (64 FR 71331), that would require licensees to notify Federally recognized Native American Tribes of shipments of certain types of high-level radioactive waste, including spent nuclear fuel, before the shipments are transported to or across the boundary of Tribal lands. In a letter to the Secretary of the Commission, dated March 1, 2000, the National Congress of American Indians (NCAI) requested a 90-day extension of the comment period. The comment period for the ANPR expired on March 22, 2000. In view of the importance of the issues described in the ANPR and the information needed to resolve these issues, the amount of additional time that the NCAI requested to provide comments on behalf of its 210 constituent Tribal governments is reasonable. The NRC is reopening the comment period for 90 days. The comment period will expire on July 5, 2000.

DATES: The comment period has been reopened and will expire on July 5, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: The Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

Hand-deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking website (http://ruleforum.llnl.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. These same documents also may be viewed and downloaded electronically via the rulemaking website.

FOR FURTHER INFORMATION CONTACT:

Stephanie P. Bush-Goddard, Ph.D., Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6257, e-mail SPB@nrc.gov; or

Dorothy M. Gauch, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1630, e-mail DMG5@nrc.gov.

Dated at Rockville, Maryland, this 31st day of March 2000.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 00–8431 Filed 4–5–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–74–AD]

Airworthiness Directives; Eurocopter Deutschland GmbH Model EC 135 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Eurocopter Deutschland GmbH (ECD) Model EC–135 helicopters. The existing AD requires conducting a tail rotor drive shaft vibration survey (survey), installing a Fenestron Shaft Retrofit Kit, inspecting each tail rotor drive shaft bearing (bearing) attaching lock plate for bent-open tabs and broken or missing slippage marks, and visually inspecting each bearing support for cracks. This action would require conducting the survey and installing the Fenestron Shaft Retrofit Kit. This AD would also require installing double bearing supports and struts, revising the required compliance time for the repetitive inspections of the bearing attach hardware and supports, and removing the requirement to contact the FAA if a lock plate tab is bent open or if slippage marks are broken or missing. This proposal is prompted by continued reports of misaligned or cracked bearing supports and loose bearing attachment bolts. The actions specified by the proposed AD are intended to prevent loss of drive to the tail rotor and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before June 5, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–74–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9 am and 3 pm, Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT:

Shep Blackman, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth,

Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–74–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–74–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On October 27, 1998, the FAA issued AD 98–15–25, Amendment 39–10866 (63 FR 59206, November 3, 1998), requiring the following:

- Before further flight, conduct a survey and install a Fenestron Shaft Retrofit Kit L 535M3002 882.
- Before further flight and thereafter at intervals not to exceed 15 hours time-in-service (TIS), inspect the bearing attaching lock plate for bent-open tabs and broken or missing slippage marks. If found, the FAA must be notified.
- Before further flight and thereafter at intervals not to exceed 3 hours TIS, using a 6-power or higher magnifying glass and a bright light, visually inspect the bearing supports for cracks.

That action was prompted by reports of loose bearings and attachment bolts. The actions of that AD were intended to prevent loss of drive to the tail rotor and subsequent loss of control of the helicopter.

Since the issuance of AD 98–15–25, additional reports of misaligned, cracked, or corroded bearing supports, and loose bearing attachment bolts have been received. The original bearing supports have been redesigned to enable more precise alignment with the tail rotor driveshaft and have been strengthened to prevent cracking. In addition, they are now fabricated of corrosion-resistant material. Struts have been added to the tail boom to improve airframe vibration characteristics and further minimize bearing support cracking.

The Luftfahrt-Bundesamt (LBA), the airworthiness authority for the Federal Republic of Germany, notified the FAA that an unsafe condition may exist on ECD Model EC 135 helicopters. The LBA advises that misaligned, corroded, or cracked bearing supports and loose bearing attachment bolts may lead to a tail rotor failure and subsequent loss of the helicopter.

Since those cited in AD 98–15–25, ECD has issued the following Alert Service Bulletins (ASB's):

- EC 135–53A–004, dated August 14, 1998, to specify replacing the current single bearing supports with double bearing supports made of corrosion-resistant material and to provide instructions for aligning these double bearing supports with the drive shaft axis for improved tail rotor drive shaft support.
- EC 135–53A–005, Revision 3, dated September 2, 1998, to extend the time interval for compliance with the repetitive bearing attach hardware inspection and to identify the required tail rotor driveshaft vibration measurement procedure.
- EC 135–53A–002, Revision 2, dated September 2, 1998, to extend the time interval for compliance with the repetitive bearing support crack inspection contingent on accomplishing Alert Service Bulletin EC 135–53A–004.

The LBA classified these ASB's as mandatory and issued AD's 1998–033/7 and 1998–389, both dated September 14, 1998, to ensure the continued airworthiness of these helicopters in the Federal Republic of Germany.

This helicopter model is manufactured in the Federal Republic of Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other ECD Model EC 135 helicopters of the same type design, the proposed AD would supersede AD 98–15–25. The proposed AD would require the following:

- Conducting a vibration survey and installing the Fenestron Shaft Retrofit Kit L535M3002 882;
- Installing double bearing supports and struts;
- Replacing bearing attach hardware if necessary; and
- Increasing the repetitive inspection interval for the bearing supports and attach hardware to 50 hours TIS.

The FAA estimates that 16 helicopters of U.S. registry would be affected by this proposed AD. The 50-hour inspection would take approximately 2 work hours to complete. The average labor rate is $60 per work hour. ECD has stated in its ASB's that the baseline vibration measurements and initial installation of all new parts are provided at no charge to the owner/operator. Assuming the helicopters are operated 900 hours TIS per year, the total cost impact of the proposed AD on U.S. operators is estimated to be $34,560.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the

location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10866; AD 98–15–25, Docket No. 98–SW–35–AD, and by adding a new airworthiness directive (AD), to read as follows:

Eurocopter Deutschland GmbH: Docket No. 98–SW–74–AD. Supersedes AD 98–15–25, Amendment 39–10866, Docket No. 98–SW–35–AD.

Applicability: Model EC 135 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of drive to the tail rotor and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, conduct a tail rotor drive shaft vibration survey and install a Fenestron Shaft Retrofit Kit L535M3002 882 in accordance with Eurocopter Deutschland GmbH Alert Service Bulletin (ASB) EC 135–53A–005, Revision 3, dated September 2, 1998.

(b) Before further flight, install double bearing supports for the tail rotor driveshaft and tail boom struts in accordance with ASB EC 135–53A–004, dated August 14, 1998.

Note 2: ASB EC 135–53A–002, Revision 2, dated September 2, 1998, pertains to the subject of this AD.

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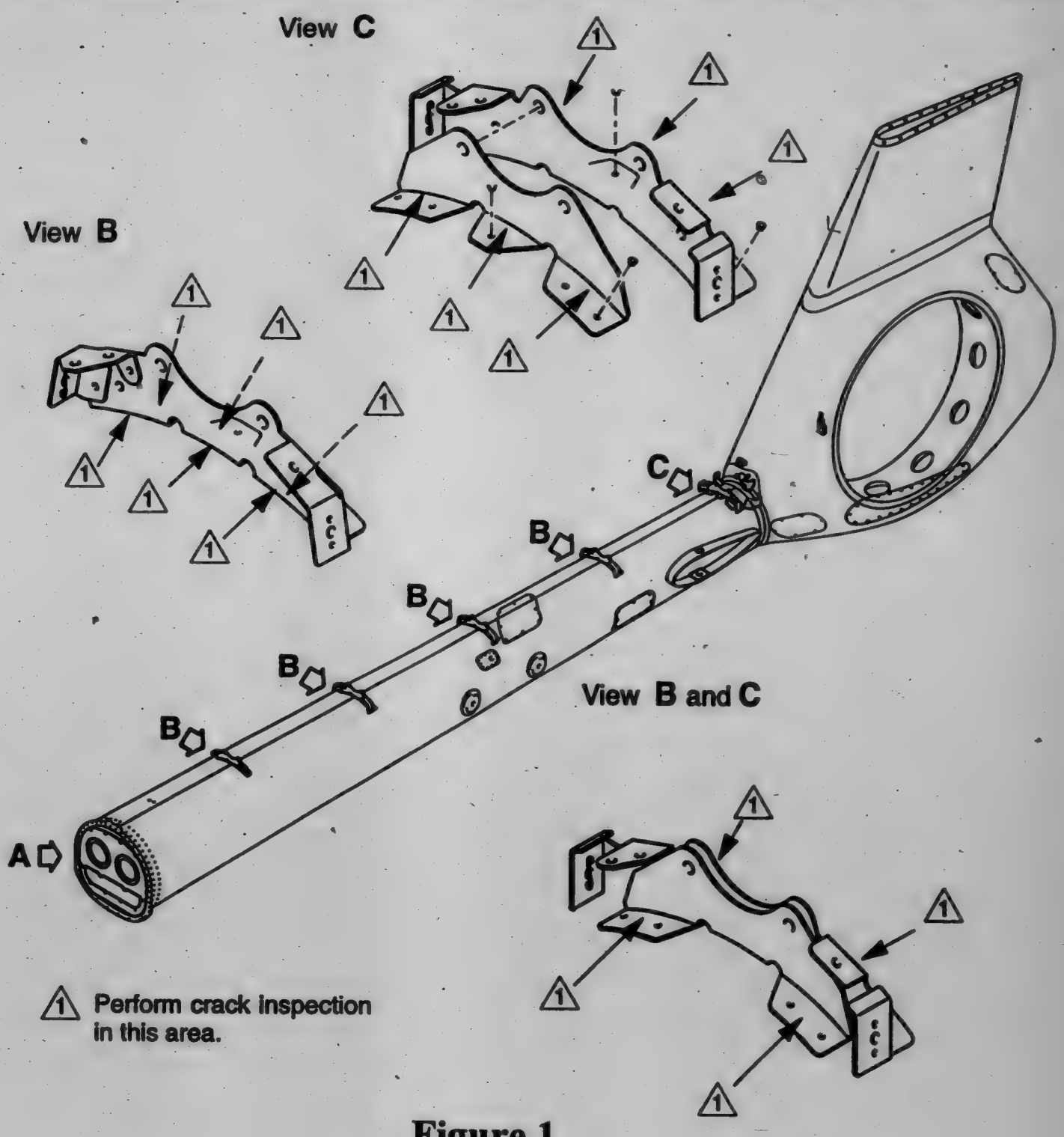

Figure 1

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(c) Before further flight and thereafter at intervals not to exceed 50 hours time-in-service, perform the following:

(1) Clean each tail rotor drive shaft bearing support. Using a 6-power or higher magnifying glass and a bright light, visually inspect the attach lugs of the bearing supports B and C (shown in Figure 1) for cracks, particularly in the area extending from the bend radius to the attaching screws and rivets connecting the bearing supports to the tail boom. Before further flight, replace each cracked bearing support with an airworthy bearing support.

(2) Inspect each bearing attach hardware lock plate for bent-open tabs and slippage marks for attach hardware looseness or rotation. Before further flight, replace any loose bearing attach hardware (including lock plates found bent or open due to bolt rotation) with airworthy hardware.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Luftfahrt-Bundesamt (Federal Republic of Germany) AD's 1998–033/7 and 1998–389, both dated September 14, 1998.

Issued in Fort Worth, Texas, on March 29, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–8520 Filed 4–5–00; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–107–2–7424b; FRL–6567–6]

Approval and Promulgation of Implementation Plans; Texas; Control of Air Pollution From Volatile Organic Compounds, Vent Gas Control and Offset Lithographic Printing Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is taking action on revisions to the Texas State Implementation Plan (SIP). This document covers three separate actions: Approving the Revisions to the 30 TAC, Chapter 115, Control of Air Pollution from Volatile Organic Compounds (VOC), Subchapter B, Division 2, Vent Gas Control (bakery oven emissions) rule as meeting our Reasonably Available Control Technology (RACT) requirements for controlling the VOC emission from such major sources in the Dallas/For Worth (D/FW) ozone nonattainment area; converting EPA's limited approval of certain sections in 30 TAC, Chapter 115, Control of Air Pollution from VOC, Subchapter B, Division 2, Vent Gas Control (bakery oven emissions) rule to a full approval as meeting the RACT requirements for controlling the VOC emission from such major sources in the D/FW ozone nonattainment area. By this approval action, we are saying that Texas will be implementing the RACT for VOC emissions resulting from operation of the bakeries in the D/FW area; and approving that the revisions to the 30 TAC, Chapter 115, Control of Air Pollution from Volatile Organic Compounds (VOC), Subchapter E, Division 4, Offset Lithography Printing as meeting our RACT requirements for controlling the VOC emission from such major sources in the D/FW ozone nonattainment area. By this approval action, we are saying that Texas will be implementing the RACT for VOC emissions resulting from operation of the offset lithography printing sources in the D/FW area.

The EPA is approving these revisions to regulate emissions of VOCs as meeting RACT in accordance with the requirements of the Federal Clean Air Act.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision and anticipates no adverse comment. The EPA has explained its reasons for this approval in the preamble to the direct final rule. If EPA receives no relevant adverse comments, the EPA will not take further action on this proposed rule. If EPA receives relevant adverse comment, EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by May 8, 2000.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, P.E., Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6691.

SUPPLEMENTARY INFORMATION: This document concerns Control of Air Pollution from Vent Gas Control (bakery oven emissions) and offset lithographic printing rules in the D/FW ozone nonattainment area. For further information, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 21, 2000.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

[FR Doc. 00–7733 Filed 4–5–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRL–6571–3; F–2000–ALPA–FFFFF]

Alternative Liner Performance, Leachate Recirculation, and Bioreactor Landfills: Request for Information and Data

AGENCY: Environmental Protection Agency.

ACTION: Request for information and data.

SUMMARY: EPA is requesting comments and information on two issues related to the Criteria for Municipal Solid Waste Landfills. First, we need data and information on the performance of alternative liner designs compared to the performance of composite liners

when leachate is recirculated. Provisions in the municipal solid waste landfill (MSWLF) criteria prohibit leachate recirculation at an MSWLF unless the unit has a composite liner as described in these regulations. Recently, various stakeholder groups (e.g., States, local governments, solid waste associations, and industry) have suggested that there are alternative liner designs that would work as well as, if not better than, the specific liner designs currently required by the criteria.

Second, EPA is also requesting data and information on the design and performance of bioreactor landfills. In recent years, bioreactor landfills have gained recognition as a possible innovation in solid waste management. The bioreactor landfill is generally defined as a landfill operated to transform and more quickly stabilize the readily and moderately decomposable organic constituents of the waste stream by purposeful control to enhance microbiological processes. Bioreactor landfills often employ liquid addition including leachate recirculation, alternative cover designs, and state-of-the-art landfill gas collection systems.

DATES: EPA must receive your responses on leachate recirculation and alternative liner performance by August 7, 2000. EPA must receive your responses on bioreactors by October 6, 2000.

ADDRESSES: See section I of **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: *For general information:* Contact the RCRA Hotline at 800 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703 412–9810 or TDD 703 412–3323.

For information on specific aspects of this document: Contact Dwight Hlustick, Municipal and Industrial Solid Waste Division of the Office of Solid Waste (mail code 5306W), U.S. Environmental Protection Agency Headquarters (EPA, HQ) 1200 Pennsylvania Ave., NW, Washington, DC 20460; 703/308–8647 [HLUSTICK.DWIGHT@EPAMAIL.EPA.GOV].

SUPPLEMENTARY INFORMATION:

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I. Submitting Responses on This Document

How May I Respond to This Document?

You may submit your information in hard copy (paper) or using electronic mail. All comments must reference docket number F–2000-ALPA-FFFFF. You should not submit electronically any confidential business information.

- Mail: Please submit an original and two copies to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ) 1200 Pennsylvania Ave., NW, Washington DC 20460.
- *Hand Deliveries:* Please submit an original and two copies of information to: RCRA Information Center (RIC), Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, Virginia.
- *Electronic Submittals:* Please submit electronic information through the Internet to: rcra-docket@epa.gov. Your responses in electronic format must also be indentified by docket number F–2000–ALPA–FFFFF. You must provide your electronic submittals as ASCII files and avoid the use of special characters and any form of encryption. You should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania NW, Washington, DC 20460.

What Information Should I Include in My Response?

Your comments will be most effective if you follow the suggestions below:

- Explain your views as clearly as possible.
- Provide solid technical data to support your views.
- If you estimate potential costs, explain how you arrived at the estimate.
- Provide specific examples to illustrate your concerns.
- Offer specific alternatives.
- Refer your comments to specific sections of this notice or MSWLF criteria.
- Be sure to submit your information by the deadline in this notice.
- Be sure to include the name, date, and docket number with your submittals.

What Will EPA Do With the Information You Submit?

We will review all responses to this action as well as additional information in our own data base in considering whether to propose to revise the Criteria for Municipal Solid Waste Landfills (40 CFR part 258). EPA will not respond directly on an individual basis to those providing information to the Agency as a result of this action, but will address issues raised by the respondents in future **Federal Register** notices. In addition, all responses to this information request notice will be incorporated into the docket for any rulemaking proposals on the subject criteria.

II. What Will Be the Official Record for This Document?

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all electronic submittals into paper form and place them in the official record, which will also include all responses submitted directly in writing. The official record is the paper record maintained at the RCRA Information Center (RIC), Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, Virginia.

How May I See Responses to This Document?

All responses to this document are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, we recommend that the public make an appointment by calling 703 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

Where May I Find Information on This Action on the Internet?

Information on this action, consisting of this notice and a fact sheet, may be found at the following Internet site: http://www.epa.gov/epaoswer/non-hw/muncpl/landfill/leachate.htm.

III. What Is the Authority for This Request?

Any revisions to Criteria for Municipal Solid Waste Landfills (40 CFR part 258) will be made under Sections 1008, 2002 (general rule making authority), 4004, and 4010 of the Resource Conservation and Recovery Act of 1976, as amended. Revisions may also be made under Section 405 of the Clean Water Act which addresses the disposal of sewage sludge.

IV. Description of EPA's Current Municipal Solid Waste Landfill Regulations

As specified in the Resource Conservation and Recovery Act, the federal role is to establish overall regulatory direction through the provision of minimum nationwide standards for MSWLFs. On October 9, 1991, EPA issued revised Criteria for Municipal Solid Waste Landfills (40 CFR part 258; 56 FR 50978). These criteria establish minimum national performance standards necessary to ensure that "no reasonable probability of adverse effects on health or the environment" will result from solid waste disposal facilities. MSWLFs typically receive household waste, non-hazardous commercial, institutional and industrial waste, household hazardous waste and conditionally exempt small quantity generator (CESQG) hazardous waste. The criteria are implemented in one of two ways. The first, and preferred alternative, is that each State would implement the criteria after receiving approval by EPA of its municipal solid waste landfill permit program or other system of prior approval. The criteria contain provisions that allow States to develop and rely on alternative approaches that deal with site-specific conditions. Therefore, the actual planning and direct implementation of solid waste programs is principally a function of State governments and those owners and operators, including local governments, of MSWLFs, not the federal government.

The second alternative is that the program would be self-implementing by landfill owners and operators in those States that have not received EPA approval of their MSWLF permitting programs. In this case, the regulations provide less flexibility than for approved States. As of March 1, 2000, 49 states and territories had received approval of their programs and are implementing these regulations.

V. Description of Current Regulations for Landfill Liners

The criteria set forth two methods for complying with liner requirements for municipal solid waste landfills. The first is a performance standard and the second is a specific design standard.

Performance Standard

The performance standard is set forth in § 258.40(a)(1). Under this standard, a landfill owner or operator may rely on the design of their choice, provided the design ensures that the concentration values for the constituents listed in the following table will not be exceeded in the uppermost aquifer at the relevant point of compliance as determined by the Director of an approved State.

TABLE 1.—CONCENTRATION VALUES NOT TO BE EXCEEDED AT THE POINT OF COMPLIANCE

Chemical	MCL (mg/l)
Arsenic	0.05
Barium	1.0
Benzene	0.005
Cadmium	0.01
Carbon tetrachloride	0.005
Chromium (hexavalent)	0.05
2,4-Dichlorophenoxy acetic acid	0.1
1,4-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,2-Dichloroethylene	0.007
Endrin	0.0002
Fluoride	4
Lindane	0.004
Lead	0.05
Mercury	0.002
Methoxychlor	0.1
Nitrate	10
Selenium	0.01
Silver	0.05
Toxaphene	0.005
1,1,1-Trichoromethane	0.2
Trichloroethylene	0.005
2,4,5-Trichlorophenoxy acetic acid	0.01
Vinyl Chloride	0.002

The point of compliance can be no more than 150 meters from the waste management unit boundary and must be on land owned by the owner of the MSWLF (see 40 CFR 258.40(d)). The criteria require that in determining whether the performance standard is met, the Director of the approved State program shall consider the following factors in his/her determination:

1. The hydrogeologic characteristics of the facility and the surrounding land;
2. The volume and the physical and chemical characteristics of the leachate;
3. The quantity, quality, and direction of flow of ground water;
4. The proximity of and withdrawal rate of the groundwater users;
5. The availability of alternative drinking water supplies;
6. The existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water, and whether the ground water is currently used or reasonably expected to be used for drinking water;
7. Public health, safety, and welfare effects; and
8. Practical capability of the owner or operator.

Design Standard

The second method for compliance with the criteria is to install a liner system that meets the specific design criteria described in 40 CFR 258.40(a)(2) and set forth in 40 CFR 258.40(b). Section 258.40(a)(2) states that the liner system must contain a composite liner and Section 258.40(b) defines a composite liner as a system comprised of two components:

1. An upper component consisting of a minimum of 30 mil flexible membrane liner (60 mil if high density polyethylene (HDPE) is used); and
2. a lower component consisting of compacted soil at least two feet deep with a hydraulic conductivity of no more than 1×10^{-7} cm/sec.

We based this decision on a desire to ensure that leachate reaching the liner would be efficiently collected (56 *FR* 51056). The design standards require that the leachate collection system be capable of maintaining a hydraulic head within the landfill of 30 cm or less.

VI. What Are the Existing Requirements for Leachate Recirculation?

The liquid restrictions in Subpart C of Part 258 only allow leachate recirculation in MSWLFs that are constructed with a composite liner and leachate recirculation system as described in 40 CFR 258.28(a)(2). The recirculation of leachate is not allowed in landfills which have an alternative liner design even if the design meets the performance standard in 40 CFR 258.40(a)(1). At the time these regulations were promulgated, we believed MSWLFs needed a composite liner and leachate control system as described at 40 CFR 258.40(a)(2) to ensure that ground water would be protected.

Description of Technical Guidance for Landfill Design

EPA published a technical manual entitled "Solid Waste Disposal Criteria" (EPA530–R–93–017, NTIS PB94–100–450, Internet site: http://www.epa.gov/epaoswer/non-hw/muncpl/landfill/techman/) in 1993. Chapter 4 of this manual entitled "Design Criteria" sets forth additional guidance in the

following areas: (1) Design concepts, (2) design calculations, (3) physical properties, and (4) construction methods. This chapter of the guidance document also addresses the following:

Designs Based on the Performance Standard

- Leachate characterization and leakage assessment;
- Leachate migration in the subsurface;
- Leachate migration models;
- Relevant point of compliance assessment.

Description of Concerns With Respect to Leachate Recirculation

Many MSWLF stakeholders (*e.g.*, States, local governments, solid waste associations, and industry) believe that under certain conditions, leachate recirculation should be allowed when alternative liners are used. In fact, some believe that alternative liner technologies can be superior to the composite liner design specified in the criteria. We are trying to determine if it is possible to design and operate MSWLFs safely when alternative liner designs are used and leachate is recirculated. As required by the regulations, such an alternative liner design must assure that the performance standard specified at 40 CFR 258.40(a)(1) and the requirement to maintain a hydraulic head within the landfill of 30 cm. or less are met.

VII. What Information Would EPA Like to Have About Alternative Liner Performance and Leachate Recirculation?

We are interested in determining whether and which types of alternative liners are capable of meeting the design performance standard described above including maintaining a hydraulic head at acceptable levels.

More specifically we are seeking data and information on the following issues and questions:

- Should EPA revise the MSWLF regulations to allow leachate recirculation when alternative liners are used, and under what conditions should leachate recirculation be allowed?
- Should only specified alternative liner designs be allowed if leachate is recirculated?
- When alternative liners are used, what would be the impact of leachate recirculation on leachate quality and quantity and attainment of the concentration values specified in Table 1 in ground water at the point of compliance?
- Does EPA need to specify other requirements in the MSWLF Criteria to ensure that landfills that recirculate leachate when using alternative liners protect ground water and maintain the hydraulic head with the landfill at 30 cm. or less?
- To what degree does leachate recirculation accelerate the stability of the leachate and the remaining decomposable solids in a landfill? How can EPA make a determination when a landfill is sufficiently stabilized?
- Should EPA revise the technical manual? If so, how? We are particularly interested in information on how to advise owners and operators to characterize leachate and leachate leakage rates properly when conducting leakage migration modeling to demonstrate that a landfill which recirculates leachate meets the performance standard specified in 40 CFR 258.40(a)(1). For example, should we be suggesting different methodologies to quantify input parameters? Are there non-steady state situations that we should be addressing in the guidance? What are the effects of leachate recirculation on heavy metals in the leachate, and subsequently in the ground water? Should the groundwater models identified in this guidance be updated? If so, what models are appropriate?

VIII. Concerns With Respect to Bioreactors

Recent communications from MSWLF stakeholders indicate that there is a growing interest in bioreactor landfills. Bioreactor landfills represent a potential new approach to solid waste management. A bioreactor landfill can be generally defined as a sanitary landfill operated to transform and stabilize the readily and moderately decomposable organic constituents of the waste stream by purposeful control to enhance microbiological processes. While categorizations of bioreactor landfills vary, operational parameters often employ leachate recirculation, alternative cover designs, liquids addition to optimize moisture content in the waste, and state-of-the-art landfill gas collection systems. Bioreactor landfills have been operated under both anaerobic and aerobic conditions. Thus, the term bioreactor landfill is a management concept for MSWLFs encompassing a variety of MSWLF practices.

Information Needs With Respect to Bioreactors

At this time, EPA lacks adequate data and information on the design, operation, and performance of bioreactor landfills to evaluate this technology. We are unsure about the appropriateness of revising the MSWLF Criteria, as some stakeholders have suggested to the Agency, to allow for design and operation of bioreactor landfills (e.g., allowing the addition of additional liquids to municipal landfills to optimize waste degradation). Therefore, we are today seeking data and other information on the design, operation, and performance of bioreactor landfills. We are specifically requesting comment and data in the following areas.

- The nature and scope of current bioreactor landfill projects both within the U.S. and abroad.
- The impact (advantages and disadvantages) of leachate recirculation and liquids addition (with or without the addition of air) on leachate quality, waste settlement, waste slope and stability, and landfill gas yield.
- Modifications that have been made to daily cover to optimize biodegradation.
- Changes to final cover that have been made to optimize biodegradation or to incorporate materials which convert landfill gas to carbon dioxide and water. See, for example "Approaching Sustainable Landfilling," Alexander Zach, et al.; and "Biological Pretreatment of MSW as a Measure to Save Landfill Volume and Deter Birds," Florian Koelsch and Richard T. Reynolds, Proceedings of Fifteenth International Conference on Solid Waste Technology and Management, December 12–15, 1999, Philadelphia, PA. Proceedings published by Widener University School of Engineering and the University of Pennsylvania.
- Additional monitoring requirements necessary to ensure that a bioreactor (with or without air addition) is functioning properly over the life of the landfill.
- Approaches that have been taken to close bioreactor landfills and to care for the landfill during the post-closure care period to ensure protection of human health and the environment.
- The potential public health, environmental, and economic impacts of adding liquid wastes, such as sewage sludge, grey water or animal feedlot liquid wastes to the MSWLF.
- For bioreactors which have been operating in the aerobic mode, what methods have been used to provide for aeration and how to control temperature in the waste mass.
- The appropriateness of liner designs different from the specific design described in 40 CFR 258.40(a)(2) when liquids are added to a MSWLF to enhance biodegradation.
- Project economics for the design, construction, and operation of

bioreactor landfills (with or without air addition).

- The Clean Air Act Section 111(d) and greenhouse gas emissions impact of operating a municipal solid waste landfill as a bioreactor landfill, i.e., will the addition of air or liquids affect the ability of a landfill to comply with air regulations?
- The comparative cost effectiveness and environmental benefits of the bioreactor landfill relative to managing segregated organic wastes through composting and placing non-compostable waste in a standard municipal landfill (i.e., one not operated as a bioreactor).
- Are there management and safety issues associated with landfill gas generation and control at bioreactor landfills that need to be addressed in regulations or guidance?
- Are there relevant patent issues associated with anaerobic, aerobic, or other bioreactor landfills of which EPA should be aware?

IX. Conclusion

After reviewing the literature on leachate recirculation, alternative liner designs, and bioreactor landfills and information and data received during this comment period, the Agency will make a determination concerning what future actions, if any, we will take on the issues discussed in this document.

Dated: March 22, 2000.

Elizabeth Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 00–8400 Filed 4–5–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPPTS–66009G; FRL–6553–6]

RIN 2070–AD27

Use Authorization for, and Distribution in Commerce of, Non-liquid Polychlorinated Biphenyls, Notice of Availability; Partial Reopening of Comment Period; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending the comment period for the proposed rule which published in the **Federal Register** of December 10, 1999. That action solicited additional information on the use and concentration of polychlorinated biphenyls (PCBs) found in certain non-liquid PCB (NLPCB) applications. It also announced the availability, for comment, of data that were submitted to EPA after the comment period closed for the December 6, 1994 proposal. In addition to authorizing certain NLPCB uses, the proposed provision (§ 761.30(q)) would have required compliance with several conditions (e.g., notification, marking, air monitoring and standard wipe tests, remediation, repair and/or removal, reporting and recordkeeping requirements). EPA is extending the 120–day data submission period, as well as the 90–day comment period on existing and new data submissions. In response to a request for more time to develop the requested data, EPA is extending the comment periods to obtain data that may support an authorization which would require few, if any, conditions but is protective of health and the environment.

DATES: Data submissions, identified by docket control number OPPTS–66009G, must be received on or before October 10, 2000. Comments on any of the data submissions and/or relevant docket materials, identified by docket control number OPPTS–66009G, must be received on or before January 10, 2001.

ADDRESSES: Submit data and comments by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–66009G in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Director, Office of Program Management and Evaluation, (7401), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone numbers: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Peggy Reynolds, Office of Pollution Prevention and Toxics, National Program Chemicals Division, (7404), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–3965; e-mail address: reynolds.peggy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be affected by this supplemental action if you own, use, process, or distribute PCBs in commerce. Affected categories and entities include:

Categories	NAICS Codes	Examples of Potentially Affected Entities
Industry	31-33, 211, 5133	Electroindustry manufacturers, oil and gas extraction, end-users of electricity, telecommunications and general contractors
Utilities and rural electric cooperatives	2211	Electric power and light companies
Individuals, Federal, State Municipal Governments, hospitals and colleges	921, 622, 6113	Individuals and agencies which own, use, process and distribute PCBs in commerce

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected

by this action, you should carefully examine the applicability provisions in Title 40 of the Code of Federal Regulations (CFR), part 761. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under "FOR FURTHER INFORMATION CONTACT."

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information about the PCB Program, go directly to the PCB Home Page at http://www.epa.gov/pcb.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS-66009G. The combined record also includes all material and submissions filed under docket control number OPPTS-66009C. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

III. How and to Whom Do I Submit Comments?

As described in Unit III. of the proposed rule published in the **Federal Register** of December 10, 1999 (64 FR 69358) (FRL–6064–7), you may submit your comments through the mail, in person, or electronically. Please follow the instructions that are provided in the proposed rule. Do not submit any information electronically that you consider to be CBI. To ensure proper receipt by EPA, be sure to identify docket control number OPPTS–66009G in the subject line on the first page of your response.

IV. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under **FOR FURTHER INFORMATION CONTACT.**

V. What Should I Consider as I Prepare My Comments for EPA?

In preparing comments and/or developing data for EPA's consideration, you should keep in mind that your NLPCB use is not currently authorized. Under the Toxic Substances Control Act (TSCA) and the existing PCB regulations, the use is prohibited and you would be required to dispose of that material. In addition to completing rulemaking to authorize the NLPCB use(s), EPA is required to make a no unreasonable risk finding for the distribution in commerce of the NLPCB material (i.e., the sale, donation or transfer of the unauthorized NLPCB). Therefore, you should keep in mind that you will not be able to avoid the prohibitions by simply selling, transferring or donating to another entity, equipment and property which contain the unauthorized NLPCB uses, unless the NLPCBs have been removed. You should weigh the costs of the TSCA PCB prohibitions (i.e., disposal and/or the loss of revenue) against the cost of providing useful data and comments to the Agency. For example, if the material is approaching the end of its life cycle, you may decide that it is not worth the effort to take samples of the material and therefore you would prefer to simply dispose of the item(s). In that event, you should remember that the PCB disposal requirements may apply regardless of whether the item is authorized for use and distribution in commerce. Conversely, you may determine that the item still has value and provides reliable service. In that instance, you may want to take advantage of this extension in order to develop the information which is needed to support the authorizations for the use and distribution in commerce of the NLPCB item(s).

In order for the Agency to make the no unreasonable risk finding and to develop a broad, generic use authorization and accompanying distribution in commerce provision, you should consider providing the data described in the December 10, 1999 **Federal Register** document (i.e., matching bulk, surface and air sample results so that EPA can examine the dermal and inhalation risks; matching bulk sample results and surface results so that relationships between bulk and surface concentrations can be better defined; summary statistics to better determine if the results are representative of the sample population; and population characteristics to determine how the results represent the overall population of the items in use; see the discussions at Units VII. and VIII. of the December 10, 1999 document at pages 64 FR 69360–69363).

Finally, you should make sure to submit your comments by the deadline in this document; i.e., October 10, 2000, for data submissions, and January 10, 2001, for comments on the docket materials. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action (i.e., OPPTS–66009G) in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

VI. What Action is EPA Taking?

EPA is extending the period for public input to allow individuals an additional opportunity to complete sample collection and testing programs, to compile the results of the testing and to submit the results to EPA. EPA intends to use the data in support of an authorization which would require few, if any, conditions but is protective of health and the environment.

VII. What is the Agency's Authority for Taking this Action?

The authority for this action is section 6(e) of the Toxic Substances Control Act, 15 U.S.C. 2605(e).

VIII. Do Any Regulatory Assessment Requirements Apply to this Action?

No. This action is not a rulemaking, it merely extends the date by which public comments on a proposed rule must be submitted to EPA on a proposed rule that previously published in the **Federal Register** of December 6, 1994 (59 FR 62788) and extended by the **Federal Register** of December 10, 1999 (64 FR 69358). For information about the applicability of the regulatory assessment requirements to the proposed rule, please refer to the discussion in Unit VI. of that document (59 FR 62788, December 6, 1994).

List of Subjects

40 CFR Part 761

Environmental protection, Hazardous substances, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: March 30, 2000.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–8407 Filed 4–5–00; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket RSPA–6455]

RIN 2137–AC34

Areas Unusually Sensitive to Environmental Damage

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of Public Workshop and Initiation of Technical Review.

SUMMARY: RSPA is concluding a pilot test of a draft definition for areas unusually sensitive to environmental damage from a hazardous liquid pipeline release, commonly referred to as unusually sensitive areas (USAs). The draft USA definition was created through a series of public workshops and technical entities. The pilot was conducted to determine if the draft definition could be used to identify and locate unusually sensitive drinking water and ecological resources using available data from government agencies and environmental organizations. RSPA invites industry, government agencies, and the public to a workshop that will begin a technical review of USA pilot results. The purpose of this workshop is to openly discuss the pilot results and to provide the results to other government agencies, environmental groups, and academia for evaluation.

DATES: The workshop will be held on April 27, 2000, from 9 to 4 and on April 28, 2000, from 9 to 1 pm. Written comments on this initiative must be submitted by June 27, 2000.

ADDRESSES: The workshop will be held at the U.S. DOT, 400 Seventh Street, SW, Room 2230, Washington, DC. Non-federal employee visitors are admitted into the DOT building through the southwest entrance at Seventh and E Streets, SW. Persons who want to participate in the workshop should call (202) 366–4561 or e-mail their name, affiliation, and phone number to christina.sames@rspa.dot.gov. Send written comments in duplicate to the Dockets Facility, U.S. Department of Transportation, Room #PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. Persons who want confirmation of mailed comments must include a self-addressed stamped postcard. Comments may also be e-mailed to ops.comments@rspa.dot.gov in ASCII or text format. The Dockets Facility is open from 10 am to 5 pm, Monday through Friday, except on Federal holidays when the facility is closed.

FOR FURTHER INFORMATION CONTACT: Christina Sames, (202) 366–4561, or e-mail *christina.sames@rspa.dot.gov*, about this document, or the Dockets Unit, U.S. Department of Transportation, Plaza 401, 400 Seventh Street SW, Washington, DC 20590, for copies of this document or other material in the docket, including material from previous workshops. The public may also review material in the docket by accessing the Docket Management System's home page at http://dms.dot.gov. An electronic copy of any document published in the **Federal Register** may be downloaded from the Government Printing Office Electronic Bulletin Board Service at (202) 512–1661.

SUPPLEMENTARY INFORMATION:

Legislative History

The pipeline safety statute (49 U.S.C. § 60109) requires the Secretary of Transportation to prescribe standards that establish criteria for identifying each hazardous liquid pipeline facility and gathering line located in an area that the Secretary describes as unusually sensitive to environmental damage if there is a hazardous liquid pipeline accident (USAs). When describing USAs, the Secretary is to consider areas where a pipeline rupture would likely cause permanent or long-term environmental damage. These areas are to include:

1. Locations near pipeline rights-of-way that are critical to drinking water, including intake locations for community water systems and critical sole source aquifer protection areas; and

2. Locations near pipeline rights-of-way that have been identified as critical wetlands, riverine or estuarine systems, national parks, wilderness areas, wildlife preservation areas or refuges, wild and scenic rivers, or critical habitat areas for threatened and endangered species.

Public Workshops to Date

RSPA has held five public workshops on USAs. Participants at the workshops have included representatives from the Environmental Protection Agency; the Departments of Interior, Agriculture, Transportation, and Commerce; nongovernment agencies; academia; and the public.

The first workshop was held on June 15 and 16, 1995, and focused on criteria being considered to determine USAs (60 FR 27948; May 26, 1995; Docket PS–140(a)). A second workshop held on October 17, 1995, focused on developing a process that could be used to determine if an area is a USA (60 FR 44824; August 29, 1995; Docket PS–140(b)). The third workshop on January 18, 1996, focused on guiding principles for determining USAs (61 FR 342; January 4, 1996; Docket PS–140(c)). The fourth workshop held April 10–11, 1996 (61 FR 13144; March 26, 1996; Docket PS–140(d)) focused on criteria, components, and parameters of terms that have been used when describing USAs and the scope and objectives of additional USA workshops.

A fifth workshop was held June 18–19, 1996 (61 FR 27323; May 31, 1996; Docket PS–140(e)) and focused on identifying critical drinking water resources and possible filtering criteria that could be used to identify drinking water resources that are unusually sensitive to a hazardous liquid pipeline release. The critical drinking water resources that were identified in that workshop include public water systems, wellhead protection areas, and sole source aquifers. Filtering criteria include the depth and geology of a drinking water resource and if the public water system has an adequate alternative drinking water supply. Transcripts of and information presented at these public workshops are in the Docket.

API Work

In addition to the five public workshops, the American Petroleum Institute (API) held two meetings with technical experts to discuss unusually sensitive ecological resources. The meetings were held on October 23–24, 1996, and June 25–26, 1997. Representatives of RSPA, EPA, the Departments of Interior, Commerce, and Agriculture, and The Nature Conservancy attended these meetings. Attendees discussed possible ecological USA candidates and filtering criteria that could be used to determine which ecological resources are unusually sensitive to damage from a hazardous liquid pipeline release. The significant ecological resources that were identified during the meetings include threatened and endangered species, critically imperiled and imperiled species, depleted marine mammals, and areas containing a large percent of the world's population of a migratory waterbird species. Filtering criteria focused on the extent to which a species is endangered, areas that are critical to multiple sensitive species, and areas where a large percent of a species population could be impacted. Notes from these technical meetings are in the Docket.

Proposed Definition and Pilot Test

RSPA recently proposed a definition for unusually sensitive drinking water end ecological resources in a notice of proposed rulemaking (64 FR 73464; December 30, 1999). The proposed definition was created through a series of public workshops and our collaboration with a wide-range of federal, state, public, and industry stakeholders. The identification of USAs uses a multi-step process that begins by designating and assessing environmentally sensitive areas (ESAs), determining which of these ESAs are potentially more susceptible to permanent or long term damage from a hazardous liquid release (areas of primary concern), and finally identifying filtering criteria to determine which areas of primary concern can be reached by a release and sustain permanent or long-term damage. The areas that result are the proposed USAs. Proposed section 195.6 gives a more detailed definition of USAs.

OPS is concluding a pilot test to determine if the proposed definition can be used to identify and locate unusually sensitive drinking water and ecological resources using available data from government agencies and environmental organizations. Texas, California, and Louisiana were the states chosen to test the proposed USA definition due to the large number of hazardous liquid pipelines and the considerable drinking water and ecological resources that exist in these states. OPS will use the results to evaluate whether the proposed definition identifies the majority of unusually sensitive areas and whether environmental data is accessible and appropriate to support the proposed definition. Once OPS finishes the test, has a peer review and gets comment on the proposed definition, it will go forward with a final rule. API will also use the results of this pilot test to create an industry guidance document on USAs.

Workshop and Technical Review

OPS is conducting a public workshop to discuss the results of the pilot test and to begin a technical review of the pilot results. Discussions at the workshop will include background on the USA initiative, the drinking water and ecological definitions, models that were used to apply the proposed definition, data that was gathered, how the data was processed using a geographic information system (GIS), and maps of the resulting USAs.

The workshop will begin a technical review of the pilot results. Drinking water and ecological resource experts from federal and state agencies, academia, environmental groups, and others have been invited to participate in a formal technical review of the pilot results. These experts include the Department of Interior's Office of the Secretary, Fish and Wildlife Service, and National Park Service; the Department of Agriculture's Forest Service; the Department of Commerce's National Marine Fisheries Service; the Environmental Protection Agency's Office of Groundwater and Drinking Water, and Office of Solid Waste and Emergency Response; state Nature Conservancies and Heritage Programs; state drinking water resource agencies; academia and other environmental experts. These reviewers will help to identify other data sets that might be utilized and other resources that might be considered, and to improve the definition's capability to identify USAs. OPS welcomes additional comments on the proposed definition and the pilot results. RSPA will use the final pilot results and comments received to move toward completing a USA definition by the end of this year.

Issued in Washington, DC on March 31, 2000.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 00–8454 Filed 4–5–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1180

[STB Ex Parte No. 582 (Sub–No. 1)][1]

Major Rail Consolidation Procedures

AGENCY: Surface Transportation Board, DOT.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Surface Transportation Board (Board) seeks public comment on modifications to its regulations governing proposals for major rail consolidations. We are issuing this advanced notice of proposed rulemaking to explore in more detail how our merger rules can and should be revised.

DATES: Notices of intent to participate are due on April 20, 2000. Comments are due on May 16, 2000. Replies are due on June 5, 2000.

ADDRESSES: An original and 25 copies of all paper documents filed in this proceeding must refer to STB Ex Parte No. 582 (Sub-No. 1) and must be sent to: Surface Transportation Board, Office of the Secretary, Case Control Unit, Attn: STB Ex Parte No. 582 (Sub-No. 1), 1925 K Street, NW., Washington, DC 20423–0001. In addition to submitting an original and 25 copies of all paper documents, parties must submit to the Board, on 3.5-inch IBM-compatible floppy diskettes (in, or convertible by and into, WordPerfect 7.0 format), an electronic copy of each such paper document. Any party may seek a waiver from the electronic submission requirement.[2]

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565–1613. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: On January 24, 2000, we initiated a proceeding in STB Ex Parte No. 582 to obtain public views on the general subject of major rail consolidations[3] and the present and future structure of the North American railroad industry.[4]

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[1] A copy of this decision is being served on all persons who participated in STB Ex Parte No. 582.

[2] Documents transmitted by facsimile (FAX) or electronic mail (e-mail) will not be accepted.

[3] Merger or control of at least two Class I railroads. Class I railroads are those United States railroads with annual operating revenues (in inflation-adjusted 1991 dollars) of at least $250 million.

[4] *See Public Views on Major Rail Consolidations,* STB Ex Parte No. 582 (STB served Jan. 24, 2000) (published in the **Federal Register** on Jan. 28, 2000, at 65 FR 4568).

In our recent decision,[5] which we issued after considering the extensive written comments that had been filed as well as the statements delivered in person at a 4-day hearing,[6] we concluded that the rail community is not now in a position to undertake what would likely be the final round of restructuring of the North American railroad industry,[7] and that our current rules are not adequate for addressing the broad concerns associated with reviewing any proposals that, if approved, would likely lead to just two large North American transcontinental railroads. We therefore announced that we would revise our merger rules, and, because we determined that it made no sense to develop new merger rules in the middle of what could likely be the final round of major rail mergers, we announced that we would decline to accept further filings involving a major transaction (defined at 49 CFR 1180.2(a)) until new merger rules are in place.

As indicated in our March 17 decision in STB Ex Parte No. 582 (slip op. at 3 n.6), we are not in a position to propose specific rules at this time because, while several parties raised broad issues of concern, specific rule changes were not the focus of our hearing. Instead, we announced that we would be issuing this advance notice of proposed rulemaking (ANPR) to explore in more detail how our merger rules can and should be revised.

Our current merger regulations[8] were adopted soon after passage of the Staggers Act of 1980. The widespread financial distress faced by our nation's rail carriers in the period leading up to enactment of that statute, and the associated deteriorating service levels faced by their customers, were due in large measure to an overly restrictive regulatory system that unduly limited the ability of railroads to effectively rationalize what was at that time a significant degree of excess rail infrastructure. The merger regulations—aimed at encouraging railroads to formulate proposals that would help rationalize excess capacity[9] so long as competition, access to essential service, and other public interest goals were not degraded—were a proper and reasoned response to the serious problems affecting railroads and their customers at that time.

As we explained in our STB Ex Parte No. 582 decision (slip op. at 6), however:

> The goals of that merger policy have largely been achieved. It does not appear that there are significant public interest benefits to be realized from further downsizing or rationalizing of rail route systems, as there is little of that activity left to do. Looking forward, the key problem faced by railroads—how to improve profitability through enhancing the service provided to their customers—is linked to adding to insufficient infrastructure, not to eliminating excess capacity.

Thus, it appears that further rail mergers now offer limited opportunity for additional efficiencies through elimination of excess capacity. And while extensions of single-line service can offer benefits to railroads and their customers, there is a view that these benefits could be better achieved, short of merger, through innovative joint marketing arrangements and other cooperative efforts, such as joint dispatching to more efficiently move trains through congested terminal areas.[10] Further, our experience has shown that, whether or not a particular proposed consolidation holds promise of significant service enhancing and cost reducing synergies, the integration task is itself quite complex and time consuming, and has, in a number of recent instances, been associated with severe service dislocations.

There were four broad concerns discussed at our hearing that persuaded us that we should begin a proceeding to revise our rules governing major rail mergers now. First, a significant number of shippers and smaller railroads stated that we need new rules to ensure that competition would not be curtailed by future mergers. Their concerns are heightened by the very real prospect that the rail industry is on the threshold of making another round of rail merger proposals that, if approved, could result in a transcontinental rail duopoly. Second, many parties argued that additional safeguards were necessary in our merger regulations to ensure that any future mergers are not accompanied by the serious service disruptions that have proved so costly to shippers, rail employees, and other rail carriers, including shortline railroads, and/or to provide suitable compensation arrangements if unforeseen disruptions do occur. Third, some parties, including Transportation Secretary Slater and representatives of rail employees, suggested that revisions to our merger rules are necessary to guarantee that railroads continue to be operated in as safe a manner as is possible and to provide other employee protections. Finally, certain parties raised concerns that would arise if one of the two large Canadian carriers, CN or CP, sought to merge with or control a large U.S. railroad.

Our merger regulations must advance our mandate—under which we are to approve mergers only to the extent consistent with the public interest, and under which we are to promote a safe and sound rail system that runs smoothly and efficiently to provide the service needed by rail customers—in a manner that is consistent with the overall rail transportation policy established by Congress.[11] In today's environment—with the industry far more concentrated than it was when our current regulations were fashioned; with the prospect that any further major rail merger would trigger strategic responses that could lead to a transcontinental rail duopoly; and with only limited opportunities remaining for significant merger-related efficiency gains—the time has come for us to consider whether we should revise our rail merger policy, as many have suggested,

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[5] *See Public Views on Major Rail Consolidations*, STB Ex Parte No. 582 (STB served Mar. 17, 2000).

[6] Written comments were filed on or about February 29, 2000. The hearing was held in our offices in Washington, DC, on March 7–10, 2000.

[7] We explained that the railroad industry has consolidated aggressively in recent years and that now only six large railroads remain in the United States and Canada: The Burlington Northern and Santa Fe Railway Company (BNSF); Union Pacific Railroad Company (UP); CSX Transportation, Inc. (CSX); Norfolk Southern Railway Company (NS); Canadian National Railway Company (CN); and Canadian Pacific Railway Company (CP). Two smaller U.S. Class I railroads (Grand Trunk Western Railroad Incorporated and Illinois Central Railroad Company (IC)) are affiliated with CN. A third smaller U.S. Class I railroad (Soo Line Railroad Company) is affiliated with CP. A fourth smaller U.S. Class I railroad (The Kansas City Southern Railway Company (KCS)) remains independent but has entered into a comprehensive alliance with CN and IC.

[8] *See* 49 CFR part 1180, subpart A (49 CFR 1180.0–1180.9).

[9] *See* 49 CFR 1180.1(a) (The Surface Transportation Board encourages private industry initiative that leads to the rationalization of the nation's rail facilities and reduction of its excess capacity. One means of accomplishing these ends is rail consolidation).

[10] Joint marketing arrangements, which enable railroads to offer joint-line service almost as seamless as single-line service, could be more practicable and more likely to be in the public interest when the carriers connect largely end-to-end, rather than competing over broad territories. At the STB Ex Parte No. 582 hearing, Secretary of Transportation Rodney Slater and the Chief Executive Officers of several Class I railroads testified as to the benefits of such arrangements.

[11] Under 49 U.S.C. 11324, in considering a major rail merger proposal, the Board is to be guided by the public interest and must consider, at a minimum: the adequacy of transportation to the public; inclusion of other rail carriers in particular mergers; and financial, employee, and competitive issues. Moreover, the rail transportation policy of 49 U.S.C. 10101, which guides us in our regulatory activities, directs us, among other things, to promote safety, efficiency, good working conditions, an economically sound and competitive rail transportation system, and a transportation system that meets the needs of the public and the national defense.

with an eye towards affirmatively enhancing, rather than simply preserving, competition.[12] Moreover, with serious service concerns surrounding major rail mergers, our rules should also address those concerns and any other areas where the public interest is involved.

Overview

As we stated in our March 17 decision in STB Ex Parte No. 582 (slip op. at 6), we intend to revisit our approach to competitive issues such as the "one-lump theory" and the "three-to-two" question; downstream effects; the important role of smaller railroads in the rail network; service performance issues; how we should look at the types of benefits to be considered in the balancing test, and how we monitor benefits; how we should view alternatives to merger, such as alliances; employee issues such as "cram down;" and the international trade and foreign control issues that would be raised by any CN or CP proposal to combine with any large U.S. railroad.

Request for Comments

We request public comment and more detailed proposals on these issues as more fully described below and on any other ways in which our merger regulations should be modified to promote and enhance competition and/or other public interest goals. We have heard parties suggest a variety of rule changes, including those listed below. We invite all interested persons to comment on these types of changes and any others that commenters would like to propose. We encourage commenters to include specific draft rules for their proposed changes.[13] We also request the parties to prioritize the changes that they propose or endorse. We should note that it is not our intent to "load up" our rules so as to make them so onerous that they would necessarily foreclose all merger proposals. Rather, our objective is to identify reasonable means to assure that future merger proposals will promote public interest goals.

Downstream Effects

One change that we definitely intend to propose is elimination of the "one case at a time" rule at 49 CFR 1180.1(g). We had previously announced our determination to waive this rule in a decision in STB Finance Docket No. 33842 for that proceeding,[14] and the idea of modifying our rules to that effect for all future major rail consolidation proposals received broad support at the hearing. Under such a proposed change, we would examine in all future major merger proceedings the likely "downstream" effects of a proposed transaction, including the likely strategic responses to that transaction by non-applicant railroads.

Maintaining Safe Operations

Transportation Secretary Slater testified that a primary concern of the Department of Transportation is that safety be maintained throughout the rail network. We share that concern. Ensuring that safety concerns are addressed has been, and will remain, a primary goal of our environmental review in railroad merger cases. This process works best on a case-by-case basis, however, and we do not see any reason to alter our merger rules in this respect.[15]

Morever, in recent major rail mergers we have required applicants to work with the Federal Railroad Administration (FRA) to formulate Safety Integration Plans (SIPs) to ensure that safe operations would be maintained throughout the implementation process of any merger proposal that we approve. We also have instituted a joint rulemaking with FRA in which the two agencies, working in conjunction, have proposed regulations designed to ensure adequate and coordinated consideration of safety integration issues in railroad merger cases.[16] We have already solicited and received comments in that proceeding, and a joint hearing was held by the two agencies. Therefore, we see no need to address the SIPs process further in this proceeding. We intend to continue to require SIPs on a case-by-case basis, where appropriate, until the SIPs rulemaking proceeding is concluded.

Safeguarding Rail Service

Many of the shipper and shortline railroad parties at our hearing explained how the serious service disruptions that have been associated with recent mergers have caused significant harm to their businesses. These parties seek additional safeguards in our merger review process so that any future rail mergers would not cause such harm.

Many parties emphasized the need for performance measures with which post-merger service could be compared. Some parties also suggested that merger applicants be required to submit more detailed service integration or implementation plans, with enforceable penalties, to ensure against merger-related service degradation, and mandatory arbitration of post-merger service disputes (perhaps with post-arbitration recourse to the Board). Other parties suggested that merger applicants be required to submit plans for preserving service options available to small shippers (*e.g.*, grain shippers located on shortline railroads that cannot handle the newest generation of heavy rail cars or load trains of a length/volume as may be required by practices of individual Class I carriers.) Others expressed concern over the ability of carriers and shippers to acquire new or utilize existing infrastructure and capacity. Finally, many parties echoed Transportation Secretary Slater's concern that more consolidations in the industry could result in carriers that are "too big to manage, yet too big to fail," and suggested that, in our assessment of the financial viability of a proposed merger, we examine the financial terms carefully with a view toward minimizing future service disruptions and any harm that could result from any such disruptions.

We seek comment on how our merger rules might best be revised to protect customers and shortline railroads from merger-related service disruptions and the loss of adequate infrastructure and capacity.

Promoting and Enhancing Competition

As explained above, we believe that the time has come to consider whether

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[12] Agency decisions issued under our existing regulations have preserved and sometimes enhanced competition, while promoting efficiency-enhancing system rationalizations whose benefits were ultimately passed along to shippers in the form of lower rates and improved service. Now, however, we see little opportunity for substantial further efficiencies to be achieved through additional system rationalizations.

[13] We also intend in this rulemaking proceeding to propose necessary technical updates or corrections to the merger rules at the notice of proposed rulemaking (NPR) stage. To that end, we invite commenters to identify, and offer textual suggestions for modifying, existing provisions within 49 CFR part 1180 that are out-of-date or otherwise in need of correction.

[14] *See Canadian National Railway Company, Grand Trunk Western Railroad Incorporated, Illinois Central Railroad Company, Burlington Northern Santa Fe Corporation, and The Burlington Northern and Santa Fe Railway Company—Common Control*, STB Finance Docket No. 33842, Decision Nos. 1 & 1A (STB served Dec. 28, 1999) (published in the **Federal Register** on Jan. 4, 2000, at 65 FR 318).

[15] We note that our environmental rules at 49 CFR part 1105 are not specific to rail mergers and we therefore do not intend by this notice to reopen our environmental rules.

[16] *See Regulations on Safety Integration Plans Governing Railroad Consolidations, Mergers, Acquisitions of Control, and Start Up Operations; and Procedures for Surface Transportation Board Consideration of Safety Integration Plans in Cases Involving Railroad Consolidations, Mergers, and Acquisitions of Control*, STB Ex Parte No. 574, FRA Docket No. SIP–1, Notice No. 1 (Joint Notice of Proposed Rulemaking published at 63 FR 72225 (Dec. 31, 1998)).

we should alter our rail merger policy to place a greater emphasis on enhancing, rather than simply preserving, competition. Many of the competition-enhancing elements of recent mergers have been proposed by the applicants themselves, either in the initial application or in voluntary agreements reached with other parties, many of which have been encouraged by this agency. For example, in the CSX/NS/Conrail transaction, applicants proposed to use "Shared Assets Areas" to open up competition between CSX and NS for $700 million in rail traffic that had been exclusively served by Conrail. In addition, the applicants negotiated agreements that contained other pro-competitive elements.

At our recent hearing in STB Ex Parte No. 582, parties suggested various other means by which rail mergers could be used to promote and enhance competition in the rail industry. These included:

- Requiring merger applicants to maintain open gateways for all major routings.
- Requiring merger applicants to provide switching, at an agreed-upon fee, to all exclusively served shippers located within or adjacent to terminal areas. (The suggestion was that this measure be even broader than the switching condition that we imposed in the CSX/NS/Conrail proceeding—where we expanded upon the privately negotiated agreement that formed the basis of the condition—by including all shippers within or adjacent to terminal areas, and not just those shippers that had switching available prior to the consolidation, as in CSX/NS/Conrail.)
- Requiring merger applicants to offer, upon request, contracts for the competitive portion of joint-line routes when the joint-line partner has a bottleneck segment. (This would address shipper concerns that competitive-segment carriers may be unwilling to enter into contracts that would enable shippers to obtain bottleneck rate relief before the Board.)[17]
- Requiring merger applicants to provide a new through route at a reasonable interchange point whenever they control a bottleneck segment and the shipper has entered into a contract with another carrier for the competitive segment. (This would permit shippers who have entered into such contracts to immediately seek bottleneck rate relief, rather than first requiring them to file an access complaint to obtain a new through route.)
- Revising the application of the "one-lump" theory to rail mergers. (Based on that theory, the Board has generally declined to require access to additional carriers by exclusively served shippers whose sole carrier sought to merge with one of several connecting carriers. The Board has applied a rebuttable presumption that such shippers would not be competitively harmed. Proponents of this change urge the Board to provide such exclusively served shippers with access to an additional carrier, through trackage rights, in order to promote and enhance, rather than merely preserve, competition.)

We seek comment on which, if any, of these or any other measures should be considered for incorporation into our merger rules.

Shortline and Regional Railroad Issues

Many of the concerns expressed at our hearing in STB Ex Parte No. 582 by shortline and regional railroads, and how these might be reflected through modifications to our rail merger regulations, are subsumed in our discussion of competition and service issues above. Certain shortline and regional railroads also suggested that our revised merger rules require applicants to submit plans for promoting the viability of existing regional and shortline railroads, based on the "Bill of Rights" advocated by the American Short Line and Regional Railroad Association—which includes the right to compensation for service failures, the right to interchange and routing freedom (including the elimination of so-called paper and steel barriers), the right to competitive and nondiscriminatory pricing, and the right to fair and nondiscriminatory car supply. We seek comment on whether and how the concerns of shortline and regional railroads should be reflected in our merger rules.

Employee Issues

Many of the concerns expressed at our hearing in STB Ex Parte No. 582 by representatives of rail employees, and how those concerns might be reflected in changes to our merger rules, are subsumed in our discussion of safety and service issues above, and cross-border issues below. In addition, rail labor parties suggested at our hearing that we require merger applicants to agree to forgo any effort to "cram down" post-merger changes in collective bargaining agreements under the auspices of 49 U.S.C. 11321(a) and/or 11326, and/or under the auspices of Article I, Section 4 of our standard *New York Dock* labor conditions,[18] and/or to offer their employees expanded labor protection (*e.g.*, 10, rather than 6, years of benefits). We seek comment on whether and how these and other concerns of rail employees should be addressed.

"Three-to-Two" Issues

Many parties to our STB Ex Parte No. 582 proceeding have suggested that the Board should give greater weight to arguments of competitive harm in those situations where the number of rail carrier alternatives within a corridor would be reduced by a merger from three to two. We seek comment on whether and how our assessment of "three-to-two" effects should be reflected in our new merger rules, or whether this issue is best left to a case-by-case examination based on the individual circumstances of each case, as it has been in the past.

Merger-Related Public Interest Benefits

Many parties at our hearing suggested that the Board should be more critical and skeptical of merger applicants' estimates of the synergies and other public interest benefits that would be produced by a proposed merger and that we should conduct post-merger monitoring to help ensure that the projected benefits are actually realized. Some have suggested that merger applicants be required to show that any claimed synergies or other public interest benefits could not be achieved short of merger, through marketing alliances or cooperative operating practices. We seek comment on how claims of public interest benefits should be treated under our merger rules.

Cross-Border Issues

We were presented, in the recent CN/IC merger proceeding, with a few issues relating to the fact that one of the applicant carriers was a Canadian railroad.[19] At our hearing in STB Ex

[17] *Central Power & Light Co.* v. *Southern Pac. Transp.Co.*, Nos. 41242, *et al.* (Dec. 31, 1996), clarified (Apr. 30, 1997), *aff'd sub nom. MidAmerican Energy Co.* v. *STB*, 169 F.3d 1099 (8th Cir. 1999), *reh'g denied* (Apr. 20, 1999), *cert. denied sub nom. Western Coal Traffic League* v. *STB*, 120 S. Ct. 372 (1999); *Union Pac. R.R.* v. *STB*, No. 98–1058 (D.C. Cir. Feb. 15, 2000).

[18] *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60, 85 (1979) (*New York Dock*).

[19] In that case, we determined that it would not be appropriate to require employees to forfeit their *New York Dock* protections if they chose not to move to Canada; we are continuing to monitor IC's Chicago gateway to address the concerns of North Dakota grain shippers that their product be able to continue to compete effectively with Canadian grain moving in new single-line service through Chicago over the combined CN-IC; and we also are monitoring whether there is any merger-related link to any unfair pricing practices in the lumber industry. *Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk*

Parte No. 582, we heard a far broader array of concerns over potential harms to the nation's interests if a Canadian railroad proposed to merge with a large U.S. railroad. Transportation Secretary Slater testified that such a proposal would lead to "yet another uncertainty: the adequacy, consistency, and effectiveness of extra-territorial oversight," most notably with respect to FRA's ability to exercise its safety authority. In addition, the representative of the U.S. Department of Defense, explaining that the U.S. military relies on rail transportation in wartime, expressed concern over the possibility that predominant foreign control of a large U.S. railroad might adversely affect our nation's defense operations.

Also, Transportation Secretary Slater explained that foreign control of railroads operating in the United States could lead to traffic shifts that could have significant adverse financial impacts on U.S. ports and waterway systems. The Port Authorities of New York and New Jersey, of Boston, and of Virginia testified at the STB Ex Parte No. 582 hearing that a major merger proposal involving CN could, by shifting traffic flows away from their ports to the Port of Halifax, imperil the significant public investment in their port facilities. Similar concerns were raised by the Ports of Seattle and Tacoma with respect to shifts of traffic to the Port of Vancouver.

Finally, we heard concerns by the U.S. Department of Agriculture and by parties representing grain and lumber interests that a merger of a Canadian carrier with a large U.S. carrier could unfairly disadvantage their product in competition with Canadian grain and lumber in our domestic markets. They suggest that merger applicants would need to submit a more detailed systemwide operating plan and competitive impacts analysis that take these concerns into account.

We seek comments as to whether and how these concerns should be addressed in our merger rules.

Notice Of Intent To Participate. A copy of this decision is being served on all persons who participated in STB Ex Parte No. 582; however, persons who participated in STB Ex Parte No. 582 will *not* automatically be placed on the service list as parties of record for this (Sub-No. 1) rulemaking proceeding. Any persons interested in participating in this rulemaking proceeding (and being on the service list and receiving copies of filings) must file a written notice of intent to participate with the Board by April 20, 2000, in accordance with the filing requirements set forth below.

Service List. A service list, identifying all parties that have filed notices of intent to participate, will be issued by the Board by April 28, 2000.

Comments. Comments are due on May 16, 2000. Each party submitting comments to the Board also must serve a copy of such comments on each person indicated on the service list.

Replies. Replies are due on June 5, 2000. Each party submitting a reply to the Board also must serve a copy of such reply on each person indicated on the service list.

Paper Copies; Electronic Copies; Document Scanning. Each person filing a notice of intent to participate, comments, and/or a reply must file with the Board an original and 25 paper copies of: The notice of intent to participate (these must be filed with the Board by April 20, 2000); the comments (these must be filed with the Board and served on all parties by May 16, 2000); and the reply (these must be filed with the Board and served on all parties by June 5, 2000). Each such person must also submit, in addition to an original and 25 copies of all paper documents filed with the Board, an electronic copy of each such paper document.[20] The electronic copy should be on a 3.5-inch IBM-compatible floppy diskette, and should be in, or convertible by and into, WordPerfect 7.0. Any person may seek a waiver from the electronic submission requirement. The Board will not accept facsimile submissions in this proceeding because of the additional administrative burden required to process such filings. Also, the Board will not accept e-mail submissions in this or any other proceeding because we have not developed policies, procedures, or standards for accepting documents in that format.

The Board intends to make available to the public all filings submitted in this proceeding by publishing an image of each on the Board's website at www.stb.dot.gov under the "Filings" link. To ensure the highest quality image is captured during the scanning process the following filing instructions apply in this proceeding: Participants shall submit comments in accordance with existing rules, which require that all filings be clear and legible; on opaque, unglazed, durable paper not exceeding 8.5 by 11 inches; and able to be reproduced by photography. We also will require that only white paper be used; that printing appear on only one side of a page; that parties not employ color printing, but use only black or dark blue ink; and that all pages of filings, including cover letters and any attachments be paginated continuously. The original document must be submitted unbound and without tabs to reduce possible damage to the document during removal of fasteners and to facilitate the use of a high-speed mechanism for automated scanning. Multi-page documents may be clipped with a removable clip or other similar device. All filings, including oversize or other non-scannable items, will be available at the Board's Docket Room.

Subsequent Stages of This Proceeding. As indicated in our STB Ex Parte No. 582 decision (slip op. at 3 n.6), we plan: To issue a notice of proposed rulemaking (NPR) in this proceeding by October 3, 2000;[21] to provide a total of 100 days (ending January 11, 2001) for comments, replies, and rebuttal on the proposals contained in the NPR; and to issue final rules by June 11, 2001.

Small Entities. Because we have not yet proposed specific rules, we need not at this point examine the impacts of any proposed rules on small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We welcome, however, any comments respecting whether any suggested revisions to our regulations would have significant economic effects on any substantial number of small entities.

Environment. The issuance of this ANPR will not significantly affect either the quality of the human environment or the conservation of energy resources. Furthermore, we do not expect that any revisions to our regulations would significantly affect either the quality of the human environment or the conservation of energy resources. We welcome, of course, any comments respecting whether any suggested revisions would have any such effects.

Board Releases Available via the Internet. Decisions and notices of the Board, including this ANPR, are available on the Board's website at "www.stb.dot.gov."

Authority. 49 U.S.C. 721 and 11323–11325.

Dated: March 30, 2000.

Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company, STB Finance Docket No. 33556, Decision No. 37 (STB served May 25, 1999), slip op. at 43, 37, and 39, respectively.

[20] For one exception, notices of intent to participate, we will not require the filing of electronic copies.

[21] The NPR will set forth our specific proposals for changes in our rail merger regulations.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–8374 Filed 4–5–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Delist the Vernal Pool Fairy Shrimp and Vernal Pool Tadpole Shrimp

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to remove the vernal pool fairy shrimp (*Branchinecta lynchi*) and the vernal pool tadpole shrimp (*Lepidurus packardi*) from the Federal list of threatened and endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. We find that the petition, other information the petitioner specifically requested we evaluate, and additional information available in our files did not present substantial scientific or commercial information indicating that delisting of the vernal pool fairy shrimp and vernal pool tadpole shrimp may be warranted.

DATES: The finding announced in this document was made on March 30, 2000.

ADDRESSES: Submit any data, information, comments, or questions concerning this petition to the Field Supervisor; Sacramento Fish and Wildlife Office; 2800 Cottage Way, Room W–2605; Sacramento, California 95825. The petition finding and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kyle Merriam or Karen Miller at the Sacramento Fish and Wildlife Office (see **ADDRESSES** section above), or at 916/414–6600.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, we will commence a status review of the involved species.

On February 29, 1996, we received a petition, dated the same day, to delist the vernal pool fairy shrimp (*Branchinecta lynchi*) and the vernal pool tadpole shrimp (*Lepidurus packardi*). The petition was submitted by the Fairy Shrimp Study Group (petitioner), consisting of the California Chamber of Commerce, Granite Construction, Teichert Aggregates, Sares-Regis Group, the California Cattlemen's Association, the Western Growers Association, and the California Farm Bureau Federation.

In a letter dated March 8, 1996, we notified the petitioner that a response would be delayed due to lack of funds and continuing resolutions in effect from November 14, 1995, to January 26, 1996, resulting in suspension of the listing program and reassignment of listing personnel to other activities. A moratorium on listing activities, and the consequent backlog at the time the moratorium was lifted, further delayed us from responding to the delisting petition.

On October 22, 1997, the petitioner filed a case in Federal court (Court) challenging our failure to address the delisting petition (*Fairy Shrimp Study Group* v. *Babbitt*, case number 1:97CV02481). Most of the issues discussed by the petitioner were included in a lawsuit filed by the Building Industry Association challenging the listing of the vernal pool crustaceans (*Building Industry Association* v. *Babbitt*, 979 F Supp. 893 (1997)), and were addressed by the Court in that case. The Court found that we had correctly determined the status of the vernal pool crustaceans as endangered and threatened and stated that (1) decisions to review petitions are not subject to judicial review; (2) we had used the best available information in our decision to list the vernal pool crustaceans; (3) the plaintiffs had been provided adequate notice of the concept of vernal pool complexes and vernal pool populations; and (4) we had not violated our Interagency Cooperative Policy for Peer Review in Endangered Species Activities (59 FR 34270).

In a settlement with the petitioner reached on October 26, 1999, we agreed to evaluate the best scientific and commercial information available as of that date. The data and information evaluated were to include relevant geographic information on the location of vernal pools and fairy shrimp, including information generated in section 7 consultations since February 29, 1996.

On September 19, 1994, we published the final rule to list the vernal pool fairy shrimp and vernal pool tadpole shrimp as threatened and endangered, respectively, in the **Federal Register** (59 FR 48136). The vernal pool fairy shrimp and vernal pool tadpole shrimp are crustacean species endemic to vernal pool habitats in California and southwestern Oregon. Both of these fresh-water crustaceans are about the size of a dime and live brief lives within vernal pools, seasonal wetlands that fill with water during fall and winter rains. These species were listed as a result of significant threats to their vernal pool habitats by a variety of human-caused activities, primarily urban development and conversion of land to agricultural use.

The factors for listing, delisting, or reclassifying species are described at 50 CFR 424.11. We may delist a species only if the best scientific and commercial data available substantiate that it is neither endangered nor threatened. Delisting may be warranted as a result of: (1) Extinction; (2) recovery; or (3) a determination that the original data used for classification of the species as endangered or threatened were in error.

The petition asserts that delisting of the vernal pool fairy shrimp and vernal pool tadpole shrimp is warranted because the original data used for classification of the vernal pool crustaceans as threatened and endangered were in error. The petition contends the listing was erroneous for four general reasons: (1) The original data and studies supporting the listing, including the original petitions to list the species, had fatal problems; (2) original information relied upon was not subjected to independent peer review; (3) new studies indicate that California has widespread vernal pool habitat that it is under little or no threat; and (4) the original listing information did not correctly establish the threats to the species and their vernal pool habitat.

We do not agree with the petitioner's assertion that the original data and studies supporting the listing, including the original petitions to list the species, had fatal problems. The petitions and information accompanying or cited in them fulfilled the requirements as set

forth in the Act and our regulations (50 CFR 424.14(b)). The Act requires us to base listing decisions on the best scientific and commercial data available. We diligently solicited all available information on the species through public notice, public comment periods, and public hearings to assure this standard was met. The petitioner did not identify any information available at the time of the listing that was not considered by us in the listing decision.

Despite the petition's focus on our assessment of historic vernal pool habitat, remaining vernal pool habitat, and habitat loss, these issues were irrelevant to the decision to list the vernal pool crustaceans, since the listing decision was not made as the result of historic habitat loss. As stated in the final rule, "The purpose of addressing historic vernal pool losses in the proposed rule was to provide a historical context to the Central Valley ecosystem inhabited by the four crustacean species. In a legal context, the extent of historic habitat loss is of academic interest only, since the five factors at 50 CFR 424.11(c) under which species may qualify for listing look prospectively to the future rather than retrospectively on the past. The relevant issues are whether the current extent of fairy and tadpole shrimp habitat is depleted and/or fragmented enough to render the species vulnerable to extinction, or whether foreseeable threats similarly threaten the species" (59 FR 48136). Section 4 of the Act, and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424), set forth procedures for adding species to the Federal Lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; and (5) other natural or manmade factors affecting its continued existence.

The petitioner suggested that estimates of habitat loss, historic vernal pool habitat, and remaining vernal pool habitat cited in the final rule were incorrect. We reviewed the information cited, and find that it represented the best scientific and commercial information available on the vernal pool crustaceans and their habitats. We can find no evidence to support the petitioner's arguments that the method of determining habitat loss in Holland (1988) was incorrect. The petitioner does not provide any alternative information about rates of habitat loss, or demonstrate this estimate was in error.

The petitioner argues that the proposed and/or final rules did not include random studies that could be extrapolated to unsampled areas or information about the locations of vernal pool crustacean populations, and questions the use of vernal pool complexes to evaluate vernal pool crustacean populations. However, the final rule does include a random study (Simovich *et al.* 1993) and describes the number and location of the known populations of the vernal pool crustaceans in adequate detail to convey relevant information about their range and distribution. The concepts of populations and vernal pool complexes were addressed throughout the listing process. The petitioner does not provide any evidence to support its claim that the methodology of Simovich *et al.* (1993) was flawed or that the results were not valid, and the petitioner does not propose a more effective method of evaluating vernal pool crustacean populations in its petition. We do not agree with the petitioner's assertion that vernal pool crustaceans are present in non-vernal pool habitats. We responded to this comment in the final rule and concluded that most of these areas represented historic vernal pool complexes that had been degraded by human activities (59 FR 48145). The petitioner presented no additional information to counter our finding.

We disagree with the petitioner's statement that the final rule did not receive peer review. We conducted extensive peer review on the listing of the vernal pool crustaceans. The petitioner did not, and has not, provided the names of individuals they believe should have reviewed the information contained in the rule, and has not provided any evidence that our method of peer review was not effective.

The petition refers to four pieces of information: Jones and Stokes (1994), Sugnet and Associates (1995), a study presented by Dave Smith of the Natural Resource Conservation Service at the 1994 Annual Conference of the California Association of Resource Conservation Districts, and comments made in 1996 by then-State Resources Secretary Douglas Wheeler "at a meeting of a governor's task force." The petitioner cites these sources to provide additional information on the vernal pool crustaceans and their remaining vernal pool habitats. The petitioner provided a copy of Sugnet and Associates (1995), and we were able to obtain and review a copy of the first source (Jones and Stokes 1994); we were unable to obtain copies of the latter two sources and relied on the petitioner's presentation of the information. Jones and Stokes (1994) supports our findings that vernal pool habitats are threatened. Sugnet and Associates (1995) and the information attributed to Smith do not present new information about the current distribution of vernal pool habitats. The amount of remaining vernal pool habitats given by the petitioner supports rather than challenges the information presented in the final rule. The comments attributed to Wheeler do not provide any information about vernal pools or vernal pool crustaceans. None of these sources supports the petitioner's claim that vernal pool habitat is widespread and not threatened.

The petitioner states that existing regulatory mechanisms made listing the vernal pool crustaceans unnecessary. However, the final rule exhaustively describes how existing regulatory mechanisms were not sufficient to protect vernal pool crustacean habitats based on information in the administrative record. The petitioner notes that minimization measures taken for 22 projects mentioned in the final rule resulted in a net gain of vernal pools. However, many of these minimization measures were developed and implemented after the publication of the final rule listing the vernal pool crustaceans as threatened and endangered. Without the protection of the Act, many of these measures would not have been implemented.

As discussed in the final rule, we concluded that the vernal pool fairy shrimp and vernal pool tadpole shrimp were threatened and endangered as the result of urban development, conversion of native habitat to agriculture, and extinction by naturally occurring random events by virtue of the small, isolated nature of many of the remaining populations. The petitioner contends threats to vernal pool crustaceans discussed in the final rule were unverified. However, the threats described in the final rule were well supported, both with cited literature and other information available in the administrative record. The petitioner does not provide any data, arguments, or evidence to contradict our findings.

Since the petition to delist the vernal pool fairy shrimp and the vernal pool tadpole shrimp was submitted on February 29, 1996, we added new information to our files on the status of these species. We reviewed that information as requested by the petitioners, including relevant

geographic information on the location of vernal pools and fairy shrimp, and information generated in section 7 consultations and section 10 habitat conservation plans. Except for the discovery of a new population of vernal pool fairy shrimp in Jackson County, Oregon (Brent Helm, May Consulting Services, *in litt.* 1998), the current range and distribution of these species is as described in the final rule. Current information on the status of the vernal pool crustaceans indicates these species are not yet recovered. Significant threats still exist throughout their ranges, primarily urban development and conversion of land to intensive agricultural use. Habitat loss occurs from direct destruction and modification of vernal pools due to these and other activities, as well as modification of surrounding uplands that can alter vernal pool habitats indirectly. Population growth projections for California indicate the current trends of agricultural conversion and urbanization will continue to threaten the vernal pool crustacean species, particularly because areas containing vernal pools are primarily privately owned. The existing network of protected areas is not yet adequate to permanently protect these species from extinction. Continued implementation of the Act is necessary to achieve a conservation strategy that includes large areas of permanently protected vernal pool crustacean habitats that are not subject to the threats of urbanization and agricultural conversion.

Listing the fairy shrimp and the vernal pool tadpole shrimp as threatened and endangered provides for the development of a recovery plan, which is being developed. The recovery plan will describe site-specific actions necessary to achieve conservation and survival of the fairy shrimp and the vernal pool tadpole shrimp, and will establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan will also set recovery goals and priorities. After the plan is completed and implemented, we will continue to evaluate information on the status of and threats to these species, and undertake delisting actions as appropriate.

Thus, based on our review of information on the vernal pool crustaceans added to our files since the time of listing and the information that the petitioner asked us to review, we determine there is not substantial information to indicate that delisting of the vernal pool tadpole shrimp and vernal pool fairy shrimp may be warranted.

References Cited

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Jones and Stokes Associates. 1994. Wetland resource planning recommendations for Chico, Clovis, Fresno, and surrounding areas of Butte and Fresno Counties. Sacramento, California. iv + 73 pp. + maps + appendices

Simovich, M., R. Brusca, and J. King. 1993. Invertebrate survey 1991–1993, PGT–PGE/Bechtel pipeline expansion project. Unpublished report to Bechtel Corporation, San Francisco, California.

Sugnet and Associates. 1995. Habitat conservation planning for California's Central Valley grassland prairie/vernal pool landscapes. National Association of Environmental Professionals Conference, Washington, D.C. 4 pp.

Author

The primary author of this document is Kyle E. Merriam, Sacramento Fish and Wildlife Office (see **ADDRESSES** section above).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq*).

Dated: March 30, 2000.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–8420 Filed 4–4–00; 8:45am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 032800B]

Fisheries of the Exclusive Economic Zone Off Alaska; Amendments 61/61/13/8 to Implement Major Provisions of the American Fisheries Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent; scoping period; request for comments.

SUMMARY: NMFS announces its intent to prepare an environmental impact statement (EIS) on proposed Amendment 61 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, proposed Amendment 61 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, proposed Amendment 13 to the Fishery Management Plan for Bering Sea and Aleutian Islands King and Tanner Crab, and proposed Amendment 8 to the Fishery Management Plan for the Scallop Fishery off Alaska (FMPs). These fishery management plan (FMP) amendments would incorporate the provisions of the American Fisheries Act (AFA) into the FMPs and their implementing regulations. The scope of the analysis will include all proposed regulations and activities that would be implemented under the proposed FMP amendments.

DATES: Written comments will be accepted through May 8, 2000.

ADDRESSES: Written comments and requests to be included on a mailing list of persons interested in the EIS should be sent to Lori Gravel, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, or delivered to the Federal Office Building, Room 457–1, 709 West 9th Street, Juneau, AK, and marked Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Kent Lind, NMFS, (907) 586–7228 or kent.lind@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands Management Area (BSAI) and Gulf of Alaska (GOA) under the FMPs for groundfish in the respective areas. With Federal oversight, the State of Alaska (State) manages the commercial king crab and Tanner crab fisheries in the BSAI and the commercial scallop fishery off Alaska under the FMPs for those fisheries. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq*. Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

EISs were prepared and filed when the FMPs for the groundfish fisheries of the BSAI and GOA were prepared and approved by NMFS in 1978 and 1981, respectively. On October 1, 1999, NMFS announced its intent to prepare a programmatic supplemental environmental impact statement that defined the Federal action under review as, among other things, all activities authorized and managed under the FMPs and all amendments thereto, and that addresses the conduct of the BSAI and GOA groundfish fisheries as a whole. Work on this programmatic SEIS

is ongoing. However, the programmatic SEIS will not examine in detail a range of alternatives specific to proposed Amendments 61/61/13/8 and implementation of the AFA.

The National Environmental Policy Act (NEPA) requires preparation of EISs for major Federal actions significantly affecting the quality of the human environment. NEPA regulations state: "Environmental impact statements may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs or regulations" (40 CFR 1502.4). NMFS has determined that the new management programs mandated by the AFA and proposed to be implemented under Amendments 61/61/13/8 are of sufficient magnitude to warrant preparation of a separate EIS for these amendments.

The AFA, Div. C, Title II, Subtitle II, Pub. L. No. 105-277, 112 Stat. 2681 (1998), made profound changes in the management of the groundfish fisheries of the BSAI and, to a lesser extent, the groundfish fisheries of the GOA, crab fisheries of the BSAI, and scallop fishery off Alaska, and requires the adoption of new agency programs and regulations. With respect to the groundfish and crab fisheries off Alaska, the AFA—

(1) Established a new allocation scheme for BSAI pollock that allocates 10 percent of the BSAI pollock total allowable catch (TAC) to the Community Development Quota (CDQ) Program, and after allowance for incidental catch of pollock in other fisheries, allocates the remaining TAC as follows: 50 percent to vessels harvesting pollock for processing by inshore processors, 40 percent to vessels harvesting pollock for processing by catcher/processors, and 10 percent to vessels harvesting pollock for processing by motherships;

(2) Provided for the buyout of nine pollock catcher/processors and the subsequent scrapping of eight of these vessels through a combination of $20 million in Federal appropriations and $75 million in direct loan obligations;

(3) Required a fee of six-tenths (0.6) of one cent for each pound round weight of pollock harvested by catcher vessels delivering to inshore processors for the purpose of repaying the $75 million direct loan obligation;

(4) Listed by name and/or provided qualifying criteria for those vessels and processors eligible to participate in the non-CDQ portion of the BSAI pollock fishery;

(5) Increased observer coverage and scale requirements for AFA catcher/processors;

(6) Established limitations for the creation of fishery cooperatives in the catcher/processor, mothership, and inshore industry sectors of the BSAI pollock fishery;

(7) Required that NMFS grant individual allocations of the inshore BSAI pollock TAC to inshore catcher vessel cooperatives that form around a specific inshore processor and agree to deliver the bulk of their catch to that processor;

(8) Required harvesting and processing restrictions (commonly known as "sideboards") on fishermen and processors who have received exclusive harvesting or processing privileges under the AFA to protect the interests of fishermen and processors who have not directly benefitted from the AFA; and

(9) Established excessive share harvesting caps for BSAI pollock and directed the Council to develop excessive share caps for BSAI pollock processing and for the harvesting and processing of other groundfish.

Since the passage of the AFA in October 1998, NMFS has begun to implement specific provisions of the AFA through a variety of mechanisms. For the 2000 fishing year, NMFS implemented AFA-related permit requirements through an emergency interim rule published on January 5, 2000 (65 FR 380). AFA-related pollock allocations, monitoring requirements, and sideboard restrictions were implemented through a second emergency rule published January 28, 2000 (65 FR 4520). Required changes to the CDQ program were implemented through an emergency interim rule (64 FR 3877, January 26, 1999; extended at 64 FR 34743, June 29, 1999). Since the passage of the AFA, the Council also has taken an active role in the development of management measures to implement the various provisions of the AFA. The Council began consideration of the implications of the AFA during a special meeting in November 1998, during which it discussed AFA-related actions that were required for the 1999 fishing year. At its December 1998 meeting, the Council began an analysis of a suite of AFA-related management measures that subsequently became known as Amendments 61/61/13/8. The Council conducted an initial review of Amendments 61/61/13/8 and related AFA measures at its April 1999 meeting, and took final action on these amendments at its June 1999 meeting. At its December 1999 meeting, the Council reviewed the status of Amendments 61/61/13/8 and recommended that NMFS proceed immediately with an emergency interim rule to implement the Council's June 1999 recommendations so that AFA regulations could be in place prior to the start of the 2000 fisheries while Amendments 61/61/13/8 and the proposed rule to implement the amendments are under continued development and review by the Council and NMFS. In accordance with the Council's recommendation, NMFS has implemented the main provisions of Amendments 61/61/13/8 through the two emergency interim rules cited here to meet the statutory deadlines contained in the AFA for most management measures.

With this document, NMFS announces its intent to prepare an EIS on proposed Amendments 61/61/13/8 that defines the proposed Federal action under review as the suite of regulations and management measures that, taken as a whole, would implement the required provisions of the AFA as recommended by the Council under proposed Amendments 61/61/13/8. NMFS will present in the EIS an overview and an assessment of all impacts (including environmental, biological, economic, and socio-economic) that result from fishing and processing activities that would be conducted under proposed Amendments 61/61/13/8 and all reasonable alternatives. The Responsible Program Manager for this EIS is Steven Pennoyer, Administrator, Alaska Region, NMFS.

Alternatives

The EIS will consider a range of alternative management measures to implement the requirements of the AFA. The EIS will not consider detailed alternatives that are inconsistent with the statutory requirements of the AFA, or alternatives that would expand the provisions of the AFA into other groundfish or crab fisheries under the authority of the Council. This EIS also will not consider alternatives for the buyout and scrapping of ineligible catcher/processors or the 0.6 cent/lb fee on inshore pollock because these two provisions of the AFA have already been permanently implemented by NMFS through separate actions.

Alternatives will be grouped into three categories of management measures for the purpose of analysis: (1) Alternatives for allocating the BSAI pollock resource among industry sectors, vessels and processors, (2) alternatives for harvesting and processing sideboard limits for AFA vessels and processors in other fisheries, and (3) alternatives for monitoring and enforcement.

Alternatives for allocating the BSAI pollock resource. The AFA provides an explicit formula for allocating the BSAI pollock resource among the CDQ, inshore, mothership, and catcher/processor sectors. The AFA further defines which vessels and processors are eligible to participate in the inshore, mothership, and catcher/processor sectors and sets an overall harvesting excessive share cap of 17.5 percent of the BSAI pollock directed fishery which no individual, corporation, or other entity may exceed. The AFA also provides guidelines for the formation of fishery cooperatives and for the allocation of BSAI pollock to fishery cooperatives. The EIS will examine the environmental and economic effects of proposed Amendments 61/61/13/8 that would allocate pollock according to the formulas set out in the AFA and contrast this allocation alternative against the no-action alternative (i.e., the pre-AFA regime). The EIS also will analyze various alternative mechanisms for allocating BSAI pollock to fishery cooperatives that have been proposed by the Council including alternatives that would modify the restrictions on inshore cooperative membership and requirements that tie inshore cooperatives to specific processors. However, the EIS will not examine, in detail, different sector allocation formulas or alternative qualification criteria for vessels and processors that would be inconsistent with the AFA and that would be outside the authority of the Council to recommend or NMFS to implement.

Alternatives for harvesting and processing sideboards. Since November 1998, the Council has examined a wide range of alternative measures for harvesting and processing sideboards. At its June 1999 meeting, the Council considered various options for establishing groundfish harvesting sideboard amounts for catcher/processors and groundfish and crab sideboard amounts for catcher vessels. The Council also considered various methods by which harvesting sideboards would be managed and considered various exemptions for catcher vessels that meet certain criteria. The full range of harvesting sideboard alternatives considered by the Council will be analyzed in the EIS including the Council's preferred alternative under proposed Amendments 61/61/13/8. The EIS will also examine the crab processing sideboard alternatives developed by the Council. However, the EIS will not examine alternatives for groundfish processing sideboards and excessive processing shares. The Council is currently examining groundfish processing sideboards and excessive processing share limits as a separate action and is preparing a separate analysis to examine those issues for initial review at its June 2000 Council meeting.

Alternatives for monitoring and enforcement. A suite of new monitoring and enforcement measures are required to implement the limited access allocation program effectively for BSAI pollock and the accompanying sideboard measures proposed under Amendments 61/61/13/8. The AFA sets out new observer and scale requirements for catcher/processors but is silent with respect to monitoring and enforcement of both BSAI pollock and sideboard fisheries in the mothership and inshore sectors. The EIS will examine a range of monitoring and enforcement options including electronic recordkeeping and reporting requirements, observer coverage requirements, and scale and catch weighing requirements for all three sectors of the BSAI directed pollock fishery.

Issues

The environmental consequences section of the EIS will examine the impacts of fishing and processing under pre-AFA management regulations and under a range of representative alternative management alternatives to implement the requirements of the AFA. The environmental issues to be examined include: (1) marine habitat and water quality, (2) major fish species, (3) bycatch, (4) marine mammals, (5) seabirds, and (6) cumulative and synergistic impacts on species across the food web. In addition, the environmental consequences section will contain summary, interpretation, and predictions for economic and socioeconomic issues associated with the conduct of the BSAI pollock fishery on the following individuals and groups: (1) Those who participate in harvesting the fishery resources off Alaska, (2) those who process and market the fishery resources harvested off Alaska, (3) those who are involved in allied support industries, (4) those who consume these fishery products, (5) those who rely on these fishery resources for subsistence or recreational needs, (6) those who benefit from non-consumptive uses of these living marine resources, (7) those involved in managing and monitoring these fisheries, and (8) affected fishing communities.

NMFS requests public input on the range of environmental, economic and socioeconomic issues that should be considered in this EIS on proposed Amendments 61/61/13/8.

Public Involvement

Scoping for the EIS begins with publication of this document. The Council will receive a presentation of the EIA project and the public will have opportunity to comment on the scope of the EIS at the Council's April 2000 meeting (Anchorage, AK, Hilton Hotel, April 12–17, 2000). Additional scoping meetings are not scheduled. The proposed action has already been subject to a lengthy development process that has included early and meaningful opportunity for public participation in the development of the proposed action including eight Council meetings beginning with a special Council meeting on the AFA in November 1998, and including every Council meeting since that date. The Council also has formed special committees to examine specific aspects of the AFA in detail including the structure and management of inshore cooperatives and the issue of processor sideboards. The Council provided notice of these meetings and they were open to the public.

Dated: April 3, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–8576 Filed 4–5–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 67
Thursday, April 6, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COMMISSION ON ELECTRONIC COMMERCE

Meeting Cancellation

The Advisory Commission on Electronic Commerce was established by Public Law 105–277 to conduct a thorough study of federal, state, local and international taxation and tariff treatment of transactions using the Internet and Internet access and other comparable intrastate, interstate or international sales activities. The Commission is to report its findings and recommendations to Congress no later than April 21, 2000. Notice is hereby given, that the Advisory Commission on Electronic Commerce has cancelled a telephone conference call meeting, which was scheduled for Monday, April 10, 2000, and noticed in the **Federal Register** on Monday, March 27, 2000, at 65 FR 16163.

Information about the activities of the Commission can be found at the Commission's Web site located at: www.ecommercecommission.org.

A listing of the members of the Commission and details concerning their appointment were published in the **Federal Register** on June 9, 1999, at 64 FR 30958.

Heather Rosenker,

Executive Director.

[FR Doc. 00–8510 Filed 4–5–00; 8:45 am]

BILLING CODE 0000–00–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104– Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington DC 20503. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0552.

Form Number: N/A.

Title: Financial Status Report.

Type of Submission: Renewal of Information Collection.

Purpose: USAID wants to require grant and cooperative agreement recipients who work in multiple countries to provide expenditure reports by country. USAID has stated in the "remarks" section of SF–269 and SF–269A, or other applicable approved financial report form that "For assistance programs which cover programs in more than one country, recipients shall specify by country the amount of the total Federals share which was expended for each country * * *." The USAID has sought a class deviation to the statute from the Office of Management and Budget in accordance with the 22 CFR 226.4. The information being collected so that USAID may report to Congress, the Office of Management and Budget and other requesters per the requirements of the Government Performance and Results Act and the Government Management Reporting Act. Also, the reporting requirements are necessary to assure that USAID funds are expended in accordance with Statutory requirements and USAID policies.

Annual Reporting Burden:

Respondents: 80.

Total annual responses: 320.

Total annual hours requested: 800 hours.

Dated: March 31, 2000.

Joanne Paskar,

Acting Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 00–8508 Filed 4–5–00; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to the Natural Resources Conservation Service's National Handbook of Conservation Practices

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture, New York State Office.

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices, Section IV of the New York State NRCS Field Office Technical Guide (FOTG) for review and comment.

SUMMARY: It is the intention of NRCS to issue a revised conservation practice standard in its National Handbook of Conservation Practices. This revised standard is: Wetland Enhancement (NY659).

DATES: Comments will be received on or before May 8, 2000.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Richard D. Swenson, State Conservationist, Natural Resources Conservation Service, (NRCS), 441 S. Salina Street, Fifth Floor, Suite 354, Syracuse, New York, 13202–2450.

A copy of this standard is available from the above individual.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agricultural Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State Technical Guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

Dated: March 16, 2000.

Melvin Womack,

Deputy State Conservationist, Natural Resources Conservation Service, Syracuse, NY.

[FR Doc. 00–8440 Filed 4–5–00; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, April 14, 2000, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of March 3, 2000 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Reports
- Community Concerns About Law Enforcement in Sonoma County (California)
- Equal Educational Opportunity for Hispanic Students in the Oklahoma City Public Schools (Oklahoma)

VI. Police Practices and Civil Rights in New York City Report
VII. Hawaiian Civil Rights Issues
VIII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: David Aronson, Press and Communications (202) 376–8312.

Edward A. Hailes, Jr.,
Acting General Counsel.
[FR Doc. 00–8644 Filed 4–4–00; 2:04 pm]
BILLING CODE 6335–0–M

DEPARTMENT OF COMMERCE

Office of the General Counsel; Request for Public Comments on Dispute Resolution Issues Relating to Section 3002(b) of the Anticybersquatting Consumer Protection Act

AGENCY: Department of Commerce.

ACTION: Notice; 15-day re-opening of comment period.

SUMMARY: Pursuant to public request, the Department of Commerce re-opens for an additional 15 days the response period for our request for public comments and suggestions concerning the "Anticybersquatting Consumer Protection Act" (or "the Act") (Public Law 106–113) and the resolution of Internet domain name disputes involving the personal names of individuals. The original notice and request for comments was published on February 29, 2000, with written comments to be provided by March 30, 2000 (65 FR 10768). Detailed background information, as well as the scope of this request, may be found in the above-cited **Federal Register** notice.

DATES: Written comments must be received no later than April 21, 2000. Under no circumstances shall any written comments received after April 21, 2000 be considered by the Department of Commerce.

ADDRESSES: Please address written comments to: Department of Commerce, Room 5876; 14th & Constitution Avenues, NW; Washington, DC 20230, marked as "Public Comments" to the attention of Sabrina McLaughlin, Office of General Counsel. If possible, paper submissions should be accompanied by disks formatted in WordPerfect, Microsoft Word, or ASCII. As an alternate means of submission, comments may be transmitted by facsimile to Sabrina McLaughlin at (202) 482–0512. Electronic submissions may be directed to *DomainName@doc.gov*. Any accompanying diskettes should be labeled with the name of the party submitting comment and the version of the word processing program used to create the document.

FOR FURTHER INFORMATION CONTACT: Sabrina McLaughlin by telephone at (202) 482–4265, by mail to her attention addressed to: Department of Commerce, Room 5876; 14th & Constitution Avenues, NW; Washington, DC 20230, or by electronic mail at *DomainName@doc.gov*.

SUPPLEMENTARY INFORMATION: The Department of Commerce has determined that it is appropriate to re-open the record for public comment in order: (1) To officially accommodate the significant number of comments being filed somewhat beyond the original comment deadline; and (2) to ensure that the Department receives the benefit of broad public perspectives as the Department, in consultation with the United States Patent and Trademark Office and the Federal Election Commission, proceeds to study and to recommend to Congress appropriate guidelines and procedures for resolving disputes involving the registration or use by a person of a domain name that includes the personal name of another person, in whole or in part, or a name confusingly similar thereto. The Department's guidelines and recommendations will take the form of a Report to Congress, as required under section 3006 of the Act.

The Department will not be posting comments online. However, because all submissions received pursuant to a solicitation for public comment are treated as public information, respondents should not submit materials that they do not desire to be made public.

Dated: April 3, 2000.
Andrew J. Pincus,
General Counsel.
[FR Doc. 00–8588 Filed 4–5–00; 8:45 am]
BILLING CODE 3510–DW–P

DEPARTMENT OF COMMERCE

Federal Trade Commission

Public Workshop: Alternative Dispute Resolution for Consumer Transactions in the Borderless Online Marketplace

AGENCY: International Trade Administration, Department of Commerce; Federal Trade Commission.

ACTION: Notice Announcing Dates and Location of Workshop and Extending Deadline for Public Comments.

SUMMARY: The United States Department of Commerce (the "Department") and the Federal Trade Commission (the "FTC") have (1) set their public workshop on alternative dispute resolution ("ADR") for online consumer transactions (announced in 65 FR 7831 (Feb. 16, 2000)) for June 6–7, 2000, in the Department of Commerce Main Auditorium; and (2) extended the deadline for receipt of comments to April 19, 2000.

DATES AND LOCATION: The deadline for written comments has been extended to April 19, 2000. The workshop will be held June 6 and 7, 2000 in the Department of Commerce, Main Auditorium, 1401 Constitution Avenue, NW, Washington, DC 20239.

ADDRESSES: Mail written comments to Secretary Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUBMISSION OF DOCUMENTS: Comments should be captioned "Alternative Dispute Resolution for Consumer Transactions in the Borderless Online Marketplace." To enable prompt review and public access, paper submissions should include three hard copies and a version on diskette in ASCII, WordPerfect (please specify version), or Microsoft Word (please specify version) format. Diskettes should be labeled with the name of the party and the name and version of the word processing program used to create the document. As an alternative to paper submissions, email comments to: *adr@ftc.gov*. Messages to that address will receive a reply in acknowledgment. Comments submitted in electronic form should be in ASCII, WordPerfect (please specify version), or Microsoft Word (please specify version) format.

Written comments will be available for public inspection in accordance with

the Freedom of Information Act, 5 U.S.C. 552 and Commission regulations, 16 CFR Part 4.9 on normal business days between the hours of 8:30 a.m. and 5:00 p.m. at 600 Pennsylvania Avenue, NW, Washington, DC 20580. The Department and the FTC will make this notice, and, to the extent possible, all papers or comments received in response to this notice available to the public through the Internet at: *http://www.ecommerce.gov/adr.*

FOR FURTHER INFORMATION CONTACT: A workshop agenda will be published closer to the date of the workshop. For questions about the workshop, please contact either Kate Rodriguez, International Trade Administration, phone (202) 482–2145; email: *kate rodriguez@ita.doc.gov* or Maneesha Mithal, Federal Trade Commission, phone: (202) 326–2771; email: *mmithal@ftc.gov.* All materials relating to the workshop can also be found at http://www.ecommerce.gov/ad.

By direction of the Commission.

Donald S. Clark

Secretary.

Barbara S. Wellbery,

Counsellor to the Under Secretary for Electronic Commerce International Trade Administration, Department of Commerce.

[FR Doc. 00–8425 Filed 4–5–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF COMMERCE

Economics and Statistics Administration; Bureau of Economic Analysis Advisory Committee Meeting

AGENCY: Bureau of Economic Analysis.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463, as amended by Public Law 94–409, Public Law 96–523, and Public Law 97–375), we are giving notice of a meeting of the Bureau of Economic Analysis Advisory Committee. The meeting's agenda is as follows:

1. Discussion of the recent National Income and Product Account (NIPA) comprehensive revision, including the implications for future work.
2. Discussion of the measurement of difficult-to-measure sectors such as the banking sector.
3. Discussion of the measurement of high-tech and E-business/E-commerce.
4. Discussion of topics for future agendas.

DATES: On Friday, May 5, 2000, the meeting will begin at 9:30 a.m. and adjourn at approximately 4 p.m.

ADDRESSES: The meeting will take place at BEA, 2nd floor, Conference Room C&D, 1441 L Street NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: J. Steven Landefeld, Director, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; telephone: 202–606–9600.

Public Participation

This meeting is open to the public. Because of security procedures, anyone planning to attend the meeting must contact Colleen Ryan of BEA at 202–606–9603 in advance. The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Colleen Ryan at 202–606–9603.

SUPPLEMENTARY INFORMATION: The Committee was established on September 2, 1999, to advise the Bureau of Economic Analysis (BEA) on matters related to the development and improvement of BEA's national, regional, and international accounts. This will be the Committee's first meeting.

Dated: March 30, 2000.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

[FR Doc. 00–8432 Filed 4–5–00; 8:45 am]

BILLING CODE 3510–06–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–485–801, A–559–801, A–401–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Preliminary Results of Antidumping Duty Administrative Reviews, Partial Rescission of Administrative Reviews, and Notice of Intent to Revoke Orders in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty Administrative reviews, partial rescission of Administrative Reviews, and notice of intent to revoke orders in part.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom. The merchandise covered by these orders are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews cover 35 manufacturers/exporters. The period of review is May 1, 1998, through April 30, 1999.

We are rescinding the reviews for 14 other manufacturers/exporters because the requests for reviews of these firms or types of bearings were withdrawn in a timely manner.

We received four requests for revocation of various orders in part. We preliminarily intend to revoke two orders in part and do not preliminary intend to revoke two other orders in part (see *Intent to Revoke and Intent Not to Revoke* below).

We have preliminary determined that sales have been made below normal value by various companies subject to these reviews. If these preliminary results are adopted in our final results of administrative reviews, we will instruct U.S. Customs to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who submit comments in these proceedings are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Please contact the appropriate case analysts for the various respondent firms as listed below, at Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

France

Lyn Johnson (SKF), Georgia Creech (SNFA), Edythe Artman (SNR), Robin Gray, or Richard Rimlinger.

Germany

Mark Ross (Torrington Nadellager), Farah Naim (SKF), Hermes Pinilla (FAG), Suzanne Brower (INA), Edythe Artman (SNR), Thomas Schauer (Paul Müller), Davina Hashmi (MPT), Robin Gray, or Richard Rimlinger.

Italy

Minoo Hatten (SKF), Suzanne Brower (FAG), Georgia Creech (SNFA/Somecat), or Robin Gray.

Japan
J. David Dirstine (Nachi-Fujikoshi, Tsubaki, Koyo), Thomas Schauer (NTN, NSK), Lyn Johnson (NPBS, Nakai Bearing), Sergio Gonzalez (Asahi Seiko, IKS), Stacey King (IJK, Takeshita), Minoo Hatten (Nankai Seiko), Larry Tabash (Osaka Pump), George Callen (KYK), Robin Gray, or Richard Rimlinger.

Romania
Suzanne Brower (TIE), J. David Dirstine (Koyo), or Robin Gray.

Singapore
George Callen (NMB/Pelmec) or Robin Gray.

Sweden
Georgia Creech (SKF) or Robin Gray.

United Kingdom
Hermes Pinilla (FAG, Barden), Georgia Creech (SNFA), Edythe Artman (SNR), Robin Gray, or Richard Rimlinger.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (1999).

Background

On May 15, 1989, the Department published in the **Federal Register** (54 FR 20909) the antidumping duty orders on ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs) from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom. Specifically, these orders cover BBs, CRBs, and SPBs from France, Germany, and Japan, BBs and CRBs from Italy, Sweden, and the United Kingdom, and BBs from Romania and Singapore. On June 30, 1999, in accordance with 19 CFR 351.213, we published a notice of initiation of administrative reviews of these orders (64 FR 35124). The period of review (POR) is May 1, 1998, through April 30, 1999. The Department is conducting these administrative reviews in accordance with section 751 of the Act.

Subsequent to the initiation of these reviews, we received timely withdrawals of the requests we had received for review of Augusta Un'Azienda Finmeccanica (France), AVSA S.A.R.L. (France), Wyko Export (France), NTN (Germany), Wyko Export of Queen Cross (Germany), AVSA S.A.R.L. (Germany), Mannesmann Sachs AG (Germany), Meter S.p.A. (Italy), SNR Roulements (Italy), Augusta Un'Azienda Finmeccanica (Italy), Isuzu Motors (Japan), Wyko Export of Queen Cross (Sweden), NSK Bearings Europe Ltd./ RHP Bearings Ltd. (United Kingdom), and Augusta Un'Azienda Finmeccanica (United Kingdom). Because there were no other requests for review of the above-named firms, we are rescinding the reviews with respect to these companies in accordance with 19 CFR 351.213(d).

Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) and constitute the following merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all AFBs that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTSUS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.2580, 8482.99.35, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

2. *Cylindrical Roller Bearings, Mounted or Unmounted, and Parts Thereof:* These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, and housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTSUS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.40.00, 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.25, 8482.99.35, 8482.99.6530, 8482.99.6560, 8482.99.70, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.93.5000, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

3. *Spherical Plain Bearings, Mounted and Unmounted, and Parts Thereof:* These products include all spherical plain bearings that employ a spherically shaped sliding element and include spherical plain rod ends.

Imports of these products are classified under the following HTSUS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.50.10, 8483.30.80, 8483.90.30, 8485.90.00, 8708.93.5000, 8708.99.50, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. For a detailed discussion of the scope of the orders being reviewed, including a list of scope determinations, see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 64 FR 35590 (July 1, 1999) *(AFBs 9)*. In addition, see Memorandum from Laurie Parkhill to Richard W. Moreland, dated December 13, 1999, and on file in the Central Records Unit (CRU), Main Commerce Building, Room B-099. This memorandum serves to exclude certain parts of a rotation prevention device, manufactured by Sanden International (U.S.A.) Inc., from the order on BBs from Japan. We have also determined that a fan center assembly, which is designed exclusively for and imported for use in the production of a V8 diesel engine produced by DMAX, Ltd., is not within the scope of the order on BBs from Japan. See Memorandum from Laurie Parkhill to Richard W. Moreland, dated March 13, 2000, and on file in the CRU, Room B–099.

Although the HTSUS item numbers are provided for convenience and customs purposes above, written descriptions of the scope of these proceedings remain dispositive.

These reviews cover the following firms and merchandise:

Name of firm	Merchandise
France	
SKF France (including all relevant affiliates)	All.
SNFA S.A. (SNFA France)	Ball and Cylindrical.
Societe Nouvelle de Roulements (SNR France)	Ball and Cylindrical.
Germany	
FAG Kugelfischer George Schaefer AG (FAG Germany)	Ball and Cylindrical.
INA Walzlager Schaeffler oHG (INA)	All.
MPT Prazisionsteile GmbH Mittweida (MPT)	Cylindrical
Paul Miller GmbH and Co. KG (Paul Miller)	Ball.
SKF GmbH (including all relevant affiliates) (SKF Germany)	All.
Societe Nouvelle de Roulements (SNR Germany)	Ball and Cylindrical.
Torrington Nadellager GmbH (Torrington)	All.
Italy	
FAG Italia, S.p.A. (including all relevant affiliates) (FAG Italy)	Ball and Cylindrical.
SKF-Industrie, S.p.A. (including all relevant affiliates) (SKF Italy)	Ball.
Somecat, S.p.A./SNFA Bearings Ltd. (Somecat/SNFA)	Ball.
Japan	
Asahi Seiko Co., Ltd. (Asahi Seiko)	Ball.
Inoue Jukuuke Kogyo (IJK)	Ball.
Izumoto Seiko Co., Ltd. (IKS)	Ball.
Koyo Seiko Co., Ltd. (Koyo Japan)	All.
Nachi-Fujikoshi Corp. (Nachi)	Ball and Cylindrical.
Nakai Bearing	Ball
Nankai Seiko	Ball.
Nippon Pillow Block Sales Company, Ltd. (NPBS)	Ball.
NSK Ltd. (NSK)	Ball and Cylindrical.
NTN Corp. (NTN)	All.
Osaka Pump	Ball.
Takeshita Seiko (Takeshita)	Ball.
Tottori Yamakai (KYK)	Ball.
Tsubaki-Nakashima Co., Ltd. (formerly Tsubakimoto Precision) (Tsubaki)	Ball.
Romania	
Tehnoimportexport, S.A. (TIE)	Ball.
S.C. Koyo Romania S.A. (Koyo Romania)	Ball.
Singapore	
NMB Singapore Ltd./Pelmec Industries (Pte.) Ltd. (NMB/Pelmec)	Ball.
Sweden	
SKF Sverige (including all relevant affiliates) (SKF Sweden)	Ball and Cylindrical.
United Kingdom	
Barden Corporation (Barden)	Ball.
FAG (U.K.) Ltd. (FAG UK)	Ball and Cylindrical.
SNFA (U.K.) Bearings Ltd. (including all relevant affiliates) (SNFA UK)	Ball.
Societe Nouvelle de Roulements (SNR UK)	Ball.

In addition to the above, we have deferred initiation of administrative review of BBs from Japan that are produced by Muro Corporation (Muro). Muro requested deferral of the review pursuant to 19 CFR 351.213(c), and there were no objections to the deferral, in accordance with 19 CFR 351.213(c)(1)(ii).

Verification

As provided in section 782(i) of the Act, we verified information provided by certain respondents using standard verification procedures, including on-site inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports, which are on file in the CRU, Room B–099.

Use of Facts Available

In accordance with section 776(a) of the Act, we preliminarily determine that the use of facts available as the basis for the weighted-average dumping margin is appropriate for KYK with respect to BBs. This company did not respond to

our antidumping questionnaire fully and, consequently, we find that it has not provided "information that has been requested by the administering authority." However, a third party has submitted information that indicates that KYK is in bankruptcy and is therefore unable to respond to the questionnaire fully. For this reason, we have preliminarily determined not to make an inference that is adverse to KYK's interest. Instead, we have used the average calculated margin for all of the Japanese firms involved in this administrative review of BBs from Japan (see Memorandum from Laurie Parkhill to Richard W. Moreland, dated March 29, 2000, and on file in the CRU, Room B–099). To substantiate the bankruptcy of this firm further, we are requesting assistance from the U.S. embassy in Tokyo. We will examine this matter further between our preliminary and final results of review and, if we are unable to confirm that the firm is in bankruptcy, we will reconsider our decision that KYK is unable to respond to the questionnaire fully.

We preliminarily determine that, in accordance with section 776(a) of the Act, the use of facts available as the basis for the weighted-average dumping margin is appropriate for Osaka Pump with respect to BBs. After reviewing the information submitted by Osaka Pump in response to our requests and after documenting our findings at verification in our report, we have concluded that the information we received from the company was not usable because it was too incomplete to serve as the basis for calculating a dumping margin; hence, we have determined that the use of facts available is warranted for Osaka Pump. At verification we found numerous deficiencies and discrepancies with the response. For example, the company had not reported its U.S. and home-market sales correctly, resulting in the omission of sales in both markets. In addition, we found numerous transaction-specific errors which undermine the reliability of the response as a whole. We explain and elaborate on these and numerous other findings in our verification report dated February 2, 2000, and on file in the CRU, Room B–099.

As a result of Osaka Pump's failed verification, we have determined to apply facts available consistent with section 776(a)(2)(D) of the Act. In light of the factors we considered in making an adverse facts-available determination in the 1994/1995 reviews of these proceedings, we have determined that making an adverse inference in applying facts available is appropriate. See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 2081, 2088 (Jan. 15, 1997). First, Osaka Pump participated in the first three reviews of the order on BBs which indicates that it has experience with an antidumping proceeding. Second, Osaka Pump was in control of the data because the data was contained in its records. Therefore, we have concluded that Osaka Pump did not cooperate to the best of its ability.

In accordance with section 776(b) of the Act, we are making an adverse inference in our application of the facts available. As adverse facts available we have applied the highest rate we have calculated for companies under review for this segment of the proceeding. This represents an adverse rate but is not the highest rate ever determined in this proceeding. Therefore, we have preliminarily determined to apply 18.49 percent, a rate we determined for Takeshita for this period, to Osaka Pump's exports to the United States during the POR. We discuss the corroboration of this rate below.

We have found it necessary to use partial facts available in one instance. In this instance, we were unable to use a portion of a response in calculating the dumping margin. For TIE, we discovered a few (less than one percent) unreported transactions at verification. We have preliminarily determined that these unreported transactions constituted a failure by TIE to report all sales. Therefore, we have preliminarily applied adverse partial facts available to these transactions. As adverse partial facts available, we have used the weighted-average dumping margin of 39.61 percent, a rate we calculated for TIE in the original less-than-fair-value (LTFV) investigation. For a discussion of our determination with respect to this matter, see Memorandum from Suzanne Brower to Laurie Parkhill, dated March 28, 2000, and on file in the CRU, Room B–009.

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information used for facts available by reviewing independent sources reasonably at its disposal. Information from a prior segment of the proceeding or from another company in the same proceeding, such as that we are using here for Osaka Pump and TIE, constitutes secondary information. The Statement of Administrative Action accompanying the URAA, H.R. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA), provides that to "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. SAA at 870. As explained in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (Nov. 6, 1996), to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used.

Unlike other types of information, such as input costs or selling expenses, there are no independent sources from which the Department can derive calculated dumping margins; the only source for margins is administrative determinations. In an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding or from the same segment of the proceeding, it is not necessary to question the reliability of the margin for that time period.

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (see *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (Feb. 22, 1996), where the Department disregarded the highest dumping margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). There is no evidence of circumstances indicating that the margin we are using as facts available in this review are not appropriate. Therefore, the requirements of section 776(c) of the Act are satisfied.

Intent To Revoke and Intent Not To Revoke

On May 28, 1999, four of the companies taking part in these reviews submitted requests for the revocation, in part, of an antidumping duty order. Torrington requested the revocation of the order covering CRBs from Germany as it pertained to its sales of these bearings. Somecat/SNFA requested the revocation of the order covering BBs

from Italy as it pertained to its sales of these bearings. TIE requested the revocation of the order covering BBs from Romania as it pertained to the export of these bearings by TIE. Finally, SNFA France requested the revocation of the order covering BBs from France as it pertained to its sales of these bearings.

Under section 751 of the Act, the Department "may revoke, in whôle or in part" an antidumping duty order upon completion of a review. Although Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is set forth under 19 CFR 351.222. Under subsection 351.222(b)(2), the Department may revoke an antidumping duty order in part if it concludes that: (1) The company in question has sold the subject merchandise at not less than normal value for a period of at least three consecutive years; (2) it is not likely that the company will in the future sell the subject merchandise at less than normal value; and (3) the company has agreed to immediate reinstatement in the order if the Department concludes that the company, subsequent to the revocation, sold the subject merchandise at less than normal value. Subsection 351.222(b)(3) states that, in the case of an exporter that is not the producer of subject merchandise, the Department normally will revoke an order in part under subsection 351.222(b)(2) only with respect to subject merchandise produced or supplied by those companies that supplied the exporter during the time period that formed the basis for the revocation.

A request for revocation of an order in part must be accompanied by three elements. The company requesting revocation must do so in writing and submit the following statements with the request: (1) The company's certification that it sold the subject merchandise at not less than normal value during the current review period and that, in the future, it will not sell at less than normal value; (2) the company's certification that, during each of the three years forming the basis of the request, it sold the subject merchandise to the United States in commercial quantities; (3) the agreement to reinstatement in the order if the Department concludes that the company, subsequent to revocation, has sold the subject merchandise at less than normal value. See 19 CFR 351.222(e)(1).

Torrington has met the first and third criteria under subsection 351.222(e)(1); however, it did not submit a certification regarding the selling of subject merchandise in commercial quantities during the three years forming the basis of the request. Thus, its request is incomplete. In addition, as a result of our preliminary margin calculations, Torrington had sales of CRBs below normal value during the current review period (see *Preliminary Results* below). Therefore, even if Torrington had submitted a complete request, it would not have satisfied the criterion under subsection 351.222(b)(2)(i) and we would have determined not to revoke the order as requested.

The request from Somecat/SNFA meets all of the criteria under subsection 351.222(e)(1). However, as with Torrington above, this company had sales of the subject merchandise to which its request pertains below normal value during the current review period (see *Preliminary Results* below). Thus, it does not meet the criterion under subsection 351.222(b)(2)(i) and we do not intend to revoke the order, in part, on BBs from Italy.

TIE's request meets all of the criteria under subsection 351.222(e)(1). Thus, our analysis turns to whether this company can satisfy the criteria of subsection 351.222(b)(2). The Department first examines whether the requesting company sold the subject merchandise at not less than normal value to the United States in commercial quantities for three consecutive reviews. It then examines whether it is likely that the company would in the future sell the subject merchandise at less than normal value.

Our preliminary margin calculations listed below show that TIE did not sell BBs at less than normal value during the current review period. Furthermore, TIE did not sell the subject merchandise at less than normal value in the two previous consecutive administrative review periods. See *AFBs 9* and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 33320 (June 18, 1998) (AFBs 8). Thus, we preliminarily find that TIE had zero or *de minimis* dumping margins for three consecutive reviews.

Second, based upon three consecutive reviews of zero or *de minimis* margins and in the absence of any other evidence on likelihood, the Department preliminarily determines that dumping is not likely to resume.

Therefore, based on our findings and in accordance with subsection 351.222(b)(3), we preliminarily intend to revoke the antidumping duty order covering BBs from Romania as it pertains to TIE's sales of merchandise from those suppliers which supplied TIE during the time period that formed the basis for the revocation. TIE has requested business proprietary treatment of the names of its suppliers. For a list of the suppliers to which this revocation applies, please see Memorandum from Suzanne Brower to the File, dated March 27, 2000. If these preliminary findings are affirmed in our final results, we will revoke this order, in part, and, in accordance with 19 CFR 351.222(f)(3), we will terminate the suspension of liquidation for any BBs from Romania that are produced by the specific suppliers and exported by TIE entered, or withdrawn from warehouse, for consumption on or after May 1, 1999, and will instruct Customs to refund any cash deposits for such entries.

The request from SNFA France meets all of the criteria under subsection 351.222(e)(1). With regard to the criteria of subsection 351.222(b)(2), our preliminary margin calculations show that SNFA France sold BBs at not less than normal value during the current review period (see rate below). In addition, SNFA France sold the subject merchandise at not less than normal value in the two previous consecutive administrative reviews. See *AFBs 9* and *AFBs 8*. Thus, we preliminarily find that SNFA France had zero or *de minimis* dumping margins for three consecutive reviews. As in the case of TIE, we preliminarily determine that dumping is not likely to resume based upon the three consecutive reviews of zero or *de minimis* margins and in the absence of any other evidence on likelihood.

Therefore, we preliminarily intend to revoke the antidumping duty order covering BBs from France as it pertains to the sales of these bearings by SNFA France. If these preliminary findings are affirmed in our final results, we will revoke this order, in part, and, in accordance with 19 CFR 351.222(f)(3), we will terminate the suspension of liquidation for any BBs from France that are exported by SNFA France entered, or withdrawn from warehouse, for consumption on or after May 1, 1999, and will instruct Customs to refund any cash deposits for such entries.

Export Price and Constructed Export Price—Market-Economy Countries

For the price to the United States, we used export price or constructed export price (CEP) as defined in sections 772(a)

and (b) of the Act, as appropriate. Due to the extremely large volume of transactions that occurred during the POR and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled CEP sales in accordance with section 777A of the Act. When a firm made more than 2,000 CEP sales transactions to the United States for merchandise subject to a particular order, we reviewed CEP sales that occurred during sample weeks. We selected one week from each two-month period in the review period, for a total of six weeks, and analyzed each transaction made in those six weeks. The sample weeks are as follows: May 10–16, 1998; August 9–15, 1998; October 4–10, 1998; December 27, 1998-January 2, 1999; January 24–30, 1999; March 21–27, 1999. We reviewed all export-price sales transactions during the POR.

We calculated export price and CEP based on the packed f.o.b., c.i.f., or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for discounts and rebates. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and the Statement of Administrative Action (SAA) accompanying the URAA (at 823–824), we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, including commissions, direct selling expenses, indirect selling expenses, and repacking expenses in the United States. When appropriate, in accordance with section 772(d)(2) of the Act, we also deducted the cost of any further manufacture or assembly, except where we applied the special rule provided in section 772(e) of the Act (see below). Finally, we made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Act.

With respect to subject merchandise to which value was added in the United States prior to sale to unaffiliated U.S. customers, *e.g.*, parts of bearings that were imported by U.S. affiliates of foreign exporters and then further processed into other products which were then sold to unaffiliated parties, we determined that the special rule for merchandise with value added after importation under section 772(e) of the Act applied to all firms, except IKS and NPBS, that added value in the United States.

Section 772(e) of the Act provides that, when the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated purchaser. Based on this analysis, we determined that the estimated value added in the United States by all firms, with the exception of IKS and NPBS, accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States. (See 19 CFR 351.402(c) for an explanation of our practice on this issue.) Therefore, we preliminarily determine that the value added is likely to exceed substantially the value of the subject merchandise. Also, for the companies in question, we determine that there was a sufficient quantity of sales remaining to provide a reasonable basis for comparison and that the use of these sales are appropriate. Accordingly, for purposes of determining dumping margins for the sales subject to the special rule, we have used the weighted-average dumping margins calculated on sales of identical or other subject merchandise sold to unaffiliated persons.

For IKS and NPBS, we determined that the special rule did not apply because the value added in the United States did not exceed substantially the value of the subject merchandise. Consequently, IKS and NPBS submitted complete section E responses which included the costs of the further processing performed by its U.S. affiliate. Since the majority of the IKS's and NPBS's products sold in the United States were further processed, we analyzed all sales. No other adjustments to export price or CEP were claimed or allowed.

Normal Value—Market-Economy Countries

Based on a comparison of the aggregate quantity of home-market and U.S. sales and absent any information that a particular market situation in the exporting country did not permit a proper comparison, we determined that the quantity of foreign like product sold by all respondents in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. Each company's quantity of sales in its home market was greater than five percent of its sales to the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value on the prices at which the foreign like products were first sold for consumption in the exporting country. With respect to MPT and Takeshita, normal value was based on constructed value because the merchandise sold in the United States was not comparable to the merchandise sold in the home market during the POR.

Due to the extremely large number of transactions that occurred during the POR and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate normal value in accordance with section 777A of the Act. When a firm had more than 2,000 home-market sales transactions on an order-specific basis, we used sales in sample months that corresponded to the sample weeks that we selected for U.S. CEP sales, sales in the one month prior to the POR, and sales in the month following the POR. The sample months were February, May, August, October, and December of 1998 and January, March, and May of 1999.

We used sales to affiliated customers only where we determined such sales were made at arm's-length prices, *i.e.*, at prices comparable to prices at which the firm sold identical merchandise to unaffiliated customers.

Because we disregarded below-cost sales in accordance with section 773(b) of the Act in the last completed review with respect to SKF France (BBs), SNR France (BBs), INA (all), SKF Germany (all), FAG Germany (BBs, CRBs), FAG Italy (BBs), SKF Italy (BBs), SKF Sweden (BBs), Koyo (BBs), Nachi (BBs, CRBs), NPBS (BBs), NSK (BBs, CRBs), NTN Japan (all), and Barden U.K. (BBs), we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of normal value in these reviews may have been made at prices below the cost of production (COP) as

provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated COP investigations of sales by these firms in the home market.

On September 20, 1999, the Department received allegations from SKF USA Inc. and INA USA Corporation that Torrington sold CRBs in Germany at prices below the COP. The parties requested that the Department initiate a cost investigation of Torrington's home-market sales of CRBs. Based on our analysis of the sales-below-cost allegations submitted by SKF USA Inc. and INA USA Corporation, we determined that the allegations provided reasonable grounds to believe or suspect that Torrington's home-market sales were made at prices below their COP. Therefore, we initiated an investigation of sales below COP for Torrington. See Memorandum to Richard W. Moreland, Request to Initiate Cost Investigation for Respondent Torrington Nadellager, October 25, 1999, on file in the CRU, Room B–099.

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, the selling, general and administrative (SG&A) expenses, and all costs and expenses incidental to packing the merchandise. In our COP analysis, we used the home-market sales and COP information provided by each respondent in its questionnaire responses. We did not conduct a COP analysis regarding merchandise subject to an antidumping duty order in instances where a respondent reported no U.S. sales or shipments of merchandise subject to that order.

After calculating the COP, in accordance with section 773(b)(1) of the Act, we tested whether home-market sales of AFBs were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. We compared model-specific COPs to the reported home-market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, when less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. When 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we disregarded the below-cost sales because they were made in substantial quantities within an extended period of time pursuant to sections 773(b)(2)(B) and (C) of the Act and because, based on comparisons of prices to weighted-average COPs for the POR, we determined that these sales were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Based on this test, we disregarded below-cost sales with respect to all of the above-mentioned companies and indicated merchandise except where there were no sales or shipments subject to review.

We compared U.S. sales with sales of the foreign like product in the home market. We considered all non-identical products within a bearing family to be equally similar. As defined in the questionnaire, a bearing family consists of all bearings which are the foreign like product that are the same in the following physical characteristics: load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, outer diameter, inner diameter, and width.

Home-market prices were based on the packed, ex-factory or delivered prices to affiliated or unaffiliated purchasers. When applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparisons to export price, we made COS adjustments by deducting home-market direct selling expenses from and adding U.S. direct selling expenses to normal value. For comparisons to CEP, we made COS adjustments by deducting home-market direct selling expenses from normal value. We also made adjustments, when applicable, for home-market indirect selling expenses to offset U.S. commissions in export-price and CEP calculations.

In accordance with section 773(a)(1)(B)(i) of the Act, we based normal value, to the extent practicable, on sales at the same level of trade as the export price or CEP. If normal value was calculated at a different level of trade, we made an adjustment, if appropriate and if possible, in accordance with section 773(a)(7) of the Act. (See Level of Trade section below.)

In accordance with section 773(a)(4) of the Act, we used constructed value as the basis for normal value when there were no usable sales of the foreign like product in the comparison market. We calculated constructed value in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses, and profit in the calculation of constructed value. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market.

When appropriate, we made adjustments to constructed value in accordance with section 773(a)(8) of the Act and 19 CFR 351.410 for COS differences and level-of-trade differences. For comparisons to export price, we made COS adjustments by deducting home-market direct selling expenses from and adding U.S. direct selling expenses to normal value. For comparisons to CEP, we made COS adjustments by deducting home-market direct selling expenses from normal value. We also made adjustments, when applicable, for home-market indirect selling expenses to offset U.S. commissions in export-price and CEP comparisons.

When possible, we calculated constructed value at the same level of trade as the export price or CEP. If constructed value was calculated at a different level of trade, we made an adjustment, if appropriate and if possible, in accordance with sections 773(a)(7) and (8) of the Act. (See *Level of Trade* section below.)

Level of Trade

To the extent practicable, we determined normal value for sales at the same level of trade as the U.S. sales (either export price or CEP). When there were no sales at the same level of trade, we compared U.S. sales to home-market sales at a different level of trade. The normal-value level of trade is that of the starting-price sales in the home market. When normal value is based on constructed value, the level of trade is that of the sales from which we derived SG&A and profit.

To determine whether home-market sales are at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales were at a different level of trade from that of a U.S. sale and the

difference affected price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison-market sales at the level of trade of the export transaction, we made a level-of-trade adjustment under section 773(a)(7)(A) of the Act. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

For a company-specific description of our level-of-trade analysis for these preliminary results, see Memorandum to Laurie Parkhill from Antifriction Bearings Team regarding Level of Trade, dated March 27, 2000, and on file in the CRU, Room B–099.

Methodology for Romania

Separate Rates

It is the Department's policy to assign all exporters of subject merchandise subject to review in a non-market-economy (NME) country a single rate unless an exporter can demonstrate that it is sufficiently independent to be entitled to a separate rate. For purposes of this "separate rates" inquiry, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this test, exporters in NME countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control over exports, both in law (*de jure*) and in fact (*de facto*).

Evidence supporting, though not requiring, a finding of *de jure* absence of government control includes the following: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

De facto absence of government control with respect to exports is based on the following four criteria: (1) Whether the export prices are set by or subject to the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has autonomy in making decisions regarding the selection of management; (4) whether each exporter has the authority to negotiate and sign contracts. (*See Silicon Carbide*, 59 FR at 22587.)

We have determined that the evidence of record demonstrates an absence of government control, both in law and in fact, with respect to exports by TIE and Koyo Romania according to the criteria identified in *Sparklers* and *Silicon Carbide*. For a discussion of the Department's preliminary determination that TIE and Koyo Romania are entitled to a separate rate, see Memorandum from Suzanne Brower to Laurie Parkhill, Assignment of Separate Rate for Tehnoimportexport: 1998–99 Administrative Review of the Antidumping Duty Order on Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Romania, dated February 25, 2000, and Memorandum from J. David Dirstine to Laurie Parkhill, Assignment of Separate Rate for S.C. Koyo Romania S.A.: 1998–99 Administrative Review of the Antidumping Duty Order on Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Romania, dated February 23, 2000, which are on file in the CRU, Room B–099. Since TIE and Koyo Romania are preliminarily entitled to separate rates and are the only Romanian firms for which administrative reviews have been requested, it is not necessary for us to review any other Romanian exporters of subject merchandise.

Export Price—Romania

For sales made by TIE, we based our margin calculation on export price as defined in section 772(a) of the Act because the subject merchandise was first sold before the date of importation by the exporter of the subject merchandise outside of the United States to unaffiliated purchasers in the United States.

We calculated export price based on the packed price to unaffiliated purchasers in the United States. We made deductions from the price used to establish export price, where appropriate, for foreign inland freight, international freight, and U.S. brokerage and handling. To value foreign inland freight we used the freight rates listed in the attachment to the Memorandum from Suzanne Brower and J. David Dirstine to Laurie Parkhill, Antidumping Duty Order Administrative Review of Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Romania: Selection of the Surrogate Country in the 1998/99 Review (Surrogate-Country Memo), dated March 27, 2000, which is on file in the CRU, Room B–099. We used the actual reported expenses for international freight and U.S. brokerage and handling because the expenses were paid to market-economy suppliers and incurred in market-economy currencies.

Constructed Export Price—Romania

For sales made by Koyo Romania, we used CEP as defined in sections 772(b) of the Act. We used the actual reported expenses for international freight because the expenses were paid to market-economy suppliers and incurred in market-economy currencies. No other adjustments were claimed or allowed.

Normal Value—Romania

For merchandise exported from a NME country, section 773(c)(1) of the Act provides that the Department shall determine normal value using a factors-of-production methodology if available information does not permit the calculation of normal value using home-market or third-country prices under section 773(a) of the Act. In every investigation or review we have conducted involving Romania, we have treated Romania as a NME country. None of the parties to this proceeding has contested such treatment in this review and, therefore, we have maintained our treatment of Romania as an NME country for these preliminary results.

Accordingly, we calculated normal value in accordance with section 773(c) of the Act and 19 CFR 351.408. In accordance with section 773(c)(3) of the Act, the factors of production used in producing AFEs include, but are not limited to, hours of labor required, quantities of raw materials employed, amounts of energy and other utilities consumed, and representative capital cost, including depreciation.

In accordance with section 773(c)(4) of the Act, the Department valued the factors of production, to the extent possible, using the prices or costs of factors of production in market-economy countries which are at a level of economic development comparable to that of Romania and which are significant producers of comparable merchandise. We determined that Indonesia is at a level of economic development comparable to that of Romania. We also found that Indonesia is a producer of bearings. Therefore, we have selected Indonesia as the primary surrogate country. For a further discussion of the Department's selection

of surrogate countries, see the Surrogate-Country Memo.

For purposes of calculating normal value, we valued the Romanian factors of production as follows:

- Where direct materials used to produce AFBs were imported by the producers from market-economy countries, we used the import price to value the material input. To value all other direct materials used in the production of AFBs, *i.e.*, those which were sourced from within Romania, we used the import value per metric ton of these materials into Indonesia as published in the 1998 *United Nations Trade Commodity Statistics (UNTCS)*, which includes the most recent published data closest to the months during the POR. We made adjustments to include freight costs incurred between the domestic suppliers and the AFB factories, using freight rates obtained from public documents attached to the Surrogate-Country Memo. We also reduced the steel-input factors to account for the scrap steel that was sold by the producers of the subject merchandise.
- For labor, section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. We have used the regression-based wage rate on Import Administration's internet website at *www.ita.doc.gov/import_admin/records/wages*.
- For energy, we used 1997 electricity rates, as adjusted, for Indonesia reported in the publication Energy, Prices and Taxes (2nd Quarter 1999). We based the value of natural gas on 1998 Indonesian prices as reported in Energy, Prices and Taxes (2nd Quarter 1999). See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Romania*, 65 FR 5594, 5599 (February 4, 2000) (*Steel Pipe*).
- For factory overhead, SG&A expenses, and profit, we could not find values for the bearings industry in Indonesia. Therefore, consistent with *Steel Pipe*, we used surrogate data from one or more of the 1997 financial statements of the following Indonesian companies: P.T. Jaya Pari Steel Ltd. Corporation, P.T. Jakarta Kyoei, and P.T. Krakatau. See attachments to the Surrogate-Country Memo for selected sources for valuing overhead, SG&A expenses, profit, and energy.
- To value packing materials, where materials used to package AFBs were imported into Romania from market-economy countries, we used the import price. To value all other packing materials, *i.e.*, those sourced from within Romania, we used the import value per metric ton of these materials as published in the *U.N. Commodity Statistics 1998*. We adjusted these values to include freight costs incurred between the domestic suppliers and the AFB factories. To value freight costs, we used the sources used to value freight rates in Steel Pipe. For example, to value truck freight, we used an August 2, 1999, quote from P.T. Batam Samudra Transportation Company in Jakarta. In addition, to value rail rates, we used a December 1994 cable from the American Embassy in Jakarta, Indonesia. See attachment to the Surrogate-Country Memo.

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the following weighted-average dumping margins (in percent) for the period May 1, 1998, through April 30, 1999:

Company	Ball	Cylindrical	Spherical plain
France			
SKF	11.43	(2)	14.83
SNFA	0.00	0.06	(3)
SNR	0.39	0.22	(3)
Germany			
FAG	7.22	8.16	(3)
INA	18.56	4.42	0.44
MPT	(3)	0.00	(3)
Paul Müller	0.00	(3)	(3)
SKF	6.39	7.79	5.02
SNR	5.92	2.46	(3)
Torrington Nadellager	(2)	61.60	(2)
Italy			
FAG	2.04	1.24	.....
SKF	4.81	(3)	.....
Somecat	5.26	(2)	.....
Japan			
Asahi Seiko	0.68	(3)	(3)
IJK	13.96	(3)	(3)
IKS	9.99	(3)	(3)
Koyo	5.39	0.92	0.00
KYK	6.49	(3)	(3)
Nachi	4.61	1.31	(3)
Nakai Bearing	4.55	(3)	(3)
Nankai Seiko	0.33	(3)	(3)
NPBS	2.53	(3)	(3)
NSK Ltd.	3.08	2.31	(3)
NTN	4.59	3.39	2.59
Osaka Pump	18.49	(3)	(3)
Takeshita	18.49	(3)	(3)

Company	Ball	Cylindrical	Spherical plain
Tsubaki	9.72	(3)	(3)
Romania			
Koyo	0.00		
TIE	0.11		
Singapore			
NMB/Pelmec	1.26		
Sweden			
SKF	2.50	(1)	
United Kingdom			
Barden Corporation	2.78	(1)	
FAG (U.K.)	(1)	(1)	
SNFA	0.00	(3)	
SNR	0.22	(3)	

[1] No shipments or sales subject to this review. The deposit rate remains unchanged from the last relevant segment of the proceeding in which the firm had shipments/sales.
[2] No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding and will continue to get the all-others deposit rate from the less-than-fair-value investigation.
[3] No request for review under section 751(a) of the Act.

Any interested party may request a hearing within 21 days of the date of publication of this notice. A general-issues hearing, if requested, and any hearings regarding issues related solely to specific countries, if requested, will be held in accordance with the following schedule and at the indicated locations in the main Commerce Department building:

Case	Date	Time	Room No.
General issues	May 15, 2000	9:00 a.m	1412
Sweden	May 16, 2000	9:00 a.m	1412
Romania	May 16, 2000	2:00 p.m	1412
Germany	May 17, 2000	9:00 a.m	1412
Italy	May 18, 2000	9:00 a.m	1412
Singapore	May 18, 2000	2:00 p.m	1412
United Kingdom	May 19, 2000	9:00 a.m	1412
France	May 19, 2000	2:00 p.m	1412
Japan	May 22, 2000	9:00 a.m	B–841A

Issues raised in hearings will be limited to those raised in the respective case and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than the dates shown below for general issues and the respective country-specific cases. Parties who submit case or rebuttal briefs in these proceedings are requested to submit with each argument (1) A statement of the issue, and (2) a brief summary of the argument with an electronic version included.

Case	Briefs due	Rebuttals due
General Issues	May 4, 2000	May 11, 2000.
Sweden	May 5, 2000	May 12, 2000.
Romania	May 5, 2000	May 12, 2000.
Germany	May 8, 2000	May 15, 2000.
Italy	May 9, 2000	May 16, 2000.
Singapore	May 9, 2000	May 16, 2000.
United Kingdom	May 10, 2000	May 17, 2000.
France	May 10, 2000	May 17, 2000.
Japan	May 11, 2000	May 18, 2000.

The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written briefs or hearings. The Department will issue final results of these reviews within 120 days of publication of these preliminary results.

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate

entries. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an exporter/importer-specific assessment rate or value for subject merchandise.

Export Price Sales

With respect to export-price sales for these preliminary results, we divided the total dumping margins (calculated as the difference between normal value and export price) for each importer/customer by the total number of units sold to that importer/customer. We will direct the Customs Service to assess the resulting per-unit dollar amount against each unit of merchandise in each of that importer's/customer's entries under the relevant order during the review period.

Constructed Export Price Sales

For CEP sales (sampled and non-sampled), we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. When an affiliated party acts as an importer for export-price sales we have included the applicable export-price sales in this assessment-rate calculation. We will direct the Customs Service to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period (see 19 CFR 351.212(a)).

Cash-Deposit Requirements

To calculate the cash-deposit rate for each respondent (*i.e.*, each exporter and/or manufacturer included in these reviews) we divided the total dumping margins for each company by the total net value for that company's sales of merchandise during the review period subject to each order.

In order to derive a single deposit rate for each order for each respondent, we weight-averaged the export price and CEP deposit rates (using the export price and CEP, respectively, as the weighting factors). To accomplish this when we sampled CEP sales, we first calculated the total dumping margins for all CEP sales during the review period by multiplying the sample CEP margins by the ratio of total days in the review period to days in the sample weeks. We then calculated a total net value for all CEP sales during the review period by multiplying the sample CEP total net value by the same ratio. Finally, we divided the combined total dumping margins for both export price and CEP sales by the combined total value for both export price and CEP sales to obtain the deposit rate.

Entries of parts incorporated into finished bearings before sales to an unaffiliated customer in the United States will receive the respondent's deposit rate applicable to the order.

Furthermore, the following deposit requirements will be effective upon publication of the notice of final results of administrative reviews for all shipments of AFBs entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash-deposit rates for the reviewed companies will be the rates established in the final results of reviews; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will continue to be the "All Others" rate for the relevant order made effective by the final results of review published on July 26, 1993 (see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al: Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 FR 39729 (July 26, 1993), and, for BBs from Italy, *see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al: Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews*, and *Revocation in Part of Antidumping Duty Orders*, 61 FR 66472 (December 17, 1996)). These rates are the "All Others" rates from the relevant LTFV investigations.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 30, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–8568 Filed 4–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–080]

Certain Carbon Steel Plate From Taiwan; Final Results of Antidumping Duty Expedited Sunset Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty expedited sunset review: Certain carbon steel plate from Taiwan.

SUMMARY: On September 1, 1999, the Department of Commerce ("the Department") published the notice of initiation of a sunset review of the antidumping finding on certain carbon steel plate from Taiwan. On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, we determined to conduct an expedited review. Based on our analysis of the comments received, we find that revocation of the antidumping finding would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Mark D. Young, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–6397.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to 19

CFR part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Background

On September 1, 1999, the Department published the notice of initiation of the sunset review of the antidumping finding on carbon steel plate from Taiwan (64 FR 47767). The Department received Notices of Intent to Participate on behalf of Bethlehem Steel Corporation and U.S. Steel Group, a unit of USX Corporation ("the domestic interested parties"), within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as U.S. manufacturers of carbon steel plate. We received a complete substantive response from the domestic interested parties on October 1, 1999, within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C) of the Department's Regulations, the Department determined to conduct an expedited, 120-day, review of this finding.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). The review at issue concerns a transition order within the meaning of section 751(c)(6)(C)(ii) of the Act. Therefore, the Department determined that the sunset review of the antidumping finding on carbon steel plate from Taiwan is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than March 29, 2000, in accordance with section 751(c)(5)(B) of the Act.[1]

Scope of Review

The imports covered by this antidumping finding are shipments of hot-rolled carbon steel plate, 0.1875 inch or more in thickness, over eight inches in width, not in coils, not pickled, not coated, or plated with metal, not clad, nor pressed or stamped to non-rectangular shape. Such merchandise was classifiable under Tariff Schedules of the United States Annotated item number 607.6615. These imports are currently classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") item numbers 7208.40.3030, 7208.40.3060,7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, and 7211.14.0045. The HTSUS item numbers are provided for convenience and customs purposes. The Department's written description remains dispositive.

There were no scope rulings pertaining to this finding. This review covers all imports from all manufacturers and exporters of carbon steel plate from Taiwan.

Analysis of Comments Received

All issues raised in this case by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 29, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the finding revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping finding on carbon steel plate from Taiwan would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturers/exporters	Margin (percent)
China Steel Corporation	34.00
All Others	34.00

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: March 29, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8545 Filed 4–5–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] See Extension of Time Limit for Final Results of Five-Year Reviews, 64 FR 71726 (December 22, 1999).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–815, A–580–816]

Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea; Final Results of Expedited Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset reviews.

SUMMARY: On September 1, 1999, the Department of Commerce ("the Department") published the notice of initiation of sunset reviews of the antidumping duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea. On the basis of a notice of intent to participate and adequate substantive response filed on behalf of a domestic interested party in each of these reviews, and inadequate response (in these cases no response) from respondent interested parties, we determined to conduct expedited sunset reviews. Based on our analysis of the substantive comments received, we find that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy, Import Administration, International Trade

Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5050 and (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to 19 CFR part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*Sunset Policy Bulletin*).

Background

On September 1, 1999, the Department published the notice of initiation of sunset reviews of the antidumping duty orders on certain cold-rolled and certain corrosion-resistant carbon steel flat products from Korea (64 FR 47767) pursuant to section 751(c) of the Act. We invited parties to comment. On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties in both reviews, and inadequate response (in these cases no response) from respondent interested parties, we determined to conduct expedited sunset reviews. The Department has conducted these sunset reviews in accordance with sections 751 and 752 of the Act.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). These reviews cover transition orders within the meaning of section 751(c)(6)(C)(ii) of the Act. Therefore, on December 22, 1999, the Department determined that the sunset reviews of the antidumping duty orders on certain cold-rolled and certain corrosion-resistant carbon steel flat products from Korea are extraordinarily complicated and extended the time limit for completion of the final results until not later than March 29, 2000, in accordance with section 751(c)(5)(B) of the Act.[1]

Scope of Review

The merchandise covered by these orders is certain cold-rolled and certain corrosion-resistant carbon steel flat products from Korea. The order on cold-rolled steel covers cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal; whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this order are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this review is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

The order on certain corrosion-resistant carbon steel flat products covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this order are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this review are: flat rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating; clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness; and certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled

[1] *See Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 71726 (December 22, 1999).

product clad on both sides with stainless steel in a 20%-60%-20% ratio. These HTS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

The antidumping duty order remains in effect for all Korean producers and exporters of the subject merchandise

Analysis of Comments Received

All issues raised in the substantive responses by parties to these sunset reviews are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 29, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the orders revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Record Unit, Room B–099, 14th Street and Constitution Ave., NW, Washington, DC 20230.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporter	Margin (percent)
Certain Cold-Rolled Steel Flat Products	
Pohang Iron and Steel Company (POSCO)	14.44
All Others	14.44
Certain Corrosion-Resistant Steel Flat Products	
Pohang Iron and Steel Company (POSCO)	17.70
All Others	17.70

In addition, in the administrative reviews of these orders initiated during 1996 and 1998, the Department found antidumping duties were being absorbed. Specifically, in the final results of the administrative reviews initiated in 1996 (covering 1995/96) the Department found antidumping duties were being absorbed by POSCO on the following percentage of its U.S. sales: 35.54 percent with respect to certain cold-rolled carbon steel flat products, and 14.64 percent with respect to corrosion-resistant carbon steel flat products.[2] Additionally, in the reviews of both of these orders initiated in 1998 (covering 1997/98) the Department found that duties were absorbed by three companies on the following percentage of their U.S. sales: certain cold-rolled carbon steel flat products, POSCO—2.70 percent; and corrosion-resistant carbon steel flat products, Dongbu—20.81 percent, POSCO—6.85 percent, and Union—4.49 percent.[3]

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: March 29, 2000.

Joseph A. Spetrini,

Acting, Assistant Secretary for Import Administration.

[FR Doc. 00–8558 Filed 4–5–00; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews: Final Results of Antidumping Duty Administrative Reviews;* 63 FR 13170 (March 18, 1998)

[3] *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews: Final Results of Antidumping Duty Administrative Reviews;* 65 FR 13359 (March 13, 2000).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–814]

Cold-Rolled Carbon Steel Flat Products from Germany; Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: cold-rolled carbon steel flat products from Germany.

SUMMARY: On September 1, 1999, the Department of Commerce ("the Department") published the notice of initiation of sunset review of the antidumping duty order on cold-rolled carbon steel flat products from Germany (64 FR 47767), pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and a waiver of participation from respondent interested parties, we determined to conduct an expedited sunset review. Based on our analysis of the comments received, we find that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled *Final Results of the Review.*

EFFECTIVE DATE: April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of*

[1] See Ext... Five-Year R... 1999).

Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (Sunset Policy Bulletin).

Background

On September 1, 1999, the Department published the notice of initiation of sunset review of the antidumping duty order on cold-rolled carbon steel flat products from Germany (64 FR 47767). We invited parties to comment. On the basis of a notice of intent to participate and adequate substantive responses filed on behalf of domestic interested parties and a waiver of participation from respondent interested parties, we determined to conduct an expedited sunset review. The Department is conducting this sunset review in accordance with sections 751 and 752 of the Act.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). This review concerns a transition order within the meaning of section 751(c)(6)(C)(ii) of the Act. Therefore, on December 22, 1999, the Department determined that the sunset review of the antidumping duty order on cold-rolled carbon steel flat products from Germany is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than March 29, 2000, in accordance with section 751(c)(5)(B) of the Act. [1]

Scope of Review

The product covered by this review is certain cold-rolled carbon steel flat products from Germany. This scope includes cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000. Included in this scope are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been worked after rolling)—for example, products which have been bevelled or rounded at the edges. Excluded from this scope is certain shadow mask steel; *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

The HTS item numbers are provided for convenience and custom purposes. The written description remains dispositive.

Analysis of Comments Received

All issues raised in substantive responses by parties to this sunset review are addressed in the Issues and Decision Memorandum ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. LaRussa Acting Assistant Secretary for Import Administration, dated March 29, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099, the Central Records Unit, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporter	Margin (percent)
Thyssen	20.64
Klockner	23.54
All others	21.66

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(c), 752, and 777(i) of the Act.

Dated: March 29, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8552 Filed 4–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–307–815]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon-Quality Steel Flat Products From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of antidumping duty investigation.

EFFECTIVE DATE: April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips or Linda Ludwig, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and

[1] See Extension of Time Limit for Final Results of Five-Year Reviews, 64 FR 71726 (December 22, 1999).

Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0193 or (202) 482–3833, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to the regulations at 19 CFR part 351 (April 1999).

Final Determination

We determine that certain cold-rolled carbon-quality steel flat products from Venezuela are being sold in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins are shown in the *Suspension of Liquidation* section of this notice.

Case History

The preliminary determination in this investigation was published November 15, 1999. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon-Quality Steel Flat Products from Venezuela*, 64 FR 61826 (Nov. 15, 1999) *(Preliminary Determination)*. On January 4, 2000, the petitioners, Bethlehem Steel Corporation, Gulf States Steel, Inc., Ispat Inland Steel, Inc., LTV Steel Company, Inc., National Steel Corporation, Steel Dynamics, Inc., U.S. Steel Group, a unit of USX Corporation, United Steelworkers of America, and Weirton Steel Corporation, and the respondent, Siderurgica del Orinoco, C.V. (Sidor), submitted case briefs. On January 11, 2000, we received a rebuttal brief from petitioners. Sidor requested a postponement of the final determination to 135 days after publication of the preliminary determination and an extension of the provisional measures to no more than six months, pursuant to 19 CFR 351.210(b)(2)(ii) and 351.210(e)(2). *See Postponement of Final Determination of Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Venezuela*, 65 FR 5499 (February 4, 2000).

Period of Investigation

The period of investigation (POI) is April 1, 1998 though March 31, 1999.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the *Issues and Decision Memorandum (Decision Memorandum)* from Joseph A. Spetrini to Robert LaRussa, Assistant Secretary for Import Administration, dated March 29, 2000, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *www.ita.doc.gov/import_admin/records/frn/*. The paper copy and the electronic version of the *Decision Memorandum* are identical in content.

Scope of Investigation

For a description of the scope of this investigation, see the "Scope of Investigation" section of the *Decision Memorandum*, which is on file in B–099 and available on the Web at *www.ita.doc.gov/import_admin/records/frn/*.

Changes Since the Preliminary Determination

Based on our analysis of comments received, we have not made any changes in the margin calculations from the *Preliminary Determination*.

The "All Others" Rate

The foreign manufacturer/exporter in this investigation is being assigned a dumping margin on the basis of adverse facts available. Section 735(c)(5) of the Act provides that, where the dumping margins established for all exporters and producers individually investigated are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "all others" rate for exporters and producers not individually investigated. Therefore, consistent with the Statement of Administrative Action ("SAA") at 873, we are using an alternative method to establish the estimated all others rate. In the *Preliminary Determination*, as an alternative, we based the all others rate on a simple average of the margins in the petition. We received no comments on this issue, and therefore, continue to use the simple average of the margins in the petition as the basis for the final determination. As a result, the all others rate is 42.93 percent.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of cold-rolled carbon-quality steel flat products produced and/or exported from Venezuela by Sidor, that are entered, or withdrawn from warehouse, for consumption on or after August 17, 1999 (90 days prior to the date of publication of the preliminary determination in the **Federal Register**). In addition, we will direct the Customs Service to continue to suspend liquidation of cold-rolled steel products exported from Venezuela by companies other than Sidor that are entered, or withdrawn from warehouse, for consumption on or after November 15, 1999, the date of publication of our preliminary determination in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or bond equal to the percentage margins, as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice. The dumping margins are as follows:

Exporter/manufacturer	Margin (percent)
Sidor	56.37
All Others	42.93

The all others rate, which we derived from the average of the margins calculated in the petition, applies to all entries of subject merchandise other than those exported by the named respondent.

ITC Notification

In accordance with section 735(c)(1)(B) of the Act, we have notified the International Trade Commission (ITC) of our determination. Because our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs' officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: March 29, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Comments and Responses

Use of Facts Available
Critical Circumstances

[FR Doc. 00–8559 Filed 4–5–00; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–602–803]

Certain Corrosion-Resistant Carbon Steel Flat Products From Australia; Final Results of Expedited Sunset Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: certain corrosion-resistant carbon steel flat products from Australia.

SUMMARY: On September 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on certain corrosion-resistant carbon steel flat products ("CR flat products") from Australia (64 FR 47767) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

EFFECTIVE DATE: April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On September 1, 1999, the Department initiated a sunset review of the antidumping order on CR flat products from Australia (64 FR 47767), pursuant to section 751(c) of the Act. On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties, and inadequate response (in this case, no response) from respondent interested parties, we determined to conduct an expedited review. The Department has conducted this sunset review in accordance with sections 751 and 752 of the Act.

Scope

The products covered by this order constitute one "class or kind" of merchandise: certain corrosion-resistant carbon steel flat products. The class or kind includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio. These HTS item numbers are provided for convenience and customs purposes only. The written description remains dispositive.

Analysis of Substantive Response

All issues raised in the substantive responses by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 29, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in

this public memorandum which is on file in room B–099 of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import—admin/records/frn/. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on CR flat products from Australia would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporter	Margin (percent)
Broken Hill Proprietary Co., Ltd.	24.96
All Others	24.96

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: March 29, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8550 Filed 4–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–808]

Corrosion-Resistant Carbon Steel Flat Products From France; Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: Corrosion-resistant carbon steel flat products from France.

SUMMARY: On September 1, 1999, the Department of Commerce ("the Department") published the notice of initiation of sunset review of the antidumping duty order on corrosion-resistant carbon steel flat products from France (64 FR 47767), pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case no response) from respondent interested parties, we determined to conduct an expedited sunset review. Based on our analysis of the comments received, we find that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled Final Results of the Review.

EFFECTIVE DATE: April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (Sunset Policy Bulletin).

Background

On September 1, 1999, the Department published the notice of initiation of sunset review of the antidumping duty order on corrosion-resistant carbon steel flat products from France (64 FR 47767). We invited parties to comment. On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and no response from respondent interested parties, we determined to conduct an expedited sunset review. The Department is conducting this sunset review in accordance with sections 751 and 752 of the Act.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (i.e., an order in effect on January 1, 1995). This review concerns a transition order within the meaning of section 751(c)(6)(C)(ii) of the Act because the order was issued on August 19, 1993. Therefore, on December 22, 1999, the Department determined that the sunset review of the antidumping duty order on corrosion-resistant carbon steel flat products from France is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than March 29, 2000, in accordance with section 751(c)(5)(B) of the Act.[1]

Scope of Review

The products covered by this order are corrosion-resistant carbon steel flat products ("corrosion-resistant steel") from France. This scope includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000,

[1] See Extension of Time Limit for Final Results of Five-Year Reviews, 64 FR 71726 (December 22, 1999).

7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included in this scope are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been worked after rolling)—for example, products which have been bevelled or rounded at the edges. Excluded from this scope are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this scope are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this scope are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The HTS item numbers are provided for convenience and custom purposes. The written description remains dispositive.

Analysis of Comments Received

All issues raised in substantive responses by parties to this sunset review are addressed in the Issues and Decision Memorandum ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. LaRussa Assistant Secretary for Import Administration, dated March 29, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099, the Central Records Unit, of the Main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporter	Margin (percent)
Usinor	29.41
All others	29.41

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(c), 752, and 777(i) of the Act.

Dated: March 29, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8553 Filed 4–5–00; 8:45 am]

BILLING CODE 3510–DS–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–815]

Corrosion-Resistant Carbon Steel Flat Products From Germany; Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: Corrosion-resistant carbon steel flat products from Germany.

SUMMARY: On September 1, 1999, the Department of Commerce ("the Department") published the notice of initiation of sunset review of the antidumping duty order on corrosion-resistant carbon steel flat products from Germany (64 FR 47767), pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and a waiver of participation from respondent interested parties, we determined to conduct an expedited sunset review. Based on our analysis of the comments received, we find that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled *Final Results of the Review.*

EFFECTIVE DATE: April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (Sunset Policy Bulletin).

Background

On September 1, 1999, the Department published the notice of initiation of sunset review of the antidumping duty order on corrosion-resistant carbon steel flat products from Germany (64 FR 47767). We invited parties to comment. On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and a waiver of participation from respondent interested parties, we determined to conduct an expedited sunset review. The Department is conducting this sunset review in accordance with sections 751 and 752 of the Act.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (i.e., an order in effect on January 1, 1995). This review concerns a transition order

within the meaning of section 751(c)(6)(C)(ii) of the Act. Therefore, on December 22, 1999, the Department determined that the sunset review of the antidumping duty order on corrosion-resistant carbon steel flat products from Germany is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than March 29, 2000, in accordance with section 751(c)(5)(B) of the Act.[1]

Scope of Review

The products covered by this order are corrosion-resistant carbon steel flat products ("corrosion-resistant steel") from Germany. This scope includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel-or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included in this scope are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been worked after rolling)—for example, products which have been bevelled or rounded at the edges. Excluded from this scope are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this scope are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this scope are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

On September 22, 1999, the Department issued the final results of a changed circumstances review partially revoking the order with respect to certain corrosion-resistant steel.[2]

The HTS item numbers are provided for convenience and custom purposes. The written description remains dispositive.

Analysis of Comments Received

All issues raised in substantive responses by parties to this sunset review are addressed in the Issues and Decision Memorandum ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. LaRussa Assistant Secretary for Import Administration, dated March 29, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099, the Central Records Unit, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporter	Margin (percent)
Thyssen	10.02
All others	10.02

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(c), 752, and 777(i) of the Act.

Dated: March 29, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8554 Filed 4–5–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 71726 (December 22, 1999).

[2] See Notice of Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews and Revocation of Orders in Part: Certain Corrosion-Resistant Carbon Steel Flat Products From Germany, 64 FR 51292 (September 22, 1999). The Department noted that the affirmative statement of no interest by petitioners, combined with the lack of comments from interested parties, is sufficient to warrant partial revocation. This partial revocation applies to certain corrosion-resistant deep-drawing carbon steel strip, roll-clad on both sides with aluminum (AlSi) foils in accordance with St3 LG as to EN 10139/10140. The merchandise's chemical composition encompasses a core material of U St 23 (continuous casting) in which carbon is less than 0.08; manganese is less than 0.30; phosphorous is less than 0.20; sulfur is less than 0.015; aluminum is less than 0.01; and the cladding material is a minimum of 99% aluminum with silicon/copper/iron of less than 1%. The products are in strips with thicknesses of 0.07mm to 4.0mm (inclusive) and widths of 5mm to 800mm (inclusive). The thickness ratio of aluminum on either side of steel may range from 3%/94%/3% to 10%/80%/10%.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–817; A–201–809]

Certain Cut-to-Length Carbon Steel Plate From Brazil and Mexico; Final Results of Antidumping Duty Expedited Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty expedited sunset review: Certain cut-to-length carbon steel plate from Brazil and Mexico

SUMMARY: On September 1, 1999, the Department of Commerce ("the Department") published the notice of initiation of sunset reviews of the antidumping duty orders on certain cut-to-length carbon steel plate ("cut-to-length plate") from Brazil and Mexico. On the basis of notices of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response (in these cases, no response) from respondent interested parties, we determined to conduct expedited reviews. As a result of this review, we find that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled "Final Results of Reviews."

EFFECTIVE DATE: April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Mark D. Young, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–6397.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"). The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) *("Sunset Regulations")* and 19 CFR part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Background

On September 1, 1999, the Department published the notice of initiation of sunset reviews of the antidumping duty orders on cut-to-length plate from Brazil and Mexico (63 FR 47767). The Department received Notices of Intent to Participate on behalf of Bethlehem Steel Corporation and U.S. Steel Group, a unit of USX Corporation ("the domestic producers"), within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. The domestic producers claimed interested party status under section 771(9)(C) of the Act, as U.S. manufacturers of cut-to-length plate. We received a complete substantive response, in both the Brazilian and Mexican reviews, from the domestic producers on October 1, 1999, within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). In their substantive responses, the domestic producers stated that they were the petitioners in the original investigations of cut-to-length plate from Brazil and Mexico. Furthermore, the domestic producers stated that they had participated in each subsequent segment of the cases. We did not receive a substantive response from any respondent interested party to these proceedings. As a result, pursuant to 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C) of the Department's Regulations, the Department determined to conduct expedited, 120-day, reviews of these orders.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (i.e., an order in effect on January 1, 1995). The reviews at issue concern transition orders within the meaning of section 751(c)(6)(C)(ii) of the Act. Therefore, the Department determined that the sunset reviews of the antidumping duty orders on cut-to-length plate from Brazil and Mexico are extraordinarily complicated and extended the time limit for completion of the final results of these reviews until not later than March 29, 2000, in accordance with section 751(c)(5)(B) of the Act. [1]

Scope of Review

The products covered by these antidumping duty orders constitute one "class or kind" of merchandise: Certain cut-to-length carbon steel plate. These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the United States Harmonized Tariff Schedule ("USHTS") under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000 and 7212.50.0000. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling"); for example, products which have been beveled or rounded at the edges. Excluded from this review is grade X–70 plate. These USHTS item numbers are provided for convenience and customs purposes. The Department's written description remains dispositive.

The Department has made one scope ruling on the subject merchandise from Brazil. The following product was determined to be within the scope of the order:

Product within scope	Manufacturer	Citation
Profile Slabs	Companhia Siderurgica Tubarao	62 FR 30569, June 4, 1997.

[1] See Extension of Time Limit for Final Results of Five-Year Reviews, 64 FR 71726 (December 22, 1999).

These reviews cover all imports from all manufacturers and exporters of cut-to-length plate from Brazil and Mexico.

Analysis of Comments Received

All issues raised in these cases by parties to these sunset reviews are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 29, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the orders revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on cut-to-length plate from Brazil and Mexico would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Brazilian manufacturers/exporters	Margin (percent)
Usinas Siderurgicas de Minas Gerais S.A. ("USIMINAS")/ Companhia Siderurgica Paulista ("COSIPA")	[2]42.08
All Others	75.54

Mexican manufacturers/exporters	Margin (percent)
Altos Hornos de Mexico	49.25
All Others	49.25

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections section 751(c), 752, and 777(i)(1) of the Act.

Dated: March 29, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8546 Filed 4–5–00; 8:45 am]

BILLING CODE 3510–DS–P

[2] In light of USIMINAS" high level of ownership of COSIPA, common directors, and the fact the COSIPA is consolidated on USIMINAS" financial statements, the Department collapsed USIMINAS and COSIPA into one entity for the purpose of calculating their dumping margin in the most recent administrative review. See Certain Cut-to-Length Carbon Steel Plate from Brazil; Final Results of Antidumping Duty Administrative Review, 63 FR 12744 (March 16, 1998). Therefore, we are reporting one margin for these companies; see decision memo for further discussion.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–405–802, A–455–802, A–401–805]

Cut-to-Length Carbon Steel Plate From Finland, Poland, and Sweden; Final Results of Expedited Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset reviews: Cut-to-length carbon steel plate from Finland, Poland, and Sweden.

SUMMARY: On September 1, 1999, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on certain cut-to-length carbon steel plate ("CTL plate") from Finland, Poland, and Sweden (64 FR 47767) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of notices of intent to participate filed on behalf of domestic interested parties and inadequate response (in these cases, no response) from respondent interested parties, the Department determined to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Reviews section of this notice.

EFFECTIVE DATE: April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On September 1, 1999, the Department initiated a sunset review of the antidumping orders on CTL plate from Finland, Poland, and Sweden (64 FR 47767), pursuant to section 751(c) of the Act. On the basis of a notice to participate and adequate substantive response filed on behalf of a domestic interested party in each review, and inadequate response (in these cases, no response) from respondent interested parties, we determined to conduct expedited reviews. The Department has conducted these sunset reviews in accordance with sections 751 and 752 of the Act.

Scope

The products covered by these orders constitute one "class or kind" of merchandise: certain cut-to-length carbon steel plate. These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other

nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling") for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. These HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

The Department has conducted a changed circumstances review with respect to the order on CLT plate from Finland.[1] In the changed circumstances review, the Department revoked the order with regard to shipments of certain carbon cut-to-length steel plate with a maximum thickness of 80 mm in steel grades BS 7191, 355 EM and 355 EMZ, as amended by Sable Offshore Energy Project specification XB MOO Y 15 0001, types 1 and 2.

Analysis of Substantive Responses

All issues raised in the case and rebuttal briefs by parties to these sunset reviews are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 29, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the orders revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in room B–099 of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *www.ita.doc.gov/import_admin/records/frn/*. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on CTL plate from Finland, Poland, and Sweden would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/Exporter	Margin (percent)
Finland	
Rautaruukki Oy	40.36
All Others	40.36
Poland	
All Polish Exporters	61.98
Sweden	
Svenskst Stal AB	24.23
All Others	24.23

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These five-year ("sunset") reviews and notices are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: March 29, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8548 Filed 4–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–816]

Cut-to-Length Carbon Steel Plate From Germany; Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: Cut-to-length carbon steel plate from Germany.

SUMMARY: On September 1, 1999, the Department of Commerce ("the Department") published the notice of initiation of sunset review of the antidumping duty order on cut-to-length carbon steel plate from Germany (64 FR 47767), pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and a waiver of participation from respondent interested parties, we determined to conduct an expedited sunset review. Based on our analysis of the comments received, we find that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled Final Results of the Review.

EFFECTIVE DATE: April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department Policy Bulletin 98:3—Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (Sunset Policy Bulletin).

Background

On September 1, 1999, the Department published the notice of initiation of sunset review of the antidumping duty order on cut-to-length carbon steel plate from Germany (64 FR 47767). We invited parties to comment. On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and of a waiver of participation from respondent interested parties, we determined to conduct an expedited sunset review. The

[1] *See Certain Cut-to-Length Carbon Steel Plate from Finland, Germany and the United Kingdom: Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews, and Revocation of Orders in Part*, 64 FR 46343 (August 25, 1999).

Department is conducting this sunset review in accordance with sections 751 and 752 of the Act.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). This review concerns a transition order within the meaning of section 751(c)(6)(C)(ii) of the Act. Therefore, on December 22, 1999, the Department determined that the sunset review of the antidumping duty order on cut-to-length carbon steel plate from Germany is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than March 29, 2000, in accordance with section 751(c)(5)(B) of the Act.[1]

Scope of Review

The product covered by this review is certain cut-to-length carbon steel plate from Germany. These products include hot-rolled carbon steel universal mill plates. (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210,70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been worked after rolling) for example, product which have been beveled or rounded at the edges. Excluded is grade X–70 plate.

On August 25, 1999, the Department issued the final results of a changed-circumstances review partially revoking the order with respect to certain carbon cut-to-length steel plate with a maximum thickness of 80 mm in steel grades BS 7191,355 EM and 355 EMZ, as amended by Sable Offshore Energy Project Specification XB MOO Y 15 0001, types 1 and 2.[2]

The HTS item numbers are provided for convenience and custom purposes. The written description remains dispositive.

Analysis of Comments Received

All issues raised in substantive responses by parties to this sunset review are addressed in the Issues and Decision Memorandum ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 29, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099, the Central Records Unit, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/ exporter	Margin (percent)
Dillinger	36.00
All others	36.00

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(c), 752, and 777(i) of the Act.

Dated: March 29, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8551 Filed 4–5–00; 8:45 am]

BILLING CODE 3510–DS–M

[1] See Extension of Time Limit for Final Results of Five-Year Reviews, 64 FR 71726 (December 22, 1999).

[2] See Certain Cut-to-Length Carbon Steel Plate from Finland, Germany, and United Kingdom: Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews, and Revocation of Orders in Part, 64 FR 46343 (August 25, 1999).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–803], [A–412–814]

Certain Cut-to-Length Carbon Steel Plate From Spain and the United Kingdom; Final Results of Expedited Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset reviews.

SUMMARY: On September 1, 1999, the Department of Commerce published the notice of initiation of sunset reviews of the antidumping duty orders on certain cut-to-length carbon steel plate ("CTL plate") from Spain and the United Kingdom. On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties, and inadequate response (in these cases no response) from respondent interested parties, we determined to conduct expedited sunset reviews. Based on our analysis of the substantive comments received, we find that revocation of these antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230;

telephone: (202) 482–5050 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to 19 CFR part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On September 1, 1999, the Department of Commerce published the notice of initiation of sunset reviews on the antidumping duty orders on CTL plate from Spain and the United Kingdom (64 FR 47767). We invited parties to comment. On the basis of a notice of intent to participate and adequate substantive responses filed on behalf of domestic interested parties, and inadequate response (in these cases no response) from respondent interested parties, we determined to conduct expedited sunset reviews. The Department has conducted these sunset reviews in accordance with sections 751 and 752 of the Act.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.* an order in effect on January 1, 1995). These reviews concern transition orders within the meaning of section 751(c)(6)(C)(ii) of the Act. Therefore, on December 22, 1999, the Department determined that the sunset reviews on the antidumping duty orders on CTL plate from Spain and the United Kingdom are extraordinarily complicated and extended the time limit for completion of the final results of these reviews until not later than March 29, 2000, in accordance with section 751(c)(5)(B) of the Act.[1]

[1] *Extension of Time Limit for Final Results of Expedited Five-Year Reviews*, 64 FR 71726 (December 22, 1999).

Scope of Review

The merchandise covered by these orders is certain CTL plate from Spain and the United Kingdom. The merchandise includes hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. These HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

As a result of a changed circumstance review with respect to the United Kingdom, the order was revoked for shipments of CTL plate with a maximum thickness of 80 mm in steel grades BS 7191, 355 EMZ, as amended by Sable Offshore Energy Project specification XB MOO Y 15 0001, types 1 and 2 (*see* 64 FR 46343 (August 25, 1999)).

Analysis of Comments Received

All issues raised in the substantive responses by parties to these sunset reviews are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 29, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the orders revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Department's Central Record Units, Room B–099.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturers/producers	Margin (percent)
Spain:	
Empresa Nacional Siderurgica, S.A. ("Ensidesa")	105.61
All Others	105.61
United Kingdom:	
British Steel plc	109.22
All Others	109.22

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversions to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(c), 752, and 777(i) of the Act.

Dated: March 29, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8557 Filed 4–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Extension of Time Limit for Final Results of Expedited Five-Year Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of expedited five-year ("Sunset") reviews.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the final results of five expedited sunset reviews initiated on December 1, 1999 (64 FR 67247), covering various antidumping duty orders. Based on adequate responses from domestic interested parties and inadequate responses from respondent interested parties, the Department is conducting expedited sunset reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. As a result of these extensions, the Department intends to issue its final results not later than June 28, 2000.

EFFECTIVE DATE: April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Mark D. Young, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6397.

Extension of Final Results

In accordance with section 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended ("the Act"), the Department may treat a sunset review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). The reviews at issue concern transition orders within the meaning of section 751(c)(6)(C)(ii) of the Act. The Department has determined that the sunset reviews of the following antidumping duty orders are extraordinarily complicated:

A–588–831 Grain-Oriented Electrical Steel from Japan
A–475–811 Grain-Oriented Electrical Steel from Italy
A–570–831 Fresh Garlic from the People's Republic of China
A–570–826 Paper Clips from the People's Republic of China
A–570–827 Cased Pencils from the People's Republic of China

Therefore, the Department is extending the time limit for completion of the final results of these reviews until not later than June 28, 2000, in accordance with section 751(c)(5)(B) of the Act.

Dated: March 30, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–8561 Filed 4–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809, A–583–821]

Certain Forged Stainless Steel Flanges From India and Taiwan; Final Results of Antidumping Duty Expedited Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty expedited sunset reviews: Certain forged stainless steel flanges from India and Taiwan.

SUMMARY: On December 1, 1999, the Department of Commerce ("the Department") published the notice of initiation of sunset reviews of the antidumping duty orders on forged stainless steel flanges ("flanges") from India and Taiwan. The products covered by these orders are flanges, both finished and unfinished. On the basis of notices of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response from Indian respondent interested parties and no response from Taiwanese respondent interested parties, we determined to conduct expedited reviews. Based on our analysis of the comments received, we find that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled "Final Results of Reviews."

EFFECTIVE DATE: April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Mark D. Young, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–6397.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to 19 CFR part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Background

On December 1, 1999, the Department published the notice of initiation of sunset reviews of the antidumping duty orders on flanges from India and Taiwan (64 FR 67247). We received a Notice of Intent to Participate, in each of the two sunset reviews, on behalf of Gerlin, Inc. ("Gerlin"), Ideal Forging Corporation ("Ideal"), Maass Flange Corporation ("Maass"), and Westbrook Flange (collectively, the "domestic interested parties"), by December 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. Pursuant to section 771(9)(C) of the Act, the domestic interested parties claimed interested party status as U.S. manufacturers of domestic like products. Moreover, Gerlin, Ideal, and Maass claim that they were petitioners in the original investigations.

The Department received a complete substantive response from the domestic interested parties, in each of the two sunset reviews, by January 3, 2000, within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). We did not receive a substantive response from any Taiwanese respondent interested party. We did receive substantive responses from Echjay Forgings Limited and Pushpaman Exports in the sunset review of the Indian order. However, we determined that the responses were inadequate to warrant a full review because respondents did not account for at least 50 percent of the subject merchandise to the U.S. over the last five years, as required by 351.218(e)(1)(ii)(A).[1] As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct expedited, 120-day, reviews of these orders.

[1] See Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin, 63 FR 18871 (April 16, 1998).

Scope of Review

The merchandise subject to these orders is certain forged stainless steel flanges ("flanges"), both finished and unfinished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld neck, used for butt-weld line connection; threaded, used for threaded line connections; slip-on and lap joint, used with stub-ends/butt-weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above-described merchandise are included in the scope. Specifically excluded from the scope of these orders are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to these orders are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the subject merchandise remains dispositive.

These reviews cover imports from all manufacturers and exporters of flanges from India and Taiwan.

Analysis of Comments Received

All issues raised in the case by parties to these sunset reviews are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 30, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the orders to be revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in room B–099 in the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on flanges from India and Taiwan would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporter	Margin (percent)
India:	
Mukand, Ltd.	210.00
Sunstar Metals Ltd.	210.00
Bombay Forgings Pvt. Ltd.	210.00
Dynafore	210.00
Akai Impex Pvt. Ltd.	18.56
All Others	162.14
Taiwan:	
Enlin Steel Corporation	48.00
Ta Chen Stainless Pipe Co.	48.00
Tay Precision Industries Co.	48.00
All Others	48.00

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these determinations and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: March 30, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–8560 Filed 4–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–840]

Manganese Metal From the People's Republic of China; Notice of Extension of Time Limit for Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the third review of the antidumping duty order on manganese metal from the People's Republic of China. The period of review is February 1, 1998 through January 31, 1999. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Greg Campbell or Cynthia Thirumalai, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–2239 or 482–4087, respectively.

SUPPLEMENTARY INFORMATION: Due to resource constraints, it is not practicable to complete this review within the time limit mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act") (*i.e.*, April 7, 2000). The Department of Commerce ("Department") is, therefore, extending the time limit for completion of the final results to not later than May 3, 2000.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675 (a)(1)) and 19 CFR 351.213(h)(2).

Dated: March 31, 2000.

Richard W. Moreland,

Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 00–8566 Filed 4–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–804]

Sparklers From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, Diamond Sparkler Company ("Diamond"), the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on sparklers from the People's Republic of China ("PRC"). The review covers three manufacturers/exporters of this merchandise to the United States, Guangxi Native Produce Import & Export Corporation, Beihai Fireworks and Firecrackers Branch ("Guangxi"); Hunan Provincial Firecrackers & Fireworks Import & Export (Holding)

Corporation, Liling City Fireworks Bomb Fty. ("Hunan"); and Jiangxi Native Produce Import & Export Corporation, Guangzhou Fireworks Company ("Jiangxi") (collectively "the respondents"). The period covered is June 1, 1998, through May 31, 1999. As a result of the review, the Department has preliminarily determined that dumping margins exist for the respondents for the covered period.

We invite interested parties to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the arguments.

EFFECTIVE DATE: April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Paige Rivas or Nithya Nagarajan, Antidumping/Countervailing Duty Enforcement, Office IV, Group II , Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0651 or 482–5253, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, all references to the Department's regulations are to 19 CFR part 351 (April 1999).

Background

On June 18, 1991, the Department published in the **Federal Register** the antidumping duty order on sparklers from the PRC, *see, Antidumping Duty Order: Sparklers from the People's Republic of China*, 56 FR 27946 (June 18, 1991), as amended by *from the People's Republic of China: Adverse Decision and Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order in Accordance with Decision on Remand*, 58 FR 40624 (July 29, 1993). On June 9, 1999, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on sparklers from the PRC covering the period June 1, 1998, through May 31, 1999. *Antidumping and Countervailing Duty Order, Finding or Suspended Investigation: Opportunity to Request Administrative Review*, 64 FR 30962 (June 9, 1999). On June 30, 1999, the petitioner requested, in accordance with 19 CFR § 351.213, that we conduct an administrative review of exports to the United States by three manufacturers/exporters of sparklers from the PRC. We published a notice of initiation of this antidumping duty administrative review on July 29, 1999. *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 64 FR 41074 (July 29, 1999).

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for issuing a preliminary determination in an administrative review if it determines that it is not practicable to complete the preliminary review within the statutory time limit of 245 days. On March 7, 2000, the Department published a notice of extension of the time limit for the preliminary results in this case to March 31, 2000. *See Sparklers from the People's Republic of China: Time Limit*, 65 FR 11985 (March 7, 2000).

The Department is now conducting that review in accordance with section 751 of the Act.

Period of Review

The period of review (POR) is June 1, 1998 through May 31, 1999.

Scope of Review

The products covered by this administrative review are sparklers from the People's Republic of China. Sparklers are fireworks, each comprising a cut-to-length wire, one end of which is coated with a chemical mix that emits bright sparks while burning. Sparklers are currently classifiable under subheading 3604.10.00 of Harmonized Tariff Schedules ("HTS"). The HTS subheadings are provided for convenience and customs purposes. The written description remains dispositive as to the scope of this proceeding.

Separate Rates Determination

In previous reviews, the Department has treated the PRC as a non-market economy ("NME") country. We have no evidence suggesting that this determination should be changed. Accordingly, the Department has determined that NME treatment is appropriate in this review. See 19 U.S.C. 1677(18)(c)(i).

To establish whether a company operating in a NME is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). Under this test, NMEs are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. *Sparklers*, 56 FR at 20589. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *Id. De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587.

In the instant review, none of the three respondents named above submitted responses to the separate rates section of the Department's questionnaire. We therefore preliminarily determine that these companies did not establish their entitlement to a separate rate.

Use of Facts Otherwise Available

On October 14, 1999, the Department sent each of the respondents a questionnaire and cover letter, explaining the review procedures, by air mail through FedEx International Airway Bill. A response to the questionnaire, which covered exports to the United States for the period of review, was due by November 27, 1999. We did not receive responses by the due date. On January 12, 2000, we sent a follow-up letter regarding the past due dates for the questionnaire responses and noting the necessity of relying on facts available. Because we have received no responses and have not been contacted by the respondents, we determine that the use of facts available is appropriate.

Section 776(a)(2) of the Act provides that "if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

Because all three respondents have failed to respond to the original questionnaires and have refused to participate in this administrative review, we find that, in accordance with sections 776(a)(2)(A) and (C) of the Act, the use of total facts available is appropriate. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Persulfates from The People's Republic of China*, 62 FR 27222, 27224 (May 19, 1997); and *Certain Grain-Oriented Electrical Steel From Italy: Final Results of Antidumping Duty Administrative Review*, 62 FR 2655 (Jan. 17, 1997) (for a more detailed discussion, *see Certain Grain-Oriented Electrical Steel From Italy: Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 36551, 36552 (July 4, 1996)) (*Grain-Oriented Electrical Steel from Italy*).

Section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* Statement of Administrative Action ("SAA") accompanying the URAA, H.R. Doc. No. 103–316, at 870 (1994). Furthermore, "an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference." *See Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997) (Final Rule). Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination from the less than fair value ("LTFV") investigation, a previous administrative review, or any other information placed on the record.

Under section 782(c) of the Act, a respondent has a responsibility not only to notify the Department if it is unable to provide requested information, but also to provide a "full explanation and suggested alternative forms." The respondents failed to respond to our requests for information, thereby failing to comply with this provision of the statute. Therefore, we determine that respondents failed to cooperate to the best of their ability, making the use of an adverse inference appropriate. In this proceeding, in accordance with Department practice, as adverse facts available we have preliminarily assigned the respondents the rate of 93.54 percent, which is the highest margin determined in any segment of this proceeding. *See Extruded Rubber Thread from Malaysia: Final Results of Antidumping Duty Administrative Review*, 65 FR 6140,6141 (February 8, 2000) (*Extruded Rubber Thread from Malaysia*). As adverse facts available, the Department uses the highest rate ever determined for any respondent in any segment of the proceeding because it assumes that if a respondent could demonstrate that its actual margins were lower, it would participate in the review and do so. *See Rhone Poulenc, Inc.* v. *United States*, 899 F.2d 1185, 1190–91 (Fed. Cir. 1990). Moreover, respondents are not benefitting by their failure to cooperate because they are receiving the highest rate ever calculated, which is higher than the petition rate. Furthermore, we have no evidence that indicates any other rate is appropriate.

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* SAA at 870. The SAA states that "corroborate" means to determine that the information used has probative value. *See id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. A respondent's own current rate has probative value. In this case, respondents already are subject to a PRC-wide cash deposit rate of 93.54 percent. It is reasonable to assume that if they could have demonstrated that their actual dumping margins are lower, they would have participated in this review and attempted to do so.

In addition, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. *See Grain-Oriented Electrical Steel from Italy*, 61 FR at 36552. Also, with respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin has relevance. In this case, if any of the respondents could have demonstrated its actual margins were lower (and that it qualifies for a separate rate), we presume it would have done so. Further, assigning a lower rate would reward these exporters for their failure to cooperate. Thus, these exporters' own current rate is relevant.

We also note that the Department will disregard the margin and determine an appropriate margin where circumstances indicate that the selected margin is not appropriate as adverse facts available. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co.* v. *United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated); *see also Borden Inc.* v. *United States*, 4 F. Supp. 2d 1221, 1246–48 (CIT 1998) (the Department may not use an uncorroborated petition margin that is high when compared to calculated margins for the period of review). None of these unusual circumstances are present here. Moreover, there is no evidence on the record indicating that the selected margin is not appropriate as adverse facts available.

Suspension of Liquidation

As a result of our review, we preliminarily determine that the following margin exists for the period June 1, 1998, through May 31, 1999:

Exporter/manufacturer	Weighted-average margin percentage
PRC-wide	93.54

Cash Deposit

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) For previously reviewed or investigated companies that have a separate rate and for which no review was requested, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (2) for all other PRC exporters, the cash deposit rate will be the rate established in the final results of this administrative review; and (3) the cash deposit rate for non-PRC exporters will be the rate applicable to the PRC supplier of the exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, that is, thirty-seven days after the date of publication of these preliminary results. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing, not later than 120 days after the date of publication of these preliminary results, unless this time period is extended.

Assessment

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Notification to Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: Dated: March 31, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–8563 Filed 4–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–815]

Certain Welded Stainless Steel Pipe From Taiwan: Notice of Extension of Time Limit

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce ("Department") is extending the time limit for the final results of the antidumping duty administrative review of Certain Welded Stainless Steel Pipe from Taiwan, for the period December 1, 1997 through November 30, 1998.

EFFECTIVE DATE: April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen or Robert Bolling, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Room 7866, Washington, DC 20230, telephone (202) 482–0409, or (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION: On December 22, 1999, the Department published the preliminary results for this administrative review. *See Certain Welded Stainless Steel Pipe from Taiwan: Preliminary Results of Antidumping Administrative Review and Intent to Revoke in Part*, 64 FR 71728 (December 22, 1999). Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)) ("Act"), requires the Department to complete an administrative review within 120 days of publication of the preliminary results. However, if it is not practicable to complete the review within the 120-day time limit, section 751(a)(3)(A) of the Act allows the Department to extend the time limit to 180 days from the date of publication of the preliminary results. The Department has determined that it is not practicable to issue its final results within the original 120-day time limit. See Decision Memorandum from Edward Yang to Joseph A. Spetrini, dated March 28, 2000. Therefore, in accordance with section 751(a)(3)(A) of the Act, we are extending the deadline for the final results in this review to 180 days from the date on which the notice of preliminary results was published. The fully extended deadline for the final results is June 19, 2000.

Dated: March 28, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary Enforcement Group III.

[FR Doc. 00–8567 Filed 4–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC.

Docket Number: 00–006. Applicant: LDS Hospital, (Intermountain Health Care), 8th Avenue & C Street, Salt Lake City, UT 84143. Instrument: Electron Microscope, Model JEM–1010. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument is intended to be used for ultrastructural diagnosis of patient material and for ultrastructural research using human and animal tissues. In addition, the instrument will be used for training medical and graduate students. Application accepted by Commissioner of Customs: March 13, 2000.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–8562 Filed 4–5–00; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–810]

Corrosion-Resistant Carbon Steel Flat Products from France; Final Results of Expedited Sunset Review of Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Corrosion-Resistant Carbon Steel Flat Products from France.

SUMMARY: On September 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the countervailing duty order on corrosion-resistant carbon steel flat products from France (64 FR 47767) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of the domestic interested parties, as well as inadequate response from respondent interested parties, the Department determined to conduct an expedited (120 day) sunset review. Based on our analysis of the comments received, we find that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy at the levels listed below in the section entitled Final Results of the Review.

EFFECTIVE DATE: April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (Sunset Policy Bulletin).

Background

On September 1, 1999, the Department initiated a sunset review of the countervailing duty order on corrosion-resistant carbon steel flat products from France (64 FR 47767). We invited parties to comment. On the basis of a notice of intent to participate and adequate substantive response filed on behalf of the domestic interested parties, as well as inadequate response from respondent interested parties, the Department determined to conduct an expedited (120 day) sunset review. The Department is conducting this sunset review in accordance with sections 751 and 752 of the Act.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (i.e., an order in effect on January 1, 1995). This review concerns a transition order within the meaning of section 751(c)(6)(C)(i) of the Act. Therefore, on December 22, 1999, the Department determined that the sunset review of the countervailing duty order on corrosion-resistant steel from France is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than March 29, 2000, in accordance with section 751(c)(5)(B) of the Act.[1]

Scope of Review

The products covered by this order are certain corrosion-resistant carbon steel flat products from France. These products include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel-or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090,7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000,7217.33.5000, 7217.39.1000, and 7217.39.5000.

Included in this scope are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been worked after rolling)—for example, products which have been bevelled or rounded at the edges. Excluded from this scope are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or

[1] See Extension of Time Limit for Final Results of Expedited Five-Year Reviews, 64 FR 71726 (December 22, 1999).

other nonmetallic substances in addition to the metallic coating. Also excluded from the scope are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from the scope are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

The HTSUS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Analysis of Comments Received

All issues raised in substantive responses by parties to this sunset review are addressed in the Issues and Decision Memorandum ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 29, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of subsidy, the net countervailable subsidy likely to prevail were the order revoked, and the nature of the subsidy. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099, the Central Records Unit, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of the subsidy at the following net countervailable subsidy.[2]

Manufacturer/exporters	Margin (percent)
Usinor	15.13
Country-wide	15.13

Although the programs included in our calculation of the net countervailable subsidy likely to prevail if the order were revoked do not fall within Article 3 of the Subsidies Agreement, some or all of them may be subsidies as described in Article 6.1. For example, the net countervailable subsidy may exceed five percent, as measured in accordance with Annex IV of the Subsidies Agreement. The Department, however, has no information with which to make such a calculation; nor do we believe it appropriate to attempt such a calculation in the course of a sunset review. Moreover, we note that as of January 1, 2000, Article 6.1 has ceased to apply (see Article 31 of the Subsidies Agreement). As such, we are only providing the Commission the following program descriptions:

(1) PACS/FIS: This program of equity infusions was devised to restructure Usinor and its massive debt.

(2) Grants in the Form of Shareholders' Advances: The Government of France ("GOF") financed the recurring needs of Usinor through shareholders' advances beginning in 1982. These shareholders' advance carried no interest and there was no precondition for receipt of these funds.

(3) Investment Subsidies: Under this program the French companies would receive subsides from the GOF for the purchase of fixed assets. Because the relevant parties did not provide sufficient information, based on best information available, the Department determined that the Investment Subsidies are specific rather than generally available.

(4) Grants in the Form of Cancellation of Debt: The two former private majority shareholders of Usinor canceled a portion of debt owed to them by Usinor. The Department found that the debt forgiveness was provided at the direction of the GOF and, hence, countervailable.

(5) ECSC 54: Under this program, investment loans are provided by the European Union for the purpose of purchasing new equipment or financing modernization. Because these loans are only available to companies in steel and coal industries, the Department found the loans countervailable.

(6) CFDI: Under this program participative loans, which were by law available to all French companies, were issued by the CFDI. The borrower paid a lower-than-market interest rate plus a share of future profits according to an agreed upon formula. Because the GOF could not provide sufficient information, the Department determined that loans under this program are de facto limited to specific enterprise or industry and that, therefore, these loans are countervailable to the extent that they were provided on terms inconsistent with commercial considerations.

(7) ECSC 56: The main purpose of these grants are to assist workers affected by the restructuring of the coal and steel industries. Because the Department did not have information pertaining to some specific details, it assumed that the extra government contribution relieved Usinor of an obligation and, therefore, is countervailable in its entirety.

(8) Other Loan Guarantees: These guarantees were provided by, or were provided to guarantee loans from, Credit National, bank syndicates in which Credit National, participated, Caisse des Depots et Consignations, Groupement de l'Industrie Siderurgique, FDES, the ECSC, and the European Investment Bank. Because relevant parties did not provide sufficient information, the Department found, based on best information available, inter alia, the fees associated with these loan guarantees are specific rather than generally available, and therefore, countervailable.

(9) Other Participative Loans: Because the Department had no information regarding the category of these loans and about the programs and because these loans were not reported, based on best information available and the calculation of the benefit from these loans, the Department determined that these loans are countervailable.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(c), 752, and 777(i) of the Act.

[2] In Inland Steel Industries, Inc. v. U.S., 188 F3d. 1349 (Fed. Cir. 1999), the court affirmed several lower court decisions which had changed the net countervailing subsidy rate to 15.13 percent from the 15.12 percent calculated in the original investigation.

Dated: March 29, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8555 Filed 4–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–818]

Certain Cut-to-Length Carbon Steel Plate From Brazil; Final Results of Countervailing Duty Expedited Sunset Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty expedited sunset review: Certain cut-to-length carbon steel plate from Brazil.

SUMMARY: On September 1, 1999, the Department of Commerce ("the Department") published the notice of initiation of the sunset review of the countervailing duty order on certain cut-to-length carbon steel plate ("cut-to-length plate") from Brazil. On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, we determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy is identified in the Final Results of Review section of this notice.

EFFECTIVE DATE: April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Mark D. Young, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–6397.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to 19 CFR part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Background

On September 1, 1999, the Department published the notice of initiation of the sunset review of the countervailing duty order on cut-to-length plate from Brazil (64 FR 47767). The Department received a Notice of Intent to Participate on behalf of Bethlehem Steel Corporation and U.S. Steel Group, a unit of USX Corporation ("the domestic interested parties"), within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as U.S. manufacturers of cut-to-length plate. We received a complete substantive response from the domestic interested parties on October 1, 1999, within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). In their substantive response, the domestic interested parties stated that they were the petitioner in the original investigation of cut-to-length plate from Brazil. We did not receive a substantive response from any respondent interested party to these proceedings. As a result, pursuant to 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C) of the Department's regulations, the Department determined to conduct an expedited, 120-day, review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). The review at issue concern a transition order within the meaning of section 751(c)(6)(C)(i) of the Act. Therefore, the Department determined that the sunset review of the countervailing duty order on cut-to-length plate from Brazil is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than March 29, 2000, in accordance with section 751(c)(5)(B) of the Act.[1]

Scope of Reviews

The products covered by this countervailing duty order constitute one "class or kind" of merchandise: certain cut-to-length plate. These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included within the scope are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling"); for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. These HTSUS item numbers are provided for convenience and customs purposes. The Department's written description remains dispositive.

The Department has made one scope ruling on the subject merchandise from Brazil. The following product was determined to be within the scope of the order:

[1] *See Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 71726 (December 22, 1999).

Product within scope	Manufacturer	Citation
Profile Slabs	Companhia Siderurgica Tubarao	62 FR 30569, June 4, 1997.

This review covers all imports from all manufacturers and exporters of cut-to-length plate from Brazil.

Analysis of Comments Received

All issues raised in this case by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 29, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of a countervailable subsidy, the net countervailable subsidy, and the nature of the subsidy. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

We determine that revocation of the countervailing duty order on cut-to-length plate from Brazil would be likely to lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

Brazilian manufacturers/exporters	Cash deposit rate (percent)
Usinas Siderurgicas de Minas Gerais S.A. ("USIMINAS")	5.44
Companhia Siderurgica Paulista ("COSIPA")	48.64
All others	23.10

Because receipt of benefits provided by the Government of Brazil's ("GOB's") countervailable program Exemption of IPI and Duties on Imports under Decree-Law 2324 is contingent upon exports, this program fall within the definition of an export subsidy under Article 3.1(a) of the Subsides Agreement.

All of the other programs provided by the GOB are, however, programs that could be found inconsistent with Article 6.1 of the Subsidies Agreement [2] if the net subsidy exceeds 5 percent *ad valorem* as measured in accordance with Annex IV of the Subsidies Agreement. However, the Department does not have enough information to calculate or determine whether the total *ad valorem* subsidization of the subject merchandise from these programs exceeds five percent or whether they were meant to cover operating losses or to be used as direct forgiveness of debt. Nor does the Department believe such calculation or determination would be appropriate in the course of a sunset review. Instead, we are providing the Commission with the program descriptions listed below.

Equity Infusions

This program enabled USIMINAS and COSIPA to receive equity infusions from the GOB in the following years: USIMINAS, 1980 to 1988; and COSIPA, 1977 through 1991. We determined that equity infusions by the GOB into USIMINAS, in these years, and COSIPA in years 1997 through 1989 and 1991 were made on terms inconsistent with commercial considerations.

Fiscal Benefits by Virtue of the CDI

The CDI provides for the reduction of up to 100 percent of the import duties and up to 10 percent of the IPI tax (value-added tax) on certain imported machinery for specific projects.

IPI Rebate Program Under Law 7554/86

This Program consists of a rebate of 95 percent of the IPI tax paid on domestic sales of industrial products.

BNDES Financing

In this program, loans were provided on terms inconsistent with commercial considerations because the companies that received the loans were uncreditworthy.

Provision of Infrastructure

This program provides preferential interest on purchasing agreements with a government-owned steel holding company.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections section 751(c), 752, and 777(i)(1) of the Act.

Dated: March 29, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8544 Filed 4–5–00; 8:45 am]

BILLING CODE 3510–DS–P

[2] We note that as of January 1, 2000, Article 6.1 has ceased to apply (*see* Article 31 of the Subsidies Agreement).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–423–806]

Certain Cut-to-Length Carbon Steel Plate from Belgium; Final Results of Expedited Sunset Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Certain Cut-to-Length Carbon Steel Plate from Belgium.

SUMMARY: On September 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the countervailing duty order on certain cut-to-length carbon steel plate ("CTL plate") from Belgium (64 FR 47767) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate response filed on behalf of domestic interested parties and inadequate response from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the countervailing duty order would likely lead to continuation or recurrence of a countervailable subsidy at the level indicated in the Final Results of Review section of this notice.

EFFECTIVE DATE: April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On September 1, 1999, the Department initiated a sunset review of the countervailing duty order on CTL plate from Belgium (64 FR 47767), pursuant to section 751(c) of the Act. On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and inadequate response from respondent interested parties, we determined to conduct an expedited review. The Department has conducted this sunset review in accordance with sections 751(c) and 752 of the Act.

Scope

The products covered by this order are certain cut-to-length carbon steel plate. These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under subheadings 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this order is grade X–70 plate. The HTS subheadings are provided for convenience and customs purposes only. The written description of the scope remains dispositive.

Analysis of Substantive Response

All issues raised in the substantive responses and rebuttals by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 29, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of a countervailable subsidy and the net subsidy rate likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B–099 of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *www.ita.doc.gov/import_admin/records/frn/*. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the countervailing duty order on CTL plate from Belgium would be likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy is 23.15 percent *ad valorem* for Cockerill, 1.05 percent *ad valorem* for Fafer, and 5.92 percent *ad valorem* for "all others."

Although the programs included in our calculation of the net countervailable subsidy likely to prevail if the orders were revoked do not fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement, they may be subsidies described in Article 6, if the net countervailable subsidy exceeds 5 percent; as measured in accordance with Annex IV of the Subsidies Agreement. The Department, however, has no information with which to make such a calculation, nor do we believe it appropriate to attempt such a calculation in the course of a sunset review.[1] Rather, we are providing the Commission the program descriptions contained in the Decision Memo.

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: March 29, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8549 Filed 4–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–201–810]

Certain Cut-to-Length Carbon Steel Plate From Mexico; Final Results of Countervailing Duty Expedited Sunset Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty expedited sunset review: certain cut-to-length carbon steel plate from Mexico.

SUMMARY: On September 1, 1999, the Department of Commerce ("the Department") published the notice of

[1] Moreover, we note that as of January 1, 2000, Article 6.1 has ceased to apply (*see* Article 31 of the Subsidies Agreement).

initiation of the sunset review of the countervailing duty order on certain cut-to-length carbon steel plate ("cut-to-length plate") from Mexico. On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, we determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy is identified in the Final Results of Review section of this notice.

EFFECTIVE DATE: April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Mark D. Young, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–6397.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to 19 CFR part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Background

On September 1, 1999, the Department published the notice of initiation of the sunset review of the countervailing duty order on cut-to-length plate from Mexico (64 FR 47767). The Department received a Notice of Intent to Participate on behalf of Bethlehem Steel Corporation and U.S. Steel Group, a unit of USX Corporation ("the domestic interested parties"), within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as U.S. manufacturers of cut-to-length plate. We received a complete substantive response from the domestic interested parties on October 1, 1999, within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). In their substantive response, the domestic interested parties stated that they were the petitioners in the original investigation of cut-to-length plate from Mexico. Furthermore, the domestic interested parties stated that they had participated in each subsequent segment of the case. We did not receive a substantive response from any respondent interested party to these proceedings. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). The review at issue concerns a transition order within the meaning of section 751(c)(6)(C)(i) of the Act. Therefore, the Department determined that the sunset review of the countervailing duty order on cut-to-length plate from Mexico is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than March 29, 2000, in accordance with section 751(c)(5)(B) of the Act.[1]

Scope of Reviews

The products covered by this countervailing duty order constitute one "class or kind" of merchandise: certain cut-to-length carbon steel plate. These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included within the scope are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling"); for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. These HTSUS item numbers are provided for convenience and customs purposes. The Department's written description remains dispositive. There has not been a scope review of the subject merchandise from Mexico.[2]

This review covers all imports from all manufacturers and exporters of cut-to-length plate from Mexico.

Analysis of Comments Received

All issues raised in this case by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 29, 2000, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of a countervailable subsidy, the net countervailable subsidy, and the nature of the subsidy. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

We determine that revocation of the countervailing duty order on cut-to-

[1] See Extension of Time Limit for Final Results of Five-Year Reviews, 64 FR 71726 (December 22, 1999).

[2] However, The Department has made one scope ruling on the subject merchandise from Brazil. The following product was determined to be within the scope of the order: Profile Slabs manufactured by Companhia Siderurgica Tubarao, 62 FR 30569 (June 4, 1997).

length plate from Mexico would be likely to lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

Mexican manufacturers/exporters	Net subsidy rate (percent)
Altos Hornos de Mexico S.A	25.87
All Others	20.25

Among the benefits provided by the GOM's countervailable programs the Department determined that those provided by the Bancomext Export Loans and PITEX Duty-Free Imports for Companies That Export were contingent upon export performance;[3] therefore, both programs fall within the purview of Article 3.1(a). Because receipt of a benefit under the 1986 Assumption of AHMSA's Debt program, the 1988 and 1990 Debt Restructuring of AHMSA Debt and the Resulting Discounted Prepayment in 1996 of AHMSA's Restructuring Debt Owed to the GOM program, and the Pre-privatization Lay-off Financing from the GOM and the 1991 Equity Infusion in Connection with the Debt to Equity Swap of PROCARSA program are types of debt forgiveness, these programs fall within the definition "direct forgiveness of debt" for purposes of Article 6.1(d) of the Subsidies Agreement. The GOM Equity Infusions program, the Immediate Deduction program, and IMIS Research and Development Grants program are not contingent on exports, nor are they "direct forgiveness of debt." Therefore, these programs could be found inconsistent with Article 6.1[4] of the Subsidies Agreement if the net subsidy exceeds 5 percent *ad valorem* as measured in accordance with Annex IV of the Subsidies Agreement. However, the Department does not have enough information to calculate or determine whether the total *ad valorem* subsidization of the subject merchandise from these programs exceeds five-percent or whether they were meant to cover operating losses or to be used as direct forgiveness of debt. Nor does the Department believe such a calculation or determination would be appropriate in the course of a sunset review. Instead, we are providing the Commission with the program descriptions listed below.

[3] See Certain Cut-To-Length Carbon Steel Plate from Mexico: Final Results of Countervailing Duty Administrative Review, 65 FR 13368 (March 13, 2000).

[4] We note that as of January 1, 2000, Article 6.1 has ceased to apply (see Article 31 of the Subsidies Agreement).

Equity Infusions

This program enabled AHMSA to receive equity infusions from the GOM in 1977, each year from 1979 to 1987, in 1990, and in 1991. We determined that equity infusions by the GOM into AHMSA in these years were specific and made on terms inconsistent with commercial considerations.

IMIS Research and Development Grants

Under this program IMIS performed joint venture research and did not make the results of the joint venture publicly available, therefore the Department was not able to determine the exact value of IMIS's contributions to the joint venture.

Immediate Deduction

This program promotes investment by allowing the future deduction of fixed assets, at their present value, at the time of the investment. This program only applied to property used permanently within Mexico but outside of the metropolitan areas of Mexico City, Guadalajara, and Monterey. With respect to small firms (*i.e.*, firms with a gross income of 7 million pesos or less), the location restriction does not apply.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: March 29, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8556 Filed 4–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta From Italy: Notice of Extension of Time Limit for the 1998 Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the third review of the countervailing duty order on certain pasta from Italy. The period of review is January 1 through December 31, 1998.

EFFECTIVE DATE: April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Craig Matney or Annika O'Hara, Office of AD/CVD Enforcement I, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1778 or (202) 482–3798, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. Unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999).

Background

On August 30, 1999, the Department of Commerce ("the Department") initiated the third countervailing duty administrative review of certain pasta from Italy, covering calendar year 1998. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 64 FR 47167 (August 30, 1999). Corrections to the initiation notice were published in the **Federal Register** on September 8, 1999 (64 FR 48897) and November 4, 1999 (64 FR 60161). The preliminary results are currently due no later than April 3, 2000.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary results within 245 days after the last day of the anniversary month of the order for which a review is requested. However, if it is not practicable to issue the preliminary results within the time

period, section 751(a)(3)(A) of the Act allows the Department to extend this deadline to a maximum of 365 days.

Postponement

The Department has determined that additional time is necessary to issue the preliminary results in this administrative review for the reasons stated in our memorandum from Susan Kuhbach to Richard Moreland, dated March 31, 2000. Therefore, in accordance with section 751 (a)(3)(A) of the Act, we are postponing the preliminary results of this administrative review until no later than July 31, 2000.

This notice is published pursuant to section 777(i)(1) of the Act.

Dated: March 31, 2000.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 00–8565 Filed 4–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–807]

Notice of Correction to Final Results of Expedited Sunset Review: Sulfanilic Acid From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 8, 2000, the Department of Commerce (the Department) published in the **Federal Register** the final results of the sunset review of the countervailing duty order on sulfanilic acid from India.[1] Subsequent to the publication of the final results, we identified an inadvertent error in the "Final Results of Review" section of the notice. Therefore, we are correcting and clarifying this inadvertent error.

The Department published a net subsidy rate, for all manufacturers/producers/exporters of sulfanilic acid from India, of 47.31 percent.[2] This rate was a typographical error. The net subsidy rate applicable to all manufacturers/producers/exporters of sulfanilic acid from India is 43.71 percent.

EFFECTIVE DATE: February 8, 2000.

FOR FURTHER INFORMATION CONTACT: Mark D. Young, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, D.C. 20230: telephone (202) 482–1930.

This correction is issued and published in accordance with sections 751(h) and 777(i) of the Act.

Dated: March 31, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–8564 Filed 4–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(C–489–502)

Certain Welded Carbon Steel Pipes and Tubes From Turkey; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on certain welded carbon steel pipes and tubes from Turkey for the period January 1, 1998 through December 31, 1998. For information on the net subsidy for the reviewed companies, as well as for all non-reviewed companies, see the *Preliminary Results of Review* section of this notice. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Preliminary Results of Review* section of this notice. Interested parties are invited to comment on these preliminary results. (*See Public Comment* section of this notice.)

EFFECTIVE DATE: April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Grossman or Stephanie Moore, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1986, the Department published in the **Federal Register** (51 FR 7984) the countervailing duty order on certain welded carbon steel pipes and tubes from Turkey. On March 9, 1999, the Department published a notice of "Opportunity to Request Administrative Review" (64 FR 11439) of this countervailing duty order. We received a timely request to conduct a review by Borusan Birlesik Boru Fabrikalari A.S. (BBBF). We initiated the review covering the period January 1, 1998 through December 31, 1998 on April 30, 1999 (64 FR 23269).

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers BBBF and Borusan Ihracat Ithalat ve Dagitim A.S. (Dagitim), an affiliated trading company that exports BBBF produced subject merchandise to the United States (*see Treatment of Trading Company* section below). This review also covers 21 programs.

On November 10, 1999, the Department extended the period for completion of the preliminary results pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act). *See Certain Welded Carbon Steel Pipes and Tubes from Turkey: Extension of Preliminary Results of Countervailing Duty Administrative Review* (64 FR 61276). The deadline for the final results of this review is no later than 120 days from the date on which these preliminary results are published in the **Federal Register**.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Act, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995. In addition, unless otherwise indicated, all citations to the Department's regulations reference 19 CFR part 351 (1999).

Scope of the Review

Imports covered by this review are shipments from Turkey of certain welded carbon steel pipe and tube, having an outside diameter of 0.375 inch or more, but not more than 16 inches, of any wall thickness. These products, commonly referred to in the industry as standard pipe and tube or structural tubing, are produced to various American Society for Testing and Materials (ASTM) specifications, most notably A–53, A–120, A–135, A–500, or A–501. These products are classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) as item number 7306.30.10. The HTSUS item numbers are provided for convenience and Customs purposes.

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[1] See Notice of Final Results of Expedited Sunset Review: Sulfanilic Acid from India, 65 FR 6171 (February 8, 2000).

[2] See Notice of Final Results of Expedited Sunset Review: Sulfanilic Acid from India, 65 FR 6171, 6174 (February 8, 2000).

The written descriptions remain dispositive.

Organizational Background

The Borusan Group includes the following companies involved in the production and/or export of the subject merchandise: BBBF, Dagitim, Kartal Boru Ticaret ve Sanayi (Kartal Boru), and Mannesmann Boru A.S. (Mannesmann Boru) (collectively, "Borusan Group"). BBBF manufactured steel pipes and tubes that were both sold in Turkey and exported to the United States during the period of review (POR). Exports are carried out through Dagitim, which handles the international marketing of goods produced by BBBF and other Borusan Group companies. Kartal Boru manufactures standard pipe products sold mainly domestically; it did not export standard pipe to the United States. On September 11, 1998, Borusan Holding purchased a stake in Mannesmann-Sumerbank Boru Endustrisi T.A.S. On December 22, 1998, Borusan Holding partnered with Mannesmannrohren-Werke A.G. to establish a joint venture named Borusan Mannesmann Boru Yatirim Holding (Borusan Mannesmann), which itself purchased a majority of BBBF's shares on the same day. Also on December 22, 1998, Borusan Mannesmann purchased a majority of Mannesmann-Sumerbank Boru Endustrisi T.A.S. Mannesmann Boru Endustrisi T.A.S. was renamed Mannesmann Boru A.S. (Mannesmann Boru) in early 1999. Mannesmann Boru did not export subject merchandise to the United States during the POR.

Treatment of Trading Company

During the POR, BBBF exported subject merchandise to the United States through Dagitim, a trading company. Dagitim is affiliated with BBBF within the meaning of section 771(33)(F) of the Act since both companies are under common ownership. The responses provided by the Borusan Group indicated that, during the POR, Dagitim did not receive any countervailable subsidies. A questionnaire response was required from the trading company because the subject merchandise may be subsidized by means of subsidies provided to both the producer and the exporter. All subsidies conferred on the production and exportation of subject merchandise benefit the subject merchandise even if it is exported to the United States by an unaffiliated trading company rather than by the producer itself. Therefore, the Department calculates countervailable subsidy rates on the subject merchandise by cumulating subsidies provided to the producer, with those provided to the exporter. *See* 19 CFR 351.525.

Under section 351.107 of the Department's Regulations, when the subject merchandise is exported to the United States by a company that is not the producer of the merchandise, the Department may establish a "combination" rate for each combination of an exporter and supplying producer. However, as noted in the "Explanation of the Final Rules" (the Preamble to the Department's Regulations), there may be situations in which it is not appropriate or practicable to establish combination rates when the subject merchandise is exported by a trading company. In such situations, the Department will make exceptions to its combination rate approach on a case-by-case basis. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296; 27303 (May 19, 1997).

In this review, we preliminarily determine that it is not appropriate to establish combination rates. This preliminary determination is based on the fact that the subsidies conferred upon the subject merchandise were received by the producer only. Therefore, combination rates would serve no practical purpose because the calculated subsidy rate for BBBF and Dagitim would effectively be the same rate. For these reasons we are not calculating combination rates in this review. Instead, we have only calculated one rate for BBBF, the producer of the subject merchandise, which will also be the rate for Dagitim.

Calculation of Benefits

Despite a persistently high rate of inflation in Turkey, Turkish companies do not index any of the figures (other than fixed assets) in their financial statements to account for inflation. During the POR, the inflation rate in Turkey was 41 percent, as published in the 1998 Quarterly Bulletin by the Central Bank of Turkey. Indexing the benefit and the sales figures will neutralize any potential distortion in our subsidy calculations caused by high inflation and the timing of the receipt of the subsidy.

Therefore, to calculate the *ad valorem* subsidy rates, we indexed the benefits (numerator) in the month of receipt and indexed the monthly sales (denominator) for each program, as we did in *Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Final Results of Countervailing Duty Administrative Reviews*, 64 FR 44496 (August 16, 1999) (*1997 Final Results*). *See*, for discussion, *Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Preliminary Results of Countervailing Duty Administrative Reviews*, 64 FR 16924 (April 7, 1999) (*1997 Preliminary Results*). We indexed the sales values and the benefits using the Wholesale Price Index (WPI) for manufacturing companies in 1998, as reported by the Central Bank of Turkey.

The subsidies which we preliminarily determine to have provided benefits during the POR were an export subsidy and an import substitution subsidy. Since BBBF is the only company from which subject merchandise was exported, the export subsidy is attributable solely to BBBF's export sales. Similarly, since the benefit from the import substitution subsidy was tied to BBBF's purchase of equipment used in the production of subject merchandise, the benefit from this subsidy is attributable solely to BBBF's sales of subject merchandise.

Consolidation of BBBF and Mannesmann Boru under the Borusan Group "umbrella" occurred late in the POR. Additionally, only BBBF's production of subject merchandise was exported to the United States during the POR. Therefore, for purposes of this administrative review, we are not addressing whether BBBF and Mannesmann need to be collapsed. However, we will reexamine this issue in a future administrative review should one be requested.

Analysis of Programs

I. Programs Conferring Subsidies

A. Programs Previously Determined to Confer Subsidies

1. Pre-Shipment Export Credit

The Export Credit Bank of Turkey provides short-term pre-shipment export loans to exporters through intermediary commercial banks. The program is designed to support export-related industries. Loans are made to exporters who commit to export within a specified period of time. Generally, loans are extended for a period of up to 180 days, and cover up to 100 percent of the FOB export value. These loans are denominated in Turkish Lira (TL) and repaid in TL. The interest rate charged on these pre-shipment loans is established by the Turk Eximbank and is tied to the Central Bank's rediscount rate. In several previous determinations, including the *1997 Final Results*, and the *Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey*, 61 FR 30366 (June 14, 1996) (*Pasta from Turkey*), the Department

found this program to be countervailable because receipt of the loans is contingent upon export performance and the interest rates paid on these loans is less than the amount the recipient would pay on comparable commercial loans.

In the *1997 Final Results*, we found these loans to be untied and available for exported merchandise because the exporter has to only show that an export has taken place and provide the foreign currency exchange receipts from the commercial bank to close out the loan with Turk Eximbank. Because the loans are not specifically tied to a particular destination at the time of approval, we determined that the pre-shipment loan program is an untied export loan program. *See* 64 FR 44496, 44497. In this review, no new information or evidence of changed circumstances has been submitted to warrant reconsideration of the Department's prior findings.

Pursuant to section 771(5)(E)(ii) of the Act, a benefit shall be treated as conferred "in the case of a loan, if there is a difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." To calculate the rate the recipient would pay on a comparable commercial loan that could actually be obtained by it (*i.e.*, the benchmark interest rate), we are using company-specific interest rates on comparable commercial loans for all pre-shipment loans that were taken out by BBBF in 1997 and 1998, and repaid in 1998, with the exception of two pre-shipment export loans taken out in the third quarter of 1997, as discussed below. The rates on commercial loans provided to BBBF, which we have used as benchmarks, include the following customary fees: Bank Insurance and Services Tax (BIST), which is equal to five percent of the interest amount paid; the Resource Utilization Support Fund (RUSF) fee, equal to six percent of the interest paid; and a stamp tax equal to 0.6 percent of the principal.

In addition, because the Department continues to consider Turkey to have high inflation, we also preliminarily determine that it is appropriate to use quarterly average short-term interest rates where available, since BBBF pays interest quarterly on its short-term borrowings. Therefore, we have used as our benchmark interest rates, for all but two pre-shipment export loans, the quarterly rates paid on short-term commercial financing contracted by BBBF. This is consistent with the Department's practice in *Certain Welded Carbon Steel Pipe and Tube and Welded Carbon Steel Line Pipe From Turkey; Final Results and Partial Rescission of Countervailing Duty Administrative Reviews*, 63 FR 18885 (April 16, 1998) (*1996 Final Results*). *See*, for discussion, *Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe From Turkey; Preliminary Results and Partial Recission of Countervailing Duty Administrative Reviews*, 62 FR 64808 (December 9, 1997) (*1996 Preliminary Results*).

As mentioned, two pre-shipment export loans were contracted by BBBF during the third quarter of 1997. Since we do not have company-specific loan information for the third quarter of 1997 to use as a benchmark, we are using a simple average of the weekly short-term interest rates for Turkey for July through September, 1997, as published in *The Economist*. Use of *The Economist* for comprising a benchmark is consistent with the *1997 Final Results*, (*see Preliminary Results*, for discussion, 64 FR 16924, 16926). Using these benchmark rates, we continue to find these pre-shipment export loans countervailable because the interest rate charged is less than the rate for comparable commercial loans that the company could actually obtain in the market. Therefore, this program provides both a financial contribution under section 771(5)(D)(i), and confers a benefit under section 771(5)(E)(ii) of the Act.

Resolution No. 94/5782, Article 4, effective June 13, 1994, allows for the exemption of certain fees that are normally charged on loans, provided that the loans are used in financing exportation and other foreign exchange earning activities. For pre-shipment loans, which are denominated in TL, the fees that are exempted are the customary BIST, RUSF, and the stamp tax, all of which have been described above. The Department's current practice is normally to compare effective interest rates rather than nominal rates. "Effective" interest rates are intended to take account of the actual cost of the loan, including the amount of any fees, commissions, compensating balances, government charges or penalties paid in addition to the "nominal" interest rate. We have added the exempted customary banking fees to the benchmark interest rates, including those rates taken from *The Economist*, because we have previously determined exempted fees to be countervailable. *See e.g., Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review*, 60 FR 44843 (August 29, 1995) (*Indian Castings*), and *1997 Preliminary Results*, 64 FR 16924, 16926.

To determine the benefit, we calculated the countervailable subsidy as the difference between actual interest paid on pre-shipment loans during the POR and the interest that would have been paid using the benchmark interest rates. This difference was indexed for inflation (as described above), and the result divided by the company's total export sales, which we also indexed for inflation. On this basis, we preliminarily determine the countervailable subsidy under this program to be 0.12 percent *ad valorem* for BBBF.

2. VAT Support Program (Incentive Premium on Domestically Obtained Goods)

The General Incentives Program (GIP) was established by the Government of the Republic of Turkey (GRT) and is designed to increase investment in Turkey and to expand the Turkish economy. Companies can apply to the GRT's Undersecretariat of the Treasury for investment encouragement certificates under the GIP, which entitle holders to specific benefits relating to the investment project. Companies holding investment certificates under the GIP have been eligible for the VAT Support Program, formerly known as the Incentive Premium on Domestically Obtained Goods, which provided a rebate of the 15 percent value added tax (VAT) paid on domestically-sourced machinery and equipment. In 1996, the GRT modified this program by providing an additional 10 percent of the rebated VAT amount to eligible companies, as a further investment incentive. Until August 1, 1998, imported machinery and equipment were subject to the VAT, but were not eligible for the rebate. However, General Comunique No. 69, dated August 14, 1998, states that as of August 1, 1998, all machinery and equipment, whether imported or locally-sourced, will be eligible for the VAT rebate when an investment certificate issued on or after August 1, 1998 is used for the purchase.

The Department determined in *Pasta from Turkey* (*see* 61 FR 30366, 30369), and in the *1996 Final Results* (*see 1996 Preliminary Results* for discussion, 62 FR 64808, 64811), that these VAT rebates are countervailable subsidies within the meaning of section 771(5)(D)(ii) of the Act because the rebates constitute revenue foregone by the GRT, and they provide a benefit in the amount of the VAT savings to the company. In this current review, we preliminarily determine that the savings is not only the VAT, but the additional

10 percent of the VAT that is added on to the rebate. Also, BBBF's benefits under this program are specific under section 771(5A)(C) because BBBF's receipt of benefits was contingent upon the use of domestic goods rather than imported goods during the POR. While the program was changed as of August 1, 1998 to include VAT exemptions on imported machinery and equipment, BBBF's investment certificates were issued prior to that date, therefore BBBF continued to receive the VAT rebate plus 10 percent only for its purchases of domestically-sourced machinery and equipment. Therefore, for purposes of this administrative review, we continue to find benefits under this program specific. Further, the Department determined that the benefits under the VAT Support Program are "recurring," because once a company has received an investment incentive certificate it becomes eligible for the VAT Support Program benefits. The receipt of benefits is automatic; companies do not have to apply for new investment incentive certificates each year.

BBBF received six separate VAT rebates, plus 10 percent, under two different investment certificates as part of this program during the POR, for machinery and equipment purchases associated solely with the production of subject merchandise. In order to determine the net countervailable subsidy rate, we divided the amount received (indexed for inflation) by the company's sales of subject merchandise during the POR (indexed for inflation). On this basis, we preliminarily determine the net countervailable subsidy under this program to be 0.08 percent *ad valorem* for BBBF.

II. Program Preliminarily Determined To Be Not Countervailable

Special Importance Sector Under Investment Allowances

During the POR, BBBF was entitled to receive a 100 percent investment allowance on its corporate tax return because it modernized an existing facility under an investment certificate issued under the GIP. According to the GIP, modernization is considered to be a "special importance sector" investment. The special importance sector is a provision under the Investment Allowance program that allows companies a 100 percent corporate tax deduction of their fixed investment, regardless of the region in which the investment is made.

In order to determine whether the "special importance sector" benefits are specific, in law or in fact, to an enterprise or industry, as per section 771(5A)(D), we examined the following:

1. Whether the enabling legislation expressly limits access to the subsidy to an enterprise or industry;
2. Whether the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number;
3. Whether an enterprise or industry is a predominant user of the subsidy;
4. Whether an enterprise or industry receives a disproportionately large amount of the subsidy; and
5. The manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others.

An analysis of the first factor shows that the enabling legislation does not expressly limit access to an enterprise or industry; therefore, the subsidy is not *de jure* specific (specific as a matter of law).

In determining whether this program is specific in practice (*de facto* specificity), we examined information supplied by the GRT, including a breakdown of the number of companies within each industry and region that received special importance sector investment certificates in 1996, the year in which the GIP certificate issued to BBBF was used to claim the benefit on the tax return filed during the POR. This data shows that more than 4,500 certificates were issued to different companies in numerous and varied industries and regions throughout Turkey. The data also shows that the iron and steel industry was not a predominant user, nor has it received a disproportionate share of the benefits. Therefore, we preliminarily determine that this program is not specific, and therefore, is not countervailable.

III. Programs Preliminarily Determined To Be Not Used

We examined the following programs and preliminarily determined that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under these programs during the POR:

A. Freight Program
B. Foreign Exchange Loan Assistance
C. Resource Utilization Support Fund
D. State Aid for Exports Program
E. Advance Refunds of Tax Savings
F. Export Credit Through the Foreign Trade Corporate Companies Rediscount Credit Facility (Eximbank)
G. Past Performance Related Foreign Currency Export Loans (Eximbank)
H. Export Credit Insurance (Eximbank)
I. Subsidized Turkish Lira Credit Facilities
J. Subsidized Credit for Proportion of Fixed Expenditures
K. Fund Based Credit
L. Investment Allowances (in excess of 30 percent minimum)
M. Resource Utilization Support Premium (RUSP)
N. Deduction from Taxable Income for Export Revenues
O. Regional Subsidies
   1. Additional Refunds of VAT (VAT + 10 percent)
   2. Postponement of VAT on Imported Goods
   3. Land Allocation (GIP)
   4. Taxes, Fees (Duties), Charge Exemption (GIP)

Preliminary Results of Review

In accordance with section 777A(e)(1) of the Act, we calculated an individual *ad valorem* subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1998 through December 31, 1998, we preliminarily determine the net subsidy for BBBF and Dagitim to be 0.20 percent *ad valorem*, which is *de minimis*.

As provided for in 19 CFR 351.106(c)(1), any rate less than 0.5 percent *ad valorem* in an administrative review is *de minimis*. Accordingly, no countervailing duties will be assessed. If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to liquidate, without regard to countervailing duties, shipments of the subject merchandise from BBBF and Dagitim exported on or after January 1, 1998, and on or before December 31, 1998. Also, the cash deposit required for these companies will be zero.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul*

Corporation and The Torrington Company v. *United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed segment of this administrative proceeding under the Act, as amended by the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding conducted pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See Certain Welded Carbon Steel Pipe and Tube Products from Turkey; Final Results of Countervailing Duty Administrative Review*, 53 FR 9791 (March 25, 1988). These rates shall apply to all non-reviewed companies until a review is requested. In addition, for the period January 1, 1998 through December 31, 1998, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This notice serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of countervailing duties occurred and the subsequent assessment of double countervailing duties.

This administrative review is issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: March 30, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–8572 Filed 4–5–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032800D]

Groundfish Fisheries of the Bering Sea/Aleutian Islands Area and the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS is publishing a report summarizing the results of the scoping process used to initiate a programmatic supplemental environmental impact statement (SEIS) on Federal groundfish fishery management in the Exclusive Economic Zone (EEZ) off Alaska. The Scoping Report summarizes the scoping process, identifies issues raised during scoping, and describes the SEIS structure and content including alternatives for analysis that resulted from scoping.

DATES: Comments on the Scoping Report may be submitted until May 1, 2000.

ADDRESSES: Copies of the Scoping Report may be obtained from Steven K. Davis, phone or e-mail: 907–271–3523, or from steven.k.davis@noaa.gov or write to: NMFS, 222 West 7th Street, Room 517, Anchorage, AK 99508, or Carol Tocco, phone or e-mail: 907–586–7032 or carol.tocco@noaa.gov or write to: NMFS, Alaska Region, 709 West 9th Street, P.O. Box 21668, Juneau, AK 99802. The Scoping Report also is available on the NMFS, Alaska Region's World Wide Web site at www.fakr.noaa.gov.

Written comments on the scoping summary report should be submitted to Lori Gravel, National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, AK 99802. Comments also may be hand delivered to Room 443–5, in the Federal Office Building, 907 West 9th Street, Juneau, AK, or sent via facsimile (fax) to 907–586–7255. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Steven K. Davis, NMFS, 907–271–3523 or steven.k.davis@noaa.gov.

SUPPLEMENTARY INFORMATION:

(1) *Alternative 1* (no action), continue with existing management policy;

(2) *Alternative 2*, adopt a new management policy framework that emphasizes increased protection for marine mammals and seabirds;

(3) *Alternative 3*, adopt a new management policy framework that emphasizes increased protection for target groundfish species;

(4) *Alternative 4*, adopt a new management policy framework that emphasizes increased protection for non-target and forage fish species;

(5) *Alternative 5*, adopt a new management policy framework that emphasizes increased protection for fish habitat; and

(6) *Alternative 6*, adopt a new management policy framework that emphasizes an increase in long-term socioeconomic benefits.

Dated: March 31, 2000.

Bruce Morehead,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–8397 Filed 3–31–00; 4:37 pm]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Thursday, April 13, 2000, 2 p.m.

LOCATION: Room 410, East West Towers, 4330 East West highway, Behtesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED: Compliance Status Report.

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–0800.

Dated: April 3, 2000.

Sadye E. Dunn,

Secretary.

[FR Doc. 00–8585 Filed 4–3–00; 4:29 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 5, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 31, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.
Title: The Evaluation of Exchange, Language, International and Area Studies (EELIAS), National Resource Centers (NRC), Foreign Language and Area Studies (FLAS) and Institute for International Public Policy (IIPP).
Frequency: Annually.
Affected Public: Not-for-profit institutions; Individuals or households.
Reporting and Recordkeeping Hour Burden:
Responses: 1,246.
Burden Hours: 9,932.
Abstract: Information collection assists the Office of International Education and Graduate Programs Servcie (IEGPS) in meeting program planning and evaluation requirements. Program officers require performance information to justify continuation funding, and grantees use this information for self evaluations and to request continuation funding from ED.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. **Please specify the complete title of the information collection when making your request.**

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe__Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–8410 Filed 4–5–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No. 84.336]

Teacher Quality Enhancement Grants Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of pre-application technical assistance workshops.

SUMMARY: The Department of Education has scheduled four regional technical assistance workshops between April 13, 2000 and April 25, 2000, to help prospective applicants better understand the Department's approach to implementing the competitive grant process to be held in Spring 2000 under the Teacher Quality Enhancement Grants Program, authorized by Title II, sections 202–204 of the Higher Education Act of 1965, as amended (HEA). During 2000, the Department will be making awards under the State Grant and Partnership Grant components of the Program. For further information on these competitions, please refer to the U.S. Department of Education, Teacher Quality website at: http://www.ed.gov/offices/OPE/heatqp/index.html

SUPPLEMENTARY INFORMATION: At these workshops, the public will learn more about the purposes and requirements of this program, how to apply for funds, program eligibility requirements, and considerations that might help them to improve the quality of their grant applications. Department of Education staff with expertise on these and other issues related to the Teacher Quality Enhancement Grants Program will be available to answer any questions on these topics.

Dates, Times, and Locations

The dates, times, and locations of the technical assistance workshops are as follows:

1. April 13, 2000, 8:30 a.m. to 1 p.m., Arizona State University, Payne Bldg., Room 129, Tempe, Arizona (Registration: 8:30 to 9 a.m.) Contact Person: Kathy Langerman, (480) 965–3146 or kllang@asu.edu

2. April 18, 2000, 8:30 a.m. to 1 p.m., Boston College, Lower Dining Hall, Heights Room, 140 Commonwealth Avenue, Chestnut Hill, Massachusetts

(Registration: 8:30 to 9 a.m.) Contact Person: Pamela Herrup, (617) 552–0763 or herrup@bc.edu

3. April 20, 2000, 8:30 a.m. to 1 p.m., University of Wisconsin-Milwaukee, University Center for Continuing Education (UCCE), 161 W. Wisconsin Avenue, Room 7970, Milwaukee, Wisconsin (Registration: 8:30 to 9 a.m.) Contact Person: Linda Post, (414) 229–4884 or lpost@uwm.edu

4. April 25, 2000, 8:30 a.m. to 1 p.m., University of Miami, University Center, Section A, Flamingo Ballroom, 1306 Stanford Drive, Coral Gables, Florida (Registration: 8:30 to 9 a.m.) Contact Person: Martha Kairuz, (305) 284–5937 or mkairuz@umiami.ir.miami.edu.

Any interested parties are invited to attend these workshops.

Assistance to Individuals With Disabilities at the Technical Assistance Workshops

The meeting sites are accessible to individuals with disabilities. The Department will provide a sign language interpreter at each of the scheduled workshops. An individual with a disability who will need an auxiliary aid or service other than an interpreter to participate in the meeting (*e.g.*, assistive listening device, or materials in alternate format) should notify the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section at least two weeks before the scheduled workshop date. Although we will attempt to meet a request received after this date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

There is no pre-registration for these workshops. For additional workshop information, you may visit the Teacher Quality website at: http://www.ed.gov/offices/OPE/heatqp/index.html or contact the person designated as contact for each workshop site listed.

FOR FURTHER INFORMATION CONTACT: Brenda Shade, Teacher Quality Program Office: Department of Education, Office of Postsecondary Education; 1990 K Street NW; Washington, DC 20006. Inquiries may be sent by e-mail to Brenda_/Shade@ed.gov (please type in the subject line:

PRE-APPLICATION WORKSHOP) or by fax to: (202) 502–7775. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person cited in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF)) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Dated: April 3, 2000.

Claudio R. Prieto,

Acting Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 00–8522 Filed 4–5–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities Meeting

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, U.S. Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and agenda of the meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.* interpreting services, assistive listening devices, materials in alternative format) should notify Treopia Washington at 202–502–7900 by no later than Tuesday, April 11, 2000.

DATE AND TIME: Tuesday, April 18, 2000 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at Morgan State University, located at Cold Spring Lane and Hillen Road, Truth Hall, 4th Floor, Baltimore, MD 21239.

FOR FURTHER INFORMATION CONTACT: Ms. Treopia Washington, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 1990 K Street, NW, Suite 8108, Washington, DC 20006–5120. Telephone: (202) 502–7900.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities was established under Executive Order 12876 of November 1, 1993. The Board was established to advise on federal policies that impact upon Historically Black Colleges and Universities, to advise on strategies to increase participation of Historically Black Colleges and Universities in federally sponsored programs and funding opportunities, and to advise on strategies to increase private sector support for these colleges.

The meeting of the Board is open to the public. The meeting will focus on the status and future of federal agency support for Historically Black Colleges and Universities. Records are kept of all Board procedures and are available for public inspection at the White House Initiative on Historically Black Colleges and Universities located at 1990 K. Street, NW, Suite 8099, Washington, DC, 20006, from the hours of 8:30 a.m. to 5 p.m.

Claudio R. Prieto,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 00–8435 Filed 4–5–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1975–000]

American Energy Savings, Inc.; Notice of Filing

March 31, 2000.

Take notice that on March 15, 2000, American Energy Savings, Inc. (AES) filed a petition for acceptance of AES Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

AES intends to engage in wholesale electric power and energy purchases and sales as a marketer. AES is not in the business of generating or transmitting electric power. AES is a wholly-owned subsidiary of American Energy Savings, Inc.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888

First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before April 10, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8463 Filed 4–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–140–000]

Black Marlin Pipeline Company, WBI Offshore Pipeline, Inc.; MCNIC Black Marlin Offshore Company; Notice of Joint Application

March 31, 2000.

Take notice that on March 28, 2000, Black Marlin Pipeline Company (Black Marlin), 801 Travis, Suite 2100, Houston, Texas 77002, WBI Offshore Pipeline, Inc. (WBI), 1250 West Century Avenue, Bismarck, North Dakota 58501, and MCNIC Black Marlin Offshore Company (MCNIC), 1360 Post Oak Blvd., Suite 1500, Houston, Texas 77056 filed in Docket No. CP00–140–000 a joint application pursuant to Sections 7(c) and 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for a certificate of public convenience and necessity reflecting WBI's and MCNIC's acquisition of one-sixth and one-third, respectively, of the undivided assets of the previously certificated Black Marlin facilities, and authorizing WBI and MCNIC to continue to use the facilities to transport natural gas under Black Marlin's existing tariff and authorizing Black Marlin to abandon by transfer the aforementioned interests to WBI and MCNIC all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Any questions regarding the application should be directed to Robert T. Hall, Thelen Reid & Priest LLP, 701 Pennsylvania Avenue, NW, Washington, DC 20004, (202) 508–4000.

The applicants state that on March 1, 1999, Blue Dolphin Energy Company, through its wholly-owned subsidiary Black Marlin Energy Company, acquired 100% of the issued and outstanding stock of Black Marlin from Enron Pipeline Company. They aver that the transaction was a stock transfer not subject to Commission approval under Section of the NGA.

They also state that on March 1, 1999, WBI Southern, Inc., acquired from Black Marlin a one-sixth undivided interest in the Black Marlin Pipeline assets for a cash purchase price of $916,212. WBI Southern, Inc., has since created a wholly owned subsidiary, WBI Offshore Pipeline, Inc., and effective March 1, 1999, contemporaneous with the acquisition of the Black Marlin Pipeline assets, has assigned the Black Marlin Pipeline assets to WBI Offshore Pipeline, Inc.

In a concurrent transaction, the applicants state that MCNIC Offshore Pipeline & Processing Company acquired from Black Marlin a one-third undivided interest in the Black Marlin Pipeline assets for a cash purchase price of $1,801,424, plus the reimbursement to Black Marlin of certain out-of-pocket expenses in the amount of $31,000. MCNIC Offhore Pipeline & Processing Company has since created a wholly owned subsidiary, MCNIC Black Marlin Offshore Company, and effective March 1, 1999, contemporaneous with the acquisition of the Black Marlin Pipeline assets, has assigned those assets to MCNIC Black Marlin Offshore Company.

Finally, the applicants state that simultaneously with the transactions described above, Black Marlin, MCNIC, and WBI entered into (i) an Operating Agreement concerning the operation of the Black Marlin Pipeline pursuant to which Black Marlin was appointed the operator, and (ii) a Purchase Rights and Participation Agreement restricting the assignability of an interest in the assets of the Black Marlin Pipeline and the stock of the parties.

The applicants state that approval of the application will have no affect on the rates, operations, or tariff of Black Marlin. They aver that the sole purpose of the application is to have authorized by abandonment the transfer of an undivided interest in assets from Black Marlin to WBI and MCNIC.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before April 21, 2000, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Black Marlin, WBI, or MCNIC to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8468 Filed 4–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–54–030]

Colorado Interstate Gas Company; Notice of Offer of Settlement

March 31, 2000.

Take notice that on March 21, 2000, the Kansas Independent Oil and Gas Association (KIOGA), filed an Offer of Settlement relating to Kansas ad valorem taxes under Rule 602 of the

Commission's Rules of Practice and Procedure. KIOGA's Offer of Settlement is intended to provide appropriate relief for the royalty owners and the smaller working interest owners from the requirements of *Public Service Company of Colorado* v. *FERC*[1] and the Commission's subsequent orders. A copy of the Offer of Settlement is on file with the Commission and is available for public inspection in the Public Reference Room. The Offer of Settlement may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

KIOGA asserts that the public interest in eliminating claims against royalty owners and the smaller producers is manifest. Accordingly, KIOGA's Offer of Settlement, would:

(1) Eliminate all claims for the royalty portion of any refunds and interest with a credit of 25% of the total claim;

(2) Provide an additional $75,000 credit for each working interest in each claim; and

(3) Limit the claims to the total amount filed by each pipeline in November of 1997.

In accordance with section 385.602(f), initial comments on the Offer of Settlement are due on April 10, 2000 and any reply comments are due on April 20, 2000.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8478 Filed 4–5–00; 8:45 am]
BILLING CODE 6717–01–M

[1] 91 F.3d 1478 (D.C. Cir., 1996), cert. denied 520 U.S. 1227 (1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–225–000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

March 30, 2000.

Take notice that on March 28, 2000, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, revised tariff sheets shown on Appendix A to the filing, with a proposed effective date of May 1, 2000.

Equitrans states that the purpose of this filing is correct typographical, grammatical errors, implement consistency in designation of Tariff Sheet Number and Section Number, and change of address, phone number, and facsimile number. Also, Equitrans is reinstating a line from a sentence in Section 6.7 in Rate Schedule 10SS that was inadvertently removed in Docket No. RP96–147.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8460 Filed 4–5–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–363–003]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

March 31, 2000.

Take notice that on March 28, 2000, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, revised tariff sheet a proposed effective date of April 1, 2000.

First Revised Sheet No. 308

Equitrans states that the purpose of this filing is to comply with the Commission's Order issued on March 20, 2000. The order granted Equitrans a waiver of the GISB Standards (Version 1.3): Nomination Standards 1.4.1 through 1.4.7, Flowing Gas Standards 2.4.1 through 2.4.6, Invoicing Standards 3.4.1 through 3.4.4, EDM Standards 4.3.1 through 4.3.3, and to the extent applicable to EDI transactions, 4.3.9 through 4.3.15, Capacity Release Standards 5.4.1 through 5.4.17 until December 31, 2000. Equitrans is incorporating this waiver into its FERC Gas Tariff, Original Volume No. 1.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8474 Filed 4–5–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP00–129–000, CP00–130–000, and CP00–131–000]

Horizon Pipeline Company, L.L.C.; Notice of Applications for Certificates

March 31, 2000.

Take notice that on March 23, 2000, Horizon Pipeline Company, L.L.C. (Horizon or applicant), 747 E. 22nd Street, Lombard, Illinois 60148—5072, filed applications pursuant to and in accordance with section 7(c) of the Natural Act (NCA). In Docket No. CP00–129–000, Horizon seeks a certificate of public convenience and necessity to construct and operate approximately 28.5 miles of new 36-inch interstate natural gas pipeline and compression facilities, lease 380 MDth per day of firm capacity from Natural Gas Pipeline Company of America (Natural)[1] on 42 miles of its existing pipeline, and provide firm compression service for Natural. Further, in Docket No. CP00–130–000, Horizon requests a blanket certificate pursuant to Subpart F of Part 157 of the Commission's Regulations to perform certain routine activities and operations. In addition, in Docket No. CP00–131–000, Horizon seeks a blanket certificate pursuant to Subpart G of Part 284 of the Commission's Regulations to provide open-access transportation of

[1] Natural has filed simultaneously an application in Docket No. CP00–132–000 to abandon by lease to Horizon firm capacity and to construct and operate certain facilities.

natural gas for others. Horizon also seeks approval of its initial rates and pro forma tariff provisions included in its certificate application, all as more fully set forth in the applications which are on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.herc.us/online/rims.htm* (call 202–208–2222).

Horizon is a limited liability company organized and existing under the laws of the State of Delaware. Horizon states that the two members of Horizon are Natural and Nicor-Horizon, Inc., a subsidiary of Nicor Inc. Horizon does not currently own any pipeline facilities and is not engaged in any natural gas transportation operations. Upon approval of the subject applications, Horizon will be a new interstate pipeline company subject to Commission jurisdiction under the NGA. Horizon proposes to provide gas transportation service from near Joliet, Illinois to near McHenry, Illinois. Horizon's proposed in-service date in April, 2002. Horizon requests that the Commission issue a preliminary determination on the non-environmental aspects of this proposal by September 15, 2000, and a final order granting the authorizations requested herein by March 1, 2001.

Horizon states that its natural gas pipeline project ("Horizon Project" or the "Project") will accommodate the continued growth and increasing need for additional gas supply in northern Illinois. The Horizon Project will consist of 71 miles of high pressure pipeline, of which, Horizon will construct 28.5 miles of 36-inch pipe[2] and will use leased capacity from Natural along approximately 42 miles of Natural's existing pipe, a new compressor station with approximately 8,900 horsepower located at Natural's existing Compressor Station No. 113 (CS 113), meter stations, and mainline taps and valves along the new pipeline. Horizon's proposed compressor station will not only create the 380 MDth/d of leased capacity, but it will also provide Natural with the compression service needed to maintain Natural's current capacity along its south-to-north pipeline terminating near Volo, Illinois. Horizon will provide compression sufficient to allow Natural to move up to 170 MDth/d of its shipper customer's gas to Volo.

[2] Horizon states that less than 2 miles of the total 28.5 miles will involve greenfield right-of-way; about 22 miles of the total 28.5 miles will use existing electric transmission right-of-way; 2 miles will be adjacent to existing pipeline right-of-way; and about 3 miles will be adjacent to existing pipeline right-of-way.

Horizon states that by leasing the 380 MDth per day of firm capacity from Natural, it will avoid the construction of 42 miles of new pipeline in a mostly congested area. Horizon has contacted with Natural for the leased capacity for an initial term of 20 years at $0.015 per Dth. According to Horizon, the lease payment will compensate Natural for its related costs in providing the lease capacity, including Natural's pro rata share of the fuel cost of Horizon's compression at CS 113 that it pays for the compression service provided by Horizon. Horizon states that Natural and its customers will not subsidize Horizon. Natural's capacity will not be decreased by the lease. Nor will Natural's customers suffer any economic detriment, because the revenues received by Natural will exceed the costs. Natural will continue to offer the same amount of capacity to its customers and they will continue to receive the same service at the same rates. Finally Horizon states that any costs that Natural incurs as a result of the Lease Agreement will be recovered through the lease payment from Horizon.

Horizon estimates that the total cost of the Project will be $75,411,000, excluding AFUDC. Horizon is proposing a 60/40 debt to equity capital structure. Currently, Horizon has been financed by equity furnished by its members, after certificate authority is obtained, the project will be financed primarily with debt during the construction phase, and at the in-service date the construction debt will be replaced with long-term debt (10-year).

Horizon held an open season between May 27 and June 25, 1999, as a result, Horizon has executed precedent agreements with two shippers for a total volume of 346 MDth/d firm service. According to Horizon, both shippers elected negotiated rates and a term of ten years. Horizon claims that one of the precedent agreements was executed with Nicor Gas, an affiliate of Nicor-Horizon, Inc., for the shipment of 300 MDth/d on Horizon. Horizon contends that Nicor Gas selected Horizon to serve the growing needs of its service territory, where about 30,000 customers are added each year. Horizon assert that there is a continuous increase in demand for natural gas in the northern counties of Illinois and the existing transportation service providers in the area are fully utilized; therefore there is a need for additional pipeline facilities. Horizon states that the second precedent agreement with Shipper A has been drafted to maintain its confidentiality because of the competitive nature of the electric power business. Horizon asserts that Shipper A is not affiliated with either of the Horizon members and that it has executed the precedent agreement for 46 MDth/d.

Horizon is proposing to lease and construct as part of this project an additional 34 MDth/d of capacity that will be used to serve projected near term demand growth in either the residential or power generation markets. Horizon recognizes that it will be at risk for any non-utilization of such capacity, given the fact that its rates are based on the project's design capacity of 380 MDth/d. Horizon will offer firm transportation service under Rate Schedule FTS and interruptible transportation service under Rate Schedule ITS on an open access, nondiscriminatory basis pursuant to Part 284 of the Commission's Regulations, and in accordance with its pro forma FERC Gas Tariff included with the application. Horizon states that its rates under Rate Schedule FTS are traditional cost-of-service based rates, designed under the Straight Fixed Variable (SFV) rate design methodology. These cost-of-service rates are Horizon's recourse rates. Horizon's states that its pro forma tariff provides for the negotiation, on a nondiscriminatory basis, of rates that differ from Horizon's generally applicable recourse rates. Horizon states that the shippers will have access to alternative receipt and delivery points and may use a capacity release mechanism.

Any questions regarding this application should be directed to James J. McElligott, Senior Vice President for Horizon, 747 East 22nd, Lombard, Illinois 60148 at (603) 691–3525; or Philip R. Telleen, Esquire, 747 East 22nd, Lombard, Illinois 60148 at (630) 691–3749.

Any person desiring to be heard or to make protest with reference to said application should on or before April 21, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NW, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a

motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Commission and will receive copies of all documents filed by the Applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Horizon to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8461 Filed 4–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2454–042; New York]

Minnesota Power, Inc.; Notice of Availability of Environmental Assessment

March 31, 2000.

An Environmental Assessment (EA) is available for public review. The EA analyzes the environmental effects of proposed changes to the project boundary for the Sylvan Hydroelectric Project located on the Crow Wing and Gull Rivers in Cass, Crow Wing, and Morrison Counties, Minnesota. The proposed boundary changes would result in the removal of a total of 20.42 acres of land from the project.

The EA was written by staff in the Office of Energy Projects, Federal Energy Regulatory Commission. Based on the environmental analyses presented in the EA, the Commission's staff finds that the proposed project boundary changes would not constitute a major federal action significantly affecting the quality of the human environment.

The EA has been attached to and made a part of an Order Amending License, issued March 21, 2000, for the Sylvan Hydroelectric Project (FERC No. 2454–042). The EA is available for inspection and reproduction at the Commission's Public Reference Room located at 888 First Street, NE, Room 2A, Washington DC 20426. Copies of the EA also may be obtained by calling (202) 208–1371, or by email at *Public.ReferenceRoom@ferc.fed.us*. The EA also may be viewed on the Commission's web site at *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8472 Filed 4–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–139–000]

National Fuel Gas Supply Corporation; Notice of Application

March 31, 2000.

Take notice that on March 29, 2000, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed an application in Docket No. CP00–139–000 pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations, for authority to abandon certain minor underground natural gas storage facilities, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

In its filing, National Fuel proposes to abandon facilities in Hebron Storage Field, jointly owned with Tennessee Gas Pipeline Company, in Potter County, Pennsylvania. National Fuel proposes to abandon Wells 4895 and 4960 and to abandon the associated well lines Y–W4895 and Y–W4960. The wells are no longer useful due to poor injection performance and poor deliverability and need to be reconditioned or plugged due to deterioration of well casings. The lines will serve no purpose once the wells are plugged and abandoned.

The two well lines total approximately 1,099 feet of 4-inch, 6-inch and 8-inch pipeline. Line Y–W4859 consists of 4-inch (16 feet), 6-inch (796 feet), and 8-inch (134 feet) line, totaling 946 feet in length and is connected to Well 4859. National Fuel proposes to abandon Line Y–W4859 in place, except for a 16 foot section starting at the well which will be removed in order to make room for the rig used in plugging the well. Line Y–W4960 consists of 4-inch and 6-inch line, totaling approximately 153 feet in length, and is connected to Well 4960. National Fuel proposes to remove Line YW–4960 in accordance with the procedures in the Environmental Report submitted as a part of National Fuel's application.

National Fuel avers that there will be no decrease in field performance, nor will there be any abandonment or decrease in service to customers as a result of the proposed abandonment of facilities. The cost of the project will be approximately $316,000, 86.1% of which shall be borne by Tennessee Gas Pipeline Company pursuant to the Hebron Storage Agreement.

National Fuel has contacted the affected landowners regarding this project. National Fuel certifies that all affected landowners will be notified as required by § 157.6(d) and Order No. 609.

Any questions regarding this application should be directed to David W. Reitz, Assistant General Counsel for National Fuel, 10 Lafayette Square, Buffalo, New York 14203 at (716) 857–7949.

Any person desiring to be heard or to make a protest with reference to said application should on or before April 21, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestant a party to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervener status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervener. An intervener can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervener must submit copies of comments or any other filings it makes with the Commission to every intervener in the proceeding, as well as an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have environmental comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court. The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervener status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further review before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Under the procedures herein provide for, unless otherwise advised, it will be unnecessary for National Fuel to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 00–8466 Filed 4–5–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–132–000]

Natural Gas Pipeline Company of America; Notice of Application for Certificate

March 31, 2000.

Take notice that on March 23, 2000, Natural Gas Pipeline Company of America (Natural or Applicant), 747 E. 22nd Street, Lombard, Illinois 60148–5072, filed in Docket No. CP00–132–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) for permission and approval to abandon, by operating lease to Horizon Pipeline Company, L.L.C. (Horizon),[1] firm capacity on its system, and for certificate authority to construct and operate certain facilities, all as more fully set forth in the application which are on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.us/online/rims.htm* (call 202–208–2222).

Natural is seeking authority to abandon 380 MDth/d of firm capacity on its system by lease to Horizon pursuant to the terms of a Lease Agreement, dated January 18, 2000. Horizon will incorporate the leased capacity as part of its interstate pipeline system, thereby avoiding the need of building duplicate facilities. The leased capacity will run for a total of 42 miles, from an interconnection between Alliance Pipeline L.P. (Alliance) and Natural's Gulf Coast mainline (at a point approximately 9 miles south of Natural's Compressor Station 113 (CS 113) to the interconnection between Horizon's new pipeline and an existing 36-inch line of Natural (at a point approximately 33-miles north of CS 113). Central to the lease agreement is the construction and ownership by Horizon of a new 8,900 horsepower compressor at CS 113, which will have the effect of creating the 380 MDth/d of leased capacity.

The capacity lease, will also require Natural to construct certain new facilities and the rearrangement of certain existing Natural facilities. Specifically, Natural is seeking certificate authority to increase the horsepower of each of its nine 1,040 horsepower compressor units, totaling 9,360 horsepower, at CS 113, so that the new total will be 13,050 horsepower. Natural is also seeking to rearrange its 20-inch line that runs 63 miles north to Volo, Illinois and one of its 36-inch lines that runs north to Natural's Howard Street Lines[2] so that in the future the Howard Street Lines will be served by a 20-inch line and a 36-inch line, in conjunction with the nine Natural compressors at CS 113.[3] Natural seeks certificate authority for a tap at the interconnection with the new Horizon pipeline and a second tap at the point where the northern terminus of Horizon meets an existing west-to-east line of Natural. Natural also seeks certificate authority for revisions at its Streamwood meter station, which is at the start of the Howard Street Lines.

Natural states that neither Natural nor its customers will subsidize Horizon, because any costs to Natural will be more than offset by the lease payments it will receive from Horizon. Under the Lease Agreement, Horizon has contracted with Natural for an initial term of 20 years to lease capacity at $0.015 per Dth within a 42-mile section of Natural's pipeline system in Grundy, Will and DuPage Counties, Illinois. This lease payment compensates Natural for its related costs in providing the leased capacity, primarily the $7.8 million in facilities proposed by Natural in this application, but also the fuel associated with the maintenance of Natural's service to its customers.

Any questions regarding this application should be directed to James

[1] Horizon has simultaneously filed applications in Docket Nos. CP00–129–000, CP00–130–000, and CP00–131–000 to construct, own, lease, operate and maintain a new natural gas pipeline (Horizon Project) from Joliet, Illinois to McHenry, Illinois.

[2] A west-to-east system providing delivery capability to both Chicago and its northwestern suburbs.

[3] This arrangement will provide Howard Street Lines with service that is substantially the same as that is provided currently under the current facility arrangement.

J. McElligott, Senior Vice President for Natural, 747 East 22nd, Lombard, Illinois 60148 at (630) 691–3525, or Philip R. Telleen, Attorney for Natural, 747 East 22nd, Lombard, Illinois 60148 at (630) 691–3749.

Any person desiring to be heard or to make protest with reference to said application should on or before April 21, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to practicipate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Commission and will receive copies of all documents filed by the Applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 00–8462 Filed 4–5–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–222–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 31, 2000.

Take notice that on March 27, 2000, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective March 27, 2000:

Fifth Revised Sheet No. 286
Seventh Revised Sheet No. 287
Fourth Revised Sheet No. 288

Northern states that the purpose of this filing is to comply with Order No. 637 issued on February 9, 2000. Pursuant to Order No. 637 and redesignated Section 284.8(i), Northern is filing revised tariff sheets to remove the maximum rate for capacity release transactions of less than one year.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 00–8475 Filed 4–5–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–223–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 31, 2000.

Take notice that on March 27, 2000, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to become effective April 27, 2000:

Fourth Revised Sheet No. 1
Fifth Revised Sheet No. 2
52 Revised Sheet No. 51
48 Revised Sheet No. 53
Third Revised Sheet No. 115
First Revised Sheet No. 125A
Original Sheet No. 125B
Original Sheet No. 125C
Original Sheet No. 125D
Original Sheet No. 125E
Original Sheet No. 125F
Third Revised Sheet No. 143
Eighth Revised Sheet No. 144
Second Revised Sheet No. 145
Fifth Revised Sheet No. 206
Fourth Revised Sheet No. 220
First Revised Sheet No. 251
Third Revised Sheet No. 252
Fourth Revised Sheet No. 225
Second Revised Sheet No. 261
Fifth Revised Sheet No. 263A
Third Revised Sheet No. 264
Fifth Revised Sheet No. 265
First Revised Sheet No. 271
Second Revised Sheet No. 290
Third Revised Sheet No. 300
Third Revised Sheet No. 302

Third Revised Sheet No. 414
Second Revised Sheet No. 415
Second Revised Sheet No. 416

Northern states that it is submitting these tariff sheets to implement a Limited Firm Throughput Service under new Rate Schedule LFT. Under this Rate Schedule, firm transportation service would be available subject to Northern's right to not schedule service in whole or in part on any day (a Limited Day), but not more than a maximum number of Limited Days per month (not to exceed ten) agreed to by Northern and Shipper in the LFT Service Agreement. Northern is proposing this service to offer greatly flexibility to shippers, and to address the needs of shippers that generally require firm service but are able to accommodate periodic interruption of service.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8476 Filed 4–5–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–536–000]

Southwestern Public Service Company; Notice of Informal Settlement Conference

March 31, 2000.

Take notice that an informal settlement conference will be convened in this proceeding on Tuesday, April 11, 2000, at 9:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, for the purpose of exploring settlement in the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214.

For additional information, contact J. Carmen Gastilo at (202) 208–2182 or Anja M. Clark at (202) 208–2034.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8469 Filed 4–5–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–135–000]

Texas Gas Transmission Corporation, Tennessee Gas Pipeline Company; Notice of Application

March 31, 2000.

Take notice that on March 23, 2000, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304, and Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana, P.O. Box 2511, Houston, Texas 77252–2511, filed in Docket No. CP00–135–000 an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval for Texas Gas to abandon by sale its interest in certain jointly owned supply lateral facilities in offshore Louisiana and for Tennessee to acquire and own these facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222; for assistance).

The joint application requests authorization for (1) Texas Gas to abandon by sale to Tennessee its interest in certain jointly owned supply lateral facilities and appurtenances in the Eugene Island and ship Shoal areas, offshore Louisiana, and (2) Tennessee to acquire and own Texas Gas' interest in such facilities.

Texas Gas declares that these facilities are no longer integral to their current role as an open access transporter and abandonment of its interest in the subject facilities will enable Texas Gas to streamline its transmission operations. Tennessee states that after approval is granted for the acquisition by Tennessee of Texas Gas' interest in these facilities, any shippers desiring access to the supplies attached to these laterals will be able to obtain transportation service from Tennessee pursuant to its Commission-approved tariff, thus none of the interruptible shippers currently utilizing Texas Gas' capacity in these facilities will be subject to a diminution or termination of service.

Tennessee declares that it will pay $102,870.79 for Texas Gas' interest in the identified supply lateral facilities. Texas Gas states that it has agreed to reimburse Tennessee for actual costs incurred by Tennessee not to exceed $100,000 for reconditioning the Eugene Island 342C pipeline in return for Tennessee's assumption of all retirement and abandonment costs associated with the facilities.

Any questions regarding the application should be directed to David N. Roberts, Manager of Certificates and Tariffs, at (270) 688–6712, Texas Gas Transmission Corporation, P.O. Box 20008, Owensboro, Kentucky 42304.

Any person desiring to be heard or to make any protest with reference to said Application should on or before April 21, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 18 CFR 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this Application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a petition for leave to

intervene is timely filed, or if the Commission, on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8467 Filed 4–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–392–000; Docket No. CP00–17–000]

Transcontinental Gas Pipe Line Corp.; South Carolina Public Service Authority; Notice of Availability of the Environmental Assessment for the Proposed Southcoast Expansion Project and Santee Cooper Natural Gas Pipeline Project

March 31, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Transcontinental Gas Pipe Line Corporation (Transco) and the South Carolina Public Service Authority (Santee Cooper) in the above-referenced dockets.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed underground gas pipeline loops and aboveground facilities including:

- About 11.3 miles of a 42-inch-diameter pipeline loop (designated as Loop E) in Choctaw and Marengo Counties, Alabama; installation of a pig launcher upstream of the loop in Choctaw County; and installation of a pig receiver and liquid scrubber at Station 90 in Marengo County;
- About 13.9 miles of a 48-inch-diameter pipeline loop (designated as Loop E) in Marengo, Perry and Dallas Counties, Alabama; and relocation of an existing pig receiver currently at the origin of the loop in Marengo County to the ending point in Dallas County;
- About 19 miles of a 24-inch-diameter pipeline loop (designated as the North Georgia Extension Loop) in Walton and Gwinnett Counties, Georgia; installation of a new pig launcher and valve at Station 125 in Walton County; and installation of a new pig receiver and valve at the terminus of the loop in Gwinnett County;
- About 2.1 miles of a 16-inch-diameter pipeline (designated as the Santee Cooper pipeline) to connect the planned Rainey Generating Station in Anderson County, South Carolina, to the Transco system at a new delivery tap and meter station in Hart County, Georgia;
- Addition of a new 15,000 horsepower (hp) gas turbine-powered compressor unit at Compressor Station 105 in Coosa County, Alabama;
- Addition of a new 16,500 hp electric motor driven compressor unit and gas coolers at Compressor Station 115 in Coweta County, Georgia;
- Rewheeling of Compressor Unit 16 at Compressor Station 120 in Henry County, Georgia; and
- Installation of new suction piping at Compressor Station 100 in Chilton County, Alabama, to allow sufficient gas to flow to Compressor Unit 10.

The purpose of the proposed facilities would be to provide about 204,099 dekatherms per day of new firm transportation capacity on Transco's existing system, and to provide up to 80,000 dt/day to Santee Cooper's planned Rainey Generating Station. Transco is proposing the project in order to meet projected growth needs of twelve of its natural gas customers in the southeastern market. The proposed Rainey Generating Station is needed to meet current and future growth in Santee Cooper's marketing area while maintaining adequate reserve of electric power.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PJ–11.2;
- Reference Docket Nos. CP99–392–000 and CP00–17–000; and
- Mail your comments so that they will be received in Washington, DC on or before May 1, 2000.

Comments will be considered by the Commission but will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8464 Filed 4–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–224–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 31, 2000.

Take notice that on March 27, 2000, Transwestern Pipeline Company (Transwestern), tendered for filing in its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to be effective March 27, 2000:

Third Revised Sheet No. 18
Seventh Revised Sheet No. 19
Third Revised Sheet No. 27
Seventh Revised Sheet No. 95A
Sixth Revised Sheet No. 95E
Sixth Revised Sheet No. 95F
Third Revised Sheet No. 951
Third Revised Sheet No. 95J
Fifth Revised Sheet No. 95K

Transwestern states that the purpose of this filing is to comply with Order No. 637 issued on February 9, 2000. Pursuant to Order No. 637, Transwestern is filing revised tariff sheets to: (1) Remove the maximum price cap for capacity release transactions of less than one year; and(2) Modify the Right of First Refusal provisions to apply only to maximum rate contracts as of March 27, 2000 with twelve or more consecutive months of service. Transwestern is also modifying its capacity release provisions to relabel the posting and bidding procedure for pre-arranged deals.

Transwestern further states that copies of the filing have mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 85.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8477 Filed 4–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–48–000]

Tennessee Gas Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Londonderry Replacement Project and Request for Comments on Environmental Issues

March 31, 2000.

The staff of the Federal Energy Regulatory Commission (FERC of Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Londonderry Replacement Project involving construction and operation of facilities by Tennessee Gas Pipeline company (Tennessee Gas) in Middlesex County, Massachusetts, and Hillsborough and Rockingham Counties, New Hampshire.[1] These facilities would consist of about 19.3 miles of 20-inch-diameter pipeline replacing 8-inch-diameter pipeline. Tennessee Gas proposes to locate the new pipeline in the same right-of-way occupied by the replaced pipeline and a 12-inch-diameter pipeline that would remain in place. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the replacement of the pipeline or acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Tennessee Gas provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (www.ferc.fed.us).

Summary of the Proposed Project

Tennessee Gas wants to expand the capacity of its facilities in Massachusetts and New Hampshire to transport 130,000 dekatherms per day (dthd) of natural gas to the AES–Londonderry Project proposed by AES Enterprises (AES). The AES–Londonderry Project is a 720-megawatt, natural gas-fired combined cycle power plant. Tennessee Gas seeks authority to construct and operate

- 19.3 miles of 20-inch-diameter pipeline in Middlesex County, Massachusetts, and Hillsborough and Rockingham Counties, New Hampshire;
- A new 130,000 dthd meter site adjacent to the existing Londonderry Meter Station in Rockingham County, New Hampshire; and
- Four new mainline valves.

The 20-inch-diameter pipeline and three of the mainline valves will replace 19.3 miles of the existing 8-inch-diameter Concord #1 Lateral (270B–100) from Valve 270B—103 in Dracut, Massachusetts, to the Londonderry Meter Station in Londonderry, New Hampshire, and three associated 8-inch mainline valves.

The location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 182.2 acres of land. Following construction, about 92.5 acres would be maintained for the new facility sites, however, all of this area would be within the existing right-of-way. The remaining 89.7 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands

[1] Tennessee Gas's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

- vegetation and wildlife
- public safety
- land use
- cultural resources
- endangered and threatened species

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information and comments provided by Tennessee Gas and intervenors. This preliminary list of issues may be changed based on your additional comments and our analysis.

- Eight federally listed endangered or threatened species may occur in the proposed project area.
- A total of about 46 acres of wetlands would be crossed.
- At least 52 residences and 4 apartment complexes would be located within 50 feet of the proposed construction work area.
- Two school properties would be crossed.

Also, we have made a preliminary decision to not address the impacts of the nonjurisdictional facilities since the AES-Londonderry Project has been approved by the state and has received all necessary Federal permits. We will briefly describe their location and status in the EA.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded.

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of OEP-Gas 2.
- Reference Docket No. CP00–48–000.
- Mail your comments so that they will be received in Washington, DC on or before May 1, 2000.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket#" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8465 Filed 4–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Lands

March 31, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands.

b. *Project No.:* 1494–197.

c. *Date Filed:* October 22, 1999; supplemented March 23, 2000.

d. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Pensacola Hydroelectric Project.

f. *Location:* The Pensacola Project is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma. This project does not occupy Federal or Tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mary E. Von Drehle, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301 (918) 256–5545.

i. *FERC Contact:* Any questions about this notice should be addressed to Steve Hocking at *steve.hockingferc.fed.us.* or telephone (202) 219–2656. The Commission cannot accept comments, recommendations, motions to intervene or protests sent by e-mail; these documents must be filed as described below.

j. *Deadline for filing comments, recommendations, motions to intervene and protests:* May 4, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy

Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please include the project number (1494–197) on any documents filed with the Commission.

k. *Description of the Application:* Grand River Dam Authority (GRDA), licensee for the Pensacola Project, requests Commission approval to issue a permit to John W. Mayes to dredge about 33,357 cubic yards of sediment and install 9 docks with a total of 84 boat slips for owners of lots in Vintage on Grand Lake subdivision.

l. *Location of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm.* Call (202) 208–2222 for assistance.

m. Individuals who want their name and address put on the Commission's mailing list for this project should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8470 Filed 4–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

March 31, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 2101–068.

c. *Date Filed:* March 6, 2000.

d. *Applicant:* Sacramento Municipal Utility District (SMUD).

e. *Name of Project:* Upper American River Hydroelectric Project (Camino Development).

f. *Location:* The Camino Development is located on the South Fork American River in El Dorado County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant's Contact:* Lon Maier, 6201 S Street, Sacramento, CA, 95817, (916) 732–6566.

i. *FERC Contact:* Any questions on this notice should be addressed to Doan Pham at (202) 219–2851 or e-mail address *doan.pham@ferc.fed.us.*

j. *Deadline for filing comments, motions to intervene, or protests:* May 10, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the Project Number (2101–068) on any comments, protests, or motions filed.

k. *Description of Amendment:* SMUD requests approval to construct at the Camino Powerhouse, a concrete deflection wall to protect the powerhouse from damage sustained from boulders and debris in the river during high flow events. The deflection wall, with a maximum height of 22 feet from bedrock, will extend about 96 feet from the powerhouse.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC, 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8471 Filed 4–5–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, Comments, Recommendations, and Terms and Conditions

March 31, 2000.

a. *Type of Application:* Conduit Exemption.
b. *Project No.:* 11836–000.
c. *Date filed:* February 23, 2000.
d. *Applicant:* Mark R. Hutchings.
e. *Name of Project:* Pinesdale Project.
f. *Location:* At the Sheafman Creek Canyon, in Ravalli County, Montana. Project has no Federal lands.
g. *Filed Pursuant to:* Federal Power Act 16 USC 791(a)–825(r).
h. *Applicant Contact:* Mark R. Hutchings, BMB Enterprises, 268 South Moss Hill Road, Bountiful, Utah 84010–1322, (801) 292–5014.
i. *FERC Contact:* Robert W. Bell (202) 219–2806.
j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D–4.
k. *Deadline for filing motions to intervene, protests and comments:* June 10, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Project:* The proposed project consists of an existing powerhouse on the 12–inch–diameter steel Pinesdale pipeline with one new generating unit having an installed capacity of 150–kW. The applicant would sell all the power generated to Ravalli County Electric Cooperative. The average annual generation would be 705, 782 kWh.

n. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing maybe viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address shown in item h above.

All documents (original and eight copies should be filed with: David P. Boergers, secretary, Federal Energy Regulatory Commission, Mail Code: DHAC, PJ–12, 888 First Street NE, Washington DC 20426.

Please include the Project Number 11836–000 on any comments, protests, or motions filed.

Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to interevene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in

accordance with 18 CFR 4.34(b) and 385.2010.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 00–8473 Filed 4–5–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the final procedures for disbursement of more than $12,000,000, including accrued interest, in alleged crude oil overcharges obtained by the DOE under the terms of Consent Orders and Remedial Orders entered into with ARGO Petroleum Corp. and 16 other firms, Case Nos. VEF–0031, *et al.* The OHA has tentatively determined that the funds obtained from these 17 firms plus accrued interest, will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW, Washington, DC 20585–0107, (202) 426–1527.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Final Decision and Order set out below. The Decision and Order sets forth the procedures that the DOE has formulated to distribute more than $12,000,000, including interest, obtained by the DOE under the terms of Consent Orders and Remedial Orders entered into with ARGO Petroleum Corp. and 16 other firms. The funds were paid towards the settlement of violations and alleged violations of the DOE price and allocation regulations involving the sale of crude oil during the period August 1973 through January 1981.

The OHA will distribute the Consent Order funds in the manner stated in an October 29, 1999 Proposed Decision and Order. The monies will be divided between the federal government, the states, and injured purchasers of refined petroleum products. Since the period for filing claims for crude oil overcharge refunds has closed, no new refund applications will be accepted for the funds involved in this decision and order.

Dated: March 28, 2000.

George B. Breznay,
Director, Office of Hearings and Appeals.

APPENDIX A

Name of firm	OHA case No.	Consent order tracking system No. (COTS)	Amount	
			Principal	With interest through 9/30/99
ARGO Petroleum Corp	VEF–0031	940C0089W	$60,835.18	$86,841.36
Don E. Pratt Oil Co	VEF–0036	740C01204W	235,000.00	394,878.05
Beta Energy Corp	VEF–0034	6C0X00260W	32,818.34	45,037.34
AWECO, Inc. & Hargis, Billy K	VEF–0032	6A0X00231W	665,908.68	968,874.23
B.M. Hester	VEF–0033	660C00647W	25,000.00	36,649.53
General Altantic Petrl & General Klotz	VEF–0038	650X00359W	107,790.21	123,262.93
Glen A. Martin	VEF–0039	610C000478W	13,583.80	18,560.48
Intercoastal Operating Co. & L.E. Lewis	VEF–0041	600C20082W	95,000.00	159,348.46
Kelly Trading Co & Reed, M.L	VEF–0043	650X00350W	182,000.00	265,665.83
Martin Exploration Co	VEF–0044	640C00406W	3,917.32	5,989.39
Pel-Star Energy	VEF–0047	6A0X00277W	30,263.70	51,178.22
Petro—Thermo	VEF–0048	6A0X00301W	42,772.32	75,698.67
Petroleum Mgmt., Inc	VEF–0049	422C00066W	71,319.67	117,570.09
Polaris Production Co	VEF–0050	670C00229W	71,726.16	109,151.96
Road Oil Sales	VEF–0051	N00S98090W	6,950.58	15,485.49
Tomlinson Petrl., Inc	VEF–0054	650X00318W	7,406,694.87	10,027,185.48
United Independent Oil Co. & Peter Hirshburg	VEF–0055	N00S90461W	75,000.00	159,621.07
Total			9,126,580.83	12,660,998.58

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: ARGO Petroleum Corp., *et al.*
Date of Filing: October 19, 1999.
Case Number: VEF–0031, *et al.*

On October 29, 1999, the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE)issued a Proposed Decision and Order (PDO) concerning a Petition for Implementation of Special Refund Procedures filed by the DOE's Office of General Counsel for Federal Litigation. The PDO is issued as Appendix B to the present determination.

In the PDO, we invited comments regarding a proposal to disburse $9,126,580.83 plus interest, received from 17 firms that sold crude oil during the period August 17, 1973 through January 1981. The names of the firms and the amounts received from each are set forth in Appendix A to this determination. The funds were remitted in order to settle actual or alleged violations of the DOE's mandatory petroleum price and allocation regulations. 10 CFR Parts 211 and 212. We allowed a 30-day period in which to provide comments regarding the manner in which these funds would be disbursed. The comment period is now closed. We received no comments regarding our proposal. We are therefore issuing final procedures for disbursing the funds.

The monies, including all additional interest that has accrued since the issuance of the October 29 PDO, will be disbursed as set forth in the appended PDO. As the PDO states, the funds will be disbursed as provided for in the DOE's Statement of Modified Restitutionary Policy in Crude Oil Cases. 51 Fed. Reg. 27899 (August 4, 1986) (the SMRP). Therefore, the funds will be divided as follows: 20 percent will be reserved for direct restitution to injured parties; the remaining 80 percent will be disbursed in equal shares to the states and the federal government for indirect restitution. As stated above, in this case, the total amount available for disbursement, not including interest, is $9,126,580.83. This fund shall be disbursed as follows: $1,825,316.16 plus 20 percent of all accrued interest as of the date of the funds transfer shall be deposited into the DOE interest-bearing account for crude oil overcharge

refund claimants; $3,650,632.33 plus 40 percent of all accrued interest as of the date of the funds transfer shall be deposited into the DOE interest bearing escrow account for the states; $3,650,632.33, plus 40 percent of all accrued interest as of the date of the funds transfer shall be deposited into the DOE interest bearing account for the federal government.

As we indicated in the PDO, the refund period for filing claims for these crude oil overcharge funds is closed. Therefore, no applications for refund for these funds may be filed. This final Decision and Order simply provides for the appropriate disposition of funds that have recently become available. It will affect only refund applications that have already been timely filed with the OHA. Accordingly, the Proposed Decision and Order, Appendix B to this determination, is hereby issued as a final Decision and Order of the Department of Energy.

It Is Therefore Ordered That:

(1) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Office of the Controller of the Department of Energy shall take all steps necessary to transfer the funds remitted by the 17 firms listed in Appendix A to this determination, plus accrued interest, pursuant to Paragraphs (2), (3), and (4) below.

(2) The Director of Special Accounts and Payroll shall transfer $3,650,632.33, plus 40 percent of all accrued interest on the funds referenced in Paragraph (1) above, into the subaccount denominated "Crude Tracking—States," Number 999DOE003W.

(3) The Director of Special Accounts and Payroll shall transfer $3,650,632.33, plus 40 percent of all accrued interest on the funds referenced in Paragraph (1) above, into the subaccount denominated "Crude Tracking—Federal," Number 999DOE002W.

(4) The Director of Special Accounts and Payroll shall transfer $1,825,316.16, plus 20 percent of all accrued interest on the funds referenced in Paragraph (1) above, into the subaccount denominated "Crude Tracking—Claimants 4," Number 999DOE010Z.

(5) No Applications for Refund may be submitted in connection with this Decision and Order.

(6) This is a final Order of the Department of Energy.

Dated: March 28, 2000.

George B. Breznay,

Director, Office of Hearings and Appeals.

APPENDIX A

Name of firm	OHA case No.	Consent order tracking system No. (COTS)	Amount	
			Principal	With interest through 9/30/99
ARGO Petroleum Corp	VEF–0031	940C0089W	$80,835.18	$86,841.36
Don E. Pratt Oil Co	VEF–0036	740C01204W	235,000.00	394,878.05
Beta Energy Corp	VEF–0034	6C0X00260W	32,818.34	45,037.34
AWECO, Inc. & Hargis, Billy K	VEF–0032	6A0X00231W	665,908.68	968,874.23
B.M. Hester	VEF–0033	660C00646W	25,000.00	36,649.53
General Atlantic Petrl & General Klotz	VEF–0038	650X00359W	107,790.21	123,262.93
Glen A. Martin	VEF–0039	610C000478W	13,583.80	18,560.48
Intercoastal Operating Co. & L.E. Lewis	VEF–0041	600C20082W	95,000.00	159,348.46
Kelly Trading Co. & Reed, M.L	VEF–0043	650X00350W	182,000.00	265,665.83
Martin Exploration Co	VEF–0044	640C00406W	3,917.32	5,989.39
Pel-Star Energy	VEF–0047	6A0X00277W	30,263.70	51,178.22
Petro-Thermo	VEF–0048	6A0X00301W	42,772.32	75,698.67
Petroleum Mgmt., Inc	VEF–0049	422C00066W	71,319.67	117,570.09
Polaris Production Co	VEF–0050	670C00229W	71,726.16	109,151.96
Road Oil Sales	VEF–0051	N00S9809W	8,950.58	15,485.49
Tominson Petrl., Inc	VEF–0054	65X00318W	7,406,694.87	10,027,185.48
United Independent Oil Co. & Peter Hirshburg	VEF–0055	N00S90461W	75,000.00	159,621.07
Total			9,126,580.83	12,660,998.58

Appendix B

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: ARGO Petroleum Corp., *et al.*

Date of Filing: October 19, 1999.

Case Number: VEF–0031, *et al.*

In accordance with the procedural regulation of the Department of Energy (DOE), a DOE enforcement official may file a request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

In this Decision and Order, we consider a Petition for Implementation of Special Refund Procedures filed by the DOE's Office of General Counsel for Federal Litigation (OGC) on October 19, 1999. The funds at issue in this case were obtained from 17 firms that sold crude oil during the period August 1973 through January 1981. These firms remitted moneys to the DOE to settle actual or alleged violations of the DOE's mandatory petroleum price and allocation regulations set forth at 10 CFR Parts 211 and 212. The sums submitted by each firm, including accrued interest are set forth in the Appendix to this Decision. The total amount remitted, including interest through September 30, 1999, is $12,660,998.58. This Decision and Order sets out the OHA's proposed procedures to distribute those funds.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Office of Enforcement,* 9 DOE ¶ 82,508 (1981), and *Office of Enforcement,* 8 DOE ¶ 82,597 (1981). We have considered the OGC's request to implement Subpart V procedures with respect to the monies received from the 17 firms named in the Appendix and have determined that such procedures are appropriate.

On July 28, 1986, the DOE issued a *Statement of Modified Restitutionary Policy in Crude Oil Cases,* 51 Fed. Reg. 27899 (August 4, 1986) (the SMRP). The SMRP, issued as a result of a court-approved Settlement Agreement In re: *The Department of Energy Stripper Well*

Exemption Litigation, M.D.L. No. 378 (D. Kan. 1986), reprinted in 6 Fed. Energy Guidelines ¶ 90,501 (The Stripper Well Agreement), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution. Twenty percent of the funds will be used for direct restitution to claimants who were injured by actual or alleged crude oil violations.

The OHA has applied these procedures in numerous cases. *E.g.*, *New York Petroleum Inc.*, 18 DOE ¶ 85,435 (1988); *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988); *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988). The procedures have been approved by the United States District Court for the District of Kansas, as well as the Temporary Emergency Court of Appeals. We will not reiterate those procedures here. They are by now well known and, further, the period for filing refund claims for crude oil overcharge funds closed on June 30, 1995. 60 Fed. Reg. 19914–15 (April 21, 1995).

Accordingly, we propose to reserve the full twenty percent of the available alleged crude oil violation amounts, $2,532,199.72, for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured parties. As stated above, no new applications for refund for those monies will be accepted, since the claims period has closed. The funds will be added to the general crude oil overcharge pool available for direct restitution.

Under the terms of the SMRP, we propose that the remaining eighty percent of the alleged crude oil violation amounts subject to this Decision, or $10,128,798.86, should be disbursed in equal shares to the states and federal government for indirect restitution. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It Is Therefore Ordered That: The refund amounts remitted to the Department of Energy by the firms listed in the Appendix to this Decision and Order will be distributed in accordance with the foregoing Decisions.

APPENDIX

Name of firm	OHA case No.	Consent order tracking system No. (COTS)	Amount	
			Principal	With interest through 9/30/99
ARGO Petroleum Corp	VEF–0031	940C0089W	$60,835.18	$86,841.36
Don E. Pratt Oil Co	VEF–0036	740C01204W	235,000.00	394,878.05
Beta Energy Corp	VEF–0034	6C0X00260W	32,818.34	45,037.34
AWECO, Inc. & Hargis, Billy K	VEF–0032	6A0X00231W	665,908.68	968,874.23
B.M. Hester	VEF–0033	660C00647W	25,000.00	36,649.53
General Atlantic Petrl & General Klotz	VEF–0038	650X00359W	107,790.21	123,262.93
Glen A. Martin	VEF–0039	610C000478W	13,583.80	18,560.48
Intercoastal Operating Co. & L.E. Lewis	VEF–0041	600C20082W	95,000.00	159,348.46
Kelly Trading Co & Reed, M.L	VEF–0043	650X00350W	182,000.00	265,665.83
Martin Exploration Co	VEF–0044	640C00406W	3,917.00	5,989.39
Pel-Star Energy	VEF–0047	6A0X00277W	30,263.70	51,178.22
Petro-Thermo	VEF–0048	6A0X00301W	42,772.32	75,698.67
Petroleum Mgmt., Inc	VEF–0049	422C00066W	71,319.67	117,570.09
Polaris Production Co	VEF–0050	670C00229W	71,726.16	109,151.96
Road Oil Sales	VEF–0051	N00X98090W	6,950.58	15,485.49
Tomlinson Petrl., Inc	VEF–0054	650X00318W	7,406,694.87	10,027,185.48
United Independent Oil Co. & Peter Hirshburg	VEF–0055	N00S90461W	75,000.00	159,621.07
Total			9,126,580.83	12,660,998.58

[FR Doc. 00–8326 Filed 4–5–00; 8:45 am]
BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6571–2]

Request for Nominations to the National Advisory Council for Environmental Policy and Technology (NACEPT)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The Environmental Protection Agency (EPA) is inviting nominations to fill vacancies on its National Advisory Council for Environmental Policy and Technology (NACEPT). The Agency is seeking qualified senior level decision makers from diverse sectors throughout the U.S. to be considered for appointments. Nominations will be accepted until close of business April 28, 2000.

ADDRESSES: Submit nominations to: Mr. Gordon Schisler, Deputy Director, Office of Cooperative Environmental Management, U.S. Environmental Protection Agency, 1601-A, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, PL 92463. NACEPT provides advice and recommendations to the Administrator and other EPA officials on a broad range of domestic and international environmental policy issues.

The Administrator of EPA has asked NACEPT to address several policy and regulatory components associated with Human Resource Development Planning, Information and Technology Planning and Strategic Planning.

NACEPT consists of a representative cross-section of EPA's partners and principle constituents who provide advice and recommendations on policy issues and serve as a sounding board for

new strategies that the Agency is developing.

Maintaining a balance and diversity of experience, knowledge, and judgement is an important consideration in the selection of members. Potential candidates should possess the following qualifications:

Occupy a senior position within their organization.

Broad experience outside of their current position.

Experience dealing with public policy issues.

Membership in broad-based networks.

Extensive experience in the environmental field.

Recognized expert in the subject matter to be addressed by NACEPT.

EPA is seeking nominees for representation from all sectors, especially, state, local and tribal agencies, industry, academia, environmental justice organizations, grassroots organizations, and NGOs.

Nominations for membership must include a resume and short biography describing the educational and professional qualifications of the nominee and the nominee's current business address and daytime telephone number.

FOR FURTHER INFORMATION CONTACT: Ms. Gwendolyn Whitt, Designated Federal Officer for NACEPT, U.S. Environmental Protection Agency, 1601–A, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–5982.

Dated: March 29, 2000.

Gwendolyn Whitt,

Designated Federal Officer.

[FR Doc. 00–8401 Filed 4–5–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00291; FRL–6552–4]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) will be held on April 26–28, 2000, in Piscataway, NJ. The NAC/AEGL Committee has now instituted the development of AEGLs for 10-minute exposure periods for all chemicals scheduled for AEGL development. This 10-minute exposure period will be in addition to the current exposure periods of 30-minutes, 1 hour, 4 hours, and 8 hours. The new 10-minute numbers will be developed for all chemicals previously addressed by the NAC/AEGL Committee, as well as all future chemicals to come before the NAC/AEGL Committee. At this meeting, the NAC/AEGL Committee will address, as time permits, the various aspects of the acute toxicity and the development of AEGLs for all exposure periods for the following chemicals: Agent HD (sulfur mustard); bromine; cis- and trans-1,2-dichloroethylene; HCFC-141b; HFC-134a; hydrogen cyanide; hydrogen fluoride; hydrogen sulfide; Otto fuel II, uranium hexafluoride; phosphine; 1,1,1-trichloroethane. There will also be a discussion of and the development of 10-minute AEGL values as time permits for the following chemicals for which the other exposure periods have already been developed at the proposed level: Allyl amine; carbon tetrachloride; chlorine trifluoride; crotonaldehyde; cyclohexylamine; dimethyldichlorosilane; epichlorohydrin; ethylenediamine; ethylene oxide; ethyleneimine; hydrogen chloride; iron pentacarbonyl; methyl isocyanate; methyl mercaptan; methyltrichlorosilane; nickel carbonyl; nitric acid; peracetic acid; phosgene; phosphorus oxychloride; phosphorus trichloride; piperidine; propyleneimine; toluene; and toluene diisocyanate.

DATES: A meeting of the NAC/AEGL Committee will be held from 10 a.m. to 5 p.m. on April 26, 2000; from 8:30 a.m. to 5:30 p.m. on April 27, 2000; and from 8:30 a.m. to 12:30 p.m. on April 28, 2000.

ADDRESSES: The meeting will be held at the Environmental and Occupational Health Sciences Institute (EOHSI), 170 Frelinghuysen Rd., Piscataway, NJ. See Unit II. for visitor registration procedures, parking information, and travel directions.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov

For technical information contact: Paul S. Tobin, Designated Federal Officer (DFO), Office of Prevention, Pesticides and Toxic Substances (7406), Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–1736; e-mail address: tobin.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–00291. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside

Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

II. Meeting Procedures

A. Presentations

For additional information on the scheduled meeting, the agenda of the NAC/AEGL Committee, or the submission of information on chemicals to be discussed at the meeting, contact the DFO listed under "FOR FURTHER INFORMATION CONTACT."

The meeting of the NAC/AEGL Committee will be open to the public. Oral presentations or statements by interested parties will be limited to 10 minutes. Interested parties are encouraged to contact the DFO to schedule presentations before the NAC/AEGL Committee. Since seating for outside observers may be limited, those wishing to attend the meeting as observers are also encouraged to contact the DFO at the earliest possible date to ensure adequate seating arrangements. Inquiries regarding oral presentations and the submission of written statements or chemical-specific information should be directed to the DFO.

B. Parking and Travel Directions

1. *Parking.* Visitors should contact the DFO to have their names added to the entry list. Visitors arriving by automobile must park in the designated parking spots for the meeting in Parking Lot #54. Parking Lot #54 is between Titsworth and Taylor Rds.

2. *Travel directions.* (Approximate mileage to EOHSI from): Exit #9, Route #287 (2.5 miles); Exit #9, New Jersey (NJ) Turnpike (6 miles); New York City (40 miles); New Brunswick Train Station (3.5 mile); Newark Airport (27 miles).

a. *From Route #287*—i. *Traveling south.* Exit at sign for "River Rd./Bound Brook/Highland Park" (Exit 9). Turn right off the exit ramp onto River Rd. (Route #18 South). At the fourth traffic light (approximately 2.5 miles from Route #287) turn left onto Hoes Lane. Continue down Hoes Lane to the "Y" in the road and the golf course will be on your right-hand side.

At the "Y" in the road bear right onto Frelinghuysen Rd. and EOHSI will be a short distance down the road on your left. You will need to pass EOHSI and continue to Allison Rd. Make a left onto Allison Rd., at the STOP sign make a right onto Bevier Rd. and continue to Taylor Rd. (one block) and make a left. Parking Lot #54 is on the left. There will be a security guard present; mention the meeting and you will be allowed to park. You then must walk back to EOHSI the way you drove. Once at EOHSI follow the posted signs to Conference Room C.

ii. *Traveling north.* Exit at the sign for "Bound Brook—Highland Park" (Exit #9). Turn left off the exit ramp onto River Rd. (514 Spur). At the fourth traffic light (approximately 2.8 miles from Route #287) turn left onto Hoes Lane. Continue from "Y" in the road by following the directions in Unit II.B.2.a.i.

b. *From the NJ Turnpike.* Take Exit #9—New Brunswick. Take Route #18 North—New Brunswick. Approximately 4 miles from the NJ Turnpike Route #18 will cross the Raritan River. Keep to the left of the bridge. Turn left at the traffic light at the end of the bridge onto River Rd. (Route #18 North). At the second traffic light turn right onto Hoes Lane. Continue from "Y" in the road by following the directions in Unit II.B.2.a.i.

c. *From Route #1 traveling south.* As you near the New Brunswick area, follow signs for Route #18 North—New Brunswick, bearing right at the Exxon Station. Continue from Route #18 North by following the directions in Unit II.B.2.b.

d. *From Garden State Parkway traveling south.* Take Exit #130 to Route #1 South. Continue from Route #1 South by following the directions in Unit II.B.2.c.

e. *From New Brunswick Railroad Station.* New Jersey (NJ) Transit trains make regular stops in New Brunswick. If you are traveling from Washington, DC or Baltimore, MD, you will have to change from AMTRAK to NJ Transit at either Philadelphia, PA or Trenton, NJ. Taxis are located outside the train station.

f. *From airports*—i. Newark International Airport is approximately 35 miles from EOHSI. Taxis are located outside the baggage claim area. Dispatchers will give you the fare to Piscataway, NJ before you enter the cab.

ii. La Guardia Airport is 50 miles from Piscataway, NJ. EOHSI is located at 170 Frelinghuysen Rd. on the Busch Campus of Rutgers University.

iii. JFK Airport is 54 miles from Piscataway, NJ. EOHSI is located at 170 Frelinghuysen Rd. on the Busch Campus of Rutgers University.

III. Future Meetings

A future meeting of the NAC/AEGL Committee is tentatively scheduled for summer 2000. The final date and location of this meeting and the chemicals to be discussed will be published in a future **Federal Register** notice.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Health and safety.

Dated: March 30, 2000.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 00–8542 Filed 4–5–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6573–2]

Public Meeting To Discuss Infrastructure Issues Associated With Alternative-Fueled Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA) intends to hold a public workshop to discuss issues associated with alternative fueled vehicles (AFV's) (*i.e.* vehicles powered by fuels other than gasoline). The purpose of this workshop is to facilitate an exchange of information focusing on issues relating to infrastructure development and creating a sustainable market for AFV's. Members of the public are invited to attend as observers as well as to participate in the discussion.

DATES: The EPA Infrastructure Workshop will be held in San Diego, California on May 10, 2000, from 12:30 to 4:30 p.m. (The date and location were selected to coordinate with the Department of Energy's National Clean Cities Conference which begins May 7, in San Diego).

ADDRESSES: Questions about the workshop should be addressed to: Barry Garelick (202–564–9028; *garelick.barry@epa.gov*) 401 M Street, SW. (6406J), Washington, DC. (20460) or Sally Newstead (734–214–4474; *newstead.sally@epa.gov*) 2000 Traverwood Dr., Ann Arbor, MI (48105). The workshop will be held at the US Grant Hotel, 326 Broadway, San Diego, CA, 92101, 800–334–6957 or 619–232–3121. The workshop registration form can be down loaded from the alternative fuels website: *http://www.epa.gov/otaq/consumer/fuels/altfuels/altfuels.htm.*

FOR FURTHER INFORMATION CONTACT: Barry Garelick (202) 546–9028 or Sally Newstead (734) 214–4474.

SUPPLEMENTARY INFORMATION: As this Administration has long recognized, one

of the keys to moving forward environmentally is moving forward technologically. Progress towards sustainable reductions in emissions from the mobile source sector is inextricably linked to technological advancement. Motor vehicles are significant contributors to ground-level ozone, the principal harmful ingredient in smog. They also emit other pollutants, including particulate matter and air toxics, and motor vehicle emissions contribute to public health problems such as asthma and other respiratory problems.

The rise in vehicle sales and vehicle miles traveled each year has consistently led to increases in the aggregate emissions from the mobile source sector despite progress in reducing emissions from gasoline-powered, convention motor vehicles. This places increasing importance on technological developments, including vehicles powered by fuels other than gasoline. There are a number of types of alternative fuel vehicles (AFV's) in production and under development. In the United States, manufacturers are already selling various types of AFV's including vehicles powered by electricity, compresses natural gas, methanol and ethanol. The last year has also seen dramatic developments in hybrid-electric vehicle and fuel cell technology.

EPA has noted that the development of a sustainable market for AFV's is a key component of any plan to achieve the air quality gains that are possible from the use of AFV's; developing the infrastructure necessary for AFV's is an important part in developing that sustainable market. For example, drivers may be reluctant to purchase electric vehicles if they have concerns about the availability of recharging stations. EPA believes that the solutions to infrastructure development needs can be found by a variety of stakeholders working together to identify useful steps that might best be taken by working in partnership with each other.

At this workshop, the Agency's intent is to gather other Administration officials (both environmental and purchasing agent), auto and utility industry representatives, environmentalists, and other interested parties. In addition to providing a opportunity to briefly discuss the barriers that limit development, it will provide a forum to begin the process of defining "next steps" that public and private sector parties can exercise in overcoming the barriers to developing an alternative fuels infrastructure. Issues to be explored include: (1) What sectors of vehicles should be targeted for an alternative fuels infrastructure (*i.e.*, heavy-duty vs light-duty;) (2) what will be the effect of Tier 2 standards on alternative fuel vehicles; (3) what market incentives and legislative actions that have worked well and are "transferable". Additionally, EPA is interested in learning what programs have been successful in promoting the use of alternative fuel vehicles.

This workshop is intended to be the type of workshop that the northeastern states and the auto industry had tentatively agreed to in the ATV Agreement in the National LEV MOU that was never finalized.[1] EPA believed that the ATV agreement would have been a productive way of creating a sustainable market for AFV's through cooperative working relationships. The Agency intends that the workshop will draw on the expertise of the northeastern states and other areas (such as California). EPA also welcomes the participation by other states. Anyone with suggestions for this workshop should contact Barry Garelick at 202/546–9028.

Dated: March 30, 2000.

Margo T. Oge,

Office Director for Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 00–8540 Filed 4–5–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6572–1]

Meeting of the Mobile Sources Technical Review Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Act, Public Law 92–463, notice is hereby given that the Mobile Sources Technical Review Subcommittee of the Clean Air Act Advisory Committee will meet in a regular quarterly session. This is an open meeting. The theme will be "Nonroad Vehicles and Engines." The meeting may include presentations on the impact and significance of such sources on air quality and public health from several perspectives, *e.g.*, EPA, CARB and the regulated industry, an update on EPA's computer model and a discussion of regulatory initiatives. The preliminary agenda for this meeting and draft minutes from the previous one are available from the Subcommittee's website at: http://transaq.ce.gatech.edu/epatac

DATES: Wednesday, April 12, 2000 from 9 a.m. to 3:15 p.m. Registration begins at 8:30 am.

ADDRESSES: The meeting will be held at the Radisson Hotel Old Town Alexandria, 901 N. Fairfax, Alexandria, Virginia, 22314. The facility is located less than two miles south of National Airport. The telephone number is (703) 683–6000. Space for observers is available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: For technical information:, Mr. John T. White, Alternate Designated Federal Officer, Certification and Compliance Division, U.S. EPA 2000 Traverwood Drive, Ann Arbor, MI 48105, Ph: 734/214–4353, FAX: 734/214–4821 email: white.johnt@epa.gov

For logistical and administrative information: Ms. Mary F. Green, FACA Management Officer, U.S. EPA, 2000 Traverwood Drive, Ann Arbor, Michigan, Ph: 734/214–4411, Fax: 734/214–4053, email: green.mary@epa.gov

For background on the Subcommittee: http://transaq.ce.gatech.edu/epatac. Individuals or organizations wishing to provide comments to the Subcommittee should submit them to Mr. White at the address above by April 7. The Mobile Sources Technical Review Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

SUPPLEMENTARY INFORMATION: During this meeting, the Subcommittee may also hear progress reports from some of its workgroups (including review and approval of the recommendations of the On-Board Diagnostics Workgroup prior to their submission to the CAAAC) as well as updates and announcements on activities of general interest, *e.g.*, status of relevant EPA regulations, schedule for the release of MOBILE6, and an update on the reorganization of the Office of Transportation and Air Quality.

[1] In the negotiations between the northeastern states and the auto industry on EPA's National Low Emission Vehicle (NLEV) program, the states and the auto industry had tentatively agreed to a process to facilitate discussion on the creation of a sustainable market for advanced technology vehicles (ATV Agreement). (This tentative ATV Agreement was to be included in a Memorandum of Understanding (MOU) that was to form the basis for the NLEV program, but the ATV Agreement was not intended to be included in the NLEV regulations. However, the parties ended discussions and decided not to finalize the MOU, which would have contained the ATV agreement.)

Dated: March 30, 2000.

Donald Zinger,

Acting Director, Office of Transportation and Air Quality.

[FR Doc. 00–8408 Filed 4–5–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6571–6]

Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that three committees of the US EPA Science Advisory Board (SAB) will meet on the dates and times noted below. All times noted are Eastern Daylight Time. All meetings are open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

1. Ecological Processes and Effects Committee (EPEC)—April 25–26, 2000

The Ecological Processes and Effects Committee (EPEC) will meet on April 25-26, 2000 in Conference Room 5530 Ariel Rios Building (North Entrance—adjacent to the entrance to the Federal Triangle Metro Stop), 1200 Pennsylvania Avenue, NW, Washington, DC. The meeting will be open to the public, with seating on a first-come, first-served basis. The meeting will convene at 9:00 am on April 25 and at 8:30 am on April 26, and will end no later than 5:30 pm on each day.

The purpose of the meeting is for the Committee to conduct a self-initiated project to offer advice to the Agency on the content and design of an ecological report card. The Committee will discuss a proposed conceptual framework for reporting on ecological condition, and will apply the framework to several Agency examples or programs. As background to the project, the Committee was briefed in July 1998 by various Agency offices on efforts to develop performance measures and environmental indicators. The output of the Committee deliberations is expected to be a report to the Agency describing a proposed framework, with illustrative case examples relevant to EPA programs.

For Further Information—The proposed meeting agenda is available from Ms. Mary Winston, Management Assistant, Committee Operations Staff, Science Advisory Board (1400A), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington DC 20460, telephone (202) 564–4538, fax (202) 501–0582, or via e-mail at: winston.mary@epa.gov.

Any member of the public wishing to submit comments must contact Ms. Stephanie Sanzone, Designated Federal Officer (DFO) for the Committee, *in writing* no later than 4:00 pm on April 17, 2000 at: EPA Science Advisory Board (1400A), 1200 Pennsylvania Avenue, NW; Washington DC 20460; fax (202) 501–0582; or e-mail at: *sanzone.stephanie@epa.gov*. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. Questions concerning the meeting can be directed to Ms. Sanzone at (202) 564–4561.

2. Radiation Advisory Committee (RAC)—April 25–27, 2000

The Radiation Advisory Committee (RAC) will meet on Tuesday, April 25 through Thursday, April 27, 2000. The meeting will convene at 9:00 a.m. each day in Conference Room 6530 Ariel Rios Building (North Entrance—adjacent to the entrance to the Federal Triangle Metro Stop), 1200 Pennsylvania Avenue, NW, Washington, DC and adjourn no later than 5:30 pm the first and second day, and no later than 3:30 pm the third day.

At this meeting, the RAC will: (a) Conduct an advisory on the GENII—Version 2 computer model, (b) conduct an advisory on an approach for uranium mining Technologically Enhanced Naturally Occurring Radioactive Material (TENORM), and (c) conduct a consultation on scenarios for radiological exposure to sewage sludge.

During this meeting, the RAC intends to draft its advisory on the GENII-Version 2 computer model under development by the Office of Radiation and Indoor Air (ORIA) for conducting radiation exposure and risk assessments. This model uses the FRAMES modular system. The charge questions to be answered include, but are not limited to the following:

(a) Is FRAMES a reasonable platform for supporting an integrated system of tools for meeting the diverse environmental modeling needs of ORIA?

(b) Are the GENII v.2 terrestrial transport (exposure and intake modules) and air dispersion models adequate? and

(c) Are the examples and documentation provided with the software adequate and helpful? What advice does the RAC have on ways to tabulate and present the output?

During the meeting the RAC also intends to draft its advisory on Technologically Enhanced Naturally Occurring Radioactive Material (TENORM). The Agency is asking the RAC's advice on the adequacy of EPA's proposed approach for characterizing TENORM, and whether EPA is appropriately applying this approach in the technical report for uranium mining TENORM which is under development. The charge questions to be answered include, but are not limited to the following:

(a) Is EPA's general approach for characterizing TENORM in a given technical report adequate;

(b) Has the general approach been appropriately applied for uranium mining TENORM?; and

(c) Is the risk assessment approach, as outlined, adequate for evaluating risks from uranium mining TENORM? In particular, have the key exposure scenarios been considered?

For Further Information—Members of the public wishing further information concerning the meeting, such as copies of the proposed meeting agenda, or who wish to submit written comments should contact Mrs. Diana L. Pozun at (202) 564–4544; fax (202) 501–0582, or via e-mail at: *pozun.diana@epa.gov*. Members of the public who wish to make a brief oral presentation to the Committee must contact (by letter or by fax—see contact information below) no later than 12 noon Daylight Time, Wednesday, April 19, 2000 in order to be included on the Agenda. Public comments will be normally limited to ten minutes per speaker or organization. The request should identify the name of the individual making the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (*e.g.*, overhead projector, 35mm projector, chalkboard, easel, etc), and at least 35 copies of an outline of the issues to be addressed or of the presentation itself. For further information, contact Ms. Melanie Medina-Metzger, Designated Federal Officer for the Radiation Advisory Committee, Science Advisory Board (1400A), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, phone (202) 564–5987; fax (202) 501–0582; or via e-mail at: medina-metzger.melanie@epa.gov.

For questions pertaining to the GENII v.2 model, please contact Dr. Anthony Wolbarst (6608J), ORIA, U.S. Environmental Protection Agency, 1200

Pennsylvania Avenue, NW, Washington, DC 20460, tel. (202) 564–9392; fax (202) 565–2042; or e-mail at: *wolbarst.anthony@epa.gov*. For questions pertaining to the advisory on uranium mining TENORM, please contact Mr. Loren W. Setlow (6608J), ORIA, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, tel. (202) 564–9445; fax (202) 565–2065; or e-mail at: setlow.loren@epa.gov. For questions pertaining to the consultation on sewage sludge scenarios or on any other topics discussed between the SAB's RAC and the ORIA staff, please contact Dr. Mary E. Clark, (6601J), ORIA, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, tel. (202) 564–9348; fax (202) 565–2043; or e-mail at: *clark.marye@epa.gov*.

3. Executive Committee (EC)—May 1, 2000

The Executive Committee (EC) of the Science Advisory Board (SAB) will conduct a public teleconference meeting on Monday, May 1, 2000 between the hours of 1:00 and 3:00 pm Eastern Daylight Time. The meeting will be coordinated through a conference call connection in Room 6013, USEPA, Ariel Rios Building (North Entrance—adjacent to the entrance to the Federal Triangle Metro Stop), 1200 Pennsylvania Avenue, NW, Washington, DC. The public is encouraged to attend the meeting in the conference room noted above, however, the public may also attend through a telephonic link, *if lines are available*. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Priscilla Tillery-Gadson no later than one week prior to the meeting (by April 24, 2000) at (202) 564–4533, or via e-mail at *tillery.priscilla@epa.gov*.

Purpose of the Meeting—The EC will take action on available reports from its Committees and Subcommittees, which may include the following:

(a) Drinking Water Committee "Comments on EPA's Draft Proposal on a Long-Term 1 Enhanced Surface Water Treatment and Filter Backwash Rule"

(b) Residual Risk Subcommittee "Advisory on the USEPA's Analysis of the Residual Risks of Lead Smelters"

(c) Environmental Engineering Committee "Commentary on Waste Re-Use"

Availability of Review Materials—All reports available for action by the EC will be posted on the SAB Website (http://www.epa.gov/sab) at least one week prior to the meeting.

For Further Information—Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments must contact Dr. Donald Barnes, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4533; fax (202) 501–0582; or via e-mail at *barnes.don@epa.gov*. Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Dr. Barnes no later than noon Daylight Time on April 24, 2000.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

General Information—Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY1999 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

Meeting Access—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: March 29, 2000.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 00–8403 Filed 4–5–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6572–2]

Proposed CERCLA Administrative Cost Recovery Settlement for the C&J Disposal Superfund Site, Town of Eaton, Madison County, NY

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement, entered into pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), for recovery of past response costs concerning the C & J Disposal Superfund Site ("Site") located in the Town of Eaton, Madison County, New York, with the following settling parties: Estate of Charles Picariello, Geneso (a/k/a James) Picariello, C & J Leasing Company and The Birge Company. The settlement requires the settling parties to pay $90,000.00 to the EPA Hazardous Substance Superfund in reimbursement of past response costs incurred with respect to the Site. The settlement includes a covenant not to sue the settling party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), for all costs incurred at or in connection with the Site by the United States through the effective date of the settlement agreement. For thirty (30) days following the date of publication of this document, the U.S. Environmental Protection Agency ("EPA" or "Agency") will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to

the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA, Region II, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before May 8, 2000.

ADDRESSES: The proposed settlement is available for public inspection at the EPA, 290 Broadway, New York, New York 10007–1866. A copy of the proposed settlement may be obtained from Lee A. Speilmann, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, 17th Floor, 290 Broadway, New York, New York 10007–1866. Comments should reference the C & J Disposal Superfund Site located in Eaton, New York, Docket No. CERCLA–02–99–2005, and should be addressed to Lee A. Spielmann, Assistant Regional Counsel, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th floor, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Lee A. Spielmann, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3222.

Dated: March 27, 2000.

William J. Muszynski,

Regional Administrator, Region 2.

[FR Doc. 00–8532 Filed 4–5–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–211044A; FRL–6496–6]

TSCA Section 21 Petition; Response to Citizens' Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On December 27, 1999, EPA received a petition under section 21 of the Toxic Substances Control Act (TSCA) from People for the Ethical Treatment of Animals (PETA) on its own behalf and on behalf of four other organizations. The petition requests that EPA initiate TSCA rulemaking proceedings with respect to all chemicals included on the HPV (High Production Volume chemical) Challenge Program list as updated through the date of initiation of the requested proceedings. Specifically, the petition requests that EPA issue a TSCA section 8(a) Preliminary Assessment Information Reporting (PAIR) rule and a Health and Safety Data Reporting rule under TSCA section 8(d). For the reasons set forth in this notice, EPA has denied the petition to initiate rulemaking.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Frank D. Kover, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–8130; e-mail address: ccd.citb@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of particular interest to U.S. chemical manufacturers (defined by statute to include importers) and processors. Because other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A copy of the petition and its supplement are available on EPA's homepage at http://www.epa.gov/chemrtk/sc21main.htm.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–211044A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

II. Background

A. What is a TSCA Section 21 Petition?

Section 21 of TSCA allows citizens to petition EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under TSCA sections 4, 6, or 8 or an order under TSCA sections 5(e) or 6(b)(2). A section 21 petition must set forth facts which the petitioner believes establish the need for the action requested. EPA is required to grant or deny the petition within 90 days of its receipt. If EPA grants the petition, the Agency must promptly commence an appropriate proceeding. If EPA denies the petition, the Agency must publish its reasons for the denial in the **Federal Register**. Within 60 days of denial or no action, petitioners may commence a civil action in a U.S. District Court to compel initiation of the requested rulemaking. When reviewing a petition for a new rule, as in this case, the court must provide an opportunity for *de novo* review of the petition. Pursuant to TSCA section 21(b)(4)(B)(ii), "if the petitioner demonstrates to the satisfaction of the court by a preponderance of evidence that ... there is a reasonable basis to conclude that the issuance of such [TSCA section 8 rules] is necessary to protect health or the environment against an unreasonable risk of injury to health or the environment" the court can order EPA to initiate the requested action.

B. What Action is Requested Under This TSCA Section 21 Petition?

On December 27, 1999, EPA received a TSCA section 21 petition from PETA on its own behalf and on behalf of the Physicians Committee for Responsible Medicine (PCRM), the Doris Day Animal League (DDAL), the International Marine Mammal Project of Earth Island Institute, and the National Anti-Vivisection Society (NAVS). The petitioners supplemented their original petition with additional references in a letter, dated January 19, 2000. The petition and its supplement are in the docket and are also available at http://www.epa.gov/chemrtk/sc21main.htm.

The petition asks EPA to initiate rulemaking proceedings with respect to all chemicals included in the HPV Challenge Program as updated through the date of initiation of the requested proceedings for the issuance of :

1. A TSCA section 8(a) PAIR rule (40 CFR part 712).

2. A Health and Safety Data Reporting rule under TSCA section 8(d) (40 CFR part 716).

The petitioners further petition that "[s]uch rule[s] should neither be limited to participants in the Challenge Program nor exclude substances or mixtures as to which a participant has enrolled in the Program." While the petitioners recognize that companies are obligated under TSCA section 8(e) to report to the Agency information suggesting that a chemical poses a substantial risk to health or the environment, they are asking the Agency to initiate the requested rulemakings in order to obtain essentially exculpatory information from companies that might "exonerate" a chemical so that additional testing would not be needed.

This request is based in part upon assertions that regulations requiring the submission of existing hazard test data provide a better approach for implementing the HPV Challenge Program and associated TSCA section 4 HPV test rule(s) than the approach currently utilized, namely, the voluntary submission of relevant existing screening-level hazard test data in connection with sponsorship of chemicals under the HPV Challenge Program or as comments on proposed HPV rule(s) under TSCA section 4. The HPV Challenge Program and associated test rule(s) are part of a broader Agency program called the "Chemical Right-to-Know Initiative." See http://www.epa.gov/chemrtk/ for a description of the Chemical Right-to-Know Initiative, including the HPV Challenge Program).

III. Disposition of Petition

EPA agrees with the underlying general premise of the petition, i.e., that relevant extant hazard data on the HPV Challenge Program chemicals, both "positive" data that indicate an effect and "negative" data that do not indicate an effect, should be considered by the Agency and made publicly available before any screening-level hazard testing (animal or non-animal) under the HPV Challenge Program or associated test rule(s) is conducted. However, EPA does not believe that it is required to grant the petition under the relevant standard set forth in TSCA section 21(b)(4)(B)(ii), namely that "there is a reasonable basis to conclude that the issuance of such a rule or order is necessary to protect health or the environment against an unreasonable risk of injury to health or the environment." The petition does not argue that the requested rules are necessary to protect against an unreasonable risk to health or the environment, but rather asserts that the TSCA sections 8(a) PAIR and 8(d) rules provide a more efficient and effective approach to obtaining existing screening-level hazard data on HPV Challenge Program chemicals. Regardless of the validity of this assertion, it would not compel the Agency to take the requested action under TSCA section 21.

Moreover, as a policy matter, EPA does not believe that the petitioner's approach is more efficient and effective than the approach already being pursued by the Agency under the HPV Challenge Program and associated test rule(s). It should be recognized that the presence of a chemical on the HPV Challenge Chemical List is based upon production and/or importation volume for chemicals reported under the 1990 Inventory Update Rule (IUR), see 40 CFR part 710 for the current IUR regulations, and does not imply that any additional testing or re-testing is needed. Following the guidance provided by EPA, a comprehensive search for and review of existing toxicity studies is occurring and will occur for each of the chemicals in the HPV Challenge Program and any other chemicals listed under associated HPV test rules (see EPA guidance documents on searching for chemical information and assessing adequacy of existing data at http://www.epa.gov/chemrtk/guidocs.htm). The collection of these data is already a fundamental part of both the HPV Challenge Program and associated test rule(s). EPA firmly believes that all stakeholders in the HPV Challenge Program share the goal of avoiding unnecessary testing, in particular the participants who are and will be gathering and making publicly available extant test data and only developing data where screening level data are needed. Further, considering the significant costs and resource burdens involved in animal testing EPA perceives no motivation on the part of program participants or others for re-testing where adequate data already exist.

Finally, EPA disagrees with petitioners' opinion that rules under TSCA sections 8(a) PAIR and 8(d) are necessary to fulfill the objectives of the HPV Challenge Program. The Agency bases its position on this matter on the following considerations:

A. The HPV Challenge Program Maximizes the Use of Existing Data

The concerns expressed by the petitioners regarding animal testing have been and continue to be recognized and carefully considered by EPA. Recognition of those concerns is reflected in the Agency's letter of October 14, 1999 (see http://www.epa.gov/chemrtk/ceoltr2.htm) to HPV Challenge Program participants. Specifically, the October 14 letter clearly already addresses the petitioners' concerns for maximizing the use of existing data. The second listed principle in the October 14 letter states that "Participants shall maximize the use of existing and scientifically adequate data to minimize further testing." The letter also indicates that EPA is firmly committed to reducing and eliminating the use of animals during any HPV chemical testing that must be conducted. EPA works domestically within the framework of the Interagency Coordinating Committee for the Validation of Alternative Methods (ICCVAM) and internationally with the Organization for Economic Cooperation and Development (OECD) to ensure the scientific acceptability of alternative test methods for regulatory as well as international data sharing purposes.

The tenth principle listed in the October 14 letter states that "Companies shall allow 120 days between the posting of test plans and the implementation of testing plans." Anyone (including companies not participating in the HPV Challenge Program as well as any other person) having relevant test data is encouraged to submit them during the 120-day review period following posting of test plans and "robust" (i.e., detailed) summaries of scientifically adequate extant data on the Internet. This approach, which has evolved through

interactions with stakeholders, expands the potential respondent community well beyond the domestic manufacturers (including importers) and processors who would be the only ones subject to any TSCA section 8(a) PAIR or 8(d) reporting requirements. As related in comments by an HPV Challenge Program participant "Domestic and foreign participants in voluntary programs have agreed to include all relevant unpublished and published data in publicly available 'robust summaries.' Indeed, it is expected that more data will be available through the 'robust summaries' which will include collaborative efforts with foreign producers, than through a Section 8 rule." (Ref. 1)

Further, EPA's implementation of the HPV Challenge Program has involved a proactive approach to increase by collaboration participants. EPA has sent letters to apparent duplicate sponsors notifying them of other participants' commitments and encouraging them to form consortia or initiate other data sharing efforts thus potentially avoiding duplicative testing by creating further opportunity to maximize use of existing data. The Agency has established an automatic e-mail notification feature on its ChemRTK website to update HPV Challenge Program information in real time for participants, as well as the public-at-large, thus taking further steps to avoid duplicative testing when "new" information becomes available. EPA's approach also broadens the scope to an international level, considering that many consortia and companies participating in the HPV Challenge Program are coordinating their data collection efforts on a global basis and are obtaining studies from companies and other sources throughout the world. EPA agrees with the Environmental Defense statement in their comments (Ref. 2) that "Even assuming *arguendo* that any appreciable quantity of unpublished exculpatory information actually exists there is every reason to believe that such information will be made available in the voluntary [HPV Challenge] program." EPA also agrees with HPV participant statements that they ". . . will not initiate new testing without thoroughly evaluating the need for such testing based on review of published and unpublished data. . . . In this highly competitive market, companies cannot afford to waste limited resources in conducting unwarranted or unnecessary testing; it is too costly." (Ref. 1)

B. Submissions Under the Requested Regulations Would Substantially Duplicate Data that HPV Challenge Program Participants Already have an Incentive to Provide

EPA believes the requested TSCA sections 8(a) PAIR and 8(d) regulatory actions are not necessary in order to obtain relevant existing hazard test data for chemicals included in the HPV Challenge Program because these data will be submitted (to the extent they exist) by participants and others under the HPV Challenge Program and by respondents to any associated TSCA section 4 rule(s). EPA believes that for the chemicals sponsored under the HPV Challenge Program, the data obtained via the requested TSCA sections 8(a) PAIR and 8(d) regulatory actions would substantially duplicate the extant data that program participants have already committed themselves to provide voluntarily under the HPV Challenge Program (where such data exist), and thus these actions would not supplement the program in a meaningful way. EPA also is guided by TSCA section 8(a)(2) which states that "To the extent feasible, the Administrator [EPA] shall not require . . . any reporting which is unnecessary or duplicative." As a further safeguard to avoid unnecessary testing, EPA encourages anyone (including companies not participating in the HPV Challenge Program as well as any other person) having relevant "positive" or "negative" hazard test data to submit such data during the 120-day review period for test plans as specified in the EPA letter of October 14, 1999.

A fundamental component of the HPV Challenge Program from its inception has been the principle that extant "positive" or "negative" test data should be submitted in order to satisfy specified program data needs and thereby obviate the need for certain testing under the program. This principle has been clearly stated from the initiation of the program (see http://www.epa.gov/chemrtk). Further, EPA developed detailed guidance for program participants to use when searching for existing hazard test data (see http://www.epa.gov/chemrtk/srchguid.htm). HPV Challenge Program participants have formally committed to prepare and make available for public inspection test plans that will include extant hazard test data in the form of "robust" (i.e. detailed) summaries before any needed new testing is initiated (see http://www.epa.gov/chemrtk). The content of these summaries has been accepted and adopted by the International Organization for Economic Cooperation and Development (OECD) for its Screening Information Data Set (SIDS) Program (for a description of the OECD HPV SIDS Program see http://www.oecd.org/ehs/HPV.htm).

HPV Challenge Program participants and other entities that would be subject to the associated TSCA section 4 test rule(s) have a strong incentive to provide the needed data voluntarily (if such data exist), and in particular where such data support a conclusion that some or all of the proposed testing is not necessary. Such responses have occurred with past TSCA section 4 test rules. The petitioners present no reason to support a presumption that chemical producers would not respond similarly in this case. By providing these extant hazard test data voluntarily, companies recognize that they will save themselves both money and time (see, e.g., Refs. 1, 3, 4).

EPA intends to consider including HPV chemicals that remain unsponsored in one or more TSCA section 4 test rules. Comments relating to the use of TSCA section 8 information gathering rules have been raised previously in association with developing TSCA section 4 test rules. The Agency previously responded ". . . that these sections of TSCA have served as useful tools in the gathering of production, release, health effects, and safety information for many previous test rule candidates. . . . However, the use of the rulemaking authorities under TSCA section 8 for information gathering purposes is not required prior to conducting rulemaking pursuant to TSCA section 4. . . and conventional rulemaking would not have produced section 8(a) and (d) data on a timely basis. Furthermore, any available studies could have been submitted to EPA in response to the proposed section 4 rule" published in the **Federal Register** of June 15, 1988 (53 FR 22300, 22304). Thus, based on its past experience in implementing TSCA section 4 rules, EPA believes that potentially regulated persons will have a strong incentive during any proposed HPV rule comment period to submit any existing data, of which the Agency may not be aware, that are relevant to the specified test rule endpoints. In so doing, these persons may demonstrate to EPA that proposed testing on a particular endpoint for a chemical is not needed, and EPA may eliminate such testing from the rule.

C. The Requested Regulations Would be a Less Effective and Efficient Means to Gather Extant Screening-level Hazard Data on HPV Chemicals than the HPV Challenge Program, which is Similar to the Internationally Accepted OECD SIDS Program

Over the past several years, EPA and the regulated community have expressed a general preference for voluntary approaches, where feasible, in data gathering under TSCA (as opposed to regulatory approaches, such as the regulations requested by this petition). The voluntary HPV Challenge Program represents one of the most successful voluntary programs to collect chemical toxicity and fate data ever developed by EPA in cooperation with industry and others. To date, the HPV Challenge Program has resulted in commitments by 437 companies, acting individually or through 155 consortia, to provide basic toxicity and fate information on 2080 HPV industrial chemicals, either by submitting extant data in the form of "robust" summaries, or by agreeing to conduct testing where extant data are not available. The success of the HPV Challenge Program is due to the benefits that accrue under voluntary programs that would not be available under regulatory approaches. These benefits include but are not limited to: Less resource intensive, less adversarial, needed information will be submitted sooner and will be available to the public sooner, and stakeholders are provided more effective interactive input than a similar program developed solely via regulatory means.

EPA believes that the success of the HPV Challenge Program could be undermined by the promulgation of the requested TSCA sections 8(a) PAIR and 8(d) rules, which, as described in Unit III.B. would largely duplicate data that companies have already committed to provide voluntarily under the program, and which could also delay the program significantly due to the time needed to promulgate the regulations (potentially years), permit an industry response, and allow EPA to review the information. For example, if a TSCA section 8(d) rule was promulgated for all HPV Challenge Program chemicals, the rule would require the submission of complete copies of all unpublished health and safety studies for program chemicals, rather than "robust" summaries of existing studies as required in the HPV Challenge Program. Given the scope of the program, the standardized format for "robust" summaries is a much more useful format for access and review by EPA and others, including the public-at-large for purposes of the program. By contrast, with a TSCA section 8(d) rule, the Agency would have to manage the information, complete a full review of the studies, and extract the "robust" summary type information on its own at substantial taxpayer cost. In addition, the data will be more quickly and easily, accessible, searchable and useable under the HPV Challenge Program because they will be submitted electronically in a standardized format, whereas they would be submitted primarily in hard copy in an unstandardized format under the requested regulation.

A regulatory approach to data collection could further delay the HPV Challenge Program information collection and review because a TSCA section 8(d) rule would require the submission of existing health and safety studies beyond those that would be useful in eliminating data needs from the HPV Challenge Program. For example, with respect to the requested TSCA section 8(d) rule, studies of mixtures that contain a substance included in the rule would generally have to be reported (40 CFR 716.10(a)(2)), and the rule would result in duplicative submissions if several manufacturers submit copies of the same study. Yet these additional studies would also need to be reviewed by the Agency even though they would not have the potential to affect the program. As a result of these and other difficulties, EPA agrees with the Chemical Manufacturers Association's (CMA's) comment that "the requested actions would undermine industry's ability to complete the work already underway in the HPV Challenge Program" (Ref. 3).

EPA's experience in implementing the OECD HPV SIDS Program in the United States has indicated that past efforts to bring forward extant hazard test data have been successful. Similar to the HPV Challenge Program, companies sponsoring SIDS chemicals frequently form consortia or collaborative panels and thus gain access to studies that may be held by other companies in other countries. Neither EPA nor the petitioners have identified any instance in the OECD HPV SIDS Program where proposed testing, subsequently performed, was later found to be duplicative of existing adequate test data.

Likewise, the International Council of Chemical Associations (ICCA) has demonstrated the willingness of industry to provide existing test data in order to satisfy screening-level data needs. This organization, which is also implementing a program that is similar to the HPV Challenge Program, will make existing data held by international companies available for public use (Ref. 5).

EPA believes that the HPV Challenge Program must be given an opportunity to work before regulatory requirements are imposed. This belief is shared by the HPV Challenge Program participants, some of whom have stated that "From a time, cost and animal use perspective, the HPV Challenge Program represents the most efficient means yet devised to ensure the evaluation of existing chemical substances, and it must go forward in parallel with other similar international programs" (Ref. 3). EPA fully anticipates that the HPV Challenge Program will result in the submission of relevant extant hazard test data on the chemicals included in the program.

The HPV Challenge Program is similar in many ways to the voluntary OECD HPV SIDS Program. The OECD HPV SIDS Program is widely acknowledged to be a successful voluntary program that is internationally supported by 29 countries, including the United States. It is considered by those countries to be fully adequate for purposes of an initial assessment of chemical hazards. Further, EPA believes that pursuing development of TSCA sections 8(a) PAIR and 8(d) rules would require reporting of little relevant information beyond that obtained under the HPV Challenge Program as it is now structured. Compelling the submission of entire studies under a section 8(d) rule would place on EPA the burden of reviewing the studies, compiling summaries and making the summaries available to the public. Such an approach could potentially take months or years to accomplish, impose substantial costs on EPA with little likely benefit accruing to the HPV Challenge Program while unnecessarily delaying the program's goal of making screening-level hazard data on HPV chemicals publicly available. EPA also believes that there should be no further unnecessary delay collecting data under the HPV Challenge Program and making the data publicly available, and that it is in the public interest to proceed expeditiously with the HPV Challenge Program.

For the foregoing reasons, EPA is denying the petitioners' request. Although the Agency has decided to deny the petition, EPA recognizes that it may in the future have a legitimate need for information that can be obtained via TSCA section 8(a) PAIR and/or TSCA section 8(d) rules, for example, e.g., in order to support the development of future test rules for chemicals for which the Agency cannot base a finding under TSCA section 4(a)

on currently available hazard or exposure-related information.

IV. Comments Received

EPA received many comments in response to the **Federal Register** notice announcing EPA's receipt of this TSCA section 21 petition. EPA considered all comments received by February 23, 2000, in determining the proper response to the petitioners' requests. The majority of the comments were from individuals, most of whom identified themselves as members of one or more of the petitioning organizations. These comments urged EPA to grant the petition, but, generally did not provide additional support for the requested action beyond the rationales expressed in the petition itself. The United States Humane Society (Ref. 6) did present some additional reasons to support granting the petition. These comments which pertain primarily to the perceived limitations of the voluntary submission of extant data and the need for EPA to collect positive as well as negative extant data prior to the conduct of testing under the HPV Challenge Program are addressed throughout Unit III. (Ref. 6).

In addition, CMA, the Chemical Specialties Manufacturers Association (CSMA), the Soap and Detergent Association (SDA), the American Petroleum Institute (API), the Great Lakes Chemical Corporation (GLCC), the Silicones Environmental, Health and Safety Council (SEHSC), the Synthetic Organic Chemicals Manufacturers Association (SOCMA), Elf Atochem(ATO) , and Environmental Defense all urged EPA to deny the petition in its entirety. These comments generally express the view that the "Framework" and design of the HPV Challenge Program will fulfill the need to make existing hazard test data available. CMA, CSMA, SDA, API, GLCC, SEHSC, SOCMA, ATO, and Environmental Defense presented a number of arguments in support of denying the petition.

All of the comments received by EPA on the petition are located in the official record, as described in Unit I.B.2.

V. References

1. Comments of Elf Atochem North America, Inc. February 2, 2000.

2. Comments of Environmental Defense. February 3, 2000.

3. Comments of the Chemical Manufacturers Association. February 2, 2000.

4. Comments of the Chemical Specialties Manufacturers Association. February 3, 2000.

5. International Council of Chemical Associations. Description of High Production Volume (HPV) Chemicals Initiative. http://www.icca-chem.org/hpv/. 2000.

List of Subjects

Environmental protection.

Dated: March 30, 2000.

Susan H. Wayland,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–8543 Filed 4–5–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[AZ023–NOA; FRL–6573–3]

Adequacy Status of the Maricopa County, Arizona Submitted PM–10 Attainment Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy determination.

SUMMARY: In this document, EPA is notifying the public that we have found that submitted Maricopa County (Phoenix, Arizona) serious area particulate matter (PM–10) attainment plan is adequate for transportation conformity purposes. As a result of our finding, the Maricopa Association of Governments and the Federal Highway Administration must use the PM–10 motor vehicle emissions budget from the submitted plan for future conformity determinations.

DATES: This determination is effective April 21, 2000.

FOR FURTHER INFORMATION CONTACT: The finding is available at EPA's conformity website: http://www.epa.gov/oms/traq, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity"). You may also contact Karina O'Connor, U.S. EPA, Region IX, Air Division (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105; (415) 744–1247 or oconnor.karina@epa.gov.

SUPPLEMENTARY INFORMATION:

Background

This notice announces our finding that the *Revised MAG 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County Nonattainment Area* (February 2000), submitted by the Arizona on February 16,2000, is adequate for transportation conformity purposes. EPA Region IX made this finding in a letter to the Arizona Department of Environmental Quality and the Maricopa Association of Governments on March 29, 2000. We are also announcing this finding on our conformity website: http://www.epa.gov/oms/transp/conform/pastsips.htm.

Transportation conformity is required by section 176(c) of the Clean Air Act. Our conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motpr vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). One of these criterion is that the plan provide for attainment of the relevant ambient air quality standard by the applicable Clean Air Act attainment date. We have preliminarily determined that the Maricopa County PM–10 plan does provide for attainment of the PM–10 standards and therefore, can be found adequate.

This adequacy finding is separate from and does not affect our February 25, 2000 finding that the plan is complete under section 110(k)(1) of the Clean Air Act.

We have described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision"). We followed this guidance in making our inadequacy determination on the Maricopa County PM–10 plan.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 30, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 00–8539 Filed 4–5–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–59370; FRL–6552–3]

Approval of Test Marketing Exemption for a Certain New Chemical (With Comment Period)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–00–2. The test marketing conditions are described in the TME application and in this notice.

DATES: Approval of this TME is effective on March 31, 2000. Written comments will be received until April 21, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify the docket control number "[OPPTS–59370]", and the TME number "[TME 00–2]" in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: For general information contact: Barbara Cunningham, Director, Office of Program Management, and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202-554-1404; and e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Adella Watson, New Chemicals Notice Management Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–3752; and e-mail address: watson.adella@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed in particular to the chemical manufacturer and/or importer who submitted the TME to EPA. This action may, however, be of interest to the public in general. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**–Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. *In person.* The Agency has established an official record for this action under docket control number OPPTS–59370. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center (NCIC), North East Mall (NEM) Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

III. How and to Whom Do I Submit Comments?

The notice of receipt was published late in the 45 day review period; however, an opportunity to submit comments is being offered at this time. You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–59370 in the subject line on the first page of your response. The complete nonconfidential document is available in the TSCA NCIC at the above address in Unit II. B. between noon and 4 p.m., Monday through Friday, excluding legal holidays. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

A. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

B. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

C. *Electronically.* You may submit your comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.1 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–59370. Electronic comments may also be filed online at many Federal Depository Libraries

IV. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under "FOR FURTHER INFORMATION CONTACT."

V. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

VI. What is the Agency's Authority for Taking this Action?

Section 5(h)(1) of TSCA and 40 CFR 720.38 authorize EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes, if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

VII. What Action is the Agency Taking?

EPA has approved the above-referenced TME. EPA has determined that test marketing the new chemical substance, under the conditions set out in the TME application and in this notice, will not present any unreasonable risk of injury to health or the environment.

VIII. What Restrictions Apply to this TME?

The test market time period, production volume, number of customers, and use must not exceed specifications in the application and this notice. All other conditions and restrictions described in the application and in this notice must also be met.

TME 00–2

Date of Receipt: February 14, 2000.

Notice of Receipt: March 23, 2000 (65 FR 15635).

Applicant: Lonza Inc.

Chemical: *N, N*-(2, 5-dimethyl-1, 4-phenylene)-bis-(3-oxo)-butanamide.

Use: (G) Organic intermediate.

Production Volume: CBI.

Number of Customers: 1.

Test Marketing Period: 24 months, commencing on first day of commercial manufacture.

The following additional restrictions apply to this TME. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

IX. What was EPA's Risk Assessment for this TME?

EPA identified no significant environmental or human health concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

X. Can EPA Change Its Decision on this TME in the Future?

Yes. The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: March 31, 2000.

Flora Chow,

Chief, New Chemicals Notice Management Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 00–8541 Filed 4–5–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act System of Records

AGENCY: Federal Communications Commission (FCC or Commission).

ACTION: Notice of new privacy act systems of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the FCC is adding a new Systems of Records, OMD–9, "Commission Registration System" ("CORES"). The FCC will use the records contained in FCC/OMD–9 to link payments to licensing records of the Federal Communications Commission. The functions in this Systems of Records will be performed by the Office of the Managing Director (OMD), Associate Managing Director-Financial Operations (AMD–FO). This notice meets the requirement documenting the change in the Commission's system of records, and provides the public, Congress, and the Office of Management and Budget (OMB) an opportunity to comment.

DATES: Any interested person may submit written comments concerning the routine uses of this system on or before May 8, 2000. The Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act to review these systems, may submit comments on or before May 16, 2000. These proposed systems shall be effective on May 16, 2000 unless the FCC receives comments that require a contrary determination. The Commission will publish a document in the **Federal Register** notifying the public if any changes are necessary. As required by 5 U.S.C. 552a(o) of the Privacy Act, the FCC will submit reports on these two new Systems of Records to both Houses of Congress.

ADDRESSES: Address comments to Les Smith, Performance Evaluation and Record Management, Room 1–A804, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, or via the Internet at *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Les Smith, Performance Evaluation and Records Management, Room 1–A804, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554 or via the Internet at *lesmith@fcc.gov* or Mary Linda Norman, AMD-Financial Operations, Federal Communications Commission, at (202) 418–1936 or via the Internet at *mlnorman@fcc.gov*.

SUPPLEMENTARY INFORMATION: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), this document sets forth notice of the proposed system of records maintained by the FCC. This notice is a summary of more detailed information which may be viewed at the location given in the **ADDRESSES** section above. The purpose of maintaining FCC/OMD–9, "Commission Registration System" ("CORES"), is to enable the Office of the Managing Director, AMD-Financial Operations, to use the records contained on the CORES form to maintain the required accounts receivable and to collect fines and debts due the Federal Communications Commission. This information also assures that the individuals, or the entities which they represent, receive any refunds due.

FCC/OMD–9 "Commission Registration System" ("CORES").

SYSTEM NAME:

Commission Registration System ("CORES").

SYSTEM LOCATION:

Financial Operations Group, Associate Managing Director-Financial Operations (AMD–FO), Office of Managing Director (OMD), Federal Communications Commission (FCC), 445 12th Street, SW, Room 1–A625, Washington, DC 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records in this system include information on individuals (acting on their own behalf or on behalf of a corporate entity) who are doing business with the Federal Communications Commission. The FCC Registration Number will be assigned by the Commission Registration System (CORES). The Registration Number will be required for anyone doing business with the Commission (feeable) after December 31, 2000 to ensure that they receive any refunds due, to service public inquiries, and to comply with the Debt Collection Improvement Act of 1996.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include: Names; Address(es); Social Security Numbers (SSN); Taxpayer Identification Numbers (TIN); FCC Registration Numbers (FRN); Business entity type (person or company); Telephone number(s); Fax number(s); E-mail address(es); and Addresses of individuals or entities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Communications Act of 1934, as amended, Sections 8 and 9 and the Debt Collection Improvement Act of 1996, Pub. L. 104–134.

PURPOSE(S):

The primary uses of the records contained on this form are to maintain required accounts receivable, and collect fines and debts due the Federal Communications Commission. This information also assures that the individuals, or the entities which they represent, receive any refunds due.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Where there is an indication of a violation or potential violation of a statute, regulation, rule, or order, records from this system may be referred to the appropriate Federal, State, or local agency responsible for investigating or prosecuting a violation, or for enforcing or implementing the statute, rule, regulation or order.

2. A record from this system may be disclosed to request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement such as licenses, if necessary, to obtain information relevant to a FCC decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

3. A record from this system may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit.

4. A record on an individual in this system of records may be disclosed to a Congressional office in response to an inquiry the individual has made to the Congressional office.

5. A record on an individual in this system of records may be disclosed, where pertinent, in any legal proceeding to which the Commission is a party before a court or administrative body.

6. A record from this system of records may be disclosed to the Department of Justice or in a proceeding before a court or adjudicative body when:

7. The United States, the Commission, a component of the Commission, or, when represented by the Government, an employee of the Commission is a party to litigation or anticipated litigation or has an interest in such litigation, and

8. The Commission determines that the disclosure is relevant or necessary to the litigation.

9. A record from this system of records which concerns information on past due debts to the Federal Government may be disclosed to the Department of the Treasure, Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund, or other payments to collect that debt.

In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper files, computer printout, and magnetic tape.

RETRIEVABILITY:

By name and/or type of transaction; Processing number; Social Security Number; Taxpayer Identification Number; FCC Registration Number; Employer Identification Number; or Sequential number.

SAFEGUARDS:

Records are located in secured metal file cabinets, metal vaults, and in metal file cabinets in secured rooms or secured premises, with access limited to those individuals whose official duties required access. Electronic record files are secured by passwords which are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Retained for two years following the end of the current fiscal year; then transferred to the Federal Records Center and destroyed when 6 years and 3 months old.

SYSTEM MANAGER(S) AND ADDRESS:

Financial Management Division, Associate Managing Director—Financial Operations (AMD–FO), Office of Managing Director (OMD), Federal Communications Commission (FCC), 445 12th Street, SW, Room 1–A625, Washington, DC 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURE:

Same as above.

RECORD SOURCE CATEGORIES:

Subject individual; Federal Reserve Bank; FCC CORES forms files; and Attorney-at-Law of the subject individual.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 00–8586 Filed 4–5–00; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act System of Records

AGENCY: Federal Communications Commission (FCC or Commission).

ACTION: Notice of new privacy act systems of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the FCC is adding a new Systems of Records, OMD–8, "Revenue Accounting Management Information System" ("RAMIS"). The FCC will use FCC/OMD–8 to account for all monies received by the FCC from the public and refunded to the public. The functions in this Systems of Records will be performed by the Office of the Managing Director (OMD), Associate Managing Director-Financial Operations (AMD–FO).

This notice meets the requirement documenting the change in the Commission's system of records, and provides the public, Congress, and the Office of Management and Budget (OMB) an opportunity to comment.

DATES: Any interested person may submit written comments concerning the routine uses of this system on or before May 8, 2000. The Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act to review these systems, may submit comments on or before May 16, 2000. These proposed systems shall be effective on May 16, 2000 unless the FCC receives comments that require a contrary determination. The Commission will publish a document in the **Federal Register** notifying the public if any changes are necessary. As required by 5 U.S.C. 552a(o) of the Privacy Act, the FCC will submit reports on these two new Systems of Records to both Houses of Congress.

ADDRESSES: Address comments to the Les Smith, Performance Evaluation and Record Management, Room 1–A804, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, or via the Internet at *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Les Smith, Performance Evaluation and Records Management, Room 1–A804, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554 or via the Internet at *lesmith@fcc.gov* or Mary Linda Norman, AMD-Financial Operations, Room 1–A813, Federal Communications Commission, at (202) 418–1936 or via the Internet at *mlnorman@fcc.gov*.

SUPPLEMENTARY INFORMATION: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), this document sets forth notice of the proposed system of records maintained by the FCC. This notice is a summary of more detailed information which may be viewed at the location given in the **"ADDRESSES"** section above. The purpose of maintaining FCC/OMD–8, "Revenue Accounting Management Information System" ("RAMIS"), is to enable the Office of the Managing Director, AMD-Financial Operations to account for all monies received by the FCC from the public and refunded to the public under the RAMIS system.

FCC/OMD–8 "Revenue Accounting Management Information System"("RAMIS")

SYSTEM NAME:

Revenue Accounting Management Information System ("RAMIS").

SYSTEM LOCATION:

Financial Operations Center, Associate Managing Director-Financial Operations (AMD–FO), Office of Managing Director (OMD), Federal Communications Commission (FCC), 445 12th Street, S.W., Room 1–A625, Washington, D.C. 20554.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records in this system include: entities (acting on their own behalf or on behalf of a corporate entity) making payments to cover forfeitures assessed, application and regulatory fees covered, services rendered, and direct loans; refunds for incorrect payments or overpayments (including application processing fees and travel advances); billing and the collection of bad debts; and miscellaneous monies received by the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include the following: Names; Social Security Numbers (SSN); Taxpayer Identification Numbers (TIN); FCC Registration Numbers (FRN); Telephone numbers; Addresses of individuals; Records of services rendered; Loan payment information; Forfeitures assessed and collected; Amounts; Dates; Check numbers; Locations; Bank deposit information; Transaction type information; United States Treasury deposit numbers; Ship name and call sign; and Information substantiating fees collected, refunds issued, and interest, penalties, and administrative charges assessed to individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Budget and Accounting Act of 1921; Budget and Accounting Procedures Act of 1950; Federal Communications Authorization Act of 1989; and 31 U.S.C. 525.

PURPOSE(S):

The primary uses of the records are to account for all monies received by the FCC from the public and refunded to the public.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1, Where there is an indication of a violation or potential violation of a statute, regulation, rule, or order, records from this system may be referred to the appropriate Federal, State, or local agency responsible for investigating or prosecuting a violation, or for enforcing or implementing the statute, rule, regulation or order.

2. A record from this system may be disclosed to request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement such as licenses, if necessary, to obtain information relevant to a FCC decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

3. A record from this system may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit.

4. A record on an individual in this system of records may be disclosed to a Congressional office in response to an inquiry the individual has made to the Congressional office.

5. A record from this system of records may be disclosed to GSA and NARA for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall not be used to make a determination about individuals.

6. A record on an individual in this system of records may be disclosed, where pertinent, in any legal proceeding to which the Commission is a party before a court or administrative body.

7. A record from this system of records may be disclosed to the

Department of Justice or in a proceeding before a court or adjudicative body when:

8. The United States, the Commission, a component of the Commission, or, when represented by the Government, an employee of the Commission is a party to litigation or anticipated litigation or has an interest in such litigation, and

9. The Commission determines that the disclosure is relevant or necessary to the litigation.

10. A record from this system of records which concerns information on past due debts to the Federal Government may be disclosed to the Department of the Treasury, Financial Management Service, other federal agencies and/or your employer to offset your salary, IRS tax refund, or other payments to collect that debt.

11. Records from this system of records which concerns information on pay and leave, benefits, retirement deductions, and any other pertinent information may be disclosed to the Office of Personnel Management in order for it to carry out its legally authorized Government-wide functions and duties.

12. Records from this system may be disclosed to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) of the Federal Claims Collection Act of 1996 (31 U.S.C. 3701(a)(3)).

In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper files, computer printout, microfiche, magnetic disc, and magnetic tape.

RETRIEVABILITY:

By name and/or type of transaction, call sign, processing number, Social Security Number, Taxpayer Identification Number (TNN), FCC Registration Number, employee identification number, fee control number, payment ID number, or sequential number.

SAFEGUARDS:

Records are located in secured metal file cabinets, metal vaults, and in metal file cabinets in secured rooms or secured premises, with access limited to those individuals whose official duties required access. Electronic record files are secured by passwords which are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Retained for two years following the end of the current fiscal year; then transferred to the Federal Records Center and destroyed when 6 years and 3 months old.

SYSTEM MANAGER(S) AND ADDRESS:

Managing Director, Office of Managing Director, Federal Communications Commission (FCC), 445 12th Street, S.W., Room 1–A625, Washington, D.C. 20554.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURE:

Same as above.

RECORD SOURCE CATEGORIES:

Subject individual; Federal Reserve Bank; FCC RAMIS forms files; Agent of subject; and Attorney-at-Law of the subject individual.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–8587 Filed 4–5–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

PREVIOUSLY ANNOUNCED DATE AND TIME:

Wednesday, April 5, 2000, 10:00 A.M. Meeting Open to the Public.

The following item was added to the agenda:

Report of the Audit Division on the Missouri Democratic State Committee (A97–102).

DATE AND TIME: Tuesday, April 11, 2000 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will be closed to the Public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, April 13, 2000 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes. Revisions to Instructions for Forms 3 and 3X.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION:

Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 00–8638 Filed 4–4–00; 11:47 am]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1322–DR]

Alabama; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1322–DR), dated March 17, 2000, and related determinations.

EFFECTIVE DATE: March 17, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 17, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Alabama, resulting from severe storms and flooding on March 10–11, 2000, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total

eligible costs. If Public Assistance is later requested and determined to be warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Charles M. Butler of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alabama to have been affected adversely by this declared major disaster:

Jefferson and Tuscaloosa Counties for Individual Assistance.

All counties within the State of Alabama are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–8502 Filed 4–5–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1315–DR]

Georgia; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1315–DR), dated February 15, 2000, and related determinations.

EFFECTIVE DATE: March 21, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 15, 2000:

Turner County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Laurence W. Zensinger,

Division Director, Response and Recovery Directorate.

[FR Doc. 00–8501 Filed 4–5–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1318–DR]

Virginia; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia, (FEMA–1318-DR), dated February 28, 2000, and related determinations.

EFFECTIVE DATE: March 28, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 28, 2000:

The City of Danville and Arlington County for debris removal (Category A), emergency protective measures (Category B), and utilities (Category F) under Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545. Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–8499 Filed 4–5–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of teleconference meeting.

SUMMARY: In accordance with § 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, the Federal Emergency Management Agency gives notice that the following meeting will be held:

Name: Technical Mapping Advisory Council.

Date of Meeting: April 18, 2000.

Place: The FEMA Conference Operator in Washington, DC will administer the teleconference. Individuals interested in participating should call 1–800–320–4330 at the time of the teleconference. Individuals interested in participating should call 1–800–320–4330 at the time of the teleconference. Callers will be prompted for the conference code, #17, and they will then be connected through to the teleconference.

Time: 2 p.m. to 4 p.m., EST.

Proposed Agenda

1. Call to order.
2. Announcements.
3. Action on minutes from March 2000 meeting.
4. Review draft annual report text on privatization of Map Modernization Program objectives.
5. Review draft annual report text on cumulative effects of watershed development.
6. Discuss agenda for June and July 2000 meetings.
7. New business.
8. Adjournment.

Status: This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Ms. Sally P. Magee, Federal Emergency Management Agency, 500 C Street SW., room 442, Washington, DC 20472, telephone (202) 646–8242 or by facsimile at (202) 646–4596.

SUPPLEMENTARY INFORMATION: Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved by the next Technical Mapping Advisory Council meeting in June 2000.

Dated: March 29, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–8500 Filed 4–5–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 20, 2000.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. *John L. Gilbert,* Fairfield, Washington, to acquire additional voting shares of Lath Bancorporation, Inc., Latah, Washington, and thereby indirectly acquire voting shares of Bank of Latah, Saint Maries, Idaho.

Board of Governors of the Federal Reserve System, March 31, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–8412 Filed 4–5–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 1, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Ida Grove Bancshares, Inc.,* Ida Grove, Iowa, and American Bancshares, Inc., Holstein, Iowa; to acquire at least 80.1 percent of the voting shares of American National Bank (in organization), Sac City, Iowa.

Board of Governors of the Federal Reserve System, March 31, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–8411 Filed 4–5–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Infectious Diseases: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Board of Scientific Counselors, National Center for Infectious Diseases (NCID).

Times and Dates: 9 a.m.–5:30 p.m., May 4, 2000. 8:30 a.m.–2:30 p.m., May 5, 2000.

Place: CDC, Conference Room Building 17, 1600 Clifton Road, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Board of Scientific Counselors, NCID, provides advice and guidance to the Director, CDC, and Director, NCID, in the following areas: program goals and objectives; strategies; program organization and resources for infectious disease prevention and control; and program priorities.

Matters To Be Discussed: Agenda items will include:

1. NCID Update.
2. CDC Facilities Master Plan.
3. Laboratory Response Capacity.
4. Integrating Surveillance Systems—NEDSS.
5. Current Issues in Vaccine Development: GAVU, Vaccine Safety.
6. Tour of New Facility: Building 17.
7. Discussions.
8. Improving Communications.
9. Program Update: Mycotic Diseases.
10. Transfer of Interstate Quarantine Authority.
11. Late Breaker: Current Scientific Event.
12. Discussions and Recommendations.

Other agenda items include announcements/introductions; follow-up on actions recommended by the Board December 1999; consideration of future directions, goals, and recommendations.

Agenda items are subject to change as priorities dictate.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Diane S. Holley, Office of the Director, NCID, CDC, Mailstop C–20, 1600 Clifton

Road, NE., Atlanta, Georgia 30333, telephone 404/639–0078.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 30, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–8436 Filed 4–5–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Welfare Demonstration Project Information Collection.

OMB No.: New Collection.

Description: Under section 1130 of the Social Security Act, the Department of Health and Human Services is given authority to approve up to ten States for Child Welfare demonstrations in each of the five fiscal years 1998–2002. These demonstration projects involve the waiver of certain requirements of titles IV–B and IV–E, the sections of the Act that govern foster care, adoption assistance, independent living, child welfare services, promoting safe and stable families, family preservation and support, and related expenses for program administration, training, and automated systems. Child Welfare demonstration projects operating under this waiver authority are required to be consistent with the purposes of existing law, cost-neutral to the Federal government, and independently evaluated. This authority provides an opportunity for States to design and test a wide range of approaches to improve and reform child welfare. Such demonstrations should provide valuable knowledge that will lead to improvements in the delivery, effectiveness and efficiency of services.

The information collection consists of seven components, which are outlined in the Information Memorandum: (1) Application; (2) Initial Design and Implementation Report; (3) Evaluation Plan; (4) Quarterly Reports (Pre-Implementation); (5) Semi-Annual Reports (Post-Implementation); (6) Interim Evaluation Report; and (7) Final Report. The primary purpose of the demonstrations is to produce information on the outcomes for children and their families. These collections lay the information infrastructure to facilitate the dissemination of this information. If data collection is not conducted for the child welfare demonstrations, the Department relinquishes all pertinent information required to test the impact of the intervention employed in the waivers, specifically the effect of allowing the flexible use of IV–E dollars in the delivery of child welfare services. Furthermore, ensuring the safety and welfare of children is of utmost importance to CB, and if data is conducted less frequently than required by the project, interim results that could affect the well-being of children can be overlooked.

Respondents

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Application	10	1	120	1,200
Initial design	55	1	40	2,200
Evaluation plan	55	1	40	2,200
Quarterly report	55	4	24	1,320
Semi-annual reports	55	1	80	4,400
Interim evaluation report	55	1	120	6,600
Final report	55	1	160	8,800
Estimated total annual burden hours				26,720

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Desk Officer for ACF.

Dated: March 30, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–8482 Filed 4–5–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Planning, Research and Evaluation; Grant to the University of Colorado Health Sciences Center

AGENCY: Office of Planning, Research and Evaluation, ACF, DHHS.

ACTION: Award announcement.

SUMMARY: Notice is hereby given that a noncompetitive grant award is being made to the University of Colorado Health Sciences Center. Under the title of "Economic Analysis of the Prenatal and Early Childhood Nurse Home Visitation Program," the project

proposes to carry out the second phase of a net-cost analysis of a program of prenatal and infancy home visiting.

This project is being funded noncompetitively, because of its uniqueness in examining cost savings to government resulting from an investment in a program of prenatal and early childhood home visitation. The duration of this project is two years, beginning April 1, 2000, for a total cost of $312,766.

FOR FURTHER INFORMATION CONTACT: K.A. Jagannathan, Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW, Washington, DC 20447, Phone: 202–205–4829.

Dated: March 31, 2000.

Howard Rolston,

Director, Office of Planning, Research and Evaluation.

[FR Doc. 00–8409 Filed 4–5–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Senior Executive Service; Performance Review Board Members

AGENCY: Administration for Children and Families.

ACTION: Announcing appointment of Performance Review Board members.

SUMMARY: 5 U.S.C. 4314(c)(4) of the Civil Service Reform Act of 1978, Pub. L. 95–454, requires that the appointment of Performance Review Board members be published in the **Federal Register.**

The following persons will serve on the Performance Review Boards or Panels which oversee the evaluation of performance appraisals of Senior Executive Service members of the Department of Health and Human Services, Administration for Children and Families: Diann Dawson, Leon R. McCowan, Madeline Mocko.

Dated: March 29, 2000.

Elizabeth M. James Duke,

Deputy Assistant Director for Administration, Office of Administration.

[FR Doc. 00–8413 Filed 4–5–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1060]

Agency Information Collection Activities; Proposed Collection; Comment Request; Adoption of the FDA Food Code by Local, State, and Tribal Governments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA's collection of information from local, State, and tribal agencies concerning their adoption of, or plans to adopt, all or portions of the FDA Food Code or its equivalent by regulation, law, or ordinance. The Association of Food and Drug Officials (AFDO) has been contracted by FDA to telephonically and/or electronically contact local, State, and tribal food program administrators to determine Food Code adoption in their respective jurisdictions.

DATES: Submit written comments on the collection of information by June 5, 2000.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Adoption of the FDA Food Code by Local, State, and Tribal Governments

FDA has developed the model Food Code to assist and promote consistent implementation of national food safety regulatory policy among the several thousand local, State, and tribal jurisdictions that have primary responsibility for the regulation or oversight of retail level food operations. The FDA Food Code provides a scientifically sound technical and legal basis for regulating the retail segment of the food industry. Authority for providing such assistance is derived from section 311(a) of the Public Health Service Act (42 U.S.C. 243) and delegation of authority from the Public Health Service to the Commissioner of Food and Drugs relative to food protection is contained in 21 CFR 5.10(a)(2) and (a)(4). Under 31 U.S.C. 1535, FDA provides assistance to other Federal agencies such as the Indian Health Service.

Nationwide adoption of the model FDA Food Code is an important step to further the goals of the President's Council on Food Safety for consistent, scientifically sound, and risk-based food safety standards and practices and to work more effectively with partners in State, local, and tribal governments. FDA has established a site on the Internet at http://www.cfsan. fda.gov under "Federal/State Food Programs"

and "Retail Food Safety References" to list jurisdictions that have reported adoptions of the FDA Food Code. Because it is self-reported, the list is incomplete and has not been evaluated to determine whether all the adopted codes are equivalent to the model Food Code. It is important to FDA to have a comprehensive, accurate, and current inventory of Food Code adoptions to help achieve the aims of the President's Council on Food Safety and the agency's Food Safety Initiative goals.

FDA has obtained the services of AFDO to develop and implement an active surveillance system to track and report on the adoption of the FDA Food Code by State and local agencies and tribal nations of native Americans. The contractor will develop and maintain an active data base to track adoptions of the Food Code; identify and periodically contact State, local, and tribal food safety program administrators to determine the current status of adoptions of the Food Code or its equivalent; evaluate the equivalency of the adopted codes with the FDA Food Code; and provide quarterly progress reports to FDA from the data base in tabular and graphic form. Reports may be placed on the Internet at http://www.fda.gov.

Initial contacts by AFDO to local, State, and tribal program administrators will be by telephone and/or e-mail to determine the Food Code status in their jurisdiction(s). Verbal responses to questions will be acceptable as will electronic or facsimile information. Followup contacts to clarify responses will be by telephone or e-mail to minimize the burden on respondents.

The types of questions to be asked will be whether or not the FDA Food Code has been adopted in the respondent's jurisdiction, which version of the Food Code is in effect, and if not, which local jurisdictions need to be contacted for Food Code adoption status. AFDO will also determine with the local/State/tribal governments that it has the latest version of the code for analysis.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
500	2	1,000	1	1,000
Total Hours				1,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based its estimate on the number of State agencies (100) involved in Food Code-related regulatory programs, 300 local agencies with local ordinance authority that may consider Food Code adoption in any one year, and 100 tribal agencies. Estimating the number of local agencies is difficult before the start of this project because in some States, adoption by a State agency automatically applies to all local jurisdictions in that state. In other States, some metropolitan jurisdictions may adopt the FDA Food Code individually. Similar circumstances may apply to tribal nations' agencies that may be adopting the FDA Food Code. When the initial information gathering is completed, FDA will be able to identify more accurately the number of local and tribal agencies for which tracking adoption of the FDA Food Code will be necessary.

Frequency of reporting will range from once per year to quarterly for any one jurisdiction. This is because agencies that have already adopted the Food Code will require less frequent contact, perhaps only annually, than those that are in the process of adopting the Food Code. An average of two contacts in 1 year, therefore, was selected. Because most reporting will be done telephonically or electronically, reporting times often will be much less than 1 hour.

These estimates will fluctuate from year to year as agencies adopt, revise, and consider adoption of the FDA Food Code. Over the next 3 years, the frequency of contacts should decrease as jurisdictions adopt the FDA Food Code. This project will take several years to complete because the adoption process in some States can extend to 2 years or more. For example, some States have biennial legislative sessions. Others have extensive notice-and-comment administrative rulemaking procedures that can extend well beyond 1 year.

Dated: March 30, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–8416 Filed 4–5–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–4168]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Electronic Records; Electronic Signatures

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by May 8, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Electronic Records; Electronic Signatures—Part 11 (21 CFR Part 11) (OMB Control Number 0910–0303)—Extension

FDA regulations in part 11 (21 CFR part 11) provide criteria for acceptance by FDA of electronic records, electronic signatures, and handwritten signatures executed to electronic records as equivalent to paper records and handwritten signatures executed on

paper. Under these regulations, records and reports may be submitted to FDA electronically, provided the agency has stated its ability to accept the records electronically in an agency-established public docket and that the other requirements of part 11 are met.

The recordkeeping provisions in part 11 (§§ 11.10, 11.30, 11.50, and 11.300) require standard operating procedures (SOP's) to ensure appropriate use of, and precautions for, systems using electronic records and signatures: (1) § 11.10 specifies procedures and controls for persons who use closed systems to create, modify, maintain, or transmit electronic records; (2) § 11.30 specifies procedures and controls for persons who use open systems to create, modify, maintain, or transmit electronic records; (3) § 11.50 specifies controls for signed electronic records; and (4) § 11.300 specifies controls to ensure the security and integrity of electronic signatures based upon use of identification codes in combination with passwords.

The burden created by the information collection provision of this regulation is a one-time burden associated with the creation of SOP's and validation. FDA anticipates the use of electronic media will substantially reduce the paperwork burden associated with maintaining FDA-required records.

The respondents will be businesses and other for-profit organizations, State or local governments, Federal agencies, and nonprofit institutions.

In the **Federal Register** of October 1, 1999 (64 FR 53392), in accordance with 5 CFR 1320.8(d), FDA announced an opportunity for public comment on the proposed collection of information on electronic records and electronic signatures. Comments from five respondents were received. In general, these comments addressed the costs of complying with the technical provisions of part 11 or used the opportunity as a forum to comment on the outcome of the final rule. Seven of these comments addressed the information collection and, in general, asserted that FDA had either underestimated the burden or had not considered all of the reporting and recordkeeping requirements. The comments on the information collection are addressed below.

(Comment 1) One comment submitted by industry stated that the creation of SOP's is not a one-time burden. It believes that the SOP's must be periodically reviewed and revised. FDA only requires the development of SOP's. FDA acknowledges that SOP's may need to be updated from time to time, but not necessarily because of an FDA requirement. If industry chooses to change their internal operations, then the associated change/update to the SOP's is a result of the company's choice to make changes, not a result of FDA requiring the change. Should SOP's need to be modified as a result of future changes to FDA regulations, FDA will consider the associated information collection burdens at the time it revises the relevant regulations.

(Comment 2) One comment asserted that the issuance of guidance documents further defines the expectations of FDA and, as such, requires industry to modify procedures and systems to reflect these new expectations. FDA recognizes that guidance documents may have additional reporting or recordkeeping requirements, however, the associated burden will be tied to the specific guidance document, and is not a part of this information collection. FDA will separately submit to OMB for review and clearance, any additional proposed collection of information associated with guidances.

(Comment 3) One comment stated that the regulation required industry to provide FDA with copies of software, as well as data. The comment added that this "requirement" places industry in the position of violating or renegotiating license agreements in order to comply with part 11. Part 11 does not require companies to provide FDA with copies of software.

(Comment 4) One comment asserted that FDA had ignored the burden in part 11 that requires industry to maintain records in electronic format for the full retention period. Electronic records must be retained for the same period applicable regulations require the equivalent paper records retained. The burden for retaining the records, in whatever form, is accounted for in the applicable FDA regulations.

(Comment 5) Two comments addressed the requirement for certification of electronic signatures. While reviewing these comments, FDA realized that under 5 CFR 1320.3(h)(1), "affidavits, oaths, affirmations, certifications, receipts, changes of address, consents, or acknowledgments" are not deemed to constitute a collection of information. Therefore, the reference to certification and the associated burden are being removed.

(Comment 6) One comment stated that its internal bureaucracy is such that it takes a long time to develop and approve a simple SOP, and therefore, FDA's estimate of cost was inaccurate. FDA has estimated the average annual burden. It will take some respondents more time and some less to develop and approve an SOP.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
11.10	2,250	1	2,250	20	45,000
11.30	2,250	1	2,250	20	45,000
11.50	4,500	1	4,500	20	90,000
11.300	4,500	1	4,500	20	90,000
Total					270,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden created by this regulation is a one-time burden associated with the creation of SOP's and validation. The numbers reflect the combination of FDA's 3 years of experience in administering the program and an anticipated increase in the number of respondents. As the opportunity to submit and maintain documents electronically becomes more available to the public, the number of participants is expected to increase.

Dated: March 30, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–8415 Filed 4–5–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Gastrointestinal Drugs Advisory Committee; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is canceling the meeting of the Gastrointestinal Drugs Advisory Committee scheduled for April 12, 2000. This meeting was announced in the **Federal Register** of February 17, 2000 (65 FR 8180).

FOR FURTHER INFORMATION CONTACT: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12538.

Dated: March 28, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–8414 Filed 4–5–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Healthcare Integrity and Protection Data Bank for Final Adverse Information on Health Care Providers, Suppliers, and Practitioners—(OMB 0915–0239)—EXTENSION

Section 221(a) of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 specifically directs the Secretary to establish a national health care fraud and abuse data collection program for the reporting and disclosure of certain final adverse actions taken against health care providers, suppliers, and practitioners. A final rule was published October 26, 1999 in the **Federal Register** to implement the statutory requirements of section 1128E of the Social Security Act (The Act) as added by Section 221(a) of HIPAA. The Act requires the Secretary to implement the national health care fraud and abuse data collection program. This data bank is known as the Healthcare Integrity and Protection Data Bank (HIPDB). It contains the following types of information: (1) Civil judgments against a health care provider, supplier, or practitioner in Federal or State court related to the delivery of a health care item or service; (2) Federal or State criminal convictions against a health care provider, supplier, or practitioner related to the delivery of a health care item or service; (3) Actions by Federal or State agencies responsible for the licensing and certification of health care providers, suppliers, or practitioners; (4) Exclusion of a health care provider, supplier, or practitioner from participation in Federal or State health care programs; and (5) Any other adjudicated actions or decisions that the Secretary shall establish by regulations. Access to this data bank is limited to Federal and State Government agencies and health plans.

The Estimated Response Burden Is As Follows

Regulation citation	Number of respond.	Respon. per respond.	Total respon.	Hrs. per respon.	Total burden hours
61.6 Errors & Omissions	1,200	1	1,200	25 min	500
61.6 Revisions/appeal status	1,000	1	1,000	75 min	1,250
61.7 Licensure actions:					
Disclosure by State licensing boards	1,836	22	40,400	75 min	50,500
Reporting by State Licensing Authorities	216	187	40,400	15 min	10,100
61.8 Reporting of State criminal convictions	54	13	700	75 min	875
61.9 Reporting of Civil Judgments	62	8	500	75 min	625
61.11 Reporting of adjudicated actions/decisions.	66	12	800	75 min	1,000
61.12 Access to data (queries/self queries):					
State licensure Boards	1,000	75	75,000	5 min	6,250
State certification agencies	54	3	162	5 min.	14
States/district attorneys & law enforcement	2,000	25	50,000	5 min	4,166
State Medicaid fraud units	47	50	2,350	5 min	196
Health plans	2,500	400	1,000,000	5 min	83,333
Health care providers, suppliers and practitioners (self query).	60,000	1	60,000	25 min	25,000
Entity registration	5,000	1	5,000	30 min	2,500
Entity registration update	250	1	250	15 min.	62
Authorized agent designation	100	1	100	10 min.	16
Authorized agent designation update	5	1	5	5 min	0.42
61.15 Disputed reports/secretarial review.					
Initial request	750	1	750	10 min	125
Request for secretarial review	37	1	37	480 min	296
Total	76,177		1,278,654		186,808

Other Forms Used in the Management of the HIPDB Include the Following:

Form name	Number of respond.	Respon. per respond.	Total respon.	Hrs. per respon.	Total burden hours
Account discrepancy	2,000	1	2,000	5 min	166
Electronic funds transfer authorization	850	1	850	5 min.	70
Entity reactivation	500	1	500	15 min	125
Total	3,350		3,350		361

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 29, 2000.

James J. Corrigan,

Associate Administrator for Management and Program Support.

[FR Doc. 00–8479 Filed 4–5–00; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place, NW, Washington, DC 20005, (202) 219–9657. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 8A–46, Rockville, MD 20857; (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated her responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by HRSA on April 1, 1999, through September 27, 1999.

Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by" one of the vaccines referred to in the Table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading "For Further Information Contact"), with a copy to HRSA addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8–05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Anita Szpotowicz on behalf of Andrew Szpotowicz, Cleveland, Ohio,

Court of Federal Claims Number 99–0192V
2. Jan Malloy on behalf of Laura Malloy, Hazelton, Pennsylvania, Court of Federal Claims Number 99–0193V
3. Lisa A. Lippa, Henderson, Kentucky, Court of Federal Claims Number 99–0202V
4. O. Lisa Persinger, Forsyth, Missouri, Court of Federal Claims Number 99–0204V
5. Marilyn Kirschner on behalf of Lindsay Kirschner, Vienna, Virginia, Court of Federal Claims Number 99–0206V
6. Phyllis Noe, Vienna, Virginia, Court of Federal Claims Number 99–0207V
7. April Oakes on behalf of Cassie Oakes, Vienna, Virginia, Court of Federal Claims Number 99–0208V
8. Roy Pearl on behalf of Traci Pearl, Vienna, Virginia, Court of Federal Claims Number 99–0209V
9. Scott Pearl, Vienna, Virginia, Court of Federal Claims Number 99–0210V
10. Nahla and Babekir Ahmed on behalf of Mohamed Babekir Ahmed, Alexandria, Virginia, Court of Federal Claims Number 99–0211V
11. Kim and Lamar Visarraga on behalf of Monica Marie Visarraga, Deceased, Sacramento, California, Court of Federal Claims Number 99–0212V
12. Terry Withers on behalf of Parker Withers, Las Vegas, Nevada, Court of Federal Claims Number 99–0213V
13. Mary and Vernon Johnson on behalf of Hillary Johnson, Worcester, Massachusetts, Court of Federal Claims Number 99–0219V
14. Sherry and Michael Battisti on behalf of Anthony Battisti, Rochester, New York, Court of Federal Claims Number 99–0223V
15. Laurie Mabee, White Cloud, Michigan, Court of Federal Claims Number 99–0230V
16. Victoria and Scott Shelton on behalf of Taylor V. Shelton, Vienna, Virginia, Court of Federal Claims Number 99–0234V
17. Elizabeth Hyla, Buffalo, New York, Court of Federal Claims Number 99–0238V
18. Kalena Woolf on behalf of Tala Dawn Woolf, Deceased, Texarkana, Texas, Court of Federal Claims Number 99–0259V
19. Tyler Hartman, Fairfield, Ohio, Court of Federal Claims Number 99–0261V
20. Jessie Mae Williams, San Antonio, Texas, Court of Federal Claims Number 99–0263V
21. Annette Nelson on behalf of Trevian Devante Nelson, Baton Rouge, Louisiana, Court of Federal Claims Number 99–0263V
22. George Guzman, Kirkland, Washington, Court of Federal Claims Number 99–0264V
23. Melissa Silva on behalf of Angelo Silva, Ruidoso, New Mexico, Court of Federal Claims Number 99–0270V
24. Serita L. Smith on behalf of Hunter James Smith, Camp Pendleton, California, Court of Federal Claims Number 99–0271V
25. Elidia Chuatle on behalf of Argenis Herrera, Bronx, New York, Court of Federal Claims Number 99–0278V
26. Martin Brausewetter, Staten Island, New York, Court of Federal Claims Number 99–0278V
27. Kimberly and Thomas Francis on behalf of Victoria Francis, West Chester, Pennsylvania, Court of Federal Claims Number 99–0286V
28. Kelly and John Sanford on behalf of Arden Christina Sanford, West Palm Beach, Florida, Court of Federal Claims Number 99–0287V
29. Carole E. Rudd on behalf of David A. Rudd, Newburyport, Massachusetts, Court of Federal Claims Number 99–0291V
30. Michele and John Jenkins on behalf of Jesse Lee Jenkins, Bedford, Indiana, Court of Federal Claims Number 99–0295V
31. Gerald Doffing, Frederic, Wisconsin, Court of Federal Claims Number 99–0304V
32. Michelle Green on behalf of Chelsey Green, Amarillo, Texas, Court of Federal Claims Number 99–0305V
33. Michael Hroncich on behalf of Brianna Nicole Hroncich, Deceased, Westfield, New Jersey, Court of Federal Claims Number 99–0306V
34. Patricia Rodriguez, Vienna, Virginia, Court of Federal Claims Number 99–0307V
35. Nicole Hamelin-Garcia, Vienna, Virginia, Court of Federal Claims Number 99–0308V
36. Mike Morrill, Vienna, Virginia, Court of Federal Claims Number 99–0309V
37. Onelia Valdes, Vienna, Virginia, Court of Federal Claims Number 99–0310V
38. Jennifer Garland, Indianapolis, Indiana, Court of Federal Claims Number 99–0313V
39. Cary Vhugen and Ellen Hermanns on behalf of Erik H. Vhugen, Santa Monica, California, Court of Federal Claims Number 99–0314V
40. Dorothy Werderitsh, Indianapolis, Indiana, Court of Federal Claims Number 99–0319V
41. Debra May, Indianapolis, Indiana, Court of Federal Claims Number 99–0320V
42. Betty Fluck, Indianapolis, Indiana, Court of Federal claims Number 99–0321V
43. Diana and Kerry D. Smith on behalf of Michael Randall Smith, Miami, Florida, Court of Federal Claims Number 99–0325V
44. Courtney M. Lambert, Aliquippa, Pennsylvania, Court of Federal Claims Number 99–0327V
45. Judy Saari, Vienna, Virginia, Court of Federal Claims Number 99–0328V
46. Monique Kanadanian, Vienna, Virginia, Court of Federal Claims Number 99–0329V
47. Kristen Jennings on behalf of Dylan Jennings, Vienna, Virginia, Court of Federal Claims Number 99–0330V
48. Kim and Kenneth Smith on behalf of Bridget Smith, Edina, Minnesota, Court of Federal Claims Number 99–0331V
49. Laura Lichoff, Columbus, Ohio, Court of Federal Claims Number 99–0332V
50. Kelly and Ruben Lujan on behalf of Dominic A. Lujan, Las Vegas, Nevada, Court of Federal Claims Number 99–0333V
51. Sharon and Robert Tersen on behalf of Gregory Tersen, Fort Myers, Florida, Court of Federal Claims Number 99–0341V
52. Deborah Burns, Fort Worth, Texas, Court of Federal Claims Number 99–0353V
53. Debbie Kaye Hunt, Vienna, Virginia, Court of Federal Claims Number 99–0356V
54. Carla and Parke Gramm on behalf of Parke Gramm, Irvington, New Jersey, Court of Federal Claims Number 99–0359V
55. Sue and Stuart Carter on behalf of Corey Carter, Vienna, Virginia, Court of Federal Claims Number 99–0362V
56. Tamra and Curtis Poll on behalf of Nathan Curtis Poll, Ogden, Utah, Court of Federal Claims Number 99–0371V
57. Patricia and Brian Strickland on behalf of Justin Brian Strickland, Deceased, Laurel, Mississippi Court of Federal claims Number 99–0374V
58. Linda and Larrie Collura on behalf of Larrie S. Collura, North Brunswick, New Jersey, Court of Federal Claims Number 99–0377V
59. Joanne Griffin, Vienna, Virginia, Court of Federal Claims Number 99–0378V
60. Sharon Durham, Vienna, Virginia, Court of Federal Claims Number 99–0379V
61. Kari Andersen, Vienna, Virginia, Court of Federal Claims Number 99–0380V
62. Pat Gerard, Vienna, Virginia, Court of Federal Claims Number 99–0381V
63. Quinton O. Riggins, Jr., Vienna, Virginia, Court of Federal Claims Number 99–0382V

64. Tammie and Thomas Houston on behalf of Thomas Matthew Houston, Higginsville, Missouri, Court of Federal Claims Number 99–0391V
65. Anna Nicolas on behalf of Nathaniel Nicolas, Beach Haven, New Jersey, Court of Federal Claims Number 99–0393V
66. Amy and Dennis Ostermeier on behalf of Katelyn Ostermeier, Grand Forks, North Dakota, Court of Federal Claims Number 99–0394V
67. Natalie and David Hay on behalf of Trevor Hay, Orlando, Florida, Court of Federal Claims Number 99–0398V
68. Dorothy and Hugh Benson on behalf of Shekinah Benson, Boston, Massachusetts, Court of Federal Claims Number 99–0399V
69. Rebecca S. Baker, Indianapolis, Indiana, Court of Federal Claims Number 99–0404V
70. Janet and Gregory Brooks on behalf of Kelly Brooks, Henrietta, New York, Court of Federal Claims Number 99–0405V
71. Nathan House, Vienna, Virginia, Court of Federal Claims Number 99–0406V
72. Linda and Joseph Goss on behalf of Jessica Goss, Vienna, Virginia, Court of Federal Claims Number 99–0407V
73. Lori Barillaro, Vienna, Virginia, Court of Federal Claims Number 99–0408V
74. Cheryl and Rick Butcher on behalf of Taylor Butcher, Deceased, Vienna, Virginia, Court of Federal Claims Number 99–0409V
75. Sue Cruz, Vienna, Virginia, Court of Federal Claims Number 99–0410V
76. Cheryl A. Castagna, Vienna, Virginia, Court of Federal Claims Number 99–0411V
77. Sonya and David Morris on behalf of Taylor Morris, Vienna, Virginia, Court of Federal Claims Number 99–0412V
78. Gordon F. McCammon, Vienna, Virginia, Court of Federal Claims Number 99–0423V
79. Jill Anne Stiefel, Vienna, Virginia, Court of Federal Claims Number 99–0424V
80. Linda Lenahan, Vienna, Virginia, Court of Federal Claims Number 99–0425V
81. Susan Kreider, Vienna, Virginia, Court of Federal Claims Number 99–0426V
82. Sarah Ann Willie, Vienna, Virginia, Court of Federal Claims Number 99–0427V
83. Barbara-Jean Cramer, Vienna, Virginia, Court of Federal Claims Number 99–0428V
84. Matthew Z. Larive, Vienna, Virginia, Court of Federal Claims Number 99–0429V
85. Ronnie D. Sanders, Sr., Vienna, Virginia, Court of Federal Claims Number 99–0430V
86. Rebecca S. McCauley, Vienna, Virginia, Court of Federal Claims Number 99–0431V
87. Jacinda S. Fisher, Vienna, Virginia, Court of Federal Claims Number 99–0432V
88. Deborah Diana Butler, Vienna, Virginia, Court of Federal Claims Number 99–0433V
89. Dana Imlay on behalf of Breanna Barber, Vienna, Virginia, Court of Federal Claims Number 99–0434V
90. Stephanie Phippen, Vienna, Virginia, Court of Federal Claims Number 99–0435V
91. Bonnie and Jamie Thompson on behalf of Katherine A. Thompson, Vienna, Virginia, Court of Federal Claims Number 99–0436V
92. Shawn and John Klorczyk on behalf of Zachary Klorczyk, Vienna, Virginia, Court of Federal Claims Number 99–0437V
93. Jodi Lynn Kabat, Vienna, Virginia, Court of Federal Claims Number 99–0438V
94. Jane and Gregory Westfall on behalf of Luke Westfall, Vienna, Virginia, Court of Federal Claims Number 99–0439V
95. Rosemary and Francis Adelizzi on behalf of Francis Matthew Adelizzi, III, Cape May, New Jersey, Court of Federal Claims Number 99–0444V
96. Sharon Johnson on behalf of Kari Johnson, Vienna, Virginia, Court of Federal Claims Number 99–0450V
97. Kimberly Gabbard, Vienna, Virginia, Court of Federal Claims Number 99–0451V
98. Sheldon D. Wexler, Vienna, Virginia, Court of Federal Claims Number 99–0452V
99. Pedora and Jack Sexton on behalf of Nicholas Zachary Sexton, Deceased, Vienna, Virginia, Court of Federal Claims Number 99–0453V
100. Vili Kraljevic, Vienna, Virginia, Court of Federal Claims Number 99–0454V
101. Stacey and Carl Duncan on behalf of Carly Iris Duncan, Vienna, Virginia, Court of Federal Claims Number 99–0455V
102. Rosita Belone and Terry Singer on behalf of Summer K. Belone, Winslow, Arizona, Court of Federal Claims Number 99–0457V
103. Jose Guerrero, Dallas, Texas, Court of Federal Claims Number 99–0458V
104. Rachel Sting, Mobridge, South Dakota, Court of Federal Claims Number 99–0459V
105. Debbie Silver, Vienna, Virginia, Court of Federal Claims Number 99–0462V 21
106. Timothy James Carpenter, Vienna, Virginia, Court of Federal Claims Number 99–0463V
107. Candace Marie Kort, Vienna, Virginia, Court of Federal Claims Number 99–0464V
108. Timothy James Carpenter, II, Vienna, Virginia, Court of Federal Claims Number 99–0465V
109. Harvey Gruber, Vienna, Virginia, Court of Federal Claims Number 99–0466V
110. Charlene Pagac on behalf of Lucas Paul Pagac, Vienna, Virginia, Court of Federal Claims Number 99–0467V
111. Charlene Pagac on behalf of Isaak Alvin Pagac, Vienna, Virginia, Court of Federal Claims Number 99–0468V
112. Jennifer L. Ziegler, Vienna, Virginia, Court of Federal Claims Number 99–0469V
113. Kimberly Dixon on behalf of Dymetria Knight, Vienna, Virginia, Court of Federal Claims Number 99–0470V
114. Sandra and Castro Juncal on behalf of Natasha Juncal, North Miami, Florida, Court of Federal Claims Number 99–0475V
115. Teresa Ann Helton on behalf of Ashley Elizabeth Ransom, Deceased, Austell, Georgia, Court of Federal Claims Number 99–0478V
116. Nancy Gardner-Cook, Lancaster, Pennsylvania, Court of Federal Claims Number 99–0480V
117. Amber Borin on behalf of Trey Borin, Cincinnati, Ohio, Court of Federal Claims Number 99–0491V
118. Alina Cusati on behalf of Eric Fernandez, Bronx, New York, Court of Federal Claims Number 99–0492V
119. Laili Aly on behalf of Shadi Wadie, Vienna, Virginia, Court of Federal Claims Number 99–0493V
120. Maryann and Michael Zezulak on behalf of Michael Scott Zezulak, Jr., Vienna, Virginia, Court of Federal Claims Number 99–0494V
121. Tammy Carrington on behalf of Jonathan Carrington, Vienna, Virginia, Court of Federal Claims Number 99–0495V
122. Debi and Howard Kaplan on behalf of Ashley Elysa Kaplan, Vienna, Virginia, Court of Federal Claims Number 99–0496V
123. Richard Abbott, Sr. on behalf of Richard Abbott, Jr., Vienna, Virginia, Court of Federal Claims Number 99–0497V
124. Jaime Dejesus Rezzonico, Vienna, Virginia, Court of Federal Claims Number 99–0498V
125. Laurie Vidaver, Vienna, Virginia, Court of Federal Claims Number 99–0499V
126. Jay Nussman, Vienna, Virginia, Court of Federal Claims. Number 99–0500V

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127. Laura L. Cosby, Vienna, Virginia, Court of Federal Claims Number 99–0501V
128. Julianna Hodgman, Vienna, Virginia, Court of Federal Claims Number 99–0502V
129. Leslie J. Klauss, Vienna, Virginia, Court of Federal Claims Number 99–0503V
130. Janet and Ronald Allen on behalf of Ronald Allen, III, Vienna, Virginia, Court of Federal Claims Number 99–0504V
131. Barbara and Roland Stipe on behalf of Landon Cole Stipe, Vienna, Virginia, Court of Federal Claims Number 99–0505V
133. Theresa and Frank Picciotti on behalf of Frank C. Picciotti, Vienna, Virginia, Court of Federal Claims Number 99–0506V
133. Anthony Lamberti, Vienna, Virginia, Court of Federal Claims Number 99–0507V
134. Kenneth Teknus on behalf of Paul Michael Teknus, Port Charlotte, Florida, Court of Federal Claims Number 99–0508V
135. Karen and Michael Hochniuk on behalf of Heather Hochniuk, Vienna, Virginia, Court of Federal Claims Number 99–0509V
136. Barbara Davis, Vienna, Virginia, Court of Federal Claims Number 99–0510V
137. Traci McGowan on behalf of Alexander W. McGowan, Bethesda, Maryland, Court of Federal Claims Number 99–0511V
138. Hong (Heather) Tabatchnick on behalf of Nina H. Tabatchnick, Vienna, Virginia, Court of Federal Claims Number 99–0512V
139. Kathy and Richard Richards on behalf of David William Richards, Deceased, Vienna, Virginia, Court of Federal Claims Number 99–0517V
140. Carol Clemens, Vienna, Virginia, Court of Federal Claims Number 99–0518V
141. Anne E. Oftenweller, Vienna, Virginia, Court of Federal Claims Number 99–0519V
142. Deborah Van Burch on behalf of Khadija Aaliyah Francis, Vienna, Virginia, Court of Federal Claims Number 99–0520V
143. Sanford H. Alper, Vienna, Virginia, Court of Federal Claims Number 99–0521V
144. Christina and Kenneth Robinson on behalf of Kenneth Robinson, Vienna, Virginia, Court of Federal Claims Number 99–0522V
145. Cheryl Lombardi, Vienna, Virginia, Court of Federal Claims Number 99–0523V
146. Eva and Daniel Ricci on behalf of Thomas Walter Ricci, Downers Grove, Illinois, Court of Federal Claims Number 99–0524V
147. Robert Lasch, Vienna, Virginia, Court of Federal Claims Number 99–0525V
148. Laura Cannizzario, Boca Raton, Florida, Court of Federal Claims Number 99–0526V
149. Paige Howard on behalf of Hayden Howard, Austin, Texas, Court of Federal Claims Number 99–0527V
150. Reginald Hailey, Waldwick, New Jersey, Court of Federal Claims Number 99–0532V
151. Casey Hocraffer, Eagle Grove, Iowa, Court of Federal Claims Number 99–0533V
152. Julie Mulac on behalf of Marco Torres, Youngstown, Ohio, Court of Federal Claims Number 99–0534V
153. Laura Elizabeth Turpin, Vienna, Virginia, Court of Federal Claims Number 99–0535V
154. Jennifer Villasenor, Vienna, Virginia, Court of Federal Claims Number 99–0536V
155. Laura Savin on behalf of Bruce Thomas Savin, Vienna, Virginia, Court of Federal Claims Number 99–0537V
156. Martha and Bill Noel on behalf of Rachel Anne Noel, Vienna, Virginia, Court of Federal Claims Number 99–0538V
157. Myra and Richard Brown on behalf of Laura Brown, Vienna, Virginia, Court of Federal Claims Number 99–0539V
158. Karen Davis, Vienna, Virginia, Court of Federal Claims Number 99–0540V
159. Lynn Miller, Vienna, Virginia, Court of Federal Claims Number 99–0541V
160. Adael Shinn on behalf of Paul Stami, Vienna, Virginia, Court of Federal Claims Number 99–0542V
161. Nancy Turner on behalf of Natalie Turner, Vienna, Virginia, Court of Federal Claims Number 99–0543V
162. Nancy Turner on behalf of Brandon Turner, Vienna, Virginia, Court of Federal Claims Number 99–0544V
163. Barbara Murray, Vienna, Virginia, Court of Federal Claims Number 99–0545V
164. Donald Simmons, Pascagoula, Mississippi, Court of Federal Claims Number 99–0546V
165. Karen and Manfred Glaeser on behalf of Katie Glaeser, South Elgin, Illinois, Court of Federal Claims Number 99–0548V
166. Elvin J. Looney, Bakersfield, California, Court of Federal Claims Number 99–0549V
167. Jeffrey F. Miller, Baltimore, Maryland, Court of Federal Claims Number 99–0551V
168. Elizabeth Shapiro, Baltimore, Maryland, Court of Federal Claims Number 99–0552V
169. Alan P. Emmendorfer on behalf of Michael J. Emmendorfer, Baltimore, Maryland, Court of Federal Claims Number 99–0553V
170. Janet Pfistrer and Christopher Cole on behalf of Caroline Isabel Cole, Fort Collins, Colorado, Court of Federal Claims Number 99–0554V
171. Sherri A. Ballam, Canandaigua, New York, Court of Federal Claims Number 99–0555V
172. Carl Loizzi on behalf of Michael Loizzi, Sylmar, California, Court of Federal Claims Number 99–0559V
173. Sharon L. McLenon, Grosse Ile, Michigan, Court of Federal Claims Number 99–560V
174. Joyce Diane Keenan, Jacksonville, Florida, Court of Federal Claims Number 99–0561V
175. Laurie Perrin, Stephentown, New York, Court of Federal Claims Number 99–0562V
176. Mary Silva on behalf of Carmen M. Silva, Lighthouse Point, Florida, Court of Federal Claims Number 99–0563V
177. Laura Turpin on behalf of Conor Allen Turpin, Falls Church, Virginia, Court of Federal Claims Number 99–0564V
178. Robin Button on behalf of Jamie P. Button, Hudson, Ohio, Court of Federal Claims Number 99–0565V
179. Barbara A. Smith, St. Louis, Missouri, Court of Federal Claims Number 99–0568V
180. Marilyn L. Wheatley on behalf of Deneka Noelani Wheatley, Moreno Valley, California, Court of Federal Claims Number 99–0569V
181. Anthony Kent on behalf of Anthony Gordon Kent, II, San Jose, California, Court of Federal Claims Number 99–0570V
182. Joanna H. Rydzewski, Seffner, Florida, Court of Federal Claims Number 99–0571V
183. John Theadore Weber on behalf of John Thomas Weber, Northport, New York, Court of Federal Claims Number 99–0572V
184. James Perrodin, Pearland, Texas, Court of Federal Claims Number 99–0573V
185. Mai and William Herbison on behalf of David Francis Herbison, Deceased, Secaucus, New Jersey, Court of Federal Claims Number 99–0574V
186. Tonya and Gerald Nelson on behalf of Abigail Nelson, Deceased, Vienna, Virginia, Court of Federal Claims Number 99–0575V
187. Judith and Christopher Converse on behalf of Benjamin Peter Converse,

Vienna, Virginia, Court of Federal Claims Number 99–0576V
188. Charlotte A. Mann, Vienna, Virginia, Court of Federal Claims Number 99–0577V
189. Joseph Michael D'Angioloni, Vienna, Virginia, Court of Federal Claims Number 99–0578V
190. Shari Sand on behalf of Andrew Joseph Sand, Vienna, Virginia, Court of Federal Claims Number 99–0579V
191. Diane M. Sohn, Vienna, Virginia, Court of Federal Claims Number 99–0580V
192. Maura J. Fisk on behalf of Jonathan M. Fisk, Vienna, Virginia, Court of Federal Claims Number 99–0581V
193. Nancy and Wayne Fitzpatrick on behalf of Thomas W. Fitzpatrick, Vienna Virginia, Court of Federal Claims Number 99–0582V
194. Tyeka Lamar on behalf of Donnovan Lamar, Vienna, Virginia, Court of Federal Claims Number 99–0583V
195. Tyeka Lamar on behalf of Desmond Lamar, Vienna, Virginia, Court of Federal Claims Number 99–0584V
196. Janine West on behalf of David West, Vienna, Virginia, Court of Federal Claims Number 99–0585V
197. Lee Ann Cherpak on behalf of Christine E. Cherpak, Vienna, Virginia, Court of Federal Claims Number 99–0586V
198. Diane Adams on behalf of Sonic Rehrig, Vienna, Virginia, Court of Federal Claims Number 99–0587V
199. Summer Erin Densmore, Vienna, Virginia, Court of Federal Claims Number 99–0588V
200. Diane Locane on behalf of Jennifer Locane, Vienna, Virginia, Court of Federal Claims Number 99–0589V
201. Marianne Fraschilla, Vienna, Virginia, Court of Federal Claims Number 99–0590V
202. Ann Marie Ryman, Boston, Massachusetts, Court of Federal Claims Number 99–0591
203. Eileen Schwankl, Boston, Massachusetts, Court of Federal Claims Number 99–0592V
204. Ralph Sizemore on behalf of Amanda Sizemore, Boston, Massachusetts, Court of Federal Claims Number 99–0593V
205. Jane Stevens, Boston, Massachusetts, Court of Federal Claims Number 99–0594V
206. Elizabeth Topp on behalf of Robert Topp, Boston, Massachusetts, Court of Federal Claims Number 99–0595V
207. Charlene Vanluvender on behalf of Amber Vanluvender, Boston, Massachusetts, Court of Federal Claims Number 99–0596V
208. Mary Vaughn, Boston, Massachusetts, Court of Federal Claims Number 99–0597V
209. Kathy Vernier, Boston, Massachusetts, Court of Federal Claims Number 99–0598V
210. Sara Vogel, Boston, Massachusetts, Court of Federal Claims Number 99–0599V
211. Angelia Wile on behalf of Cailin Wile, Boston, Massachusetts, Court of Federal Claims Number 99–0600V
212. James Youngblood, Boston, Massachusetts, Court of Federal Claims Number 99–0601V
213. Nicole Washam on behalf of Baylie Washam, Deceased, Boston, Massachusetts, Court of Federal Claims Number 99–0602V
214. Priya Parmar, Boston, Massachusetts, Court of Federal Claims Number 99–0603V
215. Josie and James Powell on behalf of Emma Powell, Boston, Massachusetts, Court of Federal Claims Number 99–0604V
216. Susan Flynn on behalf of Anthony Flynn, Boston, Massachusetts, Court of Federal Claims Number 99–0605V
217. Linda Leva, Boston, Massachusetts Court of Federal Claims Number 99–0606V
218. Benedict Nkeng, Boston, Massachusetts, Court of Federal Claims Number 99–0607V
219. Harilyn Adler, Boston, Massachusetts, Court of Federal Claims Number 99–0608V
220. Vera Analla, Boston, Massachusetts, Court of Federal Claims Number 99–0609V
221. Loreen Artz, Boston, Massachusetts, Court of Federal Claims Number 99–0610V
222. Walter Augustynski, Boston, Massachusetts, Court of Federal Claims Number 99–0611V
223. Karen Batignani, Boston, Massachusetts, Court of Federal Claims Number 99–0612V
224. Teresa Boschee, Boston, Massachusetts, Court of Federal Claims Number 99–0613V
225. Raymond Bulman, Boston, Massachusetts, Court of Federal Claims Number 99–0614V
226. Kimberly Camerlin on behalf of Alexander Camerlin, Boston, Massachusetts, Court of Federal Claims Number 99–0615V
227. David Clark, Boston, Massachusetts, Court of Federal Claims Number 99–0616V
228. Cheryl Eichelkraut, Boston, Massachusetts, Court of Federal Claims Number 99–0617V
229. David Eklund, Boston, Massachusetts, Court of Federal Claims Number 99–0618V
230. Aly and Faten El-Kadi on behalf of Enjy El-Kadi, Boston, Massachusetts, Court of Federal Claims Number 99–0619V
231. Shereen El-Kadi, Boston, Massachusetts, Court of Federal Claims Number 99–0620V
232. Kristine Goodwin, Boston, Massachusetts, Court of Federal Claims Number 99–0621V
233. Lynn Herklots, Boston, Massachusetts, Court of Federal Claims Number 99–0622V
234. Glen Kerkovich, Boston, Massachusetts, Court of Federal Claims Number 99–0623V
235. Teri Kincaid on behalf of Lisa Kincaid, Boston, Massachusetts, Court of Federal Claims Number 99–0624V
236. Cathy and Jeffrey Kolakowski on behalf of Thomas Kolakowski, Deceased, Boston, Massachusetts, Court of Federal Claims Number 99–0625V
237. Lorraine LeBlanc, Boston, Massachusetts, Court of Federal Claims Number 99–0626V
238. Adam Lipsky, Boston, Massachusetts, Court of Federal Claims Number 99–0627V
239. Nancy Manvillin, Boston, Massachusetts, Court of Federal Claims Number 99–0628V
240. Brenda McMillin, Boston, Massachusetts, Court of Federal Claims Number 99–0629V
241. James Musarra on behalf of Franklin Musarra, Boston, Massachusetts, Court of Federal Claims Number 99–0630V
242. David Myers, Boston, Massachusetts, Court of Federal Claims Number 99–0631V
243. Elizabeth Fleming, Boston, Massachusetts, Court of Federal Claims Number 99–0632V
244. Robinette Giacolo, Boston, Massachusetts, Court of Federal Claims Number 99–0633V
245. Julienne Jack on behalf of Brandon Jack, Deceased, Boston, Massachusetts, Court of Federal Claims Number 99–0634V
246. Tammy Oppy, Boston, Massachusetts, Court of Federal Claims Number 99–0635V
247. John Owen, Jr., Boston, Massachusetts, Court of Federal Claims Number 99–0636V
248. Patricia Petet, Boston, Massachusetts, Court of Federal Claims Number 99–0637V
249. Justin Peugh, Boston, Massachusetts, Court of Federal Claims Number 99–0638V
250. Mona Porter, Boston, Massachusetts, Court of Federal Claims Number 99–0639V
251. Kathy and David Radosh on behalf of Tyler Radosh, Boston, Massachusetts, Court of Federal Claims Number 99–0640V
252. Lindsay Rand and Susan Braus on behalf of Emily Rand, Boston,

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Massachusetts, Court of Federal Claims Number 99–0641V
253. Linda Reyes on behalf of Anthony R. Reyes, Boston, Massachusetts, Court of Federal Claims Number 99–0642V
254. Gregory Riddick, Boston, Massachusetts, Court of Federal Claims Number 99–0643V
255. Claudia J. Rotoli, Boston, Massachusetts, Court of Federal Claims Number 99–0644V
256. Caren Rubin, Boston, Massachusetts, Court of Federal Claims Number 99–0645V
257. Christopher Wiley, Baton Rouge, Louisiana, Court of Federal Claims Number 99–0646V
258. Martha Durham on behalf of Eliza Collier Durham, Vienna, Virginia, Court of Federal Claims Number 99–0648V
259. Ryan James Szekeres, Vienna, Virginia, Court of Federal Claims Number 99–0649V
260. Laurene Owen, Vienna, Virginia, Court of Federal Claims Number 99–0650V
261. Donna Guillory, Kenner, Louisiana, Court of Federal Claims Number 99–0651V
262. Simba Bakara on behalf of Aisha Bakara, Columbus, Ohio, Court of Federal Claims Number 99–0652V
263. Joanne Baker on behalf of Jonathan Baker, New York, New York, Court of Federal Claims Number 99–0653V
264. Kathryn and Peter Bordonaro on behalf of Michael Bordonaro, Boston, Massachusetts, Court of Federal Claims Number 99–0654V
265. Barbara and John Gilchrist on behalf of Joseph Gilchrist, Deceased, Boston, Massachusetts, Court of Federal Claims Number 99–0655V
266. Fidel Gonzales on behalf of Jacob Gonzales, Boston, Massachusetts, Court of Federal Claims Number 99–0656V
267. Juan Lopez and Elizabeth Birt on behalf of John Matthew Lopez, Boston, Massachusetts, Court of Federal Claims Number 99–0657V
268. Megan Theard, Boston, Massachusetts, Court of Federal Claims Number 99–0658V
269. Rhea Rolsten, Columbus, Ohio, Court of Federal Claims Number 99–0659V
270. Colleen Elizabeth Torbett, Bellevue, Kentucky, Court of Federal Claims Number 99–0660V
271. Renee Eyerman, Dallas, Pennsylvania, Court of Federal Claims Number 99–0661V
272. Craig D. Nicks on behalf of Charles Joffre Bouchard Nicks, Portage, Michigan, Court of Federal Claims Number 99–0662V
273. Craig D. Nicks on behalf of Aidan Nicks, Portage, Michigan, Court of Federal Claims Number 99–0663V
274. Sara and Joseph Barbeau on behalf of Amy Renee Barbeau, Chesterfield, Missouri, Court of Federal Claims Number 99–0664V
275. Winfred Christian, Miami, Florida, Court of Federal Claims Number 99–0665V
276. Lori Meyers, Kalispell, Montana, Court of Federal Claims Number 99–0666V
277. Patricia and James Musarra on behalf of Franklin Musarra, Miami, Florida, Court of Federal Claims Number 99–0667V
278. Tracy Charleville, Baton Rouge, Louisiana, Court of Federal Claims Number 99–0668V
279. Jacqueline and Rob Sharkey on behalf of Ryna Reid Sharkey, Fort Myers, Florida, Court of Federal Claims Number 99–0669V
280. Eric Jeffries, Cincinnati, Ohio, Court of Federal Claims Number 99–0670V
281. Lester Thornton, Tampa, Florida, Court of Federal Claims Number 99–0671V
282. Danielle Sarkine on behalf of Alexandra Logan Sarkine, Indianapolis, Indiana, Court of Federal Claims Number 99–0672V
283. Danielle Sarkine on behalf of Christian Sarkine, Indianapolis, Indiana, Court of Federal Claims Number 99–0673V
284. Shari and Patrick Sanders on behalf of Jake Sanders, Bismarck, North Dakota, Court of Federal Claims Number 99–0674V
285. James Brooks on behalf of Sean Austin Brooks, Deceased,Boston, Massachusetts, Court of Federal Claims Number 99–0675V
286. Clark Bury, Boston, Massachusetts, Court of Federal Claims Number 99–0676V
287. Christy Mitchell, Boston, Massachusetts, Court of Federal Claims Number 99–0677V
288. Robin and John Nesslage on behalf of Hannah Nesslage, Boston, Massachusetts, Court of Federal Claims Number 99–0678V
289. Ellen and James O'Brien on behalf Kevin O'Brien, Boston, Massachusetts, Court of Federal Claims Number 99–0679V
290. Leslie Yost-Schomer on behalf of Weston Daniel Schomer, Vienna, Virginia, Court of Federal Claims Number 99–0680V
291. Ronald Warren Edmunds of behalf of Ronald Christopher Edmunds, Vienna, Virginia, Court of Federal Claims Number 99–0681V
292. Janet Asbury on behalf of Amanda Asbury, Vienna, Virginia, Court of Federal Claims Number 99–0682V
293. Hoke Brock Hamrick, Vienna, Virginia, Court of Federal Claims Number 99–0683V
294. Gloria Lee McNett, Vienna, Virginia, Court of Federal Claims Number 99–0684V
295. Cynthia Gwinn on behalf of Samantha Gwinn, Vienna, Virginia, Court of Federal Claims Number 99–0685V
296. Annette and Wayne Bennett on behalf of Riley Bennett, Boston, Massachusetts, Court of Federal Claims Number 99–0686V
297. Margaret Wolpo on behalf of Maximllan Wolpo, Boston, Massachusetts, Court of Federal Claims Number 99–0687V
298. Ann and Robert Edge on behalf of Robert Bruce Edge, II, Orlando, Florida, Court of Federal Claims Number 99–0692V
299. Fia and Phillip Richmond on behalf of Palmer Richmond, Santa Barbara, California, Court of Federal Claims Number 99–0693V
300. Daniel Melbourne, Vienna, Virginia, Court of Federal Claims Number 99–0694V
301. Kathy Minet on behalf of Andrew Michael Minet, Poughkeepsie, New York, Court of Federal Claims Number 99–0695V
302. Timothy R. Laurain on behalf of Paige E. Laurain, Riverview, Michigan, Court of Federal Claims Number 99–0696V
303. Donald R. Masias, Denver, Colorado, Court of Federal Claims Number 99–0697V
304. Joseph Michael D'Angiolini, Barto, Pennsylvania, Court of Federal Claims Number 99–0698V
305. Wilbur Fletcher on behalf of Rachel Fletcher, La Mesa, California, Court of Federal Claims Number 99–0708V
306. Robin Grewe on behalf of Diane Grewe, Houston, Texas, Court of Federal Claims Number 99–0709V
307. Cheryl and Kenneth Dennison on behalf of Jacob Dennison, St. Louis, Missouri, Court of Federal Claims Number 99–0710V
308. Lowenda and Joel Towe on behalf of Hannah Michelle Towe, Virginia Beach, Virginia, Court of Federal Claims Number 99–0711V
309. Maureen Woods on behalf of Antoinne Nelson, Salina, Kansas, Court of Federal Claims Number 99–0720V
310. Mattie Gatlin on behalf of Billy Edward Gatlin, Deceased, Dallas, Texas, Court of Federal Claims Number 99–0723V
311. Denise Jean Shirley on behalf of Destiny Ann Shirley, Clintwood,

Virginia, Court of Federal Claims Number 99–0730V
312. Jorge and Bonnie Correa on behalf of Danielle R. Correa, Glens Falls, New York, Court of Federal Claims Number 99–0736V
313. Anita Y. Oplotnik on behalf of Kristen L. Oplotnik, Springfield, Missouri, Court of Federal Claims Number 99–0739V
314. Cara Byriel, Boone, Iowa, Court of Federal Claims Number 99–0741V
315. Tanzee and Scott Kallas on behalf of Shelby J. Kallas, Evanston, Wyoming, Court of Federal Claims Number 99–0743V
316. Cathryn Lutitia Gardiner, Lake Worth, Texas, Court of Federal Claims Number 99–0745V
317. Rosezella and Steve Gorby on behalf of Danielle Lucille Gorby, Indianapolis, Indiana, Court of Federal Claims Number 99–0748V
318. Georgia Marks on behalf of Brandon D. James, Houston, Texas, Court of Federal Claims Number 99–0761V
319. Jean Kefalidis on behalf of Eleni Kefalidis, Simpsonville, South Carolina, Court of Federal Claims Number 99–0772V
320. Andrea Rupert on behalf of Holden Rupert, Boston, Massachusetts, Court of Federal Claims Number 99–0774V
321. Christopher J. Priest and Rebecca A. Soden on behalf of Christopher I. Priest, Camden, New Jersey, Court of Federal Claims Number 99–0776V
322. Margaret Messeri on behalf of Julianna Messeri, Boston, Massachusetts, Court of Federal Claims Number 99–0777V
323. Leroy Stacy, Springfield, Massachusetts, Court of Federal Claims Number 99–0779V
324. Phyllis A. Fenstermacher, Allentown, Pennsylvania, Court of Federal Claims Number 99–0786V
325. Nelda Limon and Vincent Vaquera on behalf of Miranda Limon, Houston, Texas, Court of Federal Claims Number 99–0787V

March 21, 2000.

Claude Earl Fox,

Administrator.

[FR Doc. 00–8480 Filed 4–5–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60-Day Proposed Information Collection: Indian Health Service Customer Satisfaction Survey

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, to provide a 60-day advance opportunity for public comment on proposed information collection projects, the Indian Health Service (IHS) is publishing for comment a summary of a proposed information collection to be submitted to the Office of Management and Budget (OMB) for review.

Proposed Collection

Title: "Indian Health Service Customer Satisfaction Survey."

Type of Information Collection Request: New collection.

Form Number: None.

Need and Use of the Information Collection: Executive Order 12862, "Setting Customer Service Standards" directs agencies "that provide significant services directly to the public" to "survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services." The proposed customer satisfaction survey is designed to assess the level of customer (patient) satisfaction with the services provided at IHS-operated health care facilities. Voluntary customer service surveys will be conducted at IHS-operated health care facilities. The information gathered will be used by agency management and staff to identify strengths and weakenesses in current service provision, to plan and redirect resources, to make improvements that are practical and feasible and, to provide vital feedback to local health officials, health boards, and community members regarding customer satisfaction or dissatisfaction with the health care and related services being provided.

Affected Public: Individuals.

Type of Respondents: Individuals.

See Table 1 below for type of data collection instrument, estimated number of respondents, number of responses per respondent, average burden hour per response, and total annual burden hour.

TABLE 1

Data collection instrument	Estimated Number of respondents	Responses per respondent	Average burden hour per response [1]	Total annual burden hrs
Customer Satisfaction Survey	7500	1	[2] 0.25	1875.0
Total	7500	1		1875.0

[1] For ease of understanding, burden hours are also provided in actual minutes.
[2] 15 minutes.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report for this information collection.

Request for Comments

Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send Comments and Requests For Further Information: Send your written comments, requests for more information on the proposed collection or requests to obtain a copy of the data collection instrument(s) and instructions to: Mr. Lance Hodahkwen, Sr., M.P.H., IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852. 1601, call non-toll free (301) 443–5938; send via facsimile to (301) 443–1522, or send your e-mail requests, comments, and

return address to: lhodahkw@hqe.ihs.gov.

Comment Due Date: Your comments regarding this information collection are best assured of having their full effect if received on or before June 5, 2000.

Dated: March 28, 2000.

Michael E. Lincoln,

Acting Director.

[FR Doc. 00–8398 Filed 4–5–00; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Houston Toad (*Bufo houstonensis*) During Construction of One Single Family Residence on 0.5 Acres of the 4.55 Acres of Adjacent Lots 27 and 28 of the Pine Forest Subdivision, Unit 9, Block 2 and Lots 562 and 564 in the Tahitian Village Subdivision, Unit 2, Block 5, Bastrop County, TX

SUMMARY: Ray Don Tilley (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–023965–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of one single family residence on 0.5 acres of the 4.55 acres of adjacent Lots 27 and 28 of the Pine Forest Subdivision, Unit 9, Block 2 and Lots 562 and 564 of the Tahitian Village Subdivision, Unit 2, Block 5, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before May 8, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Scott Rowin, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Services Field Office, Austin, Texas, at the above address. Please refer to permit number TE–023965–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Scott Rowin at the above Austin Ecological Services Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: Ray Don Tilley plans to construct a single family residence on 0.5 acres of the 4.55 acres of adjacent Lots 27 and 28 of the Pine Forest Subdivision, Unit 9, Block 2 and Lots 562 and 564 of the Tahitian Village Subdivision, Unit 2, Block 5, Bastrop County, Texas. This action will eliminate 0.5 acres or less and result in indirect impacts within the lot. The applicant proposes to compensate for this incidental take of the Houston toad by providing $1,500 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Geoffrey L. Haskett,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–8437 Filed 4–5–00; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY/PL–00/012+1310]

South Baggs Area Natural Gas Development Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Final Environmental Impact Statement.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Final Environmental Impact Statement (FEIS) for the South Baggs Area Natural Gas Project (Project). The FEIS analyzes the environmental consequences of Merit Energy Company's (Merit) proposal to drill up to fifty (50) additional natural gas wells in the Project area over the next 10 years. The Project area encompasses approximately 12,352 acres of Federal, State, and private lands located approximately 3 miles west of the town of Baggs in Carbon County, Wyoming, within the administrative jurisdiction of the BLM Rawlins Field Office. Approximately 43 oil and gas wells have been drilled within the Project area to date.

DATES: Written comments on the FEIS will be accepted for 30 days following the date that the Environmental Protection Agency (EPA) publishes their notice of availability of the FEIS in the **Federal Register**. The EPA notice is expected to be published April 14, 2000.

ADDRESSES: Send written comments to: Larry Jackson, Team Leader, Rawlins Field Office, Bureau of Land Management, 1300 N. Third Street, P.O. Box 2407, Rawlins, Wyoming 82301, or e-mail to: rawlins__wymail@blm.gov.

FOR FURTHER INFORMATION CONTACT: Larry Jackson, phone 307–328–4231.

SUPPLEMENTARY INFORMATION: The Project FEIS analyzes the impacts of drilling from 40 (Alternative A) to 90 (Alternative B) natural gas wells, along with constructing access roads, pipelines, and other ancillary facilities (compressor station, water disposal sites, etc.) on 10,067 acres of Federal land and 2,285 acres of non-Federal lands. The exact numbers of additional wells, the locations of those wells, and the timing for drilling them are contingent upon drilling success, production technology, and economic considerations. The No Action Alternative analyzes the current level of drilling and development (43 wells) in the South Baggs Project area.

If you wish to comment on the FEIS, we request you make your comments as specific as possible. Comments will be more helpful if they include suggested changes, sources, or methodologies. Opinions or preference will not receive a formal response; however, BLM will consider them in its decision.

Comments, including names and street addresses of respondents, will be available for public review at the address listed above during regular

business hours (7:45 a.m.–4:30 p.m.) Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: March 30, 2000.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 00–8439 Filed 4–5–00; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–00–1310–EJ]

Jonah Field Environmental Assessment, Sublette County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of an Environmental Assessment (EA) addressing impacts associated with a modification to development of the Jonah Field, as approved by the Jonah II Natural Gas Project Final Environmental Impact Statement (EIS).

SUMMARY: This Environmental Assessment addresses modifications to the April 27, 1998, Record of Decision (ROD) for the Jonah Field II Natural Gas Project (EIS). In that ROD, BLM approved development of the Jonah Field at one gas well per 80 acres. Project proponents, McMurry Oil Company and Amoco Production Company, have requested BLM approval to develop the east half of the field at one well per 40 acres.

At this point, the analysis of the proposed project modification has resulted in a finding of no significant impact (FONSI). Should new or additional information be provided during the public review and comment period on the EA that would identify significant impacts resulting from the proposed project modification, the EA will become the draft supplemental EIS. Subsequently, a final EIS and ROD would be issued. The public will be notified through newspaper articles and a subsequent **Federal Register** notice, if significant impacts are identified and if the EA process will be replaced with the EIS process. If the FONSI is not reversed, the decision record for the EA will be prepared and issued.

DATES: Public comments concerning this proposed project modification will be accepted for 45 days following the date this notice is published in the **Federal Register**. Copies of the EA will have been distributed by mail to local media and known interested parties on or before the date this notice is published.

ADDRESSES: Send written comments to: Bureau of Land Management, Rock Springs Field Office, ATTN: Arlan Hiner, Project Manager, 280 Highway 191 North, Rock Springs, Wyoming 82901.

FOR FURTHER INFORMATION CONTACT: Arlan Hiner, Project Manager, Bureau of Land Management, Rock Springs Field Office, Telephone 307–352–0206. Information and a copy of the Jonah Field Natural Gas Project Modification EA can be obtained from Mr. Hiner at the above phone number or from the following BLM offices: Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901; Pinedale Field Office, 432 East Mill Street, P.O. Box 768, Pinedale, Wyoming 82941; and Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: The Jonah Field Natural Gas Project is located approximately 32 miles south of Pinedale, Wyoming, and 28 miles north of Farson, Wyoming, within Townships 28 and 29 North, Ranges 107, 108, and 109 West, Sublette County. The 29,200 acre project area includes 26,640 acres of Federally-owned surface and minerals, 640 acres of privately-owned surface over Federally-owned minerals, and 1,920 acres of surface and minerals owned by the State of Wyoming. Currently, 170 active gas wells, out of 497 wells approved in the Jonah II EIS ROD, have been drilled in the project area.

The project proponents would like to proceed with drilling gas wells in the east half of the project area at a 40 acre spacing (16 wells per section), beginning in the summer of 2000. They expect that drilling 497 wells will allow them to adequately extract the natural gas. There are 170 wells located within the Jonah Field, which are served by three transportation pipelines. This field development modification will not require any additional transportation pipelines. The proposed development modification would include a separator, dehydrator, production tanks, and tinhorns (for holding produced water) at each surface well location; an access road and gas gathering pipeline to each surface well location; water supply wells; and produced water disposal systems (either injection wells or surface pits).

The companies will be allowed to continue to drill wells at 80 acre spacing, as approved by the ROD for the Jonah II EIS, until the decision on the development modification is made.

Dated: March 29, 2000.

Alan R. Pierson,

State Director.

[FR Doc. 00–8438 Filed 4–5–00; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–160–1430–ET; CACA 7820]

Public Land Order No. 7435; Revocation of Public Land Order No. 460; California; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In **Federal Register** document 00–7213 beginning on page 15648 in the issue of Thursday, March 23, 2000, make the following correction:

On page 15648 in the second column, the section and subdivision which reads "Sec. 14, N½W¼" is hereby corrected to read "Sec. 14, N½NW¼".

Dated: March 29, 2000.

Duane Marti,

Acting Chief, Branch of Lands (CA–931).

[FR Doc. 00–8509 Filed 4–5–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

30 Day Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of submission to OMB and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13), this notice announces the National Park Service's (NPS) intention to request an extension for a currently approved information collection request used in the Historic Preservation Tax Incentives Program administered by the NPS.

The Primary Purpose of the Information Collection Request: Section 47 of the Internal Revenue Code requires that the Secretary of the Interior certify to the Secretary of the Treasury upon application by owners of historic properties for Federal tax benefits, (a) the historic character of the property, and (b) that the rehabilitation work is consistent with that historic character. The National Park Service administers the program in partnership with the Internal Revenue Service. The Historic Preservation Certification Application is used by the National Park Service to evaluate the condition and historic significance of buildings undergoing rehabilitation for continued use, and to evaluate whether the rehabilitation work meets the Secretary of the Interior's Standards for Rehabilitation.

DATES: Comments on this notice must be received by May 8, 2000 to be assured of consideration.

The bureau solicits public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;
2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The quality, utility, and clarity of the information to be collected; and,
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

ADDRESSES: Send comments to: Desk Officer, Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Also send a copy of your comments to: Michael Auer, National Park Service, 1849 C St., NW, Room NC 200, Washington, DC 20240; 202–343–9578.

All comments will become a matter of public record. Copies of the proposed Information Collection Request can be obtained from Michael J. Auer, Ph.D., National Park Service, 1849 C St., NW, Room NC 200, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Michael Auer, 202–343–9578.

SUPPLEMENTARY INFORMATION:

1. *Title:* Historic Preservation Certification Application.
2. *Summary:* Request for an extension for a currently approved information collection request used in the Historic Preservation Tax Incentives Program administered by the National Park Service.
3. *Need for information and proposed use:* To enable the Secretary of the Interior to make certifications to the Secretary of the Treasury concerning historic buildings undergoing rehabilitation for the purposes of a Federal income tax credit.
4. Respondents are owners of historic buildings, or qualified long-term lessees. The number of respondents is estimated to be 3,000 per year. The frequency of response is on occasion, as requested by owners of buildings (one response per respondent).
5. The total annual reporting and recordkeeping burden is estimated to be 7,500 hours.
6. Comments may be submitted to the Office of Management and Budget (OMB).

Dated: March 31, 2000.

Leonard E. Stowe,

Information Collection Clearance Officer.

[FR Doc. 00–8573 Filed 4–5–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Statistics; Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of information collection under review; New collection; Census of State and local law enforcement agencies.

Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 20, 2000, at 65 FR 3249 allowing for a 60-day public comment period. No comments were received by the Bureau of Justice Statistics.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 8, 2000. This process is conducted in accordance with 5 CFR part 1320.10.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond through the use of appropriate automated, electronic mechanical, other technological collection techniques, or other forms of information technology that permit electronic submissions of responses.

Overview of This Information Collection

(1) *Type of information collection:* New collection.

(2) *Title of the form/collection:* 2000 Census of State and Local Law Enforcement Agencies.

(3) *Agency form numbers and the applicable component of the Department sponsoring the collection:* Forms CJ–38L and CJ–38S; Law Enforcement Statistics, Bureau of Justice statistics, Office of Justice Programs,U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* State and local government agencies; The Census of State and Local Law Enforcement Agencies provides a comprehensive assessment of the characteristics of State and local law enforcement agencies in terms of functions performed, number of personnel, requirements for entry-level officers, types of equipment used, degree of computerization, special policies and programs, and community policing activities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* A total of 19,000 respondents at 44 minutes per response. This includes 3,000 respondents to from CJ–38L at 2 hours per response,and 16,000 respondents to form CJ–38S at 30 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 14,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed collection instrument with instruction, or additional information, please contact Brenda E. Dyer, Deputy Clearance Officer, U.S. Department of Justice. Information Management and Security Staff, Justice Management Division, 1331 Pennsylvania Avenue, NW, suite 1220, Washington, DC 20530.

Dated: March 31, 2000.

Brenda E. Dyer,

Deputy Clearance Officer, U.S. Department of Justice.

[FR Doc. 00–8422 Filed 4–5–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

March 30, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), on or before May 8, 2000.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Title: Inorganic Arsenic (29 CFR 1910.1018).

Type of Review: Extension of a currently approved collection.

OMB Number: 1218–0104.

Frequency: On occasion.

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Respondents: 42.

Responses: 58,763.

Estimated Time Per Respondent: Time per response ranges from approximately 5 minutes for employers to maintain employee exposure monitoring and medical records to 1.67 hours for an employee to complete a medical examination.

Total Burden Hours: 7,376.

Total Annualized capital/startup: $0.

Total annual costs (operating/maintaining systems or purchasing services): $1,132,408.

Description: The information collection requirements in the Inorganic Arsenic Standard provide protection for employees from the adverse health effects associated with occupational exposure to inorganic arsenic. The Inorganic Arsenic Standard requires employers to monitor employee exposure to inorganic arsenic; monitor employee health; develop and maintain employee exposure-monitoring records; notify OSHA area office in writing of regulated areas, and changes to these areas; and provide employees with information about their exposures and the health effects of exposure to inorganic arsenic.

Agency: Occupational Safety and Health Administration.

Title: Coke Oven Emissions (29 CFR 1910.1028).

Type of Review: Extension of a currently approved collection.

OMB Number: 1218–0128.

Frequency: On occasion.

Affected Public: Business or other for-profit; Federal Government, State, Local or Tribal Government.

Respondents: 14.

Responses: 83,111.

Estimated Time Per Respondent: Time per response ranges from approximately 5 minutes for employers to maintain employee exposure monitoring and medical records to 4 hours to complete a medical examination.

Total Burden Hours: 60,664.

Total Annualized capital/startup: $0.

Total annual costs (operating/maintaining systems or purchasing services): $1,365,365.

Description: The Coke Oven Standard, and its information collection requirements, is designed to provide protection for employees from the adverse health effects associated with occupational exposure to coke oven emissions. The Coke Oven Standard requires employers to monitor employee exposure to coke oven emissions, to monitor employee health, and to provide employees with information about their exposures and the health effects of exposure to coke oven emissions.

Agency: Occupation Safety and Health Administration.

Title: 1,3-Butadiene (29 CFR 1910.1051).

Type of Review: Extension of a currently approved collection.

OMB Number: 1218–0170.

Frequency: On occasion.

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Respondents: 115.

Responses: 335,944.

Estimated Time Per Respondent: Time per response ranges from approximately 5 minutes for employers to maintain employee exposure monitoring and medical records to 1.5 hours for an employee to complete a medical examination.

Total Burden Hours: 2,909.

Total Annualized capital/startup: $0.

Total annual costs (operating/maintaining systems or purchasing services): $82,010.

Description: The information collection requirements in the 1,3-Butadiene Standard provide protection for employees from the adverse health effects associated with occupational exposure to 1,3-Butadiene. The 1,3-Butadiene Standard requires employers to monitor employee exposure to 1,3-Butadiene; develop and maintain compliance and exposure-goal programs if employee exposures to 1,3-Butadiene are above the Standard's permissible exposure limits or action level; monitor employee health, and to provide employees with information about their exposures and the health effects of exposure to 1,3-Butadiene.

Agency: Pension and Welfare Benefits Administration.

Title: Notice of Enrollment Rights.

Type of Review: Extension of a currently approved collection.

OMB Number: 1210–0101.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals or households.

Frequency of Response: On occasion.

Respondents: 2,600,000.

Responses: 9,602,000.

Total Estimated Burden Hours: 7,200.

Total Annualized Capital/Startup Costs: $0.

Total Annual Cost (Operating and Maintenance): $841,000.

Total Annualized Cost: $841,000.

Description: Subtitle B of Title 1 of ERISA, Part 7, section 707, added by the Health Care Portability and Accountability Act of 1996 (Pub. L. 104–191, August 31, 1996) (HIPAA) authorizes the Secretary of Labor, in coordination with the Secretary of Health and Human Services (HHS) and the Secretary of the Treasury, to promulgate such regulations as may be necessary or appropriate to carry out the provisions of the Statute. Accordingly, Interim Rules Implementing the Portability Requirement for Group Health Plans were published on April 8, 1997 (62 FR 16920 through 16923) (April 8 Interim Rules).

In order to improve participants' understanding of their rights under an employer's group health plan, HIPAA requires that a participant be provided with a description of a plan's special enrollment rules on or before the time when a participant is offered the opportunity to enroll in a group health plan. This ICR covers the disclosure of enrollment rights.

Agency: Pension and Welfare Benefits Administration.

Title: Notice of Pre-existing Condition Exclusion.

Type of Review: Extension of a currently approved collection.

OMB Number: 1210–0102.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals or households.

Frequency of Response: On occasion.

Respondents: 1,300,000.

Responses: 8,570,000.

Total Estimated Burden Hours: 9,004.

Total Annualized Capital/Startup Costs: $0.

Total Annual Cost (Operating and Maintenance): $1,088,000.

Total Annualized Cost: $1,088,000.

Description: Subtitle B of Title 1 of ERISA, Part 7, section 707, added by the Health Care Portability and Accountability Act of 1996 (Pub. L. 104–191, August 31, 1996) (HIPAA) authorizes the Secretary of Labor, in coordination with the Secretary of Health and Human Services (HHS) and the Secretary of the Treasury, to promulgate such regulations as may be necessary or appropriate to carry out the provisions of the statute. Accordingly, Interim Rules implementing the Portability Requirement for Group Health Plans were published on April 8, 1997 (62 FR 16920 through 16923) (April 8 Interim Rules).

In order to meet HIPAA's goal of improving portability of health care coverage, participants need to understand their right to demonstrate prior creditable coverage when entering a group health plan that imposes pre-existing condition exclusion provisions. In addition, participants entering plans that use an alternative method of determining creditable coverage also need to be informed of the plan's provisions. Therefore, the Department has determined that plans that contain these provisions must disclose that fact to new participants, as well as inform individual participants of the extent to which a pre-existing condition exclusion applies to them. This ICR covers the disclosure of pre-existing condition exclusions.

Agency: Pension and Welfare Benefits Administration.

Title: Establishing Prior Creditable Coverage.

Type of Review: Extension of a currently approved collection.

OMB Number: 1210–0103.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals or households.

Frequency of Response: On occasion.

Respondents: 2,600,000.

Reponses: 44,396,000.

Total Estimated Burden Hours: 351,150.

Total Annual Cost (Operating and Maintenance): 429,289,000.

Total Annualized Cost: $34,689,000.

Description: Subtitle B of Title 1 of ERISA, Part 7, section 707, added by the Health Care Portability and Accountability Act of 1996 (Pub. L. 104–191, August 31, 1996) (HIPAA) authorizes the Secretary of Labor, in coordination with the Secretary of Health and Human Services (HHS) and the Secretary of the Treasury, to promulgate such regulations as may be necessary or appropriate to carry out the provisions of the statute. Accordingly, Interim Rules implementing the Portability Requirement for Group Health Plans were published on April 8, 1997, (62 FR 16920 through 16923) (April 8 Interim Rules).

In order to meet HIPAA's goal of improving access to and portability of health care benefits, the statute provides that, after the submission of evidence establishing prior creditable coverage, a subsequent health insurance provider would be limited to the extent to which it could use pre-existing condition exclusions to limit coverage. This ICR covers the submission of materials sufficient to establish prior creditable coverage.

Ira L. Mills,

Department Clearance Officer.

[FR Doc. 00–8444 Filed 4–5–00; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection of Job Corps Health Questionnaire Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Job Corps is soliciting comments concerning the proposed revision of the Health Questionnaire, Form ETA 6–53, a copy of which is attached to this notice.

DATES: Written comments must be submitted to the office listed; in the **ADDRESSES** section below on or before June 5, 2000.

ADDRESSES: Barbara J. Grove, RN, National Nursing Director, Job Corps, room N 4507, 200 Constitution Avenue, NW, Washington, DC 20210, 202–219–5556, ext. 121 (this is not a toll-free number), 202–219–5183 (fax).

SUPPLEMENTARY INFORMATION:

I. Background

The Job Corps program is described in its enabling legislation under Public Law 105–220, Workforce Investment Act of 1998. Section 145 establishes standards and procedures for obtaining data from each applicant relating to their needs. The Department of Labor's regulation at 20 CFR 670.410 further details the recruitment and screening of applicants.

Individuals who wish to enroll in the Job Corps program, must first be determined to be eligible and selected

for enrollment. This process is carried out by admissions agencies, including state employment services, contracted to recruit young people for the Job Corps program. The admission process ensures that applicants meet all the admission criteria as defined in the *Policy and Requirement Handbook (PRH) Chapter 1, Outreach and Admissions, October 1998.*

Nonmedical personnel in the admission's office (admission counselors) conduct the admission interview and complete the required application forms. The ETA 6–53 is completed on all applicants that have been determined to be eligible and selected for the Job Corps Program.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission or responses.

III. Current Actions

After the applicant has been determined to be eligible and then selected for the Job Corps Program, the applicant is assigned to a center. After being assigned to a center, the ETA 6–53 is completed on all applicants. If additional health information is needed from previous health care providers, this information is collected and the admission packet in its entirety, is sent to the center of assignment. When the application is received on center, it is reviewed; and if there are health related issues, the application is forwarded to the center's health services. After reviewing the application, if it is felt that the applicant's health needs can not be met on center, the folder is sent to the Regional Office for review. The folder is then reviewed by the Regional Health Consultant and a recommendation is made to the Regional Director. The Regional Director makes the final determination regarding enrollment of the applicant. If the application is denied, the applicant will be referred to other state and/or local agencies.

Experience throughout the Job Corps indicates that the Health Questionnaire is an excellent guide in identifying current and potential applicant health needs. Its use results in considerable savings of time, by both center health staff and regional health consultants and staff, and of money, by reducing high medical program costs due to medical separations.

Revisions of the ETA 6–53 have been made to reflect the Workforce Investment Act, and to be more sensitive to applicants with health needs.

Type of Review: Reinstatement with Change.

Agency: Employment and Training Agency.

Title: Job Corps Health Questionnaire, ETA 6–53.

OMB Number: 1205–0033.

Agency Number: ETA 653.

Recordkeeping: The applicant is not required to retain the records; admission counselors or contractor's main offices are required to retain records of applicants who are enrolled in the program for three years from the date of application.

Affected Public: Individuals or households.

Frequency: The form would be completed on each applicant.

Total Responses: 93,000.

Average Time for Responses: It takes approximately 5 minutes to complete the form. (It may take longer for some applicants.)

Estimated Total Burden Hours: 7750. [93,000 (number of applications) ÷ 12 (number of applications that can be completed in an hour) = 7750].

Total Burden Cost (capital/startup): 0.

Total Burden Cost: (operating/maintaining): Operating and maintenance services associated with these forms are contracted yearly by the Federal Government with outreach and admissions contractors, according to designated recruiting areas. This is one of the many functions the contractors perform for which precise costs cannot be identified. Based on the past experience of recruitment contractors, however, the annual cost for contractor staff and related cost is estimated to be about $771,750. An additional cost of $11,974 is added for the applicant's time, making the total $783,724. For the approximately 70 percent of the Job Corps applicants who have never worked, no value is determined. For the remaining 30 percent of applicants who have been in the work force previously for any length of time, whether full-time or less, the current minimum wage of $5.15 is used to determine the value of the applicant time.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request: they will also become a matter of public record.

Dated: March 31, 2000.

Jackie Roberts,

Acting Deputy Director, Job Corps.

BILLING CODE 4510–30–P

Job Corps Health Questionnaire

U.S. Department of Labor
Employment and Training Administration

OMB Approval No. 1205-0033
Expiration Date: xx/xx/xxxx

PURPOSE: To determine the health and accommodation/modification needs of the Job Corps applicant.

INSTRUCTIONS: Job Corps centers provide health care; therefore, please answer all of the questions correctly so that the center you go to can provide you with appropriate health services. The collection of this information is authorized by PL 105-220. The information is requested on a voluntary basis.

1. Name (Last, First, Middle Initial)

2. Social Security Number ___ ___ ___-___ ___-___ ___ ___ ___ | 3. Sex (M/F) | 4. Height (in) | 5. Weight (lb)

6 What is your general Health Condition (circle one): Excellent Good Fair

7. a. Are you or your family covered by health insurance? (If YES, obtain copy of health insurance card and attach to this form.) NO ☐ YES ☐
   b. Are you or your family covered by Medicaid? (If YES, obtain copy of Medicaid card and attach to this form.) NO ☐ YES ☐

A "YES" answer to any item in questions 8, 9, or 10 requires an explanation in question 11 on the reverse of this form.

8. a. Are you currently under the care of a physician or other health professional? NO ☐ YES ☐
   b. Are you currently taking any prescribed medication? NO ☐ YES ☐
   c. Have you been advised to have any surgical procedure or medical treatment? NO ☐ YES ☐
   d. Have you been hospitalized for a medical or mental health reason within the past 2 years? NO ☐ YES ☐
   e. Have you received counseling or treatment for drug or alcohol use within the past 2 years? NO ☐ YES ☐
   f. Have you ever been refused or discharged from military service for medical or mental health reasons? NO ☐ YES ☐
   g. Do you wear a medical device or orthodontic braces? NO ☐ YES ☐
   h. Are you allergic to any drugs, medicines, or foods? NO ☐ YES ☐
   i. Have you ever attempted or seriously thought about attempting suicide? NO ☐ YES ☐

9. Have you EVER had or do you now have any of the following conditions?

	No	Yes		No	Yes
a. Anemia (including sickle cell disease)			h. Kidney, bladder, or urinary problems		
b. Asthma			i. Speech impairment (e.g., stuttering)		
c. Visual impairment			j. Tuberculosis (TB) or positive TB skin test		
d. Hearing impairment			k. Ulcer of stomach or intestines		
e. Serious dental problems			l. Epilepsy, seizures, convulsions		
f. Diabetes (sugar in urine)			m. Other health issues		
g. Heart condition or high blood pressure			n. **FEMALES:** Are you pregnant? If YES, date of last menstrual period_____		

10. Do you have any physical or mental disability which will require an accommodation or modification to participate in the Job Corps program? | | |

ETA 6-53 (rev xx/x)

11. Provide explanation below of any "YES" responses to items in questions 8, 9, or 10. If additional space is needed, attach separate sheet.		
Item		**Explanation**

I (we) authorize the Job Corps to receive from doctors, clinics, hospitals, or other sources, a complete transcript of my (son's, daughter's, ward's) health records for the purpose of determining the health needs of the applicant. I (we) authorize release of medical information to staff with a need for that information, and to the local health department when required by law. I (we) authorize an ENTRANCE MEDICAL EXAMINATION which includes blood testing to identify conditions such as anemia, syphilis, and HIV infection; urine testing for conditions such as diabetes, nephritis, pregnancy, and for controlled substance. I (we) understand the reasons for the medical examination and health testing, and have had the opportunity to ask questions. I (we) also authorize immunizations for tetanus, diphtheria, poliomyelitis, measles, mumps, rubella, influenza, and others, if necessary; and a skin test for tuberculosis. I (we) certify that the information that has been provided on this medical form is true and complete to the best of my (our) knowledge. I (we) understand that any false statement or dishonest answers will be grounds for the dismissal for the above-named individual and may be punishable by law.

Applicant Signature	Date
Parent/Guardian Signature (if applicant is a minor)	Date

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Public reporting burden for this collection of information is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Room N-4507, 200 Constitution Avenue, NW, Washington, DC 20210 (1205-0033), Washington, DC 20503. (Paperwork Reduction Project 1205-0033).

ETA 6-53 (rev xx/x)

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JOB CORPS HEALTH QUESTIONNAIRE, ETA 6-53

Purpose. To obtain a health history on each applicant and to determine the health and accommodation/modification needs of the Job Corps applicant.

Originator. Job Corps admissions counselor.

Frequency. Once for each student at time of application.

Distribution. This is a 2-page form. If there are "yes" answers to one or more questions on the form, the originator (admissions counselor) must obtain relevant physician/institution reports and forward the applicant's folder, including the ETA 6-53, to the Job Corps center of assignment.

General Instructions. Information is placed on the form as given by the applicant during the health interview. This information is confidential and must be so maintained by the admissions counselor. The admissions counselor must:

- Ensure that the health questionnaire is fully understood by the applicant and that all entries are completed and appropriately written or checked.
- Obtain additional information or arrange for a new health examination or evaluation for the applicant when requested by the center of assignment.

Detailed Instructions.

Item	Comments
1	Self Explanatory
2	Self Explanatory
3	Self Explanatory
4	Self Explanatory
5	Self Explanatory
6	Self Explanatory

Item	Comments

7,8 Ask questions as stated and check "NO" or "YES."

- Attach copy of insurance or Medicaid card if appropriate.
- If possible, obtain the medical diagnosis of the condition rather than the applicant's description of symptoms.
- Establish appropriate dates for the onset of the condition and date it ceased, if appropriate.
- Obtain information about all hospital stays even if several were for the same condition. List only dates that applicant was in the hospital. Do not include emergency room visits.

9 Obtain information about each condition. Explain how often the problem occurs (e.g., heart condition--cannot walk up stairs without getting short of breath). Specify whether the applicant still has the condition.

10 Record whether applicant has a physical or mental impairment that requires a reasonable accommodation to perform the essential functions of the Job Corps program.

11 Use this section to record any comments provided by the applicant for questions 8, 9, or 10. If the applicant is not sure whether he/she had one of the conditions mentioned in questions 8 or 9 or requires an accommodation (item 10), include whatever information the applicant provides.

If the applicant is reluctant to give additional information, the admissions counselor must not pressure the applicant. Indicate in this section that the applicant declined to comment.

[FR Doc. 00–8443 Filed 4–5–00; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed renewal of Job Corps Placement and Assistance Record, ETA form 678. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before June 5, 2000.

ADDRESSES: June P. Veach, Office of Job Corps, 200 Constitution Avenue NW, Room N–4507, Washington, DC 20210. Telephone: (202) 219–5556, ext. 129 (This is not a toll-free number); Fax number: (202) 219–5183 (This is not a toll-free number); E-mail Internet address: *Jvewach@doleta.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Job Corps program is designed to serve low-income young women and men, 16 through 24, who are in need of additional vocational, educational and social skills training, and other support services in order to gain meaningful employment, return to school or enter the Armed Forces. Authorized by the Workforce Investment Act (WIA) of 1998, Job Corps is operated by the Department of Labor through a nationwide network of 118 Job Corps centers. The program is primarily residential, operating 24 hours per day, 7 days per week, with non-resident students limited by legislation to 20 percent of national enrollment. These centers presently accommodate more than 42,000 students. While students may stay in Job Corps up to two years to complete their programs, the average length of stay is eight months. Thus, more than 68,000 young people receive training in Job Corps in a year; of the number of students who separate from the program each year, 82 percent are placed in jobs, further education programs, or the Armed Forces. Seventy percent of all job placements are in areas for which students trained. The purpose of this collection is to gather information about each student's placement outcome after separation from the program. This form is critical to the placement process and measurement of placement outcomes and ultimately of program performance.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarify of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The form ETA 678 has expired. This form is used to evaluate program effectiveness. The introduction of the Workforce Investment Act of 1998 created a delay in the renewal process because of changes in Job Corps placement requirements mandated by the Act. Job Corps has continued to collect information because job, school, or military placements are a major indicator of program performance. The collection provides placement agencies with basic training information regarding separated students and provides the Department of Labor with information on the placement status of students subsequent to separation from the Program. No harm has been done while the form was used to collect data. No reports have been submitted and/or developed for Congress during the period. This action will effect a reduction in paperwork burden hours.

The revisions involve the addition of collecting data on program graduates as required by the Act, and a change from the use of DOT codes to O*Net codes to determine the job category and training match. In addition, with the WIA-mandated follow-up of graduates' placement status and provision of placement services for a year following separation from the program, there is no need for the item asking whether the placement is perceived as permanent or temporary.

Review: Reinstatement (with change).

Agency: Employment and Training Administration.

Title: Job Corps Placement and Assistance Record.

OMB Number: 205–0035.

Agency Number: ETA 678.

Recordkeeping: The student is not required to retain records; contractor offices and Job Corps centers are required to maintain records for 3 years.

Affected Public: Individuals who separate from Job Corps; Business or other for-profit/Not-for-profit institutions/Federal Government/State, Local or Tribal Government.

Total Respondents: 68,000.

Frequency: one per person.

Total Responses: 68,000.

Average Time per Response: 20 minutes.

Estimated Total Burden Hours: 22,666.

Total Burden Cost (capital/startup): Job Corps initiated electronic collection of placement data in 1994, with installation of 85 master placer PC units at the placement contractor headquarters. The cost was $240,000, including $170,000 for hardware, $50,000 for software and $20,000 for communications costs.

Total Burden Cost (operating/maintaining): The information on the form 678 related to the training completed on a Job Corps center is entered automatically on the form from the database. The remaining information related to the youth's placement is entered electronically by the contracted placement specialist who provides placement services. The estimated annual cost of completing the form for 68,000 separated Job Corps is estimated at $248,183. This includes $29,183 for youth and $255,000 to employers who hire them is for completing the ETA 678 for 68,000 youth is to verify the placements.

Comments submitted in response to this comment request will be

summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 31, 2000.

Jackie Roberts,

Acting Deputy Director, Office of Job Corps.

[FR Doc. 00–8445 Filed 4–5–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Corps: Final Finding of No Significant Impact (FONSI) for the New Job Corps Center Located Off of Overlook Terrace Within the Charter Oak Business Park in Hartford, CT

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Final Finding of No Significant Impact (FONSI) for the New Job Corps Center to be located off of Overlook Terrace within the Charter Oak Business Park in Hartford, Connecticut.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Employment and Training Administration, Office of Job Corps gives final notice of the proposed construction of a new Job Corps Center off of Overlook Terrace within the Charter Oak Business Park in Hartford, Connecticut, and that this construction will not have a significant adverse impact on the environment. In accordance with 29 CFR 11.11(d) and 40 CFR 1501.4(e)(2), a preliminary FONSI for the new Job Corps Center was published in the October 14, 1999 **Federal Register** (64 FR 55755–55757). No comments were received regarding the preliminary FONSI. ETA has reviewed the conclusion of the environmental assessment (EA), and agrees with the finding of no significant impact. This notice serves as the Final Finding of No Significant Impact for the new Job Corps Center to be located off of Overlook Terrace within the Charter Oak Business Park in Hartford, Connecticut. The preliminary FONSI and the EA are adopted in final with no change.

EFFECTIVE DATE: April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Michael O'Malley, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, NW, Room N–4659, Washington, DC, 20210, (202) 219–5468 ext 115 (this is not a toll-free number).

Dated at Washington, DC, this 29th day of March, 2000.

Richard C. Trigg,

National Director of Job Corps.

[FR Doc. 00–8442 Filed 4–5–00; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Job Corps: Final Finding of No Significant Impact (FONSI) for the New Job Corps Center Located at 9 Vandever Avenue, Wilmington, DE

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Final finding of No Significant Impact (FONSI) for the new Job Corps Center to be located at 9 Vandever Avenue, Wilmington, Delaware.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Employment and Training Administration, Office of Job Corps gives final notice of the proposed construction of a new Job Corps Center at 9 Vandever Avenue, Wilmington, Delaware, and that this construction will not have a significant adverse impact on the environment. In accordance with 29 CFR 11.11(d) and 40 CFR 1501.4(e)(2), a preliminary FONSI for the new Job Corps Center was published in the November 19, 1999 **Federal Register** (64 FR 63340–63342). No comments were received regarding the preliminary FONSI. ETA has reviewed the conclusion of the environmental assessment (EA), and agrees with the finding of no significant impact. This notice serves as the Final Finding of No Significant Impact for the new Job Corps Center at 9 Vandever Avenue, Wilmington, Delaware. The preliminary FONSI and the EA are adopted in final with no change

EFFECTIVE DATE: April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Michael O'Malley, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, NW, Room N–4659, Washington, DC, 20210, (202) 219–5468 ext 115 (this is not a toll-free number).

Dated at Washington, DC, this 29th day of March, 2000.

Richard C. Trigg,

National Director of Job Corps.

[FR Doc. 00–8441 Filed 4–5–00; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2000–15; Exemption Application No. D–10679, et al.]

Grant of Individual Exemptions; General Electric Pension Trust (the Trust)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

General Electric Pension Trust (the Trust), Located in Fairfield, Connecticut

[Prohibited Transaction Exemption 2000–15; Exemption Application Nos. D–10679 through D–10682]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, as of October 1, 1998, to the lease (the Lease) by the Trust of office space in a certain commercial office building (the Property) to Transport International Pool, Inc. (TIP), a party in interest with respect to employee benefit plans of General Electric Company (GE) and/or an affiliate whose assets are held in the Trust, provided that the following conditions are satisfied:

(1) The Trust was and is represented for all purposes under the Lease by a qualified, independent fiduciary;

(2) The terms and conditions of the Lease are at least as favorable to the Trust as those the Trust could have obtained in a comparable arm's length transaction with an unrelated party;

(3) The rent paid to the Trust under the Lease is no less than the fair market rental value of the office space occupied by TIP, as established by a qualified, independent appraiser;

(4) The independent fiduciary for the Trust reviewed the terms and conditions of the Lease on behalf of the Trust and determined that the Lease was in the best interests of the Trust;

(5) The independent fiduciary monitors and enforces compliance with all of the terms and conditions of the Lease, and of the exemption, throughout the duration of the Lease; and

(6) The independent fiduciary expressly approves any renewal of the Lease, and the rental rate under such renewal is based upon an updated independent appraisal of the office space being leased to TIP (but in no event shall the rental rate be less than that for the preceding period).

EFFECTIVE DATE: The exemption is effective as of October 1, 1998.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 26, 1999 at 64 FR 46728.

Written Comments

The Department received two written comments with respect to the notice of proposed exemption.

1. The first comment was submitted by a participant in the GE Pension Plan. This commenter expressed opposition to the proposed exemption on the basis of its retroactive effective date. He stated that the trustees of the Trust had a fiduciary responsibility to obtain an exemption prior to the execution of the Lease, given the conflicts of interest involved.

The applicant responded that the Department has a long-standing policy of granting retroactive exemptions "if the safeguards necessary for the grant of a prospective exemption were in place at the time of the consummated transaction." (See ERISA Technical Release 85–1.) The applicant also responded that the trustees were mindful of their fiduciary responsibility with respect to the Lease. The trustees identified the potential prohibited transaction and appropriately sought legal counsel prior to the execution of the Lease. They were advised to file an exemption application with the Department and to structure the Lease in a manner such that all the necessary safeguards for the grant of an exemption would be in place, including review and approval of the Lease by a qualified, independent fiduciary. Thus, the applicant asserts that all potential conflicts of interest were adequately addressed.

2. The second comment was submitted by the applicant. The applicant wishes to correct certain representations made in the Summary of Facts and Representations (the Summary).

a. First, the applicant notes that, as of the effective date of the exemption, the assets of the Knolls Atomic Laboratories Pension Plan were no longer held in the Trust. (See the first paragraph in Item 1 of the Summary at 64 FR 46728).

b. Second, the applicant notes that the agreed upon tenant improvements in the Lease were substantially completed in November, 1998—not October, 1998, as stated in the first paragraph in Item 6 of the Summary (64 FR 46729). In addition, the third sentence in the third paragraph of Item 6 of the Summary (64 FR 46729) should be revised to read as follows (change in bold): "In addition, TIP is responsible for any additional taxes levied or assessed that are attributable to TIP's improvements to or personal property within the leased space, its activities within the leased space, or any transactions involving the leased space."

The Department concurs with the applicant's assertion that the standards for a retroactive exemption have been satisfied. The Department also acknowledges the applicant's corrections to the Summary. Thus, after a careful consideration of the entire record, the Department has determined to grant the exemption as proposed.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Cullen Incorporated Profit Sharing Plan and Trust (the Profit Sharing Plan), Cullen Incorporated Employees Defined Contribution Pension Plan and Trust (the Money Purchase Plan) (Collectively the Plans), Located in Fredericksburg, Virginia

[Prohibited Transaction Exemption 2000–16; Exemption Application No. D–10823 and D–10824]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale (the Sale) by the Plan of property located in Fredericksburg, Virginia (the Property) to Robert C. O'Neill (Mr. O'Neill), the trustee of the Plans, President and sole shareholder of the Plan Sponsor, and a party in interest with respect to the Plans, provided that the following conditions are satisfied:

(a) The Sale was a one time transaction for a lump sum cash payment;

(b) The purchase price was the fair market value of the Property as of the date of the Sale;

(c) The Property has been appraised by a qualified, independent real estate appraiser; and

(d) The Plans paid no commissions or other expenses relating to the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 1, 2000 at 65 FR 4851.

EFFECTIVE DATE OF EXEMPTION: The effective date of this exemption is November 6, 1998.

FOR FURTHER INFORMATION CONTACT: J. Martin Jara of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 30th day of March, 2000.

Ivan Strasfeld,

Director of Exemption Determination, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 00–8447 Filed 4–5–00; 8:45 am]

BILLING CODE 4510–29–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Privacy Act of 1974; System of Records

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Notice of new, altered, and deleted systems of records.

SUMMARY: On May 14, 1998, the President directed executive departments and agencies to, among other things, review all systems of records subject to the Privacy Act of 1974, as amended, 5 U.S.C. 552a ("Privacy Act") for accuracy, completeness and to ensure that all routine uses are needed and consistent with the purposes for which the records were collected in each system. The Federal Mine Safety and Health Review Commission ("Commission" or "FMSHRC") has conducted such a review, and now publishes this notice of new, altered, and deleted systems of records.

DATES: Comments on the proposed routine uses for the systems of records included in this notice must be received by the Commission by May 8, 2000. The Commission filed a report describing the new, altered, and deleted systems of records covered by this notice with the Chair of the Committee on Governmental Affairs of the Senate, the Chair of the Committee on Government Reform of the House of Representatives, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget ("OMB") on March 30, 2000. The changes described in this notice will become effective after the 40-day period for OMB review expires on May 16, 2000, unless OMB gives specific notice within the 40 days that the changes are not approved for implementation. The new routine uses that are the subject of this notice will take effect on May 16, 2000 unless modified by a subsequent notice to incorporate comments received from the public.

ADDRESSES: All comments on the proposed routine uses should be mailed to Richard L. Baker, FMSHRC Privacy Act Officer and Executive Director, Federal Mine Safety and Health Review Commission, 1730 K Street, NW., 6th Floor, Washington DC 20006.

FOR FURTHER INFORMATION CONTACT: Richard L. Baker, FMSHRC Privacy Act Officer and Executive Director, Federal Mine Safety and Health Review Commission, 1730 K Street, NW, 6th Floor, Washington, DC 20006, telephone 202–653–5610 (202–566–2673 for TDD Relay). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Privacy Act applies to information about individuals that may be retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a "record" and the system, whether manual or computer-driven, is called a "system of records." A system is considered altered whenever certain fundamental changes are made to the system, such as whenever certain disclosures, called "routine uses," are changed.

In a memorandum dated May 14, 1998, President Clinton directed executive departments and agencies to conduct a thorough review of all agency system of records for accuracy and completeness. The President specifically directed agencies to consider changes in technology, function, and organization that may have made the systems out-of-date and to review the routine uses published in the system notices to make sure they continue to be necessary and compatible with the purposes for which the information is collected. He also directed agencies to identify systems that may not have been described in a notice published in the **Federal Register** and to publish notices for any changes to the agency systems of records.

In its review, the Commission determined that two of its systems of records are no longer relevant and necessary to accomplish an agency purpose, that the remaining three systems require revision, and that three additional systems of records should be identified and included in the Commission's systems of records. The two systems of records that are no longer relevant and necessary to accomplish an agency purpose are: (1) FMSHRC–04, "Property Management System;" and (2) FMSHRC–05, "Administrative Law Judge Caseload Report." See 49 FR 30668, 30669–70 (July 31, 1984). The property management system of records (FMSHRC–04) contained information concerning the description, value and location of furnishings and equipment. The Commission has found it unnecessary to continue to maintain such records because furnishings and equipment are no longer assigned to Commission employees and members. In addition, the Administrative Law Judge caseload report (FMSHRC–05) is no longer used by the Commission. Accordingly, the Commission is deleting these systems.

The Commission proposes revisions to the three remaining systems in order to update them. The Commission proposes changing the system name of FMSHRC–01 from "Payroll records" to "Pay and leave records," in order to more accurately describe the records included in this system, and to revise the routine uses of records maintained in this system. In addition, the Commission proposes to change the

name of FMSHRC–02 from "General finance and accounting records" to "General finance, accounting and travel records;" to revise that system to include travel records and records pertaining to usage of Westlaw and usage of government credit cards for administrative supply purchases; to update other categories of records included in this system; and to revise the routine uses of records maintained in this system. The Commission also proposes revising FMSHRC–03 to update and more accurately describe categories of records included in this system. Finally, the Commission proposes to update its general statement of routine uses, formerly set forth in the Appendix, 49 FR at 306670.

The Commission identified three systems of records, not previously identified, in which information by individual name or identifier is relevant and necessary to an agency purpose. Specifically, those systems include: (1) Biographical data files on presidential appointees; (2) federal fare subsidy benefit program records; and (3) the Commission's official case files filed according to and retrieved by the name of an individually-named miner. As to the first and second systems, information is retrieved by using an individual's name or other identifying link. As to the third system, information is retrieved from Commission adjudicatory case files through the use of a docket number or case name. In the large majority of cases before the Commission, case names are derived from a mine operator's name or a union. In a small percentage of cases, cases are identified by an individual miner's name, such as when a miner brings a discrimination complaint in an individual capacity under 30 U.S.C. 815(c)(3), or when the Secretary of Labor takes an enforcement action against a miner under 30 U.S.C. 820(c) or 820(g). Included in the third system of records are only those official case files filed according to and retrieved by an individually named miner's name. Accordingly, the Commission proposes adding these three new systems.

In sum, the Commission proposes identifying its systems as: FMSHRC–01, Pay and leave records; FMSHRC–02, General finance, accounting, and travel records; FMSHRC–03, General informal personnel files; FMSHRC–04, Biographical data file-presidential appointees; FMSHRC–05, Federal fare subsidy benefit program records; and FMSHRC–06, Official case files filed according to and retrieved by name of individually-named miner. The systems of records are published in their entirety below.

Systems of Records

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FMSHRC–01 Pay and leave records
FMSHRC–02 General finance, accounting, and travel records
FMSHRC–03 General informal personnel files
FMSHRC–04 Biographical data file-presidential appointees
FMSHRC–05 Federal fare subsidy benefit program records
FMSHRC–06 Official case files filed according to and retrieved by name of individually-named miner

General Statement of Routine Uses

In addition to the disclosures generally permitted under 5 U.S.C. 552a(b), the Commission may disclose a record or information in a Privacy Act system of records under 5 U.S.C. 552a(b)(3) as provided below.

(1) Routine use for disclosure to the Department of Justice for use in litigation:

To the Department of Justice when: (a) FMSHRC or any component thereof; or (b) any employee of FMSHRC in his or her official capacity; or (c) any employee of FMSHRC in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, FMSHRC determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by FMSHRC to be a purpose that is compatible with the purpose for which FMSHRC collected the records.

(2) Routine use for other disclosures in litigation:

To a court or adjudicative body in a proceeding when: (a) FMSHRC or any component thereof; or (b) any employee of FMSHRC in his or her official capacity; or (c) any employee of FMSHRC in his or her individual capacity where FMSHRC has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, FMSHRC determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by FMSHRC to be a purpose that is compatible with the purpose for which FMSHRC collected the records.

(3) Routine use for law enforcement purposes:

When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether federal, foreign, state, local, or tribal, or other public authority responsible for enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity.

(4) Routine use for disclosure to a member of Congress at the request of a constituent:

To a member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

(5) Routine use for records management purposes:

Records from a Privacy Act system of records may be disclosed to the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

(6) Routine use for disclosure to contractors under 5 U.S.C. 552a(m):

Disclosure may be made to agency contractors, grantees, or volunteers who have been engaged to assist FMSHRC in the performance of a contract service related to a Privacy Act system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act.

(7) Routine use to the Department of Health and Human Services ("HHS") parent locator system for finding parents who do not pay child support:

The name and current address of record of an individual may be disclosed from a Privacy Act system of record to the parent locator service of HHS or authorized persons defined by Public Law 93–647, 42 U.S.C. 653.

(8) Routine use for use in employment, clearances, licensing, contract, grant or other benefits decisions by FMSHRC:

Disclosure may be made to federal, state, local or foreign agency maintaining civil, criminal, or other relevant enforcement records, or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to an investigation concerning the retention of an employee or other personnel action, the retention of a

security clearance, the letting of a contract, or the issuance or retention of a grant, or other benefit.

(9) For use in employment, clearances, licensing, contract, grant or other benefit decisions by other than FMSHRC:

Disclosure may be made to a federal, state, local, foreign, or tribal or other public authority of the fact that a Privacy Act system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within FMSHRC or to another federal agency for criminal, civil, administrative, personnel, or regulatory action.

(10) For purposes of financial audit or internal control:

Disclosure may be made to a federal agency or to members of the private sector under contract with FMSHRC in the performance of a financial audit or evaluation of internal control, pursuant to 31 U.S.C. 501 *et seq.*

FMSHRC–01

SYSTEM NAME:

Pay and Leave Records

SYSTEM LOCATION:

(1) FMSHRC at 1730 K Street, NW, 6th Floor, Washington, DC 20006; (2) United States Department of Treasury's Bureau of Public Debt ("BPD") at PESO Branch-DPM, 200 Third Street, Room 206–1, Parkersburg, WV 26106; (3) United States Department of Agriculture's National Finance Center ("NFC") at P.O. Box 60000, New Orleans, LA 70160. BPD and NFC hold records for FMSHRC under interagency agreement.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees and members of FMSHRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Various payroll and leave records including, among other documents, time and attendance cards; payment vouchers; comprehensive listing of employees; health benefit records; requests for deductions; tax forms and W–2 forms; overtime requests; leave data; and retirement records. Records are used by FMSHRC, BPD and NFC to maintain adequate payroll and leave information for FMSHRC employees, and otherwise by FMSHRC, BPD, and NFC employees who have a need for the record in the performance of their duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

30 U.S.C. 823, 823a, 824; 5 U.S.C. 5501 *et seq.*; 31 U.S.C. "Money and Finance," generally.

PURPOSE(S):

Information in this system is used to prepare payroll, to meet Government payroll recordkeeping and reporting requirements, and to retrieve and supply payroll and leave information as required for Commission needs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures may be made under this system:

1. To other Government agencies, commercial or credit organizations, or to prospective employers to verify employment.

2. To federal, state, and local taxing authorities concerning compensation to employees or to contractors; to Office of Personnel Management, Department of the Treasury, and other federal agencies concerning pay, benefits, and retirement of employees; to federal employees' health benefits carriers concerning health insurance of employees; to financial organizations concerning employee allotments and net pay to checking accounts; to state human resource offices administering unemployment compensation programs; and to heirs, executors, and legal representatives of beneficiaries.

3. To federal agencies or to members of the private sector under contract with FMSHRC, in the performance of financial audits or evaluation of internal control;

4. To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator Service ("FPLS") and Federal Tax Offset System for use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support and for enforcement action;

5. To the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement;

6. To the Office of Child Support Enforcement for release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program (section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return;

Additional routine uses are listed in the General Statement of Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)) in accordance with 31 U.S.C. 3711(f).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Duplicate records are stored at FMSHRC's office in Washington, DC, and at the offices of the BPD and NFC. FMSHRC's records are paper.

RETRIEVABILITY:

Social Security number, and name.

SAFEGUARDS:

Paper records in FMSHRC's office in Washington, DC are stored in locked file cabinets and are released only to authorized personnel. Access to FMSHRC's office in Washington, DC may be gained only by using an electronically keyed number, which is provided only to FMSHRC personnel and is changed on a regular basis.

RETENTION AND DISPOSAL:

Retention and disposal of records is in accordance with the National Archives and Records Administration's General Records Schedule requirements for payroll-related records.

SYSTEM MANAGER(S) AND ADDRESS:

Records Management Officer, Federal Mine Safety and Health Review Commission, Room 6033, 1730 K Street, NW, Washington, DC 20006.

NOTIFICATION PROCEDURE:

Contact Executive Director or refer to FMSHRC regulations contained in 29 CFR part 2705.

RECORD ACCESS PROCEDURES:

Contact Executive Director or refer to FMSHRC regulations contained in 29 CFR part 2705.

CONTESTING RECORD PROCEDURES:

Contact Executive Director or refer to FMSHRC regulations contained in 29 CFR part 2705.

RECORD SOURCE CATEGORIES:

The subject individual; FMSHRC.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FMSHRC–02

SYSTEM NAME:

General Finance, Accounting, and Travel Records

SYSTEM LOCATION:

(1) FMSHRC at 1730 K Street, NW, Washington, DC 20006; (2) BPD at PESO Branch-DPM, 200 Third Street, Room 206–1, Parkersburg, WV 26106. BPD holds records for FMSHRC under interagency agreement.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees and members of FMSHRC and persons who provide supplies or services to FMSHRC by contract or purchase order.

CATEGORIES OF RECORDS IN THE SYSTEM:

Various accounting records including, among other documents, vendor identification numbers for electronic payments, vendor registers and vendor payments; records pertaining to usage of Government credit cards for administrative supplies purchases; records pertaining to Westlaw usage; travel authorizations; travel vouchers, which include receipts, dates, expenses, amounts advanced, amounts claimed, and amounts reimbursed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

30 U.S.C. 823, 823a, 824; 31 U.S.C. "Money and Finance," generally; 5 U.S.C. 5701 *et seq.*; 40 U.S.C. 471 *et seq.*

PURPOSE(S):

The information in this system is used to provide records of reimbursement to and collections from employees for expenses incurred while in official travel status, to provide payments to vendors and other Government agencies, to maintain control over the collection and disbursement of FMSHRC funds, to prepare reports, and to assist in any financial audits or evaluation of internal control.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures may be made under this system:

1. To federal agencies or to members of the private sector under contract with FMSHRC, in the performance of financial audits or evaluation of internal control;
2. To the Internal Revenue Service for investigation;
3. To private attorneys, pursuant to power of attorney;
4. To members of Congress, to FMSHRC personnel, and to other agencies for budgetary and reporting purposes;
5. See General Statement of Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)) in accordance with 31 U.S.C. 3711(f).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored at FMSHRC's office in Washington, DC; some duplicate records are stored at the BPD.

RETRIEVABILITY:

Manual by name, social number, or assigned password number.

SAFEGUARDS:

Paper records in FMSHRC's office in Washington, DC are stored in locked file cabinets and are released only to authorized personnel. Access to FMSHRC's office in Washington, DC may be gained only by using an electronically keyed number, which is provided only to FMSHRC personnel and is changed on a regular basis.

RETENTION AND DISPOSAL:

In accordance with the General Records Schedules issued by the National Archives and Records Administration pertaining to accounting, procurement, and travel records.

SYSTEM MANAGER(S) AND ADDRESS:

Records Management Officer, Federal Mine Safety and Health Review Commission, Room 6033, 1730 K Street, NW, Washington, DC 20006.

NOTIFICATION PROCEDURE:

Contact Executive Director or refer to FMSHRC regulations contained in 29 CFR part 2705.

RECORD ACCESS PROCEDURES:

Contact Executive Director or refer to FMSHRC regulations contained in 29 CFR part 2705.

CONTESTING RECORD PROCEDURES:

Contact Executive Director or refer to FMSHRC regulations contained in 29 CFR part 2705.

RECORD SOURCE CATEGORIES:

The subject individual; FMSHRC.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FMSHRC–03

SYSTEM NAME:

General Informal Personnel Files

SYSTEM LOCATION:

FMSHRC at 1730 K Street, NW, 6th Floor, Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees and members of FMSHRC.

CATEGORIES OF RECORDS IN THE SYSTEM:

General personnel information including position descriptions; performance appraisals; notifications of personnel action (SF–50's); employment history; home address; date of birth; grade and salary; age; social security number; resumes and SF 171's; OF 612's; letters of recommendation or for performance recognition; and other records relating to insurance coverage, health benefits, and dates service commenced and ended.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

30 U.S.C. 823, 823a, 824; 44 U.S.C. 3101 *et seq.*; 5 U.S.C. "Government Organization and Employees," generally.

PURPOSE(S):

Information in this system is used to meet Government personnel recordkeeping and reporting requirements, and to retrieve personnel information as required for FMSHRC needs.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

1. See General Statement of Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)) in accordance with 31 U.S.C. 3711(f).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored at FMSHRC's office in Washington, DC.

RETRIEVABILITY:

Manual by name.

SAFEGUARDS:

Paper records in FMSHRC's office in Washington, DC are stored in locked file cabinets and are released only to

authorized personnel. Access to FMSHRC's office in Washington, DC may be gained only by using an electronically keyed number, which is provided only to FMSHRC personnel and is changed on a regular basis.

RETENTION AND DISPOSAL:

In accordance with the General Records Schedules issued by the National Archives and Records Administration and FMSHRC's Records Management Handbook.

SYSTEM MANAGER(S) AND ADDRESS:

Records Management Officer, Federal Mine Safety and Health Review Commission, Room 6033, 1730 K Street, NW, Washington, DC 20006.

NOTIFICATION PROCEDURE:

Contact Executive Director or refer to FMSHRC regulations contained in 29 CFR part 2705.

RECORD ACCESS PROCEDURES:

Contact Executive Director or refer to FMSHRC regulations contained in 29 CFR part 2705.

CONTESTING RECORD PROCEDURES:

Contact Executive Director or refer to FMSHRC regulations contained in 29 CFR part 2705.

RECORD SOURCE CATEGORIES:

The subject individual; FMSHRC.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FMSHRC–04

SYSTEM NAME:

Biographical Data File—Presidential Appointees

SYSTEM LOCATION:

FMSHRC at 1730 K Street, NW, 6th Floor, Washington, DC 20006

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former Presidential appointees to FMSHRC positions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include biographical sketches and photographs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

30 U.S.C. 823; 44 U.S.C. 3101 *et seq.*

PURPOSE(S):

To document and provide information regarding pertinent aspects of the personal and professional history of FMSHRC's Commissioners.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures may be made under this system:

1. To the public upon request unless it is determined that release of the specific information in the context of that particular request would constitute an unwarranted invasion of personal privacy;

2. To Congress to answer inquiries regarding Commissioners;

3. See General Statement of Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper in file cabinets.

RETRIEVABILITY:

Manual by name.

SAFEGUARDS:

Maintained in file cabinets under the surveillance of office personnel. Access to FMSHRC's office in Washington, DC may be gained only by using an electronically keyed number, which is provided only to FMSHRC personnel and is changed on a regular basis.

RETENTION AND DISPOSAL:

In accordance with the General Records Schedule and FMSHRC's Records Management Handbook, records are transferred to the National Archives and Records Administration in 3-year blocks when the most recent record in a block is 3 years old. Copies are maintained permanently with FMSHRC.

SYSTEM MANAGER(S) AND ADDRESS:

Records Management Officer, Federal Mine Safety and Health Review Commission, Room 6033, 1730 K Street, NW, Washington, DC 20006.

NOTIFICATION PROCEDURE:

Contact Executive Director or refer to FMSHRC regulations contained in 29 CFR part 2705.

RECORD ACCESS PROCEDURES:

Contact Executive Director or refer to FMSHRC regulations contained in 29 CFR part 2705.

CONTESTING RECORD PROCEDURES:

Contact Executive Director or refer to FMSHRC regulations contained in 29 CFR part 2705.

RECORD SOURCE CATEGORIES:

The subject individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FMSHRC–05

SYSTEM NAME:

Federal Fare Subsidy Benefit Program Records

SYSTEM LOCATION:

FMSHRC at 1730 K Street, NW, 6th Floor, Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and members of FMSHRC who participate in the federal fare subsidy benefit program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Various records required to administer the federal fare subsidy benefit program, which include information regarding a participant's mode of transportation, monthly cost of transportation, and reports of disbursements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Federal Employees Clean Air Incentives Act (section 2(a) of Pub. L. 103–172, found at 5 U.S.C. 7905); the Transportation Equity Act for the 21st Century (section 9010 of Pub. L. 105–178, found at 112 Stat. 507 (1998)); 30 U.S.C. 823, 823a, 824.

PURPOSE(S):

Information in this system is used to administer the federal fare subsidy benefit program, to meet Government recordkeeping requirements, and to retrieve and supply transit information as required for FMSHRC needs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The FMSHRC does not normally disclose records from this system of records except to those FMSHRC employees who have a need for such records in the performance of their duties. However, in the event it is appropriate, records may be disclosed as provided in the General Statement of Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper in locked file cabinets.

RETRIEVABILITY:

Manual by name.

SAFEGUARDS:

Transit benefit program records are stored in a locked file cabinet. Access to

FMSHRC's office in Washington, DC may be gained only by using an electronically keyed number, which is provided only to FMSHRC personnel and is changed on a regular basis.

RETENTION AND DISPOSAL:

Retention and disposal of records is in accordance with National Archives and Records Administration's General Records Schedule and FMSHRC's Records Management Handbook. System manager(s) and address: Records Management Officer, Federal Mine Safety and Health Review Commission, Room 6033, 1730 K Street, NW, Washington, DC 20006.

NOTIFICATION PROCEDURE:

Contact Executive Director or refer to FMSHRC regulations contained in 29 CFR part 2705.

RECORD ACCESS PROCEDURES:

Contact Executive Director or refer to FMSHRC regulations contained in 29 CFR part 2705.

CONTESTING RECORD PROCEDURES:

Contact Executive Director or refer to FMSHRC regulations contained in 29 CFR part 2705.

RECORD SOURCE CATEGORIES:

FMSHRC employees who are participants in the Transit Benefit Program.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FMSHRC–06

SYSTEM NAME:

Official Case Files Filed according to and Retrieved by Name of Individually-Named Miner.

SYSTEM LOCATION:

FMSHRC at 1730 K Street, NW, 6th Floor, Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individually-named miners whose names are used for filing and retrieval purposes of the official case file of cases arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.* (1994) (Mine Act). Official case files are retrieved by reference to docket number, and in some instances, by case name. In the large majority of cases before FMSHRC, case names are derived from the name of a mine operator or a union. In a small percentage of cases, cases are identified by an individual miner's name, such as when a miner brings a discrimination complaint in an individual capacity under 30 U.S.C. 815(c)(3), or when the Secretary of Labor takes an enforcement action against a miner under 30 U.S.C. 820(c) or 820(g). This system of records covers only those official case files filed according to and retrieved by an individually-named miner's name.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include documents and pleadings filed by parties, hearing transcripts and exhibits, transcripts of oral argument, and decisions and orders issued by FMSHRC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

30 U.S.C. 823, 823a; 44 U.S.C. 3101 *et seq.*

PURPOSE(S):

FMSHRC provides trial and appellate review of cases arising under the Mine Act. Official case files store documents used by FMSHRC in its consideration and review of such cases, and provide information regarding such cases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures may be made under this system:

1. To the public pursuant to 29 CFR 2702.4 or upon request unless it is determined that the release of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

2. See General Statement of Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By case name or docket number.

SAFEGUARDS:

File folders are maintained in file cabinets. Access to FMSHRC's office in Washington, DC may be gained only by using an electronically keyed number, which is provided only to FMSHRC personnel and is changed on a regular basis.

RETENTION AND DISPOSAL:

In accordance with the General Records Schedule and FMSHRC's Records Management Handbook, the cut-off date for files is at the close of the case. Files are retired to the Washington National Records Center 1 year after the cutoff, and destroyed 7 years after the cutoff.

SYSTEM MANAGER(S) AND ADDRESS:

Records Management Officer, Federal Mine Safety and Health Review Commission, 1730 K Street, NW, Washington, DC 20006.

NOTIFICATION PROCEDURE:

Contact Executive Director or refer to FMSHRC regulations contained in 29 CFR part 2705.

RECORD ACCESS PROCEDURES:

Contact Executive Director or refer to FMSHRC regulations contained in 29 CFR part 2705.

CONTESTING RECORD PROCEDURES:

Contact Executive Director or refer to FMSHRC regulations contained in 29 CFR part 2705.

RECORD SOURCE CATEGORIES:

The parties, their representatives, FMSHRC.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: March 30, 2000.

Mary Lu Jordan,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 00–8507 Filed 4–5–00; 8:45 am]

BILLING CODE 6735–01–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel for Geosciences: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel for Geosciences (1756).

Date/Time: May 8–12, 2000, 8–5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Rooms 310, 320, 330, and 360, Arlington, VA.

Type of Meeting: Closed.

Contact Person: H. Lawrence Clark, Acting Section Head, Ocean Sciences Research Section, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Telephone (703) 306–1582.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the Ocean Sciences Research Programs (OSRS) as part of the selection process for awards.

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the

proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in The Sunshine Act.

Dated: April 3, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–8493 Filed 4–5–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel for Geosciences: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel for Geosciences (1756).

Date/Time: April 27–28, 2000, 8 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 340, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Bilal Haq, Program Director, Marine Geology & Geophysics, Ocean Sciences Research Section, National Science Foundation, 4201 Wilson Blvd. Arlington, VA 22230. (703) 306–1587.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the MARGINS Program as part of the selection process for awards.

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in The Sunshine Act.

Dated: April 3, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–8494 Filed 4–5–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science foundation announces the following meeting:

Name: Advisory Committee for Polar Programs (1130).

Date/Time: May 3–5, 2000, 8:30 A.M. to 5 P.M.

Place: NSF, 4201 Wilson Blvd., Room 630/730, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Dr. Michael Ledbetter, Program Manager, Arctic System Science, Room 755S, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. (703) 306–1029.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Surface Heat Budget Phase 3 (NSF 00–19) as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–8497 Filed 4–5–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Small Business Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Small Business Industrial Innovation (61).

Date/Time: April 12, 2000; 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 130, Arlington, VA.

Type of Meeting: Closed.

Contact person: Joseph Hennessey, Program Manager, Small Business Innovation Research and Small Business Technology Transfer Programs, Room 590, Division of Design, Manufacturing, and Industrial Innovation, National Science Foundation, 4201 Wilson Boulevard, VA 22230. Telephone (703) 306–1395 x 5283.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–8496 Filed 4–5–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Undergraduate Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Undergraduate Education (1214).

Date/Time: June 21, 22 & 23, 2000; 8 AM to 5 PM.

Place: Room 330, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact person: Drs. Elizabeth J. Teles and Gerhard L. Salinger, National Science Foundation, 4201 Wilson Boulevard, VA 22230. Telephone (703) 306–1667.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate ATE proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individual associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 2000.

Karen J. York.

Committee Management Officer.

[FR Doc. 00–8495 Filed 4–5–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Undergraduate Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Undergraduate Education (1214).

Date/Time: May 22–25, 2000; 8 AM to 5 PM.

Place: Rooms 365, 370, 375, 380 and 390 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Drs. Lee L. Zia and C. Dianne Martin, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1667/9.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate NSDL proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individual associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 3, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–8498 Filed 4–5–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–8]

Notice of Issuance of Amendment to Materials License SNM–2504 Department of Energy; Fort St. Vrain Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued Amendment 8 to Materials License No. SNM–2504 held by the U.S. Department of Energy (DOE) for the receipt, possession, storage, and transfer of spent fuel at the Fort St. Vrain (FSV) independent spent fuel storage installation (ISFSI), located in Weld County, Colorado. The amendment is effective as of the date of issuance.

By application dated January 18, 2000, DOE requested an amendment to its ISFSI license to revise its radiological environmental monitoring program and to revise Technical Specification 5.5.2, "Essential Program Control Program."

This amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

In accordance with 10 CFR 72.46(b)(2), a determination has been made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

The Commission has determined that, pursuant to 10 CFR 51.22(c)(11), an environmental assessment need not be prepared in connection with issuance of the amendment.

Documents related to this action are available for public inspection at the Commission's Public Document Room located at the Gelman Building, 2120 L Street, NW, Washington, DC 20555, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 24th day of March 2000.

For the Nuclear Regulatory Commission

M. Wayne Hodges,

Acting Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–8433 Filed 3–5–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–259, 50–260 and 50–296]

Tennessee Valley Authority; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating Licenses Nos. DPR–33, DPR–52 and DPR–68, issued to the Tennessee Valley Authority (the licensee), for operation of the Browns Ferry Nuclear Plant Units 1, 2, and 3 located in Limestone County, Alabama.

The proposed amendment would revise the Appendix A Technical Specifications to provide for maintenance on a secondary containment access door, when the other door in the flow path is closed, when one or more units are operating.

Exigent circumstances exist due to the need to repair an air leak on a pneumatic door seal on the inner main equipment access air lock. The licensee is concerned that the air leak could worsen if not repaired soon, potentially rendering the inner equipment access door inoperable. In this case, equipment transfer into and out of the secondary containment via the main equipment lock would be prohibited thereby hindering outage activities.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has concluded that operation of Browns Ferry Nuclear Plant (BFN) Units 1, 2, and 3 in accordance with the proposed change to the technical specifications does not involve a significant hazards consideration. TVA's conclusion is based on its evaluation, in accordance with 10 CFR 50.91(a)(1), of the three standards set forth in 10 CFR 50.92(c).

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is an administrative clarification of the existing requirements. Verifying that one door in each access opening is closed ensures the infiltration of outside air of such a magnitude as to prevent the maintaining of the desired post-accident negative pressure does not occur.

Therefore the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not add any new equipment or require any existing equipment to be operated in a manner different from the present design. The proposed change is consistent with the SAR [Safety Analysis Report] analysis for design basis accidents. No operation outside of the existing design basis is introduced by the proposed amendment.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change is consistent with the BFN FSAR [Final Safety Analysis Report] accident analysis. The change does not physically modify any equipment, setpoints, or equipment initiation sequences.

For these reasons, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 20, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to General Counsel, Tennessee Valley

Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 3790.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 29, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 31st day of March 2000.

For the Nuclear Regulatory Commission.

William O. Long,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–8434 Filed 4–5–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a New Information Collection; OPM Form 1644

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a new information collection. OPM Form 1644, Child Care Provider Information: Care Tuition Assistance Program for Federal Employees, is used to verify that child care providers are licensed and/or regulated by local and/or State authorities. Agencies need to know that child care providers to whom they make disbursements in the form of tuition assistance subsidies, are licensed and/or regulated by local and/or State authorities.

Pub. L. 106–58, passed by Congress on September 29, 1999, permits Federal agencies to use appropriated funds to help their lower income employees with their costs for child care. It is up to the agencies to decide on whether to implement this law. This is a new law and the extent to which it will be implemented, including the number of providers that will be involved, cannot be easily predicted. The form will take approximately 10 minutes to complete by each provider. The annual estimated burden is 83.5 hours.

Comments are particularly invited on:

—Whether the form adequately captures the information needed to verify child care provider State and/or local licensure and regulation.

—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on 202–606–8358, or e-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before April 16, 2000.

ADDRESSES: Send or deliver comments to:

Anice V. Nelson, Director, Family-Friendly Workplace Advocacy Office, U.S. Office of Personnel Management, 1900 E St. NW, Washington, DC 20415.

And

Joseph Lackey, Agency Desk Officer, Office of Management and Budget, 725 17th St. NW Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATION COORDINATION CONTACT: PAT KINNEY, WORK/LIFE TEAM LEADER, FAMILY-FRIENDLY WORKPLACE ADVOCACY OFFICE, (202) 606–1313.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–8399 Filed 4–5–00; 8:45 am]

BILLING CODE 6325–01–P

SOCIAL SECURITY ADMINISTRATION

Rescission of Social Security Acquiescence Ruling 88–1(11)

AGENCY: Social Security Administration.

ACTION: Notice of rescission of Social Security Acquiescence Ruling 88–1(11)—*Patterson* v. *Bowen*, 799 F.2d 1455 (11th Cir. 1986), reh'g denied, (February 12, 1987).

SUMMARY: In accordance with 20 CFR 402.35(b)(2), 404.985(e) and 416.1485(e), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Ruling 88–1(11).

EFFECTIVE DATE: The rescission of the Acquiescence Ruling will be effective May 8, 2000.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1695.

SUPPLEMENTARY INFORMATION: A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of the case or is unsuccessful on further review.

As provided by 20 CFR 404.985(e)(4) and 416.1485(e)(4), a Social Security Acquiescence Ruling may be rescinded as obsolete if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of the circuit court holding for which the Acquiescence Ruling was issued.

On January 29, 1988, we issued Acquiescence Ruling 88–1(11) to reflect the holding in *Patterson* v. *Bowen*, 799 F.2d 1455 (11th Cir. 1986), reh'g denied, (February 12, 1987), regarding the consideration of a claimant's age as a vocational factor at the last step of the sequential evaluation process for determining disability. Acquiescence Ruling 88–1(11), Social Security Rulings (Cumulative Edition 1988, p. 123). The Eleventh Circuit interpreted 20 CFR 404.1563 and 416.963 to permit a claimant to offer evidence of his or her physical or mental impairments as proof that his or her ability to adapt to other work in terms of age alone is less than the level established under the medical-vocational guidelines for claimants of that age. The court held that such evidence, which the Social Security Administration (SSA) [1] already considers in assessing a claimant's residual functional capacity, is relevant

[1] Under the Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103–296, effective March 31, 1995, SSA became an independent Agency in the Executive Branch of the United States Government and was provided ultimate responsibility for administering the Social Security and Supplemental Security Income programs under titles II and XVI of the Act. Prior to March 31, 1995, the Secretary of Health and Human Services had such responsibility.

to the question of a claimant's ability to adapt to a new work environment, and that SSA must reevaluate such evidence when considering the effect of age on a claimant's ability to adapt to a new work environment.

We indicated in the Acquiescence Ruling that we intended to clarify the regulations at issue in this case through the rulemaking process and that the Ruling would continue to apply until such clarification was made. On August 4, 1999, we published proposed rules with a notice of proposed rulemaking in the **Federal Register** (64 FR 42310) to clarify our regulations on the consideration of age as a vocational factor. We are now publishing final rules in this issue of the **Federal Register**.

We are publishing this notice of rescission of Acquiescence Ruling 88–1(11) concurrently with our publication of final rules which revise 20 CFR 404.1563 and 416.963. The final rules remove the provision contained in existing sections 404.1563(a) and 416.963(a) that states, in part, that "Age refers to how old you are * * * and the extent to which your age affects your ability to adapt to a new work situation and to do work in competition with others." The final rules revise sections 404.1563(a) and 416.963(a) to state explicitly that "age" means a claimant's "chronological age." In addition, sections 404.1563(a) and 416.963(a) of the final rules explain that when we determine whether an individual is disabled at the last step of the sequential evaluation, we consider the individual's chronological age in combination with his or her residual functional capacity, education, and work experience to determine whether the individual is able to adjust to other work. The final rules will go into effect May 8, 2000.

Because the final rules clarify the regulations at issue in Patterson and explain that "age" means a claimant's "chronological age," we are rescinding Acquiescence Ruling 88–1(11) effective May 8, 2000, the date the final rules go into effect. By revising our regulations and rescinding the Acquiescence Ruling, we are restoring uniformity to our nationwide system of rules in accordance with our commitment to the goal of administering our programs through uniform national standards as discussed in the preamble to the 1998 acquiescence regulations, 63 FR 24927 (May 6, 1998).

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income.)

Dated: March 17, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

[FR Doc. 00–8358 Filed 4–5–00; 8:45 am]

BILLING CODE 4191–02–U

SOCIAL SECURITY ADMINISTRATION

Rescission of Social Security Acquiescence Rulings 95–1(6), 99–2(8) and 99–3(5)

AGENCY: Social Security Administration.

ACTION: Notice of rescission of Social Security Acquiescence Rulings 95–1(6)—*Preslar* v. *Secretary of Health and Human Services*, 14 F.3d 1107 (6th Cir. 1994); 99–2(8)—*Kerns* v. *Apfel*, 160 F.3d 464 (8th Cir. 1998); 99–3(5)—*McQueen* v. *Apfel*, 168 F.3d 152 (5th Cir. 1999).

SUMMARY: In accordance with 20 CFR 402.35(b)(2), 404.985(e) and 416.1485(e) the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Rulings 95–1(6), 99–2(8) and 99–3(5).

EFFECTIVE DATE: The rescission of these Acquiescence Rulings will be effective May 8, 2000.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1695.

SUPPLEMENTARY INFORMATION: A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of the case or is unsuccessful on further review.

As provided by 20 CFR 404.985(e)(4) and 416.1485(e)(4), a Social Security Acquiescence Ruling may be rescinded as obsolete if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of the circuit court holding for which the Acquiescence Ruling was issued.

On May 4, 1995, we issued Acquiescence Ruling 95–1(6) (60 FR 22091) to reflect the holding in *Preslar* v. *Secretary of Health and Human Services*, 14 F.3d 1107 (6th Cir. 1994). On March 11, 1999, we issued Acquiescence Ruling 99–2(8) (64 FR 12205) to reflect the holding in *Kerns* v. *Apfel*, 160 F.3d 464 (8th Cir. 1998). On May 27, 1999, we issued Acquiescence Ruling 99–3(5) (64 FR 28853) to reflect the holding in *McQueen* v. *Apfel*, 168 F.3d 152 (5th Cir. 1999). These circuit court holdings interpreted 20 CFR 404.1563(d) to require the Social Security Administration (SSA) [1] to make an additional finding regarding the marketability of a claimant's skills in order to determine whether the skills of a claimant close to retirement age (age 60–64) are transferable to sedentary or light work. These courts held that in the absence of a finding by SSA that the skills of such an individual are "highly marketable," SSA may not conclude that the claimant possesses transferable skills and is not disabled.

We indicated in each of the Acquiescence Rulings that we intended to clarify the regulations at issue in the court decisions, 20 CFR 404.1563 and 416.963, through the rulemaking process, and that we may rescind the Acquiescence Rulings once we revise the regulations. On August 4, 1999, we published proposed rules with a notice of proposed rulemaking in the **Federal Register** (64 FR 42310) to clarify the regulations that were the subject of the circuit court holdings. We are now publishing final rules in this issue of the **Federal Register**.

We are publishing this notice of rescission of the Acquiescence Rulings concurrently with our publication of final rules which revise 20 CFR 404.1563 and 416.963. The final rules remove the reference to "highly marketable" skills contained in existing sections 404.1563(d) and 416.963(d). The final rules also add new sections 404.1568(d)(4) and 416.968(d)(4) to clarify our original intent to apply the standard in sections 201.00(f) and 202.00(f) of the medical-vocational guidelines (20 CFR part 404, subpart P, appendix 2) to determine whether an individual who is age 60–64 and limited to sedentary or light work possesses transferable skills and, therefore, is able to make an adjustment to other work. The final rules will go into effect May 8, 2000.

Because the final rules eliminate the regulatory provision upon which the holdings in *Preslar*, *Kerns* and *McQueen* are based and clarify how we evaluate the transferability of skills for older workers, including those close to retirement age (age 60–64), we are rescinding Acquiescence Rulings 95–1(6), 99–2(8) and 99–3(5). We are

[1] Under the Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103–296, effective March 31, 1995, SSA became an independent Agency in the Executive Branch of the United States Government and was provided ultimate responsibility for administering the Social Security and Supplemental Security Income programs under titles II and XVI of the Act. Prior to March 31, 1995, the Secretary of Health and Human Services had such responsibility.

rescinding these Acquiescence Rulings effective May 8, 2000, the date the final rules go into effect. By revising our regulations and rescinding these Acquiescence Rulings, we are restoring uniformity to our nationwide system of rules in accordance with our commitment to the goal of administering our programs through uniform national standards as discussed in the preamble to the 1998 acquiescence regulations, 63 FR 24927 (May 6, 1998).

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income.)

Dated: March 17, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

[FR Doc. 00–8357 Filed 4–5–00; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF STATE

[Public Notice 3274]

Culturally Significant Objects Imported for Exhibition Determinations: "1900: Art at the Crossroads"

AGENCY: U.S. Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations:

Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985, 22 U.S.C. 2459], the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681 *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999, as amended by Delegation of Authority No. 236–1 of November 9, 1999, I hereby determine that the objects to be included in the exhibit, "1900: Art at the Crossroads," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the temporary exhibition or display of the exhibit objects at the Guggenheim Museum, New York, NY, from on or about May 18, 2000, to on or about September 10, 2000, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is Room 700, United States Department of State, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: March 31, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 00–8511 Filed 4–5–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Douglas and Franklin Counties, KS

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project on U.S. Highway 59 in Douglas and Franklin Counties, Kansas.

FOR FURTHER INFORMATION CONTACT: Kurt C. Dunn, P.E., Engineering Services Team Leader, Federal Highway Administration, 3300 South Topeka Boulevard, Suite 1, Topeka, Kansas 66611–2237, Telephone: (785) 267–7281; Warren L. Sick, Assistant Secretary and State Transportation Engineer, Kansas Department of Transportation, 915 Harrison, Topeka, Kansas 66612, Telephone (785) 296–3285.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Federal Register home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

The FHWA, in cooperation with the Kansas Department of Transportation (KDOT), will prepare an environmental impact statement (EIS) on a proposal to improve U.S. Highway 59 in Douglas and Franklin Counties, Kansas. The proposed project would involve the improvement of the existing U.S. 59 corridor between the cities of Lawrence and Ottawa, a distance of about 27.2 kilometers (17 miles) in length. The KDOT has held three public information meetings on proposed improvements to U.S. 59. An environmental assessment was prepared for a proposed limited access facility on new alignment. The high level of public concern expressed and the potential for significant impacts has led to the decision to prepare an EIS.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demands and to improve safety. Also, under consideration in this proposal is a new connection with the existing Interstate Highway 35 near Ottawa. Alternatives under consideration include (1) taking no action; (2) improving the existing alignment; and (3) construction on a new alignment.

Comments are being solicited from appropriate Federal, State, and local agencies, and from private organizations and citizens who have interest in this proposal. A public hearing will be held once the draft EIS is completed. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. The FHWA has determined that a formal scoping meeting is not necessary.

Comments and/or suggestions from all interested parties are requested to ensure that the full page of issues related to this proposed action, and significant environmental issues in particular, are identified and reviewed. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the KDOT at the address provided above.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on March 16, 2000.

David R. Geiger,

Division Administrator, Kansas Division, Federal Highway Administration, Topeka, Kansas.

[FR Doc. 00–8427 Filed 4–5–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2000–7166]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel HAGGAI.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S. build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before May 8, 2000.

ADDRESSES: Comments should refer to docket number MARAD–2000–7166. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR 832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (less than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commentor's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested:

Name of vessel: HAGGAI Owner: Jeffrey White

(2) Size, capacity and tonnage of vessel: According to the Applicant "HAGGAI is 33.5 feet long with a breadth of 11.7 feet and a depth of 6.2 feet. Her gross tonnage is 13 tons. Tonnage was measured pursuant to 46 U.S.C. 14502 specifications."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "I intend to use this vessel to conduct evening, 1-day, or weekend charters which will simply involve sunset viewing, exploring local harbors and islands, and occasionally trolling a fishing line. It is not my intention to conduct a fishing charter business. The region in which I would like to operate is the coastal waters of Massachusetts, specifically between Gloucester and Boston."

(4) Date and place of construction and (if applicable) rebuilding. Date of construction: 1979, place of construction: Taiwan, Republic of China.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "Considering the type of activities I intend to conduct, and the area in which I intend to conduct them, I am confident that if this waiver is granted it will have no adverse effects upon commercial passenger vessel operators. The vessels operating in my area are: large whale watch vessels, commercial fishing vessels, large fishing charter vessels, and sport-fishing charter vessels."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "The granting of this waiver will not affect the business of U.S. shipbuilders adversely. Ultimately, not granting this waiver will however, because it is my intention to start my operation using HAGGAI and use the profits to help fund the eventual purchase of a U.S. built sailing vessel to conduct my business. Considering the activities I plan to pursue, a U.S. built sailing vessel would best suit my needs, however, my current financial situation is impeding my goal. I see the use of HAGGAI to begin this endeavor as my only viable option. As stated, the granting of this waiver will have only a positive affect on U.S. shipbuilders. To my knowledge, there is no business operating in my area which will be affected by the granting of this waiver."

Dated: March 31, 2000.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–8423 Filed 4–5–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 28, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 8, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1671.

Regulation Project Number: REG–209709–94 Final.

Type of Review: Extension.

Title: Amortization of Intangible Property.

Description: The information is required by the IRS to aid it in administering the law and to implement the election provided by section 197(f)(9)(B) of the Internal Revenue Code. The information will be used to verify that a taxpayer is properly reporting its amortization and income taxes.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent: 3 hours.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1,500 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management

and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–8417 Filed 4–5–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 28, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 8, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0714.

Form Number: IRS Forms 8027 and 8027–T.

Type of Review: Extension.

Title: Employer's Annual Information Return of Tip Income and Allocated Tips (Form 8027); and Transmittal of Employer's Annual Information Return of Tip Income and Allocated Tips (Form 8027–T).

Description: To help IRS in its examination of return filed by tipped employees, large food or beverage establishments are required to report annually information concerning food or beverage operations receipts, tips reported by employees, and in certain cases, the employer must allocate tips to certain employees.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, State, Local or Tribal Government

Estimated Number of Respondents/Recordkeepers: 52,050.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing, and sending the form to the IRS
8027	5 hr., 59 min	53 min	1 hr., 2 min.
8027–T	43 min	0 min	1 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 392,986 hours.

OMB Number: 1545–1666.

Regulation Project Number: REG–116048–99 NPRM and Temporary.

Type of Review: Extension.

Title: Stock Transfer Rules, Supplemental Rules.

Description: These regulations provide rules governing income recognition upon the occurrence of a section 367(b) transaction. Specifically, they provide certain elections for a taxpayer to limit its income inclusion.

Respondents: Business or other for-profit, Farms.

Estimated Number of Respondents: 20.

Estimated Burden Hours Per Respondent: 4 hours, 15 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 85 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 00–8418 Filed 4–5–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 30, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 8, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0166.

Form Number: IRS Form 4255.

Type of Review: Extension.

Title: Recapture of Investment Credit.

Description: Internal Revenue Code (IRC) section 50(a) and Regulation section 1.47 require that taxpayers attach a statement to their return showing the computation of the recapture tax when investment credit property is disposed of before the end of the recapture period used in the original computation of the investment credit.

Estimated Number of Respondents/Recordkeepers: 20,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—6 hr., 28 min.

Learning about the law or the form—1 hr., 35 min.

Preparing, copying, assembling, and sending the form to the IRS—1 hr., 46 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 196,400 hours.

OMB Number: 1545–0233.

Form Number: IRS Form 7004.

Type of Review: Extension.

Title: Application for Automatic Extension of Time to File Corporation Income Tax Return.

Description: Form 7004 is used by corporations and certain non-profit institutions to request an automatic 6-month extension of time to file their income tax returns. The information is needed by IRS to determine whether Form 7004 was timely filed so as not to impose a late filing penalty in error and also to insure that a proper amount of tax was computed and deposited.

Estimated Number of Respondents/Recordkeepers: 1,097,748.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—5 hr., 44 min.

Learning about the law or the form—1 hr., 22 min.

Preparing the form—2 hr., 27 min.

Copying, assembling, and sending the form to the IRS—16 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 10,790,863 hours.

OMB Number: 1545–0387.

Form Number: IRS Form 4419.

Type of Review: Extension.

Title: Application for Filing Information Returns Magnetically/Electronically.

Description: Under section 601(e)(2)(a) of the Internal Revenue Code, any person, including corporations, partnerships, individuals, estates and trusts, who is required to file 250 or more information returns magnetically/electronically. Payers required to file on magnetic media or electronically must complete Form 4419 to receive authorization to file.

Estimated Number of Respondents: 15,000.

Estimated Burden Hours Per Respondent: 26 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 6,500 hours.

OMB Number: 1545–1412.

Regulation Project Number: FI–54–93 Final.

Type of Review: Extension.

Title: Clear Reflection of Income in the Case of Hedging Transactions.

Description: This information is required by the Internal Revenue Service to verify with section 446 of the Internal Revenue Code. This information will be used to determine that the amount of tax has been computed correctly.

Estimated Number of Recordkeepers: 110,000.

Estimated Burden Hours Per Recordkeeper: 12 minutes.

Estimated Total Recordkeeping Burden: 22,000 hours.

OMB Number: 1545–1434.

Regulation Project Number: CO–26–96 Final.

Type of Review: Extension.

Title: Regulations Under Section 382 of the Internal Revenue Code of 1986; Application of Section 382 in Short Taxable Years and With Respect to Controlled Groups.

Description: Section 382 limits the amount of income that can be offset by loss carryovers after an ownership change. These regulations provide rules for applying section 382 in the case of short taxable years and with respect to controlled groups.

Estimated Number of Respondents: 3,500.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 875 hours.

OMB Number: 1545–1520.

Revenue Procedure Number: Revenue Procedures 2000–4, 2000–5, 2000–6, 2000–8 (Formerly Revenue Procedures 99–4, 99–5, 99–6, and 99–8).

Type of Review: Extension.

Title: Letter Rulings (2000–4); Technical Advice (2000–5); Determination Letters (2000–6); User Fees (2000–8).

Description: The information requested in Revenue Procedure 2000–4, Revenue Procedure 2000–5, Revenue Procedure 2000–6 and Revenue Procedure 2000–8 is required to enable the Office of the Assistant Commissioner (Employee Plans and Exempt Organizations) of the Internal Revenue Service to give advice on filing letter ruling, determination letter, and technical advice requests, to process such requests, and to determine the amount of any user fees.

Estimated Number of Respondents: 83,068.

Estimated Burden Hours Per Respondent: 2 hours, 8 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 177,986 hours.

OMB Number: 1545–1522.

Regulation Project Number: Revenue Procedures 2000–1 and 2000–3.

Type of Review: Extension.

Title: 26 CFR 601.201—Rulings and Determination Letters.

Description: The information requested in Revenue Procedure 2000–1 under sections 5.05, 6.07, 8.01, 8.02, 8.03, 8.04, 8.05, 8.07, 9.01, 10.06, 10.07, 10.09, 11.01, 11.06, 11.07, 12.11, 13.02, 15.02, 15.07, 15.08, 15.09, and 15.11, paragraph (B)(1) of Appendix A, and Appendix C, and question 35 of Appendix C, and in Revenue Procedure 2000–3 under sections 3.01(22), (24), (25), (27), and (28), 3.02(1) and (3), 4.01(26), and 4.02(1) and (7)(b) is required to enable the Internal Revenue Service to give advice on filing letter ruling and determination letter requests and to process such requests.

Estimated Number of Respondents: 3,800.

Estimated Burden Hours Per Respondent: 80 hours, 19 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 305,230 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 00–8419 Filed 4–5–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Renewal of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning its extension, without change, of an information collection titled, "Investment Securities—12 CFR 1."

DATES: You should submit written comments by June 5, 2000.

ADDRESSES: You should direct all written comments to the Communications Division, Attention: 1557–0205, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, you may send comments by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Jessie Dunaway or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0205), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW, Washington, DC, between 9:00 a.m. and 5:00 p.m. on business days. You can make an appointment to inspect the comments by calling (202)874–5043.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Investment Securities—12 CFR 1.

OMB Number: 1557–0205.

Form Number: None.

Abstract: This submission covers an existing regulation and involves no

change to the regulation or to the information collections embodied in the regulation. The OCC requests only that OMB renew its approval of the information collections in the current regulation.

The information requirements in 12 CFR part 1 are located as follows:

Under 12 CFR 1.3(h)(2), a national bank may request an OCC determination that it may invest in an entity that is exempt from registration under section 3(c)(1) of the Investment Company Act of 1940 if the portfolio of the entity consists exclusively of assets that a national bank may purchase and sell for its own account. The OCC uses the information contained in the request as a basis for determining that the bank's investment is consistent with its investment authority under applicable law and does not pose unacceptable risk.

Under 12 CFR 1.7(b), a national bank may request OCC approval to extend the five-year holding period of securities held in satisfaction of debts previously contracted (DPC) for up to an additional five years. The bank must provide a clearly convincing demonstration of why any additional holding period is needed. The OCC uses the information in the request to ensure, on a case-by-case basis, that the bank's purpose in retaining the securities is not speculative and that the bank's reasons for requesting the extension are adequate, and to evaluate the risks to the bank of extending the holding period, including potential effects on bank safety and soundness.

Type of Review: Extension, without change, of a currently approved collection.

Affected Public: Businesses or other for-profit; individuals.

Estimated Number of Respondents: 25.

Estimated Total Annual Responses: 25.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 460 burden hours.

Comments

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 31, 2000.

Mark J. Tenhundfeld,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 00–8503 Filed 4–5–00; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–8–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, CO–8–91 (TD 8643), Distributions of Stock and Stock Rights (Section 1.305–5(b)(5)).

DATES: Written comments should be received on or before June 5, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Distributions of Stock and Stock Rights.

OMB Number: 1545–1438.

Regulation Project Number: CO–8–91.

Abstract: The requested information is required to notify the Service that a holder of preferred stock callable at a premium by the issuer has made a determination regarding the likelihood of exercise of the right to call that is different from the issuer's determination.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 333.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 27, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–8577 Filed 4–5–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0113]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on applicants' qualifications to become a fee basis appraiser to appraise residential real estate.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 5, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0113" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Fee Personnel Designation, VA Form 26–6681.

OMB Control Number: 2900–0113.

Type of Review: Revision of a currently approved collection.

Abstract: The form solicits information on the fee personnel applicant's background and experience in the real estate valuation field. VA regional offices and centers use the information contained on the form to evaluate applicants' experience for the purpose of designating qualified individuals to serve on the fee roster for their stations.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,100 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 6,200.

Dated: March 15, 2000.

Sandra McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 00–8424 Filed 4–5–00; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 65, No. 67
Thursday, April 6, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE
DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AJ87

Veterans Education: Increased Allowances for the Educational Test Program

Correction

In rule document 00–6216 beginning on page 13693 in the issue of Tuesday, March 14, 2000, make the following corrections:

§21.5820 [Corrected]

1. On page 13694, in the first column, in §21.5820(b)(2)(ii)(C), in the fourth line, the "4" should read "4¢".

2. On the same page, in the same column, in the same section, in the fifth line, the "2" should read "2¢".

[FR Doc. C0–6216 Filed 4–5–00; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 00-18]

Geographic Boundaries of Customs Brokerage, Cartage, and Lighterage Districts

Correction

In the issue of Thursday, March 23, 2000, on page 15687, in the correction of notice document number 00-6263, in the third column, in the "Ports of entry" column, under the heading "Missouri", "St. Wichita" should read,"Wichita, KS".

[FR Doc. C0–6263A Filed 4–5–00; 8:45 am]
BILLING CODE 1505–01–D

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Federal Register

Thursday,
April 6, 2000

Part II

Department of Commerce

U.S. Patent and Trademark Office

37 CFR Part 1

Rules To Implement Optional Inter Partes Reexamination Proceedings; Proposed Rule

DEPARTMENT OF COMMERCE

U.S. Patent and Trademark Office

37 CFR Part 1

[Docket No. 000306064–0064–01]

RIN 0651–AB04

Rules To Implement Optional Inter Partes Reexamination Proceedings

AGENCY: U.S. Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U. S. Patent and Trademark Office (the Office) is proposing to amend its rules of practice in patent cases to provide revised procedures for the reexamination of patents and thereby implement certain provisions of "the American Inventors Protection Act of 1999." "The American Inventors Protection Act of 1999" included an amendment to the Patent Act to authorize the extension of reexamination proceedings via an optional *inter partes* reexamination procedure in addition to the present *ex parte* reexamination procedure as a means for improving the quality of United States patents. The Office intends, through this amendment of its rules, to provide patent owners and the public with guidance on the procedures that the Office will follow in conducting optional inter partes reexamination proceedings in addition to the present *ex parte* reexamination proceedings.

The American Inventors Protection Act of 1999" also made other miscellaneous changes to the Patent Act which relate to reexamination, and it is intended that this amendment of the Office's rules will implement those changes relating to reexamination.

DATES: *Comment Deadline Date:* To ensure consideration of written comments, they must be received at the Office no later than June 12, 2000. While comments may be submitted after this date, the Office cannot ensure that consideration will be given to such comments. No public hearing will be held.

Public Inspection of Comments: Written comments will be available for public inspection on or about June 20, 2000.

ADDRESSES: Those interested in submitting written comments should send their written comments to the attention of Kenneth M. Schor, Senior Legal Advisor, by electronic mail message over the Internet addressed to reexam.rules@uspto.gov and titled *"Inter Partes* Reexamination." Written comments may also be submitted by mail addressed to U.S. Patent and Trademark Office, Box Comments—Patents, Commissioner for Patents, Washington, DC 20231, marked to the attention of Kenneth M. Schor; or by facsimile transmission to (703) 872–9408, marked to the attention of Kenneth M. Schor. Although comments may be submitted by e-mail, mail, or facsimile, the Office prefers to receive comments via e-mail over the Internet. Where comments are submitted by mail, the Office would prefer that the comments be submitted on a DOS formatted 3½ inch disk accompanied by a paper copy.

Written comments will be available for public inspection at the Patent Examination Policy Law Office, Office of the Deputy Assistant Commissioner for Patent Policy and Projects, located at Crystal Plaza Four, Room 3C23 (receptionist), 2201 South Clark Place, Arlington, Virginia. In addition, written comments in electronic form may be made available via the Office's World Wide Web site at http://www.uspto.gov.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Schor or Gerald A. Dost, Senior Legal Advisors. Kenneth M. Schor may be contacted (a) by telephone at (703) 305–1616; (b) by mail addressed to: U.S. Patent and Trademark Office, Box Comments—Patents, Commissioner for Patents, Washington, DC 20231, marked to the attention of Kenneth M. Schor; (c) by facsimile transmission to (703) 872–9408, marked to the attention of Kenneth M. Schor; or (d) by electronic mail message over the Internet addressed to reexam.rules@uspto.gov and titled *"Inter Partes Reexamination."*

Gerald A. Dost may be contacted (a) by telephone at (703) 305–1616; (b) by mail addressed to: U.S. Patent and Trademark Office, Box Comments—Patents, Commissioner for Patents, Washington, DC 20231, marked to the attention of Gerald A. Dost; (c) by facsimile transmission to (703) 308–6916, marked to the attention of Gerald A. Dost; or (d) by electronic mail message over the Internet addressed to reexam.rules@uspto.gov and titled *"Inter Partes* Reexamination."

SUPPLEMENTARY INFORMATION:

Background

This proposed rulemaking sets forth distinct procedures directed toward determining and improving the quality and reliability of United States patents. The procedures provide for the optional *inter partes* reexamination procedures in addition to the present *ex parte* reexamination procedures for the reexamination of patents as provided for by the American Inventors Protection Act of 1999 as part of the conference report (H. Rep. 106–479) on H.R. 3194, Consolidated Appropriations Act, Fiscal Year 2000. The text of the American Inventors Protection Act of 1999, is contained in Title IV of S. 1948, the Intellectual Property and Communications Omnibus Reform Act of 1999 (Pub. L. 106–113), the Act which is incorporated by reference in Division B of the conference report. The procedures also provide for implementation of other miscellaneous changes to the reexamination of patents also provided for in Public Law 106–113.

In 1995, the Office published proposed rules in anticipation of H.R. 1732, 104th Cong., 1st Sess. (1995), a predecessor for the present *inter partes* reexamination statute. H.R. 1732 did not, however, mature into a statute. H.R. 1732 resulted from suggestions and comments to the Administration by the public, bar groups, and the August 1992 Advisory Commission on Patent Law Reform suggesting more participation in the reexamination proceeding by third-party requesters. In response to H.R. 1732, the Office issued a Notice of Proposed Rulemaking entitled "Rules of Practice in Patent Cases; Reexamination Proceedings," which Notice was published in the **Federal Register** at 60 FR 41035 (August 11, 1995) and in the *Official Gazette* at 1177 Off. Gaz. Pat. Office 130 (August 22, 1995). Sixteen written comments were received in response to the August 1995 Notice of Proposed Rulemaking. A public hearing was held at 9:30 a.m. on September 20, 1995. Eight individuals offered oral comments at the hearing. The sixteen written comments and a transcript of the hearing are available for public inspection in the Patent Examination Policy Law Office, Office of the Deputy Commissioner for Patent Examination Policy, located at Crystal Plaza Four, Room 3C23 (receptionist), 2201 South Clark Place, Arlington, Virginia. The present proposed rulemaking addresses, and takes into consideration, the comments received in response to the 1995 proposed rules.

Discussion of General Issues Involved

This proposed rulemaking is in response to Public Law 106–113, the Act which resulted from suggestions and comments to the Administration by the public, bar groups, and the August 1992 Advisory Commission on Patent Law Reform suggesting more participation in the reexamination proceeding by third-party requesters. Under the *inter partes* reexamination rules proposed herein, third-party

requesters will have greater opportunity to participate in reexamination proceedings in keeping with the spirit and intent of the new law. At the same time, participation will be limited to minimize the costs and other effects of reexamination requests on patentees, especially individuals and small businesses.

Ex parte reexamination proceedings filed under Chapter 30 of 35 U.S.C. (both before and after the effective date, November 29, 1999, of the new law) will continue to be governed by 37 CFR 1.501–1.570. The proposed rules for optional *inter partes* reexaminations under Chapter 31 of 35 U.S.C. have been numbered 37 CFR 1.902–1.997.

The effective date of the statute with respect to the optional *inter partes* reexamination proceedings as well as to the existing *ex parte* reexamination proceedings is complex. With the exception of the amendments to 35 U.S.C. 41(a)(7) directed to the revival of terminated *ex parte* and *inter partes* reexamination proceedings, the new statute and the conforming amendments to the present statute take effect on the date of enactment, November 29, 1999. The changes, however, only apply to a reexamination of a patent that issues from an original application which was filed in the United States on or after November 29, 1999. Thus, for *inter partes* reexaminations, the effective date language (in section 4608 of S. 1948) limits the applicability of the new *inter partes* reexamination Chapter 31 of 35 U.S.C., and that of the conforming amendments to 35 U.S.C. 134, 141, 143 and 145, to any patent that issues from an original application filed in the United States on or after November 29, 1999, the effective date of Public Law 106–113. For *ex parte* reexaminations filed under Chapter 30 of 35 U.S.C., the conforming amendments to 35 U.S.C. 134, 141, 143 and 145, only apply to those *ex parte* reexamination proceedings filed under § 1.510 for patents that issue from an original application that is filed in the United States on or after November 29, 1999. The conforming amendments to 35 U.S.C. 134, 141, 143 and 145, correspondingly, will not apply to *ex parte* reexamination proceedings filed under § 1.510 for patents that issue from an original application filed in the United States prior to November 29, 1999.

The conforming amendments also amend 35 U.S.C. 41(a)(7) to include the words "any reexamination proceeding" under the "unintentional" revival provisions of the statute for an unintentionally delayed response by the patent owner in any reexamination proceeding. These words "any reexamination proceeding" clearly make this section applicable to both *ex parte* reexaminations and *inter partes* reexaminations. The effective date of the amendment to 35 U.S.C. 41(a)(7), however, is one year after the date of enactment of the Act, or November 29, 2000. See section 4608 of S. 1948. Thus, as of November 29, 2000, any *ex parte* or *inter partes* reexamination filed before, on, or after November 29, 2000, is subject to the "unintentional" revival provisions of the statute.

Regarding the reexamination fee, 35 U.S.C. 41(d) requires the Director of the United States Patent and Trademark Office (the Director) to set the fee for the new optional *inter partes* reexamination at a level which will recover the estimated average cost of the reexamination proceeding to the Office. The estimated average cost is $8,800 for an *inter partes* reexamination proceeding. The difference in price between an *ex parte* reexamination ($2,520) and an *inter partes* reexamination ($8,800) takes into account that the Office will expend substantially more resources for examination, supervision, training, etc., where the third-party requester participates in an *inter partes* reexamination proceeding, and for the additional processing steps that are expected during an *inter partes* reexamination proceeding.

Considerations of the Comments Responding to the August 1995 Notice of Proposed Rulemaking

In 1995 the Office published proposed rules in anticipation of a predecessor bill to the present *inter partes* reexamination statute, which bill did not mature into a statute. The Office issued a notice of proposed rulemaking entitled "Rules of Practice in Patent Cases; Reexamination Proceedings," which was published in the **Federal Register** at 60 FR 41035 (August 11, 1995) and in the *Official Gazette* at 1177 Off. Gaz. Pat. Office 121 (August 22, 1995). Sixteen written comments were received in response to the August 1995 notice. Also, a public hearing was held on September 20, 1995, during which eight individuals offered oral comments. The following 28 issues summarize the comments, and the Office response.

Issue 1

Eleven comments addressed the issue of the reexamination filing fees set in the August 11, 1995, Notice of Proposed Rulemaking. The fees set in 1995 were $4,500 for a request by a patent owner and $11,000 for a request by a third-party requester. The discussion below relates to the 1995 proposed fees. The current proposed $8,800 *inter partes* reexamination fee is the result of a reevaluation of the *inter partes* reexamination parameters, and how *inter partes* reexamination will be conducted in view of the comments.

A first comment questioned why the reexamination filing fees set in the August 11, 1995, Notice of Proposed Rulemaking were many times those for original and reissue applications. A second comment questioned the disparity between fees for the patent owner and the third-party requester, suggesting that more reasonable fees be set initially until actual costs become known, since higher fees will discourage reexaminations. Further, it was urged that the distinction in the fees was inappropriately being based upon the legal positions of the parties (upholding or striking down a patent). Even further, it was pointed out that the fee structure provides a possibility of a windfall of $15,500 should both a patent owner and a third-party requester file a request for reexamination. A third comment asserted that the disparity was greater than a factor of two, whereas the reason given was that it would entail twice the effort. A fourth comment supported the fees, suggesting that the fee of $11,000 will discourage inappropriate requests and the harassing of individual inventors and small businesses. A fifth comment suggested that the cost of the reexamination proceedings be subsidized by fees collected from other services offered by the Office, that the fees should be apportioned in stages and charged as the reexamination progresses (*e.g.*, higher fees for appeals), and that there should be legislation to permit small entity discounts for reexamination fees. A sixth comment also suggested that the fees should be apportioned and charged as the reexamination progresses. The sixth comment additionally suggested that if the higher fees are warranted, there should be a more thorough examination of all cited and searched prior art by an independent supervisory examiner or a board of three examiners. A seventh comment asserted that since no new search is required of the examiner in the reexamination proceeding, the time and effort expended in a reexamination do not warrant a fee that is 14 times that of a regular application, which is not consistent with Congressional intent to provide a low cost alternative to litigation, and in view of the alternative to prepare and file another patent application and where appropriate initiate a more costly interference

proceeding. An eighth comment suggested that there should be a special reduced fee for reexamination requested within a short period (*e.g.*, six months) following the issuance of a patent, since the reexamination could be assigned to an examiner already familiar with the case, which fee should be the same as a continuing application for patent owners and double for third-party requesters. The ninth and tenth comments were directed to the impact of the $11,000 fee on independent inventors and small companies. The ninth comment suggested that the fees favored large businesses. The tenth comment suggested that a fee waiver system similar to that for Freedom of Information Act (FOIA) requests be adopted. In contrast, the eleventh comment stated that the fee was not a pivotal issue with respect to third parties participating in reexaminations, rather the pivotal issue is the perception today (under current rules) that the reexamination proceeding is not a level playing field. Accordingly, the fee should not be subsidized.

Response to Issue 1

Initially, it is noted that the *inter partes* reexamination fee structure has been reevaluated by the Office. The estimated average cost is $8,800 for an *inter partes* reexamination. Accordingly, § 1.20, as proposed in the present rule making, will require a filing fee of $8,800 for an *inter partes* reexamination under § 1.915(a).

As to the first and seventh comments asserting the disparity between costs for a regular patent application and an *inter partes* reexamination, it is not appropriate to compare these figures. Fees for filing an application are set by statute under 35 U.S.C. 41(a) and are not set at a cost recovery level. In fact, the statutory filing fee for an application is much lower than the average cost of the examination of the application. In contrast, the statutory patent maintenance fees set forth in 35 U.S.C. 41(b) are a significant source of income to the Office for very little actual work, which are, in effect, an offset for the application filing fee. On the other hand, the reexamination fees under 35 U.S.C. 41(d) must fully recover the cost of the reexamination. The submissions will be numerous in an *inter partes* reexamination proceeding, e.g., multiple responses and comments by the patent owner and third-party requester responsive to the Office and to each other. Further, these responses and comments are expected to be thorough and extensive which in turn must be analyzed by the examiner, requiring the expenditure of substantial time and resources. The additional examination hours, supervisory oversight, and other processing steps unique to *inter partes* reexamination have to be factored into the fees. The *inter partes* examination process is expected to require close policy oversight by legal advisors in the Patent Examination Policy Law Office, in addition to the extra resources needed to handle the anticipated increased number of submissions by the parties. The reexamination filing fee being set in the present rule package is $8,800 for filing a request for an *inter partes* reexamination under proposed § 1.913(a). This fee is considered to be appropriate based on the Office projections of the amount of work that will be required.

As to the second and third comments, directed to the disparity between fees for the patent owner and the third-party requester, it is noted that the current statute retains the current *ex parte* reexamination statute and provides an optional *inter partes* reexamination. It is anticipated that the expense of an *inter partes* reexamination will be substantially more than the expense of an *ex parte* reexamination and, consequently, the fees reflect this. Generally speaking, during the examination of an *ex parte* reexamination, the examiner applies the best art and normally limits the number of rejections made for a given claim to the best grounds. When responding to a third-party requester of an *inter partes* reexamination, the Office's preparation of an Office action will include responding to all of the multiple alleged grounds for rejections put forward (proposed) by the third-party requester. All of the grounds proposed by the third-party requester must be addressed by the examiner, because any proposed ground of rejection not adopted is a decision favorable to patentability which is subject to appeal by the third-party requester to the Board of Patent Appeals and Interferences. Thus, the extra effort needed for an *inter partes* reexamination entails not merely responding to amendments and arguments of the patent owner, but the substantially higher burden of responding to the arguments of the third-party requester and the many multiple decisions as to why a particular rejection is or is not an appropriate one to make. As to the second comment in particular, the difference in the amount of the fees is based on these projected costs and not on the legal position of the parties. As to the fourth comment regarding the discouragement of inappropriate requests, the setting of the filing fees is strictly based on cost expectations and not for the purpose of discouraging inappropriate reexamination requests.

Subsidizing of the cost of the reexamination proceedings (as suggested by the fifth comment and opposed by the eleventh comment) through increased costs to users of other services offered by the Office (as an alternative to pricing based on cost recovery) would naturally be viewed with disfavor by the users of other services. Also, the Office is not authorized to permit small entity reductions in reexamination filing fees. As to the suggestion regarding the apportionment of costs in stages as the proceeding evolves (e.g., higher fees at the appeal stage) (mentioned in the fifth and sixth comments), this is not practical since there would be no way to guarantee recovery of the total cost of reexamination. A third-party requester may decide to drop out of the reexamination and not pay the next required fee. The reexamination, however, would have to continue to resolve issues that had been raised. Moreover, appeal fees are set by statute under 35 U.S.C. 41(a)(6) and are not part of the reexamination filing fee. As to the utilization of a team of examiners to facilitate a review by a panel prior to forwarding the reexamination to the Board of Patent Appeals and Interferences, it is anticipated that appeal conferences will be made mandatory so that all work of an examiner will be thoroughly reviewed prior to the filing of an examiner's answer. Implementation of such review is better set by Office policy rather than by rule making.

As to the suggestion in the eighth comment that the fees be reduced for filing a request for reexamination within a short period (e.g., six months) following the issuance of a patent, reexaminations are generally based upon new prior art raising new issues so that the benefits (if any) of filing a reexamination within a short time after issuance of a patent would not warrant a reduction in fees. The ninth and tenth comments were directed to the impact the $11,000 fee required in the August 11, 1995, Notice of Proposed Rulemaking (for all reexaminations) will have on independent inventors and small companies. With respect to this, it should be noted that, as the statute has now been drafted and passed into law (Pub. L. 106–113), the filing of an *ex parte* reexamination is still available to a third-party requester, and the filing fee for such is $2,520. Thus, a less costly *ex parte* reexamination will be available to members of the public who may not be able to afford a full scale *inter partes*

reexamination which has a currently proposed filing fee of $8,800.

Issue 2

Two comments in response to the August 11, 1995, Notice of Proposed Rulemaking suggested that the Office reconsider the refund provisions. One comment suggested that the 75% refund of the fee should be reduced, since third parties who file unjustified requests should not be rewarded by so great a refund. Another comment suggested that the difference between the fees for a patent owner and a third-party requester varied by more than a factor of two and that it was difficult to rationalize why a refund of 75% would be provided for both instead of charging a flat fee of $1500 if the Director decides not to institute a reexamination proceeding (since the amount of work done in both cases should not differ).

Response to Issue 2

The comments have been adopted. Section 1.26(c), as currently proposed, sets the amount of refund to provide for the retention of a uniform fee of $830, with the remainder of the filing fee being refunded, for all reexamination requests where the Director decides not to institute a reexamination proceeding. For the *ex parte* reexamination fee of $2,520, an amount of $1,690 will be returned, thus resulting in a retention of $830. For the *inter partes* reexamination fee of $8,800, an amount of $7,970 will be returned, again resulting in a retention of $830. The amount of $830 being retained by the Office is based on projected cost expectations and is not for the purposes of penalizing unwarranted requests, since it is neither desirable nor appropriate to penalize parties for whom requests for reexamination are denied.

Issue 3

One comment in response to the August 11, 1995, Notice of Proposed Rulemaking suggested that the third-party requester should be required to certify that the request for reexamination contains all information that the requester regards as materially adverse to the patentability of the patent.

Response to Issue 3

This suggestion has not been adopted since it is in the third-party requester's best interests to submit all information that the requester regards as materially adverse to patentability with the request for reexamination in order to increase the possibility of the request for reexamination being granted. Moreover, proposed § 1.948 of the present rule package now provides that prior art submissions by the third-party requester filed after the *inter partes* reexamination order shall be limited to: (1) Any prior art which is necessary to rebut a finding of fact by the examiner or a response of the patent owner; or (2) any prior art which became known or available to the third-party requester after the filing of the *inter partes* reexamination proceeding. This is additional incentive to submit all known (and available) material prior art with the request.

Issue 4

Four comments in response to the August 11, 1995, Notice of Proposed Rulemaking were directed to the selection of the examiner and/or number of examiners. A first comment opined that it was Office practice to assign the reexamination to the examiner who originally examined and issued the patent and not on the basis of the classification of the art. The comment further noted the assignment to the same examiner defeats the underlying purpose of reexamination and petitioning for a transfer to a different art unit based on the classification of the art can also be unsuccessful, despite the "Transfer Procedure" in MPEP Section 2237 for those times when a reexamination request should be assigned to a different group art unit. The comment suggested that if a third-party requester requests a reexamination, it should be conducted by a different examiner, and further, if appropriate, assigned to a different art unit. A second comment noted that § 1.931(b) of the August 11, 1995, Notice of Proposed Rulemaking provides the only limitation placed on the selection of the examiner, namely that an examiner whose decision refusing reexamination has been reversed will not ordinarily conduct the reexamination. The comment suggested reevaluating the practice of assigning the same examiner who prosecuted the application which issued as a patent to conduct the reexamination, since many practitioners feel that the original examiner may have a bias against fully considering prior art during a reexamination proceeding. A third comment stated that since an *inter partes* reexamination proceeding is more complicated to manage than an *ex parte* reexamination proceeding, the *inter partes* reexamination proceeding is likely to require a higher degree of technical and legal competence in making a determination of patentability than is normally required in an *ex parte* reexamination proceeding. An examiner in an *inter partes* reexamination proceeding will be required to weigh and assess the credibility of often conflicting arguments; theories of operation, and evidence when making a determination of patentability. Although statistics appear to indicate that there is no inherent bias in the conduct of a reexamination proceeding when the proceeding is assigned to the same examiner who issued the patent, many perceive a bias (in favor of the patent owner) when the reexamination proceeding is assigned to the same examiner. The comment advocated assigning the reexamination proceeding to the best qualified examiner available, given the technical, legal, and procedural complexities that are likely to arise in the reexamination proceeding. The comment also suggested the formation of a separate unit of examiners to handle the new reexamination proceedings, or at least those which involve a third-party requester. The fourth comment suggested that the number of examiners be increased from one to three, including a supervisory primary examiner and a Group Director, in order to increase the probability of a "correct" decision and develop a higher degree of confidence in the reexamination process; and avoid situations where a third-party requester feels the examiner did not understand the prior art, the interview, or the declarations, etc. The comment suggested that the small increase in Office costs, and fees to be charged to participants, will probably be offset by having fewer appeals (and law suits) filed (which is of benefit to the public), and will still be a cost-effective means of resolving patent disputes, as compared to litigation. The fifth comment suggested that more than one examiner be responsible for issuing the Right of Appeal Notice, similar to the European Patent Office. Modification of the proposed rules to allow a decision from a panel of three capable examiners, would result in a higher degree of quality in the reexamination process and less ancillary issues later being raised (such as examiner bias or an examiner's lack of understanding of the relevant art or law). The comment suggested that the panel could include, for example, a legal specialist within the Examining Group, the original examiner of the application, and a primary examiner having knowledge of the relevant technical field and the record would reflect when a panel member concurs or dissents.

Response to Issue 4

As to the selection of the examiner, studies conducted by the Office have not discovered any bias irrespective of whether the same or a different

examiner handles the reexamination. The same examiner should not be biased toward confirming patentability, because a reexamination is not a rehash of old issues, but rather, a new question of patentability. In spite of the above, the Office is, for the most part, adopting the comment suggesting assignment of the reexamination to an examiner other than the one who originally examined and issued the patent. The comment is being adopted in order to eliminate public perception of bias by the original examiner who handled the patent. The comment will be implemented as a matter of policy, rather than by rule change. The MPEP will be revised to set policy that unless a Group Director needs to make an exception, a reexamination will not be assigned to a Supervisory Patent Examiner, a primary examiner, or a junior examiner who was actually involved (by preparing/signing an action on the merits) in the examination and issuance of the patent undergoing reexamination.

As to the Office personnel to be involved in the reexamination proceedings, the Office is considering the creation of a special group/unit having legal advisors trained in *inter partes* reexamination procedures to oversee the examination of the *inter partes* reexamination by the patent examiner in the examining group. For technical expertise, an examiner selected from the groups will be assigned the reexamination. The advantage of such a special group/unit is that it will include the examiner most familiar with the technology to make the patentability decisions and legal advisors to provide uniformity of the reexamination practice and procedure.

As to the comment suggesting that the number of examiners handling a reexamination proceeding be increased from one to three, the following is to be noted. In order to provide a thorough review by a team of examiners, a practice is being considered to hold a panel review just prior to the decision on the request for reexamination (order/denial) is issued and at the close of prosecution (i.e., just prior to "allowance" of the reexamination or just prior to issuing a right of appeal notice and final rejection). The panel review will be similar to the appeal conference review done in an application on appeal. It should further be noted that appeal conferences are already mandatory before a reexamination leaves the examiner for a decision by the Board of Patent Appeals and Interferences. If adopted, this will be implemented as a matter of policy, rather than by rule change.

Issue 5

One comment responding to the August 11, 1995, Notice of Proposed Rulemaking suggested that the content of the "prior art" made available for review by the Office should also include *inter partes* sworn testimony of the inventor(s) and others associated with the implementation of the invention and any patent work thereon covering their knowledge of the known prior art, related industry practices, and the like, which evidence may also impeach the inventor(s) and others in the sense of withholding known prior art from the Office.

Response to Issue 5

The Advisory Commission on Patent Law Reform: A Report to the Secretary of Commerce, August 1992, at page 117, recommended limitations on the scope of documentary prior art evidence and cautioned against reliance on testimonial evidence in light of the abuses of the process which occurred in the reissue protest proceedings under the Dann Amendments. The Commission found the Office to be an inappropriate forum for addressing all issues of validity. Affidavits or declarations which merely explain the contents or pertinent dates of prior patents or printed publications in more detail may be considered during reexamination, but any rejection must be in accordance with proposed § 1.906(a) (Scope of reexamination in reexamination proceeding). Proposed § 1.906(a) limits the scope of reexamination in that claims in an *inter partes* reexamination proceeding will be examined on the basis of patents or printed publications and, with respect to subject matter added or deleted in the reexamination proceeding, on the basis of the requirements of 35 U.S.C. 112.

Issue 6

One comment in response to the August 11, 1995, Notice of Proposed Rulemaking suggested that when an examiner allows a claim, the decision of the examiner should be supported by a well-reasoned opinion establishing the examiner's reasons for allowance. The comment stated that although § 1.109 provides that the examiner "may set forth such reasoning" for the allowance, this is rarely done and often with only a brief note. It was pointed out that well-reasoned opinions are critically important in inter partes reexamination procedure to third-party requesters (or patent owners) who are actively participating and who need the reasons for allowance (or for final rejection) in deciding whether to appeal.

Response to Issue 6

Office policy will direct the examiner to make a complete record of the reasons for allowing or rejecting a claim at various stages during the proceeding. Note further that, according to currently proposed § 1.953 (Examiner's Right of Appeal Notice), the Right of Appeal Notice is required to include "an identification of the status of each claim, and the reasons for patentability and/or the grounds of rejection for each claim." Thus, the examiner's reasons for patentability and/or the grounds of rejection will be available in *inter partes* reexamination procedure to the third-party requesters (and patent owners) who are actively participating and who need the reasons for allowance (or the grounds for final rejection) in deciding whether to appeal.

Issue 7

One comment in responding to the August 11, 1995, Notice of Proposed Rulemaking questioned whether in view of the new fee structure, the examiner will be required to do a new search of the prior art.

Response to Issue 7

The Office has chosen to rely upon the examiner's judgment and expertise in determining how much searching should be done in the reexamination proceeding. If the examiner believes that additional prior art patents and publications can be readily obtained by searching to supply any deficiencies in the prior art cited in a request, the examiner has the option of performing an additional search. The examiner is not required to, and will not routinely, make a full search.

Comments Directed to Specific Rules

Issue 8

One comment stated the belief that § 1.901 of the August 11, 1995, Notice of Proposed Rulemaking (which relates to the submission of prior art) places an unnecessary burden on a person to cite art to be placed in the file of an issued patent. A patentee who obtains prior art as a result of a foreign search report or by a competitor may believe it to be irrelevant and should be encouraged to file it without any statement that the art is pertinent, since it may turn out to be relevant when combined with other unknown prior art.

Response to Issue 8

Current § 1.501 is being retained, and thus there is no need for proposed § 1.901 of the August 11, 1995, Notice of Proposed Rulemaking which was to track and replace § 1.501. Section 1.501

provides a system for citation of patents and printed publications to the Office for placement in the patent file by any person during the period of enforceability of the patent in accordance with 35 U.S.C. 301. Section 1.501 requires the citation to state the pertinency and applicability of the cited documents to the patent and the bearing the documents have on the patentability of at least one claim of the patent pursuant to the same statutory requirement set forth in 35 U.S.C. 301.

Issue 9

Two comments suggested clarification of the language of the third-party estoppel provisions proscribed by §§ 1.907 and 1.909 of the August 11, 1995, Notice of Proposed Rulemaking, specifically the language "could have raised" used in both rules. One comment recommended that the third-party requester have the same obligation to raise issues known to him as the patent owner has. Another comment opined that the phrase "or could have raised during the prior reexamination proceeding" could be construed broadly, so as to stop a third-party requester from challenging the invalidity of a claim based on prior art which was in the possession of the third-party requester at the time of a prior reexamination proceeding, but which was not discovered at that time. Thus, depending on how the expression "could have" is interpreted, this could place a substantial burden on a large corporation. It was also suggested that the duty of individuals to disclose information known to them to be material to patentability is another difficult provision, particularly the phrase "and every other individual who is substantively involved on behalf of the patent owner in a reexamination proceeding."

Response to Issue 9

35 U.S.C. 315(c) and 317(b) of the Act use the phraseology "could have raised" with respect to issues of the third-party. The Office, as the sole agency that administers the patent statute, properly interprets statutory language in the first instance, subject to review by the courts. The question of whether an issue could have been raised must be decided on a case-by-case basis, evaluating all the facts and circumstances of each individual situation. It would not be appropriate at this time to provide an "all encompassing" definition, that might not account for facts which could arise in the future which cannot be anticipated. As to the duty of disclosure, proposed § 1.933 is substantially unchanged from existing § 1.555, which was formulated to balance the interests of the patent owner with the benefits to the public interest of the disclosure of material prior art.

Issue 10

One comment suggested that § 1.915(b)(7) of the August 11, 1995, Notice of Proposed Rulemaking be amended to specifically refer to reexaminations under the newly proposed regulations. As § 1.915(b)(7) was drafted, the required certification that the person filing an additional reexamination during the pendency of an ongoing reexamination is not a privy of the patent owner or of the third-party requester of the ongoing reexamination would include an ongoing reexamination proceeding ordered under the old regulations. Since one of the purposes of the new reexamination legislation is to permit participation by a third-party requester, no useful or public purpose would be served by precluding a third-party requester from filing a request for reexamination under the new regulations where there was a pending reexamination initiated under the old regulations.

Response to Issue 10

The language of proposed § 1.915(b)(7) has been drafted to specifically refer to an *inter partes* reexamination; this should accurately track the statutory prohibition of a third-party requester of an ongoing (pending) *inter partes* reexamination from requesting another inter partes reexamination. Note, however, that the current proposed rules do not preclude an *ex parte* third-party requester from filing an *inter partes* reexamination request.

Issue 11

Two comments responding to the August 11, 1995, Notice of Proposed Rulemaking were directed to the identification of the real party in interest. One comment suggested that as to the identification of the real party in interest, § 1.915(b)(10) of the August 11, 1995, Notice needs to be clarified on the question of whether a third-party requester filing in the name of an attorney must be identified. A second comment suggested that the real party in interest should be identified at least by the time of filing of the notice of appeal to the Court of Appeals for the Federal Circuit.

Response to Issue 11

The real party in interest must be set out in the request. 35 U.S.C. 311(b)(1) requires that the request "include the identity of the real party in interest." Proposed § 1.915(b)(8) (previously § 1.915(b)(10) in the 1995 rule package) tracks this provision of the statute and requires the requester to identify the real party in interest at the time of filing the request. If an attorney is filing a request for *inter partes* reexamination on behalf of another party, that other party must be identified. Thus, the third-party requester will be identified. As to the patent owner, proposed § 1.965(c)(1) requires the identification of the real party in interest at the time of the filing of the appellant brief, and proposed § 1.967(b)(1) requires the identification of the real party in interest at the filing of the respondent brief. Accordingly, the real parties in interest, for both the third-party requester and the patent owner, should be identified prior to an appeal to the Court of Appeals for the Federal Circuit by the patent owner (the current statute prohibits the third-party requester from appealing to the courts).

Issue 12

One comment responding to the August 11, 1995, Notice of Proposed Rulemaking was concerned that active third-party requesters representing large businesses could mount a series of attacks through "fourth parties" and "tie up" the invention of a small inventor for years.

Response to Issue 12

The statute is structured to balance the interests of the patent owners (to reduce costs and prevent harassment) and the public interest in promoting the validity of patents. Proposed § 1.907 tracks 35 U.S.C. 317 and is intended to prevent repeated challenges to the patent by third parties and their privies. In accordance with 35 U.S.C. 317(a), proposed § 1.907(a) prohibits the filing of a subsequent *inter partes* request for reexamination of the patent by the third-party requester or its privies until a reexamination certificate has been issued. In accordance with 35 U.S.C. 317(b), § 1.907(c) provides that if a final decision in an *inter partes* reexamination proceeding instituted by a third-party requester is favorable to patentability of a claim, the third-party requester and its privies may not later request another *inter partes* reexamination of any such patent claim on the basis of issues which that party, or its privies, raised or could have raised in such *inter partes* reexamination proceeding. Moreover, proposed § 1.915(b)(8) (previously § 1.915(b)(10) in the 1995 rule package) tracks 35 U.S.C. 311(b)(1) and requires the requester to identify the real party

in interest at the time of filing of the *inter partes* request.

Issue 13

One comment suggested that in regard to §§ 1.921 and 1.945 of the August 11, 1995, Notice of Proposed Rulemaking, supplemental responses and new prior art submissions should be permitted by the patent owner in order to substantiate certain points at issue (e.g., secondary considerations). It was further suggested that supplementation of responses be permitted. It was also suggested that submission of new publications by the third-party requester should be permitted in response to any amendment made by the patent owner which reduces the scope of the original claims.

Response to Issue 13

Proposed § 1.945 permits the patent owner to respond to any Office action, which response may include arguments and proposed amendments. There is no proscription regarding the submission of evidence relating to secondary considerations. As to third-party requesters, proposed § 1.948 provides that prior art submissions by the third-party requester filed after the *inter partes* reexamination order shall be limited to: (1) Any prior art which is necessary to rebut a finding of fact by the examiner or a response of the patent owner; or (2) any prior art which became known or available to the third-party requester after the filing of the *inter partes* reexamination proceeding. Accordingly, submission of new publications by the third-party requester in response to an amendment made by the patent owner which reduces the scope of the original claims would be permitted as a rebuttal of a "response of the patent owner."

Issue 14

One comment stated that as to § 1.927 of the August 11, 1995, Notice of Proposed Rulemaking, a determination by the Director refusing to initiate reexamination is final and nonappealable by a third-party. The rule should be amended to allow the third-party to appeal, since without an opportunity to appeal, a third-party's interests would be seriously jeopardized.

Response to Issue 14

Proposed § 1.927 of the present rule package (petition to review denial of the request for reexamination) has been drafted to track 35 U.S.C. 312(c). Proposed § 1.927 provides that "[t]he third-party requester may seek review by a petition to the Director under § 1.181 within one month of the mailing date of the examiner's determination refusing reexamination. Any such petition must comply with § 1.181(b). If no petition is timely filed or if the decision on petition affirms that no substantial new question of patentability has been raised, the determination shall be final and nonappealable." Thus, although the third-party requester does not have an appeal right, it may obtain a review of the decision of the examiner refusing reexamination by filing a petition. If the decision on the petition, however, affirms that no substantial new question of patentability has been raised, the determination is final and nonappealable, as is statutorily required by 35 U.S.C. 312(c).

Issue 15

Two comments were directed to the length of briefs specified in § 1.943 of the August 11, 1995, Notice of Proposed Rulemaking. One comment suggested that the length of briefs would be more meaningful if the size of the paper and the type font were specified. A second comment stated that the page limitation on briefs in § 1.943 is too restrictive, especially for patent owners, since there is no limitation on the number of issues which a third-party can raise, which may require a longer response from the patent owner. It was suggested that the rule should permit longer briefs upon a showing of good cause.

Response to Issue 15

As to the first comment, this comment is being adopted. Section 1.943, as proposed in the present rule package, has been drafted to set forth (by reference to § 1.530(d)(5)) the requirements for responses, amendments, briefs, appendices and other documents including the size of the paper, the minimum size of the type font (11-point), the line spacing and the margin requirements.

As to the second comment, the 50-page limit for amendments proposed to be set in § 1.943 is considered to be sufficient to deal with the third-party requester's comments. Note that the 50-page limit excludes reference materials such as prior art references. Where an extraordinary situation arises where justice requires the 50-page limit to be exceeded, the patent owner may petition under § 1.183 to suspend the page limit requirement of § 1.943.

The page limit set in proposed § 1.943 of the present rule package for briefs is such that appellant briefs shall not exceed 30 pages or 14,000 words in length (excluding appendices of claims and reference materials), and all other briefs by any party shall not exceed 15 pages or 7,000 words in length. These numbers of pages are in line with procedural rules of the Federal Courts; see for example Rule 32(a)(7)(A) of the Federal Rules of Appellate Procedure or Rule 33 of the Rules of the Supreme Court of the United States (Practice & Procedure).

Issue 16

Several comments were concerned with the time periods for response and extensions of time. Two comments suggested that the time periods for response for § 1.945 (patent owner) and § 1.947 (third-party requester) of the August 11, 1995, Notice of Proposed Rulemaking should be a minimum of two months for each party. A third comment suggested only that the patent owner be given two months to respond. The first comment suggested that the first month extension should be available upon payment of a fee (as in regular patent applications), with further requests requiring justification or cause. The second comment suggested that §§ 1.945 and 1.947 should be made consistent with each other (30 days versus one month) to alleviate any confusion by stating the number in months. The second comment further suggested that the extension of time procedure is unworkable since the Office could not act on the request for an extension of time (if filed within the one-month period of time) before the deadline for the response. Instead, the usual extension of time procedure used for regular patent applications should be available. The fourth comment stated that the time periods for submitting a response, a written comment, an appeal brief, and a respondent brief and for appealing or cross-appealing (§§ 1.945, 1.947, 1.951, 1.953, 1.959, 1.963, 1.971, 1.973, 1.979, 1.983, and 1.993) are too short, especially for residents outside of the United States (due to mailing delay).

Response to Issue 16

Proposed § 1.947 of the present rule package has been drafted to provide for a 30-day response period (from service of the patent owner's response on the third-party requester) for third-party requester comments. This tracks the requirement of 35 U.S.C. 314 that third-party requester comments be filed "within 30 days after the date of service of the patent owner's response." Proposed § 1.945 has been drafted to provide for an "at least 30 days" response period for the patent owner. This tracks the requirement of 35 U.S.C. 133 that the time for response to an Office action shall be "not less than 30

days." A shortened statutory period of two months will generally be set for patent owner responses to Office actions on the merits; however, where litigation has been suspended pending a determination in the reexamination proceeding, or for a like reason, the period will be shortened to one month or 30 days as is appropriate.

The suggestion that §§ 1.945 and 1.947 be made consistent with each other has been adopted to the extent that the currently proposed rules (§§ 1.945 and 1.947) recite both time periods in terms of days rather than months. The period for the patent owner response to an Office action will not, however, be made 30 days to correspond to the third-party comment period mandated by statute. While the statute limits the third-party requester to 30 days to comment on patent owner responses, a longer period for the patent owner to respond is appropriate in view of the potential need for counsel to consult with the patent owner, consider amendments, etc.

As to extensions of time, 35 U.S.C. 305 provides that all reexamination proceedings will be conducted with special dispatch within the Office. Section 1.956 provides that extensions of time will be available to the patent owner upon a showing of sufficient cause. Third-party requester's 30-day time period for comments is statutory; thus, it cannot be extended. This is consistent with the recommendation (VII–B) of *The Advisory Commission on Patent Law Reform: A Report to the Secretary of Commerce, August 1992* to provide for the opportunity for the third-party requester to submit written comments "within strict time deadlines."

Issue 17

One comment suggested that, as to § 1.949 of the August 11, 1995, Notice of Proposed Rulemaking, a more flexible policy on closing prosecution be adopted in a reexamination proceeding than is currently applied by the Office in its final action practice. Specifically, this proposed section indicates that prosecution will not normally close if there is a new ground of rejection (not previously addressed by the patent owner) which was not necessitated by an amendment to the claims by the patent owner. There was particular concern in the comments about a situation where new prior art is relied on even if it was necessitated by an amendment to the claims. It was noted that the proposed practice may serve a useful purpose in the normal examination of patent applications, where an applicant always has the opportunity to file a continuing application to make any further amendments to the claims that may be desirable to address the new ground of rejection; however, in a reexamination proceeding, where the patent owner is precluded from having any right to amend the claims to address the new ground of rejection or to file another request for reexamination, the patent owner may be trapped with no effective way to address new prior art that has been introduced for the first time in the Office action that simultaneously closes the prosecution. It was urged that this could be fundamentally unfair to the patent owner. Where new prior art is asserted by the examiner, the patent owner should have the opportunity to amend the claims.

Response to Issue 17

By weighing and balancing the interests of the parties, it is believed the rule as proposed is fair and reasonable. A rule which would prohibit an Office action from closing prosecution following a new art rejection responsive to a patent owner amendment would conceivably be subject to abuse, since patent owners could purposely add an amendment in each response to thus necessitate a new art rejection and thereby preclude the closing of prosecution for an unlimited number of cycles.

Issue 18

Eight comments were directed to interviews (provided for in § 1.955 of the August 11, 1995, Notice of Proposed Rulemaking). One comment suggested the need for a more accurate statement of why claims were found to be allowable as the result of an interview. A second comment suggested that the Office rules be modified to specifically require a means for more accurately recording what transpires at interviews, regardless of which party requests the interviews or whether all parties are present. The comment further stated that "recording" did not imply physical recording by electronic means or by a court reporter, but by a more thorough method of reporting by an examiner as to what transpired at the interview (which would be particularly effective with a multi-examiner review system). The comment indicated that the reporting of the "minutes" should be done to all parties, including a brief, non-binding, and informal opinion by the examiner on the resolution of the issues presented, so as to give all parties the opportunity to respond to the issues raised at the interview. A third comment suggested that the proposed rules should be modified to achieve two objectives. The first objective would be to provide an opportunity to better communicate issues to examiners (particularly those issues which are difficult to express on paper and might be better demonstrated; e.g., by charts, tables, or physical demonstration) of what is purported to be the main technical aspect of an invention, and how that technical aspect is or is not suggested by the prior art, either before or after the formal submission, so that they will have a better understanding of what the data represents. A second objective should be to provide a complete record for later review for a judge or an attorney who reviews the file history for a decision on patentability or infringement assessment. The proposed § 1.955 was stated to benefit the patent owner, who is the only party allowed to request an interview, thereby providing a tremendous advantage and, therefore, the rule should be modified to allow a third-party requester the opportunity to initiate an interview. The comment further criticized the lack of a specific requirement for recording what transpires at interviews, on the basis that an Examiner Interview Summary Record would be of little value in an *inter partes* reexamination proceeding, since the record is too abbreviated to be of any real value in subsequent proceedings and it is unlikely that much detail could be put into any interview record if more than one party, as well as a senior level official (whose presence would be required under the proposed rule) are all present and are relying upon an examiner to hurriedly write a summary of the interview. The comment suggested modification of § 1.955 to include an effective procedure for recording the details of what transpired at an interview. A fourth comment suggested that, in view of the criticality of the content of interviews in subsequent litigation, a mechanism should be made available for recording statements made at substantive interviews that occur during reexamination, whereby any party to a reexamination should be permitted to have a transcript of the substantive interviews made of record at their own expense. The comment further suggested that requesting parties would both supply the means for transcription and would bear the costs associated therewith. A fifth comment suggested that the third-party requester be allowed not only to participate but also initiate an interview, and that the third-party requester be provided, at a sufficient time prior to the interview, the particulars of the claim at issue at the

interview, the objective of the interview, and the specific data to be used at the interview, so that the third-party requester would be able to take substantial part in the discussion at the interview. A sixth comment was in favor of the third-party requesters having the right to participate in interviews but opposed giving third parties the right to initiate them. The reason given was that the rules need to balance the right to encourage third parties to participate with the need to keep reexamination quick and inexpensive. The comment further stated that in view of the expense, including the time required to review the transcript and the continuing attempts to make corrections and clarifications, a rule change to permit or require transcription of interviews is not recommended. Such a rule would make reexaminations more like court proceedings. A seventh comment suggested that § 1.955 should be changed to permit the third-party requester to request an interview because the third-party requester, like the patent owner, may have experts and/or documentary evidence that is not suitable for written declarations. An eighth comment suggested that if interviews are to be recorded, consideration should be given as to whether participants would be under oath.

Response to Issue 18

The Office has reconsidered its initial position (taken in the August 11, 1995, Notice of Proposed Rulemaking) to permit owner-initiated interviews in which the patent owner and the third-party requester participate. The presence of a third-party requester will complicate the reexamination proceeding and delay it. There is no reason to further complicate and delay the proceeding with *inter partes* interviews, which past history has shown to be not only resource intensive, but unwieldy. *Inter partes* interviews are difficult to arrange, control, and conduct. There would be interaction between the patent owner's representative and its experts, the third-party's representative and its experts, the examiner, and the "senior level official" which would be difficult to regulate and control. It is difficult to record what happened, and cross-transcripts would result in delay and complications. In addition, the time to arrange and conduct the interview would greatly extend the *inter partes* proceeding time line, and this is clearly contrary to the "special dispatch" required by 35 U.S.C. 314(c) for the *inter partes* reexamination proceeding. As to the comments suggesting that the third-party should be permitted to initiate interviews, this would even further complicate the proceeding, adding undue cost to the parties and the Office and further delay to the proceeding.

Accordingly, the Office has decided that the third-party requester of the *inter partes* reexamination should neither be permitted to initiate nor be permitted to participate in an interview which addresses the merits of the proceeding. If, however, the patent owner is permitted to initiate and participate in an interview which addresses the merits of the proceeding while the third-party requester is not, this will create an advantage to the patent owner which is contrary to the intent and purpose of the *inter partes* reexamination addition to the statute. Thus, to "level the playing field" in the Office, in accordance with the intent and purpose of the statute, the patent owner will neither be permitted to initiate nor be permitted to participate in an interview which addresses the merits of the proceeding. In other words, no interviews which address the merits of the proceeding will be permitted (or held) in an *inter partes* reexamination proceeding. This offers the additional advantage of further shortening the proceeding, pursuant to the dictates of "special dispatch" in 35 U.S.C. 314(c). Even further, this deals with the comments which argued that the content of the *inter partes* interview cannot be adequately captured without the use of expensive and complex transcripts. Anything stated or decided in the proceeding will be on the record, in writing.

As to the comments regarding improving the record of what transpired at interviews, clarity of the record is a concern to the Office. Accordingly, in § 1.560(b) (Interviews in *ex parte* reexamination proceedings), it is required for interviews in *ex parte* reexamination proceedings that "[i]n every instance of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the patent owner." (Emphasis added). The written statement must be filed as a separate part of a response to an Office action outstanding at the time of the *ex parte* reexamination interview, or as a separate paper within one month from the date of the *ex parte* reexamination interview, whichever is later. Regarding *inter partes* reexamination proceedings, there will be no interviews at all which address the merits of the *inter partes* reexamination proceeding, as discussed in the previous paragraph, thus the comments regarding improving the record of what transpired at interviews are moot as to *inter partes* reexamination proceedings.

With respect to the suggestion of prior notice of what issues will be discussed (the specific objective of the interview and the materials to be presented), patent owners requesting interviews in *ex parte* reexamination proceedings are in fact expected to submit such materials prior to the interview with ample time for review. As to whether participants at recorded interviews (which are only permitted in special circumstances in *ex parte* reexamination proceedings) should be under oath, this is believed to be unnecessary in view of 18 U.S.C. 1001, which provides "[w]hoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

Issue 19

One comment stated that, as to § 1.959(a)(2) of the August 11, 1995, Notice of Proposed Rulemaking, the introduction of a right to appeal by a third-party requester who is dissatisfied with an examiner's favorable consideration of a claim is an important and beneficial aspect of the new reexamination proceedings. However, the apparent unqualified opportunity to file an appeal at this advanced stage in the proceedings raises a concern that the appeal procedure could be used to compromise the patent owner's ability to address the reasons and the evidence that the third-party requester might use in its appeal and to add (perhaps intentionally) considerable length to a proceeding that is to be conducted with special dispatch. The comment was concerned that the likelihood exists that the first time the patent owner will be made aware of the grounds of rejection to be relied upon by the third-party requester will be upon receiving the third-party's appeal brief, adding complexity and length to the proceeding. In spite of this, the provisions in § 1.967(b) relating to the respondent brief apparently do not contemplate any opportunity for the patent owner to offer an amendment or material appropriate to the new ground of rejection, as is permitted when an

examiner makes a new ground of rejection in the examiner's answer (see proposed § 1.971(b)). The comment suggested that consideration must be given to setting appropriate limits on the grounds of rejection that the third-party requester can rely upon in its appeal; including consideration to requiring the third party requester who files a notice of appeal under proposed § 1.959(a)(2) to identify in this notice the grounds of rejection that it will rely upon in its appeal.

Response to Issue 19

Third-party requester's prior art submissions in an *inter partes* reexamination (after reexamination is ordered) are limited by the currently proposed § 1.948 to prior art: (1) Which is necessary to rebut a finding of fact by the examiner; (2) which is necessary to rebut a response of the patent owner; or (3) which became known or available to the third-party requester after the filing of the *inter partes* reexamination proceeding. Under § 1.947 (Response by third-party requester to patent owner's response), the third-party requester's comments shall be limited to issues raised by the action of the Office or the patent owner's response. Accordingly, the third-party requester could not advance a new ground of rejection based upon new prior art at the appeal stage. Although the notice of appeal does not require specific identification of the issues, the appellant's brief does. See currently proposed §§ 1.965(c)(6) (appellant brief), 1.967(b)(6) (respondent brief) and 1.971 (rebuttal brief), all of which specifically prohibit the third-party from introducing new grounds of rejection at each respective stage of the appeal.

Issue 20

One comment submitted in response to the August 11, 1995, Notice of Proposed Rulemaking suggested that the enforcement role of the Office should be such that the examiner is obligated to issue an examiner's answer in every reexamination proceeding. The comment noted that present (1995) rules provide that an examiner may issue an examiner's answer. It was urged that when the Office decides that an invention is unpatentable, it is incumbent that the Office not rely upon the third-party requester exclusively, and therefore, examiner's answers should be mandatory.

Response to Issue 20

Although the currently proposed § 1.969(a) (and § 1.193(a)(1)) indicates that an examiner's answer may be furnished, common practice is to furnish an examiner's answer. This practice is implemented through procedures set forth in the MPEP. Moreover, the examiner cannot be obligated to issue an examiner's answer in every instance, since, in rare instances, it will become necessary to reopen prosecution for consideration of a recently discovered new ground of rejection or reason for patentability.

Issue 21

One comment responding to the August 11, 1995, Notice of Proposed Rulemaking suggested that appellant should be given the opportunity to reply to both the opening brief of the respondent and the examiner's answer, either by filing briefs in response to each, or by a single reply brief after the examiner's answer.

Response to Issue 21

The second option of the comment has been adopted. The currently proposed § 1.971 (Rebuttal Brief) provides that, following the examiner's answer, any appellant may once submit a rebuttal brief. The rebuttal brief of the patent owner may be directed to the examiner's answer and/or any respondent brief. The rebuttal brief of any third-party requester may be directed to the examiner's answer and/or the respondent brief of the patent owner. The rebuttal brief of a third-party requester may not be directed to the respondent brief of any other third-party requester. No new ground of rejection can be proposed by a third-party requester appellant.

Issue 22

One comment responsive to the August 11, 1995, Notice of Proposed Rulemaking suggested that because both the request for oral argument and the briefs replying to the examiner's answer are due within one month, the parties will likely not be able to consider each other's final written submissions before requesting oral argument and, therefore, the period for requesting an oral hearing be lengthened to 45 days, thus giving the parties 15 days to consider each other's final written submissions.

Response to Issue 22

This comment has been adopted as follows. Section 1.973(b) (Oral Hearing) as proposed provides that the parties have two months after the date of the examiner's answer to file a written request for oral hearing.

Issue 23

One comment suggested that proposed § 1.979(b) of the August 11, 1995, Notice of Proposed Rulemaking provides an opportunity for each party to file a single request for rehearing (referred to as "request for reconsideration" in the comment) of the decision of the Board of Patent Appeals and Interferences. However, there is no apparent opportunity for the other party to provide comments on that request. The lack of this opportunity is not consistent with the general approach in the new reexamination process of providing an opportunity for both parties to provide comments before any action is taken by the Office, and it was suggested once a request for rehearing has been filed by either or both parties, that the other party have a one-month period to offer comments on the request for rehearing.

Response to Issue 23

This comment has been adopted. The third-party requester, by virtue of the statute, has no opportunity to appeal the decision of the Board of Patent Appeals and Interferences to the U.S. Court of Appeals for the Federal Circuit. In addition, § 1.979(d), as presently proposed, permits the party requesting rehearing (in addition to stating "the points believed to have been misapprehended or overlooked in rendering the decision") to also state "all other grounds upon which rehearing is sought." It is only fair to give the third-party requester an opportunity to comment on newly provided "other grounds upon which rehearing is sought." The patent owner should likewise be given the same opportunity to comment in order to create a level "playing field" in the Office. Accordingly, currently proposed § 1.979(b) has been drafted to give both the patent owner and the third-party requester a right to comment on each other's request for rehearing of the decision of the Board of Patent Appeals and Interferences.

Issue 24

One comment suggested that § 1.985 of the August 11, 1995, Notice of Proposed Rulemaking, which permits any person to advise the Office about a concurrent proceeding involving the patent being reexamined, should be changed to require the patent owner to advise the Office (and therefore any third-party requester) of any concurrent proceeding involving the patent being reexamined. The comment also stated that similar mandatory requirements are contained in § 1.660 relating to the conduct of an interference proceeding involving an application or a patent.

Response to Issue 24

The suggestion has been adopted. Currently proposed § 1.985(a) (Notification of prior or concurrent proceedings) is drafted to direct that in any *inter partes* reexamination proceeding, the patent owner shall call the attention of the Office to any prior or concurrent proceedings in which the patent is or was involved such as interferences, reissue, reexaminations, or litigation and the results of such proceeding.

Issue 25

Regarding § 1.989 of the August 11, 1995, Notice of Proposed Rulemaking, one comment stated that the merger of multiple reexamination proceedings on unrelated issues by unrelated parties will result in undue complications of the proceedings, particularly during interviews and hearings.

Response to Issue 25

As pointed out above in the response to Comment 18, the Office has reconsidered its initial position (taken in the August 11, 1995, Notice of Proposed Rulemaking) and will not permit any interview which addresses the merits in an *inter partes* reexamination proceeding. Thus, the comment is moot as to complications caused by an *inter partes* interview. Although multiple parties can, to some degree, increase the complexity of the proceeding even in areas other than the interviews focused upon by the commenter, the general policy of the Office is that concurrent reexamination proceedings will not be conducted separately at the same time on the same patent. The reasons for this policy is to prevent inconsistent, and possibly conflicting, amendments from being introduced into the two proceedings on behalf of the patent owner. Normally the proceedings will be merged whenever it is desirable to do so in the interest of expediting the prosecution of all proceedings.

Issue 26

One comment responding to the August 11, 1995, Notice of Proposed Rulemaking suggested that it would be beneficial for the rules to provide specific procedures for consolidating multiple reexamination requests of the same patent, since the procedure is too complicated for the public to simply rely upon internal Office policy.

Response to Issue 26

Section 1.989, as proposed in the present rule package, provides for the merging of multiple reexaminations. As to the details of the merger procedure, it is believed to be more appropriate to incorporate same in the MPEP, because it is less cumbersome and easier to revise the details via the MPEP as needed to react to input as the practice evolves, than it would be to revise the rules. Further, where it becomes known that an area of the merger procedure is not being understood by the public, it will be easier to add more explanation to the MPEP, than to make the rules more comprehensive. Accordingly, the MPEP will contain the detailed discussion of the merger procedure.

Issue 27

One comment stated that as to § 1.991 of the August 11, 1995, Notice of Proposed Rulemaking, a merged reissue/reexamination proceeding will be conducted according to provisions applicable to the reissue application except that the participation by a third-party requester shall be limited to issues within the scope of reexamination. Since a third-party requester has a right to inspect a reissue application and file a protest involving any issue considered in a reissue application, consideration should be given to permitting participation by a third-party requester in the full scope of issues addressed under the reissue statute. It was urged that the right of appeal and participation in the appeal process by the third-party requester should be limited to the scope permitted under the reexamination statute. The comment further questioned how the third-party requester will be notified of its right to appeal within the scope of the reexamination proceeding, since typically there would be no separate action closing prosecution and right to appeal in a reissue proceeding.

Response to Issue 27

When an *inter partes* reexamination proceeding is merged with a reissue application, the participation by the third-party requester shall be limited to issues within the scope of the *inter partes* reexamination. This is consistent with the recommendations of *The Advisory Commission on Patent Law Reform: A Report to the Secretary of Commerce, August 1992* at page 117, "that a full *inter partes* proceeding, even with certain restrictions, would lead to abuses of the process much as occurred in the reissue protests under the Dann amendments * * * [and] the USPTO is not an appropriate forum for an *inter partes* adversarial proceeding addressing all potential issues of validity." [Emphasis added]

As to how the third-party requester will be notified (in the merged proceeding) of its right to appeal within the scope of the reexamination proceeding, since there is no provision in the reissue rules for a separate action closing prosecution and right to appeal, currently proposed § 1.995 provides that when a third-party requester is involved in one or more proceedings including an *inter partes* reexamination proceeding, the merger of such proceedings will be accomplished so as to preserve a third-party requester's right to participate to the extent specifically provided for in these regulations. Due to the complexity of the merged reissue/reexamination proceedings and the varying issues presented as a result of the merger, the decision merging the reissue and reexamination proceedings will set forth the framework for various courses of action by the parties, including appeal notification and rights.

Issue 28

One comment asked what relationship will there be between the § 1.993 request to stay an interference (of the August 11, 1995, Notice of Proposed Rulemaking) and the § 1.644(a) petition in interference, since the § 1.993 "request to stay an interference" is really a form of a petition and should be covered or cross-referenced in § 1.644(a).

Response to Issue 28

The request to stay an interference under § 1.993 as currently proposed, and under present § 1.565(e) is not an exact fit under any of subsections (1)-(3) of § 1.644(a); thus, it provides an additional aspect of relief to the public. While subsection (2) of § 1.644(a) might appear to overlap the § 1.565(e) and § 1.993 request to stay an interference, § 1.644(b) states that "[a] petition under paragraph (a)(2) of this section shall not be filed prior to the party's brief for final hearing (see § 1.656)." Just as petitions under § 1.644 are decided by the Chief Administrative Patent Judge of the Board of Patent Appeals and Interferences, a request to stay an interference under § 1.565(e) and § 1.993 will likewise be decided by the Chief Administrative Patent Judge of the Board of Patent Appeals and Interferences. The decision of *Shaked* v. *Taniguchi*, 21 USPQ2d 1289 (Comm'r Pat. 1991) should be noted, where it was pointed out that neither the reexamination nor the interference will ordinarily be stayed in this situation.

Discussion of the Major Specific Issues Involved (1999 Statute)

The proposed rules relating to *inter partes* reexamination proceedings are directed to the provisions set forth in Chapter 31 of Title 35 of the United

States Code (35 U.S.C. 311–318). This Chapter provides for the filing of requests for *inter partes* reexamination, decisions on such requests, *inter partes* reexamination, appeal from *inter partes* reexamination decisions, and the issuance of a certificate at the termination of the *inter partes* reexamination proceedings.

Discussion of Specific Rules

Section 1.4 is proposed to be amended so that paragraph (a)(2) includes the *inter partes* reexamination under §§ 1.902—1.997.

Section 1.6 is proposed to be amended so that paragraph (d)(5) includes filing a request for *inter partes* reexamination under § 1.913 as an exception to the use of facsimile transmission.

Section 1.17 is proposed to be amended so that the title includes a reference to reexamination to clearly indicate that the enumerated fees may apply to reexaminations as well as to patent applications. Section 1.17 is proposed to be amended so that paragraph (l) reflects the fact that in the case of reexaminations, petitions for revival of a reexamination proceeding terminated for an unavoidable failure of the patent owner to respond will require the fees of $55 for a small entity and $110 for a large entity. Also, § 1.17 is proposed to be amended so that paragraph (m) reflects the fact that in the case of reexaminations, petitions for revival of a reexamination proceeding terminated for an unintentional failure to respond will require the fees of $605 for a small entity and $1,210 for a large entity. Note, however, that the unintentional revival provisions of the statute are not effective in any reexamination until November 29, 2000.

Section 1.20 is proposed to be amended so that paragraph (c) reflects the fact that a request for an *ex parte* reexamination under § 1.510(a) will require a filing fee of $2,520; and that a request for an *inter partes* reexamination under § 1.915(a) will require a filing fee of $8,800.

Section 1.25, which provides for charging fees to deposit accounts, is proposed to be amended so that paragraph (b) includes a reference to *inter partes* reexaminations under § 1.913.

Section 1.26 is proposed to be amended so as to reflect the refund to the reexamination requester where the Director decides not to institute a reexamination proceeding. For *ex parte* reexaminations filed under § 1.510, a refund of $1,690 will be made to the reexamination requester. For *inter partes* reexaminations filed under § 1.913, a refund of $7,970 will be made to the reexamination requester. In both cases $830 of the filing fee will be retained, which amount reflects the cost of the reexamination proceeding through the denial of the reexamination request.

Section 1.112 is proposed to be amended so that the last sentence reflects the fact that in the case of *inter partes* reexaminations, the right to reply may be limited by an action closing prosecution under § 1.949 (prior to the final action) or by a right of appeal notice under § 1.953 (which is a final action).

Section 1.113, which provides for a final rejection or action, is proposed to be amended to limit its applicability to applications and *ex parte* reexaminations filed under § 1.510. For final rejections or actions in an *inter partes* reexamination filed under § 1.913, new § 1.953 will control.

Section 1.116 is proposed to be amended so that the title includes a reference to an action closing prosecution and a right of appeal notice in *inter partes* reexaminations. Paragraph (a), which provides for amendments after final action, is proposed to be amended to apply to amendments after an action closing prosecution by patent owners in *inter partes* reexaminations filed under § 1.913. Also § 1.116(a) is proposed to be amended to preclude amendments after the right of appeal notice under § 1.953 except as provided for in § 1.116(c). Paragraph (c), which provides for amendments after the decision on appeal, is proposed to be amended to provide for amendments after the decision on appeal in an *inter partes* reexamination.

Section 1.121(c), which provides for the manner of making amendments to the description and claims in reexamination proceedings, is proposed to be amended to specify that such amendments are made in accordance with § 1.530(d) in both *ex parte* reexaminations filed under § 1.510 and *inter partes* reexaminations filed under § 1.913.

Parts (a)(2) and (b) of § 1.136, which provide for filing of timely replies with petitions for extensions of time, are proposed to be amended to make it clear that § 1.956 is controlling for extensions of time in *inter partes* reexaminations.

Section 1.137, which provides for revival of abandoned applications or lapsed patents, is proposed to be amended to provide for revival of *ex parte* reexamination proceedings terminated under § 1.550(d), for revival of *inter partes* reexamination proceedings terminated under § 1.957(b), or for revival of rejected claims terminated under § 1.957(c) in an *inter partes* reexamination proceeding where further prosecution has been limited to claims found allowable at the time of the failure to respond. The title is being amended to include a terminated reexamination proceeding. Paragraph (a) is being amended to include revival of unavoidably terminated reexamination proceedings. The unavoidable delay provisions of 35 U.S.C. 133 are imported into and are applicable to reexamination proceedings by 35 U.S.C. 305 and 314. See *In re Katrapat*, 6 USPQ2d 1863 (Comm'r Pats. 1988). Paragraph (b) is being amended to provide for revival of unintentionally terminated reexamination proceedings. The unintentional delay fee provisions of 35 U.S.C. 41(a)(7) are imported into and are applicable to all reexamination proceedings by section 4605 of S. 1948. Note that these changes pertain to *all* reexaminations (i.e., both *ex parte* reexaminations filed under § 1.510 and *inter partes* reexaminations filed under § 1.913) and become effective on November 29, 2000 (one year after enactment of statute). Paragraph (d) is being amended to provide that extensions of time for requesting reconsideration of a decision dismissing or denying a petition requesting revival of a terminated reexamination proceeding under subsections (a) or (b) must be filed under § 1.550(c) for a terminated *ex parte* reexamination proceeding, or under § 1.956 for a terminated *inter partes* reexamination proceeding.

Section 1.181, is proposed to be amended so that paragraphs (a) and (c) reflect the fact that such a petition may be filed in a reexamination proceeding.

Section 1.191, which provides for appeal to the Board of Patent Appeals and Interferences by the patent owner from any decision adverse to patentability, is proposed to be amended so as to be applicable to applications and *ex parte* reexaminations filed under § 1.510, but not to *inter partes* reexamination proceedings filed under § 1.913. Specifically, proposed § 1.191 would point out that appeals to the Board of Patent Appeals and Interferences in *inter partes* reexamination proceedings filed under § 1.913 are controlled by §§ 1.959 through 1.981, and that §§ 1.191 through 1.198 are not applicable to appeals in *inter partes* reexamination proceedings filed under § 1.913.

Section 1.191 is further proposed to be amended to distinguish between *ex parte* reexamination proceedings filed under § 1.510 for patents that issued

from an original application filed in the United States prior to November 29, 1999 (where an appeal is permitted when claims have been twice or finally rejected), and *ex parte* reexamination proceedings filed for patents that issued from an original application filed in the United States on or after November 29, 1999 (where an appeal is only possible when claims have been finally rejected). This date distinction is necessitated by the conforming amendments to 35 U.S.C. 134 in S. 1948 and the effective date of the changes to the statute which are keyed to the original filing date of the application which issued as the patent under reexamination. The effective date language in section 4608 of S. 1948 limits the applicability of the new *inter partes* reexamination Chapter 31, and the conforming amendments to 35 U.S.C. 134, 141, 143 and 145, to a reexamination of any patent that issues from an original application which is filed in the United States on or after November 29, 1999. Thus, for *ex parte* reexaminations filed under Chapter 30, the conforming amendments to 35 U.S.C. 134, 141, 143 and 145 only apply to those *ex parte* reexamination proceedings filed under § 1.510 for patents that issue from an original application which is filed in the United States on or after November 29, 1999. The conforming amendments will not apply to *ex parte* reexamination proceedings filed under § 1.510 for patents that have issued or will issue from an original application which was filed in the United States prior to November 29, 1999.

Section 1.301, which provides for appeal by the patent owner in a reexamination proceeding to the U.S. Court of Appeals for the Federal Circuit, is proposed to be amended so as to be applicable to *ex parte* reexamination proceedings filed under § 1.510 and to indicate, for *inter partes* reexamination proceedings filed under § 1.913, that § 1.983 is controlling.

Parts (a) and (b) of section 1.303, which provide for remedy by civil action under 35 U.S.C. 145 for the patent owner in a reexamination proceeding, are proposed to be amended so as to be applicable in reexamination only to *ex parte* reexaminations filed under § 1.510 for patents that issue from an original application which is filed in the United States prior to November 29, 1999. This date distinction is necessitated by the conforming amendments to 35 U.S.C. 141 and the effective date of the statute which is keyed to the original filing date of the application which issues as the patent under reexamination. See sections 4605 and 4608 of S. 1948. The effective date language limits the applicability of the new *inter partes* reexamination Chapter 31, and the conforming amendments to 35 U.S.C. 141, to any patent that issues from an original application which is filed in the United States on or after November 29, 1999. Thus, for *ex parte* reexaminations filed under Chapter 30, the conforming amendments to 35 U.S.C. 141, which limit the patent owner to an appeal only to the U.S. Court of Appeals for the Federal Circuit, only apply to those *ex parte* reexamination proceedings filed under § 1.510 for patents that issue from an original application which is filed in the United States on or after November 29, 1999. The conforming amendments in section 4605 of S. 1948 will not apply to *ex parte* reexamination proceedings filed under § 1.510 for patents that issue from an original application which is filed in the United States prior to November 29, 1999. It is further proposed to amend § 1.303 by adding a new subsection (d) to clearly note that no remedy by civil action under 35 U.S.C. 145 is available to the patent owner for *ex parte* reexamination proceedings filed under § 1.510 for patents that issue from an original application which is filed in the United States on or after November 29, 1999, and for any *inter partes* reexamination proceedings filed under § 1.913.

Section 1.304, which provides for the time for appeal by the patent owner in a reexamination proceeding to the U.S. Court of Appeals for the Federal Circuit, is proposed to be amended so as to be applicable to *inter partes* reexamination proceedings filed under § 1.913.

The section heading (title) to Subpart D is proposed to be amended by inserting "*Ex Parte*" before Reexamination to provide that the reexamination rules in this part generally apply to *ex parte* reexamination proceedings. Since some of the rules also apply to *inter partes* reexamination, they are specifically incorporated into the *inter partes* reexamination rules, *e.g.*, § 1.933 (patent owner duty of disclosure) incorporates § 1.555; and § 1.943 (manner of making amendments) incorporates § 1.530(d)(5). Unless specifically stated otherwise, in this subpart the term "reply" shall also mean "response."

The titles of §§ 1.501–1.570 and the undesignated center headings for Subpart D are proposed to be amended by revising them to be limited to *ex parte* reexamination except as specifically stated otherwise (*e.g.*, §§ 1.530, 1.555 and 1.565).

Proposed section 1.501, which provides for citations of prior art in patent files, sets forth the procedure that citations shall be entered in the patent file unless a reexamination proceeding is pending and reexamination has been ordered. In this situation, only citations by the patent owner under § 1.555 and by a third-party requester under either § 1.510 or § 1.535 will be entered during the pendency of the reexamination proceeding. Citations by other parties filed during the pendency of the reexamination proceeding will not be entered into the patent file or the reexamination file until the reexamination proceeding is concluded. The section is further amended to indicate that processing of prior art citations in patent files during an *inter partes* reexamination proceeding filed under § 1.913 is controlled by § 1.902.

Section 1.510, which relates to the contents of the reexamination request, is proposed to be amended to limit the section to *ex parte* reexamination proceedings. In addition, § 1.510(b)(4) is proposed to be amended to delete the requirement of mounting the copy of the patent to be reexamined in single column format. Instead, a copy of the entire patent including the front face, drawings, and specification/claims (in double column format) for which reexamination is requested, and a copy of any disclaimer, certificate of correction, or reexamination certificate issued in the patent will be required. All copies must have each page plainly written on only one side of a sheet of paper.

It is proposed to amend §§ 1.515, 1.520, 1.525, 1.530, 1.535, and 1.540 to recite the reexamination as "*ex parte*" reexamination where appropriate, to eliminate any potential for confusion. Further, § 1.530(d) is proposed to be revised so that it applies to both *ex parte* reexamination and *inter partes* reexamination proceedings.

Section 1.550, which provides for the conduct of the reexamination proceeding, is proposed to be amended to limit the section to *ex parte* reexamination proceedings filed under § 1.510. In addition, § 1.550(d) is proposed to be amended to clarify that the failure to file a written statement of an interview required under § 1.560(b) shall be the basis for terminating a reexamination proceeding. Proposed § 1.550(e)(1) specifically provides for the revival of terminated *ex parte* reexamination proceedings under the unavoidable delay provisions of § 1.137(a). The unavoidable delay provisions of 35 U.S.C. 133 are imported into and are applicable to *ex parte* reexamination proceedings by 35 U.S.C. 305. Proposed § 1.550(e)(2) provides for the revival of terminated *ex parte* reexamination proceedings under the

unintentional provisions of § 1.137(b). The unintentional delay fee provisions of 35 U.S.C. 41(a)(7) are imported into and are applicable to *ex parte* and *inter partes* reexamination proceedings by section 4605 of S. 1948. Note, however, the unintentional delay fee provisions of 35 U.S.C. 41(a)(7) only become effective in reexamination proceedings on November 29, 2000 (one year after enactment of statute).

Section 1.560, which provides for interviews in reexamination proceedings, is proposed to be amended to limit the section to *ex parte* reexamination proceedings filed under § 1.510. Note, however, that there will be no interviews which address the issues of the proceeding permitted in *inter partes* reexamination proceedings under § 1.913. See § 1.955.

In addition, § 1.560(b) is proposed to be amended to clarify that the patent owner must file a written statement of an interview after an interview is held. The written statement may be filed either as a separate paper or as a separate part of a response to an outstanding Office action, whichever is later.

Section 1.565, which provides for concurrent Office proceedings, is proposed to be amended to limit the section to *ex parte* reexamination proceedings filed under § 1.510. In addition, § 1.565(e) is proposed to be amended to change "examiner-in-chief" to "administrative patent judge" to reflect their current title. Also, the appropriate references for concurrent *ex parte* and *inter partes* reexamination situations have been added. Section 1.565(c) is proposed to be amended to make it clear that after prosecution has been terminated in a pending reexamination proceeding (e.g., by the issuance of a Notice of Intent to Issue a Reexamination Certificate) there is no right of merger of any subsequently filed reexamination request.

It is proposed to amend § 1.570 to recite the reexamination as "*ex parte*" reexamination where appropriate, to eliminate any potential for confusion.

In the current rules, or portions of the rules, that are amended in this package, "Commissioner," has been revised to read "Director" in accordance with section 4732 of S. 1948. As to the rules, or portion of the rules, not being revised in this package, it is anticipated that the technical correction of "Commissioner" to "Director" will be effected in a future rule package directed to technical corrections that will be issued in due course.

The proposed title to Subpart H provides that the reexamination rules in this part generally apply to *inter partes* reexamination proceedings. Some of the *inter partes* reexamination rules specifically incorporate *ex parte* reexamination rules, e.g., § 1.943 (manner of making amendments) incorporates § 1.530(d)(5), and § 1.933 (patent owner duty of disclosure) incorporates § 1.555. Unless specifically stated otherwise, in this subpart the term "reply" shall also mean "response."

Proposed § 1.902 provides for the processing of prior art citations during an *inter partes* reexamination proceeding and is consistent with the provisions of § 1.501 which deals with prior art citations in patent files and in *ex parte* reexamination proceedings.

Proposed § 1.903 provides that the patent owner and the third-party requester shall be sent copies of all Office actions, and that the patent owner and the third-party requester must serve copies of all papers on all other parties in the *inter partes* reexamination proceeding or they may be refused consideration by the Office. This is analogous to the provisions of § 1.550(e).

Proposed § 1.904 provides that the notices of filing of *inter partes* reexamination requests will be published in the *Official Gazette* under § 1.11(c) and that such a notice will be considered to be constructive notice to the patent owner.

Proposed § 1.905 provides that, unless otherwise provided for, submission of papers by the public other than third-party requesters in an *inter partes* reexamination proceeding will not be considered in the proceeding and will be treated in accordance with the requirements of a prior art submission under § 1.902. Submissions not in accordance with § 1.902 will be returned to the sender.

Proposed § 1.906 covers the scope of reexamination in an *inter partes* reexamination proceeding. While it is not intended that the examiners will routinely complete a new search when conducting an *inter partes* reexamination, the examiners may conduct additional searches and cite and apply additional prior patents and printed publications when they consider it appropriate and beneficial to do so. Paragraph (a) provides that the examination is only on the basis of patents or printed publications and on the basis of the requirements of 35 U.S.C. 112 with respect to subject matter added or deleted during the *inter partes* reexamination. Paragraph (b) provides that claims in a reexamination proceeding must not enlarge the scope of the claims of the patent and must not introduce new matter. Paragraph (c) provides that issues relating to matters other than those indicated in paragraphs (a) and (b) of this section (e.g., on sale, public use, duty of disclosure, etc.) will not be resolved in a reexamination proceeding, but will be noted by the examiner as being an open issue in the record. The examiner should only raise an issue under § 1.906(c) with caution after careful consideration, and should only raise the issue once. Patent owners could then file a reissue application if they wish such issues to be resolved.

Proposed § 1.907 sets forth prohibitions on the filing of an *inter partes* reexamination request. The basis for this section is 35 U.S.C. 317. Under § 1.907(a), once an order for *inter partes* reexamination has been issued, neither the third-party requester, nor any of its privies, may file a subsequent request for an *inter partes* reexamination of the patent until an *inter partes* reexamination certificate is issued, unless authorized by the Director. Under subsection (b) once a final decision has been entered against a party in a civil action that the party has not sustained its burden of proving invalidity of any patent claim in suit, then that party, and its privies, are thereafter precluded from requesting an *inter partes* reexamination of any such patent claim on the basis of issues which that party, or its privies, raised or could have raised in such civil action, and an *inter partes* reexamination requested by that party, or its privies, on the basis of such issues may not thereafter be maintained by the Office. Under subsection (c) if a final decision in an *inter partes* reexamination proceeding instituted by a third-party requester is favorable to patentability of any patent claim, then that party, or its privies, may not thereafter request *inter partes* reexamination of any such patent claim on the basis of issues which that party, or its privies, raised or could have raised in such *inter partes* reexamination proceeding.

Proposed § 1.913 provides for any third-party requester (except if the estoppel provisions of § 1.907 apply) to file a request under 35 U.S.C. 311 for an *inter partes* reexamination of a patent which issued from an original application filed in the United States on or after November 29, 1999. The time period for filing such a request is limited to the period of enforceability of the patent for which the request is filed.

Proposed § 1.915(a) requires payment of the fee for requesting an *inter partes* reexamination which is set forth in § 1.20(c)(2). Paragraph (b) of § 1.915 indicates what each request for *inter partes* reexamination must include. The requirements are analogous to the

requirements of § 1.510(b) for filing an *ex parte* reexamination request with the most notable difference being that the third-party requester must be identified in an *inter partes* reexamination request. Paragraph (c) indicates that requests for an *inter partes* reexamination may be filed by attorneys or agents on behalf of a third-party requester, but it is noted that the real party in interest must be identified. Paragraph (d) provides that if the request for *inter partes* reexamination does not meet all the requirements of paragraph (b), the third-party requester may be given an opportunity to complete the *inter partes* reexamination request to avoid having the proceeding vacated.

Proposed § 1.919 indicates that the date on which the entire fee for a request for *inter partes* reexamination is received will be considered to be the filing date of the request for *inter partes* reexamination.

Proposed § 1.923 provides for a determination by the examiner as to whether the request has presented a substantial new question of patentability under 35 U.S.C. 312 and requires that the determination be made within 3 months of the filing date of the request.

Proposed § 1.925 provides for a refund under § 1.26(c) of a portion of the filing fee if *inter partes* reexamination is not ordered. See the discussion of § 1.26(c) above as to the amount of the refund.

Proposed § 1.927 provides for review by petition to the Director of a decision refusing *inter partes* reexamination.

Proposed § 1.931 provides for ordering *inter partes* reexamination where a substantial new question of patentability has been found pursuant to § 1.923. Under paragraph (b), the only limitation placed on the selection of the examiner by the Office is that the same examiner whose decision refusing *inter partes* reexamination was reversed on petition filed under § 1.927 ordinarily will not conduct the *inter partes* reexamination ordered in the decision granting the petition.

Proposed § 1.933 covers the duty of disclosure by a patent owner in an *inter partes* reexamination proceeding. The rule provides that the duty in an *inter partes* reexamination proceeding is the same as the patent owner's duty in an *ex parte* reexamination proceeding as set forth in § 1.555 (a) and (b), and is satisfied by filing a paper in compliance with § 1.555 (a) and (b).

Proposed § 1.935 indicates that the initial Office action on the merits usually accompanies the *inter partes* reexamination order as expressly provided for as an option in 35 U.S.C. 313. It is contemplated that the initial paper from the examiner will comprise two parts. The first part will address the issue as to whether the prior art raises a substantial new question of patentability (SNQ). If the examiner determines that the prior art does not raise an SNQ, reexamination is denied. No patentability question would be addressed by the examiner. If the examiner determines that the prior art does raise an SNQ, reexamination will be ordered. In this situation, a second part of the initial Office action will usually be issued which would address the patentability issues and will constitute the first Office action on the merits.

Proposed § 1.937 would cover the basic items relating to the conduct of *inter partes* reexamination proceedings. Paragraph (a) provides that, in accordance with 35 U.S.C. 314(c), unless otherwise provided by the Director for good cause, all *inter partes* reexamination proceedings will be conducted with special dispatch. Paragraph (b) provides that all *inter partes* reexamination proceedings will be conducted according to the procedures established for initial examination under §§ 1.104–1.116. These proceedings will basically follow the procedures for examining patent applications. Paragraph (c) provides that all communications between the Office and the parties to the *inter partes* reexamination which are directed to the merits of the proceeding must be in writing and filed with the Office for entry into the record of the proceeding.

Proposed § 1.939 provides for the return of unauthorized papers filed by any party in an *inter partes* reexamination, and that unless otherwise authorized, no paper shall be filed in an *inter partes* reexamination before the initial Office action on the merits.

Proposed § 1.941 provides that amendments made by the patent owner in an *inter partes* reexamination must be made in accordance with the requirements of §§ 1.530(d) and 1.943.

Proposed § 1.943, paragraph (a) provides that the form of responses, briefs, appendices, and other papers must be in accordance with § 1.530(d)(5). Paragraph (b) provides for page limits for responses by the patent owner and written comments by the third-party requester (other than briefs). Amendments, appendices of claims, and reference materials such as prior art references would not be included in this total. Paragraph (c) provides for page limits or total word limits for briefs.

Proposed § 1.945 provides that a patent owner will be given at least thirty days to respond to any Office action on the merits. Although problems may arise in certain cases and extensions of time may be granted under § 1.956, it is felt that relatively short response times are necessary in order to process reexaminations with "special dispatch." While the Office intends to set a two-month period for patent owner to respond to an Office action on the merits in usual situations, the minimum period will always be at least 30 days.

Proposed § 1.947 provides that each time a patent owner files a response to any Office action on the merits, the third-party requester may once file written comments within a period of 30 days from the date of service of the patent owner's response. Since 35 U.S.C. 314(b)(3) statutorily imposes this period for third-party requester comments, this time may not be extended. Thus, any third-party comments, including any supplemental comments, filed after expiration of 30 days from the date of service of the patent owner's response shall be considered to be untimely filed and unauthorized, and shall be returned to the third-party in accordance with § 1.939.

Proposed § 1.948 provides that additional third-party requester prior art submissions as defined under § 1.501 may be filed after the *inter partes* reexamination order only if they are submitted as part of a comments submission under § 1.947 (written comments to a patent owner response to an Office action on the merits) and limited to: (1) Any prior art which is necessary to rebut a finding of fact by the examiner; (2) any prior art which is necessary to rebut a response of the patent owner; or (3) any prior art which became known or available to the third-party requester after the filing of the *inter partes* request for reexamination where a discussion of the pertinency of each reference to the patentability of at least one claim is included. The purpose of this rule is twofold. First, the third-party requester may cite any prior art needed to rebut a position taken by the examiner or the patent owner. Second, the third-party requester may submit prior art newly discovered or newly available since the filing of the *inter partes* reexamination request provided a discussion of the pertinency of each reference to the patentability of at least one claim is included. The only limitation is that the prior art may only be submitted along with written comments filed by the third-party requester under § 1.947 in response to a patent owner response to an Office action on the merits. Limiting prior art submissions to newly discovered or

newly available prior art (except when used for rebuttal purposes) will encourage the third-party requester to submit all known pertinent prior art along with the initial request for *inter partes* reexamination. Later submission of previously known or available prior art would only be permissible to rebut a position taken by the examiner or the patent owner, or through the filing of an *ex parte* reexamination request (which, if ordered, would be merged with the *inter partes* reexamination proceeding). Permitting the third-party requester to timely submit newly discovered or previously unavailable prior art, however, will obviate the need for the third-party requester to have to file *an ex parte* request for reexamination. To prevent harassment of the patent owner due to frequent submissions of prior art citations during a reexamination proceeding, such submissions may only be filed along with written comments filed by the third-party requester in response to a patent owner response to an Office action on the merits or after an action closing prosecution.

Proposed § 1.949 provides for the close of prosecution on the second or subsequent Office action, as opposed to a final rejection or a final action which would be issued in an *ex parte* reexamination proceeding. The distinction between a final action (including a final rejection) and an action closing prosecution is important as appeal rights to the Board of Patent Appeals and Interferences under 35 U.S.C. 134 (b) and (c) mature only with a final action (as opposed to "twice rejected" in an application under 35 U.S.C. 134(a)). The statute permits the patent owner to appeal finally rejected claims, and the third-party requester to appeal final decisions favorable to patentability to the Board of Patent Appeals and Interferences. The rules were drafted to provide for both the patent owner and the third-party requester to submit comments on the examiner's patentability findings prior to making such findings final. The action closing prosecution (in *lieu* of a final action) is needed to preclude one party from filing a notice of appeal while another party is filing comments seeking reconsideration of an examiner's decision. It is only after the examiner has considered all the comments submitted by all the parties that a final rejection and final decision favorable to patentability will be issued by way of the Right of Appeal Notice under § 1.953. At that time, both the patent owner and the third-party requester may appeal to the Board of Patent Appeals and Interferences.

Proposed § 1.951 provides the options available to the parties after an Office action closing prosecution. Both the patent owner and the third-party requester may once file a response limited to issues raised in the action closing prosecution. The patent owner may also submit proposed amendments (subject to the criteria of § 1.116 as to whether or not the amendments shall be admitted). If one party files a response, the other party may once file written comments on the other's response. The time periods within which the patent owner and the third-party requester may act (as provided for by this section) may run concurrently. In this manner all parties are provided an equal opportunity to contest the examiner's patentability findings before the findings are made final and ripe for appeal.

Proposed § 1.953(a) provides that, following the responses or expiration of the time for response in § 1.951, the examiner may issue a right of appeal notice which shall include a final rejection and/or final decision favorable to patentability in accordance with 35 U.S.C. 134. The intent of limiting the appeal rights until after the examiner issues a "Right of Appeal Notice" is to specifically preclude the possibility of one party attempting to appeal prematurely while prosecution before the examiner is being continued by the other party.

Proposed § 1.953(b) provides that any time after the initial Office action on the merits in an *inter partes* reexamination, the patent owner and all third-party requesters may stipulate that the issues are appropriate for a final action, which would include a final rejection and/or a final determination favorable to patentability, and may request the issuance of a Right of Appeal Notice. If the examiner determines that no other issues are present or should be raised, a Right of Appeal Notice limited to the identified issues shall be issued. The request for an expedited notice will enable the parties to accelerate the *inter partes* reexamination proceeding. Proposed § 1.953(c) provides that the Right of Appeal Notice shall be a final action, which would include a final rejection and/or final decision favorable to patentability, and that no amendment under § 1.116 can be made in response to the Right of Appeal Notice. The Right of Appeal Notice shall set a one-month time period for either party to appeal. If no appeal is filed, the reexamination proceeding will be terminated, and the Director will proceed to issue a certificate under § 1.997 in accordance with the Right of Appeal Notice.

Proposed § 1.955 provides that interviews between the examiner and the patent owner and/or the third-party requester which discuss the merits of the proceeding will not be permitted in *inter partes* reexamination proceedings. Thus, no separate *ex parte* interviews will be permitted, and no *inter partes* interviews will be permitted. All communications between the Office and the patent owner which are directed to the merits of the proceeding must be in writing and filed with the Office for entry into the record of the proceeding. An informal amendment will not be accepted, as that would amount to an informal *ex parte* interview. The Office has reconsidered its initial position taken in the August 11, 1995, Notice of Proposed Rulemaking which proposed to permit owner-initiated interviews in which the patent owner and the third-party requester participate. Thus, in the present rule package, no interviews will be held, nor be permitted, in *inter partes* reexamination cases which discuss the merits of the proceeding. In other words, neither the patent owner nor the third-party requester will be able to initiate, nor participate in, an *ex parte* nor an *inter partes* interview which discusses the merits of the proceeding in an *inter partes* reexamination proceeding. The rationale for this is discussed above in Issue 18 of the consideration of the comments responsive to the August 11, 1995, Notice of Proposed Rulemaking.

Proposed § 1.956 relates to patent owner extensions of time for responding to a requirement of the Office in *inter partes* reexamination proceedings. As in *ex parte* reexamination practice, a patent owner may only obtain an extension of time for sufficient cause, and the request for such extension must be filed on or before the end of the period for response. Note that the time for the third-party requester to file comments to patent owner responses may not be extended, as set forth in § 1.947.

Proposed § 1.957(a) provides that a third-party requester's submission in *inter partes* reexamination may be refused consideration if it is untimely or is inappropriate. Proposed § 1.957(b) and (c) relate to the patent owner's failure to timely or appropriately respond in *inter partes* reexamination proceedings. In this event, if no claims are found patentable, the proceeding shall be terminated and a reexamination certificate shall be issued. If claims are found patentable, further prosecution shall be limited to the patentable claims, and any additional claims that do not expand the scope of the patentable claims. Proposed § 1.957(d) provides

that when the action by the patent owner is a bona fide attempt to respond and to advance the case, and is substantially a complete response to the Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, an opportunity to explain and supply the omission may be given.

Proposed § 1.958(a) provides for the revival of terminated *inter partes* reexamination proceedings under the unavoidable delay provisions of § 1.137(a). The unavoidable delay provisions of 35 U.S.C. 133 are imported into and are applicable to *inter partes* reexamination proceedings under 35 U.S.C. 314. Proposed § 1.958(b) provides for the revival of terminated *inter partes* reexamination proceedings under the unintentional provisions of § 1.137(b). The unintentional delay fee provisions of 35 U.S.C. 41(a)(7) are imported into and are applicable to *inter partes* reexamination proceedings under section 4605 of S. 1948. Note, however, the unintentional delay fee provisions of 35 U.S.C. 41(a)(7) only become effective in reexamination proceedings on November 29, 2000 (one year after enactment of statute).

Proposed § 1.959 relates to appeals and cross appeals to the Board of Patent Appeals and Interferences in *inter partes* reexamination proceedings. Both patent owners and third-party requesters are given appeal rights in accordance with 35 U.S.C. 315.

Proposed § 1.961 relates to time of transfer of the jurisdiction of the appeal over to the Board of Patent Appeals and Interferences in *inter partes* reexamination proceedings.

Proposed § 1.962 relates to the definition of appellant and respondent in *inter partes* reexamination proceedings.

Proposed § 1.963 relates to the time periods for filing briefs in *inter partes* reexamination proceedings.

Proposed § 1.965 relates to the requirements of the appellant brief in *inter partes* reexamination proceedings.

Proposed § 1.967 relates to the requirements of the respondent brief in *inter partes* reexamination proceedings.

Proposed § 1.969 relates to the examiner's answer. An examiner's answer may not include a new ground of rejection nor a new decision favorable to patentability. In either case (if there is to be a new ground of rejection or a new decision favorable to patentability), prosecution should be reopened.

Proposed § 1.971 gives any appellant one opportunity to file a rebuttal brief following the examiner's answer. The rebuttal brief filed by an appellant who is the patent owner is limited to the issues raised in the examiner's answer and/or in any respondent brief. The rebuttal brief filed by an appellant who is a third-party requester is limited to the issues raised in the examiner's answer and/or in the patent owner's respondent brief. The rebuttal brief of a third-party requester may not be directed to the respondent brief of any other third-party requester. No new ground of rejection can be proposed by a third-party requester appellant.

Proposed § 1.973 relates to the oral hearing in *inter partes* reexamination proceedings.

Proposed § 1.975 relates to affidavits or declarations after appeal in *inter partes* reexamination proceedings.

Proposed § 1.977 relates to the decision by the Board of Patent Appeals and Interferences in *inter partes* reexamination proceedings. A reversal of an examiner's decision favorable to patentability (*i.e.*, a decision not to make a rejection proposed by the third-party requester) constitutes a decision adverse to patentability which will be set forth as a new ground of rejection under § 1.977(b).

Proposed § 1.979 relates to the procedure following the decision or dismissal by the Board of Patent Appeals and Interferences in *inter partes* reexamination proceedings.

Proposed § 1.981 relates to the procedure for the reopening of prosecution following the decision by the Board of Patent Appeals and Interferences in *inter partes* reexamination proceedings.

Proposed § 1.983 relates to the patent owner's right to appeal to the United States Court of Appeals for the Federal Circuit in *inter partes* reexamination proceedings. Under section 141, the patent owner in *inter partes* reexamination proceedings may appeal the decision of the Board of Patent Appeals and Interferences only to the United States Court of Appeals for the Federal Circuit. Under section 134(c), the third-party requester in *inter partes* reexamination proceedings may not appeal the decision of the Board of Patent Appeals and Interferences.

Proposed § 1.985 relates to notification of prior or concurrent proceedings in *inter partes* reexamination proceedings. Paragraph (a) requires the patent owner to notify the Office of any prior or concurrent proceeding involving the patent under *inter partes* reexamination. Paragraph (b) permits any member of the public to notify the Office of any prior or concurrent proceeding involving the patent under *inter partes* reexamination. Such notice, however, must be limited to merely providing notice without discussion of the issues in the *inter partes* reexamination. Any notice that includes a discussion of the issues will be returned to the sender.

Proposed § 1.987 provides that when a patent involved in an *inter partes* reexamination is concurrently involved in litigation, the Director shall determine whether or not to suspend the *inter partes* reexamination proceeding.

Proposed § 1.989 relates to the merger of concurrent reexamination proceedings.

Proposed § 1.991 relates to the merger of a concurrent reissue application and an *inter partes* reexamination proceeding.

Proposed § 1.993 relates to the suspension of a concurrent interference or an *inter partes* reexamination proceeding.

Proposed § 1.995 relates to the third-party requester's participation rights being preserved in a merged proceeding.

Proposed § 1.997 provides for the issuance of the reexamination certificate under 35 U.S.C. 316 after conclusion of an *inter partes* reexamination proceeding. The certificate will cancel any patent claims determined to be unpatentable, confirm any patent claims determined to be patentable, and incorporate into the patent any amended or new claims determined to be patentable. Once all of the claims have been canceled from the patent, the patent ceases to be enforceable for any purpose. Accordingly, any pending reissue proceeding or other Office proceeding relating to a patent for which a certificate that cancelled all of the patent claims has been issued will be terminated. This provides a degree of assurance to the public that patents with all the claims canceled via *inter partes* reexamination proceedings will not again be asserted.

Classification

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration, that the changes proposed in this notice, if adopted, would not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). This rulemaking implements the provisions of Title IV, subtitle F (sections 4601 through 4608) of the "American Inventors Protection Act of 1999," which permits a third-party requester to participate more extensively during the reexamination proceeding as well as giving them appeal rights. The changes proposed in

this notice (if adopted) would provide procedures for a third-party to request optional *inter partes* reexamination of a patent. The new *inter partes* proceedings are similar to the *ex parte* proceedings, although they are more complicated procedurally to accommodate the presence of the third-party.

Taking into account the overall similarities and additional complexity, it is reasonable to assume that a similar proportion of small entities will request *inter partes* reexamination as have requested *ex parte* reexamination. Furthermore, it is anticipated that *inter partes* reexamination requests will be filed by third-party requesters, while patent owners will continue to file *ex parte* reexamination requests. Approximately 400 *ex parte* reexamination filings have been received each year since 1992, of which 55% or 220 have been filed by third-party requesters. Since the beginning of the reexamination procedure, about 22.5% of the *ex parte* reexamination requesters have been small entities. If all 220 of the third-party filed reexamination requests were filed as requests for *inter partes* reexaminations, approximately 50 requests (22.5%) would come from small entities. The higher cost of the *inter partes* reexamination fee ($8,800) compared to the *ex parte* reexamination fee ($2,520) reflects the greatly expanded participation available to the third-party requester. In the *inter partes* proceeding, the third party requester has the right to comment on every response by the patent owner to the PTO, to be a party to any appeal by the patent owner to the Board of Patent Appeals and Interferences, and to appeal any determination of patentability to the Board. In the *ex parte* proceeding, the third-party requester's role is limited to the request for reexamination and a single reply to the patent owner's response. The third party requester also has no appeal rights in an *ex parte* reexamination. Therefore, the number of small businesses affected by these proposed optional *inter parte* reexamination rules is not significant, and the impact on each business, considering the benefits of greater participation throughout the *inter partes* proceeding, is not significant.

Executive Order 13132

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

Executive Order 12866

This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (September 30, 1993).

Paperwork Reduction Act

This notice of proposed rulemaking involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this notice of proposed rulemaking has been reviewed and previously approved by OMB under OMB control number 0651–0033.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Patent and Trademark Office has submitted an information collection package to OMB for its review and approval of the proposed information collections under OMB control number 0651–0033. The Patent and Trademark Office is submitting this information collection to OMB for its review and approval because this notice of proposed rulemaking will add the request for optional *inter partes* reexamination of a patent to that collection.

The title, description and respondent description of the information collection is shown below with an estimate of the annual reporting burdens. Included in this estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The principal impact of the changes in this notice of proposed rulemaking is to implement the changes to Office practice necessitated by Title IV, subtitle F (sections 4601 through 4608) of the "American Inventors Protection Act of 1999" (enacted into law by § 1000(a)(9), Division B, of Pub. L. 106–113).

OMB Number: 0651–0033.

Title: Post Allowance and Refiling.

Form Numbers: PTO/SB/13/14/44/50–57; PTOL–85b.

Type of Review: Approved through September of 2000.

Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions and Federal Government.

Estimated Number of Respondents: 172,475.

Estimated Time Per Response: 0.3 hour.

Estimated Total Annual Burden Hours: 51,593.5 hours.

Needs and Uses: This collection of information is required to administer the patent laws pursuant to title 35, U.S.C., concerning the issuance of patents and related actions including correcting errors in printed patents, refiling of patent applications, requesting reexamination of a patent, and requesting a reissue patent to correct an error in a patent. The affected public includes any individual or institution whose application for a patent has been allowed or who takes action as covered by the applicable rules.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Patent Examination Policy Law Office, Patent and Trademark Office, Washington, D.C. 20231, or to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, 725 17th St. NW, Room 10235, Washington, DC 20503, Attention: Desk Officer for the Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and record keeping requirements, Small Businesses.

For the reasons set out in the preamble and under the authority given to the Director of Patents and Trademarks by 35 U.S.C. 6, Part 1 of Title 37 CFR is amended as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.4(a)(2) is proposed to be revised to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

(a) * * *

(2) Correspondence in and relating to a particular application or other proceeding in the Office. See particularly the rules relating to the filing, processing, or other proceedings of national applications in Subpart B, §§ 1.31 to 1.378; of international applications in Subpart C, §§ 1.401 to 1.499; of ex parte reexaminations of patents in Subpart D, §§ 1.501 to 1.570; of interferences in Subpart E, §§ 1.601 to 1.690; of extension of patent term in Subpart F, §§ 1.710 to 1.785; of inter partes reexaminations of patents in Subpart H, §§ 1.902 to 1.997; and of trademark applications §§ 2.11 to 2.189.

* * * * *

3. Section 1.6(d)(5) is proposed to be revised to read as follows:

§ 1.6 Receipt of Correspondence.

* * * * *

(d) * * *

(5) A request for reexamination under § 1.510 or § 1.913.

4. Sections 1.17(l) and (m) are proposed to be revised to read as follows:

§ 1.17 Patent application and reexamination processing fees.

* * * * *

(l) For filing a petition for the revival of an unavoidably abandoned application under 35 U.S.C. 111, 133, 364, or 371, for the delayed payment of the issue fee under 35 U.S.C. 151, or for the revival of an unavoidably terminated reexamination proceeding under 35 U.S.C. 133 (§ 1.137(a)):

By a small entity (§ 1.9(f))	$55.00
By other than a small entity ...	110.00

(m) For filing a petition for revival of an unintentionally abandoned application, for the unintentionally delayed payment of the fee for issuing a patent, or for the revival of an unintentionally terminated reexamination proceeding under 35 U.S.C. 41(a)(7) (§ 1.137(b)):

By a small entity (§ 1.9(f))	$605.00
By other than a small entity ...	1,210.00

* * * * *

5. Section 1.20(c) is proposed to be revised to read as follows:

§ 1.20 Post-issuance and reexamination fees.

* * * * *

(c) In reexamination proceedings

(1) For filing a request for *ex parte* reexamination (§ 1.510(a))	$2,520.00
(2) For filing a request for *inter partes* reexamination (§ 1.915(a))	8,800.00

* * * * *

6. Section 1.25(b) is proposed to be revised to read as follows:

§ 1.25 Deposit accounts.

* * * * *

(b) Filing, issue, appeal, international-type search report, international application processing, petition, and post-issuance fees may be charged against these accounts if sufficient funds are on deposit to cover such fees. A general authorization to charge all fees, or only certain fees, set forth in §§ 1.16 to 1.18 to a deposit account containing sufficient funds may be filed in an individual application, either for the entire pendency of the application or with respect to a particular paper filed. An authorization to charge to a deposit account the fee for a request for reexamination pursuant to § 1.510 or § 1.913 and any other fees required in a reexamination proceeding of a patent may also be filed. An authorization to charge a fee to a deposit account will not be considered payment of the fee on the date the authorization to charge the fee is effective as to the particular fee to be charged unless sufficient funds are present in the account to cover the fee.

7. Section 1.26(c) is proposed to be revised to read as follows:

§ 1.26 Refunds.

* * * * *

(c) If the Director decides not to institute a reexamination proceeding, for *ex parte* reexaminations filed under § 1.510 a refund of $1,690.00 will be made to the reexamination requester. For *inter partes* reexaminations filed under § 1.913, a refund of $7,970 will be made to the reexamination requester. Reexamination requester should indicate the form in which any refund should be made (*e.g.*, by check, electronic funds transfer, credit to a deposit account, *etc.*). Generally, reexamination refunds will be issued in the form that the original payment was provided.

8. Section 1.112 is proposed to be revised to read as follows:

§ 1.112 Reconsideration before final action.

After reply by applicant or patent owner (§ 1.111) to a non-final action, the application or the patent under reexamination will be reconsidered and again examined. The applicant, or in the case of a reexamination proceeding the patent owner and any third-party requester, will be notified if claims are rejected, objections or requirements made, or decisions favorable to patentability are made, in the same manner as after the first examination. Applicant or patent owner may reply to such Office action in the same manner provided in § 1.111, with or without amendment, unless such Office action indicates that it is made final (§§ 1.113), or in an *inter partes* reexamination, that it is an action closing prosecution (§ 1.949) or a right of appeal notice (§ 1.953).

9. Section 1.113(a) is proposed to be revised to read as follows:

§ 1.113 Final rejection or action.

(a) On the second or any subsequent examination or consideration by the examiner the rejection or other action may be made final, whereupon applicant's, or for *ex parte* reexaminations filed under § 1.510 patent owner's, reply is limited to appeal in the case of rejection of any claim (§ 1.191), or to amendment as specified in § 1.116. Petition may be taken to the Director in the case of objections or requirements not involved in the rejection of any claim (§ 1.181). Reply to a final rejection or action must include cancellation of, or appeal from the rejection of, each rejected claim. If any claim stands allowed, the reply to a final rejection or action must comply with any requirements or objections as to form. For final actions in an *inter partes* reexamination filed under § 1.913, see § 1.953.

* * * * *

10. Sections 1.116(a) and (c) are proposed to be revised to read as follows:

§ 1.116 Amendments after final action, action closing prosecution, right of appeal notice, or appeal.

(a) After a final rejection or other final action (§ 1.113) in an application or in an *ex parte* reexamination filed under § 1.510, or an action closing prosecution (§ 1.949) in an *inter partes* reexamination filed under § 1.913, amendments may be made canceling claims or complying with any requirement of form expressly set forth in a previous Office action. Amendments presenting rejected claims in better form for consideration on appeal may be admitted. The admission of, or refusal to admit, any amendment after a final rejection, a final action, an action closing prosecution or any related proceedings, will not operate to relieve the application or patent under reexamination from its condition as subject to appeal or to save the application from abandonment under § 1.135, or the reexamination from termination. No amendment can be

made in an *inter partes* reexamination proceeding after the right of appeal notice under § 1.953 except as provided for in paragraph (c) of this section.

* * * * *

(c) No amendment can be made as a matter of right in appealed cases. After decision on appeal, amendments can only be made as provided in §§ 1.198 and 1.981, or to carry into effect a recommendation under §§ 1.196 or 1.977.

11. Section 1.121(c) is proposed to be revised to read as follows:

§ 1.121 Manner of making amendments.

* * * * *

(c) *Amendments in reexamination proceedings.* Any proposed amendment to the description and claims in patents involved in reexamination proceedings in both *ex parte* reexaminations filed under § 1.510 and *inter partes* reexaminations filed under § 1.913 must be made in accordance with § 1.530(d).

12. Section 1.136(a) (2) and (b) are proposed to be revised to read as follows:

§ 1.136 Extensions of time.

(a) * * *

(2) The date on which the petition and the fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The expiration of the time period is determined by the amount of the fee paid. A reply must be filed prior to the expiration of the period of extension to avoid abandonment of the application (§ 1.135), but in no situation may an applicant reply later than the maximum time period set by statute, or be granted an extension of time under paragraph (b) of this section when the provisions of this paragraph are available. See § 1.136(b) for extensions of time relating to proceedings pursuant to §§ 1.193(b), 1.194, 1.196 or 1.197; § 1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action; § 1.550(c) for extensions of time in *ex parte* reexamination proceedings, § 1.956 for extensions of time in *inter partes* reexamination proceedings; and § 1.645 for extensions of time in interference proceedings.

* * * * *

(b) When a reply cannot be filed within the time period set for such reply and the provisions of paragraph (a) of this section are not available, the period for reply will be extended only for sufficient cause and for a reasonable time specified. Any request for an extension of time under this paragraph must be filed on or before the day on which such reply is due, but the mere filing of such a request will not effect any extension under this paragraph. In no situation can any extension carry the date on which reply is due beyond the maximum time period set by statute. See § 1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action; § 1.645 for extensions of time in interference proceedings; § 1.550(c) for extensions of time in *ex parte* reexamination proceedings; and § 1.956 for extensions of time in *inter partes* reexamination proceedings.

13. Section 1.137 is proposed to be amended by revising its heading, the introductory text of paragraph (a), the introductory text of paragraph (b), and paragraph (d) to read as follows:

§ 1.137 Revival of abandoned application, lapsed patent, or terminated reexamination proceeding.

(a) *Unavoidable.* Where the delay in reply was unavoidable, a petition may be filed to revive an abandoned application, a reexamination proceeding terminated under §§ 1.550(d) and 1.957(b) and (c), or a lapsed patent pursuant to this paragraph. A grantable petition pursuant to this paragraph must be accompanied by:

* * * * *

(b) *Unintentional.* Where the delay in reply was unintentional, a petition may be filed to revive an abandoned application, a reexamination proceeding terminated under §§ 1.550(d) and 1.957(b) and (c), or a lapsed patent pursuant to this paragraph. A grantable petition pursuant to this paragraph must be accompanied by:

* * * * *

(d) Any request for reconsideration or review of a decision refusing to revive an abandoned application, a terminated reexamination proceeding, or lapsed patent upon petition filed pursuant to this section, to be considered timely, must be filed within two months of the decision refusing to revive or within such time as set in the decision. Unless a decision indicates otherwise, this time period may be extended under the provisions of § 1.136 for an abandoned application or lapsed patent; under the provisions of § 1.550(c) for a terminated *ex parte* reexamination proceeding filed under § 1.510; and under the provisions of § 1.956 for a terminated *inter partes* reexamination proceeding filed under § 1.913.

* * * * *

14. Sections 1.181(a) and (c) are proposed to be revised to read as follows:

1.181 Petition to the Director.

(a) Petition may be taken to the Director:

(1) From any action or requirement of any examiner in the *ex parte* prosecution of an application, or in the *ex parte* or *inter partes* prosecution of a reexamination proceeding which is not subject to appeal to the Board of Patent Appeals and Interferences or to the court;

(2) In cases in which a statute or the rules specify that the matter is to be determined directly by or reviewed by the Director; and

(3) To invoke the supervisory authority of the Director in appropriate circumstances.

(4) For petitions in interferences, see § 1.644.

* * * * *

(c) When a petition is taken from an action or requirement of an examiner in the *ex parte* prosecution of an application, or in the *ex parte* or *inter partes* prosecution of a reexamination proceeding, it may be required that there have been a proper request for reconsideration (§ 1.111) and a repeated action by the examiner. The examiner may be directed by the Director to furnish a written statement, within a specified time, setting forth the reasons for his or her decision upon the matters averred in the petition, supplying a copy thereof to the petitioner.

* * * * *

15. Section 1.191(a) is proposed to be revised to read as follows:

§ 1.191 Appeal to Board of Patent Appeals and Interferences.

(a) Every applicant for a patent or for reissue of a patent, and every owner of a patent under *ex parte* reexamination filed under § 1.510 for a patent that issued from an original application filed in the United States before November 29, 1999, any of whose claims has been twice or finally (§ 1.113) rejected, may appeal from the decision of the examiner to the Board of Patent Appeals and Interferences by filing a notice of appeal and the fee set forth in § 1.17(b) within the time period provided under §§ 1.134 and 1.136 for reply. Notwithstanding the above, for an *ex parte* reexamination proceeding filed under § 1.510 for a patent that issued from an original application filed in the United States on or after November 29, 1999, no appeal may be filed until the claims have been finally rejected (§ 1.113). Appeals to the Board of Patent Appeals and Interferences in *inter partes* reexamination proceedings filed under § 1.913 are controlled by §§ 1.959 through 1.981. Sections 1.191 through

1.198 are not applicable to appeals in *inter partes* reexamination proceedings filed under § 1.913.

16. Section 1.301 is proposed to be revised to read as follows:

§ 1.301 Appeal to U.S. Court of Appeals for the Federal Circuit.

Any applicant or any owner of a patent involved in any *ex parte* reexamination proceeding filed under § 1.510, dissatisfied with the decision of the Board of Patent Appeals and Interferences, and any party to an interference dissatisfied with the decision of the Board of Patent Appeals and Interferences, may appeal to the U.S. Court of Appeals for the Federal Circuit. The appellant must take the following steps in such an appeal: In the U.S. Patent and Trademark Office, file a written notice of appeal directed to the Director (see §§ 1.302 and 1.304); and in the Court, file a copy of the notice of appeal and pay the fee for appeal as provided by the rules of the Court. For *inter partes* reexamination proceedings filed under § 1.913, § 1.983 is controlling.

17. Section 1.303 is proposed to be amended by revising paragraphs (a) and (b) and by adding a new paragraph (d) to read as follows:

§ 1.303 Civil action under 35 U.S.C. 145, 146, 306.

(a) Any applicant or any owner of a patent involved in an *ex parte* reexamination proceeding filed under § 1.510 for a patent that issues from an original application filed in the United States before November 29, 1999, dissatisfied with the decision of the Board of Patent Appeals and Interferences, and any party to an interference dissatisfied with the decision of the Board of Patent Appeals and Interferences may, instead of appealing to the U.S. Court of Appeals for the Federal Circuit (§ 1.301), have remedy by civil action under 35 U.S.C. 145 or 146, as appropriate. Such civil action must be commenced within the time specified in § 1.304.

(b) If an applicant in an *ex parte* case or an owner of a patent involved in an *ex parte* reexamination proceeding filed under § 1.510 for a patent that issues from an original application filed in the United States before November 29, 1999, has taken an appeal to the U.S. Court of Appeals for the Federal Circuit, he or she thereby waives his or her right to proceed under 35 U.S.C. 145.

* * * * *

(d) For an *ex parte* reexamination proceeding filed under § 1.510 for a patent that issues from an original application filed in the United States on or after November 29, 1999, and for an *inter partes* reexamination proceeding filed under § 1.913, no remedy by civil action under 35 U.S.C. 145 is available.

18. Sections 1.304(a)(1) and (a)(2) are proposed to be revised to read as follows:

§ 1.304 Time for appeal or civil action.

(a)(1) The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is two months from the date of the decision of the Board of Patent Appeals and Interferences. If a request for rehearing or reconsideration of the decision is filed within the time period provided under § 1.197(b), § 1.658(b), or § 1.979(a), the time for filing an appeal or commencing a civil action shall expire two months after action on the request. In interferences the time for filing a cross-appeal or cross-action expires:

(i) 14 days after service of the notice of appeal or the summons and complaint; or

(ii) Two months after the date of decision of the Board of Patent Appeals and Interferences, whichever is later.

(2) The time periods set forth in this section are not subject to the provisions of §§ 1.136, 1.550(c), 1.956, or § 1.645 (a) or (b).

* * * * *

19. The heading for Subpart D is proposed to be revised to read as follows:

Subpart D—*Ex Parte* Reexamination of Patents

* * * * *

20. Section 1.501 is proposed to be amended by revising its heading and paragraph (a) to read as follows:

§ 1.501 Citation of prior art in patent and *ex parte* reexamination files.

(a) At any time during the period of enforceability of a patent, any person may cite to the Office in writing prior art consisting of patents or printed publications which that person states to be pertinent and applicable to the patent and believes to have a bearing on the patentability of any claim of the patent. If the citation is made by the patent owner, the explanation of pertinency and applicability may include an explanation of how the claims differ from the prior art. Such citations shall be entered in the patent file except as set forth in this section. Citations by the patent owner under § 1.555 and by an *ex parte* reexamination requester under either § 1.510 or § 1.535 will be entered in the reexamination file during a reexamination proceeding. The entry in the patent file of citations submitted after the date of an order to reexamine pursuant to § 1.525 by persons other than the patent owner, or an *ex parte* reexamination requester under either § 1.510 or § 1.535, will be delayed until the reexamination proceeding has been terminated. See § 1.902 for processing of prior art citations in patent files and the reexamination file during an *inter partes* reexamination proceeding filed under § 1.913.

* * * * *

21. The undesignated center heading following § 1.501 is proposed to be revised to read as follows:

Request for *Ex Parte* Reexamination

22. Section 1.510 is proposed to be amended by revising its heading and the text of paragraphs (a) and (b)(4) to read as follows:

§ 1.510 Request for ex parte reexamination.

(a) Any person may, at any time during the period of enforceability of a patent, file a request for an *ex parte* reexamination by the Office of any claim of the patent on the basis of prior art patents or printed publications cited under § 1.501. The request must be accompanied by the fee for requesting reexamination set in § 1.20(c)(1).

(b) Any request for *ex parte* reexamination must include the following parts:

* * * * *

(4) A copy of the entire patent including the front face, drawings, and specification/claims (in double column format) for which reexamination is requested, and a copy of any disclaimer, certificate of correction, or reexamination certificate issued in the patent. All copies must have each page plainly written on only one side of a sheet of paper.

* * * * *

23. Section 1.515 is proposed to be revised to read as follows:

§ 1.515 Determination of the request for ex parte reexamination.

(a) Within three months following the filing date of a request for an *ex parte* reexamination, an examiner will consider the request and determine whether or not a substantial new question of patentability affecting any claim of the patent is raised by the request and the prior art cited therein, with or without consideration of other patents or printed publications. The examiner's determination will be based on the claims in effect at the time of the determination and will become a part of the official file of the patent and will be mailed to the patent owner at the

address as provided for in § 1.33(c) and to the person requesting reexamination.

(b) Where no substantial new question of patentability has been found, a refund of a portion of the fee for requesting *ex parte* reexamination will be made to the requester in accordance with § 1.26(c).

(c) The requester may seek review by a petition to the Director under § 1.181 within one month of the mailing date of the examiner's determination refusing *ex parte* reexamination. Any such petition must comply with § 1.181(b). If no petition is timely filed or if the decision on petition affirms that no substantial new question of patentability has been raised, the determination shall be final and nonappealable.

24. Section 1.520 is proposed to be revised to read as follows:

§ 1.520 *Ex parte* reexamination at the initiative of the Director.

The Director, at any time during the period of enforceability of a patent, may determine whether or not a substantial new question of patentability is raised by patents or printed publications which have been discovered by the Director or which have been brought to the Director's attention even though no request for reexamination has been filed in accordance with § 1.510 or § 1.913. The Director may initiate *ex parte* reexamination without a request for reexamination pursuant to § 1.510 or § 1.913. Normally requests from outside the Office that the Director undertake reexamination on his own initiative will not be considered. Any determination to initiate *ex parte* reexamination under this section will become a part of the official file of the patent and will be mailed to the patent owner at the address as provided for in § 1.33(c).

25. The undesignated center heading following § 1.520 is proposed to be revised to read as follows:

***Ex Parte* Reexamination**

26. Section 1.525 is proposed to be revised to read as follows:

§ 1.525 Order for *ex parte* reexamination.

(a) If a substantial new question of patentability is found pursuant to § 1.515 or § 1.520, the determination will include an order for *ex parte* reexamination of the patent for resolution of the question. If the order for *ex parte* reexamination resulted from a petition pursuant to § 1.515(c), the *ex parte* reexamination will ordinarily be conducted by an examiner other than the examiner responsible for the initial determination under § 1.515(a).

(b) The notice published in the *Official Gazette* under § 1.11(c) will be considered to be constructive notice and *ex parte* reexamination will proceed.

27. Section 1.530 is proposed to be amended by revising its heading and paragraphs (a), (b), (c) and (d), introductory text, to read as follows:

§ 1.530 Statement by patent owner in *ex parte* reexamination; amendment by patent owner in *ex parte* reexamination or inter partes reexamination.

(a) Except as provided in § 1.510(e), no statement or other response by the patent owner in an *ex parte* reexamination proceeding shall be filed prior to the determinations made in accordance with § 1.515 or § 1.520. If a premature statement or other response is filed by the patent owner it will not be acknowledged or considered in making the determination.

(b) The order for *ex parte* reexamination will set a period of not less than two months from the date of the order within which the patent owner may file a statement on the new question of patentability including any proposed amendments the patent owner wishes to make.

(c) Any statement filed by the patent owner shall clearly point out why the subject matter as claimed is not anticipated or rendered obvious by the prior art patents or printed publications, either alone or in any reasonable combinations. Where the reexamination request was filed by a third-party requester, any statement filed by the patent owner must be served upon the *ex parte* reexamination requester in accordance with § 1.248.

(d) *Amendments in reexamination proceedings.* Amendments in both *ex parte* and *inter partes* reexamination proceedings are made by filing a paper, in compliance with paragraph (d)(5) of this section, directing that specified amendments be made.

* * * * *

28. Section 1.535 is proposed to be revised to read as follows:

§ 1.535 Reply by third-party requester in *ex parte* reexamination.

A reply to the patent owner's statement under § 1.530 may be filed by the *ex parte* reexamination requester within two months from the date of service of the patent owner's statement. Any reply by the *ex parte* requester must be served upon the patent owner in accordance with § 1.248. If the patent owner does not file a statement under § 1.530, no reply or other submission from the *ex parte* reexamination requester will be considered.

29. Section 1.540 is proposed to be revised to read as follows:

§ 1.540 Consideration of responses in *ex parte* reexamination.

The failure to timely file or serve the documents set forth in § 1.530 or in § 1.535 may result in their being refused consideration. No submissions other than the statement pursuant to § 1.530 and the reply by the *ex parte* reexamination requester pursuant to § 1.535 will be considered prior to examination.

30. Section 1.550 is proposed to be revised to read as follows:

§ 1.550 Conduct of *ex parte* reexamination proceedings.

(a) All *ex parte* reexamination proceedings, including any appeals to the Board of Patent Appeals and Interferences, will be conducted with special dispatch within the Office. After issuance of the *ex parte* reexamination order and expiration of the time for submitting any responses thereto, the examination will be conducted in accordance with §§ 1.104 through 1.116, and will result in the issuance of an *ex parte* reexamination certificate under § 1.570.

(b) The patent owner in an *ex parte* reexamination proceeding will be given at least thirty days to respond to any Office action. Such response may include further statements in response to any rejections or proposed amendments or new claims to place the patent in a condition where all claims, if amended as proposed, would be patentable.

(c) The time for taking any action by a patent owner in an *ex parte* reexamination proceeding will be extended only for sufficient cause and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the patent owner is due, but in no case will the mere filing of a request affect any extension. See § 1.304(a) for extensions of time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or for commencing a civil action.

(d) If the patent owner fails to file a timely and appropriate response to any Office action or any written statement of an interview required under § 1.560(b), the *ex parte* reexamination proceeding will be terminated and the Director will proceed to issue a certificate under § 1.570 in accordance with the last action of the Office.

(e) If a response by the patent owner is not timely filed in the Office,

(1) The delay in filing such response may be excused if it is shown to the satisfaction of the Director that the delay was unavoidable; a petition to accept an

unavoidably delayed response must be filed in compliance with § 1.137(a); or

(2) The response may nevertheless be accepted if the delay was unintentional; a petition to accept an unintentionally delayed response must be filed in compliance with § 1.137(b).

(f) The reexamination requester will be sent copies of Office actions issued during the *ex parte* reexamination proceeding. After filing of a request for *ex parte* reexamination by a third-party requester, any document filed by either the patent owner or the third-party requester must be served on the other party in the reexamination proceeding in the manner provided by § 1.248. The document must reflect service or the document may be refused consideration by the Office.

(g) The active participation of the *ex parte* reexamination requester ends with the reply pursuant to § 1.535, and no further submissions on behalf of the reexamination requester will be acknowledged or considered. Further, no submissions on behalf of any third parties will be acknowledged or considered unless such submissions are:

(1) In accordance with §§ 1.510 or 1.535; or

(2) Entered in the patent file prior to the date of the order for *ex parte* reexamination pursuant to § 1.525.

(h) Submissions by third parties, filed after the date of the order for *ex parte* reexamination pursuant to § 1.525, must meet the requirements of and will be treated in accordance with § 1.501(a).

31. Section 1.552 is proposed to be revised to read as follows:

§ 1.552 Scope of reexamination in *ex parte* reexamination proceedings.

(a) Claims in an *ex parte* reexamination proceeding will be examined on the basis of patents or printed publications and, with respect to subject matter added or deleted in the reexamination proceeding, on the basis of the requirements of 35 U.S.C. 112.

(b) Claims in an *ex parte* reexamination proceeding will not be permitted to enlarge the scope of the claims of the patent.

(c) Issues other than those indicated in paragraphs (a) and (b) of this section will not be resolved in a reexamination proceeding. If such issues are raised by the patent owner or third-party requester during a reexamination proceeding, the existence of such issues will be noted by the examiner in the next Office action, in which case the patent owner may desire to consider the advisability of filing a reissue application to have such issues considered and resolved.

32. Section 1.555 is proposed to be amended by revising its heading to read as follows:

§ 1.555 Information material to patentability in *ex parte* reexamination and *inter partes* reexamination proceedings.

* * * * *

33. Section 1.560 is proposed to be revised to read as follows:

§ 1.560 Interviews in *ex parte* reexamination proceedings.

(a) Interviews in *ex parte* reexamination proceedings pending before the Office between examiners and the owners of such patents or their attorneys or agents of record must be conducted in the Office at such times, within Office hours, as the respective examiners may designate. Interviews will not be permitted at any other time or place without the authority of the Director. Interviews for the discussion of the patentability of claims in patents involved in *ex parte* reexamination proceedings will not be conducted prior to the first official action thereon. Interviews should be arranged for in advance. Requests that reexamination requesters participate in interviews with examiners will not be granted.

(b) In every instance of an interview with an examiner in an *ex parte* reexamination proceeding, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the patent owner. An interview does not remove the necessity for response to Office actions as specified in § 1.111. Patent owner's response to an outstanding Office action after the interview does not remove the necessity for filing the written statement. The written statement must be filed as a separate part of a response to an Office action outstanding at the time of the interview, or as a separate paper within one month from the date of the interview, whichever is later.

34. Section 1.565 is proposed to be revised to read as follows:

§ 1.565 Concurrent office proceedings which include an *ex parte* reexamination proceeding.

(a) In an *ex parte* reexamination proceeding before the Office, the patent owner shall call the attention of the Office to any prior or concurrent proceedings in which the patent is or was involved such as an interference, reissue, *ex parte* reexamination, *inter partes* reexamination, or litigation and the results of such proceedings. See § 1.985 for notification of prior or concurrent proceedings in an *inter partes* reexamination proceeding.

(b) If a patent in the process of *ex parte* reexamination is or becomes involved in litigation, the Director shall determine whether or not to suspend the reexamination. See § 1.987 for *inter partes* reexamination proceedings.

(c) If *ex parte* reexamination is ordered while a prior *ex parte* reexamination proceeding is pending and prosecution has not been terminated, the *ex parte* reexamination proceedings will be consolidated and result in the issuance of a single certificate under § 1.570. For merger of *inter partes* reexamination proceedings, see § 1.989(a). For merger of *ex parte* reexamination and *inter partes* reexamination proceedings, see § 1.989(b).

(d) If a reissue application and an *ex parte* reexamination proceeding on which an order pursuant to § 1.525 has been mailed are pending concurrently on a patent, a decision will normally be made to merge the two proceedings or to suspend one of the two proceedings. Where merger of a reissue application and an *ex parte* reexamination proceeding is ordered, the merged examination will be conducted in accordance with §§ 1.171 through 1.179 and the patent owner will be required to place and maintain the same claims in the reissue application and the *ex parte* reexamination proceeding during the pendency of the merged proceeding. The examiner's actions and responses by the patent owner in a merged proceeding will apply to both the reissue application and the *ex parte* reexamination proceeding and be physically entered into both files. Any *ex parte* reexamination proceeding merged with a reissue application shall be terminated by the grant of the reissued patent. For merger of a reissue application and an *inter partes* reexamination, see § 1.991.

(e) If a patent in the process of *ex parte* reexamination is or becomes involved in an interference, the Director may suspend the reexamination or the interference. The Director will not consider a request to suspend an interference unless a motion (§ 1.635) to suspend the interference has been presented to, and denied by, an administrative patent judge and the request is filed within ten (10) days of a decision by an administrative patent judge denying the motion for suspension or such other time as the administrative patent judge may set. For concurrent *inter partes* reexamination and interference of a patent, see § 1.993.

35. The undesignated center heading following § 1.565 is proposed to be revised to read as follows:

***Ex Parte* Reexamination Certificate**

36. Section 1.570 is proposed to be revised to read as follows:

§ 1.570 Issuance of *ex parte* reexamination certificate after *ex parte* reexamination proceedings.

(a) Upon the conclusion of *ex parte* reexamination proceedings, the Director will issue an *ex parte* reexamination certificate in accordance with 35 U.S.C. 307 setting forth the results of the *ex parte* reexamination proceeding and the content of the patent following the *ex parte* reexamination proceeding.

(b) An *ex parte* reexamination certificate will be issued in each patent in which an *ex parte* reexamination proceeding has been ordered under § 1.525 and has not been merged with any *inter partes* reexamination proceeding pursuant to § 1.989(a). Any statutory disclaimer filed by the patent owner will be made part of the *ex parte* reexamination certificate.

(c) The *ex parte* reexamination certificate will be mailed on the day of its date to the patent owner at the address as provided for in § 1.33(c). A copy of the *ex parte* reexamination certificate will also be mailed to the requester of the *ex parte* reexamination proceeding.

(d) If an *ex parte* reexamination certificate has been issued which cancels all of the claims of the patent, no further Office proceedings will be conducted with regard to that patent or any reissue applications or any reexamination requests relating thereto.

(e) If the *ex parte* reexamination proceeding is terminated by the grant of a reissued patent as provided in § 1.565(d), the reissued patent will constitute the *ex parte* reexamination certificate required by this section and 35 U.S.C. 307.

(f) A notice of the issuance of each *ex parte* reexamination certificate under this section will be published in the *Official Gazette* on its date of issuance.

37. Subpart H is proposed to be added to read as follows:

Subpart H—*Inter Partes* Reexamination of Patents

Prior Art Citations

Sec.

1.902 Processing of prior art citations during an *inter partes* reexamination proceeding.

Requirements for *Inter partes* Reexamination Proceedings

1.903 Service of papers on parties in *inter partes* reexamination.
1.904 Notice of *inter partes* reexamination in *Official Gazette*.
1.905 Submission of papers by public in *inter partes* reexamination.
1.906 Scope of reexamination in *inter partes* reexamination proceeding.
1.907 *Inter partes* reexamination prohibited.
1.913 Persons eligible to file request for *inter partes* reexamination.
1.915 Content of request for *inter partes* reexamination.
1.919 Filing date of request for *inter partes* reexamination.
1.923 Examiner's determination on the request for *inter partes* reexamination.
1.925 Partial refund if request for *inter partes* reexamination is not ordered.
1.927 Petition to review refusal to order *inter partes* reexamination.

***Inter Partes* Reexamination of Patents**

1.931 Order for *inter partes* reexamination.

Information Disclosure in *Inter Partes* Reexamination

1.933 Patent owner duty of disclosure in *inter partes* reexamination proceedings.

Office Actions and Responses (Before the Examiner) in *Inter partes* Reexamination

1.935 Initial Office action usually accompanies order for *inter partes* reexamination.
1.937 Conduct of *inter partes* reexamination.
1.939 Unauthorized papers in *inter partes* reexamination.
1.941 Amendments by patent owner in *inter partes* reexamination.
1.943 Requirements of responses, written comments, and briefs in *inter partes* reexamination.
1.945 Response to Office action by patent owner in *inter partes* reexamination.
1.947 Comments by third-party requester to patent owner's response in *inter partes* reexamination.
1.948 Limitations on submission of prior art by third-party requester following the order for *inter partes* reexamination.
1.949 Examiner's Office action closing prosecution in *inter partes* reexamination.
1.951 Options after Office action closing prosecution in *inter partes* reexamination.
1.953 Examiner's Right of Appeal Notice in *inter partes* reexamination.

Interviews Prohibited in *Inter Partes* Reexamination

1.955 Interviews prohibited in *inter partes* reexamination proceedings.

Extensions of Time, Termination of Proceedings, and Petitions to Revive in *Inter Partes* Reexamination

1.956 Patent owner extensions of time in *inter partes* reexamination.
1.957 Failure to file a timely, appropriate or complete response or comment in *inter partes* reexamination.
1.958 Petition to revive terminated *inter partes* reexamination or claims terminated for lack of patent owner response.

Appeal to the Board of Patent Appeals and Interferences in *Inter Partes* Reexamination

1.959 Notice of appeal and cross appeal to Board of Patent Appeals and Interferences in *inter partes* reexamination.
1.961 Jurisdiction over appeal in *inter partes* reexamination.
1.962 Appellant and respondent in *inter partes* reexamination defined.
1.963 Time for filing briefs in *inter partes* reexamination.
1.965 Appellant brief in *inter partes* reexamination.
1.967 Respondent brief in *inter partes* reexamination.
1.969 Examiner's answer in *inter partes* reexamination.
1.971 Rebuttal brief in *inter partes* reexamination.
1.973 Oral hearing in *inter partes* reexamination.
1.975 Affidavits or declarations after appeal in *inter partes* reexamination.
1.977 Decision by the Board of Patent Appeals and Interferences; remand to examiner in *inter partes* reexamination.
1.979 Action following decision by the Board of Patent Appeals and Interferences or dismissal of appeal in *inter partes* reexamination.
1.981 Reopening after decision by the Board of Patent Appeals and Interferences in *inter partes* reexamination.

Patent Owner Appeal to the United States Court of Appeals for the Federal Circuit in *Inter Partes* Reexamination

1.983 Patent owner appeal to the United States Court of Appeals for the Federal Circuit in *inter partes* reexamination.

Concurrent Proceedings Involving Same Patent in *Inter Partes* Reexamination

1.985 Notification of prior or concurrent proceedings in *inter partes* reexamination.
1.987 Suspension of *inter partes* reexamination proceeding due to litigation.
1.989 Merger of concurrent reexamination proceedings.
1.991 Merger of concurrent reissue application and *inter partes* reexamination proceeding.
1.993 Suspension of concurrent interference and *inter partes* reexamination proceeding.
1.995 Third-party requester's participation rights preserved in merged proceeding.

Reexamination Certificate in *Inter Partes* Reexamination

1.997 Issuance of *inter partes* reexamination certificate.

Prior Art Citations

§ 1.902 Processing of prior art citations during an *inter partes* reexamination proceeding.

Citations by the patent owner in accordance with § 1.933 and by an *inter partes* reexamination third-party requester under §§ 1.915 or 1.948 will be entered in the *inter partes*

reexamination file. The entry in the patent file of other citations submitted after the date of an order for reexamination pursuant to § 1.931 by persons other than the patent owner, or the third-party requester under either § 1.915 or § 1.948, will be delayed until the *inter partes* reexamination proceeding has been terminated.

Requirements for *Inter Partes* Reexamination Proceedings

§ 1.903 Service of papers on parties in *inter partes* reexamination.

The patent owner and the third-party requester will be sent copies of Office actions issued during the *inter partes* reexamination proceeding. After filing of a request for *inter partes* reexamination by a third-party requester, any document filed by either the patent owner or the third-party requester must be served on every other party in the reexamination proceeding in the manner provided in § 1.248. Any document must reflect service or the document may be refused consideration by the Office. The failure of the patent owner or the third-party requester to serve documents may result in their being refused consideration.

§ 1.904 Notice of *inter partes* reexamination in *Official Gazette*.

A notice of the filing of an *inter partes* reexamination request will be published in the *Official Gazette*. The notice published in the *Official Gazette* under § 1.11(c) will be considered to be constructive notice of the *inter partes* reexamination proceeding and *inter partes* reexamination will proceed.

§ 1.905 Submission of papers by public in *inter partes* reexamination.

Unless specifically provided for, no submissions on behalf of any third parties other than third-party requesters as defined in 35 U.S.C. 100(e) will be considered unless such submissions are in accordance with § 1.915 or entered in the patent file prior to the date of the order for reexamination pursuant to § 1.931. Submissions by third parties, other than third-party requesters, filed after the date of the order for reexamination pursuant to § 1.931, must meet the requirements of § 1.501 and will be treated in accordance with § 1.902. Submissions which do not meet the requirements of § 1.501 will be returned.

§ 1.906 Scope of reexamination in *inter partes* reexamination proceeding.

(a) Claims in an *inter partes* reexamination proceeding will be examined on the basis of patents or printed publications and, with respect to subject matter added or deleted in the reexamination proceeding, on the basis of the requirements of 35 U.S.C. 112.

(b) Claims in an *inter partes* reexamination proceeding will not be permitted to enlarge the scope of the claims of the patent.

(c) Issues other than those indicated in paragraphs (a) and (b) of this section will not be resolved in an *inter partes* reexamination proceeding. If such issues are raised by the patent owner or the third-party requester during a reexamination proceeding, the existence of such issues will be noted by the examiner in the next Office action, in which case the patent owner may desire to consider the advisability of filing a reissue application to have such issues considered and resolved.

§ 1.907 *Inter partes* reexamination prohibited.

(a) Once an order to reexamine has been issued under § 1.931, neither the third-party requester, nor its privies, may file a subsequent request for *inter partes* reexamination of the patent until an *inter partes* reexamination certificate is issued under § 1.997, unless authorized by the Director.

(b) Once a final decision has been entered against a party in a civil action arising in whole or in part under 28 U.S.C. 1338 that the party has not sustained its burden of proving invalidity of any patent claim in suit, then neither that party nor its privies may thereafter request *inter partes* reexamination of any such patent claim on the basis of issues which that party, or its privies, raised or could have raised in such civil action, and an *inter partes* reexamination requested by that party, or its privies, on the basis of such issues may not thereafter be maintained by the Office.

(c) If a final decision in an *inter partes* reexamination proceeding instituted by a third-party requester is favorable to patentability of any original, proposed amended, or new claims of the patent, then neither that party nor its privies may thereafter request *inter partes* reexamination of any such patent claims on the basis of issues which that party, or its privies, raised or could have raised in such *inter partes* reexamination proceeding.

§ 1.913 Persons eligible to file request for *inter partes* reexamination.

Except as provided for in § 1.907, any person other than the patent owner or its privies may, at any time during the period of enforceability of a patent which issued from an original application filed in the United States on or after November 29, 1999, file a request for *inter partes* reexamination by the Office of any claim of the patent on the basis of prior art patents or printed publications cited under § 1.501.

§ 1.915 Content of request for *inter partes* reexamination.

(a) The request must be accompanied by the fee for requesting *inter partes* reexamination set in § 1.20(c)(2).

(b) A request for *inter partes* reexamination must include the following parts:

(1) An identification of the patent by patent number and every claim for which reexamination is requested.

(2) A citation of the patents and printed publications which are presented to provide a substantial new question of patentability.

(3) A statement pointing out each substantial new question of patentability based on the cited patents and printed publications, and a detailed explanation of the pertinency and manner of applying the patents and printed publications to every claim for which reexamination is requested.

(4) A copy of every patent or printed publication relied upon or referred to in paragraphs (b)(1)–(3) of this section, accompanied by an English language translation of all the necessary and pertinent parts of any non-English language document.

(5) A copy of the entire patent including the front face, drawings, and specification/claims (in double column format) for which reexamination is requested, and a copy of any disclaimer, certificate of correction, or reexamination certificate issued in the patent. All copies must have each page plainly written on only one side of a sheet of paper.

(6) A certification by the third-party requester that a copy of the request has been served in its entirety on the patent owner at the address as provided for in § 1.33(c). The name and address of the party served must be indicated. If service was not possible, a duplicate copy of the request must be supplied to the Office.

(7) A certification by the third-party requester that the estoppel provisions of § 1.907 do not prohibit the *inter partes* reexamination.

(8) A statement identifying the real party in interest to the extent necessary for a subsequent person filing an *inter partes* reexamination request to determine whether that person is a privy.

(c) If an *inter partes* request is filed by an attorney or agent identifying another party on whose behalf the request is being filed, the attorney or agent must

have a power of attorney from that party or be acting in a representative capacity pursuant to § 1.34(a).

(d) If the *inter partes* request does not meet all the requirements of § 1.915(b), the person identified as requesting *inter partes* reexamination may be so notified and given an opportunity to complete the formal requirements of the request within a specified time. Failure to comply with the notice may result in the *inter partes* reexamination proceeding being vacated.

§ 1.919 Filing date of request for *inter partes* reexamination.

(a) The filing date of a request for *inter partes* reexamination is the date on which the request satisfies the fee requirement of § 1.915(a).

(b) If the request is not granted a filing date, the request will be placed in the patent file as a citation of prior art if it complies with the requirements of § 1.501.

§ 1.923 Examiner's determination on the request for *inter partes* reexamination.

Within three months following the filing date of a request for *inter partes* reexamination under § 1.919, the examiner will consider the request and determine whether or not a substantial new question of patentability affecting any claim of the patent is raised by the request and the prior art citation. The examiner's determination will be based on the claims in effect at the time of the determination and will become a part of the official file of the patent and will be mailed to the patent owner at the address as provided for in § 1.33(c) and to the third-party requester. If the examiner determines that no substantial new question of patentability is present, the examiner shall refuse the request and shall not order *inter partes* reexamination.

§ 1.925 Partial refund if request for *inter partes* reexamination is not ordered.

Where *inter partes* reexamination is not ordered, a refund of a portion of the fee for requesting *inter partes* reexamination will be made to the requester in accordance with § 1.26(c).

§ 1.927 Petition to review refusal to order *inter partes* reexamination.

The third-party requester may seek review by a petition to the Director under § 1.181 within one month of the mailing date of the examiner's determination refusing to order *inter partes* reexamination. Any such petition must comply with § 1.181(b). If no petition is timely filed, or if the decision on petition affirms that no substantial new question of patentability has been raised, the determination shall be final and nonappealable.

Inter Partes Reexamination of Patents

§ 1.931 Order for *inter partes* reexamination.

(a) If a substantial new question of patentability is found, the determination will include an order for *inter partes* reexamination of the patent for resolution of the question.

(b) If the order for *inter partes* reexamination resulted from a petition pursuant to § 1.927, the *inter partes* reexamination will ordinarily be conducted by an examiner other than the examiner responsible for the initial determination under § 1.923.

Information Disclosure in *inter partes* Reexamination

§ 1.933 Patent owner duty of disclosure in *inter partes* reexamination proceedings.

(a) Each individual associated with the patent owner in an *inter partes* reexamination proceeding has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability in a reexamination proceeding as set forth in § 1.555(a) and (b). The duty to disclose all information known to be material to patentability in an *inter partes* reexamination proceeding is deemed to be satisfied by filing a paper in compliance with the requirements set forth in § 1.555(a) and (b).

(b) The responsibility for compliance with this section rests upon the individuals designated in paragraph (a) of this section, and no evaluation will be made by the Office in the reexamination proceeding as to compliance with this section. If questions of compliance with this section are discovered during a reexamination proceeding, they will be noted as unresolved questions in accordance with § 1.906(c).

Office Actions and Responses (Before the Examiner) in *inter partes* Reexamination

§ 1.935 Initial Office action usually accompanies order for *inter partes* reexamination.

The order for *inter partes* reexamination will usually be accompanied by the initial Office action on the merits of the reexamination.

§ 1.937 Conduct of *inter partes* reexamination.

(a) All *inter partes* reexamination proceedings, including any appeals to the Board of Patent Appeals and Interferences, will be conducted with special dispatch within the Office, unless the Director makes a determination that there is good cause for suspending the reexamination proceeding.

(b) The *inter partes* reexamination proceeding will be conducted in accordance with §§ 1.104 through 1.116, the sections governing the application examination process, and will result in the issuance of an *inter partes* reexamination certificate under § 1.997, except as otherwise provided.

(c) All communications between the Office and the parties to the *inter partes* reexamination which are directed to the merits of the proceeding must be in writing and filed with the Office for entry into the record of the proceeding.

§ 1.939 Unauthorized papers in *inter partes* reexamination.

(a) If an unauthorized paper is filed by any party at any time during the *inter partes* reexamination proceeding it will not be considered and may be returned.

(b) Unless otherwise authorized, no paper shall be filed prior to the initial Office action on the merits of the *inter partes* reexamination.

§ 1.941 Amendments by patent owner in *inter partes* reexamination.

Amendments by patent owner in *inter partes* reexamination proceedings are made by filing a paper in compliance with §§ 1.530(d) and 1.943.

§ 1.943 Requirements of responses, written comments, and briefs in *inter partes* reexamination.

(a) The form of responses, written comments, briefs, appendices, and other papers must be in accordance with the requirements of § 1.530(d)(5).

(b) Responses by the patent owner and written comments by the third-party requester shall not exceed 50 pages in length, excluding amendments, appendices of claims, and reference materials such as prior art references.

(c) Appellant briefs by the patent owner and the third-party requester shall not exceed 30 pages or 14,000 words in length, excluding appendices of claims and reference materials such as prior art references. All other briefs by any party shall not exceed 15 pages in length or 7,000 words. If the page limit for any brief is exceeded, a certificate is required stating the number of words contained in the brief.

§ 1.945 Response to Office action by patent owner in *inter partes* reexamination.

The patent owner will be given at least 30 days to file a response to any Office action on the merits of the *inter partes* reexamination.

§ 1.947 Comments by third-party requester to patent owner's response in *inter partes* reexamination.

Each time the patent owner files a response to an Office action on the merits, a third-party requester may once file written comments within a period of 30 days from the date of service of the patent owner's response. These comments shall be limited to issues raised by the Office action or the patent owner's response. The time for submitting comments by the third-party requester may not be extended.

§ 1.948 Limitations on submission of prior art by third-party requester following the order for *inter partes* reexamination.

After the *inter partes* reexamination order, the third-party requester may only cite additional prior art as defined under § 1.501 if it is filed as part of a comments submission under §§ 1.947, 1.951(a) and 1.951(d), and is limited to prior art:

(a) Which is necessary to rebut a finding of fact by the examiner;

(b) Which is necessary to rebut a response of the patent owner; or,

(c) Which became known or available to the third-party requester after the filing of the request for *inter partes* reexamination proceeding where a discussion of the pertinency of each reference to the patentability of at least one claim is included. Prior art submitted under this paragraph (c) must be accompanied by a statement as to when the prior art first became known or available to the third-party requester.

§ 1.949 Examiner's Office action closing prosecution in *inter partes* reexamination.

Upon consideration of the issues a second or subsequent time, or upon allowance of all claims, the examiner shall issue an Office action treating all claims present in the *inter partes* reexamination, which may be an action closing prosecution. The Office action shall set forth all rejections and determinations not to make a proposed rejection, and the grounds therefor. An Office action will not usually close prosecution if it includes a new ground of rejection which was not previously addressed by the patent owner, unless the new ground was necessitated by an amendment.

§ 1.951 Options after Office action closing prosecution in *inter partes* reexamination.

(a) After an action closing prosecution in an *inter partes* reexamination, a third-party requester may once file comments limited to the issues raised in the Office action closing prosecution. Such comments must be filed within the time set for response in the Office action closing prosecution.

(b) When a third-party requester does file comments, the patent owner may once file comments responsive to the third-party requester's comments within 30 days from the date of service of the third-party requester's comments on the patent owner.

(c) After an Office action closing prosecution in an *inter partes* reexamination, the patent owner may once file comments limited to the issues raised in the Office action closing prosecution. The comments can include a proposed amendment to the claims, which amendment will be subject to the criteria of § 1.116 as to whether or not it shall be admitted. The comments must be filed within the time set for response in the Office action closing prosecution.

(d) When the patent owner does file comments, a third-party requester may once file comments responsive to the patent owner's comments within 30 days from the date of service of patent owner's comments on the third-party requester.

§ 1.953 Examiner's Right of Appeal Notice in *inter partes* reexamination.

(a) Upon considering the comments of the patent owner and the third-party requester subsequent to the Office action closing prosecution in an *inter partes* reexamination, or upon expiration of the time for submitting such comments, the examiner shall issue a Right of Appeal Notice, unless the examiner reopens prosecution and issues another Office action on the merits.

(b) Expedited Right of Appeal Notice: At any time after the patent owner's response to the initial Office action on the merits in an *inter partes* reexamination, the patent owner and all third-party requesters may stipulate that the issues are appropriate for a final action, which would include a final rejection and/or a final determination favorable to patentability, and may request the issuance of a Right of Appeal Notice. The request must have the concurrence of the patent owner and all third-party requesters present in the proceeding and must identify all the appealable issues, and the positions of the patent owner and all third-party requesters on those issues. If the examiner determines that no other issues are present or should be raised, a Right of Appeal Notice limited to the identified issues shall be issued. Any appeal by the parties shall be conducted in accordance with §§ 1.959–1.983.

(c) The Right of Appeal Notice shall be a final action, which includes a final rejection setting forth each ground of rejection and/or final decision favorable to patentability including each determination not to make a proposed rejection, an identification of the status of each claim, and the reasons for decisions favorable to patentability and/or the grounds of rejection for each claim. No amendment can be made in response to the Right of Appeal Notice. The Right of Appeal Notice shall set a one-month time period for either party to appeal. If no notice of appeal is filed, the *inter partes* reexamination proceeding will be terminated, and the Director will proceed to issue a certificate under § 1.997 in accordance with the Right of Appeal Notice.

Interviews Prohibited in *Inter Partes* Reexamination

§ 1.955 Interviews prohibited in *inter partes* reexamination proceedings.

There will not be any interviews in an *inter partes* reexamination proceeding which discuss the merits of the proceeding.

EXTENSIONS OF TIME, TERMINATION OF PROCEEDINGS, AND PETITIONS TO REVIVE IN *inter partes* REEXAMINATION

§ 1.956 Patent owner extensions of time in *inter partes* reexamination.

The time for taking any action by a patent owner in an *inter partes* reexamination proceeding will be extended only for sufficient cause and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the patent owner is due, but in no case will the mere filing of a request effect any extension. See § 1.304(a) for extensions of time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit.

§ 1.957 Failure to file a timely, appropriate or complete response or comment in *inter partes* reexamination.

(a) If the third-party requester files an untimely or inappropriate comment, notice of appeal or brief in an *inter partes* reexamination, the paper will be refused consideration.

(b) If no claims are found patentable, and the patent owner fails to file a timely and appropriate response in an *inter partes* reexamination proceeding, the reexamination proceeding will be terminated and the Director will proceed to issue a certificate under § 1.997 in accordance with the last action of the Office.

(c) If claims are found patentable, and the patent owner fails to file a timely and appropriate response to any Office action in an *inter partes* reexamination proceeding, further prosecution will be limited to the claims found patentable at

the time of the failure to respond, and to any claims added thereafter which do not expand the scope of the claims which were found patentable at that time.

(d) When action by the patent owner is a *bona fide* attempt to respond and to advance the prosecution, and is substantially a complete response to the Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, an opportunity to explain and supply the omission may be given.

§ 1.958 Petition to revive terminated *inter partes* reexamination or claims terminated for lack of patent owner response.

(a) If a response by the patent owner is not timely filed in the Office, the delay in filing such response may be excused if it is shown to the satisfaction of the Director that the delay was unavoidable. A petition to accept an unavoidably delayed response must be filed in compliance with § 1.137(a).

(b) Any response by the patent owner not timely filed in the Office may nevertheless be accepted if the delay was unintentional. A petition to accept an unintentionally delayed response must be filed in compliance with § 1.137(b).

Appeal to the Board of Patent Appeals and Interferences in *Inter Partes* Reexamination

§ 1.959 Notice of appeal and cross appeal to Board of Patent Appeals and Interferences in *inter partes* reexamination.

(a)(1) Upon the issuance of a Right of Appeal Notice under § 1.953, the patent owner involved in an *inter partes* reexamination proceeding may appeal to the Board of Patent Appeals and Interferences with respect to the final rejection of any claim of the patent by filing a notice of appeal within the time provided in the Right of Appeal Notice and paying the fee set forth in § 1.17(b).

(2) Upon the issuance of a Right of Appeal Notice under § 1.953, a third-party requester involved in an *inter partes* reexamination proceeding may appeal to the Board of Patent Appeals and Interferences with respect to any final decision favorable to the patentability, including any final determination not to make a proposed rejection, of any original or proposed amended or new claim of the patent by filing a notice of appeal within the time provided in the Right of Appeal Notice and paying the fee set forth in § 1.17(b).

(b)(1) Within fourteen days of service of a third-party requester's notice of appeal under paragraph (a)(2) of this section, and upon payment of the fee set forth in § 1.17(b), a patent owner who has not filed a notice of appeal may file a notice of cross appeal with respect to the final rejection of any claim of the patent.

(2) Within fourteen days of service of a patent owner's notice of appeal under paragraph (a)(1) of this section, and upon payment of the fee set forth in § 1.17(b), a third-party requester who has not filed a notice of appeal may file a notice of cross appeal with respect to any final decision favorable to the patentability, including any final determination not to make a proposed rejection, of any original or proposed amended or new claim of the patent.

(c) The notice of appeal or cross appeal in an *inter partes* reexamination proceeding must identify the claim(s) with respect to which an appeal is being taken, and must be signed by the patent owner or third-party requester, or their duly authorized attorney or agent.

(d) An appeal or cross appeal when taken must be taken from all the rejections of the claims under rejection in a Right of Appeal Notice which the patent owner proposes to contest, or from all the determinations favorable to patentability, including any final determination not to make a proposed rejection, in a Right of Appeal Notice which a third-party requester proposes to contest. Questions relating to matters not affecting the merits of the invention may be required to be settled before an appeal is decided.

(e) The times for filing a notice of appeal or cross-appeal may not be extended.

§ 1.961 Jurisdiction over appeal in *inter partes* reexamination.

Jurisdiction over the *inter partes* reexamination proceeding passes to the Board of Patent Appeals and Interferences upon transmittal of the file, including all briefs and examiner's answers, to the Board of Patent Appeals and Interferences. Prior to the entry of a decision on the appeal, the Director may sua sponte order the *inter partes* reexamination proceeding remanded to the examiner, for action consistent with the Director's order.

§ 1.962 Appellant and respondent in *inter partes* reexamination defined.

For the purposes of *inter partes* reexamination, appellant is any party, whether the patent owner or a third-party requester, filing a notice of appeal or cross appeal. If more than one party appeals or cross appeals, each appealing or cross appealing party is an appellant with respect to the claims to which his or her appeal or cross appeal is directed. A respondent is any third-party requester responding under § 1.967 to the appellant brief of the patent owner, or the patent owner responding under § 1.967 to the appellant brief of any third-party requester. No third-party requester may be a respondent to the appellant brief of any other third-party requester.

§ 1.963 Time for filing briefs in *inter partes* reexamination.

(a) An appellant brief in an *inter partes* reexamination must be filed no later than two months from the latest of the filing date of the last-filed notice of appeal or cross appeal or if any party to the *inter partes* reexamination is entitled to file an appeal or cross appeal but fails to timely do so, the expiration of time for filing (by the last party entitled to do so) such notice of appeal or cross appeal. The time for filing an appellant brief may not be extended.

(b) Once an appellant brief has been properly filed, any respondent brief must be filed within one month from the date of service of the appellant brief. The time for filing a respondent brief may not be extended.

(c) The examiner will consider both the appellant and respondent briefs and may prepare an examiner's answer under § 1.969.

(d) Any appellant may file a rebuttal brief under § 1.971 within one month of the date of the examiner's answer. The time for filing a rebuttal brief may not be extended.

(e) No further submission will be considered and any such submission will be treated in accordance with § 1.939.

§ 1.965 Appellant brief in *inter partes* reexamination.

(a) Appellant(s) may once, within time limits for filing set forth in § 1.963, file a brief in triplicate and serve the brief on all other parties to the *inter partes* reexamination proceeding in accordance with § 1.903. The brief must be signed by the appellant, or the appellant's duly authorized attorney or agent, and must be accompanied by the requisite fee set forth in § 1.17(c). The brief must set forth the authorities and arguments on which appellant will rely to maintain the appeal. Any arguments or authorities not included in the brief will be refused consideration by the Board of Patent Appeals and Interferences, unless good cause is shown.

(b) On failure of a party to file an appellant brief, accompanied by the requisite fee, within the time allowed, that party's appeal shall stand dismissed.

(c) The appellant brief shall contain the following items under appropriate

headings and in the order indicated below, unless the brief is filed by a party who is not represented by a registered practitioner. The brief may include an appendix containing only those portions of the record on which reliance has been made.

(1) *Real Party in Interest.* A statement identifying the real party in interest.

(2) *Related Appeals and Interferences.* A statement identifying by number and filing date all other appeals or interferences known to the appellant, the appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the decision of the Board of Patent Appeals and Interferences in the pending appeal.

(3) *Status of Claims.* A statement of the status of all the claims, pending or canceled. If the appellant is the patent owner, the appellant must also identify the rejected claims whose rejection is being appealed. If the appellant is a third-party requester, the appellant must identify the claims that the examiner has made a determination favorable to patentability, which determination is being appealed.

(4) *Status of Amendments.* A statement of the status of any amendment filed subsequent to the close of prosecution.

(5) *Summary of Invention.* A concise explanation of the invention or subject matter defined in the claims involved in the appeal, which shall refer to the specification by column and line number, and to the drawing(s), if any, by reference characters.

(6) *Issues.* A concise statement of the issues presented for review. No new ground of rejection can be proposed by a third-party requester appellant.

(7) *Grouping of Claims.* If the appellant is the patent owner, for each ground of rejection in the right of appeal notice which appellant contests and which applies to a group of two or more claims, the Board of Patent Appeals and Interferences shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and, in the argument under paragraph (c)(8) of this section, appellant explains why the claims of this group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable.

(8) *Argument.* The contentions of appellant with respect to each of the issues presented for review in paragraph (c)(6) of this section, and the bases therefor, with citations of the authorities, statutes, and parts of the record relied on. Each issue should be treated under a separate, numbered heading.

(i) For each rejection under 35 U.S.C. 112, first paragraph, or for each determination favorable to patentability including a determination not to make a proposed rejection under 35 U.S.C. 112, first paragraph, which appellant contests, the argument shall specify the errors in the rejection or the determination and how the first paragraph of 35 U.S.C. 112 is complied with, if the appellant is the patent owner, or is not complied with, if the appellant is a third-party requester, including, as appropriate, how the specification and drawing(s), if any,

(A) Describe, if the appellant is the patent owner, or fail to describe, if the appellant is a third-party requester, the subject matter defined by each of the appealed claims, and

(B) Enable, if the appellant is the patent owner, or fail to enable, if the appellant is a third-party requester, any person skilled in the art to make and use the subject matter defined by each of the appealed claims, and

(ii) For each rejection under 35 U.S.C. 112, second paragraph, or for each determination favorable to patentability including a determination not to make a proposed rejection under 35 U.S.C. 112, second paragraph, which appellant contests, the argument shall specify the errors in the rejection, if the appellant is the patent owner, or the determination, if the appellant is a third-party requester, and how the claims do, if the appellant is the patent owner, or do not, if the appellant is a third-party requester, particularly point out and distinctly claim the subject matter which the inventors regard as the invention.

(iii) For each rejection under 35 U.S.C. 102 or for each determination favorable to patentability including a determination not to make a proposed rejection under 35 U.S.C. 102 which appellant contests, the argument shall specify the errors in the rejection, if the appellant is the patent owner, or determination, if the appellant is a third-party requester, and why the appealed claims are, if the appellant is the patent owner, or are not, if the appellant is a third-party requester, patentable under 35 U.S.C. 102, including any specific limitations in the appealed claims which are or are not described in the prior art.

(iv) For each rejection under 35 U.S.C. 103 or for each determination favorable to patentability including a determination not to make a proposed rejection under 35 U.S.C. 103 which appellant contests, the argument shall specify the errors in the rejection, if the appellant is the patent owner, or determination, if the appellant is a third-party requester, and, if appropriate, the specific limitations in the appealed claims which are or are not described in the prior art, and shall explain how such limitations render the claimed subject matter obvious, if the appellant is a third-party requester, or unobvious, if the appellant is the patent owner, over the prior art. If the rejection or determination is based upon a combination of references, the argument shall explain why the references, taken as a whole, do or do not suggest the claimed subject matter, and shall include, as may be appropriate, an explanation of why features disclosed in one reference may or may not properly be combined with features disclosed in another reference. A general argument that all the limitations are or are not described in a single reference does not satisfy the requirements of this paragraph.

(v) For any rejection other than those referred to in paragraphs (c)(8)(i) to (iv) of this section or for each determination favorable to patentability including any determination not to make a proposed rejection other than those referred to in paragraphs (c)(8)(i) to (iv) of this section which appellant contests, the argument shall specify the errors in the rejection, if the appellant is the patent owner, or determination, if the appellant is a third-party requester, and the specific limitations in the appealed claims, if appropriate, or other reasons, which cause the rejection or determination to be in error.

(9) *Appendix.* An appendix containing a copy of the claims appealed by the appellant.

(10) *Certificate of Service.* A certification that a copy of the brief has been served in its entirety on all other parties to the reexamination proceeding. The names and addresses of the parties served must be indicated.

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and provided with a non-extendable period of one month within which to file an amended brief. If the appellant does not file an amended brief during the one-month period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, that appellant's appeal will stand dismissed.

§ 1.967 Respondent brief in *inter partes* reexamination.

(a) Respondent(s) in an *inter partes* reexamination appeal may once, within time limit for filing set forth in § 1.963, file a respondent brief in triplicate and serve the brief on all parties in accordance with § 1.903. The brief must be signed by the party, or the party's duly authorized attorney or agent, and must be accompanied by the requisite fee set forth in § 1.17(c). The brief must set forth the authorities and arguments on which respondent will rely. Any arguments or authorities not included in the brief will be refused consideration by the Board of Patent Appeals and Interferences, unless good cause is shown. The respondent brief shall be limited to issues raised in the appellant brief to which the respondent brief is directed. A third-party respondent brief may not address any brief of any other third-party.

(b) The respondent brief shall contain the following items under appropriate headings and in the order here indicated, and may include an appendix containing only those portions of the record on which reliance has been made.

(1) *Real Party in Interest.* A statement identifying the real party in interest.

(2) *Related Appeals and Interferences.* A statement identifying by number and filing date all other appeals or interferences known to the respondent, the respondent's legal representative, or assignee (if any) which will directly affect or be directly affected by or have a bearing on the decision of the Board of Patent Appeals and Interferences in the pending appeal.

(3) *Status of claims.* A statement accepting or disputing appellant's statement of the status of claims. If appellant's statement of the status of claims is disputed, the errors in appellant's statement must be specified with particularity.

(4) *Status of amendments.* A statement accepting or disputing appellant's statement of the status of amendments. If appellant's statement of the status of amendments is disputed, the errors in appellant's statement must be specified with particularity.

(5) *Summary of invention.* A statement accepting or disputing appellant's summary of the invention or subject matter defined in the claims involved in the appeal. If appellant's summary of the invention or subject matter defined in the claims involved in the appeal is disputed, the errors in appellant's summary must be specified with particularity.

(6) *Issues.* A statement accepting or disputing appellant's statement of the issues presented for review. If appellant's statement of the issues presented for review is disputed, the errors in appellant's statement must be specified with particularity. A counter statement of the issues for review may be made. No new ground of rejection can be proposed by a third-party requester respondent.

(7) *Argument.* A statement accepting or disputing the contentions of the appellant with each of the issues. If a contention of the appellant is disputed, the errors in appellant's argument must be specified with particularity, stating the basis therefor, with citations of the authorities, statutes and parts of the record relied on. Each issue should be treated under a separate heading. An argument may be made with each of the issues stated in the counter statement of the issues, with each counter-stated issue being treated under a separate heading. The provisions of §§ 1.965(c)(8)(iii) and (iv) shall apply to any argument raised under 35 U.S.C. 102 or 103.

(8) *Certificate of Service.* A certification that a copy of the respondent brief has been served in its entirety on all other parties to the reexamination proceeding. The names and addresses of the parties served must be indicated.

(c) If a respondent brief is filed which does not comply with all the requirements of paragraph (b) of this section, respondent will be notified of the reasons for non-compliance and provided with a non-extendable period of one month within which to file an amended brief. If the respondent does not file an amended brief during the one-month period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the respondent brief will not be considered.

§ 1.969 Examiner's answer in *inter partes* reexamination.

(a) The primary examiner in an *inter partes* reexamination appeal may, within such time as directed by the Director, furnish a written statement in answer to the patent owner's and/or third-party requester's appellant brief or respondent brief including, as may be necessary, such explanation of the invention claimed and of the references, the grounds of rejection, and the reasons for patentability including grounds for not adopting a proposed rejection. A copy of the answer shall be supplied to all parties to the reexamination proceeding. If the primary examiner finds that the appeal is not regular in form or does not relate to an appealable action, he or she shall so state.

(b) An examiner's answer may not include a new ground of rejection.

(c) Where a third-party requester is a party to the appeal, an examiner's answer may not include a new determination not to make a proposed rejection of a claim.

§ 1.971 Rebuttal brief in *inter partes* reexamination.

Within one month of the examiner's answer in an *inter partes* reexamination appeal, any appellant may once file a rebuttal brief in triplicate. The rebuttal brief of the patent owner may be directed to the examiner's answer and/or any respondent brief. The rebuttal brief of any third-party requester may be directed to the examiner's answer and/or the respondent brief of the patent owner. The rebuttal brief of a third-party requester may not be directed to the respondent brief of any other third-party requester. No new ground of rejection can be proposed by a third-party requester appellant. The time for filing a rebuttal brief may not be extended. The rebuttal brief must include a certification that a copy of the rebuttal brief has been served in its entirety on all other parties to the reexamination proceeding. The names and addresses of the parties served must be indicated.

§ 1.973 Oral hearing in *inter partes* reexamination.

(a) An oral hearing in an *inter partes* reexamination appeal should be requested only in those circumstances in which an appellant or a respondent considers such a hearing necessary or desirable for a proper presentation of the appeal. An appeal decided without an oral hearing will receive the same consideration by the Board of Patent Appeals and Interferences as an appeal decided after oral hearing.

(b) If an appellant or a respondent desires an oral hearing, he or she must file a written request for such hearing accompanied by the fee set forth in § 1.17(d) within two months after the date of the examiner's answer. The time for requesting an oral hearing may not be extended.

(c) An oral argument may be presented at oral hearing by, or on behalf of, the primary examiner if considered desirable by either the primary examiner or the Board of Patent Appeals and Interferences.

(d) If an appellant or a respondent has requested an oral hearing and has submitted the fee set forth in § 1.17(d), a hearing date will be set, and notice given to all parties to the reexamination proceeding, and to the primary examiner. The notice shall set a period within which all requests for oral

hearing shall be submitted by any other party to the appeal desiring to participate in the oral hearing, which period will not be extended. A hearing will be held as stated in the notice, and oral argument will be limited to thirty minutes for each appellant and respondent who has requested an oral hearing, and twenty minutes for the primary examiner unless otherwise ordered before the hearing begins. No appellant or respondent will be permitted to participate in an oral hearing unless he or she has requested an oral hearing and submitted the fee set forth in § 1.17(d).

(e) If no request and fee for oral hearing have been timely filed by an appellant or a respondent, the appeal will be assigned for consideration and decision on the written record.

§ 1.975 Affidavits or declarations after appeal in *inter partes* reexamination.

Affidavits, declarations, or exhibits submitted after the *inter partes* reexamination has been appealed will not be admitted without a showing of good and sufficient reasons why they were not earlier presented.

§ 1.977 Decision by the Board of Patent Appeals and Interferences; remand to examiner in *inter partes* reexamination.

(a) The Board of Patent Appeals and Interferences, in its decision, may affirm or reverse each decision of the examiner on all issues raised on each appealed claim, or remand the reexamination proceeding to the examiner for further consideration. The reversal of the examiner's determination not to make a rejection proposed by the third-party requester constitutes a decision adverse to the patentability of the claims which are subject to that proposed rejection which will be set forth in the decision of the Board of Patent Appeals and Interferences as a new ground of rejection under paragraph (b) of this section. The affirmance of the rejection of a claim on any of the grounds specified constitutes a general affirmance of the decision of the examiner on that claim, except as to any ground specifically reversed.

(b) Should the Board of Patent Appeals and Interferences have knowledge of any grounds not raised in the appeal for rejecting any pending claim, it may include in the decision a statement to that effect with its reasons for so holding, which statement shall constitute a new ground of rejection of the claim. A decision which includes a new ground of rejection shall not be considered final for purposes of judicial review. When the Board of Patent Appeals and Interferences makes a new ground of rejection, the patent owner, within one month from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal proceeding as to the rejected claim:

(1) The patent owner may submit an appropriate amendment of the claim so rejected or a showing of facts relating to the claim, or both. The reexamination proceeding will be remanded to the examiner for consideration. The statement of the Board of Patent Appeals and Interferences shall be binding upon the examiner unless an amendment or showing of facts not previously of record be made which, in the opinion of the examiner, overcomes the new ground of rejection.

(2) The patent owner may file a request for rehearing of the decision of the Board of Patent Appeals and Interferences under § 1.979(a).

(c) The Board of Patent Appeals and Interferences, in its decision, may include an explicit statement that a claim may be allowed in amended form. The decision shall not be considered a final decision for purposes of judicial review if the patent owner, within one month of the date of the decision, submits an appropriate amendment of the claim in conformity with such statement, in which event the reexamination proceeding will be remanded to the examiner. The statement shall be binding on the examiner in the absence of new references or new grounds of rejection.

(d) Where the patent owner has responded under paragraph (b)(1) or (c) of this section, any third-party requester, within one month of the date of service of the patent owner response, may once file comments on the response. Such written comments must be limited to the issues raised by the decision of the Board of Patent Appeals and Interferences and the patent owner's response. Any third-party requester that had not previously filed an appeal or cross appeal and is seeking under this subsection to file comments or a reply to the comments is subject to the appeal and brief fees under §§ 1.17(b) and (c), respectively, which must accompany the comments or reply.

(e) Following any response by the patent owner under paragraph (b)(1) or (c) of this section and any written comments from a third-party requester under paragraph (d) of this section, the reexamination proceeding will be remanded to the examiner. The examiner will consider any response under paragraph (b)(1) or (c) of this section and any written comments by a third-party requester under paragraph (d) of this section and issue a determination that the rejection should be maintained or has been overcome.

(f) Within one month of the examiner's determination pursuant to paragraph (e) of this section, the patent owner or any third-party requester may once submit comments in response to the examiner's determination. Within one month of the date of service of comments in response to the examiner's determination, any party may file a reply to the comments. Any third-party requester that had not previously filed an appeal or cross appeal and is seeking under this subsection to file comments or a reply to the comments is subject to the appeal and brief fees under §§ 1.17(b) and (c), respectively, which must accompany the comments or reply.

(g) After submission of any comments and any reply pursuant to paragraph (f) of this section, or after time has expired therefor, the reexamination proceeding will be returned to the Board of Patent Appeals and Interferences which shall reconsider the matter and issue a new decision. The new decision is deemed to incorporate the earlier decision, except for those portions specifically withdrawn.

(h) The time periods set forth in paragraphs (b) and (c) of this section are subject to the extension of time provisions of § 1.956. The time periods set forth in subsections (d) and (f) may not be extended.

§ 1.979 Action following decision by the Board of Patent Appeals and Interferences or dismissal of appeal in *inter partes* reexamination.

(a) Parties to the appeal may file a request for rehearing of the decision within one month of the date of:

(1) The original decision of the Board of Patent Appeals and Interferences under § 1.977(a),

(2) The original § 1.977(b) decision under the provisions of § 1.977(b)(2),

(3) The expiration of the time for the patent owner to take action under § 1.977(b)(2) or (c), or

(4) The new decision of the Board of Patent Appeals and Interferences under § 1.977(g).

(b) Within one month of the date of service of any request for rehearing under paragraph (a) of this section, or any further request for rehearing under paragraph (c) of this section, any party to the appeal may once file comments in opposition to the request for rehearing or the further request for rehearing. The comments in opposition must be limited to the issues raised in the request for rehearing or the further request for rehearing.

(c) If a party to an appeal files a request for rehearing under paragraph

(a) of this section, or a further request for rehearing under this section, the Board of Patent Appeals and Interferences will issue a decision on rehearing which decision is deemed to incorporate the earlier decision, except for those portions specifically withdrawn. If the decision on rehearing becomes, in effect, a new decision, and the Board of Patent Appeals and Interferences so states, then any party to the appeal may, within one month of the new decision, once file a further request for rehearing of the new decision under this subsection.

(d) Any request for rehearing shall state with particularity the points believed to have been misapprehended or overlooked in rendering the decision and also state all other grounds upon which rehearing is sought.

(e) The patent owner may not appeal to the U.S. Court of Appeals for the Federal Circuit under § 1.983 until all parties' rights to request rehearing have been exhausted, at which time the decision of the Board of Patent Appeals and Interferences is final and appealable by the patent owner.

(f) An appeal by a third-party requester is considered terminated by the dismissal of the third-party requester's appeal, the failure of the third-party requester to timely request rehearing under §§ 1.979(a) or (c), or a final decision under § 1.979(e). The date of such termination is the date on which the appeal is dismissed, the date on which the time for rehearing expires, or the decision of the Board of Patent Appeals and Interferences is final. An appeal by the patent owner is considered terminated by the dismissal of the patent owner's appeal, the failure of the patent owner to timely request rehearing under §§ 1.979(a) or (c), or the failure of the patent owner to timely file an appeal to the U.S. Court of Appeals for the Federal Circuit under § 1.983. The date of such termination is the date on which the appeal is dismissed, the date on which the time for rehearing expires, or the date on which the time for the patent owner's appeal to the U.S. Court of Appeals for the Federal Circuit expires. If an appeal to the U.S. Court of Appeals for the Federal Circuit has been filed, the patent owner's appeal is considered terminated when the mandate is received by the Office. Upon termination of an appeal, if no other appeal is present, the reexamination proceeding will be terminated and the Director will issue a certificate under § 1.997.

(g) The times for requesting rehearing under paragraph (a) of this section, for requesting further rehearing under paragraph (c) of this section, and for submitting comments under paragraph (b) of this section may not be extended.

§ 1.981 Reopening after decision by the Board of Patent Appeals and Interferences in *inter partes* reexamination.

Cases which have been decided by the Board of Patent Appeals and Interferences will not be reopened or reconsidered by the primary examiner except under the provisions of § 1.977 without the written authority of the Director, and then only for the consideration of matters not already adjudicated, sufficient cause being shown.

Patent Owner Appeal to the United States Court of Appeals for the Federal Circuit in *inter partes* Reexamination

§ 1.983 Patent owner appeal to the United States Court of Appeals for the Federal Circuit in *inter partes* reexamination.

The patent owner in a reexamination proceeding who is dissatisfied with the decision of the Board of Patent Appeals and Interferences may, subject to § 1.979(e), appeal to the U.S. Court of Appeals for the Federal Circuit. The appellant must take the following steps in such an appeal:

(1) In the U. S. Patent and Trademark Office file a timely written notice of appeal directed to the Director in accordance with §§ 1.302 and 1.304; and

(2) In the Court, file a copy of the notice of appeal and pay the fee, as provided for in the rules of the Court.

Concurrent Proceedings Involving Same Patent in *inter partes* Reexamination

§ 1.985 Notification of prior or concurrent proceedings in *inter partes* reexamination.

(a) In any *inter partes* reexamination proceeding, the patent owner shall call the attention of the Office to any prior or concurrent proceedings in which the patent is or was involved, including but not limited to interference, reissue, reexamination, or litigation and the results of such proceedings.

(b) Notwithstanding any provision of the rules, any person at any time may file a paper in an *inter partes* reexamination proceeding notifying the Office of a prior or concurrent proceedings in which the same patent is or was involved, including but not limited to interference, reissue, reexamination, or litigation and the results of such proceedings. Such paper must be limited to merely providing notice of the other proceeding without discussion of issues of the current *inter partes* reexamination proceeding. Any paper not so limited will be returned to the sender.

§ 1.987 Suspension of *inter partes* reexamination proceeding due to litigation.

If a patent in the process of *inter partes* reexamination is or becomes involved in litigation, the Director shall determine whether or not to suspend the *inter partes* reexamination proceeding.

§ 1.989 Merger of concurrent reexamination proceedings.

(a) If any reexamination is ordered while a prior *inter partes* reexamination proceeding is pending for the same patent, a decision may be made to merge the two proceedings or to suspend one of the two proceedings. Where merger is ordered, the merged examination will normally result in the issuance of a single reexamination certificate under § 1.997.

(b) An *inter partes* reexamination proceeding filed under § 1.913 which is merged with an *ex parte* reexamination proceeding filed under § 1.510 will result in the merged proceeding being governed by §§ 1.902—1.997, except that the rights of any third-party requester of the *ex parte* reexamination shall be governed by §§ 1.510–1.560.

§ 1.991 Merger of concurrent reissue application and *inter partes* reexamination proceeding.

If a reissue application and an *inter partes* reexamination proceeding on which an order pursuant to § 1.931 has been mailed are pending concurrently on a patent, a decision may be made to merge the two proceedings or to suspend one of the two proceedings. Where merger of a reissue application and an *inter partes* reexamination proceeding is ordered, the merged proceeding will be conducted in accordance with §§ 1.171 through 1.179 and the patent owner will be required to place and maintain the same claims in the reissue application and the *inter partes* reexamination proceeding during the pendency of the merged proceeding. In a merged proceeding the third-party requester may participate to the extent provided under §§ 1.902–1.997, except such participation shall be limited to issues within the scope of *inter partes* reexamination. The examiner's actions and any responses by the patent owner or third-party requester in a merged proceeding will apply to both the reissue application and the *inter partes* reexamination proceeding and be physically entered into both files. Any *inter partes* reexamination proceeding merged with a reissue application shall be terminated by the grant of the reissued patent.

§ 1.993 Suspension of concurrent interference and *inter partes* reexamination proceeding.

If a patent in the process of *inter partes* reexamination is or becomes involved in an interference, the Director may suspend the *inter partes* reexamination or the interference. The Director will not consider a request to suspend an interference unless a motion under § 1.635 to suspend the interference has been presented to, and denied by, an administrative patent judge and the request is filed within ten (10) days of a decision by an administrative patent judge denying the motion for suspension or such other time as the administrative patent judge may set.

§ 1.995 Third-party requester's participation rights preserved in merged proceeding.

When a third-party requester is involved in one or more proceedings including an *inter partes* reexamination proceeding, the merger of such proceedings will be accomplished so as to preserve the third-party requester's right to participate to the extent specifically provided for in these regulations. In merged proceedings involving different requesters, any paper filed by one party in the merged proceeding shall be served on all other parties of the merged proceeding.

Reexamination Certificate in *Inter partes* Reexamination

§ 1.997 Issuance of *inter partes* reexamination certificate.

(a) Upon the conclusion of an *inter partes* reexamination proceeding, the Director will issue a certificate in accordance with 35 U.S.C. 316 setting forth the results of the *inter partes* reexamination proceeding and the content of the patent following the *inter partes* reexamination proceeding.

(b) A certificate will be issued in each patent in which an *inter partes* reexamination proceeding has been ordered under § 1.931. Any statutory disclaimer filed by the patent owner will be made part of the certificate.

(c) The certificate will be sent to the patent owner at the address as provided for in § 1.33(c). A copy of the certificate will also be sent to the third-party requester of the *inter partes* reexamination proceeding.

(d) If a certificate has been issued which cancels all of the claims of the patent, no further Office proceedings will be conducted with regard to that patent or any reissue applications or any reexamination requests relating thereto.

(e) If the *inter partes* reexamination proceeding is terminated by the grant of a reissued patent as provided in § 1.991, the reissued patent will constitute the reexamination certificate required by this section and 35 U.S.C. 316.

(f) A notice of the issuance of each certificate under this section will be published in the *Official Gazette*.

Dated: March 30, 2000.

Q. Todd Dickinson,

Under Secretary of Commerce for Intellectual Property and Director of the United States, Patent and Trademark Office.

[FR Doc. 00–8284 Filed 4–5–00; 8:45 am]

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Thursday,
April 6, 2000

Part III

Department of Education

Office of Elementary and Secondary Education; Safe and Drug-Free Schools and Communities National Programs; Combined Notice Inviting Applications for New Awards for Fiscal Year 2000

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.184H, 84.184K, 84.184M, 84.184N]

Office of Elementary and Secondary Education; Safe and Drug-Free Schools and Communities National Programs; Combined Notice Inviting Applications for New Awards for Fiscal Year 2000

SUMMARY: The Secretary invites applications for new awards for fiscal year (FY) 2000 under four direct grant competitions supported by Safe and Drug-Free Schools and Communities Act (SDFSCA) National Programs.

PURPOSE OF PROGRAMS: The National Programs portion of the SDFSCA supports the development of innovative programs that (1) demonstrate effective new methods of ensuring safe and drug-free schools, colleges, and communities, and (2) provide models or proven effective practices that will assist schools and communities around the Nation to improve their programs funded under the State Grants portion of the SDFSCA.

APPLICATIONS AVAILABLE: April 6, 2000.

Applicable Regulations

The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86 (note: The regulations in 34 CFR part 86 apply to institutions of higher education only), 97, 98, and 99; and (b) the notices of final priorities, definitions, eligible applicants, and selection criteria, as published elsewhere in this issue of the **Federal Register** apply to these competitions.

For Applications or Information Contact: Safe and Drug-Free Schools Program, 400 Maryland Avenue, SW, 3E–316, Washington, DC 20202–6123. Telephone: (202) 260–3954. By facsimile (202) 260–7767. Internet: *http://www.ed.gov/offices/OESE/SDFS.* If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at (800) 877–8339. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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http://ocfo.ed.gov/fedreg.htm

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Program Authority: 20 U.S.C. 7131.

Dated: March 31, 2000.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

CFDA No. and name	Range of awards	Estimated average size of awards	Estimated number of awards	Estimated available funds	Project period	Deadline for receipt of applications	Deadline for intergovernmental review
84.184H Grant Competition to Prevent High-Risk Drinking and Violent Behavior Among College Students.	$125,000 to $225,000.	$175,000	8–12	$2,000,000	27 months	May 12, 2000	June 12, 2000.
84.184K Middle School Drug Prevention and School Safety Program Coordinators Grant Competition.	$250,000 to $400,000.	325,000	140	45,000,000	Up to 36 months.	May 12, 2000	June 12, 2000.
84.184M Effective Alternative Strategies: Grant Competition to Reduce Student Suspensions and Expulsions and Ensure Educational Progress of Students who are Suspended or Expelled.	$250,000 to $750,000.	500,000	20	10,000,000	Up to 36 months.	May 22, 2000	June 22, 2000.
84.184N Alcohol and Other Drug Prevention Models on College Campuses Grant Competition.	$50,000 to $90,000.	70,000	Up to 10	600,000	12 months	May 12, 2000	June 12, 2000.

Note: Range of awards, average size of awards, number of awards and available funding in this notice are estimates only. The Department is not bound by any estimates in this notice. Funding estimates for competition 84.184H represent funding for both the first and second years of the project period. Projects funded under competition 84.184H will not be subject to approval of continuation or to the availability of future years' funds. Funding for 84.184K and 84.184M represent the first year of the project period only. Funding for the second and third years of projects under competitions 84.184M and 84.184K are subject both to the availability of future years' funds and the approval of continuation (see 34 CFR 75.253). ALL APPLICATIONS MUST BE RECEIVED ON OR BEFORE 4:30 P.M. EASTERN TIME ON THE DEADLINE DATE. APPLICATIONS RECEIVED AFTER THAT TIME WILL NOT BE ELIGIBLE FOR FUNDING. POSTMARKED DATES WILL NOT BE ACCEPTED.

[FR Doc. 00–8449 Filed 4–5–00; 8:45 am]
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Part IV

Department of Education

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs Federal Activities—Effective Alternative Strategies: Grant Competition to Reduce Student Suspensions and Expulsions and Ensure Educational Progress of Students Who Are Suspended or Expelled; Notice

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs—Federal Activities-Effective Alternative Strategies: Grant Competition to Reduce Student Suspensions and Expulsions and Ensure Educational Progress of Students Who Are Suspended or Expelled

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of final priority and selection criteria.

SUMMARY: The Secretary announces a final priority and selection criteria for Fiscal Year (FY) 2000 under Safe and Drug-Free Schools and Communities National Programs—Federal Activities—Effective Alternative Strategies: Grant Competition to Reduce Student Suspensions and Expulsions and Ensure Educational Progress of Students Who Are Suspended or Expelled. The Secretary may use this priority and selection criteria for competitions in FY 2001 and later years. The Secretary takes this action to focus Federal financial assistance on an identified national need to reduce student suspensions and expulsions and ensure educational progress of suspended and expelled students.

EFFECTIVE DATE: This priority and selection criteria are effective May 8, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Ann Weinheimer, U.S. Department of Education, 400 Maryland Avenue, SW—Room 3E330, Washington, Dc 20202–6123. Telephone: (202) 708–5939. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published elsewhere in this issue of the Federal Register. The notice inviting applications will specify the date and time by which applications for this competition must be received by the Department. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted.

SUPPLEMENTARY INFORMATION: The Secretary published a notice of proposed priority and selection criteria for this competition in the Federal Register on February 14, 2000, (Volume 65, Number 30, pages 7420–7421). Except for minor editorial revisions, there are no differences between the notice of proposed priority and selection criteria and this notice of final priority and selection criteria.

Public Comment

In the notice of proposed priority and selection criteria, the Secretary invited comments on the proposed priority and selection criteria. The only substantive comment we received suggested a change the law does not authorize the Secretary to make under the applicable statutory authority.

General

In making awards under this grant program, the Secretary may take into consideration the geographic distribution of the projects in addition to the rank order of applicants.

Contingent upon the availability of funds, the Secretary may make additional awards in Fiscal Year 2001 from the rank-ordered list of nonfunded applications from this competition.

Priority: Under 34 CFR 75.105(c)(3) and the Safe and Drug-Free Schools and Communities Act of 1994, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition *only* those applications that meet this absolute priority:

Absolute Priority—Enhance, Implement, and Evaluate Strategies to Reduce the Number and Duration of Student Suspensions and Expulsions and Ensure Continued Educational Progress for Students Who Are Suspended or Expelled From School

Eligible Applicants: Eligible applicants under this competition are public and private non-profit organizations and individuals.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion or factor under that criterion is indicated in parentheses.

(1) Need for Project (10 Points)

In determining the need for the proposed project the following factor is considered: The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(2) Quality of the Project Design (30 Points)

In determining the quality of the design of the proposed project, the following factors are considered:

(A) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (6 points)

(B) The extent to which the proposed project encourages parental involvement. (6 points)

(C) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (6 points)

(D) The extent to which the proposed project represents an exceptional approach to the priority. (6 points)

(E) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State and Federal resources. (6 points)

(3) Quality of Project Services (30 Points)

In determining the quality of the proposed project services, the following factors are considered:

(A) The extent to which the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age or disability. (6 points)

(B) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services. (8 points)

(C) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards. (8 points)

(D) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate community partners for maximizing the effectiveness of project services. (8 points)

(4) Quality of Project Personnel (15 Points)

In determining the quality of project personnel, the following factors are considered:

(A) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been

underrepresented based on race, color, national origin, gender, age, or disability. (5 points)

(B) The qualifications, including relevant training and experience, of key project personnel. (10 points)

(5) Quality of the Project Evaluation (15 Points)

In determining the quality of the evaluation, the following factors are considered:

(A) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (10 points)

(B) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (5 points)

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Program Authority: 20 U.S.C. 7131.

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(Catalog of Federal Domestic Assistance Number 84.184M Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs—Federal Activities—Grant Competition to Reduce Student Suspensions and Expulsions and Ensure Educational Progress of Suspended and Expelled Students)

Dated: March 31, 2000.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

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Part V

Department of Education

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs—Federal Activities—Grant Competition To Prevent High-Risk Drinking and Violent Behavior Among College Students; Notice

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DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs—Federal Activities—Grant Competition To Prevent High-Risk Drinking and Violent Behavior Among College Students

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of final priorities, definitions, and selection criteria.

SUMMARY: The Secretary announces final priorities, definitions, and selection criteria for fiscal year (FY) 2000 under the Safe and Drug-Free Schools and Communities National Programs—Federal Activities—Grant Competition to Prevent High-Risk Drinking and Violent Behavior Among College Students. The Secretary may use one or more of these priorities, definitions, and selection criteria for competitions in fiscal year (FY) 2001 and later years. The Secretary takes this action to focus Federal financial assistance on an identified national need. This competition seeks to prevent high-risk drinking and violent behavior among college students.

EFFECTIVE DATE: These priorities, definitions, and selection criteria are effective May 8, 2000.

FOR FURTHER INFORMATION CONTACT: Richard Lucey, Jr., U.S. Department of Education, 400 Maryland Avenue, SW—Room 3E252, Washington, DC 20202–6123. Telephone: (202) 205–5471. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Note: This notice of final priorities does not solicit applications. A notice inviting applications under this competition is published elsewhere in this issue of the **Federal Register**. The notice inviting applications will specify the date and time by which applications for this competition must be received by the Department. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted.

SUPPLEMENTARY INFORMATION: The Secretary published a notice of proposed priorities, definitions, and selection criteria for this competition in the **Federal Register** on February 14, 2000 (65 FR 7372–7374). Except for minor editorial revisions, there are no differences between the notice of proposed priorities, definitions, and selection criteria and this notice of final priorities, definitions, and selection criteria.

Public Comment

In the notice of proposed priorities, definitions and selection criteria, the Secretary invited comments on the proposed priorities, definitions, and selection criteria. We did not receive any substantive comments.

Definitions

1. "Two-year institutions of higher education (IHEs)" are defined as those IHEs or branches of IHEs that are public or private nonprofit organizations and confer at least a two-year formal award (certificate, diploma, or associate's degree), or have a two-year program creditable toward a baccalaureate degree or higher award.

2. "High-risk drinking" is defined as those situations that may involve but not be limited to: binge drinking (commonly defined as five or more drinks on any one occasion); underage drinking; drinking and driving; situations when one's condition is already impaired by another cause, such as depression or emotional stress; or combining alcohol and medications, such as tranquilizers, sedatives, and antihistamines.

General

In making awards under this grant program, the Secretary may take into consideration the geographic distribution of the projects in addition to the rank order of applicants.

Contingent upon the availability of funds, the Secretary may make additional awards in FY 2001 from the rank-ordered list of nonfunded applications from this competition.

Priorities: Under 34 CFR 75.105(c)(3) and the Safe and Drug-Free Schools and Communities Act of 1994, the Secretary gives an absolute preference to applications that meet one or both of the following priorities, and funds under this competition *only* those applications that meet one or both of the following absolute priorities:

Absolute Priority #1—Develop or Enhance, Implement, and Evaluate Campus-Based Strategies To Prevent High-Risk Drinking by College Student Athletes, First-Year Students, or Students Attending Two-Year Institutions

Under this priority, applicants are required to propose projects that develop or enhance, implement, and evaluate strategies to prevent high-risk drinking by college student athletes, first-year students, or students attending two-year institutions of higher education. Grant applicants are required to:

(1) Identify the target population and provide a justification for its selection;

(2) Provide evidence that a needs assessment has been conducted on campus to document prevalence rates related to high-risk drinking by the population selected;

(3) Set measurable goals and objectives for the proposed project and provide a description of how progress toward achieving goals will be measured annually;

(4) Design and implement prevention strategies, using student input and participation, that research has shown to be effective in preventing high-risk drinking by the target population;

(5) Use a qualified evaluator to design and implement an evaluation of the project using outcomes-based (summative) performance indicators related to behavioral change and process (formative) measures that assess and document the strategies used; and

(6) Demonstrate the ability to start the project within 60 days after receiving Federal funding in order to maximize the time available to show impact within the grant period.

Absolute Priority #2—Develop or Enhance, Implement, and Evaluate Campus-Based Strategies To Prevent Violent Behavior by College Students

Under this priority, applicants must propose projects that develop or enhance, implement, and evaluate strategies to prevent violent behavior by college students. Grant applicants are required to:

(1) Provide evidence that a needs assessment has been conducted on campus to document prevalence rates related to violent behavior;

(2) Set measurable goals and objectives for the proposed project and provide a description of how progress toward achieving goals will be measured annually;

(3) Design and implement prevention strategies, using student input and participation, that research has shown to be effective in preventing violent behavior among college students;

(4) Use a qualified evaluator to design and implement an evaluation of the project using outcomes-based (summative) performance indicators related to behavioral change and process (formative) measures that assess and document the strategies used; and

(5) Demonstrate the ability to start the project within 60 days after receiving

Federal funding in order to maximize the time available to show impact within the grant period.

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion or factor under that criterion is indicated in parentheses.

(1) *Need for project.* (15 points)

In determining the need for the proposed project, the following factors are considered:

(a) The magnitude or severity of the problem to be addressed by the proposed project. (10 points)

(b) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses. (5 points)

(2) *Significance.* (20 points)

In determining the significance of the proposed project, the following factors are considered:

(a) The likelihood that the proposed project will result in system change or improvement. (5 points)

(b) The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the field of study. (10 points)

(c) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies. (5 points)

(3) *Quality of the project design.* (30 points)

In determining the quality of the design of the proposed project, the following factors are considered:

(a) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (10 points)

(b) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (5 points)

(c) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice. (10 points)

(d) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population. (5 points)

(4) *Quality of project personnel.* (10 points)

In determining the quality of project personnel, the following factors are considered:

(a) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (3 points)

(b) The qualifications, including relevant training and experience, of key project personnel. (7 points)

(5) *Quality of the project evaluation.* (25 points)

In determining the quality of the evaluation, the following factors are considered:

(a) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (10 points)

(b) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (10 points)

(c) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (5 points)

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Program Authority: 20 U.S.C. 7131.

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(Catalog of Federal Domestic Assistance Number 84.184H Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs—Federal Activities—Grant Competition to Prevent High-Risk Drinking and Violent Behavior Among College Students)

Dated: March 31, 2000.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 00–8451 Filed 4–5–00; 8:45 am]

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Federal Register

Thursday,
April 6, 2000

Part VI

Department of Education

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs—Federal Activities—Middle School Drug Prevention and School Safety Program Coordinators Grant Competition; Notice

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs—Federal Activities—Middle School Drug Prevention and School Safety Program Coordinators Grant Competition

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of final priority, definitions, and selection criteria.

SUMMARY: The Secretary announces a final priority, definitions, and selection criteria for fiscal year (FY) 2000 under the Safe and Drug-Free Schools and Communities—National Programs—Federal Activities-Middle School Drug Prevention and School Safety Program Coordinators Grant Competition. The Secretary may use this priority, definitions, and selection criteria for competitions in fiscal year (FY) 2001 and later years. The Secretary takes this action to focus Federal financial assistance on a national need to recruit, hire and train drug prevention and school safety program coordinators in middle schools that have significant drug, discipline and violence problems.

EFFECTIVE DATE: This priority, definitions, and selection criteria are effective May 8, 2000.

FOR FURTHER INFORMATION CONTACT: Deirdra Hilliard, Safe and Drug-Free Schools Program, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E256, Washington, DC 20202–6123. Telephone: (202) 260–2643. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published elsewhere in this issue of the **Federal Register**. The notice inviting applications will specify the date and time by which applications for this competition must be received by the Department. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted.

SUPPLEMENTARY INFORMATION: The Secretary published a notice of proposed priority, definitions, and selection criteria for this competition in the **Federal Register** on February 14, 2000 (65 FR 7424–7425). Except for minor editorial revisions, there are no differences between the notice of proposed priority, definitions, and selection criteria and this notice of final priority, definitions, and selection criteria.

Public Comment

In the notice of proposed priority, definitions, and selection criteria, the Secretary invited comments on the proposed priority, definitions, and selection criteria. We did not receive any comments.

Definitions: 1. Middle schools are defined as any school serving students in two or more grades from grades five through nine. Note: Students in grades lower than five or higher than nine are not eligible to be served under the absolute priority for the competition in this notice.

2. Local educational agencies (LEAs) with the most significant problems in their middle schools are defined as those that have identified drug use, drug prevention and school safety as serious problems in their most recent needs assessment and that have taken one or more of the following actions within the 12 months preceding the date of this announcement:

(1) Suspended, expelled, or transferred to alternative schools or programs at least one middle school student for possession, distribution, or use of alcohol or drugs, including tobacco;

(2) Referred for treatment of substance abuse at least five middle school students;

(3) Suspended, expelled, or transferred to alternative schools or programs at least one middle school student for possession or use of a firearm or other weapon;

(4) Suspended, expelled or transferred to alternative schools or programs at least five middle school students for physical attacks or fights.

General: In making awards under this grant program, the Secretary may take into consideration the geographic distribution of the projects in addition to the rank order of applicants.

Contingent upon the availability of funds, the Secretary may make additional awards in FY 2001 from the rank-ordered list of nonfunded applications from this competition.

Priority: Under 34 CFR 75.105(c)(3) and the Safe and Drug-Free Schools and Communities Act of 1994, the Secretary gives an absolute preference to applications that meet the following priority and funds under this competition only applications that meet this absolute priority.

Under the absolute funding priority for this grant competition, LEAs with significant drug, discipline, or school safety problems in their middle schools must propose projects that—

(a) Recruit, hire, and train full-time drug prevention and school safety program coordinator(s) for their middle schools with significant drug, discipline, or school safety problems;

(b) Require coordinators hired with funds under this priority to perform at least the following functions in one or more middle schools with significant drug, discipline or school safety problems:

(1) Identify research-based drug and violence prevention strategies and programs;

(2) Assist schools in adopting the most successful strategies, including training of teachers and staff and relevant partners, as needed;

(3) Develop, conduct, and analyze assessments of school crime and drug problems;

(4) Work with community agencies and organizations to ensure that students' needs are met;

(5) Work with parents and students to obtain information about effective programs and strategies and encourage their participation in program selection and implementation;

(6) Facilitate evaluation of prevention programs and strategies and use findings to modify programs, as needed;

(7) Identify additional funding sources for drug prevention and school safety program initiatives;

(8) Provide feedback to SEAs on programs and activities that have proven to be successful in reducing drug use and violent behavior;

(9) Coordinate with student assistance and employee assistance programs; and

(10) Link other educational resources, *e.g.* Title I compensatory education funds, to programs and strategies that serve to create safer, more orderly schools; and

(c) Have measurable goals and objectives and report annually on progress toward meeting those goals and objectives.

Local educational agencies may apply for funding under this priority to hire one or more coordinators to serve middle schools in the district. Each coordinator hired with funds from this grant must:

(1) Serve at least one middle school but no more than seven middle schools;

(2) Serve only students in two or more grades from grades five through nine;

Note: Students in grades lower than five or higher than nine are not eligible to be served under this priority.

(3) Have no duties other than coordination of drug prevention or school safety programs;

(4) At a minimum, have a degree from an accredited four-year institution of higher education and an academic background or equivalent work experience in a field related to youth development, such as education, psychology, sociology, social work, or nursing.

LEAs may apply in consortia with one or more adjacent LEAs; however, each participating LEA must ensure that all requirements of the priority for this competition are met.

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion or factor under that criterion is indicated in parentheses.

(1) *Need for the project.* (25 points)

In determining the need for the proposed project, the following factor is considered: The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(2) *Quality of the project design.* (25 points)

In determining the quality of the design of the proposed project, the following factors are considered:

(A) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population;

(B) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance;

(C) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population, including community coalitions;

(D) The extent to which the proposed project encourages parental involvement in the development and implementation of the project; and

(E) The extent to which performance feedback and continuous improvement are integral to the design of the proposed project.

(3) *Adequacy of Resources* (25 points)

In determining the adequacy of resources, the following factors are considered:

(A) The adequacy of support, including facilities, equipment, supplies and other resources from the applicant organization or the lead applicant organization;

(B) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits;

(C) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support; and

(D) The potential for the incorporation of project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding.

(4) *Quality of the project evaluation* (25 points)

In determining the quality of the project evaluation, the following factors are considered:

(A) The extent to which the methods of evaluation are appropriate to the context within which the project operates;

(B) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies; and

(C) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Program Authority: 20 U.S.C. 7131.

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Note: The official version of this *document is the document published in the* **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html

(Catalogue of Federal Domestic Assistance Number 84.184K, Safe and Drug-Free Schools and Communities Act—National Programs—Federal Activities—Middle School Drug Prevention and School Safety Program Coordinators Grant Competition)

Dated: March 31, 2000.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 00–8452 Filed 4–5–00; 8:45 am]

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Part VII

Department of Education

Office of Elementary and Secondary Education; Safe and Drug-Free Schools and Communities National Programs; Federal Activities; and Alcohol and Other Drug Prevention Models on College Campuses Grant Competition; Notice

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DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Safe and Drug-Free Schools and Communities National Programs; Federal Activities; Alcohol and Other Drug Prevention Models on College Campuses Grant Competition

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of final priority, eligible applicants, and selection criteria.

SUMMARY: The Secretary announces a final priority, eligible applicants, and selection criteria for fiscal year (FY) 2000 under the Safe and Drug-Free Schools and Communities National Programs—Federal Activities—Alcohol and Other Drug Prevention Models on College Campuses Grant Competition. The Secretary may use this priority, eligible applicants, and selection criteria for competitions in FY 2001 and later years. The Secretary takes this action to use Federal financial assistance to identify and disseminate models of alcohol and other drug (AOD) prevention at institutions of higher education (IHEs).

EFFECTIVE DATE: This priority, eligible applicants, and selection criteria are effective May 8, 2000.

FOR FURTHER INFORMATION CONTACT: Kimberly Light, U.S. Department of Education, 400 Maryland Avenue, SW—Room 3E222, Washington, DC 20202–6123. Telephone: (202) 260–2647. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at (800) 877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Note: This notice of final priorities does not solicit applications. A notice inviting applications under this competition is published elsewhere in this issue of the **Federal Register**. The notice inviting applications will specify the date and time by which applications for this competition must be received by the Department. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted.

SUPPLEMENTARY INFORMATION: The Secretary published a notice of proposed priority, eligible applicants, and selection criteria for this competition in the **Federal Register** on February 14, 2000 (65 FR 7370–7372). Except for minor editorial revisions, there are no differences between the notice of proposed priority, eligible applicants, and selection criteria and this notice of final priority, eligible applicants, and selection criteria.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, two parties submitted comments on the proposed priority. An analysis of the comments follows. Comments that propose changes the law does not authorize the Secretary to make under the applicable statutory authority are not addressed.

Eligible Applicants

Comments: One commenter recommended that eligible applicants include park and recreation sites adjacent to campuses.

Discussion: In the original authorization for this program (Section 120(f) of the Higher Education Act, as amended), Congress clearly intended the recipients of grant awards to be IHEs. Although the current grant program is being administered under the Safe and Drug-Free Schools and Communities National Programs, the Secretary plans to follow as closely as possible the original intent of Congress to award funds to IHEs.

Changes: None.

Absolute Priority

Comments: One commenter suggested that student assistance programs be among the models emphasized under the priority.

Discussion: The priority language is broad enough to include a wide range of alcohol and other drug programs, which may include student assistance programs. It is not necessary to emphasize any particular type of program within the priority.

Changes: None.

General

In making awards under this grant program, the Secretary may take into consideration the geographic distribution of the projects and the diversity of activities addressed by the projects in addition to the rank order of applicants.

Contingent upon availability of funds, the Secretary may make additional awards in FY 2001 from the rank-ordered list of nonfunded applications from this competition.

Priority: Under 34 CFR 75.105(c)(3) and the Safe and Drug-Free Schools and Communities Act of 1994, the Secretary gives an absolute preference to applications that meet the following priority, and funds under this competition *only* those applications that meet the following absolute priority:

Under this priority, an IHE that wishes to be considered for an award for a model program must identify, propose to maintain, improve, or further evaluate, and propose to disseminate information about an effective alcohol or other drug prevention program currently being used on its campus. Applications must:

(1) Describe an alcohol or other drug prevention program that has been implemented for at least one full academic year on the applicant's campus;

(2) Provide evidence of the effectiveness of the program;

(3) Provide a plan to maintain, improve, or further evaluate the program during the year following award; and

(4) Provide a plan to disseminate information to assist other IHEs in implementing a similar program.

Eligible Applicants: Institutions of higher education (IHEs) are the eligible applicants under this competition. To be eligible, an IHE must not have received an award under this competition (under either CFDA 84.116X or 84.184N) during the previous two (2) fiscal years.

Selection Criteria: The Assistant Secretary uses the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion or factor under that criterion is indicated in parentheses.

(1) *Significance.* (25 points)

In determining the significance of the model, the following factors are considered:

(a) The extent to which the program involves the development or demonstration of innovative strategies that build on, or are alternatives to, existing strategies. (15 points)

(b) The potential replicability of the program, including, as appropriate, the potential for implementation in a variety of settings. (5 points)

(c) The extent to which the results of the program are to be disseminated in ways that will enable others to use the information or strategies. (5 points)

(2) *Quality of the program design.* (40 points)

In determining the quality of the design of the program, the following factors are considered:

(a) The extent to which the design of the program reflects up-to-date knowledge from research and effective practice. (20 points)

(b) The extent to which the goals, objectives, and outcomes of the program

are clearly specified and measurable. (5 points)

(c) The extent to which the design of the program is appropriate to, and successfully addresses, the needs of the target population or other identified needs. (10 points)

(d) The quality of the plan to maintain, improve, or further evaluate the program. (5 points)

In applying the above criteria, the following information is considered:

(1) The quality of the needs assessment and how well this assessment relates to the goals and objectives of the program.

(2) How well the program is integrated within a comprehensive alcohol and other drug prevention effort.

(3) The level of institutional commitment, leadership and support for alcohol and other drug prevention efforts.

(4) The clarity and strength of the institution's alcohol or other drug policies and the extent to which those policies are broadly disseminated and consistently enforced.

(5) The extent to which students and employees are involved in the program design and implementation process.

(6) The extent to which the institution has joined with community leaders to address AOD issues.

(7) If applying to be considered as an alcohol prevention model, what steps the institution is taking to limit alcoholic beverage sponsorship, advertising, and marketing on campus; and what steps are being taken to establish or expand upon alcohol-free living arrangements for students.

(3) *Quality of the project evaluation.* (35 points)

In determining the quality of the evaluation, the following factors are considered:

(a) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives and outcomes of the program. (10 points)

(b) The extent to which the evaluation data provide evidence of the effectiveness of the program in reducing either alcohol or other drug use, in reducing the problems resulting from either alcohol or other drug use, or in meeting outcome objectives that are associated with reductions in alcohol or other drug use or resulting problems. (25 points)

In applying the above criteria, the following information is considered:

(1) The quality of the evaluation methodology and evaluation instruments.

(2) Whether both process (formative) and outcome (summative) data are included for each year that the program has been implemented, including data collected both before and after initiation of the program.

(3) How evaluation information has been used for continuous improvement of the program.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Program Authority: 20 U.S.C. 7131.

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To use the PDF, you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

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http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number 84.184N Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs—Federal Activities—Alcohol and Other Drug Prevention Models on College Campuses Grant Competition)

Dated: March 31, 2000.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

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Part VIII

Department of Labor

Pension and Welfare Benefits Administration

Strategic Enforcement Plan; Notice

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Pension and Welfare Benefits Administration; Strategic Enforcement Plan

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Pension and Welfare Benefits Administration (PWBA) is publishing this Strategic Enforcement Plan (StEP) for the purposes of informing the public of its current goals, priorities, and methods, and promoting compliance with Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). The primary purpose of the StEP is to establish a general framework through which PWBA's enforcement resources may be efficiently and effectively focused to achieve the agency's policy and operational objectives.

EFFECTIVE DATE: This Strategic Enforcement Plan is effective on April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Virginia C. Smith, Director of Enforcement, (202) 219–8840 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Statutory Framework

The Employee Retirement Income Security Act (ERISA), enacted in 1974, prescribes uniform minimum standards to ensure that employee benefit plans are fair and financially sound and provide workers with the benefits promised by their employers. The law covers most private sector employee benefit plans that are voluntarily established and maintained by an employer, an employee organization, or some combination of these. Pension plans—a major type of employee benefit plan—provide retirement income or defer income until the employee stops working or sometime later. Other employee benefit plans are called welfare plans; these provide health, disability, and other similar benefits.

Three federal agencies play a role in administering ERISA. The Internal Revenue Service oversees the tax code provisions of the law. The Pension Benefit Guaranty Corporation (PBGC) administers the federally-sponsored insurance provisions covering defined benefit pension plans. The third agency, the Pension and Welfare Benefits Administration within the Department of Labor, has principal responsibility for administering Title I of ERISA. ERISA confers substantial law enforcement responsibilities on PWBA, giving PWBA the authority to conduct investigations and to seek appropriate remedies to correct violations of the law, including litigation where necessary.

Title I of ERISA sets forth standards and rules governing the conduct of plan fiduciaries. In general, people who exercise discretionary authority or manage a plan or have authority to dispose of its assets are "fiduciaries" for purposes of Title I of ERISA. Fiduciaries are required, among other things, to discharge their duties solely in the interest of plan participants and beneficiaries and for the exclusive purpose of providing benefits and defraying reasonable expenses of administering the plan. In discharging their duties, fiduciaries must act prudently and in accordance with the documents governing the plan, to the extent such documents are consistent with ERISA. Certain transactions between an employee benefit plan and "parties in interest," which include the employer and others who may be in a position to exercise improper influence over the plan, are prohibited by ERISA.

II. Organization of PWBA'S Enforcement Program

PWBA enforces ERISA by conducting investigations through its ten regional offices and five district offices located in major cities around the country.[1] These field offices conduct investigations to gather information and evaluate compliance with ERISA's civil law requirements as well as criminal law provisions relating to employee benefit plans. Except in those cases involving national priorities, projects, enforcement policy, or other designated matters, the field offices generally exercise broad discretion in determining when investigations are to be opened and which entities or individuals are to be investigated. The field offices conduct their investigations in accordance with established enforcement procedures.

Each PWBA field office coordinates civil investigations and case referrals with its local Regional Solicitor's Office (RSOL) or with the Plan Benefits Security Division (PBSD) of the Solicitor's Office in Washington, DC, which are responsible for bringing civil lawsuits on behalf of the agency.

PWBA's Office of Enforcement (OE), located in Washington, DC, communicates national enforcement policies, priorities, and procedures to PWBA's field offices. OE is responsible for operational review and oversight, enforcement policy direction, program coordination, and technical assistance.

III. Purpose and Scope of the Strategic Enforcement Plan

During fiscal year 1999, PWBA had fewer than 400 investigators, the front-line staff who identify and investigate civil and criminal violations relating to employee benefit plans. With over 700,000 pension plans and 4.5 million welfare plans, PWBA must use its investigative staff effectively to protect the more than $4.3 trillion in assets contained in private employee benefit plans. For this reason, a 1995 report by the Brookings Institution referred to PWBA as probably the most highly leveraged agency in the U.S. government.[2]

The primary purpose of PWBA's Strategic Enforcement Plan (StEP) is to establish a general framework through which PWBA's enforcement resources may be efficiently and effectively focused to achieve the agency's policy and operational objectives. The StEP identifies and describes PWBA's enforcement priorities; the planned allocation of enforcement resources to carry out these priorities is established yearly in an operational plan. PWBA intends to reference this StEP when it exercises its enforcement discretion; however, the StEP does not create or confer any rights, duties, obligations, or defenses, implied or otherwise, on any person or entity.

Because of the substantial demands that are placed on PWBA's limited investigative resources, the StEP establishes broad policy criteria to ensure an appropriate balance of priorities while maintaining the highest possible standard of operational efficiency. Within the framework of these criteria, each region may exercise discretion in allocating investigative resources, provided appropriate resources are allocated to implement national projects and other designated items, such as emerging issues and high profile investigations which warrant special attention. National investigative priorities and projects are identified and developed with participation of field office management.

IV. Enforcement Strategy

In fiscal year 1997, the Secretary of Labor established three strategic goals

[1] PWBA regional offices are located in Boston, New York, Philadelphia, Atlanta, Cincinnati, Chicago, Dallas, Kansas City, San Francisco, and Los Angeles. PWBA district offices are located in Washington, D.C., Miami, Detroit, St. Louis, and Seattle.

[2] "Cutting Government," A Report of the Brookings Institution's Center for Public Management, May 22, 1995.

for the Department of Labor: A Prepared Workforce; A Secure Workforce; and Quality Workplaces. PWBA's enforcement strategy is designed to support the strategic goal of a secure workforce by deterring and correcting violations of ERISA and related statutes. PWBA supports the goal of a secure workforce by other means as well, such as the development of the ERISA Filing Acceptance System for Form 5500 annual reports, educating the pension and welfare benefits community, and providing individual assistance to participants.

A. Targeting

The term "targeting" refers to the PWBA process whereby specific individuals or entities are identified for investigation because of some indication that an ERISA violation may have occurred or may be about to occur. For example, the targeting process could be as simple as opening a single investigation based on information received from a plan participant whose benefits are past due or it could involve opening hundreds of cases based on the computer-generated results of Form 5500 review and analysis.

Because there are over five million private employee benefit plans under PWBA's jurisdiction, targeting is essential to effectively use PWBA's limited investigative resources. Targeting focuses PWBA resources on those situations, issues, individuals, or entities where the most serious potential for ERISA violations is likely to exist.

PWBA strives to establish targeting methods that focus investigative resources in areas that are most likely to uncover abuses. Because evaluating ERISA violations usually involves applying legal standards to complex factual scenarios, the challenge in constructing effective targeting methods is to identify factors that can be used to pinpoint specific plans (*e.g.*, those with delinquent forwarding of employee contributions), individuals, and other entities in violation of the law.

Once the type of conduct and the individual or entity is identified, the field office must decide whether to formally open an investigation. This determination may be based on a number of considerations such as the egregiousness of the conduct, the amount of money or property at risk, or the number of participants potentially affected. Although the field offices are generally responsible for identifying potential investigative targets and determining which cases are to be opened, in certain cases these activities may be coordinated with OE.

PWBA must apply its investigative resources in a manner that will result in prompt and effective enforcement actions, and timely results. OE and field office managers determine how cases are to be investigated, evaluated, and resolved to achieve this goal. In some cases field office managers must determine whether to pursue an issue civilly, criminally, or both simultaneously. In addition, the investigators are responsible for implementing investigative methods designed to achieve timely monetary or injunctive relief, as appropriate. In some cases, the most effective approach may require referral to another state or federal agency because of the legal issues involved. In determining which course of enforcement action to pursue or which method to apply to prevent, redress, or punish illegal behavior, PWBA will consider all available options and strive to follow the best alternative available.

B. Protecting At-Risk Populations

Employee benefit plans provide income and services on which individuals rely for their quality of life, often to a critical degree. The financial security of an individual or a family may be jeopardized if pension, health, or other benefits are not paid as promised. Medical benefit plans provide not only for the physical well-being of individuals, but often provide access to services which individuals might not otherwise be able to afford.

PWBA seeks to identify situations and apply its enforcement resources to protect those employee benefit plan participants and beneficiaries whose security and livelihood are in the greatest danger of being harmed as a result of ERISA violations. Such methods focus on those situations where participants and beneficiaries are most susceptible to actual loss of benefits, or where "populations" of plan participants are potentially exposed to the greatest risk of falling victim to unlawful conduct.

All of PWBA's field offices engage in outreach efforts which are designed to assist potentially vulnerable populations such as participants who might have otherwise lost coverage or benefits (e.g., employees whose benefits are affected by plant closings, or employers who might be victimized by unscrupulous health care promoters) or plans for which benefits are not federally insured, such as 401(k) plans. These outreach efforts may involve speaking at conferences and seminars sponsored by trade, professional, and educational groups or participating in outreach and educational efforts in conjunction with other federal or state agencies.[3] Educating participants and beneficiaries about their benefits, rights, and the availability of PWBA's enforcement authority helps establish an environment where they can help protect their own benefits through recognizing potential problems or notifying PWBA in appropriate situations.

Although PWBA seeks to protect the benefits of plan participants and beneficiaries that are at actual risk of loss, in some cases an investigation will be conducted even where benefits do not appear to be at risk. For example, a health care service provider may pay a plan fiduciary a "kickback" in exchange for the fiduciary's selecting that entity over another. Enforcement action is warranted in such cases to ensure the integrity of the system even though the plan participants and beneficiaries incurred no actual harm. Situations involving self-dealing, conflicts of interest, and gross imprudence are examples of other types of violations that may warrant investigation even in the absence of demonstrated harm to plan participants.

C. Deterring Violations

Almost all enforcement programs hope to deter people from violating the law. PWBA seeks to deter illegal conduct through the continuing effectiveness of its civil and criminal enforcement efforts. PWBA actively publicizes its litigation, which has proven useful in encouraging voluntary compliance by others.

While PWBA seeks to recover losses incurred by participants, it also seeks to maintain the financial and operational integrity of the private employee benefit plan system. Doing so has sometimes involved conducting investigations that address potentially abusive practices which may not involve actual losses to the plans or participants.[4] Because such projects are effective at changing certain types of behavior, this approach will

[3] In July 1995, PWBA launched its national pension education campaign to inform and encourage people to make educated choices about retirement planning, especially small business owners, young people, low wage workers, women, and minorities. This information campaign was supplemented in December 1998 by PWBA's national health benefits education campaign, which is designed to help people understand their medical benefits when they experience changes in life and work.

[4] An example of such a project was the enforcement initiative relating to corporate governance issues, known as the Proxy Project. While the Proxy Project did not result in any monetary recoveries on behalf of plans, it was enormously successful in educating the ERISA community regarding their legal responsibilities under ERISA with respect to the voting of proxies.

continue to be used by PWBA under selected circumstances.

PWBA also has responsibilities for enforcing the criminal provisions contained in ERISA and violations under Title 18 of the U.S. Code which affect employee benefit plans. In pursuing criminal violations, PWBA staff work with the local U.S. Attorneys' Offices, as well as other law enforcement agencies, to support effective prosecution and sentencing. After a conviction is obtained, PWBA is diligent in ensuring that the statutory bar provided for in section 411 of ERISA is applied. This section of ERISA generally prohibits any person who has been convicted or imprisoned for any of the enumerated criminal offenses from serving in virtually any capacity relating to an employee benefit plan for 13 years after conviction or completion of imprisonment.

On March 15, 2000, PWBA adopted its Voluntary Fiduciary Correction Program, which encourages the voluntary correction of certain violations of Title I of ERISA. The program allows plan officials to identify and fully correct thirteen transactions, such as prohibited purchases and sales, improper loans, delinquent participant contributions, and improper plan expenses. If an eligible party documents the acceptable correction of a transaction, PWBA will issue a no-action letter, and will not initiate a civil investigation under Title I of ERISA regarding the applicant's responsibility for any transaction described in the no-action letter. PWBA expects this program to facilitate corrections by plan officials who want to come into compliance with the law with respect to their past practices, and promote better compliance in the future.

V. Implementing the Enforcement Strategy

PWBA's enforcement strategy is implemented through the guidance in this document, the StEP, and at a working level through the agency's annual performance goals, developed by the field offices in coordination with OE. The annual performance goals translate the general policy guidance articulated in the StEP into practical application.

A. Civil Investigations

PWBA's enforcement program is primarily carried out through civil investigations. PWBA organizes its civil investigative program using two main approaches: (i) national projects, which are investigative projects that further more broadly established long-range national investigative priorities, and (ii) regional projects which are localized investigative projects undertaken by individual PWBA regional offices.

1. National Investigative Priorities

PWBA establishes national investigative priorities to ensure that its enforcement program focuses on the areas that are critical to the well-being of employee benefit plans. Types of plans, benefits, or other broad segments of the regulated employee benefit plan universe are identified and designated for emphasis by PWBA's enforcement program. These areas will generally be designated for emphasis over several years. Each year, PWBA identifies specific national investigative projects, within these national investigative priorities, to which it will dedicate enforcement resources. These projects are designed to identify and correct ERISA violations which PWBA believes may be widespread or to focus on possible abusive practices that may affect many plans.

There are three current national investigative priorities: plan service providers, health care plans, and defined contribution pension plans.

a. *Plan Service Providers.* The term "plan service provider" refers to any person or entity which provides a direct or indirect service to an employee benefit plan for compensation. Third party administrators, accountants, attorneys, and actuaries are plan service providers. Plan service providers also include financial institutions such as banks, trust companies, investment management companies and insurance companies as well as others that manage or administer, directly or indirectly, funds or property owned by employee benefit plans.

Investigations of plan service providers offer the opportunity to address abusive practices that may affect more than one plan, and by focusing investigative resources on plan service providers, PWBA can address violations involving many plans. Because such investigations generally result in larger recoveries for more plans and more participants, this approach provides a mechanism whereby PWBA can leverage its resources and obtain the maximum impact for the benefit of plan participants and beneficiaries.

When investigating plan service providers, PWBA generally focuses on the abusive practices committed by the specific service providers rather than the plans. For example, where a third party administrator has systematically retained an undisclosed fee, generally the focus will be on the third party administrator rather than the plan that contracted for the services. Because the investigation of plan service providers offers the opportunity to leverage available staffing, the field offices are encouraged to allocate appropriate resources to the targeting and investigation of these issues or entities.

b. *Health Benefit Issues.* The Department has estimated that there are a total of 2.6 million ERISA-covered health plans, covering approximately 122 million participants and beneficiaries. In recent years several factors have combined to make the management and administration of ERISA-covered health plans a matter of vital national importance, including increased health care costs (due in part to improved technology and accessibility); changes in the health care delivery and funding systems; and the evolution of the legal standard under which health plans and their service providers must operate. As the cost of health care has increased, the methods for delivering that care have changed. In general, the increase in health care costs is regarded as a key factor in the move toward managed care which is designed to control access to health care and its related costs.

PWBA seeks to ensure that plans and the benefits of their participants and beneficiaries are protected. The application of available remedies under ERISA is critical in those cases where federal preemption leaves participants with no other effective statutory or common law cause of action. PWBA seeks to apply the full extent of ERISA's remedies and to promote a legal standard that will increase the availability of appropriate remedies to protect plans and their participants and beneficiaries.

Because of the critical importance of the health benefits area, PWBA has in recent years applied substantial resources to addressing abusive practices that violate ERISA, pursuing enforcement actions involving multiple employer welfare arrangements (MEWAs), and insurers and service providers who receive hidden discounts. PWBA's role in the health care area has also expanded as a result of the enactment of new legislation that includes regulatory and enforcement requirements to be implemented by PWBA, including:

- The Health Insurance Portability and Accountability Act of 1996 (HIPAA), which amended ERISA to provide for, among other things, improved portability and continuity of health insurance coverage provided in connection with employment;
- The Newborns' and Mothers' Health Protection Act of 1996 (NMHPA), which amended ERISA to establish minimum

requirements for hospital stays relating to childbirth;

- The Mental Health Parity Act of 1996 (MHPA), which amended ERISA to establish certain minimum requirements relating to mental health coverage; and
- The Women's Health and Cancer Rights Act (WHCRA), which amended ERISA to provide new protections for patients who elect breast reconstruction in connection with a mastectomy.

In the wake of these and other legislative amendments to ERISA, PWBA will continue to devote substantial enforcement resources to the targeting and investigation of fiduciary issues relating to health benefit issues.[5]

c. *Defined Contribution Plans.* There are two major types of pension plans under ERISA. In a defined benefit plan, the plan sponsor makes contributions to a fund and those contributions are intended to provide a promised level of benefits upon retirement. The amount of benefits paid is usually based upon a formula. With this type of plan the plan sponsor is responsible for managing the assets in the fund to ensure the amount is sufficient to pay benefits in the future. If the amount of funding in the plan is not sufficient to pay future benefits the plan sponsor is responsible for the short fall. These types of plans are also covered by termination insurance issued by the PBGC.

In contrast, defined contribution plans are plans where the plan sponsor and/or the participant makes contributions to an account and the amount paid to the participant upon retirement is determined by the amount of funds that have accumulated in the account. Participants in defined contribution plans bear the risk of investment loss, whereas in defined benefit plans that risk is borne primarily by the plan sponsor or the PBGC and only secondarily by the participant, if on plan termination the sponsor is bankrupt and PBGC insurance does not cover the benefit. Because defined contribution plans are not covered by PBGC insurance, if a plan experiences losses due to a fiduciary breach the plan participants are directly affected and, unless the funds can be recovered through enforcement or other legal actions, that loss will be irrevocable.

In recent years there has been a tremendous growth of 401(k) type of defined contribution plans in terms of the number of plans, number of participants, and amount of assets in these type plans. This growth and the related administrative and investment practices which have developed to accommodate these plans warrant scrutiny to ensure the safety of this large volume of assets.[6] PWBA has identified defined contribution plans as a national enforcement priority because the risk of loss in such plans rests entirely on the plan participants.

2. National Projects

National projects are investigative projects focusing on a selected issue or group of related issues which fall within the established national enforcement priorities. Once an issue or group of issues has been designated as a national project each PWBA field office generally must give priority to conducting investigations and dedicating appropriate resources to the project during the fiscal year. Although national projects are intended to focus on issues of national scope and significance, specific projects may on occasion address issues that are not necessarily prevalent in all areas of the country and the participation of only a selected group of PWBA field offices may be required.

The issues selected for implementation as national projects are determined (or reviewed, since an individual national project may extend over more than one fiscal year) with the input of PWBA's field offices in annual planning sessions. National projects may originate as an expansion of a successful regional project or arise in connection with field office investigations. For example, one national project which has been ongoing for a number of years is the investigation of multiple employer welfare arrangements (MEWAs).

Coordination and enforcement policy determinations for national projects are generally directed through OE. Such direction is conducted with substantial participation and opportunity to comment by the field office managers. OE's involvement in national projects includes monitoring and evaluating the project's progression and, where appropriate, issuing procedural directives and technical guidance.

3. Regional Projects

Enforcement initiatives are also conducted as projects by individual regions. Each year the field office managers submit their project proposals to OE for review and approval. The subjects selected for regional projects are generally topics that have been identified by a particular region as constituting an enforcement issue that may be unique or particularly problematic within its geographic jurisdiction. Because the field staff may be able to identify potential issues through their investigative activities, the regions have the unique opportunity to observe industry practices first hand and select issues for development as regional projects which may ultimately be appropriate for adoption as national projects. Normally, an issue selected as a regional project will be:

- Well-defined both in terms of scope and focus rather than couched in terms of broad categories, such as "small plan issues";
- Identified in the context of a type of transaction or industry practice; or
- An emerging concern or involving a legal position that is precedential in nature.

In addition a regional project should be amenable to the development of an effective targeting method so that an appropriate number of subjects can be identified for investigation. As noted previously, any number of targeting methods may be used.

Regional projects that satisfy these criteria provide a foundation for identifying cutting-edge issues that may be found to involve matters of national scope and importance. If subsequently selected as a national project, the experience and insight gained at the field office level will provide a substantive basis for guiding other field offices in conducting similar investigations. Some regional projects address practices that are more localized in their scope and impact. Because the demographics of each region differ in the concentrations of various types of plans and service providers, the same strategy is not optimal for all offices.

B. Criminal Investigations

Section 506(b) of ERISA gives the Department responsibility and authority to detect and investigate and refer, where appropriate, criminal violations related to Title I of ERISA and other federal laws, including the detection, investigation, and appropriate referrals of related violations of the federal criminal code. The number of criminal investigations and prosecutions pursued by PWBA has increased substantially in recent years and it is expected the number of cases and indictments will continue to grow. In particular, PWBA's role in investigating criminal violations involving health care plans is expected to grow with the recent addition of several new criminal provisions relating to health care plans.

[5] In December 1999, PWBA created the Office of Health Plan Standards and Compliance Assistance to develop regulations, interpretive bulletins, opinions, forms, and rulings relating to health care portability, non-discrimination requirements, and other related health provisions.

[6] In July 1998, PWBA released A Look at 401(k) Plan Fees, a 19-page educational booklet, to help consumers understand the fees and expenses associated with 401(k) plan accounts.

The prosecution of criminal acts relating to employee benefits plans is a critical part of PWBA's enforcement program. PWBA is committed to maintaining a strong criminal enforcement program by conducting criminal investigations to detect violations that affect employee benefit plans and to assist United States Attorneys and state prosecuting attorneys in their prosecution of such cases. Each of the PWBA field offices maintains on-going involvement in criminal investigative activity.

The U.S. Criminal Code includes several provisions that specifically address violations relating to ERISA-covered pension and health plans. The three major criminal provisions applicable to both pension and health plans are:

- Section 664, relating to theft or embezzlement from an employee benefit plan;
- Section 1027, relating to false statements and concealment of facts relating to documents required by ERISA; and
- Section 1954, relating to the offer, acceptance, or solicitation to influence operations of an employee benefit plan.

The federal criminal code contains several other provisions that have been applied in connection with criminal acts involving employee benefit plans, such as the mail and wire fraud provisions (sections 1341 and 1343) and money laundering prohibitions (sections 1956 and 1957).

HIPAA created four new federal crimes specifically relating to health care benefit programs. The four new provisions establish criminal penalties relating to general health care fraud (section 1347); theft or embezzlement relating to health care (section 669); false statements relating to health care (section 1035); and obstruction of criminal investigations of health care offenses (section 1518). HIPAA also amended the federal criminal code sections relating to money laundering and racketeering to address health care offenses. Amendments to the criminal asset forfeiture provisions now establish a process for restoring funds to ERISA-covered health plans.

Criminal cases are targeted in various ways, including systematic methods (such as the analysis of computer data), information obtained through a civil investigation, leads from individuals (such as plan participants, plan officials, or informants), media sources, or information obtained from other government agencies. The field offices are encouraged to maintain effective working relationships with other law enforcement agencies, such as the local U.S. Attorneys' offices, the Federal Bureau of Investigation and the Office of the Inspector General. PWBA maintains close contacts and coordinates with these and other federal and state law enforcement agencies both in connection with identifying potential investigative targets as well as in the course of conducting investigations and pursuing prosecution, when appropriate.

Once such leads have been identified and illegal conduct is indicated or suspected, the field office managers are responsible for determining whether an investigation should proceed criminally, civilly, or both simultaneously. Because the same facts giving rise to fiduciary violations in civil investigations may also give rise to criminal violations, as a matter of course, PWBA determines whether there are criminal issues to be pursued in connection with its civil investigations. If such issues are believed to potentially exist, a criminal investigation will be pursued and, as appropriate, the cases will be coordinated with the appropriate U.S. Attorneys' offices to seek indictments and convictions. Regardless of whether a criminal investigation has been formally opened, evidence obtained by PWBA indicating a potentially criminal act will be referred to the appropriate U.S. Attorney's office.

VI. Measurement of Program Results

The Government Performance and Results Act of 1993 (GPRA) requires the federal government to improve its performance and increase its results. Under GPRA, all federal agencies are required to develop multi-year strategic plans, prepare annual performance plans to implement the strategic plans, and provide annual reports that compare actual performance with stated goals. The SEP is designed to help achieve GPRA's mandates by structuring PWBA's general policies in a manner that will improve compliance results though the timely, efficient, and effective operation of its enforcement program.

GPRA requires the establishment of measurable goals against which performance can be evaluated. In the ERISA enforcement area the measurement of performance in terms of improved compliance is complicated by the absence of an established base level of non-compliance. With over 700,000 pension plans and four million welfare plans, no such baseline of compliance has been established. Like other enforcement and regulatory agencies, PWBA has struggled with this issue for some time. The establishment of pure baseline data regarding the incidence of violations remains a major obstacle. Therefore, PWBA has selected performance measures which highlight the most important activities of the enforcement program, measures that challenge the agency to improve the efficiency and effectiveness of its ongoing programs as well as to address new and important initiatives.

PWBA has made significant progress assembling baseline data for these performance measures which are included in the PWBA Strategic and Annual Performance Plans. For example, the agency has established baselines for measures such as the number of fiduciary investigations closed where plan assets are restored and where prohibited transactions have been corrected, closed investigations where plan assets have been protected from mismanagement and risk of future loss is reduced, and the ratio of closed civil cases with corrected violations to total civil cases closed.

The PWBA Strategic Plan for FY 1997–FY 2002 is located on PWBA's web site at www.dol.gov/dol/pwba/public/gpra/main.htm. For a hard copy, contact PWBA's Public Disclosure Room, at 202–219–8771.

Signed at Washington, D.C., this 3rd day of April, 2000.

Leslie B. Kramerich,

Acting Assistant Secretary, Pension and Welfare Benefits Administration.

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April 6, 2000

Part IX

Department of Education

34 CFR Part 379
Projects With Industry; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 379

RIN 1820–AB45

Projects With Industry

AGENCY: Office of Special Education and Rehabilitative Services, Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Projects With Industry (PWI) program to clarify statutory intent and to enhance program accountability.

DATES: These regulations are effective May 8, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas E. Finch, U.S. Department of Education, 400 Maryland Avenue, SW., room 3315, Mary E. Switzer Building, Washington, DC 20202–2575. Telephone: (202) 205–8292. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person named in the preceding paragraph.

SUPPLEMENTARY INFORMATION: On January 22, 1996, we published a notice of proposed rulemaking (NPRM) for the PWI program in the **Federal Register** (61 FR 1672) inviting comments on changes needed to improve the PWI program's compliance indicators. We used the comments received in response to that NPRM, comments provided by participants in focus group meetings held by the Rehabilitation Services Administration (RSA), a June 1994 report on the PWI program prepared for the Department by the Research Triangle Institute, and RSA's analysis of grantee performance on the current PWI compliance indicators to develop revisions to the PWI compliance indicators.

On June 23, 1998, we published an NPRM for the PWI program in the **Federal Register** (63 FR 34218) proposing revisions to the PWI compliance indicators. On pages 34218 through 34221 of the June 23, 1998, NPRM, we discussed the major changes proposed in that document to improve project performance, enhance project accountability, better reflect statutory intent, and reduce grantee burden. These proposed changes included the following:

- Amending § 379.21(a)(4) to require an applicant to include in its application a description of the factors that justify the project's projected average cost per placement.
- Amending § 379.50 to eliminate the minimum composite scoring system for all proposed compliance indicators and replace it with minimum performance levels on all proposed compliance indicators. We also proposed the requirement that grantees attain at least the minimum performance level on each of the compliance indicators to be eligible for continuation funding.
- Amending § 379.51 and § 379.52 to eliminate both the performance ranges within each proposed compliance indicator and the minimum composite scoring system for all proposed compliance indicators. We proposed replacing these with the requirement that grantees attain at least the minimum performance level on each of the compliance indicators.
- Amending § 379.53 to replace the nine compliance indicators with five proposed compliance indicators.
- Amending § 379.54 to reflect the change from composite scoring to a pass/fail system.

In addition to the proposed changes, we also stated that we proposed to collect data from PWI projects on "change in earnings" and "job retention" for individuals who receive services. We stated our intention to use this data to determine the need for—(a) Any revision to the performance level for the "Change in earnings" compliance indicator or to the compliance indicator itself; and (b) developing a compliance indicator, and appropriate performance level to measure job retention for individuals who receive PWI services.

In response to public comment, we have made several changes in these final regulations from what was proposed in the June 23, 1998, NPRM. The final regulations—(1) Require that each grant application include a projected average cost per placement for the project (§ 379.21(c)); (2) require a project to pass the two "primary" compliance indicators and any two of the three "secondary" compliance indicators to receive a continuation award (§ 379.50); (3) designate two compliance indicators as "primary" and three compliance indicators as "secondary" (§ 379.51(b) and (c)); and (4) change the minimum performance levels for three of the compliance indicators (§ 379.53(a)(1)—Placement rate; § 379.53(a)(2)—Change in earnings; and § 379.53(b)(3)—Average cost per placement). A more detailed description of these and other changes to the regulations is contained in the "Analysis of Comments and Changes" section of this preamble.

Analysis of Comments and Changes

In response to our invitation in the June 23, 1998, NPRM, 108 parties submitted comments on the proposed regulations. Most commenters addressed more than one issue regarding the proposed regulations. We reviewed all comments and carefully considered these comments in the development of the final regulations. Major issues raised by the commenters are discussed under the section of the final regulations to which they pertain. We do not specifically discuss in this preamble: (1) The technical changes to the PWI regulations (published in the **Federal Register** on September 1, 1999 (64 FR 48052)) to implement the 1998 Amendments to the Rehabilitation Act of 1973 (1998 Amendments), which are in title IV of the Workforce Investment Act of 1998 (WIA), Pub. L. 105–220 (enacted August 7, 1998); (2) changes suggested by commenters but that the law does not authorize us to make under the applicable statutory authority; and (3) other minor changes. We also wish to point out that the technical changes we made to the PWI regulations to implement the 1998 Amendments included substantial changes to § 379.21 from what we proposed in the June 23, 1998, NPRM. In these final regulations, we made several additional changes to § 379.21 beyond the technical changes we made on September 1, 1999. However, only one of these additional changes, which we mentioned previously, was significant, and the others were very minor.

An analysis of the comments and the changes in the regulations since publication of the June 23, 1998, NPRM follows.

Section 379.21(a)(7)—Grant Application Must Include a Description of the Factors That Justify the Applicant's Projected Average Cost Per Placement

Comments: Four commenters supported the requirement in proposed § 379.21(a)(4) that an application include a justification of the project's proposed cost per placement.

Discussion: We have reviewed this section and wish to clarify that it is the project's projected *average* cost per placement that must be justified. This clarifying change makes the application requirement consistent with the actual compliance indicator, which refers to the project's "actual *average* cost per placement." (Emphasis added.)

Changes: We have revised § 379.21(a)(7)(proposed § 379.21(a)(4)) by changing the word "proposed" to "projected" and adding the word "average" to the phrase "proposed cost

per placement" so that the regulations now read "projected average cost per placement."

Section 379.21(c)—Grant Application Must Include the Project's Projected Average Cost Per Placement

Comments: None.

Discussion: Since publication of the June 23, 1998, NPRM, we have reviewed this section and realized that the requirement to include in an application the projected average cost per placement was only implicit. The NPRM required that the grant application include a description of the justification of the project's proposed cost per placement. In addition, the NPRM proposed a minimum performance level not to exceed 110 percent of the projected average cost per placement in the grantee's application. Although this language implied that the grantee's application should include the projected average cost per placement so that the difference between the actual average cost per placement and the projected average cost per placement could be calculated, this requirement was not explicit anywhere in the NPRM. As a result, we believed the language in the final regulations needed to be clear and explicit that the applicant must include the projected average cost per placement in its application. In addition, we believe an applicant should understand that it must use the same method to calculate the projected average cost per placement that we have always used, which is to divide the sum of the total project costs (*i.e.*, Federal dollar amount of the grant plus the total non-Federal contributions) by the number of individuals the applicant projects in its application will be served by the project. This method is described in Instruction Number 8 of the "Instructions for Completing the Reporting Form for Projects With Industry Compliance Indicators and Annual Evaluation Report" that we mail to each recipient of a PWI grant.

Changes: We have added a new paragraph (c) to § 379.21 that explicitly requires the applicant to include in its application the projected average cost per placement for the proposed project, which must be calculated by dividing the sum of the total project costs (*i.e.*, Federal dollar amount of the grant plus the total non-Federal contributions) by the number of individuals the applicant projects in its application will be served by the project.

Section 379.50—Requirements for Continuation Funding

Comments: Fifteen commenters opposed the requirement that grantees meet minimum performance levels on all program compliance indicators to receive continuation funding. A majority of these commenters objected to the proposed requirement because they believed the composite scoring method allowed for more flexibility in how projects achieve their goals. Four of these commenters favored retaining the composite scoring method because it allowed a project that excelled in one or more areas to receive continuation funding even though it might be weak or unable to attain the minimum performance level in one or more other areas.

Discussion: We agree with the comments favoring more flexibility and have made changes to achieve a combination of flexibility and accountability. Under the former composite scoring method, a PWI project could receive zero points on as many as five of the nine compliance indicators and still receive continuation funding. Because this did not ensure the high level of performance and accountability we expected of all PWI projects, we proposed the changes published in the June 23, 1998, NPRM.

We have since reviewed available data to determine the effect on PWI projects if they had been required to meet all of the five proposed compliance indicators to receive continuation funding. The available data indicated that, although most projects could have met most of the minimum performance levels, a significant percentage of projects might not have met all five of the proposed compliance indicators. These projects would have failed to receive continuation funding under the system proposed in the June 23, 1998, NPRM. After reviewing the data, we believe the changes we have made combine the best features of the minimum performance level approach and the composite scoring method.

The changes we have made are based on the belief that placing individuals in competitive employment and increasing their earnings are the two most important purposes of the PWI program. The newly designated "primary" compliance indicators will measure how well a PWI project achieves these dual goals. We believe that if a project is unable to meet the minimum performance level for both of these two compliance indicators, it should not receive a continuation award.

We believe the newly designated "secondary" compliance indicators also are important for measuring the success of a PWI project. However, we do not believe that the failure to meet any one of the "secondary" compliance indicators should cause an otherwise successful project to lose its continuation funding. Therefore, we have determined that PWI projects must meet only two of the three "secondary" compliance indicators to receive continuation funding.

We believe that requiring PWI projects to meet only two of the three "secondary" compliance indicators provides the necessary flexibility to ensure that individuals without a significant disability and individuals who were unemployed for shorter periods also will have access to PWI services. Finally, this added flexibility will benefit projects—(1) Designed to excel in meeting one "secondary" compliance indicator (*e.g.*, projects serving a high percentage of individuals with significant disabilities) but which may have difficulty in meeting one or both of the other "secondary" indicators; and (2) projects facing a variety of economic and other factors that affect how much it costs to provide services to individuals.

Changes: We have revised § 379.50 to eliminate the proposed requirement that a project meet the minimum performance levels on all five compliance indicators to receive a continuation award. We also have divided the proposed five compliance indicators into "primary" and "secondary" compliance indicators. "Placement rate" and "Change in earnings" are "primary" indicators. "Percent placed who have significant disabilities," "Percent placed who were previously unemployed," and "Cost per placement" are "secondary" indicators. We have revised § 379.50 to require that a grantee meet the minimum performance levels of the two newly designated "primary" compliance indicators and any two of the three newly designated "secondary" compliance indicators to receive continuation funding. This last change makes proposed § 379.52(c) incorrect. Therefore, we have deleted § 379.52(c).

Comments: Four commenters believed that eliminating the composite scoring method (on which continuation funding was based) in the middle of a grant period is unfair to existing grantees.

Discussion: We are sensitive to the concerns of commenters that existing projects should not be unfairly penalized for grant proposals that were produced under the previous compliance indicators. We also recognize the need for a delay in the implementation of the indicators and the need to allow projects the opportunity to negotiate changes to their approved grant applications.

Changes: We have determined that implementation of the new compliance indicators should begin on October 1, 2000. We also will provide an existing project a one-time opportunity to negotiate, prior to July 1, 2000, reasonable changes to the content of its approved grant application, consistent with these regulations.

Section 379.51—What Are the Program Compliance Indicators?

Comments: One commenter recommended retaining two of the former compliance indicators ("Percent of persons served whose disabilities are significant" and "Percent of persons served who have been unemployed for at least 6 months at the time of project entry") in addition to those we proposed.

Discussion: We believe that these two former compliance indicators identified by the commenters should no longer be used to measure a project's performance for the reasons given in the preamble to the June 23, 1998, NPRM. As we stated in that preamble, projects should be judged on the extent to which they are successful in assisting individuals to achieve competitive employment, including those with a significant disability and those who have been unemployed at least 6 months prior to project entry. We believe that discontinuing the use of these two compliance indicators places more focus on a project's actual success in placing individuals in competitive employment, better reflects the goals of the PWI program, and reduces grantee information collection and reporting burden.

Changes: None.

Comments: One commenter proposed a new compliance indicator to measure the active involvement of the Business Advisory Council (BAC) in the structure and operation of a PWI project.

Discussion: The 1998 Amendments strengthened the role of the BACs in PWI projects in the following ways: (1) The project's BAC must include a representative of the appropriate designated State unit. (2) The identification of job and career availability must be consistent with the current and projected local employment opportunities identified by the local workforce investment board for the community under section 118(b)(1)(B) of WIA. (3) The BAC has the option to prescribe either training programs or job placement programs in fields related to the job and career availability it has identified. We believe the most effective method of ensuring BAC involvement in a PWI project is to monitor the extent to which a BAC complies with the revised statutory requirements. The technical amendments to the PWI regulations, including those made to § 379.21(a)(1), are designed to ensure BAC compliance with those statutory requirements.

Change: None.

Section 379.52—How Is Grantee Performance Measured Using the Compliance Indicators?

Comments: All but one of the commenters who addressed this section of the regulations opposed the proposed requirement that a grantee pass all of the proposed compliance indicators to qualify for continuation funding. Some commenters believed that a pass/fail approach would penalize projects that are unable, due to the individual characteristics of the project or for reasons beyond the project's control, to meet one or more of the proposed compliance indicators. Some commenters expressed concern that an entire project could fail by experiencing a temporary deficiency in one area even though the project's performance and achievements are outstanding in all other areas.

Discussion: For the reasons stated in the discussion to § 379.50, we believe the previous composite scoring system that allowed a project to fail five of the nine compliance indicators and yet receive continuation funding was detrimental both to the PWI program and individuals served by the PWI program. We believe deficiencies that would make a project ineligible to receive continuation funding are adequately addressed through the provisions of § 379.54(c), which allow grantees to submit data from the first 6 months of the current budget period to demonstrate that a project's performance has improved sufficiently to meet the minimum performance level or levels.

Changes: None.

Section 379.53—What Are the Minimum Performance Levels for Each Compliance Indicator?

(a) Placement Rate

Comments: Eleven commenters addressed the proposed requirement that a minimum of 55 percent of individuals served by the project be placed into competitive employment. Three of these commenters supported the proposed compliance indicator, citing the importance of this indicator in determining whether the overall purpose of the PWI program is being met. Three commenters expressed concern that the 55 percent level of compliance was too high and would adversely affect projects serving large percentages of individuals with significant disabilities or other individuals who are more difficult to place in employment. Two commenters believed that the proposed compliance indicator failed to consider local economic conditions and changes in those conditions that are beyond the control of the project.

Discussion: As stated previously, we remain committed to implementing compliance indicators for the PWI program that ensure sufficiently high standards of performance and accountability in the use and expenditure of Federal funds. We realize that increasing the minimum performance on this indicator from 40 percent to 55 percent may cause some difficulty for some projects. Therefore, we have decided to phase in the new minimum performance level over a period of 5 years. The minimum performance level for this indicator will be 50 percent for fiscal year (FY) 2001, which is 5 percentage points lower than what we proposed in the NPRM. This minimum performance level will increase to 55 percent by FY 2005. We believe that starting at a lower minimum level than what we proposed and phasing in the higher minimum performance level for the placement rate is warranted to help ensure that otherwise effective projects do not fail this compliance indicator because they serve individuals with significant disabilities or because of the location of the project (*e.g.*, rural areas). The 5 years should be more than sufficient time to improve a project's performance, even for those projects that serve individuals with significant disabilities or that are in a location that makes it difficult to place individuals (*e.g.*, rural areas).

Changes: We have lowered the proposed minimum performance level for the "Placement rate" indicator in § 379.53(a)(1) from 55 percent to 50 percent for FY 2001. However, we have established a phased-in increase in the performance level as follows: 51 percent for FY 2002; 52 percent for FY 2003; 54 percent for FY 2004; and 55 percent for FY 2005.

(b) Change in Earnings

Comments: Sixty-six commenters expressed concern with the proposed "Change in earnings" indicator. Thirty-nine of the commenters, all from the State of Maine, were opposed to the proposed compliance indicator because they believe the $150 per week minimum increase in earnings for an individual placed by the project is unfair to projects operating in rural or poor States because the job market

consists mainly of small businesses that provide primarily part-time employment. In addition, 17 of the commenters felt that the proposed compliance indicator fails to consider those individuals seeking career advancement who may not achieve an increase in earnings of $150.00 per week. Nine of the commenters felt that the proposed performance level discourages individuals from considering part-time work. One of the commenters believed that the proposed threshold of 75 percent for projects serving individuals in supported employment and projects serving students working fewer than 30 hours per week in the "Change in earnings" indicator is too high.

Discussion: We agree that the proposed "Change in earnings" compliance indicator needs to be restructured. The proposed "Change in earnings" compliance indicator contained three categories of projects, each of which had different performance levels. These categories were projects in which at least 75 percent of individuals placed are placed into supported employment, projects in which 75 percent of individuals placed are students enrolled in secondary schools who work fewer than 30 hours per week, and all other projects. Under the proposed regulations, the performance level for projects in the first two categories (*i.e.*, supported employment and students) required an average increase in earnings of at least $100 per week. The proposed level for all other projects was $150 per week.

Because many other projects (*e.g.*, "supported employment" projects and those with secondary school students) may place a large percentage of persons who need or choose to obtain part-time employment, we believe combining the two proposed exceptions to this performance level in the final regulations will simplify this indicator. In addition, we believe lowering the proposed minimum level of increase in earnings will be more fair to projects operating in rural or poor States, make it easier for projects that serve individuals seeking career advancement, and eliminate any undue penalty to projects serving individuals who want to work part-time.

Changes: We have lowered the proposed minimum "Change in earnings" performance level in § 379.53(a)(2)(A) to $125 per week. In addition, we have combined the two proposed exceptions to this requirement into one exception now found in § 379.53(a)(2)(B). The "Change in earnings" indicator in the final regulations has two categories with different performance levels: (1) Projects in which at least 75 percent of individuals placed in competitive employment are working fewer than 30 hours per week (average increase in earnings of $100.00 per week). (2) All other projects (average increase in earnings of $125 per week). The revised compliance indicator requires that, if at least 75 percent of the individuals placed by a project work fewer than 30 hours per week, their minimum change in earnings must increase by an average of at least $100 per week over earnings at the time of project entry.

(c) Percent Placed Who Have Significant Disabilities

Comments: The two commenters who specifically addressed the proposed "Percent placed who have significant disabilities" compliance indicator suggested that we consider increasing the performance level for this indicator. One of these commenters felt that PWI projects should move toward serving higher percentages of individuals with significant disabilities, as is currently the practice in State vocational rehabilitation (VR) programs.

Discussion: We do not believe that the proposed performance level for the "Percent placed who have significant disabilities" compliance indicator should be modified at this time. Title I of the Rehabilitation Act requires a State VR agency to give priority to serving those individuals with the most significant disabilities if it cannot serve all eligible individuals. There is no similar requirement in the PWI program's authorizing language. Although we are committed to serving individuals with significant disabilities, we believe that flexibility is needed to ensure that persons who are not "individuals with a significant disability" also have access to PWI services.

We also intend to review on a periodic basis each project's performance relative to the minimum performance level for all compliance indicators. If warranted, we will adjust the performance level for this compliance indicator, as well as all other compliance indicators.

Changes: None.

(d) Percent Placed Who Were Previously Unemployed

Comments: Seven commenters addressed the proposed "Percent placed who were previously unemployed" indicator. Six of the commenters raised concerns that some projects may have difficulty meeting this compliance indicator because they serve a number of individuals who are already employed or who have performed temporary or seasonal work within 6 months prior to entering the program. One of these commenters expressed concern that the steady decrease in the percentage of previously unemployed individuals who have entered this commenter's project over the past 2 years makes it more difficult to achieve compliance with this indicator.

Discussion: We believe that the proposed performance level for this compliance indicator is already set at a level that will allow most projects to serve a considerable number of individuals who are already employed or who have performed temporary or seasonal work. In addition, available data show that a large majority of projects already exceed this compliance indicator by sizable margins. Therefore, we do not believe that the performance level for this compliance indicator requires modification.

Changes: None.

(e) Average Cost Per Placement

Comments: Fifty-seven commenters expressed concerns about the "Average cost per placement" indicator. Thirty-four of these commenters were concerned that the proposed requirement will have an adverse effect on existing projects, and they believed it would be unfair to change rules in the middle of a project period. These commenters also questioned whether projects would be allowed to renegotiate the estimated "cost per placement." Twenty-one commenters believed that it would not be possible to predict, within a 10 percent margin of error, the projected "average cost per placement" 6 years into the future, as required at the time of application. Two commenters stated that, because the cost of services varies significantly from individual to individual, it is difficult to project costs in advance. Another commenter noted that the unemployment rate, which fluctuated from a low of 5.8 percent to a high of 9.0 percent over a recent 5-year grant period, had a significant impact on the cost per placement, and that no one could have predicted these fluctuations. Three commenters believed that projects will deny needed costly services to individuals with significant disabilities to avoid exceeding the projections and failing this compliance indicator.

Discussion: We agree with the commenters that the proposed performance level for this compliance indicator needed more flexibility and that the allowable difference between the projected and actual average cost per placement needed to be increased. We believe that allowing for a larger difference between the projected and

actual average cost per placement will provide for greater flexibility in the types of services PWI projects provide. The available data suggests that a substantially larger number of PWI projects will be able to meet the performance level for this compliance indicator if the allowable difference between the projected and actual average cost per placement is greater than what we had proposed.

We also intend to review on a periodic basis each project's performance relative to the minimum performance level on this compliance indicator. If warranted, we will adjust the performance level for this compliance indicator, as well as for any other compliance indicator.

Changes: We have raised the allowable change between projected and actual "Average cost per placement" in § 379.53(b)(3) from 110 percent to 115 percent.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These regulations address the National Education Goal that every adult American will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The regulations further the objectives of this Goal by implementing a program that affords individuals with disabilities opportunities for job training, job placement, placement in competitive employment, and career advancement.

Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those costs resulting from statutory requirements and those costs we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits (both quantitative and qualitative) of these final regulations, we have determined that the benefits of the final regulations justify the costs.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

We summarized the potential costs and benefits of these final regulations in the preamble to the June 23, 1998, NPRM under the heading "Summary of potential costs and benefits." (63 FR 34218, 34221) We include additional discussion of potential costs and benefits in the section of this preamble titled "Analysis of Comments and Changes."

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. We display the valid OMB control number assigned to the collection of information in these final regulations at the end of the affected sections of the regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. The order and the regulations in 34 CFR part 79 do not apply to federally recognized Indian tribes or tribal organizations.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the June 23, 1998, NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available. Based on the response to the June 23, 1998, NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Number 84.234 Projects With Industry)

List of Subjects in 34 CFR Part 379

Education, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

Dated: January 27, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

For the reasons discussed in the preamble, the Secretary amends part 379 of title 34 of the Code of Federal Regulations as follows:

PART 379—PROJECTS WITH INDUSTRY

1. The authority citation for part 379 continues to read as follows:

Authority: Sections 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795(g), unless otherwise noted.

2. Section 379.21 is revised to read as follows:

§ 379.21 What is the content of an application for an award?

(a) The grant application must include a description of—

(1) The responsibilities and membership of the BAC, consistent with section 611(a)(2)(A) of the Act, and how it will interact with the project in carrying out grant activities, including how the BAC will—

(i) Identify job and career availability within the community, consistent with the current and projected local employment opportunities identified by the local workforce investment board for the community under section 118(b)(1)(B) of the Workforce Investment Act of 1998;

(ii) Identify the skills necessary to perform the jobs and careers identified; and

(iii) For individuals with disabilities in fields related to the job and career availability identified under paragraph (a)(1)(i) of this section, prescribe either—

(A) Training programs designed to develop appropriate job and career skills; or

(B) Job placement programs designed to identify and develop job placement and career advancement opportunities;

(2) How the project will provide job development, job placement, and career advancement services to project participants;

(3) To the extent appropriate, how the project will provide for—

(i) Training in realistic work settings to prepare individuals with disabilities for employment and career advancement in the competitive market; and

(ii) To the extent practicable, the modification of any facilities or equipment of the employer involved that are used primarily by individuals with disabilities, except that a project will not be required to provide for that modification if the modification is required as a reasonable accommodation under the Americans with Disabilities Act of 1990;

(4) How the project will provide individuals with disabilities with support services that may be required to maintain the employment and career advancement for which the individuals have received training under this part;

(5) How the project will involve private industry in the design of the proposed project and the manner in which the project will collaborate with private industry in planning, implementing, and evaluating job development, job placement, career advancement activities, and, to the extent included as part of the activities to be carried out by the project, job training activities;

(6) A plan to annually conduct a review and evaluation of the operation of the proposed project in accordance with the program compliance indicators and evaluation standards in Subpart F of this part and, in conducting the review and evaluation, to collect data and information of the type described in subparagraphs (A) through (C) of section 101(a)(10) of the Act, as determined to be appropriate by the Secretary;

(7) The factors that justify the applicant's projected average cost per placement, including factors such as the project's objectives, types of services, target population, and service area, and how these factors affect the projection;

(8) The geographic area to be served by the project, including an explanation of how the area is currently unserved or underserved by the PWI program; and

(9) How the project will address the needs of individuals with disabilities from minority backgrounds, as required by section 21(c) of the Act.

(b) The grant application also must include assurances from the applicant that—

(1) The project will carry out all activities required in § 379.10;

(2) Individuals with disabilities who are placed by the project will receive compensation at or above the minimum wage, but not less than the customary or usual wage paid by the employer for the same or similar work performed by individuals who are not disabled;

(3) Individuals with disabilities who are placed by the project will—

(i) Be given terms and benefits of employment equal to terms and benefits that are given to similarly situated nondisabled co-workers; and

(ii) Not be segregated from their co-workers;

(4) The project will maintain any records required by the Secretary and make those records available for monitoring and audit purposes;

(5) The project will provide to the Secretary an annual evaluation report of project operations as required in § 379.21(a)(6) and will submit reports in the form and detail and at the time required by the Secretary; and

(6) The applicant will comply with any requirements necessary to ensure the correctness and verification of those reports.

(c) The grant application also must include the projected average cost per placement for the project, which must be calculated by dividing the sum of the total project costs (*i.e.*, Federal dollar amount of the grant plus the total non-Federal contributions) by the number of individuals the applicant projects in its application will be served by the project.

(Approved by the Office of Management and Budget under control number 1820–0631)

(Authority: Section 611 of the Act; 29 U.S.C. 795)

3. Subpart F of part 379 is revised to read as follows:

Subpart F—What Compliance Indicator Requirements Must a Grantee Meet To Receive Continuation Funding?

379.50 What are the requirements for continuation funding?

379.51 What are the program compliance indicators?

379.52 How is grantee performance measured using the compliance indicators?

379.53 What are the minimum performance levels for each compliance indicator?

379.54 What are the reporting requirements for the compliance indicators?

Subpart F—What Compliance Indicator Requirements Must a Grantee Meet To Receive Continuation Funding?

§ 379.50 What are the requirements for continuation funding?

To receive a continuation award for the third or subsequent year of the PWI grant, a grantee must—

(a) Adhere to the provisions of its approved application; and

(b) Meet the minimum performance levels on—

(1) The two "primary" program compliance indicators identified in § 379.51(b) and described in § 379.53(a); and

(2) Any two of the three "secondary" compliance indicators identified in § 379.51(c) and described in § 379.53(b).

(Authority: Section 611(f)(4) of the Act; 29 U.S.C. 795(f)(4))

§ 379.51 What are the program compliance indicators?

(a) *General.* The program compliance indicators implement program evaluation standards, which are contained in an appendix to this part, by establishing minimum performance levels in essential project areas to measure the effectiveness of individual grantees.

(b) *Primary compliance indicators.* "Placement rate" and "Change in earnings" are "primary" compliance indicators.

(c) *Secondary compliance indicators.* "Percent placed who have significant disabilities," "Percent placed who were previously unemployed," and "Average cost per placement" are "secondary" compliance indicators.

(Authority: Sections 611(d)(1) and 611(f)(1) of the Act; 29 U.S.C. 795(d)(1) and 795(f)(1))

§ 379.52 How is grantee performance measured using the compliance indicators?

(a) Each compliance indicator establishes a minimum performance level.

(b) If a grantee does not achieve the minimum performance level for a compliance indicator, the grantee does not pass the compliance indicator.

(Authority: Section 611(f)(1) of the Act; 26 U.S.C. 795(f)(1))

§ 379.53 What are the minimum performance levels for each compliance indicator?

(a) *Primary compliance indicators.*

(1) *Placement rate.* The project places individuals it serves into competitive employment as follows:

(i) No less than 50 percent during fiscal year (FY) 2001.

(ii) No less than 51 percent during FY 2002.

(iii) No less than 52 percent during FY 2003.

(iv) No less than 54 percent during FY 2004.

(v) No less than 55 percent during FY 2005 and any year thereafter.

(2) *Change in earnings.* (i) Except as provided in paragraph (a)(2)(ii) of this section, the average earnings of all individuals who are placed into competitive employment by the project increase by an average of at least $125.00 a week over the average earnings of all individuals at the time of project entry.

(ii) For projects in which at least 75 percent of individuals placed into competitive employment are working fewer than 30 hours per week, the average earnings of all individuals placed by the project increase by an average of at least $100.00 a week over the average earnings of all individuals at the time of project entry.

(b) *Secondary compliance indicators.*

(1) *Percent placed who have significant disabilities.* At least 50 percent of individuals who are placed into competitive employment are individuals with significant disabilities.

(2) *Percent placed who were previously unemployed.* At least 50 percent of individuals who are placed into competitive employment are individuals who were continuously unemployed for at least 6 months at the time of project entry.

(3) *Average cost per placement.* The actual average cost per placement does not exceed 115 percent of the projected average cost per placement in the grantee's application.

(Authority: Section 611(f)(1) of the Act; 29 U.S.C. 795(f)(1))

§ 379.54 What are the reporting requirements for the compliance indicators?

(a) To receive continuation funding for the third or any subsequent year of a PWI grant, each grantee must submit to the Secretary data for the most recent complete budget period no later than 60 days after the end of that budget period, unless the Secretary authorizes a later submission date. The Secretary uses this data to determine if the grantee has met the program compliance indicators in this subpart F.

(b) A grantee may receive its second year of funding (or the first continuation award) under this program before data from the first complete budget period is available. However, to allow the Secretary to determine whether the grantee is eligible for the third year of funding (or the second continuation award), the grantee must submit data from the first budget period in accordance with paragraph (a) of this section.

(c) If the data for the most recent complete budget period provided under paragraph (a) or (b) of this section show that a grantee has failed to achieve the minimum performance levels, as required by § 379.50(b), the grantee may, at its option, submit data from the first 6 months of the current budget period. The grantee must submit this data no later than 60 days after the end of that 6-month period, unless the Secretary authorizes a later submission date. The data must demonstrate that the grantee's project performance has improved sufficiently to meet the minimum performance levels required in § 379.50(b).

(Approved by the Office of Management and Budget under control number 1820–0631)

(Authority: Section 611(f)(2) and 611(f)(4) of the Act; 29 U.S.C. 795(f)(2) and 795(f)(4))

[FR Doc. 00–8523 Filed 4–5–00; 8:45 am]

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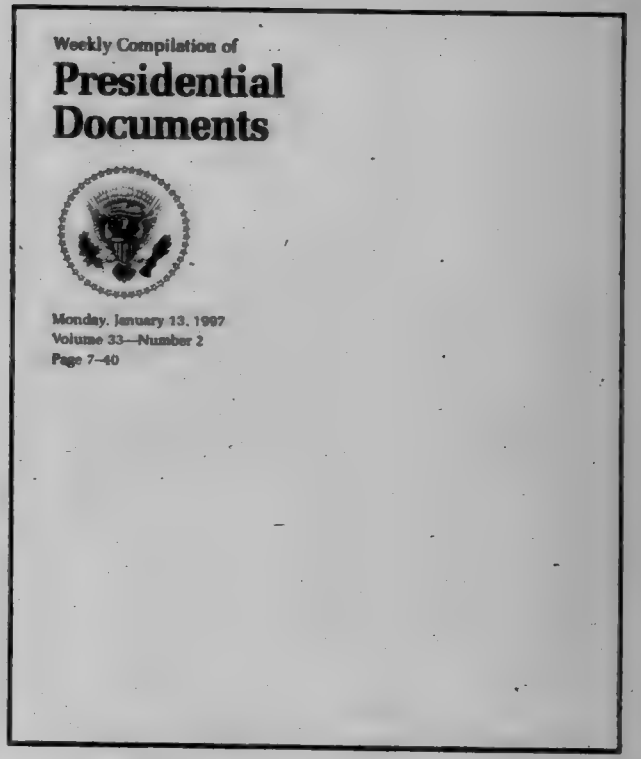

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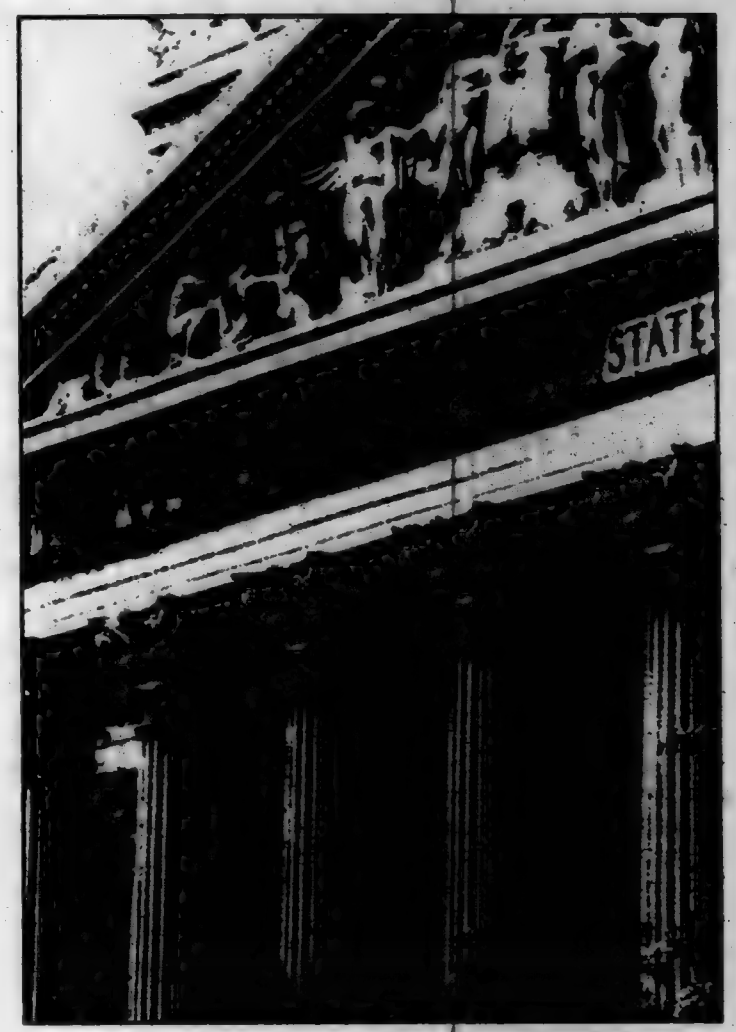

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Revision
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VOL 65 ISS 68 AP 7 2000 UMI

Rules and Regulations

Federal Register
Vol. 65, No. 68
Friday, April 7, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. RM98–9–000; Order No. 603]

Revision of Existing Regulation Under Part 157 and Related Sections of the Commission's Regulations Under the Natural Gas Act; Correction

March 31, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; correction.

SUMMARY: The Federal Energy Regulatory Commission ("Commission") published in the **Federal Register** of May 14, 1999, a document updating its regulations governing the filing of applications for the construction and operation of facilities to provide service or to abandon facilities or service under section 7 of the Natural Gas Act. Two amendatory instructions for Part 2 were incorrectly stated. This document corrects those amendatory instructions.

DATES: Effective on April 7, 2000.

FOR FURTHER INFORMATION CONTACT: Julia A. Lake, Attorney, Federal Energy Regulatory Commission, 888 First Street, NW, Washington, DC 20426; phone: 202–208–2019; e-mail: *julia.lake@ferc.fed.us.*

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission ("Commission") published in the **Federal Register** of May 14, 1999, a document updating its regulations governing the filing of applications for the construction and operation of facilities to provide service or to abandon facilities or service under section 7 of the Natural Gas Act. Two amendatory instructions for Part 2 were incorrectly stated. This document corrects those amendatory instructions.

In rule FR Doc. 99–11247, published on May 14, 1999 (64 FR 26571), make the following corrections.

1. On page 26603, in the first column, correct amendatory instruction 2 to read as follows:

"2. In § 2.1, paragraph (a)(1)(viii) is removed."

2. On page 26603, in the first column, correct amendatory instruction 3 to read as follows:

"3. In § 2.55, paragraph (a) is revised; (b)(1)(ii) is revised; (b)(4) heading is removed; (b)(4)(i) is removed and (b)(4)(ii) is redesignated as (b)(4); and paragraph (d) is removed and reserved, to read as follows:"

Dated: March 31, 2000.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8457 Filed 4–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM99–12–000; Order No. 614]

Designation of Electric Rate Schedule Sheets

Issued March 31, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to require prospectively the inclusion of a proposed designation for all rate schedule sheets filed with the Commission by public utilities. This rule will streamline rate schedule sheet designation procedures for the Commission and the electric industry. This rule will also conform public utility tariff filing procedures with those for interstate natural gas and oil pipelines. This revision to the regulations is necessary to accommodate the movement toward an integrated energy industry and to facilitate the development of common standards for the electronic filing of all electric, gas, and oil rate schedule sheets.

EFFECTIVE DATE: This final rule will become effective on June 1, 2000.

FOR FURTHER INFORMATION CONTACT:

H. Keith Pierce (Technical Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–0525

Kathleen E. Nieman (Technical Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–1070

Roger M. Gibian (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 219–3108

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations to require prospectively the inclusion of a proposed designation [1] on all rate schedule sheets filed with the Commission by public utilities.[2] This rule will streamline rate schedule sheet designation procedures for the Commission and the electric industry.

This rule will conform the procedures for identifying public utility tariff filings with those for interstate natural gas and oil pipelines.[3] This revision to the

[1] For purposes here, "designation" refers to the practice of assigning rate schedule numbers as well as sheet designations, for purposes of identification and document tracking.

[2] For purposes of this rule, use of the term "rate schedule" refers to three types of filings: sets of terms and conditions for service offered to all who qualify for the service, such as an Open Access Transmission Tariff; agreements with specific terms for service negotiated between named seller(s) and buyer(s), such as a Facilities Agreement or Coordination Agreement; or form agreements under which a specific customer takes service under a tariff.

[3] The Commission is adopting the gas program's pagination guidelines as the model for the electric program for several reasons. The gas guidelines use unique tariff sheet designations that, once assigned, cannot be reused. Therefore, the applicants, the Commission, and the public will have a common point of reference for every rate schedule sheet without the need for further identifiers, such as the date of filing or the docket number. Further, the gas guidelines provide for the use of standardized nomenclature, which conveys important information about the applicants' filings (*e.g.* a proposed change in the tariff pursuant to FPA section 205 ("Third Revised Sheet No.") or a

Continued

regulations is necessary to accommodate the movement toward an integrated energy industry and to facilitate the development of common standards for the electronic filing of all electric, gas, and oil rate schedule sheets. However, it has not been determined what the common standards for electronic filing will be or the format that will be followed. For example, it has not been decided whether a page-based or non-page-based system would be most effective. These determinations will be developed by the Commission as it moves forward with electronic filing.

II. Background

A. Notice of Proposed Rulemaking

This proceeding began with the issuance of a Notice of Proposed Rulemaking (NOPR) on October 28, 1999.[4] The NOPR addressed the following issues dealing with streamlining rate schedule sheet designation procedures for the Commission and the electric industry: (1) Requirements for identification and numbering of tariffs to be submitted by the filing utilities; and (2) rejection of materials that fail to comply with the applicable requirements.

Comments were filed by four commenters. Three of the comments were generally favorable to the proposed changes. The other comment expressed concerns with the proposed changes. The comments will be discussed below on an issue-by-issue basis.

B. Notice of Proposed Rulemaking's Origin

Section 205(c) of the Federal Power Act (FPA)[5] and section 4(c) of the Natural Gas Act (NGA)[6] provide that the Commission is charged with the responsibility to keep schedules showing all rates and charges, in such form as the Commission may designate, for any jurisdictional transmission or sale of electricity and for any jurisdictional transportation or sale of natural gas, respectively. Similarly, section 6 of the Interstate Commerce Act (ICA)[7] requires that the rate schedules for oil pipelines be published, filed, and posted in the form and manner prescribed by the Commission. Parts 35, 154, and 341 of the Commission's Rules and Regulations[8] implement these sections of the FPA, NGA, and ICA, respectively.

Pursuant to current Commission regulations under Parts 154 and 341, gas and oil pipelines are required to include proposed pagination on all tariff sheets filed with the Commission; the proposed pagination must be unique to the pertinent tariff sheets, *i.e.*, the proposed pagination is newly created and has never been used previously. Additionally, both Parts 154 and 341 require that the proposed pagination convey information as to whether the tariff sheet being filed contains changes proposed by the pipeline or is filed in compliance with a Commission order. Gas or oil tariff sheets filed without pagination or incorrect pagination are deemed incomplete, and may be rejected as such.[9]

With regard to public utility rate schedules, Part 35 of the Commission's regulations provides that every rate schedule filing under the FPA "will be numbered by the Commission and the filing public utility advised of the Rate Schedule FERC number."[10] Therefore, pursuant to that regulation, the Commission routinely designates each rate schedule filed by a public utility and informs the utility of the designation.

III. Discussion

In this rule, we are revising 18 CFR Part 35. These revisions include: (1) Amending § 35.5 to allow the Director of the Office of Markets, Tariffs, and Rates (Director) to reject rate filings that fail to comply with Part 35;[11] (2) revising § 35.9 to provide instructions on how to identify and number proposed rate schedule sheets; and (3) removing and reserving § 35.18.

This rule will streamline tariff sheet[12] designation procedures for the Commission and the electric industry. Under current procedures, a significant amount of staff time is required to assign designations for public utility tariff sheets. Staff is required to research underlying tariff sheets and proceedings to identify the status of the superseded tariff sheet (effective without suspension, suspended, or effective under suspension) and the nature of the proposed tariff sheet (a proposed rate change or a compliance filing) in order to establish the proper designation. This information must then be conveyed to the utility and the public through issuance of Commission orders.

Under the designation procedures established by this rule, staff will only need to confirm the appropriateness of the proposed designation. Commission orders, including delegated orders, will not have to list tariff sheets individually, because the filings and the tariff sheets will be cross-referenced electronically. This will simplify the identification of any specific tariff sheet for any purpose from the time of filing. Also, the proposed designation procedure will allow tariff sheets to be more easily kept up to date, with superseded sheets archived for future reference.

Filing requirements for tariff sheets for the electric, gas, and oil industries have evolved independently over time. However, with the movement toward an integrated energy industry it now makes sense to have a common standard for all tariff sheets filed with the Commission. Further, as the Commission increases its use of electronic media for filing, storage, retrieval, and tracking of information and documents, greater uniformity in filing procedures, wherever practical, will greatly expedite and simplify this conversion to electronic media. Conforming the requirements for public utilities, interstate natural gas pipelines, and oil pipelines will position the Commission and the affected industries for a smooth transition to having the tariff sheets filed, tracked, and archived electronically. In addition, designing the electronic format for these filings will be simplified if all tariff sheets are filed uniformly.

The Commission believes that the transition from the existing designation procedure to that embodied by this rule will occur in an efficient manner if currently effective and paginated/designated tariff sheets remain as filed. However, if a change is proposed in an existing tariff or rate schedule, the entire

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compliance filing (Substitute Third Revised Sheet No.")). The gas guidelines also require additional information on each rate schedule sheet to further clarify what currently effective sheets will be changed if the filing is accepted and the date the applicant proposes for the rate schedule sheet to become effective. This information is necessary to determine both the utilities' compliance with their statutory notice obligation and when the Commission must act under the FPA. Because the Commission's experience with the gas guidelines has been satisfactory, both in terms of the pipelines' ability to conform with the guidelines and the Commission's ability to administer the gas program, the Commission proposed to use, and now has decided to use, the gas guidelines as the model for the electric program.

[4] Designation of Electric Rate Schedule Sheets, Notice of Proposed Rulemaking, 64 FR 60390 (November 5, 1999), FERC Stats. & Regs. ¶ 32,547 (October 28,1999).

[5] 16 U.S.C. 824d(c).

[6] 15 U.S.C. 717(c).

[7] 49 U.S.C. app. 1 (1988).

[8] 18 CFR Part 35; 18 CFR Part 154; 18 CFR Part 341.

[9] *See* 18 CFR 154.5; 18 CFR 341.11.

[10] 18 CFR 35.9.

[11] The proposed revision provided that the Director of the Office of Electric Power Regulation (OEPR) would have the power to reject these filings. OEPR has since been dissolved and functionally replaced by the Office of Markets, Tariffs, and Rates.

[12] For the convenience of the reader, unless the context otherwise indicates, we will use the term "tariff sheet" in the remainder of the narrative discussion when referring to public utility rate schedules.

tariff or rate schedule must be re-filed according to the new system.[13] In this way, as tariff sheets are replaced over time, the old designations will disappear and the new system will be implemented in an orderly and efficient manner. Further, changes would be prospective only, alleviating any need to retroactively alter, modify, or re-file the tariff sheets currently on file.

"Tariff, Rate Schedule, and Service Agreement Pagination Guidelines" (Designation Guidelines) have been developed and are attached hereto as an appendix. The guidelines offer definitions and examples designed to assist interested parties during the period of transition. The guidelines also provide the name and telephone number of a staff person who can answer questions and provide additional guidance.

Comments are discussed in the following sections.

A. Prospective Designation by Public Utilities of Tariff Sheets

Introduction

Currently, staff is responsible for assigning designations for public utility tariff sheets. In the NOPR, we noted that a significant amount of staff time is required to establish the proper designation. Accordingly, we proposed to revise our regulations to require that the public utilities prospectively include proposed designation for all tariff sheets filed with the Commission.

Comments

Southern Company Services, Inc. (Southern), Wisconsin Public Service Corporation (WPSC), and New England Power Company and Montaup Electric Company (NEP Companies) all filed comments generally supporting the Commission's efforts to standardize the designation of electric tariff sheets. Consumers Energy Company (Consumers) commented on the proposed requirement that public utilities, prospectively, include in their filings a proposed designation for all tariff sheets filed with the Commission. Consumers states that it does not support utility designation for non-standard contracts and service agreements. Consumers suggests that it would be best for staff to continue to designate non-standard contracts and service agreements. Consumers argues that it is sometimes unclear as to whether the contracts will be deemed a new agreement for a new service or a supplement to an existing service. Also, Consumers states that, when the contracts are drafted, it is not sure which agreements will be executed and when and in which order they will be filed. Consumers also questions the usefulness of retaining the sheet identifying canceled tariff sheets. Consumers argues that, once terminated, canceled tariff sheets will never have a future use. Consumers further indicates that, for electric utilities, volume identifications are not used.

Commission Conclusion

The Commission is not persuaded by Consumers' argument that staff should continue to assign tariff sheet designations in certain circumstances. It is the responsibility of the utilities to clearly identify in their filings the nature of the services they are proposing and how those services relate to other services, if at all. It is not uncommon for there to be ambiguity as to the nature of a contract or when a tariff sheet will become effective. These issues, though, are separate from the issue of who should designate a tariff sheet. And, as an ultimate check, the Commission will review proposed designations to confirm their accuracy, and retains the right to require corrections to proposed designations that it believes are inaccurate.

The Designation Guidelines provide, in general, for proposed tariff sheets to identify the effective sheets to be superseded, except when the successive filings reflect underlying (and still pending) filings, in which case the utility should list the underlying but still pending sheets as the superseding sheets. (See Appendix, Example No. 1.) On joint services, each utility offering a service must file its own tariff sheets. This means that jointly offered services most likely will have different tariff sheet designations.

Consumers has a legitimate point concerning volume identification. Therefore, the Commission will permit the use of the rate schedule number as the identifier in the header of each tariff sheet.

The Commission is not directing utilities to use reserved tariff sheets in the future. Rather, the utilities may, at their option or as the needs of other tariff sheets require, use the reserved sheets, provided unique designations are applied.

Finally, Designation Guideline paragraph 11 and Example No. 7 originally provided that the canceling tariff sheet should be designated with the last sheet number of the canceled sheets. Consumers notes that this instruction differs from the Gas Guidelines' instruction for the first of the canceled sheets, and recommends that the Commission adopt the Gas Guidelines for the sake of continuity between the gas pipeline and utility programs. The Commission agrees, and will do so.

B. Consistency Among Filings

Introduction

Currently, public utility filing requirements differ from those for natural gas and oil pipelines. In the NOPR, we proposed conforming public utility filing procedures with those for natural gas and oil pipelines. We explained that this revision would be necessary to accommodate the movement toward an integrated energy industry and to facilitate the development of common standards for the electronic filing of all electric, gas, and oil rate schedule sheets.

Comments

Consumers states that this rule will not make electric, gas pipeline, and oil pipeline rate filings more consistent. Consumers states that the proposed designation system goes beyond the designation system used for gas pipelines.[14] Consumers recommends that the Commission adopt the procedures used for gas pipeline filings and not require the filing of electric service agreements.

Commission Conclusion

Consumers misconstrues the limits of this rule change. This rule is limited to public utility tariff sheet designations. The continued convergence of the gas and electric industries and markets, and the Commission's ongoing involvement in this convergence, are likely to require additional, future modifications to the Commission's procedures and regulations. This rule is but one step. As such, public utilities will continue to be required to file all service agreements. This is no different from what was required of gas pipelines prior to the implementation of Order No. 516.[15]

C. Non-Standard Contracts and Service Agreements

Comments

Consumers questions the need to apply tariff sheet designations to non-standard electric service agreements. Consumers argues that because gas pipeline companies are not required to paginate non-standard contracts, public

[13] *See* 18 CFR 35.2(b) and n.1.

[14] *See* 18 CFR 154.1(d).

[15] Final Regulations Clarifying the Filing Obligations for Part 284 Transportation and Sale of Natural Gas, Order No. 516, 54 FR 47758 (November 17, 1989), FERC Stats. & Regs., Regulation Preambles 1986–1990 ¶ 30,864 (November 9, 1989). *See also* 18 CFR 154.1(d).

utilities should not be required to do so either. Consumers, in further support of this request, claims that, because non-standard service agreements are rarely, if ever, changed, the tariff sheet designation requirement is unnecessary. If designation is to be required, Consumers requests that the issue be deferred and taken up as part of the Commission's future efforts to create a standardized electronic tariff for public utilities, gas pipelines, and oil pipelines.

Commission Conclusion

The Commission's intent in this rule is, in part, to improve the level of regulatory convergence. While Consumers may be correct in stating that most non-conforming contracts and service agreements will not change once filed, the Commission will not speculate as to which terms of service or rates may be revised. However, the Commission recognizes that service agreements constitute a large portion of the tariff filings made in the electric program. Therefore, to ease the administrative burden on filing utilities, this rule will not require the individual pages of service agreements to be paginated. However, the Commission will retain the requirement for utilities to designate service agreements. If a service agreement is revised or modified, the utility must file a complete revised service agreement with a new designation comporting with the Guidelines.

D. Delegated Authority to Reject Tariff Filings and Related Issues

Introduction

Currently, our regulations permit the Secretary to reject any material submitted for filing with the Commission that patently fails to substantially comply with the applicable requirements.[16] The NOPR proposed a new § 35.5(b), which would permit the Director, pursuant to delegated authority, to reject rate filings that fail to comply with Part 35 of the Commission's regulations.

Comments

Consumers, NEP Companies, WPSC, and Southern express concern that the Director may exercise the delegated authority to reject filings because of minor errors in the application. Consumers proposes a modification to the regulation that would permit the Director to reject only "patently deficient" filings. WPSC and Southern request that the Commission clarify that the Director could reject a tariff sheet, but not the rate filing in total. The NEP Companies also suggest a six-to twelve-month transition period. All parties filing comments expressed concern that rejection due to a minor error would result in delayed effective dates for rate changes or new services, thus causing economic harm to utilities and customers.

Consumers also claims that the authority in § 35.5(b) goes beyond the Director of the Office of Electric Regulation's existing delegated authority in 18 CFR § 375.308(a)(3).[17] Consumers claims that § 375.308(a)(3) does not delegate authority to reject any non-compliant filing, but only those that patently fail to comply. Consumers claims that a simple failure to designate, or a mis-designation, does not warrant rejection.[18]

Commission Conclusion

New § 35.5(b) references § 375.307(k)(3), and the Director may, pursuant to § 375.307(k)(3), reject any rate filing not containing a request for waiver if it "fails patently to comply with applicable statutory requirement or Commission rules, regulations and orders." Accurate designation of tariff sheets is essential; it allows the Commission and the public to identify the tariff sheets (and rates) the utilities propose to supersede and when they will be superseded, as well as the proposed replacement tariff sheets (and rates) and when they will go into effect.[19] It is thus incumbent upon utilities to unambiguously identify their proposed changes in a manner conforming to the Commission's regulations including properly formatting and designating their proposed tariff sheets. The proposed effective dates of utilities' proposals, in particular, are usually a function of the dates the utilities file and thus within the utilities' control. It is not the function of this Commission to speculate on the nature of an applicant's filing (for example, what a utility intends as the effective date,) nor is it our function to, on our own, perfect a utility's application.

The Commission anticipates the need, in the beginning, to provide assistance to utilities so they may become accustomed to the procedures established under the Designation Guidelines. The Commission has identified staff that affected utilities may contact to assist in initiating this new tariff designation process. Staff will work with applicants to facilitate correct filings. However, it remains the responsibility of the applicants in the first instance to file complete and accurate applications with properly formatted and designated tariff sheets.

Moreover, determinations as to whether tariff sheets are properly formatted and designated are matters properly delegated to the Director. Utilities may, of course, request rehearing of Director actions with which they disagree.[20]

Finally, the Commission will not establish a definitive transition period. Instead, as when the Commission introduced new pagination guidelines for the gas program, the Commission will rely on the Director to manage the transition.

E. Issuance Date and Issuing Office

Introduction

Section 35.9(b)(3) requires tariff sheets to include the issuing officer and the issuance date.

Comments

Consumers requests clarification as to whom the officer should be and what the issuance date should be. Consumers claims that it is not possible to know what the issuance date will be when contracts are negotiated. Consumers also states that negotiating and executing a non-standard contract often takes a significant amount of time and that contracts often provide for an effective date at a date certain after Commission approval. As such, Consumers continues, it is often impossible to include a specific effective date when a non-standard contract is prepared.

Commission Conclusion

The Commission clarifies that: (1) The issuing officer is the person responsible for filing the tariff sheet with the Commission; and (2) the issuance date is the date the tariff sheet is filed with

[16] 18 CFR 35.5.

[17] The Commission recently reorganized the delegation authorities to reflect the creation of the Office of Markets, Tariffs, and Rates (OMTR). Section 375.308(a)(3) has been redesignated § 375.307(k)(3). The final regulations adopted here reflect this change.

[18] Consumers notes that the Director of the Office of Pipeline Regulation, through delegated authority, frequently informs gas pipelines that their electronically-filed tariff sheets failed to comply with certain formatting and/or pagination requirements without rejecting those filings. However, we note that those letters also inform the gas pipelines that, if not corrected, usually within one working day, their filing and effective dates may be delayed.

[19] The WPSC suggests that the Director be allowed to reject only those tariff sheets that are not properly paginated. We are not persuaded to limit the circumstances in which filings may be rejected only to those not properly paginated. In any event, we note that a filing that is incomplete is not properly filed with the Commission, and there is nothing for the Commission to act on, either directly or by delegation.

[20] *See* 18 CFR 385.713.

the Commission. Consumers appears to equate tariff sheets with actual contract pages. While a utility may choose to equate a tariff sheet with a contract page, the Commission's regulations do not prescribe such an interrelationship.

It is the utilities' responsibility to propose an effective date when they file tariff sheets with the Commission.[21] This rulemaking does nothing to change this pre-existing requirement.

F. Mechanics of the Transition to the New Designation System

Comments

Consumers requests clarification of certain issues related to the mechanics of the transition to the new designation system. It asks whether designation should start over at "Original Sheet No." when the superseded sheet already has a number. Consumers also requests clarification as to the effective date of tariff sheets that are filed with no changes except those necessary to comply with the designation rule. Consumers further notes that the requirement for additional data on each tariff sheet may result in tariff language rolling over to subsequent tariff sheets that differ from the pre-existing tariffs sheets.

Commission Conclusion

The Commission has traditionally allowed gas pipelines that are not replacing an entire volume to simply pick a designation number higher than the most recently filed effective tariff sheet. Thus, for example, a utility may decide to redesignate all tariff sheets in its first rate change as "7th Revised Sheet No. ____," provided all existing tariff sheets are designated at some figure less than seven.

The effective date for the newly designated sheets will be the effective date for the changes contained on those sheets. Superseded sheets will be effective from the effective date allowed by the Commission up to the date they are superseded.

Rolling of text from one sheet to another is acceptable. Staff can provide additional suggestions based on the gas program's experience in order to facilitate ease in re-designation.[22]

G. Effective Date

Comments

Consumers requests that the Commission delay the effective date of the designation rule for at least 90 days, or until it is clearer how electronic filing will be accomplished. Consumers states that considerable effort is required to assemble a rate filing and it will take significant time and effort to convert existing and lengthy tariffs over to the new designation system. Further, this conversion effort cannot start until the final rule is known.

Commission Conclusion

The Commission will make the effective date of this rule June 1, 2000. Consumers seems to believe that this rule will require the refiling of its entire tariff. That will not be required. While it is the Commission's intent to eventually update utilities' tariffs, this rule will require only incremental adjustments. As changes are made to a portion of a tariff or rate schedule (including service agreements), the Commission will require the redesignation of only that individual tariff or rate schedule (including service agreements).[23] Because the Commission is not requiring utilities to refile their entire tariffs, and because the Commission has attempted to reduce the problems associated with this transition, we do not believe it is necessary to afford additional time, beyond June 1, 2000, to adapt to the new designation procedures.

The Commission has not established a standardized electronic tariff format for the electric, gas, and oil programs. Therefore, delaying the effective date of this final rule to coincide with the outcome of a future proceeding addressing this subject would be the equivalent of terminating this proceeding. The NOPR identified several reasons for implementing the designation requirements: streamlining the designation process; convergence of the gas and electric industries; facilitating case tracking and research as to the status of tariff sheets; preparing utilities for the eventual transition to electronic tariff filing; and reducing the amount of staff time necessary to process utility rate filings. These reasons provide adequate justification to implement this new rule, effective May 1, 2000.

Self-designation of tariff sheets also permits quicker and more certain Commission action on certain types of filings. The Commission is permitting certain gas and oil tariff sheets to go into effect by operation of law. If, upon staff review, a filing is complete, complies with all applicable statutory, regulatory, and policy requirements, is not protested by any party, requires no additional Commission action, and raises no other issues, these tariff sheets can go into effect without suspension or refund obligation and without an order from the Commission. Designation of utility tariff sheets will permit the same process to apply to the electric program.

IV. Information Collection Statement

The following collection of information contained in this rule is being submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995.[24] FERC identifies the information provided under Part 35 as FERC–516. The additional reporting burden to implement this proposed rule is as follows:

Data collection	Number of respondents	Number of responses	Hrs. per response	Total annual hours
FERC–516	858	3.42	2.83	8,320

Total Additional Annual Hours for Collection (Reporting + Recordkeeping, if appropriate) = 8,320.

The total annual reporting burden for FERC–516 under the current regulations is 536,800 hours. Currently, the Commission devotes approximately 8,320 hours per year to assign tariff designations to an estimated 2,934 filings per year. The proposed change will require the utilities to perform the designation duties currently performed by Commission staff. There will, therefore, be an increase in reporting burden from 536,800 hours to 545,120 hours as utilities adopt the proposed designation system for changes proposed in existing tariffs or rate

[21] Section 205(d) of the FPA (16 U.S.C. 824d(d)) provides that, unless the Commission otherwise provides, no change shall be made to a tariff except after 60 days' notice given by a filing by the utility, and that the filing must plainly state the changes being made and the time when the changes will go into effect.

[22] Consumers also raises questions and issues related to filing tariff sheets electronically. As the Commission has not yet initiated any proceeding addressing electronic filing, it is premature to address these issues at this time.

[23] *See* 18 CFR 35.2(b) and n.1.

[24] 44 U.S.C. 3507(d).

schedules and/or if an entire tariff or rate schedule must be re-filed.[25]

Information Collection Costs: The Commission has projected the average annualized cost for all respondents to be:

Annualized Capital/Startup Costs
$205,424 (tariff designations)
Annualized Costs (Operations & Maintenance): $28,359,815 (tariff + rate schedule filings)
Total Annualized Costs: $28,565,239 (tariff designations + rate schedule filings)

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule.[26] Accordingly, pursuant to OMB regulations the Commission has provided notice of this information collection to OMB.

Title: FERC–516, Electric Rate Schedule Filings.

Action: Data Collection.

OMB Control No.: 1902–0096. The respondent shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

Respondents: Business or other for profit, including small businesses.

Frequency of Responses: On Occasion.

Necessity of Information: The proposed rule revises the requirements contained in 18 CFR Part 35.

Internal Review: The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements. Section 205 of the Federal Power Act (FPA) (16 USC 824d) requires that rates, terms, and conditions for jurisdictional service be filed with the Commission. In addition, the Commission uses the information provided to make determinations under sections 205 and 206 of the FPA (16 USC 824d-e) as to whether rates, terms and conditions of jurisdictional service are unjust, unreasonable, or unduly discriminatory or preferential and to prescribe just and reasonable rates, terms and conditions. Failure to issue these requirements would mean the Commission is not meeting its statutory obligations under Sections 205 and 206 of the FPA. These requirements also conform to the Commission's plan for the efficient collection, communication, and management of information for the electric industry.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, [Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208–1415, fax: (202) 208–2425, email: mike.miller@ferc.fed.us].

For submitting comments concerning the collection of information and the associated burden estimate, please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–3087, fax: (202) 395–7285.

V. Environmental Statement

Issuance of this Final Rule does not represent a major federal action having a significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act.[27] The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment. The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment. The actions proposed to be taken here fall within categorical exclusions found in 18 CFR § 380.4(a)(1) and (15).

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires rulemakings to contain either a description and analysis of the effect that a rule will have on small entities or a certification that a rule will not have a significant economic effect on a substantial number of small entities. Most filing entities do not fall within the RFA's definition of a small entity.[28] Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis is required.

VII. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.fed.us*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.
—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.
—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to WebMaster@ferc.fed.us) or the Public Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ ferc.fed.us).*

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

VIII. Effective Date and Congressional Notification

This Final Rule will take effect on June 1, 2000. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a "major rule"

[25] The proposed change may have even less impact on utilities, as the Commission assumes utilities currently maintain an informal recordkeeping system for proposed tariff sheets pending a final designation from the Commission. This informal system will no longer be necessary to maintain, as tariff sheet designations will be assigned by the utilities prior to filing the tariff sheets.

[26] 5 CFR 1320.11

[27] See Order No. 486, 52 FR 47897 (December 17, 1987), FERC Stats. & Regs. Regulations Preambles 1986–1990 ¶ 30,783 (December 10, 1987).

[28] See 5 U.S.C. 601(3).

within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[29] The Commission will submit the Final Rule to both houses of Congress and the General Accounting Office.[30]

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Electricity, Reporting and recordkeeping requirements.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission amends Part 35, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for Part 35 continues to read as follows:

Authority: 16 U.S.C. 791a-825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Section 35.5 is amended by designating the existing text as paragraph (a) and by adding a paragraph (b) to read as follows:

§ 35.5 Rejection of material submitted for filing.

* * * * *

(b) A rate filing that fails to comply with this Part may be rejected by the Director of the Office of Markets, Tariffs, and Rates pursuant to the authority delegated to the Director in § 375.307(k)(3) of this chapter.

3. Section 35.9 is revised to read as follows:

§ 35.9 Identification and numbering of tariffs and rate schedules (including service agreements).

(a) All tariffs and rate schedules (including service agreements) must be numbered sequentially from the beginning of that tariff or rate schedule (or service agreement). Revised service agreements must be replaced in their entirety.

(b) All tariffs and rate schedules (not including service agreements, except as noted in paragraphs (b)(4) and (5) of this section) must have the following information placed in the margins of each sheet:

(1) *Identification.* At the top left of each page, the exact name of the company must be shown, under which must be set forth the words "FERC Electric Tariff" or "Rate Schedule FERC No. ____" together with volume identification, as appropriate.

(2) *Numbering of sheets.* Except for the title page, at the top right, the sheet number must appear as "(Original or Revised) Sheet No. (number)." All sheets must be numbered in the manner set forth in the Tariff, Rate Schedule and Service Agreement Pagination Guidelines, as modified from time to time.

(3) *Issuing officer and issue date.* On the lower left must be placed "Issued by:" followed by the name and title of the person authorized to issue the sheet. Immediately below must be placed "Issued on" followed by the date of issue.

(4) *Effective date.* On the lower right must be placed "Effective:" followed by the specific effective date proposed by the company. Service agreements must include this data on the same sheet containing the service agreement designation.

(5) *Filings made to comply with Commission orders.* Tariffs and rate schedules (including service agreements) filed to comply with Commission orders must carry the following notation in the bottom margin: "Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. (number), issued (date), (FERC Reports citation)." Service agreements must include this data on the same sheet containing the service agreement designation.

§ 35.18 [Removed and reserved]

4. Section 35.18 is removed and reserved.

[Note: This Appendix will not appear in the Code of Federal Regulations.]

Appendix

Tariff, Rate Schedule, and Service Agreement Pagination Guidelines

Due to the complexity of tariff filing situations, the Commission Staff provides the following guidelines. If you have questions or need assistance, please call Kathleen E. Nieman at (202) 208–1070, or such other persons as may be identified from time to time.

(1) *Original Sheets.* Paginate as "Original Sheet No. ____" (a) all pages in initial filings, (b) added sheets, and (c) all sheets in a revised tariff volume. Guideline (11) gives an exception for reserved sheets.

(2) *Substitute Sheets.* Paginate a sheet as "Substitute" if it is filed to replace a sheet filed in the same proceeding (*e.g.*, as a result of a hearing order, or of a correction to a tariff sheet filed prior to the issuance of an order, or of a compliance filing) with the same effective date. If a substitute sheet needs to be replaced, paginate the new sheet as "Second Substitute", and so on. (See Example No. 1.)

(3) *Revised Sheets.* Paginate a sheet as "Revised" if it is (a) replacing a sheet filed in a different proceeding or (b) replacing a sheet filed in the same proceeding but given a new proposed effective date. Each subsequent "Revised" pagination should be numbered sequentially, *i.e.*, First Revised, Second Revised, Third Revised, etc. (See Examples Nos. 1 and 2.)

(4) *Superseded Sheets.* Each designation must refer to the designation of the sheet being superseded, if any. The superseded sheet is the sheet being replaced by a revised sheet. (There is an exception to this guideline for retroactive filings—see Guideline (9).) Never designate a rejected or suspended sheet as the superseded sheet. However, if a sheet designated as superseded is subsequently rejected, it is not necessary to re-file solely to correct the superseded sheet designation. (See Example No. 1.)

(5) *Rejected Sheets.* Do not reuse the pagination of a rejected sheet. Paginate a sheet "Substitute" if it is filed to replace a rejected sheet in the same proceeding, but do not refer to a rejected sheet as the superseded sheet in the designation. (See Guidelines (3) and (4).)

(6) *Alternate Sheets.* When filing two versions of a proposed tariff sheet, paginate the sheet " ____ Revised Sheet No. ____" and "Alternate ____ Revised Sheet No. ____". Paginate a replacement alternate sheet "Sub Alternate ____".

(7) *Inserted Sheets.* Paginate sheets inserted between two consecutively numbered sheets using an uppercase letter following the first sheet number (*e.g.*, sheets inserted between sheets 8 and 9 would be 8A, 8B, etc.). For sheets inserted between two consecutively lettered sheets, add a "." followed by a two digit number (*e.g.*, sheets inserted between sheets 8A and 8B would be 8A.01 through 8A.99). For further insertions, add a lowercase letter (*e.g.*, between sheets 8A.01 and 8A.02 would be 8A.01a, 8A.01b, etc.).

(8) *"Squeezed" Sheets.* When a sheet needs to be made effective between two sequentially paginated sheets already on file (all in different proceedings), paginate the new sheet by adding a "1st Rev" designation to the older sheet's pagination. Commonly, this situation occurs when a sheet is suspended for five months and subsequent sheets need to be made effective prior to when the suspended sheet becomes effective. (See Example No. 3.)

(9) *"Retroactive" Sheets.* When filing a "retroactive" sheet change back to a certain date, all sheets in effect from that date forward need to be changed. The first sheet should be paginated either as "Substitute" (see Guideline (3) above) or "1st Rev" (see Guideline (8) above) depending on whether the retroactive filing is in the same or different docket as the sheet being replaced. For simplicity, the rest of the sheets should be paginated as a "Substitute" of each effective sheet already on file. Follow Guideline (4) in designating the superseded sheet for the first new sheet. However, the rest of the sheets should supersede each other in order, even though they are all filed in the same docket. In this way the superseded designation will reflect the latest sheet in effect on each given date. (See Examples Nos. 4 and 5.)

(10) *Canceled Sheets.* When canceling individual sheets, but retaining the tariff or

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[29] 5 U.S.C. 804(2).

[30] 5 U.S.C. 801(a)(1)(A).

rate schedule, designate a blank sheet as a revised sheet superseding the prior sheets.

(11) *Canceled Tariff or Rate Schedule.* When canceling an entire tariff or rate schedule, file one sheet paginated as the first sheet of the tariff volume or Rate Schedule and refer to the tariff volume or Rate Schedule as canceled. (See Example No. 7.)

(12) *Sheets Reserved For Future Use.* When reserving a number of sheets for future use, file one sheet paginated "Sheet Nos. A—Z", where "A" and "Z" refer to the first and last reserved sheet numbers. In the body of the sheet state "Reserved for Future Use." (See Example No. 8.)

(13) *Rate Schedule and Service Agreement Designations.* Rate schedule and service agreement designation should follow the above principles and terminology. For example, if a change is made to Service Agreement No. 50, the designation should be 1st Revised Service Agreement No. 50.

(14) *Abbreviations.* Abbreviate from left to right using the Abbreviation Conventions List at the end of this document. *Abbreviate only as needed.* (See Example No. 6.) The following examples reflect the types of changes and corresponding designations that may be made over the life of a given tariff or rate schedule (all docket numbers and dates are hypothetical, and are not intended to refer to actual proceedings):

Example No. 1: Revised and Substitute Sheets. "Original Sheet No. 4" is filed in Docket No. ER99–44–000 to be effective January 1, 1999. Subsequently, a sheet filed in Docket No. ER99–123–000 is to be effective February 1, 1999. Paginate the latter sheet as "First Revised Sheet No. 4 superseding Original Sheet No. 4". If a mistake is discovered and a corrected sheet needs to be filed in Docket No. ER99–123–001,[1] paginate that sheet "Substitute First Revised Sheet No. 4 superseding Original Sheet No. 4" . Note the superseded sheet is from the prior proceeding.

Docket	Filed	Effective	Pagination	Superseded sheet
ER99–44–000	11/30/98	1/1/99	Original.	
ER99–123–000	12/31/98	2/1/99	First Revised	Original.
ER99–123–001	2/15/99	2/1/99	Sub First Revised	Original.

If the utility proposes two separate changes to be effective the same date, and the second filing reflects the first filing's proposed changes, then it is appropriate to show the first filing's pagination as superseded.

Docket	Filed	Effective	Pagination	Superseded sheet
ER99–44–000	11/30/98	1/1/99	Original.	
ER99–123–000	12/31/98	2/1/99	First Revised	Original
ER99–124–000	2/15/99	2/1/99	Second Revised	First Revised

Example No. 2: Sheets Effective on the Same Date. "Second Revised Sheet No. 4" is filed in Docket No. ER99–200–000 to be effective April 1, 1999. Subsequently, a sheet is filed in Docket No. ER99–504–000 to be effective on the same date. Paginate that sheet with the next revision number, "Third Revised Sheet No. 4" even though it is to be effective on the same date.

Docket	Filed	Effective	Pagination	Superseded sheet
ER99–200–000	2/28/99	4/1/99	Second Revised	Sub First Rev.
ER99–504–000	3/31/99	4/1/99	Third Revised	Second Rev.

Example No. 3: Squeezed Sheets. "Fourth Revised Sheet No. 4" is filed July 31, 1999, in Docket No. ER99–601–000 to be effective September 1, 1999. An order suspends this sheet until February 1, 2000. Subsequently, two filings are made to be effective prior to February 1, 2000. Paginate these sheets as "1st Rev Third Revised Sheet No. 4" and "2nd Rev Third Revised Sheet No. 4". The utility will be required, if necessary, to file revised tariff sheets to update the suspended tariff sheets to include any changes to the tariff sheets that have been accepted by the Commission between the date of the suspension and the effective date of the suspended rates. When filing to update the revised tariff sheets, paginate the revised tariff sheet as "Sub Fourth Revised Sheet No. 4". Note: using the alpha-numeric "1st, 2nd, etc." for the additional revision number assists in keeping the pagination clear.

Docket	Filed	Effective	Pagination	Superseded sheet
ER99–601–000	7/31/99	2/1/00	Fourth Revised	Third Revised.
ER99–761–000	8/31/99	10/1/99	1st Rev Third Rev	Third Revised.
ER00–822–000	10/31/99	11/1/99	2nd Rev Third Rev	1st Rev Third Rev.
ER99–601–001	1/31/00	2/1/00	Sub Fourth Revised	2nd Rev Third Rev.

Example No. 4: Retroactive Sheets. The sheet paginated in Example No. 1, "Sub First Revised Sheet No. 4" filed in Docket No. ER99–123–001 is in effect February 1, 1999, subject to the resolution of issues. A year later, settlement is reached resulting in a restatement of base rates back to that date. The revised sheets filed under Docket No. ER99–123–002 (using prior examples):

Docket	Filed	Effective	Pagination	Superseded sheet
ER99–123–002	2/15/00	2/1/99	2nd Sub First Revised	Original.
		4/1/99	Sub Second Revised	2nd Sub First Rev.
		4/1/99	Sub Third Revised	Sub Second Rev.
		10/1/99	Sub 1st Rev Third Rev	Sub Third Rev.
		11/1/99	Sub 2nd Rev Third Rev	Sub 1st Rev Third Rev.

[1] The Commission is issuing a notice contemporaneous with this Final Rule informing the public of its intent to change its assignment of docket numbers to electric filings to a method similar to that used for the gas and oil programs, effective June 1, 2000.

Docket	Filed	Effective	Pagination	Superseded sheet
		2/1/00	2nd Sub Fourth Rev	Sub 2nd Rev Third Rev.

Example No. 5: Retroactive Sheets. Continuing from Example 4, a subsequent tracker filing retroactive to November 1, 1999:

Docket	Filed	Effective	Pagination	Superseded sheet
ER00–77–000	4/30/00	11/1/99	3rd Rev Third Rev	Sub 2nd Rev Third Rev.
	2/1/00	.....	3rd Sub Fourth Rev	3rd Rev Third Rev.

Example No. 6: Abbreviations. Abbreviate "Fourth Revised Twenty-Third Revised Sheet No. 4" as "4th Rev Twenty-Third Revised Sheet No. 4".

Example No. 7: Canceled Rate Schedules and Tariffs. To cancel Rate Schedule FERC No. 26, which consists of Original Sheet Nos. 1–39, file First Revised Sheet No. 1.

Company Name; Rate Schedule FERC No. 26.

First Revised Sheet No. 1.

Cancels FERC Electric Rate Schedule No. 26.

Notice of Cancellation

Example No. 8: Reserved Sheets. Your general terms and conditions end on page 75 and you want to reserve sheets 76 through 99 for future use:

Company Name; FERC Electric Tariff, Original Volume No. 2.

Sheet Nos. 76 through 99.

Sheet Nos. 76 through 99 are reserved for future use.

Abbreviation Conventions List

Substitute: Sub
Alternate: Alt
Revised: Rev
First, Second, etc.: 1st, 2nd, etc.
Sheet No.: (omit these words)

SAMPLE PAGE

Day and Light Power Company, FERC Electric Tariff, Original Volume No. 1.

Original Sheet No. 4

Issued by: Harriet Officer, Rates Manager.

Effective: July 1, 2000.

Issued on: June 10, 2000.

Filed to comply with order of the Federal Energy Regulatory Commission, Docket No. ER99–5374–000, issued October 27, 1999, 90 FERC ¶ 61,010 (1999).

[FR Doc. 00–8459 Filed 4–6–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM00–2–000, Order No. 612]

Time Frame for Intervening in and Protesting Federal Power Act Section 205 Filings; Correction

April 3, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Energy Regulation Commission (Commission) published in the **Federal Register** of December 28, 1999, a final rule amending its regulations to provide that, absent a notice providing some other time period, a twenty-one (21) calendar day time period from the date a Federal Power Act (FPA) Section 205 rate filing is filed, amended, or supplemented will be provided for interested parties to file any protest or intervention in the proceeding. Inadvertently, § 35.8(b) contained a typographical error. This document corrects that typographical error.

DATES: Effective on April 7, 2000.

FOR FURTHER INFORMATION CONTACT: Julia A. Lake, Attorney, Federal Energy Regulatory Commission, 888 First Street, NW, Washington, DC 20426; phone: 202–208–2019; e-mail:*julia.lake@ferc.fed.us.*

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission (Commission) published in the **Federal Register** of December 28, 1999, a final rule amending its regulations to provide that, absent a notice providing some other time period, a twenty-one (21) calendar day time period time from the date a Federal Power Act (FPA) Section 205 rate filing is filed, amended, or supplemented will be provided for interested parties to file any protest or intervention in the proceeding. Inadvertently, § 35.8(d) contained a typographical error. This document corrects that typographical error.

In rule FR Doc. 99–33593, published on December 28, 1999 (64 FR 72535), make the following correction. On page 72537, in the second column, last paragraph, correct the word "§ 35.9" to read "§ 35.8".

Dated: March 31, 2000.

Linwood A. Watson, Jr.,

Acting Secretary.

FR Doc. 00–8621 Filed 4–6–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM98–1–000; Order No. 607]

Regulations Governing Off-the-Record Communications; Correction

March 31, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; correction.

SUMMARY: The Federal Energy Regulatory Commission ("Commission") published in the **Federal Register** of September 22, 1999, a document revising its rules concerning communications between persons outside the Commission and the Commission and its employees. One amendatory instruction for Part 385 was incorrectly stated. This document corrects that amendatory instruction.

DATES: Effective on April 7, 2000.

FOR FURTHER INFORMATION CONTACT: Julia A. Lake, Attorney, Federal Energy Regulatory Commission, 888 First Street, NW, Washington, DC 20426; phone: 202–208–2019; e-mail: *julia.lake@ferc.fed.us.*

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission ("Commission") published in the **Federal Register** of September 22, 1999, a document revising its rules concerning communications between persons outside the Commission and the Commission and its employees. One amendatory instruction for Part 385 was incorrectly stated. This document corrects that amendatory instruction.

In rule FR Doc. 99–24616 published on September 22, 1999 (64 FR 51222), make the following correction. On page 51234, in the first column, correct amendatory instruction 2 to read as follows:

"2. In § 385.101, remove paragraph (b)(4)."

Dated: March 31, 2000.
Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8458 Filed 4–6–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 809 and 864

[Docket No. 97N–0135]

Hematology and Pathology Devices; Reclassification; Restricted Devices; OTC Test Sample Collection Systems for Drugs of Abuse Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is reclassifying over-the-counter (OTC) test sample collection systems for drugs of abuse testing from class III (premarket approval) into class I (general controls) and exempting them from premarket notification (510(k)) and current good manufacturing practice (CGMP) requirements. FDA is also designating OTC test sample collection systems for drugs of abuse testing as restricted devices under the Federal Food, Drug, and Cosmetic Act (the act) and establishing restrictions intended to assure consumers that: The underlying laboratory test(s) are accurate and reliable; the laboratory performing the test(s) has adequate expertise and competency; and the product has adequate labeling and methods of communicating test results to consumers. Finally, FDA is adding a conforming amendment to the existing classification regulation for specimen transport and storage containers to clarify that it does not apply to specimen transport and storage containers that are part of an OTC test sample collection system for the purpose of testing for the presence of drugs of abuse or their metabolites in a laboratory.

DATES: This rule is effective April 9, 2001.

ADDRESSES: Comments on the burden estimates or on any other aspect of the information collection provisions should be sent to the Office of Device Evaluation (HFZ–440), Center for Devices and Radiological Health, Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850.

FOR FURTHER INFORMATION CONTACT: Steven Gutman, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–3084.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 5, 1998 (63 FR 10792), FDA published a proposed rule to: (1) Reclassify OTC test sample collection systems for drugs of abuse testing from class III (premarket approval) into class I (general controls) and to exempt them from premarket notification (510(k)) and CGMP requirements; (2) to designate OTC test sample collection systems for drugs of abuse testing as restricted devices under the act; and (3) to establish restrictions intended to assure consumers that: The underlying laboratory test(s) are accurate and reliable, the laboratory performing the test(s) has adequate expertise and competency, and the product has adequate labeling and methods of communicating test results to consumers.

The proposed rule does not affect OTC tests for drugs of abuse that are performed in the home setting—i.e., the testing is performed in the home setting and the test results are read and interpreted directly by the consumer, without involvement or input from a health professional. These are referred to as "point of care" tests. When manufacturers or distributors market "point of care" tests, they are selling the consumers the actual test rather than a collection system that uses a laboratory to perform a test. Under these circumstances, FDA cannot determine whether the test is accurate and reliable without premarket review of the product. Accordingly, no changes are being proposed in FDA's current policy of reviewing "point of care" tests prior to marketing.

Interested persons were given until July 6, 1998, to submit written comments on the proposed rule. FDA received nine comments.

In the **Federal Register** of May 28, 1998 (63 FR 29174), FDA announced that on June 19, 1998, it would hold a public hearing on the proposed rule. FDA held that hearing as announced.

II. Response to Comments

FDA received nine comments on the proposed rule from individuals, manufacturers, and professional societies. The majority of comments supported FDA's proposed rule. A summary of the written comments as well as comments made at the public hearing and FDA's response is set forth in this section II.

A. General Comments

1. Six comments generally supported regulating OTC test sample collection systems for drugs of abuse as class I devices exempt from the premarket notification requirements. These comments asserted that deregulation of home drug test collection systems outlined in the proposed rule made drug testing more affordable and more accessible. These comments indicated support for the testing laboratory to provide a health care professional to communicate the proper interpretation of test results from the laboratory to the lay user.

B. Consumer Versus Workplace Test Kits

2. One comment stated that the rule fails to distinguish between test systems marketed directly to consumers and those intended for use in the workplace because the rule fails to take into account the additional safeguards that are present when drug testing is performed in the workplace. This comment went on to suggest that even if FDA concludes that it has jurisdiction to regulate all test systems, it should nevertheless exercise enforcement discretion with respect to drugs of abuse tests for the workplace because the workplace setting offers sufficient protections to "ensure sample integrity and test accuracy."

FDA disagrees with this comment. As explained in the proposed rule, FDA concluded that there should be consistency in its regulation of drugs of abuse test sample collection systems used in the home, workplace, insurance, and sports settings. Issues related to consumer use and quality are similar in all these settings, including concerns about sample integrity and test accuracy. FDA believes the need to provide assurance of test accuracy and reliability applies equally in all these areas.

However, FDA will continue to exercise its enforcement discretion with respect to the use of these products in the law enforcement setting because there are protections to ensure sample integrity and test accuracy that are not generally available in the home, workplace, insurance and sports settings. The additional protections include the use of rules of evidence in judicial proceedings and the representation of the accused (i.e., the person being tested) through the judicial process.

C. FDA Oversight

3. One comment expressed concern over the proposal to exempt manufacturers from the 510(k) process and suggested the need for data to be presented to demonstrate that each analyte is unaffected by storage and transport, i.e., stored and not altered or interfered with. This comment stated that there is a potential for materials in collection cups to interfere with an accurate test result.

Mail-in drug testing is practiced routinely in many settings. The materials and methods for shipping urine are in widespread use for drugs of abuse testing in Substance Abuse and Mental Health Service Administration (SAMHSA) or equivalent certified laboratories. Data submitted to the FDA have shown drugs of abuse test specimens to be stable when shipped in accordance with the requirements of SAMHSA or equivalent certified laboratories. Although FDA has exempted the OTC test sample collection systems for drugs of abuse testing from premarket review, all of these systems will be required to use screening tests that have been approved, cleared, or otherwise recognized by FDA as accurate and reliable for testing. The final rule further requires manufacturers and suppliers to comply with medical device reporting requirements (21 CFR part 803) and report adverse events that may have been due to the OTC collection containers. FDA believes these general controls, without premarket notification, provide reasonable assurance that these products will be used safely and effectively.

D. In-House Tests

4. One comment stated that FDA's proposed rule would impose on clinical laboratories using in-house (home brew) assays additional and burdensome requirements that are unnecessary under the Clinical Laboratory Improvement Amendments of 1988 (CLIA 88).

FDA disagrees with this comment. In order for products to be used OTC, they must be cleared by FDA. The agency believes that the FDA requirements will be complementary to those of CLIA and will address issues related to device safety and effectiveness outside the usual CLIA review program. CLIA requirements focus on the proficiency of the laboratories performing tests and the new regulation recognizes the need for such laboratories to have adequate expertise.

5. One comment stated that the rule unfairly discriminates against companies using screening assays for which there are no FDA-cleared screening tests, thereby imposing premarket approval requirements for the test system.

FDA does not agree that the rule discriminates unfairly. This rule is designed to ensure that there is a level playing field and that all manufacturers marketing home test collection systems use testing methods that have been approved, cleared, or otherwise recognized by FDA as accurate and reliable.

6. One comment voiced opposition to the FDA proposal to require companies marketing drugs-of-abuse test systems that employ in-house screening tests to establish validity of these tests with FDA before marketing the test system. This comment stated that FDA lacks jurisdiction to regulate the provision of laboratory testing services by clinical laboratories.

The agency believes that in-house (home brew) laboratory tests are medical devices subject to regulation by FDA. FDA considers clinical laboratories that develop such tests to be acting as manufacturers. In a recent regulation to classify/reclassify analyte specific reagents FDA stated its desire to regulate in-house developed tests in a way that would not inhibit the development of such tests or diminish the contribution they make to public health (62 FR 62243 at 62249, November 21, 1997). However, in instances where these tests are part of systems intended for lay users, the agency believes that the additional oversight provided by agency premarket review of the test is necessary to ensure the safety and effectiveness of the device.

7. One comment asked if the drugs of abuse testing required under the proposed rule would be covered under CLIA requirements for high complexity testing.

The answer is yes. Because the confirmation testing of presumptive positives is designated as a high complexity test under CLIA, CLIA standards for high complexity testing would apply.

E. Laboratory Standards

8. Three comments emphasized the importance of confirmation of presumptive results and suggested that this be a mandatory part of OTC test sample collection systems.

FDA agrees with these comments. The rule specifically requires that the laboratory performing the test shall have adequate capability to reliably perform the necessary screening and confirmatory testing.

9. One comment suggested that laboratories testing any drugs of abuse or their metabolites not covered by SAMHSA should meet standards of organizations with deemed accreditation status such as College of American Pathologists (CAP).

FDA agrees with this comment. The agency's rule clearly stated that the laboratory performing the test shall have, and shall be recognized as having, adequate capability to reliably perform the necessary screening and confirmatory tests. Such recognition would include CAP accreditation.

10. One comment expressed concern that a high complexity CLIA certified laboratory (e.g., toxicology laboratory) would not meet the SAMHSA standards that are required for laboratories performing Federal workplace drug-testing. The comment stated that OTC products relying on non-SAMHSA certified laboratories would lower the standards of competency for drugs of abuse testing.

FDA recognizes that there are differences in toxicology laboratory certification programs. However, the agency believes that the standards established by the rule, as proposed, are appropriate, because they ensure an acceptable level of testing performance. As discussed previously, the rule requires the laboratory to be recognized as being able to reliably perform screening and confirmatory testing, including the capability to check biological specimens for possible adulteration. FDA believes that such recognition of capability and good laboratory practice may be demonstrated in a number of ways including SAMHSA certification, CAP accreditation, and CLIA high complexity designation.

11. One comment suggested FDA consider allowing laboratories to report the lowest concentration of drug they are able to detect in order to encourage improvement in the sensitivity of the system.

FDA has not specified concentration levels for drugs being tested in these systems. The agency expects sponsors to label their products to reflect the chosen performance levels using appropriate cut-off points.

12. One comment suggested it would be helpful to clarify whether the screening and confirmation testing must be performed at the same physical site in the same laboratory.

The regulation requires the laboratory performing the test to have adequate capability to reliably perform the necessary screening and confirmatory testing. While the expectation is that this testing usually will be performed at

a single site, the rule does not preclude a laboratory operating as a single entity from housing different analytical functions at different sites. The rule also does not prevent laboratories from making contractual agreements to acquire or share analytical resources so long as the other laboratory meets the necessary standards.

13. One comment noted that laboratory customers are often not aware of the limits of the SAMHSA coverage and suggested that the regulation should make clear the actual jurisdiction of the SAMHSA standards.

FDA agrees that this is useful information. The dissemination of this information, however, falls outside of the scope of this rule.

F. FDA Labeling

14. One comment suggested that the guidance document that FDA intends to develop should encourage manufacturers to list all drugs that will not be covered under the test.

The agency does not agree that an exhaustive listing of drugs not being tested is reasonable or user-friendly. FDA believes the labeling for the test should clearly indicate: (1) What drugs are being tested, (2) what limitations exist, and (3) examples of these limitations. For example, a label may include the information that strong oxidizing agents such as bleach can oxidize drug analytes and explain that, if a sample is suspected of being adulterated, a new sample must be obtained. The agency intends to include examples of appropriate labeling in its guidance.

15. One comment suggested that test labeling should explicitly offer guidance on how to contact a resource for test interpretation as well as identifying resources for counseling and treatment.

FDA agrees with this comment. The regulation does require labeling of these products to include adequate instructions on how to obtain test results from a person who can explain their meaning, including the probability of false positive and false negative results, as well as how to contact a trained health professional if additional information on interpretation of test results from the laboratory or followup counseling is desired. In the **Federal Register** of December 21, 1999 (64 FR 71461), FDA announced the availability of a draft guidance document entitled "Draft Guidance on Labeling for Over-the-Counter Sample Collection Systems for Drugs of Abuse Testing." The draft guidance provides to manufacturers FDA's thinking on ways to comply with the labeling requirements in this rule. For example, it states the labeling should include advice on contacting a physician for options for identifying and/or treating substance use and abuse problems, and should include a statement on how to obtain information for talking to children about drug use and abuse. FDA intends to finalize the guidance before the effective date of this final rule.

16. One comment stated that training of users is essential in collection of these specimens.

FDA agrees that this is an important issue. Guidance on labeling of home use devices is available both from NCCLS (GP–14–A "Labeling for Home Use In-Vitro Products") and from FDA ("Write It Right" and "Points to Consider Regarding Labeling and Premarket Submissions for Home Use In-Vitro Diagnostic Devices"). These guidances can help manufacturers to develop high quality instruction manuals for users of medical devices in the home that are easy to read, understand, and follow. The manufacturers also can enlist the aid of health care professionals and home medical equipment suppliers to stress the importance of the manual to the lay users.

G. Hair Testing

17. One comment objected that OTC drugs of abuse test kits are not medical devices under section 201(h) of the act (21 U.S.C. 321(h)). The comment argued that FDA lacks jurisdiction to regulate test kits that detect drugs of abuse in hair because they are not considered devices for medical diagnosis and treatment. This comment stated that hair analysis provides no information concerning intoxication or addiction.

FDA disagrees with the comment. The definition of device as set forth in section 201(h) of the act includes the following:

> The term "device" * * * means an instrument, apparatus, implement, machine, contrivance, implant, *in vitro reagent*, or other similar or related article, *including any component, part, or accessory*, which is— * * * (2) *intended for use in the diagnosis of disease or other conditions* * * * [emphasis added]

The test for evidence of drug abuse is intended to provide information about a condition, namely, whether drugs of abuse are being used or have been used by the subject. In addition, such information can be used to diagnose other conditions or diseases, including addiction or intoxication, and may also be used to eliminate such conditions as part of a diagnosis of an underlying disease.

18. One comment endorsed the use of hair testing and indicated that it provided a valuable extension of the window for testing for hard drugs of abuse in children.

FDA agrees that hair testing may be a valuable test. To date the agency has not received a premarket submission for such a test. The agency does believe that these tests should be subject to appropriate premarket scientific review. The review standards applied to these tests will depend on the claims the manufacturer makes. FDA is committed to working with companies to develop appropriate study design and generate data sets to help characterize performance and establish labeling for these products that would be of benefit to lay users.

19. One comment said that, if FDA requires agency premarket review of tests for hair or other nonurine specimens, the agency cannot impose a higher regulatory burden on hair-based testing than on urine-based testing.

FDA is not imposing a higher regulatory burden on hair-based testing than on urine-based testing. This rule applies to the OTC test sample collection system, not the test itself, and applies equally, whether the sample collected is hair or urine. The regulatory burden imposed on a device is contingent upon the intended use, indications for use, and technological characteristics of the individual device.

20. One comment suggested FDA's proposal is irrational in requiring premarket notification for a specimen collection container for hair while exempting from premarket notification urine specimen collection containers and other specimen collection containers that are used in conjunction with screening tests previously approved, cleared, or otherwise recognized by FDA.

The comment appears to misunderstand the rule. FDA will treat all collection containers used in these products in an equivalent manner. Whenever such containers are part of a system that uses a cleared, approved, or recognized test performed in an appropriately regulated laboratory, the collection container will be exempt from any premarket review.

III. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this proposed classification action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the rule under Executive Order 12866, and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this rule is consistent with the regulatory philosophy and principles identified in the Executive Order. The Office of Management and Budget (OMB) has determined that this final rule is a significant regulatory action subject to review under the Executive Order.

The reclassification of OTC test sample collection systems for drugs of abuse testing (class III into class I exempt) is reasonably expected to provide economic benefit to the health care system, individual consumers, and regulated industry. At this time, only a very limited number of OTC products for drugs of abuse testing (without professional assistance) are available to parents. By greatly increasing access, this reclassification may provide benefits to families. First, testing may serve as a deterrent to drug use and prevent the initial experimentation with drugs of abuse by children. Next, when drugs are being used, increased access to testing may allow for earlier detection of this condition and provide opportunities for earlier intervention and treatment. Early intervention and treatment has the potential to be more successful. Finally, products for drugs of abuse testing marketed to parents may be used to monitor children already undergoing treatment for drug use, deterring or at least detecting recidivism, which is currently estimated at 30 to 50 percent. In addition, the regulation, which regulates such testing systems consistently in home, workplace, athletic, and insurance settings, will help ensure all consumers that the product produces accurate and reliable results.

FDA cannot quantify the beneficial effect on the public health that will result from easier access to these tests. Nevertheless, the agency finds that the product has significant potential to reduce drug use. As the nation's economic costs of drug abuse are staggering, estimated at up to $110 billion in 1995, the potential benefit from even a modest reduction would be substantial.

Moreover, the cost to industry will fall. Under the current classification, OTC test sample collection systems for drugs of abuse testing are class III medical devices requiring a premarket approval application (PMA). FDA has found that the median development cost for a PMA ranges from $0.5 to $ 1 million. Reclassifying these devices as class I devices exempt from premarket notification, which do not undergo premarket review, means that neither new sponsors nor product purchasers will incur these costs. Consequently, FDA expects the rule to reduce regulatory costs at the same time that it decreases the economic burdens of drug abuse.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of this device from class III to class I will relieve all manufacturers of the device of the cost of complying with the premarket approval requirements in section 515 of the act (21 U.S.C. 360e). Because this rule will not require premarket review of the vast majority of OTC test sample collection systems for drugs of abuse testing, the agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. In addition, this proposed rule will not impose costs of $100 million or more in any one year on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

V. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of these information collection provisions is given in this section V with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: OTC Test Sample Collection Systems for Drugs of Abuse Testing.

Description: The final rule amends the labeling requirements for certain in vitro diagnostic products to require that manufacturers of OTC test sample collection systems for drugs of abuse testing provide certain information to consumers for the proper use of the test sample collection system and for interpreting the results. The purpose of the regulation is to ensure that lay persons collecting samples for testing have adequate instructions for sample collection and handling and for receiving and understanding the test results reported by laboratories performing the analyses.

Description of Respondents: Businesses and other for-profit organizations.

There were no comments on the paperwork provisions in the proposed rule.

TABLE1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
809.10(f)	20	1	20	100	2,000

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Individuals and organizations may submit comments on these burden estimates or on any other aspect of these information collection provisions, including suggestions for reducing the burden, and should direct them to the Office of Device Evaluation (HFZ–440), Center for Devices and Radiological Health, Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850.

The information collection provisions in this final rule have been approved under OMB control number 0910–0368. This approval expires April 30, 2001. An agency may not conduct or sponsor,

and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

List of Subjects

21 CFR Part 809

Labeling, Medical devices.

21 CFR Part 864

Biologics, Blood, Laboratories, Medical devices, Packaging and containers.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 809 and 864 are amended as follows:

PART 809—IN VITRO DIAGNOSTIC PRODUCTS FOR HUMAN USE

1. The authority citation for 21 CFR part 809 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 355, 360b, 360c, 360d, 360h, 360i, 360j, 371, 372, 374, 381.

2. Section 809.10 is amended by adding paragraph (f) to read as follows:

§ 809.10 Labeling for in vitro diagnostic products.

* * * * *

(f) The labeling for over-the-counter (OTC) test sample collection systems for drugs of abuse testing shall bear the following information in language appropriate for the intended users:

(1) Adequate instructions for specimen collection and handling, and for preparation and mailing of the specimen to the laboratory for testing.

(2) An identification system to ensure that specimens are not mixed up or otherwise misidentified at the laboratory, and that user anonymity is maintained.

(3) The intended use or uses of the product, including what drugs are to be identified in the specimen, a quantitative description of the performance characteristics for those drugs (e.g., sensitivity and specificity) in terms understandable to lay users, and the detection period.

(4) A statement that confirmatory testing will be conducted on all samples that initially test positive.

(5) A statement of warnings or precautions for users as established in the regulations contained in 16 CFR part 1500 and any other warnings appropriate to the hazard presented by the product.

(6) Adequate instructions on how to obtain test results from a person who can explain their meaning, including the probability of false positive and false negative results, as well as how to contact a trained health professional if additional information on interpretation of test results from the laboratory or followup counseling is desired.

(7) Name and place of business of the manufacturer, packer, or distributor.

3. Section 809.40 is added to subpart C to read as follows:

§ 809.40 Restrictions on the sale, distribution, and use of OTC test sample collection systems for drugs of abuse testing.

(a) Over-the-counter (OTC) test sample collection systems for drugs of abuse testing (§ 864.3260 of this chapter) are restricted devices under section 520(e) of the Act subject to the restrictions set forth in this section.

(b) Sample testing shall be performed in a laboratory using screening tests that have been approved, cleared, or otherwise recognized by the Food and Drug Administration as accurate and reliable for the testing of such specimens for identifying drugs of abuse or their metabolites.

(c) The laboratory performing the test(s) shall have, and shall be recognized as having, adequate capability to reliably perform the necessary screening and confirmatory tests, including adequate capability to perform integrity checks of the biological specimens for possible adulteration.

(d) All OTC test sample collection systems for drugs of abuse testing shall be labeled in accordance with § 809.10(f) and shall provide an adequate system to communicate the proper interpretation of test results from the laboratory to the lay purchaser.

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

4. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

5. Section 864.3250 is amended in paragraph (a) by adding a sentence to the end of the paragraph to read as follows:

§ 864.3250 Specimen transport and storage containers.

(a) * * * This section does not apply to specimen transport and storage containers that are intended for use as part of an over-the-counter test sample collection system for drugs of abuse testing.

* * * * *

6. Section 864.3260 is added to subpart D to read as follows:

§ 864.3260 OTC test sample collection systems for drugs of abuse testing.

(a) *Identification.* An over-the-counter (OTC) test sample collection system for drugs of abuse testing is a device intended to: Collect biological specimens (such as hair, urine, sweat, or saliva), outside of a medical setting and not on order of a health care professional (e.g., in the home, insurance, sports, or workplace setting); maintain the integrity of such specimens during storage and transport in order that the matter contained therein can be tested in a laboratory for the presence of drugs of abuse or their metabolites; and provide access to test results and counseling. This section does not apply to collection, transport, or laboratory testing of biological specimens for the presence of drugs of abuse or their metabolites that is performed to develop evidence for law enforcement purposes.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification requirements in part 807, subpart E of this chapter subject to the limitations in § 864.9 if it is sold, distributed, and used in accordance with the restrictions set forth in § 809.40 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.198 of this chapter with respect to complaint files.

Dated: December 22, 1999.

Jane E. Henney,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 00–8598 Filed 4–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 00P–1209]

Medical Devices; Laser Fluorescence Caries Detection Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the laser fluorescence caries detection device into class II (special controls). The special controls that will apply to this device are set forth below. The

agency is taking this action in response to a petition submitted under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976 (the amendments), the Safe Medical Devices Act of 1990, and the Food and Drug Administration Modernization Act of 1997. The agency is classifying this device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

DATES: This rule is effective May 8, 2000.

FOR FURTHER INFORMATION CONTACT: Robert S. Betz, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the amendments, generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the FDA regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall classify the device by written order within 60 days of receiving such a request. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification.

On December 23, 1999, after review of KaVo America Corp.'s appeal, FDA reopened their petition under section 513(f)(2) of the act requesting classification of its DIAGNOdent Laser Fluorescence Caries Detection Device intended for aiding in the diagnosis of dental caries. After review of the information submitted in the petition, its amendments, and the original 510(k) notification (K983658), FDA issued an order on February 22, 2000, classifying the DIAGNOdent Laser Fluorescence Caries Detection Device and substantially equivalent devices of this generic type into class II under the generic name "laser fluorescence caries detection device." FDA has determined that the laser fluorescence caries detection device can be classified in class II with the establishment of the following special controls:

1. That sale, distribution, and use of this device are restricted to prescription use in accordance with 21 CFR 801.109;

2. That premarket notifications include clinical studies, or other relevant information, that demonstrates that the device aids in the detection of tooth decay by measuring increased laser induced fluorescence; and

3. That the labeling must include detailed use instructions with precautions that urge users to: (a) Read and understand all directions before using the device, (b) store probe tips under proper conditions, (c) properly sterilize the emitter-detector handpiece before each use, and (d) properly maintain and handle the instrument in the specified manner and condition.

FDA believes that these class II special controls, in addition to the general controls, provide reasonable assurance of the safety and effectiveness of the device.

II. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so it is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Classification of these devices into class II will relieve manufacturers of the device of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs. FDA knows of only one manufacturer of this type of device. Therefore, the agency certifies that this final rule will not have a significant impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and, therefore, a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act is not required.

IV. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 872

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 872 is amended as follows:

PART 872—DENTAL DEVICES

1. The authority citation for 21 CFR part 872 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 872.1745 is added to subpart B to read as follows:

§ 872.1745 Laser fluorescence caries detection device.

(a) *Identification.* A laser fluorescence caries detection device is a laser, a fluorescence detector housed in a dental handpiece, and a control console that performs device calibration, as well as

variable tone emitting and fluorescence measurement functions. The intended use of the device is to aid in the detection of tooth decay by measuring increased laser induced fluorescence.

(b) *Classification.* Class II, subject to the following special controls:

(1) Sale, distribution, and use of this device are restricted to prescription use in accordance with § 801.109 of this chapter;

(2) Premarket notifications must include clinical studies, or other relevant information, that demonstrates that the device aids in the detection of tooth decay by measuring increased laser induced fluorescence; and

(3) The labeling must include detailed use instructions with precautions that urge users to:

(i) Read and understand all directions before using the device,

(ii) Store probe tips under proper conditions,

(iii) Properly sterilize the emitter-detector handpick before each use, and

(iv) Properly maintain and handle the instrument in the specified manner and condition.

Dated: March 29, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–8597 Filed 4–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 876

[Docket No. 00P–1120]

Medical Devices; Gastroenterology-Urology Devices; Nonimplanted, Peripheral Electrical Continence Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the nonimplanted, peripheral electrical continence device into class II (special controls). The special controls that will apply to this device are set forth below. The agency is taking this action in response to a petition submitted under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976, the Safe Medical Devices Act of 1990, and the Food and Drug Administration Modernization Act of 1997. The agency is classifying this device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

DATES: This rule is effective May 8, 2000.

FOR FURTHER INFORMATION CONTACT: Laura J. Byrd, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the FDA regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1), request FDA to classify the device under the criteria set forth in section 513(a)(1). FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification.

On January 24, 2000, UroSurge, Inc., submitted a petition under section 513(f)(2) of the act requesting classification of its Percutaneous SANS Device intended for use in patients suffering from urinary urgency, frequency, or urge incontinence. After review of the information submitted in the petition and the premarket notification (K992069), FDA issued an order on February 9, 2000, classifying the UroSurge Percutaneous SANS (Stoller Afferent Nerve Stimulator) Device and substantially equivalent devices of this generic type into class II under the generic name, "nonimplanted, peripheral nerve stimulator for pelvic floor dysfunction." FDA has determined that the nonimplanted, peripheral nerve stimulator for pelvic floor dysfunction can be classified in class II with the establishment of the following special controls:

1. That sale, distribution, and use of this device are restricted to prescription use in accordance with § 801.109 (21 CFR 801.109).

2. That the labeling must bear all information required for the safe and effective use of the device as outlined in § 801.109(c), including a detailed summary of the clinical information upon which the instructions are based.

FDA believes that these class II special controls, in addition to the general controls, provide reasonable assurance of the safety and effectiveness of the device.

II. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so it is not subject to review under the Executive Order. The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Classification of these devices into class II will relieve manufacturers of the device of the cost of complying

with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs. FDA knows of only one manufacturer of this type of device. The agency therefore certifies that the final rule will not have a significant impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and, therefore, a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act is not required.

IV. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 876

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 876 is amended as follows:

PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

1. The authority citation for 21 CFR part 876 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

2. Section 876.5310 is added to subpart F to read as follows:

§ 876.5310 Nonimplanted, peripheral electrical continence device.

(a) *Identification.* A nonimplanted, peripheral electrical continence device is a device that consists of an electrode that is connected by an electrical cable to a battery-powered pulse source. The electrode is placed onto or inserted into the body at a peripheral location and used to stimulate the nerves associated with pelvic floor function to maintain urinary continence. When necessary, the electrode may be removed by the user.

(b) *Classification.* Class II, subject to the following special controls:

(1) That sale, distribution, and use of this device are restricted to prescription use in accordance with § 801.109 of this chapter.

(2) That the labeling must bear all information required for the safe and effective use of the device as outlined in § 801.109(c) of this chapter, including a detailed summary of the clinical information upon which the instructions are based.

Dated: March 29, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–8596 Filed 4–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SPATS No. IL–097–FOR, Part III]

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is approving part of an amendment to the Illinois regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Illinois proposed revisions to its program concerning subsidence control, water replacement, adjustment of performance bond amounts, administrative review, release of performance bonds, siltation structures, impoundments, hydrologic balance, disposal of noncoal mine wastes, revegetation, backfilling and grading, prime farmland, and State inspections. This final rule document addresses Illinois' revisions concerning release of performance bonds, siltation structures, impoundments, hydrologic balance, disposal of noncoal mine wastes, revegetation, backfilling and grading, and prime farmland. We addressed the remaining program topics in two previous final rule documents. Illinois intends to revise its program to be consistent with the corresponding Federal regulations, to provide additional safeguards, and to improve operational efficiency.

EFFECTIVE DATE: April 7, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521. Telephone: (317) 226–6700. Internet: INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program
II. Submission of the Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. You can find background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the June 1, 1982, **Federal Register** (47 FR 23883). You can find later actions concerning the Illinois program and previous amendments at 30 CFR 913.15, 913.16, and 913.17.

II. Submission of the Proposed Amendment

By letter dated August 2, 1999 (Administrative Record No. IL–5044), the Illinois Department of Natural Resources (Department) submitted an amendment to the Illinois program under the Federal regulations at 30 CFR 732.17(b). The Department proposed to amend Title 62 of the Illinois Administrative Code (IAC) in response to our letters dated May 20, 1996, June 17, 1997, October 30, 1997, and January 15, 1999 (Administrative Record Nos. IL–1900, IL–2000, IL–2002, and IL–5036, respectively), that we sent to Illinois under 30 CFR 732.17(c). The amendment also includes changes made at the Department's own initiative.

We announced receipt of the amendment in the August 17, 1999, **Federal Register** (64 FR 44674). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on September 16, 1999. No one requested an opportunity to speak at a public hearing, so no hearing was held.

During our review of the amendment, we identified concerns relating to siltation structures, impoundments, performance bonds, and State inspections. We also identified some nonsubstantive editorial errors. We notified Illinois of these concerns and editorial errors by letter dated September 21, 1999 (Administrative Record No. IL–5048). We also separated the amendment into three parts in order to expedite the State program amendment process. Part I concerned revisions to Illinois' regulations relating to subsidence control and water replacement. Because we did not identify any concerns relating to Illinois' revisions for subsidence control and water replacement, we made our final decision on them in a final rule on

December 6, 1999 (64 FR 68024). Part II concerned revisions to Illinois' regulations relating to adjustment of performance bond amounts and administrative review. On December 2, 1999, the Department requested that we proceed with our decision on these revisions (Administrative Record No. IL–5049). Because we did not identify any concerns relating to Illinois' revisions for adjustment of performance bond amounts and administrative review, we made our decision on them in a final rule on December 27, 1999 (64 FR 72275). Part III concerns revisions to Illinois' regulations relating to release of performance bonds, siltation structures, impoundments, hydrologic balance, disposal of noncoal mine wastes, revegetation, backfilling and grading, and prime farmland. This final rule **Federal Register** document addresses IL–097–FOR, Part III revisions.

By letter dated January 27, 2000 (Administrative Record No. IL–5052), Illinois sent us revisions to its proposed program amendment. On February 1, 2000, by telephone, Illinois notified us of additional revisions (Administrative Record No. IL–5053). Based upon Illinois' revisions to its amendment, we reopened the public comment period in the February 14, 2000, **Federal Register** (65 FR 7331). The public comment period closed on February 29, 2000.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the revisions to the Illinois program pertaining to definitions, release of performance bonds, siltation structures, impoundments, hydrologic balance, disposal of noncoal mine wastes, revegetation, backfilling and grading, and prime farmland.

A. Revisions to Illinois' Regulations That Are Minor.

Throughout the amended regulation sections discussed in this final rule, Illinois corrected typographical errors, punctuation, citation references, and other editorial-type errors; made minor wording changes; and simplified its use of numbers. Illinois also made some of the same types of corrections and changes in the sections listed in the table below:

Topic	State regulation	Federal regulation
Definitions	62 IAC 1701.Appendix A	30 CFR 701.5.
Hydrologic Information	62 IAC 1784.14(a)	30 CFR 784.14(a).
Subsidence Control Plan	62 IAC 1784.20(b), (b)(2)	30 CFR 784.20(b), (b)(2).
Period of Liability	62 IAC 1800.13.	30 CFR 800.13.
Hydrologic Balance Protection	62 IAC 1817.41(c), (d), and (e).	30 CFR 817.41(c), (d), and (e).
Availability of Records	62 IAC 1840.14(b), (c)(2)	30 CFR 840.14(b) and (c).

These minor changes did not alter the requirements of the previously approved provisions in the Illinois regulations. Therefore, we find that they will not make the Illinois regulations less effective than the Federal regulations.

B. 62 IAC 1701.Appendix A, Definitions

Illinois removed the following definition of "Institute" because it is no longer applicable to the Illinois program:

> "Institute" means the Department of Energy and Natural Resources or such other agency as designated by the Director in accordance with Section 7.03 of the State Act.

The Department of Energy and Natural Resources no longer exists. On March 1, 1995, the Governor of Illinois signed Executive Order Number 2 (1995) that merged the Department of Energy and Natural Resources into the Department of Natural Resources. On February 9, 1999 (64 FR 6191), we approved the changes to section 7.03 of the State Act and to Illinois' regulations at 62 IAC Part 1764 that removed references to the Department of Energy and Natural Resources. Therefore, we find that the removal of this definition will not make the Illinois regulations less effective than the Federal Regulations.

C. Siltation Structures, Impoundments, Banks, Dams, and Embankments.

By letters dated June 17, 1997, and January 15, 1999, under 30 CFR 732.17(c), we notified Illinois that it needed to change the Illinois regulations relating to siltation structures, impoundments, banks, dams, and embankments to be no less effective than the changes that were made to the Federal regulations on October 20, 1994 (59 FR 53022). In the October 20, 1994, rulemaking, OSM included standards from the U. S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210–VI–TR60, Oct. 1985) as part of the Federal requirements for siltation structures and impoundments. These changes were made as a result of decisions by the U.S. District Court of the *District of Columbia in In Re: Permanent Surface Mining Regulation Litigation (II)*, No. 79–1144 (D.D.C. July 15, 1985) and *In Re: NWF v. Lujan*, No. 88–3345 (D.D.C. August 30, 1990). In response to these notifications, Illinois proposed several changes to its regulations at 62 IAC 1780.25, 1816.46, and 1816.49 for surface mining operations and 62 IAC 1784.16, 1817.46, and 1817.49 for underground mining operations.

1. Illinois made minor wording changes, including changing the term "operator" to the term "permittee"; revised all outdated citation references; and revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment. We find that these changes are nonsubstantive and will not make Illinois' regulations less effective than the Federal regulations.

2. *Revisions to Illinois' Regulations That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations.* The changes made to the State regulations listed in the table below contain language that is the same as or similar to the corresponding changes made to the Federal regulations on October 20, 1994. Differences between the State regulations and the Federal regulations are minor.

Topic	State regulation	Federal regulation
Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams, and Embankments.	62 IAC 1780.25(a), (a)(1)(A), (a)(2), (a)(2)(A) and (B), (a)(3), (a)(3)(A), (b), (f).	30 CFR 780.25(a), (a)(1)(i), (a)(2), (a)(2)(i) and (ii), (a)(3), (a)(3)(i), (b), (f).

Topic	State regulation	Federal regulation
Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams, and Embankments.	62 IAC 1784.16(a), (a)(1)(A), (a)(2), (a)(2)(A) and (B), (a)(3), (a)(3)(A) and (B), (b)(1), (f).	30 CFR 784.16(a), (a)(1)(i), (a)(2), (a)(2)(i) and (ii), (a)(3), (a)(3)(i) and (ii), (b), (f).
Hydrologic Balance: Siltation Structures	62 IAC 1816.46(c)(2).	30 CFR 816.46(c)(2)
Impoundments	62 IAC 1816.49(a)(1), (a)(4)(A) and (B), (a)(5), (a)(6)(A), (a)(10)(A), (a)(11), (b)(9)(A) and (C), (c)(1), (c)(2)(B)(i) and (ii).	30 CFR 816.49(a)(1), (a)(4)(i) and (ii), (a)(5), (a)(6)(i), (a)(9)(ii)(A) and (C), (a)(12), (c)(2)(i) and (ii).
Hydrologic Balance: Siltation Structures	62 IAC 1817.46(c)(2)	30 CFR 817.46(c)(2).
Impoundments	62 IAC 1817.49(a)(1), (a)(4)(A) and (B), (a)(5), (a)(6)(A), (a)(10)(A), (a)(11), (b)(9)(A) and (C), (c)(1), (c)(2)(B)(i) and (ii).	30 CFR 817.49(a)(1), (a)(4)(i) and (ii), (a)(5), (a)(6)(i), (a)(9)(ii)(A) and (C), (a)(12), (c)(2)(i) and (ii).

Because the changes made to the above State regulations have the same meaning as the changes made to the corresponding Federal regulations, we find that the Illinois regulations are no less effective than the Federal regulations.

D. 62 IAC 1800.40, Requirement To Release Performance Bonds

1. Illinois revised 62 IAC 1800.40(a)(1) to allow permittees to authorize a person to act on their behalf in filing an application for bond release and to allow the Department to initiate an application for bond release. Illinois also added a provision that requires the Department to undertake the notification and certification requirements of the applicant for bond releases initiated by the Department.

While the counterpart Federal regulation at 30 CFR 800.40(a)(1) allows a permittee to file an application for bond release, the Federal regulations are silent as to whether a regulatory authority may initiate bond release proceedings. However, a similar provision was approved for the Kentucky program on December 31, 1990 (55 FR 53490). Under Illinois' proposal, bond release proceedings initiated by the Department must conform with the same procedural steps as a bond release initiated by the permittee. Thus, the public participation and notification requirements of section 519 of SMCRA and the Federal regulations at 30 CFR 800.40 would still apply when the regulatory authority initiated a bond release in Illinois. There are also circumstances, such as the release of jurisdiction from an abandoned but fully reclaimed site, where it may be necessary for a party other than the permittee to initiate bond release. For the above reasons, we find that allowing the regulatory authority to initiate bond release does not make the Illinois regulations at 62 IAC 1800.40 less effective than the Federal regulations at 30 CFR 800.40.

2. Illinois removed its reference to the "operator" in the first sentence of 62 IAC 1800.40(a)(2) and added a reference to the "applicant." Illinois removed its reference to the "operator's" in the second sentence of 62 IAC 1800.40(a)(2) and added a reference to the "permittee's." Illinois removed its reference to the "permittee" in 62 IAC 1800.40(a)(3) and added a reference to the "applicant." These changes were appropriate and further clarified that the notification and certification requirements for bond release must be completed, regardless of whether the application was initiated by the permittee, a person authorized to act for the permittee, or the Department. We find that the changes made to 62 IAC 1800.40(a)(2) and (a)(3) will not make Illinois' regulations less effective than the counterpart Federal regulations at 30 CFR 800.40(a)(2) and (a)(3).

3. At 62 IAC 1800.40(b)(2), Illinois added a requirement that the Department notify, by certified mail, the municipality and county in which the surface coal mining operation is located of the Department's final administrative decision to release or not to release all or part of the performance bond. The counterpart Federal regulation requirement at 30 CFR 800.40(e) also requires the regulatory authority to notify the municipality by certified mail before the release of all or a portion of the bond. We find that Illinois' new requirement is consistent with and no less effective than the counterpart requirement in the Federal regulation at 30 CFR 800.40(e).

E. 62 IAC 1816.89 (Surface Mining Operations) and 1817.89 (Underground Mining Operations) Disposal of Noncoal Mine Wastes

At 62 IAC 1816.89(b) and 1817.89(b), Illinois is requiring that noncoal mine waste disposal areas reclaimed to cropland capability have a minimum of four feet of suitable soil cover. There is no counterpart Federal requirement for a minimum of four feet of soil cover at 30 CFR 816.89(b) and 817.89(b). However, the Federal and State regulations for soil replacement on prime farmland at 30 CFR 823.14(b) and 62 IAC 1823.14(a), respectively, require a minimum depth of four feet of soil and substitute soil material in most cases. Also, at 62 IAC 1825.14(a)(3), the Illinois regulation for soil replacement on high capability lands requires a minimum depth of four feet of darkened surface soil and agricultural root medium with specified exceptions. Based on the above discussion, we find that Illinois' requirement for soil cover depth at 62 IAC 1816.89(b) and 1817.89(b) is consistent with the Federal regulation requirement and other Illinois regulation requirements for cropland capable land. Therefore, we are approving this requirement.

F. 62 IAC 1817.101 (Underground Mining Operations)—Backfilling and Grading: General Requirements

Illinois revised 62 IAC 1817.101(a) to require that coal operators backfill and grade surface areas disturbed incident to underground mining activities in accordance with the time schedule approved by the Department in the permit, but not later than 12 months after cessation of active use as determined by the Department.

There is no specific Federal regulation counterpart. However, the Federal regulation at 30 CFR 817.100 requires that reclamation efforts, including backfilling and grading, occur as contemporaneously as practicable with underground coal mining operations. It also allows the regulatory authority to establish schedules that define contemporaneous reclamation. We find that Illinois' regulation requirements at 62 IAC 1817.101(a) are consistent with and no less effective than the Federal regulation requirements for contemporaneous reclamation at 30 CFR 817.100.

G. Revegetation

1. *62 IAC 1816.111 (Surface Mining Operations) and 1817.111*

(Underground Mining Operations)—Revegetation: General Requirements. a. Illinois revised citation references in 62 IAC 1816.111(b)(5) for the Illinois Noxious Weed Law, the Illinois Seed Law, and the Illinois Pesticide Act. These changes did not alter the requirements of the previously approved provisions in the Illinois regulations. Therefore, we find that they will not make the Illinois regulations less effective than the Federal regulations.

b. Previously at 62 IAC 1816.111(d) and 1817.111(d), Illinois required that prime farmlands granted an exemption in accordance with 62 IAC 1785.17(a)(5) must meet the requirements of 62 IAC 1823.15. (Illinois' regulation at 62 IAC 1823.15 contains the revegetation requirements for prime farmland soils.) Illinois removed this requirement. We approved Illinois' removal of its exemption at 62 IAC 1785.17(a)(5) on May 29, 1996 (61 FR 26801). Therefore, the requirement at 62 IAC 1816.111(d) and 1817.111(d) is moot, and its removal is appropriate. We find that Illinois' revised regulations at 62 IAC 1816.111(d) and 1817.111(d) are consistent with and no less effective than the counterpart Federal regulations at 30 CFR 816.111(d) and 817.111(d).

2. *62 IAC 1816.116 (Surface Mining Operations) and 1817.116 (Underground Mining Operations)—Success of Revegetation.* For areas which have incurred five unsuccessful attempts to meet the production required by 62 IAC 1816.116/1817.116(a)(3)(C), 1816.116/1817.116(a)(3)(E), or 62 IAC 1823.15, Illinois added a provision at 62 IAC 1816.116(b)(2) and 1817.116(b)(2) that requires the person who conducts mining activities to initiate a soil compaction and fertility testing plan, subject to the approval of the Department. If the plan is not initiated, the person who conducts mining activities must initiate deep tillage on the areas. Sections 1816.116(a)(3)(C) and 1817.116(a)(3)(C) provide the production standards for cropland areas. Sections 1816.116(a)(3)(E) and 1817.116(a)(3)(E) contain the production standards for pasture, hayland, and grazing land. Section 1823.15 provides the revegetation requirements for prime farmland.

The Federal regulations at 30 CFR 816.116(b)(1) and 817.116(b)(1) provide the revegetation success standards for grazing land and pasture land. The Federal regulations at 30 CFR 816.116(b)(2) and 817.116(b)(2) contain the revegetation success standards for cropland. The Federal regulations at 30 CFR 823.15 provide the revegetation success standards for prime farmland. None of these regulations contain a counterpart to Illinois' proposed provision. However, we have always maintained that the primary responsibility for regulating surface coal mining and reclamation operations should rest with the States. The Federal regulations for revegetation were specifically written to allow States to account for regional diversity in terrain, climate, soils, and other conditions where mining occurs. In the May 12, 1983, final rule for 30 CFR Part 823, we recognized the possibility of alternative reclamation approaches by the operator if soil productivity was not restored within five or six years after initial planting (48 FR 21446). On November 25, 1998, we approved a provision for the Arkansas program that required the permittee to submit a mitigation plan if he or she could not demonstrate revegetation success in the fifth year after completion of initial seeding on cropland areas (63 FR 65062). The permittee had to include a statement of the problem and a discussion of methods to correct the problem. We have historically recognized that compaction of soil horizons decreases vegetative growth and crop yields and that deep tillage alleviates compaction (30 CFR 823.14(d); 48 FR 21452, 21457, May 12, 1983). For the reasons discussed above, we find that the proposed revegetation requirements at 30 CFR 816.116(b)(2) and 817.116(b)(2) will not make the Illinois regulations less effective than the Federal regulations at 30 CFR 816.116, 817.116, and 823.15.

H. 62 IAC 1823.14 Prime Farmland: Soil Replacement

Illinois revised subsection (d) by adding the following new requirement:

> In those areas where the B or C horizons were not removed but may have been compacted or otherwise damaged during the mining operation, the permittee shall engage in deep tillage or other appropriate means to restore premining capabilities.

We find that Illinois' proposed requirement is substantively identical to the counterpart Federal regulation requirement at 30 CFR 823.14(d), and we are approving it.

IV. Summary and Disposition of Comments

Federal Agency Comments

On August 10, 1999, and February 3, 2000, we asked for comments from various Federal agencies who may have an interest in the Illinois program amendment (Administrative Record Nos. IL–5045 and IL–5054, respectively). We requested comments under section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i) of the Federal regulations.

By letter dated September 2, 1999, the Natural Resources Conservation Services (NRCS) provided two comments (Administrative Record No. IL–5047). The NRCS commented that:

> (1) For clarity, references to the "U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210–VI–TR60, Oct. 1985), Technical Release No. 60 (TR–60)" should be recorded to read "U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210–VI–TR60, Oct. 1985), herein after referred to as TR–60."
>
> (2) In more than one instance, NRCS IL Technical Standard IL–378, "Ponds," June 1992 is cited. The NRCS may revise that standard at any time and does not archive Technical Guide Standards. The State will need to archive a copy of the IL–378, June 1992 for future reference.

The references cited in comment (1) are substantively identical to the Federal counterpart references. However, both comments were provided to Illinois for its consideration.

By letter dated February 14, 2000 (Administrative Record No. IL–5056), the NRCS commented on Illinois' duplication of the design requirements under sections 1780.25(a)(2) and 1780.25(a)(3). The NRCS recommend that Illinois eliminate subsection (a)(3) and state at subsection (a)(2) that all impoundments shall meet the design requirements under subsection (a)(2).

Illinois' regulations at sections 1780.25(a)(2) and 1780.25(a)(3) are not inconsistent with the counterpart Federal requirements. However this comment was provided to Illinois for its consideration.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(i) and (ii), OSM is required to request comments and get the written concurrence of the EPA with respect to those provisions of the program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Illinois proposed to make in this amendment pertain to air or water quality standards. However, by letters dated August 10, 1999, and February 3, 2000, we requested comments from the EPA on the State's amendment (Administrative Record Nos. IL–5045 and IL–5054, respectively). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On August 10, 1999, and February 3, 2000, we requested comments on Illinois' amendment (Administrative Record Nos. IL–5045 and IL–5054, respectively), but neither responded to our request.

Public Comments

We requested public comments on the proposed amendment, but did not receive any.

V. Director's Decision

Based on the above findings, we are approving the amendments to the Illinois program as submitted by the Department on August 2, 1999, and as revised on January 27 and February 1, 2000.

We approve the regulations that Illinois proposed with the provision that they be published in identical form to the regulations submitted to and reviewed by OSM and the public. To implement this decision, we are amending the Federal regulations at 30 CFR Part 913, which codify decisions concerning the Illinois program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage Illinois to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary under SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulation.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 17, 2000.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 913 is amended as set forth below:

PART 913—ILLINOIS

1. The authority citation for part 913 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 913.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 913.15 Approval of Illinois regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
August 2, 1999	April 7, 2000	62 IAC 1701.Appendix A; 1780.25(a), (a)(1)(A), (a)(2), (a)(2)(A) and (B), (a)(3), (a)(3)(A), (b), (f); 1784.14(a); 1784.16(a), (a)(1)(A), (a)(2), (a)(2)(A) and (B), (a)(3), (a)(3)(A) and (B), (b)(1), (f); 1784.20(b), (b)(2); 1800.13(c), (d)(2); 1800.40(a)(1), (2), and (3), (b)(2); 1816.46(c)(2); 1816.49(a)(1) and (2), (a)(4)(A) and (B), (a)(5), (a)(6)(A), (a)(10)(A) and (C), (a)(11), (b)(9)(A) and (C), (c)(1) and (2), (c)(2)(B), (c)(2)(B)(i) and (ii); 1816.89(b); 1816.111(b)(5), (d); 1816.116(a), (b)(2); 1817.41(c), (d), (e); 1817.46(c)(2); 1817.49(a)(1) and (3), (a)(4)(A) and (B), (a)(5), (a)(6)(A), (a)(10)(A), (B), and (C), (a)(11), (b)(7) and (8); (b)(9)(A) and (C), (c)(1), (c)(2), (c)(2)(B)(i) and (ii); 1817.89(b); 1817.101(a); 1817.111(d); 1817.116(a)(2)(C), (b)(2); 1823.14(d); 1840.14(b), (c)(2).

[FR Doc. 00–8665 Filed 4–6–00; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 07–00–023]

RIN 2115–AE47

Drawbridge Operation Regulations; Ortega River, Jacksonville, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: Notice is hereby given that the Commander, Seventh Coast Guard District has approved a temporary deviation from the regulations governing the operation of the CSX Railroad Drawbridge across Ortega River, mile 1.1, which parallels U.S. 17, at Jacksonville, Duval County, Florida. This deviation allows the drawbridge owner or operator to close the bridge from 7 a.m. to 7 p.m. each day on April 11 and 12, 2000, with alternative dates of April 18, 2000 and April 19, 2000. The draw shall open as soon as possible for public vessels of the United States, State and local vessels used in public safety, vessels in distress where a delay would endanger life or property, commercial vessels engaged in rescue or emergency salvage operations, and vessels seeking shelter from severe weather. This temporary deviation is issued to allow the bridge owner to safely conduct necessary repairs to the drawbridge.

DATES: This deviation is effective from 7 a.m on April 11, 2000, to 7 p.m. on April 19, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Brodie Rich, Project Manager, Seventh Coast Guard District, Bridge Section at (305) 536–5117.

SUPPLEMENTARY INFORMATION: The CSX railroad drawbridge across Ortega River at Jacksonville, has a vertical clearance of 2 feet above mean high water (MHW) and 3 feet above mean low water (MLW) measured at the fenders in the closed position. On March 6, 2000, TIC The Industrial Company, the contractor representing the drawbridge owner, requested a deviation from the current operating schedule in 33 CFR 117.5. This temporary deviation was requested to allow necessary repairs to the drawbridge in a critical time sensitive manner. The contractor has advised us that the drawbridge is likely to suffer failure of operation and increase the intensity and length of time in order to complete the necessary repairs.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.5 for the purpose of conducting repairs to the drawbridge. During this deviation period, the CSX Railroad Drawbridge need not open for the passage of vessels from 7 a.m. to 7 p.m. each day on April 11 and 12, 2000, with an alternate date of April 18 and 19, 2000, if inclement weather prevents repairs on April 11 and 12. The deviation period begins on April 11, 2000 and ends on April 19, 2000.

Dated: March 22, 2000.

T.W. Allen,

Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 00–8658 Filed 4–6–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 162

[CGD17–99–002]

RIN 2115–AF81

Anchorage Ground; Safety Zone; Speed Limit; Tongass Narrows and Ketchikan, AK

AGENCY: Coast Guard, DOT.

ACTION: Interim rule; request for comments.

SUMMARY: The Coast Guard is revising its 1999 interim rule on the Tongass Narrows seven-knot speed limit and is requesting additional public comment before finalizing the rule. Numerous public comments received during 1999 criticized the speed limit exemption applicable to "non-commercial, open skiffs of less than 20 feet in length" as too restrictive. The Coast Guard is revising the exemption to include all small vessels of 23 feet or less, registered length. This change allows an increased number of small vessels that create little wake to transit crowded areas of Tongass Narrows more quickly, thereby relieving congestion.

DATES: The interim rule becomes effective May 8, 2000. Comments regarding this interim rule must be received by October 31, 2000.

A public hearing will be held on August 19, 2000 at 7 p.m. AST.

ADDRESSES: You may mail comments to Commander (m), Seventeenth Coast Guard District, Federal Building, 709 West 9th Street, seventh floor, room 753, Juneau, Alaska, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is 907–463–2187. The Seventeenth Coast Guard District, Marine Safety Division, maintains the public docket

for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of the docket and are available for inspection or copying at room 753 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The public hearing will be held at the Ted Ferry Civic Center, 888 Venetia Avenue, Ketchikan, Alaska.

FOR FURTHER INFORMATION CONTACT: For information concerning this document, call the Supervisor, U.S. Coast Guard Marine Safety Detachment, Ketchikan, Alaska, telephone 907–225–4496.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD17–99–002) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you want acknowledgment of receipt of your comments, you should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this interim rule in view of the comments.

The Coast Guard has scheduled a public hearing for 7 p.m. (AST), August 19, 2000, at the Ted Ferry Civic Center, 888 Venetia Avenue, Ketchikan, Alaska.

Persons may request an additional public hearing by writing to Commander (m), Seventeenth Coast Guard District at the address under **ADDRESSES**. The request should include the reasons why an additional hearing would be beneficial. If it determines that the opportunity for additional oral presentations will aid this rulemaking, the Coast Guard will hold an additional public hearing at a time and place announced by later notice in the **Federal Register**.

Regulatory History

On March 25, 1999, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled "Anchorage Ground, Safety Zone, Speed Limit, Tongass Narrows and Ketchikan, AK" in the **Federal Register** (64 FR 14414).

On June 1, 1999 an interim rule was published entitled "Anchorage Ground, Safety Zone, Speed Limit, Tongass Narrows and Ketchikan, AK" in the **Federal Register** (64 FR 29554). A correction was issued on June 15, 1999 in the **Federal Register** (64 FR 32103).

Background and Purpose

The interim rule published in 1999 revised the safety zone in Ketchikan Harbor as well as the 7-knot speed limit in Tongass Narrows. It redesignated the safety zone in Ketchikan Harbor as an anchorage ground and required transiting vessels, other than those engaged in anchoring evolutions, to proceed through the anchorage by the most direct route without delay or sudden course changes.

Discussion of Comments and Changes

The Coast Guard received comments from 21 persons regarding the 1999 interim rule. The comments included oral comments made at the August 27th, 1999, public meeting and four letters. No comments were received concerning the anchorage area and this portion of the interim rule remains unchanged. Numerous comments criticized the speed limit exemption for being unnecessarily restrictive. Responses to these comments on the 1999 interim rule are discussed in the following paragraphs.

The most frequent comments addressed the exemption for "non-commercial open skiffs". Of the 21 persons that commented on the 1999 interim rule (several persons commented on multiple aspects), 10 commented on this exemption, stating that the term "non-commercial, open skiff" created confusion as to when a vessel was considered "open" vice enclosed. The Coast Guard agrees and the term "non-commercial, open skiff" has been removed.

Nine comments were received concerning the vessel length exemption from the 7-knot speed limit based on vessel length of less than 20 feet. Seven of the comments favored increasing the size of vessels exempted to 26 feet and one favored increasing the size to 25 feet. Two comments favored keeping the size of vessel exempted from the 7-knot speed limit at 20 feet or less. Additionally, five comments favored an exemption for non-displacement hull vessels.

The Coast Guard agrees that the 20-foot vessel length exemption can be increased without adversely affecting the safety of the waterway and without causing a significant increase in vessel wakes. However, numerous comments that were received as a result of the notice of proposed rulemaking concerned the impact of any rule that split the charter fishing vessel fleet. Commenters were concerned that such a split would provide an unfair economic advantage to certain portions of the charter fishing vessel fleet.

According to data obtained by the Coast Guard from the State of Alaska Commercial Fisheries Entry Commission, there are 167 charter vessels that routinely operate in and around Tongass Narrows. This data, which is depicted in the following table, indicates:

TABLE 1.—NUMBERS OF CHARTER VESSELS THAT ROUTINELY OPERATE ON TONGASS NARROWS

Size of charter vessels	Number of vessels	Percent of total number
≤20 feet	15	9
21–23 feet	12	7.2
24–25 feet	18	10.8
≥26 feet	122	73

Note: This table reflects the adjusted number of charter vessels that are registered as operating on Tongass Narrows. The numbers have been adjusted to remove those vessels that are homeported in areas other than Ketchikan or Metlakatla or that are located at outlying lodges and could not reasonably be expected to participate in the daily charters out of Tongass Narrows (i.e. vessels homeported in Craig, AK or operating out of Yes Bay Lodge, etc.)

that the length limit for vessels exempted from the seven knot speed limit can be set at 23 feet with the expectation that any economic impacts to the charter fleet would be minimal due to the small number of additional (12) charter vessels exempted from this regulation.

The Coast Guard disagrees with the five comments favoring exemption for planing hull vessels from the seven-knot speed limit. An exemption based on hull type would be very difficult to enforce due to the variety of hull types and nomenclature and possible confusion within the maritime community. For this reason, an exemption based on hull type will not be used.

Three persons commented on the southern boundaries of the seven-knot speed limit. One comment stated that the eastern channel boundary should be extended to the south to the Saxman City breakwater. Two persons commented that the western channel boundary should be moved to the south, away from the cable crossing area.

The Coast Guard disagrees that the eastern channel boundary should be extended. The eastern channel boundary was moved north in the 1999 interim rule in an effort to minimize the size of the seven-knot zone without

increasing the impacts caused by vessel wakes to private property. Vessel transit time for vessels using the east channel has been reduced and there have been no reports of wake damage to private property located along the waterway in the east channel. Therefore the eastern channel boundary remains unchanged.

One comment noted that the regulatory marker in the western channel should be located outside the cable crossing area. The published position of the western channel regulatory marker is outside of the charted cable crossing area. The buoy tender that services this buoy has been asked to check the actual location of this regulatory marker.

Two comments were received that favored extending the northern boundary of the seven-knot speed zone northward to Channel Island as a way to control wake damage to private and commercial property caused by large vessels transiting this area. The Coast Guard disagrees that the boundary should be extended any further than Tongass Narrows Buoy 9. The overwhelming majority of 129 comments received in 1998 favored a slight extension of the 7-knot speed limit zone but these comments did not support extending the zone as far north as Channel Island. In light of all comments received, the Coast Guard believes that the present northerly boundary of the 7-knot speed limit zone, located at Tongass Narrows Buoy 9, is appropriate and no change is made.

Two comments were received on making the speed limit seasonal to align with the summer tourist season. One facility operator stated that if the rule were made seasonal, it would increase the risk of a large wake parting a line on an oil barge during transfer operations, thereby potentially increasing the chances of an oil spill. During the entire rule making process, the majority of the comments favored the existence of the year round 7-knot rule. The consensus expressed was that if the 7-knot speed limit were seasonal, the risk on the waterway would not be reduced in the off months and the amount of wake damage to private and commercial property on Tongass Narrows would most likely increase. The Coast Guard agrees that the rule should apply year around and no change is made.

One comment favored the creation of a high-speed traffic corridor through the middle of the waterway. Other commenters felt that creating a high-speed corridor would unreasonably increase the risk to vessels operating on Tongass Narrows. This proposal is not adopted.

Discussion of the Change to the Interim Rule

Based on all the comments, we are not finalizing the 1999 interim rule at this time. Instead, we are changing one provision of that rule (33 CFR 162.240(b)) and are providing an additional opportunity for comment. Section 110.231 of Title 33 CFR is not being changed and continues as an interim rule provision. By exempting "vessels of 23 feet registered length or less", the traffic congestion in the affected areas of Tongass Narrows should be eased and the safety of the small vessel operators enhanced. With the exemption for these small vessels, they will be able to depart from, or transit through the congested areas more quickly. This in turn should ease congestion and reduce navigational conflicts that have arisen between slow moving small boats and cruise ships and other large waterway users and will allow them to spend less time on the water during periods of inclement weather. Large wakes should not become a problem as the exemption is still limited to smaller vessels and because Tongass Narrows regularly experiences substantial wave action that is equivalent to the wake from these smaller vessels. The impacts to the charter fleet are considered minimal because the revised interim rule exempts only 12 of 152 charter vessels that are over 20 feet in length. The revised interim rule retains the 7-knot speed limit for all other vessels except floatplanes and public law enforcement and emergency response vessels.

Regulatory Evaluation

This interim rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this interim rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This is because the regulation is designed to reduce the impacts of the existing speed limit upon waterway users. With regards to the size of vessel exempted from this 7-knot speed limit, the majority of the comments received recognized the need to control congestion, but objected to an exemption that was limited to "non-commercial open skiffs". After reviewing the written comments submitted and listening to the oral comments, the Coast Guard concurs and has revised the exemption to read "vessels of 23 feet registered length or less".

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601–612 *et seq.*], the Coast Guard considers whether this interim rule will have significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard believes there may be some impact to small entities, but that it will be minimal or non-existence, based on the extensive comments received from the charter sport fishing industry and the relevant data (only 12 of 152 charter vessels fall under the more generous exemption). Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. If however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Assistance for Small Entities

Under Section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effect on them and participate in the rulemaking process.

Collection of Information

This interim rule calls for no new collection of information under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*].

Federalism

The Coast Guard has analyzed this interim rule under the principles and criteria contained in E.O. 12612 and has determined that this interim rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531*et seq.*) governs the issuance of Federal regulations that require unfunded government mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this interim rule and concluded that under figure 2–1, paragraph (34)(g) of COMDTINST M18475.1C, this interim rule is categorically excluded from further environmental documentation because it establishes a regulated navigation area. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 162

Navigation (water), Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 162 as follows:

PART 162—[AMENDED]

1. The authority citation for Part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. Revise § 162.240 (b) to read as follows:

§ 162.240 Tongass Narrows, Alaska; navigation.

* * * * *

(b) No vessel, except for public law enforcement and emergency response vessels, floatplanes during landings and take-offs, and vessels of 23 feet registered length or less, shall exceed a speed of 7 knots in the region of Tongass Narrows bounded to the north by Tongass Narrows Buoy 9 and to the south by Tongass Narrows East Channel Regulatory marker at position 55° 19′ 22.0″ N, 131° 36′ 40.5″ W and Tongass Narrows West Channel Regulatory marker at position 55° 19′ 28.5″ N, 131° 39′ 09.7″ W, respectively.

* * * * *

Dated: March 31, 2000.

T.J. Barrett,

Admiral, U.S. Coast Guard, Commander, Seventeenth Coast Guard District.

[FR Doc. 00–8659 Filed 4–6–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–48–200010(a); FRL–6573–5]

Approval and Promulgation of Implementation Plans; Georgia: Approval of Revisions to the Georgia State Implementation Plan: Transportation Conformity Interagency Memorandum of Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the Georgia State Implementation Plan (SIP) that contains the transportation conformity rule pursuant to sections 110(k) and 176 of the Clean Act as amended in 1990 (Act) . The transportation conformity rule assures that projected emissions from transportation plans and projects in air quality nonattainment or maintenance areas stay within the motor vehicle emissions ceiling contained in the SIP. The transportation conformity SIP revision enables the State to implement and enforce the Federal transportation conformity requirements at the State level per EPA regulation—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. of the Federal Transit Laws. This EPA approval action streamlines the conformity process and allows direct consultation among agencies at the local level. This final approval action is limited to Transportation Conformity. Rationale for approving this SIP revision is provided in the "Supplementary Information" Section of this action.

DATES: This direct final rule is effective on June 6, 2000, without further notice, unless EPA receives adverse comment by May 8, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: All comments should be addressed to Kelly Sheckler at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 61 Forsyth Street S.W., Atlanta, Georgia 30303–3104. Attn: Kelly Sheckler, (404) 562–9042.

Georgia Department of Natural Resources, Environmental Protection Division, Air Protection Division, 4244 International Parkway, Suite 136, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, at 404/562–9042, E-mail: Sheckler.Kelly@epa.gov.

SUPPLEMENTARY INFORMATION: Outlined below are the contents of this document:

I. Background
- A. What is a SIP?
- B. What is the Federal Approval Process for a SIP?
- C. What is Transportation Conformity?
- D. Why Must the State Submit a Transportation Conformity SIP?
- E. How Does Transportation Conformity Work?

II. Approval of the State Transportation Conformity Rule
- A. What Did the State Submit?
- B. What is EPA Approving Today and Why?
- C. How Did the State Satisfy the Interagency Consultation Process (40 CFR 93.105)?
- D. How the State's Submittal Address the United States Court of Appeals for the District of Columbia Circuit Ruling Overturning the Grace Period for New Nonattainment Areas (40 CFR 93.102(d)) in the *Sierra Club* v. *Environmental Protection Agency Lawsuit*
- E. What Other Parts of the Rule Are Excluded?

III. Opportunity for Public Comments

IV. Administrative Requirements

I. Background

A. What is a SIP?

The states, under section 110 of the Act, must develop air pollution regulations and control strategies to ensure that state air quality meets the National Ambient Air Quality Standards (NAAQS) established by EPA. The Act, under section 109, established these NAAQS which currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must send these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP, which protects air quality and contains emission control plans for NAAQS nonattainment areas. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

B. What is the Federal Approval Process for a SIP?

The states must formally adopt the regulations and control strategies consistent with state and Federal laws for incorporating the state regulations into the Federally enforceable SIP. This process generally includes a public notice, public comment period, public hearing, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state will send these provisions to EPA for inclusion in the Federally enforceable SIP. EPA must then determine the appropriate Federal action, provide public notice, and request additional public comment on the action. The possible Federal actions include: approval, disapproval, conditional approval and limited approval/disapproval. If adverse comments are received, EPA must consider and address the comments before taking final action.

EPA incorporates state regulations and supporting information (sent under section 110 of the Act) into the Federally approved SIP through the approval action. EPA maintains records of all such SIP actions in the CFR at Title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The EPA does not reproduce the text of the Federally approved state regulations in the CFR. They are "incorporated by reference," which means that the specific state regulation is cited in the CFR and is considered a part of the CFR the same as if the text were fully printed in the CFR.

C. What is Transportation Conformity?

Conformity first appeared as a requirement in the Act's 1977 amendments (Public Law 95–95). Although the Act did not define conformity, it stated that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated.

The 1990 Amendments to the Act expanded the scope and content of the conformity concept by defining conformity to a SIP. Section 176(c) of the Act defines conformity as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. Also, the Act states that no Federal activity will: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. The requirements of section 176(c) of the Clean Air Act apply to all departments, agencies and instrumentalities of the Federal government. Transportation conformity refers only to the conformity of transportation plans, programs and projects that are funded or approved under title 23 U.S.C. of the Federal Transit Act.

D. Why Must the State Submit a Transportation Conformity SIP?

A transportation conformity SIP is a plan which contains criteria and procedures for the Department of Transportation (DOT), Metropolitan Planning Organizations (MPOs), and other state or local agencies to assess the conformity of transportation plans, programs and projects to ensure that they do not cause or contribute to new violations of a NAAQS in the area substantially affected by the project, increase the frequency or severity of existing violations of a standard in such area or delay timely attainment. 40 CFR 51.390, subpart T requires states to submit a SIP that establishes criteria for conformity to EPA. 40 CFR part 93, subpart A, provides the criteria the SIP must meet to satisfy 40 CFR 51.390.

EPA was required to issue criteria and procedures for determining conformity of transportation plans, programs, and projects to a SIP by section 176(c) of the Act. The Act also required the procedure to include a requirement that each state submit a revision to its SIP including conformity criteria and procedures. EPA published the first transportation conformity rule in the November 24, 1993, **Federal Register** (FR), and it was codified at 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. EPA required the states to adopt and submit a transportation conformity SIP revision to the appropriate EPA Regional Office by November 25, 1994. The State of Georgia submitted a transportation conformity SIP to the EPA Region 4 on November 15, 1994. EPA did not take action on this SIP because the Agency was in the process of revising the transportation conformity requirements. EPA revised the transportation conformity rule on August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), and August 15, 1997 (62 FR 43780), and codified the revisions under 40 CFR part 51, subpart T and 40 CFR part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. of the Federal Transit Laws (62 FR 43780). EPA's action of August 15, 1997, required the states to change their rules and submit a SIP revision to EPA by August 15, 1998. States may choose to develop in place of regulations, a memorandum of agreement (MOA) which establishes the roles and procedures for transportation conformity. The MOA includes the detailed consultation procedures developed for that particular area. The MOA's are enforceable through the signature of all the transportation and air quality agencies, including the Federal Highway Administration, Federal Transit Administration and the Environmental Protection Agency.

E. How Does Transportation Conformity Work?

The Federal or state transportation conformity rule applies to all NAAQS nonattainment and maintenance areas in the state. The Metropolitan Planning Organizations (MPO), the State Department of Transportation (DOT) (in absence of a MPO), and U.S. Department of Transportation (USDOT) make conformity determinations. These agencies make conformity determinations on programs and plans such as transportation improvement programs (TIP), transportation plans, and projects. The MPOs calculate the projected emissions that will result from implementation of the transportation plans and programs and compare those

calculated emissions to the motor vehicle emissions ceiling established in the SIP. The calculated emissions must be smaller than the Federally approved motor vehicle emissions ceiling in order for USDOT to make a positive conformity determination with respect to the SIP.

II. Approval of the State Transportation Conformity Rule

A. What Did the State Submit?

The State of Georgia chose to address the transportation conformity SIP requirement through the development of an MOA. On February 16, 1999, the State of Georgia, through the Department of Natural Resources (DNR), submitted the State's transportation conformity and consultation interagency MOA to EPA as a revision to the SIP. The Georgia Air Quality Act, Article 1: Air Quality (O.C.G.A. 12–9–1, *et seq.*), approved by the Georgia General Assembly in 1992, contains the necessary authority for the revision to the SIP. DNR held a public hearing on August 13, 1998 and no comments from the general public were received. The MOA was developed with appropriate interagency consultation.

B. What is EPA Approving Today and Why?

EPA is approving the Georgia transportation conformity MOA that the Director of the Georgia DNR submitted to the Region 4 office of the EPA on February 16, 1999, except for the following sections: section 110 (c)(1)(ii); section 110 (c)(2)(ii); section 110 (d)(2)(i); section 110 (d)(3)(i); section 110 (e)(2)(i); section 110 (e)(3)(i); section 119 (e)(1); section 119b(a)(2); section 133; section 103(4)(d); section 106 (c) and, section 130 (1). The rationale for exclusion of these sections is discussed in section II.E of this action. The Georgia DNR Transportation Conformity MOA is the same as the Federal rule, with the exception of the specific interagency consultation procedures and the definition of "regionally significant".

EPA has evaluated this SIP revision and has determined that the State has met the requirements of Federal transportation conformity rule as described in 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. The Georgia DNR has satisfied the public participation and comprehensive interagency consultation requirement during development and adoption of the MOA at the local level. Therefore, EPA is approving the MOA as a revision to the Georgia SIP.

C. How did the State Satisfy the Interagency Consultation Process (40 CFR 93.105)?

EPA's rule requires the states to develop their own processes and procedures for interagency consultation among the Federal, state, and local agencies and resolution of conflicts meeting the criteria in 40 CFR 93.105. The SIP revision must include processes and procedures to be followed by the MPO, state DOT, and USDOT in consulting with the state and local air quality agencies and EPA before making conformity determinations. The transportation conformity SIP revision must also include processes and procedures for the state and local air quality agencies and EPA to coordinate the development of applicable SIPs with MPOs, state DOTs, and USDOT.

The State of Georgia developed its consultation rule based on the elements contained in 40 CFR 93.105, and included it in the MOA, Exhibit 1, section 106. As a first step, the State worked with the existing transportation planning organization's interagency committee that included representatives from the State air quality agency, State Department of Transportation, the Atlanta Regional Commission (the MPO), Federal Highway Administration—Georgia Division, Federal Transit Administration, Metropolitan Area Rapid Transit Authority, Cobb County Transit Authority, Douglas County Transit Authority, Gwinnett County Transit Authority and EPA. The interagency committee met regularly and drafted the consultation rules considering elements in 40 CFR 93.105 and 23 CFR part 450, and integrated the local procedures and processes into the consultation MOA. The consultation process developed in this MOA is unique to the State of Georgia. The MOA is enforceable against the parties by their consent in the MOA to allow the Attorney General for the State of Georgia to sue any or all of the agencies for specific performance or other relief on behalf of the citizens of Georgia in *paren. patrial.* We have determined that the State adequately included all elements of 40 CFR 93.105 and that the MOA meets the EPA SIP requirements.

D. How the State's Submittal Addresses the United States Court of Appeals for the District of Columbia Circuit Ruling Overturning the Grace Period for New Nonattainment Areas (40 CFR 93.102(d)) in Sierra Club v. Environmental Protection Agency Lawsuit

The Sierra Club challenged this section of the second set of amendments to the transportation conformity rule arguing that allowing a 120 day grace period was unlawful under the Act. On November 4, 1997, the United States Court of Appeals for the District of Columbia Circuit held in *Sierra Club* v. *Environmental Protection Agency,* No. 96–1007, determined that EPA's grace period violates the plain terms of the Act and, therefore, is unlawful. Based on this court action, the State has excluded this section from its rule. EPA agrees with the State's action as it is consistent with the United States Court of Appeals for the District of Columbia Circuit ruling. Further, the exclusion of 40 CFR 93.102(d) will not prevent EPA from approving the State transportation conformity SIP.

E. What Other Parts of the Rule Are Excluded?

EPA promulgated the third set amendments to the transportation conformity rule on August 15, 1997. On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *Environmental Defense Fund* v. *Environmental Protection Agency,* No. 97–1637. The Court granted the environmental group's petition for review and ruled that sections 40 CFR 93.102(c)(1), 93.121(a)(1), and 93.124(b) are unlawful and remanded 40 CFR 93.118(e) and 93.120(a)(2) to EPA for revision to harmonize these provisions with the requirements of the Act for an affirmative determination that Federal actions will not cause or increase violations or delay attainment. The sections of the rule that were impacted by this decision were:

(a) 40 CFR 93.102(c)(1) which allowed certain projects for which the National Environmental Policy Act (NEPA) process has been completed by the DOT to proceed toward implementation without further conformity determinations during a conformity "lapse". A lapse is a situation in which the conformity determination for the transportation plan or TIP has expired, and there is no currently conforming transportation plan and TIP. As such, there are restrictions on proceeding with federally funded and regionally significant projects;

(b) 40 CFR 93.118(e) which allowed use of motor vehicle emissions budgets (budgets) in the submitted SIPs after 45 days if EPA had not declared them inadequate;

(c) 40 CFR 93.120(a)(2) which allowed use of the budgets in a disapproved SIP for 120 days after disapproval;

(d) 40 CFR 93.121(a)(1) which allowed the nonfederally funded, regionally significant projects to proceed if included in the first three years of the most recent conforming transportation plan and transportation improvement program, even if conformity status is currently lapsed; and

(e) 40 CFR 93.124(b) which allowed areas to use a submitted SIP that allocated portions of a safety margin to transportation activities for conformity purposes before EPA approval.

States were required to submit transportation conformity SIPs to satisfy the requirements for the third set of amendments to the transportation conformity rule by August 15, 1998. Many of these SIP submittals, developed prior to the March 2, 1999 Court ruling, included provisions from the transportation conformity rule verbatim. As such, the State of Georgia's SIP revision included sections which the Court ruled unlawful or remanded for consistency with the Act. Therefore, in accordance with the Court's ruling, EPA can not approve the following sections of the Georgia MOA which relate to the above reference sections of the Federal conformity rule: Section 110 (c)(1)(ii); section 110 (c)(2)(ii); section 110 (d)(2)(i); section 110 (d)(3)(i); section 110 (e)(2)(i); section 110 (e)(3)(i); section 119 (e)(1); section 119b(a)(2); section 133; section 103 (4)(d); section 106 (c) and section 130 (1).

The State of Georgia submitted additional information which has complied with the EPA requirements for a transportation conformity SIP and has adopted the Federal rules in an MOA which were in effect at the time that the transportation conformity SIP was due to the EPA. If the Court had issued its ruling before adoption and SIP submittal by the Georgia DNR, EPA believes the Georgia DNR would have removed these sections from its MOA The Georgia DNR has expended its resources and time to prepare this SIP and meet the statutory deadline, and EPA acknowledges the agency's good faith effort in submitting the transportation conformity SIP in a timely manner.

The Georgia DNR will be required to submit a SIP revision in the future when EPA revises its rule to comply with the Court decision. Because the Court decision has invalidated the aforementioned affected provisions, EPA believes that it is reasonable to exclude the corresponding sections of the State rules from this SIP approval action. As a result, EPA is not taking any SIP action on the following Sections of the Georgia MOA : 110 (c)(1)(ii); 110 (c)(2)(ii);110 (d)(2)(i);110 (d)(3)(i);110 (e)(2)(i); 110 (e)(3)(i); 119 (e)(1); 119b(a)(2); 133; 103 (4)(d); 106 (c) and, 130 (1) which relate to the Federal rule sections 93.102(c), 93.104(d), 93.109(c)–(f), 93.118(e), 93.120(a)(2), 93.121(a)(1), and 93.124(b). The conformity determinations affected by these sections should comply with the relevant requirements of the statutory provisions of the Act underlying the Court's decision on these issues. EPA will be issuing guidance on how to implement these provisions in the interim prior to EPA's amendment of the Federal transportation conformity rule. Once this Federal rule has been revised, conformity determinations in Georgia should comply with the requirements of the revised Federal rule until corresponding provisions of the Georgia conformity SIP have been approved by EPA.

III. Opportunity for Public Comments

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve this SIP revision if adverse comments are filed. This rule will be effective on June 6, 2000, without further notice unless EPA receive adverse comment by May 8, 2000. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 6, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 23, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations* is amended as follows:

PART 52—[AMENDED]

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart L—Georgia

2. Section 52.570 paragragh (e) is amended by adding a new entry at the end of the table to read as follows:

§ 52.570 Identification of plan.

* * * * *

(e) EPA approved non-regulatory provisions.

EPA APPROVED GEORGIA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP revision	Applicable geographic or non-attainment area	State submittal date/effective date	EPA approval date
12. Georgia Interagency Transportation Conformity Memorandum of Agreement.	Atlanta Metropolitan Area	Februrary 16, 1999	April 7, 2000

[FR Doc. 00–8530 Filed 4–6–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[PA152–4099a; FRL–6571–5]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Allegheny County, Pennsylvania; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is aproving the Allegheny County, Pennsylvania hospital/medical/infectious waste incinerator (HMIWI) 111(d)/129 plan (the "plan") submitted on June 24, 1999 by the Pennsylvania Department of Environmental Protection (PADEP) on behalf of the Allegheny County Health Department (ACHD). The plan establishes emission limitations and other requirements for existing HMIWIs, and provides for the implementation and enforcement of those limitations and requirements.

DATES: This final rule is effective June 6, 2000 unless within May 8, 2000 adverse or critical comments are received. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: Air Protection Division, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029; and the Allegheny County Health Department, Air Quality Program, 301 39th Street, Pittsburgh, Pennsylvania 15201–1891.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at topsale.jim@epamail.gov.

SUPPLEMENTARY INFORMATION: This document is divided into Sections I through V and answers the questions posed below.

I. General Provisions

What is EPA approving?
What is a State/local 111(d)/129 plan?
What pollutant(s) will this action control?
What are the expected environmental and public health benefits from controlling HMIWI emissions?

II. Federal Requirements the Allegheny County HMIWI 111(d)/129 Plan Must Meet for Approval

What general EPA requirements must the Allegheny County Health Department (ACHD) meet in order to receive approval of its County HMIWI 111(d)/129 plan?
What does the Allegheny County plan contain?
Does the Allegheny County plan meet all EPA requirements for approval?

III. Requirements for Affected HMIWI Owners/Operators

How do I determine if my HMIWI is subject to the Allegheny County 111(d)/129 plan?
What general requirements must I meet under the approved EPA 111(d)/129 plan?
What emissions limits must I meet, and in what time frame?
Are there any operational requirements for my HMIWI and air pollution control system?
What are the testing, monitoring, recordkeeping, and reporting requirements for my HMIWI?
Is there a requirement for obtaining a Title V permit?

IV. Final EPA Action

V. Administrative Requirements

I. General Provisions

Q. What is EPA approving?

A. EPA is approving the Allegheny County 111(d)/129 plan (the "plan") for the control of air pollutant emissions

from hospital/medical/infectious waste incinerators (HMIWIs). The plan was developed by the Allegheny County Health Department (ACHD), Air Quality Program. In its capacity as the Commonwealth's air pollution control agency, on June 24, 1999 the Pennsylvania Department of Environmental Protection (PADEP) formally submitted the plan to EPA on behalf of the ACHD. EPA is publishing this approval action without prior proposal because we view this as a noncontroversial action and anticipate no adverse comments.

Q. What is a State/local 111(d)/129 plan?

A. Section 111(d) of the Clean Air Act (CAA) requires that "designated" pollutants, controlled under standards of performance for new stationary sources by Section 111(b) of the CAA, must also be controlled at existing sources in the same source category to a level stipulated in an emission guidelines (EG) document. Section 129 of the CAA specifically addresses solid waste combustion and emissions controls based on what is commonly referred to as maximum achievable control technology (MACT). Section 129 requires EPA to promulgate a MACT based emission guideline (EG) document, and then requires states to develop 111(d)/129 plans that implement and enforce the EG requirements. The HMIWI EG at 40 CFR part 60, subpart Ce, establish the MACT requirements under the authority of both Sections 111(d) and 129 of the CAA. These requirements must be incorporated into a State/local 111(d)/129 plan that is "at least as protective" as the EG, and is Federally enforceable upon approval by EPA.

The procedures for adoption and submittal of State 111(d)/129 plans are codified in 40 CFR part 60, subpart B. Additional information on the submittal of State plans is provided in the EPA document, "Hospital/Medical/Infectious Waste Incinerator Emission Guidelines: Summary of the Requirements for Section 111(d)/129 State Plan, EPA–456/R–97–007, November, 1997."

Q. What pollutant(s) will this action control?

A. The September 15, 1997 promulgated EG, Subpart Ce, are applicable to all existing HMIWIs (*i.e.*, the designated facilities) that emit organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury, particulate matter), opacity, and acid gases (hydrogen chloride, sulphur dioxide, and nitrogen oxides). This action establishes emission limitations for each of these pollutants.

Q. What are the expected environmental and public health benefits from controlling HMIWI emissions?

A. HMIWI emissions can have adverse effects on both public health and the environment. Dioxin, lead, and mercury can bioaccumulate in the environment. Exposure to dioxins/furans has been linked to reproductive and developmental effects, changes in hormone level, and chloracne. Respiratory and other effects are associated with exposure to particulate matter, sulfur dioxide, cadmium, hydrogen chloride, and mercury. Health effects associated with exposure to cadmium, and lead included probable carcinogenic effects. Acid gases contribute to the acid rain that lowers the pH of surface waters and watersheds, harms forests, and damages buildings.

II. Federal Requirements the Allegheny County, Pennsylvania HMIWI 111(d)/129 Plan Must Meet for Approval

Q. What general requirements must the ACHD meet to receive approval of its County 111(d)/129 plan?

A. The plan must meet the requirements of both 40 CFR part 60, subparts B, and Ce. Subpart B specifies detailed procedures for the adoption and submittal of State plans for designated pollutants and facilities. The EG, Subpart Ce, and the related new source performance (NSPS), Subpart Ec, contain the requirements for the control of designated pollutants, as listed above, in accordance with Sections 111(d) and 129 of the CAA. In general, the applicable provisions of Subpart Ec relate to compliance and performance testing, monitoring, reporting, and recordkeeping. More specifically, the Allegheny County plan must meet the requirements of: (1) 40 CFR part 60, subpart Ce, Sections 60.30e through 60.39c, and the related Subpart Ec provisions; and (2) 40 CFR part 60, subpart B, Sections 60.23 through 26.

Q. What does the Allegheny County plan contain?

A. Consistent with the requirements of Subparts B, Ce and Ec, the Allegheny County plan contains the following elements:

1. A demonstration of the County's legal authority to implement the plan under County and Pennsylvania law;

2. Identification of the County's enforceable mechanism, ACHD Rules and Regulations, Article XXI, Sections 2101.20 and 2105.32;

3. Source and emission inventories, as required;

4. Emission limitation requirements that are no less stringent than those in Subpart Ce;

5. A source compliance schedule, including increments of progress, as required;

6. Source testing, monitoring, recordkeeping, and reporting requirements;

7. HMIWI operator training and qualification requirements;

8. Requirements for development of a Waste Management Plan;

9. Records of the public hearing on the County plan;

10. Provision for County submittal to EPA of annual reports on progress in plan enforcement; and

11. A Title V permit application due date.

The ACHD HMIWI regulations were approved by the Allegheny County Board of Health on March 11, 1998 and by the Board of County Commissioners on November 19, 1998. The regulations became effective on September 1, 1999, and incorporate by reference (IBR) applicable Subpart Ec requirements.

Q. Does the Allegheny County 111(d)/129 plan meet all EPA requirements for approval?

A. Yes. The ACHD has submitted a plan that conforms to all EPA Subpart B and Ce requirements. Each of the above listed plan elements is approvable. Details regarding the approvability of the plan elements are included in the technical support document (TSD) associated with this action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

III. Requirements Affected HMIWI Owners/Operators Must Meet

Q. How do I determine if my HMIWI is a designated facility subject to the Allegheny County 111(d)/129 plan?

A. If construction commenced on your HMIWI on or before June 20, 1996, your HMIWI is classified as an existing or designated facility that may be subject the plan. The plan contains no lower applicability threshold based on incinerator capacity. However, there are designated facility exemptions. Those exemptions include incinerators that burn only pathological, low level radioactive, and/or chemotherapeutic waste; co-fired combustors; incinerators permitted under Section 3005 of the Solid Waste Disposal Act; municipal waste combustors (MWC) subject to EPA's municipal waste combustor rule; pyrolysis units; and cement kilns.

Details regarding applicability and exemptions provisions are stipulated in Article XXI, Section 2105.32.e.

Q. As an affected HMIWI owner/operator, what general requirements must I meet under the approved EPA 111(d)/129 plan?

A. In general, the Allegheny County HMIWI regulation establishes the following requirements:

- Emission limitations for particulate matter (PM), opacity, carbon monoxide (CO), dioxins/furans (CDD/CDF), hydrogen chloride (HCl), sulfur dioxide (SO_2), nitrogen oxides (NO_X), lead (Pb), cadmium (Cd), and mercury (Hg).
- Compliance and performance testing.
- Operating parameter monitoring.
- Operator training and qualification.
- Development of a waste management plan.
- Source testing, recordkeeping and reporting.
- A Title V permit.

A full and comprehensive statement of the above requirements is incorporated in the ACHD Rules and Regulations, Article XXI, Sections 2101.20 and 2105.32.

Q. What emissions limits must I meet, and in what time frame?

A. You must install an emissions controls system capable of meeting the maximum available control technology (MACT) emission limitations for the pollutants identified above. The pollutant emission limitations are stipulated in Article XXI, Sections 2105.32.f.1, Table 1, and f.2. Compliance is required on or before September 1, 2000 for all designated facilities. With adequate justification, you may petition the ACHD for a compliance schedule extension that does not extend beyond September 15, 2002. Petitions must be submitted no later than September 1, 2000, and must include documentation of your analysis undertaken to support the need for an extension, and your evaluation of the option to transport the waste offsite to a commercial medical waste treatment and disposal facility on a temporary or permanent basis. Also, your extension request must include increments of progress that are no less stringent than those specified in the plan and regulation, Section 2105.32.g.2.

Q. Are there any operational requirements for my HMIWI and emissions control system?

A. Yes, there are operational requirements. In summary, the operational requirements relate to: (1) The HMIWI and air pollution control devices (APCD) operating within certain established parameter limits, determined during the initial performance test; (2) the use of a trained and qualified HMIWI operator; and (3) the completion of an annual update of operation and maintenance information, and its review by the HMIWI operators.

Failure to operate the HMIWI or APCD within the established operating parameter limits constitutes an emissions violation for the controlled air pollutants. However, as a HMIWI owner/operator, you are provided an opportunity to establish revised operating limits, and demonstrate that your facility is meeting the required emission limitations, providing a repeat performance test is conducted in a timely manner.

A fully trained and qualified operator must be available at your facility during the operation of the HMIWI, or the operator must be readily available to the facility within one hour. In order to be classified as a qualified operator, you must complete an appropriate HMIWI operator training course that meets the Subpart Ec criteria referenced in the regulation at Section 2105.32g.5. Compliance with this training requirement must be achieved within one year of the effective date of the County regulation (*i.e.*, September 1, 2000).

Also, as a HMIWI owner/operator, you are required to develop and update annually site-specific information regarding your facilities' operations. Each of your HMIWI operators is required on an annual basis to review the updated operational information.

The ACHD regulation IBR the applicable operational requirements of the EG and the related NSPS. See Subpart Ec, §§ 60.56c, 60.53c, and 60.58c, respectively for details regarding these operational requirements.

Q. What are the testing, monitoring, recordkeeping, and reporting requirements for my HMIWI?

A. Testing, monitoring, recordkeeping, and reporting requirements are summarized below: You are required to conduct an initial stack test to determine compliance with the emission limitations for PM, opacity, CO, CDD/CDF, HCl, Pb, Cd, and Hg. As noted above, operating parameter limits are monitored and established during the initial performance test. Monitored HMIWI operating parameters include, for example, waste charge rate, secondary chamber and bypass stack temperatures. APCD operating parameters include, for example, CDD/CDF and Hg sorbent (*e.g.*, carbon) flow rate, hydrogen chloride sorbent (*e.g.*, lime) flow rate, PM control device inlet temperature, pressure drop across the control system, and liquid flow rate, including pH. After the initial stack test, compliance testing is then required annually to determine compliance with the emission limitations for PM, CO, and HCl.

Recordkeeping and reporting are required in order to document (1) The results of the initial and annual performance tests, (2) monitoring of site-specific operating parameters, (3) compliance with the operator training and qualification requirements, and (4) development of the waste management plan. Records must be maintained for at least five years.

The ACHD regulation IBR the applicable testing, monitoring, recordkeeping, and reporting requirements of the EG and related NSPS. See Subpart Ec, §§ 60.56c, 60.57c, and 60.58c, respectively for details regarding these requirements.

Q. Is there a requirement for obtaining a Title V permit?

A. Yes, affected facilities are required to operate under a Title V permit no later than September 15, 2000. This is required under Article XXI, section 2105.32d.

IV. Final EPA Action

The Allegheny County 111(d)/129 plan for controlling HMIWI emissions is approvable. This approval does not include provisions, such as siting and fugitive emission requirements, that relate solely to facilities subject to the NSPS, and are not referenced in the EG.

Based upon the rationale discussed above and in further detail in the TSD associated with this action, EPA is approving the Allegheny County 111(d)/129 plan for the control of HMIWI emissions from designated facilities. As provided by 40 CFR 60.28(c), any revisions to the Allegheny County plan or associated regulations will not be considered part of the applicable plan until submitted by the PADEP on behalf of ACHD in accordance with 40 CFR 60.28(a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR Part 60, Subpart B.

As requested, no EPA action is taken on the State Implementation Plan (SIP) revision relating to Article XXI. EPA action on the SIP revision request will be taken under a separate action from this 111(d)/129 plan approval.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the 111(d) plan should relevant adverse or critical comments be filed. This rule will be effective June 6, 2000 without further notice unless the Agency receives

relevant adverse comments by May 8, 2000. If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Only parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 6, 2000 and no further action will be taken on the proposed rule.

V. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 6, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Hospital/medical/infectious waste incinerators, Reporting and recordkeeping requirements.

Dated: March 23, 2000.

Bradley M. Campbell,

Regional Administrator, EPA Region III.

40 CFR Part 62, Subpart NN, is amended as follows:

PART 62—[AMENDED]

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q

Subpart NN—Pennsylvania

2. A new undesignated center heading and § 62.9660, 62.9661, and 62.9662 are added to Subpart NN to read as follows:

Emissions From Existing Hospital/Medical/Infectious Waste Incinerators (HMIWIs)—Section 111(d)/129 Plan

§ 62.9660 Identification of plan.

Section 111(d)/129 plan for HMIWIs and the associated Allegheny County Health Department (ACHD) regulations, as submitted on June 24, 1999.

§ 62.9661 Identification of sources.

The plan applies to all Allegheny County, Pennsylvania existing HMIWI for which construction was commenced on or before June 20, 1996.

§ 62.9662 Effective date.

The effective date of the plan for municipal solid waste landfills is June 6, 2000.

[FR Doc. 00–8404 Filed 4–6–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MS23–200015a; FRL—6574–3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Mississippi

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA)

is approving the section 111(d) Plan submitted by the Mississippi Department of Environmental Quality (DEQ) for the State of Mississippi on May 5, 1999, to implement and enforce the Emissions Guidelines (EG) for existing Hospital/Medical/Infectious Waste Incinerator (HMIWI) units.

DATES: This direct final rule is effective on June 6, 2000, without further notice, unless EPA receives adverse comment by May 8, 2000. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address comments on this action to Michele Notarianni, EPA Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104. [E-mail address: notarianni.michele@epa.gov.]

Copies of all materials considered in this rulemaking may be examined during normal business hours at the following locations: EPA Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104; and at the Mississippi Department of Environmental Quality, Air Division, P.O. Box 10385, Jackson, Mississippi 39289–0385.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni at 404/562–9031 or Scott Davis at 404/562–9127. [E-mail addresses: *notarianni.michele@epa.gov, davis.scottr@epa.gov.]*

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I. What action is being taken by EPA today?

We are approving the Mississippi State Plan, as submitted on May 5, 1999, for the control of air emissions from HMIWIs, except for those HMIWIs located in Indian Country. When EPA developed our New Source Performance Standard (NSPS) for HMIWIs, we also developed EG to control air emissions from older HMIWIs. (See 62 FR 48348–48391, September 15, 1997, 40 CFR part 60, subpart Ce [Emission Guidelines and Compliance Times for HMIWIs] and subpart Ec [Standards of Performance for HMIWIs for Which Construction is Commenced After June 20, 1996]). The Mississippi DEQ developed a State Plan, as required by sections 111(d) and 129 of the Clean Air Act (the Act), to adopt the EG into their body of regulations, and we are acting today to approve it.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the revision should significant, material, and adverse comments be filed. This action is effective June 6, 2000, unless by May 8, 2000, adverse or critical comments are received. If we receive such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, this action is effective June 6, 2000.

II. The HMIWI State Plan Requirement

What is a HMIWI State Plan?

A HMIWI State Plan is a plan to control air pollutant emissions from existing incinerators which burn hospital waste or medical/infectious waste. The plan also includes source and emission inventories of these incinerators in the State.

Why are we requiring Mississippi to submit a HMIWI State Plan?

States are required under sections 111(d) and 129 of the Act to submit State Plans to control emissions from existing HMIWIs in the State. The State Plan requirement was triggered when EPA published the EG for HMIWIs under 40 CFR part 60, subpart Ce (see 62 FR 48348, September 15, 1997).

Under section 129, EPA is required to promulgate EG for several types of existing solid waste incinerators. These EG establish the Maximum Achievable Control Technology (MACT) standards that States must adopt to comply with the Act. The HMIWI EG also establishes requirements for monitoring, operator training, permits, and a waste management plan that must be included in State Plans.

The intent of the State Plan requirement is to reduce several types of air pollutants associated with waste incineration.

Why do we need to regulate air emissions from HMIWIs?

The State Plan establishes control requirements which reduce the following emissions from HMIWIs: particulate matter; sulfur dioxide; hydrogen chloride; nitrogen oxides; carbon monoxide; lead; cadmium; mercury; and dioxin/furans. These pollutants can cause adverse effects to the public health and the environment. Dioxin, lead, and mercury bioaccumulate through the food web. Serious developmental and adult effects in humans, primarily damage to the nervous system, have been associated with exposures to mercury. Exposure to dioxin and furans can cause skin disorders, cancer, and reproductive effects such as endometriosis. Dioxin and furans can also affect the immune system. Acid gases affect the respiratory tract, as well as contribute to the acid rain that damages lakes and harms forests and buildings. Exposure to particulate matter has been linked with adverse health effects, including aggravation of existing respiratory and cardiovascular disease and increased risk of premature death. Nitrogen oxide emissions contribute to the formation of ground level ozone, which is associated with a number of adverse health and environmental effects.

What Criteria Must a HMIWI State Plan Meet to be Approved?

The criteria for approving a HMIWI State Plan include requirements from sections 111(d) and 129 of the Act and 40 CFR part 60, subpart B. Under the requirements of sections 111(d) and 129 of the Act, a State Plan must be at least as protective as the EG regarding applicability, emission limits, compliance schedules, performance testing, monitoring and inspections, operator training and certification, waste management plans, and recordkeeping and reporting. Under section 129(e), State Plans must ensure that affected HMIWI facilities submit Title V permit applications to the State by September 15, 2000. Under the requirements of 40 CFR part 60, subpart B, the criteria for an approvable section 111(d) plan include demonstration of legal authority, enforceable mechanisms, public participation documentation, source and emission

inventories, and a State progress report commitment.

III. What does the Mississippi HMIWI State Plan contain?

The Mississippi DEQ adopted the Federal EG into the Mississippi Code Annotated, "Air Emissions Regulations for the Prevention, Abatement, and Control of Air Contaminants," APC–S–1, Section 12, and the Federal NSPS into APC–S–1, Section 6. The State rules were effective on April 22, 1999. The Mississippi State Plan contains:

1. A demonstration of the State's legal authority to implement the section 111(d) State Plan;
2. State rule, APC–S–1, Section 12, as the enforceable mechanism;
3. An inventory of approximately 30 known designated facilities, along with estimates of their potential air emissions;
4. Emission limits that are as protective as the EG;
5. A compliance date of September 15, 2000;
6. Testing, monitoring, reporting and recordkeeping requirements for the designated facilities;
7. Records from the public hearing on the State Plan; and,
8. Provisions for progress reports to EPA.

IV. Is my HMIWI subject to these regulations?

The EG for existing HMIWIs affect any HMIWI built on or before June 20, 1996. If your facility meets this criterion, you are subject to these regulations.

V. What steps do I need to take?

You must meet the requirements listed in the Mississippi Code Annotated, APC–S–1, Section 12, summarized as follows:

1. Determine the size of your incinerator by establishing its maximum design capacity.
2. Each size category of HMIWI has certain emission limits established which your incinerator must meet. See Table 1 of APC–S–1, Section 12, to determine the specific emission limits which apply to you. The emission limits apply at all times, except during startup, shutdown, or malfunctions, provided that no waste has been charged during these events.
3. There are provisions to address small rural incinerators (if your unit is applicable),
4. You must meet a 10% opacity limit on your discharge, averaged over a six-minute block.
5. You must have a qualified HMIWI operator available to supervise the operation of your incinerator. This operator must be trained and qualified through a State-approved program, or a training program that meets the requirements listed under 40 CFR part 60.53c(c).
6. Your operator must be certified, as discussed in 5 above, no later than September 15, 2000.
7. You must develop and submit to Mississippi DEQ a waste management plan. This plan must be developed under guidance provided by the American Hospital Association publication, An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, 1993, and must be submitted to Mississippi DEQ no later than 60 days following the initial performance test for the affected unit.
8. You must conduct an initial performance test to determine your incinerator's compliance with these emission limits. This performance test must be completed as required under 40 CFR 60.8.
9. You must install and maintain devices to monitor the parameters listed under Table 4 of APC–S–1, Section 12.
10. You must document and maintain information concerning pollutant concentrations, opacity measurements, charge rates, and other operational data. This information must be maintained for a period of five years.
11. You must submit an annual report to Mississippi DEQ containing records of annual equipment inspections, any required maintenance, and unscheduled repairs. This annual report must be signed by the facilities manager.

VI. Why is the Mississippi HMIWI State Plan approvable?

EPA compared the Mississippi rules (Mississippi Code Annotated, APC–S–1, Section 12) against our HMIWI EG. EPA finds the Mississippi rules to be at least as protective as the EG. The Mississippi State Plan was reviewed for approval against the following criteria: 40 CFR 60.23 through 60.26, *Subpart B—Adoption and Submittal of State Plans for Designated Facilities;* and, 40 CFR 60, 60.30e through 60.39e, *Subpart Ce—Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators.* The Mississippi State Plan satisfies the requirements for an approvable section 111(d) plan under subparts B and Ce of 40 CFR part 60. For these reasons, we are approving the Mississippi HMIWI State Plan.

VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in

accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 6, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Hospital/medical/infectious waste incineration, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 16, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 62 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart Z—Mississippi

2. Section 62.6100 is amended by adding paragraphs (b)(3) and (c)(4) to read as follows:

§ 62.6100 Identification of plan.

* * * * *

(b) * * *

(3) Adopted State Plan for Control of Air Emissions from Existing Hospital/Medical/Infectious Waste Incinerators, submitted on May 5, 1999, by the Mississippi Department of Environmental Quality.

(c) * * *

(4) Existing hospital/medical/infectious waste incinerators.

3. Subpart Z is amended by adding a new § 62.6124 and a new undesignated center heading to read as follows:

Air Emissions from Hospital/Medical/Infectious Waste Incinerators

§ 62.6124 Identification of sources.

The plan applies to existing hospital/medical/infectious waste incinerators for which construction, reconstruction, or modification was commenced before June 20, 1996, as described in 40 CFR part 60, subpart Ce.

[FR Doc. 00–8528 Filed 4–6–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 24 and 64

[CC Docket No. 97–213, FCC 99–230]

Communications Assistance for Law Enforcement Act

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: On August 31, 1999, the Commission released a Third Report and Order in the matter of Communications Assistance for Law Enforcement Act. This document contains corrections to the final regulations that appeared in the **Federal Register** of September 24, 1999 (64 FR 51710).

DATES: Effective April 7, 2000.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418–2452 .

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction relate to Communications Assistance for Law Enforcement Act under Sections 24.903(a), 24.903(b), 64.2203(a) and 64.2203(b) of the rules.

Need for Correction

As published, the final regulations contain errors, which require correction.

List of Subjects in 47 CFR Parts 24 and 64

Communications common carriers.

Accordingly, 47 CFR parts 24 and 64 are corrected by making the following amendments:

PART 24—PERSONAL COMMUNICATIONS SERVICES

1. The authority citation for part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309 and 332.

2. Section 24.903 is amended by revising paragraphs (a) and (b) introductory text to read as follows:

(a) Except as provided under paragraph (b) of this section, as of June 30, 2000, a broadband PCS telecommunications carrier shall provide to a LEA the assistance capability requirements of CALEA, see 47 U.S.C. 1002. A carrier may satisfy these requirements by complying with publicly available technical requirements or standards adopted by an industry association or standard-setting organization, such as J–STD–025.

(b) As of September 30, 2001, a broadband PCS telecommunications carrier shall provide to a LEA communications and call-identifying information transported by packet-mode communications and the following capabilities:

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

3. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 201, 202, 205, 218–220, and 332 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended, 47 U.S.C. 201–204, 208–, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

4. Section 64.2203 is amended by revising paragraphs (a) and (b) introductory text to read as follows:

(a) Except as provided under paragraph (b) of this section, as of June 30, 2000, a wireline telecommunications carrier shall provide to a LEA the assistance capability requirements of CALEA, see 47 U.S.C. 1002. A carrier may satisfy these requirements by complying with publicly available technical requirements or standards

adopted by an industry association or standard-setting organization, such as J–STD–025.

(b) As of September 30, 2001, a wireline telecommunications carrier shall provide to a LEA communications and call-identifying information transported by packet-mode communications and the following capabilities:

* * * * *

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–8590 Filed 4–6–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[WT Docket No. 98–229, CC Docket No. 95–116; FCC 00–47]

Cellular Telecommunications Industry Association's Petition for Forbearance From Commercial Mobile Radio Services Number Portability Obligations; Telephone Number Portability

AGENCY: Federal Communications Commission.

ACTION: Final rule: Petition for Reconsideration.

SUMMARY: In this document, the Federal Communications Commission (Commission) denies four petitions for reconsideration or clarification of the Commission's Order forbearing from imposing service provider local number portability (LNP) requirements on commercial mobile radio service providers (CMRS providers) until November 24, 2002. The Commission finds that, in its forbearance decision, it adequately considered issues related to number conservation, competition in the wireless industry, and the Telecommunications Resellers Association's alternate LNP proposal. The Commission also finds that its forbearance analysis was consistent with the statutory standard. By this document, the Commission declines to extend or shorten the November 24, 2002 deadline for CMRS providers to support service provider LNP in the top 100 Metropolitan Statistical Areas (MSAs).

DATES: Effective April 7, 2000.

FOR FURTHER INFORMATION CONTACT: Joel Taubenblatt, Wireless Telecommunications Bureau, at (202) 418–1513.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration in WT Docket No. 98–229 and CT Docket No. 95–116, adopted February 9, 2000, and released February 23, 2000. The complete text of this Order on Reconsideration is available for inspection and copying during normal business hours in the Commission's Reference Center, room CY–A257, 445 12th Street SW, Washington, DC. The complete text is also available through the Internet at *http://www.fcc.gov/Bureaus/Wireless/Orders/2000/fcc00047.doc.* In addition, the complete text may be purchased from the Commission's duplicating contractor, International Transcription Service, Inc. (ITS, Inc.) at 1231 20th Street NW, Washington, DC 10036, (202) 857–3800.

Synopsis of the Order on Reconsideration

1. On May 27, 1999, four parties filed petitions for reconsideration or clarification of the Commission's Order forbearing from imposing service provider LNP requirements on CMRS providers until November 24, 2002. *See* Cellular Telecommunications Industry Association's Petition for Forbearance From Commercial Mobile Radio Services Number Portability Obligations, 64 FR 22562, April 27, 1999 (*"CMRS LNP Forbearance Order"*). These parties are GTE Service Corporation (GTE), MCI WorldCom Inc. (MCI WorldCom), the Telecommunications Resellers Association (TRA), and the Pennsylvania Public Utility Commission (Pennsylvania Commission). The Commission denies these petitions for the reasons discussed.

2. Under the Commission's prior LNP decisions, CMRS providers were required to implement LNP in the top 100 MSAs and to support nationwide roaming by March 31, 2000. Implementation of LNP by CMRS providers would enable wireless customers to "port" their telephone numbers in the event that they switch from one wireless carrier to another, or from a wireless to a wireline carrier.

3. In the *CMRS LNP Forbearance Order*, the Commission granted a petition filed by the Cellular Telecommunications Industry Association (CTIA) requesting forbearance from the Commission's service provider LNP requirements for CMRS providers until the expiration of the five-year buildout period for broadband PCS carriers. The Commission found that the limited forbearance granted in the *CMRS LNP Forbearance Order* satisfied the three-prong test for granting forbearance set forth in section 10 of the Communications Act. 47 U.S.C. 160. Accordingly, the Commission extended the deadline for CMRS providers to support service provider LNP in the top 100 MSAs until November 24, 2002. The Commission also stated its intention to promptly initiate a rulemaking proposing certain non-LNP based numbering optimization techniques applicable to all telecommunications carriers and to develop standards for other number conservation methods, possibly including one or more pooling methods. On June 2, 1999, the Commission released a Notice of Proposed Rulemaking on numbering resource optimization. *See* Numbering Resource Optimization, 64 FR 32471, June 17, 1999 (*"Numbering Resource Optimization Notice"*).

4. In their petitions for reconsideration of the *CMRS LNP Forbearance Order*, MCI WorldCom, the Pennsylvania Commission, and TRA argue that the Commission should not have forborne from imposing service provider LNP requirements on CMRS providers for any length of time. GTE's petition for reconsideration of the *CMRS LNP Forbearance Order*, on the other hand, contends that the Commission should have forborne indefinitely from imposing service provider LNP requirements on CMRS providers. Generally, petitioners challenge the Commission's analysis of issues related to number conservation, competition in the wireless industry, and TRA's alternate LNP proposal. In addition, GTE and TRA challenge the Commission's application of the forbearance standard set forth in section 10 of the Communications Act. 47 U.S.C. 160.

5. This Order on Reconsideration finds that none of the petitions raises arguments that warrant reconsideration of the Commission's decision in the *CMRS LNP Forbearance Order* to forbear from imposing service provider LNP requirements on CMRS providers until November 24, 2002.

6. With respect to number conservation issues, the Order rejects assertions that: (1) the Commission's decision to extend the CMRS LNP deadline until November 24, 2002 will hamper the implementation of number optimization solutions that require LNP technology, such as thousands-block number pooling; and (2) the Commission's consideration of number conservation issues as a basis for limiting forbearance was impermissible and inaccurate speculation. In addition, in response to a request for clarification,

the Order notes that whether, and the extent to which, the Commission should delegate additional authority to states to implement various numbering optimization measures is the subject of the *Numbering Resource Optimization Notice*. The Order also states the Commission's belief that the existing North American Numbering Council reporting mechanism, as well as the authority of the Wireless Telecommunications Bureau to address any wireless LNP implementation problems that may arise, are sufficient to address the LNP implementation concerns raised by petitioners.

7. With respect to competition issues, the Order states that the Commission carefully considered the effect of forbearance from the CMRS LNP requirements on wireless-to-wireless and wireless-to-wireline competition and found that extending the wireless LNP deadline until November 24, 2002, but not beyond that date, would promote competition in the short term and in the long term. Regarding TRA's proposed alternative approach for implementing LNP, the Commission finds that the Commission adequately considered TRA's proposal in the *CMRS LNP Forbearance Order*.

8. Finally, with respect to section 10 issues, the Order affirms the Commission's findings that the forbearance granted in the *CMRS LNP Forbearance Order* is consistent with the statutory standard of section 10. In addition, the Order states that, as an alternative to section 10 forbearance, the Commission could have extended the CMRS LNP implementation deadline to November 24, 2002 by granting a waiver under § 1.3 of the Commission's rules. See 47 CFR 1.3.

Ordering Clause

9. Accordingly, pursuant to § 1.106 of the Commission's rules, 47 CFR 1.106, the petitions for reconsideration of the *CMRS LNP Forbearance Order* filed by GTE Service Corporation, MCI WorldCom Inc., the Pennsylvania Public Utility Commission, and the Telecommunications Resellers Association are denied.

List of Subjects in 47 CFR Part 52

Telecommunications.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Group.

[FR Doc. 00–8651 Filed 4–6–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No.000211040–0040–01; I.D. 040300A]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Atka mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI) and is prohibiting trawling within Steller sea lion critical habitat in the Central Aleutian District of the BSAI. These actions are necessary to fully utilize the 2000 A season harvest specification of Atka mackerel total allowable catch (TAC) in the Central Aleutian District, and because the 2000 A season critical habitat percentage of Atka mackerel allocated to the Central Aleutian District has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 3, 2000, until 1200 hrs, A.l.t., April 15, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season apportionment of the 2000 TAC for Atka mackerel in the Central Aleutian District is 11,424, metric tons (mt), of which no more than 7,654 mt may be harvested from critical habitat (65 FR 8282, February 18, 2000). See § 679.20(c)(3)(iii) and 679.22(a)(8)(iii)(B).

The directed fishery for Atka mackerel in the Central Aleutian District was closed to reserve amounts anticipated to be needed for incidental catch in other fisheries (65 FR 11249, March 2, 2000). NMFS has determined that as of March 18, 2000, approximately 2,000 mt remains in the A season Central Aleutian District directed fishing allowance.

The Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the 2000 A season directed fishing allowance for Atka mackerel in the Central Aleutian District has not been reached. Therefore, NMFS is terminating the previous closure and is opening directed fishing for Atka mackerel in the Central Aleutian District of the BSAI.

In accordance with § 679.22(a)(8)(iii)(A), the Regional Administrator, has determined that the A season allowable harvest of Atka mackerel in Steller Sea lion critical habitat within the Central Aleutian District as specified under the 2000 harvest specifications has been reached. Consequently, NMFS is prohibiting trawling in critical habitat, as defined at 50 CFR part 226, Table 1 and Table 2 in the Central Aleutian District of the BSAI.

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to fully utilize the 2000 harvest specification of Atka mackerel TAC in the Central Aleutian District and to avoid jeopardy to the continued existence of Steller sea lions. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and § 679.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 3, 2000

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–8547 Filed 4–3–00; 4:55 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 68
Friday, April 7, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–53–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A330 and A340 series airplanes. This proposal would require repetitive ultrasonic inspections to detect corrosion of the retraction links of the main landing gear (MLG), and replacement of the retraction link with a new retraction link, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct corrosion of the retraction link of the MLG, which could result in reduced structural integrity and possible collapse of the MLG.

DATES: Comments must be received by May 8, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–53–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–53–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–53–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Airbus Model A330 and A340 series airplanes. The DGAC advises that, during a gear-down selection on an Airbus Model A330 series airplane, a retraction link (left-hand) of the main landing gear (MLG) ruptured. The MLG configuration of Airbus Model A330 series airplanes is similar in design to that of Airbus Model A340 series airplanes. Therefore, Airbus Model A340 series airplanes may be subject to the same unsafe condition revealed on the Airbus Model 330 series airplane. Investigation revealed that the internal face of the bore of the retraction link was heavily corroded. Such corrosion, if not detected and corrected, could result in reduced structural integrity and possible collapse of the MLG.

Explanation of Relevant Service Information

The manufacturer has issued Airbus Service Bulletins A330–32–3105, Revision 01, dated December 14, 1999 (for Model A330 series airplanes), and A340–32–4148, Revision 01, dated December 14, 1999 (for Model A340 series airplanes). These service bulletins describe procedures for repetitive ultrasonic inspections to detect corrosion of the left- and right-hand retraction links of the MLG, and replacement of the retraction link with a new retraction link, if necessary. The DGAC classified the Airbus service bulletins as mandatory and issued French airworthiness directives 2000–013–107(B) R1, dated February 9, 2000 (for Model A330 series airplanes), and 2000–015–132(B), dated January 12, 2000 (for Model A340 series airplanes), in order to assure the continued airworthiness of these airplanes in France.

The Airbus service bulletins reference Messier-Dowty Service Bulletins A33/34–32–151, Revision 3, including Appendix A, and A33/34–32–152, Revision 3, including Appendix A, each dated January 11, 2000, as additional sources of service information for accomplishing the repetitive ultrasonic inspections.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation

Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive ultrasonic inspections to detect corrosion of the retraction links of the MLG, and replacement of the retraction link with a new retraction link, if necessary. The actions would be required to be accomplished in accordance with the Airbus service bulletins described previously.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicablity of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $60 per airplane, per inspection cycle.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 2000–NM–53–AD.

Applicability: All Model A330 and A340 series airplanes, certificated in any category;

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion of the retraction links of the main landing gear (MLG), which could result in reduced structural integrity and possible collapse of the MLG, accomplish the following:

Repetitive Ultrasonic Inspections

(a) Within 36 months time-in-service on any new retraction link, or within 2 months after the effective date of this AD, whichever occurs later, perform an ultrasonic inspection to detect corrosion of the retraction links left- and right-hand of the MLG, in accordance with Airbus Service Bulletin A330–32–3105, Revision 01, dated December 14, 1999 (for Model A330 series airplanes), or Airbus Service Bulletin A340–32–4148, Revision 01, dated December 14, 1999 (for Model A340 series airplanes), as applicable.

(1) If no corrosion is detected, or if corrosion is detected that is within the limits specified in the applicable service bulletin, repeat the inspection thereafter at intervals not to exceed 6 months.

(2) If any corrosion is detected that is outside the limits specified in the applicable service bulletin, replace the affected retraction link with a new retraction link at the time specified and in accordance with the procedures specified in the applicable service bulletin. Thereafter, repeat the inspection specified in paragraph (a) on any new retraction links, at the time specified in paragraph (a) of this AD.

Note 2: The Airbus service bulletins reference Messier-Dowty Service Bulletins A33/34–32–151, Revision 3, including Appendix A, and A33/34–32–152, Revision 3, including Appendix A, each dated January 11, 2000, as additional sources of service information for accomplishing the repetitive inspections.

Note 3: Although the inspection schedule of this AD applies to both left- and right-hand retraction links of the MLG, replacement of a retraction link, prior to scheduled replacement, would result in subsequent staggered inspections for the remainder of the retraction links.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in French airworthiness directives 2000–013–107(B) R1, dated February 9, 2000, and 2000–015–132(B), dated January 12, 2000.

Issued in Renton, Washington, on April 3, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8687 Filed 4–6–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–230–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace BAe Model ATP airplanes. This proposal would require repetitive inspections to detect discrepancies of the downlock support assembly and attachment of the nose landing gear (NLG), and of the bulkhead and adjacent structure in the NLG bay; and corrective action, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct damage of the NLG downlock support, which could result in collapse of the NLG and consequent injury to passengers or flightcrew.

DATES: Comments must be received by May 8, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–230–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–230–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–230–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority, which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain British Aerospace BAe Model ATP airplanes. The CAA advises that the downlock structure of the nose landing gear (NLG) has been found damaged. The exact cause of the damage has not yet been determined. This condition, if not corrected, could result in collapse of the NLG and consequent injury to passengers or flightcrew.

Explanation of Relevant Service Information

British Aerospace has issued Service Bulletin ATP–53–36, Revision 1, dated February 21, 2000, which describes procedures for repetitive general visual inspections to detect discrepancies of the downlock support assembly and attachment of the NLG, and of the bulkhead and adjacent structure in the NLG bay; and corrective action, if necessary. Discrepancies for which to inspect include damage of the NLG downlock support, downlock backup structure, and attachment locations; damage or loose nuts and bolts of the NLG downlock attachment; and damage of the bulkhead 378FS web, boundary angles, and attachment locations, and the airplane skin attached to bulkhead 378FS. Corrective actions include repair of any damage and torquing of any loose nut or bolt to the limits specified in the service bulletin. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory, and issued British airworthiness directive 006–06–99, in order to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,400, or $240 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no

operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft
[Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Docket 99–NM–230–AD.

Applicability: BAe Model ATP airplanes, constructor's numbers 2002 through 2063 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct damage of the nose landing gear (NLG) downlock support, which could result in collapse of the NLG, and consequent injury to passengers or flightcrew, accomplish the following:

Repetitive Inspections and Corrective Action

(a) Within 6 months or 750 flight cycles after the effective date of this AD, whichever occurs first, perform a general visual inspection to detect discrepancies (e.g., damage, or loose nuts or bolts) of the NLG downlock support assembly, bulkhead, attachment locations, and adjacent structure in the NLG bay; in accordance with British Aerospace Service Bulletin ATP–53–36, Revision 1, dated February 21, 2000. Thereafter, repeat the inspection at intervals not to exceed 2 years or 3,000 flight cycles, whichever occurs first.

(1) If any damage is found during any inspection in accordance with paragraph (a) of this AD, prior to further flight, repair in accordance with the service bulletin.

(2) If any loose nut or bolt is found during any inspection in accordance with paragraph (a) of this AD, prior to further flight, torque the affected nut or bolt to the limits specified in the service bulletin, in accordance with the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Note 3: Inspections and corrective actions accomplished prior to the effective date of this AD in accordance with British Aerospace Service Bulletin ATP–53–36, dated June 9, 1999, are considered acceptable for compliance with the applicable actions specified in this amendment.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in British airworthiness directive 006–06–99.

Issued in Renton, Washington, on April 3, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8686 Filed 4–6–00; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110 and 165

[CGD 05–00–006]

RIN 2115–AA97, AA98

Tall Ships Delaware, Delaware River, Wilmington, DE

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary regulations in the Delaware River, Wilmington, Delaware, for Tall Ships Delaware activities. This action is necessary to provide for the safety of life on navigable waters before, during, and after Tall Ships Delaware events. This action will restrict vessel traffic in the Delaware River between the mouth of the Christina River and New Castle, Delaware.

DATES: Comments and related material must reach the Coast Guard on or before May 8, 2000.

ADDRESSES: You may mail comments and related material to the Waterways and Waterfront Facilities Branch, Coast Guard Marine Safety Office/Group Philadelphia, One Washington Ave., Philadelphia, Pennsylvania 19147 or deliver them to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Waterways and Waterfront Facilities Branch, Coast Guard Marine Safety Office/Group Philadelphia maintains the public docket for this

rulemaking. Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 8:30 a.m. and 2:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Kirsten Codel, Waterways and Waterfront Facilities Branch, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4991.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–00–008), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. The comment period for this regulation is 30 days. This time period is adequate to allow local input because the event is highly publicized and the shortened comment period will allow the full 30-day publication requirement prior to the final rule becoming effective. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. But you may submit a request for a meeting by writing to Commanding Officer, Coast Guard Marine Safety Office/Group Philadelphia, One Washington Ave., Philadelphia, Pennsylvania 19147, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Diamond State Port Corporation (Port of Wilmington) is sponsoring Tall Ships Delaware activities in the Delaware River, Wilmington, Delaware. The planned event includes a Parade of Sail from the confluence of the Christina River and the Delaware River, down river to New Castle, Delaware, and back to the mouth of the Christina River on June 23, 2000.

The Coast Guard anticipates a large spectator fleet for this event. Operators should expect significant vessel congestion along the parade route.

The purpose of these regulations is to promote maritime safety and protect participants and the boating public immediately prior to, during, and after the scheduled event. The regulations provide a safety buffer around the participating vessels during the parade of sail and modify existing anchorage regulations for the benefit of participants and spectators. The regulations will affect the movement of all vessels operating in the specified areas of the Delaware River.

It may be necessary for the Coast Guard to establish safety or security zones in addition to these regulations to safeguard dignitaries and certain vessels participating in the event. If the Coast Guard deems it necessary to establish such zones at a later date, the details of those zones will be announced separately via the **Federal Register**, Local Notice to Mariners, Safety Voice Broadcasts, and any other means available.

All vessel operators and passengers are reminded that vessels carrying passengers for hire or that have been chartered and are carrying passengers may have to comply with certain additional rules and regulations beyond the safety equipment requirements for all pleasure craft. When a vessel is not being used exclusively for pleasure, but rather is engaged in carrying passengers for hire or has been chartered and is carrying the requisite number of passengers, the vessel operator must possess an appropriate license and the vessel may be subject to inspection. The definition of the term "passenger for hire" is found in 46 U.S.C. 2101(21a). In general, it means any passenger who has contributed any consideration (monetary or otherwise) either directly or indirectly for carriage onboard the vessel. The definition of the term "passenger" is found in 46 U.S.C. 2101(21). It varies depending on the type of vessel, but generally means individuals carried aboard vessels except for certain specified individuals engaged in the operation of the vessel or the business of the owner/charterer. The law provides for substantial penalties for any violation of applicable license and inspection requirements. If you have any questions concerning the application of the above law to your particular case, you should contact the Coast Guard at the address listed in **ADDRESSES** for additional information.

Vessel operators are reminded they must have sufficient facilities on board their vessels to retain all garbage and untreated sewage. Discharge of either into any waters of the United States is strictly forbidden. Violators may be assessed civil penalties up to $25,000 or face criminal prosecution.

We recommend that vessel operators visiting the Wilmington area for this event obtain an up to date edition of National Ocean Service Chart 12311 to avoid anchoring within a charted cable or pipeline area.

With the arrival of Tall Ships Delaware and spectator vessels in the Wilmington area for this event, it will be necessary to curtail normal port operations to some extent. Interference will be kept to the minimum considered necessary to ensure the safety of life on the navigable waters immediately before, during, and after the scheduled events.

Discussion of Proposed Rule

The Tall Ships Delaware vessels are scheduled to arrive and moor at various locations along the Christina River by June 23, 2000. The lead vessel is scheduled to begin the Parade of Sail at 12:00 p.m. on June 23, 2000, and will follow a parade route of approximately 4 nautical miles on the Delaware River from the mouth of the Christina River, outbound to New Castle, Delaware, sailing outside the western side of the channel. The parade vessels will then cross the federal navigation channel of the Delaware River and return to the eastern side of the channel adjacent to the mouth of the Christina River sailing outside the eastern side of the channel. The parade vessels will then cross the navigable channel and enter the Christina River. After the parade, the larger Tall Ships Delaware vessels will moor at the Port of Wilmington on the Christina River. The remainder of the vessels will proceed up the Christina River to various mooring locations.

The safety of parade participants and spectators will require that spectator craft be kept at a safe distance from the parade route during these vessel movements. The Coast Guard proposes using a moving safety zone around the Parade of Sail to keep all vessels not involved in the Parade of Sail a safe distance from the Tall Ships Delaware vessels. The Parade of Sail route is outside the federal navigation channel of the Delaware River, allowing the channel to remain open, except when the Parade of Sail is crossing the navigable channel. However, the Coast Guard expects that there will be increased vessel congestion in the

vicinity of the federal navigation channel.

The Coast Guard also proposes to temporarily modify the existing anchorage regulations found in 33 CFR 110.157 to accommodate Tall Ships Delaware vessels. A leg of the parade route runs through General Anchorage 6 (Deepwater Point Anchorage). Therefore, General Anchorage 6 will be closed to all vessels except Tall Ships Delaware vessels from 12 p.m. to 4 p.m. on June 23, 2000. (A notice of proposed rulemaking affecting 33 CFR 110.157 has been published in the **Federal Register** at 65 FR 16361. Those proposed temporary regulations affect Anchorages 9–13 and would be temporarily added at § 110.157(d). Accordingly, the rules proposed here would be temporarily added at § 110.157(e).)

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The primary impact of these regulations will be on vessels wishing to transit the affected waterways during the Parade of Sail on June 23, 2000. Although these regulations prevent traffic from transiting portions of the Delaware River during the event, that restriction is limited in duration, affects only a limited area, and will be well publicized to allow mariners to make alternative plans for transiting the affected area. Moreover, the parade route will be outside the federal navigational channel allowing the channel to remain open with the exception of when the Parade of Sail actually crosses the channel. This should minimize the effect on non-participant and spectator vessels intending to transit the federal navigation channel.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to operate or anchor in portions of the Delaware River in the vicinity of Wilmington, Delaware. The regulations will not have a significant impact on a substantial number of small entities for the following reasons: the restrictions are limited in duration, affect only limited areas, and will be well publicized to allow mariners to make alternative plans for transiting the affected areas. Moreover, the parade route will be outside the federal navigational channel allowing the channel to remain open with the exception of when the Parade of Sail actually crosses the channel.

If you think that your business, organization or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant (junior grade) Kirsten Codel, Waterways and Waterfront Facilities Branch, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4991.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C; this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES**. By controlling vessel traffic during these events, this proposed rule is intended to minimize environmental impacts of increased vessel traffic during the transits of event vessels.

List of Subjects

33 CFR Part 110

Anchorage Grounds.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Parts 110 and 165 as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. From 12:00 p.m. until 4:00 p.m. on June 23, 2000 temporarily add § 110.157(e) to read as follows:

§ 110.157 Delaware Bay and River

* * * * *

(e) Not withstanding the above, the following temporary regulations will be in effect from 12 p.m. through 4 p.m. on June 23, 2000 for Tall Ships Delaware: Anchorage 6 will be closed to all vessels except Tall Ships Delaware vessels. "Tall Ships Delaware vessels" includes all vessels participating in Tall Ships Delaware under the auspices of the Marine Event Permit submitted for the Port of Wilmington, Delaware, and approved by the Commander, Fifth Coast Guard District.

PART 165—[AMENDED]

3. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

4. Add temporary § 165.T05–008 to read as follows:

§ 165.T05–008 Safety Zone; Tall Ships Delaware, Delaware River, Wilmington, DE.

(a) *Definitions:* (1) *Captain of the Port* means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) *Coast Guard Patrol Commander* is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commanding Officer, Coast Guard Marine Safety Office/Group Philadelphia.

(3) *Tall Ships Delaware Vessels* includes all vessels participating in the Tall Ships Delaware under the auspices of the Marine Event Permit submitted for the Port of Wilmington, Delaware, and approved by Commander, Fifth Coast Guard District.

(b) *Location.* The following area is a moving safety zone: All waters from 500 yards forward of the lead Tall Ships Delaware vessel to 100 yards aft of the last Tall Ships Delaware vessel, and extending 50 yards outboard of each Tall Ships Delaware vessel participating in the Parade of Sail. This safety zone will move with the Parade of Sail as it transits the Delaware River from the mouth of the Christina River outbound to New Castle, Delaware, returns to the mouth of the Christina River, and as each Tall Ships Delaware vessel moors in Wilmington, Delaware.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones in § 165.23 of this part.

(2) No person or vessel may enter or navigate within this safety zone unless authorized to do so by the Coast Guard Patrol Commander. Any person or vessel authorized to enter the safety zone must operate in strict conformance with any directions given by the Coast Guard Patrol Commander and leave the safety zone immediately if the Coast Guard Patrol Commander so orders.

(3) The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at telephone number (215) 271–4940.

(4) The Coast Guard Patrol Commander will notify the public of changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(d) *Effective dates:* These regulations are effective from 12 p.m. to 4 p.m. on June 23, 2000.

Dated: March 28, 2000.

J.W. Underwood,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 00–8661 Filed 4–6–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CCGD08–00–004]

RIN 2115–AE47

Drawbridge Operation Regulations for the Arkansas and White Rivers

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the regulation governing the operation of the Cotton Belt Railroad (Rob Roy) Bridge across the Arkansas River at mile 67.4, in the State of Arkansas. For more than 20 years the Rob Roy Bridge has been operated using radiotelephones as the primary communications device between mariners and the bridge operator even though current regulations require horns and flashing lights. The change in this rule will merely make the regulation require the use of radiotelephone for primary communications in the operation of the bridge.

DATES: Comments must be received on or before June 6, 2000.

ADDRESSES: Comments may be mailed to Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103, or may be delivered to room 2.107F at the same address between 8:00 a.m. and 4:00 p.m. Monday through Friday, except on Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Commander (obr), Eighth Coast Guard District, 314–539–3900, Ext. 378.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD08–00–004) and the specific section of this proposal to which the comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard plans no public hearing. Individuals may request a public hearing by writing to the Commander (obr), at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Arkansas River is a part of the McClellan-Kerr Arkansas River Navigation System. The System rises in the vicinity of Catoosa, Oklahoma, and embraces improved natural waterways and a canal to empty into the Mississippi River in southeast Arkansas. The Arkansas River drawbridge operation regulations contained in 33

CFR 117.123(a), states that the Cotton Belt Railroad (Rob Roy) Bridge, Mile 67.4, requires the use of ship's horns and flashing lights on the bridge to communicate between mariners requesting openings and railroad dispatchers remotely operating the bridge. Although not stated in 33 CFR 117.123(a), records indicate that the method of communication outlined in 33 CFR 117.123(b)(1) was to be used by mariners and the remote bridge operator as a back-up means of communications. The Coast Guard, however, has determined that the primary method of communications outlined in 33 CFR 117.123(a) has not been used during the past 20 years. It is doubtful that the system of horns and flashing lights was ever used. Instead, mariners and remote bridge operators have used the method outlined in 33 CFR 117.123(b)(1) as the prime method of communications for opening the Rob Roy Bridge.

Discussion of Proposed Rules

Drawbridge operation regulations should be realistic in meeting the needs of both navigation and land traffic, and be tempered with common sense and good judgment. The current regulations do not reflect the actual method of operation for the Rob Roy Bridge. A survey of towboat pilots and railroad personnel revealed that the use of radiotelephones as the primary means of communications is preferred. The people involved never favored the use of ship's horns and flashing bridge lights. This proposal will provide regulations for operation of the Rob Roy Bridge that are consistent with the way the bridge is actually operated.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. For more than 20 years the Rob Roy Bridge has been operated using radiotelephones as the primary communications device between mariners and the bridge operator even though current regulations require horns and flashing lights. The change in this rule will merely make the published operation regulation conform to the actual method of operation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. Since the proposed regulation only changes the method used to communicate between mariners requesting bridge openings and railroad dispatchers remotely operating the bridge and does not affect the existing operating schedule of the bridge, there will be little, if any, impact on small entities. Because it expects the impact of this proposal to be minimal, the Coast Guard certified under 5 U.S.C. 605 (b) that this proposal will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under paragraph 2.B.2.a. of Commandant Instructions M16475.1C, this proposal is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.123(a) is revised to read as follows:

§ 117.123 Arkansas Waterway—Automated Railroad Bridges.

(a) Across the Arkansas River, the draw of the Cotton Belt Railroad (Rob Roy) Bridge, Mile 67.4, is maintained in the closed position and is remotely operated. Any vessel requiring an opening of the draw shall establish contact by radiotelephone with the remote drawbridge operator on VHF–FM Channel 16 in Pine Bluff, Arkansas. The remote drawbridge operator will advise the vessel whether the bridge can be immediately opened and maintain constant contact with the vessel until the span has opened and the vessel passage has been completed. If the drawbridge cannot be opened

immediately, the remote drawbridge operator shall notify the calling vessel and provide an estimated time for opening.

* * * * *

Dated: March 29, 2000.

Paul J. Pluta,

Rear Admiral, U. S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 00–8660 Filed 4–6–00; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–49–200010(b); FRL–6573–4]

Approval and Promulgation of Implementation Plans, Georgia: Approval of Revisions to the Georgia State Implementation Plan: Transportation Conformity Interagency Memorandum of Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Georgia State Implementation Plan (SIP) that contains transportation conformity rules. If EPA approves this transportation conformity SIP revision, the State will be able to implement and enforce the Federal transportation conformity requirements at the State level per EPA regulations—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. of the Federal Transit Laws. EPA's proposed action would streamline the conformity process and allow direct consultation among agencies at the local levels. EPA's proposed approval is limited to Transportation Conformity.

In the Final Rules section of this **Federal Register**, the EPA is approving Georgia SIP revision, under sections 110(k) and 176 of the Clean Air Act, as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before May 8, 2000.

ADDRESSES: All comments should be addressed to Kelly Sheckler at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Attn: Kelly Sheckler, (404) 562–9042. Georgia Department of Natural Resources, Environmental Protection Division, Air Protection Division, 4244 International Parkway, Suite 136, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler at 404/562–9042, E-mail: Sheckler.Kelly@epa.gov.

Dated: March 23, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–8531 Filed 4–6–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[PA152–4090b; FRL–6571–4]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Allegheny County, Pennsylvania; Control of Emissions from Existing Hospital/Medical/Infectious Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the Allegheny County, Pennsylvania hospital/medical/ infectious waste incinerator (HMIWI) 111(d)/129 plan submitted on June 24, 1999 by the Pennsylvania Department of Environmental Protection (PADEP) on behalf of the Allegheny County Health Department (ACHD). The plan establishes emission limitations for existing HMIWIs, and provides for the implementation and enforcement of those limitations. In the final rules section of the **Federal Register**, EPA is approving the plan. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be received in writing by May 8, 2000.

ADDRESSES: Comments may be mailed to Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at topsale.jim@epamail.gov.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule, of the same title, which is located in the rules section of the **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 23, 2000.

Bradley M. Campbell,

Regional Administrator, EPA Region III.

[FR Doc. 00–8402 Filed 4–6–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MS23–200015b; FRL –6574–4]

Approval and Promulgation of State Plans For Designated Facilities and Pollutants: Mississippi

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to apporve the Section 111(d) Plan for the State of Mississippi submitted by the Mississippi Department of Environmental Quality (DEQ) on May 5, 1999, for implementing and enforcing the Emissions Guidelines applicable to existing Hospital/Medical/Infectious Waste Incinerators. The Plan was submitted by the Mississippi DEQ to satisfy certain Federal Clean Air Act requirements. In the Final Rules Section of this **Federal Register**, EPA is approving the Mississippi State Plan submittal as a direct final rule without prior proposal because the Agency

views this as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to that rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. EPA will not institute a second comment period on this action.

DATES: Comments must be received in writing by May 8, 2000.

ADDRESSES: Written comments should be addressed to Michele Notarianni at the EPA Regional Office listed below. Copies of the documents relevant to this rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3014. [Staff contact: Michele Notarianni at telephone number 404/562–9031 or e-mail address: notarianni.michele@epa.gov.]

Mississippi Department of Environmental Quality, Air Division, P.O. Box 10385, Jackson, Mississippi 39289–0385.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni at 404/562–9031 or Scott Davis at 404/562–9127.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: March 16, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–8529 Filed 4–6–00; 8:45 am]

BILLING CODE: 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 544

[Docket No.: 2000–001; Notice 01]

RIN 2127–AH77

Insurer Reporting Requirements; List of Insurers Required To File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to republish, without change, 2 lists of those passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experiences and to amend a third list. An insurer included in any of these lists would be required to file a report for the 1997 calendar year before October 25, 2000. If the passenger motor vehicle insurers remain listed, they must submit reports by each subsequent October 25.

DATES: Comments must be submitted not later than June 6, 2000.

ADDRESSES: Comments on this proposed rule must refer to the docket number referenced in the heading of this notice and submit them to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. Docket hours are 9:30 a.m. to 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Henrietta L. Spinner, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Dr. Spinner's telephone number is (202) 366–4802. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 49 U.S.C. 33112, Insurer reports and information, NHTSA requires certain passenger motor vehicle insurers to file an annual report with the agency. Each insurer's report includes information about thefts and recoveries of motor vehicles, the rating rules used by the insurer to establish premiums for comprehensive coverage, the actions taken by the insurer to reduce such premiums, and the actions taken by the insurer to reduce or deter theft. Under the agency's regulation, 49 CFR Part 544, the following insurers are subject to the reporting requirements:

(1) Those issuers of motor vehicle insurance policies whose total premiums account for 1 percent or more of the total premiums of motor vehicle insurance issued within the United States;

(2) Those issuers of motor vehicle insurance policies whose premiums account for 10 percent or more of total premiums written within any one state; and (3) rental and leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity.

Pursuant to its statutory exemption authority, the agency exempted certain passenger motor vehicle insurers from the reporting requirements.

A. Small Insurers of Passenger Motor Vehicles

Section 33112(f)(2) provides that the agency shall exempt small insurers of passenger motor vehicles if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information in the reports, either nationally or on a state-by-state basis. The term "small insurer" is defined, in Section 33112(f)(1)(A) and (B), as an insurer whose premiums for motor vehicle insurance issued directly or through an affiliate, including pooling arrangements established under state law or regulation for the issuance of motor vehicle insurance, account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. However, that section also stipulates that if an insurance company satisfies this definition of a "small insurer," but accounts for 10 percent or more of the total premiums for all motor vehicle insurance issued in a particular state, the insurer must report about its operations in that state.

In the final rule establishing the insurer reports requirement (52 FR 59; January 2, 1987), 49 CFR part 544, NHTSA exercised its exemption authority by listing in Appendix A each insurer that must report because it had at least 1 percent of the motor vehicle insurance premiums nationally. Listing the insurers subject to reporting, instead of each insurer exempted from reporting because it had less than 1 percent of the premiums nationally, is administratively simpler since the former group is much smaller than the latter. In Appendix B, NHTSA lists those insurers required to report for particular states because each insurer had a 10 percent or a greater market share of motor vehicle premiums in those states. In the January 1987 final rule, the agency stated that it would update Appendices A and B annually. NHTSA updates the appendices based on data voluntarily provided by insurance companies to A.M. Best,

which A.M. Best publishes in its State/Line Report each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-insured Rental and Leasing Companies

In addition, upon making certain determinations, NHTSA grants exemptions to self-insurers, i.e., any person who has a fleet of 20 or more motor vehicles (other than any governmental entity) used for rental or lease whose vehicles are not covered by theft insurance policies issued by insurers of passenger motor vehicles, 49 U.S.C. 33112(b)(1) and (f). NHTSA may exempt a self-insurer from reporting, if the agency determines:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer; and

(2) The insurer's report will not significantly contribute to carrying out the purposes of Chapter 331.

In a final rule published June 22, 1990 (55 FR 25606), the agency granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles, because it believed that the largest companies' reports sufficiently represent the theft experience of rental and leasing companies. NHTSA concluded that smaller rental and leasing companies' reports do not significantly contribute to carrying out NHTSA's statutory obligations and that exempting such companies will relieve an unnecessary burden on them. As a result of the June 1990 final rule, the agency added Appendix C, consisting of an annually updated list of the self-insurers subject to Part 544. Following the same approach as in Appendix A, NHTSA included, in Appendix C, each of the self-insurers subject to reporting instead of the self-insurers which are exempted. NHTSA updates Appendix C based primarily on information from Automotive Fleet Magazine and Business Travel News.

C. When a Listed Insurer Must File a Report

Under Part 544, as long as an insurer is listed, it must file reports on or before October 25 of each year. Thus, any insurer listed in the appendices must file a report by October 25, and by each succeeding October 25, absent an amendment removing the insurer's name from the appendices.

Proposal

1. Insurers of Passenger Motor Vehicles

Appendix A lists insurers that must report because each had 1 percent of the motor vehicle insurance premiums on a national basis. The list was last amended in a final rule published on October 25, 1999 (See 64 FR 57393). Based on the 1997 calendar year data from A.M. Best, we are proposing to reissue appendix A without change.

Each of the 18 insurers listed in Appendix A is required to file a report before October 25, 2000, setting forth the information required by part 544 for each State in which it did business in the 1997 calendar year. As long as these 18 insurers remain listed, they will be required to submit reports by each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Appendix B lists insurers required to report for particular States for calendar year 1997, because each insurer had a 10 percent or a greater market share of motor vehicle premiums in those States. Based on the 1997 calendar year data for market shares from A.M. Best, we are proposing to reissue Appendix B without change.

The 11 insurers listed in appendix B are required to report on their calendar year 1997 activities in every State where they had a 10 percent or a greater market share. These reports must be filed by October 25, 2000, and set forth the information required by Part 544. As long as these 11 insurers remain listed, they would be required to submit reports on or before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

2. Rental and Leasing Companies

Appendix C lists rental and leasing companies required to file reports. Based on information in Automotive Fleet Magazine and Business Travel News for 1997, NHTSA proposes to remove Penske Truck Leasing Company from Appendix C and to add Ford-Rent-A-Car System to Appendix C. Each of the 19 companies (including franchisees and licensees) listed in Appendix C would be required to file reports for calendar year 1997 no later than October 25, 2000, and set forth the information required by Part 544. As long as those 19 companies remain listed, they would be required to submit reports before each subsequent October 25 for the calendar year ending slightly less than 3 years before.

Regulatory Impacts

1. Costs and Other Impacts

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impact of this proposed rule and determined that the action is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. This proposed rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. Only those companies that are not statutorily eligible for an exemption are required to file reports.

NHTSA does not believe that this proposed rule, reflecting current data, affects the impacts described in the final regulatory evaluation prepared for the final rule establishing part 544 (52 FR 59; January 2, 1987). Accordingly, a separate regulatory evaluation has not been prepared for this rulemaking action. Using the Bureau of Labor Statistics Consumer Price Index for 1999, the cost estimates in the 1987 final regulatory evaluation were adjusted for inflation. The agency estimates that the cost of compliance is $83,300 for any insurer added to Appendix A, $33,320 for any insurer added to Appendix B, and $9,613 for any insurer added to Appendix C. If this proposed rule is made final, for Appendices A and B, the agency would make no changes; for Appendix C, the agency would remove one company and add one company. The agency therefore estimates that the net effect of this proposal, if made final, would be no cost to insurers as a group.

Interested persons may wish to examine the 1987 final regulatory evaluation. Copies of that evaluation were placed in Docket No. T86–01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Docket Section, Room 5109, 400 Seventh Street, SW, Washington, DC 20590, or by calling (202) 366–4949.

2. Paperwork Reduction Act

The information collection requirements in this proposed rule were submitted and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This collection of information is assigned OMB Control Number 2127–0547 ("Insurer Reporting Requirements") and approved for use through July 31, 2000, and the agency will seek to extend the approval afterwards.

3. Regulatory Flexibility Act

The agency also considered the effects of this rulemaking under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). I certify that this proposed rule

will not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies proposed for Appendices A, B, or C are construed to be a small entity within the definition of the RFA. "Small insurer" is defined, in part under 49 U.S.C. 33112, as any insurer whose premiums for all forms of motor vehicle insurance account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States, or any insurer whose premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. This notice would exempt all insurers meeting those criteria. Any insurer too large to meet those criteria is not a small entity. In addition, in this rulemaking, the agency proposes to exempt all "self insured rental and leasing companies" that have fleets of fewer than 50,000 vehicles. Any self insured rental and leasing company too large to meet that criterion is not a small entity.

4. Federalism

This action has been analyzed according to the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this proposed rule and determined that it would not have a significant impact on the quality of the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that two copies of the comments be submitted. All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, two copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and one copy from which the purportedly confidential information has been deleted should be accompanied by cover letter setting forth the information specified in the agency's confidential business information regulation. (49 CFR part 512).

All comments received before the close of business on the comment closing date indicated will be considered, and will be available for examination in the docket at the above address both before and after the date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration regarding the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal are available for inspection in the docket. NHTSA will continue to file relevant information, as it becomes available in the docket after the closing date. It is recommended that interested persons continue to examine the docket for new material.

Those persons wanting receipt of their comments in the rule docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 544

Crime insurance, insurance, insurance companies, motor vehicles, reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Part 544 is proposed to be amended as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 is proposed to be revised to read as follows:

Authority: 49 U.S.C. 33112; delegation of authority at 49 CFR 1.50.

2. Paragraph (a) of § 544.5 is proposed to be revised to read as follows:

§ 544.5 General requirements for reports.

(a) Each insurer to which this part applies shall submit a report annually before October 25, beginning on October 25, 1986. This report shall contain the information required by § 544.6 of this part for the calendar year three years previous to the year in which the report is filed (e.g., the report due by October 25, 2000 will contain the required information for the 1997 calendar year).

* * * * *

3. Appendix A to Part 544 is proposed to be republished to read as follows:

Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Allstate Insurance Group
American Family Insurance Group
American Financial Group
American International Group
California State Auto Association
CNA Insurance Group
Erie Insurance Group
Farmers Insurance Group
Berkshire Hathaway/GEICO Corporation Group
Hartford Insurance Group
Liberty Mutual Group
Nationwide Group
Progressive Group
Prudential of America Group
State Farm Group
Travelers PC Group
USAA Group
Zurich Insurance Group-U.S.

4. Appendix B to Part 544 is proposed to be revised to read as follows:

Appendix B—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Allmerica P & C Companies (Michigan)
Arbella Mutual Insurance (Massachusetts)
Auto Club of Michigan Group (Michigan)
Commerce Group, Inc. (Massachusetts)
Commercial Union Insurance Companies (Maine)
Concord Group Insurance Companies (Vermont)
Kentucky Farm Bureau Group (Kentucky)
Nodak Mutual Insurance Company (North Dakota)
Southern Farm Bureau Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

5. Appendix C to Part 544 is proposed to be revised to read as follows:

Appendix C—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
ARI (Automotive Rentals, Inc.)
Associates Leasing Inc.
AT&T Automotive Services, Inc.
Avis, Inc.
Budget Rent-A-Car Corporation
Dollar Rent-A-Car Systems, Inc.
Donlen Corporation
Enterprise Rent-A-Car
Ford Rent-A-Car-System [1]
GE Capital Fleet Services
Hertz Rent-A-Car Division (subsidiary of Hertz Corporation)
Lease Plan USA, Inc.

[1] Indicates a newly listed company which must file a report beginning with the report due October 25, 2000.

National Car Rental System, Inc.
PHH Vehicle Management Services
Ryder System, Inc. (Both rental and leasing operations)
U-Haul International, Inc. (Subsidiary of AMERCO)
USL Capital Fleet Services
Wheels Inc.

Issued on: April 4, 2000.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 00–8663 Filed 4–6–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[I.D. 032400C]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Exempted Fishing Permits (EFPs) to Conduct Experimental Fishing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of EFP proposals to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has made a preliminary determination to issue EFPs to conduct experimental fishing to two vessels participating in separate fisheries that would permit these vessels to conduct operations otherwise restricted by regulations governing the fisheries of the Northeastern United States. The EFPs would exempt vessels from regulations regarding: Days-at-sea (DAS) while fishing for, retaining, and landing Atlantic sea scallops; fishing in the scallop closed areas; and limiting the vessel's scallop and bycatch harvest. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on the proposed EFP to conduct experimental fishing. A decision to approve or disapprove the EFPs will be made following the comment period.

DATES: Comments on this notification must be received on or before 5:00 p.m., local time, on April 24, 2000.

ADDRESSES: Comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope "Comments on Proposed Scallop EFP Proposals."

Comments also may be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: David Gouveia, Fishery Policy Analyst, 978–281–9280.

SUPPLEMENTARY INFORMATION: The Virginia Institute of Marine Science (VIMS) proposes a scallop resource depletion study in selected locations within the Hudson Canyon and Virginia Beach Closure Areas chosen in consultation with the Northeast Fisheries Science Center's scallop survey stations. In addition, this study proposes to collect information on bycatch, habitat effects, and bio-fouling of sea scallops. Depending on the funding available, this study may also attempt to use an autonomous underwater vehicle to verify tow tracks and habitat modifications.

On a tow-by-tow basis, scientific staff and designated crew members will enumerate bycatch and estimate quantities of non-bycatch debris (mollusk shells) and will report on their general physical condition. The overall objective of the study is to assess the increased availability of commercial sea scallop biomass resulting from the area closures that commenced 2 years ago. A similar study in Georges Bank Closed Area II was not performed until 4 years after the closure. It is thought that more knowledge could be gained from a post-dredge survey conducted closer to the cessation of mobile gear activity.

The survey would be conducted during the period June through July 2000 and would employ the use of two 15-ft (4.57-m) commercial sea scallop dredges at 400 pre-designated stations. Sampling densities of approximately one station per 7.5 nm^2 in the Hudson Canyon South Closure Area, and one station per 5.0 nm^2 in the Virginia Beach Closure Area are proposed. Sampling density will be increased to one station per 5.0 nm^2 on or near the edges of closed area boundaries. Set tow times of 10 minutes at a speed of 4.5 knots will be used to calibrate area gear coverage (width of gear x length of dredge path). The dredge gear will comply with all mesh size and gear configuration provisions of Amendment 4 to the Atlantic Sea Scallop Fishery Management Plan (FMP). Therefore, no special twine-top configurations or rock chains will be used.

No other species besides Atlantic sea scallops will be retained or landed, except for unusual specimens of interest to scientists and only at the discretion of the chief scientist in charge of at-sea cruise operations. All fishing activities conducted by the participating vessel must only be research activities. All commercial operations would be prohibited. The participating vessel would be exempt from regulations on scallop harvest and bycatch (50 CFR 648.52 and 648.53) but would be allowed to retain and land no more than 9,100 lb (4,127.76 kg) (650 lb/day (294.84 kg/day)) of Atlantic sea scallops. It would also be exempt from the Atlantic Sea Scallop DAS program when fishing under the EFP (50 CFR 648.10). Based on this landing limit, participants would be required to commit a maximum of 14 days to the study.

The vessel's crew will be instructed that low value sea scallops may not be discarded in favor of retaining high value sea scallops (high grading). VIMS' chief scientist is charged with monitoring all stages of the proposed cruise operations in support of the study objectives, and will ensure maximum integrity of data collection and organization of deck operations. The second proposal, submitted by Coonamessett Farm, proposes to test new gear designs to reduce yellowtail flounder and skate bycatch rates. The experimental dredge will have two modifications. The first modification adds a 10-inch (25.40-cm) mesh panel between the depressor plate and the dredge bale that will follow the angle of the depressor plate. The second modification adds the equivalent of an old-style locomotive cow catcher under the bale frame that would direct skates and flatfish above the bale, along the mesh panel, and over the dredge frame. The applicant requests one 7-day trip to the Georges Bank and South Channel sea scallop stock areas. The participating vessel would be allowed to retain up to 850 lb (385.56 kg) of scallop meats per day, not to exceed 5,950 lb (2,698.9 kg) of scallop meats for the entire trip. An EFP issued to the vessel participating in the Coonamessett Farm proposal would exempt the vessel from the DAS restrictions (50 CFR 648.53) and limit the vessel's scallop and bycatch harvest (50 CFR 648.52 and 648.53). Although the dredge gear used by Coonamessett Farm is modified, the changes to the dredge are within the current dredge specifications found in the Atlantic Sea Scallop FMP. Therefore, no exemption of the dredge gear is necessary.

Coonamessett Farm and VIMS would each conduct experimental fishing

activities with a single commercial vessel with a Federal limited access Atlantic sea scallop permit. The vessels will be allowed to land and sell sea scallops caught during the conduct of the experiment, up to a maximum, which is determined based on the average scallop catch per DAS for the most recent 12-month period available for the Atlantic sea scallop stock areas.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 3, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–8667 Filed 4–6–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[I.D. 032300D]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit (EFP) to Conduct Experimental Fishing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of EFP proposal to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has made a preliminary determination to issue an EFP to that would allow a single vessel to conduct operations otherwise restricted by regulations governing the fisheries of the Northeastern United States. Mount Desert Oceanarium of Southwest Harbor, Maine, submitted a complete application for an EFP, which warrants further consideration. The experimental fishery would involve fishing for, retention of, and landing of small numbers of regulated multispecies and various unmanaged species for the purpose of public education. Regulations issued under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on the proposed EFP to conduct experimental fishing.

DATES: Comments on this notification must be received at the appropriate address or fax number (See **ADDRESSES**) on or before 5:00 p.m., local time, on April 24, 2000.

ADDRESSES: Written comments should be sent to Patricia Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope "Comments on Proposed EFP Proposal." Comments also may be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Tom Warren, Fishery Management Specialist, 978–281–9347.

SUPPLEMENTARY INFORMATION: The Mount Desert Oceanarium, of Southwest Harbor, Maine, submitted an application for an EFP on February 15, 2000, to collect various species of animals for public education. A single chartered vessel will use a modified 50-ft (15.2-m) shrimp trawl to collect marine animals on 3 days during the time period from May 1, 2000, to May 20, 2000. The animals will be brought to shore, maintained in tanks for public display, and most will be returned to the sea in October 2000. Collection will be from the Small Mesh Northern Shrimp Fishery Exemption Area, off Maine. If the target species cannot be located in this area, collection will be farther east or southeast from the Gulf of Maine/Georges Bank Regulated Mesh Area. The target species will include dabs, blackback and yellowtail flounder, plaice, halibut, monkfish, eel pouts, sculpins, sea ravens, cod, wolfish, spiny dogfish, little skate, barndoor skate, and unidentified species of the Phyla Arthropoda and Echinodermata. The vessel will collect a maximum of six individuals per species, juvenile and adult, with the exception of halibut, which will be limited to a total of one individual, with a minimum total length of 36 inches (91.4 cm).

EFPs are required to exempt the vessel from the possession prohibition, mesh size, minimum fish size, and days-at-sea restrictions of the Northeast Multispecies Fishery Management Plan.

16 U.S.C. 1801 *et seq.*

Dated: March 31, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries; National Marine Fisheries Service.

[FR Doc. 00–8668 Filed 4–6–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 68
Friday, April 7, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 4, 2000.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Conservation Reserve Program (CRP)—7 CFR Part 1410.

OMB Control Number: 0560–0125.

Summary of Collection: Section 1231 of the Conservation Title of the Food Security Act of 1985 (Pub. L. 990198 Stat. 1354, as amended, 16 U.S.C. 3831–3844), as amended by the Food, Agriculture, Conservation and Trade Act (Pub. L. 101–624, 104 Stat. 3577) and the Federal Agriculture Improvement and Reform Act of 1996, (Pub. L. 104–127, Stat. 994) directs the Secretary of Agriculture to formulate and carry out a Conservation Reserve Program (CRP) during the 1986–2002 calendar years. Under the program, the Secretary is authorized to enter into 10–15 year contracts to assist owners and operators of eligible land in conserving and improving the Nation's natural resources, including soil, water quality, air quality, and wildlife. The Farm Service Agency (FSA) will collect information using various CRP forms.

Need and Use of the Information: FSA will use the information collected on CRP forms to determine eligibility, quota and allotment reductions, incentive payments, maximum payment rates, and also record cropping history that is used by NRCS in determining land eligibility etc. The information is needed to implement and provide program benefits under the current legislation.

Description of Respondents: Farms; Individuals or households.

Number of Respondents: 160,497.

Frequency of Responses: Reporting: Other (When applying for benefits).

Total Burden Hours: 70,088.

Food Safety and Inspection Service

Title: Application for Inspection, Sanitation, and Exemption.

OMB Control Number: 0583–0082.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031). FSIS requires meat, poultry, and egg product establishments and FSIS accredited non-Federal analytical laboratories to maintain certain paperwork and records. FSIS will collect information using several FSIS forms.

Need and Use of the Information: FSIS will collect information to ensure that all meat and poultry establishments produce safe, wholesome, and unadulterated product, and that non-federal laboratories accord with FSIS regulations. In addition, FSIS also collects information to ensure that meat and poultry establishments exempted from FSIS's inspection do not commingle inspected and non-inspected meat and poultry products.

Description of Respondents: Business or other for-profit.

Number of Respondents: 9,885.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 1,091.

Animal and Plant Health Inspection Service

Title: Pseudorabies in Swine; Payment of Indemnity.

OMB Control Number: 0579–NEW.

Summary of Collection: Title 21, U.S.C. authorizes sections 111, 114, 114a, 114–1, 115, 120, 125, 126, 134a, 134c, 134f, and 134g of 21 U.S.C. These authorities permit the Secretary to prevent, control and eliminate domestic diseases such as pseudorabies, as well as to take actions to prevent and to manage exotic diseases such as hog cholera, African swine fever, and other foreign animal diseases. More specifically, 21 U.S.C. 111, 115, 118, authorizes the Secretary of Agriculture to take such measures as he or she may deem proper to prevent the introduction or dissemination of any contagious or communicable disease of animals or live poultry from a foreign country into the United States or from one state to another. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing our ability to compete in exporting animals and animal products. The Animal and Plant Health Inspection Service (APHIS) is conducting an Accelerated Pseudorabies Eradication program in an effort to eliminate pseudorabies from the United States. APHIS will collect information using a movement permit, an official seal to secure trucks that are carrying swine to slaughter, and a Report of Salvage Proceeds.

Need and Use of the Information: APHIS will collect information from herd owners on the number of animals being moved, their origin and destination sites, their disease status and identification, and the cleaning and disinfection requirements associated with the movement. If the information was not collected it would be impossible for APHIS to effectively ensure that pseudorabies-infected, exposed, or suspect swine are prevented from coming into contact with healthy animals.

Description of Respondents: Business or other for-profit; Farms; State, Local or Tribal Government.

Number of Respondents: 300.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 998.

Agency has requested emergency approval by April 3, 2000.

Agricultural Marketing Service

Title: Cranberries Grown in the States of MA, RI, CT, NJ, WI, MN, OR, WA, and Long Island in the State of NY—Marketing Order No. 929.

OMB Control Number: 0581–0103.

Summary of Collection: Marketing Order No. 929 (7 CFR Part 929), regulates the handling of cranberries grown in the 10 mention states and emanates from enabling legislation (the Agricultural Marketing Agreement Act of 1937, Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674). The act was designed to permit regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in interstate commerce and improving returns to growers. The objective of the marketing agreement and order is to correlate the supply of cranberries available for sale in the various trade channels with the demand in those outlets. The Agricultural Marketing Service will collect information using forms FV–53, –259, –260, and –263.

Need and Use of the Information: AMS will collect information from the form on cranberry production, shipments, inspection, and export. The Cranberry Marketing Committee, which represents growers and locally administers the order. The committee and its staff are responsible for keeping information in individual handlers inventories and receipt confidential. Information gathered by the committee would only be reported in the aggregate, along with other pertinent cranberry data. If information was not collected it would eliminate data needed to keep the cranberry industry and the Secretary abreast of changes at the State and local level.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 1,285.

Frequency of Responses: Recordkeeping; Reporting: Quarterly; Annually.

Total Burden Hours: 1,750.

William McAndrew,

Departmental Clearance Officer.

[FR Doc. 00–8678 Filed 4–6–00; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 00–020–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the regulations requiring permits for movement of restricted animals.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by June 6, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 00–020–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 00–020–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: For information regarding the regulations requiring permits for movement of restricted animals, contact Dr. Diane Sutton, Senior Staff Veterinarian, National Animal Health Programs Staff, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737; (301) 734–7709. For copies of more detailed information on the information collection, contact Ms. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Permit for Movement of Restricted Animals.

OMB Number: 0579–0051.

Expiration Date of Approval: April 30, 2000.

Type of Request: Extension of approval of an information collection.

Abstract: The United States Department of Agriculture is responsible for preventing the spread of contagious, infectious, or communicable animal diseases from one State to another and for eradicating such diseases from the United States. In connection with this mission, the Animal and Plant Health Inspection Service, Veterinary Services, carefully monitors animals which either have, or have been exposed to, diseases of quarantine significance as these animals are transported to appropriate slaughtering facilities.

When farm animals (such as cattle, swine, sheep, or horses) become sick or have been exposed to a disease of quarantine significance, it is important that they be removed promptly from the farm to prevent exposing and infecting other animals. In such situations, the owner of sick or exposed animals may have the animals transported from the farm to a slaughtering establishment. When this movement requires animals to be transported across State lines, the owner is required to complete a "Permit for Movement of Restricted Animals," also known as VS Form 1–27.

It is imperative that these animals not be removed from the vehicle during transport or be otherwise diverted from their destination, since such an event could result in the spread of a disease of quarantine significance among healthy animals. VS Form 1–27, which is completed by specified personnel at the farm of origin and again at the point of destination, is our primary means of ensuring that these animals move directly from the farm to the slaughtering establishment.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning this information collection. We need this outside input to help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average .05 hours per response.

Respondents: State field personnel, accredited veterinarians, meat inspectors, animal health technicians, and other regulated entities, including owners of cattle, swine, horses, sheep, and goats.

Estimated annual number of respondents: 3,847.

Estimated annual number of responses per respondent: 2.5258.

Estimated annual number of responses: 9,717.

Estimated total annual burden on respondents: 740 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 3rd day of April 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–8680 Filed 4–6–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Farm Service Agency's (FSA) intention to request an extension for a currently approved information collection in support of the program for Guaranteed Farm Loans.

DATES: Comments on this notice must be received by June 6, 2000 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Phillip Elder, Senior Loan Officer, USDA, FSA, Farm Loan Programs, Loan Servicing Division, STOP 0523, 1400 Independence Ave. SW, Washington, D.C. 20250–0523, telephone (202) 690–4012 or Electronic mail: phillip_elder@wdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: (7 CFR part 762) Guaranteed Farm Loans

OMB Control Number: 0560–0155.

Expiration Date of Approval: June 30, 2000.

Type of Request: Extension of a currently approved information collection.

Abstract: Section 309(h) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1929(h)) authorizes the Secretary of Agriculture to guarantee loans for CONACT purposes made by legally authorized lending agencies to eligible farmers and ranchers. FSA must assure that farmers and ranchers, joint operators, farm cooperatives, private domestic corporations and partnerships that are controlled by farmers and ranchers engaged primarily and directly in farming or ranching in the United States comply with CONACT requirements and implementing regulations at 7 CFR part 762 in order to obtain the requested assistance. A guaranteed farm ownership loan applicant, for example, must be a citizen of the United States; own and operate or become the owner and operator of not larger than a family size farm; and be unable to obtain sufficient credit elsewhere at reasonable rates and terms. The reporting and record keeping requirements imposed on the public by regulations set out in 7 CFR part 762 are necessary to administer the Farm Loan Programs (FLP) guaranteed loan program in accordance with the statutory requirements listed above and are consistent with commonly performed lending practices. Periodic collection of information after loans are made is necessary to protect the Government's financial interest. The information is stored in the FSA county office loan files or state office lender files.

Estimate of Burden: Public reporting for this collection of information is estimated to average 46 minutes per response.

Respondents: Individuals or households, businesses or other for profits, and farms.

Estimated Number of Respondents: 14,500.

Estimated Number of Responses per Respondent: 20.24.

Estimated Number of Responses: 293,538.

Estimated Total Annual Burden on Respondents: 226,935 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the subject Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should be sent to the Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Phillip Elder, Senior Loan Officer, USDA, FSA, Farm Loan Programs, Loan Servicing Division, 1400 Independence Avenue, SW, STOP 0523, Washington, D.C. 20250–0523.

Comments regarding paperwork burden will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C., on March 31, 2000.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 00–8679 Filed 3–6–00; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Advisory Committee

AGENCY: Office of the Secretary, USDA.

ACTION: Notice, renewal of charter, and request for nominations.

SUMMARY: The Secretary of Agriculture intends to renew the charter of the Lake Tahoe Federal Advisory Committee, chartered under the Federal Advisory Committee Act, to provide advice to the Secretary of Agriculture on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region. Nominations of persons to serve on the Committee are invited.

DATES: Nominations for membership on the Committee must be received in writing by May 1, 2000.

ADDRESSES: Send nominations and applications with telephone numbers for membership on the Committee to: FACA Nomination, Lake Tahoe Basin Management Unit, 870 Emerald Bay Road, South Lake Tahoe, California 96150.

FOR FURTHER INFORMATION CONTACT: Maribeth Gustafson, Forest Supervisor, Lake Tahoe Basin Management Unit, telephone (530) 573–2773.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture intends to renew the charter of the Lake Tahoe Basin Federal Advisory Committee. The purpose of the Committee is to provide advice to the Secretary of Agriculture on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Basin and other matters raised by the Secretary.

The Secretary has determined that the work of the Committee is in the public interest and relevant to the duties of the Department of Agriculture.

The Committee will meet on a quarterly basis, conducting public meetings to discuss management strategies, gather information and review federal agency accomplishments, and prepare a progress report every six months for submission to regional federal executives. Representatives will be selected from the following sectors: (1) Gaming, (2) Environmental, (3) National environmental, (4) Ski resorts, (5) North Shore economic/recreation, (6) South Shore economic/recreation, (7) Resort associations, (8) Education, (9) Property rights advocates, (10) Member-at-large, (11) Member-at-large, (12) Science and Research, (13) Local Government, (14) Washoe Tribe, (15) State of California, (16) State of Nevada, (17) Tahoe Regional Planning Agency, (18) Labor, (19) Transportation and (20) Member-at-large. Nominations to the Committee should describe and document the proposed member's qualifications for membership on the Lake Tahoe Basin Advisory Committee. The Committee Chair will be recommended by the Committee and approved by the Secretary. Vacancies on the Committee will be filled in the manner in which the original appointment was made.

Appointments to the Committee will be made by the Secretary of Agriculture. Equal opportunity practices, in line with USDA policies, will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include to the extent practicable individuals with demonstrated ability to represent minorities, women, persons with disabilities, and senior citizens.

Dated: April 3, 2000.

Edmund Gee,

Acting Forest Supervisor.

[FR Doc. 00–8683 Filed 4–6–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Big Butte Timber Sales and Related Activities, Rogue River National Forest Jackson County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The USDA, Forest Service will prepare an environmental impact statement (EIS). The purpose of the EIS is to analyze and disclose the environmental impacts of a site specific proposal to commercially harvest and regenerate trees, construct, reconstruct, and decommission roads, implement vegetation density management activities, implement wildlife projects, and conduct prescribed burns. The activities are proposed in the Big Butte Springs watershed located on lands administered by the Rogue River National Forest, Butte Falls Ranger District, Jackson County, Oregon. The Proposed Action will tier to and be designed under the Rogue River National Forest Land and Resource Management Plan (1990), as amended by the Record of Decision for the Northwest Forest Plan (1994), which provides guidance for land management activities. This proposal is scheduled for implementation during fiscal years 2000–2003. The Cascade Zone invites written comments concerning the scope of the analysis in addition to those comments that will be solicited as a result of local public participation activities. The Forest Service will also give notice of the full environmental analysis and decision making process so that interested and affected people are made aware as to how they may participate and contribute to the final decision.

DATES: Issues and comments concerning the scope, implementation, and analysis of the Proposed Action must be received by May 15, 2000.

ADDRESSES: Submit written comments regarding the Proposed Action to Joel King, District Ranger, Prospect Ranger District, 47201 Highway 62, Prospect, Oregon, 97536.

FOR FURTHER INFORMATION CONTACT: Direct questions about the Proposed Action and EIS to Don Boucher, Interdisciplinary Team Leader, Prospect Ranger District, 47201 Highway 62, Prospect, Oregon, 97536, phone: 541–560–3400, FAX: 541–560–3444, e-mail: dboucher@fs.fed.us.

SUPPLEMENTARY INFORMATION: The Big Butte Timber Sales and Related Activities Project will take place within the upper portion of the Big Butte Springs Watershed. This sub-watershed is also referred to as the Medford Watershed because it supplies domestic water to the city of Medford, Oregon and surrounding communities. The Big Butte Springs watershed is located approximately 18 miles east of Medford, Oregon, and is just north of State Highway 140. Only Forest Service managed lands would be treated. The legal description of the area being considered is: T 35 S, R 3 E, sections 13, 22–36; T 35 S, R 4 E, sections 7–34; T 36 S, R 3 E, sections 1–17, 21–28, 35, & 36; T 36 S, R 4 E, sections 3–8, 16–21, & 27–33; Willamette Meridian.

The Forest Service Proposed Action implement activities which include, in part, one or more timber sales involving approximately 6,200 acres of harvest units. Silvicultural prescriptions include: density management of overstocked stands of trees (approximately 1,700 acres); treating mature stands with small group selections or even-aged management (approximately 2,000 acres); and, density management of small, younger stands for forest health and stand development (approximately 2,500 acres). Other projects include road decommissioning (approximately 13 miles), prescribed fire for wildlife habitat improvement and fuels reduction (approximately 500 acres), density management of stands of young trees less than six inches in diameter (approximately 1,500 acres), and other wildlife improvement projects. Minor amounts of new road construction or reconstruction may be necessary to access harvest units. These activities are proposed on Matrix lands in the

Northwest Forest Plan. The Big Butte Springs watershed is not a Tier 1 Key Watershed. No activities are planned within any inventoried roadless areas.

The Purpose and Need for the Proposed Action is to implement management direction from the Rogue River National Forest Land and Resource Management Plan as amended by the Northwest Forest Plan and to manage for ecosystem needs. Specifically for the Big Butte area, needs include; improvement of overall forest health by stimulating natural processes that encourage more stable and resilient forest vegetation conditions; management and improvement of stand densities and species composition in overstocked natural and created sapling and pole stands; management, maintenance or improvement of current soil and water quality conditions; management, maintenance or improvement of current big game winter range conditions and Forest Service road systems; and providing a sustainable yield of commercial timber and other commodities, in concert with land management allocation and direction.

The following preliminary issues are identified: direct, indirect, and cumulative impacts to soils; water quality, including domestic watershed values; vegetation condition (diversity of seral stages and control insects and disease); wildlife big game winter range and travel and migration corridors; and human and social values such as economic feasibility and preservation of currently unroaded areas. The Forest Service will consider these and other issues with the Proposed Action, and develop additional alternatives to the Proposed Action that respond to the significant issues. The no-action alternative will also be considered.

Public participation will be important during the analysis. Reviewers may refer to the Council on Environmental Quality Regulations for Implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1501.7. The Agency will be seeking written issues with the Proposed Action from Federal, State, and local agencies, any affected Indiana tribes, and other individuals who may be interested in or affected by the Proposed Action. This input will be used to develop additional alternatives.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and be available for review for June 2000. The comment period for the Draft EIS will be 45 days from the date that the EPA publishes the Notice of Availability in the **Federal Register**.

Comments received in response to this notice, including names and addresses of those who comment, will be considered part of the public record on this Proposed Action and will be available for public inspection. Comments submitted anonymously will be accepted and considered, however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Person requesting such confidentiality should be aware that, under the FOIA, confidentially may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, a reviewer of a Draft EIS must structure their participation in the environmental review process of the proposal so that it is specific, meaningful, and alerts an agency to the review's position and contentions. *Vermont Yankee Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the Draft EIS stage, but that are not raised until after the completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages Inc.* v. *Harris*, 409 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the Final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the Proposed Action, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the Draft EIS. Comments may also address the inadequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the EIS. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the 45 day comment period ends on the Draft EIS, comment will be considered and analyzed by the Agency in preparing the Final EIS. The Final EIS is scheduled for completion by September 2000. In the Final EIS, the Forest Service is required to respond to the comments and responses received during the comment period that pertain to the environmental consequences discussed in the Draft EIS and applicable laws, regulations, and policies considered in making the decision regarding the proposal.

The Forest Service is the Lead Agency. The Forest Service Responsible Official is Joel King, Prospect District Ranger. The Responsible Official will consider the Final EIS, applicable laws, regulations, policies, and analysis files in making a decision. The Responsible Official will document the Big Butte Timber Sales and Related Activities decision and rationale in a Record of Decision. The decision will be subject to under Forest Service appeal regulation (36 CFR Part 215).

Dated: March 28, 2000.

Joel T. King,

Prospect District Ranger.

[FR Doc. 00–8623 Filed 4–6–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Middle Imnaha River Range Planning Area, Hells Canyon National Recreation Area and Hells Canyon Wilderness, Wallowa-Whitman National Forest, Wallowa and Baker Counties, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to update range management planning on seventeen (17) livestock (cattle and horse) grazing allotments and one administrative use pasture, which will result in the development of new Allotment Management Plans (AMPs). The allotments are Blackmore, Chalk, College Creek, Dunlap-Thorn, Dunn Creek, Grouseline, Himmelwright, Keeler, Middle Point, Saddle Creek,

Schleur, Snell, Mink, Needham, North Pine, Double Pine and Snake River. The administrative use pasture is called College Creek Administrative Horse Pasture. The southern end of the range planning area begins approximately 40 miles north and east of the town of Halfway, Oregon on Pine Ranger District, and continues north into Hells Canyon National Recreation Area (HCNRA), ending approximately 6 miles south of the town of Imnaha, Oregon. The allotments extend east into the Hells Canyon Wilderness and west into the Big Sheep Creek drainage. The allotments, combined, are called the Middle Imnaha River Range Planning Area. National Forest System (NFS) lands within the Wallowa-Whitman National Forests will be considered in the proposal. Management actions are planned to be implemented beginning in the year 2002. The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people may become aware of how they may participate in the process and contribute to the final decision.

DATES: Comments concerning the scope of the analysis should be received in writing by May 31, 2000.

ADDRESSES: Send written comments and suggestions concerning this proposal to Kendall Clark, District Ranger, Hells Canyon National Recreation Area, Wallowa-Whitman National Forest, 88401 Highway 82, Enterprise, Oregon 97828.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Howard Lyman, Project Co-Leader, Hells Canyon National Recreation Area, 88401 Highway 82, Enterprise, Oregon 97828, 541–426–5573 or to Lynne Smith, Project Co-Leader, Pine Ranger District, 38470 Pine Town Lane, Halfway, Oregon 97834, 541–742–6715.

SUPPLEMENTARY INFORMATION: The proposed action is to continue to permit livestock grazing on NFS lands. The proposed action will also incorporate pertinent management guidelines and direction found in the Wallowa-Whitman National Forest Land and Resource Management Plan, as amended, the Hells Canyon National Recreation Area Comprehensive Land Management Plan (CMP), Wild and Scenic River Plans for the Imnaha and Snake Rivers, and biological assessments and biological opinions for threatened Snake River Chinook salmon and steelhead. The proposed action is designed to continue the improving trends in vegetation and watershed conditions relative to livestock grazing within the planning area. The action is needed to develop new AMPs which incorporate results of recent scientific research, analysis and documentation at the sub-basin level. Components of the proposed action include: (1) Protection of Endangered Species Act listed spawning and rearing habitat; (2) provide for sustained forage production through deferment and rest; (3) review utilization standards in riparian areas and analyze potential changes is required stubble heights; and (4) adjust allotment boundaries where the allotment has previously extended into the Wild and Scenic Snake River to outside the Wild and Scenic corridor.

The Wallowa-Whitman Forest Plan, as amended, recognized the continuing need for forage production for the Forest and recognized the seventeen allotments and the administrative pasture of the Middle Imnaha River Range Planning Area as containing lands which are capable and suitable for grazing by domestic livestock. The action is needed to continue this historic use.

The allotments are located within twenty-seven subwatersheds: Freezeout Creek; Imnaha River/mile 24; Squaw Creek; Big Sheep Creek/mile 4; Imnaha River/mile 37; Pumpkin Creek; Summit Creek; Rich Creek; Lower Grouse Creek; Imnaha River/mile 43; Crazyman Creek; Snake River/Rocky Bar; Snake River/Hells Canyon; Lower Little Sheep Creek; Big Sheep Creek/mile 0; Marr Creek; Big Sheep Creek/mile 17; Snake River/Two Bars; Saddle Creek; Lower North Pine Creek; Upper North Pine Creek; Elk Creek; Lake Fork Creek; Imnaha River/mile 55; Imnaha River/mile 58; Snake River/Big Bar; and McGraw Creek. These subwatersheds are contained within the Lower Imnaha River, Upper Imnaha River, Imnaha River, Snake River, Snake River/Hat Point, Big Sheep Creek and Pine Creek watersheds.

The Forest planning process allocated specific management direction across the Wallowa-Whitman National Forest. Within the area encompassed by the seventeen allotments, the management areas (MAs) are MA1—Timber Production Emphasis, MA3—Big game winter range/timber; MA4—Wilderness; MA7—Wild and Scenic River; MA8—HCNRA Snake River corridor; MA9—HCNRA Dispersed Recreation/Native Vegetation, MA10—HCNRA Forage production; MA11—HCNRA Dispersed recreation/timber; MA12—Research Natural Areas, and MA15—Old Growth Preservation.

The seventeen allotments encompass approximately 86,268 acres of NFS Lands, with private land making up an additional 7,603 acres. Approximately 30,695 acres in the Himmelwright, Saddle Creek and Snake River allotments are part of the Hells Canyon Wilderness. Points of interest in the allotments include portions of the Wallowa Loop Road (Forest Road 39); as well as many historic, prehistoric and scenic sites located along the area's extensive trail system. These include Barton Heights, Saulsbery Saddle, Lord Flat, Summit Ridge; Freezeout Saddle; Needham Butte,. and many others.

The Middle Imnaha River Range Planning Area provides habitat for many wildlife species including management indicator species (MIS) and their habitats. These MIS species include California wolverine, North American lynx, Rocky Mountain elk, marten, pileated woodpecker, goshawk, bald eagle and American peregrine falcon. Fish species within the planning area include native populations of inland redband/rainbow trout, bull trout, steelhead and Chinook salmon.

Preliminary issues include: (1) The effects of livestock grazing on riparian conditions (including water quality, water temperature and stream bank stability); (2) The effects of no grazing or reduced grazing on the local economy; (3) The reduction in soil productivity and in amounts of native bunchgrasses due to the encroachment of cheatgrass and sand dropseed species; (4) The effects of livestock grazing on Wild and Scenic River Outstandingly Remarkable Values and Wilderness values, (5) the effects of livestock grazing on TES species and (6) the effects of livestock grazing on big game winter range.

A detailed public involvement plan has been developed, and an interdisciplinary team has been selected to do the environmental analysis, prepare and accomplish scoping, and accomplish public involvement activities.

The proposed action is intended to provide the analysis needed to prepare new AMPs that meet all the Forest Plan amended requirements of Interim Strategies for Managing Pacific Anadromous Fish-producing Watersheds in Eastern Oregon and Washington, Idaho, and portions of California (PACFISH), Inland Native Strategies for Managing Fish-producing Watersheds in Eastern Oregon and Washington, Idaho, Western Montana, and Portions of Nevada (INFISH), Wild and Scenic River Plans, and are consistent with the scientific findings of the Interior Columbia Basin Ecosystem Management Program (ICBEMP). Consultation with the U.S. Fish and Wildlife Service, as required by the

Endangered Species Act (ESA), will be completed on all proposed activities.

Public involvement will be especially important at several points during the analysis, beginning with the scoping process. The Forest Service will be consulting with Tribes and seeking information, comments, and assistance from Federal, State, local agencies, current range permittees, and other individuals or organizations who may be interested in or affected by the proposals. The scoping process includes:

1. Identifying and clarifying issues.
2. Identifying key issues to be analyzed in depth.
3. Exploring alternatives based on themes which will be derived from issues recognized during scoping activities.
4. Identifying potential environmental effects of the proposals and alternatives (*i.e.*, direct, indirect, and cumulative effects and connected actions).
5. Determining potential cooperating agencies and task assignments.
6. Developing a list of interested people to keep apprised of opportunities to participate through meetings, personal contacts, or written comments.
7. Developing a means of informing the public through the media and/or written material (*e.g.*, newsletters, correspondence, *etc.*).

Public comments are appreciated throughout the analysis process. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and be available for public review by March, 2001. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. The final EIS is scheduled to be available October, 2001.

Comments received in response to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered, however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The Forest Service believes it is important to give reviewers notice of this early stage of public participation and of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,*, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft stage may be waived or dismissed by the court if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, 803 f.2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

In the final EIS, the Forest Service is required to respond to substantive comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. The Forest Service is the lead Agency. Karyn L. Wood, Forest Supervisor, is the Responsible Official. As the Responsible Official she will document the decision and rationale for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: March 31, 2000.

Karyn L. Wood,

Forest Supervisor.

[FR Doc. 00–8622 Filed 4–6–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Conduct an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intent of the National Agricultural Statistics Service (NASS) to request an extension of a currently approved information collection, the *Honey Survey*.

DATES: Comments on this notice must be received by June 12, 2000 to be assured of consideration.

ADDRESSES: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, DC 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Honey Survey.

OMB Control Number: 0535—0153.

Expiration Date of Approval: October 31, 2000.

Type of Request: To extend a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue state and national estimates of crop and livestock production. The Honey Survey collects information on the number of colonies, honey production, stocks, and prices. The survey provides data needed by the U.S. Department of Agriculture and other government agencies to administer programs and to set trade quotas and tariffs. State universities and agriculture departments also use data from this survey. The Honey Survey has approval from OMB for a three year period. NASS intends to request that the survey be approved for another three years.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 7,200.

Estimated Total Annual Burden on Respondents: 2,426 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Ginny McBride, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4162 South Building, Washington, DC 20250–2000.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, March 24, 2000.

Rich Allen,

Associate Administrator.

[FR Doc. 00–8609 Filed 4–6–00; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Conduct an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intent of the National Agricultural Statistics Service (NASS) to request approval for an information collection, the Monthly Hog Survey.

DATES: Comments on this notice must be received by June 12, 2000, to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Monthly Hog Survey.

Type of Request: Intent to Seek Approval to Conduct an Information Collection.

Abstract: The National Agricultural Statistics Service is responsible for collecting and issuing state and national estimates of crop and livestock production, grain stocks, farm numbers, land values, on-farm pesticide usage, and pest crop management practices. Uses of this statistical information are extensive and varied. Producers, farm organizations, agribusinesses, state and national farm policy makers, and government agencies are important users of these statistics. Agricultural statistics are used to plan and administer other related Federal and state programs in such areas as consumer protection, conservation, foreign trade, education, and recreation.

The Monthly Hog Survey Program will supplement the Hog Survey Program currently conducted as part of the Quarterly Agricultural Surveys. The monthly surveys will use a shorter version of the quarterly questionnaire and will be conducted eight times a year, during the months between the Quarterly Hog Surveys. The sampling frame for the monthly program will be hog owners who reported breeding females on the December Quarterly Hog Survey.

NASS was directed to publish on a monthly basis the Hogs and Pigs Inventory Report with the passage by Congress and signature of the President of H.R. 1906, the FY2000 Department of Agriculture budget. The Monthly Hog Report will include estimates of (1) Inventory of breeding females, (2) breeding females mated, (3) litters farrowed, (4) pigs born alive, (5) average pigs/litter born, and (6) pigs weaned. Hog producers supported the provision that NASS publish the Hogs and Pigs Inventory Report on a monthly basis. Data users can utilize monthly data of breeding females and pig crop to get an indication of hog supplies coming to market over the next 6 months.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Experience with similar surveys indicates that the questionnaire will require approximately 10 minutes to complete.

Respondents: Farms.

Estimated Number of Respondents: 2,805.

Estimated Total Annual Burden on Respondents: 3,740 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, Agency OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Ginny McBride, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4162 South Building, Washington, DC 20250–2000. All responses to this notice will become a matter of public record and be included in the request for OMB approval.

Signed at Washington, DC, March 24, 2000.
Rich Allen,
Associate Administrator.
[FR Doc. 00–8611 Filed 4–6–00; 8:45 am]
BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of the Advisory Committee on Agriculture Statistics Meeting

AGENCY: National Agricultural Statistics Service, USDA.
ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, the National Agricultural Statistics Service (NASS) announces a meeting of the Advisory Committee on Agriculture Statistics.

FOR FURTHER INFORMATION CONTACT: Rich Allen, Executive Director, Advisory Committee on Agriculture Statistics, U.S. Department of Agriculture, National Agricultural Statistics Service, 1400 Independence Avenue SW, Room 4117 South Building, Washington, D.C. 20250–2000. Telephone: 202–720–4333, Fax: 202–720–9013, or e-mail: rallen@nass.usda.gov.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Agriculture Statistics, which consists of 25 members appointed from 7 categories covering a broad range of agricultural disciplines and interests, has scheduled a meeting on April 25–26, 2000. The Committee meeting will be held 8 a.m.–4:30 p.m. on Tuesday, April 25, and 8:00 a.m.-11:30 a.m. on Wednesday, April 26. During this time the Advisory Committee will discuss: (1) 2002 Census of Agriculture content, (2) NASS data use policy, (3) mandatory business reporting, and (4) census of agriculture procedures for American Indian reservations.

Dates and Locations: April 25—8 a.m. to 4:30 p.m., Advisory Committee Meeting, with an opportunity for public questions and comments at 3:30 p.m., Crowne Plaza Hotel, 1001 14th & K Streets, NW, Washington, DC.

April 26—8 a.m. to 11:30 a.m., Advisory Committee Meeting, with an opportunity for public questions and comments at 9:45 a.m., Crowne Plaza Hotel, 1001 14th & K Streets, NW, Washington, DC.

Type of Meeting: Open to the public.

Comments: The public may file written comments to the USDA Advisory Committee contact person before or within a reasonable time after the meeting. All statements will become a part of the official records of the USDA Advisory Committee on Agriculture Statistics and will be kept on file for public review in the office of the Executive Director, Advisory Committee on Agriculture Statistics, U.S. Department of Agriculture, Washington, DC. 20250.

Dated: April 3, 2000, at Washington, DC.
R. Ronald Bosecker,
Administrator, National Agricultural Statistics Service.
[FR Doc. 00–8610 Filed 4–6–00; 8:45 am]
BILLING CODE 3410–20–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Public Rights-of-Way Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.
ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) established a Public Rights-of-Way Access Advisory Committee (committee) to assist the Board in developing a proposed rule on accessibility guidelines for newly constructed and altered public rights-of-way covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. This document announces the next meeting of the committee, which will be open to the public.

DATES: The third meeting of the committee is scheduled for May 18 and 19, 2000, beginning at 9 a.m. and ending at 5:30 p.m. each day; and May 20, 2000 beginning at 9 a.m and ending at 3 p.m.

ADDRESSES: The meeting will be held in the 3rd floor training room at 1331 F Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Scott Windley, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 125 (Voice); (202) 272–5449 (TTY). E-mail windley@access-board.gov. This document is available in alternate formats (cassette tape, Braille, large print, or ASCII disk) upon request. This document is also available on the Board's Internet Site (http://www.access-board.gov/notices/prowmtg.htm).

SUPPLEMENTARY INFORMATION: On October 20, 1999, the Architectural and Transportation Barriers Compliance Board (Access Board) published a notice appointing members to a Public Rights-of-Way Access Advisory Committee (committee) to provide recommendations for developing a proposed rule addressing accessibility guidelines for newly constructed and altered public rights-of-way covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. 64 FR 56482 (October 20, 1999).

Committee meetings will be open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have an opportunity to address the committee on issues of interest to them and the committee during the public comment period at the end of each meeting day. Members of groups or individuals who are not members of the committee may also have the opportunity to participate with subcommittees of the committee. Additionally, all interested persons will have the opportunity to comment when the proposed accessibility guidelines for public rights-of-way are issued in the **Federal Register** by the Access Board.

Individuals who require sign language interpreters or real-time captioning systems should contact Scott Windley by May 3, 2000. Notices of future meetings will be published in the **Federal Register**.

Lawrence W. Roffee,
Executive Director.
[FR Doc. 00–8657 Filed 4–6–00; 8:45 am]
BILLING CODE 8150–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.
ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: May 8, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: On February 11, and 25, 2000, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 FR 6981 and 10047) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Administrative Services

Internal Revenue Service Collections Department, 1100 Commerce Street, Dallas, Texas

Administrative Services

Internal Revenue Service Mailroom, 1100 Commerce Street, Dallas, Texas

Administrative Services

Internal Revenue Service Mailroom, 1919 Smith Street, Houston, Texas

Grounds Maintenance

Air National Guard Readiness Center, Andrews AFB, Maryland

Telephone Switchboard Operations

Department of Veterans Affairs Medical Center, 100 Emancipation Drive, Hampton, Virginia

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Leon A. Wilson, Jr.,

Executive Director.

[FR Doc. 00–8681 Filed 4–6–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to and deletions from procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 8, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Addition

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service has been proposed for addition to Procurement List for production by the nonprofit agency listed:

Janitorial/Custodial

Fort Huachuca, Arizona
NPA: Cochise County Association for the Handicapped, Bisbee, Arizona

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Cover, Shipping, Blade
1615–01–160–3748
Ladder, Straight (Wood)
5440–00–816–2585
Aerosol Paint, Lacquer
8010–00–584–3148
8010–00–721–9743
8010–00–141–2950
8010–00–965–2392
Enamel, Lacquer
8010–00–852–9033
8010–00–846–5117
8010–00–181–7371
8010–00–988–1458
8010–00–935–7085
Enamel, Aerosol, Waterbase
8010–01–350–5254
8010–01–350–5255
8010–01–350–4746
8010–01–350–4747
8010–01–350–4755
8010–01–350–5248
8010–01–350–5249
8010–01–350–5258
8010–01–397–3985
Enamel
8010–01–332–3743
8010–01–336–5061

8010–01–336–5063
8010–01–332–3742
8010–01–363–3376
Rinse Additive, Dishwashing
7930–00–819–9575

Leon A. Wilson, Jr.
Executive Director.
[FR Doc. 00–8682 Filed 4–6–00; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 12–2000]

Foreign-Trade Zone 79; Tampa, Florida: Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the City of Tampa, Florida, grantee of Foreign-Trade Zone 79, requesting authority to expand its zone to include the Tampa International Airport fuel system which consists of the airport hydrant and storage facilities, a pipeline, and two offsite terminals, within the Tampa Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on March 28, 2000.

FTZ 79 was approved on May 29, 1982 (Board Order 192, 47 FR 24760, 6/8/82) and expanded on December 29, 1993 (Board Order 676, 59 F.R. 1371, 1/10/94). The zone project currently consists of six sites in the Tampa area: *Site 1* (600,000 sq. ft.) Tampa International Center at Adamo Drive and 22nd Street; *Site 2* (35 acres) cargo complex adjacent to Tampa International Airport at Tampa Boulevard and Lauber Way, including a parcel at the airport's air cargo facility and the East Tampa Container Station (2 acres), located at 1831 Massaro Boulevard; *Site 3* (50 acres) within the 127-acre Tampa Industrial Park, Malcolm McKinley Drive and Fowler Avenue; *Site 4* (14 acres) Tampa Convention Center, 333 South Franklin Street; *Site 5* (295 acres) at the Tampa Port Authority's Hooker's Point terminal complex at Maritime Boulevard; and *Site 6* (33 acres) at Tampa Port Authority's George B. Howell terminal facility, located at 20th and Thrace Streets.

The applicant is now requesting authority to expand the general-purpose zone to include the jet fuel storage and distribution system (100 acres) at the Tampa International Airport. The airport fuel system includes the jet fuel storage farm (3 acres) and hydrant systems (23 acres) at the Tampa International Airport; the petroleum products storage terminal of GATX (31 acres), Hookers Point, Port of Tampa section of the City of Tampa; the petroleum products storage terminal of Motiva (16 acres), 6500 W. Commerce Street, Port Tampa section of the City of Tampa; and, the Tampa Pipeline (26 acres), a dedicated jet fuel carrier line. The GATX terminal is owned and operated by GATX Terminals Corporation; the Motiva terminal is owned and operated by Motiva Enterprises LLC; and, the Tampa dedicated pipeline is owned by the Tampa Pipeline Limited Partnership. Hillsborough County Aviation Authority owns the property that contains the jet fuel storage and distribution facilities at the Tampa International Airport. The City of Tampa owns the land at the GATX terminal and the land at the Tampa Pipeline location. The airport property is leased to the member airlines of the Tampa Fuel Committee. The Aircraft Services International Group (ASIG) will operate the jet fuel storage and distribution facilities at the airport. In addition to the storage of jet fuel, the Motiva and GATX terminals may also use zone status for the receipt and storage of other petroleum products.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is June 6, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 21, 2000).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Airport Services International Group, Tampa Airport Marriott Hotel, Suite A–23, Tampa, FL 33607

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: March 30, 2000.
Dennis Puccinelli,
Acting Executive Secretary.
[FR Doc. 00–8703 Filed 4–6–00; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1082]

Grant of Authority for Subzone Status; Zeneca, Inc. (Agricultural Chemical Products), Omaha, NE

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Dock Board of the City of Omaha, grantee of Foreign-Trade Zone 19, has made application to the Board for authority to establish special-purpose subzone status at the agricultural chemical products facility of Zeneca, Inc., located in Omaha, Nebraska (FTZ Docket 34–99, filed 6/25/99);

Whereas, notice inviting public comment has been given in the **Federal Register** (64 FR 37497, 7/12/99); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application would be in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the agricultural chemical products facility of Zeneca, Inc., located in Omaha, Nebraska, (Subzone 19A), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 24th day of March 2000.

Richard W. Moreland,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–8704 Filed 4–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1084]

Grant of Authority for Subzone Status; Fuji Photo Film, Inc. (Imaging and Information Products), Greenwood, SC

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for " * * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the South Carolina State Ports Authority, grantee of Foreign-Trade zone 38, has made application to the Board for authority to establish special-purpose subzone status at the manufacturing and distribution facilities (imaging and information products) of Fuji Photo Film, Inc., located Greenwood, South Carolina (FTZ Docket 35–99, filed 6/28/99);

Whereas, notice inviting public comment has been given in the **Federal Register** (64 FR 37498, 7/12/99); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application would be in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the imaging and information products manufacturing and distribution facilities of Fuji Photo Film, Inc., located in Greenwood, South Carolina (Subzone 38C), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 27th day of March 2000.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–8705 Filed 4–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–806]

Carbon Steel Wire Rope from Mexico: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review, and Determination Not To Revoke the Antidumping Duty Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and new shipper review, and determination not to revoke the antidumping duty order in part.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on carbon steel wire rope from Mexico in response to requests by respondent Aceros Camesa S.A. de C.V. (Camesa) and petitioner, the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (the Committee). Camesa also requested that the order be revoked as it pertains to sales of its products to the United States. This review covers exports of subject merchandise to the United States during the period March 1, 1998 through February 28, 1999.

We have preliminarily determined that Camesa's sales have been made below normal value (NV). If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price (EP) or constructed export price (CEP) and the NV.

The Department is also conducting a new shipper review of the antidumping duty order on carbon steel wire rope from Mexico in response to a request by respondent Cablesa S.A. de C.V. (Cablesa).[1] This new shipper review also covers exports of subject merchandise to the United States during the period March 1, 1998 through February 28, 1999.

We have preliminarily determined that Cablesa's sales have not been made below NV. If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to liquidate appropriate entries without regard to antidumping duties.

Interested parties are invited to comment on these preliminary results. Parties who submit comments are requested to submit with each comment a statement of the issue and a brief summary of the comment.

EFFECTIVE DATE: April 7, 2000.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley, (202) 482–0666, or Maureen Flannery, (202) 482–3020, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise stated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise stated, all citations to the Department's regulations are references to the regulations as codified at 19 CFR part 351 (April 1999).

SUPPLEMENTARY INFORMATION:

Background

The Department published in the **Federal Register** the antidumping duty order on steel wire rope from Mexico on March 25, 1993 (58 FR 16173). On March 9, 1999 we published in the **Federal Register** (64 FR 11439) a notice of opportunity to request an administrative review of the antidumping duty order on steel wire rope from Mexico covering the period March 1, 1998 through February 28, 1999.

In accordance with 19 CFR 351.213(b)(2), Camesa requested that we

[1] After receiving from Cablesa a waiver of the normal time limits for a new shipper review under 19 CFR § 351.214(j)(3), we determined to publish the results of this new shipper review simultaneously with the results of the administrative review. *See* 64 FR 61825 (November 15, 1999).

conduct an administrative review of its sales. The Committee also requested a review of Camesa's sales, in accordance with 19 CFR 351.213(b)(1). We published a notice of initiation of this antidumping duty administrative review on April 30, 1999 (64 FR 23269).

In accordance with 19 CFR 351.214, Cablesa requested that we conduct a new shipper review of its sales. We published a notice of initiation of this new shipper review on May 7, 1999 (64 FR 24573).

In accordance with section 773(b)(2)(A)(ii), the Department initiated a sales-below-cost investigation of Camesa. The Department determined to initiate this inquiry because, during the immediately preceding review of this antidumping duty order, the second administrative review, the Department disregarded some of Camesa's below-cost sales. The final results of the second administrative review were published on July 27, 1999 (64 FR 40549). We received cost data from Camesa on August 2, 1999.

During this review, the Department conducted verifications of the information provided by Cablesa and information provided by Camesa concerning its further manufacturing of subject merchandise in the United States. We used standard verification procedures, including on-site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. Our verification results for Cablesa are outlined in business-proprietary and public versions of the verification reports. Our verification results for Camesa are not available (refer to following paragraph).

On September 28, 1999, the Department received a letter from Camesa announcing its intention not to continue participating in this review, including the final days of verification scheduled for the following week. It stated that all material it had submitted during this review should be returned by the Department and the Committee and removed from the record. The Department destroyed all such material with the exception of Camesa's September 28 letter. *See Memorandum to the File* (November 5, 1999).

Scope of the Review

The product covered by this review is carbon steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass plated wire. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7312.10.9030, 7312.10.9060 and 7312.10.9090.

Excluded from this review is stainless steel wire rope, which is classifiable under the HTS subheading 7312.10.6000, and all forms of stranded wire, with the following exception.

Based on the affirmative final determination of circumvention of the antidumping duty order, 60 FR 10831 (Feb. 28, 1995), the Department has determined that steel wire strand, when manufactured in Mexico by Camesa and imported into the United States for use in the production of steel wire rope, falls within the scope of the antidumping duty order on steel wire rope from Mexico. Such merchandise is currently classifiable under subheading 7312.10.3020 of the HTS.

Although HTS subheadings are provided for convenience and Customs purposes, the written description of the scope of this order remains dispositive.

These reviews cover the period March 1, 1998 through February 28, 1999.

Camesa

Application of Facts Available

Section 776(a)(2) of the Act provides that if any interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes an antidumping proceeding; or (D) provides such information but the information cannot be verified, the Department shall use the facts otherwise available (FA) in reaching the applicable determination under this title.

As noted above, Camesa notified the Department of its intent not to continue participating in the administrative review and requested the return or destruction of all of its submissions. Additionally, Camesa informed the Department that it would not be participating further in verification. Thus, the Department does not have any information with which to calculate a margin. We determine that Camesa's actions amount to withholding information requested by the Department, thus significantly impeding our review. As such, consistent with sections 776(a)(2)(A) and (C) of the Act, we are relying upon the facts otherwise available. Furthermore, we determine that Camesa did not cooperate to the best of its ability with our requests for information, and that, pursuant to section 776(b) of the Act, the use of adverse FA is appropriate.

Under section 776(b) of the Act, adverse FA may include reliance on information derived from: (1) The petition, (2) a final determination in the investigation, (3) any previous review under section 751 of the Act or determination under section 753 of the Act, or (4) any other information placed on the record. For Camesa, we have used the highest rate from the investigation, 111.68 percent, which is the "all others rate" established in the investigation and which was Camesa's rate until the first review.

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information using independent sources reasonably at its disposal. The Statement of Administrative Action, H.R. Doc. No. 103–316, 870 (1994) (SAA) provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA, at 870. In this case, the margin we are using is Camesa's margin from the investigation of sales at less than fair value (LTFV). Therefore, we consider the rate to have probative value.

Determination Not To Revoke in Part

Section 351.222(b)(2)(i) requires that in order for the Department to revoke an order in part we must, among other requirements, determine that the exporter or producer has sold the merchandise at not less than NV for a period of at least three consecutive years. Because we have determined that Camesa has sold subject merchandise at less than NV during the current review period, we have determined not to revoke the order in part.

Cablesa

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Cablesa covered by the description in the "Scope of Review" section, above, and sold in the home market during the period of review (POR) to be foreign like products for the purposes of determining appropriate product comparisons with U.S. sales. In the Product Concordance section (Appendix V) of our questionnaire, we provided the following hierarchy of product characteristics to be used for reporting identical and most similar comparisons of merchandise: (1) Type of steel wire (finishing type); (2) diameter of wire rope; (3) type of core; (4) class of wire rope; (5) grade of steel; (6) number of wires per strand; (7) design of strands; and (8) lay of rope.

Cablesa requested that we allow it to limit its reporting of home market sales of steel wire rope to products having the

same finish and belonging to the same class as those products sold in the United States. Product finish can be either galvanized or non-galvanized. Product class is determined by the number of wires and strands twined together to produce a rope. Cablesa argued that sales with the same finish and within the same class would provide all necessary matches for the U.S. sale, because such products were most similar. Cablesa stressed that, because the Department was not conducting a sales-below-cost test, it could conduct its analysis with sales of these similar products alone, and that any other reported sales would be superfluous. We agreed that Cablesa could limit its reporting as requested, but stated that we might at a later date require the reporting of additional home market sales on short notice. *See Letter from Barbara Tillman to Cablesa* (July 31, 1999).

On January 11, 2000, the Department requested that Cablesa submit additional home market sales. On January 28, 2000, Cablesa submitted a response containing some additional sales information and requesting that the Department calculate NV using this additional information or information previously placed on the record. Upon reviewing Cablesa's submission, we determined that this additional information, combined with information already on the record, is sufficient for margin calculation purposes. Specifically, Cablesa's submission demonstrates that, although the Department does not have sales data for all of Cablesa's home market sales during the POR, any additional home market sales data would not be of similar merchandise, and thus would not provide valid matches. For a more detailed discussion, see *Memorandum to Edward Yang, Basis for Normal Value* (March 30, 2000).

United States Price

We based United States price on EP, as defined in section 772(a) of the Act, because the merchandise was sold directly by the manufacturer to an unaffiliated U.S. purchaser prior to the date of importation, and because CEP was not indicated by other facts of record.

The Department calculated EP for Cablesa based on packed, delivered prices to customers in the United States. We made deductions for domestic and foreign inland freight expenses, inland insurance, U.S. customs duties, and brokerage and handling, in accordance with section 772(c)(2)(A).

Normal Value

We have preliminarily determined that none of the home market sales reported by Cablesa provides a suitable basis for calculating NV. Each reported home market sale is either not contemporaneous with the U.S. sale, would require a difference in merchandise adjustment of greater than 20 percent to be matched with the U.S. sale, or could not be shown to have been made on an arm's-length basis with home market customers. Therefore, we based NV on constructed value (CV). CV consists of the cost of manufacturing the product sold in the United States, plus amounts for selling, general, and administrative expenses, interest expenses, U.S. packing expenses, U.S. credit expenses, and profit made on sales of foreign like merchandise in the home market. We deducted an amount for home market credit expense in order to compare CV to the U.S. sale.

Preliminary Results of the Review

For Camesa, based on adverse facts available, and for Cablesa, based on our comparison of CV and EP, we preliminarily determine that the following weighted-average dumping margins exist:

Exporter/manufacturer	Weighted-average margin percentage
Aceros Camesa, S.A. de C.V. ..	111.68
Cablesa, S.A. de C.V.	0.00

The Department will disclose its calculations within 5 business days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication. Pursuant to 19 CFR § 351.310(d), any hearing, if requested, will be held 37 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, not later than 120 days after the date of publication of this notice.

Upon issuance of the final results of review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of these reviews for all shipments of steel wire rope products from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates established in the final results of these reviews; (2) For merchandise exported by manufacturers or exporters not covered in these reviews but covered in the original investigation of sales at LTFV or a previous review, the cash deposit will continue to be the company-specific rate published for the most recent period; (3) If the exporter is not a firm covered in this or a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 111.68 percent, the "all others" rate established in the LTFV investigation (58 FR 7531, February 8, 1993).

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review. This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR § 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and (a)(2)(B) of the Act (19 USC 1675(a)) and 19 CFR §§ 351.213–14.

Dated: March 30, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–8700 Filed 4–6–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822]

Corrosion-Resistant Carbon Steel Flat Products From Canada; Preliminary Results of Full Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of full sunset review: Corrosion-resistant carbon steel flat products from Canada.

SUMMARY: On September 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on corrosion-resistant carbon steel flat products from Canada (64 FR 47767) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, because exports of the respondent account for less than the threshold amount of exports (*i.e.*, 50 percent)), the Department determined to conduct an expedited review. However, upon reconsideration of our initial adequacy determination, the Department determines that it is appropriate in this case to conduct a full review. As a result of this review, the Department preliminarily finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels indicated in the Preliminary Results of Review section of this notice.

EFFECTIVE DATE: April 7, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR Part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*"Sunset Policy Bulletin"*).

Background

On September 1, 1999, the Department initiated a sunset review of the antidumping duty order on cut-to-length carbon steel plate from Canada (64 FR 47767), pursuant to section 751(c) of the Act. The Department received a notice of intent to participate on behalf of the Bethlehem Steel Corporation and U.S. Steel Corporation, a unit of USX Corporation, Ispat Inlad, Inc., and LTV Steel Company (collectively, "domestic interested parties"), within the applicable deadline (September 15, 1999) specified in section 351.218(d)(1)(i) of the *Sunset Regulations*.

On September 24, 1999, we received a request for an extension to file rebuttal comments from domestic interested parties.[1] Pursuant to 19 CFR 351.302(b), the Department extended the deadline for all participants eligible to file rebuttal comments until October 15, 1999.[2] On October 1, 1999, we received a complete substantive response from domestic interested parties, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). On October 1, 1999, Dofasco Inc. ("Dofasco") and Sorveco, Inc. ("Soreveco") in separate submissions, notified the Department of their intend to participate in this review as respondent interested parties. Domestic interested parties claimed interested-party status under section 771(9)(C) of the Act, as U.S. producers of a domestic like product; Dofasco and Sorevco are interested parties pursuant to section 771(9)(A) of the Act, as foreign producers and exporters of subject merchandise.

All interested parties claim that they have been involved in this proceeding since its inception. Domestic interested parties state that they have participated in the investigation, all five administrative reviews, and all related appeals (*see* October 1, 1999, Substantive Response of domestic interested parties at 4). Likewise, Dofasco and Sorevco state that they participated as respondent parties in the original investigation, and have participated in each subsequent administrative review (*see* October 1, 1999, Substantive Responses of Dofasco at 3 and Sorevco at 2). Sorevco notes that, in the original investigation, the Department "collapsed" Sorevco with Dofasco Inc., another Canadian producer with a fifty percent ownership interest in Sorevco (*see* October 1, 1999, Substantive Response of Sorevco at 2). Further the Department has continued to "collapse" the two companies in each administrative review, and in the Department's notices, "Dofasco" incorporates both Dofasco and Sorevco. *Id.* However, the companies are represented by separate legal counsel. *Id.*

On October 15, 1999, we received rebuttal comments from domestic interested parties and Dofasco. On October 20, 1999, pursuant to 19 CFR 351.218 (e)(1)(ii)(A), the Department determined to conduct an expedited (120-day) sunset review of this order.[3] On December 9, 1999, we received comments from Dofasco on the adequacy and appropriateness of an expedited sunset review concerning the subject order. Based on the comments received from Dofasco, we have now determined that it is appropriate to conduct a full review in this case.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). This review concerns a transition order within the meaning of section 751(c)(6)(ii) of the Act. Accordingly, on December 22, 1999, the Department determined that the sunset review of cut-to-length carbon steel flat plate is extraordinarily complicated, and extended the time limit for completion of the final results of this review until not later than March 29, 2000, in accordance with section 751(c)(5)(B) of the Act.[4]

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[1] *See* September 24, 1999, Request for an Extension to File Rebuttal Comments in the Sunset Reviews of Antidumping and Countervailing Duty Orders: A–602–803; A–351–817; C–351–818, A–122–822, A–122–823, A–405–802, A–588–826, A–421–804, A–405–802, A–485–803, C–401–401, C–401–804, C–401–805, from Valerie S. Schindler, Skadden, Arps, Slate, Meagher & Flom LLP, to Jeffrey A. May, Office of Policy.

[2] *See* September 30, 1999, Letter from Jeffrey A. May, Director, Office of Policy to Valerie S. Schindler, Skadden, Arps, Slate, Meagher & Flom LLP.

[3] *See* October 20, 1999, Memorandum for Jeffrey A. May, Re: Certain Cut-to-Length Carbon Steel Flat Plate from Canada: Adequacy of Respondent Interested Party Response to the Notice of Initiation.

[4] *See Extension of Time Limit for Final Results of Expedited Five-Year Reviews*, 64 FR 71726 (December 22, 1999).

Scope of Review

These products include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel, or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090.

Included in the scope are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")— for example, products which have been bevelled or rounded at the edges.

Excluded from the scope are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from the scope are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20–60–20 percent ratio.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. La Russa, Assistant Secretary for Import Administration, dated March 29, 2000, which is hereby adopted and incorporated by reference into this notice. The issues discussed in the attached Decision Memo include adequacy, the likelihood of continuation or recurrence of dumping, and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Preliminary Results of Review:

We preliminarily determine that revocation of the antidumping duty order on corrosion-resistant carbon steel flat products from Canada would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporters	Margin (percent)
Dofasco, Inc	11.71
Stelco, Inc.	22.70
All Others	18.71

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held on May 17, 2000, in accordance with 19 CFR 351.310(d). Interested parties may submit case briefs no later than May 8, 2000, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than May 15, 2000. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than July 27, 2000, in accordance with section 751(c)(5)(B) of the Act.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: March 29, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8688 Filed 4–6–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822, A–122–823]

Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Amended Final Results of Antidumping Duty Administrative Reviews and Determination Not To Revoke in Part

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of amended final results of the antidumping duty administrative review of certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada and determination not to revoke in part.

SUMMARY: We are amending our final results of the 1997–98 administrative reviews of the antidumping duty orders on Certain Corrosion Resistant Carbon Steel Products and Certain Cut-to-Length Carbon Steel Plate From Canada and Determination Not to Revoke in Part, published on February 24, 2000 (65 FR 9243), to reflect the correction of ministerial errors made in the model match and margin calculation in the final results for corrosion resistant carbon steel flat products. We are publishing this amendment to the final results in accordance with 19 CFR part 351 (1998).

EFFECTIVE DATE: March 30, 2000.

FOR FURTHER INFORMATION CONTACT: Elfi Blum (Stelco, Inc. (Stelco)) and Michael Strollo (Dofasco,Inc. and Sorevco, Inc., collectively Dofasco), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–0197 and (202) 482–5255, respectively.

Applicable Statute

Unless otherwise stated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the

Department's regulations are to 19 CFR part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

On August 19, 1999, the Department of Commerce (the Department) published in the **Federal Register** (64 FR 45228) the preliminary results of its 1997–98 administrative reviews of the antidumping duty orders on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada. We published the final results of review on February 24, 2000 (65 FR 9243).

On February 28, 2000 and on March 6, 2000, we received timely allegations from petitioners (Bethlehem Steel Corporation, U.S. Steel Group (a unit of USX Corporation), Inland Steel Industries, Inc., AK Steel Corporation, LTV Steel Co., Inc. and National) that the Department made ministerial errors in the final results of reviews regarding Stelco and Dofasco, respectively. On March 6, 2000 we also received a timely allegation from Dofasco that the Department made clerical errors in the final results. On March 8, 2000 we received rebuttal comments from Dofasco.

Scope of Review

The products covered by these administrative reviews constitute two separate "classes or kinds" of merchandise: (1) Certain corrosion-resistant carbon steel flat products, and (2) certain cut-to-length carbon steel plate.

The first class or kind, certain corrosion-resistant steel, includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in this review are corrosion-resistant flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

The second class or kind, certain cut-to-length plate, includes hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.40.3030, 7208.40.3060, and 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this review is grade X–70 plate. Also excluded is cut-to-length carbon steel plate meeting the following criteria: (1) 100% dry steel plates, virgin steel, no scrap content (free of Cobalt-60 and other radioactive nuclides); (2) .290 inches maximum thickness, plus 0.0, minus .030 inches; (3) 48.00 inch wide, plus .05, minus 0.0 inches; (4) 10 foot lengths, plus 0.5, minus 0.0 inches; (5) flatness, plus/minus 0.5 inch over 10 feet; (6) AISI 1006; (7) tension leveled; (8) pickled and oiled; and (9) carbon content, 0.3 to 0.8 (maximum).

With respect to both classes or kinds, the HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope of these reviews.

Amended Final Results

Dofasco

On March 6, 2000, petitioners and Dofasco alleged that the Department made ministerial errors in calculating the final antidumping margin with respect to Dofasco, one of the respondents in the review of corrosion-resistant carbon steel flat products from Canada.

Comment 1: Exclusion of sales under the arm's length test.

Petitioners argue that the Department did not exclude sales that failed the arm's length test from our model match program. Dofasco agrees with petitioners.

Department's Position: We agree with both petitioners and Dofasco that sales that failed the arm's length test were incorrectly included in our model match program and should have been excluded. Therefore, we have made the appropriate changes to the model match program to exclude these sales.

Comment 2: Credit expenses.

Petitioners allege that the Department erroneously calculated Dofasco's credit expenses. Dofasco agrees with petitioners in this regard. For a further

discussion of this issue, please refer to the *Memorandum to the File from Mike Strollo through Maureen Flannery: Analysis of Dofasco, Inc. and Sorevco, Inc. (Dofasco) for the amended final results of the fifth administrative review of corrosion-resistant carbon steel flat products from Canada*, dated March 30, 2000.

Department's Position: We agree with both petitioners and Dofasco that we erroneously calculated credit expense and have made the relevant corrections to the programming language in the margin calculation program.

Comment 3: The Department miscalculated actual freight expenses when conducting the arm's length test.

Dofasco alleges that the Department tested for actual freight (ACTFRTH) to identify Dofasco's prepaid and charge transactions where ACTFRTH was not reported. However, Dofasco argued that ACTFRTH is never missing, but rather is reported as zero for such transactions. Thus, as a result, Dofasco alleges that movement expense (MOVEH) was not calculated correctly for these transactions. Petitioners did not comment on this issue.

Department's Position: We agree with Dofasco and have made the appropriate corrections to the programming language in the arm's length program.

Comment 4: The Department's arm's length test.

Dofasco argues that the Department improperly conducted the arm's length test by comparing the prices of the affiliated transactions to the prices of the unaffiliated transactions to the same customer instead of to the weighted-average net price for each product sold to all unaffiliated customers. Dofasco contends that this was only possible since all of Dofasco's customers have since become unaffiliated during the extended review period. Petitioners did not comment on this issue.

Department's Position: We agree with Dofasco and have made the appropriate corrections to the programming language in the arm's length program.

Comment 5: The Department is not using the same home market sales dataset as submitted by Dofasco on February 3, 1999.

Dofasco argues that, although the Department is now using a file with the correct file name, and with the correct number of records, the original data submitted by Dofasco and Sorevco was processed prior to its use in these programs without any explanation by the Department. Dofasco concludes that, as a result, the model match program was not run properly. As evidence of Dofasco's claim, it points to the following: (1) The log of the model match program was sorted by SALEDTH instead of first by CONNUMH then by SALEDTH as Dofasco claims its data was sorted; (2) the number of home market models used to create the product concordance is 12,024 when Dofasco runs the data it submitted (*i.e.*, the number of CONNUMH–MONTHH combinations in the home market sales data after the cost test has been performed as well as removing other unwanted sales) instead of 12,135 home market models that appeared in the log of the model match program; (3) there were differences in the number of pointers created by the model match program using Dofasco's February 3, 1999 data; and (4) the product concordance from the output of the model match program demonstrates that the data used by the Department for the final results was different than that submitted by Dofasco in its February 3, 1999 supplemental response. Dofasco contends that, as further evidence that the Department has sorted the data it submitted on February 3, 1999 prior to its use in these programs, the margin calculation program generates 14,205 home market normal values whereas Dofasco claims its submission only generates 14,105 home market normal values. Petitioners did not comment on this issue.

Department's Position: We disagree with Dofasco. For the *Final Results*, the Department used the datasets Dofasco submitted in its February 3, 1999 submission. The fact that the data was sorted differently by the Department prior to its use in the program does not have an impact on the manner in which the model match program runs. In addition, Dofasco has admitted that the data it submitted on February 3, 1999 is, in fact, the same home market data file which was used by the Department for the *Final Results* of review. Finally, we can not and do not know the exact contents of the model match program that Dofasco is running. This may account for the differences between the number of home market models, pointers, product concordance, and home market normal values in their program and ours. Therefore, as a result, we have not made any changes to the program or the data used by the Department to run the model match program.

Comment 6: The Department incorrectly calculated weighted-average production costs and performed the cost test by PRODUCTH.

Dofasco argues that the Department correctly recombined Dofasco's and Sorevco's production costs by PRODUCTH; however, the Department omitted certain steps in its recalculation of the weighted-average production costs. Dofasco contends that the Department failed to eliminate duplicate records from Dofasco's and Sorevco's production costs, and that the Department should calculate a weighted average by production quantity. In addition, the Department erroneously conducted the cost test by PRODUCTH rather than CONNUMH. In each instance, Dofasco provided programming language to solve the identified problems. Petitioners did not comment on the issue.

Department's Position: We agree with Dofasco, in part. We agree that production costs were not weight-averaged, and we agree that we performed the cost test by PRODUCTH rather than CONNUMH; however, we disagree that the programming language that Dofasco submitted to rectify the alleged problems is appropriate. The language that Dofasco proposes fails to solve the problems identified. Dofasco states that we correctly recombined Dofasco's and Sorevco's costs by PRODUCT. Then, Dofasco claims that we should delete CONNUM from the model matching program at lines 191, 308 and 322. Following these and other changes, Dofasco claims that we should perform the cost test by CONNUMH rather than PRODUCTH. However, Dofasco has already claimed that we should eliminate references to CONNUM in earlier lines of code. These changes make it impossible to run the cost test by CONNUMH, as is the Department's standard practice. Therefore, in order to comply with the Department's standard practice of running the cost test by CONNUMH, we have determined that additional lines of code are needed in the model match program. *See Memorandum to The File from Mike Strollo through Maureen Flannery: Analysis of Dofasco, Inc. and Sorevco, Inc. (Dofasco) for the amended final results of the fifth administrative review of corrosion-resistant carbon steel flat products from Canada*, dated March 24, 2000. Therefore, for these final results of review, we have recalculated the weighted-average production costs for Dofasco and Sorevco and subsequently performed the cost test by CONNUM.

Comment 7: The Department failed to convert the recalculated CREDITU to U.S. dollars when the transaction was reported in Canadian dollars.

Dofasco argues that the Department failed to convert the recalculated CREDITU to U.S. dollars when the transaction was reported in Canadian dollars. Dofasco proposed programming language to rectify this problem.

Petitioners did not comment on this issue.

Department's Position: We agree with Dofasco and have made the appropriate corrections to the programming language in the margin calculation program.

Comment 8: A more fundamental error exists in the Department's recalculation of credit expenses.

Dofasco alleges that the Department made a more fundamental error in the calculation of its U.S. credit expenses. Dofasco contends that the Department must correct the methodology it used to recalculate these expenses.

Petitioners, however, argue that the comment submitted by Dofasco is unrelated to any ministerial error comments contained in petitioners' March 6, 2000 submission, and as such, does not constitute a reply pursuant to section 351.224(c)(3) of the Department's regulations. Instead, petitioners contend that this is simply an untimely submission of a new ministerial error comment pursuant to section 351.224(c)(1) of the Department's regulations and should not be considered by the Department.

Department's Position: We agree with petitioners that Dofasco's claim is not a rebuttal comment, but instead, an untimely submission of a new ministerial error comment. Therefore, in accordance with section 351.224(d) of the Department's regulations, we have not considered this allegation for these amended final results.

As a result of the corrections made to the arm's length, model match, and margin calculation programs, the margin for corrosion-resistant carbon steel flat products from Canada for Dofasco has changed from 0.16 percent to 0.20 percent.

Stelco

On February 28, 2000, petitioners alleged that the Department made ministerial errors in calculating the final antidumping duty margin with respect to Stelco, one of the respondents in the review of corrosion-resistant carbon steel flat products from Canada. Petitioners alleged that the Department made certain errors in its computer programming language for the model match and margin calculation programs, when implementing its adjustment to G&A for Baycoat G&A expenses in the cost of production (COP) and constructed value (CV) calculations. Petitioners argue that the Department should have renamed the G&A variable when making the Baycoat adjustment, to avoid distortion of the value of Stelco's G&A.

We agree with petitioners that we incorrectly calculated the revised G&A expenses for Stelco by not renaming the G&A variable in our COP and CV calculations after adjusting for Baycoat's G&A expenses. We have made the pertinent corrections in the programming language of our model match and margin calculation programs, and renamed the respective variables to RGNA and RGNACV.

As a result of these corrections, the margin for corrosion-resistant carbon steel flat products from Canada for Stelco has changed from 0.68 percent to 4.24 percent.

Amended Final Results of Review

Upon review of the submitted allegations, the Department has determined that the following margins exist for the period August 1, 1997, through July 31, 1998:

Manufacturer/exporter	Margin (percent)
Corrosion Resistant Steel:	
CCC	1.01
Dofasco	0.20
National	5.65
Stelco	4.24
Cut-to-Length Plate:	
MRM	0.00
Stelco	0.00

The Department will determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, we have calculated importer-specific *ad valorem* duty assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total quantity of sales examined. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these amended final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for each reviewed company will be the rates stated above (except that no deposit will be required for firms with zero or *de minimis* margins, *i.e.*, margins less than 0.5 percent); (2) for exporters not covered in this review, but covered in the less-than-fair-value (LTFV) investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rates established in the LTFV investigations, which were 18.71 percent for corrosion-resistant steel products and 61.88 percent for plate (*see Amended Final Determination of Sales at Less than Fair Value and Anti-Dumping Orders: Certain Corrosion Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada*, 60 FR 49582 (September 26, 1995)). These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

These administrative reviews and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 CFR 351.213 and 19 CFR 351.221(b)(5).

Dated: March 30, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–8699 Filed 4–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–823]

Cut-to-Length Carbon Steel Plate From Canada; Preliminary Results of Full Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of full sunset review: Cut-to-length carbon steel plate from Canada.

SUMMARY: On September 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on cut-to-length carbon steel plate from Canada (64 FR 47767) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and inadequate response from respondent interested parties (in this case, because exports of the respondent account for less than the threshold amount of exports (*i.e.* 50 percent)), the Department determined to conduct an

expedited review. However, upon reconsideration of initial adequacy determination, the Department determines that it is appropriate in this case to conduct a full review. As a result of this review, the Department preliminarily finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels indicated in the Preliminary Results of Review section of this notice.

EFFECTIVE DATE: April 7, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–1930 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR Part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On September 1, 1999, the Department initiated a sunset review of the antidumping duty order on cut-to-length carbon steel plate from Canada (64 FR 47767), pursuant to section 751(c) of the Act. The Department received a notice of intent to participate on behalf of the Bethlehem Steel Corporation and U.S. Steel Corporation, a unit of USX Corporation ("domestic interested parties"), within the applicable deadline (September 15, 1999) specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. On October 1, 1999, Stelco Inc. ("Stelco") notified the Department of its intent to participate in this review as a respondent interested party. Domestic interested parties claimed interested-party status under section 771(9)(C) of the Act, as U.S. producers of a domestic like product; Stelco is an interested party pursuant to section 771(9)(A) of the Act, as a foreign producer and exporter of subject merchandise.

On September 24, 1999, we received a request for an extension to file rebuttal comments from domestic interested parties.[1] Pursuant to 19 CFR 351.302(b), the Department extended the deadline for all participants eligible to file rebuttal comments until October 15, 1999.[2] On October 1, 1999, we received a complete substantive response from domestic interested parties, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i), and a complete substantive response from Stelco. On October 15, 1999, we received rebuttal comments from domestic and respondent interested parties. On October 20, 1999, pursuant to 19 CFR 351.218(e)(1)(ii)(A), the Department determined to an conduct an expedited (120-day) sunset review of this order.[3]

Domestic interested parties and Stelco claim that they have been involved in this proceeding since its inception. Domestic interested parties state that they have participated in the investigation, all five administrative reviews, and all related appeals (*see* October 1, 1999, Substantive Response of domestic interested parties at 4). Likewise, Stelco states that it was a respondent party in the original investigation, and has participated in each subsequent administrative review (*see* October 1, 1999, Substantive Response of Stelco at 3).

On November 10, 1999, we received comments from the Government of Canada and Stelco on the adequacy and appropriateness of an expedited sunset review concerning the subject order. Based on the comments we've received from Stelco, we have now determined that it is appropriate to conduct a full review in this case.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). This review concerns a transition order within the meaning of section 751(c)(6)(ii) of the Act. Accordingly, on December 22, 1999, the Department determined that the sunset review of cut-to-length carbon steel flat plate is extraordinarily complicated, and extended the time limit for completion of the final results of this review until not later than March 29, 2000, in accordance with section 751(c)(5)(B) of the Act.[4]

Scope of Review

These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.5030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000.

Included in this order are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges.

Excluded from this order is grade X–70 plate. Also excluded is cut-to-length carbon steel plate meeting the following criteria: (1) 100 percent dry steel plates, virgin steel, no scrap content (free of Cobalt-60 and other radioactive nuclides); (2) 0.290 inches maximum thickness, plus 0.0, minus 0.030 inches;

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[1] *See* September 24, 1999, Request for an Extension to File Rebuttal Comments in the Sunset Reviews of Antidumping and Countervailing Duty Orders: A–602–803; A–351–817; C–351–818, A–122–822, A–122–823, A–405–802, A–588–826, A–421–804, A–455–802, A–485–803, C–401–401, C–401–804, C–401–805, from Valerie S. Schindler, Skadden, Arps, Slate, Meagher & Flom LLP, to Jeffrey A. May, Office of Policy.

[2] *See* September 30, 1999, Letter from Jeffrey A. May, Director, Office of Policy to Valerie S. Schindler, Skadden, Arps, Slate, Meagher & Flom LLP.

[3] *See* October 20, 1999, Memorandum for Jeffrey A. May, Re: Certain Cut-to-Length Carbon Steel Flat Plate from Canada: Adequacy of Respondent Interested Party Response to the Notice of Initiation.

[4] *See Extension of Time Limit for Final Results of Expedited Five-Year Reviews*, 64 FR 71726 (December 22, 1999).

(3) 48.00 inch wide, plus 0.05, minus 0.0 inches; (4) 10 foot lengths, plus 0.5, minus 0.0 inches; (5) flatness, plus/minus 0.5 inch over 10 feet; (6) AISI 1006; (7) tension leveled; (8) pickled and oiled; and (9) carbon content, 0.3 to 0.8 (maximum). On February 28, 1996, the Department revoked the order with respect to certain cut-to-length carbon steel plate free of cobalt-60 and other radioactive nuclides; and with certain dimensions and other characteristics.[5] On February 12, 1999, the Department revoked the order with respect certain cut-to-length carbon steel plate free of cobalt-60 and other radioactive nuclides; and with certain dimensions and other characteristics.[6] In addition, there has been one circumvention inquiry initiated with respect to imports of boron-added grader blade and draft key steel.[7] These HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. La Russa, Assistant Secretary for Import Administration, dated March 29, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include adequacy, the likelihood of continuation or recurrence of dumping, and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

[5] *See Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order*, 61 FR 7471 (February 28, 1996).

[6] *See Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order*, 64 FR 7167 (February 12, 1999).

[7] *See Cut-to-Length Carbon Steel Plate from Canada; Initiation of Anticircumvention Inquiry on Antidumping Duty Order*, 63 FR 29179 (May 28, 1998).

Preliminary Results of Review

We preliminarily determine that revocation of the antidumping duty order on cut-to-length carbon steel plate from Canada would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporters	Margin (percent)
Stelco, Inc	68.70
All Others	61.88

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held on May 17, 2000, in accordance with 19 CFR 351.310(d). Interested parties may submit case briefs no later than May 8, 2000, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than May 15, 2000. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than July 27, 2000, in accordance with section 751(c)(5)(B) of the Act.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: March 29, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8689 Filed 4–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–805]

Cut-to-Length Carbon Steel Plate From Belgium; Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: Cut-to-length carbon steel plate from Belgium.

SUMMARY: On September 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on cut-to-length carbon steel plate from Belgium (64 FR 47767) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and inadequate response from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

EFFECTIVE DATE: April 7, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR Part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On September 1, 1999, the Department initiated a sunset review of the antidumping duty order on cut-to-length carbon steel plate from Belgium (64 FR 47767), pursuant to section 751(c) of the Act. The Department received a notice of intent to participate on behalf of the Bethlehem Steel Corporation and U.S. Steel Corporation, a unit of USX Corporation ("domestic interested parties"), within the applicable deadline (September 15, 1999) specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. Domestic interested parties claimed interested-party status under section 771(9)(C) of the Act, as U.S. producers of a domestic like product.

On September 20, 1999, we received a request for an extension to file rebuttal comments from domestic interested

parties.[1] Pursuant to 19 CFR 351.302(b)(1999), the Department extended the deadline for all participants eligible to file rebuttal comments until October 15, 1999.[2]

On October 1, 1999, we received a complete substantive response from domestic interested parties, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). Respondent interested parties Duferco La Lovière ("Duferco") and Fabrique de Fer de Charleroi ("FAFER"), each submitted incomplete responses on October 1, 1999.

Domestic interested parties assert that at least one of them has been involved in this proceeding since the petition was filed, and has participated in each subsequent segment of the case (*see* October 1, 1999, Substantive Response of domestic interested parties at 3). On October 15, 1999, the domestic interested parties submitted a letter to the Department requesting that the Department undertake an expedited review in this case. They assert that FAFER's October 1, 1999, letter to the Department is wholly inadequate as it fails to meet necessary procedural and substantive requirements of a response to a notice of initiation (*see* October 15, 1999, Letter from domestic interested parties at 2). Further, domestic interested parties urge the Department to deem FAFER's failure to file a complete response as a waiver of participation in this review. *Id.*

On October 21, 1999, pursuant to 19 CFR 351.218(e)(1)(ii)(A), the Department determined to conduct an expedited (120-day) sunset review of this order.[3]

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). This review concerns a transition order within the meaning of section 751(c)(6)(ii) of the Act. Accordingly, on December 22, 1999, the Department determined that the sunset review of cut-to-length carbon steel plate from Belgium is extraordinarily complicated, and extended the time limit for completion of the final results of this review until not later than March 29, 2000, in accordance with section 751(c)(5)(B) of the Act.[4]

[1] *See* September 20, 1999, Request for an Extension to File Rebuttal Comments in the Sunset Reviews of Antidumping and Countervailing Duty Orders on Certain Steel Products from Belgium, France, Germany, Mexico, Spain, South Korea, Taiwan and the United Kingdom: A–583–080, A–423–805, A–427–808, A–428–815, A–428–814, A–428–816, A–580–815, A–580–816, S–201–809, A–469–803, A–412–814, C–423–806, C–427–810, C–428–817 (CTL), C–428–817 (CR), C–580–818 (CORE), C–201–810, C–469–804, C–412–815, from Bradford L. Ward, Dewey Balantine LLP, to Jeffrey A. May, Office of Policy.

[2] *See* September 30, 1999, Letter from Jeffrey A. May, Director, Office of Policy to Michael H. Stein, Dewey Ballantine LLP.

[3] *See* October 21, 1999, Memorandum for Jeffrey A. May, Re: Certain Cut-to-Length Carbon Steel Flat Plate from Belgium: Adequacy of Respondent Interested Party Response to the Notice of Initiation.

[4] *See Extension of Time Limit for Final Results of Expedited Five-Year Reviews*, 64 FR 71726 (December 22, 1999).

Scope of Review

The scope of this order includes hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this order are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this order is grade X–70 plate. These HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. La Russa, Assistant Secretary for Import Administration, dated March 29, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on cut-to-length carbon steel plate from Belgium would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporters	Margin (percent)
Forges de Clabecq, S.A	6.78
Fabrique de Fer de Charleroi, S.A	27.5
All Others	6.75

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: March 29, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8693 Filed 4–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–816]

Notice of Postponement of Preliminary Results of Antidumping Duty Administrative Reviews: Certain Cut-to-Length Carbon Steel Plate From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of preliminary results of antidumping duty administrative reviews.

EFFECTIVE DATE: April 7, 2000.

FOR FURTHER INFORMATION CONTACT: Doreen Chen or Robert Bolling, Office IX, DAS Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–0408 and (202) 482–3434, respectively.

Postponement of Preliminary Results: The Department of Commerce (the Department) is postponing the preliminary results in the antidumping administrative reviews of Certain Cut-to-Length Carbon Steel Plate from Germany. The deadline for issuing the preliminary results in these administrative reviews is now August 30, 2000.

On October 29, 1999, the Department initiated these administrative reviews, setting May 2, 2000 as the date for issuing the preliminary results of the review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part Thursday,* July 29, 1999 (63 FR 58009 and 64 FR 53318). On February 15, 2000, the Department issued Sections A–C of the Department's questionnaires to the respondent, Reiner Brach GmbH & Co. KG. Because of the reasons stated in the memorandum from Edward Yang to Joseph A. Spetrini: *Extension of Time Limit for the Administrative Reviews of Certain Cut-to-Length Carbon Steel Plate from Germany,* April 3, 2000, we determine that it is not practicable to complete these reviews within the normal time frame and are therefore extending the time limit for these preliminary results of the administrative reviews of Certain Cut-to-Length Carbon Steel Plate from Germany by 120 days, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

The date for issuing the preliminary results is moved from May 2, 2000 to August 30, 2000.

Dated: April 3, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 00–8702 Filed 4–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–821]

Notice of Court Decision and Suspension of Liquidation: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On March 8, 2000, in *Koenig & Bauer-Albert AG, et al.,* v. *United States,* Consol. Court No. 96–10–02298, Slip Op. 00–25, a lawsuit challenging the Department of Commerce's final affirmative antidumping duty determination of large newspaper printing presses and components thereof, whether assembled or unassembled, from Germany, the Court of International Trade affirmed the Department of Commerce's remand determination and entered a judgement order. In its remand determination, the Department addressed issues of collapsing and cost-averaging relevant to producer/exporter MAN Roland Druckmaschinen AG and its wholly-owned subsidiary MAN Plamag Druckmaschinen AG. As a result, the final antidumping duty rate for MAN Roland Druckmaschinen AG and MAN Plamag Druckmaschinen AG has increased from 30.72 percent to 39.53 percent *ad valorem.* This decision was not in harmony with the Department's original final determination.

Consistent with the decision of the Court of Appeals for the Federal Circuit in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990), the Department of Commerce will direct the Customs Service to change the cash deposit rate being used in connection with the suspension of liquidation of the subject merchandise and liquidate entries of the subject merchandise during the period March 1, 1996 through August 31, 1997, at the amended rate, as appropriate, once there is a "final and conclusive" decision in this case.

EFFECTIVE DATE: April 7, 2000.

FOR FURTHER INFORMATION CONTACT: David Goldberger at (202) 482–4136 or Irene Darzenta Tzafolias at (202) 482–0922, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 23, 1996, the Department of Commerce (the Department) published notice of its final determination of less-than-fair-value (LTFV) investigation of large newspaper printing presses and components thereof, whether assembled or unassembled (LNPP), from Germany. *See Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany,* 61 FR 38166 (July 23, 1996) (*LNPP Germany Final Determination*). In the final determination of the LTFV investigation, the Department established a final dumping margin of 30.80 percent *ad valorem* for MAN Roland Druckmaschinen AG (MAN Roland) and All Others (except Koenig Bauer-Albert AG (KBA) for which a 46.40 percent margin was established based on adverse facts available). On September 4, 1996, the Department published an antidumping duty order correcting ministerial errors made in the final determination and instructing the Customs Service to collect cash deposits at the rate of 30.72 percent *ad valorem* for MAN Roland and All Others (except KBA as indicated above), on entries of the subject merchandise entered or withdrawn from warehouse on or after that date. *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany,* 61 FR 46623 (September 4, 1996).

Following publication of the Department's antidumping duty order, the respondent MAN Roland and the petitioner Goss Graphic System, Inc., filed a lawsuit with the Court of International Trade (CIT) challenging various aspects of the Department's final determination of the LTFV investigation. In its first decision in this case on June 23, 1998, *Koenig & Bauer-Albert AG, et al.,* v. *United States,* 15 F. Supp. 2d 834, 849–850, 854–855 (CIT 1998), Slip Op. 98–83 at 28–30, 40–43, the CIT issued an order remanding two issues to the Department. In its remand instructions, the Court ordered the

Department to reconsider its decision not to combine certain production costs for MAN Roland and its affiliate MAN Plamag Druckmaschinen AG (MAN Plamag), and granted the Department's request to recalculate MAN Roland's selling, general and administrative (SG&A) expenses using an appropriate cost allocation ratio. In its final remand determination on September 17, 1998, the Department declined to compute a single, weighted-average cost for MAN Roland and Man Plamag because the companies failed to satisfy the fundamental condition for averaging costs—that the products manufactured at their facilities be sufficiently similar in physical characteristics, such that they could be considered identical for product comparison purposes. However, the Department recalculated MAN Roland's SG&A expenses using an appropriate allocation ratio. *See* September 17, 1998, *Final Results of Redetermination Pursuant to Court Remand (Redetermination 1)* at 9–10, 13–14. As a result of our recalculations pursuant to Court remand, the antidumping margin for MAN Roland changed from 30.72 to 39.60 percent.

In a later decision on March 16, 1999, *Koenig & Bauer-Albert AG, et al.*, v. *United States*, 44 F. Supp. 2d 280, 287–288 (CIT 1999), Slip Op. 99–25 at 16–18, the CIT affirmed the Department's recalculation of MAN Roland's SG&A expenses, but did not affirm the Department's final remand results pertaining to the issue of combining certain production costs of MAN Roland and its affiliate. The CIT held that the Department did not address the threshold question of whether MAN Roland and MAN Plamag should be collapsed in order to properly determine whether their production costs should be averaged, and remanded the issue to the Department again for reconsideration and explanation consistent with its opinion. Upon remand, on August 10, 1999, the Department found that MAN Roland and MAN Plamag should have been collapsed as a single entity in performing its antidumping analysis in accordance with 19 CFR 351.401(f). Moreover, the Department determined that treating these affiliated producers as a single entity necessitated that the inputs transferred between them be valued at the cost of producing the input, and adjusted its CV calculations accordingly. Furthermore, in light of the identical merchandise requirement for production cost averaging purposes, the Department maintained its previous remand determination not to weight-average the production costs of the two affiliated companies. In addition, because MAN Plamag made no sales of subject merchandise to the United States during the period of investigation, the Department's decision to collapse MAN Roland and MAN Plamag did not require any changes to the sales side of the Department's original final margin analysis. However, in contrast to its original final determination, the Department applied the same margin, as amended based on the above-described cost adjustments, to both MAN Roland and MAN Plamag. *See* August 10, 1998, *Final Results of Redetermination Pursuant to Court Remand (Redetermination 2)* at 5–8. As a result of the adjustments made in *Redetermination 2*, the revised antidumping margin for both MAN Roland and MAN Plamag changed from 39.60 percent (margin calculated based on *Redetermination 1)* to 39.53 percent.

In sum, as a result of the two remands in this case, the final dumping rate for MAN Roland and its affiliate MAN Plamag has increased from 30.72 percent (the original final LTFV margin for MAN Roland) to 39.53 percent *ad valorem*. The rate for All Others changes accordingly.

Suspension of Liquidation

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the Court of Appeals for the Federal Circuit (CAFC) held that the Department must publish notice of a decision of the CIT or the CAFC which is not in harmony with the Department's determination. Publication of this notice fulfills this obligation. The CAFC also held that the Department must suspend liquidation of the subject merchandise until there is a "final and conclusive" decision on the case. Therefore, pursuant to *Timken*, the Department must suspend liquidation of the subject merchandise pending the expiration of the period to appeal the CIT's March 8, 2000 ruling, or if that ruling is appealed, pending a final decision by the CAFC. However, because entries of the subject merchandise already are being suspended pursuant to the antidumping duty order in effect, the Department need not order the Customs Service to suspend liquidation. Further, consistent with *Timken*, the Department will order the Customs Service to change the relevant cash deposit rates in the event that the CIT's ruling is not appealed or the CAFC issues a final decision affirming the CIT's ruling.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–8695 Filed 4–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India; Initiation of antidumping new shipper review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping New Shipper Review.

SUMMARY: The Department of Commerce has received a request to conduct a new shipper review of the antidumping duty order on stainless steel bar from India. In accordance with section 751(a)(2)(B) of the Tariff Act and 19 CFR 351.214(d), we are initiating this review.

EFFECTIVE DATE: April 7, 2000.

FOR FURTHER INFORMATION CONTACT: Blanche Ziv or Rosa Jeong, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4207 or (202) 482–3853, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, all references to the Department of Commerce's ("the Department's") regulations are to 19 CFR Part 351 (April 1999).

SUPPLEMENTARY INFORMATION:

Background

On February 18, 2000, the Department received a request from Atlas Stainless Corporation ("Atlas"), pursuant to section 751(a)(2)(B) of the Act, and in accordance with 19 CFR 351.214(b), for a new shipper review of the antidumping duty order on stainless steel bar from India. This order has a February anniversary month. On March 27, 2000, pursuant to the Department's request, Atlas submitted supplemental information regarding the required

documentation pursuant to section 351.214(a)(2) of the Department's regulations. Accordingly, we are initiating a new shipper review for Atlas as requested. The period of review is February 1, 1998 through January 31, 1999.

Initiation of Review

In accordance with 19 CFR 351.214(b)(2), Atlas provided certification that it did not export subject merchandise to the United States during the period of investigation; certification that, since the investigation was initiated, it has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the period of investigation, including those not individually examined during the investigation; documentation establishing: (i) The date on which its stainless steel bar was first entered, or withdrawn from warehouse, for consumption, or if the exporter or producer could not establish the date of first entry, the date on which it first shipped the subject merchandise for export to the United States; (ii) the volume of that and subsequent shipments; and (iii) the date of the first sale to an unaffiliated customer in the United States. Therefore, in accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating a new shipper review of the antidumping duty order on stainless steel bar from India. We intend to issue the final results of this review not later than 180 days after the date of publication of this notice in the **Federal Register**. All provisions of 19 CFR 351.214 will apply to Atlas throughout the duration of this new shipper review.

We will instruct the Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit, until the completion of the review, for each entry of the merchandise exported by the above listed company, in accordance with 19 CFR 351.214(e). Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and this notice are in accordance with section 751(a) of the Act.

Dated: March 31, 2000.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 00–8701 Filed 4–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–811]

Notice of Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Antidumping Duty Administrative Review and Intent To Revoke Antidumping Duty Order in Part: Steel Wire Rope From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request by the petitioner, the Committee of Domestic Steel Wire Rope & Specialty Cable Manufacturers, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on steel wire rope from Korea. The review covers 14 manufacturers/exporters of the subject merchandise. The period of review is March 1, 1998, through February 28, 1999.

We have preliminarily found that, for certain producers/exporters, sales of subject merchandise have been made below normal value (NV). If these preliminary results are adopted in our final results of this administrative review, we will instruct the Customs Service to assess antidumping duties based on the difference between the export price (EP) and the NV. Also, if these preliminary results are adopted in our final results of this administrative review, we intend to revoke the antidumping duty order with respect to Kumho Wire Rope Manufacturing Company (Kumho), based on three years of sales at not less than NV. *See Intent to Revoke* section of this notice.

EFFECTIVE DATE: April 7, 2000.

FOR FURTHER INFORMATION CONTACT: James Kemp, at (202) 482–1276, or Abdelali Elouaradia, at (202) 482–0498, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (1999).

Case History

On March 9, 1999, the Department published a notice providing an opportunity to request an administrative review of this antidumping duty order for the period March 1, 1998, through February 28, 1999 (POR). *See* 64 FR 11439. On March 31, 1999, the petitioner requested an administrative review of Boo Kook Corporation (Boo Kook), Dae Heung Industrial Company (Dae Heung), Dae Kyung Metal (Dae Kyung), Dong Il Steel Manufacturing Company (Dong Il), Dong Young, Hanboo Wire Rope Inc. (Hanboo), Jinyang Wire Rope Inc. (Jinyang), Korea Sangsa Company (Korea Sangsa), Kumho, Kwangshin Rope, Myung Jin Company, Seo Hae Industrial (Seo Hae), Sungsan Special Steel Processing (Sungsan) and Yeonsin Metal (Yeonsin). On March 31, 1999, Kumho requested a review and revocation of the order with respect to its sales of subject merchandise. On April 22, 1999, we initiated an administrative review of all 14 companies. *See* 64 FR 23269.

In early May 1999, in response to our inquiry, the Department was advised by the U.S. Embassy in Seoul that Boo Kook, Hanboo, Kwangshin Rope, and Seo Hae were out of business. We determined, based on data obtained from the Customs Service, that these companies had not exported subject merchandise during the POR. Accordingly, we did not issue antidumping questionnaires to these companies. We issued antidumping questionnaires to the remaining ten respondents. *See Partial Rescission* section of this notice.

On June 11, 1999, we received a letter from Dae Kyung stating that it had not exported subject merchandise to the United States during the POR. However, Customs Service data indicated that the company had shipments of subject merchandise during the POR. *See Facts Available* section of this notice.

On June 21, 1999, we received a letter from Dae Heung stating that it did not export subject merchandise to the United States during the POR. *See Partial Rescission* section of this notice.

On June 23, 1999, the Department received a response to the antidumping questionnaire from Kumho. This was the only response filed within the original deadline for the questionnaire. However, on September 8, 1999, Jinyang requested permission to submit a response to the questionnaire. While acknowledging that the deadline for submission of a response had elapsed, Jinyang cited extenuating factors, namely that it had moved its offices and did not receive the questionnaire until

August 1999. The petitioners objected to Jinyang's request. However, in view of the extenuating factors cited by Jinyang, the fact that there was still sufficient time in the proceeding to conduct a proper review and the availability of personnel to examine Jinyang's data, the Department agreed to accept Jinyang's response. See Memorandum from Steven Presing and Jim Kemp to Bernard Carreau, dated October 7, 1999, and on file with the Department's Central Records Unit (CRU), room B–099 of the main Department building. Jinyang filed its response on November 12, 1999.

We issued supplemental questionnaires to both respondents, and received timely responses.

On November 2, 1999, we extended the deadline for issuance of the preliminary results until March 30, 2000. *See* Decision Memorandum from Bernard T. Carreau to Robert S. LaRussa, dated November 2, 1999, on file in the Department's CRU. *See* also 64 FR 61276.

We verified the information submitted by Kumho and Jinyang during the weeks of January 31, and February 7, 2000, in Pusan, Korea.

Scope of Review

The product covered by this review is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or carbon steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass-plated wire. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTSUS) subheadings: 7312.10.9030, 7312.10.9060, and 7312.10.9090. Excluded from this review is stainless steel wire rope, *i.e.*, ropes, cables and cordage other than stranded wire, of stainless steel, not fitted with fittings or made up into articles, which is classifiable under HTSUS subheading 7312.10.6000. Although HTSUS subheadings are provided for convenience and the Customs Service purposes, the written description of the scope of this review is dispositive.

Partial Rescission

As noted above, the Department has determined that Boo Kook, Hanboo, Kwangshin Rope and Seo Hae closed their operations prior to the POR, and we have confirmed that none of these companies had shipments of subject merchandise to the United States during the POR. Therefore, in accordance with section 351.213(d)(3) of the Department's regulations, we are rescinding our review with respect to Boo Kook, Hanboo, Kwangshin Rope and Seo Hae. This decision is consistent with the Department's practice. *See, e.g., Certain Welded Carbon Steel Pipe and Tube from Turkey: Final Results and Partial Rescission of Antidumping Administrative Review*, 63 FR 35190, 35191 (June 29, 1998) and *Certain Fresh Cut Flowers From Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53287, 53288 (October 14, 1997).

We are also rescinding our review with respect to Dae Heung. Pursuant to the antidumping duty order on steel wire rope issued after the completion of the investigation, merchandise produced by Dae Heung and sold through Young Heung Iron & Steel Co., Ltd. (YHC) is excluded from the order. *See* 58 FR 16397, 16397 (March 26, 1993). Dae Heung has stated on the record that it did not ship subject merchandise directly to the United States during the POR; rather, its production for export was sold through YHC. We have confirmed, based on Customs Service information, that Dae Heung had no shipments of subject merchandise during the POR.

Facts Available

We preliminarily find, in accordance with section 776(a) of the Act, that the use of facts available is appropriate for Dong Il, Dong Young, Korea Sangsa, Myung Jin Company, Sungsan and Yeonsin, since they did not respond to our antidumping questionnaire. We confirmed that theses companies received, but failed to respond to, the Department's questionnaire. Since these companies have not cooperated in providing necessary information for our review, the use of facts available is appropriate.

We also find that the use of facts available is appropriate for Dae Kyung. Although the company responded to our response with a statement that it had no shipments during the POR, we requested additional information on September 28, 1999, because Customs Service data indicated that Dae Kyung did have shipments of subject merchandise. Dae Kyung responded on October 4, 1999, claiming that it only produced stainless steel aircraft cables (i.e. non-subject merchandise). To support this claim, Dae Kyung included sales documents with its letter and argued that the prices on the invoice for the entry in question indicate that the merchandise is stainless steel. However, the documentation does not conclusively establish that the sales were only for stainless products, and we can not infer from price alone that the products were stainless. Because we found that this documentation was inconclusive, on November 3, 1999, and February 18, 2000, we sent two more letters to Dae Kyung requesting additional clarification. We received no response to either of these letters. Dae Kyung has failed, despite repeated requests, to provide additional support for its claim that it only sold non-subject merchandise during the POR. Thus, since we were unable to confirm that Dae Kyung shipped only stainless steel aircraft cables to the United States, and, as such, did not have entries of subject merchandise during the POR, we preliminarily find that the use of facts available is appropriate for Dae Kyung.

Section 776(a)(2)(B) of the Act requires the Department to resort to facts available if necessary information is not available on the record or when an interested party or any other person "fails to provide [requested] information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782." As provided in section 782(c)(1) of the Act, if an interested party "promptly after receiving a request from [the Department] for information, notifies [the Department] that such party is unable to submit the information requested in the requested form and manner," the Department may modify the requirements to avoid imposing an unreasonable burden on that party. Because Dong Il, Dong Young, Korea Sangsa, Myung Jin Company, Sungsan and Yeonsin did not provide any notification or information to the Department, and Dae Kyung did not address adequately the issue of its U.S. shipments, nor did it respond to our requests for additional clarification, they have failed to comply with section 782(c)(1) and (e) of the Act. Accordingly, we find preliminarily, in accordance with section 776(a)(2)(B) of the Act, that the use of facts available is appropriate for Dong Il, Dong Young, Korea Sangsa, Myung Jin Company, Sungsan, Yeonsin and Dae Kyung.

Where the Department must resort to facts available because a respondent failed to cooperate to the best of its ability, section 776(b) of the Act authorizes the use of an inference adverse to the interests of that respondent in selecting from among the facts available. The failure of Dong Il, Dong Young, Korea Sangsa, Myung Jin Company, Sungsan and Yeonsin to respond to our antidumping questionnaire, and the failure of Dae Kyung to respond to subsequent requests for information, demonstrate that these companies have not acted to

the best of their abilities to comply with the Department's review. Accordingly, we have preliminarily determined that an adverse inference with respect to these companies is warranted.

Section 776(b) of the Act also authorizes the Department to use as adverse facts available information derived from the petition, the final determination in the antidumping investigation, a previous administrative review, or any other information placed on the record. We have preliminarily assigned these seven companies the rate of 136.72 percent, which is the highest rate determined for any respondent in any segment of the proceeding and the rate currently applicable to several of these companies, as adverse facts available. We applied this rate to uncooperative companies in the previous administrative review. *See Steel Wire Rope From the Republic of Korea; Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 64 FR 17995, 17996 (April 13, 1999).

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that "corroborate" means simply that the Department will satisfy itself that the secondary information has probative value. *See* H.R. Doc. 103–316, 870 (1994).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.

The adverse facts available rate being applied in this review is a simple average of all rates from the petition, which was applied to several companies in the prior review. As this rate is currently applicable to several companies and was corroborated to the extent possible in the previous review, we continue to find that it is reliable. To corroborate the EPs in the petition, we examined the Customs Service import statistics from 1991 for the HTSUS subheadings 7312.10.9030, 7312.10.9060, and 7312.10.9090. We concluded that the Customs Service data were not comparable to the prices in the petition, because the Customs Service data encompass a wide range of steel wire rope products, while the sales in the petition consist of a small number of specific product types. With regard to the NVs used in the petition's margin calculation, we were provided with no useful information by interested parties, and are aware of no other independent sources of information, which would assist us in this aspect of the corroboration process. Notwithstanding the difficulties encountered in our attempts to corroborate the information from the petition, the Department has no evidence that suggests the petition does not continue to have probative value. Moreover, the fact that this margin is the rate currently applicable to several of these exporters/producers, and the fact that these exporters/producers neither requested a review or cooperated in demonstrating that their actual margins were lower, indicates that the margin is reliable. If these companies could have demonstrated that their actual margins were lower, we presume that they would have done so.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. *See, e.g., Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996). We are not aware of any circumstances that indicate that the selected margin is not appropriate as adverse facts available. Moreover, the rate used is the rate currently applicable to certain of these uncooperative companies. Assigning a lower rate to these firms would reward them for their failure to cooperate. Thus, these exporters' own current rate is relevant. Accordingly, we determine that the rate used is an appropriate basis for adverse facts available.

Verification

As provided in section 782(i) of the Act, we verified information provided by Kumho and Jinyang. We used standard verification procedures, including examination of relevant sales and financial records. Our verification results are outlined in verification reports, dated March 3, 2000, which have been placed on the case file in the Department's CRU.

Export Price

For sales to the United States, the Department used EP as defined in section 772(a) of the Act for Kumho and Jinyang, because the subject merchandise was sold to unaffiliated U.S. purchasers prior to the date of importation and the use of constructed export price was not otherwise indicated by the facts of record.

We calculated EP based on packed, cost insurance and freight (c.i.f.) and cost and freight (c&f) prices to unaffiliated purchasers in the United States. Where appropriate, we made deductions from the starting price for domestic inland freight, brokerage and handling, ocean freight, marine insurance, terminal handling charges, wharfage expenses, bill of lading issuing fees and container taxes in accordance with section 772(c)(2)(A) of the Act. Based on our findings at verification, for Jinyang, we made adjustments to brokerage, wharfage and international freight expenses. *See Memorandum to the File: Preliminary Results Calculation Memorandum for Jinyang Wire Rope Manufacturing Co., Ltd.*, March 30, 2000 (*Jinyang Calculation Memo*), which has been placed in the Department's CRU.

The merchandise involved in certain U.S. and home market sales reported by Kumho was produced by an unaffiliated Korean supplier. We included these sales by Kumho in our analysis because we determined that for Kumho's U.S. sales the supplier did not know at the time of the sale that the subject merchandise was to be exported to the United States. Pursuant to section 771(16) of the Act, we compared these U.S. sales to the appropriate home market sales of merchandise produced by the same supplier and sold by Kumho.

Kumho and Jinyang claimed a duty drawback adjustment based on a fixed rate amount per U.S. dollar exported. Consistent with our findings in previous reviews of steel wire rope from Korea, we did not allow the duty drawback adjustments claimed by Kumho and Jinyang because the companies did not demonstrate a connection between payment of import duties and receipt of duty drawback on exports of steel wire rope, and because they did not demonstrate that they had sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product. *See Steel Wire Rope from the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke Antidumping Duty Order in Part*, 62 FR 64354, 64357 (December 5, 1997).

Normal Value

We determined that, for both respondents, the aggregate volume of home market sales of the foreign like product was five percent or more of the aggregate volume of U.S. sales. In accordance with section 773(a)(1)(C) of the Act, we therefore based NV on home market sales.

Pursuant to section 777A(d)(2) of the Act, we compared the EPs of individual transactions to the monthly weighted-average price of sales of the foreign like product. We compared EP sales to sales in the home market of identical merchandise.

We based NV on the price at which the foreign like product was first sold for consumption in the exporting country, in the usual commercial quantities, in the ordinary course of trade, and at the same level of trade as the EP, in accordance with section 773(a)(1)(B)(i) of the Act. We increased home market price by the amount of U.S. packing costs in accordance with section 773(a)(6)(A) of the Act, and reduced it by the amount of home market packing costs in accordance with section 773(a)(6)(B) of the Act. We note that for Jinyang we recalculated the reported home and U.S. market packing expense, as a result of the company's failure to fully support the reported packing expenses at verification. During verification, Jinyang was able to provide documentary support for the total packing expenses incurred during the POR. However, the company provided no documentary support for its allocation of packing costs to home market and U.S. sales. Company officials instead relied solely on allocation ratios. *See* the March 3, 2000, verification report on file in Department's CRU. Company officials claimed that the ratios utilized to calculate estimated costs were developed through business expertise and experience. However the officials could provide no documentation in support of the ratios. Therefore, we have not accepted Jinyang's packing cost allocations. As facts available, we have reallocated Jinyang's packing costs among U.S. and home market products to comport with the allocation ratios reflected in the data submitted by Kumho. For a more detailed discussion of the basis for this adjustment, which requires references to business proprietary information, *See Memorandum to the File: Recalculation of Packing Expense for the Preliminary Results for Jinyang Wire Rope Manufacturing Co., Ltd.*, March 30, 2000.

We calculated NV based on delivered and ex-factory prices to unaffiliated customers. Where appropriate, we made adjustments for movement expenses consistent with section 773(a)(6)(B) of the Act. In addition, pursuant to section 773(a)(6)(C)(iii) of the Act and section 351.410 of the Department's regulations, we made circumstance-of-sale adjustments to NV. Specifically, we deducted home market credit expenses and, where appropriate, added U.S. credit expenses, U.S. postage fees, U.S. letter of credit fees, delayed payment charges and document handling charges. Based on our findings at verification, for Jinyang, we made adjustments to U.S. letter of credit fees, U.S. postage fees, delayed payment charges and home market credit expenses, and, for Kumho, we adjusted delayed payment and document handling charges. *See Jinyang Calculation Memo* and *Memorandum to the File: Preliminary Results Calculation Memorandum for Kumho Wire Rope Manufacturing Company*, dated March 30, 2000, on file with the Department's CRU.

For Jinyang, we also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other (the "commission offset"). *See Jinyang Calculation Memo.*

Intent To Revoke

On March 31, 1999, Kumho submitted a letter to the Department requesting, pursuant to 19 CFR 351.222(b), revocation of the order with respect to its sales of the subject merchandise. In accordance with 19 CFR 351.222(b)(2)(iii), Kumho provided with its letter a certification stating that the company: (1) Sold subject merchandise at not less than NV during the POR (and the preceding five reviews), and that in the future it would not sell such merchandise at less than NV; (2) sold the subject merchandise to the United States in commercial quantities during the POR and the last five reviews; and (3) agrees to its immediate reinstatement in the order, if the Department concludes that Kumho, subsequent to revocation, sold merchandise at less than NV.

Based on the preliminary results in this review and the final results of the two preceding reviews, Kumho has preliminarily demonstrated three consecutive years of sales at not less than NV. *See Steel Wire Rope From the Republic of Korea; Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 64 FR 17995 (April 13, 1999) and *Steel Wire Rope From the Republic of Korea; Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order*, 63 FR 17986 (April 13, 1998). Additionally, we have determined that Kumho made sales of steel wire rope in commercial quantities during this review period and the previous two review periods. *See* Memorandum from Jim Kemp and Abdelali Elouaradia to Gary Taverman, dated March 30, 2000, on file in the Department's CRU.

Given the results of the two preceding reviews, and the fact that Kumho continues to sell in commercial quantities, if the final results of this review demonstrate that Kumho sold the merchandise at prices not less than NV, and if we determine that the continued application of the antidumping duty order is no longer necessary to offset dumping, we intend to revoke the order with respect to merchandise produced and exported by Kumho. *See* 19 CFR 351.222(b) and *Amended Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders*, 64 FR 51236 (September 22, 1999).

Currency Conversion

For purposes of the preliminary results, we made currency conversions in accordance with section 773A of the Act based on the exchange rates published by the Federal Reserve in effect on the dates of the U.S. sales. Section 773A of the Act directs the Department to use a daily exchange rate in effect on the date of sale of subject merchandise in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark for the daily rate.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margin exists for the period March 1, 1998, through February 28, 1999:

Manufacturer/exporter	Margin (percent)
Dae Kyung Metal Co., Ltd	*136.72
Dong-Il Steel Manufacturing Co., Ltd	*136.72
Dong Young	*136.72
Jinyang Wire Rope, Inc	2.96
Korea Sangsa Company	*136.72
Kumho Wire Rope Mfg. Co., Ltd	0.06
Myung Jin Company	*136.72
Sungsan Special Steel Processing	*136.72
Yeonsin Metal	*136.72

*Adverse Facts Available Rate.

The Department will disclose the calculations performed to parties to the proceeding within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) A statement of the issues; and (2) a brief summary of the argument. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will issue a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at the hearing, within 120 days from the publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination. For Kumho and Jinyang, for duty assessment purposes, we calculated importer-specific assessment rates by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total entered value of total sales. In order to estimate the entered value, we subtracted international movement expenses from the gross sales value. The rate calculated for each importer will be used for the assessment of antidumping duties on the relevant entries of subject merchandise during the POR. Pursuant to 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries for any importer for whom the assessment rate is *de minimis* (i.e. less than 0.50 percent).

As a result of a Sunset Review of steel wire rope from Korea, the Department has revoked the antidumping duty order for this case, effective January 1, 2000. *See* 65 FR 3205 (January 20, 2000). Therefore, we have instructed the Customs Service to terminate suspension of liquidation for all entries of subject merchandise made after January 1, 2000. We will issue additional instructions directing the Customs Service to liquidate all entries of steel wire rope made after January 1, 2000, without regard to antidumping duties.

Entries of subject merchandise made prior to January 1, 2000, will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

This notice serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 30, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–8698 Filed 4–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–815]

Sulfanilic Acid From the People's Republic of China: Amendment of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amendment of final results of antidumping duty administrative review.

SUMMARY: On March 13, 2000, the Department of Commerce (the Department) published the final results of its administrative review of the antidumping duty order on sulfanilic acid from the People's Republic of China covering the period August 1, 1997 through July 31, 1998 (65 FR 13366). Based on the correction of a ministerial error made in the final results, we are publishing this amendment.

EFFECTIVE DATE: April 7, 2000.

FOR FURTHER INFORMATION CONTACT: Sean Carey or Robert James, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3964, or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR part 351 (1998).

Background

On March 13, 2000, the Department published the final results of its administrative review of the antidumping duty order on sulfanilic acid from the People's Republic of China (65 FR 13366). This review covers two manufacturers/exporters of the subject merchandise, Zhenxing/Mancheng (Zhenxing) and Yude/Xinyu (Yude), for the period August 1, 1997 through July 31, 1998. After publication of our final results, we received timely allegations from respondents that we had made a ministerial error in calculating the final results. No other party commented on the final results. We agree that we made a ministerial error and have corrected our calculations in accordance with section 751 (h) of the Tariff Act.

Analysis of Ministerial Error Allegations Received From Interested Parties

We received one ministerial error allegation from respondents stating that the Department neglected to revise the surrogate value for electricity in its final calculations of normal value.

As defined by section 751(h) of the Tariff Act, the term "ministerial error" includes errors "in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the [Department] considers ministerial."

We agree with respondents that the correct surrogate value for electricity in our calculation of normal value should be the non-inflated value of 2.922 rupees per kilowatt-hour as per attachment six of the Department's Analysis Memorandum for the Final

Results of the 1997/98 Administrative Review of Sulfanilic Acid from the People's Republic of China, dated March 6, 2000. In the final results, we inadvertently used a higher figure of 3.039 rupees. This type of unintentional error meets the definition of ministerial error contained in the Tariff Act. We have made the suggested correction for the amended final results.

Amended Final Results of Review

We determine that the following percentage weighted-average margins exist for the period August 1, 1997 through July 31, 1998:

Manufacturer/producer/exporter	Time period	Margin (percent)
Yude (Yude/Xinyu) Chemical Industry, Co. and Zhenxing (Zhenxing/Mancheng) Chemical Industry, Co[1].	8/1/97–7/31/98	18.65
PRC Rate [2].	8/1/97–7/31/98	85.20

[1] Exporters Yude (Yude/Xinyu) and Zhenxing (Zhenxing/Mancheng) have been collapsed for the purposes of this administrative review. *See Sulfanilic Acid from the People's Republic of China: Preliminary Results of Antidumping Administrative Review*, 64 FR 48788 (September 8, 1999); Decision Memo, Affiliation/Collapsing section.

[2] This rate will be applied to all firms other than Yude (Yude/Xinyu) and Zhenxing (Zhenxing/Mancheng), including all firms which did not respond to our questionnaire.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. With respect to both export price and constructed export price sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

Amended Cash Deposit Requirements

The following amended deposit requirements will be effective upon publication of this notice of amended final results of administrative review for all shipments of sulfanilic acid from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) the cash deposit rate for Yude/Xinyu and Zhenxing/Mancheng will be the rate shown above; (2) the cash deposit rate for all other PRC exporters (*i.e.*, the PRC rate) will be 85.20 percent; and (3) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: March 31, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–8696 Filed 4–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Certain Welded Carbon Steel Pipes and Tubes From Thailand: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review: Certain welded carbon steel pipes and tubes from Thailand.

SUMMARY: In response to requests by a Thai manufacturer, Saha Thai Steel Company, Ltd. ("Saha Thai"), and two importers, Ferro Union Inc. ("Ferro Union"), and ASOMA Corp. ("ASOMA"), the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on certain welded carbon steel pipes and tubes from Thailand. This review covers Saha Thai Steel Pipe Co., Ltd. ("Saha Thai"), a Thai manufacturer of the subject merchandise to the United States. The period of review (POR) is March 1, 1998, through February 28, 1999.

We have preliminarily determined that the respondent sold subject merchandise at less than normal value ("NV") during the POR. If these preliminary results are adopted in our final results, we will instruct U.S. Customs to assess antidumping duties based on the differences between the export price and NV.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding should also submit with the argument: (1) A statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: April 7, 2000.

FOR FURTHER INFORMATION CONTACT: Linda Ludwig or Javier Barrientos, AD/CVD Enforcement Group III, Room 7866, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3833 and (202) 482–2243, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to those codified at 19 CFR part 351 (1999).

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1986, the Department published in the **Federal Register** an antidumping duty order on certain welded carbon steel pipes and tubes from Thailand (51 FR 8341). On March 9, 1999, the Department published a notice of opportunity to request an administrative review of this order covering the period March 1, 1998, through February 28, 1999 (64 FR 11439). Timely requests for an administrative review of the antidumping order with respect to sales by Saha Thai during the POR were filed by Saha Thai, Ferro Union and ASOMA. The Department published a notice of initiation of this antidumping duty administrative review on May 28, 1999 (64 FR 28973).

Because the Department determined that it was not practicable to complete this review within statutory time limits, on December 3, 1999, we published in the **Federal Register** our notice of extension of the time limit for this review (64 FR 67876). As a result, we extended the deadline for these preliminary results. The deadline for the final results will continue to be 120 days after publication of these preliminary results.

Scope of the Review

The products covered by this administrative review are certain welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter of 0.375 inches or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as "standard pipe" or "structural tubing," are hereinafter designated as "pipe and tube." The merchandise is classifiable under the Harmonized Tariff Schedule (HTS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of the order is dispositive.

Date of Sale

As in previous segments of this proceeding, Saha Thai reported invoice date as the date of sale. In order to determine whether invoice date was the appropriate date of sale, *i.e.*, whether the material terms of sale were established on that or an earlier date, we examined the contracts provided by Saha Thai for its U.S. sales and found that the terms of sale changed in a significant number of sales. Therefore, we have preliminarily determined that the invoice date is the appropriate date of sale. With respect to home market sales, the invoice is the first written document that establishes the terms of sale.

Normal Value Comparisons

To determine whether sales of steel pipes and tubes from Thailand to the United States were made at less than NV, we compared the export price (EP) to the NV for Saha Thai as specified in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Saha Thai's reported U.S. sales include both its own sales and sales made by another company of subject merchandise processed by Saha Thai under a tolling agreement. We have included all of these sales in our analysis for these preliminary results. After reviewing the submissions we requested additional information regarding Saha Thai and its relationship with the other company to which it provided tolling services and the degree to which certain costs and expenses incurred by Saha Thai and this other company (*e.g.*, the cost of tolling services, coil cost, interest expenses, exchange rate losses and selling expenses) were fully allocated and reported. We have also requested additional information regarding the various weight conversion methodologies used in reporting sales, costs and expenses. Due to the timing of these requests, we were not able to use this information for these preliminary results. Parties are invited to comment on this information as part of their case briefs and/or rebuttal briefs. This information plus any relevant comments will be fully considered in our final results of this review.

Export Price

Based upon our review of the record evidence, we classified all Saha Thai sales to United States customers as EP sales because, as in previous segments of this proceeding, we found that Saha Thai is not affiliated with its U.S. distributors, which are the first purchasers in the United States. *Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 61 FR 56515, 56517 (November 1, 1996). Therefore, we calculated the EP based on the price from Saha Thai to the first unaffiliated purchaser in the U.S. in accordance with section 772(a) of the Act.

Where appropriate, in accordance with section 772(c)(2) of the Act, we made deductions from the starting price for ocean freight to the U.S. port, foreign inland freight, foreign brokerage and handling, foreign inland insurance, bill of lading charge, U.S. duty and U.S. brokerage and handling charges. In addition, pursuant to section 772(c)(1)(B) of the Act, we have made an adjustment for duty drawback.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of Saha Thai's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with section 773(a)(1) of the Act. Based on this comparison, we determined that the aggregate volume of Saha Thai's home market sales of the foreign like product is greater than five percent of the aggregate volume of Saha Thai's U.S. sales. Thus, we determined that Saha Thai had a viable home market during the POR. Consequently, we based NV on home market sales.

We applied the standard arm's length test to Saha Thai's sales to affiliated parties. Therefore, where Saha Thai's sales to affiliated parties were not made at arm's length prices, we excluded these sales from our home market normal value calculation.

Pursuant to section 773(b)(2)(A)(ii) of the Act, there were reasonable grounds to believe or suspect that Saha Thai had made home market sales at prices below its cost of production ("COP") in this review because the Department had disregarded sales that failed the cost test in the 1996–1997 administrative review (i.e., the most recently completed review at the time we issued our antidumping questionnaire). As a result, the Department initiated an investigation to determine whether Saha Thai made home market sales during the POR at prices below its COP. We calculated the COP based on the sum of respondent's cost of materials and fabrication for the foreign like product, plus amounts for SG&A and packing costs, in accordance with section 773(b)(3) of the Act.

For these preliminary results we are using respondent's reported COP. We have requested additional information about Saha Thai's costs and those of another company for which Saha Thai provided tolling services. We invite parties to comment on this information and will consider this information for the final results.

We compared the COP figures to home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges and discounts.

In determining whether to disregard home market sales made at prices below the COP, we examined: (1) Whether, within an extended period of time, such sales were made in substantial quantities, and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of the respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in substantial quantities within an extended period of time in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act. Therefore, we disregarded the below-cost sales.

Where appropriate, we adjusted Saha Thai's home market sales for discounts, direct selling expenses and inland freight. In addition, in accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs, U.S imputed credit, bank charges, and penalty fees.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of Saha Thai's cost of materials, fabrication, SG&A, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by Saha Thai in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the average of the selling expenses reported for home market sales that passed the cost test, weighted by the total quantity of those sales. For actual profit, we first calculated the difference between the home market sales value and home market COP, and divided the difference by the home market COP. We then multiplied this percentage by the COP for each U.S. model to derive an actual profit.

Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the SAA, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as the EP or the CEP. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses and profit. For EP, the U.S. level of trade is the level of the starting-price sale, which is usually from exporter to importer.

To determine whether NV sales are at a different level of trade than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level of trade adjustment under section 773(a)(7)(A) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

For the U.S. market, Saha Thai reported only one level of trade for its EP sales. This single level of trade represents large volume sales to unaffiliated trading companies/distributors in the United States. In the home market, Saha Thai claimed that it made sales at one level of trade. These sales were made to unaffiliated trading companies and distributors (made at the same level of trade as U.S. sales). There are no significant differences in the selling functions Saha Thai performs for these customers in the home market or in the United States. Therefore, we conclude that EP and NV sales are made at the same LOT and no adjustment is warranted.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act, based on exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. *See* Change in Policy Regarding Currency Conversions, 61 FR 9434 (March 8, 1996).

Preliminary Results of the Review

We preliminarily determine that the following weighted-average dumping margins exist:

Manufacturer/exporter	Period	Margin (percent)
Saha Thai	3/1/98–2/28/99	0.24

The Department will disclose to parties to this proceeding within 5 days after publication of these preliminary results. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 37 days after the date of publication or the first business day thereafter. Case briefs and/or other written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 35 days after the date of publication of this notice. The Department will publish the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days from the date of publication of these preliminary results.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate

entries. In accordance with 19 CFR 351.212(b), we calculated importer-specific ad valorem duty assessment rates for the class or kind of merchandise based on entered value. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon the publication of the final results of this administrative review for all shipments of certain welded carbon steel pipes and tubes from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 15.67 percent, the "All Others" rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 30, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–8697 Filed 4–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–401–401]

Certain Carbon Steel Products From Sweden; Final Results of Expedited Sunset Review of Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: Certain carbon steel products from Sweden.

SUMMARY: On September 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the countervailing duty order on certain carbon steel products from Sweden (64 FR 47767) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of the domestic interested parties, as well as inadequate response from respondent interested parties, the Department determined to conduct an expedited (120-day) sunset review. Based on our analysis of the comments received, we find that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy at the levels listed below in the section entitled Final Results of the Review.

EFFECTIVE DATE: April 7, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR Part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*Sunset Policy Bulletin*).

Background

On September 1, 1999, the Department initiated a sunset review of the countervailing duty order on carbon steel products from Sweden (64 FR 47767), pursuant to section 751(c) of the Act. The Department received a notice of intent to participate on behalf of Bethlehem Steel Corporation, Inland Ispat Inc., LTV Steel Company, Inc., National Steel Corporation, and U.S. Steel Group, a unit of USX Corporation ("domestic interested parties"), within the applicable deadline (September 15, 1999) specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. Domestic interested parties claimed interested-party status under section 771(9)(C) of the Act, as U.S. producers of a domestic like product.

On September 24, 1999, we received a request for an extension to file rebuttal comments from domestic interested parties.[1] Pursuant to 19 CFR 351.302(b), the Department extended the deadline for all participants eligible to file rebuttal comments until October 15, 1999.[2]

On October 1, 1999, we received a complete substantive response from domestic interested parties, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). Domestic interested parties claim that United States Steel Corporation ("USSC") now USX, was the petitioner in the original investigation, and one or more of the domestic interested parties participated in all subsequent administrative reviews (*see* October 1, 1999, Substantive Response of domestic interested parties at 5).

On September 29, 1999, and we received a response from the European Union Delegation of the European Commission ("EC") expressing its intent to participate in this review as the authority responsible for defending the interest of the Member States of the European Union (*see* September 29, 1999, Substantive Response of the EU at 3). On September 30, 1999, we received a response from the Government of

[1] *See* September 24, 1999, Request for an Extension to File Rebuttal Comments in the Sunset Reviews of Antidumping and Countervailing Duty Orders: A–602–603; A–351–817; C–351–818, A–122–822, A–122–823, A–405–802, A–588–826, A–421–804, A–455–802, A–485–803, C–401–401, C–401–804, C–401–805, from Valerie S. Schindler, Skadden, Arps, Slate, Meagher & Flom LLP, to Jeffrey A. May, Office of Policy.

[2] *See* September 30, 1999, Letter from Jeffrey A. May, Director, Office of Policy to Valerie S. Schindler, Skadden, Arps, Slate, Meagher & Flom LLP.

Sweden ("GOS") expressing its intent to participate in this review, as the government of a country in which subject merchandise is produced and exported. The GOS notes that it has in the past participated in this proceeding (*see* September 30, 1999, Substantive Response of GOS at 2).

The Department did not receive a substantive response from any foreign producer/exporter of the subject merchandise as defined under section 771(9)(A) of the Act. Thus, pursuant to section 351.218(e)(1)(ii)(A) of the *Sunset Regulations*, the Department determined the EC's and GOS's substantive responses to be inadequate for purposes of conducting a full review. Consequently, on October 21, 1999, pursuant to 19 CFR 351.218 (e)(1)(ii)(A), the Department determined to conduct an expedited (120-day) sunset review of this order.[3]

The Department did not receive rebuttal comments from any interested parties.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). This review concerns a transition order within the meaning of section 751(c)(6)(i) of the Act. Accordingly, on December 22, 1999, the Department determined that the sunset review of cold-rolled carbon steel products from Sweden is extraordinarily complicated, and extended the time limit for completion of the final results of this review until not later than March 29, 2000, in accordance with section 751(c)(5)(B) of the Act.[4]

Scope of Review

The scope of this order covers carbon steel products from Sweden. These products include cold-rolled carbon steel, flat-rolled products, whether or not corrugated, or crimped; whether or not pickled, not cut, not pressed and not stamped to non-rectangular shape; not coated or plated with metal and not clad; over 12 inches in width and of any thickness; whether or not in coils. Such merchandise is classifiable under the Harmonized Tariff Schedule ("HTS") item numbers: 7209.11.0000, 7209.12.0000, 7209.13.0000, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7211.30.5000, 7211.41.7000, and 7211.49.5000. The written description remains dispostive.

Analysis of Comments Received

All issues raised in substantive responses by parties to this sunset review are addressed in the Issues and Decision Memorandum ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 29, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of subsidy, the net countervailable subsidy likely to prevail were the order revoked, and the nature of the subsidy. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099, the Central Records Unit, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

As a result of this review, the Department finds that revocation of the countervailing duty order would likely lead to continuation or recurrence of a countervailable subsidy at the rate listed below for all Swedish producers/exporters, except for Surahammars Bruk AB, which was excluded from the order:

Producer/exporter	Net countervailable subsidy (percent)
All Producers/Exporters from Sweden	8.77

Nature of the Subsidy

In the *Sunset Policy Bulletin*, the Department states that, consistent with section 752(a)(6) of the Act, the Department will provide to the Commission information concerning the nature of the subsidy, and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement. Because some programs not falling within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement, could be found to be inconsistent with Article 6 if the net countervailable subsidy exceeds five percent (as measured in accordance with Annex IV of the Subsidies Agreement), we are providing the Commission with program descriptions in our Decision Memo.[5]

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(c), 752, and 777(i) of the Act.

Dated: March 29, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8692 Filed 4–6–00; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See* October 20, 1999, Memorandum for Jeffrey A. May, Re: Certain Carbon Steel Products from Sweden: Adequacy of Respondent Interested Party Response to the Notice of Initiation.

[4] *See Extension of Time Limit for Final Results of Expedited Five-Year Reviews*, 64 FR 71726 (December 22, 1999).

[5] We note that as of January 1, 2000, Article 6.1 has ceased to apply (*see* Article 31 of the Subsidies Agreement).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–401–804]

Cut-to-Length Carbon Steel Plate From Sweden; Final Results of Expedited Sunset Review of Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: Cut-to-length carbon steel plate from Sweden.

SUMMARY: On September 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the countervailing duty order on cut-to-length carbon steel plate from Sweden (64 FR 47767) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of the domestic interested parties, as well as inadequate responses from respondent interested parties, the Department determined to conduct an expedited (120-day) sunset review.

Based on our analysis of the comments received, we find that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy at the levels listed below in the section entitled Final Results of the Review.

EFFECTIVE DATE: April 7, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR Part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*Sunset Policy Bulletin*).

Background

On September 1, 1999, the Department initiated a sunset review of the countervailing duty order on cut-to-length carbon steel plate from Sweden (64 FR 47767), pursuant to section 751(c) of the Act. The Department received a notice of intent to participate on behalf of the Bethlehem Steel Corporation and U.S. Steel Corporation, a unit of USX Corporation ("domestic interested parties"), within the applicable deadline (September 15, 1999) specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. Domestic interested parties claimed interested-party status under section 771(9)(C) of the Act, as U.S. producers of a domestic like product.

On September 24, 1999, we received a request for an extension to file rebuttal comments from domestic interested parties.[1] Pursuant to 19 CFR 351.302(b), the Department extended the deadline for all participants eligible to file rebuttal comments until October 15, 1999.[2]

On October 1, 1999, we received a complete substantive response from domestic interested parties, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). Domestic interested parties assert that they have been involved in this proceeding since its inception throughout the investigation and in the only administrative review (*see* October 1, 1999, Substantive Response of domestic interested parties at 4).

On September 29, 1999, we received a response from the European Union Delegation of the European Commission ("EC") expressing its intent to participate in this review as the authority responsible for defending the interest of the Member States of the European Union ("EU") (*see* September 29, 1999, Substantive Response of the EU at 3). On September 30, 1999, we received a response from the Government of Sweden ("GOS") expressing its intent to participate in this review as the government of a country in which the subject merchandise is produced and exported. The GOS notes that it has in the past participated in this proceeding (*see* September 30, 1999, Substantive Response of the GOS at 2).

The Department did not receive a substantive response from any foreign producer/exporter, of the subject merchandise as defined under 771(9)(A) of the Act. Thus, pursuant to section 351.218(e)(1)(ii)(A) of the *Sunset Regulations*, the Department determined the EC's and GOS's substantive responses to be inadequate for the purposes of conducting a full review. Consequently, on October 21, 1999, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department determined to conduct an expedited (120-day) sunset review of this order.[3]

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). This review concerns a transition order within the meaning of section 751(c)(C)(6)(i) of the Act. Accordingly, on December 22, 1999, the Department determined that the sunset review of cut-to-length carbon steel flat plate from Sweden is extraordinarily complicated, and extended the time limit for completion of the final results of this review until not later than March 29, 2000, in accordance with section 751(c)(5)(B) of the Act.[4]

Scope of Review

The scope of this order includes hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers: 7208.31.0000, 7208.38.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.22.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.5000 (62 FR 16551, April 7, 1997).

Included in this order are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this order is grade X–70 plate. These HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Analysis of Comments Received

All issues raised in substantive responses by parties to this sunset review are addressed in the Issues and

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[1] *See* September 24, 1999, Request for an Extension to File Rebuttal Comments in the Sunset Reviews of Antidumping and Countervailing Duty Orders: A–602–803; A–351–817; C–351–818, A–122–822, A–122–823, A–405–802, A–588–826, A–421–804, A–455–802, A–485–803, C–401–401, C–401–804, C–401–805, from Valerie S. Schindler, Skadden, Arps, Slate, Meagher & Flom LLP, to Jeffrey A. May, Office of Policy.

[2] *See* September 30, 1999, Letter from Jeffrey A. May, Director, Office of Policy to Valerie S. Schindler, Skadden, Arps, Slate, Meagher & Flom LLP.

[3] *See* October 20, 1999, Memorandum for Jeffrey A. May, Re: Certain Cut-to-Length Carbon Steel Flat Plate from Sweden: Adequacy of Respondent Interested Party Response to the Notice of Initiation.

[4] *See Extension of Time Limit for Final Results of Expedited Five-Year Reviews*, 64 FR 71726 (December 22, 1999).

Decision Memorandum ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 29, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of subsidy and the net countervailable subsidy likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B–099, the Central Records Unit, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of the subsidy at the following net countervailable subsidy.

Producer/exporter	Net countervailable subsidy (%)
All Producers/Exporters from Sweden	4.27

Nature of the Subsidy

In the *Sunset Policy Bulletin*, the Department states that, consistent with section 752(a)(6) of the Act, the Department will provide to the Commission information concerning the nature of the subsidy, and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement. Although the programs at issue do not fall within Article 3 of the Subsidies Agreement, some or all of them could be found to be inconsistent with Article 6.1. For example, the net countervailable subsidy may exceed five percent, as measured in accordance with Annex IV of the Subsidies Agreement. The Department, however, has no information with which to make such a calculation; nor do we believe it appropriate to attempt such a calculation in the course of a sunset review. Moreover, we note that, as of January 1, 2000, Article 6.1 has ceased to apply (*see* Article 31 of the Subsidies Agreement). As such, we are providing the Commission with program descriptions in our Decision Memo.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(c), 752, and 777(i) of the Act.

Dated: March 29, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8691 Filed 4–6–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–469–804]

Cut-to-Length Carbon Steel Plate From Spain; Final Results of Expedited Sunset Review of Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Cut-to-Length Carbon Steel Plate from Spain.

SUMMARY: On September 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the countervailing duty order on cut-to-length carbon steel plate from Spain (64 FR 47767) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of the domestic interested parties, as well as inadequate response from respondent interested parties, the Department determined to conduct an expedited (120-day) sunset review. Based on our analysis of the comments received, we find that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy at the levels listed below in the section entitled Final Results of the Review.

EFFECTIVE DATE: April 7, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR Part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*Sunset Policy Bulletin*).

Background

On September 1, 1999, the Department initiated a sunset review of the countervailing duty order on cut-to-length carbon steel plate from Spain (64 FR 47767), pursuant to section 751(c) of the Tariff Act of 1930, as amended, ("the Act"). The Department received a notice of intent to participate on behalf of the Bethlehem Steel Corporation and U.S. Steel Group, a unit of USX Corporation ("domestic interested parties"), within the applicable deadline (September 15, 1999) specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. Domestic interested parties claimed interested-party status under section 771(9)(C) of the Act, as U.S. producers of a domestic like product.

On September 20, 1999, we received a request for an extension to file rebuttal comments from domestic interested parties.[1] Pursuant to 19 CFR 351.302(b), the Department extended the deadline for all participants eligible to file

[1] *See* September 20, 1999, Request for an Extension to File Rebuttal Comments in the Sunset Reviews of Antidumping and Countervailing Duty Orders on Certain Steel Products from Belgium, France, Germany, Mexico, Spain, South Korea, Taiwan and the United Kingdom: A–583–080, A–423–805, A–427–808, A–428–815, A–428–814, A–428–816, A–580–815, A–580–816, S–201–809, A–469–803, A–412–814, C–423–806, C–427–810, C–428–817 (CTL), C–428–817 (CR), C–580–818 (CORE), C–201–810, C–469–804, C–412–815, from Bradford L. Ward, Dewey Balantine LLP, to Jeffrey A. May, Office of Policy.

rebuttal comments until October 15, 1999.[2]

On October 1, 1999, we received a complete substantive response from domestic interested parties, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). On September 29, 1999, we received a response from the European Union Delegation of the European Commission ("EC") expressing its intent to participate in this review as the authority responsible for defending the interest of the Member States of the European Union (*see* September 29, 1999, Substantive Response of the EU at 3). On September 30, 1999, we received a response from the Government of Spain ("GOS") expressing its intent to participate in this review, as the government of a country in which subject merchandise is produced and exported. The GOS notes that it has in the past participated in this proceeding (*see* September 30, 1999, Response of GOS at 2).

The Department did not receive a substantive response from any foreign producer/exporter of the subject merchandise as defined under 771(9)(A) of the Act. Thus, pursuant to section 351.218(e)(1)(ii)(A) of the *Sunset Regulations*, the Department determined the EC's and GOS's responses to be inadequate for purposes of conducting a full review. Consequently, on October 21, 1999, pursuant to 19 CFR 351.218(e)(1)(ii)(A), the Department determined to conduct an expedited (120-day) sunset review of this order.[3]

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). This review concerns a transition order within the meaning of section 751(c)(6)(i) of the Act. Accordingly, on December 22, 1999, the Department determined that the sunset review of cut-to-length carbon steel flat plate from Spain is extraordinarily complicated, and extended the time limit for completion of the final results of this review until not later than March 29, 2000, in accordance with section 751(c)(5)(B) of the Act.[4]

[2] *See* September 30, 1999, Letter from Jeffrey A. May, Director, Office of Policy to Michael H. Stein, Dewey Ballantine LLP.

[3] *See* October 20, 1999, Memorandum for Jeffrey A. May, Re: Certain Cut-to-Length Carbon Steel Flat Plate from Sweden: Adequacy of Respondent Interested Party Response to the Notice of Initiation.

[4] *See Extension of Time Limit for Final Results of Expedited Five-Year Reviews*, 64 FR 71726 (December 22, 1999).

Scope of Review

The scope of the order covers cut-to-length carbon steel plate including hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States ("HTS") under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this investigation are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from this investigation is grade X–70 plate. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of Comments Received

All issues raised in substantive responses by parties to this sunset review are addressed in the Issues and Decision Memorandum ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 29, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of subsidy and the net countervailable subsidy likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099, the Central Records Unit, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of the subsidy at the following net countervailable subsidy.

Producer/exporter	Net countervailable subsidy (percent)
All Producers/Exporters from Spain	36.86

Nature of the Subsidy

In the *Sunset Policy Bulletin*, the Department states that, consistent with section 752(a)(6) of the Act, the Department will provide to the Commission information concerning the nature of the subsidy, and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement. Although the programs at issue do not fall within Article 3 of the Subsidies Agreement, some or all of them could be found to be inconsistent with Article 6.1. For example, the net countervailable subsidy may exceed five percent. The Department, however, has no information with which to make such a calculation; nor do we believe it appropriate to attempt such a calculation in the course of a sunset review. Moreover, we note that, as of January 1, 2000, Article 6.1 has ceased to apply (*see* Article 31 of the Subsidies Agreement). As such, we are providing the Commission with program descriptions in our Decision Memo.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(c), 752, and 777(i) of the Act.

Dated: March 29, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8694 Filed 4–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–412–815]

Cut-to-Length Carbon Steel Plate From the United Kingdom; Final Results of Expedited Sunset Review of Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: Cut-to-length carbon steel plate from the United Kingdom.

SUMMARY: On September 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the countervailing duty order on cut-to-length carbon steel plate from the United Kingdom ("UK") (64 FR 47767) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of the domestic interested parties, as well as inadequate response from respondent interested parties, the Department determined to conduct an expedited (120-day) sunset review. Based on our analysis of the comments received, we find that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy at the levels listed below in the section entitled Final Results of Review.

EFFECTIVE DATE: April 7, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR Part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (Sunset Policy Bulletin).

Background

On September 1, 1999, the Department initiated a sunset review of the countervailing duty order on cut-to-length carbon steel plate from the UK (64 FR 47767), pursuant to section 751(c) of the Tariff Act of 1930, as amended, ("the Act"). The Department received a notice of intent to participate on behalf of the Bethlehem Steel Corporation and U.S. Steel Group, a unit of USX Corporation ("domestic interested parties"), within the applicable deadline (September 15, 1999) specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. Domestic interested parties claimed interested-party status under section 771(9)(C) of the Act, as U.S. producers of a domestic like product.

On September 20, 1999, we received a request for an extension to file rebuttal comments from domestic interested parties. [1] Pursuant to 19 CFR 351.302(b), the Department extended the deadline for all participants eligible to file rebuttal comments until October 15, 1999.[2]

On September 29, 1999, we received a response from the European Union Delegation of the European Commission ("EC") expressing its intent to participate in this review as the authority responsible for defending the interest of the Member States of the European Union ("EU") (*see* September 29, 1999, Response of the EU at 2). On September 30, 1999, we received a response from the Government of the United Kingdom ("GOUK") expressing its intent to participate in this review, as the government of a country in which subject merchandise is produced and exported, and a request for an extension of the deadline to submit its substantive response to the Department's notice of initiation.[3]

On October 1, 1999, we received a complete substantive response from domestic interested parties, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). They claim that one or more of these domestic interested parties have been involved in these proceedings since the original petition was filed and have participated in each subsequent segment of the case and any court litigation arising from any segment (*see* October 1, 1999, Substantive Response of domestic interested parties at 3). On October 5, 1999, we received a response from the GOUK.

The Department did not receive a substantive response from any foreign producer/exporter, or the U.S. importer of the subject merchandise as defined under 771(9)(A) of the Act. Thus, pursuant to section 351.218(e)(1)(ii)(A) of the *Sunset Regulations*, the Department determined the EC's and GOUK's responses to be inadequate for purposes of conducting a full sunset review. Consequently, on October 21, 1999, pursuant to 19 CFR 351.218 (e)(1)(ii)(C), the Department determined to conduct an expedited (120-day) sunset review of this order.[4]

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). This review concerns a transition order within the meaning of section 751(c)(6)(C)(i) of the Act. Accordingly, on December 22, 1999, the Department determined that the sunset review of cut-to-length carbon steel plate from the UK is extraordinarily complicated and extended the time limit for completion of the final results of this review until not later than March 29, 2000, in accordance with section 751(c)(5)(B) of the Act.[5]

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[1] *See* September 20, 1999, Request for an Extension to File Rebuttal Comments in the Sunset Reviews of Antidumping and Countervailing Duty Orders on Certain Steel Products from Belgium, France, Germany, Mexico, Spain, South Korea, Taiwan and the United Kingdom: A–583–080, A–423–805, A–427–806, A–428–815, A–428–814, A–428–816, A–580–815, A–580–816, S–201–809, A–469–803, A–412–814, C–423–806, C–427–810, C–428–817 (CTL), C–428–817 (CR), C–580–818 (CORE), C–201–810, C–469–804, C–412–815, from Barbara Ward, Dewey Balantine LLP, to Jeffrey A. May, Office of Policy.

[2] *See* September 30, 1999, Letter from Jeffrey A. May, Director, Office of Policy to Michael H. Stein, Dewey Ballantine LLP.

[3] *See* September 30, 1999, Letter from Joseph P. Griffin, the British Embassy, to Scott Smith, Office of Policy.

[4] *See* October 20, 1999, Memorandum for Jeffrey A. May, Re: Certain Cut-to-Length Carbon Steel Plate from Sweden: Adequacy of Respondent Interested Party Response to the Notice of Initiation.

[5] *See Extension of Time Limit for Final Results of Expedited Five-Year Reviews*, 64 FR 71728 (December 22, 1999).

Scope of Review

The scope of this order includes hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers: 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211:90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.5000. Included in this order are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this order is grade X–70 plate. In addition, the Department issued a changed circumstances review with respect to this order (64 FR 46343, August 25, 1999). Changes made to the scope of the subject merchandise in this review covered cut-to-length carbon steel products consisting of plate products with a maximum thickness of 80 mm in steel grades BS 7191, 355 EM and 355 EMZ, as amended by Sable Offshore Energy Project specification XB MOO Y 15 0001, types 1 and 2. *Id.* These HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Analysis of Comments Received

All issues raised in substantive responses by parties to this sunset review are addressed in the *Issues and Decision Memorandum* ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 29, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of subsidy and the net countervailable subsidy likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099, the Central Records Unit, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a subsidy at the following net countervailable subsidy.

Producer/exporter	Net countervailable subsidy (%)
Glynwed Steels Limited	0.73
"All Other" British Producers/ Exporters	12.00

Nature of the Subsidy

In the *Sunset Policy Bulletin*, the Department states that, consistent with section 752(a)(6) of the Act, the Department will provide to the Commission information concerning the nature of the subsidy, and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement. Although the programs at issue do not fall within Article 3 of the Subsidies Agreement, some or all of them could be found to be inconsistent with Article 6.1. For example, the net countervailable subsidy may exceed five percent, as measured in accordance with Annex IV of the Subsidies Agreement. The Department, however, has no information with which to make such a calculation; nor do we believe it appropriate to attempt such a calculation in the course of a sunset review. Moreover, we note that, as of January 1, 2000, Article 6.1 has cease to apply (see Article 31 of the Subsidies Agreement). As such, we are providing the Commission with program descriptions in our Decision Memo.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(c), 752, and 777(i) of the Act.

Dated: March 29, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8690 Filed 4–6–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 033100C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications to modify scientific research permits (900, 1116, 1141, 1152, 1156, 1212).

SUMMARY: Notice is hereby given that NMFS has received applications for permit modifications from: the Northwest Fisheries Science Center, NMFS at Seattle, WA (NWFSC)(900, 1212), Douglas County Public Utility District No. 1 at East Wenatchee, WA (DCPUD)(1116), Grant County Public Utility District No. 2 at Ephrata, WA (GCPUD)(1141), Oregon Department of Fish and Wildlife at LaGrande, OR (ODFW)(1152), and the U.S. Environmental Protection Agency at Corvallis, OR (USEPA)(1156).

DATES: Comments or requests for a public hearing on any of these modification requests must be received at the appropriate address or fax number no later than 5:00pm Pacific standard time on May 8, 2000.

ADDRESSES: Written comments on any of the modification requests should be sent to Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737. Comments may also be sent via fax to 503–230–5435. Comments will not be accepted if submitted via e-mail or the internet. The applications and related

documents are available for review in the Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737 (ph: 503–230–5400).

Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permits 900, 1152, and 1156: Leslie Schaeffer, Portland, OR (ph: 503–230–5433, fax: 503–230–5435, e-mail: Leslie.Schaeffer@noaa.gov).

For permits 1116, 1141, and 1212: Robert Koch, Portland, OR (ph: 503–230–5424, fax: 503–230–5435, e-mail: Robert.Koch@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on a modification request listed in this notice should set out the specific reasons why a hearing on that request would be appropriate (see **ADDRESSES**). The holding of such hearing(s) is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in this Notice

The following species, evolutionarily significant units (ESU's), and runs are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened Snake River (SnR) spring/summer, threatened SnR fall, endangered upper Columbia River (UCR) spring, threatened Puget Sound (PS), threatened upper Willamette River (UWR).

Coho salmon (*O. kisutch*): threatened Southern Oregon/Northern California Coast (SONCC).

Sockeye salmon (*O. nerka*): endangered SnR.

Steelhead (*O. mykiss*): threatened SnR, endangered UCR, threatened middle Columbia River (MCR), threatened lower Columbia River (LCR).

To date, final protective regulations for threatened PS and UWR chinook salmon and SnR, MCR, and LCR steelhead under section 4(d) of the ESA have not been promulgated by NMFS. Protective regulations are currently proposed for PS and UWR chinook salmon (65 FR 169, January 3, 2000) and SnR, MCR, and LCR steelhead (64 FR 73479, December 30, 1999). This notice of receipt of applications requesting takes of these species is issued as a precaution in the event that NMFS issues final protective regulations. The initiation of a 30-day public comment period on the applications, including their proposed takes of PS and UWR chinook salmon and SnR, MCR, and LCR steelhead does not presuppose the contents of the eventual final protective regulations.

Modification Requests Received

On March 22, 2000, NMFS published a notice in the **Federal Register** (65 FR 15312) that an application had been received from NWFSC for a modification to permit 900. For the modification, NWFSC requested an annual take of juvenile MCR steelhead and an increase in the annual take of juvenile naturally produced UCR steelhead associated with the research. NMFS has received an amendment of NWFSC's application for a modification to permit 900. In the application amendment, NWFSC requests an increase in the annual take of juvenile SnR fall chinook salmon associated with the research. The increased take is requested because fall chinook salmon stock abundance estimates in the Snake River have recently been revised. The ESA-listed juvenile fish are proposed to be captured at John Day Dam on the Columbia River and/or obtained from the Fish Passage Center's Smolt Monitoring Program, authorized to be collected under a separate permit. The fish are proposed to be handled and released or tagged with passive integrated transponders, transported to the Dalles Dam, held for up to 24 hours, and released in front of The Dalles Dam spillway, sluiceway, turbines, or downstream from the dam. PIT-tag interrogations made at Bonneville Dam and Rice Island will be used to estimate relative survival of the release groups. An associated increase in ESA-listed juvenile chinook salmon indirect mortalities is also requested. The modification as amended is requested to be valid for the duration of the permit, which expires on December 31, 2000.

DCPUD requests a modification to permit 1116, which authorizes annual takes of juvenile naturally produced and artificially propagated UCR steelhead associated with five research studies. The purpose of Study 1 is to determine the survival and migration differences of juvenile fish as they pass downstream through Lake Pateros and Wells Dam on the Columbia River. The purpose of Study 2 is to understand the status of juvenile salmonid migration at Wells Dam by verifying hydroacoustic accuracy. For Study 2, ESA-listed juvenile fish are collected in fyke nets and sacrificed as a means to estimate the number of unguided fish at the dam. The purpose of Study 3 is to inventory the fish species in Wells Reservoir on the Columbia River. The purpose of Study 4 is to assess the survival of juvenile, artificially propagated, UCR steelhead as they pass Wells Dam. The purpose of Study 5 is to evaluate the relative benefits of passive integrated transponder (PIT) and radio tag technologies. The results from the research will be used to enhance the survival of emigrating smolts and improve the operation of the fish passage facilities at Wells Dam. For the modification, DCPUD requests a lethal take of juvenile naturally produced and artificially propagated UCR spring chinook salmon associated with the conduct of Study 2. The modification is requested to be valid for the duration of permit 1116, which expires on December 31, 2002.

GCPUD requests a modification to permit 1141, which authorizes annual takes of adult and juvenile, naturally produced and artificially propagated, UCR steelhead associated with four scientific research studies at or in the vicinity of Wanapum and Priest Rapids Dams located on the upper Columbia River in Washington. The purpose of Study 1 is to monitor outmigrating adult and juvenile steelhead condition, survival, and travel time relative to spill effectiveness at the dams. The purpose of Study 2 is to substantiate and document hydroacoustic accuracy at Wanapum Dam. The purpose of Study 3 is to evaluate the relative abundance of the fish fauna inhabiting the Priest Rapids project area. The purpose of Study 4 is to assess the survival of juvenile, artificially propagated, UCR steelhead as they migrate past Wanapum and Priest Rapids Dams. For Study 4, ESA-listed juvenile steelhead are collected with dip nets at the dam gatewells, anesthetized, tagged with radiotransmitters, allowed to recover, released downstream, and tracked

electronically. The results from the research will be used to enhance the survival of emigrating smolts and improve the operation of the fish passage facilities at Wanapum and Priest Rapids Dams. For the modification, GCPUD requests an increase in the annual take of juvenile artificially propagated UCR steelhead associated with Study 4. An associated increase in ESA-listed juvenile steelhead indirect mortalities is also requested. The modification is requested to be valid for the duration of permit 1141, which expires on December 31, 2002.

ODFW requests a modification to permit 1152, which authorizes annual takes of adult and juvenile naturally produced and artificially propagated SnR spring/summer chinook salmon associated with 5 scientific research studies conducted in the Grande Ronde and Imnaha River Basins in the state of OR: (1) Spring chinook salmon spawning ground surveys, (2) a spring chinook salmon early life history study, (3) habitat and fish inventory surveys, (4) passage and irrigation screening evaluations, and (5) residual hatchery steelhead monitoring. For the modification, ODFW requests an increase in the annual take of juvenile artificially propagated SnR spring/summer chinook salmon associated with Study 2. Production levels for juvenile artificially propagated SnR spring/summer chinook salmon have increased for 2000, 2001 and 2002. ODFW also proposes to apply temporary marks to juvenile artificially propagated SnR spring/summer chinook salmon to determine trap efficiencies. An associated increase in ESA-listed juvenile fish indirect mortalities is also requested. The modification is requested to be valid for the duration of permit 1152, which expires on December 31, 2002.

USEPA requests a modification to permit 1156, which authorizes annual takes of juvenile SONCC coho salmon, juvenile SnR fall chinook salmon, and juvenile naturally produced and artificially propagated SnR spring/summer chinook salmon associated with research designed to collect data used to enforce the Clean Water Act which will increase the recovery potential of ESA-listed species in various rivers in the Pacific Northwest. For the modification, USEPA requests an annual take of juvenile naturally produced and artificially propagated UCR spring chinook salmon, juvenile naturally produced and artificially propagated PS chinook salmon, juvenile UWR chinook salmon, juvenile SnR steelhead, juvenile naturally produced and artificially propagated UCR steelhead, juvenile MCR steelhead, and juvenile LCR steelhead. ESA-listed juvenile fish are proposed to be captured using electrofishing, examined, and released. USEPA also requests an increase in the annual take of juvenile SnR fall chinook salmon and juvenile naturally produced and artificially propagated SnR spring/summer chinook salmon. The modification is requested to be valid for the duration of permit 1156, which expires on December 31, 2002.

On March 21, 2000, NMFS published a notice in the **Federal Register** (65 FR 15131) that NWFSC had applied for a modification to permit 1212, which authorizes annual takes of juvenile SnR sockeye salmon, juvenile naturally produced and artificially propagated SnR spring/summer chinook salmon, juvenile SnR fall chinook salmon, juvenile naturally produced and artificially propagated UCR steelhead, and juvenile naturally produced and artificially propagated UCR spring chinook salmon associated with four studies at the hydropower dams on the Snake and Columbia Rivers in the Pacific Northwest. The goal of Study 1 is to provide up-to-date survival estimates of juvenile salmonids as they migrate past McNary Dam on the Columbia River. The goal of Study 2 is to evaluate the specific trouble areas in the juvenile fish bypass system at Lower Monumental Dam on the Snake River. The goal of Study 3 is to compare the performance of juvenile salmonids tagged with Sham radiotransmitters with juvenile salmonids tagged with PITs at Lower Granite Dam on the Snake River. The goal of Study 4 is to determine tailrace residence times of radio-tagged hatchery chinook salmon under varying operational conditions at Lower Monumental Dam and to identify spill conditions that utilize the smallest volumes of water to maximize fish passage efficiency at Ice Harbor Dam on the Snake River. The research will provide information that will be used to develop corrective measures to improve juvenile fish passage at the dams. For the modification, NWFSC requested an annual take of juvenile MCR steelhead associated with the research. NWFSC has amended their application for a modification to request an increase in the annual take of juvenile SnR fall chinook salmon associated with the research. The increased take is requested because fall chinook salmon stock abundance estimates in the Snake River have recently been revised. The ESA-listed juvenile fish are proposed to be captured at McNary Dam, sampled for biological information, and released. An associated increase in ESA-listed juvenile chinook salmon indirect mortalities is also requested. The modification as amended is requested to be valid for the duration of permit 1212, which expires on December 31, 2003.

Dated: April 4, 2000.

Barbara A. Schroeder,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–8672 Filed 4–6–00; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange's Proposal To Adopt Block Trading Procedures

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed new Chicago Mercantile Exchange Rule 526 to establish block trading procedures and request for comment.

SUMMARY: The Chicago Mercantile Exchange ("CME" or "Exchange") has submitted proposed new Rule 526 to the Commodity Futures Trading Commission ("Commission") that would establish block trading procedures at the Exchange. Under these procedures, qualified market participants would be allowed to negotiate and arrange futures transactions of a minimum size bilaterally away from the centralized, competitive market. Once the specific terms of the block transaction have been agreed to, the counterparties would report the relevant details of the transaction to a designated Exchange official for clearing and settlement. The CME is seeking to allow block trading in its Five-Year and Ten-Year Agency Note futures contracts on a one-year pilot program basis. This proposal is the second contract market proposal that the Commission has received that would allow block trading.

Acting pursuant to the authority delegated by Commission Regulation 140.96(b), the Division of Trading and Markets ("Division") has determined to publish the CME's proposal for public comment. The Division believes that publication of the proposal is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before April 24, 2000.

ADDRESSES: Comments should be submitted to Jean A. Webb, Secretary,

Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments also may be sent by facsimile (202) 418–5221 or by electronic mail to secretary@cftc.gov. Reference should be made to the "Chicago Mercantile Exchange's Proposal to Adopt Block Trading Procedures."

FOR FURTHER INFORMATION CONTACT: David P. Van Wagner, Associate Director, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Background

On June 4, 1999, the Commission issued an Advisory on Alternative Execution, or Block Trading, Procedures for the Futures Industry.[1] Through this Advisory, the Commission announced its intention to consider contract market proposals to adopt alternative execution, or block trading, procedures for large size or other types of orders on case-by-case basis under a flexible approach to the requirements of the Commodity Exchange Act ("Act") and the Commission's regulations. Under this approach, each contract market retains the discretion to permit alternative executive procedures and has the ability to develop procedures that reflect the particular characteristics and needs of its individual markets and market participants.

After the issuance of the Advisory, in September of 1999, the New York Board of Trade, on behalf of the Cantor Financial Futures Exchange, Inc. ("CX"), submitted proposed new rules and rule amendments to the Commission that would establish block trading procedures at the CX[2] The CX proposal was the first contract market proposal to allow block trading that the Commission has received. On February 11, 2000, the Commission approved the CX's block trading proposal for its U.S. Treasury Bond, U.S. Treasury Ten-Year Note, Flexible Coupon U.S. Treasury Bond, and Flexible Coupon U.S. Treasury Ten-Year Note futures contracts on a one-year pilot program basis pursuant to Section 5a(a)(12)(A) of the Act and Commission Regulations 1.38 and 1.41(c).

By letters dated February 25, 2000, through March 23, 2000, the CME submitted proposed new Rule 526 to the Commission pursuant to Section 5a(a)(12(A) of the Act and Commission Regulation 1.41(c). Proposed CME Rule 526 would establish block trading procedures at the Exchange whereby qualified market participants would be allowed to negotiate and arrange futures transactions of a minimum size bilaterally away from the centralized, competitive market. Once the specific terms of the block transaction have been agreed to, the counterparties would report the relevant details of the transaction to a designated Exchange official for clearing and settlement. Thus, under the proposed procedures, certain futures transactions could be executed noncompetitively rather than through the Exchange's open outcry trading platform or through its GLOBEX2 electronic trading system.

II. Description of the Proposed Block Trading Procedures

A. Eligible Contracts and Market Participants

At the present time, the only contracts that would be eligible for the CME's proposed block trading procedures are its Five-year and Ten-Year and Ten-Year Agency Note futures contracts.[3] The CME is seeking to allow block trading in these contracts on a one-year pilot program basis. The CME could make additional contracts eligible for the block trading procedures subject to the approval of its Board of Directors (or a Committee appointed by the Board) and of the Commission.

Proposed CME Rule 526 would restrict block trading to those market participants that qualify as an "eligible participant" as that term is defined by Commission regulation 36.1. In addition, each block order must include specific instructions that such order is to be executed pursuant to the proposed block trading procedures.

In connection with block trades entered into by a commodity trading advisor ("CTA") on behalf of its customers, and provided that certain registration and financial conditions are satisfied,[4] The CTA (and not its underlying customers) would be responsible for meeting the eligibility requirements described above. Accordingly, the CTA would be able to enter into such transactions on behalf of customers without these customers having to qualify as "eligible participants" under Commission regulation 36.1 or to specifically authorize the use of the block trading procedures.

B. Size and Price Requirements

Under proposed CME Rule 526, each buy or sell order underlying a block trade must satisfy the applicable minimum size requirement as determined by the CME's Board of Directors or by a Committee appointed by the Board. In the case of the CME's Five-year and Ten-Year Agency Note futures contracts, the minimum threshold will be 200 contracts.[5]

The price at which a block trade is executed must be "fair and reasonable" in light of the following factors: (1) The size of such block trade; (2) the prices and sizes of other transactions in the same contract at the relevant time; (3) the prices and sizes of transactions in other relevant markets; including the underlying cash and futures markets, at the relevant time; and (4) the circumstances of the parties to the block trade.

C. Transparency

Each block trade must be reported to a designated Exchange within five minutes of the time of execution.[6] Such

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[1] 64 FR 31195 (June 10, 1999); 64 FR 34851 (corrections). The Commission first raised the subject of alternative execution, or block trading, procedures in its Concept Release on the Regulation of Noncompetitive Transaction Executed on or Subject to the Rules of a Contract Market. 63 FR 3708 (January 26, 1998). Through the Concept Release, the Commission wished to explore whether certain alternative executive procedures for large size or other types of orders could be developed to satisfy the needs of market participants while furthering the policies and purposes of the Commodity Exchange Act and the Commission's Regulations.

[2] The CX's block trading proposal was published in the **Federal Register** for public comment on October 7, 1999. 64 FR 54620.

[3] The Commission approved the CME's application for designation as a contract market in the Five-Year and Ten Year Agency Note futures contracts on March 13, 2000. The current trading hours for these contracts are as follows: 7:20 a.m.–2 p.m. Central Time Monday through Friday for open outcry trading; 2:10 p.m.—7:05 a.m. Central Time Monday through Thursday for GLOBEX2 trading; and 5:30 p.m.—7:05 a.m. Central Time Sundays and holidays for GLOBEX2 trading.

[4] The CTA must be registered under the Act (which includes without limitation any investment advisor registered as such with the Securities and Exchange Commission that is exempt from regulation under the Act or the Commission's regulations) with total assets under management exceeding $50 million.

[5] In connection with block trades entered into by a CTA (which satisfies certain registration and financial conditions) on behalf of its customers, the underlying customer orders do not have to satisfy the minimum threshold requirement. Accordingly, a CTA registered under the Act (including without limitation any investment advisor registered as such with the Securities and Exchange Commission that is exempt from regulation under the Act or the Commission's regulations) with total assets under management exceeding $50 million may aggregate orders from different accounts to satisfy the minimum size requirement.

[6] Completed block transactions may be reported to the Exchange in one of two ways: (1) through telephone to the Exchange's GLOBEX Control Center from 5:30 p.m. Central Time on Sunday through 2:00 p.m. Central time on Friday; and (2) through select price reporting terminals available

Continued

report must include information identifying the relevant contract, contract month, price, and quantity of the transaction. In addition, clearing firms must report each block trade to the Exchange Clearing House—including the time of execution—in accordance with the Clearing House Manual of Operations. The CME will immediately publicize block trade information separately from the reports of transactions in the regular, competitive market.

III. Request for Comment

The Commission request comment from interested persons concerning any aspects of the CME's proposed block trading procedures.

Copies of the CME's proposed new Rule 526 and related materials are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 418–5100.

Issued in Washington, DC, on April 3, 2000.

John C. Lawton,

Acting Director.

[FR Doc. 00–8604 Filed 4–6–00; 8:45 am]

BILLING CODE 8351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Renewal of Two Currently Approved Information Collections

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning the proposed revision of two forms:

- *Corporation for National Service Enrollment Form* (OMB #3045–0006), and
- *Corporation for National Service End of Term/Exit Form* (OMB #3045–0015).

Copies of the forms can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by June 6, 2000.

ADDRESSES: Send comments to the Corporation for National and Community Service, National Service Trust, Attn: Ms. Natalie Burch, 8th Floor, 1201 New York Avenue, N.W., Washington, D.C., 20525.

FOR FURTHER INFORMATION CONTACT: Natalie Burch, (202) 606–5000, ext. 159.

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

I. Background

The Corporation for National and Community Service supports programs that provide opportunities for individuals who want to become involved in national service. The service opportunities cover a wide range of activities over varying periods of time. Upon successfully completing an agreed-upon term of service in an AmeriCorps program, an AmeriCorps participant receives an "education award". This education award can be used to make a payment towards a qualified student loan or pay for educational expenses at qualified post-secondary institutions and approved school-to-work opportunities programs. This award is an amount of money set aside in the AmeriCorps member's name in the National Service Trust Fund. Members have seven years in which to draw against any unused balance.

The National Service Trust is the office within the Corporation that administers the education award program. This involves:

- Tracking the service for all AmeriCorps members;
- Ensuring that the requirements of the Corporation's enabling legislation are met, vis-a-vis the education award;
- Processing school and loan payments that the members authorize; and
- Processing payments for the interest that accrues on certain qualified student loans during the member's service period.

II. Current Action

The Corporation has been using several versions of the two forms contained in this Notice since the AmeriCorps program began in 1994. The Corporation proposes to ask the Office of Management and Budget (OMB) for permission to renew each form in basically the same format as the forms currently in use. The current forms are due to expire on June 30, 2000.

The Corporation's *Enrollment Form* serves two purposes essential to the functioning of the AmeriCorps program. It is the means by which programs certify that an individual is eligible to serve in an AmeriCorps program and the date service has begun. Second, it provides the Corporation, Grantees, program managers, and Congress with demographic data on AmeriCorps members.

The Enrollment Form is the beginning-of-service counterpart to the Corporation's *End of Term/Exit Form*, which concludes the tracking of members at the end of their term of service.

Submission of the *End of Term/Exit* form provides legal certification for the disbursement of an education award to an AmeriCorps member. It is the document by which an authorized program official at an AmeriCorps program site indicates whether an AmeriCorps member is eligible for an education award.

Several versions of both forms have been used since the AmeriCorps program began in 1994.

In 1999, the Corporation began using an electronic system to both enroll and exit AmeriCorps members. Many local projects can enter into a database information about their members' enrollment and completion of service. This data is transferred to the Trust

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on the Exchange floor during Regular Trading Hours (7:30 a.m.—2:00 p.m. Central Time) Monday through Friday.

periodically where it becomes the official record.

Currently, more than half of the nation's AmeriCorps programs use this system. The Corporation would like to have all programs use it, since it ultimately speeds up both collecting information and issuing education awards to members who have successfully completed their terms of service. However, many AmeriCorps programs, especially smaller ones, do not have the technological resources to afford the computer hardware and software.

The Corporation does not want to exclude any competent, otherwise qualified organizations from participating as a sponsor, so it is possible that there may always be a small number of organizations that will use forms. A separate discussion of each form follows.

A. Enrollment Form—(OMB #3045–0006)

Currently, AmeriCorps members use a form entitled *Corporation for National Service Enrollment Form* to enroll national service participants in the AmeriCorps program. The form requests program-related as well as demographic information. The program information includes the participant's start date, the code number of the program, the expected completion date, and whether the term of service is full or part time. This is the Corporation's sole source of data for individual members. The demographic information includes background information on the AmeriCorps member (including gender, marital status, education level, and reasons for joining).

The program information is used to:

- Make liability projections for the Trust Fund;
- Verify national service participation when requested by a lender who holds an AmeriCorps member's student loan (members are eligible to have the repayment of certain student loans postponed if they are participating in national service),
- Plan and monitor programs (review recruiting efforts, identify programs with excessive early termination rates, establish and reconcile program's budgets)

The demographic information is used for recruiting purposes and to provide the Corporation, program managers, and the Congress with demographic data on AmeriCorps members.

In requesting permission for renewal of this form, the Corporation does not propose making any changes to the version currently in use.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Corporation for National Service Enrollment Form.

OMB Number: 3045–0006.

Agency Number: None.

Affected Public: Individuals about to participate in an AmeriCorps program.

Total Respondents: 5,000 annually.

Frequency: Once per service period (average of once per year).

Average Time Per Response: Total of 7 minutes (4 minutes for the AmeriCorps members; and 3 minutes for the program staff).

Estimated Total Burden Hours: 584 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

B. End of Term/Exit Form—(3045–0015)

The Corporation's End of Term/Exit form is the means by which AmeriCorps programs certify that a member has, or has not, successfully satisfied conditions which must be met in order to receive an education award. When an AmeriCorps member successfully completes a term of national service, a designated program official certifies that the service was completed and the individual is eligible for an education award. The End of Term/Exit form is the document upon which this certification is recorded. Additional information requested on the form includes the member's service completion date, the current address where the education award documentation should be mailed, and two questions regarding the member's desire for post service information.

The Corporation proposes to eliminate the ten evaluation questions that are on the form currently being used. The Corporation's Evaluation Division has decided that relevant evaluation data will be collected through surveys.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Corporation for National Service End of Term/Exit Form.

OMB Number: None.

Agency Number: None.

Affected Public: AmeriCorps members who have ended their term of national service.

Total Respondents: 5,000 annually.

Frequency: Once per term of service (average of once per year).

Average Time Per Response: 7 minutes, total (4 minutes for the AmeriCorps members to complete the form and, 3 minutes for the program staff)

Estimated Total Burden Hours: 584 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 3, 2000.

Thomas L. Bryant,

Acting General Counsel.

[FR Doc. 00–8595 Filed 4–6–00; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board (AFEB)

AGENCY: Office of the Surgeon General, DoD.

ACTION: Notice of partially-closed meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92–463, The Federal Advisory Committee Act, this announces the forthcoming AFEB meeting. This Board will meet from 0730–1600 on Tuesday, 30 May, and 0730–1300 on Wednesday, 31 May 2000. The purpose of the meeting is to address pending and new Board issues, provide briefings for Board members on topics related to ongoing and new Board issues conduct subcommittee meetings, conduct an executive working session, and to have a classified AFEB update on the DoD Immunization Program for Biological Warfare Defense in accordance with DoD Directive 6205.3. The meeting location will be at USAMRIID, Fort Detrick, Frederick, Maryland. This meeting will be open to the public on 30 May, but limited by space accommodations. The meeting will be closed to the public on 31 May in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof and Title 5, U.S.C., appendix 1, subsection 10(d). Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: COL Benedict Diniega, AFEB Executive Secretary, Armed Forces Epidemiological Board, Skyline Six, 5109 Leesburg Pike, Room 682, Falls Church, Virginia 22041–3258, (703) 681–8012/4.

SUPPLEMENTARY INFORMATION: None.

John A. Hall,
Alternate Federal Register Liaison Officer.
[FR Doc. 00–8676 Filed 4–6–00; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Announcement of Intent To Grant an Exclusive License for a U.S. Army-Owned Patent Application and All Patents Resulting Therefrom Worldwide, Including All Foreign Counterpart Applications

AGENCY: Picatinny Arsenal, New Jersey, DoD.

ACTION: Notice.

SUMMARY: The Department of the Army announces that unless there is objection, in sixty days it will grant an Exclusive license to Bulova Technologies, L.L.C,, 101 North Queen Street, Lancaster, Pennsylvania 17604–4787, on U.S. Army Patent Application serial number 09/511,641 filed on February 22, 2000, Army docket number DAR–63–99, entitled "Improved Self Destruct Fuze For Munitions" by Louis J. Adimari, Joseph A. Donini, Keith R. Fulton, Marc E. Ball, Edward F. Cooper, John R. Hertzier, and John C. Yoo, together with all foreign counterpart patent applications, and all U.S. and worldwide patents resulting therefrom.

FOR FURTHER INFORMATION CONTACT: Mr. John Moran, Chief, Intellectual Property Law Division, AMSTA–AR–GCL, U.S. Army TACOM–ARDEC, Picatinny Arsenal, NJ 07806–5000, telephone (973) 724–6590.

SUPPLEMENTARY INFORMATION: Written objections must be filed within 60 days from publication date of this notice in the Federal Register.

John A. Hall,
Alternate Army Federal Register Liaison Officer.
[FR Doc. 00–8677 Filed 4–6–00; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patent for non-exclusive, partially exclusive or exclusive licensing. The listed patent has been assigned to the United States of America as represented by the Secretary of the Army, Washington, DC.

This patent covers a wide variety of technical arts including: An improved liquid explosive composition of nitromethane, a nitromethane sensitizer and an energetic compound.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Public Law 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patent listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by this patent.

Title: Liquid Explosive Composition.
Inventor: John D. Sullivan, Jr.
Patent Number: 6,007,648.
Issued Date: December 28, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Rausa, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Aberdeen Proving Ground, MD 21005–5055 tel: (410) 278–5028; fax: (410) 278–5820.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 00–8673 Filed 4–6–00; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF THE DEFENSE

Department of the Army

Notice To Seek Licensing Partners for Psuedo-Monolithic Laser With an Intracavity Optical Parametric Oscillator

AGENCY: U.S. Army, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army CERDEC's Night Vision & Electronic Sensors Directorate (NVESD) has filed for a patent on a Pseudo-Monolithic Laser with an Intracavity Optical Parametric Oscillator. This is to announce that we are now seeking licensing partners for this technology, which has direct applications to military rangefinders as well as other commercial purposes. The laser was designed for simplicity and has no moving parts and few optical components. It can be tuned/manufactured to laze at three discrete frequencies. The design makes innovative use of existing flash bulb circuitry found in disposable cameras as the power source for the devices. The design is exceptionally small and compact. There is a plan for initial procurement of rangefinders utilizing this laser which will be announced separately. Other uses of this device include: ophthalmology applications; due to the precision of the beam it may also lend itself to applications in computer chip processing; and applications in surveying instruments. Due to the numerous applications of this technology the NVESD invites companies to consider Cooperative Research and Development Agreements for developing applications of this technology to their product lines. A preliminary design review package and license application for the required patent is available from NVESD. If interested please request information and respond with the required documents within 30 days.

FOR FURTHER INFORMATION CONTACT: Karen Gordon, U.S. Army (CERDEC) Night Vision & Electronic Senors Directorate, ATTN: AMSEL–RD–NV–OPS, 10221 Burbeck Road, Fort Belvoir, Virginia 22060–5806, Telephone: (703) 704–2279.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 00–8675 Filed 4–6–00; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the John Redmond Lake Reallocation Study, Kansas

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The purpose of the EIS is to address alternatives and impacts pertaining to reallocation of water storage at John Redmond Lake, Kansas.

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the proposed action should be addressed to Mr. David L. Combs, Chief, Environmental Analysis and Compliance Branch, 1645 South 101st East Avenue, Tulsa, Oklahoma 74128–4629, telephone 918–669–7660, e-mail: David L. Combs@usace.army.mil.

SUPPLEMENTARY INFORMATION: John Redmond Lake was authorized by the Flood Control Act approved May 17, 1950, Public Law 81–516a; Project Document HD 442, 80th Congress, 2d Session. Public Law 85–327, dated February 15, 1958, changed the project name from Strawn Dam to John Redmond Dam and Reservoir. It is located on the Grand (Neosho) River at river mile 343.7, about 3 miles northwest of Burlington in Coffey County, Kansas. Project purposes include flood control, water supply, water quality, and recreation. Closure of the embankment was completed in September 1963 and the project was completed for full flood control operation in September 1964.

In 1975, the state of Kansas and the Federal government entered into a water supply agreement for an estimated 34,900 acre-feet of storage remaining after 50 years of sedimentation. After the agreement was signed, it was determined that sediment was entering the lake unevenly from what had been predicted. Over time, sedimentation in the lake has changed the amount of storage the lake has for flood control, water supply and other purposes. Storage available for water supply purposes in the lake has been depleted by sediment distribution such that the water supply agreement obligations are being infringed upon.

Most of the sediment deposited in the lake pool has been below elevation 1039.0 (top of conservation pool), National Geodetic Vertical Datum (NGVD). Based on the Corps sediment surveys for 1964–1993, it was predicted that adequate storage would be available below elevation 1068.0 feet NGVD (top of flood control pool) at the end of the economic life of the project (Year 2014) to meet all authorized project purposes. However, the top of the conservation pool should ultimately be established at a higher elevation to reapportion equitably the storage between the conservation and flood control pools.

When a lake is designed, each pool (flood control, conservation, sediment) is designed to capture a proportionate amount of sediment. In the case of John Redmond, the sediment load has been as predicted; however, the sediment is accumulating in the conservation pool while the flood control pool has experienced less than expected sedimentation losses.

The reallocation study and EIS will focus on ways to accommodate for the uneven distribution of sediment within the lake and evaluate a number of alternatives. Alternatives presently identified include the no action plan, which follows the current operational practices and another alternative to raise the lake's conservation pool to accommodate for sediment buildup. This alternative includes a 2-foot pool rise with the intentions of raising the conservation pool to elevation 1040.0 feet NGVD and using a phased pool raise of the remaining one-foot, in one-half foot pool increments.

The EIS will evaluate the effects of alternatives on the authorized project purposes and other identified concerns. Significant issues to be addressed in the EIS include: (1) potential impacts to the Flint Hills National Wildlife Refuge; (2) impacts on recreation and recreation facilities; (3) impacts on structure of the dam; (4) impacts on fish and wildlife resources within and also above and below the lake; (5) impacts on downstream flows on the Neosho River; and (6) other impacts identified by the public, agencies, or Corps studies.

Scoping meetings for the project are planned to be conducted in March and April 2000. News releases informing the public and local, state, and Federal agencies of the proposed action will be published in local newspapers. Comments received as a result of this notice and the news releases will be used to assist the Tulsa District in identifying potential impacts to the quality of the human or natural environment. Affected local, state, or Federal agencies, affected Indian tribes, and other interested private organizations and parties may participate in the Scoping process by forwarding written comments to the above noted address or attending Scoping meetings.

The draft EIS (DEIS) is expected to be available for public review and comment by September 2001. Any comments and suggestions should be forwarded to the above noted address no later than June 1, 2000, to be considered in the DEIS.

Dated: March 27, 2000.

Leonardo V. Flor,

Colonel, U.S. Army District Engineer.

[FR Doc. 00–8674 Filed 4–6–00; 8:45 am]

BILLING CODE 3710–39–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.292B]

Office of Bilingual Education: Field-Initiated Research Program

AGENCY: Department of Education.

ACTION: Correction and Extension notice.

SUMMARY: On March 17, 2000, a notice inviting applications for new awards for FY 2000 was published in the **Federal Register** (65 FR 14730 through 14749). This notice was a complete application package and contained all of the information, application forms and instructions needed to apply for a grant under this program. There was one form inadvertently omitted from the application package. The form was "Bilingual Education: Field Initiated Research Program—Eligibility Certification". The form is included with this correction notice.

Note: This notice also extends the deadline for transmittal of application as follows:

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: April 24, 2000.

DEADLINE FOR INTERGOVERNMENTAL REVIEW: May 24, 2000.

FOR FURTHER INFORMATION CONTACT: Socorro Lara, U.S. Department of Education, 400 Maryland Ave., SW Room 5086, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–9730. E-mail address: socorro__lara@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 1–800–877–8330.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Please, note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498 or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at http://www.access.gpo.gov/nara/index.html.

Program Authority

Dated: March 31, 2000.

Art Love,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

BILLING CODE 4000-01-M

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VOL 65 ISS 68 AP 7 2000 UMI

BILINGUAL EDUCATION: FIELD-INITIATED RESEARCH PROGRAM

ELIGIBILITY CERTIFICATION

Application Information

_____
Name of Institution

_____

_____

_____
Address (give city, county, state, zip code)

_____
Type of Institution (IHE, NPO, SEA, LEA)

Grant(s) received under subpart 1 or 2 of Title VII of the Elementary and Secondary Education Act (or Parts A and B of Title VII of ESEA, as in effect prior to its amendment on October 20, 1994):

Grants must have been received within the previous five years.

_____	_____
_____	_____
_____	_____
Grant number/PR number	Type of grant

[FR Doc. 00–8483 Filed 4–6–00; 8:45 am]
BILLING CODE 4000–01–C

DEPARTMENT OF ENERGY

Office of Science; Biological and Environmental Research Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Biological and Environmental Research Advisory Committee. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, April 27, 2000, 8:30 a.m. to 5 p.m.; and Friday, April 28, 2000, 8:30 a.m. to 12 p.m.

ADDRESSES: American Geophysical Union, 2000 Florida Avenue, N.W., Washington, D.C. 20009.

FOR FURTHER INFORMATION CONTACT: Dr. David Thomassen (301–903–9817; david.thomassen@science.doe.gov), or Ms. Shirley Derflinger (301–903–0044; shirley.derflinger@science.doe.gov), Designated Federal Officers, Biological and Environmental Research Advisory Committee, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, SC–70, 19901 Germantown Road, Germantown, Maryland 20874–1290. The most current information concerning this meeting can be found on the website: http://www.sc.doe.gov/production/ober/berac.html.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that rise in the development and implementation of the biological and environmental research program.

Tentative Agenda:

Thursday, April 27 and Friday, April 28, 2000:

Welcoming Remarks
Opening of Meeting
Remarks from Acting Director, Office of Science
Update on Office of Biological and Environmental Research Activities
Review of Subcommittee Activities
New Business
Public Comment (10-minute rule)

Public Participation: The day and a half meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact David Thomassen or Shirley Derflinger at the address or telephone numbers listed above. You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. on April 4, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–8655 Filed 4–6–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Los Alamos

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, April 26, 2000, 6 p.m.–9 p.m.

ADDRESSES: Hotel Loretto, 211 Old Santa Fe Trail, Santa Fe, NM.

FOR FURTHER INFORMATION CONTACT: Ann DuBois, Northern New Mexico Citizens' Advisory Board, 1640 Old Pecos Trail, Suite H, Santa Fe, NM 87505. Phone:505–989–1662; Fax: 505–989–1752; E-mail: *adubois@doeal.gov;* or Internet http:www.nmcab.org

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Opening Activities, 6 p.m.–6:30 p.m.
Public Comment, 6:30 p.m.–7 p.m.

Committee Reports

Environmental Restoration
Monitoring and Surveillance
Waste Management
Community Outreach
Budget.

Other Board business will be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ann DuBois at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 528 35th Street, Los Alamos, NM 87544. Hours of operation for the Public Reading Room are 9 a.m. and 4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above.

Issued at Washington, DC on April 4, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–8654 Filed 4–6–00; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex Plant

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE AND TIME: Tuesday, April 25, 2000; 1 p.m.–5 p.m.

ADDRESSES: The Wellington Room, I–40 & Georgia, Amarillo, Texas.

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477–3125.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to advise the Department of Energy and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1:00 Agenda Review/Approval of Minutes
1:15 Co-Chair Comments
1:30 Task Force/Subcommittee Reports
2:00 Ex-Officio Reports
2:30 Updates—Concurrence Reports—DOE
3:00 Break
3:15 Presentation (To Be Decided)
4:15 Public Comments
4:30 Closing Comments
4:45 Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jerry Johnson's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and every reasonable provision will be made to accommodate the request in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX, phone (806) 371–5400. Hours of operation are from 7:45 a.m. to 10 p.m. Monday through Thursday; 7:45 a.m. to 5 p.m. on Friday; 8:30 a.m. to 12 noon on Saturday; and 2 p.m. to 6 p.m. on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9 a.m. to 7 p.m. on Monday; 9 a.m. to 5 p.m. Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on April 4, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–8656 Filed 4–6–00; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6253–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 20, 2000 Through March 24, 2000 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 09, 1999 (63 FR 17856).

Draft EISs

ERP No. D–AFS–E65053–NC Rating EC2, Croatan National Forest Revised Land and Resource Management Plan (1986), Implementation, Carteret, Craven, and Jones Counties, NC.

Summary: EPA expressed concern regarding potential water quality impacts and that the preferred alternative could potentially clearcut too much timber too rapidly for conversion to longleaf pines and consequently be counterproductive to RCW recovery. EPA recommended that the alternatives discussion be modified to take this concern into account.

ERP No. D–AFS–J65320–MT Rating EC2, Knox-Brooks Timber Sales and Road Rehabilitation, Implementation, Lolo National Forest, Super Ranger District, Mineral County, MT.

Summary: EPA expressed environmental concerns regarding potential erosion impacts, wetland impacts, aquatic effects of herbicides, and the level of monitoring to detect effects of management activities. EPA requested additional information on these issues and mitigation measures to reduce the impacts of management actions.

ERP No. D–AFS–J65321–MT Rating EC2, Mill-Key-Wey Project, Proposed Timber Harvesting, Ecosystem Burning, Road Construction and Reconstruction, Implementation, Lolo National Forest, Superior Ranger District, Mineral County, MT.

Summary: EPA expressed concerns regarding harvests on erosive soils, wetland impacts, use of weed control chemical and the level of monitoring proposed to identify project impacts. The EPA requested additional information on these issues and mitigation measures to reduce potential impacts of the management actions.

ERP No. D–SFW–K90030–CA Rating EC2, San Diequito Wetland Restoration Project, Implementation, Comprehensive Restoration Plan, COE Section 404 Permit, Cities of Del Mar and San Diego, San Diego County, CA.

Summary: EPA expressed concern due to the potential for undiscovered contaminated soil and hazardous waste. EPA requested that soil contamination be monitored and that a monitoring, emergency response, and reporting plan be included as part of the restoration program.

Final EISs

ERP No. F–BLM–J67028–CO North Fork Coal Program, Approval of Two Lease-By-Applications (LBA) and Exploration License for Iron Point and Elk Creek Coal Leases, Delta and Gunnison Counties, CO.

Summary: No formal comment letter sent to preparing agency.

ERP No. F–NPS–G02009–TX Padre Island National Seashore Oil and Gas Management Plan, Implementation, Kleberg, Kenedy and Willacy Counties, TX.

Summary: EPA previous concerns have been adequately responded to, therefore EPA has no objection to the action as proposed.

Dated: April 4, 2000.

Joseph C. Montgomery,

Director, Office of Federal Activities.

[FR Doc. 00–8669 Filed 4–6–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6252–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/ofa.

Weekly Receipt of Environmental Impact Statements
Filed March 27, 2000 Through March 31, 2000
Pursuant to 40 CFR 1506.9

EIS No. 000087, Draft EIS, AFS, ID, Idaho Panhandle National Forests, Small Sales, Harvesting Dead and Damaged Timber, Coeur d'Alene River Range District, Kootenai and Shoshone Counties, ID, Due: May 15, 2000, Contact: Bob Rehnborg (208) 664–2318.

EIS No. 000088, Draft EIS, AFS, PA, Duck and Sheriff Project Area (DSPA), Timber Management, Road

Construction and Reconstruction, Trail Maintenance, Wildlife Habitat Improvement, and Recreation Management, Allegheny National Forest, Bradford Ranger District, Cherry Grove Township of Warren County, and Howe Township of Forest County, PA, Due: May 15, 2000, Contact: John Schultz (814) 362–4613.

EIS No. 000089, Draft EIS, AFS, ID, Warm Springs Ridge Vegetation Management Project, Improve Forest Conditions, Boise National Forest, Cascade Resource Area, Boise County, ID, Due: May 15, 2000, Contact: Kathy Ramirez (208) 392–6681.

EIS No. 000090, Final EIS, FAA, MA, Provincetown Municipal Airport Safety and Operational Enhancement Project, Improvements (1) Firefighter Equipment Garage; (2) General Aviation Parking Apron Expansion; (3) Runaway Safety Areas, and (4) a Runaway Extension, COE Section 404 Permit, Cape Cod National Seashore, Barnstable County, MA, Due: May 01, 2000, Contact: Frank Smigelski (781) 238–7613.

EIS No. 000091, Draft Supplement, AFS, WA, ID, OR, MT, Interior Columbia Basin Ecosystem Management Projects, Updated and New Information on three Management Alternatives, Implementation, WA, OR, ID and MT, Due: June 30, 2000, Contact: Cathy Humphrey (208) 334–1770.

EIS No. 000092, Final EIS, FTA, CA, Vasona Corridor Light Rail Transit Project, Extension of existing Light Rail Transit (LRT), in portion of the Cities of San Jose, Campbell and Los Gatos, Santa Clara County, CA, Due: May 01, 2000, Contact: Jerome Wiggins (415) 744–3115.

EIS No. 000093, Draft EIS, AFS, ID, JJ (Jerry Johnson) Ecosystem Restoration Project, Implementation, Clearwater National Forest, Lochsa Ranger District (Powell), Idaho County, ID, Due: May 15, 2000, Contact: Ken Hotchkiss (208) 942–3113.

EIS No. 000094, Draft Supplement, COE, CA, Port of Los Angeles Channel Deepening Project, To Improve Navigation and Disposal of Dredge Material for the Inner Harbor Channels, Los Angeles County, CA, Due: May 22, 2000, Contact: Larry Smith (213) 452–3846.

Dated: April 4, 2000.

Joseph C. Montgomery,

Director, Office of Federal Activities.

[FR Doc. 00–8670 Filed 4–6–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–933; FRL–6552–9]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–933, must be received on or before May 8, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–933 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Treva C. Alston, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8373; and e-mail address: alston.treva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–933. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–933 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division

(7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–933. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 30, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the views of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Ecolab Inc.

OE6100

EPA has received a pesticide petition (OE6100) from Ecolab Inc., 370 N. Wabasha Street, St. Paul, MN 55102 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for 1,2–ethanediamine, polymer with oxirane and methyloxirane (EDPOM) in or on raw agricultural commodities, in processed commodities, and in or on meat and meat by products of cattle, sheep, hogs, goats, horses, and poultry, milk, and dairy products, eggs, seafood and shellfish, and fruits and vegetables when such residues result from the use of EDPOM as a component of a food contact surface sanitizing solution for use in food handling establishments. The request is for an unlimited clearance. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

This is a high molecular weight alkoxylated amine polymer. No residue chemistry data or environmental fate data are presented in the petition as the Agency does not generally require some or all of the listed studies to rule on the exemption from the requirement of a tolerance for an inert ingredient.

B. Toxicological Profile

The Agency has established a set of criteria, which identifies categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compounds compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Ecolab Inc. believes that EDPOM conforms to the definition of a polymer given in 40 CFR 723.250 and meets the following criteria used to identify a low risk polymer.

1. EDPOM is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. EDPOM contains as an integral part of its composition the atomic elements carbon, nitrogen, hydrogen and oxygen.

3. EDPOM does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. EDPOM is not designed, nor is it reasonably anticipated to substantially degrade, decompose or depolymerize prior to, during, or after use.

5. EDPOM is not manufactured or imported from monomers and/or reactants that are not included on the Toxic Substances Control Act (TSCA) substance inventory or manufactured under an applicable TSCA section 5 exemption.

6. EDPOM is not a water absorbing polymer.

7. EDPOM has an minimum-average molecular weight of 25,000. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

8. EDPOM has a minimum-average molecular weight of 25,000. EDPOM meets the requirements for molecular weight distribution of oligomer contents of less than 25% with molecular weights below 1,000 and less than 10% with molecular weights below 500.

Ecolab Inc. believes that sufficient information has been submitted to assess the hazards of EDPOM. No toxicology data are being submitted as the Agency does not generally require these data to rule on exemptions from the requirement of a tolerance for an inert ingredient. Because EDPOM conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Ecolab Inc. believes there are no concerns for risks associated with toxicity.

C. Aggregate Exposure

1. *Dietary exposure.* Acute: Due to the low toxicity, there are no toxicological concerns for EDPOM. An acute dietary risk assessment is not appropriate. Chronic: Chronic exposure would not produce any effect since it is not absorbed. Therefore, no concerns are warranted.

i. *Food.* When EDPOM is used as a component of a food contact surface sanitizer, the residue that would be introduced into food will be insignificant. EDPOM is not absorbed from the GI tract. Based on this, there are no toxicological concerns resulting from exposures to residues of EDPOM resulting from the use of sanitizing solutions.

ii. *Drinking water.* Acute: EDPOM is not expected to be introduced into drinking water, therefore an acute drinking water risk assessment is not required. Chronic: EDPOM is not expected to be introduced into drinking water; therefore, a chronic drinking water risk assessment is not required.

2. *Non-dietary exposure.* EDPOM is not absorbed from the GI tract or through the skin. The potential for significant additional non-occupational exposure to the general population (including children) is unlikely.

D. Cumulative Effects

The amount of EDPOM exposure resulting from indirect exposure to sanitizing solutions will be miniscule. EDPOM is a high molecular weight alkoxylated amine polymer that is not absorbed by the body. EDPOM in the diet poses no cumulative toxicological risk. Ecolab Inc. believes that sufficient information has been submitted to assess the hazards of EDPOM. Because EDPOM conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Ecolab Inc. believes there are no concerns for risks associated with cumulative effects.

E. Safety Determination

1. *U.S. population.* There are no adverse toxicological effects resulting from ingestion of trace amounts of EDPOM, so there is no need to determine aggregate risks, or to conduct a safety determination. EDPOM exposure due to its use as an inert ingredient in a food contact surface sanitizer is negligible. Ecolab Inc. believes that sufficient information has been submitted to assess the hazards of EDPOM. Because it conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, there are no concerns for risks associated with any potential exposure to adults.

2. *Infants and children.* Children are at no greater risk from exposure to EDPOM. Therefore, as with adults, a safety determination is not appropriate. Ecolab Inc. believes that sufficient information has been submitted to assess the hazards of EDPOM. Because it conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, there are no concerns for risks associated with any potential exposure to children.

E. International Tolerances

No Codex Maximum Residue Levels have been established for EDPOM.

[FR Doc. 00–8405 Filed 4–6–00; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–932; FRL–6499–7]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–932, must be received on or before May 8, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–932 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Treva C. Alston, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8373; e-mail address: alston.treva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–932. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–932 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–932. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 30, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the

analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Ecolab Inc.

PP 9E6028

EPA has received a pesticide petition (PP 9E6028) from Ecolab Inc., 370 N. Wabasha Street, St. Paul, MN 55102 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for urea in or on raw agricultural commodities, in processed commodities, and in or on meat and meat by products of cattle, sheep, hogs, goats, horses, and poultry, milk, and dairy products, eggs, seafood and shellfish, and fruits and vegetables when such residues result from the use of urea as a component of a food contact surface sanitizing solution for use in food handling establishments. The request is for an unlimited clearance. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Analytical method.* Because Ecolab Inc. is petitioning for an exemption from the requirement of a tolerance, an enforcement method for urea is not needed.

2. *Magnitude of residues.* The residues which transfer from the sanitized dish or utensil to food are not of toxicological significance.

B. Toxicological Profile

1. *Acute toxicity.* Urea is a direct food additive. Urea in concentrated form is severely irritating to the eyes and slightly irritating to the skin. It is essentially non-toxic for acute oral and dermal effects. From published literature values the acute oral LD_{50} in rats was determined to be 14,300 milligrams/kilograms (mg/kg). No value is assigned for dermal LD_{50} since it is essentially non-toxic via the dermal route.

2. *Genotoxicity.* Nothing in the available literature indicates that urea is a genotoxic material. There is no data that would indicate it has carcinogenic properties.

3. *Reproductive and developmental toxicity.* Nothing in the available literature indicates that urea is a developmental or reproductive toxin. It is generally recognized as safe and is a normal constituent in the human diet.

4. *Subchronic toxicity.* Nothing in the available literature indicates chronic exposure of urea products any adverse toxicological effects unless it is ingested at extremely high doses. Urea has been used as a feed supplement in cattle. Levels of 5% in their diet did not result in adverse effects. At dietary levels approaching 25%, symptoms of ammonia toxicity such as central nervous system (CNS) effects develop. At normal dietary intake levels in the human diet, no adverse effects result. Due to the rapid excretion of urea, prolonged low level exposure does not produce cumulative toxicity. Most of the urea in the body is generated endogenously since urea is the major pathway of nitrogen excretion in man. The typical concentration of urea excreted in the urine is approximately is 1,000 mg/deciliter (dl).

5. *Chronic toxicity.* Chronic exposure would not produce any additional effect over what is noted in subchronic exposure; therefore, no additional concerns are warranted. Nothing in the literature indicates that urea may be carcinogenic.

6. *Animal metabolism.*. Urea is a normal constituent of cellular metabolism in man.

7. *Endocrine disruption.* A review of information from the Agency for Toxic Substances and Disease Registry indicates that potential endocrine effects from exposure to urea have not been studied. To the best of our knowledge, nothing in the available literature suggests that urea acts as an endocrine disrupter or that it possesses intrinsic hormonal activity.

C. Aggregate Exposure

1. *Dietary exposure— i. Acute.* Due to the low toxicity, there are no toxicological concerns for urea. An acute dietary risk assessment is not appropriated.

ii.*Chronic.* Chronic exposure would not produce any additional effect beyond what is noted in acute exposure, therefore, no additional concerns are warranted.

iii. *Food— Chronic direct.* A typical adult ingests significant quantities of urea via the diet. An even larger amount is generated endogenously by the liver as a part of nitrogen excretion. Following ingestion, urea is absorbed by the gastrointestinal tract. The approximate concentration of urea in the plasma is 15 mg/dl. When urea is used as a component of a food contact surface sanitizer, the residue that would be introduced into food will be insignificant compared to the normal dietary intake and endogenous production. Based on this, there are no toxicological concerns resulting from exposures to residues of urea resulting from the use of sanitizing solutions.

2. *Drinking water— i. Acute.* Since there are no acute toxicological concerns for urea, an acute drinking water risk assessment is not required.

ii. *Chronic.* There are no toxicological concerns about the exposure of low concentrations of urea in the drinking water. Although it is possible that trace amounts of urea resulting from its use as a sanitizer may ultimately get into drinking water, no adverse health effects would result.

3. *Non-dietary exposure.* The potential for significant additional non-occupational exposure to the general population (including children) is unlikely.

D. Cumulative Effects

Well over 99% of the exposure to urea is expected to be via natural sources in the diet and through endogenous generation. Potentially small amounts of urea exposure will be the result of non-food uses. The amount of urea exposure resulting from indirect exposure to sanitizing solutions will be miniscule. Since urea in the diet poses no toxicological risk, the cumulative toxicity resulting from this additional exposure is negligible.

E. Safety Determination

1. *U.S. population.* Since there are no adverse toxicological effects resulting from normal dietary concentrations of urea, there is no need to determine aggregate risks, or to conduct a safety determination. Urea is generally recognized as safe and the incremental exposure due to its use as an inert in a food contact surface sanitizer is negligible.

2. *Infants and children.* As in adults, infants and children produce urea as a basic process of cellular metabolism. Children are at no greater "risk" from exposure to urea. Therefore, as with adults, a safety determination is not appropriate.

F. International Tolerances

No codex maximum residue levels have been established for urea.

2. Ecolab Inc.

PP 9E6029

EPA has received a pesticide petition (9E6029) from Ecolab Inc., proposing, pursuant to section 408(d) of FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the

requirement of a tolerance for nitric acid in or on raw agricultural commodities, in processed commodities, and in or on meat and meat byproducts of cattle, sheep, hogs, goats, horses, and poultry, milk, and dairy products, eggs, seafood and shellfish, and fruits and vegetables when such residues result from the use of nitric acid as a component of a food contact surface sanitizing solution for use in food handling establishments at 1,000 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1 *Analytical method.* Because Ecolab Inc. is petitioning for an exemption from the requirement of a tolerance, an enforcement method for nitric acid is not needed.

2. *Magnitude of residues.* The residues which transfer from the sanitized dish or utensil to food are not of toxicological significance.

B. Toxicological Profile

1. *Acute toxicity.* Nitric acid (HNO_3) in concentrated form is corrosive to the eyes and corrosive to the skin. In neutral solutions, nitric acid dissociates into nitrate ions (NO_3-). Nitrate is a normal constituent of the diet. Nitrate (as sodium nitrate) is allowed under 40 CFR 180.1001(d) as an inert ingredient in pesticide formulations applied to growing crops without limit in the formula. No data are available on the acute oral LD_{50} of nitric acid. The rat oral LD_{50} of sodium nitrate is approximately 2,000 mg/kg. Acute or short-term exposure at relatively high doses of nitrate may result in the formation of methemoglobin. This is caused by the reduction of nitrate to nitrite by microorganisms in the oral cavity or gastrointestinal tract. Nitrite ion is capable of rapidly oxidizing the ferrous ion to ferric ion in hemoglobin, producing methemoglobin. The body possesses enzymes capable of reduction of the methemoglobin back to hemoglobin.

2. *Genotoxicity.* Nothing in the available literature indicates that nitric acid or nitrate are considered to be genotoxic or mutagenic.

3. *Reproductive and developmental toxicity.* Nothing in the available literature indicates that nitric acid or nitrate are developmental or reproductive toxins. Sodium nitrate has been repeatedly tested for adverse reproductive effects. A series of teratology studies were conducted under the direction of the Food and Drug Administration (FDA) using mice, rats, hamsters and rabbits. Mice (doses up to 400 mg/kg), rats (doses up to 250 mg/kg), hamsters (doses up to 400 mg/kg), and rabbits (doses up to 250 mg/kg) were treated through the organogenesis phase of gestation and sacrificed just prior to parturition. There were no effects on fetal survival, reproductive parameters or incidence of malformations. Many other studies have corroborated these results. Some studies have demonstrated fetal death and other adverse effects, but only at doses that caused significant methemoglobinemia and maternal toxicity.

4. *Subchronic toxicity.* No studies are available on the long-term effects of nitric acid. In neutral solutions, nitric acid dissociates into nitrate ions. Data are available on long-term exposure to nitrate. Nitrate is a normal constituent of the diet. Studies on nitrate have focused on the effects on the blood, namely the induction of methemoglobin formation. Bacteria in the oral cavity and gastrointestinal tract reduce nitrate to nitrite (NO_2-). Approximately 5-10% of a typical dose of nitrate is converted into nitrite. Nitrite is capable of oxidizing the hemoglobin iron from a +2 valence to +3 valence resulting in the formation of methemoglobin. Methemoglobin is not capable of oxygen transport. Normal levels of methemoglobin in human blood range from 1-2% of the total hemoglobin content. Methemoglobin levels below 10% are asymptomatic. Animal studies have demonstrated that chronic, low level exposure to nitrate does not result in adverse health effects. Rats drinking water containing 2,000 mg/L sodium nitrate ($NaNO_3$) (corresponding to doses of up to 150-300 mg nitrate/kg/day) did not demonstrate increased levels of methemoglobin. Other studies reported similar findings. Long-term exposure at very high levels can result in an increased red blood cell turnover and subsequent hemosiderosis and hepatic atrophy. Animals exposed to relatively low levels of nitrate do not demonstrate any hematological or histopathological effects. Nitrate does not accumulate in the body. It is excreted primarily in the urine or is converted to nitrite via bacteria in oral cavity and gastrointestinal tract. Nitrite in the blood quickly reacts with hemoglobin. The toxicological profile of nitrate clearly demonstrates that, except for the cases of large bolus doses, nitrate is not a chronic toxicant. Residue levels and exposure limits should be based on the acute toxic effects rather than on long-term exposures.

5. *Chronic toxicity.* Chronic exposure would not produce any additional effect beyond what is noted in subchronic exposure, therefore, no additional concerns are warranted. Several studies have been conducted on nitrate. None have concluded nitrate is a carcinogen.

6. *Animal metabolism.* Nitrate is a normal constituent of the diet.

7. *Endocrine disruption.* A review of information from the Agency for Toxic Substances and Disease Registry indicates that potential endocrine effects from exposure to nitric acid or nitrate ion have not been studied. To the best of our knowledge, nothing in the available literature suggests that nitric acid acts as an endocrine disrupter or that it possesses intrinsic hormonal activity.

C. Aggregate Exposure

1. *Dietary exposure*— i. *Acute.* Nitric acid is converted into nitrate in aqueous solutions. Nitrate is a common constituent of the human diet. Nitrate is found mostly in green leafy vegetables such as beets (2,400 ppm), celery (2,300 ppm) and turnip greens (6,600 ppm). It is the acute toxicity, not chronic exposure that is a concern, especially in infants (0-3 months). Based on the acute toxicological effects of nitrate, an EPA IRIS oral reference dose (RfD) of 7.0 mg nitrate/kg/day was established. This number assumes that the infant is the most susceptible sub-population and an uncertainty factor of 1, since the results are based on actual human data.

ii. *Chronic.* Chronic exposure would not produce any additional effect beyond what is noted in acute exposure, therefore, no additional concerns are warranted.

iii. *Food.* A typical adult ingests significant quantities of nitrate in the diet. A typical adult's daily intake of nitrate is about 1.3 mg nitrate/kg/day. The dietary intake of nitrate accounts for the vast majority of all nitrate exposure. Using a worst case scenario, exposure to nitrate resulting from the use of nitric acid as a component of a hard surface sanitizer at 1,000 ppm would be 0.057 mg/kg/day for adults. This value is calculated by using standard FDA calculations for exposures to hard surface sanitizers.

2. *Drinking water*— i. *Acute.* Nitrate is commonly found in drinking water, most typically in well water. Although there have been several instances of chronic methemoglobinemia reported from people consuming water containing high nitrate levels, typically the concentration of nitrate is quite low.

The EPA has set the drinking water equivalent level (DWEL) for nitrate at 10 mg nitrate-nitrogen/L (44 mg nitrate/L).

ii. *Chronic.* There are no chronic toxicological concerns about the exposure of low concentrations (below 44 mg/L) of nitrate in the drinking water. Although it is possible that trace amounts of nitrate from a sanitizer may ultimately get into drinking water, no adverse health effects would result. The amount of "naturally occurring nitrate" in drinking water (especially well water) will greatly exceed the amount derived from sanitizing solutions. Since only a small fraction of the population drinks well water with elevated concentrations of nitrate, this is not a concern for the general population.

3. *Non-dietary exposure.* The potential for significant additional non-occupational exposure under the use proposed to the general population (including children) is unlikely.

D. Cumulative Effects

Well over 99% of the exposure to nitric acid/nitrate is expected to be via natural sources in the diet and drinking water. Trace amounts of nitric acid/nitrate exposure may result from non-food uses. The amount of nitric acid/nitrate exposure resulting from indirect exposure to sanitizing solutions will be virtually zero. Since nitric acid/nitrate in the diet poses little toxicological risk, the cumulative toxicity resulting from this additional exposure to hard surface sanitizers is negligible.

E. Safety Determination

1. *U.S. population.* Since there are no adverse toxicological effects resulting from normal dietary concentrations of nitric acid/nitrate ion, and the additional exposure from sanitizers is miniscule, there is no need to determine aggregate risks, or to conduct a safety determination.

2. *Infants and children.* Infants under 3 months of age are the most susceptible population; however, their diet is unlikely to be in contact with food contact surface sanitizers.

F. International Tolerances

No Codex maximum levels have been established for nitric acid.

[FR Doc. 00–8406 Filed 4–6–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–930; FRL–6499–4]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–930, must be received on or before May 8, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–930 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Thomas C. Harris, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9423; e-mail address: harris.thomas@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS Codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**–Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–930. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–930 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division

(7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–930. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 28, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Novartis Crop Protection, Inc.

PP 9F5047

EPA has received a pesticide petition (PP 9F5047) from Novartis Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of abamectin (avermectin B_1) and or its delta 8,9–isomer in or on the raw agricultural commodities plums at 0.01 parts per million (ppm), fruiting vegetables (except Cucurbits) group at 0.02 ppm, and leafy vegetables (except Brassica) group at 0.10 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of abamectin in plants is adequately understood and the residues of concern include the parent insecticide, abamectin or avermectin B_1, which is a mixture of a minimum of 80% avermectin B_{1a} and a maximum of 20% avermectin B_{1b} and the delta 8,9–isomer of the B_{1a} and of the B_{1b} components of the parent insecticide. Animal metabolism also has been studied but is not relevant to this petition, since the crops involved are not significant animal feed items. Under photolytic conditions in the laboratory and in the field, abamectin under goes isomerization around the 8,9–double bond to produce small amounts of the delta–8,9 isomer. The photo-oxidative half-life of the delta–8,9 isomer is 4.5 hours and that of avermectin B_{1a} is 6.5 hours.

2. *Analytical method.* The analytical method involves homogenization, filtration, partition and cleanup with analysis by HPLC-fluorescence detection. The methods are sufficiently sensitive to detect residues at or above the tolerances proposed. All methods have undergone independent laboratory validation as required by PR Notice 88–5.

3. *Magnitude of residues.* Abamectin was applied to leaf lettuce and spinach in eleven trials in the following states: Colorado, California (4) sites; Florida, Texas, Arizona leaf lettuce; South Carolina spinach; New Jersey spinach; and New York leaf lettuce. Nine field trials were conducted in the principal

plum growing areas of the United States including California (6), Michigan (1), Oregon (1) and Washington (1). This data support the proposed tolerances of 0.01 ppm for residues of abamectin on plums and 0.10 ppm on leafy vegetables (except Brassica) group. Tolerances and residue data on tomatoes and peppers support the fruiting vegetable (except Cucurbits) group tolerance.

B. Toxicological Profile

1. *Acute toxicity.* The data base includes the following studies: A rat acute oral study with a LD_{50} of 4.4 to 11.8 milligrams/kilograms (mg/kg) (males) and 10.9 to 14.9 mg/kg (females); an acute oral toxicity in the CF–1 mouse with the delta 8,9–isomer has LD_{50} greater than 80 mg/kg; a rabbit acute dermal study with a LD_{50} greater than 2,000 mg/kg; a rat acute inhalation study with a LC_{50} greater than 5.73 mg/L; a primary eye irritation study in rabbits which showed irritation; a primary dermal irritation study in rabbits which showed no irritation; a primary dermal sensitization study in guinea pigs which showed no skin sensitization potential; an acute oral toxicity study in monkeys with no observed adverse effects level (NOAEL) of 1.0 mg/kg based upon emesis at 2.0 mg/kg.

2. *Genotoxicity.* The ames assays conducted with and without metabolic activation were both negative. The V–79 mammalian cell mutagenesis assays conducted with and without metabolic activation did not produce mutations. In an alkaline elution/rat hepatocyte assay, abamectin was found to induce single strand DNA breaks without significant toxicity in rat hepatocytes treated *in vitro* at doses greater than 0.2 mM. This *in vitro* dose of 0.2 mM is biologically unobtainable *in vivo*, due to the toxicity of the compound. However, at these potentially lethal doses, *in vivo* treatment did not induce DNA single strand breaks in hepatocytes. In the mouse bone marrow assay, abamectin was not found to induce chromosomal damage. There are also many studies and a great deal of clinical and follow-up experience with regard to ivermectin, a closely similar human and animal drug.

3. *Reproductive and developmental toxicity.* A 2–generation study in rats with a NOAEL of 0.12 mg/kg/day in pups based upon retinal folds, decreased body weight, and mortality. The NOAELs for systemic and reproductive toxicity were 0.4 mg/kg/day. In the 2–generation reproduction study in rats with the delta 8,9–isomer, the NOAEL was 0.4 mg/kg/day and the NOAEL was greater than 0.4 mg/kg/day (HDT). An oral teratology study in the CF–1 mouse with a maternal NOAEL of 0.05 mg/kg/day based upon decreased body weights and tremors. The fetal NOAEL was 0.20 mg/kg/day based upon cleft palates. An oral teratology study with the delta 8,9–isomer in CF–1 mice with a maternal NOAEL of 0.10 mg/kg/day based upon decreased body weights. The fetal NOAEL was 0.06 mg/kg/day based upon cleft palate. An oral teratology study in rabbits with a maternal NOAEL of 1.0 mg/kg/day based upon decreased body weights and tremors. The fetal NOAEL was 1.0 mg/kg/day based upon clubbed feet. An oral teratology study in rats with a maternal and fetal NOAEL at 1.6 mg/kg/day, the highest dose tested (HDT). An oral teratology study with the delta 8,9–isomer with a maternal NOAEL in CF–1 mice that expressed P-glycoprotein greater than 1.5 mg/kg/day, the highest and only dose tested. No cleft palates were observed in fetuses that expressed normal levels of P-glycoprotein, but fetuses with low or no levels of P-glycoprotein had increased incidence of cleft palates.

4. *Subchronic toxicity.* A rat 8–week feeding study with a NOAEL of 1.4 mg/kg/day based upon tremors. A rat 14–week oral toxicity study with a NOAEL of 0.4 mg/kg/day, the highest dose tested. A dog 12–week feeding study with a NOAEL of 0.5 mg/kg/day based upon mydriasis. A dog 18–week oral study with a NOAEL of 0.25 mg/kg/day based upon mortality. A CD-1 mouse 84–day feeding study with a NOAEL of 4 mg/kg/day based upon decreased body weights.

5. *Chronic toxicity.* A rat 53–week oncogenicity feeding study, negative for oncogenicity, with a NOAEL of 1.5 mg/kg/day based upon tremors. A CD–1 mouse 94–week oncogenicity feeding study, negative for oncogenicity, with a NOAEL of 4 mg/kg/day based upon decreased body weights. A dog 53–week chronic feeding study, negative for oncogenicity, with a NOAEL of 0.25 mg/kg/day based upon mydriasis.

6. *Animal metabolism.* Rats were given oral doses of 0.14 or 1.4 mg/kg/day of abamectin or 1.4 mg/kg/day of the delta–8,9 isomer. Over 7 days, the percent excreted in urine were 0.3–1% of the administered dose of abamectin and 0.4% of the dose of the isomer. The animals eliminated 69–82% of the dose of abamectin and 94% of the dose of isomer in feces. In rats, goats and cattle, unchanged parent compound accounted for up to 50% of the total radioactive residues in tissues. The 24–hydroxymethyl derivative of abamectin was found in rats, goats and cattle treated with the compound and in rats treated with the delta–8,9 isomer, and the 3″–O-demethyl derivative was found in rats and cattle administered abamectin and in rats administered the isomer.

7. *Metabolite toxicology.* There are no metabolites of concern based on a differential metabolism between plants and animals. The potential hazard of the 24–hydroxymethyl or the 3″–O-demethyl animal metabolites was evaluated in through toxicology studies with abamectin, photolytic break down product, the delta 8,9–isomer.

8. *Endocrine disruption.* There is no evidence that abamectin is an endocrine disrupter. Evaluation of the rat multi-generational study demonstrated no effect on the time to mating or on the mating and fertility indices, suggesting no effects on the estrous cycle, on mating behavior, or on male or female fertility at doses up to 0.4 mg/kg/day, the highest dose tested. Furthermore, the range finding study demonstrated no adverse effect on female fertility at doses up to 1.5 mg/kg/day, the highest dose tested. Similarly, chronic and subchronic toxicity studies in mice, rats, and dogs did not demonstrate any evidence of toxicity to the male or female reproductive tract, or to the thyroid or pituitary based upon organ weights and gross and histopathologic examination. In the developmental studies, the pattern of toxicity observed does not seem suggestive of any endocrine effect. Finally, experience with ivermectin in breeding animals, including sperm evaluations in multiple species, shows no adverse effects suggestive of endocrine disruption.

C. Aggregate Exposure

Dietary exposure—i. Food. The acute dietary reference dose (RfD) is 0.0025 mg/kg/day from a 1–year dog study. The NOAEL is 0.25 mg/kg/day, and the lowest observed adverse effect level (LOAEL) is 0.50 mg/kg/day based on mydriasis (pupil dilation) which was observed after 1–week of dosing. An uncertainty factor of 100 to account for interspecies extrapolation (10x) and intraspecies variability (10x) was recommended. EPA has also retained the 10x safety factor for infants and children resulting in an aRfD of 0.00025 mg/kg for appropriate populations. EPA has determined that the studies conducted with the CF–1 mouse are not relevant to human safety assessment. A Monte Carlo acute dietary exposure analysis predicted the percent RfD used for the general population is 39.9% at the 99.9%. Children 1–6 years constitute the sub-population with the highest predicted exposure. The predicted percent RfD utilization for

this subgroup is 69.5% for 99.9% of the individuals.

EPA has established the RfD for abamectin at 0.0012 mg/kg/day from a 2–generation reproduction study in rats. The developmental NOAEL is 0.12 mg/kg/day, and the developmental LOAEL is 0.40 mg/kg/day based on decreased pup body weight and viability during lactation, and increased incidence of retinal rosettes in F2b weanlings. An uncertainty factor of 100 to account for interspecies extrapolation (10x) and intraspecies variability (10x) was recommended. EPA has also retained the 10x safety factor for infants and children resulting in an RfD of 0.00012 mg/kg/day for appropriate population dietary exposure analysis for abamectin in the most exposed population (non-nursing infants <1–year old) shows the percent RfD utilization to be only 20.0%. For the average U.S. population (48 contiguous states), dietary exposure for abamectin shows a minimal utilization of 9.4% of the RfD.

ii. Drinking water. EPA modeling data (Generic Expected Environmental Concentration/Screening Concentration In Ground Water (GENEEC/SCIGROW)) indicated the worst case estimated environmental concentrations (EEC) of 0.485 ug/L avermectin for acute and 0.239 ug/L for chronic exposure, both in surface water from the same use of abamectin on strawberries (the maximum use rate on the label). Refined modeling data pesticide root zone model exposure analysis modeling system (PRZM EXAM) indicate a worst case EEC of 0.88 ug/L for acute and 0.57 ug/L for chronic, both calculated for an abamectin use on strawberries grown on black plastic mulch. EPA noted and Novartis agrees that the certainty of the concentrations estimated for strawberries is low, due to uncertainty on the amount of run off from plant beds covered in plastic mulch and uncertainty on the amount of degradation of abamectin on black plastic compared to soil.

Novartis believes the estimates of abamectin exposure in water derived from the PRZM–EXAMS model are overstated for several reasons. The PRZM–EXAMS model was designed to estimate exposure from ecological risk assessments and thus use a scenario of a body of water approximating the size of a 1 hectare (2.5 acres) pond. This tends to overstate drinking water exposure levels for the following reasons.

a. Surface water source drinking water generally comes from bodies of water that is substantially larger than a 1 hectare (2.5 acres) pond.

b. The modeled scenario also assumes that essentially the whole basin receives an application of the pesticide. Yet in virtually all cases, basins large enough to support a drinking water facility will contain a substantial fraction of the area which does not receive pesticide.

c. There is often at least some flow in a river or turnover in a reservoir or lake of water persistence to the pesticide near the drinking water facility is usually over estimated.

d. Even assuming a reservoir is directly adjacent to an agricultural field, the agricultural field may not be used to grow a crop on which the pesticide in question is registered for use.

e. The PRZM–EXAMS modeled scenario does not take into account reductions in residue loading due to applications of less than the maximum application rate or no treatment of the crop at all (percent crop treated data).

Although there is a high degree of uncertainty to this analysis, this is the best available estimate of concentrations of abamectin in drinking water. Although the peak EEC of 0.88 ug/L slightly exceeds the acute DWLOC, 0.76 ug/L, considering the uncertain nature of the modeling estimate, Novartis does not expect aggregate acute exposure to avermectin will pose an unacceptable risk to human health.

2. Non-dietary exposure. Avermectin's registered residential use include indoor crack/crevice and outdoor application to lawns. For lawn use, EPA conducted a risk assessment for adult applicators and post application exposure to avermectin using EPA's Draft SOP's for residential exposure assessments. The highest predicted exposure oral hand to mouth for children, resulted in a calculated margin of exposure 14,000. For children's post application exposure to avermectin from indoor crack/crevice products, valid exposure studies demonstrate there is no exposure and therefore no risk for indoor residential scenarios. Short-and intermediate-term risk for registered uses do not exceed EPA's level of concern. Chronic exposure and risk for the residential use is not expected. Short-and intermediate-term exposure and risk for the registered uses do not exceed EPA's level of concern.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency considers "available information" concerning the cumulative effects of a particular pesticide residue and "other substances that have a common mechanism of toxicity." EPA stated in the FR notice published on April 7, 1999, that it does not have at this time available data to determine whether avermectin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment.

E. Safety Determination

1. U.S. population. Using the exposure assumptions described above and based on the completeness and reliability of the toxicity data base, Novartis has calculated aggregate exposure levels for this chemical. The calculations show that chronic exposure is below 100% of the RfD and the predicted acute exposure is below 100% of the acute RfD for all subpopulations. Novartis concludes that there is a reasonable certainty that no harm will result from aggregate exposure to abamectin residues.

2. Infants and children. The FQPA authorizes the employment of an additional safety factor of up to 10x to guard against the possibility of prenatal or postnatal toxicity, or to account for an incomplete data base on toxicity or exposure. EPA has chosen to retain the FQPA 10x safety factor for abamectin based on several reasons including evidence of neurotoxicity, susceptibility of neonatal rat pups, similarity to ivermectin, lack of a developmental neurotoxicity study, and concern for exposure to infants and children. It is the opinion of Novartis that a 3x safety factor is more appropriate for abamectin at this time. EPA has evaluated abamectin repeatedly since its introduction in 1985 and has found repeatedly that the level of dietary exposure is sufficiently low to provide ample margins of safety to guard against any potential adverse effects of abamectin. In addition, valid exposure studies demonstrate there is no exposure via indoor applications of abamectin products. Novartis states that the data base for abamectin is complete and that the developmental neurotoxicity study is a new and not yet initially required study. Additionally, there is more information regarding human risk potential than is the case with most pesticides, because of the widespread animal drug and human drug uses of ivermectin, the closely related analog of abamectin.

It is the opinion of Novartis that the use of a full 10x safety factor to address risks to infants and children is not necessary. The established chronic endpoint for abamectin in the neonatal rat is overly conservative. Similar endpoints for ivermectin are not used by the Food and Drug Administration to

support the allowable daily intake for ivermectin residues in food from treated animals. No evidence of toxicity was observed in neonatal rhesus monkeys after 14 days of repeated administration of 0.1 mg/kg/day highest dose tested in juvenile rhesus monkeys after repeated administration of 1.0 mg/kg/day, highest dose tested. The comparative data on abamectin and ivermectin in primates also clearly demonstrate the dose response for exposure to either compound is much less steep than that seen in the neonatal rat. Single doses as high as 24 mg/kg of either abamectin or ivermectin in rhesus monkeys did not result in mortality; however, this dose was more than two times the LD_{50} in the adult rat and more than 20 times the LD_{50} in the neonatal rat. The absence of steep dose response curve in primates provides a further margin of safety regarding the probability of toxicity occurring in infants or children exposed to avermectin compounds. The significant human clinical experience and widespread animal drug uses of ivermectin without systemically toxic, developmental, or postnatal effects supports the safety of abamectin to infants and children.

F. International Tolerances

Codex has established an abamectin Maximum Residue Level of 0.02 ppm for peppers. The fruiting vegetable tolerance of 0.02 ppm for abamectin is harmonized with Codex.

[FR Doc. 00–8263 Filed 4–6–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6571–8]

Proposed Administrative Agreement Pursuant to the Comprehensive Environmental Response Compensation, and Liability Act and the Resource Conservation and Recovery Act; Solvent Recovery Corporation, Kansas City, Kansas, Docket Nos. CERCLA–7–2000–0014 and RCRA–7–2000–0027

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), and Section 7003(d) of the Resource Conservation and Recovery Act ("RCRA"), notification is hereby given of a proposed administrative agreement concerning the Solvent Recovery Corporation ("Respondent") at 100 South 1st Street, Kansas City, Kansas ("Site"). Under the agreement, the Respondent agrees to perform response actions in connection with the release and threatened release of hazardous substances at the Site. Respondent will remove and properly dispose of several thousand containers of waste, contaminated soil, and a 20,000 gallon tank of material. The Respondent agrees to pay oversight costs incurred by the U.S. EPA pursuant to an Administrative Order on Consent ("Order") dated March 16, 2000. The settlement includes a covenant not to sue the settling party pursuant to Section 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a) for past response costs incurred by EPA in connection with the Site, which total approximately $60,000. This covenant not to sue shall take effect when all actions required by the Order have been completed and EPA has notified the Respondent, in writing, that the actions required by the Order have been completed.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the Kansas City, Kansas, Public Library, 625 Minnesota, Kansas City, Kansas 66101, and Office of Regional Hearing Clerk, EPA, 901 North 5th Street, Kansas City, KS 66101. Commenters may request an opportunity for a public meeting in the affected area in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

DATES: Comments must be submitted on or before May 8, 2000.

ADDRESSES: The proposed settlement is available for public inspection at Office of Regional Hearing Clerk, Environmental Protection Agency, 901 N. 5th Street, Kansas City, KS 66101. A copy of the proposed settlement may be obtained from Kathy Robinson, Regional Hearing Clerk, EPA, 901 N. 5th Street, Kansas City, KS 66101, telephone 913–551–7567. Comments should reference the Solvent Recovery Corporation, Kansas City, Kansas, Docket No. CERCLA 7–2000–0014 and Docket No. RCRA7–2000–0027 and should be addressed to Regional Hearing Clerk, EPA, 901 N. 5th Street, Kansas City, KS 66101.

FOR FURTHER INFORMATION CONTACT: Kristina Gonzales, Assistant Regional Counsel, EPA, 901 N. 5th Street, Kansas City, KS 66101, telephone: 913–551–7245.

Dated: March 21, 2000.

Gale Hutton,

Acting Regional Administrator, Region VII.

[FR Doc. 00–8535 Filed 4–6–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 30, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 6, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–XXXX.

Title: Interstate Telephone Service Provider Worksheet.

Form No.: FCC Form 159–W.

Type of Review: New collection.

Respondents: Business or other for-profit

Number of Respondents: 4,500.

Estimated Time Per Response: .25 hours or 15 minutes.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 1,125 hours.

Total Annual Cost: N/A.

Needs and Uses: The information supplied by will assist applicants in determining the correct amount of regulatory fees owed, and it will facilitate FCC verification that the correct fee amount has been paid.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–8593 Filed 4–6–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

March 30, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 6, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1 A–804, 445 Twelfth Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0483.

Title: Section 73.687 Transmission system requirements.

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 6.

Estimated Time per Response: 1.0 hours.

Total Annual Burden: 6 hours.

Total Annual Costs: $0.

Needs and Uses: Section 73.687(e)(3) requires TV broadcast stations operating on Channels 14 and 69 to take special precautions to avoid interference to adjacent spectrum land mobile operations. This requirement applies to all new Channel 14 and 69 TV broadcast stations and those authorized to change channel, increase effective radiated power (ERP), change directional antenna characteristics such that ERP increases in any azimuth direction or change location, involving an existing or proposed channel 14 or 69 assignment. Section 73.687(e)(4) requires these stations to submit evidence to the FCC that no interference is being caused before they will be permitted to transmit programming on the new facilities. The data is used by the FCC to ensure proper precautions have been taken to protect land mobile stations from interference. It will also both increase and improve service to the public by broadcasters and land mobile services operating in certain parts of the spectrum.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–8594 Filed 4–6–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–760]

Wireless Telecommunications Bureau Sets Comment Schedule for Petitions for Reconsideration of the Order on Reconsideration of the Fourth Report and Order in WT Docket No. 97–82

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document gives notice of a jointly filed petition for reconsideration of the Order on Reconsideration of the Fourth Report and Order in WT Docket No. 97–82 and sets an expedited schedule for filing oppositions.

DATES: Oppositions are due April 17, 2000.

ADDRESSES: Interested parties who choose to file by paper must file an original and four copies of their filing with the Office of the Secretary, Federal Communications Commission, TW B204, 445 12th Street, SW, Washington, DC 20554. In addition, parties should send two copies to Audrey Bashkin, Legal Branch, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th St. SW Washington, DC 20554, and one copy to ITS, at 1231 20th Street, NW, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Audrey Bashkin at (202) 418–0660. The fax number is (202) 418–0890.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released April 5, 2000. The complete text of the public notice is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW, Washington, D.C. 20554. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, D.C. 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov.*

1. Notice is hereby given that the parties listed have jointly petitioned the Commission for reconsideration of the Order on Reconsideration of the Fourth

Report and Order (*Order on Reconsideration*) in WT Docket No. 97–82, FCC 00–54, 65 FR 14213 (March 16, 2000). The *Order on Reconsideration* addresses petitions for reconsideration of the *C Block Fourth Report and Order*, 63 FR 50791 (September 23, 1998), in which the Commission modified the rules governing auctions of C block broadband Personal Communications Services ("PCS") spectrum.

2. In light of the auction schedule for the upcoming PCS C and F block auction ("Auction No. 35"), and the requests of certain commenters that the Commission resolve all issues related to Auction No. 35 in an expedited manner, the Wireless Telecommunications Bureau ("Bureau") has determined that good cause exists in this instance to alter the periods specified in § 1.429 of the Commission's rules for oppositions to petitions for reconsideration. Preliminary review of the petition indicates that it raises issues regarding the eligibility of certain parties to participate in Auction No. 35. To provide timely guidance to prospective bidders, we must close the record on reconsideration issues on an expedited schedule. We note also that there are pending petitions for reconsideration on spectrum cap issues. Accordingly, oppositions to petitions for reconsideration of the *Order on Reconsideration* shall be filed no later then April 17, 2000.

3. The petition listed reflects Commission records as of April 4, 2000. Any timely filed petitions subsequently posted on the Electronic Comment Filing System (ECFS), or received in paper form, will be subject to a filing schedule for oppositions similar to that adopted herein. In addition, the record of comments and other documents filed in response to the petitions of Nextel Communications, Inc. and SBC Communications Inc. regarding PCS C and F block rules will be incorporated into this docket. *See* PCS C and F Block Spectrum Public Notice, 65 FR 8363 (February 18, 2000). *See also* DA 00–318, released February 18, 2000. Commenters therefore need not restate their positions on C and F block issues in response to this petition for reconsideration.

Procedural Matters

4. Parties submitting oppositions should address the petitions for reconsideration in light of the requirements of 47 U.S.C. 309, 47 CFR 1.429 and any other public interest considerations. All oppositions should reference the docket number of this proceeding, *i.e.*, WT Docket No. 97–82.

5. This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200(a), 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

6. Parties may obtain the *Order on Reconsideration* and petitions for reconsideration at the FCC website, *http://www.fcc.gov/e-file/ecfs.html*. The petitions are also available for public inspection and copying in the Reference Center, Room CY A257, 445 12th Street, SW, Washington, DC 20554. Copies of the petitions are also available from ITS at 1231 20th Street, N.W., Washington, DC 20036, or by calling (202) 857–3800.

7. Oppositions to petitions for reconsideration may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Oppositions filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, parties should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic opposition by Internet e-mail. To get filing instructions for e-mail filings, parties should send an e-mail message to *ecfs@fcc.gov*, including "get form to <your e-mail address>" in the body of the message. A sample form and directions will be sent in response.

Parties Filing Petitions for Reconsideration in WT Docket 97–82

8. This list reflects the Commission's records as of April 4, 2000 of parties that have petitioned the Commission for reconsideration of the *Order on Reconsideration*. Sprint Spectrum L.P. and US WEST Wireless, LLC (April 4, 2000) (filing jointly).

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions & Industry Analysis Division.

[FR Doc. 00–8784 Filed 4–6–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2399]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

March 31, 2000.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY-A257, 445 12th Street, SW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to this petition must be filed by April 24, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Federal-State Joint Board on Universal Service (CC Docket No. 96–45). Access Charge Reform (CC Docket No. 96–262).

Number of Petitions Filed: 2.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–8591 Filed 4–6–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2400]

Petitions for Reconsideration of Action in Rulemaking Proceedings

April 3, 2000.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to this petition must be filed by April 24, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: In the Matter of Creation of a Low Power Radio Service (MM Docket No. 99–25).

Number of Petitions Filed: 18.

Subject: Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band (PR Docket No. 93–144).

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–8592 Filed 4–6–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 1, 2000.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106–2204:

1. SI Bancorp, Willimantic, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of Savings Institute, Willimantic, Connecticut.

B. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Niagara Bancorp, MHC, Lockport, New York, and Niagara Bancorp, Inc, Lockport, New York; to acquire 100 percent of the voting shares, and thereby merge with CNY Financial Corporation, Cortland, New York, and thereby indirectly acquire Cortland Savings Bank, Cortland, New York.

C. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Business Bancorporation, Inc., Minnetonka, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of The Business Bank, Minnetonka, Minnesota.

D. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Dai-Ichi Kangyo Bank, Limited, Tokyo, Japan; indirectly through Dai-Ichi Kangyo Fuji Trust & Banking Co., Ltd., Tokyo, Japan; to acquire 100 percent of the voting shares of DKF Trust Company (USA), New York, New York.

Board of Governors of the Federal Reserve System, April 3, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–8619 Filed 4–6–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 21, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. TrustCo Bank Corp NY, Schenectady, New York; to acquire Landmark Financial Corp., Canajoharie, New York, and thereby indirectly acquire Landmark Community Bank, and thereby engage in operating a savings association, pursuant to § 225.28 (b)(4)(ii) of Regulation Y. Comments regarding this application must be received not later than May 1, 2000.

2. Banco Bilbao Vizcaya Argentaria, S.A., Bilbao, Spain; to acquire Argentaria International Securities Inc., New York, New York, and thereby engage in securities brokerage services; riskless principal transactions; and private placement services, pursuant to § 225.28(b)(7) of Regulation Y.

Board of Governors of the Federal Reserve System, April 3, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–8620 Filed 4–6–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 10 a.m., Wednesday, April 12, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, DC 20551

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days

before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: April 5, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–8741 Filed 4–5–00; 11:46 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Public Information Collection Requirement Proposed To Be Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Administration on Aging (AoA), DHHS.

The Administration on Aging (AoA), Department of Health and Human Services, is submitting the following proposal for the collection of information in compliance with the Paperwork Reduction Act (Public Law 96–511): Title VI Program Performance Reports.

Title of Information Collection: Administration on Aging Title VI Program Performance Report.

Type of Request: Extension.

Use: To continue an existing information collection, Title VI Program Performance Report, from Title VI grantees to use in reporting information on programs funded by Title VI as required under Section 202(a)(19), Section 614(a)(3) of the Older Americans Act, as amended.

Frequency: Semi-Annually.

Respondent: Tribal Organizations and Non-profit Organizations representing Native Hawaiians.

Estimated Number of Responses: 227.

Estimated Burden Hours: 681.

Additional Information or Comments: The AoA announced the continuation of use of the Title VI Program Performance Reports in the **Federal Register** on November 9, 1999.

There were no responses to the 60-day notice.

Requests for a copy of the above mentioned Program Performance Report call M. Yvonne Jackson, Director, Office for American Indian, Alaskan Native and Native Hawaiian Programs, Administration on Aging, 330 Independence Avenue, SW, Washington, DC 20201; telephone (202) 619–2713. Written comments and recommendations regarding the Program Performance Report should be sent within 30 days of the publication of this notice to the following address: Office of Information and Regulatory Affairs, Attention: Allison Eydt, OMD Desk Officer, Office of Management and Budget, Washington, DC 20503.

Dated: March 15, 2000.

Jeanette C. Takamura,

Assistant Secretary for Aging.

[FR Doc. 00–8607 Filed 4–6–00; 8:45 am]

BILLING CODE 4154–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Breath Responsive Powered Air-Purifying Respirators (PAPRs); Notice of Acceptance and Evaluation

AGENCY: Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: This notice announces the criteria and standard test procedure that are being used by NIOSH for the evaluation of applications for approval of breath responsive powered air-purifying respirators (PAPRs).

FOR FURTHER INFORMATION CONTACT: Mr. Sam Terry, Team Leader, Respirator Certification Team, Respirator Branch, Division of Respiratory Disease Studies, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505, Telephone (304) 285–5907.

SUPPLEMENTARY INFORMATION: A breath responsive powered air-purifying respirator (PAPR) is designed to deliver filtered air to the user upon demand in order to match the respiratory requirements of the user. The requirements for the evaluation of PAPRs under Title 42, Code of Federal Regulations, part 84, do not address these design features. In accordance with 42 CFR 84.60 and 84.63, and the past practice of NIOSH, the Institute will evaluate a breath responsive PAPR submitted for approval under the requirements for PAPRs in 42 CFR part 84 that are applicable to its design. Design features of breath responsive PAPRs that cannot be addressed under the present PAPR standards will be evaluated under additional test procedures established to determine the quality, effectiveness and safety of the respirator. Since there is no applicable test for breath responsive PAPRs in the PAPR requirements, the Institute has determined that the airflow resistance for breath responsive PAPRs will be evaluated under the requirements of 42 CFR 84, subpart J, § 84.157, for pressure-demand supplied air respirators. For the convenience of the reader, § 84.157 is republished as follows:

§ 84.157 Airflow resistance test; Type C supplied-air respirator, pressure-demand class; minimum requirements.

(a) The static pressure in the facepiece shall not exceed 38 mm. (1.5 inches) of water-column height.

(b) The pressure in the facepiece shall not fall below atmospheric at inhalation airflows less than 115 liters (4 cubic feet) per minute.

(c) The exhalation resistance to a flow of air at a rate of 85 liters (3 cubic feet) per minute shall not exceed the static pressure in the facepiece by more than 51 mm. (2 inches) of water-column height.

NIOSH has developed Standard Test Procedure APRS–STP–0065–00 which can adequately test the quality, effectiveness and safety of this type of design feature. Copies of this procedure are available upon request.

Linda Rosenstock,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 00–8371 Filed 4–6–00; 8:45 am]

BILLING CODE 4160–18–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF–PA–HS–2000–03A]

Fiscal Year 2000 Discretionary Announcement of the Availability of Funds and Request for Applications for Nationwide Expansion Competition of Early Head Start; Correction

AGENCY: Administration for Children, Youth and Families, ACF, DHHS.

ACTION: Correction.

SUMMARY: This document contains a correction to the Notice that was published in the **Federal Register** on Tuesday, February 29, 2000.

On page 10799, the County column mistakenly lists the following counties in Iowa: Des Moines County, Ida County, Lee County, Louisa County, Lyon County, Monroe County, Sioux

County, and Wayne County. These counties are unserved and open for competition for Early Head Start Programs.

On page 10803 the State column mistakenly lists Nuckolls. Nuckolls is a county in Nebraska and should appear in the county column. The county is currently being served and is not open for competition to new Early Head Start programs.

On page 10804, in New York State, Westchester County, in the community column it should read "excluding White Plains, New York." The County is being served, except for White Plains. Only White Plains is open to competition for new Early Head Start programs.

On page 10806, for Rhode Island, Bristol County, the community of Barrington should be added to the communities of Bristol and Warren. In Rhode Island, Providence County, the City of Cranston and the towns of E. Providence and Central Falls should be added to the towns of: Burrillville, Johnston, N. Providence, Smithfield, N. Smithfield, Glocester, Scituate and Foster. All these communities are currently being served and are not open for competition to new Early Head Start programs.

On page 10808, in Texas, in the County column, Tarran is mispelled and should be corrected to read Tarrant County. This county is currently being served and is not open to competition to new Early Head Start programs.

FOR FURTHER INFORMATION CONTACT: The ACYF Operations Center at 1–800–351–2293 or send an email to *ehs@lcgnet.com*. You can also contact Judith Jerald, Early Head Start, Head Start Bureau at (202) 205–8074.

Dated: April 3, 2000.

Patricia Montoya,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 00–8605 Filed 4–6–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration on Developmental Disabilities Statement of Organization, Functions, and Delegations of Authority

This Notice amends Part K of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KC, Administration on Developmental Disabilities (ADD), 56 FR 42338, dated August 27, 1991. This Notice reflects a revised ADD mission statement to reflect current legislative references and a realignment of functions within the Office of ADD.

I. Delete KC.00 Mission in its entirety and replace with the following:

KC.00 Mission. The Administration on Developmental Disabilities (ADD) advised the Secretary, through the Assistant Secretary for Children and Families, on matters relating to individuals with developmental disabilities and their families. ADD serves as the focal point in the Department to support and encourage the provision of quality services to individuals with developmental disabilities and their families. ADD assists states, through the design and implementation of a comprehensive and continuing state plan, in increasing the independence, productivity and community inclusion of individuals with developmental disabilities. These state plans make optimal use of existing federal and state resources for the provision of services and supports to these individuals and their families to achieve these outcomes. ADD works with states to ensure that the rights of all individuals with developmental disabilities are protected.

ADD administers two formula grant programs, State Developmental Disabilities Councils and Protection and Advocacy Systems, and two discretionary grant programs, University Affiliated Programs and Projects of National Significance, including Family Support. These programs support the provision of services to individuals with developmental disabilities and their families. In concert with other components of ACF as well as other public, private, and voluntary sector partners, ADD develops and implements research, demonstration and evaluation strategies for discretionary funding of activities designed to improve and enrich the lives of individuals with developmental disabilities. In addition, ADD serves as a resource in the development of policies and programs to reduce or eliminate barriers experienced by individuals with developmental disabilities through the identification of promising practices and dissemination of information. ADD supports and encourages programs or services, which prevent developmental disabilities and manages initiatives involving the private and voluntary sectors that benefit individuals with developmental and other disabilities and their families.

II. Delete KC.10 Organization in its entirety and replace with the following:

KC.10 Organization. The Administration on Development Disabilities is headed by a Commissioner who reports directly to the Assistant Secretary for Children and Families. The Administration on Developmental Disabilities consists of:

Office of the Commissioner (KCA)
Program Operations Division (KCB)
Program Development Division (KCC)

III. Delete KC.20 Functions in its entirety and replace with the following:

KC.20 Functions. A. The Office of the Commissioner (OC) serves as the principal advisor to the Assistant Secretary for Children and Families, the Secretary, and other elements of the Department for individuals with developmental disabilities. OC provides executive direction and management strategy to ADD's components and establishes goals and objectives for ADD programs. The Deputy Commissioner assists the Commissioner in carrying out the responsibilities of the Office and acts as Commissioner in the absence of the Commissioner. The Staff within the office of the Commissioner plans, coordinates and controls ADD policy, planning, and management activities which include the development of legislative proposals, regulations and policy issuances for ADD. The Staff manages the formulation and execution of the program and operating budgets; provides administrative, personnel and information systems support services; serves as the ADD Executive Secretariat controlling the flow of correspondence; and coordinates with appropriate ACF components in implementing administrative requirements and procedures. The staff also coordinates interagency collaboration, program outreach, and convenor functions.

In coordination with the ACF Office of Public Affairs, OC develops a strategy for increasing public awareness of the needs of individuals with developmental disabilities and programs designed to address them.

B. Division of Program Operations (POD) is responsible for the coordination, management, and evaluation of the State Developmental Disabilities Councils Program and the Protection and Advocacy Grants Program, including the development of procedures and performance standards that ensure compliance with the Developmental Disabilities Assistance and Bill of Rights (DD) Act and improve the outcomes of Developmental Disabilities Councils and Protection and Advocacy Systems in increasing the independence, productivity and

community inclusion of persons with developmental disabilities.

The Division conducts routine and special analyses of state plans under the Basic State Grants Program, including an examination of priority area activities, to assure consistent application of ADD program goals and objectives. The Division conducts reviews of programs to ensure compliance with the DD Act and to improve program outcomes; and identifies and disseminates information regarding excellence in advancing the independence, productivity and community inclusion of people with developmental disabilities.

The Division initiates, executes, and supports the development of interagency, intergovernmental, and public-private sector agreements, committees, task forces, commissions, or joint funding efforts as appropriate.

The Division provides program and administrative guidance to regional offices on matters related to the implementation of the DD Act; and ensures timely and effective communication with the regional offices regarding program compliance, policy clarification, and the approval of required state plans and reports.

C. Division of Program Development (PDD) manages the discretionary grants and contracts mandated by the DD Act, and provides program development services. PDD originates cross-cutting research, demonstration and evaluation initiatives with other components of ADD, ACF, HHS, and other government agencies; and manages discretionary grants and contracts and assists in monitoring and evaluating discretionary grants at the national level.

The Division plans for and implements experimental program services based on advice from state and local organizations on program needs. The Division formulates and prepares annual demonstration and evaluation plans, coordinates and administers the University Affilatied Programs (UAP's) activities, and develops quality assurance criteria for the UAP Program.

The Division develops and initiates guidelines, policy issuances and actions with team participation by other components of ADD, ACF, HHS, and other government agencies to fulfill the mission and goals of the DD Act, as amended. The Division ensures the dissemination of project results and information produced by ADD grantees.

The Division coordinates national program trends with other ACF programs and HHS agencies; and studies, reviews and analyzes other federal programs providing services applicable to persons with developmental disabilities for the purpose of integrating and coordinating program efforts.

Dated: March 30, 2000.

Sue Swenson,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 00–8606 Filed 4–6–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90D–0529]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Guidance for Industry: Changes to an Approved NDA or ANDA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (PRA).

DATES: Submit written comments on the collection of information by May 8, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry: Changes to an Approved NDA or ANDA

On November 21, 1997, the President signed into law the FDA Modernization Act (the Modernization Act) (Public Law 105–115). Section 116 of the Modernization Act amended the Federal Food, Drug, and Cosmetic Act (the act) by adding section 506A (21 U.S.C. 356a), which describes requirements and procedures for making and reporting manufacturing changes to approved new drug applications (NDA's) and abbreviated new drug applications (ANDA's), to new and abbreviated animal drug applications, and to license applications for biological products.

The guidance provides recommendations to holders of approved NDA's and ANDA's who intend to make postapproval changes in accordance with section 506A of the act. The guidance covers recommended reporting categories for postapproval changes for drugs, other than specified biotechnology and specified synthetic biological products. Recommendations are provided for postapproval changes in: (1) Components and composition, (2) sites, (3) manufacturing process, (4) specification(s), (5) package, (6) labeling, and (7) miscellaneous changes.

Section 116 of the Modernization Act amended the act by adding section 506A, which includes the following provisions:

1. A drug made with a manufacturing change, whether a major manufacturing change or otherwise, may be distributed only after the applicant validates the effects of the change on the identity strength, quality, purity, and potency of the drug as these factors may relate to the safety or effectiveness of the drug (section 506A(a)(1) and (b) of the act). This section recognizes that additional testing, beyond testing to ensure that an approved specification is met, is required to ensure unchanged identity, strength, quality, purity, or potency as these factors may relate to the safety or effectiveness of the drug.

2. A drug made with a major manufacturing change may be distributed only after the applicant submits a supplement application to FDA and the supplemental application is approved by the agency. The application is required to contain information determined to be appropriate by FDA and include the information developed by the applicant when "validating the effects of the change" (section 506A(c)(1) of the act).

3. A major manufacturing change is a manufacturing change determined by FDA to have substantial potential to adversely affect the identity, strength, quality, purity, or potency of the drug as these factors may relate to the safety or effectiveness of the drug. Such changes include: (1) A change made in the qualitative or quantitative formulation of the drug involved or in the specifications in the approved application or license unless exempted by FDA by regulation or guidance; (2) a change determined by FDA by regulation or guidance to require

completion of an appropriate clinical study demonstrating equivalence of the drug to the drug manufactured without the change; and (3) other changes determined by FDA by regulation or guidance to have a substantial potential to adversely affect the safety or effectiveness of the drug (section 506A(2) of the act).

4. FDA may require submission of a supplemental application for drugs made with manufacturing changes that are not major (section 506A(d)(1)(B) of the act) and establish categories of manufacturing changes for which a supplemental application is required (section 506A(d)(1)(C) of the act). In such a case the applicant may begin distribution of the drug 30 days after FDA receives a supplemental application unless the agency notifies the applicant within the 30-day period that prior approval of the application is required (section 506A(d)(3)(B)(i) of the act). FDA may also designate a category of manufacturing changes that permit the applicant to begin distributing a drug made with such changes upon receipt by the agency of a supplemental application for the change (section 506A(d)(3)(B)(ii)of the act). If FDA disapproves a supplemental application, the agency may order the manufacturer to cease the distribution of drugs that have been made with the disapproved change (section 506A(d)(3)(B)(iii) of the act).

5. FDA may authorize applicants to distribute drugs without submitting a supplemental application (section 506A(d)(1)(A) of the act) and may establish categories of manufacturing changes that may be made without submitting a supplemental application (section 506A(d)(1)(C) of the act). The applicant is required to submit a report to FDA on such a change and the report is required to contain information the agency deems to be appropriate and information developed by the applicant when validating the effects of the change. FDA also may specify the date on which the report is to be submitted (section 506A(d)(2)(A) of the act). If during a single year an applicant makes more than one manufacturing change subject to an annual reporting requirement, FDA may authorize the applicant to submit a single report containing the required information for all the changes made during the year (annual report) (section 506A(d)(2)(B) of the act).

Section 506A of the act provides FDA with considerable flexibility to determine the information and filing mechanism required for the agency to assess the effect of manufacturing changes in the safety and effectiveness of the product. There is a corresponding need to retain such flexibility in the guidance on section 506A of the act to ensure that the least burdensome means for reporting changes are available. FDA believes that such flexibility will allow it to be responsive to increasing knowledge of and experience with certain types of changes and help ensure the efficacy and safety of the products involved. For example, a change that may currently be considered to have a substantial potential to have an adverse effect on the safety or effectiveness of the product may, at a later date, based on new information or advances in technology, be determined to have a lesser potential to have such an adverse effect. Conversely, a change originally considered to have a minimal or moderate potential to have an adverse effect on the safety or effectiveness of the product may later, as a result of new information, be found to have an increased, substantial potential to adversely affect the product. The guidance enables the agency to respond more readily to knowledge gained from manufacturing experience, further research and data collection, and advances in technology. The guidance describes the agency's current interpretation of specific changes falling into the four filling categories. Section 506A of the act explicitly provides FDA the authority to use guidance documents to determine the type of changes that do or do not have a substantial potential to adversely affect the safety or effectiveness of the drug product. The use of guidance documents allows FDA to more easily and quickly modify and update important information.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Federal Food, Drug, and Cosmetic Act Section	Number of Respondents	Number of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
506A(c)(1) and (c)(2) Prior approval supplement	594	3	1,744	120	209,280
506A(d)(1)(C), and (d)(3)(B)(i) CBE[2] in 30-day supplement	594	5	2,754	80	220,320
506A(d)(1)(B), (d)(1)(C), and (d)(3)(B)(ii) CBE[2] supplement	486	1	486	80	38,880
506A(d)(1)(A), (d)(1)(C), (d)(2)(A), and (d)(2)(B) Annual report	704	10	6,929	25	173,225
Total					641,705

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] CBE means changes being effected.

Section 506A(a)(1) and (b) of the act requires the holder of an approved application to validate the effects of a manufacturing change on the identity, strength, quality, purity, or potency of the drug as these factors may relate to the safety or effectiveness of the drug before distributing a drug made with the change. Under section 506A(d)(3)(A) of the act, information developed by the applicant to validate the effects of the change regarding identity, strength, quality, purity, and potency is required to be submitted to FDA as part of the supplement or annual report. Thus, no separate estimates are provided for these sections in table 1 of this document; estimates for validation requirements are included in the estimates for supplements and annual reports. The guidance does not provide recommendations on the specific information that should be developed by the applicant to validate the effect of the change on the identity, strength (e.g., assay, content uniformity), quality (e.g., physical, chemical, and biological properties), purity (e.g., impurities and degradation products), or potency (e.g., biological activity, bioavailability, bioequivalence) of a product as they may relate to the safety or effectiveness of the product.

Section 506A(c)(1) and (c)(2) of the act sets forth requirements for changes requiring supplement submission and

approval prior to distribution of the product made using the change (major changes). Under this section, a supplement must be submitted for any change in the product, production process, quality controls, equipment, or facilities that have a substantial potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as the factors may relate to the safety or effectiveness of the product. The applicant must obtain approval of a supplement from FDA prior to distribution of a product made using the change.

Based on data concerning the number of supplements received by the agency, FDA estimates that approximately 1,744 supplements will be submitted annually under section 506A(c)(1) and (c)(2) of the act. FDA estimates that approximately 594 applicants will submit such supplements, and that it will take approximately 120 hours to prepare and submit to FDA each supplement.

Section 506A(d)(1)(B), (d)(1)(C), and (d)(3)(B)(i) of the act sets forth requirements for changes requiring supplement submission at least 30 days prior to distribution of the product made using the change (moderate changes). Under this section, a supplement must be submitted for any change in the product, production process, quality controls, equipment, or facilities that has a moderate potential to have an adverse effect on the identity, strength, quality, purity or potency of the product as these factors may relate to the safety or effectiveness of the product. Distribution of the product made using the change may begin not less than 30 days after receipt of the supplement by FDA.

Based on the data concerning the number of supplements received by the agency, FDA estimates that approximately 2,754 supplements will be submitted annually under section 506A(d)(1)(B), (d)(1)(C), and (d)(3)(B)(i) of the act. FDA estimates that approximately 594 applicants will submit such supplements, and that it will take approximately 80 hours to prepare and submit to FDA each supplement.

Under section 506A(d)(3)(B)(ii) of the act, FDA may designate a category of changes for the purpose of providing that, in the case of a change in such category, the holder of an approved application may commence distribution of the drug upon receipt by the agency of a supplement for the change. Based on the data concerning the number of supplements received by the agency, FDA estimates that approximately 486 supplements will be submitted annually under section 506A(d)(3)(B)(ii) of the act. FDA estimates that approximately 486 applicants will submit such supplements, and that it will take approximately 80 hours to prepare and submit to FDA each supplement.

Section 506A(d)(1)(A), (d)(1)(C), and (d)(2)(A), and (d)(2)(B) of the act sets forth requirements for changes to be described in an annual report (minor changes). Under this section, changes in the product, production process, quality controls, equipment, or facilities that have a minimal potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product must be documented by the applicant in the next annual report.

Based on the data concerning the number of supplements and annual reports received by the agency, FDA estimates that approximately 6,929 annual reports will include documentation of certain manufacturing changes as required under section 506A(d)(1)(A), (d)(1)(C), (d)(2)(A), and (d)(2)(B) of the act. FDA estimates that approximately 704 applicants will submit such information, and that it will take approximately 25 hours to prepare and submit to FDA the information for each annual report.

In the **Federal Register** of June 28, 1999 (64 FR 34608), FDA published a proposed rule to implement section 116 of the Modernization Act by revising current regulations at 21 CFR 314.70 on supplements and other changes to an approved application. In that same issue of the **Federal Register** (64 FR 34660), FDA published a notice of availability of a draft guidance for industry entitled "Changes to an Approved NDA or ANDA." On August 19, 1999, FDA held a public meeting to discuss and receive comments on the proposed regulations and the draft guidance (64 FR 42625, August 5, 1999).

The period for public comment on the proposed regulations closed on September 13, 1999 and FDA is currently reviewing the comments and preparing a final rule. The comment period for the draft guidance closed on August 27, 1999, and FDA has considered these comments when preparing the guidance that is the subject of this request.

FDA published in the **Federal Register** of January 6, 2000 (65 FR 779), a 60-day notice requesting comments on the extension of the proposed collection of information in this guidance. In response to this notice, no comments were received by the agency.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Dated: March 30, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–8599 Filed 4–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Opthalmic Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Ophthalmic Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 11, 2000, 9:30 a.m. to 5 p.m., and May 12, 2000, 8:30 a.m. to 5 p.m.

Location: Hilton Hotel, Salons A and B, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Sara M. Thornton, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, SMT@CDRH.FDA.GOV, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12396. Please call the Information Line for up-to-date information on this meeting.

Agenda: On May 11, 2000, the committee will discuss, make recommendations, and vote on a premarket approval application (PMA) for reduction or elimination of hyperopia (+0.5 to +5.00 diopters of sphere) with astigmatism (+0.5 to +4.0 diopters of cylinder) using photorefractive keratectomy (PRK).

On May 12, 2000, the committee will discuss issues related to the design and development of clinical protocols to support claims of reduced posterior capsular opacification (PCO) for intraocular lenses (IOL's). The topics for discussion will include study,

methodology, controls, clinical endpoints, and data analysis. The committee will also discuss issues related to the development of guidance for refractive implants (phakic IOL's and corneal implants). The topics for discussion will include the scope of the proposed guidance, the maintenance of endothelial cell counts, and cataractogenesis due to the presence of an implant. As the materials become available, background information, questions for the panel, a bibliography for the PCO discussion, and an overview of the proposed clinical study section and questions for the panel for the refractive implants discussion will be made available to the public on FDA's website at http://www.fda.gov/ohrms/dockets/ac/cdrh00.htm#ophthalmicdevices.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 1, 2000. Oral presentations from the public will be scheduled between approximately 9:15 a.m. and 9:45 a.m. on May 11, 2000, and between approximately 8:45 a.m. and 9:15 a.m. on May 12, 2000. On May 11, 2000, near the end of the committee deliberations on the PMA, a 30-minute open public session will be conducted for interested persons to address issues specific to the submission before the committee. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 1, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 30, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–8600 Filed 4–6–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1128–N]

RIN 0938–AK01

Medicare Program; Process for Requesting Recognition of New Technologies and Certain Drugs, Biologicals, and Medical Devices for Special Payment Under the Hospital Outpatient Prospective Payment System

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: We expect to implement a prospective payment system for hospital outpatient services for the Medicare program on July 1, 2000. This system will recognize new technology as discrete payment groups within the ambulatory payment classification (APC) system. This payment system will also provide for additional payments to hospitals at amounts higher than the amounts that would otherwise be paid for certain specified items, such as: orphan drugs; drugs, biologic agents, and brachytherapy devices used for the treatment of cancer; radiopharmaceutical drugs and biologic products; and certain new or innovative medical devices. We have identified items or services for inclusion in the new technology APC groups, as well as items potentially eligible for special additional payments. This notice addresses the process that interested parties must use to submit additional items for consideration.

FOR FURTHER INFORMATION CONTACT: Diane Milstead, (410) 786–3355.

SUPPLEMENTARY INFORMATION: We expect to implement a prospective payment system (PPS) for hospital outpatient services for Medicare on July 1, 2000. One aspect of this system will be to develop a process to recognize new technologies on an ongoing basis in a timely manner, and to establish special payments for a number of specified items, in accordance with section 201 of the Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113), enacted on November 29, 1999. New technologies refer to services and items that have emerged since 1996, and therefore are not reflected in the cost data that are being used to develop our PPS. Additionally, section 201(b) of the BBRA requires us to make additional payments to hospitals for a period of 2 to 3 years for specific items at amounts higher than the amounts that would otherwise be paid under the hospital outpatient PPS for items in the following categories: (a) current orphan drugs, as designated under section 526 of the Federal Food, Drug, and Cosmetic Act; (b) current drugs, biologic agents, and brachytherapy devices used for the treatment of cancer; (c) current radiopharmaceutical drugs and biologicals; and (d) new or innovative medical devices, new drugs, and biologic agents, in instances when we were not paying for the item as a hospital outpatient service as of December 31, 1996, and when the cost is "not insignificant" in relation to the hospital outpatient PPS payment amount. In this context, "current" refers to those items for which we are making hospital outpatient payment on the first date the new PPS is implemented.

We will include these items and services within payment groups called ambulatory payment classifications (APCs), which will be used in the payment system for hospital outpatient services. In addition to the APC-related payments, however, hospitals may receive additional payment for specified items. In order to appropriately assign items to the new technology APCs and make special payments for the relevant drugs, biologicals, and medical devices, we must be able to identify the specific items and services, and ensure that HCFA Common Procedure Coding System (HCPCS) codes are established for them. To facilitate this activity, we have placed on our Internet site at *http://www.hcfa.gov/medicare/hopsmain.htm* the following information:

(a) A list of those items and services that we have already identified as potentially eligible for special payments or treatment as a new technology service; and

(b) The procedures interested parties must follow to bring to our attention additional items that may be eligible.

If you cannot access this information on our Internet site, you may request a paper copy by contacting Joan Briscoe in the Division of Practitioner and Ambulatory Care at (410) 786–4495.

Authority: Section 1833(t) of the Social Security Act (42 U.S.C. 1395l(t)).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 21, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Approved: March 31, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–8744 Filed 4–6–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–3028–N2]

Medicare Program; Notice of the Solicitation for Proposals to Expand the Medicare Lifestyle Modification Program Demonstration; Cancellation Notice

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Cancellation of notice.

SUMMARY: In the January 5, 2000 issue of the **Federal Register** (65 FR 495), we published a notice soliciting proposals to expand the Medicare Lifestyle Modification Program Demonstration to one additional, national multi-site cardiovascular lifestyle modification program. The original solicitation contained an inaccurate description of the intended population to be served by the proposed demonstration. We are withdrawing the request for solicitations of interest in order to correct this mistake, which may affect the types of organizations interested in participating and the composition of their applications, and expect to publish a new request at a later time with the correct description.

EFFECTIVE DATE: April 7, 2000.

FOR FURTHER INFORMATION CONTACT: Armen Thoumaian, Ph.D., (410) 786–6672.

Authority: Sections 402(a)(1)(G) and (a)(2) of the Social Security Amendments of 1967 (Public Law 90–248), as amended (42 U.S.C. 1395b–1(a)(1)(G) and (a)(2)).

(Catalog of Federal Domestic Assistance Program No. 93.779; Health Financing, Demonstrations, and Experiments)

Dated: March 31, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 00–8589 Filed 4–3–00; 4:55 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Mandatory Guidelines for Federal Workplace Drug Testing Programs (0930–0158, revision)

SAMHSA is requesting OMB approval for the Federal Drug Testing Custody and Control Form for Federal agency and federally regulated drug testing programs which must comply with the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29908) dated June 9, 1994,and for the information provided by laboratories for the National Laboratory Certification Program (NLCP). The Federal Drug Testing Custody and Control Form is used by all Federal agencies and employers regulated by the Department of Transportation to document the collection and chain of custody of urine specimens at the collection site, for laboratories to report results, and for Medical Review Offices to make a determination.

The Federal Drug Testing Custody and Control Form is being revised. Major changes include eliminating the split specimen copy, simplifying the chain of custody requirements, revising the outcomes for the laboratory test results, revising the collection instructions, and ensuring that the form follows the sequence of events. Prior to an inspection, a laboratory is required to submit specific information regarding its laboratory procedures to allow inspectors to become familiar with a laboratory's procedures before arriving at the laboratory.

The annual total burden estimates for the Federal Drug Testing Custody and Control Form, the NLCP application, the NLCP inspection checklist, and NLCP recordkeeping requirements is 1,790,664 hours.

Form/respondent	Burden/response (hrs.)	Number of responses	Total annual burden (hrs.)
Custody and Control Form:			
Donor	.08	7,093,000	567,440
Collector	.07	7,093,000	496,510
Laboratory	.05	7,093,000	354,650
Medical Review Officer	.05	7,093,000	354,650
Laboratory Application	3.00	2	6
Laboratory Inspection Checklist	3.00	136	408
Laboratory Recordkeeping	250.00	68	17,000
Total			1,790,664

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: March 31, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–8624 Filed 4–6–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This Notice is available on the internet at the following website: *http://wmcare.samhsa.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014, Fax: (301) 443–3031.

Special Note: Please use the above address for all surface mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory).

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400.

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745.

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000, (Formerly: Jewish Hospital of Cincinnati, Inc.).

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900.

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750.

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917.

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093, (Formerly: Cox Medical Centers).

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P. O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171.

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416.

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468.

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310.

Dynacare Kasper Medical Laboratories,* 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 780–451–3702/800–661–9876.

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609.

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4, 519–679–1630.

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267.

Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102–5037, 860–545–6023.

Integrated Regional Laboratories, 5361 NW 33rd Avenue, Fort Lauderdale, FL 33309, 954–777–0018, 800–522–0232, (Formerly: Cedars Medical Center, Department of Pathology).

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Laboratory Specialists, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc., MedExpress/National Laboratory Center), LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–728–4064, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.).

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734.

MAXXAM Analytics Inc.*, 5540 McAdam Rd., Mississauga, ON,, Canada L4Z 1P1, 905–890–2555, (Formerly: NOVAMANN (Ontario) Inc.).

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–383–5213.

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250.

NWT Drug Testing, 1141 E. 3900 South, Salt Lake City, UT 84124, 801–268–2431/800–322–3361, (Formerly: NorthWest Toxicology, Inc.).

One Source Toxicology Laboratory, Inc., 1705 Center Street, Deer Park, TX 77536, 713–920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134.

Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110, (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400/800–541–7891.
PharmChem Laboratories, Inc., 1505-A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200/800–446–5177.
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–215–8800, (Formerly: Harris Medical Laboratory).
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627.
Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600/800–882–7272.
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120/800–444–0106, (Formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories).
Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485, (Formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science).
Quest Diagnostics Incorporated, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 972–916–3376/800–526–0947, (Formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories).
Quest Diagnostics Incorporated, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006, (Formerly: SmithKline Beecham Clinical Laboratories, Doctors & Physicians Laboratory).
Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/800–877–7484, (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 412–920–7733/800–574–2474, (Formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories).
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010, (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories).
Quest Diagnostics Incorporated, 7470, Mission Valley Rd., San Diego, CA 92108–4406, 619–686–3200/800–446–4728, (Formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories).
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590, (Formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory).
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories).
San Diego Reference Laboratory, 6122 Nancy Ridge Dr., San Diego, CA 92121, 800–677–7995.
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130.
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 254–771–8379/800–749–3788.
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227.
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176.
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507.
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520, (Formerly: St. Lawrence Hospital & Healthcare System).
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273.
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 818–996–7300 / 800–492–0800, (Formerly: MetWest-BPL Toxicology Laboratory).
Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851 / 888–953–8851.

The following laboratory voluntarily withdrew from the NLCP program, effective March 31, 2000:

Quest Diagnostics of Missouri LLC, 2320 Schuetz Rd., St. Louis, MO 63146, 314–991–1311 / 800–288–7293, (Formerly: Quest Diagnostics Incorporated, Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division).

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 Federal Register, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,
Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 00–8309 Filed 4–6–00; 8:45 am]
BILLING CODE 4160–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4566–N–04]

Notice of Proposed Information Collection: Comment Request, Youthbuild Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* June 6, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Sheila E. Jones, Department of Housing and Urban Development, 451 7th Street, SW, Room 7230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Phyllis Williams, 202/708–2035 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Youthbuild Program.

OMB Control Number, if applicable: 2506–0142.

Description of the need for the information and proposed use: Information collected from NOFA will be used by HUD to select grant awardees as required by the HUD Reform Act. Information collected from reports will be used to monitor and evaluate progress of grantees and programs.

Agency form numbers, if applicable: Youthbuild Application, HUD–40202, SF 1199A, HUD–27054.

Members of affected public: Not-for profit institutions, and state or local governments.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of Respondents: 250.

Frequency of Reports: Semi-annually.

Hours of Response: hours per response—45.

Status of the proposed information collection: reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: February 18, 2000.

Joseph A. D'Agosta,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 00–8634 Filed 4–6–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–20]

Notice of Submission of Proposed Information Collection to OMB; Evaluation of Environmental Interventions Conducted Under HUD Lead-Based Paint Abatement Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: May 8, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Evaluation of Environment Interventions Conducted Under HUD Lead-Based Paint—Abatement Program.

OMB Approval Number: 2502—pending.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: To evaluate the use of community service employees trained as lead abatement workers rather than certified lead abatement contractors. This evaluation is required under HUD's FY 1999 and FY 2000 appropriations. Information will be gathered from 15 locally based organizations which refer housing units for abatement work and from 350 housing occupants. This will be a one-time information collection.

Respondents: Individuals or households, not-for-profit institutions.

Frequency of Submission: One-time.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
365		1		0.1		43

Total Estimated Burden Hours: 43.
Status: New collection pending approval.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 31, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–8615 Filed 4–6–00; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–19]

Notice of Submission of Proposed Information Collection to OMB; Application for Approval as FHA Lender and/or Ginnie Mae Mortgage-Backed Securities Issuer

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: May 8, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0005) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Application for Approval as FHA Lender and/or Ginnie Mae Mortgage-Backed Securities Issuer

OMB Approval Number: 2502–0005

Form Numbers: HUD 11701/92001, HUD–92001–B

Description of the Need for the Information and its Proposed Use: This information is collected from mortgagees upon their application for Approval as an FHA Lender and/or Ginnie Mae Mortgage-Backed Securities Issuer. The information is used to determine if the applicants' qualifications justify approval.

Respondents: Business or Other-for-Profit entities.

Frequency of Submission: On occasion of application.

Reporting Burden:

	Number of Respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–5378	4,130		1		0.8		3,438

Total Estimated Burden Hours: 3,438.
Status: Reinstatement, with change.

Autority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 3, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–8616 Filed 4–6–00; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–21]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request Lenders Qualification for Multifamily Accelerated Processing

AGENCY: Officer of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 14, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB approval number and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20410 (202) 395–7316.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review as

required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). HUD has requested OMB approval by April 21, 2000. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless collection displays a valid control number. This notice contains the following information:

(1) The title for the collection of information;

(2) A summary of the collection of information;

(3) A brief description of the need for the information and proposed use of the information;

(4) A description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information;

(5) An estimate of the total annual reporting and recordkeeping burden that will result from the collection of information;

This Notice also lists the following information:

Title of Proposed: Lender Qualifications for multifamily Accelerated Processing

OMB Control number, if Applicable: 2502–XXXX.

Agency Form Number, if Applicable: None.

Description of the Need for the Information and its Proposed Use: FHA-approved mortgagees (lenders) will be required to submit to HUD information to show that they have an experienced multifamily underwriter on staff, and that they have satisfactory record on lending on multifamily housing properties. These additional requirements will enable a qualified lender to take advantage of a mortgage application processing plan that should take substantially less processing time than traditional multifamily mortgage processing where HUD staff prepares many of the processing documents. The information includes (a) identification of the applicant lender; (b) names of those authorized to commit the lender to a mortgage insurance application; (c) copy of approval as an FHA multifamily mortgagee; (d) method of operation in multifamily lending; *e.g.* whether loans are serviced, and experience in construction loan administration; (e) Experience in multifamily lending, including both conventional lending and FHA insured mortgage lending; (f) experience of key personnel, including underwriter or underwriters; (g) and agreement that the lender will open its files and records to monitoring by HUD staff or one or more loans or originated by the lender under the MAP process.

Need and Use of the Information: The information is needed for HUD to qualify lenders to process applications for mortgage insurance under the Multifamily Accelerated processing guide. Once a lender is approved, its name will be posted on the web. Once approval is given, there are no requirements for further qualifications. Form Number (s): No form required. Qualified lenders will submit exhibits, such as resumes, and use a narrative description. Lender Qualifications are posted on the worldwide web. Chapter 2 of the MAP Guide is posted on worldwide web: The Netsite address is: http://@www.hud.gov/fha/mfh/map/mapguide.html

Respondents: Lenders which are approved FHA multifamily mortgagees.

Reporting burden:.

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
130		1		10		1,300

Status of The Proposed Information Collection: Emergency.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 3, 2000.

Wayne Eddins,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–8633 Filed 4–6–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–14]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: April 7, 2000.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless.

Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 30, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

[FR Doc. 00–8304 Filed 4–6–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Permit for the Incidental Take of the Houston Toad (*Bufo Houstonensis*); Bastrop County, TX

SUMMARY: Lorie Lopez (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit numbers TE–024873. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston Toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of one single family residence on Lot 41 of the Circle D Estates Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this

notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before May 8, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Scott Rowin, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request or by appointment only during normal business hours (8:00 to 4:30) at U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Austin, Texas at the above address. Please refer to permit number TE–024873 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Scott Rowin at the above U.S. Fish and Wildlife Service Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

Lorie Lopez plans to construct one single family residence on 0.757 acres platted as Lot 41, in the Circle D Estates Subdivision, Bastrop County, Texas. This action will eliminate less than one acre of habitat and result in an unquantifiable amount of indirect impact. The applicant proposes to compensate for this incidental take of the Houston Toad by donating $1,500.00 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Alternatives to this action were rejected because not developing the subject property with federally listed species present was not economically feasible and alteration of the project design would not alter the level of impacts.

Geoffrey L. Haskett,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–8625 Filed 4–6–00; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan for Issuance of an Endangered Species Act Section 10(a)(1)(B) Permit for the Incidental Take of the Houston Toad (*Bufo houstonensis*) During Construction of One Single Family Residence on 0.5 Acres of Each of 22 Lots in the Pine Oak Estates Subdivision, Bastrop County, Texas

SUMMARY: John Schuelke (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (ESA). The Applicant has been assigned permit number TE–023822–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of one single family residence each on Lots 5–8, 10–15, 22–24, 25A, 26A, 27A&B, 28A&B, 29A&B, 30A in the Pine Oak Estates Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before May 8, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Engelhard, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057, extension 242). Documents will be available for public inspection by written request or by appointment only during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service office, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Supervisor, U.S. Fish and Wildlife Service, Austin, Texas at the above address. Please refer to permit number TE–023822–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Engelhard at the above U.S. Fish and Wildlife Service office, Austin, Texas.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

John Schuelke proposes to construct one single family residence on 0.5 acres of each of twenty-two (22) lots (Lots 5–8, 10–15, 22–24, 25A, 26A, 27A&B, 28A&B, 29A&B, 30A) in the Pine Oak Estates Subdivision, Bastrop County, Texas. This action will eliminate less than eleven acres of habitat (0.5 acres or less per homesite) and result in indirect impacts within the lot. The applicant proposes to compensate for this incidental take of the Houston toad by providing $33,000.00 ($1,500.00 per homesite) to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Alternatives to this action were rejected because not developing the subject properties with federally listed species present was not economically feasible and alteration of the project design would not alter the level of impacts.

Geoffrey L. Haskett,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–8626 Filed 4–6–00; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare an Environmental Impact Statement/ Environmental Impact Report on the Restoration and Management Plan for Bair Island, Don Edwards San Francisco Bay National Wildlife Refuge, San Mateo County, CA, and Announcement of Public Scoping Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; correction.

SUMMARY: The Fish and Wildlife Service published a document in the **Federal Register** of March 27, 2000, concerning a request for comments on the scope and content of the Restoration and Management Plan for Bair Island and EIS/EIR. This document contained an incorrect date for the comment period.

FOR FURTHER INFORMATION CONTACT: Clyde Morris, Refuge Manager, Don Edwards San Francisco Bay National Wildlife Refuge, Newark, California, telephone (510) 792–0222.

Correction

In the **Federal Register** of March 27, 2000, in FR Doc. 00–7168, on page 16217, in the second column, correct the "Dates" caption to read:

DATES: A public scoping meeting will be held on April 27, 2000, from 7 p.m. to 9 p.m., see addresses for location. Written comments related to the scope and content of the Restoration and Management Plan and EIS/EIR should be received by the Service at the Newark address below by May 12, 2000.

Dated: March 29, 2000.

Toni Deery,

Manager, California/Nevada Operations Sacramento, California.

[FR Doc. 00–8367 Filed 4–6–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–600–00–2810–PG]

Northwest Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The next meeting of the Northwest Colorado Resource Advisory Council will be held on Friday, May 19, 2000, at the Bureau of Land Management in Grand Junction, Colorado.

DATES: Friday, May 19, 2000.

ADDRESSES: Bureau of Land Management, 2815 H Road, Grand Junction, Colorado 81506.

FOR FURTHER INFORMATION, CONTACT: Lynn Barclay, Bureau of Land Management (BLM), 455 Emerson Street, Craig, Colorado 81625; Telephone (970) 826–5096.

SUPPLEMENTARY INFORMATION: The Northwest Resource Advisory Council will meet on Friday, May 19, 2000, at the Bureau of Land Management, 2815 H Road, Grand Junction, Colorado. The meeting will start at 9 a.m. and includes discussion of mission of Wildlife and Land Exchange subcommittees, subcommittee assignments, working with United States Forest Service, and defining meeting procedures and processes.

The meeting is open to the public. Interested persons may make oral statements at the meetings or submit written statements at the meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak. Summary minutes of council meetings are maintained at the Bureau of Land Management Offices in Grand Junction and Craig, Colorado. They are available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: April 3, 2000.

Mary E. Trautner,

Acting Little Snake Field Office Manager.

[FR Doc. 00–8684 Filed 4–6–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Western Gulf of Mexico, Oil and Gas Lease Sale 177

AGENCY: Minerals Management Service, Interior.

ACTION: Availability of the proposed notice of sale.

Gulf of Mexico Outer Continental Shelf (OCS) Notice of Availability of the Proposed Notice of Sale for proposed Oil and Gas Lease Sale 177 in the Western Gulf of Mexico. This Notice of Availability is published pursuant to 30 CFR 256.29(c), as a matter of information to the public.

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, provides the affected States the opportunity to review the proposed Notice. The proposed Notice sets forth the proposed terms and conditions, of the sale, including minimum bids, royalty rates, and rentals.

The proposed Notice of Sale for Sale 177 and a "Proposed Sale Notice Package" containing information essential to potential bidders may be obtained from the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Telephone: (504) 736–2519.

The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for August 23, 2000.

Dated: March 24, 2000.

Thomas R. Kitsos,

Acting Director, Minerals Management Service.

[FR Doc. 00–8608 Filed 4–06–00; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 1, 2000. Pursuant to section 60.13 of 36 CFR part 60, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by April 24, 2000.

Beth M. Boland,

Acting Keeper of the National Register.

ILLINOIS

Adams County

Quincy Northwest Historic District, Roughly bounded by Broadway, N. Secod, Locust, and N. Twelfth Sts., Quincy, 00000414

Champaign County

Library—University of Illinois at Urbana-Champaign, (University of Illinois Buildings designed by Charles A. Platt MPS) 1408 W. Gregory Dr., Urbana, 00000413

Kane County

Spring—Douglas Historic District, Roughly Spring St. and Douglas Ave., bet. River Bluff Rd. and Kimball Ave. Elgin, 00000410

Kankakee County

Illinois Central Railroad Depot, 199 S. East Ave., Kankakee, 00000409

Windrose Site, Address Restricted, Bourbonnais, 00000412

Sangamon County

Fisher Building—Latham Block, 111, 113, and 115 N. Sixth St., Springfield, 00000411

MASSACHUSETTS

Hampshire County

Goodwin Memorial African Methodist Episcopal Zion Church, Woodside Ave., Amherst, 00000416

Suffolk County

Harvard Avenue Historic District, Roughly bounded by Linden St., Commonwealth Ave., Harvard Ave., and Park Vale Ave., Boston, 00000415

NEW YORK

Saratoga County

Arrowhead Casino Prehistoric Site, (Saratoga Lake-Fish Creek Area Archeological Sites MPS) Address Restricted, Saratoga Springs, 00000418

NORTH CAROLINA

Davidson County

First Reformed Church, 22 E. Center S., Lexington, 00000417

OHIO

Cuyahoga County

Falls River Rd., Falls Rd., Chagrin Falls, 00000421

Henn, Albert W., Mansion, 23131 Lake Shore Blvd., Euclid, 00000422

Morrow County

Benedict, Reuben, House, 1463 Cty. Rd. 24, Marengo, 00000419

Tuscarawas County

Lanning, T., & Co. Department Store, 226–228 Grant St., Dennison, 00000420

PUERTO RICO

Hormigueros Municipality

Torrens Bridge, (Spanish-American War in Puerto Rico MPS) PR 319., Hormigueros, 00000423

[FR Doc. 00–8652 Filed 4–6–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Draft Director's Order #47 Concerning Soundscape Preservation and Noise Management

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) is updating its current system of internal instructions. When these documents contain new policy or procedural requirements that may affect parties outside the NPS, this information is being made available for public review and comment. Draft Director's Order #47 establishes comprehensive operational policies and requirements to guide NPS soundscape preservation and noise management.

DATES: Written comments will be accepted until May 8, 2000.

ADDRESSES: Draft Director's Order #47 is available on the Internet at *http://www.nps.gov/refdesk/DOrders/index.htm*. Requests for copies and written comments should be sent to Wes Henry, National Park Service, Ranger Activities Division, 1849 C Street, NW., Room 7418, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Bill Schmidt at 202/501–9269.

SUPPLEMENTARY INFORMATION: The NPS is revising its operational policies and procedures to facilitate, to the fullest extent practicable, the protection, maintenance, or restoration of the natural soundscapes associated with units of the national park system. Natural sounds are vital to the natural function of many parks, and may provide valuable indicators of the health of various ecosystems. The natural sound environment is recognized as one of the resources found in parks, and is highly valued by most park visitors. Increasingly, even those parks that appear as they did in historical context no longer sound the way they once did. Natural sounds are slowly and inexorably being masked or obscured by a wide variety of human activities. Soundscape preservation and noise management is one dimension of the complex problem the NPS faces in preserving park resources unimpaired while providing appropriate enjoyment for current and future generations.

Dated: March 30, 2000.

Maureen Finnerty,

Associate Director, Park Operations and Education.

[FR Doc. 00–8613 Filed 4–6–00; 8:45 am]

BILLING CODE 4310–70–U

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Director's Orders 87, the Guidance for All Non-National Park Service Federal-Aid Roads and Highways in Units of the National Park Service

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: The National Park Service (NPS) has available for public review, the proposed guidance document for all non-NPS Federal-Aid roads and highways in units of the NPS. This information was developed to provide guidance to managers in all units of the National Park System who deal with requests from State and other Department of Transportation (DOT) agencies for NPS land to be used for non-NPS Federal-Aid roads and highways. At the end of the review period, this material will appear as a Director's Order for Non-NPS Federal-Aid Roads in Parks distributed to all NPS units. The Director's Order will provide policy guidance to park managers concerning all aspects of requests for land for these purposes, from the initial contact and decisions, through 4(f) determinations, statutory requirements and NPS policy, ultimately resulting in official notification of denial or consent for the request for a deed of easement for highway purposes. The guidance document is a concise treatment of the entire subject of non-NPS Federal-Aid roads in parks including but not limited to requests for new roads and widening of existing roads.

Copies of the proposed guidance document will be made available upon request by writing: National Park Service, Ranger Activity Division, 1849 C St. NW, Suite 7408, Washington, DC 20240, or by calling 202–208–4874. The draft document is also available on the NPS website the following URL: www.nps.gov/refdesk/DOrders/index.htm.

DATES: Public comments will be accepted on or before June 6, 2000.

ADDRESSES: Comments should be addressed to: Dick Young, Special Park Uses Program Manager, C/O Colonial NHP, P. O. Box 210, Yorktown, VA 23690.

FOR FURTHER INFORMATION CONTACT: Dick Young at 757–898–7846, or 757–898–3400, ext. 51.

Dated: March 31, 2000.

Chris Andress,

Chief, Ranger Activities Division.

[FR Doc. 00–8612 Filed 4–6–00; 8:45 am]

BILLING CODE 4310–70–U

INTERNATIONAL TRADE COMMISSION

[USITC SE–00–016]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: April 20, 2000 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: 1. Agenda for future meeting: none.

2. Minutes.

3. Ratification List.

4. Inv. Nos. 731–TA–406 and 408 (Review)(Electrolytic Manganese Dioxide from Greece and Japan)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on May 9, 2000.)

5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: April 3, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–8777 Filed 4–5–00; 2:06 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a Consent Decree in *U.S.* v. *Arnet Realty Co., et al.*, Civil Action No. 00–1294 (AJL) (D.N.J.) was lodged with the United States District Court for the District of New Jersey on March 17, 2000.

The proposed consent decree resolves claims asserted by the United States, on behalf of the U.S. Environmental Protection Agency ("EPA"), against: Madison Industries, Inc.; Old Bridge Chemicals, Co.; Arnet Realty Company and its two partners, Arnold Asman and Nettie Bzura; and Ciba Specialty Chemicals Water Treatments, Inc. (formerly CPS Chemical Company, Inc., a subsidiary of Ciba Specialty Chemicals Corporation. ("Settling Defendants") under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607. The claims sought to recover past response costs incurred at the CPS/Madison site ("Site") in Middlesex County, New Jersey. The proposed Consent Decree requires the Settling Defendants to reimburse the United States $500,000 in past response costs.

The Department of Justice will accept written comments relating to the proposed consent decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *U.S.* v. *Arnet Realty Co., et al.*, Civil Action No. 00–1294 (AJL) (D.N.J.), DJ #90–11–3–1525.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney for the District of New Jersey, 970 Broad Street, Newark, NJ 07102, or at the U.S. Environmental Protection Agency, Region II, 290 Broadway, New York, NY 10007–1866. A copy of the proposed Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044. When requesting a copy of the consent decree by mail, please enclose a check in the amount of $7.00 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 00–8603 Filed 4–6–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act ("CWA") and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")

Consistent with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Gulf States Steel, Inc.* was lodged with the United States District Court for the Northern District of Alabama on march 28, 2000 (CV–97–BU–2755–M). The United States filed a complaint pursuant to Section 309(b) of the Clean Water Act alleging that the defendant violated the CWA on numerous occasions. The proposed Consent Decree resolves the CWA liability of Gulf States Steel as alleged in the complaint. The United States also believes that the defendant is liable pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, for costs incurred and to be incurred by the United States Environmental Protection Agency at the Gulf States Steel Superfund Site in Gadsden, Alabama. The proposed Consent Decree resolves certain such liabilities.

Under the Consent Decree, Gulf States Steel agrees to pay a civil penalty to the United States in the amount of $100,000. In addition, Gulf States Steel agrees to operate its plant in compliance with its National Pollutant Discharge Elimination System (NPDES) Permit, and with the CWA. In addition, Gulf States Steel agrees to undertake certain Supplemental Environmental Projects (SEPs) in the amount of at least $206 million. These SEPs will result in significant pollution prevention or reduction in excess of Gulf States Steel's legal obligations. In addition, one SEP will result in Gulf States Steel purchasing ecologically-valuable land for perpetual preservation. Gulf States Steel also agrees to pay $6.54 million for cleanup of Lake Gadsden and Black Creek in Gadsden, Alabama. Gulf States Steel also agrees to purchase or donate appropriate real property for placement of sediments, if needed by EPA, Region 4.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, D.C. 20044; and refer to *United States* v. *Gulf States Steel, Inc.* DOJ Ref. # 90–5–1–1–4211.

The proposed settlement agreement may be examined at the Office of the United States Attorney, 1800 Fifth Avenue, North, Birmingham, Alabama 35203, and at the office of the Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, GA 30303. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $4.25 (25 cents per page reproduction costs).

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–8602 Filed 4–6–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 C.F.R. 50.7, notice is hereby given that a Consent Decree that would resolve the liability of Artemissa Farms, Inc., the last of four defendants in *United States of America* v. *Jane A. Young, et al.* Civil Action No. 95–4202–JPG (S.D. Ill.), was lodged with the United States District Court for the

Southern District of Illinois on March 15, 2000.

The proposed Consent Decree concerns alleged violations of the Clean Water Act, 33 U.S.C. 1311, as a result of the discharge of dredged and fill materials onto approximately 100 acres of wetlands, in Hamilton County, Illinois (the "Site"), which is alleged to constitute "waters of the United States."

The Consent Decree permanently enjoins Artemissa Farms, Inc. from taking any actions, or causing others to take any actions, which result in the discharge of dredged or fill material into waters of the United States. The Consent Decree further requires Artemissa Farms, Inc. to pay $5,000 into an interest-bearing Registry Account of the United States District Court for the Southern District of Illinois, to be used to conduct a wetland restoration on the Site.

The Consent Decree also requires Artemissa Farms, Inc., subject to the right of prior approval by the United States Army Corps of Engineers, to convey the Site to an appropriate entity for conservation after the wetland restoration is completed. The purpose of the conveyance is to provide a conservation area in which no development, excavation, or other disturbance will occur. To achieve that end, the conveyance shall contain several restrictions that are set forth in the Consent Decree.

The Department of Justice will receive written comments relating to the Consent Decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Attention: Steven E. Rusak, Senior Attorney, Environmental Defense Section, P.O. Box 23986, Washington, D.C. 20026–3986, and should refer to *United States of America* v. *Jane A. Young, et. al.*, DJ Reference No. 90–5–1–6–580.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court, United States Courthouse, 301 West Main Street, Benton, Illinois 62812.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment & Natural Resources Division, United States Department of Justice.

[FR Doc. 00–8601 Filed 4–6–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statues referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interest parties that the Department of Labor is withdrawing, from the date of this notice, the following General Wage Determinations:

NH000011—See NH000003
NH000012—See NH000003
NH000013—See NH000003
NH000014—See NH000003
NH000015—See NH000003
NH000016—See NH000003
IA000076—See IA000018

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effected unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

New General Wage Determination Decision

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and States:

Volume I
New York
NY0000
Volume II
Maryland
MD0000
Modificat
Determin
The nu
Governme
entitled "
Issued Un
Related A
by Volum
publicatio
in parenth
being mo
Volume I
New Hamp
NH00000
NH00000
New Jersey
NJ00000
New York
NY00000
NY00000
NY00001
NY00001
NY00001
NY00002
NY00002
NY00003
NY00004
NY00004
NY00007
NY00007
NY00007
Volume II
Maryland
MD0000
MD0000
Pennsylvan
PA00000
PA00000
PA00000
PA00001
PA00001
PA00002
PA00002
PA00003
Volume III
Alabama
AL00003
AL00005
Florida
FL00000
FL00000
FL00000
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and Related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the

seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 30th day of March, 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–8446 Filed 4–6–00; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10678, et al.]

Proposed Exemptions; H. Ray McPhail (Mr. McPhail) and the H. Ray McPhail Profit Sharing Plan (the Plan)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

H. Ray McPhail (Mr. McPhail) and the H. Ray McPhail Profit Sharing Plan (the Plan) Located in Atlanta, Georgia

[Exemption Application No. D–10678]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32826, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale (the Sale) of four parcels of unimproved real property (the Property) and loan (the Loan) from the Plan to Mr. McPhail,[1] a disqualified person with respect to the Plan, provided that the following conditions are met:

(1) With respect to the Sale:

(A) The terms and conditions of the Sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(B) The Sale will occur at a price which includes the greater of $270,000 or the Property's fair market value as established by a qualified, independent appraiser;

(C) The Sale Price will also include a premium of $30,000 (the Assemblage Value) due to Mr. McPhail's ownership of unimproved real property located adjacent to the Property;

(D) The Plan will pay no fees or commissions with respect to the Sale; and

(E) Mr. McPhail will pay $60,000 or 20% of the Sale Price in cash with the balance paid for by the Loan; and

(2) With Respect to the Loan:

(A) The interest rate on the Loan (the Interest Rate) will be 7%, a rate set by the Macon Bank for a real estate loan having terms similar to the Loan;

(B) The Loan terms are at least favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(C) The Loan is secured by a first security interest on the certain real property, which has been appraised by a qualified independent appraiser to have a fair market value not less than 150% of the principal amount of the Loan; and

(D) The outstanding balance of the Loan will never exceed 20% of the assets of the Plan throughout the duration of the Loan;

(E) The fair market value of the collateral remains at least equal to 150% of the outstanding principal balance plus accrued but not unpaid interest, throughout the duration of the Loan; and

(3) Should any employee of the Plan Sponsor become eligible for Plan participation, the new participant will be enrolled in another qualified retirement plan or the Loan will be immediately repaid.

Summary of Facts and Representations

1. The H. Ray McPhail Company (the McPhail Co.) is a Georgia company engaged in the purchase and sale of real estate. The McPhail Co. is solely owned

[1] Since Mr. McPhail is the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

by Mr. McPhail and is the sponsor of the Plan. The Plan is a defined contribution plan located in Atlanta, Georgia and having Mr. McPhail as its sole participant. The Plan had total assets of approximately $3,420,136 as of October 31, 1998.

2. The assets of the Plan include the Property. The Property comprises approximately 3.66 acres of unimproved real property located in Highlands, North Carolina. The Property is divided into four lots. Two of the lots are interior lots and the other two lots have frontage on Lake Sequoyah. The Property was acquired for $293,000 on November 23, 1994 from Elizabeth Nielson, an unrelated party.

3. Since its acquisition, the Property has not generated any income for the Plan. The Plan has, however, incurred certain expenses as a result of the Plan's ownership of the Property. In this regard, the applicant represents that the Plan has incurred a total of $3,169.33 in property taxes. In addition, the applicant represents that the Plan has incurred expenses in the amount of $1,685 for consulting fees resulting from the Plan's attempt to develop the Property.

4. The Property was appraised by Thomas Ringle (Mr. Ringle), an appraiser independent of the Plan and certified in the State of North Carolina. Mr. Ringle calculated the Property's fair market value (the Fair Market Value) using the sales comparison approach and compared the Property to similar unimproved properties located near the Property. Based on these comparisons, Mr. Ringle determined the Fair Market Value to be $270,000 as of June 9, 1998.

Mr. Ringle also calculated an additional value for the Property for purposes of the Sale (*i.e.*, the Assemblage Value). Mr. Ringle represents that the Assemblage Value is due to Mr. McPhail's ownership of unimproved real property located adjacent to the Property and reflects the higher value property owners are willing to pay for adjoining parcels of property. Based on his analysis of the Property, Mr. Ringle calculated that the Assemblage Value to be $30,000.

Mr. Ringle determined that the sales price of the Property for purposes of the Sale (the Sale Price) should be a sum equal to the Fair Market Value and the Assemblage Value. As a result, Mr. Ringle determined the Sale Price to be $300,000.

5. The applicant is proposing the sale of the Property from the Plan to Mr. McPhail for $300,000 (*i.e.*, the Sale). The applicant represents that Mr. McPhail proposes to pay 20% of the Sales Price in cash to the Plan as a down payment on the Property with the Plan loaning Mr. McPhail the remaining 80% balance (*i.e.*, the Loan). In this regard, the applicant represents that the Loan will be for 15 years at seven percent (7%) interest (*i.e.*, the Interest Rate). The Interest Rate represents an interest rate set by the Macon Savings Bank (Macon) located in Highlands, North Carolina, for a real estate loan having similar terms as the Loan. The applicant represents that Macon is an independent party with respect to the Plan.

As a result, Mr. McPhail proposes the following terms for the Sale: $60,000 in cash paid by Mr. McPhail to the Plan as a down payment on the Property; and $2,157.19 paid by Mr. McPhail to the Plan each month for 179 months. As security on the Loan, Mr. McPhail will pledge the Property and additional unimproved real property having a fair market value of $435,000 as of September 3, 1999, as determined by John Meadows of John Cleveland Realty, an independent real estate broker. The security interest securing the Loan will be a first security interest and will be perfected in accordance with North Carolina law. In addition, the property securing the Loan, will be insured against casualty loss for an amount which is not less than the Loan balance throughout the duration of the Loan. The Plan will be listed as a loss payee on the insurance policy.

6. The applicant represents that the proposed Sale is in the best interest of the Plan due to the high expense the Plan anticipates will be necessary for a sale of the Property to unrelated third parties. The applicant further represents that the Property was originally purchased by the Plan with the intent that the Plan would resell the Property to unrelated parties. The applicant notes that, subsequent to the purchase of the Property by the Plan, the Plan determined that the Property could not be sold to third parties without the expenditure of Plan assets on certain costly improvements, including the construction, grading and paving of a road.

The applicant additionally represents that the proposed Loan is protective of the Plan since the Loan will be secured with real property having a fair market value in excess of the Property and the Interest Rate is set according to current market rates for similar transactions.

Finally, the applicant represents that the Sale is administratively feasible since the proposed Sale will allow the Plan to liquidate its investment in the Property at a price which will maximize value to the Plan and is a one-time transaction in which the Plan will pay no fees or transaction costs.

7. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 4975(c)(2) of the Code because,

(1) With respect to the Sale:

(A) The terms and conditions of the Sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(B) The Sale will occur at a price which includes the greater of $270,000 or the Property's fair market value as established by a qualified, independent appraiser;

(C) The Sale Price will also include a premium of $30,000 (the Assemblage Value) due to Mr. McPhail's ownership of unimproved real property located adjacent to the Property;

(D) The Plan will pay no fees or commissions with respect to the Sale; and

(E) Mr. McPhail will pay $60,000 or 20% of the Sale Price in cash with the balance paid for by the Loan; and

(2) With Respect to the Loan:

(A) The interest rate on the Loan (the Interest Rate) will be 7%, a rate set by the Macon Bank for a real estate loan having terms similar to the Loan;

(B) The Loan terms are at least favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(C) The Loan is secured by a first security interest on the certain real property, which has been appraised by a qualified independent appraiser to have a fair market value not less than 150% of the principal amount of the Loan; and

(D) The outstanding balance of the Loan will never exceed 20% of the assets of the Plan throughout the duration of the Loan;

(E) The fair market value of the collateral remains at least equal to 150% of the outstanding principal balance plus accrued but not unpaid interest, throughout the duration of the Loan; and

(3) Should any employee of the Plan Sponsor become eligible for Plan participation, the new participant will be enrolled in another qualified retirement plan or the Loan will be immediately repaid.

For Further Information Contact: J. Martin Jara of the Department, telephone (202) 219–8883 (this is not a toll free number).

Triumph Capital Group, Inc., Located in Boston, MA

[Application No. D–10708]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective July 22, 1997, to the making, by an employee benefit plan subject to the Act (the Plan), of capital contributions to any private equity fund (the Triumph Fund) that is organized, sponsored and/or managed by Triumph Capital Group, Inc. and/or any of its affiliates (collectively, Triumph) pursuant to a contractual obligation by a Plan having an interest in the Triumph Fund.[2]

This proposed exemption is subject to the following conditions:

a. At the time the Plan undertakes the obligation to make such capital contributions (the Determination Date), the Triumph Fund is not a party in interest with respect to the Plan.

b. The decision to make a capital contribution to a Triumph Fund is made on behalf of the Plan by a Plan fiduciary which is independent of and unrelated to Triumph and the portfolio company whose interest is acquired by the Triumph Fund.

c. Triumph does not otherwise provide investment advice as a fiduciary to the Plan, within the meaning of the Department's regulations at 29 CFR 2510.3–21(c), with respect to such Plan's assets that are invested in the Triumph Fund.

d. At the Determination Date, the Plan has aggregate assets that are in excess of $50 million; provided, however, that in the case of:

(1) Two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Plans), whose assets are invested in a Triumph Fund through a group trust, an insurance company pooled separate account or any other form of entity the assets of which are "plan assets" under the Department's regulations at 29 CFR 2510.3–101 (the Plan Asset Regulation), the foregoing $50 million requirement shall be satisfied if such trust, separate account, or other entity has aggregate assets which are in excess of $50 million, provided further that the fiduciary responsible for making the investment decision on behalf of such group trust, insurance company pooled separate account, or other entity has—

i. Full investment responsibility[3] with respect to the plan assets invested therein; and

ii. Total assets under its management and control, exclusive of the assets invested in the Triumph Fund, which are in excess of $100 million, for Triumph Funds established after the date this notice of proposed exemption is published in the **Federal Register**.

(2) Two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Plans), whose assets are invested in a Triumph Fund through a master trust or any other entity the assets of which are "plan assets" under the Plan Asset Regulation, the $50 million requirement shall in any event be satisfied if such trust or other entity has aggregate assets which are in excess of $50 million, provided, further, that, in the case of a Triumph Fund established after the date the notice granting the exemption is published in the **Federal Register**, in addition to the $50 million requirement, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, then such fiduciary has total assets under its management and control, exclusive of the assets invested in the Triumph Fund, which are in excess of $100 million.

e. The Triumph Fund is a party in interest with respect to the Plan solely by reason of a relationship to a portfolio company which is a service provider to a Plan, as described in Section 3(14)(H) or (I) of the Act, including a fiduciary with respect to such Plan.

f. The capital commitment of the Plan (together with the capital commitments of any other Plans maintained by the same employer, controlled group of corporations or employee organization) with respect to the Triumph Fund, does not exceed 15 percent of the total capital commitments made by all investors with respect to such Triumph Fund, determined at the later of (i) the Determination Date, or (ii) the date on which the Triumph Fund first becomes a party in interest with respect to such Plan.

g. At the Determination Date the percentage of the Plan's assets committed to be invested in the Triumph Fund does not exceed 5 percent of the Plan's total assets.

h. At the Determination Date, a Plan's aggregate capital commitment to all Triumph Funds does not exceed 25 percent of the Plan's total assets.

i. The Plan receives the following initial and ongoing disclosures with respect to the Triumph Fund;

(1) A copy of the private placement memorandum applicable to the Triumph Fund or another comparable document containing substantially the same information;

(2) A copy of the limited partnership or other agreement establishing the Triumph Fund;

(3) A copy of the subscription agreement applicable to the Triumph Fund, if any;

(4) Copies of this proposed exemption and the final exemption, if granted, once such documents are published in the **Federal Register**; and

(5) Periodic, but no less frequently than annually, reports relating to the overall financial position and operational results of the Triumph Fund, including copies of the Triumph Fund's annual financial statements.

j. With respect to capital contributions made to a Triumph Fund by a Plan after the date this proposed exemption is granted, Triumph maintains or causes to be maintained, for a period of six (6) years from the date of the transaction, the records necessary to enable the persons described in paragraph (k) to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred, if due to circumstances beyond the control of Triumph, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest, other than Triumph, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (k).

k. (1) Except as provided in paragraph (k)(2) and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (j) are unconditionally available at their customary location for examination during normal business hours by—

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[2] As discussed herein, Triumph Funds are generally expected to be organized as venture capital operating companies that are managed by Triumph.

[3] For purposes of this exemption, the term "full investment responsibility" means that the fiduciary responsible for making the investment decision has and exercises discretionary management authority over all of the assets of the group trust or other plan assets entity.

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any fiduciary of a Plan which has an interest in the Triumph Fund and has the authority to acquire or dispose of the interest of the Plan in the Triumph Fund, or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of any Plan which has an interest in the Triumph Fund, or duly authorized representative of such participant or beneficiary.

(2) None of the persons described in paragraph (k)(1)(B) and (k)(1)(C) shall be authorized to examine trade secrets of Triumph or commercial or financial information which is privileged or confidential.

Effective Date: If granted, this proposed exemption will be effective as of July 22, 1997.

Summary of Facts and Representations

1. Triumph Capital Group, Inc., is a Delaware corporation which, together with its affiliates (collectively referred to herein as "Triumph") has organized, sponsored and/or managed six (6) private equity (or high-yield debt) funds, involving total capital commitments of approximately one (1) billion dollars. The investors in the Triumph Funds are primarily sophisticated institutional investors, including employee benefit plans that are subject to the Act, private foundations, government plans, endowments and other tax exempt organizations, and a few wealthy individuals. The applicant represents that private equity funds, such as the Triumph Funds, allow Plans, particularly those having significant asset bases, to achieve greater diversification by asset class. As such, many of the investors in the existing Triumph Funds, and many potential investors in future Triumph Funds, will be Plan investors that are covered by the Act.

2. Each Triumph Fund in which any Plan invests is organized and operated so that the assets of such Triumph Fund will not be deemed to be "plan assets" under the Plan Asset Regulation. In most cases, this results from the fact that the Triumph Fund is operated in a manner which causes such Fund to qualify as a venture capital operating company.[4] In some cases, it may be the result of the fact that the equity participation in the Triumph Fund by benefit plan investors is not significant (*i.e.*, 75 percent or more of the equity interest in the entity is held by non-benefit plan investors).[5]

3. The Triumph Funds have typically been structured as limited partnerships with Triumph serving as general partner and, in some cases, having an interest as limited partner. (Triumph Funds organized in the future may be organized using different structures, such as limited liability companies.) The Triumph Funds are managed by Triumph which receives a pre-specified management fee as well as a pre-specified incentive allocation after investors have received distributions in excess of their capital contributions plus a pre-specified minimum rate of return. Because the Triumph Funds are generally expected to be organized as venture capital operating companies, the applicant represents that none of the Triumph Funds will hold "plan assets" and that the compensation paid to Triumph by the Triumph Funds will not be subject to the prohibitions under the Act.[6]

One of Triumph's more recent funds, Triumph Partners III, L.P., has aggregate capital commitments of approximately $595,550,000 from 49 individual and institutional investors. Of the institutional investors, 6 investors are Plans that are covered under the provisions of the Act. These Plans have made a total capital commitment to Triumph Partners III, L.P. of $170,300,000.

4. Triumph Funds typically involve multiple closings with investors making their investment commitments (and therefore having a Determination Date) over a six to nine month period. Because of this staging, Triumph proposes, for purposes of the 15% limit contained in condition (f) above, to test each Plan investor's capital commitment with respect to the Triumph Fund in relation to the total capital commitments made by all the investors with respect to such Triumph Fund, at the *later* of (a) the Determination Date, or (b) the date on which the Triumph Fund first becomes a party in interest with respect to such Plan investor.

Each investor in a Triumph Fund, including each Plan investor, enters into a binding commitment to make capital contributions to the Triumph Fund in an amount specified by the investor. However, the investors' capital commitments typically are not funded at the outset. Rather, the capital is drawn down over time as the Triumph Fund identifies and makes its venture capital and other investments. Generally, capital is called down in installments ranging from 2.5 percent to 10 percent of the total commitment. In most cases, all of the capital commitments will have been drawn down within 3 to 5 years of the establishment of the Triumph Fund.

5. The Triumph Funds' investments include a wide variety of portfolio companies.[7] Specifically, the Triumph Funds may acquire interests in portfolio companies which are involved, either directly or through subsidiaries, in various aspects of the financial services industry. Triumph believes that the flexibility to acquire such investments is necessary to enable the Triumph Funds to maximize investment opportunities and investment returns. In Triumph's view, business opportunities can arise in connection with start-up or later-stage companies (including spinoffs and management buy-outs of existing

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[4] The Department's regulation at 29 CFR 2510.3–101(c) defines the term "operating company" as an entity that is primarily engaged, directly or through a majority-owned subsidiary or subsidiaries, in the production or sale of a product or service other than the investment of capital. The term "operating company" includes a "venture capital operating company."

29 CFR 2510.3–101(d) provides, in part, that an entity is a "venture capital operating company" if at least 50 percent of its assets are invested in venture capital investments, and the entity, in the ordinary course of its business, actually exercises management rights with respect to one or more operating companies in which it invests. 29 CFR 2510.3–101(d)(3) explains that a venture capital investment is an investment in an operating company (other than a venture capital operating company) as to which the investor has or obtains management rights. The term "management rights" is defined under 29 CFR 2510.3–101(d)(3)(ii) to mean contractual rights directly between the investor and an operating company to substantially participate in, or substantially influence the conduct of, the management of the operating company.

[5] The Department's regulation at 2510.3–101(f)(1) states, in pertinent part, that equity participation in an entity by benefit plan investors is "significant" on any date, if immediately after the most recent acquisition of any equity interest in the entity, 25 percent or more of the value of any class of equity interests in the entity is held by benefit plan investors.

[6] The Department is providing no opinion with regard to whether a Triumph Fund is a venture capital operating company or whether the equity participation by Plans investing in a Triumph Fund is not significant. In addition, the Department is not expressing any views with respect to the compensation that is paid to Triumph by a Triumph Fund.

[7] According to the applicant, the term "portfolio company" refers to each of the operating companies in which a private equity fund has made an investment. Thus, for example, when a private equity fund, such as a Triumph Fund, makes an investment in a start-up, high tech company, that company becomes one of the private equity fund's portfolio companies and will remain so as long as the private equity fund retains its investment in that high tech company. Similarly, if a private equity fund acquires an interest in an investment management firm, the investment management firm will become a portfolio company of the private equity fund.

business operations) in virtually any type of business.

6. Triumph Funds may acquire interests in portfolio companies that are involved in providing money management services, brokerage services or other types of services which may be utilized by Plans and institutional investors. The portfolio company may be, or may become, a party in interest with respect to one or more Plans which hold an interest in the Triumph Fund when such portfolio company, or any subsidiary thereof, performs services for a Plan. The services may include fiduciary services (*e.g.*, management of assets of the Plan other than those invested in a Triumph Fund). In no event will the portfolio company or its subsidiary act in a fiduciary capacity with respect to the assets of the Plan that are invested in the Triumph Fund.

If the Triumph Fund owns, directly or indirectly, a 10 percent or more interest in a service provider to a Plan, Triumph notes that the Fund will become a party in interest with respect to such Plan under section 3(14)(H) or (I) of the Act.[8] Since a Triumph Fund frequently purchases a 10 percent or more interest in a portfolio company, Triumph represents that it is possible that a Triumph Fund could become a 10 percent or more owner of a service provider and a party in interest with respect to each Plan as to which the portfolio company (or one of its subsidiaries) is a service provider. Once a Triumph Fund becomes a party in interest with respect to a Plan, Triumph states that the Plan would be prohibited from engaging in any transaction with that Triumph Fund.

If a Triumph Fund were to become a party in interest with respect to a Plan, Triumph is concerned that a capital contribution made by the Plan subsequent to the Triumph Fund's becoming a party in interest would violate section 406(a)(1)(D) of the Act notwithstanding the fact that the capital contribution is being made pursuant to a pre-existing binding contractual commitment made by the Plan at a time when the Triumph Fund was not a party in interest. Therefore, to resolve these potential technical violations of the Act, Triumph has requested an administrative exemption from the Department.[9]

7. The requested exemption is subject to a number of conditions that will apply both retroactively and prospectively. First, the Triumph Fund's party in interest status will, in all cases, arise after the Determination Date, *i.e.*, after the Plan investor has made a binding commitment to invest in the Triumph Fund, including its commitment to make future capital contributions to the Triumph Fund. Second, the decision to undertake the obligation to make a binding commitment must be made on behalf of the Plan by a Plan fiduciary which is independent of and unrelated to Triumph and the portfolio company. Third, Triumph must not otherwise provide investment advice to the Plan, within the meaning of the Department's regulation at 29 CFR 2510.3–21(c) (defining when an investment adviser to a plan becomes a fiduciary by reason of the advice), with respect to such Plan's assets that are invested in the Triumph Fund. Fourth, at the Determination Date, the Plan must have aggregate assets that are in excess of $50 million, subject to special rules addressing investments in a Triumph Fund by entities holding the assets of multiple plans, such as group trusts and master trusts. Fifth, at the later of the Determination Date or the date on which the Triumph Fund first becomes a party in interest with respect to such Plan investor, the capital commitment of the Plan (together with the capital commitments of any other Plans maintained by the same employer, controlled group of corporations, or employee organization) with respect to the Triumph Fund, must not exceed 15 percent of the total capital commitments with respect to such Triumph Fund. Sixth, at the Determination Date, the percentage of the Plan's assets committed to be invested in the Triumph Fund must not exceed 5 percent of the Plan's total assets. Seventh, at the Determination Date, a Plan's aggregate capital commitment with respect to all Triumph Funds must not exceed 25 percent of such Plan's total assets.

8. The conditions of the proposed exemption also require that each Plan receive the following initial and ongoing written disclosures from Triumph: (a) A copy of the private placement memorandum applicable to the Triumph Fund or another comparable document containing substantially the same information; (b) a copy of the limited partnership or other agreement establishing the Triumph Fund; (c) a copy of the subscription agreement applicable to the Triumph Fund, if any; (d) copies of the proposed exemption and the final exemption, if granted, once such documents are published in the **Federal Register**; and (e) periodic, but no less frequently than annually, reports relating to the overall financial position and operational results of the Triumph Fund including copies of the Triumph Fund's annual financial statements. In addition, with respect to capital contributions made to a Triumph Fund by a Plan after the date this proposed exemption is granted, Triumph will maintain or cause to be maintained for a period of six (6) years from the date of each transaction, records of each Plan investing in a Triumph Fund and each portfolio company comprising a Triumph Fund. Such records will enable the Department and other persons to determine whether the terms and conditions of the exemption are being met.

9. If the exemption is not granted, Triumph represents that it and the Triumph Funds would be required to make one of several adjustments designed to avoid the prohibited transaction concern that is the subject of this request. However, Triumph states that it does not believe these adjustments would be in the best interest of existing or prospective Plan investors. In this regard, Triumph represents that it might attempt to avoid the problem by not acquiring any portfolio companies which are, directly or indirectly, service providers to any of a Triumph Fund's Plan investors. However, Triumph does not consider this alternative satisfactory because it would limit the Triumph Fund's potential range of investments and diminish the expected investment return of such Fund. Moreover, Triumph points out that a portfolio company which is not a service provider at the time of the Triumph Fund's investment might become a service provider at some time in the future. Under these circumstances, Triumph represents that it would be impractical to restrict the activities of all portfolio companies in which the Triumph Fund invests to assure that no such portfolio company would ever become a service provider to any Triumph Fund's Plan investors. According to Triumph, such restriction

[8] In this regard, it is noted that the corresponding section of the Code relating to "disqualified persons" (see section 4975(e)(2)(H) and (I)) does not contain a similar provision which would make the owner of 10 percent or more of a service provider a disqualified person with respect to a Plan. Nevertheless, because the service provider is a "disqualified person" under section 4975(e)(2)(B) of the Code, Triumph has requested that the exemption extend to both the Code and the Act in order to avoid any potential concerns regarding the possibility of indirect prohibited transactions.

[9] The Department is providing no opinion in this proposed exemption regarding whether, or to what extent, a Plan engaging in the subject transaction with a Triumph Fund would violate section 406(a) of the Act, once the Triumph Fund becomes a party in interest with respect to the Plan, under the circumstances described herein.

would be contrary to the best interest of the Triumph Funds and their investors, particularly, their Plan investors.

As another alternative, Triumph represents that it could limit the offering of interests in the Triumph Funds to those Plans which could take advantage of Prohibited Transaction Exemption (PTE) 84–14 (49 FR 9494 March 13, 1984), the Class Exemption for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers (QPAMs) or PTE 96–23 (61 FR 15975, April 10, 1996), the Class Exemption for Plan Asset Transactions Determined by In-House Asset Managers (INHAMs).[10] However, Triumph believes that such an approach would be unduly restrictive and not in the best interest of the Plans since relatively few Plans could take advantage of PTE 96–23. In addition, in the absence of this proposed exemption, each Plan would be forced to hire a QPAM in order to meet the conditions of PTE 84–14, and incur an additional expense in order to invest in a Triumph Fund, if the Plan's named fiduciary would otherwise make that decision itself.

10. In summary, it is represented that the proposed transactions satisfy the statutory criteria of section 408(a) of the Act because: (a) The Triumph Fund's party in interest status with respect to the Plan will arise after the Plan has made its binding commitment to invest in the Triumph Fund, including its commitment to make future capital contributions to the Triumph Fund; (b) the decision by a Plan to make capital contributions to the Triumph Fund has been and will be made on behalf of the Plan by a Plan fiduciary which is independent of and unrelated to Triumph and the portfolio company that is acquired by the Triumph Fund; (c) Triumph will not otherwise provide investment advice to the Plan, within the meaning of 29 CFR 2510.3–21(c) of the Act, with respect to such Plan's assets that are invested in the Triumph Fund; (d) at the later of the Determination Date, or the date on which the Triumph Fund first becomes a party in interest with respect to such Plan investor, the capital commitment of the Plan (together with the capital commitment of any other related Plans maintained by the same employer, controlled group of corporations, or employee organization) will not exceed more than 15 percent of the total outstanding capital commitments made by all investors with respect to the Triumph Fund; (e) at the Determination Date, the percentage of the Plan's assets committed to be invested in the Triumph Fund has not and will not exceed 5 percent of the Plan's total assets, and the Plan's aggregate commitment to all Triumph Funds has not and will not exceed 25 percent of the Plan's total assets; (f) a Plan investing in a Triumph Fund has or will have, either alone or in combination with other plans, assets that are in excess of $50 million (as described under the conditions contained herein); and (g) Triumph has made or will make written disclosures to the Plan regarding the Triumph Fund, both at the time of the initial commitment to invest in such Fund as well as on an ongoing basis.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption include fiduciaries of Plans whose assets are currently invested in a Triumph Fund. Accordingly, the Department has determined that the only practical form of providing notice to such Plan fiduciaries is the distribution, by Triumph, of a copy of the proposed exemption by first class mail within 15 days of the date of publication of the pendency notice in the **Federal Register**. The notice will include a copy of the notice of proposed exemption, as published in the **Federal Register**, as well as a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on the pending exemption. Comments with respect to the proposed exemption are due 45 days after the date of publication of the proposed exemption in the **Federal Register**.

For Further Information Contact: Ms. Janet Schmidt of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The Fidelity Mutual Life Insurance Company (In Rehabilitation) (FML) Located in Radnor, PA

[Application No. D–10712]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[11]

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the receipt of certain stock (the Plan Stock) issued by Fidelity Insurance Group, Inc. (Group), a wholly owned subsidiary of FML, or (2) the receipt of plan credits (the Plan Credits), by or on behalf of a mutual member (the Mutual Member) of FML, which is an employee benefit plan (the Plan), other than the Employee Pension Plan of Fidelity Mutual Life Insurance Company (the FML Plan), in exchange for such Mutual Member's membership interest (the Membership Interest) in FML, in accordance with the terms of a plan of rehabilitation (the Third Amended Plan of Rehabilitation), approved by the Pennsylvania Commonwealth Court (the Court) and supervised by both the Court and a rehabilitator (the Rehabilitator) appointed by the Pennsylvania Insurance Commissioner (the Commissioner).

This proposed exemption is subject to the following conditions set forth below in Section II.

Section II. General Conditions

(a) The Third Amended Plan of Rehabilitation is approved by the Court, implemented in accordance with procedural and substantive safeguards that are imposed under Pennsylvania law and is subject to review and/or supervision by the Commissioner and the Rehabilitator. The Court determines whether the Third Amended Plan of Rehabilitation is fair and equitable to Mutual Members.

(b) Each Mutual Member has an opportunity to vote and comment on the Third Amended Plan of Rehabilitation at hearings held by the Court after full written disclosure is given to such Mutual Member by FML of the terms of the Plan.

(c) Participation by all Mutual Members in the Third Amended Plan of Rehabilitation, if approved by the Court, is mandatory, although Mutual Members may disclaim Plan Stock.

(d) Any determination by a Mutual Member which is a Plan to receive Plan Stock or Plan Credits is made by one or more independent fiduciaries of such

[10] PTE 84–14 permits various parties which are related to employee benefit plans to engage in transactions involving plan assets if, among other conditions, the assets are managed by QPAMs (i.e., banks, savings and loan associations, insurance companies or investment advisers registered under the Investment Advisers Act of 1940), which are independent of the parties in interest involved in such transactions and meet certain specified financial standards. PTE 96–23 permits various transactions involving employee benefit plans whose assets are managed by INHAMs and parties in interest to such plans, who are service providers, or their affiliates (other than the INHAM and its affiliates).

[11] For purposes of this exemption, reference to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

Plan and not by FML, Group or Fidelity Life Insurance Company (FLIC). Consequently, neither FML nor any of its affiliates will exercise investment discretion nor render "investment advice" within the meaning of 29 CFR 2510.3–21(c) with respect to an independent Plan fiduciary's decision to elect Plan Stock or Plan Credits.

(e) Twenty percent of the Plan Stock is allocated to a Mutual Member based upon voting rights and eighty percent is allocated to a Mutual Member on the basis of the contribution of the Mutual Member's insurance or annuity contract (the Contract) to the surplus of FML. The contribution to FML's surplus is the actuarial calculation of both the historical and expected future profit contribution of the Contracts that have contributed to the surplus (*i.e.*, the net earnings) of FML. The actuarial formulas are approved by the Court and the Commissioner.

(f) The value of Plan Stock or Plan Credits that will be received by a Mutual Member will reflect the aggregate price paid by an independent investor (the Investor) to Group for common Stock (the Common Stock) and for plan credit shares (the Plan Credit Shares) in convertible preferred stock (the Preferred Stock) issued by Group.

(g) All Mutual Members that are Plans participate in the transactions on the same basis as all other Mutual Members that are not Plans.

(h) No Mutual Member pays any brokerage commissions or fees in connection with the receipt of Plan Stock or Plan Credits.

(i) All of FML's obligations to contractholders (the Contractholders) of the company which are Mutual Members remain in force upon endorsement and transfer to FLIC and are not affected by the Third Amended Plan of Rehabilitation.

Section III. Definitions

For purposes of this proposed exemption:

(a) The term "FML" means the Fidelity Mutual Life Insurance Company (In Rehabilitation) and any affiliate of FML as defined in paragraph (c) of this Section III.

(b) The term "FLIC" means the Fidelity Life Insurance Company and any affiliate of FLIC as defined in paragraph (c) of this Section III.

(c) An "affiliate" of FML or FLIC includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with FML or FLIC; (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.) or

(2) Any officer, director or partner in such person.

(c) The term "Mutual Member" means a Contractholder whose name appears on FML's records as an owner of an FML Contract on the Record Date of the Third Amended Plan of Rehabilitation.

(d) The term "Investor" means the person (*e.g.*, individual, corporation, partnership, joint venture, etc.) selected by the Rehabilitator and approved by the Court to be the purchaser under the Investment Agreement.

(e) The term "Group Stock" refers to shares of Group Common Stock and to Group Preferred Stock, which will have a cumulative, annual dividend equal to 7 percent of its liquidation value. The Preferred Stock will be Series A stock having a par value of $0.01 per share and a liquidation preference and a redemption value of $25 per share.

(f) The term "Plan Stock" means the 3 million shares of Group Common Stock and the 2.8 million of Group Preferred Stock that will be allocated to Mutual Members.

(g) The term "Plan Credit" means either (1) additional paid up insurance for a traditional life policy or (2) credits to the account values for Contracts that are not traditional (such as a flexible premium policy). Under FML's Third Amended Plan of Plan of Rehabilitation, Plan Credits are to be allocated to certain Mutual Members in lieu of Plan Stock.

(h) The term "Plan Credit Shares" includes those shares of Plan Stock (*i.e.*, the 15,000 to 180,000 shares of Group Common Stock) and any shares of Group Preferred Stock to be issued and sold by Group to the Investor to fund Plan Credits.

(i) The term "Policyholder Stock" means those shares of Group Common or Group Preferred Stock that will be issued and distributed to Mutual Members, consisting of Plan Stock plus any shares of Group Stock (in excess of Plan Stock) issued for purposes of correcting errors in the allocation of Plan Stock, less Plan Credit Shares and any disclaimed shares.

(j) The term "Investor Stock" means the 3.1 million shares of Group Common Stock (other than Plan Stock) and the Plan Credit Shares which, under the Third Amended Plan of Rehabilitation, are sold to the Investor pursuant to bid procedures and the Investment Agreement.

Summary of Facts and Representations

1. FML is a mutual life insurance company that was founded in 1878 and organized to conduct a life insurance business in Pennsylvania. FML maintains its principal place of business at 250 King of Prussia Road, Radnor, Pennsylvania. Prior to the rehabilitation proceedings that are described herein, FML was licensed to issue life insurance policies in 47 states and the District of Columbia.

Because FML has been organized as a mutual form of life insurance company, it has no stockholders. Instead, the owners of its Contracts (i.e., the Contractholders) have a dual legal relationship with FML. In this regard, the Contractholders are vested with rights in the company, such as such as the right to vote and the right to an allocable portion of the divisible surplus. In addition, the Contractholders have contractual rights under their Contracts with FML.

FML has approximately 3,997 Contracts that are related to qualified Plans. FML also sponsors the FML Plan, a defined benefit plan, which had 254 participants and total assets of $17,282,009 as of December 31, 1998.

2. FML owns all of the stock of Group, a Pennsylvania-domiciled stock corporation. Group, in turn, owns all of the stock of FLIC, also a Pennsylvania corporation. Group purchased the FLIC stock from an unrelated party on June 30, 1995. FLIC is a stock life insurance company duly licensed, chartered and domesticated in Pennsylvania and is qualified to conduct a life insurance business in substantially all jurisdictions where FML has business, except in New York and New Hampshire. FLIC has filed applications for licenses to conduct business in these states.

3. During late 1990, the Pennsylvania Insurance Department began monitoring FML's operations because of concern over FML's extensive real estate holdings, decline in surplus and unrealized capital losses. In response to an increase in Contract surrenders and loan requests for the period October 26 to November 5, 1992, the Pennsylvania Insurance Department and FML's Board of Directors petitioned the Court for an Order of Rehabilitation. As a result, FML was placed in rehabilitation by an order of the Court on November 6, 1992, pursuant to the Pennsylvania Insurance Department Act, as amended. Under the Order of Rehabilitation, a moratorium was imposed on cash distributions, Contract surrenders, withdrawals and policy loans, except in certain hardship situations. At the time of the rehabilitation, FML had assets with a book value of approximately $1.2 billion. Of this amount, a significant portion of FML's assets was comprised

of real estate and mortgages which were non-performing, illiquid and overvalued.

4. On June 30, 1994, the Rehabilitator filed the original Plan of Rehabilitation for The Fidelity Mutual Life Insurance Company (the Original Plan of Rehabilitation) with the Court. The Original Plan of Rehabilitation called for the transfer of FML insurance policies to "Newco," the name designated for the stock life insurance company that was to be purchased by FML and Group. Under the Original Plan of Rehabilitation, all Contractholders of FML would be allocated one share of Group Stock, all Mutual Members would be made whole for any "Impairment" [12] through the allocation of Group Stock, and any remaining Group Stock would be allocated to creditors on a *pro rata* basis. Contractholders could opt out of the Original Plan of Rehabilitation, surrender their policies and receive the liquidation value of their cash surrender values plus one share of Group Stock. Contractholders remaining with Newco would also be subject to a continued moratorium charge (*i.e.*, a charge based upon the suspension, by the Court, of cash distributions, Contract surrenders, withdrawals and policy loans) of 16 percent during the first year and 8 percent during the second year if they surrendered their policies. Further, a trust was to be created under the Original Plan of Rehabilitation to hold the stock during the moratorium period and then dispose of such stock by distributing it to Contractholders and creditors. Finally, the Original Plan of Rehabilitation provided that an Investor could provide a capital infusion to Newco through Group that would be sufficient to meet risk-based capital requirements and that such Investor would receive unspecified securities of Group in return. Notice was sent to Contractholders and other interested persons of the filing of the Original Plan and objections were due by November 1, 1994.

5. After the filing of the Original Plan of Rehabilitation with the Court in June 1994, the Rehabilitator proceeded to work with an investment banker to solicit and select an Investor.[13] On January 12, 1995, the Rehabilitator filed an Amended Plan for the Rehabilitation of The Fidelity Mutual Life Insurance Company (the First Amended Plan of Rehabilitation) with the Court which included an Investment Agreement executed by the Presidential Life Insurance Company (Presidential). The framework for the First Amended Plan of Rehabilitation was similar to the Original Plan, with additional definition. The First Amended Plan of Rehabilitation provided that 10 million shares of Group Stock would be placed in a stock trust to be distributed to Contractholders for Impairment [14] and thereafter, if any shares remained, to creditors with allowed claims. The First Amended Plan of Rehabilitation also provided that Group could sell up to 49.9 percent of Group Common Stock to Presidential in exchange for an investment of up to $45 million and could sell $25 million in debt instruments to the Presidential Life Corporation. The moratorium charge applicable to Contractholder cash values upon surrender after closing was reduced to 14 percent during the first year and 8 percent during the second year. Further, the liquidation value that Contractholders would receive if electing to opt out of the First Amended Plan of Rehabilitation was approximately 89 percent of their cash surrender value. Notice of the filing of the First Amended Plan of Rehabilitation was provided to all Contractholders and other interested persons and objections had to be filed by March 31, 1995.

6. In January 1995, a new Commissioner was appointed who became the new Rehabilitator for FML. In March 1995, the Court approved the appointment of a Policyholder Committee at the request of a group of former FML agents. Subsequently, the Policyholder Committee engaged counsel, an accounting firm and an investment banking firm. Also, in March 1995, a bidder who was not selected as the Investor objected to the First Amended Plan of Rehabilitation and ultimately sought permission to intervene and propose an alternative rehabilitation plan. In May 1995, the Policyholder Committee filed objections to the First Amended Plan of Rehabilitation and specifically objected to the selected investor, Presidential. Also in May 1995, Presidential petitioned the Court for permission to intervene in the rehabilitation proceedings. In early September 1995, the Deputy Rehabilitator for FML resigned and a Deputy Commissioner from the Pennsylvania Insurance Department was assigned to oversee the daily affairs of FML. Negotiations with the Policyholder Committee, Presidential, and the objecting bidder continued during the remainder of 1995 through 1996. In May 1996, Presidential filed a petition for payment of expenses and liquidated damages under the 1995 Stock Purchase Agreement and the Policyholder Committee and former FML agents objected to that petition.

7. On June 25, 1996, the Rehabilitator filed the Second Amended Plan for the Rehabilitation of The Fidelity Mutual Life Insurance Company (the Second Amended Plan of Rehabilitation) with the Court. The framework for the Second Amended Plan was substantially the same as the predecessor Plans but there were significant differences. For example, the concept of Plan Credits was introduced for the first time. In addition, Group could sell 35 percent of its issued and outstanding common stock to the Investor under bid procedures to be approved by the Court. However, Group could not issue any debt instruments. The other 65 percent of the Group Stock was to be allocated to Contractholders and creditors, except that the stock would no longer be held and distributed by a stock trust, but would be distributed directly to the Contractholders and creditors around the Closing Date. Based on an assumed Closing Date of June 30, 1997, Impairment had increased to an estimated total of $57.1 million. Also, the Liquidation Value as of September 30, 1995 was estimated to be 95 percent of the cash surrender value of any Contractholder who elected to opt out of the Plan. The moratorium period of two years in the previous Plans was reduced to one year and the moratorium charge would be equal to the Liquidation Discount (5 percent of September 30, 1995).

Notice of the filing of the Second Amended Plan of Rehabilitation was not sent to Contractholders and other interested persons because the Policyholder Committee filed significant objections to both the Notice Package and the Second Amended Plan of Rehabilitation, including an objection asserting that the Contractholders should receive cash rather than Group Stock for Impairment. In July 1996,

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[12] Under the Original Plan, the term "Impairment" was defined as "* * * the sum of (a) the loss of interest which would have been credited to Participating Contractholders in the normal course of business had FML not been placed in rehabilitation, as determined by the Receiver, and (b) the loss of liquidity due to the limited access of Participating Contractholders to their cash values, as determined by the Receiver."

[13] It is represented that many of the objections concerning the Original Plan of Rehabilitation related to the fact that the Plan had not included an Investor and that there was no certainty that an Investor could be found.

[14] Impairment under the First Amended Plan of Rehabilitation was defined as "* * * the loss of liquidity due to the lack of access of Participating Contractholders to their Surrender Values measured from the Rehabilitation Date to the Closing Date * * *" Aggregate Impairment was estimated to have a value of $40 million as of September 30, 1994.

Presidential filed a motion asking the Court to enjoin any new Investor selection process until their claim for relief was addressed. The Presidential claim was finally settled and approved by the Court in March 1997.

8. Negotiations with the Policyholder Committee continued and the Third Amended Plan for the Rehabilitation of The Fidelity Mutual Life Insurance Company (*i.e.*, the Third Amended Plan of Rehabilitation) was filed with the Court on June 30, 1998. The Plan included several significant improvements for Contractholders due to the improved financial condition of FML.[15] For example, under the Third Amended Plan of Rehabilitation, there are no moratorium charges after the Closing Date and Contractholders may immediately surrender their Contracts for the full cash surrender value. Consequently, no opt out period is necessary to allow the option of immediate surrender. Further, all creditor claims will be paid in full with 6 percent interest.

Subject to the approval of the Court, the Rehabilitator is proposing that FML transfer, on the Closing Date,[16] pursuant to assumption reinsurance and transfer agreements, its insurance operations to FLIC, which will continue as a wholly owned subsidiary of Group and a successor to FML. In addition, FML will modify the terms of the FML Contracts by endorsement prior to their transfer to and assumption by FLIC. Group Common Stock and Preferred Stock[17] that has been denominated as Plan Stock will be allocated and then distributed to Mutual Members in exchange for their Membership Interests in FML rather than for the Impairment of their Contracts, except that Contractholders of certain tax-qualified retirement funding accounts (who have impediments to holding stock generally), will be entitled to have Plan Credits made to their Contracts in lieu of receiving Plan Stock.

Therefore, FML requests an administrative exemption from the Department with respect to the receipt of Plan Stock or the receipt of Plan Credits by Mutual Members that are Plans. FML is not requesting, nor is the Department providing, exemptive relief with respect to the receipt of Plan Stock by the FML Plan because it believes such stock will constitute "qualifying employer securities" within the meaning of section 407(d)(5) of the Act. Therefore, FML represents that the acquisition of Plan Stock by the FML Plan will satisfy the requirements of section 408(e) of the Act.[18]

9. As with the other Plans of Rehabilitation, under the Third Amended Plan of Rehabilitation, an independent party (*i.e.*, the Investor), approved by the Court, will be selected pursuant to bid procedures[19] to purchase Common Stock from Group so that immediately after the Closing Date, the Investor will own more than 50 percent of such Common Stock. The Investor will acquire Preferred Stock only through the required purchase of Plan Credit Shares but not through the bid process.

Under the Third Amended Plan of Rehabilitation, the Investor may be a foreign or domestic entity such as a life/health insurer, a property/casualty insurer, an investment company or other investment fund, a joint venture, general partnership or a limited partnership. In addition, the Investor may be required to satisfy certain ratings or capitalization criteria. For example, if the Investor is a property/casualty insurer, it must have an A.M. Best rating of at least A−, a minimum Total Adjusted Capital of $500 million, and a ratio of Total Adjusted Capital to Authorized Control Level Risk Based Capital of 5:1 or better. If the Investor is not a publicly-rated entity but is an investment company or other investment fund, it must have a net worth of at least $500 million and minimum available equity of $150 million. Further, the Investor must be either a Qualified Institutional Buyer within the meaning of Rule 144A under the Securities Exchange Act of 1933 (the 1933 Act), an Institutional Accredited Investor within the meaning of Rule 501(a)(1), (2), (3) or (7) under the 1933 Act, or a sophisticated institutional investor not requiring the protections of the registration requirements of the 1933 Act.

10. The rehabilitation strategy, which is aimed at maximizing the interests of FML's Contractholders and creditors, is to transfer FML's insurance operations into a stock life insurance company. The Contractholders and creditors will be provided benefits in accordance with the priorities for distribution to be determined under the Pennsylvania law applicable to insurance company rehabilitations.[20]

Thus, the treatment of FML's Contracts and the Contractholder's interests thereunder is a significant aspect of the Third Amended Plan of Rehabilitation. These Contracts include, but are not limited to, traditional ordinary life insurance Contracts and universal life insurance Contracts.

11. Section 2.01 of the Third Amended Plan of Rehabilitation specifies a classification of claims (the Claims) and interests and priorities governing the receipt of distributions. The rights provided the Contractholders under section 2.04 of the Third Amended Plan of Rehabilitation (for the Contracts to be modified by endorsement in FML and reinsured by FLIC) will have a Class 3 priority (along with certain other Claims under the Contracts), following certain secured and administrative claims which are classified as Class 1 and Class 2 Claims. Classes 4 through 9 Claims provide for claims for governments, general creditors, employees, debt holders, etc. Class 10, the last and residual category,

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[15] In this regard, since its rehabilitation, FML has improved the investment quality of its assets and its financial strength. In addition, FML has stabilized its revenue and achieved levels of surplus in excess of minimum state regulatory requirements. Further, FML has continued to pay dividends to Contractholders under participating Contracts and excess interest credits under other Contracts (*e.g.*, universal life and deferred annuity contracts).

By an order of the Court dated April 30, 1998, FML increased policyholder dividends and declared interest crediting rates of certain Contracts beginning in 1998. In addition, FML petitioned the Court to pay an increased one-time policyholder dividend and declared interest credit beginning in 1999 because of its financial capacity to do so and in recognition of the fact that the policyholder dividends and declared interest credits paid on its Contracts had generally been lower during the period of rehabilitation than those for comparable policies of other insurers.

[16] The Closing Date of the rehabilitation under the Third Amended Plan of Rehabilitation is expected to occur after December 31, 2000.

[17] The Rehabilitator has been advised by outside securities and tax counsel that the Preferred Stock constitutes equity rather than debt. Additionally, the Rehabilitator has relied upon a private letter ruling issued by the Internal Revenue Service on July 14, 1999 which treats the Preferred Stock and the Common Stock as equity rather than as debt.

[18] However, the Department expresses no opinion herein on whether such distributions will satisfy the terms and conditions of section 408(e) of the Act.

[19] The bid procedures, which will strictly control the selection process for the Investor as well as the post-closing activities of the Investor, are designed to prevent any negotiation among potential Investors because the winning bid is to be determined solely on the basis of the bid price per share, the financial condition of the Investor and the statutory requirements of the Pennsylvania Rehabilitation Statute.

[20] It is represented that the Rehabilitator has been advised by outside rehabilitation counsel and attorneys for the Pennsylvania Insurance Department that the Pennsylvania Insurance Company Mutual Stock Conversion Act (Conversion Act), which governs the demutualization of an insurer under Pennsylvania law, will not be applicable to FML's situation. It was determined that the Third Amended Plan of Rehabilitation did not contemplate a conversion transaction since the assets of FML would be transferred to a separate company (FLIC) by assumption reinsurance and FML would then be liquidated. Also, it was determined that the Conversion Act would not apply to a company in rehabilitation or liquidation because conflicts would exist with the applicable Pennsylvania rehabilitation/liquidation laws.

provides for the Claims of the Membership Interests of FML's Mutual Members.

Allowed Claims 1 through 9 will be paid in full in cash. Each Contractholder having a Contract in force on the Closing Date will have his or her Contract assumed and reinsured by FLIC as of the Closing Date. In addition, at Closing, Class 10 Claims will be satisfied by an allocation of Plan Stock in exchange for the Mutual Member's relinquishment of his or her membership interest in FML.[21] No other class of Claims will be paid or satisfied either partially or totally by a distribution or allocation of Plan Stock or Plan Credits.[22]

12. Under Section 4.05 of the Third Amended Plan of Rehabilitation, any Contract held in connection with a qualified retirement plan or an arrangement described in section 401(a), 403(a) or 408 of the Code, other than a Contract held by a trustee under a plan described in section 401(a) of the Code, (*i.e.*, a Non-Trusteed Tax-Qualified Retirement Funding Contract) will be allocated Plan Credits in lieu of Plan Stock in exchange for the relinquishment of the Mutual Member's Membership Interest under such Contract. The Plan Credits allocated to such Mutual Member's Contract will be equal in value to the Plan Stock otherwise allocable to the Non-Trusteed Tax-Qualified Retirement Funding Contract.

13. As noted above, the Plan Stock allocated to Mutual Members for Class 10 Claims will consist of Group Common Stock and Preferred Stock. Twenty percent of the Plan Stock will be allocated based on voting rights[23] and 80 percent will be allocated based on a Contract's contribution to FML's surplus. If a Mutual Member has two or more Contracts, the Plan Stock allocated to such Mutual Member, based on voting rights, will be allocated in equal portions to each such Contract.

14. Each Mutual Member which is a Class 10 Claimant will be allocated Group Common Stock and Preferred Stock, in the ratio of 3 shares of Common Stock to 2.8 shares of Preferred Stock. At closing, the total value of the Plan Stock, immediately prior to the sale of Common Stock to the Investor, is projected at approximately $100 million. Of this amount, 70 percent of the value of the Plan Stock will be represented by the Preferred Stock, which will have an estimated value of $70 million. The 30 percent remaining Plan Stock will consist of Common Stock and it will have a value of approximately $30 million. If desired, a Mutual Member may disclaim any interest in the Plan Stock. Although the Mutual Member will receive no consideration for any disclaimed Stock, such Mutual Member will continue to retain all benefits.

The distribution of the Group Stock will occur at Closing when Group will issue and distribute Plan Stock on behalf of FML to Mutual Members. FML, simultaneously, will return all Group Stock to Group for cancellation. Disclaimed shares will not be issued or, if issued, will be canceled and returned to Group.

15. There will be 40 million shares, par value $.01 per share, of Common Stock authorized and 6.1 million shares of such stock outstanding at the Closing Date. The Common Stock will have voting rights of one vote per share.

Group will sell approximately 3.1 million shares of its Common Stock to the Investor in a private placement pursuant to bid procedures approved by the Court and utilize the majority of the sale proceeds to supplement the capital of FLIC. FML will designate a maximum of 3 million shares of the remaining Common Stock as the "Common Stock component" of Plan Stock. Included in this amount will be between 15,000 and 180,000 shares of Common Stock allocable to Mutual Members who will receive Plan Credits in lieu of Plan Stock.[24]

In addition, Group will sell to the Investor the shares of Common Stock and Preferred Stock equal to the Plan Credits[25] and contribute to the capital of FLIC the sales proceeds of such sale. Consequently, the Investor will own, at the Closing Date, more than 50 percent of the total outstanding Group Common Stock, and such percentage will increase to the extent there are disclaimed shares and Plan Credits which require the Investor to purchase more Plan Stock.

At the Closing Date, Group will have authorized 10 million shares and will have outstanding 2.8 million shares of Preferred Stock, all of which will be allocated as Plan Stock. There will be no other class of Preferred Stock.

The Preferred Stock will have a liquidation preference and redemption value of $25 per share. The holders of Preferred Stock will be entitled to cumulative annual dividends, payable quarterly, at the rate of 7 percent per annum of the liquidation preference, resulting in an annual dividend of $1.75 per share. Shares of Preferred Stock will be non-voting except (a) when four quarterly dividends on such class of stock are in arrears, (b) for certain matters pertaining to that class of stock, or (c) as otherwise required by law. Upon liquidation of Group, a share of Preferred Stock will be entitled to a distribution preference of $25 per share plus the amount of any accrued but unpaid dividends. Group, at its option, may redeem shares of Preferred Stock at any time after 20 years from the later of the issue date and the Closing Date, at a redemption price of $25 per share plus the amount of any accrued but unpaid dividends.

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[21] Even though Mutual Members are deemed "Contractholders" for purposes of claims distribution, they are not entitled to receive cash as are Class 3 Claimants. Instead, Mutual Members will be entitled to receive Plan Stock. Class 3 Claims include claims for losses under the insurance policy such as death proceeds, annuity proceeds or investment values. Class 10 Claims, which represent the claims of shareholders or other owners, are not deemed "loss claims" under a policy. Rather, such claims are deemed analogous to mutual membership interests.

[22] Article IV of the Third Amended Plan of Rehabilitation generally provides that the policyholder eligible to participate in the distribution of Plan Stock or Plan Credits resulting from such Plan is "the Person specified in the Contract, or in a subsequent document, as the 'Contractholder' or 'owner' of such Contract, or any similar designation in the Contract, as shown on the books and records of FML." FML further represents that its insurance contracts that provide benefits under an employee benefit plan, typically designate the employer that sponsors the plan, or a trustee acting on behalf of the plan, as the Contractholder or owner of the policy. In regard to those Contracts that designate the employer or trustee as Contractholder or owner of the policy, FML represents that under Article IV of the Third Amended Plan of Rehabilitation, it will make distributions resulting from such Plan to the employer or trustee as Contractholder or owner of the Contract.

In general, it is the Department's view that, if an insurance policy is purchased with assets of an employee benefit plan, including participant contributions, and if there exist any participants under the plan (as defined at 29 CFR 2510.3–3) at the time when FML incurs the obligation to distribute Plan Stock or Plan Credits, then such consideration would constitute an assets of such employee benefit plan. Under these circumstances, the appropriate plan fiduciaries must take all necessary steps to safeguard the assets of the plan in order to avoid engaging in a violation of the fiduciary responsibility provisions of the Act.

[23] Voting rights are set forth in the FML By-laws which provide: "At all meetings, each member shall be entitled to one vote irrespective of the number of policies or amount of insurance held by a member."

[24] It should be noted that the value of the Plan Stock or Plan Credits that will be received by a Mutual Member will reflect the bid price paid by the Investor for Group Common Stock. Because the bid process does not allow the Investor to bid on or purchase Preferred Stock (except for the Plan Credit Shares), there is no means of establishing an immediate market value. Consequently, the $25 per share liquidation value as described herein is deemed to approximate the fair market value of such stock. The Investor will also be required to purchase Preferred Stock at that price as well.

[25] In other words, if a Mutual Member is eligible to receive Plan Credits, the Common Stock allocated to that Mutual Member will become part of the Plan Credit Shares that will be purchased by the Investor in order to fund the purchase of Plan Credits for the Mutual Member.

A share of Preferred Stock is convertible into shares of Common Stock at any time at the option of the holder. The number of shares of Common Stock that will be received by a Mutual Member upon such a conversion will be determined by dividing $25 by the result of multiplying 1.20 times the price per share paid by the Investor for the Common Stock (which price will be determined by the competitive bidding process approved by the Court). The conversion rate for the Preferred Stock is also subject to various anti-dilution provisions.

16. Under Section 4.10 of the Third Amended Plan of Rehabilitation, Policyholder Stock [26] will be issued pursuant to the exemption from the registration requirements provided in section 3(a)(10) of the 1933 Act. In addition, Policyholder Stock will be publicly-traded and listed on the NASDAQ National Market or the New York or American Stock Exchange, as determined by the Rehabilitator prior to Closing.

Investor Stock will be issued in a private placement pursuant to the exemption from the registration requirements of the 1933 Act provided by section 4(2) thereof and the rules and regulations thereunder. Neither Policyholder Stock nor Investor Stock will be registered under the 1933 Act.

Group Stock will be registered under section 12(g) of the Securities Exchange Act of 1934.

17. Since the participation by all Mutual Members in the Third Amended Plan of Rehabilitation will be mandatory (although Mutual Members may disclaim Plan Stock), any determination by a Mutual Member which is a Plan to receive Plan Stock or Plan Credits will be made by one or more Plan fiduciaries which are independent of FML and its affiliates. As a result, neither FML nor any of its affiliates will exercise investment discretion nor render "investment advice" within the meaning of 29 CFR 2510.3–21(c) with respect to an independent Plan fiduciary's decision to elect to receive Plan Stock or Plan Credits.

In addition, all Mutual Members that are Plans will participate in the transactions on the same basis as all other Mutual Members that are not Plans. Moreover, no Mutual Member will pay any brokerage commissions or fees in connection with the receipt of Plan Stock or Plan Credits. Finally, all of FML's Contractholder obligations will remain in force upon endorsement and transfer to FLIC and will essentially be unaffected by the Third Amended Plan of Rehabilitation.

18. Mutual Members will not be restricted from selling or otherwise transferring the Plan Stock received, including converting the Preferred Stock to Common Stock, although Group, its affiliates and the Investor are subject to restrictions on purchasing or redeeming such Stock.[27] In addition, Group will not be precluded from establishing a commission-free purchase or sales program after the Rehabilitation which would allow Mutual Members who receive a small number of shares of Plan Stock the opportunity to round-up those shares or sell such shares for a temporary period without the payment of any sales commissions.[28] It is not contemplated that FLIC or any of its affiliates will be engaged in such transactions.

19. The Plan will be approved by and be under the continued jurisdiction of the Court. The Court's review will include, among other matters, (a) a determination, after hearings available to Contractholders, creditors and other interested parties, the procedural and substantive fairness of the terms and conditions of the allocation and distribution of the Plan Stock in exchange for Membership Interests, including a review of the methodology for allocating Plan Stock based on the basis of contribution to surplus and voting rights and (b) approval of the modification, by endorsement, of the terms and conditions of the Contract.

FLIC and Group will be subject to the jurisdiction of the Court and the supervision of the Rehabilitator prior to and through the Closing Date. In addition, the Court will retain, after the Closing Date, exclusive jurisdiction over Group and FLIC to enforce the provisions of the Third Amended Plan of Rehabilitation to ensure that its intent and purposes are carried out and given effect.

FML will discontinue its business operations, liquidate and dissolve shortly after completing all transfers. FLIC will continue the business of FML in a substantially unchanged manner after the transfer from FML by receiving premiums, paying claims and generally administering the assumed Endorsed Contracts.

Further, for a period of 2 years following the Closing Date, the Investor will not be allowed to cause a change to the business plan for FLIC without the prior written approval of the Department if the change might reasonably result in the dissolution of FLIC or the operation of FLIC in a "run off" mode.

20. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Third Amended Plan of Rehabilitation will be implemented in accordance with procedural and substantive safeguards that are imposed under Pennsylvania law and by the Court and will be subject to review and supervision of the Court and/or the Rehabilitator.

(b) The Court will review the terms of the Third Amended Plan of Rehabilitation and will approve such Plan following a determination and public hearing or hearings that the Plan is fair and equitable to all Mutual Members.

(c) Each Mutual Member will have an opportunity to participate in any hearing or hearings before the Court regarding the approval of the Third Amended Plan of Rehabilitation.

(d) Although participation by all Mutual Members in FML's Third Amended Plan of Rehabilitation will be mandatory (although Mutual Members may disclaim Plan Stock), the determination of whether a Mutual Member receives Plan Stock or Plan Credits will be made by one or more independent fiduciaries of such Plan and not by FML, Group or FLIC. As a result, FML nor any of its affiliates will exercise investment discretion nor render "investment advice" within the meaning of 29 CFR 2510.3–21(c) with respect to the decision by the independent Plan fiduciary to elect Plan Stock or Plan Credits.

(e) After each Mutual Member is allocated its share of Plan Stock based on voting rights, the remaining consideration will be allocated based

[26] As noted in Section III(i) of the Definitions, "Policyholder Stock" refers to those shares of Group Common or Group Preferred Stock that will be issued and distributed to Mutual Members. Thus, it consists of Plan Stock plus any shares of Group Stock (in excess of Plan Stock) that are issued for purposes of correcting errors in the allocation of Plan Stock, less Plan Credit Shares and any disclaimed shares.

[27] Specifically, Section 5.08 of the Third Amended Plan of Rehabilitation provides that for one year after closing, the Investor may not purchase or enter into an agreement to purchase Group Stock from Group or the shareholders of Group, or take other action which would result in the Investor being affiliated with Group. In addition, Section 5.09 of the Third Amended Plan provides that for one year after closing, Group and any company controlled directly or indirectly by Group will not purchase or redeem nor enter into an agreement to purchase or redeem, Group Stock from Mutual Members that, when combined with the value of Plan Credit Shares, has an aggregate value that exceeds 50 percent of the value of the Plan Stock.

[28] FML has still not determined how many shares of Plan Stock will constitute the "small number of shares" required for a Mutual Member to participate in the commission-free purchase and sales program nor has it decided on the duration of such program.

upon actuarial formulas that take into account each Mutual Member's contribution to the surplus of FML, which formulas have been approved by the Rehabilitator and the Court.

(f) The value of Plan Stock or Plan Credits that will be received by a Mutual Member will reflect the prices paid by the Investor for Group Common Stock and for Plan Credit Shares.

(g) All Plans will participate in the exemption transaction on the same basis as other Mutual Members that are not Plans.

(h) No Plan will pay any brokerage commissions or fees in connection with receipt of Plan Stock or Plan Credits.

(i) FML's Contractholder obligations will remain in force upon endorsement and transfer to FLIC.

Notice to Interested Persons

FML will provide notice of the proposed exemption to Mutual Members which are Plans within 5 days of the publication of the notice of proposed exemption in the **Federal Register**. Such notice will be provided to interested persons by first class mail and will include a copy of the notice of proposed exemption as published in the **Federal Register** as well as a supplemental statement, as required pursuant to 20 CFR 2570.43(b)(2) which shall inform interested persons of their right to comment on the proposed exemption. Comments with respect to the notice of proposed exemption are due within 35 days after the date of publication of this pendency notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

McDonald Investments Inc. (McDonald) Located in Cleveland, Ohio

[Application No. D–10857]

Proposed Exemption

I. Transactions

A. Effective January 4, 2000, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[29]

B. Effective January 4, 2000, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) a plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[30] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective January 4, 2000, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing agreement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in, the prospectus or private placement memorandum provided to investing plans before they purchase certificates issued by the trust.[31]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act, or from the taxes imposed by reason of section 4975(c) of the Code, for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective January 4, 2000, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code by

[29] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[30] For purposes of this proposed exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[31] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this proposed exemption, references to "prospectus" include any related prospectus supplement thereto, pursuant to which certificates are offered to investors.

reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating from a Rating Agency (as defined in section III.W.) at the time of such acquisition that is in one of the three highest generic rating categories;

(4) The trustee is not an affiliate of any other member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund a trust have not all been transferred to the trust on the closing date, additional obligations as specified in subsection III.B.(1) may be transferred to the trust during the pre-funding period (as defined in section III.BB.) in exchange for amounts credited to the pre-funding account (as defined in section III.Z.), provided that:

(a) The pre-funding limit (as defined in section III.AA.) is not exceeded;

(b) All such additional obligations meet the same terms and conditions for eligibility as those of the original obligations used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a Rating Agency. Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority of the outstanding certificateholders or by a Rating Agency;

(c) The transfer of such additional obligations to the trust during the pre-funding period does not result in the certificates receiving a lower credit rating from a rating agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the trust on the closing date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to those which were acquired as of the closing date, the characteristics of the additional obligations will be either monitored by a credit support provider or other insurance provider which is independent of the sponsor, or an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the Rating Agency, the underwriter and the trustees) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date;

(f) The pre-funding period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The trustee of the trust (or any agent with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this proposed exemption:

A. "Certificate" means:

(1) A certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Code; and

(b) That is issued by, and is an obligation of, a trust; with respect to certificates defined in (1) and (2) above for which McDonald or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this proposed exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) (a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U); and/or

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3–101(i)(2); and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) property which had secured any of the obligations described in subsection B.(1);

(3) (a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to certificateholders pursuant to any yield supplement agreement or similar yield maintenance arrangement to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1) held in the trust, provided that such arrangements do not involve swap agreements or other notional principal contracts; and/or

(c) Cash transferred to the trust on the closing date and permitted investments made therewith which:

(i) Are credited to a pre-funding account established to purchase additional obligations with respect to which the conditions set forth in clauses (a)–(g) of subsection II.A.(7) are met and/or;

(ii) Are credited to a capitalized interest account (as defined in section III.X.); and

(iii) Are held in the trust for a period ending no later than the first distribution date to certificateholders occurring after the end of the pre-funding period.

For purposes of this clause (c) of subsection III.B.(3), the term "permitted investments" means investments which are either: (i) Direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by the United States, or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a rating agency; are described in the pooling and servicing agreement; and are permitted by the rating agency; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, yield supplement agreements described in clause (b) of subsection III.B.(3) and other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) the investment pool consists only of assets of the type described in clauses (a) through (f) of subsection III.B.(1) which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by a Rating Agency for at least one year prior to the plan's acquisition of certificates pursuant to this proposed exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this proposed exemption.

C. "Underwriter" means:

(1) McDonald;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with McDonald; or

(3) Any member of an underwriting syndicate or selling group of which McDonald or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services obligations contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services obligations contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this proposed exemption (if granted) applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(1) The trust owns or holds a security interest in the lease;

(2) The trust owns or holds a security interest in the leased motor vehicle; and

(3) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. "Rating Agency" means Standard & Poor's Structured Rating Group (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Credit Rating Co. (D & P) or Fitch IBCA, Inc. (Fitch) or their successors;

X. "Capitalized Interest Account" means a trust account: (i) which is established to compensate certificateholders for shortfalls, if any, between investment earnings on the pre-funding account and the pass-through rate payable under the certificates; and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

Y. "Closing Date" means the date the trust is formed, the certificates are first issued and the trust's assets (other than those additional obligations which are to be funded from the pre-funding account pursuant to subsection II.A.(7)) are transferred to the trust.

Z. "Pre-Funding Account" means a trust account: (i) Which is established to purchase additional obligations, which obligations meet the conditions set forth in clauses (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

AA. "Pre-Funding Limit" means a percentage or ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered which is less than or equal to 25 percent.

BB. "Pre-Funding Period" means the period commencing on the closing date and ending no later than the earliest to occur of: (i) The date the amount on deposit in the pre-funding account is less than the minimum dollar amount specified in the pooling and servicing agreement; (ii) the date on which an event of default occurs under the pooling and servicing agreement; or (iii) the date which is the later of three months or 90 days after the closing date.

CC. "McDonald" means McDonald Investments Inc. and its affiliates.

The Department notes that this proposed exemption is included within the meaning of the term "Underwriter Exemption" as it is defined in section V(h) of Prohibited Transaction Exemption 95–60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts at (see 60 FR 35932).

Summary of Facts and Representations

1. McDonald is an indirect, wholly-owned, separately capitalized investment banking and registered broker-dealer subsidiary of KeyCorp (the Corporation). As of September 30, 1999, McDonald's capitalization was approximately $310 million. The Corporation is a diversified financial services company incorporated under the laws of Ohio and a multi-bank holding company registered under the Bank Holding Company Act of 1956, as amended. As of September 30, 1999, the Corporation's consolidated assets were approximately $81 billion. The principal executive offices of the Corporation are located in Cleveland, Ohio. As of September 30, 1999, the Corporation directly owned a subsidiary

bank with offices located in twelve states. In addition, indirectly-held non-bank subsidiaries of the Corporation offer a wide range of insurance, securities brokerage, investment banking, venture capital investment, and consumer finance products and services.

KeyBank, National Association (the Bank), a direct, wholly-owned subsidiary of the Corporation, is a national banking association engaged in banking and related activities and is the largest bank in the Corporation's banking group. As of September 30, 1997, the Bank had total assets of approximately $80 billion. The principal executive offices of the Bank are located in Cleveland, Ohio.

McDonald was incorporated in 1983 as an Ohio corporation. McDonald maintains its principal place of business in Cleveland, Ohio and has branch offices in 24 states.

McDonald is a member of the National Association of Securities Dealers and the Securities Investor Protection Corporation and underwrites and deals in corporate debt securities, commercial paper, municipal securities, high-yield securities and asset-backed securities, provides private placement and corporate finance advisory services, including merger and acquisition advisory services, publishes research on a wide range of securities and issuers, and engages in the syndication and arranging and trading of bank loans.

Trust Assets

2. McDonald seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) Single and multi-family residential or commercial mortgage investment trusts;[32] (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[33]

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.[34]

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee.[35] The sponsor or servicer of a trust selects assets to be included in the trust.[36] These assets are receivables which may have been originated, in the ordinary course of business, by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.[37]

Typically, on or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. Typically, all receivables to be held in the trust are transferred as of the closing date, but in some transactions, as described more fully below, a limited percentage of the receivables to be held in the trust may be transferred during a limited period of time following the closing date, through the use of a pre-funding account.

McDonald, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. All of the public offerings of certificates presently contemplated have been or are to be underwritten by McDonald on a firm commitment basis. In addition, McDonald anticipates that it may privately place certificates on both a firm commitment and an agency basis. McDonald may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders will be entitled to receive monthly, quarterly or semi-annual installments of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable.

When installments or payments are made on a semi-annual basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from

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[32] The Department notes that PTE 83–1 [48 FR 895, January 7, 1983], a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83–1 are met. McDonald requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, McDonald has stated that it may still avail itself of the exemptive relief provided by PTE 83–1.

[33] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of "plan assets" (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

[34] Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90–32 involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990 at 23150).

[35] The Department is of the view that the term "trust" includes a trust: (a) the assets of which, although all specifically identified by the sponsor or the originator as of the closing date, are not all transferred to the trust on the closing date for administrative or other reasons but will be transferred to the trust shortly after the closing date, or (b) with respect to which certificates are not purchased by plans until after the end of the pre-funding period at which time all receivables are contained in the trust.

[36] It is the Department's view that the definition of "trust" contained in section III.B. includes a two-tier structure under which certificates issued by the first trust, which contains a pool of receivables described above, are transferred to a second trust which issues securities that are sold to plans. However, the Department is of the further view that, since the exemption provides relief for the direct or indirect acquisition or disposition of certificates that are not subordinated, no relief would be available if the certificates held by the second trust were subordinated to the rights and interests evidenced by other certificates issued by the first trust.

[37] It is the view of the Department that section III.B.(4) includes within the definition of the term "trust" rights under any yield supplement or similar arrangement which obligates the sponsor or master servicer, or another party specified in the relevant pooling and servicing agreement, to supplement the interest rates otherwise payable on the obligations described in section III.B.(1), in accordance with the terms of a yield supplement arrangement described in the pooling and servicing agreement, provided that such arrangements do not involve swap agreements or other notional principal contracts.

obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. Usually, the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account does not exceed one month. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to each Rating Agency that has rated the certificates.

5. Some of the certificates will be multi-class certificates. McDonald requests exemptive relief for two types of multi-class certificates: "strip" certificates and "fast-pay/slow-pay" certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[38]

"Fast-pay/slow-pay" certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with different payment schedules. Interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing a certificate be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a pro rata basis.[39]

6. The trust will be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates (within 120 days, except in the case of obligations having an original term of 30 years, in which case the period will not exceed two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed-through to certificateholders.

In some cases the trust will be maintained as a Financial Asset Securitization Investment Trust ("FASIT"), a statutory entity created by the Small Business Job Protection Act of 1996, adding sections 860H, 860J, 860K and 860L to the Code. In general, a FASIT is designed to facilitate the securitization of debt obligations, such as credit card receivables, home equity loans, and auto loans, and thus, allows certain features such as revolving pools of assets, trusts containing unsecured receivables and certain hedging types of investments. A FASIT is not a taxable entity and debt instruments issued by such trusts, which might otherwise be recharacterized as equity, will be treated as debt in the hands of the holder for tax purposes. However, a trust which is the subject of the proposed exemption will be maintained as a FASIT only where the assets held by the FASIT will be comprised of secured debt; revolving pools of assets or hedging investments will not be allowed unless specifically authorized by the exemption, if granted, so that a trust maintained as a FASIT will be maintained as an essentially passive entity.

Trust Structure With Pre-Funding Account

Pre-Funding Accounts

7. As described briefly above, some transactions may be structured using a pre-funding account or a capitalized interest account. If pre-funding is used, cash sufficient to purchase the receivables to be transferred after the closing date will be transferred to the trust by the sponsor or originator on the closing date. During the pre-funding period, such cash and temporary investments, if any, made therewith will be held in a pre-funding account and used to purchase the additional receivables, the characteristics of which will be substantially similar to the characteristics of the receivables transferred to the trust on the closing date. The pre-funding period for any trust will be defined as the period beginning on the closing date and ending on the earliest to occur of: (i) The date on which the amount on deposit in the pre-funding account is less than a specified dollar amount, (ii) the date on which an event of default occurs under the related pooling and servicing agreement, or (iii) the date which is the later of three months or ninety (90) days after the closing date. Certain specificity and monitoring requirements described below will be met and will be disclosed in the pooling and servicing agreement and/or the prospectus or private placement memorandum.

For transactions involving a trust using pre-funding, on the closing date, a portion of the offering proceeds will be allocated to the pre-funding account generally in an amount equal to the excess of (i) the principal amount of certificates being issued over (ii) the principal balance of the receivables being transferred to the trust on such closing date. In certain transactions, the aggregate principal balance of the receivables intended to be transferred to the trust may be larger than the total principal balance of the certificates being issued. In these cases, the cash deposited in the pre-funding account will equal the excess of the principal balance of the total receivables intended to be transferred to the trust over the principal balance of the receivables being transferred on the closing date.

On the closing date, the sponsor transfers the assets to the trust in exchange for the certificates. The certificates are then sold to McDonald

[38] It is the Department's understanding that where a plan invests in REMIC "residual" interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this proposed exemption.

[39] If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis with the senior certificateholders. The Department notes that the proposed exemption does not provide relief for plan investment in such subordinated certificates.

for cash or to the certificateholders directly if the certificates are sold through McDonald as a placement agent. The cash received by the sponsor from the certificateholders (or McDonald) for the sale of the certificates issued by the trust in excess of the purchase price for the receivables and certain other trust expenses, such as underwriting or placement agent fees and legal and accounting fees, constitutes the cash to be deposited in the pre-funding account. Such funds are either held in the trust and accounted for separately, or are held in a sub-trust. In either event, these funds are not part of the assets of the sponsor.

Generally, the receivables are transferred at par value, unless the interest rate payable on the receivables is not sufficient to service both the interest rates to be paid on the certificates and the transaction fees (*i.e.*, servicing fees, trustee fees and fees to credit support providers). In such cases, the receivables are sold to the trust at a discount, based on an objective, written, mechanical formula which is set forth in the pooling and servicing agreement and agreed upon in advance between the sponsor, the Rating Agency and any credit support provider or other insurer. The proceeds payable to the sponsor from the sale of the receivables transferred to the trust may also be reduced to the extent they are used to pay transaction costs (which typically include underwriting or placement agent fees and legal and accounting fees). In addition, in certain cases, the sponsor may be required by the Rating Agencies or credit support providers to set up trust reserve accounts to protect the certificateholders against credit losses.

The pre-funding account of any trust will be limited so that the percentage or ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered (the pre-funding limit) will not exceed 25%. The pre-funding limit (which may be expressed as a ratio or as a stated percentage or a combination thereof) will be specified in the prospectus or the private placement memorandum.

Any amounts paid out of the pre-funding account are used solely to purchase receivables and to support the certificate pass-through rate (as explained below). Amounts used to support the pass-through rate are payable only from investment earnings and are not payable from principal. However, in the event that, after all of the requisite receivables have been transferred into the trust, any funds remain in the pre-funding account, such funds will be paid to the certificateholders as principal prepayments. Upon termination of the trust, if no receivables remain in the trust and all amounts payable to certificateholders have been distributed, any amounts remaining in the trust would be returned to the sponsor.

A dramatic change in interest rates on the receivables held in a trust using a pre-funding account would be handled as follows. If the receivables (other than those with adjustable or variable rates) had already been originated prior to the closing date, no action would be required as the fluctuations in the market interest rates would not affect the receivables transferred to the trust after the closing date. In contrast, if interest rates fall after the closing date, loans originated after the closing date will tend to be originated at lower rates, with the possible result that the receivables will not support the certificate pass-through rate. In a situation where interest rates drop dramatically and the sponsor is unable to provide sufficient receivables at the requisite interest rates, the pool of receivables would be closed. In this latter event, under the terms of the pooling and servicing agreement, the certificateholders would receive a repayment of principal from the unused cash held in the pre-funding account. In transactions where the certificate pass-through rates are variable or adjustable, the effects of market interest rate fluctuations are mitigated. In no event will fluctuations in interest rates payable on the receivable affect the pass-through rate for fixed rate certificates.

The cash deposited into the trust and allocated to the pre-funding account is invested in certain permitted investments (see below), which may be commingled with other accounts of the trust. The allocation of investment earnings to each trust account is made periodically as earned in proportion to each account's allocable share of the investment returns. As pre-funding account investment earnings are required to be used to support (to the extent authorized in the particular transaction) the pass-through amounts payable to the certificateholders with respect to a periodic distribution date, the trustee is necessarily required to make periodic, separate allocations of the trust's earning to each trust account, thus ensuring that all allocable commingled investment earnings are properly credited to the pre-funding account on a timely basis.

The Capitalized Interest Account

8. In certain transactions where a pre-funding account is used, the sponsor and/or originator may also transfer to the trust additional cash on the closing date, which is deposited in a capitalized interest account and used during the pre-funding period to compensate the certificateholders for any shortfall between the investment earnings on the pre-funding account and the pass-through interest rate payable under the certificates.

The capitalized interest account is needed in certain transactions since the certificates are supported by the receivables and the earnings on the pre-funding account, and it is unlikely that the investment earnings on the pre-funding account will equal the interest rates on the certificates (although such investment earnings will be available to pay interest on the certificates). The capitalized interest account funds are paid out periodically to the certificateholders as needed on distribution dates to support the pass-through rate. In addition, a portion of such funds may be returned to the sponsor from time to time as the receivables are transferred into the trust and the need for the capitalized interest account diminishes. Any amounts held in the capitalized interest account generally will be returned to the sponsor and/or originator either at the end of the pre-funding period or periodically as receivables are transferred and the proportionate amount of funds in the capitalized interest account can be reduced. Generally, the capitalized interest account terminates no later than the end of the pre-funding period. However, there may be some cases where the capitalized interest account remains open until the first date distributions are made to certificateholders following the end of the pre-funding period.

In other transactions, a capitalized interest account is not necessary because the interest paid on the receivables exceeds the interest payable on the certificates at the applicable pass-through rate and the fees of the trust. Such excess is sufficient to make up any shortfall resulting from the pre-funding account earning less than the certificate pass-through rate. In certain of these transactions, this occurs because the aggregate principal amount of receivables exceeds the aggregate principal amount of certificates.

Pre-Funding Account and Capitalized Interest Account Payments and Investments

9. Pending the acquisition of additional receivables during the pre-funding period, it is expected that amounts in the pre-funding account and the capitalized interest account will be invested in certain permitted investments or will be held uninvested. Pursuant to the pooling and servicing agreement, all permitted investments must mature prior to the date the actual funds are needed. The permitted types of investments in the pre-funding account and capitalized interest account are investments which are either: (i) Direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States, or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a rating agency, as set forth in the pooling and servicing agreement and as required by the Rating Agencies. The credit grade quality of the permitted investments is generally no lower than that of the certificates. The types of permitted investments will be described in the pooling and servicing agreement.

The ordering of interest payments to be made from the pre-funding and capitalized interest accounts is pre-established and set forth in the pooling and servicing agreement. The only principal payments which will be made from the pre-funding account are those made to acquire the receivables during the pre-funding period and those distributed to the certificateholders in the event that the entire amount in the pre-funding account is not used to acquire receivables. The only principal payments which will be made from the capitalized interest account are those made to certificateholders if necessary to support the certificate pass-through rate or those made to the sponsor either periodically as they are no longer needed or at the end of the pre-funding period when the capitalized interest account is no longer necessary.

The Characteristics of the Receivables Transferred During the Pre-Funding Period

10. In order to ensure that there is sufficient specificity as to the representations and warranties of the sponsor regarding the characteristics of the receivables to be transferred after the closing date:

(i) All such receivables will meet the same terms and conditions for eligibility as those of the original receivables used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a Rating Agency. However, the terms and conditions for determining the eligibility of a receivable may be changed if such changes receive prior approval either by a majority vote of the outstanding certificateholders or by a Rating Agency;

(ii) The transfer to the trust of the receivables acquired during the pre-funding period will not result in the certificates receiving a lower credit rating from the Rating Agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(iii) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the trust on the closing date;

(iv) The trustee of the trust (or any agency with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to receivables that were acquired as of the closing date, the characteristics of the additional obligations subsequently acquired will be either (i) monitored by a credit support provider or other insurance provider which is independent of the sponsor, or (ii) an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the Rating Agency, McDonald and the trustee) stating whether or not the characteristics of the additional obligations acquired after the closing date conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date.

Each prospectus, private placement memorandum and/or pooling and servicing agreement will set forth the terms and conditions for eligibility of the receivables to be included in the trust as of the related closing date, as well as those to be acquired during the pre-funding period, which terms and conditions will have been agreed to by the Rating Agencies which are rating the applicable certificates as of the closing date. Also included among these conditions is the requirement that the trustee be given prior notice of the receivables to be transferred, along with such information concerning those receivables as may be requested. Each prospectus or private placement memorandum will describe the amount to be deposited in, and the mechanics of, the pre-funding account and will describe the pre-funding period for the trust.

Parties to Transactions

11. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a home-owner or automobile purchaser, or leases property to a lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be entities that originate receivables in the ordinary course of their businesses, including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

12. The *sponsor* will be one of three entities: (i) a special-purpose or other corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

13. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and

as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to McDonald, the trust sponsor, the servicer or any other member of the Restricted Group (as defined in section III.L.). McDonald represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer or sponsor or out of the trust assets. The method of compensating the trustee will be specified in the pooling and servicing agreement and disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

14. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, the receivables may be "subserviced" by their respective originators and a single entity may "master service" the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

Receivables of the type suitable for inclusion in a trust invariably are serviced with the assistance of a computer. After the sale, the servicer keeps the sold receivables on the computer system in order to continue monitoring the accounts. Although the records relating to sold receivables are kept in the same master file as receivables retained by the originator, the sold receivables are flagged as having been sold. To protect the investor's interest, the servicer ordinarily covenants that this "sold flag" will be included in all records relating to the sold receivables, including the master file, archives, tape extracts and printouts.

The sold flags are invisible to the obligor and do not affect the manner in which the servicer performs the billing, posting and collection procedures related to the sold receivables. However, the servicer uses the sold flag to identify the receivables for the purpose of reporting all activity on those receivables after their sale to investors.

Depending on the type of receivable and the details of the servicer's computer system, in some cases the servicer's internal reports can be adapted for investor reporting with little or no modification. In other cases, the servicer may have to perform special calculations to fulfill the investor reporting responsibilities. These calculations can be performed on the servicer's main computer, or on a small computer with data supplied by the main system. In all cases, the numbers produced for the investors are reconciled to the servicer's books and reviewed by public accountants.

The *underwriter* (*i.e.*, McDonald, its affiliate, or a member of an underwriting syndicate or selling group of which McDonald or its affiliate is a manager or co-manager) will be a registered broker-dealer that acts as underwriter or placement agent with respect to the sale of the certificates. Public offerings of certificates are generally made on a firm commitment basis. Private placement of certificates may be made on a firm commitment or agency basis. It is anticipated that the lead and co-managing underwriters will make a market in certificates offered to the public.

In some cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (although they may themselves be related) will be unrelated to McDonald. In other cases, however, affiliates of McDonald may originate or service receivables included in a trust or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

15. In some cases, the sponsor will obtain the receivables from various originators pursuant to existing contracts with such originators under which the sponsor continually buys receivables. In other cases, the sponsor will purchase the receivables at fair market value from the originator or a third party pursuant to a purchase and sale agreement related to the specific offering of certificates. In other cases, the sponsor will originate the receivables itself.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust, or the cash proceeds of the sale of such certificates. If the sponsor receives certificates from the trust, the sponsor sells all or a portion of these certificates for cash to investors or securities underwriters.

16. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces, including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.[40] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon, rate together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

17. As compensation for performing its servicing duties, the servicer (who may also be the sponsor or an affiliate thereof, and receive fees for acting in that capacity) will retain the difference between payments received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer typically will be required to pay the administrative expenses of servicing the trust, including in some cases the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is either paid out of the interest income received on the

[40] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into "principal" and "interest" components based on an implicit interest rate.

receivables in excess of the pass-through rate or paid in a lump sum at the time the trust is established.

18. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) prepayment fees; (b) late payment and payment extension fees; and (c) expenses, fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

19. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts maintained with itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

20. The underwriter will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, this fee would consist of the difference between what the underwriter receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor. In a best efforts underwriting in which the underwriter would sell certificates in a public offering on an agency basis, the underwriter would receive an agency commission rather than a fee based on the difference between the price at which the certificates are sold to the public and what it pays the sponsor. In some private placements, the underwriter may buy certificates as principal, in which case its compensation would be the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

Purchase of Receivables by the Servicer

21. The applicant represents that as the principal amount of the receivables in a trust is reduced by payments, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables remaining in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance.

The purchase price of a receivable is specified in the pooling and servicing agreement and will be at least equal to: (1) The unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer; or (2) the greater of (a) the amount in (1) or (b) the fair market value of such obligations in the case of a REMIC, or the fair market value of the receivables in the case of a trust that is not a REMIC.

Certificate Ratings

22. The certificates will have received one of the three highest ratings available from a Rating Agency. Insurance or other credit support (such as surety bonds, letters of credit, guarantees, or overcollateralization) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the Rating Agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

23. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e. act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) from the credit support provider (which may be the master servicer or an affiliate thereof) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases, however, the master servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, a master servicer typically can recover advances either from the provider of credit support or from future payments on the affected assets.

If the master servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover delinquent payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the master servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee; and

(d) The credit support has a "floor" dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount thereafter is subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

24. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, any material risk factors with respect to the certificates, and the fact that principal amounts left in the pre-funding account at the end of the pre-funding period will be paid to certificateholders as a repayment of principal;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms, and their material legal aspects, and a description of any pre-funding account used or capitalized interest account used in connection with a pre-funding account;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets, including the terms and conditions for eligibility of any receivables transferred during the pre-funding period and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; a description of permitted investments for any pre-funding account or capitalized interest account; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through securities to investors;

(j) Information about the scope and nature of the secondary market, if any, for the certificates; and

(k) A statement as to the duration of any pre-funding period and the pre-funding limit for the trust.

25. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

26. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission (SEC), a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates and copies of the statements sent to certificateholders. While the SEC's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

27. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets (including those purchased by the trust from any pre-funding account), payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the servicer, paying agent or trustee summarizing information regarding the trust and its assets, including underlying receivables. Such statement

will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Forward Delivery Commitments

28. To date, no forward delivery commitments have been entered into by McDonald in connection with the offering of any certificates, but McDonald may contemplate entering into such commitments. The utility of forward delivery commitments has been recognized with respect to offering similar certificates backed by pools of residential mortgages, and McDonald may find it desirable in the future to enter into such commitments for the purchase of certificates.

Secondary Market Transactions

29. It is McDonald's normal policy to attempt to make a market for securities for which it is lead or co-managing underwriter, and it is McDonald's intention to make a market for any certificates for which it is lead or co-managing underwriter, although it is under no obligation to do so. At times McDonald will facilitate sales by investors who purchase certificates if McDonald has acted as agent or principal in the original private placement of the certificates and if such investors request McDonald's assistance.

Retroactive Relief

30. McDonald represents that it has not engaged in transactions related to mortgage-backed and asset-backed securities based on the assumption that retroactive relief would be granted prior to the date of their application. However, McDonald requests the exemptive relief granted to be retroactive to January 4, 1999, the date of their application, and would like to rely on such retroactive relief for transactions entered into prior to the date exemptive relief may be granted.

Summary

31. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain "fixed pools" of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) In the case where a pre-funding account is used, the characteristics of the receivables to be transferred to the trust during the pre-funding period will be substantially similar to the characteristics of those transferred to the trust on the closing date, thereby giving the sponsor and/or originator little discretion over the selection process, and compliance with this requirement will be assured by the specificity of the characteristics and the monitoring mechanisms contemplated under the proposed exemption. In addition, certain cash accounts will be established to support the certificate pass-through rate and such cash accounts will be invested in short-term, conservative investments; the pre-funding period will be of a reasonably short duration; a pre-funding limit will be imposed; and any Internal Revenue Service requirements with respect to pre-funding intended to preserve the passive income character of the trust will be met. The fiduciary of the plans making the decision to invest in certificates is thus fully apprised of the nature of the receivables which will be held in the trust and has sufficient information to make a prudent investment decision.

(c) Certificates in which plans invest will have been rated in one of the three highest rating categories by a rating agency. Credit support will be obtained to the extent necessary to attain the desired rating;

(d) All transactions for which McDonald seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(e) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(f) McDonald anticipates that it will make a secondary market in certificates (although it is under no obligation to do so).

Notice to Interested Persons: The applicant represents that any securities offered in reliance upon the proposed exemption prior to the date the final exemption is published in the **Federal Register** shall disclose in the offering memorandum or prospectus: (a) The availability of the proposed exemption; (b) the right of potentially interested plan fiduciaries to comment on the proposed exemption; and (c) information on how an interested plan fiduciary can obtain a copy of the proposed exemption (once it is available) from McDonald.

Once this proposed exemption is granted, a copy of the exemption published in the **Federal Register** shall be distributed to any current or prospective plan investor in a security offered in reliance upon the exemption upon request of such investor, and each offering memorandum or prospectus offering securities in reliance upon the exemption shall describe and disclose the availability of the exemption.

Comments and requests for a hearing must be received by the Department not later than 45 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

For Further Information Contact: Gary Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 30th day of March, 2000.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 00–8448 Filed 4–6–00; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on April 15, 2000. The meeting will begin at 10 a.m. and continue until conclusion of the Board's agenda.

LOCATION: Marriott Wardman Park Hotel, 2660 Woodley Road, NW, Washington, DC 20008.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c) (10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of minutes of the Board's meeting of January 28–29, 2000.
3. Approval of minutes of the executive session of the Board's meeting of January 28–29, 2000.
4. Approval of minutes of the Board's teleconference meeting of January 28–29, 2000.
5. Approval of minutes of the Annual Performance Reviews Committee's teleconference meeting of November 19, 1999.
6. Approval of minutes of the Annual Performance Reviews Committee's teleconference meeting of January 24, 2000.
7. Approval of minutes of the November 19, 1999 meeting of the Committee on Provision for the Delivery of Legal Services.
8. Approval of minutes of the Operations & Regulations Committee's meeting of November 19, 1999.
9. Chairman's Report.
10. Members' Report.
11. Inspector General's Report.
12. President's Report.
13. Report on the status of Strategic Planning by the Corporation.
14. Review of the Corporation's Consolidated Operating Budget, Expenses and Other Funds Available through February 29, 2000.
15. Consider and act on the Board's meeting schedule, including designation of locations, for calendar year 2001.
16. Consider and act on the extension of John McKay's contract of employment as President of the Corporation.

Closed Session

17. Briefing [1] by the Inspector General on the activities of the Office of Inspector General.
18. Consider and act on the Office of Legal Affairs' report on potential and pending litigation involving the Corporation.

Open Session

19. Consider and act on other business.
20. Public Comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel and Secretary of the Corporation, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8800.

Dated: April 4, 2000.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel and Corporate Secretary.

[FR Doc. 00–8745 Filed 4–5–00; 12:45 pm]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting; Meeting of the Board of Directors Operations and Regulations Committee

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation's Board of Directors will meet on April 14, 2000. The meeting will begin at 2:30 p.m. and continue until the Committee concludes its agenda.

LOCATION: Marriott Wardman Park Hotel, 2660 Woodley Road, NW, Washington, DC 20008.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Consider and act on proposed Operations and Regulations Committee procedures.
3. Consider and act on other business.
4. Public Comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel and Secretary of the Corporation, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8800.

Dated: April 4, 2000.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel and Corporate Secretary.

[FR Doc. 00–8746 Filed 4–5–00; 12:45 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Committee on Provision for the Delivery of Legal Services

TIME AND DATE: The Committee on Provision for the Delivery of Legal Services of the Legal Services Corporation Board of Directors will meet on April 14, 2000. The meeting will begin at 10:00 a.m. and continue until the Committee concludes its agenda.

LOCATION: Marriott Wardman Park Hotel, 2660 Woodley Road, N.W., Washington, DC 20008.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Report by Robert Gross, of the Corporation's Office of Program Performance, on State Planning.
3. Update by Michael Genz and Glenn Rawdon, of the Corporation's Office of Program Performance, on the Technology Initiatives Grants Process.
4. Report by Michael Genz and Cynthia Schneider, of the Corporation's Office of Program Performance, on the Migrant Workers Legal Services Conference held on March 19–22, 2000, in Boerne, Texas.

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 CFR § 1622.2 & 1622.3.

5. Consider and act on other business.

6. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel and Secretary of the Corporation, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8800.

Dated: April 4, 2000.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel and Corporate Secretary.

[FR Doc. 00–8747 Filed 4–5–00; 12:45 pm]

BILLING CODE 7000–01–P

NATIONAL SCIENCE FOUNDATION

Public Affairs Advisory Group; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Public Affairs Advisory Group (5292).

Date and Time: April 10, 2000, 6 p.m.–9 p.m. (This notice replaces previous submission erroneously listing meeting as April 2, 2000).

Place: 2132 Florida Avenue, NW, Washington, DC 20008.

Type of Meeting: Open.

Contact Person: Mr. Michael Sieverts, Acting Director, Office of Legislative and Public Affairs, Room 1245, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306–1070.

Purpose of Meeting: To provide advice and recommendations concerning NSF science and engineering outreach activities.

Agenda: Review of Outreach Programs and Initiatives; Strategic Planning for 2000 and Beyond.

Meeting Minutes: May be obtained from the contact person listed above.

Dated: April 4, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–8635 Filed 4–6–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–003 and 50–247]

Consolidated Edison Company of New York, Inc.; Indian Point Nuclear Generating Units 1 and 2; Notice of Consideration of Approval of Application Regarding Proposed Merger and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of Facility Operating Licenses Nos. DPR–5 and DPR–26 for the Indian Point Nuclear Generating Units 1 and 2 (Indian Point Units 1 and 2), held by Consolidated Edison Company of New York, Inc. (Con Ed). The indirect transfer would be to a new Consolidated Edison, Inc., incorporated in Delaware (New CEI), resulting from the planned merger of Consolidated Edison, Inc. (CEI), the current parent of Con Ed, and Northeast Utilities (NU).

According to a January 13, 2000, application by Con Ed, North Atlantic Energy Service Corporation (NAESCO), and Northeast Nuclear Energy Company (NNECO), for approval of certain indirect license transfers, on October 13, 1999, NU entered into an Agreement and Plan of Merger with CEI. Upon consummation of the merger, NU will become a wholly owned subsidiary of New CEI. In addition, Con Ed, presently a subsidiary of CEI, will become a subsidiary of New CEI. Accordingly, consummation of the merger will effect an indirect transfer of the Indian Point Units 1 and 2 licenses to New CEI. Con Ed owns Indian Point Units 1 and 2 and is authorized to operate the units. Following the merger, Con Ed would continue to have responsibility for the management, operation, and maintenance of the Indian Point Units 1 and 2 and own the facility. No physical changes to Indian Point Units 1 and 2 or operational changes are being proposed. No direct transfer of the licenses will result from the proposed merger.

The application also seeks approval of certain proposed indirect license transfers in connection with the Millstone Nuclear Power Station, Units 1, 2, and 3, and the Seabrook Station, Unit 1, facilities, which will be the subject of separate notices.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the underlying transaction that will effectuate the indirect transfer will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments regarding the license transfer application, are discussed below.

By April 27, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Brent L. Brandenburg, Esq., Consolidated Edison Co. of New York, Inc., 4 Irving Place—1830, New York, NY 10003 (telephone number (212) 460–4333 and e-mail address brandenburgb@coned.com), attorney for Consolidated Edison, Inc., William J. Quinlan, Esq., Northeast Utilities, 107 Selden Street, Berlin, CT 06037 (telephone number (860) 665–3761 and e-mail address quinlwj@nu.com), attorney for Northeast Utilities; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by May 8, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated January 13, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Website (http://www.NRC.gov).

Dated at Rockville, Maryland this 3rd day of April 2000.

For the Nuclear Regulatory Commission.

Jefferey F. Harold,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–8629 Filed 4–6–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

Consumers Energy Company (Palisades Plant); Exemption

I

Consumers Energy Company (the licensee) is the holder of Facility Operating License No. DPR–20, which authorizes operation of the Palisades Plant. The facility consists of a pressurized-water reactor at the licensee's site located in Van Buren County, Michigan. The license provides that the licensee is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

II

The Code of Federal Regulations, 10 CFR part 50, appendix R, "Fire Protection Program For Nuclear Power Facilities Operating Prior To January 1, 1979," Section III.O, "Oil Collection System for Reactor Coolant Pump," requires that primary coolant pumps be equipped with oil collection systems (if the containment is not inerted during normal operation) capable of collecting lube oil from potential leakage sites in the primary coolant pump lube oil systems. Section III.O includes a specific requirement regarding the capacity of the lube oil collection container: "Leakage shall be collected and drained to a vented closed container that can hold the entire lube oil system inventory." The underlying purpose of Section III.O requirements is to provide reasonable assurance that leakage from primary coolant pump lube oil systems will not lead to a fire that could damage safety-related equipment during normal or design-basis accident conditions.

Pursuant to 10 CFR 50.12(a), the Commission may grant exemptions from requirements of 10 CFR Part 50 that are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security, provided that special circumstances are present. Pursuant to 10 CFR 50.12(a)(2)(ii), special circumstances are present whenever "application of the regulation in the particular circumstances * * * is not necessary to achieve the underlying purpose of the rule."

III

The Palisades Plant consists of a two-loop, pressurized water reactor with two primary coolant pumps returning flow from each of the two steam generators to the reactor core. Each of the four primary coolant pumps is powered by a vertical shaft motor with upper and lower bearing assemblies. Each bearing assembly has its own separate lubrication system consisting of an oil reservoir and associated piping. The upper reservoir for each pump motor could contain up to 87 gallons of lube oil, of which 76 gallons would be in the oil reservoir and 11 gallons in the associated piping systems (including lift and backstop pumps and their respective oil coolers). The nominal volume of the lower reservoir is 18 gallons, with no significant volume in the associated piping. Thus, the total inventory of lube oil that each primary coolant pump motor could contain is 105 gallons.

Each of the four primary coolant pump motors has a separate closed and vented oil collection tank to collect oil leakage. Each of the oil collection tanks for the motors of primary coolant pumps P–50A, P–50B, and P–50C has a usable capacity of 79 gallons, which is insufficient (by 26 gallons) to contain the entire lube oil inventory of the pump motor. There is reasonable assurance that the oil collection systems would withstand a safe shutdown earthquake.

Operating procedures and practices at the Palisades Plant are such that oil spillage due to overflowing an existing collection tank is unlikely. The operating levels in the upper and lower lubricating oil reservoirs must be maintained above a minimum level to keep the bearings properly lubricated during motor operation. The operating level for the upper reservoir is about 20 gallons and the operating level for the lower reservoir is about 5 gallons. Any significant leakage or change in leakage trends would be identified through regular monitoring by control room operators and by oil level alarms. The operators would shut down a primary coolant pump if oil leakage caused either reservoir to reach an operating level low enough to threaten motor bearing damage, or if the lubricating oil level dropped at a rate that would cause concern about safe pump operation. Stopping the pump (and its oil lift pump) would depressurize the leaking lubricating oil system. The cause of the oil leakage would be investigated and repaired, and the collection tank would be pumped out before returning the pump to operation. Stopping a primary coolant pump during reactor operation would result in an immediate reactor shutdown.

In the unlikely event that operators allowed leakage in a primary coolant pump motor's upper oil system to drain the entire system without taking action to stop the pump, approximately 8 gallons of oil could overflow the oil collection tank onto the floor in containment. Approximately 26 gallons could overflow onto the floor in the less likely event that both the upper and lower oil systems were to develop gross leakage simultaneously with no operator action.

Lubricating oil that might overflow an oil collection tank would flow down to lower floor elevations and eventually into the containment sump. The motor oil has a flash point of over 400 °F and the containment atmosphere is nominally 80 °F to 100 °F when the primary coolant pumps are in operation. The oil would not come into contact with any hot pipes, hot equipment

surfaces, or electrical ignition sources in the tank areas or in the flow paths to the sump. Thus, the oil would not become a fire hazard and would drain to a safe location.

By its response to Question 6.2 of Generic Letter 86–10, "Implementation of Fire Protection Requirements," the NRC staff has previously addressed the use of splash shields and the containment sump for the collection tank volume. The NRC staff concluded that, although an exemption would be required, it would be acceptable if the collected overflow of lube oil drained to the sump, and there were no sources of ignition in the area. The NRC staff finds that the exemption requested for the Palisades Plant meets the guidelines for an acceptable exemption as addressed by the NRC staff in Generic Letter 86–10.

Accordingly, the usable capacity of the existing lube oil collection tanks for the motors of primary coolant pumps P–50A, P–50B, and P–50C, in conjunction with the low risk associated with minor amounts of potential oil overflow to the containment sump, which would not lead to a fire, satisfies the underlying purpose of Section III.O of Appendix R to 10 CFR 50.

IV

Pursuant to 10 CFR 50.12(a), the Commission has determined that special circumstances exist at the Palisades Plant in that application of the regulation regarding the capacity of lube oil collection containers is not necessary to achieve the underlying purpose of that requirement in Appendix R to 10 CFR part 50. The Commission has also determined that this exemption is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security. Therefore, the Commission hereby grants the licensee an exemption from the requirements of Section III.O of Appendix R to 10 CFR Part 50 regarding the specified capacity of lube oil collection containers. This exemption applies to the lube oil collection containers for the motors of primary coolant pumps P–50A, P–50B, and P–50C, based on the facts set forth herein.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact upon the quality of the human environment (65 FR 16971).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of March 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–8631 Filed 4–6–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

North Atlantic Energy Service Corporation, Et Al., Seabrook Station, Unit 1; Notice of Consideration of Approval of Application Regarding Proposed Merger and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of Facility Operating License No. NPF–86 for the Seabrook Station, Unit 1 (Seabrook Station), to the extent held by North Atlantic Energy Corporation (NAEC), Connecticut Light and Power Company (CL&P), and North Atlantic Energy Service Corporation (NAESCO). The indirect transfer would be to a new Consolidated Edison, Inc., incorporated in Delaware (New CEI), resulting from the planned merger of Consolidated Edison, Inc. (CEI), the current parent of Consolidated Edison Company of New York, Inc. (Con Ed), and Northeast Utilities (NU), the parent company of NAEC, CL&P, and NAESCO.

According to a January 13, 2000, application by Con Ed, NAESCO, and Northeast Nuclear Energy Company (NNECO) for approval of certain indirect license transfers, on October 13, 1999, NU entered into an Agreement and Plan of Merger with CEI. Upon consummation of the merger, NU will become a wholly owned subsidiary of New CEI. CL&P, NAEC, and NAESCO are all subsidiaries of NU, and will remain as such following the merger, but will have a new indirect parent, New CEI. Accordingly, consummation of the merger will effect an indirect transfer of the Seabrook Station license to the extent held by the above NU subsidiaries, to New CEI. CL&P and NAEC hold ownership interests in Seabrook Station and NAESCO is exclusively authorized to operate the unit. NAESCO would remain as the managing agent for the 11 joint owners of the facility and would continue to have exclusive responsibility for the management, operation, and maintenance of the Seabrook Station. The application does not propose a change in the rights, obligations, or interests of the other nine joint owners of the Seabrook Station. In addition, no physical changes to the Seabrook Station or operational changes are being proposed. No direct transfer of the license will result from the proposed merger.

The application also seeks approval of certain proposed indirect license transfers in connection with the Millstone Nuclear Power Station, Units 1, 2, and 3 and the Indian Point Generating Station, Units 1 and 2 facilities, which will be the subject of separate published notices.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the underlying transaction that will effectuate the indirect transfer will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments regarding the license transfer application, are discussed below.

By April 27, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served

upon Brent L. Brandenburg, Esq., Consolidated Edison Co. of New York, Inc., 4 Irving Place—1830, New York, NY 10003 (telephone number (212) 460–4333 and e-mail address brandenburgb@coned.com), attorney for Consolidated Edison, Inc., William J. Quinlan, Esq., Northeast Utilities, 107 Selden Street, Berlin, CT 06037 (telephone number (860) 665–3761 and e-mail address quinlwj@nu.com), attorney for Northeast Utilities; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by May 8, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of the **Federal Register** notice.

For further details with respect to this action, see the application dated January 13, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and Accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.NRC.gov).

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 3rd day of April 2000.

Robert M. Pulsifer,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–8627 Filed 4–6–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–245, 50–336, and 50–423]

Northeast Nuclear Energy Company, et al.; Millstone Nuclear Power Station, Units 1, 2, and 3; Notice of Consideration of Approval of Application Regarding Proposed Merger and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of Facility Operating Licenses Nos. DPR–21, DPR–65 and NPF–49 for the Millstone Nuclear Power Station, Units 1, 2, and 3, (Unit 1, Unit 2, and Unit 3), respectively, to the extent held by Connecticut Light and Power Company (CL&P), Western Massachusetts Electric Company (WMECO), Northeast Nuclear Energy Company (NNECO), and Public Service Company of New Hampshire (PSNH). The indirect transfer would be to a new Consolidated Edison, Inc., incorporated in Delaware (New CEI), resulting from the planned merger of Consolidated Edison, Inc. (CEI), the current parent of Consolidated Edison Company of New York, Inc. (Con Ed), and Northeast Utilities (NU), the parent company of WMECO, CL&P, PSNH and NNECO.

According to a January 13, 2000, application by ConEd, NNECO, and North Atlantic Energy Service Corporation (NAESCO) for approval of certain indirect license transfers, on October 13, 1999, NU entered into an Agreement and Plan of Merger with CEI. Upon consummation of the merger, NU will become a wholly owned subsidiary of New CEI. CL&P, WMECO, NNECO, and PSNH are all subsidiaries of NU, and will remain as such following the merger, but will have a new indirect parent, New CEI. Accordingly, consummation of the merger will effect an indirect transfer of the Millstone Units 1, 2, and 3 licenses to the extent held by the above NU subsidiaries, to New CEI. CL&P and WMECO hold ownership interests in Units 1 and 2, and NNECO is exclusively authorized to operate both Units as well as Unit 3. CL&P, WMECO, and PSNH hold ownership interests in Unit 3 along with 11 other co-owners not affiliated with NU. NNECO would remain as the managing agent for the joint owners of the facilities and would continue to have exclusive responsibility for the management, operation, and maintenance of Units 1, 2, and 3. The application does not propose a change in the rights, obligations, or interests of the other 11 joint owners of Unit 3 which are not affiliates of NU. In addition, no physical changes to Units 1, 2, and 3 or operational changes are being proposed. No direct transfer of the licenses will result from the proposed merger.

The application also seeks approval of certain proposed indirect license transfers in connection with Seabrook Station and Indian Point, Units 1 and 2 facilities, which will be the subject of separate published notices.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the underlying transaction that will effectuate the indirect transfer will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments regarding the license transfer application, are discussed below.

By April 27, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Brent L. Brandenburg, Esq., Consolidated Edison Co. of New York, Inc., 4 Irving Place—1830, New York,

NY 10003 (telephone number (212) 460–4333 and e-mail address brandenburgb@coned.com), attorney for Consolidated Edison, Inc., William J. Quinlan, Esq., Northeast Utilities, 107 Selden Street, Berlin, CT 06037 (telephone number (860) 665–3761 and e-mail address quinlwj@nu.com), attorney for Northeast Utilities; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by May 8, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of the **Federal Register** notice.

For further details with respect to this action, see the application dated January 13, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.NRC.gov).

Dated at Rockville, Maryland this 3rd day of April 2000.

For The Nuclear Regulatory Commission.

Victor Nerses,

Senior Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–8628 Filed 4–6–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–08838]

Notice of Consideration of Amendment Request for U.S. Army Jefferson Proving Ground Site in Madison, IN and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Materials License No. SUB–1435 issued to the U.S. Army (licensee) at the Jefferson Proving Ground (JPG) site in Madison, Indiana. The licensee requested, in a letter dated February 15, 2000, to: (1) Authorize transfer of licensing responsibilities for the Jefferson Proving Ground (JPG) site from the U.S. Army Test and Evaluation Command (TECOM) to the U.S. Army Soldier and Biological Chemical Command (SBCCOM), (2) designate Ms. Joyce E. Kuykendall as the Radiation Safety Officer (RSO) for the site, and (3) include the revised JPG Security Plan in the license.

From 1941 to 1994, the licensee conducted ordnance testing on the JPG site, and fired more than 24 million rounds of conventional explosive. From 1984 to 1994, the licensee conducted accuracy testing of depleted uranium (DU) tank penetrator rounds at the site. An NRC license was issued to authorize the U.S. Army to use, store, and perform testing of DU munitions at JPG. The DU penetrator rounds vary in size but can be generally described as rods comprised of a DU titanium alloy with a diameter of approximately 2.5 centimeters (cm) (1 inch) and a length as much as 61 cm (2 feet). The DU munitions testing contaminated approximately 5.1×10^6 square meters (m^2) (1260 acres) of the site with an estimated 7×10^4 kilograms (1.5×10^5 pounds) of DU. In accordance with the Defense Authorization Amendments and Base Realignment and Closure Act of 1988 (Public Law 100–526), the licensee was required to close the JPG base on September 30, 1995. Currently, the licensed material is kept onsite in the restricted area known as the "Depleted Uranium Impact Area." This area is located north of the firing line, and consists of approximately 12×10^6 m^2 (3,000 acres).

An NRC administrative review, documented in a letter to the licensee dated March 15, 2000, found the license amendment application acceptable to begin a technical review. The application requested to: (1) Authorize transfer of licensing responsibilities for the JPG site from TECOM to SBCCOM, (2) designate Ms. Joyce E. Kuykendall as the RSO for the site, and (3) include the revised JPG Security Plan in the license. The NRC Decommissioning Branch is currently changing its policy regarding listing the RSO by name in the license. Instead, the license will include the qualifications that an RSO must meet for the respective site. NRC staff plans to revise the JPG license condition on the RSO accordingly.

If the NRC approves the February 15, 2000, request, the approval will be documented in an amendment to NRC License No. SUB–1435. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment or a Categorical Exclusion.

NRC hereby provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules of practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 pm Federal workdays; or

2. By mail, telegram, or facsimile addressed to the Secretary, U.S. Nuclear Regulatory Commission, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, U.S. Army Soldier and Biological Chemical Command, 5183 Black Hawk Road, Aberdeen Proving Ground, MD 21010–5424, Attention: Mr. John M. Ferriter, and;

2. The NRC staff, by delivery to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 pm Federal workdays, or by mail, addressed to the Executive Director for Operations, U.S.

Nuclear Regulatory Commission, Washington, DC 20555–0001.

In addition to meeting other applicable requirements of 10 CFR Part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h):

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstance establishing that the request for a hearing is timely in accordance with § 2.1205(d).

FOR FURTHER INFORMATION CONTACT: The application for license amendment and supporting documentation are available for inspection at NRC's Public Electronic Reading Room on the NRC web site at http://www.nrc.gov/NRC/ADAMS/index.html. Questions with respect to this action should be referred to Ms. Sherry W. Lewis, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6619. Fax: (301) 415–5398.

Dated at Rockville, Maryland, this 3rd day of April 2000.

For the Nuclear Regulatory Commission.

Robert A. Nelson,

Acting Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–8630 Filed 4–6–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on April 27, 2000, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The agenda for the subject meeting shall be as follows:

Thursday, April 27, 2000—8:30 a.m. until 12 Noon

The Subcommittee will continue discussion of the NRC Code Guideline Documents (Proposed Regulatory Guide and Standard Review Plan Section). The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: March 31, 2000.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 00–8430 Filed 4–6–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Issuance of Final Design Approval and Final Safety Evaluation Report, Supplement 1, for AP600 Standard Plant Design Westinghouse Electric Company

The U.S. Nuclear Regulatory Commission (NRC) has issued Supplement 1 to the Final Safety Evaluation Report (FSER) related to certification of the AP600 Standard Plant Design. On the basis of the evaluation described in the FSER (NUREG–1512) and Supplement 1 thereto, the NRC staff concludes that the confirmatory issues in NUREG–1512 are resolved, the AP600 design documentation is acceptable, and Westinghouse's application for design certification meets the requirements of Subpart B to 10 CFR Part 52 that are applicable and technically relevant to the AP600 Standard Plant Design.

The NRC has also issued a revised final design approval (FDA) to Westinghouse for the AP600 design under 10 CFR part 52, appendix O. This FDA allows the AP600 design to be referenced in an application for a construction permit or an operating license under 10 CFR Part 50, or an application for a combined license under 10 CFR part 52. The FDA was revised to make it coterminous with the design certification rule that was issued on December 23, 1999 (Appendix C to 10 CFR part 52). This FDA supersedes the FDA dated September 3, 1998.

A copy of the AP600 FDA and Supplement 1 to the FSER have been placed in the NRC's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington DC 20037, for review and copying by interested persons.

Dated at Rockville, Maryland, this 31st day of March 2000.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Chief, License Renewal and Standardization Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 00–8632 Filed 4–6–00; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of Approval of a Collection of Information Under the Paperwork Reduction Act; Customer Service Focus Groups and Surveys

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension and expansion of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation is requesting that the Office of Management and Budget extend and expand its approval of a collection of information under the Paperwork Reduction Act. The purpose of the information collection, which will be

conducted through focus groups and surveys over a three-year period, is to help the PBGC assess the efficiency and effectiveness with which it serves its customers and to design actions to address identified problems.

DATES: Comments should be submitted on or before June 6, 2000.

ADDRESSES: All written comments should be addressed to: Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 725 17th Street, NW., Room 10235, Washington, DC 20503–0009. The request for approval of the proposed collection of information will be available for public inspection at the PBGC Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005–4026, between the hours of 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Thomas H. Gabriel, Attorney, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC is requesting that OMB extend its approval, for a three-year period, of a generic collection of information consisting of customer satisfaction focus groups and surveys (OMB No. 1212–0053; expires July 31, 2002). The PBGC also is requesting that OMB expand its approval to encompass a broader range of surveys than those approved under 1212–0053, which provided for surveys only as an adjunct to focus groups. The expanded information collection will further the goals of Executive Order 12862, Setting Customer Service Standards, which states the Federal Government must seek to provide "the highest quality of service delivered to customers by private organizations providing a comparable or analogous service."

The PBGC uses customer satisfaction focus groups and surveys to find out about the needs and expectations of its customers and assess how well it is meeting those needs and expectations. By keeping these avenues of communication open, the PBGC can continually improve service to its customers, including plan participants and beneficiaries, plan sponsors and their affiliates, plan administrators, pension practitioners, and others involved in the establishment, operation and termination of plans covered by the PBGC's insurance program. Because the areas of concern to the PBGC and its customers vary and may quickly change, it is important that the PBGC have the ability to evaluate customer concerns quickly by developing new vehicles for gathering information under this generic approval. The focus groups and surveys will provide important information on customer attitudes about the delivery and quality of agency services and will be used as part of an ongoing process to improve PBGC programs. The PBGC is including in this information collection two surveys previously approved by OMB (OMB Approval Nos. 1212–0056 and 1212–0058).

Participation in the focus groups and surveys will be voluntary. The PBGC estimates that the average annual burden will total 2,500 burden hours for 9,500 respondents (an average of about one-quarter hour per respondent). The PBGC will consult with OMB regarding each specific information collection during the approval period.

On December 10, 1999, the PBGC published in the **Federal Register** a notice of intention to request extension of OMB approval of this collection. No comments were received in response to the notice.

Issued at Washington, D.C., this 31st day of March, 2000.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 00–8584 Filed 4–6–00; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Form N–23C–1; SEC File No. 270–230; OMB Control No. 3235–0230.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension and approval on the collection of information discussed below.

Section 23(c) of the Investment Company Act of 1940 [15 U.S.C. 80a–23(c)] ("Investment Company Act" or "Act") prohibits a registered closed-end investment company ("closed-end fund" or "fund") from purchasing any security it issues except on a securities exchange, pursuant to tender offers, or under such other circumstances as the Commission may permit by rules or orders designed to ensure that purchases are made in a manner that does not unfairly discriminate against any holders of the securities to be purchased. Rule 23c–1 [17 CFR 270.23c–1] under the Act permits a closed-end fund that meets certain requirements to repurchase its securities other than on an exchange or pursuant to a tender.

A registered closed-end fund that relies on rule 23c–1 may purchase its securities for cash if, among other conditions set forth in the rule, certain conditions are met:

- Payment of the purchase price is accompanied or preceded by a written confirmation of the purchase;
- The purchase is made at a price not above the market value, if any, or the asset value of the security, whichever is lower, at the time of the purchase; and
- If the security is stock, the issuer has, within the preceding six months, informed stockholders of its intention to purchase stock of the class by letter or report addressed to all the stockholders of the class.

In addition, the issuer must file with the Commission, on or before the tenth day of the month following the date in which the purchase occurs, two copies of Form N–23C–1. The form requires the issuer to report all purchases in has made during the month, together with a copy of any written solicitation to purchase securities under rule 23c–1 sent or given during the month by or on behalf of the issuer to ten or more persons.

The purpose of rule 23c–1 is to protect shareholders of closed-end funds from fraud in connection with the repurchase by funds of their own securities. The purpose of the rule's requirement that the fund file Form N–23C–1 with the Commission is to allow the Commission to monitor funds' repurchase of securities as well as any written solicitation used by the fund to effect those repurchases, and to make that information available to the public. Investors may seek this information when determining whether to invest in certain funds.

The requirements to file Form N–23C–1 applies to a closed-end fund only when the fund has repurchased its securities. If the information provided

in the form were collected less frequently than a month after repurchases occur, the Commission and investing public would lack current information about closed-end funds that repurchase their own securities.

Commission staff estimates that each year approximately 19 closed-end funds use the repurchase procedures under rule 23c–1, and that these funds file a total of 115 forms each year.[1] The number of forms filed by each fund ranges from 1 to 12 depending on the number of months in which the fund repurchases its securities under rule 23c–1. Commission staff estimates that each response requires 1 burden hour to prepare and file Form N–23C–1 with a copy of any written solicitation to purchase securities under the rule (if necessary). Commission staff estimates each burden hour consists of 15 minutes of professional time and 45 minutes of support staff time.[2] Commission staff further estimates that each of the 19 funds expends between 1 and 12 hours annually in filing Form N–23C–1. The total annual burden of the rule's paperwork requirements is estimated to be 115 hours.

These estimates represent an increase of 92 hours from the prior estimate of 23 hours. The increase results primarily from the increase in the number of funds relying on the rule to purchase their securities. At the time of the last submission the Commission estimated that 4 funds filed a total of 23 Form N–23C–1s annually with the Commission (with each fund filing between 1 and 12 forms during the year). In 1999, 19 funds filed 115 forms with the Commission.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Compliance with the collection of information requirements of the rule and form is necessary to obtain the benefit of relying on the rule and form. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 30, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8617 Filed 4–6–00; 8:45 am]

BILLING CODE 8010–01–M

[1] These estimates are based on Form N–23C–1 filings for 1999.

[2] The burden hour estimates are based upon consultation with lawyers and accountants familiar with the practices of fund boards and the staff of investment advisers.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24374; File No. 812–11888]

Alexander Hamilton Life Insurance Company of America, et al.

April 3, 2000.

AGENCY: Securities and Exchange Commission (the "Commission" or "SEC").

ACTION: Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the "1940 Act") approving a substitution of underlying fund shares (the "Substitution") and pursuant to Section 17(b) of the 1940 Act exempting certain in-kind transactions from Section 17(a) of the 1940 Act in connection with the Substitution.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered unit investment trusts to substitute shares of the S&P 500 Index Portfolio (the "JPVF 500 Portfolio") of the Jefferson Pilot Variable Fund, Inc. ("JPVF") for shares of the Fidelity Index 500 Portfolio (the "Fidelity 500 Portfolio") of the Fidelity Variable Insurance Products Fund II ("FVIPF II") currently held by those unit investment trusts, and to permit certain in-kind redemptions of portfolio securities in connection with the Substitution.

APPLICANTS: Alexander Hamilton Life Insurance Company of America ("AH Life"), Alexander Hamilton Variable Annuity Separate Account ("AH Separate Account"), Jefferson Pilot Financial Insurance Company ("Jefferson Pilot Financial"), JPF Separate Account A ("JPF Account A"), JPF Separate Account C ("JPF Account C"), Jefferson Pilot LifeAmerica Insurance Company ("JP LifeAmerica"), JPF Separate Account B ("JPF Account B"), Jefferson-Pilot Life Insurance Company ("JP Life"), Jefferson-Pilot Separate Account A ("JP Life Account A") and Jefferson Pilot Investment Advisory Corporation ("Jefferson Pilot Advisory")(collectively, the "Applicants").

FILING DATE: The application was filed on December 15, 1999, and amended and restated on March 8, 2000.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 27, 2000, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street NW 20549–0609. Applicants: c/o Jefferson Pilot Financial Insurance Company, One Granite Place, Concord, New Hampshire 03301, Attn: Shari J. Lease, Esq.

FOR FURTHER INFORMATION CONTACT: Kevin P. McEnery, Senior Counsel, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. AH Life is a stock life insurance company organized under the insurance laws of the State of Michigan in 1963. AH Life commenced operations on October 31, 1964, and is engaged primarily in the sale of annuity contracts and life insurance policies. AH Life is authorized to write annuities and life insurance in Canada, the District of Columbia, and all states except New York. Jefferson Pilot is a stock life insurance company chartered in 1903 in Tennessee. Prior to May 1, 1998, Jefferson Pilot Financial was known as Chubb Life Insurance Company of America ("Chubb Life"). In 1991 Chubb Life redomesticated from

Tennessee to New Hampshire and is now a New Hampshire life insurance company. Jefferson Pilot Financial is engaged primarily in the sale of annuities and life insurance. Jefferson Pilot Financial is authorized to write annuities and life insurance in 49 states, Puerto Rico, the U.S. Virgin Islands, Guam and the District of Columbia. JP LifeAmerica is a stock life insurance company chartered in 1897 in New Jersey. Prior to May 1, 1998, JP LifeAmerica was known as Chubb Colonial Life Insurance Company. JP LifeAmerica is engaged primarily in the sale of annuities and life insurance and writes individual life contracts, as well as group life policies. JP LifeAmerica is licensed to sell life insurance in all States, Puerto Rico, the U.S. Virgin Islands, Guam and the District of Columbia. JP Life is a stock life insurance company organized under the insurance laws of North Carolina in 1890. JP Life is primarily engaged in the writing of whole life, term, endowment, and annuity policies on an individual ordinary basis, plus industrial and group insurance. JP Life is authorized to write annuities and other insurance in the Virgin Islands, Puerto Rico, the District of Columbia, and all States except New York. These four life insurance companies are referred to in the application and herein as the "Life Company Applicants," and they are affiliated companies wholly-owned by Jefferson-Pilot Corporation, a North Carolina corporation.

2. AH Separate Account is a segregated asset account of AH Life. It was established by AH Life pursuant to a resolution of its Board of Directors on January 24, 1994, in accordance with the laws of Michigan and is registered as a unit investment trust under the 1940 Act. AH Life issues certain variable annuity contracts through the AH Separate Account.

3. JPF Account A was established by Jefferson Pilot Financial pursuant to a resolution of its Board of Directors on August 20, 1984 in accordance with laws of New Hampshire and is registered as a unit investment trust under the 1940 Act. JPF Account A is used to fund certain variable life insurance policies issued by Jefferson Pilot Financial.

4. JPF Account C is a segregated asset account of Jefferson Pilot Financial. It was established by Jefferson Pilot Financial pursuant to a resolution of its Board of Directors on August 3, 1993, in accordance with the laws of New Hampshire and is registered as a unit investment trust under the 1940 Act. JPF Account C is used to fund certain variable life insurance policies issued by Jefferson Pilot Financial.

5. JPF Account B is a segregated asset account of JP LifeAmerica. It was established by JP LifeAmerica pursuant to a resolution of its Board of Directors on March 2, 1994, in accordance with the laws of New Jersey and is registered as a unit investment trust under the 1940 Act. JPF Account B is used to fund certain variable life insurance policies issued by JP LifeAmerica.

6. JP Life Account A is a segregated asset account of JP Life. Its predecessor was established pursuant to a resolution of the Board of Directors of JP Life on May 13, 1969. JP Life Account A was established under the laws of North Carolina and is registered as a unit investment trust under the 1940 Act. JP Life Account A is used to fund certain variable annuity contracts issued by JP Life.

7. The above described segregated asset accounts are referred to in the application and herein as the "Separate Account Applicants." The variable annuity and variable life contracts issued by the Life Company Applicants (through the Separate Account Applicants) that would be affected by the Substitution are referred to in the application and herein as the "Contracts."[1] Each of the Contracts permits Contractowners to make a number of transfers between and among the sub-accounts of the respective Separate Account Applicant per contract or policy year and does not impose a transfer fee or charge on a number of such transfers.

8. Jefferson Pilot Advisory (formerly, Chubb Investment Advisory Corporation) is the investment adviser to the Jefferson Pilot Variable Fund, Inc. ("JPVF"), which is registered as an open-end management investment company under the 1940 Act and which was incorporated in Maryland on October 19, 1984, and each of its portfolios. One of these portfolios is the S&P 500 Index Portfolio (the "JPVF 500 Portfolio"). Jefferson Pilot Advisory is a corporation organized under the laws of Tennessee in 1984 and is registered as an investment adviser under the Investment Advisers Act of 1940. Jefferson Pilot Advisory is a wholly-owned subsidiary of Jefferson-Pilot Corporation. Jefferson Pilot Advisory has obtained an SEC order granting relief from Section 15(a) of the 1940 Act and certain other provisions (the "JPVF Order") permitting it to manage JPVF's portfolios pursuant to a "manager-of-managers" arrangement.[2] Pursuant to the JPVF Order, Jefferson Pilot Advisory may, subject to certain conditions, including approval of the Board of JPVF, and without the approval of shareholders, (a) employ a new sub-adviser or sub-advisers for any portfolio of JPVF pursuant to terms of a new investment advisory agreement, in each case either as a replacement for an existing sub-adviser or as an additional sub-adviser; (b) change the terms of any investment advisory agreement pertaining to a sub-adviser; and (c) continue the employment of an existing sub-adviser on the same contract terms where a contract has been assigned because of a change of control of the sub-adviser. In such circumstances, Contractowners would receive notice of any such action, including information concerning any new sub-adviser that normally is provided in proxy materials.

9. The Fidelity Index 500 Portfolio ("Fidelity 500 Portfolio" or the "Replaced Fund") is a series of the Fidelity Variable Insurance Products Fund II ("FVIPF II"), an open-end management investment company established as a Massachusetts business trust under a Declaration of Trust dated March 21, 1988. Shares of the Fidelity 500 Portfolio are currently available only through the purchase of variable annuity and variable life insurance contracts and through certain tax qualified retirement plans. Fidelity Management & Research Company ("FMR") acts as the Fidelity 500 Portfolio's investment adviser and has retained Bankers Trust Company ("BTC") to serve as sub-adviser to the Fidelity 500 Portfolio. The Fidelity 500 Portfolio is an investment option under each of the Contracts.

[1] JP Life, through JP Life Account A, issued two forms of individual flexible payment variable annuity contracts (the "Alpha Contracts"). Applicants represent that the Alpha Contracts are not currently being offered and that JP Life Account A does not file updated post-effective amendments consistent with the terms and conditions of relevant SEC no-action precedent. *See, e.g.*, Great-West Life & Annuity and Insurance Company (pub. avail. Oct. 23, 1990) ("*Great-West*"). Applicants state that in reliance on such precedent, certain information about the Alpha Contracts, JP Life Account A, and JPVF is provided to Alpha Contractowners in lieu of filing post-effective amendments to the registration statements relating to the Alpha Contracts or delivering updated Contract prospectuses to those Contractowners

[2] *In the Matter of Jefferson Pilot Variable Fund, Inc. and Jefferson Pilot Advisory Corporation*, Investment Company Act Rel. Nos. 23301 (July 1, 1998) (Order) and 23242 (June 5, 1998) (Notice). Applicants state that, because the JPVF 500 Portfolio is a series of JPVF, it will be entitled to rely on the JPVF Order. As a condition to the application, Applicants state that they will take no action in reliance on the JPVF Order with respect to the JPVF 500 Portfolio unless and until the operation of the Portfolio in the manner contemplated by the JPVF Order is approved, following the Substitution, by the holders of a "majority of the outstanding voting securities" of the Portfolio within the meaning of the 1940 Act.

10. Applicants state that the Fidelity 500 Portfolio seeks investment results that correspond to the total return of common stocks publicly traded in the United States as represented by the Standard & Poor's 500 Composite Stock Price Index ('S&P 500 Index"). Under normal circumstances, the Fidelity 500 Portfolio intends to invest at least 80% of its assets in common stocks included in the S&P 500 Index. The Fidelity 500 Portfolio seeks to achieve a 98% or better correlation between its total return, before fees and expenses, and the total return of the S&P 500 Index.

11. Applicants state that the JPVF 500 Portfolio was established pursuant to a resolution of the JPVF's Board of Directors at a Board meeting held on February 7, 2000. Applicants represent that JPVF filed a post-effective amendment to its registration statement on February 16, 2000 to register shares of the JPVF 500 Portfolio. The Substitution proposed by the application cannot go forward unless and until the post-effective amendment relating to JPVF 500 Portfolio's shares becomes effective. Upon such effectiveness, shares of JPVF 500 Portfolio will be offered only to corresponding sub-accounts of separate accounts established by the Life Company Applicants and in the future may be offered to other insurance companies, including insurance companies that are not affiliated with the Life Company Applicants. Jefferson Pilot Advisory will serve as investment manager of the JPVF 500 Portfolio and will retain Barclays Global Investors ('Barclays") to act as sub-adviser to the JPVF 500 Portfolio.

12. As disclosed in the post-effective amendment, the JPVF 500 Portfolio's investment objective is to seek to approximate as closely as practicable, before fees and expenses, the total rate of return of common stock publicly traded in the United States, as represented by the S&P 500 Index. The JPVF 500 Portfolio will pursue its objective by investing in all the securities that make up the S&P 500 Index and by investing in these securities in proportions that match their index weights, although the Portfolio reserves the right not to invest in every security in the S&P 500 Index if it is not practical to do so under the circumstances. The JPVF 500 Portfolio may also invest in stock index futures as a substitute for a comparable market position in the securities underlying the S&P 500 Index.

13. Applicants represent that the fees of the Fidelity 500 Portfolio were as follows. There is an annual management fee of .24%, and operating expenses for the fiscal year ending December 31, 1998 were .11%. Applicants state that since the Fidelity 500 Portfolio is subject to an expense cap of .28%, 07% of such expenses were reimbursed and shareholders were assessed annual fees of .28% for that fiscal year. The Fidelity 500 Portfolio's expense cap is a non-contractual voluntary cap which may be terminated at any time. Applicants represent that, as to the JPVF 500 Portfolio, like the Fidelity 500 Portfolio, there will be an annual management fee of .24%. Annual operating expenses are anticipated to be .10%. Like the Fidelity 500 Portfolio, the JPVF 500 Portfolio will also be subject to an expense cap of .28%. Therefore, Jefferson Pilot Advisory would reimburse the JPVF 500 Portfolio .06% of its expenses to maintain annual expenses at no greater than .28%. Like the Fidelity 500 Portfolio's expense cap, the JPVF 500 Portfolio's expense cap will be a non-contractual voluntary cap which can be terminated at any time. However, Applicant Jefferson Pilot Advisory has represented that it will waive investment management fees and reimburse expenses to the extent necessary to keep annual fees of the JPVF 500 Portfolio from exceeding .28% of the average daily net assets through April 30, 2001.

14. Applicants represent that, as of June 30, 1999, the Fidelity 500 Portfolio had assets of approximately $8.3 billion. Since the JPVF 500 Portfolio will be a newly organized fund, it presently does not have any assets and will not have any assets prior to the Substitution. Applicants further represent that they anticipate, based on current figures, that $150 million in assets attributable to the Contracts would be invested in the Replacement Fund upon the consummation of the Substitution. Jefferson Pilot Advisory and Barclays have determined that the assets that will initially comprise the JPVF 500 Portfolio (whether redemptions are effected for cash and/or portfolio securities) upon consummation of the Substitution are entirely sufficient for purposes of meeting the JPVF 500 Portfolio's objectives and that the JPVF 500 Portfolio will not be disadvantaged in any way by virtue of its smaller initial asset base as compared with the present asset base of the Fidelity 500 Portfolio.

15. Applicants represent that Barclays presently manages a publicly available S&P 500 fund called the Barclays Global Investors S&P 500 Fund ("Barclays S&P 500 Fund"), a series of Barclays Global Investors fund, Inc., that has assets of approximately $2.6 billion as of August 31, 1999. The Barclays S&P 500 Fund seeks to approximate as closely as practicable, before fees and expenses, the capitalization-weighted total return of the S&P 500 Index. The Barlcays S&P 500 Fund pursues its objectives by investing in all the securities that make up the S&P 500 Index and by investing in these securities in proportions that match their index weights. The Barclays S&P 500 Fund seeks to come within 95% of the total return of the S&P 500 Index, before fees and expenses, in falling as well as rising markets and does not seek to "beat" the market and does not seek temporary defensive positions when markets appear overvalued. It is anticipated that Barclays would "bunch" orders for the purchase and sale of securities for the JPVF 500 Portfolio with the publicly available Barclays S&P 500 Fund under appropriate circumstances, and subject to any regulatory requirements. Accordingly, the asset base of the publicly available Barclays S&P 500 Fund managed by Barclays will afford the JPVF 500 Portfolio certain economies of scale and other tangible benefits.

16. Applicants state that the prospectuses by which the Contracts were offered reserve to the respective Life Company Applicants the right to replace the shares of any underlying registered investment company held by the applicable Separate Account Applicant with shares of another registered investment company, provided any such substitution is approved by the SEC to the extent required by applicable law.

17. The Life Company Applicants propose to redeem all of the shares of the Fidelity 500 Portfolio they currently hold on behalf of the Separate Account Applicants at the close of business on the effective date of the Substitution. Applicants state that, in connection with such redemptions and the purchase of portfolio securities by the JPVF 500 Portfolio, the Fidelity 500 and JPVF 500 Portfolios would normally incur brokerage costs as the Fidelity 500 Portfolio would have to dispose of portfolio securities to satisfy redemption requests and the JPVF 500 Portfolio would have to purchase securities with the redemption proceeds. In order that such costs can be avoided, the redemption of shares of the Fidelity 500 Portfolio may be effected in whole or in part for portfolio securities (*i.e.*, "in-kind" redemptions). Applicants state that to this end, at the effective date of the Substitution, the Fidelity 500 Portfolio will transfer to the Separate Account Applicants portfolio securities held by the Fidelity 500 Portfolio, and the Separate Account Applicants will purchase shares of the JPVF 500

Portfolio with these portfolio securities. Applicants represent that in connection with the proposed in-kind redemption transactions, the JPVF 500 Portfolio and the Separate Account Applicants will comply with the requirements of Rule 17a–7 under the 1940 Act and pertinent SEC no action letters and the procedures JPVF and the Separate Account Applicants have established thereunder.[3] Applicants state that, in view of the identity of investment objectives and policies of both Portfolios and the above noted cost savings anticipated to be derived from in-kind redemption transactions, they have determined such transactions would be appropriate. Applicants state that the valuation of any in-kind redemptions will be made on a basis consistent with the normal valuation procedures of the Fidelity 500 Portfolio and the normal valuation procedures of the JPVF 500 Portfolio, as provided in those Portfolios' established valuation procedures. Applicants state that it is presently anticipated that 100% of the redemption orders of the Separate Account Applicants will be effected on an in-kind basis, and, thus, there will be no brokerage costs. To the extent that the Substitution requires the purchase of portfolio securities, the Life Company Applicants and/or Jefferson Pilot Advisory will pay the related brokerage costs.

18. Applicants state that in all cases, the Life Company Applicants on behalf of their respective Separate Account Applicants will simultaneously place redemption requests with the Fidelity 500 Portfolio and purchase orders with the JPVF 500 Portfolio so that purchases will be for the exact amount of the redemption proceeds. As a result, at all times, monies attributable to Contractowners who have allocated value to the Fidelity 500 Portfolio will remain fully invested.

19. Applicants represent that the full net asset value of the redeemed shares held by the Separate Account Applicants will be reflected in Contractowners' accumulation unit or annuity unit values following the Substitution. The Life Company Applicants represent that they will assume all transaction costs and expenses relating to the Substitution.

20. The Life Company Applicants have determined, for reasons based upon administrative, economic and marketing concerns, to use a proprietary mutual fund to serve as the S&P 500 fund that will serve as an underlying investment option for the Contracts, as well as other variable life and variable annuity contracts which they may offer in the future. Applicants state that the proposed Substitution will allow the Life Company Applicants to maintain a greater proprietary identity between their variable products and the S&P 500 investment option, which historically has been one of the most popular investment options among Contractowners. The proposed Substitution will afford the Life Company Applicants greater control with respect to administrative and compliance issues over this investment option and afford Jefferson Pilot Advisory the ability to make sub-adviser changes when necessary or appropriate as consistent with the above-noted manager-of-managers arrangement, subject to the conditions as set forth in the application.

21. Applicants also believe that Jefferson Pilot Advisory, as an affiliate of each Life Company Applicants, will have greater incentive to provide superior shareholder services to Contractowners. Correspondingly, the Life Company Applicants will have greater opportunity to contribute to and review the adequacy of the services being provided in connection with this investment option. Given the relative simplicity involved in managing an S&P 500 fund, Applicants believe that when comparing two S&P 500 funds which have the same fee structures and which are managed by experienced and suitable investment advisers, the difference between the respective funds lies mainly in the nature and quality of the non-advisory services provided by management of the respective funds. In this regard, Applicants believe Contractowners will be better served if the S&P 500 fund becomes a proprietary fund.

22. Applicants state that their desire to effect the Substitution also relates, in part, to BTC's role as sub-adviser to the Fidelity 500 Portfolio. Applicants represent that BTC has recently experienced turnover of portfolio management personnel which included the departure of the team which managed the Fidelity 500 Portfolio. Applicants believe that these events are the kind of events that can be better managed for the benefit of Contractowners by including the JPVF 500 Portfolio in the funds over which Jefferson Pilot Advisory has overall management authority. Applicants further represent BTC recently encountered certain compliance problems that will require a permanent order to exemption issued by the SEC under Section 9(c) of the 1940 Act to permit it to continue to serve as an investment adviser to registered mutual funds. Applicants state that the substance of these compliance problems presently must be disclosed in the Fidelity 500 Portfolio's prospectus and will continue to be disclosed therein in the future. The Life Company Applicants find this type of disclosure to be troubling in connection with underlying mutual funds that serve as investment vehicles for their products.

23. Applicants represent that each of the Life Company Applicants supplemented the prospectus for its applicable Separate Account Applicant at the time of filing of the original application to reflect the proposed Substitution and its essential terms and mailed such supplement to Contractowners at that time. The supplement informed Contractowners (among other things) that they have the right to transfer amounts allocated to the Fidelity 500 Portfolio to any other investment option available under the Contracts at any time prior to the Substitution, and for a period of 31 days after the Substitution, and that any such transfer would not count toward the number of free transfers permitted in a Contract year. Within five (5) days after the Substitution, the Life Company Applicants will send to their respective Contractowners a written notice ("Notice") of the Substitution, identifying the shares of the Replaced Fund that have been eliminated and the shares of the Replacement Fund that have been substituted and other relevant information. The Applicants will include in such mailing the prospectus for the Replacement Fund and the applicable revised prospectus or supplement for the Contracts describing the Substitution.

24. Contractowners will be advised in the Notice that for a period of thirty-one (31) days from the mailing of the Notice, Contractowners may transfer any substituted assets to any other sub-account available under their Contracts without limitation or charge and without any such transfer counting as one of the free transfers permitted per

[3] As here applicable, Rule 17a–7 exempts transactions between registered investment companies or separate series of registered investment companies from Section 17(a) of the 1940 Act, provided the conditions specified in that Rule are met. Applicants cannot literally comply with the terms of Rule 17a–17 because paragraph (a) thereof requires that the transaction be "for no consideration other than cash," whereas the subject transactions will involve the use of portfolio securities as consideration. However, the SEC Staff has granted several no-action letters under similar circumstances. *See, e.g.*, Federated Investors (pub avail. April 21, 1994); Trust Funds Institutional Managers Trust (pub. avail. July 20, 1988); Metropolitan Series Fund, Inc. (pub. avail Aug. 29, 1986).

Contract year (the "Free Transfer Period").[4]

25. Prior to effecting the Substitution, Applicants state that they will have satisfied themselves, based on advice of counsel familiar with insurance laws, that the Contracts allow the Substitution as described in the application, and that the transactions can be consummated as described therein under applicable insurance laws and under the Contracts.

26. Applicants further state that, prior to effecting the Substitution, they will have complied with any regulatory requirements they believe are necessary to complete the transactions in each jurisdiction where the Contracts are qualified for sale.

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act provides that "[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the [SEC] shall have approved such substitution." Section 26(b) of the 1940 Act was enacted as part of the Investment Company Act Amendments of 1970. Prior to the enactment of these amendments, a depositor of a unit investment trust could substitute new securities for those held by the trust by notifying the trust's security holders of the substitution within five (5) days after the substitution. In 1966, the SEC, concerned with the high sales charges then common to most unit investment trusts and the disadvantageous position in which such charges placed investors who did not want to remain invested in the substituted security, recommended that Section 26 be amended to require that a proposed substitution of the underlying investments of a trust receive prior SEC approval. Congress responded to the SEC's concerns by enacting Section 26(b) to require that the Commission approve all substitutions by the depositor of investments held by unit investment trusts. As the legislative history makes clear, Congress intended Section 26(b) to provide SEC scrutiny of proposed substitutions which could otherwise, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the proceeds of redemption, or both.

2. Applicants submit that the purposes, terms, and conditions of the Substitution are consistent with the principles and purposes of Section 26(b) and do not entail any of the abuses that Section 26(b) is designed to prevent. Applicants assert that, simply put, Contractowners will be assessed no charges whatsoever in connection with the Substitution and their annual fund level charges will not increase. In addition, to the extent a Contractowner does not wish to participate in the Substitution, he or she is free to transfer to any other option available under the relevant Contract prior to the Substitution and after the Substitution during the Free Transfer Period, without such transfer counting toward the number of free transfers permitted per year under a Contract. Applicants assert that Contractowners will be substituted into a fund whose investment objectives, policies and expenses are substantially identical in all material respects to those of the Replaced Fund. Finally, Applicants have concluded that it would be appropriate and in the best interests of Contractowners to have a proprietary S&P 500 mutual fund underlying their variable products.

3. Applicants submit that the Substitution presents none of the harms that Section 26(b) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act for the following reasons:

(1) the Replacement Fund has objectives, policies, and restrictions substantially identical in all material respects to the objectives, policies, and restrictions of the Replaced Fund so as to continue to fulfill the Contractowners' objectives and risk expectations;

(2) after receipt of the Notice informing a Contractowner of the Substitution, a Contractowner may request that his or her assets be reallocated to another subaccount at any time during the Free Transfer Period. The Free Transfer Period provides sufficient time for Contractowners to consider their reinvestment options;

(3) the Substitution will be at net asset value of the respective shares, without the imposition of any transfer or similar charge;

(4) the Life Company Applicants have undertaken to assume all expenses and transaction costs (or ensure that an affiliate assumes such expenses and costs), in connection with the Substitution;

(5) the Substitution will in no way alter the contractual obligations of the Life Company Applicants or the rights and privileges of Contractowners under the Contracts;

(6) Applicants anticipate that the JPVF 500 Portfolio will seek to rely upon the JPVF Order. Applicants will take no action in reliance on the JPVF Order with respect to JPVF 500 Portfolio unless and until the operation of JPVF 500 Portfolio in the manner contemplated by the JPVF Order, is approved by the holders of a majority of the outstanding voting securities of JPVF 500 Portfolio within the meaning of the 1940 Act, by vote obtained following the Substitution in a manner consistent with all outstanding relief granted by the SEC;

(7) the Substitution will in no way alter the tax benefits to Contractowners;

(8) Contractowners will not incur any fees or charges as a result of the proposed Substitution, nor will the Contractowners' rights or the Life Company Applicants' obligations under the Contracts be altered in any way. The Life Company Applicants will bear all expenses incurred in connection with the proposed Substitution and related filings and notices, including legal, accounting, and other fees and expenses. The proposed Substitution will not cause Contract fees and charges currently being paid by existing Contractowners to be greater after the proposed Substitution than before the proposed Substitution; and

(9) Contractowners may withdraw amounts under the Contracts or terminate their interest in a Contract, under the conditions that currently exist, including payment of any applicable withdrawal or surrender charge.

4. Applicants maintain that the Replacement Fund and the Replaced Fund will have investment objectives and policies that are substantially the same in all material respects. Accordingly, Life Company Applicants have specifically made the determination that the Replacement fund is a suitable and appropriate investment vehicle for Contractowners who have allocated value to the Replaced Fund and that the Substitution will be consistent with Contractowners' investment expectations.

5. Applicants assert that the fees and expenses of the Replacement Fund will be equal to (or less than) those of the Replaced Fund and that the Replacement Fund will receive comparable (or better) overall services.

[4] Applicants state that they have sent and will continue to send to Alpha Contractowners all relevant information about the proposed Substitution in accordance with the terms of *Great-West*. Applicants further state that the substance of the disclosures about the Substitution that they have made or will make to Alpha Contractowners was or will be essentially identical to the disclosures about the Substitution that have already been made or will be made to all other affected Contractowners. Applicants state that certain of these disclosures have already been delivered and that all such further disclosures will be sent at approximately the same time to owners of Alpha Contracts as to all other affected Contractowners.

Accordingly, Applicants argue that the proposed Substitution poses no concerns in connection with the fees and expenses that will arise therefrom.

6. Applicants state that the prospectuses by which the Contracts were offered reserve to the respective Life Company Applicants the right to replace the shares of any underlying registered investment company held by the applicable Separate Account Applicant with shares of another registered investment company, provided any such substitution is approved by the SEC to the extent required by applicable law.

7. Applicants submit that, for all the reasons stated in the application, that their request for approval meets the standard set forth in Section 26(b) of the 1940 Act and is consistent with applicable precedent and should, therefore, be granted.

8. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of such an affiliated person, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any of the persons described above from purchasing any security or other property from such registered investment company.

9. Applicants state that the proposed transactions first involve a transfer of portfolio securities by the Fidelity 500 Portfolio to the Separate Account Applicants; immediately thereafter, the Separate Account Applicants purchase shares of the JPVF 500 Portfolio with the portfolio securities received from the Fidelity 500 Portfolio. Since the Separate Account Applicants and the JPVF 500 Portfolio could be affiliated persons under Section 2(a)(3)(C) of the 1940 Act due to their common control, Applicants submit that this aspect of the Substitution could be prohibited by Section 17(a). Accordingly, Applicants believe that it is prudent to seek relief from Section 17(a).

10. Section 17(b) of the 1940 Act provides that the SEC may grant an order exempting transactions prohibited by Section 17(a) of the 1940 Act upon application if evidence establishes that:

(1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned;

(2) the proposed transaction is consistent with the investment policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and

(3) the proposed transaction is consistent with the general purposes of the 1940 Act.

11. Applicants represent that the terms of the proposed transactions: Are reasonable and fair, including the consideration to be paid and received; do not involved overreaching; are consistent with the policies of the affected registered investment companies; and are consistent with the general purposes of the 1940 Act.

12. Applicants maintain that the Substitution transactions, including the redemption of the Fidelity 500 Portfolio shares on an in-kind basis and the purchase of the JPVF 500 Portfolio shares, will be effected in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder. Applicants also maintain that Contractowners will not incur any fees or charges as a result of the transfer of account values. Contractowners' rights and privileges under the Contracts and the Life Company Applicants' obligations thereunder will not be affected by the Substitution. Applicants assert that the Substitution will not increase Contract or separate account fees and charges after the Substitution. Expenses incurred in connection with the Substitution, including legal, accounting and other expenses, will not be borne by Contractowners. Contract values will remain unchanged and fully invested following the consummation of the Substitution. Accordingly, Applicants represent that Contractowner interests after the Substitution, in practical economic terms, will not differ in any measurable way from such interests immediately prior to the Substitution. Applicants asserts that in each case, the consideration to be received and paid is, therefore, reasonable and fair.

13. Applicants assert that the investment objectives and policies of the JPVF 500 Portfolio are substantially similar to the investment objectives and policies of the Fidelity 500 Portfolio. Applicants maintain that, in this regard, the Substitution is consistent with the findings required under Section 17(b) of the 1940 Act.

14. Applicants assert that the proposed Substitution is consistent with the general purposes of the 1940 Act and that the proposed transactions do not present any of the issues or abuses that the 1940 Act is designed to prevent.

15. Applicants submit that the proposed in-kind redemption transactions meet all of the requirements of Section 17(b) of the 1940 Act and that their request for an order pursuant to that section exempting the transactions from the provisions of Section 17(a) of the 1940 Act, to the extent necessary, should be granted.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the substitutions and related in-kind transactions should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–8645 Filed 4–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27161]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 31, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 25, 2000, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified or any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 25, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

GPU, Inc. (70–9629)

GPU, Inc. ("GPU"), 300 Madison Avenue, Morristown, New Jersey 07960,

a registered holding company, has filed with this Commission an application under sections 9(a) and 10 and rule 54 of the Act.

GPU seeks authorization to acquire a 36% interest in a nonutility subsidiary. GPU and several of its subsidiary companies [1] currently purchase workers compensation insurance from Utilities Mutual Insurance Company ("UMI"), a captive mutual insurer providing insurance to a limited number of companies.[2] UMI is in the process of obtaining approval from the New York States Department of Insurance to convert from a mutual company to stock company status. It is contemplated, that once UMI becomes a stock company, each policy holder will receive shares of common stock, $.01 par value, of a newly formed holding company parent, UMICO Holdings, Inc. ("UMICO"), in proportion to its current ownership interest in UMI. GPU and its subsidiaries currently have an aggregate ownership interest in UMI of approximately 36% and would, therefore, receive approximately 36% of UMICO's voting shares upon UMI's demutualization. GPU would not pay any other consideration for the UMICO shares.

In connection with the demutualization, GPU expects UMI to sell its entire insurance portfolio to Cologne Re, which will assume all UMI obligations and liabilities for outstanding claims and future claims under policies written by UMI. GPU states that UMI will not conduct any active business. The workers compensation insurance previously provided by UMI will instead be provide by an affiliate of Cologne Re to the UMICO shareholders, at least through 2003. UMI and UMICO will not be liquidated and dissolved and will remain in existence until all claims or potential claims covered by outstanding UMI policies have either been resolved or adequately reinsured. Upon dissolution, the UMICO shareholders will be entitled to their pro rata shares of any remaining UMI surplus.

Prior to demutualization, the GPU subsidiaries (other than Prime and Onondaga) have assigned their present interests in UMI to GPU. In contemplation of the demutualization, GPU and other utility policy holders have entered into a subscription agreement providing for their purchase of shares of UMICO in proportion to their respective interests in UMI. Under the subscription agreement, GPU has agreed to acquire approximately 36.52% of UMICO in exchange for its present interest in UMI. Following the acquisition, UMICO will become a nonutility subsidary of GPU.

For the Commission by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–8618 Filed 4–6–00; 8:45 am]

BILLING CODE 8010–01–M

[1] The GPU subsidiaries that purchase workers compensation insurance from UMI as the following: GPU Advanced Resources, Inc., Metropolitan Edison Company, Pennsylvania Electric Company, Jersey Central Power & Light Company, GPU International, Inc., GPU Service, Inc., GPU Nuclear, Inc., Prime Energy Limited Partnership ("Prime") and Onondaga Cogeneration Limited Partnership ("Onondaga") (collectively, "Subsidiaries").

[2] In addition to GPU and its Subsidiaries, the current UMI members and policy holders are the following: South Jersey Industries, Inc., Central Hudson Gas & Electric Corp., Empire State Electric Energy Research Corp., Griffth Oil Co., Long Island Water Corp., Middleburg Telephone, New York State Electric & Gas Corp., Niagara Mohawk Power Corp., Rochester Gas & Electric Corp. and Fi-Net Technologies.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24372]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

March 31, 2000.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of March 2000. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 25, 2000, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549–0609. For Further Information Contact: Daine L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, N.W., Washington, DC 20549–0506.

MIMLIC Cash Fund, Inc. [File No. 811–5027]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 24, 1999, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $1,000 incurred in connection with the liquidation were paid by Advantus Capital Management, Inc., the fund's investment adviser.

Filing Dates: The application was filed on September 29, 1999, and amended on March 8, 2000.

Applicant's Address: 400 Robert Street North, St. Paul, Minnesota 55101–2098.

Sage/TSO [File No. 811–7573]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 30, 1998, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $15,000 incurred in connection with the liquidation were paid by SAGE/TSO Investment Management L.P., applicant's investment adviser.

Filing Dates: The application was filed on January 7, 2000, and amended on March 3, 2000.

Applicant's Address: 1462 Waterfront Road, Reston, Virginia 20194.

Anchor Strategic Assets Trust [File No. 811–5963]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 1, 1999, applicant transferred its assets to Anchor Resource and Commodity Trust based on net asset value. Expenses of $37,000 incurred in connection with the reorganization were paid by the acquiring fund.

Filing Date: The application was filed on March 8, 2000.

Applicant's Address: 579 Pleasant Street, Suite 4, Paxton, Massachusetts 01612.

Income Opportunities Fund 2006, Inc. [File No. 811–9621]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make any public offering or engage in business of any kind.

Filing Dates: The application was filed February 22, 2000, and amended on March 10, 2000.

Applicant's Address: c/o Fund Asset Management L.P., P.O. Box 9011, Princeton, New Jersey 08543–9011.

Alterman Investment Fund, Inc. [File No. 811–2998]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 10, 1999, applicant transferred its assets to Smith Barney Muni Funds Georgia Portfolio, based on net asset value. Total expenses of $80,446 were incurred in connection with the reorganization. Salomon Smith Barney, Inc., paid the first $40,000 of the legal and accounting expenses, and the remaining expenses were paid equally by Salomon Smith Barney, Inc. and applicant. The acquiring fund bore all of the expenses it incurred in connection with the reorganization.

Filing Date: The application was filed on March 7, 2000.

Applicant's Address: 182 Hilderbrand Drive, Suite 102, Atlanta, Georgia 30328.

Life & Annuity Trust [File No. 811–8118]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 20, 1999, applicant transferred all of its assets to Wells Fargo Variable Trust, based on net asset value. Expenses of $144,638 incurred in connection with the reorganization were paid by Wells Fargo Bank, N.A., investment adviser to the acquiring fund.

Filing Date: The application was filed on March 2, 2000.

Applicant's Address: 111 Center Street, Little Rock, Arkansas 72201.

Stagecoach Funds, Inc. [File No. 811–6419]; Stagecoach Trust [File No. 811–7780]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On November 8, 1999, each applicant transferred all of its assets to Wells Fargo Funds Trust, based on net asset value. Expenses of $1,933,236 and $361,710, respectively, incurred in connection with the reorganizations were paid by Wells Fargo Bank, N.A., investment adviser to the acquiring fund.

Filing Date: The applications were filed on March 2, 2000.

Applicant's Address: 111 Center Street, Little Rock, Arkansas 72201.

Golf Associated Fund [File No. 811–8819]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 29, 1999, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of approximately $700 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on March 2, 2000.

Applicant's Address: 2801 Ocean Drive, Suite 204, Vero Beach, Florida 32963.

Evergreen Quality Bond Fund (Formerly Keystone Quality Bond Fund (B–1)) [File No. 811–92]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On January 24, 1998, applicant transferred its assets to Evergreen Diversified Bond Fund, a newly-created series of Evergreen Fixed Income Trust, based on net asset value. All expenses incurred in connection with the reorganization were paid by First Union National Bank, the parent of applicant's investment adviser.

Filing Date: The application was filed on February 18, 2000.

Applicant's Address: 200 Berkeley Street, Boston, Massachusetts 02116.

Nations Fund Portfolios, Inc. [File No. 811–8982]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 20, 1999, applicant transferred its assets to Nations Reserves, based on net asset value. Expenses of $15,400 incurred in connection with the reorganization were paid by NationsBanc Advisors, Inc. or its affiliates.

Filing Date: The application was filed on February 22, 2000.

Applicant's Address: 111 Center Street, Suite 300, Little Rock, Arkansas 72201.

Master Investment Trust [File No. 811–6415]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 12, 1997, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $26,392 incurred in connection with the liquidation were paid by Wells Fargo Bank, N.A., applicant's administrator.

Filing Dates: The application was filed on September 30, 1999, and amended on March 1, 2000, and March 10, 2000.

Applicant's Address: 111 Center Street, Little rock, Arkansas 72201.

The Hudson River Trust [File No. 811–4185]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 18, 1999, applicant made a final liquidating distribution to its shareholders based on net asset value. Expenses of $8,000 incurred in connection with the liquidation were paid by the Equitable, the indirect parent of applicant's investment adviser.

Filing Dates: The application was filed on December 30, 1999, and amended on January 21, 2000, and February 25, 2000.

Applicant's Address: 1345 Avenue of the Americas, New York, New York 10105.

Overland Express Funds, Inc. [File No. 811–8275]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 12, 1997, applicant transferred its assets to Stagecoach Funds, Inc. (the "Acquiring Fund") in exchange for shares of the corresponding series of the Acquiring Fund based on the relative net asset value per share. Expenses of $426,690 incurred in connection with the reorganization were paid by Wells Fargo Bank, N.A., the administrator of the Acquiring Fund.

Filing Dates: The application was filed on September 30, 1999, and amended on February 25, 2000.

Applicant's Address: 111 Center Street, Little Rock, Arkansas 72201.

Investa Management Co. [File No. 811–8198]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has not made a public offering of its securities and does not propose to make any public offering or engage in business of any kind.

Filing Date: The application was filed on March 17, 2000.

Applicant's Address: c/o Investa Management Co., Inc., 551 Fifth Avenue, New York, New York 10176.

Variable Account D of Monarch Life Insurance Company [File No. 811–5226]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has not made any public offering of its securities, is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

Filing Dates: The application was filed on December 23, 1999, and amended on February 24, 2000.

Applicant's Address: One Monarch Place, Springfield, Massachusetts 01133.

Variable Account H of Monarch Life Insurance Company [File No. 811–5637]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has not made any public offering of its securities, is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

Filing Dates: The application was filed on December 23, 1999, and amended on February 24, 2000.

Applicant's Address: One Monarch Place, Springfield, Massachusetts 01133.

Variable Account G of Monarch Life Insurance Company [File No. 811–5403]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has not made any public offering of its securities, is not now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs.

Filing Dates: The application was filed on December 23, 1999, and amended on February 24, 2000.

Applicant's Address: One Monarch Place, Springfield, Massachusetts 01133.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8485 Filed 4–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24371, 812–11952]

Touchstone Advisors, Inc., et al.; Notice of Application

March 31, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain series of two registered open-end management investment companies to acquire all of the assets, subject to certain liabilities, of certain series of a third registered open-end management investment company. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

APPLICANTS: Touchstone Advisors, Inc. ("Touchstone Advisors"), Touchstone Series Trust ("Touchstone Trust"), Countrywide Investment Trust ("Investment Trust"), and Countrywide Strategic Trust ("Strategic Trust").

FILING DATES: The application was filed on January 24, 2000. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 25, 2000 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW, Washington, D.C. 20549–0609. Touchstone Advisors and Touchstone Trust, 311 Pike Street, Cincinnati, Ohio 45202; Investment Trust and Strategic Trust, 312 Walnut Street, Cincinnati, Ohio 45202.

FOR FURTHER INFORMATION CONTACT: Anu Dubey, Senior Counsel, at (202) 942–0687, or George Zornada, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW, Washington, D.C. 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Touchstone Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company and offers eight series, including the Touchstone Bond Fund ("TS Bond"), the Touchstone Growth & Income Fund ("TS G & I"), the Touchstone Value Plus Fund ("TS Value Plus"), the Touchstone International Equity Fund ("TS International") and the Touchstone Emerging Growth Fund ("TS Emerging") (together, the "Acquired Funds"). Investment Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company and offers six series, including Countrywide Intermediate Bond Fund ("CW Bond"). Strategic Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company and will comprise nine series, including three newly-organized series. Countrywide Value Plus ("CW Value Plus"), Countrywide International Equity Fund ("CW International") and Countrywide Emerging Growth Fund ("CW Emerging"). CW Value Plus, CW International and CW Emerging, together with CW Bond, are the "Acquiring Funds". The Acquiring Funds and the Acquired Funds are referred to collectively as the "Funds".

2. Touchstone Advisors, the investment adviser to the Acquired Funds, is a wholly-owned subsidiary of The Western-Southern Life Assurance Company ("Western-Southern"). Western-Southern is a wholly-owned subsidiary of The Western and Southern Life Insurance Company ("Western Southern Life"). Countrywide Investments, Inc. ("Countrywide"), the investment adviser to each Acquiring Fund, is an indirect wholly-owned subsidiary of Western Southern Life. Touchstone Advisors is the investment adviser to the Acquiring Funds. Both Touchstone Advisors and Countrywide are registered as investment advisers under the Investment Advisers Act of 1940.

3. Currently, Western Southern Life and/or Western-Southern own more than 5% (and in come cases more than 25%) of the outstanding voting securities of each of the Acquired Funds. The initial investment in each of CW Value Plus, CW International and CW Emerging will be contributed by one or more entities controlling, controlled by or under common control with Touchstone Advisors ("Touchstone Affiliates") resulting in Touchstone Affiliates owning 100% of CW Value Plus, CW International and CW Emerging.[1]

3. On January 7, 2000 and February 15, 2000, the board of trustees of each of the Touchstone Trust, Investment Trust and Strategic Trust (together, the "Boards"), including a majority of the trustees who are not "interested persons" as defined in section 2(a)(19) of the Act ("Disinterested Trustees"), approved a plan of reorganization between the Acquiring Funds and the Acquired Funds (the "Reorganization Plan", and the transaction the

[1] Western-Southern and Western Southern Life are Touchstone Affiliates.

"Reorganization").[2] The Reorganization is expected to occur on April 28, 2000 ("Closing Date"). Under the Reorganization Plan, each Acquiring Fund will acquire all of the assets, subject to the liabilities, of each corresponding Acquired Fund in exchange for Class A and Class C shares of the respective Acquiring Fund having an aggregate net asset value equal to the aggregate net asset value of the corresponding Acquired Fund's shares determined on the date immediately prior to the Closing Date. The value of the assets of the Funds will be determined in the manner set forth in the Funds' then current prospectuses and statements of additional information. The Acquiring Fund shares received by the Acquired Funds will be distributed pro rata by each Acquired Fund to its shareholders and each Acquired Fund will liquidate and dissolve.

4. Applicants state that the investment objectives and policies of each Acquired Fund are substantially similar to those of its corresponding Acquiring Fund. Each Acquired Fund offers (i) class A shares, which are subject to a sales load and rule 12b–1 distribution fee, and (ii) class C shares, which are subject to a contingent deferred sales charge ("CDSC") and rule 12b–1 distribution fee.[3] The holding period used to determine whether a CDSC will apply to a holder of Class C shares of an Acquiring Fund who becomes a shareholder as a result of the Reorganization will include any period of time that the shareholder held shares of the Acquired Fund. No sales charges will be imposed in connection with the Reorganization. Touchstone Advisors and/or one of the Touchstone Affiliates will pay the Reorganization expenses.

5. The Boards, including a majority of the Disinterested Trustees, determined that the Reorganization is in the best interests of each Fund, and that the interests of the existing shareholders of each Fund will not be diluted by the Reorganization. In assessing the Reorganization, the Boards considered various factors, including (a) the terms and conditions of the Reorganization Plan, (b) the investment advisory and other fees projected to be paid by an Acquiring Fund, and the projected expense ratio of an Acquiring Fund, as compared to those of the corresponding Acquired Fund,[4] (c) the investment objectives, policies, practices and restrictions of the Acquiring Fund and their compatibility with those of the corresponding Acquired Fund, (d) that Touchstone Advisors and/or one of the Touchstone Affiliates would pay the expenses of the Reorganization, (e) the potential economies of scale to be gained from combining the assets of the Acquired Funds into the corresponding Acquiring Funds, and (f) the anticipated tax-free nature of the Reorganization.

6. The Reorganization is subject to a number of conditions precedent, including that (a) the shareholders of each Acquired Fund shall have approved the Reorganization Plan; (b) applicants shall have received exemptive relief from the Commission that is the subject of the application; (c) a registration statement on Form N–14, relating to the Acquiring Funds shall have become effective; and (d) applicants shall have received an opinion of counsel with respect to certain federal tax consequences of the Reorganization. The Reorganization Plan may be terminated and the Reorganization abandoned upon the mutual agreement of the Funds, upon a material breach of the Reorganization Plan by a Fund, or due to the failure to meet a condition precedent to consummation of the Reorganization Plan. Applicants agree not to make any material changes to the Reorganization Plan without prior approval of the Commission.

7. The definitive prospectus/proxy statement will be filed with the Commission and will be mailed to shareholders of the Acquired Funds on or about March 30, 2000. A special meeting of the shareholders will be held on or about April 19, 2000.

Applicant's Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person, and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Funds may be deemed affiliated persons and thus the Reorganization may be prohibited by section 17(a).

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants state that they may not reply on rule 17a–8 because the Funds may be deemed to be affiliated for reasons other than those set forth in the rule. By virtue of the direct or indirect ownership by one or more Touchstone Affiliates of 5% or more (and in some cases 25% or more) of the outstanding voting securities of each of the Acquired Funds and of each of the Acquiring Funds (except CW Bond), each Acquired Fund may be deemed to be an affiliated person of an affiliated person of the Acquiring Fund. Thus, each Acquired Fund may be deemed to be an affiliated person of an affiliated person of the Acquiring Fund for reasons other than having a common investment adviser, common directors and/or common officers.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, a reasonable and fair and do not involve overreaching on the part of any person concerned, and that the

[2] The Funds will combine as follows: TS Bond with and into CW Bond, TS G & I with and into CW Value Plus, TS Value Plus with and into CW Value Plus, TS International with and into CW International and TS Emerging with and into CW Emerging.

[3] Class A shares of each Acquired Fund and each Acquiring Fund have the same maximum sales load. Class A shares of TS G & I, TS Value Plus, TS International and TS Emerging and each corresponding Acquiring Fund have the same maximum distribution fee. Class A shares of TS Bond have a maximum distribution fee of 0.25% and Class A shares of CW Bond have a maximum distribution fee of 0.35%. From May 1, 2000 to October 31, 2001, Touchstone Advisors will waive a portion of the distribution fee on Class A shares of CW Bond so that the maximum distribution fee on the shares will be 0.25%. Class C shares of each Acquired Fund and each Acquiring Fund have the same maximum CDSC and the same maximum distribution fee. Class C shares of each Acquired Fund are not subject to a sales load while Class C shares of each Acquiring Fund have a maximum sales load of 1.25%. The 1.25% sales load will be waived on future purchases of Class C shares of the Acquiring Funds by the current shareholders of the Acquired Funds.

[4] The Board's consideration of this factor included considering that, upon giving effect to the waivers of certain fees, that the advisory fees and other fees of an Acquiring Fund will be no higher than those paid by the corresponding Acquired Fund.

proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to permit applicants to consummate the Reorganization. Applicants submit that the Reorganization satisfied the standards of section 17(b) of the Act. Applicants states that the Boards, including a majority of the Disinterested Trustees, have found that participation in the Reorganization is in the best interests of each Fund, and that the interests of the existing shareholders will not be diluted as a result of the Reorganization. In addition, applicants state that the Reorganization will be on the basis of net asset value.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8486 Filed 4–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42605; File No. SR–Amex–99–33]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 to the Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 to the Proposed Rule Change by the American Stock Exchange LLC Relating to Margin Requirements

March 31, 2000.

I. Introduction

On September 18, 1998, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] to allow specified Portfolio Depositary Receipts ("PDRs")[3] or Index Fund Shares[4] to serve as cover for short positions in options on specified indexes. On March 5, 1999, the Amex filed Amendment Nos. 1 and 2 to the proposal.[5] The proposed rule change and Amendment Nos. 1 and 2 were published for comment in the **Federal Register** on October 20, 1999.[6] On September 24, 1999, the Amex provided data regarding the correlation between several PDRs or Index Fund Shares and indexes.[7] On December 15, 1999, the Amex filed Amendment No. 3 to the proposal.[8] The Commission received no comments regarding the proposal. This order approves the proposed rule change, as amended.

II. Background and Description of the Proposal

In a letter dated February 1, 1993, the staff of the Board of Governors of the Federal Reserve System ("Federal Reserve Board") indicated that it was compatible with Regulation T[9] for the Amex to treat positions in Standard & Poor's Depositary Receipts ("SPDRs")[10] as "cover" for an Options Clearing Corporation ("OCC")—issued option on a broad-based stock index with at least 99% correlation with the S&P 500 Index.[11] Specifically, the 1993 Letter stated that the Amex may require no additional margin where one leg of a position consisted of SPDRs and the other leg was an OCC-issued index option on a broad-based stock index with at least 99% correlation with the S&P 500 Index.[12] According to the Amex, the Federal Reserve Board staff also indicated that MidCap SPDRs[13] could serve as cover for S&P MidCap 400 Index options.[14]

Federal Reserve Board amendments to Regulation T that became effective on June 1, 1997, modified or deleted certain margin requirements regarding options transactions in favor of rules to be adopted by the options exchanges, subject to approval by the Commission.[15] Because exchange rules, as approved by the Commission, rather than Regulation T, now govern matters such as permitted offsets and cover for short options positions, the Amex proposes to revise Amex Rule 462, "Minimum Margins," to incorporate into Amex Rule 462 the Federal Reserve Board staff positions regarding SPDRs and MidCap SPDRs. In addition, the Amex proposes to amend Amex Rule

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] PDRs are shares in a unit investment trust registered under the Investment Company Act of 1940, as amended, whose assets are a securities portfolio.

[4] Index Fund Shares are shares in an open-end management investment company registered under the Investment Company Act of 1940, as amended, whose assets are a securities portfolio.

[5] *See* letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Michael Walinskas, Deputy Associate Director, Office of Market Supervision, Commission, dated March 4, 1999 ("Amendment No. 1"); and letter from Michael Cavalier, Associate General Counsel, Legal and Regulatory Policy, Amex, to Michael A. Walinskas, Deputy Associate Director, Division of Market Regulation ("Division"), Commission, dated March 4, 1999 ("Amendment No. 2"). In Amendment No. 1, the Amex (1) provided requirements for calculating the margin for an existing position in PDRs or Index Fund Shares serving as cover for short index options; and (2) added Commentary .10 to Amex Rule 462(d)(2)(H) to specify the PDRs or Fund Shares that may serve as cover for short index options positions. Specifically, Commentary .10 provided that: (1) Positions in Standard & Poor's ("S&P") Depositary Receipts ("SPDRs") shall be cover for positions in S&P 500 Index options; S&P 100 Index options, or Institutional Index options; (2) positions in S&P MidCap 400 Depositary Receipts ("MidCap SPDRs") shall be cover for positions in S&P MidCap 400 Index options; (3) positions in DIAMONDS Trust Units ("DIAMONDS") shall be cover for positions in Dow Jones Industrial Index ("DJX") options or Major Market Index options; and (4) positions in Nasdaq-100 Shares shall be cover for positions in Nasdaq 100-Index options. Amendment No. 2 revised the caption for the notice provided with Amendment No. 1.

[6] *See* Securities Exchange Act Release No. 41999 (October 13, 1999), 64 FR 56545.

[7] *See* letter from Michael Cavalier, Associate General Counsel, Legal and Regulatory Policy, Amex, to Mandy Cohen, Special Counsel, Division, Commission, dated September 24, 1999.

[8] *See* letter from Michael Cavalier, Associate General Counsel, Legal and Regulatory Policy, Amex, to Yvonne Fraticelli, Special Counsel, Division, Commission, dated December 8, 1999 ("Amendment No. 3"). In Amendment No. 3, the Amex revised proposed Commentary .10 to provide that specified PDRs or Index Fund Shares may serve as cover only for options on the index that the PDR or Index Fund Share is designed to replicate. Specifically, Amendment No. 3 revised Commentary .10 to provide that: (1) Positions in SPDRs shall be cover for S&P 500 Index options; (2) positions in MidCap SPDRs shall be cover for S&P 400 Index options; (3) positions in DIAMONDS shall be cover for DJX options; and (4) positions in Nasdaq-100 Shares shall be cover for positions in Nasdaq-100 Index options. In addition, Amendment No. 3 requested permanent approval of the proposed changes.

[9] 12 CFR 220. The Federal Reserve Board issued Regulation T pursuant to Section 7(c) of the Act.

[10] SPDRs represent interests in a unit investment trust that holds a portfolio of stocks replicating the S&P 500 Index. *See* Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (order approving File No. SR–Amex–92–18).

[11] *See* letter from Michael J. Schoenfeld, Senior Securities Regulation Analyst, Federal Reserve Board, to James M. McNeil, Chief Examiner, Amex, dated February 1, 1993 ("1993 Letter").

[12] *See* Letter, *supra* note 11.

[13] MidCap SPDRs represent interests in a unit investment trust that holds a portfolio of stocks replicating the S&P MidCap 400 Index. *See* Securities Exchange Act Release No. 35534 (March 24, 1995), 60 FR 16686 (order approving File No. SR–Amex–94–52).

[14] According to the Amex, the Federal Reserve Board staff confirmed this position in a telephone conversation between Michael J. Schoenfeld, Senior Securities Regulation Analyst, Federal Reserve Board, and James M. McNeil, Chief Examiner, Amex, on May 1, 1995. Conversation between Michael Cavalier, Associate General Counsel, Legal and Regulatory Policy, Amex, and Yvonne Fraticelli, Special Counsel, Division, Commission, on February 24, 2000.

[15] *See* Board of Governors of the Federal Reserve System Docket No. R–977 (April 24, 1996), 61 FR 20386 (permitting the adoption of margin requirements "deemed appropriate by the exchange that trades the option, subject to the approval of the Securities and Exchange Commission").

462 to allow DIAMONDS [16] to serve as cover for DJX options and to allow Nasdaq-100 Shares [17] to serve as cover for Nasdaq-100 Index options.

Specifically, the proposal amends Amex Rule 462(d)(2)(H) to provide that no margin need be required in respect of a call index option or a put index option carried in a short position where the same account carries a long position in the PDRs or Index Fund Shares specified in Commentary .10 to the rule, and the PDRs or Index Fund Shares serving as cover have a market value at least equal to the aggregate current index value [18] of the stocks underlying the index option contracts to be covered. Commentary .10 provides that: (1) Position in SPDRs shall be cover for position in S&P 500 Index options; (2) positions in MidCap SPDRs shall be cover for positions in S&P MidCap 400 Index options; (3) positions in DIAMONDS shall be cover for positions in DJX options; and (4) positions in Nasdaq-100 Shares shall be cover for positions in Nasdaq-100 Index options.[19]

In addition, the proposal states that in computing the margin on an existing position in PDRs or Index Fund Shares that covers a short index put or call, the market value of the PDRs or Index Funds Shares to be used shall not be greater than the exercise price, in the case of a call, or less than the market value of the PDRs or Index Fund Shares, in the case of a put, and the required margin shall be increased by any unrealized loss on the short put security position.[20]

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange. In particular, the Commission finds that the proposal is consistent with the Section 6(b)(5) [21] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.[22]

As noted above, the proposal will amend Amex Rule 462 to provide that no margin need be required for short call or put positions in specified index options when the account carrying the short index option position also holds a long position in specified corresponding PDRs or Index Fund Shares that have a market value at least equal to the aggregate current index value of the stocks underlying the index option contracts to be covered. Specifically, the proposal will allow positions in SPDRs to serve as cover for positions in S&P 500 Index options; positions in MidCap SPDRs to serve as cover for positions in MidCap 400 Index options; positions in DIAMONDS to serve as cover for positions in DJX options; and positions in Nasdaq-100 Shares to served as cover for positions in Nasdaq-100 Index options.[23]

Thus, the proposal will allow long positions in specified PDRs or Index Fund Shares to cover short positions in options on the indexes that the PDRs or Index Fund Shares are designed to replicate. The values of the PDR or Index Fund Share and the index that the PDR or Index Fund Share is designed to replicate should move in tandem. In addition, the PDR or Index Fund Share serving as cover for an index option position must have a market value at least equal to the aggregate current index value of the stocks underlying the index option contracts to be covered. Accordingly, the long PDR or Index Fund Share position service as cover for the short index option position should ensure that the index option writer would be able to deliver upon exercise the difference between the current index value and the exercise price of the option. Specifically, in an account that meets the requirements of the proposal, the amount earned from closing out the long PDR or Index Fund Share position would adequately cover the option writer's obligation upon exercise. Accordingly, the Commission believes that it is reasonable for the Amex to allow SPDRs, MidCap SPDRs, DIAMONDS, and Nasdaq-100 Shares to serve as cover for short positions in options on the indexes they are designed to replicate.

In addition, the Commission notes that the proposal incorporates into the Amex's rules the Federal Reserve Board staff's positions regarding SPDRs and MidCap SPDRs.[24] For the reasons discussed above, the Commission believes that it is reasonable for the Amex to incorporate the Federal Reserve Board staff's positions into its rules and to provide the same treatment for DIAMONDS serving as cover for DJX options and for Nasdaq-100 Shares serving as cover for Nasdaq-100 Index options.

The Commission also believes that it is reasonable for the proposal to provide that in computing the margin on an existing position in PDRs or Index Fund Shares to be used shall not be greater than the exercise price, in the case of a call, or less than the market value of the PDRs or Index Fund Shares, in the case of a put, and that the required margin shall be increased by any unrealized loss on the short put security position. The Commission believes that these requirements will help to ensure that the writer of an index put or call option that is covered by a long position in PDRs or Index Fund Shares would be able to meet its obligation upon exercise of the option. In addition, the Commission notes that the proposed margin requirement for PDRs or Index Fund Shares serving as cover for short index option positions is consistent with current Amex Rule 462(d)(2)(H)iv),[25] which establishes the margin requirement for an existing security position carried against a short put or call.[26]

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[16] DIAMONDS are units of beneficial interest in the DIAMONDS Trust, which holds a portfolio of stocks replicating the Dow Jones Industrial Average. *See* Securities Exchange Act Release No. 39525 (January 8, 1998), 63 FR 2438 (order approving File No. SR–Amex–97–29). In connection with the commencement of trading in DIAMONDS, the Amex requested confirmation from the Federal Reserve Board staff that margin treatment of DIAMONDS would be comparable to that for SPDRs under Regulation T. *See* letter from James M. McNeil, Chief Examiner, Amex, to Scott Holz, Senior Attorney, Legal Division, The Federal Reserve Board, dated December 3, 1997. In response, the Federal Reserve Board staff noted, among other things, that the amendments to Regulation T that became effective on June 1, 1997, provide that the margin requirement for listed options is the amount specified by the national securities exchange that trades the option. Thus, the Federal Reserve Board staff indicated that DIAMONDS could serve as cover for a short position in index options if the rules of the appropriate self-regulatory organization specified that DIAMONDS qualify for such treatment. *See* letter from Scott Holz, Senior Attorney, the Federal Reserve Board, to James M. McNeil, Chief Examiner, Amex, dated January 8, 1998.

[17] Nasdaq 100 shares are units of beneficial interest in the Nasdaq-100 Trust, a portfolio of stocks replicating the Nasdaq 100 Index. *See* Securities Exchange Act Release No. 41119 (February 26, 1999, 64 FR 11510 (order approving File No. SR–Amex–98–34).

[18] Under Amex Rule 900C, the "aggregate current index value" is the current index group value (*i.e.*, the current numerical index value of a stock index group multiplied by $1.00) multiplied by the index multiplier (*i.e.* the number specified in a stock index option contract by which the market closing index group value is to be multiplied to arrive at the value required to be delivered upon valid exercise of the contract).

[19] *See* Amendment No. 3, *supra* note 8.

[20] *See* Amendment No. 3, *supra*, note 8.

[21] 15 U.S.C. 78f(b)(5).

[22] In approving this rule, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[23] *See* Amendment No. 3, *supra* note 8.

[24] *See* 1993 Letter, *supra* note 11, and note 14, *supra*.

[25] The proposal will renumber current Amex Rule 462(d)(2)(H)(iv) as Amex Rule 462(d)(2)(H)(v).

[26] Specially, current Amex Rule 462(d)(2)(H)(iv) provides that in computing margin on an existing net security position carried against a short put or short call, the current market price to be used shall

The Commission notes that the current proposal applies solely to the PDRs or Index Fund Shares and the corresponding index options specified in the proposal. If the Amex intends to allow additional PDRs or Index Fund Shares to serve as cover for short positions in options on other indexes, the Amex must file a proposed rule change pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder to adopt the additional offsets.

The commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 3 strengthens the proposal by clarifying the language of the proposed rule change and by providing that specified PDRs or Index Fund Shares may serve as cover for short positions in options on the index that the PDR or Index Fund Share is designed to replicate. Accordingly, the Commission believes that granting accelerated approval of Amendment No. is appropriate and consistent with Sections 6(b)(5) and 10(b)(2) of the Act.[27]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3 including whether Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–98–33 and should be submitted by April 28, 2000.

not be greater than the exercise price in the case of a call or less than the current market price in the case of a put and the required margin shall be increased by an unrealized loss on the short security position.

[27] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (SR–Amex–98–33), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8647 Filed 4–6–00; 8:45 am]

BILLING CODE 8010–01–M

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42596; File No. SR–CBOE–00–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Extending for Six Months the Rapid Opening System ("ROS") Pilot Program

March 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 22, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange requests an extension through September 30, 2000, of a pilot program established in Exchange Rule 6.2A, which governs the operation of, and the eligibility to participate in, the Exchange's Rapid Opening System.[3] The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The pilot program was first approved by the Commission effective February 9, 1999 through March 31, 2000. *See* Securities Exchange Act Release No. 41033 (February 9, 1999), 64 FR 8156 (February 18, 1999.)

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend for six months the Rapid Opening System ("ROS") pilot program.[4] Before the implementation of ROS, a trading crowd on CBOE arrived at the opening price by manually progressing through series after series of an options class. Open trading for any of the class' series could not commence until all series in the class had undergone the process.[5] ROS allows the Exchange to automate the opening of its various option classes, thereby avoiding the lengthier opening rotations that can occur under circumstances when there is a large influx of orders entered before or during the opening rotation. As the opening occurs, fill reports on all participating orders are generated automatically, opening market quotes and last sales will be disseminated, and market-makers will receive notification of assigned trades. In addition, as part of the pilot, the Exchange has developed a manual procedure for incorporating orders currently not included on CBOE's Electronic Book, known as non-bookable orders,[6] into the opening process.[7]

The CBOE represents that its experience with ROS over the past year has been positive. Member firms have

[4] *Id.*

[5] *Id.*

[6] Telephone conversation between Tim Thompson, Director of Regulatory Affairs, CBOE, and Terri Evans, Special Counsel, Division of Market Regulation ("Division"), SEC, March 28, 2000 (clarifying the definition of non-bookable orders and the manual entry of such orders.

[7] The Pacific Exchange, Inc. ("PCX") has adopted a similar procedure for manually handling non-bookable orders in connection with the use of the PCX's Automated Opening Rotation system. *See* Securities Exchange Act Release No. 41970 (September 30, 1999), 64 FR 54713 (October 7, 1999).

told CBOE that they appreciate how ROS enables the Exchange to enter into opening trading much sooner, allowing them to represent their customer orders in open outcry. The Exchange believes that ROS has prevented large numbers of orders from queuing on the Exchange's book and "live ammo" screens immediately after the opening, thus providing Designated Primary Market-Maker ("DPM") staff with the ability to handle orders in a more expeditious manner. The Exchange further represents that trading crowds have been able to open classes using ROS within seconds of the dissemination of the opening part in the underlying security.

The Exchange also believes that the current procedure for manually incorporating non-bookable orders has been adequate to provide these orders with the executions that they deserve on the opening. In fact, the Exchange has observed that many firms currently choose to wait until after the opening has been completed to represent their orders because of the short time needed to complete a ROS opening and because the firms have a better sense of where they may trade the order after the opening and after opening quotes have been disseminated. The Exchange represents, however, that it will continue to explore possibilities for including non-bookable orders[8] into ROS in an automated fashion. The Exchange is actively studying the possibility of changing its book to allow for the inclusion of non-bookable orders,[9] at least at the opening. These changes to the Exchange's book would allow ROS to electronically accommodate non-bookable orders.[10]

In the Commission's approval order of the ROS system, the Commission requested the Exchange to study issues related to the SEC's concerns during the pilot period and to report back to the Commission at least sixty days prior to seeking permanent approval of ROS.[11] The Exchange is now preparing a report to the Commission and will seek permanent approval of ROS in the next couple of months. In the meantime, the extension of the pilot period will allow the Exchange to continue to utilize ROS.

[8] Telephone conversation between Tim Thompson, Director of Regulatory Affairs, CBOE, and Terri Evans, Special Counsel, Division, SEC, March 28, 2000.

[9] *Id.*

[10] *Id.*

[11] *See* Securities Exchange Act Release No. 41033 (February 9, 1999), 64 FR 8156 (February 18, 1999).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[12] in general and furthers the objectives of Section 6(b)(5)[13] in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

CBOE has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6)[15] thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing the proposed rule change as required by Rule 19b–4(f)(6).

A proposed rule change filed under Rule 19b–4(f)(16)[16] normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[17] permits the Commission to designate such shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission designate such shorter time period so that the proposed rule change may become operative no later than March 31, 2000. The immediate effectiveness would allow the current ROS pilot program to continue uninterrupted, while allowing the Exchange the opportunity to prepare a report for the Commission prior to seeking permanent approval.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately upon filing for the following reasons. The proposed rule change extends the expiration date of the ROS pilot program from March 31, 2000, to September 30, 2000. An extension would allow the Exchange to continue to offer ROS without interruption and provide the Exchange more time to complete its review and evaluation of the ROS pilot program.[18] The Commission notes that the CBOE's filing was also the subject of prior notice and comment when it was first proposed over a year ago.

Among the issues that the Commission expects the CBOE to explore in its report are: how and when market-makers set ROS risk and size thresholds; how often such thresholds are exceeded and result in the adjustment of AutoQuote; the effect of AutoQuote adjustments on the quality of customer executions; any effects on existing order execution priority; and the handling of an adjustments made for non-bookable orders.[19] The Commission also expects that the Exchange will provide a workable plan for the electronic incorporation of non-bookable orders on ROS.[20]

Based on the above reasons, the Commission believes it is consistent with the protection of investors and the public interest that the proposed rule change become operative immediately upon the date of filing, March 22, 2000. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.[21]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] *Id.*

[17] 17 CFR 240.19b–4(f)(6)(iii)

[18] Further, the Commission approved a similar system proposed by the PCX on a pilot basis until September 30, 2000. *See* Securities Exchange Act Release No. 41970, *supra* note 7.

[19] *See* Securities Exchange Act Release No. 41033, *supra* note 3.

[20] *Id.*

[21] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–00–09 and should be submitted by April 28, 2000.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8489 Filed 4–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42597; File No. SR–DTC–99–26]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Enhancement of Custody Reorganization and Redemption Services

March 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 27, 1999, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

[22] 17 CFR 200.30–3(a)(12)

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would implement the short-term redemption service as an ancillary service of the custody reorganization and redemption service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to implement the short-term redemption service. The short-term redemption service will enhance the custody reorganization and redemption services, which are a part of DTC's custody service. DTC believes that the proposed rule change will provide its participants with additional flexibility in their use of the custody reorganization and redemption services.[3]

The short-term redemption service will be available for the following instruments as they are handled within the custody reorganization and redemption services: certificated bankers acceptances, municipal variable-rate demand obligations issued in commercial paper mode, institutional certificates of deposit, and other instruments held in custody which must be presented to the paying agent on, but not before, the scheduled payable date with the agent making payment of principal or income proceeds later that same afternoon, which is too late for processing through DTC's settlement system. Some instruments may also have certificates with different payable dates identified by the same CUSIP number.

Under the short-term redemption service, the payable date and other relevant payment details are captured at the certificate level by DTC when the eligible instruments are deposited into custody. A short-term redemption payment projection report detailing instruments with payable dates within the next five business days is produced daily and forwarded to the participant. It is the participant's responsibility to verify the completeness and accuracy of this report and to immediately notify DTC of any discrepancies (*e.g.*, a security payable within the next five days is not shown on the report or an incorrect paying agent name or address is shown on the report). Securities shown on the projection report are automatically routed by DTC to the short-term redemption prep box. DTC then arranges for the securities to be delivered to the paying agent on the payable date. The securities are accompanied by a letter of transmittal instructing the agent to wire the proceeds directly to the bank account designated by the participant for this purpose. It is the participant's responsibility to follow-up with the agent to ensure timely payment and reconcile any payment discrepancies.

The fee per item for this enhanced service is $32.25, which fee is an aggregate of several custody service fees previously filed with DTC's 1999 fee schedule.[4]

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder because the proposal will give participants greater flexibility in use of the custody reorganization and redemption services. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in DTC's custody or control or for which it is responsible since the operation of the custody reorganization and redemption services, as modified by the proposed rule charge, will be similar to the current operation of the function.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change has been developed through discussions with several participants. Written comments

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] Securities Exchange Act Release No. 37314 (June 21, 1996), 61 FR 31989.

[4] Securities Exchange Act Release No. 41508 (June 17, 1999), 64 FR 32574.

[5] 15 U.S.C. 78q–1.

relating to the proposed rule change have not yet been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[6] of the Act and Rule 19b–4(f)(4)[7] promulgated thereunder because the proposal effects a change in an existing service of DTC that does not adversely affect the safeguarding of securities or funds in the custody or control of DTC and that does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–99–26 and should be submitted by April 28, 2000.

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(4).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8492 Filed 4–6–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42584; File No. SR–DTC–99–22]

Self-Regulations Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to Revisions to the Procedures for Running Call Lotteries for Book Entry Only Securities

March 28, 2000.

On September 23, 1999, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–DTC–99–22) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on December 28, 1999.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Currently, DTC's call lottery process allocates called book-entry only ("BEO") securities among participants having positions in the called securities as of the close of business on the day DTC announces the call lottery ("DTC call announcement date"). DTC adopted these procedures in March 1998 with the approval of the Commission and the endorsement of the Corporate Actions Division of the Securities Industry Association ("Corporate Actions Division").[3] Prior to March 1998, DTC ran its lotteries based on participants' positions as of the close of business on the day prior to the publication date ("call publication date").[4]

At times, DTC receives notice of a call of BEO securities after the redemption date. Under DTC's current BEO call lottery procedures, the DTC call announcement date in such a situation will necessarily be after the date as of which the called securities are deemed to have been redeemed by the issuer. Use of the DTC call announcement date in these instances can have an adverse impact on participants and their customers who have acquired a security position during the period between the redemption date and the DTC call announcement date because they have acquired the called security without notice that the security has been redeemed. Therefore, for call notices received after the redemption date, DTC is amending its BEO securities call lottery procedures so that the allocation lotteries will be run using participants' positions as of the close of business on the day prior to the call publication date. Use of the call publication date to determine lottery allocations for calls of BEO securities where DTC receives notice of the call after the redemption date is consistent with DTC's procedures for lotteries in certificated issues. Allocation lotteries for other calls of BEO securities, where notice is received on or before the redemption date, will continue to be run using participant's positions as of the DTC call announcement date.

II. Discussion

Section 17A(b)(3)(F)[5] of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that DTC's rule change is consistent with DTC's obligations under the Act because the new procedures will mitigate the negative impact of calls of BEO securities that are processed through DTC's lottery process where DTC receives the notification of the call after the redemption date.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 42257 (Dec. 20, 1999), 64 FR 72709 (Dec. 28, 1999).

[3] See Securities Exchange Act Release No. 39658 (Feb. 12, 1998), 63 FR 8726 (Feb. 20, 1998) [File No. SR–DTC–97–14].

[4] For a history of DTC's call lottery process, refer to Securities Exchange Act Release Nos. 21523 (Nov. 27, 1984), 49 FR 47352 [File No. SR–DTC–84–09] (notice of filing and immediate effectiveness of proposed rule change); 30552 (Apr. 2, 1992) 57 FR 12352 [File No. SR–DTC–90–02] (order temporarily approving a proposed rule change by DTC relating to the establishment of a procedure to recall certain deliveries which have created short positions as a result of call lotteries); 35034 (Nov. 30, 1994) 59 FR 63396 [File Nos. SR–DTC–94–08 and SR–DTC–94–09] (order granting temporary approval of proposed rule changes to establish procedures to recall certain deliveries which have created short positions as a result of call lotteries and rejected deposits); 36651 (Dec. 28, 1995) 61 FR 429 [File No. SR–DTC–21] (order granting accelerated permanent approval of a proposed rule change concerning short position reclamation procedures); and 39658 (Feb. 20, 1998) 63 FR 8726 [File No. SR–DTC–97–14] (order approving proposed rule change regarding call lottery procedures for BEO securities).

[5] 15 U.S.C. 78–1(b)(3)(F).

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–99–22) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8648 Filed 4–6–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42598; File No. SR–EMCC–99–11]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Revisions in Fee Schedule

March 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 22, 1999, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by EMCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of changes to EMCC's fee schedule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. EMCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

EMCC has determined to charge its trade input fee so that inter-dealer broker members pay $1.50 per compared bond side and dealer members pay $2.00 per compared bond side.

The proposed rule change is consistent with the requirements of Section 17A(b)(3)(D) of the Act[3] and the rules and regulations thereunder applicable to EMCC because it provides for the equitable allocation of dues, fees, and other charges among EMCC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

One comment was received by EMCC.[4] The commenter stated its belief that EMCC's additional fee makes it cost prohibitive to be a member of EMCC.[5]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[6] of the Act and Rule 19b–4(f)(2)[7] promulgated thereunder because the proposal establishes or changes a due, fee, or charge imposed by EMCC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of EMCC. All submissions should refer to File No. SR–EMCC–99–11 and should be submitted by April 28, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8491 Filed 4–6–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42606; File No. SR–MSRB–00–05]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpretation of Rule G–38, on Consultants

April 3, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

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[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by EMCC.

[3] 15 U.S.C. 78q–1.

[4] Letter from Vincent G. Rayano, Vice President, Tullett and Tokyo Securities, Inc., to Karen Saperstein, General Counsel and Secretary, EMCC (November 23, 1999).

[5] In its reply letter, EMCC responded to the commenter by stating that interdealer broker members, such as the commenter, will pay a lower fee under the revised fee schedule than it previously was paying. Letter from Keith C. Kanaga, Managing Director, EMCC, to Vincent G. Rayano, Vice President, Tullet and Tokyo Securities, Inc. (December 7, 1999).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[1] 15 U.S.C. 78s(b)(1).

("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 2, 2000, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is proposing a notice of interpretation, in question and answer format, concerning MSRB Rule G–38, on consultants. The purpose of the proposed rule change is to provide interpretative guidance concerning MSRB Rule G–38. The proposed rule change is as follows:

Rule G–38 *Questions and Answers Concerning Information about Consultants' Political Contributions and Payments to State and Local Political Parties*

General Requirements of New Amendments

1. Q: What are the new amendments to rule G–38 about?

A: The amendments will require dealers to collect from their consultants, and to disclose to the Board on revised Form G–37/G–38, information regarding certain contributions to issuer officials and certain payments to state and local political parties made by such consultants.

2. Q: What political contributions and political party payments are subject to the new reporting requirement?

A: This depends upon whether the consultant is an individual or a company. If the consultant is an individual, then the contributions and payments that are covered (to the extent reportable under the rule) are those of (1) that individual and (2) any political action committee controlled by such individual. If the consultant is a company, then the contributions and payments that are covered (to the extent reportable under the rule) are those of (1) that company, (2) any partner, director, officer or employee of such company who communicates with an issuer to obtain municipal securities business on behalf of the dealer, and (3) any political action committee controlled by such company or any of the individuals identified in the immediately preceding clause (2).

3. Q: May the dealer enter into a Consultant Agreement with either an individual or a company?[3]

A: Yes, provided that the dealer must enter into a Consultant Agreement with the actual party that is serving as the consultant. For example, if the consultant is in effect a company with several employees making actual contact with issuers on the dealer's behalf, a Consultant Agreement entered into only with one of these employees may not, depending upon all the relevant facts and circumstances, satisfy the requirement that the dealer enter into a Consultant Agreement with the consultant.

4. Q: Must a Consultant Agreement include any provisions regarding a consultant's reportable political contributions and reportable political party payments?

A: Yes. A dealer is required to include within its Consultant Agreement a provision to the effect that the consultant agrees to provide the dealer each calendar quarter with either (1) a listing of reportable political contributions to official(s) of an issuer and reportable payments to political parties of states and political subdivisions during such quarter, or (2) a report that no reportable political contributions or reportable political party payments were made during such quarter, as appropriate.

5. Q: Which contributions to issuer officials made by consultants are reportable under the rule?

A: Rule G–38(a)(vi) defines the term "reportable political contribution" to mean, if the consultant has had direct or indirect communication with an issuer on behalf of the dealer or obtain or retain municipal securities business for such dealer, a political contribution to an official(s) of such issuer made by any contributor referred to in rule G–38(b)(i) (see Question and Answer number 2) during the period beginning six months prior to such communication and ending six months after such communication.

6. Q: Which payments to state and local political parties made by consultants are reportable under the rule?

A: Rule G–38(a)(vii) defines the term "reportable political party payment" to mean, if a political party of a state or political subdivision operates within the geographic area (e.g., city, county and state parties) of an issuer with which the consultant has had direct or indirect communication to obtain or retain municipal securities business on behalf of the dealer, a payment to such party made by any contributor referred to in rule G–38(b)(i) (see Question and Answer number 2) during the period beginning six months prior to such communication and ending six months after such communication.

7. Q: Is there a de minimis exception for the reporting of political contributions and political party payments?

A: Yes. The de minimis exception for contributions to official(s) of an issuer provides that a consultant need not provide to a dealer information about contributions of the consultant (but only if the consultant is an individual) or by any partner, director, officer or employee of the consultant (if the consultant is a company) who communicates with issuers to obtain municipal securities business on behalf of the dealer made to any official of an issuer for whom such individual is entitled to vote if such individual's contributions, in total, are not in excess of $250 to each official of such issuer, per election.

Similarly, the de minimis exception for political party payments provides that a consultant need not provide to a dealer information about payments of the consultant to political parties of a state or political subdivision (but only if the consultant is an individual) or by any partner, director, officer or employee of the consultant (if the consultant is a company) who communicates with issuers to obtain municipal securities business on behalf of the dealer and who is entitled to vote in such state or political subdivision if the payments made by the individual, in total, are not in excess of $250 per political party, per year.

Again, the de minimis exception applies only to contributions or payments by individuals. There is no de minimis exception for contributions by the consultant if it is a company or for any PAC controlled by the company or individuals covered by the rule.

8. Q: If a consultant makes political contributions during a particular quarter but these contributions do not meet the definition of "reportable political contribution" as defined in rule G–38, is the consultant required to report any information about its political contributions to the dealer?

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[2] 17 CFR 240.19b–4.

[3] The MSRB changed the text of question three from, "May the dealer choose whether the consultant is an individual or a company?" *See* letter from Ronald W. Smith, Senior Legal Associate, MSRB, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), SEC, dated March 30, 2000.

[3] The MSRB changed the text of question three from, "May the dealer choose whether the consultant is an individual or a company?" *See* letter from Ronald W. Smith, Senior Legal Associate, MSRB, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), SEC, dated March 30, 2000.

A: The consultant is required to report to the dealer that it made no reportable political contributions during the quarter.

9. Q: With respect to a particular issuer, if a consultant is communicating with one individual but has made a contribution to a different individual, would the consultant report this contribution to the dealer? For example, if the dealer is seeking municipal securities business from City A and its consultant communicates with the Mayor of the City, would a non-de minimis political contribution to the City's Comptroller (an official of the issuer) have to be reported?

A: Yes. A consultant must report and a dealer must disclose contributions with respect to those "issuers" from which a consultant is seeking municipal securities business on behalf of the dealer, regardless of whether contributions are going to and communications are occurring with the same or different personnel within that particular issuer.

10. Q: What is the date that establishes the obligation for the collection of reportable political contributions and reportable political party payments?

A: The date of the consultant's communication with the issuer to obtain or retain municipal securities business on behalf of the dealer is the key date with respect to determining whether a contribution or payment is reportable. For the quarter in which a consultant first communicates with the issuer, the dealer is required to collect from the consultant its reportable political contributions and reportable political party payments for such quarter and, pursuant to the six-month look-back, for the six-month period preceding such first communication.

11. Q: How do the "look-back" and "look-forward" provisions operate?

A: Pursuant to the look-back provision, a consultant must disclose to the dealer the reportable political contributions and reportable political party payments made by the consultant during the six months prior to the date of the consultant's communication with the issuer. These contributions and payments become reportable in the calendar quarter in which the consultant first communicates with the issuer. Of coursed, any reportable political contributions and reportable political party payments made during the period that the consultant continues to communicate with the issuer are required to be disclosed. Once communication with an issuer ceases, the consultant still must disclose information with respect to reportable political contributions and reportable political party payments made during the ensuing six months pursuant to the look-forward provision. Contributions and payments made simultaneously with or after the consultant's first communication with the issuer are reportable in the calendar quarter in which they are made.

12. Q: When does the requirement cease for a dealer to collect contribution and payment information from its consultants?

A: The requirement ceases when a consultant agreement has been terminated. Of course, dealers should not attempt to avoid the requirements of rule G–38 by terminating a consultant relationship after directing or soliciting the consultant to make a political contribution to an issuer official after such termination. Rule G–37(d) prohibits a dealer from doing any act indirectly which would result in a violation of rule G–37 if done directly by the dealer. Thus, a dealer may violate rule G–37 by engaging in municipal securities business with an issuer after directing or soliciting any person to make a contribution to an official of such issuer.

"Reasonable Efforts" Provision

13. Q: What is the reasonable efforts provision contained in rule G–38?

A: This provision provides that a dealer will not be found to have violated rule G–38 if the dealer fails to receive from its consultants all required information about reportable political contributions and reportable political party payments and thus fails to report such information to the Board if the dealer can demonstrate that it used reasonable efforts in attempting to obtain the necessary information.

14. Q: What must a dealer do to avail itself of the reasonable efforts provision?

A: A dealer must: (1) state in the Consultant Agreement that Board rules require disclosure of consultant contributions to issuer officials and payments to state and local political parties; (2) send quarterly reminders to its consultants of the deadline for their submissions to the dealer of contribution and payment information; (3) include language in the Consultant Agreement to the effect that: (a) the Consultant Agreement will be terminated if, for any calendar quarter, the consultant fails to provide the dealer with information about its reportable contributions or payments, or a report noting that the consultant made no reportable contributions or payments, and such failure continues up to the date to be determined by the dealer but no later than the date by which the dealer is required to send Form G–37/G–38 to the Board with respect to the next succeeding calendar quarter, such termination to be effective upon the date the dealer must send its Form G–37/G–38 to the Board, and (b) the dealer may not make any further payments to the consultant, including payments owed for services performed prior to the date of termination, as of the date of such termination; and (4) enforce the Consultant Agreement provisions described above in a full and timely manner and indicate the reason for and date of the termination on its Form G–37/G–38 for the applicable quarter.

15. Q: If a dealer does not include the termination and non-payment provisions in a Consultant Agreement or enforce any such provision that may be contained in the Consultant Agreement, would this constitute a violation of rule G–38?

A: No. Failure to follow the requirements of the reasonable efforts provision would not result in a violation of rule G–38; however, the dealer would be precluded from invoking the reasonable efforts provision as a defense against a possible violation for failing to disclose consultant contribution information which the consultant may have withheld from the dealer. Of course, whether or not a dealer would be charged with a violation of rule G–38 for failure to disclose consultant contribution information would depend upon a review of the facts and circumstances of the individual case by the appropriate regulatory agency.

Disclosure on Form G–37/G–38

16. Q: What information concerning consultants' political contributions and payments to political parties is[4] required to be reported to the Board on Form G–37/G–38?

A: Forms G–37/G–38 shall include the following information to the extent required to be obtained for a calendar quarter: (1) the name and title (including any city/county/state or political subdivision) of each official of an issuer and political party receiving reportable political contributions or reportable political party payments, listed by state, and contribution or payment amounts made and the contributor category; or (2) if applicable, a statement that the consultant reported that no reportable political contributions or reportable political payments were made; or (3) if applicable, a statement that the

[4] The MSRB changed "are" to "is." See letter from Ronald W. Smith, Senior Legal Associate, MSRB, to Katherine England, Assistant Director, Division, SEC, dated March 2, 2000.

consultant failed to provide any report of information to the dealer concerning reportable political contributions or reportable political party payments.

17. Q: Does a dealer have a reporting obligation if a consultant fails to provide a report for a particular quarter?

A: Yes. The dealer must disclose on Form G–37/G–38 if the consultant has failed to provide it with a report of its reportable political contributions and reportable political party payments.

18. Q: In listing consultants' reportable political contributions and reportable political party payments on Form G–37/G–38, how are the contributors to be identified?

A: By contributor category (i.e., company, individual, company controlled PAC or individual controlled PAC).

19. Q: How should look-back contributions and payments be disclosed on Form G–37/G–38?

A: Dealers must disclose, in addition to the other required information, the calendar quarter and year of any reportable political contributions and reportable political party payments that were made prior to the calendar quarter for which the form is being completed. Look-back contributions and payments should be disclosed on the Form G–37/G–38 for the quarter in which the consultant has first communicated with an issuer to obtain municipal securities business on behalf of the dealer.

Recordkeeping

20. Q: What records concerning consultants' political contributions and payments to political parties are required to be maintained?

A: Rule G–8(a)(xviii) requires a dealer to maintain: (1) Records of each reportable political contribution, (2) records of each reportable political party payment, (3) records indicating, if applicable, that a consultant made no reportable political contributions or no reportable political party payments, and (4) a statement, if applicable, that a consultant failed to provide any report of information to the dealer concerning reportable political contributions or reportable political party payments.

Effective Date of Requirements Concerning Consultants' Political Contributions and Payments to State and Local Political Parties

21. Q: What is the effective date of the amendments to rule G–38 concerning the disclosure of consultants' reportable political contributions and reportable political party payments?

A: The amendments will become effective on April 1, 2000. On the Forms G–37/G–38 for the second quarter of 2000 (required to be sent to the Board by July 31, 2000) dealers are required to disclose their consultants' reportable political contributions and reportable political party payments for the second quarter of 2000 and include, if applicable, reportable political contributions and reportable political party payments made since October 1, 1999 pursuant to the six-month look-back provision.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 17, 1996, the Commission approved Board rule G–38, on consultants.[5] The Board adopted the rule because it was concerned about dealers' increasing use of consultants to obtain or retain municipal securities business, notwithstanding the requirements of rule G–37, on political contributions and prohibitions on municipal securities business, rule G–20, on gifts and gratuities, and rule G–17, on fair dealing. Rule G–38 requires dealers to disclose information about their consultant arrangements to issuers and the public. On December 7, 1999, the Commission approved amendments to rules G–38, G–37 and G–8, on books and records, as well as revisions to the attachment page to Form G–37/G–38.[6] The amendments require dealers to obtain from their consultants information on the consultants' political contributions and payments to state and local political parties and to report such information to the Board on Form G–37/G–38. The amendments will become effective on April 1, 2000. In order to assist the municipal securities industry and, in particular, brokers, dealers and municipal securities dealers in understanding and complying with rule G–38, the Board has determined to publish this fifth notice of interpretation which sets forth, in question-and-answer format, general guidance on the amendments that will become effective on April 1, 2000.[7] The Board will continue to monitor the application of rule G–38, and, from to time, will publish additional notices of interpretations, as necessary.

IV. Statutory Basis

The MSRB represents that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act[8] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[9]

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The MSRB has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, which constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule imposed by the Exchange, has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and subparagraph (f)(1) of Rule

[5] Securities Exchange Act Release No. 36727 (January 17, 1996), 61 FR 1955 (1996). The rule became effective on March 18, 1996.

[6] Securities Exchange Act Release No. 42205 (December 7, 1999), 64 FR 69808 (1999).

[7] For previous notices, see MSRB Reports, Vol. 16, No. 2 (June 1996) at 3–5; Vol. 17, No. 1 (January 1997) at 15; Vol. 18, No. 2 (August 1998) at 13; and Vol. 19, No. 2 (April 1999) at 23. See also MSRB Rule Book (January 1, 2000) at 208–211.

[8] 15 U.S.C. 78o–4(b)(2)(C).

[9] In reviewing the proposed rule change, the Commission considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78s(b)(3)(A).

19b–4 thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. All submissions should refer to File No. SR–MSRB–00–05 and should be submitted by April 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[11] 17 CFR 240.19b–4(f)(1).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42601; File No. SR–NASD–99–74]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. Relating to an Exemption From NASD Conduct Rule 2710 for Closed-End Management Companies That Make Periodic Repurchases of Their Securities Under Rule 23c–3(b) of the Investment Company Act of 1940

March 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Association filed an amendment to the proposed rule change on February 29, 2000, which Amendment entirely replaces and supersedes the initial proposal.[3] On March 20, 2000, the Association filed Amendment No. 2.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation proposes to amend NASD Conduct Rules 2710 ("Corporate Financing Rule") and 2830 to exempt public offerings by closed-end investment management companies that make periodic tender offers for their securities in compliance with Rule 23c–3(b)[5] of the Investment Company Act of 1940[6] (the "1940 Act") from the filing requirements and limitations on underwriting compensation of the corporate Financing Rule and, instead, subject such offerings to the sales charge limitations of NASD Conduct Rule 2830. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

2710. Corporate Financing Rule—Underwriting Terms and Arrangements

(a) No change.
(b) Filing Requirements.
(1)–(7) No change.
(8) Exempt Offerings.

Notwithstanding the provisions of subparagraph (1) above, the following offerings are exempt from this Rule, Rule 2720, and rule 2810. Documents and information relating to the following offerings need not be filed for review:

(A)–(B) No Change.

(C) securities of [investment companies registered under the Investment Company Act of 1940, as amended, except securities of a management company defined as a "closed-end company" in Section 5(a)(2) of that Act] *"open-end" investment companies as defined in Section 5(a)(1) of the Investment Company Act of 1940 and securities of any "closed-end" investment company as defined in Section 5(a)(2) of that Act that:*

(i) makes periodic repurchase offers pursuant to Rule 23c–3(b) under the Investment Company Act of 1940; and

(ii) offers its shares on a continuous basis pursuant to Rule 415(a)(1)(xi) under the Securities Act of 1933.

(D)–(J) No change.
(9)–(12) No change.
(c)–(d) No change.

* * * * *

2830. Investment Company Securities

(a)–(c) No change.
(d) Sales Charge.

No members shall offer or sell the shares of any open-end investment company, *any Closed-end investment company that makes periodic repurchase offers pursuant to Rule 23c–3(b) under the 1940 Act and offers its shares on a continuous basis pursuant to Rule 415(a)(1)(xi) under the Securities Act of 1933,* or any "single payment" investment plan issued by a unit investment trust (collectively "investment companies") registered under the 1940 Act if the sales charges described in the prospectus are excessive. Aggregate sales charges shall

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* February 28, 2000 letter and attachments from Joan C. Conley, Secretary, NASD Regulation, Inc. to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC ("Amendment No. 1"). In Amendment No. 1, NASD Regulation made changes to the language of the proposed new rule. Exhibits 2 through 4 that were attached to the original filing are incorporated by reference in Amendment No. 1.

[4] *See* March 17, 2000 letter from Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulation, Inc. to Katherine A. England, Assistant Director, Division, SEC, ("Amendment No. 2"). Amendment No. 2 made minor technical changes to the proposal.

[5] 17 CFR 270.23c–3(b).

[6] 15 U.S.C. 80a.

be deemed excessive if they do not conform to the following provisions:

(1)–(5) No change.

(e)–(i) No change.

(j) Repurchase from Dealer.

No member who is a principal underwriter of a security issued by an open-end [management] investment company *or a closed-end investment company that makes periodic repurchase offers pursuant to Rule 23c–3(b) under the 1940 Act and offers its shares on a continuous basis pursuant to Rule 415(a)(1)(xi) under the Securities Act of 1933* shall repurchase such security, either as principal or as agent for the issuer, from a dealer acting as principal who is not a party to a sales agreement with a principal underwriter, nor from any investor, unless such dealer or investor is the record owner of the security so tendered for repurchase. No member who is a principal underwriter shall participate in the offering or in the sale of any such security if the issuer voluntarily redeems or repurchases its securities from a dealer acting as principal who is not a party to such a sales agreement nor from any investor, unless such dealer or investor is the record owner of the security so tendered for repurchase. Nothing in this paragraph shall relate to the compulsory redemption of any security upon presentation to the issuer pursuant to the terms of the security.

Nothing in this Rule shall prevent any member, whether or not a party to a sales agreement, from selling any such security for the account of a record owner to the underwriter or issuer at the bid price next quoted by or for the issuer and charging the investor a reasonable charge for handling the transaction, provided that such member discloses to such record owner that direct redemption of the security can be accomplished by the record owner without incurring such charges.

(k)–(n) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Corporate Financing Rule regulates the underwriting terms and other arrangements of public offerings of securities. Subparagraph (b)(8)(C) of the Corporate Financing Rule provides that securities of investment companies registered under the 1940 Act [7] are exempt from filing and compliance with the Corporate Financing Rule, unless the offering is of securities of a management company defined as a "closed-end" company in Section 5(a)(2) [8] of the 1940 Act [9] ("closed-end funds"). [10] Thus, closed-end funds are subject to the filing requirements, filing fees, and regulations of the Corporate Financing Rule. Open-end investment management companies ("open-end funds") that continuously offer redeemable securities are exempt from filing with NASD Regulation under the Corporate Financing Rule and a member's receipt of their sales charges is regulated under NASD Conduct Rule 2830.

Closed-end funds are subject to the core provisions of the 1940 Act [11] that also apply to open-end funds, including prohibitions on affiliated transactions, obligations requiring shareholder approval of advisory contracts, anti-pyramiding restrictions, and board composition requirements. However, such funds are not subject to other 1940 Act [12] restrictions applicable to open-end funds, including limitations on leverage and obligations pertaining to the liquidity of investments. The Corporate Financing Rule and its predecessor rule have long been applied to members' sales of the securities of closed-end funds on the basis that closed-end fund offerings are structured and marketed in a manner that is more similar to and competitive with corporate securities offerings than to open-end funds. At the time the Corporate Financing Rule was adopted, closed-end funds conducted offerings of a fixed number of common shares at specified times; priced their shares periodically; limited sales compensation of broker/dealers to a discount from a fixed offering price; did not redeem their securities; and generally listed their securities on a securities market.

Certain closed-end funds, commonly known as "interval funds," have developed a hybrid structure in which they engage in continuous offerings of their securities under Rule 415 [13] under the Securities Act of 1933; [14] price their shares daily; pay broker/dealers initial and continuing compensation that meets the sales charge limitations of NASD Conduct Rule 2830; do not list their securities on a securities market; and redeem shares by making periodic self-tenders in compliance with Rule 23c–3(b) [15] of the 1940 Act. [16] Rule 23c–3(b) [17] requires that the interval fund establish as a fundamental policy, changeable only by a majority vote of the outstanding voting securities of the company, that it will make periodic repurchase offers. Because the shares of interval funds are not redeemable on a daily basis, they are nonetheless classified as "closed-end" under the 1940 Act. [18]

In *Notice to Members 98–81* (October, 1998), NASD Regulation requested public comment on whether any of the NASD's rules are obsolete. One commenter, the Investment Company Institute, proposed exempting interval funds from regulation by the Corporate Financing Rule. In addition, the Corporate Financing Department has received a rulemaking petition requesting an exemption from the Corporate Financing Rule for interval funds. NASD Regulation believes that the distribution of interval fund shares is conducted and financed in a manner more similar to that used by open-end management investment companies than the method used by traditional closed-end funds. Therefore, the calculation of members' compensation for the distribution of interval fund shares is more properly regulated by provision (d) of NASD Conduct Rule 2830 (provision (d) hereinafter, the "Sales Charge Rule"), rather than by the limitations on underwriting compensation in the Corporate Financing Rule.

Consequently, NASD Regulation proposes to amend the Corporate Financing Rule and NASD Conduct Rule 2830 to exempt interval funds from the filing requirements, filing fees, and

[7] 15 U.S.C. 80a.

[8] 15 U.S.C. 80a–5(a)(2).

[9] 15 U.S.C. 80a.

[10] Section 5(a)(1) of the 1940 Act defines "open-end company" as "a management company which is offering for sale or has outstanding any redeemable security for which it is the issuer." Section 5(a)(2) of the 1940 Act defines "closed-end company" as "any management company other than an open-end company." 15 U.S.C. 80a–5(a)(1) and (2).

[11] 15 U.S.C. 80a.

[12] *Id.*

[13] 17 CFR 230.415.

[14] 15 U.S.C. 77a *et seq.*

[15] 17 CFR 270.23c–3(b).

[16] 15 U.S.C. 80a.

[17] 17 CFR 270.23c–3(b).

[18] 15 U.S.C. 80a.

regulations of the Corporate Financing Rule and to, instead, subject them to NASD Conduct Rule 2830, which regulates the distribution and sales charges of open-end funds.[19] The proposed amendment to the Corporate Financing Rule would amend subparagraph (b)(8)(C) to provide that closed-end fund offerings are exempt if the fund makes periodic repurchase offers pursuant to Rule 23c-3(b)[20] and it offers its shares on a continuous basis pursuant to Rule 415[21] under the Securities Act of 1933.[22] Closed-end funds that do not meet these requirements will continue to be subject to the Corporate Financing Rule. The proposed amendment to NASD Conduct Rule 2830 would amend paragraphs (d) and (j) to provide that interval funds are subject to the provisions regulating sales charges and the repurchases of fund securities.[23]

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[24] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the calculation of members' compensation for the distribution of interval fund shares is more properly regulated by the Sales Charge Rule, rather than by the limitations on underwriting compensation in the Corporate Financing Rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

NASD *Notice to Members 98–81* (October, 1998) requested comment on whether any NASD rules are obsolete. A copy of the comment letter received from the Investment Company Institute in response to the *Notice* that requested the amendments proposed herein was filed with the proposed rule change. A copy of a petition for rulemaking requesting the amendments proposed herein submitted by the law firm of Stradley Ronon Stevens & Young on behalf of Franklin/Templeton Distributors, Inc. was also attached to the proposed rule change.

III. Date of Effectiveness of the Proposed rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

a. By order approve such proposed rule change, or

b. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–99–74 and should be submitted by April 28, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8490 Filed 4–6–00; 8:45 am]

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[19] Interval funds are distinguished from other hybrid closed-end funds that make periodic self-tenders in compliance with Rule 13e–4 and Schedule 13E–4 under the Act ("tender offer funds"). *See* 17 CFR 240.13e–4 and 17 CFR 240.13e–101 *et seq.* Such tender offer funds are not required to establish as a fundamental policy that they will make periodic repurchases, as required by Rule 23c-3(b) under the 1940 Act. 17 CFR 270.23c-3(b), 15 U.S.C. 80a. The rule change proposed herein would not exempt tender offer funds from the Corporate Financing Rule. However, NASD Regulation will consider individual requests for exemption under the NASD Rule 9600 series from the requirements of the Corporate Financing Rule for such tender offer funds. *See*, Exemption granted October 29, 1999 under "Corporate Financing Rule—Rule 2710" at www.nasd.com.

[20] 17 CFR 270.23c–3(b).

[21] 17 CFR 230.415.

[22] 15 U.S.C. 77a *et seq.*

[23] An interval fund that has received a "no objections" opinion from the Corporate Financing Department based upon representations that underwriting compensation will not exceed a certain amount will become subject to the Sales Charge Rule upon effectiveness of the proposed amendments, provided that the compensation limit has not already been met or exceeded. Any interval fund that has reached the applicable compensation limit under the Corporate Financing Rule shall remain subject to the requirements of the Rule until the fund files a post-effective amendment with the Commission registering additional securities.

[24] 15 U.S.C. 78o–3(b)(6).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42606; File No. SR–NASD–00–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Amending NASD Code of Arbitration Rules 10335 and 10205(h) Regarding Injunctive Relief

April 3, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 13, 2000,[3] the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rules 10335 and 10205(h) of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 9, 2000 and March 15, 2000 the NASD submitted Amendments No. 1 and 2 to the proposed rule change, respectively, the substance of which is incorporated into the notice. *See* letters to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, from Patrice Gliniecki, Vice President and Deputy General Counsel, NASD Regulation, dated March 7, 2000 ("Amendment No. 1") and March 24, 2000 (Amendment No. "2").

Code of Arbitration Procedure of the NASD, to simplify and clarify the procedures for obtaining injunctive relief in certain disputes subject to arbitration. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

RULES OF THE ASSOCIATION

* * * * *

10000. CODE OF ARBITRATION PROCEDURE

* * * * *

10300. UNIFORM CODE OF ARBITRATION

Rule 10335. [Injunctions] *Temporary Injunctive Orders; Requests for Permanent Injunctive Relief*

[The current text of Rule 10335 is deleted in its entirety.]

(a) *Temporary Injunctive Orders*

(1) *In industry or clearing disputes required to be submitted to arbitration pursuant to Rule 10201, parties may seek a temporary injunctive order, as defined in subparagraph (a)(2) of this Rule, from a court of competent jurisdiction. Parties to a pending arbitration may seek a temporary injunctive order from a court of competent jurisdiction even if another party has already filed a claim arising from the same dispute in arbitration pursuant to this paragraph, provided that an arbitration hearing on a request for permanent injunctive relief has not yet commenced.*

(2) *For purposes of this Rule, temporary injunctive order means a temporary restraining order, preliminary injunction or other form of initial, temporary injunctive relief.*

(3) *A party seeking a temporary injunctive order from a court with respect to an industry or clearing dispute required to be submitted to arbitration pursuant to Rule 10201 shall simultaneously file with the Director a Statement of Claim requesting permanent relief with respect to the same dispute in the manner specified under this Code, and shall simultaneously serve the Statement of Claim requesting permanent relief on all parties. Filings and service under this Rule may be made by facsimile, overnight delivery service or messenger. A party obtaining a court-issued temporary injunctive order shall notify the Director and the other parties of the issuance of the order within one business day.*

(4) *Unless otherwise stated, for purposes of computation of time under any paragraph of this Rule, any reference to days means calendar days, including Saturdays, Sundays or any NASD holiday. However, if a party must provide notice or a response to the Director and the day on which that notice or response to the Director must be given falls on a Saturday, Sunday or any NASD holiday, then the time period is extended until the next business day.*

(b) *Hearing on Request for Permanent Injunctive Relief*

(1) *Scheduling of Hearing*

If a court issues a temporary injunctive order, an arbitration hearing on the request for permanent injunctive relief shall commence within 15 days of the date the court issues the temporary injunctive order. If the 15th day falls on a Saturday, Sunday, or NASD holiday, the 15-day period shall expire on the next business day. The Director shall provide to all parties notice of the date, time and place of the hearing at least three days prior to the commencement of the hearing.

(2) *Composition of Arbitration Panel*

The hearing on the request for permanent injunctive relief shall be heard by a panel of three arbitrators, who shall either be all non-public arbitrators as defined in Rule 10308(a)(4), or, if the underlying dispute would be heard by a public arbitrator or panel consisting of a majority of public arbitrators under rule 10202, a majority of public arbitrators as defined in Rule 10308(a)(5).

(3) *Selection of Arbitrators and Chairperson*

(A) *In cases in which all of the members of the arbitration panel are non-public under paragraph (b)(2) of this Rule, the Director shall generate and provide to the parties a list of seven arbitrators from a national roster of arbitrators. At least a majority of the arbitrators listed shall be lawyers specializing in injunctive relief. Each party may exercise one strike to the arbitrators on the list. Within three days of receiving the list, each party shall inform the Director which arbitrator, if any, it wishes to strike, and shall rank the remaining arbitrators in order of preference.*

(B) *In cases in which the panel of arbitrators consists of a majority of public arbitrators under paragraph (b)(2) of this Rule, the Director shall generate and provide to the parties a list of nine arbitrators from a national roster of arbitrators. At least a majority of the arbitrators listed shall be (1) public arbitrators and (2) lawyers specializing in injunctive relief. Each party may exercise two strikes to the arbitrators on the list. Within three days of receiving the list, each party shall inform the Director which arbitrators, if any, it wishes to strike, and shall rank the remaining arbitrators in order of preference.*

(C) *Each party shall inform the Director of its preference of chairperson of the arbitration panel by the close of business on the next business day after receiving notice of the panel members. If the parties do not agree on a chairperson within that time, the Director, shall select the chairperson. In cases in which the panel consists of a majority of public arbitrators, the chairperson shall be one of the public arbitrators who is a lawyer specializing in injunctive relief. In cases in which the panel consists of non-public arbitrators, the chairperson shall be a lawyer specializing in injunctive relief. Whenever possible, the Director shall select as chairperson the lawyer specializing in injunctive relief whom the parties have ranked the highest.*

(D) *The Director may exercise discretionary authority and make any decision that is consistent with the purposes of this Rule and Rule 10308 to facilitate the appointment of arbitration panels and the selection of chairperson.*

(4) *Applicable Legal Standard*

The legal standard for granting or denying a request for permanent injunctive relief is that of the state where the events upon which the request is based occurred, or as specified in an enforceable choice of law agreement between the parties.

(5) *Effect of Pending Temporary Injunctive Order*

Upon a full and air presentation of the evidence from all relevant parties on the request for permanent injunctive relief, the panel may prohibit the parties from seeking an extension of any court-issued temporary injunctive order remaining in effect, or, if appropriate, order the parties jointly to move to modify or dissolve any such order. In the event that a panel's order conflicts with a pending court order, the panel's order will become effective upon expiration of the pending court order.

(6) *Fees, Costs and Expenses, and Arbitrator Honorarium*

(A) *The parties shall jointly bear the travel-related costs and expenses of the arbitrators appointed to hear the request for permanent injunctive relief. The arbitrators shall not reallocate such costs and expenses among the parties.*

(B) *The party seeking injunctive relief shall pay the expedited hearing fees pursuant to Rule 10205(h), or, where both sides seek such relief, both parties shall pay such fees. In either event, however, the arbitrator(s) shall have the authority to allocate such fees among the parties.*

(C) *Notwithstanding any other provision in the Code, the chairperson of the panel hearing a request for permanent injunctive relief pursuant to this Rule shall receive an honorarium of $375 for each single session, and $700 for each double session, of the hearing. Each other member of the panel shall receive an honorarium $300 for each single session, and $600 for each double session, of the hearing. The parties shall equally pay the difference between these amounts and the amounts panel members and the chairperson receive under the Code pursuant to IM–10104. the arbitrators shall not reallocate such amount among the parties.*

(c) *Hearing on Damages or other Relief*

(1) *Upon completion of the hearing on the request for permanent relief, the panel, may, if necessary, set a date for any subsequent hearing on damages or other relief, which shall be held before the same panel of arbitrators and which shall include, but not be limited to, the same record.*

(2) *The parties shall jointly bear the travel-related costs and expenses of the arbitrators resulting from any subsequent hearings on damages or other relief. The arbitrators shall not reallocate such costs and expenses among the parties.*

(d) *Effective Date*

This Rule shall apply to arbitration claims filed on or after [60 days from effective date.] Except as otherwise provided in this Rule, the remaining provisions of the Code shall apply to proceeding instituted under this Rule.

* * * * *

10200. INDUSTRY AND CLEARING CONTROVERSIES

10205. Schedule of Fees for Industry and Clearing Controversies

(h) [In each industry dispute of clearing controversy which is required to be submitted to arbitration before the Association as set forth in Rule 10201, above, where interim injunctive relief is requested or where a court has issued a temporary injunction and a party requests expedited proceedings, a total non-refundable surcharge of $2,500 shall be paid by the party or parties requesting the expedited proceedings as provided by Rule 10335. For purposes of this Rule, where expedited proceedings are mandated by Rule 10335(g), the party that sought and was granted injunctive relief by a court shall be deemed a party requesting expedited proceedings. These surcharges shall be in addition to all other non-refundable filing fees, hearing deposits, or costs which may be required. The arbitrator may determine that a party shall reimburse another party for any non-refundable surcharge it has paid.] *A party seeking a temporary injunctive order in court pursuant to Rule 10335 shall pay a total non-refundable surcharge of $2,500 at the time the party files its Statement of Claim and Request for Permanent Relief as required by Rule 10335. Where more than one party seeks such relief, all such parties shall pay the surcharge. The arbitrator may determine that a party shall reimburse another party for part or all of any non-refundable surcharge it has paid. These surcharge fees shall be in addition to all other non-refundable filing fees, hearing deposits, or costs which may be required.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 10335, the NASD's pilot injunctive relief rule, allows interim injunctive relief to be obtained in controversies involving member firms and associated persons in arbitration. The rule has primarily been used in "raiding cases," or cases involving the transfer of an employee to another firm. Rule 10335 took effect on January 3, 1996 for a one-year pilot period. The Commission has periodically extended the initial pilot period in order to permit NASD Regulation's Office of Dispute Resolution to assess the effectiveness of the rule. The pilot rule is currently due to expire on January 5, 2001.[4]

In November 1997, the NASD published Notice to Members 97–59, which sought comment on how the injunctive relief and expedited proceedings work and how they could be improved, and identified more than twenty specific questions based on previous comments received from users of the rule. Based on comments received in response to Notice to Members 97–59, the NASD filed a rule to amend Rule 10335 and to make it a permanent part of the Code (SR–NASD–98–49) in July 1998. The NASD filed amendments and responses to comments received by the Commission regarding the rule filing in December 1998.

In response to additional formal and informal comments received after the amendments and responses to comments were filed, the Injunctive Relief Rule Subcommittee of NASD Regulation's Inc's National Arbitration and Mediation Committee ("NAMC") undertook to reconsider every aspect of the proposed rule change. In addition to its NAMC members, the Subcommittee included representatives from member firms that has expressed an interest in the rule, including all of the retail firms that commented negatively on the prior rule filing.

After lengthy deliberation and careful compromise, the Subcommittee recommended withdrawing the previous rule filing and replacing it with the proposed amendments summarized below. The NAMC approved the proposed amendments at its September 1999 meeting. The proposed amendments were then approved by the Small Firm Advisory Board and the Board of Directors of NASD Regulations in December 1999.

Summary of the Current Rule

Rule 10335 currently provides, among other things, that:

- Parties may seek temporary injunctive relief either in court or in arbitration.
- Parties who seek temporary injunctive relief in court must simultaneously submit the claim to arbitration for permanent relief.
- Parties may obtain interim injunctive relief in arbitration rather than in court in the form of either an Immediate Injunctive Order or a Regular Injunctive Order.
- Permanent injunctive relief may be obtained in arbitration as part of the final relief sought by a party in connection with a claim.
- Applications for interim injunctive relief are expedited.
- Where a court grants interim injunctive relief to one of the parties, arbitration proceedings on the dispute must be expedited.

Summary of Proposed Rule Change

The NASD continues to believe that it is important that parties be able to obtain immediate temporary injunctive

[4] See Securities Exchange Act Release No. 42280 (December 28, 1999), 65 FR 1211 (January 7, 2000).

relief in cases that warrant such relief. However, users of the rule have complained that the bifurcated procedures and multiple layers of review provided by the current pilot rule are unnecessarily complex and confusing. The principal objectives of the proposed amendments are to simplify and expedite the procedures for seeking immediate injunctive relief in intra-industry disputes and to fairly and effectively integrate court-ordered initial injunctive relief with the arbitration of the underlying claims in the same disputes.

Availability of Injunctive Relief in Arbitration

The most significant aspect of the proposed rule change is that it would eliminate the option of seeking temporary injunctive relief in arbitration. Under the current rule, parties may seek either an Immediate Injunctive Order or a Regular Injunctive Order in arbitration, which are roughly parallel to temporary restraining orders and preliminary injunctions available in court. The rule does not currently impose any time limits on the orders issued, and does not specify what standard should be applied in deciding applications for injunctive relief. Users of the pilot rule have complained that the terminology is confusing, that the lack of standards has created uncertainty, and that the lack of time limits permits parties who obtain relief to pressure the enjoined party to settle by delaying the hearing on the merits. In addition, experience with the rule has shown that, although temporary injunctive relief is available in arbitration on an expedited basis, it is still not possible to obtain such injunctive relief in arbitration as quickly as in court, due largely to the need to appoint and convene arbitrators specifically for each case.

Under the proposed amendments, parties would still be able to seek temporary injunctive relief in a court of competitive jurisdiction. The rule would continue to require parties seeking such relief to simultaneously file a Statement of Claim in arbitration requesting permanent relief regarding the same dispute. This requirement reflects the intent of the rule to provide parties with an ability to seek immediate relief, but to ensure that the underlying disputes remain subject to arbitration.

One question that has arisen in the application of the pilot rule is whether parties can seek temporary injunctive relief in court even if a Statement of Claim has already been filed in arbitration regarding the underlying dispute. Under the proposed amendments, parties to a pending arbitration would be able to seek a temporary injunctive order in court even if another party has already filed a claim arising from the same dispute in arbitration, provided that an arbitration hearing on a request for permanent injunctive relief had not yet commenced.

Hearing on Request for Permanent Relief; Selection of Arbitrators; Appointment of Chairperson

Under the proposed amendments, if a court issues a temporary injunctive order, the hearing on the request for permanent relief must commence within 15 days of the date the court issued its order. The hearing on the request for permanent injunctive relief would be heard by a panel of three arbitrators. In cases in which the underlying dispute would be heard by a panel of non-public arbitrators as defined in Rule 10308(a)(4), the three arbitrators would be non-public. In cases in which the underlying dispute would be heard by a public arbitrator or panel consisting of a majority of public arbitrators under Rule 10202, the panel hearing the request for permanent relief would consist of a majority of public arbitrators as defined in Rule 10308(a)(5).

In cases in which all of the members of the arbitration panel are non-public, the Director of Arbitration would generate and provide to the parties a list of seven arbitrators from a national roster of arbitrators, at least a majority of whom would be lawyers specializing in injunctive relief. Each party would be able to exercise one strike to the arbitrators on the list.

In cases in which the panel of arbitrators consists of a majority of public arbitrators, the Director of Arbitration would generate and provide to the parties a list of nine arbitrators from a national roster of arbitrators. At least a majority of the arbitrators in those cases would be (1) public arbitrators and (2) lawyers specializing in injunctive relief. In those cases, the parties would be able to exercise two strikes to the arbitrators on the list. Regardless of the number of strikes given to the parties, the rule would incorporate by reference other Code of Arbitration rules providing unlimited strikes for cause, so that parties would always be able to strike arbitrators who were unqualified due to conflicts of interest or for other reasons.

Under the proposed amendments, the parties would be required to inform the Director of their preference of chairperson of the arbitration panel by the close of business on the next business day after receiving notice of the panel members. If the parties did not agree on a chairperson within that time, the Director would select the chairperson. In cases in which the panel consists of a majority of public arbitrators, the chairperson would be one of the public arbitrators who is a lawyer specializing in injunctive relief. In cases in which the panel consists of non-public arbitrators, the chairperson would be a lawyer specializing in injunctive relief. Whenever possible, the Director would select as chairperson the lawyer specializing in injunctive relief whom the parties have ranked the highest. The rule would also provide that the Director of Arbitration may exercise discretionary authority and make any decision that is consistent with the purposes of the rule and the arbitrator selection rule (Rule 10308) to facilitate the appointment of arbitration panels and the selection of the chairperson.

The timing of the hearing, the composition of the panel and the selection of the chairperson are the result of a carefully crafted compromise that is intended to balance the need to ensure fairness for all parties with the need to commence the arbitration process as quickly as possible.

Applicable Legal Standard

The proposed rule would provide that the decision to grant or deny a request for permanent injunctive relief would be governed by an enforceable choice of law agreement between the parties, or, if there were no such agreement, then by the law of the state where the events upon which the request is based occurred.

Temporary Injunctive Order in Effect During Hearing

One of the most difficult aspects of integrating court-ordered injunctive relief with arbitration of the underlying claims in the same dispute is the treatment of a pending court order in effect at the commencement of the hearing on the request for permanent relief. This becomes a potentially important issue in the event that the pending court order conflicts with the decision of the panel, because conflicting orders from a court and the arbitration panel could place parties in the position of either having to be in contempt of a pending court order or violation of an arbitration order.

NASD Regulation does not believe that arbitration panels have the authority to dissolve, modify or supersede a court order. However, arbitrators do have the authority to

order parties not to seek extensions of pending orders, or to jointly ask the court to modify or dissolve a pending order, if necessary. To address this issue, the proposed rule change would provide that, in the event that a court-issued temporary injunctive order is still in effect, after a full and fair presentation of evidence from all relevant parties, an arbitration panel may prohibit the parties from seeking an extension of the pending court order, and, if appropriate, may order the parties to jointly move the court to modify or dissolve the pending court order. In the event that a panel's order conflicts with a pending court order, the panel's order will become effective upon expiration of the pending court order.

Fees

Expediting the hearing on the request for permanent relief and providing arbitrators who meet the special requirements of Rule 10335 may involve additional costs and expenses. For example, in order to appoint the required number of qualified arbitrators in the short time frame provided by the rule, it may be necessary to use arbitrators from cities other than the site of the hearing. Because expedition of the hearing on the request for permanent relief is in the interest of all parties, particularly the party against whom a court-ordered temporary restraining order has been entered, the proposed amendments provide that the parties would jointly bear the travel-related costs and expenses of the arbitrators appointed to hear the request for permanent injunctive relief. To ensure that these additional expenses are borne equally by the parties, the rule would prohibit the arbitrators from reallocating arbitrator travel costs and expenses among the parties.

Similarly, the rule provides that, notwithstanding any other provision in the Code, the chairperson of the panel hearing a request for permanent injunctive relief pursuant to this rule shall receive an honorarium of $375 for each single session, and $700 for each double session, of the hearing. Each other member of the panel shall receive an honorarium of $300 for each single session, and $600 for each double session, of the hearing. The NASD believes that these additional amounts are necessary to ensure that a sufficient number of qualified arbitrators are available to participate in such hearings in the short time frame provided by the rule. Again, because both parties benefit from the expedition of the hearing on the request for permanent relief, the NASD believes that it is equitable that the parties share the difference between these amounts and the amounts panel members and the chairperson would otherwise receive under the Code. As in the case of additional travel costs and expenses, the rule ensure this balance by prohibiting arbitrators from reallocating these amounts among the parties.[5]

Finally, the rule also provides that the party seeking injunctive relief shall pay the expedited hearing fees pursuant to Rule 10205(h), or, where both sides seek such relief, both parties shall pay such fees. In either event, the rule specifically provides that the arbitrators shall have the authority to allocate such fees among the parties. The rule has no effect on the obligations of parties to pay, or on the authority of arbitrators to allocate, any other hearing fees required under the Code.

Subsequent Hearings on Damages or Other Relief

The hearing on the request for permanent relief is intended to address only the question of injunctive relief. It is not intended to address other forms of relief, such as damages, which do not need to be heard on an expedited basis. The rule provides that if, upon completion of the hearing on the request for permanent relief, a subsequent hearing on other forms of relief is necessary, the panel shall set the date for the subsequent hearing. This would provide parties the opportunity to develop a more complete record than might be possible within the constraints of the expedited injunctive relief hearing. Any subsequent hearing would be before the same panel that heard the request for permanent injunctive relief, and would include, but would not be limited to, the record developed at the earlier hearing. The rule would also provides that the parties would jointly bear the travel-related costs and expenses of the arbitrators resulting from any subsequent hearings on damages or other relief, and prohibits the arbitrators from reallocating those costs and expenses among the parties.

Rule 10205(n)

Rule 10205(h), Schedule of Fees in Industry and Clearing Controversies, currently provides that when temporary injunctive relief is sought in arbitrators or in court, a non-refundable surcharge of $2,500 shall be paid by the party or parties requesting the expedited proceedings as provided in Rule 10335. To harmonize Rule 10205(h) with the proposed amendments to Rule 10335, the proposed rule change would also amend Rule 10205(h) to eliminate reference to the availability of temporary injunctive relief in arbitration, and to clarify the application of the provision of temporary injunctive orders sought in court.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that it is in the best interest of investors and the parties involved in intra-industry disputes to provide for fast and efficient resolution of requests for temporary injunctive relief, and to provide clear and simple rules governing the integration of court-ordered relief with the arbitrator of the underlying disputes.

B. Self-Regulation Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designated up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[5] The payment of ordinary honoraria, as provided in IM–10104 of the Code, shall not be affected by this provision.

arguments concerning the foregoing. The Commission notes in particular that, under the proposal, the parties shall jointly bear the travel-related costs and expenses of the arbitrators appointed to hear the request for permanent injunctive relief. Further, the parties shall jointly bear the travel-related costs and expenses resulting from any subsequent hearings on damages or other relief. In addition, the parties shall equally pay the difference between the honorarium under proposed paragraph (b)(6)(C) of Rule 10335 and the amounts the arbitrators are otherwise entitled to receive under the Code. The arbitrators may not reallocate these costs and expenses among the parties. The Commission seeks comments on this fee structure, including whether the proposal is consistent with the Act which, among other things, prohibits the imposition of inappropriate and unnecessary burdens on competition[6] and requires that fees and charges be reasoanble and equitably allocated.[7] In previous orders, the Commission has relied substantially on arbitrators' discretion in finding that fees and charges met this standard.[8]

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–02 and should be submitted April 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8649 Filed 4–6–00; 8:45 am]

BILLING CODE 8010–01–M

[6] *See* 15 U.S.C. 78*o*–3(b)(9)

[7] *See* 15 U.S.C. 78*o*–3(b)(5).

[8] *See, e.g.*, Securities Exchange Act Release No. 41056 (February 16, 1999), 64 FR 10041 (March 1, 1999).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42579; File No. SR–NYSE–99–50]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 thereto by the New York Stock Exchange, Inc. Relating to Continued Listing Standards

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On March 27, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On March 27, 2000, the Exchange submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 802 of its *Listed Company Manual* (the "Manual") regarding its criteria governing the continued listing of securities (and corresponding changes to NYSE Rule 499). Specifically, the Exchange proposes: (1) to define "market capitalization" for the purpose of its continued listing standards; (2) to clarify the appropriate measures for partnerships; and, (3) to codify the Exchange's discretion to accept a financial plan for certain companies that have filed or that have announced an intent to file for bankruptcy, and that are below financial continued listing standards, but that are otherwise financially sound. The text of the proposed rule change is as follows: Proposed additions are italicized and proposed deletions are in brackets.

NYSE Listed Company Manual

* * * * *

Section 8
Suspension and Delisting
801.00 Policy

* * * * *

802.00 Continued Listing
802.01 Continued Listing Criteria

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The Exchange would normally give consideration to delisting a security of either a domestic or non-U.S. issuer when:

* * * * *

802.01B Numerical Criteria for Capital or Common Stock—

If a company falls below any of the following criteria, it is subject to the procedures outlined in Paras. 802.02 and 802.03:

- Total global market capitalization is less than $50,000,000 and total stockholders' equity *or, for partnerships, both the general and limited partners' capital as applicable,* is less than $50,000,000 (C); or
- Average global market capitalization over a consecutive 30 trading-day period is less than $15,000,000; or
- For companies that qualify under the "global market capitalization" standard:
- Total global market capitalization is less than $500,000,000 and total revenues are less than $50,000,000 over the last 12 months (unless the resultant entity qualifies as an original listing under one of the other standards) (C)

OR

- Average global market capitalization over a consecutive 30 trading-day period is less than $100,000,000.

When applying the market capitalization test in any of the above three standards, the Exchange will generally look to the total common stock outstanding (excluding treasury shares) as well as any common stock that would be issued upon conversion of another outstanding equity security. The Exchange deems these securities to be reflected in market value to such an extent that the security is a "substantial equivalent" of common stock. In this regard, the Exchange will only consider

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the NYSE made several clarifications to the intent and proposed interpretation of the proposed rule change. The Exchange expanded its discussion regarding the use of convertible securities in calculating the market capitalization of an issuer, and provided several examples of the proposed rule's application. The Exchange also explained the IRS-related basis for the proposed changes to the calculation of market capitalization for partnerships. Finally, the Exchange clarified that the proposed change to the bankruptcy provision would not restart the eighteen-month clock for an Exchange-approved plan. *See* Letter to Belinda Blaine, Associate Directors, Division of Market Regulation ("Division"), SEC, from James E. Buck, Senior Vice President and Secretary, NYSE, dated March 21, 2000 ("Amendment No. 1").

[4] In Amendment No. 2, the Exchange made several technical changes to the rule text which are reflected in this notice. *See* Letter to Belinda Blaine, Associate Director, Division, SEC, from James E. Buck, Senior Vice President and Secretary, NYSE, dated March 24, 2000 ("Amendment No. 2").

securities (1) Publicly traded (or quoted), or (2) Convertible into a publicly traded (or quoted) security. For partnerships, the Exchange will analyze the creation of the current capital structure to determine whether it is appropriate to include other publicly-traded securities in the calculation.

* * * * *

802.01D. Other Criteria—

If any of the following factors apply to a listed company, the Exchange may in its sole discretion subject the company to the procedures outlined in Paras. 802.02 and 802.03:

* * * * *

Bankruptcy and/or Liquidation—

An intent to file under any of the sections of the bankruptcy law has been announced or a filing has been made or liquidation has been authorized and the company is committed to proceed. If a company files or announces an intent to file for reorganization relief under the bankruptcy laws (or an equivalent foreign law), the Exchange may exercise its discretion to continue the listing and trading of the securities of the company. However, if a company that is below any continued listing standard enumerated in Para. 802.10B above (which may be determined on the basis of price indications) files or announces an intent to file for relief under any provisions of any bankruptcy laws, it is subject to immediate suspension and delisting. Similarly, if a company that files or announces an intent to file for relief under any provisions of any bankruptcy laws subsequently falls below any continued listing standard enumerated in Para. 802.10B above (which may be determined on the basis of price indications), it is subject to immediate suspension and delisting. *Notwithstanding the foregoing, in the event that such a company is profitable (or has positive cash flow), or is demonstrably in sound financial health despite the bankruptcy proceedings, the Exchange may evaluate and accept a Plan submitted under the procedures of 802.02 and 802.03.*

* * * * *

NYSE Rules

Delisting of Securities

Suspension from Dealings or Removal from List by Action of the Exchange

The aim of the New York Stock Exchange is to provide the foremost auction market for securities of well-established companies in which there is a broad public interest and ownership.

Rule 499.

* * * * *

.20 NUMERICAL AND OTHER CRITERIA.—WHEN A COMPANY FALLS BELOW ANY OF THESE CRITERIA, THE EXCHANGE MAY GIVE CONSIDERATION TO ANY DEFINITIVE ACTION THAT A COMPANY WOULD PROPOSE TO TAKE THAT WOULD BRING IT ABOVE CONTINUED LISTING STANDARDS.

* * * * *

4. *Total global market capitalization is less than $50,000,000 and total stockholders' equity *or, for partnerships, both the general and limited partners' capital as applicable,* is less than $50,000,000. A company that is determined to be below this continued listing criteria must re-establish both its market capitalization and its stockholders' equity (or net assets for Funds) to be considered in conformity with continued listing standards pursuant to [Paras. 802.02 and 802.03] *Sections .50 and .60.*

5. *Average global market capitalization over a consecutive three-month period is less than $15,000,000.

6. *For companies that qualify under the "global market capitalization" standard:

• Total global market capitalization is less than $500,000,000 and total revenues are less than $50,000,000 over the past 12 months. A company that is determined to be below this continued listing criteria must re-establish both its market capitalization and its revenues to be considered in conformity with continued listing standards pursuant to [Paras. 802.02 and 802.03] *Sections .50 and .60.*

OR

• Average global market capitalization over a consecutive 30 trading-day period is less than $100,000,000.

**When applying the market capitalization test, the Exchange will generally look to the total common stock outstanding (excluding treasury shares) as well as any common stock that would be issued upon conversion of another outstanding equity security. The Exchange deems these securities to be reflected in market value to such an extent that the security is a "substantial equivalent" of common stock. In this regard, the Exchange will only consider securities (1) publicly traded (or quoted), or (2) convertible into a publicly traded (or quoted) security. For partnerships, the Exchange will analyze the creation of the current capital structure to determine whether it is appropriate to include other publicly-traded securities in the calculation.*

* * * * *

Bankruptcy and/or Liquidation.—An intent to file under any of the sections of the bankruptcy law has been announced or a filing has been made or that liquidation has been authorized and the company is committed to proceed. If a company files or announces an intent to file for reorganization relief under the bankruptcy laws (or an equivalent foreign law), the Exchange may exercise its discretion to continue the listing and trading of the securities of the company. However, if a company that is below any continued listing standard enumerated in sections 4–6, above (which may be determined on the basis of price indications) files or announces an intent to file for relief under any provisions of any bankruptcy laws, it is subject to immediate suspension and delisting. Similarly, if a company that files or announces an intent to file for relief under any provisions of any bankruptcy laws subsequently falls below any continued listing standard enumerated in sections 4–6 above (which may be determined on the basis of price indications), it is subject to immediate suspension and delisting. *Notwithstanding the foregoing, in the event that such a company is profitable (or has positive cash flow), or is demonstrably in sound financial health despite the bankruptcy proceedings, the Exchange may evaluate and accept a Plan submitted under the procedures of Sections .50 and .60.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to modify several of the Exchange's existing continued listing criteria. The Exchange recently revised its continued listing standards,[5] and to this point several issues have come to light that necessitate clarification. First,

[5] *See* Securities Exchange Act Release No. 42194 (December 1, 1999), 64 FR 69311 (December 10, 1999).

the Exchange proposes to define the term "market capitalization" in so far as it applies to the continued listing standards. Second, the Exchange proposes to clarify what is meant by "shareholders equity" in the context of partnerships. Third, the Exchange proposes to specify a set of circumstances in which it will exercise some discretion in determining the listing status of a company that has filed or has announced an intent to file for bankruptcy, and that is below the financial continued listing standards specified in Para. 802.01B of the Manual. These amendments are each discussed in detail below.

(A) Market Capitalization Definition

Two of the new standards focus on the issuer's market capitalization. During the implementation of these new standards, several issues have arisen as to whether securities other than traditional equity instruments are intended to be included in the definition of the term "market capitalization."

The Exchange evaluated the comments and suggestions put forth by many issuers and discussed the issue with several outside consultants. As a result of this process, the Exchange proposes to specify that for purposes of its continued listing standards, the term "market capitalization" will encompass all common stock outstanding, whether publicly traded or not, so long as the Exchange is able to accurately attribute a value to it[6] on the day the market capitalization is calculated. Thus, if such a security is publicly traded common stock, the closing price from the previous trading day will be the price used for purposes of the calculation.

In addition, the Exchange believes that it is appropriate to provide its staff with the discretion to evaluate the capital structure of the issuer and include common stock that would be issued upon conversion of an instrument that constitutes the issuer's capital. Traditional debt, related to financing activities, will be excluded. Similar to the procedure discussed above, but for convertible publicly-traded securities other than common stock, the applicable price will be the closing price of the common stock into which it is convertible from the previous trading day. For example, if a convertible preferred security trades at $15 and the common stock into which it is convertible trades at $10, the price utilized would be the closing price of the common stock on the previous day (not the higher price of the preferred security) and the market capitalization would be computed on an as-converted basis.

Finally, if the issuer has outstanding privately-held securities, the calculation would be made as described above for convertible securities based upon the previous day's closing price of the publicly-traded security. Thus, a privately held Class B common stock convertible into the publicly-traded Class A would be valued at the price of the Class A. Likewise, a privately-held preferred Series A convertible into the publicly-traded Class A would be valued at the price of the Class A on an as-converted basis.

The Exchange notes that it will also review any applicable conversion restrictions when conducting its market capitalization analysis and factor any such restrictions into the computations as appropriate.

(B) "Shareholders' Equity" and Market Capitalization" of Partnerships.

Partnerships raise a unique set of issues that need to be incorporated into Exchange rules. Again, after consulting with various individuals, the Exchange proposes to create an additional provision in the market capitalization definition. The provision would enable the Exchange to evaluate the formation of the current capital structure of the partnership and, where appropriate, to include other publicly-traded securities in the calculation as a substantial equivalent to common stock.

Furthermore, the Exchange proposes to amend the stockholders' equity test to clarify that both general and limited partners' capital is the measure for the applicable calculation. The Exchange believes that this clarification is necessary because the concept of "shareholders' equity" is not applicable to partnerships. Instead, the notion of capital captures the appropriate analogous concept with respect to partnerships.

The Exchange's intent in codifying the concept of analyzing the creation of the current capital structure stems primarily from the recent expiration of an IRS grandfather provision that resulted in numerous recapitalizations of partnerships. The Exchange believes it is not equitable to penalize these partnerships for restructuring in order to prevent, among other things, double taxation. Thus, for instance, if a holder of $50 of partnership units prior to the conversion were to receive $25 in partnership units and $25 in debt, the "market value" of the holdings has not changed and should be calculated at $50 for purposes of determining the continued listing status of the company. Consistent with the principles articulated above, the Exchange would require that the non-equity instrument be publicly traded so as to assure the ability to value the instrument.

(C) Companies That Have Field for Bankruptcy and That Are Below the Financial Continued Listing Criteria

The recently approved language that addresses companies that have filed or that have announced an intent to file for bankruptcy, and that are also below the Exchange's financial continued listing criteria, requires the Exchange to subject such a company to "immediate suspension and delisting." There are instances, however, where the Exchange has found that such a company should be afforded the opportunity to submit a financial plan for evaluation. For instance, a company that is profitable (or that has a positive cash flow), or is demonstrably in sound financial health despite the bankruptcy proceedings, should not be delisted if it can demonstrate that, within 18 months, it will be in compliance with the Exchange's financial criteria. In response to these circumstances, the Exchange proposes to amend this provision to create the authority to analyze the financial status of these companies on a case-by-case basis. However, if a company has previously filed an Exchange-approved plan to meet the Exchange's continued listing standards within 18 months, application of this provision to the company does not restart the 18-month clock. Thus, for instance, a company that declares bankruptcy midstream through an Exchange-approved plan would still only have the remainder of the plan period to come into compliance. It would not be afforded an additional 18 months, but would incorporate the projected effect of the bankruptcy into its Plan and resubmit it for consideration.

2. Statutory Basis

The Exchange believes the basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[7] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and

[6] For example, a privately-held Class B common stock convertible into the listed Class A common stock would be included and valued on an as-converted basis.

[7] 15 U.S.C. 78f(b)(5).

open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received any written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–99–50 and should be submitted by April 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8487 Filed 4–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42604; File No. SR–NYSE–00–10]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by the New York Stock Exchange, Inc. Relating to Listed Company Fees

March 31, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 2, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On March 22, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposed rule change and Amendment No. 1.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Paragraph 902.02 of the Exchange's Listed Company Manual (the "Manual"). Paragraph 902.02 of the Manual contains the schedule of current listing fees for companies listing securities on the Exchange. The text of the proposed rule change is as follows. New text is *italicized.*

902.02 Schedule of Current Listing Fees

* * * * *

A. Original Listing Fee

A special charge of $36.800 in addition to initial fees (described below) is payable in connection with the original listing of a company's stock. *In any event, each issuer (excluding closed-end funds) is subject to a minimum original listing fee of $150,000 inclusive of the special charge referenced in the preceding sentence.* The special charge is also applicable to an application which in the opinion of the Exchange is a "back-door listing". See Para. 703.08 (F) for definition.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends the listed company fee schedule, set forth in Paragraph 902.02 of the Manual, as it applies to original listing fees. The Exchange seeks to adopt a $150,000 minimum original listing fee for each domestic new issuer (excluding closed-end funds). This minimum would include the existing special charge of $36,800.[4]

By establishing this minimum fee, the Exchange is proposing to set a base fee that issuers (other than funds) will pay to the Exchange regardless of the number of shares listed by a particular company at the time of the original listing.[5] The Exchange represents that the intent of the proposed rule change is to modestly enhance the revenue received by the Exchange at the time of certain original listings, while providing for potential applicants and their advisers a clear statement of the minimum that must be paid at the time

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the NYSE clarified its purpose for proposing the rule change. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Deborah Flynn, Division of Market Regulation ("Division"), SEC, dated March 21, 2000 ("Amendment No. 1").

[4] The Exchange currently charges a special charge of $36,800 in addition to initial listing fees. *See* Paragraph 902.02 A of the Manual.

[5] *See* Amendment No. 1, *supra*, note 3.

of an original listing.[6] The Exchange proposes to implement the new minimum initial listing fee as of April 1, 2000.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement under Section 6(b)(4) of the Act[7] that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuer and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change, as amended.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–00–10 and should be submitted by April 28, 2000.

[6] *Id.*

[7] 15 U.S.C. 78f(b)(4).

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[8] and in particular, with the requirements of Section 6(b)(4),[9] that the Exchange's rule provide for the equitable allocation of reasonable dues, fees, and other charges. Specifically, the Commission believes that the Exchange's proposal to establish a minimum original listing fee of $150,000 is not unreasonable and should not inequitably allocate fees to the Exchange's issuers.

The NYSE has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. Specifically, the Exchange requests that the Commission accelerate the effective date of the proposed rule change so the Exchange can implement the fee change by April 1, 2000, to coincide with the Exchange's quarterly billing cycle.[10] The Commission believes that it is reasonable to permit the Exchange to implement the fee change on April 1, 2000, in conjunction with the beginning of the Exchange's next fiscal quarter. Accordingly, the Commission finds good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,[11] to approve the proposed rule on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NYSE–00–10), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8646 Filed 4–6–00; 8:45 am]

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[8] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(4).

[10] Telephone conversation between Amy Bilbija, Counsel, NYSE, and Heather Traeger, Attorney, Division, SEC, on March 29, 20000.

[11] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 42600; File No. SR–Phlx–00–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending PHLX Rule 237 To Add a Credit Limit Feature to the Volume Weighted Average Price Trading System (VTS)

March 30, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 3, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 237, "The Universal Trading System Morning Session,"[3] to implement a Credit Limit Feature ("Feature") to the Volume Weighted Average Price Trading System "VTS"™).[4] Specifically, proposed Rule 237(l) states that the Credit Limit Feature provides automated validation of credit limits imposed by SCCP/Phlx members on users and committers. The Credit Limit Feature is engaged when the SCCP/Phlx member provides credit limit instructions on a form prescribed by the Exchange. Rule 237(a) states that the VTS may remove orders and commitments that exceed the established credit limits. The text of the proposed rule change is available at the Exchange and at the Commission.

[1] 15 U.S.c. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The VTS was developed by Universal Trading Technologies Corporation ("UTTC™"), and was approved by the Commission to operate as a facility of the Exchange. *See* Securities Exchange Act Release No. 41210 (March 24, 1999) (SR–Phlx–96–14).

[4] The Exchange filed a proposed rule change to change the name of the VTS to "eVWAP", SR–Phlx–00–19.

II. Self-Regulatory Organization's Statements Regarding the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The VTS provides a morning matching session for the execution of large-sized orders at the volume weighted average price ("VWAP"). The receipt and matching of these orders is handled electronically through the VTS. Non-member users may enter into the system so long as they have the appropriate give-up arrangements with a Stock Clearing Corporation of Philadelphia ("SCCP") member, who must also be a Phlx member who has assumed responsibility for that order.[5] In addition, Phlx member committers and member users who are not members of SCCP may have a clearing arrangement with SCCP member clearing firms who may want to impose credit limits on their customers. Currently, VTS users and committer credit limits must be monitored and enforced by the clearing firm by means external to the system.[6] In this regard, a number of members have requested an automated credit limit validation feature to validate their customer's credit limit before allowing the VTS committer or user to match and execute orders.

Thus, the Exchange proposes to implement the Feature, which provides an automated means for SCCP/Phlx members to impose credit limits on their customers' use of the system. SCCP/Phlx members, through the Feature, may impose credit limits: (i) On an identified clearing customer, (ii) On an identified account, or (iii) On an identified clearing customer's use of an identified account. The Feature permits clearing firms to set credit limits to limit different order types such as buys, sells, short sales, internal crosses and two-sided commitments. The member will specify the appropriate credit limits or changes to credit limits to the authorized enrollment personnel on a form prescribed by the Exchange, prior to implementation of the Feature for that customer. Once engaged, the Feature precludes any daily commitments and incoming orders of clearing customers that would exceed established credit limits from entering into VTS. Consistent with current practice, in determining whether the credit limit has been reached, valuation of commitments and orders would be based on the previous day's closing prices. Similarly, the Feature also permits members to apply their customers' unsettled trades from previous day[s] match session[s] against such customers' credit limits.

The Exchange believes that this proposed system change should assist members in ensuring that agreed upon credit limits are enforced, and thereby reduce the burden on clearing firms to verify and enforce customer credit limits. In addition, the proposed feature should ensure that such customers are complying with agreed upon credit limits.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices and protect investors and the public interest by installing a Credit Limit Feature to ensure that VTS users and committers abide by the credit limit agreed upon with their clearing firms.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective immediately under Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(5) of Rule 19b–4 thereunder,[8] in that it constitutes a change in an existing order-entry or trading system that: does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and does not have the effect of limiting the access to or availability of the system. Specifically, the proposed rule change ensures that VTS users and committers abide by the credit limit agreed upon with their clearing firms by providing automated credit limit validation.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest or for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those they may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange.

All submissions should refer to File No. SR–PHLX–00–22 and should be submitted by April 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8486 Filed 4–6–00; 8:45 am]

BILLING CODE 8010–01–M

[5] *See* Exchange Rule 237(c)(ii).

[6] The SCCP member and the respective customer agree upon the appropriate credit limits. Neither the Exchange nor SCCP approves credit limits for customers.

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(5).

[9] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of this publication.

1. Request for Reconsideration–0960–NEW. The information collected on Form SSA–561 is used by the Social Security Administration (SSA) to document and initiate the reconsideration process for determining entitlement to Social Security benefits under (title II), Supplemental Security Income payments (title XVI), Special Veterans Benefits (title VIII) and Medicare benefits (title XVIII). The respondents are individuals filing for such reconsideration.

Number of respondents: 1,455,000.
Number of Response: 1.
Average burden per response: 8 minutes.
Estimated Annual Burden: 194,000.

2. Disability Hearing Officer's Decision—Title XVI Disabled Child Continuing Disability Review—0960–NEW. The information collected on form SSA–1209 will be used by State Disability Hearing Officers (DHO) to formalize disability decisions. The form will aid the DHO in addressing the crucial elements of the case in a sequential and logical fashion. The form is used as the official determination of the DHO's decision and the personalized portion of the notice to the claimant.

Number of Respondents: 40,000.
Frequency of Response: 1.
Average Burden Per Response: 3.6 hours.
Estimated Annual Burden: 144,000 hours.

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. Claimant's Medications–0960–0289. SSA uses Form HA–4632 to request that applicants for disability benefits provide information to facilitate processing their title II, Old-Age, Survivors and Disability Insurance (OASDI) and Title XVI, Supplemental Security Income (SSI) claims. The form elicits from the claimants an updated list of medications used by the claimants. It enables the Administrative Law Judge hearing the case to fully inquire into medical treatment the claimant is receiving and the effect of medications on the claimant's medical impairments. The respondents are applicants for OASDI and SSI benefits.

Number of Respondents: 171,939.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 42,985 hours.

2. Statement of Employer–0960–0030. The information collected on Form SSA–7011 is needed by SSA to substantiate allegations of wages paid to workers when those wages do not appear in SSA's records of earnings and the worker does not have proof that payment was made. This information is used to process claims for social security benefits and to resolve discrepancies in earnings records. The respondents are certain employers who can verify allegations of wages made by the wage earner.

Number of Respondents: 925,000.
Frequency of Response: 1.
Average Burden Per Response: 20 minutes.
Estimated Annual Burden: 308,333 hours.

3. Request for SSI Benefit Estimate–0960–0492. SSA uses Form SSA–3716 for an SSI beneficiary who wishes to request a 5-month estimate of what their benefits would be if they should return to work in the future. The respondents are SSI recipients.

Number of Respondents: 50,000.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 4,167 hours.

(SSA Address)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

(OMB Address)

Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503.

Dated: April 3, 2000.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 00–8637 Filed 4–6–00; 8:45 am]

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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Public Hearings for the Petitions for the GSP 1999 IPR Country Practices Review, Additional Change in Schedule of Hearings and Deadline for Submitting Comments on Petitions for the GSP 1999 Country Practices Review

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice of Change in Schedule of Hearings and Deadline for Submitting Comments on Petitions for the GSP 1999 Country Practices Review.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a change in the date, and a change in the date for submission of comments, for the GSP Public Hearings to be held for country practice petitions accepted for review in the GSP 1999 Country Practices Review. These hearings were scheduled for April 3 and April 4, 2000, and then rescheduled for April 13 and April 14, beginning at 10:00 a.m. A **Federal Register** notice regarding these hearings was published on February 14, 2000 (65 FR 7410–7412), and then another published on March 1, 2000 (65 FR 11104–11105).

The scheduled dates for the GSP Public Hearings are changed from April 3 and April 4, 2000, and again from April 13 and April 14, to May 12. There is only one day of hearings. The location

of the GSP Hearings remains the same at the White House Conference Center, the Truman Room, 726 Jackson Place, NW, Washington, DC 20500. The deadline for submission of Post-hearing Briefs and Rebuttal Briefs is changed to June 9. The Hearings will begin at 10:00 a.m. See attached revised calendar.

All other information in the notice at 65 FR 7410 (February 14, 2000) remains the same.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW, Room 518, Washington, DC 20508 (Tel. 202/395–6971).

Jon Rosenbaum,

Assistant USTR for Trade and Development.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

* Rev. 4-4-2000 New Date For Hearings/Submission

GENERALIZED SYSTEM OF PREFERENCES (GSP)

1999 GSP ANNUAL REVIEW

IPR COUNTRY PRACTICE CASES ACCEPTED FOR REVIEW

Armenia	005-CP-99
Dominican Republic	007-CP-99
Kazakhstan	008-CP-99
Moldova	011-CP-99
Ukraine	015-CP-99
Uzbekistan	016-CP-99

PUBLIC HEARINGS AND COMMENT SCHEDULE

March 16, 2000	Deadline for **REQUESTS TO APPEAR AT PUBLIC HEARINGS** and submission of **PRE-HEARING BRIEFS.** Deadline for providing the name, address, and organization of witnesses.
* May 12, 2000 - One Day Only	**PUBLIC HEARINGS**, LOCATION REMAINS SAME: White House Conference Center, 726 Jackson Place, N.W., Washington, D.C. 20500
* June 9, 2000	Deadline for submission of **POST-HEARING BRIEFS and REBUTTAL BRIEFS.**
Future Federal Register Notice	Date Modifications to GSP List of Beneficiary Developing Countries will take effect.
For further information contact:	GSP Information Center Office of the U.S. Trade Representative 600 17th Street Washington, D.C. 20508 202-395-6971
Notification of any changes will be given in the Federal Register.	

[FR Doc. 00–8707 Filed 4–6–00; 8:45 am]
BILLING CODE 3100–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

[FTA/FHWA Docket No. FTA–2000–7171]

Notice of Request for the Extension of Currently Approved Information Collections

AGENCIES: Federal Transit Administration (FTA), Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the FTA and FHWA to request the Office of Management and Budget (OMB) to extend the following currently approved information collection: Metropolitan and Statewide Transportation Planning.

DATES: Comments must be submitted before June 6, 2000.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, SW, Washington, DC 20590. All comments received will be available for examination at the above address from 10:00 a.m. to 5:00 p.m., e.t., Monday through Friday, except federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Stout, FTA, (202) 366–1628 or Mr. Sheldon Edner, FHWA, (202) 366–4066.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA and the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB reinstatement of this information collection.

Title: Metropolitan and Statewide Transportation Planning (*OMB Number: 2132–0529*).

Background: The FTA and FHWA jointly carry out the Federal mandate to improve urban and rural transportation. 49 U.S.C. 5303–5306 and 23 U.S.C. 134 and 135 require metropolitan planning organizations (MPOs) and States to develop transportation plans and programs. The information collection activities involved in developing the Unified Planning Work Program (UPWP), the Metropolitan Transportation Plan, the Statewide Transportation Plan, the Metropolitan Transportation Improvement Program (TIP), and the Statewide Transportation Improvement Program (STIP) are necessary to identify and evaluate the transportation issues and needs in each urbanized area and throughout every State. These products of the transportation planning process are essential elements in the reasonable planning and programming of federally-funded transportation investments.

In addition to serving as a management tool for MPOs and State DOTs, the UPWP is used by both FTA and FHWA to oversee the expenditure of federal transportation planning funds and to monitor the transportation planning activities of those agencies. It is also needed to develop policy on using funds, monitor State and local compliance with national technical emphasis areas, respond to congressional inquiries, prepare congressional testimony, and ensure efficiency in the use and expenditure of federal funds by determining that planning proposals are both reasonable and cost-effective. 49 U.S.C. Section 5304 and 23 U.S.C. 134(h) require the development of TIPs for urbanized areas; STIPS are mandated by 23 U.S.C. 135(f). After approval by the Governor and MPO, metropolitan TIPs in air quality attainment areas are to be incorporated directly into the STIP. For nonattainment areas, FTA/FHWA must make a conformity finding on the TIPs before including them into the STIP. The complete STIP is then jointly reviewed and approved or disapproved by FTA and FHWA. These conformity findings and approval actions constitute the determination that States are complying with the requirements of 23 U.S.C.135 and 49 U.S.C. Section 5303 as a condition of eligibility for federal-aid funding. Without these documents, approvals and findings, capital and/or operating assistance, cannot be provided.

Respondents: State Departments of Transportation (DOTs) and Metropolitan Planning Organizations (MPOs).

Estimated Annual Burden on Respondents: 646 hours for each of the 392 respondents.

Estimated Total Annual Burden: 253,250 hours.

Frequency: Annually and biennially.

Issued: April 3, 2000.

Dorrie Y. Aldrich,
FTA Associate Administrator for Administration.

Dated: April 3, 2000.

Michael J. Vecchietti,
FHWA Acting Director of Administration.

[FR Doc. 00–8506 Filed 4–6–00; 8:45 am]
BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collections and their expected burdens. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on January 26, 2000 (65 FR 4297).

DATES: Comments must be submitted on or before May 8, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may

approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On January 26, 2000, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 65 FR 4297. FRA received no comments after issuing this notice. Accordingly, DOT announces that these information collection activities have been reevaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); see also 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); see also 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: Identification of Cars Moved in Accordance with Order 13528.
OMB Control Number: 2130–0506.
Type of Request: Extension of a currently approved collection.
Affected Public: Railroads.
Form(s): None.
Abstract: This collection of information identifies a freight car being moved within the scope of Order 13528 (Order). See CFR part 232, appendix B. Otherwise, an exception will be taken, and the car will be set out of the train and not delivered. The information that must be recorded is specified at 49 CFR part 232, appendix B, requiring that a car be properly identified by a card attached to each side of the car and signed stating that such movement is being made under the authority of the order. The Order does not require retaining cards or tags. When a car bearing a tag for movement under the Order arrives at its destination, the tags are simply removed.
Annual Estimated Burden Hours: 67 hours.

Title: Railroad Police Officers.
OMB Control Number: 2130–0537.
Type of Request: Extension of a currently approved collection.
Affected Public: Railroads and States.
Form(s): None.
Abstract: Under 49 CFR part 207, railroads are required to notify states of all designated police officers who are discharging their duties outside of their respective jurisdictions. This requirement is necessary to verify proper police authority.
Annual Estimated Burden Hours: 155 hours.
Addressee: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW, Washington, DC, 20503, *Attention:* FRA Desk Officer.
Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on April 4, 2000.

Margaret B. Reid,

Acting Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 00–8706 Filed 4–6–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–00–7126 (PDA–24 (R))]

Application by the Institute of Makers of Explosives for a Preemption Determination as to New Jersey Restrictions on Transportation of Blasting Caps With Other Commercial Explosives

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: Interested parties are invited to submit comments on an application by the Institute of Makers of Explosives (IME) for an administrative determination whether Federal hazardous materials transportation law preempts New Jersey law and regulations prohibiting the transportation of blasting caps on the same motor vehicle with more than 5,000 pounds of other commercial explosives.

DATES: Comments received on or before May 22, 2000, and rebuttal comments received on or before July 6, 2000 will be considered before issuance of an administrative ruling on IME's application. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and all comments received may be reviewed in the Dockets Office, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. The application and all comments are also available on-line through the home page of DOT's Docket Management System, at "http://dms.dot.gov."

Comments must refer to Docket No. RSPA–00–7126 and may be submitted to the docket either in writing or electronically. Send three copies of each written comment to the Dockets Office at the above address. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. To submit comments electronically, log onto the Docket Management System website at http://dms.dot.gov, and click on "Help & Information" to obtain instructions.

A copy of each comment must also be sent to:

(1) Ms. Cynthia Hilton, Vice President, Institute of Makers of Explosives, 1120 Nineteenth Street, NW, Suite 310, Washington, DC 20036–3605, and
(2) Mr. Fred Cohen, Legal Liaison, New Jersey Department of Labor, P.O. Box 110, Trenton, NJ 08625–0110.

A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: "I certify that copies of this comment have been sent to Ms. Hilton and Mr. Cohen at the addresses specified in the **Federal Register**.")

A list and subject matter index of hazardous materials preemption cases,

including all inconsistency rulings and preemption determinations issued, are available through the home page of RSPA's Office of the Chief Counsel, at "http://rspa-atty.dot.gov." A paper copy of this list and index will be provided at no cost upon request to the individual named in **FOR FURTHER INFORMATION CONTACT** below.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001 (Tel. No. 202–366–4400).

SUPPLEMENTARY INFORMATION:

I. Application for a Preemption Determination

IME has applied for a determination that Federal hazardous material transportation law, 49 U.S.C. 5125 *et seq.*, preempts New Jersey statutory and regulatory restrictions against the transportation of blasting caps on the same motor vehicle with more than 5,000 pounds of other commercial explosives.

According to IME's application, New Jersey's Explosives Act, as codified in N.J.S.A. 21:1A–128 *et seq.*, includes provisions governing the "Transportation of explosives" at N.J.S.A. 21:1A–137. Paragraph F of that section provides:

> Blasting caps or electric blasting caps, or both, may be transported in the same vehicle with other commercial explosives only when the net weight of the other commercial explosives does not exceed 5,000 pounds.

IME also states that, in 1998, the New Jersey Department of Labor adopted and began enforcing regulations governing off-highway transportation of explosives, including the provision in N.J.A.C. 12:190–6.5(d) that:

> Blasting caps or electric blasting caps, or both, may be transported in the same vehicle with other commercial explosives only when the net weight of the other commercial explosives does not exceed 5,000 pounds.

IME asserts that these statutory and regulatory restrictions are preempted because they concern the "handling" of a hazardous material and are not substantively the same as the Hazardous Materials Regulations (HMR), 49 CFR Parts 171–180.[1] In 49 CFR 177.835(g), the HMR provide that:

> No detonator assembly or booster with detonator may be transported on the same motor vehicle with any Division 1.1, 1.2 or 1.3 (Class A or Class B explosive) material (except other detonator assemblies, boosters with detonators or detonators), explosives for blasting or detonating cord Division 1.4 (Class C explosive) material. No detonator may be transported on the same motor vehicle with any Division 1.1, 1.2 or 1.3 (Class A or Class B explosive) material (except other detonators, detonator assemblies or boosters with detonators), explosives for blasting or detonating cord Division 1.4 (Class C explosive) material unless—
>
> (1) It is packed in a specification MC 201 (§ 178.318 of this subchapter) container, or
>
> (2) The package conforms with requirements prescribed in § 173.63 of this subchapter, and its use is restricted to instances when—
>
> (i) There is no Division 1.1, 1.2, or 1.3 (Class A or Class B explosive) material or blasting agent loaded on the motor vehicle; and
>
> (ii) A separation of 61 cm (24 inches) is maintained between each package of detonators and each package of detonating cord; or
>
> 3. It is packed and loaded in accordance with a method approved by the Department [of Transportation]. One method approved by the Department is as follows:
>
> (i) The detonators are in packagings as prescribed in § 173.63 of this subchapter which in turn are loaded into suitable containers or separate compartments. Both the detonators and the container or compartment must meet the requirements of the Institute of Makers of Explosives' Standard (IME Safety Library Publication No. 22).

IME also contends that these New Jersey statutory and regulatory restrictions are preempted because they are an obstacle to the accomplishing and carrying out the Federal hazardous material transportation law and the HMR. IME states that a person using both blasting caps and more than 5,000 pounds of other commercial explosives at a site within New Jersey must either: (1) Use separate vehicles to transport the blasting caps and the other commercial explosives, from the origin of the transportation to the job site; or (2) at some point before leaving the public highway at the job site, transfer either the blasting caps or the other commercial explosives to a separate vehicle.

IME submitted three affidavits with its application. Each of the affiants stated that his company uses two separate vehicles to transport detonators and other explosives to meet New Jersey's requirements. The President of Maurer & Scott, Inc., an explosives service and transportation company, testified that the use of separate vehicles to transport detonators and explosives

> leads to more explosives vehicles on the road, trucks not loaded to capacity, inefficient transportation, excess handling of hazardous materials, and greater exposure to the public. Additionally, more vehicles end up at the minesite which creates an increased safety hazard.

He also stated that the New Jersey Department of Labor has denied his company's requests for a waiver from the prohibition against transporting blasting caps on the same vehicle with more than 5,000 pounds of other commercial explosives.

IME argues that requiring separate vehicles for detonators and other commercial explosives exposes the public to greater overall risk, presumably both within and outside of New Jersey, because "the more trucks on the road, irrespective of the cargo, the higher likelihood of an accident." IME states that transferring either the detonators or the other explosives to a second vehicle, before leaving the public highway at the job site, also involves "unnecessary truck traffic" and creates "the added risk from the unnecessary handling during loading or reloading." IME notes that, in 49 CFR 177.835(j), the HMR specifically prohibit the transfer of any Division 1.1, 1.2 or 1.3 (Class A or B explosive) material

> from one container to another, or from one motor vehicle to another vehicle, or from another vehicle to a motor vehicle, on any public highway, street, or road, except in the case of an emergency.

IME also states that it is unaware of any other State that imposes the same restrictions as New Jersey on the transportation of blasting caps with other commercial explosives. IME has not indicated whether New Jersey's restrictions cause shipments of blasting caps and other explosives to be routed aroùnd the State of New Jersey, rather than on highways through the State.

The text of IME's application and a list of the exhibits to the application are set forth in Appendix A to this notice. A paper copy of the exhibits to IME's application will be provided at no cost upon request to the individual named in **FOR FURTHER INFORMATION CONTACT** above.

II. Federal Preemption

Section 5125 of Title 49 U.S.C. contains several preemption provisions that are relevant to IME's application. Subsection (a) provides that—in the absence of a waiver of preemption by DOT under § 5125(e) or specific authority in another Federal law—a requirement of a State, political subdivision of a State, or Indian tribe is preempted if

> (1) complying with a requirement of the State, political subdivision or tribe and a requirement of this chapter or a regulation issued under this chapter is not possible; or

[1] RSPA notes that New Jersey has also adopted, as State law, the requirements in the HMR. N.J.A.C. 16:49–1.3(i).

(2) the requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to the accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

These two paragraphs set forth the "dual compliance" and "obstacle" criteria which RSPA had applied in issuing inconsistency rulings prior to 1990, under the original preemption provision in the Hazardous Materials Transportation Act (HMTA). Public Law 93–633 section 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.*, 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects, that is not "substantively the same as" a provision of Federal hazardous material transportation law or a regulation prescribed under that law, is preempted unless it is authorized by another Federal law or DOT grants a waiver of preemption:

(A) the designation, description, and classification of hazardous material.

(B) the packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

To be "substantively the same," the non-Federal requirement must "conform[] in every significant respect to the Federal requirement. Editorial and other similar de minimis changes are permitted." 49 CFR 107.202(d).

Subsection (c)(1) of 49 U.S.C. 5125 provides that, beginning two years after DOT prescribes regulations on standards to be applied by States and Indian tribes in establishing requirements on highway routing of hazardous materials, a State or Indian tribe may establish, maintain, or enforce a highway routing designation over which hazardous material may or may not be transported by motor vehicles, or a limitation or requirement related to highway routing, only if the designation, limitation, or requirement complies with section 5112(b).[2]

These preemption provisions in 49 U.S.C. 5125 carry out Congress' view that a single body of uniform Federal regulations promotes safety in the transportation of hazardous materials. In considering the HMTA, the Senate Commerce Committee "endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When it amended the HMTA in 1990, Congress specifically found that:

(3) many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,

(5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Public Law 101–615 Section 2, 104 Stat. 3244. A Federal Court of Appeals has found that uniformity was the "linchpin" in the design of the HMTA, including the 1990 amendments that expanded the original preemption provisions. *Colorado Pub. Util. Comm'n* v. *Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991). (In 1994, Congress revised, codified and enacted the HMTA "without substantive change," at 49 U.S.C. Chapter 51. Pub. L. 103–272, 108 Stat. 745.)

III. Preemption Determinations

Under 49 U.S.C. 5125(d)(1), any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted. The Secretary of Transportation has delegated authority to make determinations of preemption that concern highway routing to the Federal Motor Carrier Safety Administration (FMCSA) and those concerning all other hazardous materials transportation issues to RSPA. 49 CFR 1.53(b) and 1.73(d)(2) (as added October 9, 1999, 64 FR 56720, 56721 [Oct. 19, 1999], and revised January 1, 2000, 65 FR 220, 221 [Jan. 4, 2000]).

Section 5125(d)(1) requires that notice of an application for a preemption determination must be published in the **Federal Register**. Following the receipt and consideration of written comments, RSPA will publish its determination in the **Federal Register**. *See* 49 CFR 107.209. If the comments show that New Jersey's statutory and regulatory restrictions cause diversions in highway routing of explosives, RSPA's determination may be issued jointly with FMCSA's Administrator. 49 CFR 397.211(a). A short period of time is allowed for filing of petitions for reconsideration. 49 CFR 107.211, 397.223. Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law. A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon*, above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), RSPA (and FMCSA) are guided by the principles and policies set forth in Executive Order No. 13132, entitled "Federalism" (64 FR 43255 (August 4, 1999). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence that Congress intended to preempt State law, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption previsions, which RSPA (and FMCSA) have implemented through their regulations.

IV. Public Comments

All comments should be limited to the issue whether 49 U.S.C. 5125 preempts N.J.S.A. 221:1A–137.F and N.J.A.C. 12:190–6.5(d). Comments should specifically address the preemption criteria detailed in Part II, above, and set forth in detail the manner

[2] DOT's standards and procedures for State and Indian tribe requirements for highway routing of non-radioactive hazardous materials are issued under 49 U.S.C. 5112(b) and contained in 49 CFR Part 397, subpart C.

in which the New Jersey requirements are applied and enforced. Persons intending to comment should review the standards and procedures governing consideration of applications for preemption determinations, set forth at 49 CFR 107.201–107.211 and 397.201–397.211.

Issued in Washington, DC on April 3, 2000.

Robert A. McGuire,

Acting Associate Administrator for Hazardous Materials Safety, Research and Special Programs, Administration.

Appendix A

Before the United States Department of Transpogtation Office of Hazardous Materials Safety

Application of the Institute of Makers of Explosives to initiate a proceeding to determine whether various requirements imposed by the State of New Jersey on the transportation of certain Class 1 materials to, from or through the State are preempted by the Hazardous Materials Transportation Act

February 28, 2000.

Interest of the Petitioner

The Institute of Makers of Explosives (IME) represents companies that transport by truck Class 1 materials throughout the United States, including points to, from and through the State of New Jersey (State). Despite full compliance with the hazardous materials regulations (HMR), members of the IME are precluded from transporting Class 1 materials in amounts in excess of 5,000 pounds if blasting caps are transported in the same vehicle—a practice allowed by the HMR. The IME asserts that the State requirements contravene the Hazardous Materials Transportation Act (HMTA).

Background

The State's Explosives Act (Statute) provides that "[b]lasting caps or electric blasting caps, or both, may be transported in the same vehicle with other commercial explosives only when the net weight of the other commercial explosives does not exceed 5,000 pounds."[1] The Statute allows for no exceptions. The Statute provides that "[v]iolations of the provisions of this act or rules and regulations made hereunder shall be punishable for the first offense by a penalty of not less than $100 nor more than $5,000 and for the third and each succeeding offense by a penalty of not less than $500 nor more than $10,000."[2] If the State discovers a condition that exists in violation of the provisions of this Act, the State also has power to order such violation to cease.[3]

Up until 1998, this provision of law did not interfere with the transportation of Class 1 materials because implementing regulations did not address this statutory requirement. In 1998, this oversight was corrected. Rules issued by the NJ Department of Labor (NJDL), which oversees the implementation of the Act, were amended to include the statutory restriction.[4]

The IME subsequently contracted the NJDL to advise the NJDL of the possible inconsistency with the HMTA. The NJDL acknowledged our concern, but felt that there was no recourse given the provision in the Statute. In fact, the regulatory version appears to temper the Statute by qualifying that the quantity restriction on Class 1 materials only applies when explosives are being transported "off-highway."[5] The State Act, on the other hand, clearly pertains to any transportation of these materials by any mode.[6]

State Requirements for Which a Determination Is Sought

This application seeks preemption of the following State requirements:[7]

N.J.S.A. 21:1A–37.F.
N.J.A.C. 12:190–6.5(d)

Federal Law Provides for the Preemption of Non-Federal Requirements When Those Non-Federal Requirements Fail Certain Federal Preemption Tests

The HMTA was enacted in 1975 to give the U.S. Department of Transportation (DOT) greater authority "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce."[8] By vesting primary authority over the transportation of hazardous materials in the DOT, Congress intended to "make possible for the first time a comprehensive approach to minimization of the risks associated with the movement of valuable but dangerous materials."[9] As originally enacted, the HMTA included a preemption provision "to preclude a multitude of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation."[10] The HMTA preempted "any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in [the Act], or in a regulation issued under [the Act]."[11] This preemption provision was implemented through an administrative process where DOT would issue "inconsistency rulings" as to,

[w]hether compliance with both the State or political subdivision requirement and the Act or the regulations issued under the Act is possible, and [t]he extent to which the State or political subdivision requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.[12]

These criteria, commonly referred to as the "dual compliance" and "obstacle" tests, "comport with the test for conflicts between Federal and State statutes enunciated by the Supreme Court in *Hines* v. *Davidowitz*, 312 U.S. 52 (1941)."[13]

In 1990, Congress codified the dual compliance and obstacle tests as the general preemption provision of the HMTA.[14] The 1990 amendments also expanded on DOT's preemption authorities. Among other new authorities, Congress expressly preempted non-federal requirements in five covered subject areas if they are not "substantively the same" as federal requirements. One of these covered subject areas includes "[t]he packing, repacking [and] handling . . . of hazardous materials."[15]

"Substantively the same" was defined to mean "conforms in every significant respect to the Federal requirement. Editorial and other similar de minimis, changes are permitted."[16] These preemption authorities are limited only to the extent that non-federal requirements are "otherwise authorized" by federal law. A non-federal requirement is not "otherwise authorized by Federal law" merely because it is not preempted by another federal statute.[17]

The HMR has been promulgated in accordance with the HMTA's direction that the Secretary of Transportation "issue regulations for the safe transportation of hazardous material in intrastate, interstate, and foreign commerce."[18] "Transportation" is defined as "the movement of property and loading, unloading, or storage incidental to the movement."[19]

Our review of federal law and the HMR leads us to believe that the above referenced State requirements, absent further modification and/or clarification, are subject to preemption pursuant to 49 U.S.C. 5125(a)(2) and/or (b)(1)(B). We ask for a determination of preemption based on the authority of 49 U.S.C. 5125(d).

Discussion

The HMR provides that detonators, including blasting caps, may be transported by motor vehicle in commerce with Division 1.1, 1.2, 1.3, 1.4 or 1.5[20] materials if the detonators are packaged and loaded on the vehicle under prescribed conditions.[21] No restrictions are applied to the transportation of detonators and Division 1.6 materials. Because of the State's broad definition of "explosive,"[22] the State's requirement affects all Class 1 materials.

The IME knows of no other state that imposes limitations on explosives such as are

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[1] N.J.S.A. 21:1A–137F.
[2] N.J.S.A. 21:1A–140.
[3] N.J.S.A. 21:1A–130.
[4] N.J.A.C. 12:190–6.5(d)
[5] N.J.A.C. 12:190–6.5—Off highway transportation of explosives.
[6] N.J.S.A. 21:1A–137—Transportation of explosives.
[7] Attached to this compliant are affidavits that attest to the issues we have submitted for review.
[8] P.L. 93–633 § 102.
[9] S. Rept. 1192, 93rd Cong., 2d Sess., 1974, page 2.
[10] S. Rept. 1192, 93rd Cong., 2d Sess., 1974, page 37.
[11] P.L. 93–633 § 112(a).
[12] 41 *FR* 38171 (September 9, 1976).
[13] 41 *FR* 38168 (September 9, 1976).
[14] 49 U.S.C. 5125(a).
[15] 49 U.S.C. 5125(b)(1)(B).
[16] 49 CFR 107.202(d).
[17] *Colo. Pub. Util. Comm'n* v. *Harmon*, 951 F. 2d, 1571, 1581 n. 10. (10th Cir. 1991).
[18] 49 U.S.C. 5103(b).
[19] 49 U.S.C. 5102(12).
[20] Along with Division 1.1, 1.2, 1.3, and 1.4 materials, 49 CFR 177.835(g) exceptions apply to "explosives for blasting." Anything classified as a division 1.5 can be used as an "explosive for blasting."
[21] 49 CFR 177.835(g).
[22] N.J.S.A. 21:1A–29 (f).

imposed in New Jersey. Consequently, shipments of explosives and detonators move in truckload quantities unimpeded in commerce as long as they are in compliance with the HMR until they enter or leave sites in New Jersey.

In order to comply with the State's quantity limitations, companies have few options. They can load detonators and explosives on separate vehicles or they can reconfigure detonator/explosive shipments to meet the State's restriction. These options present unacceptable safety risks.

In the first case, unnecessary truck traffic, and traffic carrying explosives, is added to the roadways. It has been shown that the more trucks on the road, irrespective of the cargo, the higher likelihood of an accident. The public along these routes of travel, which may include jurisdictions outside of New Jersey, is exposed to this relative increased risk.

In the second case, not only are two or more trucks needed to transport the same quantity of explosives that could efficiently be carried by one truck, but there is the added risk from the unnecessary handling during loading or re-loading to conform explosive/detonator shipments to New Jersey's restrictions. In the case of Division 1.1, 1.2, and 1.3 materials, the risk from this unnecessary handling is shifted to locations outside of the State because the HMR prohibit the transfer of these explosive materials "from one container to another, or from one motor vehicle to another vehicle, or from another vehicle to a motor vehicle, on any public highway, street, or road, except in case of emergency."[23] New Jersey cannot, for whatever reason, be allowed to isolate itself from the risks associated with the commerce of these products.

We do not contest the authority of the State to regulate the movement of explosives that is outside of the scope of the HMTA. In short, transportation that is entirely on private property is not transportation in commerce within the meaning of the HMTA and is not covered by the HMR.[24] In our disussion with the NJDL over these requirements, we have endeavored to see if any accommodation could be made to restrict the applicability of the rule to vehicles transporting explosives between locations on one site where a public way is never entered or crossed. Regrettably, the NJDL said they could not interpret the rules that way, and that vehicles would be in violation if they carried both explosives and detonators the moment they left a public road. While admitting to the folly of a rule that would allow vehicles carrying explosives to off-load on a public road, rather than in the security of a consignee's site, the NJDL pointed to the plain words of the Statute which state that the quantity limitation for explosives transported with detonators applies to any transportation within the State. Heretofore, we have had to contend with the consequences of the State's requirement when it applies to commercial transportation at off-highway locations. However, we must ask RSPA to consider the ramifications to safety and commerce if the State decided to implement its law verbatim.

No transportation is risk-free. The packaging and handling provisions of the HMR related to explosives are intended to minimize the consequences of an incident if it should occur. The HMR have been incredibly effective in this regard as they apply to the transportation of Class 1 materials. The IME is aware of no fatalities occurring when detonators and explosives are transported and handled as required. Since 1990, there have been 200 incidents involving explosives of which 53 were serious.[25] None of the 200 incidents resulted in a fatality. In all, there were 2 injuries that required hospitalization. Of the 200 incidents, only one, non-"serious" incident occurred in New Jersey and that incident did not involve a detonator/explosive shipment, which is the focus of this proceeding.

Standard of Preemption

While "handling" is not a term defined in the HMTA, RSPA has defined this term to mean "the operation of loading and unloading."[26] The State's requirements affect the handling of Class 1 materials being transported in commerce because the restriction demands loading and unloading activity beyond that contemplated in the HMR. Inasmuch as non-federal requirements "about any . . . handling . . . of hazardous materials" that are not substantively the same as the HMR are preempted, we ask that RSPA preempt these requirements on the basis of 49 U.S.C. 5125(b)(1)(B). Otherwise, we ask RSPA to preempt these requirements on the basis of its obstacle test authority at 49 U.S.C. 5125(a)(2). Without doubt, the State's requirements are "an obstacle to accomplishing and carrying out . . . a regulation prescribed under [the HMTA]," and are a detriment to safety.

Conclusion

We believe the State's requirements imposed on the transportation of certain Class 1 materials are preempted by federal law. The State is enforcing the above suspect requirements. Despite efforts to resolve this matter directly with the State, affected parties believe a determination of preemption is the most effective way to address this matter. Consequently, we request timely consideration of the concerns we have raised.

Certification

Pursuant to 49 CFR 107.205(a), we hereby certify that a copy of this application has been forwarded with an invitation to submit comments to: Fred Cohen, Legal Liaison, NJ Department of Labor, P.O. Box 110, Trenton, NJ 08625–0110.

Respectfully submitted,
Cynthia Hilton,
Vice President.

Attachments

(A) N.J.S.A. 21:1A–129(f)—Definition of "Explosives"
(B) N.J.S.A. 21:1A–130—Enforcement
(C) N.J.S.A. 21:1A–137—Transportation of Explosives
(D) N.J.S.A. 21:1A–140—Violations; Penalties; Revocation of Permits; Nonconforming Uses
(E) N.J.A.C. 12:190–6.5—Off Highway Transportation of Explosives
(F) Affidavits of:
Jack E. Costello, Maurer & Scott, Inc.
Ronald J. Lutz, Jr., Explo Tech, Inc.
Richard J. Coons, Energetic Solutions Quarry & Construction Services

[FR Doc. 00–8662 Filed 4–6–00; 8:45 am]
BILLING CODE 4910–60–M

[23] 49 CFR 177.835(j).
[24] 49 U.S.C. 5102 (1) and (12).
[25] Serious incidents are those that result in one or more of the following: death; accident/derailment of vehicle; evacuation of six or more individuals; injury requiring hospitalization; or road closure.
[26] 49 CFR 176.2. We recognize that this definition is contained in that section of the HMR dealing with the carriage of hazardous materials by vessel. However, we cannot believe that RSPA would define this term inconsistently as it is applied to other modes of transportation.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

STB Docket No. MC–F–20964

Laidlaw Inc.—Continuance in Control—the Gray Line of Victoria Ltd.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance transaction.

SUMMARY: In an application filed under 49 U.S.C. 14303, Laidlaw Inc. (Laidlaw), a noncarrier, seeks approval of its continuance in control of The Gray Line of Victoria Ltd. (Gray Line) upon Gray Line's becoming a regulated motor carrier of passengers. Persons wishing to oppose the application must follow the rules under 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by May 22, 2000. Applicant may file a reply by June 6, 2000. If no comments are filed by May 22, 2000, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20964 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, send one copy of comments to applicant's representative: Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, NW, Washington, DC 20005–3934.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339].

SUPPLEMENTARY INFORMATION: Laidlaw controls Gray Line through Laidlaw Transit Ltd. (Laidlaw Ltd.), which is authorized to transport passengers, in charter and special operations, pursuant to authority in No. MC–102189. Gray Line conducts charter and special passenger carrier operations within Canada. Laidlaw seeks authority to continue in control of Gray Line through Laidlaw Ltd. upon Gray Line's becoming a regulated carrier pursuant to an application it has filed with the Federal Highway Administration.

Laidlaw currently controls 23 motor carriers of passengers, including Greyhound Lines, Inc. (Greyhound) (MC–1515), which Laidlaw considers its domestic flagship carrier.[1] The controlled carrier's operations, with the exception of those of Greyhound, are largely limited to charter and special operations within the United States. Greyhound conducts mainly nationwide, scheduled regular-route operations.

Laidlaw asserts that, because Gray Line is an experienced and well regarded carrier that has established contacts with hotels, tourist attractions, and other institutions, the addition of Gray Line to the Laidlaw family of regulated carriers will contribute significantly to the breadth of services that Greyhound and the other Laidlaw affiliates will be able to provide the public. Laidlaw maintains also that the proposed transaction will inure to the benefit of Gray Line's passengers. This benefit is expected to partly take the form of reasonable fares, in view of the access to the financial resources and expertise of the Laidlaw system that Gray Line will have following the transaction.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) The total fixed charges that result; and (3) The interest of affected carrier employees.

Applicant has submitted the information required by 49 CFR 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b). Specifically, applicant has shown that the proposed transaction will have a positive effect on the adequacy of transportation to the public and will result in no increase in fixed charges and no changes in employment. *See* 49 CFR 1182.2(a)(7).

[1] Greyhound controls 9 of the 23 carriers.

Additional information may be obtained from applicant's representative.

On the basis of the application, we find that the proposed transaction is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed continuance in control is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on May 22, 2000, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration—HMCE–20, 400 Virginia Avenue, SW, Suite 600, Washington, DC 20024; (2) The U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW, Washington, DC 20530; and (3) The U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW, Washington, DC 20590.

Decided: April 3, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–8664 Filed 4–6–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33857]

Colorado, Kansas & Pacific Railway Company—Lease, Operation, and Future Purchase Exemption—Colorado Department of Transportation

Colorado, Kansas & Pacific Railway Company (CKPR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31. CKPR has entered into an agreement with the Colorado Department of Transportation (CDOT) whereby CKPR will lease and initiate common carrier operations over an abandoned line of railroad between milepost 747.5, near Towner, and milepost 869.4, near NA Junction, in Kiowa, Crowley, and Pueblo Counties, CO, a distance of approximately 121.9 route miles (rail line). In addition, the agreement grants CKPR the right to purchase the rail line under specified conditions on or before December 31, 2001.

The parties report that they intended to consummate the transaction on or about March 29, 2000. The earliest the transaction could have been consummated was March 29, 2000, 7 days after the exemption was filed.

This transaction is related to STB Finance Docket No. 33856, *Court Hammond, et al.—Continuance in Control Exemption—Colorado Central Railroad Company and Colorado, Kansas & Pacific Railway Company,* wherein Court Hammond, *et al.* have concurrently filed a verified notice to continue in control of Colorado Central Railroad Company and CKPR upon their becoming Class III rail carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33857, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, Esq., 1707 L Street, NW, Suite 570, Washington, DC 20036.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: March 31, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–8575 Filed 4–6–00; 8:45 am]

BILLING CODE 4915–00–P

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33856]

Court Hammond, et al."Continuance in Control Exemption—Colorado Central Railroad Company and Colorado, Kansas & Pacific Railway Company

Court Hammond and James Sanders [1] (Hammond Group), who previously controlled Yreka Western Railroad Company (YWRR) and Rocky Mountain Railway and Mining Museum (RMRMM),[2] have filed a verified notice of exemption to continue in control of Colorado Central Railroad Company (CCRR) and Colorado, Kansas & Pacific Railway Company (CKPR), upon their becoming rail carriers.

CCRC is a new short line railroad that will become a Class III rail carrier when it consummates the authority granted to it in *Colorado Central Railroad Company—Operation Exemption—Yreka Western Railroad Company*, STB Finance Docket No. 33849 (STB served Feb. 23, 2000).[3] CKPR will become a Class III rail carrier upon consummation of the transaction covered by the simultaneously filed notice of exemption in STB Finance Docket No. 33857, *Colorado, Kansas & Pacific Railway Company—Lease, Operation, and Future Purchase Exemption—Colorado Department of Transporation*, wherein CKPR will lease and initiate common carrier operations over an abandoned line of railroad.

The transaction was expected to be consummated on March 29, 2000.

The Hammond Group states that: (i) The railroads will not connect with each other or any railroad in their corporate family; (ii) The continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (iii) The transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33856, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, Esq., Rea, Cross & Auchincloss, 1707 L Street, N.W., Suite 570, Washington, DC 20036.

Decided: March 31, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–8574 Filed 4–6–00; 8:45 am]

BILLING CODE 4915–00–P

[1] Court Hammond and James Sanders are the controlling shareholders, officers and directors of Colorado Central Railroad Company, Yreka Western Railroad Company, Rocky Mountain Railway and Mining Museum, and Colorado, Kansas & Pacific Railway Company.

[2] RMRMM is a noncarrier holding company which controls 100% of the stock of YWRR but does not itself provide any common carrier rail freight service.

[3] The Hammond Group reports that it intended for CCRC to commence providing common carrier service over YWRR's line on or about March 27, 2000. YWRR will continue to own the line, to have a residual common carrier obligation on the line, and to provide excursion rail passenger service.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1040 TeleFile and Form 8855–V, TeleFile Payment Voucher

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1040-TeleFile and Form 8855–V, TeleFile Payment Voucher.

DATES: Written comments should be received on or before June 6, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 1040—TeleFile and TeleFile Payment Voucher (Form 8855–V).

OMB Number: 1545–1277.

Form Number: 1040-TeleFile and Form 8855–V.

Abstract: Certain Form 1040EZ filers are given the option of using a simplified method of filing their tax return by telephone. The taxpayer enters certain minimal items of information on the TeleFile Tax Record and calls the IRS with a touch-tone telephone. The automated system figures the tax and any refund or balance due while the taxpayer is still on the phone.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 5,900,000.

Estimated Time Per Respondent: 1 hour, 29 minutes.

Estimated Total Annual Burden Hours: 8,723,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the

agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 31, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–8578 Filed 4–6–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Voluntary Customer Surveys To Implement E.O. 12862 Coordinated by the Office of Program Evaluation and Risk Analysis on Behalf of All IRS Operations Functions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Voluntary Customer Surveys To Implement E.O. 12862 Coordinated by the Office of Program Evaluation and Risk Analysis on Behalf of All IRS Operations Functions.

DATES: Written comments should be received on or before June 6, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Voluntary Customer Surveys To Implement E.O. 12862 Coordinated by the Office of Program Evaluation and Risk Analysis on Behalf of All IRS Operations Functions.

OMB Number: 1545–1432.

Abstract: This is a generic clearance for an undefined number of customer satisfaction and opinion surveys and focus group interviews to be conducted over the next three years. Surveys and focus groups conducted under the generic clearance are used by the Internal Revenue Service to determine levels of customer satisfaction, as well as determining issues that contribute to customer burden. This information will be used to make quality improvements to products and services.

Current Actions: We will be conducting different customer satisfaction and opinion surveys and focus group interviews during the next three years than in the past. At the present time, it is not determined what these surveys and focus groups will be.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, business or other-for-profit organizations, not-for profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 1,166,667.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 91,667.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 27, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–8579 Filed 4–6–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Publication of Inflation Adjustment Factor, Nonconventional Source Fuel Credit, and Reference Price for Calendar Year 1999

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Publication of inflation adjustment factor, nonconventional source fuel credit, and reference price for calendar year 1999 as required by section 29 of the Internal Revenue Code (26 U.S.C. section 29).

SUMMARY: The inflation adjustment factor, nonconventional source fuel credit, and reference price are used in determining the tax credit allowable on the production of fuel from nonconventional sources under section 29.

DATES: The 1999 inflation adjustment factor, nonconventional source fuel credit, and reference price apply to qualified fuels sold during calendar year 1999.

INFLATION FACTOR: The inflation factor is calculated using GNP Implicit Price Deflators as computed and published by the Department of Commerce. The inflation factor for 1999, which is smaller than the factor published for 1998, reflects a comprehensive revision in 1999 of the national income and product accounts by the Department of Commerce. The inflation factor for calendar year 1999 is 2.0013.

CREDIT: The nonconventional source fuel credit for calendar year 1999 is $6.00 per barrel-of-oil equivalent of qualified fuels.

PRICE: The reference price for calendar year 1999 is $15.56. Because this reference price does not exceed $23.50

multiplied by the inflation adjustment factor, the phaseout of credit provided for in section 29(b)(1) does not occur for any qualified fuel sold in calendar year 1999.

FOR FURTHER INFORMATION CONTACT:

For the inflation factor and credit—

Thomas Thompson, OP:RS:R:E, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone Number (202) 874–0585 (not a toll-free number).

For the reference price—

Alan Cooper or David McMunn, CC:DOM:P&SI:6, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Telephone Number (202) 622–3110 (not a toll-free number).

Judith C. Dunn,

Associate Chief Counsel (Domestic).

[FR Doc. 00–8640 Filed 4–4–00; 2:10 pm]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Brooklyn District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Friday April 28, 2000.

FOR FURTHER INFORMATION CONTACT: Eileen Cain at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Friday, April 28, 2000, 6 p.m. to 9 p.m. at the Internal Revenue Service Brooklyn Building located at 625 Fulton Street, Brooklyn, NY 11201. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 8:30 p.m. to 9 p.m. on Friday, April 28, 2000. Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY 11201. The Agenda will include the following: various IRS issues. **Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 21, 2000.

M. Cathy VanHorn,

CAP Program Manager.

[FR Doc. 00–8580 Filed 4–6–00; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, South Florida District

ACTION: Notice.

SUMMARY: A Public meeting of the South Florida District Citizen Advocacy Panel will be held in Naples, Florida.

DATES: The meeting will be held Friday, April 28, 2000 and Saturday, April 29, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Ferree at 1–888–912–1227 or 954–423–7974.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a Public meeting of the Citizen Advocacy Panel will be held Friday, April 28, 2000, 6 p.m. to 9 p.m. and Saturday, April 29, 2000, 9 a.m. to Noon at the YMCA, 5450 YMCA Road, Naples, FL 34109. For more information contact Nancy Ferree at 1–888–912–1227 or 954–423–7974. The public is invited to make oral comments. Individual comments will be limited to 10 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 954-423–7974, or write Nancy Ferree, CAP Office, 7771 W. Oakland Park Blvd #225, Sunrise, FL, 33351.

The Agenda will include the following: various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 21, 2000.

M. Cathy VanHorn,

CAP Project Manager.

[FR Doc. 00–8581 Filed 4–6–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Midwest District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Midwest Citizen Advocacy Panel will be held in Milwaukee, Wisconsin.

DATES: The meeting will be held Thursday, April 27, 2000, and Friday, April 28, 2000.

FOR FURTHER INFORMATION CONTACT: Sandra McQuin at 1–888–912–1227, or 414–297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a working meeting of the Citizen Advocacy Panel (CAP) will be held Thursday, April 27, 2000, from 9:00 a.m. to 5:00 p.m. and Friday, April 28, 2000, from 9:00 a.m. to Noon at Reuss Federal Building, Meeting Room 290B, 310 W. Wisconsin Avenue, Milwaukee, WI. The Citizen Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. Written comments can be submitted to the panel by faxing to (414) 297–1623, or by mail to Citizen Advocacy Panel, Mail Stop 1006 MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221.

The Agenda will include the following: Various IRS issue updates and reports by the CAP sub-groups, presentation of taxpayer issues by individual members, CAP office report, and discussion of issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 24, 2000.

M. Cathy VanHorn,

CAP Project Manager.

[FR Doc. 00–8582 Filed 4–6–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Pacific-Northwest District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Pacific-Northwest Citizen Advocacy

Panel will be held in Pasco, Washington.

DATES: The meeting will be held Saturday, April 8, 2000.

FOR FURTHER INFORMATION CONTACT: Lori M. Dupuis at 1–888–912–1227 or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel will be held Saturday, April 8, 2000, 9 a.m. to Noon at the Doubletree Hotel, 2525 North 20th Avenue, Pasco, WA 99301. The public is invited to make oral comments. Individual comments will be limited to 10 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write Lori M. Dupuis, CAP Office, 915 2nd Avenue, Room 442, Seattle, WA 98174. Due to limited conference space, notification of intent to attend the meeting must be made with Lori M. Dupuis. Ms. Dupuis can be reached at 1–888–912–1227 or 206–220–6096.

The Agenda will include the following: various IRS issue updates and reports by the CAP sub-groups.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: March 21, 2000.

M. Cathy VanHorn,

CAP Project Manager.

[FR Doc. 00–8583 Filed 4–6–00; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register
Vol. 65, No. 68
Friday, April 7, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf–Update on Revised/Reaffirmed Documents Incorporated by Reference

Correction

In rule document 00–7267 beginning on page 15862 in the issue of Friday, March 24, 2000, make the following corrections:

§250.198 [Corrected]

1. On page 15863, in §250.198(e), in the third line of the table, "Chapter," should read "Chapter 4,".

2. On the same page, in the same section, in the "Incorporated by reference at" column, in the sixth and seventh entries, "§250.1202(a)(3) and (1)(4)" should read "§250.1202(a)(3) and (l)(4)".

[FR Doc. C0–7267 Filed 4–6–00; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 214 and 248

[INS No. 2090–99]

RIN 1115–AF51

Irish Peace Process Cultural and Training Program

Correction

In rule document 00–6818 beginning on page 14774 in the issue of Friday, March 17, 2000, make the following corrections:

1. On page 14774, in the first column, in the second line from the bottom, "Peach" should read, "Peace".

2. On the same page, in the third column, in the third paragraph, in the sixth line,"T&A" should read, "T&EA".

3. On page 14775, in the first column, 14 lines from the bottom, "Weihle " should read "Wiehle ".

4. On the same page, in the second column, in the fourth line, after "promotion" add "agriculture/horticulture diversification, food processing,"

5. On the same page, in the same column, in the second line from the bottom, "participation" should read "participate".

6. On page 14776, in the first column, second full paragraph, in the first line, "25.1" should read, "265.1".

§214.2 [Corrected]

7. On page 14779, in the second column, in §214.2(q)(15)(x), after the last line, add "*****".

8. On the same page, in the same column, in amendatory instruction 8c., "Paragraph (q)(3)(iv);(D)" should read, "Paragraph (q)(3)(iv)(D);".

9. On the same page, in the third column, in amendatory instruction 10., the last line should read "paragraphs (q)(5)(i), (q)(7)(ii), and (q)(8)(ii)".

10. On the same page, in the same column, in amendatory instruction 11., in the fourth line, after "visitors", remove "to read *international cultural exchange visitors*".

11. On the same page, in the same column, in amendatory instruction 12., in the second and fourth lines, "visitors" should read "visitor".

12. On the same page, in the same column, in amendatory instruction 14., in the second line "revised " should read "revising".

§248.3 [Corrected]

13. On page 14780, in §248.3(d), in the first column, in the seventh line, "free" should read "fee".

14. On the same page, §248.3(e)(2) in the second column, in the third line, after "spouse", "of" should read "or".

[FR Doc. C0–6818 Filed 4–6–00; 8:45 am]
BILLING CODE 1505–01–D

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meeting

Correction

In notice document 00–6997 appearing on page 15019 in the issue of March 20, 2000, make the following correction:

In the second column, seven lines from the bottom,"April 10, 2000" should read "April 11, 2000".

[FR Doc. C0–6997 Filed 4–6–00; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday,
April 7, 2000

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 409, et al.
Office of the Inspector General; Medicare Program Prospective Payment System for Hospital Outpatient Services; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 409, 410, 411, 412, 413, 419, 424, 489, 498, and 1003

[HCFA–1005–FC]

RIN 0938–AI56

Office of Inspector General; Medicare Program; Prospective Payment System for Hospital Outpatient Services

AGENCY: Health Care Financing Administration (HCFA), HHS, and Office of Inspector General (OIG), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period implements a prospective payment system for hospital outpatient services furnished to Medicare beneficiaries, as set forth in section 1833(t) of the Social Security Act. It also establishes requirements for provider departments and provider-based entities, and it implements section 9343(c) of the Omnibus Budget Reconciliation Act of 1986, which prohibits Medicare payment for nonphysician services furnished to a hospital outpatient by a provider or supplier other than a hospital, unless the services are furnished under an arrangement with the hospital. In addition, this rule establishes in regulations the extension of reductions in payment for costs of hospital outpatient services required by section 4522 of the Balanced Budget Act of 1997, as amended by section 201(k) of the Balanced Budget Refinement Act of 1999.

DATES: *Effective date:* July 1, 2000, except that the changes to § 412.24(d)(6), new § 413.65, and the changes to § 489.24(h), § 498.2, and § 498.3 are effective October 10, 2000.

Applicability date: For Medicare services furnished by all hospitals, including hospitals excluded from the inpatient prospective payment system, and by community mental health centers, the applicability date for implementation of the hospital outpatient prospective payment system is July 1, 2000.

Comment date: Comments on the provisions of this rule resulting from the Balanced Budget Refinement Act of 1999 will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on June 6, 2000. We will not consider comments concerning provisions that remain unchanged from the September 8, 1998 proposed rule or that were revised based on public comment.

See section VIII for a more detailed discussion of the provisions subject to comment.

ADDRESSES: Mail written comments (one original and three copies) to the following address ONLY: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1005–FC, P.O. Box 8013, Baltimore, MD 21244–8013.

If you prefer, you may deliver, by courier, your written comments (one original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

C5–14–03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to those addresses may be delayed and could be considered late.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1005–FC.

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attn: John Burke, HCFA–1005–FC; and

Lauren Oliven, HCFA Desk Officer, Office of Information and Regulatory Affairs, Room 3001, New Executive Office Building, Washington, DC 20503.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Janet Wellham, (410) 786–4510 or Chuck Braver, (410) 786–6719 (for general information)

Joel Schaer (OIG), (202) 619–0089 (for information concerning civil money penalties)

Kitty Ahern, (410) 786–4515 (for information related to the classification of services into ambulatory payment classification (APC) groups)

George Morey (410) 786–4653 (for information related to the determination of provider-based status)

Janet Samen (410) 786–9161 (for information on the application of APCs to community mental health centers)

SUPPLEMENTARY INFORMATION: To assist readers in referencing sections contained in this document, we are providing the following table of contents. Within each section, we summarize pertinent material from our proposed rule of September 8, 1998 (63 FR 47552) followed by public comments and our responses.

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Alphabetical List of Acronyms Appearing in the Final Rule

APC Ambulatory payment classification
APG Ambulatory patient group
ASC Ambulatory surgical center
AWP Average wholesale price
BBA 1997 Balanced Budget Act of 1997
BBRA 1999 Balanced Budget Refinement Act of 1999
CAH Critical access hospital
CAT Computerized axial tomography
CCI [HCFA's] Correct Coding Initiative
CCR Cost center specific cost-to-charge ratio
CCU Coronary care unit
CMHC Community mental health center
CMP Civil money penalty
CORF Comprehensive outpatient rehabilitation facility
CPI Consumer Price Index
CPT [Physicians'] Current Procedural Terminology, 4th Edition, 2000,

copyrighted by the American Medical Association
DME Durable medical equipment
DMEPOS DME, orthotics, prosthetics, prosthetic devices, prosthetic implants and supplies
DRG Diagnosis-related group
DSH Disproportionate share hospital
EACH Essential access community hospital
EBAA Eye Bank Association of America
ED Emergency department
EMS Emergency medical services
EMTALA Emergency Medical Treatment and Active Labor Act
ENT Ear/Nose/Throat
ESRD End-stage renal disease
FDA Food and Drug Administration
FDO Formula-driven overpayment
FQHC Federally qualified health center
HCPCS HCFA Common Procedure Coding System
HHA Home health agency
HRSA Health Resources and Services Administration
ICD–9–CM International Classification of Diseases, Ninth Edition, Clinical Modification
ICU Intensive care unit
IHS Indian Health Service
IME Indirect medical education
IOL Intraocular lens
JCAHO Joint Commission on Accreditation of Healthcare Organizations
LTH Long-term hospital
MDH Medicare-dependent hospital
MedPAC Medicare Payment Advisory Commission
MRI Magnetic resonance imaging
MSA Metropolitan statistical area
NECMA New England County Metropolitan Area
OBRA Omnibus Budget Reconciliation Act
OT Occupational therapy
PPO Preferred provider organization
PPS Prospective payment system
RFA Regulatory Flexibility Act
RHC Rural health clinic
RPCH Rural primary care hospital
RRC Rural referral center
SCH Sole community hospital
SGR Sustainable growth rate
SNF Skilled nursing facility
TEFRA Tax Equity and Fiscal Responsibility Act of 1982
TPA Tissue Plasminogen Activator
Y2K Year 2000

I. Background

A. General and Legislative History

When the Medicare program was first implemented, it paid for hospital services (inpatient and outpatient) based on hospital-specific reasonable costs attributable to serving Medicare beneficiaries. Later, the law was amended to limit payment to the lesser of a hospital's reasonable costs or its customary charges. In 1983, section 601 of the Social Security Amendments of 1983 (Pub. L. 98–21) completely revised the cost-based payment system for most hospital inpatient services by enacting section 1886(d) of the Social Security Act (the Act). This section provided for a prospective payment system (PPS) for acute hospital inpatient stays, effective with hospital cost reporting periods beginning on or after October 1, 1983.

Although payment for most inpatient services became subject to the PPS, Medicare hospital outpatient services continued to be paid based on hospital-specific costs, which provided little incentive for hospitals to furnish outpatient services efficiently. At the same time, advances in medical technology and changes in practice patterns were bringing about a shift in the site of medical care from the inpatient to the outpatient setting. During the 1980s, the Congress took steps to control the escalating costs of providing outpatient care. The Congress amended the statute to implement across-the-board reductions of 5.8 percent and 10 percent to the amounts otherwise payable by Medicare for hospital operating costs and capital costs, respectively, and enacted a number of different payment methods for specific types of hospital outpatient services. These methods included fee schedules for clinical diagnostic laboratory tests, orthotics, prosthetics, and durable medical equipment (DME); composite rate payment for dialysis for persons with end-stage renal disease (ESRD); and payments based on blends of hospital costs and the rates paid in other ambulatory settings such as separately certified ambulatory surgical centers (ASCs) or physician offices for certain surgery, radiology, and other diagnostic procedures. However, Medicare payment for services performed in the hospital outpatient setting remains largely cost-based.

In the Omnibus Budget Reconciliation Act of 1986 (OBRA 1986) (Pub. L. 99–509), the Congress paved the way for development of a PPS for hospital outpatient services. Section 9343(g) of OBRA 1986 mandated that fiscal intermediaries require hospitals to report claims for services under the HCFA Common Procedure Coding System (HCPCS). Section 9343(c) of OBRA 1986 extended the prohibition against unbundling of hospital services under section 1862(a)(14) of the Act to include outpatient services as well as inpatient services. The HCPCS coding enabled us to determine which specific procedures and services were being billed, while the extension of the prohibition against unbundling ensured that all nonphysician services provided to hospital outpatients would be billed only by the hospital, not by an outside supplier, and, therefore, would be reported on hospital bills and captured in the hospital outpatient data that could be used to develop an outpatient PPS.

A proposed rule to implement section 9343(c) was published in the **Federal Register** on August 5, 1988. However, those regulations were never published as a final rule, so we included them in the hospital outpatient PPS proposed rule published in the **Federal Register** on September 8, 1998 (63 FR 47552) and will implement them as part of this final rule.

Section 1866(g) of the Act, as added by section 9343(c) of OBRA 1986, and amended by section 4085(i)(17) of the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987) (Pub. L. 100–203), authorizes the Department of Health and Human Services' Office of Inspector General to impose a civil money penalty (CMP), not to exceed $2,000, against any individual or entity who knowingly and willfully presents a bill in violation of an arrangement (as defined in section 1861(w)(1) of the Act).

In section 9343(f) of the OBRA 1986 and section 4151(b)(2) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), the Congress required that we develop a proposal to replace the current hospital outpatient payment system with a PPS and submit a report to the Congress on the proposed system.

The Secretary submitted a report to the Congress on March 17, 1995, summarizing the research we conducted searching for a way to classify outpatient services for purposes of developing an outpatient PPS. The report cited ambulatory patient groups (APGs), developed by 3M-Health Information Systems (3M–HIS) under a cooperative grant with HCFA, as the most promising classification system for grouping outpatient services and recommended that APG-like groups be used in designing a hospital outpatient PPS.

The report also presented a number of options that could be used, once a PPS was in place, for addressing the issue of rapidly growing beneficiary coinsurance. As a separate issue, we recommended that the Congress amend the provisions of the law pertaining to the blended payment methods for ASC surgery, radiology, and other diagnostic services to correct an anomaly that resulted in a less than full recognition of the amount paid by the beneficiary in calculating program payment (referred to as the formula-driven overpayment).

Three sections of the Balanced Budget Act of 1997 (the BBA 1997) (Pub. L. 105–33), enacted on August 5, 1997, affect Medicare payment for hospital outpatient services. Section 4521 of the BBA 1997 eliminates the formula-driven overpayment for ambulatory surgical

center procedures, radiology services, and diagnostic procedures furnished on or after October 1, 1997. In November 1998, we issued cost report instructions (Provider Reimbursement Manual, Part II, Chapter 36, Transmittal 4) that implemented this provision for services furnished on or after October 1, 1997. Section 4522 of the BBA 1997 amends section 1861(v)(1)(S)(ii) of the Act by extending cost reductions in payment for hospital outpatient operating costs and hospital capital costs, 5.8 percent and 10 percent respectively, before January 1, 2000. Section 4523 of the BBA 1997 amends section 1833 of the Act by adding subsection (t), which provides for implementation of a PPS for outpatient services. (Under Section 4523 of the BBA 1997 the outpatient PPS does not apply to cancer hospitals before January 1, 2000.) Set forth below in section I.B is a detailed description of the changes made by the BBA 1997.

On November 29, 1999, the Balanced Budget Refinement Act of 1999 (the BBRA 1999), Pub. L. 106–113, was enacted. This Act made major changes that affect the proposed hospital outpatient PPS. The legislative changes are summarized in section I.E, below. More specific details on individual provisions that we are implementing in this final rule with comment period are included under the various sections of this preamble.

B. Summary of Provisions in the Balanced Budget Act of 1997 (the BBA 1997)

1. Prospective Payment System (PPS)

Section 4523 of the BBA 1997 amended section 1833 of the Act by adding subsection (t), which provides for a PPS for hospital outpatient department services. (The following citations reflect the statute as enacted by the BBA 1997.) Section 1833(t)(1)(B) of the Act authorizes the Secretary to designate the hospital outpatient services that would be paid under the PPS. That section also requires that the hospital outpatient PPS include hospital inpatient services designated by the Secretary that are covered under Part B for beneficiaries who are entitled to Part A benefits but who have exhausted them or otherwise are not entitled to them. Section 1833(t)(1)(B)(iii) of the Act specifically excludes ambulance, physical and occupational therapy, and speech-language pathology services, for which payment is made under a fee schedule.

Section 1833(t)(2) of the Act sets forth certain requirements for the hospital outpatient PPS. The Secretary is required to develop a classification system for covered outpatient services that may consist of groups arranged so that the services within each group are comparable clinically and with respect to the use of resources.

Section 1833(t)(2)(C) of the Act specifies data requirements for establishing relative payment weights. The weights are to be based on the median hospital costs determined by 1996 claims data and data from the most recent available cost reports. Section 1833(t)(2)(D) of the Act requires that the portion of the Medicare payment and the beneficiary coinsurance that are attributable to labor and labor-related costs be adjusted for geographic wage differences in a budget neutral manner.

The Secretary is authorized under section 1833(t)(2)(E) of the Act to establish, in a budget neutral manner, other adjustments, such as outlier adjustments or adjustments for certain classes of hospitals, that are necessary to ensure equitable payments. Section 1833(t)(2)(F) of the Act requires the Secretary to develop a method for controlling unnecessary increases in the volume of covered outpatient services.

Section 1833(t)(3) of the Act specifies how beneficiary deductibles are to be treated in calculating the Medicare payment and beneficiary coinsurance amounts and requires that rules be established regarding determination of coinsurance amounts for covered services that were not furnished in 1996. The statute freezes beneficiary coinsurance at 20 percent of the national median charges for covered services (or group of covered services) furnished during 1996 and updated to 1999 using the Secretary's estimated charge growth from 1996 to 1999.

Section 1833(t)(3) of the Act also prescribes the formula for calculating the initial conversion factor used to determine Medicare payment amounts for 1999 and the method for updating the conversion factor in subsequent years.

Sections 1833(t)(4) and (t)(5) of the Act describe the method for determining the Medicare payment amount and the beneficiary coinsurance amount for services covered under the outpatient PPS. Section 1833(t)(5)(B) of the Act requires the Secretary to establish a procedure whereby hospitals may voluntarily elect to reduce beneficiary coinsurance for some or all covered services to an amount not less than 20 percent of the Medicare payment amount. Hospitals are further allowed to disseminate information on any such reductions of coinsurance amounts. Section 4451 of the BBA 1997 added section 1861(v)(1)(T) to the Act, which provides that any reduction in coinsurance must not be treated as a bad debt.

Section 1833(t)(6) authorizes periodic review and revision of the payment groups, relative payment weights, wage index, and conversion factor.

Section 1833(t)(7) of the Act describes how payment is to be made for ambulance services, which are specifically excluded from the outpatient PPS under section 1833(t)(1)(B) of the Act.

Section 1833(t)(8) of the Act provides that the Secretary may establish a separate conversion factor for services furnished by cancer hospitals that are excluded from hospital inpatient PPS.

Section 1833(t)(9) of the Act prohibits administrative or judicial review of the hospital outpatient PPS classification system, the groups, relative payment weights, wage adjustment factors, other adjustments, calculation of base amounts, periodic adjustments, and the establishment of a separate conversion factor for those cancer hospitals excluded from hospital inpatient PPS.

Section 4523(d) of the BBA 1997 made a conforming

amendment to section 1833(a)(2)(B) of the Act to provide for payment under the hospital outpatient PPS for some services described in section 1832(a)(2) that are currently paid on a cost basis and furnished by providers of services, such as comprehensive outpatient rehabilitation facilities (CORFs), home health agencies (HHAs), hospices, and community mental health centers (CMHCs). This amendment provides that partial hospitalization services furnished by CMHCs be paid under the PPS.

2. Elimination of Formula-Driven Overpayment

Before enactment of section 4521(b) of the BBA 1997, using the blended payment formulas for ASC procedures, radiology, and other diagnostic services, the ASC or physician fee schedule portion was calculated as if the beneficiary paid 20 percent of the ASC rate or physician fee schedule amount instead of the actual amount paid, which was 20 percent of the hospital's billed charges. Section 4521(b), which amended sections 1833(i)(3)(B)(i)(II) and 1833(n)(1)(B)(i) of the Act, corrects this anomaly by changing the blended calculations so that all amounts paid by the beneficiary are subtracted from the total payment in the calculation to determine the amount due from the program. Effective for services furnished on or after October 1, 1997, payment for surgery, radiology, and other diagnostic services calculated by blended payment methods is now calculated by

subtracting the full amount of coinsurance due from the beneficiary (based on 20 percent of the hospital's billed charges).

3. Extension of Cost Reductions

Section 1861(v)(1)(S)(ii) of the Act was amended by section 4522 of the BBA 1997 to require that the amounts otherwise payable for hospital outpatient operating costs and capital costs be reduced by 5.8 percent and 10 percent, respectively, through December 31, 1999.

C. The September 8, 1998 Proposed Rule

We published a proposed rule in the **Federal Register** on September 8, 1998 (63 FR 47552) setting forth the proposed PPS for hospital outpatient services. In that proposed rule, we explained that, due to Year 2000 (Y2K) systems concerns, implementation of the new payment system would be delayed until after January 1, 1999. (The statement in the rule that the statute requires implementation "effective January 1, 1999," and other similar statements in other rules, were not intended to mean that the statute requires retroactive implementation of the hospital outpatient PPS. As noted elsewhere in this rule, the statute does not impose such a requirement.) As noted in that document, the scope of systems changes required to implement the hospital outpatient PPS is so enormous as to be impossible to accomplish concurrently with the critical work that we, our contractors, and our provider-partners had to perform to ensure that all of our respective systems were Y2K compliant. Section XI of the proposed rule (63 FR 47605) explains in greater detail the reasons for delaying implementation.

The proposed rule originally provided for a 60-day comment period. However, the comment period was extended four times, ultimately ending on July 30, 1999. (See 63 FR 63429, November 13, 1998; 64 FR 1784, January 12, 1999; 64 FR 12277, March 12, 1999; and 64 FR 36320; July 6, 1999.)

On June 30, 1999, we published a correction notice (64 FR 35258) to correct a number of technical and typographical errors contained in the September 8, 1998 proposed rule. The numerical values in the proposed rule reflected incorrect data and data programming. Among other corrections, the notice set forth revised numerical values for the current payment, total services (total units), relative weights, proposed payment rates, national unadjusted coinsurance, minimum unadjusted coinsurance, and service-mix index.

D. Overview of Public Comments

We received approximately 10,500 comments in response to our September 8, 1998 proposed rule. That count includes the numerous requests from hospital and other interested groups and organizations that we extend the public comment period to allow additional time for analysis of the impact of our proposals. As we explain above, we extended the comment period four times, to end finally on July 30, 1999.

In addition to receiving comments from a number of organizations representing the full spectrum of the hospital industry, we received comments from beneficiaries and their families, physicians, health care workers, individual hospitals, professional associations and societies, legal and nonlegal representatives and spokespersons for beneficiaries and hospitals, members of the Congress, and other interested citizens. The majority of comments addressed our proposals regarding payment for: Corneal tissue; payment for high-cost technologies, both existing and future; payment for blood and blood products; and payment for high cost drugs, including chemotherapy agents. We also received numerous comments addressing: Our approach to ratesetting using the ambulatory payment classification (APC) system; our method of calculating the payment conversion factor; and the potentially negative impact of the proposed hospital outpatient PPS on hospital revenues. In addition, we received many comments concerning the proposed regulations for provider-based entities.

We carefully reviewed and considered all comments received timely. The many modifications that we made to our proposed regulations in response to commenters' suggestions and recommendations are reflected in the provisions of this final rule. Comments and our responses are addressed by topic in the sections that follow.

E. Summary of Relevant Provisions in the Balanced Budget Refinement Act of 1999 (the BBRA 1999)

As noted above, subsequent to publication of the proposed rule, the BBRA 1999 was enacted on November 29, 1999. The BBRA 1999 made major changes that affect the proposed hospital outpatient PPS. Because these changes are effective with the implementation of the PPS, we have had to make some revisions from the September 8, 1998 proposed rule. The provisions of the BBRA 1999 that we are implementing in this final rule with comment period follow.

1. Outlier Adjustment

Section 201(a) of the BBRA 1999 amends section 1833(t) by redesignating paragraphs (5) through (9) as paragraphs (7) through (11) and adding a new paragraph (5). New section 1833(t)(5) of the Act provides that the Secretary will make payment adjustments for covered services whose costs exceed a given threshold (that is, an outlier payment). This section describes how the additional payments are to be calculated and caps the projected outlier payments at no more than 2.5 percent of the total projected payments (sum of both Medicare and beneficiary payments to the hospital) made under hospital outpatient PPS for years before 2004 and 3.0 percent of the total projected payments for 2004 and subsequent years.

2. Transitional Pass-Through for Additional Costs of Innovative Medical Devices, Drugs, and Biologicals

Section 201(b) of the BBRA 1999 adds new section 1833(t)(6) to the Act, establishing transitional pass-through payments for certain medical devices, drugs, and biologicals. This provision does the following: Specifies the types of items for which additional payments must be made; describes the amount of the additional payment; limits these payments to at least 2 years but not more than 3 years; and caps the projected payment adjustments annually at 2.5 percent of the total projected payments for hospital outpatient services each year before 2004 and no more than 2.0 percent in subsequent years. Under this provision, the Secretary has the authority to reduce pro rata the amount of the additional payments if, before the beginning of a year, she estimates that these payments would otherwise exceed the caps.

3. Budget Neutrality Applied to New Adjustments

Section 201(c) of the BBRA 1999 amends section 1833(t)(2)(E) of the Act to require that the establishment of outlier and transitional pass-through payment adjustments is to be made in a budget neutral manner.

4. Limitation on Judicial Review

Section 201(d) of the BBRA 1999 amends redesignated section 1833(t)(11) of the Act by extending the prohibition of administrative or judicial review to include the factors for determining outlier payments (that is, the fixed multiple, or a fixed dollar cutoff amount, the marginal cost of care, or applicable total payment percentage), and the determination of additional payments for certain medical devices,

drugs, and biologicals, the insignificant cost determination for these items, the duration of the additional payment or portion of the PPS payment amount associated with particular devices, drugs, or biologicals, and any pro rata reduction.

5. Inclusion in the Hospital Outpatient PPS of Certain Implantable Items

Section 201(e) of the BBRA 1999 amends section 1833(t)(1)(B) of the Act to include as covered outpatient services implantable prosthetics and DME and diagnostic x-ray, laboratory, and other tests associated with those implantable items.

6. Payment Weights Based on Mean Hospital Costs

Section 201(f) of the BBRA 1999 amends section 1833(t)(2)(C) of the Act, which specifies data requirements for establishing relative payment weights, to allow the Secretary the discretion to base the weights on either the median or mean hospital costs determined by data from the most recent available cost reports.

7. Limitation on Variation of Costs of Services Classified Within a Group

Section 201(g) of the BBRA 1999 amends section 1833(t)(2) of the Act to limit the variation of costs of services within each payment classification group by providing that the highest median (or mean cost, if elected by the Secretary) for an item or service within the group cannot be more than 2 times greater than the lowest median (or mean) cost for an item or service within the group. The provision allows the Secretary to make exceptions in unusual cases, such as for low volume items and services.

8. Annual Review of the Hospital Outpatient PPS Components

Section 201(h) of the BBRA 1999 amends redesignated section 1833(t)(8) of the Act to require at least annual review of the groups, relative payment weights, and the wage and other adjustments made by the Secretary to take into account changes in medical practice, the addition of new services, new cost data, and other relevant information and factors. That section of the Act is further amended to require the Secretary to consult with an expert outside advisory panel composed of an appropriate selection of provider representatives who will review the clinical integrity of the groups and weights and advise the Secretary accordingly. The panel may use data other than those collected or developed by the Department of HHS for the review and advisory purposes.

9. Coinsurance Not Affected by Pass-Throughs

Section 201(i) of the BBRA 1999 amends redesignated section 1833(t)(7) of the Act to provide that the beneficiary coinsurance amount will be calculated as if the outlier and transitional pass-throughs had not occurred; that is, there will be no coinsurance collected from beneficiaries for the additional payments made to hospitals by Medicare for these adjustments.

10. Extension of Cost Reductions

Section 201(k) of the BBRA 1999 amends section 1861(v)(1)(S)(ii) of the Act to extend until the first date that the hospital outpatient PPS is implemented, the 5.8 and 10 percent reductions for hospital operating and capital costs, respectively.

11. Clarification of Congressional Intent Regarding Base Amounts Used in Determining the Hospital Outpatient PPS

Section 201(l) of the BBRA 1999 provides that, "With respect to determining the amount of copayments described in paragraph (3)(A)(ii) of section 1833(t) of the Social Security Act, as added by section 4523(a) of the BBA, Congress finds that such amount should be determined without regard to such section, in a budget neutral manner with respect to aggregate payments to hospitals, and that the Secretary of Health and Human Services has the authority to determine such amount without regard to such section." Pursuant to this provision, we are calculating the aggregate PPS payment to hospitals in a budget neutral manner.

12. Transitional Corridors for Application of Outpatient PPS

Section 202 of the BBRA 1999 amends section 1833(t) of the Act by redesignating paragraphs (7) through (11) as paragraphs (8) through (12), and adding a new paragraph (7), which provides for a transitional adjustment to limit payment reductions under the hospital outpatient PPS. More specifically, for the years 2000 through 2003, a provider, including a CMHC, will receive an adjustment if its payment-to-cost ratio for outpatient services furnished during the year is less than a set percentage of its payment-to-cost ratio for those services in its cost reporting period ending in 1996 (the base year). Two categories of hospitals, rural hospitals with 100 or fewer beds and cancer hospitals, will be held harmless under this provision. Small rural hospitals, for services furnished before January 1, 2004, will be maintained at the same payment-to-cost ratio as their base year cost report if their PPS payment-to-cost ratio is less. The hold-harmless provision applies permanently to cancer centers. Section 202 also requires the Secretary to make interim payments to affected hospitals subject to retrospective adjustments and requires that the provisions of this section do not affect beneficiary coinsurance. Finally, this provision is not subject to budget neutrality.

13. Limitation on Coinsurance for a Procedure

Section 204 of the BBRA 1999 amends redesignated section 1833(t)(8) of the Act to provide that the coinsurance amount for a procedure performed in a year cannot exceed the hospital inpatient deductible for that year.

14. Reclassification of Certain Hospitals

Section 401 of the BBRA 1999 adds section 1886(d)(8)(E) to the Act to permit reclassification of certain urban hospitals as rural hospitals. Section 401 adds section 1833(t)(13) to the Act to provide that a hospital being treated as a rural hospital under section 1886(d)(8)(E) also be treated as a rural hospital under the hospital outpatient PPS.

II. Prohibition Against Unbundling of Hospital Outpatient Services

A. Background

Sections 9343(c)(1) and (c)(2) of OBRA 1986 amended sections 1862(a)(14) and 1866(a)(1)(H) of the Act, respectively. As revised, section 1862(a)(14) of the Act prohibits payment for nonphysician services furnished to hospital patients (inpatients and outpatients), unless the services are furnished by the hospital, either directly or under an arrangement (as defined in section 1861(w)(1) of the Act). As revised, section 1866(a)(1)(H) of the Act requires each Medicare-participating hospital to agree to furnish directly all covered nonphysician services required by its patients (inpatients and outpatients) or to have the services furnished under an arrangement (as defined in section 1861(w)(1) of the Act). Section 9338(a)(3) of OBRA 1986 affected implementation of the bundling mandate by amending section 1861(s)(2)(K) of the Act to permit services of physician assistants to be covered and billed separately. Sections 4511(a)(2)(C) and (D) of the BBA 1997 further revised sections 1862(a)(14) and 1866(a)(1)(H) of the Act, respectively, to exclude services of nurse practitioners

and clinical nurse specialists, described in section 1861(s)(2)(K)(ii) of the Act, from the bundling requirement.

B. Office of Inspector General (OIG) Civil Money Penalty Authority and Civil Money Penalties for Unbundling Hospital Outpatient Services

In order to deter the unbundling of nonphysician hospital services, section 9343(c)(3) of OBRA 1986 added section 1866(g) to the Act to provide for the imposition of civil money penalties (CMPs), not to exceed $2,000, against any person who knowingly and willfully presents, or causes to be presented, a bill or request for payment for a hospital outpatient service under Part B of Medicare that violates the requirement for billing under arrangements specified in section 1866(a)(1)(H) of the Act. In addition, section 1866(g) includes authorization to impose a CMP, in the same manner as other CMPs are imposed under section 1128A of the Act when arrangements should have been made but were not. Section 4085(i)(17) of OBRA 1987 amended section 1866(g) of the Act by deleting all references to hospital outpatient services under Part B of Medicare. The result of this amendment is that the CMP is now applicable for services furnished to hospital patients, whether paid for under Medicare Part A or B.

In order to implement section 1866(g) of the Act, we proposed in our August 5, 1988 proposed rule that the OIG would impose a CMP against any person who knowingly and willfully presents, or causes to be presented, a bill or request for payment for a hospital outpatient service under Part B of Medicare that violates the billing arrangement under section 1866(a)(1)(H) of the Act or the requirement for an arrangement. The amount of the CMP is to be limited to $2,000 for each improper bill or request, even if the bill or request included more than one item or service.

C. Summary of Final Regulations on Bundling of Hospital Outpatient Services

In our September 8, 1998 proposed rule, we proposed to make final most of the provisions of the August 5, 1988 proposed rule but with a number of revisions that we describe in detail in the proposed rule (63 FR 47558 through 47559). We are adopting as final regulations what we proposed in the September 8, 1998 rule with the following additional changes:

- We are adding a new paragraph (b)(7) to § 410.42 (Limitations on coverage of certain services furnished to hospital outpatients) to provide an exception to the hospital bundling requirements for services hospitals furnish to SNF residents as defined in § 411.15(p). (Section 410.42 has been redesignated from § 410.39 in the proposed rule.)
- We are making a minor change to newly redesignated paragraph (m)(2) (this language was formerly included in paragraph (m)(1)) in § 411.15 (Particular services excluded from coverage) to make it clearer that the exclusion discussed in this section is referring to excluding certain services from coverage.
- Except for minor wording changes in introductory paragraph (b) of § 1003.102 (Basis for civil money penalties and assessments), that section remains as it appeared in the August 5, 1988 proposed rule. Paragraph (b)(15) is redesignated from proposed paragraph (b)(4) in the August 5, 1988 proposed rule and (b)(14) in the September 8, 1998 proposed rule. Paragraphs (b)(12) through (b)(14) of § 1003.102 are reserved.
- We are adding a new paragraph (k) to § 1003.103 (Amount of penalty) to indicate that the OIG may impose a penalty of not more than $2,000 for each bill or request for items and services furnished to hospital patients in violation of the bundling requirements.
- We are also amending § 1003.105 (Exclusion from participation in Medicare, Medicaid and other Federal health care programs) by revising paragraph (a)(1)(i) to reflect that the basis for imposition of a CMP is also a basis for exclusion from participation in Medicare, Medicaid and other Federal health care programs.

D. Comments and Responses

Comment: One association requested that we clarify whether lab tests are subject to the bundling requirement or whether those services are included in the definition of diagnostic tests that are not required to be bundled. If lab tests are bundled, the association asked that we seek a legislative change to permit a provider, other than the lab that performs the test, to bill for the test.

Response: Laboratory tests, like all other services furnished to hospital patients, must be provided directly or under arrangements by the hospital and only the hospital may bill the program. Section 1833(h)(5)(A)(iii) of the Act provides an exception to the requirement that payment for a clinical diagnostic lab may be made only to the person or entity that performed or supervised the performance of the test. This section provides that in the case of a clinical diagnostic laboratory test provided under arrangement made by a hospital or CAH, payment is made to the hospital.

All diagnostic tests that are furnished by a hospital, directly or under arrangements, to a registered hospital outpatient during an encounter at a hospital are subject to the bundling requirements. The hospital is not responsible for billing for the diagnostic test if a hospital patient leaves the hospital and goes elsewhere to obtain the diagnostic test.

Comment: The same association asked us to clarify that services billed to skilled nursing facilities (SNFs) under the consolidated billing requirement would be exempt from the bundling requirement for hospital outpatient services.

Response: We agree that in situations where a beneficiary receives outpatient services from a Medicare participating hospital or CAH while temporarily absent from the SNF, the beneficiary continues to be considered a SNF resident specifically with regard to the comprehensive care plan required under § 483.20(b). Such services are, therefore, subject to the SNF consolidated billing provision and should be exempt from the hospital outpatient bundling requirements. The final regulations at § 410.42(b)(7) reflect this exception.

We note that the SNF consolidated billing requirements, under § 411.15(p)(3)(iii), do not apply to a limited number of exceptionally intensive hospital outpatient services that lie well beyond the scope of care that SNFs would ordinarily furnish, and thus beyond the ordinary scope of SNF care plans. The hospital outpatient services that are currently included in this policy are: Cardiac catheterization; computerized axial tomography (CAT) scans; MRIs; ambulatory surgery involving the use of an operating room; emergency room services; radiation therapy; angiography; and lymphatic and venous procedures. When a hospital or CAH provides these services to a beneficiary, the beneficiary's status as a SNF resident ends, but only with respect to these services. The beneficiary is now considered to be a hospital outpatient and the services are subject to hospital outpatient bundling requirements. In November 1998, we issued Program Memorandum transmittal number A–98–37, which provides additional clarification on this exclusion as well as a list of specific HCPCS codes that identify the services that are excluded from SNF consolidated billing but subject to hospital outpatient bundling.

Comment: One commenter understood that the proposed rule

would permit payment for all diagnostic tests that are furnished by a hospital or other entity if the patient leaves the hospital and obtains the service elsewhere; however, the commenter requested clarification as to the treatment of "outsourced" hospital departments. The commenter stated that hospitals are increasingly outsourcing departments to providers that can furnish services efficiently. Often these providers do not operate as "under arrangements" providers to the hospital, but as free-standing providers offering outpatient services on hospital grounds. The commenter specifically asked whether a free-standing entity providing outpatient services on hospital grounds, but operated independently of the hospital is able to bill separately for services furnished or is the entity considered to be part of the hospital and required to furnish services "under arrangement."

Response: A free-standing entity, that is, one that is not provider-based, may bill for services furnished to beneficiaries who do not meet the definition of a hospital outpatient at the time the service is furnished. Our bundling requirements apply to services furnished to a "hospital outpatient," as defined in § 410.2, during an "encounter," also defined in § 410.2.

Comment: One commenter indicated that while the proposed revision to § 1003.102(b) accurately reflected the statutory directive that the basis for imposing a CMP is a "bill or request for payment," the proposed amendment to § 1003.103(a) regarding the appropriate penalty amount to be imposed for bundling violations was in error. The commenter indicated that the OIG lacks the authority to impose a CMP in the amount of $10,000 for these violations, and that such a penalty should be not more than $2,000 for each violation.

Response: The commenter is correct. While section 231(c) of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191, increased the CMP maximum amount from $2,000 to $10,000, the statute sets forth "items or services" as the basis upon which a higher CMP amount may be assessed. However, with regard to bundling violations, the Secretary may impose a CMP only on the basis of a "bill or request for payment" rather than "for each item and service" as stated in the proposed revision to § 1003.103. We are correcting this error by adding a new § 1003.103(k) to indicate that the OIG may impose a penalty of not more than $2,000 for each bill or request for items and services furnished to hospital patients in violation of the bundling requirements.

III. Hospital Outpatient Prospective Payment System (PPS)

In this section, we designate the services for which Medicare will make payment under the hospital outpatient PPS, the payment rates set for those services, and the method by which we determined the outpatient PPS payment and coinsurance amounts.

We explain the structure of the hospital outpatient PPS, respond to comments that we received about the proposed PPS, and describe modifications that we made to the proposed PPS in response to comments, such as provisions we are making to expedite appropriate payment for new technologies and provisions to pay for blood and blood products.

In this section, we also discuss how we will implement requirements enacted by the BBRA 1999, including transitional payment corridors and other payment adjustments such as outliers and transitional pass-throughs.

A. Hospitals Included In or Excluded From the Outpatient PPS

This PPS applies to covered hospital outpatient services furnished by all hospitals participating in the Medicare program, except as noted below. Partial hospitalization services in community mental health centers (CMHCs) are also paid under this PPS. Exclusions from outpatient PPS are different and more limited than exclusions from inpatient PPS. Thus, hospitals or distinct parts of hospitals that are excluded from the inpatient PPS are included in the outpatient PPS, to the extent that the hospital or distinct part furnishes outpatient services. For example, we will make payment under the outpatient PPS for outpatient psychiatric services. The outpatient services provided by hospitals of the Indian Health Service (IHS) will continue to be paid under separately established rates which are published annually in the **Federal Register**. We intend to develop a plan that will help these facilities transition to the PPS and will consult with the IHS to develop this plan.

The following hospitals are excluded from the outpatient PPS:

- Certain hospitals in Maryland qualify under section 1814(b)(3) of the Act for payment under the State's payment system. The excluded services are limited to those paid under the State's payment system as described in section 1814(b)(3) of the Act. Any other outpatient services furnished by the hospital are paid under the outpatient PPS.
- Critical access hospitals that are paid under a reasonable cost based system, as required under section 1834(g) of the Act.

Comment: National and State associations representing children's hospitals and a number of individual children's hospitals located across the country strongly recommended that their hospitals be excluded from the hospital outpatient PPS just as they have been excluded from the hospital inpatient PPS. These commenters argued that the exclusion should apply to outpatient services furnished by children's hospitals because these hospitals treat a unique patient group whose health needs are different from those of adult beneficiaries entitled to Medicare benefits. The commenters further argued that services to Medicare patients are, on average, only 1 percent of the total inpatient and outpatient services that children's hospitals furnish and that these services are largely ESRD services that are already excluded from the hospital outpatient PPS. The commenters were concerned that the resources required to implement and comply with the new system would be disproportionately high relative to the small number of patients who would be affected by the new system. In addition, the impact analysis that accompanied the proposed rule estimated that children's hospitals would lose more than 20 percent of their Medicare revenues under the new system. Commenters expressed great concern about this loss of revenue.

Response: Our most recent analysis of the impact on hospitals of the PPS shows a negative effect for children's hospitals of 11.9 percent, which is significantly less than what we estimated in the proposed rule. However, the transitional corridor payments provided by the BBRA 1999 will protect these hospitals from even this level of loss through 2004. The estimated loss for CY 2000–2001 for children's hospitals is only 3.2 percent. (See Table 2 in section IX of this preamble.) As we discuss in section III.H.2 below, we will conduct extensive analyses during the first years of implementation of the PPS to determine whether we should propose adjustments for certain types of hospitals, including children's hospitals, when the transitional corridor provision expires. In the meantime, we are not excluding any special class of hospital from the PPS.

B. Scope of Facility Services

Section 1833(t)(1)(B)(i) of the Act gives us the authority to designate the services to be covered under the hospital outpatient PPS. In this section of the final rule, we designate the types

of services included or excluded under the hospital outpatient PPS.

1. Services Excluded From the Scope of Services Paid Under the Hospital Outpatient PPS

a. Background

In developing a hospital outpatient PPS, we want to ensure that all services furnished in a hospital outpatient setting will be paid on a prospective basis. We have already been paying, in part, for some hospital outpatient services such as clinical diagnostic laboratory services, orthotics, and end-stage renal disease (ESRD) dialysis services based on fee schedules or other prospectively determined rates that also apply across other sites of ambulatory care. Rather than duplicate existing payment systems that are effectively achieving consistency of payments across different service delivery sites, we proposed to exclude from the outpatient PPS those services furnished in a hospital outpatient setting that were already subject to an existing fee schedule or other prospectively determined payment rate. The similar payments across various settings create a more level playing field in which Medicare makes virtually the same payment for the same service, without regard to where the service is furnished.

We therefore proposed to exclude from the scope of services paid under the hospital outpatient PPS the following:

- Services already paid under fee schedules or other payment systems including, but not limited to: screening mammographies, services for patients with ESRD that are paid for under the ESRD composite rate; the professional services of physicians and non-physician practitioners paid under the Medicare physician fee schedule; laboratory services paid under the clinical diagnostic laboratory fee schedule; and DME, orthotics, prosthetics, and prosthetics devices, prosthetic implants, and supplies (DMEPOS) paid under the DMEPOS fee schedule when the hospital is acting as a supplier of these items. An item such as crutches or a walker that is given to the patient to take home, but that may also be used while the patient is at the hospital, would be billed to the DME regional carrier rather than paid for under the hospital outpatient PPS.
- Hospital outpatient services furnished to SNF inpatients as part of his or her resident assessment or comprehensive care plan (and thus included under the SNF PPS) that are furnished by the hospital "under arrangements" but billable only by the SNF, regardless of whether or not the patient is in a Part A SNF stay.
- Services and procedures that require inpatient care.

The statute excludes from the definition of "covered OPD services" ambulance services, physical and occupational therapy, and speech-language pathology services, specified in section 1833(t)(1)(B)(iii) of the Act (redesignated as section 1833(t)(1)(B)(iv) by section 201(e) of the BBRA 1999). These services are to be paid under fee schedules in all settings.

b. Comments and Responses

Comment: One commenter urged that we exclude services furnished to ESRD patients from the scope of the hospital outpatient PPS.

Response: Services furnished to ESRD patients include dialysis, Epoietin (EPO), drugs, and supplies provided outside the composite rate, surgery specific to access grafts, and many other medical services related to renal disease or to other coexisting conditions. We will continue to base payment for dialysis services on the composite rate, and we will continue to pay for EPO based on the current rate established for that service. The drugs and supplies that are used within a dialysis session, but for which payment is not included in the composite rate, are paid outside that rate. We have to conduct further analyses in order to develop appropriate APC groups upon which to base payment. In the meantime, we will continue to pay on a reasonable cost basis for dialysis related drugs and supplies that are paid outside the composite rate.

Comment: A hospital industry association took exception to the requirement that hospitals obtain a separate supplier number, post a bond, and bill separately to the DME regional carrier for DME supplies such as crutches. They believe that this is an unnecessary requirement that results in additional costs for small rural hospitals. The commenter recommended that we include within the PPS rate supplies such as crutches that are directly related to the provison of the hospital outpatient services or that we permit hospitals to bill under the DME fee schedule without having to obtain a DME supplier number or post a bond.

Response: Section 1834(j)(1)(A) of the Act provides that no payment may be made for items furnished by a supplier of medical equipment and supplies unless the supplier obtains a supplier number. Section 1834(a)(1)(C) of the Act provides that payment for DME can be made only under the DME fee schedule. Therefore, to receive payment for DME under Medicare, a hospital must obtain a supplier number and must meet the other requirements set by applicable Medicare rules and regulations.

Comment: Several major hospital associations and a number of other commenters opposed our proposal to exclude from payment certain procedures that we designate as "inpatient only." Other commenters, including a physician professional society, agree that many of the procedures that we designated in the proposed rule as "inpatient only" are currently performed appropriately and safely only in the inpatient setting. However, those commenters believe that our explicit exclusion of individual procedures, besides being unnecessary, could have an adverse effect on advances in surgical care. Some commenters alleged that we provided no concrete support for designating procedures as "inpatient only." A number of commenters argued that medicine is not practiced uniformly across the nation and that some services listed among the exclusions are currently being performed on an outpatient basis in various parts of the country with positive outcomes.

An industry association stated that we failed to consider surgical judgment and patient choice in determining the appropriate treatment setting for certain services that we proposed to exclude from coverage. Other commenters believe that the appropriate site for performing a medical service is best determined by physicians and their patients. One professional society stated that case law including medical malpractice case law is sufficient to ensure that medical services are delivered in the appropriate treatment setting and in conformance with prevailing medical standards.

Response: We recognize and acknowledge that our assigning "inpatient only" status to certain services and procedures raises numerous questions and concerns, and that some individual determinations can be reasonably debated. However, section 1833(t)(1)(B) of the Act explicitly authorizes the Secretary to designate which hospital outpatient services are to be "covered OPD services" subject to payment under the hospital outpatient PPS. Therefore, we have had to select from the universe of possible services those that we determine are reasonable, necessary, and appropriate for Medicare payment under the hospital outpatient PPS. We note that our designation of a service as "inpatient only" does not necessarily preclude the service from being furnished in a hospital outpatient

setting, but means only that Medicare will not make payment for the service were it to be furnished to a Medicare beneficiary in that setting. This unfortunately leaves the beneficiary liable for payment if the procedure is in fact performed in the outpatient setting. We hope that hospitals will advise beneficiaries of the consequences if procedures on the inpatient list are provided as outpatient services (that is, denial of Medicare payment with concomitant beneficiary liability). In section III.C.5 of this preamble, we discuss in greater detail our rationale for designating specific procedures as "inpatient only." In response to comments, we have removed the "inpatient only" status from a number of services, which will allow them to be paid under the hospital outpatient PPS. We emphasize our intention to review annually, in consultation with hospital and professional societies and associations and the expert outside advisory panel mandated by the BBRA 1999, those procedures classified as "inpatient only" to ensure that the designation remains consistent with current standards of practice.

Comment: One industry association contends that the statutory and regulatory authorities that we cite in the proposed rule (section 1862(a)(1)(A) of the Act and 42 CFR 411.15(k)(1), respectively) do not support the proposed medical services exclusions. The commenter argues that those provisions are the basis for prohibiting coverage for services that are not reasonable and necessary for the diagnosis or treatment of an illness or injury or to improve the functioning of a malformed body member. The commenter states that these provisions are not the basis upon which we identified services for the "inpatient only" list. The commenter further states that use of these provisions as a basis for denying coverage of the services would be confusing to beneficiaries.

Response: The commenter is correct that the proper citations are not section 1862(a)(1) of the Act and 42 CFR 411.15(k)(1). In fact, the basis for our designating certain procedures as "inpatient only" is dependent on medical judgment regarding the proper site of service, and the proper citation for such designation is section 1833(t)(1)(B) of the Act. In some instances, the identification of services to be included or excluded from this PPS was perfectly clear. For example, emergency departments (EDs) are outpatient departments of hospitals. Thus emergency services rendered in EDs qualify as outpatient services. On the other hand, coronary artery bypass graft surgery (CABG) requires many hours in surgery, part of the time with the patient's life being sustained by artificial means; a period of hours, if not days, in the surgical intensive care unit (ICU); and further care in an inpatient unit with frequent nursing attention. It clearly cannot be an outpatient procedure, and it would not be reasonable to consider it for inclusion in this PPS. There are many procedures which require similar intensity of care, including periods in specialty ICUs and several days of intense nursing attention.

Some procedures formerly performed only in the inpatient setting, however, have moved to the outpatient site of service. This movement has taken place due to new, less-invasive surgical techniques, such as laparoscopy, or new anesthesia agents that clear from the body more rapidly, allowing some patients to have general anesthesia in the morning and return home that afternoon. Thus we have had to decide which procedures may reasonably be performed in the outpatient setting, and which cannot. We have been guided in this decision by our medical advisors' clinical judgment regarding what is reasonable in various settings, comments we received in response to the proposed rule, and bill data which shows movement from one site to another. In section III.C.5, we discuss the criteria we considered in defining "inpatient only" procedures.

Comment: One hospital asked how we would pay a hospital that routinely performs on an outpatient basis a procedure that we proposed to designate as "inpatient only." The commenter recommended that a specific billing mechanism be used to guarantee payment in these situations.

Response: Services designated as "inpatient only" will be excluded from Medicare payment under the hospital outpatient PPS. If the service is performed on an outpatient basis and a claim is submitted, the claim will be denied, and the beneficiary may be billed for the service. We would consider this a very poor policy on the hospital's part, and would hope that hospitals decide to abide by the constraints of the inpatient list.

Comment: One commenter noted that hospital outpatient departments have never been limited to a list of approved procedures as are Medicare participating ASCs. The commenter stated that the "inpatient only" policy would exclude payment for a significant number of procedures that have traditionally been performed in the hospital outpatient setting. The commenter stated that some of the excluded procedures incorporate an observation stay in a recovery care center. The commenter contended that many of the excluded procedures could be safely performed in the outpatient setting particularly if a 24 to 72 hour recovery care center is part of the outpatient surgical care provided.

Response: Routinely billing an observation stay for patients recovering from outpatient surgery is not allowed under current Medicare rules nor will it be allowed under the hospital outpatient PPS. As we state in section III.C.5 of this preamble, one of the primary factors we considered as an indicator for the "inpatient only" designation is the need for at least 24 hours of postoperative care.

Comment: One commenter asked what option a hospital has if a beneficiary's secondary insurer requires that a procedure included on the Medicare inpatient only list be performed on an outpatient basis.

Response: Upon implementation, the provisions of this final rule will govern payment for Medicare covered outpatient services furnished by hospitals to Medicare beneficiaries. Medicare payment policy and rules are not binding on employer-provided retiree coverage that may supplement Medicare coverage. Medigap insurers, however, must follow Medicare's coverage determinations.

c. Payment for Certain Implantable Items Under the BBRA 1999

In the course of identifying items and services whose costs we proposed to designate for payment under the hospital outpatient PPS, we gave considerable thought to including implantable items and services because these items and services are such an integral part of the procedure by which they are inserted or implanted. However, a number of the more common implants such as aqueous shunts, hallux valgus implants, infusion pumps, and neurostimulators, are classified as implantable prosthetics or DME. The statutory language governing payment for DMEPOS provides that, notwithstanding any other provision of the Medicare statute, DMEPOS must be paid for using the DMEPOS fee schedule. Therefore, under the proposed rule, the scope of services paid under the hospital outpatient PPS did not include implantable prosthetics and DME paid under the DMEPOS fee schedule. However, we did propose to package payment for implanted items such as stents, vascular catheters, and venous ports within the APC payment rate for the procedure related to the insertion of these items because we

define these items as supplies rather than as prosthetic implants or implantable DME.

Section 201(e) of the BBRA 1999 amends section 1833(t)(1)(B) of the Act to provide that "covered OPD services" include implantable items described in paragraph (3), (6), or (8) of section 1861(s) of the Act. The conference report accompanying the BBRA 1999, H. R. Rep. No. 436 (Part I), 106th Cong., 1st Sess. (1999), expresses the belief of the conferees that the current DMEPOS fee schedule is not appropriate for certain implantable medical items such as pacemakers, defibrillators, cardiac sensors, venous grafts, drug pumps, stents, neurostimulators, and orthopedic implants as well as items that come into contact with internal human tissue during invasive medical procedures, but are not permanently implanted. In the conference report agreement, the conferees state their intention that payment for these items be made through the outpatient PPS, regardless of how these products might be classified on current HCFA fee schedules. The implantable items affected by this BBRA 1999 requirement include prosthetic implants (other than dental) that replace all or part of an internal body organ (including colostomy bags and supplies directly related to colostomy care and including replacement of these devices); implantable DME; and implantable items used in performing diagnostic x-rays, diagnostic laboratory tests, and other diagnostic tests.

Comment: A number of commenters disagreed with our proposal to pay under the DMEPOS fee schedule for implantable items and devices that require surgical insertion. We received comments on specific implantable items, including Vitrasert (a drug delivery system that is implanted in the eye); cochlear devices, which allow the profoundly deaf to hear sound and in some cases recognize speech; nerve stimulators that treat intractable epilepsy and other diseases; new technology intraocular lenses implanted following cataract surgery; and access devices for dialysis treatment. Commenters were also concerned that the costs of some implantable devices not paid under the DMEPOS fee schedule, which we packaged in our proposed rule, were not properly recognized in the APC payment.

Response: As we explain above, the amendments made to the statute by section 201(e) of the BBRA 1999 provide for payment to be made under the hospital outpatient PPS for implantable items that are part of diagnostic x-rays, diagnostic laboratory tests, and other diagnostic tests; implantable durable medical equipment; and implantable prosthetic devices (other than dental). This BBRA 1999 provision requires that an implantable item be classified to the group that includes the service to which the item relates. Thus, under this final rule with comment period, we are including within the scope of the hospital outpatient PPS items such as aqueous shunts that would, absent the BBRA 1999 provision, have been paid under the DMEPOS fee schedule. Because implantable items are now packaged into the APC payment rate for the service or procedure with which they are associated, certain items may be candidates for the transitional pass-through payment, which is discussed in detail in section III.D of this preamble. The APC rates may not in every case perfectly recognize the cost of implantable items. We will continue to review the impact of packaging implantables in future updates.

d. Summary of Final Action

We are modifying proposed § 419.22 to remove prosthetic implants from the list of services excluded from payment under the hospital outpatient PPS. We are adding subparagraphs (9), (10), and (11) to proposed § 419.2(b), to include the following in the list of items and services whose costs are included in hospital outpatient PPS payment rates: prosthetic implants (other than dental) that replace all or part of an internal body organ (including colostomy bags and supplies directly related to colostomy care), and including replacement of these devices; implantable DME; and implantable items used in performing diagnostic x-rays, diagnostic laboratory tests, and other diagnostic tests.

2. Services Included Within the Scope of the Hospital Outpatient PPS

We proposed to include three categories of services within the scope of the outpatient PPS, as follows:

a. Services for Patients Who Have Exhausted Their Part A Benefits

Section 1833(t)(1)(B)(ii) of the Act provides for Medicare payment under the hospital outpatient PPS for certain services designated by the Secretary that are furnished to inpatients who have exhausted their Part A benefits or who are otherwise not in a covered Part A stay. Examples of services covered under this provision include diagnostic x-rays and certain other diagnostic services and radiation therapy covered under section 1832 of the Act.

b. Partial Hospitalization Services

Section 1833(a)(2)(B) of the Act provides that partial hospitalization services furnished in CMHCs be paid under the hospital outpatient PPS. Partial hospitalization is a distinct and organized intensive psychiatric outpatient day treatment program, designed to provide patients who have profound and disabling mental health conditions with an individualized, coordinated, comprehensive, and multidisciplinary treatment program.

c. Services Designated by the Secretary

We proposed to designate the following services to be paid under the hospital outpatient PPS:

- All hospital outpatient services, except those that are identified as excluded, above, in section III.B.1 of this final rule. The types of services subject to payment under the hospital outpatient PPS include the following: surgical procedures; radiology, including radiation therapy; clinic visits; emergency department visits; diagnostic services and other diagnostic tests; partial hospitalization for the mentally ill; surgical pathology; and cancer chemotherapy.
- Specific hospital outpatient services furnished to a beneficiary who is admitted to a Medicare-participating SNF but who is not considered to be a SNF resident, for purposes of SNF consolidated billing, with respect to those services that are beyond the scope of SNF comprehensive care plans. The specific hospital outpatient services that are excluded from SNF consolidated billing are cardiac catheterization, computerized axial tomography (CAT) scans, MRIs, ambulatory surgery involving the use of an operating room, emergency room services, radiation therapy, angiography, and lymphatic and venous procedures.
- Supplies such as surgical dressings used during surgery or other treatments in the hospital outpatient setting that are also paid under the DMEPOS fee schedule. Payment for these supplies, when they are furnished in a hospital outpatient setting, is packaged into the APC payment rate for the procedure or service with which the items are associated.
- Certain preventive services furnished to healthy persons, such as colorectal cancer screening.

Section 4523(d)(3) of the BBA 1997 amended section 1833(a)(2)(B) of the Act to provide that we discontinue reasonable cost based payment and instead make Part B payment under the hospital outpatient PPS for certain medical and other health services when

they are furnished by other providers such as hospices, SNFs, and HHAs. Specifically, we proposed to pay under the hospital outpatient PPS for the following medical and other health services when they are furnished by a provider of services:

- Antigens (as defined in 1861(s)(2)(G) of the Act);
- Splints and casts (1861(s)(5) of the Act);
- Pneumococcal vaccine, influenza vaccine, hepatitis B vaccine (1861(s)(10) of the Act).

Upon implementation of the hospital outpatient PPS, we would make Part B payment for the above services under the outpatient PPS when they are furnished by an HHA or hospice program. We would also make payment for antigens and the vaccines under the PPS when they are furnished by CORFs. (Splints and casts furnished by CORFs are paid under the rehabilitation fee schedule.) However, this provision would not apply to services furnished by a CORF that fall within the definition of CORF services at section 1861(cc)(1) of the Act. It also would not apply to services furnished by a hospice within the scope of the hospice benefit. Nor would it apply to services furnished by HHAs to individuals under an HHA plan of treatment within the scope of the home health benefit.

d. Summary of Final Action

We received no comments about the services we proposed to include within the scope of the hospital outpatient PPS. As noted in the preceding section III.B.1, we added certain implantable items to § 419.2(b) to implement section 201(e) of the BBRA 1999.

3. Hospital Outpatient PPS Payment Indicators

In the September 8, 1998 proposed rule in the **Federal Register**, we proposed a payment status indicator for every code in the HCPCS to identify how the service or procedure described by the code would be paid under the hospital outpatient PPS. We received no comments on our proposal to assign a payment status indicator to every HCPCS code. (In section III.C.6, below, we respond to commenters who disagreed with the payment status indicator that we proposed for individual codes.) Therefore, we are implementing payment status indicators as part of the hospital outpatient PPS. Addendum B displays the final payment status indicator for each HCPCS code, including codes for incidental services that are packaged into APC payment rates. Addendum E identifies the HCPCS codes to which we have assigned payment status indicator "C" to identify inpatient services that are not payable under outpatient PPS as implemented by this final rule. We respond below, in section III.C.5, to public comments about the specific codes we classified as inpatient services in the proposed rule and our final determination regarding the payment status of those codes.

The following are the payment status indicators and description of the particular services each indicator identifies:

- We use "A" to indicate services that are paid under some other method such as the DMEPOS fee schedule or the physician fee schedule.
- We use "C" to indicate inpatient services that are not paid under the outpatient PPS.
- We use "E" to indicate services for which payment is not allowed under the hospital outpatient PPS. In some instances, the service is not covered by Medicare. In other instances, Medicare does not use the code in question, but does use another code to describe the service.
- We use "F" to indicate corneal tissue acquisition costs, which are paid separately.
- We use "G" to indicate a current drug or biological for which payment is made under the transitional pass-through.
- We use "H" to indicate a device for which payment is made under the transitional pass-through.
- We use "J" to indicate a new drug or biological for which payment is made under the transitional pass-through.
- We use "N" to indicate services that are incidental, with payment packaged into another service or APC group.
- We use "P" to indicate services that are paid only in partial hospitalization programs.
- We use "S" to indicate significant procedures for which payment is allowed under the hospital outpatient PPS but to which the multiple procedure reduction does not apply.
- We use "T" to indicate surgical services for which payment is allowed under the hospital outpatient PPS. Services with this payment indicator are the only services to which the multiple procedure payment reduction applies.
- We use "V" to indicate medical visits for which payment is allowed under the hospital outpatient PPS.
- We use "X" to indicate ancillary services for which payment is allowed under the hospital outpatient PPS.

The table below lists types of services, the hospital outpatient PPS payment status indicator assigned to each type of service, and the basis for Medicare payment for the service.

MEDICARE HOSPITAL OUTPATIENT PPS PAYMENT STATUS INDICATORS: HOW MEDICARE PAYS FOR VARIOUS SERVICES WHEN THEY ARE BILLED FOR HOSPITAL OUTPATIENTS

Indicator	Service	Status
A	Pulmonary Rehabilitation; Clinical Trial	Not paid.
C	Inpatient Procedures	Not paid.
A	Orthotics, and Non-implantable Durable Medical Equipment and Prosthetics.	DMEPOS Fee Schedule.
E	Nonallowed Items and Services	Not paid.
A	Physical, Occupational and Speech Therapy	Rehab Fee Schedule.
A	Ambulance	Reasonable cost or charge or, when implemented, Ambulance Fee Schedule.
A	EPO for ESRD Patients	National Rate.
A	Clinical Diagnostic Laboratory Services	Lab Fee Schedule.
A	Physician Services for ESRD Patients	Bill to Carrier.
A	Screening Mammography	Lower of Charge or National Rate.
N	Incidental Services, Packaged into APC Rate	Packaged; No Additional Payment Allowed.
P	Partial Hospitalization Services	Paid Per Diem.
S	Significant Procedure, Not Reduced When Multiple Procedures Performed.	Paid Under Hospital Outpatient PPS (APC Rate).
T	Significant Procedure, Multiple Procedure Reduction Applies	Hospital Paid Under Outpatient PPS (APC Rate).

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MEDICARE HOSPITAL OUTPATIENT PPS PAYMENT STATUS INDICATORS: HOW MEDICARE PAYS FOR VARIOUS SERVICES WHEN THEY ARE BILLED FOR HOSPITAL OUTPATIENTS—Continued

Indicator	Service	Status
V	Visit to Clinic or Emergency Department	Paid Under Hospital Outpatient PPS (APC Rate).
X	Ancillary Service	Paid Under Hospital Outpatient PPS (APC Rate).
F	Acquisition of Corneal Tissue	Paid at reasonable cost.
G	Current Drug/Biological Pass-Through	Additional payment.
H	Device Pass-Through	Additional payment.
J	New Drug/Biological Pass-Through	Additional payment.

C. Description of the Ambulatory Payment Classification (APC) Groups

1. Setting Payment Rates Based on Groups of Services Rather Than on Individual Services

In our March 17, 1995 report to Congress, we recommended that groups similar to the ambulatory patient groups (APGs) developed by 3M Health Information Systems (3M) be used as the basis for the hospital outpatient PPS. We made this recommendation after examining a number of other payment systems that were already in place or under development, including DRGs that are the basis for Medicare payment for hospital inpatient services, the Medicare physician fee schedule that was implemented in 1992, and the payment groups that have been the basis for Medicare payments for ambulatory surgical center (ASC) facility services since 1982.

As provided by the BBA 1997, section 1833(t)(2)(A) of the Act requires the Secretary to develop a classification system for covered outpatient services. Section 1833(t)(2)(B) provides that this classification system may be composed of groups, so that services within each group are comparable clinically and with respect to the use of resources. The statute refers to "each such service (or group of services)," confirming that the Secretary may choose or not choose to group services.

We explain in our proposed rule that we revised the APGs, based on more recent Medicare data than that used by 3M, to create the ambulatory payment classification (APC) system. We proposed to group services identified by HCPCS codes and descriptors within APC groups as the basis for setting payment rates under the hospital outpatient PPS. We indicated that we organized the APC groups so that the services within each group would be homogeneous both clinically and in terms of resource utilization. We invited comments on our proposal to set rates on the basis of groups of services rather than on individual codes.

Comments: Some commenters claimed that basing payment on APC groups rather than on individual services would result in underpayment for services that are more resource intensive, causing hospitals with a more resource intensive case mix to lose money. An organization representing physicians strongly opposed the use of APCs, because it believes that it is not possible to achieve an incentive-neutral, "level playing field" payment system using groups of codes or services. This organization favored replacing the APC system with a fee schedule based on individual services, similar to the Medicare physician fee schedule, as MedPAC recommends in its 1999 report to Congress. (We address the MedPAC recommendation later in this section.) The same physician organization is concerned that the broad range of services included in each APC will create an incentive for hospitals to provide lower cost services, even though a patient might require higher cost services. This organization expressed concern about the negative impact on physicians if a payment methodology similar to the APC system were applied to payment for physician services. To facilitate pricing new codes using individual services rather than APC groups, the same organization suggested that we establish a "relative value relationship in direct costs" between the new code and a comparable code, or that we consult AMA's Specialty Society RVS Updating Committee (RUC) for advice on relative cost relationships.

One major hospital association expressed its preference for a service-specific fee schedule because of the wide variation in costs represented by groups of codes. Another hospital association advocated using individual services rather than groups of services as the basis for ratesetting, but recommended, if we were to use some form of grouping, that we apply tight limits on the variations of costs for services within a group.

Response: We understand the concerns of commenters that setting payment weights using groups of services rather than individual services could result in payment for particular services that might not fully offset the costs that hospitals incur when they furnish expensive, resource-intensive services. However, we believe these concerns are in large measure addressed by the provisions of this final rule. As we explain in section III.C.6, we significantly restructured the proposed APC groups, first in response to comments and, second, to comply with section 1833(t)(2) of the Act, as amended by the BBRA 1999, which limits the variation of costs of services classified within a group. The result is more APC groups with fewer codes and a narrower range of costs in each group. In addition, other provisions of the BBRA 1999, such as the transitional pass-throughs (see section III.D, below), and outlier payments and transitional corridors (see section III.H, below) protect hospital revenues while hospitals gain experience with the PPS.

Medicare Payment Advisory Commission (MedPAC) Recommendation

In both its March 1998 and March 1999 reports to the Congress on Medicare payment policy, MedPAC recommends that payment rates under the hospital outpatient PPS be based upon costs of individual services rather than groups of similar services to help ensure consistent payments across ambulatory settings. In its March 1999 report, MedPAC asserts its belief that the burden imposed by our proposed APC system outweighs its benefits in ambulatory settings. MedPAC gives several reasons to support its position.

- The use of groups to calculate weights masks questionable cost data for low volume and new procedures.
- Different classes of hospitals face disproportionate impacts, suggesting APC groups may not be as homogeneous as we believe.
- Grouping services will likely create additional administrative burdens for hospitals, because hospitals may have to purchase or develop new software and will experience additional education and training costs.

Response: We carefully reviewed the concerns about using groups of services

expressed by MedPAC in its March 1998 report, and we responded to those concerns in our proposed rule (63 FR 47562). Even though MedPAC concedes in its March 1999 report that using groups to set rates has certain potential advantages, MedPAC continues to oppose using groups because, according to MedPAC, they entail considerable costs and drawbacks and necessitate "a much more complicated design logic" than would be required using a service-level fee schedule.

We do not share MedPAC's concerns. We have a high level of confidence in the ratesetting method using APC groups that we implement in this final rule with comment period. As we explain below, in section III.C.6, we have extensively restructured the APC groups to respond to comments on the proposed rule, to incorporate specific provisions of the BBRA 1999, and to correct some errors that had come to our attention. We believe that by using median costs in the calculation of group weights, we limit the extent to which infrequently performed services with suspect costs can affect the payment rate of an APC group.

As discussed below in the impact analysis (section IX of this preamble), the provisions of this final rule with comment period, which include setting rates using APC groups, alleviate to a large extent the disproportionate impacts on different classes of hospitals estimated in our proposed rule. In addition, as we explain in section III.C.6, when we restructured the APC groups, we were particularly attentive to the degree of provider concentration associated with the individual services within a group in order to avoid biasing the payment system against any subset of hospitals.

Finally, none of the commenters cited increased administrative burden as an argument against using groups. Even though we are using APC groups to set rates under the hospital outpatient PPS, hospitals will bill for services using HCPCS codes (not APCs) using the same claims forms that they use currently. Although to receive payment under the new system, hospitals will have to more fully code the services they furnish, they will not have to know to which APC the service is assigned in order to determine the payment amount. We are publishing the payment rate applicable to each HCPCS code in Addendum B of this final rule. Any burdens on hospitals necessitating additional technical assistance, training, or systems changes are more a function of implementing an entirely new payment system than of our setting rates on the basis of groups of services.

Final Action: The payment rates implemented by this final rule with comment period are determined based on APC groups that use HCPCS codes to describe individual services. The codes assigned to an APC group are comparable clinically and in terms of resource use.

2. Packaging Under the APC System

a. Summary of Proposal

In our proposed rule, we described packaged services as those items or services that we recognized as contributing to the cost of the procedures or services in an APC group, and for which we would not make separate payment. We proposed to include as packaged services use of the operating room and recovery room, anesthesia, medical/surgical supplies, pharmaceuticals, observation, blood, intraocular lenses, casts and splints, the costs of acquiring tissue such as corneal tissue for surgical insertion and various incidental services such as venipuncture. We packaged the services (and their costs) within the APC group of procedures with which they were delivered in the base year. For a list of proposed packaged services grouped by hospital revenue centers, refer to the June 30, 1999 correction notice (64 FR 35258).

b. General Comments and Responses (Supporting or Objecting to Packaging)

Comment: Few commenters disagreed with our proposal to aggregate into one payment the costs for a "package" of services variously related to a procedure or to the principal service being furnished. However, many commenters did object to our packaging costs for certain specific items such as expensive drugs and pharmaceuticals, observation services in the emergency department, blood and blood products, corneal tissue acquisition costs, and chemotherapy and supportive drugs. Commenters, fearful that packaging items and services will result in lower payments that do not offset the high costs of particularly expensive items, raised the prospect of dire consequences such as forcing hospitals to use only the cheapest drugs, being unable to employ oncology nurses, eliminating otherwise clinically necessary ancillary services, or not being able to hold emergency room patients for observation.

Response: We are persuaded by commenters' arguments that packaging payment for certain expensive items and services into an APC group rate could have such a potentially negative impact as to jeopardize beneficiary access to these items and services in the hospital outpatient setting. Therefore, in response to comments, we are not packaging within an APC payment rate the costs associated with certain specified items and services. Instead, we will make a separate APC payment for these particular items and services under the outpatient PPS. However, as we explain in section III.C.2.d, we do not concur with commenters who urge separate payment for observation services; rather, we are packaging the costs in the APC for each service with which observation services were billed in our 1996 database. We discuss in further detail below, in section III.C.2.d through section III.C.2.g, and in section III.C.6, the changes that we are making to the packaging we originally proposed. We address in section III.B.1, above, the BBRA 1999 provision that requires us to package into APC group rates payment for certain implantable items and devices. In section III.D, below, we describe additional payments for certain packaged medical devices, drugs, and biologicals that are provided as transitional pass-throughs under section 201(b) of the BBRA 1999.

As we gain experience with and collect additional cost data under the hospital outpatient PPS, we will review our policy to pay separately for certain items and services that would otherwise be packaged into the APC payment. Should we decide to modify this policy, we will do so through the rulemaking process as part of our annual hospital outpatient PPS update.

MedPAC Recommendation: In its March 1999 report to the Congress, MedPAC cites two models that Medicare uses to define a unit of payment: the DRG-based payment model for hospital inpatient services, and the Medicare physician fee schedule. MedPAC contends that services provided in the hospital outpatient setting more closely parallel those furnished in an office-based setting than those furnished as part of a hospital inpatient admission. Therefore, MedPAC recommends that, in establishing ambulatory care prospective payment systems in general, we define the unit of payment for ambulatory care facilities as an individually coded service, consisting of the primary service that is the reason for the encounter, and the necessary and essential ancillary services and supplies integral to it, including limited follow-up care if it is integral to the primary service, but not including physicians' services. MedPAC further recommends that the unit of payment be defined consistently across all ambulatory care settings.

Response: The packaging that we proposed as the basis for determining APC payment rates and that we will implement under the hospital outpatient PPS is generally consistent with MedPAC's recommendation. However, we did not propose to include "limited follow-up services" in our packaged groups under the hospital outpatient PPS because of the difficulty of matching in our database the costs of these services with their associated primary encounter. For now, hospitals are to bill follow-up care, such as suture removal, using an appropriate medical visit code. We did not propose, nor have we included in this final rule with comment period, provision for a global period for hospital outpatient services analogous to the global period affecting payments for professional services made under the Medicare physician fee schedule.

c. Packaging of Casts and Splints

Comment: One commenter stated that we should not package costs for casts and splints with other procedures.

Response: We proposed to assign payment status indicator "N" to CPT codes for strapping and casting services (CPT codes 29000–29750) to designate that these are incidental services for which payment is packaged into the APC rate for another service or procedure, in this case, the repair or reduction of a fracture or dislocation. After further review, we determined that strapping and casting services can be performed independently, for example, when a cast placed as a part of a procedure must later be replaced with another cast. Therefore, we have decided that strapping and casting services will not be packaged and we are creating two APCs (0058 and 0059) to pay for these services. The BBA 1997 required that we pay under the outpatient PPS for casting and strapping services furnished in HHAs and hospices, to the extent that these services are provided and are not within the patient's plan of care.

d. Packaging of Observation Services

We received many comments urging us to pay separately for observation services, particularly when patients are seen in the emergency department. Observation service is placing a patient in an inpatient area, adjacent to the emergency department, or, according to some comments, in the intensive care unit (ICU) or coronary care unit (CCU), in order to monitor the patient while determining whether he or she needs to be admitted, have further outpatient treatment, or be discharged. After 1983, many hospitals began to rely heavily on the use of observation services when peer review organizations questioned admissions under the hospital inpatient prospective payment system. However, in some cases, patients were kept in "outpatient" observation for days or even weeks at a time. This resulted in excess payments both from the Medicare program and from beneficiaries who generally paid a higher coinsurance. In response to this practice, in November 1996, we issued instructions limiting covered observation services to no more than 48 hours except in the most extreme circumstances. However, the cost data upon which the APC system is based contain all costs for observation in 1996, including those that exceeded the 48-hour limit imposed at the end of that year. We have packaged those costs into the service with which they were furnished in the base year. Thus, APC payments for emergency room visits include the costs of observation within the payment.

Comment: Some commenters acknowledged that being paid separately for observation following a surgical procedure was not necessary; the packaged recovery room and observation services were sufficient. However, a major concern of commenters was observation of patients with chest pain who had equivocal results on initial diagnostic testing. Commenters were concerned that the APC payment for these cases would not be adequate.

Response: We assume that chest pain patients, such as those described by the commenters, are sent to the CCU or ICU for observation. We believe that, in general, if a patient needs to be monitored in the ICU or CCU for any length of time, then that patient should be admitted as an inpatient. Furthermore, we have never considered care furnished in an ICU or CCU to be outpatient services. Existing cost reporting instructions allow for the use of these specialty beds during a shortage of regular inpatient beds, but charges are to reflect routine care, not intensive care.

Although, as noted above, we received many comments urging that observation services be covered as a separate APC, we continue to believe that these services have been used so inappropriately in the past that we will have to gather data under the PPS before considering constructing a separate APC. We have packaged observation wherever it was billed. Roughly $139 million was identified by revenue code 762 as representing observation services. An additional $253 million was identified in revenue codes 760, 761, and 769, which could be used for either observation or treatment room use. That $253 million is also packaged. (Both figures are in 1996 dollars.)

Further analyses will be necessary on the use of observation as an adjunct to emergency treatment, as in the case of chest pain. In order to ensure that we will have sufficient data for our future analyses, hospitals must continue to bill for observation using revenue center 762 and showing hours in the units field. Observation that is billed must represent some level of active monitoring by medical personnel. It must not be billed as a way to capture room and board for outpatients. During our first review of the APC groups, we will assess whether patients with certain conditions use observation services that should be separately recognized. Thus, correct diagnosis coding is required.

e. Packaging Costs of Procuring Corneal Tissue

Comment: We received about 2,000 comments from physicians, eye banks, and health care associations opposing our proposal to package corneal tissue acquisition costs into the APC payment for corneal transplant procedures. Most commenters argued that the payment for the procedures in proposed APC group 670, Corneal transplant, is grossly inadequate and that we have failed to recognize the high costs associated with tissue screening and testing procedures required by the Food and Drug Administration that are reflected in the fees charged by eye banks. In addition, commenters contended that we failed to recognize the wide variation in tissue acquisition costs resulting from the level of philanthropic contributions in different areas of the country and in different years. Commenters asserted that by packaging corneal tissue acquisition costs with the payment for corneal transplant surgery, we would limit beneficiary access to quality care, force eye banks that are nonprofit, low-cost operations to close, provide disincentives for philanthropic contributions, and impede our goal to increase tissue availability.

As part of their comments, the Eye Bank Association of America (EBAA) submitted a report of a study the EBAA commissioned on corneal tissue acquisition costs. The study was conducted by the Lewin Group which collected and analyzed data on corneal tissue acquisition costs incurred by 74 of EBAA's 100 members that are charitable nonprofit organizations. The report states that these 74 eye banks supplied approximately 82 percent of the corneal tissue distributed

throughout the United States in 1997. Based on the data that they collected, the Lewin Group found that the median gross acquisition cost per transplant is $1,689 in 1999 dollars. Of this amount, approximately $233 represents the national median value of donated in-kind services such as volunteer staff. The Lewin Group concluded that the proposed hospital outpatient PPS payment of $1,583 did not adequately reflect the cost of procuring corneal tissue.

Additionally, the report states that "fund raising and in-kind service values are not as well centered on their median values as the underlying cost data. Variability in fund raising and in-kind contributions not only exists between eye banks, but from year to year, within the same eye bank." According to the study, charitable contributions in the form of cash and in-kind services represented 28 percent of the eye banks' total gross cost for tissues furnished in 1997. The Lewin Group finds that "If HCFA were to move to fee schedule or other fixed-payment rate, and pays the adjusted median Gross cost Per Transplant * * * payment of $1689, HCFA would overpay some banks and underpay others, depending on philanthropy and in-kind services which varies from community to community and from year to year. The variation is too extreme to determine a fair rate-based system, without destroying the philanthropy the community is built upon."

Response: Based on the concerns raised by the commenters and the data presented in the Lewin Group study, we have decided not to package payment for corneal tissue acquisition costs with the APC payment for corneal transplant surgical procedures at this time. Instead, we will make separate payment, based on the hospital's reasonable costs incurred to acquire corneal tissue. Final payment will be subject to cost report settlement. To receive payment for corneal acquisition costs, hospitals must submit a bill using HCPCS code V2785, Processing, preserving and transporting corneal tissue, and indicate the acquisition cost rather than the hospital's charge on the bill. We intend to review this policy after we have acquired updated data on corneal procedures.

f. Packaging Costs of Blood and Blood Products

Comment: Many commenters, including the American Red Cross, a major medical association, teaching hospitals, and community oncology centers, believe that the payments we proposed for blood and blood-related products and for APCs that required the use of blood and blood-related products, were too low. Commenters claimed that the proposed payments are so much lower than actual costs that hospitals might be forced to stop providing a range of blood services, especially those more complex than a simple transfusion. The commenters were concerned that our proposed payment would not allow hospitals to furnish the most clinically appropriate blood products and services. The commenters also stated that blood and blood product exchange were not assigned to appropriate APCs, thus skewing payment rates and not recognizing the true costs of services with which blood and blood product exchange are associated. Commenters attributed this deficiency to the fact that certain blood-related products were incorrectly billed in the 1996 data we used as the basis for pricing APCs. Commenters were also concerned that we excluded procedures whose costs fell outside 3 standard deviations of the mean cost. One major organization recommended that we separate payment for blood and blood products from the service with which it is associated. This commenter also recommended separate payment for infusible blood-derived drugs, and that we base payment for transfusable blood products on costs. Some commenters recommended a transition period prior to full implementation of the proposed PPS.

Response: Based on the recommendations of commenters, we have created separate APC groups to pay for blood and blood products. We agree with the commenters that blood use varies enough that packaging blood units with their administration could lead to inequities. Because we were not able to capture enough claims data in the base year to accurately price the blood and blood-product APCs, we have based payment rates for these APCs on data provided by commenters, including suppliers of blood and blood products. We have based payment on current costs rather than 1996 costs so that we recognize the costs of recently developed blood safety tests. The safety of the nation's blood supply is a major concern of the Department of Health and Human Services, and we want to encourage appropriate testing and follow-up care.

g. Packaging Costs for Drugs, Pharmaceuticals, and Biologicals

We proposed to package the cost of drugs, pharmaceuticals, and biologicals with APC groups because we believe drugs are usually provided in connection with some other treatment or procedure. We collected aggregate cost data on all drugs that were billed with HCPCS codes and those billed with revenue center codes, whether or not a HCPCS was entered. By so doing, we captured historical patterns of drug use within the APC groups with which the drugs were billed during the base year. However, because we did not require HCPCS coding of drugs, we could not isolate costs associated with individual drugs, some of which are very expensive even though they are rarely used and may be used by only a few hospitals. As a result, we acknowledge that our proposed APC payment rates may not fully reflect costs of very expensive drugs or biologicals.

We also proposed to create separate drug groups for chemotherapeutic agents because those were separately identified in the APG system designed by 3M. However, because we did not have bills that were coded to identify drugs individually, we were concerned that the APC groups for chemotherapeutic groups may not have completely reflected the costs of these drugs.

Comment: Many commenters criticized the proposed APC payment rates because they were developed using cost data from 1996 that do not reflect the cost of many new drugs, pharmaceuticals, and biologicals. Some commenters expressed particular concern about oncology drugs such as paclitaxil (Taxol) and topotecan. Some advised that Taxol and carboplatin chemotherapy have become the standard treatment for ovarian carcinoma. A number of commenters believe that our proposal did not provide sufficient financial incentives to dissuade hospitals from using the older less effective chemotherapy regimens even though there is significantly greater toxicity and reduced chances of favorable outcomes associated with their use. Many commenters strongly suggested that we carve out new drugs and biologicals and those introduced after 1996 from the PPS and pay for them on a reasonable cost basis. Several commenters asserted that packaging drugs and pharmaceuticals within the APC groups understates their cost to hospitals and their value to patients.

Response: We believe the commenters' concerns have, to a great extent, been addressed by implementation of the BBRA 1999 pass-through provisions for drugs and biologicals. Addendum K includes a complete list of all drugs, biologicals, and medical devices that are eligible for pass-through payments. We encourage interested parties to follow the process outlined below in section III.I.4 of this

preamble to submit requests for consideration of drugs, biologicals, and medical devices that may be eligible for additional payment under the transitional pass-through provision but that are not listed in Addendum K.

h. Summary of Final Action

After consideration of comments received about packaging of services and of the requirements set forth in the amendments made to section 1833(t) of the Act by section 201(b) and section 201(e) of the BBRA 1999, we have revised the package of services directly related and integral to performing a procedure or furnishing a service on an outpatient basis whose costs will determine the national payment rate for that procedure or service under the hospital outpatient PPS.

- We will package into the APC payment rate for a given procedure or service any costs incurred to furnish the following items and services: Use of an operating suite, procedure room or treatment room; use of the recovery room or area; use of an observation bed; anesthesia; medical and surgical supplies and equipment; surgical dressings; supplies and equipment for administering and monitoring anesthesia or sedation; intraocular lenses; capital-related costs; costs incurred to procure donor tissue other than corneal tissue; and, various incidental services such as venipuncture.
- In general, we will package the cost of drugs, pharmaceuticals and biologicals into the APC payment rate for the primary procedure or treatment with which they are used. Additional payment for some drugs, pharmaceuticals, and biologics may be allowed under the transitional pass-through provisions, which we explain below, in section III.D.
- We will *not* package payment for corneal tissue acquisition costs into the payment rate for corneal transplant surgical procedures at this time. We will make separate payment for these acquisition costs based on the hospital's reasonable costs incurred to acquire corneal tissue.
- We will *not* package into the APC payment rate for another procedure or service costs incurred to furnish the following items and services: blood and blood products, including anti-hemophilic agents; casting, splinting, and strapping services; immunosuppressive drugs for patients following organ transplant; and certain other high cost drugs that are infrequently administered. We have created new APC groups for these items and services, which allows separate payment to be made for them.

3. Treatment of Clinic and Emergency Department Visits

a. Provisions of the Proposed Rule

As we discussed in our proposed rule, determining payment for hospital clinic and emergency department (ED) visits requires a variety of considerations such as the following:

- The impact of packaging on setting payment rates.
- How to code visits in a manner that recognizes variations in service intensity and levels of resource consumption.
- How to keep the system administratively manageable.
- How to define critical care in terms of facility as opposed to physician input.
- Data problems associated with identifying costs from claims that list multiple services.
- How to move toward greater uniformity of payments across ambulatory settings so as to remove payment as an incentive for determining site of service.

The major issue we faced in determining payment for hospital clinic and ED visits is whether to include diagnosis as well as *Physicians' Current Procedural Terminology* (CPT) codes in setting payment rates.

In our proposed rule, we considered several approaches to setting prospective payment rates for hospital clinic and ED visits. Potential options included: (1) Using diagnosis codes only; (2) using CPT codes only; and (3) using a CPT-diagnosis code hybrid. We solicited comments on these approaches to setting payment rates for clinic and ED visits as well as comments on alternative approaches that we did not set forth in the proposed rule. In the proposed rule, we discussed in detail our assessment of the advantages and disadvantages of each approach.

In addition, we proposed to create a HCPCS code that would be used to bill when a patient presents to an ED, requests a screening, and is screened in accordance with section 1867(a) of the Act. Payment for this new code would be minimal because we included no treatment costs in the screening service. Payment for the screening APC would be made only when no additional services were furnished by the emergency department. If nonemergency treatment was furnished, the appropriate emergency department visit would be billed, and not the screening. Similarly, if the screening reveals that an emergency does exist and treatment is instituted immediately, the screening would not be billed because we would consider payment to be subsumed into the payment for further treatment.

We proposed paying for critical care as the highest level of "visit." In our proposed rule, we stated that hospitals would use CPT code 99291 to bill for outpatient encounters in which critical care services are furnished.

We used the CPT definition of "critical care" which is the evaluation and management of the critically ill or injured patient. Under the outpatient PPS, we would allow the hospital to use CPT code 99291 in place of, but not in addition to, a code for a medical visit or for an emergency department service. Although the CPT system allows the physician to bill in 30-minute increments following the first 74-minute period of providing critical care, we proposed to pay separately for only the initial period (CPT code 99291), packaging the few instances in which the 30-minute increments (CPT code 99292) were billed. If other services, such as surgery, x-rays, or cardiopulmonary resuscitation, were furnished on the same day as the critical care services, we would allow the hospital to bill for them separately.

b. Comments and Responses

Comment: The major hospital associations argued that none of our three proposed approaches fully explains facility resource use in connection with clinic and emergency visits. Hospitals did not see a clear benefit in the payment ranges created by using the CPT and diagnosis hybrid approach. A major medical association adamantly opposed the use of diagnosis codes. One major HMO that does not currently use CPT codes was opposed to the use of CPT codes to describe clinic and emergency visits.

Response: In this final rule, we are not using patient diagnosis codes to compute payment rates for medical visits to clinics and emergency departments under the outpatient PPS because a number of concerns were raised about basing payment for medical visits on both HCPCS codes and ICD–9 diagnosis codes. The final payment groups for medical visits are constructed using CPT procedure codes only, which is consistent with our overall PPS grouping strategy and with the approach we have followed to establish payment groups for surgical and diagnostic services. However, we will continue to require hospitals to provide accurate diagnosis coding on claims for payment. We will continue to assess the value of using patient diagnosis for application

to our payment system for possible use in the future.

In developing medical visit APCs based on CPT procedure codes only (a change from the proposed rule), we are collapsing 31 CPT codes that define clinic and emergency visits into six groups, three each for the clinics and the emergency department. The final APC groups for clinic and emergency visits are as follows: APC 0600, Low Level Clinic Visits; APC 0601, Mid-Level Clinic Visits; APC 0602, High Level Clinic Visits; APC 0603, Interdisciplinary Team Conference; APC 0610, Low Level Emergency Visits; APC 0611, Mid-Level Emergency Visits; APC 0612, High Level Emergency Visits; and APC 0620, Critical Care.

When basing payment on CPT codes alone, the range of costs reflects hospitals' billing patterns in increasing level of intensity. However, those increasing increments are due largely to hospitals' use of "chargemaster" systems, which generate bills using predetermined charges for codes. Thus, billing patterns reflect standard bills, not the resources used in any particular case.

We had been concerned that certain hospitals' use of the lowest level code, CPT code 99201, to bill for all clinic visits would distort the data, causing inflation in both the volume and cost of low-level clinic visits, and a corresponding underreporting of mid- and high-level visits. (Costs for mid- and high-level visits would presumably have been correct, because individual hospitals would have reported appropriate charges with these codes; there simply would have been fewer reported visits at those levels.)

We have developed the weights for clinic visits by using claims data only from a subset of hospitals that billed a wider range of visits rather than relying solely on claims with CPT code 99201. We chose to use this subset of hospitals (for this purpose only) because we do not know what CPT code 99201 indicates when hospitals use it exclusively to bill all visits.

We emphasize the importance of hospitals assessing from the outset the intensity of their clinic visits and reporting codes properly based on internal assessment of the charges for those codes, rather than failing to distinguish between low-and mid-level visits "because the payment is the same." The billing information that hospitals report during the first years of implementation of the hospital outpatient PPS will be vitally important to our revision of weights and other adjustments that affect payment in future years. We realize that while these HCPCS codes appropriately represent different levels of physician effort, they do not adequately describe nonphysician resources. However, in the same way that each HCPCS code represents a different degree of physician effort, the same concept can be applied to each code in terms of the differences in resource utilization. Therefore, each facility should develop a system for mapping the provided services or combination of services furnished to the different levels of effort represented by the codes. (The meaning of "new" and "established" pertain to whether or not the patient already has a hospital medical record number.)

We will hold each facility accountable for following its own system for assigning the different levels of HCPCS codes. As long as the services furnished are documented and medically necessary and the facility is following its own system, which reasonably relates the intensity of hospital resources to the different levels of HCPCS codes, we will assume that it is in compliance with these reporting requirements as they relate to the clinic/emergency department visit code reported on the bill. Therefore, we would not expect to see a high degree of correlation between the code reported by the physician and that reported by the facility.

Hospitals are required to use HCPCS code 99291 to report outpatient encounters in which critical care services are furnished. (See the American Medical Association's CPT 2000 coding manual for the definition of this code.) The hospital is required to use HCPCS code 99291 in place of, but not in addition to, a code for a medical visit or for an emergency department service.

We will work with the American Hospital Association and the American Medical Association to propose the establishment of appropriate facility-based patient visit codes in time for the next proposed rule.

Comment: Several commenters expressed concern that resources expended in the emergency department are not fully explained by the codes at their disposal. One commenter pointed out that some hospitals use internal coding systems to capture differing charges based on whether or not a case requires one-on-one nursing care.

Response: While we share commenters' concerns on this point, we remind hospitals that they can receive additional payment under the outpatient PPS for services such as diagnostic testing and administration of infused drugs, and for therapeutic procedures including resuscitation that are furnished during the course of an emergency visit. We will also pay separately for certain high cost drugs, such as the expensive "clotbuster" drugs that must be given within a short period of time following a heart attack or stroke, if these drugs are furnished during an emergency visit. Even though some ED patients will be transferred to another hospital for inpatient treatment, the hospital that administers the drugs will be paid for them. Cases that fall far outside the normal range of costs will be eligible for an outlier adjustment established by section 201(a) of the BBRA 1999. (See section III.H, below.) In addition, one of the first topics of review to be addressed by the expert outside advisory panel, required by section 201(h)(1)(B) of the BBRA 1999, will be to determine if emergency department visits can be categorized in a way that better recognizes the underlying resources, especially nursing resources, involved in the visit.

Comment: Several commenters expressed concern about the appropriate level of payment for patients who die in the ED. One commenter believes that services furnished to these patients are resource-intensive and recommends that we continue to pay for the services on a reasonable cost basis.

Response: We are directing fiscal intermediaries to use the following guidelines in determining how to make payment when a patient dies in the ED or is sent directly to surgery and dies there.

- If the patient dies in the ED, make payment under the outpatient PPS for services furnished.
- If the ED or other physician orders the patient to the operating room for a surgical procedure, and the patient dies in surgery, payment will be made based on the status of the patient. If the patient had been admitted as an inpatient, pay under the hospital inpatient PPS (a DRG-based payment). If the patient was not admitted as an inpatient, pay under the outpatient PPS (an APC-based payment). If the patient was not admitted as an inpatient and the procedure is designated as an inpatient-only procedure (payment status indicator "C"), no Medicare payment will be made for the procedure, but payment will be made for ED services.

Comment: Some commenters objected to our proposal to restrict payment for critical care services to CPT code 99291 and not allow payment for CPT code 99292. One commenter recommended that we create an APC group for the additional increments of time a physician spends in critical care for which the physician may bill.

Response: We do not believe that paying hospitals for incremental time as critical care would better reflect facility resources. The most resource-intensive period for the hospital is generally the first hour of critical care. In addition, we believe it would be burdensome for hospitals to keep track of minutes for billing purposes. Therefore, we will pay for critical care as the most resource-intensive visit possible as defined by CPT code 99291. Critical care services will be assigned to APC 0620.

Comment: Several commenters advised that a screening code was not necessary because an emergency visit code could be billed for ED screening services.

Response: We agree with the commenters, and we will instead use the appropriate emergency department codes for screening services (as defined in section 1867(a) of the Act). If no treatment is furnished, we would expect screening to be billed with a low-level emergency department code.

Comment: Some commenters expressed concern about our proposal to allow hospitals to create a separate claim for each visit when two or more medical visits occur on the same day for different diagnoses. Commenters feared that this would result in our paying under the outpatient PPS for clinic care furnished at sites other than hospital outpatient departments, and that we are promoting fragmented care. One commenter was concerned that, to the extent that patients see multiple specialists, tests will be repeated unnecessarily, hospitalizations will rise, and beneficiaries and the Medicare program will be burdened with additional, unnecessary costs.

Response: Our decision not to use diagnosis codes as a factor in determining payment for clinic visits largely negates these concerns because the need to prepare different claims for visits for different diagnoses has been eliminated. When patients are seen in different clinics on the same day, hospitals should bill using the proper codes for the level of the visits, using the units field if appropriate to reflect more than one visit at the same level.

However, we note that the comment did prompt us to develop a code for billing those visits during which numerous physicians see a patient concurrently, for example, a surgeon, medical oncologist, and radiation oncologist for a cancer patient, to discuss treatment options and to ensure that the patient is fully informed. In this instance, each physician is addressing the patient's care from a unique perspective. If several physicians see a patient concurrently in the same clinic for the same reason, the hospital would bill for one clinic visit using an appropriate visit code even though each physician would bill individually for his or her professional services. We have established a code for hospitals to use in reporting a scheduled medical conference with the patient involving a combination of at least three health care professionals, at least one of whom is a physician. That code is G0175, Scheduled interdisciplinary team conference (minimum of three, exclusive of patient care nursing staff) with patient present.

4. Treatment of Partial Hospitalization Services

As we explained in the proposed rule, partial hospitalization is an intensive outpatient program of psychiatric services provided to patients in lieu of inpatient psychiatric care. Partial hospitalization may be provided by a hospital to its outpatients or by a Medicare-certified community mental health center (CMHC). It is important to note that the services of physicians, clinical psychologists, clinical nurse specialists (CNSs), nurse practitioners (NPs), and physician assistants (PAs) furnished to partial hospitalization patients would continue to be billed separately to the carrier as professional services and are not considered to be partial hospitalization services. Thus, payment for partial hospitalization services represents the provider's overhead costs, support staff, and the services of clinical social workers (CSWs) and occupational therapists (OTs), whose professional services are considered to be partial hospitalization services for which payment is made to the provider. Including CSW and OT services reflects historical patterns of treatment billed during the base year.

Because a day of care is the unit that defines the structure and scheduling of partial hospitalization services, we proposed a per diem payment methodology for the partial hospitalization APC. We analyzed the service components billed by hospitals over the course of a billing period and determined the median hospital cost of furnishing a day of partial hospitalization. As noted in the June 30, 1999 correction notice, this analysis resulted in a proposed APC payment rate of $206.71 per day, of which $46.78 is the beneficiary's coinsurance.

We also solicited comments on a number of issues related to partial hospitalization. We asked for information on the mix of services that constitute a typical partial hospitalization day and average duration of a partial hospitalization episode, whether we should impose a minimum number of services for each covered partial hospitalization day, and whether we should establish a limit on routine outpatient mental health services furnished on a given day to equal the partial hospitalization per diem amount. Finally, we indicated that we are considering specifying a timeframe for physician recertification of need for partial hospitalization services as a method of ensuring that a patient's condition continues to require the intensity of a partial hospitalization program.

We did not receive a significant number of public comments on this issue. A summary of the comments we received and our responses follow.

Comment: We received many similar comments from rural hospitals that operate partial hospitalization programs. The hospitals indicated that the proposed per diem amount does not cover their direct cost of providing services. Each commenter included an estimate of their partial hospitalization program cost (without depreciation or allocation of overhead costs). The estimates range from $270 to $325 per patient per day. The commenters indicated that approximately 65 to 70 percent of the costs are personnel-related.

Response: The commenters did not indicate why their costs were higher than the per diem amount, but only that a significant proportion of their costs are related to personnel. In the future, we are committed to assessing the extent to which the per diem reflects special needs of rural hospitals. In the meantime, the BBRA 1999 includes provisions that offer relief to rural hospitals during the early years of the outpatient PPS. (See section III.H of this preamble.)

Comment: We received several other comments regarding the proposed per diem amount. One commenter stated that the proposed per diem rate is equivalent to 3.3 psychotherapy units. The commenter believed this is an inadequate level of therapy for partial hospitalization patients and suggested that a per diem rate equal to 4 psychotherapy units would provide payment for a more appropriate level of service intensity. Several other commenters suggested that we set a single rate using a therapeutic hour of treatment (for example, the group psychotherapy APC rate) as the unit of service coupled with an overall aggregate limit for a course of treatment. These commenters estimated that a typical partial hospitalization day costs $275. Another commenter, a national association, conducted a survey of its

member hospitals which showed that the median cost per day of treatment was approximately $210. Other commenters urged us to establish separate per diem amounts for partial hospitalization programs serving geriatric beneficiaries and those serving disabled beneficiaries under age 65. They indicated that programs designed to serve geriatric beneficiaries consist of different treatment modalities that are costlier than programs that serve younger beneficiaries. One commenter stated that programs serving younger beneficiaries typically average high patient volume and therefore have much lower costs per patient day than do the programs that serve geriatric patients. Other commenters urged us to establish a half day rate, although some stated that a half-day benefit does not reduce administrative costs appreciably.

Response: In accordance with section 1833(t)(2)(C) of the Act, the proposed per diem amount represents the national median cost of providing partial hospitalization services. We used all the data from hospital bills that included the condition code 41, which identifies the claim as partial hospitalization. Because providers do not report on the claim the specific services provided each day, we do not currently have data that would permit us to establish an aggregate limit for a course of treatment or to analyze differences in the mix of services provided to various populations. As discussed in the preamble to the proposed rule and in Transmittal 7 of the CMHC Manual (issued November 1999) and Transmittal 747 of the Hospital Manual (issued December 1999), beginning April 1, 2000, hospitals and CMHCs will be required to indicate line item dates of service on claims. Once we have accumulated these data, we will be better able to determine if refinements to the per diem methodology are warranted, including the extent to which half-days are utilized.

Comment: Several commenters expressed concern that no CMHC data were used to establish the partial hospitalization per diem payment rate. The commenters stated that CMHC costs are significantly different from hospital-based programs and urged us to collect CMHC cost data and base payments to CMHCs on CMHC-specific information. Another commenter stated that implementing PPS for partial hospitalization services provided by CMHCs is intended to contain costs and urged us to track the impact of the PPS on CMHCs. Still another commenter expressed concern that the per diem amount is insufficient for CMHCs to provide quality services. The commenter admitted, however, that historically their service area has had limited resources to provide minimum support for the persistent and chronically mentally ill. Two commenters expressed concern about certification requirements for CMHCs. One urged us to require accreditation by a national accrediting body and another commenter noted that reliance on the statutory definition established for CMHCs under the Public Health Service Act in 1963 is no longer appropriate and urged us to redefine a CMHC for Medicare certification purposes.

Response: Partial hospitalization services are covered services under the hospital outpatient PPS. Section 1833(a)(2)(B) of the Act provides that partial hospitalization services furnished by CMHCs are to be paid under the hospital outpatient PPS. And, section 1833(t)(2)(C) of the Act requires that we establish relative payment weights based on median (or mean, at the election of the Secretary) hospital costs determined by 1996 claims data and data from the most recent available cost reports. As stated above, we are committed to analyzing future data from hospitals and CMHCs to determine if refinements to the per diem are warranted. As we noted in the proposed rule, the Medicare partial hospitalization benefit is designed to furnish services to patients who have been discharged from inpatient psychiatric care, and partial hospitalization services are provided in lieu of continued inpatient treatment, and for patients who exhibit disabling psychiatric/psychological symptoms or experience an acute exacerbation of a severe and persistent mental disorder. Because the statute requires a physician to certify that the patient would otherwise require inpatient psychiatric care in the absence of the partial hospitalization services, we do not believe the Medicare partial hospitalization benefit was intended to provide support for the persistent and chronically mentally ill except when they are in an acute phase of their mental illness. With regard to accreditation requirements for CMHCs and substantively revising the definition of a CMHC, this final rule is not the appropriate vehicle in which to address these issues. We are, however, amending § 410.2 to remove an obsolete provision from the definition of a CMHC.

Comment: Several commenters questioned whether the proposed per diem approach meets the definition of an APC, that is, a group of services that are comparable clinically and in resource use. They believed that partial hospitalizations vary widely in their treatment approach and cost. Therefore, creating one payment amount for all partial hospitalization days is not consistent with our proposed classification system.

Response: We continue to believe that the structure of the average partial hospitalization day is more similar than the commenters believe. We followed the basic analytical methodology used to establish all the APC payment amounts, except that we determined that, for partial hospitalization services, the unit of service is a day. Nonetheless, requiring providers to submit claims by date of service and by service provided will allow for future analysis to determine if the APC grouping for partial hospitalization can be improved.

Comment: One commenter expressed concern about the use of 1996 data as the basis for the per diem amount. They referenced testimony by the Inspector General that indicated a significant improvement in the accuracy of provider billing in 1998 audits. They urged us to use 1997 or 1998 cost reports by region to develop the APC rate.

Response: Section 1833(t)(2)(C) of the Act requires that we use 1996 claims data and the most recent cost reports as the basis for ratesetting under the hospital outpatient PPS. For purposes of the final rule, we primarily used cost reports for periods beginning in FY 1997.

Comment: Several commenters, including national industry associations, expressed concern that partial hospitalization programs are required by their individual fiscal intermediaries to meet different medical necessity and programmatic requirements. For this reason, programs vary widely in program content and resultant cost. The commenters urged us to establish national coverage criteria before implementing a PPS for partial hospitalization services. Another commenter urged us to rely on more recent claims data that identify all services provided on each date of service in order to determine the relative resource cost of various outpatient mental health treatment programs.

Response: Section 1833(a)(2)(B) of the Act provides that partial hospitalization services are paid under section 1833(t). We will refine the system, as needed, based on our review of more specific bill data. Movement to a per diem payment methodology will necessitate changes in the medical review approach used by fiscal intermediaries. It will become necessary to ensure that all patients receive the level of service their

individual condition requires. Some patients will require days of service that cost the provider more than the per diem payment amount. Other patients may require less intensive days of service during an acute episode of partial hospitalization care or as they transition out of the partial hospitalization program. We will be developing medical review guidance for fiscal intermediaries, which we believe will lead to more consistency in medical review.

Comment: One commenter noted that, in the past, a daily or partial-day payment approach was commonly used and was abandoned in favor of component billing for each partial hospitalization service. The commenter now believes that component billing provides a more accurate indication of the services provided to individual patients.

Response: We believe that a per diem payment approach is a more appropriate methodology than billing for each program component. This approach is supported by the major industry groups involved with partial hospitalization and is used by other governmental and private insurers to pay for partial hospitalization program services. A per diem approach also incorporates and recognizes the cost of services that are not separately billable as outpatient psychiatric services, such as nursing services, training and education services, activity therapy, and support staff costs.

Comment: Several commenters requested additional information on the HCPCS codes to which the partial hospitalization indicator applies and questioned how codes will group to APC 20 rather than grouping to psychotherapy APCs 91 through 94. They also asked whether substance abuse day programs will group to APC 20.

Response: We issued revised billing instructions for partial hospitalization services provided by CMHCs in November 1999 and for hospital programs in December 1999. We instructed CMHCs to use HCPCS codes to bill for their partial hospitalization services; we required hospitals and CMHCs to report line item dates of service; and we established new HCPCS codes for occupational therapy and training and educational services furnished as a component of a partial hospitalization treatment program. We included in the instructions a complete listing of the revenue codes and HCPCS codes that may be billed as partial hospitalization services as follows:

Revenue codes	Description	HCPCS code
43X	Occupational Therapy (Partial Hospitalization)	G0129.
904	Activity Therapy (Partial Hospitalization)	Q0082.
910	Psychiatric General Services	90801, 90802, 90875, 90876, 90899, or 97770.
914	Individual Psychotherapy	90816, 90818, 90821, 90823, 90826, or 90828.
915	Group Psychotherapy	90849, 90853, or 90857.
916	Family Psychotherapy	90846, 90847, or 90849.
918	Psychiatric Testing	96100, 96115, or 96117.
942	Education Training (Partial Hospitalization)	G0172.

To bill for partial hospitalization services under the hospital outpatient PPS, hospitals are to use these HCPCS and revenue codes and are to specify condition code 41 on the HCFA–1450 claim form. Before assigning a claim for payment to APC 0033 (the final APC for partial hospitalization services), the outpatient code editor (OCE) will check for errors; for example, the OCE will verify that the claim includes a mental health diagnosis, and at least three partial hospitalization HCPCS codes for each day of service, one of which must be a psychotherapy HCPCS code (other than brief). Claims that do not pass the OCE edits will undergo further prepayment review.

With regard to the comments regarding substance abuse day programs, the Medicare benefit category is partial hospitalization services. Because there is no separate benefit category for substance abuse programs, any such program would have to meet requirements established for partial hospitalization programs in order for claims to group to APC 0033, including the requirements that a physician certify that the patient would otherwise require inpatient psychiatric care in the absence of the partial hospitalization services and that the program provides active treatment.

Comment: In regard to physician recertification, we received several comments expressing support for establishing a specific timeframe and recommending a range from 7 to 31 days.

Response: We agree that physicians should initially certify a patient's need for partial hospitalization services and recertify continued need for this intensive level of treatment. Because partial hospitalization is the outpatient substitute for inpatient psychiatric care, we believe it is appropriate to adopt the standard currently used for inpatient psychiatric care. Therefore, in this final rule, we are amending § 424.24(e) to establish physician recertification requirements for partial hospitalization services. The initial physician certification establishing the need for partial hospitalization must be received by the partial hospitalization program upon admission. Thus, services provided to establish a patient's need for partial hospitalization services would continue to be billed to the carrier as professional services. The first recertification is required as of the 18th day of services and subsequent recertifications are required no less frequently than every 30 days. Each recertification must address the patient's response to the intensive, therapeutic interventions provided by the active treatment program which make up partial hospitalization services, changes in functioning and status of the serious psychiatric symptoms that place the patient at risk of hospitalization, and treatment plan and goals for coordination of services such as community supports and less intensive treatment options to facilitate discharge from the partial hospitalization program.

Comment: We received several comments regarding our proposal to limit payment for less intensive outpatient mental health treatment at the partial hospitalization per diem rate. One commenter did not believe the law supports establishment of a payment ceiling and that any such action is arbitrary. Other commenters believe that treatment should be determined by the clinical needs of each patient. However, the commenters conceded that additional requirements may have to be added to the final rule to prevent duplication or overlap of partial

hospitalization and routine outpatient mental health services.

Response: Our rationale for this proposal was that the costs associated with administering a partial hospitalization program represent the most resource intensive of all outpatient mental health treatment and, therefore, we should not pay more for a day of individual services. We are also concerned that a provider may disregard a patient's need for the intensive active treatment offered by a partial hospitalization program and opt to bill for individual services. In addition, the per diem amount represents the cost of an average day of partial hospitalization because the data used to calculate the per diem were derived from all the partial hospitalization data and include the most and the least intensive days. It would not be appropriate for a provider to obtain more payment through component billing.

Comment: Several commenters expressed concern about staffing services that are bundled in the per diem payment and other staffing issues. One commenter stated that due to increased medical review by the fiscal intermediary, no partial hospitalization services may be furnished by unlicensed personnel. The commenter urged that the necessity for upgrades in staffing be taken into consideration in establishing a per diem rate. One commenter believes that all services, except for physician services, should be bundled into the per diem rate.

Response: The list of covered partial hospitalization services is located in section 1861(ff) of the Act. The list includes several services such as patient education and training and activity therapy that may be provided by unlicensed but qualified staff who are specifically trained to work with the mentally ill. We note that the billing instructions issued in November 1999 (for CMHCs) and in December 1999 (for hospitals) announced a new HCPCS code for patient training and education services as a component of a partial hospitalization program. (A HCPCS code for activity therapy as part of a partial hospitalization program has been in place for several years.) Although the list also specifically references the services of social workers, trained psychiatric nurses, and other staff trained to work with psychiatric patients, there are no specific HCPCS codes for these services. Certain other partial hospitalization services, for example, individual and group psychotherapy, family counseling, occupational therapy (OT), and diagnostic services, must be provided by licensed staff, authorized by the State to provide these services.

With regard to the content and staffing of partial hospitalization programs, we believe that all the covered services listed in section 1861(ff) of the Act and the disciplines of the staff who provide the services, that is, the multidisciplinary team, are an important element in creating the therapeutic milieu that distinguishes partial hospitalization programs from other outpatient mental health treatment. We believe it would be inappropriate if providers no longer offered the full range of partial hospitalization services, especially services such as OT that continue to be bundled in the per diem amount. We plan to monitor the extent to which providers change their programming in response to implementation of the PPS. Because the data on which the per diem was based included the full range of services and the use of certain bundled professionals, we will monitor changes in services or increased use of unbundled practitioners to evaluate and update the per diem rate. In response to the comment recommending that we bundle more professional services into the per diem rate, we captured historical patterns of treatment and staffing during the base year. Thus, the partial hospitalization per diem amount is limited to the provider's overhead costs, support staff, and the services of clinical social workers and occupational therapists, whose professional services are defined as partial hospitalization services. We have amended § 410.43(b) to update the list of services that are not paid as partial hospitalization services.

Comment: One commenter took issue with our characterizing partial hospitalization to be the result of an acute exacerbation of a beneficiary's severe and persistent mental illness for which partial hospitalization services are provided in lieu of an inpatient psychiatric admission. They urged us to clarify that admission to a partial hospitalization is based on a physician certification that the patient would otherwise require inpatient psychiatric care, but continued stay in a partial hospitalization program would serve as a maintenance program for the chronically mentally ill. The commenter raised many other concerns about how we described partial hospitalization in the proposed rule, noting specific concern with regard to active treatment, community-based support, and frequency and duration of services.

Response: It was not our intention in the proposed rule to generate public comment on the nature and coverage of partial hospitalization under the Medicare program. Rather, the information presented has appeared in various program memoranda and was included to describe the benefit and explain the per diem payment methodology. We continue to believe that partial hospitalization is a covered Medicare benefit category only when provided as an alternative to inpatient psychiatric care for acutely mentally ill beneficiaries.

Result of Evaluation of Comments

We are adopting as final our proposal to—

- Establish a per diem payment of $202.19 for the partial hospitalization APC (APC 0033); and
- Limit the payment for outpatient mental health treatment furnished on a day of services to the partial hospitalization APC payment amount.

In addition, we are amending § 424.24(e) to establish requirements for physician recertification for partial hospitalization services.

5. Inpatient Only Procedures

In our proposed rule, we assigned payment status indicator "C" to 1,803 codes that represent procedures that our medical advisors and staff determined require inpatient care because of the invasive nature of the procedure, the need for postoperative care, or the underlying physical condition of the patient who would require the surgery. We did not assign these procedures to an APC group, and we proposed to make no payment for these services under the hospital outpatient PPS. Above, in section III.B.1.b of this preamble, we respond to the numerous general comments we received challenging both our classification of various procedures as inpatient procedures and our exclusion of these procedures from the scope of services paid under the hospital outpatient PPS.

Comment: Commenters objected on the grounds that medical practice and new technology have allowed many procedures that formerly were performed only in the inpatient setting to be safely and effectively performed on an outpatient basis. In addition, they believe we are making decisions that should be left to the discretion of surgeons and their patients. Finally, the commenters believe that it is better for the patient if procedures are performed on an outpatient basis whenever possible. Commenters requested that we remove the payment status indicator of "inpatient only" from 195 codes and include them in an appropriate APC.

Response: Under section 1833(t)(1)(B)(i) of the Act, the Secretary has broad authority to designate which

services fall within the definition of "covered OPD [outpatient department] services" that will be subject to payment under the prospective payment system. We believe that certain surgically invasive procedures on the brain, heart, and abdomen, such as craniotomies, coronary-artery bypass grafting, and laparotomies, indisputably require inpatient care, and therefore are outside the scope of outpatient services. Certain other procedures that we proposed as "inpatient only" may not be so clearly classified as such, but they are performed virtually always on an inpatient basis for the Medicare population. We acknowledge that emerging new technologies and innovative medical practice are blurring the difference between the need for inpatient care and the sufficiency of outpatient care for many procedures, although we are concerned that some of the procedures that commenters claim to be performing on an outpatient basis may actually have been performed with overnight postoperative care furnished in observation units. And, regardless of how a procedure is classified for purposes of payment, we expect, as we stated in our proposed rule, that in every case the surgeon and the hospital will assess the risk of a procedure or service to the individual patient, taking site of service into account, and will act in that patient's best interests.

After a careful review of comments by our medical advisors and staff, we have assigned to APC groups certain procedures that we had proposed as inpatient only. We made some changes because we were convinced by commenters' arguments that certain procedures are often performed safely in the outpatient setting; others because we believe that the simplest procedure described by the code may be performed safely in the outpatient setting; and yet others because they were related to codes we moved (for example, the radiologic part of an interventional cardiology procedure). The procedures we moved to the outpatient APCs include codes from within the following families: Explorations of penetrating wounds; repairs of some cranial and facial fractures; planned tracheostomies; diagnostic thoracoscopies; some insertion/removal/replacement of pacemakers, pulse generators, electrodes and cardioverter-defibrillators; embolectomies and thrombectomies; transluminal balloon angioplasty and peripheral atherectomy; transcatheter therapies; bone marrow transplantation; gastrostomies; percutaneous nephrostolithotomy; surgical laparoscopies, including cholecystectomies; ovarian biopsies; and surgeries on the orbit. Although we are moving these procedures into APC groups and they can receive outpatient payment, we emphasize that we expect only the simplest and least resource intensive procedures of each type to be performed in the outpatient setting. For example, several codes could be used to describe initial insertion of a pacemaker or replacement of the pacemaker or its electrodes. We believe most initial pacemaker insertions are performed on an inpatient basis, so codes billed in this range are most likely to be for replacement of a pacemaker, which requires fewer facility resources.

Because of the risk involved with invasive cardiovascular procedures, including angioplasty and atherectomy, we are placing an additional requirement on their performance that we do not think is necessary with other procedures. That is, Medicare will pay for these procedures only in those settings in which the patient can immediately be placed on cardiopulmonary bypass in the event of a complication such as perforation of a coronary artery, which would require an immediate thoracotomy.

When our medical advisors and staff disagreed with the recommendation of commenters to reclassify a particular procedure, they based their decision to retain a procedure as "inpatient only" on several considerations. In general terms, as stated above, we define inpatient procedures as those that require inpatient care because of the invasive nature of the procedure, the need for at least 24 hours of postoperative recovery time or monitoring before the patient can be safely discharged, or the underlying physical condition of the patient who would require the surgery. In other words, inpatient procedures are those that, in the judgment of our medical advisors and staff, would not be safe, appropriate, or considered to fall within the boundaries of acceptable medical practice if they were performed on other than a hospital inpatient basis.

Among the procedures cited by commenters that we believe should remain as "inpatient only" are: Breast reconstruction using myocutaneous flaps; radical resections of tumors of the mandible; open treatment of certain craniofacial fractures; osteotomies of the femur and tibia; sinus endoscopy with repair of cerebrospinal fluid leaks; carinal reconstruction; surgical thoracoscopies; pacemaker procedures by thoracotomy; certain thromboendarterectomies; excision of mediastinal cysts and tumors; excisions of stomach tumors; enterostomies; hepatotomies; ureterotomies and ureteral endoscopies through ureterotomies; transcranial approaches to the orbit; and laminectomies. Our medical advisors and staff, as well as consulting physicians, believe these procedures are too invasive (for example, thoracotomies), too extensive (for example, breast reconstruction with myocutaneous flaps), or too risky by virtue of proximity to major organs (for example, repairs of spinal fluid leaks and carinal reconstruction) to be performed on an outpatient basis. The procedures that we exclude from outpatient payment because we believe they should be performed on an inpatient basis are listed in Addendum E. This list represents national Medicare policy and is binding on fiscal intermediaries and peer review organizations as well as on hospitals and Medicare participating ASCs. Note, however, that services included in outpatient PPS and assigned to an APC may be performed on an inpatient basis when the patient's condition warrants inpatient admission.

In the future, as part of our annual update process, we will be working with professional societies and hospital associations, as well as with the expert outside advisory panel that we will be convening as required by new section 1833(t)(9)(A) of the Act, to reevaluate procedures on the "inpatient only" list and we will propose to move procedures to the outpatient setting whenever we determine it to be appropriate. For example, a decreasing length of inpatient stay for a procedure may signal that it is appropriate for consideration for payment under the outpatient PPS. If hospitals find that surgeons are discharging patients successfully on the day of surgery, they should bring this to our attention as well, because hospitals may become aware of this trend before our payment data disclose it. Thus, assignment of a "C" payment status indicator in this final rule should not be considered as a permanent or irrevocable designation.

Comment: One professional society recommended that we assign payment status indicator "C" to CPT codes 21343, open treatment of depressed frontal sinus fracture, 42842, radical resection of tonsil, tonsillar pillars, and/or retromolar trigone—without closure, and 69150, radical excision external auditory canal lesion—without neck dissection, because these procedures require inpatient care.

Response: We accepted the commenters' recommendation that these CPT codes should not be performed in an outpatient setting. We also reclassified as an inpatient procedure

CPT code 94762, noninvasive ear or pulse oximetry for oxygen saturation; by continuous overnight monitoring (separate procedure), because it requires an overnight stay.

Comment: One commenter noted that, to the extent that we require that certain surgical procedures be performed in an inpatient setting in order to receive Medicare payment, the beneficiary will incur the higher deductible associated with a hospital inpatient service.

Response: The commenter is correct that the Part A hospital inpatient deductible amount that a beneficiary will have to pay may be higher than coinsurance and deductibles the beneficiary would have paid as an outpatient for a surgical procedure. However, our decisions concerning whether to pay for certain surgical procedures under the PPS are based on patient safety concerns and the medical appropriateness of performing the procedures in the hospital inpatient versus outpatient setting.

Final Action

Under the hospital outpatient PPS, we will not make payment for procedures that are designated as "inpatient only." We have, however, revised the list of procedures that are designated as "inpatient only" based on comments. (See Addendum E.)

6. Modification of APC Groups

a. How the Groups Were Constructed

Section 1833(t)(2)(A) of the Act requires the Secretary to develop a classification system for covered outpatient services. Within that classification system, the Secretary is given the authority under section 1833(t)(2)(B) of the Act to establish groups of covered services so that the services within each group are comparable clinically and with respect to the use of resources. In the proposed rule, we explain how we constructed the APC groups that are the basis for ratesetting under the hospital outpatient PPS.

Our medical advisors and staff used the ambulatory patient groups (APGs) developed by 3M-Health Information Systems as a starting point for the APC groups, but we modified the APGs to take into account 1996 outpatient claims data, data collected in a 1994 survey of ambulatory surgical center (ASC) costs and charges, data collected in 1995 and 1996 to establish resource-based practice expense relative values under the Medicare physician fee schedule, and comments offered by a broad range of professional and trade societies and associations. For a more detailed discussion of this process, see section V.B of the proposed rule (63 FR 47561).

b. Comments on Classification of Procedures and Services Within APC Groups

In the proposed rule, we invited comments on the composition of the APC groups, and we requested that commenters support their recommendations for changes with resource cost data and clinical arguments. We received a large number of comments on our proposed grouping of individual procedures and services. The most common comment was that the APC groups generally lacked consistency in terms of clinical characteristics and resource utilization. Below, in section III.C.6.d of this preamble, we address recommendations from commenters that specific HCPCS codes be assigned to a group other than the one we proposed. In addition to reviewing the APC groups that were the subject of comments, our medical advisors and staff reviewed every APC group to take into account the effect across all related groups of commenters' recommended changes.

Criteria for Evaluating Changes Recommended by Commenters

In determining whether or not to accept a recommended change, we focused on five criteria that are fundamental to the definition of a group within the APC system. The decision to accept or decline a modification to an APC group was measured by whether the change enhanced, detracted from, or had no effect on the integrity of an APC group within the context of these five criteria. The five criteria are as follows:

• Resource Homogeneity

The amount and type of facility resources, for example, operating room time, medical surgical supplies, and equipment, that are used to furnish or perform the individual procedures or services within each APC should be homogeneous. That is, the resources used are relatively constant across all procedures or services even though resource use may vary somewhat among individual patients. If the procedures within an APC require widely varying resources, it would be difficult to develop equitable payment rates. Aggregated payments to a facility that performed a disproportionate share of either the expensive or inexpensive procedures within an APC would be distorted. Further, the facility might be encouraged to furnish only the less costly procedures within the APC, resulting in a potential access problem for the more costly services.

It is important to note that procedures within an individual HCPCS code can vary widely in resource use. The coefficient of variation of cost for the procedures within one HCPCS code can be as high as the overall coefficient of variation across all the HCPCS codes that comprise an APC group. Thus, a significant amount of the variability in resource use within some APC groups can be attributed to the variability of resources within individual HCPCS codes. Nevertheless, if resource use is reasonably homogeneous among the HCPCS codes within an APC group, the average pattern of resource use among a group of cases in an APC can be accurately predicted. In section III.C.6.c, below, we discuss the BBRA 1999 provision that sets limits on the variation in resource cost within an APC.

• Clinical Homogeneity

The definition of each APC group should be "clinically meaningful," that is, the procedures or services included within the APC group relate generally to a common organ system or etiology, have the same degree of extensiveness, and utilize the same method of treatment, for example, surgical, endoscopic, etc. The definition of clinical meaningfulness is, of course, dependent on the goal of the classification system. For APCs, the definition of clinical meaningfulness relates to the medical rationale for differences in resource use. If, on the other hand, classifying patient prognosis were the goal, the definition of patient characteristics that were clinically meaningful might be different.

• Provider Concentration

We considered the degree of provider concentration associated with the individual services that comprise the APC. If a particular service is offered only in a limited number of hospitals, then the impact of payment for the service is concentrated in a subset of hospitals. Therefore, it is particularly important to have an accurate payment level for services with a high degree of provider concentration. Conversely, the accuracy of payment levels for services that are routinely offered by most hospitals does not bias the payment system against any subset of hospitals. Thus, differences in the resource requirements for individual services within an APC are of less significance if all the services within the APC are routinely offered by most hospitals because the impact of the difference should average out at the hospital level.

• Frequency of Service

Unless we found a high degree of provider concentration, we avoided creating separate APC groups for

services that are infrequently performed. It is difficult to establish reliable payment rates for low volume APC groups. Therefore, we assigned the HCPCS codes to the APC that was the most similar in terms of resource use and clinical coherence.

Some procedures, such as craniotomies, are clearly inpatient procedures, and are rarely performed in an outpatient setting. However, there are some procedures that, while they are normally performed on an inpatient basis, can also be safely performed on an outpatient basis. The performance of those procedures on an outpatient basis is infrequent and is limited to the simplest cases. Therefore, when we included these procedures in APC groups, we assumed a level of resource use that would apply only to the simplest cases rather than that typical of more complex cases that would be performed on an inpatient basis.

• Minimal Opportunities for Upcoding and Code Fragmentation

The APC system is intended to discourage using a code in a higher paying group to define a case. That is, putting two related codes, such as the codes for excising a lesion of 1.1 cm and one of 1.0 cm, in different APC groups may create an incentive to exaggerate the size of the lesions in order to justify the incrementally higher payment. APC groups based on subtle distinctions would be susceptible to this kind of upcoding. Therefore, we kept the APC groups as broad and inclusive as possible without sacrificing resource or clinical homogeneity.

In general, HCPCS codes that are nonspecific (such as 20999, "unlisted procedure, musculoskeletal system, general") were assigned to the lowest paying APC that was consistent with the clinical characteristics of the service. In the case of 20999, the codes to which it is related are in the range 20000–20979. The APCs to which they group range from 0004, with a payment rate of $89.22, to 0050, with a payment rate of $1,024.53. We placed 20999 in the lowest paying, related group, 0004.

c. Effect of the BBRA 1999 on Final APC Groups

Section 201(g) of the BBRA 1999 amends section 1833(t)(2) of the Act to limit the variation in resource use among the procedures or services within an APC group. Specifically, section 1833(t)(2) of the Act now provides that the items and services within a group cannot be considered comparable with respect to the use of resources if the highest cost item or service within a group is more than 2 times greater than the lowest cost item or service within the same group. The Secretary is to use either the mean or median cost of the item or service. We are using the median cost because we have continued to set the relative payment weights for each APC based on median hospital costs in this final rule. (See the discussion in section III.E of this preamble.)

Section 1833(t)(2) of the Act as amended also allows the Secretary to make exceptions to this limit on the variation of costs within each group in unusual cases such as low volume items and services, although we may not make such an exception in the case of a drug or biological that has been designated as an orphan drug under section 526 of the Federal Food, Drug, and Cosmetic Act. See the discussion of the classification of orphan drugs in section II.D of this preamble and the discussion of APC groups that we excepted from the "2 times" limit in section III.C.6.e.

We applied the limit on variation on median costs required by section 201(g) to the revised APC groups. (See section C.6.d, below.) As a result of our analysis of the array of median costs within the revised APC groups, we had to split some otherwise clinically homogeneous APC groups into smaller groups. We are concerned that this further subdivision of groups may create vulnerabilities for upcoding, which conflicts with one of the five criteria described above that we used to evaluate the construction of the APC groups. We will be examining the extent to which the APC reorganization due to the "2 times" rule results in upcoding.

d. Summary of APC Modifications

In this section, we summarize and explain our response to comments on individual or serial APCs. We use the APC number that appeared in the proposed rule to identify a group that was changed. In most instances, we moved a HCPCS code from its proposed APC group to a different APC group either in response to comments or to comply with section 1833(t)(2)(C) of the Act. In some cases, we moved codes when a change in response to a comment or the cost variation limit resulted in a grouping that seriously compromised one of the criteria we used to evaluate changes recommended by commenters. Because we made so many changes in the APC groups, we renumbered all the groups and, in many cases, renamed groups. In our response to comments in connection with an APC, the final designation for a HCPCS code corresponds to the renumbered APC group found in the addenda.

APC 121: Level I Needle Biopsy/ Aspiration

Comment: One specialty society commented that there was significant variation in resource consumption for the procedures performed in this APC and that the proposed payment rate of $33.95 for APC 121 does not accurately reflect the preparation, examination, and consultation expenses for a pathologist to thoroughly perform these procedures. The commenter recommended including CPT codes 85095, 85102, 88170, and 88171 in proposed APC 122.

Response: The procedures we proposed to classify in APC 121 were considered sufficiently similar from a clinical perspective. We found no provider concentration associated with the procedures proposed for this APC. Therefore, any variation in cost across the procedures in this APC should average out at the hospital level. However, to be consistent with the BBRA 1999 "two times" provision concerning comparable resources, we have moved CPT codes 85095 and 85102 to final APC 0003, and CPT codes 88170 and 88171 remain in final APC 0002.

APC 122: Level II Needle Biopsy/ Aspiration

Comment: A number of commenters indicated that there was significant variation in resource consumption for the procedures proposed in this APC group. For example, one commenter stated that although all the codes within this group are needle biopsies, they range dramatically in complexity, they are quite dissimilar in terms of resource use, they are not clinically similar, and the proposed grouping results in inappropriate payment for the more complex procedures.

Response: We decided that CPT code 67415, Fine needle aspiration of orbital contents, was more appropriately grouped from a clinical perspective with ophthalmic procedures in final APC 0239. We further divided the codes in proposed APC groups 121 and 122 for needle biopsy/aspiration into final APC groups 0002, 0003, 0004, and 0005 to be consistent with the BBRA 1999 "two times" requirement.

APC 131: Level I incision & drainage

Although we received no comments on proposed APC group 131, based on internal review of this APC, we moved CPT code 11976, Removal, implantable contraceptive capsules, to final APC 019 because this procedure represents an excision rather than an incision. We divided proposed APC 131 into final

APC groups 0006, 0007, and 0008 to be consistent with the BBRA 1999 "two times" requirement.

APC 141: Level I Destruction of lesion

APC 142: Level II Destruction of lesion

Comment: One commenter questioned our proposed assignment of CPT codes 17106 through 17108, which describe destruction of cutaneous vascular proliferative lesions, to APC groups 141 and 142.

Response: We moved CPT code 17106 to final APC 0011 because its median cost is significantly higher than the other codes in 0010. However, the median cost for that code is greater than we would have expected it to be. We will review the appropriateness of this placement in the course of future updates of the APC groups.

APC 151: Level I debridement/ destruction

APC 152: Level II debridement/ destruction

Comment: We received general comments questioning the resource homogeneity of the proposed skin APC groups. One commenter recommended including removal of skin lesion with laser on other body parts in proposed APC 152 rather than restricting the APC to vulva, anus, and penis procedures. The commenter believes that removal of these benign lesions, including papillomas, should include other areas of the body.

Response: We agree with commenters' general concerns about resource homogeneity. We reclassified the codes in proposed APCs 151 and 152 into final APC groups 00012 through 00017 to better differentiate resource use and clinical characteristics and to be consistent with the "two times" BBRA 1999 requirement. We also moved CPT code 42809, Removal of foreign body from pharynx, to final APC 251 because it is an otorhinolaryngology (Ear/Nose/ Throat (ENT)) procedure.

APC 161: Level I excision/biopsy

APC 162: Level II excision/biopsy

APC 163: Level III excision/biopsy

Comment: Numerous commenters were concerned about the variation of resource use among the procedures in proposed APC groups 161, 162, and 163. Commenters requested that we consider classifying procedures in these groups based on anatomic location where functionality is of high importance in combination with the size of excision.

Response: We made a number of modifications to the excision APC groups to satisfy the BBRA 1999 "two times" requirement, resulting in final APC groups 0018 through 0022. We reclassified CPT codes 11043 and 11044 to APC groups 0016 and 0017 because these codes describe debridement of skin, subcutaneous tissue, muscle, and bone.

In the final excision/biopsy APC groups, we endeavored to make distinctions based on the location and size of the excision. For example, excisions of malignant lesions from the face, ears, eyelids, nose, lips greater than 4 cm were placed in an APC requiring more resource use than excisions of malignant lesions from the trunk, arms or legs greater than 4 cm because "functionality" is of greater importance when the site is the face, ears, eyelids, nose, or lips. We moved excisions involving the eye to ophthalmic procedure APCs. We did not make grouping distinctions between benign and malignant lesions of the same size and location because resource use for both types is similar.

We moved benign and malignant excisions larger than 2 cm to final APC group 0020 because these excisions require more resources than, for example, excisions smaller than 1 cm.

We moved CPT code 20220, superficial biopsy of bone (*e.g.*, ilium, sternum, spinous process, ribs) with trocar or needle, to final APC 0019, because the resources used in connection with this procedure are similar to those required for excisions of small benign or malignant lesions.

As noted above, we classified two debridement procedures (CPT codes 11043 and 11044) to final APC groups 0016 and 0017, respectively.

We also moved seven codes from proposed APC 162 to the ophthalmic APC groups.

APC 181: Level I skin repair

APC 182: Level II skin repair

APC 183: Level III skin repair

APC 184: Level IV skin repair

Comment: We received numerous comments expressing concern about the consistency of resource use and clinical homogeneity of the procedures in the four proposed skin repair APC groups. Many commenters recommended moving more complex procedures, such as large layer closures, to an APC with a higher payment rate because the procedures require more operating room and recovery time. Some commenters recommended moving some of the skin repair codes to other body systems.

Response: Our review of proposed APC groups 181, 182, 183, and 184 resulted in our regrouping the skin repair codes based more on cost than on clinical considerations. The volume of claims in most of the codes, however, is quite low. In addition, we moved CPT code 33222, Revision or relocation of skin pocket for pacemaker, from proposed APC 360 to final APC 0026, because this procedure is so similar to the other skin repair procedures in terms of clinical content and resource consumption. We will review these groups carefully as data become available.

APC 197: Incision/excision breast

APC 198: Breast reconstruction/ mastectomy

Comment: One commenter observed that the procedures in proposed APC group 198 are related both to the definitive treatment of breast cancer and to plastic and reconstructive operations of the breast. The commenter recommended moving CPT code 19162, Mastectomy, partial with axillary lymphadenectomy, and CPT code 19182, Mastectomy, subcutaneous, into an APC group with a higher payment rate because both procedures are more complex and involve more time and resources than the other procedures in proposed APC group 198. Another commenter stated that CPT code 19162, and CPT code 19318, Reduction mammoplasty, require significantly longer operating times than the other procedures in proposed APC group 198. The same commenter further observed that CPT code 19162 essentially involves performing two procedures.

Response: Our medical advisors and staff carefully reviewed the comments submitted in connection with the procedures in proposed APC group 198 within the context of the criteria that we discuss at the beginning of this section. They concluded that, although reduction mammoplasty (CPT code 19318) could require slightly more resources, a reduction mammoplasty is still fundamentally similar to other procedures in proposed APC 198 such as CPT code 19162, Partial mastectomy with axillary lymphadenectomy. Our medical advisors and staff concluded that the procedures in proposed APC groups 197 and 198 were sufficiently similar clinically and in terms of resource use to retain the proposed groupings. Therefore, we are retaining our proposed grouping in final APC groups 0029 and 0030.

APC 207: Closed treatment fracture finger/toe/trunk

Although we did not receive comments about this APC group, our medical advisors and staff determined that treatment of closed fractures

pertaining to the larynx should be moved to the ENT APC groups because they are more similar from a clinical and resource use perspective to ENT procedures. The larynx procedures do not involve casts and, more importantly, they require completely different resources and ancillary personnel than, for example, the setting of a finger fracture. Proposed APC 207 is renumbered final APC 0043.

APC 209: Closed treatment fracture/dislocation except finger/toe/trunk

Comment: One commenter objected to including multiple procedures for dislocation and fractures in proposed APC group 209, when the cost of drugs and supplies alone for these procedures probably exceeds $100. The commenter believed that the proposed payment rate for APC 209 was $71.00.

Response: We note that the proposed payment for APC 209 was $98.75, rather than $71.00, as the commenter quoted. Although we included in proposed APC 209 some procedures that could involve considerable time and resources, only the simplest cases of these potentially more complex procedures would be performed on an outpatient basis, with proportionally lower costs than would be incurred when the procedures are performed in an inpatient setting. Therefore, we retained in final APC 0044 the codes in proposed APC 209, except we moved CPT code 31586, Treatment of closed laryngeal fracture, to final APC 0256, because this is primarily an ENT procedure.

APC 216: Open/percutaneous treatment fracture or dislocation

Comment: Numerous commenters took issue with the variation in resource use among the procedures that include the open treatment of almost all bone fractures, ranging from relatively simple finger and toe fractures to major long bone fractures.

Response: We expect that only the simplest of the procedures proposed in APC group 216 would be performed on an outpatient basis. Therefore, we kept open/percutaneous treatment of fractures in one APC rather than splitting these procedures into multiple APCs. We find it unlikely that one provider would specialize in, for example, only open fractures of fingers or only open fractures of long bones. Because the CPT code descriptors for so many procedures in this APC group indicate "with and/or without internal fixation," it is impossible to make distinctions based on whether or not internal fixation is applied. Proposed APC 216 is renumbered final APC 0046.

APC 226: Maxillofacial prostheses

APC 231: Level I skull and facial bone procedures

APC 232: Level II skull and facial bone procedures

Although we did not receive specific recommendations for these APCs, our medical advisors and staff determined that the procedures in these groups are more similar to ENT procedures from a clinical and resource use perspective. Therefore, we moved all of the procedures in these proposed APC groups to the final APCs 0251 through 0256, the ENT APCs.

APC 251: Level I Musculoskeletal Procedures

APC 252: Level II Musculoskeletal Procedures

Comment: One commenter expressed concerns about the clinical homogeneity of the codes in these two groups. The commenter stated that proposed APC 251 contains 77 widely disparate procedures, including CPT code 23100 and CPT code 24100, which describe arthrotomies with biopsies, CPT code 25248, Exploration with removal of deep foreign body, forearm or wrist, and CPT code 27704, Removal of ankle implant. The commenter further stated that proposed APC 252 contains equally diverse procedures ranging from: CPT code 20900, Bone graft, any donor area; minor or small, to CPT code 25251, Removal of wrist prosthesis; complicated, including "total wrist," to CPT codes 27396, 27580, and 27665, which are different types of tendon procedures. The commenter recommended that procedures that require specialized equipment and more operating room time be moved into a group with a higher payment rate.

Response: Our medical advisors and staff, after careful consideration of the commenter's concerns and after reviewing alternative groupings of the numerous codes in these two proposed musculoskeletal APC groups, concluded that splitting these groups to address the disparities cited by the commenter would result in too many small, low-volume groups for which we would be unable to establish reliable payment rates. The broad inclusiveness of these two APC groups is in part a reflection of the magnitude of the musculoskeletal system. Given the homogeneity of resource use across the many procedures within each group, we concluded that the factors supporting retention of the two groups outweighed the concerns raised by the commenter. We did, however, move CPT code 27086, Removal of foreign body, pelvis or hip; subcutaneous tissue, to final APC 0019.

APC 280: Diagnostic Arthroscopy

APC 281: Level I Surgical Arthroscopy

APC 282: Level II Surgical Arthroscopy

Comment: A number of commenters expressed concerns about the homogeneity of codes in the proposed surgical arthroscopy APC groups. In particular, commenters stated that while an arthroscope is needed for all the procedures assigned to proposed APC group 281, the nature of the repair may mandate different additional equipment and differing times to complete. Commenters did not find the procedures in proposed APC 281 to be homogeneous with respect to the time required to perform the procedures nor their associated costs. Commenters specifically recommended transferring complex elbow and wrist procedures represented by CPT codes 29826, 29838, 29839, 29846, 29847, 29848, 29861, 29862, and 29863 into an APC group with a higher payment rate.

Response: Upon revisiting the assignment of codes to proposed APC groups 280, 281, and 282, and considering the concerns expressed by commenters, our medical advisors and staff concluded that collapsing the three proposed APC groups into a single group would result in a more homogeneous grouping in terms of resource use. Hence, final APC 0041 contains the codes proposed as APC groups 280, 281, and 282. The relatively low volume of many of the procedures in the proposed APCs supports combining them into a single group. Further, we found that, from a facility perspective, the resource use for all the codes in final APC 0041 is similar. For example, we had proposed to place CPT code 29881, Arthroscopy, knee, surgical; with meniscectomy (medial or lateral, including any meniscal shaving), and CPT code 29882, Arthroscopy, knee, surgical; with meniscus repair (medial or lateral), in two different APC groups. However, the resources required for these two procedures is sufficiently comparable to warrant placing both into the same APC.

APC 286: Arthroscopically-Aided Procedures

We considered including the procedures in proposed APC group 286 with the other arthroscopic procedures in final APC 0041 because they are so infrequently performed in an outpatient setting for Medicare beneficiaries. However, the resources required to perform the procedures in proposed

APC 286 are so strikingly distinct from those used in connection with the procedures in final APC group 0041 as to warrant being retained in a separate group. Further, it is unlikely that an individual provider specializes in the particular type of arthroscopic procedure contained in this APC, so separating all of the codes in final APC 042 from those in APC 041 should not disadvantage any one hospital.

APC 311: Level I ENT Procedures

APC 312: Level II ENT Procedures

APC 313: Level III ENT Procedures

APC 314: Level IV ENT Procedures

We received numerous comments about the composition of the four proposed ENT APC groups. After careful review of the comments, our medical advisors and staff recognized the need for a major reorganization of the groups we proposed for ENT procedures. The outcome of our review was the creation of five final APC groups for ENT procedures: APC groups 0251, 0252, 0253, 0254, and 0256. We moved a large number of bone procedures involving the facial and ENT areas from musculoskeletal groups to ENT groups. We transferred some codes out of the ENT groups altogether, and we shifted codes among the five final ENT groups to comply with the BBRA 1999 "two times" requirement. We respond to recommendations regarding specific codes below.

Comment: One commenter observed that CPT codes 31603 and 31605, emergency tracheostomy procedures, are risky and life-threatening no matter how quickly they are performed, and, as such, they should not be grouped with procedures for removing a foreign body from the ear canal or removing cerumen (proposed APC 311).

Response: We agree. We created new APC group 0340 to which we assigned CPT code 69200, removal of foreign body from external auditory canal; without general anesthesia, and CPT code 69210, Removal impacted cerumen (separate procedure), one or both ears. We shifted these two procedures to the Minor Ancillary Procedures APC group because of their relative high frequency, their low cost in terms of resource use with low disposable equipment cost, and because these procedures generally do not require scheduling. Removing CPT code 69210 from the final ENT groups also corrects any pricing distortions that may have resulted from the disproportionately high volume of that procedure.

We also moved the tracheostomy emergency procedures to final APC 0254.

We moved several other procedures such as CPT code 41870, Periodontal mucosal grafting, to final APC 0253, a group with higher cost procedures.

We moved several abscess drainage procedures such as CPT code 41800, Drainage of abscess, cyst, hematoma from dentoalveolar structures, to final APC group 0251 because of their relatively low cost.

Comment: One commenter stated that all the procedures in proposed APC 312 appear to be reasonably priced with the exception of CPT code 69436, Tympanostomy (requiring insertion of ventilating tube), general anesthesia. In the view of the commenter, the extra supplies and time required for this procedure necessitate a higher payment.

Response: We moved CPT code 69433, Tympanostomy (requiring insertion of ventilating tube, local or topical anesthesia), to final APC 0252 because of its lower resource use relative to CPT code 69436. CPT code 69436 is assigned to final APC 0253.

We moved a large number of procedures such as CPT code 42335, Sialolithotomy; submandibular (submaxillary), complicated, intraoral from original APC 313 to final APC 0253 to reflect a similarity of resource use. In terms of resource use, CPT code 30115, Excision, nasal polyp(s), extensive, is more similar to CPT code 42300, Drainage of abscess, parotid, simple, than it is to CPT 42410, Excision of parotid tumor or parotid gland; lateral lobe without nerve dissection.

We shifted CPT code 21040, Excision of benign cyst or tumor of mandible, from the musculoskeletal group to final APC 0253 with other ENT procedures.

Comment: One commenter stated that procedures directed towards cancer treatment were inappropriately assigned to proposed APC 313. As examples, the commenter cited CPT codes 30150 and 30160, rhinectomy procedures; CPT code 41120, Glossectomy; less than one-half tongue; and CPT code 69210, Excision external ear, complete amputation. The commenter also indicated concern that proposed APC group 313 includes a disproportionately large percentage of resource-consuming ENT procedures and commonly performed sinus procedures. Other commenters recommended that more complex otorhinolaryngology procedures in the group that have longer operating and recovery room times be moved to a group with a higher payment rate.

Response: We moved CPT code 69210 to final APC group 0340, and we assigned CPT codes 30150, 30160, and 41120 to final APC group 0256. We also moved CPT code 42215, Palatoplasty for cleft palate; major revision to final APC group 0256.

Comment: One commenter suggested placing certain thyroid procedures in the ENT groups.

Response: While we agree that CPT code 60280, Thyroglossal cyst excisions, is somewhat similar to CPT code 42440, Excision of submandibular, submaxillary gland, we nonetheless believe that the former type of excision is more appropriately placed from a clinical perspective with other thyroid procedures.

APC 318: Nasal Cauterization/Packing

Comment: A number of commenters addressed generally the range of resource use among the procedures within this proposed APC. One commenter observed that CPT code 30901 is almost always a simple office procedure within the context of an otolaryngology practice. The same commenter indicated that CPT codes 30903, 30905, and 30906 frequently require several hours of direct physician contact and monitoring and recommended that we consider reclassifying CPT codes 30903, 30905, and 30906 to proposed APC group 332, Level II Endoscopy Upper Airway. Another commenter was concerned that CPT codes 30905 and 30906 stand out as inappropriate for this APC level because they require much more time and expertise and are used in more life-threatening situations than the other codes in the group.

Response: While there is a range of procedures in this APC pertaining to control of nasal hemorrhage, hospitals normally treat the entire range of these procedures, and there is no concentration of certain of these procedures in a subset of hospitals. Our medical advisors and staff also found that there can be a range of resource consumption within many of the procedures themselves as well as across procedures in this APC. We therefore are not reassigning the codes.

We did, however, move CPT codes 30999 and 42999 for unlisted procedures to final APC 0251 and 0252, respectively, to be consistent with our policy of placing unlisted codes in the lowest paid related group.

APC 331: Level I Endoscopy Upper Airway

Comment: One commenter noted that the relative weight and payment rate proposed for APC group 331 approximated the relative weight and payment rate proposed for APC groups 997 or 987. The commenter stated that CPT codes 31575 and 31579 should have a higher relative weight and

payment rate than that proposed for APC 331 because both procedures require more time, higher skill levels, and more equipment than the procedures in APC 997 or 987. A professional association, echoing the first commenter, noted that CPT codes 31575 and 31579 are the most complex of all noninvasive laryngeal diagnostic procedures performed by otolaryngologists and speech language pathologists, further justifying a higher relative weight and payment rate for these procedures.

Response: Proposed APC groups 997 and 987, Manipulation therapy and Subcutaneous chemotherapy, respectively, are clinically very different from proposed APC group 331. The professional skill and expertise of the physician performing the laryngoscopy are recognized separately and are not costs that are packaged with the payment rate for services furnished by the hospital in connection with the procedure. Further, it is very unlikely that there will be systematic differences among facilities with some only doing the most difficult of the basic laryngoscopies that are contained in this group and others only specializing in the simplest variety. However, we have reorganized the proposed endoscopy, upper airway groups into final APC groups 0071 through 0075 to be consistent with the BBRA 1999 "two times" requirement.

APC 341: Level I Needle and Catheter Placement

APC 342: Level II Needle and Catheter Placement

APC 343: Level III Needle and Catheter Placement

APC 347: Injection Procedures for Interventional Radiology

Based on our cost data, our medical advisors and staff determined that the codes in these proposed APC groups should be assigned status indicator "N," which designates incidental services whose costs are packaged into the APC payment rate. Injection procedures themselves are low cost but, more importantly, they are an integral portion of another procedure. The needle and catheter placement are typically an integral portion of interventional radiology procedures. An exception was made for CPT code 36420, cutdown on a child under age one, which was placed in final APC 0032, to recognize its infrequent use but high median cost.

APC 360: Removal/Revision, Pacemaker/Vascular Device

Comment: Most commenters recommended changing a number of pacemaker codes from "inpatient only" payment status to allow payment under the hospital outpatient PPS. One commenter noted that whereas we proposed to exclude most pacemaker and implantable cardioverter defibrillator (ICD) replacement procedures from the outpatient PPS, we did include pacemaker revision/removal procedures in proposed APC 360 even though both types of procedures require very similar steps to perform. The commenter is concerned that by not paying for pacemaker replacement procedures under the outpatient PPS, we are forcing physicians to perform these replacement procedures on an inpatient basis. By so doing, the commenter suggested that we are adding costs to the entire system that could be saved, because the pacemaker replacement procedures can be safely performed in the outpatient setting, with less inconvenience to the patient.

Response: After careful consideration of commenters' recommendations, our medical advisors and staff agreed that paying for pacemaker insertion or replacement codes under the outpatient PPS is appropriate if the outpatient setting is determined to be reasonable and medically necessary for the individual beneficiary. We assigned procedures for revising or removing implanted infusion pumps and venous access ports in proposed APC 360 and pacemaker insertion or replacement codes payable under the outpatient PPS to final APCs 0089 and 0090. Also, we moved CPT code 33222, Revision or relocation of skin pocket for pacemaker, and CPT code 33223, Revision or relocation of skin pocket for implantable cardioverter-defibrillator, to final APC 0026 because the resource use for these two procedures is similar to that of the skin repair procedures in APC 0027.

APC 367: Vascular Ligation

Comment: One commenter wrote that the procedures in proposed APC 367 include ligation of major arteries and veins, which are usually performed as emergencies in the inpatient setting, and elective ligation and stripping of lower extremity varicose veins of variable complexity. The commenter contended that costs for these procedures vary dramatically, with simple ligation and division of the saphenous vein at the low end of the cost scale, and the stripping of long and saphenous veins at the high end.

Response: We split proposed APC 367 into two groups, final APCs 0091 and 0092, to conform with the BBRA 1999 "two times" requirement. Although we are not sure to which codes the comment refers, codes 37780 and 37730 are now in different groups. These represent ligation and division of the short saphenous vein, and ligation, division and stripping of long and short saphenous veins, respectively.

APC 368: Vascular Repair/Fistula Construction

Comment: Commenters disagreed with the codes assigned to proposed APC 368, especially services related to insertion of implantable hemodialysis access ports. Commenters did not find the services in APC 368 to be comparable clinically. In particular, they recommended moving cannula insertion and declotting procedures to proposed APC groups 341, 342, and 343, which consist of needle and catheter placement procedures.

Response: We split the codes in proposed APC 368 into APC groups 0088, 0090, 0092, and 0093. The resulting classifications are more clinically homogeneous, and they meet the BBRA 1999 "two times" requirement. We also moved CPT code 35875, Thrombectomy of arterial or venous graft (other than hemodialysis graft or fistula), into final APC 0088.

APC 369: Blood and Blood Product Exchange

Comments: As we noted in section III.C.2.f, above, many commenters disagreed with both our proposed payment rates and our proposed classification for blood and blood-related products. Most commenters disagreed with our classifying in one APC group therapeutic apheresis, stem cell procedures, and blood transfusion services. The commenters stated that therapeutic apheresis and stem cell procedures are very costly and resource intensive procedures which cost more than 3 times the proposed payment rate for APC 369, yet we are proposing to pay a median amount for these services that is appropriate for blood transfusions only. Commenters questioned whether we had taken into account the costs associated with the specialized equipment, supplies and personnel that are required to perform therapeutic apheresis and stem cell procedures. Commenters stated that the payment rate proposed for APC 369 would not offset the costs hospitals incur to furnish therapeutic apheresis services because outpatient apheresis procedures often combine dissimilar kinds and combinations of plasma replacement products, causing widely differing costs per service.

A major association representing community cancer centers stated that our data for stem cell harvesting claims (CPT 38231) include a range of costs so

large as to suggest that there are errors in the data. The commenter believes that the very small sample of claims (reduced by HCFA's exclusion of multiple procedure claims and claims without codes) further renders the data unreliable. The same commenter cited bone marrow harvesting (CPT 38230) as an example to argue that our data, which indicates a median cost of $18.00 for what is normally a lengthy procedure performed under general anesthesia, are problematic.

Some commenters stated that the proposed payment rate was not sufficient for transfusion services if the rate was supposed to pay for both the blood product and the transfusion procedure, because even though outpatient transfusion services are relatively simple and low-cost, they are associated with a costly blood product that is far more variable.

Commenters expressed concern that the proposed payment rate for APC 369 was insufficient to pay for extracorporeal photopheresis (CPT 36522), whose actual cost is approximately $1,000, and would have an especially negative impact for patients with cutaneous T-cell lymphoma.

A major organization recommended that we separate payment for a service from payment for the blood product associated with that service. The same commenter also recommends separate payment for infusible blood-derived drugs, and that payment for transfusable blood products be based on costs. This organization recommends that APC 369 be split into several APCs because payment for services such as transfusion services, therapeutic apheresis, stem cell collection, Staph column pheresis, and others are distinct, and deserve separate APC payments. The same commenter also recommended that we accelerate the HCPCS coding process for blood-related products.

Response: In response to commenters' recommendations, we are creating different APC groups for blood-related procedures and transfusions, and we are paying for blood and blood products separately, instead of packaging them with the procedures or services with which they are associated. We were convinced by commenters' illustrations of the variability in the use of blood and blood products in various procedures, and by our desire to recognize the costs of tests now being performed on donated blood that were not captured in our 1996 data. The procedures we proposed in APC 369 are split among final APC groups 0109, 0110, 0111, and 0112. We have also created individual APC groups for blood and blood related products. The final APC 0109 that we created to capture bone marrow harvesting and bone marrow/stem cell transplant had a median cost of only $15.00. This is due to the few, highly variable claims in our database. Based on the information available to us at this time, we have assigned a rate of $200.00, and will adjust the rate to reflect actual claims as we collect data under PPS.

APC 407: Esophagoscopy

APC 417: Diagnostic Upper GI Endoscopy

APC 418: Therapeutic Upper GI Endoscopy

Comment: Commenters were concerned about low payment rates set for these three proposed APC groups.

Response: Our medical advisors reviewed the proposed groups and determined that combining the codes into a single APC group for upper gastrointestinal endoscopic procedures conformed with the criteria we used to define APC coherence and resulted in a reasonable payment rate supported by cost data. Resource use for all procedures in final APC 0141 is similar because each procedure involves an endoscopic examination. In addition, most of the procedures involve diagnostic and therapeutic tests such as brushings or fulgurations.

APC 426: Diagnostic Lower GI Endoscopy

APC 427: Therapeutic Lower GI Endoscopy

Comment: Commenters were concerned that the payment rates proposed for APC groups 426 and 427 were too low to offset costs incurred to perform these procedures. One commenter indicated that a diagnostic colonoscopy (CPT code 45379), without any mark up or consideration of room time and equipment use, costs $350, with additional costs if a polyp has to be removed ($155 just for a bicap). The commenter indicated that the current cost of a hot biopsy forceps is $45. Given these costs, the provider would necessarily incur a loss when performing these procedures.

Response: Our medical advisors and staff, after reviewing the cost data for these two proposed groups, combined the diagnostic and therapeutic APCs into a single group, final APC 0143. Resource use for the procedures in this APC is similar because they all involve an endoscopic examination. More importantly, even though resource use may vary relative to the clinical requirements of individual cases, facilities are not likely to specialize in just therapeutic or diagnostic endoscopic services. Therefore, costs should even out across all cases.

Comment: One commenter found the low rate proposed for CPT code 45378, Diagnostic colonoscopy, to be inconsistent with our major policy initiative to screen persons at high risk for colorectal cancer.

Response: We moved HCPCS code G0105, Colorectal Cancer Screening: Colonoscopy,to its own group, final APC 0158, because it is preventive rather than diagnostic or therapeutic in nature.

APC 446: Diagnostic Sigmoidoscopy

APC 447: Therapeutic Proctosigmoidoscopy

APC 448: Therapeutic Flexible Sigmoidoscopy

We reassigned the different types of sigmoidoscopy procedures into two groups, final APC 0146 and final APC 0147. The procedures within each group are similar both clinically and in terms of resource use. We moved HCPCS code G0104, CA screening; flexible sigmoidoscopy, to its own group, final APC 0159, because it is preventive rather than diagnostic or therapeutic in nature.

APC 451: Level I Anal/Rectal Procedures

APC 452: Level II Anal/Rectal Procedures

To conform with the BBRA 1999 "two times" requirement, our medical advisors and staff reclassified procedures in the proposed APC groups resulting in final APC groups 0148 and 0149. We believe the final APC groups are more consistent both clinically and in terms of resource use.

APC 470: Tube Procedures

Comments: We split the codes in proposed APC group 470 into final APC groups 0121, 0122, and 0123 to conform with the BBRA 1999 "two times" requirement. Also, we moved CPT code 50398, Change of nephrostomy or pyelostomy tube, from proposed APC 521 to final APC 0122.

APC 523: Level III Cystourethroscopy and Other Genitourinary Procedures

Comment: A number of commenters recommended moving CPT code 52240, Cystourethroscopy, with fulguration (including cryosurgery or laser surgery) and/or resection of; large bladder tumor(s), to the APC for Level IV Cystourethroscopy and other Genitourinary Procedures because the magnitude of the procedure most

closely resembles that of the codes in the higher payment group.

Response: We agree with commenters' recommendations; we moved CPT code 52240 to final APC group 0163 because of the extensive time and equipment required to perform the procedure.

Comment: One commenter recommended placing CPT codes 52335 through 52338 in their own group, given the complexity and technical demands of these ureteroscopic procedures. The same commenter suggested as an acceptable alternative placing these codes in the APC group for Level IV Cystourethroscopy and other Genitourinary Procedures, to reflect more accurately their cost, complexity, and need for expensive single use items such as dilation balloons, baskets and stents. Other commenters recommended moving CPT codes 51020 through 51880 (cystotomy procedures) to the APC group for Level IV Cystourethroscopy and other Genitourinary Procedures.

Response: After a careful review of comments and our cost data, our medical advisors and staff concluded that the cystotomy codes are similar enough in terms of equipment and the time required to perform the procedures to justify keeping them together in final APC 162. Our medical advisors and staff also concluded that the facility equipment and time duration for CPT code 52335, Cystourethroscopy, with ureteroscopy and/or pyeloscopy (includes dilation of the ureter and/or pyeloureteral junction by any method), was sufficiently similar to be retained with the other procedures in final APC 0162.

APC 524: Level IV Cystourethroscopy and other Genitourinary Procedures

Comment: Numerous commenters were concerned that the payment rate proposed for APC 524 was insufficient to offset the costs associated with CPT code 53850, Transurethral destruction of prostate tissue, by microwave thermotherapy (TUMT). The commenters argue that TUMT is a very expensive procedure due to its high capital equipment costs and the need to construct a special microwave area, the high cost of disposable probes and other disposable supplies required for the procedure, and the need for specially trained nursing staff. The commenters urged us to establish a unique APC group for this procedure and to provide a payment rate that is consistent with its anticipated costs, which they predict would total approximately $2,200.

Response: After careful consideration of comments and available cost data, our medical advisors and staff determined that CPT code 53850 satisfies the criteria discussed below, in section III.C.8, as a new technology service. Payment for this procedure will be made under new technology APC 0980.

APC 529: Simple Urinary Studies and Procedures

Comment: A number of commenters proposed that we classify CPT code 51726, Complex cystometrogram, to its own unique APC and keep the other urinary study procedures together in proposed APC 529.

Response: After a careful review of comments and our data, our medical advisors and staff agreed with commenters' concerns and subdivided proposed APC group 529. The resulting final APC groups 0164 and 0165 are more homogeneous both in terms of clinical coherence and resource use. We also added simple anal procedures such as CPT code 91122, Anorectal manometry, to final APC 0165 because of the similarity of resource use.

APC 546: Testes/Epididymis Procedures

Comment: A number of commenters disagreed with our classification of scrotal procedures with inguinal procedures in proposed APC group 546. The commenters observed that the scrotal procedures vary considerably from the inguinal procedures in terms of resource usage. The commenters recommended that we move CPT codes 54530, 54550, 54640, 55520, 55530, 55535 and 55540 to proposed APC 466, Hernia/Hydrocele Procedures, because they all involve operating on vessels at the internal ring, and are therefore similar to a hernia repair.

Response: We agree with comments that these procedures are similar to hernia repairs. We moved CPT codes 54530, 54550, 54640, 55535, and 55540 to final APC group 0154.

APC 551: Level I Laparoscopy

APC 552: Level II Laparoscopy

Comment: We received two categories of comments pertaining to laparoscopic procedures: Numerous commenters disagreed with our proposal to define certain laparoscopic procedures as inpatient only, and numerous commenters claimed that the resource costs among the procedures within proposed APC groups 551 and 552 varied too greatly for the groups to be considered homogeneous. Most commenters stated that the costs associated with the procedures in proposed APC groups 551 and 552 exceed their respective proposed payment rates because of the expensive equipment and disposable supplies and the length of time required to perform laparoscopic procedures.

Response: Our medical advisors and staff, after a thorough review and consideration of comments, agreed with commenters who claimed that most laparoscopic procedures can and are being safely and appropriately performed in an outpatient setting. We therefore moved most of the laparoscopic codes to which we proposed to assign a payment status indicator "C," indicating that the procedures would not be covered under the hospital outpatient PPS, into an APC group with a payment status indicator "T" (significant procedure, multiple procedure reduction applies, payable under the outpatient PPS). In order to absorb these additional procedures within the APC system, we created a third laparoscopic APC group in order to accommodate the wide range of resource use and time that is required to perform the expanded list of laparoscopic procedures.

Although the AMA revised the coding of laparoscopic procedures in CPT 2000, in order to set rates for the laparoscopy APC groups, we used the codes that were in our database of 1996 claims. That is, we moved CPT codes 56362 and 56363 to the Level I laparoscopic group, final APC group 0130, because the resources used in connection with these procedures are less compared to the Level II procedures generally. For example, CPT code 56362, Laparoscopy with guided transhepatic cholangiography, primarily involves the laparoscopy without any associated removal of tissue. Conversely, we shifted CPT codes 56303 and 56304 from Level I to Level II (final APC 0131). CPT code 56303, Laparoscopy, surgical, with fulguration or excision of lesions of the ovary, pelvic viscera, or peritoneal surface, requires more resources than, for example, CPT code 56300, Diagnostic laparoscopy, the most common laparoscopic procedure within Level I, final APC group 0130.

The new Level III laparoscopy group, final APC group 0132, consists largely of laparoscopic procedures that we had proposed to classify as inpatient. In addition, we moved CPT code 56312, Laparoscopy, surgical; with bilateral total pelvic lymphadenectomy, and CPT code 56313, Laparoscopy, surgical; with bilateral total pelvic lymphadenectomy and peri-aortic lymph node sampling (biopsy), single or multiple, to final APC group 0132 because of the extensive resources and time involved in performing these procedures. Refer to Current Procedural Terminology 2000, published by the American Medical Association, for a summary of coding

changes and crosswalks for laparoscopic procedures.

APC 561: Level I Female Reproductive Procedures

APC 562: Level II Female Reproductive Procedures

APC 563: Level III Female Reproductive Procedures

Comment: One commenter expressed concern that the payment rate for proposed APC group 563 would have a negative effect on certain treatment options for women suffering with incontinence. The commenter contrasted the proposed payment of $848 with a current median cost calculated at $1,931 for CPT code 57288, Sling operation for stress incontinence (*e.g.*, fascia or synthetic).

Response: After reviewing the procedures in proposed APCs 561, 562, and 563, and to be consistent with the BBRA 1999 "two times" requirement, we split the proposed groups into final APCs 0191 through 0195. The cost of CPT code 57288, to which the commenter refers, is still at the high end of the highest weighted group, but the volume of claims for that service is so low that splitting the group again would be problematic. If these more intense surgeries move to the outpatient setting in greater numbers, we will be able to price them more precisely.

APC 601: Level I Nervous System Injections

APC 602: Level II Nervous System Injections

Comment: Commenters contended that there are no similarities among the procedures in the proposed APC groups for nervous system injections.

Response: We disagree. We find the range of services included within each APC group to be generally consistent from a clinical perspective. And, even though an injection into the subarachnoid space may be a more complex injection than some of the others in the group, no institution is likely to specialize solely in one kind of injection. Because all the services within the APC group are offered by most hospitals, the impact of the variation in resource consumption among the different codes should average out at the hospital level. Therefore, we are keeping intact in final APC groups 0211 and 0212 the two levels of nervous system injections that we proposed, with the exception of CPT codes 62194 and 62225, which we moved to final APC group 0121 because they are catheter replacement procedures.

APC 616: Implantation of Neurostimulator Electrodes

APC 617: Revision/Removal Neurological Device

APC 618: Implantation of Neurological Device

Comment: One commenter was concerned that the payment rate proposed for APC group 616 falls far short of the costs incurred to implant a neurostimulator system that embodies a vagus nerve stimulator for the treatment of patients with refractory epilepsy. The commenter estimated that hospitals incur costs between $2,000 and $5,000 to surgically insert the Neurocybernetic Prosthesis system (NCP), which includes an implantable neurostimulator, pulse generator, and implantable electrodes. The commenter stated that the NCP costs $9,100. The commenter recommended that we create a separate APC group for the procedure to ensure appropriate payment. The commenter also expressed concern that the broad range of procedures in proposed APC 618 results in inappropriate payment rates. The commenter noted that the median cost of the procedures in proposed APC group 618 varies from a low of $269.44 to a high of $3,890.70, with a proposed payment rate of $1,274.

Another commenter stated that vagus nerve stimulation, approved by the FDA in 1997, which can sometimes be performed as an outpatient procedure, would be inappropriately paid under our PPS. The commenter stated that the reported cost for the device is $6,900 for the implantable neurostimulator pulse generator and $2,030 for the implantable vagus nerve stimulator leads. A manufacturer of this new system, which is used in treating intractable epilepsy, also expressed concern that the proposed PPS will underpay hospitals for new technologies such as its system and deny beneficiaries access to them.

Response: In response to these and other comments, we made several changes in proposed APC groups 616, 617, and 618. We moved CPT code 63650, Percutaneous implantation of neurostimulator electrodes, peripheral, to final APC 0224 because the procedure is less time intensive and uses fewer facility resources than the implant procedures in final APC 0225. We also shifted CPT codes 64585 and 64595 to final APC 0225. We will re-evaluate APCs 0223, 0224, and 0225 as we accumulate data and will incorporate our findings in a subsequent hospital outpatient PPS rule. Additionally, we will determine whether the implantable neurostimulator system is eligible for treatment as a "pass-through" device under section 201(b) of the BBRA 1999. The criteria for assessing a medical device's eligibility for additional payment under this provision are discussed in section III.D.4, below.

Ophthalmic Procedures: We received numerous comments concerning the APC groups proposed for eye procedures. Based on their analysis of these comments and recommended changes, a review of our data, and consideration of the limit on variation within a group required by section 201(g) of the BBRA 1999, our medical advisors and staff have significantly restructured the ophthalmic APC groups. Eye procedures and services are assigned to final APC groups 0230 through 0248.

APC 930: Minor Eye Examinations

APC 931: Level I Eye Tests

APC 932: Level II Eye Tests

We assigned to final APC groups 0230 and 0231 the procedures in proposed APC groups 930, 931, and 932 in addition to codes from proposed APC groups 681, 682, and 683 that are either tests or minor ophthalmologic procedures requiring relatively low resource use.

APC 651: Level I Anterior Segment Eye Procedure

APC 652: Level II Anterior Segment Procedure

Comment: We received a number of comments about these proposed APC groups. Commenters were primarily concerned that the payment rates proposed for the two levels of anterior segment eye procedures are significantly less than the costs incurred to perform the procedures assigned to these groups, especially those for glaucoma surgery (CPT codes 66150 through 66170). One commenter indicated that the rate proposed for CPT 66180 is acceptable only if separate payment is made for the aqueous shunt and patch graft.

Response: Based on their review of comments and to be consistent with the BBRA 1999 "two times" requirement, our medical advisors and staff added a third APC group for anterior segment eye procedures. The anterior segment eye procedures are assigned to final APC groups 0232, 0233, and 0234. We made a number of code changes among the three groups. We moved CPT codes 66155, 66160, 66165, and 66170 for glaucoma surgery to final APC group 0234. We shifted CPT code 65800, Paracentesis of anterior chamber of eye (separate procedure) with diagnostic aspiration of aqueous, from proposed APC 683 to final APC 0232 because the

instruments used in connection with CPT code 65800 are similar to those used in all procedures that are primarily paracentesis and because operating room time is likewise similar.

APC 667: Cataract Procedures

APC 668: Cataract Procedures With IOL Insert

Based on our data, the median cost for final APC group 0245 (cataract extraction without lens insert) was slightly higher than that for final APC group 0246 (cataract extraction with lens insertion). We attribute the discrepancy to poor coding, and we have increased the payment rate for APC group 0246 to equal the payment rate for APC group 0245. Proper coding in the future should result in better differentiated costs between these two groups.

Comment: One commenter objected to assigning payment status indicator "T," Significant procedure, multiple procedure reduction applies, to the procedures in proposed APC group 668. The commenter contended that CPT code 66984, Cataract removal with lens insertion, is often performed in conjunction with other procedures such as CPT code 67010, partial removal of eye fluid, CPT code 65875, incise inner eye adhesions, and 66170, Glaucoma surgery, which also have a "T" payment status indicator. The commenter believes that the multiple procedure reduction would undercompensate for these services and that all these procedures should be given an "S" payment status indicator, which would not subject them to the multiple procedure discount.

Response: We disagree. When more than one surgical procedure is performed during a single operative session, full Medicare payment and the full beneficiary coinsurance payment are made for the procedure that has the highest payment rate. The costs associated with anesthesia, operating and recovery room use, and other services for any additional procedures are incremental and are accounted for within the discounted additional payment.

APC 670: Corneal Transplant

Comment: The numerous comments that we received about this proposed APC focused on our proposal to package the cost of procuring corneal tissue as part of the costs associated with corneal transplant surgery. Commenters feared that this fixed payment method would underpay some hospitals while overpaying others because hospitals acquire corneal tissue from eye banks whose charges are dependent upon the amount of philanthropic contributions the bank receives during the course of a year. A national association representing eye banks reported that fee data from different member facilities show that the corneal tissue acquisition fee alone nearly consumes or, in some cases, exceeds, the entire payment rate proposed for APC group 670. Commenters expressed great concern that we would significantly reduce the supply of corneas available for transplant if we were to package corneal tissue acquisition costs within the APC rate.

Response: Given the current basis for pricing corneal tissue, we are accepting commenters' recommendations that corneal tissue acquisition costs be paid separately and in addition to the payment rate for corneal transplant procedures. At least until we gather data regarding costs associated with the acquisition of corneal tissue, this will ensure that individual hospital's reasonable corneal tissue procurement costs are covered under the PPS. Corneal transplant procedures are in final APC group 0244.

APC 676: Posterior Segment Eye Procedures

Comment: Commenters were concerned that the payment rate for proposed APC group 676 was too low given the costs incurred to perform a number of procedures in the group. For example, one commenter noted that CPT code 67005 requires the same draping as a cataract extraction.

Response: In response to commenters' concerns and to be consistent with the BBRA 1999 "two times" requirement, we split the procedures in proposed APC group 676 into final APC groups 0235 through 0237. We also moved procedures such as CPT code 67025, Replace eye fluid, and CPT code 67027, Implant eye drug system, to final APC 0237 because of the similarity of resource use. CPT code 67025 involves injection of a vitreous substitute, usually gas, silicone, or a similar substance, and the procedure may also involve an aspiration.

APC 681: Level I Eye Procedure

APC 682: Level II Eye Procedure

APC 683: Level III Eye Procedure

APC 684: Level IV Eye Procedure

Comment: Commenters were concerned about the wide variation of resource use and clinical characteristics among the procedures within proposed APC groups 681, 682, 683, and 684. Commenters noted that the surgical complexity of individual procedures in proposed APC group 684 ranges from simple suturing (CPT code 67914, Repair of ectropion; suture) to complex eyelid reconstructions with full thickness tarsoconjunctival flap transfer (CPT code 67971). Commenters recommended that these proposed APC groups be revised and that the more complex procedures that require longer operating room time be paid a higher rate.

Response: We agree. Guided by commenters' recommendations as well as the "two times" limit on cost variation required by the BBRA 1999, we created several new groups and we completely reorganized the procedures in proposed APC groups 681, 682, 683, and 684 into the final APC groups 0230 through 0234 and 0238 through 0242.

APC 690: Vitrectomy

Comment: Several commenters were concerned that the cost of an intravitreal implant ($4,000, according to one commenter) would not be adequately recognized if payment for the device were to be packaged with payment for the insertion procedure (CPT code 67027, Implant eye drug system). Commenters were concerned that beneficiary access to this implant would be restricted if we did not make adequate payment. Commenters supported our proposal to make separate payment for the intravitreal implant.

Response: We assigned all of the procedures in proposed APC 690 to final APC group 0237. As we explain in section III.B.1.c, above, section 201(e) of the BBRA 1999 requires us to classify implantable items to the group that includes the service to which the item relates. However, the intravitreal implant that dispenses ganciclovir is an orphan drug that qualifies for a transitional pass-through payment under the BBRA 1999, which is explained in section III.D, below. Thus, we have assigned the entire drug delivery system to its own APC, 0913. We believe that the payment rate set for CPT code 67027 combined with the additional payment for ganciclovir results in an appropriate payment for this service.

APC 700: Plain Film

Comment: We received numerous comments about the structure of proposed APC group 700. Commenters recommended breaking down the proposed APC group into a number of smaller, more congruous groups. For example, one commenter found no justification for the assumption that resource costs are the same for all plain films listed in APC 700, noting that

there is a significant difference in capital costs, room costs, and maintenance costs between an x-ray room that is designed to take chest x-rays compared to an x-ray room with a table used to take abdominal x-rays. The commenter pointed out that there is a substantial increase in cost when cineradiography capabilities are added. The same commenter questioned our assumption that therapeutic radiology port films are clinically similar to diagnostic radiology films or that bone density studies are clinically similar to and have the same resource costs as plain film radiography.

Response: We agree with commenters' concerns about the composition of proposed APC group 700. In response to commenters' recommendations and applying the "two times" limit on cost variation required by the BBRA 1999, we split proposed APC group 700 into final APC groups 0260 through 0262. We assigned CPT code 70300, Radiologic examination, teeth; single view; CPT code 70310, Radiologic examination, teeth; partial examination, less than full mouth; and, CPT code 70320, Radiologic examination, teeth; complete, full mouth, to their own group, final APC group 0262, because these procedures require minimal time and relatively little radiographic film and technical equipment. We classified the remaining codes to final APC groups 0260 and 0261. We believe that these two groups are sufficient to distinguish clinical consistency and similar resource use. Facilities perform, relatively, a similar proportion of the different plain film procedures, and hospitals do not systematically use one type of plain film over another type, with the exception of dental films, which we moved to a separate group. The absolute magnitude of the difference in resource use among different plain films is not as significant as the difference between dental and other types of plain film. Additionally, our data indicate minimal differences in the amount of resource use between bone density measurement tests and plain films.

APC 706: Miscellaneous Radiological Procedures

Comment: A number of commenters found the tests grouped in proposed APC group 706 to vary significantly in the amount of time, effort, and costs required to provide the service.

Response: As a result of applying the "two times" limit on cost variation required by the BBRA 1999, we divided proposed APC 706 into two levels: final APC 0263 and final APC 0264. We also moved CPT code 76075, Bone Density Study, one or more sites, to final APC 0261. We explain below, in section III.C.6.e, why we are making an exception to the BBRA 1999 "two times" limit on cost variation in the case of final APC group 264.

APC 710: Computerized Axial Tomography

APC 720: Magnetic Resonance Angiography

APC 726: Magnetic Resonance Imaging

Comment: A number of commenters believe that assigning all computerized axial tomography (CAT) to a single group and all magnetic resonance imaging (MRI) to a single group results in a lack of homogeneity among the procedures within each group. These commenters were concerned that we ignored the cost of contrast materials, labor, and equipment within proposed APC group 710 and proposed APC group 726 and that combining contrast and non-contrast studies represents an inconsistency in resource use because an examination that uses contrast will be more costly than one without contrast. One commenter observed that an MRI examination with the use of contrast material requires approximately 30 percent more time and effort than an examination performed without contrast material and that a bilateral examination requires 50 percent more staff time and effort to complete. The same commenter expressed concern that proposed APC 720 consists of only one procedure, CPT code 70541, Magnetic image, head (MRA). The commenter recommended that we place this code and the other MRA codes that we now cover into two APC groups, one with and the other without contrast. A number of commenters recommended that we pay separately for contrast material, as a cost pass-through. One commenter believes that including diagnostic studies with placement of radiation therapy fields in proposed APC 710 violates the "clinically similar" criterion.

Response: Our medical advisors and staff carefully reviewed our data for the procedures in proposed APC group 710, proposed APC group 720, and proposed APC group 726 in light of commenters' concerns about the extent to which these groups take into account the costs associated with the use of contrast material. We concluded that costs associated with the use of contrast material are reflected in the payment rate in proportion to its frequency of use. We believe it is reasonable to have the CAT scans and MRIs with and without contrast together in their respective APC groups because facilities do not specialize based on whether or not they use contrast material. Further, the cost of contrast material relative to the overall inherent cost of CAT scans and MRI procedures alone is small. Moreover, the use of contrast material with CAT scans and MRI procedures differs significantly when compared to the use of contrast with plain films. Contrast comprises a significant portion of the cost of plain film services, and not all facilities perform plain films with contrast. A plain film can be ordered without being scheduled, but any plain film with contrast has to be scheduled. This scheduling distinction does not apply to a CAT or MRI scan with or without contrast. We did find that applying the "two times" limit on cost variation required by the BBRA 1999 resulted in the creation of two CAT groups, final APC groups 0282, to which we assigned CPT codes 70486, 76370, 76375, and 76380, and final APC 0283, to which the remaining codes in proposed APC group 710 are assigned. We further eliminated proposed APC group 720 and combined CPT code 70541, Magnetic image, head (MRA), with the other MRI procedures in final APC group 0284 because the base procedure, magnetic resonance imaging, is the same.

APC 716: Fluoroscopy

Comment: A number of commenters recommended that we pay separately for the fluoroscopy portion of procedures that include this radiologic service.

Response: We have assigned payment status indicator "X" to the procedures in final APC groups 0272 and 0273 to indicate that these are ancillary services that are paid separately under the hospital outpatient PPS.

Comment: A professional society commented that CPT code 74340, X-ray guide for GI tube, requires approximately 10 times the amount of radiologic technologist and room time, approximately 15 times the amount of film and many more supplies than does CPT code 71023, Chest x-ray and fluoroscopy. The commenter recommended that we divide proposed APC 716 into three separate and distinct levels based on the extent of the procedures and that we recalculate the relative weight and associated payment rate for the resulting groups.

Response: We disagree with the commenter. Our medical advisors and staff, after reviewing the procedures in proposed APC group 716, concluded that the fluoroscopic portion of these procedures is sufficiently similar in terms of clinical characteristics and resource requirements to be grouped together. However, applying the "two times" limit on cost variation required

by the BBRA 1999 results in the formation of two groups, final APC groups 0272 and 0273.

APC 728: Myelography

Comment: Commenters objected to assigning the same payment amount to procedures regardless of whether or not a contrast agent is used. One commenter was concerned that this payment policy will dissuade hospitals from utilizing contrast agents even in cases where the use of contrast is medically appropriate.

Response: We agree that median costs vary more among the procedures in proposed APC 728 than their clinical similarities would suggest. However, although we found that final APC group 0274 did not satisfy the "two times" limit on cost variation required by the BBRA 1999, we are making an exception in this case as we explain below, in section III.C.6.e., and we are retaining all myelographic procedures in final APC 0274.

APC 730: Arthrography

Comment: Some commenters suggested reassigning various arthrographic procedures that were assigned to proposed APC 730.

Response: We find the procedures in this group to be sufficiently homogeneous in terms of clinical definition and resource use. The procedures are comparable with respect to the use of resources in that the highest median cost procedure is less than twice the lowest median cost procedure, consistent with the standard set by the BBRA 1999. Therefore, we are retaining the proposed grouping of arthrographic procedures in final APC 0275.

APC 736: Digestive Radiology

To be consistent with the limit on cost variation required by section 201(g) of the BBRA 1999, we divided the procedures in proposed APC 736 into final APC groups 0276 and 0277.

APC 738: Therapeutic Radiologic Procedures

To be consistent with the limit on cost variation required by section 201(g) of the BBRA 1999, we split the procedures in proposed APC 738 into final APC groups 0296 and 0297.

APC 739: Diagnostic Angiography and Venography

Comment: Numerous commenters expressed concern about the lack of homogeneity among procedures in proposed APC 739. One commenter recommended that we divide proposed APC 739 into three groups: one for CPT code 75790, Angiography, arteriovenous shunt; one for all other angiography procedures; and one for venography procedures.

Response: In response to these comments, we created final APC group 0281, Venography of Extremity, to reflect the significant clinical and resource consumption differences between venographic procedures performed on extremities and diagnostic angiography and venography performed on other parts of the body. Venographic procedures on the extremities consume less time and fewer resources than other angiography and venography procedures. To be consistent with the limit on cost variation required by the BBRA 1999, we split the other procedures in proposed APC 739 into final APC groups 0279 and 0280. With respect to final APC group 0279, we explain in section III.C.6.e why we are making an exception to the BBRA 1999 limit on cost variation.

APC 747: Diagnostic Ultrasound Except Vascular

Comment: A number of commenters suggested that we restructure proposed APC group 747 according to body site because the APC criterion of clinical homogeneity is violated by including within one group body sites that range from the eye to the pregnant uterus to the scrotum and contents.

Response: Our medical advisors and staff carefully weighed the suggestion of commenters that clinical homogeneity would be better served if the procedures in proposed APC group 747 were divided into groups according to body site. We concluded that resource costs based on the type of technology used are what primarily dictates the definition of groups for various diagnostic services. Thus, we did not assign plain film of the chest in the same APC group with MRI of the chest. Because ultrasound is the type of technology common to all procedures in proposed APC group 747 and because resource use for the various procedures is similar irrespective of body site, we did not break this group up according to body site. However, to be consistent with the limit on cost variation required by the BBRA 1999, we split the procedures in proposed APC 747 into final APC groups 0265 and 0266.

APC 749: Guidance Under Ultrasound

Although there is a range of sites for the procedures in proposed APC group 749, as we explain above in our response to the comments submitted in connection with proposed APC 747, we are keeping this group intact in final APC group 0268 because the base procedure, ultrasonography, is the same for all procedures. Also, the procedures in final APC group 0268 are comparable with respect to the use of resources in accordance with the "two times" limit on cost variation.

APC 750: Therapeutic Radiation Treatment Planning

Comment: Commenters were concerned that radiation physics services are not appropriately recognized in proposed APC group 750. One commenter observed that proposed APC 750 lacks clinical homogeneity by including HCPCS codes for calculations and computer-based treatment planning with codes for the construction of treatment devices. Another commenter objected to including CPT codes 77261, 77262, 77263, 77431, and 77432 in proposed APC 750 because these codes are for professional services only and do not include a technical or facility component. As such, there are no facility costs associated with the codes. The commenter noted that if these codes were removed from proposed APC group 750, three medical physics consultation codes, CPT codes 77336, 77370, and 77399 would remain in the group. The commenter suggested that the resource requirements for two of the three remaining codes are dramatically different.

Response: We agree with commenters' concerns about proposed APC group 750, and we modified this group accordingly. First, we assigned payment status indicator "E," which designates certain items and services that are not paid under the hospital outpatient PPS, to five codes that describe professional services, which would not be billed by hospitals: CPT code 77261, Therapeutic radiology treatment planning; simple; CPT code 77262, Therapeutic radiology treatment planning; intermediate; CPT code 77263, Therapeutic radiology treatment planning; complex; CPT code 77431, Radiation therapy management with complete course of therapy consisting of one or two factions only; and CPT code 77432, Stereotactic radiation treatment management of cerebral lesion(s) (complete course of treatment consisting of one session).

We renamed the remaining group of codes as final APC 0311, Radiation Physics Services. The codes specific to radiation physics that we classified in this APC are CPT code 77336, Continuing medical physics consultation, including assessment of treatment parameters, quality assurance of dose delivery, and review of patient treatment documentation in support of the radiation oncologist, reported per week of therapy; CPT code 77370, Special medical radiation physics

consultation; and CPT code 77399, Unlisted procedure, medical radiation physics, dosimetry and treatment devices, and special services.

APC 751: Level I Therapeutic Radiation Treatment Preparation

APC 752: Level II Therapeutic Radiation Treatment Preparation

Comment: One commenter objected to including CPT code 77295, Therapeutic radiology simulation-aided field setting; three-dimensional, in proposed APC 752 because this service has dramatically different resource requirements than the other CPT codes in group. Another commenter believes that the resources used in connection with simple intracavitatory applications, which are normally performed with re-usable Cs-137 sources, are totally dissimilar from the resources required for remote afterloading high intensity brachytherapy in proposed APC 751. This commenter noted that the equipment and room costs associated with remote afterloading high intensity brachytherapy may well exceed $500,000.

Response: We agree. In response to commenters' concerns, we made a number of modifications to proposed APC group 751 and proposed APC group 752. First, we assigned payment status indicator "E," which designates certain items and services that are not paid under the hospital outpatient PPS, to CPT code 77299, Unlisted procedure, therapeutic radiology clinical treatment planning, thereby removing it from an APC group.

We created final APC group 0303, which consists of the following three codes: CPT code 77332, Unlisted procedure, therapeutic radiology clinical treatment planning; CPT code 77333, Treatment devices, design and construction; intermediate (multiple blocks, stents, bite blocks, special bolus); and, CPT code 77334, Treatment devices, design and construction; complex (irregular blocks, special shields, compensators, wedges, molds or casts). We created final APC 0303 because the resources needed for device construction are unique. We decided to put these three codes together in one group rather than assigning each to its own individual group because we could make no clear cost distinctions among the three codes and because we expect that facilities do not specialize in one type of device over another, but rather construct all of the types of devices encompassed within the three codes.

We created final APC group 0310, to which we assigned CPT code 77295, Therapeutic radiology simulation-aided field setting, three-dimensional. We assigned CPT code 77295 to its own individual APC group because it requires significantly greater resource consumption than the procedures in either final APC group 0304 or final APC group 0305.

We assigned the codes remaining in proposed APC groups 751 and 752 to final APC groups 0304 and 0305. Both APC groups 0304 and 0305 are comparable with respect to the use of resources in accordance with the "two times" requirement set by the BBRA 1999.

APC 757: Radiation Therapy

Comment: We received a number of comments about the assignment to proposed APC 757 of CPT code 61793, Stereotactic radiosurgery, particle beam, gamma ray or linear accelerator, one or more sessions. Commenters indicated that CPT code 61793 is clinically distinct from other forms of radiation treatment delivery and that this service generally involves significantly greater treatment time and costs. One commenter stated that if we were to keep CPT code 61793 in proposed APC 757, we would be prejudicing use of this new, proven technology. Another commenter contended that radiation therapy is not the same as a surgical procedure. The commenter urged us to separate stereotactic radiation therapy (SRT) and intensity-modulated radiation therapy (IMRT) services from the conventional radiation therapy procedures in APC 757 and to assign them a higher payment rate due to their higher cost.

Response: We created final APC group 0302, to which we assigned stereotactic radiosurgery, which requires significantly more costly resources than the procedures assigned to final APC groups 0300 and 0301. Note that we have created two codes, G0173 and G0174, to use in place of CPT code 61793. They represent stereotactic radiosurgery completed in one session, and that which requires multiple sessions, respectively. We also assigned CPT code 77470 to APC 0302, since we believe it requires resources similar to those required for radiosurgery. We will continue to track the data for these codes to ensure their proper placement. The procedures in final APC group 300 and in final APC group 301 are comparable with respect to the use of resources in accordance with the "two times" limit on cost variation.

APC 759: Brachytherapy and Complex Radioelement Applications

Comment: One commenter expressed concern because we did not identify a payment amount for the radioactive seeds used in brachytherapy. Another commenter referred to low dose rate interstitial brachytherapy that is used to treat complex gynecologic tumors, prostate cancers, and head and neck cancers, noting that this type of radiation therapy employs single-use radioactive sources (iodine, gold, iridium, and palladium seeds) and various disposable applicators. The commenter pointed out that only a limited number of vendors produce these radioactive sources and that the seeds cost as much as $200 each with the number of implants varying depending on the size, stage, and location of the cancer. The commenter stated that some patients with prostate cancer may require as many as 100 to 150 seeds. The commenter asserted that we have not captured the costs of these radiopharmaceuticals in the APC payment.

Response: We have changed how we pay for brachytherapy and the other services we proposed to classify to APC 759 in response both to comments and to the provisions of section 201(b) of the BBRA 1999, which provide for an additional payment to be made for innovative medical devices, including "a (current) device of brachytherapy." (See section III.D., below.) Within this framework, we recognize the seeds provided during brachytherapy. For bill processing purposes, we have assigned brachytherapy seeds to APC 0918. We will make payment for brachytherapy seeds under the transitional pass-through rules explained in section III.D., below.

Based on commenters' suggestions, a review of our data, and the BBRA 1999 "two times" requirement, we have classified the procedures in proposed APC 759 in final APC 0312, Radioelement Applications, and final APC 0313, Brachytherapy. APC 0313 consists of CPT code 77781, Remote afterloading high intensity brachytherapy; 1–4 source positions or catheters; CPT code 77782, Remote afterloading high intensity brachytherapy; 5–8 source positions or catheters; CPT code 77783, Remote afterloading high intensity brachytherapy; 9–12 source positions or catheters; CPT code 77784, Remote afterloading high intensity brachytherapy; over 12 source positions or catheters; and, CPT code 77799, Unlisted procedure, clinical brachytherapy. Because these

procedures are all different types of brachytherapy, final APC 313 is more coherent clinically than was proposed APC 759.

We moved CPT code 77750, Infusion or instillation of radioelement solution, to final APC 301, Level II Radiation Therapy, and CPT code 77789, Surface application of radioelement, were moved to final APC 300, Level I Radiation Therapy. The remaining procedures from proposed APC 759 constitute final APC 312, Radioelement Applications. The procedures in final APC group 312 and in final APC group 313 are comparable with respect to the use of resources in accordance with the "two times" limit on cost variation.

APC 761: Standard Non-Imaging Nuclear Medicine

APC 762: Complex Non-Imaging Nuclear Medicine

APC 771: Standard Planar Nuclear Medicine

APC 772: Complex Planar Nuclear Medicine

APC 781: Standard SPECT Nuclear Medicine

APC 782: Complex SPECT Nuclear Medicine

APC 791: Standard Therapeutic Nuclear Medicine

APC 792: Complex Therapeutic Nuclear Medicine

Comment: We received numerous comments about the proposed nuclear medicine APC groups. Commenters addressed what they believe to be discrepancies in the payment weights among the proposed groups. Commenters also asserted that the proposed payment levels are inadequate to offset the cost of radiopharmaceuticals. They believe, in part, that our use of single-procedure claims in constructing our database failed to capture the costs associated with the various radiopharmaceuticals that may be used in combination during multiple procedures performed during a single session on various patients. One commenter disagrees with our decision to consider therapeutic radiopharmaceuticals and radionuclides as incidental services, bundling their costs into nuclear medicine and radiation therapy procedures. The commenter recommended that we develop unique APC groups for radiopharmaceuticals and radionuclides. One manufacturer expressed particular concern about our proposed payment for a radiopharmaceutical used to relieve the pain of bone metastasis (CPT code 79400) that we proposed to package into APC 791 for which the proposed payment was $758. The commenter stated that this new radiopharmaceutical, which has generated a very high clinical response rate, costs more than $2,000 per dose.

Response: In response to these and other comments, as well as the changes made by the BBRA 1999 to the outpatient PPS, our medical advisors and staff have reconstructed the nuclear medicine APC groups. First, we have placed radiopharmaceuticals into a separate set of APC groups that are listed in Addendum K. As we state above, new section 1833(t)(6) of the Act provides for additional payment for current and new radiopharmaceuticals. We list in Addendum K those radiopharmaceuticals that are eligible for additional payment effective with services furnished on or after July 1, 2000. In accordance with the process outlined below, in section III.D.4, we invite requests to consider other radiopharmaceuticals as potential candidates for additional pass-through payments.

Next, we reconfigured the nuclear medicine APC groups based on the resources required for the procedures themselves, exclusive of costly radiopharmaceuticals. We took into account the fact that SPECT equipment, which costs significantly more than the non-SPECT equipment that was initially used most frequently for planar medicine, is now commonly used to conduct planar studies. As a final step, we further reorganized the groups to satisfy the requirement set by the BBRA 1999 "two times" requirement, resulting in final APC groups 0286, 0290, 0291, 0292, 0294, and 0295.

Comment: We received a number of comments concerning the clinical efficacy of iodine 131 tositumomab in the treatment of cancer. One commenter stated that iodine 131 tositumomab, which was reported to be pending final FDA approval, has the potential to be the first radioimmunotherapeutic agent to be approved for the treatment of cancer. The commenter expected this pharmaceutical to be the first in its class, and characterized it as neither a chemotherapeutic agent nor a radiopharmaceutical. The commenter stated that the cost of this pharmaceutical will be significantly higher than the payment amount proposed for any of the APC groups containing drugs used for cancer therapies. The commenter believes that we should have proposed an outlier policy to ensure equitable payment for pharmaceuticals such as iodine 131 tositumomab.

Response: If iodine 131 tositumomab receives final FDA approval, we strongly encourage interested parties to submit the appropriate materials to us for determination of this product's eligibility for additional payment under the pass-through provision as described below in section II.D.6.

Comment: One commenter finds our method of paying for new products to be flawed. The commenter sees it as highly probable that a new product will be inserted into an APC procedure category where the payment rate is significantly lower than the actual cost of the newly developed product. The commenter cites our proposed payment for a new product, In–111 Octreo Scan, which is used for tumor imaging. The product costs four times the payment rate for proposed APC 772, Complex Planar Nuclear Medicine. The commenter believes that this enormous discrepancy will discourage hospital outpatient departments from utilizing procedures that require this product and that Medicare beneficiaries may be denied access to the most appropriate care available as a result.

Response: We are firmly committed to ensuring that the provisions of the hospital outpatient PPS do not in any way obstruct or limit Medicare beneficiaries' access to reasonable medically necessary and appropriate care. We further recognize that the development of new technology and products is a highly dynamic enterprise that is constantly evolving and changing the character and cost of current diagnostic and treatment modalities. New section 1833(t)(6) of the Act provides for an additional transitional pass-through payment for certain innovative medical devices, drugs, and biologicals. We are also creating a series of transitional APCs for the express purpose of providing appropriate payment for new technology services when they emerge into the marketplace while we collect data to enable us ultimately to incorporate the new technology service within an APC group, making payment adjustments as needed. We expect to continue working closely with hospitals and their representatives throughout this process to ensure that payment does not inhibit beneficiary access to appropriate care. We discuss the transitional pass-through payment groups in greater detail in section III.D and provisions for payment for new technology in section III.C.8.

APC 881: Level I Pathology

APC 882: Level II Pathology

APC 883: Level III Pathology

Comment: We received numerous comments on the proposed pathology APC groups. One commenter expressed concern that our proposed assignment of tests among the three groups may create an incentive for physicians to order complex and unnecessary tests when simpler, less comprehensive tests may be adequate, because we have grouped together and are paying the same amount for tests that are clinically similar but that are comprehensively more difficult than one another.

Response: Our medical advisors and staff reviewed and completely reorganized the grouping of pathology tests in light of commenters' concerns and the BBRA 1999 "two times" requirement. Pathology tests are in final APC groups 0342, 0343, and 0344.

APC 906: Infusion Therapy Except Chemotherapy

APC 907: Intramuscular Injections

Comment: We received many comments about proposed APC groups 906 and 907. The commenters were generally concerned that packaging payment for nonchemotherapeutic infused and injected drugs in the payment rates for the administration of nonchemotherapy drugs does not take into account the great variation among these products with regard to their indication/application and cost nor the cost of new drugs that have been introduced since 1996. Commenters fear that we will underpay hospitals and inhibit the introduction of new drugs into the system.

Response: In response to the concerns expressed by commenters, we have created additional groups for certain expensive pharmaceuticals. These high-cost, nonchemotherapy, nonorphan drugs are captured in the following APCs: 0886–0891, 0907, 0908, 0911, 0914, 0915, 0917, 7007, 7036, and 7042. We have set the rates for these high-cost drug APCs based on data we obtained from a contracted study of drug costs. In section III.D, below, we discuss the process for pricing new high cost drugs as they are introduced into the marketplace to assure adequate payment until these new drugs can be assigned to an appropriate APC. Final APC 120, Infusion Therapy Except Chemotherapy, and final APC 359, Intramuscular injections, are priced based on the resources used to perform the procedures, including many less expensive drugs that are packaged into the two APCs.

APC 957: Echocardiography

Comment: Numerous commenters remarked on the lack of homogeneity in resource consumption in this APC. One commenter objected to our not distinguishing between procedures performed with or without contrast agents. Another commenter contends that proposed APC 957 does not account for the diversity of services in costs based on type of equipment, use of conscious sedation medication, and use of contrast agents.

Response: Conscious sedation and contrast media were packaged where they were used in the base year. We believe that packaging of items into the payment amount is appropriate because hospitals do not specialize in providing only services with or only services without sedation or contrast. To the extent that different equipment is used for different procedures, and has different costs, those differing costs are captured and recognized in our payment algorithm.

Comment: Several commenters referred to the fact that some of the echocardiograms are part of more comprehensive codes pertaining to echocardiograms that are in the same APC. For example, one commenter noted that CPT code 93880, the basic vascular ultrasound service, is defined as a "duplex scan." The commenter stated that all duplex vascular ultrasound codes involve three components and that, to the extent all three components are incorporated into this single vascular code, a provider is paid for only one procedure. On the other hand, CPT code 93307, the basic echocardiography service, incorporates only one of the three types of services included in the basic vascular service, CPT code 93880. Other codes, CPT 93320 and 93325 are used to bill for the other services that are a standard part of all vascular ultrasound procedures like CPT code 93880. This approach results in a provider receiving three separate payments for an echocardiogram with Doppler and color flow mapping as compared to a single payment for an equivalent vascular study.

Response: We agree that duplex vascular ultrasound scanning procedures include two dimensional and doppler signal display. However, for the example cited by the commenter, there is no separate code that includes both the two dimensional and the doppler ultrasound spectral analysis. To report a duplex vascular ultrasound of the heart, the only codes available are CPT codes 93307, 93320 and 93325, unlike the duplex vascular ultrasound scan of the extracranial arteries, which is coded with CPT code 93880. We agree that this limitation of the coding system affects the payment system, since the APC system is based on charges associated with each of the codes. We will bring this issue to the attention of the American Medical Association's CPT Editorial Panel.

However, in those instances where there is a code for the comprehensive service and separate codes for services that are inherent components of the comprehensive service, the Correct Coding Initiative (CCI) edits, which we are incorporating into the hospital outpatient PPS claims processing system, will address this concern. The CCI edits have been in place in the Part B claims processing system since January 1996. These edits detect when codes representing component services are reported with the code for the more comprehensive service. For example, there is an edit that prohibits the payment of CPT code 93875, a doppler study of the extracranial arteries when reported with CPT code 93880, the duplex scan of the extracranial arteries.

APC 960: Cardiac Electrophysiologic Tests/Procedures APC

Comment: Many commenters cited extreme variations in resource use among the procedures in proposed APC 960. One commenter noted that the procedures involve the use of one or more catheters, and argued that the proposed payment does not cover the cost of even one catheter. Another commenter claims that, at a minimum, the total cost of the four diagnostic catheters and one ablation catheter used in performing these procedures is $1,955.

Response: In response to these concerns, we moved CPT code 93660, Evaluation of cardiovascular function with tilt table evaluation, with continuous ECG monitoring and intermittent blood pressure monitoring, with or without pharmacological intervention, to final APC 0101, and CPT code 93724, Electronic analysis of antitachycardia pacemaker system, to final APC 0100. We reclassified the remaining procedures in proposed CPT 960 into final APC groups 0084, 0085, 0086, and 0087 to be consistent with the BBRA 1999 "two times" requirement.

APC 966: Electronic Analysis of Pacemakers/Other Devices

Comment: A number of commenters stated that the procedures in proposed APC 966 are not related clinically or in terms of resource cost. One commenter indicated that analyzing a spine infusion pump or neuroreceiver is a very different process from analyzing a

pacemaker or cardio/defibrillator and hence uses very different resources.

Response: Although the devices that are the subject of electronic analysis in proposed APC group 966 differ, we believe that the resource use among the services in the group is, on average, relatively similar. We determined that the procedures in proposed APC 966 meet the "two times" test for comparability with respect to the use of resources set by the BBRA 1999. In addition, we find it unlikely that facilities will specialize in one particular type of electronic analysis of pacemakers/other devices to the exclusion of others. Therefore, we did not change the procedures in final APC group 102 from what we had proposed.

APC 968: Vascular Ultrasound

Comment: One commenter recommended removing CPT code 93875, Non-invasive physiologic studies of extracranial arteries, complete bilateral study (for example, periorbital flow direction with arterial compression, ocular pneumoplethysmography, Doppler ultrasound spectral analysis), from proposed APC 968 because this study is a physiologic procedure and should be in the same group with other noninvasive physiologic vascular studies.

Response: We agree. We moved CPT code 93875 to final APC 0096.

Comment: One commenter recommended creating additional APC groups for CAT, MRI, and general ultrasound procedures to distinguish between diagnostic procedures that utilize contrast media and those that do not. The commenter believes that additional APC groups that properly recognize the resources required for contrast agents will encourage hospitals to use the procedures most suitable for the clinical needs of different patients.

Response: As we explained above, in our response to comments about proposed APC groups 710, 720, and 726, our medical advisors and staff carefully reviewed our data and concluded that costs associated with the use of contrast material are reflected in the payment rate for vascular ultrasound procedures in proportion to its frequency of use. We believe it is reasonable to have vascular ultrasound procedures with and without contrast together in one group because facilities do not specialize based on whether or not they use contrast material. Further, the cost of contrast material is small relative to the overall cost of the ultrasound. Moreover, facilities are not likely to schedule ultrasound according to whether or not contrast is used. Therefore, with the exception of moving CPT code 93875, we did not further change the procedures in final APC group 0267. Final APC group 0267 is within the limit on cost variation required by the BBRA 1999.

APC 969: Hyperbaric Oxygen

Comment: Many commenters were concerned that our cost data for hyperbaric oxygen therapy are flawed because of poor coding, and that the proposed payment rate is, as a consequence, inadequate. One commenter suggested that we did not use a common definition of hyperbaric oxygen therapy across all hospitals and that, due to ambiguity in codes, there is wide variation in how hyperbaric oxygen therapy services are defined for billing purposes.

Response: We cannot subdivide final APC 0031 because we have no mechanism for creating clinically distinct groups related to differences in resource consumption among facilities within a single CPT code. However, we explain below, in section III.H, that we intend to make adjustments in future years to APC group weights, once the hospital outpatient PPS is implemented. If commenters believe that current codes are inadequate to describe these services, they should seek new CPT codes from the American Medical Association.

Comment: One commenter was concerned about not only the low payment rate proposed for hyperbaric oxygen therapy, but also the fact that the proposed national unadjusted coinsurance amount exceeds the proposed total payment rate for the service.

Response: We calculated the payment rate and coinsurance amount for APC 0031 using the same method that we followed for the other APC groups. Charges for hyperbaric oxygen are much higher than their costs, which accounts for the unusually high national unadjusted coinsurance rate relative to the total payment rate for CPT code 99183. Note, however, that hospitals may elect to offer a reduced coinsurance rate for the service as described below in section III.F.4.

APC 971: Level 1 Pulmonary Tests

APC 972: Level II Pulmonary Tests

APC 973: Level III Pulmonary Tests

Comment: Commenters generally questioned the clinical consistency of procedures in the proposed pulmonary test APC groups and expressed concern about the variability of resources required to perform the procedures within each group. One commenter disagreed with our combining procedures before and after medication with procedures before rest and after exercise.

Response: After carefully reviewing the assignment of codes among the three proposed pulmonary test groups, our medical advisors and staff made a number of changes. To better recognize their median costs, we moved CPT code 94060, Bronchospasm evaluation before and after bronchodilator, and CPT code 94260, Thoracic gas volume, to final APC group 0368, and classified CPT code 94720, Carbon monoxide diffusing capacity, to final APC group 0367. We made additional changes among the three groups to ensure comparability of resources within each pulmonary test APC group in accordance with the "two times" standard set by the BBRA 1999.

APC 976: Pulmonary Therapy

Comment: Commenters generally questioned the clinical consistency of procedures in the proposed pulmonary therapy APC group and expressed concern about the variability of resources required to perform the procedures within the group. One professional association wrote that the respiratory therapy procedures in proposed APC group 976 are significantly different in complexity and require significantly different equipment and expertise to perform. The same commenter noted that CPT code 94657, Ventilation assist and management, initiation of pressure or volume preset ventilators for assisted or controlled breathing, subsequent days; CPT code 94660, Continuous positive airway pressure ventilation (CPAP), initiation and management; and, CPT code 94662, Continuous negative pressure ventilation (CNP), initiation and management, all require close monitoring, more costly equipment, and, often, more expertise than do other therapies in proposed APC group 976.

Response: We agree with the commenter. We moved the CPT codes describing ventilation initiation and management (CPT codes 94657, 94660, 94662) into their own APC, final APC 0079, Ventilation Initiation and Management, to recognize that these procedures represent a completely different type of clinical service and because they utilize resources that are materially different from those used in connection with other pulmonary therapy procedures. We further divided the procedures in proposed APC 976 to meet the definition of comparable resources required by the BBRA 1999, resulting in final APC groups 0077 and 0078.

APC 979: Extended EEG Studies and Sleep Studies

APC 980: Electroencephalogram

APC 981: Level I Nerve and Muscle Tests

APC 982: Level II Nerve and Muscle Tests

Comment: One commenter expressed concern about our grouping sleep medicine services in proposed APC 979 with EEG and Epilepsy diagnostic services. Another commenter is concerned about the clinical homogeneity of our proposed groups for the numerous different neurologic and neuromuscular diagnostic codes that are encompassed within the range of services described by CPT code 95805 through CPT code 95958. The commenter believes that our proposed groups do not make appropriate distinctions among the many different tests relating to different parts of the body, taking different amounts of time, using different equipment, and measuring different outcomes. One commenter asked that we add two codes created in 1998 for sleep services to the list of procedures in the APC system. The commenter recommended assigning CPT 95811, Polysomnography with CPAPP, to proposed APC group 979. The commenter also recommended that CPT code 95806, Sleep study, unattended by a technologist, *not* be assigned to proposed APC group 979 to avoid creating an incentive for hospitals to use that procedure, which the commenter asserts is both less costly and less conclusive than other studies in proposed APC 979, in place of more comprehensive tests. One commenter claimed that the variety of neurological and neuromuscular diagnostic tests warrants an expansion of the number of APCs for these procedures to six, because the resources used vary widely. The commenter prefers that payments be made on a per service rather than on a per group basis. However, if we retain groups, the commenter recommended, on the basis of cost-based practice expenses, separate APCs for sleep and polysomnography services, for EEG studies, for EEG monitoring codes, for EMG codes, for nerve conduction and H reflex tests, and for sensory evoked potential and autonomic nerve function tests.

Response: Our medical advisors and staff decided that CPT codes 95806 and 95811 are both most appropriately assigned to final APC 0213. While sleep studies unattended by a technologist may consume less resources than those studies which involve the presence of a technologist, we believe that physicians are likely to order a mix of sleep studies, and that institutions are unlikely to specialize in sleep studies with or without the presence of a technologist. We added CPT code 95951 to APC group 0213. We believe the codes we proposed in APC groups 979 and 980 are sufficiently comparable clinically and in terms of resource use not to require further subdivision into smaller groups. Therefore, we retained our proposed classification in final APC groups 213 and 214.

We created a third APC group for the nerve and muscle test codes, and we split the codes in proposed APCs 981 and 982 among final APC groups 0215, 0216, and 0217 to ensure comparability of resources within each of the three nerve and muscle test APC groups in accordance with the "two times" requirement set by section 201(g) of the BBRA 1999.

APC 987: Subcutaneous or Intramuscular Chemotherapy

APC 988: Chemotherapy except by Extended Infusion

APC 989: Chemotherapy by Extended Infusion

APC 990: Photochemotherapy

Comments: We received numerous comments that criticized our proposed payments for chemotherapy services. The commenters argued that the proposed payment for chemotherapy and radiation therapy would severely reduce payments to hospitals and create perverse incentives for hospitals to substitute the older, less effective therapies for the newer ones. The commenters asserted that the proposed payment would not cover the costs of supportive care such as drugs to control nausea and vomiting. They expected that low payment rates to hospitals would force them to discontinue chemotherapy services, and that patients would be faced with trips to distant facilities to obtain services.

Response: We believe that the concerns raised by the commenters have been addressed through the transitional pass-through provision set forth in section 1833(t)(6) of the Act, as added by section 201(b) of the BBRA 1999. In accordance with that provision, we have separately identified current drugs and biologicals used in the treatment of cancer. These are listed in Addendum K of this final rule, and are eligible for additional payment under this provision. We have obtained codes for any anticancer, supportive, or adjunctive drugs we could identify. Thus, we will pay for chemotherapy by recognizing the mode(s) of administration and each of the covered drugs given, whether they are to treat the cancer, to protect the patient against the toxic effects of the treatment, or to relieve the side effects of treatment. In section III.D.4, below, we discuss how to request codes for new drugs.

Note that we moved CPT-based chemotherapy infusion codes into the "E" (noncovered) category because HCPCS "Q" codes for these services will be used to identify chemotherapy infusions. Hospitals had been instructed in the past not to bill using the CPT codes.

APC 999: Therapeutic Phlebotomy

Comment: One commenter is concerned that facilities will lose money because the proposed payment rate does not cover the cost incurred to provide the nursing care, phlebotomy bag and other supplies, overhead, scheduling time and disposal of hazardous waste that are all required to furnish this service.

Response: We have carefully reviewed the costs associated with APC 999 and believe that the CPT code 99195 was mistakenly used to report simple venipuncture in some cases, thus lowering the cost of proposed APC 999. However, we believe it is appropriate to base payment for this APC on the median amount billed, since CPT code 99195 was billed more than 20,000 times. Hospitals must use this code only when *therapeutic* phlebotomy is furnished, and charge an appropriate rate for the resources involved. Appropriate reporting will enable us to determine a more precise weight for this APC in future years.

Final APC 081: Non-Coronary Angioplasty or Atherectomy

Final APC 082: Coronary Atherectomy

Final APC 083: Coronary Angioplasty

We created these three new APC groups to accommodate atherectomy and angioplasty procedures that we originally proposed to classify as inpatient only. We discuss in section III.C.5 our response to commenters' concerns about our proposing to designate certain procedures as "inpatient only" and our final decision to change the status of these atherectomy and angioplasty procedures.

Final APC 058: Strapping

Final APC 059: Casting

We proposed to assign the procedures in these new APC groups a payment status indicator "N" as incidental services for which payment is packaged into the APC rate for another service or procedure. However, we determined

that the procedures in the final APC groups 0058 and 0059 could be performed independently, that is, the procedures for which a strapping has been previously applied and/or a new cast has previously been placed. We explain in more detail in section III.C.2.c our rationale for not packaging the costs associated with these services. We therefore created APC groups 0058 and 0059 for these codes to which we assigned payment status indicator "S" to indicate that these are significant procedures paid under the hospital outpatient PPS to which the multiple procedure discount does not apply.

e. Exceptions to BBRA 1999 Limit on Variation of Costs Within APC Groups

As we note above, section 201(g) of BBRA 1999 amends section 1833(t)(2) of the Act to define what constitutes comparable use of resources among the procedures or services within an ambulatory payment classification group under the hospital outpatient PPS. The standard set by section 1833(t)(2) of the Act is that the items and services within a group cannot be considered comparable with respect to the use of resources if the highest median (elected by the Secretary, as opposed to the mean) cost item or service within a group is more than 2 times greater than the lowest median cost item or service within the same group (the "two-times" requirement).

Section 1833(t)(2) of the Act allows the Secretary to make exceptions to the "two-times" requirement in unusual cases, such as low volume items and services, although the Secretary may not make such an exception in the case of a drug or biological that has been designated as an orphan drug under section 526 of the Federal Food, Drug, and Cosmetic Act. As we explain in the preceding section of this preamble, after we had modified the composition of the APC groups based on the recommendations of commenters, we made numerous additional changes to the APC groups to conform with the BBRA 1999 "two times" requirement. In the resulting groups, we found certain anomalies that were irreconcilable with the principles underlying formation of the APC groups. After carefully evaluating the various combinations resulting from further subdividing groups or reassigning codes to other groups to resolve the anomalies, and after reviewing our data, we decided to maintain the composition of certain APC groups, as exceptions to the "two times" requirement. We based exceptions on factors such as low procedure volume, suspect or incomplete cost data, concerns about inaccurate or incorrect coding, or compelling clinical arguments. We believe that as hospitals gain experience under the hospital outpatient PPS, and as they refine their coding of services, a number of the apparent anomalies within the groups that we are treating as exceptions to the "two times" will be resolved.

Below we list the APC groups that are exceptions to the "two times" requirement, and our reasons for the exception. We use the final APC number to identify the group.

APC 0016: Level IV Debridement and Destruction

We are retaining CPT code 56501 in final APC group 0016, even though its median cost exceeds the "two times limit." We believe the higher costs that are reflected in the data are the result of incorrect coding. The descriptor for CPT code 56501 defines the procedure as the simple destruction of skin and superficial subcutaneous tissues. In the judgment of our medical advisors, costs associated with simple destruction of skin and superficial subcutaneous tissues are typically within the range of costs associated with the other procedures in final APC group 0016, and the median cost that our data attribute to CPT code 56501 is higher than the code description warrants.

APC 0030: Breast Reconstruction/ Mastectomy

Although the range of costs for procedures in final APC group 0030 exceeds the "two times limit," we believe that only the simplest breast procedures will be done in the outpatient setting. Most of the procedures with median costs over $1000 used observation services in order to provide an overnight stay. We expect these cases to revert to the more appropriate inpatient setting.

APC 0058: Level I Strapping/Casting

The codes in final APC group 0058 are the simpler casting, splinting, and strapping procedures. Costs associated with the more resource-intensive procedures in final APC group 0059 are fairly uniform, but the median costs of procedures in final APC group 0058 vary widely. We are excepting final APC group 0058 from the "two times limit" until we can review the data for the first year of the outpatient PPS.

APC 0060: Manipulation Therapy

Taken collectively, the codes in final APC group 0060 are low in volume and erratically priced. For example, although the number of areas treated increases within the range of CPT codes 98925 through 98929, suggesting progressively increasing resource utilization, our data show median costs associated with the codes in the range 98925–98929 as $38, $11, $16, $17, and $19, respectively. Although costs associated with treating 9 to 10 body regions might not be 5 to 10 times greater than treating one or two regions, we would still expect costs for the more extensive procedures to be higher than those for the less extensive procedures, and certainly not lower as suggested by our data. Nor do we expect a hospital to specialize in treating more or fewer body areas. Therefore, the median payment set for final APC 0060 should average out, providing adequate payment for any number of body areas treated.

APC 0079: Ventilation Initiation and Management

These codes all represent respiratory treatment and support within the outpatient setting. Their costs should be roughly the same, even though our data suggest otherwise. We are excepting final APC group 0079 from the "two times limit" at this time, pending the collection of more conclusive cost data.

APC 0080: Diagnostic Cardiac Catheterization

The data for CPT code 93524 reflect costs that are lower than we would expect. We can find no apparent explanation for the wide variation in costs among the cardiac catheterization codes, although we suspect that the accuracy of the chargemaster system, when assigning charges in other than the surgical suite, may be problematic. We expect costs to even out once hospitals decide which cases may be handled on an outpatient basis without requiring an overnight stay.

APC 0081: Non-Coronary Angioplasty

We are excepting final APC group 0081 from the "two times limit" because of the low volume of cases for the codes in the group. For some of the codes in this group, the data reflect lower than expected median costs, which we attribute to low volume and to miscoding, which would account for the erratic sequences of costs found in our data.

APC 0093: Vascular Repair/Fistula Construction

We believe the median costs for CPT codes 36530 and 36810 are aberrant. These codes are very similar clinically to the other codes in APC 0093, and we would expect their costs to be similar. We believe low volume may account for the variability in cost.

APC 0094: Resuscitation and Cardioversion

We believe the median costs for CPT codes 92953 and 31500 are aberrant, perhaps due to misuse of the codes. Therefore, we are excepting this APC group from the "two times limit," until we collect and analyze more accurate data once the hospital outpatient PPS is implemented.

APC 210: Spinal Tap

The two CPT codes that comprise this group are essentially the same procedure, one performed for diagnostic reasons and the other therapeutic. We suspect the disparity in median costs is attributable to the much higher volume of diagnostic spinal taps. Therefore, we are excepting this APC group from the "two times limit," until we collect and analyze more accurate data once the hospital outpatient PPS is implemented.

APC 0233: Level II Anterior Segment Eye

We are excepting final APC group 233 from the "two times limit" because many of the codes in this APC are low volume and the coding seems erratic. For example, CPT designates a number of codes that are in final APC group 0233 as "relatively small" surgical procedures, which suggests that miscoding may have resulted in inflated cost data.

APC 0251: Level I ENT Procedures

A combination of low volume and unlisted codes obscures the fact that this APC represents the least intense ENT procedures. Because there are so many ENT codes, consistent agreement on what the codes represent may be difficult to achieve. Therefore, we are excepting this APC group from the "two times limit," until we collect more accurate data under outpatient PPS.

APC 0264: Level II Miscellaneous Radiology Procedures

In the judgment of our medical advisors, the median costs for CPT codes 74740 and 76102 are aberrant. These procedures would be underpaid if they were paid separately and on the basis of what our data show to be their median cost. Therefore, we are excepting this APC group from the "two times limit," until we collect more accurate cost data under outpatient PPS.

APC 0274: Myelography

In the judgment of our medical advisors, the median costs for CPT codes 70010 and 70015 are aberrant. These codes would be underpaid if they were moved to their own APC and paid on the basis of their median cost. All codes in this APC should cluster around the same cost. Therefore, we are excepting this APC group from the "two times limit," until we collect more accurate cost data under outpatient PPS.

APC 0279: Level I Diagnostic Angiography

We believe the median costs for the codes at the low end of this APC may be inaccurate, because, clinically, these codes are homogeneous. Therefore, we are excepting this APC group from the "two times limit," until we collect more accurate cost data under outpatient PPS.

APC 0302: Level III Radiation Therapy

We are retaining CPT code 77470 in final APC group 302, because the median cost seems low for the code description, possibly because this code may have been billed improperly in the past. We are also uncertain of the appropriate median cost of CPT code 61793, because we have been told that CPT code 61793 was used for both single-session gamma knife procedures and for each of multiple sessions of treatment with linear accelerators. Therefore, we have created two codes to be used in place of CPT code 61793, in order to collect more reliable data: G0173 (Stereotactic radiosurgery, complete course of therapy in one session), and G0174 (Stereotactic radiosurgery, requiring more than one session).

We will initially pay both codes at the same rate; however, we expect differences in cost would become apparent during the first year or 18 months of the outpatient PPS.

APC 0311: Radiation Physics Services

We are retaining CPT code 77370 in final APC group 0311, because we believe a special medical radiation physics consultation (outside the weekly management of a patient) is probably more costly than our data indicate.

APC 0341: Immunology Tests

We think the variation in costs among the procedures within final APC group 0341 may be the result of erratic coding. Because these services are so similar clinically, we would expect their individual costs to cluster around the median. Therefore, we are excepting this APC group from the "two times limit," until we collect more accurate cost data under outpatient PPS.

APC 0371: Allergy Injections

We attribute the variation in median costs among the procedures within final APC group 0371 to erratic coding. Because these services are so similar clinically, we would expect their individual costs to cluster around the median. Therefore, we are excepting this APC group from the "two times limit," until we collect more accurate cost data under outpatient PPS.

APC 0373: Neuropsychological Testing

With one exception, the codes in final APC group 0373 are billed per hour, so facility costs should all cluster around the median. Therefore, we are excepting this APC group from the "two times limit," until we collect more accurate cost data under outpatient PPS.

7. Discounting of Surgical Procedures

To be consistent with Medicare policy and regulations governing payment for ambulatory surgical services furnished in a physician's office and in an ASC, we proposed under the hospital outpatient PPS to discount payment amounts when more than one procedure is performed during a single operative session or when a surgical procedure is terminated prior to completion. Specifically, we proposed that when more than one surgical procedure with payment status indicator "T" is performed during a single operative session, we would pay the full Medicare payment and the beneficiary would pay the coinsurance for the procedure having the highest payment rate. Fifty percent of the usual Medicare PPS payment amount and beneficiary coinsurance amount would be paid for all other procedures performed during the same operative session to reflect the savings associated with having to prepare the patient only once and the incremental costs associated with anesthesia, operating and recovery room use, and other services required for the second and subsequent procedures.

We also proposed to require hospitals to use modifiers on bills to indicate procedures that are terminated before completion. Modifier -73 (Discontinued Outpatient Procedure Prior to Anesthesia Administration) would identify a procedure that is terminated after the patient has been prepared for surgery, including sedation when provided, and taken to the room where the procedure is to be performed, but before anesthesia is induced (for example, local, regional block(s), or general anesthesia). Modifier-52 (Reduced Services) would be used to indicate a procedure that did not require anesthesia, but was terminated after the patient has been prepared for the procedure, including sedation when provided and taken to the room where the procedure is to be performed. We proposed to pay 50 percent of the usual Medicare PPS payment amount and

beneficiary coinsurance amount for a procedure terminated before anesthesia is induced. Modifier-74 (Discontinued Procedure) would be used to indicate that a surgical procedure was started but discontinued *after* the induction of anesthesia (for example, local, regional block, or general anesthesia), or *after* the procedure was started (incision made, intubation begun, scope inserted) due to extenuating circumstances or circumstances that threatened the well-being of the patient. To recognize the costs incurred by the hospital to prepare the patient for surgery and the resources expended in the operating room and recovery room, the hospital will receive full payment for a procedure that was started but discontinued after the induction of anesthesia or after the procedure was started, as indicated by a modifier-74. The elective cancellation of procedures would not be reported. If multiple procedures were planned, only the procedure actually initiated would be billed.

Comment: Some commenters asked us to clarify how the policy would be applied. For example, one commenter asked whether the surgical discounting methodology would apply in the following situation: Contrast x-ray of lower spine (CPT code 72265) is followed by contrast CAT of the spine (CPT code 72132). Both procedures have related surgical codes (CPT codes 62270 and 62284). Other commenters provided examples that were similar in nature but involved other codes.

Response: We proposed to apply the reduced payment for multiple procedures to surgical procedures only, that is, those CPT codes that have a payment status indicator "T." Therefore, services such as CPT codes 72265 and 72132 that have a payment status indicator of "S" would not be subject to the multiple procedure discount, whereas CPT codes 62270 and 62284, which are surgical procedures and have a payment status indicator of "T," would be subject to the multiple procedure discount. Hypothetically, if all four codes were provided in a single operative session, as suggested by this commenter, then the reduced payment would apply only to the surgical procedure with the lower payment rate. (For the record, we have responded to the commenter's example in order to clarify how the multiple procedure discount would apply in a hypothetical situation. However, we question whether the suggested combination of codes would be covered if actually performed during the course of a single patient encounter.)

Comment: Commenters asked what factors guided our assignment of payment status indicator "T" to a code.

Response: We generally assigned the payment status indicator "T" to surgical services. Our medical advisors and staff will continue to review the designation of status indicators and we may propose revisions in the future.

Comment: A variety of commenters stated that the reduced payments for multiple procedures would inappropriately reduce payments for a second procedure. Some were concerned that application of the multiple procedure discount could result in hospitals being less likely to offer procedures assigned the payment status indicator "T." These commenters recommended that we change all "T" payment indicators to a different indicator such as "S," which we define as a significant procedure not reduced when multiple, until we have had an opportunity to collect reliable cost data upon which to base payment decisions about discounting.

Response: We continue to believe that the proposed reduced payment for multiple surgical procedures is reasonable. We disagree that hospitals would be less likely to provide these services. We believe there clearly are savings achieved when more than one surgical procedure is performed during a single operative session. The patient has to be prepared for surgery only once, and the costs associated with anesthesia, operating and recovery room use, and other services required for the second procedure are incremental.

Comment: Some commenters questioned whether the reduced payment for multiple procedures applied to the beneficiary coinsurance as well as to the Medicare program payment. Others did not understand how this reduced payment was accounted for in determining the conversion factor.

Response: The reduced payment for multiple procedures would apply to both the beneficiary coinsurance and the Medicare payment. In order to do this in a "budget neutral" manner, we increased the conversion factor to account for the reduced payments for multiple procedures. In this way, total payments in the aggregate are not affected.

Comment: One commenter believes we should exclude from the multiple-procedure discount those procedures that were subject to a 50 percent reduction under the previous cost-based system because those procedures were recognized as being an adjunct to a primary procedure. The commenter believes that we had already factored these discounts into our cost determinations and would therefore be inappropriately reducing payment even further for these procedures.

Response: We disagree with the commenter. In determining the weights for the APC groups, we included only single procedure claims. Multiple procedure reductions existing under the previous cost-based system would not have been reflected in these single procedure claims, and, therefore, do not affect the APC payment weights.

Final Action

Under the hospital outpatient PPS, we will discount payment amounts for surgical procedures when more than one procedure is performed during a single operative session or when a surgical procedure is terminated prior to completion. Parallel discounts will apply to beneficiary coinsurance amounts.

8. Payment for New Technology Services

a. Background

We proposed to price a new item or service that was assigned a new HCPCS code by classifying the new code to whichever existing APC group most closely resembled the item or service in terms of its clinical characteristics and estimated resource use. We proposed to use the group weight, payment rate, and coinsurance amount established for the existing APC to price the new code for at least 2 years to give us an opportunity to collect cost data for the new item or service.

After we published our proposed rule, the Congress expressed concern in the conference report accompanying the BBRA 1999, that our proposed PPS does not adequately address "issues pertaining to the treatment of * * * new technology." (See H. R. Rep. No. 436 (Part I), 106th Cong., 1st Sess. 868 (1999).) Therefore, the Congress enacted "transitional pass-throughs" in section 201(b) of the BBRA 1999 that provide an additional payment for "new medical devices, drugs, and biologicals" that do not otherwise meet the definition of current orphan drugs, or current cancer therapy drugs and biologicals and brachytherapy, or current radiopharmaceutical drugs and biological products. (See section III.D of this preamble for a discussion of how we are implementing the transitional pass-throughs.)

b. Comments and Responses

Comment: The most frequent commenters regarding our treatment of new technology under the proposed

hospital outpatient PPS were device manufacturers and pharmaceutical companies and their trade associations. Commenters were concerned because the proposed APC payment rates were developed using 1996 cost data that do not reflect the cost of many new technologies introduced subsequent to 1996. Commenters believe that the proposed method of ratesetting under the APC system lacks the flexibility needed to recognize emergent technologies in a timely manner. In the view of the commenters, assigning new technologies to existing APC groups pending the collection of cost data would result in underpayment, thereby discouraging the adoption of new technologies.

Commenters further stated that the proposed payment rates for current yet relatively new devices were too low and would favor continued use of older, less effective regimens on the basis of financial pressures rather than on the improved clinical outcomes of newer technology. Some commenters, concerned that we will not update codes or payment rates quickly enough to allow hospitals to pay for new technologies, recommended that we assign HCPCS codes as soon as products become available and alter APC group weights to account for a new technology. These commenters believe that the time lapse between coding updates is a barrier to innovation because it can take several years for a code to be issued for a new surgical technique, and until a new code is issued, facilities must bill for new surgical techniques as "unlisted procedures" resulting in the lowest payment rate for the category of surgery.

One commenter urged that we implement a payment carve-out for certain drug and biological therapies and pay for these items on a reasonable cost basis in order to provide timely patient access to many new pharmaceutical and biotechnology products. The same commenter recommended that if we reject a complete carve-out, then, at a minimum, we should pay for new products introduced after 1996 on a reasonable cost basis for 1 year to adequately compensate companies for developing new and more effective products. Another commenter recommended that we increase the number of APC groups to better reflect services with similar cost structures.

One professional association recommended abandoning the APC group system altogether and pricing services individually because assigning new technology and most costly procedures to APC groups with established lower cost procedures creates a strong disincentive for hospitals to provide new or improved items or services and, in the case of newer, higher cost drugs, encourages hospitals to develop formularies and practice patterns based on financial considerations rather than on the medical value of drugs.

Technologies that commenters cited as being inadequately addressed by the proposed outpatient PPS include new technologies based on molecular genetics; gamma knife procedures used in radiation surgery; and prostatic microwave thermotherapy (transurethral microwave thermotherapy (TUMT)) which a commenter said has a direct cost of $1,918 and, factoring in indirect costs, a total cost of $2,623.

Response: The concerns expressed by commenters regarding new technology items and services highlight two issues. The first is specific to the data used to construct APC groups and calculate their prices at the start of the PPS. As required by section 1833(t)(2)(C) of the Act, we are using claims data from 1996 as the basis for determining APC group weights and payment rates under the new system. The 1996 data do not capture items and services that have emerged since that time and that are now in use. The second issue relates to new items and services that will be introduced in the future, after the outpatient PPS is implemented. Postponing the adjustment of APC groups and weights for several years to allow for the collection of cost data would potentially inhibit the dissemination of medically desirable innovations.

We recognize the concerns raised by commenters about our proposed treatment of new codes under the hospital outpatient PPS. We therefore have developed a process that we believe will allow us to recognize new technologies on an ongoing basis as expeditiously as our systems permit. We expect that this process, which we explain below, combined with the transitional pass-throughs established by section 201(b) of the BBRA 1999 (which we describe in section III.D of this preamble), will provide additional payment for a significant share of new technologies.

In this final rule, we have created special APC groups to accommodate payment for new technology services. In contrast to the other APC groups, the new technology APC groups do not take into account clinical aspects of the services they are to contain, but only their costs. We will assign new items and services that we determine cannot appropriately be placed in existing APC groups for established procedures and services to the new technology APC groups.

The new technology APC groups, which are now largely unpopulated, are already defined in our claims processing system for the outpatient PPS, and we have established payment rates for the APC groups based on the midpoint of ranges of possible costs, for example, the payment amount for a new technology APC group reflecting a range of costs from $300 to $500 would be set at $400. The cost range for the groups reflects current cost distributions, and we reserve the right to modify the ranges as we gain experience under the outpatient PPS. The final APC groups for new technology are groups 0970 through 0984 and cover a range of costs from less than $50 to $6,000. Upon implementation of the outpatient PPS, we will make payment for the following new technology services under the new technology APCs:

53850 Transurethral destruction of prostate tissue; by microwave thermotherapy
53852 Transurethral destruction of prostate tissue; by radiofrequency thermotherapy
96570 Photodynamic therapy, first 30 minutes
96571 Photodynamic therapy, each additional 15 minutes
G0125 PET lung imaging of solitary pulmonary nodules, using 2-(Fluorine-18)-Fluoro-2-Deoxy-D-Glucose (FDG), following CT (71250/71260 or 71270)
G0126 PET lung imaging of solitary pulmonary nodules, using 2-(Fluorine-18)-Fluoro-2-Deoxy-D-Glucose (FDG), following CT (71250/71260 or 71270); initial staging of pathologically diagnosed non-small cell lung cancer
G0163 Positron emission tomography (PET), whole body, for recurrence of colorectal metastatic cancer
G0164 Positron emission tomography (PET), whole body, for staging and characterization of lymphoma
G0165 Positron emission tomography (PET), whole body, for recurrence of melanoma or melanoma metastatic cancer
G0166 External counterpulsation, per treatment session
G0168 Wound closure by adhesive

The new technology APC groups give us a mechanism for initiating payment at an appropriate level within a relatively short timeframe, and certainly less than the 2 or 3 years that we contemplated in our proposed rule. As in the case of items qualifying for the transitional pass-through payment, placement in a new technology APC will be temporary. After we gain information about actual hospital costs incurred to furnish a new technology service, we will move it to a clinically-related APC group with comparable resource costs. If we cannot move the new technology service to an existing

APC because it is dissimilar clinically and with respect to resource costs from all other APCs, we will create a separate APC for such service. We will retain a service within a new technology APC group for at least 2 years, but no more than 3 years, consistent with the time duration allowed for the transitional pass-through payments. Movement from a new technology APC to a clinically-related APC would occur as part of the annual update of APC groups. Beneficiary coinsurance amounts for items and services in the new technology APC groups are 20 percent of the payment rate set for the new technology APCs.

We ask that interested parties take the following steps to bring to our attention services that they believe merit consideration for pricing using the new technology APC groups. Mail requests for consideration of possible new technology services that have established HCPCS codes to the following address ONLY: PPS New Tech/Pass-Throughs, Division of Practitioner and Ambulatory Care, Mailstop C4–03–06, Health Care Financing Administration, 7500 Security Boulevard, Baltimore, MD 21244–1850.

To be considered, requests MUST include the following information:

- Trade/brand name of item.
- A detailed description of the clinical application of the item, including HCPCS code(s) to identify the procedure(s) with which the item is used.
- Current cost of the item to hospitals (*i.e.*, actual cost paid by hospitals net of all discounts, rebates, and incentives in cash or in-kind). In other words, submit the best and latest information available that provides evidence of the hospital's actual cost for a specific item.
- If the item is a service, itemize the costs required to perform the procedure, *e.g.*, labor, equipment, supplies, overhead, etc.
- If the item requires FDA approval/clearance, submit information that confirms receipt of FDA approval/clearance and the date obtained.
- If the item already has an assigned HCPCS code, include the code and its descriptor in your submission plus a dated copy of the HCPCS code "recommendation application" previously submitted for this item.
- If the item does not have an assigned HCPCS code, follow the procedure discussed, below, for obtaining HCPCS codes and submit a copy of the application with our payment request.
- Name, address, and telephone number of the party making the request.
- Other information as HCFA may require to evaluate specific requests.

We believe some items not yet known to us do not yet have assigned HCPCS codes. We expect to use national HCPCS codes in the hospital outpatient PPS to the greatest extent possible. These codes are established by a well-ordered process that operates on an annual cycle, starting with submission of information by interested parties due by April 1 and leading to announcement of new codes in October of each year. This process is described, and relevant application forms are available, on the following HCFA website: http://www.hcfa.gov/medicare/hcpcs.htm.

Considering the exigencies of implementing a new system, we intend to establish temporary codes in 2000 to permit implementation of additional payments for other eligible items effective beginning October 1, 2000. The process for submitting information will be the same as for national codes.

For new technology services that DO NOT have established HCPCS codes, submit the regular application for a national HCPCS code in accordance with the instructions found on the internet at *http://www.hcfa.gov/medicare/hcpcs.htm*. Send applications for national HCPCS codes to: C. Kaye Riley, HCPCS Coordinator, Health Care Financing Administration, Mailstop C5–08–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. A fuller discussion of the HCPCS process and schedule is in section III.D.6 of this preamble.

Because of staffing and resource limitations, we cannot accept requests by facsimile (FAX) transmission. Because of claims processing systems constraints, a new technology payment rate can only be initiated at the start of a calendar quarter. Since we will update our outpatient PPS quarterly to include new technology additional services, October 1, 2000 is the earliest date that we will implement payment for additional new technology services other than for those items beginning on July 1, 2000. In general, we expect to be able to complete action on requests to assign an item or service to a new technology APC group in about 6 months from the date we receive the request.

In order to be considered for assignment to a new technology APC group, an item or service must meet the following criteria:

- The item or service is one that could not have been billed to the Medicare program in 1996 or, if it was available in 1996, the costs of the item or service could not have been adequately represented in 1996 data.
- The item or service does not qualify for an additional payment under the transitional pass-through provided for by section 1833(t)(6) of the Act, as amended by section 201(b) of the BBRA 1999, and 42 CFR 419.43(e) as a current orphan drug, as a current cancer therapy drug or biological or brachytherapy, as a current radiopharmaceutical drug or biological product, or as a new medical device, drug, or biological.
- The item or service has a HCPCS code. (See section III.D for additional information about obtaining HCPCS codes.)
- The item or service falls within the scope of Medicare benefits under section 1832(a) of the Act.
- The item or service has been determined to be reasonable and necessary in accordance with section 1862(a)(1)(A) of the Act.

Final Action

We are initiating a method to pay for new technology services that are not addressed by the transitional pass-through provisions of the BBRA 1999.

D. Transitional Pass-Through for Innovative Medical Devices, Drugs, and Biologicals

1. Statutory Basis

Section 201(b) of the BBRA 1999 amended section 1833(t) of the Act by adding a new section 1833(t)(6). This provision requires the Secretary to make additional payments to hospitals for a period of 2 to 3 years for specific items. The items designated by the law are the following: current orphan drugs, as designated under section 526 of the Federal Food, Drug, and Cosmetic Act; current drugs, biologic agents, and brachytherapy devices used for treatment of cancer; current radiopharmaceutical drugs and biological products; and new medical devices, drugs, and biologic agents, in instances where the item was not being paid for as a hospital outpatient service as of December 31, 1996, and where the cost of the item is "not insignificant" in relation to the hospital outpatient PPS payment amount. In this context, "current" refers to those items for which hospital outpatient payment is being made on the first date the new PPS is implemented.

Section 1833(t)(6)(C)(i) of the Act sets the additional payment amounts for the drugs and biologicals as the amount by which the amount determined under section 1842(o) of the Act (95 percent of the average wholesale price (AWP)) exceeds the portion of the otherwise applicable hospital outpatient department fee schedule amount that

the Secretary determines to be associated with the drug or biological. Section 1833(t)(6)(C)(ii) provides that the additional payment for medical devices be the amount by which the hospital's charges for the device, adjusted to cost, exceed the portion of the otherwise applicable hospital outpatient department fee schedule amount determined by the Secretary to be associated with the device. Under section 1833(t)(6)(D), the total amount of pass-through payments for a given year cannot be projected to exceed an "applicable percentage" of total payments. For a year (or a portion of a year) before 2004, the applicable percentage is 2.5 percent; for 2004 and subsequent years, the applicable percentage is 2.0 percent. If the Secretary estimates that total pass-through payments would exceed the caps, the statute requires the Secretary to reduce the additional payments uniformly to ensure the ceiling is not exceeded.

Section 201(c) of the BBRA amended section 1833(t)(2)(E) of the Act to require that these pass-through payments be made in a budget neutral manner. In accordance with section 1833(t)(7) of the Act, as amended by section 201(i) of the BBRA 1999, these additional payments do not affect the computation of the beneficiary coinsurance amount.

Implementation of this pass-through provision requires us to—

- Identify eligible pass-through items;
- Designate a Billing Code for each;
- Determine the term "not insignificant" in the context of determining whether an additional payment is appropriate;
- Determine an appropriate cost-to-charge ratio to use to adjust the hospital's charges for a new medical device to cost;
- Determine the portion of the applicable APC that would be associated with the drug, biological or device; and
- Determine the additional payment amount.

As with other provisions of this final rule that reflect implementation of the BBRA 1999, we are soliciting comments on our implementation of the transitional pass-through payments, as set forth below.

2. Identifying Eligible Pass-Through Items

a. Drugs and Biologicals

Section 1833(t)(6)(A) of the Act establishes definitions and examples of the drugs and biologicals that are candidates for pass-through payments. As indicated above, these drugs and biologicals are characterized as both current and new. Current refers to those drugs and biologicals for which payment is made on the first date the hospital outpatient PPS is implemented, that is, on July 1, 2000. They include the following:

1. Orphan drugs. These are drugs or biologicals that have been designated as an orphan drug under section 526 of the Federal Food, Drug and Cosmetic Act.

2. Cancer therapy drugs, biologicals, and brachytherapy. These items are those drugs or biologicals that are used in cancer therapy, including (but not limited to) chemotherapeutic agents, antiemetics, hematopoietic growth factors, colony stimulating factors, biological response modifiers, bisphosphonates, and a device of brachytherapy.

3. Radiopharmaceutical drugs and biological products. These are radiopharmaceutical drug or biological products used in nuclear medicine for diagnostic, monitoring, or therapeutic purposes.

A new drug or biological is defined as a product that was not paid as a hospital outpatient service prior to January 1, 1997 and for which the cost is not insignificant in relation to the payment for the APC to which it is assigned. These items are not reflected in the 1996 claims data we are required to use in developing the outpatient PPS. Before payment can be made for these new drugs and biologicals, a determination must be made that these items are reasonable and necessary for the diagnosis or treatment of an illness or injury or to improve the functioning of a malformed body member as required by section 1862(a)(1)(A) of the Act. Drugs that can be self-administered are not covered under Part B of Medicare (with specific exemptions for certain oral chemotherapeutic agents and antiemetics, blood-clotting factors, immunosuppressives, and erythropoietin for dialysis patients).

b. Medical Devices

Under section 201(b) of the BBRA 1999, for purposes of making pass-through payments, a new or innovative medical device is one for which payment as a hospital outpatient service was not being made as of December 31, 1996 and for which the cost of the device "is not insignificant" in relation to the hospital outpatient department fee schedule amount payable for the service involved. For the purpose of identifying "new medical devices" that may be eligible for pass-through payments, we are excluding equipment, instruments, apparatuses, implements or items that are generally used for diagnostic or therapeutic purposes, that are not implanted or incorporated into a body part, and that are used on more than one patient (that is, are reusable). This material is generally considered to be hospital overhead costs and the depreciation expenses associated with them are reflected in the APC payments. The unit of payment for the outpatient PPS is a service or procedure. Equipment or instrumentation is a method or means of delivering that service. We are not establishing separate APC payments for equipment, instruments, apparatuses, implements, or items because payment for these types of devices is packaged in the APC payment for the service or item with which they are used. However, as we discuss above in section III.C.8, we have created new technology APCs to accommodate new technology services that may be performed using equipment or instrumentation that is capitalized and depreciated and used on more than one patient. An example of a new technology service is CPT code 53850, Transurethral destruction of prostate tissue; by microwave thermotherapy. We have assigned this procedure to new technology APC 0980. (See section III.C.8 of this preamble for further discussion of payment for new technology under the hospital outpatient PPS.)

Section 201(e) of the BBRA 1999 amends section 1833(t)(1)(B) of the Act to include as "covered OPD services" implantable items described in paragraphs (3), (6), or (8) of section 1861(s) of the Act. Paragraph (3) refers to diagnostic tests including diagnostic x-rays, mammographies, laboratory tests, and other diagnostic tests. Paragraph (6) refers to implantable durable medical equipment (DME), and paragraph (8) refers to prosthetic devices that replace all or part of an internal body organ (including colostomy bags and supplies directly related to colostomy care). Implantables are not mentioned specifically in these paragraphs, but we consider a prosthetic device that replaces all or part of an internal body organ that is mentioned in section 1861(s)(8) to be an implantable. The BBRA 1999 Conference Report lists pacemakers, defibrillators, cardiac sensors, venous grafts, drug pumps, stents, neurostimulators, and orthopedic implants, as well as items that come in contact with human tissue during invasive procedures as examples of implantable items.

Implantable items covered under section 201(e) of the BBRA 1999 may be considered eligible for the transitional pass-through payments allowed under

section 201(b) of the BBRA 1999 to the extent that these implantables meet the statutory requirements set forth in section 201(b) and the criteria established in this final rule for payment of these devices.

Although we are recognizing the implantable items identified in section 201(e) of the BBRA 1999 for possible pass-through payments, we are not applying the pass-through provision to any DME, orthotics, and prosthetic devices that are not covered under section 201(e) of the BBRA 1999. Rather, we will pay for these items under the DMEPOS fee schedule when the hospital is acting as a supplier.

3. Criteria To Define New or Innovative Medical Devices Eligible for Pass-Through Payments

In summary, we will make pass-through payment for new or innovative medical devices that meet the following criteria:

a. They were not recognized for payment as a hospital outpatient service prior to 1997.

b. They have been approved/cleared for use by the FDA.

c. They are determined to be reasonable and necessary for the diagnosis or treatment of an illness or injury or to improve the functioning of a malformed body part, as required by section 1862(a)(1)(A) of the Act. We recognize that some investigational devices are refinements of existing technologies or replications of existing technologies and may be considered reasonable and necessary. We will consider devices for coverage under the outpatient PPS if they have received an FDA investigational device exemption (IDE) and are classified by the FDA as Category B devices. (See §§ 405.203 to 405.215.) However, in accordance with § 405.209, payment for a nonexperimental investigational device "is based on, and may not exceed, the amount that would have been paid for a currently used device serving the same medical purpose that has been approved or cleared for marketing by the FDA."

d. They are an integral and subordinate part of the procedure performed, are used for one patient only, are surgically implanted or inserted, and remain with that patient after the patient is released from the hospital outpatient department.

e. The associated cost is not insignificant in relation to the APC payment for the service in which the innovative medical equipment is packaged. (See section III.D.4 below for the definition of "not insignificant.")

f. They are not equipment, instruments, apparatuses, implements, or such items for which depreciation and financing expenses are recovered as depreciable assets as defined in Chapter 1 of the Medicare Provider Reimbursement Manual (HCFA Pub. 15–1). (As indicated above, these costs are considered overhead expenses that have been factored into the APC payment.)

g. They are not materials and supplies such as sutures, clips, or customized surgical kits furnished incident to a service or procedure.

h. They are not materials such as biologicals or synthetics that may be used to replace human skin.

Comment: Some commenters asked how we would pay for new technology intraocular lenses (IOLs) under the hospital outpatient PPS.

Response: We will use the same criteria established in the June 16, 1999 final rule (64 FR 32198) titled "Medicare Program; Adjustment in Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers" to identify IOLs that may be considered new technology and eligible for pass-through payments. In accordance with that rule, IOLs must first be approved by the FDA before they can be considered as a new technology IOL. The rule establishes only one criterion for distinguishing new technology IOLs from other IOLs. Specifically, all claims of the IOL's clinical advantages and superiority over existing IOLs must have been approved by the FDA for labeling and advertising purposes. For further discussion on the reasons for relying on the FDA's determination, we refer the reader to the IOL proposed rule published on September 4, 1997 (62 FR 46700 through 46701). We recognize that this criterion has been developed to define the characteristics that distinguish a new technology IOL from other IOLs in order to comply with section 141(b) of the Social Security Act Amendments of 1994 (Pub. L. 103–432) that is specific to IOLs furnished in ASCs and not hospital outpatient departments. However, we believe that it is appropriate to rely on an established approach to assist us in distinguishing this new technology since more than 1 million IOLs are inserted annually during or subsequent to cataract surgery performed in the outpatient setting. Moreover, we believe that consistent application of the criterion in both the ASC and hospital outpatient prospective payment systems is less burdensome to those requesting recognition of new technology IOLs. Therefore, when IOLs that are recognized as "new technology IOLs" in accordance with the provisions of the June 16, 1999 final rule are furnished in a hospital outpatient setting, we will pay for such new technology IOLs in accordance with the hospital outpatient PPS method for determining additional payments under the pass-through provision set forth in this final rule.

Comment: We received many comments urging that we establish appropriate payments for brachytherapy seeds used in the treatment of prostate cancer.

Response: In accordance with section 1833(t)(6)(A)(ii), as added by section 201(b) of the BBRA 1999, we will provide additional payments for brachytherapy seeds as an implanted device. The brachytherapy device is assigned to APC 0918.

4. Determination of "Not Insignificant" Cost of New Items

Section 1833(t)(6)(A)(iv)(II) of the Act, as added by section 201(b) of the BBRA 1999 provides that the transitional pass-throughs apply to new drugs, biologicals, and devices whose cost is not insignificant in relation to the hospital outpatient PPS payment amount. Section 1833(t)(6)(C) defines the additional payment as the difference between an amount specified by the law and the portion of the applicable fee schedule amount determined to be associated with the item. The objective of this section is to prevent the hospital outpatient PPS from creating disincentives for the diffusion of valuable new technology by initially paying a rate significantly below the costs of these items. We believe that the "not insignificant" criterion was included in recognition that: (1) The costs of some new technologies would not be large enough relative to the fee schedule amount to provide disincentives for their use in the short run; and (2) that an excessive number of pass-through items could place a substantial burden on the claims processing systems of both HCFA and individual hospitals in a way that could hamper the rapid processing of pass-through payments for those items that would be significantly more costly than the applicable fee schedule amount. Therefore, in order to be consistent with the objectives of this section, we are establishing the following criteria for determining whether the costs of drugs, biologicals, and devices are "not insignificant" relative to the hospital outpatient department fee schedule amount:

(1) Its expected reasonable cost exceeds 25 percent of the applicable fee schedule amount for the associated service.

(2) The expected reasonable cost of the new drug, biological, or device must exceed the portion of the fee schedule amount determined to be associated with the drug, biological, or device by 25 percent.

(3) The difference between the expected, reasonable cost of the item and the portion of the hospital outpatient department fee schedule amount determined to be associated with the item exceed 10 percent of the applicable hospital outpatient department fee schedule amount.

The following illustrates the application of these three criteria.

Example: Let us assume that the reasonable cost of the new device ZZ is $32.00. ZZ is associated with HCPCS code 00000 assigned to APC 0001. The fee schedule amount for APC 0001 is $100.00. The portion of the fee schedule amount included in APC 0001 that represents the cost associated with the former device is $25.00.

1. (a) Multiply the fee schedule amount for APC 0001 by 25 percent

$100.00 × .25 = $25.00

(b) Compare the reasonable cost for ZZ to the product derived in Step 1

$32.00 > $25.00

Finding: The first criterion is met.

2. (a) Multiply the portion of the fee schedule amount for APC 0001 that is associated with a device by 25 percent

$25.00 × .25 = $6.25

(b) Subtract the portion of the fee schedule amount for APC 0001 attributable to a device from the reasonable cost for ZZ

$32.00 − $25.00 = $7.00

(c) Compare the remainder in Step 4 to the product in Step 2(a)

$7.00 > $6.25

Finding: The second criterion is met.

3. (a) Multiply the fee schedule amount for APC 0001 by 10 percent

$100.00 × .10 = $10.00

(b) Compare the remainder in Step 3 to the product derived in Step 3(a)

$7.00 < $10.00

Finding: The third criterion is not met. Therefore, new device ZZ is not eligible for transitional pass-through payment.

5. Calculating the Additional Payment

Section 1833(t)(6)(C)(i) of the Act requires that for drugs, biologicals, and radiopharmaceuticals, the additional payment be determined as the difference between the amount determined under section 1842(o) of the Act (95 percent of AWP) and the portion of the hospital outpatient department fee schedule amount determined by the Secretary to be associated with those items. For devices, the additional payment is the difference between the hospital's charges adjusted to costs and the portion of the applicable hospital outpatient department fee schedule amount associated with the device. Under section 1833(t)(7) of the Act, as added by section 201(i) of the BBRA 1999, the coinsurance amounts for beneficiaries are not affected by pass-through payments.

We will determine, on an item-by-item basis, the amount of the applicable fee schedule amount associated with the relevant drug, biological, or device. To the extent possible, hospital outpatient department claims data will be used to make these estimates. When necessary, external data pertaining to the costs of the drugs, biologicals and devices already included in the fee schedule amounts will be used to make these determinations.

Before January 1, 2002, charges for devices eligible for pass-throughs will be adjusted to cost on each claim by applying the individual hospital's average cost-to-charge ratio across all outpatient departments. The 1996 data do not allow for determination of which revenue center-specific ratios might be used for this purpose. We will examine claims for the latter half of 2000 and for 2001 in order to determine if a revenue center-specific set of cost-to-charge ratios should be used for 2002 and beyond.

A one-time exception to the general methodology described above pertains to current drugs and biologicals that will be eligible for transitional pass-throughs when the PPS is implemented. For this final rule, we revised many APC groups by removing, to the extent possible, many of these drugs and radiopharmaceuticals. Therefore, the payment rates for the APC groups with which these drugs are associated exclude the costs of these drugs and the total amount paid to hospitals for the drugs will be 95 percent of the applicable AWP. In order to be able to determine a coinsurance amount for these drugs, we needed to estimate what portion of this payment would have been included as part of the APC payment amount associated with these drugs and what portion would be the pass-through amount. Using an external survey of hospitals' drug acquisition costs, we determined the APC payment amount for many of these drugs as their average acquisition cost adjusted to year 2000 dollars. Where valid cost data were not available for individual drugs, we applied the following average ratios of acquisition cost to AWP calculated from the survey to determine the fee schedule amount: .68 for drugs with one manufacturer, .61 for multi-source drugs, and .43 multi-source drugs with generic competitors. In either case, the coinsurance amounts were determined as 20 percent of these fee schedule amounts. It is important to note that these estimates do not affect the total payment to hospitals for these drugs (95 percent of AWP).

Because claims data are not available for most items that will be eligible for transitional pass-through payments for 2000 and 2001, it is extremely difficult to project expenditures under this provision. For this reason, and because many eligible items will be added after the system's implementation, we cannot estimate if, and to what extent, these payments would exceed 2.5 percent of total payments in 2000 and 2001. Therefore, there will be no uniform reduction factor applied to these payments during this period.

6. Process To Identify Items and To Obtain Codes for Items Subject to Transitional Pass-Throughs

We have identified a large number of items subject to the transitional pass-through payment through our own data-gathering activities or through comments on the proposed rule. Many of them already have HCPCS codes, and we are taking steps to establish temporary codes for the remaining items. We will make additional payments for these items when the hospital outpatient PPS system is implemented on July 1. A list of the items already known to us is set forth in Addendum K.

Other items potentially eligible for additional pass-through payments may not be known to us at this time. Because of systems limitations, if we do not know about an item, we will not be able to make additional payments for those items beginning on July 1, 2000. However, we will update our outpatient PPS on a quarterly basis beginning October 1, 2000 to add other items that are eligible for pass-through payments. Therefore, implementation of additional payment for any such item must wait until a later release of systems instructions, that is, in October 2000, January 2001 (annual update), or later.

A manufacturer or other interested party who wishes to bring items that may be eligible for additional transitional pass-through payments to our attention should mail requests for consideration of items to the following address ONLY: PPS New Tech/Pass-Throughs, Division of Practitioner and Ambulatory Care, Mailstop C4–03–06, Health Care Financing Administration,

7500 Security Boulevard, Baltimore, MD 21244–1850.

To be considered, requests MUST include the following information:

- Trade/brand name of item.
- A detailed description of the clinical application of the item, including HCPCS code(s) to identify the procedure(s) with which the item is used. If the item replaces or improves upon an existing item, identify the predecessor item by trade/brand name and HCPCS code.
- Current cost of the item to hospitals (*i.e.*, actual cost paid by hospitals net of all discounts, rebates, and incentives in cash or in-kind). In other words, submit the best and latest information available that provides evidence of the hospital's actual cost for a specific item.
- Date of sale of first unit.
- For drugs, submit the most recent average wholesale price (AWP) of the drug and the date associated with the AWP quote.
- If the item requires FDA approval/clearance, submit information that confirms receipt of FDA approval/clearance and the date obtained.
- If the item already has an assigned HCPCS code, include the code and its descriptor in your submission plus a dated copy of the HCPCS code "recommendation application" previously submitted for this item.
- If the item does not have an assigned HCPCS code, follow the procedure discussed, below, for obtaining HCPCS codes and submit a copy of the application with your payment request.
- Name, address, and telephone number of the party making the request.
- Other information as HCFA may require to evaluate specific requests.

We believe some items not yet known to us do not yet have assigned HCPCS codes. We expect to use national HCPCS codes in the hospital outpatient PPS to the greatest extent possible. These codes are established by a well-ordered process that operates on an annual cycle, starting with submission of information by interested parties due by April 1 and leading to announcement of new codes in October of each year. This process is described, and relevant application forms are available, on the following HCFA website: http://www.hcfa.gov/medicare/hcpcs. htm.

Considering the exigencies of implementing a new system, we intend to establish temporary codes in 2000 to permit implementation of additional payments for other eligible items effective beginning October 1, 2000. The process for submitting information will be the same as for national codes.

For items that might be candidates for additional transitional pass-through payments but that DO NOT have established HCPCS codes, submit the regular application for a national HCPCS code in accordance with the instructions found on the internet at http://www.hcfa.gov/medicare/hcpcs.htm. Send applications for national HCPCS codes to: C. Kaye Riley, HCPCS Coordinator, Health Care Financing Administration, Mailstop C5–08–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Because of staffing and resource limitations, we cannot accept requests by facsimile (FAX) transmission.

As indicated in the instructions posted at our website address cited above, the deadline for submission of applications for a national HCPCS code for the CY 2001 cycle is April 1, 2000. The HCPCS process will proceed to assign national codes as warranted, and we expect these codes will be used in the hospital outpatient PPS starting January 1, 2001. Because the coding application will contain information vital to determining a specific item or product's eligibility for pass-through payments, we are requesting that a copy of the application be sent concurrently to ATTN: PPS New Tech/Pass-Throughs at the address shown above.

This year, we plan to implement additional payment for appropriate items on October 1, 2000. Requests submitted to us with appropriate information will be evaluated for payment effective October 1. We will use the same submissions made for national HCPCS codes as the basis for making temporary code assignments. However, a very large volume of requests or systems constraints could affect our ability to achieve this goal.

Any applications for HCPCS codes that are received after April 1 will be retained for the next cycle of the national HCPCS code assignment process starting the following April 1. We will also consider these items for assignment of temporary codes that might take effect in January or later in the next year.

How quickly additional payment for a new item can be implemented will depend on processing and systems constraints; it will in general require at least 6 months and may require as many as 9 or more months. Thus, a submission that we receive in May (which is too late for October implementation) might be assigned a temporary code to be used for implementing additional payments starting the following January.

As previously stated, pass-through payment for each item is temporary. After we obtain information about actual hospital costs incurred to furnish a pass-through item, we will package it into the service with which it is clinically associated.

Comment: A number of commenters expressed concern about the extensive amount of time required to obtain HCPCS codes for new items or services. They argued that the lag-time in coding updates creates a barrier to innovation, claiming that it can be several years before a code is issued for a new surgical technique or product. Some commenters noted that when facilities are forced to code new surgical techniques as "unlisted procedures," pending issuance of a specific code for the procedure, it would result in the facility receiving payment for the lowest related APC group. Some commenters recommended that we assign HCPCS codes as soon as products become available.

Response: We recognize the urgency expressed by commenters. We believe the process we have outlined above will assist interested parties in obtaining HCPCS codes for new items and services in the most expeditious manner possible within the constraints imposed by our system requirements.

E. Calculation of Group Weights and Conversion Factor

1. Group Weights (Includes Table 1, Packaged Services by Revenue Center)

Section 1833(t)(2)(C) of the Act requires the Secretary to establish relative payment weights for covered hospital outpatient services. That section requires that the weights be developed using data on claims from 1996 and data from the most recent available hospital cost reports. Before enactment of the BBRA 1999, we were required to base the relative payment weights on median hospital costs. Section 201(i) of the BBRA 1999 amended section 1833(t)(2)(ii) of the Act to authorize the Secretary to base the relative payment weights on either the median or mean hospital costs. In constructing the database for the outpatient PPS proposed rule group weights and conversion factor, we used a universe of approximately 98 million calendar year 1996 final action claims for hospital outpatient department services received through June 1997 to match to the most recent hospital cost reports available. We have decided to continue to base the relative payments weights in this final rule on median (as opposed to mean) costs because, among other things, reconstructing our database to evaluate the impact of using mean costs after the BBRA 1999 was

enacted would have delayed implementation of the hospital outpatient PPS.

To derive weights based on median hospital costs for services in the hospital outpatient APC groups, we converted billed charges to costs and aggregated them to the procedure or visit level. To accomplish this, we first identified the cost-to-charge ratio that was specific to each hospital's cost centers ("cost center specific cost-to-charge ratios" or CCRs). We then developed a crosswalk to match the hospital's CCRs to revenue centers used on the hospital's 1996 outpatient bills. The CCRs included operating and capital costs but excluded costs associated with direct graduate medical education and allied health education.

To determine the hospital CCRs, the most recent available cost report from each hospital was identified. For the proposed rule, we used cost reports from cost reporting periods beginning on or after October 1, 1994 and before October 1, 1995 (referred to as PPS–12) or earlier. For this final rule, more recent cost reports were available for hospitals. We used cost reports from cost reporting periods beginning on or after October 1, 1996 and before October 1, 1997 (PPS–14) for approximately 94 percent of the hospitals in our database.

If the most recent available cost report for a hospital was one that had been submitted but not settled, we calculated a factor to adjust for the differences that generally exist between settled and "as submitted" cost reports. The adjustment factor was determined by dividing the outpatient department cost-to-charge ratio from the hospital's most recent settled cost report by the outpatient department cost-to-charge ratio from the hospital's "as submitted" cost report for the same period. The resulting ratio was used to adjust each of the CCRs in the hospital's most recent "as submitted" cost report. We repeated this process for every hospital for which the most recent available cost report was a cost report that had not been settled.

The Office of Inspector General (OIG) for DHHS is concerned that the cost reports we are using may reflect some unallowable costs. Therefore, the OIG, in conjunction with HCFA, is proposing to examine the extent to which the cost reports used reflect costs that were inappropriately allowed. If this examination reveals excessive inappropriate costs, we will address this issue in a future proposed rule, or perhaps seek legislation to adjust future payment rates downward.

We next eliminated from the hospital CCR database 258 hospitals that we have identified as having reported charges on their cost reports that were not actual charges (for example, they make uniform charges for all services). These excluded hospitals were Kaiser, New York Health and Hospital Corporation, and all-inclusive rate hospitals. After removing these hospitals, we calculated the geometric mean of the total operating CCRs of hospitals remaining in our CCR database. We identified 58 hospitals whose total operating CCR exceeded the geometric mean by more than 3 standard deviations. These hospitals were also removed from our CCR database.

After assembling and editing our new CCR database, we matched revenue centers from approximately 80 million claims to CCRs of approximately 5,700 hospitals. We excluded from the crosswalk approximately 15 million claims in which the bill type denoted services that would not be covered under the PPS (for example, bill type 72X for dialysis services for patients with ESRD). We also excluded almost 3 million claims from the hospitals that we had removed or trimmed from the hospital CCR database. The table below shows the five cost reporting periods used and the percentage of the cost reports within each PPS period for which we were able to match 1996 claims.

Reporting period	Percentage of cost reports matched
PPS–15 (cost reporting period beginning on or after 10/1/97 and before 10/1/98)	0.1
PPS–14 (cost reporting period beginning on or after 10/1/96 and before 10/1/97)	94.2
PPS–13 (cost reporting period beginning on or after 10/1/95 and before 10/1/96)	3.7
PPS–12 (cost reporting period beginning on or after 10/1/94 and before 10/1/95)	1.7
PPS–11 (cost reporting period beginning on or after 10/1/93 and before 10/1/94)	0.3
Total	100.0

Next, we took the estimated 80 million claims that we had matched with a cost report and separated them into two distinct groups: Single-procedure claims and multiple-procedure claims. Single-procedure claims were those that included only one HCPCS code (other than laboratory and incidentals such as packaged drugs and venipuncture) that could be grouped to an APC. Multiple-procedure claims included more than one HCPCS code that could be mapped to an APC. There were approximately 45.4 million single-procedure claims and 34.6 million multiple-procedure claims.

To calculate median costs for services within an APC, we used only the single-procedure bills. (Of the roughly 45.4 million single-procedure claims, about 24 million were excluded from the conversion process largely because the only HCPCS codes reported on the claims were for laboratory procedures or other outpatient services not paid under the outpatient PPS.) This approach was taken because the information on claims does not enable us to specifically allocate charges or costs for packaged items and services such as anesthesia, recovery room, drugs, or supplies to a particular procedure when more than one significant procedure or medical visit was billed on a claim. Use of the single-procedure bills minimizes the risk of improperly assigning costs to the wrong procedure or visit. Although we used only single-procedure/visit bills to determine APC relative payment weights, we used multiple-procedure bills in the conversion factor and service mix calculations, regressions, and impact analyses.

For each single-procedure claim, we calculated a cost for every billed line item charge by multiplying each revenue center charge by the appropriate hospital-specific CCR. If the appropriate cost center did not exist for a given hospital, we crosswalked the revenue center to a secondary cost center when possible, or to the hospital's overall cost-to-charge ratio for outpatient department services. We excluded from this calculation all charges associated with HCPCS codes previously defined as not paid under this PPS (for example, laboratory, ambulance, and therapy services).

To calculate the per-procedure or per-visit costs, we used the charges shown in the revenue centers that contained items integral to performing the procedure or visit. These included those items that we previously discussed as being subject to our proposed packaging provision. For instance, in calculating the surgical procedure cost, we included charges for the operating room, treatment rooms, recovery, observation, medical and surgical supplies, pharmacy, anesthesia, casts and splints, and donor tissue, bone, and organ. For medical visit cost estimates, we included charges for items such as medical and surgical supplies, drugs, and observation. A complete listing of the revenue centers that we used is shown below in Table 1, Packaged Services by Revenue Center.

TABLE 1.—PACKAGED SERVICES BY REVENUE CENTER

ASC AND OTHER SURGERY

250 PHARMACY
251 GENERIC
252 NONGENERIC
257 NONPRESCRIPTION DRUGS
258 IV SOLUTIONS
259 OTHER PHARMACY
260 IV THERAPY, GENERAL CLASS
262 IV THERAPY/PHARMACY SERVICES
263 IV THERAPY/DRUG/SUPPLY/DELIVERY
264 IV THERAPY/SUPPLIES
269 OTHER IV THERAPY
270 M&S SUPPLIES
271 NONSTERILE SUPPLIES
272 STERILE SUPPLIES
276 INTRAOCULAR LENS
279 OTHER M&S SUPPLIES
370 ANESTHESIA
379 OTHER ANESTHESIA
390 BLOOD STORAGE AND PROCESSING
399 OTHER BLOOD STORAGE AND PROCESSING
630 DRUGS REQUIRING SPECIFIC IDENTIFICATION, GENERAL CLASS
631 SINGLE SOURCE DRUG
632 MULTIPLE SOURCE DRUG
633 RESTRICTIVE PRESCRIPTION
700 CAST ROOM
709 OTHER CAST ROOM
710 RECOVERY ROOM
719 OTHER RECOVERY ROOM
720 LABOR ROOM
721 LABOR
723 CIRCUMCISION
762 OBSERVATION ROOM
810 ORGAN ACQUISITION
819 OTHER ORGAN ACQUISITION
890 OTHER DONOR BANK
891 BONE
892 ORGAN
893 SKIN
899 OTHER DONOR BANK

MEDICAL VISIT

250 PHARMACY
251 GENERIC
252 NONGENERIC
257 NONPRESCRIPTION DRUGS
258 IV SOLUTIONS
259 OTHER PHARMACY
270 M&S SUPPLIES
271 NONSTERILE SUPPLIES
272 STERILE SUPPLIES
279 OTHER M&S SUPPLIES
630 DRUGS REQUIRING SPECIFIC IDENTIFICATION, GENERAL CLASS
631 SINGLE SOURCE DRUG
632 MULTIPLE SOURCE DRUG
633 RESTRICTIVE PRESCRIPTION
700 CAST ROOM
709 OTHER CAST ROOM
762 OBSERVATION ROOM

OTHER DIAGNOSTIC (BLENDED SERVICES)

254 PHARMACY INCIDENT TO OTHER DIAGNOSTIC
372 ANESTHESIA INCIDENT TO OTHER DIAGNOSTIC
622 SUPPLIES INCIDENT TO OTHER DIAGNOSTIC

TABLE 1.—PACKAGED SERVICES BY REVENUE CENTER—Continued

710 RECOVERY ROOM
719 OTHER RECOVERY ROOM
762 OBSERVATION ROOM

RADIOLOGY SUBJECT TO THE FEE SCHEDULE AND OTHER RADIOLOGY

255 PHARMACY INCIDENT TO RADIOLOGY
371 ANESTHESIA INCIDENT TO RADIOLOGY
621 SUPPLIES INCIDENT TO RADIOLOGY
710 RECOVERY ROOM
719 OTHER RECOVERY ROOM
762 OBSERVATION ROOM

ALL OTHER APC GROUPS

250 PHARMACY
251 GENERIC
252 NONGENERIC
257 NONPRESCRIPTION DRUGS
258 IV SOLUTIONS
259 OTHER PHARMACY
260 IV THERAPY, GENERAL CLASS
262 IV THERAPY PHARMACY SERVICES
263 IV THERAPY DRUG/SUPPLY/DELIVERY
264 IV THERAPY SUPPLIES
269 OTHER IV THERAPY
270 M&S SUPPLIES
271 NONSTERILE SUPPLIES
272 STERILE SUPPLIES
279 OTHER M&S SUPPLIES
630 DRUGS REQUIRING SPECIFIC IDENTIFICATION, GENERAL CLASS
631 SINGLE SOURCE DRUG
632 MULTIPLE SOURCE DRUG
633 RESTRICTIVE PRESCRIPTION
762 OBSERVATION ROOM

We then applied to these cost estimates an adjustment to calibrate the costs to calendar year 1996 for those services in hospitals whose CCRs were calculated using FY 1997 or later cost reports. On average, hospital charges were rising faster than costs in FY 1997. We therefore made this adjustment for the calculation of the weights, as well as for the hospital costs used in the conversion factor and impact model, to ensure that we did not underestimate costs and payments. We based this hospital specific CCR adjustment on the observed change in each hospital's overall CCR (total operating + total capital) from the proposed rule cost report database to the new final rule database. If applicable, we then calculated a monthly rate of change and applied it based on the number of months past 1996 encompassed in a hospital's cost reporting period; if a hospital's period coincided completely within calendar year 1996, no adjustment was made.

After calibrating the costs to calendar year 1996, we standardized costs for geographic wage variation by dividing the labor-related portion of the operating and capital costs for each billed item by the FY 2000 hospital inpatient prospective payment system wage index published in the **Federal Register** on July 30, 1999 (64 FR 41585). As in the proposed rule and correction notice, we used 60 percent to represent our estimate of that portion of costs attributable, on average, to labor. A more detailed discussion of wage index adjustments is found below in section III.G of this document.

The standardized labor-related cost and the nonlabor-related cost component were summed for each billed item to derive the total standardized cost for each procedure or medical visit. Extremely unusual costs that appeared to be errors in the data were trimmed from standardized procedure and visit costs. This trimming methodology is analogous to that used in calculating the DRG weights for the inpatient PPS: eliminate any bills with costs outside of 3 standard deviations from the geometric mean. We used the geometric mean and the associated standard deviation because the distribution of costs more closely resembles a lognormal distribution than a normal distribution: There are no negative costs, and the average cost is greater than the median cost. Use of the geometric mean minimizes the impact of the most unusual bills in the determination of the mean. The geometric mean is calculated by taking the mean of the natural logarithm cost. Because the distribution of the natural logarithms of a set of numbers is more compact than the distribution of the numbers themselves, bills with extreme costs do not appear as extreme as they would if non-logged costs were examined. This ensures that only the most aberrant data will be removed from the calculation.

After trimming the procedure and visit level costs, we mapped each procedure or visit cost to its assigned APC and calculated the median cost for each APC weighted by procedure volume. Using the median APC costs, we calculated the relative payment weights for each APC. We scaled all the relative payment weights to APC 601, a mid-level clinic visit, because it is one of the most frequently performed services. This approach is consistent with that used in developing relative value units for the Medicare physician fee schedule. By assigning APC 601 a relative payment weight of 1.0, hospitals can easily compare the relative relationship of one APC to another. Next, we divided the median cost for each APC by the median cost for a mid-level clinic visit, APC 601, to derive the relative payment weight for each APC.

The median cost for APC 601 is $47.00. In the proposed rule, we also used a mid-level clinic visit, APC 91336, which had a median cost of $54.00, as the scaler of APC weights. On average, due to the reduced value of the scaler used for this notice, the final weights will be higher than those published in the proposed rule.

Comment: Some commenters believe that the ratesetting methodology does not reflect complex cases because we eliminate statistical "outlier" claims from the calculation of the median costs and the weights.

Response: As noted above, we trimmed claims with estimated costs that were outside of three standard deviations from the geometric mean. Because we removed claims above or below the mean, we corrected for data errors that would have skewed the estimates of median costs and group weights upward or downward. We believe this trim is a valid method of removing extremely unusual costs that are most likely associated with data submission errors and do not represent actual costs. In addition, it is consistent with the method we use to set inpatient hospital diagnosis-related group (DRG) weights.

Comment: Numerous commenters disagreed with our use of single-procedure claims only in the calculation of the relative payment weights. One commenter was concerned that we could be masking differences in resource use attributable to patient characteristics by using only single-procedure claims to calculate relative weights.

Response: We used single-procedure claims to calculate the relative weight for each APC because we could not accurately allocate costs to a particular procedure when the costs were part of a bill for multiple procedures. Bills with a single major procedure provided are, in most cases, the best estimate of relative procedure costs. It is important to note that for all other calculations, including calculation of the conversion factor, we used both single-procedure and multiple-procedure bills.

We do not believe that using single-procedure bills biases the relative cost of any particular procedure. Although patients with more complex healthcare needs might have several procedures performed, hospital charges for an individual procedure would not be greater. Our most significant concern was that distribution of single bill procedures within an APC would not reflect the correct distribution of those procedure on all bills. However, careful statistical analyses demonstrated that the distribution of procedures within an APC group did not differ when single bill procedure frequencies were compared with all bills. It is also important to note that when items or services were to be packaged with a major procedure, we added their costs to that procedure prior to making the single bill determination. Therefore, the costs of contrast media, for example, are included in the relative weights. In some cases, we agreed with the commenters that this approach needed to be modified. For example, for chemotherapy, we are not grouping drugs, but rather paying for each one separately. Moreover, as a result of the transitional pass-through provisions of the BBRA 1999, radiopharmaceuticals will be paid separately from the nuclear medicine APCs.

Comment: Several commenters expressed concern that the 1996 claims data are insufficient or inadequate to develop the PPS model. For example, some commenters asserted that the 1996 data are not recent enough to reflect the current mix of outpatient services. Some commenters also argued that undercoding in the data would lead to underestimates of median costs. Other commenters recommended that we address alleged inadequacies in the data by gathering cost data on new procedures and by basing payment on these data until we can determine whether to place a new procedure in an existing APC or create a new APC.

Response: While we acknowledge limitations of setting payment rates with historical claims data, section 1833(t)(2)(C) of the Act requires us to use 1996 claims in developing the PPS. We discuss how we will price new procedures that are not reflected in our database in section III.C.8 of this preamble.

Comment: Commenters were concerned about the cost-to-charge ratios used to estimate median APC costs and pre-BBA payments. For example, one medical organization recommended that we account for the capital-intensive nature of radiology services by adjusting the cost-to-charge ratios applicable to these services for the step-down methodology that allocates capital expenses by square footage. The belief is that these allocation methods underestimate radiological equipment costs and certain cost-to-charge ratios, leading to underestimates of the median costs for relevant APC groups.

Response: Although capital-related costs may be allocated to routine and ancillary service cost centers using the step-down methodology based on square footage, as an alternative, the "dollar value" method may be used by hospitals. This method is made available to hospitals in Worksheet B–1 of the hospital cost report (HCFA 2552–96). The dollar value method more accurately distributes the capital costs associated with equipment to the revenue-producing cost center to which the equipment is assigned. We are not able to adjust the cost-to-charge ratios of those hospitals that allocate equipment based on square footage because we have no way of knowing which specific equipment costs should be allocated to revenue-producing cost centers in each hospital.

2. Conversion Factor

Section 1833(t)(3)(C)(i) of the Act requires that we establish a conversion factor for 1999 to determine the Medicare payment amounts for each covered group of services. For the proposed rule as corrected, we derived the conversion factor from a base amount of payments described in section 1833(t)(3)(A) of the Act, as enacted in the BBA 1997. Such base amount was calculated for the services included in the outpatient PPS as an estimate of the sum of (1) total payments that would be payable from the Trust Fund under the current (non-PPS) payment system in 1999, plus (2) the beneficiary coinsurance that would have been paid under the new (PPS) system in 1999. For the final rule, however, we derived the conversion factor from a base amount that includes beneficiary coinsurance that would have been made under the current (non-PPS) system rather than the proposed (PPS) system. Section 201(l) of the BBRA 1999 states: "With respect to determining the amount of copayments described in paragraph (3)(A)(ii) of section 1833(t) of the Social Security Act, as added by section 4523(a) of the BBA, Congress finds that such amount should be determined without regard to such section, in a budget neutral manner with respect to aggregate payments to hospitals, and that the Secretary of Health and Human Services has the authority to determine such amount without regard to such section."

Section 1833(t)(2)(C) of the Act requires us to project utilization for hospital outpatient services. We were unable to make precise projections of increases in the volume and intensity of services because we were not able to quantify some of the factors that affect utilization. For instance, we would anticipate that Medicare beneficiaries who choose to migrate to managed care plans may be healthier than those who choose to stay in fee-for-service plans. Thus, we could assume a decrease in the volume of services coupled with an increase in the intensity of services

furnished for Medicare beneficiaries in the fee-for-service program. Another factor that we believe will affect future utilization is the incentive to code billed services more accurately. Currently, hospitals are paid for the majority of the outpatient services they furnish on a cost basis, and inaccurate or improper coding does not necessarily affect the amount of payment. In contrast, under the PPS, hospitals are required to use HCPCS codes in order to receive payment. We expect that the frequency of some services may increase as a result of the coding requirements. We believe each of these assumptions will affect the reporting of volume and intensity of services, although we are not able to quantify them individually to project 1999 utilization. Therefore, we used what we believe to be a more reliable and valid approach to computing the conversion factor under the methodology described below.

Comment: A large national trade association commented that the exclusion of claims for unclassified services (for example, those claims for which we cannot identify the service to be paid) from the PPS model could bias the conversion factor downward if the excluded claims have a disproportionate number of services with high payment to cost ratios, such as clinic and emergency room visits.

Response: In order to set the conversion factor as accurately as possible, we used only claims for which the costs and volume of services could be identified on the bill. As noted by the commenter, this decision resulted in the exclusion of claims with unclassifiable services. Upon examination of these claims, we have determined that services with high payment to cost ratios (those that would gain under the PPS system) were not disproportionately represented. Therefore, we believe the exclusion of unclassifiable services does not bias the conversion factor.

Setting the Rates

In order to convert the relative weights determined for each APC (see section III.E.1) into payment rates, we calculated a conversion factor that would result in total estimated payments to hospitals under the PPS in 1999 equal to the total estimated payments that would have been payable from the Trust Fund in 1999 if PPS had not been enacted plus estimated beneficiary coinsurance for the same services during the same period. The prospective payment rate for each APC is calculated by multiplying the APC's relative weight by the conversion factor. For the calculation of the conversion factor, we have excluded all data from the 58 Maryland providers that qualify under section 1814(b)(3) of the Act for payment under the State's payment system. We computed the conversion factor by first adding together the aggregate Medicare hospital outpatient payments made under the cost-based payment system (referred to in this section as pre-PPS payments) for calendar year 1996, plus the estimated beneficiary coinsurance amounts made under pre-PPS law for the same services. We then divided that amount by a wage-adjusted sum of the relative weights for all APCs under the hospital outpatient PPS. The methodology we used to determine current law Medicare hospital outpatient payments and beneficiary coinsurance is discussed below in section III.E.2.a. A discussion of the sum of the relative weights follows in section III.E.2.b.

a. Calculating Aggregate Calendar Year 1996 Medicare and Beneficiary Payments for Hospital Outpatient Services (Pre-PPS)

To calculate Medicare hospital outpatient payment amounts before implementation of the PPS, we first identified calendar year 1996 single and multiple procedure bills for all the services that we will recognize under the outpatient PPS. As we identified services that will be paid under the outpatient PPS, we eliminated invalid or noncovered HCPCS codes.

Hospital payments include both operating and capital costs for the HCPCS coded services for which payment is to be made under the outpatient PPS. We summed these two types of costs by HCPCS code at the provider level. Consolidating the data in this manner allowed us to simulate provider payment on an aggregate basis. Then (as required by section 1861(v)(1)(S)(ii) of the Act as amended by section 201(k) of the BBRA 1999), we applied the capital cost reductions of 10 percent and operating cost reductions of 5.8 percent.

We determined for each HCPCS code the applicable payment methodology under the current system. Payment before implementation of PPS for procedures in the baseline was calculated using one of the following equations, as appropriate:

- For radiology procedures paid for under the radiology fee schedule, we determined payment in the aggregate for each provider as the lower of the cost, charge, or blended amount. We use the following equation to determine the radiology blended amount: (0.42 × lower of cost or charge minus beneficiary coinsurance) + (0.58 × ((0.62 × global physician fee schedule amount) − beneficiary coinsurance)).
- For surgical procedures for which Medicare pays an ASC facility fee, we determined payment in the aggregate for each provider as the lower of the cost, charge, or blended amount. We used the following equation to determine the ASC blended amount: (0.42 × lower of cost or charge minus beneficiary coinsurance) + (0.58 × (ASC payment rate − beneficiary coinsurance)).
- For diagnostic procedures paid for under the diagnostic fee schedule, we determined payment in the aggregate for each provider as the lower of the cost, charge, or blended amount. We used the following equation to determine the blended amount for diagnostic procedures: (0.50 × lower of cost or charge minus beneficiary coinsurance) + (0.50 × ((0.42 × global physician fee schedule amount) − beneficiary coinsurance)).

For all other covered services not subject to one of the blended payment method categories, we determined payment as the lower of costs or charges less beneficiary coinsurance. Because the formula-driven overpayment (FDO) was corrected beginning October 1, 1997, the blended equations eliminate FDO.

We then determined the Medicare payment amount for each provider by summing the aggregate amounts computed for each of the four types of payment methodologies discussed above. In addition, we determined the amount of the beneficiary coinsurance for each provider using the beneficiary coinsurance amounts that would have been paid before implementation of PPS. The total amount (Medicare and beneficiary payments) reflects the amount hospitals would be paid under the PPS and is the numerator in the equation for calculating the unadjusted conversion factor.

b. Sum of the Relative Weights

Next we summed the discounted relative weights for services that are within the scope of the outpatient PPS. (See discussion of discounting for surgical procedures in section III.C.7.) Specifically, we multiplied (using single and multiple procedure claims in a hospital) the discounted volume of procedures or visits in each APC group by the relative weights for each APC group; we wage-adjusted 60 percent of this total by each hospital's wage index, and we then summed the wage-adjusted and nonadjusted weights across all hospitals. (The wage indices used are included in Addenda H, I, and J.) The resulting sum equals the denominator in the calculation of the conversion factor.

We calculated the conversion factor by dividing the sum of the discounted relative weights into the total payment explained in section III.E.2.a, above, including both Medicare payment and beneficiary coinsurance. We then adjusted the conversion factor so that the outlier and pass-through payments are implemented in a budget neutral manner, as described in sections III.H.1 and III.D. The adjusted calendar year 1996 conversion factor is $43.023. To inflate the 1996 conversion factor to 1999, our Office of the Actuary estimated an update factor of 1.106. Therefore, the adjusted 1999 conversion factor is $47.583.

For calendar year 2000, we updated the conversion factor as specified in section 1833(t)(3)(C)(iii) of the Act. The update is the market basket percentage increase applied to hospital discharges occurring during the fiscal year ending in calendar year 2000 minus 1 percentage point. For 2000, the updated conversion factor is $48.487.

Comment: A number of commenters suggested that we remove the behavioral offset that we proposed to apply to the conversion factor. As proposed, the intent of the offset was to adjust for hospital coding changes that take place in response to reductions in beneficiary coinsurance.

Response: We have decided not to include a behavioral offset to the conversion factor in this final rule. Hospital coding changes are expected to occur under the outpatient PPS; however, we believe changes that occur during the first PPS years will result from hospitals billing more accurately under the new system. A behavioral offset implemented in the initial PPS years may distort the incentives to bill accurately. We may reconsider implementation of a behavioral offset in future years as we gather data and gain experience under the new system.

Comment: A large national trade association expressed concern that application of the 5.8 percent and 10.0 percent reduction to costs for all hospital outpatient services included in the PPS model underestimates the conversion factor. They recommended that we exclude the Part B services provided to inpatients who exhaust their Part A benefits from the reductions.

Response: Our analysis shows that fewer than 5,000 of the more than 80 million claims used to set the conversion factor were associated with these types of services. Total costs associated with these claims were less than $1.4 million, which is too small to have a measurable effect on the conversion factor.

Comment: Many commenters strongly argued that we misinterpreted the provisions of section 1833(t)(3) of the Act in calculating beneficiary coinsurance for purposes of setting the base amount of the conversion factor. The commenters noted that this methodology contributed significantly to the estimated 5.7 percent reduction in Medicare outpatient payments to hospitals reflected in the proposed rule. Most commenters further argued that the Congress did not intend for this loss to occur and that we had the authority to interpret the methodology described in the statute so that no net change in payments would result from the conversion factor.

Response: Section 1833(t)(3)(A) of the Act, as added by the BBA 1997, states that, for purposes of calculating the base amount used to determine the conversion factor, the Secretary shall calculate "the total amount of copayments estimated to be paid *under this subsection.* * * *" (Emphasis added.) For the proposed rule, we estimated the coinsurance that would be paid under PPS. In section 201(l) of the BBRA 1999, the Congress addressed the calculation of the base amount, stating, "With respect to determining the amount of copayments described in paragraph (3)(A)(ii) of section 1833(t) of the Social Security Act, as added by section 4523(a) of the BBA, Congress finds that such amount should be determined without regard to such section, in a budget neutral manner with respect to aggregate payments to hospitals, and the Secretary of Health and Human Services has the authority to determine such amount without regard to such section." Therefore, for this final rule, we estimated the coinsurance that would have been paid if PPS had not been enacted.

F. Calculation of Coinsurance Payments and Medicare Program Payments Under the PPS

1. Background

In section III.E, above, we explained how we determined APC group weights, calculated an outpatient PPS conversion factor, and determined national prospective payment rates, standardized for area wage variations, for the APC groups. We will now explain how we calculated beneficiary coinsurance amounts for each APC group.

The outpatient PPS established by section 1833(t) of the Act includes a mechanism designed to eventually achieve a beneficiary coinsurance level equal to 20 percent of the prospectively determined payment rate established for the service. As discussed in the proposed rule, for each APC we calculate an amount referred to in section 1833(t)(3)(B) of the Act as the "unadjusted copayment amount." The unadjusted coinsurance amount is calculated by taking 20 percent of the national median charges billed in 1996 for the services that are in the APC, trended forward to 1999; however, the coinsurance amount cannot be less than 20 percent of the APC payment rate. The unadjusted coinsurance amount for an APC remains frozen, while the payment rate for the APC is increased by adjustments based on the Medicare market basket. As the APC rate increases and the coinsurance amount remains frozen, the unadjusted coinsurance amount will eventually become 20 percent of the payment rate for all APC groups. Once the unadjusted coinsurance amount is 20 percent of the payment amount, both the APC payment rate and the unadjusted coinsurance amount will be updated by the annual market basket adjustment.

In the proposed rule, we proposed to not adopt new APCs for new procedures or services for at least 2 years, but instead assign them to existing groups while accumulating data on their costs. In the final rule we do provide for APCs for new procedures that do not fit well into another APC. When an APC is added that consists of HCPCS codes for which we do not have 1996 charge data upon which to calculate the unadjusted coinsurance amount, coinsurance will be calculated as 20 percent of the APC payment amount.

There is an exception to the coinsurance provisions for screening colonoscopies and screening sigmoidoscopies. Section 4104 of the BBA 1997 provided coverage for colorectal screening. This section, in part, added new sections 1834(d)(2) and (3) to the Act, which provide that for covered screening sigmoidoscopies and colonoscopies performed in hospital outpatient departments and ambulatory surgical centers (ASCs), payment is to be based on the *lesser* of the hospital or the ASC payment rates and coinsurance for both screening colonoscopies and screening sigmoidoscopies is to be 25 percent of the rate used for payment.

Section 4104 of the BBA 1997 also allows, at the Secretary's discretion, coverage of screening barium enemas as a colorectal cancer screening tool. We are including screening barium enemas as a covered service under the hospital outpatient PPS. The payment rate for screening barium enemas is the same as for diagnostic barium enemas. Coinsurance for a screening barium enema is based on 20 percent of the APC payment rate.

Sections 201(a) and (b) of the BBRA 1999 amend section 1833(t) of the Act to provide for additional payments to hospitals for outlier cases and for certain medical devices, drugs, and biologicals. These additional payments to hospitals will not affect coinsurance amounts. Redesignated section 1833(t)(8)(D) of the Act, as amended by section 201(i) of the BBRA 1999, provides that the coinsurance amount is to be computed as if outlier adjustments, adjustments for certain medical devices, drugs, and biologicals, as well as any other adjustments we may establish under section 1833(t)(2)(E) of the Act, had not occurred. Section 202 of the BBRA 1999 adds a new section 1833(t)(7) to the Act to provide transitional corridor payments to certain hospitals through calendar year 2003 and indefinitely for certain cancer centers.

Section 1833(t)(7)(H) of the Act provides that the transitional corridor payment provisions will have no effect on determining copayment amounts.

Section 204(a) of the BBRA 1999 amended redesignated section 1833(t)(8)(C) of the Act to provide that the coinsurance amount for a hospital outpatient procedure cannot exceed the amount of the inpatient hospital deductible for that year. The inpatient hospital deductible for calendar year 2000 is $776.00. We will apply the limitation to the wage adjusted coinsurance amount (not the unadjusted coinsurance amount) after any Part B deductible amounts are taken into account. Therefore, although the published unadjusted coinsurance amount for any APC may be higher or lower than $776.00 in 2000, the actual coinsurance amount for an APC, determined after any deductible amounts and adjustments for variations in geographic areas are taken into account, will be limited to the Medicare inpatient hospital deductible. Any reductions in copayments that occur in applying the limitation will be paid to hospitals as additional program payments. (See section III.F.3.a, below, for discussion of calculating the Medicare payment amount.)

MedPAC Comment: In its March 1999 report to the Congress, MedPAC expressed concern that the statute's approach to addressing the reduction in coinsurance could mean that it will be decades before coinsurance is 20 percent of all APC payment rates. MedPAC recommended that the Secretary seek and the Congress legislate a more rapid phase-in and that the cost be financed by increases in program spending, rather than through additional reductions in payments to hospitals. MedPAC agrees that the approach to calculating the coinsurance delineated in section 1833(t) of the Act is methodologically sound, but they recommend a shorter period to complete the coinsurance reduction.

Response: The coinsurance reductions enacted by the BBA 1997 already provide significantly higher levels of financial protection for beneficiaries than have existed in the past. While an acceleration of this protection might be desirable, the costs of such a policy must be balanced against other needs for increased Medicare spending and protection of the trust funds. The President's budget for FY 2001 does not contain such a proposal.

Comment: Three commenters discussed the delay in implementing the outpatient PPS until after January 1, 2000. A hospital association stated that it strongly believes that the outpatient PPS should not be implemented until all systems are ready, and suggested that implementation occur at the start of a calendar year so that Medigap insurers did not receive an unearned windfall by reason of a midyear decrease in beneficiary coinsurance amounts. Stating that the delay in implementation was of serious concern to it, an insurance group strongly urged us to implement the outpatient PPS as soon as possible. Finally, a beneficiary advocacy group stated that it is deeply concerned about the delay in implementation. While stating that it understood the magnitude of the Y2K problem, this group urged us to find a way to proceed with the phase-down of beneficiary coinsurance or, failing that, to offer our assurance that the phase-down will not be delayed beyond January 1, 2000.

Response: As noted elsewhere in this final rule, we intend to implement the outpatient PPS effective for services furnished on or after July 1, 2000. As noted in the proposed rule, we concluded that attempting to make the massive computer changes required to implement PPS at the same time we were trying to ensure that Medicare's computers were Y2K compliant would have jeopardized the compliance effort, which was HCFA's highest priority. Now that HCFA's efforts to make its computer systems, and those of its contractors, Y2K compliant are complete, we believe that July 1, 2000 is the earliest date on which we can feasibly implement the PPS. Pursuant to HCFA's contracts with the contractors responsible for maintaining its computer systems, HCFA makes programming changes such as those required to implement the outpatient PPS at the beginning of fiscal quarters. Thus, pursuant to this practice, after January 1, 2000, there are only three dates in 2000 on which the programming changes necessary to implement outpatient PPS can be put into effect—April 1, 2000, July 1, 2000 and October 1, 2000.

The first step in changing HCFA's computer systems to allow for implementation of the outpatient PPS is to expand the claim record of several HCFA and contractor systems to accept and retain specific information related to how a service is being paid or why it is denied. The claim record expansion is an indispensable prerequisite to implementation of outpatient PPS. Once expansion of the claim form is completed, we can then make the remaining programming changes necessary to implement the outpatient PPS. As we noted in the proposed rule, 63 FR 47605, these are massive changes that will require extensive testing. We anticipate that these software coding changes cannot be completed before the end of the second quarter of 2000. Therefore, the earliest possible date on which they can be installed and made operational is July 1, 2000.

We do not believe that it is technically feasible to complete installation of both the claims-form line item expansion and the coding changes needed to implement PPS any sooner than July 1, 2000. Each of these two stages of preparing HCFA's computer system for PPS constitutes major systems changes in and of itself. To attempt to make both changes simultaneously would be to run the risk that the system would not function properly at all, potentially requiring implementation to be delayed beyond July 1, 2000. We believe that the two-stage approach discussed above is the only feasible way to make the systems changes necessary to implement PPS and to be certain that they will work. The soonest date on which PPS can be implemented after the millennium is therefore July 1, 2000.

Despite one commenter's request that we implement the outpatient PPS at the start of a calendar year, we do not believe it would be appropriate to delay implementation beyond July 1, 2000. We see no reason to delay implementation beyond the time necessary for HCFA to have completed its Y2K efforts and make all the systems changes necessary for PPS. As with all of the other aspects of PPS, we believe that the beneficiary coinsurance reform contained in the outpatient PPS should be put into effect as soon as possible, so that beneficiaries can be subject to the lower coinsurance amounts under the new payment methodology at the

earliest date. We believe that this consideration outweighs any concern that Medigap insurers might receive a windfall because they set premiums for a given year assuming coinsurance amounts would be at one level only to see those amounts decrease in the middle of the year. In addition, we note that, if insurers received a large enough windfall for the reasons described by the commenter, the insurers might be required to refund premiums to beneficiaries or offer them a credit on premiums pursuant to section 1882(r) of the Act.

While none of the commenters specifically requested that we do so, we have considered the possibility of applying the outpatient PPS payment methodology retroactively to services furnished on or after January 1, 1999. We have decided not to make these retroactive payments for the reasons described below.

The first reason is the practical problem that the information needed to implement PPS retroactively does not exist in a usable form. Under current payment methodologies for many outpatient services, hospitals submit bills for furnished services based on their charges for the services. For these services, HCFA does not require hospitals to submit bills containing the HCPCS code for the furnished service and other data (such as the dates of service of multiple services submitted on the same bill) necessary to process bills under the new prospective payment methodology. Without the HCPCS code for a given service, we would be unable to determine retroactively into which APC group the service should be placed for payment under PPS. In turn, that would mean that we could not determine the appropriate payment amount for the service. Thus, given the information currently available to us, we could not now simply reprocess bills for outpatient services that had been furnished between January 1, 1999 and July 1, 2000 and recompute payment and coinsurance amounts for these services. As a result, the data needed to implement PPS retroactively do not exist in a form that would allow for such implementation.

Nor would it have been feasible to attempt to capture the information necessary for retroactive application during 1999. As noted above, we concluded that it would not have been prudent to make the computer programming changes necessary to implement PPS until our Y2K efforts were complete. Those same changes would have been necessary to allow us to capture the more detailed claims data needed to perform a retroactive application of PPS back to January 1, 1999 once the system was implemented prospectively. Because we delayed those changes out of concern that they would interfere with our Y2K efforts, no automated process existed for the period January 1, 1999 through July 1, 2000 by which we could have captured the more detailed claims data necessary to effect an eventual retroactive implementation of PPS. Publication of a final rule before January 1, 1999 would not have altered this situation. Even if we had published such a rule, it could not have become effective until we could make the computer changes necessary to implement PPS—the functional equivalent of what we have done through publication of the proposed rule and this final rule—and until we could make those changes, we could not compile by computer the data needed to later reprocess claims under PPS.

In theory, we might have been able to implement PPS retroactively despite the lack of an automated method of compiling the data necessary to do so. But it simply would not have been practicable to maintain and later process by hand such data for the period between January 1, 1999 and July 1, 2000, given the millions of claims for outpatient services submitted during that period. (Based on the latest data available, we process approximately 160 million claims for outpatient services over an 18-month period.) Neither HCFA nor its contractors have the staff needed to accomplish such a task.

We might also have conceivably required hospitals to maintain the data required for a later retroactive implementation of PPS, but this approach has practical difficulties. First, during the interim period between January 1, 1999 and implementation of PPS, hospitals themselves were exerting significant efforts to ensure the Y2K compliance of their own automated Medicare billing systems, and it is doubtful that those systems could have accommodated the necessary programming changes any more than Medicare's systems could have. Even if hospitals could have maintained the information (or if HCFA could have maintained it by hand or could obtain it from any source now), the burden associated with attempting to implement the new prospective payment methodology both retroactively and prospectively at the same time would have been prohibitive. As noted in the proposed rule and in this final rule, effecting the transition between the old payment methodologies and the new prospective payment methodology constitutes a massive programmatic undertaking. Any effort to reprocess the huge number of bills for outpatient services that would be involved in any attempt to retroactively implement PPS would compete for the same resources needed to implement PPS prospectively, and would compromise our ability to ensure the smoothest prospective implementation.

This is especially so if paper records of claims from the interim period would have to be manually input into Medicare's automated payment systems in order to make retroactive payments for services furnished on or after January 1, 1999. Undertaking an effort, once PPS is implemented, to review hospital records of every outpatient service furnished between January 1, 1999 and July 1, 2000; translate those records into the data needed to process a Medicare claim for the service under PPS; and issue a retroactive payment reflecting the PPS rate for the service would cause a huge backlog of current bills to be processed (and of other carrier tasks), and thus would not be practicable. Therefore, there was no feasible way to have captured the information necessary to make PPS apply retroactively.

In addition to the practical problems described above, the statute does not require retroactive application of PPS. The statutory requirement to implement the PPS for services furnished on or after January 1, 1999 is ambiguous. While section 1833(t)(1)(A)'s reference to outpatient services "furnished during a year beginning with 1999" might be read as imposing such a requirement, it is also true that section 1833(t)(1)(B)(i) does not expressly set a time limit for HCFA to designate which services are "covered" outpatient services for purposes of payment under PPS. Nor does it set a deadline for HCFA to issue regulations implementing the outpatient PPS. As a result, the statute can also be read to require implementation of PPS for services furnished in a year beginning in 1999 *if* HCFA has designated in its implementing regulations those services as covered services for purposes of PPS. The better reading is that the system applies prospectively only.

We recognize that, under section 1833(a)(2)(B), Congress arguably made the old payment methodologies for outpatient services inapplicable to services furnished on or after January 1, 1999. Again, though, Congress imposed no corresponding limit on the time within which HCFA must designate the services that would be "covered" services for purposes of PPS. While it is therefore possible to read the statute in such a way that an outpatient service

furnished after January 1, 1999 but not yet designated as a covered outpatient service by HCFA for purposes of PPS would have no payment methodology applicable to it, we do not believe that Congress intended such a result. We believe that where HCFA, because of significant Y2K concerns, has not yet designated a given outpatient service as a covered service for purposes of PPS, the most appropriate reading of section 1833(t)(1)(A) is that it authorizes the Secretary to continue to pay for the service under the existing methodology until PPS can be implemented. If the Congress had known about the Y2K problem at the time it enacted the PPS statute, this is the only rational approach it could have adopted.

We believe that a clear expression of Congressional intent not to require retroactive application of PPS can be found in the legislative history of amendments to section 1833(t) of the Act, enacted as sections 201, 202, and 204 of the BBRA 1999. In each instance, the legislation provides that the "amendments made by this section shall be effective as if included in the enactment of the BBA," that is, the original enactment of PPS in section 1833(t) (sections 201(m), 202(b), and 204(c) of the BBRA 1999). This language was taken from the House version of the bill (H.R. Rep. No. 436 (Part I), 106th Cong., 1st Sess. 14, 16 (1999)). The House Report stated that the outpatient payment reforms contained in the BBRA 1999 (and hence in the BBA 1997) were intended to take effect "upon implementation of the hospital prospective payment system" by HCFA, *id.* at 52, 55, 56, not on January 1, 1999. The House Conference Committee Report reiterated the understanding that the payment and coinsurance provisions of the BBA and BBRA do not take effect until after implementation by HCFA. H. Conf. Rep. No. 479, 106th Cong., 1st Sess. 866 (1999) ("[c]urrently, beneficiaries pay 20% of charges for outpatient services," but "[u]nder the outpatient PPS, beneficiary coinsurance will be limited to frozen dollar amounts based on 20% of national median charges for services in 1996, updated to the year of implementation of the PPS"); *id.* at 867 ("[t]he conferees fully expect that the beneficiary coinsurance phase-down will commence, as scheduled, on July 1, 2000"); 870 ("[h]ospital outpatient PPS is to be implemented simultaneously and in full for all services and hospitals (estimated for July 2000)").

Both the House Report and the Conference Report expressly acknowledge, without disapproval, HCFA's decision to delay implementation of the outpatient PPS until after January 1, 2000. H.R. Rep. No. 436 (Part I) at 51 (stating that Secretary "delayed implementation of the new system until after the start of CY 2000 in order to ensure that 'year 2000' data processing problems are fully resolved before the new system is implemented" and that "HCFA currently estimates that the outpatient department prospective payment system will be implemented in July 2000"); 145 Cong. Rec. at H12529 (daily ed. Nov. 17, 1999) (H. Conf. Rep. No. 479) (acknowledging "[t]here has already been a one-year delay in implementation of the BBA 97 provision" and stating that conferees "fully expect" that the outpatient prospective payment system "will commence, as scheduled, on July 1, 2000"). These statements indicate Congressional intent that payments and coinsurance for covered hospital outpatient services would be governed prospectively by PPS only after HCFA promulgated and made effective final implementing regulations.

Finally, there is a serious question as to whether retroactive implementation of PPS might constitute prohibited retroactive rulemaking. In *Bowen* v. *Georgetown University Hospital*, 488 U.S. 204, 208 (1988), the Supreme Court stated that a statutory grant of legislative rulemaking authority does not encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms, even where some substantial justification for retroactive rulemaking might exist. The Court then declined to find this express authorization for retroactive rulemaking in the Medicare statute's general grant of rulemaking authority.

We do not find this express authorization in section 1833(t) or any other statutory provision concerning the outpatient PPS. Section 1833(t)(1) requires that payment for outpatient services that are furnished during any calendar year beginning after January 1, 1999 and that are designated by HCFA as "covered" outpatient services shall be made under a prospective payment system. While Congress may have presumed, when it enacted section 1833(t) as part of the BBA, that HCFA would be able to designate covered outpatient services and implement the outpatient PPS by January 1, 1999, Congress did not foresee at that time that Y2K concerns would prevent the agency from doing so. As a result, the statute is silent as to what was to occur if HCFA was unable to designate covered outpatient services and implement PPS by January 1, 1999. We do not believe that this silence constitutes the express authorization of retroactive rulemaking required by the Supreme Court's *Georgetown* decision.

Comment: Several commenters contended that the proposed rules for beneficiary coinsurance are overly complex and that the phase-in period is too long. One commenter asked HCFA to consider a less involved method and a more aggressive time period for implementation. Another commenter suggested using a 5-year phase-in period. One commenter requested that we recommend a legislative change to the Congress to reduce beneficiary coinsurance to 20 percent by January 1, 2003. Still another commenter expressed concern that calculations of coinsurance amounts for each hospital will be particularly burdensome to Medicare fiscal intermediaries and, as a result of the increased workload, errors may occur. The commenter also recommended a more rapid reduction of coinsurance to 20 percent of the payment amount.

Response: We agree that the rules governing how coinsurance is to be calculated under the PPS are complex, and the phase-in to 20 percent coinsurance is a lengthy one. However, the methods for calculating coinsurance are dictated by the statute. The legislative changes were made in order to put some control on rapidly increasing beneficiary coinsurance payments, to begin to decrease the proportion of beneficiary liability for hospital outpatient services, and to continue to reduce beneficiary liability over time. As we have stated, the impetus to accelerate the reduction of beneficiary coinsurance has to be viewed within the context of other needs for increased Medicare expenditures and long-term protection of the trust funds. The delay in implementing the hospital outpatient PPS past the statutory effective date was unavoidable due to systems constraints imposed by Y2K compliance requirements.

Comment: One commenter noted that the proposed rule set beneficiary coinsurance at 20 percent of *median* charges, but the commenter believes that coinsurance amounts should be recalculated to equal 20 percent of the *average* charge for the applicable APC group. The commenter indicates that such a change would provide some financial relief to hospitals.

Response: Section 1833(t)(3)(B)(i) of the Act requires that unadjusted coinsurance amounts be calculated as 20 percent of the national *median* of the charges for services within the APC group.

Comment: One commenter stated that because coinsurance is based on the median charges of the APC, some beneficiaries would pay a higher coinsurance than they would under the current system. The commenter believes that beneficiaries who require less intensive services in an APC group will essentially subsidize other beneficiaries who receive more intensive services within the group. The commenter asserted that fairness would dictate beneficiaries be charged coinsurance amounts that more appropriately reflect the services received, not an amount based on a median of multiple services they did not receive.

Response: Section 1833(t)(3)(B)(ii) of the Act provides that the unadjusted coinsurance amounts are based on the national median of the charges for the "services within" an APC. Because an APC group consists of services that are both clinically similar and similar with respect to the resources required to perform the service, we would expect that charges for the services should also be fairly homogeneous. We believe that services within a group are homogeneous enough to warrant a single payment amount and a single coinsurance amount.

In the following sections, we describe how we determined the beneficiary coinsurance amount and the Medicare program payment amount for services paid for under the hospital outpatient PPS.

2. Determining the Unadjusted Coinsurance Amount and Program Payment Percentage

To calculate Medicare program payment amounts and beneficiary coinsurance amounts, we first determined for each APC group two base amounts, in accordance with statutory provisions:

- An unadjusted copayment amount, described in section 1833(t)(3)(B) of the Act; and
- The predeductible payment percentage, which we call the program payment percentage, described in section 1833(t)(3)(E) of the Act.

a. Calculating the Unadjusted Coinsurance Amount for Each APC Group

In the proposed rule, we described the specific steps used to calculate the unadjusted coinsurance amounts for each APC group as follows:

(i) We determined the national median of the charges billed in 1996 for the services that constitute an APC group after standardizing charges for geographic variations attributable to labor costs. (To determine the labor adjustment, we divided the portion of each charge that we estimated was attributable to labor costs (60 percent) by the hospital's inpatient wage index value and added the result to the nonlabor portion of the charge (40 percent)).

(ii) We updated charge values to projected 1999 levels by multiplying the 1996 median charge for the APC group by 13.0 percent (increased to 14.7 percent in this final rule), which the HCFA Office of the Actuary estimates to be the rate of growth of charges between 1996 and 1999.

(iii) To obtain the unadjusted coinsurance amount for the APC group, we multiplied the estimated 1999 national median charge for the APC group by 20 percent. The unadjusted coinsurance amount is frozen at the 1999 level until such time as the program payment percentage (as determined below) equals or exceeds 80 percent (section 1833(t)(3)(B)(ii) of the Act).

b. Calculating the Program Payment Percentage (Predeductible Payment Percentage)

In the proposed rule and in this final rule, we use the term "program payment percentage" to replace the term "predeductible payment percentage," which is referred to in section 1833(t)(3)(E) of the Act. The program payment percentage is calculated annually for each APC group, until the value of the program payment percentage equals 80 percent. To determine the program payment percentage for each APC group, we—

(i) Subtract the APC group's unadjusted coinsurance amount from the payment rate set for the APC group; and

(ii) Divide the difference (APC payment rate minus unadjusted coinsurance amount) by the APC payment rate, and multiply by 100.

The program payment percentage will be recalculated each year because APC payment rates will change when APC rates are increased by annual market basket updates and whenever we revise an APC.

Comment: One commenter expressed concern about how the coinsurance amounts are determined. The commenter stated that the calculation is flawed and penalizes beneficiaries in those States where charges for services tend to be lower than in other States. The commenter alleged that if the hospitals in those States where charges for services tend to be lower accept a reduced coinsurance in order to hold beneficiaries harmless, the hospitals will be penalized. The commenter also asserted that Medigap policies and Medicaid programs will also be affected. The commenter further stated that coinsurance should be based on regional, not national, charges. The commenter contended that the provision does not achieve the intended outcome of equalizing payment across the nation.

Response: Sections 1833(t)(3) and (t)(8) of the Act prescribe how coinsurance amounts are to be calculated under the PPS. Our method of calculating unadjusted coinsurance amounts for each APC group based on 20 percent of national median charges follows the requirements of section 1833(t)(3)(B) of the Act.

Comment: A number of commenters believe that the payment system as proposed would create gross anomalies in coinsurance for particular chemotherapy drugs. For example, the proposed $36.61 coinsurance for fluorouracil is 10 times the hospital's cost to purchase that drug. The commenters asserted that this excessive coinsurance represents an abuse of patients and would undermine beneficiary confidence in the new system. They recommended that coinsurance be limited to 20 percent of the payment amount for each drug.

Several other commenters noted that classifying drugs with widely varying costs in the same APC will have a significant negative effect on beneficiary coinsurance, and in some cases beneficiaries could be required to pay a greater percentage of coinsurance for less effective therapies. For example, one commenter alleged that the coinsurance for the drug 5–FU, which the commenter believes has a current coinsurance of approximately $1, would increase to $40 under the proposed system.

Response: The coinsurance anomalies for chemotherapy drugs that appeared in the proposed rule are not an issue under this final rule. Unlike the proposed chemotherapy drug APCs, which grouped all chemotherapy drugs under four APCs, in this final rule, each chemotherapy drug is assigned to a separate APC. As discussed in section III.D.5 of this preamble, the unadjusted coinsurance amounts for these APCs is calculated as 20 percent of the APC payment rate.

Comment: One commenter noted that the proposed national unadjusted coinsurance amounts for cardiovascular stress testing and perfusion imaging result in beneficiaries bearing 85 percent of the total payment for stress testing and 60 percent for perfusion imaging, which many beneficiaries will be unable to afford. Another commenter

requested that we either exclude cataract procedures and angioplasty from the hospital outpatient PPS or create an outlier policy that affords special treatment for these procedures in order to protect beneficiaries from excessive coinsurance amounts.

Response: Coinsurance amounts, by law, are based on 20 percent of the median of the charges actually billed in 1996 (updated to 1999) for the services within an APC. The fact that coinsurance is a larger proportion of the total payment for some APCs than for others reflects the differences in hospital charging practices for different services. For example, in examining departmental cost-to-charge ratios reflected on hospital cost reports, we have found that most hospitals have higher mark-ups in charges for radiology and diagnostic services than they do for clinic visits.

3. Calculating the Medicare Payment Amount and Beneficiary Coinsurance Amount

a. Calculating the Medicare Payment Amount

The national APC payment rate that we calculate for each APC group is the basis for determining the total payment (subject to wage-index adjustment) the hospital will receive from the beneficiary and the Medicare program. (A hospital that elects to reduce coinsurance, as described below in section III.F.4, may receive a total payment that is less than the APC payment rate.) The Medicare payment amount takes into account the wage index adjustment and the beneficiary deductible and coinsurance amounts. In addition, the amount calculated for an APC group applies to all the services that are classified within that APC group. The Medicare payment amount for a specific service classified within an APC group under the outpatient PPS is calculated as follows:

(i) Apply the appropriate wage index adjustment to the national payment rate that is set annually for each APC group.

(ii) Subtract from the adjusted APC payment rate the amount of any applicable deductible as provided under § 410.160.

(iii) Multiply the adjusted APC payment rate, from which the applicable deductible has been subtracted, by the program payment percentage determined for the APC group or 80 percent, whichever is lower. This amount is the *preliminary Medicare payment amount.*

(iv) If the wage-index adjusted coinsurance amount for the APC is reduced because it exceeds the inpatient deductible amount for the calendar year, add the amount of this reduction to the amount determined in (iii) above. The resulting amount is the *final Medicare payment amount.*

b. Calculating the Coinsurance Amount

A coinsurance amount is calculated annually for each APC group. The coinsurance amount calculated for an APC group applies to all the services that are classified within the APC group. The beneficiary coinsurance amount for an APC is calculated as follows:

Subtract the APC group's Medicare payment amount from the adjusted APC group payment rate less deductible; for example, coinsurance amount = (adjusted APC group payment rate less deductible)—APC group *preliminary Medicare payment amount.* If the resulting amount does not exceed the annual hospital inpatient deductible amount for the calendar year, the resulting amount is the beneficiary coinsurance amount. If the resulting amount exceeds the annual inpatient hospital deductible amount, the beneficiary coinsurance amount is limited to the inpatient hospital deductible. For example, assume that the wage-adjusted payment rate for an APC is $300; the program payment percentage for the APC group is 70 percent; the wage-adjusted coinsurance amount for the APC group is $90; and the beneficiary has not yet satisfied any portion of his or her $100 annual Part B deductible.

(A) Adjusted APC payment rate: $300.

(B) Subtract the applicable deductible:

$300–$100 = $200

(C) Multiply the remainder by the program payment percentage to determine the preliminary Medicare payment amount:

0.7 × $200 = $140

(D) Subtract the Medicare payment amount from the adjusted APC payment rate less deductible to determine the coinsurance amount, which cannot exceed the inpatient hospital deductible for the calendar year:

$200 − $140 = $60

(E) Calculate the final Medicare payment amount by adding the preliminary Medicare payment amount determined in step (C) to the amount that the coinsurance was reduced as a result of the inpatient hospital deductible limitation.

$140 + $0 = $140

In this case, the beneficiary pays a deductible of $100 and a $60 coinsurance, and the program pays $140, for a total payment to the hospital of $300. Applying the program payment percentage ensures that the program and the beneficiary pay the same proportion of payment that they would have paid if no deductible were taken.

If the annual Part B deductible has already been satisfied, the calculation is:

(A) Adjusted APC payment rate: $300.

(B) Subtract the applicable deductible:

$300 − 0 = $300

(C) Multiply the remainder by the program payment percentage to determine the preliminary Medicare payment amount:

0.7 × $300 = $210

(D) Subtract the Medicare payment amount from the adjusted APC payment rate less deductible to determine the coinsurance amount. The coinsurance amount cannot exceed the amount of the inpatient hospital deductible for the calendar year:

$300 − $210= $90

(E) Calculate the final Medicare payment amount by adding the preliminary Medicare payment amount determined in step (C) to the amount that the coinsurance was reduced as a result of the inpatient hospital deductible limitation.

$210 + $0 = $210

In this case, the beneficiary makes a $90 coinsurance payment, and the program pays $210, for a total payment to the hospital of $300.

The following example illustrates a case in which the inpatient hospital deductible limit on coinsurance amounts applies. Assume that the wage-adjusted payment rate for an APC is $2,000; the wage-adjusted coinsurance amount for the APC is $900; the program payment percentage is 55 percent; the inpatient hospital deductible amount for the calendar year is $776 and the beneficiary has not yet satisfied any portion of his or her $100 Part B deductible.

(A) Adjusted APC payment rate: $2,000.

(B) Subtract the applicable deductible:

$2000 − $100 = $1,900

(C) Multiply the remainder by the program payment percentage to determine the preliminary Medicare payment amount:

0.55 × $1,900 = $1,045

(D) Subtract the preliminary Medicare payment amount from the adjusted APC payment rate less deductible to determine the coinsurance amount. The coinsurance amount cannot exceed the inpatient hospital deductible amount of $776:

$1,900 − $1,045 = $855, but coinsurance limited to $776

(E) Calculate the final Medicare payment amount by adding the

preliminary Medicare payment amount determined in step (C) to the amount that the coinsurance was reduced as a result of the inpatient hospital deductible limitation ($855 − $776 = $79).

$1,045 + $79 = $1,124

In this case, the beneficiary pays a deductible of $100 and coinsurance that is limited to $776. The program pays $1,124 (which includes the amount of the reduction in beneficiary coinsurance due to the inpatient hospital deductible limitation) for a total payment to the hospital of $2,000.

4. Hospital Election To Offer Reduced Coinsurance

For most APCs, the transition to the standard Medicare coinsurance rate (20 percent of the APC payment rate) will be gradual. For those APC groups for which coinsurance is currently a relatively high proportion of the total payment, the process will be correspondingly lengthy. The law offers hospitals, but not CMHCs, the option of electing to reduce coinsurance amounts and permits hospitals to disseminate information on their reduced rates. In this section, we discuss the procedure by which hospitals can elect to offer a reduced coinsurance amount, and the effect of the election on calculation of the program payment and beneficiary coinsurance.

Section 1833(t)(5)(B) of the Act, as added by section 4523 of the BBA 1997, requires the Secretary to establish a procedure under which a hospital, before the beginning of a year, may elect to reduce the coinsurance amount otherwise established for some or all hospital outpatient services to an amount that is not less than 20 percent of the hospital outpatient prospective payment amount. The statute further provides that the election of a reduced coinsurance amount will apply without change for the entire year, and that the hospital may disseminate information on its reduced copayments. Section 1833(t)(5)(C) of the Act, as added by the BBA 1997, provides that deductibles cannot be waived. Finally, section 1861(v)(1)(T) of the Act (as added by section 4451 of the BBA 1997) provides that no reduction in coinsurance elected by the hospital under section 1833(t)(5)(B) of the Act may be treated as a bad debt. We note that section 1833(t)(5) of the Act has been redesignated as section 1833(t)(8) of the Act by sections 201(a) and 202(a) of the BBRA 1999.

Elections to reduce coinsurance will not be taken into account in calculating transitional corridor payments to hospitals (discussed in section III.H.2 of this preamble). That is, a hospital's transitional corridor payment will be determined as if the hospital received unreduced coinsurance amounts from beneficiaries.

In the proposed rule, we stated that we would require that hospitals make the election to reduce coinsurance on a calendar year basis. The proposed rule required that the hospital must notify its fiscal intermediary of its election to reduce coinsurance no later than 90 days prior to the date the PPS is implemented or 90 days prior to the start of any subsequent calendar year and that the hospital's notification must be in writing. It must specifically identify the APC groups to which the hospital's election will apply and the coinsurance amount (within the limits identified below) that the hospital has elected for each group. The election of reduced coinsurance must remain in effect and unchanged during the year for which the election is made. Because the law states that hospitals may disseminate information on any reduced coinsurance amounts, we provided in the proposed rule that hospitals would be allowed to publicly advertise this information.

The proposed regulations provided that a hospital may elect to reduce the coinsurance amount for any or all APC groups. A hospital may *not* elect to reduce the coinsurance amount for some, but not all, services within the same APC group.

As proposed, a hospital may not elect a coinsurance amount for an APC group that is less than 20 percent of the adjusted APC payment rate for that hospital. In determining whether to make such an election, hospitals should note that the national coinsurance amount under this system, based on 20 percent of national median charges for each APC, may yield coinsurance amounts that are significantly higher or lower than the coinsurance that the hospital previously has collected. This is because the median of the national charges for an APC group, from which the coinsurance amount is ultimately derived, may be higher or lower than the hospital's historic charges. Therefore, in determining whether to elect lower coinsurance and the level at which to make the election, we advise that hospitals carefully study the wage-adjusted coinsurance amounts for each APC group in relation to the coinsurance amount that the hospital has previously collected.

As discussed in section III.F.1, under sections 1834(d)(2)(C)(ii) and 1834(d)(3)(C)(ii) of the Act the coinsurance for screening sigmoidoscopies furnished by hospitals and screening colonoscopies furnished by hospital outpatient departments and ASCs is 25 percent of the applicable payment rate. The payment rate for these colorectal cancer screening tests is the lower of the hospital outpatient rate or the ASC payment rate. The payment rate for screening barium enemas is the same as that for diagnostic barium enemas. However, the coinsurance amount for screening barium enemas is 20 percent of the APC payment rate. Hospitals may *not* elect to reduce coinsurance for screening sigmoidoscopies, screening colonoscopies, or screening barium enemas.

Calculation of coinsurance amounts on the basis of a hospital's election of reduced coinsurance is similar to the formula described in section III.F.3. For example, assume that the adjusted APC payment rate is $300; the program payment percentage for the APC group is 60 percent; the hospital has elected a $60 *reduced* coinsurance amount for the APC group; and the beneficiary has not satisfied the annual Part B deductible.

(A) Adjusted APC payment rate: $300.

(B) Subtract the applicable deductible:

$300 − $100 = $200

(C) Multiply the remainder by the program payment percentage to determine the Medicare payment amount:

0.6 × $200 = $120

(D) Beneficiary's coinsurance is the difference between the APC payment rate reduced by any deductible amount and the Medicare payment amount, but not to exceed the lesser of the reduced coinsurance amount or the inpatient hospital deductible amount:

$200 − $120 = $80 (limited to $60 because of the hospital-elected reduced coinsurance amount)

(E) Calculate the final Medicare payment amount by adding the preliminary Medicare payment amount determined in step (C) to the amount that the coinsurance was reduced as a result of the inpatient hospital deductible limitation.

$120 + $0 = $120

In this case, Medicare makes its regular payment of $120, and the beneficiary pays a $100 deductible and a reduced coinsurance amount of $60. The hospital receives a total payment of $280 instead of the $300 that it would have received if it had not made its election to reduce coinsurance.

Comment: One commenter stated that it is currently illegal to accept lower coinsurance amounts from beneficiaries and asked for an explanation as to how

we could propose to encourage hospitals to lower coinsurance.

Response: Although Medicare, in general, has prohibitions against reducing beneficiary coinsurance, redesignated section 1833(t)(8)(B) of the Act specifically provides the legal authority for hospitals to make elections to reduce coinsurance amounts for purposes of the outpatient PPS. However, those coinsurance amounts cannot be reduced below 20 percent of the adjusted APC payment rate for the hospital.

Comment: One commenter asked whether, in view of our proposal to allow hospitals to elect lower coinsurance, Medigap insurance plans will be permitted to offer a waiver of a participating hospital's coinsurance. That is, can a Medigap plan act as a preferred provider organization (PPO) with a financial incentive to select those hospitals that elect to reduce coinsurance?

Response: There are two kinds of Medigap policies—regular Medigap and Medicare SELECT. While regular Medigap policies must pay full supplemental benefits on all claims that are submitted by all Medicare providers and are approved by Medicare carriers and intermediaries, Medicare SELECT plans, which are a managed care form of Medigap, may restrict payment of supplemental benefits to network providers. Thus, by design, Medicare SELECT plans are permitted to negotiate selectively with hospitals. Ordinarily, Medicare SELECT plans contract with certain hospitals to waive the hospital deductible for inpatient services.

Since the Congress has expressly permitted hospitals to reduce outpatient coinsurance to no less than 20 percent of the PPS payment amount, a Medicare SELECT plan is free to contract selectively with these hospitals. We note that a hospital's election to reduce coinsurance under redesignated section 1833(t)(8)(B) of the Act requires that the reduction be across-the-board for some or all APC groups. Thus, an agreement between a Medicare SELECT plan and a hospital to reduce coinsurance would result in coinsurance reductions for all beneficiaries who receive those APC group services at the hospital, whether or not they are enrolled in the Medicare SELECT plan.

Comment: One commenter requested that we seek a legislative change to offer hospitals more flexibility under the coinsurance reduction provision by permitting them to review and revise coinsurance amounts every 3 months.

Response: We believe that there would be a significant impact on contractors if hospitals were allowed to revise their reduced coinsurance more often than annually. More frequent coinsurance changes may also be confusing to beneficiaries. Because we do not have a good estimate of how many hospitals will make the elections and we do not yet know whether those hospitals that do make elections will elect to reduce coinsurance for just a few or for a significant number of APCs, we do not support allowing hospitals to make or change elections more often than annually. However, we may reconsider our position after we gain more experience under the PPS and can better assess what the impact of more frequent elections would be on hospitals, beneficiaries, and HCFA and its contractors.

Comment: One commenter noted that if we intend to publish a final rule no more than 90 days before implementation of the PPS, hospitals would not have sufficient time to make coinsurance election decisions. The commenter recommended that hospitals be permitted to make the election 60 days before implementation of the system.

Response: This final rule will not be published more than 90 days before the date of implementation of the PPS. Therefore, the final regulations require that hospitals inform their fiscal intermediaries (FIs) of their elections to reduce coinsurance not later than June 1, 2000. Beginning with elections for calendar year 2001, elections are required to be made by December 1 preceding the calendar year. At this time, we do not know how many hospitals will choose to reduce coinsurance or for how many APCs these hospitals will elect reductions. While we want to provide hospitals sufficient time to make their elections, we also must provide fiscal intermediaries with enough time to incorporate the elections into their systems.

Comment: Several commenters disagreed with our proposal to allow hospitals to advertise reduced coinsurance amounts. They noted that, although the BBA 1997 provision with respect to hospitals' election to reduce coinsurance amounts provides that hospitals may "disseminate information" on their reductions, we have interpreted that to mean that hospitals may "advertise" their reductions. Two commenters stated that disseminating information is not synonymous with granting one category of hospitals the unique opportunity to advertise to attract customers. They believe that this interpretation is antithetical to the spirit underlying provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) that prohibit beneficiary inducements and may conflict with State anti-kickback laws. Some commenters were also concerned that under our proposal to allow hospitals to advertise, hospitals may issue a general advertisement of reduced coinsurance when the reduction may apply only to certain services. Other commenters were concerned that hospital advertising may lead Medicare beneficiaries to believe that hospital outpatient care is more economical than other ambulatory settings, even when that is not the case, or beneficiaries may become confused and believe that all ambulatory providers have the ability to reduce coinsurance. These commenters asked us to reconsider our proposal to allow hospitals to advertise rather than to disseminate information. In addition, they asked us to establish additional requirements for hospitals' dissemination of information concerning coinsurance reductions so that beneficiaries are made aware that reduced coinsurance applies only to certain specified services, that it applies only to coinsurance billed by hospitals for those services, and that the law does not permit reduced coinsurance for other Part B services such as physician services.

Several other commenters stated that for the election to reduce coinsurance to be effective, hospitals must have the right to advertise and, therefore, the commenters supported our proposal to permit hospitals to advertise coinsurance reductions.

Response: We believe that hospitals must be able to advertise their coinsurance reductions in order to achieve what we believe to be the intent of the BBA provision, that is, to provide hospitals with some ability to compete with other ambulatory settings (where coinsurance is already 20 percent of the applicable Medicare payment rate) and to reduce beneficiary coinsurance liability.

Hospitals would have less incentive to reduce coinsurance if they could not advertise. In addition, beneficiaries need to be fully informed so that they can make informed decisions. We believe that advertising as a way of disseminating information has merit.

We were persuaded by some commenters' concerns that beneficiaries may not understand that reduced coinsurance applies to specific hospital outpatient services furnished by specific hospitals that choose to elect reductions and that similar reductions cannot be made by other providers of ambulatory services. We, therefore, are amending the regulations to require that all

advertisements or other information furnished to beneficiaries must specify that the coinsurance reductions advertised apply only to the specified services of that hospital and that these coinsurance reductions are available only where a hospital elects to reduce coinsurance for hospital outpatient services and reductions are not allowed in other ambulatory settings or physician offices.

Comment: One commenter, noting the complexity of the PPS coinsurance requirements, requested that we provide a phase-in period in the final rule to allow hospitals sufficient time to implement the changes necessary to meet the requirements.

Response: The method required to be used in calculating coinsurance under the PPS results in an overall decrease in the total coinsurance amounts beneficiaries pay for hospital outpatient services. Total coinsurance is somewhat reduced in the first year of implementation and will be reduced even more in future years, until coinsurance for all PPS services equal 20 percent of the applicable APC payment rate. It is only by fully implementing the coinsurance provisions under section 1833(t)(3)(B) of the Act that beneficiaries will realize these reductions. We, therefore, do not support a phase-in period.

Comment: One commenter recommended that we include, as part of the public record, year by year estimates of the total economic burden placed on beneficiaries by the prolonged coinsurance phase-in period, assuming hospitals charge the maximum and minimum coinsurance amounts. The commenter believes these estimates would be useful as a basis for future discussions of how to remedy the coinsurance problem.

Response: As a rule, we develop estimates of impacts for legislative proposals that are under consideration by the Congress and for final legislation as we are developing regulations to implement the law. Although we do not have the resources available to model any number of other data analyses that may have merit, our data are made available to the public, so the commenter and any other interested party may perform the coinsurance analysis.

Comment: One commenter stated that the proposed PPS creates new complexities for Medicare beneficiaries in that they will have to wait for hospitals to do the calculations necessary to determine coinsurance. The beneficiaries will also receive multiple bills and explanations of benefits for multiple hospital visits occurring on the same day. The commenter stated that we will need to have an extensive process in place to explain why, in most cases, beneficiaries are paying 50 to 70 percent of their outpatient services and why they are receiving separate statements when they have multiple visits on the same day.

Response: In the proposed rule, we assigned medical visits, that is, clinic and emergency room visits, to APCs based on both the level of visit as defined by a HCPCS code and the diagnosis of the patient. In order to implement that type of APC assignment, we would have to require hospitals to submit a separate bill for each medical visit that occurred on the same day; however, under the final rule, medical visits are assigned to APCs based solely on the HCPCS code, and it will be possible for hospitals to bill for multiple medical visits on the same bill. We agree that the way coinsurance is determined under the PPS is a significant change. We are developing a brochure for beneficiaries that will explain the new system and the policies under the outpatient PPS that will affect them.

Comment: One commenter recommended that we make information available to beneficiaries that compares the average coinsurance for high volume procedures performed at hospitals in a particular geographic area so that beneficiaries can make informed health care decisions about their care.

Response: We believe that beneficiaries will be informed about the coinsurance reductions elected by hospitals in their area through advertisements and other information made available by hospitals.

Comment: One commenter asked whether the EOMB (Explanation of Medicare Benefits) notice to the beneficiary will clearly explain that a hospital's decision to reduce coinsurance applies to a specific service furnished at that specific hospital.

Response: We are reviewing the EOMB in light of the changes in Medicare payments and coinsurance amounts under the PPS, but we have not yet finalized our work. We will take the commenter's suggestion into consideration as we investigate changes we will make to the EOMB.

G. Adjustment for Area Wage Differences

1. Proposed Wage Index

Under section 1833(t)(2)(D) of the Act, the Secretary is required to determine a wage adjustment factor to adjust, in a budget-neutral manner, the portion of the payment rate and the coinsurance amount that is attributable to labor-related costs for relative differences in labor and labor-related costs across geographic regions. As stated in the proposed rule, we considered several options and we proposed using the hospital inpatient PPS wage index as the source of an adjustment factor for geographic wage differences for the hospital outpatient department PPS. We believe that using the hospital inpatient PPS wage index is both reasonable and logical, given the inseparable, subordinate status of the outpatient department within the hospital overall. Use of a hospital outpatient-specific wage index was not required by the Congress and we did not have either the time or resources necessary to construct one. We explained in our proposed rule that there are several possible versions of the hospital inpatient wage index that can be developed by extracting the basic wage and salary data from hospital cost reports, depending on the methodology that is applied to the data. For the hospital outpatient PPS, we proposed to adopt the same version that is used to determine payments to hospitals under the hospital inpatient PPS to adjust for relative differences in labor and labor-related costs across geographic areas. This version reflects the effect of hospital redesignation under 1886(d)(8)(B) of the Act and hospital reclassification under 1886(d)(10) of the Act.

By statute, we implement the annual updates of the hospital inpatient PPS on a fiscal year basis. However, we proposed to update the hospital outpatient department PPS on a calendar year basis. Therefore, the hospital inpatient PPS wage index values that are updated annually on October 1 would be implemented for the hospital outpatient department PPS on the January 1 immediately following. We proposed this schedule so that wage index changes will be implemented on a calendar year basis concurrently with other revisions and updates, such as the conversion factor update or changes in the APC groups resulting from new or deleted CPT codes. Subsequent to our proposal, section 201(h) of the BBRA 1999 amended section 1833(t)(8)(A) of the Act (as redesignated by section 201(a) of the BBRA 1999) to require the Secretary to review and revise the outpatient PPS wage index adjustment factor at least annually rather than on a periodic basis. (This section of the Act was further redesignated as section 1833(t)(9)(A) by section 202(a) of the BBRA 1999.)

2. Labor-Related Portion of Hospital Outpatient Department PPS Payment Rates

We proposed to recognize 60 percent of the hospital's outpatient department costs as labor-related costs that would be standardized for geographic wage differences. We initially estimated this percentage by comparing the percentage of costs attributed to labor by other systems (that is, hospital inpatient PPS and ASC) and by considering health care market factors such as the shift in more complex services from the inpatient to the outpatient setting, which could influence labor intensity and costs. We stated that 60 percent represented a reasonable estimate of outpatient costs attributable to labor, as it fell between the hospital inpatient PPS operating cost labor factor of 71.1 percent and the ASC labor factor of 34.45 percent, and is close to the labor-related costs under the hospital inpatient operating cost PPS attributed directly to wages, salaries, and employee benefits (61.4 percent) under the rebased 1992 hospital market basket that was used to develop the fiscal year 1997 update factor for inpatient PPS rates (published August 30, 1996 at 61 FR 46187).

We confirmed our estimate through regression analysis. Using this approach, we analyzed the percentage change in hospital costs attributable to a 1 percent increase in the wage index as expressed by the hospital wage index coefficient. The coefficient from a fully specified payment regression of the hospital cost per unit, standardized for the service mix on the wage index, disproportionate share patient percentage, modified teaching, rural, and urban variables, is approximately 0.60, suggesting a labor share of 60 percent. Even though we decided not to propose additional adjustments, we believed that the coefficient from this specification provided the best estimate of the labor share for the proposed PPS. This judgment was based on a policy to use a labor share that reflects the relationship between the wage index and costs, rather than the effects of correlated factors.

After calculating 60 percent of each hospital's total operating and capital costs, we divided that amount by the hospital's FY 1998 hospital inpatient PPS wage index value to standardize costs to remove the differences that are attributable to geographic wage differences. Therefore, as we explained in the proposed rule, the total cost of performing a procedure or visit would include standardized operating and capital costs, as well as related costs (for example, operating room time, medical/surgical supplies, anesthesia, recovery room, observation) and minor ancillary procedures such as venipuncture that we packaged.

Comment: Some commenters urged that we annually update the wage index applied to the outpatient PPS as we do under the hospital inpatient PPS.

Response: We proposed to update the wage index annually, on a calendar year basis. In addition, section 1833(t)(9)(A) of the Act, redesignated and amended by the BBRA 1999, requires us to review and revise the wage adjustment at least annually.

Comment: A professional society recommended eliminating the "regional variation for radiologic technologists working in small and rural practices" and applying the "same wage scale" used for their urban counterparts. The commenter asserted that our wage index methodology is biased against rural hospital radiology departments that must compete with the urban areas to attract and retain radiologic technologists. The commenter stated that hospitals are operating in a very competitive labor market in which rural facilities are forced to match or exceed wages paid in the urban areas for reduced workloads. The commenter further stated that the impact of higher hourly technologist wages does not result in a corresponding increase in a higher wage index for radiologic technologists in rural hospitals because these wages are averaged with those for all other hospital inpatient personnel working in the same area.

Response: The commenter is correct that the wage index is calculated based upon all of the wages paid and hours worked of hospital personnel within areas of the hospital that are paid under the inpatient PPS. The wages and hours are then totaled for a particular labor market area (defined as a Metropolitan Statistical Area [MSA] or all of the counties of a State that are not part of an MSA). We believe the inpatient wage index is an appropriate measure of the relative costs of labor across geographic areas for purposes of outpatient PPS.

Currently, we do not have data available that would allow us to calculate the wage index for the costs of employing staff in particular occupational categories. Collecting these data would require significant recordkeeping and reporting efforts for hospitals, and the impacts of adjusting the wage index using the data are uncertain. Although some analyses have indicated that the wage indices of rural areas could rise as a result of such an adjustment, these findings are limited by the lack of a national database through which to fully assess the impacts.

Comment: Several commenters viewed our proposal to establish a 60 percent labor share as an arbitrary decision for which we provided no rational support. One commenter stated that "Congress did not expect HCFA to invent a number."

Response: As we explained in the proposed rule (63 FR 47581), we used a statistical tool, that is, regression analysis, to validate the percentage of costs that we had initially estimated could be attributed to labor and, therefore, subject to the wage adjustment. We adopted this approach because we did not have adequate and appropriate data readily available through a reputable source from which we could derive a hospital outpatient labor share within the time allotted to develop our new system. While hospital outpatient costs, including labor costs, are reported annually on the hospital cost report, they are not reported in a manner and format that allow us to capture the statistical and cost data necessary to calculate a precise hospital outpatient labor share. Therefore, we decided to use regression analysis to test our estimate of that labor share. Within the constraints imposed by a lack of accessible, reliable data and the compressed timeframe under which we were working to develop the outpatient PPS, we believe our approach was appropriate and the best available option.

Comment: Several commenters urged us to use more current hospital cost report data to determine the appropriate hospital outpatient labor share.

Response: As stated above, at this time the Medicare hospital cost report is not a feasible data source for determining a hospital outpatient labor share.

Comment: One commenter asserted that setting the labor-related share at 60 percent fails to recognize all labor costs associated with the delivery of hospital outpatient services. The commenter stated that the labor-related percentage for the outpatient PPS should be the same as that used for the hospital inpatient PPS, that is, 71.1 percent. Another commenter supported 60 percent as a "maximum" labor percentage on an interim basis and suggested that we reconsider our decision to use the inpatient PPS hospital wage index to adjust the outpatient PPS payments because of the commenter's concerns about flaws inherent in the system used to derive the inpatient PPS wage index values. A third commenter proposed that the

labor-related portion should be closer to the 34.45 percent currently applied to adjust ASC payment for wage variation. The latter commenter contended that apportioning 60 percent of the outpatient PPS payment rate for wage adjustment would adversely affect rural hospitals because the wage index values for these areas are generally below 1.0.

Response: We note that commenters' opinions regarding an appropriate labor percentage are mixed. However, beyond expressing a preference for a percentage other than 60 percent, none of the commenters provided data to assist us in re-evaluating our proposal. We realize that rural hospitals would benefit from using a labor share that is less than 60 percent and that some other hospitals would derive advantages from a labor share greater than 60 percent. However, we believe the approach that we used to determine the labor share that will be applied to all hospitals paid under our new system is reasonable and the best option available at this time. We will re-evaluate our decision as we gain more experience with the new system and as new data become available.

3. Adjustment of Hospital Outpatient Department PPS Payment and Coinsurance Amounts for Geographic Wage Variations

In the proposed rule, we noted our intent to use fiscal year 1999 hospital inpatient PPS wage index values to compute the initial outpatient PPS rates. However, we have decided to use fiscal year 2000 inpatient PPS wage index values in determining the payment rates set forth in this final rule. The rationale for using the fiscal year 2000 wage index includes availability of the more recent wage index, that it is more current than the 1999 wage index would have been, and that it is being used to calculate FY 2000 payments under the hospital inpatient PPS.

We proposed to use the annually updated hospital inpatient PPS wage index values to adjust both program payment and coinsurance amounts under the outpatient PPS for area wage variations. Under our proposal, when intermediaries calculate actual payment amounts, they would multiply the prospectively determined APC payment rate and coinsurance amount by that labor-related percentage to determine the labor-related portion of the base payment rate and coinsurance amount that is to be adjusted using the applicable wage index factor. We proposed that the labor-related portion would then be multiplied by the hospital's inpatient PPS wage index factor, and the resulting wage-adjusted labor-related portion would be added to the nonlabor-related portion, resulting in wage-adjusted payment and coinsurance rates. The wage-adjusted coinsurance amount would then be subtracted from the wage-adjusted APC payment rate, and the remainder would be the Medicare payment amount for the service or procedure. Note that even if a hospital elects to reduce the coinsurance or if the coinsurance is capped at the inpatient deductible, the full coinsurance is assumed for purposes of determining the Medicare payment percentage. (See section III.F.3 for a discussion on how Medicare program payments are calculated when the Part B deductible applies.)

The following is an example of how an intermediary would calculate the Medicare payment for a surgical procedure with a hypothetical APC payment rate of $300 that is performed in the outpatient department of a hospital located in Heartland, USA. The coinsurance amount for the procedure is $120. The hospital inpatient PPS wage index value for hospitals located in Heartland, USA is 1.0234. The labor-related portion of the payment rate is $180 ($300 × 60 percent), and the nonlabor-related portion of the payment rate is $120 ($300 × 40 percent). The labor-related portion of the unadjusted coinsurance amount is $72 ($120 × 60 percent), and the nonlabor-related portion of the unadjusted coinsurance amount is $48 ($120 × 40 percent). It is assumed that the beneficiary deductible has been met.

Wage-Adjusted Payment Rate (rounded to nearest dollar):
= ($180 × 1.0234) + $120
= $184 + $120
= $304

Wage-Adjusted Coinsurance Amount (rounded to nearest dollar):
= ($72 × 1.0234) + $48
= $74 + $48
= $122

Calculate Medicare Program Payment Amount:
$304 − $122 = $182

4. Special Rules Under the BBRA 1999

We issued the federal fiscal year (FY) 2000 hospital inpatient PPS wage index values in the **Federal Register** on July 30, 1999, in a final rule titled "Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2000 Rates" (64 FR 41490). Subsequent to that publication, section 152 of the BBRA 1999 reclassified certain counties and labor market areas for purposes of payment under the Medicare hospital inpatient PPS; section 153 of the BBRA 1999 enacted a "wage index correction"; and section 154 of the BBRA 1999 provided for the calculation and application of a wage index floor for a specified area. These changes are effective for FY 2000 and will be explained in detail in an interim final rule with comment that we expect to issue in the **Federal Register** shortly. The wage index values in Addendum H, Addendum I, and Addendum J reflect the changes made by the BBRA 1999.

H. Other Adjustments

1. Outlier Payments

Section 1833(t)(2)(E) of the Act, as enacted by the BBA 1997, authorized, but did not require, an outlier adjustment. In the proposed rule, we discussed our reasons for not implementing an outlier adjustment policy. We explained that we had reached that decision after carefully evaluating several factors. For the following reasons, we believed an outlier policy was not necessary: (a) in the proposed PPS, unlike the hospital inpatient PPS, we would use limited packaging of services and allow payment for multiple services delivered to a given patient on a given day; (b) payment for critical care services would reflect the intensity and higher costs associated with providing this type of medical care; and (c) we would make higher payment for serious medical cases even if critical care were not provided and additional payments would be made for any other laboratory work, x-rays, or surgical interventions resulting from medical visits to the emergency room.

Section 201(a) of the BBRA 1999 amended section 1833(t) of the Act by adding an outlier adjustment provision, section 1833(t)(5). Under this new provision, the statute now requires that we make an additional payment (that is, an outlier adjustment) for outpatient services for which a hospital's charges, adjusted to cost, exceed a fixed multiple of the outpatient PPS payment as adjusted by pass-through payments. The Secretary determines this fixed multiple and the percent of costs above the threshold that is to be paid under this outlier provision. The statute sets a limit on projected aggregate outlier payments. Under the statute, projected outlier payments may not exceed an "applicable percentage" of projected total payments. The applicable percentage means a percentage specified by the Secretary (projected percentage of outlier payments relative to total payments), subject to the following limits: for years before 2004, the projected percentage that we specify cannot exceed 2.5 percent; for 2004 and later, the projected percentage cannot

exceed 3.0 percent. Section 201(c) of the BBRA 1999 amended section 1833(t)(2)(E) of the Act to require that these payments be budget neutral.

Section 1833(t)(5)(D) of the Act grants the Secretary authority until 2002 to identify outliers on a bill basis rather than on a specific service basis and to use an overall hospital cost-to-charge ratio (CCR) to calculate costs on the bill rather than using department-specific CCRs for each hospital.

To set the threshold or fixed multiple and the payment percent of costs above that multiple for which an outlier payment would be made, we first had to determine what specified percentage of total program payment, up to 2.5 percent, we should select. We decided to set the outlier target at 2.0 percent. In order to set the fixed multiple outlier threshold and payment percentage, we simulated PPS payments, as described below in section G of the preamble. As explained further below, we calibrated the threshold and the payment percentage applying an iterative process so that the simulated outlier payments were 2.5 percent of simulated total payments. *For purposes of the simulation,* we set a "target" of 2.5 percent (rather than 2.0 percent), because we believe that *a given set of numerical criteria* would result in a higher percentage of outlier payments under the simulation using 1996 data than under the PPS. This is because we believe that the 1996 data reflects undercoding of services, which means simulated total payments would likely be understated and it in turn means the percentage of outlier payments would be overstated. In addition, we are unable to fully estimate the amount and distribution of pass-through payments using the 1996 data. Our inability to make these estimates further understates the total payments under the simulation. We believe that a set of numerical criteria that results in simulated outlier payments of 2.5 percent using the 1996 data would result in outlier payments of 2.0 percent under PPS. The difference arises from the effect of undercoding in the historical data and the payment of pass-throughs under PPS. Under the budget neutrality requirement in section 1833(t)(2)(E) of the Act, as amended by section 201(c) of the BBRA 1999, we make a corresponding 2.0 percent reduction to the otherwise applicable conversion factor. We will monitor outlier payment and make any necessary refinements to the outlier methodology when we set outlier policies for CY 2002.

After setting the outlier target percentage and reducing the unadjusted conversion factor to reflect the 2 percent outlier reduction and the 2.5 percent pass-through adjustment (see discussion in section III.D), we identified those claims in our 1996 database with at least one payable service under the PPS system. For these bills, we first calculated the total PPS payment for the bill using the reduced conversion factor. Next, we calculated for each claim the total charges attributed to services being paid under the PPS system. These charges were then adjusted to cost, using a hospital-specific CCR. We used the sum of the hospital's total operating CCR and total capital CCR as the hospital specific CCR. These CCRs were calculated from the most current cost report data available and were adjusted to calendar year 1996.

We also identified all bills for the 1,800-plus hospitals that we had previously identified as having coded only the lowest level clinic visit code (CPT code 99201) for all visits. For these hospitals, we isolated those claims with at least one service with the CPT code 99201 and one or more additional PPS covered service. Due to the undercoding on these bills and the inherent problem in determining a possible outlier condition, we excluded these bills from the calculation process but set aside a proportional amount of outlier payments based on the proportional cost of these bills to the total cost of all bills used in the outlier calculation.

After determining the PPS payment and the cost for all 42 million claims for which there was at least one billable service under the PPS system, we experimented with several combinations of thresholds or fixed multiples and payment percent of costs over these multiples. We found that the combination of using a multiple of 2.5 for the threshold and the use of a payment percent of 75 percent of cost over this threshold achieved our target of a 2.5 percent outlier payment. Approximately 1.6 million claims in our 1996 claims database had calculated bill costs that exceeded the PPS payments on the claim by more than 2.5 times and thus qualified for an outlier payment in our model.

Comment: We received several comments that supported our proposal not to create outlier payments. However, most commenters opposed it and supported including an outlier policy. Several commenters disagreed that multiple payment for multiple services furnished during a given visit would absolve the need for outliers. One commenter stated that outlier payments are necessary because of the limited number of APC groups. Several commenters believe that outlier payments are necessary to recognize variability in APC groups stemming from treatment options and patient complexity. Some argued that our own data demonstrate that an outlier policy is necessary to ensure equitable payments. Several commenters stated that the data trimming algorithm that we used, excluding from our PPS database claims that were greater than three standard deviations from the geometric mean, probably eliminated claims that included high cost items and services that should have been reflected in our data and that may have been associated with the later technologies. A professional association noted that an examination of our PPS data indicated that "20 percent of outpatient services subject to the PPS (excluding clinic and emergency room visits) include maximum costs that are at least 10 times higher than the corresponding rate; 100 services have maximum costs that are at least 40 times higher than the corresponding payment rate."

One commenter believes that an outlier policy is necessary for a payment system based on averaging to provide additional payments for potentially variable and expensive items such as pharmaceuticals and supplies. Several commenters suggested that outlier payments would be necessary if we did implement their option to carve out all pharmaceuticals and certain supplies from the hospital outpatient PPS and pay them separately based on reasonable costs or average wholesale price (AWP). Most commenters who urged establishing outlier payments advocated them for high cost drugs, supplies, and new technologies. Some commenters advised that a drug such as Activase administered to a cardiac patient in the emergency room prior to inpatient admission or transfer to another hospital for inpatient admission would be costly. One commenter estimated that the cost for two doses of the drug would exceed $4,000. One commenter urged an outlier policy that would adequately pay for iodine I 131 tositomomab. Another commenter recommended that we make an outlier payment for Hemophilia Factor Concentrate that could be packaged in APC 906 (Infusion Therapy, except Chemotherapy) or APC 907 (Intramuscular Injections) and Tissue Plasminogen Activator (TPA) and IV therapy drugs as outliers.

A professional association expressed the need for an outlier policy for tests whose costs exceed a reasonable range of costs for similar procedures. They identified CPT codes 95951 and 95956 as examples of those tests. Another association recommended adoption of

an outlier policy to recognize higher costs associated with new technologies. The commenter suggested that the policy remain in effect a full year after the hospital outpatient PPS is implemented to allow us adequate time to collect the appropriate data for use in updating the payment rates. Several other commenters believe that we may need to adopt an outlier policy on an interim basis while data are collected to determine the appropriate assignment of certain services and items to an APC. One commenter advocated outlier payments for hospitals whose aggregate costs exceed total payments under the hospital outpatient PPS in a given year. A number of other commenters stated that the hospital outpatient PPS outlier policy should be similar to that currently used for the inpatient PPS.

Response: As we discussed above, section 201(a) of the BBRA 1999 amended the Act by adding a new section 1833(t)(5). This provision now requires the Secretary to make an additional outlier payment for outpatient services for which a hospital's or a CMHC's charges, adjusted to cost, exceed a fixed multiple of the new PPS payment as adjusted by pass-through payments. The Secretary is required to determine the fixed multiple and the percent of costs above the threshold that is to be paid under the outlier provision. As we explain above, to implement the outlier adjustment, we have determined that an outlier payment will be made when calculated bill costs exceed the PPS payments on a claim by more than 2.5 times. In addition, the provision of transitional pass-throughs under section 201(b) of the BBRA 1999, which requires the Secretary to make an additional payment for certain high cost medical devices, drugs, and biologicals, constitutes a kind of outlier adjustment (see section III.D of this preamble), and our decision to create special transitional payments for new technology items and services (see section III.C.8) will also provide additional payments to hospitals that incur higher costs under the outpatient PPS.

2. Transitional Corridors/Interim Payments

As we developed the proposed rule, we conducted extensive regression analysis of the relationship between outpatient hospital costs and several factors that affect costs, such as teaching intensity and disproportionate share percentage, as part of the analysis to determine whether payment adjustments should be proposed for the outpatient PPS. Ultimately, we did not propose any adjustments other than the wage index used to adjust for local variation in labor costs. One of the main reasons we did not propose any special adjustments was that the estimated effects of measured factors on costs were small and, in most cases, not statistically significant. In addition, we believe that the negative impacts estimated in the proposed rule for certain classes of hospitals were partially attributable to undercoding and coding variations in the data because coding did not affect the payment of many services under the current payment system, especially medical visits.

Since publication of our proposed policy, section 202(a)(3) of the BBRA 1999 added new paragraph (7) to section 1833(t) of the Act to require the Secretary to make payment adjustments during a transition period to limit the decline in payments under PPS for hospitals. These additional payments are to be implemented without regard to budget neutrality and are in effect through 2003.

Under paragraphs (A), (B), and (C) of section 1833(t)(7) of the Act, the amount of the payment adjustment for an individual hospital depends on the difference between the hospital's "PPS amount" and the hospital's "pre-BBA amount." Section 1833(t)(7)(E) of the Act defines the "PPS amount" as the amount payable under PPS for the hospital's covered outpatient department services, excluding the effects of the transitional corridor and including coinsurance and deductibles. For purposes of calculating the PPS amount, we include the full copayment amounts; if a hospital chooses to reduce the copayment for some or all of the services that it furnishes, we will count the full copayment amounts rather than the reduced copayment amounts. Section 1833(t)(7)(F) of the Act defines the "pre-BBA amount" for a period as the amount equal to the product of (1) the hospital's reasonable cost for covered outpatient department services, and (2) the base outpatient department payment-to-cost ratio for the hospital. The statute defines "base payment-to-cost ratio" as the ratio of (1) the hospital's reimbursement for covered outpatient department services during the cost reporting period ending in 1996, to (2) the reasonable cost of the services for the period. The base payment-to-cost ratio will be calculated as if the amendments to sections 1833(i)(3)(B)(i)(II) and 1833(n)(1)(B)(i) of the Act made by section 4521 of the BBA 1997, to require that the full amount beneficiaries paid as coinsurance under section 1862(a)(2)(A) of the Act are taken into account in determining Medicare Part B Trust Fund payment to the hospital, were in effect in 1996.

For calendar years 2000 and 2001, payment to hospitals whose PPS payment is less than 100 percent, but is at least 90 percent, of the pre-BBA payment, is increased by 80 percent of the difference. Hospitals whose PPS payment is less than 90 percent, but is at least 80 percent, of the pre-BBA payment, will receive additional payment equal to the amount by which 71 percent of the estimated pre-BBA payment exceeds 70 percent of the PPS payment. Hospitals whose PPS payment is less than 80 percent, but is at least 70 percent, of the pre-BBA payment will receive additional payment equal to the amount by which 63 percent of the pre-BBA payment exceeds 60 percent of the PPS payment. Payments to hospitals whose PPS payment is less than 70 percent of the pre-BBA payment will be increased by 21 percent of the pre-BBA payment. For calendar years 2001 through 2003, the number of corridors and the associated percentage increases decline over time. As required by statute, interim payments will be made subject to retrospective adjustments. Section 1833(t)(7) of the Act provides special transition payments for cancer centers and small rural hospitals, which are discussed below in section III.H.3.

Comment: Hundreds of commenters, including associations, hospitals, and entities providing goods and services to hospitals, expressed grave concerns about the estimated impact of our proposed system on certain classes of hospitals. Many commenters noted that the case mix and service mix for specific classes of hospitals such as rehabilitation, cancer, children's, rural, and teaching hospitals are different than for other hospitals. They argued that a number of these hospitals deal with patients who typically require more resources. The commenters noted that we have authority under the statute to make adjustments for specific classes of hospitals. Some reasoned that given our estimates of substantial losses for certain classes of hospitals under the proposed hospital outpatient PPS, we should use our authority to exclude these classes of hospitals from the outpatient PPS for 2 years, require proper coding of bills from those hospitals, and have an opportunity to analyze the results of the improved coding. These commenters urged that we examine reasons other than coding that may contribute to the disparity. Many commenters recommended that a separate conversion factor be developed

for the hospitals whose payments are adversely affected by the new system.

Response: As discussed above, section 1833(t)(7) of the Act, as added by section 202(a) of the BBRA 1999, provides that, for several years, additional payments be made to any facility for which the PPS payment is less than an estimate of the hospital's pre-PPS payment and that these payments are in addition to the total payments under the PPS. Our estimate of the impacts of this change in policy along with other payment-related provisions of the BBRA 1999 (discussed in further detail in section IX) show improved payments under PPS relative to pre-BBRA law for nearly all classes of hospitals. Our simulations show that hospitals overall receive an additional 4.6 percent in payments under PPS compared to pre-PPS law. Long-term care and children's hospitals show losses (1.7 percent and 3.2 percent, respectively). Moreover, urban hospitals with no indirect teaching or disproportionate share inpatient adjustments show a loss of 0.3 percent. In addition, we reexamined and reestimated the multivariate regression specifications described in the proposed rule to reflect the changes described in this rule. Based on the results of regression analysis, we believe further adjustments are not warranted at this time. We found, for example, the disproportionate share percentage did not have a statistically significant effect on unit costs standardized by service mix. In addition, positive and significant results did not occur for most teaching variables that we specified. For instance, positive and significant results did not occur for hospitals whose ratio of residents to inpatient and outpatient days was less than .28. Hospitals with a large number of residents to inpatient and outpatient days did demonstrate slightly higher standardized costs, but only when the regression model included independent variables for urban/rural location. Moreover, the parameter estimate was small and payment was not greatly improved when a corresponding adjustment was made to these teaching hospitals. Therefore, we are not making such adjustments for these hospital groups. We do not believe that this action will restrict beneficiary access to care because the projected losses are relatively small and could reflect undercoding on the part of these hospitals before PPS.

We will begin comprehensive analyses of cost and payment differentials between different classes of hospitals as soon as there is a sufficient amount of claims data submitted under the PPS. We will use data from the initial years of the PPS to conduct regression and simulation analyses. In addition, we will carefully track and analyze the additional payment made to hospitals under section 1833(t)(7) of the Act. These analyses will be used to consider and possibly propose adjustments in the system, particularly beginning in 2004 when the BBRA 1999 transition provisions expire.

Comment: Commenters from organizations representing teaching hospitals recommended that we include a budget-neutral payment adjustment for certain classes of hospitals such as teaching hospitals. For example, the concern is that PPS payments are not adequate for academic medical centers because they provide more resource-intensive outpatient services than other hospital types.

Response: As noted above, we are not making adjustments for specific classes of hospitals in this final rule. The primary reason for this decision is that section 1833(t)(7) of the Act requires additional payments through 2003 to all hospitals whose PPS payment falls below estimates of pre-PPS payment. We will conduct analyses and studies of cost and payment differential among different classes of hospitals, including teaching facilities, when sufficient data under the PPS have been submitted. We will carefully consider whether permanent adjustments should be made in the system once the BBRA 1999 transition provisions expire.

3. Cancer Centers and Small Rural Hospitals

Cancer Centers

In the BBA 1997, the Congress did not exclude from the hospital outpatient PPS the 10 cancer centers that are currently excluded from the inpatient PPS, but section 1833(t)(8) of the Act (as enacted in the BBA 1997) provides special consideration for these hospitals under the outpatient PPS. More specifically, that section provides that the outpatient PPS would not apply to the 10 cancer centers before January 1, 2000, and that the Secretary may establish a separate conversion factor for cancer centers to take into account the unique costs they incur due to their patient population and the intensity of their services.

In the proposed rule, we stated that, because we had no choice but to delay implementation of the PPS for all hospitals until sometime after January 1, 2000 due to Y2K concerns, we would begin paying cancer centers under hospital outpatient PPS at the same time. Also, we did not propose a separate conversion factor for cancer centers. Although our proposed impact analysis indicated that, under the PPS, the cancer centers could lose 32 percent of their current outpatient Medicare payments, we proposed to do additional work to try to explain the impact before we provided for a separate conversion factor or other payment adjustment.

Section 1833(t)(7)(D)(ii) of the Act, as added by the BBRA 1999, provides that the 10 cancer centers excluded from the inpatient PPS are permanently held harmless with respect to their pre-BBA 1997 amount.

Comment: The cancer centers commented that they are unlike other hospitals in that they treat the most difficult cases (patients often referred by community hospitals) and they are usually the first hospitals to use the latest technology related to cancer treatments. They also pointed out that their clinic visits often involve consultations with a number of physicians and therefore are longer and require more hospital resources than clinic visits in other hospitals. They believe that our proposed payments for clinic visits would seriously underpay them for their more comprehensive visits. The cancer centers also stated that any delay in recognizing and paying appropriately for new technology would affect them more adversely than it would other hospitals.

During the comment period for the proposed rule, the cancer centers submitted for our consideration an alternative payment methodology. Under their methodology, we would calculate a separate conversion factor for each of the 10 centers based on their individual base year Medicare payments and service mix. Subsequently, the conversion factors would be updated using the Congressionally determined update factor applicable to all hospitals. Hospitals would be paid interim payment amounts during the year, but payment would ultimately be based on the lesser of—

- The PPS payments they would receive using their individual conversion factor; or
- The payments they would receive based on their cost reports by applying the current (that is, pre-PPS) outpatient services payment methodology.

Capital costs would be excluded from this comparison and be paid on a reasonable cost pass-through basis. The proposal also envisioned some payment penalties and incentives similar to the penalties and incentives provided under the reasonable payment cost limit methodology applicable to hospitals excluded from the inpatient PPS.

Response: As noted above, new section 1833(t)(7)(D)(ii) of the Act holds cancer centers harmless on a permanent basis by providing that, in instances where Medicare payment to a cancer center under the hospital outpatient PPS would be lower than a specified pre-BBA Medicare payment for the same services, we are to pay the full pre-BBA amount. Therefore, an alternative approach to paying cancer centers under the hospital outpatient PPS is no longer needed.

Small Rural Hospitals

We noted in the proposed rule that rural hospitals generally receive a relatively high percentage of their Medicare income from outpatient services (greater than the national average), which compounds the impact of the reduction in Medicare payments to rural hospitals that we projected would result upon implementation of the hospital outpatient PPS. We attributed these reduced revenues to undercoding, lack of economies of scale, and reliance on the median instead of the geometric mean in the calculation of APC weights. Because our impact analysis revealed that low-volume rural hospitals that are sole community hospitals or Medicare-dependent hospitals could experience a considerable reduction in revenues under the outpatient PPS, we solicited comments in the proposed rule on two possible approaches to phasing in the outpatient PPS for these types of hospitals.

Section 1833(t)(7)(D)(i) of the Act provides that hospitals located in a rural area with 100 or fewer beds are held harmless with respect to their pre-BBA 1997 amount for outpatient services furnished before January 1, 2004. For purposes of implementing this provision, bed size will be determined in the same way it is for inpatient PPS for the indirect medical education adjustment as defined in § 412.105(b), Determination of number of beds. A hospital's location in a rural area will also be determined as it is in the inpatient PPS; see § 412.63(b), Geographic classifications.

Comment: Many commenters were concerned that the projected negative impact of the proposed outpatient PPS on rural hospitals would be magnified because outpatient revenues make up such a large part of rural hospitals' total revenues. Some commenters believe that our proposed PPS ratesetting method favors high volume, urban hospitals. Some commenters supported phasing in the outpatient PPS for rural disproportionate share hospitals because those facilities may not have the resources to improve their coding in the near future. One association opposed phasing in the PPS because doing so would postpone but not resolve the financial jeopardy imposed on rural hospitals by the hospital outpatient PPS. Some commenters recommended that we provide an "add-on" to the prospective rate for emergency services in low-volume sole community and rural disproportionate share hospitals. One commenter expressed concern about the numerous factors contributing to rural hospitals' negative margins that limit their ability to absorb losses, including a disproportionately high share of Medicare, Medicaid, and indigent patients, significant problems recruiting practitioners, low population density, and limited patient volume. Numerous commenters recommended that we establish a payment floor for low-volume rural hospitals. One association requested that we either revise the payment methodology or put in place a payment floor that guarantees health care services will continue to be available to Medicare beneficiaries served by rural hospitals.

Response: As we discuss above, in order to limit potential reductions in payment to hospitals under the outpatient PPS, section 1833(t)(7) of the Act, as added by section 202(a)(3) of the BBRA 1999, requires us to establish payment adjustments for hospitals whose PPS payments are less than our estimate of the hospital's pre-BBA payments. These additional payments are to be implemented in a non-budget neutral manner and are to be paid through 2003. Section 1833(t)(7)(D)(i) of the Act includes a special "hold harmless" provision, which is to be paid through 2003, for hospitals that are located in a rural area and that have no more than 100 beds. Under section 1833(t)(7)(D)(i) of the Act, as added by the BBRA 1999, small rural hospitals will be paid a predetermined pre-BBA amount for services covered under the outpatient PPS if payment under the PPS would be less than the pre-BBA amount. This hold harmless provision establishes a payment floor until January 1, 2004 for small rural hospitals. During this period, we will collect and analyze data under the PPS in order to assess whether any special adjustments will need to be made for rural hospitals once the hold harmless provision expires.

I. Annual Updates

1. Revisions to APC Groups, Weights and the Wage and Other Adjustments

Prior to enactment of the BBRA 1999, section 1833(t)(6)(A) of the Act required the Secretary to periodically review and revise the APC groups, the relative payment weights, and the wage and other adjustments to take into account changes in medical practice, changes in technology, the addition of new services, new cost data, and other relevant information and factors.

In the proposed rule, we described our plan to update the various components of the outpatient PPS. We proposed to keep the composition of all the APC groups essentially intact from one year to the next, with the exception of the few changes that may be necessary as a consequence of annual revisions to HCPCS and ICD–9–CM (International Classification of Diseases, Ninth Edition, Clinical Modification) codes. We stated that we did not plan to routinely reclassify services and procedures from one APC to another. We proposed to make these changes based on evidence that a reassignment would improve the group(s) either clinically or with respect to resource consumption. However, we specifically solicited comments on how frequently to recalibrate the APC weights and on the method and data that should be used. We defined recalibration as the updating of all the APC group weights based on more recent information.

We proposed to update the wage index values used to calculate program payment and coinsurance amounts on a calendar year basis, adopting, effective for services furnished each January 1, the wage index value established for a hospital under the inpatient PPS the previous October 1. The first update to the wage index values will be effective for calendar year 2001 beginning January 1, 2001.

Section 201(h)(1)(A) of the BBRA 1999 amended section 1833(t)(8)(A) of the Act (as redesignated by section 201(a) of the BBRA 1999) to require the Secretary to review the components of the outpatient PPS not less often than annually and revise the groups, the relative payment weights, and the wage and other adjustments to take into account changes in medical practice, changes in technology, and the addition of new services, new cost data, and other relevant information and factors. (Section 202(a) of the BBRA 1999 further redesignated section 1833(t)(8) as section 1833(t)(9).)

Section 201(h)(1)(B) of the BBRA 1999 further amended this section of the Act to require that the Secretary consult

with an expert outside advisory panel composed of an appropriate selection of representatives of providers to review (and advise the Secretary concerning) the clinical integrity of the groups and weights. This provision allows these experts to use data other than those collected or developed by us during our review of the APC groups and weights. Section 201(h)(2) of the BBRA 1999 requires the Secretary to initiate the annual review process beginning in 2001 for the PPS payments that would take effect January 1, 2002.

Comment: A number of commenters urged that we adopt an annual update cycle for APC recalibration. Some commented that the APC update frequency should not be less often than the annual cycles that we have instituted for both the hospital inpatient PPS and physician fee schedule payment system. Many commenters maintained that annual updating is necessary to ensure that the APCs appropriately reflect changes in new technologies, standards of care, and other marketplace patterns. Several commenters stated that an annual update cycle is needed to take into account changes in drug prices and appropriately reflect advancements in nuclear medicine. Some commenters believe that updating the APCs less frequently than annually would adversely impact hospitals that would incur financial losses attributable to inappropriate payment for new technologies. Some commenters contended that infrequent updating would be a disincentive for manufacturers to develop new outpatient therapies.

Response: In accordance with the amendments enacted by the BBRA 1999, we will review and update annually, for implementation effective January 1 of each year, the APC groups, the relative payment weights, and the wage and other adjustments that are components of the outpatient PPS, beginning with the update to be effective January 1, 2002.

2. Annual Update to the Conversion Factor

We stated in the proposed rule that section 1833(t)(3)(C)(ii) of the Act requires us to update annually the conversion factor used to determine APC payment rates. Section 1833(t)(3)(C)(iii) of the Act provides that the update be equal to the hospital inpatient market basket percentage increase applicable to hospital discharges under section 1886(b)(3)(B)(iii) of the Act, reduced by one percentage point for the years 2000, 2001, and 2002. The Secretary also has the option (under section 1833(t)(3)(C)(iii) of the Act) of developing a market basket that is specific to hospital outpatient services. We advised in our proposed rule that we are considering this option, and specifically invited comments on possible sources of data that are suitable for constructing a market basket specific to hospital outpatient services. We did not receive any comments regarding potential data sources for constructing a hospital outpatient-specific market basket. Therefore, we will update the conversion factor annually by the hospital inpatient market basket increase (as specified in section 1886(b)(3)(B) of the Act), reduced by one percentage point for the years 2000, 2001, and 2002.

3. Advisory Panel for APC Updates

As stated above, section 1833(t)(9)(A) of the Act (as redesignated by section 201(a) of the BBRA 1999 and further redesignated by section 202(a) of the BBRA 1999) requires the Secretary, beginning in 2001, to consult with an expert outside advisory panel of appropriately selected provider representatives when annually reviewing and updating the APC groups and the relative group weights. The statute specifies that the expert panel will act in an advisory capacity on matters pertaining to the clinical integrity of the groups and weights and that it may use data other than those developed or collected by us in executing this function. We will initiate this review process in 2001 for the hospital outpatient PPS payments that will take effect for services furnished on or after January 1, 2002. We will adopt a process for identifying and appropriately selecting provider representatives to serve as members of an expert advisory panel. We anticipate informing the hospital community of the formation of an expert advisory panel through timely notice in the **Federal Register**.

J. Volume Control Measures

Section 1833(t)(2)(F) of the Act requires the Secretary to develop a method for controlling unnecessary increases in the volume of covered outpatient department services. Section 1833(t)(6)(C) of the Act, as added by the BBA 1997, authorizes the Secretary to adjust the update of the conversion factor if we determine that the volume of services paid for under the outpatient PPS increases beyond amounts we establish under section 1833(t)(2)(F) of the Act.

In the proposed rule, we proposed a volume control measure for services furnished in CY 2000 only. We discussed several long-term alternatives to control volume for services furnished in subsequent years, and we solicited comments on those options. We stated that we would propose an appropriate volume control mechanism for services furnished in CY 2001 and beyond after we completed further analysis. Given the complexities of developing an appropriate volume control mechanism for hospital outpatient services, we believed additional study was necessary.

For CY 2000, we proposed to use a modified version of the physician sustainable growth rate system (SGR), which is required under section 1848(d)(3) of the Act, for purposes of the hospital outpatient PPS. As we stated in the proposed rule, this appeared to be the most feasible initial approach. Using this approach, we proposed to update the target amount specified under section 1833(t)(3)(A) for CY 1999 as an expenditure target for services furnished in CY 2000. We stated that we would update the CY 1999 target for inflation (based on the projected change in the hospital market basket minus one percentage point), estimate changes in the volume and intensity of hospital outpatient services, and estimate Part B fee-for-service changes in enrollment. If volume exceeded the target for CY 2000, we proposed to adjust the update to the conversion factor for CY 2002. We further stated that we would compare the CY 2000 target to an estimate of CY 2000 actual payments to hospitals as determined by our Office of the Actuary using the best available data. We proposed that if unnecessary volume increases, as reflected by expenditure levels, caused payment to exceed the target, we would determine the percentage by which the target is exceeded, and adjust the CY 2002 update to the conversion factor by the same percentage.

We indicated that we would respond in the final rule to comments on our proposed volume control measure for services furnished in CY 2000, but not to comments about volume control options for services furnished after CY 2000, which will be addressed in a later proposed rule.

Comment: We received many comments opposing our proposed use of an SGR-like system to control unnecessary volume increases under the hospital outpatient PPS. Most commenters strongly urged us to exercise the discretionary authority allowed under section 1833(t)(9)(C) of the Act (as redesignated) not to adjust the update to the conversion factor. A few commenters endorsed the provision

of the "President's Plan to Modernize and Strengthen Medicare for the 21st Century" (issued July 2, 1999) to delay adoption of a volume control measure in order to give hospitals additional time to adjust to the new system. Several commenters, including one national physicians' association, contended that we did not have the statutory authority to establish and use an expenditure target in the manner that we had proposed. The physicians' association stated that the law limits use of the SGR system to physician services. Some commenters believe that we lack the expertise needed to set an accurate target amount. Others argued that an expenditure target is not a reliable way to distinguish the growth of necessary versus unnecessary services and that our proposal would therefore have consequences not intended by the statute (that is, affecting all services rather than only those that would be considered unnecessary). Some commenters stated that expenditure caps only work when they directly affect those who control the volume. These commenters contended that a volume control measure is unfair to hospitals because it is physicians, not hospitals, who order services and therefore control volume. Some commenters were concerned that adopting a volume control measure would penalize hospitals for increases in outpatient volume attributable to technological changes that appropriately shift service delivery from the inpatient to outpatient setting. In addition, numerous organizations recommended that we not implement the volume expenditure targets and control measures because payments would be reduced to inadequate levels and affect beneficiary access to care.

Response: We are delaying implementation of a volume control mechanism as suggested by the "President's Plan to Modernize and Strengthen Medicare for the 21st Century" (the statute does not specify an implementation date). This delay gives hospitals time to adjust to the PPS, and it gives us additional time to study appropriate methods of controlling outpatient volume over the long term. We are currently working with a contractor to study options for volume control measures for outpatient services. In the future, before we make any final decision, we will publish a notice in which we will discuss our proposal and will provide a public comment period.

K. Claims Submission and Processing and Medical Review

Comment: Numerous commenters expressed a variety of concerns related to information exchange processes required by the new PPS. Several commenters stated that the remittance advice documents will need to reflect all of the components used in calculating payment for each claim, as well as possible coinsurance reductions. The commenters also were concerned that, with the complexity of the APC system, hospitals will need the ability to verify payment. One health system that had experience with 3M's APGs offered the experience of their member hospitals to assist us by providing input on the data needed by hospitals to manage APCs. This same commenter stated that hospitals must be given detailed instructions on claims submission, changes to the UB–92, and changes to the Correct Coding Initiative (CCI) in advance to ensure that systems and personnel can comply with Medicare requirements.

Response: We released specific hospital billing instructions that address line item reporting and reporting of service units on December 23, 1999 (Transmittals 1787 and 747). We will be issuing final instructions for implementation of this PPS in a program memorandum to fiscal intermediaries. The program memorandum addresses a range of issues such as appropriate use of revenue center/HCPCS codes for compliance with Medicare requirements and changes to Remittance Advice messages and Medicare Summary Notices/EOMBs.

All current correct coding initiative (CCI) edits with the exception of laboratory and anesthesiology edits have been incorporated in the outpatient code editor (OCE) that fiscal intermediaries use to process claims for hospital outpatient services for payment. We will address OCE changes in a program memorandum to fiscal intermediaries. The effective date of these edits is July 1, 2000.

We have decided not to pursue changes to the UB–92 claim form to allow line item diagnosis because, as we discuss in section III.C.3, we will not be using diagnosis to determine payments for clinic and emergency visits when the PPS is first implemented. Diagnosis codes, however, are still required to be reported on hospital outpatient bills.

Medical Review Under the Hospital Outpatient PPS

We have received inquiries regarding the anticipated medical review process for hospital outpatient PPS claims. The methodology of review for outpatient claims does not change under the PPS. The goal of medical review is to identify inappropriate billing and to ensure that payment is not made for noncovered services. Contractors may review any claim at any time, including requesting medical records, to ensure that payment is appropriate. In accordance with this final rule, Medicare will make payment under the PPS for hospital outpatient services including partial hospitalization services; certain Part B services furnished to inpatients who have no Part A coverage; partial hospitalization services furnished by CMHCs; vaccines, splints, casts and antigens provided by HHAs and CORFs that provide medical and other health services; and splints, casts and antigens provided to hospice patients for the treatment of a nonterminal illness. In addition, we expect focused reviews will include the adjustments we have made to the hospital outpatient PPS as a result of the enactment of the BBRA 1999, especially the transitional pass-through payments for innovative drugs, biologicals, and medical devices that are discussed in section III.D. Fiscal intermediaries will continue focused and random review of services such as ambulance, clinical diagnostic laboratory, orthotics, prosthetics, take home surgical dressings, chronic dialysis, screening mammographies, and outpatient rehabilitation (physical therapy including speech language pathology and occupational therapy) even though these services are excluded from the scope of services paid under the hospital outpatient PPS.

L. Prohibition Against Administrative or Judicial Review

Section 1833(t)(9) of the Act, as added by the BBA 1997, prohibits administrative or judicial review of the development of the PPS classification system, the groups, relative payment weights, wage adjustment factors, other adjustments, volume control methods, calculation of base amounts, periodic control methods, periodic adjustments, and the establishment of a separate conversion factor for cancer hospitals. Section 201(a) of the BBRA 1999 redesignates this section as section 1833(t)(11) of the Act, and section 201(d) of the BBRA 1999 amends the section by adding the following to the list of adjustments subject to the limitation on judicial review: the factors used to determine outlier payments, that is, the fixed multiple, or a fixed dollar cutoff amount; the marginal cost of care, or applicable total payment percentage; and the factors used to determine additional payments for certain medical devices, drugs, and biologicals such as the determination of insignificant cost, the duration of the additional payments, the portion of the outpatient PPS

payment amount associated with particular devices, drugs, or biologicals, and any pro rata reduction. Section 202(a) of the BBRA 1999 further redesignates section 1833(t)(11) as section 1833(t)(12).

IV. Provider-Based Status

A. Background

The Medicare law (section 1861(u) of the Act) lists the types of facilities that are regarded as providers of services, but does not use or define the term "provider-based." However, from the beginning of the Medicare program, some providers, which we refer to in this section as "main providers," have owned and operated other facilities, such as SNFs or HHAs, that were administered financially and clinically by the main provider. The subordinate facilities may have been located on the main provider campus or may have been located away from the main provider. In order to accommodate the financial integration of the two facilities without creating an administrative burden, we have permitted the subordinate facility to be considered provider-based. The determination of provider-based status allowed the main provider to achieve certain economies of scale. To the extent that overhead costs of the main provider, such as administrative, general, housekeeping, etc., were shared by the subsidiary facility, these costs were allowed to flow to the subordinate facility through the cost allocation process in the cost report. This was considered appropriate because these facilities were also operationally integrated, and the provider-based facility was sharing the overhead costs and revenue producing services controlled by the main provider.

Before implementation of the hospital inpatient PPS in 1983, there was little incentive for providers to affiliate with one another merely to increase Medicare revenues or to misrepresent themselves as being provider-based, because at that time each provider was paid primarily on a retrospective, cost-based system. At that time, it was in the best interest of both the Medicare program and the providers to allow the subordinate facilities to claim provider-based status, because the main providers achieved certain economies, primarily on overhead costs, due to the low incremental nature of the additional costs incurred.

In the proposed rule, we pointed out the increase of provider-based facilities and the financial and organizational incentives for that increase since 1983. A variety of factors such as the emergence of integrated delivery systems and the pressure to enhance revenues have combined to create incentives for providers to affiliate with one another and to acquire control of nonprovider treatment settings, such as physician offices.

We noted in the proposed rule that it is essential that we make decisions regarding provider-based status appropriately, and that we have clear rules for identifying provider-based entities. By failing to distinguish properly between provider-based and free-standing facilities or organizations, we risk increasing program payments and beneficiary coinsurance with no commensurate benefit to the Medicare program or its beneficiaries and we jeopardize the delivery of safe and appropriate health care services to our beneficiaries.

Although there is no direct statutory requirement to maintain explicit criteria for determination of provider-based status, there are statutory references acknowledging the existence of this payment outcome. For example, section 1881(b) of the Act provides for separate payment rates for hospital-based ESRD facilities. There is currently no general definition of "provider-based facility" in the CFR. However, in the proposed rule, we cited issuances that do contain provisions for recognition of specific types of entities as provider-based, including Program Memorandum A–96–7, published on August 27, 1996, which pulled together instructions for specific entity types from previously published documents and consolidated them into a general instruction for the designation of provider-based status for all facilities or organizations. That Program Memorandum was subsequently reissued, without substantive change, as Program Memoranda A–98–15 and A–99–24 and, in October 1999, was manualized by the Provider Reimbursement Manual, Part I, Transmittal 411 (adding new section 2446), and the State Operations Manual, Transmittal 11 (replacing previous section 2003 and adding new section 2004). Our policy will continue to follow the principles we articulated in Program Memorandum A–96–7 and the Provider Reimbursement Manual and State Operations Manual sections cited above until October 10, 2000. After that date, we shall apply the policies set forth in these final regulations.

B. Provisions of the Proposed Rule

We announced our intention to implement §§ 413.24(d)(6)(i) and (ii), 413.65, 489.24(b), and 498.3, as revised based on our consideration of public comments, with respect to services furnished on or after 30 days following publication of a final rule. We describe these sections below and explain that we have now provided a 6-month delay in the effective date of the regulations on provider-based status.

We proposed to add a new § 413.65 on the determination of provider-based status. In paragraph (a), we proposed to define the following terms: department of a provider, free-standing facility, main provider, provider-based entity, and provider-based status. In paragraph (b), we proposed that a facility or organization would not be entitled to be treated as provider-based simply because it or the provider believe it to be provider-based. The facility or organization, or the provider, would have to contact HCFA and obtain an affirmative provider-based determination before billing of the facility's or organization's costs through the main provider, or inclusion of those costs on the main provider's cost report, is initiated. Further, we proposed to presume a facility not located on the campus of a hospital and used as a site of physician services of the kind ordinarily furnished in physician offices to be a free-standing facility unless we determined it to have provider-based status.

We proposed to require, in paragraph (c), that a main provider that acquires a facility or organization for which it wishes to claim provider-based status must report its acquisition of the facility or organization to us if the facility or organization is off the campus of the main provider, or is located on the campus of the main provider and, if acquired, would increase the main provider's costs by 5 percent or more. The main provider must also furnish all information needed for a determination as to whether the facility or organization meets the criteria in this section for provider-based status. A main provider that has had one or more facilities or organizations determined to have provider-based status also must report to us any material change in the relationship between it and any department or provider-based entity, such as a change in ownership of the entity or entry into a new or different management contract, that could affect the provider-based status of the department or entity.

In paragraph (d), we proposed the requirements for a determination of provider-based status. In paragraph (d)(1), we proposed to set forth licensure requirements for facilities or organizations seeking provider-based status.

In paragraph (d)(2), we proposed to require that a facility or organization be

under the ownership and control of the main provider.

In paragraph (d)(3), with respect to administration and direct supervision of the main provider, we proposed to require that a facility or organization seeking provider-based status have a reporting relationship to the main provider that is characterized by the same frequency, intensity, and level of accountability that exists in the relationship between the main provider and one of its departments.

In paragraph (d)(4), we proposed that a facility or organization seeking provider-based status and the main provider share integrated clinical services, as evidenced by privileging of the professional staff of the department or entity at the main provider, and the main provider's maintenance of the same monitoring and oversight of the department or entity as of other departments. Also, the medical director of the department or entity would be required to maintain a day-to-day reporting relationship with the chief medical officer (or equivalent) of the main provider, and be under the same supervision as any other director of the main provider.

In paragraph (d)(5), we proposed to require that the department or entity and the main provider be fully financially integrated within the main provider's financial system, as evidenced by the sharing of income and expenses. The department's or entity's costs should be reported in a cost center of the provider, and the department's or entity's financial status should be incorporated into, and readily identifiable in, the main provider's trial balance.

In paragraph (d)(6), we proposed to require that the main provider and the facility seeking status as a department of the provider be held out to the public as a single entity, so that when patients enter the department they are aware that they are entering the provider and will be billed accordingly. (This requirement would not apply to a provider-based entity that is itself a provider, such as a SNF.)

In paragraph (d)(7), we proposed to require that the department of a provider or provider-based entity and the main provider be located on the same campus, except where requirements relating to service to the same patient population are met.

Paragraph (e) would specifically prohibit the approval of provider-based status for any proposed department or entity that is owned by two or more providers engaged in a joint venture.

In proposed paragraph (f), we proposed to state that facilities or organizations operated under management contracts would be considered provider-based only if specific requirements are met related to: Staff employment, administrative functions, day-to-day control of operations, and holding of the management contract by the provider itself rather than by a parent organization.

In proposed paragraph (g), we proposed to specify nine obligations of hospital outpatient departments and hospital-based entities. We explained that these obligations ensure that facilities seeking recognition as hospital outpatient departments or hospital-based entities are in fact what they represent themselves to be, and are not simply the private offices of individual physicians or of physicians in group practices.

We also proposed to preclude any facility or organization that furnishes all services under arrangements from qualifying as provider-based. We believe the provision of services under arrangement was intended to be allowed only to a limited extent, in situations where cost-effectiveness or clinical considerations, or both, necessitate the provision of services by someone other than the provider's own staff. The "under arrangement" provision in section 1861(w)(1) of the Act and § 409.3 is not intended to allow a facility merely to act as a billing agent for another.

Proposed paragraph (h) states that, if we learn of a provider that has inappropriately treated a facility or organization as provider-based, before obtaining our determination of provider-based status, we would reconsider all payments to that main provider for those periods subject to reopening, and we would investigate to determine whether the designation was appropriate.

In proposed paragraph (i), we would apply the principles in paragraph (h) to situations involving inappropriate billing for services furnished in a physician's office or other facility or organization as if they had been furnished in a hospital outpatient or other department of a provider or in a provider-based entity.

We also proposed to add a new paragraph (j) that would allow us to review past determinations. If we find that a designation was in error, and the facility or organization in question does not meet the requirements of this section, we will notify the main provider that the provider-based status will cease as of the first day of the next cost report period following notification of the redetermination.

In addition, we proposed to add to § 413.24(d) new paragraphs (6)(i) and (6)(ii) to clarify that main providers, in completing their Medicare cost reports, may not allocate overhead costs to the provider-based or other cost centers that incur similar costs directly through management contracts or other arrangements. These changes are needed to prevent misallocation of management costs, which would result in excessive payment to those types of providers paid on a reasonable cost basis.

To provide an administrative appeals process for entities that have been denied provider-based status, we proposed to revise the regulations on provider appeals at § 498.3. As revised, these rules would specify that a provider seeking a determination that a facility or an organization is a department of the provider or a provider-based entity under proposed § 413.65 would be included in the definition of "prospective provider" for purposes of part 498, and would be afforded the same appeal rights as a prospective provider, such as a hospital or SNF, that we have found not to qualify for participation as a provider.

C. Comments and Responses

In response to our proposals, we received approximately 120 letters of comment, most of which raised a number of issues. Included among the commenters were hospitals and hospital and other provider associations, physicians, attorneys, and other individuals. Here we respond to comments submitted on the proposed rule.

General Comments

Many comments were not directed to a specific provision or criterion, but concerned the implementation of the regulations or the application of provider-based criteria to specific types of facilities. These are summarized below.

Effective Date

Comment: A commenter requested clarification as to when the parts of the final rule setting forth criteria for provider-based status would be effective, and a number of commenters requested an extended grace period or a delay in effective date of the final rules, with some commenters requesting delays as long as 12 to 18 months. Various reasons were cited, including the pressures on providers to prepare their systems and staff for the outpatient PPS, the need to bring operations into compliance with the provider-based criteria, and the anticipated workloads of HCFA regional offices that may

receive a large number of requests for provider-based determinations. Commenters argued that it is unrealistic to expect that a hospital would engage in a full-blown analysis of its provider-based arrangements and modify each arrangement until it knows against which exact criteria it is measuring those arrangements. Any changes in status will require hospitals to implement billing and other operational changes. Thus, commenters argued that it is not reasonable to expect hospitals to complete such steps within a 30-day period.

Response: We agree, and are providing a delay in the effective date until October 10, 2000. Moreover, as stated in our response to comments on proposed § 413.65(j) below, any redetermination of provider-based status that finds the facility or organization not to be provider-based will not take effect for at least 6 months after the date the provider is notified of the redetermination.

Application to Specific Facilities

Comment: One commenter stated that under the Balanced Budget Act of 1997 (the BBA 1997) long-term hospitals established on or before September 30, 1995 are entitled to retain their long-term hospital classification notwithstanding their location in the same building or campus of another hospital. In the commenter's view, these hospitals should not now have this classification revoked by this proposed regulation.

Response: The provision referred to by the commenter, section 4417(a) of the BBA 1997, is codified in section 1886(d)(1)(B) of the Act and is implemented under regulations at § 412.22(f). That provision authorizes certain hospitals to continue being excluded from the Medicare hospital inpatient prospective payment system (PPS) based on their exclusion status and configuration on or before September 30, 1995, even though they would not otherwise qualify for this exclusion. The criteria for provider-based status do not conflict with or even directly relate to the section 4417(a) provision, and we have therefore not made any change in the regulations based on this comment.

Comment: The commenter believes that rural health clinics (RHCs) should be exempted from provider-based designation requirements if they meet the intent of the enabling regulation. The commenter requested that an RHC be granted provider-based status if it meets one of the following criteria: Is the sole source of primary care for the community; has traditionally served the community with an open door policy; or treats a disproportionate share of the community's Medicare and Medicaid population.

Response: We share the commenter's concern, but believe the criteria suggested are overly inclusive and could lead to a proliferation of RHCs in areas where there are no true shortages of care. While we do not believe a blanket exemption from the criteria is warranted, we have developed a special provision for RHCs affiliated with small rural hospitals, as described below in our responses to comments on *§ 415.65(d)(7), Location in immediate vicinity.*

Comment: A commenter stated that there may be instances where the Medicare regulations related to provider-based definitions conflict with the Medicaid provider-based regulations, and asked whether Medicaid will be required to comply with the new Medicare provider-based regulations.

Response: Because hospitals under Medicaid are required to meet the same standards as Medicare facilities, these final rules would affect the Medicaid definition of these facilities as well as the Medicare definitions.

Comment: Commenters stated that the reasons cited for establishing provider-based requirements that are found in the preamble do not apply to clinical laboratories and thus these requirements should not apply. The commenters asked that we explicitly state in the final regulations that the provider-based requirements are not applicable to clinical laboratories. They believe the regulations have little bearing where, as with clinical laboratory services, reimbursement is under a fee schedule amount, and neither the Medicare program nor the beneficiary will pay anyone differently as a result of the treatment of the laboratory in the manner proposed.

Response: As explained more fully in the preamble to the proposed rule, our objective in issuing specific criteria for provider-based status is to ensure that higher levels of Medicare payment and increases in beneficiary liability for deductibles or coinsurance (which can all be associated with provider-based status) are limited to situations where the facility or organization is clearly and unequivocally an integral and subordinate part of a provider. Under this principle, we agree with the commenter's view that it would not be either necessary or appropriate to make provider-based determinations with respect to facilities or organizations if by law their status (that is, provider-based or free-standing) would not affect either Medicare payment levels or beneficiary liability. However, we believe that it is not necessary to specify in the regulations that specific facility types are excluded, since these facilities or organizations are unlikely to seek a provider-based determination. We will be careful to clarify this policy in program operating instructions.

Comment: A commenter stated that the proposed provider-based requirements seem to preclude the possibility of a Comprehensive Outpatient Rehabilitation Facility (CORF) meeting these new requirements. The commenter believes that in the past, CORFs have been permitted to be either provider-based or free-standing and asked whether the final rules will give CORFs the option of being either free-standing or provider-based.

Response: As explained more fully in the preamble to the proposed rule, our objective in issuing specific criteria for provider-based status is to ensure that higher levels of Medicare payment and increases in beneficiary liability for deductibles or coinsurance (which can all be associated with provider-based status) are limited to situations where the facility or organization is clearly and unequivocally an integral and subordinate part of a provider. We are aware that, under the cost-based payment system that applied to CORFs prior to January 1, 1999, approximately 17 percent of participating CORFs claimed provider-based status. However, effective January 1, 1999, in accordance with the BBA 1997, payment for all CORF services is made no longer on the basis of cost reimbursement but on the basis of the physician fee schedule. Beneficiary liability is also determined under the fee schedule, regardless of the organizational structure or affiliations of the CORF. The switch to fee schedule payment from a cost-based system eliminates or removes any payment incentives to be a provider-based rather than a free-standing CORF. Thus, as in the case of the preceding comment, we agree with the commenter's view that it would not be either necessary or appropriate to make provider-based determinations with respect to facilities or organizations if by law their status (that is, provider-based or free-standing) would not affect either Medicare payment levels or beneficiary liability. We also note that existing regulations at § 413.174 specify rules for determining whether ESRD facilities are independent or hospital-based, and we have revised § 413.65(a) to state that determinations with respect to ESRD facilities will continue to be made under § 413.174,

not § 413.65. However, we believe that it is not necessary to specify in the regulations that most specific facility types are excluded, since these facilities or organizations are unlikely to seek a provider-based determination. We will be careful to clarify this policy in program operating instructions.

Application to Specific Facilities—Indian Health Service (IHS)

Comment: Several commenters requested an exception or exemption from the rules for IHS and tribal facilities. One commenter was concerned that the implementation of these proposed regulations will have the effect of denying Medicare participation as provider-based entities to a number of IHS facilities that are currently operated by Indian tribes under the auspices of Public Law 93–638. They will also cause a disruption of the coordinated health care delivery system(s) that exist between IHS and numerous tribes, and jeopardize statutorily authorized contracting and compacting relationships between the IHS and these tribes due to the conflict between these proposed regulations and the statutory opportunities for self-determination by the Indian tribes. The IHS strongly recommended that these proposed regulations not apply to IHS and tribal health systems as written. Recommendations were also made to deem satellite facilities within a discrete Indian reservation as meeting the definition of a provider-based entity as well as satellite facilities within a historical service unit. Finally, the IHS recommended that the current system be "grandfathered" to meet the definition of provider-based entity.

Response: We share many of these concerns and have provided special treatment for IHS and tribal facilities as described below.

Comment: A commenter was concerned that the proposed regulations would severely restrict a number of IHS satellite clinics from receiving reimbursement for the provision of Medicare Part B services. The commenter believes that a number of the requirements that must be met before an entity can be designated as provider-based for Medicare payment purposes are unrealistic for IHS satellite clinics, which are often the only Medicare providers on remote tribal lands. The commenter recommended that HCFA provide for an exemption for IHS satellite facilities that are generally located on a main hospital campus or within a short distance of a hospital. Also, the commenter recommended that the final rule clarify that IHS and tribal outpatient departments or satellite clinics are eligible to receive designation as a department of a provider or a provider-based entity and are eligible for Part B reimbursement.

Response: We share many of these concerns and have provided special treatment for IHS and tribal facilities as described below.

Comment: Many tribes have acquired operations of outpatient facilities and are in the process of acquiring the affiliated hospitals. The commenter stated that this trend, coupled with the complexities of the Indian Self-Determination Act (Pub. L. 93–638), the Indian Health Care Improvement Act (Pub. L. 94–437), and a moratorium on tribal compacting and contracting, requires special consideration by HCFA. The commenter requested that facilities be recognized as provider-based if—

(1) The outpatient facility is owned and operated by the tribe that owns the majority of the tribal shares utilized in funding the main hospital;

(2) The tribe has previously compacted programs that were historically administered by the hospital and are now administered through a committee or board comprised of medical staff of both facilities;

(3) The outpatient facility is in the same State as the hospital;

(4) There is coordination and integration of services, to the extent practicable, between the outpatient facility seeking provider-based status and the main provider.

Response: We recognize that the provision of health services to members of Federally recognized Tribes is based on a special and legally recognized relationship between Indian tribes and the United States Government. To address this relationship, the IHS has developed an integrated system to provide care that has its foundation in IHS hospitals. Because of these special circumstances, not present in the case of private, non-Federal facilities and organizations that serve patients generally, we agree that it would not be appropriate to apply the provider-based criteria to IHS facilities or organizations or to most tribal facilities or organizations. Therefore, we have revised the final rule to state that facilities and organizations operated by the IHS or Tribes will be considered to be departments of hospitals operated by the Indian Health Service or Tribes if, on or before April 7, 2000, they furnished only services that were billed as if they had been furnished by a department of a hospital operated by the Indian Health Service or a Tribe and they are: (1) owned and operated by the IHS; (2) owned by the Tribe but leased from the Tribe by the IHS under the Indian Self-Determination Act in accordance with applicable regulations and policies of the Indian Health Service in consultation with Tribes: or (3) owned by the IHS but leased and operated by the Tribe under the Indian Self-Determination Act in accordance with applicable regulations and policies of the Indian Health Service in consultation with Tribes. Facilities or organizations that are neither leased nor owned by the IHS would not be eligible for this special treatment, even if operated on Tribal land by members of the Tribe. These facilities would, of course, be eligible to participate in Medicare as FQHCs if applicable requirements in our regulations at 42 CFR part 405, subpart X are met. We did not adopt the conditions recommended by one commenter because we believe they may not apply to all Tribes.

Application to Specific Facilities—Federally Qualified Health Centers (FQHCs)

Comment: A commenter stated that despite specific acknowledgment of the eligibility of FQHCs to qualify as provider-based entities, certain proposed ownership, governance, and supervision criteria in connection with the determination of provider-based status would effectively prohibit entities from maintaining concurrent provider-based and FQHC designations. The commenter believe the criteria should be modified, or some other special provision created, to allow FQHCs to be departments of a provider.

Response: We understand the commenter's concerns and have provided special treatment for FQHCs as described below.

Comment: The commenter, a hospital that is affiliated with a number of off-site community health centers, believes the criteria in the proposed rule would deny provider-based status to community controlled, urban tax-exempt health centers operated under the license of a "main provider." Several of the commenter's health centers are FQHCs that must fulfill certain criteria to maintain this status. In the commenter's view, it is not feasible to require the "main provider" to own and control these health centers or to require that the health centers and the "main provider" strictly meet all of the requirements set forth in the proposed rule. The commenter asked that the final rule be revised to take into account these historical relationships and "grandfather" the provider-based status of health centers that have been on the license of a disproportionate share hospital for at least 10 years. The recommended "grandfathering"

provisions also could, in the commenter's view, require common Joint Commission on Accreditation of Healthcare Organizations (JCAHO) accreditation, integration of clinical care committees, main provider approval of clinical guidelines and protocols, and financial oversight and review by the main provider.

Response: We share many of these concerns and have provided special treatment for FQHCs as described below.

Comment: A commenter requested that we provide a transition period of at least five years for health centers that have been treated as provider-based entities for a significant period of time (for example, 10 years or more), so that the centers will have adequate time to achieve compliance with the provider-based criteria. In the commenter's view, an extended time period for compliance would permit continuity of care to the populations served by the health centers while granting the affected health centers an opportunity to find alternative funding streams.

Response: We recognize that FQHC qualification criteria effectively require these facilities to be governed by community-based boards independent of hospitals and other providers, while our provider-based criteria require facilities seeking provider-based status to be operated under the ownership and control of the main provider, and to be under the direct supervision of that provider. This does not preclude an FQHC from participating in Medicare as a free-standing entity; on the contrary, this participation is entirely appropriate. However, it does preclude the facility from qualifying as a department of a hospital or other provider under our criteria.

Despite the difference between HRSA and HCFA requirements, we are aware that some FQHCs may have been treated by hospitals as departments for purposes of Medicare and Medicaid billing, and we are concerned that an abrupt change in status for them could force some or all to close, leading to shortages of care in some areas. Therefore, we plan to establish special provisions for FQHCs and FQHC "look-alikes" (facilities that are structured like FQHCs and meet all requirements for grant funding, but have not actually received these grants). Specifically, we have revised the regulations to state that if a facility has since April 7, 1995 furnished only services that were billed as if they had been furnished by a department of a provider and either (1) received a grant before 1995 under section 330 of the Public Health Service Act or, before 1995, received funding from such a grant under a contract with the recipient of such a grant and meets the requirements to receive a grant under section 330 of the Public Health Service Act; or (2) based on the recommendation of the PHS, was determined by HCFA before 1995 to meet the requirements for receiving such a grant, the facility will continue to be treated, for purposes of this section, as a department of the provider without regard to whether it complies with the criteria for provider-based status in § 413.65. We note that both types of facilities would be obligated, for as long as they are treated as a department of a provider, to comply with the applicable requirements for departments of providers as stated in § 413.65(g).

Application of Standards

Comment: One commenter believes that the proposed rule did not make clear how it would apply to existing entities, because some language in the rule could be read to require that existing entities would not receive provider-based status until we have issued a determination letter. Another commenter requested that we clarify whether we expect to review all clinics prospectively or just new clinics. The commenter stated that requirements that only new clinics seek designation does not preclude us from auditing currently designated clinics. Another commenter asked if there will be a set time frame during which current providers with provider-based departments or entities under Program Memorandum A–96–7 must contact us and receive an official designation in order to continue billing as they currently do. More specifically, the commenter asked whether, if there is such a time frame, compliance with the criteria in the Program Memorandum would constitute a good faith effort as referred to in § 413.65(i)(2). Additional guidance was also requested as to what providers should do now to demonstrate that they have made a good faith effort.

Response: We plan to review all new requests for provider-based status. At present, we have no plans to systematically review all providers to determine whether they may be claiming provider-based status for some facilities or organizations inappropriately. However, we will review the status of specific facilities or organizations in response to complaints or any other credible information that indicates that provider-based status requirements are not being met. If the regional office determines that this is the case, it will take action in accordance with the rules in new § 413.65(h) and (i). In response to the comment about possible retroactive application of the new regulations, we note that they will apply only on or after their effective date of October 10, 2000. We will not apply the provider-based criteria in the new regulations to periods prior to that date; on the contrary, decisions for such periods will be reviewed only under the criteria in effect at the time, as stated in Program Memoranda and the Provider Reimbursement Manual and State Operations Manual.

Comment: Two commenters pointed out the proposed rules do not state whether the required approval status is retroactive to when the provider applied or to when we granted approval. These commenters believe it should be retroactive to the date of the provider's application for the determination.

Response: We plan to make provider-based status applicable as of the earliest date on which a request for provider-based status has been made and all requirements for provider-based status are shown to have been met, not on the date of our determination. Thus, if a provider requests provider-based status for a facility on May 1 and demonstrates that applicable criteria were met on that date, but the regional office did not make a formal determination until June 1, the determination would be effective on May 1.

Comment: The commenter stated that we should not have published important provider-based policies in a **Federal Register** document that some providers, such as skilled nursing facilities and home health agencies, may not have read. The commenter recommended that we re-issue these proposed rules separately from the proposed hospital outpatient prospective payment rules.

Response: We do not agree that the proposed rules were published in an obscure location. On the contrary, the number of written comments received, many of them from providers other than hospitals, indicates that our proposals were widely known among providers that could be affected. Therefore, we do not intend to republish the proposed rules.

Comment: A commenter expressed concern that these provider-based provisions are unnecessarily restrictive and will unreasonably limit practice arrangements. The commenter went on to state that in the current health care environment, physicians and hospitals need flexibility to adapt to local market conditions and participate in a variety of practice arrangements to provide cost effective, high quality care. An unnecessary strict definition of

"provider-based entity" could have a chilling effect on the evolution of new care delivery structures that would expand access to care, especially in rural areas.

Response: We share the commenter's concern with preserving Medicare beneficiaries' access to care, but do not agree that the provider-based rules will limit access. We note that the rules do not prohibit hospitals from purchasing physician practices or taking other actions to enhance access to care in remote rural areas; they only set minimum standards for the type of affiliations that will be recognized for provider-based designation.

For example, an institutional provider such as a hospital or SNF may elect to use part of its institutional complex to house physician offices or other facilities that provide services complementing those of the provider. Those facilities' costs will have to be included in the trial balance of the institutional complex, in order to allow costs to be allocated accurately to all parts of the complex, and permit the costs of the provider to be determined. However, inclusion of such facilities' costs on the institutional complex trial balance does not make the facilities provider-based. On the contrary such facilities would have to meet the criteria in § 413.65 to qualify for provider-based status.

Comment: Different views were expressed on how much

discretion regional offices should have in applying the provider-based criteria. One commenter asked that we make the rules as clear and concise as possible. The commenter argued that rules allowing for great latitude in interpretation could be dangerous for the provider community. On the other hand, another commenter stated that we should allow Medicare regional offices greater latitude for determining when sufficient integration exists for a facility to qualify as provider-based, and should avoid adopting regulations that "micro-manage" a hospital's operations. Another commenter suggested that rather than requiring that *all* criteria must be met to achieve provider-based status, we change the test to *substantially all*. There may be circumstances where criteria are not fully met, but an overall assessment supports a provider-based determination. This same commenter recommended that a "pending" status be incorporated into the evaluation process, whereby hospitals not meeting the criteria for provider-based status would be afforded an opportunity to make the modifications necessary. Another commenter asked that instead of meeting all criteria, we permit the regional offices to evaluate a facility's status with respect to the main provider with input from local government and the fiscal intermediary. Another commenter also suggested that the standards only be enforced to the extent that they are applicable and relevant, consistent with state laws, and relate to practices that are subject to the control of the particular provider.

Response: We have tried to balance the need to apply standards that can be adapted to fit particular circumstances, and agree that the standards should not be overly prescriptive, but rely on regional judgment to ensure appropriate decision making. Because provider-based status is a matter of extreme importance to many facilities, published standards provide a basis for advance assessment and planning of particular organizational and financial arrangements. Therefore, we have decided that a facility or organization will be found to be provider-based only when it is in compliance with *all* standards set forth in these final rules.

With respect to the comment regarding situations in which all but a few criteria for provider-based status are met, we note that nothing prohibits the main provider from re-applying for approval of provider-based status for a facility or organization after having made the changes necessary to come into compliance. Regional offices would in such cases only need to verify compliance with whatever criteria had not been previously met, unless the amount of time that elapses between requests, or other factors, make a full re-evaluation necessary. Because facilities have this flexibility under the rules as proposed, we did not make any changes based on this comment.

Comment: One commenter believes that we had not fully addressed the impact of these rules on service delivery. The commenter suggested that changes would affect deemed status, survey and certification requirements, state licensure requirements, physician referral requirements, and a host of related issues. Another commenter stated that the new requirement regarding administration and supervision found in § 413.65(d)(3) could impact more than our estimated 105 providers. The commenter believes that if providers are required to convert management firm employees to hospital employees and then revert back when outpatient PPS becomes effective, this could impact 5,000 inpatient PPS hospitals.

Response: We again reviewed our requirements, but do not believe they will have the far-reaching effects envisioned by these commenters. In particular, to the extent a facility or organization that claims to be a department of a provider must be accredited, surveyed, or licensed as a part of that provider, or must adapt to the physician referral requirements of the main provider, that result does not flow from the existence of criteria for provider-based status, but instead is a direct result of the provider's decision to claim the facility or entity as a department. We also do not think it is reasonable to assume that any significant number of hospitals will restructure themselves repeatedly because of the final rules set forth below. As noted earlier, both the proposed and final rules closely parallel policies that have been stated explicitly on program instructions since 1996, and we are providing a 6-month delay in effective date for the final rule. Thus, hospitals and other providers have had ample time to assess the impact of any changes and to make necessary adjustments in an orderly way.

Comment: A commenter requested clarification as to how the proposed rules would apply to two hospitals seeking consolidation into a single provider. The commenter also asked whether two small PPS hospitals located approximately 15 to 25 miles apart in separate towns within a metropolitan statistical area (MSA) who wish to consolidate would be prohibited from doing so because of patient population or licensure requirements. Furthermore, if these two hospitals are already certified as a single provider, would the proposed rules require them to separate and create separate providers? Another commenter requested that the final regulatory text state that the provider-based requirements do not apply to any facility where there are inpatient beds since such a facility would be viewed as a "main provider." The provider-based requirements should apply only to facilities or organizations other than main providers.

Response: Although the Program Memorandum and proposed rules were issued in response to situations primarily involving outpatient facilities, we believe the policies set forth in these documents are equally applicable to inpatient facilities, and should be applied in the many cases in which a determination about inpatient facilities must be made. The rules would not prohibit two previously separate hospitals from merging to become a single provider. However, for either facility to be considered provider-based with respect to the main provider, the facility would have to meet the criteria

in this final rule. To clarify the scope of application of these regulations, we have added a definition of "remote location of a hospital" and a reference to hospital satellite facilities to § 413.65(a) Definitions, and have clarified the wording of several later sections by including references to remote locations and satellites. We have defined a "remote location of a hospital" as a facility or an organization that is either created by, or acquired by, a hospital that is a main provider for the purpose of furnishing inpatient hospital services under the name, ownership, and financial and administrative control of the main provider, in accordance with the provisions of this section. A remote location of a hospital may not be licensed to provide inpatient hospital services in its own right, and Medicare conditions of participation do not apply to a department as an independent entity. The term "remote location of a hospital" does not include a satellite facility as defined in § 412.22(h)(1) and § 412.25(e)(1). Hospitals may acquire remote locations by various means, but often do so by mergers or acquisitions, in which a single hospital purchases other, previously separate hospitals, and operates them as remote locations that are not separately organized as departments, but instead furnish the same types of services as the original hospital. For example, a long-term care or other specialty hospital might acquire one or more other hospitals, terminate their separate participation in Medicare, but continue to use them as sites of the same type of care as the original hospital. Satellite facilities are currently defined in our regulations at § 412.22(h)(1) (for hospitals) and § 412.25(e)(1) (for units). In general, a satellite facility is a part of a hospital (or of a hospital unit) that provides services in a building also used by another hospital, or in one or more buildings on the same campus as buildings also used by another hospital. Satellite status always involves co-location with another hospital, while remote locations are not co-located with other hospitals' facilities.

Comment: A commenter requested clarification that the provider-based requirements apply only to providers who are paid under the reasonable cost methodology. The preamble language in section VI implies that these requirements would also apply to providers under the outpatient PPS. The commenter believe that if this were the case, the requirements found in §§ 413.24(d)(6) and 413.65 would be appropriately placed in Subchapter E (for example, Part 482, Conditions of Participation for Hospitals).

Response: The rules set forth below are not limited in their scope to providers paid on a reasonable cost basis but, except where specifically stated in the text of the rules, apply to all providers and facilities seeking Medicare payment. While many of the problems associated with inappropriate accordance of provider-based status relate to cost reimbursement, the different payment systems used for various providers may produce some unintended incentives for one type of facility to gain an unfair payment advantage by misrepresenting itself. The specific requirements cited do not, like the Medicare conditions of participation, implement section 1861(e) of the Act, nor do they primarily concern patient health and safety. Therefore, we did not adopt the suggestion that the section be relocated to part 482.

Comment: A commenter would support a provision that prohibits hospitals from acquiring free-standing physician practices and converting them to hospital-based entities.

Response: We understand the commenter's concern, but do not have authority under the Medicare law to prohibit this practice. We do believe that the rules set forth below will keep hospitals from misrepresenting physicians' practices as hospital outpatient departments.

Section 413.24(d)(6) Adequate cost data and cost finding: Management contracts

Comment: The proposed cost reporting requirements state that if an overhead administrative cost center does not perform services for the off-site clinic or department, no costs should be allocated to that function. The commenter pointed out that this contradicts generally established Medicare cost reporting principles that have always required that the administrative costs be allocated to allowed and nonallowed cost centers.

Response: Our position, as expressed in the Provider Reimbursement Manual, Part II, Chapter 36 for hospitals, is to allow the provider to bypass the allocation of overhead through the cost report to avoid inappropriate allocations. An example of this would be lab services under arrangement, where there is obviously no administrative activity by the main provider. Our electronic cost report systems are set up to "skip" that particular cost center and to re-allocate the costs to the remaining cost centers. Likewise, where administrative costs such as billing are performed by the subordinate provider, no billing cost from the main provider should be allocated to that cost center from the main provider.

Comment: Several commenters suggested clarification of "like" costs by adding a definition or providing examples. Also, a commenter stated that since the main concern is costs, this provision should be applied when management costs exceed the hospital's operating costs of the department by 10 percent on a comparable basis. Another commenter stated that: (1) Management services benefit only the specific department to which they are expensed, and provide no direct services to other hospital departments; (2) A department under the management contract receives necessary services from other hospital overhead departments; (3) such overhead departments do not represent duplicate services provided under the management contract. Since management agreements can be drastically diverse, the commenter believes this clarification would assist in avoiding any confusion, as well as allow for consistency with generally accepted cost finding principles. Another commenter stated that most entities that contract to manage an area of a hospital manage just that area. Therefore, if they offer assistance with a particular function, it is only for that area and not for the whole hospital. The commenter believes the same principles of reimbursement should be applied whether the hospital provides the service directly or contracts for the service to be provided.

Response: Examples of similar costs when management contracts provide services also available through the main provider are the following: billing services, computer services, accounting services, and, possibly, general administrative staff. When the same services are included in the administrative and general costs of the main provider, and allocated down to subordinate cost centers or providers incurring and reporting these same costs in the trial balance, the result is a duplication of costs to the subordinate cost center or provider. As long as the main provider has the ability to identify these "like" service costs, these costs should be re-allocated to the remaining reimbursable and non-reimbursable cost centers in proportion to each cost center's total costs as prescribed in the Provider Reimbursement Manual, Part II, Chapter 36. However, if the main provider is not able to identify the costs of these same services to permit the exclusion of allocation to the subordinate providers or cost centers,

the cost of the management contract of the subordinate provider or cost center must be reclassified to the main provider's administrative and general cost center, and allocated down to *all* reimbursable and non-reimbursable cost centers in proportion to each cost center's total cost.

Comment: With regard to the language in paragraph (d)(6)(ii), Medicare principles of reimbursement require that, when two entities are related, and one contracts from the other, reimbursement for these services is at cost due to the "related party principle." The commenter stated that the cost of a service is both direct and indirect; Medicare reimbursement has a longstanding methodology concerning nonrevenue producing costs and their allocation on a provider's cost report. A separate work paper should not be required. The appropriate methodology for stepping down administrative costs should be based on the cost of the entity utilizing the service. The cost of the free-standing entity must be placed on the main provider's cost report to step down cost appropriately. Additional work papers would allow room for error and would delay any necessary adjustments.

Response: The intent of § 413.24(d)(6)(ii) was to require the main provider to report costs of related party entities that would not be reported through their accounting system on the main provider's books and records, for example, trial balance. Consequently, when there is a sharing of administrative services, for example, managerial staff, the related entity escapes any administrative overhead allocation when that same related entity is not reported on the main provider's trial balance of the cost report. While the commenter is correct regarding the proper reporting of related transactions at cost of the related entity, this regulation section goes further to require the main provider to develop the total cost of the related entity, utilizing and maintaining workpapers to justify the amount to be reported, and to report those costs by the main provider on the cost report trial balance.

Section 413.65(a) Definitions (retitled in this final rule as Section 413.65(a) Scope and definitions)

Comment: Two commenters requested that a definition be provided for "a provider's campus." A definition would be important since the proposed regulation specifies additional requirements for off-campus locations.

Response: We agree that location on or off a hospital's campus is important. To provide a clear standard, we have revised the final rule to define "campus" as "the physical area immediately adjacent to the provider's main buildings, other areas and structures that are not strictly contiguous to the main buildings but are located within 250 yards of the main buildings, and any other areas determined on an individual case basis, by our regional office, to be part of the provider's campus." This definition would encompass not only institutions that are located in self-contained, well-defined settings, but other locations, such as in central city areas, where there may be a group of buildings that function as a campus but are not strictly contiguous and may even be crossed by public streets. This would also allow the regional offices to determine, on a case-by-case basis, what comprises a hospital's campus. We believe allowing regional office discretion to make these determinations will allow us to take a flexible and realistic approach to the many physical configurations that hospitals and other providers can adopt.

Comment: The commenter expressed concern regarding the definition of provider-based facilities as many hospital-owned outpatient services are often provided with leased employees with ambulatory care experience. It is not clear that such an arrangement would satisfy the intent of the regulation.

Response: The regulations do not explicitly prohibit the use of leased employees, and each situation will be evaluated relative to the criteria in the regulations set forth below.

Comment: One commenter stated that the difference between "department of a provider" and "provider-based entity" is not clear from the definitions given of those terms. The commenter requested that we clarify in the regulations text whether a provider-based entity must be certified in its own right, and what type of certification this encompasses. The commenter also requested clarification in the regulations text concerning whether the term "provider" in the definition is intended to mean only entities that satisfy the Medicare definition of "provider" contained in § 400.202.

Response: We have clarified § 413.65(a) to state that a "department of a provider" is a facility or organization that could not by itself be qualified to participate in Medicare as a provider under § 489.2, while a "provider-based entity" could be so qualified. For example, a skilled nursing facility (SNF) could be a "provider-based entity," whereas an entity that furnishes ambulatory surgical services could not be a provider-based entity, and could participate in Medicare (for example, receive Medicare payment for services furnished to beneficiaries), only as a department of a provider, as a physician office, or as an ambulatory surgical center approved by Medicare under part 416, if at all. We have further revised the final rule to clarify that a department of a provider furnishes services of the same type as the main provider (for example, a department of a hospital furnishes hospital services), while a provider-based entity furnishes services of a different type from those of the main provider (for example, a hospital-based RHC furnishes RHC services, not hospital services).

Comment: A commenter believes the proposed rule should be revised for medically underserved populations and health manpower shortage areas to allow the referral of beneficiaries back to their community for treatment of community-based therapy providers. Therapy services provided under such a referral would be included under the provider-based designation.

Response: We do not oppose use of such referrals where they are medically appropriate, but believe that referral arrangements should not be equated to provider-based status.

Comment: A commenter questioned the requirement that services be furnished "under the name" of the main provider entity. The commenter argued that the requirement is inconsistent with the commenter's view that health care in the late 1990s is, and in many markets must be, "marketed" in a highly competitive environment. The commenter's view is that having provider-based status turn on the names used will inevitably invite micro-management of the way the main provider's name is used by the department or other hospital-based entity.

Response: We disagree with any suggestion that health care is merely a generic commodity that can be repackaged under another name for marketing purposes. On the contrary, we believe that operating under the name of the main provider, and holding oneself forward to patients under that name, is an important indicator of status as an integral and subordinate part of that provider. Therefore, we did not make any changes in the regulation based on this comment.

Section 413.65(b) Responsibility for obtaining provider-based determinations

Comment: A commenter stated that the proposed rule does not state clearly enough whether our approval is required in order to permit billing each

time a provider sets up a new service, regardless of whether the service is acquired, managed, new, located on the main campus, or off the main campus. Some commenters stated that if approval is required in all instances, it will cause a significant paperwork backlog and will be quite costly to administer.

Response: Section 413.65(b) states explicitly that a determination by us that a facility or organization is provider-based is required before the main provider may treat the facility or organization as provider-based for billing or cost reporting purposes. We recognize that this may generate some administrative cost, but believe the cost will be much less than the amounts that would be spent improperly if payment were made to a free-standing facility as if it were provider-based.

Comment: A commenter urged that the new determination process be applied to all current as well as new hospital-based services.

Response: We have no plans at present to review all hospitals and other providers with respect to provider-based criteria, but will look into any situations that come to our attention in which it appears that a facility does not meet the requirements of the new regulations but is being treated as provider-based. If the facility or organization does not qualify as provider-based, action will be taken as described later in this preamble and in § 413.65(i).

Comment: A commenter stated that there should be some mechanism in place for a long-term hospital (LTH) to seek an advance determination or advisory ruling that a proposed LTH satellite will be granted provider-based status. Because establishing an LTH requires a huge expenditure of time and human resources, an LTH main provider needs to know in advance whether or not its proposed satellite will receive a favorable provider-based determination. It is suggested that we institute a system by which advance rulings or determinations are available before the satellite is established.

Response: We understand the commenter's concern, but do not have the staff or facilities to provide advance approvals of restructuring proposals. We suggest that providers review the new criteria carefully and avoid forms of organization that are not clearly in compliance with them.

Comment: Two commenters suggested that we provide guidance on the application process providers must complete in order to receive a provider-based determination. In addition, time limits for approval of these determinations should be established. Furthermore, existing provider-based entities should not be required to change their billing and accounting procedures. A commenter also asked for clarification as to whether the intermediary and regional office is to be the contact, and who will make the actual determination of provider-based status.

Response: We are developing an application process and intend to have it in place and ready for use before the effective date of the regulation. We expect that determinations of provider-based status will be made by our regional offices. Involvement by other entities, such as fiscal intermediaries or State survey agencies, will be for information-gathering purposes and under the direction of the regional office.

Comment: A commenter suggested that if a determination goes against the provider, the provider should be given the option to come into compliance with the requirements or file an appeal.

Response: As noted earlier, the regulations do not prohibit a provider that meets most but not all criteria from taking action to fully meet the criteria, thus qualifying a facility or organization for provider-based status. In the case of a provider that believes that the determination of the regional office is incorrect, an appeals process is provided under part 498.

Comment: A commenter stated that the requirement in paragraph (b)(3) establishes an adverse presumption against provider status for "off-campus" physician practice sites, and that the focus on "campus" boundaries will prove elusive, and serve no real policy purpose.

Response: As explained later, we believe location in the immediate vicinity is an important indicator of provider-based status, and that location can be a good basis for identifying facilities for further scrutiny.

Section 413.65(c) Reporting

Comment: Several commenters pointed out that the regulatory language does not reflect the preamble language regarding off-campus entities and the five percent increase in a provider's costs.

Response: We have revised the final rule to correct this oversight.

Comment: One commenter asked whether this language applies only to entities that are applying for provider-based status, or also applies to entities that have already achieved provider-based status.

Response: The requirement applies to both types of providers, but providers that have entities with provider-based status are required to report only newly created or acquired facilities or organizations.

Comment: Two commenters stated that the five percent and off-campus criteria with regard to provider-based status do not take into account the characteristics of rural and frontier areas, and could lead to lower payments to some facilities, thus reducing the flow of Federal money into rural areas and possibly creating a shortage of care. In addition, considering the small budget of RHCs and other rural facilities, 5 percent is an inappropriately low and unreasonable growth limit.

Response: We understand the commenter's concern but do not agree that a 5 percent threshold for reporting is too low. Therefore, we made no change based on this comment.

Comment: A commenter asked whether this reporting requirement also applies to all newly developed services (that is, department on the campus of the hospital).

Response: The requirement applies to all newly developed on-campus services that could increase the costs of the provider by 5 percent or more.

Comment: A commenter requested clarification that a main provider that "creates" as well as "acquires" a facility or organization is responsible for reporting to us. The commenter also suggested specific items to be included in the reporting and approval process. These include specific data elements to be reported by the main provider, specifying our component with primary responsibility, specifying our approval process; adding a preliminary conditional approval process; adding a specific time period for our approval; and adding requirements for the effective date that the costs of the provider-based entity can be included on the main provider's cost report.

Response: We have revised the regulation to clarify that it applies to facilities or organizations created by the main provider, as well as those ongoing operations acquired by purchase or other means. We have not included the procedural detail requested by the commenter in regulations, but will consider including it in program instructions.

Comment: A commenter stated that the use of the phrase "any material change" in paragraph (c)(2) of this section is too vague and open to interpretation. It is suggested that the section be revised to clearly designate changes of ownership and new management agreements as the only two material changes that require reporting by provider-based entities.

Response: We do not agree that the range of reportable events should be limited in this way. On the contrary, we intend to require reporting of any change that could have a significant ("material") effect on compliance with the provider-based criteria.

Comment: A commenter asked if the reporting requirements are coordinated with the notification of change of ownership requirements at § 489.18(b), where notice is to be given in advance, and whether there should be a cross reference or clarification with respect to the change in ownership regulation and this proposed regulation.

Response: We believe this suggestion has merit, and will consider revising our program instructions to specify that a report under § 489.18(b) should be reviewed for its applicability to provider-based determinations.

Section 413.65(d) Requirements

Comment: A commenter suggested that we clarify whether all requirements, or only a majority of the requirements, must be met to obtain provider-based status.

Response: We have revised the first sentence of paragraph (d) to state that all of the stated requirements must be met by a facility or organization that wishes to be classified as provider-based.

Section 413.65(d)(1) Licensure

Comment: Many commenters objected to the requirement that provider-based facilities share a common license with the main provider unless the State requires separate licensure for the subordinate facility. One commenter listed several reasons for this concern. First, in the commenter's opinion, licensure determinations may be made based on factors that are different from those that would be important for provider-based determinations. Another reason cited by the commenter is that State licensure laws may vary from State to State. Some State hospital licensure definitions are building specific, and do not include off-site outpatient facilities, thus giving what the commenter argues is undue weight to physical location in evaluating provider-based status. Finally, the commenter believes that requiring common licensure will create a situation where some States may have a large number of provider-based entities and others will have few or none, thus leading to inconsistent application of our rules. One commenter recommended that the same licensure requirement be waived for States with idiosyncratic licensure requirements. An alternative would be accreditation with the provider as a deemed status for meeting a common license requirement. The commenter suggested that the proposed language could be reworded to clarify that offsite clinics would not have to be licensed or operated under the same license as the provider in those States that do not license them.

Response: We recognize that licensure may not be an appropriate indicator of provider-based status in all States, and have therefore revised the regulations to require common licensure only in States with laws that permit common licensure of the provider and the prospective provider-based department under a single license. This means that in States that do not allow licensure of certain types of facilities, such as those providing ambulatory care or those located off the provider's main campus, the licensure criterion would not be applied. We do not agree that JCAHO or other accreditation should be accepted in lieu of licensure, since such accreditation may not necessarily reflect an on-site evaluation of the prospective provider-based department. In recognition of the fact that some hospitals are not licensed by the State because they are Indian Health Service (Federal) hospitals or are located on Tribal lands, we also will not apply the licensure requirement to departments of those hospitals.

Comment: Under paragraph (d)(1) as proposed, clinics in another State from the main provider could not be under the hospital's license. Several commenters argued that this requirement would arbitrarily affect rural and urban health care delivery, where the main provider is close to a State line. A commenter recommended that close proximity be used instead, where a hospital-based clinic is in another State from the main provider. For urban hospitals in large metropolitan statistical areas that cross State boundaries, the commenter believes that the market area of the main provider should be the primary determinant of the potential for integration with the main provider.

Response: Under the regulations as revised based on the comments summarized above, common licensure would not be required of facilities located across State lines if the law of the State in which the main provider is located does not allow such licensing. However, see the discussion, later in this preamble, of § 413.65(d)(7)(ii).

Comment: A commenter pointed out that the proposed rule appears to limit the licensure requirement to "departments" of the main provider. The commenter asked whether this requirement only applied to "provider-based entities." The commenter also suggested that where a State has two licensure schemes for the same type of facility, we should not prefer one licensure scheme over the other for purposes of determining the provider-based status of the facility.

Response: The commenter is correct in noting that the common licensure requirement in the proposed rule would have applied only to provider-based departments. We did not propose to apply a common licensure requirement to provider-based entities such as SNFs and HHAs, because they are providers of services in their own right, and typically would be separately licensed without regard to their affiliation with the provider. We disagree with the commenter's view that licensure should not be viewed as an indicator of integration. On the contrary, our view is that if a facility could be licensed as part of a main provider but chooses not to be, the facility cannot reasonably be seen as an integral and subordinate part of that provider.

Comment: With regard to the proposed requirement that states that our determination regarding provider-based status will be based on a State health facilities' review commission, one commenter argued that relying on the commission's criteria for purposes of making provider-based determinations is arbitrary and inappropriate. The commenter believes imposing this criterion could disadvantage providers and discourage expansion to off-site locations, thus indirectly leading to shortages of care. Another commenter requested that there be a delay in implementation during which time changes can be made to the commission's definition of what rates it can regulate.

Response: We continue to believe it would be inappropriate for a facility to claim to be separate from the provider for State rate-setting purposes while also claiming to be an integral and subordinate part of the provider for Medicare purposes. To allow this practice would authorize providers to misrepresent their structures and affiliations in whatever way will yield the highest payment. Thus, we did not make changes to reflect the comment.

Section 413.65(d)(2) Operation under the ownership and control of the main provider

Comment: Regarding § 413.65(d)(2), the commenter suggested that the regulations provide a separate set of criteria that would allow a provider that is operated within one legal entity to be provider-based to a provider that is operated within another legal entity, as long as the two entities are under common control. Another commenter

stated that this ownership and control requirement is unnecessarily rigid, since a hospital-based clinic, which was strictly an administrative division of the hospital, might qualify while another similar clinic, wholly owned by the hospital with slightly different governing bodies and documents, would not be eligible.

Response: We do not agree that common control of two separate entities by the same parent organization should be sufficient to meet a requirement for ownership and control by the main provider. While this arrangement may be an appropriate way to manage two separate entities, it does not establish provider-based status for either. With respect to the second comment, we agree that the form of administration of an entity can determine whether or not the entity is found to be provider-based. We believe this would be an appropriate result, since it would help ensure that only facilities that are organized as provider-based entities or departments of a provider are given this status.

Comment: One commenter believes it is unrealistic to require a potential provider-based facility or organization to be owned by the main provider and share bylaws and an identical governing body. The commenter stated that in the present business climate an entity can operate as a provider-based entity without meeting these criteria. It is recommended that we replace the proposed 100 percent ownership standard with a majority standard, require only overlapping governing bodies, and eliminate the requirement for organization under the same organizational documents. Another commenter believes that the key consideration should be whether the provider is in control of the day-to-day operations of that portion of the facility in which the provider seeks provider-based status, and not necessarily whether the building is 100 percent owned by the provider. The commenter believes we should rephrase this provision to require that the operations of that portion of the facility or organization in which the provider is seeking provider-based status be controlled by the provider.

Response: In response to the first comment, we recognize that many organizations enter into business relationships that involve overlapping of ownership, governance, and applicability of bylaws. However, this degree of collaboration does not mean that one facility is an integral and subordinate part of another. Therefore, we made no change based on this comment. Regarding the second comment, we wish to clarify that it is ownership of the business enterprise, not of the buildings or other physical assets of the enterprise, that is required under paragraph (b)(1). We have therefore revised the regulation text to refer to ownership of the business enterprise.

Comment: A commenter stated that the requirements contained in paragraph (d)(2) would preclude entities that are jointly owned through legitimate joint ventures or those separately organized subordinate facilities from qualifying for provider-based status. Additionally, to require the level of integration suggested by our proposed rule would prevent providers from establishing efficient systems of delegation and management, solely to qualify for provider-based status.

Response: We agree that this criterion would have the stated effect. As explained further in our discussion of comments on proposed § 413.65(e), facilities operated jointly by two or more providers cannot appropriately be considered integral and subordinate parts of either provider. With respect to the second comment, we do not oppose systems of operation that stress separate, decentralized operation where this leads to greater efficiency. However, we believe such facilities or organizations should be recognized as the separate enterprises that they are, not considered integral and subordinate parts of another institution.

Comment: A commenter suggested that the requirement under paragraph (d)(2) be modified for medically underserved populations and health manpower shortage areas.

Response: We are also concerned that our criteria not limit access to care for any vulnerable populations and have, to avoid this potential problem, created special provisions for FQHCs and IHS and tribal facilities. As described later in this preamble, we have also created an exception to the location requirements in paragraph (d)(7), which is designed to help avoid restricting access to primary care furnished by RHCs in remote, underserved areas. In view of these provisions, we do not believe it is necessary to also modify our requirement relating to ownership of the facility or organization.

Comment: A commenter stated that the proposed requirements in paragraph (d)(2) are inherently inconsistent with section 330 of the Public Health Service Act statutory and regulatory requirements and the Bureau of Primary Health Care expectations necessary to obtain and maintain section 330 funding (and FQHC status). The commenter believes HCFA should not require FQHCs to be 100 percent owned by the main provider or share a common governing body and common bylaws with the main provider. The commenter also suggested that we accept appropriate reporting relationships and satisfaction of other criteria (for example, licensure, quality assurance, integration of certain administrative and clinical functions, such as billing, purchasing, retention of medical records, quality assurance and utilization review procedures; and public awareness of the relationship between the health center and the main provider) as a sufficient basis for provider-based status.

Response: As described earlier, we have provided a special transition period for FQHCs. We believe this period will be adequate to avoid the problems envisioned in this comment.

Section 413.65(d)(3) Administration and supervision

Comment: A commenter recommended that the daily reporting relationship stated in § 413.65(d)(3) should be replaced with the standard of having the reporting relationships have the same intensity as on-site departments. The commenter stated that in practice at the hospital, there may be very little day-to-day contact between medical directors of various hospital services. Also, the commenter believes it is unlikely that departmental directors report directly to the chief executive officer, but rather to a chief operating officer or other designee. Finally, the commenter argued that under the common governance requirement, while all hospital employees are theoretically accountable to the governing body, the accountability may be directed through the CEO, and multiple executives may not have an independent reporting with the board. Another commenter also believes that the standards for the provider-based entity should mirror those of the main facility; personnel reporting structure needs to be respected within the regulations. Still another commenter found "intensity" to be a subjective standard and asked how it will be measured.

Response: We agree that reporting need not be daily in all cases, and have revised the final rule to state that the reporting relationship between the facility or organization seeking provider-based status and the main provider must have the same frequency, intensity, and level of accountability that exists in the relationship between the main provider and one of its departments. We agree with the commenter that the intensity of supervision will have to be assessed on a case-by-case basis, but do not believe

this will lead to imprecise or poorly reasoned decisions.

Comment: Several commenters believe that this requirement limits the flexibility of the entity to operate efficiently and effectively in the current environment, since hospitals frequently turn to many specialized management companies to operate more efficiently and effectively than with hospital resources. Another commenter stated that whether the administrative department utilizes employees at one location and contracts at another location should be irrelevant as long as the function is integrated with the main provider, follows the policies and procedures of the main provider, and is accountable to the governing body of the main provider as is any other department. Still another disagreed, and believes that it may be appropriate to require that the main provider manage such contracts.

Response: We do not agree that the provision unreasonably limits hospital flexibility. Paragraph (3)(iii)(B) explicitly allows different management contracts to be used for the facility or organization and the main provider, as long as the provider manages the contracts. Thus, we did not make any changes in the proposal based on these comments.

Comment: A commenter asked whether the administrative functions listed in paragraph (d)(3)(iii) are the only services that must be integrated between the main provider and the subordinate facility.

Response: The commenter was correct in understanding that the functions listed are the only administrative functions that must be integrated. There are also requirements for integration of certain financial functions, as described below.

Comment: One commenter posed several questions concerning this proposed requirement. First, in a certain situation, the facility fee is billed to the intermediary by the hospital billing department using the provider number, while the professional fee is billed to the Part B carrier by the faculty practice billing organization under its physician group number. The commenter asked if the different provider number and tax identification impact on the provider-based status, and if there is a more appropriate way to obtain billing numbers for hospital-based clinics. Also, the commenter asked if clinic space can be shared by two clinics, when one is provider-based and one is free-standing, without impacting the provider-based status of the first clinic.

Response: In the circumstances described, the use of separate billing and tax identification numbers for provider and physician services would not adversely affect a facility's request for provider-based status, since such billings are required under Medicare to be separate in the case of services in hospitals. The question regarding sharing of space, however, can be answered only in the context of a specific case, and we expect that such decisions will be made by our regional offices.

Comment: With respect to the oversight of contracts under paragraph (3)(B)(iii)(B), several commenters stated that it is common for hospitals to subcontract out the billing for different departments, especially the hospital outpatient department, due to the complexity and number of claims. These commenters stated that while it may be appropriate to require the main provider to manage such contracts, departments other than the billing department should be permitted to perform this management function. One commenter suggested revising the criterion on billing under the integration of administrative functions to state, "common billing or the contract for billing services is held by the provider where it is based."

Response: We agree that departments other than the main provider's billing department may appropriately manage billing contracts, and have revised the criterion to state that the contract for a provider-based facility or organization must be managed by the main provider.

Section 413.65(d)(4) Clinical services

Comment: A commenter asked for clarification of paragraph (4)(iv) of this section, specifically concerning whether this language would require a Medicare certified HHA's improvement activities to be overseen by hospital medical staff, rather than the advisory committee as is now being done. The commenter believes that having the hospital medical staff overseeing the quality assurance activities of a HHA may not be appropriate or cost effective and may even slow the process of performance changes.

Response: The commenter is correct in understanding that compliance with this criterion would require oversight of a hospital-based HHA's quality improvement activities by the hospital's medical staff. We do not agree with the commenter that the outcome would be to substitute the judgment of the hospital for the HHA's own committee or that it would be inappropriate. The hospital conditions of participation contain a number of separate requirements that must be read together to make complete sense of this provision. Conditions spelled out at § 482.12 (Governing body), § 482.21 (Quality assurance), and § 482.22 (Medical staff) establish a chain of accountability in a hospital for the quality of care it provides. The requirements are clearly applicable to any activity (for example, provider-based entity) that is an integral part of the hospital. Thus, a quality improvement activity of the HHA is likely to be firmly grounded in the hospital's operating and governance fabric even when the group is "established" by the HHA, and staffed by employees and physicians who work primarily in home health. We would expect the linkages to be formal (that is, known to the governing bodies and medical staffs of both providers), and the quality assurance mechanisms interrelated to the extent that shared patients are the subject of the effort.

Comment: Regarding paragraph (d)(4)(v) of this provision, some commenters requested clarification of what is meant by a "unified retrieval system," or for guidance as to what types of cross referencing are acceptable. Another commenter asked for an explanation of the practical expectations regarding the maintenance of medical records. Finally, a commenter expressed support for the requirement for a unified retrieval system (or cross references), saying the latter system would be used in States that mandate a unified system.

Response: We would like to clarify that what is intended is that a system be maintained under which both the potential provider-based entity or department of a provider and the main provider have access to the beneficiary's record, so that practitioners in either location can obtain relevant medical information about care in the other setting. We did not, however, make any changes in the requirement based on these comments.

Comment: A commenter believes that functions of operations should not be regulated to dissuade cost efficiency, and that laundry and housekeeping would be examples where shared services may not be the most effective manner of operation.

Response: We agree that in some cases it may be less expensive for a facility to obtain services independently, but continue to believe such separateness is an indicator that the facility is not an integral and subordinate part of a provider.

Comment: With regard to paragraph (d)(4)(vi) requiring integration of services of the main and provider-based entity, the commenter expressed concern about the potential impact of

this section on a patient's freedom of choice. The commenter believes that the entity's efforts to meet this standard would limit a patient's freedom of choice. The commenter suggested that we clarify our position so that providers acting in good faith will not be sanctioned for attempting to comply with this requirement.

Response: Paragraph (d)(4)(vi) requires only that patients have access to the services of the main provider and that they be referred to it where the referral is appropriate. We wish to clarify that these criteria are not intended to restrict patient freedom of choice or the practitioner's freedom to refer patients to other locations, where doing so will result in better care for the patient.

Section 413.65(d)(5) Financial integration

Comment: A commenter believes that § 413.65(d)(5), which requires full integration of financial operations, is too rigid. An alternative approach is suggested that would allow managers of provider-based entities to retain some control over both the resources and information required to administer these units.

Response: Section 413.65(d)(5) requires that there be financial integration of the potential provider-based facility or organization and the main provider, but does not preclude normal management control of resources. Thus, we made no change in the regulation based on this comment.

Comment: A commenter stated that the criteria for common resource usage of building, equipment, and service personnel is not even relevant for multi-campus systems or even buildings that are across the street from each other, much less off-site hospital outpatient departments.

Response: Although the provider-based program memoranda required that there be significant common resource usage of buildings, equipment, and service personnel on a daily basis, this requirement does not appear in the proposed rule. Thus, we made no change in the regulation based on this comment.

Comment: One commenter stated that the requirement for financial integration seems unnecessary in light of the requirement for 100 percent ownership by the main provider. The commenter stated that some providers may wish to segregate the operations of certain departments in their financial systems, and expressed the view that as long as the costs of a department can be adequately identified on the cost report, the practice should be acceptable.

Response: We do not believe that these two requirements are duplicative. On the contrary, in some cases a provider may own 100 percent of another facility or organization, but not be financially integrated with it, either because the other facility or organization is engaged in a different, non-health care activity, or because it is organized and operated separately from the main provider. In these circumstances, we believe the criteria on financial integration apply appropriately to deny provider-based status to separate facilities or organizations.

Section 413.65(d)(6) Public awareness

Comment: Section 413.65(d)(6) requires that provider-based entities be identified as part of the main provider organization. The commenter did not understand the importance of this criterion, particularly when the provider-based organization is licensed and Medicare certified separately from the main provider.

Response: The proposed rule would not apply this criterion to provider-based entities (which may participate separately as providers), but only to provider-based departments. In the latter case, we think it is not unreasonable for such a department to be expected to identify itself with the provider of which it claims to be a part.

Section 413.65(d)(7) Location in immediate vicinity

Comment: A commenter stated that if off-site RHCs cannot be considered provider-based, it will be much harder to deliver care in rural areas. The commenter asked that RHCs be allowed to continue as provider-based RHCs even though they are off campus.

Response: We continue to believe close physical proximity is an important indicator of provider-based status. We note, however, that paragraph (d)(7) does allow off-campus facilities to be treated as provider-based if they meet the criterion relating to service to the same patient population.

Comment: Many commenters believe that more specific tests of service to the same patient population are needed. One commenter suggested that an appropriate criterion would be that the proposed provider-based facility or organization be located within the same geographic area that accounts for a high percentage of patients in the main provider. The commenter believes this test is consistent with Program Memorandum No. 96–7 and with the qualification requirements for sole community hospitals. Other commenters suggested that the main provider's geographical service area be considered the area from which the main provider drew 80 percent of its Medicare inpatients for the previous three years.

Response: We agree that more precise criteria are needed. Therefore, we have revised the regulations to provide that a prospective provider-based facility or organization will be considered to serve the same patient population as the main provider if, during the 12-month period immediately preceding the first day of the month in which the application for provider-based status is filed with us, at least 75 percent of the patients served by the facility or organization seeking provider-based status reside in the same zip code areas as at least 75 percent of the patients served by the main provider. As an alternative, we would consider a facility or organization to serve the same patient population if, during the same 12-month period described above, at least 75 percent of the patients served by the prospective provider-based facility or organization who required the type of care furnished by the main provider received that care from the main provider. We require this "same patient population" test to be met for the 12-month period used to support an initial determination of provider-based status, and it must continue to be met for each subsequent 12-month period to justify a continuation of provider-based status. Application of population/geographic standards to newly established facilities or organizations is discussed below.

Comment: Commenters suggested we show some flexibility with regard to the definition of patient population for teaching hospitals. The commenter stated that it will not always be the case that the patient populations for the teaching program will be the same as the overall mix or patient population for the main provider.

Response: We recognize that patient populations will not be identical in all cases, and thus have adopted a patient population criterion under which there may be a divergence of up to 25 percent between the main provider and the facility or organization seeking provider-based status. We believe this provides a reasonable allowance for differences in patient population. Moreover, we note that under section 1886 of the Act, Medicare provides much flexibility for teaching hospitals in other ways, for example, under section 1886(h)(4)(E), permitting the counting of residents for purposes of payment to teaching hospitals for the time the residents spend in nonhospital settings.

Comment: Two commenters suggested that the criterion on service to the same patient population be dropped. One commenter believes the criterion is overly vague, could limit access to care as facilities seek to control their service patterns, and, in general, represents a geographically based approach that is out of keeping with modern technology and communications. Another commenter stated that the criterion is unclear, and providers could find it burdensome to assemble the data to show compliance. Other commenters shared the second commenter's concern, but instead of recommending elimination of the criterion, they suggested that a more administrable solution would be to use regional or state standards to define "same geographic area," such as, health systems area, a specified mileage amount, or our wage area.

Response: As described above, we have developed a more precisely stated test of service to the same patient population. We believe that test will be clear and understandable, not impose unrealistic burdens on providers, and allow provider-based designations that parallel service patterns.

Comment: With respect to paragraph (d)(7)(i), a commenter asserted that many currently operating facilities that are treated as provider-based by us provide types of service that are the same as those of the main provider, but serve patient populations from different geographic areas. The commenter believes these entities provide care under the direction of, and utilize substantial services from, the main provider. An example would be the geographically separate campuses of a single parent hospital that are located at various sites throughout a region. The commenter suggested that such campuses be presumed to be provider-based if they provide substantially the same services as the main provider, do not exceed the size of the main provider, and comply with all other provider-based requirements. Another commenter stated that the "same patient population" requirement should not apply to multi-campus long term care hospital locations. These locations are fundamentally different from other provider-based entities that the regulation addresses, since a long-term care hospital main provider and its remote campus furnish the same services, and offer the same programs of care, but operate in slightly different geographic areas. The commenter suggested that so long as all of the strict financial and administrative integration requirements of the proposed provider-based regulation are satisfied, the "same patient population" requirements should not apply to long-term care hospitals. The result of this criterion would be that satellites will not be established in many underserved areas where long term services are needed. Another commenter believes a specialty facility, such as a long-term care hospital, should be exempt from the geographic proximity requirement if it can demonstrate that it will improve the quality of patient care, and offer services that are not otherwise provided in that area.

Response: We recognize that there may be some cases in which a hospital and another facility seeking provider-based status as a remote location of that hospital may meet most or all other criteria in § 413.65, yet not qualify because the two facilities serve different patient populations. However, we do not agree that this result should lead us to abandon the "same patient population" test. On the contrary, we continue to believe that criterion is a valid indicator of provider-based status. Thus, we did not revise the regulation based on this comment. In this context, we note that there is no Medicare rule that would prohibit a hospital from setting up another hospital in another area. We do not agree with the commenter's assumption that because the program memorandum and proposed rule were issued in response to situations primarily involving outpatient facilities, they can apply only to such facilities. On the contrary, we believe the policies set forth in these documents are equally applicable to inpatient facilities, and should be applied in the many cases in which a determination about inpatient facilities must be made. In particular, the rules apply to remote locations of long-term care and other hospitals that are main providers, as well as to satellite facilities of hospitals and hospital units that are excluded from the hospital inpatient prospective payment system. Remote locations and satellite facilities are discussed more fully earlier in this preamble, and "satellite facilities" are specifically described in our regulations in §§ 412.22(h) and 412.25(e). (As explained in that document, we are concerned that establishment of satellites by hospitals and units excluded from the inpatient PPS could lead to payment abuses, such as circumvention of certain payment caps mandated by section 4414 of the Balanced Budget Act of 1997, and we have therefore established special payment rules for those facilities. Facilities seeking to qualify as "satellites" under the inpatient payment criteria in §§ 412.22(h) and 412.25(e) would first need to comply with the provider-based requirements before being eligible for satellite status.) We have revised the final rule to clarify its application to remote locations of hospitals and satellite facilities.

Comment: The commenter believes that flexibility in the definition of "located in the immediate vicinity" needs to be met with additional considerations when viewing rural and underserved areas; for example, it should not be our intention to eliminate the provider-based designation of a rural health clinic (RHC), when the purpose of the RHC is to be an outreach to geographically isolated areas.

Response: We share the commenter's concern and have developed a special provision for RHCs, as described below.

Comment: A commenter believes that the requirement that provider-based entities serve the same population as the main provider could cause significant problems for RHCs. The unique situations addressed by hospital-based RHCs attempting to satisfy the health care needs of medically underserved areas should be considered as exceptions to the proposed rule.

Response: We continue to believe close physical proximity is an important indicator of provider-based status; however, we recognize that small rural hospitals and their RHCs may not be able to demonstrate that a substantial number of clinic patients receive services from the main provider. Small rural hospitals typically provide limited inpatient care compared to their urban counterparts, which may cause the RHC patients to seek inpatient service from other providers. In light of this, we believe small rural hospitals (less than 50 beds) that own and operate RHCs should not be expected to demonstrate that they serve the same patient population as the main provider. Therefore, we are revising the regulation to allow off-campus RHCs affiliated with small rural hospitals (less than 50 beds) to retain their provider-based status without satisfying that requirement.

Comment: Several commenters opposed the inclusion of paragraph (d)(7)(ii), since they view a State border as an arbitrary boundary inhibiting a hospital's ability to serve patients, which seems counterproductive. They also argued that a regulation that fails to recognize the operation of health care systems that function across State lines is unrealistic. Another commenter suggested that we rely on the proposal concerning serving the same patient population. It was also stated that in one case a provider can be located in a city

split by the State border with its related facility located one mile away, but in another state, while in another case, the provider and its subordinate facility can be a mile apart and in the same State. Another commenter believes that, since Medicare beneficiaries often cross borders for health care services, disallowing hospitals in these areas from establishing provider-based entities eliminates choices and prohibits the development of new services. The commenter recommended that we revise or eliminate this criterion. Another commenter suggested that LTHs and their satellites not be subject to this requirement if the main provider and its satellite are located in two contiguous States. Alternatively, the commenter suggested that we consider using the wage index areas as guidelines for the areas to be served by provider-based entities even if that area crosses State lines.

Response: After reviewing these comments, we have decided to revise the regulations to allow providers in one State to have provider-based facilities in an adjacent State, if doing so is not inconsistent with the law of either State, and other criteria are met, including those related to service to the same patient population.

Comment: With regard to paragraph (d)(7)(i), while the proposed rule permits a provider to show that a "high percentage" of patients of the main provider and the facility come from the same geographic region, new facilities would not have any historical data upon which to base this assertion, and therefore would fail to be able to demonstrate the criteria prior to operation. Another commenter believes the requirement may pose an impediment to new facilities being located in underserved or outlying areas. Thus, the commenters believe the same patient population requirement should not apply to new facilities, including new long-term care hospital satellites.

Response: We agree that it would be appropriate to establish a criterion that could be met by new facilities or organizations, and therefore have revised the final rule to include a special provision for new facilities or organizations. Under this revision, a new facility or organization, (one that has not been in operation for all of the 12-month period immediately preceding the first day of the month in which the application for provider-based status is filed with us), may be considered to meet the criterion on service to the same patient population, if it is located in a zip code area included among those that (during the 12-month period described above) accounted for at least 75 percent of the patients served by the main provider. We note that this provision would not be limited to long-term care hospitals' satellites or their remote locations, but would be available to all new facilities or organizations.

Section 413.65(e) Provider-based status not applicable to joint ventures

Comment: Several commenters expressed concern that this criterion would prohibit the use of joint ventures for entities that want to participate as provider-based entities, and argued that such a prohibition would unnecessarily restrict hospital flexibility. One believes this provision should be eliminated. Another commenter suggested modification of paragraph (d)(2) of the rule to establish majority ownership as the standard rather than 100 percent ownership. Still other commenters suggested that provider-based status for facilities or organizations run as joint ventures should be permitted, as long as the hospital at which the facility is located has the equipment or service under its control.

Response: We reviewed these comments carefully, but did not make any changes in the regulations based on them. When a facility or organization is run as a joint venture of two or more providers, it is by definition under their joint control, and therefore cannot be an integral and subordinate part of any individual provider. We have no interest in discouraging such ventures, but continue to believe they do not qualify as provider-based.

Section 413.65(f) Management contracts

Comment: Several commenters expressed the view that the criterion under which the staff of the facility or organization must be employed by the provider or another organization other than a management company is too restrictive, and should be deleted. One commenter argued that, if the written contract maintains the responsibility and control for services in the hands of the main provider, the employer of the staff working at the site is not relevant. Another believes the criterion will discourage economic efficiencies. If a provider is able to demonstrate integration and subordination of the off-site facility based upon other provider-based criteria, the fact that a hospital chooses to provide certain services either directly through its own employees or indirectly through an independent contractor/management arrangements is irrelevant. Another commenter argued that the proposed criterion is inconsistent with: the provision of the Medicare statute that expressly permits coverage of "services under arrangement"; with the hospital conditions of participation that recognize that contractors may be used to furnish patient care services; and with the Provider Reimbursement Manual, which recognizes that providers commonly contract for management services and the costs of the contract services may be allowed under Medicare principles of reimbursement. Still another commenter believes the proposed criterion would negatively impact the therapy profession, and could impact the health and safety of Medicare beneficiaries.

Response: We do not believe the criterion is overly restrictive, nor do we agree that employment of the staff of a facility or organization is irrelevant to the question of whether that facility or organization is an integral and subordinate part of a provider. On the contrary, employment of the staff of such a facility or organization will normally give the provider significant control over it, thus promoting integration. Conversely, if a facility or organization is staffed by personnel who are employed by another entity that has only a contractual relationship with the provider, the facility or organization may well be an integral and subordinate part of the management company, not of the provider.

We also do not agree that the criterion is inconsistent with section 1861(w)(1) of the Act, which permits providers to make arrangements for the provision of specific health services, nor do we believe adopting this criterion will undercut the ability of providers to have selective services provided under arrangements. In this regard, we point out that existing Medicare policy, stated in section 207 of the Medicare Hospital Manual (HCFA Publication 10), emphasizes the need for the hospital to exercise professional responsibility for the arranged-for services, not merely to serve as a billing mechanism for the other party. This is consistent with our view that section 1861(w)(1) was intended to allow specific health care services to be furnished under arrangements, but was never meant to be a vehicle by which a provider could nominally operate a facility or organization, but, in fact, contract out its operation to another entity. Finally, we note that while there are various sections of the hospital conditions of participation and the Provider Reimbursement Manual that recognize the possibility that specialized health care services or management services may be provided under contract, this does not indicate that providers may

contract out entire departments or services while claiming them as provider-based. To clarify the scope of the requirement on contracted services, we have revised it to state that management staff of the facility or organization (rather than health care or support staff) need not be employed directly by the provider. We have also revised the rule to clarify that if staff of the facility or organization (other than management staff) are employed by an organization other than the management company or the provider, it must be the same organization that also employs the staff of the main provider.

Section 413.65(g) Obligations of hospital outpatient departments and hospital-based entities

Section 413.65(g)(1)

Because of the direct relationship between the proposed changes in this section and those in § 489.24(b), comments on both proposals are discussed later, under § 489.24(b), "Special responsibilities of Medicare hospitals in emergency cases."

Comment: A commenter requested clarification as to the application of the anti-dumping requirement in the home health setting.

Response: Section 413.65(g)(1) states that the EMTALA requirements apply to hospital outpatient departments. EMTALA requirements would not apply to off-campus provider-based entities that are not hospital departments, such as home health agencies.

Section 413.65(g)(2)

Comment: While one commenter agreed with the requirement under § 413.65(g)(2) for billing of physician services with the appropriate site-of-service indicator, another commenter also believes there should be clarification that correct billing is the responsibility of the entity performing the billing function. Both commenters suggested that the hospital notify physicians who do their own billing that they must use the correct indicator; they agree that it should not be the responsibility of the hospital.

Response: We agree that physicians (or those to whom they assign their billing privileges) are responsible for appropriate billing, but note that physicians who practice in hospitals, including off-site hospital departments, do so under privileges granted by the hospital. Thus, we believe the hospital has a role in ensuring proper billing.

Section 413.65(g)(5)

Comment: Presently, provider-based clinics bill Medicare for the facility charge on a UB–92 form, and the physician fee is billed separately on a HCFA–1500 form, while other payers may accept a single bill for both charges. A commenter believes it is inappropriate to mandate that two bills be submitted for all patients, as long as charges for similar services are uniform regardless of payer.

Response: As explained further below, we have revised the final rule to eliminate the part of this criterion relating to billing of services to non-Medicare patients. We believe this responds to this commenter's concern.

Comment: Many commenters stated that Medicare should treat a facility that claims a facility fee as being provider-based even when other payers do not do so, reasoning that as long as the hospital claims that the patient is an outpatient for Medicare purposes, the practices of other payers, with respect to similar patients, are not significant, and should be ignored. Another commenter believes this requirement should be eliminated, because, in the commenter's view, it has no bearing on the outpatient services delivered to Medicare beneficiaries, and therefore does not affect Medicare reimbursement. To illustrate, a large commercial insurer does not have the capability to accept certain types of outpatient claims from hospitals; therefore, it requires claims for those services to be billed on a physician claim form, so hospitals will receive the proper reimbursement. If this criteria is retained as proposed, many hospital-based departments would not meet our criteria due to the nuances of other payers' policies, that are often contractual issues with providers. Still another commenter believes that we should reexamine the proposal made in paragraph (g)(5), and at a minimum, clarify what it means by its proposal mandating uniform "treatment of all patients, for billing purposes, as hospital outpatients." If we are proposing to mandate that all outpatients be billed on the same basis, this would effectively extend Medicare direct billing or rebundling rules to all payers. In addition, this proposed requirement would not only be contrary to past policy and practice, but would affect departments that have differentiated billing practices. Another commenter stated that payers typically determine payments based upon how they define a particular service or their individual market power; Medicare certification of outpatient departments should not be influenced by how unrelated third parties pay for services to the patients they cover at these sites. Moreover, this criterion would be very difficult to implement, because hospitals can have hundreds of contracts with insurance companies and the providers that subcontract for part of the risk for plans.

Response: After review of the comments on this section, we have decided to revise it to restrict the requirement for uniform billing to Medicare patients only, thus allowing hospitals to bill other payers in whatever manner is appropriate under those payers' rules. As revised, § 413.65(g)(6) states that hospital outpatient departments (other than RHCs) must treat all Medicare patients, for billing purposes, as hospital outpatients. The department must not treat some Medicare patients as hospital outpatients and others as physician office patients.

Comment: A commenter stated that there appears to be some confusion as to whether this requirement applies to "departments" or all facilities and organizations seeking provider-based status. Also, the commenter asked if there is a provision of the proposed rule that mandates that a facility fee be charged to patients of facilities and organizations receiving provider-based status.

Response: As noted earlier, the proposed rule would not apply this criterion to provider-based entities (which may participate separately as providers) but only to provider-based departments. Regarding the second issue, we have, as described in response to the preceding comment, revised the final rule to eliminate the criterion regarding billing of payers other than Medicare.

Section 413.65(g)(7)

Comment: A commenter stated that requiring written notice for each patient (presumably signed by the patient), would be an overly burdensome requirement, and requested that the requirement allow for a clear, prominently displayed sign in lieu of individual notice. Another commenter believes that the proposed requirement would apply a standard to hospital outpatient departments that is not applied to any other site of service.

Response: First, we emphasize that notice is required only for Medicare beneficiaries, not for all patients. We recognize that providing notice will generate some burden for the provider, but believe that the protection it affords to patients warrants the requirement. We considered allowing the notice requirement to be satisfied through the posting of signs, as recommended by one commenter, but concluded that use of individual written notices would more effectively ensure that each

beneficiary receives the necessary information. In response to the comment concerning settings other than hospital outpatient departments, we note that in other settings, a patient is unlikely to be misled as to what type of facility is the site of treatment, so provision of notice is not required. To avoid confusion as to when the requirement applies, we have revised the final rule to state that notice is required only if the hospital outpatient department or provider-based entity is not located on the campus of the hospital that is the main provider. We have revised this final rule to specify that the notice must be in writing, must be one the beneficiary can read and understand, and must be given to the beneficiary's authorized representative if the beneficiary is unconscious, under great duress, or for any other reason unable to read a written notice and understand and act on his or her own rights.

Section 413.65(g)(9) (redesignated in this final rule as Section 413.65(h), Furnishing all services under arrangement)

Comment: A commenter observed that § 413.65(g)(9) does not preclude an outpatient facility from obtaining a certain type of service from an off-site supplier. If this is correct, if the service is provided on-site in the hospital's outpatient facility, it is not clear how the proposed regulations are intended to be applied. It would appear that if the facility is looked at as a whole, all services are not provided "under arrangements"; therefore, paragraph (g)(9) of this section would not preclude the facility from being recognized as provider-based. However, in this case, the commenter stated that both licensure and ownership requirements would be difficult to satisfy. In most cases, that portion of the facility that is operated "under arrangements" with the hospital will not be on the hospital's license, nor will that portion necessarily be owned by the hospital. Thus, the commenter urged that the "under arrangements" portion of an outpatient facility be excluded from the licensure and ownership analyses.

Response: We agree that where a facility offers a variety of services, provision of a single type of service under arrangement would not prevent the facility from meeting this criterion. The criterion could not, of course, be met by a facility that furnished only a specific type of service (such as physical therapy), and provided that service only under arrangement. In the case envisioned by the second commenter, the facility would be out of compliance with licensure and ownership requirements, as well as the requirement involving services under arrangement, and we would agree that it could not be provider-based.

Comment: A commenter asked for clarification of "under arrangements", in reference to our other regulations that contain these terms. Also, the commenter requested clarification on the types of services to which this standard applies, that is, direct patient care as opposed to facility related services.

Response: The term "arrangements" is defined in section 1861(w)(1) of the Act and the Medicare regulations § 409.3, in that "arrangements" refers to arrangements that provide that Medicare payment made to the provider that arranged for the services discharges the liability of the beneficiary or any other person to pay for the services. We wish to emphasize that the provision will apply to patient care services, not housekeeping, security, billing, or other services that are not patient care services but are needed to support their provision.

Section 413.65(h) Inappropriate treatment of a facility or organization as provider-based (redesignated in this final rule as paragraph (i))

Comment: This section establishes sanctions that may be used to address a main provider that has treated an entity as provider-based without our review and approval. A commenter believes that the investigation phase should precede the review of payments to the main provider. A commenter was also concerned that the individuals involved in these reviews and investigations are properly trained to make the required determinations.

Response: We believe review of payments will encompass two activities—investigation to determine whether applicable provider-based requirements were met, and a calculation of the amount of overpayment if they were not. Thus, investigation necessarily precedes recovery, but is a part of the overall effort, which is to reconsider payment amounts. To respond more effectively to concerns about how the review and recovery activities will occur, and to clarify the specific actions we will take in cases of inappropriate billing, we have reorganized paragraph (i) to deal separately with the processes of determination and review, recovery of overpayments, and the good faith effort exception. With respect to determination and review, we state that if we learn that a provider has treated a facility or organization as provider-based and the provider had not obtained a determination of provider-based status under this section, we will review current payments and, if necessary, take action in accordance with the rules on inappropriate billing in paragraph (j), investigate and determine whether the requirements for provider-based status in paragraph (d) of § 413.65 (or, for periods prior to October 10, 2000, the requirements in applicable program instructions) were met, and review all previous payments to that provider for all cost reporting periods subject to re-opening in accordance with § 405.1885 and § 405.1889 of this chapter. With respect to recovery of overpayments and the good faith exception, we have clarified that we will recover only the difference between the amount of payments that actually were made and the amount of payments that we estimate should have been made in the absence of a determination of provider-based status, and that recovery will not be made for any period prior to the effective date of these final rules if during all of that period the management of the entity made a good faith effort to operate it as a provider-based facility or organization, as described in paragraph (h)(3) of § 413.65. In response to the comment about the competence of individuals involved in these activities, we wish to emphasize that we will ensure that staff involved in these activities have the necessary expertise.

Comment: A commenter believes that it would be unfair to apply the proposed regulations retroactively, that is, to periods before the effective date of the final rule. Even though paragraphs (h) and (i) provide for a good faith exception, it is still unfair to provide that the conditions for this exception will apply prior to the effective date of the final regulation. The commenter requested that these sections be revised to provide that the period of recovery will not extend to any period prior to the effective date of the final regulations. Another commenter also believes that any payment changes be prospective (unless the hospital did not make a good faith effort to operate the site as provider-based).

Response: We agree that it would be inappropriate to apply the rules in paragraph (h) to any period prior to their effective date, and have revised the final rule to clarify that for such periods, we will make determinations based on the program memoranda or other instructions in effect at the time. However, the criteria in paragraph (i) that form the basis for a good faith exception were in effect prior to the issuance of these regulations. Regarding

the last comment, we cannot agree to ignore possible overpayments resulting from noncompliance with published criteria in effect at that time.

Comment: A commenter believes that the term "good faith effort" should be defined to provide more direction and opportunity to comply. Also, entities making "good faith efforts" should be given an opportunity to correct those factors or criteria that render it out of compliance with the provider-based requirements.

Response: The conditions under which a provider will be found to have made a good faith effort were clarified in § 413.65(i)(2), and have been restated in the final rule.

Section 413.65(i) Inappropriate billing (redesignated in this final rule as paragraph (j))

Comment: A commenter believes that suspending all payments for outpatient services to facilities that have billed inappropriately as provider-based entities until the provider can demonstrate that payments are proper is too onerous. Instead, the commenter suggested that we consider suspending the reimbursement differential between a provider-based entity and a nonprovider-based entity until a determination is made or the facility has had a reasonable opportunity to comply.

Response: We understand the commenter's concern and have revised the final rule to authorize partial suspension of payment (that is, a reduction in payment) to the extent needed to prevent creation of an overpayment to the provider. This rule will allow payment to continue at a reduced rate, thus avoiding creation of financial hardship for the provider. To describe more clearly how we will deal with instances of inappropriate billing, we have reorganized paragraph (j) of § 413.65 to spell out more clearly the actions we will take, and the extent to which payment will be adjusted. Specifically, we state that if we find that a facility or organization is being treated as provider-based without having obtained a determination of provider-based status under this section, we will notify the provider, adjust future payments, review previous payments, determine whether the facility or organization qualifies for provider-based status under this paragraph, and continue payments only under specific conditions. The notice to the provider will explain that payments for past cost reporting periods may be reviewed and recovered, that future payments for services in or of the facility or organization will be adjusted, and that a determination of provider-based status will be made.

We further state that we will not stop all payment in such cases, but instead, will adjust future payments to approximate as closely as possible the amounts that would be paid in the absence of a provider-based determination, if all other requirements for billing were met. We also explain that we will review previous payments and, if necessary, take action in accordance with the rules on inappropriate treatment of a facility or organization described above. The regulation states that we will determine whether the facility or organization qualifies for provider-based status under the criteria in this section. If we determine that the facility or organization qualifies for provider-based status, future payment for services at or by the facility or organization will be adjusted to reflect that determination. Even if the facility or organization does not qualify for provider-based status, however, we will continue paying, at an appropriately adjusted level, for a limited time period in order to avoid disruption of services to program beneficiaries at that site and to allow an orderly transition to freestanding status.

The notice of denial of provider-based status sent to the provider will ask the provider to notify us in writing, within 30 days of the date the notice is issued, as to whether the facility or organization (or, where applicable, the practitioners who staff the facility or organization) will be seeking to enroll and meet other requirements to bill for services in a free-standing facility. If the provider indicates that the facility, organization, or practitioners will not be seeking to enroll, or if we do not receive a response within 30 days of the date the notice was issued, all payment will end as of the 30th day after the date of notice. If the provider indicates that the facility or organization, or its practitioners, will be seeking to enroll and meet other requirements for billing for services in a free-standing facility, payment for services of the facility or organization will continue, at the adjusted amounts described in paragraph (j)(2) of this section for as long as is required for all billing requirements to be met (but not longer than 6 months) if—

- The facility or organization, or its practitioners, submit a complete enrollment application and provide all other required information within 90 days after the date of notice, and
- The facility or organization, or its practitioners, furnish all other information we need to process the enrollment application and verify that other billing requirements are met.

If the necessary applications or information are not provided, we will terminate all payment to the provider, facility, or organization as of the date we issue notice that necessary applications or information have not been submitted. We have clarified the final rule to state that these reductions will occur where inappropriate billing is or has been taking place.

Comment: A commenter believes that there are already existing mechanisms for overpayment and recoupment that may be used in the situations described in this section. At the very least, administrative actions of this type should be subject to time frames in order to protect providers from the impact of extended investigations.

Response: We plan to conduct any recovery efforts in accordance with applicable law and regulations on overpayment recovery. However, investigations may be complex and require examination of many records, and we do not agree that they should be limited by additional, self-imposed restrictions.

Comment: A commenter stated that a facility or organization that requests a provider-based determination prior to the effective date of the final rule, and meets the good faith requirements, should not be subject to recovery of overpayment for periods either before or after the effective date of the final rule. This will prevent disruptions to existing arrangements that meet the good faith exception during the time that the request is being processed.

Response: If we were to adopt this proposal, we would be guaranteeing an overpayment to providers who, for a specific time period, knowingly billed for services as those of provider-based entities, even though they met only a few of the provider-based criteria. Thus, we did not adopt this comment.

Comment: A commenter requested that the requirement found at paragraph (i)(2)(iii) be clarified to state that management is only responsible for professional services billed by the hospital.

Response: As explained earlier, we believe hospitals' privileging mechanisms give them adequate leverage to prevent inappropriate billing by practitioners using their facilities. Therefore, we did not adopt this comment.

Comment: As to the good faith criteria found in paragraph (i)(2), a commenter questioned why requirements related to public awareness were chosen for inclusion. An organization can represent itself to the public in any number of inaccurate ways in order to mislead our officials and others. The

commenter believes that we should focus our attention on more tangible expressions of good faith efforts to operate a provider based entity.

Response: We believe inclusion of this requirement is needed to help ensure that beneficiaries are protected from unexpected deductible and coinsurance liability. While we agree with the commenter that some providers may misrepresent the status of off-site facilities, we believe such providers cannot reasonably be said to have acted in good faith, and should not receive favorable treatment with respect to past overpayments.

Section 413.65(j) Correction of errors (redesignated in this final rule as paragraph (k))

Comment: A commenter disagreed with the language in this subsection that would allow us to review and rescind, if appropriate, any past determinations. The commenter believes that this subsection should be removed and any previous determinations should be grandfathered in under the new regulations. Other commenters recommended that we grandfather facilities or organizations that had previously been determined by the regional office to be provider-based, or that have not received such a determination but have been billing as provider-based without a determination for a period of at least ten years, so that those facilities or organizations could retain provider-based status even though they do not meet the criteria in the regulations.

Response: We do not agree that it would be appropriate to grandfather existing facilities or organizations, since this would in effect create an ongoing double standard, under which some facilities or organizations are held to higher standards than others. Moreover, the fact that improper billing may have continued undetected for a long period is not a reason to continue to permit such billing. As explained in the response to the following comment, however, any adverse determination regarding provider-based status of facilities or organizations which we previously determined were provider-based will not be effective until the start of the cost reporting period after the period in which the provider is notified of the redetermination, or for at least 6 months, whichever date is later.

Comment: A commenter believes that our proposal that we may review past provider-based determinations inserts needless uncertainty into the process for making provider-based designations. The commenter is concerned that providers may file before the final rule is published in order to avoid a crush of applications and subsequent disruption in payment, if they do not have a determination within 30 days of the rule becoming final. The commenter stated that providers need to be able to receive prompt determinations on which they can rely.

Response: We understand the concern about avoiding the need to process a large number of applications in a short time, and agree that it would not be appropriate to make abrupt changes in provider-based status. To avoid a possible crush of applications within a 30-day period, as envisioned by the commenter, we are providing the delayed effective date described earlier in this document. In addition, under § 413.65(j) of these regulations, when a facility or organization that previously was determined to be provider-based is found to no longer qualify for provider-based status, treatment of the facility or organization as provider-based will not cease until the first day of the first cost reporting period following notification of the redetermination, but not less than 6 months after the date the provider is notified of the redetermination. If there has been no prior determination of provider-based status, and a facility or organization is later found not to meet the criteria, that determination may be effective up to 6 months after the date the provider is notified of the determination, if within 30 days of the determination, the provider indicates that the facility or organization, or its practitioners, will enroll separately and, within 90 days, the facility or organization, or its practitioners, take other necessary action to enroll.

Section 489.24(b) Special responsibilities of Medicare hospitals in emergency cases

Comment: One commenter disagreed strongly with the proposed revisions to the regulation defining "comes to the emergency department," and in particular expressed the view that patients arriving on the campus, sidewalk, driveway, or parking lot of hospital facilities should not be considered to have come to the emergency department. The commenter stated the view that an obligation under section 1867 of the Act (sometimes referred to as the Emergency Medical Treatment and Active Labor Act (EMTALA), after the original title of the legislation adding section 1867) and our regulations at §§ 489.20(l), (m), (q), and (r), and § 489.24 should be triggered only by a presentation to the emergency department, and that only in exceptional situations should EMTALA apply to someone not technically in the emergency department. The commenter recommended that the regulations be revised to state that in these cases, the hospital may rely on a variety of transport options, consistent with the individual's condition and established policies that are applied in a nondiscriminatory manner. The commenter also recommended that the statute be interpreted as requiring only that hospitals with emergency departments have policies and procedures to assure that a person who presents to the hospital requesting emergency services is provided a medical screening examination and, if needed, stabilization or an appropriate transfer.

Another commenter raised several arguments against the proposed change. The commenter stated that there is a legal and ethical conflict in requiring hospital personnel to leave an area of patient care and furnish assistance to another patient in a remote area of the hospital. The commenter also believes that ED personnel are not well-trained or practiced in immobilization or scene safety, and patients and staff may be put at risk if staff are asked to go into the field and render aid to a victim who needs the expert care and experience for which field emergency medical services (EMS) personnel are trained. Finally, the commenter expressed concern about possible increases in the liability insurance cost to hospitals as a result of the proposed change.

Response: We do not agree that the proposed language inappropriately extends the scope of hospitals' EMTALA responsibilities. On the contrary, existing regulations at § 489.24 make it clear that EMTALA applies to hospitals that offer services for emergency medical conditions, and we believe it would defeat the purpose of EMTALA if we were to allow hospitals to rely on narrow, legalistic definitions of "comes to the emergency department" or of "emergency department" to escape their EMTALA obligations. We would also note, as discussed further below, that there is no requirement that all areas of the hospital be equipped to provide emergency care or that treatment always be provided outside the emergency area or department. Similarly, there is no prohibition of appropriate transfers to other facilities where such a transfer is conducted in accordance with § 489.24. On the contrary, the intent of the revised regulation is to ensure that patients who come to the hospital and request examination or treatment for what may be an emergency medical condition are not denied EMTALA protection simply because they enter the

wrong part of the hospital or fail to make their way to the emergency room.

Comment: Two commenters recommended clarification of the applicability of section 1867 of the Act regarding transfer requirements to scheduled patients at an "off-campus" hospital site, to ensure that the movement of scheduled patients unexpectedly requiring a higher level of care to another site of the same hospital is not construed as a "transfer" under the emergency access law, and that only those patients taken from one hospital's off-campus facility to another hospital's emergency department or inpatient unit be considered "transfers" that must be in accordance with the requirements of section 1867.

Response: We agree that movement of a patient from one part of a hospital to another, including movement from a remote location to a main hospital campus, does not constitute a "transfer" for EMTALA purposes, nor does it require compliance with the appropriate transfer requirements in § 489.24(d). The final regulations at § 489.24(i)(3)(i) clarify this policy.

Comment: A commenter expressed the view that the proposed revision to § 489.24 does not recognize the role that EMS personnel play in emergency situations and the true medical benefit provided by EMS personnel to patients in emergency situations. The commenter recommended that language be included in the regulation to authorize hospitals' use of EMS in responding to emergency situations on hospital grounds.

Response: We agree that EMS personnel can play a valuable role in transporting patients to appropriate sources of emergency care. A hospital may not, however, meet its EMTALA obligations merely by summoning EMS personnel. EMS may be used appropriately in conjunction with an appropriate hospital response to treat and move an individual who is already on hospital property. We therefore did not make any change to these regulations to authorize exclusive use of EMS to respond to emergency situations on hospital property.

Comment: A number of commenters stated that the anti-dumping rules implemented under section 1867 of the Act (EMTALA requirements) and our regulations at §§ 489.20(l), (m), (q), and (r), and § 489.24 should apply to the hospital's main campus and to all emergency departments. However, they argued that it is not reasonable to apply these rules to outpatient departments located off-campus that would not be set up to provide emergency services. In the commenters' view, it should suffice that patients in an emergency situation be directed to the hospital's emergency room. Another commenter stated that EMTALA obligations should be limited to those hospital entities that hold themselves out as providing emergency services, and should not be enforceable anywhere outside the emergency department or anywhere on hospital property, including an outpatient department or provider-based entity. Another commenter stated that the enforcement of this requirement would lead to the elimination of service-specific outpatient departments located off a main campus, and asked that we reconsider our policy. One commenter expressed concern that patients identifying a facility as a hospital-based department could mistakenly assume it is equipped to handle emergency cases. Another commenter believes that hospitals should be required to have policies and procedures in place to assure that all parts of the hospital are prepared to deal with getting an individual the appropriate medical screening.

Response: Existing regulations at § 489.24(b) define "hospital with an emergency department" to include all hospitals that offer services for emergency medical conditions, not just those that have organized emergency rooms or departments. To the extent a hospital acquires or creates an off-campus location, identifies it to us and to the public as a part of that hospital, and claims payment for services at that location as hospital services, we believe it is not unreasonable to expect that hospital also to assume the obligations, including compliance with EMTALA requirements, which flow from hospital status. This principle does not mean, of course, that a hospital must have a fully equipped and staffed emergency department at each location. It also does not mean that every appearance by an individual at an off-campus hospital department that does not offer services for emergency medical conditions will necessarily trigger an EMTALA obligation on the part of the hospital. Individuals come to these departments for many medical purposes which may not involve potential emergency medical conditions. Under these circumstances, the hospital would not have an EMTALA obligation with respect to that individual. This principle does mean, however, that if an individual comes to an off-campus department of a hospital and a request is made for examination or treatment for a potential emergency medical condition, the hospital incurs an obligation to provide, *within its capability*, an appropriate medical screening examination and necessary stabilizing treatment. In some cases, the patient may need to be taken back to the main hospital campus for a full screening and/or stabilizing treatment. Under these circumstances, the hospital is responsible for moving the patient or arranging his or her safe transport, but this movement would not be considered a "transfer" under § 489.24(b), since the patient is merely going from one part of the hospital to another. If it is necessary to transfer the patient to another medical facility, the hospital must provide an appropriate transfer in accordance with § 489.24(d).

After review of the comments on this issue, we have decided to revise the regulations to state more clearly the extent of a hospital's EMTALA obligations with respect to patients who come to a hospital department located off the hospital's main campus. Provider-based entities, such as SNFs or HHAs, located off the hospital campus would not, of course, be subject to EMTALA since a patient coming to such an entity would not have come to the hospital. We will require that each off-campus hospital department, during its regular hours of operation, have in effect procedures for: (1) assessing the possibility that an emergency medical condition exists, and providing such screening (as defined in § 489.24(a) and (b)) and necessary stabilization (as defined in § 489.24(c)) at the off-campus site); (2) transporting the patient to the hospital's emergency room or department for screening and necessary stabilization meeting the requirements of § 489.24; or (3) providing an appropriate transfer to another facility in accordance with the requirements in § 489.24(c). To meet these requirements, the hospital will need to develop procedures that permit staff of the off-campus department to contact emergency physicians or other qualified emergency practitioners at the main hospital campus, to obtain advice and direction regarding the handling of any potential emergencies, and to obtain prompt medical transport, by hospital-owned or other ambulance or other appropriate vehicle, either to the main hospital campus or, where an appropriate transfer is being provided, to another medical facility.

Specifically, we are adding new paragraph (i) to § 489.24 to describe a hospital's obligations. The paragraph states that, if an individual comes to a facility or organization that is located off the main hospital campus as defined in § 413.65(b), but has been determined under § 413.65 of this chapter to be a department of the hospital, and a

request is made on the individual's behalf for examination or treatment of a potential emergency medical condition as otherwise described in paragraph (a) of § 489.24, the hospital is obligated to provide the individual with an appropriate medical screening examination and any necessary stabilizing treatment.

The capability of the hospital includes that of the hospital as a whole, not just the capability of the off-campus facility or organization. Except for cases described in paragraph (i)(3)(iii) (those in which the main hospital campus does not have the specialized capability or facilities needed to treat the individual, or the individual's condition is deteriorating so rapidly that transport to the main campus would significantly jeopardize the life or health of the individual), the obligation of a hospital under this section must be discharged within the hospital as a whole. However, the hospital is not required to locate additional personnel or staff to off-site locations to be on standby for possible emergencies.

In § 489.24(i)(2), Protocols for off-campus departments, we further state that the hospital must establish protocols for the handling of potential emergency cases at off-campus departments. These protocols must include provision for direct contact between personnel at the off-campus department and emergency personnel at the main hospital campus, and may provide for dispatch of practitioners, when appropriate, from the main hospital campus to the off-campus department to provide screening or stabilization services. The intent of these requirements is to ensure timely exchange of information between the two sites, and to allow the hospital the flexibility to bring emergency personnel to the patient, rather than the opposite, where doing so is the best medical approach to meeting the patient's needs.

Under the final rule, if the off-campus department is an urgent care center, primary care center, or other facility that is routinely staffed by physicians, RNs, or LPNs, these personnel must be trained, and given appropriate protocols, for the handling of emergency cases. At least one individual on duty at the off-campus department during its regular hours of operation must be designated as a qualified medical person as described in paragraph (d). The qualified medical person must initiate screening of individuals who come to the off-campus department with a potential emergency medical condition, and may be able to complete the screening and provide any necessary stabilizing treatment at the off-campus department, or to arrange an appropriate transfer.

The final rule further states that if the off-campus department is a physical therapy, radiology, or other facility not routinely staffed with physicians, RNs, or LPNs, the department's personnel must be given protocols that direct them to contact emergency personnel at the main hospital campus for direction. Under this direction, and in accordance with protocols established in advance by the hospital, the personnel at the off-campus department must describe patient appearance and reported symptoms and, if appropriate, arrange transportation of the individual to the main hospital campus (if the main hospital campus has the capability required by the individual, and movement to the main campus would not significantly jeopardize the individual's life or health), or assist in an appropriate transfer. Movement of the individual to the main campus of the hospital is not considered a transfer under this section, since the individual is simply being moved from one department of a hospital to another department or facility of the same hospital.

Finally, specific rules apply if the individual's condition warrants movement to a facility other than the main hospital campus, either because the main hospital campus does not have the specialized capability or facilities required by the individual, or because the individual's condition is deteriorating so quickly that taking the time required to move the individual to the main hospital campus could place the life or health of the individual in significant jeopardy. Under these circumstances, personnel at the off-campus department must, in accordance with protocols established in advance by the hospital, assist in arranging an appropriate transfer of the individual to a medical facility other than the main hospital. The hospital must have protocols to ensure that the movement is an appropriate transfer in accordance with paragraph (d)(2) of this section. The protocol must include procedures and agreements established in advance with other hospitals or medical facilities in the area of the off-campus department to facilitate these anticipated transfers. We note that the interpretive guidelines for enforcement of EMTALA requirements will be revised to conform to these new rules.

Section 498.3 Scope and applicability

Comment: A commenter asked for clarification as to whether appeal rights would be available in the event of revocation by us of provider-based status.

Response: We have revised § 489.3(b)(2) to specify that a determination that a facility or organization no longer qualifies for provider-based status is an initial determination, thus providing an administrative appeals mechanism for these decisions.

D. Requirements for Payment

We proposed to revise § 410.27, Outpatient Hospital Services and Supplies Incident to a Physician Service: Conditions, to require that services furnished at a location other than an RHC or an FQHC that we designate as having provider-based status under § 413.65 must be under the direct supervision of a physician as defined in § 410.32(b)(3)(ii).

Comment: Several commenters requested clarification of what we mean by "direct supervision." One commenter asked that we further define the nature and extent of the supervision needed to comply with our proposal. One commenter asked whether the supervision requirement would be met if a physician is in the hospital or whether the physician must be in the department while the procedure is being performed. The same commenter asked whether the physician billing for the incident to services must be of the same specialty as the procedure being performed. A large trade association stated that we appear to be replacing our current policy in section 3112.4(A) of the Intermediary Manual, which states that we assume the physician supervision requirement to be met when incident to services are furnished on hospital premises, with a policy requiring direct physician supervision at all times, in all outpatient departments, regardless of whether or not they are located on the hospital campus. The commenter recommended that if we retain a direct supervision requirement, it should be limited to outpatient departments located off-site of the main provider. One commenter stated that facilities and organizations accorded provider-based status that are located on the main provider's campus should be subject to the same physician supervision requirements that apply to "incident to" services provided elsewhere on the campus.

Response: We regret that our proposal to define "direct supervision" by referring to the definition of "direct supervision of a physician" given at § 410.32(b)(3)(ii) may have been confusing to some commenters. Section 410.32(b)(3)(ii) defines "direct supervision" within (a physician) office

setting as meaning that the physician must be present in the office suite and immediately available to furnish assistance and direction throughout the performance of the procedure. The definition at § 410.32(b)(3)(ii) goes on to state that "direct supervision" does not mean that the physician must be present in the room when the procedure is performed.

Our intention in the proposed rule was to define "direct supervision" of hospital outpatient services incident to physician services when they are furnished at a department of a hospital to mean that a physician must be present on the premises of the entity accorded status as a department of the hospital and, therefore, immediately available to furnish assistance and direction for as long as patients are being treated at the site. By "direct supervision" we do not mean that the physician must physically be in the room where a procedure or service is furnished. Nor does the supervising physician necessarily have to be of the same specialty as the procedure or service that is being performed. We emphasize that our proposed amendment of § 410.27 to require direct supervision of hospital services furnished incident to a physician service to outpatients applies to services furnished at an entity that is located off the campus of a hospital that we designate as having provider-based status as a department of a hospital in accordance with the provisions of § 413.65. Our proposed amendment of § 410.27 to require direct supervision of hospital services furnished incident to a physician service to outpatients does not apply to services furnished in a department of a hospital that is located on the campus of that hospital. For hospital services furnished incident to a physician service to outpatients in a department of a hospital that is located on the campus of the hospital, we assume the direct supervision requirement to be met as we explain in section 3112.4(A) of the Intermediary Manual. The requirement at § 410.27 does not affect the definition of physician supervision in section 3112.4(A) of the Intermediary Manual. In response to these comments, we have revised our definition of "direct supervision by a physician" in the final regulation.

Comment: A major trade association asserted that requiring a physician to be on-site at a provider-based entity throughout the performance of all "incident to" services would be burdensome and costly for hospitals where there are a limited number of physicians available to provide coverage, particularly in rural settings. Another commenter believes that entities with provider-based status should not be subject to physician supervision requirements that are more stringent than those applicable to free-standing facilities. A third commenter believes that this requirement is unnecessary because the requirements for integration with the hospital and other requirements for provider-based status include adequate checks and balances to ensure quality care. The commenter recommended that this proposal be omitted from the final rule with the potential for a separate, better defined, proposal at a later date.

Response: We disagree with commenters who believe the proposed supervision requirement is not necessary or that it would be burdensome to the hospital. First, the supervision requirement is separate from and independent of the provider-based requirements, and hospitals and physicians already have to meet a direct supervision of "incident to" services requirement that is unrelated to provider-based issues. That is, we require that hospital services and supplies furnished to outpatients that are incident to physician services be furnished on a physician's order by hospital personnel and under a physician's supervision (Intermediary Manual, section 3112.4(A)). We assume the physician supervision requirement is met on hospital premises because staff physicians would always be nearby within the hospital. The effect of the regulations in this final rule is to extend this assumption to a department of a provider that is located on the campus of a hospital. However, the regulation *does not* extend the assumption of supervision to a department of a hospital that is located off the campus of the hospital. We would not extend this assumption to a provider-based entity, regardless of its location, because the "incident to" requirement in § 410.27(a)(1)(iii) applies only to hospitals. Also, as we state above, satisfying the requirements to be designated provider-based is unrelated to our requirement that hospital services furnished incident to a physician service to outpatients at an entity that has provider-based status be under the direct supervision of a physician. Finally, this supervision requirement is entirely consistent with the direct supervision requirements currently set forth in the Medicare Carriers Manual, Part 3, section 2050.1(B).

Comment: One commenter suggested that partial hospitalization services furnished by a hospital to its outpatients be exempt from the outpatient department "incident to" requirements, or that other requirements be drafted that would, in the commenter's opinion, be more appropriate to the nature of this care.

Response: Section 1861(s)(2)(B) restricts coverage of partial hospitalization services furnished by a hospital to its outpatients to services that meet "incident to" requirements. We do not have the discretion to ignore this statutory restriction.

Comment: One commenter asked that we provide an exception to the direct supervision requirement in the case of physical therapy services. The commenter questioned why therapists who furnish the same services in a provider-based entity that they would furnish in an independent practice should be subject to direct physician supervision in one setting and not the other.

Response: The provision on coverage for outpatient physical therapy and occupational therapy services does not require that they be "incident to" physician services (see section 1861(s)(2)(D) of the Act). Therefore, there is no need to exempt them from the supervision requirement for outpatient hospital services incident to a physician service that is furnished at a provider-based entity. We therefore made no change in the final regulation based on this comment.

Comment: One commenter suggested that we modify our proposed regulation to waive the direct supervision requirement in entities with provider-based status for certain procedures for which we already waive the direct supervision requirement when the procedures are performed on homebound patients, as set forth in section 2051 of the Medicare Carriers Manual. The commenter believes that general supervision is sufficient for these waived services, for example, the physician need not be present, but the services must be performed under a physician's overall supervision and control, and ordered by a physician.

Response: Under section 2050.2 of the Medicare Carriers Manual, subject to certain requirements, we waive the direct supervision requirement when the following services are furnished to homebound patients: injections; venipuncture; EKGs; therapeutic exercises; insertion and sterile irrigation of a catheter; changing of catheters and collection of catheterized specimen for urinalysis and culture; dressing changes, for example, the most common chronic conditions that may need dressing changes are decubitus care and gangrene; replacement and/or insertion of nasogastric tubes; removal of fecal

impaction, including enemas; sputum collection for gram stain and culture, and possible acid-fast and/or fungal stain and culture; paraffin bath therapy for hands and/or feet in rheumatoid arthritis or osteoarthritis; and, teaching and training the patient for the care of colostomy and ileostomy, the care of permanent tracheostomy, testing urine and care of the feet (diabetic patients only), and blood pressure monitoring. While we believe the commenter's suggestion has merit, we do not believe it would be appropriate to adopt it before we have had time to analyze the issue further. Therefore, we did not revise the final rule based on this comment.

In our proposed rule, we proposed to require that the same supervision levels established for diagnostic x-ray and other diagnostic tests in accordance with § 410.32(b)(3) be required when these tests are furnished at an entity that has been accorded provider-based status by us.

Comment: A large industry federation generally favored our requiring that diagnostic tests be furnished at provider-based entities under levels of physician supervision that we specify, consistent with the definitions of general, direct, and personal supervision established at § 410.32(b)(3). The commenter suggested that we modify the definition of general supervision to make it clear that the training of nonphysician personnel and the maintenance of necessary equipment and supplies are the responsibility of the hospital, not the physicians.

Response: We agree and we will modify our regulation accordingly.

Comment: Numerous commenters, including radiology and imaging specialty groups, neurologists, vascular technologists, and sonographers, questioned the level of supervision required for various specific diagnostic tests and services.

Response: Our model for this proposed requirement was the requirement for physician supervision for diagnostic tests payable under the Medicare physician fee schedule that was issued in the October 31, 1997 physician fee schedule final rule (for CY 1998) (62 FR 59048). There have been issues raised about the appropriate level of supervision for some specific diagnostic services, similar to the comments we received about our proposed regulation. We have not yet resolved these issues, and this final rule is not the place to convey decisions about appropriate supervision levels for specific diagnostic tests and services by individual HCPCS code. In January 1998, we sent a memorandum to all Associate Regional Administrators advising them to instruct carriers to follow their existing policies on physician supervision of diagnostic tests until we provide further instruction. We intend to instruct hospitals and intermediaries to use the October 31, 1997 physician supervision requirements as a guide, pending issuance of updated requirements. In the meantime, fiscal intermediaries, in consultation with their medical directors, will define appropriate supervision levels for services not listed in the October 31, 1997 final rule when those services are furnished at an entity with provider-based status in order to determine whether claims for these services are reasonable and necessary.

V. Summary of and Response to MedPAC Recommendations

The following are additional recommendations contained in the report on Medicare payment policy that the Medicare Payment Advisory Commission submitted to the Congress in March 1999. (MedPAC, *Report to the Congress: Medicare Payment Policy,* March 1999.) We respond to recommendations that are specifically related to a particular component of the hospital outpatient PPS in the appropriate section of this preamble.

MedPAC Recommendation: MedPAC recommends that the Secretary evaluate payment amounts under the hospital outpatient PPS and the ambulatory surgical center (ASC) PPS along with the practice expense payments under the Medicare physician fee schedule for services furnished in physicians' offices to ensure that the differing payments made under the three payment systems do not create unwarranted financial incentives regarding site of care.

Response: We agree that the three payment systems should avoid creating unnecessary financial incentives to deliver care in particular settings. We will consider this matter further and evaluate differences in payments.

MedPAC Recommendation: MedPAC recommends that the Secretary study means of adjusting base prospective payment rates across ambulatory settings for patient characteristics such as age, frailty, comorbidities and coexisting conditions, and other measurable traits. Under this approach, payment would be less dependent on the type of facility and more dependent on the relative costliness of furnishing specific services to individual patients. MedPAC notes that no viable patient-level adjuster currently exists that could be used in this fashion.

As an interim measure, MedPAC recommends, with reservations, that HCFA evaluate facility-level adjustments in order to preserve access to care for particularly vulnerable segments of the Medicare population.

Response: The underlying premise in this recommendation, as MedPAC states, is that HCFA should move toward development of a more unified and rational payment system for ambulatory care. Many powerful arguments favor such a system, but the challenges of creating and implementing it are substantial. We will give further consideration to the recommendation to study possible adjustments that could be used in various settings.

We agree that we should evaluate the need for facility-level adjustments. We believe the best course is to evaluate the need for these adjustments during the next several years as we gain actual experience with the operation of the hospital outpatient PPS and are able to observe the effects on particular provider groups. In consideration of the transitional protections provided by the BBRA 1999, we have not adopted facility-level adjustments, other than an adjustment for local labor costs, at this time.

MedPAC Recommendation: MedPAC recommends that the Secretary seek legislation to develop and implement a single update mechanism that would link conversion factor updates to volume growth across all ambulatory care settings. These settings include hospital outpatient departments, physicians' offices, and ASCs, as well as other specific settings mentioned.

Response: We believe that this proposal requires further study to determine its feasibility and possible impact. Therefore, we are not prepared to seek legislation at this time.

MedPAC Recommendation: MedPAC recommends that we not use patient diagnosis to calculate relative weights or make payments for medical visits, "given the current state of the available data and the lack of definitive rules for reporting patients' diagnoses under the proposed system."

Response: As discussed in section III.C.3, we have dropped diagnosis from our characterization of medical visit APCs. We hope to develop procedure codes for medical visits that are more descriptive of hospital outpatient resource use, rather than physician services. Once we revise procedure coding to better reflect hospital services, we will assess whether accurate diagnosis coding further improves recognition of resources.

MedPAC Recommendation: MedPAC recommends that the Secretary closely

monitor the use of hospital outpatient services to ensure that beneficiary access to care is not compromised.

Response: We plan to evaluate the operation of the new PPS to address a variety of issues, including beneficiary access to care. We note that the provisions of the BBRA 1999 should mitigate substantially any payment reductions and hence the possibility of reduced access.

MedPAC Recommendation: MedPAC recommends that the Secretary consider making payment adjustments in addition to the proposed adjustment for local area wages under the new system. These adjustments should be tied to patient characteristics. The facility-level adjustments that are made until the time that a patient-level adjuster is available should reflect the population of Medicare patients treated by facilities identified to receive the adjustments.

MedPAC points out that HCFA, in setting Medicare payment rates for hospital inpatient services, adjusts payments based on the costs or provider characteristics of hospitals (for example, sole community hospitals). Rather than continuing this practice in the outpatient setting, MedPAC recommends that HCFA move toward making adjustments based on patient characteristics and the relative costliness of resources required in furnishing care to differing patients. Any differences in the payment of the same ambulatory care service should be based on patient characteristics, rather than on the setting. MedPAC recommends that HCFA evaluate any relationships between immutable patient characteristics and the cost of furnishing care.

Response: Other than those adjustments specified in sections 201 and 202 of the BBRA 1999, we have made no additional adjustments in this final rule. We will consider the possibility of adjustments in the future once we have actual experience with operation of the hospital outpatient PPS and can examine its effects. The extent to which adjustments at the level of patient characteristics will be feasible is unclear and would require further study.

VI. Provisions of the Final Rule

The provisions of this final rule reflect the provisions of the September 8, 1998 proposed rule, except as noted elsewhere in this preamble. Following is a synopsis of the major changes we have made, either in response to comments or in order to implement provisions of the BBRA 1999 that apply to the hospital outpatient prospective payment system.

For our proposal to adjust the CY 2002 update of the conversion factor by the percentage that actual CY 2000 payments exceed the estimated CY 2000 expenditure target, we are delaying implementation of the volume control mechanism for 2 years.

For our proposal to package costs that are directly related and integral to performing a procedure or furnishing a service on an outpatient basis, we are making the following changes:

- We are creating separate APC groups to pay for blood, blood products, and anti-hemophilic factors, for splints and casts, and for certain very costly drugs that are not included in the transitional pass-through payment provision.
- We are paying separately, at cost, for the acquisition of corneal tissue.
- As required by section 201(e) of the BBRA 1999, we are *not* paying for certain implantable items under the DMEPOS fee schedule, but are including them as covered outpatient services. We are packaging the costs of these items into the APC payment rate for the procedures or services with which they are associated. These include implantable items used in connection with diagnostic tests, implantable DME, and implantable prosthetic devices.

For our proposal to base payment for medical visits to clinics and emergency departments on diagnosis codes as well as HCPCS codes, we are not using diagnosis codes at this time.

For our proposal to classify a new technology procedure or service within the APC group that it most closely resembles in terms of clinical characteristics and resource utilization, pending collection of additional pricing data, we are creating separate APC groups to which we can temporarily classify new technology services while we gather additional data and gain pricing experience. We are also creating a process under which interested parties may submit requests for consideration of services that may be eligible for payment as new technology.

For our proposal to pay for drugs, pharmaceuticals, and biologicals (except for cancer therapy drugs and certain infrequently used but very expensive drugs) as part of the APC payment for the service or procedure with which they are used, we are establishing transitional pass-through payments, as directed by section 201(b) of the BBRA 1999. Under this provision, an additional payment will be made for current orphan drugs, current cancer therapy drugs, biologicals, and brachytherapy, and current radiopharmaceutical drugs and biological products.

For our proposal to classify a new or innovative medical device, drug or biological (for which we were not making payment as of December 31, 1996) within the APC group that it most closely resembles in terms of clinical characteristics and resource utilization, pending collection of additional pricing data, we are establishing transitional pass-through payments. Under this provision, as directed by section 201(b) of the BBRA 1999, an additional payment will be made for new or innovative devices, drugs, and biologicals whose cost is not insignificant in relation to the APC payment for the group of services with which they are used.

For our proposal not to establish an outlier adjustment, as directed by section 201(a) of the BBRA 1999, we will make an outlier payment when calculated bill costs exceed 2.5 times the PPS payment for a service.

For our proposal to determine comparability of resources and clinical characteristics among the codes within an APC group based on our claims data and the analyses and judgment of our medical advisors, supported by comments from medical specialty societies and trade associations, as provided in section 201(g) of the BBRA 1999, we are limiting the variation so that the highest median cost of an item or service in an APC group is no more than two times the lowest median cost of an item or service within that group. We will also consult with an expert outside advisory panel regarding the clinical integrity of the APC groups and weights as part of our update of the PPS.

For our proposal to periodically review and update payment weights, APC groups, and other elements of the hospital outpatient PPS, as required by section 201(h) of the BBRA 1999, we will annually review the groups, relative payment weights, and the wage and other adjustments that are a part of the PPS.

For our proposal to implement the hospital outpatient PPS fully and in its entirety for all hospitals beginning as early as possible in CY 2000, with no phase-in period, as required by section 202(a) of the BBRA 1999, we are establishing transitional corridors for services furnished before January 1, 2004 to limit losses facilities might otherwise face.

For our proposal not to make any adjustments for any specific classes of hospitals, we are holding small rural hospitals harmless through CY 2003 in accordance with the requirements set by section 202(a)(3) of the BBRA 1999,

which added section 1833(t)(7)(D)(i) to the Act. Also, we are holding cancer centers permanently harmless in accordance with the requirements set by section 202(a)(3) of the BBRA 1999.

For our proposal on beneficiary coinsurance payment amounts, we are limiting the coinsurance amount for a procedure to be no more than the hospital inpatient deductible, as specified in section 204(a)(3) of the BBRA 1999.

The following is a synopsis of the principal changes that we are making in the provider-based requirements:

For our proposal to require main providers and provider-based entities to share a common license, we will require common licensure only where State law permits it. Where State law prohibits it or is silent, we will not apply the licensure requirement. We will also exempt IHS facilities and facilities located on Tribal lands from this requirement.

For our proposal requiring a main provider and a provider-based entity to serve a common service area indicated largely by overlapping patient populations, we have redefined "common service area" to mean a 75 percent threshold of patients who reside in a zip code area that is common to the main provider and the provider-based entity.

For our proposal to require provider-based entities to be in the same State as the main provider, we will allow providers in one State to have provider-based facilities in an adjacent State, if doing so is consistent both with the law of the affected States and with other criteria, including those related to a common service area.

For our proposal to require that a provider-based outpatient department bill all payers as an outpatient department, we have rescinded this requirement.

For our proposal to require FQHCs that have been billing Medicare as hospital outpatient departments to comply with the provider-based requirements, we are grandfathering both FQHCs and FQHC "look-alikes" (facilities that are organized as FQHCs but do not receive grants) so that these facilities will be considered departments of providers without having to meet § 413.65 requirements.

For our proposal to apply the provider-based requirements to Indian Health Service (including tribally operated) entities, we are creating a permanent exception for those entities that were billing as departments of IHS or Tribal hospitals on or before October 10, 2000.

For our proposal to consider provider-based entities to be part of the hospital for Emergency Medical Treatment and Active Labor Act (EMTALA) ("anti-dumping" purposes), we are maintaining the principle that off-site hospital facilities are subject to EMTALA. We have clarified the obligations of hospitals with respect to these locations to ensure they are consistent with staffing patterns and resources.

For our proposal to apply provider-based criteria to inpatient facilities such as multi-campus hospitals created by mergers and satellites of PPS-excluded hospitals that are created by hospitals leasing space in other hospitals, we have clarified the applicability of provider-based criteria to remote locations of hospitals and hospital satellite facilities.

VII. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the provisions summarized below that contain information collection requirements:

Section 413.24 Adequate cost data and cost finding

Section 413.24(d)(6)(ii) states that a provider must develop detailed work papers showing the exact cost of the services (including overhead) provided to or by the free-standing entity and show those carved out costs as nonreimbursable cost centers in the provider's trial balance. While these information collection requirements are subject to the PRA, the burden associated with these requirements is captured under §§ 413.65(c)(1) and (c)(2) below.

Section 413.65 Requirements for a determination that a facility or an organization is a department of a provider or a provider-based entity

Section 413.65(b)(2) states that a provider or a facility or organization must contact HCFA and the facility or organization must be determined by HCFA to be provider-based before the main provider begins billing for services of the facility or organization as if they were furnished by a department of the provider-based entity, or before it includes costs of those services on its cost report. While these information collection requirements are subject to the PRA, the burden associated with these requirements is captured under §§ 413.65(c)(1) and (c)(2) below.

Sections 413.65(c)(1) and (c)(2) state that a main provider that acquires a facility or organization for which it wishes to claim provider-based status, including any physician offices that a hospital wishes to operate as a hospital outpatient department or clinic, must report its acquisition of the facility or organization to HCFA and must furnish all information needed for a determination as to whether the facility or organization meets the requirements in paragraph (d) of this section for provider-based status, if the facility or organization is located off the campus of the provider or would increase the provider's total costs by at least 5 percent. Furthermore, a main provider that has had one or more entities considered provider-based also must report to HCFA any material change in the relationship between it and any provider-based facility or organization, such as a change in ownership of the facility or organization or entry into a new or different management contract that could affect the provider-based status of the facility or organization.

The burden associated with this requirement is the time for the main provider to report its acquisition to HCFA, furnish all information needed for a determination, report to HCFA any material change in the relationship between it and any provider-based facility or organization, such as a change in ownership of the facility or organization or entry into a new or different management contract that could affect the provider-based status of the facility or organization. It is estimated that 105 main providers will take 10 hours for a total of 1,050 hours.

Section 413.65(d)(4)(v) states that medical records for patients treated in a facility or organization must be integrated and maintained into a unified retrieval system (or cross reference) of the main provider. The burden

associated with this requirement is the time required for the main provider to maintain medical records in a unified retrieval system. While this requirement is subject to the PRA, we believe this requirement is a usual and customary business activity and the burden associated with this requirement is exempt from the PRA, as stipulated under 5 CFR 1320.3(b)(2) and (b)(3).

Section 413.65(d)(7)(i) requires that for a facility or organization and the main provider that is not located on the same campus, the facility or organization must demonstrate a high level of integration with the main provider by showing that it meets all of the other provider-based criteria, and demonstrates that it serves the same patient population as the main provider, by submitting records showing that, during the 12-month period immediately preceding the first day of the month in which the application for provider-based status is filed with HCFA, and for each subsequent 12-month period meet the requirements of paragraphs (d)(7)(i)(A), (B), or (C) of this section. While the information collection requirements listed below are subject to the PRA, the burden associated with these requirements is captured under §§ 413.65(c)(1) and (c)(2).

Section 413.65(g)(7) states that when a Medicare beneficiary is treated in a hospital outpatient department or hospital-based entity, the hospital has a duty to notify the beneficiary, prior to the delivery of services, of the beneficiary's potential financial liability (that is, a coinsurance liability for a facility visit as well as for the physician service).

The burden associated with this requirement is the time for the provider to disseminate information to each beneficiary of the beneficiary's potential financial liability (that is, a coinsurance liability for a facility visit as well as for the physician service). It is estimated that 750 providers will make on average 667 disclosures on an annual basis, at 3 minutes per disclosure, for a total annual burden of 25,013 hours.

Section 413.65(j)(5) requires that upon notice of denial of provider-based status sent to the provider by HCFA, the notice will ask the provider to notify HCFA in writing, within 30 days of the date the notice is issued, of whether the facility or organization (or, where applicable, the practitioners who staff the facility or organization) will be seeking to enroll and meet other requirements to bill for services in a free-standing facility. This requirement is exempt from the PRA as stipulated under 5 CFR 1320.4(a)(2).

Further, if the provider indicates that the facility or organization, or its practitioners, will be seeking to meet enrollment and other requirements for billing for services in a free-standing facility, the facility or organization must submit a complete enrollment application and provide all other required information within 90 days after the date of notice; and the facility or organization, or its practitioners, furnish all other information needed by HCFA to process the enrollment application and verify that other billing requirements are met. The requirements and burden associated with the provider enrollment process are currently approved under OMB control number 0938–0685, with a current expiration date of September 30, 2001.

Section 424.24 Requirements for Medical and Other Health Services Furnished by Providers Under Medicare Part B

Section 424.24(e)(3)(i) requires that when a partial hospitalization service occurs the physician recertification must be signed by a physician who is treating the patient and has knowledge of the patient's response to treatment. While this signature requirement is subject to the PRA, the overall requirements associated with physician recertification, as currently referenced in HCFA regulation number HCFA–1006, published in the **Federal Register** on June 5, 1998, have not yet been approved by OMB under the PRA. Therefore, we continue to solicit comment on all of the requirements and associated burden referenced in § 424.24.

Section 419.42 Hospital Election To Reduce Copayment

Sections 419.42(b) and (c) state that a hospital must notify its fiscal intermediary of its election to reduce copayments no later than June 1, 2000 prior to the date the PPS is implemented or for subsequent calendar years, beginning with elections for calendar year 2001, no later than December 1 of the preceding calendar year. The hospital's election must be properly documented. It must specifically identify the ambulatory payment classification to which it applies and the coinsurance amounts (within the limits identified within this regulation) that the hospital has elected for each group.

The burden associated with these requirements is the time it takes a hospital to compile, review, and analyze data for both revenues and coinsurance; prepare and present the data to the hospital board; make a business decision as to whether the hospital would elect to reduce coinsurance; and then notify its fiscal intermediary of its election. A hospital would notify its fiscal intermediary of its election to reduce coinsurance only if there were other providers, in close proximity, that would attract a majority of the hospital's business if they did not reduce their coinsurance. Since hospitals do not want to lose money by absorbing coinsurance, we anticipate that this requirement will affect 750 hospitals and take them 10 hours each for a total of 7,500 hours.

Section 419.42(e) states that the hospital may advertise and otherwise disseminate information concerning the reduced level(s) of coinsurance that it has elected. All advertisements and information furnished to Medicare beneficiaries must specify that the coinsurance reductions advertised apply only to the specified services of that hospital and that these coinsurance reductions are available only for hospitals that choose to reduce coinsurance for hospital outpatient services and are not applicable in any other ambulatory settings or physician offices.

The burden associated with this requirement is the time for the hospital to disseminate information concerning its coinsurance election. It is estimated that 750 hospitals will each take 10 hours annually to disseminate this information via newsletters and information sessions at senior citizen centers for a total of 7,500 hours.

We have submitted a copy of this final rule to OMB for its review of the information collection requirements. These requirements are not effective until they have been approved by OMB. A notice will be published in the **Federal Register** when approval is obtained.

If you comment on any of these information collection and record keeping requirements, please mail copies directly to the following:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attn: John Burke HCFA–1005–FC/R–240,

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn.: Allison Herron Eydt, HCFA–1005–FC.

VIII. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. Comments on the provision of this final rule that implement provisions of the BBRA 1999 will be considered if we receive them by the date and time specified in the DATES section of this preamble. We will not consider comments concerning provisions that remain unchanged from the September 8, 1998 proposed rule or that were changed based on public comments.

IX. Regulatory Impact Analysis

A. Introduction

Section 804(2) of title 5, United States Code (as added by section 251 of Pub. L. 104–121), specifies that a "major rule" is any rule that the Office of Management and Budget finds is likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic and export markets.

We estimate, based on a simulation model, that the effect on hospitals participating in the Medicare program associated with this final rule would be to increase Medicare payments by $600 million in calendar year 2000. This figure includes beneficiary copayments. We estimate that the additional expenditures to hospitals from the Part B Trust Fund associated with this final rule will be $490 million in fiscal year 2000. Therefore, this rule is a major rule as defined in Title 5, United States Code, section 804(2).

We have examined the impacts of this final rule as required by Executive Order 12866, the Unfunded Mandates Reform Act of 1995, and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). Because the projected spending resulting from this final rule is expected to exceed $100 million, it is considered a major rule for purposes of the RFA.

The Unfunded Mandates Reform Act of 1995 also requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits for any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. This final rule does not mandate any requirements for State, local, or tribal governments.

We generally prepare a regulatory flexibility analysis that is consistent with the RFA (5 U.S.C. 601 through 612), unless we certify that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals to be small entities.

Also, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the proposed prospective payment system, we classify these hospitals as urban hospitals.

B. Estimated Impact on the Medicare Program

Our Office of the Actuary projects that the additional benefit expenditures from the Part B Trust Fund resulting from implementation of the hospital outpatient PPS for hospital outpatient services furnished on or after July 1, 2000, and the hospital outpatient provisions enacted by the BBRA 1999, are as follows:

Fiscal year	Impact (In millions of dollars)
2000	490
2001	3,030
2002	3,520
2003	4,230
2004	4,670

C. Objectives

The primary objective of the hospital outpatient prospective payment system is to simplify the payment system and encourage hospital efficiency in providing outpatient services, while at the same time ensuring that payments are sufficient to compensate hospitals adequately for their legitimate costs. Another important goal of the new system is to reduce beneficiaries' share of outpatient payment to hospitals by freezing coinsurance amounts at an absolute level until they equal 20 percent of the total payment amounts.

We believe that implementation of the final PPS will ultimately further each of these goals while maintaining the financial viability of the hospital industry and ensuring access to high quality health care for Medicare beneficiaries. We expect that the provisions of this final rule with comment period will ensure that the outcomes of the PPS are reasonable and equitable while avoiding or minimizing unintended adverse consequences.

D. Limitations of Our Analysis

The following quantitative analysis presents the projected effects of our policy changes resulting from comments, as well as statutory changes enacted by the BBRA 1999, on various hospital groups. We use the best data available. In addition, we do not make adjustments for future changes in such variables as volume and intensity. For this final rule with comment period, we are soliciting comments and information about the anticipated effects of the changes on hospitals resulting from implementation of the hospital outpatient provisions of the BBRA 1999, and our methodology for estimating them.

E. Hospitals Included In and Excluded From the Prospective Payment System

The outpatient prospective payment system encompasses nearly all hospitals that participate in the Medicare program. However, Maryland hospitals that are paid under a cost containment waiver in accordance with section 1814(b)(3) of the Act are excluded from the PPS. Critical access hospitals (CAHs) are also excluded and are paid at cost under section 1834(g) of the Act.

F. Quantitative Analysis of the Impact of Policy Changes on Payment Under the Hospital Outpatient PPS: Basis and Methodology of Estimates

We have analyzed the impact on hospital payment under the outpatient PPS. Our analysis compares the payment impact of PPS compared to current law. The definition and calculation of current law used in the impact analysis is the same used in estimating the conversion factor. That is, current law reflects pre-PPS payment methodologies in effect on January 1, 2000, and prior to July 1, 2000, which include the elimination of the formula-driven overpayment and application of the capital and operating cost reductions. A detailed explanation of the current law calculation can be found in section III.E.2.a.

The data used in developing the quantitative analyses presented below are taken from the CY 1996 cost and charge data and the most current provider-specific file that is used for payment purposes. Our analysis has several qualifications. First, we draw upon various sources for the data used to categorize hospitals in Table 2, below. In some cases, there is a degree of variation in the data from the different sources. We have attempted to construct these variables with the best available source overall. For individual hospitals, however, some miscategorizations are possible.

Using CY 1996 cost and charge data, we simulated payments using the pre-PPS and PPS payment methodologies. Although we used only single-procedure/visit bills to determine APC relative payment weights, we used both single and multiple-procedure bills in the conversion factor and service mix calculations, regressions, and impact analyses. Both pre-PPS and PPS payment estimates include operating and capital costs, adjusted to the calendar year 1996 cost reporting period. We excluded Kaiser, New York Health and Hospital Corporation, and all-inclusive providers because reported charges on their cost reports are not actual charges. Cost-to-charge ratios for these hospitals are not comparable to all other hospitals. The excluded Maryland hospitals were not included in the calculation of the conversion factor and the simulations; however, we did include the 10 cancer hospitals that will be paid under the PPS.

We also trimmed outlier hospitals from the impact analysis because inclusion of hospitals with extremely high and low unit costs would not allow us to assess the impacts among the various classes of hospitals accurately. First, we identified all of the outlier hospitals by using an edit of 3 standard deviations from the mean of the logged unit costs. Trimming the data in this manner ensures that only the hospitals with aberrantly high and low costs are eliminated from the impact analysis. In doing this, we removed 97 hospitals of which 41 hospitals had extremely low unit costs and 56 hospitals had extremely high unit costs. We conducted a thorough analysis of these hospitals to ensure that we did not remove any particular type of hospital (for example, teaching hospitals) that would further harm the integrity of the data. We speculate that many of these hospitals are not coding accurately, and we will continue to perform further analysis in this area following implementation of the PPS.

After we removed the 58 excluded Maryland hospitals, the all-inclusive rate hospitals, the statistical outlier hospitals, and hospitals for which we could not identify payment variables, we used the remaining 5,362 hospitals as the basis for our analysis. Table 2, Annual Impact of Outpatient Prospective Payment System in CY2000–CY2001, below, demonstrates the results of our analysis. The table categorizes hospitals by various geographic and special payment consideration groups to illustrate the varying impacts on different types of hospitals. The first column represents the number of hospitals in each category. The second column shows the hospitals' Medicare outpatient payments under the current (non-PPS) payment system as a percentage of the hospitals' total Medicare payment. The third and fourth columns show the impact of the PPS *excluding* the transitional corridor payments enacted by the BBRA 1999. Column three shows the percentage change in total Medicare outpatient payments comparing pre-PPS payments with payments under the PPS. The fourth column shows the change in *total* (outpatient and inpatient) Medicare payments resulting from implementation of the PPS for outpatient services. The fifth and sixth columns show the impact of the PPS *including* the transitional corridor payments enacted by the BBRA 1999. Column five shows the percentage change in Medicare outpatient payments comparing pre-PPS payments with payments under the PPS. Column six shows the change in total (outpatient and inpatient) Medicare payments resulting from implementation of the PPS for outpatient services.

The first row of Table 2 shows the overall impact on the 5,362 hospitals included in the analysis. We included as much data as possible to the extent that we were able to capture all the provider information necessary to determine payment. Our estimates include the same set of services for both pre-PPS and PPS payments so that we could determine the impact of the PPS as accurately as possible. Because payment under the hospital outpatient PPS can only be determined if bills are accurately coded, the data upon which the impacts were developed do not reflect all CY 1996 hospital outpatient services, but only those that were coded using valid HCPCS codes.

The second row of Table 2 shows the overall impact of the PPS on the 4,828 hospitals that remain when we exclude psychiatric, long-term care, children's, and rehabilitation hospitals.

The next four rows of the table contain hospitals categorized according to their geographic location (all urban, which is subdivided into large urban and other urban, and rural). We include 2,665 hospitals located in urban areas (MSAs or NECMAs) in our analysis. Among these, 1,505 hospitals are located in large urban areas (populations over 1 million), and 1,160 hospitals are located in other urban areas (populations of 1 million or less). In addition, we include 2,160 hospitals located in rural areas in our analysis. The next two groupings are by bed-size categories, shown separately for urban and rural hospitals. The next category groups urban and rural hospitals by volume of outpatient services. We then show the distribution of urban and rural hospitals by regional census divisions.

The next three categories group hospitals according to whether or not they have residency programs (teaching hospitals that receive an indirect medical education (IME) adjustment), receive disproportionate share hospital (DSH) payments, or some combination of these two adjustments. In our analysis we show the impact of the PPS on the 3,738 nonteaching hospitals, the 821 teaching hospitals with fewer than 100 residents, and the 269 teaching hospitals with 100 or more residents.

In the DSH categories, hospitals are grouped according to their DSH payment status. The next category groups hospitals considered urban after geographic reclassification, in terms of whether they receive the IME adjustment, the DSH adjustment, both, or neither. The next five rows examine the impacts of the changes on rural hospitals by special payment groups (rural referral centers (RRCs), sole community hospitals/essential access community hospitals (SCHs/EACHs), Medicare dependent hospitals (MDHs), and hospitals that are both SCHs and

RRCs), as well as rural hospitals not receiving a special payment designation. The RRCs (164), SCH/EACHs (634), MDHs (358), and SCH and RRCs (56) shown here were not reclassified for purposes of the standardized amount.

The next grouping is based on type of ownership. These data are taken primarily from the FY 1996 Medicare cost report files, if available; otherwise, earlier cost report data are used.

The final two groups are specialty hospitals. The first set includes eye and ear hospitals, trauma hospitals (hospitals having a level one trauma center), and cancer hospitals, which are TEFRA hospitals. The last group lists all other TEFRA hospitals, specifically, rehabilitation, psychiatric, long-term care, and children's hospitals.

G. Estimated Impact of the New APC System (Includes Table 2, Annual Impact of Hospital Outpatient Prospective Payment System in CY2000–CY2001)

Column 3 compares our estimate of PPS payments without application of the BBRA 1999 transitional corridors, but incorporating policy changes and all other BBRA 1999 provisions contained in this final rule, to our estimate of payments under the current system. The percent differences shown in columns 3 and 4 between current and PPS payment (without the BBRA 1999 transitional corridors) reflect the impact of the BBRA 1999 outlier and pass-through payment adjustments and nonbudget-neutral hold-harmless provisions for cancer hospitals, as well as distributional differences attributable to variation in cost and charge structures among hospitals.

The percent changes in columns 5 and 6 are the result of comparing our estimate of PPS payments with application of the BBRA 1999 transitional corridors, as well as the statutory and policy changes contained in this final rule, to our estimate of payments under the pre-PPS system. Percent differences between the pre-PPS and the PPS payment (with the BBRA 1999 transition) reflect the combined impact of the transitional corridor adjustments, outlier and pass-through payment adjustments and the hold-harmless provision for cancer hospitals, in addition to distributional differences attributable to variation in cost and charge structures among hospitals.

Basing the conversion factor on pre-PPS program and pre-PPS beneficiary payments and on budget-neutral outlier and pass-through adjustments results in no net change in payments to hospitals overall relative to pre-PPS payments. (As noted above, in section III.E.2 of this preamble, pursuant to section 201(l) of the BBRA 1999, we set the conversion factor by estimating pre-PPS rather than PPS copayments.) However, the BBRA hold-harmless provision for cancer hospitals results in a 0.2 percent increase in payments to hospitals overall because this provision is not budget neutral. Including the BBRA 1999 transitional corridor adjustments further increases payment to hospitals overall. We estimate that in calendar year 2000, payment will increase by an annual rate of 4.6 percent under the PPS compared to the pre-PPS payments.

Without the BBRA 1999 transitional corridor payments, the impact on short-term acute care hospitals is negative for a substantial number of hospital classifications. That is, for certain groups of hospitals, payments under the PPS without the transitional corridor payments would be several percentage points below pre-PPS payments. For nearly all of these hospital groups, the BBRA 1999 transitional corridor payments mitigate this negative impact. In addition, hospital groups that experience net gains without the BBRA 1999 transitional corridor payments experience even greater gains with them. The reason is that even though the average impact for hospitals in these groups is positive, some individual hospitals experience net losses in payments and, thus, benefit from the transitional corridor payments. The hospital groups that gain without the transitional corridor payments receive even greater increases in payments with the transitional corridor payments. The following discussion highlights some of the changes in payments among hospital classifications.

Comparing the pre-PPS and PPS payment estimates, payment to low-volume hospitals would decrease substantially without the BBRA 1999 transitional corridor payments (12.2 percent annually for rural and 7.7 percent annually for urban hospitals with fewer than 5,000 units of service). These hospitals experience a net gain with the BBRA 1999 transitional corridor payments (2.5 percent annually and 0.2 percent annually for low-volume rural and urban hospitals, respectively), although these payment increases are relatively small compared to the 4.6 percent annual increase for hospitals overall. We believe several factors contribute to this outcome, including undercoding, lack of economies of scale, and the reliance on the median instead of the geometric mean in the calculation of APC weights. The majority of these hospitals (about 75 percent) are rural. For these small hospitals, some of the higher standardized unit costs could be attributed to economies of scale. These low-volume rural hospitals also receive a greater percentage of their Medicare income (18.5 percent) from outpatient services than the national average (9.9 percent).

Major teaching hospitals, whose payments would decrease annually by 3.7 percentage points without the BBRA 1999 transitional corridor payments, gain 2.6 percent annually with the BBRA 1999 transitional corridor payments relative to pre-PPS payments. Major teaching hospitals receive less of their total Medicare income (9.1 percent) from outpatient services than the national average. This results in a 0.2 percent annual gain in their total Medicare payments. Minor teaching and nonteaching hospitals would experience marginal gains in outpatient payment without the BBRA 1999 transitional corridor payments. Payment to both hospital groups increases by 5.0 percent annually relative to the pre-PPS payment system.

Without the BBRA 1999 transitional corridor payments, hospitals with a high percentage of low-income patients (disproportionate share patient percentage greater than or equal to 0.35) would have a 2.5 percent annual decrease in payment relative to pre-PPS payments. But payments to these hospitals increase annually by 3.5 percent relative to pre-PPS payments with the BBRA 1999 transitional corridor payments. These hospitals have lower than average volume, and, like major teaching hospitals, receive a smaller than average percentage of their Medicare income from outpatient services. Thus, their total Medicare payments increase marginally, by 0.3 percent, with the BBRA 1999 transitional corridor payments.

Without the BBRA 1999 adjustments, payment to rural hospitals would decrease 1.8 percent annually and payment to large urban hospitals would decrease 0.3 percent annually, while payment to other urban hospitals would increase 1.8 percent annually relative to pre-PPS payments. These hospitals all experience net gains in PPS payment with the BBRA 1999 transitional corridor payments, at an annual rate of 4.4 percent, 4.3 percent, and 5.1 percent, respectively. Even though rural hospitals receive a greater percentage of their Medicare income (14.7 percent) from outpatient services compared to the national average, their total Medicare payments increase by only a fraction, 0.6 percent.

Negative impacts for urban hospitals in the Mid-Atlantic and the West North Central regions are also reversed under

the BBRA 1999 transitional corridor payments, changing from −3.4 percent to 2.4 percent on an annual basis, and from −3.5 percent to 2.5 percent on an annual basis, respectively. Similarly, rural hospitals in nearly all census regions experience net increases in payment relative to pre-PPS payments with the BBRA 1999 transitional corridor payments.

The impact on TEFRA hospitals is shown separately at the end of the table. The TEFRA hospitals were not included in determining the impact on any of the other categories discussed above (for example, geographic location, bed size, volume, etc.). These hospitals demonstrated a very low service mix, but an average unit cost that approximates the national average. We believe that undercoding or billing an all-inclusive rate could account for their low-volume, low-service mix, and average cost per unit. We expect that once these hospitals begin to code services accurately under the PPS, payments will more closely approximate pre-PPS payments.

If the effect of the BBRA 1999 transition payments were removed, differences between pre-PPS payments and PPS payments among hospitals would still exist. These distributional differences are the result of many factors. First, cost variations among hospitals result in differences between pre-PPS payments and PPS payments, and charge structure variations result in differences between pre-PPS payments and PPS beneficiary copayment amounts. Hospitals whose costs are low relative to payment would gain under the PPS even without the BBRA 1999 transitional corridor payments. Because the transitional corridor payments are not budget neutral, these hospitals continue to gain relative to pre-PPS payments.

Redistributions may also occur as a result of current payment methods. Total Medicare outpatient payments are less than reported total costs because (in addition to the 5.8 and 10 percent reductions for operating and capital costs) the blended payment methods applicable to many surgical and diagnostic services often result in payments that are less than reported costs. Other services such as medical visits, chemotherapy services, and non-ASC approved surgeries are paid based on hospital costs. The new system redistributes the current total Medicare payments, based in part on cost-based payments and in part on blended payment amounts, across all services. Hospitals, in the aggregate, will receive proportionately less for services that are currently paid based on costs, and more for services that had been paid under blended payment methods.

TABLE 2. ANNUAL IMPACT OF HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM IN CY2000–CY2001

	Number of hospitals	Outpatient percent	Excluding BBRA transitional corridors [1]		Including BBRA transitional corridors	
			Percent change in Medicare outpatient payments [3]	Percent change in total Medicare payments	Percent change in Medicare outpatient payments [3]	Percent change in total Medicare payments
	(1)	(2)	(3)	(4)	(5)	(6)
ALL HOSPITALS	5,362	9.9	0.2	0.0	4.6	0.5
NON-TEFRA HOSPITALS	4,828	10	0.1	0.0	4.6	0.5
URBAN HOSPS [2]	2,665	9.3	0.6	0.1	4.6	0.4
LARGE URBAN [2] (GT 1 MILL.)	1,505	9.1	−0.3	0.0	4.3	0.4
OTHER URBAN [2] (LE 1 MILL.)	1,160	9.7	1.8	0.2	5.1	0.5
RURAL HOSPS	2,160	14.7	−1.8	−0.3	4.4	0.6
BEDS (URBAN): [2]						
0—99 BEDS	672	14.9	0.6	0.1	4.6	0.7
100–199 BEDS	924	10.5	1.3	0.1	5.2	0.5
200–299 BEDS	533	9.2	0.8	0.1	4.4	0.4
300–499 BEDS	399	8.5	1.8	0.2	5.2	0.4
500 + BEDS	137	8.4	−2.9	−0.2	2.8	0.2
BEDS (RURAL):						
0—49 BEDS	1,170	19.5	−8.5	−1.7	3.3	0.6
50–99 BEDS	615	15.5	−2.7	−0.4	4.4	0.7
100–149 BEDS	223	13.3	−0.2	0.0	3.8	0.5
150–199 BEDS	81	13	2.5	0.3	5.5	0.7
200 + BEDS	71	11.6	2.7	0.3	6.1	0.7
VOLUME (URBAN):						
LT 5,000	349	12	−7.7	−0.9	0.2	0.0
5,000–10,999	504	9.8	0.0	0.0	4.2	0.4
11,000–20,999	596	9.1	0.1	0.0	4.4	0.4
21,000–42,999	773	8.8	1.3	0.1	4.9	0.4
GT 42,999	443	9.7	0.4	0.0	4.6	0.4
VOLUME (RURAL):						
LT 5,000	1,049	18.5	−12.2	−2.3	2.5	0.5
5,000–10,999	595	15.2	−5.2	−0.8	2.9	0.4
11,000–20,999	322	13.8	0.1	0.0	4.7	0.6
21,000–42,999	173	13.6	2.4	0.3	5.7	0.8
GT 42,999	21	13.2	3.0	0.4	6.8	0.9
REGION (URBAN): [3]						
NEW ENGLAND	146	10.7	3.8	0.4	6.7	0.7
MIDDLE ATLANTIC	393	8.4	−3.4	−0.3	2.4	0.2
SOUTH ATLANTIC	401	8.6	0.3	0.0	4.2	0.4
EAST NORTH CENT.	465	10.7	1.0	0.1	4.5	0.5

TABLE 2. ANNUAL IMPACT OF HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM IN CY2000–CY2001—Continued

	Number of hospitals	Outpatient percent	Excluding BBRA transitional corridors [1]		Including BBRA transitional corridors	
			Percent change in Medicare outpatient payments [3]	Percent change in total Medicare payments	Percent change in Medicare outpatient payments [3]	Percent change in total Medicare payments
	(1)	(2)	(3)	(4)	(5)	(6)
EAST SOUTH CENT.	161	7.9	1.8	0.1	4.6	0.4
WEST NORTH CENT.	183	9.5	0.9	0.1	4.9	0.5
WEST SOUTH CENT.	335	9.7	−2.7	−0.3	2.5	0.2
MOUNTAIN	123	10.2	3.1	0.3	6.1	0.6
PACIFIC	423	9.4	5.6	0.5	8.6	0.8
PUERTO RICO	35	6.6	10.8	0.7	13.2	0.9
REGION (RURAL):						
NEW ENGLAND	53	17.2	−3.2	−0.6	3.3	0.6
MIDDLE ATLANTIC	80	13.6	7.1	1.0	10.1	1.4
SOUTH ATLANTIC	285	11.8	−1.8	−0.2	3.6	0.4
EAST NORTH CENT.	282	15.7	−1.2	−0.2	4.3	0.7
EAST SOUTH CENT.	260	11.1	0.1	0.0	4.9	0.5
WEST NORTH CENT.	508	19.8	−5.2	−1.0	3.0	0.6
WEST SOUTH CENT.	337	14.2	−5.7	−0.8	3.0	0.4
MOUNTAIN	213	16.9	−3.4	−0.6	4.7	0.8
PACIFIC	140	15.9	0.7	0.1	6.3	1.0
PUERTO RICO	2	6.6	32.1	2.1	32.1	2.1
TEACHING STATUS:						
NON-TEACHING	3,738	11.3	0.5	0.1	5.0	0.6
MINOR	821	9.1	1.6	0.1	5.0	0.5
MAJOR	269	9.1	−3.7	−0.3	2.6	0.2
DSH PATIENT PERCENT:						
0	101	10.9	−5.8	−0.6	0.7	0.1
GT 0—0.10	1,139	10.5	0.8	0.1	4.6	0.5
0.10–0.16	986	11	2.0	0.2	5.6	0.6
0.16–0.23	880	10.1	0.8	0.1	4.9	0.5
0.23–0.35	855	9.5	−1.5	−0.1	3.7	0.4
GE 0.35	867	9.2	−2.5	−0.2	3.5	0.3
URBAN IME/DSH: [2]						
IME & DSH	994	9	−0.4	0.0	4.1	0.4
IME/NO DSH	17	9.2	−3.6	−0.3	1.1	0.1
NO IME/DSH	1,611	9.9	1.9	0.2	5.4	0.5
NO IME/NO DSH	43	14.7	−8.2	−1.2	−0.3	0.0
RURAL HOSP. TYPES:						
NO SPECIAL STATUS	864	15	−2.2	−0.3	4.4	0.7
RRC	164	12.3	5.0	0.6	7.3	0.9
SCH/EACH	634	16.5	−7.7	−1.3	2.2	0.4
MDH	358	18.3	−5.4	−1.0	3.5	0.6
SCH AND RRC	56	13.9	−1.4	−0.2	3.1	0.4
TYPE OF OWNERSHIP:						
VOLUNTARY	2,816	9.9	0.6	0.1	4.7	0.5
PROPRIETARY	752	8.3	−0.1	0.0	4.7	0.4
GOVERNMENT	1,260	12.2	−2.3	−0.3	3.6	0.4
SPECIALTY HOSPITALS:						
EYE AND EAR	10	31.1	20.1	6.3	20.2	6.3
TRAUMA	159	9.1	−1.2	−0.1	4.0	0.4
CANCER	10	22	0.8	0.2	0.8	0.2
TEFRA HOSPITALS (NOT INCLUDED ON OTHER LINES):						
REHAB	147	3.7	−9.4	−0.3	1.7	0.1
PSYCH	281	9	21.3	1.9	27.9	2.5
LTC	65	3.7	−15.3	−0.6	−1.7	−0.1
CHILDREN	41	16.5	−11.9	−2.0	−3.2	−0.5

Notes:

[1] Includes all BBRA provisions except the transitional corridor provisions that expire 01/01/04.

[2] Does not include impact of reclassifications as allowed under section 401 of the BBRA 1999.

[3] Estimate of change compared to pre-PPS payments, which reflect the payment methodologies in effect as of January 1, 2000, and prior to July 1, 2000.

X. Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this final rule will not have any negative impact on the rights, roles, and responsibilities of State, local or Tribal governments.

XI. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and its reasons in the rule. We find that the circumstances surrounding this rule make it impracticable to pursue a process of notice-and-comment rulemaking before the provisions of this rule take effect.

The BBRA 1999 was enacted on November 29, 1999. This final rule incorporates the following hospital outpatient PPS provisions in the BBRA 1999: outlier adjustment for high cost cases; transitional pass-through payment adjustments for additional costs (over the payments for APCs otherwise made) for new medical devices, drugs, and biologicals; definition of APCs so that the variation of costs of items within an APC is subject to certain limits; establishment of "transitional corridors" for the first 3½ years of the new system that limit losses hospitals might otherwise face; payment for implantable devices under the hospital outpatient PPS, rather than under the Durable Medical Equipment Fee Schedule; limitation of the copayment on an outpatient procedure to the amount of the inpatient hospital deductible; requirement to review annually the APC groups, relative weights, and wage and other adjustments; and calculation of the conversion factor in a budget-neutral manner, eliminating the 5.7 percent reduction indicated in the proposed rule.

As discussed earlier in this rule, July 1, 2000 is the earliest date on which we can feasibly implement the PPS. The provisions of the BBRA 1999, enacted on November 29, 1999, made numerous refinements to the PPS. With respect to the BBRA 1999 provisions, it would have been impracticable to complete notice and comment procedures by July 1, 2000. Given the limited timeframe, given the nature and scope of the BBRA 1999 refinements, and given the time required to complete notice and comment rulemaking (to develop proposed policies, draft the proposed rule, provide a 60-day public comment period, consider public comments, develop final policies, draft a final rule), it would not have been possible to issue this document as a proposed rule and issue a final rule by July 1.

In addition, it would not be feasible to implement the hospital outpatient PPS *without* the BBRA 1999 provisions, not only because of the nature of the BBRA 1999 provisions, but also because section 201(m) of the BBRA 1999 states: "Except as provided in this section, the amendments made by this section shall be effective as if included in the enactment of BBA." Therefore, if we undertook prior notice and comment procedures with respect to the BBRA 1999 provisions, then (because such procedures could not be completed by July 1, 2000) the PPS would not be implemented by July 1, 2000.

Accordingly, we find good cause to waive the procedures for *prior* notice and comment with respect to the provisions of this document that implement the BBRA 1999 refinements to hospital outpatient PPS. We are providing a 60-day period for public comment with respect to the provisions of this final rule with comment period that implement the BBRA refinements. We are not accepting comments with respect to the other aspects of this document (for which the public has already had an extensive opportunity to comment).

List of Subjects

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 419

Health facilities, Hospitals, Medicare.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 498

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 1003

Administrative practice and procedure, Archives and records, Grant program—social programs, Maternal and Child Health, Medicaid, Medicare, Penalties.

For the reasons set forth in the preamble, 42 CFR chapter IV is amended as follows:

PART 409—HOSPITAL INSURANCE BENEFITS

A. Part 409 is amended as set forth below:

1. The authority citation for part 409 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Inpatient Hospital Services and Inpatient Critical Access Hospital Services

2. In § 409.10, paragraph (b) is revised to read as follows:

§ 409.10 Included services.

* * * * *

(b) *Inpatient hospital services* does not include the following types of services:

(1) Posthospital SNF care, as described in § 409.20, furnished by a hospital or a critical access hospital that has a swing-bed approval.

(2) Nursing facility services, described in § 440.155 of this chapter, that may be furnished as a Medicaid service under title XIX of the Act in a swing-bed hospital that has an approval to furnish nursing facility services.

(3) Physician services that meet the requirements of § 415.102(a) of this chapter for payment on a fee schedule basis.

(4) Physician assistant services, as defined in section 1861(s)(2)(K)(i) of the Act.

(5) Nurse practitioner and clinical nurse specialist services, as defined in section 1861(s)(2)(K)(ii) of the Act.

(6) Certified nurse mid-wife services, as defined in section 1861(gg) of the Act.

(7) Qualified psychologist services, as defined in section 1861(ii) of the Act.

(8) Services of an anesthetist, as defined in § 410.69 of this chapter.

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

B. Part 410 is amended as set forth below:

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Provisions

2. In § 410.2, the introductory text is republished, the definition of "Community mental health center (CMHC)" is revised, and the definitions of "Encounter" and "Outpatient" are added in alphabetical order to read as follows:

§ 410.2 Definitions.

As used in this part—

Community mental health center (CMHC) means an entity that—

(1) Provides outpatient services, including specialized outpatient services for children, the elderly, individuals who are chronically mentally ill, and residents of its mental health service area who have been discharged from inpatient treatment at a mental health facility;

(2) Provides 24-hour-a-day emergency care services;

(3) Provides day treatment or other partial hospitalization services, or psychosocial rehabilitation services;

(4) Provides screening for patients being considered for admission to State mental health facilities to determine the appropriateness of this admission; and

(5) Meets applicable licensing or certification requirements for CMHCs in the State in which it is located.

Encounter means a direct personal contact between a patient and a physician, or other person who is authorized by State licensure law and, if applicable, by hospital or CAH staff bylaws, to order or furnish hospital services for diagnosis or treatment of the patient.

* * * * *

Outpatient means a person who has not been admitted as an inpatient but who is registered on the hospital or CAH records as an outpatient and receives services (rather than supplies alone) directly from the hospital or CAH.

* * * * *

Subpart B—Medical and Other Health Services

3. In § 410.27:

A. The section heading is revised;

B. The introductory text to paragraph (a) is revised;

C. The introductory text to paragraph (a)(1) is republished;

D. The word "and" at the end of paragraph (a)(1)(i) is removed; and

E. New paragraphs (a)(1)(iii), (e), and (f) are added to read as follows:

§ 410.27 Outpatient hospital services and supplies incident to a physician service: Conditions.

(a) Medicare Part B pays for hospital services and supplies furnished incident to a physician service to outpatients, including drugs and biologicals that cannot be self-administered, if—

(1) They are furnished—

* * * * *

(iii) In the hospital or at a location (other than an RHC or an FQHC) that HCFA designates as a department of a provider under § 413.65 of this chapter; and

* * * * *

(e) Services furnished by an entity other than the hospital are subject to the limitations specified in § 410.42(a).

(f) Services furnished at a location (other than an RHC or an FQHC) that HCFA designates as a department of a provider under § 413.65 of this chapter must be under the direct supervision of a physician. "Direct supervision" means the physician must be present and on the premises of the location and immediately available to furnish assistance and direction throughout the performance of the procedure. It does not mean that the physician must be present in the room when the procedure is performed.

4. In § 410.28, paragraph (a)(4) is removed, paragraph (c) is redesignated as paragraph (d), and new paragraphs (c) and (e) are added to read as follows:

§ 410.28 Hospital or CAH diagnostic services furnished to outpatients: Conditions.

* * * * *

(c) Diagnostic services furnished by an entity other than the hospital or CAH are subject to the limitations specified in § 410.42(a).

* * * * *

(e) Medicare Part B makes payment under section 1833(t) of the Act for diagnostic services furnished at a facility (other than an RHC or an FQHC) that HCFA designates as having provider-based status only when the diagnostic services are furnished under the appropriate level of physician supervision specified by HCFA in accordance with the definitions in § 410.32(b)(3)(i), (b)(3)(ii), and (b)(3)(iii). Under general supervision at a facility accorded provider-based status, the training of the nonphysician personnel who actually perform the diagnostic procedure and the maintenance of the necessary equipment and supplies are the continuing responsibility of the facility.

5. A new § 410.42 is added to read as follows:

§ 410.42 Limitations on coverage of certain services furnished to hospital outpatients.

(a) *General rule.* Except as provided in paragraph (b) of this section, Medicare Part B does not pay for any item or service that is furnished to a hospital outpatient (as defined in § 410.2) during an encounter (as defined in § 410.2) by an entity other than the hospital unless the hospital has an arrangement (as defined in § 409.3 of this chapter) with that entity to furnish that particular service to its patients. As used in this paragraph, the term "hospital" includes a CAH.

(b) *Exceptions.* The limitations stated in paragraph (a) of this section do not apply to the following services:

(1) Physician services that meet the requirements of § 415.102(a) of this chapter for payment on a fee schedule basis.

(2) Physician assistant services, as defined in section 1861(s)(2)(K)(i) of the Act.

(3) Nurse practitioner and clinical nurse specialist services, as defined in section 1861(s)(2)(K)(ii) of the Act.

(4) Certified nurse mid-wife services, as defined in section 1861(gg) of the Act.

(5) Qualified psychologist services, as defined in section 1861(ii) of the Act.

(6) Services of an anesthetist, as defined in § 410.69.

(7) Services furnished to SNF residents as defined in § 411.15(p) of this chapter.

6. In § 410.43, paragraph (b) is revised to read as follows:

§ 410.43 Partial hospitalization services: Conditions and exclusions.

* * * * *

(b) The following services are separately covered and not paid as partial hospitalization services:

(1) Physician services that meet the requirements of § 415.102(a) of this chapter for payment on a fee schedule basis.

(2) Physician assistant services, as defined in section 1861(s)(2)(K)(i) of the Act.

(3) Nurse practitioner and clinical nurse specialist services, as defined in section 1861(s)(2)(K)(ii) of the Act.

(4) Qualified psychologist services, as defined in section 1861(ii) of the Act.

(5) Services furnished to SNF residents as defined in § 411.15(p) of this chapter.

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

C. Part 411 is amended as set forth below:

1. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Exclusions and Exclusion of Particular Services

2. In § 411.15:

A. The introductory text is republished;

B. The section heading to paragraph (m) is revised;

C. Paragraph (m)(1) is revised;

D. Paragraph (m)(2) is redesignated as paragraph (m)(3);

E. The introductory text to newly redesignated paragraph (m)(3) is republished;

F. Newly redesignated paragraphs (m)(3)(iii), (m)(3)(iv), and (m)(3)(v) are redesignated as paragraphs (m)(3)(iv), (m)(3)(v), and (m)(3)(vi), respectively; and

G. New paragraphs (m)(2) and (m)(3)(iii) are added to read as follows:

§ 411.15 Particular services excluded from coverage.

The following services are excluded from coverage:

* * * * *

(m) *Services to hospital patients*—(1) *Basic rule.* Except as provided in paragraph (m)(3) of this section, any service furnished to an inpatient of a hospital or to a hospital outpatient (as defined in § 410.2 of this chapter) during an encounter (as defined in § 410.2 of this chapter) by an entity other than the hospital unless the hospital has an arrangement (as defined in § 409.3 of this chapter) with that entity to furnish that particular service to the hospital's patients. As used in this paragraph (m)(1), the term "hospital" includes a CAH.

(2) *Scope of exclusion.* Services subject to exclusion from coverage under the provisions of this paragraph (m) include, but are not limited to, clinical laboratory services; pacemakers and other prostheses and prosthetic devices (other than dental) that replace all or part of an internal body organ (for example, intraocular lenses); artificial limbs, knees, and hips; equipment and supplies covered under the prosthetic device benefits; and services incident to a physician service.

(3) *Exceptions.* The following services are not excluded from coverage:

* * * * *

(iii) Nurse practitioner and clinical nurse specialist services, as defined in section 1861(s)(2)(K)(ii) of the Act.

* * * * *

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

D. Part 412 is amended as set forth below:

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart C—Conditions for Payment Under the Prospective Payment Systems for Inpatient Operating Costs and Inpatient Capital-Related Costs

2. In § 412.50, paragraphs (a) and (b) are revised to read as follows:

§ 412.50 Furnishing of inpatient hospital services directly or under arrangements.

(a) The applicable payments made under the prospective payment systems, as described in subparts H and M of this part, are payment in full for all inpatient hospital services, as defined in § 409.10 of this chapter. Inpatient hospital services do not include the following types of services:

(1) Physician services that meet the requirements of § 415.102(a) of this chapter for payment on a fee schedule basis.

(2) Physician assistant services, as defined in section 1861(s)(2)(K)(i) of the Act.

(3) Nurse practitioner and clinical nurse specialist services, as defined in section 1861(s)(2)(K)(ii) of the Act.

(4) Certified nurse mid-wife services, as defined in section 1861(gg) of the Act.

(5) Qualified psychologist services, as defined in section 1861(ii) of the Act.

(6) Services of an anesthetist, as defined in § 410.69 of this chapter.

(b) HCFA does not pay any provider or supplier other than the hospital for services furnished to a beneficiary who is an inpatient, except for the services described in paragraphs (a)(1) through (a)(6) of this section.

* * * * *

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

E. Part 413 is amended as set forth below:

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 1395l, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

Subpart A—Introduction and General Rules

§ 413.1 [Amended]

2. In § 413.1, paragraph (a)(2)(viii) is removed.

Subpart B—Accounting Records and Reports

3. In § 413.24, the heading to paragraph (d) is republished, and a new paragraph (d)(6) is added to read as follows:

§ 413.24 Adequate cost data and cost finding.

* * * * *

(d) *Cost finding methods.* * * *

(6) *Management contracts.* (i) If the main provider purchases services for a department of the provider or a provider-based entity through a management contract or otherwise directly assigns costs to the department or entity, the like costs of the main provider must be carved out to ensure that they are not allocated to the department of the provider or provider-based entity. However, if the like costs of the main provider cannot be separately identified, the costs of the services purchased through a management contract must be included in the main provider's administrative and general costs and allocated among the provider's overall statistics.

(ii) Costs of free-standing entities may not be shown in the provider's trial balance for purposes of stepping down overhead costs to these entities. The provider must develop detailed work papers showing the exact cost of the services (including overhead) provided to or by the free-standing entity and show those carved out costs as

nonreimbursable cost centers in the provider's trial balance.

* * * * *

Subpart E—Payments to Providers

4. A new § 413.65 is added to read as follows:

§ 413.65 Requirements for a determination that a facility or an organization has provider-based status.

(a) *Scope and definitions.* (1) *Scope.* This section applies to all facilities or organizations for which provider-based status is sought, including remote locations of hospitals, as defined in paragraph (a)(2) of this section and satellite facilities as defined in § 412.22(h)(1) and § 412.25(e)(1) of this chapter, other than ESRD facilities. Determinations for ESRD facilities are made under § 413.174 of this chapter.

(2) *Definitions.* In this subpart E, unless the context indicates otherwise—

Campus means the physical area immediately adjacent to the provider's main buildings, other areas and structures that are not strictly contiguous to the main buildings but are located within 250 yards of the main buildings, and any other areas determined on an individual case basis, by the HCFA regional office, to be part of the provider's campus.

Department of a provider means a facility or organization or a physician office that is either created by, or acquired by, a main provider for the purpose of furnishing health care services of the same type as those furnished by the main provider under the name, ownership, and financial and administrative control of the main provider, in accordance with the provisions of this section. A department of a provider may not be licensed to provide health care services in its own right, may not by itself be qualified to participate in Medicare as a provider under § 489.2 of this chapter, and Medicare conditions of participation do not apply to a department as an independent entity. For purposes of this part, the term "department of a provider" does not include an RHC or, except as specified in paragraph (m)(1) of this section, an FQHC.

Free-standing facility means an entity that furnishes health care services to Medicare beneficiaries and that is not integrated with any other entity as a main provider, a department of a provider, remote location of a hospital, satellite facility, or a provider-based entity.

Main provider means a provider that either creates, or acquires ownership of, another entity to deliver additional health care services under its name, ownership, and financial and administrative control.

Provider-based entity means a provider of health care services, or an RHC or an FQHC as defined in § 405.2401(b) of this chapter, that is either created by, or acquired by, a main provider for the purpose of furnishing health care services of a different type from those of the main provider under the name, ownership, and administrative and financial control of the main provider, in accordance with the provisions of this section.

Provider-based status means the relationship between a main provider and a provider-based entity or a department of a provider, remote location of a hospital, or satellite facility, that complies with the provisions of this section.

Remote location of a hospital means a facility or an organization that is either created by, or acquired by, a hospital that is a main provider for the purpose of furnishing inpatient hospital services under the name, ownership, and financial and administrative control of the main provider, in accordance with the provisions of this section. A remote location of a hospital may not be licensed to provide inpatient hospital services in its own right, and Medicare conditions of participation do not apply to a remote location of a hospital as an independent entity. For purposes of this part, the term "remote location of a hospital" does not include a satellite facility as defined in § 412.22(h)(1) and § 412.25(e)(1) of this chapter.

(b) *Responsibility for obtaining provider-based determinations.* (1) A facility or organization is not entitled to be treated as provider-based simply because it or the main provider believe it is provider-based.

(2) A main provider or a facility or organization must contact HCFA and the facility or organization must be determined by HCFA to be provider-based before the main provider bills for services of the facility or organization as if the facility or organization were provider-based, or before it includes costs of those services on its cost report.

(3) A facility that is not located on the campus of a hospital and is used as a site of physician services of the kind ordinarily furnished in physician offices will be presumed to be a free-standing facility, unless it is determined by HCFA to have provider-based status.

(c) *Reporting.* (1) A main provider that creates or acquires a facility or organization for which it wishes to claim provider-based status, including any physician offices that a hospital wishes to operate as a hospital outpatient department or clinic, must report its acquisition of the facility or organization to HCFA if the facility or organization is located off the campus of the provider, or inclusion of the costs of the facility or organization in the provider's cost report would increase the total costs on the provider's cost report by at least 5 percent, and must furnish all information needed for a determination as to whether the facility or organization meets the requirements in paragraph (d) of this section for provider-based status.

(2) A main provider that has had one or more facilities or organizations considered provider-based also must report to HCFA any material change in the relationship between it and any provider-based facility or organization, such as a change in ownership of the facility or organization or entry into a new or different management contract that could affect the provider-based status of the facility or organization.

(d) *Requirements.* An entity must meet all of the following requirements to be determined by HCFA to have provider-based status.

(1) *Licensure.* The department of the provider, remote location of a hospital, or satellite facility and the main provider are operated under the same license, except in areas where the State requires a separate license for the department of the provider, remote location of a hospital, or satellite facility, or in States where State law does not permit licensure of the provider and the prospective department of the provider, remote location of a hospital, or satellite facility under a single license. If a State health facilities' cost review commission or other agency that has authority to regulate the rates charged by hospitals or other providers in a State finds that a particular facility or organization is not part of a provider, HCFA will determine that the facility or organization does not have provider-based status.

(2) *Operation under the ownership and control of the main provider.* The facility or organization seeking provider-based status is operated under the ownership and control of the main provider, as evidenced by the following:

(i) The business enterprise that constitutes the facility or organization is 100 percent owned by the provider.

(ii) The main provider and the facility or organization seeking status as a department of the provider, remote location of a hospital, or satellite facility have the same governing body.

(iii) The facility or organization is operated under the same organizational documents as the main provider. For

example, the facility or organization seeking provider-based status must be subject to common bylaws and operating decisions of the governing body of the provider where it is based.

(iv) The main provider has final responsibility for administrative decisions, final approval for contracts with outside parties, final approval for personnel actions, final responsibility for personnel policies (such as fringe benefits/code of conduct), and final approval for medical staff appointments in the facility or organization.

(3) *Administration and supervision.* The reporting relationship between the facility or organization seeking provider-based status and the main provider must have the same frequency, intensity, and level of accountability that exists in the relationship between the main provider and one of its departments, as evidenced by compliance with all of the following requirements:

(i) The facility or organization is under the direct supervision of the main provider.

(ii) The facility or organization is operated under the same monitoring and oversight by the provider as any other department of the provider, and is operated just as any other department of the provider with regard to supervision and accountability. The facility or organization director or individual responsible for daily operations at the entity—

(A) Maintains a reporting relationship with a manager at the main provider that has the same frequency, intensity, and level of accountability that exists in the relationship between the main provider and its departments; and

(B) Is accountable to the governing body of the main provider, in the same manner as any department head of the provider.

(iii) The following administrative functions of the facility or organization are integrated with those of the provider where the facility or organization is based: billing services, records, human resources, payroll, employee benefit package, salary structure, and purchasing services. Either the same employees or group of employees handle these administrative functions for the facility or organization and the main provider, or the administrative functions for both the facility or organization and the entity are—

(A) Contracted out under the same contract agreement; or

(B) Handled under different contract agreements, with the contract of the facility or organization being managed by the main provider.

(4) *Clinical services.* The clinical services of the facility or organization seeking provider-based status and the main provider are integrated as evidenced by the following:

(i) Professional staff of the facility or organization have clinical privileges at the main provider.

(ii) The main provider maintains the same monitoring and oversight of the facility or organization as it does for any other department of the provider.

(iii) The medical director of the facility or organization seeking provider-based status maintains a reporting relationship with the Chief Medical Officer or other similar official of the main provider that has the same frequency, intensity, and level of accountability that exists in the relationship between the medical director of a department of the main provider and the Chief Medical Officer or other similar official of the main provider, and is under the same type of supervision and accountability as any other director, medical or otherwise, of the main provider.

(iv) Medical staff committees or other professional committees at the main provider are responsible for medical activities in the facility or organization including quality assurance, utilization review, and the coordination and integration of services, to the extent practicable, between the facility or organization seeking provider-based status and the main provider.

(v) Medical records for patients treated in the facility or organization are integrated into a unified retrieval system (or cross reference) of the main provider.

(vi) Inpatient and outpatient services of the facility or organization and the main provider are integrated, and patients treated at the facility or organization who require further care have full access to all services of the main provider and are referred where appropriate to the corresponding inpatient or outpatient department or service of the main provider.

(5) *Financial integration.* The financial operations of the facility or organization are fully integrated within the financial system of the main provider, as evidenced by shared income and expenses between the main provider and the facility or organization. The costs of the facility or organization are reported in a cost center of the provider, and the financial status of the facility or organization is incorporated and readily identified in the main provider's trial balance.

(6) *Public awareness.* The facility or organization seeking status as a department of a provider, remote location of a hospital, or satellite facility is held out to the public and other payers as part of the main provider. When patients enter the provider-based facility or organization, they are aware that they are entering the main provider and are billed accordingly.

(7) *Location in immediate vicinity.* The facility or organization and the main provider are located on the same campus, except where the following requirements are met:

(i) The facility or organization demonstrates a high level of integration with the main provider by showing that it meets all of the other provider-based criteria, and demonstrates that it serves the same patient population as the main provider, by submitting records showing that, during the 12-month period immediately preceding the first day of the month in which the application for provider-based status is filed with HCFA, and for each subsequent 12-month period—

(A) At least 75 percent of the patients served by the facility or organization reside in the same zip code areas as at least 75 percent of the patients served by the main provider;

(B) At least 75 percent of the patients served by the facility or organization who required the type of care furnished by the main provider received that care from that provider (for example, at least 75 percent of the patients of an RHC seeking provider-based status received inpatient hospital services from the hospital that is the main provider); or

(C) If the facility or organization is unable to meet the criteria in paragraph (d)(7)(i)(A) or (d)(7)(i)(B) of this section because it was not in operation during all of the 12-month period described in the previous sentence, the facility or organization is located in a zip code area included among those that, during all of the 12-month period described in the previous sentence, accounted for at least 75 percent of the patients served by the main provider.

(ii) A facility or organization is not considered to be in the "immediate vicinity" of the main provider unless the facility or organization and the main provider are located in the same State or, where consistent with the laws of both States, adjacent States.

(iii) A rural health clinic that is otherwise qualified as a provider-based entity of a hospital that is located in a rural area, as defined in § 412.62(f)(1)(iii) of this chapter, and has fewer than 50 beds, as determined under § 412.105(b) of this chapter, is not subject to the criterion in this paragraph (d)(7).

(e) *Provider-based status not applicable to joint ventures.* A facility or

organization cannot be considered provider-based if the entity is owned by two or more providers engaged in a joint venture. For example, where a hospital has jointly purchased or jointly created free-standing facilities under joint venture arrangements, neither party to the joint venture arrangement can claim the free-standing facility as a provider-based entity.

(f) *Management contracts.* Facilities and organizations that otherwise meet the requirements of paragraph (d) of this section, but are operated under management contracts, must also meet all of the following criteria:

(1) The staff of the facility or organization, other than management staff, are employed by the provider or by another organization, other than the management company, which also employs the staff of the main provider.

(2) The administrative functions of the facility or organization are integrated with those of the main provider, as determined under criteria in paragraph (d)(3)(iii) of this section.

(3) The main provider has significant control over the operations of the facility or organization as determined under criteria in paragraph (b)(3)(ii) of this section.

(4) The management contract is held by the main provider itself, not by a parent organization that has control over both the main provider and the facility or organization.

(g) *Obligations of hospital outpatient departments and hospital-based entities.* (1) Hospital outpatient departments located either on or off the campus of the hospital that is the main provider must comply with the anti-dumping rules in §§ 489.20(l), (m), (q), and (r) and § 489.24 of this chapter. If any individual comes to any hospital-based entity (including an RHC) located on the main hospital campus, and a request is made on the individual's behalf for examination or treatment of a medical condition, as described in § 489.24 of this chapter, the hospital must comply with the anti-dumping rules in § 489.24 of this chapter.

(2) Physician services furnished in hospital outpatient departments or hospital-based entities (other than RHCs) must be billed with the correct site-of-service indicator, so that applicable site-of-service reductions to physician and practitioner payment amounts can be applied.

(3) Hospital outpatient departments must comply with all the terms of the hospital's provider agreement.

(4) Physicians who work in hospital outpatient departments or hospital-based entities are obligated to comply with the non-discrimination provisions in § 489.10(b) of this chapter.

(5) Hospital outpatient departments (other than RHCs) must treat all Medicare patients, for billing purposes, as hospital outpatients. The department must not treat some Medicare patients as hospital outpatients and others as physician office patients.

(6) In the case of a patient admitted to the hospital as an inpatient after receiving treatment in the hospital outpatient department or hospital-based entity, payments for services in the hospital outpatient department or hospital-based entity are subject to the payment window provisions applicable to PPS hospitals and to hospitals and units excluded from PPS set forth at § 412.2(c)(5) of this chapter and at § 413.40(c)(2), respectively.

(7) When a Medicare beneficiary is treated in a hospital outpatient department or hospital-based entity (other than an RHC) that is not located on the main provider's campus, the hospital has a duty to provide written notice to the beneficiary, prior to the delivery of services, of the amount of the beneficiary's potential financial liability (that is, of the fact that the beneficiary will incur a coinsurance liability for an outpatient visit to the hospital as well as for the physician service, and of the amount of that liability). The notice must be one that the beneficiary can read and understand. If the beneficiary is unconscious, under great duress, or for any other reason unable to read a written notice and understand and act on his or her own rights, the notice must be provided, prior to the delivery of services, to the beneficiary's authorized representative.

(8) Hospital outpatient departments must meet applicable hospital health and safety rules for Medicare-participating hospitals in part 482 of this chapter.

(h) *Furnishing all services under arrangement.* A facility or organization may not qualify for provider-based status if all patient care services furnished at the facility are furnished under arrangement.

(i) *Inappropriate treatment of a facility or organization as provider-based.* (1) *Determination and review.* If HCFA learns that a provider has treated a facility or organization as provider-based and the provider had not obtained a determination of provider-based status under this section, HCFA will—

(i) Review current payments and, if necessary, take action in accordance with the rules on inappropriate billing in paragraph (j) of this section;

(ii) Investigate and determine whether the requirements in paragraph (d) of this section (or, for periods prior to October 10, 2000, the requirements in applicable program instructions) were met; and

(iii) Review all previous payments to that provider for all cost reporting periods subject to re-opening in accordance with § 405.1885 and § 405.1889 of this chapter.

(2) *Recovery of overpayments.* If HCFA finds that payments for services at the facility or organization have been made as if the facility or organization were provider-based, even though HCFA had not previously determined that the facility or organization qualified for provider-based status, HCFA will recover the difference between the amount of payments that actually were made and the amount of payments that HCFA estimates should have been made in the absence of a determination of provider-based status, except that recovery will not be made for any period prior to October 10, 2000 if during all of that period the management of the entity made a good faith effort to operate it as a provider-based facility or organization, as described in paragraph (h)(3) of this section.

(3) *Exception for good faith effort.* HCFA determines that the management of a facility or organization has made a good faith effort to operate it as a provider-based entity if—

(i) The requirements regarding licensure and public awareness in paragraphs (d)(1) and (d)(6) of this section are met;

(ii) All facility services were billed as if they had been furnished by a department of a provider, remote location of a hospital, satellite facility, or a provider-based entity of the main provider; and

(iii) All professional services of physicians and other practitioners were billed with the correct site-of-service indicator, as described in paragraph (g)(2) of this section.

(j) *Inappropriate billing.* If HCFA finds that a facility or organization is being treated as provider-based without having obtained a determination of provider-based status under this section, HCFA will notify the provider, adjust future payments, review previous payments, determine whether the facility or organization qualifies for provider-based status under this paragraph, and continue payments only under specific conditions, as described in paragraphs (j)(1), (j)(2), (j)(3), and (j)(4) of this section.

(1) *Notice to provider.* If HCFA finds that inappropriate billing has occurred or is occurring since no provider-based

determination has been made by HCFA, HCFA will issue written notice to the provider that payments for past cost reporting periods may be reviewed and recovered as described in paragraph (i) of this section, that future payments for services in or of the facility or organization will be adjusted as described in paragraph (j)(2) of this section, and that a determination of provider-based status will be made.

(2) *Adjustment of payments.* If HCFA finds that inappropriate billing has occurred or is occurring since no provider-based determination has been made by HCFA, HCFA will adjust future payments to the provider, the facility or organization, or both, to approximate as closely as possible the amounts that would be paid, in the absence of a provider-based determination, if all other requirements for billing were met.

(3) *Review of previous payments.* If HCFA finds that inappropriate billing has occurred or is occurring since no provider-based determination has been made by HCFA, HCFA will review previous payments and, if necessary, take action in accordance with the rules on inappropriate treatment of a facility or organization as provider-based in paragraph (h) of this section.

(4) *Determination regarding provider-based status.* If HCFA finds that inappropriate billing has occurred or is occurring since no provider-based determination has been made by HCFA, HCFA will determine whether the facility or organization qualifies for provider-based status under the criteria in this section. If HCFA determines that the facility or organization qualifies for provider-based status, future payment for services at or by the facility or organization will be adjusted to reflect that determination. If HCFA determines that the facility or organization does not qualify for provider-based status, future payment for services at or by the facility or organization will be made only in accordance with the rules in paragraph (i)(5) of this section.

(5) *Continuation of payment.* The notice of denial of provider-based status sent to the provider will ask the provider to notify HCFA in writing, within 30 days of the date the notice is issued, of whether the facility or organization (or, where applicable, the practitioners who staff the facility or organization) will be seeking to enroll and meet other requirements to bill for services in a free-standing facility. If the provider indicates that the facility, organization, or practitioners will not be seeking to enroll, or if HCFA does not receive a response within 30 days of the date the notice was issued, all payment under this paragraph (i)(5) will end as of the 30th day after the date of notice. If the provider indicates that the facility or organization, or its practitioners, will be seeking to meet enrollment and other requirements for billing for services in a free-standing facility, payment for services of the facility or organization will continue, at the adjusted amounts described in paragraph (j)(2) of this section for as long as is required for all billing requirements to be met (but not longer than 6 months) if the facility or organization, or its practitioners, submit a complete enrollment application and provide all other required information within 90 days after the date of notice; and the facility or organization, or its practitioners, furnish all other information needed by HCFA to process the enrollment application and verify that other billing requirements are met. If the necessary applications or information are not provided, HCFA will terminate all payment to the provider, facility, or organization as of the date HCFA issues notice that necessary applications or information have not been submitted.

(k) *Correction of errors.* HCFA may review a past determination of provider-based status for a facility or organization or may review the status of a facility or organization (that is, whether the facility or organization is provider-based) if no determination regarding provider-based status has previously been made, if HCFA believes that status may be inappropriate, based on the provisions of this section. If HCFA determines that a previous determination was in error, and the entity should not be considered provider-based, HCFA notifies the main provider. Treatment of the facility or organization as provider-based ceases with the first day of the next cost report period following notification of the redetermination, but not less than 6 months after the date of notification.

(l) *Status of Indian Health Service and Tribal facilities and organizations.* Facilities and organizations operated by the Indian Health Service or Tribes will be considered to be departments of hospitals operated by the Indian Health Service or Tribes if, on or before April 7, 2000, they furnished only services that were billed as if they had been furnished by a department of a hospital operated by the Indian Health Service or a Tribe and they are:

(1) Owned and operated by the Indian Health Service;

(2) Owned by the Tribe but leased from the Tribe by the IHS under the Indian Self-Determination Act (Pub. L. 93–638) in accordance with applicable regulations and policies of the Indian Health Service in consultation with Tribes: or

(3) Owned by the Indian Health Service but leased and operated by the Tribe under the Indian Self-Determination Act (Pub. L. 93–638) in accordance with applicable regulations and policies of the Indian Health Service in consultation with Tribes.

(m) *FQHCs and "look-alikes".* A facility that has, since April 7, 1995, furnished only services that were billed as if they had been furnished by a department of a provider will continue to be treated, for purposes of this section, as a department of the provider without regard to whether it complies with the criteria for provider-based status in this section, if the facility—

(1) Received a grant before 1995 under section 330 of the Public Health Service Act, or is receiving funding from such a grant under a contract with the recipient of such a grant and meets the requirements to receive a grant under section 330 of the Public Health Service Act; or

(2) Based on the recommendation of the Public Health Service, was determined by HCFA before 1995 to meet the requirements for receiving such a grant.

(n) *Effective date of provider-based status.* Provider-based status for a facility or organization is effective on the earliest date on which a request for provider-based status has been made, and all requirements of this part have been met.

Subpart F—Specific Categories of Costs

5. In § 413.118, the heading to paragraph (d) is republished, and a new paragraph (d)(5) is added to read as follows:

§ 413.118 Payment for facility services related to covered ASC surgical procedures performed in hospitals on an outpatient basis.

* * * * *

(d) *Blended payment amount.* * * *

(5) For portions of cost reporting periods beginning on or after October 1, 1997, for purposes of calculating the blended payment amount under paragraph (d)(4) of this section, the ASC payment amount is the sum of the standard overhead amounts reduced by deductibles and coinsurance as defined in section 1866(a)(2)(ii) of the Act.

* * * * *

6. In § 413.122:

A. The heading to paragraph (b) is republished

B. A new paragraph (b)(5) is added

C. The heading to paragraph (c) is republished; and

D. A new paragraph (c)(4) is added to read as follows:

§ 413.122 Payment for hospital outpatient radiology services and other diagnostic procedures.

* * * * *

(b) *Payment for hospital outpatient radiology services.* * * *

(5) For hospital outpatient radiology services furnished on or after October 1, 1997, the blended payment amount is equal to the sum of—

(i) 42 percent of the hospital-specific amount; and

(ii) 58 percent of the fee schedule amount calculated as 62 percent of the sum of the fee schedule amounts payable for the same services when furnished by participating physicians in their offices in the same locality, less deductible and coinsurance as defined in section 1866(a)(2)(A)(ii) of the Act.

(c) *Payment for other diagnostic procedures.* * * *

(4) For other diagnostic services furnished on or after October 1, 1997, the blended payment amount is equal to the sum of—

(i) 50 percent of the hospital-specific amount; and

(ii) 50 percent of the fee schedule amount calculated as 42 percent of the sum of the fee schedule amounts payable for the same services when furnished by participating physicians in their offices in the same locality less deductible and coinsurance as defined in section 1866(a)(2)(A)(ii) of the Act.

7. In § 413.124, paragraph (a) is revised to read as follows:

§ 413.124 Reduction to hospital outpatient operating costs.

(a) Except for sole community hospitals, as defined in § 412.92 of this chapter, and critical access hospitals, the reasonable costs of outpatient hospital services (other than capital-related costs of these services) are reduced by 5.8 percent for services furnished during portions of cost reporting periods occurring on or after October 1, 1990 and until the first date that the prospective payment system under part 419 of this chapter is implemented.

* * * * *

Subpart G—Capital-Related Costs

8. In § 413.130, the heading to paragraph (j) and the introductory text to paragraph (j)(1) are republished, and paragraph (j)(1)(ii) is revised to read as follows:

§ 413.130 Introduction to capital-related costs.

* * * * *

(j) *Reduction to capital-related costs.* (1) Except for sole community hospitals and critical access hospitals, the amount of capital-related costs of all hospital outpatient services is reduced by—

* * * * *

(ii) 10 percent for portions of cost reporting periods occurring on or after October 1, 1991 and until the first date that the prospective payment system under part 419 of this chapter is implemented.

* * * * *

F. A new part 419, consisting of §§ 419.1, 419.2, 419.20, 419.21, 419.22, 419.30, 419.31, 419.32, 419.40, 419.41, 419.42, 419.43, 419.44, 419.50, 419.60, and 419.70, is added to read as follows:

PART 419—PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL OUTPATIENT DEPARTMENT SERVICES

Subpart A—General Provisions

Sec.
419.1 Basis and scope.
419.2 Basis of payment.

Subpart B—Categories of Hospitals and Services Subject to and Excluded From the Hospital Outpatient Prospective Payment System

419.20 Hospitals subject to the hospital outpatient prospective payment system.
419.21 Hospital outpatient services subject to the outpatient prospective payment system.
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Subpart C—Basic Methodology for Determining Prospective Payment Rates for Hospital Outpatient Services

419.30 Base expenditure target for calendar year 1999.
419.31 Ambulatory payment classification (APC) system and payment weights.
419.32 Calculation of prospective payment rates for hospital outpatient services.

Subpart D—Payments to Hospitals

419.40 Payment concepts.
419.41 Calculation of national beneficiary copayment amounts and national Medicare program payment amounts.
419.42 Hospital election to reduce copayment.
419.43 Adjustments to national program payment and beneficiary copayment amounts.
419.44 Payment reductions for surgical procedures.

Subpart E—Updates

419.50 Annual updates.

Subpart F—Limitations on Review

419.60 Limitations on administrative and judicial review.

Subpart G—Transitional Corridors

419.70 Transitional adjustment to limit decline in payment.

Authority: Secs. 1102, 1833(t), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395l(t), and 1395hh).

PART 419—PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL OUTPATIENT DEPARTMENT SERVICES

Subpart A—General Provisions

§ 419.1 Basis and scope.

(a) *Basis.* This part implements section 1833(t) of the Act by establishing a prospective payment system for services furnished on or after July 1, 2000 by hospital outpatient departments to Medicare beneficiaries who are registered on hospital records as outpatients.

(b) *Scope.* This subpart describes the basis of payment for outpatient hospital services under the prospective payment system. Subpart B sets forth the categories of hospitals and services that are subject to the outpatient hospital prospective payment system and those categories of hospitals and services that are excluded from the outpatient hospital prospective payment system. Subpart C sets forth the basic methodology by which prospective payment rates for hospital outpatient services are determined. Subpart D describes Medicare payment amounts, beneficiary copayment amounts, and methods of payment to hospitals under the hospital outpatient prospective payment system. Subpart E describes how the hospital outpatient prospective payment system may be updated. Subpart F describes limitations on administrative and judicial review. Subpart G describes the transitional payment adjustments that are made before 2004 to limit declines in payment for outpatient services.

§ 419.2 Basis of payment.

(a) *Unit of payment.* Under the hospital outpatient prospective payment system, predetermined amounts are paid for designated services furnished to Medicare beneficiaries. These services are identified by codes established under the Health Care Financing Administration Common Procedure Coding System (HCPCS). The prospective payment rate for each service or procedure for which payment is allowed under the hospital outpatient prospective payment system is

determined according to the methodology described in subpart C of this part. The manner in which the Medicare payment amount and the beneficiary copayment amount for each service or procedure are determined is described in subpart D of this part.

(b) *Determination of hospital outpatient prospective payment rates: Included costs.* The prospective payment system establishes a national payment rate, standardized for geographic wage differences, that includes operating and capital-related costs that are directly related and integral to performing a procedure or furnishing a service on an outpatient basis. In general, these costs include, but are not limited to—

(1) Use of an operating suite, procedure room, or treatment room;

(2) Use of recovery room;

(3) Use of an observation bed;

(4) Anesthesia, certain drugs, biologicals, and other pharmaceuticals; medical and surgical supplies and equipment; surgical dressings; and devices used for external reduction of fractures and dislocations;

(5) Supplies and equipment for administering and monitoring anesthesia or sedation;

(6) Intraocular lenses (IOLs);

(7) Incidental services such as venipuncture;

(8) Capital-related costs;

(9) Implantable items used in connection with diagnostic X-ray tests, diagnostic laboratory tests, and other diagnostic tests;

(10) Durable medical equipment that is implantable;

(11) Implantable prosthetic devices (other than dental) which replace all or part of an internal body organ (including colostomy bags and supplies directly related to colostomy care), including replacement of these devices; and

(12) Costs incurred to procure donor tissue other than corneal tissue.

(c) *Determination of hospital outpatient prospective payment rates: Excluded costs.* The following costs are excluded from the hospital outpatient prospective payment rates:

(1) Medical education costs for approved nursing and allied health education programs.

(2) Corneal tissue acquisition costs incurred by hospitals that are paid for on a reasonable cost basis.

(3) Costs for services listed in § 419.22.

Subpart B—Categories of Hospitals and Services Subject to and Excluded From the Hospital Outpatient Prospective Payment System

§ 419.20 Hospitals subject to the hospital outpatient prospective payment system.

(a) *Applicability.* The hospital outpatient prospective payment system is applicable to any hospital participating in the Medicare program, except those specified in paragraph (b) of this section, for services furnished on or after July 1, 2000.

(b) *Hospitals excluded from the outpatient prospective payment system.* (1) Those services furnished by Maryland hospitals that are paid under a cost containment waiver in accordance with section 1814(b)(3) of the Act are excluded from the hospital outpatient prospective payment system.

(2) Critical access hospitals (CAHs) are excluded from the hospital outpatient prospective payment system.

§ 419.21 Hospital outpatient services subject to the outpatient prospective payment system.

Except for services described in § 419.22, effective for services furnished on or after July 1, 2000, payment is made under the hospital outpatient prospective payment system for the following:

(a) Medicare Part B services furnished to hospital outpatients designated by the Secretary under this part.

(b) Services designated by the Secretary that are covered under Medicare Part B when furnished to hospital inpatients who are either not entitled to benefits under Part A or who have exhausted their Part A benefits but are entitled to benefits under Part B of the program.

(c) Partial hospitalization services furnished by community mental health centers (CMHCs).

(d) The following medical and other health services furnished by a comprehensive outpatient rehabilitation facility (CORF) when they are provided outside the patient's plan (of care); or by a home health agency (HHA) to patients who are not under an HHA plan or treatment; or by a hospice program furnishing services to patients outside the hospice benefit:

(1) Antigens.

(2) Splints and casts.

(3) Pneumococcal vaccine, influenza vaccine, and hepatitis B vaccine.

§ 419.22 Hospital outpatient services excluded from payment under the hospital outpatient prospective payment system.

The following services are not paid for under the hospital outpatient prospective payment system:

(a) Physician services that meet the requirements of § 415.102(a) of this chapter for payment on a fee schedule basis.

(b) Nurse practitioner and clinical nurse specialist services, as defined in section 1861(s)(2)(K)(ii) of the Act.

(c) Physician assistant services, as defined in section 1861(s)(2)(K)(i) of the Act.

(d) Certified nurse-midwife services, as defined in section 1861(gg) of the Act.

(e) Services of qualified psychologists, as defined in section 1861(ii) of the Act.

(f) Services of an anesthetist as defined in § 410.69 of this chapter.

(g) Clinical social worker services as defined in section 1861(hh)(2) of the Act.

(h) Outpatient therapy services described in section 1833(a)(8) of the Act.

(i) Ambulance services, as described in section 1861(v)(1)(U) of the Act, or, if applicable, the fee schedule established under section 1834(l).

(j) Except as provided in § 419.22(b)(11), prosthetic devices, prosthetics, prosthetic supplies, and orthotic devices.

(k) Except as provided in § 419.2(b)(10), durable medical equipment supplied by the hospital for the patient to take home.

(l) Clinical diagnostic laboratory services.

(m) Services for patients with ESRD that are paid under the ESRD composite rate and drugs and supplies furnished during dialysis but not included in the composite rate.

(n) Services and procedures that the Secretary designates as requiring inpatient care.

(o) Hospital outpatient services furnished to SNF residents (as defined in § 411.15(p) of this chapter) as part of the patient's resident assessment or comprehensive care plan (and thus included under the SNF PPS) that are furnished by the hospital "under arrangements" but billable only by the SNF, regardless of whether or not the patient is in a Part A SNF stay.

(p) Services that are not covered by Medicare by statute.

(q) Services that are not reasonable or necessary for the diagnosis or treatment of an illness or disease.

Subpart C—Basic Methodology for Determining Prospective Payment Rates for Hospital Outpatient Services

§ 419.30 Base expenditure target for calendar year 1999.

(a) HCFA estimates the aggregate amount that would be payable for

hospital outpatient services in calendar year 1999 by summing—

(1) The total amounts that would be payable from the Trust Fund for covered hospital outpatient services without regard to the outpatient prospective payment system described in this part; and

(2) The total amounts of coinsurance that would be payable by beneficiaries to hospitals for covered hospital outpatient services without regard to the outpatient prospective payment system described in this part.

(b) The estimated aggregate amount under paragraph (a) of this section is determined as though the deductible required under section 1833(b) of the Act did not apply.

§ 419.31 Ambulatory payment classification (APC) system and payment weights.

(a) *APC groups.* (1) HCFA classifies outpatient services and procedures that are comparable clinically and in terms of resource use into APC groups. Except as specified in paragraph (a)(2) of this section, items and services within a group are not comparable with respect to the use of resources if the highest median cost for an item or service within the group is more than 2 times greater than the lowest median cost for an item or service within the group.

(2) HCFA may make exceptions to the requirements set forth in paragraph (a)(1) in unusual cases, such as low volume items and services, but may not make such an exception in the case of a drug or biological that has been designated as an orphan drug under section 526 of the Federal Food, Drug and Cosmetic Act.

(3) The payment rate determined for an APC group in accordance with § 419.32, and the copayment amount and program payment amount determined for an APC group in accordance with subpart D of this part, apply to every HCPCS code classified within an APC group.

(b) *APC weighting factors.* (1) Using hospital outpatient claims data from calendar year 1996 and data from the most recent available hospital cost reports, HCFA determines the median costs for the services and procedures within each APC group.

(2) HCFA assigns to each APC group an appropriate weighting factor to reflect the relative median costs for the services within the APC group compared to the median costs for the services in all APC groups.

(c) *Standardizing amounts.* (1) HCFA determines the portion of costs determined in paragraph (b)(1) of this section that is labor-related. This is known as the "labor-related portion" of hospital outpatient costs.

(2) HCFA standardizes the median costs determined in paragraph (b)(1) of this section by adjusting for variations in hospital labor costs across geographic areas.

§ 419.32 Calculation of prospective payment rates for hospital outpatient services.

(a) *Conversion factor for 1999.* HCFA calculates a conversion factor in such a manner that payment for hospital outpatient services furnished in 1999 would have equaled the base expenditure target calculated in § 419.30, taking into account APC group weights and estimated service frequencies and reduced by the amounts that would be payable in 1999 as outlier payments under § 419.43(d) and transitional pass-through payments under § 419.43(e).

(b) *Conversion factor for calendar year 2000 and subsequent years.* (1) Subject to paragraph (b)(2) of this section, the conversion factor for a calendar year is equal to the conversion factor calculated for the previous year adjusted as follows:

(i) For calendar years 2000, 2001, and 2002, by the hospital inpatient market basket percentage increase applicable under section 1886(b)(3)(B)(iii) of the Act reduced by one percentage point.

(ii) For calendar years 2003 and subsequent years, by the hospital inpatient market basket percentage increase applicable under section 1886(b)(3)(B)(iii) of the Act.

(2) Beginning in calendar year 2000, HCFA may substitute for the hospital inpatient market basket percentage in paragraph (b) of this section a market basket percentage increase that is determined and applied to hospital outpatient services in the same manner that the hospital inpatient market basket percentage increase is determined and applied to inpatient hospital services.

(c) *Payment rates.* The payment rate for services and procedures for which payment is made under the hospital outpatient prospective payment system is the product of the conversion factor calculated under paragraph (a) or paragraph (b) of this section and the relative weight determined under § 419.31(b).

(d) *Budget neutrality.* HCFA adjusts the conversion factor as needed to ensure that updates and adjustments under § 419.50(a) are budget neutral.

Subpart D—Payments to Hospitals

§ 419.40 Payment concepts.

(a) In addition to the payment rate described in § 419.32, for each APC group there is a predetermined beneficiary coinsurance amount as described in § 419.41(a). The Medicare program payment amount for each APC group is calculated by applying the program payment percentage as described in § 419.41(b).

(b) For purposes of this section—

(1) *Coinsurance percentage* is calculated as the difference between the program payment percentage and 100 percent. The coinsurance percentage in any year is thus defined for each APC group as the *greater* of the following: the ratio of the APC group unadjusted copayment amount *to* the annual APC group payment rate, or 20 percent.

(2) *Program payment percentage* is calculated as the *lower* of the following: the ratio of the APC group payment rate minus the APC group unadjusted coinsurance amount, *to* the APC group payment rate, *or* 80 percent.

(3) *Unadjusted coinsurance amount* is calculated as 20 percent of the wage-adjusted national median of charges for services within an APC group furnished during 1996, updated to 1999 using an actuarial projection of charge increases for hospital outpatient department services during the period 1996 to 1999.

(c) *Limitation of coinsurance amount to inpatient hospital deductible amount.* The coinsurance amount for a procedure performed in a year cannot exceed the amount of the inpatient hospital deductible established under section 1813(b) of the Act for that year.

§ 419.41 Calculation of national beneficiary coinsurance amounts and national Medicare program payment amounts.

(a) To calculate the unadjusted coinsurance amount for each APC group, HCFA—

(1) Standardizes 1996 hospital charges for the services within each APC group to offset variations in hospital labor costs across geographic areas;

(2) Identifies the median of the wage-neutralized 1996 charges for each APC group; and

(3) Determines the value equal to 20 percent of the wage-neutralized 1996 median charge for each APC group and multiplies that value by an actuarial projection of increases in charges for hospital outpatient department services during the period 1996 to 1999. The result is the unadjusted beneficiary coinsurance amount for the APC group.

(b) HCFA calculates annually the program payment percentage for every APC group on the basis of each group's unadjusted coinsurance amount and its payment rate after the payment rate is adjusted in accordance with § 419.32.

(c) To determine payment amounts due for a service paid under the hospital

outpatient prospective payment system, HCFA makes the following calculations:

(1) Makes the wage index adjustment in accordance with § 419.43.

(2) Subtracts the amount of the applicable Part B deductible provided under § 410.160 of this chapter.

(3) Multiplies the remainder by the program payment percentage for the group to determine the preliminary Medicare program payment amount.

(4) Subtracts the program payment amount from the amount determined in paragraph (c)(2) of this section to determine the coinsurance amount.

(i) The coinsurance amount for an APC cannot exceed the amount of the inpatient hospital deductible established under section 1813(b) of the Act for that year.

(ii) The coinsurance amount is computed as if the adjustments under § 419.43(d) and (e) (and any adjustment made under § 419.43(f) in relation to these adjustments) had not been paid.

(5) Adds the amount by which the coinsurance amount would have exceeded the inpatient hospital deductible for that year to the preliminary Medicare program payment amount determined in paragraph (c)(3) of this section to determine the final Medicare program payment amount.

§ 419.42 Hospital election to reduce coinsurance.

(a) A hospital may elect to reduce coinsurance for any or all APC groups on a calendar year basis. A hospital may *not* elect to reduce copayment for some, but not all, services within the same group.

(b) A hospital must notify its fiscal intermediary of its election to reduce coinsurance no later than—

(1) June 1, 2000, for coinsurance elections for the period July 1, 2000 through December 31, 2000; or

(2) December 1 preceding the beginning of each subsequent calendar year.

(c) The hospital's election must be properly documented. It must specifically identify the APCs to which it applies and the coinsurance amount (within the limits identified below) that the hospital has selected for each group.

(d) The election of reduced coinsurance remains in effect unchanged during the year for which the election was made.

(e) In electing reduced coinsurance, a hospital may elect a level that is less than that year's wage-adjusted coinsurance amount for the group but not less than 20 percent of the APC payment rate as determined in § 419.32.

(f) The hospital may advertise and otherwise disseminate information concerning the reduced level of coinsurance that it has elected. All advertisements and information furnished to Medicare beneficiaries must specify that the coinsurance reductions advertised apply only to the specified services of that hospital and that coinsurance reductions are available only for hospitals that choose to reduce coinsurance for hospital outpatient services and are not allowed in any other ambulatory settings or physician offices.

§ 419.43 Adjustments to national program payment and beneficiary coinsurance amounts.

(a) *General rule.* HCFA determines national prospective payment rates for hospital outpatient department services and determines a wage adjustment factor to adjust the portion of the APC payment and national beneficiary coinsurance amount attributable to labor-related costs for relative differences in labor and labor-related costs across geographic regions in a budget neutral manner.

(b) *Labor-related portion of payment and copayment rates for hospital outpatient services.* HCFA determines the portion of hospital outpatient costs attributable to labor and labor-related costs (known as the "labor-related portion" of hospital outpatient costs) in accordance with § 419.31(c)(1).

(c) *Wage index factor.* HCFA uses the hospital inpatient prospective payment system wage index established in accordance with part 412 of this chapter to make the adjustment referred to in paragraph (a) of this section.

(d) *Outlier adjustment*—(1) *General rule.* Subject to paragraph (d)(4) of this section, HCFA provides for an additional payment for each hospital outpatient service (or group of services) for which a hospital's charges, adjusted to cost, exceed the following:

(i) A fixed multiple of the sum of—

(A) The applicable Medicare hospital outpatient payment amount determined under § 419.32(c), as adjusted under § 419.43 (other than for adjustments under this paragraph (d) or paragraph (e) of this section); and

(B) Any transitional pass-through payment under paragraph (e) of this section.

(ii) At the option of HCFA, a fixed dollar amount.

(2) *Amount of adjustment.* The amount of the additional payment under paragraph (d)(1) of this section is determined by HCFA and approximates the marginal cost of care beyond the applicable cutoff point under paragraph (d)(1) of this section.

(3) *Limit on aggregate outlier adjustments*—(i) *In general.* The total of the additional payments made under this paragraph (d) for covered hospital outpatient department services furnished in a year (as estimated by HCFA before the beginning of the year) may not exceed the applicable percentage specified in paragraph (d)(3)(ii) of this section of the total program payments (sum of both the Medicare and beneficiary payments to the hospital) estimated to be made under this part for all hospital outpatient services furnished in that year. If this paragraph is first applied to less than a full year, the limit applies only to the portion of the year.

(ii) *Applicable percentage.* For purposes of paragraph (d)(3)(i) of this section, the term "applicable percentage" means a percentage specified by HCFA up to (but not to exceed)—

(A) For a year (or portion of a year) before 2004, 2.5 percent; and

(B) For 2004 and thereafter, 3.0 percent.

(4) *Transitional authority.* In applying paragraph (d)(1) of this section for hospital outpatient services furnished before January 1, 2002, HCFA may—

(i) Apply paragraph (d)(1) of this section to a bill for these services related to an outpatient encounter (rather than for a specific service or group of services) using hospital outpatient payment amounts and transitional pass-through payments covered under the bill; and

(ii) Use an appropriate cost-to-charge ratio for the hospital or CMHC (as determined by HCFA), rather than for specific departments within the hospital.

(e) *Transitional pass-through for additional costs of innovative medical devices, drugs, and biologicals*—(1) *General rule.* HCFA provides for an additional payment under this paragraph for any of the following that are provided as part of a hospital outpatient service (or group of services):

(i) *Current orphan drugs.* A drug or biological that is used for a rare disease or condition with respect to which the drug or biological has been designated as an orphan drug under section 526 of the Federal Food, Drug and Cosmetic Act if payment for the drug or biological as an outpatient hospital service under this part was being made on the first date that the system under this part is implemented.

(ii) *Current cancer therapy drugs and biologicals and brachytherapy.* A drug or biological that is used in cancer therapy, including, but not limited to, a chemotherapeutic agent, an antiemetic,

a hematopoietic growth factor, a colony stimulating factor, a biological response modifier, a bisphosphonate, and a device of brachytherapy, if payment for the drug, biological, or device as an outpatient hospital service under this part was being made on the first date that the system under this part is implemented.

(iii) *Current radiopharmaceutical drugs and biological products.* A radiopharmaceutical drug or biological product used in diagnostic, monitoring, and therapeutic nuclear medicine procedures if payment for the drug or biological as an outpatient hospital service under this part was being made on the first date that the system under this part is implemented.

(iv) *New medical devices, drugs, and biologicals.* A medical device, drug, or biological not described in paragraph (e)(1)(i), (e)(1)(ii), or (e)(1)(iii) of this section if—

(A) Payment for the device, drug, or biological as an outpatient hospital service under this part was not being made as of December 31, 1996; and

(B) The cost of the device, drug, or biological is not insignificant (as defined in paragraph (e)(1)(iv)(C) of this section) in relation to the hospital outpatient fee schedule amount (as calculated under § 419.32(c)) payable for the service (or group of services) involved.

(C) The cost of the device, drug, or biological is considered not insignificant if it meets all of the following thresholds:

(*1*) Its expected reasonable cost exceeds 25 percent of the applicable fee schedule amount for the associated service.

(*2*) The expected reasonable cost of the new drug, biological, or device must exceed the current portion of the fee schedule amount determined to be associated with the drug, biological, or device by 25 percent.

(*3*) The difference between the expected reasonable cost of the item and the portion of the hospital outpatient fee schedule amount determined to be associated with the item exceeds 10 percent of the applicable hospital outpatient fee schedule amount.

(2) *Limited period of payment.* The payment under this paragraph (e) with respect to a medical device, drug, or biological applies during a period of at least 2 years, but not more than 3 years, that begins—

(i) On the first date this section is implemented in the case of a drug, biological, or device described in paragraphs (e)(2)(i), (e)(2)(ii), or (e)(2)(iii) of this section and in the case of a device, drug, or biological described in paragraph (e)(1)(iv) of this section and for which payment under this part is made as an outpatient hospital service before the first date; or

(ii) In the case of a device, drug, or biological described in paragraph (e)(1)(iv) of this section not described in paragraph (e)(2)(i) of this section, on the first date on which payment is made under this part for the device, drug, or biological as an outpatient hospital service.

(3) *Amount of additional payment.* Subject to paragraph (e)(4)(iii) of this section, the amount of the payment under this paragraph is—

(i) In the case of a drug or biological, the amount by which the amount determined under section 1842(o) of the Act for the drug or biological exceeds the portion of the otherwise applicable Medicare hospital outpatient fee schedule amount that HCFA determines is associated with the drug or biological; or

(ii) In the case of a medical device, the amount by which the hospital's charges for the device, adjusted to cost, exceeds the portion of the otherwise applicable Medicare hospital outpatient fee schedule amount that HCFA determines is associated with the device.

(4) *Limit on aggregate annual adjustment*—(i) *General rule.* The total of the additional payments made under this paragraph for hospital outpatient services furnished in a year, as estimated by HCFA before the beginning of the year, may not exceed the applicable percentage specified in paragraph (e)(4)(ii) of this section of the total program payments estimated to be made under this section for all hospital outpatient services furnished in that year. If this paragraph is first applied to less than a full year, the limit applies only to the portion of the year.

(ii) *Applicable percentage.* For purposes of paragraph (e)(4)(i) of this section, the term "applicable percentage" means—

(A) For a year (or portion of a year) before 2004, 2.5 percent; and

(B) For 2004 and thereafter, a percentage specified by HCFA up to (but not to exceed) 2.0 percent.

(iii) *Uniform prospective reduction if aggregate limit projected to be exceeded.* If HCFA estimates before the beginning of a year that the amount of the additional payments under this paragraph (e) for the year (or portion thereof) as determined under paragraph (e)(4)(i) of this section without regard to this paragraph (e)(4)(iii) would exceed the limit established under this paragraph (e)(4)(iii), HCFA reduces pro rata the amount of each of the additional payments under this paragraph for that year (or portion thereof) in order to ensure that the aggregate additional payments under this paragraph (as so estimated) do not exceed the limit.

(f) *Budget neutrality.* Outlier adjustments under paragraph (d) of this section and transitional pass-through payments under paragraph (e) of this section are established in a budget-neutral manner.

§ 419.44 Payment reductions for surgical procedures.

(a) *Multiple surgical procedures.* When more than one surgical procedure for which payment is made under the hospital outpatient prospective payment system is performed during a single surgical encounter, the Medicare program payment amount and the beneficiary copayment amount are based on—

(1) The full amounts for the procedure with the highest APC payment rate; and

(2) One-half of the full program and the beneficiary payment amounts for all other covered procedures.

(b) *Terminated procedures.* When a surgical procedure is terminated prior to completion due to extenuating circumstances or circumstances that threaten the well-being of the patient, the Medicare program payment amount and the beneficiary copayment amount are based on—

(1) The full amounts if the procedure is discontinued after the induction of anesthesia or after the procedure is started; or

(2) One-half of the full program and the beneficiary coinsurance amounts if the procedure is discontinued after the patient is prepared for surgery and taken to the room where the procedure is to be performed but before anesthesia is induced.

Subpart E—Updates

§ 419.50 Annual review.

(a) *General rule.* Not less often than annually, HCFA reviews and updates groups, relative payment weights, and the wage and other adjustments to take into account changes in medical practice, changes in technology, the addition of new services, new cost data, and other relevant information and factors.

(b) *Consultation requirement.* HCFA will consult with an expert outside advisory panel composed of an appropriate selection of representatives of providers to review (and advise HCFA concerning) the clinical integrity of the groups and weights. The panel may use data collected or developed by entities and organizations (other than the Department of Health and Human Services) in conducting the review.

(c) *Effective dates.* HCFA conducts the first annual review under paragraph (a) of this section in 2001 for payments made in 2002.

Subpart F—Limitations on Review

§ 419.80 Limitations on administrative and judicial review.

There can be no administrative or judicial review under sections 1869 and 1878 of the Act or otherwise of the following:

(a) The development of the APC system, including—

(1) Establishment of the groups and relative payment weights;

(2) Wage adjustment factors;

(3) Other adjustments; and

(4) Methods for controlling unnecessary increases in volume.

(b) The calculation of base amounts described in section 1833(t)(3) of the Act.

(c) Periodic adjustments described in section 1833(t)(9) of the Act.

(d) The establishment of a separate conversion factor for hospitals described in section 1886(d)(1)(B)(v) of the Act.

(e) The determination of the fixed multiple, or a fixed dollar cutoff amount, the marginal cost of care, or applicable percentage under § 419.43(d) or the determination of insignificance of cost, the duration of the additional payments (consistent with § 419.43(e)), the portion of the Medicare hospital outpatient fee schedule amount associated with particular devices, drugs, or biologicals, and the application of any pro rata reduction under § 419.43(e).

Subpart G—Transitional Corridors

§ 419.70 Transitional adjustment to limit decline in payment.

(a) *Before 2002.* Except as provided in paragraph (d) of this section, for covered hospital outpatient services furnished before January 1, 2002, for which the prospective payment system amount (as defined in paragraph (e) of this section) is—

(1) At least 90 percent, but less than 100 percent, of the pre-BBA amount (as defined in paragraph (f) of this section), the amount of payment under this part is increased by 80 percent of the amount of this difference;

(2) At least 80 percent, but less than 90 percent, of the pre-BBA amount, the amount of payment under this part is increased by the amount by which the product of 0.71 and the pre-BBA amount exceeds the product of 0.70 and the prospective payment system amount;

(3) At least 70 percent, but less than 80 percent, of the pre-BBA amount, the amount of payment under this part is increased by the amount by which the product of 0.63 and the pre-BBA amount, exceeds the product of 0.60 and the PPS amount; or

(4) Less than 70 percent of the pre-BBA amount, the amount of payment under this part shall be increased by 21 percent of the pre-BBA amount.

(b) *For 2002.* Except as provided in paragraph (d) of this section, for covered hospital outpatient services furnished during 2002, for which the prospective payment system amount is—

(1) At least 90 percent, but less than 100 percent, of the pre-BBA amount, the amount of payment under this part is increased by 70 percent of the amount of this difference;

(2) At least 80 percent, but less than 90 percent, of the pre-BBA amount, the amount of payment under this part is increased by the amount by which the product of 0.61 and the pre-BBA amount exceeds the product of 0.60 and the prospective payment system amount; or

(3) Less than 80 percent of the pre-BBA amount, the amount of payment under this part is increased by 13 percent of the pre-BBA amount.

(c) *For 2003.* Except as provided in paragraph (d) of this section, for covered hospital outpatient services furnished during 2003, for which the prospective payment system amount is—

(1) At least 90 percent, but less than 100 percent, of the pre-BBA amount, the amount of payment under this part is increased by 60 percent of the amount of this difference; or

(2) Less than 90 percent of the pre-BBA amount, the amount of payment under this part is increased by 6 percent of the pre-BBA amount.

(d) *Hold harmless provisions*—(1) *Temporary treatment for small rural hospitals.* For covered hospital outpatient services furnished in a calendar year before January 1, 2004 for which the prospective payment system amount is less than the pre-BBA amount, the amount of payment under this part is increased by the amount of that difference if the hospital—

(i) Is located in a rural area as defined in § 412.63(b) of this chapter or is treated as being located in a rural area under section 1886(d)(8)(E) of the Act; and

(ii) Has 100 or fewer beds as defined in § 412.105(b) of this chapter.

(2) *Permanent treatment for cancer hospitals.* In the case of a hospital described in § 412.23(f) of this chapter for which the prospective payment system amount is less than the pre-BBA amount for covered hospital outpatient services, the amount of payment under this part is increased by the amount of this difference.

(e) *Prospective payment system amount defined.* In this paragraph, the term "prospective payment system amount" means, with respect to covered hospital outpatient services, the amount payable under this part for these services (determined without regard to this paragraph or any reduction in coinsurance elected under § 419.42), including amounts payable as copayment under § 419.41, coinsurance under section 1866(a)(2)(A)(ii) of the Act, and the deductible under section 1833(b) of the Act.

(f) *Pre-BBA amount defined*—(1) *General rule.* In this paragraph, the "pre-BBA amount" means, with respect to covered hospital outpatient services furnished by a hospital or a community mental health center (CMHC) in a year, an amount equal to the product of the reasonable cost of the provider for these services for the portions of the provider's cost reporting period (or periods) occurring in the year and the base provider outpatient payment-to-cost ratio for the provider (as defined in paragraph (f)(2) of this section).

(2) *Base payment-to-cost-ratio defined.* For purposes of this paragraph, HCFA shall determine these ratios as if the amendments to sections 1833(i)(3)(B)(i)(II) and 1833(n)(1)(B)(i) of the Act made by section 4521 of the BBA, to require that the full amount beneficiaries paid as coinsurance under section 1862(a)(2)(A) of the Act are taken into account in determining Medicare Part B Trust Fund payment to the hospital, were in effect in 1996. The "base payment-to-cost ratio" for a hospital or CMHC means the ratio of—

(i) The provider's payment under this part for covered outpatient services furnished during the cost reporting period ending in 1996, including any payment for these services through cost-sharing described in paragraph (e) of this section; and

(ii) The reasonable cost of these services for this period, without applying the cost reductions under section 1861(v)(1)(S) of the Act.

(g) *Interim payments.* HCFA makes payments under this paragraph to hospitals and CMHCs on an interim basis, subject to retrospective adjustments based on settled cost reports.

(h) *No effect on coinsurance.* No payment made under this section affects the unadjusted coinsurance amount or the coinsurance amount described in § 419.41.

(i) *Application without regard to budget neutrality.* The additional payments made under this paragraph—

(1) Are not considered an adjustment under § 419.43(f); and

(2) Are not implemented in a budget neutral manner.

PART 424—CONDITIONS FOR MEDICARE PAYMENT

G. Part 424 is amended as set forth below:

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 424.24, the heading to paragraph (e) is republished, and a new paragraph (e)(3) is added to read as follows:

§ 424.24 Requirements for medical and other health services furnished by providers under Medicare Part B.

* * * * *

(e) *Partial hospitalization services: Content of certification and plan of treatment requirements—*

* * * * *

(3) *Recertification requirements.*

(i) *Signature.* The physician recertification must be signed by a physician who is treating the patient and has knowledge of the patient's response to treatment.

(ii) *Timing.* The first recertification is required as of the 18th day of partial hospitalization services. Subsequent recertifications are required at intervals established by the provider, but no less frequently than every 30 days.

(iii) *Content.* The recertification must specify that the patient would otherwise require inpatient psychiatric care in the absence of continued stay in the partial hospitalization program and describe the following:

(A) The patient's response to the therapeutic interventions provided by the partial hospitalization program.

(B) The patient's psychiatric symptoms that continue to place the patient at risk of hospitalization.

(C) Treatment goals for coordination of services to facilitate discharge from the partial hospitalization program.

* * * * *

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

H. Part 489 is amended as set forth below:

1. The authority citation to part 489 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Essentials of Provider Agreements

2. In § 489.20, the introductory text to the section is republished; the introductory text to paragraph (d) is revised; paragraphs (d)(3), (d)(4), and (d)(5) are redesignated as paragraphs (d)(4), (d)(5), and (d)(6), respectively; and a new paragraph (d)(3) is added to read as follows:

§ 489.20 Basic commitments.

The provider agrees to the following:

* * * * *

(d) In the case of a hospital or a CAH that furnishes services to Medicare beneficiaries, either to furnish directly or to make arrangements (as defined in § 409.3 of this chapter) for all Medicare-covered services to inpatients and outpatients of a hospital or a CAH except the following:

* * * * *

(3) Nurse practitioner and clinical nurse specialist services, as defined in section 1861(s)(2)(K)(ii) of the Act.

* * * * *

3. In § 489.24, the definition for "Comes to the emergency department" in paragraph (b) is revised, and a new paragraph (i) is added to read as follows:

§ 489.24 Special responsibilities of Medicare hospitals in emergency cases.

* * * * *

(b) * * *

Comes to the emergency department means, with respect to an individual requesting examination or treatment, that the individual is on the hospital property. For purposes of this section, "property" means the entire main hospital campus as defined in § 413.65(b) of this chapter, including the parking lot, sidewalk, and driveway, as well as any facility or organization that is located off the main hospital campus but has been determined under § 413.65 of this chapter to be a department of the hospital. The responsibilities of hospitals with respect to these off-campus facilities or organizations are described in paragraph (i) of this section. Property also includes ambulances owned and operated by the hospital even if the ambulance is not on hospital grounds. An individual in a nonhospital-owned ambulance on hospital property is considered to have come to the hospital's emergency department. An individual in a nonhospital-owned ambulance off hospital property is not considered to have come to the hospital's emergency department even if a member of the ambulance staff contacts the hospital by telephone or telemetry communications and informs the hospital that they want to transport the individual to the hospital for examination and treatment. In these situations, the hospital may deny access if it is in "diversionary status," that is, it does not have the staff or facilities to accept any additional emergency patients. If, however, the ambulance staff disregards the hospital's instructions and transports the individual on to hospital property, the individual is considered to have come to the emergency department.

* * * * *

(i) *Off-campus departments.* If an individual comes to a facility or organization that is located off the main hospital campus but has been determined under § 416.35 of this chapter to be a department of the hospital and a request is made on the individual's behalf for examination or treatment of a potential emergency medical condition as otherwise described in paragraph (a) of this section, the hospital is obligated in accordance with the rules in this paragraph to provide the individual with an appropriate medical screening examination and any necessary stabilizing treatment or an appropriate transfer.

(1) *Capability of the hospital.* The capability of the hospital includes that of the hospital as a whole, not just the capability of the off-campus department. Except for cases described in paragraph (i)(3)(ii) of this section, the obligation of a hospital under this section must be discharged within the hospital as a whole. However, the hospital is not required to locate additional personnel or staff to off-campus departments to be on standby for possible emergencies.

(2) *Protocols for off-campus departments.* The hospital must establish protocols for the handling of individuals with potential emergency conditions at off-campus departments. These protocols must provide for direct contact between personnel at the off-campus department and emergency personnel at the main hospital campus and may provide for dispatch of practitioners, when appropriate, from the main hospital campus to the off-campus department to provide screening or stabilization services.

(i) If the off-campus department is an urgent care center, primary care center, or other facility that is routinely staffed by physicians, RNs, or LPNs, these department personnel must be trained, and given appropriate protocols, for the handling of emergency cases. At least one individual on duty at the off-campus department during its regular hours of operation must be designated

as a qualified medical person as described in paragraph (d) of this section. The qualified medical person must initiate screening of individuals who come to the off-campus department with a potential emergency medical condition, and may be able to complete the screening and provide any necessary stabilizing treatment at the off-campus department, or to arrange an appropriate transfer.

(ii) If the off-campus department is a physical therapy, radiology, or other facility not routinely staffed with physicians, RNs, or LPNs, the department's personnel must be given protocols that direct them to contact emergency personnel at the main hospital campus for direction. Under this direction, and in accordance with protocols established in advance by the hospital, the personnel at the off-campus department must describe patient appearance and report symptoms and, if appropriate, either arrange transportation of the individual to the main hospital campus in accordance with paragraph (i)(3)(i) of this section or assist in an appropriate transfer as described in paragraphs (i)(3)(ii) and (d)(2) of this section.

(3) *Movement or appropriate transfer from off-campus departments*—(i) If the main hospital campus has the capability required by the individual and movement of the individual to the main campus would not significantly jeopardize the life or health of the individual, the personnel at the off-campus department must assist in arranging this movement. Movement of the individual to the main campus of the hospital is not considered a transfer under this section, since the individual is simply being moved from one department of a hospital to another department or facility of the same hospital.

(ii) If transfer of an individual with a potential emergency condition to a medical facility other than the main hospital campus is warranted, either because the main hospital campus does not have the specialized capability or facilities required by the individual, or because the individual's condition is deteriorating so rapidly that taking the time needed to move the individual to the main hospital campus would significantly jeopardize the life or health of the individual, personnel at the off-campus department must, in accordance with protocols established in advance by the hospital, assist in arranging an appropriate transfer of the individual to a medical facility other than the main hospital. The protocols must include procedures and agreements established in advance with other hospitals or medical facilities in the area of the off-campus department to facilitate these appropriate transfers. Such a transfer would require—

(A) That there be either a request by or on behalf of the individual as described in paragraph (d)(1)(ii)(A) of this section or a certification by a physician or a qualified medical person as described in paragraph (d)(1)(ii)(B) or (d)(1)(ii)(C) of this section; and

(B) That the transfer comply with the requirements described in paragraph (d)(2) of this section.

(iii) If the individual is being appropriately transferred to another medical facility from the off-campus department, the requirement for the provision of medical treatment in paragraph (d)(2)(i) of this section would be met by provision of medical treatment within the capability of the transferring off-campus department.

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM AND FOR DETERMINATIONS THAT AFFECT THE PARTICIPATION OF ICFs/MR AND CERTAIN NFs IN THE MEDICAID PROGRAM

I. Part 498 is amended as set forth below:

1. The authority citation for part 498 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 498.2, the introductory text is republished, and the definition of "Provider" is revised to read as follows:

§ 498.2 Definitions.

As used in this part—

* * * * *

Provider means a hospital, critical access hospital (CAH), skilled nursing facility (SNF), comprehensive outpatient rehabilitation facility (CORF), home health agency (HHA), or hospice, that has in effect an agreement to participate in Medicare, that has in effect an agreement to participate in Medicaid, or a clinic, rehabilitation agency, or public health agency that has a similar agreement but only to furnish outpatient physical therapy or outpatient speech pathology services, and *prospective provider* means any of the listed entities that seeks to participate in Medicare as a provider or to have any facility or organization determined to be a department of the provider or provider-based entity under § 413.65 of this chapter.

* * * * *

3. In § 498.3, the introductory text to paragraph (b) is republished; paragraphs (b)(2) through (b)(15) are redesignated as paragraphs (b)(3) through (b)(16), respectively; and a new paragraph (b)(2) is added to read as follows:

§ 498.3 Scope and applicability.

* * * * *

(b) *Initial determinations by HCFA.* HCFA makes initial determinations with respect to the following matters:

* * * * *

(2) Whether a prospective department of a provider, remote location of a hospital, satellite facility, or provider-based entity qualifies for provider-based status under § 413.65 of this chapter, or whether such a facility or entity currently treated as a department of a provider, remote location of a hospital, satellite facility, or a provider-based entity no longer qualifies for that status under § 413.65 of this chapter.

* * * * *

PART 1003—CIVIL MONEY PENALTIES, ASSESSMENTS AND EXCLUSIONS

J. Part 1003 is amended as set forth below:

1. The authority citation for part 1003 is revised to read as follows:

Authority: 42 U.S.C. 1302, 1320–7, 1320a–7a, 1320a–7e, 1320b–10, 1395u(j), 1395u(k), 1395cc(g), 1395dd(d)(1), 1395mm, 1395nn(g), 1395ss(d), 1396(m), 11131(c), and 11137(b)(2).

2. Section 1003.100 is amended by revising paragraph (a), by republishing the introductory text to paragraphs (b) and (b)(1), by revising paragraphs (b)(1)(xi) and (b)(1)(xii), and by adding paragraph (b)(1)(xiii) to read as follows:

§ 1003.100 Basis and purpose.

(a) *Basis.* This part implements sections 1128(c), 1128A, 1128E, 1140, 1866(g), 1876(i), 1877(g), 1882(d) and 1903(m)(5) of the Social Security Act, and sections 421(c) and 427(b)(2) of Pub. L. 99–660 (42 U.S.C. 1320a–7, 1320a–7a, 1320a–7e, 1320a–7c, 1320b–10, 1395cc(g), 1395mm, 1395ss(d), 1396(m), 11131(c), and 11137(b)(2)).

(b) *Purpose.* This part—

(1) Provides for the imposition of civil money penalties and, as applicable, assessments against persons who—

* * * * *

(xi) Are physicians or entities that enter into an arrangement or scheme that they know or should know has as a principal purpose the assuring of referrals by the physician to a particular entity that, if made directly, would violate the provisions of § 411.353 of this title;

(xii) Violate the Federal health care programs' anti-kickback statute as set forth in section 1128B of the Act; or

(xiii) Knowingly and willfully present, or cause to be presented, a bill or request for payment for nonphysician services furnished to hospital patients (unless the services are furnished by the hospital, either directly or under an arrangement) in violation of sections 1862(a)(14) and 1866(a)(1)(H) of the Act.

* * * * *

3. Section 1003.102 is amended by republishing the introductory text to paragraph (b), by adding and reserving paragraphs (b)(12) through (b)(14), and by adding a new paragraph (b)(15) to read as follows:

§ 1003.102 Basis for civil money penalties and assessments.

* * * * *

(b) The OIG may impose a penalty, and where authorized, an assessment against any person (including an insurance company in the case of paragraphs (b)(5) and (b)(6) of this section) whom it determines in accordance with this part—

* * * * *

(15) Has knowingly and willfully presented, or caused to be presented, a bill or request for payment for items and services furnished to a hospital patient for which payment may be made under the Medicare or another Federal health care program, if that bill or request is inconsistent with an arrangement under section 1866(a)(1)(H) of the Act, or violates the requirements for such an arrangement.

* * * * *

4. Section 1003.103 is amended by revising paragraph (a), by adding and reserving paragraphs (i) and (j), and by adding a new paragraph (k) to read as follows:

§ 1003.103 Amount of penalty.

(a) Except as provided in paragraphs (b) and (d) through (k) of this section, the OIG may impose a penalty of not more than $10,000 for each item or service that is subject to a determination under § 1003.102.

* * * * *

(k) For violations of section 1862(a)(14) of the Act and § 1003.102(b)(15), the OIG may impose a penalty of not more than $2,000 for each bill or request for payment for items and services furnished to a hospital patient.

5. Section 1003.105 is amended by republishing the introductory text to paragraph (a)(1) and by revising paragraph (a)(1)(i) to read as follows:

§ 1003.105 Exclusion from participation in Medicare, Medicaid and other Federal health care programs.

(a)(1) Except as set forth in paragraph (b) of this section, in lieu of or in addition to any penalty or assessment, the OIG may exclude from participation in Medicare, Medicaid and other Federal health care programs the following persons for a period of time determined under § 1003.107—

(i) Any person who is subject to a penalty or assessment under § 1003.102(a), (b)(1) through (b)(4), or (b)(15).

* * * * *

(Catalog of Federal Domestic Assistance 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 3, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: March 28, 2000.

June G. Brown,

Inspector General, Department of Health and Human Services.

Approved: March 29, 2000.

Donna E. Shalala,

Secretary.

Note: The following addenda will not appear in the Code of Federal Regulations.

Note to Addenda A, B, C, E and F: Addenda A, B, and C have a number of errors in the following columns: APC, status indicator, payment rate, and national unadjusted coinsurance and minimum unadjusted coinsurance. We identified these errors too late in preparing this rule for publication to correct them. Some of the errors are related to the status codes assigned to the HCPCS codes and APCs.

Some errors affect addenda B, C, and E. Several of these errors involve procedures incorrectly identified as inpatient procedures, and one inpatient procedure incorrectly identified as an outpatient procedure. Certain PET scan codes and other codes are shown in incorrect APCs. Screening sigmoidoscopy and colonoscopy APCs have the wrong HCPCS codes and incorrect payment rates and coinsurance amounts. Certain dental codes were inadvertently identified as errors, so their correct APC assignments, payment rate and coinsurance amounts were not shown in the addenda. Two breath tests are subject to the clinical diagnostic lab fee schedule. We have listed below the corrections that have payment implications.

Addendum F does not include status indicators G and H which identify items that are eligible for pass-through payments. (See section III.B.3 of the preamble for a complete description of all status indications used in conjunction with this final rule.)

We also note that the word "proposed" should not appear on any Addenda contained in this final rule such as on Addendum A or C.

The fiscal intermediaries will receive the necessary changes to process outpatient PPS claims correctly. We will post the corrected Addendum B on our Website and publish a correction document in the **Federal Register**.

Our Website address is *http://www.hcfa.gov/medicare/hopsmain.htm.*

List Accompanying Note To Addenda A, B, C, E and F

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Proposed Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
20979	E	US bone stimulation.					
31375	C	Partial removal of larynx.					
35481	T	Atherectomy, open	0081	19.36	$938.71	$434.25	$187.74
61795	S	Brain surgery using computer	0302	8.21	$398.08	$216.55	$79.62
61886	T	Implant neurostim arrays	0222	25.48	$1,235.45	$780.07	$247.09
75945	S	Intravascular us	0267	2.72	$131.88	$80.06	$26.38
75946	S	Intravascular us add-on	0267	2.72	$131.88	$80.06	$26.38
78267	A	Breath test attain/anal, c-14.					
78268	A	Breath test analysis, c-14.					
92978	S	Intravasc us, heart add-on	0267	2.72	$131.88	$80.06	$26.38
92979	S	Intravasc us, heart add-on	0267	2.72	$131.88	$80.06	$26.38
96570	T	Photodynamic Tx, 30 min	0973	5.16	$250.19		$50.04
96571	T	Photodynamic Tx, addl 15 min	0973	5.16	$250.19		$50.04
D0277	S	Vert bitewings-sev to eight	0330	1.51	$73.22	$14.64	$14.64
D0472	S	Gross exam, prep & report	0330	1.51	$73.22	$14.64	$14.64

LIST ACCOMPANYING NOTE TO ADDENDA A, B, C, E AND F—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Proposed Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
D0473	S	Micro exam, prep & report	0330	1.51	$73.22	$14.64	$14.64
D0474	S	Micro w exam of surg margins	0330	1.51	$73.22	$14.64	$14.64
D0480	S	Cytopath smear prep & report	0330	1.51	$73.22	$14.64	$14.64
D4268	S	Surgical revision procedure	0330	1.51	$73.22	$14.64	$14.64
G0104	S	CA screen; flexible sigmoidscope	0159	2.83	$137.22		$34.31
G0105	S	Colorectal screen; high risk ind	0158	7.98	$386.93		$96.73
G0122	S	Colon ca scrn; barium enema	0157	1.79	$86.79		$17.36
G0125	S	Lung Image (PET)	0981	46.40	$2,249.80		$449.96
G0126	S	Lung Image (PET) staging	0981	46.40	$2,249.80		$449.96
G0163	S	PET for rec of colorectal cancer	0981	46.40	$2,249.80		$449.96
G0164	S	PET for lymphoma staging	0981	46.40	$2,249.80		$449.96
G0165	S	PET, rec of melanoma/met cancer	0981	46.40	$2,249.80		$449.96
G0168	T	Wound closure by adhesive	0970	0.52	$25.21		$5.04
G0169	T	Removal tissue; no anesthesia	0013	0.91	$44.12	$17.66	$8.82
G0170	T	Skin biograft	0025	3.74	$181.34	$70.66	$36.27
G0171	T	Skin biograft add-on	0025	3.74	$181.34	$70.66	$36.27

ADDENDUM A.—LIST OF HOSPITAL OUTPATIENT AMBULATORY PAYMENT CLASSES WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COINSURANCE AMOUNTS

APC	Group Title	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
0001	Photochemotherapy	S	0.47	$22.79	$8.49	$4.56
0002	Fine needle Biopsy/Aspiration	T	0.62	$30.06	$17.66	$6.01
0003	Bone Marrow Biopsy/Aspiration	T	0.98	$47.52	$27.99	$9.50
0004	Level I Needle Biopsy/Aspiration Except Bone Marrow	T	1.84	$89.22	$32.57	$17.84
0005	Level II Needle Biopsy/Aspiration Except Bone Marrow	T	5.41	$262.32	$119.75	$52.46
0006	Level I Incision & Drainage	T	2.00	$96.97	$33.95	$19.39
0007	Level II Incision & Drainage	T	3.68	$178.43	$72.03	$35.69
0008	Level III Incision & Drainage	T	6.15	$298.20	$113.67	$59.64
0009	Nail Procedures	T	0.74	$35.88	$9.63	$7.18
0010	Level I Destruction of Lesion	T	0.55	$26.67	$9.86	$5.33
0011	Level II Destruction of Lesion	T	2.72	$131.88	$50.01	$26.38
0012	Level I Debridement & Destruction	T	0.53	$25.70	$9.18	$5.14
0013	Level II Debridement & Destruction	T	0.91	$44.12	$17.66	$8.82
0014	Level III Debridement & Destruction	T	1.50	$72.73	$24.55	$14.55
0015	Level IV Debridement & Destruction	T	1.77	$85.82	$31.20	$17.16
0016	Level V Debridement & Destruction	T	3.53	$171.16	$74.67	$34.23
0017	Level VI Debridement & Destruction	T	12.45	$603.66	$289.16	$120.73
0018	Biopsy Skin, Subcutaneous Tissue or Mucous Membrane	T	0.94	$45.58	$17.66	$9.12
0019	Level I Excision/Biopsy	T	4.00	$193.95	$78.91	$38.79
0020	Level II Excision/Biopsy	T	6.51	$315.65	$130.53	$63.13
0021	Level III Excision/Biopsy	T	10.49	$508.63	$236.51	$101.73
0022	Level IV Excision/Biopsy	T	12.49	$605.60	$292.94	$121.12
0023	Exploration Penetrating Wound	T	1.98	$96.00	$40.37	$19.20
0024	Level I Skin Repair	T	2.43	$117.82	$44.50	$23.56
0025	Level II Skin Repair	T	3.74	$181.34	$70.66	$36.27
0026	Level III Skin Repair	T	12.11	$587.18	$277.92	$117.44
0027	Level IV Skin Repair	T	15.80	$766.10	$383.10	$153.22
0029	Incision/Excision Breast	T	12.85	$623.06	$303.50	$124.61
0030	Breast Reconstruction/Mastectomy	T	20.19	$978.95	$523.95	$195.79
0031	Hyperbaric Oxygen	S	3.00	$145.46	$140.85	$29.09
0032	Placement Transvenous Catheters/Arterial Cutdown	T	5.40	$261.83	$119.52	$52.37
0033	Partial Hospitalization	P	4.17	$202.19	$48.17	$40.44
0040	Arthrocenteeis & Ligament/Tendon Injection	T	2.11	$102.31	$40.60	$20.46
0041	Arthroscopy	T	24.57	$1,191.33	$592.08	$238.27
0042	Arthroscopically-Aided Procedures	T	29.22	$1,416.79	$804.74	$283.36
0043	Closed Treatment Fracture Finger/Toe/Trunk	T	1.64	$79.52	$25.46	$15.90
0044	Closed Treatment Fracture/Dislocation Except Finger/Toe/Trunk	T	2.17	$105.22	$38.08	$21.04
0045	Bone/Joint Manipulation Under Anesthesia	T	11.02	$534.33	$277.12	$106.87
0046	Open/Percutaneous Treatment Fracture or Dislocation	T	22.29	$1,080.78	$535.76	$216.16
0047	Arthroplasty without Prosthesis	T	22.09	$1,071.08	$537.03	$214.22
0048	Arthroplasty with Prosthesis	T	29.06	$1,409.03	$725.94	$281.81
0049	Level I Musculoskeletal Procedures Except Hand and Foot	T	15.04	$729.25	$356.95	$145.85
0050	Level II Musculoskeletal Procedures Except Hand and Foot	T	21.13	$1,024.53	$513.86	$204.91
0051	Level III Musculoskeletal Procedures Except Hand and Foot	T	27.76	$1,346.00	$675.24	$269.20
0052	Level IV Musculoskeletal Procedures Except Hand and Foot	T	36.16	$1,753.29	$930.91	$350.66
0053	Level I Hand Musculoskeletal Procedures	T	11.32	$548.87	$253.49	$109.77
0054	Level II Hand Musculoskeletal Procedures	T	19.66	$953.26	$472.33	$190.65
0055	Level I Foot Musculoskeletal Procedures	T	15.47	$750.10	$355.34	$150.02
0056	Level II Foot Musculoskeletal Procedures	T	17.30	$838.83	$405.81	$167.77

[1] Not subject to national coinsurance. Minimum unadjusted coinsurance is 25% of the payment rate. The Payment rate is the lower of the HOPD payment rate or the Ambulatory Surgical Center payment.

[2] Not subject to national coinsurance.

[3] Eligible for pass-through payments. See Preamble for payment rate determination. See Addendum K for complete list of pass-through codes.

ADDENDUM A.—LIST OF HOSPITAL OUTPATIENT AMBULATORY PAYMENT CLASSES WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COINSURANCE AMOUNTS—Continued

APC	Group Title	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
0057	Bunion Procedures	T	21.00	$1,018.23	$496.65	$203.65
0058	Level I Strapping and Cast Application	S	1.09	$52.85	$19.27	$10.57
0059	Level II Strapping and Cast Application	S	1.74	$84.37	$29.59	$16.87
0060	Manipulation Therapy	S	0.77	$37.34	$7.80	$7.47
0070	Thoracentesis/Lavage Procedures	T	3.64	$176.49	$79.60	$35.30
0071	Level I Endoscopy Upper Airway	T	0.55	$26.67	$14.22	$5.33
0072	Level II Endoscopy Upper Airway	T	1.26	$61.09	$41.52	$12.22
0073	Level III Endoscopy Upper Airway	T	4.11	$199.28	$91.07	$39.86
0074	Level IV Endoscopy Upper Airway	T	13.61	$659.91	$347.54	$131.98
0075	Level V Endoscopy Upper Airway	T	18.55	$899.44	$467.29	$179.89
0076	Endoscopy Lower Airway	T	8.06	$390.81	$197.05	$78.16
0077	Level I Pulmonary Treatment	S	0.43	$20.85	$12.62	$4.17
0078	Level II Pulmonary Treatment	S	1.34	$64.97	$29.13	$12.99
0079	Ventilation Initiation and Management	S	3.18	$154.19	$107.70	$30.84
0080	Diagnostic Cardiac Catheterization	T	25.77	$1,249.51	$713.89	$249.90
0081	Non-Coronary Angioplasty or Atherectomy	T	19.36	$938.71	$434.25	$187.74
0082	Coronary Atherectomy	T	40.34	$1,955.97	$859.56	$391.19
0083	Coronary Angioplasty	T	45.79	$2,220.22	$1,322.95	$444.04
0084	Level I Electrophysiologic Evaluation	S	10.70	$518.81	$177.79	$103.76
0085	Level II Electrophysiologic Evaluation	S	27.06	$1,312.06	$654.48	$262.41
0086	Ablate Heart Dysrhythm Focus	S	47.62	$2,308.95	$1,265.37	$461.79
0087	Cardiac Electrophysiologic Recording/Mapping	S	9.53	$462.06	$214.72	$92.42
0088	Thrombectomy	T	26.49	$1,284.42	$678.68	$256.88
0089	Level I Implantation/Removal/Revision of Pacemaker, AICD or Vascular Device.	T	6.49	$314.66	$130.07	$62.94
0090	Level II Implantation/Removal/Revision of Pacemaker, AICD or Vascular Device.	T	20.96	$1,016.29	$573.04	$203.26
0091	Level I Vascular Ligation	T	14.79	$717.12	$348.23	$143.42
0092	Level II Vascular Ligation	T	20.21	$979.92	$505.37	$195.98
0093	Vascular Repair/Fistula Construction	T	17.95	$870.34	$422.33	$174.07
0094	Resuscitation and Cardioversion	S	4.51	$218.68	$105.29	$43.74
0095	Cardiac Rehabilitation	S	0.64	$31.03	$16.98	$6.21
0096	Non-Invasive Vascular Studies	S	2.06	$99.86	$61.48	$19.96
0097	Cardiovascular Stress Test	S	1.62	$78.55	$62.40	$15.71
0098	Injection of Sclerosing Solution	T	1.19	$57.70	$20.88	$11.54
0099	Continuous Cardiac Monitoring	S	0.38	$18.43	$14.68	$3.69
0100	Continuous ECG	S	1.70	$82.43	$71.57	$16.49
0101	Tilt Table Evaluation	S	4.47	$216.74	$128.84	$43.35
0102	Electronic Analysis of Pacemakers/other Devices	S	0.45	$21.82	$12.62	$4.36
0109	Bone Marrow Harvesting and Bone Marrow/Stem Cell Transplant	S	4.13	$200.25	$40.05	$40.05
0110	Transfusion	S	5.83	$282.68	$122.73	$56.54
0111	Blood Product Exchange	S	14.17	$687.06	$300.74	$137.41
0112	Extracorporeal Photopheresis	S	39.60	$1,920.09	$663.65	$384.02
0113	Excision Lymphatic System	T	13.89	$673.49	$326.55	$134.70
0114	Thyroid/Lymphadenectomy Procedures	T	19.56	$948.41	$493.78	$189.68
0116	Chemotherapy Administration by Other Technique Except Infusion	S	2.34	$113.46	$22.69	$22.69
0117	Chemotherapy Administration by Infusion Only	S	1.84	$89.22	$71.80	$17.84
0118	Chemotherapy Administration by Both Infusion and Other Technique	S	2.90	$140.61	$72.03	$28.12
0120	Infusion Therapy Except Chemotherapy	S	1.66	$80.49	$42.67	$16.10
0121	Level I Tube changes and Repositioning	T	2.36	$114.43	$52.53	$22.89
0122	Level II Tube changes and Repositioning	T	5.04	$244.37	$114.93	$48.88
0123	Level III Tube changes and Repositioning	T	13.89	$673.49	$350.75	$134.70
0130	Level I Laparoscopy	T	25.36	$1,229.63	$659.53	$245.93
0131	Level II Laparoscopy	T	41.81	$2,027.24	$1,089.88	$405.45
0132	Level III Laparoscopy	T	48.91	$2,371.50	$1,239.22	$474.30
0140	Esophageal Dilation without Endoscopy	T	4.74	$229.83	$107.24	$45.97
0141	Upper GI Procedures	T	7.15	$346.68	$184.67	$69.34
0142	Small Intestine Endoscopy	T	7.45	$361.23	$162.42	$72.25
0143	Lower GI Endoscopy	T	7.98	$386.93	$199.12	$77.39
0144	Diagnostic Anoscopy	T	2.23	$108.13	$49.32	$21.63
0145	Therapeutic Anoscopy	T	7.46	$361.71	$179.39	$72.34
0146	Level I Sigmoidoscopy	T	2.83	$137.22	$65.15	$27.44
0147	Level II Sigmoidoscopy	T	6.26	$303.53	$149.11	$60.71
0148	Level I Anal/Rectal Procedure	T	2.34	$113.46	$43.59	$22.69
0149	Level II Anal/Rectal Procedure	T	12.86	$623.54	$293.06	$124.71
0150	Level III Anal/Rectal Procedure	T	17.68	$857.25	$437.12	$171.45
0151	Endoscopic Retrograde Cholangio-Pancreatography (ERCP)	T	10.53	$510.57	$245.46	$102.11
0152	Percutaneous Biliary Endoscopic Procedures	T	8.22	$398.56	$207.38	$79.71
0153	Peritoneal and Abdominal Procedures	T	19.62	$951.32	$498.31	$190.26
0154	Hernia/Hydrocele Procedures	T	22.43	$1,087.57	$556.98	$217.51
[2]0157	Colorectal Cancer Screening: Barium Enema	S	1.79	$86.79	.....	$17.36
[1]0158	Colorectal Cancer Screening: Colonoscopy	S	7.98	$386.93	.....	$96.73
[1]0159	Colorectal Cancer Screening: Flexible Sigmoidoscopy	S	7.98	$137.22	.....	$34.31

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ADDENDUM A.—LIST OF HOSPITAL OUTPATIENT AMBULATORY PAYMENT CLASSES WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COINSURANCE AMOUNTS—Continued

APC	Group Title	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
0160	Level I Cystourethroscopy and other Genitourinary Procedures	T	5.43	$263.28	$110.11	$52.66
0161	Level II Cystourethroscopy and other Genitourinary Procedures	T	10.94	$530.45	$249.36	$106.09
0162	Level III Cystourethroscopy and other Genitourinary Procedures	T	17.49	$848.04	$427.49	$169.61
0163	Level IV Cystourethroscopy and other Genitourinary Procedures	T	28.98	$1,405.16	$792.58	$281.03
0164	Level I Urinary and Anal Procedures	T	2.17	$105.23	$33.03	$21.05
0165	Level II Urinary and Anal Procedures	T	3.89	$188.61	$91.76	$37.72
0166	Level I Urethral Procedures	T	10.17	$493.11	$218.73	$98.62
0167	Level II Urethral Procedures	T	21.06	$1,021.14	$555.84	$204.23
0168	Level III Urethral Procedures	T	24.94	$1,209.27	$536.11	$241.85
0169	Lithotripsy	T	46.72	$2,265.32	$1,384.20	$453.06
0170	Dialysis for Other Than ESRD Patients	S	6.68	$323.89	$72.26	$64.78
0180	Circumcision	T	13.62	$660.39	$304.87	$132.08
0181	Penile Procedures	T	32.37	$1,569.53	$906.36	$313.91
0182	Insertion of Penile Prosthesis	T	52.11	$2,526.66	$1,525.05	$505.33
0183	Testes/Epididymis Procedures	T	18.26	$885.37	$448.94	$177.07
0184	Prostate Biopsy	T	4.94	$239.53	$122.96	$47.91
0190	Surgical Hysteroscopy	T	17.85	$865.49	$443.89	$173.10
0191	Level I Female Reproductive Procedures	T	1.19	$57.70	$17.43	$11.54
0192	Level II Female Reproductive Procedures	T	2.38	$115.40	$35.33	$23.08
0193	Level III Female Reproductive Procedures	T	8.93	$432.99	$171.13	$86.60
0194	Level IV Female Reproductive Procedures	T	16.21	$785.98	$395.94	$157.20
0195	Level V Female Reproductive Procedures	T	18.68	$905.74	$483.80	$181.15
0196	Dilatation & Curettage	T	14.47	$701.61	$357.98	$140.32
0197	Infertility Procedures	T	2.40	$116.37	$49.55	$23.27
0198	Pregnancy and Neonatal Care Procedures	T	1.34	$64.97	$33.03	$12.99
0199	Vaginal Delivery	T	11.20	$543.06	$157.83	$108.61
0200	Therapeutic Abortion	T	13.89	$673.49	$373.23	$134.70
0201	Spontaneous Abortion	T	13.00	$630.33	$329.65	$126.07
0210	Spinal Tap	T	3.00	$145.46	$82.40	$29.09
0211	Level I Nervous System Injections	T	3.32	$160.98	$74.78	$32.20
0212	Level II Nervous System Injections	T	3.64	$176.49	$88.78	$35.30
0213	Extended EEG Studies and Sleep Studies	S	11.15	$540.63	$290.42	$108.13
0214	Electroencephalogram	S	2.32	$112.49	$58.50	$22.50
0215	Level I Nerve and Muscle Tests	S	1.15	$55.76	$30.05	$11.15
0216	Level II Nerve and Muscle Tests	S	2.87	$139.16	$64.69	$27.83
0217	Level III Nerve and Muscle Tests	S	5.87	$284.62	$156.68	$56.92
0220	Level I Nerve Procedures	T	13.98	$676.88	$326.21	$135.38
0221	Level II Nerve Procedures	T	18.36	$890.22	$463.62	$178.04
0222	Implantation of Neurological Device	T	25.48	$1,235.45	$780.07	$247.09
0223	Level I Revision/Removal Neurological Device	T	6.34	$307.41	$153.24	$61.48
0224	Level II Revision/Removal Neurological Device	T	15.94	$772.88	$374.61	$154.58
0225	Implantation of Neurostimulator Electrodes	T	3.43	$166.31	$84.46	$33.26
0230	Level I Eye Tests	S	0.98	$47.52	$22.48	$9.50
0231	Level II Eye Tests	S	2.64	$128.01	$59.87	$25.60
0232	Level I Anterior Segment Eye	T	6.04	$292.86	$134.66	$58.57
0233	Level II Anterior Segment Eye	T	13.79	$668.64	$331.60	$133.73
0234	Level III Anterior Segment Eye Procedures	T	20.64	$1,000.77	$502.16	$200.15
0235	Level I Posterior Segment Eye Procedures	T	2.94	$142.55	$78.91	$28.51
0236	Level II Posterior Segment Eye Procedures	T	6.70	$324.86	$147.96	$64.97
0237	Level III Posterior Segment Eye Procedures	T	33.96	$1,646.62	$852.68	$329.32
0238	Level I Repair and Plastic Eye Procedures	T	2.80	$135.76	$58.96	$27.15
0239	Level II Repair and Plastic Eye Procedures	T	6.26	$303.53	$123.42	$60.71
0240	Level III Repair and Plastic Eye Procedures	T	13.47	$653.12	$315.31	$130.62
0241	Level IV Repair and Plastic Eye Procedures	T	16.60	$804.89	$384.47	$160.98
0242	Level V Repair and Plastic Eye Procedures	T	23.70	$1,149.14	$597.36	$229.83
0243	Strabismus/Muscle Procedures	T	17.99	$872.28	$431.39	$174.46
0244	Corneal Transplant	T	32.88	$1,594.26	$851.42	$318.85
0245	Cataract Procedures without IOL Insert	T	26.55	$1,287.33	$823.85	$257.47
0246	Cataract Procedures with IOL Insert	T	26.55	$1,287.33	$823.85	$257.47
0247	Laser Eye Procedures Except Retinal	T	4.89	$237.10	$112.86	$47.42
0248	Laser Retinal Procedures	T	4.19	$203.16	$94.05	$40.63
0250	Nasal Cauterization/Packing	T	2.21	$107.16	$38.54	$21.43
0251	Level I ENT Procedures	T	1.68	$81.46	$27.99	$16.29
0252	Level II ENT Procedures	T	5.18	$251.16	$114.24	$50.23
0253	Level III ENT Procedures	T	12.02	$582.81	$284.00	$116.56
0254	Level IV ENT Procedures	T	12.45	$603.66	$272.41	$120.73
0256	Level V ENT Procedures	T	25.40	$1,231.57	$823.05	$246.31
0257	Implantation of Cochlear Device	T	115.31	$5,591.04	$3,498.58	$1,118.21
0258	Tonsil and Adenoid Procedures	T	18.62	$902.83	$462.81	$180.57
0260	Level I Plain Film Except Teeth	X	0.79	$38.30	$22.02	$7.66
0261	Level II Plain Film Except Teeth Including Bone Density Measurement.	X	1.38	$66.91	$38.77	$13.38
0262	Plain Film of Teeth	X	0.40	$19.39	$10.90	$3.88

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APC	Group Title	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
0263	Level I Miscellaneous Radiology Procedures	X	1.68	$81.66	$45.88	$16.29
0264	Level II Miscellaneous Radiology Procedures	X	3.83	$185.71	$106.97	$37.14
0265	Level I Diagnostic Ultrasound Except Vascular	S	1.17	$56.73	$38.08	$11.35
0266	Level II Diagnostic Ultrasound Except Vascular	S	1.79	$86.79	$57.35	$17.36
0267	Vascular Ultrasound	S	2.72	$131.88	$80.06	$26.38
0268	Guidance Under Ultrasound	X	2.23	$108.13	$69.51	$21.63
0269	Echocardiogram Except Transesophageal	S	4.40	$213.34	$114.01	$42.67
0270	Transesophageal Echocardiogram	S	5.55	$269.10	$150.26	$53.82
0271	Mammography	S	0.70	$33.94	$19.50	$6.79
0272	Level I Fluoroscopy	X	1.40	$67.88	$39.00	$13.58
0273	Level II Fluoroscopy	X	2.49	$120.73	$61.02	$24.15
0274	Myelography	S	4.83	$234.19	$126.12	$46.84
0275	Arthrography	S	2.74	$132.85	$72.26	$26.57
0276	Level I Digestive Radiology	S	1.79	$86.79	$49.78	$17.36
0277	Level II Digestive Radiology	S	2.47	$119.76	$69.28	$23.95
0278	Diagnostic Urography	S	2.85	$138.19	$81.67	$27.64
0279	Level I Diagnostic Angiography and Venography Except Extremity	S	6.30	$305.47	$174.57	$61.09
0280	Level II Diagnostic Angiography and Venography Except Extremity	S	14.98	$726.34	$380.12	$145.27
0281	Venography of Extremity	S	4.40	$213.34	$115.16	$42.67
0282	Level I Computerized Axial Tomography	S	2.38	$115.40	$94.51	$23.08
0283	Level II Computerized Axial Tomography	S	4.89	$237.10	$179.39	$47.42
0284	Magnetic Resonance Imaging	S	8.02	$388.87	$257.39	$77.77
0285	Positron Emission Tomography (PET)	S	15.06	$730.22	$415.21	$146.04
0286	Myocardial Scans	S	7.28	$352.99	$200.04	$70.60
0290	Standard Non-Imaging Nuclear Medicine	S	1.94	$94.06	$55.51	$18.81
0291	Level I Diagnostic Nuclear Medicine Excluding Myocardial Scans	S	3.15	$152.73	$93.14	$30.55
0292	Level II Diagnostic Nuclear Medicine Excluding Myocardial Scans	S	4.36	$211.40	$126.63	$42.28
0294	Level I Therapeutic Nuclear Medicine	S	5.13	$248.74	$144.06	$49.75
0295	Level II Therapeutic Nuclear Medicine	S	19.85	$962.47	$609.17	$192.49
0296	Level I Therapeutic Radiologic Procedures	S	3.57	$173.10	$100.25	$34.62
0297	Level II Therapeutic Radiologic Procedures	S	6.13	$297.23	$172.51	$59.45
0300	Level I Radiation Therapy	S	1.98	$96.00	$47.72	$19.20
0301	Level II Radiation Therapy	S	2.21	$107.16	$52.53	$21.43
0302	Level III Radiation Therapy	S	8.21	$398.03	$216.55	$79.62
0303	Treatment Device Construction	X	2.83	$137.22	$69.28	$27.44
0304	Level I Therapeutic Radiation Treatment Preparation	X	1.49	$72.25	$41.52	$14.45
0305	Level II Therapeutic Radiation Treatment Preparation	X	4.06	$196.85	$97.50	$39.37
0310	Level III Therapeutic Radiation Treatment Preparation	X	13.98	$677.85	$339.05	$135.57
0311	Radiation Physics Services	X	1.32	$64.00	$31.66	$12.80
0312	Radioelement Applications	S	4.09	$198.31	$109.65	$39.66
0313	Brachytherapy	S	7.89	$382.58	$164.02	$76.51
0314	Hyperthermic Therapies	S	5.88	$285.10	$150.95	$57.02
0320	Electroconvulsive Therapy	S	3.68	$178.48	$80.06	$35.69
0321	Biofeedback and Other Training	S	1.26	$61.09	$29.25	$12.22
0322	Brief Individual Psychotherapy	S	1.32	$64.00	$14.22	$12.80
0323	Extended Individual Psychotherapy	S	1.85	$89.70	$22.48	$17.94
0324	Family Psychotherapy	S	1.87	$90.67	$20.19	$18.13
0325	Group Psychotherapy	S	1.55	$75.15	$19.96	$15.03
0330	Dental Procedures	S	1.51	$73.22	$14.64	$14.64
0340	Minor Ancillary Procedures	X	1.04	$50.43	$12.85	$10.09
0341	Immunology Tests	X	0.13	$6.30	$3.67	$1.26
0342	Level I Pathology	X	0.26	$12.61	$8.03	$2.52
0343	Level II Pathology	X	0.45	$21.82	$12.16	$4.36
0344	Level III Pathology	X	0.79	$38.30	$23.63	$7.66
[2] 0354	Administration of Influenza Vaccine	X	0.13	$6.19	.....	.....
0355	Level I Immunizations	X	0.19	$9.21	$5.05	$1.84
0356	Level II Immunizations	X	0.36	$17.46	$4.82	$3.49
0357	Level III Immunizations	X	1.85	$89.70	$38.31	$17.94
0358	Level IV Immunizations	X	6.98	$338.44	$126.74	$67.69
0359	Injections	X	0.96	$46.56	$9.31	$9.31
0360	Level I Alimentary Tests	X	1.38	$66.91	$34.75	$13.38
0361	Level II Alimentary Tests	X	3.53	$171.16	$88.09	$34.23
0362	Fitting of Vision Aids	X	0.51	$24.73	$9.63	$4.95
0363	Otorhinolaryngologic Function Tests	X	2.83	$137.22	$53.22	$27.44
0364	Level I Audiometry	X	0.68	$32.97	$13.31	$6.59
0365	Level II Audiometry	X	1.47	$71.26	$22.48	$14.26
0366	Electrocardiogram (ECG)	X	0.38	$18.43	$15.60	$3.69
0367	Level I Pulmonary Test	X	0.83	$40.24	$20.65	$8.05
0368	Level II Pulmonary Tests	X	1.66	$80.49	$42.44	$16.10
0369	Level III Pulmonary Tests	X	2.34	$113.48	$58.50	$22.69
0370	Allergy Tests	X	0.57	$27.64	$11.81	$5.53
0371	Allergy Injections	X	0.32	$15.52	$3.67	$3.10
0372	Therapeutic Phlebotomy	X	0.43	$20.86	$10.09	$4.17

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APC	Group Title	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
0373	Neuropsychological Testing	X	3.21	$155.64	$44.96	$31.13
0374	Monitoring Psychiatric Drugs	X	1.17	$56.73	$13.08	$11.35
0600	Low Level Clinic Visits	V	0.98	$47.52	$9.50	$9.50
0601	Mid Level Clinic Visits	V	1.00	$48.49	$9.70	$9.70
0602	High Level Clinic Visits	V	1.66	$80.49	$16.29	$16.10
0603	Interdisciplinary Team Conference	V	1.66	$80.49	$16.29	$16.10
0610	Low Level Emergency Visits	V	1.34	$64.97	$20.65	$12.99
0611	Mid Level Emergency Visits	V	2.11	$102.31	$36.47	$20.46
0612	High Level Emergency Visits	V	3.19	$154.67	$54.14	$30.93
0620	Critical Care	S	8.60	$416.99	$152.78	$83.40
[3]0701	Strontium	X				$84.76
[3]0702	Samariam	X				$139.06
[3]0704	Satumomab Pendetide	X				$63.13
[3]0705	Tc99 Tetrofosmin	X				$71.08
[3]0725	Leucovorin Calcium	X				$1.07
[3]0726	Dexrazoxane Hydrochloride	X				$18.81
[3]0727	Injection, Etidronate Disodium	X				$9.31
[3]0728	Filgrastim (G–CSF)	X				$25.21
[3]0730	Pamidronate Disodium	X				$30.93
[3]0731	Sargramostim (GM–CSF)	X				$16.97
[3]0732	Mesna	X				$2.42
[3]0733	Epoetin Alpha	X				$1.75
[3]0750	Dolasetron Mesylate 10 mg	X				$1.94
[3]0754	Metoclopramide HCL	X				$.19
[3]0755	Thiethylperazine Maleate	X				$.66
[3]0761	Oral Substitute for IV Antiemtic	X				$.10
[3]0762	Dronabinol	X				$.48
[3]0763	Dolasetron Mesylate 100 mg Oral	X				$8.53
[3]0764	Granisetron HCL, 100 mcg	X				$2.33
[3]0765	Granisetron HCL, 1mg Oral	X				$3.20
[3]0768	Ondansetron Hydrochloride per 1 mg Injection	X				$.67
[3]0769	Ondansetron Hydrochloride 8 mg oral	X				$2.62
[3]0800	Leuprolide Acetate per 3.75 mg	X				$68.56
[3]0801	Cyclophosphamide	X				$.19
[3]0802	Etoposide	X				$3.10
[3]0803	Melphalan	X				$.19
[3]0807	Aldesleukin single use vial	X				$65.07
[3]0809	BCG (Intravesical) one vial	X				$19.78
[3]0810	Goserelin Acetate Implant, per 3.6 mg	X				$59.74
[3]0811	Carboplatin 50 mg	X				$13.96
[3]0812	Carmustine 100 mg	X				$10.57
[3]0813	Cisplatin 10 mg	X				$4.56
[3]0814	Asparaginase, 10,000 units	X				$8.34
[3]0815	Cyclophosphamide 100 mg	X				$.48
[3]0816	Cyclophosphamide, Lyophilized 100 mg	X				$1.16
[3]0817	Cytrabine 100 mg	X				$.68
[3]0818	Dactinomycin 0.5 mg	X				$1.75
[3]0819	Dacarbazine 100 mg	X				$1.26
[3]0820	Daunorubicin HCl 10 mg	X				$11.64
[3]0821	Daunorubicin Citrate, Liposomal Formulation, 10 mg	X				$7.76
[3]0822	Diethylstibestrol Diphosphate 250 mg	X				$2.13
[3]0823	Docetaxel 20 mg	X				$34.72
[3]0824	Etoposide 10 mg	X				$.58
[3]0826	Methotrexate Oral 2.5 mg	X				$.29
[3]0827	Floxuridine 500 mg	X				$18.81
[3]0828	Gemcitabine HCL 200 mg	X				$9.31
[3]0830	Irinotecan 20 mg	X				$14.16
[3]0831	Ifosfamide per 1 gram	X				$13.58
[3]0832	Idarubicin Hydrochloride 5 mg	X				$46.45
[3]0833	Interferon Alfacon-1, Recombinant, 1 mcg	X				$.19
[3]0834	Interferon, Alfa-2A, Recombinant 3 million units	X				$3.20
[3]0836	Interferon, Alfa-2B, Recombinant, 1 million units	X				$1.36
[3]0838	Interferon, Gamma 1-B, 3 million units	X				$22.78
[3]0839	Mechlorethamine HCl 10 mg	X				$1.65
[3]0840	Melphalan HCl 50 mg	X				$44.71
[3]0841	Methotrexate Sodium 5 mg	X				$.10
[3]0842	Fludarabine Phosphate 50 mg	X				$30.84
[3]0843	Pegaspargase per single dose vial	X				$178.72
[3]0844	Pentostatin 10 mg	X				$133.73
[3]0847	Doxorubicin HCL 10 mg	X				$2.81
[3]0849	Rituximab, 100 mg	X				$51.40
[3]0850	Streptozocin 1 gm	X				$14.64
[3]0851	Thiotepa 15 mg	X				$9.50

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ADDENDUM A.—LIST OF HOSPITAL OUTPATIENT AMBULATORY PAYMENT CLASSES WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COINSURANCE AMOUNTS—Continued

APC	Group Title	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
[3]0852	Topotecan 4 mg	X				$73.22
[3]0853	Vinblastine Sulfate 1 mg	X				$.39
[3]0854	Vincristine Sulfate 1 mg	X				$2.23
[3]0855	Vinorelbine Tartrate per 10 mg	X				$9.60
[3]0856	Porfimer Sodium 75 mg	X				$34.62
[3]0857	Bleomycin Sulfate 15 units	X				$48.29
[3]0858	Cladribine, 1mg	X				$8.24
[3]0859	Fluorouracil	X				$.19
[3]0860	Plicamycin 2.5 mg	X				$1.36
[3]0861	Leuprolide Acetate 1 mg	X				$19.39
[3]0862	Mitomycin, 5mg	X				$19.88
[3]0863	Paclitaxel, 30mg	X				$30.16
[3]0864	Mitoxantrone HCl, per 5mg	X				$25.80
[3]0865	Interferon alfa-N3, 250,000 IU	X				$1.07
[3]0884	Rho (D) Immune Globulin, Human one dose pack	X				$3.78
[2]0886	Azathioprine, 50 mg oral	X	0.02	$.97		$.19
[2]0887	Azathioprine, Parenteral 100 mg, 20 ml each injection	X	1.40	$67.88		$13.58
[2]0888	Cyclosporine, Oral 100 mg	X	0.08	$3.88		$.78
[2]0889	Cyclosporine, Parenteral	X	0.36	$17.46		$3.49
[2]0890	Lymphocyte Immune Globulin 50 mg/ml, 5 ml each	X	3.79	$183.77		$36.75
[2]0891	Tacrolimus per 1 mg oral	X	3.15	$152.73		$30.55
[3]0892	Daclizumab, Parenteral, 25 mg	X				$54.11
[3]0900	Injection, Alglucerase per 10 units	X				$5.14
[3]0901	Alpha I, Proteinase Inhibitor, Human per 10mg	X				$15.22
[3]0902	Botulinum Toxin, Type A per unit	X				$56.05
[3]0903	CMV Immune Globulin	X				$54.11
[3]0905	Immune Globulin per 500 mg	X				$6.40
[3]0906	RSV Immune Globulin	X				$85.53
[2]0907	Ganciclovir Sodium 500 mg injection	X	0.51	$24.73		$4.95
[2]0908	Tetanus Immune Globulin, Human, up to 250 units	X	0.90	$43.64		$8.73
[3]0909	Interferon Beta—1a 33 mcg	X				$28.70
[3]0910	Interferon Beta—1b 0.25 mg	X				$8.44
[2]0911	Streptokinase per 250,000 iu	X	1.64	$79.69		$15.94
[3]0913	Ganciclovir 4.5 mg, Implant	X				$701.51
[2]0914	Reteplase, 37.6 mg (Two Single Use Vials)	X	38.20	$1,852.21		$370.44
[2]0915	Alteplase recombinant, 10mg	X	5.85	$283.70		$56.74
[3]0916	Imiglucerase per unit	X				$.58
[2]0917	Dipyridamole, 10mg Adenosine 6MG	X	0.36	$17.46		$3.49
[3]0918	Brachytherapy Seeds, Any type, Each	S				$9.99
[3]0925	Factor VIII (Antihemophilic Factor, Human) per iu	X				$.19
[3]0926	Factor VIII (Antihemophilic Factor, Porcine) per iu	X				$.19
[3]0927	Factor VIII (Antihemophilic Factor, Recombinant) per iu	X				$.19
[3]0928	Factor IX, Complex	X				$.06
[3]0929	Other Hemophilia Clotting Factors per iu	X				$.27
[3]0930	Antithrombin III (Human) per iu	X				$.19
[3]0931	Factor IX (Antihemophilic Factor, Purified, Non-Recombinant)	X				$.04
[3]0932	Factor IX (Antihemophilic Factor, Recombinant)	X				$.10
[2]0949	Plasma, Pooled Multiple Donor, Solvent/Detergent Treated, Frozen	S	3.49	$169.22		$33.84
[2]0950	Blood (Whole) For Transfusion	S	2.08	$101.02		$20.20
[2]0952	Cryoprecipitate	S	0.70	$33.92		$6.78
[2]0953	Fibrinogen Unit	S	0.48	$23.27		$4.65
[2]0954	Leukocyte Poor Blood	S	2.83	$137.21		$27.44
[2]0955	Plasma, Fresh Frozen	S	2.26	$109.35		$21.87
[2]0956	Plasma Protein Fraction	S	1.26	$61.08		$12.22
[2]0957	Platelet Concentrate	S	0.98	$47.46		$9.49
[2]0958	Platelet Rich Plasma	S	1.16	$56.25		$11.25
[2]0959	Red Blood Cells	S	2.04	$99.04		$19.81
[2]0960	Washed Red Blood Cells	S	3.81	$184.53		$36.91
[2]0961	Infusion, Albumin (Human) 5%, 500 ml	X	2.77	$134.31		$26.86
[2]0962	Infusion, Albumin (Human) 25%, 50 ml	X	1.38	$66.91		$13.38
[2]0970	New Technology—Level I ($0–$50)	T	0.52	$25.21		$5.04
[2]0971	New Technology—Level II ($50–$100)	S	1.55	$75.16		$15.03
[2]0972	New Technology—Level III ($100–$200)	T	3.09	$149.83		$29.97
[2]0973	New Technology—Level IV ($200–$300)	T	5.16	$250.19		$50.04
[2]0974	New Technology—Level V ($300–$500)	T	8.25	$400.02		$80.00
[2]0975	New Technology—Level VI ($500–$750)	T	12.90	$625.48		$125.10
[2]0976	New Technology—Level VII ($750–$1000)	T	18.05	$875.19		$175.04
[2]0977	New Technology—Level VIII ($1000–$1250)	T	23.20	$1,124.90		$224.98
[2]0978	New Technology—Level IX ($1250–$1500)	T	28.36	$1,375.09		$275.02
[2]0979	New Technology—Level X ($1500–$1750)	T	33.51	$1,624.80		$324.96
[2]0980	New Technology—Level XI ($1750–$2000)	S	38.67	$1,875.00		$375.00
[2]0981	New Technology—Level XII ($2000–$2500)	T	46.40	$2,249.80		$449.96
[2]0982	New Technology—Level XIII ($2500–$3500)	T	61.87	$2,999.90		$599.98

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ADDENDUM A.—LIST OF HOSPITAL OUTPATIENT AMBULATORY PAYMENT CLASSES WITH STATUS INDICATORS, RELATIVE WEIGHTS, PAYMENT RATES, AND COINSURANCE AMOUNTS—Continued

APC	Group Title	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
[2]0983	New Technology—Level XIV ($3500–$5000)	T	87.65	$4,249.89		$849.98
[2]0984	New Technology—Level XV ($5000–$6000)	T	113.43	$5,499.89		$1,099.98
[3]7000	Amifostine, 500 mg	X				$41.99
[3]7001	Amphotericin B lipid complex, 50 mg, Inj	X				$12.12
[3]7002	Clonidine, HCl, 1 MG	X				$4.17
[3]7003	Epoprostenol, 0.5 MG, inj	X				$2.23
[3]7004	Immune globulin intravenous human 5g, inj	X				$45.48
[3]7005	Gonadorelin hcl, 100 mcg	X				$9.12
[2]7007	Milrinone lacetate, per 5 ml, inj	X	0.47	$22.79		$4.56
[3]7010	Morphine sulfate concentrate (preservative free) per 10 mg	X				$.66
[3]7011	Oprelevekin, inj, 5 mg	X				$30.35
[3]7012	Pentamidine isethionate, 300 mg	X				$8.73
[3]7014	Fentanyl citrate, inj, up to 2 ml	X				$.19
[3]7015	Busulfan, oral 2 mg	X				$.19
[3]7019	Aprotinin, 10,000 kiu	X				$2.42
[3]7021	Baclofen, intrathecal, 50 mcg	X				$.10
[3]7022	Elliotts B Solution, per ml	X				$19.20
[3]7023	Treatment for bladder calculi, I.e. Renacidin per 500 ml	X				$4.46
[3]7024	Corticorelin ovine triflutate, 0.1 mg	X				$45.77
[3]7025	Digoxin immune FAB (Ovine), 10 mg	X				$14.06
[3]7026	Ethanolamine oleate, 1000 ml	X				$2.13
[3]7027	Fomepizole, 1.5 G	X				$141.29
[3]7028	Fosphenytoin, 50 mg	X				$.78
[3]7029	Glatiramer acetate, 25 mg	X				$3.59
[3]7030	Hemin, 1 mg	X				$.10
[3]7031	Octreotide Acetate, 500 mcg	X				$5.43
[3]7032	Sermorelin acetate, 0.5 mg	X				$53.34
[3]7033	Somatrem, 5 mg	X				$28.03
[3]7034	Somatropin, 1 mg	X				$5.04
[3]7035	Teniposide, 50 mg	X				$20.85
[2]7036	Urokinase, inj, IV, 250,000 I.U.	X	0.73	$35.40		$7.08
[3]7037	Urofollitropin, 75 I.U.	X				$8.24
[3]7038	Muromonab-CD3, 5 mg	X				$89.60
[3]7039	Pegademase bovine inj 25 I.U.	X				$1.16
[3]7040	Pentastarch 10% inj, 100 ml	X				$2.04
[2]7041	Tirofiban HCL, 0.5 mg	X	0.02	$.97		$.19
[3]7042	Capecitabine, oral 150 mg	X				$.19
[3]7043	Infliximab, 10 MG	X				$6.80
[3]7045	Trimetrexate Glucoronate	X				$8.15
[3]7046	Doxorubicin Hcl Liposome	X				$39.18

ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
00100	N	Anesth, salivary gland					
00102	N	Anesth, repair of cleft lip					
00103	N	Anesth, blepharoplasty					
00104	N	Anesth, electroshock					
00120	N	Anesth, ear surgery					
00124	N	Anesth, ear exam					
00126	N	Anesth, tympanotomy					
00140	N	Anesth, procedures on eye					
00142	N	Anesth, lens surgery					
00144	N	Anesth, corneal transplant					
00145	N	Anesth, vitrectomy					
00147	N	Anesth, iridectomy					
00148	N	Anesth, eye exam					
00160	N	Anesth, nose/sinus surgery					
00162	N	Anesth, nose/sinus surgery					
00164	N	Anesth, biopsy of nose					
00170	N	Anesth, procedure on mouth					
00172	N	Anesth, cleft palate repair					
00174	C	Anesth, pharyngeal surgery					
00176	C	Anesth, pharyngeal surgery					
00190	N	Anesth, facial bone surgery					
00192	C	Anesth, facial bone surgery					
00210	N	Anesth, open head surgery					
00212	N	Anesth, skull drainage					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
00214	C	Anesth, skull drainage					
00215	C	Anesth, skull fracture					
00216	N	Anesth, head vessel surgery					
00218	N	Anesth, special head surgery					
00220	N	Anesth, spinal fluid shunt					
00222	N	Anesth, head nerve surgery					
00300	N	Anesth, head/neck/ptrunk					
00320	N	Anesth, neck organ surgery					
00322	N	Anesth, biopsy of thyroid					
00350	N	Anesth, neck vessel surgery					
00352	N	Anesth, neck vessel surgery					
00400	N	Anesth, skin, ext/per/atrunk					
00402	N	Anesth, surgery of breast					
00404	C	Anesth, surgery of breast					
00406	C	Anesth, surgery of breast					
00410	B	Anesth correct heart rhythm					
00450	N	Anesth, surgery of shoulder					
00452	C	Anesth, surgery of shoulder					
00454	N	Anesth, collar bone biopsy					
00470	N	Anesth, removal of rib					
00472	N	Anesth, chest wall repair					
00474	C	Anesth, surgery of rib(s)					
00500	N	Anesth, esophageal surgery					
00520	N	Anesth, chest procedure					
00522	N	Anesth, chest lining biopsy					
00524	C	Anesth, chest drainage					
00528	N	Anesth, chest partition view					
00530	C	Anesth, pacemaker insertion					
00532	N	Anesth, vascular access					
00534	N	Anesth, cardioverter/defib					
00540	C	Anesth, chest surgery					
00542	C	Anesth, release of lung					
00544	C	Anesth, chest lining removal					
00546	C	Anesth, lung, chest wall surg					
00548	N	Anesth, trachea, bronchi surg					
00560	C	Anesth, open heart surgery					
00562	C	Anesth, open heart surgery					
00580	C	Anesth heart/lung transplant					
00600	N	Anesth, spine, cord surgery					
00604	C	Anesth, surgery of vertebra					
00620	N	Anesth, spine, cord surgery					
00622	C	Anesth, removal of nerves					
00630	N	Anesth, spine, cord surgery					
00632	C	Anesth, removal of nerves					
00634	C	Anesth for chemonucleolysis					
00670	C	Anesth, spine, cord surgery					
00700	N	Anesth, abdominal wall surg					
00702	N	Anesth, for liver biopsy					
00730	B	Anesth, abdominal wall surg					
00740	N	Anesth, upper gi visualize					
00750	N	Anesth, repair of hernia					
00752	N	Anesth, repair of hernia					
00754	N	Anesth, repair of hernia					
00756	N	Anesth, repair of hernia					
00770	N	Anesth, blood vessel repair					
00790	N	Anesth, surg upper abdomen					
00792	C	Anesth, part liver removal					
00794	C	Anesth, pancreas removal					
00796	C	Anesth, for liver transplant					
00800	N	Anesth, abdominal wall surg					
00802	C	Anesth, fat layer removal					
00810	N	Anesth, low intestine scope					
00820	N	Anesth, abdominal wall surg					
00830	N	Anesth, repair of hernia					
00832	N	Anesth, repair of hernia					
00840	N	Anesth, surg lower abdomen					
00842	N	Anesth, amniocentesis					
00844	C	Anesth, pelvis surgery					
00846	C	Anesth, hysterectomy					
00848	C	Anesth, pelvic organ surg					
00850	C	Anesth, cesarean section					
00855	C	Anesth, hysterectomy					
00857	C	Analgesia, labor & c-section					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
00860	N	Anesth, surgery of abdomen					
00862	N	Anesth, kidney/ureter surg					
00864	C	Anesth, removal of bladder					
00865	C	Anesth, removal of prostate					
00866	C	Anesth, removal of adrenal					
00868	C	Anesth, kidney transplant					
00870	N	Anesth, bladder stone surg					
00872	N	Anesth kidney stone destruct					
00873	N	Anesth kidney stone destruct					
00880	N	Anesth, abdomen vessel surg					
00882	C	Anesth, major vein ligation					
00884	C	Anesth, major vein revision					
00900	N	Anesth, perineal procedure					
00902	N	Anesth, anorectal surgery					
00904	C	Anesth, perineal surgery					
00906	N	Anesth, removal of vulva					
00908	C	Anesth, removal of prostate					
00910	N	Anesth, bladder surgery					
00912	N	Anesth, bladder tumor surg					
00914	N	Anesth, removal of prostate					
00916	N	Anesth, bleeding control					
00918	N	Anesth, stone removal					
00920	N	Anesth, genitalia surgery					
00922	N	Anesth, sperm duct surgery					
00924	N	Anesth, testis exploration					
00926	N	Anesth, removal of testis					
00928	C	Anesth, removal of testis					
00930	N	Anesth, testis suspension					
00932	C	Anesth, amputation of penis					
00934	C	Anesth, penis, nodes removal					
00936	C	Anesth, penis, nodes removal					
00938	N	Anesth, insert penis device					
00940	N	Anesth, vaginal procedures					
00942	N	Anesth, surgery on vagina					
00944	C	Anesth, vaginal hysterectomy					
00946	N	Anesth, vaginal delivery					
00948	N	Anesth, repair of cervix					
00950	N	Anesth, vaginal endoscopy					
00952	N	Anesth, hysteroscope/graph					
00955	C	Analgesia, vaginal delivery					
01120	N	Anesth, pelvis surgery					
01130	N	Anesth, body cast procedure					
01140	C	Anesth, amputation at pelvis					
01150	C	Anesth, pelvic tumor surgery					
01160	N	Anesth, pelvis procedure					
01170	N	Anesth, pelvis surgery					
01180	N	Anesth, pelvis nerve removal					
01190	C	Anesth, pelvis nerve removal					
01200	N	Anesth, hip joint procedure					
01202	N	Anesth, arthroscopy of hip					
01210	N	Anesth, hip joint surgery					
01212	C	Anesth, hip disarticulation					
01214	C	Anesth, replacement of hip					
01220	N	Anesth, procedure on femur					
01230	N	Anesth, surgery of femur					
01232	C	Anesth, amputation of femur					
01234	C	Anesth, radical femur surg					
01250	N	Anesth, upper leg surgery					
01260	N	Anesth, upper leg veins surg					
01270	N	Anesth, thigh arteries surg					
01272	C	Anesth, femoral artery surg					
01274	C	Anesth, femoral embolectomy					
01320	N	Anesth, knee area surgery					
01340	N	Anesth, knee area procedure					
01360	N	Anesth, knee area surgery					
01380	N	Anesth, knee joint procedure					
01382	N	Anesth, knee arthroscopy					
01390	N	Anesth, knee area procedure					
01392	N	Anesth, knee area surgery					
01400	N	Anesth, knee joint surgery					
01402	C	Anesth, replacement of knee					
01404	C	Anesth, amputation at knee					
01420	N	Anesth, knee joint casting					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
01430	N	Anesth, knee veins surgery					
01432	N	Anesth, knee vessel surg					
01440	N	Anesth, knee arteries surg					
01442	C	Anesth, knee artery surg					
01444	C	Anesth, knee artery repair					
01462	N	Anesth, lower leg procedure					
01464	N	Anesth, ankle arthroscopy					
01470	N	Anesth, lower leg surgery					
01472	N	Anesth, achilles tendon surg					
01474	N	Anesth, lower leg surgery					
01480	N	Anesth, lower leg bone surg					
01482	N	Anesth, radical leg surgery					
01484	N	Anesth, lower leg revision					
01486	C	Anesth, ankle replacement					
01490	N	Anesth, lower leg casting					
01500	N	Anesth, leg arteries surg					
01502	C	Anesth, lwr leg embolectomy					
01520	N	Anesth, lower leg vein surg					
01522	N	Anesth, lower leg vein surg					
01610	N	Anesth, surgery of shoulder					
01620	N	Anesth, shoulder procedure					
01622	N	Anesth, shoulder arthroscopy					
01630	N	Anesth, surgery of shoulder					
01632	C	Anesth, surgery of shoulder					
01634	C	Anesth, shoulder joint amput					
01636	C	Anesth, forequarter amput					
01638	C	Anesth, shoulder replacement					
01650	N	Anesth, shoulder artery surg					
01652	C	Anesth, shoulder vessel surg					
01654	C	Anesth, shoulder vessel surg					
01656	C	Anesth, arm-leg vessel surg					
01670	N	Anesth, shoulder vein surg					
01680	N	Anesth, shoulder casting					
01682	N	Anesth, airplane cast					
01710	N	Anesth, elbow area surgery					
01712	N	Anesth, uppr arm tendon surg					
01714	N	Anesth, uppr arm tendon surg					
01716	N	Anesth, biceps tendon repair					
01730	N	Anesth, uppr arm procedure					
01732	N	Anesth, elbow arthroscopy					
01740	N	Anesth, upper arm surgery					
01742	N	Anesth, humerus surgery					
01744	N	Anesth, humerus repair					
01756	C	Anesth, radical humerus surg					
01758	N	Anesth, humeral lesion surg					
01760	N	Anesth, elbow replacement					
01770	N	Anesth, uppr arm artery surg					
01772	C	Anesth, uppr arm embolectomy					
01780	N	Anesth, upper arm vein surg					
01782	C	Anesth, uppr arm vein repair					
01784	N	Anesth, av fistula repair					
01810	N	Anesth, lower arm surgery					
01820	N	Anesth, lower arm procedure					
01830	N	Anesth, lower arm surgery					
01832	N	Anesth, wrist replacement					
01840	N	Anesth, lwr arm artery surg					
01842	C	Anesth, lwr arm embolectomy					
01844	N	Anesth, vascular shunt surg					
01850	N	Anesth, lower arm vein surg					
01852	C	Anesth, lwr arm vein repair					
01860	N	Anesth, lower arm casting					
01904	C	Anesth, skull x-ray inject					
01906	N	Anesth, lumbar myelography					
01908	N	Anesth, cervical myelography					
01910	N	Anesth, skull myelography					
01912	N	Anesth, lumbar diskography					
01914	N	Anesth, cervical diskography					
01916	N	Anesth, head arteriogram					
01918	N	Anesth, limb arteriogram					
01920	N	Anesth, catheterize heart					
01921	N	Anesth, vessel surgery					
01922	N	Anesth, cat or MRI scan					
01990	C	Support for organ donor					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
01995	N	Regional anesthesia, limb					
01996	N	Manage daily drug therapy					
01999	N	Unlisted anesth procedure					
10040	T	Acne surgery of skin abscess	0006	2.00	$96.97	$33.95	$19.39
10060	T	Drainage of skin abscess	0006	2.00	$96.97	$33.95	$19.39
10061	T	Drainage of skin abscess	0006	2.00	$96.97	$33.95	$19.39
10080	T	Drainage of pilonidal cyst	0006	2.00	$96.97	$33.95	$19.39
10081	T	Drainage of pilonidal cyst	0007	3.68	$178.43	$72.03	$35.69
10120	T	Remove foreign body	0006	2.00	$96.97	$33.95	$19.39
10121	T	Remove foreign body	0020	6.51	$315.65	$130.53	$63.13
10140	T	Drainage of hematoma/fluid	0007	3.68	$178.43	$72.03	$35.69
10160	T	Puncture drainage of lesion	0006	2.00	$96.97	$33.95	$19.39
10180	T	Complex drainage, wound	0007	3.68	$178.43	$72.03	$35.69
11000	T	Debride infected skin	0015	1.77	$85.82	$31.20	$17.16
11001	T	Debride infected skin add-on	0015	1.77	$85.82	$31.20	$17.16
11010	T	Debride skin, fx	0022	12.49	$605.60	$292.94	$121.12
11011	T	Debride skin/muscle, fx	0022	12.49	$605.60	$292.94	$121.12
11012	T	Debride skin/muscle/bone, fx	0022	12.49	$605.60	$292.94	$121.12
11040	T	Debride skin, partial	0015	1.77	$85.82	$31.20	$17.16
11041	T	Debride skin, full	0015	1.77	$85.82	$31.20	$17.16
11042	T	Debride skin/tissue	0016	3.53	$171.16	$74.67	$34.23
11043	T	Debride tissue/muscle	0016	3.53	$171.16	$74.67	$34.23
11044	T	Debride tissue/muscle/bone	0017	12.45	$603.66	$289.16	$120.73
11055	T	Trim skin lesion	0015	1.77	$85.82	$31.20	$17.16
11056	T	Trim skin lesions, 2 to 4	0015	1.77	$85.82	$31.20	$17.16
11057	T	Trim skin lesions, over 4	0015	1.77	$85.82	$31.20	$17.16
11100	T	Biopsy of skin lesion	0018	0.94	$45.58	$17.66	$9.12
11101	T	Biopsy, skin add-on	0018	0.94	$45.58	$17.66	$9.12
11200	T	Removal of skin tags	0015	1.77	$85.82	$31.20	$17.16
11201	T	Remove skin tags add-on	0015	1.77	$85.82	$31.20	$17.16
11300	T	Shave skin lesion	0013	0.91	$44.12	$17.66	$8.82
11301	T	Shave skin lesion	0013	0.91	$44.12	$17.66	$8.82
11302	T	Shave skin lesion	0014	1.50	$72.73	$24.55	$14.55
11303	T	Shave skin lesion	0015	1.77	$85.82	$31.20	$17.16
11305	T	Shave skin lesion	0013	0.91	$44.12	$17.66	$8.82
11306	T	Shave skin lesion	0013	0.91	$44.12	$17.66	$8.82
11307	T	Shave skin lesion	0014	1.50	$72.73	$24.55	$14.55
11308	T	Shave skin lesion	0015	1.77	$85.82	$31.20	$17.16
11310	T	Shave skin lesion	0013	0.91	$44.12	$17.66	$8.82
11311	T	Shave skin lesion	0013	0.91	$44.12	$17.66	$8.82
11312	T	Shave skin lesion	0015	1.77	$85.82	$31.20	$17.16
11313	T	Shave skin lesion	0016	3.53	$171.16	$74.67	$34.23
11400	T	Removal of skin lesion	0019	4.00	$193.95	$78.91	$38.79
11401	T	Removal of skin lesion	0019	4.00	$193.95	$78.91	$38.79
11402	T	Removal of skin lesion	0019	4.00	$193.95	$78.91	$38.79
11403	T	Removal of skin lesion	0020	6.51	$315.65	$130.53	$63.13
11404	T	Removal of skin lesion	0020	6.51	$315.65	$130.53	$63.13
11406	T	Removal of skin lesion	0020	6.51	$315.65	$130.53	$63.13
11420	T	Removal of skin lesion	0019	4.00	$193.95	$78.91	$38.79
11421	T	Removal of skin lesion	0019	4.00	$193.95	$78.91	$38.79
11422	T	Removal of skin lesion	0019	4.00	$193.95	$78.91	$38.79
11423	T	Removal of skin lesion	0020	6.51	$315.65	$130.53	$63.13
11424	T	Removal of skin lesion	0020	6.51	$315.65	$130.53	$63.13
11426	T	Removal of skin lesion	0022	12.49	$605.60	$292.94	$121.12
11440	T	Removal of skin lesion	0019	4.00	$193.95	$78.91	$38.79
11441	T	Removal of skin lesion	0019	4.00	$193.95	$78.91	$38.79
11442	T	Removal of skin lesion	0019	4.00	$193.95	$78.91	$38.79
11443	T	Removal of skin lesion	0020	6.51	$315.65	$130.53	$63.13
11444	T	Removal of skin lesion	0020	6.51	$315.65	$130.53	$63.13
11446	T	Removal of skin lesion	0022	12.49	$605.60	$292.94	$121.12
11450	T	Removal, sweat gland lesion	0022	12.49	$605.60	$292.94	$121.12
11451	T	Removal, sweat gland lesion	0022	12.49	$605.60	$292.94	$121.12
11462	T	Removal, sweat gland lesion	0022	12.49	$605.60	$292.94	$121.12
11463	T	Removal, sweat gland lesion	0022	12.49	$605.60	$292.94	$121.12
11470	T	Removal, sweat gland lesion	0022	12.49	$605.60	$292.94	$121.12
11471	T	Removal, sweat gland lesion	0022	12.49	$605.60	$292.94	$121.12
11600	T	Removal of skin lesion	0019	4.00	$193.95	$78.91	$38.79
11601	T	Removal of skin lesion	0019	4.00	$193.95	$78.91	$38.79
11602	T	Removal of skin lesion	0019	4.00	$193.95	$78.91	$38.79
11603	T	Removal of skin lesion	0020	6.51	$315.65	$130.53	$63.13
11604	T	Removal of skin lesion	0020	6.51	$315.65	$130.53	$63.13
11606	T	Removal of skin lesion	0021	10.49	$508.63	$236.51	$101.73
11620	T	Removal of skin lesion	0019	4.00	$193.95	$78.91	$38.79

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
11621	T	Removal of skin lesion	0019	4.00	$193.95	$78.91	$38.79
11622	T	Removal of skin lesion	0019	4.00	$193.95	$78.91	$38.79
11623	T	Removal of skin lesion	0020	6.51	$315.85	$130.53	$63.13
11624	T	Removal of skin lesion	0020	6.51	$315.85	$130.53	$63.13
11626	T	Removal of skin lesion	0022	12.49	$605.80	$292.94	$121.12
11640	T	Removal of skin lesion	0019	4.00	$193.95	$78.91	$38.79
11641	T	Removal of skin lesion	0019	4.00	$193.95	$78.91	$38.79
11642	T	Removal of skin lesion	0019	4.00	$193.95	$78.91	$38.79
11643	T	Removal of skin lesion	0020	6.51	$315.85	$130.53	$63.13
11644	T	Removal of skin lesion	0020	6.51	$315.85	$130.53	$63.13
11646	T	Removal of skin lesion	0022	12.49	$605.80	$292.94	$121.12
11719	T	Trim nail(s)	0009	0.74	$35.88	$9.63	$7.18
11720	T	Debride nail, 1–5	0009	0.74	$35.88	$9.63	$7.18
11721	T	Debride nail, 6 or more	0009	0.74	$35.88	$9.63	$7.18
11730	T	Removal of nail plate	0013	0.91	$44.12	$17.66	$8.82
11732	T	Remove nail plate, add-on	0012	0.53	$25.70	$9.18	$5.14
11740	T	Drain blood from under nail	0009	0.74	$35.88	$9.63	$7.18
11750	T	Removal of nail bed	0019	4.00	$193.95	$78.91	$38.79
11752	T	Remove nail bed/finger tip	0022	12.49	$605.80	$292.94	$121.12
11755	T	Biopsy, nail unit	0019	4.00	$193.95	$78.91	$38.79
11760	T	Repair of nail bed	0024	2.43	$117.82	$44.50	$23.56
11762	T	Reconstruction of nail bed	0024	2.43	$117.82	$44.50	$23.56
11765	T	Excision of nail fold, toe	0015	1.77	$85.82	$31.20	$17.16
11770	T	Removal of pilonidal lesion	0021	10.49	$508.63	$236.51	$101.73
11771	T	Removal of pilonidal lesion	0022	12.49	$605.80	$292.94	$121.12
11772	T	Removal of pilonidal lesion	0022	12.49	$605.80	$292.94	$121.12
11900	T	Injection into skin lesions	0012	0.53	$25.70	$9.18	$5.14
11901	T	Added skin lesions injection	0013	0.91	$44.12	$17.66	$8.82
11920	T	Correct skin color defects	0024	2.43	$117.82	$44.50	$23.56
11921	T	Correct skin color defects	0024	2.43	$117.82	$44.50	$23.56
11922	T	Correct skin color defects	0024	2.43	$117.82	$44.50	$23.56
11950	T	Therapy for contour defects	0024	2.43	$117.82	$44.50	$23.56
11951	T	Therapy for contour defects	0024	2.43	$117.82	$44.50	$23.56
11952	T	Therapy for contour defects	0024	2.43	$117.82	$44.50	$23.56
11954	T	Therapy for contour defects	0024	2.43	$117.82	$44.50	$23.56
11960	T	Insert tissue expander(s)	0026	12.11	$587.18	$277.92	$117.44
11970	T	Replace tissue expander	0026	12.11	$587.18	$277.92	$117.44
11971	T	Remove tissue expander(s)	0022	12.49	$605.80	$292.94	$121.12
11975	E	Insert contraceptive cap					
11976	T	Removal of contraceptive cap	0019	4.00	$193.95	$78.91	$38.79
11977	E	Removal/reinsert contra cap					
11980	E	Implant hormone pellet(s)					
12001	T	Repair superficial wound(s)	0024	2.43	$117.82	$44.50	$23.56
12002	T	Repair superficial wound(s)	0024	2.43	$117.82	$44.50	$23.56
12004	T	Repair superficial wound(s)	0024	2.43	$117.82	$44.50	$23.56
12005	T	Repair superficial wound(s)	0024	2.43	$117.82	$44.50	$23.56
12006	T	Repair superficial wound(s)	0024	2.43	$117.82	$44.50	$23.56
12007	T	Repair superficial wound(s)	0024	2.43	$117.82	$44.50	$23.56
12011	T	Repair superficial wound(s)	0024	2.43	$117.82	$44.50	$23.56
12013	T	Repair superficial wound(s)	0024	2.43	$117.82	$44.50	$23.56
12014	T	Repair superficial wound(s)	0024	2.43	$117.82	$44.50	$23.56
12015	T	Repair superficial wound(s)	0024	2.43	$117.82	$44.50	$23.56
12016	T	Repair superficial wound(s)	0024	2.43	$117.82	$44.50	$23.56
12017	T	Repair superficial wound(s)	0024	2.43	$117.82	$44.50	$23.56
12018	T	Repair superficial wound(s)	0024	2.43	$117.82	$44.50	$23.56
12020	T	Closure of split wound	0024	2.43	$117.82	$44.50	$23.56
12021	T	Closure of split wound	0024	2.43	$117.82	$44.50	$23.56
12031	T	Layer closure of wound(s)	0024	2.43	$117.82	$44.50	$23.56
12032	T	Layer closure of wound(s)	0024	2.43	$117.82	$44.50	$23.56
12034	T	Layer closure of wound(s)	0024	2.43	$117.82	$44.50	$23.56
12035	T	Layer closure of wound(s)	0024	2.43	$117.82	$44.50	$23.56
12036	T	Layer closure of wound(s)	0024	2.43	$117.82	$44.50	$23.56
12037	T	Layer closure of wound(s)	0024	2.43	$117.82	$44.50	$23.56
12041	T	Layer closure of wound(s)	0026	12.11	$587.18	$277.92	$117.44
12042	T	Layer closure of wound(s)	0024	2.43	$117.82	$44.50	$23.56
12044	T	Layer closure of wound(s)	0024	2.43	$117.82	$44.50	$23.56
12045	T	Layer closure of wound(s)	0024	2.43	$117.82	$44.50	$23.56
12046	T	Layer closure of wound(s)	0024	2.43	$117.82	$44.50	$23.56
12047	T	Layer closure of wound(s)	0024	2.43	$117.82	$44.50	$23.56
12051	T	Layer closure of wound(s)	0026	12.11	$587.18	$277.92	$117.44
12052	T	Layer closure of wound(s)	0024	2.43	$117.82	$44.50	$23.56
12053	T	Layer closure of wound(s)	0024	2.43	$117.82	$44.50	$23.56
12054	T	Layer closure of wound(s)	0024	2.43	$117.82	$44.50	$23.56

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
12055	T	Layer closure of wound(s)	0024	2.43	$117.82	$44.50	$23.56
12056	T	Layer closure of wound(s)	0024	2.43	$117.82	$44.50	$23.56
12057	T	Layer closure of wound(s)	0026	12.11	$587.18	$277.92	$117.44
13100	T	Repair of wound or lesion	0025	3.74	$181.34	$70.66	$36.27
13101	T	Repair of wound or lesion	0025	3.74	$181.34	$70.66	$36.27
13102	T	Repair wound/lesion add-on	0025	3.74	$181.34	$70.66	$36.27
13120	T	Repair of wound or lesion	0025	3.74	$181.34	$70.66	$36.27
13121	T	Repair of wound or lesion	0025	3.74	$181.34	$70.66	$36.27
13122	T	Repair wound/lesion add-on	0025	3.74	$181.34	$70.66	$36.27
13131	T	Repair of wound or lesion	0025	3.74	$181.34	$70.66	$36.27
13132	T	Repair of wound or lesion	0025	3.74	$181.34	$70.66	$36.27
13133	T	Repair wound/lesion add-on	0025	3.74	$181.34	$70.66	$36.27
13150	T	Repair of wound or lesion	0026	12.11	$587.18	$277.92	$117.44
13151	T	Repair of wound or lesion	0025	3.74	$181.34	$70.66	$36.27
13152	T	Repair of wound or lesion	0025	3.74	$181.34	$70.66	$36.27
13153	T	Repair wound/lesion add-on	0025	3.74	$181.34	$70.66	$36.27
13160	T	Late closure of wound	0026	12.11	$587.18	$277.92	$117.44
14000	T	Skin tissue rearrangement	0026	12.11	$587.18	$277.92	$117.44
14001	T	Skin tissue rearrangement	0026	12.11	$587.18	$277.92	$117.44
14020	T	Skin tissue rearrangement	0026	12.11	$587.18	$277.92	$117.44
14021	T	Skin tissue rearrangement	0026	12.11	$587.18	$277.92	$117.44
14040	T	Skin tissue rearrangement	0026	12.11	$587.18	$277.92	$117.44
14041	T	Skin tissue rearrangement	0026	12.11	$587.18	$277.92	$117.44
14060	T	Skin tissue rearrangement	0026	12.11	$587.18	$277.92	$117.44
14061	T	Skin tissue rearrangement	0026	12.11	$587.18	$277.92	$117.44
14300	T	Skin tissue rearrangement	0026	12.11	$587.18	$277.92	$117.44
14350	T	Skin tissue rearrangement	0026	12.11	$587.18	$277.92	$117.44
15000	T	Skin graft	0026	12.11	$587.18	$277.92	$117.44
15001	T	Skin graft add-on	0026	12.11	$587.18	$277.92	$117.44
15050	T	Skin pinch graft	0026	12.11	$587.18	$277.92	$117.44
15100	T	Skin split graft	0026	12.11	$587.18	$277.92	$117.44
15101	T	Skin split graft add-on	0026	12.11	$587.18	$277.92	$117.44
15120	T	Skin split graft	0026	12.11	$587.18	$277.92	$117.44
15121	T	Skin split graft add-on	0026	12.11	$587.18	$277.92	$117.44
15200	T	Skin full graft	0026	12.11	$587.18	$277.92	$117.44
15201	T	Skin full graft add-on	0026	12.11	$587.18	$277.92	$117.44
15220	T	Skin full graft	0026	12.11	$587.18	$277.92	$117.44
15221	T	Skin full graft add-on	0026	12.11	$587.18	$277.92	$117.44
15240	T	Skin full graft	0026	12.11	$587.18	$277.92	$117.44
15241	T	Skin full graft add-on	0026	12.11	$587.18	$277.92	$117.44
15260	T	Skin full graft	0026	12.11	$587.18	$277.92	$117.44
15261	T	Skin full graft add-on	0026	12.11	$587.18	$277.92	$117.44
15350	T	Skin homograft	0026	12.11	$587.18	$277.92	$117.44
15351	T	Skin homograft add-on	0026	12.11	$587.18	$277.92	$117.44
15400	T	Skin heterograft	0026	12.11	$587.18	$277.92	$117.44
15401	T	Skin heterograft add-on	0026	12.11	$587.18	$277.92	$117.44
15570	T	Form skin pedicle flap	0026	12.11	$587.18	$277.92	$117.44
15572	T	Form skin pedicle flap	0026	12.11	$587.18	$277.92	$117.44
15574	T	Form skin pedicle flap	0026	12.11	$587.18	$277.92	$117.44
15576	T	Form skin pedicle flap	0026	12.11	$587.18	$277.92	$117.44
15600	T	Skin graft	0026	12.11	$587.18	$277.92	$117.44
15610	T	Skin graft	0026	12.11	$587.18	$277.92	$117.44
15620	T	Skin graft	0026	12.11	$587.18	$277.92	$117.44
15630	T	Skin graft	0026	12.11	$587.18	$277.92	$117.44
15650	T	Transfer skin pedicle flap	0026	12.11	$587.18	$277.92	$117.44
15732	T	Muscle-skin graft, head/neck	0027	15.80	$766.10	$383.10	$153.22
15734	T	Muscle-skin graft, trunk	0027	15.80	$766.10	$383.10	$153.22
15736	T	Muscle-skin graft, arm	0027	15.80	$766.10	$383.10	$153.22
15738	T	Muscle-skin graft, leg	0027	15.80	$766.10	$383.10	$153.22
15740	T	Island pedicle flap graft	0027	15.80	$766.10	$383.10	$153.22
15750	T	Neurovascular pedicle graft	0027	15.80	$766.10	$383.10	$153.22
15756	C	Free muscle flap, microvasc					
15757	C	Free skin flap, microvasc					
15758	C	Free fascial flap, microvasc					
15760	T	Composite skin graft	0027	15.80	$766.10	$383.10	$153.22
15770	T	Derma-fat-fascia graft	0027	15.80	$766.10	$383.10	$153.22
15775	T	Hair transplant punch grafts	0026	12.11	$587.18	$277.92	$117.44
15776	T	Hair transplant punch grafts	0026	12.11	$587.18	$277.92	$117.44
15780	T	Abrasion treatment of skin	0022	12.49	$605.60	$292.94	$121.12
15781	T	Abrasion treatment of skin	0022	12.49	$605.60	$292.94	$121.12
15782	T	Abrasion treatment of skin	0022	12.49	$605.60	$292.94	$121.12
15783	T	Abrasion treatment of skin	0015	1.77	$85.82	$31.20	$17.16
15786	T	Abrasion, lesion, single	0013	0.91	$44.12	$17.66	$8.82

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[3] Eligible for pass-through payments. See Preamble for payment rate determination. See Addendum K for complete list of pass-through codes.

ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
15787	T	Abrasion, lesions, add-on	0016	3.53	$171.16	$74.67	$34.23
15788	T	Chemical peel, face, epiderm	0013	0.91	$44.12	$17.66	$8.82
15789	T	Chemical peel, face, dermal	0015	1.77	$85.82	$31.20	$17.16
15792	T	Chemical peel, nonfacial	0016	3.53	$171.16	$74.67	$34.23
15793	T	Chemical peel, nonfacial	0016	3.53	$171.16	$74.67	$34.23
15810	T	Salabrasion	0016	3.53	$171.16	$74.67	$34.23
15811	T	Salabrasion	0022	12.49	$605.60	$292.94	$121.12
15819	T	Plastic surgery, neck	0026	12.11	$587.18	$277.92	$117.44
15820	T	Revision of lower eyelid	0026	12.11	$587.18	$277.92	$117.44
15821	T	Revision of lower eyelid	0026	12.11	$587.18	$277.92	$117.44
15822	T	Revision of upper eyelid	0026	12.11	$587.18	$277.92	$117.44
15823	T	Revision of upper eyelid	0026	12.11	$587.18	$277.92	$117.44
15824	T	Removal of forehead wrinkles	0027	15.80	$766.10	$383.10	$153.22
15825	T	Removal of neck wrinkles	0026	12.11	$587.18	$277.92	$117.44
15826	T	Removal of brow wrinkles	0027	15.80	$766.10	$383.10	$153.22
15828	T	Removal of face wrinkles	0027	15.80	$766.10	$383.10	$153.22
15829	T	Removal of skin wrinkles	0026	12.11	$587.18	$277.92	$117.44
15831	T	Excise excessive skin tissue	0027	15.80	$766.10	$383.10	$153.22
15832	T	Excise excessive skin tissue	0027	15.80	$766.10	$383.10	$153.22
15833	T	Excise excessive skin tissue	0027	15.80	$766.10	$383.10	$153.22
15834	T	Excise excessive skin tissue	0027	15.80	$766.10	$383.10	$153.22
15835	T	Excise excessive skin tissue	0026	12.11	$587.18	$277.92	$117.44
15836	T	Excise excessive skin tissue	0027	15.80	$766.10	$383.10	$153.22
15837	T	Excise excessive skin tissue	0027	15.80	$766.10	$383.10	$153.22
15838	T	Excise excessive skin tissue	0022	12.49	$605.60	$292.94	$121.12
15839	T	Excise excessive skin tissue	0027	15.80	$766.10	$383.10	$153.22
15840	T	Graft for face nerve palsy	0027	15.80	$766.10	$383.10	$153.22
15841	T	Graft for face nerve palsy	0027	15.80	$766.10	$383.10	$153.22
15842	T	Graft for face nerve palsy	0027	15.80	$766.10	$383.10	$153.22
15845	T	Skin and muscle repair, face	0027	15.80	$766.10	$383.10	$153.22
15850	T	Removal of sutures	0013	0.91	$44.12	$17.66	$8.82
15851	T	Removal of sutures	0013	0.91	$44.12	$17.66	$8.82
15852	T	Dressing change, not for burn	0012	0.53	$25.70	$9.18	$5.14
15860	N	Test for blood flow in graft					
15876	T	Suction assisted lipectomy	0027	15.80	$766.10	$383.10	$153.22
15877	T	Suction assisted lipectomy	0027	15.80	$766.10	$383.10	$153.22
15878	T	Suction assisted lipectomy	0027	15.80	$766.10	$383.10	$153.22
15879	T	Suction assisted lipectomy	0027	15.80	$766.10	$383.10	$153.22
15920	T	Removal of tail bone ulcer	0022	12.49	$605.60	$292.94	$121.12
15922	T	Removal of tail bone ulcer	0027	15.80	$766.10	$383.10	$153.22
15931	T	Remove sacrum pressure sore	0022	12.49	$605.60	$292.94	$121.12
15933	T	Remove sacrum pressure sore	0022	12.49	$605.60	$292.94	$121.12
15934	T	Remove sacrum pressure sore	0027	15.80	$766.10	$383.10	$153.22
15935	T	Remove sacrum pressure sore	0027	15.80	$766.10	$383.10	$153.22
15936	T	Remove sacrum pressure sore	0027	15.80	$766.10	$383.10	$153.22
15937	T	Remove sacrum pressure sore	0027	15.80	$766.10	$383.10	$153.22
15940	T	Remove hip pressure sore	0022	12.49	$605.60	$292.94	$121.12
15941	T	Remove hip pressure sore	0022	12.49	$605.60	$292.94	$121.12
15944	T	Remove hip pressure sore	0027	15.80	$766.10	$383.10	$153.22
15945	T	Remove hip pressure sore	0027	15.80	$766.10	$383.10	$153.22
15946	T	Remove hip pressure sore	0027	15.80	$766.10	$383.10	$153.22
15950	T	Remove thigh pressure sore	0022	12.49	$605.60	$292.94	$121.12
15951	T	Remove thigh pressure sore	0022	12.49	$605.60	$292.94	$121.12
15952	T	Remove thigh pressure sore	0027	15.80	$766.10	$383.10	$153.22
15953	T	Remove thigh pressure sore	0027	15.80	$766.10	$383.10	$153.22
15956	T	Remove thigh pressure sore	0027	15.80	$766.10	$383.10	$153.22
15958	T	Remove thigh pressure sore	0027	15.80	$766.10	$383.10	$153.22
15999	T	Removal of pressure sore	0022	12.49	$605.60	$292.94	$121.12
16000	T	Initial treatment of burn(s)	0015	1.77	$85.82	$31.20	$17.16
16010	T	Treatment of burn(s)	0015	1.77	$85.82	$31.20	$17.16
16015	T	Treatment of burn(s)	0017	12.45	$603.86	$289.16	$120.73
16020	T	Treatment of burn(s)	0015	1.77	$85.82	$31.20	$17.16
16025	T	Treatment of burn(s)	0014	1.50	$72.73	$24.55	$14.55
16030	T	Treatment of burn(s)	0015	1.77	$85.82	$31.20	$17.16
16035	T	Incision of burn scab	0020	6.51	$315.65	$130.53	$63.13
17000	T	Destroy benign/premal lesion	0010	0.55	$26.67	$9.86	$5.33
17003	T	Destroy lesions, 2–14	0010	0.55	$26.67	$9.86	$5.33
17004	T	Destroy lesions, 15 or more	0011	2.72	$131.88	$50.01	$26.38
17106	T	Destruction of skin lesions	0011	2.72	$131.88	$50.01	$26.38
17107	T	Destruction of skin lesions	0011	2.72	$131.88	$50.01	$26.38
17108	T	Destruction of skin lesions	0011	2.72	$131.88	$50.01	$26.38
17110	T	Destruct lesion, 1–14	0010	0.55	$26.67	$9.86	$5.33
17111	T	Destruct lesion, 15 or more	0011	2.72	$131.88	$50.01	$26.38

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
17250	T	Chemical cautery, tissue	0014	1.50	$72.73	$24.55	$14.55
17260	T	Destruction of skin lesions	0013	0.91	$44.12	$17.66	$8.82
17261	T	Destruction of skin lesions	0013	0.91	$44.12	$17.66	$8.82
17262	T	Destruction of skin lesions	0013	0.91	$44.12	$17.66	$8.82
17263	T	Destruction of skin lesions	0013	0.91	$44.12	$17.66	$8.82
17264	T	Destruction of skin lesions	0015	1.77	$85.82	$31.20	$17.16
17266	T	Destruction of skin lesions	0016	3.53	$171.16	$74.67	$34.23
17270	T	Destruction of skin lesions	0015	1.77	$85.82	$31.20	$17.16
17271	T	Destruction of skin lesions	0013	0.91	$44.12	$17.66	$8.82
17272	T	Destruction of skin lesions	0013	0.91	$44.12	$17.66	$8.82
17273	T	Destruction of skin lesions	0015	1.77	$85.82	$31.20	$17.16
17274	T	Destruction of skin lesions	0015	1.77	$85.82	$31.20	$17.16
17276	T	Destruction of skin lesions	0015	1.77	$85.82	$31.20	$17.16
17280	T	Destruction of skin lesions	0015	1.77	$85.82	$31.20	$17.16
17281	T	Destruction of skin lesions	0015	1.77	$85.82	$31.20	$17.16
17282	T	Destruction of skin lesions	0015	1.77	$85.82	$31.20	$17.16
17283	T	Destruction of skin lesions	0015	1.77	$85.82	$31.20	$17.16
17284	T	Destruction of skin lesions	0016	3.53	$171.16	$74.67	$34.23
17286	T	Destruction of skin lesions	0016	3.53	$171.16	$74.67	$34.23
17304	T	Chemosurgery of skin lesion	0020	6.51	$315.65	$130.53	$63.13
17305	T	2nd stage chemosurgery	0020	6.51	$315.65	$130.53	$63.13
17306	T	3rd stage chemosurgery	0020	6.51	$315.65	$130.53	$63.13
17307	T	Followup skin lesion therapy	0020	6.51	$315.65	$130.53	$63.13
17310	T	Extensive skin chemosurgery	0020	6.51	$315.65	$130.53	$63.13
17340	T	Cryotherapy of skin	0012	0.53	$25.70	$9.18	$5.14
17360	T	Skin peel therapy	0016	3.53	$171.16	$74.67	$34.23
17380	T	Hair removal by electrolysis	0016	3.53	$171.16	$74.67	$34.23
17999	T	Skin tissue procedure	0004	1.84	$89.22	$32.57	$17.84
19000	T	Drainage of breast lesion	0004	1.84	$89.22	$32.57	$17.84
19001	T	Drain breast lesion add-on	0004	1.84	$89.22	$32.57	$17.84
19020	T	Incision of breast lesion	0008	6.15	$298.20	$113.67	$59.64
19030	N	Injection for breast x-ray					
19100	T	Biopsy of breast	0005	5.41	$262.32	$119.75	$52.46
19101	T	Biopsy of breast	0029	12.85	$623.06	$303.50	$124.61
19110	T	Nipple exploration	0029	12.85	$623.06	$303.50	$124.61
19112	T	Excise breast duct fistula	0029	12.85	$623.06	$303.50	$124.61
19120	T	Removal of breast lesion	0029	12.85	$623.06	$303.50	$124.61
19125	T	Excision, breast lesion	0029	12.85	$623.06	$303.50	$124.61
19126	T	Excision, addl breast lesion	0029	12.85	$623.06	$303.50	$124.61
19140	T	Removal of breast tissue	0029	12.85	$623.06	$303.50	$124.61
19160	T	Removal of breast tissue	0030	20.19	$978.95	$523.95	$195.79
19162	T	Remove breast tissue, nodes	0030	20.19	$978.95	$523.95	$195.79
19180	T	Removal of breast	0030	20.19	$978.95	$523.95	$195.79
19182	T	Removal of breast	0030	20.19	$978.95	$523.95	$195.79
19200	C	Removal of breast					
19220	C	Removal of breast					
19240	C	Removal of breast					
19260	C	Removal of chest wall lesion					
19271	C	Revision of chest wall					
19272	C	Extensive chest wall surgery					
19290	T	Place needle wire, breast	0029	12.85	$623.06	$303.50	$124.61
19291	T	Place needle wire, breast	0029	12.85	$623.06	$303.50	$124.61
19316	T	Suspension of breast	0030	20.19	$978.95	$523.95	$195.79
19318	T	Reduction of large breast	0030	20.19	$978.95	$523.95	$195.79
19324	T	Enlarge breast	0030	20.19	$978.95	$523.95	$195.79
19325	T	Enlarge breast with implant	0030	20.19	$978.95	$523.95	$195.79
19328	T	Removal of breast implant	0030	20.19	$978.95	$523.95	$195.79
19330	T	Removal of implant material	0030	20.19	$978.95	$523.95	$195.79
19340	T	Immediate breast prosthesis	0030	20.19	$978.95	$523.95	$195.79
19342	T	Delayed breast prosthesis	0030	20.19	$978.95	$523.95	$195.79
19350	T	Breast reconstruction	0030	20.19	$978.95	$523.95	$195.79
19355	T	Correct inverted nipple(s)	0030	20.19	$978.95	$523.95	$195.79
19357	T	Breast reconstruction	0030	20.19	$978.95	$523.95	$195.79
19361	C	Breast reconstruction					
19364	C	Breast reconstruction					
19366	T	Breast reconstruction	0030	20.19	$978.95	$523.95	$195.79
19367	C	Breast reconstruction					
19368	C	Breast reconstruction					
19369	C	Breast reconstruction					
19370	T	Surgery of breast capsule	0030	20.19	$978.95	$523.95	$195.79
19371	T	Removal of breast capsule	0030	20.19	$978.95	$523.95	$195.79
19380	T	Revise breast reconstruction	0030	20.19	$978.95	$523.95	$195.79
19396	T	Design custom breast implant	0029	12.85	$623.06	$303.50	$124.61

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
19499	T	Breast surgery procedure	0029	12.85	$623.08	$303.50	$124.61
20000	T	Incision of abscess	0006	2.00	$96.97	$33.95	$19.39
20005	T	Incision of deep abscess	0049	15.04	$729.25	$356.95	$145.85
20100	T	Explore wound, neck	0023	1.98	$96.00	$40.37	$19.20
20101	T	Explore wound, chest	0026	12.11	$587.18	$277.92	$117.44
20102	T	Explore wound, abdomen	0026	12.11	$587.18	$277.92	$117.44
20103	T	Explore wound, extremity	0023	1.98	$96.00	$40.37	$19.20
20150	T	Excise epiphyseal bar	0051	27.76	$1,346.00	$675.24	$269.20
20200	T	Muscle biopsy	0020	6.51	$315.68	$130.53	$63.13
20205	T	Deep muscle biopsy	0021	10.49	$508.63	$236.51	$101.73
20206	T	Needle biopsy, muscle	0005	5.41	$262.32	$119.75	$52.46
20220	T	Bone biopsy, trocar/needle	0019	4.00	$193.99	$78.91	$38.79
20225	T	Bone biopsy, trocar/needle	0020	6.51	$315.68	$130.53	$63.13
20240	T	Bone biopsy, excisional	0022	12.49	$605.60	$292.94	$121.12
20245	T	Bone biopsy, excisional	0022	12.49	$605.60	$292.94	$121.12
20250	T	Open bone biopsy	0049	15.04	$729.25	$356.95	$145.85
20251	T	Open bone biopsy	0049	15.04	$729.25	$356.95	$145.85
20500	T	Injection of sinus tract	0252	5.18	$251.16	$114.24	$50.23
20501	N	Inject sinus tract for x-ray					
20520	T	Removal of foreign body	0019	4.00	$193.99	$78.91	$38.79
20525	T	Removal of foreign body	0022	12.49	$605.60	$292.94	$121.12
20550	T	Inject tendon/ligament/cyst	0040	2.11	$102.31	$40.60	$20.46
20600	T	Drain/inject, joint/bursa	0040	2.11	$102.31	$40.60	$20.46
20605	T	Drain/inject, joint/bursa	0040	2.11	$102.31	$40.60	$20.46
20610	T	Drain/inject, joint/bursa	0040	2.11	$102.31	$40.60	$20.46
20615	T	Treatment of bone cyst	0004	1.84	$89.22	$32.57	$17.84
20650	T	Insert and remove bone pin	0049	15.04	$729.25	$356.95	$145.85
20660	C	Apply, remove fixation device					
20661	C	Application of head brace					
20662	C	Application of pelvis brace					
20663	C	Application of thigh brace					
20664	C	Halo brace application					
20665	N	Removal of fixation device					
20670	T	Removal of support implant	0021	10.49	$508.63	$236.51	$101.73
20680	T	Removal of support implant	0022	12.49	$605.60	$292.94	$121.12
20690	T	Apply bone fixation device	0050	21.13	$1,024.53	$513.86	$204.91
20692	T	Apply bone fixation device	0050	21.13	$1,024.53	$513.86	$204.91
20693	T	Adjust bone fixation device	0049	15.04	$729.25	$356.95	$145.85
20694	T	Remove bone fixation device	0049	15.04	$729.25	$356.95	$145.85
20802	C	Replantation, arm, complete					
20805	C	Replant, forearm, complete					
20808	C	Replantation hand, complete					
20816	C	Replantation digit, complete					
20822	C	Replantation digit, complete					
20824	C	Replantation thumb, complete					
20827	C	Replantation thumb, complete					
20838	C	Replantation foot, complete					
20900	T	Removal of bone for graft	0050	21.13	$1,024.53	$513.86	$204.91
20902	T	Removal of bone for graft	0050	21.13	$1,024.53	$513.86	$204.91
20910	T	Remove cartilage for graft	0026	12.11	$587.18	$277.92	$117.44
20912	T	Remove cartilage for graft	0026	12.11	$587.18	$277.92	$117.44
20920	T	Removal of fascia for graft	0026	12.11	$587.18	$277.92	$117.44
20922	T	Removal of fascia for graft	0026	12.11	$587.18	$277.92	$117.44
20924	T	Removal of tendon for graft	0050	21.13	$1,024.53	$513.86	$204.91
20926	T	Removal of tissue for graft	0026	12.11	$587.18	$277.92	$117.44
20930	C	Spinal bone allograft					
20931	C	Spinal bone allograft					
20936	C	Spinal bone autograft					
20937	C	Spinal bone autograft					
20938	C	Spinal bone autograft					
20950	T	Fluid pressure, muscle	0008	6.15	$298.20	$113.67	$59.64
20955	C	Fibula bone graft, microvasc					
20956	C	Iliac bone graft, microvasc					
20957	C	Mt bone graft, microvasc					
20962	C	Other bone graft, microvasc					
20969	C	Bone/skin graft, microvasc					
20970	C	Bone/skin graft, iliac crest					
20972	C	Bone/skin graft, metatarsal					
20973	C	Bone/skin graft, great toe					
20974	A	Electrical bone stimulation					
20975	T	Electrical bone stimulation	0049	15.04	$729.25	$356.95	$145.85
20979	T	Us bone stimulation	0049	15.04	$729.25	$356.95	$145.85
20999	N	Musculoskeletal surgery					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
21010	T	Incision of jaw joint	0254	12.45	$603.66	$272.41	$120.73
21015	T	Resection of facial tumor	0254	12.45	$603.66	$272.41	$120.73
21025	T	Excision of bone, lower jaw	0256	25.40	$1,231.57	$623.05	$246.31
21026	T	Excision of facial bone(s)	0256	25.40	$1,231.57	$623.05	$246.31
21029	T	Contour of face bone lesion	0256	25.40	$1,231.57	$623.05	$246.31
21030	T	Removal of face bone lesion	0254	12.45	$603.66	$272.41	$120.73
21031	T	Remove exostosis, mandible	0253	12.02	$582.81	$284.00	$116.56
21032	T	Remove exostosis, maxilla	0253	12.02	$582.81	$284.00	$116.56
21034	T	Removal of face bone lesion	0256	25.40	$1,231.57	$623.05	$246.31
21040	T	Removal of jaw bone lesion	0253	12.02	$582.81	$284.00	$116.56
21041	T	Removal of jaw bone lesion	0256	25.40	$1,231.57	$623.05	$246.31
21044	T	Removal of jaw bone lesion	0256	25.40	$1,231.57	$623.05	$246.31
21045	C	Extensive jaw surgery					
21050	T	Removal of jaw joint	0256	25.40	$1,231.57	$623.05	$246.31
21060	T	Remove jaw joint cartilage	0256	25.40	$1,231.57	$623.05	$246.31
21070	T	Remove coronoid process	0256	25.40	$1,231.57	$623.05	$246.31
21076	T	Prepare face/oral prosthesis	0254	12.45	$603.66	$272.41	$120.73
21077	T	Prepare face/oral prosthesis	0256	25.40	$1,231.57	$623.05	$246.31
21079	T	Prepare face/oral prosthesis	0256	25.40	$1,231.57	$623.05	$246.31
21080	T	Prepare face/oral prosthesis	0256	25.40	$1,231.57	$623.05	$246.31
21081	T	Prepare face/oral prosthesis	0256	25.40	$1,231.57	$623.05	$246.31
21082	T	Prepare face/oral prosthesis	0256	25.40	$1,231.57	$623.05	$246.31
21083	T	Prepare face/oral prosthesis	0256	25.40	$1,231.57	$623.05	$246.31
21084	T	Prepare face/oral prosthesis	0256	25.40	$1,231.57	$623.05	$246.31
21085	T	Prepare face/oral prosthesis	0253	12.02	$582.81	$284.00	$116.56
21086	T	Prepare face/oral prosthesis	0256	25.40	$1,231.57	$623.05	$246.31
21087	T	Prepare face/oral prosthesis	0256	25.40	$1,231.57	$623.05	$246.31
21088	T	Prepare face/oral prosthesis	0256	25.40	$1,231.57	$623.05	$246.31
21089	T	Prepare face/oral prosthesis	0253	12.02	$582.81	$284.00	$116.56
21100	T	Maxillofacial fixation	0256	25.40	$1,231.57	$623.05	$246.31
21110	T	Interdental fixation	0254	12.45	$603.66	$272.41	$120.73
21116	N	Injection, jaw joint x-ray					
21120	T	Reconstruction of chin	0254	12.45	$603.66	$272.41	$120.73
21121	T	Reconstruction of chin	0254	12.45	$603.66	$272.41	$120.73
21122	T	Reconstruction of chin	0254	12.45	$603.66	$272.41	$120.73
21123	T	Reconstruction of chin	0254	12.45	$603.66	$272.41	$120.73
21125	T	Augmentation, lower jaw bone	0254	12.45	$603.66	$272.41	$120.73
21127	T	Augmentation, lower jaw bone	0256	25.40	$1,231.57	$623.05	$246.31
21137	T	Reduction of forehead	0254	12.45	$603.66	$272.41	$120.73
21138	T	Reduction of forehead	0256	25.40	$1,231.57	$623.05	$246.31
21139	T	Reduction of forehead	0256	25.40	$1,231.57	$623.05	$246.31
21141	C	Reconstruct midface, lefort					
21142	C	Reconstruct midface, lefort					
21143	C	Reconstruct midface, lefort					
21145	C	Reconstruct midface, lefort					
21146	C	Reconstruct midface, lefort					
21147	C	Reconstruct midface, lefort					
21150	C	Reconstruct midface, lefort					
21151	C	Reconstruct midface, lefort					
21154	C	Reconstruct midface, lefort					
21155	C	Reconstruct midface, lefort					
21159	C	Reconstruct midface, lefort					
21160	C	Reconstruct midface, lefort					
21172	C	Reconstruct orbit/forehead					
21175	C	Reconstruct orbit/forehead					
21179	C	Reconstruct entire forehead					
21180	C	Reconstruct entire forehead					
21181	T	Contour cranial bone lesion	0254	12.45	$603.66	$272.41	$120.73
21182	C	Reconstruct cranial bone					
21183	C	Reconstruct cranial bone					
21184	C	Reconstruct cranial bone					
21188	C	Reconstruction of midface					
21193	C	Reconstruct lower jaw bone					
21194	C	Reconstruct lower jaw bone					
21195	C	Reconstruct lower jaw bone					
21196	C	Reconstruct lower jaw bone					
21198	T	Reconstruct lower jaw bone	0256	25.40	$1,231.57	$623.05	$246.31
21206	T	Reconstruct upper jaw bone	0256	25.40	$1,231.57	$623.05	$246.31
21208	T	Augmentation of facial bones	0256	25.40	$1,231.57	$623.05	$246.31
21209	T	Reduction of facial bones	0256	25.40	$1,231.57	$623.05	$246.31
21210	T	Face bone graft	0256	25.40	$1,231.57	$623.05	$246.31
21215	T	Lower jaw bone graft	0256	25.40	$1,231.57	$623.05	$246.31
21230	T	Rib cartilage graft	0256	25.40	$1,231.57	$623.05	$246.31

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
21235	T	Ear cartilage graft	0254	12.45	$603.66	$272.41	$120.73
21240	T	Reconstruction of jaw joint	0256	25.40	$1,231.57	$623.05	$246.31
21242	T	Reconstruction of jaw joint	0256	25.40	$1,231.57	$623.05	$246.31
21243	T	Reconstruction of jaw joint	0256	25.40	$1,231.57	$623.05	$246.31
21244	T	Reconstruction of lower jaw	0256	25.40	$1,231.57	$623.05	$246.31
21245	T	Reconstruction of jaw	0256	25.40	$1,231.57	$623.05	$246.31
21246	T	Reconstruction of jaw	0256	25.40	$1,231.57	$623.05	$246.31
21247	C	Reconstruct lower jaw bone					
21248	T	Reconstruction of jaw	0256	25.40	$1,231.57	$623.05	$246.31
21249	T	Reconstruction of jaw	0256	25.40	$1,231.57	$623.05	$246.31
21255	C	Reconstruct lower jaw bone					
21256	C	Reconstruction of orbit					
21260	T	Revise eye sockets	0256	25.40	$1,231.57	$623.05	$246.31
21261	T	Revise eye sockets	0256	25.40	$1,231.57	$623.05	$246.31
21263	T	Revise eye sockets	0256	25.40	$1,231.57	$623.05	$246.31
21267	T	Revise eye sockets	0256	25.40	$1,231.57	$623.05	$246.31
21268	C	Revise eye sockets					
21270	T	Augmentation, cheek bone	0256	25.40	$1,231.57	$623.05	$246.31
21275	T	Revision, orbitofacial bones	0256	25.40	$1,231.57	$623.05	$246.31
21280	T	Revision of eyelid	0256	25.40	$1,231.57	$623.05	$246.31
21282	T	Revision of eyelid	0253	12.02	$582.81	$284.00	$116.56
21295	T	Revision of jaw muscle/bone	0253	12.02	$582.81	$284.00	$116.56
21296	T	Revision of jaw muscle/bone	0254	12.45	$603.66	$272.41	$120.73
21299	T	Cranio/maxillofacial surgery	0253	12.02	$582.81	$284.00	$116.56
21300	T	Treatment of skull fracture	0253	12.02	$582.81	$284.00	$116.56
21310	T	Treatment of nose fracture	0253	12.02	$582.81	$284.00	$116.56
21315	T	Treatment of nose fracture	0253	12.02	$582.81	$284.00	$116.56
21320	T	Treatment of nose fracture	0253	12.02	$582.81	$284.00	$116.56
21325	T	Treatment of nose fracture	0253	12.02	$582.81	$284.00	$116.56
21330	T	Treatment of nose fracture	0254	12.45	$603.66	$272.41	$120.73
21335	T	Treatment of nose fracture	0254	12.45	$603.66	$272.41	$120.73
21336	T	Treat nasal septal fracture	0046	22.29	$1,080.76	$535.76	$216.16
21337	T	Treat nasal septal fracture	0253	12.02	$582.81	$284.00	$116.56
21338	T	Treat nasoethmoid fracture	0254	12.45	$603.66	$272.41	$120.73
21339	T	Treat nasoethmoid fracture	0254	12.45	$603.66	$272.41	$120.73
21340	T	Treatment of nose fracture	0256	25.40	$1,231.57	$623.05	$246.31
21343	C	Treatment of sinus fracture					
21344	C	Treatment of sinus fracture					
21345	T	Treat nose/jaw fracture	0254	12.45	$603.66	$272.41	$120.73
21346	C	Treat nose/jaw fracture					
21347	C	Treat nose/jaw fracture					
21348	C	Treat nose/jaw fracture					
21355	T	Treat cheek bone fracture	0256	25.40	$1,231.57	$623.05	$246.31
21356	C	Treat cheek bone fracture					
21360	C	Treat cheek bone fracture					
21365	C	Treat cheek bone fracture					
21366	C	Treat cheek bone fracture					
21385	C	Treat eye socket fracture					
21386	C	Treat eye socket fracture					
21387	C	Treat eye socket fracture					
21390	C	Treat eye socket fracture					
21395	C	Treat eye socket fracture					
21400	T	Treat eye socket fracture	0252	5.18	$251.16	$114.24	$50.23
21401	T	Treat eye socket fracture	0253	12.02	$582.81	$284.00	$116.56
21406	T	Treat eye socket fracture	0256	25.40	$1,231.57	$623.05	$246.31
21407	T	Treat eye socket fracture	0256	25.40	$1,231.57	$623.05	$246.31
21408	C	Treat eye socket fracture					
21421	T	Treat mouth roof fracture	0254	12.45	$603.66	$272.41	$120.73
21422	C	Treat mouth roof fracture					
21423	C	Treat mouth roof fracture					
21431	C	Treat craniofacial fracture					
21432	C	Treat craniofacial fracture					
21433	C	Treat craniofacial fracture					
21435	C	Treat craniofacial fracture					
21436	C	Treat craniofacial fracture					
21440	T	Treat dental ridge fracture	0253	12.02	$582.81	$284.00	$116.56
21445	T	Treat dental ridge fracture	0254	12.45	$603.66	$272.41	$120.73
21450	T	Treat lower jaw fracture	0251	1.68	$81.46	$27.99	$16.29
21451	T	Treat lower jaw fracture	0254	12.45	$603.66	$272.41	$120.73
21452	T	Treat lower jaw fracture	0253	12.02	$582.81	$284.00	$116.56
21453	T	Treat lower jaw fracture	0256	25.40	$1,231.57	$623.05	$246.31
21454	T	Treat lower jaw fracture	0254	12.45	$603.66	$272.41	$120.73
21461	T	Treat lower jaw fracture	0256	25.40	$1,231.57	$623.05	$246.31

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
21462	T	Treat lower jaw fracture	0256	25.40	$1,231.57	$623.05	$246.31
21465	T	Treat lower jaw fracture	0256	25.40	$1,231.57	$623.05	$246.31
21470	T	Treat lower jaw fracture	0256	25.40	$1,231.57	$623.05	$246.31
21480	T	Reset dislocated jaw	0251	1.68	$81.46	$27.99	$16.29
21485	T	Reset dislocated jaw	0253	12.02	$582.81	$284.00	$116.56
21490	T	Repair dislocated jaw	0256	25.40	$1,231.57	$623.05	$246.31
21493	T	Treat hyoid bone fracture	0252	5.18	$251.16	$114.24	$50.23
21494	T	Treat hyoid bone fracture	0252	5.18	$251.16	$114.24	$50.23
21495	C	Treat hyoid bone fracture					
21497	T	Interdental wiring	0253	12.02	$582.81	$284.00	$116.56
21499	T	Head surgery procedure	0253	12.02	$582.81	$284.00	$116.56
21501	T	Drain neck/chest lesion	0008	6.15	$298.20	$113.67	$59.64
21502	T	Drain chest lesion	0050	21.13	$1,024.53	$513.86	$204.91
21510	C	Drainage of bone lesion					
21550	T	Biopsy of neck/chest	0019	4.00	$193.95	$78.91	$38.79
21555	T	Remove lesion, neck/chest	0022	12.49	$605.60	$292.94	$121.12
21556	T	Remove lesion, neck/chest	0022	12.49	$605.60	$292.94	$121.12
21557	C	Remove tumor, neck/chest					
21600	T	Partial removal of rib	0050	21.13	$1,024.53	$513.86	$204.91
21610	T	Partial removal of rib	0050	21.13	$1,024.53	$513.86	$204.91
21615	C	Removal of rib					
21616	C	Removal of rib and nerves					
21620	C	Partial removal of sternum					
21627	C	Sternal debridement					
21630	C	Extensive sternum surgery					
21632	C	Extensive sternum surgery					
21700	T	Revision of neck muscle	0008	6.15	$298.20	$113.67	$59.64
21705	C	Revision of neck muscle/rib					
21720	T	Revision of neck muscle	0008	6.15	$298.20	$113.67	$59.64
21725	T	Revision of neck muscle	0008	6.15	$298.20	$113.67	$59.64
21740	C	Reconstruction of sternum					
21750	C	Repair of sternum separation					
21800	T	Treatment of rib fracture	0043	1.64	$79.52	$25.46	$15.90
21805	T	Treatment of rib fracture	0046	22.29	$1,080.78	$535.76	$216.16
21810	C	Treatment of rib fracture(s)					
21820	T	Treat sternum fracture	0043	1.64	$79.52	$25.46	$15.90
21825	C	Treat sternum fracture					
21899	T	Neck/chest surgery procedure	0252	5.18	$251.16	$114.24	$50.23
21920	T	Biopsy soft tissue of back	0020	6.51	$315.65	$130.53	$63.13
21925	T	Biopsy soft tissue of back	0022	12.49	$605.60	$292.94	$121.12
21930	T	Remove lesion, back or flank	0022	12.49	$605.60	$292.94	$121.12
1935	T	Remove tumor, back	0022	12.49	$605.60	$292.94	$121.12
22100	C	Remove part of neck vertebra					
22101	C	Remove part, thorax vertebra					
22102	C	Remove part, lumber vertebra					
22103	C	Remove extra spine segment					
22110	C	Remove part of neck vertebra					
22112	C	Remove part, thorax vertebra					
22114	C	Remove part, lumber vertebra					
22116	C	Remove extra spine segment					
22210	C	Revision of neck spine					
22212	C	Revision of thorax spine					
22214	C	Revision of lumber spine					
22216	C	Revise, extra spine segment					
22220	C	Revision of neck spine					
22222	C	Revision of thorax spine					
22224	C	Revision of lumber spine					
22226	C	Revise, extra spine segment					
22305	T	Treat spine process fracture	0043	1.64	$79.52	$25.46	$15.90
22310	T	Treat spine fracture	0043	1.64	$79.52	$25.46	$15.90
22315	T	Treat spine fracture	0043	1.64	$79.52	$25.46	$15.90
22318	C	Treat odontoid fx w/o graft					
22319	C	Treat odontoid fx w/graft					
22325	C	Treat spine fracture					
22326	C	Treat neck spine fracture					
22327	C	Treat thorax spine fracture					
22328	C	Treat each add spine fx					
22505	T	Manipulation of spine	0045	11.02	$534.33	$277.12	$106.87
22548	C	Neck spine fusion					
22554	C	Neck spine fusion					
22556	C	Thorax spine fusion					
22558	C	Lumbar spine fusion					
22585	C	Additional spinal fusion					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
22590	C	Spine & skull spinal fusion					
22595	C	Neck spinal fusion					
22600	C	Neck spine fusion					
22610	C	Thorax spine fusion					
22612	C	Lumbar spine fusion					
22614	C	Spine fusion, extra segment					
22630	C	Lumbar spine fusion					
22632	C	Spine fusion, extra segment					
22800	C	Fusion of spine					
22802	C	Fusion of spine					
22804	C	Fusion of spine					
22808	C	Fusion of spine					
22810	C	Fusion of spine					
22812	C	Fusion of spine					
22818	C	Kyphectomy, 1–2 segments					
22819	C	Kyphectomy, 3 or more					
22830	C	Exploration of spinal fusion					
22840	C	Insert spine fixation device					
22841	C	Insert spine fixation device					
22842	C	Insert spine fixation device					
22843	C	Insert spine fixation device					
22844	C	Insert spine fixation device					
22845	C	Insert spine fixation device					
22846	C	Insert spine fixation device					
22847	C	Insert spine fixation device					
22848	C	Insert pelv fixation device					
22849	C	Reinsert spinal fixation					
22850	C	Remove spine fixation device					
22851	C	Apply spine prosth device					
22852	C	Remove spine fixation device					
22855	C	Remove spine fixation device					
22899	T	Spine surgery procedure	0043	1.64	$79.53	$25.46	$15.90
22900	T	Remove abdominal wall lesion	0022	12.49	$605.60	$292.94	$121.12
22999	T	Abdomen surgery procedure	0022	12.49	$605.60	$292.94	$121.12
23000	T	Removal of calcium deposits	0021	10.49	$508.63	$236.51	$101.73
23020	T	Release shoulder joint	0051	27.76	$1,346.00	$675.24	$269.20
23030	T	Drain shoulder lesion	0008	6.15	$298.20	$113.67	$59.64
23031	T	Drain shoulder bursa	0008	6.15	$298.20	$113.67	$59.64
23035	C	Drain shoulder bone lesion					
23040	T	Exploratory shoulder surgery	0050	21.13	$1,024.53	$513.86	$204.91
23044	T	Exploratory shoulder surgery	0050	21.13	$1,024.53	$513.86	$204.91
23065	T	Biopsy shoulder tissues	0021	10.49	$508.63	$236.51	$101.73
23066	T	Biopsy shoulder tissues	0022	12.49	$605.60	$292.94	$121.12
23075	T	Removal of shoulder lesion	0021	10.49	$508.63	$236.51	$101.73
23076	T	Removal of shoulder lesion	0022	12.49	$605.60	$292.94	$121.12
23077	T	Remove tumor of shoulder	0022	12.49	$605.60	$292.94	$121.12
23100	T	Biopsy of shoulder joint	0049	15.04	$729.25	$356.95	$145.85
23101	T	Shoulder joint surgery	0050	21.13	$1,024.53	$513.86	$204.91
23105	T	Remove shoulder joint lining	0050	21.13	$1,024.53	$513.86	$204.91
23106	T	Incision of collarbone joint	0050	21.13	$1,024.53	$513.86	$204.91
23107	T	Explore treat shoulder joint	0050	21.13	$1,024.53	$513.86	$204.91
23120	T	Partial removal, collar bone	0051	27.76	$1,346.00	$675.24	$269.20
23125	C	Removal of collar bone					
23130	T	Remove shoulder bone, part	0051	27.76	$1,346.00	$675.24	$269.20
23140	T	Removal of bone lesion	0049	15.04	$729.25	$356.95	$145.85
23145	T	Removal of bone lesion	0050	21.13	$1,024.53	$513.86	$204.91
23146	T	Removal of bone lesion	0050	21.13	$1,024.53	$513.86	$204.91
23150	T	Removal of humerus lesion	0050	21.13	$1,024.53	$513.86	$204.91
23155	T	Removal of humerus lesion	0050	21.13	$1,024.53	$513.86	$204.91
23156	T	Removal of humerus lesion	0050	21.13	$1,024.53	$513.86	$204.91
23170	T	Remove collar bone lesion	0050	21.13	$1,024.53	$513.86	$204.91
23172	T	Remove shoulder blade lesion	0050	21.13	$1,024.53	$513.86	$204.91
23174	T	Remove humerus lesion	0050	21.13	$1,024.53	$513.86	$204.91
23180	T	Remove collar bone lesion	0050	21.13	$1,024.53	$513.86	$204.91
23182	T	Remove shoulder blade lesion	0050	21.13	$1,024.53	$513.86	$204.91
23184	T	Remove humerus lesion	0050	21.13	$1,024.53	$513.86	$204.91
23190	T	Partial removal of scapula	0050	21.13	$1,024.53	$513.86	$204.91
23195	C	Removal of head of humerus					
23200	C	Removal of collar bone					
23210	C	Removal of shoulder blade					
23220	C	Partial removal of humerus					
23221	C	Partial removal of humerus					
23222	C	Partial removal of humerus					

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[3] Eligible for pass-through payments. See Preamble for payment rate determination. See Addendum K for complete list of pass-through codes.

ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
23330	T	Remove shoulder foreign body	0019	4.00	$193.95	$76.91	$38.79
23331	T	Remove shoulder foreign body	0022	12.49	$605.60	$292.94	$121.12
23332	C	Remove shoulder foreign body					
23350	N	Injection for shoulder x-ray					
23395	C	Muscle transfer, shoulder/arm					
23397	C	Muscle transfers					
23400	C	Fixation of shoulder blade					
23405	T	Incision of tendon & muscle	0050	21.13	$1,024.53	$513.86	$204.91
23406	T	Incise tendon(s) & muscle(s)	0050	21.13	$1,024.53	$513.86	$204.91
23410	T	Repair of tendon(s)	0052	36.16	$1,753.29	$930.91	$350.66
23412	T	Repair of tendon(s)	0052	36.16	$1,753.29	$930.91	$350.66
23415	T	Release of shoulder ligament	0051	27.76	$1,346.00	$675.24	$269.20
23420	T	Repair of shoulder	0052	36.16	$1,753.29	$930.91	$350.66
23430	T	Repair bicepe tendon	0052	36.16	$1,753.29	$930.91	$350.66
23440	C	Remove/transplant tendon					
23450	T	Repair shoulder capsule	0052	36.16	$1,753.29	$930.91	$350.66
23455	T	Repair shoulder capsule	0052	36.16	$1,753.29	$930.91	$350.66
23460	T	Repair shoulder capsule	0052	36.16	$1,753.29	$930.91	$350.66
23462	T	Repair shoulder capsule	0052	36.16	$1,753.29	$930.91	$350.66
23465	T	Repair shoulder capsule	0052	36.16	$1,753.29	$930.91	$350.66
23466	T	Repair shoulder capsule	0052	36.16	$1,753.29	$930.91	$350.66
23470	C	Reconstruct shoulder joint					
23472	C	Reconstruct shoulder joint					
23480	T	Revision of collar bone	0051	27.76	$1,346.00	$675.24	$269.20
23485	T	Revision of collar bone	0051	27.76	$1,346.00	$675.24	$269.20
23490	T	Reinforce clavicle	0051	27.76	$1,346.00	$675.24	$269.20
23491	T	Reinforce shoulder bones	0051	27.76	$1,346.00	$675.24	$269.20
23500	T	Treat clavicle fracture	0043	1.64	$79.52	$25.46	$15.90
23505	T	Treat clavicle fracture	0043	1.64	$79.52	$25.46	$15.90
23515	T	Treat clavicle fracture	0046	22.29	$1,080.78	$535.76	$216.16
23520	T	Treat clavicle dislocation	0043	1.64	$79.52	$25.46	$15.90
23525	T	Treat clavicle dislocation	0043	1.64	$79.52	$25.46	$15.90
23530	T	Treat clavicle dislocation	0046	22.29	$1,080.78	$535.76	$216.16
23532	T	Treat clavicle dislocation	0046	22.29	$1,080.78	$535.76	$216.16
23540	T	Treat clavicle dislocation	0043	1.64	$79.52	$25.46	$15.90
23545	T	Treat clavicle dislocation	0043	1.64	$79.52	$25.46	$15.90
23550	T	Treat clavicle dislocation	0046	22.29	$1,080.78	$535.76	$216.16
23552	T	Treat clavicle dislocation	0046	22.29	$1,080.78	$535.76	$216.16
23570	T	Treat shoulder blade fx	0043	1.64	$79.52	$25.46	$15.90
23575	T	Treat shoulder blade fx	0043	1.64	$79.52	$25.46	$15.90
23585	T	Treat scapula fracture	0046	22.29	$1,080.78	$535.76	$216.16
23600	T	Treat humerus fracture	0044	2.17	$105.22	$36.08	$21.04
23605	T	Treat humerus fracture	0044	2.17	$105.22	$36.08	$21.04
23615	T	Treat humerus fracture	0046	22.29	$1,080.78	$535.76	$216.16
23616	T	Treat humerus fracture	0046	22.29	$1,080.78	$535.76	$216.16
23620	T	Treat humerus fracture	0044	2.17	$105.22	$36.08	$21.04
23625	T	Treat humerus fracture	0044	2.17	$105.22	$36.08	$21.04
23630	T	Treat humerus fracture	0046	22.29	$1,080.78	$535.76	$216.16
23650	T	Treat shoulder dislocation	0043	1.64	$79.52	$25.46	$15.90
23655	T	Treat shoulder dislocation	0045	11.02	$534.33	$277.12	$106.87
23660	T	Treat shoulder dislocation	0046	22.29	$1,080.78	$535.76	$216.16
23665	T	Treat dislocation/fracture	0044	2.17	$105.22	$36.08	$21.04
23670	T	Treat dislocation/fracture	0046	22.29	$1,080.78	$535.76	$216.16
23675	T	Treat dislocation/fracture	0044	2.17	$105.22	$36.08	$21.04
23680	T	Treat dislocation/fracture	0046	22.29	$1,080.78	$535.76	$216.16
23700	T	Fixation of shoulder	0045	11.02	$534.33	$277.12	$106.87
23800	T	Fusion of shoulder joint	0051	27.76	$1,346.00	$675.24	$269.20
23802	T	Fusion of shoulder joint	0051	27.76	$1,346.00	$675.24	$269.20
23900	C	Amputation of arm & girdle					
23920	C	Amputation at shoulder joint					
23921	T	Amputation follow-up surgery	0026	12.11	$587.18	$277.92	$117.44
23929	T	Shoulder surgery procedure	0043	1.64	$79.52	$25.46	$15.90
23930	T	Drainage of arm lesion	0006	6.15	$298.20	$113.67	$59.64
23931	T	Drainage of arm bursa	0006	6.15	$298.20	$113.67	$59.64
23935	T	Drain arm/elbow bone lesion	0049	15.04	$729.25	$356.95	$145.85
24000	T	Exploratory elbow surgery	0050	21.13	$1,024.53	$513.86	$204.91
24006	T	Release elbow joint	0050	21.13	$1,024.53	$513.86	$204.91
24065	T	Biopsy arm/elbow soft tissue	0020	6.51	$315.65	$130.53	$63.13
24066	T	Biopsy arm/elbow soft tissue	0020	6.51	$315.65	$130.53	$63.13
24075	T	Remove arm/elbow lesion	0021	10.49	$508.63	$236.51	$101.73
24076	T	Remove arm/elbow lesion	0022	12.49	$605.60	$292.94	$121.12
24077	T	Remove tumor of arm/elbow	0022	12.49	$605.60	$292.94	$121.12
24100	T	Biopsy elbow joint lining	0049	15.04	$729.25	$356.95	$145.85

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
24101	T	Explore/treat elbow joint	0050	21.13	$1,024.53	$513.86	$204.91
24102	T	Remove elbow joint lining	0050	21.13	$1,024.53	$513.86	$204.91
24105	T	Removal of elbow bursa	0049	15.04	$729.25	$356.95	$145.85
24110	T	Remove humerus lesion	0049	15.04	$729.25	$356.95	$145.85
24115	T	Remove/graft bone lesion	0050	21.13	$1,024.53	$513.86	$204.91
24116	T	Remove/graft bone lesion	0050	21.13	$1,024.53	$513.86	$204.91
24120	T	Remove elbow lesion	0049	15.04	$729.25	$356.95	$145.85
24125	T	Remove/graft bone lesion	0050	21.13	$1,024.53	$513.86	$204.91
24126	T	Remove/graft bone lesion	0050	21.13	$1,024.53	$513.86	$204.91
24130	T	Removal of head of radius	0050	21.13	$1,024.53	$513.86	$204.91
24134	T	Removal of arm bone lesion	0050	21.13	$1,024.53	$513.86	$204.91
24136	T	Remove radius bone lesion	0050	21.13	$1,024.53	$513.86	$204.91
24138	T	Remove elbow bone lesion	0050	21.13	$1,024.53	$513.86	$204.91
24140	T	Partial removal of arm bone	0050	21.13	$1,024.53	$513.86	$204.91
24145	T	Partial removal of radius	0050	21.13	$1,024.53	$513.86	$204.91
24147	T	Partial removal of elbow	0050	21.13	$1,024.53	$513.86	$204.91
24149	C	Radical resection of elbow					
24150	C	Extensive humerus surgery					
24151	C	Extensive humerus surgery					
24152	C	Extensive radius surgery					
24153	C	Extensive radius surgery					
24155	T	Removal of elbow joint	0051	27.76	$1,346.00	$675.24	$269.20
24160	T	Remove elbow joint implant	0050	21.13	$1,024.53	$513.86	$204.91
24164	T	Remove radius head implant	0050	21.13	$1,024.53	$513.86	$204.91
24200	T	Removal of arm foreign body	0019	4.00	$193.95	$78.91	$38.79
24201	T	Removal of arm foreign body	0021	10.49	$508.63	$236.51	$101.73
24220	N	Injection for elbow x-ray					
24301	T	Muscle/tendon transfer	0050	21.13	$1,024.53	$513.86	$204.91
24305	T	Arm tendon lengthening	0050	21.13	$1,024.53	$513.86	$204.91
24310	T	Revision of arm tendon	0049	15.04	$729.25	$356.95	$145.85
24320	T	Repair of arm tendon	0051	27.76	$1,346.00	$675.24	$269.20
24330	T	Revision of arm muscles	0051	27.76	$1,346.00	$675.24	$269.20
24331	T	Revision of arm muscles	0051	27.76	$1,346.00	$675.24	$269.20
24340	T	Repair of biceps tendon	0051	27.76	$1,346.00	$675.24	$269.20
24341	T	Repair arm tendon/muscle	0051	27.76	$1,346.00	$675.24	$269.20
24342	T	Repair of ruptured tendon	0051	27.76	$1,346.00	$675.24	$269.20
24350	T	Repair of tennis elbow	0050	21.13	$1,024.53	$513.86	$204.91
24351	T	Repair of tennis elbow	0050	21.13	$1,024.53	$513.86	$204.91
24352	T	Repair of tennis elbow	0050	21.13	$1,024.53	$513.86	$204.91
24354	T	Repair of tennis elbow	0050	21.13	$1,024.53	$513.86	$204.91
24356	T	Revision of tennis elbow	0050	21.13	$1,024.53	$513.86	$204.91
24360	T	Reconstruct elbow joint	0047	22.09	$1,071.06	$537.03	$214.22
24361	T	Reconstruct elbow joint	0048	29.06	$1,409.03	$725.94	$281.81
24362	T	Reconstruct elbow joint	0048	29.06	$1,409.03	$725.94	$281.81
24363	T	Replace elbow joint	0048	29.06	$1,409.03	$725.94	$281.81
24365	T	Reconstruct head of radius	0047	22.09	$1,071.06	$537.03	$214.22
24366	T	Reconstruct head of radius	0048	29.06	$1,409.03	$725.94	$281.81
24400	T	Revision of humerus	0050	21.13	$1,024.53	$513.86	$204.91
24410	T	Revision of humerus	0050	21.13	$1,024.53	$513.86	$204.91
24420	T	Revision of humerus	0051	27.76	$1,346.00	$675.24	$269.20
24430	T	Repair of humerus	0051	27.76	$1,346.00	$675.24	$269.20
24435	T	Repair humerus with graft	0051	27.76	$1,346.00	$675.24	$269.20
24470	T	Revision of elbow joint	0051	27.76	$1,346.00	$675.24	$269.20
24495	T	Decompression of forearm	0050	21.13	$1,024.53	$513.86	$204.91
24498	T	Reinforce humerus	0051	27.76	$1,346.00	$675.24	$269.20
24500	T	Treat humerus fracture	0044	2.17	$105.22	$38.08	$21.04
24505	T	Treat humerus fracture	0044	2.17	$105.22	$38.08	$21.04
24515	T	Treat humerus fracture	0046	22.29	$1,080.78	$535.76	$216.16
24516	T	Treat humerus fracture	0046	22.29	$1,080.78	$535.76	$216.16
24530	T	Treat humerus fracture	0044	2.17	$105.22	$38.08	$21.04
24535	T	Treat humerus fracture	0044	2.17	$105.22	$38.08	$21.04
24538	T	Treat humerus fracture	0046	22.29	$1,080.78	$535.76	$216.16
24545	T	Treat humerus fracture	0046	22.29	$1,080.78	$535.76	$216.16
24546	T	Treat humerus fracture	0046	22.29	$1,080.78	$535.76	$216.16
24560	T	Treat humerus fracture	0044	2.17	$105.22	$38.08	$21.04
24565	T	Treat humerus fracture	0044	2.17	$105.22	$38.08	$21.04
24566	T	Treat humerus fracture	0046	22.29	$1,080.78	$535.76	$216.16
24575	T	Treat humerus fracture	0046	22.29	$1,080.78	$535.76	$216.16
24576	T	Treat humerus fracture	0044	2.17	$105.22	$38.08	$21.04
24577	T	Treat humerus fracture	0044	2.17	$105.22	$38.08	$21.04
24579	T	Treat humerus fracture	0046	22.29	$1,080.78	$535.76	$216.16
24582	T	Treat humerus fracture	0046	22.29	$1,080.78	$535.76	$216.16
24586	T	Treat elbow fracture	0046	22.29	$1,080.78	$535.76	$216.16

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
24587	T	Treat elbow fracture	0046	22.29	$1,080.78	$535.76	$216.16
24600	T	Treat elbow dislocation	0044	2.17	$105.22	$38.08	$21.04
24605	T	Treat elbow dislocation	0045	11.02	$534.33	$277.12	$106.87
24615	T	Treat elbow dislocation	0046	22.29	$1,080.78	$535.76	$216.16
24620	T	Treat elbow fracture	0044	2.17	$105.22	$38.08	$21.04
24635	T	Treat elbow fracture	0046	22.29	$1,080.78	$535.76	$216.16
24640	T	Treat elbow dislocation	0044	2.17	$105.22	$38.08	$21.04
24650	T	Treat radius fracture	0044	2.17	$105.22	$38.08	$21.04
24655	T	Treat radius fracture	0044	2.17	$105.22	$38.08	$21.04
24665	T	Treat radius fracture	0046	22.29	$1,080.78	$535.76	$216.16
24666	T	Treat radius fracture	0046	22.29	$1,080.78	$535.76	$216.16
24670	T	Treat ulnar fracture	0044	2.17	$105.22	$38.08	$21.04
24675	T	Treat ulnar fracture	0044	2.17	$105.22	$38.08	$21.04
24685	T	Treat ulnar fracture	0046	22.29	$1,080.78	$535.76	$216.16
24800	T	Fusion of elbow joint	0051	27.76	$1,346.00	$675.24	$269.20
24802	T	Fusion/graft of elbow joint	0051	27.76	$1,346.00	$675.24	$269.20
24900	C	Amputation of upper arm					
24920	C	Amputation of upper arm					
24925	T	Amputation follow-up surgery	0049	15.04	$729.25	$356.95	$145.85
24930	C	Amputation follow-up surgery					
24931	C	Amputate upper arm & implant					
24935	T	Revision of amputation	0052	36.16	$1,753.29	$930.91	$350.66
24940	C	Revision of upper arm					
24999	T	Upper arm/elbow surgery	0044	2.17	$105.22	$38.08	$21.04
25000	T	Incision of tendon sheath	0049	15.04	$729.25	$356.95	$145.85
25020	T	Decompression of forearm	0049	15.04	$729.25	$356.95	$145.85
25023	T	Decompression of forearm	0050	21.13	$1,024.53	$513.86	$204.91
25028	T	Drainage of forearm lesion	0049	15.04	$729.25	$356.95	$145.85
25031	T	Drainage of forearm bursa	0049	15.04	$729.25	$356.95	$145.85
25035	T	Treat forearm bone lesion	0049	15.04	$729.25	$356.95	$145.85
25040	T	Explore/treat wrist joint	0050	21.13	$1,024.53	$513.86	$204.91
25065	T	Biopsy forearm soft tissues	0020	6.51	$315.65	$130.53	$63.13
25066	T	Biopsy forearm soft tissues	0022	12.49	$605.60	$292.94	$121.12
25075	T	Removal of forearm lesion	0020	6.51	$315.65	$130.53	$63.13
25076	T	Removal of forearm lesion	0022	12.49	$605.60	$292.94	$121.12
25077	T	Remove tumor, forearm/wrist	0022	12.49	$605.60	$292.94	$121.12
25085	T	Incision of wrist capsule	0049	15.04	$729.25	$356.95	$145.85
25100	T	Biopsy of wrist joint	0049	15.04	$729.25	$356.95	$145.85
25101	T	Explore/treat wrist joint	0050	21.13	$1,024.53	$513.86	$204.91
25105	T	Remove wrist joint lining	0050	21.13	$1,024.53	$513.86	$204.91
25107	T	Remove wrist joint cartilage	0050	21.13	$1,024.53	$513.86	$204.91
25110	T	Remove wrist tendon lesion	0049	15.04	$729.25	$356.95	$145.85
25111	T	Remove wrist tendon lesion	0053	11.32	$548.87	$253.49	$109.77
25112	T	Reremove wrist tendon lesion	0053	11.32	$548.87	$253.49	$109.77
25115	T	Remove wrist/forearm lesion	0049	15.04	$729.25	$356.95	$145.85
25116	T	Remove wrist/forearm lesion	0049	15.04	$729.25	$356.95	$145.85
25118	T	Excise wrist tendon sheath	0050	21.13	$1,024.53	$513.86	$204.91
25119	T	Partial removal of ulna	0050	21.13	$1,024.53	$513.86	$204.91
25120	T	Removal of forearm lesion	0050	21.13	$1,024.53	$513.86	$204.91
25125	T	Remove/graft forearm lesion	0050	21.13	$1,024.53	$513.86	$204.91
25126	T	Remove/graft forearm lesion	0050	21.13	$1,024.53	$513.86	$204.91
25130	T	Removal of wrist lesion	0050	21.13	$1,024.53	$513.86	$204.91
25135	T	Remove & graft wrist lesion	0050	21.13	$1,024.53	$513.86	$204.91
25136	T	Remove & graft wrist lesion	0050	21.13	$1,024.53	$513.86	$204.91
25145	T	Remove forearm bone lesion	0050	21.13	$1,024.53	$513.86	$204.91
25150	T	Partial removal of ulna	0050	21.13	$1,024.53	$513.86	$204.91
25151	T	Partial removal of radius	0050	21.13	$1,024.53	$513.86	$204.91
25170	C	Extensive forearm surgery					
25210	T	Removal of wrist bone	0054	19.66	$953.26	$472.33	$190.65
25215	T	Removal of wrist bones	0054	19.66	$953.26	$472.33	$190.65
25230	T	Partial removal of radius	0050	21.13	$1,024.53	$513.86	$204.91
25240	T	Partial removal of ulna	0050	21.13	$1,024.53	$513.86	$204.91
25246	N	Injection for wrist x-ray					
25248	T	Remove forearm foreign body	0049	15.04	$729.25	$356.95	$145.85
25250	T	Removal of wrist prosthesis	0050	21.13	$1,024.53	$513.86	$204.91
25251	T	Removal of wrist prosthesis	0050	21.13	$1,024.53	$513.86	$204.91
25260	T	Repair forearm tendon/muscle	0050	21.13	$1,024.53	$513.86	$204.91
25263	T	Repair forearm tendon/muscle	0050	21.13	$1,024.53	$513.86	$204.91
25265	T	Repair forearm tendon/muscle	0050	21.13	$1,024.53	$513.86	$204.91
25270	T	Repair forearm tendon/muscle	0050	21.13	$1,024.53	$513.86	$204.91
25272	T	Repair forearm tendon/muscle	0050	21.13	$1,024.53	$513.86	$204.91
25274	T	Repair forearm tendon/muscle	0050	21.13	$1,024.53	$513.86	$204.91
25280	T	Revise wrist/forearm tendon	0050	21.13	$1,024.53	$513.86	$204.91

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
25290	T	Incise wrist/forearm tendon	0050	21.13	$1,024.53	$513.86	$204.91
25295	T	Release wrist/forearm tendon	0049	15.04	$729.25	$356.95	$145.85
25300	T	Fusion of tendons at wrist	0050	21.13	$1,024.53	$513.86	$204.91
25301	T	Fusion of tendons at wrist	0050	21.13	$1,024.53	$513.86	$204.91
25310	T	Transplant forearm tendon	0051	27.76	$1,346.00	$675.24	$269.20
25312	T	Transplant forearm tendon	0051	27.76	$1,346.00	$675.24	$269.20
25315	T	Revise palsy hand tendon(s)	0051	27.76	$1,346.00	$675.24	$269.20
25316	T	Revise palsy hand tendon(s)	0051	27.76	$1,346.00	$675.24	$269.20
25320	T	Repair/revise wrist joint	0051	27.76	$1,346.00	$675.24	$269.20
25332	T	Revise wrist joint	0047	22.09	$1,071.06	$537.03	$214.22
25335	T	Realignment of hand	0051	27.76	$1,346.00	$675.24	$269.20
25337	T	Reconstruct ulna/radioulnar	0051	27.76	$1,346.00	$675.24	$269.20
25350	T	Revision of radius	0051	27.76	$1,346.00	$675.24	$269.20
25355	T	Revision of radius	0051	27.76	$1,346.00	$675.24	$269.20
25360	T	Revision of ulna	0050	21.13	$1,024.53	$513.86	$204.91
25365	T	Revise radius & ulna	0050	21.13	$1,024.53	$513.86	$204.91
25370	T	Revise radius or ulna	0051	27.76	$1,346.00	$675.24	$269.20
25375	T	Revise radius & ulna	0051	27.76	$1,346.00	$675.24	$269.20
25390	C	Shorten radius or ulna					
25391	C	Lengthen radius or ulna					
25392	C	Shorten radius & ulna					
25393	C	Lengthen radius & ulna					
25400	T	Repair radius or ulna	0050	21.13	$1,024.53	$513.86	$204.91
25405	C	Repair/graft radius or ulna					
25415	T	Repair radius & ulna	0050	21.13	$1,024.53	$513.86	$204.91
25420	C	Repair/graft radius & ulna					
25425	T	Repair/graft radius or ulna	0051	27.76	$1,346.00	$675.24	$269.20
25426	T	Repair/graft radius & ulna	0051	27.76	$1,346.00	$675.24	$269.20
25440	T	Repair/graft wrist bone	0051	27.76	$1,346.00	$675.24	$269.20
25441	T	Reconstruct wrist joint	0048	29.06	$1,409.03	$725.94	$281.81
25442	T	Reconstruct wrist joint	0048	29.06	$1,409.03	$725.94	$281.81
25443	T	Reconstruct wrist joint	0048	29.06	$1,409.03	$725.94	$281.81
25444	T	Reconstruct wrist joint	0048	29.06	$1,409.03	$725.94	$281.81
25445	T	Reconstruct wrist joint	0048	29.06	$1,409.03	$725.94	$281.81
25446	T	Wrist replacement	0048	29.06	$1,409.03	$725.94	$281.81
25447	T	Repair wrist joint(s)	0047	22.09	$1,071.06	$537.03	$214.22
25449	T	Remove wrist joint implant	0047	22.09	$1,071.06	$537.03	$214.22
25450	T	Revision of wrist joint	0051	27.76	$1,346.00	$675.24	$269.20
25455	T	Revision of wrist joint	0051	27.76	$1,346.00	$675.24	$269.20
25490	T	Reinforce radius	0051	27.76	$1,346.00	$675.24	$269.20
25491	T	Reinforce ulna	0051	27.76	$1,346.00	$675.24	$269.20
25492	T	Reinforce radius and ulna	0051	27.76	$1,346.00	$675.24	$269.20
25500	T	Treat fracture of radius	0044	2.17	$105.22	$38.08	$21.04
25505	T	Treat fracture of radius	0044	2.17	$105.22	$38.08	$21.04
25515	T	Treat fracture of radius	0046	22.29	$1,080.78	$535.76	$216.16
25520	T	Treat fracture of radius	0044	2.17	$105.22	$38.08	$21.04
25525	T	Treat fracture of radius	0046	22.29	$1,080.78	$535.76	$216.16
25526	T	Treat fracture of radius	0046	22.29	$1,080.78	$535.76	$216.16
25530	T	Treat fracture of ulna	0044	2.17	$105.22	$38.08	$21.04
25535	T	Treat fracture of ulna	0044	2.17	$105.22	$38.08	$21.04
25545	T	Treat fracture of ulna	0046	22.29	$1,080.78	$535.76	$216.16
25560	T	Treat fracture radius & ulna	0044	2.17	$105.22	$38.08	$21.04
25565	T	Treat fracture radius & ulna	0044	2.17	$105.22	$38.08	$21.04
25574	T	Treat fracture radius & ulna	0046	22.29	$1,080.78	$535.76	$216.16
25575	T	Treat fracture radius/ulna	0046	22.29	$1,080.78	$535.76	$216.16
25600	T	Treat fracture radius/ulna	0044	2.17	$105.22	$38.08	$21.04
25605	T	Treat fracture radius/ulna	0044	2.17	$105.22	$38.08	$21.04
25611	T	Treat fracture radius/ulna	0046	22.29	$1,080.78	$535.76	$216.16
25620	T	Treat fracture radius/ulna	0046	22.29	$1,080.78	$535.76	$216.16
25622	T	Treat wrist bone fracture	0044	2.17	$105.22	$38.08	$21.04
25624	T	Treat wrist bone fracture	0044	2.17	$105.22	$38.08	$21.04
25628	T	Treat wrist bone fracture	0046	22.29	$1,080.78	$535.76	$216.16
25630	T	Treat wrist bone fracture	0044	2.17	$105.22	$38.08	$21.04
25635	T	Treat wrist bone fracture	0044	2.17	$105.22	$38.08	$21.04
25645	T	Treat wrist bone fracture	0046	22.29	$1,080.78	$535.76	$216.16
25650	T	Treat wrist bone fracture	0044	2.17	$105.22	$38.08	$21.04
25660	T	Treat wrist dislocation	0044	2.17	$105.22	$38.08	$21.04
25670	T	Treat wrist dislocation	0046	22.29	$1,080.78	$535.76	$216.16
25675	T	Treat wrist dislocation	0044	2.17	$105.22	$38.08	$21.04
25676	T	Treat wrist dislocation	0046	22.29	$1,080.78	$535.76	$216.16
25680	T	Treat wrist fracture	0044	2.17	$105.22	$38.08	$21.04
25685	T	Treat wrist fracture	0046	22.29	$1,080.78	$535.76	$216.16
25690	T	Treat wrist dislocation	0044	2.17	$105.22	$38.08	$21.04

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
25695	T	Treat wrist dislocation	0046	22.29	$1,080.78	$535.76	$216.16
25800	T	Fusion of wrist joint	0051	27.76	$1,346.00	$675.24	$269.20
25805	T	Fusion/graft of wrist joint	0051	27.76	$1,346.00	$675.24	$269.20
25810	T	Fusion/graft of wrist joint	0051	27.76	$1,346.00	$675.24	$269.20
25820	T	Fusion of hand bones	0053	11.32	$548.87	$253.49	$109.77
25825	T	Fuse hand bones with graft	0054	19.66	$953.26	$472.33	$190.65
25830	T	Fusion, radioulnar jnt/ulna	0051	27.76	$1,346.00	$675.24	$269.20
25900	C	Amputation of forearm					
25905	C	Amputation of forearm					
25907	T	Amputation follow-up surgery	0049	15.04	$729.25	$356.95	$145.85
25909	C	Amputation follow-up surgery					
25915	C	Amputation of forearm					
25920	C	Amputate hand at wrist					
25922	T	Amputate hand at wrist	0049	15.04	$729.25	$356.95	$145.85
25924	C	Amputation follow-up surgery					
25927	C	Amputation of hand					
25929	T	Amputation follow-up surgery	0028	12.11	$587.18	$277.92	$117.44
25931	C	Amputation follow-up surgery					
25999	T	Forearm or wrist surgery	0044	2.17	$105.22	$38.08	$21.04
26010	T	Drainage of finger abecess	0006	2.00	$96.97	$33.95	$19.39
26011	T	Drainage of finger abecess	0007	3.68	$178.43	$72.03	$35.69
26020	T	Drain hand tendon sheath	0053	11.32	$548.87	$253.49	$109.77
26025	T	Drainage of palm bursa	0053	11.32	$548.87	$253.49	$109.77
26030	T	Drainage of palm bursa(s)	0053	11.32	$548.87	$253.49	$109.77
26034	T	Treat hand bone lesion	0053	11.32	$548.87	$253.49	$109.77
26035	T	Decompress fingers/hand	0053	11.32	$548.87	$253.49	$109.77
26037	T	Decompress fingers/hand	0053	11.32	$548.87	$253.49	$109.77
26040	T	Release palm contracture	0054	19.66	$953.26	$472.33	$190.65
26045	T	Release palm contracture	0054	19.66	$953.26	$472.33	$190.65
26055	T	Incise finger tendon sheath	0053	11.32	$548.87	$253.49	$109.77
26060	T	Incision of finger tendon	0053	11.32	$548.87	$253.49	$109.77
26070	T	Explore/treat hand joint	0053	11.32	$548.87	$253.49	$109.77
26075	T	Explore/treat finger joint	0053	11.32	$548.87	$253.49	$109.77
26080	T	Explore/treat finger joint	0053	11.32	$548.87	$253.49	$109.77
26100	T	Biopsy hand joint lining	0053	11.32	$548.87	$253.49	$109.77
26105	T	Biopsy finger joint lining	0053	11.32	$548.87	$253.49	$109.77
26110	T	Biopsy finger joint lining	0053	11.32	$548.87	$253.49	$109.77
26115	T	Removal of hand lesion	0022	12.49	$605.60	$292.94	$121.12
26116	T	Removal of hand lesion	0022	12.49	$605.60	$292.94	$121.12
26117	T	Remove tumor, hand/finger	0022	12.49	$605.60	$292.94	$121.12
26121	T	Release palm contracture	0054	19.66	$953.26	$472.33	$190.65
26123	T	Release palm contracture	0054	19.66	$953.26	$472.33	$190.65
26125	T	Release palm contracture	0054	19.66	$953.26	$472.33	$190.65
26130	T	Remove wrist joint lining	0053	11.32	$548.87	$253.49	$109.77
26135	T	Revise finger joint, each	0054	19.66	$953.26	$472.33	$190.65
26140	T	Revise finger joint, each	0053	11.32	$548.87	$253.49	$109.77
26145	T	Tendon excision, palm/finger	0053	11.32	$548.87	$253.49	$109.77
26160	T	Remove tendon sheath lesion	0053	11.32	$548.87	$253.49	$109.77
26170	T	Removal of palm tendon, each	0053	11.32	$548.87	$253.49	$109.77
26180	T	Removal of finger tendon	0053	11.32	$548.87	$253.49	$109.77
26185	T	Remove finger bone	0053	11.32	$548.87	$253.49	$109.77
26200	T	Remove hand bone lesion	0053	11.32	$548.87	$253.49	$109.77
26205	T	Remove/graft bone lesion	0054	19.66	$953.26	$472.33	$190.65
26210	T	Removal of finger lesion	0053	11.32	$548.87	$253.49	$109.77
26215	T	Remove/graft finger lesion	0053	11.32	$548.87	$253.49	$109.77
26230	T	Partial removal of hand bone	0053	11.32	$548.87	$253.49	$109.77
26235	T	Partial removal, finger bone	0053	11.32	$548.87	$253.49	$109.77
26236	T	Partial removal, finger bone	0053	11.32	$548.87	$253.49	$109.77
26250	T	Extensive hand surgery	0053	11.32	$548.87	$253.49	$109.77
26255	T	Extensive hand surgery	0054	19.66	$953.26	$472.33	$190.65
26260	T	Extensive finger surgery	0053	11.32	$548.87	$253.49	$109.77
26261	T	Extensive finger surgery	0053	11.32	$548.87	$253.49	$109.77
26262	T	Partial removal of finger	0053	11.32	$548.87	$253.49	$109.77
26320	T	Removal of implant from hand	0020	6.51	$315.65	$130.53	$63.13
26350	T	Repair finger/hand tendon	0054	19.66	$953.26	$472.33	$190.65
26352	T	Repair/graft hand tendon	0054	19.66	$953.26	$472.33	$190.65
26356	T	Repair finger/hand tendon	0054	19.66	$953.26	$472.33	$190.65
26357	T	Repair finger/hand tendon	0054	19.66	$953.26	$472.33	$190.65
26358	T	Repair/graft hand tendon	0054	19.66	$953.26	$472.33	$190.65
26370	T	Repair finger/hand tendon	0054	19.66	$953.26	$472.33	$190.65
26372	T	Repair/graft hand tendon	0054	19.66	$953.26	$472.33	$190.65
26373	T	Repair finger/hand tendon	0054	19.66	$953.26	$472.33	$190.65
26390	T	Revise hand/finger tendon	0054	19.66	$953.26	$472.33	$190.65

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
26392	T	Repair/graft hand tendon	0054	19.66	$953.26	$472.33	$190.65
26410	T	Repair hand tendon	0053	11.32	$548.87	$253.49	$109.77
26412	T	Repair/graft hand tendon	0054	19.66	$953.26	$472.33	$190.65
26415	T	Excision, hand/finger tendon	0054	19.66	$953.26	$472.33	$190.65
26416	T	Graft hand or finger tendon	0054	19.66	$953.26	$472.33	$190.65
26418	T	Repair finger tendon	0053	11.32	$548.87	$253.49	$109.77
26420	T	Repair/graft finger tendon	0054	19.66	$953.26	$472.33	$190.65
26426	T	Repair finger/hand tendon	0054	19.66	$953.26	$472.33	$190.65
26428	T	Repair/graft finger tendon	0054	19.66	$953.26	$472.33	$190.65
26432	T	Repair finger tendon	0053	11.32	$548.87	$253.49	$109.77
26433	T	Repair finger tendon	0053	11.32	$548.87	$253.49	$109.77
26434	T	Repair/graft finger tendon	0054	19.66	$953.26	$472.33	$190.65
26437	T	Realignment of tendons	0053	11.32	$548.87	$253.49	$109.77
26440	T	Release palm/finger tendon	0053	11.32	$548.87	$253.49	$109.77
26442	T	Release palm & finger tendon	0054	19.66	$953.26	$472.33	$190.65
26445	T	Release hand/finger tendon	0053	11.32	$548.87	$253.49	$109.77
26449	T	Release forearm/hand tendon	0054	19.66	$953.26	$472.33	$190.65
26450	T	Incision of palm tendon	0053	11.32	$548.87	$253.49	$109.77
26455	T	Incision of finger tendon	0053	11.32	$548.87	$253.49	$109.77
26460	T	Incise hand/finger tendon	0053	11.32	$548.87	$253.49	$109.77
26471	T	Fusion of finger tendons	0053	11.32	$548.87	$253.49	$109.77
26474	T	Fusion of finger tendons	0053	11.32	$548.87	$253.49	$109.77
26476	T	Tendon lengthening	0053	11.32	$548.87	$253.49	$109.77
26477	T	Tendon shortening	0053	11.32	$548.87	$253.49	$109.77
26478	T	Lengthening of hand tendon	0053	11.32	$548.87	$253.49	$109.77
26479	T	Shortening of hand tendon	0053	11.32	$548.87	$253.49	$109.77
26480	T	Transplant hand tendon	0054	19.66	$953.26	$472.33	$190.65
26483	T	Transplant/graft hand tendon	0054	19.66	$953.26	$472.33	$190.65
26485	T	Transplant palm tendon	0054	19.66	$953.26	$472.33	$190.65
26489	T	Transplant/graft palm tendon	0054	19.66	$953.26	$472.33	$190.65
26490	T	Revise thumb tendon	0054	19.66	$953.26	$472.33	$190.65
26492	T	Tendon transfer with graft	0054	19.66	$953.26	$472.33	$190.65
26494	T	Hand tendon/muscle transfer	0054	19.66	$953.26	$472.33	$190.65
26496	T	Revise thumb tendon	0054	19.66	$953.26	$472.33	$190.65
26497	T	Finger tendon transfer	0054	19.66	$953.26	$472.33	$190.65
26498	T	Finger tendon transfer	0054	19.66	$953.26	$472.33	$190.65
26499	T	Revision of finger	0054	19.66	$953.26	$472.33	$190.65
26500	T	Hand tendon reconstruction	0053	11.32	$548.87	$253.49	$109.77
26502	T	Hand tendon reconstruction	0054	19.66	$953.26	$472.33	$190.65
26504	T	Hand tendon reconstruction	0054	19.66	$953.26	$472.33	$190.65
26508	T	Release thumb contracture	0053	11.32	$548.87	$253.49	$109.77
26510	T	Thumb tendon transfer	0054	19.66	$953.26	$472.33	$190.65
26516	T	Fusion of knuckle joint	0054	19.66	$953.26	$472.33	$190.65
26517	T	Fusion of knuckle joints	0054	19.66	$953.26	$472.33	$190.65
26518	T	Fusion of knuckle joints	0054	19.66	$953.26	$472.33	$190.65
26520	T	Release knuckle contracture	0053	11.32	$548.87	$253.49	$109.77
26525	T	Release finger contracture	0053	11.32	$548.87	$253.49	$109.77
26530	T	Revise knuckle joint	0047	22.09	$1,071.06	$537.03	$214.22
26531	T	Revise knuckle with implant	0048	29.06	$1,409.03	$725.94	$281.81
26535	T	Revise finger joint	0047	22.09	$1,071.06	$537.03	$214.22
26536	T	Revise/implant finger joint	0048	29.06	$1,409.03	$725.94	$281.81
26540	T	Repair hand joint	0053	11.32	$548.87	$253.49	$109.77
26541	T	Repair hand joint with graft	0054	19.66	$953.26	$472.33	$190.65
26542	T	Repair hand joint with graft	0053	11.32	$548.87	$253.49	$109.77
26545	T	Reconstruct finger joint	0054	19.66	$953.26	$472.33	$190.65
26546	T	Repair nonunion hand	0054	19.66	$953.26	$472.33	$190.65
26548	T	Reconstruct finger joint	0054	19.66	$953.26	$472.33	$190.65
26550	T	Construct thumb replacement	0054	19.66	$953.26	$472.33	$190.65
26551	C	Great toe-hand transfer					
26553	C	Single transfer, toe-hand					
26554	C	Double transfer, toe-hand					
26555	T	Positional change of finger	0054	19.66	$953.26	$472.33	$190.65
26556	C	Toe joint transfer					
26560	T	Repair of web finger	0053	11.32	$548.87	$253.49	$109.77
26561	T	Repair of web finger	0054	19.66	$953.26	$472.33	$190.65
26562	T	Repair of web finger	0054	19.66	$953.26	$472.33	$190.65
26565	T	Correct metacarpal flaw	0054	19.66	$953.26	$472.33	$190.65
26567	T	Correct finger deformity	0054	19.66	$953.26	$472.33	$190.65
26568	T	Lengthen metacarpal/finger	0054	19.66	$953.26	$472.33	$190.65
26580	T	Repair hand deformity	0054	19.66	$953.26	$472.33	$190.65
26585	T	Repair finger deformity	0054	19.66	$953.26	$472.33	$190.65
26587	T	Reconstruct extra finger	0053	11.32	$548.87	$253.49	$109.77
26590	T	Repair finger deformity	0054	19.66	$953.26	$472.33	$190.65

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
26591	T	Repair muscles of hand	0054	19.66	$953.26	$472.33	$190.65
26593	T	Release muscles of hand	0053	11.32	$548.87	$253.49	$109.77
26596	T	Excision constricting tissue	0054	19.66	$953.26	$472.33	$190.65
26597	T	Release of scar contracture	0054	19.66	$953.26	$472.33	$190.65
26600	T	Treat metacarpal fracture	0044	2.17	$105.22	$38.06	$21.04
26605	T	Treat metacarpal fracture	0044	2.17	$105.22	$38.06	$21.04
26607	T	Treat metacarpal fracture	0044	2.17	$105.22	$38.06	$21.04
26608	T	Treat metacarpal fracture	0046	22.29	$1,080.78	$535.76	$216.16
26615	T	Treat metacarpal fracture	0046	22.29	$1,080.78	$535.76	$216.16
26641	T	Treat thumb dislocation	0044	2.17	$105.22	$38.06	$21.04
26645	T	Treat thumb fracture	0044	2.17	$105.22	$38.06	$21.04
26650	T	Treat thumb fracture	0046	22.29	$1,080.78	$535.76	$216.16
26665	T	Treat thumb fracture	0046	22.29	$1,080.78	$535.76	$216.16
26670	T	Treat hand dislocation	0044	2.17	$105.22	$38.06	$21.04
26675	T	Treat hand dislocation	0045	11.02	$534.33	$277.12	$106.87
26676	T	Pin hand dislocation	0046	22.29	$1,080.78	$535.76	$216.16
26685	T	Treat hand dislocation	0046	22.29	$1,080.78	$535.76	$216.16
26686	T	Treat hand dislocation	0046	22.29	$1,080.78	$535.76	$216.16
26700	T	Treat knuckle dislocation	0043	1.64	$79.52	$25.46	$15.90
26705	T	Treat knuckle dislocation	0045	11.02	$534.33	$277.12	$106.87
26706	T	Pin knuckle dislocation	0044	2.17	$105.22	$38.06	$21.04
26715	T	Treat knuckle dislocation	0046	22.29	$1,080.78	$535.76	$216.16
26720	T	Treat finger fracture, each	0043	1.64	$79.52	$25.46	$15.90
26725	T	Treat finger fracture, each	0043	1.64	$79.52	$25.46	$15.90
26727	T	Treat finger fracture, each	0046	22.29	$1,080.78	$535.76	$216.16
26735	T	Treat finger fracture, each	0046	22.29	$1,080.78	$535.76	$216.16
26740	T	Treat finger fracture, each	0043	1.64	$79.52	$25.46	$15.90
26742	T	Treat finger fracture, each	0044	2.17	$105.22	$38.06	$21.04
26746	T	Treat finger fracture, each	0046	22.29	$1,080.78	$535.76	$216.16
26750	T	Treat finger fracture, each	0043	1.64	$79.52	$25.46	$15.90
26755	T	Treat finger fracture, each	0043	1.64	$79.52	$25.46	$15.90
26756	T	Pin finger fracture, each	0046	22.29	$1,080.78	$535.76	$216.16
26765	T	Treat finger fracture, each	0046	22.29	$1,080.78	$535.76	$216.16
26770	T	Treat finger dislocation	0043	1.64	$79.52	$25.46	$15.90
26775	T	Treat finger dislocation	0045	11.02	$534.33	$277.12	$106.87
26776	T	Pin finger dislocation	0046	22.29	$1,080.78	$535.76	$216.16
26785	T	Treat finger dislocation	0046	22.29	$1,080.78	$535.76	$216.16
26820	T	Thumb fusion with graft	0054	19.66	$953.26	$472.33	$190.65
26841	T	Fusion of thumb	0054	19.66	$953.26	$472.33	$190.65
26842	T	Thumb fusion with graft	0054	19.66	$953.26	$472.33	$190.65
26843	T	Fusion of hand joint	0054	19.66	$953.26	$472.33	$190.65
26844	T	Fusion/graft of hand joint	0054	19.66	$953.26	$472.33	$190.65
26850	T	Fusion of knuckle	0054	19.66	$953.26	$472.33	$190.65
26852	T	Fusion of knuckle with graft	0054	19.66	$953.26	$472.33	$190.65
26860	T	Fusion of finger joint	0054	19.66	$953.26	$472.33	$190.65
26861	T	Fusion of finger jnt, add-on	0054	19.66	$953.26	$472.33	$190.65
26862	T	Fusion/graft of finger joint	0054	19.66	$953.26	$472.33	$190.65
26863	T	Fuse/graft added joint	0054	19.66	$953.26	$472.33	$190.65
26910	T	Amputate metacarpal bone	0054	19.66	$953.26	$472.33	$190.65
26951	T	Amputation of finger/thumb	0053	11.32	$548.87	$253.49	$109.77
26952	T	Amputation of finger/thumb	0053	11.32	$548.87	$253.49	$109.77
26989	T	Hand/finger surgery	0043	1.64	$79.52	$25.46	$15.90
26990	T	Drainage of pelvis lesion	0049	15.04	$729.25	$356.95	$145.85
26991	T	Drainage of pelvis bursa	0049	15.04	$729.25	$356.95	$145.85
26992	C	Drainage of bone lesion					
27000	T	Incision of hip tendon	0049	15.04	$729.25	$356.95	$145.85
27001	T	Incision of hip tendon	0050	21.13	$1,024.53	$513.86	$204.91
27003	T	Incision of hip tendon	0050	21.13	$1,024.53	$513.86	$204.91
27005	C	Incision of hip tendon					
27006	C	Incision of hip tendons					
27025	C	Incision of hip/thigh fascia					
27030	C	Drainage of hip joint					
27033	T	Exploration of hip joint	0051	27.76	$1,346.00	$675.24	$269.20
27035	C	Denervation of hip joint					
27036	C	Excision of hip joint/muscle					
27040	T	Biopsy of soft tissues	0021	10.49	$508.63	$236.51	$101.73
27041	T	Biopsy of soft tissues	0022	12.49	$605.60	$292.94	$121.12
27047	T	Remove hip/pelvis lesion	0022	12.49	$605.60	$292.94	$121.12
27048	T	Remove hip/pelvis lesion	0022	12.49	$605.60	$292.94	$121.12
27049	T	Remove tumor, hip/pelvis	0022	12.49	$605.60	$292.94	$121.12
27050	T	Biopsy of sacroiliac joint	0049	15.04	$729.25	$356.95	$145.85
27052	T	Biopsy of hip joint	0049	15.04	$729.25	$356.95	$145.85
27054	C	Removal of hip joint lining					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
27060	T	Removal of ischial bursa	0049	15.04	$729.25	$356.95	$145.85
27062	T	Remove femur lesion/bursa	0049	15.04	$729.25	$356.95	$145.85
27065	T	Removal of hip bone lesion	0049	15.04	$729.25	$356.95	$145.85
27066	T	Removal of hip bone lesion	0050	21.13	$1,024.58	$513.86	$204.91
27067	T	Remove/graft hip bone lesion	0050	21.13	$1,024.58	$513.86	$204.91
27070	C	Partial removal of hip bone					
27071	C	Partial removal of hip bone					
27075	C	Extensive hip surgery					
27076	C	Extensive hip surgery					
27077	C	Extensive hip surgery					
27078	C	Extensive hip surgery					
27079	C	Extensive hip surgery					
27080	T	Removal of tail bone	0050	21.13	$1,024.58	$513.86	$204.91
27086	T	Remove hip foreign body	0019	4.00	$193.95	$78.91	$38.79
27087	T	Remove hip foreign body	0049	15.04	$729.25	$356.95	$145.85
27090	C	Removal of hip prosthesis					
27091	C	Removal of hip prosthesis					
27093	N	Injection for hip x-ray					
27095	N	Injection for hip x-ray					
27096	N	Inject sacroiliac joint					
27097	T	Revision of hip tendon	0050	21.13	$1,024.58	$513.86	$204.91
27098	T	Transfer tendon to pelvis	0050	21.13	$1,024.58	$513.86	$204.91
27100	T	Transfer of abdominal muscle	0051	27.76	$1,346.00	$675.24	$269.20
27105	T	Transfer of spinal muscle	0051	27.76	$1,346.00	$675.24	$269.20
27110	T	Transfer of iliopsoas muscle	0051	27.76	$1,346.00	$675.24	$269.20
27111	T	Transfer of iliopsoas muscle	0051	27.76	$1,346.00	$675.24	$269.20
27120	C	Reconstruction of hip socket					
27122	C	Reconstruction of hip socket					
27125	C	Partial hip replacement					
27130	C	Total hip replacement					
27132	C	Total hip replacement					
27134	C	Revise hip joint replacement					
27137	C	Revise hip joint replacement					
27138	C	Revise hip joint replacement					
27140	C	Transplant femur ridge					
27146	C	Incision of hip bone					
27147	C	Revision of hip bone					
27151	C	Incision of hip bones					
27156	C	Revision of hip bones					
27158	C	Revision of pelvis					
27161	C	Incision of neck of femur					
27165	C	Incision/fixation of femur					
27170	C	Repair/graft femur head/neck					
27175	C	Treat slipped epiphysis					
27176	C	Treat slipped epiphysis					
27177	C	Treat slipped epiphysis					
27178	C	Treat slipped epiphysis					
27179	C	Revise head/neck of femur					
27181	C	Treat slipped epiphysis					
27185	C	Revision of femur epiphysis					
27187	C	Reinforce hip bones					
27193	T	Treat pelvic ring fracture	0044	2.17	$105.22	$38.08	$21.04
27194	T	Treat pelvic ring fracture	0045	11.02	$534.33	$277.12	$106.87
27200	T	Treat tail bone fracture	0043	1.64	$79.52	$25.46	$15.90
27202	T	Treat tail bone fracture	0046	22.29	$1,080.78	$535.76	$216.16
27215	C	Treat pelvic fracture(s)					
27216	C	Treat pelvic ring fracture					
27217	C	Treat pelvic ring fracture					
27218	C	Treat pelvic ring fracture					
27220	T	Treat hip socket fracture	0044	2.17	$105.22	$38.08	$21.04
27222	C	Treat hip socket fracture					
27226	C	Treat hip wall fracture					
27227	C	Treat hip fracture(s)					
27228	C	Treat hip fracture(s)					
27230	T	Treat thigh fracture	0044	2.17	$105.22	$38.08	$21.04
27232	C	Treat thigh fracture					
27235	C	Treat thigh fracture					
27236	C	Treat thigh fracture					
27238	T	Treat thigh fracture	0044	2.17	$105.22	$38.08	$21.04
27240	C	Treat thigh fracture					
27244	C	Treat thigh fracture					
27245	C	Treat thigh fracture					
27246	T	Treat thigh fracture	0044	2.17	$105.22	$38.08	$21.04

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
27248	C	Treat thigh fracture					
27250	T	Treat hip dislocation	0044	2.17	$105.22	$38.08	$21.04
27252	T	Treat hip dislocation	0045	11.02	$534.33	$277.12	$106.87
27253	C	Treat hip dislocation					
27254	C	Treat hip dislocation					
27256	T	Treat hip dislocation	0044	2.17	$105.22	$38.08	$21.04
27257	T	Treat hip dislocation	0045	11.02	$534.33	$277.12	$106.87
27258	C	Treat hip dislocation					
27259	C	Treat hip dislocation					
27265	T	Treat hip dislocation	0044	2.17	$105.22	$38.08	$21.04
27266	T	Treat hip dislocation	0047	22.09	$1,071.08	$537.03	$214.22
27275	T	Manipulation of hip joint	0045	11.02	$534.33	$277.12	$106.87
27280	C	Fusion of sacroiliac joint					
27282	C	Fusion of pubic bones					
27284	C	Fusion of hip joint					
27286	C	Fusion of hip joint					
27290	C	Amputation of leg at hip					
27295	C	Amputation of leg at hip					
27299	T	Pelvis/hip joint surgery	0043	1.64	$79.52	$25.46	$15.90
27301	T	Drain thigh/knee lesion	0008	6.15	$298.20	$113.67	$59.64
27303	C	Drainage of bone lesion					
27305	T	Incise thigh tendon & fascia	0049	15.04	$729.25	$356.95	$145.85
27306	T	Incision of thigh tendon	0049	15.04	$729.25	$356.95	$145.85
27307	T	Incision of thigh tendons	0049	15.04	$729.25	$356.95	$145.85
27310	T	Exploration of knee joint	0050	21.13	$1,024.53	$513.86	$204.91
27315	T	Partial removal, thigh nerve	0220	13.96	$676.88	$326.21	$135.38
27320	T	Partial removal, thigh nerve	0220	13.96	$676.88	$326.21	$135.38
27323	T	Biopsy, thigh soft tissues	0021	10.49	$508.63	$236.51	$101.73
27324	T	Biopsy, thigh soft tissues	0022	12.49	$605.60	$292.94	$121.12
27327	T	Removal of thigh lesion	0022	12.49	$605.60	$292.94	$121.12
27328	T	Removal of thigh lesion	0022	12.49	$605.60	$292.94	$121.12
27329	T	Remove tumor, thigh/knee	0022	12.49	$605.60	$292.94	$121.12
27330	T	Biopsy, knee joint lining	0050	21.13	$1,024.53	$513.86	$204.91
27331	T	Explore/treat knee joint	0050	21.13	$1,024.53	$513.86	$204.91
27332	T	Removal of knee cartilage	0050	21.13	$1,024.53	$513.86	$204.91
27333	T	Removal of knee cartilage	0050	21.13	$1,024.53	$513.86	$204.91
27334	T	Remove knee joint lining	0050	21.13	$1,024.53	$513.86	$204.91
27335	T	Remove knee joint lining	0050	21.13	$1,024.53	$513.86	$204.91
27340	T	Removal of kneecap bursa	0049	15.04	$729.25	$356.95	$145.85
27345	T	Removal of knee cyst	0049	15.04	$729.25	$356.95	$145.85
27347	T	Remove knee cyst	0049	15.04	$729.25	$356.95	$145.85
27350	T	Removal of kneecap	0050	21.13	$1,024.53	$513.86	$204.91
27355	T	Remove femur lesion	0050	21.13	$1,024.53	$513.86	$204.91
27356	T	Remove femur lesion/graft	0050	21.13	$1,024.53	$513.86	$204.91
27357	T	Remove femur lesion/graft	0050	21.13	$1,024.53	$513.86	$204.91
27358	T	Remove femur lesion/fixation	0050	21.13	$1,024.53	$513.86	$204.91
27360	T	Partial removal, leg bone(s)	0050	21.13	$1,024.53	$513.86	$204.91
27365	C	Extensive leg surgery					
27370	N	Injection for knee x-ray					
27372	T	Removal of foreign body	0022	12.49	$605.60	$292.94	$121.12
27380	T	Repair of kneecap tendon	0049	15.04	$729.25	$356.95	$145.85
27381	T	Repair/graft kneecap tendon	0049	15.04	$729.25	$356.95	$145.85
27385	T	Repair of thigh muscle	0049	15.04	$729.25	$356.95	$145.85
27386	T	Repair/graft of thigh muscle	0049	15.04	$729.25	$356.95	$145.85
27390	T	Incision of thigh tendon	0049	15.04	$729.25	$356.95	$145.85
27391	T	Incision of thigh tendons	0049	15.04	$729.25	$356.95	$145.85
27392	T	Incision of thigh tendons	0049	15.04	$729.25	$356.95	$145.85
27393	T	Lengthening of thigh tendon	0050	21.13	$1,024.53	$513.86	$204.91
27394	T	Lengthening of thigh tendons	0050	21.13	$1,024.53	$513.86	$204.91
27395	T	Lengthening of thigh tendons	0051	27.76	$1,346.00	$675.24	$269.20
27396	T	Transplant of thigh tendon	0050	21.13	$1,024.53	$513.86	$204.91
27397	T	Transplants of thigh tendons	0051	27.76	$1,346.00	$675.24	$269.20
27400	T	Revise thigh muscles/tendons	0051	27.76	$1,346.00	$675.24	$269.20
27403	T	Repair of knee cartilage	0050	21.13	$1,024.53	$513.86	$204.91
27405	T	Repair of knee ligament	0051	27.76	$1,346.00	$675.24	$269.20
27407	T	Repair of knee ligament	0051	27.76	$1,346.00	$675.24	$269.20
27409	T	Repair of knee ligaments	0051	27.76	$1,346.00	$675.24	$269.20
27418	T	Repair degenerated kneecap	0051	27.76	$1,346.00	$675.24	$269.20
27420	T	Revision of unstable kneecap	0051	27.76	$1,346.00	$675.24	$269.20
27422	T	Revision of unstable kneecap	0051	27.76	$1,346.00	$675.24	$269.20
27424	T	Revision/removal of kneecap	0051	27.76	$1,346.00	$675.24	$269.20
27425	T	Lateral retinacular release	0050	21.13	$1,024.53	$513.86	$204.91
27427	T	Reconstruction, knee	0052	36.16	$1,753.29	$930.91	$350.66

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
27428	T	Reconstruction, knee	0052	36.16	$1,753.29	$930.91	$350.66
27429	T	Reconstruction, knee	0052	36.16	$1,753.29	$930.91	$350.66
27430	T	Revision of thigh muscles	0051	27.76	$1,346.00	$675.24	$269.20
27435	T	Incision of knee joint	0051	27.76	$1,346.00	$675.24	$269.20
27437	T	Revise kneecap	0047	22.09	$1,071.06	$537.03	$214.22
27438	T	Revise kneecap with implant	0048	29.06	$1,409.03	$725.94	$281.81
27440	T	Revision of knee joint	0047	22.09	$1,071.06	$537.03	$214.22
27441	T	Revision of knee joint	0047	22.09	$1,071.06	$537.03	$214.22
27442	T	Revision of knee joint	0047	22.09	$1,071.06	$537.03	$214.22
27443	T	Revision of knee joint	0047	22.09	$1,071.06	$537.03	$214.22
27445	C	Revision of knee joint					
27446	C	Revision of knee joint					
27447	C	Total knee replacement					
27448	C	Incision of thigh					
27450	C	Incision of thigh					
27454	C	Realignment of thigh bone					
27455	C	Realignment of knee					
27457	C	Realignment of knee					
27465	C	Shortening of thigh bone					
27466	C	Lengthening of thigh bone					
27468	C	Shorten/lengthen thighs					
27470	C	Repair of thigh					
27472	C	Repair/graft of thigh					
27475	C	Surgery to stop leg growth					
27477	C	Surgery to stop leg growth					
27479	C	Surgery to stop leg growth					
27485	C	Surgery to stop leg growth					
27486	C	Revise/replace knee joint					
27487	C	Revise/replace knee joint					
27488	C	Removal of knee prosthesis					
27495	C	Reinforce thigh					
27496	T	Decompression of thigh/knee	0049	15.04	$729.25	$356.95	$145.85
27497	T	Decompression of thigh/knee	0049	15.04	$729.25	$356.95	$145.85
27498	T	Decompression of thigh/knee	0049	15.04	$729.25	$356.95	$145.85
27499	T	Decompression of thigh/knee	0049	15.04	$729.25	$356.95	$145.85
27500	T	Treatment of thigh fracture	0044	2.17	$105.22	$38.08	$21.04
27501	T	Treatment of thigh fracture	0044	2.17	$105.22	$38.08	$21.04
27502	T	Treatment of thigh fracture	0044	2.17	$105.22	$38.08	$21.04
27503	T	Treatment of thigh fracture	0044	2.17	$105.22	$38.08	$21.04
27506	C	Treatment of thigh fracture					
27507	C	Treatment of thigh fracture					
27508	T	Treatment of thigh fracture	0044	2.17	$105.22	$38.08	$21.04
27509	T	Treatment of thigh fracture	0046	22.29	$1,080.78	$535.76	$216.16
27510	T	Treatment of thigh fracture	0044	2.17	$105.22	$38.08	$21.04
27511	C	Treatment of thigh fracture					
27513	C	Treatment of thigh fracture					
27514	C	Treatment of thigh fracture					
27516	T	Treat thigh fx growth plate	0044	2.17	$105.22	$38.08	$21.04
27517	T	Treat thigh fx growth plate	0044	2.17	$105.22	$38.08	$21.04
27519	C	Treat thigh fx growth plate					
27520	T	Treat kneecap fracture	0044	2.17	$105.22	$38.08	$21.04
27524	C	Treat kneecap fracture					
27530	T	Treat knee fracture	0044	2.17	$105.22	$38.08	$21.04
27532	T	Treat knee fracture	0044	2.17	$105.22	$38.08	$21.04
27535	C	Treat knee fracture					
27536	C	Treat knee fracture					
27538	T	Treat knee fracture(s)	0044	2.17	$105.22	$38.08	$21.04
27540	C	Treat knee fracture					
27550	T	Treat knee dislocation	0044	2.17	$105.22	$38.08	$21.04
27552	T	Treat knee dislocation	0045	11.02	$534.33	$277.12	$106.87
27556	T	Treat knee dislocation	0046	22.29	$1,080.78	$535.76	$216.16
27557	C	Treat knee dislocation					
27558	C	Treat knee dislocation					
27560	T	Treat kneecap dislocation	0044	2.17	$105.22	$38.08	$21.04
27562	T	Treat kneecap dislocation	0045	11.02	$534.33	$277.12	$106.87
27566	T	Treat kneecap dislocation	0046	22.29	$1,080.78	$535.76	$216.16
27570	T	Fixation of knee joint	0045	11.02	$534.33	$277.12	$106.87
27580	C	Fusion of knee					
27590	C	Amputate leg at thigh					
27591	C	Amputate leg at thigh					
27592	C	Amputate leg at thigh					
27594	T	Amputation follow-up surgery	0049	15.04	$729.25	$356.95	$145.85
27596	C	Amputation follow-up surgery					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
27596	C	Amputate lower leg at knee					
27599	T	Leg surgery procedure	0044	2.17	$105.22	$38.08	$21.04
27600	T	Decompression of lower leg	0049	15.04	$729.25	$356.95	$145.85
27601	T	Decompression of lower leg	0049	15.04	$729.25	$356.95	$145.85
27602	T	Decompression of lower leg	0049	15.04	$729.25	$356.95	$145.85
27603	T	Drain lower leg lesion	0008	6.15	$298.20	$113.67	$59.64
27604	T	Drain lower leg bursa	0049	15.04	$729.25	$356.95	$145.85
27605	T	Incision of achilles tendon	0055	15.47	$750.10	$355.34	$150.02
27606	T	Incision of achilles tendon	0049	15.04	$729.25	$356.95	$145.85
27607	T	Treat lower leg bone lesion	0049	15.04	$729.25	$356.95	$145.85
27610	T	Explore/treat ankle joint	0050	21.13	$1,024.53	$513.86	$204.91
27612	T	Exploration of ankle joint	0050	21.13	$1,024.53	$513.86	$204.91
27613	T	Biopsy lower leg soft tissue	0020	6.51	$315.65	$130.53	$63.13
27614	T	Biopsy lower leg soft tissue	0022	12.49	$605.60	$292.94	$121.12
27615	T	Remove tumor, lower leg	0046	22.29	$1,080.76	$535.76	$216.16
27618	T	Remove lower leg lesion	0021	10.49	$508.63	$236.51	$101.73
27619	T	Remove lower leg lesion	0022	12.49	$605.60	$292.94	$121.12
27620	T	Explore/treat ankle joint	0050	21.13	$1,024.53	$513.86	$204.91
27625	T	Remove ankle joint lining	0050	21.13	$1,024.53	$513.86	$204.91
27626	T	Remove ankle joint lining	0050	21.13	$1,024.53	$513.86	$204.91
27630	T	Removal of tendon lesion	0049	15.04	$729.25	$356.95	$145.85
27635	T	Remove lower leg bone lesion	0050	21.13	$1,024.53	$513.86	$204.91
27637	T	Remove/graft leg bone lesion	0050	21.13	$1,024.53	$513.86	$204.91
27638	T	Remove/graft leg bone lesion	0050	21.13	$1,024.53	$513.86	$204.91
27640	T	Partial removal of tibia	0051	27.76	$1,346.00	$675.24	$269.20
27641	T	Partial removal of fibula	0050	21.13	$1,024.53	$513.86	$204.91
27645	C	Extensive lower leg surgery					
27646	C	Extensive lower leg surgery					
27647	T	Extensive ankle/heel surgery	0051	27.76	$1,346.00	$675.24	$269.20
27648	N	Injection for ankle x-ray					
27650	T	Repair achilles tendon	0051	27.76	$1,346.00	$675.24	$269.20
27652	T	Repair/graft achilles tendon	0051	27.76	$1,346.00	$675.24	$269.20
27654	T	Repair of achilles tendon	0051	27.76	$1,346.00	$675.24	$269.20
27656	T	Repair leg fascia defect	0049	15.04	$729.25	$356.95	$145.85
27658	T	Repair of leg tendon, each	0049	15.04	$729.25	$356.95	$145.85
27659	T	Repair of leg tendon, each	0049	15.04	$729.25	$356.95	$145.85
27664	T	Repair of leg tendon, each	0049	15.04	$729.25	$356.95	$145.85
27665	T	Repair of leg tendon, each	0050	21.13	$1,024.53	$513.86	$204.91
27675	T	Repair lower leg tendons	0049	15.04	$729.25	$356.95	$145.85
27676	T	Repair lower leg tendons	0050	21.13	$1,024.53	$513.86	$204.91
27680	T	Release of lower leg tendon	0050	21.13	$1,024.53	$513.86	$204.91
27681	T	Release of lower leg tendons	0050	21.13	$1,024.53	$513.86	$204.91
27685	T	Revision of lower leg tendon	0050	21.13	$1,024.53	$513.86	$204.91
27686	T	Revise lower leg tendons	0050	21.13	$1,024.53	$513.86	$204.91
27687	T	Revision of calf tendon	0050	21.13	$1,024.53	$513.86	$204.91
27690	T	Revise lower leg tendon	0051	27.76	$1,346.00	$675.24	$269.20
27691	T	Revise lower leg tendon	0051	27.76	$1,346.00	$675.24	$269.20
27692	T	Revise additional leg tendon	0051	27.76	$1,346.00	$675.24	$269.20
27695	T	Repair of ankle ligament	0050	21.13	$1,024.53	$513.86	$204.91
27696	T	Repair of ankle ligaments	0050	21.13	$1,024.53	$513.86	$204.91
27698	T	Repair of ankle ligament	0050	21.13	$1,024.53	$513.86	$204.91
27700	T	Revision of ankle joint	0047	22.09	$1,071.08	$537.03	$214.22
27702	C	Reconstruct ankle joint					
27703	C	Reconstruction, ankle joint					
27704	T	Removal of ankle implant	0049	15.04	$729.25	$356.95	$145.85
27705	T	Incision of tibia	0051	27.76	$1,346.00	$675.24	$269.20
27707	T	Incision of fibula	0049	15.04	$729.25	$356.95	$145.85
27709	T	Incision of tibia & fibula	0050	21.13	$1,024.53	$513.86	$204.91
27712	C	Realignment of lower leg					
27715	C	Revision of lower leg					
27720	C	Repair of tibia					
27722	C	Repair/graft of tibia					
27724	C	Repair/graft of tibia					
27725	C	Repair of lower leg					
27727	C	Repair of lower leg					
27730	T	Repair of tibia epiphysis	0050	21.13	$1,024.53	$513.86	$204.91
27732	T	Repair of fibula epiphysis	0050	21.13	$1,024.53	$513.86	$204.91
27734	T	Repair lower leg epiphyses	0050	21.13	$1,024.53	$513.86	$204.91
27740	T	Repair of leg epiphyses	0050	21.13	$1,024.53	$513.86	$204.91
27742	T	Repair of leg epiphyses	0051	27.76	$1,346.00	$675.24	$269.20
27745	T	Reinforce tibia	0051	27.76	$1,346.00	$675.24	$269.20
27750	T	Treatment of tibia fracture	0044	2.17	$105.22	$38.08	$21.04
27752	T	Treatment of tibia fracture	0044	2.17	$105.22	$38.08	$21.04

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
27756	T	Treatment of tibia fracture	0046	22.29	$1,080.78	$535.76	$216.16
27758	T	Treatment of tibia fracture	0046	22.29	$1,080.78	$535.76	$216.16
27759	T	Treatment of tibia fracture	0046	22.29	$1,080.78	$535.76	$216.16
27760	T	Treatment of ankle fracture	0044	2.17	$105.22	$38.08	$21.04
27762	T	Treatment of ankle fracture	0044	2.17	$105.22	$38.08	$21.04
27766	T	Treatment of ankle fracture	0046	22.29	$1,080.78	$535.76	$216.16
27780	T	Treatment of fibula fracture	0044	2.17	$105.22	$38.08	$21.04
27781	T	Treatment of fibula fracture	0044	2.17	$105.22	$38.08	$21.04
27784	T	Treatment of fibula fracture	0046	22.29	$1,080.78	$535.76	$216.16
27786	T	Treatment of ankle fracture	0044	2.17	$105.22	$38.08	$21.04
27788	T	Treatment of ankle fracture	0044	2.17	$105.22	$38.08	$21.04
27792	T	Treatment of ankle fracture	0046	22.29	$1,080.78	$535.76	$216.16
27808	T	Treatment of ankle fracture	0044	2.17	$105.22	$38.08	$21.04
27810	T	Treatment of ankle fracture	0044	2.17	$105.22	$38.08	$21.04
27814	T	Treatment of ankle fracture	0046	22.29	$1,080.78	$535.76	$216.16
27816	T	Treatment of ankle fracture	0044	2.17	$105.22	$38.08	$21.04
27818	T	Treatment of ankle fracture	0044	2.17	$105.22	$38.08	$21.04
27822	T	Treatment of ankle fracture	0046	22.29	$1,080.78	$535.76	$216.16
27823	T	Treatment of ankle fracture	0046	22.29	$1,080.78	$535.76	$216.16
27824	T	Treat lower leg fracture	0044	2.17	$105.22	$38.08	$21.04
27825	T	Treat lower leg fracture	0044	2.17	$105.22	$38.08	$21.04
27826	T	Treat lower leg fracture	0046	22.29	$1,080.78	$535.76	$216.16
27827	T	Treat lower leg fracture	0046	22.29	$1,080.78	$535.76	$216.16
27828	T	Treat lower leg fracture	0046	22.29	$1,080.78	$535.76	$216.16
27829	T	Treat lower leg joint	0046	22.29	$1,080.78	$535.76	$216.16
27830	T	Treat lower leg dislocation	0044	2.17	$105.22	$38.08	$21.04
27831	T	Treat lower leg dislocation	0045	11.02	$534.33	$277.12	$106.87
27832	T	Treat lower leg dislocation	0046	22.29	$1,080.78	$535.76	$216.16
27840	T	Treat ankle dislocation	0044	2.17	$105.22	$38.08	$21.04
27842	T	Treat ankle dislocation	0045	11.02	$534.33	$277.12	$106.87
27846	T	Treat ankle dislocation	0046	22.29	$1,080.78	$535.76	$216.16
27848	T	Treat ankle dislocation	0046	22.29	$1,080.78	$535.76	$216.16
27860	T	Fixation of ankle joint	0045	11.02	$534.33	$277.12	$106.87
27870	T	Fusion of ankle joint	0051	27.76	$1,346.00	$675.24	$269.20
27871	T	Fusion of tibiofibular joint	0051	27.76	$1,346.00	$675.24	$269.20
27880	C	Amputation of lower leg					
27881	C	Amputation of lower leg					
27882	C	Amputation of lower leg					
27884	T	Amputation follow-up surgery	0049	15.04	$729.25	$356.95	$145.85
27886	C	Amputation follow-up surgery					
27888	C	Amputation of foot at ankle					
27889	T	Amputation of foot at ankle	0050	21.13	$1,024.53	$513.86	$204.91
27892	T	Decompression of leg	0049	15.04	$729.25	$356.95	$145.85
27893	T	Decompression of leg	0049	15.04	$729.25	$356.95	$145.85
27894	T	Decompression of leg	0049	15.04	$729.25	$356.95	$145.85
27899	T	Leg/ankle surgery procedure	0044	2.17	$105.22	$38.08	$21.04
28001	T	Drainage of bursa of foot	0006	6.15	$298.20	$113.67	$59.64
28002	T	Treatment of foot infection	0049	15.04	$729.25	$356.95	$145.85
28003	T	Treatment of foot infection	0049	15.04	$729.25	$356.95	$145.85
28005	T	Treat foot bone lesion	0055	15.47	$750.10	$355.34	$150.02
28008	T	Incision of foot fascia	0055	15.47	$750.10	$355.34	$150.02
28010	T	Incision of toe tendon	0055	15.47	$750.10	$355.34	$150.02
28011	T	Incision of toe tendons	0055	15.47	$750.10	$355.34	$150.02
28020	T	Exploration of foot joint	0055	15.47	$750.10	$355.34	$150.02
28022	T	Exploration of foot joint	0055	15.47	$750.10	$355.34	$150.02
28024	T	Exploration of toe joint	0055	15.47	$750.10	$355.34	$150.02
28030	T	Removal of foot nerve	0220	13.96	$676.88	$326.21	$135.38
28035	T	Decompression of tibia nerve	0220	13.96	$676.88	$326.21	$135.38
28043	T	Excision of foot lesion	0021	10.49	$508.63	$236.51	$101.73
28045	T	Excision of foot lesion	0055	15.47	$750.10	$355.34	$150.02
28046	T	Resection of tumor, foot	0055	15.47	$750.10	$355.34	$150.02
28050	T	Biopsy of foot joint lining	0055	15.47	$750.10	$355.34	$150.02
28052	T	Biopsy of foot joint lining	0055	15.47	$750.10	$355.34	$150.02
28054	T	Biopsy of toe joint lining	0055	15.47	$750.10	$355.34	$150.02
28060	T	Partial removal, foot fascia	0056	17.30	$838.83	$405.81	$167.77
28062	T	Removal of foot fascia	0056	17.30	$838.83	$405.81	$167.77
28070	T	Removal of foot joint lining	0056	17.30	$838.83	$405.81	$167.77
28072	T	Removal of foot joint lining	0056	17.30	$838.83	$405.81	$167.77
28080	T	Removal of foot lesion	0055	15.47	$750.10	$355.34	$150.02
28086	T	Excise foot tendon sheath	0055	15.47	$750.10	$355.34	$150.02
28088	T	Excise foot tendon sheath	0055	15.47	$750.10	$355.34	$150.02
28090	T	Removal of foot lesion	0055	15.47	$750.10	$355.34	$150.02
28092	T	Removal of toe lesions	0055	15.47	$750.10	$355.34	$150.02

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
28100	T	Removal of ankle/heel lesion	0055	15.47	$750.10	$355.34	$150.02
28102	T	Remove/graft foot lesion	0056	17.30	$838.83	$405.81	$167.77
28103	T	Remove/graft foot lesion	0056	17.30	$838.83	$405.81	$167.77
28104	T	Removal of foot lesion	0055	15.47	$750.10	$355.34	$150.02
28106	T	Remove/graft foot lesion	0056	17.30	$838.83	$405.81	$167.77
28107	T	Remove/graft foot lesion	0056	17.30	$838.83	$405.81	$167.77
28108	T	Removal of toe lesions	0055	15.47	$750.10	$355.34	$150.02
28110	T	Part removal of metatarsal	0057	21.00	$1,018.23	$496.65	$203.65
28111	T	Part removal of metatarsal	0055	15.47	$750.10	$355.34	$150.02
28112	T	Part removal of metatarsal	0055	15.47	$750.10	$355.34	$150.02
28113	T	Part removal of metatarsal	0055	15.47	$750.10	$355.34	$150.02
28114	T	Removal of metatarsal heads	0055	15.47	$750.10	$355.34	$150.02
28116	T	Revision of foot	0055	15.47	$750.10	$355.34	$150.02
28118	T	Removal of heel bone	0055	15.47	$750.10	$355.34	$150.02
28119	T	Removal of heel spur	0055	15.47	$750.10	$355.34	$150.02
28120	T	Part removal of ankle/heel	0055	15.47	$750.10	$355.34	$150.02
28122	T	Partial removal of foot bone	0055	15.47	$750.10	$355.34	$150.02
28124	T	Partial removal of toe	0055	15.47	$750.10	$355.34	$150.02
28126	T	Partial removal of toe	0055	15.47	$750.10	$355.34	$150.02
28130	T	Removal of ankle bone	0055	15.47	$750.10	$355.34	$150.02
28140	T	Removal of metatarsal	0055	15.47	$750.10	$355.34	$150.02
28150	T	Removal of toe	0055	15.47	$750.10	$355.34	$150.02
28153	T	Partial removal of toe	0055	15.47	$750.10	$355.34	$150.02
28160	T	Partial removal of toe	0055	15.47	$750.10	$355.34	$150.02
28171	T	Extensive foot surgery	0055	15.47	$750.10	$355.34	$150.02
28173	T	Extensive foot surgery	0055	15.47	$750.10	$355.34	$150.02
28175	T	Extensive foot surgery	0055	15.47	$750.10	$355.34	$150.02
28190	T	Removal of foot foreign body	0019	4.00	$193.95	$78.91	$38.79
28192	T	Removal of foot foreign body	0021	10.49	$508.63	$236.51	$101.73
28193	T	Removal of foot foreign body	0020	6.51	$315.65	$130.53	$63.13
28200	T	Repair of foot tendon	0055	15.47	$750.10	$355.34	$150.02
28202	T	Repair/graft of foot tendon	0056	17.30	$838.83	$405.81	$167.77
28208	T	Repair of foot tendon	0055	15.47	$750.10	$355.34	$150.02
28210	T	Repair/graft of foot tendon	0055	15.47	$750.10	$355.34	$150.02
28220	T	Release of foot tendon	0055	15.47	$750.10	$355.34	$150.02
28222	T	Release of foot tendons	0055	15.47	$750.10	$355.34	$150.02
28225	T	Release of foot tendon	0055	15.47	$750.10	$355.34	$150.02
28226	T	Release of foot tendons	0055	15.47	$750.10	$355.34	$150.02
28230	T	Incision of foot tendon(s)	0055	15.47	$750.10	$355.34	$150.02
28232	T	Incision of toe tendon	0055	15.47	$750.10	$355.34	$150.02
28234	T	Incision of foot tendon	0055	15.47	$750.10	$355.34	$150.02
28238	T	Revision of foot tendon	0056	17.30	$838.83	$405.81	$167.77
28240	T	Release of big toe	0055	15.47	$750.10	$355.34	$150.02
28250	T	Revision of foot fascia	0056	17.30	$838.83	$405.81	$167.77
28260	T	Release of midfoot joint	0056	17.30	$838.83	$405.81	$167.77
28261	T	Revision of foot tendon	0056	17.30	$838.83	$405.81	$167.77
28262	T	Revision of foot and ankle	0056	17.30	$838.83	$405.81	$167.77
28264	T	Release of midfoot joint	0056	17.30	$838.83	$405.81	$167.77
28270	T	Release of foot contracture	0055	15.47	$750.10	$355.34	$150.02
28272	T	Release of toe joint, each	0055	15.47	$750.10	$355.34	$150.02
28280	T	Fusion of toes	0055	15.47	$750.10	$355.34	$150.02
28285	T	Repair of hammertoe	0055	15.47	$750.10	$355.34	$150.02
28286	T	Repair of hammertoe	0055	15.47	$750.10	$355.34	$150.02
28288	T	Partial removal of foot bone	0056	17.30	$838.83	$405.81	$167.77
28289	T	Repair hallux rigidus	0056	17.30	$838.83	$405.81	$167.77
28290	T	Correction of bunion	0057	21.00	$1,018.23	$496.65	$203.65
28292	T	Correction of bunion	0057	21.00	$1,018.23	$496.65	$203.65
28293	T	Correction of bunion	0057	21.00	$1,018.23	$496.65	$203.65
28294	T	Correction of bunion	0057	21.00	$1,018.23	$496.65	$203.65
28296	T	Correction of bunion	0057	21.00	$1,018.23	$496.65	$203.65
28297	T	Correction of bunion	0057	21.00	$1,018.23	$496.65	$203.65
28298	T	Correction of bunion	0057	21.00	$1,018.23	$496.65	$203.65
28299	T	Correction of bunion	0057	21.00	$1,018.23	$496.65	$203.65
28300	T	Incision of heel bone	0056	17.30	$838.83	$405.81	$167.77
28302	T	Incision of ankle bone	0056	17.30	$838.83	$405.81	$167.77
28304	T	Incision of midfoot bones	0056	17.30	$838.83	$405.81	$167.77
28305	T	Incise/graft midfoot bones	0056	17.30	$838.83	$405.81	$167.77
28306	T	Incision of metatarsal	0056	17.30	$838.83	$405.81	$167.77
28307	T	Incision of metatarsal	0056	17.30	$838.83	$405.81	$167.77
28308	T	Incision of metatarsal	0056	17.30	$838.83	$405.81	$167.77
28309	T	Incision of metatarsals	0056	17.30	$838.83	$405.81	$167.77
28310	T	Revision of big toe	0055	15.47	$750.10	$355.34	$150.02
28312	T	Revision of toe	0055	15.47	$750.10	$355.34	$150.02

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
28313	T	Repair deformity of toe	0055	15.47	$750.10	$355.34	$150.02
28315	T	Removal of sesamoid bone	0055	15.47	$750.10	$355.34	$150.02
28320	T	Repair of foot bones	0056	17.30	$838.83	$405.81	$167.77
28322	T	Repair of metatarsals	0056	17.30	$838.83	$405.81	$167.77
28340	T	Resect enlarged toe tissue	0055	15.47	$750.10	$355.34	$150.02
28341	T	Resect enlarged toe	0055	15.47	$750.10	$355.34	$150.02
28344	T	Repair extra toe(s)	0056	17.30	$838.83	$405.81	$167.77
28345	T	Repair webbed toe(s)	0056	17.30	$838.83	$405.81	$167.77
28360	T	Reconstruct cleft foot	0056	17.30	$838.83	$405.81	$167.77
28400	T	Treatment of heel fracture	0044	2.17	$105.22	$38.08	$21.04
28405	T	Treatment of heel fracture	0044	2.17	$105.22	$38.08	$21.04
28406	T	Treatment of heel fracture	0046	22.29	$1,080.78	$535.76	$216.16
28415	T	Treat heel fracture	0046	22.29	$1,080.78	$535.76	$216.16
28420	T	Treat/graft heel fracture	0046	22.29	$1,080.78	$535.76	$216.16
28430	T	Treatment of ankle fracture	0044	2.17	$105.22	$38.08	$21.04
28435	T	Treatment of ankle fracture	0044	2.17	$105.22	$38.08	$21.04
28436	T	Treatment of ankle fracture	0046	22.29	$1,080.78	$535.76	$216.16
28445	T	Treat ankle fracture	0046	22.29	$1,080.78	$535.76	$216.16
28450	T	Treat midfoot fracture, each	0044	2.17	$105.22	$38.08	$21.04
28455	T	Treat midfoot fracture, each	0044	2.17	$105.22	$38.08	$21.04
28456	T	Treat midfoot fracture	0046	22.29	$1,080.78	$535.76	$216.16
28465	T	Treat midfoot fracture, each	0046	22.29	$1,080.78	$535.76	$216.16
28470	T	Treat metatarsal fracture	0044	2.17	$105.22	$38.08	$21.04
28475	T	Treat metatarsal fracture	0044	2.17	$105.22	$38.08	$21.04
28476	T	Treat metatarsal fracture	0046	22.29	$1,080.78	$535.76	$216.16
28485	T	Treat metatarsal fracture	0046	22.29	$1,080.78	$535.76	$216.16
28490	T	Treat big toe fracture	0043	1.64	$79.52	$25.46	$15.90
28495	T	Treat big toe fracture	0043	1.64	$79.52	$25.46	$15.90
28496	T	Treat big toe fracture	0046	22.29	$1,080.78	$535.76	$216.16
28505	T	Treat big toe fracture	0046	22.29	$1,080.78	$535.76	$216.16
28510	T	Treatment of toe fracture	0043	1.64	$79.52	$25.46	$15.90
28515	T	Treatment of toe fracture	0043	1.64	$79.52	$25.46	$15.90
28525	T	Treat toe fracture	0046	22.29	$1,080.78	$535.76	$216.16
28530	T	Treat sesamoid bone fracture	0044	2.17	$105.22	$38.08	$21.04
28531	T	Treat sesamoid bone fracture	0046	22.29	$1,080.78	$535.76	$216.16
28540	T	Treat foot dislocation	0044	2.17	$105.22	$38.08	$21.04
28545	T	Treat foot dislocation	0045	11.02	$534.33	$277.12	$106.87
28546	T	Treat foot dislocation	0046	22.29	$1,080.78	$535.76	$216.16
28555	T	Repair foot dislocation	0046	22.29	$1,080.78	$535.76	$216.16
28570	T	Treat foot dislocation	0044	2.17	$105.22	$38.08	$21.04
28575	T	Treat foot dislocation	0045	11.02	$534.33	$277.12	$106.87
28576	T	Treat foot dislocation	0046	22.29	$1,080.78	$535.76	$216.16
28585	T	Repair foot dislocation	0046	22.29	$1,080.78	$535.76	$216.16
28600	T	Treat foot dislocation	0044	2.17	$105.22	$38.08	$21.04
28605	T	Treat foot dislocation	0045	11.02	$534.33	$277.12	$106.87
28606	T	Treat foot dislocation	0046	22.29	$1,080.78	$535.76	$216.16
28615	T	Repair foot dislocation	0046	22.29	$1,080.78	$535.76	$216.16
28630	T	Treat toe dislocation	0043	1.64	$79.52	$25.46	$15.90
28635	T	Treat toe dislocation	0045	11.02	$534.33	$277.12	$106.87
28636	T	Treat toe dislocation	0046	22.29	$1,080.78	$535.76	$216.16
28645	T	Repair toe dislocation	0046	22.29	$1,080.78	$535.76	$216.16
28660	T	Treat toe dislocation	0043	1.64	$79.52	$25.46	$15.90
28665	T	Treat toe dislocation	0045	11.02	$534.33	$277.12	$106.87
28666	T	Treat toe dislocation	0046	22.29	$1,080.78	$535.76	$216.16
28675	T	Repair of toe dislocation	0046	22.29	$1,080.78	$535.76	$216.16
28705	T	Fusion of foot bones	0056	17.30	$838.83	$405.81	$167.77
28715	T	Fusion of foot bones	0056	17.30	$838.83	$405.81	$167.77
28725	T	Fusion of foot bones	0056	17.30	$838.83	$405.81	$167.77
28730	T	Fusion of foot bones	0056	17.30	$838.83	$405.81	$167.77
28735	T	Fusion of foot bones	0056	17.30	$838.83	$405.81	$167.77
28737	T	Revision of foot bones	0055	15.47	$750.10	$355.34	$150.02
28740	T	Fusion of foot bones	0056	17.30	$838.83	$405.81	$167.77
28750	T	Fusion of big toe joint	0055	15.47	$750.10	$355.34	$150.02
28755	T	Fusion of big toe joint	0055	15.47	$750.10	$355.34	$150.02
28760	T	Fusion of big toe joint	0056	17.30	$838.83	$405.81	$167.77
28800	C	Amputation of midfoot					
28805	C	Amputation thru metatarsal					
28810	T	Amputation toe & metatarsal	0055	15.47	$750.10	$355.34	$150.02
28820	T	Amputation of toe	0055	15.47	$750.10	$355.34	$150.02
28825	T	Partial amputation of toe	0055	15.47	$750.10	$355.34	$150.02
28899	T	Foot/toes surgery procedure	0043	1.64	$79.52	$25.46	$15.90
29000	S	Application of body cast	0059	1.74	$84.37	$29.59	$16.87
29010	S	Application of body cast	0059	1.74	$84.37	$29.59	$16.87

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[3] Eligible for pass-through payments. See Preamble for payment rate determination. See Addendum K for complete list of pass-through codes.

ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
29015	S	Application of body cast	0059	1.74	$84.37	$29.59	$16.87
29020	S	Application of body cast	0059	1.74	$84.37	$29.59	$16.87
29025	S	Application of body cast	0059	1.74	$84.37	$29.59	$16.87
29035	S	Application of body cast	0059	1.74	$84.37	$29.59	$16.87
29040	S	Application of body cast	0059	1.74	$84.37	$29.59	$16.87
29044	S	Application of body cast	0059	1.74	$84.37	$29.59	$16.87
29046	S	Application of body cast	0059	1.74	$84.37	$29.59	$16.87
29049	S	Application of figure eight	0059	1.74	$84.37	$29.59	$16.87
29055	S	Application of shoulder cast	0059	1.74	$84.37	$29.59	$16.87
29058	S	Application of shoulder cast	0059	1.74	$84.37	$29.59	$16.87
29065	S	Application of long arm cast	0059	1.74	$84.37	$29.59	$16.87
29075	S	Application of forearm cast	0059	1.74	$84.37	$29.59	$16.87
29085	S	Apply hand/wrist cast	0059	1.74	$84.37	$29.59	$16.87
29105	S	Apply long arm splint	0059	1.74	$84.37	$29.59	$16.87
29125	S	Apply forearm splint	0059	1.74	$84.37	$29.59	$16.87
29126	S	Apply forearm splint	0059	1.74	$84.37	$29.59	$16.87
29130	S	Application of finger splint	0059	1.74	$84.37	$29.59	$16.87
29131	S	Application of finger splint	0059	1.74	$84.37	$29.59	$16.87
29200	S	Strapping of chest	0059	1.74	$84.37	$29.59	$16.87
29220	S	Strapping of low back	0059	1.74	$84.37	$29.59	$16.87
29240	S	Strapping of shoulder	0059	1.74	$84.37	$29.59	$16.87
29260	S	Strapping of elbow or wrist	0059	1.74	$84.37	$29.59	$16.87
29280	S	Strapping of hand or finger	0059	1.74	$84.37	$29.59	$16.87
29305	S	Application of hip cast	0059	1.74	$84.37	$29.59	$16.87
29325	S	Application of hip casts	0059	1.74	$84.37	$29.59	$16.87
29345	S	Application of long leg cast	0059	1.74	$84.37	$29.59	$16.87
29355	S	Application of long leg cast	0059	1.74	$84.37	$29.59	$16.87
29358	S	Apply long leg cast brace	0059	1.74	$84.37	$29.59	$16.87
29365	S	Application of long leg cast	0059	1.74	$84.37	$29.59	$16.87
29405	S	Apply short leg cast	0059	1.74	$84.37	$29.59	$16.87
29425	S	Apply short leg cast	0059	1.74	$84.37	$29.59	$16.87
29435	S	Apply short leg cast	0059	1.74	$84.37	$29.59	$16.87
29440	S	Addition of walker to cast	0059	1.74	$84.37	$29.59	$16.87
29445	S	Apply rigid leg cast	0059	1.74	$84.37	$29.59	$16.87
29450	S	Application of leg cast	0059	1.74	$84.37	$29.59	$16.87
29505	S	Application, long leg splint	0058	1.09	$52.85	$19.27	$10.57
29515	S	Application lower leg splint	0058	1.09	$52.85	$19.27	$10.57
29520	S	Strapping of hip	0058	1.09	$52.85	$19.27	$10.57
29530	S	Strapping of knee	0058	1.09	$52.85	$19.27	$10.57
29540	S	Strapping of ankle	0058	1.09	$52.85	$19.27	$10.57
29550	S	Strapping of toes	0058	1.09	$52.85	$19.27	$10.57
29580	S	Application of paste boot	0058	1.09	$52.85	$19.27	$10.57
29590	S	Application of foot splint	0058	1.09	$52.85	$19.27	$10.57
29700	S	Removal/revision of cast	0058	1.09	$52.85	$19.27	$10.57
29705	S	Removal/revision of cast	0058	1.09	$52.85	$19.27	$10.57
29710	S	Removal/revision of cast	0058	1.09	$52.85	$19.27	$10.57
29715	S	Removal/revision of cast	0058	1.09	$52.85	$19.27	$10.57
29720	S	Repair of body cast	0058	1.09	$52.85	$19.27	$10.57
29730	S	Windowing of cast	0058	1.09	$52.85	$19.27	$10.57
29740	S	Wedging of cast	0058	1.09	$52.85	$19.27	$10.57
29750	S	Wedging of clubfoot cast	0058	1.09	$52.85	$19.27	$10.57
29799	S	Casting/strapping procedure	0058	1.09	$52.85	$19.27	$10.57
29800	T	Jaw arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29804	T	Jaw arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29815	T	Shoulder arthroscopy	0041	24.57	$1,191.33	$592.08	$238.27
29819	T	Shoulder arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29820	T	Shoulder arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29821	T	Shoulder arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29822	T	Shoulder arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29823	T	Shoulder arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29825	T	Shoulder arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29826	T	Shoulder arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29830	T	Elbow arthroscopy	0041	24.57	$1,191.33	$592.08	$238.27
29834	T	Elbow arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29835	T	Elbow arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29836	T	Elbow arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29837	T	Elbow arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29838	T	Elbow arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29840	T	Wrist arthroscopy	0041	24.57	$1,191.33	$592.08	$238.27
29843	T	Wrist arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29844	T	Wrist arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29845	T	Wrist arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29846	T	Wrist arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
29847	T	Wrist arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29848	T	Wrist endoscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29850	T	Knee arthroscopy/surgery	0042	29.22	$1,416.79	$804.74	$283.36
29851	T	Knee arthroscopy/surgery	0042	29.22	$1,416.79	$804.74	$283.36
29855	T	Tibial arthroscopy/surgery	0042	29.22	$1,416.79	$804.74	$283.36
29856	T	Tibial arthroscopy/surgery	0042	29.22	$1,416.79	$804.74	$283.36
29860	T	Hip arthroscopy, dx	0041	24.57	$1,191.33	$592.08	$238.27
29861	T	Hip arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29862	T	Hip arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29863	T	Hip arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29870	T	Knee arthroscopy, dx	0041	24.57	$1,191.33	$592.08	$238.27
29871	T	Knee arthroscopy/drainage	0041	24.57	$1,191.33	$592.08	$238.27
29874	T	Knee arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29875	T	Knee arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29876	T	Knee arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29877	T	Knee arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29879	T	Knee arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29880	T	Knee arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29881	T	Knee arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29882	T	Knee arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29883	T	Knee arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29884	T	Knee arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29885	T	Knee arthroscopy/surgery	0042	29.22	$1,416.79	$804.74	$283.36
29886	T	Knee arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29887	T	Knee arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29888	T	Knee arthroscopy/surgery	0042	29.22	$1,416.79	$804.74	$283.36
29889	T	Knee arthroscopy/surgery	0042	29.22	$1,416.79	$804.74	$283.36
29891	T	Ankle arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29892	T	Ankle arthroscopy/surgery	0042	29.22	$1,416.79	$804.74	$283.36
29893	T	Scope, plantar fasciotomy	0055	15.47	$750.10	$355.34	$150.02
29894	T	Ankle arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29895	T	Ankle arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29897	T	Ankle arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29898	T	Ankle arthroscopy/surgery	0041	24.57	$1,191.33	$592.08	$238.27
29909	T	Arthroscopy of joint	0041	24.57	$1,191.33	$592.08	$238.27
30000	T	Drainage of nose lesion	0251	1.68	$81.46	$27.99	$16.29
30020	T	Drainage of nose lesion	0251	1.68	$81.46	$27.99	$16.29
30100	T	Intranasal biopsy	0252	5.18	$251.16	$114.24	$50.23
30110	T	Removal of nose polyp(s)	0253	12.02	$582.81	$284.00	$116.56
30115	T	Removal of nose polyp(s)	0253	12.02	$582.81	$284.00	$116.56
30117	T	Removal of intranasal lesion	0253	12.02	$582.81	$284.00	$116.56
30118	T	Removal of intranasal lesion	0254	12.45	$603.66	$272.41	$120.73
30120	T	Revision of nose	0253	12.02	$582.81	$284.00	$116.56
30124	T	Removal of nose lesion	0252	5.18	$251.16	$114.24	$50.23
30125	T	Removal of nose lesion	0256	25.40	$1,231.57	$623.05	$246.31
30130	T	Removal of turbinate bones	0253	12.02	$582.81	$284.00	$116.56
30140	T	Removal of turbinate bones	0253	12.02	$582.81	$284.00	$116.56
30150	T	Partial removal of nose	0256	25.40	$1,231.57	$623.05	$246.31
30160	T	Removal of nose	0256	25.40	$1,231.57	$623.05	$246.31
30200	T	Injection treatment of nose	0253	12.02	$582.81	$284.00	$116.56
30210	T	Nasal sinus therapy	0252	5.18	$251.16	$114.24	$50.23
30220	T	Insert nasal septal button	0252	5.18	$251.16	$114.24	$50.23
30300	T	Remove nasal foreign body	0251	1.68	$81.46	$27.99	$16.29
30310	T	Remove nasal foreign body	0253	12.02	$582.81	$284.00	$116.56
30320	T	Remove nasal foreign body	0253	12.02	$582.81	$284.00	$116.56
30400	T	Reconstruction of nose	0256	25.40	$1,231.57	$623.05	$246.31
30410	T	Reconstruction of nose	0256	25.40	$1,231.57	$623.05	$246.31
30420	T	Reconstruction of nose	0256	25.40	$1,231.57	$623.05	$246.31
30430	T	Revision of nose	0254	12.45	$603.66	$272.41	$120.73
30435	T	Revision of nose	0256	25.40	$1,231.57	$623.05	$246.31
30450	T	Revision of nose	0256	25.40	$1,231.57	$623.05	$246.31
30460	T	Revision of nose	0256	25.40	$1,231.57	$623.05	$246.31
30462	T	Revision of nose	0256	25.40	$1,231.57	$623.05	$246.31
30520	T	Repair of nasal septum	0256	25.40	$1,231.57	$623.05	$246.31
30540	T	Repair nasal defect	0256	25.40	$1,231.57	$623.05	$246.31
30545	T	Repair nasal defect	0256	25.40	$1,231.57	$623.05	$246.31
30560	T	Release of nasal adhesions	0251	1.68	$81.46	$27.99	$16.29
30580	T	Repair upper jaw fistula	0256	25.40	$1,231.57	$623.05	$246.31
30600	T	Repair mouth/nose fistula	0256	25.40	$1,231.57	$623.05	$246.31
30620	T	Intranasal reconstruction	0256	25.40	$1,231.57	$623.05	$246.31
30630	T	Repair nasal septum defect	0254	12.45	$603.66	$272.41	$120.73
30801	T	Cauterization, inner nose	0252	5.18	$251.16	$114.24	$50.23
30802	T	Cauterization, inner nose	0253	12.02	$582.81	$284.00	$116.56

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
30901	T	Control of nosebleed	0250	2.21	$107.16	$36.54	$21.43
30903	T	Control of nosebleed	0250	2.21	$107.16	$36.54	$21.43
30905	T	Control of nosebleed	0250	2.21	$107.16	$36.54	$21.43
30906	T	Repeat control of nosebleed	0250	2.21	$107.16	$36.54	$21.43
30915	T	Ligation, nasal sinus artery	0091	14.79	$717.12	$348.23	$143.42
30920	T	Ligation, upper jaw artery	0092	20.21	$979.92	$505.37	$195.98
30930	T	Therapy, fracture of nose	0253	12.02	$582.81	$284.00	$116.56
30999	T	Nasal surgery procedure	0251	1.68	$81.46	$27.99	$16.29
31000	T	Irrigation, maxillary sinus	0251	1.68	$81.46	$27.99	$16.29
31002	T	Irrigation, sphenoid sinus	0252	5.18	$251.16	$114.24	$50.23
31020	T	Exploration, maxillary sinus	0253	12.02	$582.81	$284.00	$116.56
31030	T	Exploration, maxillary sinus	0256	25.40	$1,231.57	$623.05	$246.31
31032	T	Explore sinus, remove polyps	0256	25.40	$1,231.57	$623.05	$246.31
31040	T	Exploration behind upper jaw	0254	12.45	$603.66	$272.41	$120.73
31050	T	Exploration, sphenoid sinus	0256	25.40	$1,231.57	$623.05	$246.31
31051	T	Sphenoid sinus surgery	0256	25.40	$1,231.57	$623.05	$246.31
31070	T	Exploration of frontal sinus	0254	12.45	$603.66	$272.41	$120.73
31075	T	Exploration of frontal sinus	0256	25.40	$1,231.57	$623.05	$246.31
31080	T	Removal of frontal sinus	0256	25.40	$1,231.57	$623.05	$246.31
31081	T	Removal of frontal sinus	0256	25.40	$1,231.57	$623.05	$246.31
31084	T	Removal of frontal sinus	0256	25.40	$1,231.57	$623.05	$246.31
31085	T	Removal of frontal sinus	0256	25.40	$1,231.57	$623.05	$246.31
31086	T	Removal of frontal sinus	0256	25.40	$1,231.57	$623.05	$246.31
31087	T	Removal of frontal sinus	0256	25.40	$1,231.57	$623.05	$246.31
31090	T	Exploration of sinuses	0256	25.40	$1,231.57	$623.05	$246.31
31200	T	Removal of ethmoid sinus	0256	25.40	$1,231.57	$623.05	$246.31
31201	T	Removal of ethmoid sinus	0256	25.40	$1,231.57	$623.05	$246.31
31205	T	Removal of ethmoid sinus	0256	25.40	$1,231.57	$623.05	$246.31
31225	C	Removal of upper jaw					
31230	C	Removal of upper jaw					
31231	T	Nasal endoscopy, dx	0071	0.55	$26.67	$14.22	$5.33
31233	T	Nasal/sinus endoscopy, dx	0072	1.26	$61.09	$41.52	$12.22
31235	T	Nasal/sinus endoscopy, dx	0074	13.61	$659.91	$347.54	$131.98
31237	T	Nasal/sinus endoscopy, surg	0074	13.61	$659.91	$347.54	$131.98
31238	T	Nasal/sinus endoscopy, surg	0074	13.61	$659.91	$347.54	$131.98
31239	T	Nasal/sinus endoscopy, surg	0075	18.55	$899.44	$467.29	$179.89
31240	T	Nasal/sinus endoscopy, surg	0074	13.61	$659.91	$347.54	$131.98
31254	T	Revision of ethmoid sinus	0075	18.55	$899.44	$467.29	$179.89
31255	T	Removal of ethmoid sinus	0075	18.55	$899.44	$467.29	$179.89
31256	T	Exploration maxillary sinus	0075	18.55	$899.44	$467.29	$179.89
31267	T	Endoscopy, maxillary sinus	0075	18.55	$899.44	$467.29	$179.89
31276	T	Sinus endoscopy, surgical	0075	18.55	$899.44	$467.29	$179.89
31287	T	Nasal/sinus endoscopy, surg	0075	18.55	$899.44	$467.29	$179.89
31288	T	Nasal/sinus endoscopy, surg	0075	18.55	$899.44	$467.29	$179.89
31290	C	Nasal/sinus endoscopy, surg					
31291	C	Nasal/sinus endoscopy, surg					
31292	C	Nasal/sinus endoscopy, surg					
31293	C	Nasal/sinus endoscopy, surg					
31294	C	Nasal/sinus endoscopy, surg					
31299	T	Sinus surgery procedure	0252	5.18	$251.16	$114.24	$50.23
31300	T	Removal of larynx lesion	0256	25.40	$1,231.57	$623.05	$246.31
31320	T	Diagnostic incision, larynx	0256	25.40	$1,231.57	$623.05	$246.31
31360	C	Removal of larynx					
31365	C	Removal of larynx					
31367	C	Partial removal of larynx					
31368	C	Partial removal of larynx					
31370	C	Partial removal of larynx					
31375	T	Partial removal of larynx	0256	25.40	$1,231.57	$623.05	$246.31
31380	C	Partial removal of larynx					
31382	C	Partial removal of larynx					
31390	C	Removal of larynx & pharynx					
31395	C	Reconstruct larynx & pharynx					
31400	T	Revision of larynx	0256	25.40	$1,231.57	$623.05	$246.31
31420	T	Removal of epiglottis	0256	25.40	$1,231.57	$623.05	$246.31
31500	S	Insert emergency airway	0094	4.51	$218.68	$105.29	$43.74
31502	T	Change of windpipe airway	0121	2.36	$114.43	$52.53	$22.89
31505	T	Diagnostic laryngoscopy	0072	1.26	$61.09	$41.52	$12.22
31510	T	Laryngoscopy with biopsy	0074	13.61	$659.91	$347.54	$131.98
31511	T	Remove foreign body, larynx	0072	1.26	$61.09	$41.52	$12.22
31512	T	Removal of larynx lesion	0074	13.61	$659.91	$347.54	$131.98
31513	T	Injection into vocal cord	0073	4.11	$199.28	$91.07	$39.86
31515	T	Laryngoscopy for aspiration	0074	13.61	$659.91	$347.54	$131.98
31520	T	Diagnostic laryngoscopy	0072	1.26	$61.09	$41.52	$12.22

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
31525	T	Diagnostic laryngoscopy	0074	13.61	$659.91	$347.54	$131.98
31526	T	Diagnostic laryngoscopy	0074	13.61	$659.91	$347.54	$131.98
31527	T	Laryngoscopy for treatment	0075	18.55	$899.44	$467.29	$179.89
31528	T	Laryngoscopy and dilatation	0074	13.61	$659.91	$347.54	$131.98
31529	T	Laryngoscopy and dilatation	0074	13.61	$659.91	$347.54	$131.98
31530	T	Operative laryngoscopy	0075	18.55	$899.44	$467.29	$179.89
31531	T	Operative laryngoscopy	0075	18.55	$899.44	$467.29	$179.89
31535	T	Operative laryngoscopy	0075	18.55	$899.44	$467.29	$179.89
31536	T	Operative laryngoscopy	0075	18.55	$899.44	$467.29	$179.89
31540	T	Operative laryngoscopy	0075	18.55	$899.44	$467.29	$179.89
31541	T	Operative laryngoscopy	0075	18.55	$899.44	$467.29	$179.89
31560	T	Operative laryngoscopy	0075	18.55	$899.44	$467.29	$179.89
31561	T	Operative laryngoscopy	0075	18.55	$899.44	$467.29	$179.89
31570	T	Laryngoscopy with injection	0075	18.55	$899.44	$467.29	$179.89
31571	T	Laryngoscopy with injection	0075	18.55	$899.44	$467.29	$179.89
31575	T	Diagnostic laryngoscopy	0071	0.55	$26.67	$14.22	$5.33
31576	T	Laryngoscopy with biopsy	0074	13.61	$659.91	$347.54	$131.98
31577	T	Remove foreign body, larynx	0073	4.11	$199.28	$91.07	$39.86
31578	T	Removal of larynx lesion	0074	13.61	$659.91	$347.54	$131.98
31579	T	Diagnostic laryngoscopy	0073	4.11	$199.28	$91.07	$39.86
31580	T	Revision of larynx	0256	25.40	$1,231.57	$623.05	$246.31
31582	C	Revision of larynx					
31584	C	Treat larynx fracture					
31585	T	Treat larynx fracture	0253	12.02	$582.81	$284.00	$116.56
31586	T	Treat larynx fracture	0256	25.40	$1,231.57	$623.05	$246.31
31587	C	Revision of larynx					
31588	T	Revision of larynx	0256	25.40	$1,231.57	$623.05	$246.31
31590	T	Reinnervate larynx	0256	25.40	$1,231.57	$623.05	$246.31
31595	T	Larynx nerve surgery	0256	25.40	$1,231.57	$623.05	$246.31
31599	T	Larynx surgery procedure	0253	12.02	$582.81	$284.00	$116.56
31600	T	Incision of windpipe	0254	12.45	$603.66	$272.41	$120.73
31601	T	Incision of windpipe	0254	12.45	$603.66	$272.41	$120.73
31603	T	Incision of windpipe	0254	12.45	$603.66	$272.41	$120.73
31605	T	Incision of windpipe	0254	12.45	$603.66	$272.41	$120.73
31610	T	Incision of windpipe	0254	12.45	$603.66	$272.41	$120.73
31611	T	Surgery/speech prosthesis	0254	12.45	$603.66	$272.41	$120.73
31612	T	Puncture/clear windpipe	0253	12.02	$582.81	$284.00	$116.56
31613	T	Repair windpipe opening	0254	12.45	$603.66	$272.41	$120.73
31614	T	Repair windpipe opening	0256	25.40	$1,231.57	$623.05	$246.31
31615	T	Visualization of windpipe	0076	8.06	$390.81	$197.05	$78.16
31622	T	Dx bronchoscope/wash	0076	8.06	$390.81	$197.05	$78.16
31623	T	Dx bronchoscope/brush	0076	8.06	$390.81	$197.05	$78.16
31624	T	Dx bronchoscope/lavage	0076	8.06	$390.81	$197.05	$78.16
31625	T	Bronchoscopy with biopsy	0076	8.06	$390.81	$197.05	$78.16
31628	T	Bronchoscopy with biopsy	0076	8.06	$390.81	$197.05	$78.16
31629	T	Bronchoscopy with biopsy	0076	8.06	$390.81	$197.05	$78.16
31630	T	Bronchoscopy with repair	0076	8.06	$390.81	$197.05	$78.16
31631	T	Bronchoscopy with dilation	0076	8.06	$390.81	$197.05	$78.16
31635	T	Remove foreign body, airway	0076	8.06	$390.81	$197.05	$78.16
31640	T	Bronchoscopy & remove lesion	0076	8.06	$390.81	$197.05	$78.16
31641	T	Bronchoscopy, treat blockage	0076	8.06	$390.81	$197.05	$78.16
31643	T	Diag bronchoscope/catheter	0076	8.06	$390.81	$197.05	$78.16
31645	T	Bronchoscopy, clear airways	0076	8.06	$390.81	$197.05	$78.16
31646	T	Bronchoscopy, reclear airway	0076	8.06	$390.81	$197.05	$78.16
31656	T	Bronchoscopy, inj for x-ray	0076	8.06	$390.81	$197.05	$78.16
31700	T	Insertion of airway catheter	0072	1.26	$61.09	$41.52	$12.22
31708	N	Instill airway contrast dye					
31710	N	Insertion of airway catheter					
31715	N	Injection for bronchus x-ray					
31717	T	Bronchial brush biopsy	0073	4.11	$199.28	$91.07	$39.86
31720	T	Clearance of airways	0072	1.26	$61.09	$41.52	$12.22
31725	C	Clearance of airways					
31730	T	Intro, windpipe wire/tube	0073	4.11	$199.28	$91.07	$39.86
31750	T	Repair of windpipe	0256	25.40	$1,231.57	$623.05	$246.31
31755	T	Repair of windpipe	0256	25.40	$1,231.57	$623.05	$246.31
31760	C	Repair of windpipe					
31766	C	Reconstruction of windpipe					
31770	C	Repair/graft of bronchus					
31775	C	Reconstruct bronchus					
31780	C	Reconstruct windpipe					
31781	C	Reconstruct windpipe					
31785	C	Remove windpipe lesion					
31786	C	Remove windpipe lesion					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
31800	C	Repair of windpipe injury					
31805	C	Repair of windpipe injury					
31820	T	Closure of windpipe lesion	0253	12.02	$582.81	$284.00	$116.56
31825	T	Repair of windpipe defect	0254	12.45	$603.66	$272.41	$120.73
31830	T	Revise windpipe scar	0254	12.45	$603.66	$272.41	$120.73
31899	T	Airways surgical procedure	0076	8.06	$390.81	$197.05	$78.16
32000	T	Drainage of chest	0070	3.64	$176.49	$79.60	$35.30
32002	T	Treatment of collapsed lung	0070	3.64	$176.49	$79.60	$35.30
32005	T	Treat lung lining chemically	0070	3.64	$176.49	$79.60	$35.30
32020	T	Insertion of chest tube	0070	3.64	$176.49	$79.60	$35.30
32035	C	Exploration of chest					
32036	C	Exploration of chest					
32095	C	Biopsy through chest wall					
32100	C	Exploration/biopsy of chest					
32110	C	Explore/repair chest					
32120	C	Re-exploration of chest					
32124	C	Explore chest free adhesions					
32140	C	Removal of lung lesion(s)					
32141	C	Remove/treat lung lesions					
32150	C	Removal of lung lesion(s)					
32151	C	Remove lung foreign body					
32160	C	Open chest heart massage					
32200	C	Drain, open, lung lesion					
32201	C	Drain, percut, lung lesion					
32215	C	Treat chest lining					
32220	C	Release of lung					
32225	C	Partial release of lung					
32310	C	Removal of chest lining					
32320	C	Free/remove chest lining					
32400	T	Needle biopsy chest lining	0005	5.41	$262.32	$119.75	$52.46
32402	C	Open biopsy chest lining					
32405	T	Biopsy, lung or mediastinum	0005	5.41	$262.32	$119.75	$52.46
32420	T	Puncture/clear lung	0070	3.64	$176.49	$79.60	$35.30
32440	C	Removal of lung					
32442	C	Sleeve pneumonectomy					
32445	C	Removal of lung					
32480	C	Partial removal of lung					
32482	C	Bilobectomy					
32484	C	Segmentectomy					
32486	C	Sleeve lobectomy					
32488	C	Completion pneumonectomy					
32491	C	Lung volume reduction					
32500	C	Partial removal of lung					
32501	C	Repair bronchus add-on					
32520	C	Remove lung & revise chest					
32522	C	Remove lung & revise chest					
32525	C	Remove lung & revise chest					
32540	C	Removal of lung lesion					
32601	T	Thoracoscopy, diagnostic	0076	8.06	$390.81	$197.05	$78.16
32602	T	Thoracoscopy, diagnostic	0076	8.06	$390.81	$197.05	$78.16
32603	T	Thoracoscopy, diagnostic	0076	8.06	$390.81	$197.05	$78.16
32604	T	Thoracoscopy, diagnostic	0076	8.06	$390.81	$197.05	$78.16
32605	T	Thoracoscopy, diagnostic	0076	8.06	$390.81	$197.05	$78.16
32606	T	Thoracoscopy, diagnostic	0076	8.06	$390.81	$197.05	$78.16
32650	C	Thoracoscopy, surgical					
32651	C	Thoracoscopy, surgical					
32652	C	Thoracoscopy, surgical					
32653	C	Thoracoscopy, surgical					
32654	C	Thoracoscopy, surgical					
32655	C	Thoracoscopy, surgical					
32656	C	Thoracoscopy, surgical					
32657	C	Thoracoscopy, surgical					
32658	C	Thoracoscopy, surgical					
32659	C	Thoracoscopy, surgical					
32660	C	Thoracoscopy, surgical					
32661	C	Thoracoscopy, surgical					
32662	C	Thoracoscopy, surgical					
32663	C	Thoracoscopy, surgical					
32664	C	Thoracoscopy, surgical					
32665	C	Thoracoscopy, surgical					
32800	C	Repair lung hernia					
32810	C	Close chest after drainage					
32815	C	Close bronchial fistula					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
32820	C	Reconstruct injured chest					
32850	C	Donor pneumonectomy					
32851	C	Lung transplant, single					
32852	C	Lung transplant with bypass					
32853	C	Lung transplant, double					
32854	C	Lung transplant with bypass					
32900	C	Removal of rib(s)					
32905	C	Revise & repair chest wall					
32906	C	Revise & repair chest wall					
32940	C	Revision of lung					
32960	T	Therapeutic pneumothorax	0070	3.64	$176.49	$79.60	$35.30
32997	C	Total lung lavage					
32999	T	Chest surgery procedure	0070	3.64	$176.49	$79.60	$35.30
33010	T	Drainage of heart sac	0070	3.64	$176.49	$79.60	$35.30
33011	T	Repeat drainage of heart sac	0070	3.64	$176.49	$79.60	$35.30
33015	C	Incision of heart sac					
33020	C	Incision of heart sac					
33025	C	Incision of heart sac					
33030	C	Partial removal of heart sac					
33031	C	Partial removal of heart sac					
33050	C	Removal of heart sac lesion					
33120	C	Removal of heart lesion					
33130	C	Removal of heart lesion					
33140	C	Heart revascularize (tmr)					
33200	C	Insertion of heart pacemaker					
33201	C	Insertion of heart pacemaker					
33206	T	Insertion of heart pacemaker	0090	20.96	$1,016.29	$573.04	$203.26
33207	T	Insertion of heart pacemaker	0090	20.96	$1,016.29	$573.04	$203.26
33208	T	Insertion of heart pacemaker	0090	20.96	$1,016.29	$573.04	$203.26
33210	T	Insertion of heart electrode	0089	6.49	$314.68	$130.07	$62.94
33211	T	Insertion of heart electrode	0089	6.49	$314.68	$130.07	$62.94
33212	T	Insertion of pulse generator	0090	20.96	$1,016.29	$573.04	$203.26
33213	T	Insertion of pulse generator	0090	20.96	$1,016.29	$573.04	$203.26
33214	T	Upgrade of pacemaker system	0090	20.96	$1,016.29	$573.04	$203.26
33216	T	Revise eltrd pacing-defib	0090	20.96	$1,016.29	$573.04	$203.26
33217	T	Revise eltrd pacing-defib	0090	20.96	$1,016.29	$573.04	$203.26
33218	T	Revise eltrd pacing-defib	0090	20.96	$1,016.29	$573.04	$203.26
33220	T	Revise eltrd pacing-defib	0089	6.49	$314.68	$130.07	$62.94
33222	T	Revise pocket, pacemaker	0026	12.11	$587.18	$277.92	$117.44
33223	T	Revise pocket, pacing-defib	0026	12.11	$587.18	$277.92	$117.44
33233	T	Removal of pacemaker system	0090	20.96	$1,016.29	$573.04	$203.26
33234	T	Removal of pacemaker system	0090	20.96	$1,016.29	$573.04	$203.26
33235	T	Removal pacemaker electrode	0090	20.96	$1,016.29	$573.04	$203.26
33236	C	Remove electrode/thoracotomy					
33237	C	Remove electrode/thoracotomy					
33238	C	Remove electrode/thoracotomy					
33240	T	Insert pulse generator	0090	20.96	$1,016.29	$573.04	$203.26
33241	T	Remove pulse generator	0089	6.49	$314.68	$130.07	$62.94
33243	C	Remove eltrd/thoracotomy					
33244	T	Remove eltrd, transven	0090	20.96	$1,016.29	$573.04	$203.26
33245	C	Insert epic eltrd pace-defib					
33246	C	Insert epic eltrd/generator					
33249	T	Eltrd/insert pace-defib	0090	20.96	$1,016.29	$573.04	$203.26
33250	C	Ablate heart dysrhythm focus					
33251	C	Ablate heart dysrhythm focus					
33253	C	Reconstruct atria					
33261	C	Ablate heart dysrhythm focus					
33282	C	Implant pat-active ht record					
33284	C	Remove pat-active ht record					
33300	C	Repair of heart wound					
33305	C	Repair of heart wound					
33310	C	Exploratory heart surgery					
33315	C	Exploratory heart surgery					
33320	C	Repair major blood vessel(s)					
33321	C	Repair major vessel					
33322	C	Repair major blood vessel(s)					
33330	C	Insert major vessel graft					
33332	C	Insert major vessel graft					
33335	C	Insert major vessel graft					
33400	C	Repair of aortic valve					
33401	C	Valvuloplasty, open					
33403	C	Valvuloplasty, w/cp bypass					
33404	C	Prepare heart-aorta conduit					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
33405	C	Replacement of aortic valve					
33406	C	Replacement of aortic valve					
33410	C	Replacement of aortic valve					
33411	C	Replacement of aortic valve					
33412	C	Replacement of aortic valve					
33413	C	Replacement of aortic valve					
33414	C	Repair of aortic valve					
33415	C	Revision, subvalvular tissue					
33416	C	Revise ventricle muscle					
33417	C	Repair of aortic valve					
33420	C	Revision of mitral valve					
33422	C	Revision of mitral valve					
33425	C	Repair of mitral valve					
33426	C	Repair of mitral valve					
33427	C	Repair of mitral valve					
33430	C	Replacement of mitral valve					
33460	C	Revision of tricuspid valve					
33463	C	Valvuloplasty, tricuspid					
33464	C	Valvuloplasty, tricuspid					
33465	C	Replace tricuspid valve					
33468	C	Revision of tricuspid valve					
33470	C	Revision of pulmonary valve					
33471	C	Valvotomy, pulmonary valve					
33472	C	Revision of pulmonary valve					
33474	C	Revision of pulmonary valve					
33475	C	Replacement, pulmonary valve					
33476	C	Revision of heart chamber					
33478	C	Revision of heart chamber					
33496	D	Repair, prosth valve clot					
33500	C	Repair heart vessel fistula					
33501	C	Repair heart vessel fistula					
33502	C	Coronary artery correction					
33503	C	Coronary artery graft					
33504	C	Coronary artery graft					
33505	C	Repair artery w/tunnel					
33506	C	Repair artery, translocation					
33510	C	CABG, vein, single					
33511	C	CABG, vein, two					
33512	C	CABG, vein, three					
33513	C	CABG, vein, four					
33514	C	CABG, vein, five					
33516	C	Cabg, vein, six or more					
33517	C	CABG, artery-vein, single					
33518	C	CABG, artery-vein, two					
33519	C	CABG, artery-vein, three					
33521	C	CABG, artery-vein, four					
33522	C	CABG, artery-vein, five					
33523	C	Cabg, art-vein, six or more					
33530	C	Coronary artery, bypass/reop					
33533	C	CABG, arterial, single					
33534	C	CABG, arterial, two					
33535	C	CABG, arterial, three					
33536	C	Cabg, arterial, four or more					
33542	C	Removal of heart lesion					
33545	C	Repair of heart damage					
33572	C	Open coronary endarterectomy					
33600	C	Closure of valve					
33602	C	Closure of valve					
33606	C	Anastomosis/artery-aorta					
33608	C	Repair anomaly w/conduit					
33610	C	Repair by enlargement					
33611	C	Repair double ventricle					
33612	C	Repair double ventricle					
33615	C	Repair, simple fontan					
33617	C	Repair, modified fontan					
33619	C	Repair single ventricle					
33641	C	Repair heart septum defect					
33645	C	Revision of heart veins					
33647	C	Repair heart septum defects					
33660	C	Repair of heart defects					
33665	C	Repair of heart defects					
33670	C	Repair of heart chambers					
33681	C	Repair heart septum defect					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
33684	C	Repair heart septum defect					
33688	C	Repair heart septum defect					
33690	C	Reinforce pulmonary artery					
33692	C	Repair of heart defects					
33694	C	Repair of heart defects					
33697	C	Repair of heart defects					
33702	C	Repair of heart defects					
33710	C	Repair of heart defects					
33720	C	Repair of heart defect					
33722	C	Repair of heart defect					
33730	C	Repair heart-vein defect(s)					
33732	C	Repair heart-vein defect					
33735	C	Revision of heart chamber					
33736	C	Revision of heart chamber					
33737	C	Revision of heart chamber					
33750	C	Major vessel shunt					
33755	C	Major vessel shunt					
33762	C	Major vessel shunt					
33764	C	Major vessel shunt & graft					
33766	C	Major vessel shunt					
33767	C	Major vessel shunt					
33770	C	Repair great vessels defect					
33771	C	Repair great vessels defect					
33774	C	Repair great vessels defect					
33775	C	Repair great vessels defect					
33776	C	Repair great vessels defect					
33777	C	Repair great vessels defect					
33778	C	Repair great vessels defect					
33779	C	Repair great vessels defect					
33780	C	Repair great vessels defect					
33781	C	Repair great vessels defect					
33786	C	Repair arterial trunk					
33788	C	Revision of pulmonary artery					
33800	C	Aortic suspension					
33802	C	Repair vessel defect					
33803	C	Repair vessel defect					
33813	C	Repair septal defect					
33814	C	Repair septal defect					
33820	C	Revise major vessel					
33822	C	Revise major vessel					
33824	C	Revise major vessel					
33840	C	Remove aorta constriction					
33845	C	Remove aorta constriction					
33851	C	Remove aorta constriction					
33852	C	Repair septal defect					
33853	C	Repair septal defect					
33860	C	Ascending aortic graft					
33861	C	Ascending aortic graft					
33863	C	Ascending aortic graft					
33870	C	Transverse aortic arch graft					
33875	C	Thoracic aortic graft					
33877	C	Thoracoabdominal graft					
33910	C	Remove lung artery emboli					
33915	C	Remove lung artery emboli					
33916	C	Surgery of great vessel					
33917	C	Repair pulmonary artery					
33918	C	Repair pulmonary atresia					
33919	C	Repair pulmonary atresia					
33920	C	Repair pulmonary atresia					
33922	C	Transect pulmonary artery					
33924	C	Remove pulmonary shunt					
33930	C	Removal of donor heart/lung					
33935	C	Transplantation, heart/lung					
33940	C	Removal of donor heart					
33945	C	Transplantation of heart					
33960	C	External circulation assist					
33961	C	External circulation assist					
33968	C	Remove aortic assist device					
33970	C	Aortic circulation assist					
33971	C	Aortic circulation assist					
33973	C	Insert balloon device					
33974	C	Remove intra-aortic balloon					
33975	C	Implant ventricular device					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
33976	C	Implant ventricular device					
33977	C	Remove ventricular device					
33978	C	Remove ventricular device					
33999	T	Cardiac surgery procedure	0070	3.64	$176.49	$79.60	$35.30
34001	C	Removal of artery clot					
34051	C	Removal of artery clot					
34101	T	Removal of artery clot	0088	26.49	$1,284.42	$678.68	$256.88
34111	T	Removal of arm artery clot	0088	26.49	$1,284.42	$678.68	$256.88
34151	C	Removal of artery clot					
34201	T	Removal of artery clot	0088	26.49	$1,284.42	$678.68	$256.88
34203	T	Removal of leg artery clot	0088	26.49	$1,284.42	$678.68	$256.88
34401	C	Removal of vein clot					
34421	C	Removal of vein clot					
34451	C	Removal of vein clot					
34471	T	Removal of vein clot	0088	26.49	$1,284.42	$678.68	$256.88
34490	T	Removal of vein clot	0088	26.49	$1,284.42	$678.68	$256.88
34501	T	Repair valve, femoral vein	0088	26.49	$1,284.42	$678.68	$256.88
34502	C	Reconstruct vena cava					
34510	T	Transposition of vein valve	0088	26.49	$1,284.42	$678.68	$256.88
34520	T	Cross-over vein graft	0088	26.49	$1,284.42	$678.68	$256.88
34530	T	Leg vein fusion	0088	26.49	$1,284.42	$678.68	$256.88
35001	C	Repair defect of artery					
35002	C	Repair artery rupture, neck					
35005	C	Repair defect of artery					
35011	C	Repair defect of artery					
35013	C	Repair artery rupture, arm					
35021	C	Repair defect of artery					
35022	C	Repair artery rupture, chest					
35045	C	Repair defect of arm artery					
35081	C	Repair defect of artery					
35082	C	Repair artery rupture, aorta					
35091	C	Repair defect of artery					
35092	C	Repair artery rupture, aorta					
35102	C	Repair defect of artery					
35103	C	Repair artery rupture, groin					
35111	C	Repair defect of artery					
35112	C	Repair artery rupture, spleen					
35121	C	Repair defect of artery					
35122	C	Repair artery rupture, belly					
35131	C	Repair defect of artery					
35132	C	Repair artery rupture, groin					
35141	C	Repair defect of artery					
35142	C	Repair artery rupture, thigh					
35151	C	Repair defect of artery					
35152	C	Repair artery rupture, knee					
35161	C	Repair defect of artery					
35162	C	Repair artery rupture					
35180	T	Repair blood vessel lesion	0081	19.36	$938.71	$434.25	$187.74
35182	C	Repair blood vessel lesion					
35184	T	Repair blood vessel lesion	0081	19.36	$938.71	$434.25	$187.74
35188	T	Repair blood vessel lesion	0088	26.49	$1,284.42	$678.68	$256.88
35189	C	Repair blood vessel lesion					
35190	T	Repair blood vessel lesion	0081	19.36	$938.71	$434.25	$187.74
35201	T	Repair blood vessel lesion	0081	19.36	$938.71	$434.25	$187.74
35206	T	Repair blood vessel lesion	0081	19.36	$938.71	$434.25	$187.74
35207	T	Repair blood vessel lesion	0088	26.49	$1,284.42	$678.68	$256.88
35211	C	Repair blood vessel lesion					
35216	C	Repair blood vessel lesion					
35221	C	Repair blood vessel lesion					
35226	T	Repair blood vessel lesion	0081	19.36	$938.71	$434.25	$187.74
35231	T	Repair blood vessel lesion	0081	19.36	$938.71	$434.25	$187.74
35236	T	Repair blood vessel lesion	0081	19.36	$938.71	$434.25	$187.74
35241	C	Repair blood vessel lesion					
35246	C	Repair blood vessel lesion					
35251	C	Repair blood vessel lesion					
35256	T	Repair blood vessel lesion	0081	19.36	$938.71	$434.25	$187.74
35261	T	Repair blood vessel lesion	0081	19.36	$938.71	$434.25	$187.74
35266	T	Repair blood vessel lesion	0081	19.36	$938.71	$434.25	$187.74
35271	C	Repair blood vessel lesion					
35276	C	Repair blood vessel lesion					
35281	C	Repair blood vessel lesion					
35286	T	Repair blood vessel lesion	0081	19.36	$938.71	$434.25	$187.74
35301	C	Rechanneling of artery					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
35311	C	Rechanneling of artery					
35321	T	Rechanneling of artery	0081	19.36	$938.71	$434.25	$187.74
35331	C	Rechanneling of artery					
35341	C	Rechanneling of artery					
35351	C	Rechanneling of artery					
35355	C	Rechanneling of artery					
35361	C	Rechanneling of artery					
35363	C	Rechanneling of artery					
35371	C	Rechanneling of artery					
35372	C	Rechanneling of artery					
35381	C	Rechanneling of artery					
35390	C	Reoperation, carotid add-on					
35400	C	Angioscopy					
35450	C	Repair arterial blockage					
35452	C	Repair arterial blockage					
35454	C	Repair arterial blockage					
35456	C	Repair arterial blockage					
35458	C	Repair arterial blockage					
35459	T	Repair arterial blockage	0081	19.36	$938.71	$434.25	$187.74
35460	T	Repair venous blockage	0081	19.36	$938.71	$434.25	$187.74
35470	T	Repair arterial blockage	0081	19.36	$938.71	$434.25	$187.74
35471	T	Repair arterial blockage	0081	19.36	$938.71	$434.25	$187.74
35472	T	Repair arterial blockage	0081	19.36	$938.71	$434.25	$187.74
35473	T	Repair arterial blockage	0081	19.36	$938.71	$434.25	$187.74
35474	T	Repair arterial blockage	0081	19.36	$938.71	$434.25	$187.74
35475	T	Repair arterial blockage	0081	19.36	$938.71	$434.25	$187.74
35476	T	Repair venous blockage	0081	19.36	$938.71	$434.25	$187.74
35480	C	Atherectomy, open					
35481	C	Atherectomy, open					
35482	C	Atherectomy, open					
35483	C	Atherectomy, open					
35484	T	Atherectomy, open	0081	19.36	$938.71	$434.25	$187.74
35485	T	Atherectomy, open	0081	19.36	$938.71	$434.25	$187.74
35490	T	Atherectomy, percutaneous	0081	19.36	$938.71	$434.25	$187.74
35491	T	Atherectomy, percutaneous	0081	19.36	$938.71	$434.25	$187.74
35492	T	Atherectomy, percutaneous	0081	19.36	$938.71	$434.25	$187.74
35493	T	Atherectomy, percutaneous	0081	19.36	$938.71	$434.25	$187.74
35494	T	Atherectomy, percutaneous	0081	19.36	$938.71	$434.25	$187.74
35495	T	Atherectomy, percutaneous	0081	19.36	$938.71	$434.25	$187.74
35500	T	Harvest vein for bypass	0081	19.36	$938.71	$434.25	$187.74
35501	C	Artery bypass graft					
35506	C	Artery bypass graft					
35507	C	Artery bypass graft					
35508	C	Artery bypass graft					
35509	C	Artery bypass graft					
35511	C	Artery bypass graft					
35515	C	Artery bypass graft					
35516	C	Artery bypass graft					
35518	C	Artery bypass graft					
35521	C	Artery bypass graft					
35526	C	Artery bypass graft					
35531	C	Artery bypass graft					
35533	C	Artery bypass graft					
35536	C	Artery bypass graft					
35541	C	Artery bypass graft					
35546	C	Artery bypass graft					
35548	C	Artery bypass graft					
35549	C	Artery bypass graft					
35551	C	Artery bypass graft					
35556	C	Artery bypass graft					
35558	C	Artery bypass graft					
35560	C	Artery bypass graft					
35563	C	Artery bypass graft					
35565	C	Artery bypass graft					
35566	C	Artery bypass graft					
35571	C	Artery bypass graft					
35582	C	Vein bypass graft					
35583	C	Vein bypass graft					
35585	C	Vein bypass graft					
35587	C	Vein bypass graft					
35601	C	Artery bypass graft					
35606	C	Artery bypass graft					
35612	C	Artery bypass graft					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
35616	C	Artery bypass graft					
35621	C	Artery bypass graft					
35623	C	Bypass graft, not vein					
35626	C	Artery bypass graft					
35631	C	Artery bypass graft					
35636	C	Artery bypass graft					
35641	C	Artery bypass graft					
35642	C	Artery bypass graft					
35645	C	Artery bypass graft					
35646	C	Artery bypass graft					
35650	C	Artery bypass graft					
35651	C	Artery bypass graft					
35654	C	Artery bypass graft					
35656	C	Artery bypass graft					
35661	C	Artery bypass graft					
35663	C	Artery bypass graft					
35665	C	Artery bypass graft					
35666	C	Artery bypass graft					
35671	C	Artery bypass graft					
35681	C	Composite bypass graft					
35682	C	Composite bypass graft					
35683	C	Composite bypass graft					
35691	C	Arterial transposition					
35693	C	Arterial transposition					
35694	C	Arterial transposition					
35695	C	Arterial transposition					
35700	C	Reoperation, bypass graft					
35701	C	Exploration, carotid artery					
35721	C	Exploration, femoral artery					
35741	C	Exploration popliteal artery					
35761	C	Exploration of artery/vein					
35800	C	Explore neck vessels					
35820	C	Explore chest vessels					
35840	C	Explore abdominal vessels					
35860	C	Explore limb vessels					
35870	C	Repair vessel graft defect					
35875	T	Removal of clot in graft	0088	26.49	$1,284.42	$678.68	$256.88
35876	T	Removal of clot in graft	0088	26.49	$1,284.42	$678.68	$256.88
35879	T	Revise graft w/vein	0088	26.49	$1,284.42	$678.68	$256.88
35881	T	Revise graft w/vein	0088	26.49	$1,284.42	$678.68	$256.88
35901	C	Excision, graft, neck					
35903	C	Excision, graft, extremity					
35905	C	Excision, graft, thorax					
35907	C	Excision, graft, abdomen					
36000	N	Place needle in vein					
36005	N	Injection, venography					
36010	N	Place catheter in vein					
36011	N	Place catheter in vein					
36012	N	Place catheter in vein					
36013	N	Place catheter in artery					
36014	N	Place catheter in artery					
36015	N	Place catheter in artery					
36100	N	Establish access to artery					
36120	N	Establish access to artery					
36140	N	Establish access to artery					
36145	N	Artery to vein shunt					
36160	N	Establish access to aorta					
36200	N	Place catheter in aorta					
36215	N	Place catheter in artery					
36216	N	Place catheter in artery					
36217	N	Place catheter in artery					
36218	N	Place catheter in artery					
36245	N	Place catheter in artery					
36246	N	Place catheter in artery					
36247	N	Place catheter in artery					
36248	N	Place catheter in artery					
36260	T	Insertion of infusion pump	0093	17.95	$870.34	$422.33	$174.07
36261	T	Revision of infusion pump	0089	6.49	$314.68	$130.07	$62.94
36262	T	Removal of infusion pump	0089	6.49	$314.68	$130.07	$62.94
36299	T	Vessel injection procedure	0089	6.49	$314.68	$130.07	$62.94
36400	N	Drawing blood					
36405	N	Drawing blood					
36406	N	Drawing blood					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
36410	N	Drawing blood					
36415	E	Drawing blood					
36420	T	Establish access to vein	0032	5.40	$261.88	$119.52	$52.37
36425	T	Establish access to vein	0032	5.40	$261.88	$119.52	$52.37
36430	S	Blood transfusion service	0110	5.83	$282.68	$122.73	$56.54
36440	S	Blood transfusion service	0110	5.83	$282.68	$122.73	$56.54
36450	S	Exchange transfusion service	0110	5.83	$282.68	$122.73	$56.54
36455	S	Exchange transfusion service	0110	5.83	$282.68	$122.73	$56.54
36460	S	Transfusion service, fetal	0110	5.83	$282.68	$122.73	$56.54
36468	T	Injection(s), spider veins	0098	1.19	$57.70	$20.88	$11.54
36469	T	Injection(s), spider veins	0098	1.19	$57.70	$20.88	$11.54
36470	T	Injection therapy of vein	0098	1.19	$57.70	$20.88	$11.54
36471	T	Injection therapy of veins	0098	1.19	$57.70	$20.88	$11.54
36481	N	Insertion of catheter, vein					
36488	T	Insertion of catheter, vein	0032	5.40	$261.88	$119.52	$52.37
36489	T	Insertion of catheter, vein	0032	5.40	$261.88	$119.52	$52.37
36490	T	Insertion of catheter, vein	0032	5.40	$261.88	$119.52	$52.37
36491	T	Insertion of catheter, vein	0032	5.40	$261.88	$119.52	$52.37
36493	T	Repositioning of cvc	0032	5.40	$261.88	$119.52	$52.37
36500	N	Insertion of catheter, vein					
36510	C	Insertion of catheter, vein					
36520	S	Plasma and/or cell exchange	0111	14.17	$687.08	$300.74	$137.41
36521	S	Apheresis w/adsorp/reinfuse	0111	14.17	$687.08	$300.74	$137.41
36522	S	Photopheresis	0112	39.60	$1,920.09	$863.65	$384.02
36530	T	Insertion of infusion pump	0093	17.95	$870.34	$422.33	$174.07
36531	T	Revision of infusion pump	0089	6.49	$314.68	$130.07	$62.94
36532	T	Removal of infusion pump	0089	6.49	$314.68	$130.07	$62.94
36533	T	Insertion of access device	0093	17.95	$870.34	$422.33	$174.07
36534	T	Revision of access device	0089	6.49	$314.68	$130.07	$62.94
36535	T	Removal of access device	0089	6.49	$314.68	$130.07	$62.94
36550	C	Declot vascular device					
36600	N	Withdrawal of arterial blood					
36620	N	Insertion catheter, artery					
36625	N	Insertion catheter, artery					
36640	T	Insertion catheter, artery	0032	5.40	$261.88	$119.52	$52.37
36660	C	Insertion catheter, artery					
36680	S	Insert needle, bone cavity	0120	1.66	$80.49	$42.67	$16.10
36800	T	Insertion of cannula	0093	17.95	$870.34	$422.33	$174.07
36810	T	Insertion of cannula	0093	17.95	$870.34	$422.33	$174.07
36815	T	Insertion of cannula	0093	17.95	$870.34	$422.33	$174.07
36819	T	Av fusion by basilic vein	0093	17.95	$870.34	$422.33	$174.07
36821	T	Av fusion direct any site	0088	26.49	$1,284.42	$678.68	$256.88
36822	C	Insertion of cannula(s)					
36823	C	Insertion of cannula(s)					
36825	T	Artery-vein graft	0088	26.49	$1,284.42	$678.68	$256.88
36830	T	Artery-vein graft	0088	26.49	$1,284.42	$678.68	$256.88
36831	T	Av fistula excision	0088	26.49	$1,284.42	$678.68	$256.88
36832	T	Av fistula revision	0088	26.49	$1,284.42	$678.68	$256.88
36833	T	Av fistula revision	0088	26.49	$1,284.42	$678.68	$256.88
36834	C	Repair A–V aneurysm					
36835	T	Artery to vein shunt	0093	17.95	$870.34	$422.33	$174.07
36860	T	External cannula declotting	0090	20.96	$1,016.29	$573.04	$203.26
36861	T	Cannula declotting	0090	20.96	$1,016.29	$573.04	$203.26
37140	C	Revision of circulation					
37145	C	Revision of circulation					
37160	C	Revision of circulation					
37180	C	Revision of circulation					
37181	C	Splice spleen/kidney veins					
37195	C	Thrombolytic therapy, stroke					
37200	C	Transcatheter biopsy					
37201	C	Transcatheter therapy infuse					
37202	C	Transcatheter therapy infuse					
37203	T	Transcatheter retrieval	0089	6.49	$314.68	$130.07	$62.94
37204	T	Transcatheter occlusion	0081	19.36	$938.71	$434.25	$187.74
37205	T	Transcatheter stent	0081	19.36	$938.71	$434.25	$187.74
37206	T	Transcatheter stent add-on	0081	19.36	$938.71	$434.25	$187.74
37207	T	Transcatheter stent	0081	19.36	$938.71	$434.25	$187.74
37208	T	Transcatheter stent add-on	0081	19.36	$938.71	$434.25	$187.74
37209	T	Exchange arterial catheter	0081	19.36	$938.71	$434.25	$187.74
37250	T	Iv us first vessel add-on	0081	19.36	$938.71	$434.25	$187.74
37251	T	Iv us each add vessel add-on	0081	19.36	$938.71	$434.25	$187.74
37565	T	Ligation of neck vein	0081	19.36	$938.71	$434.25	$187.74
37600	T	Ligation of neck artery	0081	19.36	$938.71	$434.25	$187.74

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
37605	T	Ligation of neck artery	0091	14.79	$717.12	$348.23	$143.42
37606	T	Ligation of neck artery	0091	14.79	$717.12	$348.23	$143.42
37607	T	Ligation of a–v fistula	0092	20.21	$979.92	$505.37	$195.98
37609	T	Temporal artery procedure	0020	6.51	$315.65	$130.53	$63.13
37615	T	Ligation of neck artery	0091	14.79	$717.12	$348.23	$143.42
37616	C	Ligation of chest artery					
37617	C	Ligation of abdomen artery					
37618	E	Ligation of extremity artery					
37620	C	Revision of major vein					
37650	T	Revision of major vein	0091	14.79	$717.12	$348.23	$143.42
37660	C	Revision of major vein					
37700	T	Revise leg vein	0091	14.79	$717.12	$348.23	$143.42
37720	T	Removal of leg vein	0092	20.21	$979.92	$505.37	$195.98
37730	T	Removal of leg veins	0092	20.21	$979.92	$505.37	$195.98
37735	T	Removal of leg veins/lesion	0092	20.21	$979.92	$505.37	$195.98
37760	T	Revision of leg veins	0091	14.79	$717.12	$348.23	$143.42
37780	T	Revision of leg vein	0091	14.79	$717.12	$348.23	$143.42
37785	T	Revise secondary varicosity	0091	14.79	$717.12	$348.23	$143.42
37788	C	Revascularization, penis					
37790	T	Penile venous occlusion	0181	32.37	$1,569.53	$906.36	$313.91
37799	T	Vascular surgery procedure	0020	6.51	$315.65	$130.53	$63.13
38100	C	Removal of spleen, total					
38101	C	Removal of spleen, partial					
38102	C	Removal of spleen, total					
38115	C	Repair of ruptured spleen					
38120	T	Laparoscopy, splenectomy	0131	41.81	$2,027.24	$1,089.88	$405.45
38129	T	Laparoscope proc, spleen	0130	25.36	$1,229.63	$659.53	$245.93
38200	N	Injection for spleen x-ray					
38230	S	Bone marrow collection	0109	4.13	$200.25	$40.05	$40.05
38231	S	Stem cell collection	0111	14.17	$687.06	$300.74	$137.41
38240	S	Bone marrow/stem transplant	0109	4.13	$200.25	$40.05	$40.05
38241	S	Bone marrow/stem transplant	0109	4.13	$200.25	$40.05	$40.05
38300	T	Drainage, lymph node lesion	0008	6.15	$298.20	$113.67	$59.64
38305	T	Drainage, lymph node lesion	0008	6.15	$298.20	$113.67	$59.64
38308	T	Incision of lymph channels	0113	13.89	$673.49	$326.55	$134.70
38380	C	Thoracic duct procedure					
38381	C	Thoracic duct procedure					
38382	C	Thoracic duct procedure					
38500	T	Biopsy/removal, lymph nodes	0113	13.89	$673.49	$326.55	$134.70
38505	T	Needle biopsy, lymph nodes	0005	5.41	$262.32	$119.75	$52.46
38510	T	Biopsy/removal, lymph nodes	0113	13.89	$673.49	$326.55	$134.70
38520	T	Biopsy/removal, lymph nodes	0113	13.89	$673.49	$326.55	$134.70
38525	T	Biopsy/removal, lymph nodes	0113	13.89	$673.49	$326.55	$134.70
38530	T	Biopsy/removal, lymph nodes	0113	13.89	$673.49	$326.55	$134.70
38542	T	Explore deep node(s), neck	0114	19.56	$948.41	$493.78	$189.68
38550	T	Removal, neck/armpit lesion	0113	13.89	$673.49	$326.55	$134.70
38555	T	Removal, neck/armpit lesion	0114	19.56	$948.41	$493.78	$189.68
38562	C	Removal, pelvic lymph nodes					
38564	C	Removal, abdomen lymph nodes					
38570	T	Laparoscopy, lymph node biop	0131	41.81	$2,027.24	$1,089.88	$405.45
38571	T	Laparoscopy, lymphadenectomy	0132	48.91	$2,371.50	$1,239.22	$474.30
38572	T	Laparoscopy, lymphadenectomy	0131	41.81	$2,027.24	$1,089.88	$405.45
38589	T	Laparoscope proc, lymphatic	0130	25.36	$1,229.63	$659.53	$245.93
38700	C	Removal of lymph nodes, neck					
38720	T	Removal of lymph nodes, neck	0114	19.56	$948.41	$493.78	$189.68
38724	C	Removal of lymph nodes, neck					
38740	T	Remove armpit lymph nodes	0114	19.56	$948.41	$493.78	$189.68
38745	T	Remove armpit lymph nodes	0114	19.56	$948.41	$493.78	$189.68
38746	C	Remove thoracic lymph nodes					
38747	C	Remove abdominal lymph nodes					
38760	T	Remove groin lymph nodes	0114	19.56	$948.41	$493.78	$189.68
38765	C	Remove groin lymph nodes					
38770	C	Remove pelvis lymph nodes					
38780	C	Remove abdomen lymph nodes					
38790	N	Inject for lymphatic x-ray					
38792	N	Identify sentinal node					
38794	N	Access thoracic lymph duct					
38999	T	Blood/lymph system procedure	0008	6.15	$298.20	$113.67	$59.64
39000	C	Exploration of chest					
39010	C	Exploration of chest					
39200	C	Removal chest lesion					
39220	C	Removal chest lesion					
39400	T	Visualization of chest	0076	8.06	$390.81	$197.05	$78.16

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
39499	C	Chest procedure					
39501	C	Repair diaphragm laceration					
39502	C	Repair paraesophageal hernia					
39503	C	Repair of diaphragm hernia					
39520	C	Repair of diaphragm hernia					
39530	C	Repair of diaphragm hernia					
39531	C	Repair of diaphragm hernia					
39540	C	Repair of diaphragm hernia					
39541	C	Repair of diaphragm hernia					
39545	C	Revision of diaphragm					
39560	C	Resect diaphragm, simple					
39561	C	Resect diaphragm, complex					
39599	C	Diaphragm surgery procedure					
40490	T	Biopsy of lip	0252	5.18	$251.16	$114.24	$50.23
40500	T	Partial excision of lip	0253	12.02	$582.81	$284.00	$116.56
40510	T	Partial excision of lip	0254	12.45	$603.66	$272.41	$120.73
40520	T	Partial excision of lip	0253	12.02	$582.81	$284.00	$116.56
40525	T	Reconstruct lip with flap	0254	12.45	$603.66	$272.41	$120.73
40527	T	Reconstruct lip with flap	0254	12.45	$603.66	$272.41	$120.73
40530	T	Partial removal of lip	0254	12.45	$603.66	$272.41	$120.73
40650	T	Repair lip	0253	12.02	$582.81	$284.00	$116.56
40652	T	Repair lip	0253	12.02	$582.81	$284.00	$116.56
40654	T	Repair lip	0254	12.45	$603.66	$272.41	$120.73
40700	T	Repair cleft lip/nasal	0256	25.40	$1,231.57	$623.05	$246.31
40701	T	Repair cleft lip/nasal	0256	25.40	$1,231.57	$623.05	$246.31
40702	T	Repair cleft lip/nasal	0256	25.40	$1,231.57	$623.05	$246.31
40720	T	Repair cleft lip/nasal	0256	25.40	$1,231.57	$623.05	$246.31
40761	T	Repair cleft lip/nasal	0256	25.40	$1,231.57	$623.05	$246.31
40799	T	Lip surgery procedure	0253	12.02	$582.81	$284.00	$116.56
40800	T	Drainage of mouth lesion	0251	1.68	$81.46	$27.99	$16.29
40801	T	Drainage of mouth lesion	0252	5.18	$251.16	$114.24	$50.23
40804	T	Removal, foreign body, mouth	0251	1.68	$81.46	$27.99	$16.29
40805	T	Removal, foreign body, mouth	0252	5.18	$251.16	$114.24	$50.23
40806	T	Incision of lip fold	0251	1.68	$81.46	$27.99	$16.29
40808	T	Biopsy of mouth lesion	0251	1.68	$81.46	$27.99	$16.29
40810	T	Excision of mouth lesion	0253	12.02	$582.81	$284.00	$116.56
40812	T	Excise/repair mouth lesion	0252	5.18	$251.16	$114.24	$50.23
40814	T	Excise/repair mouth lesion	0253	12.02	$582.81	$284.00	$116.56
40816	T	Excision of mouth lesion	0253	12.02	$582.81	$284.00	$116.56
40818	T	Excise oral mucosa for graft	0251	1.68	$81.46	$27.99	$16.29
40819	T	Excise lip or cheek fold	0252	5.18	$251.16	$114.24	$50.23
40820	T	Treatment of mouth lesion	0253	12.02	$582.81	$284.00	$116.56
40830	T	Repair mouth laceration	0251	1.68	$81.46	$27.99	$16.29
40831	T	Repair mouth laceration	0253	12.02	$582.81	$284.00	$116.56
40840	T	Reconstruction of mouth	0254	12.45	$603.66	$272.41	$120.73
40842	T	Reconstruction of mouth	0254	12.45	$603.66	$272.41	$120.73
40843	T	Reconstruction of mouth	0254	12.45	$603.66	$272.41	$120.73
40844	T	Reconstruction of mouth	0256	25.40	$1,231.57	$623.05	$246.31
40845	T	Reconstruction of mouth	0256	25.40	$1,231.57	$623.05	$246.31
40899	T	Mouth surgery procedure	0252	5.18	$251.16	$114.24	$50.23
41000	T	Drainage of mouth lesion	0253	12.02	$582.81	$284.00	$116.56
41005	T	Drainage of mouth lesion	0251	1.68	$81.46	$27.99	$16.29
41006	T	Drainage of mouth lesion	0253	12.02	$582.81	$284.00	$116.56
41007	T	Drainage of mouth lesion	0253	12.02	$582.81	$284.00	$116.56
41008	T	Drainage of mouth lesion	0253	12.02	$582.81	$284.00	$116.56
41009	T	Drainage of mouth lesion	0251	1.68	$81.46	$27.99	$16.29
41010	T	Incision of tongue fold	0253	12.02	$582.81	$284.00	$116.56
41015	T	Drainage of mouth lesion	0252	5.18	$251.16	$114.24	$50.23
41016	T	Drainage of mouth lesion	0253	12.02	$582.81	$284.00	$116.56
41017	T	Drainage of mouth lesion	0253	12.02	$582.81	$284.00	$116.56
41018	T	Drainage of mouth lesion	0253	12.02	$582.81	$284.00	$116.56
41100	T	Biopsy of tongue	0252	5.18	$251.16	$114.24	$50.23
41105	T	Biopsy of tongue	0253	12.02	$582.81	$284.00	$116.56
41108	T	Biopsy of floor of mouth	0252	5.18	$251.16	$114.24	$50.23
41110	T	Excision of tongue lesion	0253	12.02	$582.81	$284.00	$116.56
41112	T	Excision of tongue lesion	0253	12.02	$582.81	$284.00	$116.56
41113	T	Excision of tongue lesion	0253	12.02	$582.81	$284.00	$116.56
41114	T	Excision of tongue lesion	0254	12.45	$603.66	$272.41	$120.73
41115	T	Excision of tongue fold	0253	12.02	$582.81	$284.00	$116.56
41116	T	Excision of mouth lesion	0253	12.02	$582.81	$284.00	$116.56
41120	T	Partial removal of tongue	0256	25.40	$1,231.57	$623.05	$246.31
41130	C	Partial removal of tongue					
41135	C	Tongue and neck surgery					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
41140	C	Removal of tongue					
41145	C	Tongue removal, neck surgery					
41150	C	Tongue, mouth, jaw surgery					
41153	C	Tongue, mouth, neck surgery					
41155	C	Tongue, jaw, & neck surgery					
41250	T	Repair tongue laceration	0251	1.68	$81.46	$27.99	$16.29
41251	T	Repair tongue laceration	0253	12.02	$582.81	$284.00	$116.56
41252	T	Repair tongue laceration	0253	12.02	$582.81	$284.00	$116.56
41500	T	Fixation of tongue	0253	12.02	$582.81	$284.00	$116.56
41510	T	Tongue to lip surgery	0253	12.02	$582.81	$284.00	$116.56
41520	T	Reconstruction, tongue fold	0253	12.02	$582.81	$284.00	$116.56
41599	T	Tongue and mouth surgery	0251	1.68	$81.46	$27.99	$16.29
41800	T	Drainage of gum lesion	0251	1.68	$81.46	$27.99	$16.29
41805	T	Removal foreign body, gum	0253	12.02	$582.81	$284.00	$116.56
41806	T	Removal foreign body, jawbone	0253	12.02	$582.81	$284.00	$116.56
41820	T	Excision, gum, each quadrant	0252	5.18	$251.16	$114.24	$50.23
41821	T	Excision of gum flap	0252	5.18	$251.16	$114.24	$50.23
41822	T	Excision of gum lesion	0253	12.02	$582.81	$284.00	$116.56
41823	T	Excision of gum lesion	0253	12.02	$582.81	$284.00	$116.56
41825	T	Excision of gum lesion	0253	12.02	$582.81	$284.00	$116.56
41826	T	Excision of gum lesion	0253	12.02	$582.81	$284.00	$116.56
41827	T	Excision of gum lesion	0253	12.02	$582.81	$284.00	$116.56
41828	T	Excision of gum lesion	0253	12.02	$582.81	$284.00	$116.56
41830	T	Removal of gum tissue	0253	12.02	$582.81	$284.00	$116.56
41850	T	Treatment of gum lesion	0253	12.02	$582.81	$284.00	$116.56
41870	T	Gum graft	0253	12.02	$582.81	$284.00	$116.56
41872	T	Repair gum	0253	12.02	$582.81	$284.00	$116.56
41874	T	Repair tooth socket	0253	12.02	$582.81	$284.00	$116.56
41899	T	Dental surgery procedure	0253	12.02	$582.81	$284.00	$116.56
42000	T	Drainage mouth roof lesion	0251	1.68	$81.46	$27.99	$16.29
42100	T	Biopsy roof of mouth	0252	5.18	$251.16	$114.24	$50.23
42104	T	Excision lesion, mouth roof	0253	12.02	$582.81	$284.00	$116.56
42106	T	Excision lesion, mouth roof	0253	12.02	$582.81	$284.00	$116.56
42107	T	Excision lesion, mouth roof	0254	12.45	$603.66	$272.41	$120.73
42120	T	Remove palate/lesion	0256	25.40	$1,231.57	$623.05	$246.31
42140	T	Excision of uvula	0252	5.18	$251.16	$114.24	$50.23
42145	T	Repair palate, pharynx/uvula	0254	12.45	$603.66	$272.41	$120.73
42160	T	Treatment mouth roof lesion	0253	12.02	$582.81	$284.00	$116.56
42180	T	Repair palate	0251	1.68	$81.46	$27.99	$16.29
42182	T	Repair palate	0256	25.40	$1,231.57	$623.05	$246.31
42200	T	Reconstruct cleft palate	0256	25.40	$1,231.57	$623.05	$246.31
42205	T	Reconstruct cleft palate	0256	25.40	$1,231.57	$623.05	$246.31
42210	T	Reconstruct cleft palate	0256	25.40	$1,231.57	$623.05	$246.31
42215	T	Reconstruct cleft palate	0256	25.40	$1,231.57	$623.05	$246.31
42220	T	Reconstruct cleft palate	0256	25.40	$1,231.57	$623.05	$246.31
42225	T	Reconstruct cleft palate	0256	25.40	$1,231.57	$623.05	$246.31
42226	T	Lengthening of palate	0256	25.40	$1,231.57	$623.05	$246.31
42227	T	Lengthening of palate	0256	25.40	$1,231.57	$623.05	$246.31
42235	T	Repair palate	0254	12.45	$603.66	$272.41	$120.73
42260	T	Repair nose to lip fistula	0253	12.02	$582.81	$284.00	$116.56
42280	T	Preparation, palate mold	0251	1.68	$81.46	$27.99	$16.29
42281	T	Insertion, palate prosthesis	0253	12.02	$582.81	$284.00	$116.56
42299	T	Palate/uvula surgery	0251	1.68	$81.46	$27.99	$16.29
42300	T	Drainage of salivary gland	0253	12.02	$582.81	$284.00	$116.56
42305	T	Drainage of salivary gland	0253	12.02	$582.81	$284.00	$116.56
42310	T	Drainage of salivary gland	0251	1.68	$81.46	$27.99	$16.29
42320	T	Drainage of salivary gland	0251	1.68	$81.46	$27.99	$16.29
42325	T	Create salivary cyst drain	0252	5.18	$251.16	$114.24	$50.23
42326	T	Create salivary cyst drain	0252	5.18	$251.16	$114.24	$50.23
42330	T	Removal of salivary stone	0252	5.18	$251.16	$114.24	$50.23
42335	T	Removal of salivary stone	0253	12.02	$582.81	$284.00	$116.56
42340	T	Removal of salivary stone	0253	12.02	$582.81	$284.00	$116.56
42400	T	Biopsy of salivary gland	0004	1.84	$89.22	$32.57	$17.84
42405	T	Biopsy of salivary gland	0253	12.02	$582.81	$284.00	$116.56
42408	T	Excision of salivary cyst	0253	12.02	$582.81	$284.00	$116.56
42409	T	Drainage of salivary cyst	0253	12.02	$582.81	$284.00	$116.56
42410	T	Excise parotid gland/lesion	0256	25.40	$1,231.57	$623.05	$246.31
42415	T	Excise parotid gland/lesion	0256	25.40	$1,231.57	$623.05	$246.31
42420	T	Excise parotid gland/lesion	0256	25.40	$1,231.57	$623.05	$246.31
42425	T	Excise parotid gland/lesion	0256	25.40	$1,231.57	$623.05	$246.31
42426	C	Excise parotid gland/lesion					
42440	T	Excise submaxillary gland	0256	25.40	$1,231.57	$623.05	$246.31
42450	T	Excise sublingual gland	0253	12.02	$582.81	$284.00	$116.56

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
42500	T	Repair salivary duct	0254	12.45	$603.66	$272.41	$120.73
42505	T	Repair salivary duct	0256	25.40	$1,231.57	$623.05	$246.31
42507	T	Parotid duct diversion	0256	25.40	$1,231.57	$623.05	$246.31
42508	T	Parotid duct diversion	0256	25.40	$1,231.57	$623.05	$246.31
42509	T	Parotid duct diversion	0256	25.40	$1,231.57	$623.05	$246.31
42510	T	Parotid duct diversion	0256	25.40	$1,231.57	$623.05	$246.31
42550	N	Injection for salivary x-ray					
42600	T	Closure of salivary fistula	0253	12.02	$582.81	$284.00	$116.56
42650	T	Dilation of salivary duct	0252	5.18	$251.16	$114.24	$50.23
42660	T	Dilation of salivary duct	0252	5.18	$251.16	$114.24	$50.23
42665	T	Ligation of salivary duct	0253	12.02	$582.81	$284.00	$116.56
42699	T	Salivary surgery procedure	0253	12.02	$582.81	$284.00	$116.56
42700	T	Drainage of tonsil abscess	0251	1.68	$81.46	$27.99	$16.29
42720	T	Drainage of throat abscess	0253	12.02	$582.81	$284.00	$116.56
42725	T	Drainage of throat abscess	0256	25.40	$1,231.57	$623.05	$246.31
42800	T	Biopsy of throat	0252	5.18	$251.16	$114.24	$50.23
42802	T	Biopsy of throat	0253	12.02	$582.81	$284.00	$116.56
42804	T	Biopsy of upper nose/throat	0253	12.02	$582.81	$284.00	$116.56
42806	T	Biopsy of upper nose/throat	0253	12.02	$582.81	$284.00	$116.56
42808	T	Excise pharynx lesion	0253	12.02	$582.81	$284.00	$116.56
42809	T	Remove pharynx foreign body	0251	1.68	$81.46	$27.99	$16.29
42810	T	Excision of neck cyst	0253	12.02	$582.81	$284.00	$116.56
42815	T	Excision of neck cyst	0256	25.40	$1,231.57	$623.05	$246.31
42820	T	Remove tonsils and adenoids	0258	18.62	$902.83	$462.81	$180.57
42821	T	Remove tonsils and adenoids	0258	18.62	$902.83	$462.81	$180.57
42825	T	Removal of tonsils	0258	18.62	$902.83	$462.81	$180.57
42826	T	Removal of tonsils	0258	18.62	$902.83	$462.81	$180.57
42830	T	Removal of adenoids	0258	18.62	$902.83	$462.81	$180.57
42831	T	Removal of adenoids	0258	18.62	$902.83	$462.81	$180.57
42835	T	Removal of adenoids	0258	18.62	$902.83	$462.81	$180.57
42836	T	Removal of adenoids	0258	18.62	$902.83	$462.81	$180.57
42842	C	Extensive surgery of throat					
42844	T	Extensive surgery of throat	0256	25.40	$1,231.57	$623.05	$246.31
42845	C	Extensive surgery of throat					
42860	T	Excision of tonsil tags	0258	18.62	$902.83	$462.81	$180.57
42870	T	Excision of lingual tonsil	0258	18.62	$902.83	$462.81	$180.57
42890	T	Partial removal of pharynx	0256	25.40	$1,231.57	$623.05	$246.31
42892	T	Revision of pharyngeal walls	0256	25.40	$1,231.57	$623.05	$246.31
42894	C	Revision of pharyngeal walls					
42900	T	Repair throat wound	0253	12.02	$582.81	$284.00	$116.56
42950	T	Reconstruction of throat	0254	12.45	$603.66	$272.41	$120.73
42953	C	Repair throat, esophagus					
42955	T	Surgical opening of throat	0254	12.45	$603.66	$272.41	$120.73
42960	T	Control throat bleeding	0250	2.21	$107.16	$38.54	$21.43
42961	C	Control throat bleeding					
42962	T	Control throat bleeding	0256	25.40	$1,231.57	$623.05	$246.31
42970	T	Control nose/throat bleeding	0250	2.21	$107.16	$38.54	$21.43
42971	C	Control nose/throat bleeding					
42972	T	Control nose/throat bleeding	0253	12.02	$582.81	$284.00	$116.56
42999	T	Throat surgery procedure	0252	5.18	$251.16	$114.24	$50.23
43020	T	Incision of esophagus	0254	12.45	$603.66	$272.41	$120.73
43030	C	Throat muscle surgery					
43045	C	Incision of esophagus					
43100	C	Excision of esophagus lesion					
43101	C	Excision of esophagus lesion					
43107	C	Removal of esophagus					
43108	C	Removal of esophagus					
43112	C	Removal of esophagus					
43113	C	Removal of esophagus					
43116	C	Partial removal of esophagus					
43117	C	Partial removal of esophagus					
43118	C	Partial removal of esophagus					
43121	C	Partial removal of esophagus					
43122	C	Partial removal of esophagus					
43123	C	Partial removal of esophagus					
43124	C	Removal of esophagus					
43130	C	Removal of esophagus pouch					
43135	C	Removal of esophagus pouch					
43200	T	Esophagus endoscopy	0141	7.15	$346.66	$184.67	$69.34
43202	T	Esophagus endoscopy, biopsy	0141	7.15	$346.66	$184.67	$69.34
43204	T	Esophagus endoscopy & inject	0141	7.15	$346.66	$184.67	$69.34
43205	T	Esophagus endoscopy/ligation	0141	7.15	$346.66	$184.67	$69.34
43215	T	Esophagus endoscopy	0141	7.15	$346.66	$184.67	$69.34

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
43216	T	Esophagus endoscopy/lesion	0141	7.15	$346.68	$184.67	$69.34
43217	T	Esophagus endoscopy	0141	7.15	$346.68	$184.67	$69.34
43219	T	Esophagus endoscopy	0141	7.15	$346.68	$184.67	$69.34
43220	T	Esoph endoscopy, dilation	0141	7.15	$346.68	$184.67	$69.34
43226	T	Esoph endoscopy, dilation	0141	7.15	$346.68	$184.67	$69.34
43227	T	Esoph endoscopy, repair	0141	7.15	$346.68	$184.67	$69.34
43228	T	Esoph endoscopy, ablation	0141	7.15	$346.68	$184.67	$69.34
43234	T	Upper GI endoscopy, exam	0141	7.15	$346.68	$184.67	$69.34
43235	T	Uppr gi endoscopy, diagnosis	0141	7.15	$346.68	$184.67	$69.34
43239	T	Upper GI endoscopy, biopsy	0141	7.15	$346.68	$184.67	$69.34
43241	T	Upper GI endoscopy with tube	0141	7.15	$346.68	$184.67	$69.34
43243	T	Upper gi endoscopy & inject	0141	7.15	$346.68	$184.67	$69.34
43244	T	Upper GI endoscopy/ligation	0141	7.15	$346.68	$184.67	$69.34
43245	T	Operative upper GI endoscopy	0141	7.15	$346.68	$184.67	$69.34
43246	T	Place gastrostomy tube	0141	7.15	$346.68	$184.67	$69.34
43247	T	Operative upper GI endoscopy	0141	7.15	$346.68	$184.67	$69.34
43248	T	Uppr gi endoscopy/guide wire	0141	7.15	$346.68	$184.67	$69.34
43249	T	Esoph endoscopy, dilation	0141	7.15	$346.68	$184.67	$69.34
43250	T	Upper GI endoscopy/tumor	0141	7.15	$346.68	$184.67	$69.34
43251	T	Operative upper GI endoscopy	0141	7.15	$346.68	$184.67	$69.34
43255	T	Operative upper GI endoscopy	0141	7.15	$346.68	$184.67	$69.34
43258	T	Operative upper GI endoscopy	0141	7.15	$346.68	$184.67	$69.34
43259	T	Endoscopic ultrasound exam	0141	7.15	$346.68	$184.67	$69.34
43260	T	Endo cholangiopancreatograph	0151	10.53	$510.57	$245.46	$102.11
43261	T	Endo cholangiopancreatograph	0151	10.53	$510.57	$245.46	$102.11
43262	T	Endo cholangiopancreatograph	0151	10.53	$510.57	$245.46	$102.11
43263	T	Endo cholangiopancreatograph	0151	10.53	$510.57	$245.46	$102.11
43264	T	Endo cholangiopancreatograph	0151	10.53	$510.57	$245.46	$102.11
43265	T	Endo cholangiopancreatograph	0151	10.53	$510.57	$245.46	$102.11
43267	T	Endo cholangiopancreatograph	0151	10.53	$510.57	$245.46	$102.11
43268	T	Endo cholangiopancreatograph	0151	10.53	$510.57	$245.46	$102.11
43269	T	Endo cholangiopancreatograph	0151	10.53	$510.57	$245.46	$102.11
43271	T	Endo cholangiopancreatograph	0151	10.53	$510.57	$245.46	$102.11
43272	T	Endo cholangiopancreatograph	0151	10.53	$510.57	$245.46	$102.11
43280	T	Laparoscopy, fundoplasty	0132	48.91	$2,371.50	$1,239.22	$474.30
43289	T	Laparoscope proc, esoph	0130	25.36	$1,229.63	$659.53	$245.93
43300	C	Repair of esophagus					
43305	C	Repair esophagus and fistula					
43310	C	Repair of esophagus					
43312	C	Repair esophagus and fistula					
43320	C	Fuse esophagus & stomach					
43324	C	Revise esophagus & stomach					
43325	C	Revise esophagus & stomach					
43326	C	Revise esophagus & stomach					
43330	C	Repair of esophagus					
43331	C	Repair of esophagus					
43340	C	Fuse esophagus & intestine					
43341	C	Fuse esophagus & intestine					
43350	C	Surgical opening, esophagus					
43351	C	Surgical opening, esophagus					
43352	C	Surgical opening, esophagus					
43360	C	Gastrointestinal repair					
43361	C	Gastrointestinal repair					
43400	C	Ligate esophagus veins					
43401	C	Esophagus surgery for veins					
43405	C	Ligate/staple esophagus					
43410	C	Repair esophagus wound					
43415	C	Repair esophagus wound					
43420	C	Repair esophagus opening					
43425	C	Repair esophagus opening					
43450	T	Dilate esophagus	0140	4.74	$229.83	$107.24	$45.97
43453	T	Dilate esophagus	0140	4.74	$229.83	$107.24	$45.97
43456	T	Dilate esophagus	0140	4.74	$229.83	$107.24	$45.97
43458	T	Dilate esophagus	0140	4.74	$229.83	$107.24	$45.97
43460	C	Pressure treatment esophagus					
43496	C	Free jejunum flap, microvasc					
43499	T	Esophagus surgery procedure	0140	4.74	$229.83	$107.24	$45.97
43500	C	Surgical opening of stomach					
43501	C	Surgical repair of stomach					
43502	C	Surgical repair of stomach					
43510	C	Surgical opening of stomach					
43520	C	Incision of pyloric muscle					
43600	T	Biopsy of stomach	0141	7.15	$346.68	$184.67	$69.34

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
43605	C	Biopsy of stomach					
43610	C	Excision of stomach lesion					
43611	C	Excision of stomach lesion					
43620	C	Removal of stomach					
43621	C	Removal of stomach					
43622	C	Removal of stomach					
43631	C	Removal of stomach, partial					
43632	C	Removal of stomach, partial					
43633	C	Removal of stomach, partial					
43634	C	Removal of stomach, partial					
43635	C	Removal of stomach, partial					
43638	C	Removal of stomach, partial					
43639	C	Removal of stomach, partial					
43640	C	Vagotomy & pylorus repair					
43641	C	Vagotomy & pylorus repair					
43651	T	Laparoscopy, vagus nerve	0132	48.91	$2,371.50	$1,239.22	$474.30
43652	T	Laparoscopy, vagus nerve	0132	48.91	$2,371.50	$1,239.22	$474.30
43653	T	Laparoscopy, gastrostomy	0131	41.81	$2,027.24	$1,089.88	$405.45
43659	T	Laparoscope proc, stom	0130	25.36	$1,229.63	$659.53	$245.93
43750	T	Place gastrostomy tube	0141	7.15	$346.68	$184.67	$69.34
43760	T	Change gastrostomy tube	0121	2.36	$114.43	$52.53	$22.89
43761	T	Reposition gastrostomy tube	0121	2.36	$114.43	$52.53	$22.89
43800	C	Reconstruction of pylorus					
43810	C	Fusion of stomach and bowel					
43820	C	Fusion of stomach and bowel					
43825	C	Fusion of stomach and bowel					
43830	T	Place gastrostomy tube	0141	7.15	$346.68	$184.67	$69.34
43831	T	Place gastrostomy tube	0141	7.15	$346.68	$184.67	$69.34
43832	C	Place gastrostomy tube					
43840	C	Repair of stomach lesion					
43842	C	Gastroplasty for obesity					
43843	C	Gastroplasty for obesity					
43846	C	Gastric bypass for obesity					
43847	C	Gastric bypass for obesity					
43848	C	Revision gastroplasty					
43850	C	Revise stomach-bowel fusion					
43855	C	Revise stomach-bowel fusion					
43860	C	Revise stomach-bowel fusion					
43865	C	Revise stomach-bowel fusion					
43870	T	Repair stomach opening	0025	3.74	$181.34	$70.66	$36.27
43880	C	Repair stomach-bowel fistula					
43999	T	Stomach surgery procedure	0121	2.36	$114.43	$52.53	$22.89
44005	C	Freeing of bowel adhesion					
44010	C	Incision of small bowel					
44015	C	Insert needle cath bowel					
44020	C	Exploration of small bowel					
44021	C	Decompress small bowel					
44025	C	Incision of large bowel					
44050	C	Reduce bowel obstruction					
44055	C	Correct malrotation of bowel					
44100	T	Biopsy of bowel	0141	7.15	$346.68	$184.67	$69.34
44110	C	Excision of bowel lesion(s)					
44111	C	Excision of bowel lesion(s)					
44120	C	Removal of small intestine					
44121	C	Removal of small intestine					
44125	C	Removal of small intestine					
44130	C	Bowel to bowel fusion					
44139	C	Mobilization of colon					
44140	C	Partial removal of colon					
44141	C	Partial removal of colon					
44143	C	Partial removal of colon					
44144	C	Partial removal of colon					
44145	C	Partial removal of colon					
44146	C	Partial removal of colon					
44147	C	Partial removal of colon					
44150	C	Removal of colon					
44151	C	Removal of colon/ileostomy					
44152	C	Removal of colon/ileostomy					
44153	C	Removal of colon/ileostomy					
44155	C	Removal of colon/ileostomy					
44156	C	Removal of colon/ileostomy					
44160	C	Removal of colon					
44200	T	Laparoscopy, enterolysis	0131	41.81	$2,027.24	$1,089.88	$405.45

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
44201	T	Laparoscopy, jejunostomy	0131	41.81	$2,027.24	$1,089.86	$405.45
44202	C	Laparo, resect intestine					
44209	T	Laparoscope proc, intestine	0130	25.36	$1,229.63	$659.53	$245.93
44300	C	Open bowel to skin					
44310	C	Ileostomy/jejunostomy					
44312	T	Revision of ileostomy	0026	12.11	$587.18	$277.92	$117.44
44314	C	Revision of ileostomy					
44316	C	Devise bowel pouch					
44320	C	Colostomy					
44322	C	Colostomy with biopsies					
44340	T	Revision of colostomy	0026	12.11	$587.18	$277.92	$117.44
44345	C	Revision of colostomy					
44346	C	Revision of colostomy					
44360	T	Small bowel endoscopy	0142	7.45	$361.23	$162.42	$72.25
44361	T	Small bowel endoscopy/biopsy	0142	7.45	$361.23	$162.42	$72.25
44363	T	Small bowel endoscopy	0142	7.45	$361.23	$162.42	$72.25
44364	T	Small bowel endoscopy	0142	7.45	$361.23	$162.42	$72.25
44365	T	Small bowel endoscopy	0142	7.45	$361.23	$162.42	$72.25
44366	T	Small bowel endoscopy	0142	7.45	$361.23	$162.42	$72.25
44369	T	Small bowel endoscopy	0142	7.45	$361.23	$162.42	$72.25
44372	T	Small bowel endoscopy	0142	7.45	$361.23	$162.42	$72.25
44373	T	Small bowel endoscopy	0142	7.45	$361.23	$162.42	$72.25
44376	T	Small bowel endoscopy	0142	7.45	$361.23	$162.42	$72.25
44377	T	Small bowel endoscopy/biopsy	0142	7.45	$361.23	$162.42	$72.25
44378	T	Small bowel endoscopy	0142	7.45	$361.23	$162.42	$72.25
44380	T	Small bowel endoscopy	0142	7.45	$361.23	$162.42	$72.25
44382	T	Small bowel endoscopy	0142	7.45	$361.23	$162.42	$72.25
44385	T	Endoscopy of bowel pouch	0143	7.98	$386.93	$199.12	$77.39
44386	T	Endoscopy, bowel pouch/biop	0143	7.98	$386.93	$199.12	$77.39
44388	T	Colon endoscopy	0143	7.98	$386.93	$199.12	$77.39
44389	T	Colonoscopy with biopsy	0143	7.98	$386.93	$199.12	$77.39
44390	T	Colonoscopy for foreign body	0143	7.98	$386.93	$199.12	$77.39
44391	T	Colonoscopy for bleeding	0143	7.98	$386.93	$199.12	$77.39
44392	T	Colonoscopy & polypectomy	0143	7.98	$386.93	$199.12	$77.39
44393	T	Colonoscopy, lesion removal	0143	7.98	$386.93	$199.12	$77.39
44394	T	Colonoscopy w/snare	0143	7.98	$386.93	$199.12	$77.39
44500	C	Intro, gastrointestinal tube					
44602	C	Suture, small intestine					
44603	C	Suture, small intestine					
44604	C	Suture, large intestine					
44605	C	Repair of bowel lesion					
44615	C	Intestinal stricturoplasty					
44620	C	Repair bowel opening					
44625	C	Repair bowel opening					
44626	C	Repair bowel opening					
44640	C	Repair bowel-skin fistula					
44650	C	Repair bowel fistula					
44660	C	Repair bowel-bladder fistula					
44661	C	Repair bowel-bladder fistula					
44680	C	Surgical revision, intestine					
44700	C	Suspend bowel w/prosthesis					
44799	T	Intestine surgery procedure	0142	7.45	$361.23	$162.42	$72.25
44800	C	Excision of bowel pouch					
44820	C	Excision of mesentery lesion					
44850	C	Repair of mesentery					
44899	C	Bowel surgery procedure					
44900	C	Drain app abecess, open					
44901	C	Drain app abecess, percut					
44950	C	Appendectomy					
44955	C	Appendectomy add-on					
44960	C	Appendectomy					
44970	T	Laparoscopy, appendectomy	0130	25.36	$1,229.63	$659.53	$245.93
44979	T	Laparoscope proc, app	0130	25.36	$1,229.63	$659.53	$245.93
45000	T	Drainage of pelvic abecess	0149	12.86	$623.54	$293.06	$124.71
45005	T	Drainage of rectal abecess	0148	2.34	$113.46	$43.59	$22.69
45020	T	Drainage of rectal abecess	0149	12.86	$623.54	$293.06	$124.71
45100	T	Biopsy of rectum	0149	12.86	$623.54	$293.06	$124.71
45108	T	Removal of anorectal lesion	0150	17.68	$857.25	$437.12	$171.45
45110	C	Removal of rectum					
45111	C	Partial removal of rectum					
45112	C	Removal of rectum					
45113	C	Partial proctectomy					
45114	C	Partial removal of rectum					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
45116	C	Partial removal of rectum					
45119	C	Remove rectum w/reservoir					
45120	C	Removal of rectum					
45121	C	Removal of rectum and colon					
45123	C	Partial proctectomy					
45126	C	Pelvic exenteration					
45130	C	Excision of rectal prolapse					
45135	C	Excision of rectal prolapse					
45150	T	Excision of rectal stricture	0150	17.68	$857.25	$437.12	$171.45
45160	T	Excision of rectal lesion	0150	17.68	$857.25	$437.12	$171.45
45170	T	Excision of rectal lesion	0150	17.68	$857.25	$437.12	$171.45
45190	T	Destruction, rectal tumor	0150	17.68	$857.25	$437.12	$171.45
45300	T	Proctosigmoidoscopy	0146	2.83	$137.22	$65.15	$27.44
45303	T	Proctosigmoidoscopy	0146	2.83	$137.22	$65.15	$27.44
45305	T	Proctosigmoidoscopy & biopsy	0146	2.83	$137.22	$65.15	$27.44
45307	T	Proctosigmoidoscopy	0146	2.83	$137.22	$65.15	$27.44
45308	T	Proctosigmoidoscopy	0147	6.26	$303.53	$149.11	$60.71
45309	T	Proctosigmoidoscopy	0147	6.26	$303.53	$149.11	$60.71
45315	T	Proctosigmoidoscopy	0147	6.26	$303.53	$149.11	$60.71
45317	T	Proctosigmoidoscopy	0146	2.83	$137.22	$65.15	$27.44
45320	T	Proctosigmoidoscopy	0147	6.26	$303.53	$149.11	$60.71
45321	T	Proctosigmoidoscopy	0147	6.26	$303.53	$149.11	$60.71
45330	T	Diagnostic sigmoidoscopy	0146	2.83	$137.22	$65.15	$27.44
45331	T	Sigmoidoscopy and biopsy	0146	2.83	$137.22	$65.15	$27.44
45332	T	Sigmoidoscopy	0146	2.83	$137.22	$65.15	$27.44
45333	T	Sigmoidoscopy & polypectomy	0147	6.26	$303.53	$149.11	$60.71
45334	T	Sigmoidoscopy for bleeding	0147	6.26	$303.53	$149.11	$60.71
45337	T	Sigmoidoscopy & decompress	0147	6.26	$303.53	$149.11	$60.71
45338	T	Sigmoidoscopy	0147	6.26	$303.53	$149.11	$60.71
45339	T	Sigmoidoscopy	0147	6.26	$303.53	$149.11	$60.71
45355	T	Surgical colonoscopy	0143	7.96	$386.93	$199.12	$77.39
45378	T	Diagnostic colonoscopy	0143	7.96	$386.93	$199.12	$77.39
45379	T	Colonoscopy	0143	7.96	$386.93	$199.12	$77.39
45380	T	Colonoscopy and biopsy	0143	7.96	$386.93	$199.12	$77.39
45382	T	Colonoscopy/control bleeding	0143	7.96	$386.93	$199.12	$77.39
45383	T	Lesion removal colonoscopy	0143	7.96	$386.93	$199.12	$77.39
45384	T	Colonoscopy	0143	7.96	$386.93	$199.12	$77.39
45385	T	Lesion removal colonoscopy	0143	7.96	$386.93	$199.12	$77.39
45500	T	Repair of rectum	0150	17.68	$857.25	$437.12	$171.45
45505	T	Repair of rectum	0150	17.68	$857.25	$437.12	$171.45
45520	T	Treatment of rectal prolapse	0098	1.19	$57.70	$20.88	$11.54
45540	C	Correct rectal prolapse					
45541	C	Correct rectal prolapse					
45550	C	Repair rectum/remove sigmoid					
45560	T	Repair of rectocele	0150	17.68	$857.25	$437.12	$171.45
45562	C	Exploration/repair of rectum					
45563	C	Exploration/repair of rectum					
45800	C	Repair rect/bladder fistula					
45805	C	Repair fistula w/colostomy					
45820	C	Repair rectourethral fistula					
45825	C	Repair fistula w/colostomy					
45900	T	Reduction of rectal prolapse	0148	2.34	$113.46	$43.59	$22.69
45905	T	Dilation of anal sphincter	0149	12.86	$623.54	$293.06	$124.71
45910	T	Dilation of rectal narrowing	0149	12.86	$623.54	$293.06	$124.71
45915	T	Remove rectal obstruction	0148	2.34	$113.46	$43.59	$22.69
45999	T	Rectum surgery procedure	0148	2.34	$113.46	$43.59	$22.69
46030	T	Removal of rectal marker	0149	12.86	$623.54	$293.06	$124.71
46040	T	Incision of rectal abscess	0148	2.34	$113.46	$43.59	$22.69
46045	T	Incision of rectal abscess	0150	17.68	$857.25	$437.12	$171.45
46050	T	Incision of anal abscess	0148	2.34	$113.46	$43.59	$22.69
46060	T	Incision of rectal abscess	0150	17.68	$857.25	$437.12	$171.45
46070	T	Incision of anal septum	0148	2.34	$113.46	$43.59	$22.69
46080	T	Incision of anal sphincter	0149	12.86	$623.54	$293.06	$124.71
46083	T	Incise external hemorrhoid	0148	2.34	$113.46	$43.59	$22.69
46200	T	Removal of anal fissure	0150	17.68	$857.25	$437.12	$171.45
46210	T	Removal of anal crypt	0149	12.86	$623.54	$293.06	$124.71
46211	T	Removal of anal crypts	0150	17.68	$857.25	$437.12	$171.45
46220	T	Removal of anal tab	0149	12.86	$623.54	$293.06	$124.71
46221	T	Ligation of hemorrhoid(s)	0148	2.34	$113.46	$43.59	$22.69
46230	T	Removal of anal tabs	0149	12.86	$623.54	$293.06	$124.71
46250	T	Hemorrhoidectomy	0150	17.68	$857.25	$437.12	$171.45
46255	T	Hemorrhoidectomy	0150	17.68	$857.25	$437.12	$171.45
46257	T	Remove hemorrhoids & fissure	0150	17.68	$857.25	$437.12	$171.45

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
46258	T	Remove hemorrhoids & fistula	0150	17.68	$857.25	$437.12	$171.45
46260	T	Hemorrhoidectomy	0150	17.68	$857.25	$437.12	$171.45
46261	T	Remove hemorrhoids & fissure	0150	17.68	$857.25	$437.12	$171.45
46262	T	Remove hemorrhoids & fistula	0150	17.68	$857.25	$437.12	$171.45
46270	T	Removal of anal fistula	0150	17.68	$857.25	$437.12	$171.45
46275	T	Removal of anal fistula	0150	17.68	$857.25	$437.12	$171.45
46280	T	Removal of anal fistula	0150	17.68	$857.25	$437.12	$171.45
46285	T	Removal of anal fistula	0150	17.68	$857.25	$437.12	$171.45
46288	T	Repair anal fistula	0150	17.68	$857.25	$437.12	$171.45
46320	T	Removal of hemorrhoid clot	0148	2.34	$113.46	$43.59	$22.69
46500	T	Injection into hemorrhoids	0148	2.34	$113.46	$43.59	$22.69
46600	N	Diagnostic anoscopy					
46604	T	Anoscopy and dilation	0144	2.23	$108.13	$49.32	$21.63
46606	T	Anoscopy and biopsy	0145	7.46	$361.71	$179.39	$72.34
46608	T	Anoscopy/remove for body	0144	2.23	$108.13	$49.32	$21.63
46610	T	Anoscopy/remove lesion	0145	7.46	$361.71	$179.39	$72.34
46611	T	Anoscopy	0145	7.46	$361.71	$179.39	$72.34
46612	T	Anoscopy/remove lesions	0145	7.46	$361.71	$179.39	$72.34
46614	T	Anoscopy/control bleeding	0145	7.46	$361.71	$179.39	$72.34
46615	T	Anoscopy	0145	7.46	$361.71	$179.39	$72.34
46700	T	Repair of anal stricture	0150	17.68	$857.25	$437.12	$171.45
46705	C	Repair of anal stricture					
46715	C	Repair of anovaginal fistula					
46716	C	Repair of anovaginal fistula					
46730	C	Construction of absent anus					
46735	C	Construction of absent anus					
46740	C	Construction of absent anus					
46742	C	Repair of imperforated anus					
46744	C	Repair of cloacal anomaly					
46746	C	Repair of cloacal anomaly					
46748	C	Repair of cloacal anomaly					
46750	T	Repair of anal sphincter	0150	17.68	$857.25	$437.12	$171.45
46751	C	Repair of anal sphincter					
46753	T	Reconstruction of anus	0150	17.68	$857.25	$437.12	$171.45
46754	T	Removal of suture from anus	0149	12.86	$623.54	$293.06	$124.71
46760	T	Repair of anal sphincter	0150	17.68	$857.25	$437.12	$171.45
46761	T	Repair of anal sphincter	0150	17.68	$857.25	$437.12	$171.45
46762	T	Implant artificial sphincter	0150	17.68	$857.25	$437.12	$171.45
46900	T	Destruction, anal lesion(s)	0016	3.53	$171.16	$74.67	$34.23
46910	T	Destruction, anal lesion(s)	0016	3.53	$171.16	$74.67	$34.23
46916	T	Cryosurgery, anal lesion(s)	0016	3.53	$171.16	$74.67	$34.23
46917	T	Laser surgery, anal lesions	0014	1.50	$72.73	$24.55	$14.55
46922	T	Excision of anal lesion(s)	0017	12.45	$603.66	$289.16	$120.73
46924	T	Destruction, anal lesion(s)	0017	12.45	$603.66	$289.16	$120.73
46934	T	Destruction of hemorrhoids	0148	2.34	$113.46	$43.59	$22.69
46935	T	Destruction of hemorrhoids	0148	2.34	$113.46	$43.59	$22.69
46936	T	Destruction of hemorrhoids	0149	12.86	$623.54	$293.06	$124.71
46937	T	Cryotherapy of rectal lesion	0150	17.68	$857.25	$437.12	$171.45
46938	T	Cryotherapy of rectal lesion	0150	17.68	$857.25	$437.12	$171.45
46940	T	Treatment of anal fissure	0149	12.86	$623.54	$293.06	$124.71
46942	T	Treatment of anal fissure	0149	12.86	$623.54	$293.06	$124.71
46945	T	Ligation of hemorrhoids	0148	2.34	$113.46	$43.59	$22.69
46946	T	Ligation of hemorrhoids	0148	2.34	$113.46	$43.59	$22.69
46999	T	Anus surgery procedure	0149	12.86	$623.54	$293.06	$124.71
47000	T	Needle biopsy of liver	0005	5.41	$262.32	$119.75	$52.46
47001	C	Needle biopsy, liver add-on					
47010	C	Open drainage, liver lesion					
47011	C	Percut drain, liver lesion					
47015	C	Inject/aspirate liver cyst					
47100	C	Wedge biopsy of liver					
47120	C	Partial removal of liver					
47122	C	Extensive removal of liver					
47125	C	Partial removal of liver					
47130	C	Partial removal of liver					
47133	C	Removal of donor liver					
47134	C	Partial removal, donor liver					
47135	C	Transplantation of liver					
47136	C	Transplantation of liver					
47300	C	Surgery for liver lesion					
47350	C	Repair liver wound					
47360	C	Repair liver wound					
47361	C	Repair liver wound					
47362	C	Repair liver wound					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
47399	T	Liver surgery procedure	0005	5.41	$262.32	$119.75	$52.46
47400	C	Incision of liver duct					
47420	C	Incision of bile duct					
47425	C	Incision of bile duct					
47460	C	Incise bile duct sphincter					
47480	C	Incision of gallbladder					
47490	C	Incision of gallbladder					
47500	N	Injection for liver x-rays					
47505	N	Injection for liver x-rays					
47510	T	Insert catheter, bile duct	0152	8.22	$398.58	$207.38	$79.71
47511	T	Insert bile duct drain	0152	8.22	$398.58	$207.38	$79.71
47525	T	Change bile duct catheter	0122	5.04	$244.37	$114.93	$48.88
47530	T	Revise/reinsert bile tube	0121	2.36	$114.43	$52.53	$22.89
47550	C	Bile duct endoscopy add-on					
47552	T	Biliary endoscopy thru skin	0152	8.22	$398.58	$207.38	$79.71
47553	T	Biliary endoscopy thru skin	0152	8.22	$398.58	$207.38	$79.71
47554	T	Biliary endoscopy thru skin	0152	8.22	$398.58	$207.38	$79.71
47555	T	Biliary endoscopy thru skin	0152	8.22	$398.58	$207.38	$79.71
47556	T	Biliary endoscopy thru skin	0152	8.22	$398.58	$207.38	$79.71
47560	T	Laparoscopy w/cholangio	0130	25.36	$1,229.63	$659.53	$245.93
47561	T	Laparo w/cholangio/biopsy	0130	25.36	$1,229.63	$659.53	$245.93
47562	T	Laparoscopic cholecystectomy	0131	41.81	$2,027.24	$1,089.88	$405.45
47563	T	Laparo cholecystectomy/graph	0131	41.81	$2,027.24	$1,089.88	$405.45
47564	T	Laparo cholecystectomy/explr	0131	41.81	$2,027.24	$1,089.88	$405.45
47570	T	Laparo cholecystoenterostomy	0131	41.81	$2,027.24	$1,089.88	$405.45
47579	T	Laparoscope proc, biliary	0130	25.36	$1,229.63	$659.53	$245.93
47600	C	Removal of gallbladder					
47605	C	Removal of gallbladder					
47610	C	Removal of gallbladder					
47612	C	Removal of gallbladder					
47620	C	Removal of gallbladder					
47630	T	Remove bile duct stone	0152	8.22	$398.58	$207.38	$79.71
47700	C	Exploration of bile ducts					
47701	C	Bile duct revision					
47711	C	Excision of bile duct tumor					
47712	C	Excision of bile duct tumor					
47715	C	Excision of bile duct cyst					
47716	C	Fusion of bile duct cyst					
47720	C	Fuse gallbladder & bowel					
47721	C	Fuse upper gi structures					
47740	C	Fuse gallbladder & bowel					
47741	C	Fuse gallbladder & bowel					
47760	C	Fuse bile ducts and bowel					
47765	C	Fuse liver ducts & bowel					
47780	C	Fuse bile ducts and bowel					
47785	C	Fuse bile ducts and bowel					
47800	C	Reconstruction of bile ducts					
47801	C	Placement, bile duct support					
47802	C	Fuse liver duct & intestine					
47900	C	Suture bile duct injury					
47999	T	Bile tract surgery procedure	0121	2.36	$114.43	$52.53	$22.89
48000	C	Drainage of abdomen					
48001	C	Placement of drain, pancreas					
48005	C	Resect/debride pancreas					
48020	C	Removal of pancreatic stone					
48100	C	Biopsy of pancreas					
48102	T	Needle biopsy, pancreas	0005	5.41	$262.32	$119.75	$52.46
48120	C	Removal of pancreas lesion					
48140	C	Partial removal of pancreas					
48145	C	Partial removal of pancreas					
48146	C	Pancreatectomy					
48148	C	Removal of pancreatic duct					
48150	C	Partial removal of pancreas					
48152	C	Pancreatectomy					
48153	C	Pancreatectomy					
48154	C	Pancreatectomy					
48155	C	Removal of pancreas					
48160	E	Pancreas removal/transplant					
48180	C	Fuse pancreas and bowel					
48400	C	Injection, intraop add-on					
48500	C	Surgery of pancreas cyst					
48510	C	Drain pancreatic pseudocyst					
48511	C	Drain pancreatic pseudocyst					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
48520	C	Fuse pancreas cyst and bowel					
48540	C	Fuse pancreas cyst and bowel					
48545	C	Pancreatorrhaphy					
48547	C	Duodenal exclusion					
48550	E	Donor pancreatectomy					
48554	E	Transpl allograft pancreas					
48556	C	Removal, allograft pancreas					
48999	T	Pancreas surgery procedure	0005	5.41	$262.32	$119.75	$52.46
49000	C	Exploration of abdomen					
49002	C	Reopening of abdomen					
49010	C	Exploration behind abdomen					
49020	C	Drain abdominal abscess					
49021	C	Drain abdominal abscess					
49040	C	Drain, open, abdom abscess					
49041	C	Drain, percut, abdom abscess					
49060	C	Drain, open, retrop abscess					
49061	C	Drain, percut, retroper absc					
49062	C	Drain to peritoneal cavity					
49080	T	Puncture, peritoneal cavity	0070	3.64	$176.49	$79.60	$35.30
49081	T	Removal of abdominal fluid	0070	3.64	$176.49	$79.60	$35.30
49085	T	Remove abdomen foreign body	0153	19.62	$951.32	$496.31	$190.26
49180	T	Biopsy, abdominal mass	0005	5.41	$262.32	$119.75	$52.46
49200	C	Removal of abdominal lesion					
49201	C	Removal of abdominal lesion					
49215	C	Excise sacral spine tumor					
49220	C	Multiple surgery, abdomen					
49250	T	Excision of umbilicus	0153	19.62	$951.32	$496.31	$190.26
49255	C	Removal of omentum					
49320	T	Diag laparo separate proc	0130	25.36	$1,229.63	$859.53	$245.93
49321	T	Laparoscopy, biopsy	0130	25.36	$1,229.63	$859.53	$245.93
49322	T	Laparoscopy, aspiration	0130	25.36	$1,229.63	$859.53	$245.93
49323	T	Laparo drain lymphocele	0130	25.36	$1,229.63	$859.53	$245.93
49329	T	Laparo proc, abdm/per/oment	0130	25.36	$1,229.63	$859.53	$245.93
49400	N	Air injection into abdomen					
49420	T	Insert abdominal drain	0153	19.62	$951.32	$496.31	$190.26
49421	T	Insert abdominal drain	0153	19.62	$951.32	$496.31	$190.26
49422	T	Remove perm cannula/catheter	0123	13.89	$673.49	$350.75	$134.70
49423	T	Exchange drainage catheter	0153	19.62	$951.32	$496.31	$190.26
49424	N	Assess cyst, contrast inject					
49425	C	Insert abdomen-venous drain					
49426	T	Revise abdomen-venous shunt	0153	19.62	$951.32	$496.31	$190.26
49427	N	Injection, abdominal shunt					
49428	C	Ligation of shunt					
49429	T	Removal of shunt	0123	13.89	$673.49	$350.75	$134.70
49495	T	Repair inguinal hernia, init	0154	22.43	$1,087.57	$556.98	$217.51
49496	T	Repair inguinal hernia, init	0154	22.43	$1,087.57	$556.98	$217.51
49500	T	Repair inguinal hernia	0154	22.43	$1,087.57	$556.98	$217.51
49501	T	Repair inguinal hernia, init	0154	22.43	$1,087.57	$556.98	$217.51
49505	T	Repair inguinal hernia	0154	22.43	$1,087.57	$556.98	$217.51
49507	T	Repair inguinal hernia	0154	22.43	$1,087.57	$556.98	$217.51
49520	T	Rerepair inguinal hernia	0154	22.43	$1,087.57	$556.98	$217.51
49521	T	Repair inguinal hernia, rec	0154	22.43	$1,087.57	$556.98	$217.51
49525	T	Repair inguinal hernia	0154	22.43	$1,087.57	$556.98	$217.51
49540	T	Repair lumbar hernia	0154	22.43	$1,087.57	$556.98	$217.51
49550	T	Repair femoral hernia	0154	22.43	$1,087.57	$556.98	$217.51
49553	T	Repair femoral hernia, init	0154	22.43	$1,087.57	$556.98	$217.51
49555	T	Repair femoral hernia	0154	22.43	$1,087.57	$556.98	$217.51
49557	T	Repair femoral hernia, recur	0154	22.43	$1,087.57	$556.98	$217.51
49560	T	Repair abdominal hernia	0154	22.43	$1,087.57	$556.98	$217.51
49561	T	Repair incisional hernia	0154	22.43	$1,087.57	$556.98	$217.51
49565	T	Rerepair abdominal hernia	0154	22.43	$1,087.57	$556.98	$217.51
49566	T	Repair incisional hernia	0154	22.43	$1,087.57	$556.98	$217.51
49568	T	Hernia repair w/mesh	0154	22.43	$1,087.57	$556.98	$217.51
49570	T	Repair epigastric hernia	0154	22.43	$1,087.57	$556.98	$217.51
49572	T	Repair epigastric hernia	0154	22.43	$1,087.57	$556.98	$217.51
49580	T	Repair umbilical hernia	0154	22.43	$1,087.57	$556.98	$217.51
49582	T	Repair umbilical hernia	0154	22.43	$1,087.57	$556.98	$217.51
49585	T	Repair umbilical hernia	0154	22.43	$1,087.57	$556.98	$217.51
49587	T	Repair umbilical hernia	0154	22.43	$1,087.57	$556.98	$217.51
49590	T	Repair abdominal hernia	0154	22.43	$1,087.57	$556.98	$217.51
49600	T	Repair umbilical lesion	0154	22.43	$1,087.57	$556.98	$217.51
49605	C	Repair umbilical lesion					
49606	C	Repair umbilical lesion					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
49610	C	Repair umbilical lesion					
49611	C	Repair umbilical lesion					
49650	T	Laparo hernia repair initial	0131	41.81	$2,027.24	$1,089.88	$405.45
49651	T	Laparo hernia repair recur	0131	41.81	$2,027.24	$1,089.88	$405.45
49659	T	Laparo proc, hernia repair	0131	41.81	$2,027.24	$1,089.88	$405.45
49900	C	Repair of abdominal wall					
49905	C	Omental flap					
49906	C	Free omental flap, microvasc					
49999	T	Abdomen surgery procedure	0121	2.36	$114.43	$52.53	$22.89
50010	C	Exploration of kidney					
50020	C	Renal abscess, open drain					
50021	C	Renal abscess, percut drain					
50040	C	Drainage of kidney					
50045	C	Exploration of kidney					
50060	C	Removal of kidney stone					
50065	C	Incision of kidney					
50070	C	Incision of kidney					
50075	C	Removal of kidney stone					
50080	T	Removal of kidney stone	0163	28.98	$1,405.16	$792.58	$281.03
50081	T	Removal of kidney stone	0163	28.98	$1,405.16	$792.58	$281.03
50100	C	Revise kidney blood vessels					
50120	C	Exploration of kidney					
50125	C	Explore and drain kidney					
50130	C	Removal of kidney stone					
50135	C	Exploration of kidney					
50200	T	Biopsy of kidney	0005	5.41	$262.32	$119.75	$52.46
50205	C	Biopsy of kidney					
50220	C	Removal of kidney					
50225	C	Removal of kidney					
50230	C	Removal of kidney					
50234	C	Removal of kidney & ureter					
50236	C	Removal of kidney & ureter					
50240	C	Partial removal of kidney					
50280	C	Removal of kidney lesion					
50290	C	Removal of kidney lesion					
50300	C	Removal of donor kidney					
50320	C	Removal of donor kidney					
50340	C	Removal of kidney					
50360	C	Transplantation of kidney					
50365	C	Transplantation of kidney					
50370	C	Remove transplanted kidney					
50380	C	Reimplantation of kidney					
50390	T	Drainage of kidney lesion	0005	5.41	$262.32	$119.75	$52.46
50392	T	Insert kidney drain	0160	5.43	$263.28	$110.11	$52.66
50393	T	Insert ureteral tube	0160	5.43	$263.28	$110.11	$52.66
50394	N	Injection for kidney x-ray					
50395	T	Create passage to kidney	0160	5.43	$263.28	$110.11	$52.66
50396	T	Measure kidney pressure	0165	3.89	$188.61	$91.76	$37.72
50398	T	Change kidney tube	0122	5.04	$244.37	$114.93	$48.88
50400	C	Revision of kidney/ureter					
50405	C	Revision of kidney/ureter					
50500	C	Repair of kidney wound					
50520	C	Close kidney-skin fistula					
50525	C	Repair renal-abdomen fistula					
50526	C	Repair renal-abdomen fistula					
50540	C	Revision of horseshoe kidney					
50541	T	Laparo ablate renal cyst	0131	41.81	$2,027.24	$1,089.88	$405.45
50544	T	Laparoscopy, pyeloplasty	0131	41.81	$2,027.24	$1,089.88	$405.45
50546	C	Laparoscopic nephrectomy					
50547	C	Laparo removal donor kidney					
50548	T	Laparo-asst remove k/ureter	0132	48.91	$2,371.50	$1,239.22	$474.30
50549	T	Laparoscope proc, renal	0130	25.36	$1,229.63	$659.53	$245.93
50551	T	Kidney endoscopy	0161	10.94	$530.45	$249.36	$106.09
50553	T	Kidney endoscopy	0161	10.94	$530.45	$249.36	$106.09
50555	T	Kidney endoscopy & biopsy	0161	10.94	$530.45	$249.36	$106.09
50557	T	Kidney endoscopy & treatment	0161	10.94	$530.45	$249.36	$106.09
50559	T	Renal endoscopy/radiotracer	0161	10.94	$530.45	$249.36	$106.09
50561	T	Kidney endoscopy & treatment	0161	10.94	$530.45	$249.36	$106.09
50570	C	Kidney endoscopy					
50572	C	Kidney endoscopy					
50574	C	Kidney endoscopy & biopsy					
50575	C	Kidney endoscopy					
50578	C	Kidney endoscopy & treatment					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
50578	C	Renal endoscopy/radiotracer					
50580	C	Kidney endoscopy & treatment					
50590	T	Fragmenting of kidney stone	0169	46.72	$2,265.32	$1,394.20	$453.06
50600	C	Exploration of ureter					
50605	C	Insert ureteral support					
50610	C	Removal of ureter stone					
50620	C	Removal of ureter stone					
50630	C	Removal of ureter stone					
50650	C	Removal of ureter					
50660	C	Removal of ureter					
50684	N	Injection for ureter x-ray					
50686	T	Measure ureter pressure	0165	3.89	$188.61	$91.76	$37.72
50688	T	Change of ureter tube	0121	2.36	$114.43	$52.53	$22.89
50690	N	Injection for ureter x-ray					
50700	C	Revision of ureter					
50715	C	Release of ureter					
50722	C	Release of ureter					
50725	C	Release/revise ureter					
50727	C	Revise ureter					
50728	C	Revise ureter					
50740	C	Fusion of ureter & kidney					
50750	C	Fusion of ureter & kidney					
50760	C	Fusion of ureters					
50770	C	Splicing of ureters					
50780	C	Reimplant ureter in bladder					
50782	C	Reimplant ureter in bladder					
50783	C	Reimplant ureter in bladder					
50785	C	Reimplant ureter in bladder					
50800	C	Implant ureter in bowel					
50810	C	Fusion of ureter & bowel					
50815	C	Urine shunt to bowel					
50820	C	Construct bowel bladder					
50825	C	Construct bowel bladder					
50830	C	Revise urine flow					
50840	C	Replace ureter by bowel					
50845	C	Appendico-vesicostomy					
50860	C	Transplant ureter to skin					
50900	C	Repair of ureter					
50920	C	Closure ureter/skin fistula					
50930	C	Closure ureter/bowel fistula					
50940	C	Release of ureter					
50945	T	Laparoscopy ureterolithotomy	0131	41.81	$2,027.24	$1,069.88	$405.45
50951	T	Endoscopy of ureter	0162	17.49	$848.04	$427.49	$169.61
50953	T	Endoscopy of ureter	0162	17.49	$848.04	$427.49	$169.61
50955	T	Ureter endoscopy & biopsy	0162	17.49	$848.04	$427.49	$169.61
50957	T	Ureter endoscopy & treatment	0162	17.49	$848.04	$427.49	$169.61
50959	T	Ureter endoscopy & tracer	0162	17.49	$848.04	$427.49	$169.61
50961	T	Ureter endoscopy & treatment	0162	17.49	$848.04	$427.49	$169.61
50970	C	Ureter endoscopy					
50972	C	Ureter endoscopy & catheter					
50974	C	Ureter endoscopy & biopsy					
50976	C	Ureter endoscopy & treatment					
50978	C	Ureter endoscopy & tracer					
50980	C	Ureter endoscopy & treatment					
51000	T	Drainage of bladder	0165	3.89	$188.61	$91.76	$37.72
51005	T	Drainage of bladder	0164	2.17	$105.23	$33.03	$21.05
51010	T	Drainage of bladder	0165	3.89	$188.61	$91.76	$37.72
51020	T	Incise & treat bladder	0162	17.49	$848.04	$427.49	$169.61
51030	T	Incise & treat bladder	0162	17.49	$848.04	$427.49	$169.61
51040	T	Incise & drain bladder	0162	17.49	$848.04	$427.49	$169.61
51045	T	Incise bladder/drain ureter	0162	17.49	$848.04	$427.49	$169.61
51050	T	Removal of bladder stone	0162	17.49	$848.04	$427.49	$169.61
51060	C	Removal of ureter stone					
51065	T	Removal of ureter stone	0162	17.49	$848.04	$427.49	$169.61
51080	T	Drainage of bladder abscess	0008	6.15	$298.20	$113.67	$59.64
51500	T	Removal of bladder cyst	0154	22.43	$1,087.57	$556.98	$217.51
51520	T	Removal of bladder lesion	0162	17.49	$848.04	$427.49	$169.61
51525	C	Removal of bladder lesion					
51530	C	Removal of bladder lesion					
51535	C	Repair of ureter lesion					
51550	C	Partial removal of bladder					
51555	C	Partial removal of bladder					
51565	C	Revise bladder & ureter(s)					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
51570	C	Removal of bladder					
51575	C	Removal of bladder & nodes					
51580	C	Remove bladder/revise tract					
51585	C	Removal of bladder & nodes					
51590	C	Remove bladder/revise tract					
51595	C	Remove bladder/revise tract					
51596	C	Remove bladder/create pouch					
51597	C	Removal of pelvic structures					
51600	N	Injection for bladder x-ray					
51605	N	Preparation for bladder x-ray					
51610	N	Injection for bladder x-ray					
51700	T	Irrigation of bladder	0164	2.17	$105.23	$33.03	$21.05
51705	T	Change of bladder tube	0121	2.36	$114.43	$52.53	$22.89
51710	T	Change of bladder tube	0121	2.36	$114.43	$52.53	$22.89
51715	T	Endoscopic injection/implant	0167	21.06	$1,021.14	$555.84	$204.23
51720	T	Treatment of bladder lesion	0165	3.89	$188.61	$91.76	$37.72
51725	T	Simple cystometrogram	0165	3.89	$188.61	$91.76	$37.72
51726	T	Complex cystometrogram	0165	3.89	$188.61	$91.76	$37.72
51736	T	Urine flow measurement	0164	2.17	$105.23	$33.03	$21.05
51741	T	Electro-uroflowmetry, first	0164	2.17	$105.23	$33.03	$21.05
51772	T	Urethra pressure profile	0165	3.89	$188.61	$91.76	$37.72
51784	T	Anal/urinary muscle study	0164	2.17	$105.23	$33.03	$21.05
51785	T	Anal/urinary muscle study	0164	2.17	$105.23	$33.03	$21.05
51792	T	Urinary reflex study	0165	3.89	$188.61	$91.76	$37.72
51795	T	Urine voiding pressure study	0164	2.17	$105.23	$33.03	$21.05
51797	T	Intraabdominal pressure test	0164	2.17	$105.23	$33.03	$21.05
51800	C	Revision of bladder/urethra					
51820	C	Revision of urinary tract					
51840	C	Attach bladder/urethra					
51841	C	Attach bladder/urethra					
51845	C	Repair bladder neck					
51860	C	Repair of bladder wound					
51865	C	Repair of bladder wound					
51880	T	Repair of bladder opening	0162	17.49	$848.04	$427.49	$169.61
51900	C	Repair bladder/vagina lesion					
51920	C	Close bladder-uterus fistula					
51925	C	Hysterectomy/bladder repair					
51940	C	Correction of bladder defect					
51960	C	Revision of bladder & bowel					
51980	C	Construct bladder opening					
51990	T	Laparo urethral suspension	0131	41.81	$2,027.24	$1,089.88	$405.45
51992	T	Laparo sling operation	0132	48.91	$2,371.50	$1,239.22	$474.30
52000	T	Cystoscopy	0160	5.43	$263.28	$110.11	$52.66
52005	T	Cystoscopy & ureter catheter	0161	10.94	$530.45	$249.36	$106.09
52007	T	Cystoscopy and biopsy	0161	10.94	$530.45	$249.36	$106.09
52010	T	Cystoscopy & duct catheter	0161	10.94	$530.45	$249.36	$106.09
52204	T	Cystoscopy	0161	10.94	$530.45	$249.36	$106.09
52214	T	Cystoscopy and treatment	0161	10.94	$530.45	$249.36	$106.09
52224	T	Cystoscopy and treatment	0161	10.94	$530.45	$249.36	$106.09
52234	T	Cystoscopy and treatment	0162	17.49	$848.04	$427.49	$169.61
52235	T	Cystoscopy and treatment	0162	17.49	$848.04	$427.49	$169.61
52240	T	Cystoscopy and treatment	0163	28.98	$1,405.16	$792.58	$281.03
52250	T	Cystoscopy and radiotracer	0162	17.49	$848.04	$427.49	$169.61
52260	T	Cystoscopy and treatment	0161	10.94	$530.45	$249.36	$106.09
52265	T	Cystoscopy and treatment	0160	5.43	$263.28	$110.11	$52.66
52270	T	Cystoscopy & revise urethra	0161	10.94	$530.45	$249.36	$106.09
52275	T	Cystoscopy & revise urethra	0161	10.94	$530.45	$249.36	$106.09
52276	T	Cystoscopy and treatment	0161	10.94	$530.45	$249.36	$106.09
52277	T	Cystoscopy and treatment	0162	17.49	$848.04	$427.49	$169.61
52281	T	Cystoscopy and treatment	0161	10.94	$530.45	$249.36	$106.09
52282	T	Cystoscopy, implant stent	0162	17.49	$848.04	$427.49	$169.61
52283	T	Cystoscopy and treatment	0161	10.94	$530.45	$249.36	$106.09
52285	T	Cystoscopy and treatment	0161	10.94	$530.45	$249.36	$106.09
52290	T	Cystoscopy and treatment	0161	10.94	$530.45	$249.36	$106.09
52300	T	Cystoscopy and treatment	0161	10.94	$530.45	$249.36	$106.09
52301	T	Cystoscopy and treatment	0161	10.94	$530.45	$249.36	$106.09
52305	T	Cystoscopy and treatment	0161	10.94	$530.45	$249.36	$106.09
52310	T	Cystoscopy and treatment	0161	10.94	$530.45	$249.36	$106.09
52315	T	Cystoscopy and treatment	0161	10.94	$530.45	$249.36	$106.09
52317	T	Remove bladder stone	0162	17.49	$848.04	$427.49	$169.61
52318	T	Remove bladder stone	0162	17.49	$848.04	$427.49	$169.61
52320	T	Cystoscopy and treatment	0162	17.49	$848.04	$427.49	$169.61
52325	T	Cystoscopy, stone removal	0162	17.49	$848.04	$427.49	$169.61

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
52327	T	Cystoscopy, inject material	0161	10.94	$530.45	$249.36	$106.09
52330	T	Cystoscopy and treatment	0162	17.49	$848.04	$427.49	$169.61
52332	T	Cystoscopy and treatment	0162	17.49	$848.04	$427.49	$169.61
52334	T	Create passage to kidney	0162	17.49	$848.04	$427.49	$169.61
52335	T	Endoscopy of urinary tract	0162	17.49	$848.04	$427.49	$169.61
52336	T	Cystoscopy, stone removal	0162	17.49	$848.04	$427.49	$169.61
52337	T	Cystoscopy, stone removal	0162	17.49	$848.04	$427.49	$169.61
52338	T	Cystoscopy and treatment	0162	17.49	$848.04	$427.49	$169.61
52339	T	Cystoscopy and treatment	0162	17.49	$848.04	$427.49	$169.61
52340	T	Cystoscopy and treatment	0162	17.49	$848.04	$427.49	$169.61
52450	T	Incision of prostate	0162	17.49	$848.04	$427.49	$169.61
52500	T	Revision of bladder neck	0162	17.49	$848.04	$427.49	$169.61
52510	T	Dilation prostatic urethra	0161	10.94	$530.45	$249.36	$106.09
52601	T	Prostatectomy (TURP)	0163	28.98	$1,405.16	$792.58	$281.03
52606	T	Control postop bleeding	0162	17.49	$848.04	$427.49	$169.61
52612	T	Prostatectomy, first stage	0163	28.98	$1,405.16	$792.58	$281.03
52614	T	Prostatectomy, second stage	0163	28.98	$1,405.16	$792.58	$281.03
52620	T	Remove residual prostate	0163	28.98	$1,405.16	$792.58	$281.03
52630	T	Remove prostate regrowth	0163	28.98	$1,405.16	$792.58	$281.03
52640	T	Relieve bladder contracture	0162	17.49	$848.04	$427.49	$169.61
52647	T	Laser surgery of prostate	0163	28.98	$1,405.16	$792.58	$281.03
52648	T	Laser surgery of prostate	0163	28.98	$1,405.16	$792.58	$281.03
52700	T	Drainage of prostate abscess	0162	17.49	$848.04	$427.49	$169.61
53000	T	Incision of urethra	0166	10.17	$493.11	$218.73	$98.62
53010	T	Incision of urethra	0166	10.17	$493.11	$218.73	$98.62
53020	T	Incision of urethra	0166	10.17	$493.11	$218.73	$98.62
53025	T	Incision of urethra	0166	10.17	$493.11	$218.73	$98.62
53040	T	Drainage of urethra abscess	0166	10.17	$493.11	$218.73	$98.62
53060	T	Drainage of urethra abscess	0166	10.17	$493.11	$218.73	$98.62
53080	T	Drainage of urinary leakage	0166	10.17	$493.11	$218.73	$98.62
53085	C	Drainage of urinary leakage					
53200	T	Biopsy of urethra	0166	10.17	$493.11	$218.73	$98.62
53210	T	Removal of urethra	0168	24.94	$1,209.27	$536.11	$241.85
53215	T	Removal of urethra	0168	24.94	$1,209.27	$536.11	$241.85
53220	T	Treatment of urethra lesion	0168	24.94	$1,209.27	$536.11	$241.85
53230	T	Removal of urethra lesion	0168	24.94	$1,209.27	$536.11	$241.85
53235	T	Removal of urethra lesion	0168	24.94	$1,209.27	$536.11	$241.85
53240	T	Surgery for urethra pouch	0168	24.94	$1,209.27	$536.11	$241.85
53250	T	Removal of urethra gland	0166	10.17	$493.11	$218.73	$98.62
53260	T	Treatment of urethra lesion	0166	10.17	$493.11	$218.73	$98.62
53265	T	Treatment of urethra lesion	0166	10.17	$493.11	$218.73	$98.62
53270	T	Removal of urethra gland	0167	21.06	$1,021.14	$555.84	$204.23
53275	T	Repair of urethra defect	0166	10.17	$493.11	$218.73	$98.62
53400	T	Revise urethra, stage 1	0168	24.94	$1,209.27	$536.11	$241.85
53405	T	Revise urethra, stage 2	0168	24.94	$1,209.27	$536.11	$241.85
53410	T	Reconstruction of urethra	0168	24.94	$1,209.27	$536.11	$241.85
53415	C	Reconstruction of urethra					
53420	T	Reconstruct urethra, stage 1	0168	24.94	$1,209.27	$536.11	$241.85
53425	T	Reconstruct urethra, stage 2	0168	24.94	$1,209.27	$536.11	$241.85
53430	T	Reconstruction of urethra	0168	24.94	$1,209.27	$536.11	$241.85
53440	T	Correct bladder function	0182	52.11	$2,526.66	$1,525.05	$505.33
53442	T	Remove perineal prosthesis	0166	10.17	$493.11	$218.73	$98.62
53443	C	Reconstruction of urethra					
53445	T	Correct urine flow control	0182	52.11	$2,526.66	$1,525.05	$505.33
53447	T	Remove artificial sphincter	0168	24.94	$1,209.27	$536.11	$241.85
53449	T	Correct artificial sphincter	0168	24.94	$1,209.27	$536.11	$241.85
53450	T	Revision of urethra	0168	24.94	$1,209.27	$536.11	$241.85
53460	T	Revision of urethra	0168	24.94	$1,209.27	$536.11	$241.85
53502	T	Repair of urethra injury	0166	10.17	$493.11	$218.73	$98.62
53505	T	Repair of urethra injury	0167	21.06	$1,021.14	$555.84	$204.23
53510	T	Repair of urethra injury	0166	10.17	$493.11	$218.73	$98.62
53515	T	Repair of urethra injury	0168	24.94	$1,209.27	$536.11	$241.85
53520	T	Repair of urethra defect	0168	24.94	$1,209.27	$536.11	$241.85
53600	T	Dilate urethra stricture	0164	2.17	$105.23	$33.03	$21.05
53601	T	Dilate urethra stricture	0164	2.17	$105.23	$33.03	$21.05
53605	T	Dilate urethra stricture	0161	10.94	$530.45	$249.36	$106.09
53620	T	Dilate urethra stricture	0165	3.89	$188.61	$91.76	$37.72
53621	T	Dilate urethra stricture	0164	2.17	$105.23	$33.03	$21.05
53660	T	Dilation of urethra	0164	2.17	$105.23	$33.03	$21.05
53661	T	Dilation of urethra	0164	2.17	$105.23	$33.03	$21.05
53665	T	Dilation of urethra	0166	10.17	$493.11	$218.73	$98.62
53670	N	Insert urinary catheter					
53675	T	Insert urinary catheter	0164	2.17	$105.23	$33.03	$21.05

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[3] Eligible for pass-through payments. See Preamble for payment rate determination. See Addendum K for complete list of pass-through codes.

ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
[2]53850	T	Prostatic microwave thermotx	0980	36.67	$1,875.00		$375.00
[2]53852	T	Prostatic rf thermotx	0980	36.67	$1,875.00		$375.00
53899	T	Urology surgery procedure	0165	3.89	$188.61	$91.76	$37.72
54000	T	Slitting of prepuce	0166	10.17	$493.11	$218.73	$98.62
54001	T	Slitting of prepuce	0166	10.17	$493.11	$218.73	$98.62
54015	T	Drain penis lesion	0008	6.15	$298.20	$113.67	$59.64
54050	T	Destruction, penis lesion(s)	0013	0.91	$44.12	$17.66	$8.82
54055	T	Destruction, penis lesion(s)	0016	3.53	$171.16	$74.67	$34.23
54056	T	Cryosurgery, penis lesion(s)	0013	0.91	$44.12	$17.66	$8.82
54057	T	Laser surg, penis lesion(s)	0017	12.45	$603.66	$289.16	$120.73
54060	T	Excision of penis lesion(s)	0017	12.45	$603.66	$289.16	$120.73
54065	T	Destruction, penis lesion(s)	0017	12.45	$603.66	$289.16	$120.73
54100	T	Biopsy of penis	0020	6.51	$315.65	$130.53	$63.13
54105	T	Biopsy of penis	0021	10.49	$508.63	$236.51	$101.73
54110	T	Treatment of penis lesion	0181	32.37	$1,569.53	$906.36	$313.91
54111	T	Treat penis lesion, graft	0181	32.37	$1,569.53	$906.36	$313.91
54112	T	Treat penis lesion, graft	0181	32.37	$1,569.53	$906.36	$313.91
54115	T	Treatment of penis lesion	0008	6.15	$298.20	$113.67	$59.64
54120	T	Partial removal of penis	0181	32.37	$1,569.53	$906.36	$313.91
54125	C	Removal of penis					
54130	C	Remove penis & nodes					
54135	C	Remove penis & nodes					
54150	T	Circumcision	0180	13.62	$660.39	$304.87	$132.08
54152	T	Circumcision	0180	13.62	$660.39	$304.87	$132.08
54160	T	Circumcision	0180	13.62	$660.39	$304.87	$132.08
54161	T	Circumcision	0180	13.62	$660.39	$304.87	$132.08
54200	T	Treatment of penis lesion	0165	3.89	$188.61	$91.76	$37.72
54205	T	Treatment of penis lesion	0181	32.37	$1,569.53	$906.36	$313.91
54220	T	Treatment of penis lesion	0165	3.89	$188.61	$91.76	$37.72
54230	N	Prepare penis study					
54231	T	Dynamic cavernosometry	0165	3.89	$188.61	$91.76	$37.72
54235	T	Penile injection	0164	2.17	$105.23	$33.03	$21.05
54240	T	Penis study	0164	2.17	$105.23	$33.03	$21.05
54250	T	Penis study	0165	3.89	$188.61	$91.76	$37.72
54300	T	Revision of penis	0181	32.37	$1,569.53	$906.36	$313.91
54304	T	Revision of penis	0181	32.37	$1,569.53	$906.36	$313.91
54308	T	Reconstruction of urethra	0181	32.37	$1,569.53	$906.36	$313.91
54312	T	Reconstruction of urethra	0181	32.37	$1,569.53	$906.36	$313.91
54316	T	Reconstruction of urethra	0181	32.37	$1,569.53	$906.36	$313.91
54318	T	Reconstruction of urethra	0181	32.37	$1,569.53	$906.36	$313.91
54322	T	Reconstruction of urethra	0181	32.37	$1,569.53	$906.36	$313.91
54324	T	Reconstruction of urethra	0181	32.37	$1,569.53	$906.36	$313.91
54326	T	Reconstruction of urethra	0181	32.37	$1,569.53	$906.36	$313.91
54328	T	Revise penis/urethra	0181	32.37	$1,569.53	$906.36	$313.91
54332	C	Revise penis/urethra					
54336	C	Revise penis/urethra					
54340	T	Secondary urethral surgery	0181	32.37	$1,569.53	$906.36	$313.91
54344	T	Secondary urethral surgery	0181	32.37	$1,569.53	$906.36	$313.91
54348	T	Secondary urethral surgery	0181	32.37	$1,569.53	$906.36	$313.91
54352	T	Reconstruct urethra/penis	0181	32.37	$1,569.53	$906.36	$313.91
54360	T	Penis plastic surgery	0181	32.37	$1,569.53	$906.36	$313.91
54380	T	Repair penis	0181	32.37	$1,569.53	$906.36	$313.91
54385	T	Repair penis	0181	32.37	$1,569.53	$906.36	$313.91
54390	C	Repair penis and bladder					
54400	T	Insert semi-rigid prosthesis	0182	52.11	$2,526.66	$1,525.05	$505.33
54401	T	Insert self-contd prosthesis	0182	52.11	$2,526.66	$1,525.05	$505.33
54402	T	Remove penis prosthesis	0181	32.37	$1,569.53	$906.36	$313.91
54405	T	Insert multi-comp prosthesis	0182	52.11	$2,526.66	$1,525.05	$505.33
54407	T	Remove multi-comp prosthesis	0181	32.37	$1,569.53	$906.36	$313.91
54409	T	Revise penis prosthesis	0181	32.37	$1,569.53	$906.36	$313.91
54420	T	Revision of penis	0181	32.37	$1,569.53	$906.36	$313.91
54430	C	Revision of penis					
54435	T	Revision of penis	0181	32.37	$1,569.53	$906.36	$313.91
54440	T	Repair of penis	0181	32.37	$1,569.53	$906.36	$313.91
54450	T	Preputial stretching	0165	3.89	$188.61	$91.76	$37.72
54500	T	Biopsy of testis	0005	5.41	$262.32	$119.75	$52.46
54505	T	Biopsy of testis	0183	18.26	$885.37	$448.94	$177.07
54510	T	Removal of testis lesion	0183	18.26	$885.37	$448.94	$177.07
54520	T	Removal of testis	0183	18.26	$885.37	$448.94	$177.07
54530	T	Removal of testis	0154	22.43	$1,087.57	$556.98	$217.51
54535	C	Extensive testis surgery					
54550	T	Exploration for testis	0154	22.43	$1,087.57	$556.98	$217.51
54560	C	Exploration for testis					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
54600	T	Reduce testis torsion	0183	18.26	$885.37	$448.94	$177.07
54620	T	Suspension of testis	0183	18.26	$885.37	$448.94	$177.07
54640	T	Suspension of testis	0154	22.43	$1,087.57	$556.98	$217.51
54650	C	Orchiopexy (Fowler-Stephens)					
54660	T	Revision of testis	0183	18.26	$885.37	$448.94	$177.07
54670	T	Repair testis injury	0183	18.26	$885.37	$448.94	$177.07
54680	T	Relocation of testis(es)	0183	18.26	$885.37	$448.94	$177.07
54690	T	Laparoscopy, orchiectomy	0131	41.81	$2,027.24	$1,089.86	$405.45
54692	T	Laparoscopy, orchiopexy	0132	48.91	$2,371.50	$1,239.22	$474.30
54699	T	Laparoscope proc, testis	0130	25.36	$1,229.63	$659.53	$245.93
54700	T	Drainage of scrotum	0183	18.26	$885.37	$448.94	$177.07
54800	T	Biopsy of epididymis	0004	1.84	$89.22	$32.57	$17.84
54820	T	Exploration of epididymis	0183	18.26	$885.37	$448.94	$177.07
54830	T	Remove epididymis lesion	0183	18.26	$885.37	$448.94	$177.07
54840	T	Remove epididymis lesion	0183	18.26	$885.37	$448.94	$177.07
54860	T	Removal of epididymis	0183	18.26	$885.37	$448.94	$177.07
54861	T	Removal of epididymis	0183	18.26	$885.37	$448.94	$177.07
54900	T	Fusion of spermatic ducts	0183	18.26	$885.37	$448.94	$177.07
54901	T	Fusion of spermatic ducts	0183	18.26	$885.37	$448.94	$177.07
55000	T	Drainage of hydrocele	0004	1.84	$89.22	$32.57	$17.84
55040	T	Removal of hydrocele	0154	22.43	$1,087.57	$556.98	$217.51
55041	T	Removal of hydroceles	0154	22.43	$1,087.57	$556.98	$217.51
55060	T	Repair of hydrocele	0183	18.26	$885.37	$448.94	$177.07
55100	T	Drainage of scrotum abscess	0006	6.15	$298.20	$113.67	$59.64
55110	T	Explore scrotum	0183	18.26	$885.37	$448.94	$177.07
55120	T	Removal of scrotum lesion	0183	18.26	$885.37	$448.94	$177.07
55150	T	Removal of scrotum	0183	18.26	$885.37	$448.94	$177.07
55175	T	Revision of scrotum	0183	18.26	$885.37	$448.94	$177.07
55180	T	Revision of scrotum	0183	18.26	$885.37	$448.94	$177.07
55200	T	Incision of sperm duct	0183	18.26	$885.37	$448.94	$177.07
55250	T	Removal of sperm duct(s)	0183	18.26	$885.37	$448.94	$177.07
55300	N	Prepare, sperm duct x-ray					
55400	T	Repair of sperm duct	0183	18.26	$885.37	$448.94	$177.07
55450	T	Ligation of sperm duct	0183	18.26	$885.37	$448.94	$177.07
55500	T	Removal of hydrocele	0183	18.26	$885.37	$448.94	$177.07
55520	T	Removal of sperm cord lesion	0183	18.26	$885.37	$448.94	$177.07
55530	T	Revise spermatic cord veins	0183	18.26	$885.37	$448.94	$177.07
55535	T	Revise spermatic cord veins	0154	22.43	$1,087.57	$556.98	$217.51
55540	T	Revise hernia & sperm veins	0154	22.43	$1,087.57	$556.98	$217.51
55550	T	Laparo ligate spermatic vein	0131	41.81	$2,027.24	$1,089.86	$405.45
55559	T	Laparo proc, spermatic cord	0130	25.36	$1,229.63	$659.53	$245.93
55600	C	Incise sperm duct pouch					
55605	C	Incise sperm duct pouch					
55650	C	Remove sperm duct pouch					
55680	T	Remove sperm pouch lesion	0183	18.26	$885.37	$448.94	$177.07
55700	T	Biopsy of prostate	0184	4.94	$239.53	$122.96	$47.91
55705	T	Biopsy of prostate	0184	4.94	$239.53	$122.96	$47.91
55720	T	Drainage of prostate abscess	0162	17.49	$848.04	$427.49	$169.61
55725	T	Drainage of prostate abscess	0162	17.49	$848.04	$427.49	$169.61
55801	C	Removal of prostate					
55810	C	Extensive prostate surgery					
55812	C	Extensive prostate surgery					
55815	C	Extensive prostate surgery					
55821	C	Removal of prostate					
55831	C	Removal of prostate					
55840	C	Extensive prostate surgery					
55842	C	Extensive prostate surgery					
55845	C	Extensive prostate surgery					
55859	T	Percut/needle insert, pros	0162	17.49	$848.04	$427.49	$169.61
55860	C	Surgical exposure, prostate					
55862	C	Extensive prostate surgery					
55865	C	Extensive prostate surgery					
55870	T	Electroejaculation	0197	2.40	$116.37	$49.55	$23.27
55899	T	Genital surgery procedure	0164	2.17	$105.23	$33.03	$21.05
55970	E	Sex transformation, M to F					
55980	E	Sex transformation, F to M					
56405	T	I & D of vulva/perineum	0192	2.38	$115.40	$35.33	$23.08
56420	T	Drainage of gland abscess	0192	2.38	$115.40	$35.33	$23.08
56440	T	Surgery for vulva lesion	0194	16.21	$785.98	$395.94	$157.20
56441	T	Lysis of labial lesion(s)	0193	8.93	$432.99	$171.13	$86.60
56501	T	Destruction, vulva lesion(s)	0016	3.53	$171.16	$74.67	$34.23
56515	T	Destruction, vulva lesion(s)	0017	12.45	$603.66	$289.16	$120.73
56605	T	Biopsy of vulva/perineum	0019	4.00	$193.95	$78.91	$38.79

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
56606	T	Biopsy of vulva/perineum	0019	4.00	$193.95	$78.91	$38.79
56620	T	Partial removal of vulva	0195	18.68	$905.74	$483.80	$181.15
56625	T	Complete removal of vulva	0195	18.68	$905.74	$483.80	$181.15
56630	C	Extensive vulva surgery					
56631	C	Extensive vulva surgery					
56632	C	Extensive vulva surgery					
56633	C	Extensive vulva surgery					
56634	C	Extensive vulva surgery					
56637	C	Extensive vulva surgery					
56640	C	Extensive vulva surgery					
56700	T	Partial removal of hymen	0194	16.21	$785.98	$395.94	$157.20
56720	T	Incision of hymen	0193	8.93	$432.99	$171.13	$86.60
56740	T	Remove vagina gland lesion	0194	16.21	$785.98	$395.94	$157.20
56800	T	Repair of vagina	0194	16.21	$785.98	$395.94	$157.20
56805	C	Repair clitoris					
56810	T	Repair of perineum	0194	16.21	$785.98	$395.94	$157.20
57000	T	Exploration of vagina	0194	16.21	$785.98	$395.94	$157.20
57010	T	Drainage of pelvic abscess	0194	16.21	$785.98	$395.94	$157.20
57020	T	Drainage of pelvic fluid	0193	8.93	$432.99	$171.13	$86.60
57061	T	Destruction vagina lesion(s)	0194	16.21	$785.98	$395.94	$157.20
57065	T	Destruction vagina lesion(s)	0194	16.21	$785.98	$395.94	$157.20
57100	T	Biopsy of vagina	0192	2.38	$115.40	$35.33	$23.08
57105	T	Biopsy of vagina	0194	16.21	$785.98	$395.94	$157.20
57106	T	Remove vagina wall, partial	0194	16.21	$785.98	$395.94	$157.20
57107	T	Remove vagina tissue, part	0194	16.21	$785.98	$395.94	$157.20
57109	T	Vaginectomy partial w/nodes	0194	16.21	$785.98	$395.94	$157.20
57110	C	Remove vagina wall, complete					
57111	C	Remove vagina tissue, compl					
57112	C	Vaginectomy w/nodes, compl					
57120	C	Closure of vagina					
57130	T	Remove vagina lesion	0194	16.21	$785.98	$395.94	$157.20
57135	T	Remove vagina lesion	0194	16.21	$785.98	$395.94	$157.20
57150	T	Treat vagina infection	0192	2.38	$115.40	$35.33	$23.08
57160	T	Insert pessary/other device	0191	1.19	$57.70	$17.43	$11.54
57170	T	Fitting of diaphragm/cap	0191	1.19	$57.70	$17.43	$11.54
57180	T	Treat vaginal bleeding	0192	2.38	$115.40	$35.33	$23.08
57200	T	Repair of vagina	0194	16.21	$785.98	$395.94	$157.20
57210	T	Repair vagina/perineum	0194	16.21	$785.98	$395.94	$157.20
57220	T	Revision of urethra	0195	18.68	$905.74	$483.80	$181.15
57230	T	Repair of urethral lesion	0194	16.21	$785.98	$395.94	$157.20
57240	T	Repair bladder & vagina	0195	18.68	$905.74	$483.80	$181.15
57250	T	Repair rectum & vagina	0195	18.68	$905.74	$483.80	$181.15
57260	T	Repair of vagina	0195	18.68	$905.74	$483.80	$181.15
57265	T	Extensive repair of vagina	0195	18.68	$905.74	$483.80	$181.15
57268	T	Repair of bowel bulge	0195	18.68	$905.74	$483.80	$181.15
57270	C	Repair of bowel pouch					
57280	C	Suspension of vagina					
57282	C	Repair of vaginal prolapse					
57284	T	Repair paravaginal defect	0195	18.68	$905.74	$483.80	$181.15
57288	T	Repair bladder defect	0195	18.68	$905.74	$483.80	$181.15
57289	T	Repair bladder & vagina	0195	18.68	$905.74	$483.80	$181.15
57291	T	Construction of vagina	0195	18.68	$905.74	$483.80	$181.15
57292	C	Construct vagina with graft					
57300	T	Repair rectum-vagina fistula	0195	18.68	$905.74	$483.80	$181.15
57305	C	Repair rectum-vagina fistula					
57307	C	Fistula repair & colostomy					
57308	C	Fistula repair, transperine					
57310	C	Repair urethrovaginal lesion					
57311	C	Repair urethrovaginal lesion					
57320	C	Repair bladder-vagina lesion					
57330	C	Repair bladder-vagina lesion					
57335	C	Repair vagina					
57400	T	Dilation of vagina	0194	16.21	$785.98	$395.94	$157.20
57410	T	Pelvic examination	0194	16.21	$785.98	$395.94	$157.20
57415	T	Remove vaginal foreign body	0194	16.21	$785.98	$395.94	$157.20
57452	T	Examination of vagina	0191	1.19	$57.70	$17.43	$11.54
57454	T	Vagina examination & biopsy	0192	2.38	$115.40	$35.33	$23.08
57460	T	Cervix excision	0193	8.93	$432.99	$171.13	$86.60
57500	T	Biopsy of cervix	0193	8.93	$432.99	$171.13	$86.60
57505	T	Endocervical curettage	0192	2.38	$115.40	$35.33	$23.08
57510	T	Cauterization of cervix	0193	8.93	$432.99	$171.13	$86.60
57511	T	Cryocautery of cervix	0192	2.38	$115.40	$35.33	$23.08
57513	T	Laser surgery of cervix	0193	8.93	$432.99	$171.13	$86.60

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
57520	T	Conization of cervix	0194	16.21	$785.98	$395.94	$157.20
57522	T	Conization of cervix	0195	18.68	$905.74	$483.80	$181.15
57530	T	Removal of cervix	0195	18.68	$905.74	$483.80	$181.15
57531	C	Removal of cervix, radical					
57540	C	Removal of residual cervix					
57545	C	Remove cervix/repair pelvis					
57550	T	Removal of residual cervix	0195	18.68	$905.74	$483.80	$181.15
57555	T	Remove cervix/repair vagina	0195	18.68	$905.74	$483.80	$181.15
57556	T	Remove cervix, repair bowel	0195	18.68	$905.74	$483.80	$181.15
57700	T	Revision of cervix	0194	16.21	$785.98	$395.94	$157.20
57720	T	Revision of cervix	0194	16.21	$785.98	$395.94	$157.20
57800	T	Dilation of cervical canal	0193	8.93	$432.99	$171.13	$86.60
57820	T	D & c of residual cervix	0196	14.47	$701.61	$357.98	$140.32
58100	T	Biopsy of uterus lining	0191	1.19	$57.70	$17.43	$11.54
58120	T	Dilation and curettage	0196	14.47	$701.61	$357.98	$140.32
58140	C	Removal of uterus lesion					
58145	T	Removal of uterus lesion	0195	18.68	$905.74	$483.80	$181.15
58150	C	Total hysterectomy					
58152	C	Total hysterectomy					
58180	C	Partial hysterectomy					
58200	C	Extensive hysterectomy					
58210	C	Extensive hysterectomy					
58240	C	Removal of pelvis contents					
58260	C	Vaginal hysterectomy					
58262	C	Vaginal hysterectomy					
58263	C	Vaginal hysterectomy					
58267	C	Hysterectomy & vagina repair					
58270	C	Hysterectomy & vagina repair					
58275	C	Hysterectomy/revise vagina					
58280	C	Hysterectomy/revise vagina					
58285	C	Extensive hysterectomy					
58300	E	Insert intrauterine device					
58301	T	Remove intrauterine device	0191	1.19	$57.70	$17.43	$11.54
58321	T	Artificial insemination	0197	2.40	$116.37	$49.55	$23.27
58322	T	Artificial insemination	0197	2.40	$116.37	$49.55	$23.27
58323	T	Sperm washing	0197	2.40	$116.37	$49.55	$23.27
58340	N	Catheter for hysterography					
58345	T	Reopen fallopian tube	0194	16.21	$785.98	$395.94	$157.20
58350	T	Reopen fallopian tube	0194	16.21	$785.98	$395.94	$157.20
58400	C	Suspension of uterus					
58410	C	Suspension of uterus					
58520	C	Repair of ruptured uterus					
58540	C	Revision of uterus					
58550	T	Laparo-asst vag hysterectomy	0132	48.91	$2,371.50	$1,239.22	$474.30
58551	T	Laparoscopy, remove myoma	0131	41.81	$2,027.24	$1,089.88	$405.45
58555	T	Hysteroscopy, dx, sep proc	0191	1.19	$57.70	$17.43	$11.54
58558	T	Hysteroscopy, biopsy	0190	17.85	$865.49	$443.89	$173.10
58559	T	Hysteroscopy, lysis	0190	17.85	$865.49	$443.89	$173.10
58560	T	Hysteroscopy, resect septum	0190	17.85	$865.49	$443.89	$173.10
58561	T	Hysteroscopy, remove myoma	0190	17.85	$865.49	$443.89	$173.10
58562	T	Hysteroscopy, remove fb	0190	17.85	$865.49	$443.89	$173.10
58563	T	Hysteroscopy, ablation	0190	17.85	$865.49	$443.89	$173.10
58578	T	Laparo proc, uterus	0190	17.85	$865.49	$443.89	$173.10
58579	T	Hysteroscope procedure	0190	17.85	$865.49	$443.89	$173.10
58600	C	Division of fallopian tube					
58605	C	Division of fallopian tube					
58611	C	Ligate oviduct(s) add-on					
58615	C	Occlude fallopian tube(s)					
58660	T	Laparoscopy, lysis	0131	41.81	$2,027.24	$1,089.88	$405.45
58661	T	Laparoscopy, remove adnexa	0131	41.81	$2,027.24	$1,089.88	$405.45
58662	T	Laparoscopy, excise lesions	0131	41.81	$2,027.24	$1,089.88	$405.45
58670	T	Laparoscopy, tubal cautery	0131	41.81	$2,027.24	$1,089.88	$405.45
58671	T	Laparoscopy, tubal block	0131	41.81	$2,027.24	$1,089.88	$405.45
58672	T	Laparoscopy, fimbrioplasty	0131	41.81	$2,027.24	$1,089.88	$405.45
58673	T	Laparoscopy, salpingostomy	0131	41.81	$2,027.24	$1,089.88	$405.45
58679	T	Laparo proc, oviduct-ovary	0130	25.36	$1,229.63	$659.53	$245.93
58700	C	Removal of fallopian tube					
58720	C	Removal of ovary/tube(s)					
58740	C	Revise fallopian tube(s)					
58750	C	Repair oviduct					
58752	C	Revise ovarian tube(s)					
58760	C	Remove tubal obstruction					
58770	C	Create new tubal opening					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
58800	T	Drainage of ovarian cyst(s)	0195	18.68	$905.74	$483.80	$181.15
58805	C	Drainage of ovarian cyst(s)					
58820	T	Drain ovary abscess, open	0195	18.68	$905.74	$483.80	$181.15
58822	C	Drain ovary abscess, percut					
58823	C	Drain pelvic abscess, percut					
58825	C	Transposition, ovary(s)					
58900	T	Biopsy of ovary(s)	0195	18.68	$905.74	$483.80	$181.15
58920	T	Partial removal of ovary(s)	0195	18.68	$905.74	$483.80	$181.15
58925	T	Removal of ovarian cyst(s)	0195	18.68	$905.74	$483.80	$181.15
58940	C	Removal of ovary(s)					
58943	C	Removal of ovary(s)					
58950	C	Resect ovarian malignancy					
58951	C	Resect ovarian malignancy					
58952	C	Resect ovarian malignancy					
58960	C	Exploration of abdomen					
58970	T	Retrieval of oocyte	0194	16.21	$785.98	$395.94	$157.20
58974	T	Transfer of embryo	0197	2.40	$116.37	$49.55	$23.27
58976	T	Transfer of embryo	0197	2.40	$116.37	$49.55	$23.27
58999	T	Genital surgery procedure	0019	4.00	$193.95	$78.91	$38.79
59000	T	Amniocentesis	0198	1.34	$64.97	$33.03	$12.99
59012	T	Fetal cord puncture, prenatal	0198	1.34	$64.97	$33.03	$12.99
59015	T	Chorion biopsy	0198	1.34	$64.97	$33.03	$12.99
59020	T	Fetal contract stress test	0198	1.34	$64.97	$33.03	$12.99
59025	T	Fetal non-stress test	0198	1.34	$64.97	$33.03	$12.99
59030	T	Fetal scalp blood sample	0198	1.34	$64.97	$33.03	$12.99
59050	T	Fetal monitor w/report	0198	1.34	$64.97	$33.03	$12.99
59051	E	Fetal monitor/interpret only					
59100	C	Remove uterus lesion					
59120	C	Treat ectopic pregnancy					
59121	C	Treat ectopic pregnancy					
59130	C	Treat ectopic pregnancy					
59135	C	Treat ectopic pregnancy					
59136	C	Treat ectopic pregnancy					
59140	C	Treat ectopic pregnancy					
59150	T	Treat ectopic pregnancy	0131	41.81	$2,027.24	$1,089.88	$405.45
59151	T	Treat ectopic pregnancy	0131	41.81	$2,027.24	$1,089.88	$405.45
59160	T	D & c after delivery	0196	14.47	$701.61	$357.98	$140.32
59200	T	Insert cervical dilator	0191	1.19	$57.70	$17.43	$11.54
59300	T	Episiotomy or vaginal repair	0194	16.21	$785.98	$395.94	$157.20
59320	T	Revision of cervix	0194	16.21	$785.98	$395.94	$157.20
59325	C	Revision of cervix					
59350	C	Repair of uterus					
59400	E	Obstetrical care					
59409	E	Obstetrical care	0199	11.20	$543.06	$157.83	$108.61
59410	E	Obstetrical care					
59412	T	Antepartum manipulation	0199	11.20	$543.06	$157.83	$108.61
59414	T	Deliver placenta	0199	11.20	$543.06	$157.83	$108.61
59425	E	Antepartum care only					
59426	E	Antepartum care only					
59430	E	Care after delivery					
59510	E	Cesarean delivery					
59514	C	Cesarean delivery only					
59515	E	Cesarean delivery					
59525	C	Remove uterus after cesarean					
59610	E	Vbac delivery					
59612	T	Vbac delivery only	0199	11.20	$543.06	$157.83	$108.61
59614	E	Vbac care after delivery					
59618	E	Attempted vbac delivery					
59620	C	Attempted vbac delivery only					
59622	E	Attempted vbac after care					
59812	T	Treatment of miscarriage	0201	13.00	$630.33	$329.65	$126.07
59820	T	Care of miscarriage	0201	13.00	$630.33	$329.65	$126.07
59821	T	Treatment of miscarriage	0201	13.00	$630.33	$329.65	$126.07
59830	C	Treat uterus infection					
59840	T	Abortion	0200	13.89	$673.49	$373.23	$134.70
59841	T	Abortion	0200	13.89	$673.49	$373.23	$134.70
59850	C	Abortion					
59851	C	Abortion					
59852	C	Abortion					
59855	C	Abortion					
59856	C	Abortion					
59857	C	Abortion					
59866	C	Abortion (mpr)					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
59870	T	Evacuate mole of uterus	0201	13.00	$630.33	$329.66	$126.07
59871	T	Remove cerclage suture	0194	16.21	$785.98	$395.94	$157.20
59898	T	Laparo proc, ob care/deliver	0130	25.36	$1,229.63	$659.53	$245.93
59899	T	Maternity care procedure	0198	1.34	$64.97	$33.03	$12.99
60000	T	Drain thyroid/tongue cyst	0253	12.02	$582.81	$294.00	$116.56
60001	T	Aspirate/inject thyriod cyst	0002	0.62	$30.06	$17.68	$6.01
60100	T	Biopsy of thyroid	0004	1.84	$89.22	$32.57	$17.84
60200	T	Remove thyroid lesion	0114	19.56	$948.41	$493.78	$189.68
60210	T	Partial thyroid excision	0114	19.56	$948.41	$493.78	$189.68
60212	C	Partial thyroid excision					
60220	T	Partial removal of thyroid	0114	19.56	$948.41	$493.78	$189.68
60225	T	Partial removal of thyroid	0114	19.56	$948.41	$493.78	$189.68
60240	T	Removal of thyroid	0114	19.56	$948.41	$493.78	$189.68
60252	C	Removal of thyroid					
60254	C	Extensive thyroid surgery					
60260	C	Repeat thyroid surgery					
60270	C	Removal of thyroid					
60271	C	Removal of thyroid					
60280	T	Remove thyroid duct lesion	0114	19.56	$948.41	$493.78	$189.68
60281	T	Remove thyroid duct lesion	0114	19.56	$948.41	$493.78	$189.68
60500	T	Explore parathyroid glands	0256	25.40	$1,231.57	$623.05	$246.31
60502	C	Re-explore parathyroids					
60505	C	Explore parathyroid glands					
60512	C	Autotransplant parathyroid					
60520	C	Removal of thymus gland					
60521	C	Removal of thymus gland					
60522	C	Removal of thymus gland					
60540	C	Explore adrenal gland					
60545	C	Explore adrenal gland					
60600	C	Remove carotid body lesion					
60605	C	Remove carotid body lesion					
60650	C	Laparoscopy adrenalectomy					
60659	T	Laparo proc, endocrine	0130	25.36	$1,229.63	$659.53	$245.93
60699	T	Endocrine surgery procedure	0004	1.84	$89.22	$32.57	$17.84
61000	T	Remove cranial cavity fluid	0212	3.64	$176.49	$88.78	$35.30
61001	T	Remove cranial cavity fluid	0212	3.64	$176.49	$88.78	$35.30
61020	T	Remove brain cavity fluid	0212	3.64	$176.49	$88.78	$35.30
61026	T	Injection into brain canal	0212	3.64	$176.49	$88.78	$35.30
61050	T	Remove brain canal fluid	0212	3.64	$176.49	$88.78	$35.30
61055	T	Injection into brain canal	0212	3.64	$176.49	$88.78	$35.30
61070	T	Brain canal shunt procedure	0212	3.64	$176.49	$88.78	$35.30
61105	C	Twist drill hole					
61107	C	Drill skull for implantation					
61108	C	Drill skull for drainage					
61120	C	Burr hole for puncture					
61140	C	Pierce skull for biopsy					
61150	C	Pierce skull for drainage					
61151	C	Pierce skull for drainage					
61154	C	Pierce skull & remove clot					
61156	C	Pierce skull for drainage					
61210	C	Pierce skull, implant device					
61215	T	Insert brain-fluid device	0222	25.48	$1,235.45	$760.07	$247.09
61250	C	Pierce skull & explore					
61253	C	Pierce skull & explore					
61304	C	Open skull for exploration					
61305	C	Open skull for exploration					
61312	C	Open skull for drainage					
61313	C	Open skull for drainage					
61314	C	Open skull for drainage					
61315	C	Open skull for drainage					
61320	C	Open skull for drainage					
61321	C	Open skull for drainage					
61330	T	Decompress eye socket	0256	25.40	$1,231.57	$623.05	$246.31
61332	C	Explore/biopsy eye socket					
61333	C	Explore orbit/remove lesion					
61334	C	Explore orbit/remove object					
61340	C	Relieve cranial pressure					
61343	C	Incise skull (press relief)					
61345	C	Relieve cranial pressure					
61440	C	Incise skull for surgery					
61450	C	Incise skull for surgery					
61458	C	Incise skull for brain wound					
61460	C	Incise skull for surgery					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
61470	C	Incise skull for surgery					
61480	C	Incise skull for surgery					
61490	C	Incise skull for surgery					
61500	C	Removal of skull lesion					
61501	C	Remove infected skull bone					
61510	C	Removal of brain lesion					
61512	C	Remove brain lining lesion					
61514	C	Removal of brain abscess					
61516	C	Removal of brain lesion					
61518	C	Removal of brain lesion					
61519	C	Remove brain lining lesion					
61520	C	Removal of brain lesion					
61521	C	Removal of brain lesion					
61522	C	Removal of brain abscess					
61524	C	Removal of brain lesion					
61526	C	Removal of brain lesion					
61530	C	Removal of brain lesion					
61531	C	Implant brain electrodes					
61533	C	Implant brain electrodes					
61534	C	Removal of brain lesion					
61535	C	Remove brain electrodes					
61536	C	Removal of brain lesion					
61538	C	Removal of brain tissue					
61539	C	Removal of brain tissue					
61541	C	Incision of brain tissue					
61542	C	Removal of brain tissue					
61543	C	Removal of brain tissue					
61544	C	Remove & treat brain lesion					
61545	C	Excision of brain tumor					
61546	C	Removal of pituitary gland					
61548	C	Removal of pituitary gland					
61550	C	Release of skull seams					
61552	C	Release of skull seams					
61556	C	Incise skull/sutures					
61557	C	Incise skull/sutures					
61558	C	Excision of skull/sutures					
61559	C	Excision of skull/sutures					
61563	C	Excision of skull tumor					
61564	C	Excision of skull tumor					
61570	C	Remove foreign body, brain					
61571	C	Incise skull for brain wound					
61575	C	Skull base/brainstem surgery					
61576	C	Skull base/brainstem surgery					
61580	C	Craniofacial approach, skull					
61581	C	Craniofacial approach, skull					
61582	C	Craniofacial approach, skull					
61583	C	Craniofacial approach, skull					
61584	C	Orbitocranial approach/skull					
61585	C	Orbitocranial approach/skull					
61586	C	Resect nasopharynx, skull					
61590	C	Infratemporal approach/skull					
61591	C	Infratemporal approach/skull					
61592	C	Orbitocranial approach/skull					
61595	C	Transtemporal approach/skull					
61596	C	Transcochlear approach/skull					
61597	C	Transcondylar approach/skull					
61598	C	Transpetrosal approach/skull					
61600	C	Resect/excise cranial lesion					
61601	C	Resect/excise cranial lesion					
61605	C	Resect/excise cranial lesion					
61606	C	Resect/excise cranial lesion					
61607	C	Resect/excise cranial lesion					
61608	C	Resect/excise cranial lesion					
61609	C	Transect artery, sinus					
61610	C	Transect artery, sinus					
61611	C	Transect artery, sinus					
61612	C	Transect artery, sinus					
61613	C	Remove aneurysm, sinus					
61615	C	Resect/excise lesion, skull					
61616	C	Resect/excise lesion, skull					
61618	C	Repair dura					
61619	C	Repair dura					
61624	C	Occlusion/embolization cath					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
61626	C	Occlusion/embolization cath					
61680	C	Intracranial vessel surgery					
61682	C	Intracranial vessel surgery					
61684	C	Intracranial vessel surgery					
61686	C	Intracranial vessel surgery					
61690	C	Intracranial vessel surgery					
61692	G	Intracranial vessel surgery					
61700	C	Inner skull vessel surgery					
61702	C	Inner skull vessel surgery					
61703	C	Clamp neck artery					
61705	C	Revise circulation to head					
61708	C	Revise circulation to head					
61710	C	Revise circulation to head					
61711	C	Fusion of skull arteries					
61720	C	Incise skull/brain surgery					
61735	C	Incise skull/brain surgery					
61750	C	Incise skull/brain biopsy					
61751	C	Brain biopsy w/ct/mr guide					
61760	C	Implant brain electrodes					
61770	C	Incise skull for treatment					
61790	T	Treat trigeminal nerve	0220	13.96	$676.88	$326.21	$135.38
61791	C	Treat trigeminal tract					
61793	E	Focus radiation beam					
61795	C	Brain surgery using computer					
61850	C	Implant neuroelectrodes					
61860	C	Implant neuroelectrodes					
61862	C	Implant neurostimul, subcort					
61870	C	Implant neuroelectrodes					
61875	C	Implant neuroelectrodes					
61880	C	Revise/remove neuroelectrode					
61885	T	Implant neurostim one array	0222	25.48	$1,235.45	$780.07	$247.09
61886	C	Implant neurostim arrays					
61888	C	Revise/remove neuroreceiver					
62000	C	Treat skull fracture					
62005	C	Treat skull fracture					
62010	C	Treatment of head injury					
62100	C	Repair brain fluid leakage					
62115	C	Reduction of skull defect					
62116	C	Reduction of skull defect					
62117	C	Reduction of skull defect					
62120	C	Repair skull cavity lesion					
62121	C	Incise skull repair					
62140	C	Repair of skull defect					
62141	C	Repair of skull defect					
62142	C	Remove skull plate/flap					
62143	C	Replace skull plate/flap					
62145	C	Repair of skull & brain					
62146	C	Repair of skull with graft					
62147	C	Repair of skull with graft					
62180	C	Establish brain cavity shunt					
62190	C	Establish brain cavity shunt					
62192	C	Establish brain cavity shunt					
62194	T	Replace/irrigate catheter	0121	2.36	$114.43	$52.53	$22.89
62200	C	Establish brain cavity shunt					
62201	C	Establish brain cavity shunt					
62220	C	Establish brain cavity shunt					
62223	C	Establish brain cavity shunt					
62225	T	Replace/irrigate catheter	0121	2.36	$114.43	$52.53	$22.89
62230	T	Replace/revise brain shunt	0224	15.94	$772.88	$374.61	$154.58
62256	C	Remove brain cavity shunt					
62258	C	Replace brain cavity shunt					
62263	T	Lysis epidural adhesions	0212	3.64	$176.49	$86.78	$35.30
62268	T	Drain spinal cord cyst	0212	3.64	$176.49	$86.78	$35.30
62269	T	Needle biopsy, spinal cord	0005	5.41	$262.32	$119.75	$52.46
62270	T	Spinal fluid tap, diagnostic	0210	3.00	$145.46	$62.40	$29.09
62272	T	Drain spinal fluid	0210	3.00	$145.46	$62.40	$29.09
62273	T	Treat epidural spine lesion	0212	3.64	$176.49	$86.78	$35.30
62280	T	Treat spinal cord lesion	0212	3.64	$176.49	$86.78	$35.30
62281	T	Treat spinal cord lesion	0212	3.64	$176.49	$86.78	$35.30
62282	T	Treat spinal canal lesion	0212	3.64	$176.49	$86.78	$35.30
62284	N	Injection for myelogram					
62287	T	Percutaneous diskectomy	0220	13.96	$676.88	$326.21	$135.38
62290	N	Inject for spine disk x-ray					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
62291	N	Inject for spine disk x-ray					
62292	T	Injection into disk lesion	0212	3.64	$176.49	$88.78	$35.30
62294	T	Injection into spinal artery	0212	3.64	$176.49	$88.78	$35.30
62310	T	Inject spine c/t	0212	3.64	$176.49	$88.78	$35.30
62311	T	Inject spine l/s (cd)	0212	3.64	$176.49	$88.78	$35.30
62318	T	Inject spine w/cath, c/t	0212	3.64	$176.49	$88.78	$35.30
62319	T	Inject spine w/cath l/s (cd)	0212	3.64	$176.49	$88.78	$35.30
62350	T	Implant spinal canal cath	0223	6.34	$307.41	$153.24	$61.48
62351	C	Implant spinal canal cath					
62355	T	Remove spinal canal catheter	0223	6.34	$307.41	$153.24	$61.48
62360	T	Insert spine infusion device	0222	25.48	$1,235.45	$780.07	$247.09
62361	T	Implant spine infusion pump	0222	25.48	$1,235.45	$780.07	$247.09
62362	T	Implant spine infusion pump	0222	25.48	$1,235.45	$780.07	$247.09
62365	T	Remove spine infusion device	0224	15.94	$772.88	$374.61	$154.58
62367	S	Analyze spine infusion pump	0102	0.45	$21.82	$12.62	$4.36
62368	S	Analyze spine infusion pump	0102	0.45	$21.82	$12.62	$4.36
63001	C	Removal of spinal lamina					
63003	C	Removal of spinal lamina					
63005	C	Removal of spinal lamina					
63011	C	Removal of spinal lamina					
63012	C	Removal of spinal lamina					
63015	C	Removal of spinal lamina					
63016	C	Removal of spinal lamina					
63017	C	Removal of spinal lamina					
63020	C	Neck spine disk surgery					
63030	C	Low back disk surgery					
63036	C	Spinal disk surgery add-on					
63040	C	Neck spine disk surgery					
63042	C	Low back disk surgery					
63045	C	Removal of spinal lamina					
63046	C	Removal of spinal lamina					
63047	C	Removal of spinal lamina					
63048	C	Remove spinal lamina add-on					
63055	C	Decompress spinal cord					
63056	C	Decompress spinal cord					
63057	C	Decompress spine cord add-on					
63064	C	Decompress spinal cord					
63066	C	Decompress spine cord add-on					
63075	C	Neck spine disk surgery					
63076	C	Neck spine disk surgery					
63077	C	Spine disk surgery, thorax					
63078	C	Spine disk surgery, thorax					
63081	C	Removal of vertebral body					
63082	C	Remove vertebral body add-on					
63085	C	Removal of vertebral body					
63086	C	Remove vertebral body add-on					
63087	C	Removal of vertebral body					
63088	C	Remove vertebral body add-on					
63090	C	Removal of vertebral body					
63091	C	Remove vertebral body add-on					
63170	C	Incise spinal cord tract(s)					
63172	C	Drainage of spinal cyst					
63173	C	Drainage of spinal cyst					
63180	C	Revise spinal cord ligaments					
63182	C	Revise spinal cord ligaments					
63185	C	Incise spinal column/nerves					
63190	C	Incise spinal column/nerves					
63191	C	Incise spinal column/nerves					
63194	C	Incise spinal column & cord					
63195	C	Incise spinal column & cord					
63196	C	Incise spinal column & cord					
63197	C	Incise spinal column & cord					
63198	C	Incise spinal column & cord					
63199	C	Incise spinal column & cord					
63200	C	Release of spinal cord					
63250	C	Revise spinal cord vessels					
63251	C	Revise spinal cord vessels					
63252	C	Revise spinal cord vessels					
63265	C	Excise intraspinal lesion					
63266	C	Excise intraspinal lesion					
63267	C	Excise intraspinal lesion					
63268	C	Excise intraspinal lesion					
63270	C	Excise intraspinal lesion					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
63271	C	Excise intraspinal lesion					
63272	C	Excise intraspinal lesion					
63273	C	Excise intraspinal lesion					
63275	C	Biopsy/excise spinal tumor					
63276	C	Biopsy/excise spinal tumor					
63277	C	Biopsy/excise spinal tumor					
63278	C	Biopsy/excise spinal tumor					
63280	C	Biopsy/excise spinal tumor					
63281	C	Biopsy/excise spinal tumor					
63282	C	Biopsy/excise spinal tumor					
63283	C	Biopsy/excise spinal tumor					
63285	C	Biopsy/excise spinal tumor					
63286	C	Biopsy/excise spinal tumor					
63287	C	Biopsy/excise spinal tumor					
63290	C	Biopsy/excise spinal tumor					
63300	C	Removal of vertebral body					
63301	C	Removal of vertebral body					
63302	C	Removal of vertebral body					
63303	C	Removal of vertebral body					
63304	C	Removal of vertebral body					
63305	C	Removal of vertebral body					
63306	C	Removal of vertebral body					
63307	C	Removal of vertebral body					
63308	C	Remove vertebral body add-on					
63600	T	Remove spinal cord lesion	0220	13.96	$676.88	$326.21	$135.36
63610	T	Stimulation of spinal cord	0220	13.96	$676.88	$326.21	$135.36
63615	T	Remove lesion of spinal cord	0220	13.96	$676.88	$326.21	$135.36
63650	T	Implant neuroelectrodes	0224	15.94	$772.88	$374.61	$154.56
63655	C	Implant neuroelectrodes					
63660	T	Revise/remove neuroelectrode	0224	15.94	$772.88	$374.61	$154.56
63685	T	Implant neuroreceiver	0222	25.48	$1,235.45	$780.07	$247.09
63688	T	Revise/remove neuroreceiver	0224	15.94	$772.88	$374.61	$154.56
63700	C	Repair of spinal herniation					
63702	C	Repair of spinal herniation					
63704	C	Repair of spinal herniation					
63706	C	Repair of spinal herniation					
63707	C	Repair spinal fluid leakage					
63709	C	Repair spinal fluid leakage					
63710	C	Graft repair of spine defect					
63740	C	Install spinal shunt					
63741	C	Install spinal shunt					
63744	T	Revision of spinal shunt	0224	15.94	$772.88	$374.61	$154.56
63746	T	Removal of spinal shunt	0223	6.34	$307.41	$153.24	$61.48
64400	T	Injection for nerve block	0211	3.32	$160.98	$74.78	$32.20
64402	T	Injection for nerve block	0211	3.32	$160.98	$74.78	$32.20
64405	T	Injection for nerve block	0211	3.32	$160.98	$74.78	$32.20
64408	T	Injection for nerve block	0211	3.32	$160.98	$74.78	$32.20
64410	T	Injection for nerve block	0211	3.32	$160.98	$74.78	$32.20
64412	T	Injection for nerve block	0211	3.32	$160.98	$74.78	$32.20
64413	T	Injection for nerve block	0211	3.32	$160.98	$74.78	$32.20
64415	T	Injection for nerve block	0211	3.32	$160.98	$74.78	$32.20
64417	T	Injection for nerve block	0211	3.32	$160.98	$74.78	$32.20
64418	T	Injection for nerve block	0211	3.32	$160.98	$74.78	$32.20
64420	T	Injection for nerve block	0211	3.32	$160.98	$74.78	$32.20
64421	T	Injection for nerve block	0211	3.32	$160.98	$74.78	$32.20
64425	T	Injection for nerve block	0211	3.32	$160.98	$74.78	$32.20
64430	T	Injection for nerve block	0211	3.32	$160.98	$74.78	$32.20
64435	T	Injection for nerve block	0211	3.32	$160.98	$74.78	$32.20
64445	T	Injection for nerve block	0211	3.32	$160.98	$74.78	$32.20
64450	T	Injection for nerve block	0211	3.32	$160.98	$74.78	$32.20
64470	T	Inj paravertebral c/t	0211	3.32	$160.98	$74.78	$32.20
64472	T	Inj paravertebral c/t add-on	0211	3.32	$160.98	$74.78	$32.20
64475	T	Inj paravertebral l/s	0211	3.32	$160.98	$74.78	$32.20
64476	T	Inj paravertebral l/s add-on	0211	3.32	$160.98	$74.78	$32.20
64479	T	Inj foramen epidural c/t	0211	3.32	$160.98	$74.78	$32.20
64480	T	Inj foramen epidural add-on	0211	3.32	$160.98	$74.78	$32.20
64483	T	Inj foramen epidural l/s	0211	3.32	$160.98	$74.78	$32.20
64484	T	Inj foramen epidural add-on	0211	3.32	$160.98	$74.78	$32.20
64505	T	Injection for nerve block	0211	3.32	$160.98	$74.78	$32.20
64508	T	Injection for nerve block	0211	3.32	$160.98	$74.78	$32.20
64510	T	Injection for nerve block	0211	3.32	$160.98	$74.78	$32.20
64520	T	Injection for nerve block	0211	3.32	$160.98	$74.78	$32.20
64530	T	Injection for nerve block	0211	3.32	$160.98	$74.78	$32.20

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
64550	A	Apply neurostimulator					
64553	T	Implant neuroelectrodes	0225	3.43	$166.31	$64.46	$33.26
64555	T	Implant neuroelectrodes	0225	3.43	$166.31	$64.46	$33.26
64560	T	Implant neuroelectrodes	0225	3.43	$166.31	$64.46	$33.26
64565	T	Implant neuroelectrodes	0225	3.43	$166.31	$64.46	$33.26
64573	T	Implant neuroelectrodes	0225	3.43	$166.31	$64.46	$33.26
64575	T	Implant neuroelectrodes	0225	3.43	$166.31	$64.46	$33.26
64577	T	Implant neuroelectrodes	0225	3.43	$166.31	$64.46	$33.26
64580	T	Implant neuroelectrodes	0225	3.43	$166.31	$64.46	$33.26
64585	T	Revise/remove neuroelectrode	0225	3.43	$166.31	$64.46	$33.26
64590	T	Implant neuroreceiver	0222	25.48	$1,235.45	$780.07	$247.09
64595	T	Revise/remove neuroreceiver	0225	3.43	$166.31	$64.46	$33.26
64600	T	Injection treatment of nerve	0211	3.32	$160.96	$74.78	$32.20
64605	T	Injection treatment of nerve	0211	3.32	$160.96	$74.78	$32.20
64610	T	Injection treatment of nerve	0211	3.32	$160.96	$74.78	$32.20
64612	T	Destroy nerve, face muscle	0211	3.32	$160.96	$74.78	$32.20
64613	T	Destroy nerve, spine muscle	0211	3.32	$160.96	$74.78	$32.20
64620	T	Injection treatment of nerve	0211	3.32	$160.96	$74.78	$32.20
64622	T	Destr paravertebrl nerve l/s	0211	3.32	$160.96	$74.78	$32.20
64623	T	Destr paravertebral n add-on	0211	3.32	$160.96	$74.78	$32.20
64626	T	Destr paravertebrl nerve c/t	0211	3.32	$160.96	$74.78	$32.20
64627	T	Destr paravertebral n add-on	0211	3.32	$160.96	$74.78	$32.20
64630	T	Injection treatment of nerve	0211	3.32	$160.96	$74.78	$32.20
64640	T	Injection treatment of nerve	0211	3.32	$160.96	$74.78	$32.20
64680	T	Injection treatment of nerve	0211	3.32	$160.96	$74.78	$32.20
64702	T	Revise finger/toe nerve	0220	13.96	$676.88	$326.21	$135.38
64704	T	Revise hand/foot nerve	0220	13.96	$676.88	$326.21	$135.38
64708	T	Revise arm/leg nerve	0220	13.96	$676.88	$326.21	$135.38
64712	T	Revision of sciatic nerve	0220	13.96	$676.88	$326.21	$135.38
64713	T	Revision of arm nerve(s)	0220	13.96	$676.88	$326.21	$135.38
64714	T	Revise low back nerve(s)	0220	13.96	$676.88	$326.21	$135.38
64716	T	Revision of cranial nerve	0220	13.96	$676.88	$326.21	$135.38
64718	T	Revise ulnar nerve at elbow	0220	13.96	$676.88	$326.21	$135.38
64719	T	Revise ulnar nerve at wrist	0220	13.96	$676.88	$326.21	$135.38
64721	T	Carpal tunnel surgery	0220	13.96	$676.88	$326.21	$135.38
64722	T	Relieve pressure on nerve(s)	0220	13.96	$676.88	$326.21	$135.38
64726	T	Release foot/toe nerve	0220	13.96	$676.88	$326.21	$135.38
64727	T	Internal nerve revision	0220	13.96	$676.88	$326.21	$135.38
64732	T	Incision of brow nerve	0220	13.96	$676.88	$326.21	$135.38
64734	T	Incision of cheek nerve	0220	13.96	$676.88	$326.21	$135.38
64736	T	Incision of chin nerve	0220	13.96	$676.88	$326.21	$135.38
64738	T	Incision of jaw nerve	0220	13.96	$676.88	$326.21	$135.38
64740	T	Incision of tongue nerve	0220	13.96	$676.88	$326.21	$135.38
64742	T	Incision of facial nerve	0220	13.96	$676.88	$326.21	$135.38
64744	T	Incise nerve, back of head	0220	13.96	$676.88	$326.21	$135.38
64746	T	Incise diaphragm nerve	0220	13.96	$676.88	$326.21	$135.38
64752	C	Incision of vagus nerve					
64755	C	Incision of stomach nerves					
64760	C	Incision of vagus nerve					
64761	T	Incision of pelvis nerve	0220	13.96	$676.88	$326.21	$135.38
64763	C	Incise hip/thigh nerve					
64766	C	Incise hip/thigh nerve					
64771	T	Sever cranial nerve	0220	13.96	$676.88	$326.21	$135.38
64772	T	Incision of spinal nerve	0220	13.96	$676.88	$326.21	$135.38
64774	T	Remove skin nerve lesion	0220	13.96	$676.88	$326.21	$135.38
64776	T	Remove digit nerve lesion	0220	13.96	$676.88	$326.21	$135.38
64778	T	Digit nerve surgery add-on	0220	13.96	$676.88	$326.21	$135.38
64782	T	Remove limb nerve lesion	0220	13.96	$676.88	$326.21	$135.38
64783	T	Limb nerve surgery add-on	0220	13.96	$676.88	$326.21	$135.38
64784	T	Remove nerve lesion	0220	13.96	$676.88	$326.21	$135.38
64786	T	Remove sciatic nerve lesion	0221	18.36	$890.22	$463.62	$178.04
64787	T	Implant nerve end	0220	13.96	$676.88	$326.21	$135.38
64788	T	Remove skin nerve lesion	0220	13.96	$676.88	$326.21	$135.38
64790	T	Removal of nerve lesion	0220	13.96	$676.88	$326.21	$135.38
64792	T	Removal of nerve lesion	0221	18.36	$890.22	$463.62	$178.04
64795	T	Biopsy of nerve	0220	13.96	$676.88	$326.21	$135.38
64802	C	Remove sympathetic nerves					
64804	C	Remove sympathetic nerves					
64809	C	Remove sympathetic nerves					
64818	C	Remove sympathetic nerves					
64820	C	Remove sympathetic nerves					
64831	T	Repair of digit nerve	0221	18.36	$890.22	$463.62	$178.04
64832	T	Repair nerve add-on	0221	18.36	$890.22	$463.62	$178.04

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
64834	T	Repair of hand or foot nerve	0221	18.36	$890.22	$463.62	$178.04
64835	T	Repair of hand or foot nerve	0221	18.36	$890.22	$463.62	$178.04
64836	T	Repair of hand or foot nerve	0221	18.36	$890.22	$463.62	$178.04
64837	T	Repair nerve add-on	0221	18.36	$890.22	$463.62	$178.04
64840	T	Repair of leg nerve	0221	18.36	$890.22	$463.62	$178.04
64856	T	Repair/transpose nerve	0221	18.36	$890.22	$463.62	$178.04
64857	T	Repair arm/leg nerve	0221	18.36	$890.22	$463.62	$178.04
64858	T	Repair sciatic nerve	0221	18.36	$890.22	$463.62	$178.04
64859	T	Nerve surgery	0221	18.36	$890.22	$463.62	$178.04
64861	T	Repair of arm nerves	0221	18.36	$890.22	$463.62	$178.04
64862	T	Repair of low back nerves	0221	18.36	$890.22	$463.62	$178.04
64864	T	Repair of facial nerve	0221	18.36	$890.22	$463.62	$178.04
64865	T	Repair of facial nerve	0221	18.36	$890.22	$463.62	$178.04
64866	C	Fusion of facial/other nerve					
64868	C	Fusion of facial/other nerve					
64870	T	Fusion of facial/other nerve	0221	18.36	$890.22	$463.62	$178.04
64872	T	Subsequent repair of nerve	0221	18.36	$890.22	$463.62	$178.04
64874	T	Repair & revise nerve add-on	0221	18.36	$890.22	$463.62	$178.04
64876	T	Repair nerve/shorten bone	0221	18.36	$890.22	$463.62	$178.04
64885	T	Nerve graft, head or neck	0221	18.36	$890.22	$463.62	$178.04
64886	T	Nerve graft, head or neck	0221	18.36	$890.22	$463.62	$178.04
64890	T	Nerve graft, hand or foot	0221	18.36	$890.22	$463.62	$178.04
64891	T	Nerve graft, hand or foot	0221	18.36	$890.22	$463.62	$178.04
64892	T	Nerve graft, arm or leg	0221	18.36	$890.22	$463.62	$178.04
64893	T	Nerve graft, arm or leg	0221	18.36	$890.22	$463.62	$178.04
64895	T	Nerve graft, hand or foot	0221	18.36	$890.22	$463.62	$178.04
64896	T	Nerve graft, hand or foot	0221	18.36	$890.22	$463.62	$178.04
64897	T	Nerve graft, arm or leg	0221	18.36	$890.22	$463.62	$178.04
64898	T	Nerve graft, arm or leg	0221	18.36	$890.22	$463.62	$178.04
64901	T	Nerve graft add-on	0221	18.36	$890.22	$463.62	$178.04
64902	T	Nerve graft add-on	0221	18.36	$890.22	$463.62	$178.04
64905	T	Nerve pedicle transfer	0221	18.36	$890.22	$463.62	$178.04
64907	T	Nerve pedicle transfer	0221	18.36	$890.22	$463.62	$178.04
64999	T	Nervous system surgery	0211	3.32	$160.96	$74.78	$32.20
65091	T	Revise eye	0242	23.70	$1,149.14	$597.36	$229.83
65093	T	Revise eye with implant	0241	16.60	$804.89	$384.47	$160.96
65101	T	Removal of eye	0242	23.70	$1,149.14	$597.36	$229.83
65103	T	Remove eye/insert implant	0242	23.70	$1,149.14	$597.36	$229.83
65105	T	Remove eye/attach implant	0242	23.70	$1,149.14	$597.36	$229.83
65110	T	Removal of eye	0242	23.70	$1,149.14	$597.36	$229.83
65112	T	Remove eye/revise socket	0242	23.70	$1,149.14	$597.36	$229.83
65114	T	Remove eye/revise socket	0242	23.70	$1,149.14	$597.36	$229.83
65125	T	Revise ocular implant	0240	13.47	$653.12	$315.31	$130.62
65130	T	Insert ocular implant	0241	16.60	$804.89	$384.47	$160.96
65135	T	Insert ocular implant	0241	16.60	$804.89	$384.47	$160.96
65140	T	Attach ocular implant	0242	23.70	$1,149.14	$597.36	$229.83
65150	T	Revise ocular implant	0241	16.60	$804.89	$384.47	$160.96
65155	T	Reinsert ocular implant	0242	23.70	$1,149.14	$597.36	$229.83
65175	T	Removal of ocular implant	0240	13.47	$653.12	$315.31	$130.62
65205	S	Remove foreign body from eye	0231	2.64	$128.01	$59.87	$25.60
65210	S	Remove foreign body from eye	0231	2.64	$128.01	$59.87	$25.60
65220	S	Remove foreign body from eye	0231	2.64	$128.01	$59.87	$25.60
65222	S	Remove foreign body from eye	0231	2.64	$128.01	$59.87	$25.60
65235	T	Remove foreign body from eye	0232	6.04	$292.86	$134.66	$58.57
65260	T	Remove foreign body from eye	0237	33.96	$1,646.62	$852.68	$329.32
65265	T	Remove foreign body from eye	0237	33.96	$1,646.62	$852.68	$329.32
65270	T	Repair of eye wound	0240	13.47	$653.12	$315.31	$130.62
65272	T	Repair of eye wound	0232	6.04	$292.86	$134.66	$58.57
65273	C	Repair of eye wound					
65275	T	Repair of eye wound	0233	13.79	$668.64	$331.60	$133.73
65280	T	Repair of eye wound	0233	13.79	$668.64	$331.60	$133.73
65285	T	Repair of eye wound	0234	20.64	$1,000.77	$502.16	$200.15
65286	T	Repair of eye wound	0232	6.04	$292.86	$134.66	$58.57
65290	T	Repair of eye socket wound	0243	17.99	$872.28	$431.39	$174.46
65400	T	Removal of eye lesion	0232	6.04	$292.86	$134.66	$58.57
65410	T	Biopsy of cornea	0233	13.79	$668.64	$331.60	$133.73
65420	T	Removal of eye lesion	0233	13.79	$668.64	$331.60	$133.73
65426	T	Removal of eye lesion	0233	13.79	$668.64	$331.60	$133.73
65430	S	Corneal smear	0231	2.64	$128.01	$59.87	$25.60
65435	T	Curette/treat cornea	0239	6.26	$303.53	$123.42	$80.71
65436	T	Curette/treat cornea	0232	6.04	$292.86	$134.66	$58.57
65450	T	Treatment of corneal lesion	0232	6.04	$292.86	$134.66	$58.57
65600	T	Revision of cornea	0240	13.47	$653.12	$315.31	$130.62

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[2] Not subject to national coinsurance.

[3] Eligible for pass-through payments. See Preamble for payment rate determination. See Addendum K for complete list of pass-through codes.

ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
65710	T	Corneal transplant	0244	32.88	$1,594.26	$851.42	$318.85
65730	T	Corneal transplant	0244	32.88	$1,594.26	$851.42	$318.85
65750	T	Corneal transplant	0244	32.88	$1,594.26	$851.42	$318.85
65755	T	Corneal transplant	0244	32.88	$1,594.26	$851.42	$318.85
65760	E	Revision of cornea					
65765	E	Revision of cornea					
65767	E	Corneal tissue transplant					
65770	T	Revise cornea with implant	0244	32.88	$1,594.26	$851.42	$318.85
65771	E	Radial keratotomy					
65772	T	Correction of astigmatism	0232	6.04	$292.86	$134.66	$58.57
65775	T	Correction of astigmatism	0233	13.79	$668.64	$331.60	$133.73
65800	T	Drainage of eye	0232	6.04	$292.86	$134.66	$58.57
65805	T	Drainage of eye	0233	13.79	$668.64	$331.60	$133.73
65810	T	Drainage of eye	0233	13.79	$668.64	$331.60	$133.73
65815	T	Drainage of eye	0233	13.79	$668.64	$331.60	$133.73
65820	T	Relieve inner eye pressure	0232	6.04	$292.86	$134.66	$58.57
65850	T	Incision of eye	0234	20.64	$1,000.77	$502.16	$200.15
65855	T	Laser surgery of eye	0247	4.89	$237.10	$112.86	$47.42
65860	T	Incise inner eye adhesions	0247	4.89	$237.10	$112.86	$47.42
65865	T	Incise inner eye adhesions	0233	13.79	$668.64	$331.60	$133.73
65870	T	Incise inner eye adhesions	0233	13.79	$668.64	$331.60	$133.73
65875	T	Incise inner eye adhesions	0233	13.79	$668.64	$331.60	$133.73
65880	T	Incise inner eye adhesions	0232	6.04	$292.86	$134.66	$58.57
65900	T	Remove eye lesion	0232	6.04	$292.86	$134.66	$58.57
65920	T	Remove implant from eye	0233	13.79	$668.64	$331.60	$133.73
65930	T	Remove blood clot from eye	0233	13.79	$668.64	$331.60	$133.73
66020	T	Injection treatment of eye	0232	6.04	$292.86	$134.66	$58.57
66030	T	Injection treatment of eye	0232	6.04	$292.86	$134.66	$58.57
66130	T	Remove eye lesion	0233	13.79	$668.64	$331.60	$133.73
66150	T	Glaucoma surgery	0233	13.79	$668.64	$331.60	$133.73
66155	T	Glaucoma surgery	0234	20.64	$1,000.77	$502.16	$200.15
66160	T	Glaucoma surgery	0234	20.64	$1,000.77	$502.16	$200.15
66165	T	Glaucoma surgery	0234	20.64	$1,000.77	$502.16	$200.15
66170	T	Glaucoma surgery	0234	20.64	$1,000.77	$502.16	$200.15
66172	T	Incision of eye	0234	20.64	$1,000.77	$502.16	$200.15
66180	T	Implant eye shunt	0234	20.64	$1,000.77	$502.16	$200.15
66185	T	Revise eye shunt	0234	20.64	$1,000.77	$502.16	$200.15
66220	T	Repair eye lesion	0236	6.70	$324.86	$147.96	$64.97
66225	T	Repair/graft eye lesion	0234	20.64	$1,000.77	$502.16	$200.15
66250	T	Follow-up surgery of eye	0233	13.79	$668.64	$331.60	$133.73
66500	T	Incision of iris	0232	6.04	$292.86	$134.66	$58.57
66505	T	Incision of iris	0232	6.04	$292.86	$134.66	$58.57
66600	T	Remove iris and lesion	0233	13.79	$668.64	$331.60	$133.73
66605	T	Removal of iris	0233	13.79	$668.64	$331.60	$133.73
66625	T	Removal of iris	0232	6.04	$292.86	$134.66	$58.57
66630	T	Removal of iris	0233	13.79	$668.64	$331.60	$133.73
66635	T	Removal of iris	0233	13.79	$668.64	$331.60	$133.73
66680	T	Repair iris & ciliary body	0233	13.79	$668.64	$331.60	$133.73
66682	T	Repair iris & ciliary body	0233	13.79	$668.64	$331.60	$133.73
66700	T	Destruction, ciliary body	0232	6.04	$292.86	$134.66	$58.57
66710	T	Destruction, ciliary body	0232	6.04	$292.86	$134.66	$58.57
66720	T	Destruction, ciliary body	0232	6.04	$292.86	$134.66	$58.57
66740	T	Destruction, ciliary body	0233	13.79	$668.64	$331.60	$133.73
66761	T	Revision of iris	0247	4.89	$237.10	$112.86	$47.42
66762	T	Revision of iris	0247	4.89	$237.10	$112.86	$47.42
66770	T	Removal of inner eye lesion	0247	4.89	$237.10	$112.86	$47.42
66820	T	Incision, secondary cataract	0232	6.04	$292.86	$134.66	$58.57
66821	T	After cataract laser surgery	0247	4.89	$237.10	$112.86	$47.42
66825	T	Reposition intraocular lens	0236	13.79	$668.64	$331.60	$133.73
66830	T	Removal of lens lesion	0232	6.04	$292.86	$134.66	$58.57
66840	T	Removal of lens material	0245	26.55	$1,287.33	$623.85	$257.47
66850	T	Removal of lens material	0245	26.55	$1,287.33	$623.85	$257.47
66852	T	Removal of lens material	0245	26.55	$1,287.33	$623.85	$257.47
66920	T	Extraction of lens	0245	26.55	$1,287.33	$623.85	$257.47
66930	T	Extraction of lens	0245	26.55	$1,287.33	$623.85	$257.47
66940	T	Extraction of lens	0245	26.55	$1,287.33	$623.85	$257.47
66983	T	Remove cataract/insert lens	0246	26.55	$1,287.33	$623.85	$257.47
66984	T	Remove cataract/insert lens	0246	26.55	$1,287.33	$623.85	$257.47
66985	T	Insert lens prosthesis	0246	26.55	$1,287.33	$623.85	$257.47
66986	T	Exchange lens prosthesis	0246	26.55	$1,287.33	$623.85	$257.47
66999	T	Eye surgery procedure	0247	4.89	$237.10	$112.86	$47.42
67005	T	Partial removal of eye fluid	0237	33.96	$1,646.62	$852.68	$329.32
67010	T	Partial removal of eye fluid	0237	33.96	$1,646.62	$852.68	$329.32

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
67015	T	Release of eye fluid	0237	33.96	$1,646.62	$852.68	$329.32
67025	T	Replace eye fluid	0237	33.96	$1,646.62	$852.68	$329.32
67027	T	Implant eye drug system	0237	33.96	$1,646.62	$852.68	$329.32
67028	T	Injection eye drug	0236	6.70	$324.86	$147.96	$64.97
67030	T	Incise inner eye strands	0236	6.70	$324.86	$147.96	$64.97
67031	T	Laser surgery, eye strands	0247	4.89	$237.10	$112.86	$47.42
67036	T	Removal of inner eye fluid	0237	33.96	$1,646.62	$852.68	$329.32
67038	T	Strip retinal membrane	0237	33.96	$1,646.62	$852.68	$329.32
67039	T	Laser treatment of retina	0237	33.96	$1,646.62	$852.68	$329.32
67040	T	Laser treatment of retina	0237	33.96	$1,646.62	$852.68	$329.32
67101	T	Repair detached retina	0236	6.70	$324.86	$147.96	$64.97
67105	T	Repair detached retina	0248	4.19	$203.16	$94.05	$40.63
67107	T	Repair detached retina	0237	33.96	$1,646.62	$852.68	$329.32
67108	T	Repair detached retina	0237	33.96	$1,646.62	$852.68	$329.32
67110	T	Repair detached retina	0236	6.70	$324.86	$147.96	$64.97
67112	T	Rerepair detached retina	0237	33.96	$1,646.62	$852.68	$329.32
67115	T	Release encircling material	0236	6.70	$324.86	$147.96	$64.97
67120	T	Remove eye implant material	0236	6.70	$324.86	$147.96	$64.97
67121	T	Remove eye implant material	0237	33.96	$1,646.62	$852.68	$329.32
67141	T	Treatment of retina	0235	2.94	$142.55	$78.91	$28.51
67145	T	Treatment of retina	0248	4.19	$203.16	$94.05	$40.63
67208	T	Treatment of retinal lesion	0235	2.94	$142.55	$78.91	$28.51
67210	T	Treatment of retinal lesion	0248	4.19	$203.16	$94.05	$40.63
67218	T	Treatment of retinal lesion	0237	33.96	$1,646.62	$852.68	$329.32
67220	T	Treatment of choroid lesion	0237	33.96	$1,646.62	$852.68	$329.32
67227	T	Treatment of retinal lesion	0235	2.94	$142.55	$78.91	$28.51
67228	T	Treatment of retinal lesion	0248	4.19	$203.16	$94.05	$40.63
67250	T	Reinforce eye wall	0240	13.47	$653.12	$315.31	$130.62
67255	T	Reinforce/graft eye wall	0237	33.96	$1,646.62	$852.68	$329.32
67299	T	Eye surgery procedure	0248	4.19	$203.16	$94.05	$40.63
67311	T	Revise eye muscle	0243	17.99	$872.28	$431.39	$174.46
67312	T	Revise two eye muscles	0243	17.99	$872.28	$431.39	$174.46
67314	T	Revise eye muscle	0243	17.99	$872.28	$431.39	$174.46
67316	T	Revise two eye muscles	0243	17.99	$872.28	$431.39	$174.46
67318	T	Revise eye muscle(s)	0243	17.99	$872.28	$431.39	$174.46
67320	T	Revise eye muscle(s) add-on	0243	17.99	$872.28	$431.39	$174.46
67331	T	Eye surgery follow-up add-on	0243	17.99	$872.28	$431.39	$174.46
67332	T	Rerevise eye muscles add-on	0243	17.99	$872.28	$431.39	$174.46
67334	T	Revise eye muscle w/suture	0243	17.99	$872.28	$431.39	$174.46
67335	T	Eye suture during surgery	0243	17.99	$872.28	$431.39	$174.46
67340	T	Revise eye muscle add-on	0243	17.99	$872.28	$431.39	$174.46
67343	T	Release eye tissue	0243	17.99	$872.28	$431.39	$174.46
67345	T	Destroy nerve of eye muscle	0238	2.80	$135.76	$58.96	$27.15
67350	S	Biopsy eye muscle	0231	2.64	$128.01	$59.87	$25.60
67399	T	Eye muscle surgery procedure	0243	17.99	$872.28	$431.39	$174.46
67400	T	Explore/biopsy eye socket	0241	16.60	$804.89	$384.47	$160.98
67405	T	Explore/drain eye socket	0241	16.60	$804.89	$384.47	$160.98
67412	T	Explore/treat eye socket	0241	16.60	$804.89	$384.47	$160.98
67413	T	Explore/treat eye socket	0241	16.60	$804.89	$384.47	$160.98
67414	T	Explr/decompress eye socket	0242	23.70	$1,149.14	$597.36	$229.83
67415	T	Aspiration, orbital contents	0239	6.26	$303.53	$123.42	$60.71
67420	T	Explore/treat eye socket	0242	23.70	$1,149.14	$597.36	$229.83
67430	T	Explore/treat eye socket	0242	23.70	$1,149.14	$597.36	$229.83
67440	T	Explore/drain eye socket	0242	23.70	$1,149.14	$597.36	$229.83
67445	T	Explr/decompress eye socket	0242	23.70	$1,149.14	$597.36	$229.83
67450	T	Explore/biopsy eye socket	0242	23.70	$1,149.14	$597.36	$229.83
67500	S	Inject/treat eye socket	0231	2.64	$128.01	$59.87	$25.60
67505	T	Inject/treat eye socket	0238	2.80	$135.76	$58.96	$27.15
67515	T	Inject/treat eye socket	0239	6.26	$303.53	$123.42	$60.71
67550	T	Insert eye socket implant	0242	23.70	$1,149.14	$597.36	$229.83
67560	T	Revise eye socket implant	0241	16.60	$804.89	$384.47	$160.98
67570	T	Decompress optic nerve	0242	23.70	$1,149.14	$597.36	$229.83
67599	T	Orbit surgery procedure	0239	6.26	$303.53	$123.42	$60.71
67700	T	Drainage of eyelid abscess	0238	2.80	$135.76	$58.96	$27.15
67710	T	Incision of eyelid	0239	6.26	$303.53	$123.42	$60.71
67715	T	Incision of eyelid fold	0240	13.47	$653.12	$315.31	$130.62
67800	T	Remove eyelid lesion	0238	2.80	$135.76	$58.96	$27.15
67801	T	Remove eyelid lesions	0239	6.26	$303.53	$123.42	$60.71
67805	T	Remove eyelid lesions	0238	2.80	$135.76	$58.96	$27.15
67808	T	Remove eyelid lesion(s)	0240	13.47	$653.12	$315.31	$130.62
67810	T	Biopsy of eyelid	0238	2.80	$135.76	$58.96	$27.15
67820	T	Revise eyelashes	0238	2.80	$135.76	$58.96	$27.15
67825	T	Revise eyelashes	0238	2.80	$135.76	$58.96	$27.15

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
67830	T	Revise eyelashes	0239	6.26	$303.53	$123.42	$60.71
67835	T	Revise eyelashes	0240	13.47	$653.12	$315.31	$130.62
67840	T	Remove eyelid lesion	0239	6.26	$303.53	$123.42	$60.71
67850	T	Treat eyelid lesion	0239	6.26	$303.53	$123.42	$60.71
67875	T	Closure of eyelid by suture	0239	6.26	$303.53	$123.42	$60.71
67880	T	Revision of eyelid	0232	6.04	$292.86	$134.66	$58.57
67882	T	Revision of eyelid	0240	13.47	$653.12	$315.31	$130.62
67900	T	Repair brow defect	0240	13.47	$653.12	$315.31	$130.62
67901	T	Repair eyelid defect	0240	13.47	$653.12	$315.31	$130.62
67902	T	Repair eyelid defect	0240	13.47	$653.12	$315.31	$130.62
67903	T	Repair eyelid defect	0240	13.47	$653.12	$315.31	$130.62
67904	T	Repair eyelid defect	0240	13.47	$653.12	$315.31	$130.62
67906	T	Repair eyelid defect	0240	13.47	$653.12	$315.31	$130.62
67908	T	Repair eyelid defect	0240	13.47	$653.12	$315.31	$130.62
67909	T	Revise eyelid defect	0240	13.47	$653.12	$315.31	$130.62
67911	T	Revise eyelid defect	0240	13.47	$653.12	$315.31	$130.62
67914	T	Repair eyelid defect	0240	13.47	$653.12	$315.31	$130.62
67915	T	Repair eyelid defect	0239	6.26	$303.53	$123.42	$60.71
67916	T	Repair eyelid defect	0240	13.47	$653.12	$315.31	$130.62
67917	T	Repair eyelid defect	0240	13.47	$653.12	$315.31	$130.62
67921	T	Repair eyelid defect	0240	13.47	$653.12	$315.31	$130.62
67922	T	Repair eyelid defect	0239	6.26	$303.53	$123.42	$60.71
67923	T	Repair eyelid defect	0240	13.47	$653.12	$315.31	$130.62
67924	T	Repair eyelid defect	0240	13.47	$653.12	$315.31	$130.62
67930	T	Repair eyelid wound	0240	13.47	$653.12	$315.31	$130.62
67935	T	Repair eyelid wound	0240	13.47	$653.12	$315.31	$130.62
67938	T	Remove eyelid foreign body	0238	2.80	$135.76	$58.96	$27.15
67950	T	Revision of eyelid	0240	13.47	$653.12	$315.31	$130.62
67961	T	Revision of eyelid	0240	13.47	$653.12	$315.31	$130.62
67966	T	Revision of eyelid	0240	13.47	$653.12	$315.31	$130.62
67971	T	Reconstruction of eyelid	0241	16.60	$804.89	$384.47	$160.98
67973	T	Reconstruction of eyelid	0241	16.60	$804.89	$384.47	$160.98
67974	T	Reconstruction of eyelid	0241	16.60	$804.89	$384.47	$160.98
67975	T	Reconstruction of eyelid	0240	13.47	$653.12	$315.31	$130.62
67999	T	Revision of eyelid	0240	13.47	$653.12	$315.31	$130.62
68020	T	Incise/drain eyelid lining	0240	13.47	$653.12	$315.31	$130.62
68040	T	Treatment of eyelid lesions	0239	6.26	$303.53	$123.42	$60.71
68100	T	Biopsy of eyelid lining	0232	6.04	$292.86	$134.66	$58.57
68110	S	Remove eyelid lining lesion	0231	2.64	$128.01	$59.87	$25.60
68115	T	Remove eyelid lining lesion	0239	6.26	$303.53	$123.42	$60.71
68130	T	Remove eyelid lining lesion	0233	13.79	$668.64	$331.60	$133.73
68135	T	Remove eyelid lining lesion	0239	6.26	$303.53	$123.42	$60.71
68200	S	Treat eyelid by injection	0230	0.98	$47.52	$22.48	$9.50
68320	T	Revise/graft eyelid lining	0240	13.47	$653.12	$315.31	$130.62
68325	T	Revise/graft eyelid lining	0242	23.70	$1,149.14	$597.36	$229.83
68326	T	Revise/graft eyelid lining	0241	16.60	$804.89	$384.47	$160.98
68328	T	Revise/graft eyelid lining	0241	16.60	$804.89	$384.47	$160.98
68330	T	Revise eyelid lining	0233	13.79	$668.64	$331.60	$133.73
68335	T	Revise/graft eyelid lining	0241	16.60	$804.89	$384.47	$160.98
68340	T	Separate eyelid adhesions	0240	13.47	$653.12	$315.31	$130.62
68360	T	Revise eyelid lining	0234	20.64	$1,000.77	$502.16	$200.15
68362	T	Revise eyelid lining	0234	20.64	$1,000.77	$502.16	$200.15
68399	T	Eyelid lining surgery	0239	6.26	$303.53	$123.42	$60.71
68400	T	Incise/drain tear gland	0238	2.80	$135.76	$58.96	$27.15
68420	T	Incise/drain tear sac	0240	13.47	$653.12	$315.31	$130.62
68440	T	Incise tear duct opening	0238	2.80	$135.76	$58.96	$27.15
68500	T	Removal of tear gland	0241	16.60	$804.89	$384.47	$160.98
68505	T	Partial removal, tear gland	0241	16.60	$804.89	$384.47	$160.98
68510	T	Biopsy of tear gland	0240	13.47	$653.12	$315.31	$130.62
68520	T	Removal of tear sac	0241	16.60	$804.89	$384.47	$160.98
68525	T	Biopsy of tear sac	0240	13.47	$653.12	$315.31	$130.62
68530	T	Clearance of tear duct	0240	13.47	$653.12	$315.31	$130.62
68540	T	Remove tear gland lesion	0241	16.60	$804.89	$384.47	$160.98
68550	T	Remove tear gland lesion	0242	23.70	$1,149.14	$597.36	$229.83
68700	T	Repair tear ducts	0241	16.60	$804.89	$384.47	$160.98
68705	T	Revise tear duct opening	0238	2.80	$135.76	$58.96	$27.15
68720	T	Create tear sac drain	0242	23.70	$1,149.14	$597.36	$229.83
68745	T	Create tear duct drain	0241	16.60	$804.89	$384.47	$160.98
68750	T	Create tear duct drain	0242	23.70	$1,149.14	$597.36	$229.83
68760	T	Close tear duct opening	0238	2.80	$135.76	$58.96	$27.15
68761	S	Close tear duct opening	0231	2.64	$128.01	$59.87	$25.60
68770	T	Close tear system fistula	0240	13.47	$653.12	$315.31	$130.62
68801	S	Dilate tear duct opening	0231	2.64	$128.01	$59.87	$25.60

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
68810	S	Probe nasolacrimal duct	0231	2.64	$128.01	$59.87	$25.60
68811	T	Probe nasolacrimal duct	0240	13.47	$653.12	$315.31	$130.62
68815	T	Probe nasolacrimal duct	0240	13.47	$653.12	$315.31	$130.62
68840	S	Explore/irrigate tear ducts	0231	2.64	$128.01	$59.87	$25.60
68850	N	Injection for tear sac x-ray					
68899	S	Tear duct system surgery	0231	2.64	$128.01	$59.87	$25.60
69000	T	Drain external ear lesion	0006	2.00	$96.97	$33.95	$19.39
69005	T	Drain external ear lesion	0007	3.68	$178.43	$72.03	$35.69
69020	T	Drain outer ear canal lesion	0006	2.00	$96.97	$33.95	$19.39
69090	E	Pierce earlobes					
69100	T	Biopsy of external ear	0019	4.00	$193.95	$78.91	$38.79
69105	T	Biopsy of external ear canal	0253	12.02	$582.81	$284.00	$116.56
69110	T	Remove external ear, partial	0020	6.51	$315.65	$130.53	$63.13
69120	T	Removal of external ear	0253	12.02	$582.81	$284.00	$116.56
69140	T	Remove ear canal lesion(s)	0254	12.45	$603.66	$272.41	$120.73
69145	T	Remove ear canal lesion(s)	0020	6.51	$315.65	$130.53	$63.13
69150	C	Extensive ear canal surgery					
69155	C	Extensive ear/neck surgery					
69200	X	Clear outer ear canal	0340	1.04	$50.43	$12.85	$10.09
69205	T	Clear outer ear canal	0022	12.49	$605.60	$292.94	$121.12
69210	X	Remove impacted ear wax	0340	1.04	$50.43	$12.85	$10.09
69220	T	Clean out mastoid cavity	0012	0.53	$25.70	$9.18	$5.14
69222	T	Clean out mastoid cavity	0253	12.02	$582.81	$284.00	$116.56
69300	T	Revise external ear	0254	12.45	$603.66	$272.41	$120.73
69310	T	Rebuild outer ear canal	0256	25.40	$1,231.57	$623.05	$246.31
69320	T	Rebuild outer ear canal	0256	25.40	$1,231.57	$623.05	$246.31
69399	T	Outer ear surgery procedure	0252	5.18	$251.16	$114.24	$50.23
69400	T	Inflate middle ear canal	0251	1.68	$81.46	$27.99	$16.29
69401	N	Inflate middle ear canal					
69405	T	Catheterize middle ear canal	0252	5.18	$251.16	$114.24	$50.23
69410	T	Insert middle ear (baffle)	0252	5.18	$251.16	$114.24	$50.23
69420	T	Incision of eardrum	0252	5.18	$251.16	$114.24	$50.23
69421	T	Incision of eardrum	0253	12.02	$582.81	$284.00	$116.56
69424	T	Remove ventilating tube	0252	5.18	$251.16	$114.24	$50.23
69433	T	Create eardrum opening	0252	5.18	$251.16	$114.24	$50.23
69436	T	Create eardrum opening	0253	12.02	$582.81	$284.00	$116.56
69440	T	Exploration of middle ear	0253	12.02	$582.81	$284.00	$116.56
69450	T	Eardrum revision	0256	25.40	$1,231.57	$623.05	$246.31
69501	T	Mastoidectomy	0256	25.40	$1,231.57	$623.05	$246.31
69502	C	Mastoidectomy					
69505	T	Remove mastoid structures	0256	25.40	$1,231.57	$623.05	$246.31
69511	T	Extensive mastoid surgery	0256	25.40	$1,231.57	$623.05	$246.31
69530	T	Extensive mastoid surgery	0256	25.40	$1,231.57	$623.05	$246.31
69535	C	Remove part of temporal bone					
69540	T	Remove ear lesion	0253	12.02	$582.81	$284.00	$116.56
69550	T	Remove ear lesion	0256	25.40	$1,231.57	$623.05	$246.31
69552	T	Remove ear lesion	0256	25.40	$1,231.57	$623.05	$246.31
69554	C	Remove ear lesion					
69601	T	Mastoid surgery revision	0256	25.40	$1,231.57	$623.05	$246.31
69602	T	Mastoid surgery revision	0256	25.40	$1,231.57	$623.05	$246.31
69603	T	Mastoid surgery revision	0256	25.40	$1,231.57	$623.05	$246.31
69604	T	Mastoid surgery revision	0256	25.40	$1,231.57	$623.05	$246.31
69605	T	Mastoid surgery revision	0256	25.40	$1,231.57	$623.05	$246.31
69610	T	Repair of eardrum	0253	12.02	$582.81	$284.00	$116.56
69620	T	Repair of eardrum	0253	12.02	$582.81	$284.00	$116.56
69631	T	Repair eardrum structures	0256	25.40	$1,231.57	$623.05	$246.31
69632	T	Rebuild eardrum structures	0256	25.40	$1,231.57	$623.05	$246.31
69633	T	Rebuild eardrum structures	0256	25.40	$1,231.57	$623.05	$246.31
69635	T	Repair eardrum structures	0256	25.40	$1,231.57	$623.05	$246.31
69636	T	Rebuild eardrum structures	0256	25.40	$1,231.57	$623.05	$246.31
69637	T	Rebuild eardrum structures	0256	25.40	$1,231.57	$623.05	$246.31
69641	T	Revise middle ear & mastoid	0256	25.40	$1,231.57	$623.05	$246.31
69642	T	Revise middle ear & mastoid	0256	25.40	$1,231.57	$623.05	$246.31
69643	T	Revise middle ear & mastoid	0256	25.40	$1,231.57	$623.05	$246.31
69644	T	Revise middle ear & mastoid	0256	25.40	$1,231.57	$623.05	$246.31
69645	T	Revise middle ear & mastoid	0256	25.40	$1,231.57	$623.05	$246.31
69646	T	Revise middle ear & mastoid	0256	25.40	$1,231.57	$623.05	$246.31
69650	T	Release middle ear bone	0254	12.45	$603.66	$272.41	$120.73
69660	T	Revise middle ear bone	0256	25.40	$1,231.57	$623.05	$246.31
69661	T	Revise middle ear bone	0256	25.40	$1,231.57	$623.05	$246.31
69662	T	Revise middle ear bone	0256	25.40	$1,231.57	$623.05	$246.31
69666	T	Repair middle ear structures	0256	25.40	$1,231.57	$623.05	$246.31
69667	T	Repair middle ear structures	0256	25.40	$1,231.57	$623.05	$246.31

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
69670	T	Remove mastoid air cells	0256	25.40	$1,231.57	$623.05	$246.31
69676	T	Remove middle ear nerve	0256	25.40	$1,231.57	$623.05	$246.31
69700	T	Close mastoid fistula	0256	25.40	$1,231.57	$623.05	$246.31
69710	E	Implant/replace hearing aid					
69711	T	Remove/repair hearing aid	0256	25.40	$1,231.57	$623.05	$246.31
69720	T	Release facial nerve	0256	25.40	$1,231.57	$623.05	$246.31
69725	T	Release facial nerve	0256	25.40	$1,231.57	$623.05	$246.31
69740	T	Repair facial nerve	0256	25.40	$1,231.57	$623.05	$246.31
69745	T	Repair facial nerve	0256	25.40	$1,231.57	$623.05	$246.31
69799	T	Middle ear surgery procedure	0253	12.02	$582.81	$284.00	$116.56
69801	T	Incise inner ear	0256	25.40	$1,231.57	$623.05	$246.31
69802	T	Incise inner ear	0256	25.40	$1,231.57	$623.05	$246.31
69805	T	Explore inner ear	0256	25.40	$1,231.57	$623.05	$246.31
69806	T	Explore inner ear	0256	25.40	$1,231.57	$623.05	$246.31
69820	T	Establish inner ear window	0256	25.40	$1,231.57	$623.05	$246.31
69840	T	Revise inner ear window	0256	25.40	$1,231.57	$623.05	$246.31
69905	T	Remove inner ear	0256	25.40	$1,231.57	$623.05	$246.31
69910	T	Remove inner ear & mastoid	0256	25.40	$1,231.57	$623.05	$246.31
69915	T	Incise inner ear nerve	0256	25.40	$1,231.57	$623.05	$246.31
69930	T	Implant cochlear device	0257	115.31	$5,591.06	$3,498.58	$1,118.21
69949	T	Inner ear surgery procedure	0253	12.02	$582.81	$284.00	$116.56
69950	C	Incise inner ear nerve					
69955	T	Release facial nerve	0256	25.40	$1,231.57	$623.05	$246.31
69960	T	Release inner ear canal	0256	25.40	$1,231.57	$623.05	$246.31
69970	C	Remove inner ear lesion					
69979	T	Temporal bone surgery	0252	5.18	$251.16	$114.24	$50.23
69990	N	Microsurgery add-on					
70010	S	Contrast x-ray of brain	0274	4.83	$234.19	$128.12	$46.84
70015	S	Contrast x-ray of brain	0274	4.83	$234.19	$128.12	$46.84
70030	X	X-ray eye for foreign body	0260	0.79	$38.30	$22.02	$7.66
70100	X	X-ray exam of jaw	0260	0.79	$38.30	$22.02	$7.66
70110	X	X-ray exam of jaw	0260	0.79	$38.30	$22.02	$7.66
70120	X	X-ray exam of mastoids	0260	0.79	$38.30	$22.02	$7.66
70130	X	X-ray exam of mastoids	0260	0.79	$38.30	$22.02	$7.66
70134	X	X-ray exam of middle ear	0261	1.36	$66.91	$38.77	$13.38
70140	X	X-ray exam of facial bones	0260	0.79	$38.30	$22.02	$7.66
70150	X	X-ray exam of facial bones	0260	0.79	$38.30	$22.02	$7.66
70160	X	X-ray exam of nasal bones	0260	0.79	$38.30	$22.02	$7.66
70170	X	X-ray exam of tear duct	0263	1.68	$81.46	$45.88	$16.29
70190	X	X-ray exam of eye sockets	0260	0.79	$38.30	$22.02	$7.66
70200	X	X-ray exam of eye sockets	0260	0.79	$38.30	$22.02	$7.66
70210	X	X-ray exam of sinuses	0260	0.79	$38.30	$22.02	$7.66
70220	X	X-ray exam of sinuses	0260	0.79	$38.30	$22.02	$7.66
70240	X	X-ray exam, pituitary saddle	0260	0.79	$38.30	$22.02	$7.66
70250	X	X-ray exam of skull	0260	0.79	$38.30	$22.02	$7.66
70260	X	X-ray exam of skull	0261	1.36	$66.91	$38.77	$13.38
70300	X	X-ray exam of teeth	0262	0.40	$19.39	$10.90	$3.88
70310	X	X-ray exam of teeth	0262	0.40	$19.39	$10.90	$3.88
70320	X	Full mouth x-ray of teeth	0262	0.40	$19.39	$10.90	$3.88
70328	X	X-ray exam of jaw joint	0260	0.79	$38.30	$22.02	$7.66
70330	X	X-ray exam of jaw joints	0260	0.79	$38.30	$22.02	$7.66
70332	S	X-ray exam of jaw joint	0275	2.74	$132.85	$72.26	$26.57
70336	S	Magnetic image, jaw joint	0284	8.02	$388.87	$257.39	$77.77
70350	X	X-ray head for orthodontia	0260	0.79	$38.30	$22.02	$7.66
70355	X	Panoramic x-ray of jaws	0260	0.79	$38.30	$22.02	$7.66
70360	X	X-ray exam of neck	0260	0.79	$38.30	$22.02	$7.66
70370	X	Throat x-ray & fluoroscopy	0273	2.49	$120.73	$61.02	$24.15
70371	X	Speech evaluation, complex	0272	1.40	$67.86	$39.00	$13.58
70373	X	Contrast x-ray of larynx	0263	1.68	$81.46	$45.88	$16.29
70380	X	X-ray exam of salivary gland	0260	0.79	$38.30	$22.02	$7.66
70390	X	X-ray exam of salivary duct	0263	1.68	$81.46	$45.88	$16.29
70450	S	CAT scan of head or brain	0283	4.89	$237.10	$179.39	$47.42
70460	S	Contrast CAT scan of head	0283	4.89	$237.10	$179.39	$47.42
70470	S	Contrast CAT scans of head	0283	4.89	$237.10	$179.39	$47.42
70480	S	CAT scan of skull	0283	4.89	$237.10	$179.39	$47.42
70481	S	Contrast CAT scan of skull	0283	4.89	$237.10	$179.39	$47.42
70482	S	Contrast CAT scans of skull	0283	4.89	$237.10	$179.39	$47.42
70486	S	Cat scan of face/jaw	0282	2.38	$115.40	$94.51	$23.08
70487	S	Contrast CAT scan, face/jaw	0283	4.89	$237.10	$179.39	$47.42
70488	S	Contrast cat scans, face/jaw	0283	4.89	$237.10	$179.39	$47.42
70490	S	CAT scan of neck tissue	0283	4.89	$237.10	$179.39	$47.42
70491	S	Contrast CAT of neck tissue	0283	4.89	$237.10	$179.39	$47.42
70492	S	Contrast CAT of neck tissue	0283	4.89	$237.10	$179.39	$47.42

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
70540	S	Magnetic image, face/neck	0284	8.02	$388.87	$257.39	$77.77
70541	S	Magnetic image, head (MRA)	0284	8.02	$388.87	$257.39	$77.77
70551	S	Magnetic image, brain (MRI)	0284	8.02	$388.87	$257.39	$77.77
70552	S	Magnetic image, brain (MRI)	0284	8.02	$388.87	$257.39	$77.77
70553	S	Magnetic image, brain (mri)	0284	8.02	$388.87	$257.39	$77.77
71010	X	Chest x-ray	0260	0.79	$38.30	$22.02	$7.66
71015	X	Chest x-ray	0260	0.79	$38.30	$22.02	$7.66
71020	X	Chest x-ray	0260	0.79	$38.30	$22.02	$7.66
71021	X	Chest x-ray	0260	0.79	$38.30	$22.02	$7.66
71022	X	Chest x-ray	0260	0.79	$38.30	$22.02	$7.66
71023	X	Chest x-ray and fluoroscopy	0272	1.40	$67.86	$39.00	$13.56
71030	X	Chest x-ray	0260	0.79	$38.30	$22.02	$7.66
71034	X	Chest x-ray and fluoroscopy	0272	1.40	$67.86	$39.00	$13.56
71035	X	Chest x-ray	0260	0.79	$38.30	$22.02	$7.66
71036	X	X-ray guidance for biopsy	0273	2.49	$120.73	$61.02	$24.15
71040	X	Contrast x-ray of bronchi	0263	1.68	$81.46	$45.86	$16.29
71060	X	Contrast x-ray of bronchi	0263	1.68	$81.46	$45.86	$16.29
71090	X	X-ray & pacemaker insertion	0273	2.49	$120.73	$61.02	$24.15
71100	X	X-ray exam of ribs	0260	0.79	$38.30	$22.02	$7.66
71101	X	X-ray exam of ribs/chest	0260	0.79	$38.30	$22.02	$7.66
71110	X	X-ray exam of ribs	0260	0.79	$38.30	$22.02	$7.66
71111	X	X-ray exam of ribs/chest	0261	1.38	$66.91	$38.77	$13.38
71120	X	X-ray exam of breastbone	0260	0.79	$38.30	$22.02	$7.66
71130	X	X-ray exam of breastbone	0260	0.79	$38.30	$22.02	$7.66
71250	S	Cat scan of chest	0283	4.89	$237.10	$179.39	$47.42
71260	S	Contrast CAT scan of chest	0283	4.89	$237.10	$179.39	$47.42
71270	S	Contrast CAT scans of chest	0283	4.89	$237.10	$179.39	$47.42
71550	S	Magnetic image, chest (mri)	0284	8.02	$388.87	$257.39	$77.77
71555	E	Magnetic image, chest (mra)					
72010	X	X-ray exam of spine	0261	1.38	$66.91	$38.77	$13.38
72020	X	X-ray exam of spine	0260	0.79	$38.30	$22.02	$7.66
72040	X	X-ray exam of neck spine	0260	0.79	$38.30	$22.02	$7.66
72050	X	X-ray exam of neck spine	0261	1.38	$66.91	$38.77	$13.38
72052	X	X-ray exam of neck spine	0261	1.38	$66.91	$38.77	$13.38
72069	X	X-ray exam of trunk spine	0260	0.79	$38.30	$22.02	$7.66
72070	X	X-ray exam of thoracic spine	0260	0.79	$38.30	$22.02	$7.66
72072	X	X-ray exam of thoracic spine	0260	0.79	$38.30	$22.02	$7.66
72074	X	X-ray exam of thoracic spine	0260	0.79	$38.30	$22.02	$7.66
72080	X	X-ray exam of trunk spine	0260	0.79	$38.30	$22.02	$7.66
72090	X	X-ray exam of trunk spine	0260	0.79	$38.30	$22.02	$7.66
72100	X	X-ray exam of lower spine	0260	0.79	$38.30	$22.02	$7.66
72110	X	X-ray exam of lower spine	0261	1.38	$66.91	$38.77	$13.38
72114	X	X-ray exam of lower spine	0261	1.38	$66.91	$38.77	$13.38
72120	X	X-ray exam of lower spine	0260	0.79	$38.30	$22.02	$7.66
72125	S	CAT scan of neck spine	0283	4.89	$237.10	$179.39	$47.42
72126	S	Contrast CAT scan of neck	0283	4.89	$237.10	$179.39	$47.42
72127	S	Contrast CAT scans of neck	0283	4.89	$237.10	$179.39	$47.42
72128	S	CAT scan of thorax spine	0283	4.89	$237.10	$179.39	$47.42
72129	S	Contrast CAT scan of thorax	0283	4.89	$237.10	$179.39	$47.42
72130	S	Contrast CAT scans of thorax	0283	4.89	$237.10	$179.39	$47.42
72131	S	CAT scan of lower spine	0283	4.89	$237.10	$179.39	$47.42
72132	S	Contrast CAT of lower spine	0283	4.89	$237.10	$179.39	$47.42
72133	S	Contrast cat scans, low spine	0283	4.89	$237.10	$179.39	$47.42
72141	S	Magnetic image, neck spine	0284	8.02	$388.87	$257.39	$77.77
72142	S	Magnetic image, neck spine	0284	8.02	$388.87	$257.39	$77.77
72146	S	Magnetic image, chest spine	0284	8.02	$388.87	$257.39	$77.77
72147	S	Magnetic image, chest spine	0284	8.02	$388.87	$257.39	$77.77
72148	S	Magnetic image, lumbar spine	0284	8.02	$388.87	$257.39	$77.77
72149	S	Magnetic image, lumbar spine	0284	8.02	$388.87	$257.39	$77.77
72156	S	Magnetic image, neck spine	0284	8.02	$388.87	$257.39	$77.77
72157	S	Magnetic image, chest spine	0284	8.02	$388.87	$257.39	$77.77
72158	S	Magnetic image, lumbar spine	0284	8.02	$388.87	$257.39	$77.77
72159	E	Magnetic image, spine (mra)					
72170	X	X-ray exam of pelvis	0260	0.79	$38.30	$22.02	$7.66
72190	X	X-ray exam of pelvis	0260	0.79	$38.30	$22.02	$7.66
72192	S	CAT scan of pelvis	0283	4.89	$237.10	$179.39	$47.42
72193	S	Contrast CAT scan of pelvis	0283	4.89	$237.10	$179.39	$47.42
72194	S	Contrast CAT scans of pelvis	0283	4.89	$237.10	$179.39	$47.42
72196	S	Magnetic image, pelvis	0284	8.02	$388.87	$257.39	$77.77
72198	E	Magnetic image, pelvis (mra)					
72200	X	X-ray exam sacroiliac joints	0260	0.79	$38.30	$22.02	$7.66
72202	X	X-ray exam sacroiliac joints	0260	0.79	$38.30	$22.02	$7.66
72220	X	X-ray exam of tailbone	0260	0.79	$38.30	$22.02	$7.66

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[3] Eligible for pass-through payments. See Preamble for payment rate determination. See Addendum K for complete list of pass-through codes.

ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
72240	S	Contrast x-ray of neck spine	0274	4.83	$234.19	$128.12	$46.84
72255	S	Contrast x-ray, thorax spine	0274	4.83	$234.19	$128.12	$46.84
72265	S	Contrast x-ray, lower spine	0274	4.83	$234.19	$128.12	$46.84
72270	S	Contrast x-ray of spine	0274	4.83	$234.19	$128.12	$46.84
72275	S	Epidurography	0274	4.83	$234.19	$128.12	$46.84
72285	S	X-ray of spine disk	0274	4.83	$234.19	$128.12	$46.84
72295	S	X-ray of lower spine disk	0274	4.83	$234.19	$128.12	$46.84
73000	X	X-ray exam of collar bone	0260	0.79	$38.30	$22.02	$7.66
73010	X	X-ray exam of shoulder blade	0260	0.79	$38.30	$22.02	$7.66
73020	X	X-ray exam of shoulder	0260	0.79	$38.30	$22.02	$7.66
73030	X	X-ray exam of shoulder	0260	0.79	$38.30	$22.02	$7.66
73040	S	Contrast x-ray of shoulder	0275	2.74	$132.85	$72.26	$26.57
73050	X	X-ray exam of shoulders	0260	0.79	$38.30	$22.02	$7.66
73060	X	X-ray exam of humerus	0260	0.79	$38.30	$22.02	$7.66
73070	X	X-ray exam of elbow	0260	0.79	$38.30	$22.02	$7.66
73080	X	X-ray exam of elbow	0260	0.79	$38.30	$22.02	$7.66
73085	S	Contrast x-ray of elbow	0275	2.74	$132.85	$72.26	$26.57
73090	X	X-ray exam of forearm	0260	0.79	$38.30	$22.02	$7.66
73092	X	X-ray exam of arm, infant	0260	0.79	$38.30	$22.02	$7.66
73100	X	X-ray exam of wrist	0260	0.79	$38.30	$22.02	$7.66
73110	X	X-ray exam of wrist	0260	0.79	$38.30	$22.02	$7.66
73115	S	Contrast x-ray of wrist	0275	2.74	$132.85	$72.26	$26.57
73120	X	X-ray exam of hand	0260	0.79	$38.30	$22.02	$7.66
73130	X	X-ray exam of hand	0260	0.79	$38.30	$22.02	$7.66
73140	X	X-ray exam of finger(s)	0260	0.79	$38.30	$22.02	$7.66
73200	S	CAT scan of arm	0283	4.89	$237.10	$179.39	$47.42
73201	S	Contrast CAT scan of arm	0283	4.89	$237.10	$179.39	$47.42
73202	S	Contrast CAT scans of arm	0283	4.89	$237.10	$179.39	$47.42
73220	S	Magnetic image, arm/hand	0284	8.02	$388.87	$257.39	$77.77
73221	S	Magnetic image, joint of arm	0284	8.02	$388.87	$257.39	$77.77
73225	E	Magnetic image, upper (mra)					
73500	X	X-ray exam of hip	0260	0.79	$38.30	$22.02	$7.66
73510	X	X-ray exam of hip	0260	0.79	$38.30	$22.02	$7.66
73520	X	X-ray exam of hips	0260	0.79	$38.30	$22.02	$7.66
73525	S	Contrast x-ray of hip	0275	2.74	$132.85	$72.26	$26.57
73530	X	X-ray exam of hip	0261	1.38	$66.91	$38.77	$13.38
73540	X	X-ray exam of pelvis & hips	0260	0.79	$38.30	$22.02	$7.66
73542	S	X-ray exam, sacroiliac joint	0275	2.74	$132.85	$72.26	$26.57
73550	X	X-ray exam of thigh	0260	0.79	$38.30	$22.02	$7.66
73560	X	X-ray exam of knee, 1 or 2	0260	0.79	$38.30	$22.02	$7.66
73562	X	X-ray exam of knee, 3	0260	0.79	$38.30	$22.02	$7.66
73564	X	X-ray exam, knee, 4 or more	0260	0.79	$38.30	$22.02	$7.66
73565	X	X-ray exam of knees	0260	0.79	$38.30	$22.02	$7.66
73580	S	Contrast x-ray of knee joint	0275	2.74	$132.85	$72.26	$26.57
73590	X	X-ray exam of lower leg	0260	0.79	$38.30	$22.02	$7.66
73592	X	X-ray exam of leg, infant	0261	1.38	$66.91	$38.77	$13.38
73600	X	X-ray exam of ankle	0260	0.79	$38.30	$22.02	$7.66
73610	X	X-ray exam of ankle	0260	0.79	$38.30	$22.02	$7.66
73615	S	Contrast x-ray of ankle	0275	2.74	$132.85	$72.26	$26.57
73620	X	X-ray exam of foot	0260	0.79	$38.30	$22.02	$7.66
73630	X	X-ray exam of foot	0260	0.79	$38.30	$22.02	$7.66
73650	X	X-ray exam of heel	0260	0.79	$38.30	$22.02	$7.66
73660	X	X-ray exam of toe(s)	0260	0.79	$38.30	$22.02	$7.66
73700	S	CAT scan of leg	0283	4.89	$237.10	$179.39	$47.42
73701	S	Contrast CAT scan of leg	0283	4.89	$237.10	$179.39	$47.42
73702	S	Contrast CAT scans of leg	0283	4.89	$237.10	$179.39	$47.42
73720	S	Magnetic image, leg/foot	0284	8.02	$388.87	$257.39	$77.77
73721	S	Magnetic image, joint of leg	0284	8.02	$388.87	$257.39	$77.77
73725	E	Magnetic image/lower (mra)					
74000	X	X-ray exam of abdomen	0260	0.79	$38.30	$22.02	$7.66
74010	X	X-ray exam of abdomen	0260	0.79	$38.30	$22.02	$7.66
74020	X	X-ray exam of abdomen	0260	0.79	$38.30	$22.02	$7.66
74022	X	X-ray exam series, abdomen	0261	1.38	$66.91	$38.77	$13.38
74150	S	CAT scan of abdomen	0283	4.89	$237.10	$179.39	$47.42
74160	S	Contrast CAT scan of abdomen	0283	4.89	$237.10	$179.39	$47.42
74170	S	Contrast CAT scans, abdomen	0283	4.89	$237.10	$179.39	$47.42
74181	S	Magnetic image/abdomen (mri)	0284	8.02	$388.87	$257.39	$77.77
74185	E	Magnetic image/abdomen (MRA)					
74190	X	X-ray exam of peritoneum	0263	1.68	$81.46	$45.88	$16.29
74210	S	Contrast x-ray exam of throat	0276	1.79	$86.79	$49.78	$17.36
74220	S	Contrast x-ray, esophagus	0276	1.79	$86.79	$49.78	$17.36
74230	S	Cinema x-ray, throat/esoph	0276	1.79	$86.79	$49.78	$17.36
74235	S	Remove esophagus obstruction	0296	3.57	$173.10	$100.25	$34.62

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
74240	S	X-ray exam, upper gi tract	0276	1.79	$86.79	$49.78	$17.36
74241	S	X-ray exam, upper gi tract	0276	1.79	$86.79	$49.78	$17.36
74245	S	X-ray exam, upper gi tract	0277	2.47	$119.76	$69.28	$23.95
74246	S	Contrast x-ray uppr gi tract	0276	1.79	$86.79	$49.78	$17.36
74247	S	Contrast x-ray uppr gi tract	0276	1.79	$86.79	$49.78	$17.36
74249	S	Contrast x-ray uppr gi tract	0277	2.47	$119.76	$69.28	$23.95
74250	S	X-ray exam of small bowel	0276	1.79	$86.79	$49.78	$17.36
74251	S	X-ray exam of small bowel	0277	2.47	$119.76	$69.28	$23.95
74260	S	X-ray exam of small bowel	0277	2.47	$119.76	$69.28	$23.95
74270	S	Contrast x-ray exam of colon	0276	1.79	$86.79	$49.78	$17.36
74280	S	Contrast x-ray exam of colon	0277	2.47	$119.76	$69.28	$23.95
74283	S	Contrast x-ray exam of colon	0276	1.79	$86.79	$49.78	$17.36
74290	S	Contrast x-ray, gallbladder	0276	1.79	$86.79	$49.78	$17.36
74291	S	Contrast x-rays, gallbladder	0276	1.79	$86.79	$49.78	$17.36
74300	C	X-ray bile ducts/pancreas					
74301	C	X-rays at surgery add-on					
74305	X	X-ray bile ducts/pancreas	0263	1.68	$81.46	$45.66	$16.29
74320	X	Contrast x-ray of bile ducts	0264	3.83	$185.71	$108.97	$37.14
74327	S	X-ray bile stone removal	0296	3.57	$173.10	$100.25	$34.62
74328	X	X-ray bile duct endoscopy	0264	3.83	$185.71	$108.97	$37.14
74329	X	X-ray for pancreas endoscopy	0264	3.83	$185.71	$108.97	$37.14
74330	X	X-ray bile/panc endoscopy	0264	3.83	$185.71	$108.97	$37.14
74340	X	X-ray guide for GI tube	0272	1.40	$67.88	$39.00	$13.58
74350	X	X-ray guide, stomach tube	0264	3.83	$185.71	$108.97	$37.14
74355	X	X-ray guide, intestinal tube	0264	3.83	$185.71	$108.97	$37.14
74360	S	X-ray guide, GI dilation	0296	3.57	$173.10	$100.25	$34.62
74363	S	X-ray, bile duct dilation	0297	6.13	$297.23	$172.51	$59.45
74400	S	Contrast x-ray, urinary tract	0278	2.85	$138.19	$81.67	$27.64
74410	S	Contrast x-ray, urinary tract	0278	2.85	$138.19	$81.67	$27.64
74415	S	Contrast x-ray, urinary tract	0278	2.85	$138.19	$81.67	$27.64
74420	S	Contrast x-ray, urinary tract	0278	2.85	$138.19	$81.67	$27.64
74425	S	Contrast x-ray, urinary tract	0278	2.85	$138.19	$81.67	$27.64
74430	S	Contrast x-ray, bladder	0278	2.85	$138.19	$81.67	$27.64
74440	S	X-ray, male genital tract	0278	2.85	$138.19	$81.67	$27.64
74445	S	X-ray exam of penis	0278	2.85	$138.19	$81.67	$27.64
74450	S	X-ray, urethra/bladder	0278	2.85	$138.19	$81.67	$27.64
74455	S	X-ray, urethra/bladder	0278	2.85	$138.19	$81.67	$27.64
74470	X	X-ray exam of kidney lesion	0264	3.83	$185.71	$108.97	$37.14
74475	S	X-ray control, cath insert	0297	6.13	$297.23	$172.51	$59.45
74480	S	X-ray control, cath insert	0297	6.13	$297.23	$172.51	$59.45
74485	S	X-ray guide, GU dilation	0296	3.57	$173.10	$100.25	$34.62
74710	X	X-ray measurement of pelvis	0260	0.79	$38.30	$22.02	$7.66
74740	X	X-ray, female genital tract	0264	3.83	$185.71	$108.97	$37.14
74742	X	X-ray, fallopian tube	0264	3.83	$185.71	$108.97	$37.14
74775	S	X-ray exam of perineum	0278	2.85	$138.19	$81.67	$27.64
75552	S	Magnetic image, myocardium	0284	8.02	$388.87	$257.39	$77.77
75553	S	Magnetic image, myocardium	0284	8.02	$388.87	$257.39	$77.77
75554	S	Cardiac MRI/function	0284	8.02	$388.87	$257.39	$77.77
75555	S	Cardiac MRI/limited study	0284	8.02	$388.87	$257.39	$77.77
75556	E	Cardiac MRI/flow mapping					
75600	S	Contrast x-ray exam of aorta	0280	14.98	$726.34	$380.12	$145.27
75605	S	Contrast x-ray exam of aorta	0280	14.98	$726.34	$380.12	$145.27
75625	S	Contrast x-ray exam of aorta	0280	14.98	$726.34	$380.12	$145.27
75630	S	X-ray aorta, leg arteries	0280	14.98	$726.34	$380.12	$145.27
75650	S	Artery x-rays, head & neck	0280	14.98	$726.34	$380.12	$145.27
75658	S	Artery x-rays, arm	0280	14.98	$726.34	$380.12	$145.27
75660	S	Artery x-rays, head & neck	0279	6.30	$305.47	$174.57	$61.09
75662	S	Artery x-rays, head & neck	0279	6.30	$305.47	$174.57	$61.09
75665	S	Artery x-rays, head & neck	0280	14.98	$726.34	$380.12	$145.27
75671	S	Artery x-rays, head & neck	0280	14.98	$726.34	$380.12	$145.27
75676	S	Artery x-rays, neck	0280	14.98	$726.34	$380.12	$145.27
75680	S	Artery x-rays, neck	0280	14.98	$726.34	$380.12	$145.27
75685	S	Artery x-rays, spine	0279	6.30	$305.47	$174.57	$61.09
75705	S	Artery x-rays, spine	0279	6.30	$305.47	$174.57	$61.09
75710	S	Artery x-rays, arm/leg	0280	14.98	$726.34	$380.12	$145.27
75716	S	Artery x-rays, arms/legs	0280	14.98	$726.34	$380.12	$145.27
75722	S	Artery x-rays, kidney	0280	14.98	$726.34	$380.12	$145.27
75724	S	Artery x-rays, kidneys	0280	14.98	$726.34	$380.12	$145.27
75726	S	Artery x-rays, abdomen	0280	14.98	$726.34	$380.12	$145.27
75731	S	Artery x-rays, adrenal gland	0280	14.98	$726.34	$380.12	$145.27
75733	S	Artery x-rays, adrenals	0280	14.98	$726.34	$380.12	$145.27
75736	S	Artery x-rays, pelvis	0280	14.98	$726.34	$380.12	$145.27
75741	S	Artery x-rays, lung	0279	6.30	$305.47	$174.57	$61.09

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
75743	S	Artery x-rays, lungs	0260	14.96	$726.34	$380.12	$145.27
75746	S	Artery x-rays, lung	0279	6.30	$305.47	$174.57	$61.09
75756	S	Artery x-rays, chest	0279	6.30	$305.47	$174.57	$61.09
75774	S	Artery x-ray, each vessel	0260	14.96	$726.34	$380.12	$145.27
75790	S	Visualize A–V shunt	0281	4.40	$213.34	$115.16	$42.67
75801	X	Lymph vessel x-ray, arm/leg	0264	3.83	$185.71	$106.97	$37.14
75803	X	Lymph vessel x-ray, arms/legs	0264	3.83	$185.71	$106.97	$37.14
75805	X	Lymph vessel x-ray, trunk	0264	3.83	$185.71	$106.97	$37.14
75807	X	Lymph vessel x-ray, trunk	0264	3.83	$185.71	$106.97	$37.14
75809	X	Nonvascular shunt, x-ray	0264	3.83	$185.71	$106.97	$37.14
75810	S	Vein x-ray, spleen/liver	0279	6.30	$305.47	$174.57	$61.09
75820	S	Vein x-ray, arm/leg	0281	4.40	$213.34	$115.16	$42.67
75822	S	Vein x-ray, arms/legs	0281	4.40	$213.34	$115.16	$42.67
75825	S	Vein x-ray, trunk	0279	6.30	$305.47	$174.57	$61.09
75827	S	Vein x-ray, chest	0279	6.30	$305.47	$174.57	$61.09
75831	S	Vein x-ray, kidney	0279	6.30	$305.47	$174.57	$61.09
75833	S	Vein x-ray, kidneys	0279	6.30	$305.47	$174.57	$61.09
75840	S	Vein x-ray, adrenal gland	0279	6.30	$305.47	$174.57	$61.09
75842	S	Vein x-ray, adrenal glands	0279	6.30	$305.47	$174.57	$61.09
75860	S	Vein x-ray, neck	0279	6.30	$305.47	$174.57	$61.09
75870	S	Vein x-ray, skull	0279	6.30	$305.47	$174.57	$61.09
75872	S	Vein x-ray, skull	0279	6.30	$305.47	$174.57	$61.09
75880	S	Vein x-ray, eye socket	0279	6.30	$305.47	$174.57	$61.09
75885	S	Vein x-ray, liver	0279	6.30	$305.47	$174.57	$61.09
75887	S	Vein x-ray, liver	0279	6.30	$305.47	$174.57	$61.09
75889	S	Vein x-ray, liver	0260	14.96	$726.34	$380.12	$145.27
75891	S	Vein x-ray, liver	0279	6.30	$305.47	$174.57	$61.09
75893	N	Venous sampling by catheter	0279	6.30	$305.47	$174.57	$61.09
75894	S	X-rays, transcath therapy	.....	.....	.....	.....	.....
75896	S	X-rays, transcath therapy	0297	6.13	$297.23	$172.51	$59.45
75898	X	Follow-up angiogram	0297	6.13	$297.23	$172.51	$59.45
75900	C	Arterial catheter exchange	0264	3.83	$185.71	$106.97	$37.14
75940	C	X-ray placement, vein filter	.....	.....	.....	.....	.....
75945	C	Intravascular us	.....	.....	.....	.....	.....
75946	C	Intravascular us add-on	.....	.....	.....	.....	.....
75960	C	Transcatheter intro, stent	.....	.....	.....	.....	.....
75961	C	Retrieval, broken catheter	.....	.....	.....	.....	.....
75962	C	Repair arterial blockage	.....	.....	.....	.....	.....
75964	C	Repair artery blockage, each	.....	.....	.....	.....	.....
75966	C	Repair arterial blockage	.....	.....	.....	.....	.....
75968	C	Repair artery blockage, each	.....	.....	.....	.....	.....
75970	C	Vascular biopsy	.....	.....	.....	.....	.....
75978	C	Repair venous blockage	.....	.....	.....	.....	.....
75980	S	Contrast x-ray exam bile duct	0297	6.13	$297.23	$172.51	$59.45
75982	S	Contrast x-ray exam bile duct	0297	6.13	$297.23	$172.51	$59.45
75984	S	X-ray control catheter change	0296	3.57	$173.10	$100.25	$34.62
75989	X	Abscess drainage under x-ray	0273	2.49	$120.73	$61.02	$24.15
75992	C	Atherectomy, x-ray exam	.....	.....	.....	.....	.....
75993	C	Atherectomy, x-ray exam	.....	.....	.....	.....	.....
75994	C	Atherectomy, x-ray exam	.....	.....	.....	.....	.....
75995	C	Atherectomy, x-ray exam	.....	.....	.....	.....	.....
75996	C	Atherectomy, x-ray exam	.....	.....	.....	.....	.....
76000	X	Fluoroscope examination	0272	1.40	$67.88	$39.00	$13.58
76001	X	Fluoroscope exam, extensive	0273	2.49	$120.73	$61.02	$24.15
76003	X	Needle localization by x-ray	0272	1.40	$67.88	$39.00	$13.58
76005	X	Fluoroguide for spine inject	0273	2.49	$120.73	$61.02	$24.15
76006	X	X-ray stress view	0261	1.38	$66.91	$38.77	$13.38
76010	X	X-ray, nose to rectum	0260	0.79	$38.30	$22.02	$7.66
76020	X	X-rays for bone age	0261	1.38	$66.91	$38.77	$13.38
76040	X	X-rays, bone evaluation	0260	0.79	$38.30	$22.02	$7.66
76061	X	X-rays, bone survey	0261	1.38	$66.91	$38.77	$13.38
76062	X	X-rays, bone survey	0261	1.38	$66.91	$38.77	$13.38
76065	X	X-rays, bone evaluation	0261	1.38	$66.91	$38.77	$13.38
76066	X	Joint(s) survey, single film	0260	0.79	$38.30	$22.02	$7.66
76070	E	CT scan, bone density study	.....	.....	.....	.....	.....
76075	X	Dual energy x-ray study	0261	1.38	$66.91	$38.77	$13.38
76076	X	Dual energy x-ray study	0261	1.38	$66.91	$38.77	$13.38
76078	X	Photodensitometry	0261	1.38	$66.91	$38.77	$13.38
76080	X	X-ray exam of fistula	0263	1.68	$81.46	$45.88	$16.29
76082	X	X-ray of mammary duct	0263	1.68	$81.46	$45.88	$16.29
76083	X	X-ray of mammary ducts	0263	1.68	$81.46	$45.88	$16.29
76090	S	Mammogram, one breast	0271	0.70	$33.94	$19.50	$6.79
76091	S	Mammogram, both breasts	0271	0.70	$33.94	$19.50	$6.79

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
76092	A	Mammogram, screening					
76093	S	Magnetic image, breast	0284	8.02	$388.87	$257.39	$77.77
76094	S	Magnetic image, both breasts	0284	8.02	$388.87	$257.39	$77.77
76095	X	Stereotactic breast biopsy	0264	3.83	$185.71	$108.97	$37.14
76096	X	X-ray of needle wire, breast	0263	1.68	$81.46	$45.88	$16.29
76098	X	X-ray exam, breast specimen	0260	0.79	$38.30	$22.02	$7.66
76100	X	X-ray exam of body section	0261	1.38	$66.91	$38.77	$13.38
76101	X	Complex body section x-ray	0263	1.68	$81.46	$45.88	$16.29
76102	X	Complex body section x-rays	0264	3.83	$185.71	$108.97	$37.14
76120	X	Cinematic x-rays	0261	1.38	$66.91	$38.77	$13.38
76125	X	Cinematic x-rays add-on	0261	1.38	$66.91	$38.77	$13.38
76140	E	X-ray consultation					
76150	X	X-ray exam, dry process	0260	0.79	$38.30	$22.02	$7.66
76350	N	Special x-ray contrast study					
76355	S	CAT scan for localization	0283	4.89	$237.10	$179.39	$47.42
76360	S	CAT scan for needle biopsy	0283	4.89	$237.10	$179.39	$47.42
76365	S	CAT scan for cyst aspiration	0283	4.89	$237.10	$179.39	$47.42
76370	S	CAT scan for therapy guide	0282	2.38	$115.40	$94.51	$23.08
76375	S	3D/holograph reconstr add-on	0282	2.38	$115.40	$94.51	$23.08
76380	S	CAT scan follow-up study	0282	2.38	$115.40	$94.51	$23.08
76390	S	Mr spectroscopy	0284	8.02	$388.87	$257.39	$77.77
76400	S	Magnetic image, bone marrow	0284	8.02	$388.87	$257.39	$77.77
76499	X	Radiographic procedure	0260	0.79	$38.30	$22.02	$7.66
76506	S	Echo exam of head	0266	1.79	$86.79	$57.35	$17.36
76511	S	Echo exam of eye	0266	1.79	$86.79	$57.35	$17.36
76512	S	Echo exam of eye	0266	1.79	$86.79	$57.35	$17.36
76513	S	Echo exam of eye, water bath	0265	1.17	$56.73	$38.08	$11.35
76516	S	Echo exam of eye	0266	1.79	$86.79	$57.35	$17.36
76519	S	Echo exam of eye	0266	1.79	$86.79	$57.35	$17.36
76529	S	Echo exam of eye	0265	1.17	$56.73	$38.08	$11.35
76536	S	Echo exam of head and neck	0265	1.17	$56.73	$38.08	$11.35
76604	S	Echo exam of chest	0266	1.79	$86.79	$57.35	$17.36
76645	S	Echo exam of breast(s)	0265	1.17	$56.73	$38.08	$11.35
76700	S	Echo exam of abdomen	0266	1.79	$86.79	$57.35	$17.36
76705	S	Echo exam of abdomen	0266	1.79	$86.79	$57.35	$17.36
76770	S	Echo exam abdomen back wall	0266	1.79	$86.79	$57.35	$17.36
76775	S	Echo exam abdomen back wall	0266	1.79	$86.79	$57.35	$17.36
76778	S	Echo exam kidney transplant	0266	1.79	$86.79	$57.35	$17.36
76800	S	Echo exam spinal canal	0266	1.79	$86.79	$57.35	$17.36
76805	S	Echo exam of pregnant uterus	0266	1.79	$86.79	$57.35	$17.36
76810	S	Echo exam of pregnant uterus	0265	1.17	$56.73	$38.08	$11.35
76815	S	Echo exam of pregnant uterus	0265	1.17	$56.73	$38.08	$11.35
76816	S	Echo exam follow-up/repeat	0265	1.17	$56.73	$38.08	$11.35
76818	S	Fetal biophysical profile	0266	1.79	$86.79	$57.35	$17.36
76825	S	Echo exam of fetal heart	0269	4.40	$213.34	$114.01	$42.67
76826	S	Echo exam of fetal heart	0269	4.40	$213.34	$114.01	$42.67
76827	S	Echo exam of fetal heart	0269	4.40	$213.34	$114.01	$42.67
76828	S	Echo exam of fetal heart	0269	4.40	$213.34	$114.01	$42.67
76830	S	Echo exam, transvaginal	0266	1.79	$86.79	$57.35	$17.36
76831	S	Echo exam, uterus	0266	1.79	$86.79	$57.35	$17.36
76856	S	Echo exam of pelvis	0266	1.79	$86.79	$57.35	$17.36
76857	S	Echo exam of pelvis	0265	1.17	$56.73	$38.08	$11.35
76870	S	Echo exam of scrotum	0266	1.79	$86.79	$57.35	$17.36
76872	S	Echo exam, transrectal	0266	1.79	$86.79	$57.35	$17.36
76873	S	Echograp trans r, pros study	0266	1.79	$86.79	$57.35	$17.36
76880	S	Echo exam of extremity	0266	1.79	$86.79	$57.35	$17.36
76885	S	Echo exam, infant hips	0266	1.79	$86.79	$57.35	$17.36
76886	S	Echo exam, infant hips	0266	1.79	$86.79	$57.35	$17.36
76930	X	Echo guide for heart sac tap	0268	2.23	$108.13	$69.51	$21.63
76932	X	Echo guide for heart biopsy	0268	2.23	$108.13	$69.51	$21.63
76934	X	Echo guide for chest tap	0268	2.23	$108.13	$69.51	$21.63
76936	X	Echo guide for artery repair	0268	2.23	$108.13	$69.51	$21.63
76938	X	Echo exam for drainage	0268	2.23	$108.13	$69.51	$21.63
76941	X	Echo guide for transfusion	0268	2.23	$108.13	$69.51	$21.63
76942	X	Echo guide for biopsy	0268	2.23	$108.13	$69.51	$21.63
76945	X	Echo guide, villus sampling	0268	2.23	$108.13	$69.51	$21.63
76946	X	Echo guide for amniocentesis	0268	2.23	$108.13	$69.51	$21.63
76948	X	Echo guide, ova aspiration	0268	2.23	$108.13	$69.51	$21.63
76950	X	Echo guidance radiotherapy	0268	2.23	$108.13	$69.51	$21.63
76960	X	Echo guidance radiotherapy	0268	2.23	$108.13	$69.51	$21.63
76965	X	Echo guidance radiotherapy	0268	2.23	$108.13	$69.51	$21.63
76970	S	Ultrasound exam follow-up	0265	1.17	$56.73	$38.08	$11.35
76975	S	GI endoscopic ultrasound	0266	1.79	$86.79	$57.35	$17.36

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
76977	S	Us bone density measure	0265	1.17	$56.73	$38.08	$11.35
76986	S	Echo exam of surgery	0266	1.79	$86.79	$57.35	$17.36
76999	S	Echo examination procedure	0266	1.79	$86.79	$57.35	$17.36
77261	E	Radiation therapy planning					
77262	E	Radiation therapy planning					
77263	E	Radiation therapy planning					
77280	X	Set radiation therapy field	0304	1.49	$72.25	$41.52	$14.45
77285	X	Set radiation therapy field	0305	4.06	$196.86	$97.50	$39.37
77290	X	Set radiation therapy field	0305	4.06	$196.86	$97.50	$39.37
77295	X	Set radiation therapy field	0310	13.98	$677.85	$339.05	$135.57
77299	E	Radiation therapy planning					
77300	X	Radiation therapy dose plan	0304	1.49	$72.25	$41.52	$14.45
77305	X	Radiation therapy dose plan	0304	1.49	$72.25	$41.52	$14.45
77310	X	Radiation therapy dose plan	0304	1.49	$72.25	$41.52	$14.45
77315	X	Radiation therapy dose plan	0305	4.06	$196.86	$97.50	$39.37
77321	X	Radiation therapy port plan	0305	4.06	$196.86	$97.50	$39.37
77326	X	Radiation therapy dose plan	0305	4.06	$196.86	$97.50	$39.37
77327	X	Radiation therapy dose plan	0305	4.06	$196.86	$97.50	$39.37
77328	X	Radiation therapy dose plan	0305	4.06	$196.86	$97.50	$39.37
77331	X	Special radiation dosimetry	0304	1.49	$72.25	$41.52	$14.45
77332	X	Radiation treatment aid(s)	0303	2.83	$137.22	$69.28	$27.44
77333	X	Radiation treatment aid(s)	0303	2.83	$137.22	$69.28	$27.44
77334	X	Radiation treatment aid(s)	0303	2.83	$137.22	$69.28	$27.44
77336	X	Radiation physics consult	0311	1.32	$64.00	$31.66	$12.80
77370	X	Radiation physics consult	0311	1.32	$64.00	$31.66	$12.80
77399	X	External radiation dosimetry	0311	1.32	$64.00	$31.66	$12.80
77401	S	Radiation treatment delivery	0300	1.98	$96.00	$47.72	$19.20
77402	S	Radiation treatment delivery	0300	1.98	$96.00	$47.72	$19.20
77403	S	Radiation treatment delivery	0300	1.98	$96.00	$47.72	$19.20
77404	S	Radiation treatment delivery	0300	1.98	$96.00	$47.72	$19.20
77406	S	Radiation treatment delivery	0300	1.98	$96.00	$47.72	$19.20
77407	S	Radiation treatment delivery	0300	1.98	$96.00	$47.72	$19.20
77408	S	Radiation treatment delivery	0300	1.98	$96.00	$47.72	$19.20
77409	S	Radiation treatment delivery	0300	1.98	$96.00	$47.72	$19.20
77411	S	Radiation treatment delivery	0300	1.98	$96.00	$47.72	$19.20
77412	S	Radiation treatment delivery	0301	2.21	$107.16	$52.53	$21.43
77413	S	Radiation treatment delivery	0301	2.21	$107.16	$52.53	$21.43
77414	S	Radiation treatment delivery	0301	2.21	$107.16	$52.53	$21.43
77416	S	Radiation treatment delivery	0300	1.98	$96.00	$47.72	$19.20
77417	X	Radiology port film(s)	0301	2.21	$107.16	$52.53	$21.43
77427	E	Radiation tx management, x5	0260	0.79	$38.30	$22.02	$7.66
77431	E	Radiation therapy management					
77432	E	Stereotactic radiation trmt					
77470	S	Special radiation treatment					
77499	E	Radiation therapy management	0302	8.21	$398.08	$216.55	$79.62
77520	S	Proton beam delivery					
77523	S	Proton beam delivery	0301	2.21	$107.16	$52.53	$21.43
77600	S	Hyperthermia treatment	0301	2.21	$107.16	$52.53	$21.43
77605	S	Hyperthermia treatment	0314	5.88	$285.10	$150.95	$57.02
77610	S	Hyperthermia treatment	0314	5.88	$285.10	$150.95	$57.02
77615	S	Hyperthermia treatment	0314	5.88	$285.10	$150.95	$57.02
77620	S	Hyperthermia treatment	0314	5.88	$285.10	$150.95	$57.02
77750	S	Infuse radioactive materials	0314	5.88	$285.10	$150.95	$57.02
77761	S	Radioelement application	0301	2.21	$107.16	$52.53	$21.43
77762	S	Radioelement application	0312	4.09	$198.31	$109.65	$39.66
77763	S	Radioelement application	0312	4.09	$198.31	$109.65	$39.66
77776	S	Radioelement application	0312	4.09	$198.31	$109.65	$39.66
77777	S	Radioelement application	0312	4.09	$198.31	$109.65	$39.66
77778	S	Radioelement application	0312	4.09	$198.31	$109.65	$39.66
77781	S	High intensity brachytherapy	0312	4.09	$198.31	$109.65	$39.66
77782	S	High intensity brachytherapy	0313	7.89	$382.56	$164.02	$76.51
77783	S	High intensity brachytherapy	0313	7.89	$382.56	$164.02	$76.51
77784	S	High intensity brachytherapy	0313	7.89	$382.56	$164.02	$76.51
77789	S	Radioelement application	0313	7.89	$382.56	$164.02	$76.51
77790	N	Radioelement handling	0300	1.98	$96.00	$47.72	$19.20
77799	S	Radium/radioisotope therapy					
78000	S	Thyroid, single uptake	0313	7.89	$382.56	$164.02	$76.51
78001	S	Thyroid, multiple uptakes	0290	1.94	$94.06	$55.51	$18.81
78003	S	Thyroid suppres/stimul	0290	1.94	$94.06	$55.51	$18.81
78006	S	Thyroid imaging with uptake	0290	1.94	$94.06	$55.51	$18.81
78007	S	Thyroid image, mult uptakes	0291	3.15	$152.73	$93.14	$30.55
78010	S	Thyroid imaging	0291	3.15	$152.73	$93.14	$30.55
78011	S	Thyroid imaging with flow	0290	1.94	$94.06	$55.51	$18.81
			0290	1.94	$94.06	$55.51	$18.81

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
78015	S	Thyroid met imaging	0291	3.15	$152.73	$93.14	$30.55
78016	S	Thyroid met imaging/studies	0292	4.36	$211.40	$126.63	$42.28
78018	S	Thyroid met imaging, body	0292	4.36	$211.40	$126.63	$42.28
78020	S	Thyroid met uptake	0292	4.36	$211.40	$126.63	$42.28
78070	S	Parathyroid nuclear imaging	0292	4.36	$211.40	$126.63	$42.28
78075	S	Adrenal nuclear imaging	0292	4.36	$211.40	$126.63	$42.28
78099	S	Endocrine nuclear procedure	0290	1.94	$94.06	$55.51	$18.81
78102	S	Bone marrow imaging, ltd	0291	3.15	$152.73	$93.14	$30.55
78103	S	Bone marrow imaging, mult	0292	4.36	$211.40	$126.63	$42.28
78104	S	Bone marrow imaging, body	0292	4.36	$211.40	$126.63	$42.28
78110	S	Plasma volume, single	0291	3.15	$152.73	$93.14	$30.55
78111	S	Plasma volume, multiple	0291	3.15	$152.73	$93.14	$30.55
78120	S	Red cell mass, single	0291	3.15	$152.73	$93.14	$30.55
78121	S	Red cell mass, multiple	0291	3.15	$152.73	$93.14	$30.55
78122	S	Blood volume	0292	4.36	$211.40	$126.63	$42.28
78130	S	Red cell survival study	0292	4.36	$211.40	$126.63	$42.28
78135	S	Red cell survival kinetics	0292	4.36	$211.40	$126.63	$42.28
78140	S	Red cell sequestration	0292	4.36	$211.40	$126.63	$42.28
78160	S	Plasma iron turnover	0292	4.36	$211.40	$126.63	$42.28
78162	S	Iron absorption exam	0292	4.36	$211.40	$126.63	$42.28
78170	S	Red cell iron utilization	0292	4.36	$211.40	$126.63	$42.28
78172	S	Total body iron estimation	0292	4.36	$211.40	$126.63	$42.28
78185	S	Spleen imaging	0291	3.15	$152.73	$93.14	$30.55
78190	S	Platelet survival, kinetics	0291	3.15	$152.73	$93.14	$30.55
78191	S	Platelet survival	0291	3.15	$152.73	$93.14	$30.55
78195	S	Lymph system imaging	0292	4.36	$211.40	$126.63	$42.28
78199	S	Blood/lymph nuclear exam	0290	1.94	$94.06	$55.51	$18.81
78201	S	Liver imaging	0291	3.15	$152.73	$93.14	$30.55
78202	S	Liver imaging with flow	0291	3.15	$152.73	$93.14	$30.55
78205	S	Liver imaging (3D)	0292	4.36	$211.40	$126.63	$42.28
78206	S	Liver image (3D) w/flow	0292	4.36	$211.40	$126.63	$42.28
78215	S	Liver and spleen imaging	0291	3.15	$152.73	$93.14	$30.55
78216	S	Liver & spleen image/flow	0291	3.15	$152.73	$93.14	$30.55
78220	S	Liver function study	0292	4.36	$211.40	$126.63	$42.28
78223	S	Hepatobiliary imaging	0292	4.36	$211.40	$126.63	$42.28
78230	S	Salivary gland imaging	0291	3.15	$152.73	$93.14	$30.55
78231	S	Serial salivary imaging	0291	3.15	$152.73	$93.14	$30.55
78232	S	Salivary gland function exam	0291	3.15	$152.73	$93.14	$30.55
78258	S	Esophageal motility study	0291	3.15	$152.73	$93.14	$30.55
78261	S	Gastric mucosa imaging	0291	3.15	$152.73	$93.14	$30.55
78262	S	Gastroesophageal reflux exam	0291	3.15	$152.73	$93.14	$30.55
78264	S	Gastric emptying study	0292	4.36	$211.40	$126.63	$42.28
[2]78267	T	Breath tst attain/anal c–14	0971	1.55	$75.16	.....	$15.03
[2]78268	T	Breath test analysis, c–14	0970	0.52	$25.21	.....	$5.04
78270	S	Vit B–12 absorption exam	0290	1.94	$94.06	$55.51	$18.81
78271	S	Vit B–12 absorp exam, IF	0290	1.94	$94.06	$55.51	$18.81
78272	S	Vit B–12 absorp, combined	0291	3.15	$152.73	$93.14	$30.55
78278	S	Acute GI blood loss imaging	0292	4.36	$211.40	$126.63	$42.28
78282	S	GI protein loss exam	0290	1.94	$94.06	$55.51	$18.81
78290	S	Meckel's divert exam	0291	3.15	$152.73	$93.14	$30.55
78291	S	Leveen/shunt patency exam	0292	4.36	$211.40	$126.63	$42.28
78299	S	GI nuclear procedure	0290	1.94	$94.06	$55.51	$18.81
78300	S	Bone imaging, limited area	0291	3.15	$152.73	$93.14	$30.55
78305	S	Bone imaging, multiple areas	0292	4.36	$211.40	$126.63	$42.28
78306	S	Bone imaging, whole body	0292	4.36	$211.40	$126.63	$42.28
78315	S	Bone imaging, 3 phase	0292	4.36	$211.40	$126.63	$42.28
78320	S	Bone imaging (3D)	0292	4.36	$211.40	$126.63	$42.28
78350	X	Bone mineral, single photon	0261	1.38	$66.91	$38.77	$13.38
78351	E	Bone mineral, dual photon	.....	.....	.....	.....	.....
78399	S	Musculoskeletal nuclear exam	0290	1.94	$94.06	$55.51	$18.81
78414	S	Non-imaging heart function	0292	4.36	$211.40	$126.63	$42.28
78428	S	Cardiac shunt imaging	0292	4.36	$211.40	$126.63	$42.28
78445	S	Vascular flow imaging	0291	3.15	$152.73	$93.14	$30.55
78455	S	Venous thrombosis study	0291	3.15	$152.73	$93.14	$30.55
78456	S	Acute venous thrombus image	0291	3.15	$152.73	$93.14	$30.55
78457	S	Venous thrombosis imaging	0291	3.15	$152.73	$93.14	$30.55
78458	S	Ven thrombosis images, bilat	0291	3.15	$152.73	$93.14	$30.55
78459	E	Heart muscle imaging (PET)	.....	.....	.....	.....	.....
78460	S	Heart muscle blood, single	0286	7.28	$352.99	$200.04	$70.60
78461	S	Heart muscle blood, multiple	0286	7.28	$352.99	$200.04	$70.60
78464	S	Heart image (3D), single	0286	7.28	$352.99	$200.04	$70.60
78465	S	Heart image (3D), multiple	0286	7.28	$352.99	$200.04	$70.60
78466	S	Heart infarct image	0292	4.36	$211.40	$126.63	$42.28

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
78468	S	Heart infarct image (ef)	0292	4.36	$211.40	$126.63	$42.28
78469	S	Heart infarct image (3D)	0292	4.36	$211.40	$126.63	$42.28
78472	S	Gated heart, planar, single	0286	7.28	$352.99	$200.04	$70.60
78473	S	Gated heart, multiple	0286	7.28	$352.99	$200.04	$70.60
78478	S	Heart wall motion add-on	0286	7.28	$352.99	$200.04	$70.60
78480	S	Heart function add-on	0286	7.28	$352.99	$200.04	$70.60
78481	S	Heart first pass, single	0286	7.28	$352.99	$200.04	$70.60
78483	S	Heart first pass, multiple	0286	7.28	$352.99	$200.04	$70.60
78491	E	Heart image (pet), single					
78492	E	Heart image (pet), multiple					
78494	S	Heart image, spect	0296	3.57	$173.10	$100.25	$34.62
78496	S	Heart first pass add-on	0296	3.57	$173.10	$100.25	$34.62
78499	S	Cardiovascular nuclear exam	0292	4.36	$211.40	$126.63	$42.28
78580	S	Lung perfusion imaging	0291	3.15	$152.73	$93.14	$30.55
78584	S	Lung V/Q image single breath	0292	4.36	$211.40	$126.63	$42.28
78585	S	Lung V/Q imaging	0292	4.36	$211.40	$126.63	$42.28
78586	S	Aerosol lung image, single	0292	4.36	$211.40	$126.63	$42.28
78587	S	Aerosol lung image, multiple	0292	4.36	$211.40	$126.63	$42.28
78588	S	Perfusion lung image	0292	4.36	$211.40	$126.63	$42.28
78591	S	Vent image, 1 breath, 1 proj	0291	3.15	$152.73	$93.14	$30.55
78593	S	Vent image, 1 proj, gas	0292	4.36	$211.40	$126.63	$42.28
78594	S	Vent image, mult proj, gas	0292	4.36	$211.40	$126.63	$42.28
78596	S	Lung differential function	0292	4.36	$211.40	$126.63	$42.28
78599	S	Respiratory nuclear exam	0291	3.15	$152.73	$93.14	$30.55
78600	S	Brain imaging, ltd static	0292	4.36	$211.40	$126.63	$42.28
78601	S	Brain imaging, ltd w/flow	0292	4.36	$211.40	$126.63	$42.28
78605	S	Brain imaging, complete	0291	3.15	$152.73	$93.14	$30.55
78606	S	Brain imaging, compl w/flow	0292	4.36	$211.40	$126.63	$42.28
78607	S	Brain imaging (3D)	0292	4.36	$211.40	$126.63	$42.28
78608	E	Brain imaging (PET)					
78609	E	Brain imaging (PET)					
78610	S	Brain flow imaging only	0291	3.15	$152.73	$93.14	$30.55
78615	S	Cerebral blood flow imaging	0292	4.36	$211.40	$126.63	$42.28
78630	S	Cerebrospinal fluid scan	0292	4.36	$211.40	$126.63	$42.28
78635	S	CSF ventriculography	0292	4.36	$211.40	$126.63	$42.28
78645	S	CSF shunt evaluation	0292	4.36	$211.40	$126.63	$42.28
78647	S	Cerebrospinal fluid scan	0292	4.36	$211.40	$126.63	$42.28
78650	S	CSF leakage imaging	0292	4.36	$211.40	$126.63	$42.28
78655	S		0292	4.36	$211.40	$126.63	$42.28
78660	S	Nuclear exam of tear flow	0291	3.15	$152.73	$93.14	$30.55
78699	S	Nervous system nuclear exam	0292	4.36	$211.40	$126.63	$42.28
78700	S	Kidney imaging, static	0291	3.15	$152.73	$93.14	$30.55
78701	S	Kidney imaging with flow	0291	3.15	$152.73	$93.14	$30.55
78704	S	Imaging renogram	0292	4.36	$211.40	$126.63	$42.28
78707	S	Kidney flow/function image	0292	4.36	$211.40	$126.63	$42.28
78708	S	Kidney flow/function image	0292	4.36	$211.40	$126.63	$42.28
78709	S	Kidney flow/function image	0292	4.36	$211.40	$126.63	$42.28
78710	S	Kidney imaging (3D)	0292	4.36	$211.40	$126.63	$42.28
78715	S	Renal vascular flow exam	0291	3.15	$152.73	$93.14	$30.55
78725	S	Kidney function study	0291	3.15	$152.73	$93.14	$30.55
78730	S	Urinary bladder retention	0291	3.15	$152.73	$93.14	$30.55
78740	S	Ureteral reflux study	0291	3.15	$152.73	$93.14	$30.55
78760	S	Testicular imaging	0291	3.15	$152.73	$93.14	$30.55
78761	S	Testicular imaging/flow	0291	3.15	$152.73	$93.14	$30.55
78799	S	Genitourinary nuclear exam	0292	4.36	$211.40	$126.63	$42.28
78800	S	Tumor imaging, limited area	0292	4.36	$211.40	$126.63	$42.28
78801	S	Tumor imaging, mult areas	0292	4.36	$211.40	$126.63	$42.28
78802	S	Tumor imaging, whole body	0292	4.36	$211.40	$126.63	$42.28
78803	S	Tumor imaging (3D)	0292	4.36	$211.40	$126.63	$42.28
78805	S	Abscess imaging, ltd area	0292	4.36	$211.40	$126.63	$42.28
78806	S	Abscess imaging, whole body	0292	4.36	$211.40	$126.63	$42.28
78807	S	Nuclear localization/abscess	0292	4.36	$211.40	$126.63	$42.28
78810	E	Tumor imaging (PET)					
78890	N	Nuclear medicine data proc					
78891	N	Nuclear med data proc					
78990	N	Provide diag radionuclide(s)					
78999	S	Nuclear diagnostic exam	0291	3.15	$152.73	$93.14	$30.55
79000	S	Init hyperthyroid therapy	0294	5.13	$248.74	$144.06	$49.75
79001	S	Repeat hyperthyroid therapy	0294	5.13	$248.74	$144.06	$49.75
79020	S	Thyroid ablation	0294	5.13	$248.74	$144.06	$49.75
79030	S	Thyroid ablation, carcinoma	0294	5.13	$248.74	$144.06	$49.75
79035	S	Thyroid metastatic therapy	0294	5.13	$248.74	$144.06	$49.75
79100	S	Hematopoetic nuclear therapy	0294	5.13	$248.74	$144.06	$49.75

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
79200	S	Intracavitary nuclear trmt	0295	19.85	$962.47	$609.17	$192.49
79300	S	Interstitial nuclear therapy	0294	5.13	$248.74	$144.06	$49.75
79400	S	Nonhemato nuclear therapy	0295	19.85	$962.47	$609.17	$192.49
79420	S	Intravascular nuclear ther	0295	19.85	$962.47	$609.17	$192.49
79440	S	Nuclear joint therapy	0294	5.13	$248.74	$144.06	$49.75
79900	N	Provide ther radiopharm(s)					
79999	S	Nuclear medicine therapy	0294	5.13	$248.74	$144.06	$49.75
80048	A	Basic metabolic panel					
80050	A	General health panel					
80051	A	Electrolyte panel					
80053	A	Comprehen metabolic panel					
80055	A	Obstetric panel					
80061	A	Lipid panel					
80069	A	Renal function panel					
80072	A	Arthritis panel					
80074	A	Acute hepatitis panel					
80076	A	Hepatic function panel					
80090	A	Torch antibody panel					
80100	A	Drug screen					
80101	A	Drug screen					
80102	A	Drug confirmation					
80103	N	Drug analysis, tissue prep					
80150	A	Assay of amikacin					
80152	A	Assay of amitriptyline					
80154	A	Assay of benzodiazepines					
80156	A	Assay of carbamazepine					
80158	A	Assay of cycloesporine					
80160	A	Assay of desipramine					
80162	A	Assay of digoxin					
80164	A	Assay, dipropylacetic acid					
80166	A	Assay of doxepin					
80168	A	Assay of ethosuximide					
80170	A	Assay of gentamicin					
80172	A	Assay of gold					
80174	A	Assay of imipramine					
80176	A	Assay of lidocaine					
80178	A	Assay of lithium					
80182	A	Assay of nortriptyline					
80184	A	Assay of phenobarbital					
80185	A	Assay of phenytoin, total					
80186	A	Assay of phenytoin, free					
80188	A	Assay of primidone					
80190	A	Assay of procainamide					
80192	A	Assay of procainamide					
80194	A	Assay of quinidine					
80196	A	Assay of salicylate					
80197	A	Assay of tacrolimus					
80198	A	Assay of theophylline					
80200	A	Assay of tobramycin					
80201	A	Assay of topiramate					
80202	A	Assay of vancomycin					
80299	A	Quantitative assay, drug					
80400	A	Acth stimulation panel					
80402	A	Acth stimulation panel					
80406	A	Acth stimulation panel					
80408	A	Aldosterone suppression eval					
80410	A	Calcitonin stimul panel					
80412	A	CRH stimulation panel					
80414	A	Testosterone response					
80415	A	Estradiol response panel					
80416	A	Renin stimulation panel					
80417	A	Renin stimulation panel					
80418	A	Pituitary evaluation panel					
80420	A	Dexamethasone panel					
80422	A	Glucagon tolerance panel					
80424	A	Glucagon tolerance panel					
80426	A	Gonadotropin hormone panel					
80428	A	Growth hormone panel					
80430	A	Growth hormone panel					
80432	A	Insulin suppression panel					
80434	A	Insulin tolerance panel					
80435	A	Insulin tolerance panel					
80436	A	Metyrapone panel					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
80436	A	TRH stimulation panel					
80439	A	TRH stimulation panel					
80440	A	TRH stimulation panel					
80500	X	Lab pathology consultation	0343	0.45	$21.82	$12.16	$4.36
80502	X	Lab pathology consultation	0343	0.45	$21.82	$12.16	$4.36
81000	A	Urinalysis, nonauto w/scope					
81001	A	Urinalysis, auto w/scope					
81002	A	Urinalysis nonauto w/o scope					
81003	A	Urinalysis, auto, w/o scope					
81005	A	Urinalysis					
81007	A	Urine screen for bacteria					
81015	A	Microscopic exam of urine					
81020	A	Urinalysis, glass test					
81025	A	Urine pregnancy test					
81050	A	Urinalysis, volume measure					
81099	A	Urinalysis test procedure					
82000	A	Assay of blood acetaldehyde					
82003	A	Assay of acetaminophen					
82009	A	Test for acetone/ketones					
82010	A	Acetone assay					
82013	A	Acetylcholinesterase assay					
82016	A	Acylcarnitines, qual					
82017	A	Acylcarnitines, quant					
82024	A	Assay of acth					
82030	A	Assay of adp & amp					
82040	A	Assay of serum albumin					
82042	A	Assay of urine albumin					
82043	A	Microalbumin, quantitative					
82044	A	Microalbumin, semiquant					
82055	A	Assay of ethanol					
82075	A	Assay of breath ethanol					
82085	A	Assay of aldolase					
82088	A	Assay of aldosterone					
82101	A	Assay of urine alkaloids					
82103	A	Alpha-1-antitrypsin, total					
82104	A	Alpha-1-antitrypsin, pheno					
82105	A	Alpha-fetoprotein, serum					
82106	A	Alpha-fetoprotein, amniotic					
82108	A	Assay of aluminum					
82120	A	Amines, vaginal fluid qual					
82127	A	Amino acid, single qual					
82128	A	Amino acids, mult qual					
82131	A	Amino acids, single quant					
82135	A	Assay, aminolevulinic acid					
82136	A	Amino acids, quant, 2–5					
82139	A	Amino acids, quan, 6 or more					
82140	A	Assay of ammonia					
82143	A	Amniotic fluid scan					
82145	A	Assay of amphetamines					
82150	A	Assay of amylase					
82154	A	Androstanediol glucuronide					
82157	A	Assay of androstenedione					
82160	A	Assay of androsterone					
82163	A	Assay of angiotensin II					
82164	A	Angiotensin I enzyme test					
82172	A	Assay of apolipoprotein					
82175	A	Assay of arsenic					
82180	A	Assay of ascorbic acid					
82190	A	Atomic absorption					
82205	A	Assay of barbiturates					
82232	A	Assay of beta-2 protein					
82239	A	Bile acids, total					
82240	A	Bile acids, cholylglycine					
82247	A	Bilirubin, total					
82248	A	Bilirubin, direct					
82251	A	Assay of bilirubin					
82252	A	Fecal bilirubin test					
82261	A	Assay of biotinidase					
82270	A	Test for blood, feces					
82273	A	Test for blood, other source					
82286	A	Assay of bradykinin					
82300	A	Assay of cadmium					
82306	A	Assay of vitamin D					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
82307	A	Assay of vitamin D					
82308	A	Assay of calcitonin					
82310	A	Assay of calcium					
82330	A	Assay of calcium				[2]	
82331	A	Calcium infusion test					
82340	A	Assay of calcium in urine					
82355	A	Calculus (stone) analysis					
82360	A	Calculus (stone) assay					
82365	A	Calculus (stone) assay					
82370	A	X-ray assay, calculus					
82374	A	Assay, blood carbon dioxide					
82375	A	Assay, blood carbon monoxide					
82376	A	Test for carbon monoxide					
82378	A	Carcinoembryonic antigen					
82379	A	Assay of carnitine					
82380	A	Assay of carotene					
82382	A	Assay, urine catecholamines					
82383	A	Assay, blood catecholamines					
82384	A	Assay, three catecholamines					
82387	A	Assay of cathepsin-d					
82390	A	Assay of ceruloplasmin					
82397	A	Chemiluminescent assay					
82415	A	Assay of chloramphenicol					
82435	A	Assay of blood chloride					
82436	A	Assay of urine chloride					
82438	A	Assay, other fluid chlorides					
82441	A	Test for chlorohydrocarbons					
82465	A	Assay of serum cholesterol					
82480	A	Assay, serum cholinesterase					
82482	A	Assay, rbc cholinesterase					
82485	A	Assay, chondroitin sulfate					
82486	A	Gas/liquid chromatography					
82487	A	Paper chromatography					
82488	A	Paper chromatography					
82489	A	Thin layer chromatography					
82491	A	Chromotography, quant, sing					
82492	A	Chromotography, quant, mult					
82495	A	Assay of chromium					
82507	A	Assay of citrate					
82520	A	Assay of cocaine					
82523	A	Collagen crosslinks					
82525	A	Assay of copper					
82528	A	Assay of corticosterone					
82530	A	Cortisol, free					
82533	A	Total cortisol					
82540	A	Assay of creatine					
82541	A	Column chromotography, qual					
82542	A	Column chromotography, quant					
82543	A	Column chromotograph/isotope					
82544	A	Column chromotograph/isotope					
82550	A	Assay of ck (cpk)					
82552	A	Assay of cpk in blood					
82553	A	Creatine, MB fraction					
82554	A	Creatine, isoforms					
82565	A	Assay of creatinine					
82570	A	Assay of urine creatinine					
82575	A	Creatinine clearance test					
82585	A	Assay of cryofibrinogen					
82595	A	Assay of cryoglobulin					
82600	A	Assay of cyanide					
82607	A	Vitamin B–12					
82608	A	B–12 binding capacity					
82615	A	Test for urine cystines					
82626	A	Dehydroepiandrosterone					
82627	A	Dehydroepiandrosterone					
82633	A	Desoxycorticosterone					
82634	A	Deoxycortisol					
82638	A	Assay of dibucaine number					
82646	A	Assay of dihydrocodeinone					
82649	A	Assay of dihydromorphinone					
82651	A	Assay of dihydrotestosterone					
82652	A	Assay of dihydroxyvitamin d					
82654	A	Assay of dimethadione					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
82657	A	Enzyme cell activity					
82658	A	Enzyme cell activity, ra					
82664	A	Electrophoretic test					
82666	A	Assay of epiandrosterone					
82668	A	Assay of erythropoietin					
82670	A	Assay of estradiol					
82671	A	Assay of estrogens					
82672	A	Assay of estrogen					
82677	A	Assay of estriol					
82679	A	Assay of estrone					
82680	A	Assay of ethchlorvynol					
82693	A	Assay of ethylene glycol					
82696	A	Assay of etiocholanolone					
82705	A	Fats/lipids, feces, qual					
82710	A	Fats/lipids, feces, quant					
82715	A	Assay of fecal fat					
82725	A	Assay of blood fatty acids					
82726	A	Long chain fatty acids					
82728	A	Assay of ferritin					
82731	A	Assay of fetal fibronectin					
82735	A	Assay of fluoride					
82742	A	Assay of flurazepam					
82746	A	Blood folic acid serum					
82747	A	Assay of folic acid, rbc					
82757	A	Assay of semen fructose					
82759	A	Assay of rbc galactokinase					
82760	A	Assay of galactose					
82775	A	Assay galactose transferase					
82776	A	Galactose transferase test					
82784	A	Assay of gammaglobulin igm					
82785	A	Assay of gammaglobulin ige					
82787	A	Igg 1, 2, 3 and 4					
82800	A	Blood pH					
82803	A	Blood gases: pH, pO2 & pCO2					
82805	A	Blood gases W/O2 saturation					
82810	A	Blood gases, O2 sat only					
82820	A	Hemoglobin-oxygen affinity					
82926	A	Assay of gastric acid					
82928	A	Assay of gastric acid					
82938	A	Gastrin test					
82941	A	Assay of gastrin					
82943	A	Assay of glucagon					
82946	A	Glucagon tolerance test					
82947	A	Assay of glucose, quant					
82948	A	Reagent strip/blood glucose					
82950	A	Glucose test					
82951	A	Glucose tolerance test (GTT)					
82952	A	GTT-added samples					
82953	A	Glucose-tolbutamide test					
82955	A	Assay of g6pd enzyme					
82960	A	Test for G6PD enzyme					
82962	A	Glucose blood test					
82963	A	Assay of glucosidase					
82965	A	Assay of gdh enzyme					
82975	A	Assay of glutamine					
82977	A	Assay of GGT					
82978	A	Assay of glutathione					
82979	A	Assay, rbc glutathione					
82980	A	Assay of glutethimide					
82985	A	Glycated protein					
83001	A	Gonadotropin (FSH)					
83002	A	Gonadotropin (LH)					
83003	A	Assay, growth hormone (hgh)					
83008	A	Assay of guanosine					
83010	A	Assay of haptoglobin, quant					
83012	A	Assay of haptoglobins					
83013	A	H pylori breath tst analysis					
83014	A	H pylori drug admin/collect					
83015	A	Heavy metal screen					
83018	A	Quantitative screen, metals					
83020	A	Hemoglobin electrophoresis					
83021	A	Hemoglobin chromotography					
83026	A	Hemoglobin, copper sulfate					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
83030	A	Fetal hemoglobin assay					
83033	A	Fetal fecal hemoglobin assay					
83036	A	Glycated hemoglobin test					
83045	A	Blood methemoglobin test					
83050	A	Blood methemoglobin assay					
83051	A	Assay of plasma hemoglobin					
83055	A	Blood sulfhemoglobin test					
83060	A	Blood sulfhemoglobin assay					
83065	A	Assay of hemoglobin heat					
83068	A	Hemoglobin stability screen					
83069	A	Assay of urine hemoglobin					
83070	A	Assay of hemosiderin, qual					
83071	A	Assay of hemosiderin, quant					
83080	A	Assay of b hexosaminidase					
83088	A	Assay of histamine					
83150	A	Assay of for hva					
83491	A	Assay of corticosteroids					
83497	A	Assay of 5-hiaa					
83498	A	Assay of progesterone					
83499	A	Assay of progesterone					
83500	A	Assay, free hydroxyproline					
83505	A	Assay, total hydroxyproline					
83516	A	Immunoassay, nonantibody					
83518	A	Immunoassay, dipstick					
83519	A	Immunoassay, nonantibody					
83520	A	Immunoassay, RIA					
83525	A	Assay of insulin					
83527	A	Assay of insulin					
83528	A	Assay of intrinsic factor					
83540	A	Assay of iron					
83550	A	Iron binding test					
83570	A	Assay of idh enzyme					
83582	A	Assay of ketogenic steroids					
83586	A	Assay 17-ketosteroids					
83593	A	Fractionation, ketosteroids					
83605	A	Assay of lactic acid					
83615	A	Lactate (LD) (LDH) enzyme					
83625	A	Assay of ldh enzymes					
83632	A	Placental lactogen					
83633	A	Test urine for lactose					
83634	A	Assay of urine for lactose					
83655	A	Assay of lead					
83661	A	Assay of l/s ratio					
83662	A	L/S ratio, foam stability					
83670	A	Assay of lap enzyme					
83690	A	Assay of lipase					
83715	A	Assay of blood lipoproteins					
83716	A	Assay of blood lipoproteins					
83718	A	Assay of lipoprotein					
83719	A	Assay of blood lipoprotein					
83721	A	Assay of blood lipoprotein					
83727	A	Assay of lrh hormone					
83735	A	Assay of magnesium					
83775	A	Assay of md enzyme					
83785	A	Assay of manganese					
83788	A	Mass spectrometry qual					
83789	A	Mass spectrometry quant					
83805	A	Assay of meprobamate					
83825	A	Assay of mercury					
83835	A	Assay of metanephrines					
83840	A	Assay of methadone					
83857	A	Assay of methemalbumin					
83858	A	Assay of methsuximide					
83864	A	Mucopolysaccharides					
83866	A	Mucopolysaccharides screen					
83872	A	Assay synovial fluid mucin					
83873	A	Assay of csf protein					
83874	A	Assay of myoglobin					
83883	A	Assay, nephelometry not spec					
83885	A	Assay of nickel					
83887	A	Assay of nicotine					
83890	A	Molecule isolate					
83891	A	Molecule isolate nucleic					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
83892	A	Molecular diagnostics					
83893	A	Molecule dot/slot/blot					
83894	A	Molecule gel electrophor					
83896	A	Molecular diagnostics					
83897	A	Molecule nucleic transfer					
83898	A	Molecule nucleic ampli					
83901	A	Molecule nucleic ampli					
83902	A	Molecular diagnostics					
83903	A	Molecule mutation scan					
83904	A	Molecule mutation identify					
83905	A	Molecule mutation identify					
83906	A	Molecule mutation identify					
83912	A	Genetic examination					
83915	A	Assay of nucleotidase					
83916	A	Oligoclonal bands					
83918	A	Assay, organic acids quant					
83919	A	Assay, organic acids qual					
83925	A	Assay of opiates					
83930	A	Assay of blood osmolality					
83935	A	Assay of urine osmolality					
83937	A	Assay of osteocalcin					
83945	A	Assay of oxalate					
83970	A	Assay of parathormone					
83986	A	Assay of body fluid acidity					
83992	A	Assay for phencyclidine					
84022	A	Assay of phenothiazine					
84030	A	Assay of blood pku					
84035	A	Assay of phenylketones					
84060	A	Assay acid phosphatase					
84061	A	Phosphatase, forensic exam					
84066	A	Assay prostate phosphatase					
84075	A	Assay alkaline phosphatase					
84078	A	Assay alkaline phosphatase					
84080	A	Assay alkaline phosphatases					
84081	A	Amniotic fluid enzyme test					
84085	A	Assay of rbc pg6d enzyme					
84087	A	Assay phosphohexose enzymes					
84100	A	Assay of phosphorus					
84105	A	Assay of urine phosphorus					
84106	A	Test for porphobilinogen					
84110	A	Assay of porphobilinogen					
84119	A	Test urine for porphyrins					
84120	A	Assay of urine porphyrins					
84126	A	Assay of feces porphyrins					
84127	A	Assay of feces porphyrins					
84132	A	Assay of serum potassium					
84133	A	Assay of urine potassium					
84134	A	Assay of prealbumin					
84135	A	Assay of pregnanediol					
84138	A	Assay of pregnanetriol					
84140	A	Assay of pregnenolone					
84143	A	Assay of 17-hydroxypregneno					
84144	A	Assay of progesterone					
84146	A	Assay of prolactin					
84150	A	Assay of prostaglandin					
84153	A	Assay of psa, total					
84154	A	Assay of psa, free					
84155	A	Assay of protein					
84160	A	Assay of serum protein					
84165	A	Assay of serum proteins					
84181	A	Western blot test					
84182	A	Protein, western blot test					
84202	A	Assay RBC protoporphyrin					
84203	A	Test RBC protoporphyrin					
84206	A	Assay of proinsulin					
84207	A	Assay of vitamin b–6					
84210	A	Assay of pyruvate					
84220	A	Assay of pyruvate kinase					
84228	A	Assay of quinine					
84233	A	Assay of estrogen					
84234	A	Assay of progesterone					
84235	A	Assay of endocrine hormone					
84238	A	Assay, nonendocrine receptor					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
84244	A	Assay of renin					
84252	A	Assay of vitamin b–2					
84255	A	Assay of selenium					
84260	A	Assay of serotonin					
84270	A	Assay of sex hormone globul					
84275	A	Assay of sialic acid					
84285	A	Assay of silica					
84295	A	Assay of serum sodium					
84300	A	Assay of urine sodium					
84305	A	Assay of somatomedin					
84307	A	Assay of somatostatin					
84311	A	Spectrophotometry					
84315	A	Body fluid specific gravity					
84375	A	Chromatogram assay, sugars					
84376	A	Sugars, single, qual					
84377	A	Sugars, multiple, qual					
84378	A	Sugars single quant					
84379	A	Sugars multiple quant					
84392	A	Assay of urine sulfate					
84402	A	Assay of testosterone					
84403	A	Assay of total testosterone					
84425	A	Assay of vitamin b–1					
84430	A	Assay of thiocyanate					
84432	A	Assay of thyroglobulin					
84436	A	Assay of total thyroxine					
84437	A	Assay of neonatal thyroxine					
84439	A	Assay of free thyroxine					
84442	A	Assay of thyroid activity					
84443	A	Assay thyroid stim hormone					
84445	A	Assay of tsi					
84446	A	Assay of vitamin e					
84449	A	Assay of transcortin					
84450	A	Transferase (AST) (SGOT)					
84460	A	Alanine amino (ALT) (SGPT)					
84466	A	Assay of transferrin					
84478	A	Assay of triglycerides					
84479	A	Assay of thyroid (t3 or t4)					
84480	A	Assay, triiodothyronine (t3)					
84481	A	Free assay (FT–3)					
84482	A	T3 reverse					
84484	A	Assay of troponin, quant					
84485	A	Assay duodenal fluid trypsin					
84488	A	Test feces for trypsin					
84490	A	Assay of feces for trypsin					
84510	A	Assay of tyrosine					
84512	A	Assay of troponin, qual					
84520	A	Assay of urea nitrogen					
84525	A	Urea nitrogen semi-quant					
84540	A	Assay of urine/urea-n					
84545	A	Urea-N clearance test					
84550	A	Assay of blood/uric acid					
84560	A	Assay of urine/uric acid					
84577	A	Assay of feces/urobilinogen					
84578	A	Test urine urobilinogen					
84580	A	Assay of urine urobilinogen					
84583	A	Assay of urine urobilinogen					
84585	A	Assay of urine vma					
84586	A	Assay of vip					
84588	A	Assay of vasopressin					
84590	A	Assay of vitamin a					
84597	A	Assay of vitamin k					
84600	A	Assay of volatiles					
84620	A	Xylose tolerance test					
84630	A	Assay of zinc					
84681	A	Assay of c-peptide					
84702	A	Chorionic gonadotropin test					
84703	A	Chorionic gonadotropin assay					
84830	A	Ovulation tests					
84999	A	Clinical chemistry test					
85002	A	Bleeding time test					
85007	A	Differential WBC count					
85008	A	Nondifferential WBC count					
85009	A	Differential WBC count					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
85013	A	Hematocrit					
85014	A	Hematocrit					
85018	A	Hemoglobin					
85021	A	Automated hemogram					
85022	A	Automated hemogram					
85023	A	Automated hemogram					
85024	A	Automated hemogram					
85025	A	Automated hemogram					
85027	A	Automated hemogram					
85031	A	Manual hemogram, cbc					
85041	A	Red blood cell (RBC) count					
85044	A	Reticulocyte count					
85045	A	Reticulocyte count					
85046	A	Reticyte/hgb concentrate					
85048	A	White blood cell (WBC) count					
85060	X	Blood smear interpretation					
85095	T	Bone marrow aspiration	0342	0.26	$12.61	$8.03	$2.52
85097	X	Bone marrow interpretation	0003	0.98	$47.52	$27.99	$9.50
85102	T	Bone marrow biopsy	0344	0.79	$38.30	$23.63	$7.66
85130	A	Chromogenic substrate assay	0003	0.98	$47.52	$27.99	$9.50
85170	A	Blood clot retraction					
85175	A	Blood clot lysis time					
85210	A	Blood clot factor II test					
85220	A	Blood clot factor V test					
85230	A	Blood clot factor VII test					
85240	A	Blood clot factor VIII test					
85244	A	Blood clot factor VIII test					
85245	A	Blood clot factor VIII test					
85246	A	Blood clot factor VIII test					
85247	A	Blood clot factor VIII test					
85250	A	Blood clot factor IX test					
85260	A	Blood clot factor X test					
85270	A	Blood clot factor XI test					
85280	A	Blood clot factor XII test					
85290	A	Blood clot factor XIII test					
85291	A	Blood clot factor XIII test					
85292	A	Blood clot factor assay					
85293	A	Blood clot factor assay					
85300	A	Antithrombin III test					
85301	A	Antithrombin III test					
85302	A	Blood clot inhibitor antigen					
85303	A	Blood clot inhibitor test					
85305	A	Blood clot inhibitor assay					
85306	A	Blood clot inhibitor test					
85335	A	Factor inhibitor test					
85337	A	Thrombomodulin					
85345	A	Coagulation time					
85347	A	Coagulation time					
85348	A	Coagulation time					
85360	A	Euglobulin lysis					
85362	A	Fibrin degradation products					
85366	A	Fibrinogen test					
85370	A	Fibrinogen test					
85378	A	Fibrin degradation					
85379	A	Fibrin degradation					
85384	A	Fibrinogen					
85385	A	Fibrinogen					
85390	A	Fibrinolysins screen					
85400	A	Fibrinolytic plasmin					
85410	A	Fibrinolytic antiplasmin					
85415	A	Fibrinolytic plasminogen					
85420	A	Fibrinolytic plasminogen					
85421	A	Fibrinolytic plasminogen					
85441	A	Heinz bodies, direct					
85445	A	Heinz bodies, induced					
85460	A	Hemoglobin, fetal					
85461	A	Hemoglobin, fetal					
85475	A	Hemolysin					
85520	A	Heparin assay					
85525	A	Heparin					
85530	A	Heparin-protamine tolerance					
85535	A	Iron stain, blood cells					
85540	A	Wbc alkaline phosphatase					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
85547	A	RBC mechanical fragility					
85549	A	Muramidase					
85555	A	RBC osmotic fragility					
85557	A	RBC osmotic fragility					
85576	A	Blood platelet aggregation					
85585	A	Blood platelet estimation					
85590	A	Platelet count, manual					
85595	A	Platelet count, automated					
85597	A	Platelet neutralization					
85610	A	Prothrombin time					
85611	A	Prothrombin test					
85612	A	Viper venom prothrombin time					
85613	A	Russell viper venom, diluted					
85635	A	Reptilase test					
85651	A	Rbc sed rate, nonautomated					
85652	A	Rbc sed rate, automated					
85660	A	RBC sickle cell test					
85670	A	Thrombin time, plasma					
85675	A	Thrombin time, titer					
85705	A	Thromboplastin inhibition					
85730	A	Thromboplastin time, partial					
85732	A	Thromboplastin time, partial					
85810	A	Blood viscosity examination					
85999	A	Hematology procedure					
86000	A	Agglutinins, febrile					
86003	A	Allergen specific IgE					
86005	A	Allergen specific IgE					
86021	A	WBC antibody identification					
86022	A	Platelet antibodies					
86023	A	Immunoglobulin assay					
86038	A	Antinuclear antibodies					
86039	A	Antinuclear antibodies (ANA)					
86060	A	Antistreptolysin o, titer					
86063	A	Antistreptolysin o, screen					
86077	X	Physician blood bank service	0343	0.45	$21.82	$12.16	$4.36
86078	X	Physician blood bank service	0344	0.79	$38.30	$23.63	$7.66
86079	X	Physician blood bank service	0344	0.79	$38.30	$23.63	$7.66
86140	A	C-reactive protein					
86147	A	Cardiolipin antibody					
86148	A	Phospholipid antibody					
86155	A	Chemotaxis assay					
86156	A	Cold agglutinin, screen					
86157	A	Cold agglutinin, titer					
86160	A	Complement, antigen					
86161	A	Complement/function activity					
86162	A	Complement, total (CH50)					
86171	A	Complement fixation, each					
86185	A	Counterimmunoelectrophoresis					
86215	A	Deoxyribonuclease, antibody					
86225	A	DNA antibody					
86226	A	DNA antibody, single strand					
86235	A	Nuclear antigen antibody					
86243	A	Fc receptor					
86255	A	Fluorescent antibody, screen					
86256	A	Fluorescent antibody, titer					
86277	A	Growth hormone antibody					
86280	A	Hemagglutination inhibition					
86308	A	Heterophile antibodies					
86309	A	Heterophile antibodies					
86310	A	Heterophile antibodies					
86316	A	Immunoassay, tumor antigen					
86317	A	Immunoassay, infectious agent					
86318	A	Immunoassay, infectious agent					
86320	A	Serum immunoelectrophoresis					
86325	A	Other immunoelectrophoresis					
86327	A	Immunoelectrophoresis assay					
86329	A	Immunodiffusion					
86331	A	Immunodiffusion ouchterlony					
86332	A	Immune complex assay					
86334	A	Immunofixation procedure					
86337	A	Insulin antibodies					
86340	A	Intrinsic factor antibody					
86341	A	Islet cell antibody					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
86343	A	Leukocyte histamine release					
86344	A	Leukocyte phagocytosis					
86353	A	Lymphocyte transformation					
86359	A	T cells, total count					
86360	A	T cell, absolute count/ratio					
86361	A	T cell, absolute count					
86376	A	Microsomal antibody					
86378	A	Migration inhibitory factor					
86382	A	Neutralization test, viral					
86384	A	Nitroblue tetrazolium dye					
86403	A	Particle agglutination test					
86406	A	Particle agglutination test					
86430	A	Rheumatoid factor test					
86431	A	Rheumatoid factor, quant					
86485	X	Skin test, candida	0341	0.13	$6.30	$3.67	$1.26
86490	X	Coccidioidomycosis skin test	0341	0.13	$6.30	$3.67	$1.26
86510	X	Histoplasmosis skin test	0341	0.13	$6.30	$3.67	$1.26
86580	X	TB intradermal test	0341	0.13	$6.30	$3.67	$1.26
86585	X	TB tine test	0341	0.13	$6.30	$3.67	$1.26
86586	X	Skin test, unlisted	0341	0.13	$6.30	$3.67	$1.26
86590	A	Streptokinase, antibody					
86592	A	Blood serology, qualitative					
86593	A	Blood serology, quantitative					
86602	A	Antinomyces antibody					
86603	A	Adenovirus antibody					
86606	A	Aspergillus antibody					
86609	A	Bacterium antibody					
86612	A	Blastomyces antibody					
86615	A	Bordetella antibody					
86617	A	Lyme disease antibody					
86618	A	Lyme disease antibody					
86619	A	Borrelia antibody					
86622	A	Brucella antibody					
86625	A	Campylobacter antibody					
86628	A	Candida antibody					
86631	A	Chlamydia antibody					
86632	A	Chlamydia igm antibody					
86635	A	Coccidioides antibody					
86638	A	Q fever antibody					
86641	A	Cryptococcus antibody					
86644	A	CMV antibody					
86645	A	CMV antibody, IgM					
86648	A	Diphtheria antibody					
86651	A	Encephalitis antibody					
86652	A	Encephalitis antibody					
86653	A	Encephalitis antibody					
86654	A	Encephalitis antibody					
86658	A	Enterovirus antibody					
86663	A	Epstein-barr antibody					
86664	A	Epstein-barr antibody					
86665	A	Epstein-barr antibody					
86668	A	Francisella tularensis					
86671	A	Fungus antibody					
86674	A	Giardia lamblia antibody					
86677	A	Helicobacter pylori					
86682	A	Helminth antibody					
86684	A	Hemophilus influenza					
86687	A	Htlv-i antibody					
86688	A	Htlv-ii antibody					
86689	A	HTLV/HIV confirmatory test					
86692	A	Hepatitis, delta agent					
86694	A	Herpes simplex test					
86695	A	Herpes simplex test					
86698	A	Histoplasma					
86701	A	HIV–1					
86702	A	HIV–2					
86703	A	HIV–1/HIV–2, single assay					
86704	A	Hep b core antibody, igg/igm					
86705	A	Hep b core antibody, igm					
86706	A	Hep b surface antibody					
86707	A	Hep be antibody					
86708	A	Hep a antibody, igg/igm					
86709	A	Hep a antibody, igm					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
86710	A	Influenza virus antibody					
86713	A	Legionella antibody					
86717	A	Leishmania antibody					
86720	A	Leptospira antibody					
86723	A	Listeria monocytogenes ab					
86727	A	Lymph choriomeningitis ab					
86729	A	Lympho venereum antibody					
86732	A	Mucormycosis antibody					
86735	A	Mumps antibody					
86738	A	Mycoplasma antibody					
86741	A	Neisseria meningitidis					
86744	A	Nocardia antibody					
86747	A	Parvovirus antibody					
86750	A	Malaria antibody					
86753	A	Protozoa antibody nos					
86756	A	Respiratory virus antibody					
86759	A	Rotavirus antibody					
86762	A	Rubella antibody					
86765	A	Rubeola antibody					
86768	A	Salmonella antibody					
86771	A	Shigella antibody					
86774	A	Tetanus antibody					
86777	A	Toxoplasma antibody					
86778	A	Toxoplasma antibody, igm					
86781	A	Treponema pallidum, confirm					
86784	A	Trichinella antibody					
86787	A	Varicella-zoster antibody					
86790	A	Virus antibody nos					
86793	A	Yersinia antibody					
86800	A	Thyroglobulin antibody					
86803	A	Hepatitis c ab test					
86804	A	Hep c ab test, confirm					
86805	A	Lymphocytotoxicity assay					
86806	A	Lymphocytotoxicity assay					
86807	A	Cytotoxic antibody screening					
86808	A	Cytotoxic antibody screening					
86812	A	HLA typing, A, B, or C					
86813	A	HLA typing, A, B, or C					
86816	A	HLA typing, DR/DQ					
86817	A	HLA typing, DR/DQ					
86821	A	Lymphocyte culture, mixed					
86822	A	Lymphocyte culture, primed					
86849	A	Immunology procedure					
86850	A	RBC antibody screen					
86860	A	RBC antibody elution					
86870	A	RBC antibody identification					
86880	A	Coombs test					
86885	A	Coombs test					
86886	A	Coombs test					
86890	A	Autologous blood process					
86891	A	Autologous blood, op salvage					
86900	A	Blood typing, ABO					
86901	A	Blood typing, Rh (D)					
86903	A	Blood typing, antigen screen					
86904	A	Blood typing, patient serum					
86905	A	Blood typing, RBC antigens					
86906	A	Blood typing, Rh phenotype					
86910	E	Blood typing, paternity test					
86911	E	Blood typing, antigen system					
86915	A	Bone marrow/stem cell prep					
86920	A	Compatibility test					
86921	A	Compatibility test					
86922	A	Compatibility test					
86927	A	Plasma, fresh frozen					
86930	A	Frozen blood prep					
86931	A	Frozen blood thaw					
86932	A	Frozen blood freeze/thaw					
86940	A	Hemolysins/agglutinins, auto					
86941	A	Hemolysins/agglutinins					
86945	A	Blood product/irradiation					
86950	A	Leukacyte transfusion					
86965	A	Pooling blood platelets					
86970	A	RBC pretreatment					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
86971	A	RBC pretreatment					
86972	A	RBC pretreatment					
86975	A	RBC pretreatment, serum					
86976	A	RBC pretreatment, serum					
86977	A	RBC pretreatment, serum					
86978	A	RBC pretreatment, serum					
86985	A	Split blood or products					
86999	A	Transfusion procedure					
87001	A	Small animal inoculation					
87003	A	Small animal inoculation					
87015	A	Specimen concentration					
87040	A	Blood culture for bacteria					
87045	A	Stool culture for bacteria					
87060	A	Nose/throat culture, bact					
87070	A	Culture specimen, bacteria					
87072	A	Culture of specimen by kit					
87075	A	Culture specimen, bacteria					
87076	A	Bacteria identification					
87081	A	Bacteria culture screen					
87082	A	Culture of specimen by kit					
87083	A	Culture of specimen by kit					
87084	A	Culture of specimen by kit					
87085	A	Culture of specimen by kit					
87086	A	Urine culture/colony count					
87087	A	Urine bacteria culture					
87088	A	Urine bacteria culture					
87101	A	Skin fungus culture					
87102	A	Fungus isolation culture					
87103	A	Blood fungus culture					
87106	A	Fungus identification					
87109	A	Mycoplasma culture					
87110	A	Culture, chlamydia					
87116	A	Mycobacteria culture					
87117	A	Mycobacteria culture					
87118	A	Mycobacteria identification					
87140	A	Culture typing, fluorescent					
87143	A	Culture typing, GLC method					
87145	A	Culture typing, phage method					
87147	A	Culture typing, serologic					
87151	A	Culture typing, serologic					
87155	A	Culture typing, precipitin					
87158	A	Culture typing, added method					
87163	A	Special microbiology culture					
87164	A	Dark field examination					
87166	A	Dark field examination					
87174	A	Endotoxin, bacterial					
87175	A	Assay, endotoxin, bacterial					
87176	A	Endotoxin, bacterial					
87177	A	Ova and parasites smears					
87181	A	Antibiotic sensitivity, each					
87184	A	Antibiotic sensitivity, each					
87186	A	Antibiotic sensitivity, MIC					
87187	A	Antibiotic sensitivity, MBC					
87188	A	Antibiotic sensitivity, each					
87190	A	TB antibiotic sensitivity					
87192	A	Antibiotic sensitivity, each					
87197	A	Bactericidal level, serum					
87205	A	Smear, stain & interpret					
87206	A	Smear, stain & interpret					
87207	A	Smear, stain & interpret					
87208	A	Smear, stain & interpret					
87210	A	Smear, stain & interpret					
87211	A	Smear, stain & interpret					
87220	A	Tissue exam for fungi					
87230	A	Assay, toxin or antitoxin					
87250	A	Virus inoculation for test					
87252	A	Virus inoculation for test					
87253	A	Virus inoculation for test					
87260	A	Adenovirus ag, dfa					
87265	A	Pertussis ag, dfa					
87270	A	Chylmd trach ag, dfa					
87272	A	Cryptosporidum ag, dfa					
87274	A	Herpes simplex ag, dfa					

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CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
87276	A	Influenza ag, dfa					
87278	A	Legion pneumo ag, dfa					
87280	A	Resp syncytial ag, dfa					
87285	A	Trepon pallidum ag, dfa					
87290	A	Varicella ag, dfa					
87299	A	Ag detection nos, dfa					
87301	A	Adenovirus ag, eia					
87320	A	Chylmd trach ag, eia					
87324	A	Clostridium ag, eia					
87328	A	Cryptospor ag, eia					
87332	A	Cytomegalovirus ag, eia					
87335	A	E coli 0157 ag, eia					
87338	A	Hpylori, stool, eia					
87340	A	Hepatitis b surface ag, eia					
87350	A	Hepatitis be ag, eia					
87380	A	Hepatitis delta ag, eia					
87385	A	Histoplasma capsul ag, eia					
87390	A	Hiv–1 ag, eia					
87391	A	Hiv–2 ag, eia					
87420	A	Resp syncytial ag, eia					
87425	A	Rotavirus ag, eia					
87430	A	Strep a ag, eia					
87449	A	Ag detect nos, eia, mult					
87450	A	Ag detect nos, eia, single					
87470	A	Bartonella, dna, dir probe					
87471	A	Bartonella, dna, amp probe					
87472	A	Bartonella, dna, quant					
87475	A	Lyme dis, dna, dir probe					
87476	A	Lyme dis, dna, amp probe					
87477	A	Lyme dis, dna, quant					
87480	A	Candida, dna, dir probe					
87481	A	Candida, dna, amp probe					
87482	A	Candida, dna, quant					
87485	A	Chylmd pneum, dna, dir probe					
87486	A	Chylmd pneum, dna, amp probe					
87487	A	Chylmd pneum, dna, quant					
87490	A	Chylmd trach, dna, dir probe					
87491	A	Chylmd trach, dna, amp probe					
87492	A	Chylmd trach, dna, quant					
87495	A	Cytomeg, dna, dir probe					
87496	A	Cytomeg, dna, amp probe					
87497	A	Cytomeg, dna, quant					
87510	A	Gardner vag, dna, dir probe					
87511	A	Gardner vag, dna, amp probe					
87512	A	Gardner vag, dna, quant					
87515	A	Hepatitis b, dna, dir probe					
87516	A	Hepatitis b, dna, amp probe					
87517	A	Hepatitis b, dna, quant					
87520	A	Hepatitis c, rna, dir probe					
87521	A	Hepatitis c, rna, amp probe					
87522	A	Hepatitis c, rna, quant					
87525	A	Hepatitis g, dna, dir probe					
87526	A	Hepatitis g, dna, amp probe					
87527	A	Hepatitis g, dna, quant					
87528	A	Hsv, dna, dir probe					
87529	A	Hsv, dna, amp probe					
87530	A	Hsv, dna, quant					
87531	A	Hhv–6, dna, dir probe					
87532	A	Hhv–6, dna, amp probe					
87533	A	Hhv–6, dna, quant					
87534	A	Hiv–1, dna, dir probe					
87535	A	Hiv–1, dna, amp probe					
87536	A	Hiv–1, dna, quant					
87537	A	Hiv–2, dna, dir probe					
87538	A	Hiv–2, dna, amp probe					
87539	A	Hiv–2, dna, quant					
87540	A	Legion pneumo, dna, dir prob					
87541	A	Legion pneumo, dna, amp prob					
87542	A	Legion pneumo, dna, quant					
87550	A	Mycobacteria, dna, dir probe					
87551	A	Mycobacteria, dna, amp probe					
87552	A	Mycobacteria, dna, quant					
87555	A	M.tuberculo, dna, dir probe					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
87556	A	M.tuberculo, dna, amp probe					
87557	A	M.tuberculo, dna, quant					
87560	A	M.avium-intra, dna, dir prob					
87561	A	M.avium-intra, dna, amp prob					
87562	A	M.avium-intra, dna, quant					
87580	A	M.pneumon, dna, dir probe					
87581	A	M.pneumon, dna, amp probe					
87582	A	M.pneumon, dna, quant					
87590	A	N.gonorrhoeae, dna, dir prob					
87591	A	N.gonorrhoeae, dna, amp prob					
87592	A	N.gonorrhoeae, dna, quant					
87620	A	Hpv, dna, dir probe					
87621	A	Hpv, dna, amp probe					
87622	A	Hpv, dna, quant					
87650	A	Strep a, dna, dir probe					
87651	A	Strep a, dna, amp probe					
87652	A	Strep a, dna, quant					
87797	A	Detect agent nos, dna, dir					
87798	A	Detect agent nos, dna, amp					
87799	A	Detect agent nos, dna, quant					
87810	A	Chylmd trach assay w/optic					
87850	A	N. gonorrhoeae assay w/optic					
87880	A	Strep a assay w/optic					
87899	A	Agent nos assay w/optic					
87999	A	Microbiology procedure					
88000	E	Autopsy (necropsy), gross					
88005	E	Autopsy (necropsy), gross					
88007	E	Autopsy (necropsy), gross					
88012	E	Autopsy (necropsy), gross					
88014	E	Autopsy (necropsy), gross					
88016	E	Autopsy (necropsy), gross					
88020	E	Autopsy (necropsy), complete					
88025	E	Autopsy (necropsy), complete					
88027	E	Autopsy (necropsy), complete					
88028	E	Autopsy (necropsy), complete					
88029	E	Autopsy (necropsy), complete					
88036	E	Limited autopsy					
88037	E	Limited autopsy					
88040	E	Forensic autopsy (necropsy)					
88045	E	Coroner's autopsy (necropsy)					
88099	E	Necropsy (autopsy) procedure					
88104	X	Cytopathology, fluids	0343	0.45	$21.62	$12.16	$4.36
88106	X	Cytopathology, fluids	0343	0.45	$21.62	$12.16	$4.36
88107	X	Cytopathology, fluids	0343	0.45	$21.62	$12.16	$4.36
88108	X	Cytopath, concentrate tech	0343	0.45	$21.62	$12.16	$4.36
88125	X	Forensic cytopathology	0343	0.45	$21.62	$12.16	$4.36
88130	A	Sex chromatin identification					
88140	A	Sex chromatin identification					
88141	N	Cytopath, c/v, interpret					
88142	A	Cytopath, c/v, thin layer					
88143	A	Cytopath c/v thin layer redo					
88144	A	Cytopath, c/v thin lyr redo					
88145	A	Cytopath, c/v thin lyr sel					
88147	A	Cytopath, c/v, automated					
88148	A	Cytopath, c/v, auto rescreen					
88150	A	Cytopath, c/v, manual					
88152	A	Cytopath, c/v, auto redo					
88153	A	Cytopath, c/v, redo					
88154	A	Cytopath, c/v, select					
88155	A	Cytopath, c/v, index add-on					
88160	X	Cytopath smear, other source	0342	0.26	$12.61	$8.03	$2.52
88161	X	Cytopath smear, other source	0343	0.45	$21.62	$12.16	$4.36
88162	X	Cytopath smear, other source	0343	0.45	$21.62	$12.16	$4.36
88164	A	Cytopath tbs, c/v, manual					
88165	A	Cytopath tbs, c/v, redo					
88166	A	Cytopath tbs, c/v, auto redo					
88167	A	Cytopath tbs, c/v, select					
88170	T	Fine needle aspiration	0002	0.62	$30.06	$17.66	$6.01
88171	T	Fine needle aspiration	0002	0.62	$30.06	$17.66	$6.01
88172	X	Evaluation of smear	0343	0.45	$21.62	$12.16	$4.36
88173	X	Interpretation of smear	0343	0.45	$21.62	$12.16	$4.36
88180	X	Cell marker study	0344	0.79	$38.30	$23.63	$7.66
88182	X	Cell marker study	0344	0.79	$38.30	$23.63	$7.66

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
88199	X	Cytopathology procedure	0342	0.26	$12.61	$8.03	$2.52
88230	A	Tissue culture, lymphocyte					
88233	A	Tissue culture, skin/biopsy					
88235	A	Tissue culture, placenta					
88237	A	Tissue culture, bone marrow					
88239	A	Tissue culture, tumor					
88240	A	Cell cryopreserve/storage					
88241	A	Frozen cell preparation					
88245	A	Chromosome analysis, 20–25					
88248	A	Chromosome analysis, 50–100					
88249	A	Chromosome analysis, 100					
88261	A	Chromosome analysis, 5					
88262	A	Chromosome analysis, 15–20					
88263	A	Chromosome analysis, 45					
88264	A	Chromosome analysis, 20–25					
88267	A	Chromosome analys, placenta					
88269	A	Chromosome analys, amniotic					
88271	A	Cytogenetics, dna probe					
88272	A	Cytogenetics, 3–5					
88273	A	Cytogenetics, 10–30					
88274	A	Cytogenetics, 25–99					
88275	A	Cytogenetics, 100–300					
88280	A	Chromosome karyotype study					
88283	A	Chromosome banding study					
88285	A	Chromosome count, additional					
88289	A	Chromosome study, additional					
88291	A	Cyto/molecular report					
88299	A	Cytogenetic study					
88300	X	Surgical path, gross	0342	0.26	$12.61	$8.03	$2.52
88302	X	Tissue exam by pathologist	0342	0.26	$12.61	$8.03	$2.52
88304	X	Tissue exam by pathologist	0343	0.45	$21.82	$12.16	$4.36
88305	X	Tissue exam by pathologist	0343	0.45	$21.82	$12.16	$4.36
88307	X	Tissue exam by pathologist	0344	0.79	$38.30	$23.63	$7.66
88309	X	Tissue exam by pathologist	0344	0.79	$38.30	$23.63	$7.66
88311	X	Decalcify tissue	0342	0.26	$12.61	$8.03	$2.52
88312	X	Special stains	0343	0.45	$21.82	$12.16	$4.36
88313	X	Special stains	0342	0.26	$12.61	$8.03	$2.52
88314	X	Histochemical stain	0343	0.45	$21.82	$12.16	$4.36
88318	X	Chemical histochemistry	0343	0.45	$21.82	$12.16	$4.36
88319	X	Enzyme histochemistry	0342	0.26	$12.61	$8.03	$2.52
88321	X	Microslide consultation	0342	0.26	$12.61	$8.03	$2.52
88323	X	Microslide consultation	0343	0.45	$21.82	$12.16	$4.36
88325	X	Comprehensive review of data	0343	0.45	$21.82	$12.16	$4.36
88329	X	Pathology consult in surgery	0343	0.45	$21.82	$12.16	$4.36
88331	X	Pathology consult in surgery	0343	0.45	$21.82	$12.16	$4.36
88332	X	Pathology consult in surgery	0343	0.45	$21.82	$12.16	$4.36
88342	X	Immunocytochemistry	0344	0.79	$38.30	$23.63	$7.66
88346	X	Immunofluorescent study	0343	0.45	$21.82	$12.16	$4.36
88347	X	Immunofluorescent study	0344	0.79	$38.30	$23.63	$7.66
88348	X	Electron microscopy	0344	0.79	$38.30	$23.63	$7.66
88349	X	Scanning electron microscopy	0344	0.79	$38.30	$23.63	$7.66
88355	X	Analysis, skeletal muscle	0344	0.79	$38.30	$23.63	$7.66
88356	X	Analysis, nerve	0344	0.79	$38.30	$23.63	$7.66
88358	X	Analysis, tumor	0344	0.79	$38.30	$23.63	$7.66
88362	X	Nerve teasing preparations	0343	0.45	$21.82	$12.16	$4.36
88365	X	Tissue hybridization	0344	0.79	$38.30	$23.63	$7.66
88371	A	Protein, western blot tissue					
88372	A	Protein analysis w/probe					
88399	X	Surgical pathology procedure	0342	0.26	$12.61	$8.03	$2.52
89050	A	Body fluid cell count					
89051	A	Body fluid cell count					
89060	A	Exam, synovial fluid crystals					
89100	X	Sample intestinal contents	0361	3.53	$171.16	$88.09	$34.23
89105	X	Sample intestinal contents	0360	1.38	$66.91	$34.75	$13.38
89125	A	Specimen fat stain					
89130	X	Sample stomach contents	0360	1.38	$66.91	$34.75	$13.38
89132	X	Sample stomach contents	0360	1.38	$66.91	$34.75	$13.38
89135	X	Sample stomach contents	0360	1.38	$66.91	$34.75	$13.38
89136	X	Sample stomach contents	0360	1.38	$66.91	$34.75	$13.38
89140	X	Sample stomach contents	0360	1.38	$66.91	$34.75	$13.38
89141	X	Sample stomach contents	0361	3.53	$171.16	$88.09	$34.23
89160	A	Exam feces for meat fibers					
89190	A	Nasal smear for eosinophils					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
89250	A	Fertilization of oocyte					
89251	A	Culture oocyte w/embryos					
89252	A	Assist oocyte fertilization					
89253	A	Embryo hatching					
89254	A	Oocyte identification					
89255	A	Prepare embryo for transfer					
89256	A	Prepare cryopreserved embryo					
89257	A	Sperm identification					
89258	A	Cryopreservation, embryo					
89259	A	Cryopreservation, sperm					
89260	A	Sperm isolation, simple					
89261	A	Sperm isolation, complex					
89264	A	Identify sperm tissue					
89300	A	Semen analysis					
89310	A	Semen analysis					
89320	A	Semen analysis					
89325	A	Sperm antibody test					
89329	A	Sperm evaluation test					
89330	A	Evaluation, cervical mucus					
89350	X	Sputum specimen collection	0344	0.79	$38.30	$23.63	$7.66
89355	A	Exam feces for starch					
89360	X	Collect sweat for test	0344	0.79	$38.30	$23.63	$7.66
89365	A	Water load test					
89399	X	Pathology lab procedure	0343	0.45	$21.82	$12.16	$4.36
90281	E	Human ig, im					
90283	E	Human ig, iv					
90287	X	Botulinum antitoxin	0357	1.85	$89.70	$38.31	$17.94
90288	E	Botulism ig, iv					
90291	E	Cmv ig, iv					
90296	X	Diphtheria antitoxin	0357	1.85	$89.70	$38.31	$17.94
90371	X	Hep b ig, im	0356	0.36	$17.46	$4.82	$3.49
90375	X	Rabies ig, im/sc	0357	1.85	$89.70	$38.31	$17.94
90376	X	Rabies ig, heat treated	0357	1.85	$89.70	$38.31	$17.94
90378	X	Rsv ig, im	0357	1.85	$89.70	$38.31	$17.94
90379	X	Rsv ig, iv	0357	1.85	$89.70	$38.31	$17.94
90384	X	Rh ig, full-dose, im	0357	1.85	$89.70	$38.31	$17.94
90385	X	Rh ig, minidose, im	0357	1.85	$89.70	$38.31	$17.94
90386	X	Rh ig, iv	0357	1.85	$89.70	$38.31	$17.94
90389	X	Tetanus ig, im	0356	0.36	$17.46	$4.82	$3.49
90393	X	Vaccinia ig, im	0357	1.85	$89.70	$38.31	$17.94
90396	X	Varicella-zoster ig, im	0356	0.36	$17.46	$4.82	$3.49
90399	E	Immune globulin					
90471	N	Immunization admin					
90472	N	Immunization admin, each add					
90476	X	Adenovirus vaccine, type 4	0356	0.36	$17.46	$4.82	$3.49
90477	X	Adenovirus vaccine, type 7	0356	0.36	$17.46	$4.82	$3.49
90581	X	Anthrax vaccine, sc	0357	1.85	$89.70	$38.31	$17.94
90585	X	Bcg vaccine, percut	0356	0.36	$17.46	$4.82	$3.49
90586	X	Bcg vaccine, intravesical	0356	0.36	$17.46	$4.82	$3.49
90632	X	Hep a vaccine, adult im	0356	0.36	$17.46	$4.82	$3.49
90633	X	Hep a vacc, ped/adol, 2 dose	0356	0.36	$17.46	$4.82	$3.49
90634	X	Hep a vacc, ped/adol, 3 dose	0356	0.36	$17.46	$4.82	$3.49
90636	X	Hep a/hep b vacc, adult im	0357	1.85	$89.70	$38.31	$17.94
90645	X	Hib vaccine, hboc, im	0355	0.19	$9.21	$5.05	$1.84
90646	X	Hib vaccine, prp-d, im	0355	0.19	$9.21	$5.05	$1.84
90647	X	Hib vaccine, prp-omp, im	0355	0.19	$9.21	$5.05	$1.84
90648	X	Hib vaccine, prp-t, im	0355	0.19	$9.21	$5.05	$1.84
90657	X	Flu vaccine, 6–35 mo, im	0355	0.19	$9.21	$5.05	$1.84
90658	X	Flu vaccine, 3 yrs, im	0355	0.19	$9.21	$5.05	$1.84
90659	X	Flu vaccine, whole, im	0355	0.19	$9.21	$5.05	$1.84
90660	X	Flu vaccine, nasal	0355	0.19	$9.21	$5.05	$1.84
90665	X	Lyme disease vaccine, im	0357	1.85	$89.70	$38.31	$17.94
90669	X	Pneumococcal vaccine, ped	0357	1.85	$89.70	$38.31	$17.94
90675	X	Rabies vaccine, im	0357	1.85	$89.70	$38.31	$17.94
90676	X	Rabies vaccine, id	0357	1.85	$89.70	$38.31	$17.94
90680	X	Rotovirus vaccine, oral	0356	0.36	$17.46	$4.82	$3.49
90690	X	Typhoid vaccine, oral	0356	0.36	$17.46	$4.82	$3.49
90691	X	Typhoid vaccine, im	0356	0.36	$17.46	$4.82	$3.49
90692	X	Typhoid vaccine, h-p, sc/id	0356	0.36	$17.46	$4.82	$3.49
90693	X	Typhoid vaccine, akd, sc	0356	0.36	$17.46	$4.82	$3.49
90700	X	Dtap vaccine, im	0355	0.19	$9.21	$5.05	$1.84
90701	X	Dtp vaccine, im	0356	0.36	$17.46	$4.82	$3.49
90702	X	Dt vaccine, im	0355	0.19	$9.21	$5.05	$1.84

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
90703	X	Tetanus vaccine, im	0356	0.36	$17.46	$4.82	$3.49
90704	X	Mumps vaccine, sc	0355	0.19	$9.21	$5.05	$1.84
90705	X	Measles vaccine, sc	0357	1.85	$89.70	$38.31	$17.94
90706	X	Rubella vaccine, sc	0358	6.98	$338.44	$126.74	$67.69
90707	X	Mmr vaccine, sc	0356	0.36	$17.46	$4.82	$3.49
90708	X	Measles-rubella vaccine, sc	0358	6.98	$338.44	$126.74	$67.69
90709	X	Rubella & mumps vaccine, sc	0358	6.98	$338.44	$126.74	$67.69
90710	X	Mmrv vaccine, sc	0356	0.36	$17.46	$4.82	$3.49
90712	X	Oral poliovirus vaccine	0356	0.36	$17.46	$4.82	$3.49
90713	X	Poliovirus, ipv, sc	0355	0.19	$9.21	$5.05	$1.84
90716	X	Chicken pox vaccine, sc	0355	0.19	$9.21	$5.05	$1.84
90717	X	Yellow fever vaccine, sc	0356	0.36	$17.46	$4.82	$3.49
90718	X	Td vaccine, im	0356	0.36	$17.46	$4.82	$3.49
90719	X	Diphtheria vaccine, im	0357	1.85	$89.70	$38.31	$17.94
90720	X	Dtp/hib vaccine, im	0355	0.19	$9.21	$5.05	$1.84
90721	X	Dtap/hib vaccine, im	0355	0.19	$9.21	$5.05	$1.84
90725	X	Cholera vaccine, injectable	0356	6.98	$338.44	$126.74	$67.69
90727	X	Plague vaccine, im	0355	0.19	$9.21	$5.05	$1.84
90732	X	Pneumococcal vaccine, adult	0355	0.19	$9.21	$5.05	$1.84
90733	X	Meningococcal vaccine, sc	0357	1.85	$89.70	$38.31	$17.94
90735	X	Encephalitis vaccine, sc	0357	1.85	$89.70	$38.31	$17.94
90744	X	Hep b vaccine, ped/adol, im	0356	0.36	$17.46	$4.82	$3.49
90746	X	Hep b vaccine, adult, im	0356	0.36	$17.46	$4.82	$3.49
90747	X	Hep b vaccine, ill pat, im	0356	0.36	$17.46	$4.82	$3.49
90748	X	Hep b/hib vaccine, im	0356	6.98	$338.44	$126.74	$67.69
90749	X	Vaccine toxoid	0355	0.19	$9.21	$5.05	$1.84
90780	E	IV infusion therapy, 1 hour					
90781	E	IV infusion, additional hour					
90782	X	Injection, sc/im	0359	0.96	$46.55	$9.31	$9.31
90783	X	Injection, ia	0359	0.96	$46.55	$9.31	$9.31
90784	X	Injection, iv	0359	0.96	$46.55	$9.31	$9.31
90788	X	Injection of antibiotic	0359	0.96	$46.55	$9.31	$9.31
90799	X	Ther/prophylactic/dx inject	0359	0.96	$46.55	$9.31	$9.31
90801	S	Psy dx interview	0323	1.85	$89.70	$22.48	$17.94
90802	S	Intac psy dx interview	0323	1.85	$89.70	$22.48	$17.94
90804	S	Psytx, office, 20–30 min	0322	1.32	$64.00	$14.22	$12.80
90805	S	Psytx, off, 20–30 min w/e&m	0322	1.32	$64.00	$14.22	$12.80
90806	S	Psytx, off, 45–50 min	0323	1.85	$89.70	$22.48	$17.94
90807	S	Psytx, off, 45–50 min w/e&m	0323	1.85	$89.70	$22.48	$17.94
90808	S	Psytx, office, 75–80 min	0323	1.85	$89.70	$22.48	$17.94
90809	S	Psytx, off, 75–80, w/e&m	0323	1.85	$89.70	$22.48	$17.94
90810	S	Intac psytx, off, 20–30 min	0322	1.32	$64.00	$14.22	$12.80
90811	S	Intac psytx, 20–30, w/e&m	0322	1.32	$64.00	$14.22	$12.80
90812	S	Intac psytx, off, 45–50 min	0323	1.85	$89.70	$22.48	$17.94
90813	S	Intac psytx, 45–50 min w/e&m	0323	1.85	$89.70	$22.48	$17.94
90814	S	Intac psytx, off, 75–80 min	0323	1.85	$89.70	$22.48	$17.94
90815	S	Intac psytx, 75–80 w/e&m	0323	1.85	$89.70	$22.48	$17.94
90816	S	Psytx, hosp, 20–30 min	0322	1.32	$64.00	$14.22	$12.80
90817	S	Psytx, hosp, 20–30 min w/e&m	0322	1.32	$64.00	$14.22	$12.80
90818	S	Psytx, hosp, 45–50 min	0323	1.85	$89.70	$22.48	$17.94
90819	S	Psytx, hosp, 45–50 min w/e&m	0323	1.85	$89.70	$22.48	$17.94
90821	S	Psytx, hosp, 75–80 min	0323	1.85	$89.70	$22.48	$17.94
90822	S	Psytx, hosp, 75–80 min w/e&m	0323	1.85	$89.70	$22.48	$17.94
90823	S	Intac psytx, hosp, 20–30 min	0322	1.32	$64.00	$14.22	$12.80
90824	S	Intac psytx, hsp 20–30 w/e&m	0322	1.32	$64.00	$14.22	$12.80
90826	S	Intac psytx, hosp, 45–50 min	0323	1.85	$89.70	$22.48	$17.94
90827	S	Intac psytx, hsp 45–50 w/e&m	0323	1.85	$89.70	$22.48	$17.94
90828	S	Intac psytx, hosp, 75–80 min	0323	1.85	$89.70	$22.48	$17.94
90829	S	Intac psytx, hsp 75–80 w/e&m	0323	1.85	$89.70	$22.48	$17.94
90845	S	Psychoanalysis	0323	1.85	$89.70	$22.48	$17.94
90846	S	Family psytx w/o patient	0324	1.87	$90.67	$20.19	$18.13
90847	S	Family psytx w/patient	0324	1.87	$90.67	$20.19	$18.13
90849	S	Multiple family group psytx	0325	1.55	$75.16	$19.96	$15.03
90853	S	Group psychotherapy	0325	1.55	$75.16	$19.96	$15.03
90857	S	Intac group psytx	0325	1.55	$75.16	$19.96	$15.03
90862	X	Medication management	0374	1.17	$56.73	$13.08	$11.35
90865	S	Narcosynthesis	0323	1.85	$89.70	$22.48	$17.94
90870	S	Electroconvulsive therapy	0320	3.68	$178.43	$80.06	$35.69
90871	S	Electroconvulsive therapy	0320	3.68	$178.43	$80.06	$35.69
90875	E	Psychophysiological therapy					
90876	E	Psychophysiological therapy					
90880	S	Hypnotherapy	0323	1.85	$89.70	$22.48	$17.94
90882	E	Environmental manipulation					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
90885	N	Psy evaluation of records					
90887	N	Consultation with family					
90889	N	Preparation of report					
90899	S	Psychiatric service/therapy	0322	1.32	$64.00	$14.22	$12.80
90901	S	Biofeedback train, any meth	0321	1.26	$61.09	$29.25	$12.22
90911	S	Biofeedback peri/uro/rectal	0321	1.26	$61.09	$29.25	$12.22
90918	A	ESRD related services, month					
90919	A	ESRD related services, month					
90920	A	ESRD related services, month					
90921	A	ESRD related services, month					
90922	A	ESRD related services, day					
90923	A	Esrd related services, day					
90924	A	Esrd related services, day					
90925	A	Esrd related services, day					
90935	S	Hemodialysis, one evaluation	0170	6.68	$323.89	$72.26	$64.78
90937	E	Hemodialysis, repeated eval					
90945	S	Dialysis, one evaluation	0170	6.68	$323.89	$72.26	$64.78
90947	E	Dialysis, repeated eval					
90989	E	Dialysis training, complete					
90993	E	Dialysis training, incompl					
90997	E	Hemoperfusion					
90999	E	Dialysis procedure					
91000	X	Esophageal intubation	0361	3.53	$171.16	$86.09	$34.23
91010	X	Esophagus motility study	0361	3.53	$171.16	$86.09	$34.23
91011	X	Esophagus motility study	0361	3.53	$171.16	$86.09	$34.23
91012	X	Esophagus motility study	0361	3.53	$171.16	$86.09	$34.23
91020	X	Gastric motility	0361	3.53	$171.16	$86.09	$34.23
91030	X	Acid perfusion of esophagus	0360	1.38	$66.91	$34.75	$13.38
91032	X	Esophagus, acid reflux test	0361	3.53	$171.16	$86.09	$34.23
91033	X	Prolonged acid reflux test	0361	3.53	$171.16	$86.09	$34.23
91052	X	Gastric analysis test	0361	3.53	$171.16	$86.09	$34.23
91055	X	Gastric intubation for smear	0360	1.38	$66.91	$34.75	$13.38
91060	X	Gastric saline load test	0361	3.53	$171.16	$86.09	$34.23
91065	X	Breath hydrogen test	0360	1.38	$66.91	$34.75	$13.38
91100	X	Pass intestine bleeding tube	0360	1.38	$66.91	$34.75	$13.38
91105	X	Gastric intubation treatment	0360	1.38	$66.91	$34.75	$13.38
91122	T	Anal pressure record	0165	3.89	$188.61	$91.76	$37.72
91299	X	Gastroenterology procedure	0360	1.38	$66.91	$34.75	$13.38
92002	V	Eye exam, new patient	0601	1.00	$48.49	$9.70	$9.70
92004	V	Eye exam, new patient	0602	1.66	$80.49	$16.29	$16.10
92012	V	Eye exam established pat	0601	1.00	$48.49	$9.70	$9.70
92014	V	Eye exam & treatment	0602	1.66	$80.49	$16.29	$16.10
92015	E	Refraction					
92018	S	New eye exam & treatment	0231	2.64	$128.01	$59.87	$25.60
92019	S	Eye exam & treatment	0231	2.64	$128.01	$59.87	$25.60
92020	S	Special eye evaluation	0230	0.98	$47.52	$22.48	$9.50
92060	S	Special eye evaluation	0230	0.98	$47.52	$22.48	$9.50
92065	S	Orthoptic/pleoptic training	0230	0.98	$47.52	$22.48	$9.50
92070	N	Fitting of contact lens					
92081	S	Visual field examination(s)	0230	0.98	$47.52	$22.48	$9.50
92082	S	Visual field examination(s)	0230	0.98	$47.52	$22.48	$9.50
92083	S	Visual field examination(s)	0230	0.98	$47.52	$22.48	$9.50
92100	N	Serial tonometry exam(s)					
92120	S	Tonography & eye evaluation	0230	0.98	$47.52	$22.48	$9.50
92130	S	Water provocation tonography	0230	0.98	$47.52	$22.48	$9.50
92135	S	Opthalmic dx imaging	0231	2.64	$128.01	$59.87	$25.60
92140	S	Glaucoma provocative tests	0231	2.64	$128.01	$59.87	$25.60
92225	S	Special eye exam, initial	0230	0.98	$47.52	$22.48	$9.50
92226	S	Special eye exam, subsequent	0231	2.64	$128.01	$59.87	$25.60
92230	S	Eye exam with photos	0231	2.64	$128.01	$59.87	$25.60
92235	S	Eye exam with photos	0231	2.64	$128.01	$59.87	$25.60
92240	S	Icg angiography	0231	2.64	$128.01	$59.87	$25.60
92250	S	Eye exam with photos	0230	0.98	$47.52	$22.48	$9.50
92260	S	Ophthalmoscopy/dynamometry	0230	0.98	$47.52	$22.48	$9.50
92265	S	Eye muscle evaluation	0230	0.98	$47.52	$22.48	$9.50
92270	S	Electro-oculography	0230	0.98	$47.52	$22.48	$9.50
92275	S	Electroretinography	0216	2.87	$139.16	$64.69	$27.83
92283	S	Color vision examination	0230	0.98	$47.52	$22.48	$9.50
92284	S	Dark adaptation eye exam	0231	2.64	$128.01	$59.87	$25.60
92285	S	Eye photography	0230	0.98	$47.52	$22.48	$9.50
92286	S	Internal eye photography	0231	2.64	$128.01	$59.87	$25.60
92287	T	Internal eye photography	0231	2.64	$128.01	$59.87	$25.60
92310	E	Contact lens fitting					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
92311	X	Contact lens fitting	0362	0.51	$24.73	$9.63	$4.95
92312	X	Contact lens fitting	0362	0.51	$24.73	$9.63	$4.95
92313	X	Contact lens fitting	0362	0.51	$24.73	$9.63	$4.95
92314	E	Prescription of contact lens					
92315	X	Prescription of contact lens	0362	0.51	$24.73	$9.63	$4.95
92316	X	Prescription of contact lens	0362	0.51	$24.73	$9.63	$4.95
92317	X	Prescription of contact lens	0362	0.51	$24.73	$9.63	$4.95
92325	X	Modification of contact lens	0362	0.51	$24.73	$9.63	$4.95
92326	X	Replacement of contact lens	0362	0.51	$24.73	$9.63	$4.95
92330	S	Fitting of artificial eye	0230	0.98	$47.52	$22.48	$9.50
92335	N	Fitting of artificial eye					
92340	E	Fitting of spectacles					
92341	E	Fitting of spectacles					
92342	E	Fitting of spectacles					
92352	X	Special spectacles fitting	0362	0.51	$24.73	$9.63	$4.95
92353	X	Special spectacles fitting	0362	0.51	$24.73	$9.63	$4.95
92354	X	Special spectacles fitting	0362	0.51	$24.73	$9.63	$4.95
92355	X	Special spectacles fitting	0362	0.51	$24.73	$9.63	$4.95
92358	X	Eye prosthesis service	0362	0.51	$24.73	$9.63	$4.95
92370	E	Repair & adjust spectacles					
92371	X	Repair & adjust spectacles	0362	0.51	$24.73	$9.63	$4.95
92390	E	Supply of spectacles					
92391	E	Supply of contact lenses					
92392	E	Supply of low vision aids					
92393	E	Supply of artificial eye					
92395	E	Supply of spectacles					
92396	E	Supply of contact lenses					
92499	S	Eye service or procedure	0230	0.98	$47.52	$22.48	$9.50
92502	T	Ear and throat examination	0251	1.68	$81.46	$27.90	$16.29
92504	N	Ear microscopy examination					
92506	A	Speech/hearing evaluation					
92507	A	Speech/hearing therapy					
92508	A	Speech/hearing therapy					
92510	A	Rehab for ear implant					
92511	T	Nasopharyngoscopy	0071	0.55	$26.67	$14.22	$5.33
92512	X	Nasal function studies	0363	2.83	$137.22	$53.22	$27.44
92516	X	Facial nerve function test	0363	2.83	$137.22	$53.22	$27.44
92520	X	Laryngeal function studies	0363	2.83	$137.22	$53.22	$27.44
92525	A	Oral function evaluation					
92526	A	Oral function therapy					
92531	N	Spontaneous nystagmus study					
92532	N	Positional nystagmus study					
92533	N	Caloric vestibular test					
92534	N	Optokinetic nystagmus					
92541	X	Spontaneous nystagmus test	0363	2.83	$137.22	$53.22	$27.44
92542	X	Positional nystagmus test	0363	2.83	$137.22	$53.22	$27.44
92543	X	Caloric vestibular test	0363	2.83	$137.22	$53.22	$27.44
92544	X	Optokinetic nystagmus test	0363	2.83	$137.22	$53.22	$27.44
92545	X	Oscillating tracking test	0363	2.83	$137.22	$53.22	$27.44
92546	X	Sinusoidal rotational test	0363	2.83	$137.22	$53.22	$27.44
92547	X	Supplemental electrical test	0363	2.83	$137.22	$53.22	$27.44
92548	X	Posturography	0363	2.83	$137.22	$53.22	$27.44
92551	E	Pure tone hearing test, air					
92552	X	Pure tone audiometry, air	0364	0.68	$32.97	$13.31	$6.59
92553	X	Audiometry, air & bone	0364	0.68	$32.97	$13.31	$6.59
92555	X	Speech threshold audiometry	0364	0.68	$32.97	$13.31	$6.59
92556	X	Speech audiometry, complete	0364	0.68	$32.97	$13.31	$6.59
92557	X	Comprehensive hearing test	0365	1.47	$71.28	$22.48	$14.26
92559	E	Group audiometric testing					
92560	E	Bekesy audiometry, screen					
92561	X	Bekesy audiometry, diagnosis	0365	1.47	$71.28	$22.48	$14.26
92562	X	Loudness balance test	0365	1.47	$71.28	$22.48	$14.26
92563	X	Tone decay hearing test	0365	1.47	$71.28	$22.48	$14.26
92564	X	Sisi hearing test	0365	1.47	$71.28	$22.48	$14.26
92565	X	Stenger test, pure tone	0365	1.47	$71.28	$22.48	$14.26
92567	X	Tympanometry	0364	0.68	$32.97	$13.31	$6.59
92568	X	Acoustic reflex testing	0365	1.47	$71.28	$22.48	$14.26
92569	X	Acoustic reflex decay test	0365	1.47	$71.28	$22.48	$14.26
92571	X	Filtered speech hearing test	0365	1.47	$71.28	$22.48	$14.26
92572	X	Staggered spondaic word test	0365	1.47	$71.28	$22.48	$14.26
92573	X	Lombard test	0365	1.47	$71.28	$22.48	$14.26
92575	X	Sensorineural acuity test	0365	1.47	$71.28	$22.48	$14.26
92576	X	Synthetic sentence test	0365	1.47	$71.28	$22.48	$14.26

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
92577	X	Stenger test, speech	0365	1.47	$71.28	$22.48	$14.26
92579	X	Visual audiometry (vra)	0365	1.47	$71.28	$22.48	$14.26
92582	X	Conditioning play audiometry	0365	1.47	$71.28	$22.48	$14.26
92583	X	Select picture audiometry	0365	1.47	$71.28	$22.48	$14.26
92584	X	Electrocochleography	0363	2.83	$137.22	$53.22	$27.44
92585	S	Auditory evoked potential	0216	2.87	$139.16	$64.69	$27.83
92587	X	Evoked auditory test	0363	2.83	$137.22	$53.22	$27.44
92588	X	Evoked auditory test	0363	2.83	$137.22	$53.22	$27.44
92589	X	Auditory function test(s)	0365	1.47	$71.28	$22.48	$14.26
92590	E	Hearing aid exam, one ear					
92591	E	Hearing aid exam, both ears					
92592	E	Hearing aid check, one ear					
92593	E	Hearing aid check, both ears					
92594	E	Electro hearng aid test, one					
92595	E	Electro hearng aid tst, both					
92596	X	Ear protector evaluation	0365	1.47	$71.28	$22.48	$14.26
92597	A	Oral speech device eval					
92598	A	Modify oral speech device					
92599	X	ENT procedure/service	0364	0.68	$32.97	$13.31	$6.59
92950	S	Heart/lung resuscitation cpr	0094	4.51	$218.68	$105.29	$43.74
92953	S	Temporary external pacing	0094	4.51	$218.68	$105.29	$43.74
92960	S	Cardioversion electric, ext	0094	4.51	$218.68	$105.29	$43.74
92961	S	Cardioversion, electric, int	0094	4.51	$218.68	$105.29	$43.74
92970	C	Cardioassist, internal					
92971	C	Cardioassist, external					
92975	C	Dissolve clot, heart vessel					
92977	C	Dissolve clot, heart vessel					
92978	C	Intravasc us, heart add-on					
92979	C	Intravasc us, heart add-on					
92980	T	Insert intracoronary stent	0083	45.79	$2,220.22	$1,322.95	$444.04
92981	T	Insert intracoronary stent	0083	45.79	$2,220.22	$1,322.95	$444.04
92982	T	Coronary artery dilation	0083	45.79	$2,220.22	$1,322.95	$444.04
92984	T	Coronary artery dilation	0083	45.79	$2,220.22	$1,322.95	$444.04
92986	C	Revision of aortic valve					
92987	C	Revision of mitral valve					
92990	C	Revision of pulmonary valve					
92992	C	Revision of heart chamber					
92993	C	Revision of heart chamber					
92995	T	Coronary atherectomy	0082	40.34	$1,955.97	$859.56	$391.19
92996	T	Coronary atherectomy add-on	0082	40.34	$1,955.97	$859.56	$391.19
92997	C	Pul art balloon repr, percut					
92998	C	Pul art balloon repr, percut					
93000	E	Electrocardiogram, complete					
93005	X	Electrocardiogram, tracing	0366	0.38	$18.43	$15.60	$3.69
93010	E	Electrocardiogram report					
93012	S	Transmission of ECG	0099	0.38	$18.43	$14.68	$3.69
93014	E	Report on transmitted ECG					
93015	E	Cardiovascular stress test					
93016	E	Cardiovascular stress test					
93017	S	Cardiovascular stress test	0097	1.62	$78.55	$62.40	$15.71
93018	E	Cardiovascular stress test					
93024	S	Cardiac drug stress test	0097	1.62	$78.55	$62.40	$15.71
93040	E	Rhythm ECG with report					
93041	X	Rhythm ECG, tracing	0366	0.38	$18.43	$15.60	$3.69
93042	E	Rhythm ECG, report					
93224	E	ECG monitor/report, 24 hrs					
93225	S	ECG monitor/record, 24 hrs	0100	1.70	$82.43	$71.57	$16.49
93226	S	ECG monitor/report, 24 hrs	0100	1.70	$82.43	$71.57	$16.49
93227	E	ECG monitor/review, 24 hrs					
93230	E	ECG monitor/report, 24 hrs					
93231	S	ECG monitor/record, 24 hrs	0100	1.70	$82.43	$71.57	$16.49
93232	S	ECG monitor/report, 24 hrs	0100	1.70	$82.43	$71.57	$16.49
93233	E	ECG monitor/review, 24 hrs					
93235	E	ECG monitor/report, 24 hrs					
93236	S	ECG monitor/report, 24 hrs	0100	1.70	$82.43	$71.57	$16.49
93237	E	ECG monitor/review, 24 hrs					
93268	S	ECG record/review	0100	1.70	$82.43	$71.57	$16.49
93270	S	ECG recording	0099	0.38	$18.43	$14.68	$3.69
93271	S	ECG/monitoring and analysis	0100	1.70	$82.43	$71.57	$16.49
93272	E	ECG/review, interpret only					
93278	S	ECG/signal-averaged	0099	0.38	$18.43	$14.68	$3.69
93303	S	Echo transthoracic	0269	4.40	$213.34	$114.01	$42.67
93304	S	Echo transthoracic	0269	4.40	$213.34	$114.01	$42.67

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
93307	S	Echo exam of heart	0269	4.40	$213.34	$114.01	$42.67
93308	S	Echo exam of heart	0269	4.40	$213.34	$114.01	$42.67
93312	S	Echo transesophageal	0270	5.55	$269.10	$150.26	$53.82
93313	S	Echo transesophageal	0270	5.55	$269.10	$150.26	$53.82
93314	N	Echo transesophageal					
93315	S	Echo transesophageal	0270	5.55	$269.10	$150.26	$53.82
93316	S	Echo transesophageal	0270	5.55	$269.10	$150.26	$53.82
93317	N	Echo transesophageal					
93320	S	Doppler echo exam, heart	0269	4.40	$213.34	$114.01	$42.67
93321	S	Doppler echo exam, heart	0269	4.40	$213.34	$114.01	$42.67
93325	S	Doppler color flow add-on	0269	4.40	$213.34	$114.01	$42.67
93350	S	Echo transthoracic	0269	4.40	$213.34	$114.01	$42.67
93501	T	Right heart catheterization	0080	25.77	$1,249.51	$713.89	$249.90
93503	T	Insert/place heart catheter	0080	25.77	$1,249.51	$713.89	$249.90
93505	T	Biopsy of heart lining	0080	25.77	$1,249.51	$713.89	$249.90
93508	N	Cath placement, angiography					
93510	T	Left heart catheterization	0080	25.77	$1,249.51	$713.89	$249.90
93511	T	Left heart catheterization	0080	25.77	$1,249.51	$713.89	$249.90
93514	T	Left heart catheterization	0080	25.77	$1,249.51	$713.89	$249.90
93524	T	Left heart catheterization	0080	25.77	$1,249.51	$713.89	$249.90
93526	T	Rt & Lt heart catheters	0080	25.77	$1,249.51	$713.89	$249.90
93527	T	Rt & Lt heart catheters	0080	25.77	$1,249.51	$713.89	$249.90
93528	T	Rt & Lt heart catheters	0080	25.77	$1,249.51	$713.89	$249.90
93529	T	Rt, Lt heart catheterization	0080	25.77	$1,249.51	$713.89	$249.90
93530	T	Rt heart cath, congenital	0080	25.77	$1,249.51	$713.89	$249.90
93531	T	R & I heart cath, congenital	0080	25.77	$1,249.51	$713.89	$249.90
93532	T	R & I heart cath, congenital	0080	25.77	$1,249.51	$713.89	$249.90
93533	T	R & I heart cath, congenital	0080	25.77	$1,249.51	$713.89	$249.90
93536	T	Insert circulation assi	0080	25.77	$1,249.51	$713.89	$249.90
93539	N	Injection, cardiac cath					
93540	N	Injection, cardiac cath					
93541	N	Injection for lung angiogram					
93542	N	Injection for heart x-rays					
93543	N	Injection for heart x-rays					
93544	N	Injection for aortography					
93545	N	Inject for coronary x-rays					
93555	N	Imaging, cardiac cath					
93556	N	Imaging, cardiac cath					
93561	N	Cardiac output measurement					
93562	N	Cardiac output measurement					
93571	N	Heart flow reserve measure					
93572	N	Heart flow reserve measure					
93600	S	Bundle of His recording	0087	9.53	$462.08	$214.72	$92.42
93602	S	Intra-atrial recording	0087	9.53	$462.08	$214.72	$92.42
93603	S	Right ventricular recording	0087	9.53	$462.08	$214.72	$92.42
93607	S	Left ventricular recording	0087	9.53	$462.08	$214.72	$92.42
93609	S	Mapping of tachycardia	0087	9.53	$462.08	$214.72	$92.42
93610	S	Intra-atrial pacing	0087	9.53	$462.08	$214.72	$92.42
93612	S	Intraventricular pacing	0087	9.53	$462.08	$214.72	$92.42
93615	S	Esophageal recording	0087	9.53	$462.08	$214.72	$92.42
93616	S	Esophageal recording	0087	9.53	$462.08	$214.72	$92.42
93618	S	Heart rhythm pacing	0087	9.53	$462.08	$214.72	$92.42
93619	S	Electrophysiology evaluation	0085	27.06	$1,312.06	$654.48	$262.41
93620	S	Electrophysiology evaluation	0085	27.06	$1,312.06	$654.48	$262.41
93621	S	Electrophysiology evaluation	0085	27.06	$1,312.06	$654.48	$262.41
93622	S	Electrophysiology evaluation	0085	27.06	$1,312.06	$654.48	$262.41
93623	S	Stimulation, pacing heart	0087	9.53	$462.08	$214.72	$92.42
93624	S	Electrophysiologic study	0087	9.53	$462.08	$214.72	$92.42
93631	S	Heart pacing, mapping	0087	9.53	$462.08	$214.72	$92.42
93640	S	Evaluation heart device	0084	10.70	$518.81	$177.79	$103.76
93641	S	Electrophysiology evaluation	0084	10.70	$518.81	$177.79	$103.76
93642	S	Electrophysiology evaluation	0084	10.70	$518.81	$177.79	$103.76
93650	S	Ablate heart dysrhythm focus	0086	47.62	$2,308.95	$1,265.37	$461.79
93651	S	Ablate heart dysrhythm focus	0086	47.62	$2,308.95	$1,265.37	$461.79
93652	S	Ablate heart dysrhythm focus	0086	47.62	$2,308.95	$1,265.37	$461.79
93660	S	Tilt table evaluation	0101	4.47	$216.74	$128.84	$43.35
93720	E	Total body plethysmography					
93721	S	Plethysmography tracing	0096	2.06	$99.86	$61.48	$19.96
93722	E	Plethysmography report					
93724	S	Analyze pacemaker system	0100	1.70	$82.43	$71.57	$16.49
93727	S	Analyze ilr system	0102	0.45	$21.82	$12.62	$4.36
93731	S	Analyze pacemaker system	0102	0.45	$21.82	$12.62	$4.36
93732	S	Analyze pacemaker system	0102	0.45	$21.82	$12.62	$4.36

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
93733	S	Telephone analy, pacemaker	0102	0.45	$21.62	$12.62	$4.36
93734	S	Analyze pacemaker system	0102	0.45	$21.62	$12.62	$4.36
93735	S	Analyze pacemaker system	0102	0.45	$21.62	$12.62	$4.36
93736	S	Telephone analy, pacemaker	0102	0.45	$21.62	$12.62	$4.36
93737	S	Analyze cardio/defibrillator	0102	0.45	$21.62	$12.62	$4.36
93738	S	Analyze cardio/defibrillator	0102	0.45	$21.62	$12.62	$4.36
93740	S	Temperature gradient studies	0096	2.06	$99.88	$61.48	$19.96
93741	S	Analyze ht pace device sngl	0102	0.45	$21.62	$12.62	$4.36
93742	S	Analyze ht pace device sngl	0102	0.45	$21.62	$12.62	$4.36
93743	S	Analyze ht pace device dual	0102	0.45	$21.62	$12.62	$4.36
93744	S	Analyze ht pace device dual	0102	0.45	$21.62	$12.62	$4.36
93760	E	Cephalic thermogram					
93762	E	Peripheral thermogram					
93770	N	Measure venous pressure					
93784	E	Ambulatory BP monitoring					
93786	E	Ambulatory BP recording					
93788	E	Ambulatory BP analysis					
93790	E	Review/report BP recording					
93797	S	Cardiac rehab	0095	0.64	$31.03	$16.98	$6.21
93798	S	Cardiac rehab/monitor	0095	0.64	$31.03	$16.98	$6.21
93799	S	Cardiovascular procedure	0096	2.06	$99.88	$61.48	$19.96
93875	S	Extracranial study	0096	2.06	$99.88	$61.48	$19.96
93880	S	Extracranial study	0267	2.72	$131.88	$80.06	$26.38
93882	S	Extracranial study	0267	2.72	$131.88	$80.06	$26.38
93886	S	Intracranial study	0267	2.72	$131.88	$80.06	$26.38
93888	S	Intracranial study	0267	2.72	$131.88	$80.06	$26.38
93922	S	Extremity study	0096	2.06	$99.88	$61.48	$19.96
93923	S	Extremity study	0096	2.06	$99.88	$61.48	$19.96
93924	S	Extremity study	0096	2.06	$99.88	$61.48	$19.96
93925	S	Lower extremity study	0267	2.72	$131.88	$80.06	$26.38
93926	S	Lower extremity study	0267	2.72	$131.88	$80.06	$26.38
93930	S	Upper extremity study	0267	2.72	$131.88	$80.06	$26.38
93931	S	Upper extremity study	0267	2.72	$131.88	$80.06	$26.38
93965	S	Extremity study	0096	2.06	$99.88	$61.48	$19.96
93970	S	Extremity study	0267	2.72	$131.88	$80.06	$26.38
93971	S	Extremity study	0267	2.72	$131.88	$80.06	$26.38
93975	S	Vascular study	0267	2.72	$131.88	$80.06	$26.38
93976	S	Vascular study	0267	2.72	$131.88	$80.06	$26.38
93978	S	Vascular study	0267	2.72	$131.88	$80.06	$26.38
93979	S	Vascular study	0267	2.72	$131.88	$80.06	$26.38
93980	S	Penile vascular study	0267	2.72	$131.88	$80.06	$26.38
93981	S	Penile vascular study	0267	2.72	$131.88	$80.06	$26.38
93990	S	Doppler flow testing	0267	2.72	$131.88	$80.06	$26.38
94010	X	Breathing capacity test	0367	0.83	$40.24	$20.65	$8.05
94014	X	Patient recorded spirometry	0369	2.34	$113.46	$58.50	$22.69
94015	X	Patient recorded spirometry	0369	2.34	$113.46	$58.50	$22.69
94016	X	Review patient spirometry	0369	2.34	$113.46	$58.50	$22.69
94060	X	Evaluation of wheezing	0368	1.66	$80.49	$42.44	$16.10
94070	X	Evaluation of wheezing	0369	2.34	$113.46	$58.50	$22.69
94150	N	Vital capacity test					
94200	X	Lung function test (MBC/MVV)	0367	0.83	$40.24	$20.65	$8.05
94240	X	Residual lung capacity	0368	1.66	$80.49	$42.44	$16.10
94250	X	Expired gas collection	0367	0.83	$40.24	$20.65	$8.05
94260	X	Thoracic gas volume	0368	1.66	$80.49	$42.44	$16.10
94350	X	Lung nitrogen washout curve	0368	1.66	$80.49	$42.44	$16.10
94360	X	Measure airflow resistance	0368	1.66	$80.49	$42.44	$16.10
94370	X	Breath airway closing volume	0368	1.66	$80.49	$42.44	$16.10
94375	X	Respiratory flow volume loop	0367	0.83	$40.24	$20.65	$8.05
94400	X	CO2 breathing response curve	0367	0.83	$40.24	$20.65	$8.05
94450	X	Hypoxia response curve	0367	0.83	$40.24	$20.65	$8.05
94620	X	Pulmonary stress test/simple	0368	1.66	$80.49	$42.44	$16.10
94621	X	Pulm stress test/complex	0369	2.34	$113.46	$58.50	$22.69
94640	S	Airway inhalation treatment	0077	0.43	$20.85	$12.62	$4.17
94642	S	Aerosol inhalation treatment	0078	1.34	$64.97	$29.13	$12.99
94650	S	Pressure breathing (IPPB)	0077	0.43	$20.85	$12.62	$4.17
94651	S	Pressure breathing (IPPB)	0077	0.43	$20.85	$12.62	$4.17
94652	C	Pressure breathing (IPPB)					
94656	S	Initial ventilator mgmt	0079	3.18	$154.19	$107.70	$30.84
94657	S	Continued ventilator mgmt	0079	3.18	$154.19	$107.70	$30.84
94660	S	Pos airway pressure, CPAP	0079	3.18	$154.19	$107.70	$30.84
94662	S	Neg press ventilation, cnp	0079	3.18	$154.19	$107.70	$30.84
94664	S	Aerosol or vapor inhalations	0077	0.43	$20.85	$12.62	$4.17
94665	S	Aerosol or vapor inhalations	0077	0.43	$20.85	$12.62	$4.17

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
94667	S	Chest wall manipulation	0077	0.43	$20.85	$12.62	$4.17
94668	S	Chest wall manipulation	0077	0.43	$20.85	$12.62	$4.17
94680	X	Exhaled air analysis, o2	0367	0.83	$40.24	$20.65	$8.05
94681	X	Exhaled air analysis, o2/co2	0368	1.66	$80.49	$42.44	$16.10
94690	X	Exhaled air analysis	0367	0.83	$40.24	$20.65	$8.05
94720	X	Monoxide diffusing capacity	0367	0.83	$40.24	$20.65	$8.05
94725	X	Membrane diffusion capacity	0368	1.66	$80.49	$42.44	$16.10
94750	X	Pulmonary compliance study	0368	1.66	$80.49	$42.44	$16.10
94760	N	Measure blood oxygen level					
94761	N	Measure blood oxygen level					
94762	C	Measure blood oxygen level					
94770	X	Exhaled carbon dioxide test	0367	0.83	$40.24	$20.65	$8.05
94772	X	Breath recording, infant	0369	2.34	$113.46	$58.50	$22.69
94799	X	Pulmonary service/procedure	0367	0.83	$40.24	$20.65	$8.05
95004	X	Allergy skin tests	0370	0.57	$27.64	$11.81	$5.53
95010	X	Sensitivity skin tests	0370	0.57	$27.64	$11.81	$5.53
95015	X	Sensitivity skin tests	0370	0.57	$27.64	$11.81	$5.53
95024	X	Allergy skin tests	0370	0.57	$27.64	$11.81	$5.53
95027	X	Skin end point titration	0370	0.57	$27.64	$11.81	$5.53
95028	X	Allergy skin tests	0370	0.57	$27.64	$11.81	$5.53
95044	X	Allergy patch tests	0370	0.57	$27.64	$11.81	$5.53
95052	X	Photo patch test	0370	0.57	$27.64	$11.81	$5.53
95056	X	Photosensitivity tests	0370	0.57	$27.64	$11.81	$5.53
95060	X	Eye allergy tests	0370	0.57	$27.64	$11.81	$5.53
95065	X	Nose allergy test	0370	0.57	$27.64	$11.81	$5.53
95070	X	Bronchial allergy tests	0369	2.34	$113.46	$58.50	$22.69
95071	X	Bronchial allergy tests	0369	2.34	$113.46	$58.50	$22.69
95075	X	Ingestion challenge test	0361	3.53	$171.16	$88.09	$34.23
95078	X	Provocative testing	0370	0.57	$27.64	$11.81	$5.53
95115	X	Immunotherapy, one injection	0371	0.32	$15.52	$3.67	$3.10
95117	X	Immunotherapy injections	0371	0.32	$15.52	$3.67	$3.10
95120	E	Immunotherapy, one injection					
95125	E	Immunotherapy, many antigens					
95130	E	Immunotherapy, insect venom					
95131	E	Immunotherapy, insect venoms					
95132	E	Immunotherapy, insect venoms					
95133	E	Immunotherapy, insect venoms					
95134	E	Immunotherapy, insect venoms					
95144	X	Antigen therapy services	0371	0.32	$15.52	$3.67	$3.10
95145	X	Antigen therapy services	0371	0.32	$15.52	$3.67	$3.10
95146	X	Antigen therapy services	0371	0.32	$15.52	$3.67	$3.10
95147	X	Antigen therapy services	0371	0.32	$15.52	$3.67	$3.10
95148	X	Antigen therapy services	0371	0.32	$15.52	$3.67	$3.10
95149	X	Antigen therapy services	0371	0.32	$15.52	$3.67	$3.10
95165	X	Antigen therapy services	0371	0.32	$15.52	$3.67	$3.10
95170	X	Antigen therapy services	0371	0.32	$15.52	$3.67	$3.10
95180	X	Rapid desensitization	0370	0.57	$27.64	$11.81	$5.53
95199	X	Allergy immunology services	0370	0.57	$27.64	$11.81	$5.53
95805	S	Multiple sleep latency test	0213	11.15	$540.63	$290.42	$108.13
95806	S	Sleep study, unattended	0213	11.15	$540.63	$290.42	$108.13
95807	S	Sleep study, attended	0213	11.15	$540.63	$290.42	$108.13
95808	S	Polysomnography, 1–3	0213	11.15	$540.63	$290.42	$108.13
95810	S	Polysomnography, 4 or more	0213	11.15	$540.63	$290.42	$108.13
95811	S	Polysomnography w/cpap	0213	11.15	$540.63	$290.42	$108.13
95812	S	Electroencephalogram (EEG)	0213	11.15	$540.63	$290.42	$108.13
95813	S	Electroencephalogram (EEG)	0213	11.15	$540.63	$290.42	$108.13
95816	S	Electroencephalogram (EEG)	0214	2.32	$112.49	$58.50	$22.50
95819	S	Electroencephalogram (EEG)	0214	2.32	$112.49	$58.50	$22.50
95822	S	Sleep electroencephalogram	0214	2.32	$112.49	$58.50	$22.50
95824	S	Electroencephalography	0214	2.32	$112.49	$58.50	$22.50
95827	S	Night electroencephalogram	0213	11.15	$540.63	$290.42	$108.13
95829	S	Surgery electrocorticogram	0214	2.32	$112.49	$58.50	$22.50
95830	E	Insert electrodes for EEG					
95831	N	Limb muscle testing, manual					
95832	N	Hand muscle testing, manual					
95833	N	Body muscle testing, manual					
95834	N	Body muscle testing, manual					
95851	N	Range of motion measurements					
95852	N	Range of motion measurements					
95857	S	Tensilon test	0215	1.15	$55.76	$30.05	$11.15
95858	S	Tensilon test & myogram	0215	1.15	$55.76	$30.05	$11.15
95860	S	Muscle test, one limb	0215	1.15	$55.76	$30.05	$11.15
95861	S	Muscle test, two limbs	0215	1.15	$55.76	$30.05	$11.15

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CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
95863	S	Muscle test, 3 limbs	0216	2.87	$139.16	$64.69	$27.83
95864	S	Muscle test, 4 limbs	0215	1.15	$55.76	$30.05	$11.15
95867	S	Muscle test, head or neck	0216	2.87	$139.16	$64.69	$27.83
95868	S	Muscle test, head or neck	0216	2.87	$139.16	$64.69	$27.83
95869	S	Muscle test, thor paraspinal	0215	1.15	$55.76	$30.05	$11.15
95870	S	Muscle test, nonparaspinal	0215	1.15	$55.76	$30.05	$11.15
95872	S	Muscle test, one fiber	0215	1.15	$55.76	$30.05	$11.15
95875	S	Limb exercise test	0217	5.87	$284.62	$156.68	$56.92
95900	S	Motor nerve conduction test	0215	1.15	$55.76	$30.05	$11.15
95903	S	Motor nerve conduction test	0215	1.15	$55.76	$30.05	$11.15
95904	S	Sensa/mixed n conduction tst	0215	1.15	$55.76	$30.05	$11.15
95920	C	Intraop nerve test add-on					
95921	S	Autonomic nerv function test	0216	2.87	$139.16	$64.69	$27.83
95922	S	Autonomic nerv function test	0216	2.87	$139.16	$64.69	$27.83
95923	S	Autonomic nerv function test	0216	2.87	$139.16	$64.69	$27.83
95925	S	Somatosensory testing	0216	2.87	$139.16	$64.69	$27.83
95926	S	Somatosensory testing	0216	2.87	$139.16	$64.69	$27.83
95927	S	Somatosensory testing	0216	2.87	$139.16	$64.69	$27.83
95930	S	Visual evoked potential test	0216	2.87	$139.16	$64.69	$27.83
95933	S	Blink reflex test	0215	1.15	$55.76	$30.05	$11.15
95934	S	H-reflex test	0215	1.15	$55.76	$30.05	$11.15
95936	S	H-reflex test	0216	2.87	$139.16	$64.69	$27.83
95937	S	Neuromuscular junction test	0215	1.15	$55.76	$30.05	$11.15
95950	S	Ambulatory eeg monitoring	0217	5.87	$284.62	$156.68	$56.92
95951	S	EEG monitoring/videorecord	0213	11.15	$540.63	$290.42	$108.13
95953	S	EEG monitoring/computer	0213	11.15	$540.63	$290.42	$108.13
95954	S	EEG monitoring/giving drugs	0213	11.15	$540.63	$290.42	$108.13
95955	S	EEG during surgery	0214	2.32	$112.49	$58.50	$22.50
95956	N	Eeg monitoring, cable/radio					
95957	N	EEG digital analysis					
95958	S	EEG monitoring/function test	0213	11.15	$540.63	$290.42	$108.13
95961	C	Electrode stimulation, brain					
95962	C	Electrode stim, brain add-on					
95970	S	Analyze neurostim, no prog	0102	0.45	$21.82	$12.62	$4.36
95971	S	Analyze neurostim, simple	0102	0.45	$21.82	$12.62	$4.36
95972	S	Analyze neurostim, complex	0102	0.45	$21.82	$12.62	$4.36
95973	S	Analyze neurostim, complex	0102	0.45	$21.82	$12.62	$4.36
95974	S	Cranial neurostim, complex	0102	0.45	$21.82	$12.62	$4.36
95975	S	Cranial neurostim, complex	0102	0.45	$21.82	$12.62	$4.36
95999	N	Neurological procedure					
96100	X	Psychological testing	0373	3.21	$155.64	$44.96	$31.13
96105	X	Assessment of aphasia	0373	3.21	$155.64	$44.96	$31.13
96110	X	Developmental test, lim	0373	3.21	$155.64	$44.96	$31.13
96111	X	Developmental test, extend	0373	3.21	$155.64	$44.96	$31.13
96115	X	Neurobehavior status exam	0373	3.21	$155.64	$44.96	$31.13
96117	X	Neuropsych test battery	0373	3.21	$155.64	$44.96	$31.13
96400	E	Chemotherapy, sc/im					
96405	E	Intralesional chemo admin					
96406	E	Intralesional chemo admin					
96408	E	Chemotherapy, push technique					
96410	E	Chemotherapy, infusion method					
96412	E	Chemo, infuse method add-on					
96414	E	Chemo, infuse method add-on					
96420	E	Chemotherapy, push technique					
96422	E	Chemotherapy, infusion method					
96423	E	Chemo, infuse method add-on					
96425	E	Chemotherapy, infusion method					
96440	E	Chemotherapy, intracavitary					
96445	E	Chemotherapy, intracavitary					
96450	E	Chemotherapy, into CNS					
96520	E	Pump refilling, maintenance					
96530	E	Pump refilling, maintenance					
96542	E	Chemotherapy injection					
96545	E	Provide chemotherapy agent					
96549	E	Chemotherapy, unspecified					
96570	T	Photodynamic tx, 30 min	0075	18.55	$899.44	$467.29	$179.89
96571	T	Photodynamic tx, addl 15 min	0075	18.55	$899.44	$467.29	$179.89
96900	S	Ultraviolet light therapy	0001	0.47	$22.79	$8.49	$4.56
96902	N	Trichogram					
96910	S	Photochemotherapy with UV–B	0001	0.47	$22.79	$8.49	$4.56
96912	S	Photochemotherapy with UV–A	0001	0.47	$22.79	$8.49	$4.56
96913	S	Photochemotherapy, UV–A or B	0001	0.47	$22.79	$8.49	$4.56
96999	S	Dermatological procedure	0001	0.47	$22.79	$8.49	$4.56

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
97001	A	Pt evaluation					
97002	A	Pt re-evaluation					
97003	A	Ot evaluation					
97004	A	Ot re-evaluation					
97010	A	Hot or cold packs therapy					
97012	A	Mechanical traction therapy					
97014	A	Electric stimulation therapy					
97016	A	Vasopneumatic device therapy					
97018	A	Paraffin bath therapy					
97020	A	Microwave therapy					
97022	A	Whirlpool therapy					
97024	A	Diathermy treatment					
97026	A	Infrared therapy					
97028	A	Ultraviolet therapy					
97032	A	Electrical stimulation					
97033	A	Electric current therapy					
97034	A	Contrast bath therapy					
97035	A	Ultrasound therapy					
97036	A	Hydrotherapy					
97039	A	Physical therapy treatment					
97110	A	Therapeutic exercises					
97112	A	Neuromuscular reeducation					
97113	A	Aquatic therapy/exercises					
97116	A	Gait training therapy					
97124	A	Massage therapy					
97139	A	Physical medicine procedure					
97140	A	Manual therapy					
97150	A	Group therapeutic procedures					
97504	A	Orthotic training					
97520	A	Prosthetic training					
97530	A	Therapeutic activities					
97535	A	Self care mngment training					
97537	A	Community/work reintegration					
97542	A	Wheelchair mngment training					
97545	A	Work hardening					
97546	A	Work hardening add-on					
97703	A	Prosthetic checkout					
97750	A	Physical performance test					
97770	A	Cognitive skills development					
97780	E	Acupuncture w/o stimul					
97781	E	Acupuncture w/stimul					
97799	A	Physical medicine procedure					
98925	S	Osteopathic manipulation	0060	0.77	$37.34	$7.80	$7.47
98926	S	Osteopathic manipulation	0060	0.77	$37.34	$7.80	$7.47
98927	S	Osteopathic manipulation	0060	0.77	$37.34	$7.80	$7.47
98928	S	Osteopathic manipulation	0060	0.77	$37.34	$7.80	$7.47
98929	S	Osteopathic manipulation	0060	0.77	$37.34	$7.80	$7.47
98940	S	Chiropractic manipulation	0060	0.77	$37.34	$7.80	$7.47
98941	S	Chiropractic manipulation	0060	0.77	$37.34	$7.80	$7.47
98942	S	Chiropractic manipulation	0060	0.77	$37.34	$7.80	$7.47
98943	E	Chiropractic manipulation					
99000	E	Specimen handling					
99001	E	Specimen handling					
99002	E	Device handling					
99024	E	Postop follow-up visit					
99025	E	Initial surgical evaluation					
99050	E	Medical services after hrs					
99052	E	Medical services at night					
99054	E	Medical servce, unusual hrs					
99056	E	Non-office medical services					
99058	E	Office emergency care					
99070	E	Special supplies					
99071	E	Patient education materials					
99075	E	Medical testimony					
99078	E	Group health education					
99080	E	Special reports or forms					
99082	E	Unusual physician travel					
99090	E	Computer data analysis					
99100	E	Special anesthesia service					
99116	E	Anesthesia with hypothermia					
99135	E	Special anesthesia procedure					
99140	E	Emergency anesthesia					
99141	N	Sedation, iv/im or inhalant					

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CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
99142	N	Sedation, oral/rectal/nasal					
99170	T	Anogenital exam, child	0192	2.38	$115.40	$35.33	$23.08
99173	N	Visual screening test					
99175	N	Induction of vomiting					
99183	S	Hyperbaric oxygen therapy	0031	3.00	$145.46	$140.85	$29.09
99185	N	Regional hypothermia					
99186	N	Total body hypothermia					
99190	C	Special pump services					
99191	C	Special pump services					
99192	C	Special pump services					
99195	X	Phlebotomy					
99199	E	Special service/proc/report	0372	0.43	$20.85	$10.09	$4.17
99201	V	Office/outpatient visit, new					
99202	V	Office/outpatient visit, new	0600	0.98	$47.52	$9.50	$9.50
99203	V	Office/outpatient visit, new	0600	0.98	$47.52	$9.50	$9.50
99204	V	Office/outpatient visit, new	0601	1.00	$48.49	$9.70	$9.70
99205	V	Office/outpatient visit, new	0602	1.66	$80.49	$16.29	$16.10
99211	V	Office/outpatient visit, est	0602	1.66	$80.49	$16.29	$16.10
99212	V	Office/outpatient visit, est	0600	0.98	$47.52	$9.50	$9.50
99213	V	Office/outpatient visit, est	0600	0.98	$47.52	$9.50	$9.50
99214	V	Office/outpatient visit, est	0601	1.00	$48.49	$9.70	$9.70
99215	V	Office/outpatient visit, est	0602	1.66	$80.49	$16.29	$16.10
99217	N	Observation care discharge	0602	1.66	$80.49	$16.29	$16.10
99218	N	Observation care					
99219	N	Observation care					
99220	N	Observation care					
99221	E	Initial hospital care					
99222	E	Initial hospital care					
99223	E	Initial hospital care					
99231	E	Subsequent hospital care					
99232	E	Subsequent hospital care					
99233	E	Subsequent hospital care					
99234	C	Observ/hosp same date					
99235	C	Observ/hosp same date					
99236	C	Observ/hosp same date					
99238	E	Hospital discharge day					
99239	E	Hospital discharge day					
99241	V	Office consultation	0600	0.98	$47.52	$9.50	$9.50
99242	V	Office consultation	0600	0.98	$47.52	$9.50	$9.50
99243	V	Office consultation	0601	1.00	$48.49	$9.70	$9.70
99244	V	Office consultation	0602	1.66	$80.49	$16.29	$16.10
99245	V	Office consultation	0602	1.66	$80.49	$16.29	$16.10
99251	C	Initial inpatient consult					
99252	C	Initial inpatient consult					
99253	C	Initial inpatient consult					
99254	C	Initial inpatient consult					
99255	C	Initial inpatient consult					
99261	C	Follow-up inpatient consult					
99262	C	Follow-up inpatient consult					
99263	C	Follow-up inpatient consult					
99271	V	Confirmatory consultation	0600	0.98	$47.52	$9.50	$9.50
99272	V	Confirmatory consultation	0600	0.98	$47.52	$9.50	$9.50
99273	V	Confirmatory consultation	0601	1.00	$48.49	$9.70	$9.70
99274	V	Confirmatory consultation	0602	1.66	$80.49	$16.29	$16.10
99275	V	Confirmatory consultation	0602	1.66	$80.49	$16.29	$16.10
99281	V	Emergency dept visit	0610	1.34	$64.97	$20.65	$12.99
99282	V	Emergency dept visit	0610	1.34	$64.97	$20.65	$12.99
99283	V	Emergency dept visit	0611	2.11	$102.31	$36.47	$20.46
99284	V	Emergency dept visit	0612	3.19	$154.67	$54.14	$30.93
99285	V	Emergency dept visit	0612	3.19	$154.67	$54.14	$30.93
99288	E	Direct advanced life support					
99291	S	Critical care, first hour	0620	8.60	$416.99	$152.78	$83.40
99292	N	Critical care, addl 30 min					
99295	C	Neonatal critical care					
99296	C	Neonatal critical care					
99297	C	Neonatal critical care					
99298	C	Neonatal critical care					
99301	E	Nursing facility care					
99302	E	Nursing facility care					
99303	E	Nursing facility care					
99311	E	Nursing fac care, subseq					
99312	E	Nursing fac care, subseq					
99313	E	Nursing fac care, subseq					

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CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
99315	E	Nursing fac discharge day					
99316	E	Nursing fac discharge day					
99321	E	Rest home visit, new patient					
99322	E	Rest home visit, new patient					
99323	E	Rest home visit, new patient					
99331	E	Rest home visit, est pat					
99332	E	Rest home visit, est pat					
99333	E	Rest home visit, est pat					
99341	E	Home visit, new patient					
99342	E	Home visit, new patient					
99343	E	Home visit, new patient					
99344	E	Home visit, new patient					
99345	E	Home visit, new patient					
99347	E	Home visit, est patient					
99348	E	Home visit, est patient					
99349	E	Home visit, est patient					
99350	E	Home visit, est patient					
99354	N	Prolonged service, office					
99355	N	Prolonged service, office					
99356	C	Prolonged service, inpatient					
99357	C	Prolonged service, inpatient					
99358	N	Prolonged serv, w/o contact					
99359	N	Prolonged serv, w/o contact					
99360	E	Physician standby services					
99361	E	Physician/team conference					
99362	E	Physician/team conference					
99371	E	Physician phone consultation					
99372	E	Physician phone consultation					
99373	E	Physician phone consultation					
99374	E	Home health care supervision					
99375	E	Home health care supervision					
99377	E	Hospice care supervision					
99378	E	Hospice care supervision					
99379	E	Nursing fac care supervision					
99380	E	Nursing fac care supervision					
99381	E	Prev visit, new, infant					
99382	E	Prev visit, new, age 1–4					
99383	E	Prev visit, new, age 5–11					
99384	E	Prev visit, new, age 12–17					
99385	E	Prev visit, new, age 18–39					
99386	E	Prev visit, new, age 40–64					
99387	E	Prev visit, new, 65 & over					
99391	E	Prev visit, est, infant					
99392	E	Prev visit, est, age 1–4					
99393	E	Prev visit, est, age 5–11					
99394	E	Prev visit, est, age 12–17					
99395	E	Prev visit, est, age 18–39					
99396	E	Prev visit, est, age 40–64					
99397	E	Prev visit, est, 65 & over					
99401	E	Preventive counseling, indiv					
99402	E	Preventive counseling, indiv					
99403	E	Preventive counseling, indiv					
99404	E	Preventive counseling, indiv					
99411	E	Preventive counseling, group					
99412	E	Preventive counseling, group					
99420	E	Health risk assessment test					
99429	E	Unlisted preventive service					
99431	N	Initial care, normal newborn					
99432	N	Newborn care, not in hosp					
99433	C	Normal newborn care/hospital					
99435	E	Newborn discharge day hosp					
99436	M	Attendance, birth					
99440	S	Newborn resuscitation	0094	4.51	$218.68	$105.29	$43.74
99450	E	Life/disability evaluation					
99455	E	Disability examination					
99456	E	Disability examination					
99499	E	Unlisted e&m service					
A0021	E	Outside state ambulance serv					
A0030	A	Air ambulance service					
A0040	A	Helicopter ambulance service					
A0050	A	Water amb service emergency					
A0080	E	Noninterest escort in non er					
A0090	E	Interest escort in non er					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
A0100	E	Nonemergency transport taxi					
A0110	E	Nonemergency transport bus					
A0120	E	Noner transport mini-bus					
A0130	E	Noner transport wheelch van					
A0140	E	Nonemergency transport air					
A0160	E	Noner transport case worker					
A0170	E	Noner transport parking fees					
A0180	E	Noner transport lodging recip					
A0190	E	Noner transport meals recip					
A0200	E	Noner transport lodging escrt					
A0210	E	Noner transport meals escort					
A0225	A	Neonatal emergency transport					
A0300	A	Ambulance basic non-emer all					
A0302	A	Ambulance basic emergency all					
A0304	A	Amb adv non-er no serv all					
A0306	A	Amb adv non-er spec serv all					
A0308	A	Amb adv er no spec serv all					
A0310	A	Amb adv er spec serv all					
A0320	A	Amb basic non-er + supplies					
A0322	A	Amb basic emerg + supplies					
A0324	A	Adv non-er serv sep mileage					
A0326	A	Adv non-er no serv sep mile					
A0328	A	Adv er no serv sep mileage					
A0330	A	Adv er spec serv sep mile					
A0340	A	Amb basic non-er + mileage					
A0342	A	Ambul basic emer + mileage					
A0344	A	Amb adv non-er no serv +mile					
A0346	A	Amb adv non-er serv + mile					
A0348	A	Adv emer no spec serv + mile					
A0350	A	Adv emer spec serv + mileage					
A0360	A	Basic non-er sep mile & supp					
A0362	A	Basic emer sep mile & supply					
A0364	A	Adv non-er no serv sep mi&su					
A0366	A	Adv non-er serv sep mile&supp					
A0368	A	Adv er no serv sep mile&supp					
A0370	A	Adv er spec serv sep mi&supp					
A0380	A	Basic life support mileage					
A0382	A	Basic support routine supplis					
A0384	A	Bls defibrillation supplies					
A0390	A	Advanced life support mileag					
A0392	A	Als defibrillation supplies					
A0394	A	Als IV drug therapy supplies					
A0396	A	Als esophageal intub supplis					
A0398	A	Als routine disposble supplis					
A0420	A	Ambulance waiting 1/2 hr					
A0422	A	Ambulance 02 life sustaining					
A0424	A	Extra ambulance attendant					
A0888	E	Noncovered ambulance mileage					
A0999	A	Unlisted ambulance service					
A4206	A	1 CC sterile syringe & needle					
A4207	A	2 CC sterile syringe & needle					
A4208	A	3 CC sterile syringe & needle					
A4209	A	5+ CC sterile syringe & needle					
A4210	E	Nonneedle injection device					
A4211	A	Supp for self-adm injections					
A4212	A	Non coring needle or stylet					
A4213	A	20+ CC syringe only					
A4214	A	30 CC sterile water/saline					
A4215	A	Sterile needle					
A4220	A	Infusion pump refill kit					
A4221	A	Maint drug infus cath per wk					
A4222	A	Drug infusion pump supplies					
A4230	E	Infus insulin pump non needl					
A4231	E	Infusion insulin pump needle					
A4232	E	Syringe w/needle insulin 3cc					
A4244	A	Alcohol or peroxide per pint					
A4245	A	Alcohol wipes per box					
A4246	A	Betadine/phisohex solution					
A4247	A	Betadine/iodine swabs/wipes					
A4250	E	Urine reagent strips/tablets					
A4253	A	Blood glucose/reagent strips					
A4254	A	Battery for glucose monitor					
A4255	A	Glucose monitor platforms					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
A4256	A	Calibrator solution/chips					
A4258	A	Lancet device each					
A4259	A	Lancets per box					
A4260	E	Levonorgestrel implant					
A4261	E	Cervical cap contraceptive					
A4262	N	Temporary tear duct plug					
A4263	A	Permanent tear duct plug					
A4265	A	Paraffin					
A4270	A	Disposable endoscope sheath					
A4280	A	Brst prsths adhsv attchmnt					
A4300	A	Cath impl vasc access portal					
A4301	A	Implantable access syst perc					
A4305	A	Drug delivery system >=50 ML					
A4306	A	Drug delivery system <=5 ML					
A4310	A	Insert tray w/o bag/cath					
A4311	A	Catheter w/o bag 2-way latex					
A4312	A	Cath w/o bag 2-way silicone					
A4313	A	Catheter w/bag 3-way					
A4314	A	Cath w/drainage 2-way latex					
A4315	A	Cath w/drainage 2-way silcne					
A4316	A	Cath w/drainage 3-way					
A4320	A	Irrigation tray					
A4321	A	Cath therapeutic irrig agent					
A4322	A	Irrigation syringe					
A4323	A	Saline irrigation solution					
A4326	A	Male external catheter					
A4327	A	Fem urinary collect dev cup					
A4328	A	Fem urinary collect pouch					
A4329	A	External catheter start set					
A4330	A	Stool collection pouch					
A4335	A	Incontinence supply					
A4338	A	Indwelling catheter latex					
A4340	A	Indwelling catheter special					
A4344	A	Cath indw foley 2 way silicn					
A4346	A	Cath indw foley 3 way					
A4347	A	Male external catheter					
A4351	A	Straight tip urine catheter					
A4352	A	Coude tip urinary catheter					
A4353	A	Intermittent urinary cath					
A4354	A	Cath insertion tray w/bag					
A4355	A	Bladder irrigation tubing					
A4356	A	Ext ureth clmp or compr dvc					
A4357	A	Bedside drainage bag					
A4358	A	Urinary leg bag					
A4359	A	Urinary suspensory w/o leg b					
A4361	A	Ostomy face plate					
A4362	A	Solid skin barrier					
A4364	A	Ostomy/cath adhesive					
A4365	A	Ostomy adhesive remover wipe					
A4367	A	Ostomy belt					
A4368	A	Ostomy filter					
A4369	A	Skin barrier liquid per oz					
A4370	A	Skin barrier paste per oz					
A4371	A	Skin barrier powder per oz					
A4372	A	Skin barrier solid 4x4 equiv					
A4373	A	Skin barrier with flange					
A4374	A	Skin barrier extended wear					
A4375	A	Drainable plastic pch w fcpl					
A4376	A	Drainable rubber pch w fcplt					
A4377	A	Drainable plstic pch w/o fp					
A4378	A	Drainable rubber pch w/o fp					
A4379	A	Urinary plastic pouch w fcpl					
A4380	A	Urinary rubber pouch w fcplt					
A4381	A	Urinary plastic pouch w/o fp					
A4382	A	Urinary hvy plstc pch w/o fp					
A4383	A	Urinary rubber pouch w/o fp					
A4384	A	Ostomy facepit/silicone ring					
A4385	A	Ost skn barrier sld ext wear					
A4386	A	Ost skn barrier w flng ex wr					
A4387	A	Ost clsd pouch w att st barr					
A4388	A	Drainable pch w ex wear barr					
A4389	A	Drainable pch w st wear barr					
A4390	A	Drainable pch ex wear convex					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
A4391	A	Urinary pouch w ex wear barr					
A4392	A	Urinary pouch w st wear barr					
A4393	A	Urine pch w ex wear bar conv					
A4394	A	Ostomy pouch liq deodorant					
A4395	A	Ostomy pouch solid deodorant					
A4397	A	Irrigation supply sleeve					
A4398	A	Ostomy irrigation bag					
A4399	A	Ostomy irrig cone/cath w brs					
A4400	A	Ostomy irrigation set					
A4402	A	Lubricant per ounce					
A4404	A	Ostomy ring each					
A4421	A	Ostomy supply misc					
A4454	A	Tape all types all sizes					
A4455	A	Adhesive remover per ounce					
A4460	A	Elastic compression bandage					
A4462	A	Abdmnl dressng holder/binder					
A4465	A	Non-elastic extremity binder					
A4470	A	Gravlee jet washer					
A4480	A	Vabra aspirator					
A4481	A	Tracheostoma filter					
A4483	A	Moisture exchanger					
A4490	E	Above knee surgical stocking					
A4495	E	Thigh length surg stocking					
A4500	E	Below knee surgical stocking					
A4510	E	Full length surg stocking					
A4550	E	Surgical trays					
A4554	E	Disposable underpads					
A4556	A	Electrodes, pair					
A4557	A	Lead wires, pair					
A4558	A	Conductive paste or gel					
A4560	A	Pessary					
A4565	A	Slings					
A4570	A	Splint					
A4572	A	Rib belt					
A4575	E	Hyperbaric o2 chamber diems					
A4580	A	Cast supplies (plaster)					
A4590	A	Special casting material					
A4595	A	TENS suppl 2 lead per month					
A4611	A	Heavy duty battery					
A4612	A	Battery cables					
A4613	A	Battery charger					
A4614	A	Hand-held PEFR meter					
A4615	A	Cannula nasal					
A4616	A	Tubing (oxygen) per foot					
A4617	A	Mouth piece					
A4618	A	Breathing circuits					
A4619	A	Face tent					
A4620	A	Variable concentration mask					
A4621	A	Tracheotomy mask or collar					
A4622	A	Tracheostomy or laryngectomy					
A4623	A	Tracheostomy inner cannula					
A4624	A	Tracheal suction tube					
A4625	A	Trach care kit for new trach					
A4626	A	Tracheostomy cleaning brush					
A4627	E	Spacer bag/reservoir					
A4628	A	Oropharyngeal suction cath					
A4629	A	Tracheostomy care kit					
A4630	A	Repl bat t.e.n.s. own by pt					
A4631	A	Wheelchair battery					
A4635	A	Underarm crutch pad					
A4636	A	Handgrip for cane etc					
A4637	A	Repl tip cane/crutch/walker					
A4640	A	Alternating pressure pad					
A4641	N	Diagnostic imaging agent					
[3] A4642	X	Satumomab pendetide per dose	0704			$63.13	
A4643	N	High dose contrast MRI					
A4644	N	Contrast 100–199 MGs iodine					
A4645	N	Contrast 200–299 MGs iodine					
A4646	N	Contrast 300–399 MGs iodine					
A4647	N	Supp-paramagnetic contr mat					
A4649	A	Surgical supplies					
A4650	A	Supp esrd centrifuge					
A4655	A	Esrd syringe/needle					

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CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
A4660	A	Esrd blood pressure device					
A4663	A	Esrd blood pressure cuff					
A4670	E	Auto blood pressure monitor					
A4680	A	Activated carbon filters					
A4690	A	Dialyzers					
A4700	A	Standard dialysate solution					
A4705	A	Bicarb dialysate solution					
A4712	A	Sterile water					
A4714	A	Treated water for dialysis					
A4730	A	Fistula cannulation set dial					
A4735	A	Local/topical anesthetics					
A4740	A	Esrd shunt accessory					
A4750	A	Arterial or venous tubing					
A4755	A	Arterial and venous tubing					
A4760	A	Standard testing solution					
A4765	A	Dialysate concentrate					
A4770	A	Blood testing supplies					
A4771	A	Blood clotting time tube					
A4772	A	Dextrostick/glucose strips					
A4773	A	Hemostix					
A4774	A	Ammonia test paper					
A4780	A	Esrd sterilizing agent					
A4790	A	Esrd cleansing agents					
A4800	A	Heparin/antidote dialysis					
A4820	A	Supplies hemodialysis kit					
A4850	A	Rubber tipped hemostats					
A4860	A	Disposable catheter caps					
A4870	A	Plumbing/electrical work					
A4880	A	Water storage tanks					
A4890	A	Contracts/repair/maintenance					
A4900	A	Capd supply kit					
A4901	A	Ccpd supply kit					
A4905	A	Ipd supply kit					
A4910	A	Esrd nonmedical supplies					
A4912	A	Gomco drain bottle					
A4913	A	Esrd supply					
A4914	A	Preparation kit					
A4918	A	Venous pressure clamp					
A4919	A	Supp dialysis dialyzer holde					
A4920	A	Harvard pressure clamp					
A4921	A	Measuring cylinder					
A4927	A	Gloves					
A5051	A	Pouch clsd w barr attached					
A5052	A	Clsd ostomy pouch w/o barr					
A5053	A	Clsd ostomy pouch faceplate					
A5054	A	Clsd ostomy pouch w/flange					
A5055	A	Stoma cap					
A5061	A	Pouch drainable w barrier at					
A5062	A	Drnble ostomy pouch w/o barr					
A5063	A	Drain ostomy pouch w/flange					
A5064	E	Drain ostomy pouch w/fceplte					
A5065	E	Drain ostomy pouch on fcplte					
A5071	A	Urinary pouch w/barrier					
A5072	A	Urinary pouch w/o barrier					
A5073	A	Urinary pouch on barr w/flng					
A5074	E	Urinary pouch w/faceplate					
A5075	E	Urinary pouch on faceplate					
A5081	A	Continent stoma plug					
A5082	A	Continent stoma catheter					
A5093	A	Ostomy accessory convex inse					
A5102	A	Bedside drain btl w/wo tube					
A5105	A	Urinary suspensory					
A5112	A	Urinary leg bag					
A5113	A	Latex leg strap					
A5114	A	Foam/fabric leg strap					
A5119	A	Skin barrier wipes box pr 50					
A5121	A	Solid skin barrier 6x6					
A5122	A	Solid skin barrier 8x8					
A5123	A	Skin barrier with flange					
A5126	A	Disk/foam pad +or- adhesive					
A5131	A	Appliance cleaner					
A5149	A	Incontinence/ostomy supply					
A5200	A	Percutaneous catheter anchor					

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CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
A5500	A	Diab shoe for density insert					
A5501	A	Diabetic custom molded shoe					
A5502	A	Diabetic shoe density insert					
A5503	A	Diabetic shoe w/roller/rockr					
A5504	A	Diabetic shoe with wedge					
A5505	A	Diab shoe w/metatarsal bar					
A5506	A	Diabetic shoe w/off set heel					
A5507	A	Modification diabetic shoe					
A5508	A	Diabetic deluxe shoe					
A6020	A	Collagen wound dressing					
A6025	E	Silicone gel sheet, each					
A6154	A	Wound pouch each					
A6196	A	Alginate dressing <=16 sq in					
A6197	A	Alginate dreg >16 <=48 sq in					
A6198	A	alginate dressing > 48 sq in					
A6199	A	Alginate dreg wound filler					
A6200	A	Compos dreg <=16 no border					
A6201	A	Compos dreg >16<=48 no bdr					
A6202	A	Compos dreg >48 no border					
A6203	A	Composite dreg <= 16 sq in					
A6204	A	Composite dreg >16<=48 sq in					
A6205	A	Composite dreg > 48 sq in					
A6206	A	Contact layer <= 16 sq in					
A6207	A	Contact layer >16<= 48 sq in					
A6208	A	Contact layer > 48 sq in					
A6209	A	Foam dreg <=16 sq in w/o bdr					
A6210	A	Foam drg >16<=48 sq in w/o b					
A6211	A	Foam drg > 48 sq in w/o brdr					
A6212	A	Foam drg <=16 sq in w/border					
A6213	A	Foam drg >16<=48 sq in w/bdr					
A6214	A	Foam drg > 48 sq in w/border					
A6215	A	Foam dressing wound filler					
A6216	A	Non-sterile gauze<=16 sq in					
A6217	A	Non-sterile gauze>16<=48 sq					
A6218	A	Non-sterile gauze > 48 sq in					
A6219	A	Gauze <= 16 sq in w/border					
A6220	A	Gauze >16 <=48 sq in w/bordr					
A6221	A	Gauze > 48 sq in w/border					
A6222	A	Gauze <=16 in no w/sal w/o b					
A6223	A	Gauze >16<=48 no w/sal w/o b					
A6224	A	Gauze > 48 in no w/sal w/o b					
A6228	A	Gauze <= 16 sq in water/sal					
A6229	A	Gauze >16<=48 sq in watr/sal					
A6230	A	Gauze > 48 sq in water/saine					
A6234	A	Hydrocolid drg <=16 w/o bdr					
A6235	A	Hydrocolid drg >16<=48 w/o b					
A6236	A	Hydrocolid drg > 48 in w/o b					
A6237	A	Hydrocolid drg <=16 in w/bdr					
A6238	A	Hydrocolid drg >16<=48 w/bdr					
A6239	A	Hydrocolid drg > 48 in w/bdr					
A6240	A	Hydrocolid drg filler paste					
A6241	A	Hydrocolloid drg filler dry					
A6242	A	Hydrogel drg <=16 in w/o bdr					
A6243	A	Hydrogel drg >16<=48 w/o bdr					
A6244	A	Hydrogel drg >48 in w/o bdr					
A6245	A	Hydrogel drg <= 16 in w/bdr					
A6246	A	Hydrogel drg >16<=48 in w/b					
A6247	A	Hydrogel drg > 48 sq in w/b					
A6248	A	Hydrogel dreg gel filler					
A6250	A	Skin seal protect moisturizr					
A6251	A	Absorpt drg <=16 sq in w/o b					
A6252	A	Absorpt drg >16 <=48 w/o bdr					
A6253	A	Absorpt drg > 48 sq in w/o b					
A6254	A	Absorpt drg <=16 sq in w/bdr					
A6255	A	Absorpt drg >16<=48 in w/bdr					
A6256	A	Absorpt drg > 48 sq in w/bdr					
A6257	A	Transparent film <= 16 sq in					
A6258	A	Transparent film >16<=48 in					
A6259	A	Transparent film > 48 sq in					
A6260	A	Wound cleanser any type/size					
A6261	A	Wound filler gel/paste/oz					
A6262	A	Wound filler dry form/gram					
A6263	A	Non-sterile elastic gauze/yd					

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CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
A6264	A	Non-sterile no elastic gauze					
A6265	A	Tape per 18 sq inches					
A6266	A	Impreg gauze no h20/sal/yard					
A6402	A	Sterile gauze <= 16 sq in					
A6403	A	Sterile gauze>16 <= 48 sq in					
A6404	A	Sterile gauze > 48 sq in					
A6405	A	Sterile elastic gauze/yd					
A6406	A	Sterile non-elastic gauze/yd					
A7000	A	Disposable canister for pump					
A7001	A	Nondisposable pump canister					
A7002	A	Tubing used w suction pump					
A7003	A	Nebulizer administration set					
A7004	A	Disposable nebulizer sml vol					
A7005	A	Nondisposable nebulizer set					
A7006	A	Filtered nebulizer admin set					
A7007	A	Lg vol nebulizer disposable					
A7008	A	Disposable nebulizer prefill					
A7009	A	Nebulizer reservoir bottle					
A7010	A	Disposable corrugated tubing					
A7011	A	Nondispos corrugated tubing					
A7012	A	Nebulizer water collec devic					
A7013	A	Disposable compressor filter					
A7014	A	Compressor nondispos filter					
A7015	A	Aerosol mask used w nebulize					
A7016	A	Nebulizer dome & mouthpiece					
A7017	A	Nebulizer not used w oxygen					
A9150	E	Misc/exper non-prescript dru					
A9160	E	Podiatrist non-covered servi					
A9170	E	Chiropractor non-covered ser					
A9190	E	Misc/expe personal comfort i					
A9270	E	Non-covered item or service					
A9300	E	Exercise equipment					
A9500	N	Technetium TC 99m sestamibi					
[3] A9502	X	Technetium TC99M tetrofosmin	0705				$71.08
A9503	N	Technetium TC 99m medronate					
A9504	N	Technetium tc 99m apcitide					
A9505	N	Thallous chloride TL 201/mci					
A9507	N	Indium/111 capromab pendetid					
[3] A9600	X	Strontium-89 chloride	0701				$84.76
[3] A9605	X	Samarium sm153 lexidronamm	0702				$139.06
A9900	E	Supply/accessory/service					
A9901	E	Delivery/set up/dispensing					
B4034	A	Enter feed supkit syr by day					
B4035	A	Enteral feed supp pump per d					
B4036	A	Enteral feed sup kit grav by					
B4081	A	Enteral ng tubing w/stylet					
B4082	A	Enteral ng tubing w/o stylet					
B4083	A	Enteral stomach tube levine					
B4084	A	Gastrostomy/jejunostomy tubi					
B4085	A	Gastrostomy tube w/ring each					
B4150	A	Enteral formulae category i					
B4151	A	Enteral formulae category i-					
B4152	A	Enteral formulae category ii					
B4153	A	Enteral formulae category ii					
B4154	A	Enteral formulae category IV					
B4155	A	Enteral formulae category v					
B4156	A	Enteral formulae category vi					
B4164	A	Parenteral 50% dextrose solu					
B4168	A	Parenteral sol amino acid 3.					
B4172	A	Parenteral sol amino acid 5.					
B4176	A	Parenteral sol amino acid 7-					
B4178	A	Parenteral sol amino acid >					
B4180	A	Parenteral sol carb > 50%					
B4184	A	Parenteral sol lipids 10%					
B4186	A	Parenteral sol lipids 20%					
B4189	A	Parenteral sol amino acid &					
B4193	A	Parenteral sol 52–73 gm prot					
B4197	A	Parenteral sol 74–100 gm pro					
B4199	A	Parenteral sol > 100gm prote					
B4216	A	Parenteral nutrition additiv					
B4220	A	Parenteral supply kit premix					
B4222	A	Parenteral supply kit homemi					
B4224	A	Parenteral administration id					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
B5000	A	Parenteral sol renal-amirosy					
B5100	A	Parenteral sol hepatic-fream					
B5200	A	Parenteral sol stree-bmch c					
B9000	A	Enter infusion pump w/o alrm					
B9002	A	Enteral infusion pump w/ala					
B9004	A	Parenteral infus pump portab					
B9006	A	Parenteral infus pump statio					
B9998	A	Enteral supp not otherwise c					
B9999	A	Parenteral supp not othrws c					
D0120	E	Periodic oral evaluation					
D0140	E	Limit oral eval problm focus					
D0150	S	Comprehenave oral evaluation	0330	1.51	$73.22	$14.64	$14.64
D0160	E	Extenev oral eval prob focus					
D0170	E	Re-eval, est pt, problem focus					
D0210	E	Intraor complete film series					
D0220	E	Intraoral periapical first f					
D0230	E	Intraoral periapical ea add					
D0240	S	Intraoral occlusal film	0330	1.51	$73.22	$14.64	$14.64
D0250	S	Extraoral first film	0330	1.51	$73.22	$14.64	$14.64
D0260	S	Extraoral ea additional film	0330	1.51	$73.22	$14.64	$14.64
D0270	S	Dental bitewing single film	0330	1.51	$73.22	$14.64	$14.64
D0272	S	Dental bitewings two films	0330	1.51	$73.22	$14.64	$14.64
D0274	S	Dental bitewings four films	0330	1.51	$73.22	$14.64	$14.64
D0277	E	Vert bitewings-esv to eight					
D0290	E	Dental film skull/facial bon					
D0310	E	Dental sialography					
D0320	E	Dental tmj arthrogram incl i					
D0321	E	Dental other tmj films					
D0322	E	Dental tomographic survey					
D0330	E	Dental panoramic film					
D0340	E	Dental cephalometric film					
D0350	E	Oral/facial images					
D0415	E	Bacteriologic study					
D0425	E	Caries susceptibility test					
D0460	S	Pulp vitality test	0330	1.51	$73.22	$14.64	$14.64
D0470	E	Diagnostic casts					
D0472	E	Gross exam, prep & report					
D0473	E	Micro exam, prep & report					
D0474	E	Micro w exam of surg margins					
D0480	E	Cytopath smear prep & report					
D0501	S	Histopathologic examinations	0330	1.51	$73.22	$14.64	$14.64
D0502	S	Other oral pathology procedu	0330	1.51	$73.22	$14.64	$14.64
D0999	S	Unspecified diagnostic proce	0330	1.51	$73.22	$14.64	$14.64
D1110	E	Dental prophylaxis adult					
D1120	E	Dental prophylaxis child					
D1201	E	Topical fluor w prophy child					
D1203	E	Topical fluor w/o prophy chi					
D1204	E	Topical fluor w/o prophy adu					
D1205	E	Topical fluoride w/prophy a					
D1310	E	Nutri counsel-control caries					
D1320	E	Tobacco counseling					
D1330	E	Oral hygiene instruction					
D1351	E	Dental sealant per tooth					
D1510	S	Space maintainer fxd unilat	0330	1.51	$73.22	$14.64	$14.64
D1515	S	Fixed bilat space maintainer	0330	1.51	$73.22	$14.64	$14.64
D1520	S	Remove unilat space maintain	0330	1.51	$73.22	$14.64	$14.64
D1525	S	Remove bilat space maintain	0330	1.51	$73.22	$14.64	$14.64
D1550	S	Recement space maintainer	0330	1.51	$73.22	$14.64	$14.64
D2110	E	Amalgam one surface primary					
D2120	E	Amalgam two surfaces primary					
D2130	E	Amalgam three surfaces prima					
D2131	E	Amalgam four/more surf prima					
D2140	E	Amalgam one surface permanen					
D2150	E	Amalgam two surfaces permane					
D2160	E	Amalgam three surfaces perma					
D2161	E	Amalgam 4 or > surfaces perm					
D2330	E	Resin one surface-anterior					
D2331	E	Resin two surfaces-anterior					
D2332	E	Resin three surfaces-anterio					
D2335	E	Resin 4/> surf or w incis an					
D2336	E	Composite resin crown					
D2337	E	Compo resin crown ant-perm					
D2380	E	Resin one surf poster primar					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
D2381	E	Resin two surf poster primar					
D2382	E	Resin three/more surf post p					
D2385	E	Resin one surf poster perman					
D2386	E	Resin two surf poster perman					
D2387	E	Resin three/more surf post p					
D2388	E	Resin four/more, post perm					
D2410	E	Dental gold foil one surface					
D2420	E	Dental gold foil two surface					
D2430	E	Dental gold foil three surfa					
D2510	E	Dental inlay metalic 1 surf					
D2520	E	Dental inlay metallic 2 surf					
D2530	E	Dental inlay metl 3/more sur					
D2542	E	Dental onlay metallic 2 surf					
D2543	E	Dental onlay metallic 3 surf					
D2544	E	Dental onlay metl 4/more sur					
D2610	E	Inlay porcelain/ceramic 1 su					
D2620	E	Inlay porcelain/ceramic 2 su					
D2630	E	Dental onlay porc 3/more sur					
D2642	E	Dental onlay porcelin 2 surf					
D2643	E	Dental onlay porcelin 3 surf					
D2644	E	Dental onlay porc 4/more sur					
D2650	E	Inlay composite/resin one su					
D2651	E	Inlay composite/resin two su					
D2652	E	Dental inlay resin 3/mre sur					
D2662	E	Dental onlay resin 2 surface					
D2663	E	Dental onlay resin 3 surface					
D2664	E	Dental onlay resin 4/mre sur					
D2710	E	Crown resin laboratory					
D2720	E	Crown resin w/high noble me					
D2721	E	Crown resin w/base metal					
D2722	E	Crown resin w/noble metal					
D2740	E	Crown porcelain/ceramic subs					
D2750	E	Crown porcelain w/h noble m					
D2751	E	Crown porcelain fused base m					
D2752	E	Crown porcelain w/noble met					
D2780	E	Crown 3/4 cast hi noble met					
D2781	E	Crown 3/4 cast base metal					
D2782	E	Crown 3/4 cast noble metal					
D2783	E	Crown 3/4 porcelain/ceramic					
D2790	E	Crown full cast high noble m					
D2791	E	Crown full cast base metal					
D2792	E	Crown full cast noble metal					
D2799	E	Provisional crown					
D2910	E	Dental recement inlay					
D2920	E	Dental recement crown					
D2930	E	Prefab stnlss steel crwn pri					
D2931	E	Prefab stnlss steel crown pe					
D2932	E	Prefabricated resin crown					
D2933	E	Prefab stainless steel crown					
D2940	E	Dental sedative filling					
D2950	E	Core build-up incl any pins					
D2951	E	Tooth pin retention					
D2952	E	Post and core cast + crown					
D2953	E	Each addtnl cast post					
D2954	E	Prefab post/core + crown					
D2955	E	Post removal					
D2957	E	Each addtnl prefab post					
D2960	E	Laminate labial veneer					
D2961	E	Lab labial veneer resin					
D2962	E	Lab labial veneer porcelain					
D2970	S	Temporary-fractured tooth	0330	1.51	$73.22	$14.64	$14.64
D2980	E	Crown repair					
D2999	S	Dental unspec restorative pr	0330	1.51	$73.22	$14.64	$14.64
D3110	E	Pulp cap direct					
D3120	E	Pulp cap indirect					
D3220	E	Therapeutic pulpotomy					
D3221	E	Gross pulpal debridement					
D3230	E	Pulpal therapy anterior prim					
D3240	E	Pulpal therapy posterior pri					
D3310	E	Anterior					
D3320	E	Root canal therapy 2 canals					
D3330	E	Root canal therapy 3 canals					
D3331	E	Non-surg tx root canal obs					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
D3332	E	Incomplete endodontic tx					
D3333	E	Internal root repair					
D3346	E	Retreat root canal anterior					
D3347	E	Retreat root canal bicuspid					
D3348	E	Retreat root canal molar					
D3351	E	Apexification/recalc initial					
D3352	E	Apexification/recalc interim					
D3353	E	Apexification/recalc final					
D3410	E	Apicoect/perirad surg anter					
D3421	E	Root surgery bicuspid					
D3425	E	Root surgery molar					
D3426	E	Root surgery ea add root					
D3430	E	Retrograde filling					
D3450	E	Root amputation					
D3460	S	Endodontic endosseous implan	0330	1.51	$73.22	$14.64	$14.64
D3470	E	Intentional replantation					
D3910	E	Isolation-tooth w rubb dam					
D3920	E	Tooth splitting					
D3950	E	Canal prep/fitting of dowel					
D3999	S	Endodontic procedure	0330	1.51	$73.22	$14.64	$14.64
D4210	E	Gingivectomy/plasty per quad					
D4211	E	Gingivectomy/plasty per toot					
D4220	E	Gingival curettage per quadr					
D4240	E	Gingival flap proc w/planin					
D4245	E	Apically positioned flap					
D4249	E	Crown lengthen hard tissue					
D4260	S	Osseous surgery per quadrant	0330	1.51	$73.22	$14.64	$14.64
D4263	S	Bone replce graft first site	0330	1.51	$73.22	$14.64	$14.64
D4264	S	Bone replce graft each add	0330	1.51	$73.22	$14.64	$14.64
D4266	E	Guided tiss regen resorble					
D4267	E	Guided tiss regen nonresorb					
D4268	E	Surgical revision procedure					
D4270	S	Pedicle soft tissue graft pr	0330	1.51	$73.22	$14.64	$14.64
D4271	S	Free soft tissue graft proc	0330	1.51	$73.22	$14.64	$14.64
D4273	S	Subepithelial tissue graft	0330	1.51	$73.22	$14.64	$14.64
D4274	E	Distal/proximal wedge proc					
D4320	E	Provision splint intracoronal					
D4321	E	Provisional splint extracoro					
D4341	E	Periodontal scaling & root					
D4355	S	Full mouth debridement	0330	1.51	$73.22	$14.64	$14.64
D4381	S	Localized chemo delivery	0330	1.51	$73.22	$14.64	$14.64
D4910	E	Periodontal maint procedures					
D4920	E	Unscheduled dressing change					
D4999	E	Unspecified periodontal proc					
D5110	E	Dentures complete maxillary					
D5120	E	Dentures complete mandible					
D5130	E	Dentures immediat maxillary					
D5140	E	Dentures immediat mandible					
D5211	E	Dentures maxill part resin					
D5212	E	Dentures mand part resin					
D5213	E	Dentures maxill part metal					
D5214	E	Dentures mandibl part metal					
D5281	E	Removable partial denture					
D5410	E	Dentures adjust cmplt maxil					
D5411	E	Dentures adjust cmplt mand					
D5421	E	Dentures adjust part maxill					
D5422	E	Dentures adjust part mandbl					
D5510	E	Dentur repr broken compl bas					
D5520	E	Replace denture teeth complt					
D5610	E	Dentures repair resin base					
D5620	E	Rep part denture cast frame					
D5630	E	Rep partial denture clasp					
D5640	E	Replace part denture teeth					
D5650	E	Add tooth to partial denture					
D5660	E	Add clasp to partial denture					
D5710	E	Dentures rebase cmplt maxil					
D5711	E	Dentures rebase cmplt mand					
D5720	E	Dentures rebase part maxill					
D5721	E	Dentures rebase part mandbl					
D5730	E	Denture rein cmplt maxil ch					
D5731	E	Denture rein cmplt mand chr					
D5740	E	Denture rein part maxil chr					
D5741	E	Denture rein part mand chr					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
D5750	E	Denture rein cmplt max lab					
D5751	E	Denture rein cmplt mand lab					
D5760	E	Denture rein part maxil lab					
D5761	E	Denture rein part mand lab					
D5810	E	Denture interm cmplt maxill					
D5811	E	Denture interm cmplt mandbl					
D5820	E	Denture interm part maxill					
D5821	E	Denture interm part mandbl					
D5850	E	Denture tiss conditn maxill					
D5851	E	Denture tiss conditn mandbl					
D5860	E	Overdenture complete					
D5861	E	Overdenture partial					
D5862	E	Precision attachment					
D5867	E	Replacement of precision att					
D5875	E	Prosthesis modification					
D5899	E	Removable prosthodontic proc					
D5911	S	Facial moulage sectional	0330	1.51	$73.22	$14.64	$14.64
D5912	S	Facial moulage complete	0330	1.51	$73.22	$14.64	$14.64
D5913	E	Nasal prosthesis					
D5914	E	Auricular prosthesis					
D5915	E	Orbital prosthesis					
D5916	E	Ocular prosthesis					
D5919	E	Facial prosthesis					
D5922	E	Nasal septal prosthesis					
D5923	E	Ocular prosthesis interim					
D5924	E	Cranial prosthesis					
D5925	E	Facial augmentation implant					
D5926	E	Replacement nasal prosthesis					
D5927	E	Auricular replacement					
D5928	E	Orbital replacement					
D5929	E	Facial replacement					
D5931	E	Surgical obturator					
D5932	E	Postsurgical obturator					
D5933	E	Refitting of obturator					
D5934	E	Mandibular flange prosthesis					
D5935	E	Mandibular denture prosth					
D5936	E	Temp obturator prosthesis					
D5937	E	Trismus appliance					
D5951	E	Feeding aid					
D5952	E	Pediatric speech aid					
D5953	E	Adult speech aid					
D5954	E	Superimposed prosthesis					
D5955	E	Palatal lift prosthesis					
D5958	E	Intraoral con def inter plt					
D5959	E	Intraoral con def mod palat					
D5960	E	Modify speech aid prosthesis					
D5982	E	Surgical stent					
D5983	S	Radiation applicator	0330	1.51	$73.22	$14.64	$14.64
D5984	S	Radiation shield	0330	1.51	$73.22	$14.64	$14.64
D5985	S	Radiation cone locator	0330	1.51	$73.22	$14.64	$14.64
D5986	E	Fluoride applicator					
D5987	S	Commissure splint	0330	1.51	$73.22	$14.64	$14.64
D5988	E	Surgical splint					
D5999	E	Maxillofacial prosthesis					
D6010	E	Odontics endosteal implant					
D6020	E	Odontics abutment placement					
D6040	E	Odontics eposteal implant					
D6050	E	Odontics transosteal implnt					
D6055	E	Implant connecting bar					
D6056	E	Prefabricated abutment					
D6057	E	Custom abutment					
D6058	E	Abutment supported crown					
D6059	E	Abutment supported mtl crown					
D6060	E	Abutment supported mtl crown					
D6061	E	Abutment supported mtl crown					
D6062	E	Abutment supported mtl crown					
D6063	E	Abutment supported mtl crown					
D6064	E	Abutment supported mtl crown					
D6065	E	Implant supported crown					
D6066	E	Implant supported mtl crown					
D6067	E	Implant supported mtl crown					
D6068	E	Abutment supported retainer					
D6069	E	Abutment supported retainer					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
D6070	E	Abutment supported retainer					
D6071	E	Abutment supported retainer					
D6072	E	Abutment supported retainer					
D6073	E	Abutment supported retainer					
D6074	E	Abutment supported retainer					
D6075	E	Implant supported retainer					
D6076	E	Implant supported retainer					
D6077	E	Implant supported retainer					
D6078	E	Implnt/abut suprtd fixd dent					
D6079	E	Implnt/abut suprtd fixd dent					
D6080	E	Implant maintenance					
D6090	E	Repair implant					
D6095	E	Odontics repr abutment					
D6100	E	Removal of implant					
D6199	E	Implant procedure					
D6210	E	Prosthodont high noble metal					
D6211	E	Bridge base metal cast					
D6212	E	Bridge noble metal cast					
D6240	E	Bridge porcelain high noble					
D6241	E	Bridge porcelain base metal					
D6242	E	Bridge porcelain nobel metal					
D6245	E	Bridge porcelain/ceramic					
D6250	E	Bridge resin w/high noble					
D6251	E	Bridge resin base metal					
D6252	E	Bridge resin w/noble metal					
D6519	E	Inlay/onlay porce/ceramic					
D6520	E	Dental retainer two surfaces					
D6530	E	Retainer metallic 3+ surface					
D6543	E	Dental retainr onlay 3 surf					
D6544	E	Dental retainr onlay 4/more					
D6545	E	Dental retainr cast metl					
D6548	E	Porcelain/ceramic retainer					
D6720	E	Retain crown resin w hi nble					
D6721	E	Crown resin w/base metal					
D6722	E	Crown resin w/noble metal					
D6740	E	Crown porcelain/ceramic					
D6750	E	Crown porcelain high noble					
D6751	E	Crown porcelain base metal					
D6752	E	Crown porcelain noble metal					
D6780	E	Crown 3/4 high noble metal					
D6781	E	Crown 3/4 cast based metal					
D6782	E	Crown 3/4 cast noble metal					
D6783	E	Crown 3/4 porcelain/ceramic					
D6790	E	Crown full high noble metal					
D6791	E	Crown full base metal cast					
D6792	E	Crown full noble metal cast					
D6920	S	Dental connector bar	0330	1.51	$73.22	$14.64	$14.64
D6930	E	Dental recement bridge					
D6940	E	Stress breaker					
D6950	E	Precision attachment					
D6970	E	Post & core plus retainer					
D6971	E	Cast post bridge retainer					
D6972	E	Prefab post & core plus reta					
D6973	E	Core build up for retainer					
D6975	E	Coping metal					
D6976	E	Each addtnl cast post					
D6977	E	Each addtl prefab post					
D6980	E	Bridge repair					
D6999	E	Fixed prosthodontic proc					
D7110	S	Oral surgery single tooth	0330	1.51	$73.22	$14.64	$14.64
D7120	S	Each add tooth extraction	0330	1.51	$73.22	$14.64	$14.64
D7130	S	Tooth root removal	0330	1.51	$73.22	$14.64	$14.64
D7210	S	Rem imp tooth w mucoper flp	0330	1.51	$73.22	$14.64	$14.64
D7220	S	Impact tooth remov soft tiss	0330	1.51	$73.22	$14.64	$14.64
D7230	S	Impact tooth remov part bony	0330	1.51	$73.22	$14.64	$14.64
D7240	S	Impact tooth remov comp bony	0330	1.51	$73.22	$14.64	$14.64
D7241	S	Impact tooth rem bony w/comp	0330	1.51	$73.22	$14.64	$14.64
D7250	S	Tooth root removal	0330	1.51	$73.22	$14.64	$14.64
D7260	S	Oral antral fistula closure	0330	1.51	$73.22	$14.64	$14.64
D7270	E	Tooth reimplantation					
D7272	E	Tooth transplantation					
D7280	E	Exposure impact tooth orthod					
D7281	E	Exposure tooth aid eruption					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
D7285	E	Biopsy of oral tissue hard					
D7286	E	Biopsy of oral tissue soft					
D7290	E	Repositioning of teeth					
D7291	S	Transseptal fiberotomy	0330	1.51	$73.22	$14.64	$14.64
D7310	E	Alveoplasty w/extraction					
D7320	E	Alveoplasty w/o extraction					
D7340	E	Vestibuloplasty ridge extens					
D7350	E	Vestibuloplasty exten graft					
D7410	E	Rad exc lesion up to 1.25 cm					
D7420	E	Lesion > 1.25 cm					
D7430	E	Exc benign tumor to 1.25 cm					
D7431	E	Benign tumor exc > 1.25 cm					
D7440	E	Malig tumor exc to 1.25 cm					
D7441	E	Malig tumor > 1.25 cm					
D7450	E	Rem odontogen cyst to 1.25cm					
D7451	E	Rem odontogen cyst > 1.25 cm					
D7460	E	Rem nonodonto cyst to 1.25cm					
D7461	E	Rem nonodonto cyst > 1.25 cm					
D7465	E	Lesion destruction					
D7471	E	Rem exostosis any site					
D7480	E	Partial ostectomy					
D7490	E	Mandible resection					
D7510	E	I&d abec intraoral soft tiss					
D7520	E	I&d abscess extraoral					
D7530	E	Removal fb skin/areolar tiss					
D7540	E	Removal of fb reaction					
D7550	E	Removal of sloughed off bone					
D7560	E	Maxillary sinusotomy					
D7610	E	Maxilla open reduct simple					
D7620	E	Clsd reduct simpl maxilla fx					
D7630	E	Open red simpl mandible fx					
D7640	E	Clsd red simpl mandible fx					
D7650	E	Open red simp malar/zygom fx					
D7660	E	Clsd red simp malar/zygom fx					
D7670	E	Closed reductn splint alveolus					
D7680	E	Reduct simple facial bone fx					
D7710	E	Maxilla open reduct compound					
D7720	E	Clsd reduct compd maxilla fx					
D7730	E	Open reduct compd mandible fx					
D7740	E	Clsd reduct compd mandible fx					
D7750	E	Open red comp malar/zygma fx					
D7760	E	Clsd red comp malar/zygma fx					
D7770	E	Open reduc compd alveolus fx					
D7780	E	Reduct compnd facial bone fx					
D7810	E	Tmj open reduct-dislocation					
D7820	E	Closed tmp manipulation					
D7830	E	Tmj manipulation under anest					
D7840	E	Removal of tmj condyle					
D7850	E	Tmj meniscectomy					
D7852	E	Tmj repair of joint disc					
D7854	E	Tmj excien of joint membrane					
D7856	E	Tmj cutting of a muscle					
D7858	E	Tmj reconstruction					
D7860	E	Tmj cutting into joint					
D7865	E	Tmj reshaping components					
D7870	E	Tmj aspiration joint fluid					
D7871	E	Lysis + lavage w catheters					
D7872	E	Tmj diagnostic arthroscopy					
D7873	E	Tmj arthroscopy lysis adhesn					
D7874	E	Tmj arthroscopy disc repositi					
D7875	E	Tmj arthroscopy synovectomy					
D7876	E	Tmj arthroscopy discectomy					
D7877	E	Tmj arthroscopy debridement					
D7880	E	Occlusal orthotic appliance					
D7899	E	Tmj unspecified therapy					
D7910	E	Dent sutur recent wnd to 5cm					
D7911	E	Dental suture wound to 5 cm					
D7912	E	Suture complicate wnd > 5 cm					
D7920	E	Dental skin graft					
D7940	S	Reshaping bone orthognathic	0330	1.51	$73.22	$14.64	$14.64
D7941	E	Bone cutting ramus closed					
D7943	E	Cutting ramus open w/graft					
D7944	E	Bone cutting segmented					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
D7945	E	Bone cutting body mandible					
D7946	E	Reconstruction maxilla total					
D7947	E	Reconstruct maxilla segment					
D7948	E	Reconstruct midface no graft					
D7949	E	Reconstruct midface w/graft					
D7950	E	Mandible graft					
D7955	E	Repair maxillofacial defects					
D7960	E	Frenulectomy/frenulotomy					
D7970	E	Excision hyperplastic tissue					
D7971	E	Excision pericoronal gingiva					
D7980	E	Sialolithotomy					
D7981	E	Excision of salivary gland					
D7982	E	Sialodochoplasty					
D7983	E	Closure of salivary fistula					
D7990	E	Emergency tracheotomy					
D7991	E	Dental coronoidectomy					
D7995	E	Synthetic graft facial bones					
D7996	E	Implant mandible for augment					
D7997	E	Appliance removal					
D7999	E	Oral surgery procedure					
D8010	E	Limited dental tx primary					
D8020	E	Limited dental tx transition					
D8030	E	Limited dental tx adolescent					
D8040	E	Limited dental tx adult					
D8050	E	Intercep dental tx primary					
D8060	E	Intercep dental tx transitn					
D8070	E	Compre dental tx transition					
D8080	E	Compre dental tx adolescent					
D8090	E	Compre dental tx adult					
D8210	E	Orthodontic rem appliance tx					
D8220	E	Fixed appliance therapy habt					
D8660	E	Preorthodontic tx visit					
D8670	E	Periodic orthodontc tx visit					
D8680	E	Orthodontic retention					
D8690	E	Orthodontic treatment					
D8691	E	Repair ortho appliance					
D8692	E	Replacement retainer					
D8999	E	Orthodontic procedure					
D9110	N	Tx dental pain minor proc					
D9210	E	Dent anesthesia w/o surgery					
D9211	E	Regional block anesthesia					
D9212	E	Trigeminal block anesthesia					
D9215	E	Local anesthesia					
D9220	E	General anesthesia					
D9221	E	General anesthesia ea ad 15m					
D9230	N	Analgesia					
D9241	E	Intravenous sedation					
D9242	E	IV sedation ea ad 30 m					
D9248	E	Sedation (non-iv)					
D9310	E	Dental consultation					
D9410	E	Dental house call					
D9420	E	Hospital call					
D9430	E	Office visit during hours					
D9440	E	Office visit after hours					
D9610	E	Dent therapeutic drug inject					
D9630	S	Other drugs/medicaments	0330	1.51	$73.22	$14.64	$14.64
D9910	E	Dent appl desensitizing med					
D9911	E	Appl desensitizing resin					
D9920	E	Behavior management					
D9930	S	Treatment of complications	0330	1.51	$73.22	$14.64	$14.64
D9940	S	Dental occlusal guard	0330	1.51	$73.22	$14.64	$14.64
D9941	E	Fabrication athletic guard					
D9950	S	Occlusion analysis	0330	1.51	$73.22	$14.64	$14.64
D9951	S	Limited occlusal adjustment	0330	1.51	$73.22	$14.64	$14.64
D9952	S	Complete occlusal adjustment	0330	1.51	$73.22	$14.64	$14.64
D9970	E	Enamel microabrasion					
D9971	E	Odontoplasty 1–2 teeth					
D9972	E	Extrnl bleaching per arch					
D9973	E	Extrnl bleaching per tooth					
D9974	E	Intrnl bleaching per tooth					
D9999	E	Adjunctive procedure					
E0100	A	Cane adjust/fixed with tip					
E0105	A	Cane adjust/fixed quad/3 pro					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
E0110	A	Crutch forearm pair					
E0111	A	Crutch forearm each					
E0112	A	Crutch underarm pair wood					
E0113	A	Crutch underarm each wood					
E0114	A	Crutch underarm pair no wood					
E0116	A	Crutch underarm each no wood					
E0130	A	Walker rigid adjust/fixed ht					
E0135	A	Walker folding adjust/fixed					
E0141	A	Rigid walker wheeled wo seat					
E0142	A	Walker rigid wheeled with se					
E0143	A	Walker folding wheeled w/o s					
E0144	A	Enclosed walker w rear seat					
E0145	A	Walker whled seat/crutch att					
E0146	A	Folding walker wheels w seat					
E0147	A	Walker variable wheel resist					
E0153	A	Forearm crutch platform atta					
E0154	A	Walker platform attachment					
E0155	A	Walker wheel attachment, pair					
E0156	A	Walker seat attachment					
E0157	A	Walker crutch attachment					
E0158	A	Walker leg extenders set of4					
E0159	A	Brake for wheeled walker					
E0160	A	Sitz type bath or equipment					
E0161	A	Sitz bath/equipment w/faucet					
E0162	A	Sitz bath chair					
E0163	A	Commode chair stationry fxd					
E0164	A	Commode chair mobile fixed a					
E0165	A	Commode chair stationry det					
E0166	A	Commode chair mobile detach					
E0167	A	Commode chair pail or pan					
E0175	A	Commode chair foot rest					
E0176	A	Air pressre pad/cushion nonp					
E0177	A	Water press pad/cushion nonp					
E0178	A	Gel pressre pad/cushion nonp					
E0179	A	Dry pressre pad/cushion nonp					
E0180	A	Press pad alternating w pump					
E0181	A	Press pad alternating w/pum					
E0182	A	Pressure pad alternating pum					
E0184	A	Dry pressure mattress					
E0185	A	Gel pressure mattress pad					
E0186	A	Air pressure mattress					
E0187	A	Water pressure mattress					
E0188	E	Synthetic sheepskin pad					
E0189	E	Lambswool sheepskin pad					
E0191	A	Protector heel or elbow					
E0192	A	Pad wheelchr low press/posit					
E0193	A	Powered air flotation bed					
E0194	A	Air fluidized bed					
E0196	A	Gel pressure mattress					
E0197	A	Air pressure pad for mattres					
E0198	A	Water pressure pad for mattr					
E0199	A	Dry pressure pad for mattres					
E0200	A	Heat lamp without stand					
E0202	A	Phototherapy light w/photom					
E0205	A	Heat lamp with stand					
E0210	A	Electric heat pad standard					
E0215	A	Electric heat pad moist					
E0217	A	Water circ heat pad w pump					
E0218	A	Water circ cold pad w pump					
E0220	A	Hot water bottle					
E0225	A	Hydrocollator unit					
E0230	A	Ice cap or collar					
E0235	A	Paraffin bath unit portable					
E0236	A	Pump for water circulating p					
E0238	A	Heat pad non-electric moist					
E0239	A	Hydrocollator unit portable					
E0241	E	Bath tub wall rail					
E0242	E	Bath tub rail floor					
E0243	E	Toilet rail					
E0244	E	Toilet seat raised					
E0245	E	Tub stool or bench					
E0246	A	Transfer tub rail attachment					
E0249	A	Pad water circulating heat u					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
E0250	A	Hosp bed fixed ht w/mattres					
E0251	A	Hosp bed fixd ht w/o mattres					
E0255	A	Hospital bed var ht w/mattr					
E0256	A	Hospital bed var ht w/o matt					
E0260	A	Hosp bed semi-electr w/matt					
E0261	A	Hosp bed semi-electr w/o mat					
E0265	A	Hosp bed total electr w/mat					
E0266	A	Hosp bed total elec w/o matt					
E0270	A	Hospital bed institutional t					
E0271	A	Mattress innerspring					
E0272	A	Mattress foam rubber					
E0273	A	Bed board					
E0274	A	Over-bed table					
E0275	A	Bed pan standard					
E0276	A	Bed pan fracture					
E0277	A	Powered pres-redu air mattrs					
E0280	A	Bed cradle					
E0290	A	Hosp bed fx ht w/o rails w/m					
E0291	A	Hosp bed fx ht w/o rail w/o					
E0292	A	Hosp bed var ht w/o rail w/o					
E0293	A	Hosp bed var ht w/o rail w/					
E0294	A	Hosp bed semi-elect w/mattr					
E0295	A	Hosp bed semi-elect w/o matt					
E0296	A	Hosp bed total elect w/matt					
E0297	A	Hosp bed total elect w/o mat					
E0305	A	Rails bed side half length					
E0310	A	Rails bed side full length					
E0315	A	Bed accessory brd/tbl/supprt					
E0325	A	Urinal male jug-type					
E0326	A	Urinal female jug-type					
E0350	A	Control unit bowel system					
E0352	A	Disposable pack w/bowel syst					
E0370	A	Air elevator for heel					
E0371	A	Nonpower mattress overlay					
E0372	A	Powered air mattress overlay					
E0373	A	Nonpowered pressure mattress					
E0424	A	Stationary compressed gas 02					
E0425	A	Gas system stationary compre					
E0430	A	Oxygen system gas portable					
E0431	A	Portable gaseous 02					
E0434	A	Portable liquid 02					
E0435	A	Oxygen system liquid portabl					
E0439	A	Stationary liquid 02					
E0440	A	Oxygen system liquid station					
E0441	A	Oxygen contents gas per/unit					
E0442	A	Oxygen contents liq per/unit					
E0443	A	Port 02 contents gas/unit					
E0444	A	Port 02 contents liq/unit					
E0450	A	Volume vent stationary/porta					
E0455	A	Oxygen tent excl croup/ped t					
E0457	A	Chest shell					
E0459	A	Chest wrap					
E0460	A	Neg press vent portab/stain					
E0462	A	Rocking bed w/ or w/o side r					
E0480	A	Percussor elect/pneum home m					
E0500	A	Ippb all types					
E0550	A	Humidif extens supple w ippb					
E0555	A	Humidifier for use w/regula					
E0560	A	Humidifier supplemental w/i					
E0565	A	Compressor air power source					
E0570	A	Nebulizer with compression					
E0575	A	Nebulizer ultrasonic					
E0580	A	Nebulizer for use w/regulat					
E0585	A	Nebulizer w/compressor & he					
E0590	A	Dispensing fee dme neb drug					
E0600	A	Suction pump portab hom modl					
E0601	A	Cont airway pressure device					
E0602	A	Breast pump					
E0605	A	Vaporizer room type					
E0606	A	Drainage board postural					
E0607	A	Blood glucose monitor home					
E0608	A	Apnea monitor					
E0609	A	Blood gluc mon w/special fea					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
E0610	A	Pacemaker monitr audible/vis					
E0615	A	Pacemaker monitr digital/vis					
E0616	A	Cardiac event recorder					
E0621	A	Patient lift sling or seat					
E0625	A	Patient lift bathroom or toi					
E0627	A	Seat lift incorp lift-chair					
E0628	A	Seat lift for pt furn-electr					
E0629	A	Seat lift for pt furn-non-el					
E0630	A	Patient lift hydraulic					
E0635	A	Patient lift electric					
E0650	A	Pneuma compressor non-segment					
E0651	A	Pneum compressor segmental					
E0652	A	Pneum compres w/cal pressure					
E0655	A	Pneumatic appliance half arm					
E0660	A	Pneumatic appliance full leg					
E0665	A	Pneumatic appliance full arm					
E0666	A	Pneumatic appliance half leg					
E0667	A	Seg pneumatic appl full leg					
E0668	A	Seg pneumatic appl full arm					
E0669	A	Seg pneumatic appli half leg					
E0671	A	Pressure pneum appl full leg					
E0672	A	Pressure pneum appl full arm					
E0673	A	Pressure pneum appl half leg					
E0690	A	Ultraviolet cabinet					
E0700	A	Safety equipment					
E0710	A	Restraints any type					
E0720	A	Tens two lead					
E0730	A	Tens four lead					
E0731	A	Conductive garment for tens/					
E0740	A	Incontinence treatment systm					
E0744	A	Neuromuscular stim for scoli					
E0745	A	Neuromuscular stim for shock					
E0746	A	Electromyograph biofeedback					
E0747	A	Elec osteogen stim not spine					
E0748	A	Elec osteogen stim spinal					
E0749	A	Elec osteogen stim implanted					
E0751	A	Pulse generator or receiver					
E0753	A	Neurostimulator electrodes					
E0755	A	Electronic salivary reflex s					
E0760	A	Osteogen ultrasound stimltor					
E0776	A	Iv pole					
E0779	A	Amb infusion pump mechanical					
E0780	A	Mech amb infusion pump <8hrs					
E0781	A	External ambulatory infus pu					
E0782	A	Non-programble infusion pump					
E0783	A	Programmable infusion pump					
E0784	A	Ext amb infusn pump insulin					
E0785	A	Replacement impl pump cathet					
E0791	A	Parenteral infusion pump sta					
E0840	A	Tract frame attach headboard					
E0850	A	Traction stand free standing					
E0855	A	Cervical traction equipment					
E0860	A	Tract equip cervical tract					
E0870	A	Tract frame attach footboard					
E0880	A	Trac stand free stand extrem					
E0890	A	Traction frame attach pelvic					
E0900	A	Trac stand free stand pelvic					
E0910	A	Trapeze bar attached to bed					
E0920	A	Fracture frame attached to b					
E0930	A	Fracture frame free standing					
E0935	A	Exercise device passive moti					
E0940	A	Trapeze bar free standing					
E0941	A	Gravity assisted traction de					
E0942	A	Cervical head harness/halter					
E0943	A	Cervical pillow					
E0944	A	Pelvic belt/harness/boot					
E0945	A	Belt/harness extremity					
E0946	A	Fracture frame dual w cross					
E0947	A	Fracture frame attachmnts pe					
E0948	A	Fracture frame attachmnts ce					
E0950	A	Tray					
E0951	A	Loop heel					
E0952	A	Loop tie					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
E0953	A	Pneumatic tire					
E0954	A	Wheelchair semi-pneumatic ca					
E0958	A	Whichr att-conv 1 arm drive					
E0959	A	Amputee adapter					
E0961	A	Wheelchair brake extension					
E0962	A	Wheelchair 1 inch cushion					
E0963	A	Wheelchair 2 inch cushion					
E0964	A	Wheelchair 3 inch cushion					
E0965	A	Wheelchair 4 inch cushion					
E0966	A	Wheelchair head rest extensi					
E0967	A	Wheelchair hand rims					
E0968	A	Wheelchair commode seat					
E0969	A	Wheelchair narrowing device					
E0970	A	Wheelchair no. 2 footplates					
E0971	A	Wheelchair anti-tipping devi					
E0972	A	Transfer board or device					
E0973	A	Wheelchair adjustabl height					
E0974	A	Wheelchair grade-aid					
E0975	A	Wheelchair reinforced seat u					
E0976	A	Wheelchair reinforced back u					
E0977	A	Wheelchair wedge cushion					
E0978	A	Wheelchair belt w/airplane b					
E0979	A	Wheelchair belt with velcro					
E0980	A	Wheelchair safety vest					
E0990	A	Whellchair elevating leg res					
E0991	A	Wheelchair upholstry seat					
E0992	A	Wheelchair solid seat insert					
E0993	A	Wheelchair back upholstery					
E0994	A	Wheelchair arm rest					
E0995	A	Wheelchair calf rest					
E0996	A	Wheelchair tire solid					
E0997	A	Wheelchair caster w/a fork					
E0998	A	Wheelchair caster w/o a fork					
E0999	A	Wheelchr pneumatic tire w/wh					
E1000	A	Wheelchair tire pneumatic ca					
E1001	A	Wheelchair wheel					
E1031	A	Rollabout chair with casters					
E1050	A	Whelchr fxd full length arms					
E1060	A	Wheelchair detachable arms					
E1065	A	Wheelchair power attachment					
E1066	A	Wheelchair battery charger					
E1069	A	Wheelchair deep cycle batter					
E1070	A	Wheelchair detachable foot r					
E1083	A	Hemi-wheelchair fixed arms					
E1084	A	Hemi-wheelchair detachable a					
E1085	A	Hemi-wheelchair fixed arms					
E1086	A	Hemi-wheelchair detachable a					
E1087	A	Wheelchair lightwt fixed arm					
E1088	A	Wheelchair lightweight det a					
E1089	A	Wheelchair lightwt fixed arm					
E1090	A	Wheelchair lightweight det a					
E1091	A	Wheelchair youth					
E1092	A	Wheelchair wide w/leg rests					
E1093	A	Wheelchair wide w/foot rest					
E1100	A	Whchr s-recl fxd arm leg res					
E1110	A	Wheelchair semi-recl detach					
E1130	A	Whichr stand fxd arm ft rest					
E1140	A	Wheelchair standard detach a					
E1150	A	Wheelchair standard w/leg r					
E1160	A	Wheelchair fixed arms					
E1170	A	Whichr ampu fxd arm leg rest					
E1171	A	Wheelchair amputee w/o leg r					
E1172	A	Wheelchair amputee detach ar					
E1180	A	Wheelchair amputee w/foot r					
E1190	A	Wheelchair amputee w/leg re					
E1195	A	Wheelchair amputee heavy dut					
E1200	A	Wheelchair amputee fixed arm					
E1210	A	Whichr moto ful arm leg rest					
E1211	A	Wheelchair motorized w/det					
E1212	A	Wheelchair motorized w full					
E1213	A	Wheelchair motorized w/det					
E1220	A	Whichr special size/constrc					
E1221	A	Wheelchair spec size w foot					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
E1222	A	Wheelchair spec size w/leg					
E1223	A	Wheelchair spec size w foot					
E1224	A	Wheelchair spec size w/leg					
E1225	A	Wheelchair spec sz semi-recl					
E1226	A	Wheelchair spec sz full-recl					
E1227	A	Wheelchair spec sz spec ht a					
E1228	A	Wheelchair spec sz spec ht b					
E1230	A	Power operated vehicle					
E1240	A	Whchr litwt det arm leg rest					
E1250	A	Wheelchair lightwt fixed arm					
E1260	A	Wheelchair lightwt foot rest					
E1270	A	Wheelchair lightweight leg r					
E1280	A	Whchr h-duty det arm leg res					
E1285	A	Wheelchair heavy duty fixed					
E1290	A	Wheelchair hvy duty detach a					
E1295	A	Wheelchair heavy duty fixed					
E1296	A	Wheelchair special seat heig					
E1297	A	Wheelchair special seat dept					
E1298	A	Wheelchair spec seat depth/w					
E1300	A	Whirlpool portable					
E1310	A	Whirlpool non-portable					
E1340	A	Repair for DME, per 15 min					
E1353	A	Oxygen supplies regulator					
E1355	A	Oxygen supplies stand/rack					
E1372	A	Oxy suppl heater for nebuliz					
E1375	A	Oxygen suppl nebulizer porta					
E1377	A	Oxygen concentrator to 244 c					
E1378	A	Oxygen concentrator to 488 c					
E1379	A	Oxygen concentrator to 732 c					
E1380	A	Oxygen concentrator to 976 c					
E1381	A	Oxygen concentrat to 1220 cu					
E1382	A	Oxygen concentrat to 1464 cu					
E1383	A	Oxygen concentrat to 1708 cu					
E1384	A	Oxygen concentrat to 1952 cu					
E1385	A	Oxygen concentrator > 1952 c					
E1390	A	Oxygen concentrator					
E1399	A	Durable medical equipment mi					
E1405	A	O2/water vapor enrich w/heat					
E1406	A	O2/water vapor enrich w/o he					
E1510	A	Kidney dialysate delivry sys					
E1520	A	Heparin infusion pump for di					
E1530	A	Air bubble detector for dial					
E1540	A	Pressure alarm for dialysis					
E1550	A	Bath conductivity meter					
E1560	A	Blood leak detector for dial					
E1570	A	Adjustable chair for esrd pt					
E1575	A	Transducer protector/fluid b					
E1580	A	Unipuncture control system					
E1590	A	Hemodialysis machine					
E1592	A	Auto interm peritoneal dialy					
E1594	A	Cycler dialysis machine					
E1600	A	Deliv/install equip for dial					
E1610	A	Reverse osmosis water purifi					
E1615	A	Deionizer water purification					
E1620	A	Blood pump for dialysis					
E1625	A	Water softening system					
E1630	A	Reciprocating peritoneal dia					
E1632	A	Wearable artificial kidney					
E1635	A	Compact travel hemodialyzer					
E1636	A	Sorbent cartridges for dialy					
E1640	A	Replacement components for d					
E1699	A	Dialysis equipment unspecifi					
E1700	A	Jaw motion rehab system					
E1701	A	Repl cushions for jaw motion					
E1702	A	Repl measr scales jaw motion					
E1800	A	Adjust elbow ext/flex device					
E1805	A	Adjust wrist ext/flex device					
E1810	A	Adjust knee ext/flex device					
E1815	A	Adjust ankle ext/flex device					
E1820	A	Soft interface material					
E1825	A	Adjust finger ext/flex devc					
E1830	A	Adjust toe ext/flex device					
E1900	A	Speech communication device					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
G0001	A	Drawing blood for specimen					
G0002	N	Temporary urinary catheter					
G0004	S	ECG transm phys review & int	0100	1.70	$82.43	$71.57	$16.49
G0005	S	ECG 24 hour recording	0099	0.38	$18.43	$14.66	$3.69
G0006	S	ECG transmission & analysis	0100	1.70	$82.43	$71.57	$16.49
G0007	N	ECG phy review & interpret					
[2] G0008	X	Admin influenza virus vac	0354	0.13	$6.19		
G0009	N	Admin pneumococcal vaccine					
G0010	N	Admin hepatitis b vaccine					
G0015	S	Post symptom ECG tracing	0099	0.38	$18.43	$14.66	$3.69
G0016	N	Post symptom ECG md review					
G0025	X	Collagen skin test kit	0343	0.45	$21.82	$12.16	$4.36
G0026	A	Fecal leukocyte examination					
G0027	A	Semen analysis					
G0030	S	PET imaging prev PET single	0285	15.06	$730.22	$415.21	$146.04
G0031	S	PET imaging prev PET multple	0285	15.06	$730.22	$415.21	$146.04
G0032	S	PET follow SPECT 78464 singl	0285	15.06	$730.22	$415.21	$146.04
G0033	S	PET follow SPECT 78464 mult	0285	15.06	$730.22	$415.21	$146.04
G0034	S	PET follow SPECT 78465 singl	0285	15.06	$730.22	$415.21	$146.04
G0035	S	PET follow SPECT 78465 mult	0285	15.06	$730.22	$415.21	$146.04
G0036	S	PET follow comry angio sing	0285	15.06	$730.22	$415.21	$146.04
G0037	S	PET follow comry angio mult	0285	15.06	$730.22	$415.21	$146.04
G0038	S	PET follow myocard perf sing	0285	15.06	$730.22	$415.21	$146.04
G0039	S	PET follow myocard perf mult	0285	15.06	$730.22	$415.21	$146.04
G0040	S	PET follow stress echo singl	0285	15.06	$730.22	$415.21	$146.04
G0041	S	PET follow stress echo mult	0285	15.06	$730.22	$415.21	$146.04
G0042	S	PET follow ventriculogm sing	0285	15.06	$730.22	$415.21	$146.04
G0043	S	PET follow ventriculogm mult	0285	15.06	$730.22	$415.21	$146.04
G0044	S	PET following rest ECG singl	0285	15.06	$730.22	$415.21	$146.04
G0045	S	PET following rest ECG mult	0285	15.06	$730.22	$415.21	$146.04
G0046	S	PET follow stress ECG singl	0285	15.06	$730.22	$415.21	$146.04
G0047	S	PET follow stress ECG mult	0285	15.06	$730.22	$415.21	$146.04
G0050	S	Residual urine by ultrasound	0265	1.17	$56.73	$38.08	$11.35
G0101	V	CA screen; pelvic/breast exam	0601	1.00	$48.49	$9.70	$9.70
G0102	E	Prostate ca screening; dre					
G0103	E	Psa, total screening					
[1] G0104	S	CA screen; flexi sigmoidscope	0158	7.98	$386.93		$96.73
[1] G0105	S	Colorectal scrn; hi risk ind	0159	2.83	$137.22		$34.31
[2] G0106	S	Colon CA screen; barium enema	0157	1.79	$86.79		$17.36
G0107	A	CA screen; fecal blood test					
G0108	A	Diab manage trn per indiv					
G0109	A	Diab manage trn ind/group					
G0110	A	Nett pulm-rehab educ; ind					
G0111	A	Nett pulm-rehab educ; group					
G0112	A	Nett; nutrition guid, initial					
G0113	A	Nett; nutrition guid, subseqnt					
G0114	A	Nett; psychosocial consult					
G0115	A	Nett; psychological testing					
G0116	A	Nett; psychosocial counsel					
[2] G0120	S	Colon ca scrn; barium enema	0157	1.79	$86.79		$17.36
G0121	E	Colon ca scrn not hi rsk ind					
G0122	E	Colon ca scrn; barium enema					
G0123	E	Screen cerv/vag thin layer					
G0124	E	Screen c/v thin layer by MD					
[2] G0125	T	Lung image (PET)	0980	38.67	$1,875.00		$375.00
[2] G0126	T	Lung image (PET) staging	0980	38.67	$1,875.00		$375.00
G0127	T	Trim nail(s)	0009	0.74	$35.88	$9.63	$7.18
G0128	E	CORF skilled nursing service					
G0129	P	Partial hosp prog service	0033	4.17	$202.19	$48.17	$40.44
G0130	X	Single energy x-ray study	0261	1.38	$66.91	$38.77	$13.38
G0131	X	CT scan, bone density study	0261	1.38	$66.91	$38.77	$13.38
G0132	X	CT scan, bone density study	0261	1.38	$66.91	$38.77	$13.38
G0141	E	Scr c/v cyto, autosys and md					
G0143	E	Scr c/v cyto, thinlayer, rescr					
G0144	E	Scr c/v cyto, thinlayer, rescr					
G0145	E	Scr c/v cyto, thinlayer, rescr					
G0147	E	Scr c/v cyto, automated sys					
G0148	E	Scr c/v cyto, autosys, rescr					
G0151	E	HHCP-serv of pt, ea 15 min					
G0152	E	HHCP-serv of ot, ea 15 min					
G0153	E	HHCP-svs of s/l path, ea 15mn					
G0154	E	HHCP-svs of rn, ea 15 min					
G0155	E	HHCP-svs of csw, ea 15 min					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
G0156	E	HHCP-svs of aide, ea 15 min					
G0159	T	Perc declot dialysis graft	0088	28.49	$1,284.42	$678.68	$256.88
G0160	C	Cryo. ablation, prostate					
G0161	X	Echo guide for cryo probes	0268	2.23	$106.13	$89.51	$21.63
[2]G0163	T	Pet for rec of colorectal ca	0980	38.67	$1,875.00		$375.00
[2]G0164	T	Pet for lymphoma staging	0980	38.67	$1,875.00		$375.00
[2]G0165	T	Pet, rec of melanoma/met ca	0980	38.67	$1,875.00		$375.00
[2]G0166	T	Extrnl counterpulse, per tx	0972	3.09	$149.83		$29.97
G0167	S	Hyperbaric oz tx; no md reqrd	0031	3.00	$145.46	$140.85	$29.09
G0168	T	Wound closure by adhesive	0026	12.11	$587.18	$277.92	$117.44
G0169	T	Removal tissue; no anesthesia	0026	12.11	$587.18	$277.92	$117.44
G0170	T	Skin biograft	0026	12.11	$587.18	$277.92	$117.44
G0171	T	Skin biograft add-on	0026	12.11	$587.18	$277.92	$117.44
G0172	P	Partial hosp prog service	0033	4.17	$202.19	$48.17	$40.44
G0173	S	Stereotactic, one session	0302	8.21	$398.08	$216.55	$79.62
G0174	S	Stereotactic, mult session	0302	8.21	$398.08	$216.55	$79.62
G0175	V	Multidisciplinary team visit	0603	1.66	$80.49	$16.29	$16.10
J0120	N	Tetracyclin injection					
J0130	N	Abciximab injection					
[2]J0150	X	Injection adenosine 6 MG	0917	0.36	$17.46		$3.49
J0151	E	Adenosine injection					
J0170	N	Adrenalin epinephrin inject					
J0190	N	Inj biperiden lactate/5 mg					
J0200	N	Alatrofloxacin mesylate					
[3]J0205	X	Alglucerase injection	0900				$5.14
[3]J0207	X	Amifostine	7000				$41.99
J0210	N	Methyldopate hcl injection					
[3]J0256	X	Alpha 1 proteinase inhibitor	0901				$15.22
J0270	E	Alprostadil for injection					
J0275	E	Alprostadil urethral suppos					
J0280	N	Aminophyllin 250 MG inj					
J0285	N	Amphotericin B					
[3]J0286	X	Amphotericin B lipid complex	7001				$12.12
J0290	N	Ampicillin 500 MG inj					
J0295	N	Ampicillin sodium per 1.5 gm					
J0300	N	Amobarbital 125 MG inj					
J0330	N	Succinycholine chloride inj					
J0340	N	Nandrolon phenpropionate inj					
J0350	N	Injection anistreplase 30 u					
J0360	N	Hydralazine hcl injection					
J0380	N	Inj metaraminol bitartrate					
J0390	N	Chloroquine injection					
J0395	N	Arbutamine HCl injection					
J0400	N	Inj trimethaphan camsylate					
J0456	N	Azithromycin					
J0460	N	Atropine sulfate injection					
J0470	N	Dimecaprol injection					
J0475	N	Baclofen 10 MG injection					
[3]J0476	X	Baclofen intrathecal trial	7021				$.10
J0500	N	Dicyclomine injection					
J0510	N	Benzquinamide injection					
J0515	N	Inj benztropine mesylate					
J0520	N	Bethanechol chloride inject					
J0530	N	Penicillin g benzathine inj					
J0540	N	Penicillin g benzathine inj					
J0550	N	Penicillin g benzathine inj					
J0560	N	Penicillin g benzathine inj					
J0570	N	Penicillin g benzathine inj					
J0580	N	Penicillin g benzathine inj					
[3]J0585	X	Botulinum toxin a per unit	0902				$56.05
J0590	N	Ethylnorepinephrine hcl inj					
J0600	N	Edetate calcium disodium inj					
J0610	N	Calcium gluconate injection					
J0620	N	Calcium glycer & lact/10 ML					
J0630	N	Calcitonin salmon injection					
J0635	N	Calcitriol injection					
[3]J0640	X	Leucovorin calcium injection	0725				$1.07
J0670	N	Inj mepivacaine HCL/10 ml					
J0690	N	Cefazolin sodium injection					
J0694	N	Cefoxitin sodium injection					
J0695	N	Cefonocid sodium injection					
J0696	N	Ceftriaxone sodium injection					
J0697	N	Sterile cefuroxime injection					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
J0698	N	Cefotaxime sodium injection					
J0702	N	Betamethasone acet & sod phosp					
J0704	N	Betamethasone sod phosp/4 MG					
J0710	N	Cephapirin sodium injection					
J0713	N	Inj ceftazidime per 500 mg					
J0715	N	Ceftizoxime sodium/500 MG					
J0720	N	Chloramphenicol sodium injec					
J0725	N	Chorionic gonadotropin/1000u					
J0730	M	Chlorpheniramin maleate inj					
[3]J0735	X	Clonidine hydrochloride	7002				$4.17
J0740	N	Cidofovir injection					
J0743	N	Cilastatin sodium injection					
J0745	N	Inj codeine phosphate/30 MG					
J0760	N	Colchicine injection					
J0770	N	Colistimethate sodium inj					
J0780	N	Prochlorperazine injection					
J0800	N	Corticotropin injection					
J0810	N	Cortisone injection					
J0835	N	Inj cosyntropin per 0.25 MG					
[3]J0850	X	Cytomegalovirus imm IV/vial	0903				$54.11
J0895	N	Deferoxamine mesylate inj					
J0900	N	Testosterone enanthate inj					
J0945	N	Brompheniramine maleate inj					
J0970	N	Estradiol valerate injection					
J1000	N	Depo-estradiol cypionate inj					
J1020	N	Methylprednisolone 20 MG inj					
J1030	N	Methylprednisolone 40 MG inj					
J1040	N	Methylprednisolone 80 MG inj					
J1050	N	Medroxyprogesterone inj					
J1055	E	Medroxyprogester acetate inj					
J1060	N	Testosterone cypionate 1 ML					
J1070	N	Testosterone cypionat 100 MG					
J1080	N	Testosterone cypionat 200 MG					
J1090	N	Testosterone cypionate 50 MG					
J1095	N	Inj dexamethasone acetate					
J1100	N	Dexamethasone sodium phos					
J1110	N	Inj dihydroergotamine mesylt					
J1120	N	Acetazolamid sodium injectio					
J1160	N	Digoxin injection					
J1165	N	Phenytoin sodium injection					
J1170	N	Hydromorphone injection					
J1180	N	Dyphylline injection					
[3]J1190	X	Dexrazoxane HCl injection	0726				$18.81
J1200	N	Diphenhydramine hcl injectio					
J1205	N	Chlorothiazide sodium inj					
J1212	N	Dimethyl sulfoxide 50% 50 ML					
J1230	N	Methadone injection					
J1240	N	Dimenhydrinate injection					
[2]J1245	X	Dipyridamole injection	0917	0.36	$17.46		$3.49
J1250	N	Inj dobutamine HCL/250 mg					
[3]J1260	X	Dolasetron mesylate	0750				$1.94
J1320	N	Amitriptyline injection					
[3]J1325	X	Epoprostenol injection	7003				$2.23
J1327	N	Eptifibatide injection					
J1330	N	Ergonovine maleate injection					
J1362	N	Erythromycin glucep/250 MG					
J1364	N	Erythro lactobionate/500 MG					
J1380	N	Estradiol valerate 10 MG inj					
J1390	N	Estradiol valerate 20 MG inj					
J1410	N	Inj estrogen conjugate 25 MG					
J1435	N	Injection estrone per 1 MG					
J1436	X	Etidronate disodium inj	0727				$9.31
J1438	N	Etanercept injection					
[3]J1440	X	Filgrastim 300 mcg injection	0728				$25.21
J1441	E	Filgrastim 480 mcg injection					
J1450	N	Fluconazole					
J1455	N	Foscarnet sodium injection					
J1460	N	Gamma globulin 1 CC inj					
J1470	E	Gamma globulin 2 CC inj					
J1480	E	Gamma globulin 3 CC inj					
J1490	E	Gamma globulin 4 CC inj					
J1500	E	Gamma globulin 5 CC inj					
J1510	E	Gamma globulin 6 CC inj					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
J1520	E	Gamma globulin 7 CC inj					
J1530	E	Gamma globulin 8 CC inj					
J1540	E	Gamma globulin 9 CC inj					
J1550	E	Gamma globulin 10 CC inj					
J1560	E	Gamma globulin > 10 CC inj					
[3]J1561	X	Immune globulin 500 mg	0905				$6.40
[3]J1562	X	Immune globulin 5 gms	7004				$45.48
[3]J1565	X	RSV-ivig	0906				$85.53
[2]J1570	X	Ganciclovir sodium injection	0907	0.51	$24.73		$4.95
J1580	N	Garamycin gentamicin inj					
J1600	N	Gold sodium thiomaleate inj					
J1610	N	Glucagon hydrochloride/1 MG					
[3]J1620	X	Gonadorelin hydroch/100 mcg	7005				$9.12
[3]J1626	X	Granisetron HCl injection	0784				$2.33
J1630	N	Haloperidol injection					
J1631	N	Haloperidol decanoate inj					
J1642	N	Inj heparin sodium per 10 u					
J1644	N	Inj heparin sodium per 1000u					
J1645	N	Dalteparin sodium					
J1650	N	Inj enoxaparin sodium					
[2]J1670	X	Tetanus immune globulin inj	0908	0.90	$43.64		$8.73
J1690	N	Prednisolone tebutate inj					
J1700	N	Hydrocortisone acetate inj					
J1710	N	Hydrocortisone sodium ph inj					
J1720	N	Hydrocortisone sodium succ i					
J1730	N	Diazoxide injection					
J1739	N	Hydroxyprogesterone cap 125					
J1741	N	Hydroxyprogesterone cap 250					
J1742	N	Ibutilide fumarate injection					
[3]J1745	X	Infliximab injection	7043				$6.89
J1750	N	Iron dextran					
[3]J1785	X	Injection imiglucerase/unit	0916				$.56
J1790	N	Droperidol injection					
J1800	N	Propranolol injection					
J1810	N	Droperidol/fentanyl inj					
J1820	N	Insulin injection					
[3]J1825	X	Interferon beta-1a	0909				$28.70
[3]J1830	X	Interferon beta-1b/.25 MG	0910				$8.44
J1840	N	Kanamycin sulfate 500 MG inj					
J1850	N	Kanamycin sulfate 75 MG inj					
J1885	N	Ketorolac tromethamine inj					
J1890	N	Cephalothin sodium injection					
J1910	N	Kutapressin injection					
J1930	N	Propiomazine injection					
J1940	N	Furosemide injection					
[3]J1950	X	Leuprolide acetate/3.75 MG	0800				$68.56
J1955	E	Inj levocarnitine per 1 gm					
J1956	N	Levofloxacin injection					
J1960	N	Levorphanol tartrate inj					
J1970	N	Methotrimeprazine injection					
J1980	N	Hyoscyamine sulfate inj					
J1990	N	Chlordiazepoxide injection					
J2000	N	Lidocaine injection					
J2010	N	Lincomycin injection					
J2060	N	Lorazepam injection					
J2150	N	Mannitol injection					
J2175	N	Meperidine hydrochl/100 MG					
J2180	N	Meperidine/promethazine inj					
J2210	N	Methylergonovin maleate inj					
J2240	N	Metocurine iodide injection					
J2250	N	Inj midazolam hydrochloride					
[2]J2260	X	Inj milrinone lactate/5 ML	7007	0.47	$22.79		$4.56
J2270	N	Morphine sulfate injection					
J2271	N	Morphine so4 injection 100mg					
[3]J2275	X	Morphine sulfate injection	7010				$.68
J2300	N	Inj nalbuphine hydrochloride					
J2310	N	Inj naloxone hydrochloride					
J2320	N	Nandrolone decanoate 50 MG					
J2321	N	Nandrolone decanoate 100 MG					
J2322	N	Nandrolone decanoate 200 MG					
J2330	N	Thiothixene injection					
J2350	N	Niacinamide/niacin injection					
[3]J2352	N	Octreotide acetate injection	7031				$5.43

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CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
[3]J2355	X	Oprelvekin injection	7011				$30.35
J2360	N	Orphenadrine injection					
J2370	N	Phenylephrine hcl injection					
J2400	N	Chloroprocaine hcl injection					
[3]J2405	X	Ondansetron hcl injection	0768				$.87
J2410	N	Oxymorphone hcl injection					
[3]J2430	X	Pamidronate disodium/30 MG	0730				$30.93
J2440	N	Papaverin hcl injection					
J2460	N	Oxytetracycline injection					
J2480	N	Hydrochlorides of opium inj					
J2500	N	Paricalcitol					
J2510	N	Penicillin g procaine inj					
J2512	N	Inj pentagastrin per 2 ML					
J2515	N	Pentobarbital sodium inj					
J2540	N	Penicillin g potassium inj					
J2543	N	Piperacillin/tazobactam					
[3]J2545	X	Pentamidine isethionte/300mg	7012				$8.73
J2550	N	Promethazine hcl injection					
J2560	N	Phenobarbital sodium inj					
J2590	N	Oxytocin injection					
J2597	E	Inj desmopressin acetate					
J2640	N	Prednisolone sodium ph inj					
J2650	N	Prednisolone acetate inj					
J2670	N	Tolazoline hcl injection					
J2675	N	Inj progesterone per 50 MG					
J2680	N	Fluphenazine decanoate 25 MG					
J2690	N	Procainamide hcl injection					
J2700	N	Oxacillin sodium injection					
J2710	N	Neostigmine methylsulfte inj					
J2720	N	Inj protamine sulfate/10 MG					
J2725	N	Inj protirelin per 250 mcg					
J2730	N	Pralidoxime chloride inj					
J2760	N	Phentolamine mesylate inj					
[3]J2765	X	Metoclopramide hcl injection	0754				$.19
J2780	N	Ranitidine hydrochloride inj					
[3]J2790	X	Rho d immune globulin inj	0864				$3.78
J2792	N	Rho(D) immune globulin h, sd					
J2800	N	Methocarbamol injection					
J2810	N	Inj theophylline per 40 MG					
[3]J2820	X	Sargramostim injection	0731				$16.97
J2860	N	Secobarbital sodium inj					
J2910	N	Aurothioglucose injection					
J2912	N	Sodium chloride injection					
J2920	N	Methylprednisolone injection					
J2930	N	Methylprednisolone injection					
J2950	N	Promazine hcl injection					
J2970	N	Methicillin sodium injection					
[2]J2994	X	Reteplase double bolus	0914	36.20	$1,852.21		$370.44
[2]J2995	X	Inj streptokinase/250000 IU	0911	1.64	$79.69		$15.94
[2]J2996	X	Alteplase recombinant inj	0915	5.85	$283.70		$56.74
J3000	N	Streptomycin injection					
[3]J3010	X	Fentanyl citrate injection	7014				$.19
J3030	N	Sumatriptan succinate/6 MG					
J3070	N	Pentazocine hcl injection					
J3080	N	Chlorprothixene injection					
J3105	N	Terbutaline sulfate inj					
J3120	N	Testosterone enanthate inj					
J3130	N	Testosterone enanthate inj					
J3140	N	Testosterone suspension inj					
J3150	N	Testosteron propionate inj					
J3230	N	Chlorpromazine hcl injection					
J3240	N	Thyrotropin injection					
[2]J3245	X	Tirofiban hydrochloride	7041	0.02	$.97		$.19
J3250	N	Trimethobenzamide hcl inj					
J3260	N	Tobramycin sulfate injection					
J3265	N	Injection torsemide 10 mg/ml					
J3270	N	Imipramine hcl injection					
[3]J3280	X	Thiethylperazine maleate inj	0755				$.68
J3301	N	Triamcinolone acetonide inj					
J3302	N	Triamcinolone diacetate inj					
J3303	N	Triamcinolone hexacetonl inj					
[3]J3305	X	Inj trimetrexate glucoronate	7045				$8.15
J3310	N	Perphenazine injection					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
J3320	N	Spectinomycn di-hcl inj					
J3350	N	Urea injection					
J3360	N	Diazepam injection					
J3364	N	Urokinase 5000 IU injection					
[2]J3365	X	Urokinase 250,000 IU inj	7036	0.73	$35.40		$7.08
J3370	N	Vancomycin hcl injeciton					
J3390	N	Methoxamine injection					
J3400	N	Triflupromazine hcl inj					
J3410	N	Hydroxyzine hcl injeciton					
J3420	N	Vitamin b12 injection					
J3430	N	Vitamin k phytonadione inj					
J3450	N	Mephentermine sulfate inj					
J3470	N	Hyaluronidase injection					
J3475	N	Inj magnesium sulfate					
J3480	N	Inj potassium chloride					
J3490	N	Drugs unclassified injection					
J3520	E	Edetate disodium per 150 mg					
J3530	N	Nasal vaccine inhalation					
J3535	E	Metered dose inhaler drug					
J3570	E	Laetrile amygdalin vit B17					
J7030	N	Normal saline solution infus					
J7040	N	Normal saline solution infus					
J7042	N	5% dextrose/normal saline					
J7050	N	Normal saline solution infus					
J7051	N	Sterile saline/water					
J7060	N	5% dextrose/water					
J7070	N	D5w infusion					
J7100	N	Dextran 40 infusion					
J7110	N	Dextran 75 infusion					
J7120	N	Ringers lactate infusion					
J7130	N	Hypertonic saline solution					
[3]J7190	X	Factor viii	0925				$.19
[3]J7191	X	Factor VIII (porcine)	0926				$.19
[3]J7192	X	Factor viii recombinant	0927				$.19
[3]J7194	X	Factor ix complex	0928				$.08
[3]J7197	X	Antithrombin iii injection	0930				$.19
[3]J7198	X	Anti-inhibitor	0929				$.27
J7199	E	Hemophilia clot factor noc					
J7300	E	Intraut copper contraceptive					
[3]J7310	X	Ganciclovir long act implant	0913				$701.51
J7315	N	Sodium hyaluronate injection					
J7320	N	Hylan G–F 20 injection					
[2]J7500	X	Azathioprine oral 50mg	0686	0.02	$.97		$.19
[2]J7501	X	Azathioprine parenteral	0687	1.40	$67.88		$13.58
[2]J7502	X	Cyclosporine oral 100 mg	0688	0.08	$3.88		$.78
[2]J7504	X	Lymphocyte immune globulin	0690	3.79	$183.77		$36.75
[3]J7505	E	Monoclonal antibodies	7038				$89.60
J7506	N	Prednisone oral					
[2]J7507	X	Tacrolimus oral per 1 MG	0691	3.15	$152.73		$30.55
J7508	E	Tacrolimus oral per 5 MG					
J7509	N	Methylprednisolone oral					
J7510	N	Prednisolone oral per 5 mg					
J7513	X	Daclizumab, parenteral					
J7515	N	Cyclosporine oral 25 mg					
[2]J7516	X	Cyclosporin parenteral 250mg	0689	0.36	$17.46		$3.49
J7517	N	Mycophenolate mofetil oral					
J7599	E	Immunosuppressive drug noc					
J7608	A	Acetylcysteine inh sol u d					
J7610	A	Acetylcysteine 10% injection					
J7615	A	Acetylcysteine 20% injection					
J7618	A	Albuterol inh sol con					
J7619	A	Albuterol inh sol u d					
J7620	A	Albuterol sulfate .083%/ml					
J7625	A	Albuterol sulfate .5% inj					
J7627	A	Bitolterolmesylate inhal sol					
J7628	A	Bitolterol mes inhal sol con					
J7629	A	Bitolterol mes inh sol u d					
J7630	A	Cromolyn sodium injection					
J7631	A	Cromolyn sodium inh sol u d					
J7635	A	Atropine inhal sol con					
J7636	A	Atropine inhal sol unit dose					
J7637	A	Dexamethasone inhal sol con					
J7638	A	Dexamethasone inhal sol u d					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
J7639	A	Dornase alpha inhal sol u d					
J7640	A	Epinephrine injection					
J7642	A	Glycopyrrolate inhal sol con					
J7643	A	Glycopyrrolate inhal sol u d					
J7644	A	Ipratropium brom inh sol u d					
J7645	A	Ipratropium bromide .02%/ml					
J7648	A	Isoetharine hcl inh sol con					
J7649	A	Isoetharine hcl inh sol u d					
J7650	A	Isoetharine hcl .1% inj					
J7651	A	Isoetharine hcl .125% inj					
J7652	A	Isoetharine hcl .167% inj					
J7653	A	Isoetharine hcl .2%/inj					
J7654	A	Isoetharine hcl .25% inj					
J7655	A	Isoetharine hcl 1% inj					
J7658	A	Isoproterenolhcl inh sol con					
J7659	A	Isoproterenol hcl inh sol ud					
J7660	A	Isoproterenol hcl .5% inj					
J7665	A	Isoproterenol hcl 1% inj					
J7668	A	Metaproterenol inh sol con					
J7669	A	Metaproterenol inh sol u d					
J7670	A	Metaproterenol sulfate .4%					
J7672	A	Metaproterenol sulfate .6%					
J7675	A	Metaproterenol sulfate 5%					
J7680	A	Terbutaline so4 inh sol con					
J7681	A	Terbutaline so4 inh sol u d					
J7682	A	Tobramycin inhalation sol					
J7683	A	Triamcinolone inh sol con					
J7684	A	Triamcinolone inh sol u d					
J7699	A	Inhalation solution for DME					
J7799	A	Non-inhalation drug for DME					
[3]J7913	X	Daclizumab, Parenteral, 25 m	0892				$54.11
J8499	E	Oral prescrip drug non chemo					
[3]J8510	X	Oral busulfan	7015				$.19
[3]J8520	X	Capecitabine, oral, 150 mg	7042				$.19
J8521	N	Capecitabine, oral, 500 mg					
[3]J8530	X	Cyclophosphamide oral 25 MG	0801				$.19
[3]J8560	X	Etoposide oral 50 MG	0802				$3.10
[3]J8600	X	Melphalan oral 2 MG	0803				$.19
[3]J8610	X	Methotrexate oral 2.5 MG	0826				$.29
J8999	E	Oral prescription drug chemo					
[3]J9000	X	Doxorubic hcl 10 MG vl chemo	0847				$2.81
[3]J9001	X	Doxorubicin hcl liposome inj	7046				$39.18
[3]J9015	X	Aldesleukin/single use vial	0807				$65.07
[3]J9020	X	Asparaginase injection	0814				$8.34
[3]J9031	X	Bcg live intravesical vac	0809				$19.78
[3]J9040	X	Bleomycin sulfate injection	0857				$48.29
[3]J9045	X	Carboplatin injection	0811				$13.96
[3]J9050	X	Carmus bischl nitro inj	0812				$10.57
[3]J9060	X	Cisplatin 10 MG injection	0813				$4.56
J9062	E	Cisplatin 50 MG injection					
[3]J9065	X	Inj cladribine per 1 MG	0858				$8.24
[3]J9070	X	Cyclophosphamide 100 MG inj	0815				$.48
J9080	E	Cyclophosphamide 200 MG inj					
J9090	E	Cyclophosphamide 500 MG inj					
J9091	E	Cyclophosphamide 1.0 grm inj					
J9092	E	Cyclophosphamide 2.0 grm inj					
[3]J9093	X	Cyclophosphamide lyophilized	0816				$1.16
J9094	E	Cyclophosphamide lyophilized					
J9095	E	Cyclophosphamide lyophilized					
J9096	E	Cyclophosphamide lyophilized					
J9097	E	Cyclophosphamide lyophilized					
[3]J9100	X	Cytarabine hcl 100 MG inj	0817				$.68
J9110	E	Cytarabine hcl 500 MG inj					
[3]J9120	X	Dactinomycin actinomycin d	0818				$1.75
[3]J9130	X	Dacarbazine 10 MG inj	0819				$1.26
J9140	E	Dacarbazine 200 MG inj					
[3]J9150	X	Daunorubicin	0820				$11.64
[3]J9151	X	Daunorubicin citrate liposom	0821				$7.76
[3]J9165	X	Diethylstilbestrol injection	0822				$2.13
[3]J9170	X	Docetaxel	0823				$34.72
[3]J9181	X	Etoposide 10 MG inj	0824				$.58
J9182	E	Etoposide 100 MG inj					
[3]J9185	X	Fludarabine phosphate inj	0842				$30.84

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
[3] J9190	X	Fluorouracil injection	0859				$.19
[3] J9200	X	Floxuridine injection	0827				$18.81
[3] J9201	X	Gemcitabine HCl	0828				$9.31
[3] J9202	X	Goserelin acetate implant	0810				$59.74
[3] J9206	X	Irinotecan injection	0830				$14.16
[3] J9208	X	Ifosfomide injection	0831				$13.58
[3] J9209	X	Mesna injection	0732				$2.42
[3] J9211	X	Idarubicin hcl injection	0832				$46.45
[3] J9212	X	Interferon alfacon-1	0833				$.19
[3] J9213	X	Interferon alfa-2a inj	0834				$3.20
[3] J9214	X	Interferon alfa-2b inj	0836				$1.36
[3] J9215	X	Interferon alfa-n3 inj	0865				$1.07
[3] J9216	X	Interferon gamma 1-b inj	0838				$22.79
J9217	E	Leuprolide acetate suspension					
[3] J9218	X	Leuprolide acetate injection	0861				$19.39
[3] J9230	X	Mechlorethamine hcl inj	0839				$1.65
[3] J9245	X	Inj melphalan hydrochl 50 MG	0840				$44.71
[3] J9250	X	Methotrexate sodium inj	0841				$.10
J9260	E	Methotrexate sodium inj					
[3] J9265	X	Paclitaxel injection	0863				$30.16
[3] J9266	X	Pegaspergase/singl dose vial	0843				$176.72
[3] J9268	X	Pentostatin injection	0844				$133.73
[3] J9270	X	Plicamycin (mithramycin) inj	0860				$1.36
[3] J9280	X	Mitomycin 5 MG inj	0862				$19.86
J9290	E	Mitomycin 20 MG inj					
J9291	E	Mitomycin 40 MG inj					
[3] J9293	X	Mitoxantrone hydrochl/5 MG	0864				$25.80
[3] J9310	X	Rituximab cancer treatment	0849				$51.40
[3] J9320	X	Streptozocin injection	0850				$14.64
[3] J9340	X	Thiotepa injection	0851				$9.50
[3] J9350	X	Topotecan	0852				$73.22
J9355	N	Trastuzumab					
J9357	N	Valrubicin, 200 mg					
[3] J9360	X	Vinblastine sulfate inj	0853				$.39
[3] J9370	X	Vincristine sulfate 1 MG inj	0854				$2.23
J9375	E	Vincristine sulfate 2 MG inj					
J9380	E	Vincristine sulfate 5 MG inj					
[3] J9390	X	Vinorelbine tartrate/10 mg	0855				$9.60
[3] J9600	X	Porfimer sodium	0856				$34.62
J9999	E	Chemotherapy drug					
K0001	A	Standard wheelchair					
K0002	A	Stnd hemi (low seat) whichr					
K0003	A	Lightweight wheelchair					
K0004	A	High strength ltwt whichr					
K0005	A	Ultralightweight wheelchair					
K0006	A	Heavy duty wheelchair					
K0007	A	Extra heavy duty wheelchair					
K0008	A	Cstm manual wheelchair/base					
K0009	A	Other manual wheelchair/base					
K0010	A	Stnd wt frame power whichr					
K0011	A	Stnd wt pwr whichr w control					
K0012	A	Ltwt portbl power whichr					
K0013	A	Custom power whichr base					
K0014	A	Other power whichr base					
K0015	A	Detach non-adjus hght armrst					
K0016	A	Detach adjust armrst cmplete					
K0017	A	Detach adjust armrest base					
K0018	A	Detach adjust armrst upper					
K0019	A	Arm pad each					
K0020	A	Fixed adjust armrest pair					
K0021	A	Anti-tipping device each					
K0022	A	Reinforced back upholstery					
K0023	A	Plainr back insrt foam w/strp					
K0024	A	Plnr back insrt foam w/hrdwr					
K0025	A	Hook-on headrest extension					
K0026	A	Back upholst lgtwt whichr					
K0027	A	Back upholst other whichr					
K0028	A	Manual fully reclining back					
K0029	A	Reinforced seat upholstery					
K0030	A	Solid plnr seat sngl dnsfoam					
K0031	A	Safety belt/pelvic strap					
K0032	A	Seat uphols lgtwt whichr					
K0033	A	Seat upholstery other whichr					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
K0034	A	Heel loop each					
K0035	A	Heel loop with ankle strap					
K0036	A	Toe loop each					
K0037	A	High mount flip-up footrest					
K0038	A	Leg strap each					
K0039	A	Leg strap h style each					
K0040	A	Adjustable angle footplate					
K0041	A	Large size footplate each					
K0042	A	Standard size footplate each					
K0043	A	Ftrst lower extension tube					
K0044	A	Fitrst upper hanger bracket					
K0045	A	Footrest complete assembly					
K0046	A	Elevat legrst low extension					
K0047	A	Elevat legrst up hangr brack					
K0048	A	Elevate legrest complete					
K0049	A	Calf pad each					
K0050	A	Ratchet assembly					
K0051	A	Cam relese assem ftrst/lgrst					
K0052	A	Swingaway detach footrest					
K0053	A	Elevate footrest articulate					
K0054	A	Seat wdth 10–12/15/17/20 wc					
K0055	A	Seat dpth 15/17/18 ltwt wc					
K0056	A	Seat ht <17 or >=21 ltwt wc					
K0057	A	Seat wdth 19/20 hvy dty wc					
K0058	A	Seat dpth 17/18 power wc					
K0059	A	Plastic coated handrim each					
K0060	A	Steel handrim each					
K0061	A	Aluminum handrim each					
K0062	A	Handrim 8–10 vert/obliq proj					
K0063	A	Hndrm 12–16 vert/obliq proj					
K0064	A	Zero pressure tube flat free					
K0065	A	Spoke protectors					
K0066	A	Solid tire any size each					
K0067	A	Pneumatic tire any size each					
K0068	A	Pneumatic tire tube each					
K0069	A	Rear whl complete solid tire					
K0070	A	Rear whl compl pneum tire					
K0071	A	Front castr compl pneum tire					
K0072	A	Frnt cstr cmpl semi-pneum tir					
K0073	A	Caster pin lock each					
K0074	A	Pneumatic caster tire each					
K0075	A	Semi-pneumatic caster tire					
K0076	A	Solid caster tire each					
K0077	A	Front caster assem complete					
K0078	A	Pneumatic caster tire tube					
K0079	A	Wheel lock extension pair					
K0080	A	Anti-rollback device pair					
K0081	A	Wheel lock assembly complete					
K0082	A	22 nf deep cycl acid battery					
K0083	A	22 nf gel cell battery each					
K0084	A	Grp 24 deep cycl acid battry					
K0085	A	Group 24 gel cell battery					
K0086	A	U–1 lead acid battery each					
K0087	A	U–1 gel cell battery each					
K0088	A	Battry chrgr acid/gel cell					
K0089	A	Battery charger dual mode					
K0090	A	Rear tire power wheelchair					
K0091	A	Rear tire tube power whichr					
K0092	A	Rear assem cmplt powr whichr					
K0093	A	Rear zero pressure tire tube					
K0094	A	Wheel tire for power base					
K0095	A	Wheel tire tube each base					
K0096	A	Wheel assem powr base complt					
K0097	A	Wheel zero presure tire tube					
K0098	A	Drive belt power wheelchair					
K0099	A	Pwr wheelchair front caster					
K0100	A	Amputee adapter pair					
K0101	A	One-arm drive attachment					
K0102	A	Crutch and cane holder					
K0103	A	Transfer board < 25"					
K0104	A	Cylinder tank carrier					
K0105	A	Iv hanger					
K0106	A	Arm trough each					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
K0107	A	Wheelchair tray					
K0108	A	W/c component-accessory NOS					
K0112	A	Trunk vest supprt innr frame					
K0113	A	Trunk vest suprt w/o inr frm					
K0114	A	Whichr back suprt inr frame					
K0115	A	Back module orthotic system					
K0116	A	Back & seat modul orthot sys					
K0182	A	Water distilled w/nebulizer					
K0183	A	Nasal application device					
K0184	A	Nasal pillows/seals pair					
K0185	A	Pos airway pressure headgear					
K0186	A	Pos airway prasure chinstrap					
K0187	A	Pos airway pressure tubing					
K0188	A	Pos airway pressure filter					
K0189	A	Filter nondisposable w PAP					
K0195	A	Elevating whichair leg rests					
K0268	A	Humidifier nonheated w PAP					
K0269	A	Aerosol compressor cpap dev					
K0270	A	Ultrasonic generator w nebul					
K0280	A	Extension drainage tubing					
K0281	A	Lubricant catheter insertion					
K0283	A	Saline solution dispenser					
K0407	A	Urinary cath skin attachment					
K0408	A	Urinary cath leg strap					
K0409	A	Sterile H2O irrigation solut					
K0410	A	Male ext cath w/adh coating					
K0411	A	Male ext cath w/adh strip					
K0415	E	RX antiemetic drg, oral NOS					
K0416	E	Rx antiemetic drg, rectal NOS					
K0440	A	Nasal prosthesis					
K0441	A	Midfacial prosthesis					
K0442	A	Orbital prosthesis					
K0443	A	Upper facial prosthesis					
K0444	A	Hemi-facial prosthesis					
K0445	A	Auricular prosthesis					
K0446	A	Partial facial prosthesis					
K0447	A	Nasal septal prosthesis					
K0448	A	Unspec maxillofacial prosth					
K0449	A	Repair maxillofacial prosth					
K0450	A	Liq adhes for facial prosth					
K0451	A	Adhesive remover wipes					
K0452	A	Wheelchair bearings					
K0455	A	Pump uninterrupted infusion					
K0456	A	Heavyduty/xtra wide hosp bed					
K0457	A	Heavyduty/wide commode chair					
K0458	A	Heavyduty walker no wheels					
K0459	A	Heavy duty wheeled walker					
K0460	A	WC power add-on joystick					
K0461	A	WC power add-on tiller cntrl					
K0462	A	Temporary replacement eqpmnt					
K0501	A	Aerosol compressor for svneb					
K0529	A	Sterile H20 or nas w iv neb					
K0531	A	Heated humidifier used w pap					
K0532	A	Noninvasive assist wo backup					
K0533	A	Noninvasive assist w backup					
K0534	A	Invasive assist w backup					
L0100	A	Cerv craniosten helmet mold					
L0110	A	Cerv craniostenosis hel non-					
L0120	A	Cerv flexible non-adjustable					
L0130	A	Flex thermoplastic collar mo					
L0140	A	Cervical semi-rigid adjustab					
L0150	A	Cerv semi-rig adj molded chn					
L0160	A	Cerv semi-rig wire occ/mand					
L0170	A	Cervical collar molded to pt					
L0172	A	Cerv col thermplas foam 2 pi					
L0174	A	Cerv col foam 2 piece w thor					
L0180	A	Cer post col occ/man sup adj					
L0190	A	Cerv collar supp adj cerv ba					
L0200	A	Cerv col supp adj bar & thor					
L0210	A	Thoracic rib belt					
L0220	A	Thor rib belt custom fabrica					
L0300	A	TLSO flex surgical support					
L0310	A	Tlso flexible custom fabrica					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
L0315	A	Tlso flex elas rigid post pa					
L0317	A	Tlso flex hypext elas post p					
L0320	A	Tlso a-p contrl w apron frnt					
L0330	A	Tlso ant-pos-lateral control					
L0340	A	Tlso a-p-l-rotary with apron					
L0350	A	Tlso flex compress jacket cu					
L0360	A	Tlso flex compress jacket mo					
L0370	A	Tlso a-p-l-rotary hyperexten					
L0380	A	Tlso a-p-l-rot w/pos extens					
L0390	A	Tlso a-p-l control molded					
L0400	A	Tlso a-p-l w interface mater					
L0410	A	Tlso a-p-l two piece constr					
L0420	A	Tlso a-p-l 2 piece w interfa					
L0430	A	Tlso a-p-l w interface custm					
L0440	A	Tlso a-p-l overlap frnt cust					
L0500	A	Lso flex surgical support					
L0510	A	Lso flexible custom fabricat					
L0515	A	Lso flex elas w/rig post pa					
L0520	A	Lso a-p-l control with apron					
L0530	A	Lso ant-pos control w apron					
L0540	A	Lso lumbar flexion a-p-l					
L0550	A	Lso a-p-l control molded					
L0560	A	Lso a-p-l w interface					
L0565	A	Lso a-p-l control custom					
L0600	A	Sacroiliac flex surg support					
L0610	A	Sacroiliac flexible custm fa					
L0620	A	Sacroiliac semi-rig w apron					
L0700	A	Ctlso a-p-l control molded					
L0710	A	Ctlso a-p-l control w/inter					
L0810	A	Halo cervical into jckt vest					
L0820	A	Halo cervical into body jack					
L0830	A	Halo cerv into milwaukee typ					
L0860	A	Magnetic resonanc image comp					
L0900	A	Torso/ptosis support					
L0910	A	Torso & ptosis supp custm fa					
L0920	A	Torso/pendulous abd support					
L0930	A	Pendulous abdomen supp custm					
L0940	A	Torso/postsurgical support					
L0950	A	Post surg support custom fab					
L0960	A	Post surgical support pads					
L0970	A	Tlso corset front					
L0972	A	Lso corset front					
L0974	A	Tlso full corset					
L0976	A	Lso full corset					
L0978	A	Axillary crutch extension					
L0980	A	Peroneal strape pair					
L0982	A	Stocking supp grips set of f					
L0984	A	Protective body sock each					
L0999	A	Add to spinal orthosis NOS					
L1000	A	Ctlso milwauke initial model					
L1010	A	Ctlso axilla sling					
L1020	A	Kyphosis pad					
L1025	A	Kyphosis pad floating					
L1030	A	Lumbar bolster pad					
L1040	A	Lumbar or lumbar rib pad					
L1050	A	Sternal pad					
L1060	A	Thoracic pad					
L1070	A	Trapezius sling					
L1080	A	Outrigger					
L1085	A	Outrigger bil w/vert extens					
L1090	A	Lumbar sling					
L1100	A	Ring flange plastic/leather					
L1110	A	Ring flange plas/leather mol					
L1120	A	Covers for upright each					
L1200	A	Furnsh initial orthosis only					
L1210	A	Lateral thoracic extension					
L1220	A	Anterior thoracic extension					
L1230	A	Milwaukee type superstructur					
L1240	A	Lumbar derotation pad					
L1250	A	Anterior asis pad					
L1260	A	Anterior thoracic derotation					
L1270	A	Abdominal pad					
L1280	A	Rib gusset (elastic) each					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

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L1290	A	Lateral trochanteric pad					
L1300	A	Body jacket mold to patient					
L1310	A	Post-operative body jacket					
L1499	A	Spinal orthosis NOS					
L1500	A	Thkao mobility frame					
L1510	A	Thkao standing frame					
L1520	A	Thkao swivel walker					
L1600	A	Abduct hip flex frejka w cvr					
L1610	A	Abduct hip flex frejka covr					
L1620	A	Abduct hip flex pavlik harne					
L1630	A	Abduct control hip semi-flex					
L1640	A	Pelv band/spread bar thigh c					
L1650	A	HO abduction hip adjustable					
L1660	A	HO abduction static plastic					
L1680	A	Pelvic & hip control thigh c					
L1685	A	Post-op hip abduct custom fa					
L1686	A	HO post-op hip abduction					
L1690	A	Combination bilateral HO					
L1700	A	Leg perthes orth toronto typ					
L1710	A	Legg perthes orth newington					
L1720	A	Legg perthes orthosis trilat					
L1730	A	Legg perthes orth scottish r					
L1750	A	Legg perthes sling					
L1755	A	Legg perthes patten bottom t					
L1800	A	Knee orthoses elas w stays					
L1810	A	Ko elastic with joints					
L1815	A	Elastic with condylar pads					
L1820	A	Ko elas w/condyle pads & jo					
L1825	A	Ko elastic knee cap					
L1830	A	Ko immobilizer canvas longit					
L1832	A	KO adj jnt pos rigid support					
L1834	A	Ko w/0 joint rigid molded to					
L1840	A	Ko derot ant cruciate custom					
L1843	A	KO single upright custom fit					
L1844	A	Ko w/adj jt rot cntrl molded					
L1845	A	Ko w/adj flex/ext rotat cus					
L1846	A	Ko w adj flex/ext rotat mold					
L1847	A	KO adjustable w air chambers					
L1850	A	Ko swedish type					
L1855	A	Ko plas doub upright jnt mol					
L1858	A	Ko polycentric pneumatic pad					
L1860	A	Ko supracondylar socket mold					
L1870	A	Ko doub upright lacers molde					
L1880	A	Ko doub upright cuffs/lacers					
L1885	A	Knee upright w/resistance					
L1900	A	Afo spring wir drsflx calf bd					
L1902	A	Afo ankle gauntlet					
L1904	A	Afo molded ankle gauntlet					
L1906	A	Afo multiligamentus ankle su					
L1910	A	Afo sing bar clasp attach sh					
L1920	A	Afo sing upright w/adjust s					
L1930	A	Afo plastic					
L1940	A	Afo molded to patient plasti					
L1945	A	Afo molded plas rig ant tib					
L1950	A	Afo spiral molded to pt plas					
L1960	A	Afo pos solid ank plastic mo					
L1970	A	Afo plastic molded w/ankle j					
L1980	A	Afo sing solid stirrup calf					
L1990	A	Afo doub solid stirrup calf					
L2000	A	Kafo sing fre stirr thi/calf					
L2010	A	Kafo sng solid stirrup w/o j					
L2020	A	Kafo dbl solid stirrup band/					
L2030	A	Kafo dbl solid stirrup w/o j					
L2035	A	KAFO plastic pediatric size					
L2036	A	Kafo plas doub free knee mol					
L2037	A	Kafo plas sing free knee mol					
L2038	A	Kafo w/o joint multi-axis an					
L2039	A	KAFO, plstic, medlat rotat con					
L2040	A	Hkafo torsion bil rot straps					
L2050	A	Hkafo torsion cable hip pelv					
L2060	A	Hkafo torsion ball bearing j					
L2070	A	Hkafo torsion unilat rot str					
L2080	A	Hkafo unilat torsion cable					

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CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
L2090	A	Hkafo unilat torsion ball br					
L2102	A	Afo tibial fx cast plstr mol					
L2104	A	Afo tib fx cast synthetic mo					
L2106	A	Afo tib fx cast plaster mold					
L2108	A	Afo tib fx cast molded to pt					
L2112	A	Afo tibial fracture soft					
L2114	A	Afo tib fx semi-rigid					
L2116	A	Afo tibial fracture rigid					
L2122	A	Kafo fem fx cast plaster mol					
L2124	A	Kafo fem fx cast synthet mol					
L2126	A	Kafo fem fx cast thermoplas					
L2128	A	Kafo fem fx cast molded to p					
L2132	A	Kafo femoral fx cast soft					
L2134	A	Kafo fem fx cast semi-rigid					
L2136	A	Kafo femoral fx cast rigid					
L2180	A	Plas shoe insert w ank joint					
L2182	A	Drop lock knee					
L2184	A	Limited motion knee joint					
L2186	A	Adj motion knee jnt lerman t					
L2188	A	Quadrilateral brim					
L2190	A	Waist belt					
L2192	A	Pelvic band & belt thigh fla					
L2200	A	Limited ankle motion ea jnt					
L2210	A	Dorsiflexion assist each joi					
L2220	A	Dorsi & plantar flex ass/res					
L2230	A	Split flat caliper stirr & p					
L2240	A	Round caliper and plate atta					
L2250	A	Foot plate molded stirrup at					
L2260	A	Reinforced solid stirrup					
L2265	A	Long tongue stirrup					
L2270	A	Varus/valgus strap padded/li					
L2275	A	Plastic mod low ext pad/line					
L2280	A	Molded inner boot					
L2300	A	Abduction bar jointed adjust					
L2310	A	Abduction bar-straight					
L2320	A	Non-molded lacer					
L2330	A	Lacer molded to patient mode					
L2335	A	Anterior swing band					
L2340	A	Pre-tibial shell molded to p					
L2350	A	Prosthetic type socket molde					
L2360	A	Extended steel shank					
L2370	A	Patten bottom					
L2375	A	Torsion ank & heil solid sti					
L2380	A	Torsion straight knee joint					
L2385	A	Straight knee joint heavy du					
L2390	A	Offset knee joint each					
L2395	A	Offset knee joint heavy duty					
L2397	A	Suspension sleeve lower ext					
L2405	A	Knee joint drop lock ea jnt					
L2415	A	Knee joint cam lock each joi					
L2425	A	Knee disc/dial lock/adj flex					
L2430	A	Knee jnt ratchet lock ea jnt					
L2435	A	Knee joint polycentric joint					
L2492	A	Knee lift loop drop lock rin					
L2500	A	Thi/glut/ischia wgt bearing					
L2510	A	Th/wght bear quad-lat brim m					
L2520	A	Th/wght bear quad-lat brim c					
L2525	A	Th/wght bear nar m-l brim mo					
L2526	A	Th/wght bear nar m-l brim cu					
L2530	A	Thigh/wght bear lacer non-mo					
L2540	A	Thigh/wght bear lacer molded					
L2550	A	Thigh/wght bear high roll cu					
L2570	A	Hip clevis type 2 posit jnt					
L2580	A	Pelvic control pelvic sling					
L2600	A	Hip clevis/thrust bearing fr					
L2610	A	Hip clevis/thrust bearing lo					
L2620	A	Pelvic control hip heavy dut					
L2622	A	Hip joint adjustable flexion					
L2624	A	Hip adj flex ext abduct cont					
L2627	A	Plastic mold recipro hip & c					
L2628	A	Metal frame recipro hip & ca					
L2630	A	Pelvic control band & belt u					
L2640	A	Pelvic control band & belt b					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
L2650	A	Pelv & thor control gluteal					
L2660	A	Thoracic control thoracic ba					
L2670	A	Thorac cont paraspinal uprig					
L2680	A	Thorac cont lat support upri					
L2750	A	Plating chrome/nickel pr bar					
L2755	A	Carbon graphite lamination					
L2760	A	Extension per extension per					
L2770	A	Low ext orthosis per bar/jnt					
L2780	A	Non-corrosive finish					
L2785	A	Drop lock retainer each					
L2795	A	Knee control full kneecap					
L2800	A	Knee cap medial or lateral p					
L2810	A	Knee control condylar pad					
L2820	A	Soft interface below knee se					
L2830	A	Soft interface above knee se					
L2840	A	Tibial length sock fx or equ					
L2850	A	Femoral lgth sock fx or equa					
L2860	A	Torsion mechanism knee/ankle					
L2999	A	Lower extremity orthosis NOS					
L3000	A	Ft insert ucb berkeley shell					
L3001	A	Foot insert remov molded spe					
L3002	A	Foot insert plastazote or eq					
L3003	A	Foot insert silicone gel eac					
L3010	A	Foot longitudinal arch suppo					
L3020	A	Foot longitud/metatarsal sup					
L3030	A	Foot arch support remov prem					
L3040	A	Ft arch suprt premold longit					
L3050	A	Foot arch supp premold metat					
L3060	A	Foot arch supp longitud/meta					
L3070	A	Arch suprt att to sho longit					
L3080	A	Arch supp att to shoe metata					
L3090	A	Arch supp att to shoe long/m					
L3100	A	Hallus-valgus nght dynamic s					
L3140	A	Abduction rotation bar shoe					
L3150	A	Abduct rotation bar w/o shoe					
L3160	A	Shoe styled positioning dev					
L3170	A	Foot plastic heel stabilizer					
L3201	A	Oxford w supinat/pronat inf					
L3202	A	Oxford w/supinat/pronator c					
L3203	A	Oxford w/supinator/pronator					
L3204	A	Hightop w/supp/pronator inf					
L3206	A	Hightop w/supp/pronator chi					
L3207	A	Hightop w/supp/pronator jun					
L3208	A	Surgical boot each infant					
L3209	A	Surgical boot each child					
L3211	A	Surgical boot each junior					
L3212	A	Benesch boot pair infant					
L3213	A	Benesch boot pair child					
L3214	A	Benesch boot pair junior					
L3215	A	Orthopedic ftwear ladies oxf					
L3216	A	Orthoped ladies shoes dpth i					
L3217	A	Ladies shoes hightop depth i					
L3218	A	Ladies surgical boot each					
L3219	A	Orthopedic mens shoes oxford					
L3221	A	Orthopedic mens shoes dpth i					
L3222	A	Mens shoes hightop depth inl					
L3223	A	Mens surgical boot each					
L3224	A	Woman's shoe oxford brace					
L3225	A	Man's shoe oxford brace					
L3230	A	Custom shoes depth inlay					
L3250	A	Custom mold shoe remov prost					
L3251	A	Shoe molded to pt silicone s					
L3252	A	Shoe molded plastazote cust					
L3253	A	Shoe molded plastazote cust					
L3254	A	Orth foot non-stndard size/w					
L3255	A	Orth foot non-standard size/					
L3257	A	Orth foot add charge split s					
L3260	A	Ambulatory surgical boot eac					
L3265	A	Plastazote sandal each					
L3300	A	Sho lift taper to metatarsal					
L3310	A	Shoe lift elev heel/sole neo					
L3320	A	Shoe lift elev heel/sole cor					
L3330	A	Lifts elevation metal extens					

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CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
L3332	A	Shoe lift tapered to one-ha					
L3334	A	Shoe lift elevation heel/i					
L3340	A	Shoe wedge each					
L3350	A	Shoe heel wedge					
L3360	A	Shoe sole wedge outside sole					
L3370	A	Shoe sole wedge between sole					
L3380	A	Shoe clubfoot wedge					
L3390	A	Shoe outflare wedge					
L3400	A	Shoe metatarsal bar wedge ro					
L3410	A	Shoe metatarsal bar between					
L3420	A	Full sole/heel wedge btween					
L3430	A	Sho heel count plast reinfor					
L3440	A	Heel leather reinforced					
L3450	A	Shoe heel each cushion type					
L3455	A	Shoe heel new leather standa					
L3460	A	Shoe heel new rubber standar					
L3465	A	Shoe heel thomas with wedge					
L3470	A	Shoe heel thomas extend to b					
L3480	A	Shoe heel pad & depress for					
L3485	A	Shoe heel pad removable for					
L3500	A	Ortho shoe add leather insol					
L3510	A	Orthopedic shoe add rub insl					
L3520	A	O shoe add felt w leath insl					
L3530	A	Ortho shoe add half sole					
L3540	A	Ortho shoe add full sole					
L3550	A	O shoe add standard toe tap					
L3560	A	O shoe add horseshoe toe tap					
L3570	A	O shoe add instep extension					
L3580	A	O shoe add instep velcro clo					
L3590	A	O shoe convert to sof counte					
L3595	A	Ortho shoe add march bar					
L3600	A	Trans shoe calip plate exist					
L3610	A	Trans shoe caliper plate new					
L3620	A	Trans shoe solid stirrup exi					
L3630	A	Trans shoe solid stirrup new					
L3640	A	Shoe dennis browne splint bo					
L3649	A	Orthopedic shoe modifica NOS					
L3650	A	Shlder fig 8 abduct restrain					
L3660	A	Abduct restrainer canvas & web					
L3670	A	Acromio/clavicular canvas & we					
L3675	A	Canvas vest SO					
L3700	A	Elbow orthoses elas w stays					
L3710	A	Elbow elastic with metal joi					
L3720	A	Forearm/arm cuffs free motio					
L3730	A	Forearm/arm cuffs ext/flex a					
L3740	A	Cuffs adj lock w/active con					
L3800	A	Whfo short opponen no attach					
L3805	A	Whfo long opponens no attach					
L3807	A	Whfo w inflatable airchamber					
L3810	A	Whfo thumb abduction bar					
L3815	A	Whfo second m.p. abduction a					
L3820	A	Whfo ip ext assi w/mp ext a					
L3825	A	Whfo m.p. extension stop					
L3830	A	Whfo m.p. extension assist					
L3835	A	Whfo m.p. spring extension a					
L3840	A	Whfo spring swivel thumb					
L3845	A	Whfo thumb ip ext ass w/mp					
L3850	A	Action wrist w/dorsiflex as					
L3855	A	Whfo adj m.p. flexion contro					
L3860	A	Whfo adj m.p. flex ctrl & l.					
L3890	A	Torsion mechanism wrist/elbo					
L3900	A	Hinge extension/flex wrist/f					
L3901	A	Hinge ext/flex wrist finger					
L3902	A	Whfo ext power compress gas					
L3904	A	Whfo electric custom fitted					
L3906	A	Wrist gauntlet molded to pt					
L3907	A	Whfo wrst gauntlt thmb spica					
L3908	A	Wrist cock-up non-molded					
L3910	A	Whfo swanson design					
L3912	A	Flex glove w/elastic finger					
L3914	A	WHO wrist extension cock-up					
L3916	A	Whfo wrist extens w/outrigg					
L3918	A	HFO knuckle bender					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
L3920	A	Knuckle bender with outrigge					
L3922	A	Knuckle bend 2 seg to flex j					
L3924	A	Oppenheimer					
L3926	A	Thomas suspension					
L3928	A	Finger extension w/clock sp					
L3930	A	Finger extension with wrist					
L3932	A	Safety pin spring wire					
L3934	A	Safety pin modified					
L3936	A	Palmer					
L3938	A	Dorsal wrist					
L3940	A	Dorsal wrist w/outrigger at					
L3942	A	Reverse knuckle bender					
L3944	A	Reverse knuckle bend w/outr					
L3946	A	HFO composite elastic					
L3948	A	Finger knuckle bender					
L3950	A	Oppenheimer w/knuckle bend					
L3952	A	Oppenheimer w/rev knuckle 2					
L3954	A	Spreading hand					
L3956	A	Add joint upper ext orthosis					
L3960	A	Sewho airplan desig abdu pos					
L3962	A	Sewho erbs palsey design abd					
L3963	A	Molded w/articulating elbow					
L3964	A	Seo mobile arm sup att to wc					
L3965	A	Arm supp att to wc rancho ty					
L3966	A	Mobile arm supports reclinin					
L3968	A	Friction dampening arm supp					
L3969	A	Monosuspension arm/hand supp					
L3970	A	Elevat proximal arm support					
L3972	A	Offset/lat rocker arm w/ela					
L3974	A	Mobile arm support supinator					
L3980	A	Upp ext fx orthosis humeral					
L3982	A	Upper ext fx orthosis rad/ul					
L3984	A	Upper ext fx orthosis wrist					
L3985	A	Forearm hand fx orth w/wr h					
L3986	A	Humeral rad/ulna wrist fx or					
L3995	A	Sock fracture or equal each					
L3999	A	Upper limb orthosis NOS					
L4000	A	Repl girdle milwaukee orth					
L4010	A	Replace trilateral socket br					
L4020	A	Replace quadlat socket brim					
L4030	A	Replace socket brim cust fit					
L4040	A	Replace molded thigh lacer					
L4045	A	Replace non-molded thigh lac					
L4050	A	Replace molded calf lacer					
L4055	A	Replace non-molded calf lace					
L4060	A	Replace high roll cuff					
L4070	A	Replace prox & dist upright					
L4080	A	Repl met band kafo-afo prox					
L4090	A	Repl met band kafo-afo calf/					
L4100	A	Repl leath cuff kafo prox th					
L4110	A	Repl leath cuff kafo-afo cal					
L4130	A	Replace pretibial shell					
L4205	A	Ortho dvc repair per 15 min					
L4210	A	Orth dev repair/repl minor p					
L4350	A	Pneumatic ankle cntrl splint					
L4360	A	Pneumatic walking splint					
L4370	A	Pneumatic full leg splint					
L4380	A	Pneumatic knee splint					
L4392	A	Replace AFO soft interface					
L4394	A	Replace foot drop spint					
L4396	A	Static AFO					
L4398	A	Foot drop splint recumbent					
L5000	A	Sho insert w arch toe filler					
L5010	A	Mold socket ank hgt w/toe f					
L5020	A	Tibial tubercle hgt w/toe f					
L5050	A	Ank symes mold sckt sach ft					
L5060	A	Symes met fr leath socket ar					
L5100	A	Molded socket shin sach foot					
L5105	A	Plast socket jts/thgh lacer					
L5150	A	Mold sckt ext knee shin sach					
L5160	A	Mold socket bent knee shin s					
L5200	A	Kne sing axis fric shin sach					
L5210	A	No knee/ankle joints w/ft b					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
L5220	A	No knee joint with artic ali					
L5230	A	Fem focal defic constant fri					
L5250	A	Hip canad sing axi cons fric					
L5270	A	Tilt table locking hip sing					
L5280	A	Hemipelvect canad sing axis					
L5300	A	Bk sach soft cover & finish					
L5310	A	Knee disart sach soft cv/fin					
L5320	A	Ak open end sach soft cv/fin					
L5330	A	Hip canadian sach sft cv/fin					
L5340	A	Hemipelvectomy canad cv/fin					
L5400	A	Postop dress & 1 cast chg bk					
L5410	A	Postop dag bk ea add cast ch					
L5420	A	Postop dag & 1 cast chg ak/d					
L5430	A	Postop dag ak ea add cast ch					
L5450	A	Postop app non-wgt bear dag					
L5460	A	Postop app non-wgt bear dag					
L5500	A	Init bk ptb plaster direct					
L5505	A	Init ak ischial plstr direct					
L5510	A	Prep BK ptb plaster molded					
L5520	A	Perp BK ptb thermopls direct					
L5530	A	Prep BK ptb thermopls molded					
L5535	A	Prep BK ptb open end socket					
L5540	A	Prep BK ptb laminated socket					
L5560	A	Prep AK ischial plast molded					
L5570	A	Prep AK ischial direct form					
L5580	A	Prep AK ischial thermo mold					
L5585	A	Prep AK ischial open end					
L5590	A	Prep AK ischial laminated					
L5595	A	Hip disartic sach thermopls					
L5600	A	Hip disart sach laminat mold					
L5610	A	Above knee hydracadence					
L5611	A	Ak 4 bar link w/fric swing					
L5613	A	Ak 4 bar linq w/hydraul swig					
L5614	A	4-bar link above knee w/swng					
L5616	A	Ak univ multiplex sys frict					
L5617	A	AK/BK self-aligning unit ea					
L5618	A	Test socket symes					
L5620	A	Test socket below knee					
L5622	A	Test socket knee disarticula					
L5624	A	Test socket above knee					
L5626	A	Test socket hip disarticulat					
L5628	A	Test socket hemipelvectomy					
L5629	A	Below knee acrylic socket					
L5630	A	Syme typ expandabl wall sckt					
L5631	A	Ak/knee disartic acrylic soc					
L5632	A	Symes type ptb brim design s					
L5634	A	Symes type poster opening so					
L5636	A	Symes type medial opening so					
L5637	A	Below knee total contact					
L5638	A	Below knee leather socket					
L5639	A	Below knee wood socket					
L5640	A	Knee disarticulat leather so					
L5642	A	Above knee leather socket					
L5643	A	Hip flex inner socket ext fr					
L5644	A	Above knee wood socket					
L5645	A	Ak flexibl inner socket ext					
L5646	A	Below knee air cushion socke					
L5647	A	Below knee suction socket					
L5648	A	Above knee air cushion socke					
L5649	A	Isch containmt/narrow m-l so					
L5650	A	Tot contact ak/knee disart s					
L5651	A	Ak flex inner socket ext fra					
L5652	A	Suction susp ak/knee disart					
L5653	A	Knee disart expand wall sock					
L5654	A	Socket insert symes					
L5655	A	Socket insert below knee					
L5656	A	Socket insert knee articulat					
L5658	A	Socket insert above knee					
L5660	A	Sock inert syme silicone gel					
L5661	A	Multi-durometer symes					
L5662	A	Socket insert bk silicone ge					
L5663	A	Sock knee disartic silicone					
L5664	A	Socket insert ak silicone ge					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
L5665	A	Multi-durometer below knee					
L5666	A	Below knee cuff suspension					
L5667	A	Socket insert w lock lower					
L5668	A	Socket insert w/o lock lower					
L5669	A	Below knee socket w/o lock					
L5670	A	Bk molded supracondylar susp					
L5672	A	Bk removable medial brim sus					
L5674	A	Bk latex sleeve suspension/e					
L5675	A	Bk latex sleeve susp/eq hvy					
L5676	A	Bk knee joints single axis p					
L5677	A	Bk knee joints polycentric p					
L5678	A	Bk joint covers pair					
L5680	A	Bk thigh lacer non-molded					
L5682	A	Bk thigh lacer glut/ischia m					
L5684	A	Bk fork strap					
L5686	A	Bk back check					
L5688	A	Bk waist belt webbing					
L5690	A	Bk waist belt padded and lin					
L5692	A	Ak pelvic control belt light					
L5694	A	Ak pelvic control belt pad/l					
L5695	A	Ak sleeve susp neoprene/equa					
L5696	A	Ak/knee disartic pelvic join					
L5697	A	Ak/knee disartic pelvic band					
L5698	A	Ak/knee disartic silesian be					
L5699	A	Shoulder harness					
L5700	A	Replace socket below knee					
L5701	A	Replace socket above knee					
L5702	A	Replace socket hip					
L5704	A	Custom shape covr below knee					
L5705	A	Custm shape cover above knee					
L5706	A	Custm shape cvr knee disart					
L5707	A	Custm shape cover hip disart					
L5710	A	Kne-shin exo sng axi mnl loc					
L5711	A	Knee-shin exo mnl lock ultra					
L5712	A	Knee-shin exo frict swg & st					
L5714	A	Knee-shin exo variable frict					
L5716	A	Knee-shin exo mech stance ph					
L5718	A	Knee-shin exo frct swg & sta					
L5722	A	Knee-shin pneum swg frct exo					
L5724	A	Knee-shin exo fluid swing ph					
L5726	A	Knee-shin ext jnts fld swg e					
L5728	A	Knee-shin fluid swg & stance					
L5780	A	Knee-shin pneum/hydra pneum					
L5785	A	Exoskeletal bk ultralt mater					
L5790	A	Exoskeletal ak ultra-light m					
L5795	A	Exoskel hip ultra-light mate					
L5810	A	Endoskel knee-shin mnl lock					
L5811	A	Endo knee-shin mnl lck ultra					
L5812	A	Endo knee-shin frct swg & st					
L5814	A	Endo knee-shin hydral swg ph					
L5816	A	Endo knee-shin polyc mch sta					
L5818	A	Endo knee-shin frct swg & st					
L5822	A	Endo knee-shin pneum swg frc					
L5824	A	Endo knee-shin fluid swing p					
L5826	A	Miniature knee joint					
L5828	A	Endo knee-shin fluid swg/sta					
L5830	A	Endo knee-shin pneum/swg pha					
L5840	A	Multi-axial knee/shin system					
L5845	A	Knee-shin sys stance flexion					
L5846	A	Knee-shin sys microprocessor					
L5850	A	Endo ak/hip knee extens assi					
L5855	A	Mech hip extension assist					
L5910	A	Endo below knee alignable sy					
L5920	A	Endo ak/hip alignable system					
L5925	A	Above knee manual lock					
L5930	A	High activity knee frame					
L5940	A	Endo bk ultra-light material					
L5950	A	Endo ak ultra-light material					
L5960	A	Endo hip ultra-light materia					
L5962	A	Below knee flex cover system					
L5964	A	Above knee flex cover system					
L5966	A	Hip flexible cover system					
L5968	A	Multiaxial ankle w dorsiflex					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
L5970	A	Foot external keel sach foot					
L5972	A	Flexible keel foot					
L5974	A	Foot single axis ankle/foot					
L5975	A	Combo ankle/foot prosthesis					
L5976	A	Energy storing foot					
L5978	A	Ft prosth multiaxial ankl/ft					
L5979	A	Multi-axial ankle/ft prosth					
L5980	A	Flex foot system					
L5981	A	Flex-walk sys low ext prosth					
L5982	A	Exoskeletal axial rotation u					
L5984	A	Endoskeletal axial rotation					
L5985	A	Lwr ext dynamic prosth pylon					
L5986	A	Multi-axial rotation unit					
L5987	A	Shank ft w vert load pylon					
L5988	A	Vertical shock reducing pylo					
L5999	A	Lowr extremity prosthes NOS					
L6000	A	Par hand robin-aids thum rem					
L6010	A	Hand robin-aids little/ring					
L6020	A	Part hand robin-aids no fing					
L6050	A	Wrst MLd sck flx hng tri pad					
L6055	A	Wrst mold sock w/exp interfa					
L6100	A	Elb mold sock flex hinge pad					
L6110	A	Elbow mold sock suspension t					
L6120	A	Elbow mold doub splt soc ste					
L6130	A	Elbow stump activated lock h					
L6200	A	Elbow mold outsid lock hinge					
L6205	A	Elbow molded w/expand inter					
L6250	A	Elbow inter loc elbow forarm					
L6300	A	Shldr disart int lock elbow					
L6310	A	Shoulder passive restor comp					
L6320	A	Shoulder/passive restor cap					
L6350	A	Thoracic interm lock elbow					
L6360	A	Thoracic passive restor comp					
L6370	A	Thoracic passive restor cap					
L6380	A	Postop dag cast chg wrst/elb					
L6382	A	Postop dag cast chg elb dis/					
L6384	A	Postop dag cast chg shlder/t					
L6386	A	Postop ea cast chg & realign					
L6388	A	Postop applicat rigid dag on					
L6400	A	Below elbow prosth tiss shap					
L6450	A	Elb disart prosth tiss shap					
L6500	A	Above elbow prosth tiss shap					
L6550	A	Shldr disar prosth tiss shap					
L6570	A	Scap thorac prosth tiss shap					
L6580	A	Wrist/elbow bowden cable mol					
L6582	A	Wrist/elbow bowden cbl dir f					
L6584	A	Elbow fair lead cable molded					
L6586	A	Elbow fair lead cable dir fo					
L6588	A	Shdr fair lead cable molded					
L6590	A	Shdr fair lead cable direct					
L6600	A	Polycentric hinge pair					
L6605	A	Single pivot hinge pair					
L6610	A	Flexible metal hinge pair					
L6615	A	Disconnect locking wrist uni					
L6616	A	Disconnect insert locking wr					
L6620	A	Flexion-friction wrist unit					
L6623	A	Spring-ass rot wrst w/latch					
L6625	A	Rotation wrst w/cable lock					
L6628	A	Quick disconn hook adapter o					
L6629	A	Lamination collar w/couplin					
L6630	A	Stainless steel any wrist					
L6632	A	Latex suspension sleeve each					
L6635	A	Lift assist for elbow					
L6637	A	Nudge control elbow lock					
L6640	A	Shoulder abduction joint pai					
L6641	A	Excursion amplifier pulley t					
L6642	A	Excursion amplifier lever ty					
L6645	A	Shoulder flexion-abduction j					
L6650	A	Shoulder universal joint					
L6655	A	Standard control cable extra					
L6660	A	Heavy duty control cable					
L6665	A	Teflon or equal cable lining					
L6670	A	Hook to hand cable adapter					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
L6672	A	Harness chest/shlder saddle					
L6675	A	Harness figure of 8 sing con					
L6676	A	Harness figure of 8 dual con					
L6680	A	Test sock wrist disart/bel e					
L6682	A	Test sock elbw disart/above					
L6684	A	Test socket shldr disart/tho					
L6686	A	Suction socket					
L6687	A	Frame typ socket bel elbow/w					
L6688	A	Frame typ sock above elb/dis					
L6689	A	Frame typ socket shoulder di					
L6690	A	Frame typ sock interscap-tho					
L6691	A	Removable insert each					
L6692	A	Silicone gel insert or equal					
L6693	A	Lockingelbow forearm cntrbal					
L6700	A	Terminal device model #3					
L6705	A	Terminal device model #5					
L6710	A	Terminal device model #5x					
L6715	A	Terminal device model #5xa					
L6720	A	Terminal device model #6					
L6725	A	Terminal device model #7					
L6730	A	Terminal device model #7lo					
L6735	A	Terminal device model #8					
L6740	A	Terminal device model #8x					
L6745	A	Terminal device model #88x					
L6750	A	Terminal device model #10p					
L6755	A	Terminal device model #10x					
L6765	A	Terminal device model #12p					
L6770	A	Terminal device model #99x					
L6775	A	Terminal device model #555					
L6780	A	Terminal device model #ss555					
L6790	A	Hooks-accu hook or equal					
L6795	A	Hooks-2 load or equal					
L6800	A	Hooks-aprl vc or equal					
L6805	A	Modifier wrist flexion unit					
L6806	A	Trs grip vc or equal					
L6807	A	Term device grip 1/2 or equal					
L6808	A	Term device infant or child					
L6809	A	Trs super sport passive					
L6810	A	Pincher tool otto bock or eq					
L6825	A	Hands dorrance vo					
L6830	A	Hand aprl vc					
L6835	A	Hand sierra vo					
L6840	A	Hand becker imperial					
L6845	A	Hand becker lock grip					
L6850	A	Term dvc-hand becker plylite					
L6855	A	Hand robin-aide vo					
L6860	A	Hand robin-aide vo soft					
L6865	A	Hand passive hand					
L6867	A	Hand detroit infant hand					
L6868	A	Passive inf hand steeper/hos					
L6870	A	Hand child mitt					
L6872	A	Hand nyu child hand					
L6873	A	Hand mech inf steeper or equ					
L6875	A	Hand bock vc					
L6880	A	Hand bock vo					
L6890	A	Production glove					
L6895	A	Custom glove					
L6900	A	Hand restorat thumb/1 finger					
L6905	A	Hand restoration multiple fi					
L6910	A	Hand restoration no fingers					
L6915	A	Hand restoration replacmnt g					
L6920	A	Wrist disarticul switch ctrl					
L6925	A	Wrist disart myoelectronic c					
L6930	A	Below elbow switch control					
L6935	A	Below elbow myoelectronic ct					
L6940	A	Elbow disarticulation switch					
L6945	A	Elbow disart myoelectronic c					
L6950	A	Above elbow switch control					
L6955	A	Above elbow myoelectronic ct					
L6960	A	Shldr disartic switch contro					
L6965	A	Shldr disartic myoelectronic					
L6970	A	Interscapular-thor switch ct					
L6975	A	Interscap-thor myoelectronic					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
L7010	A	Hand otto back steaper/eq sw					
L7015	A	Hand sys teknik village swit					
L7020	A	Electronic greifer switch ct					
L7025	A	Electron hand myoelectronic					
L7030	A	Hand sys teknik vill myoelec					
L7035	A	Electron greifer myoelectro					
L7040	A	Prehensile actuator hoemer s					
L7045	A	Electron hook child michigan					
L7170	A	Electronic elbow hoemer swit					
L7180	A	Electronic elbow utah myoele					
L7185	A	Electron elbow adolescent sw					
L7186	A	Electron elbow child switch					
L7190	A	Elbow adolescent myoelectron					
L7191	A	Elbow child myoelectronic ct					
L7260	A	Electron wrist rotator otto					
L7261	A	Electron wrist rotator utah					
L7266	A	Servo control steeper or equ					
L7272	A	Analogue control unb or equa					
L7274	A	Proportional ctl 12 volt uta					
L7360	A	Six volt bat otto bock/eq ea					
L7362	A	Battery chrgr six volt otto					
L7364	A	Twelve volt battery utah/equ					
L7366	A	Battery chrgr 12 volt utah/e					
L7499	A	Upper extremity prosthes NOS					
L7500	A	Prosthetic dvc repair hourly					
L7510	A	Prosthetic device repair rep					
L7520	A	Repair prosthesis per 15 min					
L7900	A	Vacuum erection system					
L8000	A	Mastectomy bra					
L8010	A	Mastectomy sleeve					
L8015	A	Ext breastprosthesis garment					
L8020	A	Mastectomy form					
L8030	A	Breast prosthesis silicone/e					
L8035	A	Custom breast prosthesis					
L8039	A	Breast prosthesis NOS					
L8100	A	Compression stocking BK18–30					
L8110	A	Compression stocking BK30–40					
L8120	A	Compression stocking BK40–50					
L8130	A	Gc stocking thighlngth 18–30					
L8140	A	Gc stocking thighlngth 30–40					
L8150	A	Gc stocking thighlngth 40–50					
L8160	A	Gc stocking full lngth 18–30					
L8170	A	Gc stocking full lngth 30–40					
L8180	A	Gc stocking full lngth 40–50					
L8190	A	Gc stocking waistlngth 18–30					
L8195	A	Gc stocking waistlngth 30–40					
L8200	A	Gc stocking waistlngth 40–50					
L8210	A	Gc stocking custom made					
L8220	A	Gc stocking lymphedema					
L8230	A	Gc stocking garter belt					
L8239	A	G compression stocking NOS					
L8300	A	Truss single w/standard pad					
L8310	A	Truss double w/standard pad					
L8320	A	Truss addition to std pad wa					
L8330	A	Truss add to std pad scrotal					
L8400	A	Sheath below knee					
L8410	A	Sheath above knee					
L8415	A	Sheath upper limb					
L8417	A	Pros sheath/sock w gel cushn					
L8420	A	Prosthetic sock multi ply BK					
L8430	A	Prosthetic sock multi ply AK					
L8435	A	Pros sock multi ply upper lm					
L8440	A	Shrinker below knee					
L8460	A	Shrinker above knee					
L8465	A	Shrinker upper limb					
L8470	A	Pros sock single ply BK					
L8480	A	Pros sock single ply AK					
L8485	A	Pros sock single ply upper l					
L8490	A	Air seal suction reten systm					
L8499	A	Unlisted misc prosthetic ser					
L8500	A	Artificial larynx					
L8501	A	Tracheostomy speaking valve					
L8600	A	Implant breast silicone/eq					

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ADD

CPT/ HCPCS
L8603
L8610
L8612
L8613
L8614
L8619
L8630
L8641
L8642
L8658
L8670
L8699
L9900
M0064
M0075
M0076
M0100
M0300
M0301
M0302
P2028
P2029
P2031
P2033
P2038
P3000
P3001
P7001
[2] P9010
P9011
[2] P9012
[2] P9013
[2] P9016
[2] P9017
[2] P9018
[2] P9019
[2] P9020
[2] P9021
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[2] P9023
P9603
P9604
P9612
P9615
[2] Q0034
Q0035
Q0081
Q0082
Q0083
Q0084
Q0085
Q0086
Q0091
Q0092
Q0111
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Q0114
Q0115
[3] Q0136
Q0144
[2] Q0156
[2] Q0157
[3] Q0160
[3] Q0161
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[3] Q0169
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[1] Not su
Center paym
[2] Not su
[3] Eligibl

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
L8603	A	Collagen imp urinary 2.5 CC					
L8610	A	Ocular implant					
L8612	A	Aqueous shunt prosthesis					
L8613	A	Ossicular implant					
L8614	A	Cochlear device/system					
L8619	A	Replace cochlear processor					
L8630	A	Metacarpophalangeal implant					
L8641	A	Metatarsal joint implant					
L8642	A	Hallux implant					
L8658	A	Interphalangeal joint implnt					
L8670	A	Vascular graft, synthetic					
L8699	A	Prosthetic implant NOS					
L9900	A	O&P supply/accessory/service					
M0064	X	Visit for drug monitoring	0374	1.17	$56.73	$13.08	$11.35
M0075	E	Cellular therapy					
M0076	E	Prolotherapy					
M0100	E	Intragastric hypothermia					
M0300	E	IV chelationtherapy					
M0301	E	Fabric wrapping of aneurysm					
M0302	E	Assessment of cardiac output					
P2028	A	Cephalin floculation test					
P2029	A	Congo red blood test					
P2031	E	Hair analysis					
P2033	A	Blood thymol turbidity					
P2038	A	Blood mucoprotein					
P3000	A	Screen pap by tech w md supv					
P3001	E	Screening pap smear by phys					
P7001	E	Culture bacterial urine					
[2]P9010	S	Whole blood for transfusion	0950	2.06	$101.02		$20.20
P9011	S	Blood split unit					
[2]P9012	S	Cryoprecipitate each unit	0952	0.70	$33.92		$6.78
[2]P9013	S	Unit/s blood fibrinogen	0953	0.48	$23.27		$4.65
[2]P9016	S	Leukocyte poor blood, unit	0954	2.83	$137.21		$27.44
[2]P9017	S	One donor fresh frozn plasma	0955	2.26	$109.35		$21.87
[2]P9018	S	Plasma prtein fract, unit	0956	1.26	$61.09		$12.22
[2]P9019	S	Platelet concentrate unit	0957	0.98	$47.46		$9.49
[2]P9020	S	Platelet rich plasma unit	0958	1.16	$56.25		$11.25
[2]P9021	S	Red blood cells unit	0959	2.04	$99.04		$19.81
[2]P9022	S	Washed red blood cells unit	0960	3.81	$184.53		$36.91
[2]P9023	S	Frozen plasma, pooled, sd	0949	3.49	$169.22		$33.84
P9603	A	One-way allow prorated miles					
P9604	A	One-way allow prorated trip					
P9612	N	Catheterize for urine spec					
P9615	N	Urine specimen collect mult					
[2]Q0034	X	Admin of influenza vaccine	0354	0.13	$6.19		
Q0035	X	Cardiokymography	0366	0.38	$18.43	$15.60	$3.69
Q0081	S	Infusion ther other than che	0120	1.66	$80.49	$42.67	$16.10
Q0082	P	Activity therapy w/partial h	0033	4.17	$202.19	$48.17	$40.44
Q0083	S	Chemo by other than infusion	0116	2.34	$113.46	$22.69	$22.69
Q0084	S	Chemotherapy by infusion	0117	1.84	$89.22	$71.80	$17.84
Q0085	S	Chemo by both infusion and o	0118	2.90	$140.61	$72.03	$28.12
Q0086	A	Physical therapy evaluation/					
Q0091	T	Obtaining screen pap smear	0191	1.19	$57.70	$17.43	$11.54
Q0092	N	Set up port x-ray equipment					
Q0111	A	Wet mounts/w preparations					
Q0112	A	Potassium hydroxide preps					
Q0113	A	Pinworm examinations					
Q0114	A	Fern test					
Q0115	A	Post-coital mucous exam					
[3]Q0136	X	Non esrd epoetin alpha inj	0733				$1.75
Q0144	E	Azithromycin dihydrate, oral					
[2]Q0156	X	Human albumin 5%	0961	2.77	$134.31		$26.86
[2]Q0157	X	Human albumin 25%	0962	1.38	$66.91		$13.38
[3]Q0160	X	Factor IX non-recombinant	0931				$.04
[3]Q0161	X	Factor IX recombinant	0932				$.10
[3]Q0163	X	Diphenhydramine HCl 50mg	0761				$.10
[3]Q0164	X	Prochlorperazine maleate 5mg	0761				$.10
Q0165	E	Prochlorperazine maleate10mg					
[3]Q0166	X	Granisetron HCl 1 mg oral	0765				$3.20
[3]Q0167	X	Dronabinol 2.5mg oral	0762				$.48
Q0168	E	Dronabinol 5mg oral					
[3]Q0169	X	Promethazine HCl 12.5mg oral	0761				$.10
Q0170	E	Promethazine HCl 25 mg oral					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
[3]Q0171	X	Chlorpromazine HCl 10mg oral	0761				$.10
Q0172	E	Chlorpromazine HCl 25mg oral					
[3]Q0173	X	Trimethobenzamide HCl 250mg	0761				$.10
[3]Q0174	X	Thiethylperazine maleate10mg	0761				$.10
[3]Q0175	X	Perphenazine 4mg oral	0761				$.10
Q0176	E	Perphenazine 8mg oral					
[3]Q0177	X	Hydroxyzine pamoate 25mg	0761				$.10
Q0178	E	Hydroxyzine pamoate 50mg					
[3]Q0179	X	Ondansetron HCl 8mg oral	0769				$2.62
[3]Q0180	X	Dolasetron mesylate oral	0763				$8.53
Q0181	E	Unspecified oral anti-emetic					
Q0183	N	Nonmetabolic active tissue					
Q0184	N	Metabolically active tissue					
Q0185	N	Metabolic active D/E tissue					
Q0186	E	Paramedic intercept, rural					
[3]Q0187	X	Factor viia recombinant	0929				$.27
Q1001	E	Nitol category 1					
Q1002	E	Nitol category 2					
Q1003	E	Nitol category 3					
Q1004	E	Nitol category 4					
Q1005	E	Nitol category 5					
Q2001	E	Cabergoline, 0.5 mg, oral					
[3]Q2002	X	Elliot's B solution	7022				$19.20
[3]Q2003	X	Aprotinin, 10,000 kiu	7019				$2.42
[3]Q2004	X	Treatment for bladder calcul	7023				$4.46
[3]Q2005	X	Corticorelin ovine triflutat	7024				$45.77
[3]Q2006	X	Digoxin immune FAB (Ovine),	7025				$14.06
[3]Q2007	X	Ethanolamine oleate, 1000 ml	7026				$2.13
[3]Q2008	X	Fomepizole, 1.5 G	7027				$141.29
[3]Q2009	X	Fosphenytoin, 50 mg	7028				$.78
[3]Q2010	X	Glatiramer acetate, 25 mgamy	7029				$3.59
[3]Q2011	X	Hemin, 1 mg	7030				$.10
[3]Q2012	X	Pegademase bovine inj 25 I.U	7039				$1.16
[3]Q2013	X	Pentastarch 10% inj, 100 ml	7040				$2.04
[3]Q2014	X	Sermorelin acetate, 0.5 mg	7032				$53.34
[3]Q2015	X	Somatrem, 5 mg	7033				$28.03
[3]Q2016	X	Somatropin, 1 mg	7034				$5.04
[3]Q2017	X	Teniposide, 50 mg	7035				$20.85
[3]Q2018	X	Urofollitropin, 75 I.U.	7037				$8.24
[3]Q3001	S	Brachytherapy Seeds	0918				$9.99
Q9920	A	Epoetin with hct <= 20					
Q9921	A	Epoetin with hct = 21					
Q9922	A	Epoetin with hct = 22					
Q9923	A	Epoetin with hct = 23					
Q9924	A	Epoetin with hct = 24					
Q9925	A	Epoetin with hct = 25					
Q9926	A	Epoetin with hct = 26					
Q9927	A	Epoetin with hct = 27					
Q9928	A	Epoetin with hct = 28					
Q9929	A	Epoetin with hct = 29					
Q9930	A	Epoetin with hct = 30					
Q9931	A	Epoetin with hct = 31					
Q9932	A	Epoetin with hct = 32					
Q9933	A	Epoetin with hct = 33					
Q9934	A	Epoetin with hct = 34					
Q9935	A	Epoetin with hct = 35					
Q9936	A	Epoetin with hct = 36					
Q9937	A	Epoetin with hct = 37					
Q9938	A	Epoetin with hct = 38					
Q9939	A	Epoetin with hct = 39					
Q9940	A	Epoetin with hct >= 40					
R0070	N	Transport portable x-ray					
R0075	N	Transport port x-ray multipl					
R0076	N	Transport portable EKG					
V2020	A	Vision svcs frames purchases					
V2025	E	Eyeglasses delux frames					
V2100	A	Lens spher single plano 4.00					
V2101	A	Single vision sphere 4.12–7.00					
V2102	A	Singl vision sphere 7.12–20.00					
V2103	A	Spherocylindr 4.00d/12–2.00d					
V2104	A	Spherocylindr 4.00d/2.12–4d					
V2105	A	Spherocylinder 4.00d/4.25–6d					
V2106	A	Spherocylinder 4.00d/>6.00d					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
V2107	A	Spherocylinder 4.25d/12–2d					
V2108	A	Spherocylinder 4.25d/2.12–4d					
V2109	A	Spherocylinder 4.25d/4.25–6d					
V2110	A	Spherocylinder 4.25d/over 6d					
V2111	A	Spherocylindr 7.25d/.25–2.25					
V2112	A	Spherocylindr 7.25d/2.25–4d					
V2113	A	Spherocylindr 7.25d/4.25–6d					
V2114	A	Spherocylinder over 12.00d					
V2115	A	Lens lenticular bifocal					
V2116	A	Nonaspheric lens bifocal					
V2117	A	Aspheric lens bifocal					
V2118	A	Lens aniseikonic single					
V2199	A	Lens single vision not oth c					
V2200	A	Lens spher bifoc plano 4.00d					
V2201	A	Lens sphere bifocal 4.12–7.0					
V2202	A	Lens sphere bifocal 7.12–20.					
V2203	A	Lens sphcyl bifocal 4.00d/.1					
V2204	A	Lens sphcy bifocal 4.00d/2.1					
V2205	A	Lens sphcy bifocal 4.00d/4.2					
V2206	A	Lens sphcy bifocal 4.00d/ove					
V2207	A	Lens sphcy bifocal 4.25–7d/.					
V2208	A	Lens sphcy bifocal 4.25–7/2.					
V2209	A	Lens sphcy bifocal 4.25–7/4.					
V2210	A	Lens sphcy bifocal 4.25–7/ov					
V2211	A	Lens sphcy bifo 7.25–12/.25–					
V2212	A	Lens sphcyl bifo 7.25–12/2.2					
V2213	A	Lens sphcyl bifo 7.25–12/4.2					
V2214	A	Lens sphcyl bifocal over 12.					
V2215	A	Lens lenticular bifocal					
V2216	A	Lens lenticular nonaspheric					
V2217	A	Lens lenticular aspheric bif					
V2218	A	Lens aniseikonic bifocal					
V2219	A	Lens bifocal seg width over					
V2220	A	Lens bifocal add over 3.25d					
V2299	A	Lens bifocal speciality					
V2300	A	Lens sphere trifocal 4.00d					
V2301	A	Lens sphere trifocal 4.12–7.					
V2302	A	Lens sphere trifocal 7.12–20					
V2303	A	Lens sphcy trifocal 4.0/.12–					
V2304	A	Lens sphcy trifocal 4.0/2.25					
V2305	A	Lens sphcy trifocal 4.0/4.25					
V2306	A	Lens sphcyl trifocal 4.00/>6					
V2307	A	Lens sphcy trifocal 4.25–7/.					
V2308	A	Lens sphc trifocal 4.25–7/2.					
V2309	A	Lens sphc trifocal 4.25–7/4.					
V2310	A	Lens sphc trifocal 4.25–7/>6					
V2311	A	Lens sphc trifo 7.25–12/.25–					
V2312	A	Lens sphc trifo 7.25–12/2.25					
V2313	A	Lens sphc trifo 7.25–12/4.25					
V2314	A	Lens sphcyl trifocal over 12					
V2315	A	Lens lenticular trifocal					
V2316	A	Lens lenticular nonaspheric					
V2317	A	Lens lenticular aspheric tri					
V2318	A	Lens aniseikonic trifocal					
V2319	A	Lens trifocal seg width > 28					
V2320	A	Lens trifocal add over 3.25d					
V2399	A	Lens trifocal speciality					
V2410	A	Lens variab asphericity sing					
V2430	A	Lens variable asphericity bi					
V2499	A	Variable asphericity lens					
V2500	A	Contact lens pmma spherical					
V2501	A	Cntct lens pmma-toric/prism					
V2502	A	Contact lens pmma bifocal					
V2503	A	Cntct lens pmma color vision					
V2510	A	Cntct gas permeable sphericl					
V2511	A	Cntct toric prism ballast					
V2512	A	Cntct lens gas permbl bifocl					
V2513	A	Contact lens extended wear					
V2520	A	Contact lens hydrophilic					
V2521	A	Cntct lens hydrophilic toric					
V2522	A	Cntct lens hydrophil bifocl					
V2523	A	Cntct lens hydrophil extend					
V2530	A	Contact lens gas impermeable					

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ADDENDUM B.—HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT STATUS BY HCPCS CODE AND RELATED INFORMATION—Continued

CPT/ HCPCS	HOPD Status Indicator	Description	APC	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
V2531	A	Contact lens gas permeable					
V2599	A	Contact lens/es other type					
V2600	A	Hand held low vision aids					
V2610	A	Single lens spectacle mount					
V2615	A	Telescop/othr compound lens					
V2623	A	Plastic eye prosth custom					
V2624	A	Polishing artifical eye					
V2625	A	Enlargemnt of eye prosthesis					
V2626	A	Reduction of eye prosthesis					
V2627	A	Scleral cover shell					
V2628	A	Fabrication & fitting					
V2629	A	Prosthetic eye other type					
V2630	N	Anter chamber intraocul lens					
V2631	N	Iris support intraocir lens					
V2632	N	Post chmbr intraocular lens					
V2700	A	Balance lens					
V2710	A	Glass/plastic slab off prism					
V2715	A	Prism lens/es					
V2718	A	Fresnell prism prese-on lens					
V2730	A	Special base curve					
V2740	A	Rose tint plastic					
V2741	A	Non-rose tint plastic					
V2742	A	Rose tint glass					
V2743	A	Non-rose tint glass					
V2744	A	Tint photochromatic lens/es					
V2750	A	Anti-reflective coating					
V2755	A	UV lens/es					
V2760	A	Scratch resistant coating					
V2770	A	Occluder lens/es					
V2780	A	Oversize lens/es					
V2781	A	Progressive lens per lens					
V2785	A	Corneal tissue processing					
V2799	A	Miscellaneous vision service					
V5008	E	Hearing screening					
V5010	E	Assessment for hearing aid					
V5011	E	Hearing aid fitting/checking					
V5014	E	Hearing aid repair/modifying					
V5020	E	Conformity evaluation					
V5030	E	Body-worn hearing aid air					
V5040	E	Body-worn hearing aid bone					
V5050	E	Body-worn hearing aid in ear					
V5060	E	Behind ear hearing aid					
V5070	E	Glasses air conduction					
V5080	E	Glasses bone conduction					
V5090	E	Hearing aid dispensing fee					
V5100	E	Body-worn bilat hearing aid					
V5110	E	Hearing aid dispensing fee					
V5120	E	Body-worn binaur hearing aid					
V5130	E	In ear binaural hearing aid					
V5140	E	Behind ear binaur hearing ai					
V5150	E	Glasses binaural hearing aid					
V5160	E	Dispensing fee binaural					
V5170	E	Within ear cros hearing aid					
V5180	E	Behind ear cros hearing aid					
V5190	E	Glasses cros hearing aid					
V5200	E	Cros hearing aid dispens fee					
V5210	E	In ear bicros hearing aid					
V5220	E	Behind ear bicros hearing ai					
V5230	E	Glasses bicros hearing aid					
V5240	E	Dispensing fee bicros					
V5299	A	Hearing service					
V5336	E	Repair communication device					
V5362	A	Speech screening					
V5363	A	Language screening					
V5364	A	Dysphagia screening					

ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
0001		Photochemotherapy	S	0.47	$22.79	$8.49	$4.56

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APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	96900	Ultraviolet light therapy					
	96910	Photochemotherapy with UV–B					
	96912	Photochemotherapy with UV–A					
	96913	Photochemotherapy, UV–A or B					
	96999	Dermatological procedure					
0002		Fine needle Biopsy/Aspiration	T	0.62	$30.06	$17.66	$6.01
	60001	Aspirate/inject thyriod cyst					
	88170	Fine needle aspiration					
	88171	Fine needle aspiration					
0003		Bone Marrow Biopsy/Aspiration	T	0.98	$47.52	$27.99	$9.50
	85095	Bone marrow aspiration					
	85102	Bone marrow biopsy					
0004		Level I Needle Biopsy/Aspiration Except Bone Marrow	T	1.84	$89.22	$32.57	$17.84
	17999	Skin tissue procedure					
	19000	Drainage of breast lesion					
	19001	Drain breast lesion add-on					
	20615	Treatment of bone cyst					
	42400	Biopsy of salivary gland					
	54800	Biopsy of epididymis					
	55000	Drainage of hydrocele					
	60100	Biopsy of thyroid					
	60699	Endocrine surgery procedure					
0005		Level II Needle Biopsy/Aspiration Except Bone Marrow	T	5.41	$262.32	$119.75	$52.46
	19100	Biopsy of breast					
	20206	Needle biopsy, muscle					
	32400	Needle biopsy chest lining					
	32405	Biopsy, lung or mediastinum					
	38505	Needle biopsy, lymph nodes					
	47000	Needle biopsy of liver					
	47399	Liver surgery procedure					
	48102	Needle biopsy, pancreas					
	48999	Pancreas surgery procedure					
	49180	Biopsy, abdominal mass					
	50200	Biopsy of kidney					
	50390	Drainage of kidney lesion					
	54500	Biopsy of testis					
	62269	Needle biopsy, spinal cord					
0006		Level I Incision & Drainage	T	2.00	$96.97	$33.95	$19.39
	10040	Acne surgery of skin abscess					
	10060	Drainage of skin abscess					
	10061	Drainage of skin abscess					
	10080	Drainage of pilonidal cyst					
	10120	Remove foreign body					
	10160	Puncture drainage of lesion					
	20000	Incision of abscess					
	26010	Drainage of finger abscess					
	69000	Drain external ear lesion					
	69020	Drain outer ear canal lesion					
0007		Level II Incision & Drainage	T	3.68	$178.43	$72.03	$35.69
	10081	Drainage of pilonidal cyst					
	10140	Drainage of hematoma/fluid					
	10180	Complex drainage, wound					
	26011	Drainage of finger abscess					
	69005	Drain external ear lesion					
0008		Level III Incision & Drainage	T	6.15	$298.20	$113.67	$59.64
	19020	Incision of breast lesion					
	20950	Fluid pressure, muscle					
	21501	Drain neck/chest lesion					
	21700	Revision of neck muscle					
	21720	Revision of neck muscle					
	21725	Revision of neck muscle					
	23030	Drain shoulder lesion					
	23031	Drain shoulder bursa					
	23930	Drainage of arm lesion					
	23931	Drainage of arm bursa					
	27301	Drain thigh/knee lesion					
	27603	Drain lower leg lesion					
	28001	Drainage of bursa of foot					
	38300	Drainage, lymph node lesion					
	38305	Drainage, lymph node lesion					
	38999	Blood/lymph system procedure					
	51080	Drainage of bladder abscess					
	54015	Drain penis lesion					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	54115	Treatment of penis lesion					
	55100	Drainage of scrotum abscess					
0009		Nail Procedures	T	0.74	$35.88	$9.63	$7.18
	11719	Trim nail(s)					
	11720	Debride nail, 1–5					
	11721	Debride nail, 6 or more					
	11740	Drain blood from under nail					
	G0127	Trim nail(s)					
0010		Level I Destruction of Lesion	T	0.55	$26.67	$9.86	$5.33
	17000	Destroy benign/premal lesion					
	17003	Destroy lesions, 2–14					
	17110	Destruct lesion, 1–14					
0011		Level II Destruction of Lesion	T	2.72	$131.88	$50.01	$26.38
	17004	Destroy lesions, 15 or more					
	17106	Destruction of skin lesions					
	17107	Destruction of skin lesions					
	17108	Destruction of skin lesions					
	17111	Destruct lesion, 15 or more					
0012		Level I Debridement & Destruction	T	0.53	$25.70	$9.18	$5.14
	11732	Remove nail plate, add-on					
	11900	Injection into skin lesions					
	15852	Dressing change, not for burn					
	17340	Cryotherapy of skin					
	69220	Clean out mastoid cavity					
0013		Level II Debridement & Destruction	T	0.91	$44.12	$17.66	$8.82
	11300	Shave skin lesion					
	11301	Shave skin lesion					
	11305	Shave skin lesion					
	11306	Shave skin lesion					
	11310	Shave skin lesion					
	11311	Shave skin lesion					
	11730	Removal of nail plate					
	11901	Added skin lesions injection					
	15786	Abrasion, lesion, single					
	15788	Chemical peel, face, epiderm					
	15850	Removal of sutures					
	15851	Removal of sutures					
	17260	Destruction of skin lesions					
	17261	Destruction of skin lesions					
	17262	Destruction of skin lesions					
	17263	Destruction of skin lesions					
	17271	Destruction of skin lesions					
	17272	Destruction of skin lesions					
	54050	Destruction, penis lesion(s)					
	54056	Cryosurgery, penis lesion(s)					
0014		Level III Debridement & Destruction	T	1.50	$72.73	$24.55	$14.55
	11302	Shave skin lesion					
	11307	Shave skin lesion					
	16025	Treatment of burn(s)					
	17250	Chemical cautery, tissue					
	46917	Laser surgery, anal lesions					
0015		Level IV Debridement & Destruction	T	1.77	$85.82	$31.20	$17.16
	11000	Debride infected skin					
	11001	Debride infected skin add-on					
	11040	Debride skin, partial					
	11041	Debride skin, full					
	11055	Trim skin lesion					
	11056	Trim skin lesions, 2 to 4					
	11057	Trim skin lesions, over 4					
	11200	Removal of skin tags					
	11201	Remove skin tags add-on					
	11303	Shave skin lesion					
	11308	Shave skin lesion					
	11312	Shave skin lesion					
	11765	Excision of nail fold, toe					
	15783	Abrasion treatment of skin					
	15789	Chemical peel, face, dermal					
	16000	Initial treatment of burn(s)					
	16010	Treatment of burn(s)					
	16020	Treatment of burn(s)					
	16030	Treatment of burn(s)					
	17264	Destruction of skin lesions					
	17270	Destruction of skin lesions					

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APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	17273	Destruction of skin lesions					
	17274	Destruction of skin lesions					
	17276	Destruction of skin lesions					
	17280	Destruction of skin lesions					
	17281	Destruction of skin lesions					
	17282	Destruction of skin lesions					
	17283	Destruction of skin lesions					
0016	Level V Debridement & Destruction		T	3.53	$171.16	$74.67	$34.23
	11042	Debride skin/tissue					
	11043	Debride tissue/muscle					
	11313	Shave skin lesion					
	15787	Abrasion, lesions, add-on					
	15792	Chemical peel, nonfacial					
	15793	Chemical peel, nonfacial					
	15810	Salabrasion					
	17266	Destruction of skin lesions					
	17284	Destruction of skin lesions					
	17286	Destruction of skin lesions					
	17360	Skin peel therapy					
	17380	Hair removal by electrolysis					
	46900	Destruction, anal lesion(s)					
	46910	Destruction, anal lesion(s)					
	46916	Cryosurgery, anal lesion(s)					
	54055	Destruction, penis lesion(s)					
	56501	Destruction, vulva lesion(s)					
0017	Level VI Debridement & Destruction		T	12.45	$603.66	$289.16	$120.73
	11044	Debride tissue/muscle/bone					
	16015	Treatment of burn(s)					
	46922	Excision of anal lesion(s)					
	46924	Destruction, anal lesion(s)					
	54057	Laser surg, penis lesion(s)					
	54060	Excision of penis lesion(s)					
	54065	Destruction, penis lesion(s)					
	56515	Destruction, vulva lesion(s)					
0018	Biopsy Skin, Subcutaneous Tissue or Mucous Membrane		T	0.94	$45.58	$17.66	$9.12
	11100	Biopsy of skin lesion					
	11101	Biopsy, skin add-on					
0019	Level I Excision/Biopsy		T	4.00	$193.95	$78.91	$38.79
	11400	Removal of skin lesion					
	11401	Removal of skin lesion					
	11402	Removal of skin lesion					
	11420	Removal of skin lesion					
	11421	Removal of skin lesion					
	11422	Removal of skin lesion					
	11440	Removal of skin lesion					
	11441	Removal of skin lesion					
	11442	Removal of skin lesion					
	11600	Removal of skin lesion					
	11601	Removal of skin lesion					
	11602	Removal of skin lesion					
	11620	Removal of skin lesion					
	11621	Removal of skin lesion					
	11622	Removal of skin lesion					
	11640	Removal of skin lesion					
	11641	Removal of skin lesion					
	11642	Removal of skin lesion					
	11750	Removal of nail bed					
	11755	Biopsy, nail unit					
	11976	Removal of contraceptive cap					
	20220	Bone biopsy, trocar/needle					
	20520	Removal of foreign body					
	21550	Biopsy of neck/chest					
	23330	Remove shoulder foreign body					
	24200	Removal of arm foreign body					
	27086	Remove hip foreign body					
	28190	Removal of foot foreign body					
	56605	Biopsy of vulva/perineum					
	56606	Biopsy of vulva/perineum					
	58999	Genital surgery procedure					
	69100	Biopsy of external ear					
0020	Level II Excision/Biopsy		T	6.51	$315.65	$130.53	$63.13
	10121	Remove foreign body					
	11403	Removal of skin lesion					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	11404	Removal of skin lesion					
	11406	Removal of skin lesion					
	11423	Removal of skin lesion					
	11424	Removal of skin lesion					
	11443	Removal of skin lesion					
	11444	Removal of skin lesion					
	11603	Removal of skin lesion					
	11604	Removal of skin lesion					
	11623	Removal of skin lesion					
	11624	Removal of skin lesion					
	11643	Removal of skin lesion					
	11644	Removal of skin lesion					
	16035	Incision of burn scab					
	17304	Chemosurgery of skin lesion					
	17305	2nd stage chemosurgery					
	17306	3rd stage chemosurgery					
	17307	Followup skin lesion therapy					
	17310	Extensive skin chemosurgery					
	20200	Muscle biopsy					
	20225	Bone biopsy, trocar/needle					
	21920	Biopsy soft tissue of back					
	24065	Biopsy arm/elbow soft tissue					
	24066	Biopsy arm/elbow soft tissue					
	25065	Biopsy forearm soft tissues					
	25075	Removal of forearm lesion					
	26320	Removal of implant from hand					
	27613	Biopsy lower leg soft tissue					
	28193	Removal of foot foreign body					
	37609	Temporal artery procedure					
	37799	Vascular surgery procedure					
	54100	Biopsy of penis					
	69110	Remove external ear, partial					
	69145	Remove ear canal lesion(s)					
0021	Level III Excision/Biopsy		T	10.49	$506.63	$236.51	$101.73
	11606	Removal of skin lesion					
	11770	Removal of pilonidal lesion					
	20205	Deep muscle biopsy					
	20670	Removal of support implant					
	23000	Removal of calcium deposits					
	23065	Biopsy shoulder tissues					
	23075	Removal of shoulder lesion					
	24075	Remove arm/elbow lesion					
	24201	Removal of arm foreign body					
	27040	Biopsy of soft tissues					
	27323	Biopsy, thigh soft tissues					
	27618	Remove lower leg lesion					
	28043	Excision of foot lesion					
	28192	Removal of foot foreign body					
	54105	Biopsy of penis					
0022	Level IV Excision/Biopsy		T	12.49	$605.60	$292.94	$121.12
	11010	Debride skin, fx					
	11011	Debride skin/muscle, fx					
	11012	Debride skin/muscle/bone, fx					
	11426	Removal of skin lesion					
	11446	Removal of skin lesion					
	11450	Removal, sweat gland lesion					
	11451	Removal, sweat gland lesion					
	11462	Removal, sweat gland lesion					
	11463	Removal, sweat gland lesion					
	11470	Removal, sweat gland lesion					
	11471	Removal, sweat gland lesion					
	11626	Removal of skin lesion					
	11646	Removal of skin lesion					
	11752	Remove nail bed/finger tip					
	11771	Removal of pilonidal lesion					
	11772	Removal of pilonidal lesion					
	11971	Remove tissue expander(s)					
	15780	Abrasion treatment of skin					
	15781	Abrasion treatment of skin					
	15782	Abrasion treatment of skin					
	15811	Salabrasion					
	15836	Excise excessive skin tissue					
	15920	Removal of tail bone ulcer					

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APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	15931	Remove sacrum pressure sore					
	15933	Remove sacrum pressure sore					
	15940	Remove hip pressure sore					
	15941	Remove hip pressure sore					
	15950	Remove thigh pressure sore					
	15951	Remove thigh pressure sore					
	15999	Removal of pressure sore					
	20240	Bone biopsy, excisional					
	20245	Bone biopsy, excisional					
	20525	Removal of foreign body					
	20680	Removal of support implant					
	21555	Remove lesion, neck/chest					
	21556	Remove lesion, neck/chest					
	21925	Biopsy soft tissue of back					
	21930	Remove lesion, back or flank					
	21935	Remove tumor, back					
	22900	Remove abdominal wall lesion					
	22999	Abdomen surgery procedure					
	23066	Biopsy shoulder tissues					
	23076	Removal of shoulder lesion					
	23077	Remove tumor of shoulder					
	23331	Remove shoulder foreign body					
	24076	Remove arm/elbow lesion					
	24077	Remove tumor of arm/elbow					
	25066	Biopsy forearm soft tissues					
	25076	Removal of forearm lesion					
	25077	Remove tumor, forearm/wrist					
	26115	Removal of hand lesion					
	26116	Removal of hand lesion					
	26117	Remove tumor, hand/finger					
	27041	Biopsy of soft tissues					
	27047	Remove hip/pelvis lesion					
	27048	Remove hip/pelvis lesion					
	27049	Remove tumor, hip/pelvis					
	27324	Biopsy, thigh soft tissues					
	27327	Removal of thigh lesion					
	27328	Removal of thigh lesion					
	27329	Remove tumor, thigh/knee					
	27372	Removal of foreign body					
	27614	Biopsy lower leg soft tissue					
	27619	Remove lower leg lesion					
	69205	Clear outer ear canal					
0023	Exploration Penetrating Wound		T	1.96	$96.00	$40.37	$19.20
	20100	Explore wound, neck					
	20103	Explore wound, extremity					
0024	Level I Skin Repair		T	2.43	$117.82	$44.50	$23.56
	11760	Repair of nail bed					
	11762	Reconstruction of nail bed					
	11920	Correct skin color defects					
	11921	Correct skin color defects					
	11922	Correct skin color defects					
	11950	Therapy for contour defects					
	11951	Therapy for contour defects					
	11952	Therapy for contour defects					
	11954	Therapy for contour defects					
	12001	Repair superficial wound(s)					
	12002	Repair superficial wound(s)					
	12004	Repair superficial wound(s)					
	12005	Repair superficial wound(s)					
	12006	Repair superficial wound(s)					
	12007	Repair superficial wound(s)					
	12011	Repair superficial wound(s)					
	12013	Repair superficial wound(s)					
	12014	Repair superficial wound(s)					
	12015	Repair superficial wound(s)					
	12016	Repair superficial wound(s)					
	12017	Repair superficial wound(s)					
	12018	Repair superficial wound(s)					
	12020	Closure of split wound					
	12021	Closure of split wound					
	12031	Layer closure of wound(s)					
	12032	Layer closure of wound(s)					
	12034	Layer closure of wound(s)					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	12035	Layer closure of wound(s)					
	12036	Layer closure of wound(s)					
	12041	Layer closure of wound(s)					
	12042	Layer closure of wound(s)					
	12044	Layer closure of wound(s)					
	12045	Layer closure of wound(s)					
	12046	Layer closure of wound(s)					
	12051	Layer closure of wound(s)					
	12052	Layer closure of wound(s)					
	12053	Layer closure of wound(s)					
	12054	Layer closure of wound(s)					
	12055	Layer closure of wound(s)					
	12056	Layer closure of wound(s)					
0025	Level II Skin Repair		T	3.74	$181.34	$70.66	$36.27
	13100	Repair of wound or lesion					
	13101	Repair of wound or lesion					
	13102	Repair wound/lesion add-on					
	13120	Repair of wound or lesion					
	13121	Repair of wound or lesion					
	13122	Repair wound/lesion add-on					
	13131	Repair of wound or lesion					
	13132	Repair of wound or lesion					
	13133	Repair wound/lesion add-on					
	13151	Repair of wound or lesion					
	13152	Repair of wound or lesion					
	13153	Repair wound/lesion add-on					
	43870	Repair stomach opening					
0026	Level III Skin Repair		T	12.11	$587.18	$277.92	$117.44
	11960	Insert tissue expander(s)					
	11970	Replace tissue expander					
	12037	Layer closure of wound(s)					
	12047	Layer closure of wound(s)					
	12057	Layer closure of wound(s)					
	13150	Repair of wound or lesion					
	13160	Late closure of wound					
	14000	Skin tissue rearrangement					
	14001	Skin tissue rearrangement					
	14020	Skin tissue rearrangement					
	14021	Skin tissue rearrangement					
	14040	Skin tissue rearrangement					
	14041	Skin tissue rearrangement					
	14060	Skin tissue rearrangement					
	14061	Skin tissue rearrangement					
	14300	Skin tissue rearrangement					
	14350	Skin tissue rearrangement					
	15000	Skin graft					
	15001	Skin graft add-on					
	15050	Skin pinch graft					
	15100	Skin split graft					
	15101	Skin split graft add-on					
	15120	Skin split graft					
	15121	Skin split graft add-on					
	15200	Skin full graft					
	15201	Skin full graft add-on					
	15220	Skin full graft					
	15221	Skin full graft add-on					
	15240	Skin full graft					
	15241	Skin full graft add-on					
	15260	Skin full graft					
	15261	Skin full graft add-on					
	15350	Skin homograft					
	15351	Skin homograft add-on					
	15400	Skin heterograft					
	15401	Skin heterograft add-on					
	15570	Form skin pedicle flap					
	15572	Form skin pedicle flap					
	15574	Form skin pedicle flap					
	15576	Form skin pedicle flap					
	15600	Skin graft					
	15610	Skin graft					
	15620	Skin graft					
	15630	Skin graft					
	15650	Transfer skin pedicle flap					

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APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	15775	Hair transplant punch grafts					
	15776	Hair transplant punch grafts					
	15819	Plastic surgery, neck					
	15820	Revision of lower eyelid					
	15821	Revision of lower eyelid					
	15822	Revision of upper eyelid					
	15823	Revision of upper eyelid					
	15825	Removal of neck wrinkles					
	15829	Removal of skin wrinkles					
	15835	Excise excessive skin tissue					
	20101	Explore wound, chest					
	20102	Explore wound, abdomen					
	20910	Remove cartilage for graft					
	20912	Remove cartilage for graft					
	20920	Removal of fascia for graft					
	20922	Removal of fascia for graft					
	20926	Removal of tissue for graft					
	23921	Amputation follow-up surgery					
	25929	Amputation follow-up surgery					
	33222	Revise pocket, pacemaker					
	33223	Revise pocket, pacing-defib					
	44312	Revision of ileostomy					
	44340	Revision of colostomy					
	G0168	Wound closure by adhesive					
	G0169	Removal tissue; no anesthesia					
	G0170	Skin biograft					
	G0171	Skin biograft add-on					
0027	Level IV Skin Repair		T	15.80	$766.10	$383.10	$153.22
	15732	Muscle-skin graft, head/neck					
	15734	Muscle-skin graft, trunk					
	15736	Muscle-skin graft, arm					
	15738	Muscle-skin graft, leg					
	15740	Island pedicle flap graft					
	15750	Neurovascular pedicle graft					
	15760	Composite skin graft					
	15770	Derma-fat-fascia graft					
	15824	Removal of forehead wrinkles					
	15826	Removal of brow wrinkles					
	15828	Removal of face wrinkles					
	15831	Excise excessive skin tissue					
	15832	Excise excessive skin tissue					
	15833	Excise excessive skin tissue					
	15834	Excise excessive skin tissue					
	15836	Excise excessive skin tissue					
	15837	Excise excessive skin tissue					
	15839	Excise excessive skin tissue					
	15840	Graft for face nerve palsy					
	15841	Graft for face nerve palsy					
	15842	Graft for face nerve palsy					
	15845	Skin and muscle repair, face					
	15876	Suction assisted lipectomy					
	15877	Suction assisted lipectomy					
	15878	Suction assisted lipectomy					
	15879	Suction assisted lipectomy					
	15922	Removal of tail bone ulcer					
	15934	Remove sacrum pressure sore					
	15935	Remove sacrum pressure sore					
	15936	Remove sacrum pressure sore					
	15937	Remove sacrum pressure sore					
	15944	Remove hip pressure sore					
	15945	Remove hip pressure sore					
	15946	Remove hip pressure sore					
	15952	Remove thigh pressure sore					
	15953	Remove thigh pressure sore					
	15956	Remove thigh pressure sore					
	15958	Remove thigh pressure sore					
0029	Incision/Excision Breast		T	12.85	$623.06	$303.50	$124.61
	19101	Biopsy of breast					
	19110	Nipple exploration					
	19112	Excise breast duct fistula					
	19120	Removal of breast lesion					
	19125	Excision, breast lesion					
	19126	Excision, addl breast lesion					

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APC	CPT/HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	19140	Removal of breast tissue					
	19290	Place needle wire, breast					
	19291	Place needle wire, breast					
	19396	Design custom breast implant					
	19499	Breast surgery procedure					
0030	Breast Reconstruction/Mastectomy		T	20.19	$978.95	$523.95	$195.79
	19160	Removal of breast tissue					
	19162	Remove breast tissue, nodes					
	19180	Removal of breast					
	19182	Removal of breast					
	19316	Suspension of breast					
	19318	Reduction of large breast					
	19324	Enlarge breast					
	19325	Enlarge breast with implant					
	19328	Removal of breast implant					
	19330	Removal of implant material					
	19340	Immediate breast prosthesis					
	19342	Delayed breast prosthesis					
	19350	Breast reconstruction					
	19355	Correct inverted nipple(s)					
	19357	Breast reconstruction					
	19366	Breast reconstruction					
	19370	Surgery of breast capsule					
	19371	Removal of breast capsule					
	19380	Revise breast reconstruction					
0031	Hyperbaric Oxygen		S	3.00	$145.46	$140.65	$29.09
	99183	Hyperbaric oxygen therapy					
	G0167	Hyperbaric oz tx; no md reqrd					
0032	Placement Transvenous Catheters/Arterial Cutdown		T	5.40	$261.83	$119.52	$52.37
	36420	Establish access to vein					
	36425	Establish access to vein					
	36488	Insertion of catheter, vein					
	36489	Insertion of catheter, vein					
	36490	Insertion of catheter, vein					
	36491	Insertion of catheter, vein					
	36493	Repositioning of cvc					
	36640	Insertion catheter, artery					
0033	Partial Hospitalization		P	4.17	$202.19	$48.17	$40.44
	G0129	Partial hosp prog service					
	G0172	Partial hosp prog service					
	Q0082	Activity therapy w/partial h					
0040	Arthrocentesis & Ligament/Tendon Injection		T	2.11	$102.31	$40.60	$20.46
	20550	Inject tendon/ligament/cyst					
	20600	Drain/inject, joint/bursa					
	20605	Drain/inject, joint/bursa					
	20610	Drain/inject, joint/bursa					
0041	Arthroscopy		T	24.57	$1,191.33	$592.08	$238.27
	29800	Jaw arthroscopy/surgery					
	29804	Jaw arthroscopy/surgery					
	29815	Shoulder arthroscopy					
	29819	Shoulder arthroscopy/surgery					
	29820	Shoulder arthroscopy/surgery					
	29821	Shoulder arthroscopy/surgery					
	29822	Shoulder arthroscopy/surgery					
	29823	Shoulder arthroscopy/surgery					
	29825	Shoulder arthroscopy/surgery					
	29826	Shoulder arthroscopy/surgery					
	29830	Elbow arthroscopy					
	29834	Elbow arthroscopy/surgery					
	29835	Elbow arthroscopy/surgery					
	29836	Elbow arthroscopy/surgery					
	29837	Elbow arthroscopy/surgery					
	29838	Elbow arthroscopy/surgery					
	29840	Wrist arthroscopy					
	29843	Wrist arthroscopy/surgery					
	29844	Wrist arthroscopy/surgery					
	29845	Wrist arthroscopy/surgery					
	29846	Wrist arthroscopy/surgery					
	29847	Wrist arthroscopy/surgery					
	29848	Wrist endoscopy/surgery					
	29860	Hip arthroscopy, dx					
	29861	Hip arthroscopy/surgery					
	29862	Hip arthroscopy/surgery					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	29863	Hip arthroscopy/surgery					
	29870	Knee arthroscopy, dx					
	29871	Knee arthroscopy/drainage					
	29874	Knee arthroscopy/surgery					
	29875	Knee arthroscopy/surgery					
	29876	Knee arthroscopy/surgery					
	29877	Knee arthroscopy/surgery					
	29879	Knee arthroscopy/surgery					
	29880	Knee arthroscopy/surgery					
	29881	Knee arthroscopy/surgery					
	29882	Knee arthroscopy/surgery					
	29883	Knee arthroscopy/surgery					
	29884	Knee arthroscopy/surgery					
	29886	Knee arthroscopy/surgery					
	29887	Knee arthroscopy/surgery					
	29891	Ankle arthroscopy/surgery					
	29894	Ankle arthroscopy/surgery					
	29895	Ankle arthroscopy/surgery					
	29897	Ankle arthroscopy/surgery					
	29898	Ankle arthroscopy/surgery					
	29909	Arthroscopy of joint					
0042		Arthroscopically-Aided Procedures	T	29.22	$1,416.79	$804.74	$283.36
	29850	Knee arthroscopy/surgery					
	29851	Knee arthroscopy/surgery					
	29855	Tibial arthroscopy/surgery					
	29856	Tibial arthroscopy/surgery					
	29885	Knee arthroscopy/surgery					
	29888	Knee arthroscopy/surgery					
	29889	Knee arthroscopy/surgery					
	29892	Ankle arthroscopy/surgery					
0043		Closed Treatment Fracture Finger/Toe/Trunk	T	1.64	$79.52	$25.46	$15.90
	21800	Treatment of rib fracture					
	21820	Treat sternum fracture					
	22305	Treat spine process fracture					
	22310	Treat spine fracture					
	22315	Treat spine fracture					
	22899	Spine surgery procedure					
	23500	Treat clavicle fracture					
	23505	Treat clavicle fracture					
	23520	Treat clavicle dislocation					
	23525	Treat clavicle dislocation					
	23540	Treat clavicle dislocation					
	23545	Treat clavicle dislocation					
	23570	Treat shoulder blade fx					
	23575	Treat shoulder blade fx					
	23650	Treat shoulder dislocation					
	23929	Shoulder surgery procedure					
	26700	Treat knuckle dislocation					
	26720	Treat finger fracture, each					
	26725	Treat finger fracture, each					
	26740	Treat finger fracture, each					
	26750	Treat finger fracture, each					
	26755	Treat finger fracture, each					
	26770	Treat finger dislocation					
	26989	Hand/finger surgery					
	27200	Treat tail bone fracture					
	27299	Pelvis/hip joint surgery					
	28490	Treat big toe fracture					
	28495	Treat big toe fracture					
	28510	Treatment of toe fracture					
	28515	Treatment of toe fracture					
	28630	Treat toe dislocation					
	28660	Treat toe dislocation					
	28899	Foot/toes surgery procedure					
0044		Closed Treatment Fracture/Dislocation Except Finger/Toe/Trunk	T	2.17	$105.22	$36.08	$21.04
	23600	Treat humerus fracture					
	23605	Treat humerus fracture					
	23620	Treat humerus fracture					
	23625	Treat humerus fracture					
	23665	Treat dislocation/fracture					
	23675	Treat dislocation/fracture					
	24500	Treat humerus fracture					
	24505	Treat humerus fracture					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	24530	Treat humerus fracture					
	24535	Treat humerus fracture					
	24560	Treat humerus fracture					
	24565	Treat humerus fracture					
	24576	Treat humerus fracture					
	24577	Treat humerus fracture					
	24600	Treat elbow dislocation					
	24620	Treat elbow fracture					
	24640	Treat elbow dislocation					
	24650	Treat radius fracture					
	24655	Treat radius fracture					
	24670	Treat ulnar fracture					
	24675	Treat ulnar fracture					
	24999	Upper arm/elbow surgery					
	25500	Treat fracture of radius					
	25505	Treat fracture of radius					
	25520	Treat fracture of radius					
	25530	Treat fracture of ulna					
	25535	Treat fracture of ulna					
	25560	Treat fracture radius & ulna					
	25565	Treat fracture radius & ulna					
	25600	Treat fracture radius/ulna					
	25605	Treat fracture radius/ulna					
	25622	Treat wrist bone fracture					
	25624	Treat wrist bone fracture					
	25630	Treat wrist bone fracture					
	25635	Treat wrist bone fracture					
	25650	Treat wrist bone fracture					
	25660	Treat wrist dislocation					
	25675	Treat wrist dislocation					
	25680	Treat wrist fracture					
	25690	Treat wrist dislocation					
	25999	Forearm or wrist surgery					
	26600	Treat metacarpal fracture					
	26605	Treat metacarpal fracture					
	26607	Treat metacarpal fracture					
	26641	Treat thumb dislocation					
	26645	Treat thumb fracture					
	26670	Treat hand dislocation					
	26706	Pin knuckle dislocation					
	26742	Treat finger fracture, each					
	27193	Treat pelvic ring fracture					
	27220	Treat hip socket fracture					
	27230	Treat thigh fracture					
	27238	Treat thigh fracture					
	27246	Treat thigh fracture					
	27250	Treat hip dislocation					
	27256	Treat hip dislocation					
	27265	Treat hip dislocation					
	27500	Treatment of thigh fracture					
	27501	Treatment of thigh fracture					
	27502	Treatment of thigh fracture					
	27503	Treatment of thigh fracture					
	27506	Treatment of thigh fracture					
	27510	Treatment of thigh fracture					
	27516	Treat thigh fx growth plate					
	27517	Treat thigh fx growth plate					
	27520	Treat kneecap fracture					
	27530	Treat knee fracture					
	27532	Treat knee fracture					
	27538	Treat knee fracture(s)					
	27550	Treat knee dislocation					
	27560	Treat kneecap dislocation					
	27599	Leg surgery procedure					
	27750	Treatment of tibia fracture					
	27752	Treatment of tibia fracture					
	27760	Treatment of ankle fracture					
	27762	Treatment of ankle fracture					
	27780	Treatment of fibula fracture					
	27781	Treatment of fibula fracture					
	27786	Treatment of ankle fracture					
	27788	Treatment of ankle fracture					
	27808	Treatment of ankle fracture					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	27810	Treatment of ankle fracture					
	27816	Treatment of ankle fracture					
	27818	Treatment of ankle fracture		—			
	27824	Treat lower leg fracture					
	27825	Treat lower leg fracture					
	27830	Treat lower leg dislocation					
	27840	Treat ankle dislocation					
	27899	Leg/ankle surgery procedure					
	28400	Treatment of heel fracture					
	28405	Treatment of heel fracture					
	28430	Treatment of ankle fracture					
	28435	Treatment of ankle fracture					
	28450	Treat midfoot fracture, each					
	28455	Treat midfoot fracture, each					
	28470	Treat metatarsal fracture					
	28475	Treat metatarsal fracture					
	28530	Treat sesamoid bone fracture					
	28540	Treat foot dislocation					
	28570	Treat foot dislocation					
	28600	Treat foot dislocation					
0045	Bone/Joint Manipulation Under Anesthesia		T	11.02	$534.33	$277.12	$106.87
	22505	Manipulation of spine					
	23655	Treat shoulder dislocation					
	23700	Fixation of shoulder					
	24605	Treat elbow dislocation					
	26675	Treat hand dislocation					
	26705	Treat knuckle dislocation					
	26775	Treat finger dislocation					
	27194	Treat pelvic ring fracture					
	27252	Treat hip dislocation					
	27257	Treat hip dislocation					
	27275	Manipulation of hip joint					
	27552	Treat knee dislocation					
	27562	Treat kneecap dislocation					
	27570	Fixation of knee joint					
	27831	Treat lower leg dislocation					
	27842	Treat ankle dislocation					
	27860	Fixation of ankle joint					
	28545	Treat foot dislocation					
	28575	Treat foot dislocation					
	28605	Treat foot dislocation					
	28635	Treat toe dislocation					
	28665	Treat toe dislocation					
0046	Open/Percutaneous Treatment Fracture or Dislocation		T	22.29	$1,080.78	$535.76	$216.16
	21336	Treat nasal septal fracture					
	21805	Treatment of rib fracture					
	23515	Treat clavicle fracture					
	23530	Treat clavicle dislocation					
	23532	Treat clavicle dislocation					
	23550	Treat clavicle dislocation					
	23552	Treat clavicle dislocation					
	23585	Treat scapula fracture					
	23615	Treat humerus fracture					
	23616	Treat humerus fracture					
	23630	Treat humerus fracture					
	23660	Treat shoulder dislocation					
	23670	Treat dislocation/fracture					
	23680	Treat dislocation/fracture					
	24515	Treat humerus fracture					
	24516	Treat humerus fracture					
	24538	Treat humerus fracture					
	24545	Treat humerus fracture					
	24546	Treat humerus fracture					
	24566	Treat humerus fracture					
	24575	Treat humerus fracture					
	24579	Treat humerus fracture					
	24582	Treat humerus fracture					
	24586	Treat elbow fracture					
	24587	Treat elbow fracture					
	24615	Treat elbow dislocation					
	24635	Treat elbow fracture					
	24665	Treat radius fracture					
	24666	Treat radius fracture					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	24685	Treat ulner fracture					
	25515	Treat fracture of radius					
	25525	Treat fracture of radius					
	25526	Treat fracture of radius					
	25545	Treat fracture of ulna					
	25574	Treat fracture radius & ulna					
	25575	Treat fracture radius/ulna					
	25611	Treat fracture radius/ulna					
	25620	Treat fracture radius/ulna					
	25628	Treat wrist bone fracture					
	25645	Treat wrist bone fracture					
	25670	Treat wrist dislocation					
	25676	Treat wrist dislocation					
	25685	Treat wrist fracture					
	25695	Treat wrist dislocation					
	26608	Treat metacarpal fracture					
	26615	Treat metacarpal fracture					
	26650	Treat thumb fracture					
	26665	Treat thumb fracture					
	26676	Pin hand dislocation					
	26685	Treat hand dislocation					
	26686	Treat hand dislocation					
	26715	Treat knuckle dislocation					
	26727	Treat finger fracture, each					
	26735	Treat finger fracture, each					
	26746	Treat finger fracture, each					
	26756	Pin finger fracture, each					
	26765	Treat finger fracture, each					
	26776	Pin finger dislocation					
	26785	Treat finger dislocation					
	27202	Treat tail bone fracture					
	27509	Treatment of thigh fracture					
	27556	Treat knee dislocation					
	27566	Treat kneecap dislocation					
	27615	Remove tumor, lower leg					
	27756	Treatment of tibia fracture					
	27758	Treatment of tibia fracture					
	27759	Treatment of tibia fracture					
	27766	Treatment of ankle fracture					
	27784	Treatment of fibula fracture					
	27792	Treatment of ankle fracture					
	27814	Treatment of ankle fracture					
	27822	Treatment of ankle fracture					
	27823	Treatment of ankle fracture					
	27826	Treat lower leg fracture					
	27827	Treat lower leg fracture					
	27828	Treat lower leg fracture					
	27829	Treat lower leg joint					
	27832	Treat lower leg dislocation					
	27846	Treat ankle dislocation					
	27848	Treat ankle dislocation					
	28406	Treatment of heel fracture					
	28415	Treat heel fracture					
	28420	Treat/graft heel fracture					
	28436	Treatment of ankle fracture					
	28445	Treat ankle fracture					
	28456	Treat midfoot fracture					
	28465	Treat midfoot fracture, each					
	28476	Treat metatarsal fracture					
	28485	Treat metatarsal fracture					
	28496	Treat big toe fracture					
	28505	Treat big toe fracture					
	28525	Treat toe fracture					
	28531	Treat sesamoid bone fracture					
	28546	Treat foot dislocation					
	28555	Repair foot dislocation					
	28576	Treat foot dislocation					
	28585	Repair foot dislocation					
	28606	Treat foot dislocation					
	28615	Repair foot dislocation					
	28636	Treat toe dislocation					
	28645	Repair toe dislocation					
	28666	Treat toe dislocation					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	28675	Repair of toe dislocation					
0047	Arthroplasty without Prosthesis		T	22.09	$1,071.08	$537.03	$214.22
	24360	Reconstruct elbow joint					
	24365	Reconstruct head of radius					
	25332	Revise wrist joint					
	25447	Repair wrist joint(s)					
	25449	Remove wrist joint implant					
	26530	Revise knuckle joint					
	26535	Revise finger joint					
	27266	Treat hip dislocation					
	27437	Revise kneecap					
	27440	Revision of knee joint					
	27441	Revision of knee joint					
	27442	Revision of knee joint					
	27443	Revision of knee joint					
	27700	Revision of ankle joint					
0048	Arthroplasty with Prosthesis		T	29.06	$1,409.03	$725.94	$281.81
	24361	Reconstruct elbow joint					
	24362	Reconstruct elbow joint					
	24363	Replace elbow joint					
	24366	Reconstruct head of radius					
	25441	Reconstruct wrist joint					
	25442	Reconstruct wrist joint					
	25443	Reconstruct wrist joint					
	25444	Reconstruct wrist joint					
	25445	Reconstruct wrist joint					
	25446	Wrist replacement					
	26531	Revise knuckle with implant					
	26536	Revise/implant finger joint					
	27438	Revise kneecap with implant					
0049	Level I Musculoskeletal Procedures Except Hand and Foot		T	15.04	$729.25	$356.95	$145.85
	20005	Incision of deep abscess					
	20250	Open bone biopsy					
	20251	Open bone biopsy					
	20650	Insert and remove bone pin					
	20693	Adjust bone fixation device					
	20694	Remove bone fixation device					
	20975	Electrical bone stimulation					
	20979	Us bone stimulation					
	23100	Biopsy of shoulder joint					
	23140	Removal of bone lesion					
	23935	Drain arm/elbow bone lesion					
	24100	Biopsy elbow joint lining					
	24105	Removal of elbow bursa					
	24110	Remove humerus lesion					
	24120	Remove elbow lesion					
	24310	Revision of arm tendon					
	24925	Amputation follow-up surgery					
	25000	Incision of tendon sheath					
	25020	Decompression of forearm					
	25028	Drainage of forearm lesion					
	25031	Drainage of forearm bursa					
	25035	Treat forearm bone lesion					
	25085	Incision of wrist capsule					
	25100	Biopsy of wrist joint					
	25110	Remove wrist tendon lesion					
	25115	Remove wrist/forearm lesion					
	25116	Remove wrist/forearm lesion					
	25248	Remove forearm foreign body					
	25295	Release wrist/forearm tendon					
	25907	Amputation follow-up surgery					
	25922	Amputate hand at wrist					
	26990	Drainage of pelvis lesion					
	26991	Drainage of pelvis bursa					
	27000	Incision of hip tendon					
	27050	Biopsy of sacroiliac joint					
	27052	Biopsy of hip joint					
	27060	Removal of ischial bursa					
	27062	Remove femur lesion/bursa					
	27065	Removal of hip bone lesion					
	27067	Remove hip foreign body					
	27305	Incise thigh tendon & fascia					
	27306	Incision of thigh tendon					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	27307	Incision of thigh tendons					
	27340	Removal of kneecap bursa					
	27345	Removal of knee cyst					
	27347	Remove knee cyst					
	27360	Repair of kneecap tendon					
	27361	Repair/graft kneecap tendon					
	27365	Repair of thigh muscle					
	27366	Repair/graft of thigh muscle					
	27390	Incision of thigh tendon					
	27391	Incision of thigh tendons					
	27392	Incision of thigh tendons					
	27496	Decompression of thigh/knee					
	27497	Decompression of thigh/knee					
	27498	Decompression of thigh/knee					
	27499	Decompression of thigh/knee					
	27594	Amputation follow-up surgery					
	27600	Decompression of lower leg					
	27601	Decompression of lower leg					
	27602	Decompression of lower leg					
	27604	Drain lower leg bursa					
	27606	Incision of achilles tendon					
	27607	Treat lower leg bone lesion					
	27630	Removal of tendon lesion					
	27656	Repair leg fascia defect					
	27658	Repair of leg tendon, each					
	27659	Repair of leg tendon, each					
	27664	Repair of leg tendon, each					
	27675	Repair lower leg tendons					
	27704	Removal of ankle implant					
	27707	Incision of fibula					
	27884	Amputation follow-up surgery					
	27892	Decompression of leg					
	27893	Decompression of leg					
	27894	Decompression of leg					
	28002	Treatment of foot infection					
	28003	Treatment of foot infection					
0050	Level II Musculoskeletal Procedures Except Hand and Foot		T	21.13	$1,024.58	$513.86	$204.91
	20690	Apply bone fixation device					
	20692	Apply bone fixation device					
	20900	Removal of bone for graft					
	20902	Removal of bone for graft					
	20924	Removal of tendon for graft					
	21502	Drain chest lesion					
	21600	Partial removal of rib					
	21610	Partial removal of rib					
	23040	Exploratory shoulder surgery					
	23044	Exploratory shoulder surgery					
	23101	Shoulder joint surgery					
	23105	Remove shoulder joint lining					
	23106	Incision of collarbone joint					
	23107	Explore treat shoulder joint					
	23145	Removal of bone lesion					
	23146	Removal of bone lesion					
	23150	Removal of humerus lesion					
	23155	Removal of humerus lesion					
	23156	Removal of humerus lesion					
	23170	Remove collar bone lesion					
	23172	Remove shoulder blade lesion					
	23174	Remove humerus lesion					
	23180	Remove collar bone lesion					
	23182	Remove shoulder blade lesion					
	23184	Remove humerus lesion					
	23190	Partial removal of scapula					
	23405	Incision of tendon & muscle					
	23406	Incise tendon(s) & muscle(s)					
	24000	Exploratory elbow surgery					
	24006	Release elbow joint					
	24101	Explore/treat elbow joint					
	24102	Remove elbow joint lining					
	24115	Remove/graft bone lesion					
	24116	Remove/graft bone lesion					
	24125	Remove/graft bone lesion					
	24126	Remove/graft bone lesion					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	24130	Removal of head of radius					
	24134	Removal of arm bone lesion					
	24136	Remove radius bone lesion					
	24138	Remove elbow bone lesion					
	24140	Partial removal of arm bone					
	24145	Partial removal of radius					
	24147	Partial removal of elbow					
	24160	Remove elbow joint implant					
	24164	Remove radius head implant					
	24301	Muscle/tendon transfer					
	24305	Arm tendon lengthening					
	24350	Repair of tennis elbow					
	24351	Repair of tennis elbow					
	24352	Repair of tennis elbow					
	24354	Repair of tennis elbow					
	24356	Revision of tennis elbow					
	24400	Revision of humerus					
	24410	Revision of humerus					
	24495	Decompression of forearm					
	25023	Decompression of forearm					
	25040	Explore/treat wrist joint					
	25101	Explore/treat wrist joint					
	25105	Remove wrist joint lining					
	25107	Remove wrist joint cartilage					
	25118	Excise wrist tendon sheath					
	25119	Partial removal of ulna					
	25120	Removal of forearm lesion					
	25125	Remove/graft forearm lesion					
	25126	Remove/graft forearm lesion					
	25130	Removal of wrist lesion					
	25135	Remove & graft wrist lesion					
	25136	Remove & graft wrist lesion					
	25145	Remove forearm bone lesion					
	25150	Partial removal of ulna					
	25151	Partial removal of radius					
	25230	Partial removal of radius					
	25240	Partial removal of ulna					
	25250	Removal of wrist prosthesis					
	25251	Removal of wrist prosthesis					
	25260	Repair forearm tendon/muscle					
	25263	Repair forearm tendon/muscle					
	25265	Repair forearm tendon/muscle					
	25270	Repair forearm tendon/muscle					
	25272	Repair forearm tendon/muscle					
	25274	Repair forearm tendon/muscle					
	25280	Revise wrist/forearm tendon					
	25290	Incise wrist/forearm tendon					
	25300	Fusion of tendons at wrist					
	25301	Fusion of tendons at wrist					
	25360	Revision of ulna					
	25365	Revise radius & ulna					
	25400	Repair radius or ulna					
	25415	Repair radius & ulna					
	27001	Incision of hip tendon					
	27003	Incision of hip tendon					
	27066	Removal of hip bone lesion					
	27067	Remove/graft hip bone lesion					
	27080	Removal of tail bone					
	27097	Revision of hip tendon					
	27098	Transfer tendon to pelvis					
	27310	Exploration of knee joint					
	27330	Biopsy, knee joint lining					
	27331	Explore/treat knee joint					
	27332	Removal of knee cartilage					
	27333	Removal of knee cartilage					
	27334	Remove knee joint lining					
	27335	Remove knee joint lining					
	27350	Removal of kneecap					
	27355	Remove femur lesion					
	27356	Remove femur lesion/graft					
	27357	Remove femur lesion/graft					
	27358	Remove femur lesion/fixation					
	27360	Partial removal, leg bone(s)					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	27393	Lengthening of thigh tendon					
	27394	Lengthening of thigh tendons					
	27396	Transplant of thigh tendon					
	27403	Repair of knee cartilage					
	27425	Lateral retinacular release					
	27610	Explore/treat ankle joint					
	27612	Exploration of ankle joint					
	27620	Explore/treat ankle joint					
	27625	Remove ankle joint lining					
	27626	Remove ankle joint lining					
	27635	Remove lower leg bone lesion					
	27637	Remove/graft leg bone lesion					
	27638	Remove/graft leg bone lesion					
	27641	Partial removal of fibula					
	27665	Repair of leg tendon, each					
	27676	Repair lower leg tendons					
	27680	Release of lower leg tendon					
	27681	Release of lower leg tendons					
	27685	Revision of lower leg tendon					
	27686	Revise lower leg tendons					
	27687	Revision of calf tendon					
	27695	Repair of ankle ligament					
	27696	Repair of ankle ligaments					
	27698	Repair of ankle ligament					
	27709	Incision of tibia & fibula					
	27730	Repair of tibia epiphysis					
	27732	Repair of fibula epiphysis					
	27734	Repair lower leg epiphyses					
	27740	Repair of leg epiphyses					
	27880	Amputation of foot at ankle					
0051	Level III	Musculoskeletal Procedures Except Hand and Foot	T	27.76	$1,346.00	$675.24	$269.20
	20150	Excise epiphyseal bar					
	23020	Release shoulder joint					
	23120	Partial removal, collar bone					
	23130	Remove shoulder bone, part					
	23415	Release of shoulder ligament					
	23480	Revision of collar bone					
	23485	Revision of collar bone					
	23490	Reinforce clavicle					
	23491	Reinforce shoulder bones					
	23800	Fusion of shoulder joint					
	23802	Fusion of shoulder joint					
	24155	Removal of elbow joint					
	24320	Repair of arm tendon					
	24330	Revision of arm muscles					
	24331	Revision of arm muscles					
	24340	Repair of biceps tendon					
	24341	Repair arm tendon/muscle					
	24342	Repair of ruptured tendon					
	24420	Revision of humerus					
	24430	Repair of humerus					
	24435	Repair humerus with graft					
	24470	Revision of elbow joint					
	24498	Reinforce humerus					
	24800	Fusion of elbow joint					
	24802	Fusion/graft of elbow joint					
	25310	Transplant forearm tendon					
	25312	Transplant forearm tendon					
	25315	Revise palsy hand tendon(s)					
	25316	Revise palsy hand tendon(s)					
	25320	Repair/revise wrist joint					
	25335	Realignment of hand					
	25337	Reconstruct ulna/radioulnar					
	25350	Revision of radius					
	25355	Revision of radius					
	25370	Revise radius or ulna					
	25375	Revise radius & ulna					
	25425	Repair/graft radius or ulna					
	25426	Repair/graft radius & ulna					
	25440	Repair/graft wrist bone					
	25450	Revision of wrist joint					
	25455	Revision of wrist joint					
	25490	Reinforce radius					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	25491	Reinforce ulna					
	25492	Reinforce radius and ulna					
	25800	Fusion of wrist joint					
	25805	Fusion/graft of wrist joint					
	25810	Fusion/graft of wrist joint					
	25830	Fusion, radioulnar jnt/ulna					
	27033	Exploration of hip joint					
	27100	Transfer of abdominal muscle					
	27105	Transfer of spinal muscle					
	27110	Transfer of iliopsoas muscle					
	27111	Transfer of iliopsoas muscle					
	27395	Lengthening of thigh tendons					
	27397	Transplants of thigh tendons					
	27400	Revise thigh muscles/tendons					
	27405	Repair of knee ligament					
	27407	Repair of knee ligament					
	27409	Repair of knee ligaments					
	27418	Repair degenerated kneecap					
	27420	Revision of unstable kneecap					
	27422	Revision of unstable kneecap					
	27424	Revision/removal of kneecap					
	27430	Revision of thigh muscles					
	27435	Incision of knee joint					
	27640	Partial removal of tibia					
	27647	Extensive ankle/heel surgery					
	27650	Repair achilles tendon					
	27652	Repair/graft achilles tendon					
	27654	Repair of achilles tendon					
	27690	Revise lower leg tendon					
	27691	Revise lower leg tendon					
	27692	Revise additional leg tendon					
	27705	Incision of tibia					
	27742	Repair of leg epiphyses					
	27745	Reinforce tibia					
	27870	Fusion of ankle joint					
	27871	Fusion of tibiofibular joint					
0052		Level IV Musculoskeletal Procedures Except Hand and Foot	T	36.16	$1,753.29	$930.91	$350.66
	23410	Repair of tendon(s)					
	23412	Repair of tendon(s)					
	23420	Repair of shoulder					
	23430	Repair biceps tendon					
	23450	Repair shoulder capsule					
	23455	Repair shoulder capsule					
	23460	Repair shoulder capsule					
	23462	Repair shoulder capsule					
	23465	Repair shoulder capsule					
	23466	Repair shoulder capsule					
	24935	Revision of amputation					
	27427	Reconstruction, knee					
	27428	Reconstruction, knee					
	27429	Reconstruction, knee					
0053		Level I Hand Musculoskeletal Procedures	T	11.32	$548.87	$253.49	$109.77
	25111	Remove wrist tendon lesion					
	25112	Reremove wrist tendon lesion					
	25820	Fusion of hand bones					
	26020	Drain hand tendon sheath					
	26025	Drainage of palm bursa					
	26030	Drainage of palm bursa(s)					
	26034	Treat hand bone lesion					
	26035	Decompress fingers/hand					
	26037	Decompress fingers/hand					
	26055	Incise finger tendon sheath					
	26060	Incision of finger tendon					
	26070	Explore/treat hand joint					
	26075	Explore/treat finger joint					
	26080	Explore/treat finger joint					
	26100	Biopsy hand joint lining					
	26105	Biopsy finger joint lining					
	26110	Biopsy finger joint lining					
	26130	Remove wrist joint lining					
	26140	Revise finger joint, each					
	26145	Tendon excision, palm/finger					
	26160	Remove tendon sheath lesion					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	26170	Removal of palm tendon, each					
	26180	Removal of finger tendon					
	26185	Remove finger bone					
	26200	Remove hand bone lesion					
	26210	Removal of finger lesion					
	26215	Remove/graft finger lesion					
	26230	Partial removal of hand bone					
	26235	Partial removal, finger bone					
	26236	Partial removal, finger bone					
	26250	Extensive hand surgery					
	26260	Extensive finger surgery					
	26261	Extensive finger surgery					
	26262	Partial removal of finger					
	26410	Repair hand tendon					
	26418	Repair finger tendon					
	26432	Repair finger tendon					
	26433	Repair finger tendon					
	26437	Realignment of tendons					
	26440	Release palm/finger tendon					
	26445	Release hand/finger tendon					
	26450	Incision of palm tendon					
	26455	Incision of finger tendon					
	26460	Incise hand/finger tendon					
	26471	Fusion of finger tendons					
	26474	Fusion of finger tendons					
	26476	Tendon lengthening					
	26477	Tendon shortening					
	26478	Lengthening of hand tendon					
	26479	Shortening of hand tendon					
	26500	Hand tendon reconstruction					
	26506	Release thumb contracture					
	26520	Release knuckle contracture					
	26525	Release finger contracture					
	26540	Repair hand joint					
	26542	Repair hand joint with graft					
	26560	Repair of web finger					
	26567	Reconstruct extra finger					
	26593	Release muscles of hand					
	26951	Amputation of finger/thumb					
	26952	Amputation of finger/thumb					
0054	Level II Hand Musculoskeletal Procedures		T	19.66	$953.28	$472.33	$190.65
	25210	Removal of wrist bone					
	25215	Removal of wrist bones					
	25825	Fuse hand bones with graft					
	26040	Release palm contracture					
	26045	Release palm contracture					
	26121	Release palm contracture					
	26123	Release palm contracture					
	26125	Release palm contracture					
	26135	Revise finger joint, each					
	26205	Remove/graft bone lesion					
	26255	Extensive hand surgery					
	26350	Repair finger/hand tendon					
	26352	Repair/graft hand tendon					
	26356	Repair finger/hand tendon					
	26357	Repair finger/hand tendon					
	26358	Repair/graft hand tendon					
	26370	Repair finger/hand tendon					
	26372	Repair/graft hand tendon					
	26373	Repair finger/hand tendon					
	26390	Revise hand/finger tendon					
	26392	Repair/graft hand tendon					
	26412	Repair/graft hand tendon					
	26415	Excision, hand/finger tendon					
	26416	Graft hand or finger tendon					
	26420	Repair/graft finger tendon					
	26426	Repair finger/hand tendon					
	26428	Repair/graft finger tendon					
	26434	Repair/graft finger tendon					
	26442	Release palm & finger tendon					
	26449	Release forearm/hand tendon					
	26480	Transplant hand tendon					
	26483	Transplant/graft hand tendon					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	26485	Transplant palm tendon					
	26489	Transplant/graft palm tendon					
	26490	Revise thumb tendon					
	26492	Tendon transfer with graft					
	26494	Hand tendon/muscle transfer					
	26496	Revise thumb tendon					
	26497	Finger tendon transfer					
	26498	Finger tendon transfer					
	26499	Revision of finger					
	26502	Hand tendon reconstruction					
	26504	Hand tendon reconstruction					
	26510	Thumb tendon transfer					
	26516	Fusion of knuckle joint					
	26517	Fusion of knuckle joints					
	26518	Fusion of knuckle joints					
	26541	Repair hand joint with graft					
	26545	Reconstruct finger joint					
	26546	Repair nonunion hand					
	26548	Reconstruct finger joint					
	26550	Construct thumb replacement					
	26555	Positional change of finger					
	26561	Repair of web finger					
	26562	Repair of web finger					
	26565	Correct metacarpal flaw					
	26567	Correct finger deformity					
	26568	Lengthen metacarpal/finger					
	26580	Repair hand deformity					
	26585	Repair finger deformity					
	26590	Repair finger deformity					
	26591	Repair muscles of hand					
	26596	Excision constricting tissue					
	26597	Release of scar contracture					
	26820	Thumb fusion with graft					
	26841	Fusion of thumb					
	26842	Thumb fusion with graft					
	26843	Fusion of hand joint					
	26844	Fusion/graft of hand joint					
	26850	Fusion of knuckle					
	26852	Fusion of knuckle with graft					
	26860	Fusion of finger joint					
	26861	Fusion of finger jnt, add-on					
	26862	Fusion/graft of finger joint					
	26863	Fuse/graft added joint					
	26910	Amputate metacarpal bone					
0055	Level I Foot Musculoskeletal Procedures		T	15.47	$750.10	$365.34	$150.02
	27605	Incision of achilles tendon					
	28005	Treat foot bone lesion					
	28008	Incision of foot fascia					
	28010	Incision of toe tendon					
	28011	Incision of toe tendons					
	28020	Exploration of foot joint					
	28022	Exploration of foot joint					
	28024	Exploration of toe joint					
	28045	Excision of foot lesion					
	28046	Resection of tumor, foot					
	28050	Biopsy of foot joint lining					
	28052	Biopsy of foot joint lining					
	28054	Biopsy of toe joint lining					
	28060	Removal of foot lesion					
	28086	Excise foot tendon sheath					
	28088	Excise foot tendon sheath					
	28090	Removal of foot lesion					
	28092	Removal of toe lesions					
	28100	Removal of ankle/heel lesion					
	28104	Removal of foot lesion					
	28106	Removal of toe lesions					
	28111	Part removal of metatarsal					
	28112	Part removal of metatarsal					
	28113	Part removal of metatarsal					
	28114	Removal of metatarsal heads		—			
	28116	Revision of foot					
	28118	Removal of heel bone					
	28119	Removal of heel spur					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	28120	Part removal of ankle/heel					
	28122	Partial removal of foot bone					
	28124	Partial removal of toe					
	28126	Partial removal of toe					
	28130	Removal of ankle bone					
	28140	Removal of metatarsal					
	28150	Removal of toe					
	28153	Partial removal of toe					
	28160	Partial removal of toe					
	28171	Extensive foot surgery					
	28173	Extensive foot surgery					
	28175	Extensive foot surgery					
	28200	Repair of foot tendon					
	28208	Repair of foot tendon					
	28210	Repair/graft of foot tendon					
	28220	Release of foot tendon					
	28222	Release of foot tendons					
	28225	Release of foot tendon					
	28226	Release of foot tendons					
	28230	Incision of foot tendon(s)					
	28232	Incision of toe tendon					
	28234	Incision of foot tendon					
	28240	Release of big toe					
	28270	Release of foot contracture					
	28272	Release of toe joint, each					
	28280	Fusion of toes					
	28285	Repair of hammertoe					
	28286	Repair of hammertoe					
	28310	Revision of big toe					
	28312	Revision of toe					
	28313	Repair deformity of toe					
	28315	Removal of sesamoid bone					
	28340	Resect enlarged toe tissue					
	28341	Resect enlarged toe					
	28737	Revision of foot bones					
	28750	Fusion of big toe joint					
	28755	Fusion of big toe joint					
	28810	Amputation toe & metatarsal					
	28820	Amputation of toe					
	28825	Partial amputation of toe					
	29893	Scope, plantar fasciotomy					
0056	Level II Foot Musculoskeletal Procedures		T	17.39	$838.83	$405.81	$167.77
	28060	Partial removal, foot fascia					
	28062	Removal of foot fascia					
	28070	Removal of foot joint lining					
	28072	Removal of foot joint lining					
	28102	Remove/graft foot lesion					
	28103	Remove/graft foot lesion					
	28106	Remove/graft foot lesion					
	28107	Remove/graft foot lesion					
	28202	Repair/graft of foot tendon					
	28238	Revision of foot tendon					
	28250	Revision of foot fascia					
	28260	Release of midfoot joint					
	28261	Revision of foot tendon					
	28262	Revision of foot and ankle					
	28264	Release of midfoot joint					
	28288	Partial removal of foot bone					
	28289	Repair hallux rigidus					
	28300	Incision of heel bone					
	28302	Incision of ankle bone					
	28304	Incision of midfoot bones					
	28305	Incise/graft midfoot bones					
	28306	Incision of metatarsal					
	28307	Incision of metatarsal					
	28308	Incision of metatarsal					
	28309	Incision of metatarsals					
	28320	Repair of foot bones					
	28322	Repair of metatarsals					
	28344	Repair extra toe(s)					
	28345	Repair webbed toe(s)					
	28360	Reconstruct cleft foot					
	28705	Fusion of foot bones					

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APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	28715	Fusion of foot bones					
	28725	Fusion of foot bones					
	28730	Fusion of foot bones					
	28735	Fusion of foot bones					
	28740	Fusion of foot bones					
	28760	Fusion of big toe joint					
0057	Bunion Procedures		T	21.00	$1,018.23	$498.65	$203.65
	28110	Part removal of metatarsal					
	28290	Correction of bunion					
	28292	Correction of bunion					
	28293	Correction of bunion					
	28294	Correction of bunion					
	28296	Correction of bunion					
	28297	Correction of bunion					
	28298	Correction of bunion					
	28299	Correction of bunion					
0058	Level I Strapping and Cast Application		S	1.09	$52.85	$19.27	$10.57
	29505	Application, long leg splint					
	29515	Application lower leg splint					
	29520	Strapping of hip					
	29530	Strapping of knee					
	29540	Strapping of ankle					
	29550	Strapping of toes					
	29580	Application of paste boot					
	29590	Application of foot splint					
	29700	Removal/revision of cast					
	29705	Removal/revision of cast					
	29710	Removal/revision of cast					
	29715	Removal/revision of cast					
	29720	Repair of body cast					
	29730	Windowing of cast					
	29740	Wedging of cast					
	29750	Wedging of clubfoot cast					
	29799	Casting/strapping procedure					
0059	Level II Strapping and Cast Application		S	1.74	$84.37	$29.59	$16.87
	29000	Application of body cast					
	29010	Application of body cast					
	29015	Application of body cast					
	29020	Application of body cast					
	29025	Application of body cast					
	29035	Application of body cast					
	29040	Application of body cast					
	29044	Application of body cast					
	29046	Application of body cast					
	29049	Application of figure eight					
	29055	Application of shoulder cast					
	29058	Application of shoulder cast					
	29065	Application of long arm cast					
	29075	Application of forearm cast					
	29085	Apply hand/wrist cast					
	29105	Apply long arm splint					
	29125	Apply forearm splint					
	29126	Apply forearm splint					
	29130	Application of finger splint					
	29131	Application of finger splint					
	29200	Strapping of chest					
	29220	Strapping of low back					
	29240	Strapping of shoulder					
	29260	Strapping of elbow or wrist					
	29280	Strapping of hand or finger					
	29305	Application of hip cast					
	29325	Application of hip casts					
	29345	Application of long leg cast					
	29355	Application of long leg cast					
	29358	Apply long leg cast brace					
	29365	Application of long leg cast					
	29405	Apply short leg cast					
	29425	Apply short leg cast					
	29435	Apply short leg cast					
	29440	Addition of walker to cast					
	29445	Apply rigid leg cast					
	29450	Application of leg cast					
0060	Manipulation Therapy		S	0.77	$37.34	$7.80	$7.47

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	98925	Osteopathic manipulation					
	98926	Osteopathic manipulation					
	98927	Osteopathic manipulation					
	98928	Osteopathic manipulation					
	98929	Osteopathic manipulation					
	98940	Chiropractic manipulation					
	98941	Chiropractic manipulation					
	98942	Chiropractic manipulation					
0070		Thoracentesis/Lavage Procedures	T	3.64	$176.49	$79.60	$35.30
	32000	Drainage of chest					
	32002	Treatment of collapsed lung					
	32005	Treat lung lining chemically					
	32020	Insertion of chest tube					
	32420	Puncture/clear lung					
	32960	Therapeutic pneumothorax					
	32999	Chest surgery procedure					
	33010	Drainage of heart sac					
	33011	Repeat drainage of heart sac					
	33999	Cardiac surgery procedure					
	49080	Puncture, peritoneal cavity					
	49081	Removal of abdominal fluid					
0071		Level I Endoscopy Upper Airway	T	0.55	$26.67	$14.22	$5.33
	31231	Nasal endoscopy, dx					
	31575	Diagnostic laryngoscopy					
	92511	Nasopharyngoscopy					
0072		Level II Endoscopy Upper Airway	T	1.26	$61.09	$41.52	$12.22
	31233	Nasal/sinus endoscopy, dx					
	31505	Diagnostic laryngoscopy					
	31511	Remove foreign body, larynx					
	31520	Diagnostic laryngoscopy					
	31700	Insertion of airway catheter					
	31720	Clearance of airways					
0073		Level III Endoscopy Upper Airway	T	4.11	$199.28	$91.07	$39.86
	31513	Injection into vocal cord					
	31577	Remove foreign body, larynx					
	31579	Diagnostic laryngoscopy					
	31717	Bronchial brush biopsy					
	31730	Intro, windpipe wire/tube					
0074		Level IV Endoscopy Upper Airway	T	13.61	$659.91	$347.54	$131.98
	31235	Nasal/sinus endoscopy, dx					
	31237	Nasal/sinus endoscopy, surg					
	31238	Nasal/sinus endoscopy, surg					
	31240	Nasal/sinus endoscopy, surg					
	31510	Laryngoscopy with biopsy					
	31512	Removal of larynx lesion					
	31515	Laryngoscopy for aspiration					
	31525	Diagnostic laryngoscopy					
	31526	Diagnostic laryngoscopy					
	31528	Laryngoscopy and dilatation					
	31529	Laryngoscopy and dilatation					
	31576	Laryngoscopy with biopsy					
	31578	Removal of larynx lesion					
0075		Level V Endoscopy Upper Airway	T	18.55	$899.44	$467.29	$179.89
	31239	Nasal/sinus endoscopy, surg					
	31254	Revision of ethmoid sinus					
	31255	Removal of ethmoid sinus					
	31256	Exploration maxillary sinus					
	31267	Endoscopy, maxillary sinus					
	31276	Sinus endoscopy, surgical					
	31287	Nasal/sinus endoscopy, surg					
	31288	Nasal/sinus endoscopy, surg					
	31527	Laryngoscopy for treatment					
	31530	Operative laryngoscopy					
	31531	Operative laryngoscopy					
	31535	Operative laryngoscopy					
	31536	Operative laryngoscopy					
	31540	Operative laryngoscopy					
	31541	Operative laryngoscopy					
	31560	Operative laryngoscopy					
	31561	Operative laryngoscopy					
	31570	Laryngoscopy with injection					
	31571	Laryngoscopy with injection					
	96570	Photodynamic tx, 30 min					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	96571	Photodynamic tx, addl 15 min					
0076	Endoscopy Lower Airway		T	8.06	$380.81	$197.05	$78.16
	31615	Visualization of windpipe					
	31622	Dx bronchoscope/wash					
	31623	Dx bronchoscope/brush					
	31624	Dx bronchoscope/lavage					
	31625	Bronchoscopy with biopsy					
	31628	Bronchoscopy with biopsy					
	31629	Bronchoscopy with biopsy					
	31630	Bronchoscopy with repair					
	31631	Bronchoscopy with dilation					
	31635	Remove foreign body, airway					
	31640	Bronchoscopy & remove lesion					
	31641	Bronchoscopy, treat blockage					
	31643	Diag bronchoscope/catheter					
	31645	Bronchoscopy, clear airways					
	31646	Bronchoscopy, reclear airway					
	31656	Bronchoscopy, inj for x-ray					
	31899	Airways surgical procedure					
	32601	Thoracoscopy, diagnostic					
	32602	Thoracoscopy, diagnostic					
	32603	Thoracoscopy, diagnostic					
	32604	Thoracoscopy, diagnostic					
	32605	Thoracoscopy, diagnostic					
	32606	Thoracoscopy, diagnostic					
	39400	Visualization of chest					
0077	Level I Pulmonary Treatment		S	0.43	$20.85	$12.62	$4.17
	94640	Airway inhalation treatment					
	94650	Pressure breathing (IPPB)					
	94651	Pressure breathing (IPPB)					
	94664	Aerosol or vapor inhalations					
	94665	Aerosol or vapor inhalations					
	94667	Chest wall manipulation					
	94668	Chest wall manipulation					
0078	Level II Pulmonary Treatment		S	1.34	$64.97	$29.13	$12.99
	94642	Aerosol inhalation treatment					
0079	Ventilation Initiation and Management		S	3.18	$154.19	$107.70	$30.84
	94656	Initial ventilator mgmt					
	94657	Continued ventilator mgmt					
	94660	Pos airway pressure, CPAP					
	94662	Neg press ventilation, cnp					
0080	Diagnostic Cardiac Catheterization		T	25.77	$1,249.51	$713.89	$249.90
	93501	Right heart catheterization					
	93503	Insert/place heart catheter					
	93505	Biopsy of heart lining					
	93510	Left heart catheterization					
	93511	Left heart catheterization					
	93514	Left heart catheterization					
	93524	Left heart catheterization					
	93526	Rt & Lt heart catheters					
	93527	Rt & Lt heart catheters					
	93528	Rt & Lt heart catheters					
	93529	Rt, Lt heart catheterization					
	93530	Rt heart cath, congenital					
	93531	R & I heart cath, congenital					
	93532	R & I heart cath, congenital					
	93533	R & I heart cath, congenital					
	93536	Insert circulation assi					
0081	Non-Coronary Angioplasty or Atherectomy		T	19.36	$938.71	$434.25	$187.74
	35180	Repair blood vessel lesion					
	35184	Repair blood vessel lesion					
	35190	Repair blood vessel lesion					
	35201	Repair blood vessel lesion					
	35206	Repair blood vessel lesion					
	35226	Repair blood vessel lesion					
	35231	Repair blood vessel lesion					
	35236	Repair blood vessel lesion					
	35256	Repair blood vessel lesion					
	35261	Repair blood vessel lesion					
	35266	Repair blood vessel lesion					
	35286	Repair blood vessel lesion					
	35321	Rechanneling of artery					
	35459	Repair arterial blockage					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	35460	Repair venous blockage					
	35470	Repair arterial blockage					
	35471	Repair arterial blockage					
	35472	Repair arterial blockage					
	35473	Repair arterial blockage					
	35474	Repair arterial blockage					
	35475	Repair arterial blockage					
	35476	Repair venous blockage					
	35484	Atherectomy, open					
	35485	Atherectomy, open					
	35490	Atherectomy, percutaneous					
	35491	Atherectomy, percutaneous					
	35492	Atherectomy, percutaneous					
	35493	Atherectomy, percutaneous					
	35494	Atherectomy, percutaneous					
	35495	Atherectomy, percutaneous					
	35500	Harvest vein for bypass					
	37204	Transcatheter occlusion					
	37205	Transcatheter stent					
	37206	Transcatheter stent add-on					
	37207	Transcatheter stent					
	37208	Transcatheter stent add-on					
	37209	Exchange arterial catheter					
	37250	Iv us first vessel add-on					
	37251	Iv us each add vessel add-on					
	37565	Ligation of neck vein					
	37600	Ligation of neck artery					
0082	Coronary Atherectomy		T	40.34	$1,955.07	$859.56	$391.19
	92995	Coronary atherectomy					
	92996	Coronary atherectomy add-on					
0083	Coronary Angioplasty		T	45.79	$2,220.22	$1,322.95	$444.04
	92980	Insert intracoronary stent					
	92981	Insert intracoronary stent					
	92982	Coronary artery dilation					
	92984	Coronary artery dilation					
0084	Level I Electrophysiologic Evaluation		S	10.70	$518.81	$177.79	$103.76
	93640	Evaluation heart device					
	93641	Electrophysiology evaluation					
	93642	Electrophysiology evaluation					
0085	Level II Electrophysiologic Evaluation		S	27.06	$1,312.06	$654.48	$262.41
	93619	Electrophysiology evaluation					
	93620	Electrophysiology evaluation					
	93621	Electrophysiology evaluation					
	93622	Electrophysiology evaluation					
0086	Ablate Heart Dysrhythm Focus		S	47.62	$2,308.95	$1,265.37	$461.79
	93650	Ablate heart dysrhythm focus					
	93651	Ablate heart dysrhythm focus					
	93652	Ablate heart dysrhythm focus					
0087	Cardiac Electrophysiologic Recording/Mapping		S	9.53	$462.08	$214.72	$92.42
	93600	Bundle of His recording					
	93602	Intra-atrial recording					
	93603	Right ventricular recording					
	93607	Left ventricular recording					
	93609	Mapping of tachycardia					
	93610	Intra-atrial pacing					
	93612	Intraventricular pacing					
	93615	Esophageal recording					
	93616	Esophageal recording					
	93618	Heart rhythm pacing					
	93623	Stimulation, pacing heart					
	93624	Electrophysiologic study					
	93631	Heart pacing, mapping					
0088	Thrombectomy		T	26.49	$1,284.42	$678.68	$256.88
	34101	Removal of artery clot					
	34111	Removal of arm artery clot					
	34201	Removal of artery clot					
	34203	Removal of leg artery clot					
	34471	Removal of vein clot					
	34490	Removal of vein clot					
	34501	Repair valve, femoral vein					
	34510	Transposition of vein valve					
	34520	Cross-over vein graft					
	34530	Leg vein fusion					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	35188	Repair blood vessel lesion					
	35207	Repair blood vessel lesion					
	35875	Removal of clot in graft					
	35876	Removal of clot in graft					
	35879	Revise graft w/vein					
	35881	Revise graft w/vein					
	36821	Av fusion direct any site					
	36825	Artery-vein graft					
	36830	Artery-vein graft					
	36831	Av fistula excision					
	36832	Av fistula revision					
	36833	Av fistula revision					
	G0159	Perc declot dialysis graft					
0089	Level I Implantation/Removal/Revision of Pacemaker, AICD or Vascular Device		T	6.49	$314.66	$130.07	$62.94
	33210	Insertion of heart electrode					
	33211	Insertion of heart electrode					
	33220	Revise eltrd pacing-defib					
	33241	Remove pulse generator					
	36261	Revision of infusion pump					
	36262	Removal of infusion pump					
	36299	Vessel injection procedure					
	36531	Revision of infusion pump					
	36532	Removal of infusion pump					
	36534	Revision of access device					
	36535	Removal of access device					
	37203	Transcatheter retrieval					
0090	Level II Implantation/Removal/Revision of Pacemaker, AICD or Vascular Device		T	20.96	$1,016.29	$573.04	$203.26
	33206	Insertion of heart pacemaker					
	33207	Insertion of heart pacemaker					
	33208	Insertion of heart pacemaker					
	33212	Insertion of pulse generator					
	33213	Insertion of pulse generator					
	33214	Upgrade of pacemaker system					
	33216	Revise eltrd pacing-defib					
	33217	Revise eltrd pacing-defib					
	33218	Revise eltrd pacing-defib					
	33233	Removal of pacemaker system					
	33234	Removal of pacemaker system					
	33235	Removal pacemaker electrode					
	33240	Insert pulse generator					
	33244	Remove eltrd, transven					
	33249	Eltrd/insert pace-defib					
	36860	External cannula declotting					
	36861	Cannula declotting					
0091	Level I Vascular Ligation		T	14.79	$717.12	$348.23	$143.42
	30915	Ligation, nasal sinus artery					
	37605	Ligation of neck artery					
	37606	Ligation of neck artery					
	37615	Ligation of neck artery					
	37650	Revision of major vein					
	37700	Revise leg vein					
	37760	Revision of leg veins					
	37780	Revision of leg vein					
	37785	Revise secondary varicosity					
0092	Level II Vascular Ligation		T	20.21	$979.92	$505.37	$195.98
	30920	Ligation, upper jaw artery					
	37607	Ligation of a–v fistula					
	37720	Removal of leg vein					
	37730	Removal of leg veins					
	37735	Removal of leg veins/lesion					
0093	Vascular Repair/Fistula Construction		T	17.95	$870.34	$422.33	$174.07
	36260	Insertion of infusion pump					
	36530	Insertion of infusion pump					
	36533	Insertion of access device					
	36800	Insertion of cannula					
	36810	Insertion of cannula					
	36815	Insertion of cannula					
	36819	Av fusion by basilic vein					
	36835	Artery to vein shunt					
0094	Resuscitation and Cardioversion		S	4.51	$218.68	$105.29	$43.74
	31500	Insert emergency airway					
	92950	Heart/lung resuscitation cpr					
	92953	Temporary external pacing					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	92960	Cardioversion electric, ext					
	92961	Cardioversion, electric, int					
	99440	Newborn resuscitation					
0095	Cardiac Rehabilitation		S	0.64	$31.03	$16.98	$6.21
	93797	Cardiac rehab					
	93798	Cardiac rehab/monitor					
0096	Non-Invasive Vascular Studies		S	2.06	$99.86	$61.48	$19.96
	93721	Plethysmography tracing					
	93740	Temperature gradient studies					
	93799	Cardiovascular procedure					
	93875	Extracranial study					
	93922	Extremity study					
	93923	Extremity study					
	93924	Extremity study					
	93965	Extremity study					
0097	Cardiovascular Stress Test		S	1.62	$78.55	$62.40	$15.71
	93017	Cardiovascular stress test					
	93024	Cardiac drug stress test					
0098	Injection of Sclerosing Solution		T	1.19	$57.70	$20.88	$11.54
	36468	Injection(s), spider veins					
	36469	Injection(s), spider veins					
	36470	Injection therapy of vein					
	36471	Injection therapy of veins					
	45520	Treatment of rectal prolapse					
0099	Continuous Cardiac Monitoring		S	0.38	$18.43	$14.68	$3.69
	93012	Transmission of ecg					
	93270	ECG recording					
	93278	ECG/signal-averaged					
	G0005	ECG 24 hour recording					
	G0015	Post symptom ECG tracing					
0100	Continuous ECG		S	1.70	$82.48	$71.57	$16.49
	93225	ECG monitor/record, 24 hrs					
	93226	ECG monitor/report, 24 hrs					
	93231	Ecg monitor/record, 24 hrs					
	93232	ECG monitor/report, 24 hrs					
	93236	ECG monitor/report, 24 hrs					
	93268	ECG record/review					
	93271	Ecg/monitoring and analysis					
	93724	Analyze pacemaker system					
	G0004	ECG transm phys review & int					
	G0006	ECG transmission & analysis					
0101	Tilt Table Evaluation		S	4.47	$216.74	$128.84	$43.35
	93660	Tilt table evaluation					
0102	Electronic Analysis of Pacemakers/other Devices		S	0.45	$21.82	$12.62	$4.36
	62367	Analyze spine infusion pump					
	62368	Analyze spine infusion pump					
	93727	Analyze itr system					
	93731	Analyze pacemaker system					
	93732	Analyze pacemaker system					
	93733	Telephone analy, pacemaker					
	93734	Analyze pacemaker system					
	93735	Analyze pacemaker system					
	93736	Telephone analy, pacemaker					
	93737	Analyze cardio/defibrillator					
	93738	Analyze cardio/defibrillator					
	93741	Analyze ht pace device sngl					
	93742	Analyze ht pace device sngl					
	93743	Analyze ht pace device dual					
	93744	Analyze ht pace device dual					
	95970	Analyze neurostim, no prog					
	95971	Analyze neurostim, simple					
	95972	Analyze neurostim, complex					
	95973	Analyze neurostim, complex					
	95974	Cranial neurostim, complex					
	95975	Cranial neurostim, complex					
0109	Bone Marrow Harvesting and Bone Marrow/Stem Cell Transplant		S	4.13	$200.25	$40.05	$40.05
	38230	Bone marrow collection					
	38240	Bone marrow/stem transplant					
	38241	Bone marrow/stem transplant					
0110	Transfusion		S	5.83	$282.68	$122.73	$56.54
	36430	Blood transfusion service					
	36440	Blood transfusion service					
	36450	Exchange transfusion service					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	36455	Exchange transfusion service					
	36460	Transfusion service, fetal					
0111	Blood Product Exchange		S	14.17	$667.06	$300.74	$137.41
	36520	Plasma and/or cell exchange					
	36521	Apheresis w/adsorp/reinfuse					
	38231	Stem cell collection					
0112	Extracorporeal Photopheresis		S	39.60	$1,920.09	$863.65	$384.02
	36522	Photopheresis					
0113	Excision Lymphatic System		T	13.89	$673.49	$326.55	$134.70
	38308	Incision of lymph channels					
	38500	Biopsy/removal, lymph nodes					
	38510	Biopsy/removal, lymph nodes					
	38520	Biopsy/removal, lymph nodes					
	38525	Biopsy/removal, lymph nodes					
	38530	Biopsy/removal, lymph nodes					
	38550	Removal, neck/armpit lesion					
0114	Thyroid/Lymphadenectomy Procedures		T	19.56	$948.41	$493.78	$189.68
	38542	Explore deep node(s), neck					
	38555	Removal, neck/armpit lesion					
	38720	Removal of lymph nodes, neck					
	38740	Remove armpit lymph nodes					
	38745	Remove armpit lymph nodes					
	38760	Remove groin lymph nodes					
	60200	Remove thyroid lesion					
	60210	Partial thyroid excision					
	60220	Partial removal of thyroid					
	60225	Partial removal of thyroid					
	60240	Removal of thyroid					
	60280	Remove thyroid duct lesion					
	60281	Remove thyroid duct lesion					
0116	Chemotherapy Administration by Other Technique Except Infusion		S	2.34	$113.46	$22.69	$22.69
	Q0083	Chemo by other than infusion					
0117	Chemotherapy Administration by Infusion Only		S	1.84	$89.22	$71.80	$17.84
	Q0084	Chemotherapy by infusion					
0118	Chemotherapy Administration by Both Infusion and Other Technique		S	2.90	$140.61	$72.03	$28.12
	Q0085	Chemo by both infusion and o					
0120	Infusion Therapy Except Chemotherapy		S	1.66	$80.49	$42.67	$16.10
	36680	Insert needle, bone cavity					
	Q0081	Infusion ther other than che					
0121	Level I Tube changes and Repositioning		T	2.36	$114.43	$52.53	$22.89
	31502	Change of windpipe airway					
	43760	Change gastrostomy tube					
	43761	Reposition gastrostomy tube					
	43999	Stomach surgery procedure					
	47530	Revise/reinsert bile tube					
	47999	Bile tract surgery procedure					
	49999	Abdomen surgery procedure					
	50688	Change of ureter tube					
	51705	Change of bladder tube					
	51710	Change of bladder tube					
	62194	Replace/irrigate catheter					
	62225	Replace/irrigate catheter					
0122	Level II Tube changes and Repositioning		T	5.04	$244.37	$114.93	$48.88
	47525	Change bile duct catheter					
	50398	Change kidney tube					
0123	Level III Tube changes and Repositioning		T	13.89	$673.49	$350.75	$134.70
	49422	Remove perm cannula/catheter					
	49429	Removal of shunt					
0130	Level I Laparoscopy		T	25.36	$1,229.63	$659.53	$245.93
	38129	Laparoscope proc, spleen					
	38589	Laparoscope proc, lymphatic					
	43289	Laparoscope proc, esoph					
	43659	Laparoscope proc, stom					
	44209	Laparoscope proc, intestine					
	44970	Laparoscopy, appendectomy					
	44979	Laparoscope proc, app					
	47560	Laparoscopy w/cholangio					
	47561	Laparo w/cholangio/biopsy					
	47579	Laparoscope proc, biliary					
	49320	Diag laparo separate proc					
	49321	Laparoscopy, biopsy					
	49322	Laparoscopy, aspiration					
	49323	Laparo drain lymphocele					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	49329	Laparo proc, abdm/per/oment					
	50549	Laparoscope proc, renal					
	54699	Laparoscope proc, testis					
	55559	Laparo proc, spermatic cord					
	58679	Laparo proc, oviduct-ovary					
	59899	Laparo proc, ob care/deliver					
	60659	Laparo proc, endocrine					
0131	Level II Laparoscopy		T	41.81	$2,027.24	$1,089.88	$405.45
	38120	Laparoscopy, splenectomy					
	38570	Laparoscopy, lymph node biop					
	38572	Laparoscopy, lymphadenectomy					
	43653	Laparoscopy, gastrostomy					
	44200	Laparoscopy, enterolysis					
	44201	Laparoscopy, jejunostomy					
	47562	Laparoscopic cholecystectomy					
	47563	Laparo cholecystectomy/graph					
	47564	Laparo cholecystectomy/explr					
	47570	Laparo cholecystoenterostomy					
	49650	Laparo hernia repair initial					
	49651	Laparo hernia repair recur					
	49659	Laparo proc, hernia repair					
	50541	Laparo ablate renal cyst					
	50544	Laparoscopy, pyeloplasty					
	50945	Laparoscopy ureterolithotomy					
	51990	Laparo urethral suspension					
	54690	Laparoscopy, orchiectomy					
	55550	Laparo ligate spermatic vein					
	58551	Laparoscopy, remove myoma					
	58660	Laparoscopy, lysis					
	58661	Laparoscopy, remove adnexa					
	58662	Laparoscopy, excise lesions					
	58670	Laparoscopy, tubal cautery					
	58671	Laparoscopy, tubal block					
	58672	Laparoscopy, fimbrioplasty					
	58673	Laparoscopy, salpingostomy					
	59150	Treat ectopic pregnancy					
	59151	Treat ectopic pregnancy					
0132	Level III Laparoscopy		T	48.91	$2,371.50	$1,239.22	$474.30
	38571	Laparoscopy, lymphadenectomy					
	43280	Laparoscopy, fundoplasty					
	43651	Laparoscopy, vagus nerve					
	43652	Laparoscopy, vagus nerve					
	50548	Laparo-asst remove k/ureter					
	51992	Laparo sling operation					
	54692	Laparoscopy, orchiopexy					
	58550	Laparo-asst vag hysterectomy					
0140	Esophageal Dilation without Endoscopy		T	4.74	$229.83	$107.24	$45.97
	43450	Dilate esophagus					
	43453	Dilate esophagus					
	43456	Dilate esophagus					
	43458	Dilate esophagus					
	43499	Esophagus surgery procedure					
0141	Upper GI Procedures		T	7.15	$346.68	$184.67	$69.34
	43200	Esophagus endoscopy					
	43202	Esophagus endoscopy, biopsy					
	43204	Esophagus endoscopy & inject					
	43205	Esophagus endoscopy/ligation					
	43215	Esophagus endoscopy					
	43216	Esophagus endoscopy/lesion					
	43217	Esophagus endoscopy					
	43219	Esophagus endoscopy					
	43220	Esoph endoscopy, dilation					
	43226	Esoph endoscopy, dilation					
	43227	Esoph endoscopy, repair					
	43228	Esoph endoscopy, ablation					
	43234	Upper GI endoscopy, exam					
	43235	Uppr gi endoscopy, diagnosis					
	43239	Upper GI endoscopy, biopsy					
	43241	Upper GI endoscopy with tube					
	43243	Upper gi endoscopy & inject					
	43244	Upper GI endoscopy/ligation					
	43245	Operative upper GI endoscopy					
	43246	Place gastrostomy tube					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	43247	Operative upper GI endoscopy					
	43248	Uppr gi endoscopy/guide wire					
	43249	Esoph endoscopy, dilation					
	43250	Upper GI endoscopy/tumor					
	43251	Operative upper GI endoscopy					
	43255	Operative upper GI endoscopy					
	43258	Operative upper GI endoscopy					
	43259	Endoscopic ultrasound exam					
	43600	Biopsy of stomach					
	43750	Place gastrostomy tube					
	43830	Place gastrostomy tube					
	43831	Place gastrostomy tube					
	44100	Biopsy of bowel					
0142	Small Intestine Endoscopy		T	7.45	$361.23	$162.42	$72.25
	44360	Small bowel endoscopy					
	44361	Small bowel endoscopy/biopsy					
	44363	Small bowel endoscopy					
	44364	Small bowel endoscopy					
	44365	Small bowel endoscopy					
	44366	Small bowel endoscopy					
	44369	Small bowel endoscopy					
	44372	Small bowel endoscopy					
	44373	Small bowel endoscopy					
	44376	Small bowel endoscopy					
	44377	Small bowel endoscopy/biopsy					
	44378	Small bowel endoscopy					
	44380	Small bowel endoscopy					
	44382	Small bowel endoscopy					
	44799	Intestine surgery procedure					
0143	Lower GI Endoscopy		T	7.98	$386.93	$199.12	$77.39
	44385	Endoscopy of bowel pouch					
	44386	Endoscopy, bowel pouch/biop					
	44388	Colon endoscopy					
	44389	Colonoscopy with biopsy					
	44390	Colonoscopy for foreign body					
	44391	Colonoscopy for bleeding					
	44392	Colonoscopy & polypectomy					
	44393	Colonoscopy, lesion removal					
	44394	Colonoscopy w/snare					
	45355	Surgical colonoscopy					
	45378	Diagnostic colonoscopy					
	45379	Colonoscopy					
	45380	Colonoscopy and biopsy					
	45382	Colonoscopy/control bleeding					
	45383	Lesion removal colonoscopy					
	45384	Colonoscopy					
	45385	Lesion removal colonoscopy					
0144	Diagnostic Anoscopy		T	2.23	$108.13	$49.32	$21.63
	46604	Anoscopy and dilation					
	46606	Anoscopy/remove for body					
0145	Therapeutic Anoscopy		T	7.46	$361.71	$179.39	$72.34
	46606	Anoscopy and biopsy					
	46610	Anoscopy/remove lesion					
	46611	Anoscopy					
	46612	Anoscopy/remove lesions					
	46614	Anoscopy/control bleeding					
	46615	Anoscopy					
0146	Level I Sigmoidoscopy		T	2.83	$137.22	$65.15	$27.44
	45300	Proctosigmoidoscopy					
	45303	Proctosigmoidoscopy					
	45305	Proctosigmoidoscopy & biopsy					
	45307	Proctosigmoidoscopy					
	45317	Proctosigmoidoscopy					
	45330	Diagnostic sigmoidoscopy					
	45331	Sigmoidoscopy and biopsy					
	45332	Sigmoidoscopy					
0147	Level II Sigmoidoscopy		T	6.26	$303.53	$149.11	$60.71
	45308	Proctosigmoidoscopy					
	45309	Proctosigmoidoscopy					
	45315	Proctosigmoidoscopy					
	45320	Proctosigmoidoscopy					
	45321	Proctosigmoidoscopy					
	45333	Sigmoidoscopy & polypectomy					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	45334	Sigmoidoscopy for bleeding					
	45337	Sigmoidoscopy & decompress					
	45338	Sigmoidoscopy					
	45339	Sigmoidoscopy					
0148	Level I Anal/Rectal Procedure		T	2.34	$113.46	$43.59	$22.69
	45005	Drainage of rectal abscess					
	45900	Reduction of rectal prolapse					
	45915	Remove rectal obstruction					
	45999	Rectum surgery procedure					
	46040	Incision of rectal abscess					
	46050	Incision of anal abscess					
	46070	Incision of anal septum					
	46083	Incise external hemorrhoid					
	46221	Ligation of hemorrhoid(s)					
	46320	Removal of hemorrhoid clot					
	46500	Injection into hemorrhoids					
	46934	Destruction of hemorrhoids					
	46935	Destruction of hemorrhoids					
	46945	Ligation of hemorrhoids					
	46946	Ligation of hemorrhoids					
0149	Level II Anal/Rectal Procedure		T	12.86	$623.54	$293.06	$124.71
	45000	Drainage of pelvic abscess					
	45020	Drainage of rectal abscess					
	45100	Biopsy of rectum					
	45905	Dilation of anal sphincter					
	45910	Dilation of rectal narrowing					
	46030	Removal of rectal marker					
	46080	Incision of anal sphincter					
	46210	Removal of anal crypt					
	46220	Removal of anal tab					
	46230	Removal of anal tabs					
	46754	Removal of suture from anus					
	46936	Destruction of hemorrhoids					
	46940	Treatment of anal fissure					
	46942	Treatment of anal fissure					
	46999	Anus surgery procedure					
0150	Level III Anal/Rectal Procedure		T	17.68	$857.25	$437.12	$171.45
	45108	Removal of anorectal lesion					
	45150	Excision of rectal stricture					
	45160	Excision of rectal lesion					
	45170	Excision of rectal lesion					
	45190	Destruction, rectal tumor					
	45500	Repair of rectum					
	45505	Repair of rectum					
	45560	Repair of rectocele					
	46045	Incision of rectal abscess					
	46060	Incision of rectal abscess					
	46200	Removal of anal fissure					
	46211	Removal of anal crypts					
	46250	Hemorrhoidectomy					
	46255	Hemorrhoidectomy					
	46257	Remove hemorrhoids & fissure					
	46258	Remove hemorrhoids & fistula					
	46260	Hemorrhoidectomy					
	46261	Remove hemorrhoids & fissure					
	46262	Remove hemorrhoids & fistula					
	46270	Removal of anal fistula					
	46275	Removal of anal fistula					
	46280	Removal of anal fistula					
	46285	Removal of anal fistula					
	46288	Repair anal fistula					
	46700	Repair of anal stricture					
	46750	Repair of anal sphincter					
	46753	Reconstruction of anus					
	46760	Repair of anal sphincter					
	46761	Repair of anal sphincter					
	46762	Implant artificial sphincter					
	46937	Cryotherapy of rectal lesion					
	46938	Cryotherapy of rectal lesion					
0151	Endoscopic Retrograde Cholangio-Pancreatography (ERCP)		T	10.53	$510.57	$245.46	$102.11
	43260	Endo cholangiopancreatograph					
	43261	Endo cholangiopancreatograph					
	43262	Endo cholangiopancreatograph					

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APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	43263	Endo cholangiopancreatograph					
	43264	Endo cholangiopancreatograph					
	43265	Endo cholangiopancreatograph					
	43267	Endo cholangiopancreatograph					
	43268	Endo cholangiopancreatograph					
	43269	Endo cholangiopancreatograph					
	43271	Endo cholangiopancreatograph					
	43272	Endo cholangiopancreatograph					
0152	Percutaneous Biliary Endoscopic Procedures		T	8.22	$398.56	$207.38	$79.71
	47510	Insert catheter, bile duct					
	47511	Insert bile duct drain					
	47552	Biliary endoscopy thru skin					
	47553	Biliary endoscopy thru skin					
	47554	Biliary endoscopy thru skin					
	47555	Biliary endoscopy thru skin					
	47556	Biliary endoscopy thru skin					
	47630	Remove bile duct stone					
0153	Peritoneal and Abdominal Procedures		T	19.62	$951.32	$496.31	$190.26
	49085	Remove abdomen foreign body					
	49250	Excision of umbilicus					
	49420	Insert abdominal drain					
	49421	Insert abdominal drain					
	49423	Exchange drainage catheter					
	49426	Revise abdomen-venous shunt					
0154	Hernia/Hydrocele Procedures		T	22.43	$1,087.57	$556.96	$217.51
	49495	Repair inguinal hernia, init					
	49496	Repair inguinal hernia, init					
	49500	Repair inguinal hernia					
	49501	Repair inguinal hernia, init					
	49505	Repair inguinal hernia					
	49507	Repair inguinal hernia					
	49520	Rerepair inguinal hernia					
	49521	Repair inguinal hernia, rec					
	49525	Repair inguinal hernia					
	49540	Repair lumbar hernia					
	49550	Repair femoral hernia					
	49553	Repair femoral hernia, init					
	49555	Repair femoral hernia					
	49557	Repair femoral hernia, recur					
	49560	Repair abdominal hernia					
	49561	Repair incisional hernia					
	49565	Rerepair abdominal hernia					
	49566	Repair incisional hernia					
	49568	Hernia repair w/mesh					
	49570	Repair epigastric hernia					
	49572	Repair epigastric hernia					
	49580	Repair umbilical hernia					
	49582	Repair umbilical hernia					
	49585	Repair umbilical hernia					
	49587	Repair umbilical hernia					
	49590	Repair abdominal hernia					
	49600	Repair umbilical lesion					
	51500	Removal of bladder cyst					
	54530	Removal of testis					
	54550	Exploration for testis					
	54640	Suspension of testis					
	55040	Removal of hydrocele					
	55041	Removal of hydroceles					
	55535	Revise spermatic cord veins					
	55540	Revise hernia & sperm veins					
[2]0157	Colorectal Cancer Screening: Barium Enema		S	1.79	$86.79		$17.36
	G0106	Colon CA screen; barium enema					
	G0120	Colon ca scrn; barium enema					
[1]0158	Colorectal Cancer Screening: Colonoscopy		S	7.98	$386.93		$96.73
	G0104	CA screen; flexi sigmoidescope					
[1]0159	Colorectal Cancer Screening: Flexible Sigmoidoscopy		S	7.98	$137.22		$34.31
	G0105	Colorectal scrn; hi risk ind					
0160	Level I Cystourethroscopy and other Genitourinary Procedures		T	5.43	$263.28	$110.11	$52.66
	50392	Insert kidney drain					
	50393	Insert ureteral tube					
	50395	Create passage to kidney					
	52000	Cystoscopy					
	52265	Cystoscopy and treatment					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
0161	Level II Cystourethroscopy and other Genitourinary Procedures		T	10.94	$530.45	$249.36	$106.09
	50551	Kidney endoscopy					
	50553	Kidney endoscopy					
	50555	Kidney endoscopy & biopsy					
	50557	Kidney endoscopy & treatment					
	50559	Renal endoscopy/radiotracer					
	50561	Kidney endoscopy & treatment					
	52005	Cystoscopy & ureter catheter					
	52007	Cystoscopy and biopsy					
	52010	Cystoscopy & duct catheter					
	52204	Cystoscopy					
	52214	Cystoscopy and treatment					
	52224	Cystoscopy and treatment					
	52260	Cystoscopy and treatment					
	52270	Cystoscopy & revise urethra					
	52275	Cystoscopy & revise urethra					
	52276	Cystoscopy and treatment					
	52281	Cystoscopy and treatment					
	52283	Cystoscopy and treatment					
	52285	Cystoscopy and treatment					
	52290	Cystoscopy and treatment					
	52300	Cystoscopy and treatment					
	52301	Cystoscopy and treatment					
	52305	Cystoscopy and treatment					
	52310	Cystoscopy and treatment					
	52315	Cystoscopy and treatment					
	52327	Cystoscopy, inject material					
	52510	Dilation prostatic urethra					
	53605	Dilate urethra stricture					
0162	Level III Cystourethroscopy and other Genitourinary Procedures		T	17.49	$848.04	$427.49	$169.61
	50951	Endoscopy of ureter					
	50953	Endoscopy of ureter					
	50955	Ureter endoscopy & biopsy					
	50957	Ureter endoscopy & treatment					
	50959	Ureter endoscopy & tracer					
	50961	Ureter endoscopy & treatment					
	51020	Incise & treat bladder					
	51030	Incise & treat bladder					
	51040	Incise & drain bladder					
	51045	Incise bladder/drain ureter					
	51050	Removal of bladder stone					
	51065	Removal of ureter stone					
	51520	Removal of bladder lesion					
	51860	Repair of bladder opening					
	52234	Cystoscopy and treatment					
	52265	Cystoscopy and treatment					
	52250	Cystoscopy and radiotracer					
	52277	Cystoscopy and treatment					
	52282	Cystoscopy, implant stent					
	52317	Remove bladder stone					
	52318	Remove bladder stone					
	52320	Cystoscopy and treatment					
	52325	Cystoscopy, stone removal					
	52330	Cystoscopy and treatment					
	52332	Cystoscopy and treatment					
	52334	Create passage to kidney					
	52335	Endoscopy of urinary tract					
	52336	Cystoscopy, stone removal					
	52337	Cystoscopy, stone removal					
	52338	Cystoscopy and treatment					
	52339	Cystoscopy and treatment					
	52340	Cystoscopy and treatment					
	52450	Incision of prostate					
	52500	Revision of bladder neck					
	52606	Control postop bleeding					
	52640	Relieve bladder contracture					
	52700	Drainage of prostate abscess					
	55720	Drainage of prostate abscess					
	55725	Drainage of prostate abscess					
	55859	Percut/needle insert, pros					
0163	Level IV Cystourethroscopy and other Genitourinary Procedures		T	28.98	$1,405.18	$792.56	$281.03
	50080	Removal of kidney stone					
	50081	Removal of kidney stone					

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APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	52240	Cystoscopy and treatment					
	52601	Prostatectomy (TURP)					
	52612	Prostatectomy, first stage					
	52614	Prostatectomy, second stage					
	52620	Remove residual prostate					
	52630	Remove prostate regrowth					
	52647	Laser surgery of prostate					
	52648	Laser surgery of prostate					
0164	Level I Urinary and Anal Procedures		T	2.17	$105.23	$33.03	$21.05
	51005	Drainage of bladder					
	51700	Irrigation of bladder					
	51736	Urine flow measurement					
	51741	Electro-uroflowmetry, first					
	51784	Anal/urinary muscle study					
	51785	Anal/urinary muscle study					
	51795	Urine voiding pressure study					
	51797	Intraabdominal pressure test					
	53600	Dilate urethra stricture					
	53601	Dilate urethra stricture					
	53621	Dilate urethra stricture					
	53660	Dilation of urethra					
	53661	Dilation of urethra					
	53675	Insert urinary catheter					
	54235	Penile injection					
	54240	Penis study					
	55899	Genital surgery procedure					
0165	Level II Urinary and Anal Procedures		T	3.89	$188.61	$91.76	$37.72
	50396	Measure kidney pressure					
	50686	Measure ureter pressure					
	51000	Drainage of bladder					
	51010	Drainage of bladder					
	51720	Treatment of bladder lesion					
	51725	Simple cystometrogram					
	51726	Complex cystometrogram					
	51772	Urethra pressure profile					
	51792	Urinary reflex study					
	53620	Dilate urethra stricture					
	53899	Urology surgery procedure					
	54200	Treatment of penis lesion					
	54220	Treatment of penis lesion					
	54231	Dynamic cavernosometry					
	54250	Penis study					
	54450	Preputial stretching					
	91122	Anal pressure record					
0166	Level I Urethral Procedures		T	10.17	$493.11	$218.73	$98.62
	53000	Incision of urethra					
	53010	Incision of urethra					
	53020	Incision of urethra					
	53025	Incision of urethra					
	53040	Drainage of urethra abscess					
	53060	Drainage of urethra abscess					
	53080	Drainage of urinary leakage					
	53200	Biopsy of urethra					
	53250	Removal of urethra gland					
	53260	Treatment of urethra lesion					
	53265	Treatment of urethra lesion					
	53275	Repair of urethra defect					
	53442	Remove perineal prosthesis					
	53502	Repair of urethra injury					
	53510	Repair of urethra injury					
	53665	Dilation of urethra					
	54000	Slitting of prepuce					
	54001	Slitting of prepuce					
0167	Level II Urethral Procedures		T	21.06	$1,021.14	$555.84	$204.23
	51715	Endoscopic injection/implant					
	53270	Removal of urethra gland					
	53505	Repair of urethra injury					
0168	Level III Urethral Procedures		T	24.94	$1,209.27	$536.11	$241.85
	53210	Removal of urethra					
	53215	Removal of urethra					
	53220	Treatment of urethra lesion					
	53230	Removal of urethra lesion					
	53235	Removal of urethra lesion					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	53240	Surgery for urethra pouch					
	53400	Revise urethra, stage 1					
	53405	Revise urethra, stage 2					
	53410	Reconstruction of urethra					
	53420	Reconstruct urethra, stage 1					
	53425	Reconstruct urethra, stage 2					
	53430	Reconstruction of urethra					
	53447	Remove artificial sphincter					
	53449	Correct artificial sphincter					
	53450	Revision of urethra					
	53460	Revision of urethra					
	53515	Repair of urethra injury					
	53520	Repair of urethra defect					
0169	Lithotripsy		T	46.72	$2,265.32	$1,384.20	$453.06
	50590	Fragmenting of kidney stone					
0170	Dialysis for Other Than ESRD Patients		S	6.68	$323.89	$72.26	$64.78
	90935	Hemodialysis, one evaluation					
	90945	Dialysis, one evaluation					
0180	Circumcision		T	13.62	$660.39	$304.87	$132.08
	54150	Circumcision					
	54152	Circumcision					
	54160	Circumcision					
	54161	Circumcision					
0181	Penile Procedures		T	32.37	$1,569.58	$906.36	$313.91
	37790	Penile venous occlusion					
	54110	Treatment of penis lesion					
	54111	Treat penis lesion, graft					
	54112	Treat penis lesion, graft					
	54120	Partial removal of penis					
	54205	Treatment of penis lesion					
	54300	Revision of penis					
	54304	Revision of penis					
	54308	Reconstruction of urethra					
	54312	Reconstruction of urethra					
	54316	Reconstruction of urethra					
	54318	Reconstruction of urethra					
	54322	Reconstruction of urethra					
	54324	Reconstruction of urethra					
	54326	Reconstruction of urethra					
	54328	Revise penis/urethra					
	54340	Secondary urethral surgery					
	54344	Secondary urethral surgery					
	54348	Secondary urethral surgery					
	54352	Reconstruct urethra/penis					
	54360	Penis plastic surgery					
	54380	Repair penis					
	54385	Repair penis					
	54402	Remove penis prosthesis					
	54407	Remove multi-comp prosthesis					
	54409	Revise penis prosthesis					
	54420	Revision of penis					
	54435	Revision of penis					
	54440	Repair of penis					
0182	Insertion of Penile Prosthesis		T	52.11	$2,526.66	$1,525.05	$505.33
	53440	Correct bladder function					
	53445	Correct urine flow control					
	54400	Insert semi-rigid prosthesis					
	54401	Insert self-contd prosthesis					
	54405	Insert multi-comp prosthesis					
0183	Testes/Epididymis Procedures		T	18.26	$885.37	$448.94	$177.07
	54505	Biopsy of testis					
	54510	Removal of testis lesion					
	54520	Removal of testis					
	54600	Reduce testis torsion					
	54620	Suspension of testis					
	54660	Revision of testis					
	54670	Repair testis injury					
	54680	Relocation of testis(es)					
	54700	Drainage of scrotum					
	54820	Exploration of epididymis					
	54830	Remove epididymis lesion					
	54840	Remove epididymis lesion					
	54860	Removal of epididymis					

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APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	54861	Removal of epididymis					
	54900	Fusion of spermatic ducts					
	54901	Fusion of spermatic ducts					
	55060	Repair of hydrocele					
	55110	Explore scrotum					
	55120	Removal of scrotum lesion					
	55150	Removal of scrotum					
	55175	Revision of scrotum					
	55180	Revision of scrotum					
	55200	Incision of sperm duct					
	55250	Removal of sperm duct(s)					
	55400	Repair of sperm duct					
	55450	Ligation of sperm duct					
	55500	Removal of hydrocele					
	55520	Removal of sperm cord lesion					
	55530	Revise spermatic cord veins					
	55680	Remove sperm pouch lesion					
0184	Prostate Biopsy		T	4.94	$239.53	$122.96	$47.91
	55700	Biopsy of prostate					
	55705	Biopsy of prostate					
0190	Surgical Hysteroscopy		T	17.85	$865.49	$443.89	$173.10
	58558	Hysteroscopy, biopsy					
	58559	Hysteroscopy, lysis					
	58560	Hysteroscopy, resect septum					
	58561	Hysteroscopy, remove myoma					
	58562	Hysteroscopy, remove fb					
	58563	Hysteroscopy, ablation					
	58578	Laparo proc, uterus					
	58579	Hysteroscope procedure					
0191	Level I Female Reproductive Procedures		T	1.19	$57.70	$17.43	$11.54
	57160	Insert pessary/other device					
	57170	Fitting of diaphragm/cap					
	57452	Examination of vagina					
	58100	Biopsy of uterus lining					
	58301	Remove intrauterine device					
	58555	Hysteroscopy, dx, sep proc					
	59200	Insert cervical dilator					
	Q0091	Obtaining screen pap smear					
0192	Level II Female Reproductive Procedures		T	2.38	$115.40	$35.33	$23.08
	56405	I & D of vulva/perineum					
	56420	Drainage of gland abscess					
	57100	Biopsy of vagina					
	57150	Treat vagina infection					
	57180	Treat vaginal bleeding					
	57454	Vagina examination & biopsy					
	57505	Endocervical curettage					
	57511	Cryocautery of cervix					
	99170	Anogenital exam, child					
0193	Level III Female Reproductive Procedures		T	8.93	$432.99	$171.13	$86.60
	56441	Lysis of labial lesion(s)					
	56720	Incision of hymen					
	57020	Drainage of pelvic fluid					
	57460	Cervix excision					
	57500	Biopsy of cervix					
	57510	Cauterization of cervix					
	57513	Laser surgery of cervix					
	57800	Dilation of cervical canal					
0194	Level IV Female Reproductive Procedures		T	16.21	$785.96	$395.94	$157.20
	56440	Surgery for vulva lesion					
	56700	Partial removal of hymen					
	56740	Remove vagina gland lesion					
	56800	Repair of vagina					
	56810	Repair of perineum					
	57000	Exploration of vagina					
	57010	Drainage of pelvic abscess					
	57061	Destruction vagina lesion(s)					
	57065	Destruction vagina lesion(s)					
	57105	Biopsy of vagina					
	57106	Remove vagina wall, partial					
	57107	Remove vagina tissue, part					
	57109	Vaginectomy partial w/nodes					
	57130	Remove vagina lesion					
	57135	Remove vagina lesion					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	57200	Repair of vagina					
	57210	Repair vagina/perineum					
	57230	Repair of urethral lesion					
	57400	Dilation of vagina					
	57410	Pelvic examination					
	57415	Remove vaginal foreign body					
	57520	Conization of cervix					
	57700	Revision of cervix					
	57720	Revision of cervix					
	58345	Reopen fallopian tube					
	58350	Reopen fallopian tube					
	58970	Retrieval of oocyte					
	59300	Episiotomy or vaginal repair					
	59320	Revision of cervix					
	59871	Remove cerclage suture					
0195	Level V Female Reproductive Procedures		T	18.68	$905.74	$483.80	$181.15
	56620	Partial removal of vulva					
	56625	Complete removal of vulva					
	57220	Revision of urethra					
	57240	Repair bladder & vagina					
	57250	Repair rectum & vagina					
	57260	Repair of vagina					
	57265	Extensive repair of vagina					
	57268	Repair of bowel bulge					
	57284	Repair paravaginal defect					
	57288	Repair bladder defect					
	57289	Repair bladder & vagina					
	57291	Construction of vagina					
	57300	Repair rectum-vagina fistula					
	57522	Conization of cervix					
	57530	Removal of cervix					
	57550	Removal of residual cervix					
	57555	Remove cervix/repair vagina					
	57556	Remove cervix, repair bowel					
	58145	Removal of uterus lesion					
	58800	Drainage of ovarian cyst(s)					
	58820	Drain ovary abscess, open					
	58900	Biopsy of ovary(s)					
	58920	Partial removal of ovary(s)					
	58925	Removal of ovarian cyst(s)					
0196	Dilatation & Curettage		T	14.47	$701.61	$357.98	$140.32
	57820	D & c of residual cervix					
	58120	Dilation and curettage					
	59160	D & c after delivery					
0197	Infertility Procedures		T	2.40	$116.37	$49.55	$23.27
	55870	Electroejaculation					
	58321	Artificial insemination					
	58322	Artificial insemination					
	58323	Sperm washing					
	58974	Transfer of embryo					
	58976	Transfer of embryo					
0198	Pregnancy and Neonatal Care Procedures		T	1.34	$64.97	$33.03	$12.99
	59000	Amniocentesis					
	59012	Fetal cord puncture, prenatal					
	59015	Chorion biopsy					
	59020	Fetal contract stress test					
	59025	Fetal non-stress test					
	59030	Fetal scalp blood sample					
	59050	Fetal monitor w/report					
	59899	Maternity care procedure					
0199	Vaginal Delivery		T	11.20	$543.06	$157.83	$108.61
	59409	Obstetrical care					
	59412	Antepartum manipulation					
	59414	Deliver placenta					
	59612	Vbac delivery only					
0200	Therapeutic Abortion		T	13.89	$673.49	$373.23	$134.70
	59840	Abortion					
	59841	Abortion					
0201	Spontaneous Abortion		T	13.00	$630.33	$329.65	$126.07
	59812	Treatment of miscarriage					
	59820	Care of miscarriage					
	59821	Treatment of miscarriage					
	59870	Evacuate mole of uterus					

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APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
0210	Spinal Tap		T	3.00	$145.46	$62.40	$29.09
	62270	Spinal fluid tap, diagnostic					
	62272	Drain spinal fluid					
0211	Level I Nervous System Injections		T	3.32	$160.96	$74.78	$32.20
	64400	Injection for nerve block					
	64402	Injection for nerve block					
	64405	Injection for nerve block					
	64408	Injection for nerve block					
	64410	Injection for nerve block					
	64412	Injection for nerve block					
	64413	Injection for nerve block					
	64415	Injection for nerve block					
	64417	Injection for nerve block					
	64418	Injection for nerve block					
	64420	Injection for nerve block					
	64421	Injection for nerve block					
	64425	Injection for nerve block					
	64430	Injection for nerve block					
	64435	Injection for nerve block					
	64445	Injection for nerve block					
	64450	Injection for nerve block					
	64470	Inj paravertebral c/t					
	64472	Inj paravertebral c/t add-on					
	64475	Inj paravertebral l/s					
	64476	Inj paravertebral l/s add-on					
	64479	Inj foramen epidural c/t					
	64480	Inj foramen epidural add-on					
	64483	Inj foramen epidural l/s					
	64484	Inj foramen epidural add-on					
	64505	Injection for nerve block					
	64508	Injection for nerve block					
	64510	Injection for nerve block					
	64520	Injection for nerve block					
	64530	Injection for nerve block					
	64600	Injection treatment of nerve					
	64605	Injection treatment of nerve					
	64610	Injection treatment of nerve					
	64612	Destroy nerve, face muscle					
	64613	Destroy nerve, spine muscle					
	64620	Injection treatment of nerve					
	64622	Destr paravertebrl nerve l/s					
	64623	Destr paravertebral n add-on					
	64626	Destr paravertebrl nerve c/t					
	64627	Destr paravertebral n add-on					
	64630	Injection treatment of nerve					
	64640	Injection treatment of nerve					
	64680	Injection treatment of nerve					
	64999	Nervous system surgery					
0212	Level II Nervous System Injections		T	3.64	$176.49	$88.78	$35.30
	61000	Remove cranial cavity fluid					
	61001	Remove cranial cavity fluid					
	61020	Remove brain cavity fluid					
	61026	Injection into brain canal					
	61050	Remove brain canal fluid					
	61055	Injection into brain canal					
	61070	Brain canal shunt procedure					
	62263	Lysis epidural adhesions					
	62268	Drain spinal cord cyst					
	62273	Treat epidural spine lesion					
	62280	Treat spinal cord lesion					
	62281	Treat spinal cord lesion					
	62282	Treat spinal canal lesion					
	62292	Injection into disk lesion					
	62294	Injection into spinal artery					
	62310	Inject spine c/t					
	62311	Inject spine l/s (cd)					
	62318	Inject spine w/cath, c/t					
	62319	Inject spine w/cath l/s (cd)					
0213	Extended EEG Studies and Sleep Studies		S	11.15	$540.63	$290.42	$108.13
	95805	Multiple sleep latency test					
	95806	Sleep study, unattended					
	95807	Sleep study, attended					
	95808	Polysomnography, 1–3					

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APC	CPT/HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	95810	Polysomnography, 4 or more					
	95811	Polysomnography w/cpap					
	95812	Electroencephalogram (EEG)					
	95813	Electroencephalogram (EEG)					
	95827	Night electroencephalogram					
	95951	EEG monitoring/videorecord					
	95953	EEG monitoring/computer					
	95954	EEG monitoring/giving drugs					
	95956	EEG monitoring/function test					
0214	Electroencephalogram		S	2.32	$112.49	$56.50	$22.50
	95816	Electroencephalogram (EEG)					
	95819	Electroencephalogram (EEG)					
	95822	Sleep electroencephalogram					
	95824	Electroencephalography					
	95829	Surgery electrocorticogram					
	95955	EEG during surgery					
0215	Level I Nerve and Muscle Tests		S	1.15	$55.76	$30.05	$11.15
	95857	Tensilon test					
	95858	Tensilon test & myogram					
	95860	Muscle test, one limb					
	95861	Muscle test, two limbs					
	95864	Muscle test, 4 limbs					
	95869	Muscle test, thor paraspinal					
	95870	Muscle test, nonparaspinal					
	95872	Muscle test, one fiber					
	95900	Motor nerve conduction test					
	95903	Motor nerve conduction test					
	95904	Sense/mixed n conduction tst					
	95933	Blink reflex test					
	95934	H-reflex test					
	95937	Neuromuscular junction test					
0216	Level II Nerve and Muscle Tests		S	2.87	$139.16	$84.69	$27.83
	92275	Electroretinography					
	92585	Auditory evoked potential					
	95863	Muscle test, 3 limbs					
	95867	Muscle test, head or neck					
	95868	Muscle test, head or neck					
	95921	Autonomic nerv function test					
	95922	Autonomic nerv function test					
	95923	Autonomic nerv function test					
	95925	Somatosensory testing					
	95926	Somatosensory testing					
	95927	Somatosensory testing					
	95930	Visual evoked potential test					
	95936	H-reflex test					
0217	Level III Nerve and Muscle Tests		S	5.87	$284.62	$156.68	$56.92
	95875	Limb exercise test					
	95950	Ambulatory eeg monitoring					
0220	Level I Nerve Procedures		T	13.96	$676.88	$326.21	$135.38
	27315	Partial removal, thigh nerve					
	27320	Partial removal, thigh nerve					
	28030	Removal of foot nerve					
	28035	Decompression of tibia nerve					
	61790	Treat trigeminal nerve					
	62287	Percutaneous diskectomy					
	63600	Remove spinal cord lesion					
	63610	Stimulation of spinal cord					
	63615	Remove lesion of spinal cord					
	64702	Revise finger/toe nerve					
	64704	Revise hand/foot nerve					
	64706	Revise arm/leg nerve					
	64712	Revision of sciatic nerve					
	64713	Revision of arm nerve(s)					
	64714	Revise low back nerve(s)					
	64716	Revision of cranial nerve					
	64718	Revise ulnar nerve at elbow					
	64719	Revise ulnar nerve at wrist					
	64721	Carpal tunnel surgery					
	64722	Relieve pressure on nerve(s)					
	64726	Release foot/toe nerve					
	64727	Internal nerve revision					
	64732	Incision of brow nerve					
	64734	Incision of cheek nerve					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	64736	Incision of chin nerve					
	64738	Incision of jaw nerve					
	64740	Incision of tongue nerve					
	64742	Incision of facial nerve					
	64744	Incise nerve, back of head					
	64746	Incise diaphragm nerve					
	64761	Incision of pelvis nerve					
	64771	Sever cranial nerve					
	64772	Incision of spinal nerve					
	64774	Remove skin nerve lesion					
	64776	Remove digit nerve lesion					
	64778	Digit nerve surgery add-on					
	64782	Remove limb nerve lesion					
	64783	Limb nerve surgery add-on					
	64784	Remove nerve lesion					
	64787	Implant nerve end					
	64788	Remove skin nerve lesion					
	64790	Removal of nerve lesion					
	64795	Biopsy of nerve					
0221	Level II Nerve Procedures		T	18.36	$890.22	$463.62	$178.04
	64786	Remove sciatic nerve lesion					
	64792	Removal of nerve lesion					
	64831	Repair of digit nerve					
	64832	Repair nerve add-on					
	64834	Repair of hand or foot nerve					
	64835	Repair of hand or foot nerve					
	64836	Repair of hand or foot nerve					
	64837	Repair nerve add-on					
	64840	Repair of leg nerve					
	64856	Repair/transpose nerve					
	64857	Repair arm/leg nerve					
	64858	Repair sciatic nerve					
	64859	Nerve surgery					
	64861	Repair of arm nerves					
	64862	Repair of low back nerves					
	64864	Repair of facial nerve					
	64865	Repair of facial nerve					
	64870	Fusion of facial/other nerve					
	64872	Subsequent repair of nerve					
	64874	Repair & revise nerve add-on					
	64876	Repair nerve/shorten bone					
	64885	Nerve graft, head or neck					
	64886	Nerve graft, head or neck					
	64890	Nerve graft, hand or foot					
	64891	Nerve graft, hand or foot					
	64892	Nerve graft, arm or leg					
	64893	Nerve graft, arm or leg					
	64895	Nerve graft, hand or foot					
	64896	Nerve graft, hand or foot					
	64897	Nerve graft, arm or leg					
	64898	Nerve graft, arm or leg					
	64901	Nerve graft add-on					
	64902	Nerve graft add-on					
	64905	Nerve pedicle transfer					
	64907	Nerve pedicle transfer					
0222	Implantation of Neurological Device		T	25.48	$1,235.45	$780.07	$247.09
	61215	Insert brain-fluid device					
	61885	Implant neurostim one array					
	62360	Insert spine infusion device					
	62361	Implant spine infusion pump					
	62362	Implant spine infusion pump					
	63685	Implant neuroreceiver					
	64590	Implant neuroreceiver					
0223	Level I Revision/Removal Neurological Device		T	6.34	$307.41	$153.24	$61.48
	62350	Implant spinal canal cath					
	62355	Remove spinal canal catheter					
	63746	Removal of spinal shunt					
0224	Level II Revision/Removal Neurological Device		T	15.94	$772.88	$374.61	$154.58
	62230	Replace/revise brain shunt					
	62365	Remove spine infusion device					
	63650	Implant neuroelectrodes					
	63660	Revise/remove neuroelectrode					
	63688	Revise/remove neuroreceiver					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	63744	Revision of spinal shunt					
0225	Implantation of Neurostimulator Electrodes		T	3.43	$166.31	$64.46	$33.26
	64553	Implant neuroelectrodes					
	64555	Implant neuroelectrodes					
	64560	Implant neuroelectrodes					
	64565	Implant neuroelectrodes					
	64573	Implant neuroelectrodes					
	64575	Implant neuroelectrodes					
	64577	Implant neuroelectrodes					
	64580	Implant neuroelectrodes					
	64585	Revise/remove neuroelectrode					
	64595	Revise/remove neuroreceiver					
0230	Level I Eye Tests		S	0.98	$47.52	$22.48	$9.50
	66200	Treat eyelid by injection					
	92020	Special eye evaluation					
	92060	Special eye evaluation					
	92065	Orthoptic/pleoptic training					
	92081	Visual field examination(s)					
	92082	Visual field examination(s)					
	92083	Visual field examination(s)					
	92120	Tonography & eye evaluation					
	92130	Water provocation tonography					
	92225	Special eye exam, initial					
	92250	Eye exam with photos					
	92260	Ophthalmoscopy/dynamometry					
	92265	Eye muscle evaluation					
	92270	Electro-oculography					
	92283	Color vision examination					
	92285	Eye photography					
	92330	Fitting of artificial eye					
	92499	Eye service or procedure					
0231	Level II Eye Tests		S	2.64	$128.01	$59.87	$25.60
	65205	Remove foreign body from eye					
	65210	Remove foreign body from eye					
	65220	Remove foreign body from eye					
	65222	Remove foreign body from eye					
	65430	Corneal smear					
	67350	Biopsy eye muscle					
	67500	Inject/treat eye socket					
	68110	Remove eyelid lining lesion					
	68761	Close tear duct opening					
	68801	Dilate tear duct opening					
	68810	Probe nasolacrimal duct					
	68840	Explore/irrigate tear ducts					
	68899	Tear duct system surgery					
	92018	New eye exam & treatment					
	92019	Eye exam & treatment					
	92135	Opthalmic dx imaging					
	92140	Glaucoma provocative tests					
	92226	Special eye exam, subsequent					
	92230	Eye exam with photos					
	92235	Eye exam with photos					
	92240	Icg angiography					
	92284	Dark adaptation eye exam					
	92286	Internal eye photography					
	92287	Internal eye photography					
0232	Level I Anterior Segment Eye		T	6.04	$292.86	$134.66	$58.57
	65235	Remove foreign body from eye					
	65272	Repair of eye wound					
	65286	Repair of eye wound					
	65400	Removal of eye lesion					
	65436	Curette/treat cornea					
	65450	Treatment of corneal lesion					
	65772	Correction of astigmatism					
	65800	Drainage of eye					
	65820	Relieve inner eye pressure					
	65880	Incise inner eye adhesions					
	65900	Remove eye lesion					
	66020	Injection treatment of eye					
	66030	Injection treatment of eye					
	66500	Incision of iris					
	66505	Incision of iris					
	66625	Removal of iris					

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APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	66700	Destruction, ciliary body					
	66710	Destruction, ciliary body					
	66720	Destruction, ciliary body					
	66820	Incision, secofdary cataract					
	66830	Removal of lens lesion					
	67880	Revision of eyelid					
	68100	Biopsy of eyelid lining					
0233	Level II Anterior Segment Eye		T	13.79	$668.64	$331.60	$133.73
	65275	Repair of eye wound					
	65280	Repair of eye wound					
	65410	Biopsy of cornea					
	65420	Removal of eye lesion					
	65426	Removal of eye lesion					
	65775	Correction of astigmatism					
	65805	Drainage of eye					
	65810	Drainage of eye					
	65815	Drainage of eye					
	65865	Incise inner eye adhesions					
	65870	Incise inner eye adhesions					
	65875	Incise inner eye adhesions					
	65920	Remove implant from eye					
	65930	Remove blood clot from eye					
	66130	Remove eye lesion					
	66150	Glaucoma surgery					
	66250	Follow-up surgery of eye					
	66600	Remove iris and lesion					
	66605	Removal of iris					
	66630	Removal of iris					
	66635	Removal of iris					
	66680	Repair iris & ciliary body					
	66682	Repair iris & ciliary body					
	66740	Destruction, ciliary body					
	66825	Reposition intraocular lens					
	68130	Remove eyelid lining lesion					
	68330	Revise eyelid lining					
0234	Level III Anterior Segment Eye Procedures		T	20.64	$1,000.77	$502.16	$200.15
	65285	Repair of eye wound					
	65850	Incision of eye					
	66155	Glaucoma surgery					
	66160	Glaucoma surgery					
	66165	Glaucoma surgery					
	66170	Glaucoma surgery					
	66172	Incision of eye					
	66180	Implant eye shunt					
	66185	Revise eye shunt					
	66225	Repair/graft eye lesion					
	68360	Revise eyelid lining					
	68362	Revise eyelid lining					
0235	Level I Posterior Segment Eye Procedures		T	2.94	$142.55	$78.91	$28.51
	67141	Treatment of retina					
	67208	Treatment of retinal lesion					
	67227	Treatment of retinal lesion					
0236	Level II Posterior Segment Eye Procedures		T	6.70	$324.86	$147.96	$64.97
	66220	Repair eye lesion					
	67028	Injection eye drug					
	67030	Incise inner eye strands					
	67101	Repair detached retina					
	67110	Repair detached retina					
	67115	Release encircling material					
	67120	Remove eye implant material					
0237	Level III Posterior Segment Eye Procedures		T	33.96	$1,646.62	$852.66	$329.32
	65260	Remove foreign body from eye					
	65265	Remove foreign body from eye					
	67005	Partial removal of eye fluid					
	67010	Partial removal of eye fluid					
	67015	Release of eye fluid					
	67025	Replace eye fluid					
	67027	Implant eye drug system					
	67036	Removal of inner eye fluid					
	67038	Strip retinal membrane					
	67039	Laser treatment of retina					
	67040	Laser treatment of retina					
	67107	Repair detached retina					

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APC	CPT/HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	67108	Repair detached retina					
	67112	Rerepair detached retina					
	67121	Remove eye implant material					
	67218	Treatment of retinal lesion					
	67220	Treatment of choroid lesion					
	67255	Reinforce/graft eye wall					
0238	Level I Repair and Plastic Eye Procedures		T	2.80	$135.76	$58.96	$27.15
	67345	Destroy nerve of eye muscle					
	67505	Inject/treat eye socket					
	67700	Drainage of eyelid abscess					
	67800	Remove eyelid lesion					
	67805	Remove eyelid lesions					
	67810	Biopsy of eyelid					
	67820	Revise eyelashes					
	67825	Revise eyelashes					
	67938	Remove eyelid foreign body					
	68400	Incise/drain tear gland					
	68440	Incise tear duct opening					
	68705	Revise tear duct opening					
	68760	Close tear duct opening					
0239	Level II Repair and Plastic Eye Procedures		T	6.26	$303.53	$123.42	$60.71
	65435	Curette/treat cornea					
	67415	Aspiration, orbital contents					
	67515	Inject/treat eye socket					
	67599	Orbit surgery procedure					
	67710	Incision of eyelid					
	67801	Remove eyelid lesions					
	67830	Revise eyelashes					
	67840	Remove eyelid lesion					
	67850	Treat eyelid lesion					
	67875	Closure of eyelid by suture					
	67915	Repair eyelid defect					
	67922	Repair eyelid defect					
	68040	Treatment of eyelid lesions					
	68115	Remove eyelid lining lesion					
	68135	Remove eyelid lining lesion					
	68399	Eyelid lining surgery					
0240	Level III Repair and Plastic Eye Procedures		T	13.47	$653.12	$315.31	$130.62
	65125	Revise ocular implant					
	65175	Removal of ocular implant					
	65270	Repair of eye wound					
	65600	Revision of cornea					
	67250	Reinforce eye wall					
	67715	Incision of eyelid fold					
	67808	Remove eyelid lesion(s)					
	67835	Revise eyelashes					
	67882	Revision of eyelid					
	67900	Repair brow defect					
	67901	Repair eyelid defect					
	67902	Repair eyelid defect					
	67903	Repair eyelid defect					
	67904	Repair eyelid defect					
	67906	Repair eyelid defect					
	67908	Repair eyelid defect					
	67909	Revise eyelid defect					
	67911	Revise eyelid defect					
	67914	Repair eyelid defect					
	67916	Repair eyelid defect					
	67917	Repair eyelid defect					
	67921	Repair eyelid defect					
	67923	Repair eyelid defect					
	67924	Repair eyelid defect					
	67930	Repair eyelid wound					
	67935	Repair eyelid wound					
	67950	Revision of eyelid					
	67961	Revision of eyelid					
	67966	Revision of eyelid					
	67975	Reconstruction of eyelid					
	67999	Revision of eyelid					
	68020	Incise/drain eyelid lining					
	68320	Revise/graft eyelid lining					
	68340	Separate eyelid adhesions					
	68420	Incise/drain tear sac					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	68510	Biopsy of tear gland					
	68525	Biopsy of tear sac					
	68530	Clearance of tear duct					
	68770	Close tear system fistula					
	68811	Probe nasolacrimal duct					
	68815	Probe nasolacrimal duct					
0241	Level IV Repair and Plastic Eye Procedures		T	16.60	$804.89	$384.47	$160.98
	65093	Revise eye with implant					
	65130	Insert ocular implant					
	65135	Insert ocular implant					
	65150	Revise ocular implant					
	67400	Explore/biopsy eye socket					
	67405	Explore/drain eye socket					
	67412	Explore/treat eye socket					
	67413	Explore/treat eye socket					
	67560	Revise eye socket implant					
	67971	Reconstruction of eyelid					
	67973	Reconstruction of eyelid					
	67974	Reconstruction of eyelid					
	68326	Revise/graft eyelid lining					
	68328	Revise/graft eyelid lining					
	68335	Revise/graft eyelid lining					
	68500	Removal of tear gland					
	68505	Partial removal, tear gland					
	68520	Removal of tear sac					
	68540	Remove tear gland lesion					
	68700	Repair tear ducts					
	68745	Create tear duct drain					
0242	Level V Repair and Plastic Eye Procedures		T	23.70	$1,149.14	$597.36	$229.83
	65091	Revise eye					
	65101	Removal of eye					
	65103	Remove eye/insert implant					
	65105	Remove eye/attach implant					
	65110	Removal of eye					
	65112	Remove eye/revise socket					
	65114	Remove eye/revise socket					
	65140	Attach ocular implant					
	65155	Reinsert ocular implant					
	67414	Explr/decompress eye socket					
	67420	Explore/treat eye socket					
	67430	Explore/treat eye socket					
	67440	Explore/drain eye socket					
	67445	Explr/decompress eye socket					
	67450	Explore/biopsy eye socket					
	67550	Insert eye socket implant					
	67570	Decompress optic nerve					
	68325	Revise/graft eyelid lining					
	68550	Remove tear gland lesion					
	68720	Create tear sac drain					
	68750	Create tear duct drain					
0243	Strabismus/Muscle Procedures		T	17.99	$872.28	$431.39	$174.46
	65290	Repair of eye socket wound					
	67311	Revise eye muscle					
	67312	Revise two eye muscles					
	67314	Revise eye muscle					
	67316	Revise two eye muscles					
	67318	Revise eye muscle(s)					
	67320	Revise eye muscle(s) add-on					
	67331	Eye surgery follow-up add-on					
	67332	Rerevise eye muscles add-on					
	67334	Revise eye muscle w/suture					
	67335	Eye suture during surgery					
	67340	Revise eye muscle add-on					
	67343	Release eye tissue					
	67399	Eye muscle surgery procedure					
0244	Corneal Transplant		T	32.88	$1,594.26	$851.42	$318.85
	65710	Corneal transplant					
	65730	Corneal transplant					
	65750	Corneal transplant					
	65755	Corneal transplant					
	65770	Revise cornea with implant					
0245	Cataract Procedures without IOL Insert		T	26.55	$1,287.33	$823.85	$257.47
	66840	Removal of lens material					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	66850	Removal of lens material					
	66852	Removal of lens material					
	66920	Extraction of lens					
	66930	Extraction of lens					
	66940	Extraction of lens					
0246		Cataract Procedures with IOL Insert	T	26.55	$1,287.33	$623.85	$257.47
	66983	Remove cataract/insert lens					
	66984	Remove cataract/insert lens					
	66985	Insert lens prosthesis					
	66986	Exchange lens prosthesis					
0247		Laser Eye Procedures Except Retinal	T	4.89	$237.10	$112.86	$47.42
	65855	Laser surgery of eye					
	65860	Incise inner eye adhesions					
	66761	Revision of iris					
	66762	Revision of iris					
	66770	Removal of inner eye lesion					
	66821	After cataract laser surgery					
	66999	Eye surgery procedure					
	67031	Laser surgery, eye strands					
0248		Laser Retinal Procedures	T	4.19	$203.16	$94.05	$40.63
	67105	Repair detached retina					
	67145	Treatment of retina					
	67210	Treatment of retinal lesion					
	67228	Treatment of retinal lesion					
	67299	Eye surgery procedure					
0250		Nasal Cauterization/Packing	T	2.21	$107.16	$36.54	$21.43
	30901	Control of nosebleed					
	30903	Control of nosebleed					
	30905	Control of nosebleed					
	30906	Repeat control of nosebleed					
	42960	Control throat bleeding					
	42970	Control nose/throat bleeding					
0251		Level I ENT Procedures	T	1.68	$81.46	$27.99	$16.29
	21450	Treat lower jaw fracture					
	21480	Reset dislocated jaw					
	30000	Drainage of nose lesion					
	30020	Drainage of nose lesion					
	30300	Remove nasal foreign body					
	30560	Release of nasal adhesions					
	30999	Nasal surgery procedure					
	31000	Irrigation, maxillary sinus					
	40800	Drainage of mouth lesion					
	40804	Removal, foreign body, mouth					
	40806	Incision of lip fold					
	40808	Biopsy of mouth lesion					
	40818	Excise oral mucosa for graft					
	40830	Repair mouth laceration					
	41005	Drainage of mouth lesion					
	41009	Drainage of mouth lesion					
	41250	Repair tongue laceration					
	41599	Tongue and mouth surgery					
	41800	Drainage of gum lesion					
	42000	Drainage mouth roof lesion					
	42180	Repair palate					
	42280	Preparation, palate mold					
	42299	Palate/uvula surgery					
	42310	Drainage of salivary gland					
	42320	Drainage of salivary gland					
	42700	Drainage of tonsil abscess					
	42809	Remove pharynx foreign body					
	69400	Inflate middle ear canal					
	92502	Ear and throat examination					
0252		Level II ENT Procedures	T	5.18	$251.16	$114.24	$50.23
	20500	Injection of sinus tract					
	21400	Treat eye socket fracture					
	21493	Treat hyoid bone fracture					
	21494	Treat hyoid bone fracture					
	21899	Neck/chest surgery procedure					
	30100	Intranasal biopsy					
	30124	Removal of nose lesion					
	30210	Nasal sinus therapy					
	30220	Insert nasal septal button					
	30801	Cauterization, inner nose					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC— Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	31002	Irrigation, sphenoid sinus					
	31299	Sinus surgery procedure					
	40490	Biopsy of lip					
	40801	Drainage of mouth lesion					
	40805	Removal, foreign body, mouth					
	40812	Excise/repair mouth lesion					
	40819	Excise lip or cheek fold					
	40899	Mouth surgery procedure					
	41015	Drainage of mouth lesion					
	41100	Biopsy of tongue					
	41108	Biopsy of floor of mouth					
	41820	Excision, gum, each quadrant					
	41821	Excision of gum flap					
	42100	Biopsy roof of mouth					
	42140	Excision of uvula					
	42325	Create salivary cyst drain					
	42326	Create salivary cyst drain					
	42330	Removal of salivary stone					
	42650	Dilation of salivary duct					
	42660	Dilation of salivary duct					
	42800	Biopsy of throat					
	42999	Throat surgery procedure					
	69399	Outer ear surgery procedure					
	69405	Catheterize middle ear canal					
	69410	Inset middle ear (baffle)					
	69420	Incision of eardrum					
	69424	Remove ventilating tube					
	69433	Create eardrum opening					
	69979	Temporal bone surgery					
0253	Level III ENT Procedures		T	12.02	$582.81	$284.00	$116.56
	21031	Remove exostosis, mandible					
	21032	Remove exostosis, maxilla					
	21040	Removal of jaw bone lesion					
	21085	Prepare face/oral prosthesis					
	21089	Prepare face/oral prosthesis					
	21282	Revision of eyelid					
	21295	Revision of jaw muscle/bone					
	21299	Cranio/maxillofacial surgery					
	21300	Treatment of skull fracture					
	21310	Treatment of nose fracture					
	21315	Treatment of nose fracture					
	21320	Treatment of nose fracture					
	21325	Treatment of nose fracture					
	21337	Treat nasal septal fracture					
	21401	Treat eye socket fracture					
	21440	Treat dental ridge fracture					
	21452	Treat lower jaw fracture					
	21485	Reset dislocated jaw					
	21497	Interdental wiring					
	21499	Head surgery procedure					
	30110	Removal of nose polyp(s)					
	30115	Removal of nose polyp(s)					
	30117	Removal of intranasal lesion					
	30120	Revision of nose					
	30130	Removal of turbinate bones					
	30140	Removal of turbinate bones					
	30200	Injection treatment of nose					
	30310	Remove nasal foreign body					
	30320	Remove nasal foreign body					
	30802	Cauterization, inner nose					
	30930	Therapy, fracture of nose					
	31020	Exploration, maxillary sinus					
	31585	Treat larynx fracture					
	31589	Larynx surgery procedure					
	31612	Puncture/clear windpipe					
	31820	Closure of windpipe lesion					
	40500	Partial excision of lip					
	40520	Partial excision of lip					
	40650	Repair lip					
	40652	Repair lip					
	40799	Lip surgery procedure					
	40810	Excision of mouth lesion					
	40814	Excise/repair mouth lesion					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	40816	Excision of mouth lesion					
	40820	Treatment of mouth lesion					
	40831	Repair mouth laceration					
	41000	Drainage of mouth lesion					
	41006	Drainage of mouth lesion					
	41007	Drainage of mouth lesion					
	41008	Drainage of mouth lesion					
	41010	Incision of tongue fold					
	41016	Drainage of mouth lesion					
	41017	Drainage of mouth lesion					
	41018	Drainage of mouth lesion					
	41105	Biopsy of tongue					
	41110	Excision of tongue lesion					
	41112	Excision of tongue lesion					
	41113	Excision of tongue lesion					
	41115	Excision of tongue fold					
	41116	Excision of mouth lesion					
	41251	Repair tongue laceration					
	41252	Repair tongue laceration					
	41500	Fixation of tongue					
	41510	Tongue to lip surgery					
	41520	Reconstruction, tongue fold					
	41805	Removal foreign body, gum					
	41806	Removal foreign body, jawbone					
	41822	Excision of gum lesion					
	41823	Excision of gum lesion					
	41825	Excision of gum lesion					
	41826	Excision of gum lesion					
	41827	Excision of gum lesion					
	41828	Excision of gum lesion					
	41830	Removal of gum tissue					
	41850	Treatment of gum lesion					
	41870	Gum graft					
	41872	Repair gum					
	41874	Repair tooth socket					
	41899	Dental surgery procedure					
	42104	Excision lesion, mouth roof					
	42106	Excision lesion, mouth roof					
	42169	Treatment mouth roof lesion					
	42260	Repair nose to lip fistula					
	42281	Insertion, palate prosthesis					
	42300	Drainage of salivary gland					
	42305	Drainage of salivary gland					
	42335	Removal of salivary stone					
	42340	Removal of salivary stone					
	42405	Biopsy of salivary gland					
	42408	Excision of salivary cyst					
	42409	Drainage of salivary cyst					
	42450	Excise sublingual gland					
	42600	Closure of salivary fistula					
	42665	Ligation of salivary duct					
	42699	Salivary surgery procedure					
	42720	Drainage of throat abscess					
	42802	Biopsy of throat					
	42804	Biopsy of upper nose/throat					
	42806	Biopsy of upper nose/throat					
	42808	Excise pharynx lesion					
	42810	Excision of neck cyst					
	42900	Repair throat wound					
	42972	Control nose/throat bleeding					
	60000	Drain thyroid/tongue cyst					
	69105	Biopsy of external ear canal					
	69120	Removal of external ear					
	69222	Clean out mastoid cavity					
	69421	Incision of eardrum					
	69436	Create eardrum opening					
	69440	Exploration of middle ear					
	69540	Remove ear lesion					
	69610	Repair of eardrum					
	69620	Repair of eardrum					
	69799	Middle ear surgery procedure					
	69949	Inner ear surgery procedure					
0254	Level IV ENT Procedures		T	12.45	$803.66	$272.41	$120.73

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	21010	Incision of jaw joint					
	21015	Resection of facial tumor					
	21030	Removal of face bone lesion					
	21076	Prepare face/oral prosthesis					
	21110	Interdental fixation					
	21120	Reconstruction of chin					
	21121	Reconstruction of chin					
	21122	Reconstruction of chin					
	21123	Reconstruction of chin					
	21125	Augmentation, lower jaw bone					
	21137	Reduction of forehead					
	21181	Contour cranial bone lesion					
	21235	Ear cartilage graft					
	21296	Revision of jaw muscle/bone					
	21330	Treatment of nose fracture					
	21335	Treatment of nose fracture					
	21338	Treat nasoethmoid fracture					
	21339	Treat nasoethmoid fracture					
	21345	Treat nose/jaw fracture					
	21421	Treat mouth roof fracture					
	21445	Treat dental ridge fracture					
	21451	Treat lower jaw fracture					
	21454	Treat lower jaw fracture					
	30118	Removal of intranasal lesion					
	30430	Revision of nose					
	30630	Repair nasal septum defect					
	31040	Exploration behind upper jaw					
	31070	Exploration of frontal sinus					
	31600	Incision of windpipe					
	31601	Incision of windpipe					
	31603	Incision of windpipe					
	31605	Incision of windpipe					
	31610	Incision of windpipe					
	31611	Surgery/speech prosthesis					
	31613	Repair windpipe opening					
	31825	Repair of windpipe defect					
	31830	Revise windpipe scar					
	40510	Partial excision of lip					
	40525	Reconstruct lip with flap					
	40527	Reconstruct lip with flap					
	40530	Partial removal of lip					
	40654	Repair lip					
	40840	Reconstruction of mouth					
	40842	Reconstruction of mouth					
	40843	Reconstruction of mouth					
	41114	Excision of tongue lesion					
	42107	Excision lesion, mouth roof					
	42145	Repair palate, pharynx/uvula					
	42235	Repair palate					
	42500	Repair salivary duct					
	42950	Reconstruction of throat					
	42955	Surgical opening of throat					
	43020	Incision of esophagus					
	69140	Remove ear canal lesion(s)					
	69300	Revise external ear					
	69650	Release middle ear bone					
0256	Level V ENT Procedures		T	25.40	$1,231.57	$623.05	$246.31
	21025	Excision of bone, lower jaw					
	21026	Excision of facial bone(s)					
	21029	Contour of face bone lesion					
	21034	Removal of face bone lesion					
	21041	Removal of jaw bone lesion					
	21044	Removal of jaw bone lesion					
	21050	Removal of jaw joint					
	21060	Remove jaw joint cartilage					
	21070	Remove coronoid process					
	21077	Prepare face/oral prosthesis					
	21079	Prepare face/oral prosthesis					
	21080	Prepare face/oral prosthesis					
	21081	Prepare face/oral prosthesis					
	21082	Prepare face/oral prosthesis					
	21083	Prepare face/oral prosthesis					
	21084	Prepare face/oral prosthesis					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	21086	Prepare face/oral prosthesis					
	21087	Prepare face/oral prosthesis					
	21088	Prepare face/oral prosthesis					
	21100	Maxillofacial fixation					
	21127	Augmentation, lower jaw bone					
	21138	Reduction of forehead					
	21139	Reduction of forehead					
	21196	Reconstruct lower jaw bone					
	21206	Reconstruct upper jaw bone					
	21208	Augmentation of facial bones					
	21209	Reduction of facial bones					
	21210	Face bone graft					
	21215	Lower jaw bone graft					
	21230	Rib cartilage graft					
	21240	Reconstruction of jaw joint					
	21242	Reconstruction of jaw joint					
	21243	Reconstruction of jaw joint					
	21244	Reconstruction of lower jaw					
	21245	Reconstruction of jaw					
	21246	Reconstruction of jaw					
	21248	Reconstruction of jaw					
	21249	Reconstruction of jaw					
	21260	Revise eye sockets					
	21261	Revise eye sockets					
	21263	Revise eye sockets					
	21267	Revise eye sockets					
	21270	Augmentation, cheek bone					
	21275	Revision, orbitofacial bones					
	21280	Revision of eyelid					
	21340	Treatment of nose fracture					
	21355	Treat cheek bone fracture					
	21406	Treat eye socket fracture					
	21407	Treat eye socket fracture					
	21453	Treat lower jaw fracture					
	21461	Treat lower jaw fracture					
	21462	Treat lower jaw fracture					
	21465	Treat lower jaw fracture					
	21470	Treat lower jaw fracture					
	21490	Repair dislocated jaw					
	30125	Removal of nose lesion					
	30150	Partial removal of nose					
	30160	Removal of nose					
	30400	Reconstruction of nose					
	30410	Reconstruction of nose					
	30420	Reconstruction of nose					
	30435	Revision of nose					
	30450	Revision of nose					
	30460	Revision of nose					
	30462	Revision of nose					
	30520	Repair of nasal septum					
	30540	Repair nasal defect					
	30545	Repair nasal defect					
	30580	Repair upper jaw fistula					
	30600	Repair mouth/nose fistula					
	30620	Intranasal reconstruction					
	31030	Exploration, maxillary sinus					
	31032	Explore sinus, remove polyps					
	31050	Exploration, sphenoid sinus					
	31051	Sphenoid sinus surgery					
	31075	Exploration of frontal sinus					
	31080	Removal of frontal sinus					
	31081	Removal of frontal sinus					
	31084	Removal of frontal sinus					
	31085	Removal of frontal sinus					
	31086	Removal of frontal sinus					
	31087	Removal of frontal sinus					
	31090	Exploration of sinuses					
	31200	Removal of ethmoid sinus					
	31201	Removal of ethmoid sinus					
	31205	Removal of ethmoid sinus					
	31300	Removal of larynx lesion					
	31320	Diagnostic incision, larynx					
	31375	Partial removal of larynx					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	31400	Revision of larynx					
	31420	Removal of epiglottis					
	31580	Revision of larynx					
	31586	Treat larynx fracture					
	31588	Revision of larynx					
	31590	Reinnervate larynx					
	31595	Larynx nerve surgery					
	31614	Repair windpipe opening					
	31750	Repair of windpipe					
	31755	Repair of windpipe					
	40700	Repair cleft lip/nasal					
	40701	Repair cleft lip/nasal					
	40702	Repair cleft lip/nasal					
	40720	Repair cleft lip/nasal					
	40761	Repair cleft lip/nasal					
	40844	Reconstruction of mouth					
	40845	Reconstruction of mouth					
	41120	Partial removal of tongue					
	42120	Remove palate/lesion					
	42182	Repair palate					
	42200	Reconstruct cleft palate					
	42205	Reconstruct cleft palate					
	42210	Reconstruct cleft palate					
	42215	Reconstruct cleft palate					
	42220	Reconstruct cleft palate					
	42225	Reconstruct cleft palate					
	42226	Lengthening of palate					
	42227	Lengthening of palate					
	42410	Excise parotid gland/lesion					
	42415	Excise parotid gland/lesion					
	42420	Excise parotid gland/lesion					
	42425	Excise parotid gland/lesion					
	42440	Excise submaxillary gland					
	42505	Repair salivary duct					
	42507	Parotid duct diversion					
	42508	Parotid duct diversion					
	42509	Parotid duct diversion					
	42510	Parotid duct diversion					
	42725	Drainage of throat abscess					
	42815	Excision of neck cyst					
	42844	Extensive surgery of throat					
	42890	Partial removal of pharynx					
	42892	Revision of pharyngeal walls					
	42962	Control throat bleeding					
	60500	Explore parathyroid glands					
	61330	Decompress eye socket					
	69310	Rebuild outer ear canal					
	69320	Rebuild outer ear canal					
	69450	Eardrum revision					
	69501	Mastoidectomy					
	69505	Remove mastoid structures					
	69511	Extensive mastoid surgery					
	69530	Extensive mastoid surgery					
	69550	Remove ear lesion					
	69552	Remove ear lesion					
	69601	Mastoid surgery revision					
	69602	Mastoid surgery revision					
	69603	Mastoid surgery revision					
	69604	Mastoid surgery revision					
	69605	Mastoid surgery revision					
	69631	Repair eardrum structures					
	69632	Rebuild eardrum structures					
	69633	Rebuild eardrum structures					
	69635	Repair eardrum structures					
	69636	Rebuild eardrum structures					
	69637	Rebuild eardrum structures					
	69641	Revise middle ear & mastoid					
	69642	Revise middle ear & mastoid					
	69643	Revise middle ear & mastoid					
	69644	Revise middle ear & mastoid					
	69645	Revise middle ear & mastoid					
	69646	Revise middle ear & mastoid					
	69660	Revise middle ear bone					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	69661	Revise middle ear bone					
	69662	Revise middle ear bone					
	69666	Repair middle ear structures					
	69667	Repair middle ear structures					
	69670	Remove mastoid air cells					
	69676	Remove middle ear nerve					
	69700	Close mastoid fistula					
	69711	Remove/repair hearing aid					
	69720	Release facial nerve					
	69725	Release facial nerve					
	69740	Repair facial nerve					
	69745	Repair facial nerve					
	69801	Incise inner ear					
	69802	Incise inner ear					
	69805	Explore inner ear					
	69806	Explore inner ear					
	69820	Establish inner ear window					
	69840	Revise inner ear window					
	69905	Remove inner ear					
	69910	Remove inner ear & mastoid					
	69915	Incise inner ear nerve					
	69955	Release facial nerve					
	69960	Release inner ear canal					
0257	Implantation of Cochlear Device		T	115.31	$5,591.04	$3,496.58	$1,118.21
	69930	Implant cochlear device					
0258	Tonsil and Adenoid Procedures		T	18.62	$902.83	$462.81	$180.57
	42820	Remove tonsils and adenoids					
	42821	Remove tonsils and adenoids					
	42825	Removal of tonsils					
	42826	Removal of tonsils					
	42830	Removal of adenoids					
	42831	Removal of adenoids					
	42835	Removal of adenoids					
	42836	Removal of adenoids					
	42860	Excision of tonsil tags					
	42870	Excision of lingual tonsil					
0260	Level I Plain Film Except Teeth		X	0.79	$38.30	$22.02	$7.66
	70030	X-ray eye for foreign body					
	70100	X-ray exam of jaw					
	70110	X-ray exam of jaw					
	70120	X-ray exam of mastoids					
	70130	X-ray exam of mastoids					
	70140	X-ray exam of facial bones					
	70150	X-ray exam of facial bones					
	70160	X-ray exam of nasal bones					
	70190	X-ray exam of eye sockets					
	70200	X-ray exam of eye sockets					
	70210	X-ray exam of sinuses					
	70220	X-ray exam of sinuses					
	70240	X-ray exam, pituitary saddle					
	70250	X-ray exam of skull					
	70328	X-ray exam of jaw joint					
	70330	X-ray exam of jaw joints					
	70350	X-ray head for orthodontia					
	70355	Panoramic x-ray of jaws					
	70360	X-ray exam of neck					
	70380	X-ray exam of salivary gland					
	71010	Chest x-ray					
	71015	Chest x-ray					
	71020	Chest x-ray					
	71021	Chest x-ray					
	71022	Chest x-ray					
	71030	Chest x-ray					
	71035	Chest x-ray					
	71100	X-ray exam of ribs					
	71101	X-ray exam of ribs/chest					
	71110	X-ray exam of ribs					
	71120	X-ray exam of breastbone					
	71130	X-ray exam of breastbone					
	72020	X-ray exam of spine					
	72040	X-ray exam of neck spine					
	72069	X-ray exam of trunk spine					
	72070	X-ray exam of thoracic spine					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	72072	X-ray exam of thoracic spine					
	72074	X-ray exam of thoracic spine					
	72080	X-ray exam of trunk spine					
	72090	X-ray exam of trunk spine					
	72100	X-ray exam of lower spine					
	72120	X-ray exam of lower spine					
	72170	X-ray exam of pelvis					
	72190	X-ray exam of pelvis					
	72200	X-ray exam sacroiliac joints					
	72202	X-ray exam sacroiliac joints					
	72220	X-ray exam of tailbone					
	73000	X-ray exam of collar bone					
	73010	X-ray exam of shoulder blade					
	73020	X-ray exam of shoulder					
	73030	X-ray exam of shoulder					
	73050	X-ray exam of shoulders					
	73060	X-ray exam of humerus					
	73070	X-ray exam of elbow					
	73080	X-ray exam of elbow					
	73090	X-ray exam of forearm					
	73092	X-ray exam of arm, infant					
	73100	X-ray exam of wrist					
	73110	X-ray exam of wrist					
	73120	X-ray exam of hand					
	73130	X-ray exam of hand					
	73140	X-ray exam of finger(s)					
	73500	X-ray exam of hip					
	73510	X-ray exam of hip					
	73520	X-ray exam of hips					
	73540	X-ray exam of pelvis & hips					
	73550	X-ray exam of thigh					
	73560	X-ray exam of knee, 1 or 2					
	73562	X-ray exam of knee, 3					
	73564	X-ray exam, knee, 4 or more					
	73565	X-ray exam of knees					
	73590	X-ray exam of lower leg					
	73600	X-ray exam of ankle					
	73610	X-ray exam of ankle					
	73620	X-ray exam of foot					
	73630	X-ray exam of foot					
	73650	X-ray exam of heel					
	73660	X-ray exam of toe(s)					
	74000	X-ray exam of abdomen					
	74010	X-ray exam of abdomen					
	74020	X-ray exam of abdomen					
	74710	X-ray measurement of pelvis					
	76010	X-ray, nose to rectum					
	76040	X-rays, bone evaluation					
	76066	Joint(s) survey, single film					
	76098	X-ray exam, breast specimen					
	76150	X-ray exam, dry process					
	76499	Radiographic procedure					
	77417	Radiology port film(s)					
0261	Level II Plain Film Except Teeth Including Bone Density Measurement		X	1.38	$86.91	$38.77	$13.38
	70134	X-ray exam of middle ear					
	70260	X-ray exam of skull					
	71111	X-ray exam of ribs/chest					
	72010	X-ray exam of spine					
	72050	X-ray exam of neck spine					
	72052	X-ray exam of neck spine					
	72110	X-ray exam of lower spine					
	72114	X-ray exam of lower spine					
	73530	X-ray exam of hip					
	73592	X-ray exam of leg, infant					
	74022	X-ray exam series, abdomen					
	76006	X-ray stress view					
	76020	X-rays for bone age					
	76061	X-rays, bone survey					
	76062	X-rays, bone survey					
	76065	X-rays, bone evaluation					
	76075	Dual energy x-ray study					
	76076	Dual energy x-ray study					
	76078	Photodensitometry					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	76100	X-ray exam of body section					
	76120	Cinematic x-rays					
	76125	Cinematic x-rays add-on					
	76350	Bone mineral, single photon					
	G0130	Single energy x-ray study					
	G0131	CT scan, bone density study					
	G0132	CT scan, bone density study					
0262	Plain Film of Teeth		X	0.40	$19.39	$10.90	$3.88
	70300	X-ray exam of teeth					
	70310	X-ray exam of teeth					
	70320	Full mouth x-ray of teeth					
0263	Level I Miscellaneous Radiology Procedures		X	1.68	$81.46	$45.88	$16.29
	70170	X-ray exam of tear duct					
	70373	Contrast x-ray of larynx					
	70390	X-ray exam of salivary duct					
	71040	Contrast x-ray of bronchi					
	71060	Contrast x-ray of bronchi					
	74190	X-ray exam of peritoneum					
	74305	X-ray bile ducts/pancreas					
	76080	X-ray exam of fistula					
	76086	X-ray of mammary duct					
	76088	X-ray of mammary ducts					
	76096	X-ray of needle wire, breast					
	76101	Complex body section x-ray					
0264	Level II Miscellaneous Radiology Procedures		X	3.83	$185.71	$108.97	$37.14
	74320	Contrast x-ray of bile ducts					
	74328	X-ray bile duct endoscopy					
	74329	X-ray for pancreas endoscopy					
	74330	X-ray bile/panc endoscopy					
	74350	X-ray guide, stomach tube					
	74355	X-ray guide, intestinal tube					
	74470	X-ray exam of kidney lesion					
	74740	X-ray, female genital tract					
	74742	X-ray, fallopian tube					
	75801	Lymph vessel x-ray, arm/leg					
	75803	Lymph vessel x-ray, arms/legs					
	75805	Lymph vessel x-ray, trunk					
	75807	Lymph vessel x-ray, trunk					
	75809	Nonvascular shunt, x-ray					
	75898	Follow-up angiogram					
	76095	Stereotactic breast biopsy					
	76102	Complex body section x-rays					
0265	Level I Diagnostic Ultrasound Except Vascular		S	1.17	$56.73	$38.08	$11.35
	76513	Echo exam of eye, water bath					
	76529	Echo exam of eye					
	76536	Echo exam of head and neck					
	76645	Echo exam of breast(s)					
	76810	Echo exam of pregnant uterus					
	76815	Echo exam of pregnant uterus					
	76816	Echo exam follow-up/repeat					
	76857	Echo exam of pelvis					
	76970	Ultrasound exam follow-up					
	76977	Us bone density measure					
	G0050	Residual urine by ultrasound					
0266	Level II Diagnostic Ultrasound Except Vascular		S	1.79	$86.79	$57.35	$17.36
	76506	Echo exam of head					
	76511	Echo exam of eye					
	76512	Echo exam of eye					
	76516	Echo exam of eye					
	76519	Echo exam of eye					
	76604	Echo exam of chest					
	76700	Echo exam of abdomen					
	76705	Echo exam of abdomen					
	76770	Echo exam abdomen back wall					
	76775	Echo exam abdomen back wall					
	76778	Echo exam kidney transplant					
	76800	Echo exam spinal canal					
	76805	Echo exam of pregnant uterus					
	76818	Fetal biophysical profile					
	76830	Echo exam, transvaginal					
	76831	Echo exam, uterus					
	76856	Echo exam of pelvis					
	76870	Echo exam of scrotum					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	76872	Echo exam, transrectal					
	76873	Echograp trans r, pros study					
	76880	Echo exam of extremity					
	76885	Echo exam, infant hips					
	76886	Echo exam, infant hips					
	76975	GI endoscopic ultrasound					
	76986	Echo exam at surgery					
	76999	Echo examination procedure					
0267	Vascular Ultrasound		S	2.72	$131.86	$80.06	$26.38
	93880	Extracranial study					
	93882	Extracranial study					
	93886	Intracranial study					
	93888	Intracranial study					
	93925	Lower extremity study					
	93926	Lower extremity study					
	93930	Upper extremity study					
	93931	Upper extremity study					
	93970	Extremity study					
	93971	Extremity study					
	93975	Vascular study					
	93976	Vascular study					
	93978	Vascular study					
	93979	Vascular study					
	93980	Penile vascular study					
	93981	Penile vascular study					
	93990	Doppler flow testing					
0268	Guidance Under Ultrasound		X	2.23	$108.13	$69.51	$21.63
	76930	Echo guide for heart sac tap					
	76932	Echo guide for heart biopsy					
	76934	Echo guide for chest tap					
	76936	Echo guide for artery repair					
	76938	Echo exam for drainage					
	76941	Echo guide for transfusion					
	76942	Echo guide for biopsy					
	76945	Echo guide, villus sampling					
	76946	Echo guide for amniocentesis					
	76948	Echo guide, ova aspiration					
	76950	Echo guidance radiotherapy					
	76960	Echo guidance radiotherapy					
	76965	Echo guidance radiotherapy					
	G0161	Echo guide for cryo probes					
0269	Echocardiogram Except Transesophageal		S	4.40	$213.34	$114.01	$42.67
	76825	Echo exam of fetal heart					
	76826	Echo exam of fetal heart					
	76827	Echo exam of fetal heart					
	76828	Echo exam of fetal heart					
	93303	Echo transthoracic					
	93304	Echo transthoracic					
	93307	Echo exam of heart					
	93308	Echo exam of heart					
	93320	Doppler echo exam, heart					
	93321	Doppler echo exam, heart					
	93325	Doppler color flow add-on					
	93350	Echo transthoracic					
0270	Transesophageal Echocardiogram		S	5.55	$269.10	$150.26	$53.82
	93312	Echo transesophageal					
	93313	Echo transesophageal					
	93315	Echo transesophageal					
	93316	Echo transesophageal					
0271	Mammography		S	0.70	$33.94	$19.50	$6.79
	76090	Mammogram, one breast					
	76091	Mammogram, both breasts					
0272	Level I Fluoroscopy		X	1.40	$67.88	$39.00	$13.58
	70371	Speech evaluation, complex					
	71023	Chest x-ray and fluoroscopy					
	71034	Chest x-ray and fluoroscopy					
	74340	X-ray guide for GI tube					
	76000	Fluoroscope examination					
	76003	Needle localization by x-ray					
0273	Level II Fluoroscopy		X	2.49	$120.73	$81.02	$24.15
	70370	Throat x-ray & fluoroscopy					
	71036	X-ray guidance for biopsy					
	71090	X-ray & pacemaker insertion					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	75989	Abscess drainage under x-ray					
	76001	Fluoroscope exam, extensive					
	76005	Fluoroguide for spine inject					
0274	Myelography		S	4.83	$234.19	$128.12	$46.84
	70010	Contrast x-ray of brain					
	70015	Contrast x-ray of brain					
	72240	Contrast x-ray of neck spine					
	72255	Contrast x-ray, thorax spine					
	72265	Contrast x-ray, lower spine					
	72270	Contrast x-ray of spine					
	72275	Epidurography					
	72285	X-ray c/t spine disk					
	72295	X-ray of lower spine disk					
0275	Arthrography		S	2.74	$132.85	$72.26	$26.57
	70332	X-ray exam of jaw joint					
	73040	Contrast x-ray of shoulder					
	73085	Contrast x-ray of elbow					
	73115	Contrast x-ray of wrist					
	73525	Contrast x-ray of hip					
	73542	X-ray exam, sacroiliac joint					
	73580	Contrast x-ray of knee joint					
	73615	Contrast x-ray of ankle					
0276	Level I Digestive Radiology		S	1.79	$86.79	$49.78	$17.36
	74210	Contrst x-ray exam of throat					
	74220	Contrast x-ray, esophagus					
	74230	Cinema x-ray, throat/esoph					
	74240	X-ray exam, upper gi tract					
	74241	X-ray exam, upper gi tract					
	74246	Contrst x-ray uppr gi tract					
	74247	Contrst x-ray uppr gi tract					
	74250	X-ray exam of small bowel					
	74270	Contrast x-ray exam of colon					
	74283	Contrast x-ray exam of colon					
	74290	Contrast x-ray, gallbladder					
	74291	Contrast x-rays, gallbladder					
0277	Level II Digestive Radiology		S	2.47	$119.74	$69.28	$23.95
	74245	X-ray exam, upper gi tract					
	74249	Contrst x-ray uppr gi tract					
	74251	X-ray exam of small bowel					
	74260	X-ray exam of small bowel					
	74280	Contrast x-ray exam of colon					
0278	Diagnostic Urography		S	2.85	$138.19	$81.67	$27.64
	74400	Contrst x-ray, urinary tract					
	74410	Contrst x-ray, urinary tract					
	74415	Contrst x-ray, urinary tract					
	74420	Contrst x-ray, urinary tract					
	74425	Contrst x-ray, urinary tract					
	74430	Contrast x-ray, bladder					
	74440	X-ray, male genital tract					
	74445	X-ray exam of penis					
	74450	X-ray, urethra/bladder					
	74455	X-ray, urethra/bladder					
	74775	X-ray exam of perineum					
0279	Level I Diagnostic Angiography and Venography Except Extremity		S	6.30	$305.47	$174.57	$61.09
	75660	Artery x-rays, head & neck					
	75662	Artery x-rays, head & neck					
	75685	Artery x-rays, spine					
	75705	Artery x-rays, spine					
	75741	Artery x-rays, lung					
	75746	Artery x-rays, lung					
	75756	Artery x-rays, chest					
	75810	Vein x-ray, spleen/liver					
	75825	Vein x-ray, trunk					
	75827	Vein x-ray, chest					
	75831	Vein x-ray, kidney					
	75833	Vein x-ray, kidneys					
	75840	Vein x-ray, adrenal gland					
	75842	Vein x-ray, adrenal glands					
	75860	Vein x-ray, neck					
	75870	Vein x-ray, skull					
	75872	Vein x-ray, skull					
	75880	Vein x-ray, eye socket					
	75885	Vein x-ray, liver					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	75889	Vein x-ray, liver					
	75891	Vein x-ray, liver					
0280	Level II Diagnostic Angiography and Venography Except Extremity		S	14.98	$726.34	$380.12	$145.27
	75600	Contrast x-ray exam of aorta					
	75605	Contrast x-ray exam of aorta					
	75625	Contrast x-ray exam of aorta					
	75630	X-ray aorta, leg arteries					
	75650	Artery x-rays, head & neck					
	75658	Artery x-rays, arm					
	75665	Artery x-rays, head & neck					
	75671	Artery x-rays, head & neck					
	75676	Artery x-rays, neck					
	75680	Artery x-rays, neck					
	75710	Artery x-rays, arm/leg					
	75716	Artery x-rays, arms/legs					
	75722	Artery x-rays, kidney					
	75724	Artery x-rays, kidneys					
	75726	Artery x-rays, abdomen					
	75731	Artery x-rays, adrenal gland					
	75733	Artery x-rays, adrenals					
	75736	Artery x-rays, pelvis					
	75743	Artery x-rays, lungs					
	75774	Artery x-ray, each vessel					
	75887	Vein x-ray, liver					
0281	Venography of Extremity		S	4.40	$213.34	$115.16	$42.67
	75790	Visualize A–V shunt					
	75820	Vein x-ray, arm/leg					
	75822	Vein x-ray, arms/legs					
0282	Level I Computerized Axial Tomography		S	2.38	$115.40	$94.51	$23.08
	70486	Cat scan of face/jaw					
	76370	CAT scan for therapy guide					
	76375	3d/holograph reconstr add-on					
	76380	CAT scan follow-up study					
0283	Level II Computerized Axial Tomography		S	4.89	$237.10	$179.39	$47.42
	70450	CAT scan of head or brain					
	70460	Contrast CAT scan of head					
	70470	Contrast CAT scans of head					
	70480	CAT scan of skull					
	70481	Contrast CAT scan of skull					
	70482	Contrast CAT scans of skull					
	70487	Contrast CAT scan, face/jaw					
	70488	Contrast cat scans, face/jaw					
	70490	CAT scan of neck tissue					
	70491	Contrast CAT of neck tissue					
	70492	Contrast CAT of neck tissue					
	71250	Cat scan of chest					
	71260	Contrast CAT scan of chest					
	71270	Contrast CAT scans of chest					
	72125	CAT scan of neck spine					
	72126	Contrast CAT scan of neck					
	72127	Contrast CAT scans of neck					
	72128	CAT scan of thorax spine					
	72129	Contrast CAT scan of thorax					
	72130	Contrast CAT scans of thorax					
	72131	CAT scan of lower spine					
	72132	Contrast CAT of lower spine					
	72133	Contrst cat scans, low spine					
	72192	CAT scan of pelvis					
	72193	Contrast CAT scan of pelvis					
	72194	Contrast CAT scans of pelvis					
	73200	CAT scan of arm					
	73201	Contrast CAT scan of arm					
	73202	Contrast CAT scans of arm					
	73700	CAT scan of leg					
	73701	Contrast CAT scan of leg					
	73702	Contrast CAT scans of leg					
	74150	CAT scan of abdomen					
	74160	Contrast CAT scan of abdomen					
	74170	Contrast CAT scans, abdomen					
	76355	CAT scan for localization					
	76360	CAT scan for needle biopsy					
	76365	CAT scan for cyst aspiration					
0284	Magnetic Resonance Imaging		S	8.02	$388.87	$257.39	$77.77

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	70336	Magnetic image, jaw joint					
	70540	Magnetic image, face/neck					
	70541	Magnetic image, head (MRA)					
	70551	Magnetic image, brain (MRI)					
	70552	Magnetic image, brain (MRI)					
	70553	Magnetic image, brain (mri)					
	71550	Magnetic image, chest (mri)					
	72141	Magnetic image, neck spine					
	72142	Magnetic image, neck spine					
	72146	Magnetic image, chest spine					
	72147	Magnetic image, chest spine					
	72148	Magnetic image, lumbar spine					
	72149	Magnetic image, lumbar spine					
	72156	Magnetic image, neck spine					
	72157	Magnetic image, chest spine					
	72158	Magnetic image, lumbar spine					
	72196	Magnetic image, pelvis					
	73220	Magnetic image, arm/hand					
	73221	Magnetic image, joint of arm					
	73720	Magnetic image, leg/foot					
	73721	Magnetic image, joint of leg					
	74181	Magnetic image/abdomen (mri)					
	75552	Magnetic image, myocardium					
	75553	Magnetic image, myocardium					
	75554	Cardiac MRI/function					
	75555	Cardiac MRI/limited study					
	76093	Magnetic image, breast					
	76094	Magnetic image, both breasts					
	76390	Mr spectroscopy					
	76400	Magnetic image, bone marrow					
0285	Positron Emission Tomography (PET)		S	15.06	$730.22	$415.21	$146.04
	G0030	PET imaging prev PET single					
	G0031	PET imaging prev PET multple					
	G0032	PET follow SPECT 78464 singl					
	G0033	PET follow SPECT 78464 mult					
	G0034	PET follow SPECT 78865 singl					
	G0035	PET follow SPECT 78465 mult					
	G0036	PET follow comry angio sing					
	G0037	PET follow comry angio mult					
	G0038	PET follow myocard perf sing					
	G0039	PET follow myocard perf mult					
	G0040	PET follow stress echo singl					
	G0041	PET follow stress echo mult					
	G0042	PET follow ventriculogm sing					
	G0043	PET follow ventriculogm mult					
	G0044	PET following rest ECG singl					
	G0045	PET following rest ECG mult					
	G0046	PET follow stress ECG singl					
	G0047	PET follow stress ECG mult					
0286	Myocardial Scans		S	7.28	$352.99	$200.04	$70.60
	78460	Heart muscle blood, single					
	78461	Heart muscle blood, multiple					
	78464	Heart image (3d), single					
	78465	Heart image (3d), multiple					
	78472	Gated heart, planar, single					
	78473	Gated heart, multiple					
	78478	Heart wall motion add-on					
	78480	Heart function add-on					
	78481	Heart first pass, single					
	78483	Heart first pass, multiple					
0290	Standard Non-Imaging Nuclear Medicine		S	1.94	$94.06	$55.51	$18.81
	78000	Thyroid, single uptake					
	78001	Thyroid, multiple uptakes					
	78003	Thyroid suppress/stimul					
	78010	Thyroid imaging					
	78011	Thyroid imaging with flow					
	78099	Endocrine nuclear procedure					
	78199	Blood/lymph nuclear exam					
	78270	Vit B–12 absorption exam					
	78271	Vit B–12 absorp exam, IF					
	78282	GI protein loss exam					
	78299	GI nuclear procedure					
	78399	Musculoskeletal nuclear exam					

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APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
0291		Level I Diagnostic Nuclear Medicine Excluding Myocardial Scans	S	3.15	$152.73	$93.14	$30.55
	78006	Thyroid imaging with uptake					
	78007	Thyroid image, mult uptakes					
	78015	Thyroid met imaging					
	78102	Bone marrow imaging, lid					
	78110	Plasma volume, single					
	78111	Plasma volume, multiple					
	78120	Red cell mass, single					
	78121	Red cell mass, multiple					
	78185	Spleen imaging					
	78190	Platelet survival, kinetics					
	78191	Platelet survival					
	78201	Liver imaging					
	78202	Liver imaging with flow					
	78215	Liver and spleen imaging					
	78216	Liver & spleen image/flow					
	78230	Salivary gland imaging					
	78231	Serial salivary imaging					
	78232	Salivary gland function exam					
	78258	Esophageal motility study					
	78261	Gastric mucosa imaging					
	78262	Gastroesophageal reflux exam					
	78272	Vit B–12 absorp, combined					
	78290	Meckel's divert exam					
	78300	Bone imaging, limited area					
	78445	Vascular flow imaging					
	78455	Venous thrombosis study					
	78456	Acute venous thrombus image					
	78457	Venous thrombosis imaging					
	78458	Ven thrombosis images, bilat					
	78580	Lung perfusion imaging					
	78591	Vent image, 1 breath, 1 proj					
	78599	Respiratory nuclear exam					
	78605	Brain imaging, complete					
	78610	Brain flow imaging only					
	78660	Nuclear exam of tear flow					
	78700	Kidney imaging, static					
	78701	Kidney imaging with flow					
	78715	Renal vascular flow exam					
	78725	Kidney function study					
	78730	Urinary bladder retention					
	78740	Ureteral reflux study					
	78760	Testicular imaging					
	78761	Testicular imaging/flow					
	78999	Nuclear diagnostic exam					
0292		Level II Diagnostic Nuclear Medicine Excluding Myocardial Scans	S	4.36	$211.40	$126.63	$42.28
	78016	Thyroid met imaging/studies					
	78018	Thyroid met imaging, body					
	78020	Thyroid met uptake					
	78070	Parathyroid nuclear imaging					
	78075	Adrenal nuclear imaging					
	78103	Bone marrow imaging, mult					
	78104	Bone marrow imaging, body					
	78122	Blood volume					
	78130	Red cell survival study					
	78135	Red cell survival kinetics					
	78140	Red cell sequestration					
	78160	Plasma iron turnover					
	78162	Iron absorption exam					
	78170	Red cell iron utilization					
	78172	Total body iron estimation					
	78195	Lymph system imaging					
	78205	Liver imaging (3D)					
	78206	Liver image (3d) w/flow					
	78220	Liver function study					
	78223	Hepatobiliary imaging					
	78264	Gastric emptying study					
	78278	Acute GI blood loss imaging					
	78291	Leveen/shunt patency exam					
	78305	Bone imaging, multiple areas					
	78306	Bone imaging, whole body					
	78315	Bone imaging, 3 phase					
	78320	Bone imaging (3D)					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	78414	Non-imaging heart function					
	78428	Cardiac shunt imaging					
	78466	Heart infarct image					
	78468	Heart infarct image (ef)					
	78469	Heart infarct image (3D)					
	78499	Cardiovascular nuclear exam					
	78584	Lung V/Q image single breath					
	78585	Lung V/Q imaging					
	78586	Aerosol lung image, single					
	78587	Aerosol lung image, multiple					
	78588	Perfusion lung image					
	78593	Vent image, 1 proj, gas					
	78594	Vent image, mult proj, gas					
	78596	Lung differential function					
	78600	Brain imaging, ltd static					
	78601	Brain imaging, ltd w/flow					
	78606	Brain imaging, compl w/flow					
	78607	Brain imaging (3D)					
	78615	Cerebral blood flow imaging					
	78630	Cerebrospinal fluid scan					
	78635	CSF ventriculography					
	78645	CSF shunt evaluation					
	78647	Cerebrospinal fluid scan					
	78650	CSF leakage imaging					
	78699	Nervous system nuclear exam					
	78704	Imaging renogram					
	78707	Kidney flow/function image					
	78708	Kidney flow/function image					
	78709	Kidney flow/function image					
	78710	Kidney imaging (3D)					
	78799	Genitourinary nuclear exam					
	78800	Tumor imaging, limited area					
	78801	Tumor imaging, mult areas					
	78802	Tumor imaging, whole body					
	78803	Tumor imaging (3D)					
	78805	Abscess imaging, ltd area					
	78806	Abscess imaging, whole body					
	78807	Nuclear localization/abscess					
0294		Level I Therapeutic Nuclear Medicine	S	5.13	$248.74	$144.06	$49.75
	79000	Init hyperthyroid therapy					
	79001	Repeat hyperthyroid therapy					
	79020	Thyroid ablation					
	79030	Thyroid ablation, carcinoma					
	79035	Thyroid metastatic therapy					
	79100	Hematopoetic nuclear therapy					
	79300	Interstitial nuclear therapy					
	79440	Nuclear joint therapy					
	79999	Nuclear medicine therapy					
0295		Level II Therapeutic Nuclear Medicine	S	19.85	$962.47	$609.17	$192.49
	79200	Intracavitary nuclear trmt					
	79400	Nonhemato nuclear therapy					
	79420	Intravascular nuclear ther					
0296		Level I Therapeutic Radiologic Procedures	S	3.57	$173.10	$100.25	$34.62
	74235	Remove esophagus obstruction					
	74327	X-ray bile stone removal					
	74360	X-ray guide, GI dilation					
	74485	X-ray guide, GU dilation					
	75984	X-ray control catheter change					
	78494	Heart image, spect					
	78496	Heart first pass add-on					
0297		Level II Therapeutic Radiologic Procedures	S	6.13	$297.23	$172.51	$59.45
	74363	X-ray, bile duct dilation					
	74475	X-ray control, cath insert					
	74480	X-ray control, cath insert					
	75894	X-rays, transcath therapy					
	75896	X-rays, transcath therapy					
	75980	Contrast x-ray exam bile duct					
	75982	Contrast x-ray exam bile duct					
0300		Level I Radiation Therapy	S	1.98	$96.00	$47.72	$19.20
	77401	Radiation treatment delivery					
	77402	Radiation treatment delivery					
	77403	Radiation treatment delivery					
	77404	Radiation treatment delivery					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	77406	Radiation treatment delivery					
	77407	Radiation treatment delivery					
	77408	Radiation treatment delivery					
	77409	Radiation treatment delivery					
	77414	Radiation treatment delivery					
	77789	Radioelement application					
0301	Level II Radiation Therapy		S	2.21	$107.16	$52.53	$21.43
	77411	Radiation treatment delivery					
	77412	Radiation treatment delivery					
	77413	Radiation treatment delivery					
	77416	Radiation treatment delivery					
	77520	Proton beam delivery					
	77523	Proton beam delivery					
	77750	Infuse radioactive materials					
0302	Level III Radiation Therapy		S	8.21	$398.08	$216.55	$79.62
	77470	Special radiation treatment					
	G0173	Stereotactic, one session					
	G0174	Stereotactic, mult session					
0303	Treatment Device Construction		X	2.83	$137.22	$69.28	$27.44
	77332	Radiation treatment aid(s)					
	77333	Radiation treatment aid(s)					
	77334	Radiation treatment aid(s)					
0304	Level I Therapeutic Radiation Treatment Preparation		X	1.49	$72.25	$41.52	$14.45
	77280	Set radiation therapy field					
	77300	Radiation therapy dose plan					
	77305	Radiation therapy dose plan					
	77310	Radiation therapy dose plan					
	77331	Special radiation dosimetry					
0305	Level II Therapeutic Radiation Treatment Preparation		X	4.06	$196.86	$97.50	$39.37
	77285	Set radiation therapy field					
	77290	Set radiation therapy field					
	77315	Radiation therapy dose plan					
	77321	Radiation therapy port plan					
	77326	Radiation therapy dose plan					
	77327	Radiation therapy dose plan					
	77328	Radiation therapy dose plan					
0310	Level III Therapeutic Radiation Treatment Preparation		X	13.98	$677.85	$339.05	$135.57
	77295	Set radiation therapy field					
0311	Radiation Physics Services		X	1.32	$64.00	$31.66	$12.80
	77336	Radiation physics consult					
	77370	Radiation physics consult					
	77399	External radiation dosimetry					
0312	Radioelement Applications		S	4.09	$198.31	$109.65	$39.66
	77761	Radioelement application					
	77762	Radioelement application					
	77763	Radioelement application					
	77776	Radioelement application					
	77777	Radioelement application					
	77778	Radioelement application					
0313	Brachytherapy		S	7.89	$382.56	$164.02	$76.51
	77781	High intensity brachytherapy					
	77782	High intensity brachytherapy					
	77783	High intensity brachytherapy					
	77784	High intensity brachytherapy					
	77799	Radium/radioisotope therapy					
0314	Hyperthermic Therapies		S	5.88	$285.10	$150.95	$57.02
	77600	Hyperthermia treatment					
	77605	Hyperthermia treatment					
	77610	Hyperthermia treatment					
	77615	Hyperthermia treatment					
	77620	Hyperthermia treatment					
0320	Electroconvulsive Therapy		S	3.68	$178.43	$80.06	$35.69
	90870	Electroconvulsive therapy					
	90871	Electroconvulsive therapy					
0321	Biofeedback and Other Training		S	1.26	$61.09	$29.25	$12.22
	90901	Biofeedback train, any meth					
	90911	Biofeedback peri/uro/rectal					
0322	Brief Individual Psychotherapy		S	1.32	$64.00	$14.22	$12.80
	90804	Psytx, office, 20–30 min					
	90805	Psytx, off, 20–30 min w/e&m					
	90810	Intac psytx, off, 20–30 min					
	90811	Intac psytx, 20–30, w/e&m					
	90816	Psytx, hosp, 20–30 min					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	90817	Psytx, hosp, 20–30 min w/e&m					
	90823	Intac psytx, hosp, 20–30 min					
	90824	Intac psytx, hsp 20–30 w/e&m					
	90899	Psychiatric service/therapy					
0323	Extended Individual Psychotherapy		S	1.85	$89.70	$22.48	$17.94
	90801	Psy dx interview					
	90802	Intac psy dx interview					
	90806	Psytx, off, 45–50 min					
	90807	Psytx, off, 45–50 min w/e&m					
	90808	Psytx, office, 75–80 min					
	90809	Psytx, off, 75–80, w/e&m					
	90812	Intac psytx, off, 45–50 min					
	90813	Intac psytx, 45–50 min w/e&m					
	90814	Intac psytx, off, 75–80 min					
	90815	Intac psytx, 75–80 w/e&m					
	90818	Psytx, hosp, 45–50 min					
	90819	Psytx, hosp, 45–50 min w/e&m					
	90821	Psytx, hosp, 75–80 min					
	90822	Psytx, hosp, 75–80 min w/e&m					
	90826	Intac psytx, hosp, 45–50 min					
	90827	Intac psytx, hsp 45–50 w/e&m					
	90828	Intac psytx, hosp, 75–80 min					
	90829	Intac psytx, hsp 75–80 w/e&m					
	90845	Psychoanalysis					
	90865	Narcosynthesis					
	90880	Hypnotherapy					
0324	Family Psychotherapy		S	1.87	$90.67	$20.19	$18.13
	90846	Family psytx w/o patient					
	90847	Family psytx w/patient					
0325	Group Psychotherapy		S	1.55	$75.16	$19.96	$15.03
	90849	Multiple family group psytx					
	90853	Group psychotherapy					
	90857	Intac group psytx					
0330	Dental Procedures		S	1.51	$73.22	$14.64	$14.64
	D0150	Comprehensve oral evaluation					
	D0240	Intraoral occlusal film					
	D0250	Extraoral first film					
	D0260	Extraoral ea additional film					
	D0270	Dental bitewing single film					
	D0272	Dental bitewings two films					
	D0274	Dental bitewings four films					
	D0460	Pulp vitality test					
	D0501	Histopathologic examinations					
	D0502	Other oral pathology procedu					
	D0999	Unspecified diagnostic proce					
	D1510	Space maintainer fxd unilat					
	D1515	Fixed bilat space maintainer					
	D1520	Remove unilat space maintain					
	D1525	Remove bilat space maintain					
	D1550	Recement space maintainer					
	D2970	Temporary-fractured tooth					
	D2999	Dental unspec restorative pr					
	D3460	Endodontic endosseous implan					
	D3999	Endodontic procedure					
	D4260	Osseous surgery per quadrant					
	D4263	Bone replce graft first site					
	D4264	Bone replce graft each add					
	D4270	Pedicle soft tissue graft pr					
	D4271	Free soft tissue graft proc					
	D4273	Subepithelial tissue graft					
	D4355	Full mouth debridement					
	D4381	Localized chemo delivery					
	D5911	Facial moulage sectional					
	D5912	Facial moulage complete					
	D5983	Radiation applicator					
	D5984	Radiation shield					
	D5985	Radiation cone locator					
	D5987	Commissure splint					
	D6920	Dental connector bar					
	D7110	Oral surgery single tooth					
	D7120	Each add tooth extraction					
	D7130	Tooth root removal					
	D7210	Rem imp tooth w mucoper flp					

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APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	D7220	Impact tooth remov soft tiss					
	D7230	Impact tooth remov part bony					
	D7240	Impact tooth remov comp bony					
	D7241	Impact tooth rem bony w/comp					
	D7250	Tooth root removal					
	D7260	Oral antral fistula closure					
	D7291	Transseptal fiberotomy					
	D7940	Reshaping bone orthognathic					
	D9630	Other drugs/medicaments					
	D9930	Treatment of complications					
	D9940	Dental occlusal guard					
	D9950	Occlusion analysis					
	D9951	Limited occlusal adjustment					
	D9952	Complete occlusal adjustment					
0340	Minor Ancillary Procedures		X	1.04	$50.43	$12.85	$10.09
	69200	Clear outer ear canal					
	69210	Remove impacted ear wax					
0341	Immunology Tests		X	0.13	$6.30	$3.67	$1.26
	86485	Skin test, candida					
	86490	Coccidioidomycosis skin test					
	86510	Histoplasmosis skin test					
	86580	TB intradermal test					
	86585	TB tine test					
	86586	Skin test, unlisted					
0342	Level I Pathology		X	0.26	$12.61	$8.03	$2.52
	85060	Blood smear interpretation					
	88160	Cytopath smear, other source					
	88199	Cytopathology procedure					
	88300	Surgical path, gross					
	88302	Tissue exam by pathologist					
	88311	Decalcify tissue					
	88313	Special stains					
	88319	Enzyme histochemistry					
	88321	Microslide consultation					
	88399	Surgical pathology procedure					
0343	Level II Pathology		X	0.45	$21.82	$12.16	$4.36
	80500	Lab pathology consultation					
	80502	Lab pathology consultation					
	86077	Physician blood bank service					
	88104	Cytopathology, fluids					
	88106	Cytopathology, fluids					
	88107	Cytopathology, fluids					
	88108	Cytopath, concentrate tech					
	88125	Forensic cytopathology					
	88161	Cytopath smear, other source					
	88162	Cytopath smear, other source					
	88172	Evaluation of smear					
	88173	Interpretation of smear					
	88304	Tissue exam by pathologist					
	88305	Tissue exam by pathologist					
	88312	Special stains					
	88314	Histochemical stain					
	88318	Chemical histochemistry					
	88323	Microslide consultation					
	88325	Comprehensive review of data					
	88329	Pathology consult in surgery					
	88331	Pathology consult in surgery					
	88332	Pathology consult in surgery					
	88346	Immunofluorescent study					
	88362	Nerve teasing preparations					
	89399	Pathology lab procedure					
	G0025	Collagen skin test kit					
0344	Level III Pathology		X	0.79	$38.30	$23.63	$7.66
	85097	Bone marrow interpretation					
	86078	Physician blood bank service					
	86079	Physician blood bank service					
	88180	Cell marker study					
	88182	Cell marker study					
	88307	Tissue exam by pathologist					
	88309	Tissue exam by pathologist					
	88342	Immunocytochemistry					
	88347	Immunofluorescent study					
	88348	Electron microscopy					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	88349	Scanning electron microscopy					
	88355	Analysis, skeletal muscle					
	88356	Analysis, nerve					
	88358	Analysis, tumor					
	88365	Tissue hybridization					
	89350	Sputum specimen collection					
	89360	Collect sweat for test					
[2]0354	Administration of Influenza Vaccine		X	0.13	$6.19	.....	.....
	G0008	Admin influenza virus vac					
	Q0034	Admin of influenza vaccine					
0355	Level I Immunizations		X	0.19	$9.21	$5.05	$1.84
	90645	Hib vaccine, hboc, im					
	90646	Hib vaccine, prp-d, im					
	90647	Hib vaccine, prp-omp, im					
	90648	Hib vaccine, prp-t, im					
	90657	Flu vaccine, 6–35 mo, im					
	90658	Flu vaccine, 3 yrs, im					
	90659	Flu vaccine, whole, im					
	90660	Flu vaccine, nasal					
	90700	Dtap vaccine, im					
	90702	Dt vaccine, im					
	90704	Mumps vaccine, sc					
	90713	Poliovirus, ipv, sc					
	90716	Chicken pox vaccine, sc					
	90720	Dtp/hib vaccine, im					
	90721	Dtap/hib vaccine, im					
	90727	Plague vaccine, im					
	90732	Pneumococcal vaccine, adult					
	90749	Vaccine toxoid					
0356	Level II Immunizations		X	0.36	$17.4[illegible]	$4.82	$3.49
	90371	Hep b ig, im					
	90389	Tetanus ig, im					
	90396	Varicella-zoster ig, im					
	90476	Adenovirus vaccine, type 4					
	90477	Adenovirus vaccine, type 7					
	90585	Bcg vaccine, percut					
	90586	Bcg vaccine, intravesical					
	90632	Hep a vaccine, adult im					
	90633	Hep a vacc, ped/adol, 2 dose					
	90634	Hep a vacc, ped/adol, 3 dose					
	90680	Rotovirus vaccine, oral					
	90690	Typhoid vaccine, oral					
	90691	Typhoid vaccine, im					
	90692	Typhoid vaccine, h-p, sc/id					
	90693	Typhoid vaccine, akd, sc					
	90701	Dtp vaccine, im					
	90703	Tetanus vaccine, im					
	90707	Mmr vaccine, sc					
	90710	Mmrv vaccine, sc					
	90712	Oral poliovirus vaccine					
	90717	Yellow fever vaccine, sc					
	90718	Td vaccine, im					
	90744	Hep b vaccine, ped/adol, im					
	90746	Hep b vaccine, adult, im					
	90747	Hep b vaccine, ill pat, im					
0357	Level III Immunizations		X	1.85	$89.70	$38.31	$17.94
	90287	Botulinum antitoxin					
	90296	Diphtheria antitoxin					
	90375	Rabies ig, im/sc					
	90376	Rabies ig, heat treated					
	90378	Rsv ig, im					
	90379	Rsv ig, iv					
	90384	Rh ig, full-dose, im					
	90385	Rh ig, minidose, im					
	90386	Rh ig, iv					
	90393	Vaccina ig, im					
	90581	Anthrax vaccine, sc					
	90636	Hep a/hep b vacc, adult im					
	90665	Lyme disease vaccine, im					
	90669	Pneumococcal vaccine, ped					
	90675	Rabies vaccine, im					
	90676	Rabies vaccine, id					
	90705	Measles vaccine, sc					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	90719	Diphtheria vaccine, im					
	90733	Meningococcal vaccine, sc					
	90735	Encephalitis vaccine, sc					
0358	Level IV Immunizations		X	6.98	$338.44	$126.74	$67.69
	90706	Rubella vaccine, sc					
	90708	Measles-rubella vaccine, sc					
	90709	Rubella & mumps vaccine, sc					
	90725	Cholera vaccine, injectable					
	90748	Hep b/hib vaccine, im					
0359	Injections		X	0.96	$46.55	$9.31	$9.31
	90782	Injection, sc/im					
	90783	Injection, ia					
	90784	Injection, iv					
	90788	Injection of antibiotic					
	90799	Ther/prophylactic/dx inject					
0360	Level I Alimentary Tests		X	1.38	$66.91	$34.75	$13.38
	89105	Sample intestinal contents					
	89130	Sample stomach contents					
	89132	Sample stomach contents					
	89135	Sample stomach contents					
	89136	Sample stomach contents					
	89140	Sample stomach contents					
	91030	Acid perfusion of esophagus					
	91055	Gastric intubation for smear					
	91065	Breath hydrogen test					
	91100	Pass intestine bleeding tube					
	91105	Gastric intubation treatment					
	91299	Gastroenterology procedure					
0361	Level II Alimentary Tests		X	3.53	$171.16	$88.09	$34.23
	89100	Sample intestinal contents					
	89141	Sample stomach contents					
	91000	Esophageal intubation					
	91010	Esophagus motility study					
	91011	Esophagus motility study					
	91012	Esophagus motility study					
	91020	Gastric motility					
	91032	Esophagus, acid reflux test					
	91033	Prolonged acid reflux test					
	91052	Gastric analysis test					
	91060	Gastric saline load test					
	95075	Ingestion challenge test					
0362	Fitting of Vision Aids		X	0.51	$24.73	$9.63	$4.95
	92311	Contact lens fitting					
	92312	Contact lens fitting					
	92313	Contact lens fitting					
	92315	Prescription of contact lens					
	92316	Prescription of contact lens					
	92317	Prescription of contact lens					
	92325	Modification of contact lens					
	92326	Replacement of contact lens					
	92352	Special spectacles fitting					
	92353	Special spectacles fitting					
	92354	Special spectacles fitting					
	92355	Special spectacles fitting					
	92358	Eye prosthesis service					
	92371	Repair & adjust spectacles					
0363	Otorhinolaryngologic Function Tests		X	2.83	$137.22	$53.22	$27.44
	92512	Nasal function studies					
	92516	Facial nerve function test					
	92520	Laryngeal function studies					
	92541	Spontaneous nystagmus test					
	92542	Positional nystagmus test					
	92543	Caloric vestibular test					
	92544	Optokinetic nystagmus test					
	92545	Oscillating tracking test					
	92546	Sinusoidal rotational test					
	92547	Supplemental electrical test					
	92548	Posturography					
	92584	Electrocochleography					
	92587	Evoked auditory test					
	92588	Evoked auditory test					
0364	Level I Audiometry		X	0.68	$32.97	$13.31	$6.59
	92552	Pure tone audiometry, air					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	92553	Audiometry, air & bone					
	92555	Speech threshold audiometry					
	92556	Speech audiometry, complete					
	92567	Tympanometry					
	92599	ENT procedure/service					
0365	Level II Audiometry		X	1.47	$71.28	$22.48	$14.26
	92557	Comprehensive hearing test					
	92561	Bekesy audiometry, diagnosis					
	92562	Loudness balance test					
	92563	Tone decay hearing test					
	92564	Sisi hearing test					
	92565	Stenger test, pure tone					
	92568	Acoustic reflex testing					
	92569	Acoustic reflex decay test					
	92571	Filtered speech hearing test					
	92572	Staggered spondaic word test					
	92573	Lombard test					
	92575	Sensorineural acuity test					
	92576	Synthetic sentence test					
	92577	Stenger test, speech					
	92579	Visual audiometry (vra)					
	92582	Conditioning play audiometry					
	92583	Select picture audiometry					
	92589	Auditory function test(s)					
	92596	Ear protector evaluation					
0366	Electrocardiogram (ECG)		X	0.38	$18.48	$15.60	$3.69
	93005	Electrocardiogram, tracing					
	93041	Rhythm ECG, tracing					
	Q0035	Cardiokymography					
0367	Level I Pulmonary Test		X	0.83	$40.28	$20.65	$8.05
	94010	Breathing capacity test					
	94200	Lung function test (MBC/MVV)					
	94250	Expired gas collection					
	94375	Respiratory flow volume loop					
	94400	CO2 breathing response curve					
	94450	Hypoxia response curve					
	94680	Exhaled air analysis, o2					
	94690	Exhaled air analysis					
	94720	Monoxide diffusing capacity					
	94770	Exhaled carbon dioxide test					
	94799	Pulmonary service/procedure					
0368	Level II Pulmonary Tests		X	1.66	$80.49	$42.44	$16.10
	94060	Evaluation of wheezing					
	94240	Residual lung capacity					
	94260	Thoracic gas volume					
	94350	Lung nitrogen washout curve					
	94360	Measure airflow resistance					
	94370	Breath airway closing volume					
	94620	Pulmonary stress test/simple					
	94681	Exhaled air analysis, o2/co2					
	94725	Membrane diffusion capacity					
	94750	Pulmonary compliance study					
0369	Level III Pulmonary Tests		X	2.34	$113.46	$58.50	$22.69
	94014	Patient recorded spirometry					
	94015	Patient recorded spirometry					
	94016	Review patient spirometry					
	94070	Evaluation of wheezing					
	94621	Pulm stress test/complex					
	94772	Breath recording, infant					
	95070	Bronchial allergy tests					
	95071	Bronchial allergy tests					
0370	Allergy Tests		X	0.57	$27.64	$11.81	$5.53
	95004	Allergy skin tests					
	95010	Sensitivity skin tests					
	95015	Sensitivity skin tests					
	95024	Allergy skin tests					
	95027	Skin end point titration					
	95028	Allergy skin tests					
	95044	Allergy patch tests					
	95052	Photo patch test					
	95056	Photosensitivity tests					
	95060	Eye allergy tests					
	95065	Nose allergy test					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	95078	Provocative testing					
	95180	Rapid desensitization					
	95199	Allergy immunology services					
0371	Allergy Injections		X	0.32	$15.52	$3.67	$3.10
	95115	Immunotherapy, one injection					
	95117	Immunotherapy injections					
	95144	Antigen therapy services					
	95145	Antigen therapy services					
	95146	Antigen therapy services					
	95147	Antigen therapy services					
	95148	Antigen therapy services					
	95149	Antigen therapy services					
	95165	Antigen therapy services					
	95170	Antigen therapy services					
0372	Therapeutic Phlebotomy		X	0.43	$20.85	$10.09	$4.17
	99195	Phlebotomy					
0373	Neuropsychological Testing		X	3.21	$155.64	$44.96	$31.13
	96100	Psychological testing					
	96105	Assessment of aphasia					
	96110	Developmental test, lim					
	96111	Developmental test, extend					
	96115	Neurobehavior status exam					
	96117	Neuropsych test battery					
0374	Monitoring Psychiatric Drugs		X	1.17	$56.73	$13.08	$11.35
	90862	Medication management					
	M0064	Visit for drug monitoring					
0600	Low Level Clinic Visits		V	0.98	$47.52	$9.50	$9.50
	99201	Office/outpatient visit, new					
	99202	Office/outpatient visit, new					
	99211	Office/outpatient visit, est					
	99212	Office/outpatient visit, est					
	99241	Office consultation					
	99242	Office consultation					
	99271	Confirmatory consultation					
	99272	Confirmatory consultation					
0601	Mid Level Clinic Visits		V	1.00	$48.49	$9.70	$9.70
	92002	Eye exam, new patient					
	92012	Eye exam established pat					
	99203	Office/outpatient visit, new					
	99213	Office/outpatient visit, est					
	99243	Office consultation					
	99273	Confirmatory consultation					
	G0101	CA screen; pelvic/breast exam					
0602	High Level Clinic Visits		V	1.66	$80.49	$16.29	$16.10
	92004	Eye exam, new patient					
	92014	Eye exam & treatment					
	99204	Office/outpatient visit, new					
	99205	Office/outpatient visit, new					
	99214	Office/outpatient visit, est					
	99215	Office/outpatient visit, est					
	99244	Office consultation					
	99245	Office consultation					
	99274	Confirmatory consultation					
	99275	Confirmatory consultation					
0603	Interdisciplinary Team Conference		V	1.66	$80.49	$16.29	$16.10
G0175	Multidisciplinary team visit						
0610	Low Level Emergency Visits		V	1.34	$64.97	$20.65	$12.99
	99281	Emergency dept visit					
	99282	Emergency dept visit					
0611	Mid Level Emergency Visits		V	2.11	$102.31	$36.47	$20.46
	99283	Emergency dept visit					
0612	High Level Emergency Visits		V	3.19	$154.67	$54.14	$30.93
	99284	Emergency dept visit					
	99285	Emergency dept visit					
0620	Critical Care		S	8.60	$416.99	$152.78	$83.40
	99291	Critical care, first hour					
[3] 0701	Strontium		X				$84.76
	A9600	Strontium-89 chloride					
[3] 0702	Samarium		X	—			$139.06
	A9605	Samarium sm153 lexidronamm					
[3] 0704	Satumomab Pendetide		X				$63.13
	A4642	Satumomab pendetide per dose					
[3] 0705	Tc99 Tetrofosmin		X				$71.08

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	A9502	Technetium TC99M tetrofosmin					
[3]0725	Leucovorin Calcium		X				$1.07
	J0640	Leucovorin calcium injection					
[3]0726	Dexrazoxane Hydrochloride		X				$18.81
	J1190	Dexrazoxane HCl injection					
[3]0727	Injection, Etidronate Disodium		X				$9.31
	J1436	Etidronate disodium inj					
[3]0728	Filgrastim (G–CSF)		X				$25.21
	J1440	Filgrastim 300 mcg injection					
[3]0730	Pamidronate Disodium		X				$30.93
	J2430	Pamidronate disodium/30 MG					
[3]0731	Sargramostim (GM–CSF)		X				$16.97
	J2820	Sargramostim injection					
[3]0732	Mesna		X				$2.42
	J9209	Mesna injection					
[3]0733	Epoetin Alpha		X				$1.75
	Q0136	Non esrd epoetin alpha inj					
[3]0750	Dolasetron Mesylate 10 mg		X				$1.94
	J1260	Dolasetron mesylate					
[3]0754	Metoclopramide HCL		X				$0.19
	J2765	Metoclopramide hcl injection					
[3]0755	Thiethylperazine Maleate		X				$0.68
	J3260	Thiethylperazine maleate inj					
[3]0761	Oral Substitute for IV Antiemtic		X				$0.10
	Q0163	Diphenhydramine HCl 50mg					
	Q0164	Prochlorperazine maleate 5mg					
	Q0169	Promethazine HCl 12.5mg oral					
	Q0171	Chlorpromazine HCl 10mg oral					
	Q0173	Trimethobenzamide HCl 250mg					
	Q0174	Thiethylperazine maleate10mg					
	Q0175	Perphenazine 4mg oral					
	Q0177	Hydroxyzine pamoate 25mg					
[3]0762	Dronabinol		X				$0.48
	Q0167	Dronabinol 2.5mg oral					
[3]0763	Dolasetron Mesylate 100 mg Oral		X				$8.53
	Q0180	Dolasetron mesylate oral					
[3]0764	Granisetron HCL, 100 mcg		X				$2.33
	J1626	Granisetron HCl injection					
[3]0765	Granisetron HCL, 1mg Oral		X				$3.20
	Q0166	Granisetron HCl 1 mg oral					
[3]0766	Ondansetron Hydrochloride per 1 mg Injection		X				$0.87
	J2405	Ondansetron hcl injection					
[3]0769	Ondansetron Hydrochloride 8 mg oral		X				$2.62
	Q0179	Ondansetron HCl 8mg oral					
[3]0800	Leuprolide Acetate per 3.75 mg		X				$68.56
	J1950	Leuprolide acetate/3.75 MG					
[3]0801	Cyclophosphamide		X				$.19
	J8530	Cyclophosphamide oral 25 MG					
[3]0802	Etoposide		X				$3.10
	J8560	Etoposide oral 50 MG					
[3]0803	Melphalan		X				$0.19
	J8600	Melphalan oral 2 MG					
[3]0807	Aldesleukin single use vial		X				$65.07
	J9015	Aldesleukin/single use vial					
[3]0809	BCG (intravesical) one vial		X				$19.78
	J9031	Bcg live intravesical vac					
[3]0810	Goserelin Acetate Implant, per 3.6 mg		X				$59.74
	J9202	Goserelin acetate implant					
[3]0811	Carboplatin 50 mg		X				$13.96
	J9045	Carboplatin injection					
[3]0812	Carmustine 100 mg		X				$10.57
	J9050	Carmus bischl nitro inj					
[3]0813	Cisplatin 10 mg		X				$4.56
	J9060	Cisplatin 10 MG injecton					
[3]0814	Asparaginase, 10,000 units		X				$8.34
	J9020	Asparaginase injection					
[3]0815	Cyclophosphamide 100 mg		X				$0.48
	J9070	Cyclophosphamide 100 MG inj					
[3]0816	Cyclophosphamide, Lyophilized 100 mg		X				$1.16
	J9093	Cyclophosphamide lyophilized					
[3]0817	Cytrabine 100 mg		X				$0.68
	J9100	Cytarabine hcl 100 MG inj					
[3]0818	Dactinomycin 0.5 mg		X				$1.75

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APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	J9120	Dactinomycin actinomycin d					
[3]0819		Decarbazine 100 mg	X				$1.26
	J9130	Decarbazine 10 MG inj					
[3]0820		Daunorubicin HCl 10 mg	X				$11.64
	J9150	Daunorubicin					
[3]0821		Daunorubicin Citrate, Liposomal Formulation, 10 mg	X				$7.76
	J9151	Daunorubicin citrate liposom					
[3]0822		Diethylstilbestrol Diphosphate 250 mg	X				$2.13
	J9165	Diethylstilbestrol injection					
[3]0823		Docetaxel 20 mg	X				$34.72
	J9170	Docetaxel					
[3]0824		Etoposide 10 mg	X				$.58
	J9181	Etoposide 10 MG inj					
[3]0826		Methotrexate Oral 2.5 mg	X				$.29
	J8610	Methotrexate oral 2.5 MG					
[3]0827		Floxuridine 500 mg	X				$18.81
	J9200	Floxuridine injection					
[3]0828		Gemcitabine HCL 200 mg	X				$9.31
	J9201	Gemcitabine HCl					
[3]0830		Irinotecan 20 mg	X				$14.16
	J9206	Irinotecan injection					
[3]0831		Ifosfamide per 1 gram	X				$13.58
	J9208	Ifosfomide injection					
[3]0832		Idarubicin Hydrochloride 5 mg	X				$46.45
	J9211	Idarubicin hcl injection					
[3]0833		Interferon Alfacon-1, Recombinant, 1 mcg	X				$0.19
	J9212	Interferon alfacon-1					
[3]0834		Interferon, Alfa-2A, Recombinant 3 million units	X				$3.20
	J9213	Interferon alfa-2a inj					
[3]0836		Interferon, Alfa-2B, Recombinant, 1 million units	X				$1.36
	J9214	Interferon alfa-2b inj					
[3]0838		Interferon, Gamma 1–B, 3 million units	X				$22.79
	J9216	Interferon gamma 1–b inj					
[3]0839		Mechlorethamine HCl 10 mg	X				$1.65
	J9230	Mechlorethamine hcl inj					
[3]0840		Melphalan HCl 50 mg	X				$44.71
	J9245	inj melphalan hydrochl 50 MG					
[3]0841		Methotrexate Sodium 5 mg	X				$.10
	J9250	Methotrexate sodium inj					
[3]0842		Fludarabine Phosphate 50 mg	X				$30.84
	J9185	Fludarabine phosphate inj					
[3]0843		Pegaspargase per single dose vial	X				$178.72
	J9266	Pegaspargase/singl dose vial					
[3]0844		Pentostatin 10 mg	X				$133.73
	J9268	Pentostatin injection					
[3]0847		Doxorubicin HCL 10 mg	X				$2.81
	J9000	Doxorubic hcl 10 MG vl chemo					
[3]0849		Rituximab, 100 mg	X				$51.40
	J9310	Rituximab cancer treatment					
[3]0850		Streptozocin 1 gm	X				$14.64
	J9320	Streptozocin injection					
[3]0851		Thiotepa 15 mg	X				$9.50
	J9340	Thiotepa injection					
[3]0852		Topotecan 4 mg	X				$73.22
	J9350	Topotecan					
[3]0853		Vinblastine Sulfate 1 mg	X				$.39
	J9360	Vinblastine sulfate inj					
[3]0854		Vincristine Sulfate 1 mg	X				$2.23
	J9370	Vincristine sulfate 1 MG inj					
[3]0855		Vinorelbine Tartrate per 10 mg	X				$9.60
	J9390	Vinorelbine tartrate/10 mg					
[3]0856		Porfimer Sodium 75 mg	X				$34.62
	J9600	Porfimer sodium					
[3]0857		Bleomycin Sulfate 15 units	X				$48.29
	J9040	Bleomycin sulfate injection					
[3]0858		Cladribine, 1mg	X				$8.24
	J9065	Inj cladribine per 1 MG					
[3]0859		Fluorouracil	X				$0.19
	J9190	Fluorouracil injection					
[3]0860		Plicamycin 2.5 mg	X				$1.36
	J9270	Plicamycin (mithramycin) inj					
[3]0861		Leuprolide Acetate 1 mg	X				$19.39
	J9218	Leuprolide acetate injection					

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[2] Not subject to national coinsurance.

[3] Eligible for pass-through payments. See Preamble for payment rate determination. See Addendum K for complete list of pass-through codes.

ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
[3]0862	Mitomycin, 5mg		X				$19.88
	J9280	Mitomycin 5 MG inj					
[3]0863	Paclitaxel, 30mg		X				$30.16
	J9265	Paclitaxel injection					
[3]0864	Mitoxantrone HCl, per 5mg		X				$25.80
	J9293	Mitoxantrone hydrochl/5 MG					
[3]0865	Interferon alfa-N3, 250,000 IU		X				$1.07
	J9215	Interferon alfa-n3 inj					
[3]0884	Rho (D) Immune Globulin, Human one dose pack		X				$3.78
	J2790	Rho d immune globulin inj					
[2]0866	Azathioprine, 50 mg oral		X	0.02	$.97		$0.19
	J7500	Azathioprine oral 50mg					
[2]0867	Azathioprine, Parenteral 100 mg, 20 ml each injection		X	1.40	$67.88		$13.58
	J7501	Azathioprine parenteral					
[2]0868	Cyclosporine, Oral 100 mg		X	0.08	$3.88		$0.78
	J7502	Cyclosporine oral 100 mg					
[2]0869	Cyclosporine, Parenteral		X	0.36	$17.46		$3.49
	J7516	Cyclosporin parenteral 250mg					
[2]0890	Lymphocyte Immune Globulin 50 mg/ml, 5 ml each		X	3.79	$183.77		$36.75
	J7504	Lymphocyte immune globulin					
[2]0891	Tacrolimus per 1 mg oral		X	3.15	$152.73		$30.55
	J7507	Tacrolimus oral per 1 MG					
[3]0892	Daclizumab, Parenteral, 25 mg		X				$54.11
	J7913	Daclizumab, Parenteral, 25 m					
[3]0900	Injection, Alglucerase per 10 units		X				$5.14
	J0205	Alglucerase injection					
[3]0901	Alpha I, Proteinase Inhibitor, Human per 10mg		X				$15.22
	J0256	Alpha 1 proteinase inhibitor					
[3]0902	Botulinum Toxin, Type A per unit		X				$56.05
	J0585	Botulinum toxin a per unit					
[3]0903	CMV Immune Globulin		X				$54.11
	J0850	Cytomegalovirus imm IV/vial					
[3]0905	Immune Globulin per 500 mg		X				$6.40
	J1561	Immune globulin 500 mg					
[3]0906	RSV Immune Globulin		X				$85.53
	J1565	RSV-ivig					
[2]0907	Ganciclovir Sodium 500 mg injection		X	0.51	$24.73		$4.95
	J1570	Ganciclovir sodium injection					
[2]0908	Tetanus Immune Globulin, Human, up to 250 units		X	0.90	$43.64		$8.73
	J1670	Tetanus immune globulin inj					
[3]0909	Interferon Beta-1a 33 mcg		X				$28.70
	J1825	Interferon beta-1a					
[3]0910	Interferon Beta-1b 0.25 mg		X				$8.44
	J1830	Interferon beta-1b/.25 MG					
[2]0911	Streptokinase per 250,000 iu		X	1.64	$79.69		$15.94
	J2995	Inj streptokinase/250000 IU					
[3]0913	Ganciclovir 4.5 mg, Implant		X				$701.51
	J7310	Ganciclovir long act implant					
[2]0914	Reteplase, 37.6 mg (Two Single Use Vials)		X	38.20	$1,852.21		$370.44
	J2994	Reteplase double bolus					
[2]0915	Alteplase recombinant, 10mg		X	5.85	$283.70		$56.74
	J2996	Alteplase recombinant inj					
[3]0916	Imiglucerase per unit		X				$0.58
	J1785	Injection imiglucerase/unit					
[2]0917	Dipyridamole, 10 mg/Adenosine 6MG		X	0.36	$17.46		$3.49
	J0150	Injection adenosine 6 MG					
	J1245	Dipyridamole injection					
[3]0918	Brachytherapy Seeds, Any type, Each		S				$9.99
	Q3001	Brachytherapy Seeds					
[3]0925	Factor VIII (Antihemophilic Factor, Human) per iu		X				$0.19
	J7190	Factor viii					
[3]0926	Factor VIII (Antihemophilic Factor, Porcine) per iu		X				$0.19
	J7191	Factor VIII (porcine)					
[3]0927	Factor VIII (Antihemophilic Factor, Recombinant) per iu		X				$0.19
	J7192	Factor viii recombinant					
[3]0928	Factor IX, Complex		X				$0.08
	J7194	Factor ix complex					
[3]0929	Other Hemophilia Clotting Factors per iu		X				$0.27
	J7196	Anti-inhibitor					
	Q0187	Factor viia recombinant					
[3]0930	Antithrombin III (Human) per iu		X				$0.19
	J7197	Antithrombin iii injection					
[3]0931	Factor IX (Antihemophilic Factor, Purified, Non-Recombinant)		X				$0.04

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[3] Eligible for pass-through payments. See Preamble for payment rate determination. See Addendum K for complete list of pass-through codes.

ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/ HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
	Q0160	Factor IX non-recombinant					
[3]0932		Factor IX (Antihemophilic Factor, Recombinant)	X				$0.10
	Q0161	Factor IX recombinant					
[2]0949		Plasma, Pooled Multiple Donor, Solvent/Detergent Treated, Frozen	S	3.49	$169.22		$33.84
	P9023	Frozen plasma, pooled, sd					
[2]0950		Blood (Whole) For Transfusion	S	2.08	$101.02		$20.20
	P9010	Whole blood for transfusion					
[2]0952		Cryoprecipitate	S	0.70	$33.92		$6.78
	P9012	Cryoprecipitate each unit					
[2]0953		Fibrinogen Unit	S	0.48	$23.27		$4.65
	P9013	Unit/s blood fibrinogen					
[2]0954		Leukocyte Poor Blood	S	2.83	$137.21		$27.44
	P9016	Leukocyte poor blood, unit					
[2]0955		Plasma, Fresh Frozen	S	2.26	$109.35		$21.87
	P9017	One donor fresh frozn plasma					
[2]0956		Plasma Protein Fraction	S	1.26	$61.09		$12.22
	P9018	Plasma protein fract, unit					
[2]0957		Platelet Concentrate	S	0.98	$47.46		$9.49
	P9019	Platelet concentrate unit					
[2]0958		Platelet Rich Plasma	S	1.16	$56.25		$11.25
	P9020	Platelet rich plasma unit					
[2]0959		Red Blood Cells	S	2.04	$99.04		$19.81
	P9021	Red blood cells unit					
[2]0960		Washed Red Blood Cells	S	3.81	$184.53		$36.91
	P9022	Washed red blood cells unit					
[2]0961		Infusion, Albumin (Human) 5%, 500 ml	X	2.77	$134.31		$26.86
	Q0156	Human albumin 5%					
[2]0962		Infusion, Albumin (Human) 25%, 50 ml	X	1.38	$66.91		$13.38
	Q0157	Human albumin 25%					
[2]0970		New Technology - Level I ($0–$50)	T	0.52	$25.21		$5.04
	78268	Breath test analysis, c–14					
[2]0971		New Technology - Level II ($50–$100)	S	1.55	$75.16		$15.03
	78267	Breath tst attain/anal c–14					
[2]0972		New Technology - Level III ($100–$200)	T	3.09	$149.83		$29.97
	G0166	Extrnl counterpulse, per tx					
[2]0980		New Technology - Level XI ($1750–$2000)	S	38.67	$1,875.00		$375.00
	53850	Prostatic microwave thermotx					
	53852	Prostatic rf thermotx					
	G0125	Lung image (PET)					
	G0126	Lung image (PET) staging					
	G0163	Pet for rec of colorectal ca					
	G0164	Pet for lymphoma staging					
	G0165	Pet, rec of melanoma/met ca					
[3]7000		Amifostine, 500 mg	X				$41.99
	J0207	Amifostine					
[3]7001		Amphotericin B lipid complex, 50 mg, Inj	X				$12.12
	J0286	Amphotericin B lipid complex					
[3]7002		Clonidine, HCl, 1 MG	X				$4.17
	J0735	Clonidine hydrochloride					
[3]7003		Epoprostenol, 0.5 MG, inj	X				$2.23
	J1325	Epoprostenol injection					
[3]7004		Immune globulin intravenous human 5g, inj	X				$45.48
	J1562	Immune globulin 5 gms					
[3]7005		Gonadorelin hcl, 100 mcg	X				$9.12
	J1620	Gonadorelin hydroch/100 mcg					
[2]7007		Milrinone lacetate, per 5 ml, inj	X	0.47	$22.79		$4.56
	J2260	Inj milrinone lactate/5 ML					
[3]7010		Morphine sulfate concentrate (preservative free) per 10 mg	X				$.68
	J2275	Morphine sulfate injection					
[3]7011		Oprelevekin, inj, 5 mg	X				$30.35
	J2355	Oprelvekin injection					
[3]7012		Pentamidine isethionate, 300 mg	X				$8.73
	J2545	Pentamidine isethionte/300mg					
[3]7014		Fentanyl citrate, inj, up to 2 ml	X				$.19
	J3010	Fentanyl citrate injeciton					
[3]7015		Busulfan, oral 2 mg	X				$0.19
	J8510	Oral busulfan					
[3]7019		Aprotinin, 10,000 kiu	X				$2.42
	Q2003	Aprotinin, 10,000 kiu					
[3]7021		Baclofen, intrathecal, 50 mcg	X				$0.10
	J0476	Baclofen intrathecal trial					
[3]7022		Elliotts B Solution, per ml	X				$19.20
	Q2002	Elliot's B solution					

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ADDENDUM C.—PROPOSED HOSPITAL OUTPATIENT DEPARTMENT (HOPD) PAYMENT FOR PROCEDURES BY APC—Continued

APC	CPT/HCPCS	HCPCS Description	Status Indicator	Relative Weight	Payment Rate	National Unadjusted Coinsurance	Minimum Unadjusted Coinsurance
37023		Treatment for bladder calculi, i.e. Renacidin per 500 ml	X				$4.46
	Q2004	Treatment for bladder calcul					
37024		Corticorelin ovine triflutate, 0.1 mg	X				$45.77
	Q2005	Corticorelin ovine triflutat					
37025		Digoxin Immune FAB (Ovine), 10 mg	X				$14.06
	Q2006	Digoxin immune FAB (Ovine),					
37026		Ethanolamine oleate, 1000 ml	X				$2.13
	Q2007	Ethanolamine oleate, 1000 ml					
37027		Fomepizole, 1.5 G	X				$141.29
	Q2008	Fomepizole, 1.5 G					
37028		Fosphenytoin, 50 mg	X				$0.78
	Q2009	Fosphenytoin, 50 mg					
37029		Glatiramer acetate, 25 mg	X				$3.59
	Q2010	Glatiramer acetate, 25 mgeny					
37030		Hemin, 1 mg	X				$0.10
	Q2011	Hemin, 1 mg					
37031		Octreotide Acetate, 500 mcg	X				$5.43
	J2352	Octreotide acetate injection					
37032		Sermorelin acetate, 0.5 mg	X				$53.34
	Q2014	Sermorelin acetate, 0.5 mg					
37033		Somatrem, 5 mg	X				$28.03
	Q2015	Somatrem, 5 mg					
37034		Somatropin, 1 mg	X				$5.04
	Q2016	Somatropin, 1 mg					
37035		Teniposide, 50 mg	X				$20.85
	Q2017	Teniposide, 50 mg					
27036		Urokinase, inj, IV, 250,000 I.U.	X	0.73	$35.40		$7.08
	J3365	Urokinase 250,000 IU inj					
37037		Urofollitropin, 75 I.U.	X				$8.24
	Q2018	Urofollitropin, 75 I.U.					
37038		Muromonab-CD3, 5 mg	X				$89.60
	J7505	Monoclonal antibodies					
37039		Pegademase bovine inj 25 I.U.	X				$1.16
	Q2012	Pegademase bovine inj 25 I.U					
37040		Pentastarch 10% inj, 100 ml	X				$2.04
	Q2013	Pentastarch 10% inj, 100 ml					
27041		Tirofiban HCL, 0.5 mg	X	0.02	$.97		$0.19
	J3245	Tirofiban hydrochloride					
37042		Capecitabine, oral 150 mg	X				$0.19
	J8520	Capecitabine, oral, 150 mg					
37043		Infliximab, 10 MG	X				$6.89
	J1745	Infliximab injection					
37045		Trimetrexate Glucoronate	X				$8.15
	J3305	Inj trimetrexate glucoronate					
37046		Doxorubicin Hcl Liposome	X				$39.18
	J9001	Doxorubicin hcl liposome inj					

ADDENDUM D.—1996 HCPC CODES USED TO CALCULATE PAY

CPT/HCPCS	Termination Date
00420	12/31/1999
01000	12/31/1999
01110	12/31/1999
01240	12/31/1999
01300	12/31/1999
01460	12/31/1999
01600	12/31/1999
01700	12/31/1999
01800	12/31/1999
01900	12/31/1999
01902	12/31/1999
11050	12/31/1997
11051	12/31/1997
11052	12/31/1997
11700	12/31/1996
11701	12/31/1996

ADDENDUM D.—1996 HCPC CODES USED TO CALCULATE PAY—Continued

CPT/HCPCS	Termination Date
11710	12/31/1996
11711	12/31/1996
11731	12/31/1996
13300	12/31/1999
15580	12/31/1999
15625	12/31/1999
15755	12/31/1996
16040	12/31/1996
16041	12/31/1996
16042	12/31/1996
17001	12/31/1997
17002	12/31/1997
17010	12/31/1997
17100	12/31/1997
17101	12/31/1997
17102	12/31/1997

ADDENDUM D.—1996 HCPC CODES USED TO CALCULATE PAY—Continued

CPT/HCPCS	Termination Date
17104	12/31/1997
17105	12/31/1997
17200	12/31/1997
17201	12/31/1997
20960	12/31/1996
20971	12/31/1996
25330	12/31/1996
25331	12/31/1996
26552	12/31/1996
26557	12/31/1996
26558	12/31/1996
26559	12/31/1996
32001	12/31/1999
33242	12/31/1999
33247	12/31/1999
42880	12/31/1996

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ADDENDUM D.—1996 HCPC CODES USED TO CALCULATE PAY—Continued

CPT/HCPCS	Termination Date
53640	12/31/1996
56300	12/31/1999
56301	12/31/1999
56302	12/31/1999
56303	12/31/1999
56304	12/31/1999
56305	12/31/1999
56306	12/31/1999
56307	12/31/1999
56308	12/31/1999
56309	12/31/1999
56310	12/31/1999
56311	12/31/1999
56312	12/31/1999
56313	12/31/1999
56314	12/31/1999
56315	12/31/1999
56316	12/31/1999
56317	12/31/1999
56318	12/31/1999
56320	12/31/1999
56321	12/31/1999
56322	12/31/1999
56323	12/31/1999
56324	12/31/1999
56340	12/31/1999
56341	12/31/1999
56342	12/31/1999
56343	12/31/1999
56344	12/31/1999
56345	12/31/1999
56346	12/31/1999
56347	12/31/1999
56348	12/31/1999
56349	12/31/1999
56350	12/31/1999
56351	12/31/1999
56352	12/31/1999
56353	12/31/1999
56354	12/31/1999
56355	12/31/1999
56356	12/31/1999
56360	12/31/1996
56361	12/31/1996
56362	12/31/1999
56363	12/31/1999
56399	12/31/1999
57106	12/31/1998
61106	12/31/1998
61130	12/31/1998
61712	12/31/1998
61855	12/31/1999
61865	12/31/1999
62274	12/31/1999
62275	12/31/1999
62276	12/31/1999
62277	12/31/1999
62278	12/31/1999
62279	12/31/1999
62288	12/31/1999
62289	12/31/1999
62298	12/31/1999
63690	12/31/1998
63691	12/31/1998
64440	12/31/1999
64441	12/31/1999

ADDENDUM D.—1996 HCPC CODES USED TO CALCULATE PAY—Continued

CPT/HCPCS	Termination Date
64442	12/31/1999
64443	12/31/1999
64830	12/31/1998
68800	12/31/1996
68820	12/31/1996
68825	12/31/1996
68830	12/31/1996
71038	12/31/1998
74405	12/31/1998
77380	12/31/1999
77381	12/31/1999
77419	12/31/1999
77420	12/31/1999
77425	12/31/1999
77430	12/31/1999
78017	12/31/1998
78726	12/31/1997
78727	12/31/1997
80002	12/31/1997
80003	12/31/1997
80004	12/31/1997
80005	12/31/1997
80006	12/31/1997
80007	12/31/1997
80008	12/31/1997
80009	12/31/1997
80010	12/31/1997
80011	12/31/1997
80012	12/31/1997
80016	12/31/1997
80018	12/31/1997
80019	12/31/1997
80049	12/31/1999
80054	12/31/1999
80058	12/31/1999
80059	12/31/1999
80091	12/31/1999
80092	12/31/1999
82130	12/31/1998
82250	12/31/1998
83019	12/31/1998
83717	12/31/1998
85029	12/31/1998
85030	12/31/1998
86287	12/31/1997
86289	12/31/1997
86290	12/31/1997
86291	12/31/1997
86293	12/31/1997
86295	12/31/1997
86296	12/31/1997
86299	12/31/1997
86302	12/31/1997
86303	12/31/1997
86306	12/31/1997
86311	12/31/1997
86313	12/31/1997
86315	12/31/1997
86588	12/31/1999
87178	12/31/1997
87179	12/31/1997
88151	12/31/1997
88156	12/31/1998
88157	12/31/1997
88158	12/31/1998
88250	12/31/1998

ADDENDUM D.—1996 HCPC CODES USED TO CALCULATE PAY—Continued

CPT/HCPCS	Termination Date
88260	12/31/1998
90592	12/31/1999
90711	12/31/1998
90714	12/31/1998
90724	12/31/1998
90726	12/31/1998
90728	12/31/1998
90730	12/31/1998
90737	12/31/1998
90741	12/31/1998
90742	12/31/1998
90745	12/31/1999
90820	12/31/1997
90825	12/31/1997
90835	12/31/1997
90841	12/31/1997
90842	12/31/1997
90843	12/31/1997
90844	12/31/1997
90855	12/31/1997
90900	12/31/1996
90902	12/31/1996
90904	12/31/1996
90906	12/31/1996
90908	12/31/1996
90910	12/31/1996
90915	12/31/1996
93201	12/31/1996
93202	12/31/1996
93204	12/31/1996
93205	12/31/1996
93208	12/31/1996
93209	12/31/1996
93210	12/31/1996
93220	12/31/1996
93221	12/31/1996
93222	12/31/1996
94160	12/31/1996
97122	12/31/1998
97250	12/31/1998
97260	12/31/1998
97261	12/31/1998
97265	12/31/1998
97500	12/31/1998
97501	12/31/1996
97521	12/31/1996
99351	12/31/1997
99352	12/31/1997
99353	12/31/1997
99376	12/31/1997
A2000	12/31/1997
A4190	12/31/1996
A4200	12/31/1998
A4202	12/31/1996
A4203	12/31/1996
A4204	12/31/1996
A4205	12/31/1996
A4363	12/31/1999
A4581	12/31/1996
A4610	12/31/1996
D0471	12/31/1999
D2210	12/31/1999
D2810	12/31/1999
D3960	12/31/1999
D4250	12/31/1999
D7470	12/31/1999

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ADDENDUM D.—1996 HCPC CODES USED TO CALCULATE PAY—Continued

CPT/HCPCS	Termination Date
D7942	12/31/1999
D9240	12/31/1999
E0237	12/31/1996
E0452	12/31/1999
E0453	12/31/1999
E1350	12/31/1996
E1400	12/31/1999
E1401	12/31/1999
E1402	12/31/1999
E1403	12/31/1999
E1404	12/31/1999
G0051	12/31/1997
G0052	12/31/1997
G0053	12/31/1997
G0054	09/30/1996
G0055	09/30/1996
G0056	09/30/1996
G0057	09/30/1996
G0058	12/31/1997
G0059	12/31/1997
G0060	12/31/1997
G0061	12/31/1996
G0062	12/31/1997
G0063	12/31/1997
G0064	12/31/1997
G0065	12/31/1997
G0066	12/31/1997
G0071	12/31/1997
G0072	12/31/1997
G0073	12/31/1997
G0074	12/31/1997
G0075	12/31/1997
G0076	12/31/1997
G0077	12/31/1997
G0078	12/31/1997
G0079	12/31/1997
G0080	12/31/1997
G0081	12/31/1997
G0082	12/31/1997
G0083	12/31/1997
G0084	12/31/1997
G0085	12/31/1997
G0086	12/31/1997
G0087	12/31/1997
G0088	12/31/1997
G0089	12/31/1997
G0090	12/31/1997
G0091	12/31/1997
G0092	12/31/1997
G0093	12/31/1997
G0094	12/31/1997
G0095	12/31/1997
G0096	12/31/1997
G0097	12/31/1997
G0098	12/31/1997
G0100	12/31/1997
G0133	12/31/1998
H5300	12/31/1997
J1625	12/31/1997
J1760	12/31/1999
J1770	12/31/1999
J1780	12/31/1999
J2050	12/31/1996
J3005	12/31/1997
J7140	12/31/1996
J7150	12/31/1996

ADDENDUM D.—1996 HCPC CODES USED TO CALCULATE PAY—Continued

CPT/HCPCS	Termination Date
J7196	12/31/1999
J7503	12/31/1999
J9010	12/31/1996
K0109	12/31/1999
K0110	12/31/1999
K0111	12/31/1996
K0119	12/31/1999
K0120	12/31/1999
K0121	12/31/1999
K0122	12/31/1999
K0123	12/31/1999
K0124	12/31/1999
K0125	12/31/1999
K0126	12/31/1999
K0127	12/31/1999
K0128	12/31/1999
K0129	12/31/1999
K0130	12/31/1999
K0137	12/31/1999
K0138	12/31/1999
K0139	12/31/1999
K0140	03/31/1997
K0141	03/31/1997
K0142	03/31/1997
K0143	03/31/1997
K0144	03/31/1997
K0145	03/31/1997
K0146	03/31/1997
K0152	12/31/1996
K0154	12/31/1996
K0163	12/31/1996
K0168	12/31/1999
K0169	12/31/1999
K0170	12/31/1999
K0171	12/31/1999
K0172	12/31/1999
K0173	12/31/1999
K0174	12/31/1999
K0175	12/31/1999
K0176	12/31/1999
K0177	12/31/1999
K0178	12/31/1999
K0179	12/31/1999
K0180	12/31/1999
K0181	12/31/1999
K0190	12/31/1999
K0191	12/31/1999
K0192	12/31/1999
K0193	09/30/1999
K0194	09/30/1999
K0196	12/31/1996
K0197	12/31/1996
K0198	12/31/1996
K0199	12/31/1996
K0203	12/31/1996
K0204	12/31/1996
K0205	12/31/1996
K0206	12/31/1996
K0207	12/31/1996
K0208	12/31/1999
K0209	12/31/1999
K0210	12/31/1999
K0211	12/31/1996
K0212	12/31/1996
K0213	12/31/1996
K0214	12/31/1996

ADDENDUM D.—1996 HCPC CODES USED TO CALCULATE PAY—Continued

CPT/HCPCS	Termination Date
K0215	12/31/1996
K0216	12/31/1996
K0217	12/31/1996
K0218	12/31/1996
K0219	12/31/1996
K0220	12/31/1996
K0221	12/31/1996
K0222	12/31/1996
K0223	12/31/1996
K0224	12/31/1996
K0228	12/31/1996
K0229	12/31/1996
K0230	12/31/1996
K0234	12/31/1996
K0235	12/31/1996
K0236	12/31/1996
K0237	12/31/1996
K0238	12/31/1996
K0239	12/31/1996
K0240	12/31/1996
K0241	12/31/1996
K0242	12/31/1996
K0243	12/31/1996
K0244	12/31/1996
K0245	12/31/1996
K0246	12/31/1996
K0247	12/31/1996
K0248	12/31/1996
K0249	12/31/1996
K0250	12/31/1996
K0251	12/31/1996
K0252	12/31/1996
K0253	12/31/1996
K0254	12/31/1996
K0255	12/31/1996
K0256	12/31/1996
K0257	12/31/1996
K0258	12/31/1996
K0259	12/31/1996
K0260	12/31/1996
K0261	12/31/1996
K0262	12/31/1996
K0263	12/31/1996
K0264	12/31/1996
K0265	12/31/1996
K0266	12/31/1996
K0271	06/30/1996
K0272	06/30/1996
K0273	06/30/1996
K0274	06/30/1996
K0275	06/30/1996
K0276	06/30/1996
K0277	12/31/1999
K0278	12/31/1999
K0279	12/31/1999
K0284	12/31/1999
K0285	12/31/1996
K0400	12/31/1999
K0401	12/31/1999
K0402	12/31/1996
K0403	12/31/1996
K0404	12/31/1996
K0405	12/31/1996
K0406	12/31/1996
K0412	12/31/1999
K0413	12/31/1997

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ADDENDUM D.—1996 HCPC CODES USED TO CALCULATE PAY—Continued

CPT/HCPCS	Termination Date
K0414	12/31/1997
K0417	12/31/1999
K0418	12/31/1999
K0419	12/31/1999
K0420	12/31/1999
K0421	12/31/1999
K0422	12/31/1999
K0423	12/31/1999
K0424	12/31/1999
K0425	12/31/1999
K0426	12/31/1999
K0427	12/31/1999
K0428	12/31/1999
K0429	12/31/1999
K0430	12/31/1999
K0431	12/31/1999
K0432	12/31/1999
K0433	12/31/1999
K0434	12/31/1999
K0435	12/31/1999
K0436	12/31/1999
K0437	12/31/1999
K0438	12/31/1999
K0439	12/31/1999
K0453	12/31/1998
K0454	12/31/1997
K0503	12/31/1999
K0504	12/31/1999
K0505	12/31/1999
K0506	12/31/1999
K0507	12/31/1999
K0508	12/31/1999
K0509	12/31/1999
K0511	12/31/1999
K0512	12/31/1999
K0513	12/31/1999
K0514	12/31/1999
K0515	12/31/1999
K0516	12/31/1999
K0518	12/31/1999
K0519	12/31/1999
K0520	12/31/1999
K0521	12/31/1999
K0522	12/31/1999
K0523	12/31/1999
K0524	12/31/1999
K0525	12/31/1999
K0526	12/31/1999
K0527	12/31/1999
K0528	12/31/1999
K0530	12/31/1999
L4200	12/31/1996
L4310	12/31/1998
L4320	12/31/1998
L4390	12/31/1998
L7160	12/31/1996
L7165	12/31/1996
L8605	12/31/1997
L8611	12/31/1997
L8615	12/31/1997
L8616	12/31/1997
L8617	12/31/1997
L8618	12/31/1997
L8620	12/31/1997
L8621	12/31/1997
L8622	12/31/1997

ADDENDUM D.—1996 HCPC CODES USED TO CALCULATE PAY—Continued

CPT/HCPCS	Termination Date
L8623	12/31/1997
L8624	12/31/1997
L8625	12/31/1997
L8626	12/31/1997
L8627	12/31/1997
L8628	12/31/1997
L8629	12/31/1997
L8640	12/31/1997
L8655	12/31/1997
L8656	12/31/1997
L8657	12/31/1997
L8680	12/31/1997
L8690	12/31/1997
L9999	12/31/1996
M0005	12/31/1997
M0006	12/31/1997
M0007	12/31/1997
M0008	12/31/1997
M0101	12/31/1998
P9014	12/31/1998
P9015	12/31/1998
P9610	12/31/1998
Q0068	12/31/1999
Q0103	12/31/1997
Q0104	12/31/1997
Q0109	12/31/1997
Q0110	12/31/1997
Q0116	09/30/1996
Q0132	12/31/1999
Q0158	12/31/1997
Q0159	12/31/1998
Q0162	12/31/1998
Q0182	12/31/1998

ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES

CPT/HCPCS	HOPD Status Indicator	Description
00174	C	Anesth, pharyngeal surgery
00176	C	Anesth, pharyngeal surgery
00192	C	Anesth, facial bone surgery
00214	C	Anesth, skull drainage
00215	C	Anesth, skull fracture
00404	C	Anesth, surgery of breast
00406	C	Anesth, surgery of breast
00452	C	Anesth, surgery of shoulder
00474	C	Anesth, surgery of rib(s)
00524	C	Anesth, chest drainage
00530	C	Anesth, pacemaker insertion
00540	C	Anesth, chest surgery
00542	C	Anesth, release of lung
00544	C	Anesth, chest lining removal
00546	C	Anesth, lung, chest wall surg
00560	C	Anesth, open heart surgery
00562	C	Anesth, open heart surgery
00580	C	Anesth heart/lung transplant
00604	C	Anesth, surgery of vertebra
00622	C	Anesth, removal of nerves
00632	C	Anesth, removal of nerves
00634	C	Anesth for chemonucleolysis
00670	C	Anesth, spine, cord surgery
00792	C	Anesth, part liver removal
00794	C	Anesth, pancreas removal
00796	C	Anesth, for liver transplant

ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

CPT/HCPCS	HOPD Status Indicator	Description
00802	C	Anesth, fat layer removal
00844	C	Anesth, pelvis surgery
00846	C	Anesth, hysterectomy
00848	C	Anesth, pelvic organ surg
00850	C	Anesth, cesarean section
00855	C	Anesth, hysterectomy
00857	C	Analgesia, labor & c-section
00864	C	Anesth, removal of bladder
00865	C	Anesth, removal of prostate
00866	C	Anesth, removal of adrenal
00868	C	Anesth, kidney transplant
00882	C	Anesth, major vein ligation
00884	C	Anesth, major vein revision
00904	C	Anesth, perineal surgery
00908	C	Anesth, removal of prostate
00928	C	Anesth, removal of testis
00932	C	Anesth, amputation of penis
00934	C	Anesth, penis, nodes removal
00936	C	Anesth, penis, nodes removal
00944	C	Anesth, vaginal hysterectomy
00955	C	Analgesia, vaginal delivery
01140	C	Anesth, amputation at pelvis
01150	C	Anesth, pelvic tumor surgery
01190	C	Anesth, pelvis nerve removal
01212	C	Anesth, hip disarticulation
01214	C	Anesth, replacement of hip
01232	C	Anesth, amputation of femur
01234	C	Anesth, radical femur surg
01272	C	Anesth, femoral artery surg
01274	C	Anesth, femoral embolectomy
01402	C	Anesth, replacement of knee
01404	C	Anesth, amputation at knee
01442	C	Anesth, knee artery surg
01444	C	Anesth, knee artery repair
01486	C	Anesth, ankle replacement
01502	C	Anesth, lwr leg embolectomy
01632	C	Anesth, surgery of shoulder
01634	C	Anesth, shoulder joint amput
01636	C	Anesth, forequarter amput
01638	C	Anesth, shoulder replacement
01652	C	Anesth, shoulder vessel surg
01654	C	Anesth, shoulder vessel surg
01656	C	Anesth, arm-leg vessel surg
01756	C	Anesth, radical humerus surg
01772	C	Anesth, uppr arm embolectomy
01782	C	Anesth, uppr arm vein repair
01842	C	Anesth, lwr arm embolectomy
01852	C	Anesth, lwr arm vein repair
01904	C	Anesth, skull x-ray inject
01990	C	Support for organ donor
15756	C	Free muscle flap, microvasc
15757	C	Free skin flap, microvasc
15758	C	Free fascial flap, microvasc
19200	C	Removal of breast
19220	C	Removal of breast
19240	C	Removal of breast
19260	C	Removal of chest wall lesion
19271	C	Revision of chest wall
19272	C	Extensive chest wall surgery
19361	C	Breast reconstruction
19364	C	Breast reconstruction
19367	C	Breast reconstruction
19368	C	Breast reconstruction
19369	C	Breast reconstruction
20660	C	Apply, remove fixation device
20661	C	Application of head brace
20662	C	Application of pelvis brace
20663	C	Application of thigh brace
20664	C	Halo brace application
20802	C	Replantation, arm, complete
20805	C	Replant, forearm, complete

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ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

CPT/HCPCS	HOPD Status Indicator	Description
20808	C	Replantation hand, complete
20816	C	Replantation digit, complete
20822	C	Replantation digit, complete
20824	C	Replantation thumb, complete
20827	C	Replantation thumb, complete
20838	C	Replantation foot, complete
20930	C	Spinal bone allograft
20931	C	Spinal bone allograft
20936	C	Spinal bone autograft
20937	C	Spinal bone autograft
20938	C	Spinal bone autograft
20955	C	Fibula bone graft, microvasc
20956	C	Iliac bone graft, microvasc
20957	C	Mt bone graft, microvasc
20962	C	Other bone graft, microvasc
20969	C	Bone/skin graft, microvasc
20970	C	Bone/skin graft, iliac crest
20972	C	Bone/skin graft, metatarsal
20973	C	Bone/skin graft, great toe
21045	C	Extensive jaw surgery
21141	C	Reconstruct midface, lefort
21142	C	Reconstruct midface, lefort
21143	C	Reconstruct midface, lefort
21145	C	Reconstruct midface, lefort
21146	C	Reconstruct midface, lefort
21147	C	Reconstruct midface, lefort
21150	C	Reconstruct midface, lefort
21151	C	Reconstruct midface, lefort
21154	C	Reconstruct midface, lefort
21155	C	Reconstruct midface, lefort
21159	C	Reconstruct midface, lefort
21160	C	Reconstruct midface, lefort
21172	C	Reconstruct orbit/forehead
21175	C	Reconstruct orbit/forehead
21179	C	Reconstruct entire forehead
21180	C	Reconstruct entire forehead
21182	C	Reconstruct cranial bone
21183	C	Reconstruct cranial bone
21184	C	Reconstruct cranial bone
21188	C	Reconstruction of midface
21193	C	Reconstruct lower jaw bone
21194	C	Reconstruct lower jaw bone
21195	C	Reconstruct lower jaw bone
21196	C	Reconstruct lower jaw bone
21247	C	Reconstruct lower jaw bone
21255	C	Reconstruct lower jaw bone
21256	C	Reconstruction of orbit
21268	C	Revise eye sockets
21343	C	Treatment of sinus fracture
21344	C	Treatment of sinus fracture
21346	C	Treat nose/jaw fracture
21347	C	Treat nose/jaw fracture
21348	C	Treat nose/jaw fracture
21356	C	Treat cheek bone fracture
21360	C	Treat cheek bone fracture
21365	C	Treat cheek bone fracture
21366	C	Treat cheek bone fracture
21385	C	Treat eye socket fracture
21386	C	Treat eye socket fracture
21387	C	Treat eye socket fracture
21390	C	Treat eye socket fracture
21395	C	Treat eye socket fracture
21408	C	Treat eye socket fracture
21422	C	Treat mouth roof fracture
21423	C	Treat mouth roof fracture
21431	C	Treat craniofacial fracture
21432	C	Treat craniofacial fracture
21433	C	Treat craniofacial fracture
21435	C	Treat craniofacial fracture
21436	C	Treat craniofacial fracture
21495	C	Treat hyoid bone fracture
21510	C	Drainage of bone lesion
21557	C	Remove tumor, neck/chest
21615	C	Removal of rib
21616	C	Removal of rib and nerves
21620	C	Partial removal of sternum
21627	C	Sternal debridement
21630	C	Extensive sternum surgery
21632	C	Extensive sternum surgery
21705	C	Revision of neck muscle/rib
21740	C	Reconstruction of sternum
21750	C	Repair of sternum separation
21810	C	Treatment of rib fracture(s)
21825	C	Treat sternum fracture
22100	C	Remove part of neck vertebra
22101	C	Remove part, thorax vertebra
22102	C	Remove part, lumbar vertebra
22103	C	Remove extra spine segment
22110	C	Remove part of neck vertebra
22112	C	Remove part, thorax vertebra
22114	C	Remove part, lumbar vertebra
22116	C	Remove extra spine segment
22210	C	Revision of neck spine
22212	C	Revision of thorax spine
22214	C	Revision of lumbar spine
22216	C	Revise, extra spine segment
22220	C	Revision of neck spine
22222	C	Revision of thorax spine
22224	C	Revision of lumbar spine
22226	C	Revise, extra spine segment
22318	C	Treat odontoid fx w/o graft
22319	C	Treat odontoid fx w/graft
22325	C	Treat spine fracture
22326	C	Treat neck spine fracture
22327	C	Treat thorax spine fracture
22328	C	Treat each add spine fx
22548	C	Neck spine fusion
22554	C	Neck spine fusion
22556	C	Thorax spine fusion
22558	C	Lumbar spine fusion
22585	C	Additional spinal fusion
22590	C	Spine & skull spinal fusion
22595	C	Neck spinal fusion
22600	C	Neck spine fusion
22610	C	Thorax spine fusion
22612	C	Lumbar spine fusion
22614	C	Spine fusion, extra segment
22630	C	Lumbar spine fusion
22632	C	Spine fusion, extra segment
22800	C	Fusion of spine
22802	C	Fusion of spine
22804	C	Fusion of spine
22808	C	Fusion of spine
22810	C	Fusion of spine
22812	C	Fusion of spine
22818	C	Kyphectomy, 1–2 segments
22819	C	Kyphectomy, 3 or more
22830	C	Exploration of spinal fusion
22840	C	Insert spine fixation device
22841	C	Insert spine fixation device
22842	C	Insert spine fixation device
22843	C	Insert spine fixation device
22844	C	Insert spine fixation device
22845	C	Insert spine fixation device
22846	C	Insert spine fixation device
22847	C	Insert spine fixation device
22848	C	Insert pelv fixation device
22849	C	Reinsert spinal fixation
22850	C	Remove spine fixation device
22851	C	Apply spine prosth device
22852	C	Remove spine fixation device
22855	C	Remove spine fixation device
23035	C	Drain shoulder bone lesion
23125	C	Removal of collar bone
23195	C	Removal of head of humerus
23200	C	Removal of collar bone
23210	C	Removal of shoulder blade
23220	C	Partial removal of humerus
23221	C	Partial removal of humerus
23222	C	Partial removal of humerus
23332	C	Remove shoulder foreign body
23395	C	Muscle transfer, shoulder/arm
23397	C	Muscle transfers
23400	C	Fixation of shoulder blade
23440	C	Remove/transplant tendon
23470	C	Reconstruct shoulder joint
23472	C	Reconstruct shoulder joint
23900	C	Amputation of arm & girdle
23920	C	Amputation at shoulder joint
24149	C	Radical resection of elbow
24150	C	Extensive humerus surgery
24151	C	Extensive humerus surgery
24152	C	Extensive radius surgery
24153	C	Extensive radius surgery
24900	C	Amputation of upper arm
24920	C	Amputation of upper arm
24930	C	Amputation follow-up surgery
24931	C	Amputate upper arm & implant
24940	C	Revision of upper arm
25170	C	Extensive forearm surgery
25390	C	Shorten radius or ulna
25391	C	Lengthen radius or ulna
25392	C	Shorten radius & ulna
25393	C	Lengthen radius & ulna
25405	C	Repair/graft radius or ulna
25420	C	Repair/graft radius & ulna
25900	C	Amputation of forearm
25905	C	Amputation of forearm
25909	C	Amputation follow-up surgery
25915	C	Amputation of forearm
25920	C	Amputate hand at wrist
25924	C	Amputation follow-up surgery
25927	C	Amputation of hand
25931	C	Amputation follow-up surgery
26551	C	Great toe-hand transfer
26553	C	Single transfer, toe-hand
26554	C	Double transfer, toe-hand
26556	C	Toe joint transfer
26992	C	Drainage of bone lesion
27005	C	Incision of hip tendon
27006	C	Incision of hip tendons
27025	C	Incision of hip/thigh fascia
27030	C	Drainage of hip joint
27035	C	Denervation of hip joint
27036	C	Excision of hip joint/muscle
27054	C	Removal of hip joint lining
27070	C	Partial removal of hip bone
27071	C	Partial removal of hip bone
27075	C	Extensive hip surgery
27076	C	Extensive hip surgery
27077	C	Extensive hip surgery
27078	C	Extensive hip surgery
27079	C	Extensive hip surgery
27090	C	Removal of hip prosthesis
27091	C	Removal of hip prosthesis
27120	C	Reconstruction of hip socket
27122	C	Reconstruction of hip socket
27125	C	Partial hip replacement
27130	C	Total hip replacement
27132	C	Total hip replacement
27134	C	Revise hip joint replacement
27137	C	Revise hip joint replacement
27138	C	Revise hip joint replacement
27140	C	Transplant femur ridge
27146	C	Incision of hip bone
27147	C	Revision of hip bone

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ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

CPT/ HCPCS	HOPD Status Indicator	Description
27151	C	Incision of hip bones
27156	C	Revision of hip bones
27158	C	Revision of pelvis
27161	C	Incision of neck of femur
27165	C	Incision/fixation of femur
27170	C	Repair/graft femur head/neck
27175	C	Treat slipped epiphysis
27176	C	Treat slipped epiphysis
27177	C	Treat slipped epiphysis
27178	C	Treat slipped epiphysis
27179	C	Revise head/neck of femur
27181	C	Treat slipped epiphysis
27185	C	Revision of femur epiphysis
27187	C	Reinforce hip bones
27215	C	Treat pelvic fracture(s)
27216	C	Treat pelvic ring fracture
27217	C	Treat pelvic ring fracture
27218	C	Treat pelvic ring fracture
27222	C	Treat hip socket fracture
27226	C	Treat hip wall fracture
27227	C	Treat hip fracture(s)
27228	C	Treat hip fracture(s)
27232	C	Treat thigh fracture
27235	C	Treat thigh fracture
27236	C	Treat thigh fracture
27240	C	Treat thigh fracture
27244	C	Treat thigh fracture
27245	C	Treat thigh fracture
27248	C	Treat thigh fracture
27253	C	Treat hip dislocation
27254	C	Treat hip dislocation
27258	C	Treat hip dislocation
27259	C	Treat hip dislocation
27280	C	Fusion of sacroiliac joint
27282	C	Fusion of pubic bones
27284	C	Fusion of hip joint
27286	C	Fusion of hip joint
27290	C	Amputation of leg at hip
27295	C	Amputation of leg at hip
27303	C	Drainage of bone lesion
27365	C	Extensive leg surgery
27445	C	Revision of knee joint
27446	C	Revision of knee joint
27447	C	Total knee replacement
27448	C	Incision of thigh
27450	C	Incision of thigh
27454	C	Realignment of thigh bone
27455	C	Realignment of knee
27457	C	Realignment of knee
27465	C	Shortening of thigh bone
27466	C	Lengthening of thigh bone
27468	C	Shorten/lengthen thighs
27470	C	Repair of thigh
27472	C	Repair/graft of thigh
27475	C	Surgery to stop leg growth
27477	C	Surgery to stop leg growth
27479	C	Surgery to stop leg growth
27485	C	Surgery to stop leg growth
27486	C	Revise/replace knee joint
27487	C	Revise/replace knee joint
27488	C	Removal of knee prosthesis
27495	C	Reinforce thigh
27506	C	Treatment of thigh fracture
27507	C	Treatment of thigh fracture
27511	C	Treatment of thigh fracture
27513	C	Treatment of thigh fracture
27514	C	Treatment of thigh fracture
27519	C	Treat thigh fx growth plate
27524	C	Treat kneecap fracture
27535	C	Treat knee fracture
27536	C	Treat knee fracture
27540	C	Treat knee fracture
27557	C	Treat knee dislocation
27558	C	Treat knee dislocation
27580	C	Fusion of knee
27590	C	Amputate leg at thigh
27591	C	Amputate leg at thigh
27592	C	Amputate leg at thigh
27596	C	Amputation follow-up surgery
27598	C	Amputate lower leg at knee
27645	C	Extensive lower leg surgery
27646	C	Extensive lower leg surgery
27702	C	Reconstruct ankle joint
27703	C	Reconstruction, ankle joint
27712	C	Realignment of lower leg
27715	C	Revision of lower leg
27720	C	Repair of tibia
27722	C	Repair/graft of tibia
27724	C	Repair/graft of tibia
27725	C	Repair of lower leg
27727	C	Repair of lower leg
27880	C	Amputation of lower leg
27881	C	Amputation of lower leg
27882	C	Amputation of lower leg
27886	C	Amputation follow-up surgery
27888	C	Amputation of foot at ankle
28800	C	Amputation of midfoot
28805	C	Amputation thru metatarsal
31225	C	Removal of upper jaw
31230	C	Removal of upper jaw
31290	C	Nasal/sinus endoscopy, surg
31291	C	Nasal/sinus endoscopy, surg
31292	C	Nasal/sinus endoscopy, surg
31293	C	Nasal/sinus endoscopy, surg
31294	C	Nasal/sinus endoscopy, surg
31360	C	Removal of larynx
31365	C	Removal of larynx
31367	C	Partial removal of larynx
31368	C	Partial removal of larynx
31370	C	Partial removal of larynx
31380	C	Partial removal of larynx
31382	C	Partial removal of larynx
31390	C	Removal of larynx & pharynx
31395	C	Reconstruct larynx & pharynx
31582	C	Revision of larynx
31584	C	Treat larynx fracture
31587	C	Revision of larynx
31725	C	Clearance of airways
31760	C	Repair of windpipe
31766	C	Reconstruction of windpipe
31770	C	Repair/graft of bronchus
31775	C	Reconstruct bronchus
31780	C	Reconstruct windpipe
31781	C	Reconstruct windpipe
31785	C	Remove windpipe lesion
31786	C	Remove windpipe lesion
31800	C	Repair of windpipe injury
31805	C	Repair of windpipe injury
32035	C	Exploration of chest
32036	C	Exploration of chest
32095	C	Biopsy through chest wall
32100	C	Exploration/biopsy of chest
32110	C	Explore/repair chest
32120	C	Re-exploration of chest
32124	C	Explore chest free adhesions
32140	C	Removal of lung lesion(s)
32141	C	Remove/treat lung lesions
32150	C	Removal of lung lesion(s)
32151	C	Remove lung foreign body
32160	C	Open chest heart massage
32200	C	Drain, open, lung lesion
32201	C	Drain, percut, lung lesion
32215	C	Treat chest lining
32220	C	Release of lung
32225	C	Partial release of lung
32310	C	Removal of chest lining
32320	C	Free/remove chest lining
32402	C	Open biopsy chest lining
32440	C	Removal of lung
32442	C	Sleeve pneumonectomy
32445	C	Removal of lung
32480	C	Partial removal of lung
32482	C	Bilobectomy
32484	C	Segmentectomy
32486	C	Sleeve lobectomy
32488	C	Completion pneumonectomy
32491	C	Lung volume reduction
32500	C	Partial removal of lung
32501	C	Repair bronchus add-on
32520	C	Remove lung & revise chest
32522	C	Remove lung & revise chest
32525	C	Remove lung & revise chest
32540	C	Removal of lung lesion
32650	C	Thoracoscopy, surgical
32651	C	Thoracoscopy, surgical
32652	C	Thoracoscopy, surgical
32653	C	Thoracoscopy, surgical
32654	C	Thoracoscopy, surgical
32655	C	Thoracoscopy, surgical
32656	C	Thoracoscopy, surgical
32657	C	Thoracoscopy, surgical
32658	C	Thoracoscopy, surgical
32659	C	Thoracoscopy, surgical
32660	C	Thoracoscopy, surgical
32661	C	Thoracoscopy, surgical
32662	C	Thoracoscopy, surgical
32663	C	Thoracoscopy, surgical
32664	C	Thoracoscopy, surgical
32665	C	Thoracoscopy, surgical
32800	C	Repair lung hernia
32810	C	Close chest after drainage
32815	C	Close bronchial fistula
32820	C	Reconstruct injured chest
32850	C	Donor pneumonectomy
32851	C	Lung transplant, single
32852	C	Lung transplant with bypass
32853	C	Lung transplant, double
32854	C	Lung transplant with bypass
32900	C	Removal of rib(s)
32905	C	Revise & repair chest wall
32906	C	Revise & repair chest wall
32940	C	Revision of lung
32997	C	Total lung lavage
33015	C	Incision of heart sac
33020	C	Incision of heart sac
33025	C	Incision of heart sac
33030	C	Partial removal of heart sac
33031	C	Partial removal of heart sac
33050	C	Removal of heart sac lesion
33120	C	Removal of heart lesion
33130	C	Removal of heart lesion
33140	C	Heart revascularize (tmr)
33200	C	Insertion of heart pacemaker
33201	C	Insertion of heart pacemaker
33236	C	Remove electrode/ thoracotomy
33237	C	Remove electrode/ thoracotomy
33238	C	Remove electrode/ thoracotomy
33243	C	Remove elctrd/thoracotomy
33245	C	Insert epic elctrd pace-defib
33246	C	Insert epic elctrd/generator
33250	C	Ablate heart dysrhythm focus
33251	C	Ablate heart dysrhythm focus
33253	C	Reconstruct atria

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ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

CPT/ HCPCS	HOPD Status Indicator	Description
33261	C	Ablate heart dysrhythm focus
33262	C	Implant pat-active ht record
33264	C	Remove pat-active ht record
33300	C	Repair of heart wound
33305	C	Repair of heart wound
33310	C	Exploratory heart surgery
33315	C	Exploratory heart surgery
33320	C	Repair major blood vessel(s)
33321	C	Repair major vessel
33322	C	Repair major blood vessel(s)
33330	C	Insert major vessel graft
33332	C	Insert major vessel graft
33335	C	Insert major vessel-graft
33400	C	Repair of aortic valve
33401	C	Valvuloplasty, open
33403	C	Valvuloplasty, w/cp bypass
33404	C	Prepare heart-aorta conduit
33405	C	Replacement of aortic valve
33406	C	Replacement of aortic valve
33410	C	Replacement of aortic valve
33411	C	Replacement of aortic valve
33412	C	Replacement of aortic valve
33413	C	Replacement of aortic valve
33414	C	Repair of aortic valve
33415	C	Revision, subvalvular tissue
33416	C	Revise ventricle muscle
33417	C	Repair of aortic valve
33420	C	Revision of mitral valve
33422	C	Revision of mitral valve
33425	C	Repair of mitral valve
33426	C	Repair of mitral valve
33427	C	Repair of mitral valve
33430	C	Replacement of mitral valve
33460	C	Revision of tricuspid valve
33463	C	Valvuloplasty, tricuspid
33464	C	Valvuloplasty, tricuspid
33465	C	Replace tricuspid valve
33468	C	Revision of tricuspid valve
33470	C	Revision of pulmonary valve
33471	C	Valvotomy, pulmonary valve
33472	C	Revision of pulmonary valve
33474	C	Revision of pulmonary valve
33475	C	Replacement, pulmonary valve
33476	C	Revision of heart chamber
33478	C	Revision of heart chamber
33496	C	Repair, prosth valve clot
33500	C	Repair heart vessel fistula
33501	C	Repair heart vessel fistula
33502	C	Coronary artery correction
33503	C	Coronary artery graft
33504	C	Coronary artery graft
33505	C	Repair artery w/tunnel
33506	C	Repair artery, translocation
33510	C	CABG, vein, single
33511	C	CABG, vein, two
33512	C	CABG, vein, three
33513	C	CABG, vein, four
33514	C	CABG, vein, five
33516	C	Cabg, vein, six or more
33517	C	CABG, artery-vein, single
33518	C	CABG, artery-vein, two
33519	C	CABG, artery-vein, three
33521	C	CABG, artery-vein, four
33522	C	CABG, artery-vein, five
33523	C	Cabg, art-vein, six or more
33530	C	Coronary artery, bypass/reop
33533	C	CABG, arterial, single
33534	C	CABG, arterial, two
33535	C	CABG, arterial, three
33536	C	Cabg, arterial, four or more
33542	C	Removal of heart lesion
33545	C	Repair of heart damage
33572	C	Open coronary endarterectomy
33600	C	Closure of valve
33602	C	Closure of valve
33606	C	Anastomosis/artery-aorta
33608	C	Repair anomaly w/conduit
33610	C	Repair by enlargement
33611	C	Repair double ventricle
33612	C	Repair double ventricle
33615	C	Repair, simple fontan
33617	C	Repair, modified fontan
33619	C	Repair single ventricle
33641	C	Repair heart septum defect
33645	C	Revision of heart veins
33647	C	Repair heart septum defects
33660	C	Repair of heart defects
33665	C	Repair of heart defects
33670	C	Repair of heart chambers
33681	C	Repair heart septum defect
33684	C	Repair heart septum defect
33688	C	Repair heart septum defect
33690	C	Reinforce pulmonary artery
33692	C	Repair of heart defects
33694	O	Repair of heart defects
33697	C	Repair of heart defects
33702	C	Repair of heart defects
33710	C	Repair of heart defects
33720	C	Repair of heart defect
33722	C	Repair of heart defect
33730	C	Repair heart-vein defect(s)
33732	C	Repair heart-vein defect
33735	C	Revision of heart chamber
33736	C	Revision of heart chamber
33737	C	Revision of heart chamber
33750	C	Major vessel shunt
33755	C	Major vessel shunt
33762	C	Major vessel shunt
33764	C	Major vessel shunt & graft
33766	C	Major vessel shunt
33767	C	Major vessel shunt
33770	C	Repair great vessels defect
33771	C	Repair great vessels defect
33774	C	Repair great vessels defect
33775	C	Repair great vessels defect
33776	C	Repair great vessels defect
33777	C	Repair great vessels defect
33778	C	Repair great vessels defect
33779	C	Repair great vessels defect
33780	C	Repair great vessels defect
33781	C	Repair great vessels defect
33786	C	Repair arterial trunk
33788	C	Revision of pulmonary artery
33800	C	Aortic suspension
33802	C	Repair vessel defect
33803	C	Repair vessel defect
33813	C	Repair septal defect
33814	C	Repair septal defect
33820	C	Revise major vessel
33822	C	Revise major vessel
33824	C	Revise major vessel
33840	C	Remove aorta constriction
33845	C	Remove aorta constriction
33851	C	Remove aorta constriction
33852	C	Repair septal defect
33853	C	Repair septal defect
33860	C	Ascending aortic graft
33861	C	Ascending aortic graft
33863	C	Ascending aortic graft
33870	C	Transverse aortic arch graft
33875	C	Thoracic aortic graft
33877	C	Thoracoabdominal graft
33910	C	Remove lung artery emboli
33915	C	Remove lung artery emboli
33916	C	Surgery of great vessel
33917	C	Repair pulmonary artery
33918	C	Repair pulmonary stenosis
33919	C	Repair pulmonary stenosis
33920	C	Repair pulmonary stenosis
33922	C	Transect pulmonary artery
33924	C	Remove pulmonary shunt
33930	C	Removal of donor heart/lung
33935	C	Transplantation, heart/lung
33940	C	Removal of donor heart
33945	C	Transplantation of heart
33960	C	External circulation assist
33961	C	External circulation assist
33968	C	Remove aortic assist device
33970	C	Aortic circulation assist
33971	C	Aortic circulation assist
33973	C	Insert balloon device
33974	C	Remove intra-aortic balloon
33975	C	Implant ventricular device
33976	C	Implant ventricular device
33977	C	Remove ventricular device
33978	C	Remove ventricular device
34001	C	Removal of artery clot
34051	C	Removal of artery clot
34151	C	Removal of artery clot
34401	C	Removal of vein clot
34421	C	Removal of vein clot
34451	C	Removal of vein clot
34502	C	Reconstruct vena cava
35001	C	Repair defect of artery
35002	C	Repair artery rupture, neck
35005	C	Repair defect of artery
35011	C	Repair defect of artery
35013	C	Repair artery rupture, arm
35021	C	Repair defect of artery
35022	C	Repair artery rupture, chest
35045	C	Repair defect of arm artery
35081	C	Repair defect of artery
35082	C	Repair artery rupture, aorta
35091	C	Repair defect of artery
35092	C	Repair artery rupture, aorta
35102	C	Repair defect of artery
35103	C	Repair artery rupture, groin
35111	C	Repair defect of artery
35112	C	Repair artery rupture, spleen
35121	C	Repair defect of artery
35122	C	Repair artery rupture, belly
35131	C	Repair defect of artery
35132	C	Repair artery rupture, groin
35141	C	Repair defect of artery
35142	C	Repair artery rupture, thigh
35151	C	Repair defect of artery
35152	C	Repair artery rupture, knee
35161	C	Repair defect of artery
35162	C	Repair artery rupture
35182	C	Repair blood vessel lesion
35189	C	Repair blood vessel lesion
35211	C	Repair blood vessel lesion
35216	C	Repair blood vessel lesion
35221	C	Repair blood vessel lesion
35241	C	Repair blood vessel lesion
35246	C	Repair blood vessel lesion
35251	C	Repair blood vessel lesion
35271	C	Repair blood vessel lesion
35276	C	Repair blood vessel lesion
35281	C	Repair blood vessel lesion
35301	C	Rechanneling of artery
35311	C	Rechanneling of artery
35331	C	Rechanneling of artery
35341	C	Rechanneling of artery
35351	C	Rechanneling of artery
35355	C	Repair defect of artery
35361	C	Repair defect of artery
35363	C	Repair defect of artery
35371	C	Repair defect of artery
35372	C	Repair defect of artery
35381	C	Repair defect of artery
35390	C	Reconstruct carotid artery
35400	C	Angioscopy
35450	C	Repair defect of artery
35452	C	Repair defect of artery
35454	C	Repair defect of artery
35456	C	Repair defect of artery
35458	C	Repair defect of artery
35480	C	Atherectomy
35481	C	Atherectomy
35482	C	Atherectomy
35483	C	Atherectomy
35501	C	Bypass graft
35506	C	Bypass graft
35507	C	Bypass graft
35508	C	Bypass graft
35509	C	Bypass graft
35511	C	Bypass graft
35515	C	Bypass graft
35516	C	Bypass graft
35518	C	Bypass graft
35521	C	Bypass graft
35526	C	Bypass graft
35531	C	Bypass graft
35533	C	Bypass graft
35536	C	Bypass graft
35541	C	Bypass graft
35546	C	Bypass graft
35548	C	Bypass graft
35549	C	Bypass graft
35551	C	Bypass graft
35556	C	Bypass graft
35558	C	Bypass graft
35560	C	Bypass graft
35563	C	Bypass graft
35565	C	Bypass graft
35566	C	Bypass graft
35571	C	Bypass graft
35582	C	Bypass graft
35583	C	Bypass graft
35585	C	Bypass graft
35587	C	Bypass graft
35601	C	Bypass graft
35606	C	Bypass graft
35612	C	Bypass graft
35616	C	Bypass graft
35621	C	Bypass graft
35623	C	Bypass graft
35626	C	Bypass graft
35631	C	Bypass graft
35636	C	Bypass graft
35641	C	Bypass graft
35642	C	Bypass graft
35645	C	Bypass graft
35646	C	Bypass graft
35650	C	Bypass graft
35651	C	Bypass graft
35654	C	Bypass graft
35656	C	Bypass graft
35661	C	Bypass graft
35663	C	Bypass graft
35665	C	Bypass graft
35666	C	Bypass graft
35671	C	Bypass graft
35681	C	Bypass graft
35682	C	Bypass graft
35683	C	Bypass graft

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ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

CPT/ HCPCS	HOPD Status Indicator	Description
35355	C	Rechanneling of artery
35361	C	Rechanneling of artery
35363	C	Rechanneling of artery
35371	C	Rechanneling of artery
35372	C	Rechanneling of artery
35381	C	Rechanneling of artery
35390	C	Reoperation, carotid add-on
35400	C	Angioscopy
35450	C	Repair arterial blockage
35452	C	Repair arterial blockage
35454	C	Repair arterial blockage
35456	C	Repair arterial blockage
35458	C	Repair arterial blockage
35480	C	Atherectomy, open
35481	C	Atherectomy, open
35482	C	Atherectomy, open
35483	C	Atherectomy, open
35501	C	Artery bypass graft
35506	C	Artery bypass graft
35507	C	Artery bypass graft
35508	C	Artery bypass graft
35509	C	Artery bypass graft
35511	C	Artery bypass graft
35515	C	Artery bypass graft
35516	C	Artery bypass graft
35518	C	Artery bypass graft
35521	C	Artery bypass graft
35526	C	Artery bypass graft
35531	C	Artery bypass graft
35533	C	Artery bypass graft
35536	C	Artery bypass graft
35541	C	Artery bypass graft
35546	C	Artery bypass graft
35548	C	Artery bypass graft
35549	C	Artery bypass graft
35551	C	Artery bypass graft
35556	C	Artery bypass graft
35558	C	Artery bypass graft
35560	C	Artery bypass graft
35563	C	Artery bypass graft
35565	C	Artery bypass graft
35566	C	Artery bypass graft
35571	C	Artery bypass graft
35582	C	Vein bypass graft
35583	C	Vein bypass graft
35585	C	Vein bypass graft
35587	C	Vein bypass graft
35601	C	Artery bypass graft
35606	C	Artery bypass graft
35612	C	Artery bypass graft
35616	C	Artery bypass graft
35621	C	Artery bypass graft
35623	C	Bypass graft, not vein
35626	C	Artery bypass graft
35631	C	Artery bypass graft
35636	C	Artery bypass graft
35641	C	Artery bypass graft
35642	C	Artery bypass graft
35645	C	Artery bypass graft
35646	C	Artery bypass graft
35650	C	Artery bypass graft
35651	C	Artery bypass graft
35654	C	Artery bypass graft
35656	C	Artery bypass graft
35661	C	Artery bypass graft
35663	C	Artery bypass graft
35665	C	Artery bypass graft
35666	C	Artery bypass graft
35671	C	Artery bypass graft
35681	C	Composite bypass graft
35682	C	Composite bypass graft
35683	C	Composite bypass graft

ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

CPT/ HCPCS	HOPD Status Indicator	Description
35691	C	Arterial transposition
35693	C	Arterial transposition
35694	C	Arterial transposition
35695	C	Arterial transposition
35700	C	Reoperation, bypass graft
35701	C	Exploration, carotid artery
35721	C	Exploration, femoral artery
35741	C	Exploration popliteal artery
35761	C	Exploration of artery/vein
35800	C	Explore neck vessels
35820	C	Explore chest vessels
35840	C	Explore abdominal vessels
35860	C	Explore limb vessels
35870	C	Repair vessel graft defect
35901	C	Excision, graft, neck
35903	C	Excision, graft, extremity
35905	C	Excision, graft, thorax
35907	C	Excision, graft, abdomen
36510	C	Insertion of catheter, vein
36550	C	Declot vascular device
36660	C	Insertion catheter, artery
36822	C	Insertion of cannula(s)
36823	C	Insertion of cannula(s)
36834	C	Repair A–V aneurysm
37140	C	Revision of circulation
37145	C	Revision of circulation
37160	C	Revision of circulation
37180	C	Revision of circulation
37181	C	Splice spleen/kidney veins
37195	C	Thrombolytic therapy, stroke
37200	C	Transcatheter biopsy
37201	C	Transcatheter therapy infuse
37202	C	Transcatheter therapy infuse
37616	C	Ligation of chest artery
37617	C	Ligation of abdomen artery
37620	C	Revision of major vein
37660	C	Revision of major vein
37788	C	Revascularization, penis
38100	C	Removal of spleen, total
38101	C	Removal of spleen, partial
38102	C	Removal of spleen, total
38115	C	Repair of ruptured spleen
38380	C	Thoracic duct procedure
38381	C	Thoracic duct procedure
38382	C	Thoracic duct procedure
38562	C	Removal, pelvic lymph nodes
38564	C	Removal, abdomen lymph nodes
38700	C	Removal of lymph nodes, neck
38724	C	Removal of lymph nodes, neck
38746	C	Remove thoracic lymph nodes
38747	C	Remove abdominal lymph nodes
38765	C	Remove groin lymph nodes
38770	C	Remove pelvis lymph nodes
38780	C	Remove abdomen lymph nodes
39000	C	Exploration of chest
39010	C	Exploration of chest
39200	C	Removal chest lesion
39220	C	Removal chest lesion
39499	C	Chest procedure
39501	C	Repair diaphragm laceration
39502	C	Repair paraesophageal hernia
39503	C	Repair of diaphragm hernia
39520	C	Repair of diaphragm hernia
39530	C	Repair of diaphragm hernia
39531	C	Repair of diaphragm hernia
39540	C	Repair of diaphragm hernia
39541	C	Repair of diaphragm hernia
39545	C	Revision of diaphragm
39560	C	Resect diaphragm, simple

ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

CPT/ HCPCS	HOPD Status Indicator	Description
39561	C	Resect diaphragm, complex
39599	C	Diaphragm surgery procedure
41130	C	Partial removal of tongue
41135	C	Tongue and neck surgery
41140	C	Removal of tongue
41145	C	Tongue removal, neck surgery
41150	C	Tongue, mouth, jaw surgery
41153	C	Tongue, mouth, neck surgery
41155	C	Tongue, jaw, & neck surgery
42426	C	Excise parotid gland/lesion
42842	C	Extensive surgery of throat
42845	C	Extensive surgery of throat
42894	C	Revision of pharyngeal walls
42953	C	Repair throat, esophagus
42961	C	Control throat bleeding
42971	C	Control nose/throat bleeding
43030	C	Throat muscle surgery
43045	C	Incision of esophagus
43100	C	Excision of esophagus lesion
43101	C	Excision of esophagus lesion
43107	C	Removal of esophagus
43108	C	Removal of esophagus
43112	C	Removal of esophagus
43113	C	Removal of esophagus
43116	C	Partial removal of esophagus
43117	C	Partial removal of esophagus
43118	C	Partial removal of esophagus
43121	C	Partial removal of esophagus
43122	C	Partial removal of esophagus
43123	C	Partial removal of esophagus
43124	C	Removal of esophagus
43130	C	Removal of esophagus pouch
43135	C	Removal of esophagus pouch
43300	C	Repair of esophagus
43305	C	Repair esophagus and fistula
43310	C	Repair of esophagus
43312	C	Repair esophagus and fistula
43320	C	Fuse esophagus & stomach
43324	C	Revise esophagus & stomach
43325	C	Revise esophagus & stomach
43326	C	Revise esophagus & stomach
43330	C	Repair of esophagus
43331	C	Repair of esophagus
43340	C	Fuse esophagus & intestine
43341	C	Fuse esophagus & intestine
43350	C	Surgical opening, esophagus
43351	C	Surgical opening, esophagus
43352	C	Surgical opening, esophagus
43360	C	Gastrointestinal repair
43361	C	Gastrointestinal repair
43400	C	Ligate esophagus veins
43401	C	Esophagus surgery for veins
43405	C	Ligate/staple esophagus
43410	C	Repair esophagus wound
43415	C	Repair esophagus wound
43420	C	Repair esophagus opening
43425	C	Repair esophagus opening
43460	C	Pressure treatment esophagus
43496	C	Free jejunum flap, microvasc
43500	C	Surgical opening of stomach
43501	C	Surgical repair of stomach
43502	C	Surgical repair of stomach
43510	C	Surgical opening of stomach
43520	C	Incision of pyloric muscle
43605	C	Biopsy of stomach
43610	C	Excision of stomach lesion
43611	C	Excision of stomach lesion
43620	C	Removal of stomach
43621	C	Removal of stomach
43622	C	Removal of stomach
43631	C	Removal of stomach, partial
43632	C	Removal of stomach, partial

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ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

CPT/ HCPCS	HOPD Status Indicator	Description
43633	C	Removal of stomach, partial
43634	C	Removal of stomach, partial
43635	C	Removal of stomach, partial
43638	C	Removal of stomach, partial
43639	C	Removal of stomach, partial
43640	C	Vagotomy & pylorus repair
43641	C	Vagotomy & pylorus repair
43800	C	Reconstruction of pylorus
43810	C	Fusion of stomach and bowel
43820	C	Fusion of stomach and bowel
43825	C	Fusion of stomach and bowel
43832	C	Place gastrostomy tube
43840	C	Repair of stomach lesion
43842	C	Gastroplasty for obesity
43843	C	Gastroplasty for obesity
43846	C	Gastric bypass for obesity
43847	C	Gastric bypass for obesity
43848	C	Revision gastroplasty
43850	C	Revise stomach-bowel fusion
43855	C	Revise stomach-bowel fusion
43860	C	Revise stomach-bowel fusion
43865	C	Revise stomach-bowel fusion
43880	C	Repair stomach-bowel fistula
44005	C	Freeing of bowel adhesion
44010	C	Incision of small bowel
44015	C	Insert needle cath bowel
44020	C	Exploration of small bowel
44021	C	Decompress small bowel
44025	C	Incision of large bowel
44050	C	Reduce bowel obstruction
44055	C	Correct malrotation of bowel
44110	C	Excision of bowel lesion(s)
44111	C	Excision of bowel lesion(s)
44120	C	Removal of small intestine
44121	C	Removal of small intestine
44125	C	Removal of small intestine
44130	C	Bowel to bowel fusion
44139	C	Mobilization of colon
44140	C	Partial removal of colon
44141	C	Partial removal of colon
44143	C	Partial removal of colon
44144	C	Partial removal of colon
44145	C	Partial removal of colon
44146	C	Partial removal of colon
44147	C	Partial removal of colon
44150	C	Removal of colon
44151	C	Removal of colon/ileostomy
44152	C	Removal of colon/ileostomy
44153	C	Removal of colon/ileostomy
44155	C	Removal of colon/ileostomy
44156	C	Removal of colon/ileostomy
44160	C	Removal of colon
44202	C	Laparo, resect intestine
44300	C	Open bowel to skin
44310	C	Ileostomy/jejunostomy
44314	C	Revision of ileostomy
44316	C	Devise bowel pouch
44320	C	Colostomy
44322	C	Colostomy with biopsies
44345	C	Revision of colostomy
44346	C	Revision of colostomy
44500	C	Intro, gastrointestinal tube
44602	C	Suture, small intestine
44603	C	Suture, small intestine
44604	C	Suture, large intestine
44605	C	Repair of bowel lesion
44615	C	Intestinal stricturoplasty
44620	C	Repair bowel opening
44625	C	Repair bowel opening
44626	C	Repair bowel opening
44640	C	Repair bowel-skin fistula
44650	C	Repair bowel fistula

ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

CPT/ HCPCS	HOPD Status Indicator	Description
44660	C	Repair bowel-bladder fistula
44661	C	Repair bowel-bladder fistula
44680	C	Surgical revision, intestine
44700	C	Suspend bowel w/prosthesis
44800	C	Excision of bowel pouch
44820	C	Excision of mesentery lesion
44850	C	Repair of mesentery
44899	C	Bowel surgery procedure
44900	C	Drain app abecess, open
44901	C	Drain app abecess, percut
44950	C	Appendectomy
44955	C	Appendectomy add-on
44960	C	Appendectomy
45110	C	Removal of rectum
45111	C	Partial removal of rectum
45112	C	Removal of rectum
45113	C	Partial proctectomy
45114	C	Partial removal of rectum
45116	C	Partial removal of rectum
45119	C	Remove rectum w/reservoir
45120	C	Removal of rectum
45121	C	Removal of rectum and colon
45123	C	Partial proctectomy
45126	C	Pelvic exenteration
45130	C	Excision of rectal prolapse
45135	C	Excision of rectal prolapse
45540	C	Correct rectal prolapse
45541	C	Correct rectal prolapse
45550	C	Repair rectum/remove sigmoid
45562	C	Exploration/repair of rectum
45563	C	Exploration/repair of rectum
45800	C	Repair rect/bladder fistula
45805	C	Repair fistula w/colostomy
45820	C	Repair rectourethral fistula
45825	C	Repair fistula w/colostomy
46705	C	Repair of anal stricture
46715	C	Repair of anovaginal fistula
46716	C	Repair of anovaginal fistula
46730	C	Construction of absent anus
46735	C	Construction of absent anus
46740	C	Construction of absent anus
46742	C	Repair of imperforated anus
46744	C	Repair of cloacal anomaly
46746	C	Repair of cloacal anomaly
46748	C	Repair of cloacal anomaly
46751	C	Repair of anal sphincter
47001	C	Needle biopsy, liver add-on
47010	C	Open drainage, liver lesion
47011	C	Percut drain, liver lesion
47015	C	Inject/aspirate liver cyst
47100	C	Wedge biopsy of liver
47120	C	Partial removal of liver
47122	C	Extensive removal of liver
47125	C	Partial removal of liver
47130	C	Partial removal of liver
47133	C	Removal of donor liver
47134	C	Partial removal, donor liver
47135	C	Transplantation of liver
47136	C	Transplantation of liver
47300	C	Surgery for liver lesion
47350	C	Repair liver wound
47360	C	Repair liver wound
47361	C	Repair liver wound
47362	C	Repair liver wound
47400	C	Incision of liver duct
47420	C	Incision of bile duct
47425	C	Incision of bile duct
47460	C	Incise bile duct sphincter
47480	C	Incision of gallbladder
47490	C	Incision of gallbladder
47550	C	Bile duct endoscopy add-on
47600	C	Removal of gallbladder

ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

CPT/ HCPCS	HOPD Status Indicator	Description
47605	C	Removal of gallbladder
47610	C	Removal of gallbladder
47612	C	Removal of gallbladder
47620	C	Removal of gallbladder
47700	C	Exploration of bile ducts
47701	C	Bile duct revision
47711	C	Excision of bile duct tumor
47712	C	Excision of bile duct tumor
47715	C	Excision of bile duct cyst
47716	C	Fusion of bile duct cyst
47720	C	Fuse gallbladder & bowel
47721	C	Fuse upper gi structures
47740	C	Fuse gallbladder & bowel
47741	C	Fuse gallbladder & bowel
47760	C	Fuse bile ducts and bowel
47765	C	Fuse liver ducts & bowel
47780	C	Fuse bile ducts and bowel
47785	C	Fuse bile ducts and bowel
47800	C	Reconstruction of bile ducts
47801	C	Placement, bile duct support
47802	C	Fuse liver duct & intestine
47900	C	Suture bile duct injury
48000	C	Drainage of abdomen
48001	C	Placement of drain, pancreas
48005	C	Resect/debride pancreas
48020	C	Removal of pancreatic stone
48100	C	Biopsy of pancreas
48120	C	Removal of pancreas lesion
48140	C	Partial removal of pancreas
48145	C	Partial removal of pancreas
48146	C	Pancreatectomy
48148	C	Removal of pancreatic duct
48150	C	Partial removal of pancreas
48152	C	Pancreatectomy
48153	C	Pancreatectomy
48154	C	Pancreatectomy
48155	C	Removal of pancreas
48180	C	Fuse pancreas and bowel
48400	C	Injection, intraop add-on
48500	C	Surgery of pancreas cyst
48510	C	Drain pancreatic pseudocyst
48511	C	Drain pancreatic pseudocyst
48520	C	Fuse pancreas cyst and bowel
48540	C	Fuse pancreas cyst and bowel
48545	C	Pancreatorrhaphy
48547	C	Duodenal exclusion
48556	C	Removal, allograft pancreas
49000	C	Exploration of abdomen
49002	C	Reopening of abdomen
49010	C	Exploration behind abdomen
49020	C	Drain abdominal abecess
49021	C	Drain abdominal abecess
49040	C	Drain, open, abdom abecess
49041	C	Drain, percut, abdom abecess
49060	C	Drain, open, retrop abecess
49061	C	Drain, percut, retroper abec
49062	C	Drain to peritoneal cavity
49200	C	Removal of abdominal lesion
49201	C	Removal of abdominal lesion
49215	C	Excise sacral spine tumor
49220	C	Multiple surgery, abdomen
49255	C	Removal of omentum
49425	C	Insert abdomen-venous drain
49428	C	Ligation of shunt
49605	C	Repair umbilical lesion
49606	C	Repair umbilical lesion
49610	C	Repair umbilical lesion
49611	C	Repair umbilical lesion
49900	C	Repair of abdominal wall
49905	C	Omental flap
49906	C	Free omental flap, microvasc
50010	C	Exploration of kidney

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ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

CPT/ HCPCS	HOPD Status Indicator	Description
50020	C	Renal abscess, open drain
50021	C	Renal abscess, percut drain
50040	C	Drainage of kidney
50045	C	Exploration of kidney
50060	C	Removal of kidney stone
50065	C	Incision of kidney
50070	C	Incision of kidney
50075	C	Removal of kidney stone
50100	C	Revise kidney blood vessels
50120	C	Exploration of kidney
50125	C	Explore and drain kidney
50130	C	Removal of kidney stone
50135	C	Exploration of kidney
50205	C	Biopsy of kidney
50220	C	Removal of kidney
50225	C	Removal of kidney
50230	C	Removal of kidney
50234	C	Removal of kidney & ureter
50236	C	Removal of kidney & ureter
50240	C	Partial removal of kidney
50280	C	Removal of kidney lesion
50290	C	Removal of kidney lesion
50300	C	Removal of donor kidney
50320	C	Removal of donor kidney
50340	C	Removal of kidney
50360	C	Transplantation of kidney
50365	C	Transplantation of kidney
50370	C	Remove transplanted kidney
50380	C	Reimplantation of kidney
50400	C	Revision of kidney/ureter
50405	C	Revision of kidney/ureter
50500	C	Repair of kidney wound
50520	C	Close kidney-skin fistula
50525	C	Repair renal-abdomen fistula
50526	C	Repair renal-abdomen fistula
50540	C	Revision of horseshoe kidney
50546	C	Laparoscopic nephrectomy
50547	C	Laparo removal donor kidney
50570	C	Kidney endoscopy
50572	C	Kidney endoscopy
50574	C	Kidney endoscopy & biopsy
50575	C	Kidney endoscopy
50576	C	Kidney endoscopy & treatment
50578	C	Renal endoscopy/radiotracer
50580	C	Kidney endoscopy & treatment
50600	C	Exploration of ureter
50605	C	Insert ureteral support
50610	C	Removal of ureter stone
50620	C	Removal of ureter stone
50630	C	Removal of ureter stone
50650	C	Removal of ureter
50660	C	Removal of ureter
50700	C	Revision of ureter
50715	C	Release of ureter
50722	C	Release of ureter
50725	C	Release/revise ureter
50727	C	Revise ureter
50728	C	Revise ureter
50740	C	Fusion of ureter & kidney
50750	C	Fusion of ureter & kidney
50760	C	Fusion of ureters
50770	C	Splicing of ureters
50780	C	Reimplant ureter in bladder
50782	C	Reimplant ureter in bladder
50783	C	Reimplant ureter in bladder
50785	C	Reimplant ureter in bladder
50800	C	Implant ureter in bowel
50810	C	Fusion of ureter & bowel
50815	C	Urine shunt to bowel
50820	C	Construct bowel bladder
50825	C	Construct bowel bladder
50830	C	Revise urine flow
50840	C	Replace ureter by bowel
50845	C	Appendico-vesicostomy
50860	C	Transplant ureter to skin
50900	C	Repair of ureter
50920	C	Closure ureter/skin fistula
50930	C	Closure ureter/bowel fistula
50940	C	Release of ureter
50970	C	Ureter endoscopy
50972	C	Ureter endoscopy & catheter
50974	C	Ureter endoscopy & biopsy
50976	C	Ureter endoscopy & treatment
50978	C	Ureter endoscopy & tracer
50980	C	Ureter endoscopy & treatment
51060	C	Removal of ureter stone
51525	C	Removal of bladder lesion
51530	C	Removal of bladder lesion
51535	C	Repair of ureter lesion
51550	C	Partial removal of bladder
51555	C	Partial removal of bladder
51565	C	Revise bladder & ureter(s)
51570	C	Removal of bladder
51575	C	Removal of bladder & nodes
51580	C	Remove bladder/revise tract
51585	C	Removal of bladder & nodes
51590	C	Remove bladder/revise tract
51595	C	Remove bladder/revise tract
51596	C	Remove bladder/create pouch
51597	C	Removal of pelvic structures
51800	C	Revision of bladder/urethra
51820	C	Revision of urinary tract
51840	C	Attach bladder/urethra
51841	C	Attach bladder/urethra
51845	C	Repair bladder neck
51860	C	Repair of bladder wound
51865	C	Repair of bladder wound
51900	C	Repair bladder/vagina lesion
51920	C	Close bladder-uterus fistula
51925	C	Hysterectomy/bladder repair
51940	C	Correction of bladder defect
51960	C	Revision of bladder & bowel
51980	C	Construct bladder opening
53085	C	Drainage of urinary leakage
53415	C	Reconstruction of urethra
53443	C	Reconstruction of urethra
54125	C	Removal of penis
54130	C	Remove penis & nodes
54135	C	Remove penis & nodes
54332	C	Revise penis/urethra
54336	C	Revise penis/urethra
54390	C	Repair penis and bladder
54430	C	Revision of penis
54535	C	Extensive testis surgery
54560	C	Exploration for testis
54650	C	Orchiopexy (Fowler-Stephens)
55600	C	Incise sperm duct pouch
55605	C	Incise sperm duct pouch
55650	C	Remove sperm duct pouch
55601	C	Removal of prostate
55810	C	Extensive prostate surgery
55812	C	Extensive prostate surgery
55815	C	Extensive prostate surgery
55821	C	Removal of prostate
55831	C	Removal of prostate
55840	C	Extensive prostate surgery
55842	C	Extensive prostate surgery
55845	C	Extensive prostate surgery
55860	C	Surgical exposure, prostate
55862	C	Extensive prostate surgery
55865	C	Extensive prostate surgery
56630	C	Extensive vulva surgery
56631	C	Extensive vulva surgery
56632	C	Extensive vulva surgery
56633	C	Extensive vulva surgery
56634	C	Extensive vulva surgery
56637	C	Extensive vulva surgery
56640	C	Extensive vulva surgery
56805	C	Repair clitoris
57110	C	Remove vagina wall, complete
57111	C	Remove vagina tissue, compl
57112	C	Vaginectomy w/nodes, compl
57120	C	Closure of vagina
57270	C	Repair of bowel pouch
57280	C	Suspension of vagina
57282	C	Repair of vaginal prolapse
57292	C	Construct vagina with graft
57305	C	Repair rectum-vagina fistula
57307	C	Fistula repair & colostomy
57308	C	Fistula repair, transperine
57310	C	Repair urethrovaginal lesion
57311	C	Repair urethrovaginal lesion
57320	C	Repair bladder-vagina lesion
57330	C	Repair bladder-vagina lesion
57335	C	Repair vagina
57531	C	Removal of cervix, radical
57540	C	Removal of residual cervix
57545	C	Remove cervix/repair pelvis
58140	C	Removal of uterus lesion
58150	C	Total hysterectomy
58152	C	Total hysterectomy
58180	C	Partial hysterectomy
58200	C	Extensive hysterectomy
58210	C	Extensive hysterectomy
58240	C	Removal of pelvis contents
58260	C	Vaginal hysterectomy
58262	C	Vaginal hysterectomy
58263	C	Vaginal hysterectomy
58267	C	Hysterectomy & vagina repair
58270	C	Hysterectomy & vagina repair
58275	C	Hysterectomy/revise vagina
58280	C	Hysterectomy/revise vagina
58285	C	Extensive hysterectomy
58400	C	Suspension of uterus
58410	C	Suspension of uterus
58520	C	Repair of ruptured uterus
58540	C	Revision of uterus
58600	C	Division of fallopian tube
58605	C	Division of fallopian tube
58611	C	Ligate oviduct(s) add-on
58615	C	Occlude fallopian tube(s)
58700	C	Removal of fallopian tube
58720	C	Removal of ovary/tube(s)
58740	C	Revise fallopian tube(s)
58750	C	Repair oviduct
58752	C	Revise ovarian tube(s)
58760	C	Remove tubal obstruction
58770	C	Create new tubal opening
58805	C	Drainage of ovarian cyst(s)
58822	C	Drain ovary abscess, percut
58823	C	Drain pelvic abscess, percut
58825	C	Transposition, ovary(s)
58940	C	Removal of ovary(s)
58943	C	Removal of ovary(s)
58950	C	Resect ovarian malignancy
58951	C	Resect ovarian malignancy
58952	C	Resect ovarian malignancy
58960	C	Exploration of abdomen
59100	C	Remove uterus lesion
59120	C	Treat ectopic pregnancy
59121	C	Treat ectopic pregnancy
59130	C	Treat ectopic pregnancy
59135	C	Treat ectopic pregnancy
59136	C	Treat ectopic pregnancy
59140	C	Treat ectopic pregnancy
59325	C	Revision of cervix

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ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

CPT/ HCPCS	HOPD Status Indicator	Description
59350	C	Repair of uterus
59514	C	Cesarean delivery only
59525	C	Remove uterus after cesarean
59620	C	Attempted vbac delivery only
59830	C	Treat uterus infection
59850	C	Abortion
59851	C	Abortion
59852	C	Abortion
59855	C	Abortion
59856	C	Abortion
59857	C	Abortion
59866	C	Abortion (mpr)
60212	C	Partial thyroid excision
60252	C	Removal of thyroid
60254	C	Extensive thyroid surgery
60260	C	Repeat thyroid surgery
60270	C	Removal of thyroid
60271	C	Removal of thyroid
60502	C	Re-explore parathyroids
60505	C	Explore parathyroid glands
60512	C	Autotransplant parathyroid
60520	C	Removal of thymus gland
60521	C	Removal of thymus gland
60522	C	Removal of thymus gland
60540	C	Explore adrenal gland
60545	C	Explore adrenal gland
60600	C	Remove carotid body lesion
60605	C	Remove carotid body lesion
60650	C	Laparoscopy adrenalectomy
61105	C	Twist drill hole
61107	C	Drill skull for implantation
61108	C	Drill skull for drainage
61120	C	Burr hole for puncture
61140	C	Pierce skull for biopsy
61150	C	Pierce skull for drainage
61151	C	Pierce skull for drainage
61154	C	Pierce skull & remove clot
61156	C	Pierce skull for drainage
61210	C	Pierce skull, implant device
61250	C	Pierce skull & explore
61253	C	Pierce skull & explore
61304	C	Open skull for exploration
61305	C	Open skull for exploration
61312	C	Open skull for drainage
61313	C	Open skull for drainage
61314	C	Open skull for drainage
61315	C	Open skull for drainage
61320	C	Open skull for drainage
61321	C	Open skull for drainage
61332	C	Explore/biopsy eye socket
61333	C	Explore orbit/remove lesion
61334	C	Explore orbit/remove object
61340	C	Relieve cranial pressure
61343	C	Incise skull (press relief)
61345	C	Relieve cranial pressure
61440	C	Incise skull for surgery
61450	C	Incise skull for surgery
61458	C	Incise skull for brain wound
61460	C	Incise skull for surgery
61470	C	Incise skull for surgery
61480	C	Incise skull for surgery
61490	C	Incise skull for surgery
61500	C	Removal of skull lesion
61501	C	Remove infected skull bone
61510	C	Removal of brain lesion
61512	C	Remove brain lining lesion
61514	C	Removal of brain abscess
61516	C	Removal of brain lesion
61518	C	Removal of brain lesion
61519	C	Remove brain lining lesion
61520	C	Removal of brain lesion
61521	C	Removal of brain lesion
61522	C	Removal of brain abscess
61524	C	Removal of brain lesion
61526	C	Removal of brain lesion
61530	C	Removal of brain lesion
61531	C	Implant brain electrodes
61533	C	Implant brain electrodes
61534	C	Removal of brain lesion
61535	C	Remove brain electrodes
61536	C	Removal of brain lesion
61538	C	Removal of brain tissue
61539	C	Removal of brain tissue
61541	C	Incision of brain tissue
61542	C	Removal of brain tissue
61543	C	Removal of brain tissue
61544	C	Remove & treat brain lesion
61545	C	Excision of brain tumor
61546	C	Removal of pituitary gland
61548	C	Removal of pituitary gland
61550	C	Release of skull seams
61552	C	Release of skull seams
61556	C	Incise skull/sutures
61557	C	Incise skull/sutures
61558	C	Excision of skull/sutures
61559	C	Excision of skull/sutures
61563	C	Excision of skull tumor
61564	C	Excision of skull tumor
61570	C	Remove foreign body, brain
61571	C	Incise skull for brain wound
61575	C	Skull base/brainstem surgery
61576	C	Skull base/brainstem surgery
61580	C	Craniofacial approach, skull
61581	C	Craniofacial approach, skull
61582	C	Craniofacial approach, skull
61583	C	Craniofacial approach, skull
61584	C	Orbitocranial approach/skull
61585	C	Orbitocranial approach/skull
61586	C	Resect nasopharynx, skull
61590	C	Infratemporal approach/skull
61591	C	Infratemporal approach/skull
61592	C	Orbitocranial approach/skull
61595	C	Transtemporal approach/skull
61596	C	Transcochlear approach/skull
61597	C	Transcondylar approach/skull
61598	C	Transpetrosal approach/skull
61600	C	Resect/excise cranial lesion
61601	C	Resect/excise cranial lesion
61605	C	Resect/excise cranial lesion
61606	C	Resect/excise cranial lesion
61607	C	Resect/excise cranial lesion
61608	C	Resect/excise cranial lesion
61609	C	Transect artery, sinus
61610	C	Transect artery, sinus
61611	C	Transect artery, sinus
61612	C	Transect artery, sinus
61613	C	Remove aneurysm, sinus
61615	C	Resect/excise lesion, skull
61616	C	Resect/excise lesion, skull
61618	C	Repair dura
61619	C	Repair dura
61624	C	Occlusion/embolization cath
61626	C	Occlusion/embolization cath
61680	C	Intracranial vessel surgery
61682	C	Intracranial vessel surgery
61684	C	Intracranial vessel surgery
61686	C	Intracranial vessel surgery
61690	C	Intracranial vessel surgery
61692	C	Intracranial vessel surgery
61700	C	Inner skull vessel surgery
61702	C	Inner skull vessel surgery
61703	C	Clamp neck artery
61705	C	Revise circulation to head
61708	C	Revise circulation to head
61710	C	Revise circulation to head
61711	C	Fusion of skull arteries
61720	C	Incise skull/brain surgery
61735	C	Incise skull/brain surgery
61750	C	Incise skull/brain biopsy
61751	C	Brain biopsy w/ct/mr guide
61760	C	Implant brain electrodes
61770	C	Incise skull for treatment
61791	C	Treat trigeminal tract
61795	C	Brain surgery using computer
61850	C	Implant neuroelectrodes
61860	C	Implant neuroelectrodes
61862	C	Implant neurostimul, subcort
61870	C	Implant neuroelectrodes
61875	C	Implant neuroelectrodes
61880	C	Revise/remove neuroelectrode
61886	C	Implant neurostim arrays
61888	C	Revise/remove neuroreceiver
62000	C	Treat skull fracture
62005	C	Treat skull fracture
62010	C	Treatment of head injury
62100	C	Repair brain fluid leakage
62115	C	Reduction of skull defect
62116	C	Reduction of skull defect
62117	C	Reduction of skull defect
62120	C	Repair skull cavity lesion
62121	C	Incise skull repair
62140	C	Repair of skull defect
62141	C	Repair of skull defect
62142	C	Remove skull plate/flap
62143	C	Replace skull plate/flap
62145	C	Repair of skull & brain
62146	C	Repair of skull with graft
62147	C	Repair of skull with graft
62160	C	Establish brain cavity shunt
62190	C	Establish brain cavity shunt
62192	C	Establish brain cavity shunt
62200	C	Establish brain cavity shunt
62201	C	Establish brain cavity shunt
62220	C	Establish brain cavity shunt
62223	C	Establish brain cavity shunt
62256	C	Remove brain cavity shunt
62258	C	Replace brain cavity shunt
62351	C	Implant spinal canal cath
63001	C	Removal of spinal lamina
63003	C	Removal of spinal lamina
63005	C	Removal of spinal lamina
63011	C	Removal of spinal lamina
63012	C	Removal of spinal lamina
63015	C	Removal of spinal lamina
63016	C	Removal of spinal lamina
63017	C	Removal of spinal lamina
63020	C	Neck spine disk surgery
63030	C	Low back disk surgery
63035	C	Spinal disk surgery add-on
63040	C	Neck spine disk surgery
63042	C	Low back disk surgery
63045	C	Removal of spinal lamina
63046	C	Removal of spinal lamina
63047	C	Removal of spinal lamina
63048	C	Remove spinal lamina add-on
63055	C	Decompress spinal cord
63056	C	Decompress spinal cord
63057	C	Decompress spine cord add-on
63064	C	Decompress spinal cord
63066	C	Decompress spine cord add-on
63075	C	Neck spine disk surgery
63076	C	Neck spine disk surgery
63077	C	Spine disk surgery, thorax
63078	C	Spine disk surgery, thorax

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ADDEN
WOU
PROC

CPT/ HCPCS
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Indicato

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ADDENDUM E.—CPT CODES WHICH WOULD BE PAID ONLY AS INPATIENT PROCEDURES—Continued

CPT/ HCPCS	HOPD Status Indicator	Description
63081	C	Removal of vertebral body
63082	C	Remove vertebral body add-on
63085	C	Removal of vertebral body
63086	C	Remove vertebral body add-on
63087	C	Removal of vertebral body
63088	C	Remove vertebral body add-on
63090	C	Removal of vertebral body
63091	C	Remove vertebral body add-on
63170	C	Incise spinal cord tract(s)
63172	C	Drainage of spinal cyst
63173	C	Drainage of spinal cyst
63180	C	Revise spinal cord ligaments
63182	C	Revise spinal cord ligaments
63185	C	Incise spinal column/nerves
63190	C	Incise spinal column/nerves
63191	C	Incise spinal column/nerves
63194	C	Incise spinal column & cord
63195	C	Incise spinal column & cord
63196	C	Incise spinal column & cord
63197	C	Incise spinal column & cord
63198	C	Incise spinal column & cord
63199	C	Incise spinal column & cord
63200	C	Release of spinal cord
63250	C	Revise spinal cord vessels
63251	C	Revise spinal cord vessels
63252	C	Revise spinal cord vessels
63265	C	Excise intraspinal lesion
63266	C	Excise intraspinal lesion
63267	C	Excise intraspinal lesion
63268	C	Excise intraspinal lesion
63270	C	Excise intraspinal lesion
63271	C	Excise intraspinal lesion
63272	C	Excise intraspinal lesion
63273	C	Excise intraspinal lesion
63275	C	Biopsy/excise spinal tumor
63276	C	Biopsy/excise spinal tumor
63277	C	Biopsy/excise spinal tumor
63278	C	Biopsy/excise spinal tumor
63280	C	Biopsy/excise spinal tumor
63281	C	Biopsy/excise spinal tumor
63282	C	Biopsy/excise spinal tumor
63283	C	Biopsy/excise spinal tumor
63285	C	Biopsy/excise spinal tumor
63286	C	Biopsy/excise spinal tumor
63287	C	Biopsy/excise spinal tumor
63290	C	Biopsy/excise spinal tumor
63300	C	Removal of vertebral body
63301	C	Removal of vertebral body
63302	C	Removal of vertebral body
63303	C	Removal of vertebral body
63304	C	Removal of vertebral body
63305	C	Removal of vertebral body
63306	C	Removal of vertebral body
63307	C	Removal of vertebral body
63308	C	Remove vertebral body add-on
63655	C	Implant neuroelectrodes
63700	C	Repair of spinal herniation
63702	C	Repair of spinal herniation
63704	C	Repair of spinal herniation
63706	C	Repair of spinal herniation
63707	C	Repair spinal fluid leakage
63709	C	Repair spinal fluid leakage
63710	C	Graft repair of spine defect
63740	C	Install spinal shunt
63741	C	Install spinal shunt
64752	C	Incision of vagus nerve
64755	C	Incision of stomach nerves
64760	C	Incision of vagus nerve
64763	C	Incise hip/thigh nerve
64766	C	Incise hip/thigh nerve
64802	C	Remove sympathetic nerves
64804	C	Remove sympathetic nerves
64809	C	Remove sympathetic nerves
64818	C	Remove sympathetic nerves
64820	C	Remove sympathetic nerves
64866	C	Fusion of facial/other nerve
64868	C	Fusion of facial/other nerve
65273	C	Repair of eye wound
69150	C	Extensive ear canal surgery
69155	C	Extensive ear/neck surgery
69502	C	Mastoidectomy
69535	C	Remove part of temporal bone
69554	C	Remove ear lesion
69950	C	Incise inner ear nerve
69970	C	Remove inner ear lesion
74300	C	X-ray bile ducts/pancreas
74301	C	X-rays at surgery add-on
75900	C	Arterial catheter exchange
75940	C	X-ray placement, vein filter
75945	C	Intravascular us
75946	C	Intravascular us add-on
75960	C	Transcatheter intro, stent
75961	C	Retrieval, broken catheter
75962	C	Repair arterial blockage
75964	C	Repair artery blockage, each
75966	C	Repair arterial blockage
75968	C	Repair artery blockage, each
75970	C	Vascular biopsy
75978	C	Repair venous blockage
75992	C	Atherectomy, x-ray exam
75993	C	Atherectomy, x-ray exam
75994	C	Atherectomy, x-ray exam
75995	C	Atherectomy, x-ray exam
75996	C	Atherectomy, x-ray exam
92970	C	Cardioassist, internal
92971	C	Cardioassist, external
92975	C	Dissolve clot, heart vessel
92977	C	Dissolve clot, heart vessel
92978	C	Intravasc us, heart add-on
92979	C	Intravasc us, heart add-on
92986	C	Revision of aortic valve
92987	C	Revision of mitral valve
92990	C	Revision of pulmonary valve
92992	C	Revision of heart chamber
92993	C	Revision of heart chamber
92997	C	Pul art balloon repr, percut
92998	C	Pul art balloon repr, percut
94652	C	Pressure breathing (IPPB)
94762	C	Measure blood oxygen level
95920	C	Intraop nerve test add-on
95961	C	Electrode stimulation, brain
95962	C	Electrode stim, brain add-on
99190	C	Special pump services
99191	C	Special pump services
99192	C	Special pump services
99234	C	Observ/hosp same date
99235	C	Observ/hosp same date
99236	C	Observ/hosp same date
99251	C	Initial inpatient consult
99252	C	Initial inpatient consult
99253	C	Initial inpatient consult
99254	C	Initial inpatient consult
99255	C	Initial inpatient consult
99261	C	Follow-up inpatient consult
99262	C	Follow-up inpatient consult
99263	C	Follow-up inpatient consult
99295	C	Neonatal critical care
99296	C	Neonatal critical care
99297	C	Neonatal critical care
99298	C	Neonatal critical care
99356	C	Prolonged service, inpatient
99357	C	Prolonged service, inpatient
99433	C	Normal newborn care/hospital
G0180	C	Cryo. ablation, prostate

ADDENDUM F.—STATUS INDICATORS: HOW VARIOUS SERVICES ARE TREATED UNDER OUTPATIENT PPS

Indicator	Service	Status
A	Pulmonary Rehabilitation Clinical Trial	Not Paid Under PPS
C	Inpatient Procedures	Admit Patient; Bill as Inpatient
A	Durable Medical Equipment, Prosthetics and	DMEPOS Fee Schedule
E	Non-Covered Items and Services	Non-paid
A	Physical, Occupational and SpeechTherapy	Rehabilitation Fee Schedule
A	Ambulance	Ambulance Fee Schedule
A	EPO for ESRD Patients	National Rate
A	Clinical Diagnostic Laboratory Services	Laboratory Fee Schedule
A	Physican Services for ESRD Patients	Not Paid Under PPS
A	Screening Mammography	National Rate
N	Incidental Services, packaged into APC Rat	Packaged
P	Partial Hospitalization	Paid Per Diem APC
S	Significant Procedure, Not Discounted When	Paid
T	Procedure, Multiple When Discount Applies	Paid
V	Visit to Clinic or Emergency Department	Paid
X	Ancillary Service	Paid

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL

Hospital	SMI
010001	3.13
010004	1.77
010005	2.17
010006	3.08
010007	1.70
010008	1.86
010009	1.69
010010	2.44
010011	2.56
010012	2.21
010015	2.29
010016	2.55
010018	6.45
010019	2.41
010021	1.74
010022	2.02
010023	2.85
010024	2.88
010025	2.14
010027	1.10
010029	3.22
010031	2.04
010032	1.28
010033	1.53
010034	2.69
010035	3.05
010036	2.72
010038	4.48
010039	2.19
010040	2.62
010043	2.32
010044	2.21
010045	2.00
010046	2.09
010047	1.67
010049	3.06
010050	1.93
010051	1.60
010052	1.60
010053	2.00
010054	1.88
010055	2.86
010056	2.70
010058	1.25
010059	1.90
010061	2.62
010062	1.81
010064	3.43
010065	2.41
010066	1.42
010068	1.39
010069	2.34
010072	2.61
010073	2.61
010078	2.55
010079	2.52
010080	1.08
010083	2.25
010084	4.17
010087	2.71
010089	2.61
010090	2.43
010091	1.63
010092	2.55
010094	2.50
010095	1.50
010097	2.07
010098	1.75
010099	2.14
010100	2.79
010101	2.38
010102	1.32
010103	2.38
010104	2.66
010108	1.95
010109	2.24
010110	1.20
010112	1.87
010113	2.85
010114	2.48
010115	1.47
010118	2.56
010119	2.13
010120	2.04
010123	3.11
010124	3.42
010125	1.44
010126	2.11
010127	3.32
010128	1.40
010129	1.84
010130	1.67
010131	2.80
010134	1.56
010137	1.57
010138	1.32
010139	2.72
010143	2.02
010144	2.70
010145	1.61
010146	3.10
010148	1.94
010149	2.84
010150	2.15
010152	2.14
010155	1.63
013025	1.64
013027	1.11
013028	0.93
013300	1.48
014002	1.41
020001	2.78
020002	2.30
020004	1.92
020005	1.07
020006	2.04
020007	0.87
020008	2.33
020009	1.05
020010	0.58
020011	1.02
020012	3.41
020013	1.89
020014	1.78
020017	3.41
020024	1.84
020025	1.06
024001	1.65
030001	2.73
030002	2.64
030003	2.15
030004	0.86
030006	2.79
030007	2.55
030009	1.43
030010	2.87
030011	3.75
030012	1.90
030013	2.56
030014	3.09
030016	1.86
030017	2.92
030018	3.33
030019	2.49
030022	1.73
030023	2.74
030024	3.70
030025	1.79
030027	1.63
030030	3.06
030033	2.60
030034	1.39
030035	3.18
030036	2.49
030037	4.59
030038	3.33
030040	1.99
030041	1.30
030043	2.57
030044	2.07
030047	1.68
030049	0.78
030054	0.83
030055	2.47
030059	2.66
030060	2.25
030061	2.09
030062	2.47
030064	2.59
030065	3.18
030067	1.59
030068	2.56
030069	3.02
030080	2.74
030083	2.58
030085	2.55
030086	2.27
030087	3.66
030088	2.22
030089	2.78
030092	2.94
030093	1.63
030094	2.11
030095	3.28
030099	2.09
033025	1.82
033026	2.18
033028	1.64
034004	1.58
034008	3.05
034009	1.55
034010	1.55
034013	1.57
034019	1.52
040001	2.42
040002	2.24
040003	1.98
040004	3.62
040005	2.05
040007	4.24
040008	1.31
040010	3.21
040011	2.11
040014	2.81
040015	1.77
040016	2.02
040017	2.57
040018	2.87
040019	2.10
040020	3.01
040021	3.28
040022	2.43
040024	1.80

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
040025	1.76
040026	2.63
040027	3.19
040028	2.17
040029	3.57
040030	1.37
040032	0.92
040035	1.17
040036	3.29
040037	2.01
040039	2.51
040040	1.35
040041	3.36
040042	2.13
040044	1.40
040045	1.65
040047	1.77
040048	2.46
040050	2.88
040051	2.07
040053	1.60
040054	3.26
040055	2.81
040058	2.42
040060	1.45
040062	2.58
040064	1.41
040066	3.53
040067	1.19
040070	1.77
040072	2.31
040074	2.91
040075	1.74
040076	1.79
040077	1.77
040078	2.74
040080	1.87
040081	0.93
040082	1.77
040084	3.12
040085	1.90
040088	3.29
040090	1.43
040091	1.73
040093	1.37
040100	2.39
040105	1.29
040106	2.06
040107	1.59
040109	2.02
040114	5.13
040116	2.93
040118	2.82
040119	3.14
040124	2.53
040126	1.95
040132	0.96
043026	1.30
043027	0.85
043028	1.17
043029	1.86
043031	0.82
043032	3.76
043300	1.57
044004	1.54
044005	1.57
044006	1.64
044010	1.65
044012	1.59
050002	2.06
050006	2.44

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
050007	2.29
050009	2.97
050013	3.22
050014	2.86
050015	2.38
050016	2.13
050017	5.03
050018	2.55
050021	2.26
050022	2.85
050024	2.28
050025	2.34
050026	2.34
050028	2.52
050029	2.32
050030	1.88
050032	3.20
050033	2.24
050036	2.67
050038	1.49
050039	2.85
050042	3.26
050043	2.85
050045	3.17
050046	2.32
050047	3.05
050051	1.60
050054	1.75
050055	1.93
050056	3.46
050057	3.51
050058	2.74
050060	2.11
050061	5.22
050063	2.75
050065	2.53
050066	2.43
050067	1.93
050068	2.71
050069	2.78
050077	3.23
050078	2.67
050079	2.20
050080	2.13
050081	1.14
050082	2.90
050084	2.44
050088	1.44
050089	2.10
050090	2.52
050091	2.57
050092	1.87
050093	3.76
050095	3.98
050096	3.94
050097	3.79
050099	2.27
050100	2.75
050101	2.80
050102	2.14
050103	3.29
050104	2.27
050107	2.69
050108	2.76
050109	2.26
050110	3.28
050111	5.30
050112	2.67
050113	1.35
050114	2.76
050115	2.18

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
050116	2.99
050117	3.02
050118	2.63
050121	3.26
050122	2.54
050124	2.32
050125	3.20
050126	2.94
050127	2.04
050128	2.45
050129	2.73
050131	2.45
050132	2.98
050133	2.08
050135	1.59
050136	2.67
050144	2.46
050145	2.76
050146	1.41
050148	2.31
050149	2.40
050150	2.44
050152	2.31
050153	2.58
050155	2.14
050158	3.58
050159	1.48
050167	1.42
050168	3.40
050169	2.78
050170	2.83
050172	1.89
050173	2.82
050174	3.38
050175	3.37
050177	1.89
050179	2.63
050180	2.32
050183	1.30
050186	1.96
050188	3.77
050189	2.48
050191	2.69
050192	1.60
050193	1.89
050194	2.70
050195	2.38
050196	2.39
050197	2.76
050204	3.22
050205	2.35
050207	3.48
050208	2.09
050211	2.71
050213	1.28
050214	2.05
050215	3.07
050217	2.15
050219	1.98
050222	2.61
050224	2.71
050225	2.28
050226	2.85
050228	1.17
050230	2.91
050231	3.44
050232	2.92
050233	3.37
050234	1.67
050235	2.64
050236	2.17

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
050238	2.14
050239	2.64
050240	2.66
050241	2.55
050242	2.23
050243	2.05
050245	1.24
050248	1.49
050251	2.23
050253	2.29
050254	3.23
050256	1.39
050257	1.90
050260	1.38
050261	2.11
050262	2.22
050264	2.24
050267	2.80
050270	2.61
050272	2.14
050274	1.56
050276	1.32
050277	2.59
050278	2.70
050279	1.93
050280	2.70
050281	3.99
050282	2.17
050283	1.16
050286	1.02
050289	2.76
050290	2.40
050291	1.73
050292	1.41
050293	1.42
050295	2.63
050296	2.45
050298	2.08
050299	3.08
050300	2.95
050301	2.95
050302	2.87
050305	2.12
050307	3.67
050308	2.42
050309	3.00
050310	2.96
050312	2.71
050313	3.15
050315	1.20
050317	1.84
050320	1.26
050324	3.46
050325	1.73
050327	2.36
050328	2.69
050329	1.93
050331	2.12
050333	1.10
050334	3.36
050335	1.34
050336	2.48
050337	1.78
050342	2.84
050343	3.36
050348	1.87
050349	1.17
050350	2.25
050351	3.35
050352	2.05
050353	2.61
050355	0.96
050357	2.47
050359	3.58
050360	3.42
050366	2.09
050367	1.90
050369	2.41
050377	0.95
050378	2.89
050379	1.56
050380	3.91
050382	2.62
050388	1.03
050390	2.90
050391	2.02
050392	1.48
050393	2.93
050394	3.37
050396	4.28
050397	1.44
050401	2.30
050404	1.55
050406	1.36
050407	2.93
050410	1.05
050414	2.65
050417	3.03
050418	1.29
050419	2.69
050420	2.12
050421	2.38
050423	2.49
050424	2.95
050426	2.60
050427	0.76
050430	1.38
050431	3.90
050432	2.60
050433	1.55
050434	1.37
050435	2.38
050436	1.58
050438	2.65
050440	1.53
050441	2.19
050443	1.62
050444	2.31
050446	1.43
050447	1.60
050448	3.14
050454	1.78
050455	3.70
050456	5.49
050457	2.23
050459	2.44
050468	1.71
050469	1.68
050470	2.22
050471	3.14
050476	2.73
050477	4.61
050478	1.57
050481	2.80
050482	1.06
050483	3.44
050485	3.44
050486	2.39
050488	2.21
050491	2.52
050492	2.39
050494	3.25
050496	2.55
050497	1.04
050498	2.58
050502	3.66
050503	3.44
050506	2.44
050516	3.39
050517	2.78
050522	2.46
050523	2.22
050526	2.04
050528	2.12
050531	3.41
050534	2.45
050535	2.86
050537	2.76
050539	2.31
050542	2.06
050543	3.65
050545	0.99
050546	0.94
050547	1.12
050548	0.81
050549	2.87
050550	2.38
050551	2.61
050552	1.32
050557	2.30
050559	2.89
050560	2.10
050564	2.61
050565	2.02
050566	1.55
050567	2.31
050568	2.82
050569	2.55
050570	3.36
050571	3.32
050573	2.43
050577	4.54
050579	2.39
050580	2.36
050581	2.45
050583	3.40
050584	2.20
050585	2.85
050586	3.12
050588	2.72
050589	3.13
050590	3.28
050591	2.53
050592	3.06
050593	1.95
050594	3.76
050597	2.92
050599	1.65
050601	2.91
050607	1.80
050608	1.91
050613	0.75
050615	2.77
050616	2.60
050618	1.32
050624	2.96
050625	2.60
050630	2.33
050633	2.71
050636	3.18
050638	1.47
050641	2.70
050644	2.58

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
050660	1.47
050661	1.54
050662	1.05
050663	2.23
050667	1.07
050668	1.18
050676	0.91
050678	3.03
050680	1.56
050682	1.29
050684	2.07
050685	2.62
050688	1.75
050689	2.53
050693	2.19
050694	2.25
050695	1.71
050696	3.37
050697	4.88
050699	2.68
050700	2.52
050701	2.18
050702	0.93
050704	2.10
050709	2.93
050713	3.24
052031	1.13
053026	1.62
053027	1.03
053028	1.25
053029	1.40
053030	0.97
053031	1.25
053032	0.83
053033	1.14
053034	1.85
053035	1.41
053036	1.39
053037	1.42
053300	1.47
053301	2.09
053302	1.70
053305	1.00
054001	1.55
054003	2.23
054009	1.56
054012	1.60
054032	1.55
054050	1.85
054053	1.66
054055	1.32
054060	1.55
054064	1.32
054065	1.53
054069	1.55
054074	1.55
054078	2.06
054085	1.55
054087	1.55
054091	1.82
054093	2.49
054094	1.59
054095	1.55
054096	1.58
054097	1.57
054098	1.32
054099	1.69
054104	2.67
054105	1.55
054106	1.56
054108	1.45

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
054110	1.55
054111	1.55
054113	1.55
054115	1.55
054116	1.57
054119	1.55
054122	1.05
054123	1.58
054125	1.83
054126	1.55
054130	1.61
054131	1.85
054133	0.72
060001	3.12
060003	3.01
060004	1.51
060006	2.24
060007	1.59
060008	2.16
060009	2.35
060010	2.53
060011	1.32
060012	1.94
060013	1.91
060014	2.56
060015	1.84
060016	2.15
060018	2.30
060020	2.29
060022	1.85
060023	2.62
060024	1.62
060027	2.23
060028	2.77
060029	1.10
060030	2.93
060031	2.37
060032	2.92
060033	1.69
060034	2.06
060036	1.88
060037	1.48
060038	1.46
060041	0.99
060042	1.65
060043	1.29
060044	2.43
060046	3.04
060047	0.95
060049	2.79
060050	2.00
060052	1.79
060053	1.78
060054	2.64
060056	1.10
060057	2.11
060058	1.34
060060	1.27
060062	1.52
060063	0.78
060064	3.29
060065	2.34
060068	1.25
060070	1.32
060071	2.19
060073	1.33
060075	2.68
060076	1.96
060085	1.17
060087	2.10
060088	1.53

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
060090	1.60
060096	2.09
060100	2.06
060103	4.46
060104	2.40
060107	1.34
062009	0.80
062011	2.22
063026	1.56
063027	1.56
063030	2.31
063301	1.51
063302	1.41
064007	1.55
064009	1.39
064010	1.61
064012	1.52
064016	2.18
064020	1.55
070001	2.88
070002	2.63
070003	2.19
070004	2.36
070005	2.09
070006	2.48
070007	2.92
070008	2.12
070009	2.79
070010	2.68
070011	2.12
070012	2.27
070015	2.25
070016	2.15
070017	2.56
070018	2.28
070019	2.96
070020	2.24
070021	2.61
070022	2.69
070024	2.52
070025	3.27
070026	2.20
070027	2.35
070028	2.28
070029	2.48
070030	2.60
070031	2.23
070033	2.12
070035	2.48
070036	2.07
070039	1.17
072003	1.05
072004	0.87
072008	1.85
073025	1.16
074000	1.50
074007	1.55
074008	1.78
080001	3.31
080002	2.32
080003	2.90
080004	2.55
080005	2.95
080006	2.52
080007	2.26
083300	3.78
084002	1.67
090001	3.61
090002	1.92
090003	1.81
090004	2.59

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
090006	2.60
090007	1.28
090008	2.52
090010	2.06
090011	2.49
090015	0.75
092002	0.80
093025	1.08
093300	2.05
094004	1.33
100001	1.62
100002	2.75
100004	1.94
100006	2.43
100007	3.08
100008	3.40
100009	2.57
100010	2.79
100012	3.06
100014	2.68
100015	2.69
100017	2.75
100018	2.01
100019	3.36
100020	3.14
100022	1.43
100023	2.70
100024	3.07
100025	2.33
100026	2.86
100027	1.58
100028	2.94
100029	2.61
100030	3.15
100032	2.22
100034	2.49
100035	2.62
100038	2.39
100039	2.94
100040	3.26
100043	2.46
100044	2.58
100045	2.36
100046	2.41
100047	2.06
100048	1.71
100049	2.76
100050	2.35
100051	2.67
100052	4.07
100053	2.62
100054	2.09
100055	2.32
100056	3.65
100057	3.13
100060	2.58
100061	2.80
100062	3.23
100063	2.34
100067	2.59
100068	2.16
100069	2.65
100070	2.58
100071	2.27
100072	2.44
100073	2.03
100075	2.32
100076	2.55
100077	3.36
100078	1.17
100079	1.77
100080	2.43
100081	1.91
100082	2.40
100084	2.18
100085	2.40
100086	2.52
100087	4.08
100088	3.46
100090	2.89
100093	2.95
100098	1.56
100099	2.99
100102	2.09
100103	1.25
100105	2.85
100106	2.89
100107	2.72
100108	2.15
100109	2.87
100110	2.33
100112	1.04
100113	2.91
100114	2.71
100117	3.23
100118	1.99
100121	2.91
100122	2.77
100124	1.97
100125	2.46
100126	2.26
100127	2.97
100128	2.50
100129	3.40
100130	2.33
100131	3.08
100132	2.39
100134	1.61
100135	4.27
100137	2.28
100138	1.27
100139	1.51
100140	2.57
100142	2.03
100144	2.86
100145	2.34
100146	2.04
100147	1.85
100150	2.63
100151	4.07
100154	3.38
100156	2.44
100157	3.67
100159	1.51
100160	2.03
100161	2.32
100162	2.24
100165	2.22
100167	4.26
100168	2.54
100169	2.75
100170	2.92
100172	2.44
100173	3.21
100174	2.18
100175	1.94
100176	1.96
100177	2.98
100179	3.31
100180	2.10
100181	4.55
100183	2.80
100187	2.46
100189	2.75
100191	2.47
100199	3.39
100200	4.10
100203	2.22
100204	2.51
100206	2.51
100208	2.24
100209	2.61
100210	2.68
100211	2.02
100212	2.45
100213	1.93
100217	3.59
100220	3.22
100221	2.58
100222	1.66
100223	2.21
100224	2.34
100225	2.65
100226	1.90
100228	2.19
100229	2.01
100230	1.87
100231	2.31
100232	2.67
100234	2.30
100235	2.21
100236	2.19
100237	2.92
100238	3.13
100240	5.17
100241	2.57
100242	3.00
100243	2.12
100244	2.54
100246	3.15
100248	1.94
100249	2.45
100252	2.42
100253	2.76
100254	2.22
100255	2.31
100256	2.25
100258	2.48
100259	2.80
100260	3.68
100262	3.20
100263	2.45
100264	2.11
100265	2.41
100266	2.85
100267	2.70
100268	2.33
100269	2.74
100270	1.21
100271	1.86
100275	2.38
100276	3.07
100277	0.95
100279	2.11
100280	1.90
100281	2.17
100282	1.72
102009	0.94
102013	3.59
103026	0.50
103027	1.15
103028	1.41
103030	0.81

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
103031	1.52
103032	1.73
103034	1.36
103300	7.02
103301	2.56
104008	1.72
104015	1.55
104016	1.53
104017	1.55
104024	1.75
104026	1.55
104029	1.55
104034	1.56
104036	1.58
104037	1.55
104038	1.68
104041	1.81
104045	1.69
104046	1.55
104047	1.55
104052	1.56
104054	1.57
104056	1.54
104060	1.43
110001	2.73
110002	1.75
110003	2.69
110004	2.62
110005	2.65
110006	3.33
110007	2.64
110008	2.44
110009	1.15
110010	3.09
110011	2.39
110013	1.55
110014	1.70
110015	1.76
110016	3.17
110017	1.28
110018	2.22
110020	3.19
110023	2.44
110024	3.80
110025	2.85
110026	1.76
110027	1.62
110028	2.89
110029	2.10
110030	3.04
110031	2.55
110032	2.72
110033	2.97
110034	1.43
110035	2.93
110036	2.93
110037	1.63
110038	2.20
110039	2.96
110040	2.05
110041	2.04
110042	3.56
110043	3.18
110044	2.66
110045	2.47
110046	2.26
110048	1.63
110049	1.30
110050	1.78
110051	1.91
110052	1.04
110054	2.16
110056	1.26
110059	2.38
110061	1.25
110062	0.97
110063	1.50
110064	2.05
110065	1.13
110066	2.56
110069	2.55
110070	1.84
110071	1.29
110072	1.55
110073	2.16
110074	2.78
110075	2.39
110076	2.79
110078	2.95
110079	1.23
110080	1.97
110082	3.62
110083	3.30
110086	1.97
110087	2.75
110088	0.94
110089	2.39
110091	3.09
110092	1.71
110093	1.48
110094	1.01
110095	2.97
110096	1.48
110097	1.32
110098	1.77
110100	1.27
110101	1.56
110103	1.28
110104	2.20
110105	2.49
110107	2.05
110108	0.81
110109	1.61
110111	1.68
110112	1.52
110113	1.41
110114	1.60
110115	2.62
110118	0.76
110120	1.15
110121	4.84
110122	2.79
110124	2.19
110125	3.21
110127	1.59
110128	2.41
110129	2.94
110130	1.82
110132	2.04
110134	1.23
110135	4.68
110140	2.41
110141	1.22
110142	1.50
110143	3.07
110144	1.92
110146	1.72
110149	1.57
110150	2.56
110152	1.77
110153	2.02
110155	1.35
110156	1.52
110161	3.52
110163	3.22
110164	2.47
110165	2.62
110166	2.82
110168	2.47
110169	7.21
110171	2.37
110172	3.25
110174	1.87
110176	2.69
110177	2.47
110178	8.34
110179	2.22
110181	1.14
110183	2.32
110184	2.16
110185	1.45
110186	3.32
110187	2.45
110188	2.91
110189	1.99
110190	1.73
110191	3.54
110192	2.42
110193	3.14
110194	1.47
110195	1.20
110198	2.98
110200	4.48
110201	2.34
110203	1.35
110205	1.77
110207	1.28
110208	1.59
110211	1.00
110212	1.99
112000	1.04
112003	1.69
112004	0.79
113026	1.40
113027	0.40
113300	2.36
114000	1.55
114003	1.55
114008	1.55
114010	1.67
114016	1.54
114017	1.61
114022	1.55
114023	1.59
114024	1.57
114027	1.55
114030	1.67
114032	1.55
114033	1.54
114034	1.55
120001	2.95
120002	2.93
120003	2.15
120004	2.18
120005	3.21
120006	2.09
120007	3.17
120009	1.26
120010	2.69
120012	1.32
120014	2.83
120018	0.71
120019	2.58

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
120022	1.31
120024	0.86
120025	0.77
120026	3.08
120027	1.96
120028	3.33
123025	1.65
123300	1.76
124001	1.53
130001	1.60
130002	3.18
130003	3.14
130005	3.43
130006	2.12
130007	3.65
130008	1.94
130009	2.56
130010	0.93
130011	2.46
130012	1.61
130013	2.69
130014	3.03
130015	1.20
130016	2.06
130017	1.93
130018	3.31
130019	1.83
130021	1.09
130022	2.48
130024	2.89
130025	1.91
130026	3.68
130027	1.60
130028	2.30
130029	2.10
130030	0.89
130031	2.34
130034	1.61
130035	2.08
130036	3.90
130037	1.90
130043	1.68
130044	1.57
130045	1.65
130048	1.30
130049	2.59
130054	0.71
130056	0.76
130060	2.73
130061	1.55
133025	1.47
134002	1.55
134009	1.60
140001	2.21
140002	2.35
140003	1.61
140005	1.45
140007	2.57
140008	2.49
140010	2.35
140011	1.78
140012	2.22
140013	2.76
140014	2.41
140015	2.82
140016	1.95
140018	1.94
140019	1.65
140024	1.81
140025	1.53
140026	2.30

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
140027	1.84
140029	2.17
140030	2.97
140031	1.64
140032	3.04
140033	2.61
140034	2.39
140035	1.66
140036	2.69
140037	1.44
140038	1.59
140040	2.32
140041	2.20
140042	1.64
140043	2.70
140045	1.65
140046	2.43
140047	1.40
140048	2.18
140049	2.02
140051	2.56
140052	2.79
140053	3.25
140054	2.63
140055	1.58
140058	2.30
140059	2.50
140061	1.71
140062	2.16
140063	2.29
140064	3.76
140065	2.44
140066	2.17
140067	2.63
140068	1.77
140069	1.89
140070	2.00
140074	1.21
140075	2.41
140077	1.66
140079	2.44
140080	2.19
140081	1.66
140082	1.94
140083	1.45
140084	2.94
140086	2.09
140087	2.41
140088	1.65
140089	2.96
140090	2.57
140091	5.51
140093	2.71
140094	2.24
140095	1.93
140097	1.37
140100	2.74
140101	2.02
140102	1.99
140103	1.62
140105	2.70
140107	1.67
140108	2.82
140109	1.69
140110	2.28
140112	1.85
140113	2.49
140114	2.42
140115	2.07
140116	2.63
140117	2.67

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
140118	2.83
140119	2.96
140120	2.46
140121	2.64
140122	2.48
140125	2.18
140127	4.46
140128	1.79
140129	2.14
140130	2.50
140132	2.85
140133	2.17
140135	2.78
140137	1.67
140138	2.05
140139	1.69
140140	1.76
140141	2.22
140143	2.24
140144	1.68
140145	2.04
140146	1.62
140147	2.31
140148	2.95
140150	1.61
140151	1.34
140155	2.43
140158	1.73
140160	3.21
140161	2.48
140162	2.30
140164	2.77
140165	2.25
140166	1.91
140167	2.59
140168	1.97
140170	1.62
140171	1.37
140172	1.61
140173	1.23
140174	2.18
140176	2.67
140177	2.11
140179	2.60
140180	2.01
140181	1.95
140182	2.00
140184	1.93
140185	2.35
140186	2.10
140187	2.10
140188	1.37
140189	2.21
140190	1.82
140191	2.08
140193	2.51
140197	1.99
140199	1.78
140200	1.94
140202	2.55
140203	2.43
140205	4.24
140206	2.22
140207	2.12
140208	2.47
140209	2.71
140210	2.15
140211	2.35
140212	1.38
140213	2.63
140215	1.32

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ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
140217	2.32
140218	1.94
140220	1.82
140223	2.80
140224	2.33
140228	2.34
140230	1.15
140231	2.40
140233	2.59
140234	2.40
140236	1.38
140239	2.79
140240	2.09
140242	2.83
140245	1.83
140246	1.75
140250	1.98
140251	3.00
140252	2.01
140253	3.53
140258	2.37
140271	2.10
140275	2.53
140276	2.47
140280	2.60
140281	2.61
140285	2.21
140286	2.15
140288	2.00
140289	2.39
140290	3.26
140291	2.60
140292	2.47
140294	2.57
140297	1.61
140300	1.25
142006	1.37
143025	1.33
143026	1.34
143027	1.50
143300	1.82
143301	3.19
144005	1.64
144025	1.55
144026	1.55
144031	2.28
144033	1.55
144034	1.54
144036	1.57
150001	2.13
150002	2.14
150003	2.39
150004	2.20
150005	2.41
150006	2.80
150007	2.44
150008	2.61
150009	2.79
150011	1.92
150012	2.78
150013	2.18
150014	2.23
150015	2.76
150018	3.00
150019	2.19
150020	2.70
150022	2.63
150023	2.63
150024	1.31
150026	2.75
150027	1.74

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
150029	3.77
150030	2.56
150031	1.68
150033	2.41
150034	2.79
150036	1.92
150037	2.58
150038	1.73
150039	2.16
150042	2.75
150043	1.93
150044	2.38
150045	1.67
150046	2.72
150047	1.89
150049	1.94
150050	1.76
150051	2.17
150052	2.37
150053	1.99
150054	1.72
150057	2.23
150058	3.07
150059	1.88
150060	1.65
150061	2.02
150062	2.18
150063	1.49
150064	2.03
150065	2.37
150066	1.54
150067	2.12
150069	2.68
150070	1.93
150071	1.58
150072	1.97
150073	1.99
150074	2.46
150075	2.12
150076	2.07
150078	1.80
150079	1.71
150084	3.60
150086	2.32
150089	2.57
150090	1.89
150091	1.90
150092	1.54
150094	2.25
150095	2.28
150096	2.12
150097	2.03
150098	1.75
150099	2.46
150100	2.70
150101	2.03
150102	1.68
150103	1.32
150104	2.03
150105	1.94
150106	1.93
150109	3.35
150110	1.52
150111	1.74
150112	2.58
150114	1.61
150115	2.82
150122	2.07
150123	1.29
150125	2.42
150126	2.68

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
150127	1.22
150128	2.62
150129	2.02
150130	1.39
150132	2.65
150133	2.30
150134	1.80
150136	2.61
152007	0.59
152009	0.55
153025	2.03
153027	2.31
153029	1.35
153030	1.78
154009	1.69
154011	1.85
154013	1.51
154014	1.44
154026	1.65
154027	1.73
154028	1.37
154031	1.62
154032	1.79
154035	1.59
154036	1.53
154037	1.66
154038	1.71
154042	1.66
160001	3.30
160002	2.13
160003	1.84
160005	2.00
160007	1.19
160008	2.28
160009	2.03
160012	1.62
160013	3.05
160014	1.71
160016	3.06
160018	1.55
160020	1.65
160021	2.56
160023	1.68
160024	2.78
160026	1.91
160027	1.96
160028	2.46
160029	3.39
160030	3.47
160031	1.59
160032	2.35
160033	3.02
160034	2.31
160035	0.98
160036	2.10
160037	2.01
160039	1.65
160040	3.64
160041	1.49
160043	1.68
160044	2.29
160045	2.87
160046	2.22
160047	2.33
160048	1.72
160049	1.08
160050	2.49
160051	1.84
160052	1.95
160054	1.97
160055	2.09

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
160056	1.68
160057	2.59
160058	1.63
160060	1.89
160061	2.10
160062	1.74
160063	1.61
160064	3.14
160065	2.01
160066	2.40
160067	2.42
160068	1.88
160069	3.27
160070	1.70
160072	2.23
160073	1.35
160074	1.46
160075	1.79
160076	2.64
160077	1.83
160079	3.44
160080	2.72
160081	1.92
160082	3.36
160083	2.89
160085	1.61
160086	1.33
160088	1.65
160089	2.80
160090	1.59
160091	1.75
160092	1.82
160093	1.40
160094	2.93
160095	1.16
160097	2.12
160098	1.38
160099	1.74
160101	1.22
160102	2.85
160103	1.30
160104	2.24
160106	3.18
160107	1.49
160108	2.35
160109	1.62
160110	2.28
160111	1.64
160112	2.48
160113	1.34
160114	2.75
160115	2.45
160116	1.98
160117	2.86
160118	1.80
160120	0.95
160122	2.30
160124	2.14
160126	1.82
160129	2.98
160130	1.42
160131	1.61
160134	1.13
160135	1.78
160138	1.34
160140	1.69
160142	1.41
160143	1.92
160145	1.64
160146	2.96
160147	1.66
160151	1.39
160152	1.41
160153	2.76
164002	4.09
170001	3.29
170004	1.61
170006	2.01
170008	2.18
170009	2.47
170010	2.83
170012	3.18
170013	3.53
170014	1.86
170015	2.47
170016	2.73
170017	2.59
170018	1.74
170019	3.41
170020	3.81
170022	2.57
170023	5.62
170024	2.36
170025	2.06
170026	3.15
170027	3.18
170030	1.56
170031	2.04
170032	1.63
170033	2.67
170034	1.90
170035	1.52
170036	1.04
170037	3.34
170038	1.02
170039	1.64
170041	1.43
170043	1.17
170044	1.58
170045	1.74
170049	3.00
170051	1.06
170052	1.53
170053	1.02
170054	1.71
170055	1.80
170056	1.04
170057	1.62
170060	2.49
170061	2.07
170063	1.28
170064	1.61
170066	1.17
170067	2.08
170068	3.51
170070	2.26
170072	1.32
170073	1.38
170074	2.26
170075	1.03
170076	2.02
170077	1.94
170080	1.59
170081	1.39
170082	2.08
170084	1.79
170085	1.62
170086	3.38
170088	1.48
170089	1.28
170090	1.26
170092	1.36
170093	1.58
170094	2.00
170095	2.90
170097	1.89
170098	2.58
170099	2.27
170100	0.80
170101	1.45
170102	1.80
170103	4.48
170104	3.66
170105	2.02
170106	1.20
170109	1.99
170110	1.70
170112	1.48
170113	2.29
170114	2.46
170115	1.89
170116	2.91
170117	0.91
170119	1.37
170120	3.12
170122	2.74
170123	3.90
170124	2.13
170126	1.20
170128	1.96
170131	1.93
170133	3.64
170134	1.84
170137	2.80
170139	0.72
170142	3.08
170143	3.11
170144	3.09
170145	2.18
170146	3.03
170147	1.44
170148	2.58
170150	3.35
170151	1.95
170152	1.46
170160	1.49
170164	1.69
170166	1.42
170171	1.39
170175	4.34
170176	2.71
170182	3.37
170183	9.35
171304	0.79
171305	0.38
171310	0.32
172004	0.68
173025	1.55
173027	2.17
173028	1.16
174003	1.35
174006	0.83
174012	1.55
174014	1.79
174016	1.46
174018	1.56
180001	2.22
180004	1.97
180005	2.23
180006	1.20
180007	2.91
180009	2.80
180010	2.69

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
180011	2.33
180012	2.60
180013	2.86
180014	3.17
180015	1.74
180016	2.32
180017	2.53
180018	2.71
180019	2.90
180021	1.92
180023	1.82
180024	2.06
180025	2.13
180026	2.07
180027	3.08
180030	1.42
180031	1.58
180032	1.34
180033	1.83
180034	1.97
180035	2.67
180036	2.73
180037	2.60
180038	2.25
180040	3.61
180041	2.44
180042	1.92
180043	1.43
180044	2.50
180045	2.60
180046	2.24
180047	1.66
180048	2.39
180049	3.18
180051	2.98
180054	2.22
180055	1.99
180056	2.49
180058	1.42
180059	1.54
180060	0.81
180063	1.48
180064	2.22
180065	1.37
180066	2.49
180067	2.63
180070	1.79
180072	1.70
180075	1.82
180078	2.22
180079	1.77
180080	3.22
180087	2.94
180088	3.54
180092	2.19
180093	2.72
180094	1.54
180095	1.97
180099	1.75
180101	1.73
180102	2.84
180103	2.88
180104	2.58
180105	1.70
180106	1.50
180108	1.47
180115	1.63
180116	2.41
180117	2.43
180118	1.53
180120	1.55
180121	2.48
180122	1.68
180123	2.77
180124	3.14
180126	1.44
180127	2.80
180128	1.97
180129	1.25
180130	2.83
180132	2.66
180133	2.33
180134	1.92
180136	4.43
180137	1.76
180138	2.11
180139	1.47
180140	1.19
180141	2.02
182001	2.05
183027	1.32
183028	1.51
184000	1.97
184002	0.78
184007	1.55
184008	1.66
184009	1.64
184011	1.81
184015	0.87
190003	2.15
190004	2.45
190007	1.87
190008	2.74
190013	1.83
190014	2.81
190015	2.42
190017	2.18
190018	2.35
190019	1.89
190020	2.64
190025	2.15
190026	2.24
190027	2.06
190029	2.05
190033	1.17
190034	2.07
190036	2.73
190037	1.00
190039	2.12
190040	2.44
190041	2.55
190043	1.14
190044	2.08
190045	2.22
190046	1.93
190048	2.14
190049	2.69
190050	2.08
190053	1.57
190054	2.26
190059	1.78
190060	2.85
190064	4.30
190065	2.35
190071	1.49
190077	0.88
190078	3.17
190079	2.06
190081	1.07
190083	1.30
190086	2.84
190088	2.36
190089	1.77
190090	1.77
190092	1.88
190095	2.00
190098	1.55
190099	1.42
190102	3.14
190103	0.98
190106	1.71
190109	2.29
190110	1.51
190111	3.47
190112	2.78
190113	3.09
190114	1.72
190115	4.85
190116	2.27
190118	1.80
190120	1.57
190124	2.30
190125	2.21
190128	2.36
190130	1.76
190131	1.51
190133	1.54
190134	1.16
190135	2.45
190136	1.05
190138	7.09
190140	1.77
190142	1.06
190144	2.68
190145	1.54
190146	1.99
190147	1.98
190148	1.16
190149	1.71
190151	1.90
190152	2.85
190155	1.50
190156	0.90
190158	2.36
190160	2.76
190162	1.68
190164	2.43
190167	1.96
190170	1.02
190173	2.12
190175	2.53
190176	1.64
190177	2.46
190178	1.25
190182	2.24
190184	1.12
190185	2.75
190186	1.25
190189	0.98
190190	1.48
190191	2.21
190196	2.45
190197	2.63
190200	2.63
190201	2.19
190202	1.98
190203	2.82
190204	2.44
190205	2.47
190206	2.06
190207	3.10
190208	1.18
190218	2.41

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
190231	4.55
190236	3.56
192004	1.30
192006	1.78
192016	3.50
192020	0.79
193027	1.77
193028	1.84
193034	1.22
193038	1.62
193041	0.89
193044	2.62
193300	1.52
194000	3.15
194004	1.32
194014	1.53
194019	1.57
194022	1.32
194023	1.52
194024	1.40
194027	1.56
194031	1.63
194036	1.47
194044	1.54
194058	1.55
200001	2.71
200002	2.25
200003	1.96
200006	1.43
200007	1.64
200008	2.14
200009	2.23
200012	1.69
200013	2.05
200015	2.19
200016	1.92
200017	2.72
200018	2.23
200019	2.23
200020	2.32
200021	2.52
200023	1.08
200024	2.50
200025	2.47
200026	1.83
200027	1.77
200028	1.83
200031	1.84
200032	1.99
200033	2.24
200034	2.74
200037	1.95
200038	2.48
200039	2.55
200040	2.89
200041	2.42
200043	1.29
200050	2.80
200051	2.73
200052	1.79
200055	1.47
200062	1.46
200063	2.52
200068	2.16
204005	1.68
204006	1.54
220001	2.29
220003	2.21
220004	2.30
220006	2.26
220008	2.19
220010	2.68
220011	1.67
220015	2.19
220016	2.31
220017	2.13
220019	2.43
220020	1.82
220021	2.13
220023	2.01
220024	2.35
220025	1.85
220028	2.02
220029	2.15
220030	1.57
220031	1.87
220033	2.15
220035	2.37
220038	2.07
220041	2.29
220042	2.16
220046	2.57
220049	2.46
220050	2.20
220051	2.52
220052	2.08
220053	2.05
220055	2.53
220057	2.30
220058	2.07
220060	2.36
220062	1.78
220063	2.16
220064	2.33
220065	1.92
220066	2.62
220067	2.39
220068	1.42
220070	2.06
220071	1.88
220073	2.06
220074	2.06
220075	2.83
220076	1.93
220077	2.11
220079	1.89
220080	2.09
220081	1.92
220082	2.28
220083	1.87
220084	2.57
220086	1.93
220088	2.06
220089	2.12
220090	2.05
220092	2.22
220094	2.04
220095	1.92
220098	2.29
220100	1.96
220101	2.23
220104	1.44
220105	2.21
220106	2.17
220107	2.34
220108	2.11
220111	2.34
220116	1.72
220119	1.92
220123	1.81
220126	2.32
220128	1.99
220135	2.20
220162	1.56
220163	1.59
220171	1.62
222000	1.54
222002	1.04
222006	1.10
222008	0.98
222024	2.57
222026	1.01
222027	1.01
222029	1.24
222035	1.30
222041	0.45
222043	1.10
222044	1.10
223026	1.14
223027	1.49
223028	1.62
223029	1.05
223030	1.52
223032	1.26
223302	1.99
224007	1.75
224018	1.64
224021	1.54
224022	2.67
224034	1.57
224035	1.31
230001	1.98
230002	3.04
230003	1.99
230004	2.85
230005	2.32
230006	2.20
230007	2.85
230012	1.22
230013	2.28
230015	2.20
230017	2.90
230019	3.09
230020	3.32
230021	3.02
230022	2.25
230024	2.94
230027	1.97
230029	2.37
230030	2.80
230031	2.57
230032	3.42
230034	2.13
230035	2.21
230036	2.62
230037	2.46
230038	2.97
230040	2.66
230041	2.56
230042	2.04
230046	2.04
230047	3.03
230053	1.46
230054	2.58
230055	2.07
230056	1.77
230058	2.77
230059	3.12
230060	2.39
230062	1.78
230063	2.18
230065	2.69
230066	2.62

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
230068	2.96
230069	2.29
230070	3.47
230071	13.46
230072	2.32
230075	2.74
230076	4.83
230077	3.51
230078	2.17
230080	3.55
230081	2.66
230082	2.17
230085	2.65
230086	1.79
230087	2.14
230089	2.65
230092	2.76
230093	2.99
230095	2.79
230096	2.47
230097	3.23
230099	2.22
230100	1.66
230101	2.22
230103	2.22
230104	2.53
230105	3.58
230106	1.97
230107	1.39
230108	2.30
230110	2.55
230111	1.83
230113	1.20
230114	7.32
230115	1.87
230116	2.04
230117	2.64
230118	2.16
230119	2.20
230120	2.77
230121	2.57
230122	3.37
230124	2.26
230125	1.91
230128	3.39
230130	2.88
230132	2.37
230133	2.44
230134	2.45
230135	2.66
230137	2.40
230141	2.47
230142	2.53
230143	2.75
230144	2.44
230145	2.35
230146	2.11
230147	1.91
230149	1.62
230151	2.11
230153	2.20
230154	1.52
230155	1.61
230156	2.46
230157	2.73
230159	2.74
230162	1.04
230165	3.20
230167	2.97
230169	2.72
230171	1.61
230172	1.86
230174	2.13
230175	1.55
230176	2.96
230178	1.91
230180	2.02
230184	5.45
230186	1.92
230188	2.38
230189	1.41
230190	1.28
230191	2.01
230193	2.22
230194	1.22
230195	2.84
230197	3.63
230199	2.25
230201	2.58
230204	2.72
230205	2.62
230207	2.22
230208	2.41
230211	0.91
230212	2.15
230213	1.35
230216	2.08
230217	2.66
230219	2.46
230221	2.13
230222	2.66
230223	2.86
230227	2.69
230230	2.88
230232	1.16
230235	2.24
230236	2.79
230239	2.40
230241	2.58
230244	2.53
230253	2.64
230254	2.61
230257	5.56
230259	2.83
230264	3.02
230269	2.85
230270	3.10
230273	1.95
230275	1.90
230276	1.34
230277	2.81
230278	1.84
230279	1.59
230280	2.00
233025	1.26
233026	1.09
233027	1.24
233300	3.39
234006	1.63
234011	1.71
234029	1.46
234030	1.64
240001	3.26
240002	2.84
240004	1.30
240005	1.12
240006	2.89
240007	2.92
240008	2.88
240009	1.53
240010	3.69
240011	2.58
240013	2.49
240014	2.65
240016	3.00
240017	3.88
240018	3.20
240019	2.95
240020	2.08
240021	1.94
240022	2.29
240023	2.46
240025	2.01
240027	2.68
240028	2.16
240029	2.97
240030	3.11
240031	2.26
240036	2.44
240037	1.93
240038	3.13
240040	2.51
240041	2.49
240043	3.30
240044	2.56
240045	2.04
240047	3.16
240048	3.81
240049	1.87
240050	3.12
240051	1.95
240052	2.17
240053	3.27
240056	3.03
240057	2.35
240058	1.44
240059	3.44
240061	4.55
240063	2.66
240064	3.06
240065	1.73
240066	4.22
240069	3.56
240071	2.37
240072	2.79
240073	1.65
240075	2.45
240076	2.75
240077	2.34
240078	3.66
240079	1.91
240080	2.09
240082	1.86
240083	2.36
240084	2.83
240085	1.53
240086	2.09
240087	2.23
240088	1.90
240089	1.37
240090	3.29
240093	2.68
240094	1.66
240096	1.46
240097	6.54
240098	2.05
240099	1.53
240100	2.83
240101	2.00
240102	1.70
240103	1.87
240104	2.68
240105	1.33

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
240106	1.44
240107	1.69
240108	2.55
240109	1.82
240110	2.39
240111	2.28
240112	1.98
240114	1.84
240115	3.13
240116	1.61
240117	1.29
240119	1.19
240121	1.94
240122	1.45
240123	2.37
240124	2.36
240125	1.91
240127	2.25
240128	2.55
240129	2.38
240130	3.06
240132	2.75
240133	3.45
240137	3.54
240138	1.42
240139	2.01
240141	2.49
240142	1.80
240143	1.54
240144	2.78
240145	1.37
240146	2.11
240148	1.64
240152	2.60
240153	1.82
240154	1.44
240155	2.59
240157	2.46
240160	2.58
240161	1.77
240162	2.16
240163	1.89
240166	3.66
240169	2.39
240170	1.83
240171	2.87
240172	2.01
240173	2.63
240179	1.84
240184	1.71
240187	3.42
240193	2.12
240200	0.91
240207	2.75
240210	2.78
240211	1.04
242004	1.59
243300	1.41
243301	1.45
243302	6.10
244009	3.31
250001	2.17
250002	1.57
250003	1.07
250004	2.27
250005	0.94
250006	2.22
250007	1.98
250008	1.07
250009	2.99
250010	1.62
250012	1.46
250015	2.25
250017	1.36
250018	0.66
250019	2.28
250020	1.40
250021	0.75
250023	0.70
250024	0.90
250025	2.05
250027	1.72
250029	1.62
250030	1.06
250031	2.52
250032	1.96
250033	1.70
250034	3.67
250035	1.84
250036	1.88
250037	1.50
250038	1.35
250039	1.02
250040	2.53
250042	2.37
250043	1.84
250044	1.99
250045	1.77
250048	3.17
250049	1.44
250050	2.13
250051	1.22
250057	2.41
250058	2.59
250059	1.87
250060	1.04
250061	1.51
250063	1.43
250065	1.46
250066	1.13
250067	1.45
250068	1.54
250069	3.53
250071	1.19
250072	2.38
250076	0.67
250077	1.38
250078	2.73
250079	1.17
250081	3.27
250082	2.32
250083	1.27
250084	2.89
250085	1.35
250088	1.99
250089	1.70
250093	1.88
250094	3.86
250095	2.03
250096	1.97
250097	2.14
250098	1.33
250099	3.06
250100	2.80
250101	1.10
250102	2.82
250104	3.29
250105	1.35
250107	1.21
250109	1.25
250112	1.25
250117	1.42
250119	1.66
250120	2.27
250122	2.74
250123	3.13
250124	1.39
250125	2.27
250126	1.23
250128	1.77
250131	1.65
250136	2.92
250138	3.33
250141	2.99
250145	1.32
250146	1.31
250148	2.33
250149	1.26
252003	0.50
253025	1.93
254001	1.55
254002	1.50
260001	2.41
260002	2.38
260003	1.52
260004	1.40
260005	2.56
260006	2.13
260008	1.17
260009	2.66
260011	2.37
260012	1.48
260013	2.16
260014	2.52
260015	2.36
260017	2.87
260018	1.11
260019	1.77
260020	2.41
260021	2.14
260022	2.47
260023	2.33
260024	1.73
260025	3.53
260027	2.51
260029	2.18
260030	1.38
260031	2.62
260032	2.44
260034	1.35
260035	1.51
260036	1.87
260039	1.61
260040	2.57
260044	1.97
260047	2.11
260048	1.99
260050	2.60
260052	2.22
260053	1.82
260054	2.34
260055	1.72
260057	1.70
260059	2.45
260061	2.72
260062	2.48
260063	2.01
260064	2.46
260065	2.51
260066	1.99
260067	1.26
260068	2.91
260070	1.31
260073	
260074	
260077	
260078	
260079	
260080	
260081	
260082	
260085	
260086	
260091	
260094	
260095	
260096	
260097	
260100	
260102	
260103	
260104	
260105	
260107	
260108	
260109	
260110	
260113	
260115	
260116	
260119	
260120	
260122	
260123	
260127	
260128	
260129	
260131	
260134	
260137	
260138	
260141	
260142	
260143	
260147	
260148	
260158	
260159	
260160	
260162	
260163	
260164	
260166	
260172	
260173	
260175	
260176	
260177	
260178	
260179	
260180	
260183	
260186	
260188	
260189	
260190	
260191	
260193	
260195	
260197	
260198	
260200	
262001	
262011	

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
260073	1.81
260074	1.74
260077	2.60
260078	2.61
260079	1.56
260080	2.08
260081	2.08
260082	1.60
260085	2.75
260086	1.77
260091	2.98
260094	2.39
260095	2.22
260096	3.19
260097	3.14
260100	1.86
260102	1.11
260103	1.96
260104	2.36
260105	2.69
260107	3.54
260108	2.38
260109	2.03
260110	2.51
260113	2.30
260115	1.73
260116	2.40
260119	2.68
260120	2.17
260122	2.04
260123	1.31
260127	1.90
260128	1.42
260129	2.18
260131	2.05
260134	2.38
260137	3.09
260138	2.50
260141	2.03
260142	2.64
260143	1.28
260147	1.76
260148	1.29
260158	1.69
260159	2.08
260160	1.74
260162	2.75
260163	1.89
260164	1.69
260166	2.33
260172	2.00
260173	1.31
260175	2.92
260176	2.60
260177	3.33
260178	3.53
260179	2.42
260180	2.28
260183	2.77
260186	2.66
260188	2.21
260189	0.89
260190	2.65
260191	2.69
260193	2.34
260195	2.21
260197	2.35
260198	2.50
260200	1.98
262001	1.00
262011	0.81

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
263025	1.49
263026	2.37
263300	1.85
263301	1.61
263302	1.62
264004	0.98
264005	0.98
264008	0.98
264011	1.51
264016	2.48
264017	1.84
264021	1.55
264024	1.55
270002	2.36
270003	2.63
270004	3.29
270006	0.62
270007	1.03
270009	1.65
270011	2.64
270012	3.44
270013	2.67
270014	3.11
270016	1.15
270017	2.02
270019	1.17
270021	1.95
270023	2.88
270024	1.06
270026	1.72
270027	1.40
270028	2.43
270029	1.91
270032	2.61
270033	0.91
270035	1.65
270036	1.13
270039	1.94
270040	1.88
270041	1.49
270044	2.58
270046	1.26
270048	1.91
270049	1.88
270050	1.95
270051	2.84
270052	1.06
270053	0.98
270057	2.29
270058	1.70
270059	0.71
270060	1.01
270063	1.17
270068	2.25
270072	0.64
270073	1.28
270079	1.52
270080	2.01
270081	1.07
270082	1.01
270083	1.36
270084	1.59
271225	0.72
271226	1.06
271228	0.89
271229	1.04
271231	1.00
271232	0.94
271233	1.00
271234	1.56
280001	2.04

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
280005	2.57
280009	3.52
280010	1.15
280011	1.53
280012	2.09
280013	2.00
280014	1.81
280015	2.04
280017	1.92
280018	1.67
280020	2.38
280021	2.74
280022	1.21
280023	2.78
280024	1.53
280025	1.09
280026	1.69
280028	2.26
280029	1.49
280030	2.19
280031	1.42
280032	3.03
280033	1.60
280034	2.54
280035	1.59
280037	1.21
280038	2.20
280039	2.21
280040	3.15
280041	1.34
280042	1.26
280043	1.87
280045	1.87
280046	1.56
280047	2.12
280048	1.58
280049	1.41
280050	2.15
280051	2.61
280052	2.53
280054	2.00
280055	1.75
280056	1.45
280057	1.69
280058	1.89
280060	2.26
280061	3.72
280062	1.90
280064	2.28
280065	2.36
280066	1.67
280068	1.42
280070	2.01
280073	1.79
280074	1.63
280075	2.76
280076	1.80
280077	2.61
280079	1.19
280080	1.52
280081	2.64
280082	1.53
280083	1.88
280084	1.69
280085	2.61
280088	3.10
280089	1.91
280090	1.24
280091	2.42
280092	1.65
280094	1.80

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
280097	1.57
280098	1.09
280101	1.12
280102	1.60
280104	1.97
280105	2.63
280106	2.20
280107	2.17
280108	3.91
280109	1.20
280110	2.61
280111	2.00
280114	1.49
280115	2.04
280117	2.23
280118	1.79
280125	2.66
283025	1.13
283301	2.09
284007	3.05
290001	2.20
290002	0.80
290003	2.93
290005	3.18
290006	1.70
290007	1.48
290008	2.80
290009	2.15
290010	2.20
290011	1.11
290012	2.61
290013	1.04
290014	2.15
290015	1.38
290016	2.15
290019	2.42
290020	0.94
290021	2.36
290022	2.77
290027	1.27
290032	2.34
290038	1.70
290039	2.60
292002	1.01
293027	2.09
294003	1.57
294004	1.56
294005	2.31
300001	2.65
300003	1.80
300005	2.43
300006	1.57
300007	2.44
300008	2.59
300009	2.10
300010	1.75
300011	2.21
300013	1.65
300014	2.30
300015	2.49
300016	2.08
300017	1.97
300018	2.48
300019	2.25
300021	1.87
300022	2.33
300023	1.99
300024	2.11
300028	1.65
300029	2.86
300033	1.52
303026	1.85
303027	0.47
304001	11.15
304003	1.55
310001	1.98
310002	2.01
310005	2.33
310006	2.74
310008	2.88
310009	2.59
310010	1.99
310011	2.95
310013	2.30
310015	2.26
310016	2.52
310017	2.70
310018	2.16
310019	2.49
310020	2.39
310021	2.29
310022	2.52
310024	2.45
310025	2.33
310026	2.09
310027	2.40
310028	2.05
310029	3.53
310031	2.24
310032	2.20
310034	2.75
310036	1.93
310037	2.32
310039	2.77
310041	2.33
310042	2.58
310043	2.81
310044	2.19
310045	2.63
310047	2.62
310048	2.55
310050	1.91
310051	2.79
310052	2.08
310054	2.34
310056	1.89
310057	2.44
310058	1.31
310060	3.24
310061	2.89
310063	2.27
310064	2.39
310067	2.57
310069	2.66
310070	2.43
310072	2.98
310073	1.92
310074	1.47
310076	2.40
310077	2.66
310078	2.28
310081	2.40
310083	1.69
310084	2.17
310086	2.33
310088	1.84
310090	2.29
310091	2.73
310092	2.38
310093	2.56
310096	2.69
310105	1.47
310111	2.02
310112	2.37
310113	2.47
310115	2.02
310116	2.54
310118	2.36
310120	1.73
312014	0.98
313025	1.23
313026	1.19
313027	1.24
313029	1.64
313030	1.05
313032	0.90
314001	1.71
314010	1.72
314011	1.56
314012	2.07
314021	1.70
314022	1.53
320001	1.50
320002	1.78
320003	2.47
320004	2.43
320005	2.98
320006	2.87
320009	2.44
320011	1.76
320012	2.54
320013	2.15
320014	1.79
320016	2.94
320017	2.03
320018	2.95
320019	1.21
320021	1.80
320022	3.20
320023	1.33
320030	2.00
320031	1.27
320032	1.44
320033	2.26
320035	1.18
320037	2.32
320038	2.61
320046	2.17
320048	1.53
320063	2.36
320065	2.27
320067	1.21
320068	2.33
320069	1.96
320074	2.12
320079	2.29
322002	3.05
322003	0.68
323027	0.58
323028	1.76
323029	1.43
324003	1.56
324004	1.59
324007	1.68
324010	1.85
330001	2.13
330002	2.29
330003	2.40
330004	2.49
330005	2.32
330006	2.27
330007	2.26
330008	2.47
330010	
330011	
330012	
330013	
330014	
330016	
330023	
330024	
330025	
330027	
330028	
330029	
330030	
330033	
330034	
330036	
330037	
330038	
330039	
330041	
330043	
330044	
330045	
330046	
330047	
330048	
330049	
330053	
330055	
330056	
330057	
330058	
330059	
330061	
330062	
330064	
330065	
330066	
330067	
330072	
330073	
330074	
330075	
330078	
330079	
330084	
330085	
330086	
330088	
330090	
330091	
330092	
330094	
330095	
330096	
330097	
330100	
330101	
330102	
330103	
330104	
330106	
330107	
330108	
330111	
330114	
330115	
330116	
330118	
330119	
330121	

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ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
330010	2.17
330011	1.70
330012	2.20
330013	2.59
330014	1.92
330016	1.90
330023	2.50
330024	2.41
330025	1.87
330027	0.92
330028	2.00
330029	1.55
330030	2.54
330033	1.59
330034	1.09
330036	2.29
330037	2.61
330038	1.88
330039	1.19
330041	3.15
330043	1.95
330044	2.25
330045	2.79
330046	2.01
330047	2.35
330048	2.82
330049	2.37
330053	1.93
330055	2.49
330056	1.96
330057	2.38
330058	1.81
330059	2.21
330061	2.74
330062	1.41
330064	2.38
330065	2.46
330066	2.06
330067	2.40
330072	1.95
330073	1.90
330074	2.96
330075	2.05
330078	2.35
330079	2.09
330084	2.26
330085	1.75
330086	1.96
330088	1.68
330090	2.37
330091	2.31
330092	1.22
330094	2.09
330095	2.49
330096	2.30
330097	1.80
330100	5.13
330101	2.50
330102	2.92
330103	2.74
330104	2.04
330106	2.65
330107	2.39
330108	2.31
330111	1.94
330114	0.90
330115	2.41
330116	2.02
330118	2.57
330119	2.61
330121	1.33
330122	2.87
330125	1.89
330126	2.28
330132	1.47
330133	2.88
330135	2.39
330136	1.25
330140	2.32
330141	2.43
330144	2.39
330148	1.69
330151	2.05
330152	2.43
330153	2.23
330154	2.17
330157	1.99
330158	2.47
330159	2.38
330160	2.09
330161	1.35
330162	3.96
330163	2.58
330164	1.88
330166	2.04
330167	3.17
330169	2.19
330171	2.56
330175	2.10
330177	1.91
330179	1.23
330180	1.95
330181	2.22
330182	3.70
330183	2.02
330184	2.37
330185	1.70
330186	0.62
330188	2.57
330189	7.27
330191	2.18
330193	2.64
330194	2.22
330195	2.31
330197	2.05
330198	2.35
330203	4.09
330205	2.12
330208	2.09
330209	2.27
330211	2.07
330212	2.39
330213	1.69
330214	2.42
330215	2.59
330218	1.87
330219	1.90
330221	2.14
330222	2.72
330223	1.98
330224	2.49
330225	2.34
330226	2.40
330229	2.03
330230	2.36
330232	2.08
330235	2.81
330236	2.04
330238	2.25
330239	2.16
330241	2.09
330245	2.24
330246	2.60
330249	2.04
330250	2.32
330252	1.16
330254	2.10
330258	1.48
330259	2.37
330261	2.47
330263	2.78
330264	2.34
330265	1.66
330267	2.16
330268	1.40
330270	1.94
330273	2.53
330275	1.99
330276	1.77
330277	2.31
330279	2.75
330285	2.09
330286	2.29
330288	1.01
330290	1.96
330293	1.61
330304	2.62
330306	1.92
330307	2.53
330308	2.77
330314	2.63
330316	3.26
330327	1.71
330331	2.29
330332	3.39
330333	3.09
330336	2.09
330338	2.72
330339	2.11
330340	2.53
330350	2.13
330353	2.88
330354	1.74
330357	2.06
330359	0.95
330372	2.87
330381	2.05
330386	1.99
330389	1.74
330390	1.39
330393	2.43
330394	2.50
330395	2.27
330397	1.48
330398	2.93
330399	1.38
331300	0.79
332012	1.34
332022	1.08
333025	1.23
333027	1.19
333028	0.89
333300	1.87
334002	1.55
334048	2.24
334055	1.59
340001	1.76
340002	3.52
340003	2.17
340004	2.78
340005	2.27
340006	1.85
340007	1.89

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
340008	2.17
340010	2.97
340011	1.80
340012	2.23
340013	1.88
340014	1.55
340015	2.89
340016	3.02
340017	2.73
340018	2.38
340019	1.73
340020	2.03
340021	2.55
340022	2.01
340023	1.95
340024	2.16
340025	2.66
340027	2.93
340028	2.42
340030	2.25
340031	2.08
340032	2.37
340035	2.22
340036	1.70
340037	1.77
340038	3.18
340039	2.57
340040	2.88
340041	1.93
340042	2.35
340044	1.73
340045	1.26
340047	2.39
340049	7.04
340050	2.41
340051	2.60
340052	1.84
340053	3.14
340054	2.59
340055	1.98
340060	2.27
340061	1.97
340063	1.40
340064	2.13
340065	2.01
340067	2.52
340068	2.46
340069	2.33
340070	2.66
340071	2.02
340072	2.29
340073	3.16
340075	2.12
340080	1.71
340084	1.83
340085	2.18
340087	2.01
340088	3.10
340089	1.58
340090	2.03
340091	2.88
340093	1.99
340094	3.53
340096	2.50
340097	2.52
340098	2.42
340099	2.05
340101	2.58
340104	1.67
340105	3.75
340106	1.71
340107	2.92
340109	3.44
340111	2.10
340112	1.77
340113	2.38
340114	2.00
340115	2.50
340116	2.78
340119	2.31
340120	1.91
340121	2.15
340123	2.13
340125	3.76
340126	2.61
340127	1.99
340129	2.51
340130	2.48
340131	2.69
340132	2.04
340133	1.57
340141	2.73
340142	2.13
340143	2.77
340144	2.72
340145	2.45
340146	1.90
340147	3.03
340148	4.19
340151	2.44
340153	3.95
340155	2.38
340158	2.82
340159	1.51
340160	2.47
340164	2.00
340166	2.10
340171	2.70
340173	2.50
341302	1.46
342003	1.39
342012	0.79
343025	1.71
344005	1.55
344006	1.55
344014	0.79
344015	1.55
344019	1.55
344020	1.55
350001	1.09
350002	3.66
350003	2.36
350004	3.95
350005	2.06
350006	1.99
350007	2.75
350008	1.73
350009	3.26
350010	3.09
350011	3.23
350012	2.13
350013	1.93
350014	2.06
350015	3.37
350016	1.18
350017	2.65
350018	2.58
350019	3.33
350020	1.45
350021	2.55
350023	2.01
350024	2.03
350025	1.13
350027	1.30
350029	1.36
350030	2.77
350033	2.00
350034	1.89
350035	0.85
350038	2.02
350039	2.08
350041	1.51
350042	3.25
350043	3.06
350044	1.70
350047	1.95
350049	2.14
350050	1.55
350051	1.58
350053	1.33
350055	1.22
350056	1.96
350058	1.71
350060	0.79
350061	2.56
360001	2.87
360002	2.52
360003	1.95
360006	3.15
360007	1.98
360008	2.28
360009	2.47
360010	2.48
360011	2.00
360012	2.85
360013	2.27
360014	2.61
360016	1.93
360017	3.43
360018	2.52
360019	2.10
360020	2.20
360021	5.55
360024	2.41
360025	2.09
360026	1.80
360027	2.46
360028	4.56
360029	2.63
360030	2.31
360031	2.13
360032	2.59
360034	1.96
360035	2.10
360036	2.35
360037	2.27
360039	2.26
360040	2.08
360041	2.24
360042	2.23
360044	2.19
360045	1.93
360046	2.34
360047	1.60
360048	2.31
360049	2.78
360050	1.54
360051	3.04
360052	2.41
360054	2.70
360055	2.55
360056	2.63
360057	1.74

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
360058	2.16
360059	1.67
360062	2.77
360063	1.73
360064	2.65
360065	2.22
360066	2.59
360067	1.77
360068	2.50
360069	1.86
360070	2.00
360071	2.46
360074	2.21
360075	2.27
360076	2.58
360077	2.38
360078	2.63
360079	2.90
360080	2.18
360081	2.32
360082	2.84
360083	2.23
360084	2.47
360085	2.81
360086	2.46
360087	2.34
360088	1.96
360089	2.20
360090	3.47
360091	2.34
360092	1.84
360093	3.05
360094	2.00
360095	2.72
360096	2.37
360098	3.04
360099	2.32
360100	2.58
360101	3.13
360102	2.70
360103	2.15
360106	1.68
360107	2.19
360108	1.72
360109	2.35
360112	2.63
360113	2.64
360114	2.18
360115	2.16
360116	1.88
360118	2.26
360121	2.88
360123	2.22
360125	1.75
360126	1.92
360127	2.27
360128	1.65
360129	1.77
360130	2.00
360131	2.25
360132	2.43
360133	2.66
360134	2.53
360136	1.62
360137	2.29
360140	1.73
360141	2.77
360142	1.99
360143	2.23
360144	2.68
360145	2.60
360147	2.27
360148	2.21
360149	2.65
360150	3.15
360151	2.60
360152	2.65
360153	1.88
360154	1.61
360155	2.64
360156	2.36
360159	2.16
360161	2.35
360162	1.75
360163	2.90
360164	1.72
360165	1.84
360166	1.67
360170	2.09
360172	2.93
360174	2.57
360175	2.58
360176	1.80
360177	1.52
360178	2.58
360179	2.31
360180	2.68
360184	1.65
360185	1.85
360186	1.54
360187	2.58
360188	1.82
360189	2.44
360192	2.28
360193	2.49
360194	2.25
360195	2.67
360197	1.98
360200	1.78
360203	2.43
360204	1.94
360210	2.67
360211	2.20
360212	2.03
360213	2.01
360218	2.40
360230	2.88
360231	1.46
360234	2.16
360236	2.41
360239	2.61
360241	1.27
360242	1.72
360243	1.55
360244	1.55
360245	1.58
362004	1.97
362007	0.47
362009	1.59
362014	7.33
362015	1.48
363300	1.97
363303	2.62
363305	1.94
363306	1.34
364003	1.64
364017	1.97
364029	1.64
364038	1.85
370001	3.25
370002	2.74
370004	2.77
370005	1.46
370006	2.59
370007	1.79
370008	2.75
370011	1.95
370012	1.29
370013	2.96
370014	2.86
370015	1.85
370016	2.53
370017	1.88
370018	3.22
370019	2.37
370020	2.21
370021	1.40
370022	2.97
370023	2.42
370025	2.44
370026	3.08
370028	3.11
370029	2.34
370030	1.95
370032	3.62
370033	2.56
370034	2.57
370035	1.78
370036	0.76
370037	3.69
370038	1.47
370039	1.91
370040	3.03
370041	1.70
370042	1.40
370043	1.12
370045	1.56
370046	2.02
370047	2.41
370048	1.96
370049	2.95
370051	1.31
370054	2.51
370056	2.70
370057	1.98
370059	1.02
370060	2.17
370063	1.38
370064	1.45
370065	2.50
370071	1.48
370072	1.33
370076	2.46
370077	1.96
370078	3.60
370079	1.78
370080	1.83
370082	1.29
370083	2.31
370084	1.53
370085	1.79
370086	2.26
370089	2.25
370091	3.07
370092	2.21
370093	4.35
370094	3.00
370095	1.37
370097	2.07
370099	2.06
370100	1.27
370103	1.60
370105	3.08

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
370106	4.05
370108	1.62
370112	1.52
370113	2.06
370114	3.04
370121	2.51
370122	0.92
370123	2.45
370125	1.86
370126	1.38
370131	1.27
370133	1.83
370138	2.30
370139	1.62
370140	1.92
370141	1.89
370146	2.19
370148	2.26
370149	2.90
370153	2.47
370154	2.61
370156	2.47
370158	1.66
370159	2.44
370163	1.25
370166	1.99
370169	1.88
370176	2.14
370177	1.53
370178	2.10
370179	1.49
370183	2.08
370186	2.55
370190	2.49
370192	2.87
372004	0.74
373025	0.87
373026	1.03
374008	1.84
374012	1.50
374013	1.36
374020	1.63
380001	2.80
380002	3.93
380004	3.63
380005	5.17
380006	2.75
380007	3.08
380008	1.66
380009	2.18
380010	1.76
380011	2.28
380013	1.59
380014	2.69
380017	3.80
380018	2.58
380019	1.83
380020	3.61
380021	2.54
380022	2.71
380023	2.43
380025	2.73
380026	2.33
380027	1.96
380029	2.14
380031	1.63
380033	3.16
380035	2.96
380036	2.44
380037	2.28
380038	2.93
380039	1.89
380040	2.17
380042	1.87
380047	3.63
380048	2.14
380050	2.51
380051	3.02
380052	2.57
380056	1.51
380060	2.44
380061	2.63
380062	0.92
380063	1.81
380064	1.96
380065	1.84
380066	2.92
380068	1.49
380069	1.80
380070	1.93
380071	3.34
380072	1.77
380075	3.14
380078	1.85
380081	0.99
380082	2.58
380083	2.44
380084	2.05
380087	2.42
380088	2.32
380089	2.73
380090	3.04
384006	1.63
390001	2.47
390002	2.56
390003	1.74
390004	2.56
390005	2.28
390006	1.65
390007	3.19
390008	1.94
390009	2.49
390010	2.64
390011	2.41
390012	2.54
390013	2.84
390015	1.97
390016	2.16
390017	2.14
390018	2.79
390019	2.23
390022	2.76
390023	1.75
390024	3.14
390025	1.03
390026	1.96
390028	3.01
390029	2.74
390030	2.19
390031	2.12
390032	2.28
390035	2.56
390036	2.57
390037	2.74
390039	2.41
390040	1.90
390041	2.86
390042	2.29
390043	3.02
390044	2.65
390045	2.41
390046	1.97
390047	2.50
390048	2.31
390049	2.71
390050	3.05
390051	2.65
390054	1.97
390055	2.73
390056	2.07
390057	2.39
390058	3.14
390060	1.70
390061	2.26
390062	2.85
390063	3.48
390065	2.31
390066	2.15
390067	2.55
390068	1.83
390069	2.13
390070	3.25
390071	2.72
390072	2.25
390073	2.60
390074	2.69
390075	3.05
390076	2.58
390078	2.98
390079	3.00
390080	2.35
390083	1.81
390084	1.68
390086	2.21
390088	2.14
390090	2.91
390091	2.29
390093	1.95
390095	2.40
390096	1.84
390097	2.39
390100	2.55
390101	1.69
390102	2.83
390103	2.11
390104	1.97
390106	2.06
390107	2.54
390108	2.53
390109	1.55
390110	2.16
390111	1.93
390112	2.21
390113	2.49
390114	2.33
390115	2.35
390116	2.31
390118	2.79
390119	2.51
390121	2.47
390122	2.04
390123	2.99
390125	2.33
390127	2.58
390128	2.85
390130	2.18
390131	2.60
390132	2.08
390133	2.68
390135	2.13
390136	3.85
390137	2.44
390138	2.22
390139	
390142	
390145	
390146	
390147	
390150	
390151	
390153	
390154	
390155	
390156	
390157	
390158	
390160	
390161	
390162	
390163	
390164	
390166	
390167	
390168	
390169	
390173	
390174	
390176	
390178	
390179	
390180	
390181	
390183	
390184	
390185	
390189	
390191	
390192	
390193	
390194	
390195	
390196	
390197	
390198	
390199	
390200	
390201	
390203	
390204	
390205	
390206	
390209	
390211	
390213	
390215	
390217	
390219	
390222	
390223	
390224	
390225	
390226	
390228	
390231	
390233	
390235	
390236	
390237	
390238	
390242	
390244	
390245	
390246	
390247	

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ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
390139	2.58
390142	1.93
390145	2.38
390146	2.04
390147	2.44
390150	1.94
390151	2.55
390153	1.96
390154	2.36
390155	1.31
390156	2.51
390157	2.50
390158	2.42
390160	2.91
390161	2.26
390162	2.25
390163	2.38
390164	2.12
390166	1.76
390167	2.18
390168	2.13
390169	3.11
390173	2.08
390174	2.42
390176	2.22
390178	2.55
390179	2.33
390180	2.38
390181	2.39
390183	2.61
390184	1.63
390185	2.85
390189	2.30
390191	3.17
390192	2.03
390193	2.60
390194	2.57
390195	2.89
390196	2.16
390197	3.10
390198	1.87
390199	1.79
390200	1.50
390201	2.23
390203	2.59
390204	2.50
390205	2.42
390206	2.05
390209	2.00
390211	2.74
390213	1.07
390215	2.28
390217	2.20
390219	1.91
390222	2.84
390223	2.25
390224	1.69
390225	2.31
390226	2.31
390228	2.24
390231	2.19
390233	2.03
390235	1.87
390236	2.15
390237	2.25
390238	2.43
390242	2.48
390244	1.01
390245	2.18
390246	2.44
390247	1.13
390249	1.13
390256	1.87
390258	2.45
390260	3.75
390262	2.73
390263	3.02
390265	1.57
390266	3.04
390267	2.67
390268	2.66
390270	2.58
390277	1.31
390279	2.40
392024	1.64
392025	1.76
392026	1.18
393025	1.38
393026	1.77
393027	1.99
393031	1.67
393032	0.55
393035	0.94
393037	1.55
393038	1.90
393039	1.10
393040	3.59
393041	2.26
393042	1.77
393043	0.98
393301	1.73
393302	1.58
394006	1.55
394007	1.84
394008	3.26
394020	1.36
394023	1.57
394027	1.48
394034	1.56
394040	1.32
394041	1.32
400001	1.65
400002	3.95
400003	1.58
400004	2.04
400005	1.76
400006	2.56
400007	1.11
400009	1.87
400011	2.39
400012	1.22
400013	1.42
400014	4.78
400016	1.87
400017	2.13
400018	1.39
400019	3.28
400021	1.94
400022	1.95
400027	0.88
400028	1.61
400029	1.12
400032	1.18
400094	1.13
400098	1.40
400102	2.07
400106	1.60
400109	2.06
400111	1.37
400113	1.87
400114	1.46
400115	1.22
400117	2.22
400118	1.89
400120	2.38
400122	0.96
400123	3.95
400124	7.82
404002	2.72
410001	2.29
410004	2.02
410005	2.79
410006	2.27
410007	2.55
410008	2.54
410009	3.00
410010	1.89
410011	2.36
410012	2.67
410013	2.56
413025	1.27
414000	2.21
420002	2.54
420004	1.95
420005	2.12
420006	1.29
420007	2.64
420009	2.81
420010	2.45
420011	1.83
420014	1.46
420015	2.47
420016	1.79
420018	1.96
420019	1.99
420020	2.50
420023	3.02
420026	3.87
420027	2.27
420030	2.23
420031	1.44
420033	1.98
420036	2.60
420037	1.83
420038	1.72
420039	1.93
420042	1.80
420043	2.20
420048	2.30
420049	2.77
420051	2.47
420053	2.35
420054	1.72
420055	1.70
420056	2.74
420057	1.84
420059	1.59
420061	1.94
420062	2.34
420064	1.64
420065	2.89
420066	2.05
420067	3.28
420068	2.98
420069	1.67
420070	2.46
420071	2.61
420072	1.34
420073	2.64
420074	1.17
420075	1.89
420078	2.77
420079	1.83

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
420080	2.73
420082	2.46
420083	3.56
420085	2.11
420086	2.53
420087	2.67
420088	2.69
420089	2.78
420091	2.90
420093	1.72
423025	2.87
423026	1.85
424006	1.55
424008	1.55
424010	1.72
430004	1.93
430005	2.85
430007	2.59
430008	2.76
430010	2.44
430011	3.17
430012	3.67
430013	3.09
430014	2.74
430015	3.04
430016	2.68
430018	1.52
430022	1.19
430023	1.38
430024	1.09
430026	1.24
430027	3.97
430028	2.58
430029	1.96
430031	1.74
430033	1.72
430034	1.42
430036	2.00
430037	1.34
430038	2.55
430040	2.03
430041	1.71
430043	2.19
430044	1.45
430047	1.89
430048	2.33
430049	1.38
430051	1.03
430054	1.91
430056	1.34
430057	1.61
430060	1.05
430062	1.79
430064	1.98
430065	1.41
430066	1.16
430073	1.69
430076	1.05
430077	3.25
430079	1.00
430087	1.15
434004	1.77
440001	1.78
440002	3.88
440003	2.91
440006	3.43
440007	1.27
440008	2.51
440009	3.09
440010	1.83
440011	2.47
440012	1.94
440014	1.65
440015	3.03
440016	2.08
440017	2.53
440018	1.62
440019	2.59
440020	2.08
440023	1.65
440024	3.03
440025	2.28
440026	0.96
440029	3.02
440030	3.03
440031	2.41
440032	1.55
440033	1.95
440034	2.66
440035	2.55
440039	2.24
440040	1.63
440041	1.78
440046	2.60
440047	1.87
440048	3.27
440049	2.65
440050	2.49
440051	1.73
440052	1.62
440053	3.01
440054	2.09
440056	1.86
440057	1.98
440058	3.01
440059	2.48
440060	1.61
440061	2.13
440063	2.77
440064	1.83
440065	2.45
440067	2.80
440068	2.52
440070	1.77
440071	2.56
440072	2.79
440073	2.64
440078	1.68
440081	2.03
440082	2.82
440083	1.67
440084	1.44
440090	1.66
440091	3.29
440100	1.89
440102	1.95
440103	2.48
440104	2.70
440105	6.65
440109	2.02
440110	2.05
440111	1.34
440114	1.96
440115	1.91
440120	3.52
440125	2.79
440130	2.95
440131	2.77
440132	2.22
440133	3.04
440135	2.23
440137	2.14
440141	1.11
440142	1.45
440143	1.64
440144	3.94
440145	1.38
440147	7.20
440148	2.45
440149	1.54
440150	3.46
440151	1.93
440152	1.65
440153	2.05
440156	3.10
440157	1.61
440159	2.28
440161	3.68
440162	1.33
440166	2.69
440168	2.48
440173	4.06
440174	2.07
440175	2.60
440176	3.06
440178	2.28
440180	1.76
440181	1.99
440182	2.30
440183	3.34
440184	3.06
440185	2.49
440186	2.23
440187	1.94
440189	3.47
440192	1.80
440193	3.20
440194	2.14
440197	2.76
440200	2.02
440203	1.96
440205	1.46
440206	1.95
440211	1.50
442007	0.93
443025	1.69
443026	1.27
443029	3.28
444003	1.36
444004	1.56
444006	1.50
444010	1.47
444011	1.70
444012	1.48
450002	2.42
450004	1.82
450005	2.10
450007	2.96
450008	1.81
450010	2.54
450011	2.92
450014	1.79
450015	1.30
450016	3.15
450018	1.54
450020	2.19
450021	1.91
450023	2.67
450024	1.59
450025	2.88
450028	2.44
450029	2.05
450031	2.15

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
450032	
450033	
450034	
450037	
450039	
450040	
450042	
450044	
450046	
450047	
450050	
450051	
450052	
450053	
450054	
450055	
450056	
450058	
450059	
450063	
450064	
450065	
450068	
450072	
450073	
450076	
450078	
450079	
450080	
450081	
450082	
450083	
450085	
450087	
450090	
450092	
450094	
450096	
450097	
450098	
450099	
450101	
450102	
450104	
450107	
450108	
450109	
450111	
450112	
450113	
450118	
450119	
450121	
450123	
450124	
450126	
450128	
450130	
450131	
450132	
450133	
450135	
450137	
450140	
450142	
450143	
450144	
450145	
450146	
450147	
450148	

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
450032	1.58
450033	2.00
450034	2.20
450037	2.45
450039	1.15
450040	2.06
450042	2.28
450044	2.42
450046	2.83
450047	2.39
450050	1.32
450051	1.88
450052	1.52
450053	2.39
450054	3.44
450055	1.76
450056	3.27
450058	3.45
450059	2.75
450063	0.93
450064	2.96
450065	1.66
450068	2.03
450072	2.31
450073	1.43
450076	1.74
450078	1.20
450079	2.85
450080	3.06
450081	1.93
450082	1.66
450083	3.49
450085	1.74
450087	1.92
450090	2.50
450092	1.92
450094	2.64
450096	1.90
450097	3.26
450098	1.14
450099	2.07
450101	2.56
450102	3.28
450104	2.89
450107	2.09
450108	1.34
450109	1.62
450111	2.55
450112	2.73
450113	2.75
450118	3.27
450119	2.49
450121	2.67
450123	1.81
450124	2.19
450126	1.79
450128	1.96
450130	3.66
450131	1.87
450132	2.27
450133	2.37
450135	2.53
450137	2.28
450140	1.45
450142	2.07
450143	1.77
450144	1.72
450145	1.28
450146	0.96
450147	1.94
450148	2.31
450149	2.01
450150	1.68
450151	1.53
450152	2.31
450153	2.31
450154	1.65
450155	1.62
450157	1.35
450160	1.92
450162	2.04
450163	1.73
450164	1.25
450165	1.80
450166	0.89
450170	1.58
450176	2.39
450177	2.15
450178	1.45
450181	1.30
450184	3.00
450185	1.48
450187	2.15
450188	1.85
450190	2.93
450191	2.63
450192	1.73
450193	3.90
450194	2.36
450196	2.70
450200	2.44
450201	2.12
450203	1.91
450209	1.87
450210	1.70
450211	2.35
450213	1.41
450214	2.68
450217	1.03
450219	2.18
450221	1.26
450222	2.43
450224	1.98
450229	2.67
450231	2.88
450234	1.46
450235	2.06
450236	2.65
450237	1.91
450239	1.44
450241	1.30
450243	1.51
450246	1.41
450249	1.26
450250	1.24
450253	2.53
450258	1.10
450259	2.23
450264	0.95
450269	1.27
450270	1.51
450271	1.29
450272	2.97
450276	1.49
450278	1.31
450280	1.89
450283	1.44
450286	1.18
450288	1.62
450289	1.10
450292	1.86
450293	1.74
450296	2.21
450299	2.38
450303	1.01
450306	3.74
450307	0.96
450309	1.55
450315	2.78
450320	1.95
450321	1.19
450322	0.95
450324	2.31
450327	0.99
450330	1.72
450334	1.11
450337	1.43
450340	2.59
450341	1.92
450346	2.03
450347	2.42
450348	1.19
450351	4.30
450352	2.28
450353	1.76
450355	1.19
450358	2.70
450362	2.54
450369	1.65
450370	4.89
450371	2.14
450372	2.85
450373	1.30
450374	1.01
450376	2.42
450378	1.88
450379	2.51
450388	2.86
450389	1.82
450393	1.90
450395	1.59
450399	1.01
450400	1.84
450403	1.86
450411	1.60
450417	1.87
450419	1.63
450423	2.53
450424	2.48
450429	0.92
450431	3.06
450438	2.81
450446	1.56
450447	3.17
450451	2.28
450457	3.06
450460	1.80
450462	2.18
450464	1.52
450465	3.29
450467	1.51
450469	2.86
450473	1.18
450475	2.34
450484	2.35
450488	1.99
450489	1.16
450497	1.87
450498	2.36
450508	1.98
450514	2.23
450517	1.38
450518	2.21

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
450523	2.86
450530	2.51
450534	1.19
450535	2.43
450537	1.99
450538	1.73
450539	2.51
450544	2.04
450545	3.67
450547	1.58
450550	2.14
450551	2.35
450558	2.15
450559	1.17
450561	2.38
450563	2.67
450565	2.26
450570	1.54
450571	2.72
450573	1.71
450574	0.86
450575	1.23
450578	0.99
450580	2.31
450583	1.05
450584	1.81
450586	1.68
450587	2.02
450591	2.79
450596	2.40
450597	1.62
450603	1.13
450604	2.50
450605	2.09
450609	1.13
450610	2.61
450614	1.50
450615	2.10
450617	2.32
450620	1.54
450623	1.90
450626	1.25
450628	1.23
450630	2.13
450631	2.35
450632	0.82
450633	2.66
450634	2.74
450638	3.03
450639	2.56
450641	1.78
450643	2.22
450644	2.61
450646	2.30
450647	3.16
450648	1.81
450649	1.41
450651	2.23
450652	1.56
450653	2.45
450654	1.13
450656	2.67
450658	1.99
450659	2.45
450661	3.17
450662	1.88
450665	1.72
450666	2.05
450668	2.88
450669	2.34
450670	2.50
450672	2.85
450673	1.27
450675	2.26
450677	2.45
450678	2.78
450683	2.31
450684	1.97
450686	2.30
450688	2.14
450690	1.61
450694	2.52
450696	10.88
450697	2.05
450698	0.96
450700	1.29
450702	2.40
450703	1.31
450704	2.26
450706	2.28
450709	3.05
450711	2.54
450712	1.58
450713	2.33
450715	1.66
450716	2.68
450717	2.11
450718	2.38
450723	1.91
450724	3.75
450725	1.74
450727	1.83
450730	2.19
450733	2.48
450735	0.61
450742	2.28
450743	2.99
450746	1.40
450747	2.66
450749	1.10
450750	1.49
450754	1.70
450755	1.77
450757	1.05
450758	2.25
450760	2.56
450761	1.23
450763	1.79
450766	5.91
450769	1.09
450770	1.31
450771	2.19
450774	5.04
450775	2.38
450776	1.42
450777	1.59
450779	2.04
450780	6.29
450788	1.88
450795	0.95
450797	9.66
450798	0.52
450801	2.59
450802	3.03
450803	1.09
450804	6.10
450809	2.33
450811	4.24
450813	0.96
452013	0.96
452019	2.02
452022	0.50
452033	0.99
452036	0.68
452038	1.47
452039	2.99
452043	0.99
453025	1.24
453028	0.80
453029	1.16
453031	1.67
453033	0.76
453034	1.11
453035	2.14
453036	1.94
453037	1.55
453038	1.38
453040	1.31
453041	0.98
453042	1.12
453044	2.33
453047	1.22
453048	1.07
453052	1.56
453053	1.56
453054	1.70
453055	1.15
453056	1.64
453057	1.41
453059	0.79
453065	3.51
453070	1.94
453071	1.31
453072	0.83
453074	1.48
453300	1.36
453302	1.48
453304	1.75
453305	1.03
454012	1.55
454018	1.55
454026	1.50
454028	1.56
454029	2.26
454030	1.55
454031	1.46
454032	1.41
454034	1.19
454038	1.55
454042	1.54
454043	1.55
454045	1.61
454046	1.55
454050	1.55
454051	1.55
454056	1.85
454057	1.59
454058	1.55
454063	1.43
454064	1.55
454065	1.60
454066	1.57
454069	3.09
454072	1.55
454073	2.07
454078	1.55
454086	1.64
454089	1.59
460001	3.01
460003	3.25
460004	2.54
460005	2.52
460006	3.82

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
460007	2.96
460008	2.63
460010	2.49
460011	2.23
460013	2.78
460014	1.34
460015	2.90
460016	1.45
460017	3.22
460018	1.64
460019	2.15
460020	1.91
460021	2.21
460022	1.38
460023	3.19
460024	1.13
460026	2.02
460027	1.60
460029	1.95
460030	1.97
460033	1.71
460035	1.25
460036	2.22
460037	2.00
460039	1.74
460041	2.92
460042	2.75
460044	2.19
460047	1.87
460050	2.05
463025	1.62
463301	2.49
464003	1.55
464010	1.49
470001	2.03
470003	2.64
470004	1.61
470005	2.36
470006	2.57
470008	1.91
470010	1.97
470011	2.35
470012	2.92
470015	2.00
470018	2.08
470020	1.21
470023	2.58
470024	2.14
474001	1.00
480001	1.71
480002	2.28
490001	1.65
490002	1.67
490004	2.35
490005	2.56
490006	2.26
490007	2.58
490009	1.92
490011	2.79
490012	1.55
490013	2.66
490014	1.99
490015	3.19
490017	2.89
490018	2.98
490019	2.31
490020	2.71
490021	4.47
490022	2.51
490023	2.38
490024	2.41
490027	1.99
490030	2.72
490031	1.99
490032	1.79
490033	1.86
490035	2.24
490037	2.53
490038	2.45
490040	3.17
490041	3.49
490042	2.44
490043	2.05
490044	2.36
490045	2.18
490046	3.14
490047	1.54
490048	2.50
490050	2.83
490052	2.52
490053	3.03
490054	1.53
490057	2.55
490059	3.37
490060	2.50
490063	3.91
490066	2.69
490067	2.92
490069	1.47
490071	3.11
490073	3.88
490074	4.12
490075	2.71
490077	2.70
490079	2.29
490084	2.34
490085	2.06
490088	2.76
490089	1.66
490090	2.56
490091	2.51
490092	2.40
490093	2.47
490094	1.80
490095	2.26
490097	2.14
490098	2.23
490099	1.15
490100	3.77
490101	2.60
490107	3.12
490110	3.44
490111	2.35
490112	2.51
490113	2.59
490114	1.71
490115	2.14
490116	2.10
490117	1.36
490118	2.66
490119	2.87
490120	2.67
490122	2.96
490123	2.48
490124	2.04
490126	2.43
490127	1.71
490130	2.18
490131	1.76
490132	1.35
492001	0.79
493025	1.33
493026	0.95
493027	2.22
493301	1.92
494001	1.55
494002	2.09
494011	1.32
494012	1.32
494016	1.61
494018	1.58
494020	1.55
494022	1.54
494023	1.49
494025	1.51
494026	1.56
494028	1.55
500001	2.76
500002	2.28
500003	2.52
500005	2.36
500007	3.32
500008	1.76
500011	2.06
500012	2.89
500014	2.81
500015	2.18
500016	2.18
500019	2.86
500021	2.40
500023	2.26
500024	4.42
500025	3.38
500026	2.35
500027	3.25
500028	1.40
500029	1.05
500030	2.75
500031	2.22
500033	2.86
500036	2.81
500037	1.78
500039	3.11
500041	2.44
500042	3.48
500043	1.89
500044	2.71
500045	2.58
500048	1.78
500049	3.44
500050	2.66
500051	2.50
500053	2.46
500054	2.75
500055	1.92
500057	2.86
500058	2.71
500059	2.44
500060	2.27
500061	1.20
500062	1.05
500064	1.39
500065	2.77
500068	1.20
500069	1.37
500071	3.26
500072	2.47
500073	1.53
500074	2.55
500077	2.36
500079	1.86
500080	1.24
500084	2.51

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
500085	1.80
500086	2.16
500088	3.09
500089	1.95
500090	0.72
500092	1.86
500094	0.90
500096	1.92
500097	1.37
500098	1.55
500101	1.28
500102	1.87
500104	2.26
500106	0.74
500107	1.59
500108	2.82
500110	3.07
500118	2.65
500119	1.90
500122	2.64
500123	0.91
500124	2.31
500125	1.49
500129	2.22
500132	1.55
500138	1.18
500139	2.80
500141	3.36
500146	2.38
502002	3.92
503025	0.98
503300	2.92
504002	2.30
510001	2.30
510002	2.52
510004	1.11
510005	1.58
510006	3.16
510007	2.23
510008	2.53
510012	2.16
510013	1.65
510015	1.20
510016	1.25
510018	1.83
510020	1.28
510022	2.50
510023	2.47
510024	3.34
510026	1.65
510027	1.74
510028	1.53
510029	2.69
510030	2.36
510031	3.42
510033	2.25
510038	1.72
510039	2.54
510043	1.04
510046	2.15
510047	2.69
510048	1.50
510050	2.35
510053	1.65
510055	2.34
510058	2.55
510059	8.87
510060	1.67
510063	1.27
510065	1.25
510066	2.08
510067	2.57
510068	2.41
510070	3.32
510071	2.27
510072	1.53
510077	2.18
510081	1.38
510082	1.71
510084	1.51
510085	1.82
510086	1.23
511300	1.44
511302	1.06
511303	0.83
511304	0.76
513026	0.85
513027	1.46
513028	1.85
513030	1.62
514001	3.01
514007	6.63
514008	2.21
520002	2.77
520003	2.36
520004	2.74
520006	2.33
520007	1.68
520008	2.45
520009	2.18
520010	2.42
520011	3.20
520013	2.03
520014	2.43
520015	2.52
520016	1.89
520017	2.13
520018	2.14
520019	2.31
520021	2.83
520024	1.93
520025	2.07
520026	2.20
520028	3.51
520029	1.40
520030	3.48
520031	4.15
520032	1.98
520033	2.12
520034	2.48
520035	3.09
520037	2.90
520038	3.33
520039	1.83
520040	2.06
520041	2.05
520042	2.08
520044	3.29
520045	2.41
520047	2.14
520048	2.38
520049	3.14
520053	1.79
520054	1.65
520057	3.07
520058	2.94
520059	2.95
520060	1.75
520062	2.61
520063	3.04
520064	1.94
520066	3.17
520068	1.77
520069	2.12
520070	2.50
520074	1.63
520075	2.66
520076	2.70
520077	1.23
520078	2.04
520082	2.99
520083	1.84
520084	2.26
520087	1.35
520088	2.57
520089	3.53
520090	2.03
520091	3.78
520092	2.09
520094	2.16
520095	2.78
520096	2.59
520097	2.39
520098	1.53
520100	2.57
520101	1.56
520102	2.55
520103	2.61
520107	1.94
520109	2.11
520110	1.80
520111	2.23
520112	3.43
520113	2.74
520114	2.15
520115	2.08
520116	2.63
520117	1.88
520118	1.11
520120	1.09
520121	1.82
520122	1.47
520123	1.74
520124	1.94
520130	2.26
520131	2.07
520132	2.57
520134	1.61
520135	1.93
520136	2.43
520138	2.56
520139	2.66
520140	2.57
520141	2.06
520142	1.24
520144	2.29
520145	1.66
520146	2.38
520148	1.87
520149	1.20
520151	2.64
520152	2.15
520153	1.47
520154	2.30
520156	3.30
520157	1.65
520159	1.39
520160	2.79
520161	2.36
520170	3.01
520171	1.86
520173	2.91
520177	2.45

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ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
520178	2.40
523025	1.73
523026	1.64
523300	2.75
524000	1.64
524003	1.42
524017	0.47
524034	1.54
524038	1.80
524040	1.66
530002	2.28
530003	1.36
530004	1.89

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
530005	1.75
530006	2.21
530007	2.02
530008	2.57
530009	2.04
530010	2.43
530011	2.24
530012	2.33
530014	2.79
530015	2.27
530016	2.03
530017	2.10
530018	1.65

ADDENDUM G.—SERVICE MIX INDICES BY HOSPITAL—Continued

Hospital	SMI
530019	1.56
530022	2.09
530023	1.65
530025	2.01
530026	1.52
530027	1.58
530029	1.01
530031	1.02
530032	2.22
534003	1.56
650001	2.01

ADDENDUM H.—WAGE INDEX FOR URBAN AREAS

Urban Code	Urban Area (Constituent Counties)	Wage Index
0040	Abilene, TX Taylor, TX	0.8179
0060	[2] Aguadilla, PR Aguada, PR Aguadilla, PR Moca, PR	0.4249
0080	Akron, OH Portage, OH Summit, OH	1.0163
0120	Albany, GA Dougherty, GA Lee, GA	1.0372
0160	Albany-Schenectady-Troy, NY Albany, NY Montgomery, NY Rensselaer, NY Saratoga, NY Schenectady, NY Schoharie, NY.	0.8754
0200	Albuquerque, NM Bernalillo, NM Sandoval, NM Valencia, NM	0.8499
0220	Alexandria, LA Rapides, LA	0.7910
0240	Allentown-Bethlehem-Easton, PA Carbon, PA Lehigh, PA Northampton, PA	0.9550
0280	Altoona, PA Blair, PA	0.9342
0320	Amarillo, TX Potter, TX Randall, TX	0.8435
0380	Anchorage, AK Anchorage, AK	1.3009
0440	Ann Arbor, MI Lenawee, MI Livingston, MI Washtenaw, MI	1.1483
0450	Anniston, AL Calhoun, AL	0.8462
0460	Appleton-Oshkosh-Neenah, WI Calumet, WI Outagamie, WI Winnebago, WI	0.8913
0470	Arecibo, PR Arecibo, PR Camuy, PR Hatillo, PR	0.4815
0480	Asheville, NC Buncombe, NC Madison, NC	0.8884
0500	Athens, GA Clarke, GA Madison, GA Oconee, GA	0.9800
0520	[1] Atlanta, GA Barrow, GA Bartow, GA Carroll, GA Cherokee, GA Clayton, GA Cobb, GA Coweta, GA DeKalb, GA Douglas, GA Fayette, GA Forsyth, GA Fulton, GA Gwinnett, GA Henry, GA Newton, GA Paulding, GA Pickens, GA Rockdale, GA Spalding, GA Walton.	1.0050
0560	Atlantic-Cape May, NJ Atlantic, NJ Cape May, NJ	1.1050
0580	Auburn-Opelika, AL Lee, AL	0.7748
0600	Augusta-Aiken, GA–SC Columbia, GA McDuffie, GA Richmond, GA Aiken, SC Edgefield, SC	0.9013
0640	[1] Austin-San Marcos, TX Bastrop, TX Caldwell, TX Hays, TX Travis, TX Williamson, TX	0.9081
0680	[2] Bakersfield, CA Kern, CA	0.9951
0720	[1] Baltimore, MD Anne Arundel, MD Baltimore, MD Baltimore City, MD Carroll, MD Harford, MD Howard, MD Queen Anne's, MD.	0.9891
0733	Bangor, ME Penobscot, ME	0.9609
0743	Barnstable-Yarmouth, MA Barnstable, MA	1.3302
0760	Baton Rouge, LA Ascension, LA East Baton Rouge, LA Livingston, LA West Baton Rouge, LA	0.8707
0840	Beaumont-Port Arthur, TX Hardin, TX Jefferson, TX Orange, TX	0.8624
0860	Bellingham, WA Whatcom, WA	1.1394
0870	[2] Benton Harbor, MI Berrien, MI	0.8831
0875	[1] Bergen-Passaic, NJ Bergen, NJ Passaic, NJ	1.1833
0880	Billings, MT Yellowstone, MT	1.0038
0920	Biloxi-Gulfport-Pascagoula, MS Hancock, MS Harrison, MS Jackson, MS	0.7949
0960	Binghamton, NY Broome, NY Tioga, NY	0.8750
1000	Birmingham, AL Blount, AL Jefferson, AL St. Clair, AL Shelby, AL	0.8994
1010	Bismarck, ND Burleigh, ND Morton, ND	0.7893
1020	Bloomington, IN Monroe, IN	0.8593
1040	Bloomington-Normal, IL McLean, IL	0.8993
1060	Boise City, ID Ada, ID Canyon, ID	0.9066
1123	[1 2] Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH (MA Hospitals) Bristol, MA Essex, MA Middlesex, MA Norfolk, MA Plymouth, MA Suffolk, MA Worcester, MA Hillsborough, NH Merrimack, NH Rockingham, NH Strafford, NH.	1.1369
1123	[1] Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH (NH Hospitals) Bristol, MA Essex, MA Middlesex, MA Norfolk, MA Plymouth, MA Suffolk, MA Worcester, MA Hillsborough, NH Merrimack, NH Rockingham, NH Strafford, NH.	1.1358

[1] Large Urban Area
[2] Hospitals geographically located in the area are assigned the statewide rural wage index for FY 2000.

ADDENDUM H.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Code	Urban Area (Constituent Counties)	Wage Index
1125	Boulder-Longmont, CO Boulder, CO	0.9944
1145	Brazoria, TX Brazoria, TX	0.8516
1150	Bremerton, WA Kitsap, WA	1.1011
1240	Brownsville-Harlingen-San Benito, TX Cameron, TX	0.9212
1260	Bryan-College Station, TX Brazos, TX	0.8501
1280	[1] Buffalo-Niagara Falls, NY Erie, NY Niagara, NY	0.9604
1303	Burlington, VT Chittenden, VT Franklin, VT Grand Isle, VT	1.0558
1310	Caguas, PR Caguas, PR Cayey, PR Cidra, PR Gurabo, PR San Lorenzo, PR	0.4561
1320	[2] Canton-Massillon, OH Carroll, OH Stark, OH	0.8649
1350	Casper, WY Natrona, WY	0.9199
1360	Cedar Rapids, IA Linn, IA	0.9018
1400	Champaign-Urbana, IL Champaign, IL	0.9163
1440	Charleston-North Charleston, SC Berkeley, SC Charleston, SC Dorchester, SC	0.8988
1480	Charleston, WV Kanawha, WV Putnam, WV	0.9095
1520	[1] Charlotte-Gastonia-Rock Hill, NC–SC Cabarrus, NC Gaston, NC Lincoln, NC Mecklenburg, NC Rowan, NC Stanly, NC Union, NC York, SC.	0.9433
1540	Charlottesville, VA Albemarle, VA Charlottesville City, VA Fluvanna, VA Greene, VA	1.0573
1560	Chattanooga, TN–GA Catoosa, GA Dade, GA Walker, GA Hamilton, TN Marion, TN	0.9731
1580	[2] Cheyenne, WY Laramie, WY	0.8859
1600	[1] Chicago, IL Cook, IL DeKalb, IL DuPage, IL Grundy, IL Kane, IL Kendall, IL Lake, IL McHenry, IL Will, IL	1.0872
1620	Chico-Paradise, CA Butte, CA	1.0390
1640	[1] Cincinnati, OH–KY–IN Dearborn, IN Ohio, IN Boone, KY Campbell, KY Gallatin, KY Grant, KY Kenton, KY Pendleton, KY Brown, OH Clermont, OH Hamilton, OH Warren, OH.	0.9434
1660	Clarksville-Hopkinsville, TN–KY Christian, KY Montgomery, TN	0.8283
1680	[1] Cleveland-Lorain-Elyria, OH Ashtabula, OH Cuyahoga, OH Geauga, OH Lake, OH Lorain, OH Medina, OH	0.9688
1720	Colorado Springs, CO El Paso, CO	0.9218
1740	Columbia, MO Boone, MO	0.8904
1760	Columbia, SC Lexington, SC Richland, SC	0.9357
1800	Columbus, GA–AL Russell, AL Chattahoochee, GA Harris, GA Muscogee, GA	0.8510
1840	[1] Columbus, OH Delaware, OH Fairfield, OH Franklin, OH Licking, OH Madison, OH Pickaway, OH	0.9907
1880	Corpus Christi, TX Nueces, TX San Patricio, TX	0.8702
1890	Corvallis, OR Benton, OR	1.1087
1900	Cumberland, MD–WV (Maryland Hospitals) Allegany, MD Mineral, WV	0.8801
1920	[1] Dallas, TX Collin, TX Dallas, TX Denton, TX Ellis, TX Henderson, TX Hunt, TX Kaufman, TX Rockwall, TX	0.9589
1950	Danville, VA Danville City, VA Pittsylvania, VA	0.9061
1960	Davenport-Moline-Rock Island, IA–IL Scott, IA Henry, IL Rock Island, IL	0.8706
2000	Dayton-Springfield, OH Clark, OH Greene, OH Miami, OH Montgomery, OH	0.9336
2020	[2] Daytona Beach, FL Flagler, FL Volusia, FL	0.8986
2030	Decatur, AL Lawrence, AL Morgan, AL	0.8679
2040	Decatur, IL Macon, IL	0.8321
2080	[1] Denver, CO Adams, CO Arapahoe, CO Denver, CO Douglas, CO Jefferson, CO	1.0197
2120	Des Moines, IA Dallas, IA Polk, IA Warren, IA	0.8754
2160	[1] Detroit, MI Lapeer, MI Macomb, MI Monroe, MI Oakland, MI St. Clair, MI Wayne, MI	1.0421
2180	Dothan, AL Dale, AL Houston, AL	0.7836
2190	Dover, DE Kent, DE	0.9335
2200	Dubuque, IA Dubuque, IA	0.8520
2240	Duluth-Superior, MN–WI St. Louis, MN Douglas, WI	1.0165
2281	Dutchess County, NY Dutchess, NY	0.9872
2290	Eau Claire, WI Chippewa, WI Eau Claire, WI	0.8957
2320	El Paso, TX El Paso, TX	0.8947
2330	Elkhart-Goshen, IN Elkhart, IN	0.9379
2335	[2] Elmira, NY Chemung, NY	0.8636
2340	Enid, OK Garfield, OK	0.7953
2360	Erie, PA Erie, PA	0.9023
2400	Eugene-Springfield, OR Lane, OR	1.0765
2440	[2] Evansville-Henderson, IN–KY (IN Hospitals) Posey, IN Vanderburgh, IN Warrick, IN Henderson, KY	0.8396
2440	Evansville-Henderson, IN–KY (KY Hospitals) Posey, IN Vanderburgh, IN Warrick, IN Henderson, KY	0.8303
2520	Fargo-Moorhead, ND–MN Clay, MN Cass, ND	0.8620
2560	Fayetteville, NC Cumberland, NC	0.8494
2580	Fayetteville-Springdale-Rogers, AR Benton, AR Washington, AR	0.7773
2620	Flagstaff, AZ–UT Coconino, AZ Kane, UT	1.0348
2640	Flint, MI Genesee, MI	1.1020
2650	Florence, AL Colbert, AL Lauderdale, AL	0.7927
2655	Florence, SC Florence, SC	0.8618
2670	Fort Collins-Loveland, CO Larimer, CO	1.0302
2680	[1] Ft. Lauderdale, FL Broward, FL	1.0172
2700	[2] Fort Myers-Cape Coral, FL Lee, FL	0.8986

[1] Large Urban Area
[2] Hospitals geographically located in the area are assigned the statewide rural wage index for FY 2000.

ADDENDUM H.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Code	Urban Area (Constituent Counties)	Wage Index
2710	Fort Pierce-Port St. Lucie, FL Martin, FL St. Lucie, FL	1.0109
2720	Fort Smith, AR–OK Crawford, AR Sebastian, AR Sequoyah, OK	0.7844
2750	[2] Fort Walton Beach, FL Okaloosa, FL	0.8986
2760	Fort Wayne, IN Adams, IN Allen, IN De Kalb, IN Huntington, IN Wells, IN Whitley, IN	0.9096
2800	[1] Forth Worth-Arlington, TX Hood, TX Johnson, TX Parker, TX Tarrant, TX	0.9835
2840	Fresno, CA Fresno, CA Madera, CA	1.0262
2880	Gadsden, AL Etowah, AL	0.8754
2900	Gainesville, FL Alachua, FL	1.0102
2920	Galveston-Texas City, TX Galveston, TX	0.9732
2960	Gary, IN Lake, IN Porter, IN	0.9369
2975	[2] Glens Falls, NY Warren, NY Washington, NY	0.8636
2980	Goldsboro, NC Wayne, NC	0.8333
2985	Grand Forks, ND–MN Polk, MN Grand Forks, ND	0.9097
2995	Grand Junction, CO Mesa, CO	0.9188
3000	[1] Grand Rapids-Muskegon-Holland, MI Allegan, MI Kent, MI Muskegon, MI Ottawa, MI	1.0135
3040	Great Falls, MT Cascade, MT	1.0459
3060	Greeley, CO Weld, CO	0.9722
3080	Green Bay, WI Brown, WI	0.9215
3120	[1] Greensboro-Winston-Salem-High Point, NC Alamance, NC Davidson, NC Davie, NC Forsyth, NC Guilford, NC Randolph, NC Stokes, NC Yadkin, NC.	0.9037
3150	Greenville, NC Pitt, NC	0.9500
3160	Greenville-Spartanburg-Anderson, SC Anderson, SC Cherokee, SC Greenville, SC Pickens, SC Spartanburg, SC	0.9188
3180	Hagerstown, MD Washington, MD	0.8853
3200	Hamilton-Middletown, OH Butler, OH	0.8989
3240	Harrisburg-Lebanon-Carlisle, PA Cumberland, PA Dauphin, PA Lebanon, PA Perry, PA	0.9917
3283	[1] [2] Hartford, CT Hartford, CT Litchfield, CT Middlesex, CT Tolland, CT	1.2413
3285	[2] Hattiesburg, MS Forrest, MS Lamar, MS	0.7306
3290	Hickory-Morganton-Lenoir, NC Alexander, NC Burke, NC Caldwell, NC Catawba, NC	0.9148
3320	Honolulu, HI Honolulu, HI	1.1479
3350	Houma, LA Lafourche, LA Terrebonne, LA	0.7837
3360	[1] Houston, TX Chambers, TX Fort Bend, TX Harris, TX Liberty, TX Montgomery, TX Waller, TX	0.9387
3400	Huntington-Ashland, WV–KY–OH Boyd, KY Carter, KY Greenup, KY Lawrence, OH Cabell, WV Wayne, WV	0.9757
3440	Huntsville, AL Limestone, AL Madison, AL	0.8822
3480	[1] Indianapolis, IN Boone, IN Hamilton, IN Hancock, IN Hendricks, IN Johnson, IN Madison, IN Marion, IN Morgan, IN Shelby, IN.	0.9792
3500	Iowa City, IA Johnson, IA	0.9607
3520	Jackson, MI Jackson, MI	0.8840
3560	Jackson, MS Hinds, MS Madison, MS Rankin, MS	0.8387
3580	Jackson, TN Madison, TN Chester, TN	0.8600
3600	[1] [2] Jacksonville, FL Clay, FL Duval, FL Nassau, FL St. Johns, FL	0.8986
3605	[2] Jacksonville, NC Onslow, NC	0.8290
3610	[2] Jamestown, NY Chautauqua, NY	0.8636
3620	Janesville-Beloit, WI Rock, WI	0.9656
3640	Jersey City, NJ Hudson, NJ	1.1674
3660	Johnson City-Kingsport-Bristol, TN–VA Carter, TN Hawkins, TN Sullivan, TN Unicoi, TN Washington, TN Bristol City, VA Scott, VA Washington, VA.	0.8894
3680	[2] Johnstown, PA Cambria, PA Somerset, PA	0.8524
3700	Jonesboro, AR Craighead, AR	0.7251
3710	[2] Joplin, MO Jasper, MO Newton, MO	0.7723
3720	Kalamazoo-Battlecreek, MI Calhoun, MI Kalamazoo, MI Van Buren, MI	0.9981
3740	Kankakee, IL Kankakee, IL	0.8598
3760	[1] Kansas City, KS–MO Johnson, KS Leavenworth, KS Miami, KS Wyandotte, KS Cass, MO Clay, MO Clinton, MO Jackson, MO Lafayette, MO Platte, MO Ray, MO.	0.9322
3800	Kenosha, WI Kenosha, WI	0.9033
3810	Killeen-Temple, TX Bell, TX Coryell, TX	0.9932
3840	Knoxville, TN Anderson, TN Blount, TN Knox, TN Loudon, TN Sevier, TN Union, TN	0.9199
3850	Kokomo, IN Howard, IN Tipton, IN	0.8984
3870	La Crosse, WI–MN Houston, MN La Crosse, WI	0.8933
3880	Lafayette, LA Acadia, LA Lafayette, LA St. Landry, LA St. Martin, LA	0.8397
3920	Lafayette, IN Clinton, IN Tippecanoe, IN	0.8809
3960	Lake Charles, LA Calcasieu, LA	0.7966
3980	[2] Lakeland-Winter Haven, FL Polk, FL	0.8986
4000	Lancaster, PA Lancaster, PA	0.9255
4040	Lansing-East Lansing, MI Clinton, MI Eaton, MI Ingham, MI	0.9977
4080	Laredo, TX Webb, TX	0.8323
4100	Las Cruces, NM Dona Ana, NM	0.8590
4120	[1] Las Vegas, NV–AZ Mohave, AZ Clark, NV Nye, NV	1.1258

[1] Large Urban Area

[2] Hospitals geographically located in the area are assigned the statewide rural wage index for FY 2000.

ADDENDUM H.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Code	Urban Area (Constituent Counties)	Wage Index
4150	Lawrence, KS Douglas, KS	0.8222
4200	Lawton, OK Comanche, OK	0.9532
4243	Lewiston-Auburn, ME Androscoggin, ME	0.8899
4280	Lexington, KY Bourbon, KY Clark, KY Fayette, KY Jessamine, KY Madison, KY Scott, KY Woodford, KY	0.8552
4320	Lima, OH Allen, OH Auglaize, OH	0.9108
4360	Lincoln, NE Lancaster, NE	0.9670
4400	Little Rock-North Little Rock, AR Faulkner, AR Lonoke, AR Pulaski, AR Saline, AR	0.8614
4420	Longview-Marshall, TX Gregg, TX Harrison, TX Upshur, TX	0.8738
4480	[1] Los Angeles-Long Beach, CA Los Angeles, CA	1.2085
4520	Louisville, KY–IN Clark, IN Floyd, IN Harrison, IN Scott, IN Bullitt, KY Jefferson, KY Oldham, KY	0.9381
4600	Lubbock, TX Lubbock, TX	0.8411
4640	Lynchburg, VA Amherst, VA Bedford, VA Bedford City, VA Campbell, VA Lynchburg City, VA	0.8814
4680	Macon, GA Bibb, GA Houston, GA Jones, GA Peach, GA Twiggs, GA	0.8530
4720	Madison, WI Dane, WI	0.9729
4800	[2] Mansfield, OH Crawford, OH Richland, OH	0.8649
4840	Mayaguez, PR Anasco, PR Cabo Rojo, PR Hormigueros, PR Mayaguez, PR Sabana Grande, PR San German, PR	0.4674
4880	McAllen-Edinburg-Mission, TX Hidalgo, TX	0.8120
4890	Medford-Ashland, OR Jackson, OR	1.0492
4900	Melbourne-Titusville-Palm Bay, FL Brevard, FL	0.9296
4920	[1] Memphis, TN–AR–MS Crittenden, AR DeSoto, MS Fayette, TN Shelby, TN Tipton, TN	0.8244
4940	Merced, CA Merced, CA	1.0509
5000	[1] Miami, FL Dade, FL	1.0233
5015	[1] Middlesex-Somerset-Hunterdon, NJ Hunterdon, NJ Middlesex, NJ Somerset, NJ	1.0876
5080	[1] Milwaukee-Waukesha, WI Milwaukee, WI Ozaukee, WI Washington, WI Waukesha, WI	0.9845
5120	[1] Minneapolis-St. Paul, MN–WI Anoka, MN Carver, MN Chisago, MN Dakota, MN Hennepin, MN Isanti, MN Ramsey, MN Scott, MN Sherburne, MN Washington, MN Wright, MN Pierce, WI St. Croix, WI.	1.0929
5140	Missoula, MT Missoula, MT	0.9085
5160	Mobile, AL Baldwin, AL Mobile, AL	0.8267
5170	Modesto, CA Stanislaus, CA	1.0111
5190	[1] Monmouth-Ocean, NJ Monmouth, NJ Ocean, NJ	1.1258
5200	Monroe, LA Ouachita, LA	0.8221
5240	Montgomery, AL Autauga, AL Elmore, AL Montgomery, AL	0.7724
5280	Muncie, IN Delaware, IN	1.0834
5330	Myrtle Beach, SC Horry, SC	0.8529
5345	Naples, FL Collier, FL	0.9639
5360	[1] Nashville, TN Cheatham, TN Davidson, TN Dickson, TN Robertson, TN Rutherford TN Sumner, TN Williamson, TN Wilson, TN.	0.9449
5380	[1] Nassau-Suffolk, NY Nassau, NY Suffolk, NY	1.4074
5483	[1] New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT Fairfield, CT New Haven, CT	1.2417
5523	New London-Norwich, CT New London, CT	1.2428
5560	[1] New Orleans, LA Jefferson, LA Orleans, LA Plaquemines, LA St. Bernard, LA St. Charles, LA St. James, LA St. John The Baptist, LA St. Tammany, LA.	0.9089
5600	[1] New York, NY Bronx, NY Kings, NY New York, NY Putnam, NY Queens, NY Richmond, NY Rockland, NY Westchester, NY.	1.4517
5640	[1] Newark, NJ Essex, NJ Morris, NJ Sussex, NJ Union, NJ Warren, NJ	1.0772
5660	Newburgh, NY–PA Orange, NY Pike, PA	1.0908
5720	[1] Norfolk-Virginia Beach-Newport News, VA–NC Currituck, NC Chesapeake City, VA Gloucester, VA Hampton City, VA Isle of Wight, VA James City, VA Mathews, VA Newport News City, VA Norfolk City, VA Poquoson City, VA Portsmouth City, VA Suffolk C.	0.8442
5775	[1] Oakland, CA Alameda, CA Contra Costa, CA	1.5095
5790	Ocala, FL Marion, FL	0.9615
5800	Odessa-Midland, TX Ector, TX Midland, TX	0.8873
5880	[1] Oklahoma City, OK Canadian, OK Cleveland, OK Logan, OK McClain, OK Oklahoma, OK Pottawatomie, OK	0.8589
5910	Olympia, WA Thurston, WA	1.0932
5920	Omaha, NE–IA Pottawattamie, IA Cass, NE Douglas, NE Sarpy, NE Washington, NE	1.0455
5945	[1] Orange County, CA Orange, CA	1.1592
5960	[1] Orlando, FL Lake, FL Orange, FL Osceola, FL Seminole, FL	0.9806
5990	Owensboro, KY Daviess, KY	0.8104
6015	Panama City, FL Bay, FL	0.9169
6020	Parkersburg-Marietta, WV–OH (WV Hospitals) Washington, OH Wood, WV	0.8414
6020	[2] Parkersburg-Marietta, WV–OH (OH Hospitals) Washington, OH Wood, WV	0.8649
6080	[2] Pensacola, FL Escambia, FL Santa Rosa, FL	0.8986
6120	Peoria-Pekin, IL Peoria, IL Tazewell, IL Woodford, IL	0.8399
6160	[1] Philadelphia, PA–NJ Burlington, NJ Camden, NJ Gloucester, NJ Salem, NJ Bucks, PA Chester, PA Delaware, PA Montgomery, PA Philadelphia, PA.	1.1166
6200	[1] Phoenix-Mesa, AZ Maricopa, AZ Pinal, AZ	0.9464
6240	Pine Bluff, AR Jefferson, AR	0.7697

[1] Large Urban Area
[2] Hospitals geographically located in the area are assigned the statewide rural wage index for FY 2000.

ADDENDUM H.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Code	Urban Area (Constituent Counties)	Wage Index
6280	[1] Pittsburgh, PA Allegheny, PA Beaver, PA Butler, PA Fayette, PA Washington, PA Westmoreland, PA	0.9634
6323	[2] Pittsfield, MA Berkshire, MA	1.1369
6340	Pocatello, ID Bannock, ID	0.8973
6360	Ponce, PR Guayanilla, PR Juana Diaz, PR Penuelas, PR Ponce, PR Villalba, PR Yauco, PR	0.4971
6403	Portland, ME Cumberland, ME Sagadahoc, ME York, ME	0.9487
6440	[1] Portland-Vancouver, OR–WA Clackamas, OR Columbia, OR Multnomah, OR Washington, OR Yamhill, OR Clark, WA	1.0996
6483	[1] Providence-Warwick-Pawtucket, RI Bristol, RI Kent, RI Newport, RI Providence, RI Washington, RI	1.0690
6520	Provo-Orem, UT Utah, UT	0.9618
6560	Pueblo, CO Pueblo, CO	0.8853
6580	Punta Gorda, FL Charlotte, FL	0.9508
6600	Racine, WI Racine, WI	0.9216
6640	[1] Raleigh-Durham-Chapel Hill, NC Chatham, NC Durham, NC Franklin, NC Johnston, NC Orange, NC Wake, NC	0.9544
6660	Rapid City, SD Pennington, SD	0.8363
6680	Reading, PA Berks, PA	0.9436
6690	Redding, CA Shasta, CA	1.1263
6720	Reno, NV Washoe, NV	1.0655
6740	Richland-Kennewick-Pasco, WA Benton, WA Franklin, WA	1.1224
6760	Richmond-Petersburg, VA Charles City County, VA Chesterfield, VA Colonial Heights City, VA Dinwiddie, VA Goochland, VA Hanover, VA Henrico, VA Hopewell City, VA New Kent, VA Petersburg City, VA Powhatan, VA Prince George, VA Richmond City, V.	0.9545
6780	[1] Riverside-San Bernardino, CA Riverside, CA San Bernardino, CA	1.1061
6800	Roanoke, VA Botetourt, VA Roanoke, VA Roanoke City, VA Salem City, VA	0.8142
6820	Rochester, MN Olmsted, MN	1.1429
6840	[1] Rochester, NY Genesee, NY Livingston, NY Monroe, NY Ontario, NY Orleans, NY Wayne, NY	0.9184
6880	Rockford, IL Boone, IL Ogle, IL Winnebago, IL	0.8783
6895	Rocky Mount, NC Edgecombe, NC Nash, NC	0.8735
6920	[1] Sacramento, CA El Dorado, CA Placer, CA Sacramento, CA	1.2284
6960	Saginaw-Bay City-Midland, MI Bay, MI Midland, MI Saginaw, MI	0.9294
6980	St. Cloud, MN Benton, MN Stearns, MN	0.9606
7000	St. Joseph, MO Andrew, MO Buchanan, MO	0.8943
7040	[1] St. Louis, MO–IL Clinton, IL Jersey, IL Madison, IL Monroe, IL St. Clair, IL Franklin, MO Jefferson, MO Lincoln, MO St. Charles, MO St. Louis, MO St. Louis City, MO Warren, MO.	0.9052
7080	Salem, OR Marion, OR Polk, OR	0.9949
7120	Salinas, CA Monterey, CA	1.4710
7160	[1] Salt Lake City-Ogden, UT Davis, UT Salt Lake, UT Weber, UT	0.9854
7200	San Angelo, TX Tom Green, TX	0.7845
7240	[1] San Antonio, TX Bexar, TX Comal, TX Guadalupe, TX Wilson, TX	0.8318
7320	[1] San Diego, CA San Diego, CA	1.1955
7360	[1] San Francisco, CA Marin, CA San Francisco, CA San Mateo, CA	1.3784
7400	[1] San Jose, CA Santa Clara, CA	1.3492
7440	[1] San Juan-Bayamon, PR Aguas Buenas, PR Barceloneta, PR Bayamon, PR Canovanas, PR Carolina, PR Catano, PR Ceiba, PR Comerio, PR Corozal, PR Dorado, PR Fajardo, PR Florida, PR Guaynabo, PR Humacao, PR Juncos, PR Los Piedras, PR Loiza, PR Lug.	0.4657
7460	San Luis Obispo-Atascadero-Paso Robles, CA San Luis Obispo, CA	1.0470
7480	Santa Barbara-Santa Maria-Lompoc, CA Santa Barbara, CA	1.0819
7485	Santa Cruz-Watsonville, CA Santa Cruz, CA	1.3927
7490	Santa Fe, NM Los Alamos, NM Santa Fe, NM	1.0437
7500	Santa Rosa, CA Sonoma, CA	1.3000
7510	Sarasota-Bradenton, FL Manatee, FL Sarasota, FL	0.9905
7520	Savannah, GA Bryan, GA Chatham, GA Effingham, GA	0.9953
7560	[2] Scranton—Wilkes-Barre—Hazleton, PA Columbia, PA Lackawanna, PA Luzerne, PA Wyoming, PA	0.8524
7600	[1] Seattle-Bellevue-Everett, WA Island, WA King, WA Snohomish, WA	1.1289
7610	[2] Sharon, PA Mercer, PA	0.8524
7620	[2] Sheboygan, WI Sheboygan, WI	0.8759
7640	Sherman-Denison, TX Grayson, TX	0.9329
7680	Shreveport-Bossier City, LA Bossier, LA Caddo, LA Webster, LA	0.9049
7720	Sioux City, IA–NE Woodbury, IA Dakota, NE	0.8549
7760	Sioux Falls, SD Lincoln, SD Minnehaha, SD	0.8776
7800	South Bend, IN St. Joseph, IN	0.9793
7840	Spokane, WA Spokane, WA	1.0799
7880	Springfield, IL Menard, IL Sangamon, IL	0.8684
7920	Springfield, MO Christian, MO Greene, MO Webster, MO	0.7991
8003	[2] Springfield, MA Hampden, MA Hampshire, MA	1.1369
8050	State College, PA Centre, PA	0.9138
8080	[2] Steubenville-Weirton, OH–WV (OH Hospitals) Jefferson, OH Brooke, WV Hancock, WV	0.8649
8080	Steubenville-Weirton, OH–WV (WV Hospitals) Jefferson, OH Brooke, WV Hancock, WV	0.8614
8120	Stockton-Lodi, CA San Joaquin, CA	1.0518

[1] Large Urban Area
[2] Hospitals geographically located in the area are assigned the statewide rural wage index for FY 2000.

ADDENDUM H.—WAGE INDEX FOR URBAN AREAS—Continued

Urban Code	Urban Area (Constituent Counties)	Wage Index
8140	[2] Sumter, SC Sumter, SC	0.8264
8160	Syracuse, NY Cayuga, NY Madison, NY Onondaga, NY Oswego, NY	0.9441
8200	Tacoma, WA Pierce, WA	1.1631
8240	[2] Tallahassee, FL Gadsden, FL Leon, FL	0.8986
8280	[1] Tampa-St. Petersburg-Clearwater, FL Hernando, FL Hillsborough, FL Pasco, FL Pinellas, FL	0.9119
8320	Terre Haute, IN Clay, IN Vermillion, IN Vigo, IN	0.8570
8360	Texarkana, AR-Texarkana, TX Miller, AR Bowie, TX	0.8174
8400	Toledo, OH Fulton, OH Lucas, OH Wood, OH	0.9593
8440	Topeka, KS Shawnee, KS	0.9326
8480	Trenton, NJ Mercer, NJ	0.9955
8520	Tucson, AZ Pima, AZ	0.8742
8560	Tulsa, OK Creek, OK Osage, OK Rogers, OK Tulsa, OK Wagoner, OK	0.8086
8600	Tuscaloosa, AL Tuscaloosa, AL	0.8064
8640	Tyler, TX Smith, TX	0.9369
8680	[2] Utica-Rome, NY Herkimer, NY Oneida, NY	0.8636
8720	Vallejo-Fairfield-Napa, CA Napa, CA Solano, CA	1.2655
8735	Ventura, CA Ventura, CA	1.0952
8750	Victoria, TX Victoria, TX	0.8378
8760	Vineland-Millville-Bridgeton, NJ Cumberland, NJ	1.0517
8780	Visalia-Tulare-Porterville, CA Tulare, CA	1.0411
8800	Waco, TX McLennan, TX	0.8075
8840	[1] Washington, DC–MD–VA–WV District of Columbia, DC Calvert, MD Charles, MD Frederick, MD Montgomery, MD Prince Georges, MD Alexandria City, VA Arlington, VA Clarke, VA Culpeper, VA Fairfax, VA Fairfax City, VA Falls Church City, VA Fauquier,.	
8920	Waterloo-Cedar Falls, IA Black Hawk, IA	0.8841
8940	Wausau, WI Marathon, WI	0.9445
8960	[1] West Palm Beach-Boca Raton, FL Palm Beach, FL	0.9909
9000	[2] Wheeling, WV–OH (WV Hospitals) Belmont, OH Marshall, WV Ohio, WV	0.8068
9000	[2] Wheeling, WV–OH (OH Hospitals) Belmont, OH Marshall, WV Ohio, WV	0.8649
9040	Wichita, KS Butler, KS Harvey, KS Sedgwick, KS	0.9421
9080	Wichita Falls, TX Archer, TX Wichita, TX	0.7652
9140	[2] Williamsport, PA Lycoming, PA	0.8524
9160	Wilmington-Newark, DE–MD New Castle, DE Cecil, MD	1.1274
9200	Wilmington, NC New Hanover, NC Brunswick, NC	0.9707
9260	[2] Yakima, WA Yakima, WA	1.0446
9270	Yolo, CA Yolo, CA	1.0485
9280	York, PA York, PA	0.9309
9320	Youngstown-Warren, OH Columbiana, OH Mahoning, OH Trumbull, OH	0.9996
9340	Yuba City, CA Sutter, CA Yuba, CA	1.0662
9360	Yuma, AZ Yuma, AZ	0.9924

ADDENDUM I.—WAGE INDEX FOR RURAL AREAS

Nonurban Area	Wage Index
Alabama	0.7390
Alaska	1.2057
Arizona	0.8544
Arkansas	0.7236
California	0.9951
Colorado	0.8813
Connecticut	1.2413
Delaware	0.9166
Florida	0.8986
Georgia	0.8094
Hawaii	1.0726
Idaho	0.8651
Illinois	0.8047
Indiana	0.8396
Iowa	0.7926
Kansas	0.7460
Kentucky	0.8043
Louisiana	0.7486
Maine	0.8639
Maryland	0.8631
Massachusetts	1.1369
Michigan	0.8831
Minnesota	0.8669
Mississippi	0.7306
Missouri	0.7723
Montana	0.8398
Nebraska	0.8007
Nevada	0.9097
New Hampshire	0.9905
[1] New Jersey	.....
New Mexico	0.8378
New York	0.8636
North Carolina	0.8290
North Dakota	0.7647
Ohio	0.8649
Oklahoma	0.7255
Oregon	0.9873
Pennsylvania	0.8524
Puerto Rico	0.4249
[1] Rhode Island	.....
South Carolina	0.8264
South Dakota	0.7576
Tennessee	0.7650
Texas	0.7471
Utah	0.8906
Vermont	0.9427
Virginia	0.7916
Washington	1.0446
West Virginia	0.8068
Wisconsin	0.8759
Wyoming	0.8859

[1] All counties within state are classified as urban.

ADDENDUM J.—WAGE INDEX FOR HOSPITALS THAT ARE RECLASSIFIED

Area	Wage Index
Abilene, TX	0.8179
Akron, OH	0.9981
Albany, GA	0.9544
Alexandria, LA	0.7910
Amarillo, TX	0.8435
Anchorage, AK	1.3009
Ann Arbor, MI	1.1343
Atlanta, GA	1.0050
Austin-San Marcos, TX	0.9081
Baltimore, MD	0.9891
Baton Rouge, LA	0.8707
Beaumont-Port Arthur, TX	0.8624
Benton Harbor, MI	0.8831
Bergen-Passaic, NJ	1.1833
Billings, MT	1.0038
Biloxi-Gulfport-Pascagoula, MS	0.7949
Binghamton, NY	0.8750
Birmingham, AL	0.8994
Bismarck, ND	0.7893
Boise City, ID	0.9066
Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	1.1358
Burlington, VT	1.0122
Caguas, PR	0.4561
Champaign-Urbana, IL	0.9163
Charleston-North Charleston, SC	0.8988
Charleston, WV	0.8861
Charlotte-Gastonia-Rock Hill, NC–SC	0.9433
Chattanooga, TN–GA	0.9453
Chicago, IL	1.0872
Cincinnati, OH–KY–IN	0.9434
Clarksville-Hopkinsville, TN–KY	0.8283
Cleveland-Lorain-Elyria, OH	0.9688
Columbia, MO	0.8736
Columbia, SC	0.9215
Columbus, GA–AL	0.8318
Columbus, OH	0.9728
Corpus Christi, TX	0.8599
Dallas, TX	0.9589
Danville, VA	0.8706
Davenport-Moline-Rock Island, IA–IL	0.8606
Dayton-Springfield, OH	0.9231
Denver, CO	1.0197
Des Moines, IA	0.8754
Dothan, AL	0.7836
Dover, DE	1.0511
Duluth-Superior, MN–WI	1.0165
Elkhart-Goshen, IN	0.9379
Eugene-Springfield, OR	1.0765
Evansville-Henderson, IN–KY	0.8396
Fargo-Moorhead, ND–MN (ND and SD Hospitals)	0.8620
Fargo-Moorhead, ND–MN (MN Hospital)	0.8669
Fayetteville, NC	0.8494
Flagstaff, AZ–UT	0.9860
Flint, MI	1.0918
Fort Collins-Loveland, CO	1.0197
Fort Pierce-Port St. Lucie, FL	1.0109
Fort Smith, AR–OK	0.7696
Fort Walton Beach, FL	0.8713
Forth Worth-Arlington, TX	0.9635
Fresno, CA	1.0262
Gadsden, AL	0.8754

ADDENDUM J.—WAGE INDEX FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage Index
Gainesville, FL	0.9963
Goldsboro, NC	0.8333
Grand Forks, ND–MN	0.9097
Grand Rapids-Muskegon-Holland, MI	1.0017
Great Falls, MT	1.0459
Greeley, CO	0.9449
Green Bay, WI	0.9215
Greensboro-Winston-Salem-High Point, NC	0.9037
Greenville, NC	0.9237
Greenville-Spartanburg-Anderson, SC	0.9188
Hagerstown, MD	0.8853
Harrisburg-Lebanon-Carlisle, PA	0.9793
Hartford, CT	1.1715
Hickory-Morganton-Lenoir, NC	0.9148
Honolulu, HI	1.1479
Houston, TX	0.9387
Huntington-Ashland, WV–KY–OH	0.9436
Huntsville, AL	0.8608
Indianapolis, IN	0.9792
Iowa City, IA	0.9460
Jackson, MS	0.8268
Jackson, TN	0.8447
Jacksonville, FL	0.8957
Johnson City-Kingsport-Bristol, TN–VA	0.8894
Jonesboro, AR	0.7251
Joplin, MO	0.7678
Kalamazoo-Battlecreek, MI	0.9981
Kansas City, KS–MO	0.9322
Knoxville, TN	0.9199
Kokomo, IN	0.8984
Lafayette, LA	0.8397
Lansing-East Lansing, MI	0.9834
Las Vegas, NV–AZ	1.1258
Lexington, KY	0.8552
Lima, OH	0.9108
Lincoln, NE	0.9451
Little Rock-North Little Rock, AR	0.8432
Longview-Marshall, TX	0.8541
Los Angeles-Long Beach, CA	1.2085
Louisville, KY–IN	0.9381
Macon, GA	0.8530
Madison, WI	0.9729
Mansfield, OH	0.8649
Memphis, TN–AR–MS	0.8244
Merced, CA	1.0509
Milwaukee-Waukesha, WI	0.9845
Minneapolis-St. Paul, MN–WI	1.0929
Missoula, MT	0.9085
Monmouth-Ocean, NJ	1.1258
Monroe, LA	0.8062
Montgomery, AL	0.7724
Myrtle Beach, SC	0.8357
Nashville, TN	0.9254
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2417
New London-Norwich, CT	1.2328
New Orleans, LA	0.9069
New York, NY	1.4399
Newark, NJ	1.0772
Newburgh, NY–PA	1.0837

ADDENDUM J.—WAGE INDEX FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage Index
Norfolk-Virginia Beach-Newport News, VA–NC	0.8442
Oakland, CA	1.5095
Oklahoma City, OK	0.8589
Omaha, NE–IA	1.0455
Orange County, CA	1.1592
Orlando, FL	0.9806
Peoria-Pekin, IL	0.8399
Philadelphia, PA–NJ	1.1186
Phoenix-Mesa, AZ	0.9464
Pittsburgh, PA	0.9496
Pocatello, ID	0.8651
Portland, ME	0.9487
Portland-Vancouver, OR–WA	1.0996
Provo-Orem, UT	0.9818
Raleigh-Durham-Chapel Hill, NC	0.9544
Roanoke, VA	0.8142
Rockford, IL	0.8783
Sacramento, CA	1.2284
Saginaw-Bay City-Midland, MI	0.9294
St. Cloud, MN	0.9608
St. Louis, MO–IL	0.9052
Salt Lake City-Ogden, UT	0.9854
San Diego, CA	1.1955
Santa Fe, NM	0.9911
Santa Rosa, CA	1.3000
Seattle-Bellevue-Everett, WA	1.1289
Sharon, PA	0.8524
Sherman-Denison, TX	0.8833
Sioux City, IA–NE	0.8549
South Bend, IN	0.9692
Springfield, IL	0.8684
Springfield, MO	0.7991
Syracuse, NY	0.9441
Tallahassee, FL	0.8274
Tampa-St. Petersburg-Clearwater, FL	0.9119
Texarkana, AR-Texarkana, TX	0.8174
Toledo, OH	0.9593
Topeka, KS	0.9326
Tulsa, OK	0.7931
Tuscaloosa, AL	0.8064
Tyler, TX	0.9199
Vallejo-Fairfield-Napa, CA	1.2167
Victoria, TX	0.8378
Waco, TX	0.8075
Washington, DC–MD–VA–WV	1.1053
Waterloo-Cedar Falls, IA	0.8841
Wausau, WI	0.9445
Wichita, KS	0.9082
Rural Colorado	0.8813
Rural Florida	0.8986
Rural Illinois	0.8047
Rural Louisiana	0.7486
Rural Michigan	0.8831
Rural Minnesota	0.8669
Rural Missouri	0.7723
Rural Montana	0.8398
Rural Oregon	0.9873
Rural Tennessee	0.7650
Rural Texas	0.7471
Rural Virginia (KY Hospital)	0.8043
Rural Washington	1.0333
Rural Wyoming	0.8859

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ADDENDUM K.—CODES ELIGIBLE FOR PASS-THROUGH PAYMENT

CPT/ HCPCS	Description
A4642	Saturnomab pendetide per dose
A9502	Technetium TC99M tetrofosmin
A9600	Strontium-89 chloride
A9605	Samarium sm153 lexidronamm
J0205	Alglucerase injection
J0207	Amifostine
J0256	Alpha 1 proteinase inhibitor
J0286	Amphotericin B lipid complex
J0476	Baclofen intrathecal trial
J0585	Botulinum toxin a per unit
J0640	Leucovorin calcium injection
J0735	Clonidine hydrochloride
J0850	Cytomegalovirus imm IV/vial
J1190	Dexrazoxane HCl injection
J1260	Dolasetron mesylate
J1325	Epoprostenol injection
J1436	Etidronate disodium inj
J1440	Filgrastim 300 mcg injeciton
J1561	Immune globulin 500 mg
J1562	Immune globulin 5 gms
J1565	RSV-ivig
J1620	Gonadorelin hydroch/100 mcg
J1626	Granisetron HCl injection
J1745	Infliximab injection
J1785	Injection imiglucerase/unit
J1825	Interferon beta-1a
J1830	Interferon beta-1b/.25 MG
J1950	Leuprolide acetate/3.75 MG
J2275	Morphine sulfate injection
J2352	Octreotide acetate injection
J2355	Oprelvekin injection
J2405	Ondansetron hcl injection
J2430	Pamidronate disodium/30 MG
J2545	Pentamidine isethionte/300mg
J2765	Metoclopramide hcl injection
J2790	Rho d immune globulin inj
J2820	Sargramostim injection
J3010	Fentanyl citrate injeciton
J3260	Thiethylperazine maleate inj
J3305	Inj trimetrexate glucoronate
J7190	Factor viii
J7191	Factor VIII (porcine)
J7192	Factor viii recombinant
J7194	Factor ix complex
J7197	Antithrombin iii injection
J7198	Anti-inhibitor
J7310	Ganciclovir long act implant
J7505	Monoclonal antibodies

ADDENDUM K.—CODES ELIGIBLE FOR PASS-THROUGH PAYMENT—Continued

CPT/ HCPCS	Description
J7913	Daclizumab, Parenteral, 25 m
J8510	Oral busulfan
J8520	Capecitabine, oral, 150 mg
J8530	Cyclophosphamide oral 25 MG
J8560	Etoposide oral 50 MG
J8600	Melphalan oral 2 MG
J8610	Methotrexate oral 2.5 MG
J9000	Doxorubic hcl 10 MG vi chemo
J9001	Doxorubicin hcl liposome inj
J9015	Aldesleukin/single use vial
J9020	Asparaginase injection
J9031	Bcg live intravesical vac
J9040	Bleomycin sulfate injection
J9045	Carboplatin injection
J9050	Carmus bischl nitro inj
J9060	Cisplatin 10 MG injeciton
J9065	Inj cladribine per 1 MG
J9070	Cyclophosphamide 100 MG inj
J9093	Cyclophosphamide lyophilized
J9100	Cytarabine hcl 100 MG inj
J9120	Dactinomycin actinomycin d
J9130	Dacarbazine 10 MG inj
J9150	Daunorubicin
J9151	Daunorubicin citrate liposom
J9165	Diethylstilbestrol injection
J9170	Docetaxel
J9181	Etoposide 10 MG inj
J9185	Fludarabine phosphate inj
J9190	Fluorouracil injection
J9200	Floxuridine injection
J9201	Gemcitabine HCl
J9202	Goserelin acetate implant
J9206	Irinotecan injection
J9208	Ifosfomide injection
J9209	Mesna injection
J9211	Idarubicin hcl injeciton
J9212	Interferon alfacon-1
J9213	Interferon alfa-2a inj
J9214	Interferon alfa-2b inj
J9215	Interferon alfa-n3 inj
J9216	Interferon gamma 1-b inj
J9218	Leuprolide acetate injeciton
J9230	Mechlorethamine hcl inj
J9245	Inj melphalan hydrochl 50 MG
J9250	Methotrexate sodium inj
J9265	Paclitaxel injection
J9266	Pegaspargase/singl dose vial
J9268	Pentostatin injection

ADDENDUM K.—CODES ELIGIBLE FOR PASS-THROUGH PAYMENT—Continued

CPT/ HCPCS	Description
J9270	Plicamycin (mithramycin) inj
J9280	Mitomycin 5 MG inj
J9293	Mitoxantrone hydrochl/5 MG
J9310	Rituximab cancer treatment
J9320	Streptozocin injection
J9340	Thiotepa injection
J9350	Topotecan
J9360	Vinblastine sulfate inj
J9370	Vincristine sulfate 1 MG inj
J9390	Vinorelbine tartrate/10 mg
J9600	Porfimer sodium
Q0136	Non esrd epoetin alpha inj
Q0160	Factor IX non-recombinant
Q0161	Factor IX recombinant
Q0163	Diphenhydramine HCl 50mg
Q0164	Prochlorperazine maleate 5mg
Q0166	Granisetron HCl 1 mg oral
Q0167	Dronabinol 2.5mg oral
Q0169	Promethazine HCl 12.5mg oral
Q0171	Chlorpromazine HCl 10mg oral
Q0173	Trimethobenzamide HCl 250mg
Q0174	Thiethylperazine maleate10mg
Q0175	Perphenazine 4mg oral
Q0177	Hydroxyzine pamoate 25mg
Q0179	Ondansetron HCl 8mg oral
Q0180	Dolasetron mesylate oral
Q0187	Factor viia recombinant
Q2002	Elliot's B solution
Q2003	Aprotinin, 10,000 kiu
Q2004	Treatment for bladder calcul
Q2005	Corticorelin ovine triflutat
Q2006	Digoxin immune FAB (Ovine),
Q2007	Ethanolamine oleate, 1000 ml
Q2008	Fomepizole, 1.5 G
Q2009	Fosphenytoin, 50 mg
Q2010	Glatiramer acetate, 25 mgeny
Q2011	Hemin, 1 mg
Q2012	Pegademase bovine inj 25 I.U
Q2013	Pentastarch 10% inj, 100 ml
Q2014	Sermorelin acetate, 0.5 mg
Q2015	Somatrem, 5 mg
Q2016	Somatropin, 1 mg
Q2017	Teniposide, 50 mg
Q2018	Urofollitropin, 75 I.U.
Q3001	Brachytherapy Seeds

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Federal Register

Friday,
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Part III

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Integrated Research, Education, and Extension Competitive Grants Program—Pest Management: Request for Proposals and Request for Input; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Integrated Research, Education, and Extension Competitive Grants Program—Pest Management: Request for Proposals and Request for Input

AGENCY: Cooperative State Research, Education, and Extension Service.

ACTION: Notice of Request for Proposals and Request for Input.

SUMMARY: The Cooperative State Research, Education and Extension Service (CSREES) announces the availability of grant funds and requests proposals for the Integrated Research, Education, and Extension Competitive Grants Program—Pest Management for fiscal year (FY) 2000 to support integrated, multifunctional agricultural research, extension, and education activities that address pest management priorities in United States agriculture, particularly those priorities addressing anticipated regulatory losses of key pest management tools resulting from the implementation of the Food Quality Protection Act (FQPA) of 1996. The Integrated Research, Education, and Extension Competitive Grants Program—Pest Management will have four program components: Crops at Risk from FQPA Implementation (CAR); FQPA Risk Avoidance and Mitigation for Major Food Crop Systems (RAMP); Methyl Bromide Transitions (MBT); and Pest Management Centers. The amount available for support of this program in FY 2000 is approximately $11,000,000.

This notice sets out the objectives for these projects, the eligibility criteria for projects and applicants, the application procedures, and the set of instructions needed to apply for a Pest Management grant under this authority.

By this notice, CSREES additionally solicits stakeholder input from any interested party regarding the FY 2000 Integrated Research, Education, and Extension Competitive Grants Program—Pest Management for use in the development of any future requests for proposals for this program.

DATES: Proposals must be transmitted by June 6, 2000, as indicated by the postmark or date on courier bill of lading. Proposals transmitted after this date will not be considered for funding. Comments regarding this request for proposals are requested within six months from the issuance of this notice. Comments received after that date will be considered to the extent practicable.

ADDRESSES: The address for hand-delivered proposals or proposals submitted using an express mail or overnight courier service is: Integrated Research, Education, and Extension Competitive Grants Program—Pest Management; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, S.W.; Washington, D.C. 20024.

Proposals sent via the U.S. Postal Service must be sent to the following address: Integrated Research, Education, and Extension Competitive Grants Program—Pest Management; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245.

Written user comments should be submitted by first-class mail to: Policy and Program Liaison Staff; Office of Extramural Programs; USDA–CSREES; STOP 2299; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2299; or via e-mail to: RFP–OEP@reeusda.gov. In your comments, please include the name of the program and the fiscal year of the RFP to which you are responding.

FOR FURTHER INFORMATION CONTACT: Applicants and other interested parties are encouraged to contact the following individuals: CAR: Dr. Rick Meyer; National Program Leader; Plant and Animal Systems Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2210; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2210; Telephone: (202) 401–4891; Fax: (202) 401–4888; e-mail address: hmeyer@reeusda.gov.; RAMP: Dr. Steve Yaninek; National Program Leader; Plant and Animal Systems Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2210; 1400 Independence Avenue, S.W.; Washington, D.C.; Telephone: (202) 401–6702; Fax: 202–401–4888; e-mail address: syaninek@reeusda.gov.; MBT: Dr. Robin Huettel; National Program Leader; Plant and Animal Systems Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2210; 1400 Independence Avenue, S.W.; Washington, D.C.; Telephone: (202) 401–5804; Fax: (202) 401–4888; e-mail address: rhuettel@reeusda.gov; Pest Management Centers: Dr. Dennis Kopp; National Program Leader; Plant and Animal Systems Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2210; 1400 Independence Avenue, S.W.; Washington, D.C.; Telephone: (202) 401–6437; Fax: (202) 401–4888; e-mail address: dkopp@reeusda.gov.

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Stakeholder Input

CSREES is soliciting comments regarding this solicitation of applications from any interested party. These comments will be considered in the development of any future RFP for the program. Such comments will be forwarded to the Secretary or his designee for use in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7613(c)(2)). This section requires the Secretary to solicit and consider input on a current RFP from persons who conduct or use agricultural research, education and extension for use in formulating future RFPs for competitive programs. Comments should be submitted as provided for in the **ADDRESSES** and **DATES** portions of this Notice.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under 10.303, Integrated Research, Education, and Extension Competitive Grants Program.

Part I—General Information

A. Legislative Authority and Background

Section 406 of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) (7 U.S.C. 7626) authorized the Secretary of Agriculture to establish a research, education, and extension competitive grants program to provide funding for integrated, multifunctional agricultural research, extension, and education activities. Subject to the availability of appropriations to carry out this program, the Secretary may award grants to colleges and universities (as defined by 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA) (7 U.S.C. 3103)) on a competitive basis for integrated research, education, and extension projects. Grants are to be awarded to address priorities in United States agriculture that involve integrated research, education, and extension activities as determined by the Secretary in consultation with the National Agricultural Research, Extension, Education, and Economics Advisory Board.

On November 19, 1999, the Secretary published in the **Federal Register** [64 FR 63560] a notice that the administration of this grant program had been delegated to the Cooperative State Research, Education, and Extension Service (CSREES). This notice also solicited public comment from persons who use or conduct research, extension, or education regarding the priorities to be addressed by this new program. In addition, this notice announced a public meeting to obtain comments to use in developing the proposed rule and requests for proposals for this new grant program. The public meeting was held on December 6, 1999. All the comments and the official transcript of the meeting have been made available for review on the CSREES web page (http://www.reeusda.gov/integrated/). This RFP was developed in consultation with the Advisory Board. In addition, the comments and testimonies from the December 6, 1999, public meeting were considered in the formulation of this RFP.

The entire program is funded in FY 2000 at $37,637,702 (after deduction for administrative expenses) for the following integrated activities: Water Quality ($12,374,115), Food Safety ($14,277,277), and the Pest Management Component that includes: Pesticide Impact Assessment ($4,322,310), Crops at Risk from Food Quality and Protection Act (FQPA) Implementation ($952,000), FQPA Risk Mitigation Program for Major Food Crop Systems ($3,808,000), and Methyl Bromide Transitions ($1,904,000). There will be three RFP's for this program. The Water Quality and Food Safety Programs will each have a separate RFP, while the latter four programs will be announced as one RFP. This notice announces and describes the Pest Management component of the Program.

CSREES will administer the Integrated Research, Education, and Extension Competitive Grants Program by determining priorities in United States agriculture through Agency stakeholder input processes and in consultation with the National Agricultural Research, Extension, Education, and Economics Advisory Board. Each RFP for the different program areas (i.e., Water Quality, Food Safety, etc.) will be developed each fiscal year based on these established priorities and the resulting determined approaches to solving these critical agricultural issues. Although this overall grant program seeks to solve critical agricultural issues through an integration of research, education, and extension activities, a component of a RFP, depending on the priority being addressed and/or the stage at which the priority is being addressed, may request proposals that are research, education, or extension only, or a combination thereof. However, the overall overarching approach to solving the critical agricultural issue, priority, or problem will be through an integration of research, education, and extension activities within each individual program area.

B. Purpose, Priorities, and Fund Availability

The components of the Integrated Competitive Grants Program—Pest Management are Crops at Risk from FQPA Implementation program (CAR); FQPA Risk Avoidance and Mitigation for Major Food Crop Systems (RAMP); Methyl Bromide Transitions Program (MBTP); and Pesticide Impact Assessment Program (hereafter referred to as "Pest Management Centers"). These four components will address anticipated regulatory losses of key pest management tools resulting from the implementation of the Food Quality Protection Act of 1996 (FQPA) (see http://www.epa.gov/oppfead1/fqpa/index.html), other regulatory actions, or other agreements (e.g., Clean Air Act, as amended 1990).

The four components of the Integrated Research, Education, and Extension Competitive Grants Program—Pest Management will support a wide range of complementary research, education, and extension activities. Together, these four components support activities to assess the use and efficacy of available pest management tools, develop and demonstrate the efficacy of reduced-risk pesticides and other pest management alternatives, and identify possible transition and mitigation strategies that serve as viable pest management options for crops and agro-ecosystems at risk due to anticipated regulatory actions.

By integrating these four separate program components into a single competitive grants program, CSREES has responded to stakeholder suggestions that the Agency develop a coordinated program to address pest management challenges that face the Nation in the short- and long-terms. Projects supported by the four components of the Integrated Activities Pest Management Competitive Grants Program provide a coordinated response to FQPA needs and issues. CSREES also expects that Integrated Research, Education, and Extension Competitive Grants Program—Pest Management projects will be integral components of other CSREES pest management programs such as the Pest Management Alternatives Program (PMAP), the Regional Integrated Pest Management Grants Program (RIPM), the Pesticide Applicator Training program (PAT), the Minor Crops Program (IR–4), and to pest management activities funded under the regional Sustainable Agriculture Research and Education program (SARE) and the National Research Initiative (NRI).

There is no commitment by USDA to fund any particular proposal or to make a specific number of awards. Approximately $11 million will be available to fund proposals in FY 2000 distributed among the program components as follows: CAR—$952,000, RAMP—$3,808,000, MBT—$1,904,000 and Pest Management Centers—$4,322,310.

C. Definitions

For the purpose of awarding grants under this program, the following definitions are applicable:

(1) *Administrator* means the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES) and any other officer or employee of the Department to whom the authority involved my be delegated.

(2) *Authorized departmental officer* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

(3) *Authorized organizational representative* means the president or

chief executive officer of the applicant organization or the official, designated by the president or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

(4) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(5) *Cash contributions* means the applicant's cash outlay, including the outlay of money contributed to the applicant by non-Federal third parties.

(6) *Department* or *USDA* means the United States Department of Agriculture.

(7) *Education activity* means formal classroom instruction, laboratory instruction, and practicum experience in the food and agricultural sciences and other related matters such as faculty development, student recruitment and services, curriculum development, instructional materials and equipment, and innovative teaching methodologies.

(8) *Extension activity* means an act or process that delivers science-based knowledge and informal educational programs to people, enabling them to make practical decisions.

(9) *Grant* means the award by the Secretary of funds to an eligible organization or individual to assist in meeting the costs of conducting, for the benefit of the public, an identified project which is intended and designed to accomplish the purpose of the program as identified in these guidelines.

(10) *Grantee* means an organization designated in the grant award document as the responsible legal entity to which a grant is awarded.

(11) *Integrated* means to bring the three components of the agricultural knowledge system (research, education, and extension) together around a problem area or activity.

(12) *Matching* means that portion of allowable project costs not borne by the Federal Government, including the value of in-kind contributions.

(13) *Peer review* means an evaluation of a proposed project for scientific or technical quality and relevance performed by experts with the scientific knowledge and technical skills to conduct the proposed work or to give expert advice on the merits of a proposal.

(14) *Principal investigator/Project director* means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project.

(15) *Prior approval* means written approval evidencing prior consent by an authorized departmental officer as defined in (2) above.

(16) *Project* means the particular activity within the scope of the program supported by a grant award.

(17) *Project period* means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

(18) *Research activity* means a scientific investigation or inquiry that results in the generation of knowledge.

(19) *Secretary* means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved may be delegated.

(20) *Third party in-kind contributions* means non-cash contributions of property or services provided by non-Federal third parties, including real property, equipment, supplies and other expendable property, directly benefitting and specifically identifiable to a funded project or program.

(21) *Total integrated, multifunctional research, education, and extension approach* means that the combination of grants (although the individual grants may involve only research, education, or extension activities or a combination thereof) awarded under the fiscal year's program components will work together to address the priorities in United States agriculture as determined by the Secretary of Agriculture in consultation with the Advisory Board, that involve integrated research, extension, and education activities.

D. Eligibility

Proposals may be submitted by colleges and universities as defined in section 1404 of the National Agricultural research, Extension, and Teaching Policy Act of 1977 (NARETPA). The terms "college" and "university" mean an educational institution in any State which (1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, (2) is legally authorized within such State to provide a program of education beyond secondary education, (3) provides an educational program for which a bachelor's degree or any other higher degree is awarded, (4) is a public or other nonprofit institution, and (5) is accredited by a nationally recognized accrediting agency or association. Although an applicant may be eligible based on its status as one of these entities, there are factors which may exclude an applicant from receiving Federal financial and nonfinancial assistance and benefits under this program (e.g., debarment or suspension of an individual involved or a determination that an applicant is not responsible based on submitted organizational management information). Eligible applicants may subcontract to organizations not eligible under these requirements.

Please note that a research foundation maintained by a college or university is not eligible to receive an award under this program.

E. Matching Requirements

1. General Requirement

If a grant provides a particular benefit to a specific agricultural commodity, the grant recipient is required to provide funds or in-kind support to match the amount of the grant funds provided. See section 10. c. on "Matching Funds" under Part III, B, "Content of Proposals" for more details.

2. Waiver

CSREES may waive the matching funds requirement specified in the above paragraph for a grant if CSREES determines that (a) the results of the project, while of particular benefit to a specific agricultural commodity, are likely to be applicable to agricultural commodities generally; or (b) the project involves a minor commodity, the project deals with scientifically important research, and the grant recipient is unable to satisfy the matching funds requirement.

F. Funding Restrictions

CSREES has determined that grant funds awarded under this authority may not be used for the renovation or refurbishment of research, education, or extension space; the purchase or installation of fixed equipment in such space; or the planning, repair, rehabilitation, acquisition, or construction of buildings or facilities.

G. Types of Grant Instruments

In FY 2000 all projects will be awarded using a "New Grant" instrument. In future years, projects under the Integrated Research, Education, and Extension Competitive Grants Program authority can be awarded using one of the grant instruments described below:

(1) New grant. This is a grant instrument by which the Department agrees to support a specified level of effort for a project that generally has not been supported previously under this program. This type of grant is approved on the basis of peer review recommendations.

(2) Renewal grant. This is a grant instrument by which the Department agrees to provide additional funding for a project period beyond that approved in an original or amended award, provided that the cumulative period does not exceed the statutory limitation. When a renewal application is submitted, it should include a summary of progress to date from the previous granting period. A renewal grant shall be based upon new application, de novo peer review and staff evaluation, new recommendation and approval, and a new award instrument.

(3) Supplemental grant. This is an instrument by which the department agrees to provide small amounts of additional funding under a new or renewal grant as specified above and may involve a short-term (usually six months or less) extension of the project period beyond that approved in an original or amended award, but in no case may the cumulative period for the project exceed the statutory limitation. A supplement is awarded only if required to assure adequate completion of the original scope of work and if there is sufficient justification to warrant such action. A request of this nature normally will not require additional peer review.

H. Funding Mechanisms

The two mechanisms by which new, renewal, and supplemental grants shall be awarded are as follows:

(1) Standard grant. This is a funding mechanism whereby the Department agrees to support a specified level of effort for a predetermined time period without the announced intention of providing additional support at a future date.

(2) Continuation grant. This is a funding mechanism whereby the Department agrees to support a specified level of effort for a predetermined period of time with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued support will be in the best interests of the Federal government and the public. This kind of mechanism normally will be awarded for an initial one-year period, and any subsequent continuation project grants will be awarded in one-year increments. The award of a continuation project grant to fund an initial or succeeding budget period does not constitute an obligation to fund any subsequent budget period. Unless prescribed otherwise by CSREES, a grantee must submit a separate application for continued support for each subsequent fiscal year. Requests for such continued support must be submitted in duplicate at least three months prior to the expiration date of the budget period currently being funded. Decisions regarding continued support and the actual funding levels of such support in future years usually will be made administratively after consideration of such factors as the grantee's progress and management practices and the availability of funds. Since initial peer reviews are based upon the full term and scope of the original application, additional evaluations of this type generally are not required prior to successive years' support. However, in unusual cases (e.g., when the nature of the project or key personnel change or when the amount of future support requested substantially exceeds the grant application originally reviewed and approved), additional reviews may be required prior to approving continued funding.

Part II—Program Description

A. Project Types

Approximately, $952,000 is available for CAR projects in FY 2000. Proposals should be between two to four years in duration with a budget of not more than $200,000 per year.

Approximately $3,808,000 is available for RAMP projects in FY 2000. Proposals can be up to five years in duration with a maximum budget of $500,000 per year.

Approximately $1,904,000 is available for MBT proposals. It is anticipated that 12–15 grants of up to two years in duration will be awarded in this program component.

Approximately $4,322,000 is available for Pest Management Center proposals. Pest Management Centers will be supported for a 3-year period at levels reflective of the activities proposed.

Grants awarded under the Program Area Description of MBT (as described in this RFP) will be issued as "New Grant" instruments and will be awarded as "Standard Grants." Grants awarded under the Program Area Descriptions of CAR, RAMP, and Pest Management Center (as described in this RFP) will be issued as "New Grant" instruments and may be awarded as "Continuation Grants."

B. Program Area Description

The Integrated Research, Education, and Extension Competitive Grants Program—Pest Management supports efforts to modify existing pest management approaches or develop new methods that address needs created by the implementation of regulatory actions. Projects supported under this authority must show evidence of research, education, and extension integration at the program or institutional level.

Alternative pest control chemistries and practices resulting from FQPA tolerance reassessment and reregistration should be considered when preparing proposals for this program. These priorities are determined through a critical evaluation of pest management needs for a commodity and the effect of regulatory changes on current pest management practices. These priorities were published in a November 18, 1999, **Federal Register** notice titled "Pesticide Reregistration Performance Measures and Goals" [64 FR 63036-63045]. This notice is available on the Environmental Protection Agency (EPA) web site at http://www.epa.gov/ fedrgstr/EPAFR-CONTENTS/1999/November/Day-18/ contents.htm/. This notice provides the schedule for completion of regulatory review for high priority chemicals. The overall priorities for FQPA review are also available on the EPA web site at http://www.eps.gov/oppfead1/fqpa/ toleran.htm/.

Activities funded by the Integrated Research, Education, and Extension Competitive Grants Program—Pest Management will address work needed to facilitate grower knowledge and adoption of pesticides that are newly registered or are candidates for registration. Recently-registered chemical pesticides are identified in annual reports on the web site of the EPA Office of Pesticide Programs at http://www.epa.gov/pesticides. Pesticides that are candidates for registration in FY 2000 are named in the interim work plan of the EPA Registration Division. The interim work plan is available on the web at http:// www.epa.gov/opprd001/workplan. Twenty-five new chemicals are included in the work plan in addition to many new uses for 64 already-registered chemicals. The work plan provides the trade name, crops, and company for each chemical and identifies those chemicals that qualified for the EPA reduced-risk status. Biopesticides that are recently registered and those under consideration for registration are identified on the web site at www.epa.gov/pesticides/ biopesticides/. Updates to EPA pesticide priority review and reregistration lists are available at http://www.epa.gov/ pesticides. EPA also issues an electronic newsletter that will announce updates. Sign-up information for the electronic newsletter is available at http:// www.epa.gov/pesticides.

The phase.out of methyl bromide is required under Title IV of the Clean Air Act (as amended in 1990) because of its ozone-depleting potential. In October 1998, the Clean Air Act was amended to change the phase out date to 2005, in harmonization with the date agreed to in the Montreal Protocol. More information on the phase out of methyl bromide is available on the EPA website at http://www.epa. gov/ozone/mbr/harmoniz.html.

Proposals are solicited for the following program areas:

1. Crops at Risk From FQPA Implementation (CAR) (Program Area 112.1)

(Maximum award: $200,000 per year for two to four years).

The Crops at Risk from FQPA Implementation (CAR) program is an intermediate-term (two to four years) research, education, and extension competitive grants program with at-risk crops or cropping systems as the focal point. Several crops and cropping systems face potentially severe economic impacts as a result of the possible restrictions or elimination of certain pesticides resulting from implementation of the Food Quality Protection Act (FQPA) of 1996 and other regulatory actions. In the short-term, small-acreage fruit and vegetable crops are most vulnerable. However, many more crops, including large-acreage grain, forage and fiber crops, will be impacted during the pesticide review process. Development of new multiple-tactic pest management strategies designed to assist producers during the transition is the goal of this program component.

Specific Objectives: a. Evaluate new approaches to pest management techniques and technology (rates, timing,pre-harvest intervals, application methods and equipment, post-harvest treatment etc.) That could reduce or eliminate pesticide residues of concern or the effects of these residues.

b. Develop new pest management tactics based on alternative technologies, including products of genetic engineering, biological organisms, biological pesticides, new chemical pesticides, and cultural practices; and

c. Demonstrate and describe how new tactics can be economically and practically integrated into pest management programs for individual crops.

Updates to EPA pesticide priority review and registration lists are available at http://www.epa.gov/pesticides. EPA also issues an electronic newsletter that will announce updates. Sign-up information for the electronic newsletter is available at http://www.epa.gov/pesticides.

Proposals that address priorities established by stakeholders representing an entire crop production region, consider crosscutting challenges, and show evidence of multi-state or within-state cooperation regarding research, education, and extension will be given preference.

2. FQPA Risk Avoidance and Mitigation for Major Food Crop Systems Program (RAMP) (Program Area 112.2)

(Maximum award: $500,000 per year for up to five years).

The FQPA Risk Avoidance and Mitigation for Major Food Crop Systems Program (RAMP) is a long-term (up to five years) research, education, and extension competitive grants program to develop reduced risk pest management strategies for agro-ecosystems. Global markets for food and grain products demand high quality at competitive prices. Growers are faced with meeting market demands and ever-increasing production costs coupled with decreasing or unstable commodity prices. Added to these constraints are concerns posed by implementation of regulatory actions over the next decade. Many of the pest management tools growers have depended on in the past may be restricted or eliminated. Growers face uncertainty regarding which pest management tactics will continue to be available and how to make use of new technologies, such as bioengineered crop innovations and precision agriculture in their production systems. There is a critical need to devise pest management systems that consider all aspects of crop production

Projects supported by RAMP will have a food, fiber and grain production system focus and can include consideration of food safety, occupational safety, water quality and other environmental concerns. The program will address the major acreage cropping systems including, but not limited to, corn, soybean, wheat, cotton and rice, as well as, the fruits and vegetables most important in the human diet, especially the diets of infants and children. Emphasis will be placed on development and implementation of new and innovative pest management systems designed to maintain crop productivity and profitability while addressing environmental quality and human health concerns. The goal of this long-term effort is to eliminate or minimize pesticide residues of concern on foods, in drinking water , and in the environment. This program also supports projects to reduce occupational risk for producers and their employees. These will be long-term projects and will evolve from in-depth discussions of pest management needs and priorities involving stakeholders. Projects are intended to enhanced stability and sustainability of agricultural production systems and will be multi-state or regional in scale, typically involve multiple cropping systems that define an agroecosystem. A major goal of this effort will be the development of pest management systems that are based on an advanced understanding of cropping system biology and ecology.

Specific Objectives: a. Develop methods of pest management that reduce or eliminate the risk from pesticide residues; and b. Develop and implement information intensive approaches to pest management based on a more complete understanding of crop and pest biology, their interactions and mutual impacts, and factors impacting the stability of pest management systems in major cropping systems.

Proposals that strive to maintain crop economic viability based on a diverse bio-based pest management system are encouraged. Proposals should address priorities established by stakeholders representing an entire cropping system and consider crosscutting challenges, and must show evidence for multi-state and multi-disciplinary cooperation regarding research, education, and extension. Proposals should catalog and review the pest management tactics currently being used in the targeted cropping system, then define opportunities for new pest management approaches as part of the proposal. All proposals should include an outreach component to promote the exchange of pest management information among researchers, extension agents, producers, and commodity groups as it relates to the project. Outreach efforts can make use of publications, website development, field days, workshops or other relevant planning and outreach activities. Successful proposals will provide milestones and independently verifiable indicators that can be used to measure progress and impact across a range of ecological, agronomic and economic criteria. Budgetary provisions should be made to support formal stakeholder reviews after the second field season and at the end of the project.

3. Methyl Bromide Transitions Program (MBT) (Progam Area 112.3)

(No Maximum award and up to two years; however, it is anticipated that 12–15 grants will be funded).

The Methyl Bromide Transitions Program (MBT) supports the discovery and implementation of practical pest management alternatives for commodities affected by the phase-out of methyl bromide. Projects supported by MBT will focus on short- to intermediate-term solutions for all commodities at risk using presently available or newly developed pest management technologies and practices. Since alternatives to methyl bromide that have thus far been developed require different pest management strategies than those used for methyl bromide alone, projects supported by MBT will emphasize the development and implementation of integrated management approaches. This includes increased research, education and extension activities on all commodities at risk, including field trials and other demonstration projects that enhance the adoption of pest management alternatives for all commodities. It also will support the technology transfer of results to growers through education and outreach programs.

Specific Objectives: a. Conduct integrated research, education, and extension activities for pest management alternatives on strawberry, tomato, other vegetables, fruits and nuts;

b. Conduct integrated research, education, and extension activities for pest management alternatives for nurseries, including the floral industry and forest nurseries (e.g., general nursery production, production for pest and pathogen-free rootstocks);

c. Develop extension activities to implement pest management alternatives, including field trials and other demonstration projects that enhance the adoption of alternative management practices; and

d. Increase transfer of results to growers through education and outreach programs that promote the implementation of pest management alternatives.

Proposals that address priorities established by stakeholders, consider crosscutting challenges, and show evidence of multi-state or within-state cooperation involving research, education, and extension will be given preference.

4. Pest Management Centers (Program Area 112.4)

(No maximum award; however, budget requests should be at levels reflective of the complexity and intensity of agriculture within the region for a duration up to three years).

USDA has placed a high priority on the establishment of Pest Management Centers as a means of strengthening its connection with production agriculture, research and extension programs, and agricultural stakeholders throughout the United States. USDA and EPA have recognized the need for a pest management information network that can quickly respond to information needs of the public and private sectors. When fully implemented, Pest Management Centers will help USDA and its partner institutions identify, prioritize and coordinate a national pest management research, extension, and education program implemented on a regional basis.

Pest Management Centers will be the focal point for team building efforts, communication networks, and stakeholder participation within a given region. Pest Management Centers will promote open communication, exchange of information and resources, collaboration, and integration of activities among individuals, institutions, states, and regions into coordinated efforts around common themes that span institutional or geographical boundaries. Pest Management Centers also will bring together and help focus the institutional and individual expertise needed to successfully address a range of pest management issues confronting farmers and other pest managers (e.g., regulatory restrictions, development of pest resistance, invasive species, and biotechnology). When fully implemented, Pest Management Centers will maximize the availability of dispersed expertise, reduce duplication of effort, enhance interdisciplinary and multiorganizational efforts, and provide regional expert information, technology, and education upon which production agriculture, government agencies, and agricultural stakeholders can draw.

The process to develop the Pest Management Centers will begin in FY 2000 with the formation of four geographically-based regional Pest Management Centers with one in each of the north central, northeastern, southern, and western regions of the United States. The four regional Pest Management Centers funded in FY 2000 by this RFP will be instrumental in creating a regional process that will evolve into Agroecological Pest Management Centers in FY 2003, based upon agroecologically defined crop production regions.

Pest Impact Assessment Program funds will be used to implement and support the regional Pest Management Centers. The regional Pest Management Centers will fulfill a real and immediate need in establishing a national 2-way pest management communication network which includes USDA and other government agencies, scientists at colleges and universities, and stakeholders focusing on pest management issues. These activities, among other things, will ensure broad based stakeholder participation in initiating a 3-year process to facilitate the planning and development of future Agroecological Pest Management Centers.

Successful applicants for FY 2000 regional Pest Management Centers should present a plan that will demonstrate their capacity to form and fund collaborative information networks that cross traditional institutional, disciplinary, and geographic boundaries to address the region's pest management priorities. The four successful proposals funded in FY 2000 will be expected to conduct the following activities:

a. Establish a team of pest managers, producers and commodity groups, and other stakeholders that represent the diversity of capabilities, institutions, and pest management issues found in the region.

b. Establish a regionally-based pest management information and communication network linking USDA and other Federal agencies with agricultural researchers and stakeholders throughout the region. Among the responsibilities of the network will be to (1) collect, synthesize, and disseminate information on pest management practices; (2) coordinate crop profile development and develop pest management strategy plans for important commodities in the region; and (3) coordinate science reviews of documents related to crop production, pest management, regulatory, health, and environmental risk issues.

c. Facilitate an interactive process designed to identify appropriate boundaries for agroecological pest management areas in the United States. Once determined, agroecological areas will serve to demarcate the Agroecological Pest Management Centers needed to address regional and National priorities. These Agroecological Pest Management Centers will be geographically defined by an appropriate set of criteria, such as agroecological or crop production regions, that reflect principal agricultural production zones in the country and address the broad spectrum of pest management needs within each region. The function of the regional Pest Management Centers will be redistributed in FY 2003 to the newly defined Agroecological Pest Management Centers that will be established in an open and fair competitive process during FY 2003.

The planning for the FY 2003 Pest Management Centers should be an integral part of the proposal for the FY 2000 regional Pest Management Centers. Thus applicants should include plans for:

a. Bringing together pest management professionals and stakeholders to establish the pest management information network and to identify and prioritize agroecological pest management needs. Agroecological Pest Management Centers will serve as regional hubs responsible for ensuring efficient access to pest management expertise and data available through colleges and universities.

b. Defining functional agroecologoically based pest management regions within the four geographic regions of the country to facilitate the evolution of regional Pest Management Centers into Agroecological Pest Management Centers.

c. Participating as a regional representative on a national steering committee established by CSREES to harmonize regional pest management needs into a proposed comprehensive national network compatible and complimentary agroecologically based Pest Management Centers.

Proposed budgets could include funding for a regional Pest Management Center director and support staff, and to support the information network. Regional Pest Management Centers will be supported for a 3-year period. Annual funding beyond the first year will be dependent upon demonstration of the regional Pest Management Center's accomplishments and the continued availability of Federal funds.

C. Expected Program Outputs and Reporting Requirements

The grantee must prepare an annual report that details all significant activities towards achieving the goals and objectives of the project. The narrative should be succinct and be no longer than five pages, using 12-point, single-spaced type. The report also should include a listing of any students who worked on the project (report graduate degrees awarded and undergraduates trained, as applicable). A budget summary should be attached to this report, which will provide an overview of all monies spent during the reporting period.

Part III—Preparation of a Proposal

A. Program Application Materials

Program application materials are available at the Integrated Research, Education, and Extension Competitive Grants Program website (http://www.reeusda.gov/integrated/). If you do not have access to our web page or have trouble downloading material, you may contact the Proposal Services Unit, Office of Extramural Programs, USDA/CSREES at (202) 401–5048. When calling the Proposal Services Unit, please indicate that you are requesting forms for the Integrated Research, Education, and Extension Competitive Grants Program—Pest Management. These materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and phone number to psb@reeusda.gov. State that you want a copy of the Program Description and application materials (orange book) for the Fiscal Year 2000 Integrated Research, Education, and Extension Competitive Grants Program—Pest Management.

B. Content of Proposals

1. General

The proposal should follow these guidelines, enabling reviewers to more easily evaluate the merits of each proposal in a systematic, consistent fashion:

(a) The proposal should be prepared on only one side of the page using standard size (8½″×11″) white paper, one inch margins, typed or word processed using no type smaller than 12 point font, and single or double spaced. Use an easily readable font face (e.g., Geneva, Helvetica, Times Roman).

(b) Each page of the proposal, including the Project Summary, budget pages, required forms, and any appendices, should be numbered sequentially.

(c) The proposal should be stapled in the upper left-hand corner. Do not bind. An original and 14 copies (15 total) must be submitted in one package, along with 10 copies of the "Project Summary" as a separate attachment.

(d) If applicable, proposals should include original illustrations (photographs, color prints, etc.) in all copies of the proposal to prevent loss of meaning through poor quality reproduction.

2. Cover Page (Form CSREES–661)

Each copy of each grant proposal must contain an "Application for Funding", Form CSREES–661. One copy of the application, preferably the original, must contain the pen-and-ink signature(s) of the proposing principal investigator(s)/project director(s) (PI/PD) and the authorized organizational representative who possesses the necessary authority to commit the organization's time and other relevant resources to the project. Any proposed PI/PD or co-PI/PD whose signature does not appear on Form CSREES–661 will not be listed on any resulting grant award. Complete both signature blocks located at the bottom of the "Application for Funding" form.

Form CSREES–661 serves as a source document for the CSREES grant database; it is therefore important that it be completed accurately. The following items are highlighted as having a high potential for errors or misinterpretations:

(a) Title of Project (Block 6). The title of the project must be brief (80-character maximum), yet represent the major thrust of the effort being proposed. Project titles are read by a variety of nonscientific people; therefore, highly technical words or phraseology should be avoided where possible. In addition, introductory phrases such as "investigation of" or "research on" "education for" or "outreach that" should not be used.

(b) Program to Which You Are Applying (Block 7). "Integrated Research, Education, and Extension Competitive Grants Program—Pest Management."

(c) Program Area and Number (Block 8). The name of the program component, e.g., CAR, 112.1 or RAMP, 112.2 should be inserted in this block.

(d) Type of Award Request (Block 13). Check the block for "new."

(e) Principal Investigator(s)/Project Director(s) (PI/PD) (Block 15). The designation of excessive numbers of co-PI/PD's creates problems during final review and award processing. Listing multiple co-PI/PD's, beyond those required for genuine collaboration, is therefore discouraged. Note that providing a Social Security Number is voluntary, but is an integral part of the CSREES information system and will assist in the processing of the proposal.

(f) Type of Performing Organization (Block 18). A check should be placed in the box beside the type of organization which actually will carry out the effort. For example, if the proposal is being submitted by an 1862 Land-Grant Institution but the work will be performed in a department, laboratory, or other organizational unit of an agricultural experiment station, box "03" should be checked. If portions of the effort are to be performed in several departments, check the box that applies to the individual listed as PI/PD #1 in Block 15.a.

(g) Other Possible Sponsors (Block 22). List the names or acronyms of all other public or private sponsors including other agencies within USDA and other programs funded by CSREES

to whom your application has been or might be sent. In the event you decide to send your application to another organization or agency at a later date, you must inform the identified CSREES Program Director as soon as practicable. Submitting your proposal to other potential sponsors will not prejudice its review by CSREES; however, duplicate support for the same project will not be provided. Complete the "Application for Funding," Form CSREES–661, in its entirety.

(h) One copy of the "Application for Funding" form must contain the signatures (in ink) of the PI/PD's and authorized organizational representative for the applicant organization.

3. Table of Contents

For consistency and ease in locating information, each proposal must contain a detailed Table of Contents just after the cover page. The Table of Contents should contain page numbers for each component of the proposal. Page numbers should begin with the first page of the Project Description.

4. Project Summary

The proposal must contain a Project Summary of 250 words or less on a separate page which should be placed immediately after the Table of Contents and should not be numbered. The names and affiliated organizations of all PI/PD's and co-PI/PD's should be listed on this form as well as the title of the project, in addition to the title of the project. The summary should be a self-contained, specific description of the activity to be undertaken and should focus on: overall project goal(s) and supporting objectives; plans to accomplish project goal(s); and relevance of the project to the Integrated Competitive Grants Program—Pest Management. The importance of a concise, informative Project Summary cannot be overemphasized.

5. Project Description

For CAR, RAMP, and MBT proposals, the project description may not exceed 15 single- or double-spaced pages. Project descriptions for Pest Management Centers may not exceed 20 single- or double-spaced pages. The Project Description should include the following components.

a. *Introduction and Rationale:* Include a clear statement of the problems to be addressed and goals expected to be accomplished. Describe the supporting objectives; questions; research, education and/or extension components to be included; and/or partners that will be used to accomplish the goal(s) set. In addition, this section should include in-depth information on the following, when applicable:

1. Estimates of the magnitude of the issues and their relevance to stakeholders and to ongoing State-Federal food and agricultural research, education and extension programs.

2. Role of stakeholders in problem identification, planning, implementation and evaluation as appropriate.

3. Reasons for having the work performed by the proposing institution.

4. For CAR, RAMP, and MBTP proposals only: A detailed plan for the research, education, and technology transfer that will be used to implement the pest management alternative solution in the field, and should identify milestones and independently verifiable indicators.

b. *Objectives:* Clear, concise, complete, and logically arranged statement(s) of the specific aims of the proposed effort must be included in all proposals. Pest Management Center proposals should indicate which information needs will be given first priority, and identify major Center deliverables, such as crop profiles, reports, databases, and Web sites.

c. *Procedures:* For CAR, RAMP, and MBTP Proposals: The procedures or methodology to be applied to the proposed effort should be explicitly stated. This section should include but not necessarily be limited to:

1. A description of the proposed investigations and/or experiments in the sequence in which it is planned to carry them out;

2. Techniques to be employed, including their feasibility;

3. Kinds of results expected;

4. Means by which data will be analyzed or interpreted;

5. Pitfalls that might be encountered; and

6. Limitations to proposed procedures.

For Pest Management Center Proposals: The proposal should provide details regarding the procedures and processes that will be used to manage the Pest Management Center. Proposals should include, but not necessarily be limited to, the following aspects of Center management:

1. Identify the Center Director and other key personnel who will comprise the Center's staff;

2. Describe how the Pest Management Center will be managed, including how and by who work priorities will be established (e.g., steering and stakeholder advisory committees), how partner institutions and stakeholders will participate in Center management, how information collected by the Center will be aggregated and disseminated, and how Center activities will be coordinated with the activities of the other three regional Centers;

3. Describe the open and competitive process that will be used to identify the institutions and individuals that will form the information network in the region (Centers should build upon existing regional coordination efforts to the extent possible or should indicate why existing efforts are not relevant. The proposal should also describe how coordination with the National Agricultural Statistics Service (NASS), the Economic Research Service (ERS), EPA, the Agricultural Research Service (ARS), and other government agencies will be ensured;

4. Provide an action plan, including milestones, for the establishment of the Pest Management Center, the regional information network, the participatory process to identify agro-ecosystems centers; and

5. Describe the process that will be used to hold an "independent" evaluation of the Center on an annual basis (Members of the review team should reflect the Center's "community of interest", including member institutions, Center clients, and stakeholder groups. The results of the annual review will be used by CSREES to determine whether continued funding of the Center is justified.).

d. *Cooperation and Institutional Units Involved:* Cooperative and multi-state applications are encouraged. Identify each institutional unit contributing to the project. Identify each institution in a multiple-institution proposal and designate the lead institution. When appropriate, the project should be coordinated with the efforts of other State and/or national programs. Clearly define the roles and responsibilities of each institutional unit of the project team, if applicable.

e. *Literature Review:* A summary of pertinent publications with emphasis on their relationship to the effort being proposed should be provided and should include all important and recent publications from other institutions, as well as those from the applicant institution. The citations themselves should be accurate, complete, and written in an acceptable journal format.

6. Appendices to Project Description

Appendices to the Project Description are allowed if they are directly germane to the proposed project and are limited to a total of two of the following: reprints (papers that have been published in peer reviewed journals) and preprints (manuscripts in press for a peer reviewed journal; these must be

accompanied by a letter of acceptance from the publishing journal).

7. Key Personnel

All senior personnel who are expected to be involved in the effort must be clearly identified. For each person, the following should be included:

a. The roles and responsibilities of each PI/PD and/or collaborator should be clearly described;

b. An estimate of the time commitment involved for each PI/PD and/or collaborator; and

c. Vitae of each PI/PD, senior associate, and other professional personnel. This section should include vitae of all key persons who are expected to work on the project, whether or not CSREES funds are sought for their support. The vitae should be limited to two (2) pages each in length, excluding publications listings. A chronological list of all publications in refereed journals during the past four (4) years, including those in press, must be provided for each project member for which a curriculum vitae is provided. Also list only those non-refereed technical publications that have relevance to the proposed project. All authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

8. Conflict-of-Interest List

A Conflict-of-Interest List must be provided for all individuals involved in the project (identified as key personnel). Each list should be on a separate page and include alphabetically the full names of the individuals in the following categories: (a) All collaborators on projects within the past four years, including current and planned collaborations; (b) all co-authors on publications within the past four years, including pending publications and submissions; (c) all persons in your field with whom you have had a consulting or financial arrangement within the past four years, who stand to gain by seeing the project funded; and (d) all thesis or postdoctoral advisees/advisors within the past four years (some may wish to call these life-time conflicts). This form is necessary to assist program staff in excluding from proposal review those individuals who have conflicts-of-interest with the personnel in the grant proposal. The Program Director must be informed of any additional conflicts-of-interest that arise after the proposal is submitted.

9. Collaborative and/or Subcontractual Arrangements

If it will be necessary to enter into formal consulting or collaborative arrangements with others, such arrangements should be fully explained and justified. In addition, evidence should be provided that the collaborators involved have agreed to render these services. If the need for consultant services is anticipated, the proposal narrative should provide a justification for the use of such services, a statement of work to be performed, and a resume or curriculum vita for each consultant. For purposes of proposal development, informal day-to-day contacts between key project personnel and outside experts are not considered to be collaborative arrangements and thus do not need to be detailed.

All anticipated subcontractual arrangements also should be explained and justified in this section. A proposed statement of work and a budget for each arrangement involving the transfer of substantive programmatic work or the providing of financial assistance to a third party must be provided. Agreements between departments or other units of your own institution and minor arrangements with entities outside of your institution (e.g., requests for outside laboratory analyses) are excluded from this requirement.

If you expect to enter into subcontractual arrangements, please note that the provisions contained in 7 CFR Part 3019, USDA Uniform Administrative Requirements for Grant and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and the general provisions contained in 7 CFR Part 3015.205, USDA Uniform Federal Assistance Regulations, flow down to subrecipients. In addition, required clauses from Sections 40–48 ("Procurement Standards") and Appendix A ("Contract Provisions") to 7 CFR Part 3019 should be included in final contractual documents, and it is necessary for the subawardee to make a certification relating to debarment/suspension.

10. Budget (Form CSREES–55)

a. Budget Form. Prepare the budget, Form CSREES–55, in accordance with instructions provided. A budget form is required for each year of requested support. In addition, a cumulative budget is required detailing the requested total support for the overall project period. The budget form may be reproduced as needed by applicants. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, and these program guidelines, and can be justified as necessary for the successful conduct of the proposed project. Applicants must also include a Budget Narrative to justify their budgets (see section b below.)

The following guidelines should be used in developing your proposal budget(s):

1. Salaries and Wages. Salaries and wages are allowable charges and may be requested for personnel who will be working on the project in proportion to the time such personnel will devote to the project. If salary funds are requested, the number of Senior and Other Personnel and the number of CSREES-Funded Work Months must be shown in the spaces provided. Grant funds may not be used to augment the total salary or rate of salary of project personnel or to reimburse them for time in addition to a regular full-time salary covering the same general period of employment. Salary funds requested must be consistent with the normal policies of the institution.

2. Fringe Benefits. Funds may be requested for fringe benefit costs if the usual accounting practices of your organization provide that organizational contributions to employee benefits (social security, retirement, etc.) be treated as direct costs. Fringe benefit costs may be included only for those personnel whose salaries are charged as a direct cost to the project.

3. Nonexpendable Equipment. Nonexpendable equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 (or lower depending on institutional policy) or more per unit. As such, items of necessary instrumentation or other nonexpendable equipment should be listed individually by description and estimated cost in the Budget Narrative. This applies to revised budgets as well, as the equipment item(s) and amount(s) may change.

4. Materials and Supplies. The types of expendable materials and supplies which are required to carry out the project should be indicated in general terms with estimated costs in the Budget Narrative.

5. Travel. The type and extent of travel and its relationship to project objectives should be described briefly and justified. If foreign travel is proposed, the country to be visited, the

specific purpose of the travel, a brief itinerary, inclusive dates of travel, and estimated cost must be provided for each trip. Airfare allowances normally will not exceed round-trip jet economy air accommodations. U.S. flag carriers must be used when available. See 7 CFR Part 3015.205(b)(4) for further guidance.

6. Publication Costs/Page Charges. Include anticipated costs associated with publications in a journal (preparing and publishing results including page charges, necessary illustrations, and the cost of a reasonable number of coverless reprints) and audio-visual materials that will be produced. Photocopying and printing brochure, etc., should be shown in Section I., "All Other Direct Costs" of Form CSREES–55.

7. Computer (ADPE) Costs. Reimbursement for the costs of using specialized facilities (such as a university- or department-controlled computer mainframe or data processing center) may be requested if such services are required for completion of the work.

8. All Other Direct Costs. Anticipated direct project charges not included in other budget categories must be itemized with estimated costs and justified in the Budget Narrative. This also applies to revised budgets, as the item(s) and dollar amount(s) may change. Examples may include space rental at remote locations, subcontractual costs, and charges for consulting services, telephone, facsimile, shipping costs, and fees necessary for laboratory analyses. You are encouraged to consult the "Instructions for Completing Form CSREES–55, Budget," of the Application Kit for detailed guidance relating to this budget category. Form AD–1048 must be completed by each subcontractor or consultant and retained by the grantee. Pest Management Centers proposals should indicate that sub-contractual arrangements are anticipated, but should not identify specific institutions. Successful Pest Management Center applicants will be expected to conduct an open and competitive process to identify institutional members of its regionally-based information network, after which subcontractual arrangements can be made between the Center's host institution and member institutions.

9. Indirect Costs. Section 1462 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3310) limits indirect costs for this program to 19 percent of total Federal funds provided under each award. Therefore the recovery of indirect costs under this program may not exceed the lesser of the institution's official negotiated indirect cost rate or the equivalent of 19 percent of total Federal funds awarded. If no rate has been negotiated, a reasonable dollar amount (equivalent to less than 19 percent of total Federal funds requested) in lieu of indirect costs may be requested, subject to approval by USDA.

b. Budget Narrative. All budget categories, excluding Indirect Costs, for which support is requested, must be individually listed (with costs) and justified on a separate sheet of paper and placed immediately behind the Budget Form. Explanations of matching funds or lack there of on commodity-specific projects also are to be included in this section.

c. Matching Funds. If an applicant concludes that matching funds are not required as specified under Part I (e), a justification should be included in the Budget Narrative. CSREES will consider this justification when ascertaining final matching requirements or in determining if required matching can be waived. CSREES retains the right to make final determinations regarding matching requirements.

For those grants requiring matching funds as specified under Part I (e), proposals should include written verification of commitments of matching support (including both cash and in-kind contributions) from third parties. Written verification means:

(a) For any third party cash contributions, a separate pledge agreement for each donation, signed by the authorized organizational representatives of the donor organization and the applicant organization, which must include: (1) The name, address, and telephone number of the donor; (2) the name of the applicant organization; (3) the title of the project for which the donation is made; (4) the dollar amount of the cash donation; and (5) a statement that the donor will pay the cash contribution during the grant period; and

(b) For any third party in-kind contributions, a separate pledge agreement for each contribution, signed by the authorized organizational representatives of the donor organization and the applicant organization, which must include: (1) The name, address, and telephone number of the donor; (2) the name of the applicant organization; (3) the title of the project for which the donation is made; (4) a good faith estimate of the current fair market value of the third party in-kind contribution; and (5) a statement that the donor will make the contribution during the grant period.

The sources and amount of all matching support from outside the applicant institution should be summarized on a separate page and placed in the proposal immediately following the Budget Narrative. All pledge agreements must be placed in the proposal immediately following the summary of matching support.

The value of applicant contributions to the project shall be established in accordance with applicable cost principles. Applicants should refer to OMB Circular A–21, Cost Principles for Educational Institutions, for further guidance and other requirements relating to matching and allowable costs.

11. Current and Pending Support (Form CSREES–663)

All proposals must contain Form CSREES–663 listing other current public or private support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA Programs or agencies. Concurrent submission of identical or similar proposals to the possible sponsors will not prejudice proposal review or evaluation by the CSREES for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or to be funded) by another organization or agency will not be funded under this program. Note that the project being proposed should be included in the pending section of the form.

12. Assurance Statement(s), (Form CSREES–662)

A number of situations encountered in the conduct of projects require special assurances, supporting documentation, etc., before funding can be approved for the project. In addition to any other situation that may exist with regard to a particular project, it is expected that some applications submitted in response to these guidelines will involve the following:

a. Recombinant DNA or RNA Research. As stated in 7 CFR Part 3015.205 (b)(3), all key personnel identified in the proposal and all endorsing officials of the proposing organization are required to comply with the guidelines established by the National Institutes of Health entitled,

"Guidelines for Research Involving Recombinant DNA Molecules," as revised. If your project proposes to use recombinant DNA or RNA techniques, you must so indicate by checking the "yes" box in Block 19 of Form CSREES–661 (the Cover Page) and by completing Section A of Form CSREES–662. For applicable proposals recommended for funding, Institutional Biosafety Committee approval is required before CSREES funds will be released.

b. Animal Care. Responsibility for the humane care and treatment of live vertebrate animals used in any grant project supported with funds provided by CSREES rests with the performing organization. Where a project involves the use of living vertebrate animals for experimental purposes, all key project personnel identified in a proposal and all endorsing officials of the proposing organization are required to comply with the applicable provisions of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et seq.*) and the regulations promulgated thereunder by the Secretary in 9 CFR Parts 1, 2, 3, and 4 pertaining to the care, handling, and treatment of these animals. If your project will involve these animals, you should check "yes" in block 20 of Form CSREES–661 and complete Section B of Form CSREES–662. In the event a project involving the use of live vertebrate animals results in a grant award, funds will be released only after the Institutional Animal Care and Use Committee has approved the project.

c. Protection of Human Subjects. Responsibility for safeguarding the rights and welfare of human subjects used in any grant project supported with funds provided by CSREES rests with the performing organization. Guidance on this issue is contained in the National Research Act, Pub. L. No. 93–348, as amended, and implementing regulations promulgated by the Department under 7 CFR Part 1c. If you propose to use human subjects for experimental purposes in your project, you should check the "yes" box in Block 21 of Form CSREES–661 and complete Section C of Form CSREES–662. In the event a project involving human subjects results in a grant award, funds will be released only after the appropriate Institutional Review Board has approved the project.

13. Certifications

Note that by signing Form CSREES–661 the applicant is providing the certifications required by 7 CFR Part 3017, as amended, regarding Debarment and Suspension and Drug Free Workplace, and 7 CFR Part 3018, regarding Lobbying. The certification forms are included in the application package for informational purposes only. These forms should not be submitted with the proposal since by signing form CSREES–661 your organization is providing the required certifications. If the project will involve a subcontractor or consultant, the subcontractor/consultant should submit a form AD–1048 to the grantee organization for retention in their records. This form should not be submitted to USDA.

14. Compliance With the National Environmental Policy Act (NEPA) (Form CSREES–1234)

As outlined in 7 CFR Part 3407 (the Cooperative State Research, Education, and Extension Service regulations implementing NEPA), the environmental data for any proposed project is to be provided to CSREES so that CSREES may determine whether any further action is needed. In some cases, however, the preparation of environmental data may not be required. Certain categories of actions are excluded from the requirements of NEPA.

In order for CSREES to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, Form CSREES–1234, "NEPA Exclusions Form," must be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefore. If it is the applicant's opinion that the proposed project falls within the categorical exclusions, the specific exclusion must be identified. Form CSREES–1234 and supporting documentation should be included as the last page of this proposal.

Even though a project may fall within the categorical exclusions, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity, if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

C. Submission of Proposals

1. When To Submit (Deadline Date)

Proposals must be transmitted by June 6, 2000, as indicated by postmark or date of courier bill of lading. Proposals transmitted after this date will not be considered for funding.

2. What To Submit

An original and 14 copies must be submitted. In addition submit 10 copies of the proposal's Project Summary. All copies of the proposals and the Project Summaries must be submitted in one package.

3. Where To Submit

Applicants are strongly encouraged to submit completed proposals via overnight mail or delivery service to ensure timely receipt by the USDA. The address for hand-delivered proposals or proposals submitted using an express mail or overnight courier service is: Integrated Research, Education, and Extension Competitive Grants Program -Pest Managment; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, S.W.; Washington, D.C. 20024.

Proposals sent via the U.S. Postal Service must be sent to the following address: Integrated Research, Education, and Extension Competitive Grants Program—Pest Management; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245.

D. Acknowledgment of Proposals

The receipt of all proposals will be acknowledged by e-mail. Therefore, applicants strongly are encouraged to provide e-mail addresses, where designated, on the Form CSREES–661. If the applicant's email address is not indicated, CSREES will acknowledge receipt of proposal by letter.

Once the proposal has been assigned an identification number, please cite that number on all future correspondence. If the applicant does not receive an acknowledgment within 60 days of the submission deadline, please contact the Program Director.

Part IV—Review Process

A. General

Each proposal will be evaluated using a 3-part process. First, each proposal will be screened to ensure that it meets the administrative requirements as set forth in this request for proposals-tier review process. Second, a panel will consider the relevance of the proposal to program objectives. Third, a technical peer panel will consider the technical merits of the proposal. The relevancy panel will be comprised of representatives from USDA and other federal agencies, farm and commodity

organizations, environmental and consumer groups, experts from colleges and universities, and others as needed. The technical peer panel will include representatives with appropriate scientific backgrounds from colleges and universities, USDA, EPA, and organizations with research, education, and extension expertise as needed. Funding determinations will come from a rank-ordered list of projects based on the combined relevancy and scientific peer panel scores. CSREES has found the above review process most appropriate for evaluating pest management grant proposals as proven through the administration of the Pest Management Alternatives Research Program as authorized under the Competitive, Special, and Facilities Research Grant Act.

Overall, peer review panel members will be selected based upon their training and experience in relevant scientific, education or extension fields taking into account the following factors: (a) The level of formal scientific, technical education, and extension experience of the individual, as well as the extent to which an individual is engaged in relevant research, education and/or extension activities; (b) the need to include as peer reviewers experts from various areas of specialization within relevant scientific, education, and extension fields; (c) the need to include as reviewers other experts (producers, range or forest managers/operators, consumers, etc.) who can assess relevance of the proposals to targeted audiences and to program needs; (d) the need to include as peer reviewers experts from a variety of organizational types (e.g., colleges, universities, industry, state and Federal agencies, private profit and non-profit organizations), and geographic locations; (e) the need to maintain a balanced composition of peer review groups with regard to minority and female representation and an equitable age distribution; and (f) the need to include members that can judge the effective usefulness to producers and the general public of each proposal.

B. Evaluation Criteria

Priority will be given for integrated, multifunctional research, education, and extension projects.

The criteria used to evaluate proposals submitted to the Integrated Research, Education, and Extension Competitive Grants Program—Pest Management will vary depending on which of the four program components you are requesting funding from. The two sets of evaluation criteria are listed below.

1. Evaluation Criteria for CAR, RAMP, and MBT Proposals

Proposals for CAR, RAMP, and MBT funding will be evaluated based on the criteria described below. The relevancy panel will assign up to 30 points based on Criterion a, and the technical panel will assign up to 70 points based on Criteria b–f. The criteria are listed below.

a. Relevance to Program Objectives (30 points): Factors that will be considered include the importance of the crop/pest combination (particularly agronomic and economic considerations; e.g., magnitude of the pest problem if a widely used pesticide is no longer available), number of crops and pesticides addressed, user involvement in planning and implementation, potential for rapid integration into production practices, and demonstration of consideration of existing pest management programs.

b. Importance of the Problem (10 points): particularly ecological and agronomic considerations.

c. Technical Quality of the Approach (15 points): include the feasibility of attaining objectives; and the adequacy of professional training and experience, facilities and equipment.

d. Potential to Reduce Reliance on Pesticides (15 points).

e. Level of End-User Involvement (20 points): Examples are grower or commodity group involvement in planning or conducting research trials and demonstrations.

f. Appropriateness of the Budget (10 points).

2. Evaluation Criteria for Pest Management Center Proposals

Proposals for Pest Management Center funding will be evaluated based on the criteria described below. The relevancy panel will assign up to 30 points based on Criterion a, and the technical panel will assign up to 70 points based on Criteria b–e. The criteria are listed below.

a. Relevance to Program Objectives (30 points).

b. Appropriateness of Process to Establish Information Network (20 points): The process to establish the information network should ensure that all eligible colleges and universities have an opportunity to be become a member of the regional Center's information network.

c. Capacity to Attain Program Objectives (20 points): Factors that will be considered include the ability to provide leadership to form a broad-based regional information network; the strength of the action plan for development of Pest Management Centers organized around crop production regions (agro-ecosystems); the ability to foster research, extension and education collaborations, interdisciplinary teams, and inter-institutional partnerships; the adequacy, professional training and experience of Center staff; and the level of institutional support for Center including facilities and equipment.

d. Level of End-User Involvement (20 points): Factors that will be considered include evidence that stakeholders were consulted during proposal preparation and will participate in operation of the Center, and the ability to establish partnerships with stakeholders to accomplish Center objectives.

e. Appropriateness of the Budget (10 points): The budget should be reflective of the complexity and intensity of agriculture within the region.

C. Conflicts-of-Interest and Confidentiality

During the peer evaluation process, extreme care will be taken to prevent any actual or perceived conflicts-of-interest that may impact review or evaluation. For the purpose of determining conflicts-of-interest, the academic and administrative autonomy of an institution shall be determined by reference to the January 1998 issue of the Codebook for Compatible Statistical Reporting of Federal Support to Universities, Colleges, and Nonprofit Institutions, prepared by Quantum Research Corporation for the National Science Foundation.

Names of submitting institutions and individuals, as well as proposal content and peer evaluations, will be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of peer reviewers will remain confidential throughout the entire review process. Therefore, the names of the reviewers will not be released to applicants. At the end of the fiscal year, names of panelists will be made available in such a way that the panelists cannot be identified with the review of any particular proposal.

Part V—Additional Information

A. Access To Review Information

Copies of summary reviews, not including the identity of reviewers, will be sent to the applicant PI/PD after the review process has been completed.

B. Grant Awards

(1) General

Within the limit of funds available for such purpose, the awarding official of

CSREES shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious under the procedures set forth in this RFP. The date specified by the awarding official of CSREES as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds granted by CSREES under this RFP shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (parts 3015 and 3019 of 7 CFR).

(2) Organizational Management Information

Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant identified under this RFP, if such information has not been provided previously under this or another CSREES program. CSREES will provide copies of forms recommended for use in fulfilling these requirements as part of the preaward process.

(3) Grant Award Document and Notice of Grant Award

The grant award document shall include at a minimum the following:

(a) Legal name and address of performing organization or institution to whom the Administrator has awarded a grant under the terms of this request for proposals;

(b) Title of project;

(c) Name(s) and address(es) of PI/PD's chosen to direct and control approved activities;

(d) Identifying grant number assigned by the Department;

(e) Project period, specifying the amount of time the Department intends to support the project without requiring recompetition for funds;

(f) Total amount of Departmental financial assistance approved by the Administrator during the project period;

(g) Legal authority(ies) under which the grant is awarded;

(h) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award; and

(i) Other information or provisions deemed necessary by CSREES to carry out its respective granting activities or to accomplish the purpose of a particular grant.

The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

C. Use of Funds; Changes

(1) Delegation of Fiscal Responsibility

Unless the terms and conditions of the grant state otherwise, the grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(2) Changes in Project Plans

(a) The permissible changes by the grantee, PI/PD(s), or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the PI/PD(s) are uncertain as to whether a change complies with this provision, the question must be referred to the CSREES Authorized Departmental Officer (ADO) for a final determination.

(b) Changes in approved goals or objectives shall be requested by the grantee and approved in writing by the ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(c) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the awarding official of CSREES prior to effecting such changes.

(d) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the ADO prior to effecting such transfers, unless prescribed otherwise in the terms and conditions of the grant.

(e) Changes in Project Period: The project period may be extended by CSREES without additional financial support, for such additional period(s) as the ADO determines may be necessary to complete or fulfill the purposes of an approved project, but in no case shall the total project period exceed five years. Any extension of time shall be conditioned upon prior request by the grantee and approval in writing by the ADO, unless prescribed otherwise in the terms and conditions of a grant.

(f) Changes in Approved Budget: Changes in an approved budget must be requested by the grantee and approved in writing by the ADO prior to instituting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or in the grant award.

D. Applicable Federal Statutes and Regulations

Several Federal statutes and regulations apply to grant proposals considered for review and to project grants awarded under this program. These include, but are not limited to:

7 CFR Part 1.1—USDA implementation of the Freedom of Information Act

7 CFR Part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Non-profit Organizations.

7 CFR Part 3407—CSREES procedures to implement the National Environmental Policy Act of 1969, as amended.

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR Part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

E. Confidential Aspects of Proposals and Awards

When a proposal results in a grant, it becomes a part of the record of CSREES transactions, available to the public upon specific request. Information that the Secretary determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as confidential, privileged, or proprietary should be clearly marked within the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

F. Regulatory Information

For the reasons set forth in the final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. Under the provisions of the Paperwork Reduction Act of 1995, as amended (44 U.S.C. chapter 35), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, D.C., this 4th day of April 2000.

Charles W. Laughlin,

Administrator, Cooperative State Research, Education, and Extension Service.

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Part IV

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Integrated Research, Education, and Extension Competitive Grants Program—National Food Safety Initiative: Request for Proposals and Request for Input; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Integrated Research, Education, and Extension Competitive Grants Program—National Food Safety Initiative: Request for Proposals and Request for Input

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of request for proposals and request for input.

SUMMARY: The Cooperative State Research, Education and Extension Service (CSREES) announces the availability of grant funds and requests proposals for the Integrated Research, Education, and Extension Competitive Grants Program—National Food Safety Initiative for fiscal year (FY) 2000 to support integrated, multifunctional agricultural research, extension, and education activities that address food safety priorities in United States agriculture. The amount available for support of this program in FY 2000 is approximately $14,277,000.

This notice sets out the objectives for these projects, the eligibility criteria for projects and applicants, the application procedures, and the set of instructions needed to apply for a Food Safety grant under this authority.

By this notice, CSREES additionally solicits stakeholder input from any interested party regarding the FY 2000 Integrated Research, Education, and Extension Competitive Grants Program—National Food Safety Initiative for use in the development of any future requests for proposals for this program.

DATES: Proposals must be transmitted by June 6, 2000, as indicated by the postmark or date on courier bill of lading. Proposals transmitted after this date will not be considered for funding. Comments regarding this request for proposals are requested within six months from the issuance of this notice. Comments received after that date will be considered to the extent practicable.

ADDRESSES: The address for hand-delivered proposals or proposals submitted using an express mail or overnight courier service is: Integrated Research, Education, and Extension Competitive Grants Program—National Food Safety Initiative; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, S.W.; Washington, D.C. 20024.

Proposals sent via the U.S. Postal Service must be sent to the following address: Integrated Research, Education, and Extension Competitive Grants Program—National Food Safety Initiative; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245.

Written user comments should be submitted by first-class mail to: Policy and Program Liaison Staff; Office of Extramural Programs; USDA–CSREES; STOP 2299; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2299; or via e-mail to: RFP–OEP@reeusda.gov. In your comments, please include the name of the program and the fiscal year of the RFP to which you are responding.

FOR FURTHER INFORMATION: Applicants and other interested parties are encouraged to contact Dr. Jan Singleton; National Program Leader, Food Science and Food Safety; Plant and Animal Systems Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2220; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2220; telephone: (202) 401–1954; fax: (202) 401–5179; email: jsingleton@reeusda.gov.

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Stakeholder Input

CSREES is soliciting comments regarding this solicitation of applications from any interested party. These comments will be considered in the development of any future RFP for the program. Such comments will be forwarded to the Secretary or his designee for use in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7613(c)(2)). This section requires the Secretary to solicit and consider input on a current RFP from persons who conduct or use agricultural research, education and extension for use in formulating future RFPs for competitive programs. Comments should be submitted as provided for in the **ADDRESSES** and **DATES** portions of this Notice.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under 10.303, Integrated Research, Education, and Extension Competitive Grants Program.

Part I—General Information

A. Legislative Authority and Background

Section 406 of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) (7 U.S.C. 7626) authorized the Secretary of Agriculture to establish a research, education, and extension competitive grants program to provide funding for integrated, multifunctional agricultural research, extension, and education activities. Subject to the availability of appropriations to carry out this program, the Secretary may award grants to colleges and universities (as defined by 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA) (7 U.S.C. 3103)) on a competitive basis for integrated research, education, and extension projects. Grants are to be awarded to address priorities in United States agriculture that involve integrated research, education, and extension activities as determined by the Secretary in consultation with the National Agricultural Research, Extension, Education, and Economics Advisory Board.

On November 19, 1999, the Secretary published in the **Federal Register** (64

FR 63560) a notice that the administration of this grant program had been delegated to the Cooperative State Research, Education, and Extension Service (CSREES). This notice also solicited public comment from persons who use or conduct research, extension, or education regarding the priorities to be addressed by this new program. In addition, this notice announced a public meeting to obtain comments to use in developing the proposed rule and requests for proposals for this new grant program. The public meeting was held on December 6, 1999. All the comments and the official transcript of the meeting have been made available for review on the CSREES web page (http://www.reeusda.gov/integrated/). This RFP was developed in consultation with the Advisory Board. In addition, the comments and testimonies from the December 6, 1999, public meeting were considered in the formulation of this RFP.

The entire program is funded in FY 2000 at $37,637,702 (after deduction for administrative expenses) for the following integrated activities: Water Quality ($12,374,115), Food Safety ($14,277,277), Pesticide Impact Assessment ($4,322,310), Crops at Risk from Food Quality and Protection Act (FQPA) Implementation ($952,000), FQPA Risk Mitigation Program for Major Food Crop Systems ($3,808,000), and Methyl Bromide Transition Program ($1,904,000). There will be three RFP's for this program. The Water Quality and Food Safety Programs will each have a separate RFP, while the latter four programs will be announced as one RFP. This notice announces and describes the Food Safety component of the Program.

CSREES will administer the Integrated Research, Education, and Extension Competitive Grants Program by determining priorities in United States agriculture through Agency stakeholder input processes and in consultation with the National Agricultural Research, Extension, Education, and Economics Advisory Board. Each RFP for the different program areas (*i.e.*, Water Quality, Food Safety, etc.) will be developed each fiscal year based on these established priorities and the resulting determined approaches to solving these critical agricultural issues. Although this overall grant program seeks to solve critical agricultural issues through an integration of research, education, and extension activities, a component of a RFP, depending on the priority being addressed and/or the stage at which the priority is being addressed, may request proposals that are research, education, or extension only, or a combination thereof. However, the overall overarching approach to solving the critical agricultural issue, priority, or problem will be through an integration of research, education, and extension activities within each individual program area.

B. Purpose, Priorities, and Fund Availability

The purpose of the National Food Safety Initiative is to support projects that address selected priority issues in food safety and demonstrate an integrated approach to solving problems in food safety research, education, and extension as described in this RFP. Various models for integration of research, education, and extension will be considered for funding. Proposals describing multistate, multi-institutional, multidisciplinary, and/or multifunctional activities (and combinations thereof) are acceptable. However, special emphasis will be given to proposals describing multifunctional activities that integrate research, education, and extension (i.e. those that contain research, education, and extension components).

The component areas described below address priority issues in food safety that were identified by stakeholders during a series of public meetings held to solicit program input from various users of food safety information at the local, state, regional, and national levels. Interdepartmental food safety priorities and those supported by the Presidential Food Safety Initiative were also considered in the development of this RFP.

There is no commitment by USDA to fund any particular proposal or to make a specific number of awards. Approximately $14,277,000 will be available to fund proposals in FY 2000. Proposals are being solicited in 12 component areas: (1) Qualitative and Quantitative Risk Assessments; (2) Control Measures for Food-Borne Microbial Pathogens; (3) Sources and Incidence of Microbial Pathogens; (4) Antibiotic Resistant Microbial Pathogens; (5) Improving the Safety of Fresh Fruits and Vegetables; (6) Food Handler Education and Training for Consumer and Youth; (7) Food Handler Education for High-risk and Hard-to-reach Audiences; (8) Food Handler Education for Commercial and Non-Commercial Audiences; (9) Hazard Analysis and Critical Control Points Model Development, Testing and Implementation; and (10) Integrating Food Safety into Related Agricultural Problems. In addition, proposals are being solicited for (11) National Coordination of Integrated Food Safety Programs and Resources and a (12) National Center for Home Food Processing and Preservation.

C. Definitions

For the purpose of awarding grants under this program, the following definitions are applicable:

(1) *Administrator* means the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES) and any other officer or employee of the Department to whom the authority involved my be delegated.

(2) *Authorized departmental officer* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

(3) *Authorized organizational representative* means the president or chief executive officer of the applicant organization or the official, designated by the president or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

(4) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(5) *Cash contributions* means the applicant's cash outlay, including the outlay of money contributed to the applicant by non-Federal third parties.

(6) *Department* or *USDA* means the United States Department of Agriculture.

(7) *Education activity* means formal classroom instruction, laboratory instruction, and practicum experience in the food and agricultural sciences and other related matters such as faculty development, student recruitment and services, curriculum development, instructional materials and equipment, and innovative teaching methodologies.

(8) *Extension activity* means an act or process that delivers science-based knowledge and informal educational programs to people, enabling them to make practical decisions.

(9) *Grant* means the award by the Secretary of funds to an eligible organization or individual to assist in meeting the costs of conducting, for the benefit of the public, an identified project which is intended and designed to accomplish the purpose of the program as identified in these guidelines.

(10) *Grantee* means an organization designated in the grant award document as the responsible legal entity to which a grant is awarded.

(11) *Integrated* means to bring the three components of the agricultural knowledge system (research, education,

and extension) together around a problem area or activity.

(12) *Matching* means that portion of allowable project costs not borne by the Federal Government, including the value of in-kind contributions.

(13) *Peer review* means an evaluation of a proposed project for scientific or technical quality and relevance performed by experts with the scientific knowledge and technical skills to conduct the proposed work or to give expert advice on the merits of a proposal.

(14) *Principal investigator/Project director* means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project.

(15) *Prior approval* means written approval evidencing prior consent by an authorized departmental officer as defined in (2) above.

(16) *Project* means the particular activity within the scope of the program supported by a grant award.

(17) *Project period* means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

(18) *Research activity* means a scientific investigation or inquiry that results in the generation of knowledge.

(19) *Secretary* means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved may be delegated.

(20) *Third party in-kind contributions* means non-cash contributions of property or services provided by non-Federal third parties, including real property, equipment, supplies and other expendable property, directly benefitting and specifically identifiable to a funded project or program.

(21) *Total integrated, multifunctional research, education, and extension approach* means that the combination of grants (although the individual grants may involve only research, education, or extension activities or a combination thereof) awarded under the fiscal year's program components will work together to address the priorities in United States agriculture as determined by the Secretary of Agriculture in consultation with the Advisory Board, that involve integrated research, extension, and education activities.

D. Eligibility

Proposals may be submitted by colleges and universities as defined in section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA). The terms "college" and "university" mean an educational institution in any State which (1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, (2) is legally authorized within such State to provide a program of education beyond secondary education, (3) provides an educational program for which a bachelor's degree or any other higher degree is awarded, (4) is a public or other nonprofit institution, and (5) is accredited by a nationally recognized accrediting agency or association. Although an applicant may be eligible based on its status as one of these entities, there are factors which may exclude an applicant from receiving Federal financial and nonfinancial assistance and benefits under this program (*e.g.*, debarment or suspension of an individual involved or a determination that an applicant is not responsible based on submitted organizational management information). Eligible applicants may subcontract to organizations not eligible under these requirements.

Please note that a research foundation maintained by a college or university is not eligible to receive an award under this program.

E. Matching Requirements

1. General Requirement

If a grant provides a particular benefit to a specific agricultural commodity, the grant recipient is required to provide funds or in-kind support to match the amount of the grant funds provided. See section 10. c. on "Matching Funds" under Part III, B, "Content of Proposals" for more details.

2. Waiver

CSREES may waive the matching funds requirement specified in the above paragraph for a grant if CSREES determines that (a) the results of the project, while of particular benefit to a specific agricultural commodity, are likely to be applicable to agricultural commodities generally; or (b) the project involves a minor commodity, the project deals with scientifically important research, and the grant recipient is unable to satisfy the matching funds requirement.

F. Funding Restrictions

CSREES has determined that grant funds awarded under this authority may not be used for the renovation or refurbishment of research, education, or extension space; the purchase or installation of fixed equipment in such space; or the planning, repair, rehabilitation, acquisition, or construction of buildings or facilities.

G. Types of Grant Instruments

In FY 2000 all projects will be awarded using a "New Grant" instrument. In future years, projects under the Integrated Research, Education, and Extension Competitive Grants Program authority can be awarded using one of the grant instruments described below:

(1) New grant. This is a grant instrument by which the Department agrees to support a specified level of effort for a project that generally has not been supported previously under this program. This type of grant is approved on the basis of peer review recommendations.

(2) Renewal grant. This is a grant instrument by which the Department agrees to provide additional funding for a project period beyond that approved in an original or amended award, provided that the cumulative period does not exceed the statutory limitation. When a renewal application is submitted, it should include a summary of progress to date from the previous granting period. A renewal grant shall be based upon new application, *de novo* peer review and staff evaluation, new recommendation and approval, and a new award instrument.

(3) Supplemental grant. This is an instrument by which the department agrees to provide small amounts of additional funding under a new or renewal grant as specified above and may involve a short-term (usually six months or less) extension of the project period beyond that approved in an original or amended award, but in no case may the cumulative period for the project exceed the statutory limitation. A supplement is awarded only if required to assure adequate completion of the original scope of work and if there is sufficient justification to warrant such action. A request of this nature normally will not require additional peer review.

H. Funding Mechanisms

The two mechanisms by which new, renewal, and supplemental grants shall be awarded are as follows:

(1) Standard grant. This is a funding mechanism whereby the Department agrees to support a specified level of effort for a predetermined time period without the announced intention of providing additional support at a future date.

(2) Continuation grant. This is a funding mechanism whereby the Department agrees to support a

specified level of effort for a predetermined period of time with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued support will be in the best interests of the Federal government and the public. This kind of mechanism normally will be awarded for an initial one-year period, and any subsequent continuation project grants will be awarded in one-year increments. The award of a continuation project grant to fund an initial or succeeding budget period does not constitute an obligation to fund any subsequent budget period. Unless prescribed otherwise by CSREES, a grantee must submit a separate application for continued support for each subsequent fiscal year. Requests for such continued support must be submitted in duplicate at least three months prior to the expiration date of the budget period currently being funded. Decisions regarding continued support and the actual funding levels of such support in future years usually will be made administratively after consideration of such factors as the grantee's progress and management practices and the availability of funds. Since initial peer reviews are based upon the full term and scope of the original application, additional evaluations of this type generally are not required prior to successive years' support. However, in unusual cases (*e.g.*, when the nature of the project or key personnel change or when the amount of future support requested substantially exceeds the grant application originally reviewed and approved), additional reviews may be required prior to approving continued funding.

Part II—Program Description

A. Project Types

For Program Areas 1 through 10, the maximum total award is $600,000, and for a project period up to three years. For Program Areas 11 and 12, the maximum total award is $600,000 per year and for a project period up to four years.

Proposals that focus on one functional area (*i.e.*, research only, education only, or extension only) are acceptable. However, applicants should explain how the separate functional area will meet the overall goal of a total integrated, multifunctional research, education, and extension approach.

Applications received in any of the aforementioned program areas should include budgets commensurate with the activities proposed. Grants awarded under Program Description Areas 1 through 10 of this RFP will be issued as "New Grant" instruments and will be awarded as "Standard Grants." Grants awarded under Program Description Areas 11 and 12 of this RFP will be issued as "New Grant" instruments and may be awarded as "Continuation Grants."

B. Program Area Description

Integrated research, education, and/or extension proposals that address the following selected priority issues are requested:

For Program Areas 1 through 10:

(Maximum award: $600,000 and up to three years).

(1) Qualitative and Quantitative Risk Assessments (Program Area 111.1)

This category will support the development and testing of comprehensive, qualitative and/or quantitative science-based risk assessments for microbial food-borne pathogens (*e.g.*, Listeria monocytogenes, Campylobacter jejuni, Cyclospora, Salmonella, *etc.*) and/or their toxins associated with ready-to-eat foods, including those foods that are fresh, minimally processed or processed.

(2) Control Measures for Food-borne Microbial Pathogens (Program Area 111.2)

This category will support the establishment of the scientific bases for, and the development of, models for identifying and validating critical control points, critical limits, and process capability related to control measures for significant food-borne microbial pathogens and/or their toxins in production, processing and distribution of foods.

(3) Sources and Incidence of Microbial Pathogens (Program Area 111.3)

This category will support identification of the sources and incidence of microbial pathogens of animal and human origin that impact on food safety and the development and implementation of strategies for their prevention and control.

(4) Antibiotic Resistant Microbial Pathogens (Program Area 111.4)

This category will support: (a) The identification of factors that lead to the development of antibiotic resistant microbial pathogens related to food safety; (b) the identification and application of measures to prevent antibiotic resistence; and (c) the development and application of alternative approaches to the use of antibiotics.

(5) Improving the Safety of Fresh Fruits and Vegetables (Program Area 111.5)

This category will support the development of projects that focus on improving the safety of fresh and minimally processed imported and domestic fruits and vegetables, which includes: (a) The development of safe and efficacious techniques to enhance or ensure microbiological safety; (b) approaches that relate to post-production, harvesting, handling, transportation, and distribution control measures to the prevention of microbial pathogen infection or cross-contamination; or (c) development of procedures for sampling to accurately detect the presence of microbial pathogens and/or their toxins.

(6) Food Handler Education and Training for Consumers and Youth (Program Area 111.6)

This category will support the development of education and training programs that promote and enhance general food safety and food handler education for youths, adults, and older Americans preparing food in the home. Special emphasis will be given to education efforts that support activities of the *Presidential Food Safety Initiative and the Fight BAC* campaign of the government and industry-wide *Partnership for Food Safety Education.* Information about the Presidential Initiative, Fight BAC, and the Partnership for Food Safety Education can be found at the following website: http://www.foodsafety.gov.

(7) Food Handler Education for High-risk and Hard-to-reach Audiences (Program Area 111.7)

This category will support the development of consumer education and training programs for high-risk or under-served groups (*i.e.* pregnant or nursing mothers, infants, children, the chronically ill, those with limited resources, those with low literacy skills, or those who speak English as a second language). Projects that target families receiving Federal food assistance are encouraged.

(8) Food Handler Education for Commercial and Non-commercial Audiences, Including Food Handler Certification Training and Other Train-the-trainer Programs (Program Area 111.8)

This category will support the development, implementation, and evaluation of *train-the-trainer* programs for food handlers in commercial and

non-commercial settings (e.g., institutional food service, retail establishments, hospitals, health care facilities, day care facilities, congregate meal sites, gleaning and food recovery programs, food banks, soup kitchens, churches, service clubs, etc.). Special emphasis will be given to the development and implementation of food handler certification programs.

(9) Hazard Analysis and Critical Control Points (HACCP) Model Development, Testing, and Implementation (Program Area 111.9)

This category will support the development of projects that focus on the development of HACCP models for education and training in four targeted areas: (a) Minimizing microbial food safety hazards for fresh fruits and vegetables through the development of training and education programs for domestic and international growers and producers; (b) HACCP plan development and implementation in small and very small meat and poultry plants and other small food processing plants; (c) HACCP plan development and implementation in retail establishments, including distribution and transportation sectors of the food industry; (d) HACCP *train-the-trainer* programs using currently available models, curricula, and materials. HACCP model development must include pilot-testing, model implementation and evaluation. Regional, multi-state, or national workshops focused on training potential users of the HACCP models will be supported and are encouraged.

(10) Integrating Food Safety into Related Agricultural Programs (Program Area 111.10)

This category will support the development of projects that incorporate food safety concepts and food safety education into other topical areas in agriculture including, but not limited to, those focusing on: (a) Water quality; (b) animal waste management; (c) integrated pest management; (d) small farms; and (e) sustainable agriculture. For example, projects in this category might focus on developing educational programs that teach growers and producers how to reduce the risk of food-borne illness by minimizing microbial and pesticide contamination through integrated pest management, the control of pesticide application, water quality, and animal waste management. Priority consideration will be given to proposals that describe multi-disciplinary efforts that include those with expertise in food safety and nutrition.

In addition CSREES is soliciting proposals in the following areas:

For Program Areas 11 and 12: *(Maximum award: $600,000/per year and up to four years)*

(11) National Coordination of Integrated Food Safety Programs and Resources (Program Area 111.11)

This category will support the development of integrated food safety resources that facilitate national and international networking and coordination among the various users of food safety information, from production to consumption (i.e. farmers, producers, growers, packers, shippers, retailers, food service workers, processors, inspectors, veterinarians, sanitarians, educators, researchers, consumers, etc.). Special emphasis will be given to the development of databases and interactive software that support decision-making and problem-solving among food safety researchers, educators, consumers, and others. Proposals to support national or regional conferences, multi-user distance education programs, satellite videoteleconferences, and other communication transfer technologies will be supported.

(12) Home Food Processing and Preservation (Program Area 111.12)

This category will support the development of a *National Center for Home Food Processing and Preservation*. Activities conducted by the *Center* should include: (a) Reviewing recent research conducted in the public and private sectors on home food processing and preservation techniques, and formulating recommendations for new recipes and guidelines based on the reviews; (b) updating current guidelines on home food processing and preservation; (c) developing and testing new recipes and guidelines on home food processing and preservation methods for specialty foods, ethnic foods, and new varieties of fruits and vegetables; (d) establishing distribution mechanisms for disseminating new guidelines for home food processing and preservation; and (e) identifying areas where further research in home food processing and preservation techniques are needed.

C. Expected Program Outputs and Reporting Requirements

The grantee must prepare an annual report that details all significant activities towards achieving the goals and objectives of the project. The narrative should be succinct and be no longer than five pages, using 12-point, single-spaced type. The report also should include a listing of any students who worked on the project (report graduate degrees awarded and undergraduates trained, as applicable). A budget summary should be attached to this report, which will provide an overview of all monies spent during the reporting period.

Part III—Preparation of a Proposal

A. Program Application Materials

Program application materials are available at the Integrated Research, Education, and Extension Competitive Grants Program website (http://www.reeusda.gov/integrated/). If you do not have access to our web page or have trouble downloading material, you may contact the Proposal Services Unit, Office of Extramural Programs, USDA/CSREES at (202) 401–5048. When calling the Proposal Services Unit, please indicate that you are requesting forms for the Integrated Research, Education, and Extension Competitive Grants Program—National Food Safety Initiative. These materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and phone number to psb@reeusda.gov. State that you want a copy of the Program Description and application materials (orange book) for the Fiscal Year 2000 Integrated Research, Education, and Extension Competitive Grants Program—National Food Safety Initiative.

B. Content of Proposals

1. General

The proposal should follow these guidelines, enabling reviewers to more easily evaluate the merits of each proposal in a systematic, consistent fashion:

(a) The proposal should be prepared on only one side of the page using standard size (8 ½″ x 11″) white paper, one inch margins, typed or word processed using no type smaller than 12 point font, and single or double spaced. Use an easily readable font face (*e.g.*, Geneva, Helvetica, Times Roman).

(b) Each page of the proposal, including the Project Summary, budget pages, required forms, and any appendices, should be numbered sequentially.

(c) The proposal should be stapled in the upper left-hand corner. Do not bind. An original and 14 copies (15 total) must be submitted in one package, along with 10 copies of the "Project Summary" as a separate attachment.

(d) If applicable, proposals should include original illustrations (photographs, color prints, etc.) in all copies of the proposal to prevent loss of

meaning through poor quality reproduction.

2. Cover Page (Form CSREES–661)

Each copy of each grant proposal must contain an "Application for Funding", Form CSREES–661. One copy of the application, preferably the original, must contain the pen-and-ink signature(s) of the proposing principal investigator(s)/project director(s)(PI/PD) and the authorized organizational representative who possesses the necessary authority to commit the organization's time and other relevant resources to the project. Any proposed PI/PD or co-PI/PD whose signature does not appear on Form CSREES–661 will not be listed on any resulting grant award. Complete both signature blocks located at the bottom of the "Application for Funding" form.

Form CSREES–661 serves as a source document for the CSREES grant database; it is therefore important that it be completed accurately. The following items are highlighted as having a high potential for errors or misinterpretations:

(a) Title of Project (Block 6). The title of the project must be brief (80-character maximum), yet represent the major thrust of the effort being proposed. Project titles are read by a variety of nonscientific people; therefore, highly technical words or phraseology should be avoided where possible. In addition, introductory phrases such as "investigation of" or "research on" "education for" or "outreach that" should not be used.

(b) Program to Which You Are Applying (Block 7). "Integrated Research, Education, and Extension Competitive Grants Program—National Food Safety Initiative."

(c) Program Area and Number (Block 8). The name of the program component, *e.g.* Qualitative and Quantitative Risk Assessments, 111.1 or Control Measures for Food-borne Microbial Pathogens, 111.2 should be inserted in this block.

(d) Type of Award Request (Block 13). Check the block for "new."

(e) Principal Investigator(s)/Project Director(s) (PI/PD) (Block 15). The designation of excessive numbers of co-PI/PD's creates problems during final review and award processing. Listing multiple co-PI/PD's, beyond those required for genuine collaboration, is therefore discouraged. Note that providing a Social Security Number is voluntary, but is an integral part of the CSREES information system and will assist in the processing of the proposal.

(f) Type of Performing Organization (Block 18). A check should be placed in the box beside the type of organization which actually will carry out the effort. For example, if the proposal is being submitted by an 1862 Land-Grant Institution but the work will be performed in a department, laboratory, or other organizational unit of an agricultural experiment station, box "03" should be checked. If portions of the effort are to be performed in several departments, check the box that applies to the individual listed as PI/PD #1 in Block 15.a.

(g) Other Possible Sponsors (Block 22). List the names or acronyms of all other public or private sponsors including other agencies within USDA and other programs funded by CSREES to whom your application has been or might be sent. In the event you decide to send your application to another organization or agency at a later date, you must inform the identified CSREES Program Director as soon as practicable. Submitting your proposal to other potential sponsors will not prejudice its review by CSREES; however, duplicate support for the same project will not be provided. Complete the "Application for Funding," Form CSREES–661, in its entirety.

(h) One copy of the "Application for Funding" form must contain the signatures (in ink) of the PI/PD's and authorized organizational representative for the applicant organization.

3. Table of Contents

For consistency and ease in locating information, each proposal must contain a detailed Table of Contents just after the cover page. The Table of Contents should contain page numbers for each component of the proposal. Page numbers should begin with the first page of the Project Description.

4. Project Summary

The proposal must contain a Project Summary of 250 words or less on a separate page which should be placed immediately after the Table of Contents and should not be numbered. The names and institutions of all PI/PD's and co-PI/PD's should be listed on this form, in addition to the title of the project. The summary should be a self-contained, specific description of the activity to be undertaken and should focus on: overall project goal(s) and supporting objectives; plans to accomplish project goal(s); and relevance of the project to the goals of the National Food Safety Initiative. The importance of a concise, informative Project Summary cannot be overemphasized.

5. Project Description

The Project Description may not exceed a total of 18 pages including figures and tables.

(a) *Justification:* This section should include in-depth information on the following, when applicable:

(i) a statement must be given at the beginning of the justification that clearly identifies the area(s) in Part II B that is (are) addressed in the proposal;

(ii) estimates of the magnitude of the food safety problem and its relevance to ongoing National food and agricultural research programs; and

(iii) reasons for having the work performed by the proposing institution.

(b) *Objectives:* Clear, concise, complete, and logically arranged statement(s) of specific aims of the proposed effort must be included in all proposals.

(c) *Methodology:* The procedures or methodology to be applied to the proposed effort should be explicitly stated. This section should include but not necessarily be limited to:

(i) a description of the proposed activities and the sequence in which they will be carried out;

(ii) procedures, techniques, methodologies, or approaches to be employed, including their feasibility;

(iii) kinds of results or expected outcomes;

(iv) evaluation methods or means by which data/information will be analyzed or interpreted;

(v) problems that might be encountered; and

(vi) limitations to proposed procedures, techniques, methodologies, or approaches.

(d) *Literature Review:* A summary of pertinent publications with emphasis of their relationship to the effort being proposed should be provided and should include all important and recent publications from other institutions, as well as those from the applicant institution. The citations themselves should be accurate, complete, and written in an acceptable journal format.

(e) *Current Work:* Current unpublished institutional activities "to date" in the program area under which the proposal is being submitted should be described.

(f) *Cooperation and Institutional Units Involved:* Cooperative, multi-institutional and multidisciplinary applications are encouraged. Identify each institutional unit contributing to the project and designate the lead institution or institutional unit. When appropriate, the project should be coordinated with the efforts of other State and/or national programs. Clearly

define the roles and responsibilities of each institutional unit of the project team, if applicable.

(g) *Equipment and Facilities:* All facilities which are available for use or assignment to the project during the requested period of support should be reported and described briefly. Any potentially hazardous materials, procedures, situations, or activities, whether or not directly related to a particular phase of the effort, must be explained fully, along with an outline of the precautions to be exercised. Examples include work with toxic chemicals and experiments that may put human subjects or animals at risk. All items of major instrumentation available for use or assignment to the proposed project should be itemized. In addition, items of non-expendable equipment needed to conduct and bring the project to a successful conclusion should be listed, including dollar amounts and, if funds are requested for their acquisition, justified.

(h) *Project Timetable:* The proposal should outline all important phases as a function of time, year by year, for the entire project, including periods beyond the grant funding period.

An applicant for the National Center for Home Food Processing and Preservation should include a management plan to ensure efficient administration of the grant and how activities will be integrated across collaborators.

6. Appendices to Project Description

Appendices to the Project Description are allowed if they are directly germane to the proposed project and are limited to a total of two of the following: Reprints (papers that have been published in peer reviewed journals) and preprints (manuscripts in press for a peer reviewed journal; these must be accompanied by a letter of acceptance from the publishing journal).

7. Key Personnel

All senior personnel who are expected to be involved in the effort must be clearly identified. For each person, the following should be included:

a. The roles and responsibilities of each PI/PD and/or collaborator should be clearly described;

b. An estimate of the time commitment involved for each PI/PD and/or collaborator; and

c. Vitae of each PI/PD, senior associate, and other professional personnel. This section should include vitae of all key persons who are expected to work on the project, whether or not CSREES funds are sought for their support. The vitae should be limited to two (2) pages each in length, excluding publications listings. A chronological list of all publications in refereed journals during the past four (4) years, including those in press, must be provided for each project member for which a curriculum vitae is provided. Also list only those non-refereed technical publications that have relevance to the proposed project. All authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

8. Conflict-of-Interest List

A Conflict-of-Interest List must be provided for all individuals involved in the project (identified as key personnel). Each list should be on a separate page and include alphabetically the full names of the individuals in the following categories: (a) All collaborators on projects within the past four years, including current and planned collaborations; (b) all co-authors on publications within the past four years, including pending publications and submissions; (c) all persons in your field with whom you have had a consulting or financial arrangement within the past four years, who stand to gain by seeing the project funded; and (d) all thesis or postdoctoral advisees/advisors within the past four years (some may wish to call these life-time conflicts). This form is necessary to assist program staff in excluding from proposal review those individuals who have conflicts-of-interest with the personnel in the grant proposal. The Program Director must be informed of any additional conflicts-of-interest that arise after the proposal is submitted.

9. Collaborative and/or Subcontractual Arrangements

If it will be necessary to enter into formal consulting or collaborative arrangements with others, such arrangements should be fully explained and justified. In addition, evidence should be provided that the collaborators involved have agreed to render these services. If the need for consultant services is anticipated, the proposal narrative should provide a justification for the use of such services, a statement of work to be performed, and a resume or curriculum vita for each consultant. For purposes of proposal development, informal day-to-day contacts between key project personnel and outside experts are not considered to be collaborative arrangements and thus do not need to be detailed.

All anticipated subcontractual arrangements also should be explained and justified in this section. A proposed statement of work and a budget for each arrangement involving the transfer of substantive programmatic work or the providing of financial assistance to a third party must be provided. Agreements between departments or other units of your own institution and minor arrangements with entities outside of your institution (*e.g.*, requests for outside laboratory analyses) are excluded from this requirement.

If you expect to enter into subcontractual arrangements, please note that the provisions contained in 7 CFR Part 3019, USDA Uniform Administrative Requirements for Grant and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and the general provisions contained in 7 CFR Part 3015.205, USDA Uniform Federal Assistance Regulations, flow down to subrecipients. In addition, required clauses from Sections 40–48 ("Procurement Standards") and Appendix A ("Contract Provisions") to 7 CFR Part 3019 should be included in final contractual documents, and it is necessary for the subawardee to make a certification relating to debarment/suspension.

10. Budget (Form CSREES–55)

a. Budget Form. Prepare the budget, Form CSREES–55, in accordance with instructions provided. A budget form is required for each year of requested support. In addition, a cumulative budget is required detailing the requested total support for the overall project period. The budget form may be reproduced as needed by applicants. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, and these program guidelines, and can be justified as necessary for the successful conduct of the proposed project. Applicants must also include a Budget Narrative to justify their budgets (see section b below.)

The following guidelines should be used in developing your proposal budget(s):

1. Salaries and Wages. Salaries and wages are allowable charges and may be requested for personnel who will be working on the project in proportion to the time such personnel will devote to the project. If salary funds are requested, the number of Senior and Other

Personnel and the number of CSREES–Funded Work Months must be shown in the spaces provided. Grant funds may not be used to augment the total salary or rate of salary of project personnel or to reimburse them for time in addition to a regular full-time salary covering the same general period of employment. Salary funds requested must be consistent with the normal policies of the institution.

2. Fringe Benefits. Funds may be requested for fringe benefit costs if the usual accounting practices of your organization provide that organizational contributions to employee benefits (social security, retirement, etc.) be treated as direct costs. Fringe benefit costs may be included only for those personnel whose salaries are charged as a direct cost to the project.

3. Nonexpendable Equipment. Nonexpendable equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 (or lower depending on institutional policy) or more per unit. As such, items of necessary instrumentation or other nonexpendable equipment should be listed individually by description and estimated cost in the Budget Narrative. This applies to revised budgets as well, as the equipment item(s) and amount(s) may change.

4. Materials and Supplies. The types of expendable materials and supplies which are required to carry out the project should be indicated in general terms with estimated costs in the Budget Narrative.

5. Travel. The type and extent of travel and its relationship to project objectives should be described briefly and justified. If foreign travel is proposed, the country to be visited, the specific purpose of the travel, a brief itinerary, inclusive dates of travel, and estimated cost must be provided for each trip. Airfare allowances normally will not exceed round-trip jet economy air accommodations. U.S. flag carriers must be used when available. See 7 CFR Part 3015.205(b)(4) for further guidance.

6. Publication Costs/Page Charges. Include anticipated costs associated with publications in a journal (preparing and publishing results including page charges, necessary illustrations, and the cost of a reasonable number of coverless reprints) and audio-visual materials that will be produced. Photocopying and printing brochure, etc., should be shown in Section I., "All Other Direct Costs" of Form CSREES–55.

7. Computer (ADPE) Costs. Reimbursement for the costs of using specialized facilities (such as a university- or department-controlled computer mainframe or data processing center) may be requested if such services are required for completion of the work.

8. All Other Direct Costs. Anticipated direct project charges not included in other budget categories must be itemized with estimated costs and justified in the Budget Narrative. This also applies to revised budgets, as the item(s) and dollar amount(s) may change. Examples may include space rental at remote locations, subcontractual costs, and charges for consulting services, telephone, facsimile, shipping costs, and fees necessary for laboratory analyses. You are encouraged to consult the "Instructions for Completing Form CSREES–55, Budget," of the Application Kit for detailed guidance relating to this budget category. Form AD–1048 must be completed by each subcontractor or consultant and retained by the grantee.

9. Indirect Costs. Section 1462 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3310) limits indirect costs for this program to 19 percent of total Federal funds provided under each award. Therefore the recovery of indirect costs under this program may not exceed the lesser of the institution's official negotiated indirect cost rate or the equivalent of 19 percent of total Federal funds awarded. If no rate has been negotiated, a reasonable dollar amount (equivalent to less than 19 percent of total Federal funds requested) in lieu of indirect costs may be requested, subject to approval by USDA.

b. *Budget Narrative.* All budget categories, with the exception of Indirect Costs for which support is requested, must be individually listed (with costs) and justified on a separate sheet of paper and placed immediately behind the Budget Form. Explanations of matching funds or lack thereof on commodity-specific projects also are to be included in this section.

c. Matching Funds. If an applicant concludes that matching funds are not required as specified under Part I (e), a justification should be included in the Budget Narrative. CSREES will consider this justification when ascertaining final matching requirements or in determining if required matching can be waived. CSREES retains the right to make final determinations regarding matching requirements.

For those grants requiring matching funds as specified under Part I (e), proposals should include written verification of commitments of matching support (including both cash and in-kind contributions) from third parties. Written verification means:

(a) For any third party cash contributions, a separate pledge agreement for each donation, signed by the authorized organizational representatives of the donor organization and the applicant organization, which must include: (1) The name, address, and telephone number of the donor; (2) the name of the applicant organization; (3) the title of the project for which the donation is made; (4) the dollar amount of the cash donation; and (5) a statement that the donor will pay the cash contribution during the grant period; and

(b) For any third party in-kind contributions, a separate pledge agreement for each contribution, signed by the authorized organizational representatives of the donor organization and the applicant organization, which must include: (1) The name, address, and telephone number of the donor; (2) the name of the applicant organization; (3) the title of the project for which the donation is made; (4) a good faith estimate of the current fair market value of the third party in-kind contribution; and (5) a statement that the donor will make the contribution during the grant period.

The sources and amount of all matching support from outside the applicant institution should be summarized on a separate page and placed in the proposal immediately following the Budget Narrative. All pledge agreements must be placed in the proposal immediately following the summary of matching support.

The value of applicant contributions to the project shall be established in accordance with applicable cost principles. Applicants should refer to OMB Circular A–21, Cost Principles for Educational Institutions, for further guidance and other requirements relating to matching and allowable costs.

11. Current and Pending Support (Form CSREES–663)

All proposals must contain Form CSREES–663 listing other current public or private support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other

possible sponsors, including other USDA Programs or agencies. Concurrent submission of identical or similar proposals to the possible sponsors will not prejudice proposal review or evaluation by the CSREES for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or to be funded) by another organization or agency will not be funded under this program. Note that the project being proposed should be included in the pending section of the form.

12. Assurance Statement(s), (Form CSREES–662)

A number of situations encountered in the conduct of projects require special assurances, supporting documentation, etc., before funding can be approved for the project. In addition to any other situation that may exist with regard to a particular project, it is expected that some applications submitted in response to these guidelines will involve the following:

a. Recombinant DNA or RNA Research. As stated in 7 CFR Part 3015.205 (b)(3), all key personnel identified in the proposal and all endorsing officials of the proposing organization are required to comply with the guidelines established by the National Institutes of Health entitled, "Guidelines for Research Involving Recombinant DNA Molecules," as revised. If your project proposes to use recombinant DNA or RNA techniques, you must so indicate by checking the "yes" box in Block 19 of Form CSREES–661 (the Cover Page) and by completing Section A of Form CSREES–662. For applicable proposals recommended for funding, Institutional Biosafety Committee approval is required before CSREES funds will be released.

b. Animal Care. Responsibility for the humane care and treatment of live vertebrate animals used in any grant project supported with funds provided by CSREES rests with the performing organization. Where a project involves the use of living vertebrate animals for experimental purposes, all key project personnel identified in a proposal and all endorsing officials of the proposing organization are required to comply with the applicable provisions of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et seq.*) and the regulations promulgated thereunder by the Secretary in 9 CFR Parts 1, 2, 3, and 4 pertaining to the care, handling, and treatment of these animals. If your project will involve these animals, you should check "yes" in block 20 of Form CSREES–661 and complete Section B of Form CSREES–662. In the event a project involving the use of live vertebrate animals results in a grant award, funds will be released only after the Institutional Animal Care and Use Committee has approved the project.

c. Protection of Human Subjects. Responsibility for safeguarding the rights and welfare of human subjects used in any grant project supported with funds provided by CSREES rests with the performing organization. Guidance on this issue is contained in the National Research Act, Pub. L. No. 93–348, as amended, and implementing regulations promulgated by the Department under 7 CFR Part 1c. If you propose to use human subjects for experimental purposes in your project, you should check the "yes" box in Block 21 of Form CSREES–661 and complete Section C of Form CSREES–662. In the event a project involving human subjects results in a grant award, funds will be released only after the appropriate Institutional Review Board has approved the project.

13. Certifications

Note that by signing Form CSREES–661 the applicant is providing the certifications required by 7 CFR Part 3017, as amended, regarding Debarment and Suspension and Drug Free Workplace, and 7 CFR Part 3018, regarding Lobbying. The certification forms are included in the application package for informational purposes only. These forms should not be submitted with the proposal since by signing form CSREES–661 your organization is providing the required certifications. If the project will involve a subcontractor or consultant, the subcontractor/consultant should submit a form AD–1048 to the grantee organization for retention in their records. This form should not be submitted to USDA.

14. Compliance with the National Environmental Policy Act (NEPA) (Form CSREES–1234)

As outlined in 7 CFR Part 3407 (the Cooperative State Research, Education, and Extension Service regulations implementing NEPA), the environmental data for any proposed project is to be provided to CSREES so that CSREES may determine whether any further action is needed. In some cases, however, the preparation of environmental data may not be required. Certain categories of actions are excluded from the requirements of NEPA.

In order for CSREES to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, Form CSREES–1234, "NEPA Exclusions Form," must be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefore. If it is the applicant's opinion that the proposed project falls within the categorical exclusions, the specific exclusion must be identified. Form CSREES–1234 and supporting documentation should be included as the last page of this proposal.

Even though a project may fall within the categorical exclusions, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity, if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

C. Submission of Proposals

1. When To Submit (Deadline Date)

Proposals must be transmitted by June 6, 2000, as indicated by postmark or date of courier bill of lading. Proposals transmitted after this date will not be considered for funding.

2. What To Submit

An original and 14 copies must be submitted. In addition submit 10 copies of the proposal's Project Summary. All copies of the proposals and the Project Summaries must be submitted in one package.

3. Where To Submit

Applicants are strongly encouraged to submit completed proposals via overnight mail or delivery service to ensure timely receipt by the USDA. The address for hand-delivered proposals or proposals submitted using an express mail or overnight courier service is: Integrated Research, Education, and Extension Competitive Grants Program—National Food Safety Initiative; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, S.W.; Washington, D.C. 20024.

Proposals sent via the U.S. Postal Service must be sent to the following address: Integrated Research, Education, and Extension Competitive Grants Program—National Food Safety Initiative; c/o Proposal Services Unit; Cooperative State Research, Education,

and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245.

D. Acknowledgment of Proposals

The receipt of all proposals will be acknowledged by e-mail. Therefore, applicants are encouraged to provide e-mail addresses, where designated, on the Form CSREES–661. If the applicant's e-mail address is not indicated, CSREES will acknowledge receipt of the proposal by letter.

Once the proposal has been assigned an identification number, please cite that number on all future correspondence. If the applicant does not receive an acknowledgment within 60 days of the submission deadline, please contact the Program Director.

Part IV—Review Process

A. General

Each proposal will be evaluated in a 2-part process. First, each proposal will be screened to ensure that it meets the administrative requirements as set forth in this request for proposals. Second, proposals that meet these requirements will be technically evaluated by a peer review panel.

Peer review panel members will be selected based upon their training and experience in relevant scientific, education or extension fields taking into account the following factors: (a) The level of formal scientific, technical education, and extension experience of the individual, as well as the extent to which an individual is engaged in relevant research, education and/or extension activities; (b) the need to include as peer reviewers experts from various areas of specialization within relevant scientific, education, and extension fields; (c) the need to include as reviewers other experts (producers, range or forest managers/operators, consumers, etc.) who can assess relevance of the proposals to targeted audiences and to program needs; (d) the need to include as peer reviewers experts from a variety of organizational types (*e.g.*, colleges, universities, industry, state and Federal agencies, private profit and non-profit organizations), and geographic locations; (e) the need to maintain a balanced composition of peer review groups with regard to minority and female representation and an equitable age distribution; and (f) the need to include members that can judge the effective usefulness to producers and the general public of each proposal.

B. Evaluation Factors

The evaluation factors below will be used in reviewing applications submitted in response to this request for proposals:

(1) Overall merit of the proposal.

(a) The project goal, approach, or hypothesis is conceptually adequate and related to selected priority issues identified in the request for proposals;

(b) Objectives are clearly described and related to selected priority issues identified in the request for proposals;

(c) There is a demonstrated need for the project;

(d) The target audience(s) is identified (where appropriate);

(e) The proposed technique, procedure, or methodology is clearly described;

(f) The technique, procedure, or methodology is suitable and feasible for the proposed project;

(g) The evaluation procedures, or means by which data will be analyzed and interpreted, are clearly described and are suitable for the proposed project;

(h) The expected results or outcomes are clearly stated; and (i) The probability of success of the project is indicated.

(2) Qualifications of the proposed project personnel, adequacy of the facilities, and budget request.

(a) The roles of all project personnel are clearly defined;

(b) There is evidence that project personnel have sufficient expertise needed to complete the project;

(c) There is evidence of partnerships with other disciplines and institutions;

(d) There is sufficient time allocated for systematic attainment of objectives;

(e) There is evidence of institutional experience and competence in the identified area of work;

(f) There is adequate support personnel, facilities, and instrumentation;

(g) All necessary budget information is provided and all figures are tallied correctly;

(h) The budget narrative provides adequate justification for all budget categories; and

(i) The proposed budget is appropriate for the scope of the project.

(3) The relevance of the proposed project to current issues in food safety and related topical areas.

(a) The relevance to current issues in food safety is described; and

(b) The project makes a unique and original contribution to food safety.

Proposals submitted for the National Center for Home Food Processing and Preservation also will be judged on the quality of the management plan that is proposed.

Priority will be given for integrated, multifunctional research, education, and extension projects.

C. Conflicts-of-Interest and Confidentiality

During the peer evaluation process, extreme care will be taken to prevent any actual or perceived conflicts-of-interest that may impact review or evaluation. For the purpose of determining conflicts-of-interest, the academic and administrative autonomy of an institution shall be determined by reference to the January 1998 issue of the Codebook for Compatible Statistical Reporting of Federal Support to Universities, Colleges, and Nonprofit Institutions, prepared by Quantum Research Corporation for the National Science Foundation.

Names of submitting institutions and individuals, as well as proposal content and peer evaluations, will be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of peer reviewers will remain confidential throughout the entire review process. Therefore, the names of the reviewers will not be released to applicants. At the end of the fiscal year, names of panelists will be made available in such a way that the panelists cannot be identified with the review of any particular proposal.

Part V—Additional Information

A. Access To Review Information

Copies of summary reviews, not including the identity of reviewers, will be sent to the applicant PI/PD after the review process has been completed.

B. Grant Awards

(1) General

Within the limit of funds available for such purpose, the awarding official of CSREES shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious under the procedures set forth in this RFP. The date specified by the awarding official of CSREES as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds granted by CSREES under this RFP shall be

expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (parts 3015 and 3019 of 7 CFR).

(2) Organizational Management Information

Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant identified under this RFP, if such information has not been provided previously under this or another CSREES program. CSREES will provide copies of forms recommended for use in fulfilling these requirements as part of the preaward process.

(3) Grant Award Document and Notice of Grant Award

The grant award document shall include at a minimum the following:

(a) Legal name and address of performing organization or institution to whom the Administrator has awarded a grant under the terms of this request for proposals;

(b) Title of project;

(c) Name(s) and address(es) of PI/PD's chosen to direct and control approved activities;

(d) Identifying grant number assigned by the Department;

(e) Project period, specifying the amount of time the Department intends to support the project without requiring recompetition for funds;

(f) Total amount of Departmental financial assistance approved by the Administrator during the project period;

(g) Legal authority(ies) under which the grant is awarded;

(h) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award; and

(i) Other information or provisions deemed necessary by CSREES to carry out its respective granting activities or to accomplish the purpose of a particular grant.

The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

C. Use of Funds; Changes

(1) Delegation of Fiscal Responsibility

Unless the terms and conditions of the grant state otherwise, the grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(2) Changes in Project Plans

(a) The permissible changes by the grantee, PI/PD(s), or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the PI/PD(s) are uncertain as to whether a change complies with this provision, the question must be referred to the CSREES Authorized Departmental Officer (ADO) for a final determination.

(b) Changes in approved goals or objectives shall be requested by the grantee and approved in writing by the ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(c) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the awarding official of CSREES prior to effecting such changes.

(d) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the ADO prior to effecting such transfers, unless prescribed otherwise in the terms and conditions of the grant.

(e) Changes in Project Period: The project period may be extended by CSREES without additional financial support, for such additional period(s) as the ADO determines may be necessary to complete or fulfill the purposes of an approved project, but in no case shall the total project period exceed five years. Any extension of time shall be conditioned upon prior request by the grantee and approval in writing by the ADO, unless prescribed otherwise in the terms and conditions of a grant.

(f) Changes in Approved Budget: Changes in an approved budget must be requested by the grantee and approved in writing by the ADO prior to instituting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or in the grant award.

D. Applicable Federal Statutes and Regulations

Several Federal statutes and regulations apply to grant proposals considered for review and to project grants awarded under this program. These include, but are not limited to:

7 CFR Part 1.1—USDA implementation of the Freedom of Information Act.

7 CFR Part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (*i.e.*, Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Non-profit Organizations.

7 CFR Part 3407—CSREES procedures to implement the National Environmental Policy Act of 1969, as amended.

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR Part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs

(implementing regulations are contained in 37 CFR Part 401).

E. Confidential Aspects of Proposals and Awards

When a proposal results in a grant, it becomes a part of the record of CSREES transactions, available to the public upon specific request. Information that the Secretary determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as confidential, privileged, or proprietary should be clearly marked within the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

F. Regulatory Information

For the reasons set forth in the final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. Under the provisions of the Paperwork Reduction Act of 1995, as amended (44 U.S.C. chapter 35), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, D.C., this 4th day of April 2000.

Charles W. Laughlin,

Administrator, Cooperative State Research, Education, and Extension Service.

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Part V

Department of Agriculture

Cooperative State Research, Education and Extension Service

Integrated Research, Education, and Extension Competitive Grants Program—Water Quality: Request for Proposals and Request for Input; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Integrated Research, Education, and Extension Competitive Grants Program—Water Quality: Request for Proposals and Request for Input

AGENCY: Cooperative State Research, Education, and Extension Service.

ACTION: Notice of request for proposals and request for input.

SUMMARY: The Cooperative State Research, Education and Extension Service (CSREES) announces the availability of grant funds and requests proposals for the Integrated Research, Education, and Extension Competitive Grants Program—Water Quality for fiscal year (FY) 2000 to support integrated, multifunctional agricultural research, extension, and education activities that address water quality priorities in United States agriculture. The amount available for support of this program in FY 2000 is approximately $12,400,000.

This notice sets out the objectives for these projects, the eligibility criteria for projects and applicants, the application procedures, and the set of instructions needed to apply for a Water Quality grant under this authority.

By this notice, CSREES additionally solicits stakeholder input from any interested party regarding the FY 2000 Integrated Research, Education, and Extension Competitive Grants Program—Water Quality for use in the development of any future requests for proposals for this program.

DATES: Proposals must be transmitted by June 6, 2000, as indicated by the postmark or date on courier bill of lading. Proposals transmitted after this date will not be considered for funding. Comments regarding this request for proposals are requested within six months from the issuance of this notice. Comments received after that date will be considered to the extent practicable.

ADDRESSES: The address for hand-delivered proposals or proposals submitted using an express mail or overnight courier service is: Integrated Research, Education, and Extension Competitive Grants Program—Water Quality; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, SW; Washington, DC 20024.

Proposals sent via the U.S. Postal Service must be sent to the following address: Integrated Research, Education, and Extension Competitive Grants Program—Water Quality; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, SW; Washington, DC 20250–2245.

Written user comments should be submitted by first-class mail to: Policy and Program Liaison Staff; Office of Extramural Programs; USDA–CSREES; STOP 2299; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2299; or via e-mail to: RFP–OEP@reeusda.gov. In your comments, please include the name of the program and the fiscal year of the RFP to which you are responding.

FOR FURTHER INFORMATION: Applicants and other interested parties are encouraged to contact Dr. Timothy C. Strickland; Water Quality Chair; Natural Resources and Environment Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2210; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2210; telephone: (202) 205–5952; fax: (202) 401–1706; email: tstrickland@reeusda.gov or Dr. Raymond Knighton; National Program Leader; Natural Resources and Environment Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2210; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2210; telephone: (202) 401–6417; fax: (202) 401–1706; email: rknighton@reeusda.gov.

SUPPLEMENTARY INFORMATION:

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Stakeholder Input

CSREES is soliciting comments regarding this solicitation of applications from any interested party. These comments will be considered in the development of any future RFP for the program. Such comments will be forwarded to the Secretary or his designee for use in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7613(c)(2)). This section requires the Secretary to solicit and consider input on a current RFP from persons who conduct or use agricultural research, education and extension for use in formulating future RFPs for competitive programs. Comments should be submitted as provided for in the **ADDRESSES** and **DATES** portions of this Notice.

Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under 10.303, Integrated Research, Education, and Extension Competitive Grants Program.

Part I—General Information

A. Legislative Authority and Background

Section 406 of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA) (7 U.S.C. 7626) authorized the Secretary of Agriculture to establish a research, education, and extension competitive grants program to provide funding for integrated, multifunctional agricultural research, extension, and education activities. Subject to the availability of appropriations to carry out this program, the Secretary may award grants to colleges and universities (as defined by 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA) (7 U.S.C. 3103)) on a competitive basis for integrated research, education, and extension projects. Grants are to be awarded to address priorities in United States agriculture that involve integrated research, education, and extension activities as determined by the Secretary in consultation with the National

Agricultural Research, Extension, Education, and Economics Advisory Board.

On November 19, 1999, the Secretary published in the **Federal Register** [64 FR 63560] a notice that the administration of this grant program had been delegated to the Cooperative State Research, Education, and Extension Service (CSREES). This notice also solicited public comment from persons who use or conduct research, extension, or education regarding the priorities to be addressed by this new program. In addition, this notice announced a public meeting to obtain comments to use in developing the proposed rule and requests for proposals for this new grant program. The public meeting was held on December 6, 1999. All the comments and the official transcript of the meeting have been made available for review on the CSREES web page (http://www.reeusda.gov/integrated/). This RFP was developed in consultation with the Advisory Board. In addition, the comments and testimonies from the December 6, 1999, public meeting were considered in the formulation of this RFP.

The entire program is funded in FY 2000 at $37,637,702 (after deduction for administrative expenses) for the following integrated activities: Water Quality ($12,374,115), Food Safety ($14,277,277), Pesticide Impact Assessment ($4,322,310), Crops at Risk from Food Quality and Protection Act (FQPA) Implementation ($952,000), FQPA Risk Mitigation Program for Major Food Crop Systems ($3,808,000), and Methyl Bromide Transition Program ($1,904,000). There will be three RFP's for this program. The Water Quality and Food Safety Programs will each have a separate RFP, while the latter four programs will be announced as one RFP. This notice announces and describes the Water Quality component of the Program.

CSREES will administer the Integrated Research, Education, and Extension Competitive Grants Program by determining priorities in United States agriculture through Agency stakeholder input processes and in consultation with the National Agricultural Research, Extension, Education, and Economics Advisory Board. Each RFP for the different program areas (*i.e.*, Water Quality, Food Safety, etc.) will be developed each fiscal year based on these established priorities and the resulting determined approaches to solving these critical agricultural issues. Although this overall grant program seeks to solve critical agricultural issues through an integration of research, education, and extension activities, a component of a RFP, depending on the priority being addressed and/or the stage at which the priority is being addressed, may request proposals that are research, education, or extension only, or a combination thereof. However, the overall overarching approach to solving the critical agricultural issue, priority, or problem will be through an integration of research, education, and extension activities within each individual program area.

B. Purpose, Priorities, and Fund Availability

The CSREES Water Quality Program is being enhanced by the establishment of a new water quality program authorized under section 406 of AREERA for an Integrated Research, Education, and Extension Competitive Grants Program. This program will bring university scientists, instructors, and extension educators into more effective and efficient partnerships with Federal interagency priority programs in addressing water quality issues in U.S. agriculture. This program will also provide the flexibility necessary for CSREES to bring the resources of researchers, instructors, and extension educators to national initiatives and programmatic partnerships that target evolving water quality needs.

The Water Quality Program is targeted directly to the identification and resolution of agriculturally-related degradation of water quality. Proposals are sought that will provide watershed-based information that can be used to: Assess sources of water quality impairment in targeted watersheds; develop and/or recommend options for continued improvement of water quality in targeted watersheds; and evaluate the relative costs and benefits associated with cleanup from all responsible sectors (*e.g.*, farming, processing, urban runoff, municipal waste treatment, etc.). The program will favor proposals that have a clear problem statement and that are "place-based." "Place-based" means that the proposers have identified a specific location where the work is to be conducted so that the results and implications of the work conducted can be associated with a specific, geo-referenced location. Categories of water quality needs that have been identified, both individually by USDA and in partnership with other Federal programs, include:

—Development and implementation of voluntary approaches that will enable producers to comply with newly developing Federal and State Total Maximum Daily Load regulations for non-point source pollutants.
—Coordination of targeted research, education, and extension activities to minimize any adverse impacts that agricultural, forest, and range management practices; food and agricultural product processing; and/or livestock production systems may have on the Nation's water quality.
—Applied research evaluating the efficacy of currently recommended management practices and strategies to improve water quality.
—Evaluation and error assessment of currently available data sets being used for Geographic Information Systems (GIS) based decision-support models for watershed management.
—Projects supporting the pilot activities of the National Science and Technology Council's National Environmental Monitoring Initiative. This initiative seeks to integrate the Nation's environmental monitoring and related research networks and programs. For more information, see (http://www.epa.gov/cludygxb/Pubs/factsheet.html).
—Development and validation of cost-effective means to reduce the contribution of agriculture to the development of harmful algal blooms and hypoxic conditions in coastal systems.
—Development and validation of cost-effective means to reduce the contribution of animal and food processing wastes to water quality degradation.
—Documenting the coincident status and trends of multiple resources and related water quality, demographic, and socioeconomic condition; relating status and trends to human and natural causes and consequences; predicting future trajectories and rates of change; assessing associated uncertainties; and identifying data, information and research needed to reduce future uncertainties.
—Evaluation of the efficacy of USDA conservation programs' implementation.
—Projects addressing the Action Items identified in the President's Clean Water Action Plan (February 1998), see (http://www.cleanwater.gov/) for more information.

There is no commitment by USDA to fund any particular proposal or to make a specific number of awards. Approximately $12.4 million will be available to fund proposals in FY 2000. Proposals are being solicited in each of four component areas: National Facilitation proposals, Regional Water Quality Coordination proposals,

Extension Education proposals, and Integrated Research, Education, and Extension proposals.

C. Definitions

For the purpose of awarding grants under this program, the following definitions are applicable:

(1) *Administrator* means the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES) and any other officer or employee of the Department to whom the authority involved my be delegated.

(2) *Authorized departmental officer* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

(3) *Authorized organizational representative* means the president or chief executive officer of the applicant organization or the official, designated by the president or chief executive officer of the applicant organization, who has the authority to commit the resources of the organization.

(4) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(5) *Cash contributions* means the applicant's cash outlay, including the outlay of money contributed to the applicant by non-Federal third parties.

(6) *Department* or *USDA* means the United States Department of Agriculture.

(7) *Education activity* means formal classroom instruction, laboratory instruction, and practicum experience in the food and agricultural sciences and other related matters such as faculty development, student recruitment and services, curriculum development, instructional materials and equipment, and innovative teaching methodologies.

(8) *Extension activity* means an act or process that delivers science-based knowledge and informal educational programs to people, enabling them to make practical decisions.

(9) *Grant* means the award by the Secretary of funds to an eligible organization or individual to assist in meeting the costs of conducting, for the benefit of the public, an identified project which is intended and designed to accomplish the purpose of the program as identified in these guidelines.

(10) *Grantee* means an organization designated in the grant award document as the responsible legal entity to which a grant is awarded.

(11) *Integrated* means to bring the three components of the agricultural knowledge system (research, education, and extension) together around a problem area or activity.

(12) *Matching* means that portion of allowable project costs not borne by the Federal Government, including the value of in-kind contributions.

(13) *Peer review* means an evaluation of a proposed project for scientific or technical quality and relevance performed by experts with the scientific knowledge and technical skills to conduct the proposed work or to give expert advice on the merits of a proposal.

(14) *Principal investigator/Project director* means the single individual designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project.

(15) *Prior approval* means written approval evidencing prior consent by an authorized departmental officer as defined in (2) above.

(16) *Project* means the particular activity within the scope of the program supported by a grant award.

(17) *Project period* means the period, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

(18) *Research activity* means a scientific investigation or inquiry that results in the generation of knowledge.

(19) *Secretary* means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved may be delegated.

(20) *Third party in-kind contributions* means non-cash contributions of property or services provided by non-Federal third parties, including real property, equipment, supplies and other expendable property, directly benefitting and specifically identifiable to a funded project or program.

(21) *Total integrated, multifunctional research, education, and extension approach* means that the combination of grants (although the individual grants may involve only research, education, or extension activities or a combination thereof) awarded under the fiscal year's program components will work together to address the priorities in United States agriculture as determined by the Secretary of Agriculture in consultation with the Advisory Board, that involve integrated research, extension, and education activities.

D. Eligibility

Proposals may be submitted by colleges and universities as defined in section 1404 of the National Agricultural research, Extension, and Teaching Policy Act of 1977 (NARETPA). The terms "college" and "university" mean an educational institution in any State which (1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, (2) is legally authorized within such State to provide a program of education beyond secondary education, (3) provides an educational program for which a bachelor's degree or any other higher degree is awarded, (4) is a public or other nonprofit institution, and (5) is accredited by a nationally recognized accrediting agency or association. Although an applicant may be eligible based on its status as one of these entities, there are factors which may exclude an applicant from receiving Federal financial and nonfinancial assistance and benefits under this program (e.g., debarment or suspension of an individual involved or a determination that an applicant is not responsible based on submitted organizational management information). Eligible applicants may subcontract to organizations not eligible under these requirements.

Please note that a research foundation maintained by a college or university is not eligible to receive an award under this program.

E. Matching Requirements

1. General Requirement

If a grant provides a particular benefit to a specific agricultural commodity, the grant recipient is required to provide funds or in-kind support to match the amount of the grant funds provided. See section 10. c. on "Matching Funds" under Part III, B, "Content of Proposals" for more details.

2. Waiver

CSREES may waive the matching funds requirement specified in the above paragraph for a grant if CSREES determines that (a) the results of the project, while of particular benefit to a specific agricultural commodity, are likely to be applicable to agricultural commodities generally; or (b) the project involves a minor commodity, the project deals with scientifically important research, and the grant recipient is unable to satisfy the matching funds requirement.

F. Funding Restrictions

CSREES has determined that grant funds awarded under this authority may not be used for the renovation or refurbishment of research, education, or extension space; the purchase or

installation of fixed equipment in such space; or the planning, repair, rehabilitation, acquisition, or construction of buildings or facilities.

G. Types of Grant Instruments

In FY 2000 all projects will be awarded using a "New Grant" instrument. In future years, projects under the Integrated Research, Education, and Extension Competitive Grants Program authority can be awarded using one of the grant instruments described below:

(1) New grant. This is a grant instrument by which the Department agrees to support a specified level of effort for a project that generally has not been supported previously under this program. This type of grant is approved on the basis of peer review recommendations.

(2) Renewal grant. This is a grant instrument by which the Department agrees to provide additional funding for a project period beyond that approved in an original or amended award, provided that the cumulative period does not exceed the statutory limitation. When a renewal application is submitted, it should include a summary of progress to date from the previous granting period. A renewal grant shall be based upon new application, *de novo* peer review and staff evaluation, new recommendation and approval, and a new award instrument.

(3) Supplemental grant. This is an instrument by which the department agrees to provide small amounts of additional funding under a new or renewal grant as specified above and may involve a short-term (usually six months or less) extension of the project period beyond that approved in an original or amended award, but in no case may the cumulative period for the project exceed the statutory limitation. A supplement is awarded only if required to assure adequate completion of the original scope of work and if there is sufficient justification to warrant such action. A request of this nature normally will not require additional peer review.

H. Funding Mechanisms

The two mechanisms by which new, renewal, and supplemental grants shall be awarded are as follows:

(1) Standard grant. This is a funding mechanism whereby the Department agrees to support a specified level of effort for a predetermined time period without the announced intention of providing additional support at a future date.

(2) Continuation grant. This is a funding mechanism whereby the Department agrees to support a specified level of effort for a predetermined period of time with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued support will be in the best interests of the Federal government and the public. This kind of mechanism normally will be awarded for an initial one-year period, and any subsequent continuation project grants will be awarded in one-year increments. The award of a continuation project grant to fund an initial or succeeding budget period does not constitute an obligation to fund any subsequent budget period. Unless prescribed otherwise by CSREES, a grantee must submit a separate application for continued support for each subsequent fiscal year. Requests for such continued support must be submitted in duplicate at least three months prior to the expiration date of the budget period currently being funded. Decisions regarding continued support and the actual funding levels of such support in future years usually will be made administratively after consideration of such factors as the grantee's progress and management practices and the availability of funds. Since initial peer reviews are based upon the full term and scope of the original application, additional evaluations of this type generally are not required prior to successive years' support. However, in unusual cases (*e.g.*, when the nature of the project or key personnel change or when the amount of future support requested substantially exceeds the grant application originally reviewed and approved), additional reviews may be required prior to approving continued funding.

Part II—Program Description

A. Project Types

Approximately $1,000,000 is available for National Facilitation proposals. The maximum total award is $400,000, with an annual funding limitation of $100,000. The project period may be one to four years in duration. It is anticipated that two to five grants will be awarded in this program component.

Approximately $5,000,000 is available for Regional Water Quality Coordination proposals. Projects will be supported at expected levels of up to $650,000 per year/per region for up to four years. Projects involving more than one region may be considered for larger funding. CSREES expects that some regions will request less funding due to a smaller number of states within the region. It is anticipated that ten grants will be awarded in this program component.

Approximately $1,400,000 is available for Extension Education proposals. The maximum total award is $300,000, with an annual funding limitation of $100,000. The project period may be one to three years in duration. It is anticipated that 12–15 grants will be awarded in this program component.

Approximately $3,600,000 is available for Integrated Research, Education and Extension proposals. The maximum total award is $600,000, with an annual funding limitation of $200,000. The project period may be one to three years in duration. It is anticipated that 5–15 grants will be awarded in this program component.

Applications received in any of the aforementioned program areas should include budgets commensurate with the activities proposed. Grants awarded under the Program Description Areas of National Facilitation, Extension Education, and Integrated Research, Education, and Extension (as described in this RFP) will be issued as "New Grant" instruments and will be awarded as "Standard Grants." Grants awarded under the Program Area Description of Regional Water Quality Coordination (as described in this RFP) will be issued as "New Grant" instruments and may be awarded as "Continuation Grants."

B. Program Area Description

1. National Facilitation Proposals (Program Area 110.1)

(Maximum award: $100,000/year for up to four years).

Proposals are invited for projects that develop and initiate nationally coordinated programs that will contribute to an increase in public understanding and involvement in community decision-making and that facilitate the development of public policy on water resources issues. Because protection of local watersheds and aquifers often requires community-based actions, decisions about land use, land management practices, waste water management alternatives for areas without sewers, storm water controls, and the protection and restoration of riparian zones are critical to individual and public planning. All proposals are required to include specific, measurable accomplishments for each project year and a projected time-line. While it is not required that projects be fully independent within the 4-year project period, it is expected that the timeline will culminate in the establishment of an independently supported national coordination effort.

This component of the CSREES Water Quality Program seeks to provide a common base of knowledge in support of individuals and communities grappling to formulate public policy and management strategies that will allow growth and increased profitability while protecting the water resource. Projects will be supported that facilitate the appropriate application of tools and techniques (*i.e.*, Geographic Information Systems, decision support systems, remote sensing, economic analysis, and world wide web technologies) to strengthen awareness of the water quality impacts of current and proposed land use activities by both community decision-makers and individual property owners. These tools can also be used to target specific problems and locations in need of additional attention. Projects should contribute to an increase in community partnerships and networks that develop solutions to particular concerns identified through the projects and in response to increased citizen awareness of local issues. The result will be more citizen involvement, wider dispersal of information, and more rational analysis of environmental decisions in the community and the nation. Metadata and accomplishment reports should be delivered annually to the appropriate regional coordination group (see Regional Water Quality Coordination Proposals below).

2. Regional Water Quality Coordination Proposals (Program Area 110.2)

(Maximum award: $650,000 per year/ per region for up to four years. Projects involving more than one region may be considered for larger funding. CSREES expects that some regions will request less funding due to a smaller number of states within the region).

CSREES invites proposals to ensure the integration of water quality efforts within the jurisdiction of each of the ten regions established by the U.S. Environmental Protection Agency (EPA). The EPA Regions are:

Region 1—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Region 2—New Jersey, New York, and the territories of Puerto Rico and the U.S. Virgin Islands.

Region 3—Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia.

Region 4—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

Region 5—Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Region 6—Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

Region 7—Iowa, Kansas, Missouri, and Nebraska.

Region 8—Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Region 9—Arizona, California, Hawaii, Nevada, and the territories of Guam and American Samoa.

Region 10—Alaska, Idaho, Oregon, and Washington.

Proposals may be submitted for one or any combination of regions.

This component of the CSREES Water Quality Program is designed to make research, education, and extension resources of the university system more accessible to Federal, State, and local water quality improvement efforts, thus enhancing opportunities for agricultural producers and agriculturally impacted communities to adopt voluntary approaches for the improvement of water quality. Grantees are expected to facilitate the conceptualization and implementation of multi-partner efforts that minimize duplication of effort and that leverage multiple funding sources into a common collaborative effort. As such, it is expected that coordination grantees will initiate partnership activities with key water quality efforts in their region. Proposers should clearly identify the water quality issues and education, extension, and research efforts that are common to the region. A plan should be presented that lays out the approaches to be employed for regional resource sharing, communication, priority setting, and outreach. The proposal should also discuss Federal and State water quality activities in the region and present a strategy for establishing partnerships with appropriate programs.

Each proposal must include provision for a regional coordination mechanism (whether an individual, a committee, or an office) and for a Water Quality Research, Education, and Extension Coordinator in each State or Territory in the Region. Regional coordinators will be expected to work with CSREES National Program Leaders to provide liaison among Federal activities (e.g., U.S. Environmental Protection Agency (EPA) Regional Offices, U.S. Geological Survey National Water Quality Assessment Program (USGS NAWQA) Coordination Offices, USDA Agricultural Research Service(ARS) Regional Offices, USDA Forest Service (FS) Regional Offices, National Aeronautics and Space Administration (NASA), National Oceanic and Atmospheric Administration (NOAA), Bureau of Land Management (BLM), etc.), State environmental organizations, and the State Water Quality Research, Education, and Extension Coordinators within the Region. Successful projects will thus provide more efficient development, evaluation, and dissemination of information on watershed improvement, management, and monitoring, and in the development of comparable watershed sampling protocols, data, metadata, and reporting. Provision should be included in the budget request for the regional coordinator to participate in monthly conference calls as well as a national coordination meeting to be held annually in the Washington, D.C. area.

Each regional project must include a plan for the development and maintenance of a georeferenced, watershed-based reporting system. This reporting system will serve as the primary vehicle for reporting progress and accomplishments of the CSREES Water Quality Program. Regional projects are expected: (1) To serve as the repository for the reporting of all projects funded on an ad hoc basis by other components of the CSREES Water Quality Program; (2) to collaborate in the linkage of their databases and reporting systems to other funded regions; (3) to periodically conduct water quality needs assessments for the region and report on partnerships and progress in water quality improvement; (4) to facilitate the incorporation of relevant projects that may become funded in the region through CSREES programs (including other sections of the Water Quality Program, the National Research Initiative, the Animal Waste Center, the Initiative for Future Agriculture and Food Systems) or through other federal and state programs (e.g., EPA 319, EPA National Center for Environmental Research and Quality Assurance (NCERQA), National Science Foundation (NSF), NOAA, etc.); and (5) to be compatible with related information sources (e.g., USGS NAWQA Program, EPA Know Your Watershed, CSREES Integrated Pest Management Program, and the CSREES Pesticide Impact Assessment Program, etc.).

3. Extension Education Proposals (Program Area 110.3)

(Maximum award: $100,000/year for one to three years).

Proposals are invited for Extension Education projects to address water quality issues of State or local importance. One mission of the CSREES Water Quality Program is to provide leadership in extension education that will enable individuals, industry, and government to effect changes enhancing and protecting the Nation's water

resources for the public good. The vision is to be recognized as an important and effective partnership providing leadership for water quality education to help people, industry, and governments prevent and solve current and emerging water quality problems. Proposals for this program are expected to address one or more of the seven strategic extension priorities of the Water Quality Program (see http://www.reeusda.gov/nre/water/strategi.htm). The seven areas of emphasis for the education program are under-served audiences, watersheds and aquifers, surface water systems, public policy, individual actions, volunteerism,and partnership. All proposals are required to include specific, measureable accomplishments for each project year. Metadata and accomplishments reports will be delivered annually to the appropriate regional coordination group. See "Regional Water Quality Coordination Proposals" above.

4. Integrated Research, Education, and Extension Proposals (Program Area 110.4)

(Maximum award: $200,000/year up to three years).

Proposals are invited that integrate water quality research, education, and extension to solve water quality problems at the whole watershed. Proposals should: (a) Identify the cause of water quality degradation;

(b) conduct research filling the gaps that are critical to the development of water improvement practices and programs; (c) implement watershed-scale improvement programs; (d) evaluate and monitor the efficacy of the improvement programs implemented; (e) assess the costs and benefits of water quality management practices that are developed; and (f) conduct evaluations closing the loop and improving our understanding of the drivers of water quality degradation. Each proposal is expected to present a fully integrated research, education, and extension approach to accomplish the objectives listed in a–f above. CSREES also encourages the inclusion of a curriculum development component that takes advantage of the integrated watershed activities to enhance environmental education at all levels. The proposing investigators are expected to justify watershed selection (*e.g.*, the level of water quality degradation—chemical, physical, and biological; the relative distribution of agricultural, range or forestry land uses within the watershed; and/or proximity to coastal resources) and to demonstrate capacities for establishing and/or maintaining watershed-wide partnerships for the project's implementation. Preference will be given to proposals that: (1) Demonstrate a substantial potential to contribute long term information, existing opportunities for leveraging support and cost sharing, and active public and private sector participation; (2) take advantage of the participatory educational and extension opportunities engendered by the watershed's restoration and by its continued management; and/or (3) focus on watersheds where the project will better inform policy makers in developing the most equitable multistate and/or regional strategies for water quality improvement. All proposals are required to include specific, measurable accomplishments each project year. Metadata and accomplishments reports will be delivered annually to the appropriate regional coordination groups. See "Regional Water Quality Coordination Proposals" above.

C. Expected Program Outputs and Reporting Requirements

It is expected that outputs from successful projects will include: the development of watershed management partnerships, increased involvement of community and business sectors in watershed restoration and management, enhanced understanding of regionally-appropriate watershed management practices, increased coordination and partnership between universities and other Federal research and management agencies, and the establishment and maintenance of monitoring and assessment activities related to the agricultural-water quality interface.

All projects selected for award will be required to deliver metadata and annual reports, a final summary report, a bibliography of publications and training materials resulting from support, and an impacts analysis. All reports will be geo-referenced to the watersheds where activities were performed. The final summary report must include total funding (Federal, matching and other) and a listing of students who worked on the project (report graduate degrees awarded and undergraduates trained).

The grantee must prepare an annual report that details all significant activities towards achieving the goals and objectives of the project. The narrative should be succinct and be no longer than 10 pages, using 12-point, single-spaced type. A budget summary should be attached to this report, which will provide an overview of all monies spent during the reporting period.

Part III—Preparation of a Proposal

A. Program Application Materials

Program application materials are available at the Integrated Research, Education, and Extension Competitive Grants Program website (http://www.reeusda.gov/integrated/). If you do not have access to our web page or have trouble downloading material, you may contact the Proposal Services Unit, Office of Extramural Programs, USDA/CSREES at (202) 401–5048. When calling the Proposal Services Unit, please indicate that you are requesting forms for the Integrated Research, Education, and Extension Competitive Grants Program—Water Quality. These materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and phone number to psb@reeusda.gov. State that you want a copy of the Program Description and application materials (orange book) for the Fiscal Year 2000 Integrated Research, Education, and Extension Competitive Grants Program—Water Quality.

B. Content of Proposals

1. General

The proposal should follow these guidelines, enabling reviewers to more easily evaluate the merits of each proposal in a systematic, consistent fashion:

(a) The proposal should be prepared on only one side of the page using standard size (8½″ x 11″) white paper, one inch margins, typed or word processed using no type smaller than 12 point font, and single or double spaced. Use an easily readable font face (*e.g.*, Geneva, Helvetica, Times Roman).

(b) Each page of the proposal, including the Project Summary, budget pages, required forms, and any appendices, should be numbered sequentially.

(c) The proposal should be stapled in the upper left-hand corner. Do not bind. An original and 14 copies (15 total) must be submitted in one package, along with 10 copies of the "Project Summary" as a separate attachment.

(d) If applicable, proposals should include original illustrations (photographs, color prints, etc.) in all copies of the proposal to prevent loss of meaning through poor quality reproduction.

2. Cover Page (Form CSREES–661)

Each copy of each grant proposal must contain an "Application for Funding", Form CSREES–661. One copy of the application, preferably the original, must contain the pen-and-ink

signature(s) of the proposing principal investigator(s)/project director(s)(PI/PD) and the authorized organizational representative who possesses the necessary authority to commit the organization's time and other relevant resources to the project. Any proposed PI/PD or co-PI/PD whose signature does not appear on Form CSREES–661 will not be listed on any resulting grant award. Complete both signature blocks located at the bottom of the "Application for Funding" form.

Form CSREES–661 serves as a source document for the CSREES grant database; it is therefore important that it be completed accurately. The following items are highlighted as having a high potential for errors or misinterpretations:

(a) Title of Project (Block 6). The title of the project must be brief (80-character maximum), yet represent the major thrust of the effort being proposed. Project titles are read by a variety of nonscientific people; therefore, highly technical words or phraseology should be avoided where possible. In addition, introductory phrases such as "investigation of" or "research on" "education for" or "outreach that" should not be used.

(b) Program to Which You Are Applying (Block 7). "Integrated Research, Education, and Extension Competitive Grants Program—Water Quality."

(c) Program Area and Number (Block 8). The name of the program component, *e.g.* National Facilitation Proposal, 110.1 or Regional Water Quality Coordination Proposal, 110.2 should be inserted in this block.

(d) Type of Award Request (Block 13). Check the block for "new."

(e) Principal Investigator(s)/Project Director(s) (PI/PD) (Block 15). The designation of excessive numbers of co-PI/PD's creates problems during final review and award processing. Listing multiple co-PI/PDs, beyond those required for genuine collaboration, is therefore discouraged. Note that providing a Social Security Number is voluntary, but is an integral part of the CSREES information system and will assist in the processing of the proposal.

(f) Type of Performing Organization (Block 18). A check should be placed in the box beside the type of organization which actually will carry out the effort. For example, if the proposal is being submitted by an 1862 Land-Grant Institution but the work will be performed in a department, laboratory, or other organizational unit of an agricultural experiment station, box "03" should be checked. If portions of the effort are to be performed in several departments, check the box that applies to the individual listed as PI/PD #1 in Block 15.a.

(g) Other Possible Sponsors (Block 22). List the names or acronyms of all other public or private sponsors including other agencies within USDA and other programs funded by CSREES to whom your application has been or might be sent. In the event you decide to send your application to another organization or agency at a later date, you must inform the identified CSREES program manager as soon as practicable. Submitting your proposal to other potential sponsors will not prejudice its review by CSREES; however, duplicate support for the same project will not be provided. Complete the "Application for Funding," Form CSREES–661, in its entirety.

(h) One copy of the "Application for Funding" form must contain the signatures (in ink) of the PI/PD's and authorized organizational representative for the applicant organization.

3. Table of Contents

For consistency and ease in locating information, each proposal must contain a detailed Table of Contents just after the cover page. The Table of Contents should contain page numbers for each component of the proposal. Page numbers should begin with the first page of the Project Description.

4. Project Summary

The proposal must contain a Project Summary of 250 words or less on a separate page which should be placed immediately after the Table of Contents and should not be numbered. The names and institutions of all PI/PD's and co-PI/PD's should be listed on this form, in addition to the title of the project. The summary should be a self-contained, specific description of the activity to be undertaken and should focus on: overall project goal(s) and supporting objectives; plans to accomplish project goal(s); and relevance of the project to regional, State, or local water quality efforts and/or list of CSREES Water Quality Program Priorities listed above. The importance of a concise, informative Project Summary cannot be overemphasized. Summaries for Regional Water Quality Coordination Proposals should also indicate all organizations participating in the effort, the organization that will house the database effort, and the mechanism that will be used to coordinate between organizations.

5. Project Description

For Regional Water Quality Coordination and for Integrated Research, Education, and Extension proposals, the project description may not exceed 15 single- or double-spaced pages of written text and may not exceed a total of 20 pages after inclusion of figures and tables.

For National Facilitation and for Extension Education proposals, the project description may not exceed 8 single- or double-spaced pages of written text and may not exceed a total of ten pages after inclusion of figures and tables.

The project description should include the following:

a. *Introduction and Rationale:* Include a clear statement of the problems to be addressed and goals expected to be accomplished. Describe the supporting objectives; questions; research, education and/or extension components to be included; and/or partners that will be used to accomplish the goal(s) set. If preparing a Regional Coordination proposal, describe the current limitations to effective regional water quality management and describe the key stakeholders that must be included to overcome these limitations.

b. *Approach:*

(1) Describe the activities to be performed, the means by which data and information will be analyzed and interpreted, the methods that will be used for information transfer, the methods that will be used to evaluate adoption and project impact, and the limitations and pitfalls to the approaches selected.

(2) A plan should be presented for coordination and communication between project collaborators.

(3) A project timeline.

(4) A description of outcomes and expected deliverables.

(5) Literature Review. All references cited should be complete, including titles and all co-authors, and should conform to an acceptable journal format.

In addition to the above, the National Facilitation and Regional Coordination proposals should describe the roles and responsibilities of central coordinators and should present a management plan for the administration of the project including facilitation of communication, planning, and annual report preparation.

6. Appendices to Project Description

Appendices to the Project Description are allowed if they are directly germane to the proposed project and are limited to a total of two of the following: reprints (papers that have been

published in peer reviewed journals) and preprints (manuscripts in press for a peer reviewed journal; these must be accompanied by a letter of acceptance from the publishing journal).

7. Key Personnel

All senior personnel who are expected to be involved in the effort must be clearly identified. For each person, the following should be included:

a. The roles and responsibilities of each PI/PD and/or collaborator should be clearly described;

b. An estimate of the time commitment involved for each PI/PD and/or collaborator; and

c. Vitae of each PI/PD, senior associate, and other professional personnel. This section should include vitae of all key persons who are expected to work on the project, whether or not CSREES funds are sought for their support. The vitae should be limited to two (2) pages each in length, excluding publications listings. A chronological list of all publications in refereed journals during the past four (4) years, including those in press, must be provided for each project member for which a curriculum vitae is provided. Also list those non-refereed technical publications that have relevance to the proposed project. All authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

8. Conflict-of-Interest List

A Conflict-of-Interest List must be provided for all individuals involved in the project (identified as key personnel). Each list should be on a separate page and include alphabetically the full names of the individuals in the following categories: (a) All collaborators on projects within the past four years, including current and planned collaborations; (b) all co-authors on publications within the past four years, including pending publications and submissions; (c) all persons in your field with whom you have had a consulting or financial arrangement within the past four years, who stand to gain by seeing the project funded; and (d) all thesis or postdoctoral advisees/advisors within the past four years (some may wish to call these life-time conflicts). This form is necessary to assist program staff in excluding from proposal review those individuals who have conflicts-of-interest with the personnel in the grant proposal. The Program Director must be informed of any additional conflicts-of-interest that arise after the proposal is submitted.

9. Collaborative and/or Subcontractual Arrangements

If it will be necessary to enter into formal consulting or collaborative arrangements with others, such arrangements should be fully explained and justified. In addition, evidence should be provided that the collaborators involved have agreed to render these services. If the need for consultant services is anticipated, the proposal narrative should provide a justification for the use of such services, a statement of work to be performed, and a resume or curriculum vita for each consultant. For purposes of proposal development, informal day-to-day contacts between key project personnel and outside experts are not considered to be collaborative arrangements and thus do not need to be detailed.

All anticipated subcontractual arrangements also should be explained and justified in this section. A proposed statement of work and a budget for each arrangement involving the transfer of substantive programmatic work or the providing of financial assistance to a third party must be provided. Agreements between departments or other units of your own institution and minor arrangements with entities outside of your institution (*e.g.*, requests for outside laboratory analyses) are excluded from this requirement.

If you expect to enter into subcontractual arrangements, please note that the provisions contained in 7 CFR Part 3019, USDA Uniform Administrative Requirements for Grant and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and the general provisions contained in 7 CFR Part 3015.205, USDA Uniform Federal Assistance Regulations, flow down to subrecipients. In addition, required clauses from Sections 40–48 ("Procurement Standards") and Appendix A ("Contract Provisions") to 7 CFR Part 3019 should be included in final contractual documents, and it is necessary for the subawardee to make a certification relating to debarment/suspension.

10. Budget (Form CSREES–55)

a. Budget Form. Prepare the budget, Form CSREES–55, in accordance with instructions provided. A budget form is required for each year of requested support. In addition, a cumulative budget is required detailing the requested total support for the overall project period. The budget form may be reproduced as needed by applicants. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, and these program guidelines, and can be justified as necessary for the successful conduct of the proposed project. Applicants must also include a Budget Narrative to justify their budgets (see section b below.)

The following guidelines should be used in developing your proposal budget(s):

1. Salaries and Wages. Salaries and wages are allowable charges and may be requested for personnel who will be working on the project in proportion to the time such personnel will devote to the project. If salary funds are requested, the number of Senior and Other Personnel and the number of CSREES-Funded Work Months must be shown in the spaces provided. Grant funds may not be used to augment the total salary or rate of salary of project personnel or to reimburse them for time in addition to a regular full-time salary covering the same general period of employment. Salary funds requested must be consistent with the normal policies of the institution.

2. Fringe Benefits. Funds may be requested for fringe benefit costs if the usual accounting practices of your organization provide that organizational contributions to employee benefits (social security, retirement, etc.) be treated as direct costs. Fringe benefit costs may be included only for those personnel whose salaries are charged as a direct cost to the project.

3. Nonexpendable Equipment. Nonexpendable equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 (or lower depending on institutional policy) or more per unit. As such, items of necessary instrumentation or other nonexpendable equipment should be listed individually by description and estimated cost in the Budget Narrative. This applies to revised budgets as well, as the equipment item(s) and amount(s) may change.

4. Materials and Supplies. The types of expendable materials and supplies which are required to carry out the project should be indicated in general terms with estimated costs in the Budget Narrative.

5. Travel. The type and extent of travel and its relationship to project objectives should be described briefly

and justified. If foreign travel is proposed, the country to be visited, the specific purpose of the travel, a brief itinerary, inclusive dates of travel, and estimated cost must be provided for each trip. Airfare allowances normally will not exceed round-trip jet economy air accommodations. U.S. flag carriers must be used when available. See 7 CFR Part 3015.205(b)(4) for further guidance.

6. Publication Costs/Page Charges. Include anticipated costs associated with publications in a journal (preparing and publishing results including page charges, necessary illustrations, and the cost of a reasonable number of coverless reprints) and audio-visual materials that will be produced. Photocopying and printing brochure, etc., should be shown in Section I., "All Other Direct Costs" of Form CSREES–55.

7. Computer (ADPE) Costs. Reimbursement for the costs of using specialized facilities (such as a university- or department-controlled computer mainframe or data processing center) may be requested if such services are required for completion of the work.

8. All Other Direct Costs. Anticipated direct project charges not included in other budget categories must be itemized with estimated costs and justified in the Budget Narrative. This also applies to revised budgets, as the item(s) and dollar amount(s) may change. Examples may include space rental at remote locations, subcontractual costs, and charges for consulting services, telephone, facsimile, shipping costs, and fees necessary for laboratory analyses. You are encouraged to consult the "Instructions for Completing Form CSREES–55, Budget," of the Application Kit for detailed guidance relating to this budget category. Form AD–1048 must be completed by each subcontractor or consultant and retained by the grantee.

9. Indirect Costs. Section 1462 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3310) limits indirect costs for this program to 19 percent of total Federal funds provided under each award. Therefore the recovery of indirect costs under this program may not exceed the lesser of the institution's official negotiated indirect cost rate or the equivalent of 19 percent of total Federal funds awarded. If no rate has been negotiated, a reasonable dollar amount (equivalent to less than 19 percent of total Federal funds requested) in lieu of indirect costs may be requested, subject to approval by USDA.

b. Budget Narrative. All budget categories, excluding Indirect Costs, for which support is requested must be individually listed (with costs) and justified on a separate sheet of paper and placed immediately behind the Budget Form. Explanations of matching funds or lack thereof on commodity-specific projects also are to be included in this section.

c. Matching Funds. If an applicant concludes that matching funds are not required as specified under Part I (e), a justification should be included in the Budget Narrative. CSREES will consider this justification when ascertaining final matching requirements or in determining if required matching can be waived. CSREES retains the right to make final determinations regarding matching requirements.

For those grants requiring matching funds as specified under Part I (e), proposals should include written verification of commitments of matching support (including both cash and in-kind contributions) from third parties. Written verification means:

(a) For any third party cash contributions, a separate pledge agreement for each donation, signed by the authorized organizational representatives of the donor organization and the applicant organization, which must include: (1) The name, address, and telephone number of the donor; (2) the name of the applicant organization; (3) the title of the project for which the donation is made; (4) the dollar amount of the cash donation; and (5) a statement that the donor will pay the cash contribution during the grant period; and

(b) For any third party in-kind contributions, a separate pledge agreement for each contribution, signed by the authorized organizational representatives of the donor organization and the applicant organization, which must include: (1) The name, address, and telephone number of the donor; (2) the name of the applicant organization; (3) the title of the project for which the donation is made; (4) a good faith estimate of the current fair market value of the third party in-kind contribution; and (5) a statement that the donor will make the contribution during the grant period.

The sources and amount of all matching support from outside the applicant institution should be summarized on a separate page and placed in the proposal immediately following the Budget Narrative. All pledge agreements must be placed in the proposal immediately following the summary of matching support.

The value of applicant contributions to the project shall be established in accordance with applicable cost principles. Applicants should refer to OMB Circulars A–21, Cost Principles for Educational Institutions, for further guidance and other requirements relating to matching and allowable costs.

11. Current and Pending Support (Form CSREES–663)

All proposals must contain Form CSREES–663 listing other current public or private support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA Programs or agencies. Concurrent submission of identical or similar proposals to the possible sponsors will not prejudice proposal review or evaluation by the CSREES for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or to be funded) by another organization or agency will not be funded under this program. Note that the project being proposed should be included in the pending section of the form.

12. Assurance Statement(s), (Form CSREES–662)

A number of situations encountered in the conduct of projects require special assurances, supporting documentation, etc., before funding can be approved for the project. In addition to any other situation that may exist with regard to a particular project, it is expected that some applications submitted in response to these guidelines will involve the following:

a. Recombinant DNA or RNA Research. As stated in 7 CFR Part 3015.205 (b)(3), all key personnel identified in the proposal and all endorsing officials of the proposing organization are required to comply with the guidelines established by the National Institutes of Health entitled, "Guidelines for Research Involving Recombinant DNA Molecules," as revised. If your project proposes to use recombinant DNA or RNA techniques, you must so indicate by checking the "yes" box in Block 19 of Form CSREES–661 (the Cover Page) and by completing Section A of Form CSREES–662. For applicable proposals recommended for

funding, Institutional Biosafety Committee approval is required before CSREES funds will be released.

b. Animal Care. Responsibility for the humane care and treatment of live vertebrate animals used in any grant project supported with funds provided by CSREES rests with the performing organization. Where a project involves the use of living vertebrate animals for experimental purposes, all key project personnel identified in a proposal and all endorsing officials of the proposing organization are required to comply with the applicable provisions of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et seq.*) and the regulations promulgated thereunder by the Secretary in 9 CFR Parts 1, 2, 3, and 4 pertaining to the care, handling, and treatment of these animals. If your project will involve these animals, you should check "yes" in block 20 of Form CSREES–661 and complete Section B of Form CSREES–662. In the event a project involving the use of live vertebrate animals results in a grant award, funds will be released only after the Institutional Animal Care and Use Committee has approved the project.

c. Protection of Human Subjects. Responsibility for safeguarding the rights and welfare of human subjects used in any grant project supported with funds provided by CSREES rests with the performing organization. Guidance on this issue is contained in the National Research Act, Pub. L. No. 93–348, as amended, and implementing regulations promulgated by the Department under 7 CFR Part 1c. If you propose to use human subjects for experimental purposes in your project, you should check the "yes" box in Block 21 of Form CSREES–661 and complete Section C of Form CSREES–662. In the event a project involving human subjects results in a grant award, funds will be released only after the appropriate Institutional Review Board has approved the project.

13. Certifications

Note that by signing Form CSREES–661 the applicant is providing the certifications required by 7 CFR Part 3017, as amended, regarding Debarment and Suspension and Drug Free Workplace, and 7 CFR Part 3018, regarding Lobbying. The certification forms are included in the application package for informational purposes only. These forms should not be submitted with the proposal since by signing form CSREES–661 your organization is providing the required certifications. If the project will involve a subcontractor or consultant, the subcontractor/consultant should submit a form AD–1048 to the grantee organization for retention in their records. This form should not be submitted to USDA.

14. Compliance with the National Environmental Policy Act (NEPA) (Form CSREES–1234)

As outlined in 7 CFR Part 3407 (the Cooperative State Research, Education, and Extension Service regulations implementing NEPA), the environmental data for any proposed project is to be provided to CSREES so that CSREES may determine whether any further action is needed. In some cases, however, the preparation of environmental data may not be required. Certain categories of actions are excluded from the requirements of NEPA.

In order for CSREES to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, Form CSREES–1234, "NEPA Exclusions Form," must be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefore. If it is the applicant's opinion that the proposed project falls within the categorical exclusions, the specific exclusion must be identified. Form CSREES–1234 and supporting documentation should be included as the last page of this proposal.

Even though a project may fall within the categorical exclusions, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity, if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

C. Submission of Proposals

1. When to Submit (Deadline Date)

Proposals must be transmitted by June 6, 2000, as indicated by postmark or date of courier bill of lading. Proposals transmitted after this date will not be considered for funding.

2. What to Submit

An original and 14 copies must be submitted. In addition submit 10 copies of the proposal's Project Summary. All copies of the proposals and the Project Summaries must be submitted in one package.

3. Where to Submit

Applicants are strongly encouraged to submit completed proposals via overnight mail or delivery service to ensure timely receipt by the USDA. The address for hand-delivered proposals or proposals submitted using an express mail or overnight courier service is: Integrated Research, Education, and Extension Competitive Grants Program—Water Quality; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, S.W.; Washington, D.C. 20024.

Proposals sent via the U.S. Postal Service must be sent to the following address: Integrated Research, Education, and Extension Competitive Grants Program—Water Quality; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245.

D. Acknowledgment of Proposals

The receipt of all proposals will be acknowledged by e-mail. Therefore, applicants are encouraged to provide e-mail addresses, where designated, on the Form CSREES–661. If the applicant's email address is not indicated, CSREES will acknowledge receipt of the proposal by letter.

Once the proposal has been assigned an identification number, please cite that number on all future correspondence. If the applicant does not receive an acknowledgment within 60 days of the submission deadline, please contact the Program Director.

Part IV—Review Process

A. General

Each proposal will be evaluated in a 3-part process. First, each proposal will be screened to ensure that it meets the administrative requirements as set forth in this request for proposals. Second, proposals that meet these requirements will be technically evaluated by a peer review panel. Each program component will have a separate review panel. Third, proposals ranked highly by the technical peer review panel will be evaluated by a panel of experts that will select awardees based on an evaluation of: national coverage, topical coverage, level of participation from stakeholder community, likelihood for the implementation of voluntary approaches to water quality improvement, and convergence with USDA and federal partnership priorities.

Peer review panel members will be selected based upon their training and experience in relevant scientific, education or extension fields taking into account the following factors: (a) The level of formal scientific, technical education, and extension experience of the individual, as well as the extent to which an individual is engaged in relevant research, education and/or extension activities; (b) the need to include as peer reviewers experts from various areas of specialization within relevant scientific, education, and extension fields; (c) the need to include as reviewers other experts (producers, range or forest managers/operators, consumers, etc.) who can assess relevance of the proposals to targeted audiences and to program needs; (d) the need to include as peer reviewers experts from a variety of organizational types (e.g., colleges, universities, industry, state and Federal agencies, private profit and non-profit organizations), and geographic locations; (e) the need to maintain a balanced composition of peer review groups with regard to minority and female representation and an equitable age distribution; and (f) the need to include members that can judge the effective usefulness to producers and the general public of each proposal.

B. Evaluation Factors

The evaluation factors below will be used in reviewing applications submitted in response to this request for proposals:

(1) The proposal specifies realistic water quality-related outcomes and presents an approach with high technical and/or educational merit.

(2) The proposal identifies, documents, and addresses water quality problems of Federal, State, regional, or local importance.

(3) The proposal specifically addresses one or more of the program priorities identified in Part II.

(4) The proposal establishes the integrated nature of the Water Quality program and includes inter-disciplinary approaches.

(5) The proposal encompasses the development of partnerships among the various stakeholders to generate support and resources.

(6) The proposal includes a budget adequate to carry out project activities and which is cost-effective and justified.

(7) The proposal provides a clear plan for accomplishments reporting.

(8) The proposal clearly demonstrates that the investigators and institutions involved in the project exhibit that: (a) Project personnel have appropriate training and a demonstrated awareness of previous and alternative approaches to the problem identified in the proposal, and performance record and/or potential for future accomplishments; (b) appropriate time has been allocated for systematic attainment of objectives; (c) the participating institutions have experience and competence in subject areas appropriate to the successful completion of the project; and (d) adequate support personnel, facilities, and instrumentation are available or obtainable. For the National Facilitation proposals and Regional Water Quality Coordination proposals will also be judged on the quality of the management plan that is proposed. Priority will be given for integrated, multifunctional research, education, and extension projects.

C. Conflicts-of-Interest and Confidentiality

During the peer evaluation process, extreme care will be taken to prevent any actual or perceived conflicts-of-interest that may impact review or evaluation. For the purpose of determining conflicts-of-interest, the academic and administrative autonomy of an institution shall be determined by reference to the January 1998 issue of the Codebook for Compatible Statistical Reporting of Federal Support to Universities, Colleges, and Nonprofit Institutions, prepared by Quantum Research Corporation for the National Science Foundation.

Names of submitting institutions and individuals, as well as proposal content and peer evaluations, will be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of peer reviewers will remain confidential throughout the entire review process. Therefore, the names of the reviewers will not be released to applicants. At the end of the fiscal year, names of panelists will be made available in such a way that the panelists cannot be identified with the review of any particular proposal.

Part V—Additional Information

A. Access to Review Information

Copies of summary reviews, not including the identity of the reviewers, will be sent to all applicant PI/PD's automatically, after the review process has been completed.

B. Grant Awards

(1) General.

Within the limit of funds available for such purpose, the awarding official of CSREES shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious under the procedures set forth in this RFP. The date specified by the awarding official of CSREES as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds granted by CSREES under this RFP shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (parts 3015 and 3019 of 7 CFR).

(2) Organizational Management Information.

Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant identified under this RFP, if such information has not been provided previously under this or another CSREES program. CSREES will provide copies of forms recommended for use in fulfilling these requirements as part of the preaward process.

(3) Grant Award Document and Notice of Grant Award.

The grant award document shall include at a minimum the following:

(a) Legal name and address of performing organization or institution to whom the Administrator has awarded a grant under the terms of this request for proposals;

(b) Title of project;

(c) Name(s) and address(es) of PI/PD's chosen to direct and control approved activities;

(d) Identifying grant number assigned by the Department;

(e) Project period, specifying the amount of time the Department intends to support the project without requiring recompetition for funds;

(f) Total amount of Departmental financial assistance approved by the Administrator during the project period;

(g) Legal authority(ies) under which the grant is awarded;

(h) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award; and

(i) Other information or provisions deemed necessary by CSREES to carry out its respective granting activities or

to accomplish the purpose of a particular grant.

The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

C. Use of Funds; Changes

(1) Delegation of Fiscal Responsibility

Unless the terms and conditions of the grant state otherwise, the grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(2) Changes in Project Plans

(a) The permissible changes by the grantee, PI/PD(s), or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the PI/PD(s) are uncertain as to whether a change complies with this provision, the question must be referred to the CSREES Authorized Departmental Officer (ADO) for a final determination.

(b) Changes in approved goals or objectives shall be requested by the grantee and approved in writing by the ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(c) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the awarding official of CSREES prior to effecting such changes.

(d) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the ADO prior to effecting such transfers, unless prescribed otherwise in the terms and conditions of the grant.

(e) Changes in Project Period: The project period may be extended by CSREES without additional financial support, for such additional period(s) as the ADO determines may be necessary to complete or fulfill the purposes of an approved project, but in no case shall the total project period exceed five years. Any extension of time shall be conditioned upon prior request by the grantee and approval in writing by the ADO, unless prescribed otherwise in the terms and conditions of a grant.

(f) Changes in Approved Budget: Changes in an approved budget must be requested by the grantee and approved in writing by the ADO prior to instituting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or in the grant award.

D. Applicable Federal Statutes and Regulations

Several Federal statutes and regulations apply to grant proposals considered for review and to project grants awarded under this program. These include but are not limited to:

7 CFR Part 1.1—USDA implementation of the Freedom of Information Act.

7 CFR Part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (*i.e.*, Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Non-profit Organizations.

7 CFR Part 3407—CSREES procedures to implement the National Environmental Policy Act of 1969, as amended.

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR Part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR Part 401).

E. Confidential Aspects of Proposals and Awards

When a proposal results in a grant, it becomes a part of the record of CSREES transactions, available to the public upon specific request. Information that the Secretary determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as confidential, privileged, or proprietary should be clearly marked within the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

F. Regulatory Information

For the reasons set forth in the final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. Under the provisions of the Paperwork Reduction Act of 1995, as amended (44 U.S.C. chapter 35), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, D.C., this 4th day of April 2000.

Charles W. Laughlin,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 00–8643 Filed 4–4–00; 2:36 pm]

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Friday,
April 7, 2000

Part VI

Department of the Treasury

Fiscal Service

31 CFR Part 210

Federal Government Participation in the Automated Clearing House; Interim Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1510–AA81

Federal Government Participation in the Automated Clearing House

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Interim Rule with request for comment.

SUMMARY: We're issuing an interim rule amending our regulation governing the use of the Automated Clearing House (ACH) system by Federal agencies. Our regulation generally adopts the ACH rules developed by NACHA—The Electronic Payments Association (NACHA) (ACH Rules) as the rules governing ACH transactions by Federal agencies. We're revising our regulation to reflect changes that NACHA has made to the ACH Rules since the publication of NACHA's 1999 rule book.

DATES: This interim rule is effective May 8, 2000. Comments must be received by June 6, 2000. The incorporation by reference of the publication listed in the rule is approved by the Director of the Federal Register as of May 8, 2000.

ADDRESSES: You can download this interim rule at the following World Wide Web address: http://www.fms.treas.gov/ach/.

You may also inspect and copy this interim rule at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Before visiting, you must call (202) 622–0990 for an appointment.

You may send comments electronically to the following address: 210comments@fms.treas.gov. You may also mail comments to Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, Financial Management Service, 401 14th Street, SW, Room 420, Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT:

Walt Henderson, Senior Financial Program Specialist, at (202) 874–6705 or walt.henderson@fms.treas.gov;
Natalie H. Diana at (202) 874–6590 or natalie.diana@fms.treas.gov;
Adam Martin, Financial Program Specialist, at (202) 874–6881 or adam.martin@fms.treas.gov;
Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, at (202) 874–6590 or cindy.johnson@fms.treas.gov; or
Margaret Marquette, Deputy Chief Counsel, at (202) 874–6681.

SUPPLEMENTARY INFORMATION:

I. Background

On April 9, 1999, we published a final rule in the **Federal Register** (64 FR 17472). The final rule amended our regulations at 31 CFR Part 210 (Part 210), which govern the use of the ACH system by Federal agencies (agencies). The ACH system is a nationwide electronic funds transfer system that provides for the interbank clearing of credit and debit transactions and for the exchange of information among participating financial institutions. The final rule adopted the ACH Rules published in NACHA's 1999 rule book (including rule changes with an effective date on or before September 17, 1999) as the rules governing all Government ACH transactions, with 11 exceptions.

NACHA periodically updates the ACH Rules. Each year NACHA publishes a new rule book that reflects the changes to the ACH Rules that have been approved since the publication of the previous rule book. NACHA recently published its 2000 rule book.

Part 210 provides that any amendment to the ACH Rules, as published in the 1999 Rule Book, that takes effect after September 17, 1999, will not apply to Government ACH entries unless we publish notice of acceptance of the amendment in the **Federal Register**. 31 CFR 210.3(b)(2). We're publishing this interim rule in order to indicate which amendments to the ACH Rules we're accepting and which amendments we're rejecting, and to provide an opportunity for comment.

II. Summary of Rule Changes

A. Changes to ACH Rules

The ACH Rules published in NACHA's 2000 rule book reflect changes to the ACH Rules published in NACHA's 1999 rule book related to seven topics:

1. Self-Audit Requirements

NACHA has revised the self-audit provisions of the ACH Rules to require self-audits annually rather than every three years; to require third-party service providers to conduct self-audits; to require proof be retained that a self-audit was completed; and to require that originating depository financial institutions (ODFIs) and receiving depository financial institutions (RDFIs) specifically warrant that they have completed self-audits. The effective date of these changes was December 17, 1999.

2. Point-of-Purchase Electronic Check Transactions

NACHA has adopted an interim rule to provide a legal framework for the conversion of checks to ACH debit entries at the point-of-purchase. The interim rule expands the definition of Prearranged Payment and Deposit (PPD) format in the ACH Rules to allow this format to be used to initiate a one-time ACH debit entry to a Receiver's account for purchases made in person at the point-of-purchase. The implementation period for the interim rule began on September 17, 1999 and will continue through September 14, 2000.

NACHA also has adopted a final rule, which will take effect when the interim rule ends, that amends the ACH Rules by establishing a legal framework to allow for the conversion of checks to ACH debit entries at the point-of-purchase. The amendment creates a new Standard Entry Class (SEC) code, POP (Point-of-Purchase Entry), that will allow for an Originator to initiate a one-time ACH debit entry to a Receiver's account for purchases made in person at the point-of-purchase. This rule change will become effective as of September 15, 2000.

3. Accounts Receivable Check Truncation

NACHA has adopted an interim rule expanding the definition of the PPD format in the ACH Rules to allow Originators to utilize the PPD format to truncate checks received through the U.S. mail for payment for goods or services and convert them to ACH debit entries. The rule provides a legal framework to allow pilot tests of lockbox check truncation. The rule requires the Originator to provide the consumer with notice of the check truncation policy prior to receiving the first check payment that will be truncated. The consumer must authorize the entry in writing, signed or similarly authenticated, unless the notice to the consumer indicates that the item will be truncated if the consumer doesn't provide the Originator with written notice not to truncate. The implementation period for the interim rule began on December 17, 1999, and will continue through December 15, 2000.

4. ACH Operator Definition

NACHA has revised the definition of ACH Operator to more clearly define the role and functions assumed by ACH Operators when clearing and settling

ACH transactions. This revision became effective June 18, 1999.[1]

5. Cross-Border Payments

NACHA has amended the ACH Rules to establish two new SEC codes, CBR (Corporate Cross-Border Transactions) and PBR (Consumer Cross-Border Transactions), to be used for the origination and receipt of cross-border ACH entries. The amendment will become effective as of September 15, 2000.

6. Re-Presented Check Entries

NACHA has established a new SEC code to provide commercial depositors and their financial institutions with a legal framework and technical specifications to transmit ACH debit entries to collect checks that have been returned for insufficient or uncollected funds. The new code will become effective as of September 15, 2000.

7. Types of Accounts for ACH Transactions

NACHA has established two new sets of transaction codes to support the transmission of ACH credit and debit entries to financial institutions' general ledger accounts and the transmission of credit entries to loan accounts. This change to the ACH Rules will become effective as of September 15, 2000.

B. ACH Rule Changes That We Are Accepting

We are accepting all of the changes to the ACH Rules that are reflected in the 2000 Rule Book with two exceptions discussed in Section C below. Under the interim rule, there are still 11 provisions of the ACH Rules that Part 210 preempts, except that we are broadening our preemption of the ACH rules enforcement provisions to include the self-audit requirements (see 210.2(d)(3)). No change to the 11 preempted provisions is necessary to reflect our preemption of the changes related to types of accounts, because we were aware of NACHA's intention to permit the crediting of ACH credits to general ledger and loan accounts and had already preempted that provision of the ACH Rules for Federal payments other than vendor payments. See 64 FR 17474.

All of the ACH rule changes that we are accepting are effective as of the effective date of publication of this interim rule or NACHA's effective date for the rule change, whichever is later.

Point-of-Purchase Electronic Check Transactions

We're accepting both the interim and the final ACH rule changes that allow an Originator to initiate a one-time ACH debit entry to a Receiver's account for purchases made in person at the point-of-purchase.

We are currently engaged in pilot programs with several agencies to test the conversion of checks to ACH debit entries at the point-of-purchase. We believe that these transactions could expand the utility of the ACH system and might provide useful and cost-effective applications for Government agency collections. We also recognize, however, that the conversion of checks to ACH debits raises various issues, including the kind of disclosure and authorization that is appropriate for such transactions and the kinds of checks that can or should be converted.

While we believe that the establishment of a legal framework for such transactions is desirable, it's difficult to determine the appropriate responsibilities and liabilities of the parties before the application of this technology has been tested. Moreover, attempting to establish a definitive legal framework for point-of-purchase check conversion by agencies at this time could hamper innovation and impede operational flexibility. Because of the diversity and unique concerns of Government check collections, it's unclear whether the model of POP check conversion will be workable or appropriate on a Government-wide basis. Accordingly, although we're accepting the NACHA's interim and final rule changes in order to provide a basic legal foundation for these transactions, we anticipate that we would seek public comment on the rules governing POP check conversion before engaging in POP check conversion on anything other than a pilot basis. In addition, in view of the experimental nature of pilot programs, it is possible that our pilots may not conform to all of the requirements otherwise imposed under the ACH Rules. It is our intention, however, to ensure that any on-going Government POP check conversion programs that we might establish in the future will conform to the ACH Rules that we incorporate in Part 210.

Accounts Receivable Check Truncation

We're accepting the Interim Rule that provides a legal framework for Originators to truncate checks received through the mail in payment for goods or services and convert them to ACH debit entries. The rule requires the Originator to provide the consumer with notice of the check truncation policy prior to receiving the first check payment that will be truncated. The Receiver must authorize the truncation, either by "opting-in" (meaning that the Receiver must authorize the entry in writing, signed or similarly authenticated), or "opting-out" (meaning that the notice to the Receiver indicates that the Receiver may provide the Originator with written notice not to truncate the check).

Although we're not engaged in lockbox check truncation at this time, we are aware that lockbox check truncation could offer significant cost savings for Government collections. However, we're concerned that consumers understand and consent to such transactions. It is therefore our intention to seek public comment on the rules governing lockbox check truncation before engaging in lockbox check truncation other than on a pilot basis. As discussed above in the context of POP check conversion, pilot programs, by virtue of their very nature in exploring new or novel applications of technology, may not conform to all of the requirements otherwise imposed under the ACH Rules.

ACH Operator Definition

We are accepting the revisions to the ACH Operator definition.

Cross-Border Payments

We are accepting the rules establishing two new SEC codes to be used for the origination and receipt of cross-border ACH entries. We don't anticipate that agencies will be utilizing these codes for the origination or receipt of cross-border entries in the immediate future. However, it is possible that at some future time, agencies may wish to utilize these codes.

Re-Presented Check Entries

We're accepting the rule changes that establish a new SEC code to provide commercial depositors and their financial institutions with a legal framework and technical specifications to transmit ACH debit entries to collect checks that have been returned for insufficient or uncollected funds. We believe that the ability to use ACH debit entries in this manner may facilitate the Government's ability to collect on checks that have been returned unpaid.

[1] Part 210 adopted the ACH Rules published in NACHA's 1999 rule book (including rule changes with an effective date on or before September 17, 1999) as the rules governing all Government ACH transactions, with certain exceptions. Although NACHA's effective date for the ACH Operator definition was June 18, 1999, the changes to the definition were not published in the 1999 rule book and thus not previously incorporated in Part 210.

C. ACH Rule Changes That We Aren't Accepting

Self-Audit Requirements

We aren't accepting the ACH Rule changes related to the self-audit requirements. The purpose of the changes to the self-audit requirements is to promote better compliance with the ACH Rules. We believe that compliance with the ACH Rules is important and we are working with agencies to achieve Government-wide compliance with all ACH Rule requirements, including applicable time frames. Federal agencies are subject to oversight and audit requirements unique to the Federal Government. For example, the Office of the Inspector General and the General Accounting Office periodically review and audit various aspects of Federal agencies' operations. Accordingly, we believe that the imposition of a separate ACH compliance self-examination is both unnecessary and unlikely to significantly enhance the Government's compliance with Part 210.

Types of Accounts for ACH Transactions

We're not accepting, for Federal payments other than vendor payments, the changes to the ACH Rules that permit the crediting of ACH credits to a financial institution general ledger account or to a loan account. Section 210.5 provides that ACH credit entries representing Federal payments other than vendor payments must be deposited to an account at a financial institution in the name of the recipient, with three exceptions. As discussed in the rulemaking release that accompanied our adoption of this requirement, the term "account" for purposes of § 210.5 is intended to mean a deposit account and not a loan account or general ledger account. See 64 FR 17472, 17474 (1999). We believe that important consumer protections are associated with the crediting of Federal payments to a deposit account, including those available under Regulation E (12 CFR Part 205) and Regulation DD (12 CFR Part 230), as well as the availability of Federal deposit or share insurance. Therefore, we're not accepting this change to the ACH Rules with respect to payments other than vendor payments.

D. Section-by-Section Analysis

Section 210.2(a)

We are amending the definition of ACH Rules to reflect NACHA's name change from the National Automated Clearing House Association to NACHA—The Electronic Payments Association.

Section 210.2(d)

We are amending the definition of "applicable ACH Rules" at section 210.2(d) to reference the rules published in NACHA's 2000 rule book rather than the rules published in NACHA's 1999 rule book. In addition, we are amending section 210.2(d)(3) to exclude the self-audit requirements of the ACH Rules.

Section 210.3(b)

We are amending subsection 210.3(b), "Incorporation by reference—applicable ACH Rules," by replacing the references to the ACH Rules as published in the 1999 rule book with references to the ACH Rules as published in the 2000 rule book.

Section 210.5

We are revising section 210.5, "Account requirements for Federal payments," by specifically providing in subsection 210.5(a) that an ACH entry representing a Federal payment other than a vendor payment must be deposited into a deposit account at a financial institution. This revision of the regulatory language does not represent a substantive change from the existing rule since, as discussed above, the rulemaking release that accompanied our adoption of this requirement indicated that § 210.5 was intended to require that Federal payments other than vendor payments must be deposited to a deposit account and not a loan account or general ledger account. See 64 FR 17472, 17474 (1999).

We also are amending the first sentence of § 210.5 to read, "Notwithstanding ACH Rules 2.1.2, 4.1.3, and Appendix Two, section 2.2 (listing general ledger and loan accounts as permissible transaction codes) * * *" in order to clarify that the requirements of § 210.5 preempt the ACH Rules that would otherwise allow ACH credits generally to be sent to general ledger or loan accounts.

III. Procedural Requirements

A. Request for Comment

We invite comment on all aspects of the interim rule.

B. Request for Comment on Plain Language

On June 1, 1998, the President issued a memorandum directing each agency in the Executive branch to write its rules in plain language. This directive is effective for all new proposed and final rulemaking documents issued on or after January 1, 1999. We invite comment on how to make this interim rule clearer. For example, you may wish to discuss: (1) Whether we have organized the material to suit your needs; (2) whether the requirements of this interim rule are clear; or (3) whether there is something else we could do to make this rule easier to understand.

C. Notice and Comment; Effective Date

We find that good cause exists for issuing this interim rule without prior notice and comment. Under the Administrative Procedure Act, an agency is permitted to issue a rule without prior notice and comment when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). We believe that it is important to address the publication of new ACH rules as quickly as possible in order to mitigate the uncertainty and inconvenience to financial institutions that would result from a time lag in responding to NACHA's rule changes. When we proposed to address changes to the ACH Rules by reviewing and responding to rule changes on an annual basis, we received many comments expressing concern over the potential consequences of such a time lag. For these reasons, we conclude that we have good cause for issuing this interim rule without prior notice and comment. Nevertheless, we are inviting comment and will consider the comments received. For these reasons we also find that good cause exists to make this interim rule effective without a delayed effective date.

D. Executive Order 12866

This interim rule does not meet the criteria for a "significant regulatory action" as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

E. Regulatory Flexibility Act

Because notice and public comment are not required, the Regulatory Flexibility Act (5 U.S.C. 601) does not apply.

F. Paperwork Reduction Act

We ask for no new collections of information in this final rule. Therefore, the Paperwork Reduction Act (44 U.S.C. 3501) does not apply.

List of Subjects in 31 CFR Part 210

Automated Clearing House, Electronic funds transfers, Financial institutions, Fraud, Incorporation by reference.

Authority and Issuance

For the reasons set out in the preamble, 31 CFR Part 210 is amended as follows:

PART 210—FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE

1. The authority citation for part 210 continues to read as follows:

Authority: 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3332, 3335, and 3720.

2. Revise § 210.2(a) and (d) to read as follows:

§ 210.2 Definitions.

* * * * *

(a) *ACH Rules* means the Operating Rules and the Operating Guidelines published by NACHA—The Electronic Payments Association (NACHA), a national association of regional member clearing house associations, ACH Operators and participating financial institutions located in the United States.

* * * * *

(d) *Applicable ACH Rules* means the ACH Rules with an effective date on or before September 15, 2000, as published in Parts I, II, and IV of the "2000 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network," except:

(1) ACH Rule 1.1 (limiting the applicability of the ACH Rules to members of an ACH association);

(2) ACH Rule 1.2.2 (governing claims for compensation);

(3) ACH Rule 1.2.4; 2.2.1.10; Appendix Eight and Appendix Eleven (governing the enforcement of the ACH Rules, including self-audit requirements);

(4) ACH Rules 2.2.1.8; 2.6; and 4.7 (governing the reclamation of benefit payments);

(5) ACH Rule 8.3 and Appendix Two (requiring that a credit entry be originated no more than two banking days before the settlement date of the entry—see definition of "Effective Entry Date" in Appendix Two).

* * * * *

3. Revise § 210.3(b) to read as follows:

§ 210.3 Governing law.

* * * * *

(b) *Incorporation by reference—applicable ACH Rules.* (1) This part incorporates by reference the applicable ACH Rules, including rule changes with an effective date on or before September 15, 2000, as published in Parts I, II, and IV of the "2000 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network." The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the "2000 ACH Rules" are available from NACHA—The Electronic Payments Association, 13665 Dulles Technology Drive, Suite 300, Herndon, Virginia 20171. Copies also are available for public inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, D.C.

(2) Any amendment to the applicable ACH Rules that takes effect after September 15, 2000, shall not apply to Government entries unless the Service expressly accepts such amendment by publishing notice of acceptance of the amendment to this part in the **Federal Register**. An amendment to the ACH Rules that is accepted by the Service shall apply to Government entries on the effective date of the rulemaking specified by the Service in the **Federal Register** document expressly accepting such amendment.

4. Revise § 210.5 to read as follows:

§ 210.5 Account requirements for Federal payments.

(a) Notwithstanding ACH Rules 2.1.2, 4.1.3, and Appendix Two, section 2.2 (listing general ledger and loan accounts as permissible transaction codes), an ACH credit entry representing a Federal payment other than a vendor payment shall be deposited into a deposit account at a financial institution. For all payments other than vendor payments, the account at the financial institution shall be in the name of the recipient, except as provided in paragraph (b) of this section.

* * * * *

Dated: April 4, 2000.

Richard L. Gregg,

Commissioner.

[FR Doc. 00–8636 Filed 4–6–00; 8:45 am]

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RESERVATIONS: 202–523–4538

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Monday, April 10, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV00–989–4 IFR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for 1999–2000 Crop Natural (Sun-Dried) Seedless and Zante Currant Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes final volume regulation percentages for 1999–2000 crop Natural (sun-dried) Seedless raisins (Naturals) and Zante Currant raisins (Zantes) covered under the Federal marketing order for California raisins (order). The volume regulation percentages are 85 percent free and 15 percent reserve for Naturals and 51 percent free and 49 percent reserve for Zantes. The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). The volume regulation percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions.

DATES: Effective April 10, 2000. Comments received by June 9, 2000, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, or Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule establishes final free and reserve percentages for Naturals and Zantes for the 1999–2000 crop year, which began August 1, 1999, and ends July 31, 2000. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule establishes final volume regulation percentages for 1999–2000 crop Naturals and Zantes covered under the order. The volume regulation percentages are 85 percent free and 15 percent reserve for Naturals and 51 percent free and 49 percent reserve for Zantes. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop the following year; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed.

The volume regulation percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions. Final percentages for Zantes were recommended by the Committee on January 13, 2000, and for Naturals on February 11, 2000.

Computation of Trade Demands

Section 989.54 of the order prescribes the procedures and time frames to be followed in establishing volume regulation. This includes methodology used to calculate percentages. Pursuant to § 989.54(a) of the order, the Committee met on August 12, 1999, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types.

The Committee computed a trade demand for each varietal type for which a free tonnage percentage might be recommended. Trade demand is computed using a formula specified in the order and, for each varietal type, is equal to 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use into all market outlets, adjusted by subtracting the carryin on August 1 of the current crop year and by adding the desirable carryout at the end of that crop year. As specified in § 989.154(a), the desirable carryout for each varietal type is equal to the shipments of free tonnage raisins of the prior crop year during the months of August, September, and one-half of October. In accordance with these provisions, the Committee computed and announced 1999–2000 trade demands for Naturals and Zantes at 254,475 and 1,855 tons, respectively, as shown below.

COMPUTED TRADE DEMANDS

[Natural condition tons]

	Naturals	Zantes
Prior year's shipments	[1] 314,013	3,542
Multiplied by 90 percent	0.90	0.90
Equals adjusted base	282,612	3,188
Minus carryin inventory	101,946	1,906
Plus desirable carryout	73,809	573
Equals computed trade demand	254,475	1,855

[1] Pursuant to § 989.54(a), 1996–97 shipments were utilized to compute trade demand because 1998–99 shipments were limited.

Computation of Preliminary Volume Regulation Percentages

As required under § 989.54(b) of the order, the Committee met on October 1, 1999, and announced a preliminary crop estimate of 294,519 tons for Naturals. This estimate was almost 15 percent lower than the 10-year average of 346,325 tons. Naturals are the major varietal type of California raisins. Combining the carryin inventory of 101,946 tons with the 294,519-ton crop estimate resulted in a total available supply of 396,465 tons, which was much higher than the 254,475-ton trade demand. Thus, the Committee determined that volume regulation for Naturals was warranted. The Committee announced preliminary free and reserve percentages for Naturals which released 65 percent of the computed trade demand since the field price had not yet been established. The preliminary percentages were 56 percent free and 44 percent reserve. The Committee authorized its staff to modify the preliminary percentages to release 85 percent of the trade demand once the field price was established. The field price was established on October 22, 1999, and the preliminary percentages were thus modified to 73 percent free and 27 percent reserve.

Also at its October 1, 1999, meeting, the Committee announced a preliminary crop estimate for Zantes at 4,187 tons, which is comparable to the 10-year average of 4,463 tons. Combining the carryin inventory of 1,906 tons with the 4,187-ton crop estimate resulted in a total available supply of 6,093 tons, which is significantly greater the 1,855-ton trade demand. Thus, the Committee determined that volume regulation for Zantes was warranted. The Committee announced preliminary free and reserve percentages for Zantes which released 65 percent of the computed trade demand since field price had not yet been established. The preliminary percentages were 29 percent free and 71 percent reserve. Like Naturals, the Committee authorized its staff to modify the preliminary percentages to release 85 percent of the trade demand once the field price was established. The field price was established on October 12, 1999, and the preliminary percentages were thus modified to 38 percent free and 62 percent reserve. As in past seasons, the Committee submitted its marketing policy to the Department for review. In addition, the Committee determined that volume regulation was not warranted for the other varietal types of raisins covered under the order.

Computation of Final Volume Regulation Percentages

Pursuant to §§ 989.54(c) and (d) of the order, the Committee met on January 12, 2000, and announced interim percentages for Zantes at 50.75 percent free and 49.25 percent reserve. These interim percentages were based on a revised Zante crop estimate of 3,650 tons. At that meeting, the Committee also computed final percentages for Zantes which, when applied to the final 3,650-ton crop estimate, tend to release the full Zante trade demand. Final percentages compute to 51 percent free and 49 percent reserve.

The Committee met on February 11, 2000, and announced interim percentages for Naturals at 84.75 percent free and 15.25 percent reserve. These interim percentages were based on a revised crop estimate of 298,477 tons. The Committee also computed final percentages for Naturals which, when applied to the final 298,477-ton crop estimate, tend to release the full trade demand. Final percentages compute to 85 percent free and 15 percent reserve. The Committee's calculations to arrive at final percentages for Naturals and Zantes are shown in the table below.

FINAL VOLUME REGULATION PERCENTAGES

[Tonnage as natural condition weight]

	Naturals	Zantes
Trade demand	254,475	1,855
Divided by crop estimate	298,477	3,650
Equals free percentage	85	51
100 minus free percentage equals reserve percentage	15	49

In addition, the Department's "Guidelines for Fruit, Vegetable, and Speciality Crop Marketing Orders" (Guidelines) specify that 110 percent of recent years' sales should be made available to primary markets each season for marketing orders utilizing reserve pool authority. This goal will be met for Naturals and Zantes by the establishment of final percentages which release 100 percent of the trade demand and the offer of additional reserve raisins for sale to handlers under the "10 plus 10 offers." As specified in § 989.54(g), the 10 plus 10 offers are two offers of reserve pool raisins which are made available to handlers during each season. For each such offer, a quantity of reserve raisins equal to 10 percent of the prior year's shipments is made available for free use. Handlers may sell their 10 plus 10 raisins to any market.

For Naturals, both 10 plus 10 offers will be held in June 2000 where a total of about 44,000 tons of raisins will be made available to handlers. This quantity is less than the amount specified in the order. As previously stated, the Committee utilized 1996–97 shipments of 314,013 tons as a base to compute trade demand because 1998–99 shipments were limited. Similarly, as specified in § 989.54(g), 1996-97 shipments were used as a base to compute the amount of tonnage to be made available in the 10 plus 10 offers. Thus, 31,402 tons should be made available in each of the 10 plus 10 offers (62,803 tons total). However, this amount is not available in the reserve. Thus, all of the reserve pool raisins will be made available to handlers for free use through the 10 plus 10 offers.

Adding the 44,000 tons of 10 plus 10 raisins to the 254,475-ton trade demand figure, plus 101,946 tons of 1998-99

carryin inventory equates to about 400,423 tons natural condition raisins, or 375,893 tons packed raisins, that will be made available for free use, or to the primary market. This is 136 percent of the quantity of Naturals shipped during the 1998–99 crop year (295,401 natural condition tons or 277,305 packed tons).

For Zantes, both Zante 10 plus 10 offers were made available simultaneously in early February 2000 and 708 tons of raisins were purchased by handlers. Adding the 708 tons of 10 plus 10 raisins to the 1,855 ton trade demand figure, plus 1,906 tons of 1998–99 carryin inventory equates to 4,469 tons natural condition raisins, or about 3,985 tons packed raisins, made available for free use, or to the primary market. This is 126 percent of the quantity of Zantes shipped during the 1998–99 crop year (3,542 natural condition tons or 3,158 packed tons).

In addition to the 10 plus 10 offers, § 989.67(j) of the order provides authority for sales of reserve raisins to handlers under certain conditions such as a national emergency, crop failure, change in economic or marketing conditions, or if free tonnage shipments in the current crop year exceed shipments of a comparable period of the prior crop year. Such reserve raisins may be sold by handlers to any market. When implemented, these additional offers of reserve raisins make even more raisins available to primary markets which is consistent with the Department's Guidelines.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000, excluding receipts from any other sources. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

Pursuant to § 989.54(d) of the order, this rule establishes final volume regulation percentages for 1999-2000 crop Natural and Zante raisins. The volume regulation percentages are 85 percent free and 15 percent reserve for Naturals and 51 percent free and 49 percent reserve for Zantes. Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through certain programs authorized under the order.

Volume regulation is warranted this season for Naturals because the final crop estimate of 298,477 tons combined with the carryin inventory of 101,946 tons results in a total available supply of 400,423 tons, which is about 57 percent higher than the 254,475-ton trade demand. Volume regulation is warranted for Zantes this season because the crop estimate of 3,650 tons combined with the carryin inventory of 1,906 tons results in a total available supply of 5,556 tons which is about 200 percent higher than the 1,855-ton trade demand. The volume regulation percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions.

Many years of marketing experience led to the development of the current volume regulation procedures. These procedures have helped the industry address its marketing problems by keeping supplies in balance with domestic and export market needs, and strengthening market conditions. The current volume regulation procedures fully supply the domestic and export markets, provide for market expansion, and help prevent oversupplies in the domestic market.

Raisin-variety grapes can be marketed as fresh grapes, crushed for use in the production of wine or juice concentrate, or dried into raisins. Annual fluctuations in the fresh grape, wine, and concentrate markets, as well as weather-related factors, cause fluctuations in raisin supply. These supply fluctuations can cause producer price instability and disorderly market conditions. Volume regulation is helpful to the raisin industry because it lessens the impact of such fluctuations and contributes to orderly marketing. For example, excluding the 1997–98 season for which complete data is not yet available, producer prices for Naturals have remained fairly steady between the 1992–93 through the 1998–99 seasons, although production has varied. As shown in the table below, production has varied from a low of 240,469 tons in 1998–99 to a high of 387,007 tons in 1993–94, or 61 percent. According to Committee data, during years of Natural volume regulation, the total producer return per ton, which includes proceeds from both free tonnage plus reserve pool raisins, has varied from a low of $901 in 1992–93 to a high of $1,049 in 1996–97, or 16 percent.

NATURAL SEEDLESS PRODUCER PRICES

Crop year	Production (natural condition tons)	Producer prices
1998–99	240,469	[1] $1,290
1997–98	382,448	[2] 925.50
1996–97	272,063	1,049
1995–96	325,911	1,007
1994–95	378,427	928
1993–94	387,007	904
1992–93	371,516	901

[1] No volume regulation.
[2] Return to date, reserve pool still open.

In addition, the Committee is implementing an export program for Naturals. Through this program, the Committee hopes to export more Naturals thereby helping to build and maintain export markets, and ultimately improving producer returns. Volume regulation helps the industry not only to manage its supply of raisins, but also maintain market stability.

Regarding Zantes, Zante production is much smaller than that of Naturals. Volume regulation has been implemented for Zantes during the 1994–95, 1995–96, 1997–98, and 1998–99 seasons. Various programs to utilize reserve Zantes were implemented when volume regulation was in effect during the 1994–95, 1995–96, 1997–98, and 1998–99 seasons. As shown in the table following this paragraph, although production varied during those years, volume regulation helped to reduce inventories, and helped to strengthen total producer prices (free tonnage plus reserve Zantes) from $412.56 per ton in 1994–95 to an estimated high of $730 per ton in 1997–98. The Committee is implementing an export program for Zantes, in addition to Naturals. Through this program, the Committee hopes to export more Zantes, thereby continuing to reduce the industry's oversupply, helping to build export markets, and ultimately improving producer returns. Volume regulation helps the industry not only to manage oversupplies of raisins, but also maintain market stability.

ZANTE CURRANT INVENTORIES AND PRODUCER PRICES DURING YEARS OF VOLUME REGULATION

[* Natural condition tons]

Crop year	Production *	Inventory *		Total season average producer price (per ton)
		Desirable	Physical	
1998–99	3,880	573	1,906	(1)
1997–98	4,826	694	1,188	2 $730.00
1996–97	4,491	987	549	3 1,150.00
1995–96	3,294	782	2,890	711.32
1994–95	5,377	837	4,364	412.56

[1] Data not yet available, reserve pool open.
[2] Estimate.
[3] No volume regulation.

Free and reserve percentages are established by variety, and usually in years when the supply exceeds the trade demand by a large enough margin that the Committee believes volume regulation is necessary to maintain market stability. However, volume regulation may also be utilized in short crop years so that the industry may utilize its export program as described to maintain its export markets and provide stability in the domestic market. Accordingly, in assessing whether to apply volume regulation or, as an alternative, not to apply such regulation, the Committee recommended only two of the nine raisin varieties defined under the order for volume regulation this season.

The free and reserve percentages established by this rule release the full trade demands and apply uniformly to all handlers in the industry, regardless of size. For Naturals, with the exception of the 1998–99 crop year, small and large raisin producers and handlers have been operating under volume regulation percentages every year since 1983–84. There are no known additional costs incurred by small handlers that are not incurred by large handlers. All handlers are regulated based on the quantity of raisins which they acquire from producers. While the level of benefits of this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain and expand markets even though raisin supplies fluctuate widely from season to season. Likewise, price stability positively impacts small and large producers by allowing them to better anticipate the revenues their raisins will generate.

There are some reporting, recordkeeping and other compliance requirements under the order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The requirements are the same as those applied in past seasons. Thus, this action will not impose any additional reporting or recordkeeping burdens on either small or large handlers. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. The information collection and recordkeeping requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Further, Committee and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members, including small business entities, and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab/html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments for a 60-day period on the establishment of final volume regulation percentages for 1999–2000 crop Natural and Zante raisins covered under the order. All comments received within the comment period will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause

that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The relevant provisions of this part require that the percentages designated herein for the 1999–2000 crop year apply to all Natural and Zante raisins acquired from the beginning of that crop year; (2) handlers are currently marketing 1999–2000 crop Natural and Zante raisins and this action should be taken promptly to achieve the intended purpose of making the full trade demands available to handlers; (3) handlers are aware of this action, which the Committee recommended at open meetings, and need no additional time to comply with these percentages; and (4) this interim final rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended to read as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 989.253 is added to Subpart—Supplementary Regulations to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 989.253 Final free and reserve percentages for the 1999–2000 crop year.

The final percentages for standard Natural (sun-dried) Seedless and Zante Currant raisins acquired by handlers during the crop year beginning on August 1, 1999, which shall be free tonnage and reserve tonnage, respectively, are designated as follows:

Varietal type	Free-percentage	Reserve-percentage
Natural (sun-dried) Seedless	85	15
Zante Currant	51	49

Dated: April 4, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–8728 Filed 4–7–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 71 and 80

[Docket No. 98–037–2]

Johne's Disease in Domestic Animals; Interstate Movement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations regarding the interstate movement of domestic animals that have reacted to a test for paratuberculosis. First, we are replacing all references to "paratuberculosis" with references to "Johne's disease" to reflect a change in nomenclature. Second, we are identifying an official test for the detection of Johne's disease in domestic animals. Third, we are amending the requirements for moving animals interstate. These actions will update the regulations and remove restrictions on the interstate movement of animals that are positive to an official Johne's disease test that do not appear necessary to prevent the interstate spread of Johne's disease.

EFFECTIVE DATE: May 10, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph S. VanTiem, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7716.

SUPPLEMENTARY INFORMATION:

Background

Paratuberculosis, also known as Johne's disease, is a disease caused by *Mycobacterium paratuberculosis*. This disease primarily affects cattle, sheep, goats, and other domestic, exotic, and wild ruminants. Paratuberculosis is a chronic and contagious enteritis that results in progressive wasting and eventual death. Clinical signs are rarely evident until 2 or 3 years after the initial infection, which usually occurs soon after birth. The organism is shed in large numbers in the feces of infected animals, and infection can be acquired by ingestion of organisms from contaminated food and water sources. The organisms can also be present in colostrum and milk of infected cows. The disease is nearly always introduced into a clean herd by an infected animal that does not show symptoms of the disease. Our regulations are intended to control the interstate spread of the disease in the United States.

The regulations in subchapter C of chapter I, title 9, Code of Federal Regulations (CFR), govern the interstate movement of animals to prevent the dissemination of livestock and poultry diseases in the United States. Parts 71 and 80 (referred to below as the regulations) are included in subchapter C. Part 71 relates to the interstate transportation of animals, poultry, and animal products. Part 80 pertains to the interstate movement of domestic animals that are paratuberculosis reactors. A paratuberculosis reactor is a domestic animal that has reacted to a test recognized by the Secretary of Agriculture for paratuberculosis.

On March 22, 1999, we published in the **Federal Register** (64 FR 13726–13732, Docket No. 98–037–1) a proposal to amend the regulations regarding the interstate movement of domestic animals affected with Johne's disease. We proposed to replace references to "paratuberculosis" with references to "Johne's disease", to identify an official test for Johne's disease, and to allow the interstate movement of domestic animals that are positive to the official Johne's disease test for slaughter purposes or the collection of germ plasm.

We solicited comments concerning our proposal for 60 days ending May 21, 1999. We received six comments by that date. They were from a national veterinary medical association, a State veterinary association, a beef association, two dairy associations, and a State advisory committee on Johne's disease. Two commenters supported the proposed rule. One commenter stated that he could not support the proposed rule. This commenter and the remaining commenters expressed concerns that are discussed below.

Movement of Animals for the Collection of Germ Plasm

Several commenters raised concerns related to our proposed provisions to allow the interstate movement of positive animals for the collection of germ plasm (semen, embryos, and ova). We stated in our proposal that artificial insemination and embryo transfer were considered to present a low risk of transmitting Johne's disease, and that allowing interstate movement of positive animals for germ plasm collection would allow herd owners to

salvage valuable genetics and continue an animal's lineage. One commenter took issue with our statement about low risk, maintaining that there is insufficient research to support our contention. One commenter mentioned that semen, embryos, and ova are not the only genetic materials that could be considered germ plasm. One commenter recommended that we allow interstate movement of positive animals only from herds that have achieved a certain status level under the United States Animal Health Association's (USAHA) Voluntary Johne's Disease Herd Status Program for Cattle, and that germ plasm be collected from other animals in a sanitized station on the premises. One commenter stated that many breeders enrolled in various voluntary Johne's disease programs are not interested in having an animal from a herd positive for Johne's disease on their property.

Based on these comments, and because germ plasm from positive animals may be collected without restriction on the premises of origin, this final rule will not allow the interstate movement of positive animals for germ plasm collection. Our proposed rule did not place any restrictions on the collection of germ plasm at the premises of origin, and we are not adding such provisions in this final rule.

In addition, because we are removing the proposed requirements for the interstate movement of positive animals for the collection of germ plasm, we have removed the definitions of *accredited veterinarian*, *germ plasm*, *permit*, and *premises of origin* from the proposed list of definitions in § 80.1. These terms were used and referenced in the aforementioned proposed requirements.

One commenter took exception to a portion of the discussion under the heading, "Executive Order 12866 and Regulatory Flexibility Act," that stated, "However, for most producers, the impact may be insignificant." The commenter stated that the impact of the proposed rule on a substantial number of seed stock producers will be very significant if overly vigorous administration of testing programs puts a significant number of seed stock producers out of business or reduces them to producing commercial milk products, which could have an international impact. This commenter further stated that the premature restriction of the movement of breeding animals could affect the rate of genetic gain in the United States, especially if the incidence of Johne's disease is as high as estimated. This commenter also stated that seed stock herds cannot be destroyed or locked up during the process of controlling Johne's disease.

Approximately 22 percent (25,670 herds) of U.S. dairy herds are affected with Johne's disease. In developing our proposal, we considered how breeding programs, and genetic gains, could be affected by restrictions on the interstate movement of animals that are positive to an official Johne's disease test. We proposed to limit the interstate movement of these animals, but we did not propose any quarantine or related measures, and we did not propose to require testing before interstate movement because mandatory testing programs are not currently supported by a majority of the cattle industry, partially due to the effect that testing might have on some seed stock producers. Industry sources indicated that when removing positive animals from a herd, most producers would choose to move the positive animals for slaughter purposes. Because we will allow the interstate movement of positive animals for slaughter purposes in this rule, and remove, among other things, requirements for permits and branding, seed stock producers will be able to implement more efficient and accelerated herd cleanup programs, if desired, and, thus, reduce the economic effect Johne's disease could have on their operations.

This rule will allow domestic animals that are positive to an official test for Johne's disease to be moved interstate only to a recognized slaughtering establishment or to an approved livestock facility for sale to such an establishment. However, there may be circumstances, including pilot projects, where other interstate movements may be appropriate. Therefore, this final rule provides that the Administrator may, upon request in specific cases, allow animals that are positive to an official Johne's disease test to be moved interstate to other locations and for other purposes under such conditions as the Administrator may prescribe in each case to prevent the spread of Johne's disease. The Administrator must notify the State animal health officials of the States involved of any such action.

Other Comments

One commenter stated that we should require serological tests for herd screening and allow the interstate movement of an animal from a herd only if the animal is negative when tested by an organism identification test.

As noted previously in this document, mandatory testing programs are not currently supported by a majority of the cattle industry. We believe that requiring serological testing of a herd prior to the interstate movement of an individual animal would be too restrictive and put too many constraints on herd owners. Therefore, at this time, we are only restricting the interstate movement of animals that are positive to an official Johne's disease test.

One commenter had concerns regarding the identification of specific officially recognized tests. One commenter stated that our use of the term "polymerase chain reaction (PCR)" was confusing, and noted that PCR is a process. The commenter who had concerns regarding the identification of specific officially recognized tests did not elaborate further.

We continue to believe that a standard test for Johne's disease is necessary and that a test that detects the presence of the *M. paratuberculosis* organisms in fecal samples is the most specific and reliable index of infection in live animals. As to the comment regarding PCR, we agree that PCR is a process. In our proposal, we stated, "Organism detection tests, such as fecal culture or polymerase chain reaction (PCR), detect the presence of the *M. paratuberculosis* organism in fecal samples."

Two commenters stated that there were loopholes in the proposed regulations that could contribute to the spread of Johne's disease, and one of these commenters stated that the loopholes could affect various voluntary programs. One of these commenters had concerns regarding the structure of the proposed changes for interstate movement.

The commenters who stated that there were loopholes in the proposed regulations did not identify those areas of the proposed regulations that they thought might contribute to the spread of Johne's disease or affect voluntary programs. The commenter who had concerns regarding the structure of the proposed changes did not elaborate further. We assume that these commenters were referring to the proposed requirements that would have allowed sexually intact animals that are positive to an official Johne's disease test to be moved interstate for the collection of germ plasm. As stated previously in this document, this final rule will not allow the interstate movement of positive animals for germ plasm collection. This final rule will allow domestic animals that are positive to an official Johne's disease test to be moved interstate only to a recognized slaughtering establishment or to an approved livestock facility for sale to such an establishment, or elsewhere only with specific authorization from the Administrator.

One commenter stated that new regulations should not be finalized until States have standardized control and testing programs. This commenter further stated that it may be best to eliminate the current regulations, pending the development of an appropriate proposed rule, because they cannot be enforced. This commenter also stated that he was unable to endorse any particular animal movement control systems at this time. Another commenter expressed disapproval that this rulemaking exposed the public to the existing regulations, which he maintains are "obsolete and disregarded."

The current regulations are outdated, and this rulemaking is intended to remove language that hinders State and industry voluntary programs that are attempting to reduce the national prevalence of Johne's disease. Prior to this final rule, the regulations provided that cattle and other domestic animals that had reacted to a test for Johne's disease could be moved interstate only to a recognized slaughtering establishment or to a specifically approved stockyard for sale to a recognized slaughter establishment. Prior to movement, cattle and other domestic animals had to be identified with an approved metal eartag that was attached to their left ear and bore a serial number and the inscription, "U.S. Reactor," or a similar State reactor tag. Cattle also had to be: (1) Branded with the letter "J" on their left hip near the tailhead; or (2) accompanied directly to slaughter by an APHIS or State representative; or (3) moved in vehicles closed with official seals that were applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

Based on this final rule, domestic animals that are positive to an official Johne's disease test may be moved interstate to a recognized slaughtering establishment or to an approved livestock facility for sale to such an establishment if they bear an official eartag, are shipped with an owner-shipper statement, and are moved to the destination in one continuous movement without unloading. We believe that these changes will allow herd owners to remove infected animals from their premises sooner and decrease the possibility of these animals infecting other animals on the premises. We also believe that these changes, compared to the previous requirements, will allow APHIS to better enforce restrictions on interstate movement.

One commenter stated that there needs to be an effective program to raise the level of awareness of Johne's disease among producers because only with an understanding of the disease and the mode of its transmission can broad-based support for control and eradication be gained. One commenter stated that control and eradication of Johne's disease requires producer and veterinary education, development of adequate diagnostic tests, design and implementation of herd testing and classification systems, and design of appropriate animal movement controls. One commenter stated that the regulations may need to be amended in the future to promote uniformity as States develop and implement Johne's disease control programs and to incorporate recommendations from future Johne's disease studies. Another commenter said that we should have included the voluntary herd status programs developed by USAHA's Johne's Disease Committee.

We agree that educating the beef and dairy industry and the public about Johne's disease is essential to control and eradication efforts. Some beef and dairy associations have taken steps to provide educational material regarding Johne's disease and other diseases of livestock to their members. APHIS has distributed educational material on Johne's disease as well as conducted training courses for our field veterinary medical officers. In addition, a classification system—the "voluntary herd status program" mentioned by the commenter above—has been developed by USAHA's Johne's Disease Committee. While APHIS supports the U.S. Voluntary Johne's Disease Herd Status Program for Cattle, we do not believe it is appropriate at this time to make it a federally-regulated activity and, therefore, have not made it part of this rulemaking.

In the future, the regulations may be further amended to include new technologies (including diagnostic tests) and standards from voluntary programs and to incorporate changes that may be necessary as States develop and implement their own Johne's disease control programs.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule will establish an official test for Johne's disease. It also will make it easier to move domestic animals that are positive to an official Johne's disease test interstate to slaughter.

However, we do not anticipate that these changes will have a significant economic effect on small entities. Under the regulations in effect before this final rule, animals moved interstate to slaughter had to bear an eartag with a serial number and the inscription "U.S. Reactor" and be transported with a certificate. In addition, cattle also had to be branded with the letter "J" on their left hip, accompanied directly to slaughter by an APHIS or State representative, or moved in vehicles closed with official seals. We are removing these requirements and will simply require positive animals moving interstate to slaughter to bear an official eartag and be shipped with an owner-shipper statement. There are no direct costs related to these requirements, so herd owners will not experience a savings from the removal of these requirements. However, this rule will expedite the movement of animals by 1 to 5 days because herd owners will not have to wait to obtain the services of an APHIS or State representative prior to the interstate movement of their animals to slaughter. This may result in some small savings to herd owners.

In a recent study, APHIS examined the cost of Johne's disease on U.S. dairy cattle producers.[1] The study found that infected herds with at least 10 percent of the culled cows showing clinical signs of Johne's disease had an average disease-related cost to producers of $227 for each cow in the herd per year. Therefore, the disease-related costs for a 100 cow dairy with at least 10 percent of culled cows showing clinical disease signs of Johne's disease would be approximately $22,700 per year. By amending the regulations, we may be able to strengthen detection and control of Johne's disease, which should reduce the producers' Johne's disease-related costs. However, the reduction in disease-related costs is not likely to be significant for the reasons provided in the next paragraph.

We anticipate that this rule will affect primarily U.S. dairy cattle producers. In 1997, there were 116,680 dairy herds or farms in the United States. We estimate that about 22 percent (25,670 herds) of the U.S. dairy herds are affected with Johne's disease. The Small Business

[1] See *Johne's disease on U.S. DairyOperations*, National Animal Health Monitoring System, Dairy 1996, October, 1997.

Administration (SBA) considers a dairy farm a small entity if its annual receipts are $0.5 million or less. According to the 1992 Census of Agriculture, 95 percent of dairy producers are considered small entities under SBA guidelines. This rule should benefit dairy cattle producers, but for most producers, the economic effect of the rule may be insignificant. This is because on a per head basis only about 10 percent of the cattle will test positive, not all positive animals are likely to be moved interstate for slaughter, and, as noted earlier, there are no direct costs associated with the requirements we are removing.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB). The assigned OMB control number is 0579–0148.

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects

9 CFR Part 71

Animal diseases, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 80

Animal diseases, Livestock, Transportation.

Accordingly, we are amending 9 CFR parts 71 and 80 as follows:

PART 71—GENERAL PROVISIONS

1. The authority citation for part 71 continues to read as follows:

Authority: 21 U.S.C. 111–113, 114a, 114a–1, 115–117, 120–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 71.3 is amended as follows:

a. In paragraph (a), by removing the word "paratuberculosis" and adding the words "Johne's disease" in its place.

b. By revising paragraph (c)(1) to read as set forth below.

c. By redesignating paragraphs (c)(2), (c)(3), and (c)(4) as paragraphs (c)(3), (c)(4), and (c)(5), respectively, and adding a new paragraph (c)(2) to read as set forth below.

d. In newly redesignated paragraph (c)(3), remove "; and" and add a period in its place.

§ 71.3 Interstate movement of diseased animals and poultry generally prohibited.

* * * * *

(c) * * *

(1) Domestic animals that have reacted to an official test for brucellosis, are not affected with any other disease referred to in this section, and are not tick infested may be moved interstate in accordance with part 78 of this chapter.

(2) Domestic animals that are positive to an official Johne's disease test, are not affected with any other disease referred to in this section, and are not tick infested may be moved interstate in accordance with part 80 of this chapter.

* * * * *

3. Part 80 is revised to read as follows:

PART 80—JOHNE'S DISEASE IN DOMESTIC ANIMALS

Sec.

80.1 Definitions.
80.2 General restrictions.
80.3 Movement of domestic animals that are positive to an official Johne's disease test.
80.4 Segregation of animals positive to an official Johne's disease test during interstate movement.

Authority: 21 U.S.C. 111–113, 114a-1, 115, 117, 120, 121, and 125; 7 CFR 2.22, 2.80, and 371.2(d).

§ 80.1 Definitions.

The following definitions apply to this part:

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

APHIS. The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

APHIS representative. An individual employed by APHIS who is authorized to perform the function involved.

Approved livestock facility. A stockyard, livestock market, buying station, concentration point, or any other premises that has been approved under § 71.20 of this chapter.

Area veterinarian in charge. An APHIS veterinarian authorized by the Administrator to supervise and manage the animal health work of APHIS in a specified area of the United States.

Interstate. From one State into or through any other State.

Johne's disease. An infectious and communicable disease that primarily affects cattle, sheep, goats, and other domestic, exotic, and wild ruminants, also known as paratuberculosis, caused by *Mycobacterium paratuberculosis.*

Moved. Shipped, transported, delivered, or received for movement, or otherwise aided, induced, or caused to be moved.

Official eartag. An identification eartag approved by APHIS as being tamper-resistant and providing unique identification for each animal. An official eartag may conform to the alpha-numeric National Uniform Eartagging System, or it may bear a valid premises identification number that is used in conjunction with the producer's livestock production numbering system to provide a unique identification number.

Official Johne's disease test. An organism detection test approved by the Administrator and conducted in a laboratory approved by the Administrator.[1]

Owner-shipper statement. A statement signed by the owner or shipper of animals, which states: The number of animals to be moved, the official eartag number of each animal, the species of the animals, points of origin and destination, the consignor and consignee, a statement that the animals are positive to an official Johne's disease test, and any additional information required by this part.

Premises identification number. A unique number assigned by the State animal health official to a livestock production unit that is, in the judgment of the State animal health official or area veterinarian in charge, epidemiologically distinct from other livestock production units. A premises

[1] A list of currently approved laboratories and the requirements for obtaining approval are available from the Diagnostic Bacteriology Laboratory, National Veterinary Services Laboratories, P.O. Box 844, Ames, Iowa 50010. the Administrator will approve laboratories to conduct an official Johne's disease test only after determining that the laboratory meets the check test proficiency requirements prescribed by the National Veterinary Services Laboratories. Approval will continue as long as such check test proficiency requirements are met on an annual basis.

identification number shall consist of the State's two-letter postal abbreviation followed by the premises' assigned number. A premises identification number may be used in conjunction with a producer's own livestock production numbering system to provide a unique identification number for an animal.

Recognized slaughtering establishment. A slaughtering establishment [2] operating under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or a State inspected slaughtering establishment.

State. Any of the 50 States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the District of Columbia, and any territories and possessions of the United States.

State animal health official. The State official responsible for livestock and poultry disease control and eradication programs.

State representative. An individual employed in animal health work by a State or political subdivision of a State, and who is authorized by the State or political subdivision to perform tasks required by this part.

§ 80.2 General restrictions.

Domestic animals that are positive to an official Johne's disease test may not be moved interstate except in compliance with this part.

§ 80.3 Movement of domestic animals that are positive to an official Johne's disease test.

(a) *Movement of domestic animals for slaughter.* Domestic animals that are positive to an official Johne's disease test may be moved interstate for slaughter if:

(1) The animals are moved directly to a recognized slaughtering establishment or to an approved livestock facility for sale to a recognized slaughtering establishment;

(2) An owner-shipper statement that identifies the animals as positive to an official Johne's disease test accompanies the animals during the movement and is delivered to the consignee;

(3) Each animal bears an official eartag; and

(4) The animals are moved to the destination in one continuous movement without unloading.

(b) *Other movements.* The Administrator may, upon request in specific cases, allow domestic animals that are positive to an official Johne's disease test to be moved interstate other than as provided in paragraph (a) of this section, under such conditions as the Administrator may prescribe in each case to prevent the spread of Johne's disease. The Administrator will promptly notify the State animal health officials of the States involved of any such action.

(c) *Cleaning and disinfecting.* Each means of conveyance used to transport the animals must be cleaned and disinfected in accordance with § 71.6 of this chapter. The facilities in which the animals were maintained must be cleaned and disinfected in accordance with § 71.7 of this chapter.

§ 80.4 Segregation of animals positive to an official Johne's disease test during interstate movement.

Animals that are positive to an official Johne's disease test may not be moved interstate in a railroad car, boat, truck, or other vehicle containing healthy animals susceptible to Johne's disease unless all of the animals are for immediate slaughter, or unless the positive animals are kept separate from the other animals by a partition that is securely affixed to the sides of the vehicle and prevents the transfer of fecal matter from the animals positive to an official Johne's disease test to the healthy animals in the vehicle.

Done in Washington, DC, this 5th day of April 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–8780 Filed 4–7–00; 8:45 am]

BILLING CODE 3410–34–U

[2] A list of recognized slaughtering establishments in any State may be obtained from an APHIS representative, the State animal health official, or a State representative.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–84–AD; Amendment 39–11663; AD 2000–07–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, and 800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–600, –700, and 800 series airplanes. This action requires a one-time inspection to detect loose nuts installed on the bolts at each end of the input rods connected to each elevator power control unit (PCU), and corrective action, if necessary. This amendment is prompted by reports of loose nuts on the bolts that connect the lower input crank arm and the vernier adjustment input rod of the elevator PCU. The actions specified in this AD are intended to detect and correct loose nuts on the bolts of the input crank arms of the elevator PCU, which could result in the loss of pivot bolts on the PCU and consequent loss of control of the airplane during takeoff and landing.

DATES: Effective April 25, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 25, 2000.

Comments for inclusion in the Rules Docket must be received on or before June 9, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–84–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2673; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA received several reports indicating that operators found loose nuts on the bolts that connect the lower input crank arm and the vernier adjustment input rod of the elevator power control unit (PCU). Apparently, maintenance had not been accomplished on the PCU's since delivery of the airplanes from the manufacturer. One of the loose PCU input rod nuts was found on a production airplane during a line check. The loose nuts reported had been finger tightened, but had not been properly torqued on the bolts.

Loose nuts on the bolts of the input rod of the elevator PCU could result in the loss of pivot bolts on the crank arms of the elevator PCU's, and consequent

loss of control of the airplane during takeoff and landing.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Telegraphic Service Letter 737–SL–27–150, dated February 14, 2000, which describes procedures for a one-time visual inspection to determine if the nuts installed on the bolts at each end of the input rods connected to each elevator power control unit (PCU) are installed correctly, and tightening of any loose nut that is found.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 737–600, –700, and –800 series airplanes of the same type design, this AD is being issued to prevent loss of control of the airplane during takeoff and landing due to loose nuts on the bolts of the input crank arms of the elevator PCU, and consequent loss of pivot bolts on the PCU. This AD requires a one-time general visual inspection to determine if the nuts installed on the bolts at each end of the input rods connected to each elevator PCU are installed correctly, and corrective action, if necessary. The actions are required to be accomplished in accordance with the telegraphic service letter described previously.

This AD also requires that operators report findings of loose nuts to the FAA.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–84–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–07–09 Boeing: Amendment 39–11663. Docket 2000–NM–84–AD.

Applicability: Model 737–600, –700, and –800 series airplanes, line numbers 1 through 477 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of control of the airplane during takeoff and landing due to loose nuts on the bolts of the input crank arms of the elevator power control unit (PCU), and consequent loss of pivot bolts, accomplish the following:

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(a) Within 30 days after the effective date of this AD, perform a one-time general visual inspection to determine if the nuts installed on the bolts at each end of the input rods connected to each elevator PCU are installed correctly, in accordance with Boeing Telegraphic Service Letter 737–SL–27–150, dated February 14, 2000.

(1) If all bolts are protruding through the nuts, no further action is required by this AD.

(2) If any bolt does not protrude through the nut, prior to further flight, tighten the nut in accordance with the telegraphic service letter.

(b) Within 10 days after accomplishing the inspection required by this AD; or within 10 days after the effective date of this AD if the inspection was accomplished prior to the

effective date of this AD: Submit a report of any findings of loose nuts to the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181. The report must include the operator's name, the date the inspection was accomplished, the airplane line number, and the number of loose nuts found on that airplane. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Telegraphic Service Letter 737–SL–27–150, dated February 14, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 25, 2000.

Issued in Renton, Washington, on March 30, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8392 Filed 4–7–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–87–AD; Amendment 39–11664; AD 2000–07–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200B, –300, –400, –400D, and –400F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–200B, –300, –400, –400D, and –400F series airplanes. This action requires repetitive inspections to detect cracking of fire extinguisher discharge tubes in certain engine struts, and corrective action, if necessary. For certain airplanes, this action also provides for a modification of the fire extinguisher discharge tubes, which constitutes terminating action for the repetitive inspections. This amendment is prompted by reports that cracked fire extinguisher discharge tubes have been found in the engine struts on certain airplanes. The actions specified in this AD are intended to detect and correct cracked fire extinguishing tubes in the engine struts. In the event of an engine fire, such cracked tubes could reduce the amount of fire extinguishing agent that can be delivered to the engine, and could result in a fire spreading from the engine to the wing of the airplane.

DATES: Effective April 25, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 25, 2000.

Comments for inclusion in the Rules Docket must be received on or before June 9, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–87–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2686; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has recently received reports indicating that several operators have found cracked fire extinguisher discharge tubes in the number 2 and number 3 struts on several Boeing Model 747–400 series airplanes that are equipped with General Electric (GE) CF6–80C2 series engines. Further investigation revealed similarly cracked fire extinguisher discharge tubes on Boeing Model 747–400 series airplanes equipped with Pratt & Whitney PW4000 series engines, which incorporate a similar tube installation. The cause of the cracking has been attributed to installation preload and flexing of the tube due to motion between the wing and the strut.

The subject fire extinguisher discharge tubes extend from the fire extinguisher bottles to the number 2 and number 3 engine struts, and are intended to deliver fire extinguishing agent to the engine in the event of an engine fire. Similar designs exist in Boeing Model 747–200B and –300 series airplanes equipped with GE CF6–80C2 series engines. A cracked tube could reduce the amount of fire extinguishing agent that can be delivered to the engine. In the worst case (a broken tube), no fire-extinguishing agent would be delivered to the engine. This condition, if not corrected, could result in a fire spreading from the engine to the wing of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–26A2266, dated March 3, 2000. That alert service bulletin describes procedures for repetitive detailed visual inspections to detect cracking of fire extinguisher discharge tubes in the number 2 and number 3 engine struts. The alert service bulletin also describes procedures for replacement of any cracked tube with a new or serviceable tube.

The FAA also has reviewed and approved Boeing Service Bulletin 747–26–2233, dated May 11, 1995. That service bulletin applies to Model 747–400 series airplanes equipped with Pratt & Whitney PW4000 series engines and describes procedures for a modification

of the fire extinguisher discharge tubes in the number 2 and number 3 engine struts, and a post-modification test of the fire extinguishing system to ensure that it functions properly. The modification is intended to prevent cracked fire extinguishing tubes by rerouting the fire extinguisher discharge tubes along the front spar and changing the orientation of two wire bundle clamps in the number 2 engine strut. Accomplishment of the modification eliminates the need for the repetitive inspections described previously on the subject airplanes.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 747–200B, –300, –400, –400D, and –400F series airplanes of the same type design, this AD is being issued to detect and correct cracked fire extinguishing tubes in the engine struts. In the event of an engine fire, such cracked tubes could reduce the amount of fire extinguishing agent that can be delivered to the engine, and could result in a fire spreading from the engine to the wing of the airplane. This AD requires repetitive detailed visual inspections to detect cracking of fire extinguisher discharge tubes in certain engine struts, and replacement of any cracked tube with a new or serviceable tube. These actions are required to be accomplished in accordance with Boeing Alert Service Bulletin 747–26A2266. For Boeing Model 747–400 series airplanes equipped with Pratt & Whitney PW4000 series engines, this AD also provides for a modification of the fire extinguisher discharge tubes, which constitutes terminating action for the repetitive inspections. If accomplished, that modification is required to be accomplished in accordance with Boeing Service Bulletin 747–26–2233.

Explanation of Applicability

Though Boeing Alert Service Bulletin 747–26A2266 specifies that it applies to airplanes having line numbers 679 through 1062 inclusive, this AD applies to airplanes having line numbers 679 through 1061 inclusive. The alert service bulletin states that the intent of Boeing Service Bulletin 747–26–2233 was accomplished (by service bulletin validation) prior to delivery on the airplane having line number 1062. As stated previously, accomplishment of Boeing Service Bulletin 747–26–2233 constitutes terminating action for the requirements of this AD for Boeing Model 747–400 series airplanes equipped with Pratt & Whitney PW4000 series engines. Therefore, the airplane with line number 1062 is not included in the applicability statement of this AD.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–87–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–07–10 Boeing: Amendment 39–11664. Docket 2000–NM–87–AD.

Applicability: Model 747–200B, –300 series airplanes equipped with General Electric (GE) CF6–80C2 series engines, and Model 747–400, 747–400D, and 747–400F series airplanes equipped with General Electric (GE) CF6–80C2 series engines or Pratt & Whitney PW4000 series engines; line numbers (L/N) 679 through 1061 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of

the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracked fire extinguishing tubes in the engine struts, which, in the event of an engine fire, could reduce the amount of fire extinguishing agent that can be delivered to the engine, and result in a fire spreading from the engine to the wing of the airplane, accomplish the following:

Repetitive Inspections and Corrective Actions

(a) Within 30 days after the effective date of this AD, perform a detailed visual inspection to detect cracking of the fire extinguisher discharge tubes in the number 2 and number 3 engine struts, in accordance with Boeing Alert Service Bulletin 747–26A2266, dated March 3, 2000.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 18 months.

(2) If any cracking is detected, prior to further flight, replace the cracked tube with a new or serviceable part, in accordance with Boeing Alert Service Bulletin 747–26A2266, dated March 3, 2000. Repeat the inspection required by paragraph (a) of this AD within 18 months after the replacement and thereafter at intervals not to exceed 18 months.

Optional Terminating Action

(b) For Model 747–400 series airplanes, L/N 696 through 1061 inclusive, equipped with Pratt & Whitney PW4000 series engines: Modification of the fire extinguisher discharge tubes in the number 2 and number 3 struts, in accordance with Boeing Service Bulletin 747–26–2233, dated May 11, 1995, constitutes terminating action for the repetitive inspection requirements of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The inspections and replacement shall be done in accordance with Boeing Alert Service Bulletin 747–26A2266, dated March 3, 2000. If accomplished, the optional terminating action shall be accomplished in accordance with Boeing Service Bulletin 747–26–2233, dated May 11, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on April 25, 2000.

Issued in Renton, Washington, on March 30, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8393 Filed 4–7–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–72–AD; Amendment 39–11659; AD 2000–07–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires repetitive inspections to detect cracking or damage of the forward and aft lugs of the diagonal brace of the nacelle strut, and follow-on actions, if necessary. That AD also provides optional terminating action for the repetitive inspections. This amendment requires accomplishment of the previously optional terminating action. This amendment is prompted by a report that a fractured diagonal brace lug was found during a routine maintenance inspection. The actions specified by this AD are intended to prevent cracking of the diagonal brace of the nacelle strut, which could result in failure of the diagonal brace, and consequent fatigue failure of a strut secondary load path and separation of the engine and strut.

DATES: Effective May 15, 2000.

The incorporation by reference of Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998, was approved previously by the Director of the Federal Register as of April 12, 1999 (64 FR 14578, March 26, 1999).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James G. Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2783; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–07–06, amendment 39–11091 (64 FR 14578, March 26, 1999), which is applicable to certain Boeing Model 767 series airplanes, was published in the **Federal Register** on June 23, 1999 (64 FR 33437). The action proposed to supersede AD 99–07–06 to continue to require repetitive inspections to detect cracking or damage of the forward and aft lugs of the diagonal brace of the nacelle strut, and follow-on actions, if necessary. That action also proposed to require accomplishment of the previously optional terminating action.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Two commenters support the proposed rule.

Requests To Revise Compliance Time

One commenter requests that the compliance time for the repetitive inspection intervals specified in paragraph (b)(1) of the proposed AD be extended. The commenter suggests that the inspection intervals should coincide with its current heavy maintenance program, which specifies that inspections be performed between 1,200 and 1,300 flight cycles. The commenter further states that to carry out the inspection at intervals not to exceed 1,000 flight cycles would be considered punitive action as it is prior to the normally scheduled maintenance.

The FAA does not concur with the commenter's request to extend the compliance time for accomplishment of the repetitive inspection intervals to between 1,200 and 1,300 flight cycles after the initial inspection. In developing an appropriate compliance time for the repetitive inspections, the FAA considered not only the degree of urgency associated with addressing cracking or damage of the forward and aft lugs of the diagonal brace of the nacelle strut, but other factors as well. Those factors include the recommendations of the manufacturer, and the practical aspect of accomplishing the repetitive inspections within an interval of time coinciding with normally scheduled maintenance for the majority of affected operators. Considering those factors, the FAA has determined that the compliance time of 1,000 flight cycles after the accomplishment of the initial inspection represents the maximum interval in which the affected airlines can continue to operate without compromising safety. In view of those factors, and the amount of time that has already elapsed since issuance of the notice of proposed rulemaking, the FAA has determined that further delay of these inspections is, in general, not appropriate. The FAA may, however, approve a request for an adjustment of the compliance time under the provisions of paragraph (f) of this final rule if data are submitted to substantiate that such an adjustment would provide an equivalent level of safety. No change to the final rule is necessary in this regard.

Another commenter requests that the compliance times for the replacement of the diagonal brace specified in paragraphs (d) and (e) of the proposed rule be changed to reflect the flight cycle threshold formula specified in the structural inspection program service bulletin, 767–54–0081, Figure 1, which is to be released soon. The commenter also notes that the threshold formula could be placed in an appendix to the proposal.

The FAA does not concur with the commenter's request. Boeing Service Bulletin 767–54–0081 states that the threshold formula may be used in lieu of the calendar threshold specified in the identified service bulletins. The formula in service bulletin 767–54–0081 was FAA-approved based on the fact that certain airplanes (*e.g.*, those that have extended flights) would reach the 20-year calendar threshold long before they accumulated the flight cycle threshold of 37,500 total flight cycles specified in that service bulletin. The FAA notes that there is no comparable threshold in calendar time contained in this final rule for which the proposed threshold formula can be used as a substitute. The FAA considered many factors (as stated previously) before developing an appropriate compliance time for this AD, and the FAA has determined that the compliance time for the replacement required by paragraphs (d) and (e) of the final rule represents the maximum interval in which the affected airlines can continue to operate without compromising safety. Therefore, no change to the final rule is necessary.

Another commenter requests the compliance time in paragraph (b)(2) of the proposal be revised to read, "* * * diagonal brace has accumulated 24,000 flight cycles * * *" to agree with the alert service bulletin. The FAA does not concur. The alert service bulletin specifies that the initial inspection for Group 2 airplanes be performed prior to the accumulation of 24,000 flight cycles, or within 90 days after receipt of the service bulletin; and the repetitive inspections be performed at intervals not to exceed 3,000 flight cycles until the diagonal brace has accumulated 32,000 flight cycles. Therefore, the final rule agrees with the alert service bulletin and no change is necessary in this regard.

Request To Revise Paragraphs (a), (b), and (c) of the Proposed Rule

Three commenters request that the word "damage" be deleted from or clarified in paragraphs (a), (b), and (c) of the proposal.

The first commenter states that, if any damage is detected, even if it is minor and repairable, replacement of the diagonal brace is required, as specified in paragraph (c) of the proposal. The commenter further states that the alert service bulletin referenced in the proposal specifies an inspection to detect cracking of the diagonal brace lugs only, and does not specify inspecting for damage; therefore, the word "damage" should be deleted.

The second commenter states that if the words "or damage" are not removed, paragraphs (a), (b), and (c) of the proposal should specifically clarify what should be searched for (cracks, fracture) during the inspection. The same commenter requests the addition of a requirement in paragraph (c) of the proposal to specify that damage to the lug bores (including wear, cracks, or surface corrosion) be repaired in accordance with Part 2 of the Accomplishment Instructions of the alert service bulletin.

The third commenter states that the word "damage" is undefined in the proposed rule, and notes that the alert service bulletin specifies that cracks originated in the lug bore of the diagonal brace caused by bushing motion and subsequent fretting of the lug bore, indicating that the damage that caused the cracks was fretting of the lug bore. The commenter also notes that the detailed visual inspection required by paragraph (a) of the proposal does not inspect the lug bore; therefore, the fretting or "damage" will not be found. The commenter indicates that, without any damage limit guidelines, even very minor damage (tool marks, scratched paint) will make it necessary for operators to perform costly additional inspections. The commenter notes that the inspection should be limited to the unsafe condition that is caused by fretting of the lug bore, which can be found by crack indications.

The FAA does not concur with the commenters' requests concerning removal of the word "damage" as referenced in paragraphs (a), (b), and (c) of the final rule. The FAA has reviewed this issue and has determined that the inspection to detect cracks or damage as required by paragraphs (a) and (b) of the final rule, is necessary. Certain types of damage, if detected, specifically fretting and bushing motion, must be corrected in accordance with the Manager, Seattle Aircraft Certification Office. These types of damage are two links in a sequential chain of events that can ultimately result in a fractured lug, or other possible failure modes. Other types of damage (tool marks, scratched paint) are not related to the unsafe condition specified in this AD, and would be defined as superficial. The FAA has, however, added a "NOTE 2" to the final rule to define the word "damage."

The FAA concurs with the second commenter's request to add another requirement to paragraph (c) of the final rule, which states that damage can be repaired in accordance with the applicable service bulletin. Paragraph

(c) of the final rule has been revised to give the operator the option of either repair or replacement of the diagonal brace if any cracking or damage is detected, following accomplishment of any inspection required by paragraph (a) or (b) of the AD.

Request for Clarification of Paragraph (c) of the Proposed Rule

One commenter requests that the wording in paragraph (c) of the proposal be revised to read, "* * * and if one or more ligaments of the lugs are fractured perform additional inspections to detect damage of the strut secondary load paths * * *" The commenter notes that cracking, rather than fractures, will not increase the load in the secondary load path.

Another commenter requests clarification of the requirements in paragraph (c) of the proposal. The commenter questions which two lugs out of the four lugs (two lugs on the forward end and two lugs on the aft end) of the diagonal brace must be fractured before the extensive follow-on inspections of the secondary load path structure (Figure 8 of the service bulletin) are necessary. The commenter's interpretation is that the inspections specified in Figure 8 of the service bulletin are necessary only if both lugs on one of the ends of the diagonal brace are fractured, and if only one lug on each end of the diagonal brace is fractured, the inspections specified in Figure 7 of the service bulletin would be necessary.

The FAA agrees that clarification is necessary in order to better define the requirements in paragraph (c) of the AD. Paragraph (c) of the final rule has been revised to provide a detailed explanation of the inspection area and procedures.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 208 airplanes of the affected design in the worldwide fleet. The FAA estimates that 105 airplanes of U.S. registry will be affected by this AD.

The inspections that are currently required by AD 99–07–06, and retained in this AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $6,300, or $60 per airplane, per inspection cycle.

The replacement that is required in this AD action takes approximately 8 work hours (4 work hours for each strut) per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $50,000 per airplane. Based on these figures, the cost impact of the required replacement required by this AD on U.S. operators is estimated to be $5,300,400, or $50,480 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11091 (64 FR 14578, March 26, 1999), and by adding a new airworthiness directive (AD), amendment 39–11659, to read as follows:

2000–07–05 Boeing: Amendment 39–11659. Docket 99–NM–72–AD. Supersedes AD 99–07–06, amendment 39–11091.

Applicability: Model 767 series airplanes; as listed in Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the diagonal brace of the nacelle strut, which could result in failure of the diagonal brace, and consequent fatigue failure of a strut secondary load path and separation of the engine and strut, accomplish the following:

Initial Inspection

(a) Perform a detailed visual inspection to detect cracking or damage of the forward and aft lugs of the diagonal brace of the nacelle strut, on the left and right sides of the airplane, in accordance with Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998. Perform the inspection at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

Note 2: The word "damage" as referenced in this AD, is defined as fretting and/or bushing motion.

(1) For airplanes in Groups 1, 3, and 4: Inspect prior to the accumulation of 12,000 total flight cycles, or within 90 days after April 12, 1999 (the effective date of AD 99–07–06, amendment 39–11091), whichever occurs later.

(2) For airplanes in Group 2: Inspect prior to the accumulation of 24,000 total flight cycles, or within 90 days after April 12, 1999, whichever occurs later.

Follow-On Actions

(b) If no cracking or damage is detected during the inspection required by paragraph

(a) of this AD, repeat the inspection thereafter at the interval specified in paragraph (b)(1) or (b)(2) of this AD, as applicable, in accordance with Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998. Repeat the inspection until the actions specified by paragraph (d) or (e) of this AD have been accomplished.

(1) For airplanes in Groups 1, 3, and 4; and for airplanes in Group 2 on which the diagonal brace has accumulated more than 32,000 total flight cycles: Repeat the inspection at intervals not to exceed 1,000 flight cycles.

(2) For airplanes in Group 2 on which the diagonal brace has accumulated 32,000 or fewer total flight cycles: Repeat the inspection at intervals not to exceed 3,000 flight cycles.

(c) If any cracking or damage is detected during any inspection required by paragraph (a) or (b) of this AD: Prior to further flight, remove the diagonal brace and perform additional inspections to detect damage of the strut secondary load paths, in accordance with Part 4 of Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998; and accomplish the requirements of paragraph (c)(1) or (c)(2) of this AD; as applicable.

(1) If any cracking is detected: Prior to further flight, accomplish the requirements of paragraph (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this AD, as applicable.

(i) If one lug on one or both ends of the diagonal brace is fractured (Figure 7 of the alert service bulletin), or if two lugs on either end of the diagonal brace are fractured (Figure 8 of the alert service bulletin), prior to further flight: Rework the forward and aft lugs of the diagonal brace in accordance with the rework limits specified in Part 2 of the Accomplishment Instructions of the alert service bulletin.

(ii) Replace the one-piece diagonal brace with a new three-piece diagonal brace, in accordance with Part 3 of the Accomplishment Instructions of the alert service bulletin. Such replacement constitutes terminating action for the requirements of this AD.

(iii) If any additional damage of the alternate load paths is detected, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings.

(2) If any damage is detected: Prior to further flight, repair in accordance with a method approved by the Manager, Seattle ACO; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings.

(d) For airplanes on which no cracking is detected during the inspection required by paragraph (a) of this AD, in lieu of accomplishing repetitive inspections in accordance with paragraph (b) of this AD, rework of the forward and aft lugs of the diagonal brace may be accomplished in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998. If such rework is accomplished: Within 12,000 flight cycles after the rework, repeat the inspection required by paragraph (a) of this AD; and, prior to the accumulation of 37,500 total flight cycles on the diagonal brace, replace the one-piece diagonal brace with a new three-piece diagonal brace, in accordance with Part 3 of the Accomplishment Instructions of the alert service bulletin. Such replacement constitutes terminating action for the requirements of this AD.

Terminating Action

(e) Prior to the accumulation of 37,500 total flight cycles, or within 180 days after the effective date of this AD, whichever occurs later: Replace the one-piece diagonal brace with a new three-piece diagonal brace, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998. Such replacement constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as provided by paragraphs (c)(1)(i) and (c)(3) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 767–54A0094, dated May 22, 1998. The incorporation by reference of this service bulletin was approved previously by the Director of the Federal Register as of April 12, 1999 (64 FR 14578, March 26, 1999). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on May 15, 2000.

Issued in Renton, Washington, on March 31, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8518 Filed 4–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 27065, 25148 and 26620; Amendment No. 121–273]

Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action corrects FAA office addresses listed in the Code of Federal Regulations regarding Drug Testing Programs and Alcohol Misuse Prevention Programs. The action is necessary so that required notifications and reports are received by the FAA in a timely and efficient manner. The intended effect of this action is to ensure that the regulated public has correct information regarding FAA office addresses.

EFFECTIVE DATE: April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Ralph Timmons, Acting Manager, Program Analysis Branch, AAM–810, Drug Abatement Division, Office of Aviation Medicine, Federal Aviation Administration, Washington, DC 20591, telephone (202) 267–8442.

SUPPLEMENTARY INFORMATION:

Background

On February 15, 1994, the FAA published a final rule, Alcohol Misuse Prevention Program (59 FR 7380). On August 19, 1994, the FAA published a final rule, Antidrug Program for Personnel Engaged in Specified Aviation Activities (59 FR 42922). These final rules specified the requirements for drug and alcohol testing of air carrier employees. Since the publication of the final rules, the FAA has identified several FAA office addresses specified in the final rules that have changed. This technical amendment updates office addresses specified in 14 CFR Part 121, Appendices I and J. The changes will facilitate notification, reporting, and submission requirements.

Because this action is merely a technical amendment reflecting the change to office addresses, the FAA finds that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. For the same reason, the FAA finds that good cause exists under 5 U.S.C. 5553(d) for making this amendment effective upon publication.

Availability of Final Rule

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: (703) 321–3339), or the Government Printing Office's (GPO) electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.thm or the Government Printing Office's webpage at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number or docket number of this rule.

Small Entity Inquiries

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analysis Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following Internet address: 9–AWA–SBREFA@faa.gov.

Agency Findings

This is a routine matter that will affect only changes to office addresses for notification, reporting, and submission purposes. The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this action does not warrant preparation of a regulatory evaluation since the anticipated impact is minimal. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Paperwork Reduction Act

Information collection requirements in the amendment to Part 121, Appendix I, Sections VI, VII, and IX and Appendix J, Sections V and VII have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. section 3507(d)), and have been assigned OMB Control Numbers 2120–0535 and 2120–0571, respectively.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 121, as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

2. In Appendix I to part 121:

A. In section VI.E., paragraph 1 is revised.

B. In section VII.B., paragraph 4 is revised.

C. In section IX.A., paragraph 1 is revised.

The revisions read as follows:

Appendix I to Part 121—Drug Testing Program

* * * * *

VI. * * *

E. * * * 1. Each employer shall notify the FAA within 5 working days of any employee who holds a certificate issued under part 61, part 63, or part 65 of this chapter who has refused to submit to a drug test required under this appendix. Notification should be sent to: Federal Aviation Administration, Office of Aviation Medicine, Drug Abatement Division (AAM–800), 800 Independence Avenue, SW., Washington, DC 20591.

* * * * *

VII. * * *

B. * * *

4. All reports required under this section shall be forwarded to the Federal Air Surgeon, Office of Aviation Medicine, Federal Aviation Administration, Attn: Drug Abatement Division (AAM–800), 800 Independence Avenue, SW., Washington, DC 20591.

* * * * *

IX. * * * A. * * * 1. Each employer shall submit an antidrug program plan to the Federal Aviation Administration, Office of Aviation Medicine, Drug Abatement Division (AAM–800), 800 Independence Avenue, SW., Washington, DC 20591.

* * * * *

3. In appendix J to part 121:

A. In section V.C., paragraph 3 is revised.

B. In section V.D., paragraph 1 is revised.

C. In section VII.A., paragraph 1 introductory text is revised.

The revision read as follows:

Appendix J to Part 121—Alcohol Misuse Prevention Program

* * * * *

V. * * *

C. * * *

3. All documents shall be sent to the Federal Air Surgeon, Office of Aviation Medicine, Federal Aviation Administration, Attn: Drug Abatement Division (AAM–800), 800 Independence Avenue, SW., Washington, DC 20591.

* * * * *

D. * * *

1. Except as provided in subparagraph 2 of this paragraph D, each employer shall notify the FAA within 5 working days of any covered employee who holds a certificate issued under 14 CFR part 61, part 63, or part 65 who has refused to submit to an alcohol test required under this appendix. Notifications should be sent to: Federal Aviation Administration, Office of Aviation Medicine, Drug Abatement Division (AAM–800), 800 Independence Avenue, SW., Washington, DC 20591.

* * * * *

VII. * * *

A. * * *

1. Each employer shall submit an alcohol misuse prevention program (AMPP) certification statement as prescribed in paragraph B of section VII of this appendix.

in duplicate, to the Federal Aviation Administration, Office of Aviation Medicine, Drug Abatement Division (AAM–800), 800 Independence Avenue, SW., Washington, DC 20591, in accordance with the schedule below.

* * * * *

Issued in Washington, DC, on March 31, 2000.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 00–8362 Filed 4–7–00; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–42603A; File No. S7–12–98]

RIN 3235–AH41

Regulation of Alternative Trading Systems; Temporary Stay of Effectiveness

AGENCY: Securities and Exchange Commission.

ACTION: Temporary stay of effectiveness.

SUMMARY: The Securities and Exchange Commission stays the effectiveness of Rules 301(b)(5)(i)(D) and (E) and 301(b)(6)(i)(D) and (E) until December 1, 2000. This would provide sufficient time for a reporting system to be developed that would compile and publish data for investment grade and non-investment grade corporate market segments. These provisions relate to alternative trading systems that trade certain categories of debt securities. The other alternative trading system rules, which were published in 63 FR 70844 on December 22, 1998, remain effective as previously stated.

DATES: 17 CFR 242.301(b)(5)(i)(D) and (E) and 242.301(b)(6)(i)(D) and (E) are stayed until December 1, 2000.

FOR FURTHER INFORMATION CONTACT: Constance Kiggins, Senior Special Counsel, at (202) 942–0059, and Kevin Ehrlich, Attorney, at (202) 942–0778, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Background

On December 8, 1998, the Securities and Exchange Commission ("Commission") adopted new rules and rule amendments to allow alternative trading systems to choose whether to register as national securities exchanges, or to register as broker-dealers and comply with additional requirements under Regulation ATS, depending on their activities and trading volume.[1] The effective date for most of these new rules and rule amendments was April 21, 1999. The Commission stated in the adopting release that Rules 301(b)(5)(i)(D) and (E) and 301(b)(6)(i)(D) and (E) would become effective on April 1, 2000. These rules relate to certain requirements for alternative trading systems that trade investment grade and non-investment grade corporate debt securities. For alternative trading systems trading 20 percent or more of the average daily trading volume over at least four of the preceding six months in either investment grade or non-investment grade corporate debt securities, the fair access and systems capacity, security, and integrity requirements were to take effect on April 1, 2000.

II. Temporary Stay of Effectiveness of Rules 301(b)(5)(i)(D) and (E) and 301(b)(6)(i)(D) and (E)

In the Adopting Release, we noted that volume data for investment grade and non-investment grade corporate debt was not being compiled or published. Accordingly, market participants and regulators had no mechanism to determine what the aggregate daily trading volume is for either investment grade corporate bonds or non-investment grade corporate bonds. The Commission had anticipated that a comprehensive reporting system for corporate debt would be in place by April 1, 2000 that would have allowed market participants to access aggregate data with which to determine their own compliance with the rules. While efforts are ongoing to complete such a system, no such comprehensive reporting system is currently in place. The Commission currently believes that staying the effectiveness of Rules 301(b)(5)(i)(D) and (E) and 301(b)(6)(i)(D) and (E) until December 1, 2000 would provide sufficient time for a system to be developed and implemented that would compile and publish data for both market segments.[2]

By the Commission.

Dated: March 31, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8873 Filed 4–7–00; 8:45 am]

BILLING CODE 8010–01–U

[1] Securities Exchange Act Release 40760 (Dec. 8, 1998), 63 FR 70844 (Dec. 22, 1998) ("Adopting Release").

[2] The Commission, however, believes that good business practice dictates that alternative trading systems adopt the standards of systems capacity, security, and integrity regardless of their trading volume.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 211 and 720

[Docket No. 00N–1217]

Code of Federal Regulations; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to reflect a correct footnote and a part heading. This action is being taken to improve the accuracy of the regulations.

EFFECTIVE DATE: April 10, 2000.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy, Planning, and Legislation (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

SUPPLEMENTARY INFORMATION: FDA has discovered that errors have been incorporated into the agency's codified regulations for 21 CFR parts 211 and 720. This document corrects those errors. Publication of this document constitutes final action under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because this amendment is nonsubstantive.

List of Subjects

21 CFR Part 211

Drugs, Labeling, Laboratories, Packaging and containers, Prescription drugs, Reporting and recordkeeping requirements, Warehouses.

21 CFR Part 720

Confidential business information, Cosmetics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 211 and 720 are amended as follows:

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

1. The authority citation for 21 CFR part 211 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 355, 360b, 371, 374.

§ 211.194 [Amended]

2. Section 211.194 *Laboratory records* is amended by removing in paragraph (a)(2) and its footnote the number "2" and by adding in their place the number "1".

PART 720—VOLUNTARY FILING OF COSMETIC PRODUCT INGREDIENT COMPOSITION STATEMENTS

3. The authority citation for 21 CFR part 720 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 361, 362, 371, 374.

4. The heading for part 720 is revised to read as set forth above.

Dated: March 31, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–8716 Filed 4–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[SPATS No. NM–037–FOR]

New Mexico Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the New Mexico regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). New Mexico proposed revisions about cross sections, maps, and plans required in a permit application; criteria for permit approval or denial; requirement to release performance bonds; timing of backfilling and grading; backfilling and grading requirements for the construction of small depressions; and design requirements for road embankments. New Mexico revised its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, Telephone: (505) 248–5096, Internet address: WGAINER@OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. You can find background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 31, 1980, **Federal Register** (45 FR 86459). You can also find later actions concerning New Mexico's program and program amendments at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Submission of the Proposed Amendment

By letter dated March 11, 1996, New Mexico sent to us an amendment (SPATS No. NM–037–FOR, administrative record No. NM–773) to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico submitted the proposed amendment to include changes made in response to the required amendment at 30 CFR 931.16(t) and at its own initiative.

We announced receipt of the amendment in the March 26, 1996 **Federal Register** (59 FR 13117), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. NM–802). Because no one requested a public hearing or meeting, none was held. The public comment period ended on April 25, 1996.

During our review of the amendment, we identified concerns and notified New Mexico of the concerns by letter dated May 15, 1996 (administrative record no. NM–785). New Mexico responded in a letter dated November 9, 1998, by submitting a revised amendment and additional explanatory information (administrative record no. NM–803).

We announced receipt of the proposed amendments in the December 3, 1998 **Federal Register** (63 FR 66774). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (administrative record No. NM–809). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on December 18, 1998.

During our review of the revised amendment, we identified concerns and notified New Mexico of the concerns by letter dated December 21, 1998 (administrative record no. NM–814). New Mexico responded in a letter dated December 1, 1999, by sending us a revised amendment (administrative record no. NM–816).

Based upon New Mexico's revisions to its amendment, we reopened the public comment period in the December 22, 1999 **Federal Register** (64 FR 71698); administrative record no. NM–818). The public comment period ended on January 21, 2000.

III. Director's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

1. Minor Revisions to New Mexico's Rules

New Mexico proposed minor wording, editorial, punctuation, grammatical, and recodification changes to the following previously-approved rules.

19 NMAC 8.2 813.L [30 CFR 779.25(b)] recodification concerning the requirement for maps, plans, and cross sections to be prepared by or under the direction of and certified by a qualified registered professional engineer;

19 NMAC 8.2 2054.A(2) [30 CFR 816.100] to refer to the term "open pit mining;" and

19 NMAC 8.2 2054.A(3) [30 CFR 816.100] to refer to the term "strip mining."

Because these changes are minor, we find that they will not make New Mexico's rules less effective than the corresponding Federal regulations.

2. Revisions to New Mexico's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

New Mexico proposed revisions to the following rules containing language that is the same as or similar to the corresponding sections of the Federal regulations.

19 NMAC 8.2 2055.C(1) [30 CFR 816.102(h)], concerning backfilling and grading requirements for the construction of small depressions, and

19 NMAC 8.2 1106.C [30 CFR 773.15(c)(5)], concerning permit approval or denial pertaining to the probable cumulative hydrological impacts.

Because these proposed rules contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations.

3. Revisions to New Mexico's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

A. 19 NMAC 8.2 2054.A(1), (2), (3), and (5), Timing of Backfilling and Grading

New Mexico proposed to revise 19 NMAC 8.2. 2054A(1), (2), and (3), concerning time requirements for backfilling and grading of contour mining, open pit mining, and strip mining, to add the allowance for the Director of the New Mexico program to approve additional distance, as well as additional time, for rough backfilling and grading if the permittee can demonstrate, on the basis of the materials submitted under 19 NMAC 8.2 906.B(3), that additional distance is necessary.

New Mexico also proposed to add at 19 NMAC 8.2 2054.A(5) the requirement that, at completion of mining, rough backfilling and grading shall occur in accordance with a time schedule approved by the Director of the New Mexico program based on materials submitted under 19 NMAC 8.2 906.B(3).

Existing 19 NMAC 8.2 906.B(3) requires that each permit application contain a reclamation plan including a plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross sections that show the anticipated final surface configuration of the proposed permit area.

On December 17, 1991, OSM promulgated new regulations, at 30 CFR 816.101, that provided national time and distance performance standards for rough backfilling and grading for surface mining operations. Those regulations were subsequently challenged in *National Coal Association and American Mining Congress* v. *U.S. Department of the Interior, et al.*, Civ. No. 92–0408–CRR (1992). This case was dismissed without prejudice by the U.S. District Court for the District of Columbia as the result of a joint stipulation of the parties that included OSM's agreement to suspend the regulation at 30 CFR 816.101.

The December 17, 1991, Federal regulations at 30 CFR 816.101 concerning time and distance performance standards for rough backfilling and grading were suspended by OSM on July 31, 1992. Therefore, in absence of a specific Federal regulation providing specific time and distance performance standards for rough backfilling and grading, the Federal standards against which State time and distance performance standards for rough backfilling and grading must be judged are section 515(b)(16) of SMCRA and 30 CFR 816.100.

Section 515(b)(16) of SMCRA requires that surface coal mining and reclamation operations be conducted so as to insure that all reclamation efforts proceed as contemporaneously as practicable with the surface coal mining operations. The Federal regulation at 816.100 similarly provides that backfilling and grading shall occur as contemporaneously as practicable with mining operations. In common usage, the term "practicable" means "possible to perform" or "feasible". Therefore, New Mexico's proposal to allow time and distance standards for backfilling and grading demonstrated as necessary by an applicant's reclamation plan, whether during active mining as proposed by New Mexico at 19 NMAC 8.2 2054.A (1), (2), and (3), or at the completion of mining, as proposed by New Mexico at 19 NMAC 8.2 2054.A(5), is equivalent in meaning to and consistent with section(b)(16) of SMCRA and the Federal regulation at 30 CFR 816.100. Accordingly, New Mexico's proposed rules at 19 NMAC 8.2 2054.A (1), (2), (3), and (5) are no less stringent than section 515(b)(16) of SMCRA and no less effective than the Federal regulations at 30 CFR 816.100 with respect to standards for rough backfilling and grading. The Director approves 19 NMAC 8.2 2054.A (1), (2), (3), and (5).

B. 19 NMAC 8.2 2076.B and 2077.A(5), Design of Primary Road Embankments

OSM required at 30 CFR 931.16(t) that New Mexico revise 19 NMAC 8.2 2076.B(9), concerning the requirement for all ancillary and primary roads to have (at a minimum) a static safety factor of 1.3 for all embankments, to reference 19 NMAC 8.2 2076.D instead of 19 NMAC 8.2 2076.C. (See finding No. 20(b), 58 FR 65907, 65923, December 17, 1993.)

New Mexico proposed to revise 19 NMAC 8.2 2076.B by deleting the general requirement at 19 NMAC 8.2 2076.B(9) that all roads have, at a minimum, a static factor of safety of 1.3 for all embankments, with the exception that the Director of the New Mexico program could determine a lesser static factor of safety on a site-specific basis with respect to an ancillary road. New Mexico also proposed to revise 19 NMAC 8.2 2077.A by adding the requirement at 19 NMAC 8.2 2077.A(5) that all primary roads have a static factor of safety of 1.3, at a minimum, for all embankments.

The Federal regulations at 30 CFR 816.150 and 817.150, concerning performance standards for all roads, do not specify a static safety factor for road embankments and the Federal regulations at 30 CFR 816.151(b) and 817.151(b), concerning performance standards for primary roads, require that each primary road embankment have a minimum static factor of 1.3.

Because New Mexico's proposed revisions cause its rules to be the same as the Federal regulations, the Director finds that New Mexico's proposed deletion at 19 NMAC 8.2 2076.B(9) and addition at 19 NMAC 8.2 2077.A(5) have resolved the required amendment and are no less effective than the Federal regulations at 30 CFR 816.150 and 151(b) and 817.150 and 151(b). The Director approves the proposed deletion of 19 NMAC 8.2 2076.B(9) and addition of 19 NMAC 8.2 2077.A(5) and is removing the required amendment at 30 CFR 931.16(t).

4. Revisions to New Mexico's Rules With No Corresponding Federal Regulations

A. 19 NMAC 8.2 813.K, Cross Sections, Maps, and Plans Required in a Permit Application

New Mexico proposed to revise 19 NMAC 8.2 813.K(1) through (3), concerning cross sections, maps, and plans required in a permit application, by (1) deleting specific slope measurement requirements paragraphs (1) through (3) so that proposed 19 NMAC 8.2 813.K requires that a map show the existing land surface configuration of the proposed permit area on contour maps of a maximum of 5 foot contour intervals.

The corresponding Federal regulation at 30 CFR 779.25(a) lists what is required to be shown by cross sections, maps, and plans required in a permit application. There is no counterpart to proposed 19 NMAC 8.2 813.K, pertaining to a map showing existing land surface configuration, in the corresponding Federal regulations at 30 CFR 779.25(a). However, the requirement at proposed 19 NMAC 8.2 813.K serves to aid the regulatory authority in a determination at phase I bond release concerning backfilling and grading to approximate original contours and is not inconsistent with the requirements of the Federal regulations at 30 CFR 779.25(a).

Therefore, the Director finds that proposed 19 NMAC 8.2 813.K is no less effective than the Federal regulations at 30 CFR 779.25(a). The Director approves proposed 19 NMAC 8.2 813.K.

B. 19 NMAC 8.2 1412, Requirement to Release Performance Bonds

New Mexico proposed to revise 19 NMAC 8.2 1412 by adding new 19 NMAC 8.2 1412.A(2) (i) through (vii), concerning minimum requirements for all bond release applications, and recodifying existing 19 NMAC 1412.A(2) as 19 NMAC 1412.A(3). New Mexico also proposed to revise 19 NMAC 1412.A(3) by deleting the requirement for bond release applications that the applicant submit copies of letters which he has sent to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the surface coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond. New Mexico deleted this requirement because it is proposed under the minimum requirements for a bond release application at 19 NMAC 1412.A(2)(v).

There are no specific counterparts setting forth minimum requirements for a bond release application in the corresponding Federal regulations at 30 CFR 800.40(a)(1). However, New Mexico's proposed minimum requirements at proposed 19 NMAC 1412.A(2)(i) through (vii) clarify what kinds of legal and technical information any bond release application must contain and are consistent with the Federal regulation at 30 CFR 800.40(a)(1). Recodified and revised 19 NMAC 1412.A(3), concerning the permittee's public notice of a bond release application, along with the requirement now codified at 19 NMAC 1412.A(2)(v) for copies of letters notifying specified individuals and governmental or private entities of the application for bond release, are substantively identical to the Federal regulation at 30 CFR 800.40(a)(2).

Therefore, the Director finds that proposed 19 NMAC 8.2 1412.A(2)(i) through (vii) and 1412.A(3) are no less effective than the Federal regulations at 30 CFR 800.40(a)(1) and (2). The Director approves proposed 19 NMAC 8.2 1412.A(2)(i) through (vii) and 1412.A(3).

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (administrative record Nos. 776, 806, and 817).

The National Mining Association requested, by letter dated December 8, 1998 (administrative record No. NM–810), that OSM send copies of (1) the May 15, 1996, letter sent to New Mexico by OSM setting forth concerns with the proposed amendment and (2) the supplemental information OSM sent to New Mexico by letter dated February 26,1998. OSM sent the requested information by letter dated December 22, 1998 (administrative record No. NM–813).

The Navajo Nation commented, by letter dated January 21, 2000 (administrative record No. 821), that it was unclear from the two December 22, 1999, **Federal Register** notices (64 FR 71698 and 64 FR 71700), which published OSM's receipt of three New Mexico amendments (including the amendment that is the subject of this document), that there would be an opportunity for public comment prior to OSM's decision on the amendments. The text of December 22, 1999, **Federal Register** notices identified the changes proposed by New Mexico, notified the public of its right to comment and/or request a public hearing or meeting, and provided for a thirty day public comment period on the proposed New Mexico amendments. The public comment period for the New Mexico amendments closed on January 21, 2000. OSM explained to the Navajo Nation, in a letter dated February 7, 2000 (administrative record No. NM–823), the OSM's published **Federal Register** notices, as well as OSM's distribution of the proposed amendment to interested parties (which included the Navajo Nation) by letters dated April 1, 1996, November 23, 1998, and December 15, 1999, were the vehicles by which OSM provided for a public comment period and solicited public comments.

The Navajo Nation had two additional comments concerning New Mexico's March 11, 1996, amendment that is the subject of this notice. First, the Navajo Nation commented that the word "demonstrate" was missing from the text of 19 NMAC 8.2 2054.A(3), concerning the timing of backfilling and grading for strip mining. The amendment language at this rule as submitted by New Mexico to OSM on December 1, 1999, did not include the word demonstrate. However, this typographical error was corrected when New Mexico promulgated this rule and the word "demonstrate" is included in the published text of New Mexico's rules. Second, the Navajo Nation commented that New Mexico's proposed addition of 19 NMAC 2045.A(5), concerning the timing of backfilling and grading for the final pit at completion of mining, was less effective than SMCRA and the Federal regulations because it lacked a time factor. New Mexico's proposed rule at 19 NMAC 2045.A(5) requires that a permittee complete backfilling and grading of a final pit at the completion of mining in accordance with a time schedule approved by New Mexico based on materials submitted by the permittee in accordance with 19 NMAC 906.B(3). Although New Mexico did not specify in the rule a time factor such as 60 days, it does require that a specific time schedule be approved by New Mexico when mining is complete. And, as discussed in finding 3.A above, New Mexico's proposal to allow time (and distance) standards for backfilling and grading demonstrated as necessary by a permittee's reclamation plan, whether during active mining as proposed by New Mexico at 19 NMAC 8.2 2054.A(1), (2), and (3), or at the completion of mining, as proposed by New Mexico at 19 NMAC 8.2 2054.A(5), is equivalent in meaning to and consistent with section 515(b)(16) of SMCRA and the Federal regulation at 30 CFR 816.100. The Director is taking no further action in response to these comments in the Navajo Nation's January 21, 2000, letter.

Federal Agency Comments

Under 30 CFR 732.17(H)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the New Mexico program (administrative record nos. 776, 806, and 817).

The U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS), submitted the following comments by letter dated April 12, 1996 (administrative record No. NM–781).

New Mexico's recodified rule at 19 NMAC 8.2 1412.A(2)(v) requires that bond release application contain copies of letters which that have been sent to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the surface coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond. As discussed in finding No. 4.B above, 19 NMAC 8.2 1412.A(2)(v) is identical to the Federal regulation at 30 CFR 800.40(a)(3). NRCS questioned whether these groups will

have sufficient opportunity to respond, whether they will have information on where to send their response, and will the responses be included as part of the bond release application. New Mexico's rules at 19 NMAC 8.2 1412.A(3) require that the applicant for bond release advertise its intention to seek bond release and that the advertisement include, among other things, the name and address of the Director of the New Mexico to which written comments, objections, or requests for public hearings and informal conferences may be submitted. New Mexico's rules at 19 NMAC 8.2 1412.F provide for a person's right to file written objections until 30 days after the last publication of the advertisement required by 19 NMAC 8.2 1412.A(3). These rules are identical to the counterpart Federal regulations. All comments pertaining to a bond release application received by New Mexico will become part of the public record.

NRCS commented that New Mexico's proposed rule at 19 NMAC 8.2 1510, concerning minimum requirements for coal mine operations exclusively under reclamation, should also contain information and analysis that will define expected land use, capability, and productivity after reclamation is complete. As announced by OSM in the December 3, 1998, **Federal Register** notice (which reopened the comment period on New Mexico's November 9, 1998, revisions proposed to its March 11, 1996, amendment), New Mexico withdrew all proposed rules at 19 NMAC 8.2 Part 15 (administrative record No. NM–809). These rules had no counterpart in the Federal program and were repealed by New Mexico so that they no longer exist in its program.

NRCS commented that the timing of backfilling and grading, as proposed by New Mexico at 19 NMAC 8.2 2054.A(1) and (3), should not rely only on distance, but should include a time factor as well. New Mexico subsequently revised its proposed rules at 19 NMAC 8.2 2054.A, as discussed in finding 3.A above, to require that the timing of backfilling and grading be determined by both time and distance standards.

Based on the discussion above, the Director is taking no further action in response to the NRCS comments.

The Bureau of Land Management (BLM) submitted the following comments by letter dated April 17, 1996 (administrative record No. NM–782).

BLM recommended that New Mexico revise 19 NMAC 8.2 813.K, concerning a map showing the existing land surface configuration of the proposed permit area on contour maps of a maximum of 5 foot contour intervals, to require the map to show roads, rail lines, occupied dwellings, pipelines, power lines, and planned exploratory and development features on a scale of 1:24,000 or larger. As discussed at finding No. 4.A above, proposed 19 NMAC 8.2 813.K is not inconsistent with the requirements of the Federal regulations at 30 CFR 779.25(a). New Mexico's existing rules at 19 NMAC 8.2 812.D and E require a map showing the location of (1) all buildings on and within 1,000 feet of the proposed permit area, with identification of the current use of the buildings, and (2) surface and subsurface man-made features within, passing through, or passing over the proposed permit area, including, but not limited to major electric transmission lines, pipelines, and agricultural drainage tile fields. The counterpart Federal regulations, concerning map requirements at 30 CFR 779.24 and 779.25, do not otherwise include requirements similar to the ones recommended by BLM. OSM can only require that New Mexico's program contain rules that are no less effective than the Federal regulations.

BLM recommended New Mexico revise proposed 19 NMAC 8.2 2054.A to require that the permittee demonstrate that additional distance for backfilling and grading is necessary or conducive to greater recovery of coal. As discussed in finding No. 3.A above, New Mexico revised 19 NMAC 8.2 2054.A to provide for additional time and distance for the timing of backfilling and grading based on information submitted in the reclamation plan required at 19 NMAC 906.B(3). This information could include justification for additional distance based on the need to maximize coal recovery. OSM is approving proposed 19 NMAC 8.2 2054.A in part because OSM recognized that there may exist unique conditions at individual surface coal mining operations that require unique standards for the timing of backfilling and grading (see finding No. 3A above). However, the counterpart Federal regulations at 30 CFR 816.100 contain no requirement to the one recommended by BLM. OSM can only require that New Mexico's program contain rules that are no less effective than the Federal regulations.

BLM recommended New Mexico revise 19 NMAC 8.2 2076.B, concerning general road design requirements, to require that roads be maintained and reclaimed so as to be in compliance with any and all safety standards established or approved by the Director. As discussed at finding 3.B above, New Mexico's proposed revision of 19 NMAC 8.2 2076 and 2077 to require a 3.1 safety factor for primary road embankments, rather than for all road embankments, is identical to the requirements in the Federal regulations. New Mexico's existing rule at 19 NMAC 8.2 2076.C requires that the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, culvert size, *and any necessary design criteria established by the Director* (emphasis added).

The counterpart Federal regulations, concerning general road design at 30 CFR 816.150, do not include a requirement similar to the one recommended by BLM. OSM can only require that New Mexico's program contain rules that are no less effective than the Federal regulations.

Based on the discussion above, the Director is taking no further action in response to BLM's comments.

The U.S. Department of Interior, Fish and Wildlife Service (FWS), submitted several comments, by letter dated April 30, 1996 (administrative record No. NM–784), pertaining to proposed 19 NMAC Part 15, concerning minimum requirements for coal mine operations exclusively under reclamation. As announced by OSM in the December 3, 1998, **Federal Register** notice (which reopened the comment period on New Mexico's November 9, 1998, revisions proposed to its March 11, 1996, amendment), New Mexico withdrew all proposed rules at 19 NMAC 8.2 Part 15 (administrative record No. NM–809). These rules had no counterpart in the Federal program and were repealed by New Mexico so that they no longer exist in its program. For this reason, the Director is taking no action in response to the FWS comments.

The U.S. Department of Agriculture, Forest Service, Southwestern Region, commented, by letter dated December 9, 1998 (administrative record No. NM–811), that it had no comments.

The U.S. Department of Army, Corps of Engineers, commented, by dated December 28, 1999 (administrative record No. NM–820), that it found the proposed changes to be satisfactory.

BLM also commented, by letter dated January 26, 2000 (administrative record No. NM–822) that New Mexico's proposed 19 NMAC 8.2 2054.A allows 60 days for rough backfilling and grading when contour mining, yet 180 days for strip mining. BLM commented that this difference indicates that 60 days is an insufficient time for such remediation and recommended either the 180 day, 1500 linear feet limit or limits determined by plans of operations. BLM further stated that it preferred tying time frames to plans

because specific seams may lend themselves to different backfilling and grading schedules.

As discussed in finding No. 3.A above, New Mexico proposed and OSM is approving, revisions to 19 NMAC 8.2 2054.A(1), (2), and (3), concerning time requirements for backfilling and grading of contour mining, open pit mining, and strip mining. New Mexico proposed to add the allowance for the Director of the New Mexico program to approve additional distance, as well as additional time, for rough backfilling and grading of contour mining, open pit mining, and strip mining, if the permittee can demonstrate, on the basis of the materials submitted that additional time or distance is necessary. Because New Mexico proposed (and OSM is approving) what BLM recommended in it's comment letter, the Director is taking no further action in response to this comment.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written agreement from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that New Mexico proposed to make in this amendment pertain to air or water quality standards. Under 30 CFR 732.17(h)(11)(i), OSM requested comments on the amendment from EPA (administrative records Nos. 776, 806, and 817). EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. We requested comments on New Mexico's amendment from the SHPO and ACHP (administrative record Nos. 776, 806, and 817); the ACHP did not respond to our request.

By letter dated April 19, 1996, the SHPO commented that it was unclear whether the protection from adverse effect of reclamation operations proposed at 19 NMAC 8.2 1517 (protection of public parks and historic places) included cultural resources identified at 19 NMAC 8.2 1510 (general environmental resources), and recommended that 19 NMAC 8.2 1517 be clarified to clearly include the cultural resources listed at 19 NMAC 8.2 1510.

As announced by OSM in the December 3, 1998, **Federal Register** notice (which reopened the comment period on New Mexico's November 9, 1998, revisions proposed to its March 11, 1996, amendment), New Mexico withdrew all proposed rules at 19 NMAC 8.2 Part 15 (administrative record No. NM–809). These rules concerned minimum requirements for coal mine operations exclusively under reclamation and had no counterpart in the Federal program; they were repealed by New Mexico and no longer exist in its program. Therefore, the Director is taking no action in response to this comment.

V. Director's Decision

Based on the above findings, we approved the March 11, 1996, amendment sent to us by New Mexico, as revised on November 9, 1998, and December 1, 1999.

We approved, as discussed in:

(1) Finding No. 1, 19 NMAC 8.2 813.L, 19 NMAC 8.2 2054.A(2), and 19 NMAC 8.2 2054.A(3), concerning minor wording, editorial, punctuation, grammatical, and/or recodification changes to previously-approved New Mexico rules;

(2) Finding No. 2, 19 NMAC 8.2 2055.C(1) and 19 NMAC 8.2 1106.C, revisions to New Mexico's rules that contain language that is the same as or similar to the corresponding sections of the Federal regulations concerning, respectively, backfilling and grading requirements for the construction of small depressions and permit approval or denial pertaining to the probable cumulative hydrological impacts;

(3) Finding No. 3.A, 19 NMAC 8.2 2054.A(1), (2), and (3), and 19 NMAC 8.2 2054.A(5), concerning time requirements for backfilling and grading of contour mining, open pit mining, and strip mining and the schedule for backfilling and grading at completion of mining;

(4) Finding No. 3.B, 19 NMAC 8.2 2076.B and 19 NMAC 8.2 2077.A, concerning the static factor of safety of 1.3 for road embankments;

(5) Finding No. 4.A, 19 NMAC 8.2 813.K(1) through (3), concerning cross sections, maps, and plans required in a permit application; and

(6) Finding No. 4.B, 19 NMAC 8.2 1412.A(2) (i) through (vii), concerning minimum requirements for all bond release applications.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 931, which codify decisions concerning the New Mexico program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage States to make their programs conform with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based

upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on any local, State, or Tribal governments or private entities.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 21, 2000.

Brent T. Wahlquist,

Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 931 is amended as set forth below:

PART 931—NEW MEXICO

1. The authority citation for part 931 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 931.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 931.15 Approval of New mexico regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
•	•	•
March 11, 1998	April 10, 2000	19 NMAC 8.2 813.K (1) through (3); 813.L; 1106.C; 1412.A(2) (i) through (vii); 2054.A (1), (2), (3), and (5); 2055.C(1); 2076.B; and 2077.A.

§ 931.16 [Amended]

3. Section 931.16 is amended by removing and reserving paragraph (t).

[FR Doc. 00–8666 Filed 4–7–00; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Defense Threat Reduction Agency

32 CFR Part 318

Defense Threat Reduction Agency Privacy Program

AGENCY: Defense Threat Reduction Agency, DoD

ACTION: Final rule, with comments.

SUMMARY: 32 CFR part 318 is being revised to incorporate administrative changes made to the Defense Threat Reduction Agency Privacy Act Program Instruction.

DATES: This rule is effective January 18, 2000. Comments must be received by June 9, 2000.

ADDRESSES: Chief, FOIA and Privacy Division, FOIA/Privacy Act Division, Defense Threat Reduction Agency (ADF), 6801 Telegraph Road, Alexandria, VA 22310–3398.

FOR FURTHER INFORMATION CONTACT: Ms. Sandy Ford at (703) 325–1205.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that 32 CFR part 318 is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more; or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that this part does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects 32 CFR part 318

Privacy.

Accordingly, Title 32 CFR part 318 is revised to read as follows:

PART 318—DEFENSE THREAT REDUCTION AGENCY PRIVACY PROGRAM

Sec.

318.1 Reissuance and purpose.
318.2 Application.
318.3 Definitions.
318.4 Policy.
318.5 Designations and responsibilities.
318.6 Procedures for requests pertaining to individual records in a record system.
318.7 Disclosure of requested information to individuals.
318.8 Request for correction or amendment to a record.
318.9 Agency review of request for correction or amendment of record.
318.10 Appeal of initial adverse Agency determination for access, correction or amendment
318.11 Disclosure of record to persons other than the individual to whom it pertains.
318.12 Fees.
318.13 Enforcement actions.
318.14 Blanket routine uses.
318.15 Rules of conduct.
318.16 Exemption rules.

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

§ 318.1 Reissuance and purpose.

(a) This part updates the policies, responsibilities, and procedures of the DTRA Privacy Program under the Privacy Act of 1974, as amended (5

U.S.C. 552a), OMB Circular A–130,[1] and the DoD Privacy Program (32 CFR part 310).

(b) This rule establishes procedures whereby individuals can:

(1) Request notification of whether Defense Threat Reduction Agency (DTRA) maintains or has disclosed a record pertaining to them in any nonexempt system of records;

(2) Request a copy or other access to such a record or to an accounting of its disclosure;

(3) Request that the record be amended; and

(4) Appeal any initial adverse determination of any such request.

(c) Specifies those system of records which the Director, Defense Threat Reduction Agency has determined to be exempt from the procedures established by this rule and by certain provisions of the Privacy Act.

(d) DTRA policy encompasses the safeguarding of individual privacy from any misuse of DTRA records and the provides the fullest access practicable by individuals to DTRA records concerning them.

§ 318.2 Applicability.

(a) This part applies to all members of the Armed Forces and Department of Defense civilians assigned to the DTRA at any of its duty locations.

(b) This part shall be made applicable to DoD contractors who are operating a system of records on behalf of DTRA, to include any of the activities, such as collecting and disseminating records, associated with maintaining a system of records.

§ 318.3 Definitions.

Access. The review of a record or a copy of a record or parts thereof in a system of records by any individual.

Agency. For the purposes of disclosing records subject to the Privacy Act among DoD Components, the Department of Defense is considered a single agency. For all other purposes to include applications for access and amendment, denial of access or amendment, appeals from denials, and record keeping as regards release to non-DoD agencies; each DoD Component is considered an agency within the meaning of the Privacy Act.

Confidential source. A person or organization who has furnished information to the federal government under an express promise that the person's or the organization's identity will be held in confidence or under an implied promise of such confidentiality if this implied promise was made before September 27, 1975.

Disclosure. The transfer of any personal information from a system of records by any means of communication (such as oral, written, electronic, mechanical, or actual review) to any person, private entity, or government agency, other than the subject of the record, the subject's designated agent or the subject's legal guardian.

Individual. A living person who is a citizen of the United States or an alien lawfully admitted for permanent residence. The parent of a minor or the legal guardian of any individual also may act on behalf of an individual. Corporations, partnerships, sole proprietorships, professional groups, businesses, whether incorporated or unincorporated, and other commercial entities are not "individuals."

Law enforcement activity. Any activity engaged in the enforcement of criminal laws, including efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities.

Maintain. Includes maintain, collect, use or disseminate.

Official use. Within the context of this part, this term is used when officials and employees of a DoD Component have a demonstrated need for the use of any record or the information contained therein in the performance of their official duties, subject to DoD 5200.1–R,[2] "DoD Information Security Program Regulation".

Personal information. Information about an individual that identifies, relates or is unique to, or describes him or her; e.g., a social security number, age, military rank, civilian grade, marital status, race, salary, home/office phone numbers, etc.

Privacy Act request. A request from an individual for notification as to the existence of, access to, or amendment of records pertaining to that individual. These records must be maintained in a system of records.

Member of the public. Any individual or party acting in a private capacity to include federal employees or military personnel.

Record. Any item, collection, or grouping of information, whatever the storage media (e.g., paper, electronic, etc.), about an individual that is maintained by a DoD Component, including but not limited to, his or her education, financial transactions, medical history, criminal or employment history and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

Risk assessment. An analysis considering information sensitivity, vulnerabilities, and the cost to a computer facility or word processing activity in safeguarding personal information processed or stored in the facility or activity.

Routine use. The disclosure of a record outside the Department of Defense for a use that is compatible with the purpose for which the information was collected and maintained by the Department of Defense. The routine use must be included in the published system notice for the system of records involved.

Statistical record. A record maintained only for statistical research or reporting purposes and not used in whole or in part in making determinations about specific individuals.

System manager. The DoD Component official who is responsible for the operation and management of a system of records.

System of records. A group of records under the control of a DoD Component from which personal information is retrieved by the individual's name or by some identifying number, symbol, or other identifying particular assigned to an individual.

Word processing system. A combination of equipment employing automated technology, systematic procedures, and trained personnel for the primary purpose of manipulating human thoughts and verbal or written or graphic presentations intended to communicate verbally or visually with another individual.

Word processing equipment. Any combination of electronic hardware and computer software integrated in a variety of forms (firmware, programmable software, handwiring, or similar equipment) that permits the processing of textual data. Generally, the equipment contains a device to receive information, a computer-like processor with various capabilities to manipulate the information, a storage medium, and an output device

§ 318.4 Policy.

(a) It is DTRA policy that:

(1) The personal privacy of an individual shall be respected and protected. Personal information shall be collected, maintained, used, or disclosed to insure that:

(2) It shall be relevant and necessary to accomplish a lawful DTRA purpose

[1] Copies may be obtained: http://www.whitehouse.gov/OMB/circulars.

[2] Copies may be obtained: http://web7.whs.osd.mil/corres.htm.

required to be accomplished by Federal statute or Executive order;

(3) It shall be collected to the greatest extent practicable directly from the individual;

(4) The individual shall be informed as to why the information is being collected, the authority for collection, what uses will be made of it, whether disclosure is mandatory or voluntary, and the consequences of not providing the information;

(5) It shall be relevant, timely, complete and accurate for its intended use; and

(6) Appropriate administrative, technical, and physical safeguards shall be established, based on the media (e.g., paper, electronic, etc.) involved, to ensure the security of the records and to prevent compromise or misuse during storage or transfer.

(b) No record shall be maintained on how an individual exercises rights guaranteed by the First Amendment to the Constitution, except as specifically authorized by statute; expressly authorized by the individual on whom the record is maintained; or when the record is pertinent to and within the scope of an authorized law enforcement activity.

(c) Notices shall be published in the Federal Register and reports shall be submitted to Congress and the Office of Management and Budget, in accordance with, and as required by 5 U.S.C. 552a, OMB Circular A–130, and 32 CFR part 310, as to the existence and character of any system of records being established or revised by the DoD Components. Information shall not be collected, maintained, or disseminated until the required publication/review requirements are satisfied.

(d) Individuals shall be permitted, to the extent authorized by this part:

(1) To determine what records pertaining to them are contained in a system of records;

(2) Gain access to such records and obtain a copy of those records or a part thereof;

(3) Correct or amend such records on a showing the records are not accurate, relevant, timely, or complete.

(4) Appeal a denial of access or a request for amendment.

(e) Disclosure of records pertaining to an individual from a system of records shall be prohibited except with the consent of the individual or as otherwise authorized by 5 U.S.C. 552a and 32 CFR part 286. When disclosures are made, the individual shall be permitted, to the extent authorized by 5 U.S.C. 552a and 32 CFR part 310, to seek an accounting of such disclosures from DTRA.

(f) Computer matching programs between DTRA and Federal, State, or local governmental agencies shall be conducted in accordance with the requirements of 5 U.S.C. 552a, OMB Circular A–130, and 32 CFR part 310.

(g) DTRA personnel and Systems Managers shall conduct themselves, pursuant to established rules of conduct, so that personal information to be stored in a system of records shall only be collected, maintained, used, and disseminated as authorized by this part.

§ 318.5 Designations and responsibilities

(a) The Director, DTRA shall:

(1) Provide adequate funding and personnel to establish and support an effective Privacy Program.

(2) Appoint a senior official to serve as the Agency Privacy Act Officer.

(3) Serve as the Agency Appellate Authority.

(b) The Privacy Act Officer shall:

(1) Implement the Agency's Privacy Program in accordance with the specific requirements set forth in this part, 5 U.S.C. 552a, OMB Circular A–130, and 32 CFR part 310.

(2) Establish procedures, as well as rules of conduct, necessary to implement this part so as to ensure compliance with the requirements of 5 U.S.C. 552a, OMB Circular A–130, and 32 CFR part 310.

(3) Ensure that the DTRA Privacy Program periodically shall be reviewed by the DTRA Inspectors General or other officials, who shall have specialized knowledge of the DoD Privacy Program.

(4) Serve as the Agency Initial Denial Authority.

(c) *The Privacy Act Program Manager shall:*

(1) Manage activities in support of the DTRA Program oversight in accordance with part, 5 U.S.C. 552a, OMB Circular A–130, and 32 CFR part 310.

(2) Provide operational support, guidance and assistance to Systems Managers for responding to requests for access/amendment of records.

(3) Direct the day-by-day activities of the DTRA Privacy Program.

(4) Provide guidance and assistance to DTRA elements in their implementation and execution of the DTRA Privacy Program.

(5) Prepare and submit proposed new, altered, and amended systems of records, to include submission of required notices for publication in the Federal Register consistent with this part, 5 U.S.C. 552a, OMB Circular A–130, and 32 CFR part 310.

(6) Prepare and submit proposed DTRA privacy rulemaking, to include documentation for submission of the proposed rule to the Office of the Federal Register for publication. Additionally, provide required documentation for reporting to the OMB and Congress, consistent with this part, 5 U.S.C. 552a, OMB Circular A–130, and 32 CFR part 310.

(7) Provide advice and support to DTRA elements to ensure that:

(i) All information requirements developed to collect and/or maintain personal data conform to DoD Privacy Act Program standards;

(ii) Appropriate procedures and safeguards shall be developed, implemented, and maintained to protect personal information when it is stored in either a manual and/or automated system of records or transferred by electronic or non-electronic means; and

(iii) Specific procedures and safeguards shall be developed and implemented when personal data is collected and maintained for research purposes.

(8) Conduct reviews, and prepare and submit reports consistent with the requirements in this part, 5 U.S.C. 552a, OMB Circular A–130, and 32 CFR part 310, or as otherwise directed by the Defense Privacy Office.

(9) Conduct training for all assigned and employed DTRA personnel and for those individuals having primary responsibility for DTRA Privacy Act Record Systems consistent with requirements of this part, 5 U.S.C. 552a, OMB Circular A–130, and 32 CFR part 310.

(10) Serve as the principal points of contact for coordination of privacy and related matters.

(d) *The Directorate Heads and Office Chiefs shall:*

(1) Recognize and support the DTRA Privacy Act Program.

(2) Appoint an individual to serve as Privacy Act Point of Contact within their purview.

(3) Initiate prompt, constructive management actions on agreed-upon actions identified in agency Privacy Act reports.

(e) *The Chief, Information Systems shall:*

(1) Ensure that all personnel who have access to information from an automated system of records during processing or who are engaged in developing procedures for processing such information are aware of the provisions of this Instruction.

(2) Promptly notify automated system managers and the Privacy Act Officer whenever they are changes to Agency Information Technology that may require the submission of an amended system notice for any system of records.

(3) Establish rules of conduct for Agency personnel involved in the

design, development, operation, or maintenance of any automated system of records and train them in these rules of conduct.

(f) Agency System Managers shall exercise the Rules of Conduct as specified in 32 CFR part 310.

(g) Agency personnel shall exercise the Rules of Conduct as specified in 32 CFR part 310.

§ 318.6 Procedures for requests pertaining to individual records in a record system.

(a) An individual seeking notification of whether a system of records, maintained by the Defense Threat Reduction Agency, contains a record pertaining to himself/herself and who desires to review, have copies made of such records, or to be provided an accounting of disclosures from such records, shall submit his or her request in writing. Requesters are encourage to review the systems of records notices published by the Agency so as to specifically identify the particular record system(s) of interest to be accessed.

(b) In addition to meeting the requirements set forth in this section 318.6, the individual seeking notification, review or copies, and an accounting of disclosures will provide in writing his or her full name, address, Social Security Number, and a telephone number where the requester can be contacted should questions arise concerning the request. This information will be used only for the purpose of identifying relevant records in response to an individual's inquiry. It is further recommended that individuals indicate any present or past relationship or affiliations, if any, with the Agency and the appropriate dates in order to facilitate a more thorough search. A notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746 may also be required.

(c) An individual who wishes to be accompanied by another individual when reviewing his or her records, must provide the Agency with written consent authorizing the Agency to disclose or discuss such records in the presence of the accompanying individual.

(d) Individuals should mail their written request to the FOIA/Privacy Act Division, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517 and indicate clearly on the outer envelope "Privacy Act Request."

§ 318.7 Disclosure of requested information to individuals.

(a) The Defense Threat Reduction Agency, upon receiving a request for notification of the existence of a record or for access to a record, shall acknowledge receipt of the request within 10 working days.

(b) Determine whether or not such record exists.

(c) Determine whether or not such request for access is available under the Privacy Act.

(d) Notify requester of determinations within 30 working days after receipt of such request.

(e) Provide access to information pertaining to that person which has been determined to be available within 30 working days.

(f) Notify the individual if fees will be assessed for reproducing copies of the records. Fee schedule and rules for assessing fees are contained in § 318.11.

§ 318.8 Request for correction or amendment to a record.

(a) An individual may request that the Defense Threat Reduction Agency correct, amend, or expunge any record, or portions thereof, pertaining to the requester that he/she believe to be inaccurate, irrelevant, untimely, or incomplete.

(b) Such requests shall specify the particular portions of the records in question, be in writing and should be mailed to the FOIA/Privacy Act Division, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

(c) The requester shall provide sufficient information to identify the record and furnish material to substantiate the reasons for requesting corrections, amendments, or expurgation.

§ 318.9 Agency review of request for correction or amendment of record.

(a) The Agency will acknowledge a request for correction or amendment within 10 working days of receipt. The acknowledgment will be in writing and will indicate the date by which the Agency expects to make its initial determination.

(b) The Agency shall complete its consideration of requests to correct or amend records within 30 working days, and inform the requester of its initial determination.

(c) If it is determined that records should be corrected or amended in whole or in part, the Agency shall advise the requester in writing of its determination; and correct or amend the records accordingly. The Agency shall then advise prior recipients of the records of the fact that a correction or amendment was made and provide the substance of the change.

(d) If the Agency determines that a record should not be corrected or amended, in whole or in part, as requested by the individual, the Agency shall advise the requester in writing of its refusal to correct or amend the records and the reasons therefor. The notification will inform the requester that the refusal may be appealed administratively and will advise the individual of the procedures for such appeals.

§ 318.10 Appeal of initial adverse Agency determination for access, correction or amendment.

(a) An individual who disagrees with the denial or partial denial of his or her request for access, correction, or amendment of Agency records pertaining the himself/herself, may file a request for administrative review of such refusal within 30 days after the date of notification of the denial or partial denial.

(b) Such requests shall be made in writing and mailed to the FOIA/Privacy Act Division, Defense Threat Reduction Agency, 45045 Aviation Drive, Dulles, VA 20166–7517.

(c) The requester shall provide a brief written statement setting for the reasons for his or her disagreement with the initial determination and provide such additional supporting material as the individual feels necessary to justify the appeal.

(d) Within 30 working days of receipt of the request for review, the Agency shall advise the individual of the final disposition of the request.

(e) In those cases where the initial determination is reversed, the individual will be so informed and the Agency will take appropriate action.

(f) In those cases where the initial determination is sustained, the individual shall be advised:

(1) In the case of a request for access to a record, of the individual's right to seek judicial review of the Agency refusal for access.

(2) In the case of a request to correct or amend the record:

(i) Of the individual's right to file a concise statement of his or her reasons for disagreeing with the Agency's decision in the record,

(ii) Of the procedures for filing a statement of the disagreement, and

(iii) Of the individual's right to seek judicial review of the Agency's refusal to correct or amend a record.

§ 318.11 Disclosure of record to persons other than the individual to whom it pertains.

(a) General. No record contained in a system of records maintained by DTRA shall be disclosed by any means to any person or agency within or outside the

Department of Defense without the request or consent of the subject of the record, except as described in 32 CFR 310.41, Appendix C to part 310, and/or a Defense Threat Reduction Agency system of records notice.

(b) Accounting of disclosures. Except for disclosures made to members of the DoD in connection with their official duties, and disclosures required by the Freedom of Information Act, an accounting will be kept of all disclosures of records maintained in DTRA system of records.

(1) Accounting entries will normally be kept on a DTRA form, which will be maintained in the record file jacket, or in a document that is part of the record.

(2) Accounting entries will record the date, nature and purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made.

(3) Accounting records will be maintained for at least 5 years after the last disclosure, of for the life of the record, whichever is longer.

(4) Subjects of DTRA records will be given access to associated accounting records upon request, except for those disclosures made to law enforcement activities when the law enforcement activity has requested that the disclosure not be made, and/or as exempted under § 318.16.

§318.12 Fees.

Individuals may request copies for retention of any documents to which they are granted access in DTRA records pertaining to them. Requesters will not be charged for the first copy of any records provided; however, duplicate copies will require a charge to cover costs of reproduction. Such charges will be computed in accordance with 32 CFR part 310.

§318.13 Enforcement actions.

Procedures and sanctions are set forth in 5 U.S.C. 552a, OMB Circular A–130, and 32 CFR part 310.

§318.14 Blanket routine uses.

(a) *Blanket routine uses.* Certain 'blanket routine uses' of the records have been established that are applicable to every record system maintained within the Department of Defense unless specifically stated otherwise within a particular record system. These additional blanket routine uses of the records are published only once in the interest of simplicity, economy and to avoid redundancy.

(b) *Routine Use—Law Enforcement.* If a system of records maintained by a DoD Component, to carry out its functions, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

(c) *Routine Use—Disclosure When Requesting Information.* A record from a system of records maintained by a Component may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a Component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(d) *Routine Use—Disclosure of Requested Information.* A record from a system of records maintained by a Component may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(e) *Routine Use—Congressional Inquiries.* Disclosure from a system of records maintained by a Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(f) *Routine Use—Private Relief Legislation.* Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, will be disclosed to the OMB in connection with the review of private relief legislation as set forth in OMB Circular A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

(g) *Routine Use—Disclosures Required by International Agreements.* A record from a system of records maintained by a Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating the stationing and status in foreign countries of DoD military and civilian personnel.

(h) *Routine Use—Disclosure to State and Local Taxing Authorities.* Any information normally contained in Internal Revenue Service (IRS) Form W–2 which is maintained in a record from a system of records maintained by a Component may be disclosed to State and local taxing authorities with which the Secretary of the Treasury has entered into agreements under 5 U.S.C. 5516, 5517, and 5520 and only to those State and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin No. 76–07.

(i) *Routine Use—Disclosure to the Office of Personnel Management.* A record from a system of records subject to the Privacy Act and maintained by a Component may be disclosed to the Office of Personnel Management (OPM) concerning information on pay and leave, benefits, retirement deduction, and any other information necessary for the OPM to carry out its legally authorized government-wide personnel management functions and studies.

(j) *Routine Use—Disclosure to the Department of Justice for Litigation.* A record from a system of records maintained by this component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

(k) *Routine Use—Disclosure to Military Banking Facilities Overseas.* Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged, or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the U.S. Government will be

liable for the losses the facility may incur.

(l) *Routine Use—Disclosure of Information to the General Services Administration (GSA).* A record from a system of records maintained by this component may be disclosed as a routine use to the General Services Administration (GSA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

(m) *Routine Use—Disclosure of Information to the National Archives and Records Administration (NARA).* A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Administration (NARA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

(n) Routine Use—Disclosure to the Merit Systems Protection Board. A record from a system of records maintained by this component may be disclosed as a routine use to the Merit Systems Protection Board, including the Office of the Special Counsel for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems, review of OPM or component rules and regulations, investigation of alleged or possible prohibited personnel practices; including administrative proceedings involving any individual subject of a DoD investigation, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

(o) *Routine Use—Counterintelligence Purpose.* A record from a system of records maintained by this component may be disclosed as a routine use outside the DoD or the U.S. Government for the purpose of counterintelligence activities authorized by U.S. Law or Executive Order or for the purpose of enforcing laws which protect the national security of the United States.

§ 318.15 Rules of conduct

(a) DTRA personnel shall:

(1) Take such actions, as considered appropriate, to ensure that personal information contained in a system of records, to which they have access or are using incident to the conduct of official business, shall be protected so that the security and confidentiality of the information shall be preserved.

(2) Not disclose any personal information contained in any system of records except as authorized by 32 CFR part 310 or other applicable law or regulation. Personnel willfully making such a disclosure when knowing the disclosure is prohibited are subject to possible criminal penalties and/or administrative sanctions.

(3) Report any unauthorized disclosure of personal information from a system of records or the maintenance of any system of records that are not authorized by the Instruction to the DTRA Privacy Act Officer.

(b) DTRA system managers for each system of records shall:

(1) Ensure that all personnel who either have access to the system of records or who shall develop or supervise procedures for the handling of records in the system of records shall be aware of their responsibilities for protecting personnel information being collected and maintained under the DTRA Privacy Program.

(2) Promptly notify the Privacy Act Officer of any required new, amended, or altered system notices for the system of records.

(3) Not maintain any official files on individuals, which are retrieved by name or other personal identifier without first ensuring that a notice for the system of records shall have been published in the "Federal Register." Any official who willfully maintains a system of records without meeting the publication requirements, as prescribed by 5 U.S.C. 552a, OMB Circular A–130, and 32 CFR part 310, is subject to possible criminal penalties and/or administrative sanctions.

§ 318.16 Exemption rules.

(a) *Exemption for classified material.* All systems of records maintained by the Defense Threat Reduction Agency shall be exempt under section (k)(1) of 5 U.S.C. 552a, to the extent that the systems contain any information properly classified under E.O. 12598 and that is required by that E.O. to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

(b) *System identifier and name:* HDTRA 007, Security Operations.

(1) Exemption: Portions of this system of records may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (d)(4), (e)(1), (e)(4)(G), (H), (I), and (f).

(2) Authority: 5 U.S.C. 552a(k)(5).

(3) Reasons: (i) From subsection (c)(3) because it will enable DTRA to safeguard certain investigations and relay law enforcement information without compromise of the information, and protect the identities of confidential sources who might not otherwise come forward and who have furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise.)

(ii) From subsection (d)(1) through (d)(4) and (f) because providing access to records of a civil investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of security investigations. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1), (e)(4)(G), (H), (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information; under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise.)

(c) *System identifier and name:* HDTRA 011, Inspector General Investigation Files.

(1) Exemption: Portions of this system of records may be exempt from the provisions of 5 U.S.C. 552a(c)(3); (d)(1) through (4); (e)(1); (e)(4)(G), (H), and (I); and (f).

(2) Authority: 5 U.S.C. 552a(k)(2).

(3) Reasons: (i) From subsection (c)(3) because it will enable DTRA to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would

be held in confidence (or prior to the effective date of the Act, under an implied promise.)

(ii) From subsection (d)(1) through (d)(4) and (f) because providing access to records of a civil investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1), (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

Dated: April 3, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–8722 Filed 4–7–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

32 CFR Part 323

[Defense Logistics Agency Reg. 5400.21]

Defense Logistics Agency Privacy Program

AGENCY: Defense Logistics Agency, DoD

ACTION: Final rule.

SUMMARY: The Defense Logistics Agency is exempting a system of records (S500.30 CAAS, Incident Investigation/ Police Inquiry Files) from certain provisions of the Privacy Act. The exemptions are intended to increase the value of the system of records for law enforcement purposes, to comply with prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the system of records.

EFFECTIVE DATE: March 21, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The proposed rule was published on January 20, 2000 at 65 FR 3167. No comments were received, therefore, the Defense Logistics Agency is adopting the rule as final.

Executive Order 12866, 'Regulatory Planning and Review'

It has been determined that 32 CFR part 321 is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more; or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that this part does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects 32 CFR Part 323

Privacy.

Accordingly, 32 CFR part 323 is amended as follows:

PART 323—DEFENSE LOGISTICS AGENCY PRIVACY PROGRAM

1. The authority citation for 32 CFR Part 323 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

2. Appendix H to Part 323 is to be amended by adding paragraph f. as follows:

Appendix H to Part 323—DLA Exemption Rules.

* * * * *

f. ID: S500.30 CAAS *(Specific exemption).*

1. *System name:* Incident Investigation/ Police Inquiry Files.

2. *Exemption:* (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

3. *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5), subsections (c)(3), (d)(1) through (d)(4), (e)(1), (e)(4)(G), (H), and (I), and (f).

4. *Reasons:* (i) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutive interest by DLA or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(ii) From subsections (d)(1) through (d)(4), and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or

necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because this system of records is compiled for law enforcement purposes and is exempt from the access provisions of subsections (d) and (f).

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. DLA will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

Dated: April 3, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–8721 Filed 4–7–00; 8:45 am]

BILLING CODE 5001–10–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA231–0227a; FRL–6570–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Antelope Valley Air Pollution Control District and Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the Antelope Valley Air Pollution Control District (AVAPCD) and the Mojave Desert Air Quality Management District (MDAQMD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from Automotive Refinishing Operations and Motor Vehicle and Mobile Equipment Coatings Operations. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on June 9, 2000 without further notice, unless EPA receives adverse comments by May 10, 2000. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel, Chief, Rulemaking Office at the Region IX office listed below. Copies of the rule revisions and EPA's technical support document for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105;

Environmental Protection Agency, Ariel Rios Building, (Mail Code 6102), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812;

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, Lancaster, CA 93539–4409;

Mojave Desert Air Quality Management District (formerly San Bernardino County Air Pollution Control District), 15428 Civic Drive, Suite 200, Victorville, CA 92392–2382

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: Antelope Valley Air Pollution Control District (AVAPCD) Rule 1151, Motor Vehicle and Mobile Equipment Coatings Operations and Mojave Desert Air Quality Management District (MDAQMD) Rule 1116, Automotive Refinishing Operations. These rules were submitted by the California Air Resources Board to EPA on October 29, 1999 and July 23, 1999, respectively.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the portions of the San Bernardino County Air Pollution Control District [1] within the Southeast Desert Modified Air Quality Maintenance Area and the Los Angeles-South Coast Air Basin Area. 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172 (b) as interpreted in pre-amendment guidance.[2] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas.

The AVAPCD portion of the Southeast Desert Modified Air Quality Maintenance Area (SDMAQMA) is classified as Severe-17, therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The MDAQMD portion of the SDMAQMA is classified as severe; [3] therefore, this area was subject to the RACT fix-up requirements and the May 15, 1991 deadline.

The AVAPCD was created pursuant to California Health and Safety Code (CHSC) section 40106 and assumed all

[1] On July 1, 1993, the San Bernardino County Air Pollution Control District was renamed the Mojave Desert Air Quality Management District.

[2] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** document" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[3] Southeast Desert Air Quality Management Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

air pollution control responsibilities of the South Coast Air Quality Management District in the Antelope Valley region of Los Angeles County,[4] effective July 1, 1997. AVAPCD is the successor agency to SCAQMD in the Antelope Valley portion of the Southeast Desert Modified Air Quality Maintenance Area. The AVAPCD remains subject to the RACT requirements.

The State of California submitted many revised RACT rules for incorporation into its SIP on July 23, 1999 and October 29, 1999, including the rules being acted on in this document. This document addresses EPA's direct-final action for AVAPCD Rule 1151, Motor Vehicle and Mobile Equipment Coatings Operations and MDAQMD Rule 1116, Automotive Refinishing Operations. AVAPCD adopted Rule 1151 on July 20, 1999 and MDAQMD adopted Rule 1116 on February 22, 1995 and revised Rule 1116 on April 26, 1999. These submitted rules were found to be complete on December 16, 1999 and August 24, 1999, respectively, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V[5] and is being finalized for approval into the SIP.

AVAPCD Rule 1151 is a new rule for Antelope Valley. Rule 1151 limits emissions of volatile organic compounds (VOC) and stratospheric ozone-depleting and global warming compounds from coatings applied to Group I or Group II Vehicles and Mobile Equipment. The provisions of this rule apply to all commercial and non-commercial coating applications at facilities involved in the production, modification, or refinishing of motor vehicles and mobile equipment.

MDAQMD Rule 1116 limits emissions of VOC and stratospheric ozone-depleting and global warming compounds from coatings applied to Group I and Group II Vehicles and Mobile Equipment. VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted as part of AVAPCD's and MDAQMD's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for these rules.

[4] The Antelope Valley region of Los Angeles County is contained within the Federal area known as the Southeast Desert Modified Air Quality Management Area and the region identified by the State of California as the Mojave Desert Air Basin.

[5] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

III. EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 2. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). EPA has not yet issued a Control Techniques Guideline (CTG) for this source category, but has on December 30, 1997 amended 40 CFR Part 59, "National Volatile Organic Emission Standards for Consumer and Commercial Products" by adding Subpart E, "National Volatile Organic Compound Emission Standards for Automobile Refinishing Coatings," 62 FR 67784. This standard regulates the manufacture of automotive coatings and not the application of automobile refinishing coatings. Body shops nationwide are not directly affected by the regulation's requirements. EPA has used the proposed VOC standards for automotive coatings as guidance in evaluating the VOC limits of Rule 1151 and Rule 1116. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 2. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

There is currently no version of AVAPCD Rule 1151, Motor Vehicle and Mobile Equipment Coatings Operations in the SIP. The submitted rule includes the following provisions:

- Limits of 15 pounds per gallon of applied solids for the original production of motor homes;
- Limits emissions of VOCs from coatings applied to Group I and Group II Vehicles and Mobile Equipment;
- Applies to all commercial and non-commercial coating applications at facilities involved in the production, modification, or refinishing of motor vehicles and mobile equipment; and
- Includes test methods to determine compliance.

On June 13, 1995 (60 FR 31081), EPA approved into the SIP a version of MDAQMD Rule 1116, Automotive Refinishing Operations that had been adopted on February 22, 1995. Revisions to this rule were subsequently adopted on April 26, 1999. The submitted Rule 1116 includes the following significant changes from the current SIP:

- Delayed imposition of the 420 grams per liter VOC limit for multistage topcoat systems until July 1, 2000;
- Updated and streamlined VOC definition referencing the most recent federal list of exempt compounds;
- Removed of obsolete limits and language; and
- Specified exemptions to the "Prohibition of Sale" provision.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, AVAPCD Rule 1151, Motor Vehicle and Mobile Equipment Coatings Operations and MDAQMD Rule 1116, Automotive Refinishing Operations are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective June 9, 2000 without further notice unless the Agency receives adverse comments by May 10, 2000.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule is effective on

June 9, 2000 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 9, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements.

(See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 15, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(268)(i)(B) and (c)(270)(i)(E) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(268) * * *

(i) * * *

(B) Mojave Desert Air Quality Management District.

(*1*) Rule 1116 revised on April 26, 1999.

* * * * *

(270) * * *

(i) * * *

(E) Antelope Valley Air Pollution Control District.

(*1*) Rule 1151 adopted on July 20, 1999.

* * * * *

[FR Doc. 00–8526 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–237–0221; FRL–6570–7]

Approval and Promulgation of State Implementation Plans; California—South Coast

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a state implementation plan (SIP) revision submitted by the State of California to provide for attainment of the 1-hour ozone national ambient air quality standard (NAAQS) in the Los Angeles-South Coast Air Basin Area (South Coast). EPA is approving the SIP revision under provisions of the Clean Air Act (CAA) regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: This action is effective on May 10, 2000.

ADDRESSES: The rulemaking docket for this notice is available for public inspection during normal business hours at EPA's Region IX office. A reasonable fee may be charged for copying parts of the docket.

Copies of the SIP materials are also available for inspection at the following locations:

California Air Resources Board, 2020 L Street, Sacramento, California

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, California

The SIP materials are also electronically available at: http://www.aqmd.gov/aqmp/

FOR FURTHER INFORMATION CONTACT: Dave Jesson (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1288, or jesson.david@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

We are finalizing approval of the 1997 ozone plan for the South Coast, as revised by a 1999 amendment.[1] The South Coast Air Quality Management District (SCAQMD) adopted the 1997 plan on November 15, 1996, and the California Air Resources Board (CARB) submitted the plan to us on February 5, 1997. SCAQMD adopted the 1999 amendment on December 10, 1999, and CARB submitted the plan to us on February 4, 2000. EPA determined the submittal to be complete on March 15, 2000.[2] In this document, we refer to the 1997 plan and 1999 amendment as "the revised ozone plan," which is intended to replace the 1994 ozone SIP except for that portion of the SIP that consists of State control measures and EPA's commitment relating to a Public Consultative Process on national mobile sources.[3]

On February 8, 2000, we proposed approval of the revised ozone plan with respect to the revised emissions inventory, the modeled attainment demonstration, control measures, commitment to achieve specified emission reductions in future years, revised rate-of-progress (ROP) plan, and emissions budget. Please see that document (65 FR 6091–6102) for further details on our proposed action, applicable CAA requirements, and additional information on the affected area.

[1] The nonattainment area includes all of Orange County and the more populated portions of Los Angeles, San Bernardino, and Riverside Counties.

[2] We adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216). CARB requested that we "parallel process" action on the 1997 plan and 1999 amendment before SIP submittal of the 1999 amendment.

[3] For information on the 1994 ozone SIP, see 62 FR 1150 (January 8, 1997). For information on the Public Consultative Process, see 64 FR 39923 (July 23, 1999).

II. Public Comments

We received 3 public comments. SCAQMD supported the proposed action, but requested a minor correction. The proposal stated that the South Coast Air Basin recorded the largest number of ozone violations in the country in 1999 based on preliminary data from EPA's Aerometric Information Retrieval System (AIRS). 65 FR 6092. We agree with SCAQMD that updated AIRS data now show that the basin had the second highest number of violations in 1999. Over the past three years (1997–1999), however, the South Coast Air Basin did have the largest number of ozone violations in the country.

A representative of the National Paint and Coatings Association commented regarding the purported technological and economic infeasibility of SCAQMD's coatings control measures, and issues regarding public notice and hearing requirements relative to SCAQMD's revisions to Rule 1113.

As noted by the commenter, we are barred from considering claims of economic or technological infeasibility in determining whether to approve a submitted SIP.

Union Electric Co. v. *U.S. EPA*, 429 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

The comment regarding Rule 1113 is not germane to our proposed action on the revised ozone plan, which does not address any approval issues associated with revisions to Rule 1113. When we take action on the SIP revision to Rule 1113, we will determine whether or not SCAQMD met public notice and public hearing requirements when the rule was revised. If the commentor continues to believe that these requirements were not met, he must resubmit comments during the public comment period for our rulemaking on the revisions to SCAQMD Rule 1113.

A private citizen argued that the emissions inventory does not meet the CAA section 172(c)(3) requirements and should not be approved. The commenter stated that the control factors associated with California's enhanced motor vehicle inspection and maintenance (I/M) program are known to be bogus. The commenter referenced a CARB letter dated January 7, 2000, stating: "There have been a number of legislative and operational changes to the I/M program that have reduced its effectiveness and associated air quality benefits."

We addressed this issue in our proposed approval of the plan, noting that the revised ozone plan represents more current and accurate information than was used in the 1994 ozone SIP and complies with acceptable methodologies for inventory preparation, but that the responsible agencies are in the process of updating and refining emissions reductions, including those associated with the I/M program. 65 FR 6094, 6100.

When improved information is available to refine the estimate of emissions reductions associated with the I/M program, CARB and SCAQMD will use this information in a comprehensive ozone plan revision, scheduled for adoption and submittal as a SIP revision in 2001. As discussed in our proposed approval, this future revision will include a revised control strategy if needed to provide for expeditious attainment.

We reaffirm our finding that the emissions inventory portion of the revised ozone plan not only improves on the accuracy of the 1994 ozone SIP but also meets CAA requirements that the inventory be comprehensive, accurate, and current. Therefore, we are finalizing approval of the revised ozone plan with respect to the requirements of CAA sections 172(c)(3) and 182(a)(1).

III. EPA Final Action

In this document, we are finalizing the following actions on the revised ozone plan. For each action, we indicate the page on which the element is discussed in our proposal.

(1) Approval of the revised baseline and projected emissions inventories under CAA sections 172(c)(3) and 182(a)(1)—6094;

(2) Approval of the SCAQMD commitment to implement those measures that had been adopted in regulatory form between November 1994 and September 1999, by the dates specified to achieve the identified emission reductions, under CAA section 110(k)(3)—6095 (Table 1);

(3) Approval of the SCAQMD commitment to adopt and implement the short- and intermediate-term control measures in the revised ozone plan by the dates specified to achieve the identified emission reductions, under CAA section 110(k)(3)—6095 (Table 2);

(4) Approval of the SCAQMD commitment to adopt and implement control measures to achieve the identified emission reduction commitments[4] for 1999 to 2008, as specified in Table 2–6 of the 1999

[4] This approval makes enforceable the SCAQMD commitment to achieve the overall emission reduction schedule and thus creates the possibility of SCAQMD control measure adjustments and substitutions under the approved SIP, so long as the overall emission reduction obligations are met as described in Chapter 2 of the 1999 amendment.

amendment, under CAA section 110(k)(3)—6097 (Table 3);

(5) Deletion of 1994 ozone SIP control measures identified in the 1999 Amendment—6097 (Table 4);

(6) Approval of the SCAQMD commitment to adopt and implement the long-term control measures in the revised ozone plan by the dates specified to achieve the identified emission reductions, under CAA section 110(k)(3) and 182(e)(5)—6098 (Table 5);

(7) Approval of the revised rate-of-progress plan for the milestone years 1999, 2002, 2005, 2008, and 2010, under CAA sections 182(c)(2)—6099 (Table 6);

(8) Approval of the revised attainment demonstration under CAA sections 182(c)(2) and (e)—6100;

(9) Approval of the revised motor vehicle emissions budgets for purposes of transportation conformity under CAA section 176(c)(2)(A). Approval of the revised ozone plan also establishes new emissions budgets for ROP milestone years for purposes of general conformity under CAA section 176(c)(1)—6100–1 (Table 8).

Upon the effective date of our approval of the revised ozone plan, this plan replaces and supersedes the 1994 ozone SIP for the South Coast Air Basin with the exception of the State control measures for mobile sources, consumer products, and pesticides, and EPA's commitment. The State measures remain unchanged from those approved as part of the 1994 ozone SIP until we, in separate action, approve revised measures.

As discussed in our proposed action, CARB and SCAQMD intend to adopt and submit a comprehensive revision to the ozone plan in 2001. 65 FR 6101. We intend to work with CARB and SCAQMD to ensure the timely completion of this new comprehensive revision to refine and enhance the technical foundations of the attainment demonstration and update the control measures, as necessary.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Executive Order 13121, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a

significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 9, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 20, 2000.

David P. Howekamp,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(247)(i)(A)(*3*) and (c)(272) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(247) * * *

(i) * * *

(A) * * *

(3) Baseline and projected emissions inventories and ozone attainment demonstration, as contained in the South Coast 1997 Air Quality Management Plan for ozone.

* * * * *

(272) New and amended plan for the following agency was submitted on February 4, 2000, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(1) SCAQMD commitment to adopt and implement short- and intermediate-term control measures; SCAQMD commitment to adopt and implement long-term control measures; SCAQMD commitment to achieve overall emissions reductions for the years 1999–2008; SCAQMD commitment to implement those measures that had been adopted in regulatory form between November 1994 and September 1999; rate-of-progress plan for the 1999, 2002, 2005, 2008, and 2010 milestone years; amendment to the attainment demonstration in the 1997 Air Quality Management Plan for ozone; and motor vehicle emissions budgets for purposes of transportation conformity, as contained in the 1999 Amendment to the South Coast 1997 Air Quality Management Plan.

* * * * *

[FR Doc. 00–8534 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–6570–4]

RIN 2060–AC42

Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical corrections.

SUMMARY: Under the Clean Air Act (CAA), the EPA issued a final rule entitled "Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills," published in the **Federal Register** on March 12, 1996 (61 FR 9905). A subsequent direct final rule, published

on June 16, 1998 (63 FR 32743) corrected errors and clarified regulatory text of the final rule. These technical corrections will correct an error in the amendatory instructions and an inconsistency between the reportable exceedances and reporting of monitoring data. Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. The EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because the changes to the rule are minor technical corrections, are noncontroversial in nature, and do not substantively change the requirements of the NSPS/EG rule. Thus, notice and public procedure are unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

DATES: These technical corrections are effective April 10, 2000.

ADDRESSES: Docket No. A–88–09 contains the supporting information used in the development of this rulemaking. The docket is located at the U.S. Environmental Protection Agency in Room M–1500, Waterside Mall (ground floor), 401 M Street SW, Washington, DC 20460, and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Laur, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5256, e-mail: laur.michele@epa.gov.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The entities potentially affected by this action include:

Category	SIC	Examples of regulated entities
Industry and Local Government Agencies	4953	Existing municipal solid waste landfills where solid waste from households is placed in or on land. Waste from commercial or industrial operations may be mixed with the household waste.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. While the landfills EG and NSPS (40 CFR part 60, subparts Cc and WWW) will primarily impact facilities in the Standard Industrial Classification (SIC) code 4953, not all facilities in this code will be affected by this action. To determine if your landfill is affected by the landfills EG or NSPS, see 40 CFR part 60, subparts Cc and WWW, or the technical amendments published on June 16, 1998 (63 FR 37243).

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's action will be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

I. Background

On March 12, 1996, the EPA promulgated in the **Federal Register** (61 FR 9919) EG for existing municipal solid waste landfills and the NSPS for municipal solid waste landfills. These regulations and guidelines were promulgated as subparts Cc and WWW of 40 CFR part 60. This action corrects an error in the amendatory instructions, typographic and formatting errors, and it corrects three inconsistencies in the direct final action published on June 16, 1998.

II. Description of Corrections

A. Amendatory Instruction Error

Due to an error in the amendatory instructions for the direct final rule published in the **Federal Register** on June 16, 1998, § 60.752(b)(2)(ii) (A) and (B) and § 60.752(b)(2)(iii)(B) (1) and (2) were incorrectly removed. These technical corrections add those paragraphs back into the final rule.

B. Inconsistencies

An inconsistency exists between what constitutes a reportable exceedance for boilers and process heaters in § 60.758(c)(1)(i), and the monitoring (§ 60.756(b)(1)) and recordkeeping (§ 60.758(b)(2)) requirements for these devices. Boilers and process heaters with design heat input capacity less than or equal to 44 megawatts are required to monitor temperature and keep records. A reportable exceedance related to temperature can only occur for boilers and process heaters that are less than 44 megawatts. It was not our intent to require monitoring and recordkeeping for boilers and process heaters if their design heat input capacity is equal to or greater than 44 megawatts.

C. Typographical and Formatting Errors

A typographical error appearing in the equation in §§ 60.754(a)(1) (i), (ii) and 60.759(a)(3)(ii) is being corrected. The term "$CN_{NM}MOC$" is corrected to read "C_{NMOC}", meaning the concentration of non-methane organic compounds.

A typographical error appearing in § 60.754(a)(1)(ii) is being corrected. The paragraph immediately following the list of terms to the equation in this section was incorrectly duplicated from the paragraph in § 60.754(a)(1)(i). The paragraph is amended to correctly reflect the method for subtracting nondegradable solid waste when actual year-to-year solid waste acceptance rates are known.

A formatting error in § 60.756(a), introductory text, is being corrected. A comma was left out between the words "thermometer" and "other."

A typographical error appearing in § 60.757(c) is being corrected. Throughout the rule, various requirements are triggered by the emission rate cutoff of "equals or exceeds 50 megagrams per year." The term "equals or" was inadvertently omitted. This omission is being corrected to be consistent with the remainder of the rule and with our intent.

A typographical error appearing in § 60.758(c)(1)(ii) is being corrected. This section incorrectly references § 60.758(b)(3)(i) which does not exist. The correct reference is § 60.758(b)(3).

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the EPA has made a "good cause" finding that this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute (see

Summary), it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule does not have substantial direct effects on the States, on the relationship between the national government and the States, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the June 16, 1998 amendments to the final NSPS/EG rule **Federal Register** document.

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the Congressional Review Act if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, the EPA has made such a good cause finding, including the reasons therefor, and established an effective date of April 10, 2000. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous waste, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 27, 2000.

Robert D. Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

For the reasons stated in the preamble, title 40, chapter I, part 60, of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7429, and 7601.

Subpart WWW—[Amended]

2. Section 60.752 is amended by adding paragraphs (b)(2)(ii)(A), (b)(2)(ii)(B), (b)(2)(iii)(B)(1) and (b)(2)(iii)(B)(2) to read as follows:

§ 60.752 Standards for air emissions from municipal solid waste landfills.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(A) An active collection system shall:

(*1*) Be designed to handle the maximum expected gas flow rate from the entire area of the landfill that warrants control over the intended use period of the gas control or treatment system equipment;

(*2*) Collect gas from each area, cell, or group of cells in the landfill in which the initial solid waste has been placed for a period of:

(*i*) 5 years or more if active; or

(*ii*) 2 years or more if closed or at final grade.

(*3*) Collect gas at a sufficient extraction rate;

(*4*) Be designed to minimize off-site migration of subsurface gas.

(B) A passive collection system shall:

(*1*) Comply with the provisions specified in paragraphs (b)(2)(ii)(A)(*1*), (*2*), and (2)(ii)(A)(*4*) of this section.

(*2*) Be installed with liners on the bottom and all sides in all areas in which gas is to be collected. The liners shall be installed as required under § 258.40.

* * * * *

(iii) * * *

(B) * * *

(*1*) If a boiler or process heater is used as the control device, the landfill gas stream shall be introduced into the flame zone.

(*2*) The control device shall be operated within the parameter ranges established during the initial or most recent performance test. The operating parameters to be monitored are specified in § 60.756;

* * * * *

3. In § 60.754, in the equation in paragraph (a)(1)(i) the term "$C_{NM}OC$" is revised to read "C_{NMOC}" and paragraph (a)(1)(ii) is revised to read as follows:

§ 60.754 Test methods and procedures.

(a) * * *

(1) * * *

(ii) The following equation shall be used if the actual year-to-year solid waste acceptance rate is unknown.

$$M_{NMOC} = 2L_o R (e^{-kc} - e^{-kt}) C_{NMOC} (3.6 \times 10^{-9})$$

Where:

M_{NMOC}=mass emission rate of NMOC, megagrams per year

L_o=methane generation potential, cubic meters per megagram solid waste

R=average annual acceptance rate, megagrams per year

k=methane generation rate constant, $year^{-1}$

t = age of landfill, years

C_{NMOC}=concentration of NMOC, parts per million by volume as hexane

c=time since closure, years; for active landfill c=O and e^{-kc}1

3.6×10 − 9=conversion factor

The mass of nondegradable solid waste may be subtracted from the total mass of solid waste in a particular section of the landfill when calculating the value of R, if documentation of the nature and amount of such wastes is maintained.

* * * * *

4. Section 60.756 is amended in paragraph (a) introductory text by

adding a comma between the words "thermometer" and "other" and by revising paragraph (b)(1) to read as follows:

§ 60.756 Monitoring of operations.

* * * * *

(b) * * *

(1) A temperature monitoring device equipped with a continuous recorder and having a minimum accuracy of ±1 percent of the temperature being measured expressed in degrees Celsius or ±0.5 degrees Celsius, whichever is greater. A temperature monitoring device is not required for boilers or process heaters with design heat input capacity equal to or greater than 44 megawatts.

* * * * *

5. Section 60.757 is amended by revising paragraph (c) introductory text to read as follows:

§ 60.757 Reporting requirements.

* * * * *

(c) Each owner or operator subject to the provisions of § 60.752(b)(2)(i) shall submit a collection and control system design plan to the Administrator within 1 year of the first report required under paragraph (b) of this section in which the emission rate equals or exceeds 50 megagrams per year, except as follows:

* * * * *

6. Section 60.758 is amended by revising paragraphs (b)(2) introductory text and (c)(1)(ii) to read as follows:

§ 60.758 Recordkeeping requirements.

* * * * *

(b) * * *

(2) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with § 60.752(b)(2)(iii) through use of an enclosed combustion device other than a boiler or process heater with a design heat input capacity equal to or greater than 44 megawatts:

* * * * *

(c) * * *

(1) * * *

(ii) For boilers or process heaters, whenever there is a change in the location at which the vent stream is introduced into the flame zone as required under paragraph (b)(3) of this section.

* * * * *

§ 60.759 [Amended]

7. In § 60.759 (a)(3)(ii), the term "$C_{NM}OC$" is revised to read "C_{NMOC}".

[FR Doc. 00–8151 Filed 4–7–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AL52—200014; FRL–6568–6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Alabama

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the section 111(d) Plan submitted by the Alabama Department of Environmental Management (ADEM) for the State of Alabama on April 20, 1999, to implement and enforce the Emissions Guidelines (EG) for existing Hospital/Medical/Infectious Waste Incinerator (HMIWI) units.

DATES: This direct final rule is effective on June 9, 2000, without further notice, unless EPA receives adverse comment by May 10, 2000. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address comments on this action to Kimberly Bingham, EPA Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104. Copies of all materials considered in this rulemaking may be examined during normal business hours at the following locations: EPA Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104; and at the Alabama Department of Environmental Management, Air Division, 1751 Congressman W.L. Dickinson Drive, Montgomery, Alabama 36109.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham at (404) 562–9038, Bingham.Kimberly@epa.gov or Scott Davis at (404) 562–9127, Davis.ScottR@epa.gov.

SUPPLEMENTARY INFORMATION:

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  Why are we requiring Alabama to submit a HMIWI State Plan?
  Why do we need to regulate air emissions from HMIWIs?
  What criteria must a HMIWI State Plan meet to be approved?
III. What does the Alabama State Plan contain?
IV. Is my HMIWI subject to these regulations?
V. What steps do I need to take?
VI. Why Is the Alabama HMIWI State Plan approvable?
VII. Administrative Requirements.

I. What Action is Being Taken by EPA Today?

We are approving the Alabama State Plan, as submitted on April 20, 1999, for the control of air emissions from HMIWIs, except for those HMIWIs located in Indian Country. When EPA developed our New Source Performance Standard (NSPS) for HMIWIs, we also developed EG to control air emissions from older HMIWIs. (See 62 FR 48348–48391, September 15, 1997, 40 CFR part 60, subpart Ce [Emission Guidelines and Compliance Times for HMIWIs] and subpart Ec [Standards of Performance for HMIWIs for Which Construction is Commenced After June 20, 1996]). The ADEM developed a State Plan, as required by sections 111(d) and 129 of the Clean Air Act (the Act), to adopt the EG into their body of regulations, and we are acting today to approve it.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the revision should significant, material, and adverse comments be filed. This action is effective June 9, 2000, unless by May 10, 2000, adverse or critical comments are received. If we receive such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, this action is effective June 9, 2000.

II. The HMIWI State Plan Requirement

What is a HMIWI State Plan?

A HMIWI State Plan is a plan to control air pollutant emissions from existing incinerators which burn hospital waste or medical/infectious waste. The plan also includes source and emission inventories of these incinerators in the State.

Why Are We Requiring Alabama To Submit a HMIWI State Plan?

States are required under sections 111(d) and 129 of the Act to submit State Plans to control emissions from existing HMIWIs in the State. The State Plan requirement was triggered when

EPA published the EG for HMIWIs under 40 CFR part 60, subpart Ce (see 62 FR 48348, September 15, 1997).

Under section 129, EPA is required to promulgate EG for several types of existing solid waste incinerators. These EG establish the Maximum Achievable Control Technology (MACT) standards that States must adopt to comply with the Act. The HMIWI EG also establishes requirements for monitoring, operator training, permits, and a waste management plan that must be included in State Plans.

The intent of the State Plan requirement is to reduce several types of air pollutants associated with waste incineration.

Why Do We Need To Regulate Air Emissions From HMIWIs?

The State Plan establishes control requirements which reduce the following emissions from HMIWIs: particulate matter; sulfur dioxide; hydrogen chloride; nitrogen oxides; carbon monoxide; lead; cadmium; mercury; and dioxin/furans. These pollutants can cause adverse effects to the public health and the environment. Dioxin, lead, and mercury bioaccumulate through the food web. Serious developmental and adult effects in humans, primarily damage to the nervous system, have been associated with exposures to mercury. Exposure to dioxin and furans can cause skin disorders, cancer, and reproductive effects such as endometriosis. Dioxin and furans can also affect the immune system. Acid gases affect the respiratory tract, as well as contribute to the acid rain that damages lakes and harms forests and buildings. Exposure to particulate matter has been linked with adverse health effects, including aggravation of existing respiratory and cardiovascular disease and increased risk of premature death. Nitrogen oxide emissions contribute to the formation of ground level ozone, which is associated with a number of adverse health and environmental effects.

What Criteria Must a HMIWI State Plan Meet To Be Approved?

The criteria for approving a HMIWI State Plan include requirements from sections 111(d) and 129 of the Act and 40 CFR part 60, subpart B. Under the requirements of sections 111(d) and 129 of the Act, a State Plan must be at least as protective as the EG regarding applicability, emission limits, compliance schedules, performance testing, monitoring and inspections, operator training and certification, waste management plans, and recordkeeping and reporting. Under section 129(e), State Plans must ensure that affected HMIWI facilities submit Title V permit applications to the State by September 15, 2000. Under the requirements of 40 CFR part 60, subpart B, the criteria for an approvable section 111(d) plan include demonstration of legal authority, enforceable mechanisms, public participation documentation, source and emission inventories, and a State progress report commitment.

III. What Does the Alabama State Plan Contain?

The ADEM adopted the Federal EG into the ADEM Administrative Code, Rule 335–3–3–.04 and the Federal NSPS into the ADEM Administrative Code, Rule 335–3–10–.02(c). The State rules were effective on April 13, 1999. The Alabama State Plan contains:

1. A demonstration of the State's legal authority to implement the section 111(d) State Plan;
2. State rules, Rule 335–3–3–.04 and Rule 335–3–10–.02(c), as the enforceable mechanism;
3. An inventory of approximately 56 known designated facilities, along with estimates of their potential air emissions;
4. Emission limits that are as protective as the EG;
5. A compliance date of one year from the effective date of this State Plan approval;
6. Testing, monitoring, reporting and recordkeeping requirements for the designated facilities;
7. Records from the public hearing on the State Plan; and,
8. Provisions for progress reports to EPA.

IV. Is My HMIWI Subject to These Regulations?

The EG for existing HMIWIs affect any HMIWI built on or before June 20, 1996. If your facility meets this criterion, you are subject to these regulations.

V. What Steps Do I Need to Take?

You must meet the requirements listed in the ADEM Administrative Code, Rule 335–3–3–.04, summarized as follows:

1. Determine the size of your incinerator by establishing its maximum design capacity.
2. Each size category of HMIWI has certain emission limits established which your incinerator must meet. See Table 1 of Rule 335–3–3–.04 to determine the specific emission limits which apply to you. The emission limits apply at all times, except during startup, shutdown, or malfunctions, provided that no waste has been charged during these events.
3. There are provisions to address small rural incinerators (if your unit is applicable).
4. You must meet a 10% opacity limit on your discharge, averaged over a six-minute block.
5. You must have a qualified HMIWI operator available to supervise the operation of your incinerator. This operator must be trained and qualified through a State-approved program, or a training program that meets the requirements listed under 40 CFR part 60.53c(c).
6. Your operator must be certified, as discussed in 5 above, no later than one year after EPA approval of this Alabama State Plan.
7. You must develop and submit to ADEM a waste management plan. This plan must be developed under guidance provided by the American Hospital Association publication, An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, 1993, and must be submitted to ADEM no later than 60 days following the initial performance test for the affected unit.
8. You must conduct an initial performance test to determine your incinerator's compliance with these emission limits. This performance test must be completed as required under 40 CFR 60.8.
9. You must install and maintain devices to monitor the parameters listed under Table 4 of Rule 335–3–3–.04.
10. You must document and maintain information concerning pollutant concentrations, opacity measurements, charge rates, and other operational data. This information must be maintained for a period of five years.
11. You must submit an annual report to ADEM containing records of site-specific operating parameters, performance test results, and exceedance information, and for small HMIWI units records of annual equipment inspections, any required maintenance, and unscheduled repairs. This annual report must be signed by the facilities manager.

VI. Why Is the Alabama HMIWI State Plan Approvable?

EPA compared the Alabama rules (ADEM Administrative Code, Rule 335–3–3–.04) against our HMIWI EG. EPA finds the Alabama rules to be at least as protective as the EG. The Alabama State Plan was reviewed for approval against the following criteria: 40 CFR 60.23 through 60.26, *Subpart B—Adoption and Submittal of State Plans for Designated Facilities;* and, 40 CFR 60, 60.30e through 60.39e, *Subpart Ce—Emission Guidelines and Compliance Times for Hospital/Medical/Infectious*

Waste Incinerators. The Alabama State Plan satisfies the requirements for an approvable section 111(d) plan under subparts B and Ce of 40 CFR part 60. For these reasons, we are approving the Alabama HMIWI State Plan.

VII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 9, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Hospital/medical/infectious waste incineration, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 16, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart B—Alabama

2. Section 62.100 is amended by adding paragraphs (b)(5) and (c)(5) to read as follows:

§ 62.100 Identification of plan.

* * * * *

(b) * * *

(5) Alabama Department of Environmental Management Plan for the Control of Hospital/Medical/Infectious Waste Incinerators, submitted on April 20, 1999, by the Alabama Department of Environmental Management.

(c) * * *

(5) Existing hospital/medical/infectious waste incinerators.

3. Subpart B is amended by adding a new § 62.104 and a new undesignated center heading to read as follows:

Air Emissions From Hospital/Medical/Infectious Waste Incinerators

§ 62.104 Identification of sources.

The plan applies to existing hospital/medical/infectious waste incinerators for which construction, reconstruction, or modification was commenced before June 20, 1996, as described in 40 CFR part 60, subpart Ce.

[FR Doc. 00–8142 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 93

[FRL–6574–7]

RIN 2060–AI76

Transportation Conformity Amendment: Deletion of Grace Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this final rule we (EPA) are eliminating a provision of the transportation conformity rule that was overturned by the U.S. Court of Appeals for the District of Columbia Circuit (*Sierra Club* v. *EPA, et al.*, 129 F.3d 137 (D.C. Cir. 1997)). In compliance with the court's ruling, today's final rule formally deletes the 1995 amendment that allowed new nonattainment areas a one-year grace period before transportation conformity began applying.

In addition, we discuss in the preamble four issues that were raised in

a Petition for Reconsideration of the original transportation conformity rule that was finalized November 24, 1993. Although we are not taking any regulatory action in response to these issues at this time, the preamble clarifies our policies on the issues raised in the Petition.

Transportation conformity is a Clean Air Act requirement for transportation plans, programs, and projects to conform to state air quality plans. Conformity to a state air quality plan means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national air quality standards.

Our transportation conformity rule establishes the criteria and procedures for determining whether or not transportation activities conform to the state air quality plan.

EFFECTIVE DATE: May 10, 2000.

ADDRESSES: Docket No. A–99–35 contains materials relevant to today's action and is located at the U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 in Room M–1500, Waterside Mall (ground floor). The docket is open and supporting materials are available for review between 8:00 a.m. and 5:30 p.m. on all federal government workdays . You may have to pay a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Denise Kearns, Transportation and Market Incentives Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, kearns.denise@epa.gov. (734–214–4240).

SUPPLEMENTARY INFORMATION: The text of this rulemaking and certain supporting documents used to develop the rule also can be accessed and downloaded from the Internet at http://www.epa.gov/docs/fedrgstr/EPA-AIR/ (either select desired date or use Search feature) OR http://www.epa.gov/OMSWWW/ (look in What's New or under the Conformity file area). Please note that there may be format changes in the documents on the web due to differences in software.

Regulated Entities

Entities potentially regulated by the conformity rule are those which adopt, approve, or fund transportation plans, programs, or projects under title 23 U.S.C. or title 49 U.S.C. Regulated categories and entities include:

Category	Examples of regulated entities
Local government	Local transportation and air quality agencies.
State government	State transportation and air quality agencies.
Federal government	Department of Transportation (Federal Highway Administration and Federal Transit Administration).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this rule. This table lists the types of entities that EPA is now aware could potentially be regulated by the conformity rule. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability requirements in § 93.102 of the conformity rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The contents of this preamble are listed in the following outline:

I. Background
II. How Soon Does Conformity Apply to a New Nonattainment Area?
III. What Are the Effects of Deleting the Grace Period and EPA's Response to Comments?
IV. What Are the Issues From the Petition for Reconsideration and EPA's Response to Comments?
A. Fiscal Constraint
B. Horizon Years for Hot-Spot Analyses
C. Assumptions Regarding Regional Distribution of Emissions
D. Credit for Delayed TCMs
V. How Would This Action Affect Conformity SIPs?
VI. Administrative Requirements and EPA's Response to Comments on Small Business and Environmental Justice Impacts of Rule
A. Executive Order 12866
B. Paperwork Reduction Act
C. Regulatory Flexibility Analysis and EPA's Response to Comments on Impact of Grace Period Deletion on Small Entities
D. Unfunded Mandates
E. National Technology Transfer and Advancement Act of 1995
F. Executive Order 13045
G. Executive Order 13084
H. Executive Orders on Federalism
I. Executive Order 12898 and EPA's Response to Comments on Environmental Justice Impacts of Grace Period Deletion
J. Submission to Congress and the Comptroller General
K. Petitions for Judicial Review

I. Background

The original conformity rule was finalized on November 24, 1993 (58 FR 62188). That rule has been subsequently amended on August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), and August 15, 1997 (62 FR 43780).

In 1998, we entered into a settlement with Environmental Defense (ED) in response to litigation. In that settlement, we agreed to repeal the grace period which had been established by the November 14, 1995 amendments and was permitted under 40 CFR 93.102(d) of the conformity rule. This grace period was overturned by the United States Court of Appeals in 1997.

We also agreed to respond to four issues raised in a Petition for Reconsideration that was submitted by the ED, Natural Resources Defense Council, and Sierra Club. That petition was filed with us on May 26, 1994 and addressed various provisions of the original conformity rule (58 FR 62188).

The Notice of Proposed Rulemaking for today's rule was published on November 30, 1999 (64 FR 66832). The comment period for the proposal ended December 30, 1999.

We received four comments on our proposal. Most commenters addressed issues relating to the rule's effect in areas subject to conformity. However, one commenter focused exclusively on our discussion of the four issues raised in the 1994 petition. Copies of the comments in their entirety can be obtained from the docket for this rule (see **ADDRESSES**).

This docket also includes a complete Response to Comments document for this rule. We summarize our response to comments below in parts III, IV and V of this preamble.

II. How Soon Does Conformity Apply to a New Nonattainment Area?

Conformity applies as soon as we formally designate an area nonattainment. In this final rule we are deleting § 93.102(d), which had provided a one-year grace period following nonattainment designation. On November 4, 1997, the U.S. Court of Appeals for the District of Columbia Circuit overturned § 93.102(d) of the conformity rule, and ruled that the

Clean Air Act requires conformity to apply upon designation. Because the court overturned § 93.102(d), we must delete this provision from our rules.

Therefore, as soon as a nonattainment designation is effective for your area, you must have a conforming transportation plan and transportation improvement plan (TIP) in order to approve transportation projects. This plan and TIP must conform with respect to all pollutants for which the area is designated nonattainment. You may have to delay approving projects until this is done.

III. What Are the Effects of Deleting the Grace Period and EPA's Response to Comments?

Under today's rule, new nonattainment areas must have a conforming plan and TIP in place as soon as their designations become effective. As a practical matter, this requirement has been in effect since November 14, 1997, when the court ruled to delete the one-hour grace period.

Two commenters expressed concern that transportation planning agencies will not have enough time to respond to a new nonattainment designation and ensure that their plans and TIPs conform. These commenters were concerned that without a grace period, virtually all transportation projects in new nonattainment areas could be stopped upon the effective date of a designation.

We believe that new nonattainment areas will have ample time to develop a conforming plan and TIP before nonattainment designations are final and effective. There are generally several opportunities for transportation agencies to become aware that we are preparing to designate an area nonattainment, and as a consequence to prepare for conformity as needed.

For example, on October 25, 1999, we published a proposal to reinstate the one-hour ozone standard in areas that had previously been designated nonattainment. In that proposal, we stated that designations would not become effective until 90 days after we publish the final rule reinstating our one-hour ozone standard. In these areas, state and local transportation agencies will have been notified more than six months in advance of our decision to reinstate the nonattainment designations.

In addition, we point out that we do pursue a public process before we formally designate an area as nonattainment for the first time. We seek recommendations from the state regarding nonattainment designations and boundaries. If we modify the state's recommendations, we notify the state at least 120 days before finalizing the designation.

State and local transportation agencies and air quality agencies also are working to coordinate their planning processes and avoid situations that would result in a conformity lapse. We and the U.S. Department of Transportation (DOT) will work with areas to process their conformity determinations expeditiously. Although we acknowledge the timing issues and other concerns expressed by commenters regarding the deletion of the grace period, we believe that all partners involved in the conformity process can share information and effectively find ways to avoid significant delays in transportation projects resulting from the court's interpretation of the Clean Air Act.

We also note some transportation projects can proceed in the absence of a conforming plan and TIP, including exempt projects (§§ 93.126 and 93.127) and transportation control measures in an approved state implementation plan. These projects would not be affected by a new nonattainment designation.

IV. What Are the Issues From the Petition for Reconsideration and EPA's Response to Comments?

On May 26, 1994, Environmental Defense (ED), Natural Resources Defense Council, and Sierra Club Legal Defense Fund submitted to us a Petition for Reconsideration of the November 1993 conformity rule. We have responded to all issues raised in this petition through previous conformity amendments, with the exception of four issues addressed in this preamble. In a 1998 court settlement, EPA and ED agreed to address these four issues through today's rulemaking. A copy of the 1998 settlement and the full Petition for Reconsideration are included in the docket for this rulemaking see (ADDRESSES). As proposed, we are not taking any regulatory action in today's rule in response to the four issues raised in the 1994 Petition. However, in the discussion below we do clarify certain existing EPA policies, where we feel such clarification is necessary to address concerns raised by commenters on our proposed response to the Petition for Reconsideration.

A. Fiscal Constraint

1. What Is the Issue?

As discussed in the November proposal, in issue 6 of the Petition for Reconsideration, the petitioners requested that we adopt our own regulatory language requiring transportation plans and TIPs to be fiscally constrained, rather than referencing the Department of Transportation's (DOT's) metropolitan planning regulations. The existing conformity rule requires plans and TIPs to be fiscally constrained as required by DOT's metropolitan planning rule at 23 CFR part 450. These DOT regulations require that proposed projects in plans and TIPs be consistent with already available or projected sources of revenue.

2. What Comments Did EPA Receive on Fiscal Constraint, and What Is EPA's Response?

In response to our proposal, one of the petitioners reiterates their position that by referencing DOT's planning regulations, we have unlawfully delegated our rulemaking authority to DOT. Another commenter on the issue concurs with our belief that it is not necessary for us to establish our own language regarding fiscal constraint.

As we discussed in the proposal, we believe it is appropriate to refer to DOT's regulations on fiscal constraint for several reasons. First, we believe DOT's definition of fiscal constraint substantively meets the goals of our conformity rule. We also maintain that by referencing DOT's definition, we have met our procedural obligation to provide criteria and procedures for determining conformity, as required under section 176(c)(4)(A) of the Clean Air Act. We disagree with the commenter's contention that the Clean Air Act directs us to issue regulations specifically regarding fiscal constraint.

Again, we note that we rely on many other DOT definitions and rules, including some that are even more fundamental to the implementation of conformity (*e.g.*, DOT definitions and requirements for plans and TIPs). We also note that the petitioner's comments agree with us that DOT's existing fiscal constraint definition is acceptable for the purposes of conformity.

The commenter's real concern seems to be that future changes to the definition may be unacceptable, and that the conformity rule will automatically incorporate any future changes without EPA action. To remedy this situation, the commenter suggests that we adopt by reference DOT's existing definition of fiscal constraint and specifically exclude any changes that may be made in future DOT rules.

Although we agree that we do not have a concurrence role on DOT's metropolitan planning rule, we point out that there are effective, non-

statutory mechanisms in place to ensure federal coordination. We are fully utilizing these mechanisms and actively working with DOT on their new metropolitan planning regulations, including those provisions that address the definition of fiscal constraint. DOT is proposing to amend these regulations under the Transportation Equity Act for the 21st Century. Petitioners will have an opportunity to comment directly on any changes DOT may propose to their regulation on fiscal constraint through DOT's regulatory process.

As described in the proposal, we also believe that it is appropriate and efficient to rely on DOT's definition of fiscal constraint. It would be impractical to require plans and TIPs to satisfy two different definitions of fiscal constraint. If we refer only to the current definition of fiscal constraint, to ensure consistency we would have to amend the conformity rule whenever DOT's regulations change.

In summary, we believe that by referencing DOT's fiscal constraint definition we are meeting our statutory duty under the Clean Air Act. We also believe that it is reasonable to rely on the framework for federal coordination to ensure that DOT's regulations are appropriate in the conformity context. Lastly, we also believe that wherever it makes sense, we have a responsibility to provide state and local agencies involved in transportation conformity with clear and consistent rules. By referencing DOT's regulations in this case, and coordinating with DOT on any changes they may be contemplating, we believe the goals of conformity and the needs of the public will be effectively met.

B. Horizon Years for Hot-Spot Analyses

1. What Is the Issue?

As discussed in the proposal, issue 9B of the Petition for Reconsideration requested that we require hot-spot analyses to examine the 20-year timeframe of the transportation plan. The existing transportation conformity rule does not clearly specify the horizon for hot-spot analyses.

2. What Comments Did We Receive on the Hot-Spot Analysis Issue?

One of the petitioners explained that their intention was to request that EPA require hot-spot reviews of transportation projects to be consistent with plan and TIP time horizons, and with the time horizons for emissions analyses required by our general conformity rule. To ensure that projects do not cause or worsen hot-spots during the timeframe of the transportation plan, the petitioner suggests that we require an analysis to be conducted for the year during which peak emissions from the action are expected.

3. What Is Our Policy on the Horizon for Hot-Spot Analysis?

As discussed in the proposal to this rule, the conformity rule allows flexibility for areas to decide through the interagency consultation process how to demonstrate that hot-spots are not caused or worsened in any area. Although most areas conduct hot-spot analyses for the year of project completion, many areas also examine other analysis years in the future. For example, some areas do analyze the last year of a currently conforming transportation plan, or another year within the timeframe of that plan, whichever year emissions are highest.

In response to comments on the proposal, we acknowledge the need to clarify that the hot-spot analysis must demonstrate that no hot-spots will be caused or worsened during the timeframe of the transportation plan. Nonetheless, we continue to believe that the specific year examined in the hot-spot analysis to make this demonstration should be decided through interagency consultation, as appropriate to the individual area, on a case-by-case basis. This is allowed by our conformity rule. We also reiterate that it is not necessary in all cases to model the last year of the transportation plan in a hot-spot analysis. Rather, the hot-spot analysis should examine the year in which peak emissions are expected, which may not necessarily be the last year of the conforming plan.

We believe that it would be useful for § 93.116 of the conformity rule to specify that a demonstration that local violations will not be caused or worsened should cover the timeframe of the transportation plan. We agree that without this clarification, it is difficult for implementers to decide which years to examine in order to demonstrate that the conformity requirement is satisfied. For example, some could read the existing requirement to mean that the demonstration regarding local violations must consider only the year of project completion, or in contrast that it consider all future years.

Because we need to propose a regulatory clarification before finalizing it, we are not making any changes to § 93.116 or § 93.123 in this rule. However, we will propose clarifying regulatory text on this issue in an upcoming proposal to amend the conformity rule in response to the March 2, 1999 court decision (*Environmental Defense Fund* v. *EPA, et al.*, 167 F. 3d 641, D.C. Cir. 1999). That proposal would codify existing EPA guidance, issued in a May 14, 1999 memorandum from Gay MacGregor, Director of the Regional and State Programs Division in the Office of Transportation and Air Quality, to Regional Air Division Directors, "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision." Based on the court's decision that guidance outlines our approach for notifying and providing the public an opportunity to participate in the conformity process. It also provides criteria for transportation projects that may proceed during a conformity lapse.

In the interim, until this proposal is advanced, we believe our interpretation of § 93.116 and § 93.123 is consistent with our existing conformity rule, and that selection of the year of peak emissions should continue to be decided through the consultation process. We and DOT will implement the hot-spot requirements of the conformity rule as described in this preamble in all future conformity determinations.

C. Assumptions Regarding the Regional Distribution of Emissions

1. What Is the Issue?

In issue 12 of the Petition for Reconsideration, petitioners requested that we require metropolitan planning organizations (MPOs) to demonstrate that regional land use policies and proposed transportation plans achieve the same spatial distribution of motor vehicle emissions as was used in the state implementation plan (SIP) for demonstrating attainment. As discussed in the proposed rule, we had interpreted issue 12 of the Petition for Reconsideration to mean that the petitioners were in effect requesting that we should always require SIPs to establish subarea budgets that MPOs would have to conform to.

2. What Are the Conformity Rule's Requirements on the Use of Subarea Budgets?

Our existing conformity rule does not require states to establish subarea budgets in their SIPs. However, the conformity rule does support the development and use subarea budgets where states choose to do so, and it requires conformity to such budgets if they are established.

3. What Comments Did We Receive?

One commenter supported our current requirement that subarea budgets be established only at the state's

discretion. One of the petitioners commented that we had misconstrued this issue as presented in the Petition for Reconsideration.

The petitioner states that they did not mean to request that subarea budgets be established in all cases. Rather, the petitioner intended to request that we require MPOs to determine whether the emissions it projects for an area are going to be spatially distributed in the same way their distribution has been assumed in a SIP, whether or not there are subarea budgets. The petitioner also suggests that we develop screening criteria to help MPOs identify what is a significant magnitude of variance. In cases where the variance is significant, the petitioner believes we should require MPOs to perform an updated air quality analysis.

4. What Is Our Response to These Comments?

We do not believe that the Clean Air Act directs us to require analyses of spatial distribution or regional air quality analyses as a means for ensuring that transportation activities will not cause or contribute to new or increased violations, or delay timely attainment. The Clean Air Act simply requires a comparison with the SIP's estimates of emissions. We do not believe that the Clean Air Act ever intended MPOs to routinely perform regional air quality analyses, such as photochemical grid modeling, as part of a conformity determination.[1]

As a practical matter, we also note the SIP's assumptions about spatial distribution of emissions would not necessarily be clear to an MPO unless subarea budgets had been established. This is because not all SIPs are required to specifically document their assumptions about spatial distribution, and these assumptions are not always developed or presented in a form that is useful for other agencies, such as MPOs. Spatial distributions of emissions in SIPs are generally developed strictly to serve as an input to the SIP's dispersion modeling, and these emissions distributions are not designed or required to be used for any other purpose.

Again, neither the Clean Air Act nor the conformity rule requires states to develop subarea budgets. We have always interpreted the Clean Air Act to allow for a single budget for a nonattainment area for a given criteria pollutant or precursor, although states have the option to disaggregate and establish subarea budgets at their discretion (see our General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 at 57 FR 13448, April 16, 1992).

To conclude, we do not believe that the Clean Air Act directs us to require the analysis suggested in the petitioner's comments as a means to ensuring that conformity is properly implemented. We also believe that the analysis suggested by petitioners would in effect require states to establish subarea budgets. Although EPA recognizes that there may be some areas that would benefit by conducting emissions analyses that rely on subarea budgets, we believe these areas will be identified through the interagency consultation process and that it is not necessary for us to issue regulations imposing these kinds of requirements.

D. Credit for Delayed TCMs

1. What Is the Issue?

As described in issue 15 of the Petition for Reconsideration, the petitioners believe that where a transportation control measure (TCM) has been delayed beyond the scheduled implementation date(s) in the SIP, an area's conformity determination should not be allowed to take emissions reduction credit for the TCM until after the TCM has actually been brought into service.

2. What Are the Conformity Rule's Requirements on the Timely Implementation of TCMs?

Under the current conformity rule, emission reduction credit may be taken at "such time as implementation has been assured" (see § 93.122(a)(2)). Once implementation has been assured, emissions analyses can take credit for the TCM in the analysis years during which the TCM would actually be in service (under the revised schedule). In the preamble discussion of the November 30, 1999 proposed rule, we clarified that an assurance of implementation would require at least the following: (a) Past obstacles to implementation of the TCM have been overcome; (b) state and local agencies are giving maximum priority to approval or funding of TCMs over other projects within their control; (c) funding for the TCM is identified and reasonably expected to be available; and (d) the legal or regulatory authority necessary to implement the TCM has been secured or appropriate commitments are in place.

3. What Comments Did EPA Receive on the Timely Implementation of TCMs, and What Is EPA's Response?

In response to our discussion on requirements for assuring the timely implementation of TCMs in the proposal, commenters seemed satisfied that EPA's existing requirements were appropriate. However, a petitioner suggested that we include the criteria listed in the November 1999 proposal as a regulatory definition for assurance of implementation.

EPA does not believe that it is necessary to amend the conformity rule to include such a regulatory definition. We believe that § 93.113 of the conformity rule as written is clear, and that this preamble is an appropriate place to elaborate on the rule. We note that a previous preamble discussion on the timely implementation of TCMs (58 FR 62197, November 24, 1993) has provided additional guidance on our implementation of the conformity rule to date. EPA and DOT have effectively used this 1993 preamble discussion to implement conformity, and we will continue to do so with the language in today's preamble.

V. How Would This Action Affect Conformity SIPs?

Clean Air Act section 176(c)(4)(C) requires states to submit revisions to their SIPs in order to include the criteria and procedures for determining conformity.

If we approved your area's conformity SIP and it includes a provision for a one-year grace period (§ 93.102(d)), that provision cannot be implemented. This has been the case ever since the November 4, 1997, court decision, which found such provisions to be inconsistent with the Clean Air Act. Future conformity SIP submissions may not include § 93.102(d).

If your area has submitted a conformity SIP to us that contains this provision (and we have not yet approved the conformity SIP), we will not approve such a provision as part of the SIP.

VI. Administrative Requirements and EPA's Response to Comments on Small Business and Environmental Justice Impacts of Rule

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines significant

[1] One state has opted to require dispersion modeling for conformity for its own purposes.

"regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or otherwise adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This rule does not impose any new information collection requirements from EPA which require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

C. Regulatory Flexibility Analysis and EPA's Response to Comments on Impact of Grace Period Deletion on Small Entities

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires the agency to conduct a regulatory flexibility analysis of any significant impact a rule will have on a substantial number of small entities. Small entities include small businesses, small not-for-profit organizations and small government jurisdictions. EPA has determined that today's regulations will not have a significant impact on a substantial number of small entities.

One commenter questioned our determination that the proposal to delete the grace period will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (RFA). We found no such impact because the conformity rules only apply directly to Federal agencies and metropolitan planning organizations (MPOs), which by definition are designated only for metropolitan areas with population of at least 50,000 and thus do not meet the definition of small entities under the RFA. The commenter alleged that both the RFA, the courts, and our own implementing guidance require us to consider the indirect impacts of a proposed rule as well.

We do not agree with the commenter that the agency must consider the indirect impacts of a regulation under the RFA. EPA has consistently interpreted the RFA as requiring the agency only to assess the impacts of proposed rules on the small entities directly regulated by the proposed rule, and this position has been upheld by the courts. See *Mid-Tex Electric Cooperative, Inc.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the requirements of the rule); *American Trucking Associations, Inc., et al.*, v. *EPA, et al.*, 175 F.3d 1027 (D.C. Cir. 1999) (court has consistently interpreted RFA to impose no obligation on agency to assess impacts on entities it does not regulate).

In addition, the commenter misreads EPA's guidance concerning consideration of indirect impacts. The sentence the commenter quotes from EPA's guidance directs agency staff to consider indirect impacts as part of any broader economic analysis conducted for the rule, such as a Regulatory Impact Analysis if one is conducted. However, the immediately preceding sentence of the guidance clarifies that if a rule is applicable only to large entities but indirectly impacts small entities, the agency can still certify no significant impact on small entities under the RFA. See Revised Interim Guidance for EPA Rulewriters: Regulatory Flexibility Act, March 29, 1999, p. 17. In any event, the document to which the commenter refers is only guidance; it does not establish any legally binding requirements.

It is also clear that the conformity rule applies directly only to federal agencies and MPOs and does not directly regulate small entities, such as the road builders represented by the commenter. These entities will only be adversely effected by the deletion of the grace period if DOT and the MPOs fail to develop a conforming transportation plan and program by the effective date of a nonattainment designation. In light of the advance warning areas will have of pending designations during the notice and comment period, and the delayed effective date EPA intends to provide for such designations, EPA believes that DOT and MPOs will be able to develop conforming plans and programs in a timely fashion.

Finally, the commenter's allegation is incorrect that the court which ordered EPA to delete the grace period determined that such a change would adversely effect small entities. The court in *Sierra Club* did find that the fact that an intervening governmental agency could alleviate any potential impact on private individuals was not sufficient to deprive such individuals of standing to challenge the grace period in court. However, the standard for showing harm sufficient to support legal standing to sue has no bearing on the impact necessary to mandate a finding of significant impacts under the RFA. The RFA only requires an agency to assess the impacts of a proposed rule on entities directly subject to the proposed rule. The analysis under the RFA need not cover any entities not directly subject to the proposed rule notwithstanding any indirect impacts that may result to other entities, regardless of whether any such impacts could support legal standing to challenge the rule.

EPA therefore concludes that it correctly interpreted the RFA and correctly found that the proposal to delete the grace period would not have a significant impact on a substantial number of small entities. Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules

with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Furthermore, this rule simply formalizes what the court has already decided as a legal matter, and which is already being implemented in practice.

This rule affects only those areas that are newly designated as nonattainment, and it simply applies conformity one year earlier than our previous rule had required. Therefore, this rule could require a limited number of areas to perform perhaps one additional transportation plan/TIP conformity determination each.

A 1992 DOT survey of metropolitan planning organizations (MPOs) found that most MPOs spend less than $50,000 per transportation plan/TIP conformity determination. The largest MPOs (serving a population over one million) spent up to $250,000. Thus, even if EPA were to designate 200 areas as nonattainment in one year and each one incurred the maximum costs, the expenditures would not exceed $100 million.

Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

F. Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not economically significant within the meaning of Executive Order 12866.

G. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

The Clean Air Act requires conformity to apply in nonattainment and maintenance areas, and the U.S. Court of Appeals for the District of Columbia Circuit has determined that the Clean Air Act requires conformity to apply immediately upon nonattainment designation. As a result, this regulatory change is required by statute. Furthermore, today's rule would not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. Executive Orders on Federalism

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency

consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's Prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This final rule, which is required by statute, will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The Clean Air Act requires conformity to apply in nonattainment and maintenance areas, and the U.S. Court of Appeals for the District of Columbia Circuit has determined that the Clean Air Act requires conformity to apply immediately upon nonattainment designation. As a result, this rule is codifying in regulation the statutory interpretation by the court that is currently in effect. Consequently, this rule is required by statute, and by itself will not have substantial impact on States. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

I. Executive Order 12898 and EPA's Response to Comments on Environmental Justice Impacts of Grace Period Deletion

One commenter indicated that we failed to consider the disproportionate impact the deletion of the grace period would have on minority and low income groups as required by Executive Order 12898 on environmental justice. The commenter argued that we recently found that minorities and low income populations were disproportionately represented in nonattainment areas, and that we are required by the Executive Order to consider the economic impact on such populations of job loss resulting from deletion of the grace period.

We do not agree that Executive Order 12898 requires us to consider the economic impact of the grace period deletion on minorities and low income populations in this case. The Executive Order only requires agencies to assess adverse impacts on minorities and low income populations where the action the agency is taking will cause disproportionate human health or environmental impacts on such populations. In this case the regulatory action we are taking to delete the grace period from our conformity regulations will not have such impacts, since we are only formally correcting our regulations to reflect the action taken by the United States Court of Appeals in 1997. Any potential adverse impacts on minority and low income populations resulting from deletion of the grace period were caused by the court when it found the grace period to be illegal and overturned it. Since the court decision in 1997, the grace period has effectively been nullified and any areas newly redesignated to nonattainment have been subject to conformity requirements immediately upon the effective date of any redesignation. In addition, since this deletion is mandated by the court's ruling, we could not effectively address any potential adverse impacts from EPA action even if an environmental justice analysis disclosed any.

J. Submission to Congress and the Comptroller General

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C 804(2).

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 9, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceeding to enforce its requirements. (See section 307(b)(2) of the Administrative Procedures Act.)

List of Subjects in 40 CFR Part 93

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen Dioxide, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Dated: March 31, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 93 is amended as follows:

PART 93—[AMENDED]

1. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

§ 93.102 [Amended]

2. In § 93.102, paragraph (d) is removed.

[FR Doc. 00–8712 Filed 4–7–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6570–2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is granting a petition submitted by Rhodia, Inc. (Rhodia), to exclude from hazardous waste control (or delist) a certain solid waste. This action responds to the petition originally submitted by Rhodia to delist the Filter Cake Sludge on a "generator specific" basis from the lists of hazardous waste.

After careful analysis, the EPA has concluded that the petitioned waste is not hazardous waste when disposed of in subtitle D landfills/surface impoundments. This exclusion applies to Filter Cake Sludge generated at Rhodia's Houston, Texas facility. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in subtitle D landfills/surface impoundments but imposes testing conditions to ensure that the future-generated wastes remain qualified for delisting.

EFFECTIVE DATE: April 10, 2000.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in the EPA Freedom of Information Act review room on the 7th floor from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The reference number for this docket is "F–99–TXDEL–RHODIA." The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For general information, contact Bill Gallagher, at (214) 665–6775. For technical information concerning this document, contact James Harris, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas, (214) 665–8302.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information
A. What action is EPA finalizing?
B. Why is EPA approving this delisting?
C. What are the limits of this exclusion?
D. How will Rhodia manage the waste if it is delisted?
E. When is the final delisting exclusion effective?
F. How does this action affect states?
II. Background
A. What is a delisting petition?
B. What regulations allow facilities to delist a waste?
C. What information must the generator supply?
III. EPA's Evaluation of the Waste Data
A. What wastes did Rhodia petition EPA to delist?
B. How much wastes did Rhodia propose to delist?
C. How did Rhodia sample and analyze the waste data in this petition?
IV. Public Comments Received on the Proposed Exclusion
Were Public Comments Submitted on the Proposed Rule?
V. Regulatory Impact
VI. Regulatory Flexibility Act
VII. Paperwork Reduction Act
VIII. Unfunded Mandates Reform Act
IX. Congressional Review Act
X. Executive Order 12875
XI. Executive Order 13045
XII. Executive Order 13084
XIII. National Technology Transfer and Advancements Act
XIV. Executive Order 13132 Federalism

I. Overview Information

A. What Action Is EPA Finalizing?

The EPA is finalizing the decision to grant Rhodia's petition to have their Filter Cake Sludge excluded, or delisted, from the definition of a hazardous waste.

After evaluating the petition, EPA proposed, on December 10, 1999 to exclude Rhodia's waste from the lists of hazardous wastes under §§ 261.31 and 261.32 (see 64 FR 8278).

B. Why Is EPA Approving This Delisting?

Rhodia petitioned to exclude the Filter Cake Sludge treatment residues because it does not believe that the petitioned waste meets the criteria for which it was listed.

Rhodia also believes that the waste does not contain any other constituents that would render it hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. *See*, section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2)–(4).

For reasons stated in both the proposal and this document, EPA believes that Rhodia' Filter Cake Sludge should be excluded from hazardous waste control. The EPA therefore is granting a final exclusion to Rhodia, located in Houston, Texas for its Filter Cake Sludge.

C. What Are the Limits of This Exclusion?

This exclusion applies to the waste described in the petition only if the requirements described in Table 1 of part 261 and the conditions contained herein are satisfied. The maximum annual volume of the Filter Cake Sludge is 1,200 cubic yards.

D. How Will Rhodia Manage the Waste if It Is Delisted?

Rhodia currently disposes of the petitioned waste (filter-cake Sludge) generated at its facility in off-site, RCRA permitted Treatment Storage or Disposal facilities which are not owned/operated by Rhodia. If the waste is delisted it will be disposed of in a subtitle "D" landfill.

E. When Is The Final Delisting Exclusion Effective?

This rule is effective April 10, 2000. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

F. How Does This Action Affect States?

Because EPA is issuing today's exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude two categories of States: States having a dual system that includes Federal RCRA requirements and their own requirements, and States who have received our authorization to make their own delisting decisions.

We allow states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

The EPA has also authorized some States (for example, Louisiana, Georgia, Illinois) to administer a delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States. If Rhodia transports the petitioned waste to or manages the waste in any State with delisting authorization, Rhodia must obtain delisting authorization from that State before they can manage the waste as nonhazardous in the State.

II. Background

A. What Is a Delisting Petition?

A delisting petition is a request from a generator to EPA or another agency with jurisdiction to exclude from the list of hazardous wastes, wastes the generator does not consider hazardous under RCRA.

B. What Regulations Allow Facilities To Delist a Waste?

Under 40 CFR 260.20 and 260.22, facilities may petition the EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, section 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of Title 40 of the

Code of Federal Regulations (CFR). Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

C. What Information Must the Generator Supply?

Petitioners must provide sufficient information to EPA to allow the EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents), other than those for which the waste was listed, could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

III. EPA's Evaluation of the Waste Data

A. What Waste Did Rhodia Petition EPA To Delist?

On November 4, 1997, Rhodia petitioned the EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, a waste by-product (Filter-Cake Sludge) which falls under the classification of listed waste because of the "derived from" rule in RCRA 40 CFR 260.3(c)(2)(i). Specifically, in its petition, Rhodia, Incorporated, located in Houston, Texas, requested that EPA grant an exclusion for 1,200 cubic yards per year of filter-cake sludge resulting from its treatment process which treats listed hazardous waste. The resulting waste is also listed, in accordance with § 261.3(c)(2)(i) (*i.e.*, the "derived from" rule).

The waste codes of the constituents of concern are EPA Hazardous Waste Numbers D001–D043, F001–F012, F019, F024, F025, F032, F034, F037–F039, K002–004, K006–K011, K013–K052, K060–K062, K064–K066, K069, K071, K073, K083–K088, K090–K091, K093–K118, K123–K126, K131–K133, K136, K141–K145, K147–K151, K156–K161, P001–P024, P026–P031, P033–P034, P036–P051, P054, P056–P060, P062–P078, P081–P082, P084–P085, P087–P089, P092–P116, P118–P123, P127–P128, P185, P188–P192, P194, P196–P199, P201–P205, U001–U012, U014–U039, U041–U053, U055–U064, U066–U099, U101–U103, U105–U138, U140–U174, U176–U194, U196–U197, U200–U211, U213–U223, U225–U228, U234–U240, U243–U244, U246–U249, U271, U277–U280, U328, U353, U359, U364–U367, U372–U373, U375–U379, U381–U396, U400–U404, U407, U409–U411.

B. How Much Waste Did Rhodia Propose To Delist?

Specifically, in its petition, Rhodia requested that EPA grant a standard exclusion for 1,200 cubic yards of Filter Cake Sludge generated per calender year.

C. How Did Rhodia Sample and Analyze the Waste Data in This Petition?

In support of its petition, which included the sampling and analysis plan, Rhodia analyzed the samples for the complete list of constituents included in 40 CFR part 264, appendix IX and the additional parameters for waste common to the petrochemical, oil and gas industries. The analyses was performed using EPA-approved methods. The analytical parameters and methods are provided in Table I.

TABLE I.—ANALYTICAL PARAMETERS AND METHODS

Parameter	Matrix	Method
GC/MS BNA, App IX List	Solid	SW846 Method 8270.
GC/MS VOA, App IX List	Solid	SW846 Method 8240.
Metals—App IX List	Solid	SW846 Methods 6010/7000 Series.
Herbicides—App IX List	Solid	SW846 Method 8150.
Pesticide/PCB, App IX List	Solid	SW846 Method 8080.
Organophoseporus Pesticides, App IX List	Solid	SW846 Method 8140.
Sulfide	Solid	EPA 376.1.
Cyanide, Total	Solid	SW846, Method 9010.
Dioxin/Furan—App IX List	Solid	SW846 Method 8280.
TCLP—40 CFR 261.24 List, and Nickel	Solid	SW846 Method 1311.
Neutral Leach Cyanide	Solid	SW846 Method 1311 (Modified).
Oil & Grease	Solid	EPA 413.1.
Reactive Cyanide	Solid	SW 846 Chapter 7.3.3.2.
Reactive Sulfide	Solid	SW846 Chapter 7.3.4.2.
Flash Point Closed Cup	Solid	SW846 Method 1010.
pH	Solid	SW846 Method 9045.

Note: Rhodia performed TCLP analyses for specific constituents detected in the total analyses for a given sample.

IV. Public Comments Received on the Proposed Exclusion

Were Public Comments Submitted on the Proposed Rule?

No public comments were received.

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from today's proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on a small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

The EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will become effective on the date of publication in the **Federal Register**.

X. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

XI. Executive Order 13045

The Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines: (1) Is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XII. Executive Order 13084

Because this action does not involve any requirements that affect Indian Tribes, the requirements of section 3(b) of Executive Order 13084 do not apply.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects that communities of indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, EPA must provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XIII. National Technology Transfer and Advancement Act

Under section 12(d) if the National Technology Transfer and Advancement Act (NTTAA), the Agency is directed to use voluntary consensus standards in its regulatory activities unless to do so

would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the NTTAA requires that Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, the Agency has no need to consider the use of voluntary consensus standards in developing this final rule.

XIV. Executive Order 13132 Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one State.

List of Subjects 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: March 17, 2000.

Carl E. Edlund,

P.E. Director, Multimedia Planning and Permitting Division, Region 6.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

2. In Tables 1, 2, and 3 of appendix IX of part 261, add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
. . .	. . .	. . .
Rhodia	Houston,Texas	Filter-cake Sludge, (at a maximum generation of 1,200 cubic yards per calendar year) generated by Rhodia using the SARU and AWT treatment process to treat the filter-cake sludge (EPA Hazardous Waste Nos. D001–D43, F001–F012, F019, F024, F025, F032, F034, F037–F039) generated at Rhodia. Rhodia must implement a testing program that meets the following conditions for the exclusion to be valid: (1) *Delisting Levels:* All concentrations for the following constituents must not exceed the following levels (mg/l). For the filter-cake constituents must be measured in the waste leachate by the method specified in 40 CFR 261.24. (A) Filter-cake Sludge (i) Inorganic Constituents: Antimony-1.15; Arsenic-1.40; Barium-21.00; Beryllium-1.22; Cadmium-0.11; Cobalt-189.00; Copper-90.00; Chromium-0.60; Lead-0.75; Mercury-0.025; Nickel-9.00; Selenium-4.50; Silver-0.14; Thallium-0.20; Vanadium-1.60; Zinc-4.30 (ii) Organic Constituents: Chlorobenzene-Non Detect; Carbon Tetrachloride-Non Detect; Acetone-360; Chloroform-0.9 (2) *Waste Holding and Handling:* Rhodia must store in accordance with its RCRA permit, or continue to dispose of as hazardous waste all Filter-cake Sludge until the verification testing described in Condition (3)(A), as appropriate, is completed and valid analyses demonstrate that condition (3) is satisfied. If the levels of constituents measured in the samples of the Filter-cake Sludge do not exceed the levels set forth in Condition (1), then the waste is nonhazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. (3) *Verification Testing Requirements:* Rhodia must perform sample collection and analyses, including quality control procedures, according to SW–846 methodologies. If EPA judges the process to be effective under the operating conditions used during the initial verification testing, Rhodia may replace the testing required in Condition (3)(A) with the testing required in Condition (3)(B). Rhodia must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B).

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(A) *Initial Verification Testing:* At quarterly intervals for one year after the final exclusion is granted, Rhodia must collect and analyze composites of the filter-cake sludge. From Paragraph 1 TCLP must be run on all waste and any constituents for which total concentrations have been identified. Rhodia must conduct a multiple pH leaching procedure on samples collected during the quarterly intervals. Rhodia must perform the TCLP procedure using distilled water and three different pH extraction fluids to simulate disposal under three conditions. Simulate an acidic landfill environment, basic landfill environment and a landfill environment similar to the pH of the waste. Rhodia must report the operational and analytical test data, including quality control information, obtained during this initial period no later than 90 days after the generation of the waste. (B) *Subsequent Verification Testing:* Following termination of the quarterly testing, Rhodia must continue to test a representative composite sample for all constituents listed in Condition (1) on an annual basis (no later than twelve months after the final exclusion). (4) *Changes in Operating Conditions:* If Rhodia significantly changes the process which generate(s) the waste(s) and which may or could affect the composition or type waste(s) generated as established under Condition (1) (by illustration, but not limitation, change in equipment or operating conditions of the treatment process), or its NPDES permit is changed, revoked or not reissued, Rhodia must notify the EPA in writing and may no longer handle the waste generated from the new process or no longer discharge as nonhazardous until the waste meet the delisting levels set in Condition (1) and it has received written approval to do so from EPA. (5) *Data Submittals:* Rhodia must submit the information described below. If Rhodia fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in Paragraph 6. Rhodia must: (A) Submit the data obtained through Paragraph 3 to Mr. William Gallagher, Chief, Region 6 Delisting Program, EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD–O) within the time specified. (B) Compile records of operating conditions and analytical data from Paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when EPA or the State of Texas request them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: (i) Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. (ii) As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. (iii) If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion. (6) *Reopener Language* (A) If, anytime after disposal of the delisted waste, Rhodia possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Regional Administrator or his delegate in granting the petition, then the facility must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (B) If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, Rhodia must report the data, in writing, to the Regional Administrator or his delegate within 10 days of first possessing or being made aware of that data. (C) If Rhodia fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Regional Administrator or his delegate will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(D) If the Regional Administrator or his delegate determines that the reported information does require Agency action, the Regional Administrator or his delegate will notify the facility in writing of the actions the Regional Administrator or his delegate believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Regional Administrator or his delegate's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Regional Administrator or his delegate will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator or his delegate's determination shall become effective immediately, unless the Regional Administrator or his delegate provides otherwise. (7) *Notification Requirements:* Rhodia must do following before transporting the delisted waste: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if they ship the delisted waste into a different disposal facility.

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
Rhodia	Houston, Texas	Filter-cake Sludge, (at a maximum generation of 1,200 cubic yards per calendar year) generated by Rhodia using the SARU and AWT treatment process to treat the filter-cake sludge (EPA Hazardous Waste Nos. K002–004, K006-K011, K013–K052, K060–K062, K064–K066, K069, K071, K073, K083–K088, K090–K091, K093–K118, K123–K126, K131–K133, K136, K141–K145, K147–K151, K156–K161) generated at Rhodia. Rhodia must implement the testing program described in Table 1. Waste Excluded From Non-Specific Sources for the petition to be valid.
*	*	* * * * *

TABLE 3.—WASTE EXCLUDED FROM COMMERCIAL CHEMICAL PRODUCTS, OFF-SPECIFICATION SPECIES, CONTAINER RESIDUES, AND SOIL RESIDUES THEREOF

Facility	Address	Waste description
*	*	* * * * *
Rhodia	Houston, Texas	Filter-cake Sludge, (at a maximum generation of 1,200 cubic yards per calendar year) generated by Rhodia using the SARU and AWT treatment process to treat the filter-cake sludge (EPA Hazardous Waste Nos. P001–P024, P026-P031, P033–P034, P036–P051, P054, P056-P060, P062–P078, P081–P082, P084–P085, P087–P089, P092–P116, P118–P123, P127-P128, P185, P188–P192, P194, P196–P199, P201–P205, U001–U012, U014–U039, U041-U053, U055–U064, U066–U099, U101–U103, U105–U138, U140–U174, U176–U194, U196-U197, U200–U211, U213–U223, U225–U228, U234–U240, U243–U244, U246–U249, U271, U277–U280, U328, U353, U359, U364–U367, U372–U373, U375–U379, U381–U396, U400-U404, U407, U409–U411) generated at Rhodia. Rhodia must implement the testing program described in Table 1. Waste Excluded From Non-Specific Sources for the petition to be valid.
*	*	* * * * *

[FR Doc. 00–8152 Filed 4–7–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6572–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final deletion of the Upper Deerfield Township Sanitary Landfill Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region II Office announces the deletion of the Upper Deerfield Township Sanitary Landfill Superfund Site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended. EPA and the New Jersey Department of Environmental Protection (NJDEP) have determined that all appropriate response actions under CERCLA have been implemented at the Site to protect human health and the environment.

DATES: This "direct final" action will be effective on June 9, 2000 unless EPA receives significant adverse or critical comments by May 10, 2000. If written significant comments are received, EPA will publish a timely withdrawal of the rule in the **Federal Register**, informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to: Diego M. Garcia, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor New York, New York 10007–1866.

Comprehensive information on this Site is available for viewing at the Upper Deerfield Township Sanitary Landfill Superfund Site information repositories at the following locations:

Upper Deerfield Municipal Building, Administrative Office, Building 1325, State Highway 77, Seabrook, New Jersey 08302, (609) 329–4000

and

U.S. EPA Records Center, 290 Broadway, Room 1828, New York, New York 10007–1866, Hours: 9:00 AM to 5:00 PM, Monday through Friday. Contact: Superfund Records Center (212) 637–4308.

FOR FURTHER INFORMATION CONTACT: Diego M. Garcia, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, New York 10007–1866, (212) 637–4947, by FAX at (212) 637–4393 or via e-mail at garcia.diego@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion
V. Action

I. Introduction

The United States Environmental Protection Agency (EPA) Region II announces the deletion of the Upper Deerfield Township Sanitary Landfill Superfund Site (the "Site"), which is located in Upper Deerfield Township, Cumberland County, New Jersey, from the National Priorities List (NPL). The NPL constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300. EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of these sites. Pursuant to 40 CFR 300.425(e)(3) of the NCP, any site or portions of a site deleted from the NPL remains eligible for Fund-financed remedial actions if future conditions at the site warrant such action.

EPA will accept comments concerning this document until May 10, 2000.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the Upper Deerfield Township Sanitary Landfill Superfund Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

As described in § 300.425(e) of the NCP, sites may be deleted from the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA, in consultation with NJDEP, shall consider whether any of the following have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or,

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions at the Site if future Site conditions warrant such actions. Section 300.425(e)(3) of the NCP provides that Fund-financed actions may be taken at sites that have been deleted from the NPL. Further, deletion of a site from the NPL does not affect the liability of responsible parties or impede Agency efforts to recover costs associated with response efforts.

III. Deletion Procedures

The following procedures are being used for the intended deletion of this Site: (1) EPA Region II issued a Record of Decision (ROD) on September 30, 1991, which found that the release poses no significant threat to public health or the environment and therefore, taking remedial measures is not appropriate; (2) EPA Region II issued a Final Close-Out Report dated September 27, 1993; (3) NJDEP has concurred with the deletion decision in a letter dated March 4, 1998; (4) a five-year review was completed in September 1999, and determined that the remedy continues to be protective of public health and the environment; (5) a notice has been published in the local newspaper and has been distributed to appropriate federal, state and local officials and other interested parties announcing a 30-day dissenting public comment period on EPA's Direct Final Action to Delete; and (6) EPA Region II recommends deletion and has made all relevant documents available for public review in the regional office and local Site information repositories.

EPA is requesting public comments on the Direct Final Action to Delete. The NCP provides that EPA shall not delete a site from the NPL until the Public has been afforded an opportunity to comment on the proposed deletion.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management of Superfund sites.

EPA Region II will accept and evaluate public comments before making a final decision to delete. If appropriate, the Agency will prepare a Responsiveness Summary to address

any significant public comments received.

If EPA does not receive significant adverse or critical comments and/or any significant new data submitted during the comment period, the Site will be deleted from the NPL effective June 9, 2000.

IV. Basis for Intended Site Deletion

The Upper Deerfield Sanitary Landfill Superfund Site is an inactive, 14-acre landfill located on a 22.72-acre tract of land in the rural farming community of Upper Deerfield Township, Cumberland County, New Jersey. The Site is located approximately two and one-half miles east-southeast of Seabrook, New Jersey and lies between Woodruff Husted Station Road (County Route 687) to the east and Centerton Road (County Route 553) to the west.

The 14-acre site was operated as a municipal landfill licensed to accept household waste until it closed in 1983. In response to complaints about water quality from residents using private ground water wells, ground water investigations were conducted in 1980. Volatile organic compounds (VOCs) and mercury were found in area wells. In 1983, NJDEP and the County advised residents to discontinue using their wells, and the Township began supplying the affected residents with bottled water. The Site was included on the NPL on September 1, 1983.

In 1986, utilizing funds provided by the State of New Jersey, the Township installed a public water supply well and distribution system to provide potable water to residents in the area. EPA conducted a remedial investigation at the Site from September 1987 through September 1990.

The results showed that the ground water and soil contamination associated with the Site no longer posed a health threat under current or likely future land use conditions. On September 30, 1991, EPA issued a ROD which called for no further action with a program to monitor the air and ground water.

In September 1994, EPA and Upper Deerfield Township signed an Administrative Order on Consent (ACO) which requires the Township to monitor the ground water for 30 years pursuant to the 1991 ROD. The ground water monitoring program began in December 1995. To date, ground water samples taken at the landfill, have not shown elevated levels of contaminants of concern. Air samples at the landfill and surrounding areas have not detected any airborne contaminants. Since airborne contaminants were not detected, the air monitoring program has been discontinued.

A five-year review was completed in September 1999, and found the remedy continues to be protective of public health and the environment. In accordance with § 300.430(f)(4)(ii) of the NCP, this site is subject to a review of the remedies selected under CERCLA every five years. The next five-year review will be conducted on or before September 2004.

All the completion requirements for this Site have been met as described in the Final Close-Out Report dated September 23, 1993. EPA and NJDEP have found that the release poses no significant threat to public health and the environment and, therefore, taking remedial measures is not appropriate. Documents supporting this action are available in the deletion docket.

V. Action

EPA and the NJDEP have found that the release poses no significant threat to public health and the environment and, therefore, taking remedial measures is not appropriate. Therefore, EPA is deleting the Site from the NPL.

This action will be effective on June 9, 2000. However, if EPA receives significant adverse or critical comments by May 10, 2000, EPA will publish a document that withdraws this action.

List of Subjects in 40 CFR Part 300

Environmental protection, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Superfund, Water pollution control, Water supply.

Dated: March 15, 2000.

William J. Muszynki,

Acting Regional Administrator, Region 2.

Part 300, title 40 of chapter I of the Code of Federal Regulations is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the site for Upper Deerfield Township Sanit. Landfill, Upper Deerfield Township, New Jersey.

[FR Doc. 00–8524 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

[CC Docket No. 98–137, ASD File No. 98–91; FCC 99–397]

1998 Biennial Regulatory Review—Review of Depreciation Requirements for Incumbent Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document we address proposals set forth in our Notice of Proposed Rulemaking to reform our depreciation prescription process. With this Order, we greatly streamline the depreciation requirements for price cap incumbent local exchange carriers (LECs). We adopt proposals to permit summary filings, eliminate the prescription of depreciation rates for certain incumbent LECs, expand the prescribed range for the digital switching plant account, and eliminate the theoretical reserve study requirement for mid-sized incumbent LECs. These measures will minimize the regulatory burden on incumbent LECs and will provide them with greater flexibility to adjust their depreciation rates while allowing the Commission to maintain adequate oversight in order to promote competition and protect consumer.

DATES: These rules contain information collections that have not been approved by the Office of Management and Budget. The Commission will publish a document announcing the effective date of this rule. Written comments by the public on the new and/or modified information collections are due June 9, 2000.

ADDRESSES: Federal Communications Commission, 445—12th Street, SW., TW–A325, Washington, D.C. 20554. In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: JoAnn Lucanik, Accounting Safeguards Division, Common Carrier Bureau at (202) 418–0800 or Andy Mulitz, Chief, Legal Branch, Accounting Safeguards Division, Common Carrier Bureau at (202) 418–0827. For additional information concerning the information collections contained in this document,

contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This *Report and Order* in CC Docket No. 98–137, ASD File No. 98–81, adopted on December 17, 1999 and released on December 30, 1999, is available for inspection and copying during normal business hours in the FCC Reference Information Center (RIC), 445 12th Street, SW, TW–A325, Washington, D.C. 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036 (202) 857–3800.

This Report and Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collections contained in this proceeding.

Paperwork Reduction Act

This R&O contains either a new or modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this R&O as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due June 9, 2000. Comments should address: (a) Whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–0168.

Title: Reports of Proposed Changes in Depreciation Rates—Section 43.43.

Form No.: N/A.

Type of Review: Revised Collection.

Respondents: Business or other for-profit.

Title	Number of respondents	Est. time per respondent	Total annual burden
Section 43.43	11	5970	60030
Waiver of Depreciation Process	5	100	500

Total Annual Burden: 60,030 Hours.

Cost to Respondents: $0.

Needs and Uses: The Commission streamlined its depreciation prescription process by permitting summary filings and eliminating the prescription of depreciation rates for certain incumbent LECs, expanding the prescribed range for the digital switching plant account, and eliminating the theoretical reserve study requirement for mid-sized incumbent LECs. The Commission also established a waiver process whereby price cap incumbent LECs can free themselves of depreciation regulation. Synopsis of *Report and Order:*

I. Background

The Commission prescribes depreciation factors for price cap incumbent LECs whose revenues exceed an indexed revenue threshold, currently set at $112 million in annual revenue. These carriers currently have investments in telephone plant totaling $288 billion and an accumulated depreciation balance totaling $146 billion. Depreciation constitutes 28 percent of incumbent LECs' total operating expenses, and is their largest single expense.

Over the years, the Commission has taken steps to streamline the depreciation requirements to keep pace with changes in communications technology and legal requirements. When incumbent LECs were regulated under cost-of-service (or rate-of-return) regulation, regulation and oversight of the depreciation process was a critical function because prices for incumbent LEC services were set based on costs, including depreciation expenses. Under this regulatory scheme, each carrier seeking to change its depreciation rates was required to submit a depreciation rate study that was reviewed both by the Commission staff and the representatives of the state regulatory authorities. This depreciation prescription process required carriers to submit extensive data for each plant category to support the projection life, survivor curve, and future net salvage estimates underlying their proposed depreciation rates. These data requirements often necessitated voluminous submissions, with up to 25 pages of analysis for each of 34 plant categories for each jurisdiction.

In 1980, the Commission departed from its previous practice of relying largely on historical experience to project equipment lives and began to rely on analysis of company plans, technological developments, and other future-oriented studies. In 1993, the Commission issued the *Depreciation Simplification Order* (See 58 FR 00530 January 6, 1993) that adopted a simplified depreciation prescription process for AT&T and incumbent LECs. With regard to incumbent LECs, that Order provided for the establishment of ranges for the life and salvage factors that carriers could use to compute their depreciation rates. Consequently, incumbent LECs that proposed life and salvage factors within the Commission-approved ranges no longer needed to file detailed cost support for those rates. In contrast, a carrier that chose to propose depreciation factors outside of the ranges would have to provide cost support to justify it. Today, incumbent LECs remain subject to the Commission's rules under §§ 32.2000(g) and 43.43 for purposes of establishing depreciation rates; however, the typical carrier's filing requirements have been reduced by 75 percent when its depreciation proposals are within the prescribed ranges.

The recent *Depreciation Notice* (63 FR 56900 September 23, 1998) sought comment on proposals that would further minimize the burden on incumbent LECs in the depreciation prescription process. We address the proposals set forth in the *Depreciation Notice* and take further steps to streamline the depreciation prescription process for incumbent LECs. In this action, we take the following actions to further simplify our depreciation prescription process. Filing Requirements in the *Depreciation Notice*, we sought comment on a proposal that would reduce price cap incumbent LECs' filing requirements to four summary exhibits, and the electronic data files used to generate them, provided carriers select depreciation factors from within the specified ranges for all accounts and certify that their selections are consistent with their operations. The four summary exhibits are a comparison of existing and proposed depreciation

rates; a comparison of existing and proposed annual depreciation expenses; a book and theoretical reserve summary; and the underlying depreciation factors. We conclude that we must balance the carriers' needs for simplification with the needs of this Commission, ratepayers, state regulatory missions, and competitors for sufficient information to assess claims the incumbent LECs' may make for regulatory relief. As noted, depreciation expense constitutes a large portion of a carrier's expenses and is significant in determining cost recovery. While we believe we can reduce the amount of information a carrier must file, we find certain basic information is still needed to allow us to adequately monitor a carrier's depreciation practices and amounts associated with these practices. The information that carriers will be required to file in the four summary exhibits, along with the underlying data used to generate them, will provide the depreciation factors (*i.e.*, life, salvage, curve shape, depreciation reserve) required to verify the calculation of the carriers' depreciation rates, estimate the changes in annual depreciation expenses, and monitor the adequacy of the depreciation reserve. This information is critical because it provides the minimum amount of data needed to maintain oversight of carriers' depreciation expenses and rates. We conclude that the proposal in the *Depreciation Notice* strikes an appropriate balance. It will minimize the burden on the carriers, since carriers will not be required to prepare extensive supporting documents for public filing, while providing the minimum amount of data needed to maintain oversight of carriers' depreciation expenses and rates. Thus, we will permit carriers that select depreciation factors from within the specified ranges for all accounts, and certify that their selections are consistent with their operations, to file four summary exhibits along with electronic data files used to generate the summary exhibits as described.

Reduction of Need for Prescription Orders

In the *Depreciation Notice* we proposed that, if a carrier selects depreciation factors from within the ranges for all of its accounts, the carrier's new depreciation rates could go into effect without a prescription order. Based on our review of the record in this proceeding, we will permit carriers to submit streamlined exhibits if they request depreciation factors for all accounts that are within the prescribed ranges. Carriers that request depreciation factors outside the ranges prescribed by the Commission must continue to submit exhibits for each account. In either case, however, the information filed by the incumbent LEC would contain life, salvage, reserve, rate, and expense information, which will be maintained in public files. Also, much of this data will be maintained in the ARMIS database, and therefore, will be readily available to the public via the Internet. We conclude, therefore, that we can eliminate prescriptions in the case where carriers select depreciation factors from within the prescribed ranges for all of its accounts, thereby further reducing the burden on these carriers, and still maintaining an adequate public record that all interested parties will be able to review.

Equipment Life Ranges

We proposed to expand the range of lives for digital switching equipment from a range of 16 to 18 years to 13 to 18 years. Based on our review of the record, we are persuaded that the lower limit of the life range for digital switching should be shortened from the current 16-year minimum to 12 years. We find that this reduction is justified by incumbent LEC accounting data that shows an upward trend in retirements of digital switching equipment in recent years. The increasing retirements are due, in part, to the modular nature of modern digital switches, which allows the incumbent LECs to retire portions of a switch on an interim basis as technology improves. Incumbent LECs also advocate shorter minimum lives for accounts other than digital switching and recommend lives projected by Technology Futures, Inc. (TFI). Based on our review, and given the significant uncertainty that even TFI acknowledges exists in forecasting plant replacement over the next fifteen years, we do not find that the carriers that advocate adoption of TFI's much shorter projection lives have met their burden. Depreciation reserves are at 51 percent, an all-time high, and have increased for each of the past five years. There is no evidence that the large wave of plant replacements forecast by TFI, which should result in increased retirements, has begun or is about to begin. If the carriers do begin to retire plant more rapidly, our depreciation prescription process is flexible enough to allow them shorter lives and faster depreciation. We conclude, therefore, that the TFI study fails to establish convincingly that current projection lives are inadequate.

Salvage and Cost of Removal

In order to calculate net salvage, carriers must estimate both gross salvage and cost of removal. Given the speculative nature of these estimates and the burdens associated with their calculation, the *Depreciation Notice* tentatively concluded that the prescription of net salvage no longer serves a regulatory purpose and that eliminating that factor from the formula would significantly reduce the regulatory burden of the depreciation prescription process. Accordingly, we proposed to eliminate the future net salvage factor from the depreciation formula and to record net salvage as a current expense in the period incurred. Alternatively, we proposed making the elimination of net salvage from the depreciation formula optional, and allowing each incumbent LEC the option to treat net salvage as either a current expense or a component of depreciation. The Financial Accounting and Standards Board (FASB) is currently conducting a proceeding that could change how firms must account for net salvage on their financial books. In light of the pending action by the FASB, we conclude that it is appropriate to defer action on this issue.

Reporting Requirements for Mid-Sized LECs

In the *Depreciation Notice*, we proposed that mid-sized incumbent LECs no longer be required to file annual theoretical reserve studies. Because the Commission would continue to receive theoretical reserve studies from the largest incumbent LECs, which serve approximately 90 percent of all access lines, this proposal would relieve these mid-sized companies of this regulatory burden without seriously encumbering the Commission's ability to monitor and evaluate the adequacy of the industry's reserves. Although a carrier's theoretical reserve studies allow us to monitor and evaluate the adequacy of a carrier's depreciation reserve, we recognize the burden these studies impose on mid-sized incumbent LECs. On balance, we believe that the benefits of streamlining depreciation reporting for mid-sized LECs outweighs the risks. We note that, if necessary, we can request a mid-sized carrier to provide a theoretical reserve study. Further, we note that incumbent LECs with individual annual operating revenues below the indexed revenue threshold continue to be exempt from the Commission's depreciation prescription process.

Confidentiality

The Commission's existing confidentiality procedures are contained in 47 CFR 0.457 and 0.459 of the Commission's rules. We sought comment on whether these rules are

adequate or whether additional safeguards need to be adopted to protect information that carriers regard as confidential. We find no reason to alter the policies we have in place to protect the confidentiality of carrier information.

Waivers

In the *Depreciation Notice*, we noted that even under price caps, depreciation had a potentially significant impact on a carrier's price cap indexes and its rates for some non-price cap services. We invited comment on ways that we might eliminate our need for depreciation prescription. In addition, the USTA forbearance petition raised issues concerning conditions under which the depreciation process might not be necessary. Based on our review, we believe that it would be appropriate to grant a waiver of our depreciation prescription process for certain price cap incumbent LECs in certain instances. Specifically, we find that such a waiver may be approved when an incumbent LEC, voluntarily, in conjunction with its request for waiver: (1) Adjusts the net book costs on its regulatory books to the level currently reflected in its financial books by a below-the-line write-off; (2) uses the same depreciation factors and rates for both regulatory and financial accounting purposes; (3) foregoes the opportunity to seek recovery of the write-off through a low-end adjustment, an exogenous adjustment, or an above-cap filing; and (4) agrees to submit information concerning its depreciation accounts, including forecast additions and retirements for major network accounts and replacement plans for digital central offices. Finally, the waiver request must comply with § 1.3 of the Commission's rules. We will consider alternative proposals by carriers seeking a waiver of our depreciation requirements. Such alternative proposals, however, must provide the same protections to guard against adverse impacts on consumers and competition as the conditions adopted in this Order provide.

The first and second conditions of the waiver process we establish in this Order require that carriers seeking a waiver of our depreciation prescription process adjust their regulatory net book costs to their financial net book costs and use the same depreciation factors and rates for both regulatory and financial accounting purposes. The first condition addresses the disparity that exists between the largest incumbent LECs' financial and regulatory books. In the early 1990's many of the largest incumbent LECs wrote off billions of dollars from their financial books through adjustments to their depreciation reserves. Because they did not make comparable write-offs on their regulatory books, there are significant differences in depreciation reserves between their financial and regulatory books. The first condition requires that the incumbent LEC eliminate this disparity by increasing the depreciation reserves on its regulatory books by a below-the-line write-off. The second condition then requires that carriers use the same depreciation factors and rates for both regulatory and financial purposes. Using the same factors and rates will ensure that established accounting procedures are being followed. These conditions are important because they provide assurance that carriers do not engage in a practice that would disadvantage consumers and competition by using high financial depreciation rates with high regulatory net book costs or by applying inappropriate depreciation rates to regulatory plant accounts.

The third condition requires that carriers obtaining a waiver forego the opportunity to recover any portion of the adjustment that results from conforming their regulatory net book costs to their financial net book costs (*i.e.*, through a below-the-line write-off). As a precondition to obtaining a waiver of the depreciation prescription process, a carrier would have to voluntarily forego its opportunity to recover any portion of the one-time adjustment to its regulatory books through a low-end adjustment, an exogenous adjustment or an above-cap filing. These are all mechanisms through which a price cap incumbent LEC can increase its prices by passing costs through to ratepayers. This third condition assures that a waiver from the depreciation prescription rules would not lead to unjust and unreasonable rates that would result from the inappropriate use of recovery mechanisms. Foregoing recovery of any portion of the write-off is necessary because the depreciation prescription process is the primary way in which we evaluate such claims for recovery. If, as a condition of obtaining a waiver, an incumbent LEC voluntarily foregoes any opportunity to assert such claims in connection with this adjustment to its regulatory net book costs, then our concerns would be mitigated and we could conclude that a waiver of our rules is consistent with the public interest.

These first three conditions are imposed in order to guard against adverse impacts on consumers and competition. Without these conditions, the largest incumbent LECs could use their high financial depreciation rates with their high regulatory net book costs, thereby drastically increasing their annual depreciation expenses. Large increases in depreciation expenses on the carrier's regulatory books would significantly reduce carrier's earnings, which in the case of most all the largest incumbent LECs, would be of such magnitude as to lower rates of return below 10.25%. This in turn could trigger a low-end adjustment, or could lead to carriers seeking recovery through exogenous cost treatment or above-cap filings. These recovery mechanisms, if granted, could enable incumbent LECs to increase prices they charge for access services and in rates they charge for unbundled network elements (UNEs) and interconnection. Increases in access service prices, which could be substantial, would be imposed on purchasers of access and passed on to their customers. The harmful impact that increased charges could have on competition is also substantial. State regulatory commissions have set rates for interconnection and UNEs, and in many instances, have based the rates on Commission-prescribed depreciation factors. Incumbent LECs, acting as wholesale providers of critical facilities to their competitors, could independently establish depreciation rates that could result in unreasonably high interconnection and UNE rates, which competitors would be compelled to pay in order to provide competing local exchange service.

In addition, allowing the largest incumbent LECs to select their own financial depreciation rates for regulatory purposes could have serious consequences for the universal service process. All the largest price cap incumbent LECs are classified as non-rural for universal service purposes. Under the rules we adopted in the recent federal high-cost support mechanism proceedings, each of the non-rural carriers' high cost support is the larger of: (1) An amount determined under our previous USF calculation method, i.e., by basing the amount of support on the relationship of the carrier's average cost per loop and the nationwide average cost per loop or (2) an amount determined under the new synthesis model. Our current depreciation prescription process is critical in the calculation of high cost support amounts determined under method (1) because it ensures that the depreciation expense component of the carriers' average costs per loop are reasonable. If we were to allow incumbent LECs to choose their own depreciation factors without review, we

could no longer ensure that the depreciation expense or the average cost per loop were reasonable. If these carriers were to use their financial depreciation factors for regulatory purposes, they would report major increases in their average costs per loop. This would increase substantially their high cost support under method (1). Under this method, however, because high cost support is subject to a cap, increases in the largest incumbent LECs' high cost support would not increase the fund. Instead, it would lead to substantial reductions in the high cost support for other, primarily rural, carriers, many of which rely to a great extent on high cost support to keep their local rates affordable.

In light of the significantly harmful impact that unrestricted changes in depreciation expenses could have on consumers and competition, we find the public interest is protected only if safeguards are in place that will negate such potential harm. We believe the first three conditions provide the appropriate safeguards and will ensure that carriers do not unreasonably increase depreciation expenses as a result of granting flexibility to establish their own depreciation rates.

The fourth condition requires that carriers who obtain a waiver of our depreciation process submit certain information about network retirement patterns and modernization plans related to their plant accounts so that we can maintain realistic ranges of depreciable life and salvage factors for each of the major plant accounts. This condition seeks to ensure that the Commission has the necessary data to periodically update depreciation factors (*i.e.*, life, salvage, curve shape, depreciation reserve) and to address issues in areas where reliance on the carriers' financial depreciation rates may be inconsistent with other regulatory policy goals. Maintaining appropriate depreciation ranges for the major plant accounts will continue to be critical even though some carriers may be granted relief from the Commission's prescribed depreciation process. This is especially true given the Commission's reliance on the prescribed depreciation ranges in the use of its cost models for universal service high cost support and UNE/interconnection prices.

As discussed, calculation of high cost support under method (2) uses the synthesis model. In this model, the Commission determined that it would rely on the weighted average of the prescribed lives and salvage percentages. If we were to discontinue depreciation prescription for most carriers, these weighted average factors would become less representative of the industry as a whole. In such a circumstance, in order to have representative depreciation factors, we would likely have to rely on the Commission's prescribed depreciation ranges. In order to do this successfully, however, we would have to require that all the major carriers continue to provide the data necessary to keep the ranges up-to-date.

Further, in the *Local Competition Proceeding*, (61 FR 45476 August 29, 1996) the Commission required the use of "economic depreciation" in calculating rates for interconnection and UNEs, but did not elaborate on how economic depreciation should be calculated. Based on our review to date, twenty-four states commissions have required incumbent LECs to use FCC-prescribed projection lives and salvage factors, or similar state-prescribed factors, to calculate their rates for UNEs. We are concerned that forbearance from depreciation regulation by the Commission might deprive state regulatory commissions of valuable information that they may want or need in setting rates for interconnection and UNEs, and might enable incumbent LECs to raise arbitrarily the rates for essential inputs that competitors must purchase from the incumbent LECs. This could have an adverse impact on the development of local competition.

Thus, in order to prevent any inappropriate and undesirable fluctuations in high cost support or the rates for interconnection and UNEs due to changes in depreciation rates caused by carriers receiving a waiver, we will continue to maintain realistic ranges of depreciable life and salvage factors for each of the major plant accounts. These ranges can be relied upon by federal and state regulatory commissions for determining the appropriate depreciation factors to use in establishing high cost support and interconnection and UNE prices. The information that carriers will be required to submit include: forecast additions and retirements for major network accounts; replacement plans for digital central offices; and information concerning relative investments in fiber and copper cable. This condition will assure that any increase in depreciation expense will not have a harmful effect on consumers or competition in rates calculated using reported costs or forward-looking cost models.

The four conditions outlined are intended to mitigate our concerns about the adverse impacts that could occur when carriers are given the freedom to select their own depreciation lives and procedures. The depreciation prescription process is our primary method of assessing the validity of the incumbent LECs' claims for reserve deficiencies and it would not be in the public interest to waive our depreciation rules with the issue of billions of dollars in potential claims unresolved. By establishing conditions pursuant to which a waiver from the depreciation prescription process would be granted, we are giving carriers the freedom from depreciation regulation that they seek. In exchange for that freedom, however, they would need to relinquish portions of the regulatory safety net that has protected them in the past.

USTA Petition for Forbearance

On September 21, 1998, USTA filed a petition for forbearance on behalf of the price cap incumbent LECs and requested that the Commission forbear from imposing §§ 32.2000(g) and 43.43 of the Commission's rules, and refrain from conducting depreciation prescription proceedings under section 220(b) of the Act. The USTA petition is filed under section 10 of the Act. We deny the USTA's petition. We find that USTA did not meet the requirements of Section 10 and that: Our depreciation prescription process is necessary to ensure just and reasonable charges; continuation of our depreciation prescription process is necessary for the protection of consumers; and that forbearance is not consistent with the public interest and the promotion of competition as it is likely to have an adverse effect on competition by raising the input prices that competitors must pay to provide local exchange service. We therefore find that none of the three prongs of the section 10 forbearance test is met. We thus deny USTA's petition for forbearance from the prescription of depreciation prescription.

IV. Procedural Issues

A. Regulatory Flexibility Act

Final Regulatory Flexibility Certification—Report and Order in CC Docket No. 98–81, RM–9341.

The Regulatory Flexibility Act (RFA), 5 USC 601 *et seq.*, amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA), requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). In the *NPRM*, 1998 Biennial Regulatory Review—Review of

Depreciation Requirements for Incumbent Local Exchange Carriers, CC Docket No. 98–137, *Notice of Proposed Rulemaking (NPRM)*, the Commission certified that the Regulatory Flexibility Act did not apply to this rulemaking because none of the proposed changes to our depreciation prescription process would have a significant economic impact on a substantial number of small entities. Pursuant to longstanding rules, the proposed changes would apply only to incumbent LECs with annual operating revenues exceeding the indexed revenue threshold. No comments were received concerning the proposed certification.

B. Paperwork Reduction Act

26. *Final Paperwork Reduction Act Analysis.*

C. Authority

This decision herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law 104–13, and has been approved in accordance with the provisions of that Act. The Office of Management and Budget (OMB) approved the proposed requirements under OMB control number 3060–0168, which expires December 31, 2001. The Report and Order contains new or modified information collections which are subject to the Paperwork Reduction Act of 1995.

D. Ordering Clauses

Pursuant to Sections 1, 2, 4, 11, 201–205, and 218–220 of the Communications Act of 1934, as amended, 47 USC 151, 152, 154, 161, 201–205, and 218–220, part 43 of the Commission's rules, 47 CFR part 43, is *Amended* as shown. Pursuant to Sections 1–4, 201–205, 220 and 303(r) of the Communications Act of 1934, as amended, 47 USC 151–154, 201–205, 220 and 303(r) that the *Report and Order is Adopted*. These rules contain information collections that have not been approved by OMB. The Commission will publish a document announcing the effective date of this rule.

Pursuant to Sections 1, 4, 10, and 220 of the Communications Act of 1934, as amended, 47 USC 151, 154, 160, and 220 that the Petition for Forbearance from Depreciation Regulation of Price Cap Local Exchange Carriers filed by the United States Telephone Association is hereby denied. The Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 43

Reports of Communication Common Carriers and Certain Affiliates.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 43 of Title 47 of the CFR is amended as follows:

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

1. The authority citation for part 43 continues to read as follows:

Authority: 47 U.S.C. 154: Telecommunications Act 0f 1996, Public Law 104–104, sections 402 (b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220 as amended.

2. In § 43.43 paragraph (c) and (e) are revised to read as follows:

§ 43.43 Reports of proposed changes in depreciation rates.

* * * * *

(c) Except as specified in paragraphs (c)(1) and (c)(3) of this section, when the change in the depreciation rate proposed for any class or subclass of plant (other than one occasioned solely by a shift in the relative investment in the several subclasses of the class of plant) amounts to twenty percent (20%) or more of the rate currently applied thereto, or when the proposed change will produce an increase or decrease of one percent (1%) or more of the aggregate depreciation charges for all depreciable plant (based on the amounts determined in compliance with paragraph (b)(2) of this section) the carrier shall supplement the data required by paragraph (b) of this section) with copies of the underlying studies, including calculations and charts, developed by the carrier to support service-life and net-salvage estimates. If a carrier must submit data of a repetitive nature to comply with this requirement, the carrier need only submit a fully illustrative portion thereof.

(1) A Local Exchange Carrier regulated under price caps, pursuant to §§ 61.41 through 61.49 of this chapter, is not required to submit the supplemental information described in paragraph (c) introductory text of this section for a specific account if: The carrier's currently prescribed depreciation rate for the specific accounts derived from basic factors that fall within the basic factor ranges established for that same account; and the carrier's proposed depreciation rate for the specific account would also be derived from basic factors that fall within the basic factor ranges for the same account.

(2) Local Exchange Carriers that are regulated under price caps, pursuant to §§ 61.41 through 61.49 of this chapter, and have selected basic factors that fall within the basic factor ranges for all accounts are exempt from paragraphs (b)(3), (b)(4), and (c) introductory text of this section. They shall instead comply with paragraphs (b)(1), (b)(2) and (b)(5) of this section and provide a book and theoretical reserve summary and a summary of basic factors underlying proposed rates by account.

(3) Interexchange carriers regulated under price caps, pursuant to §§ 61.41 through 61.49 of this chapter, are exempted from submitting the supplemental information as described in paragraph (c) introductory text of this section. They shall instead submit: Generation data, a summary of basic factors underlying proposed depreciation rates by account and a short narrative supporting those basic factors, including company plans of forecasted retirements and additions, recent annual retirements, salvage and cost of removal.

* * * * *

(e) Unless otherwise directed or approved by the Commission, the following shall be observed: Proposed changes in depreciation rates shall be filed at least ninety (90) days prior to the last day of the month with respect to which the revised rates are first to be applied in the accounts (*e.g.*, if the new rates are to be first applied in the depreciation accounts for September, they must be filed on or before July 1). Such rates may be made retroactive to a date not prior to the beginning of the year in which the filing is made: *Provided however*, that in no event shall a carrier for which the Commission has prescribed depreciation rates make any changes in such rates unless the changes are prescribed by the Commission. Carriers who select basic factors that fall within the basic factor ranges for all accounts are exempt from depreciation rate prescription by the Commission.

* * * * *

[FR Doc. 00–8639 Filed 4–7–00; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 65, No. 69
Monday, April 10, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 158

[Docket No. 27791; Notice No. 96–3]

RIN 2120–AF69

Passenger Facility Charges

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); withdrawal.

SUMMARY: The FAA is withdrawing the ANPRM, published on April 16, 1996, that proposed to amend provisions of the regulations on passenger facility charges (PFCs). These provisions address the collection, handling, and remittance of PFCs.

FOR FURTHER INFORMATION CONTACT: Joe Hebert, Passenger Facility Charge Branch (APP–530), Room 619, Airports Financial Assistance Division, Office of Airports Planning and Programming, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–8902.

SUPPLEMENTARY INFORMATION:

Background

On May 27, 1994, the Airport Transportation Association of America (ATA) petitioned for a rule change to 14 CFR 158.53(a) to extend the handling fee of $0.12 per each PFC remitted to a public agency, for an additional 3 years. Under the terms of § 158.53, the handling fee dropped to $0.08 per PFC remitted on June 28, 1994. The ATA also proposed that after the third year, they would file comments to determine if the entire airline industry had fully recovered the cost necessary to maintain the PFC collection system. Further, the ATA requested that § 158.53(a) be amended to allow air carriers to retain a handling fee for each refunded PFC. On June 24, 1994, the FAA published a summary of the ATA's petition in the **Federal Register** (59 FR 32668). Air carriers and public agencies were asked to provide specific data to the FAA, so that the agency could determine an adequate rate of airline compensation. The FAA received 12 comments in response to this notice, but determined that these comments did not constitute sufficient information to make a decision.

As a result, the FAA issued an ANPRM (61 FR 16678) on April 16, 1996, providing additional guidance on the quantity and quality of information that the FAA needed in order to make a decision regarding the ATA's petition on adequate compensation for PFC revenue collecting, handling, and remitting. The FAA also used the ANPRM to solicit comments on a number of ancillary issues pertaining to the handling and transfer of PFC revenues and on other changes in Part 158 to accommodate new legislation and industry practices. Specifically, these issues included the following proposals to amend sections of Part 158: require separate handling of PFC collections by air carriers to facilitate PFC remittance in the event of air carrier bankruptcy; implement the statutory prohibition on collection of PFCs from passengers traveling on frequent flyer awards; establish that PFC remittance occurs at the time that a public agency receives PFC collections from an air carrier; and codify current industry practice by providing for appropriate PFC adjustments when a trip itinerary change is initiated by the passenger.

To further analyze whether a change in PFC compensation is necessary, the FAA requested detailed and persuasive data from air carriers that, in total, represented at least 75 percent of enplanements at PFC locations. The FAA determined that information on 75 percent of total PFC enplanements was necessary to give an adequate view of current industry cost and would provide adequate cost data to determine if a change in collecting, handling, and remitting compensation is necessary. In particular, the PFC statute requires that the handling fee be a "uniform amount" that "reflects the average necessary and reasonable handling expenses (net of interest accruing to the carrier and agent after collection and before remittance)." A sample of less than 75 percent, if it included a disproportionate representation from carriers with higher PFC handling costs, would not yield an accurate average handling cost calculation for the industry. (61 FR 16678).

Reasons for Withdrawal

The FAA received responses with data from 10 air carriers. The FAA also received responses from 18 public agencies and 5 industry organizations. The airline responses represented 62 percent of the enplanements at PFC locations, which was 13 percent below the minimum response required by the FAA. As a result of the lack of information provided, the FAA cannot conclude that the current compensation level of $0.08 for each PFC remitted to a public agency does not provide adequate compensation to air carriers. The FAA has no justification to change the PFC collecting, handling, and remitting compensation level either by adjusting the uniform average handling fee itself or changing the basis on which the fee is paid from PFC remitted (which does not include refunded PFCs) to PFC collected (which would include refunded PFCs). Thus, the compensation level remains at $0.08 for each PFC remitted to a public agency, and this compensation cannot be claimed by the air carrier for refunded air travel tickets.

In addition, Congress recently passed H.R. 1000. When signed into law, this legislation, among other items, will establish higher PFC charge levels of $4 and $4.50, will set additional criteria for the review and approval of charges at the higher levels, and will make other miscellaneous changes to the prior PFC legislation. In the "Statement of Managers for the Conference Report accompanying H.R. 1000," the FAA was charged with reviewing the compensation level for air carriers collecting, handling, and remitting PFCs to airports. The FAA will shortly commence a new rulemaking to examine air carrier compensation in response to this requirement.

Many commenters addressed the three proposals the FAA made regarding bankruptcy. The first proposal would prohibit air carriers from commingling PFC revenue with other sources of revenue and require air carriers to establish separate trust accounts. Commenters viewed this proposal as the least costly of the three. The Metropolitan Washington Airports

Authority (MWAA) stated that establishing separate trust accounts would strengthen airport public agencies' claim to PFCs which had been collected. The MWAA preferred trust accounts to escrow accounts, if the PFC funds could be protected sufficiently through trust accounts. Other airports shared the MWAA's view. However, the commenters did not quantify the amount of additional cost that implementation of this proposal would entail to air carriers. Moreover, the degree of additional protection offered to public agencies from such trust accounts in the event of air carrier bankruptcy was not felt to be significantly greater than the current practice. Based on these comments, the FAA cannot determine if the benefits of implementing this proposal would justify higher costs to air carriers.

The second proposal was to require that carriers establish third-party escrow accounts to hold PFC revenue between collection of that revenue and remittance to the public agency. United Airlines indicated that this proposal would increase the air carrier's cost while reducing the compensation available to recover such cost. The FAA notes that public agencies, in their contractual arrangements with air carriers serving their airports, may require PFC escrow accounts or security deposits provided that such security requirements apply to the air carriers in a manner that is not unjustly discriminatory. However, the FAA does not have sufficient data on the costs or expected benefits of such accounts at this time to pursue mandatory implementation.

The third proposal concerning bankruptcy would require the Airline Reporting Corporation (ARC) clearinghouse to remit PFC revenue directly to the public agencies when travel agencies' tickets are processed through the clearinghouse. This proposal presented a problem to some commenters because the majority of travel agency ticket sales are purchased with credit cards, with no funds being collected from the purchaser at time of sale. Travel agents report these credit sales through ARC without remitting any funds to ARC. The ARC clearinghouse bills credit card sales on the air carriers' behalf and reports the amounts billed to the air carriers. However, credit card issuers remit directly to the air carrier. At no point in this credit sale cycle does ARC have liquid funds from the credit card sales. As with the other proposals, the FAA does not have sufficient data on the costs or expected benefits of this proposal to pursue its mandatory implementation.

In the ANPRM, the FAA proposed to implement the statutory prohibition on collection of PFCS from passengers traveling on frequent flyer awards that was promulgated in the Authorization Act of 1994. The FAA also proposed to change §§ 158.45(a)(3) and 158.47(c)(4) to delete a provision in the original PFC rule that is no longer applicable under current industry ticketing practice. The FAA did not receive any opposition on these issues from air carriers or airports. The FAA notes that it already imposes the statutory requirement pertaining to non-collection of PFCs on frequent flyer award tickets in its PFC Records of Decision and the presence of the obsolete provisions has not adversely affected ticketing and remittance practices. Consequently, a separate rulemaking to address these issues may be postponed until the changes may be combined with other changes to Part 158 when appropriate. The frequently flyer provision and technical correction to §§ 158.45(a)(3) and 158.47(c)(4) will be implemented as part of a future rulemaking on the PFC program when the need arises to address additional issues by rulemaking.

The final issue addressed changing the phrase "remitted to" to "received by" when addressing the deadline for monthly transfer of PFC revenue from air carriers to public agencies. Commenters contended that using the term "received by" would make it easier for them to enforce late payment penalties. However the term "remitted by" is common and effective in several U.S. tax laws, so the FAA has denied this request. The FAA notes that a public agency's authority to establish due dates for receipt of remitted monies and collect penalties and interest on PFC revenue that is past due depends on local law or the public agency's contractual relationship with the air carrier, although the due date cannot be in advance of the requirements of § 158.51. The FAA does not consider Part 158's silence on this subject to preclude the collection of penalties and interest based on local law or contract, and the FAA does not object to this practice as long it is applied in a manner that is not unjustly discriminatory.

Conclusion

Therefore, as a result of reviewing comments to the ANPRM Notice No. 96–3, regarding the collection, handling, and remittance of PFCs, the FAA has decided to withdraw this ANPRM. Accordingly, the ANPRM, Notice No. 96–3, published on April 16, 1996 (61 FR 16678), is withdrawn.

Issued in Washington, DC on March 31, 2000.

Catherine M. Lang,

Director, Office of Airport Planning and Programming.

[FR Doc. 00–8365 Filed 4–7–00; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 250

Guides for the Household Furniture Industry

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission ("Commission") requests public comments about the overall costs and benefits and the continuing need for its Guides for the Household Furniture Industry ("the Household Furniture Guides" or "the Guides"), as part of the Commission's systematic review of all current Commission regulations and guides.

DATES: Written comments will be accepted until June 9, 2000.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments should be identified as "Household Furniture Industry Guides, 16 CFR Part 250—Comment."

FOR FURTHER INFORMATION CONTACT: Ingrid Whittaker-Ware, Attorney, Federal Trade Commission, Southeast Region, 60 Forsyth Street, S.W., Atlanta, Georgia 30303, telephone number (404) 656–1364, E-mail address: *"Furniture@FTC.gov"*.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission promulgated the Guides for the Household Furniture Industry on December 21, 1973, 38 FR 34992 (1973), under the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 41–58. [1] The Guides became effective on March 21, 1974. Prior to promulgating the Guides, the Commission released proposed Guides to allow interested or affected parties an opportunity to inform the Commission of their views, suggestions, objections, or other information regarding the proposed

[1] The FTC Act makes it unlawful for one to engage in "unfair methods of competition and unfair or deceptive acts or practices in commerce."

Guides. Based on this information, the Commission determined that it was in the public interest to offer guidance to the industry thereby promoting a higher level of compliance with the laws administered by the Commission by adopting the Guides. The Guides are voluntary guidelines containing interpretations of acts or practices that the Commission has issued to assist members of the industry in complying with Section 5 of the FTC Act.

The Furniture Guides generally advise members of the industry to make affirmative disclosures for the benefit of consumers to ensure that the prospective purchaser is not misled into thinking that the product is different from that which is actually offered, because of the appearance, description, depictions or representations made about the product, in advertising, labeling or other promotional materials. The Guides also advise that advertisers making representations concerning (a) tests made on products, or (b) the performance characteristics of upholstery fabrics do in fact have a "reasonable basis" for such representations. Further, the guides also inform advertisers that the Commission may require documentation from them to substantiate their representations concerning the product. The Guides also provide several definitions for the industry, including definitions regarding certain types of wood. In summary, the Guides for the Household Furniture Industry, 16 CFR Part 250, advise members of the industry to:

(1) Make affirmative disclosures of material facts concerning merchandise, which if known to a purchaser, would influence his or her decision to purchase the merchandise:

(2) Attach an accurate tag or label in a prominent location on each product;

(3) Describe wood, wood imitations and color used in or on furniture only with qualified wood names or generally accepted wood names. The description shall not be deceptive;

(4) Identify certain woods as "walnut", "mahogany" and "mapel" only if such woods are derived from specified species;

(5) Refrain from making representations or misleading inferences about a product being made of leather, when in fact it is not;

(6) Refrain from making false or misleading representations concerning outer coverings of furniture or furniture stuffing;

(7) Accurately describe the origin of furniture, whether domestic or foreign; and whether the furniture is actually new, being made of parts and materials that were entirely unused;

(8) Refrain from describing as "floor sample" furniture that has been rented, repossessed or "traded-in";

(9) Refrain from using deceptive trademarks or claiming to be a manufacturer or wholesaler when in fact they are not; and

(10) Look to the applicable guides and rules for further guidance on guarantees, pricing and advertising.

II. Regulatory Review Program

The Commission has determined to review all current Commission rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Therefore, the Commission solicits comments on, among other things, the economic impact of and the continuing need for the Household Furniture Industry Guides; possible conflict between the Guides and state, local or other federal laws; and the effect on the Guides of any technological, economic, or other industry changes.

III. Request for Comments

The Commission solicits written public comments on the following questions:

1. Is there a continuing need for the Household Furniture Guides?

(a) What benefits have the Guides provided to purchasers of the products or services affected by the Guides?

(b) Have the Guides imposed costs on purchasers?

2. What changes, if any, should be made to the Guides to increase the benefits of the Guides to purchasers?

(a) How would these changes affect the costs the Guides impose on companies subject to their requirements?

3. What significant burdens or costs, including costs of adherence, have the Guides imposed on companies subject to their requirements?

(a) Have the Guides provided benefits to such companies?

4. What changes, if any, should be made to the Guides to reduce the burdens or costs imposed on companies subject to their requirements?

(a) How would these changes affect the benefits provided by the Guides?

5. Do the Guides overlap or conflict with other federal, state, or local laws or regulations?

6. Since the Guides were issued, what effects, if any, have changes in the relevant technology or economic conditions had on the Guides?

7. What effect, if any, has the use of modern technology such as the Internet and E-mail had on the Guides?

(a) How has the use of modern technology such as the Internet and E-mail affected the rights of consumers and the responsibilities of sellers?

8. Are there any abuses in the marketing of furniture products that are not addressed by the Guides?

(a) What mechanisms (*e.g.*, consumer education, self-regulation, amendment or rescission of the Guides) should be explored to deal with any marketing abuses that may exist?

9. What significant burdens or costs, including costs of adherence, have the Guides imposed on small companies subject to their requirements?

(a) How do these burdens or costs differ from those imposed on larger companies subject to the requirements of the Guides?

10. To what extent are the burdens or costs that the Guides impose on small companies similar to those that small companies would incur under standard and prudent business practices?

11. What changes, if any, should be made to the Guides to reduce the burdens or cost imposed on small companies?

(a) How would these changes affect the benefits of the Guides?

(b) Would such changes adversely affect the competitive position of larger companies?

List of Subjects in 16 CFR Part 250

Forest and forest products, Furniture industry, Trade practices.

Authority: 15 U.S.C. 41–58

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–8770 Filed 4–7–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 10, 201, 250, 290, 310, 329, 341, 361, 369, 606, and 610

[Docket No. 00N–0066]

Amendment of Regulations Regarding Certain Label Statements on Prescription Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to

amend its regulations to require the labels of prescription drugs to bear the statement "only" instead of the statement "Caution: Federal law prohibits dispensing without prescription" and to remove the requirement that certain habit-forming drugs bear the statement "Warning—May be habit forming." The agency is also proposing to add a new section to the regulations to make clear that these habit-forming drugs must be dispensed by prescription only. The agency is taking this action to implement changes made by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Submit written comments by June 26, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: For information regarding human drugs:

Jerry Phillips, Center for Drug Evaluation and Research (HFD–400), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3246.

For information regarding biologics:

Robert A. Yetter, Center for Biologics Evaluation and Research (HFM–10), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. The Modernization Act

On November 21, 1997, President Clinton signed into law the Modernization Act (Public Law 105–115). Section 126 of the Modernization Act amended section 503(b)(4) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 353(b)(4)) to require, at a minimum, that, prior to dispensing, the label of prescription drugs bear the symbol "Rxonly" instead of the statement "Caution: Federal law prohibits dispensing without prescription." The new label statement may be printed as either "Rx only" or "℞ only."[1] Section 126 of the Modernization Act also repealed section 502(d) of the act (21 U.S.C. 352(d)), which provided that a drug or device containing certain enumerated narcotic or hypnotic (habit-forming) substances or their derivatives was misbranded unless its label bore the name and quantity of the substance and the statement "Warning—May be habit forming."

II. Description of the Proposed Rule

The proposed rule would amend parts 10, 201, 250, 310, 329, 361, 606, and 610 (21 CFR parts 10, 201, 250, 310, 329, 361, 606, and 610) by removing the requirement that prescription drugs be labeled with "Caution: Federal law prohibits dispensing without prescription" and adding in its place a requirement that prescription drugs be labeled with "Rx only" or "℞ only."

The proposed rule would amend parts 201 and 369 (21 CFR part 369) by removing the requirement that certain habit-forming drugs bear the statement "Warning—May be habit forming."

The proposed rule would remove part 329. Part 329 was issued under repealed section 502(d) of the act. Section 329.1 designates as habit-forming certain derivatives of the habit-forming substances listed in section 502(d) of the act. Section 329.10 elaborates on the labeling requirement of section 502(d) of the act.

Section 329.20 exempts certain habit-forming drugs from the prescription-dispensing requirements of the act. This section has not been substantively revised in more than 30 years. It is now out of date. Except as discussed elsewhere in this section, none of the drug ingredients listed as exempt in § 329.20 are currently marketed over-the-counter (OTC) or have any legal basis to be marketed OTC.

The proposed rule would amend part 290 (21 CFR part 290), by adding new §§ 290.1 and 290.2. Section 290.1 is being added to make clear the agency's determination that a drug that is a controlled substance listed in Schedule II, III, IV, or V of the Federal Controlled Substances Act (CSA) or implementing regulations must, unless otherwise determined by the agency, be dispensed by prescription only as required by section 503(b)(1) of the act. Section 503(b)(1) provides that a drug that "because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use," or a drug which "is limited by an approved application under section 505 of the act to use under the professional supervision of a practitioner licensed by law to administer such drug," shall be dispensed only upon a prescription of a practitioner licensed by law to administer such drug. Generally, a drug that meets the criteria for control under Schedule II, III, IV, or V of the CSA (see 21 U.S.C. 812) would also meet the standard for prescription dispensing under section 503(b)(1) of the act. Drugs included in Schedule I of the CSA cannot be lawfully marketed in the United States.

Section 290.2 retains the exemption from the prescription-dispensing requirement in § 329.20 for small amounts of codeine in combination with other nonnarcotic active medicinal ingredients. Small amounts of codeine in combination with other nonnarcotic active medicinal ingredients, for example, cough syrup with codeine, may be marketed OTC under a final monograph for cold and cough products. (See § 341.14 (21 CFR 341.14)). For the reason stated above, no other exemptions are warranted at this time for the other narcotic drugs listed in § 329.20(a). Also, an exemption under § 290.2 is not needed for the chlorobutanol preparations described in § 329.20 because chlorobutanol is not a scheduled substance under the CSA. The epinephrine product described in § 329.20(c) cannot be lawfully marketed at this time.

The proposed rule would also revise § 341.14 to refer to the exemption at § 290.2, rather than § 329.20 which is being removed.

III. Implementation

A guidance for industry entitled "Implementation of Section 126 of the Food and Drug Administration Modernization Act of 1997—Elimination of Certain Labeling Requirements" (63 FR 39100, July 21, 1998) is available on the Internet at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/guidelines.htm. The guidance indicates that, for the time periods and under the circumstances stated in this section, in the exercise of its enforcement discretion, FDA does not intend to object if a sponsor does not comply with the new labeling requirements of section 126 of the Modernization Act. The guidance advises that FDA does not intend to object if a sponsor of a currently approved product implements the new requirements of section 126 of the Modernization Act at the time of the next revision of its labels, or by February 19, 2003, whichever comes first, and reports these minor changes in the next annual report. For pending (unapproved) full or abbreviated applications received by the agency prior to February 19, 1998, sponsors should comply with the new labeling requirements by the time of the next revision of their labels or by February 19, 2003, whichever comes first. The guidance also advises that full or abbreviated applications received by FDA after February 19, 1998, should provide labels and labeling in

[1] The ℞ symbol appears in bold in this document because of type-setting limitations, however, it should not be bolded when used on the product's label.

compliance with the new labeling requirements.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) through (k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. The agency's guidance document explains that FDA will exercise its enforcement discretion in a manner that will permit companies to implement the required label changes at the time of the next revision of their labels, or by February 19, 2003, whichever comes first. Because almost all labels would typically be reprinted within this timeframe, this enforcement strategy will eliminate any significant costs that would otherwise be associated with the rule. As a result, the proposed rule is not a significant action as defined by the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options to minimize any significant impact on a substantial number of small entities. The agency certifies that the proposed rule would not have a significant impact on a substantial number of small entities because the 5-year implementation period will allow companies to make the necessary label changes during the normal course of business. Therefore, under the Regulatory Flexibility Act, no further analysis is required. The Unfunded Mandates Reform Act (in section 202) requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation). Because this rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in an expenditure of $100 million or more in any one year, FDA is not required to perform a cost-benefit analysis under the Unfunded Mandates Reform Act.

VI. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Public Law 104–13) is not required. The revised labeling information is supplied by the Modernization Act (changing "Caution: Federal law prohibits dispensing without prescription" to "℞ only" or "℞ only"). According to 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not considered a collection of information.

VII. Request for Comments

Interested persons may, on or before June 26, 2000, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Proposed Effective Date

FDA proposes that any final rule that may issue based on this proposal become effective 60 days after publication of the final rule. For information on implementation, see the discussion in section III of this document.

List of Subjects

21 CFR Part 10

Administrative practice and procedure, News media.

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 250

Drugs.

21 CFR Parts 290 and 329

Drugs, Labeling.

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 341

Labeling, Over-the-counter drugs.

21 CFR Part 361

Medical research, Prescription drugs, Radiation protection.

21 CFR Part 369

Labeling, Medical devices, Over-the-counter drugs.

21 CFR Part 606

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and the Food and Drug Administration Modernization Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that chapter I of Title 21 be amended as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

1. The authority citation for 21 CFR part 10 is revised to read as follows:

Authority: 5 U.S.C. 551–558, 701–706; 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–397, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

§ 10.50 [Amended]

2. Section 10.50 *Promulgation of regulations and orders after an opportunity for a formal evidentiary public hearing* is amended by removing and reserving paragraph (c)(7).

PART 201—LABELING

3. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg-360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

§ 201.10 [Amended]

4. Section 201.10 *Drugs; statement of ingredients* is amended in paragraph (a) by removing the phrase "as 'Warning—May be habit forming' ".

5. Section 201.16 is revised to read as follows:

§ 201.16 Drugs; Spanish-language version of certain required statements.

An increasing number of medications restricted to prescription use only are being labeled solely in Spanish for

distribution in the Commonwealth of Puerto Rico where Spanish is the predominant language. Such labeling is authorized under § 201.15(c). One required warning, the wording of which is fixed by law in the English language, could be translated in various ways, from literal translation to loose interpretation. The statutory nature of this warning requires that the translation convey the meaning properly to avoid confusion and dilution of the purpose of the warning. Section 503(b)(4) of the Federal Food, Drug, and Cosmetic Act requires, at a minimum, that the label bear the statement "Rx only." The Spanish-language version of this must be "SoAE1lamente Rx".

§ 201.100 [Amended]

6. Section 201.100 *Prescription drugs for human use* is amended in paragraph (b)(1) by removing the phrase " 'Caution: Federal law prohibits dispensing without prescription' " and adding in its place the phrase " 'Rx only' ".

§ 201.120 [Amended]

7. Section 201.120 *Prescription chemicals and other prescription components* is amended in paragraph (b)(2) by removing the phrase " 'Caution: Federal law prohibits dispensing without prescription' " and adding in its place the phrase " 'Rx only' ".

§ 201.122 [Amended]

8. Section 201.122 *Drugs for processing, repacking, or manufacturing* is amended in the introductory text, first sentence, by removing the phrase " 'Caution: Federal law prohibits dispensing without prescription' " and adding in its place the phrase " 'Rx only' ".

§ 201.306 [Amended]

9. Section 201.306 *Potassium salt preparations intended for oral ingestion by man* is amended in paragraph (b)(1) by removing the word "caution".

PART 250—SPECIAL REQUIREMENTS FOR SPECIFIC HUMAN DRUGS

10. The authority citation for 21 CFR part 250 continues to read as follows:

Authority: 21 U.S.C. 321, 336, 342, 352, 353, 355, 361(a), 362(a) and (c), 371, 375(b).

§ 250.100 [Amended]

11. Section 250.100 *Amyl nitrite inhalant as a prescription drug for human use* is amended in paragraph (b) by removing the phrase "legend 'Caution: Federal law prohibits dispensing without prescription.' " and adding in its place the phrase "statement 'Rx only.' ".

§ 250.101 [Amended]

12. Section 250.101 *Amphetamine and methamphetamine inhalers regarded as prescription drugs* is amended in paragraph (b) by removing the phrase "legend 'Caution: Federal law prohibits dispensing without prescription.' " and adding in its place the phrase "statement 'Rx only.' ".

§ 250.105 [Amended]

13. Section 250.105 *Gelsemium-containing preparations regarded as prescription drugs* is amended by removing the phrase " 'Caution: Federal law prohibits dispensing without prescription.' " from the last sentence and adding in its place the phrase " 'Rx only.' ".

§ 250.108 [Amended]

14. Section 250.108 *Potassium permanganate preparations as prescription drugs* is amended in paragraph (c)(1) by removing the phrase "legend, 'Caution: Federal law prohibits dispensing without prescription. ' " and adding in its place the phrase "statement 'Rx only.' " and in paragraph (c)(2) by removing the phrase ", 'Caution: Federal law prohibits dispensing without prescription.' " and adding in its place the phrase " 'Rx only.' ".

§ 250.201 [Amended]

15. Section 250.201 *Preparations for the treatment of pernicious anemia* is amended in paragraph (d) by removing the phrase "legend 'Caution—Federal law prohibits dispensing without prescription.' " and adding in its place the phrase "statement 'Rx only.' ".

§ 250.250 [Amended]

16. Section 250.250 *Hexachlorophene, as a component of drug and cosmetic products* is amended in the last sentence of paragraph (c)(1) by removing the phrase "legend 'Caution: Federal law prohibits dispensing without a prescription,' " and adding in its place the phrase "statement 'Rx only,' " and in paragraph (c)(4)(i) by removing the phrase "prescription legend" and adding in its place the phrase "statement 'Rx only'.".

PART 290—CONTROLLED DRUGS

17. The authority citation for 21 CFR part 290 continues to read as follows:

Authority: 21 U.S.C. 352, 353, 355, 371.

18. Section 290.1 is added to subpart A to read as follows:

§ 290.1 Controlled substances.

Any drug that is a controlled substance listed in schedule II, III, IV, or V of the Federal Controlled Substances Act or implementing regulations must be dispensed by prescription only as required by section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act unless specifically exempted in § 290.2.

19. Section 290.2 is added to subpart A to read as follows:

§ 290.2 Exemption from prescription requirements.

The prescription-dispensing requirements of section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act are not necessary for the protection of the public health with respect to a compound, mixture, or preparation containing not more than 200 milligrams of codeine per 100 milliliters or per 100 grams that also includes one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by codeine alone.

PART 310—NEW DRUGS

20. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b-360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b-263n.

§ 310.103 [Amended]

21. Section 310.103 *New drug substances intended for hypersensitivity testing* is amended in paragraph (a)(3)(i) by removing the phrase " 'Caution: Federal law prohibits dispensing without a prescription' " and adding in its place the phrase " 'Rx only' ".

PART 329—HABIT-FORMING DRUGS

22. Part 329 is removed.

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

23. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

§ 341.14 [Amended]

24. Section 341.14 *Antitussive active ingredients* is amended in paragraph (a)(2) by removing "§§ 329.20(a) and 341.40" and adding in its place "§ 290.2".

PART 361—PRESCRIPTION DRUGS FOR HUMAN USE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED: DRUGS USED IN RESEARCH

25. The authority citation for 21 CFR part 361 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 371; 42 U.S.C. 262.

§ 361.1 [Amended]

26. Section 361.1 *Radioactive drugs for certain research uses* is amended in paragraph (f)(1) by removing the phrase " 'Caution: Federal law prohibits dispensing without prescription' " and adding in its place the phrase " 'Rx only' ".

PART 369—INTERPRETATIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER-THE-COUNTER SALE

27. The authority citation for 21 CFR part 369 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371.

§ 369.22 [Removed]

28. Section 369.22 is removed.

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

29. The authority citation for 21 CFR part 606 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 360, 360j, 371, 374; 42 U.S.C. 216, 262, 263a, 264.

30. Section 606.121 is amended by revising paragraph (c)(8)(i) to read as follows:

§ 606.121 Container label.

* * * * *

(c) * * *

(8) * * *

(i) "Rx only."

* * * * *

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

31. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

§ 610.60 [Amended]

32. Section 610.60 *Container label* is amended in paragraph (a)(6) by removing the phrase " 'Caution: Federal law prohibits dispensing without prescription,' " and adding in its place the phrase " 'Rx only' ".

§ 610.61 [Amended]

33. Section 610.61 *Package label* is amended in paragraph (s) by removing the phrase " 'Caution: Federal law prohibits dispensing without prescription,' " and adding in its place the phrase " 'Rx only' ".

Dated: March 31, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–8737 Filed 4–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Defense Commissary Agency

32 CFR Part 327

Defense Commissary Agency Privacy Act Program

AGENCY: Defense Commissary Agency, DOD

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes the Defense Commissary Agency Privacy Act Program. This rule establishes policies and procedures for implementing the DeCA Privacy Program, and delegates authorities and assigns responsibilities for the administration of the DeCA Privacy Program.

DATES: Comments must be received by June 9, 2000, to be considered by the agency.

ADDRESSES: Defense Commissary Agency, 1300 E. Avenue, Fort Lee, VA 23801-1800.

FOR FURTHER INFORMATION CONTACT: Ms. Carole Marsh at (804) 734-8841.

SUPPLEMENTARY INFORMATION: Executive Order 12866. It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act. It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

List of subjects in CFR 32 CFR Part 327

Privacy.

Accordingly, Title 32 of the CFR is proposed to be amended in Chapter I, subchapter O, by adding part 327 to read as follows:

PART 327 - DEFENSE COMMISSARY AGENCY PRIVACY ACT PROGRAM

Sec.

327.1 Purpose.
327.2 Applicability.
327.3 Responsibilities.
327.4 Definitions.
327.5 Systems of records
327.6 Collecting personal information.
327.7 Access by individuals.
327.8 Disclosure of personal information to other agencies and third parties.
Appendix A to part 327 - Sample DeCA response letter.
Appendix B to part 327 - Internal management control review checklist.
Appendix C to part 327 - DeCA blanket routine uses.

Authority: Pub. L. 93-579, 88 Stat 1896 (5 U.S.C. 552a).

§ 327.1 Purpose.

This part implements the basic policies and procedures for the implementation of the Privacy Act of 1974, as amended (5 U.S.C. 552a); OMB Circular A-130 [1]; and 32 CFR part 310; and to promote uniformity in the DeCA Privacy Act Program.

§ 327.2 Applicability.

This part applies to Headquarters, Field Operating Activities (FOA), Regions, Zones, Central Distribution Centers (CDC), Commissaries of DeCA, and contractors during the performance of a contract with DeCA. All personnel are expected to comply with the procedures established herein.

§ 327.3 Responsibilities.

(a) *The Director, DeCA:*

(1) Supervises the execution of the Privacy Act and this part within the DeCA, and serves as the DeCA Privacy Act Appeal Authority.

[1] Copies may be obtained: http://www.whitehouse.gov/OMB/circulars

(2) Appoints:

(i) The Executive Director for Support as the DeCA Initial Denial Authority for the DeCA Privacy Act Program.

(ii) The Records Manager, Office of Safety, Security, and Administration as the DeCA Privacy Act Officer.

(b) *The Privacy Act Officer, DeCA:*

(1) Establishes and manages the PA program for DeCA.

(2) Provides guidance, assistance and training.

(3) Controls and monitors all requests received and prepares documentation to the office of primary responsibility (OPR) for response.

(4) Prepares response to requester based on information provided by the OPR.

(5) Signs all response requests for releasable information to the requester after coordination through the General Counsel. Ensures that all denied requests for information are released by the DeCA Initial Denial Authority.

(6) Publishes instructions to contractors that:

(i) Provide DeCA Privacy Program guidance to their personnel who solicit, award, or administer government contracts;

(ii) Inform prospective contractors of their responsibilities regarding the DeCA Privacy Program; and.

(iii) Establish an internal system of contractor performance review to ensure compliance with DeCA's Privacy Program.

(iv) Prepare and submit System Notices to the Defense Privacy Office for publication in the Federal Register.

(7) Maintain Privacy Case files and records of disclosure accounting.

(8) Submit the DeCA Annual Privacy Act Report (RCS: DD-DA&M(A)1379) to the Defense Privacy Office.

(c) *DeCA Directorates/Staff Offices:*

(1) Provide response and the information requested to the PA Officer for release to the individual.

(2) In the event the information is to be denied release, the requested information and rationale for denial will be forwarded to the PA Officer for denial determination.

(d) *Regions:*

(1) Regional Directors will appoint a Regional PA Coordinator who will maintain suspense control of PA actions, prepare documentation to the OPR for response, forward the information to the DeCA PA Officer for release determination, and notify the requester that the response will be received from the DeCA PA Officer using the format in Appendix A to this part.

(e) *DeCA Field Operating Activities (FOAs):*

(1) Upon receipt of a PA request that has not been received from the DeCA PA Officer, notify the DeCA PA Officer within 2 days.

(2) Collect all information available and forward to the DeCA PA Officer. If the requested information is not available, provide the DeCA PA Officer the rationale to respond to the requester.

(f) *Central Distribution Centers (CDCs) and Commissaries:*

(1) Upon receipt of a PA request, not received from the Region Coordinator, notify the Region Coordinator within 2 days.

(2) Collect all information available and forward it to the Region Coordinator for submission to DeCA PA Officer. If requested information is not available, provide the Region Coordinator the rationale so they can prepare a response to the DeCA PA Officer. If the information is available but determined to be exempt, provide the Region Coordinator with the requested information and specific reasons why the request should be denied. The Region Coordinator will formalize a reply to the DeCA PA Officer, forwarding requested information and reasons for denial. The DeCA PA Officer will prepare the response to the requester with coordination by the General Counsel and signature by the IDA.

§ 327.4 Definitions.

Access. The review of a record or a copy of a record or parts thereof in a system of records by any individual.

Agency. For the purposes of disclosing records subject to the Privacy Act among DoD Components, the Department of Defense is considered a single agency. For all other purposes to include applications for access and amendment, denial of access or amendment, appeals from denials, and record keeping as regards release to non-DoD agencies; each DoD Component is considered an agency within the meaning of the Privacy Act.

Computer room. Any combination of electronic hardware and software integrated in a variety of forms (firmware, programmable software, hard wiring, or similar equipment) that permits the processing of textual data. The equipment contains device to receive information and other processors with various capabilities to manipulate the information, store and provide input.

Confidential source. A person or organization who has furnished information to the federal government under an express promise that the person's or the organization's identity will be held in confidence or under an implied promise of such confidentiality if this implied promise was made before September 27, 1975.

Disclosure. The transfer of any personal information from a system of records by any means of communication (such as oral, written, electronic, mechanical, or actual review) to any person, private entity, or government agency, other than the subject of the record, the subject's designated agent or the subject's legal guardian.

Federal Register system. Established by Congress to inform the public of interim, proposed, and final regulations or rulemaking documents having substantial impact on the public. In this case, DeCA directives have the same meaning as regulations or rulemaking documents. The secondary role of the **Federal Register** system is to publish notice documents of public interest.

Individual. A living person who is a citizen of the United States or an alien lawfully admitted for permanent residence. The parent of a minor or the legal guardian of any individual also may act on behalf of an individual. Corporations, partnerships, sole proprietorships, professional groups, businesses, whether incorporated or unincorporated, and other commercial entities are not 'individuals.'

Individual access. Access to information pertaining to the individual by the individual or his or her designated agent or legal guardian.

Law enforcement activity. Any activity engaged in the enforcement of criminal laws, including efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities.

Maintain. Includes maintain, collect, use or disseminate.

Official use. Within the context of this part, this term is used when officials and employees of a DoD Component have a demonstrated need for the use of any record or the information contained therein in the performance of their official duties, subject to DoD 5200.1–R [2], 'DoD Information Security Program Regulation'.

Personal information. Information about an individual that identifies, relates or is unique to, or describes him or her; *e.g.*, a social security number, age, military rank, civilian grade, marital status, race, salary, home/office phone numbers, etc.

Privacy Act. The Privacy Act of 1974, as amended, (5 U.S.C. 552a).

Privacy Act request. A request from an individual for notification as to the

[2] Copies may be obtained: http://www.whs.osd.mil/corres.htm.

existence of, access to, or amendment of records pertaining to that individual. These records must be maintained in a system of records.

Member of the public. Any individual or party acting in a private capacity to include federal employees or military personnel.

Record. Any item, collection, or grouping of information, whatever the storage media (*e.g.*, paper, electronic, etc.), about an individual that is maintained by a DoD Component, including but not limited to, his or her education, financial transactions, medical history, criminal or employment history and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

Risk assessment. An analysis considering information sensitivity, vulnerabilities, and the cost to a computer facility or word processing activity in safeguarding personal information processed or stored in the facility or activity.

Routine use. The disclosure of a record outside the Department of Defense for a use that is compatible with the purpose for which the information was collected and maintained by the Department of Defense. The routine use must be included in the published system notice for the system of records involved.

Statistical record. A record maintained only for statistical research or reporting purposes and not used in whole or in part in making determinations about specific individuals.

System manager. The DoD Component official who is responsible for the operation and management of a system of records.

System of records. A group of records under the control of a DoD Component from which personal information is retrieved by the individual's name or by some identifying number, symbol, or other identifying particular assigned to an individual.

Word processing system. A combination of equipment employing automated technology, systematic procedures, and trained personnel for the primary purpose of manipulating human thoughts and verbal or written or graphic presentations intended to communicate verbally or visually with another individual.

Word processing equipment. Any combination of electronic hardware and computer software integrated in a variety of forms (firmware, programmable software, hard wiring, or similar equipment) that permits the processing of textual data. Generally, the equipment contains a device to receive information, a computer-like processor with various capabilities to manipulate the information, a storage medium, and an output device.

§ 327.5 Systems of records.

(a) *System of records.* To be subject to the provisions of this part, a 'system of records' must:

(1) Consist of 'records' that are retrieved by the name of an individual or some other personal identifier, and

(2) Be under the control of DeCA.

(b) *Retrieval practices.* Records in a group of records that may be retrieved by a name or personal identifier are not covered by this part even if the records contain personal data and are under the control of DeCA. The records MUST BE, in fact, retrieved by name or other personal identifier to become a system of records for DeCA.

(c) *Relevance and necessity.* Only those records that contain personal information which is relevant and necessary to accomplish a purpose required by Federal statute or an Executive Order will be maintained by DeCA.

(d) *Authority to establish systems of records.* Director, DeCA has the authority to establish systems of records; however, each time a system of records is established, the Executive Order or Federal statute that authorizes maintaining the personal information must be identified.

(1) DeCA will not maintain any records describing how an individual exercises his or her rights guaranteed by the First Amendment of the U.S. Constitution.

(2) These rights include, but are not limited to, freedom of religion, freedom of political beliefs, freedom of speech, freedom of the press, the right to assemble, and the right to petition.

(e) *System manager's evaluation.* Systems managers, along with the DeCA Privacy Officer, shall evaluate the information to be included in each new system before establishing the system and evaluate periodically the information contained in each existing system of records for relevancy and necessity. Such a review will also occur when a system notice amendment or alteration is prepared. Consider the following:

(1) The relationship of each item of information retained and collected to the purpose for which the system is maintained.

(2) The specific impact on the purpose or mission of not collecting each category of information contained in the system.

(3) The possibility of meeting the informational requirements through use of information not individually identifiable or through other techniques, such as sampling.

(4) The length of time each item of personal information must be retained.

(5) The cost of maintaining the information.

(6) The necessity and relevancy of the information to the purpose for which it was collected.

(f) *Discontinued information requirements.*

(1) When notification is received to stop collecting any category or item of personal information, the DeCA PA Officer will issue instructions to stop immediately and also excise this information from existing records, when feasible, and amend existing notice.

(2) Disposition of these records will be provided by the DeCA PA Officer in accordance with the DeCA Filing System [3].

(g) *Government contractors.*

(1) When DeCA contracts for the operation or maintenance of a system of records or a portion of a system of records by a contractor, the record system or the portion affected are considered to be maintained by DeCA and are subject to this part. DeCA is responsible for applying the requirements of this part to the contractor. The contractor and its employees are to be considered employees of DeCA for the purposes of the approved provisions of the Privacy Act during the performance of the contract. Consistent with the Defense Acquisition Regulation, contracts requiring the maintenance of a system of records or the portion of a system of records shall identify specifically the record system and the work to be performed and shall include in the solicitation and resulting contract such terms as are prescribed in the Defense Acquisition Regulation (DAR). [4]

(2) If the contractor must use or have access to individually identifiable information subject to this part to perform any part of a contract, and the information would have been collected and maintained by DeCA but for the award of the contract, these contractor activities are subject to this part.

(3) The restrictions in paragraphs (g)(1) and (g)(2) of this section do not apply to records:

(i) Established and maintained to assist in making internal contractor

[3] Copies may be obtained: Defense Commissary Agency, ATTN: FOIA/Privacy Officer, 1300 E. Avenue, Fort Lee, VA 23801-1800

[4] See foonote 3 to § 327.5

management decisions such as those maintained for use in managing the contract.

(ii) Those maintained as internal contractor employee records even when used in conjunction with providing goods and services to DeCA.

(4) Disclosure of records to contractors. Disclosure of personal records to a contractor for the use in the performance of any DeCA contract is considered a disclosure within the Department of Defense (DoD). The contractor is considered the agent of DeCA and is to be maintaining and receiving the records for DeCA.

(h) *Safeguarding personal information.* DeCA personnel will protect records in every system of records for confidentiality against alteration, unauthorized disclosure, embarrassment, or unfairness to any individual about whom information is kept.

(1) Supervisor/Manager paper records maintained by DeCA personnel will be treated as 'For Official Use Only' (FOUO) documents and secured in locked file cabinets, desks or bookcases during non-duty hours. During normal working hours, these records will be out-of-sight if the working area is accessible to non-government personnel.

(2) Personnel records maintained by DeCA computer room or stand alone systems, will be safeguarded at all times. Printed computer reports containing personal data must carry the markings FOUO. Other media storing personal data such as tapes, reels, disk packs, etc., must be marked with labels which bear FOUO and properly safeguarded.

(3) Adherence to paragraphs (h)(1) and (h)(2) of this section, fulfills the requirements of 32 CFR part 285.

(i) *Records disposal.*

(1) DeCA records containing personal data will be shredded or torn to render the record unrecognizable or beyond reconstruction.

(2) The transfer of large quantities of DeCA records containing personal data to disposal activities is not considered a release of personal information under this part. The volume of such transfers makes it difficult or impossible to identify easily specific individual records. Care must be exercised to ensure that the bulk is maintained so as to prevent specific records from becoming readily identifiable. If the bulk is maintained, no special procedures are required. If the bulk cannot be maintained, dispose of the records by shredding or tearing to render the record unrecognizable or beyond reconstruction.

§ 327.6 Collecting personal information

(a) *Collect directly from the individual.* To the greatest extent practicable, collect personal information directly from the individual to whom it pertains if the information may be used in making any determination about the rights, privileges, or benefits of the individual under any Federal program.

(b) *Collecting personal information from third parties.* It may not be practical to collect personal information directly from an individual in all cases. Some examples of this are:

(1) Verification of information through third party sources for security or employment suitability determinations;

(2) Seeking third party opinions such as supervisory comments as to job knowledge, duty performance, or other opinion-type evaluations;

(3) When obtaining the needed information directly from the individual is exceptionally difficult or may result in unreasonable costs; or

(4) Contacting a third party at the request of the individual to furnish certain information such as exact periods of employment, termination dates, copies of records, or similar information.

(c) *Collecting social security numbers (SSNs).*

(1) It is unlawful for DeCA to deny an individual any right, benefit, or privilege provided by law because an individual refuses to provide his or her SSN. Executive Order 9397 authorizes solicitation and use of SSNs as numerical identifiers for individuals in most Federal record systems, however, it does not provide mandatory authority for soliciting.

(2) When an individual is requested to provide their SSN, they must be told:

(i) The uses that will be made of the SSN;

(ii) The statute, regulation, or rule authorizing the solicitation of the SSN; and

(iii) Whether providing the SSN is voluntary or mandatory.

(3) Once the SSN has been furnished for the purpose of establishing a record, the notification in paragraph (c)(2) of this section is not required if the individual is only requested to furnish or verify the SSNs for identification purposes in connection with the normal use of his or her records.

(d) *Privacy act statements.* When a DeCA individual is requested to furnish personal information about himself or herself for inclusion in a system of records, a Privacy Act Statement is required regardless of the medium used to collect the information, *e.g.* forms, personal interviews, telephonic interviews. The statement allows the individual to make a decision whether to provide the information requested. The statement will be concise, current, and easily understood and must state whether providing the information is voluntary or mandatory. If furnishing the data is mandatory, a Federal statute, Executive Order, regulation or other lawful order must be cited. If the personal information solicited is not to be incorporated into a DeCA system of records, a PA statement is not required. This information obtained without the PA statement will not be incorporated into any DeCA systems of records.

(1) The DeCA Privacy Act Statement will include:

(i) The specific Federal statute or Executive Order that authorized collection of the requested information;

(ii) The principal purpose or purposes for which the information is to be used;

(iii) The routine uses that will be made of the information;

(iv) Whether providing the information is voluntary or mandatory; and

(v) The effects on the individual if he or she chooses not to provide the requested information.

(2) Forms. When DeCA uses forms to collect personal information, placement of the Privacy Act advisory statement should be in the following order of preference:

(i) Below the title of the form and positioned so the individual will be advised of the requested information,

(ii) Within the body of the form with a notation of its location below the title of the form,

(iii) On the reverse of the form with a notation of its location below the title of the form,

(iv) Attached to the form as a tear-off sheet, or

(v) Issued as a separate supplement to the form.

(3) Forms issued by non-DoD activities. Ensure that the statement prepared by the originating agency on their forms is adequate for the purpose for which DeCA will use the form. If the statement is inadequate, DeCA will prepare a new statement before using the form. Forms issued by other agencies not subject to the Privacy Act but its use requires DeCA to collect personal data, a Privacy Act Statement will be added.

§ 327.7 Access by individuals

(a) *Individual access to personal information.* Release of personal information to individuals whose records are maintained in a systems of records under this part is not considered public release of information. DeCA will

release to the individual all of the personal information, except to the extent the information is contained in an exempt system of records.

(1) Requests for access.

(i) Individuals in DeCA Headquarters and FOAs will address requests for access to their personal information to the DeCA Privacy Act Officer. Individuals in Regions, CDCs, and commissaries, will address requests to their respective Region Privacy Act Coordinator. The individual is not required to explain or justify why access is being sought.

(ii) If an individual wishes to be accompanied by a third party when seeking access to his or her records or to have the records released directly to the third party, a signed access authorization granting the third party access is required.

(iii) A DeCA individual will not be denied access to his or her records because he or she refuses to provide his or her SSN unless the SSN is the only way retrieval can be made.

(2) Granting access.

(i) If the record is not part of an exempt system, DeCA personnel will be granted access to the original record or an exact copy of the original record without any changes or deletions. Medical records will be disclosed to the individual to whom they pertain unless an individual fails to comply with the established requirements. This includes refusing to name a physician to receive medical records when required, refusing to pay fees, or when a judgment is made that access to such records may have an adverse effect on the mental or physical health of the individual. Where an adverse effect may result, a release will be made in consultation with a physician.

(ii) DeCA personnel may be denied access to information compiled in reasonable anticipation of a civil action or proceeding. The term 'civil proceeding' is intended to include quasi-judicial and pretrial judicial proceedings. Information prepared in conjunction with the quasi-judicial, pretrial and trial proceedings to include those prepared by DeCA legal and non-legal officials of the possible consequences of a given course of action are protected from access.

(iii) Requests by DeCA personnel for access to investigatory records pertaining to themselves, compiled for law enforcement purposes, are processed under this part and that of 32 CFR part 310. Those requests by DeCA personnel for investigatory records pertaining to themselves that are in records systems exempt from access provisions shall be processed under this part or 32 CFR part 285, depending upon which provides the greatest degree of access.

(3) Non agency records.

(i) Uncirculated personal notes and records that are not given or circulated to any person or organization (example, personal telephone list) that are kept or discarded at the author's discretion and over which DeCA exercises no direct control, are not considered DeCA records. However, if personnel are officially directed or encouraged, either in writing or orally, to maintain such records, they may become 'agency records' and may be subject to this part.

(ii) Personal uncirculated handwritten notes of team leaders, office supervisors, or military supervisory personnel concerning subordinates are not a system of records within the meaning of this part. Such notes are an extension of the individual's memory. These notes, however, must be maintained and discarded at the discretion of the individual supervisor and not circulated to others. Any established requirement to maintain such notes (written or oral directives, regulation or command policy) make these notes 'AGENCY RECORDS'. If the notes are circulated, they must be made a part of a system of records. Any action that gives personal notes the appearance of official agency records is prohibited unless they have been incorporated into a DeCA system of records.

(b) *Relationship Between the Privacy Act and the Freedom of Information Act (FOIA).*

(1) Requests from DeCA individuals for access to a record pertaining to themselves made under the FOIA are processed under the provisions of this part, 32 CFR part 310 and DeCA Directive 30-12, Freedom of Information Act (FOIA) Program [5].

(2) Request from DeCA individuals for access to a record pertaining to themselves are processed under this part and 32 CFR part 310.

(3) Requests from DeCA individuals for access to records about themselves that cite both Acts or the DeCA implementing directives for both Acts are processed under this part except:

(i) When the access provisions of the FOIA provide a greater degree of access process under the FOIA, or

(ii) When access to the information sought is controlled by another Federal statute process access procedures under the controlling statute.

(4) Requests from DeCA individuals for access to information about themselves in a system of records that do not cite either Act or DeCA implementing directive are processed under the procedures established by this part.

(5) DeCA requesters will not be denied access to personal information concerning themselves that would be releasable to them under either Act because they fail to cite either Act or the wrong Act. The Act or procedures used in granting or denying access will be explained to requesters.

(6) DeCA requesters should receive access to their records within 30 days.

(7) Records in all DeCA systems maintained in accordance with the Government-wide systems notices are in temporary custody of DeCA; and all requests to access or amend these records will be processed in accordance with this part.

(c) *Denial of individual access.*

(1) A DeCA individual may be denied formal access to a record pertaining to him/her only if the record:

(i) Was compiled in reasonable anticipation of civil action.

(ii) Is in a system of records that has been exempt from access provisions of this part.

(iii) All systems of records maintained by the Defense Commissary Agency shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12958 and which is required by the Executive Order to be withheld in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may contain items of information that have been properly classified.

(iv) Is contained in a system of records for which access may be denied under some other Federal statute.

(v) All systems of records maintained by the DeCA shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12958 and which is required by the Executive Order to be withheld in the interest of national defense of foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may contain items of information that have been properly classified.

(2) DeCA individuals will only be denied access to those portions of the records from which the denial of access

[5] See foonote 3 to § 327.5.

serves some legitimate governmental purpose.

(3) Other reasons to refuse DeCA individuals are:

(i) The request is not described well enough to locate it within a reasonable amount of effort by the PA Officer or PA Coordinator; or

(ii) An individual fails to comply with the established requirements including refusing to name a physician to receive medical records when required or to pay fees.

(4) Only the DeCA IDA can deny access. This denial must be in writing and contain:

(i) The date of the denial, name, title of position, and signature of the DeCA Initial Denial Authority.

(ii) The specific reasons for the denial, including specific reference to the appropriate sections of the PA, other statutes, this part or the Code of Federal Regulations (CFR);

(iii) Information providing the right to appeal the denial through the DeCA appeal procedure within 60 days, and the title, position and address of the DeCA PA Appellate Authority.

(5) DeCA Appeal Procedures. The Director of DeCA, or the designee, will review any appeal by an individual from a denial of access to DeCA records. Formal written notification will be provided to the individual explaining whether the denial is sustained totally or in part. The DeCA PA Officer will:

(i) Assign a control number and process the appeal to the Director, DeCA or the designee appointed by the Director.

(ii) Provide formal written notification to the individual by the appeal authority explaining whether the denial is sustained totally or in part and the exact reasons for the denial to include provisions of the Act, other statute, this part or the CFR whichever the determination is based, or

(iii) Provide the individual access to the material if the appeal is granted.

(iv) Process all appeals within 30 days of receipt unless the appeal authority determines the review cannot be made within that period and provide notification to the individual the reasons for the delay and when an answer may be expected.

(d) *Amendment of records.*

(1) DeCA employees are encouraged to review the personal information being maintained about them periodically. An individual may request amendment of any record contained in a system of records unless the system of records has been exempt specifically from the amendment procedures by the Director, DeCA. A request for amendment must include:

(i) A description of the item or items to be amended.

(ii) The specific reason for the amendment.

(iii) The type of amendment action such as deletion, correction or addition.

(iv) Copies of evidence supporting the request.

(v) DeCA employees may be required to provide identification to make sure that they are indeed seeking to amend a record pertaining to themselves.

(2) The amendment process is not intended to permit the alteration of evidence presented in the course of judicial or quasi-judicial proceedings. Amendments to these records are made through specific procedures established for the amendment of these records.

(i) Written notification will be provided to the requester within 10 working days of its receipt by the DeCA PA Officer. No notification will be provided to the requester if the action is completed within the 10 days. Only under exceptional circumstances will more than 30 days be required to reach the decision to amend a request. If the decision is to grant all or in part of the request for amendment, the record will be amended and the requester informed and all other offices/personnel known to be keeping the information.

(ii) If the request for amendment is denied in whole or in part, the PA Officer will notify the individual in writing and provide the specific reasons and the procedures for appealing the decision.

(iii) All appeals are to be processed within 30 days. If additional time is required, the requester will be informed and provided when a final decision may be expected.

(e) *Fee assessments.*

(1) DeCA personnel will only be charged the direct cost of copying and reproduction, computed using the appropriate portions of the fee schedule in DeCA Directive 30-12 [6]. Normally, fees are waived automatically if the direct costs of a given request are less than $30. This fee waiver provision does not apply when a waiver has been granted to the individual before, and later requests appear to be an extension or duplication of that original request. Decisions to waive or reduce fees that exceed the automatic waiver threshold will be made on a case-by-case basis. Fees may not be charged when:

(i) Copying is performed for the convenience of the Government or is the only means to make the record available for the individual.

(ii) No reading room is available for the individual to review the record or a copy is made to keep the original in DeCA files.

(iii) The information may be obtained without charge under any other regulation, directive, or statute.

(2) No fees will be collected for search, retrieval, and review of records to determine releasability, copying of records when the individual has not requested a copy, transportation of records and personnel, or normal postage.

§ 327.8 Disclosure of personal information to other agencies and third parties

(a) *Disclosures and nonconsensual disclosures.*

(1) All requests made by DeCA individuals for personal information about other individuals (third parties) will be processed under DeCA Directive 30-12 [7] except when the third party personal information is contained in the Privacy record of the individual making the request.

(2) For the purposes of disclosure and disclosure accounting, the Department of Defense (DoD) is considered a single agency.

(3) Personal information from DeCA systems of records will not be disclosed outside the DoD unless:

(i) The record has been requested by the individual to whom it pertains

(ii) Written consent has been given by the individual to whom the record pertains for release to the requesting agency, activity, or individual, or

(iii) The release is pursuant to one of the specific nonconsensual purposes set forth in the Act.

(4) Records may be disclosed without the consent of a DeCA individual to any DoD official who has need for the record in the performance of their assigned duties. Rank, position, or title alone does not authorize this access. An official need for this information must exist.

(5) DeCA records must be disclosed if their release is required by 32 CFR part 285, which is implemented by DeCA Directive 30-12 [8]. 32 CFR part 285 requires that records be made available to the public unless exempt from disclosure under the FOIA.

(b) *Normally releasable information.* Personal information that is normally releasable without the consent of a DeCA individual that does not imply a clearly unwarranted invasion of personal privacy:

(1) Civilian employees

(i) Name

(ii) Present and past position titles

(iii) Present and past grades

[6] See foonote 3 to § 327.5.

[7] See foonote 3 to § 327.5.

[8] See foonote 3 to § 327.5.

(iv) Present and past salaries
(v) Present and past duty stations
(vi) Office or duty telephone numbers
(2) Military members
(i) Full name
(ii) Rank
(iii) Date of rank
(iv) Gross salary
(v) Past duty assignments
(vi) Present duty assignments
(vii) Future assignments that are officially established
(viii) Office or duty telephone numbers
(ix) Source of commission
(x) Promotion sequence number
(xi) Awards and decorations
(xii) Attendance at professional military schools
(xiii) Duty status at any given time
(3) All disclosures of personal information on civilian employees shall be made in accordance with the Office of Personnel Management (OPM) and all disclosures of personal information on military members shall be made in accordance with the standards established by 32 CFR part 285.
(4) The release of DeCA employees' home addresses and home telephone numbers is considered a clearly unwarranted invasion of personal privacy and is prohibited; however, these may be released without prior consent of the employee if:
(i) The employee has indicated previously that he or she consents to their release,
(ii) The releasing official was requested to release the information under the provisions of 32 CFR part 285.
(5) Before listing home addresses and home telephone numbers in any DeCA telephone directory, give the individuals the opportunity to refuse such a listing.
(c) *Disclosures for established routine uses.*
(1) Records may be disclosed outside of DeCA without consent of the individual to whom they pertain for an established routine use.
(2) A routine use shall:
(i) Be compatible with the purpose for which the record was collected;
(ii) Indicate to whom the record may be released;
(iii) Indicate the uses to which the information may be put by the receiving agency; and
(iv) Have been published previously in the **Federal Register**.
(3) A routine use will be established for each user of the information outside DeCA who need official access to the records. This use may be discontinued or amended without the consent of the individual/s involved. Any routine use that is new or changed is published in the **Federal Register** 30 days before actually disclosing the record. In addition to routine uses established by DeCA individual system notices, blanket routine uses have been established. See Appendix C to this part.
(d) Disclosures without Consent. DeCA records may be disclosed without the consent of the individual to whom they pertain to another agency within or under the control of the U.S. for a civil or criminal law enforcement activity if:
(1) The civil or criminal law enforcement activity is authorized by law (Federal, State, or local); and
(2) The head of the agency or instrumentality (or designee) has made a written request to the Component specifying the particular record or portion desired and the law enforcement activity for which it is sought.
(3) Blanket requests for any and all records pertaining to an individual shall not be honored. The requesting agency or instrumentality must specify each record or portion desired and how each relates to the authorized law enforcement activity.
(4) This disclosure provision applies when the law enforcement agency or instrumentality requests the record. If the DoD Component discloses a record outside the DoD for law enforcement purposes without the individual's consent and without an adequate written request, the disclosure must be pursuant to an established routine use, such as the blanket routine use for law enforcement.
(e) *Disclosures to the public from health care records.*
(1) The following general information may be released to the news media or public concerning a DeCA employee treated or hospitalized in DoD medical facilities and non-Federal facilities for whom the cost of the care is paid by DoD:
(i) Personal information concerning the patient that is provided in section 327.8 and under the provisions of 32 CFR part 285.
(ii) The medical condition such as the date of admission or disposition and the present medical assessment of the individual's condition in the following terms if the medical doctor has volunteered the information:
(A) The individual's condition is presently (stable) (good) (fair) (serious) or (critical) and,
(B) Whether the patient is conscious, semi-conscious or unconscious.
(2) Detailed medical and other personal information may be released on a DeCA employee only if the employee has given consent to the release. If the employee is not conscious or competent, no personal information, except that required by 32 CFR part 285, will be released until there has been enough improvement in the patient's condition for them to give informed consent.
(3) Any item of personal information may be released on a DeCA patient if the patient has given consent to its release.
(4) This part does not limit the disclosure of personal medical information for other government agencies' use in determining eligibility for special assistance or other benefits provided disclosure is pursuant to a routine use.

Appendix A to part 327-Sample DeCA response letter

Mrs. Floria Employee
551 Florida Avenue
Oakland, CA 94618
Dear Mrs. Employee:
This responds to your Privacy Act request dated (enter date of request), in which you requested (describe requested records).
Your request has been referred to our headquarters for further processing. They will respond directly to you. Any questions concerning your request may be made telephonically (enter Privacy Officer's telephone number) or in writing to the following address:
Defense Commissary Agency, Safety, Security, and Administration, Attention: FOIA/PA Officer, Fort Lee, VA 23801-1800.
I trust this information is responsive to your needs.
(Signature block)

Appendix B to part 327-Internal management control review checklist.

(a) *Task:* Personnel and/or Organization Management
(b) *Subtask:* Privacy Act (PA) Program
(c) *Organization:*
(d) *Action officer:*
(e) *Reviewer:*
(f) *Date completed:*
(g) *Assessable unit:* The assessable units are HQ, DeCA, Regions, Central Distribution Centers, Field Operating Activities, and commissaries. Each test question is annotated to indicate which organization(s) is (are) responsible for responding to the question(s). Assessable unit managers responsible for completing this checklist are shown in the DeCA MCP, DeCA Directive 70–2[1].
(h) *Event cycle 1:* Establish and implement a Privacy Act Program

[1] Copies may be obtained: Defense Commissary Agency, ATTN: FOIA/Privacy Officer, 1300 E. Avenue, Fort Lee, VA 23801–1800.

(1) Risk: If prescribed policies, procedures and responsibilities of the Privacy Act Program are not adhered to, sensitive private information on individuals can be given out to individuals.

(2) Control Objectives: The prescribed policies, procedures and responsibilities contained in 5 U.S.C. 552a are followed to protect individual privacy and information release.

(3) Control Techniques: 32 CFR part 310 and DeCA Directive 30–13 [2], Privacy Act Program.

(i) Ensure that a PA program is established and implemented.

(ii) Appoint an individual with PA responsibilities and ensure the designation of appropriate staff to assist.

(4) Test Questions: Explain rationale for YES responses or provide cross-references where rationale can be found. For NO responses, cross-reference to where corrective action plans can be found. If response is NA, explain rationale.

(i) Is a PA program established and implemented in DeCA to encompass procedures for subordinate activities? (DeCA HQ/SA, Region IM). Response: Yes / No / NA. Remarks:

(ii) Is an individual appointed PA responsibilities? (DeCA HQ/SA, Region IM). Response: Yes / No / NA. Remarks:

(iii) Are the current names and office telephone numbers furnished OSD, Privacy Act Office of the PA Officer and the IDA? (DeCA HQ/SA). Response: Yes / No / NA. Remarks:

(iv) Is the annual PA report prepared and forwarded to OSD, Defense Privacy Office? (DeCA HQ/SA). Response: Yes / No / NA. Remarks:

(v) Is PA awareness training/ orientation provided? Is in-depth training provided for personnel involved in the establishment, development, custody, maintenance and use of a system of records? (DeCA HQ/SA, Region). Response: Yes / No / NA. Remarks:

(vi) Is the PA Officer consulted by information systems developers for privacy requirements which need to be included as part of the life cycle management of information consideration in information systems design? (DeCA HQ/SA, Region). Response: Yes / No / NA. Remarks:

(vii) Is each system of records maintained by DeCA supported by a Privacy Act System Notice and has the systems notice been published in the Federal Register? (DeCA HQ/SA). Response: Yes / No / NA. Remarks:

(i) *Event cycle 2:* Processing PA Requests

(1) Risk: Failure to process PA requests correctly could result in privacy information being released which subjects the Department of Defense, DeCA or individuals to criminal penalties.

(2) Control Objective: PA requests are processed correctly

(3) Control Technique:

(i) Ensure PA requests are logged into a formal control system.

(ii) Ensure PA requests are answered promptly and correctly.

(iii) Ensure DeCA records are only withheld when they fall under the general and specific exemptions of 5 U.S.C. 552a and one or more of the nine exemptions under DeCA Directive 30–12 [3], Freedom of Information Act (FOIA) Program.

(iv) Ensure all requests are coordinated through the General Counsel

(v) Ensure all requests are denied by the DeCA IDA.

(vi) Ensure all appeals are forwarded to the Director DeCA or his designee.

(4) Test Questions:

(i) Are PA requests logged into a formal control system? (DeCA HQ/SA, Region IM). Response: Yes / No / NA. Remarks:

(ii) Are individual requests for access acknowledged within 10 working days after receipt? (DeCA HQ/SA, Region IM). Response: Yes / No / NA. Remarks:

(iii) When more than 10 working days are required to respond to a PA request, is the requester informed, explaining the circumstances for the delay and provided an approximate date for completion? (DeCA HQ/SA, Region IM). Response: Yes / No / NA. Remarks:

(iv) Are DeCA records withheld only when they fall under one or more of the general or specific exemptions of the PA or one or more of the nine exemptions of the FOIA? (DeCA HQ/SA, Region IM). Response: Yes / No / NA. Remarks:

(v) Do denial letters contain the name and title or position of the official who made the determination, cite the exemption(s) on which the denial is based and advise the PA requester of their right to appeal the denial to the Director DeCA or designee? (DeCA HQ/SA). Response: Yes / No / NA. Remarks:

(vi) Are PA requests denied only by the HQ DeCA IDA? (All). Response: Yes / No / NA. Remarks:

(vii) Is coordination met with the General Counsel prior to forwarding a PA request to the IDA? (DeCA HQ/SA). Response: Yes / No / NA. Remarks:

(j) *Event cycle 3:* Requesting PA Information

(1) Risk: Obtaining personal information resulting in a violation of the PA.

(2) Control Objective: Establish a system before data collection and storage to ensure no violation of the privacy of individuals.

(3) Control Technique: Ensure Privacy Act Statement to obtain personal information is furnished to individuals before data collection.

(4) Test Questions:

(i) Are all forms used to collect information about individuals which will be part of a system of records staffed with the PA Officer for correctness of the Privacy Act Statement? (DeCA HQ/SA, Region). Response: Yes / No / NA. Remarks:

(ii) Are Privacy Statements prepared and issued for all forms, formats and questionnaires that are subject to the PA, coordinated with the DeCA forms manager? (DeCA HQ/SA, Region). Response: Yes / No / NA. Remarks:

(iii) Do Privacy Act Statements furnished to individuals provide the following:

(A) The authority for the request.

(B) The principal purpose for which the information will be used.

(C) Any routine uses.

(D) The consequences of failing to provide the requested information. Response: Yes / No / NA. Remarks:

(k) *Event cycle 4:* Records Maintenance

(1) Risk: Unprotected records allowing individuals without a need to know access to privacy information

(2) Control Objective: PA records are properly maintained throughout their life cycle

(3) Control Technique: Ensure the prescribed policies and procedures are followed during the life cycle of information.

(4) Test Questions:

(i) Are file cabinets/containers that house PA records locked at all times to prevent unauthorized access? (All). Response: Yes / No / NA. Remarks:

(ii) Are personnel with job requirement (need to know) only allowed access to PA information? (All). Response: Yes / No / NA. Remarks:

(iii) Are privacy act records treated as unclassified records and designated 'For Official Use Only'? (All). Response: Yes / No / NA. Remarks:

(iv) Are computer printouts that contain privacy act information as well as disks, tapes and other media marked 'For Official Use Only'? (All). Response: Yes / No / NA. Remarks:

(v) Is a Systems Manager appointed for each automated/manual PA systems of records? (DeCA HQ/SA, Region). Response: Yes / No / NA. Remarks:

[2] See footnote 1 to this Appendix B.

[3] See footnote 1 to this Appendix B.

(vi) Are PA records maintained and disposed of in accordance with DeCA Directive 30-2 [4], The Defense Commissary Agency Filing System? (All). Response: Yes / No / NA. Remarks:

(l) I attest that the above listed internal controls provide reasonable assurance that DeCA resources are adequately safeguarded. I am satisfied that if the above controls are fully operational, the internal controls for this sub-task throughout DeCA are adequate.

Safety, Security and Administration FUNCTIONAL PROPONENT

I have reviewed this sub-task within my organization and have supplemented the prescribed internal control review checklist when warranted by unique environmental circumstances. The controls prescribed in this checklist, as amended, are in place and operational for my organization (except for the weaknesses described in the attached plan, which includes schedules for correcting the weaknesses).

ASSESSABLE UNIT MANAGER (Signature)

Appendix C to part 327-DeCA Blanket Routine Uses

(a) *Routine Use--Law Enforcement.* If a system of records maintained by a DoD Component, to carry out its functions, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

(b) *Routine Use-Disclosure when Requesting Information.* A record from a system of records maintained by a Component may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a Component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(c) *Routine Use--Disclosure of Requested Information.* A record from a system of records maintained by a Component may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(d) *Routine Use--Congressional Inquiries.* Disclosure from a system of records maintained by a Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

(e) *Routine Use--Private Relief Legislation.* Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, will be disclosed to the OMB in connection with the review of private relief legislation as set forth in OMB Circular A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

(f) *Routine Use--Disclosures Required by International Agreements.* A record from a system of records maintained by a Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating the stationing and status in foreign countries of DoD military and civilian personnel.

(g) *Routine Use--Disclosure to State and Local Taxing Authorities.* Any information normally contained in Internal Revenue Service (IRS) Form W-2 which is maintained in a record from a system of records maintained by a Component may be disclosed to State and local taxing authorities with which the Secretary of the Treasury has entered into agreements under 5 U.S.C., sections 5516, 5517, and 5520 and only to those State and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin No. 76-07.

(h) *Routine Use--Disclosure to the Office of Personnel Management.* A record from a system of records subject to the Privacy Act and maintained by a Component may be disclosed to the Office of Personnel Management (OPM) concerning information on pay and leave, benefits, retirement deduction, and any other information necessary for the OPM to carry out its legally authorized government-wide personnel management functions and studies.

(i) *Routine Use--Disclosure to the Department of Justice for Litigation.* A record from a system of records maintained by this component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

(j) *Routine Use--Disclosure to Military Banking Facilities Overseas.* Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged, or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the U.S. Government will be liable for the losses the facility may incur.

(k) *Routine Use--Disclosure of Information to the General Services Administration (GSA).* A record from a system of records maintained by this component may be disclosed as a routine use to the General Services Administration (GSA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

(l) *Routine Use--Disclosure of Information to the National Archives and Records Administration (NARA).* A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Administration (NARA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

(m) *Routine Use--Disclosure to the Merit Systems Protection Board.* A record from a system of records maintained by this component may be disclosed as a routine use to the Merit Systems Protection Board, including the Office of the Special Counsel for the purpose of litigation, including

[4] See foonote 2 to this Appendix B.

administrative proceedings, appeals, special studies of the civil service and other merit systems, review of OPM or component rules and regulations, investigation of alleged or possible prohibited personnel practices; including administrative proceedings involving any individual subject of a DoD investigation, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

(n) *Routine Use--Counterintelligence Purpose.* A record from a system of records maintained by this component may be disclosed as a routine use outside the DoD or the U.S. Government for the purpose of counterintelligence activities authorized by U.S. Law or Executive Order or for the purpose of enforcing laws which protect the national security of the United States.

Dated: April 3, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–8723 Filed 4–7–00; 8:45 am]

BILLING CODE 5001–10–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA231–0227b; FRL–6571–1]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Antelope Valley Air Pollution Control District and Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from Automotive Refinishing Operations and Motor Vehicle and Mobile Equipment Coatings Operations.

The intended effect of this action is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by May 10, 2000.

ADDRESSES: Comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's technical support document for each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812;

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, Lancaster, CA 93539–4409;

Mojave Desert Air Quality Management District (formerly San Bernardino County Air Pollution Control District), 15428 Civic Drive, Suite 200, Victorville, CA 92392–2382.

FOR FURTHER INFORMATION CONTACT: Julie Rose, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION: This document concerns Antelope Valley Air Pollution Control District, Rule 1151, Motor Vehicle and Mobile Equipment Coatings Operations and Mojave Desert Air Quality Management District Rule 1116, Automotive Refinishing Operations. These rules were submitted by the California Air Resources Board to EPA on October 29, 1999 and July 28, 1999, respectively. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: March 15, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 00–8527 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA54–200017; FRL–6574–9]

Approval and Promulgation of Implementation Plans, Georgia: Approval of Revisions for a Transportation Control Measure

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to the Georgia State Implementation Plan (SIP) submitted by the State through the Department of Natural Resources on March 29, 2000, requesting incorporation of the Atlantic Steel Transportation Control Measure (TCM) into the SIP.

DATES: Comments on EPA's proposed action must be received on or before May 10, 2000.

ADDRESSES: All comments should be addressed to: Kay T. Prince, Chief, Regulatory Planning Section at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Contact Dr. Robert W. Goodwin at 404/562–9044.

Georgia Department of Natural Resources, Environmental Protection Division, Air Protection Branch, 4244 International Parkway, Suite 136, Atlanta, Georgia 30354. 404/363–7000.

FOR FURTHER INFORMATION CONTACT: Dr. Robert W. Goodwin at 404/562-9044, E-mail: *Goodwin.Robert@epa.gov.* Information regarding Project XL and the Atlantic Steel Final Project Agreement is available via the Internet at the following location: "http://www.epa.gov/ProjectXL".

SUPPLEMENTARY INFORMATION:

I. Background

EPA, with the cooperation of State and local authorities, has initiated Project XL to work with interested companies to develop innovative approaches for addressing environmental issues. Project XL encourages companies and communities to come forward with new approaches that have the potential to advance environmental goals more effectively

and efficiently than have been achieved using traditional regulatory tools.

Atlantis 16th, L.L.C. (hereafter referred to as Jacoby or the developer), a developer in Atlanta, Georgia, has proposed redevelopment of a 138-acre site previously owned by Atlantic Steel near Atlanta's central business district. The proposed redevelopment is a mix of residential and business uses. Project plans include a new 17th Street multi-modal (cars, pedestrians, bicycles, transit linkage) bridge that would cross over and provide access ramps to and from Interstate-75/85 (I–75/85) and connect the site to a nearby Metropolitan Atlanta Rapid Transit Authority (MARTA) rapid rail mass transit station. Jacoby worked intensively with representatives of EPA, the State of Georgia, the City of Atlanta, other local authorities, and public stakeholders to develop a site-specific Project XL Agreement that will allow implementation of the redevelopment. The XL Final Project Agreement was signed September 7, 1999.

A. Why Is Project XL Necessary?

The project site currently suffers from poor accessibility due to the lack of a linkage to and across I–75/85 and to the existing MARTA transit system in Atlanta. Construction of an interchange and multi-modal bridge across I–75/85 at or near 17th Street would improve access to the site. The bridge would also serve as a vital linkage between the Atlantic Steel redevelopment and the MARTA Arts Center station. In addition, construction of the 17th Street bridge was one of the City of Atlanta's zoning requirements for the redevelopment.

Jacoby is participating in Project XL for the Atlantic Steel redevelopment because neither the 17th Street bridge nor the associated I–75/85 access ramps would be able to proceed without the regulatory flexibility being allowed by EPA under Project XL. Atlanta is currently out of compliance with federal transportation conformity requirements because it has not demonstrated that its transportation activities will not exacerbate existing air quality problems or create new air quality problems in the region. The Clean Air Act (CAA) generally prohibits construction of new transportation projects that use federal funds or require federal approval in areas where compliance with conformity requirements has lapsed. However, projects which are approved as Transportation Control Measures (TCMs) in the SIP can proceed—even during a conformity lapse. EPA reviews and takes rulemaking action on proposed revisions to SIPs, including proposed TCMs to be included in SIPs.

B. What Is a TCM?

A TCM is any measure that is specifically identified and committed to in the applicable SIP that is either one of the types listed in section 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions.

C. What Flexibility Is EPA Granting?

The flexibility Jacoby and the City of Atlanta are seeking through Project XL is to regard the entire redevelopment project, including the 17th Street bridge, as a TCM. The flexibility under Project XL is necessary because the redevelopment likely would not qualify as a TCM in the traditional sense. There are two components to the flexibility.

1. The first part of the flexibility is to consider the entire Atlantic Steel redevelopment to be a TCM. That is, the redevelopment's location, transit linkage, site design, and other transportation elements (*e.g.*, provisions for bicyclists, participation in a transportation management association (TMA)) are viewed together as the TCM. Section 108 of the CAA lists several types of projects that can be TCMs, but its language does not limit TCMs to the measures listed.

2. The second aspect of the flexibility sought under Project XL concerns use of an innovative approach to estimate the air quality benefit of the Atlantic Steel redevelopment. The redevelopment's air quality benefit is estimated relative to an equivalent amount of development at other likely sites in the region. This type of comparison is available only to this particular redevelopment through the Project XL process. The entire Atlantic Steel redevelopment would attract new automobile trips and result in new emissions. Therefore, redevelopment of the site when considered in isolation would not qualify as a TCM in the traditional sense. EPA believes, however, that the Atlanta region will continue to grow, and that redevelopment of the Atlantic Steel site will produce fewer air pollution emissions than an equivalent quantity of development that likely would occur at other potential sites in the region, if the Atlantic Steel redevelopment were not to occur.

D. Why Is This Flexibility Appropriate?

EPA believes the flexibility described above is appropriate for this project because of the combination of unique elements of the site and the redevelopment listed below. In the absence of these elements, EPA would be unlikely to approve this project as a TCM.

1. The site is a brownfield. An accelerated clean-up of the site will occur if this TCM is implemented. The clean-up and redevelopment of the former industrial site aligns with EPA's general efforts to encourage clean-up and reuse of urban brownfields.

2. The site has a regionally central, urban location. Redeveloping this property will result in a shift of growth to Midtown Atlanta from the outer reaches of the metropolitan area. Because of the site's central location, people taking trips to and from the site will be driving shorter average distances than those taking trips to and from a development on the edge of the city. Shorter driving distances will result in fewer emissions.

3. The redevelopment plan includes a linkage to MARTA. This linkage would make it possible for those who work at the site to commute without a car and would serve residents of Atlantic Steel as well as residents of surrounding neighborhoods. In addition, the transit link is valuable for those coming to the site for non-work purposes, such as dining, shopping, and entertainment.

4. The redevelopment plan incorporates many "smart growth" site design principles. These principles include features which promote pedestrian and transit access rather than exclusive reliance on the car. The redevelopment will avoid creating areas that are abandoned and unsafe in the evening, hotels and offices will be within walking distance of shops and restaurants, shops that serve local needs will be within walking distance of both the Atlantic Steel site and the adjacent neighborhoods, and wide sidewalks will encourage walking and retail use. Jacoby has also responded to the adjacent neighborhood's request for public parks, designating public space to central locations rather than relegating it to the edge.

5. The redevelopment plan incorporates many elements that could qualify as TCMs by themselves. In addition to other features, such as the linkage to mass transit, the redevelopment will participate in a TMA. The TMA may participate with the City of Atlanta and Jacoby in monitoring the transportation performance of the redevelopment by collecting travel-related data on an annual basis.

With the exception of the site's accelerated clean-up, all of these elements will have an impact on transportation decisions of people who begin and/or end trips in the Atlantic

Steel site. The combination of the site's location in a central urban area, connection to the existing transit system, design that promotes pedestrian access, participation in a TMA, and provision of bicycle and pedestrian conveniences are expected to work together to reduce growth in auto traffic in the Atlanta region. The redevelopment could demonstrate that the application of smart growth concepts can make a difference in travel patterns. Therefore, EPA is proposing to use the regulatory flexibility under Project XL to approve the Atlantic Steel redevelopment and its associated transportation projects as a TCM.

II. Analysis of State's Submittal

On March 29, 2000, the State of Georgia through the Department of Natural Resources submitted to EPA a request to approve the Atlantic Steel TCM into the SIP. A public hearing on the proposed SIP revision was held on September 30, 1999.

EPA's policy establishes six criteria that a TCM must meet before it can be considered for approval in the SIP. These criteria are contained in the September 1990 report entitled "Transportation Control Measures: State Implementation Plan Guidance." These six criteria are addressed in the following six sections.

A. Complete Description of the Measure and Its Estimated Emissions Reduction Benefits

Current plans for redevelopment of the 138-acre Atlantic Steel site include 1.6 million ft^2 of retail space, 4.0 million ft^2 of office space, 2885 residential units, 1150 hotel rooms, and 1.5 million ft^2 of high tech office space to be built in three phases over approximately ten years. The final site design may change from the current design site provided in the March 29, 2000, submittal, however the SIP revision requires the final site design to meet or exceed certain criteria for overall density, transit-oriented density, activity diversity, and external street connectivity.

The City of Atlanta has established 27 zoning conditions on the Atlantic Steel property that are included as part of the SIP revision, requiring Jacoby to complete certain activities, several of which are related to implementation of the TCM. Relevant conditions include: development and appropriate phasing of residential and non-residential components of the project; development of 17th Street as a mixed use street; construction of bicycle lanes; creation of and maintenance of open space; incorporation of a transit connection to the MARTA Arts Center station from the site; development of a transportation management plan, including support for and participation in a TMA; and the necessity of having the 17th Street bridge under contract for construction before building permits are issued for the site. The SIP revision requires that the zoning conditions apply to the current developer and all subsequent developers of the property. The conditions help ensure that the site design maximizes pedestrian and bicycle connectivity, transit connections, and activity diversity. Before construction occurs, the zoning conditions require Jacoby to submit a site plan to the Bureau of Buildings of the City of Atlanta for approval. The zoning conditions are described in more detail in section II.E below.

A multi-modal bridge will be constructed that will connect the site to Midtown Atlanta and the MARTA Arts Center station on the east side of I–75/85 at or near 17th Street. The SIP revision requires the bridge to be designed to accommodate potential future rail transit, with dedicated transit lanes and adequate widths for dedicated sidewalks and bicycle lanes. The bridge will also include ramps connecting to I–75/85.

The SIP revision requires Jacoby to provide an interim rubber tire shuttle service connecting the Atlantic Steel site with the MARTA Arts Center Station utilizing the multi-modal bridge. The SIP revision requires the service to begin operation immediately after construction of the 17th Street bridge. The SIP revision requires that the duration of this obligation is for ten years from the date that the 17th Street bridge opens to traffic or until an appropriate entity operates a fixed mass transit link providing a similar level of service, whichever occurs first. The SIP revision requires the shuttle to complement the hours of service and headways of fixed transit serving the MARTA Arts Center station, operating on a dedicated transit lane with a projected minimum headway of four minutes and a projected maximum headway of eight minutes, and that it will be designed to reduce the number of single occupant trips made to the site. The SIP revision requires the shuttle to provide the most direct and closest access practicable to the anticipated on-site high-density office building development, and, at a minimum, comply with all requirements of the Americans with Disabilities Act related to operation of a transit system. The shuttle system may consist of electric and alternatively fueled buses.

To estimate the air emissions impacts of the Atlantic Steel TCM, EPA, in consultation with stakeholders including the Federal Highway Administration (FHWA), the Atlanta Regional Commission (ARC), and local citizen's groups, undertook three analyses: Regional transportation and air emissions impacts; local hot spot impacts; and site level travel impacts. The results of these analyses are included in the SIP revision in the May 10, 1999, report entitled "Transportation and Environmental Analysis of the Atlantic Steel Development Proposal." The ARC Interagency Consultation Group, comprised of staff from Federal, state, and local transportation and air quality planning agencies in the Atlanta nonattainment area, approved the modeling methodology EPA used to estimate the emissions benefits of the proposed Atlantic Steel TCM at its February 12, 1999, and May 5, 1999, meetings.

To analyze the transportation and air emissions impacts of locating new development at the Atlantic Steel site, EPA used ARC's regional transportation model and the MOBILE5 emissions factor model to compare the Atlantic Steel site to three other possible development locations for similar-scale development in the Atlanta region. EPA's evaluation of the Atlantic Steel site's impacts is predicated on two assumptions: First, Atlanta will continue to grow over the next 20 years. Second, without redeveloping the 138-acre Atlantic Steel site, more of this growth will locate in outlying areas.

Analysis of regional transportation and air impacts of the proposed Atlantic Steel redevelopment indicates that absorbing a portion of Atlanta's future growth at the Atlantic Steel site would create less travel and fewer emissions than developing likely alternative sites. The study estimates that by the year 2015 the Atlantic Steel redevelopment would generate roughly 0.2–0.3 tons per day fewer emissions of oxides of nitrogen, and 1.1–1.2 tons per day fewer emissions of volatile organic compounds, both precursors to ground-level ozone formation, than comparable developments at other likely sites in the Atlanta region. However, no emissions credit is being claimed by the State of Georgia in the SIP revision for the Atlantic Steel TCM relative to current emissions levels.

EPA analyzed whether additional traffic resulting from the redevelopment of Atlantic Steel would cause carbon monoxide hot spots, *i.e.*, localized levels of carbon monoxide exceeding the National Ambient Air Quality

Standards. The analysis indicates that the redevelopment would create no violations of the standards.

Finally, EPA analyzed the transportation and air emissions impacts of the proposed redevelopment's site design. EPA evaluated three designs for the Atlantic Steel site: The design submitted at the time of the Project XL application by Jacoby; a design commissioned by EPA and created by Duany Plater-Zyberk & Co. (DPZ), a leading town planning firm; and a redesign by Jacoby that incorporates aspects of the DPZ design. The designs differ substantially in ways that affect travel behavior and therefore emissions. Compared to Jacoby's original design, the DPZ design and Jacoby's redesign excel in three areas in particular. First, they improve the mix of uses on-site by integrating them at a finer scale. Second, they provide better connectivity both on- and off-site. Third, the pedestrian environment is improved through street design that includes more direct routing and slower traffic speeds. The current site design is essentially Jacoby's redesign.

In summary, EPA analyzed the impacts of development location and design on regional vehicle miles traveled (VMT) and emissions. EPA found that the most regionally central, most transit-accessible, and most pedestrian-friendly location and site design combinations—those at the Atlantic Steel location—produced the least VMT, emissions, and other environmental impacts. The SIP revision requires the final site design to meet or exceed certain criteria that were derived, in part, from EPA's analysis. The site design criteria help ensure that the redevelopment will contain the high density, mixed use, transit- and pedestrian-friendly components EPA studied.

EPA finds that the City of Atlanta and State of Georgia have met this criterion by providing a complete description of the measure and its estimated emissions reduction benefits.

B. Evidence That the Measure Was Properly Adopted by a Jurisdiction With Legal Authority To Commit to and Execute the Measure

The City of Atlanta is the sponsor of the Atlantic Steel TCM and is responsible for implementing and monitoring the project according to the criteria and schedule in the SIP revision. This commitment is evidenced by a letter contained in the SIP revision dated June 22, 1999, from the Honorable Michael A. Dobbins, Commissioner of Planning, Development, and Neighborhood Conservation for the City of Atlanta, to Mr. Harry West, Executive Director of ARC.

In addition, the SIP revision contains a copy of the resolution approved by the ARC Board on June 23, 1999, in which the proposed Atlantic Steel TCM was adopted as part of the Interim Atlanta Region Transportation Improvement Program, Fiscal Years 2000–2002.

EPA finds that the City of Atlanta and State of Georgia have met this criterion by providing sufficient evidence that the measure was properly adopted by a jurisdiction with legal authority to commit to and execute the measure.

C. Evidence That Funding Has Been (Or Will Be) Obligated To Implement the Measure

Although not a direct transportation/air quality component, remediation of the site is a necessary precondition for development. Presently, the estimated cost of remediation is $10 million, which will be paid by the sellers of the property with funds from the purchase price.

The value of the land after remediation is conservatively estimated at $1 million per acre. Of the 138 acres, 47 acres to the west of I–75/85 are scheduled for right-of-way acquisition. The SIP revision requires that, as appropriate, right-of-way for streets, sidewalks, transit, bicycle lanes and open space will be dedicated by Jacoby without cost. The SIP revision requires Jacoby to provide right-of-way in the development to MARTA or other acceptable entity for the construction of a transit linkage connecting the Atlantic Steel site to the MARTA Arts Center station. The estimated value of the right-of-way dedication is $47 million.

The SIP revision identifies several financing mechanisms available to assist with funding for construction of roads, sidewalks and bicycle lanes. The SIP revision includes an ordinance adopted by the City of Atlanta calling for the collection of Transportation Impact Fees. Fees are based upon a cost per peak hour VMT less property tax credit assessed on an amount of square feet for different building types. Jacoby can request a waiver of impact fees of similar magnitude provided the improvements are made as part of the project. Fees are collected at the time a building permit is issued. Appropriate expenditures of fees include projects that promote pedestrian activity, bicycling, mass transit and other alternatives to automobile transportation. As per the current site plan, Transportation Impact Fees for phase one of the project are approximately $2.8 million. Estimates based upon phase two and phase three development plans are approximately $9.7 million.

An alternative method of financing improvements identified and included in the SIP revision is the Atlantic Steel Brownfield Area and Tax Allocation District Number Two (BATAD#2). The BATAD#2 was approved by the Atlanta City Council on October 4, 1999, and signed by the Mayor of the City of Atlanta on October 5, 1999. The BATAD#2 will issue bonds against anticipated revenues to pay for infrastructure improvements. The BATAD#2 will continue in existence for 25 years. The estimated tax increment base set by the City of Atlanta is $7.5 million. This leverages approximately $75 million.

Current estimates for the construction of roads, sidewalks and sewers to the west of I–75/85 are $15 million; preliminary architectural and engineering costs are estimated to be $12 million. The SIP revision establishes that funding for the various infrastructure improvements associated with redevelopment of the Atlantic Steel site will be achieved through either imposition of Transportation Impact Fees or by the BATAD#2, as described above.

The cost of the 17th Street bridge is estimated to be approximately $53 million, with an additional $25 million to purchase required right-of-way and easement for that area of the project beyond the Atlantic Steel development site. The Georgia Department of Transportation (GDOT) has committed to fund all construction costs (which includes the local matching funds) for the western section of 17th Street starting at the railroad bridge and extending to Northside Drive, the 17th Street bridge interchange, including the bridge ramps, frontage road relocations, associated intersections and approaches for 17th Street at Spring Street and West Peachtree Street, and the possible reconstruction of the 14th Street bridge over I–75/85. GDOT will reserve and assign funding to ARC and provide the local match for construction of the 17th Street bridge. GDOT will also fund utility relocations. In addition, GDOT will place the 17th Street corridor from Northside Drive to Spring Street and West Peachtree Street on the temporary state system. This will enable GDOT to finance the purchase of the required right-of-way and easement for that area of the project beyond the Atlantic Steel development site. These commitments by GDOT are part of the SIP revision and are evidenced by: (1) A letter from GDOT Commissioner Wayne Shackelford to City of Atlanta Commissioner Michael A. Dobbins

dated February 5, 1999; (2) a GDOT interdepartment correspondence from Joseph P. Palladi to Commissioner Wayne Shackelford dated January 31, 2000; and (3) a letter from Commissioner Wayne Shackelford to City of Atlanta Mayor Bill Campbell dated March 7, 2000.

There are also operating costs associated with the development of the TCM. This includes the cost of operating an interim shuttle service to satisfy transit obligations. Exclusive of right-of-way, hard costs associated with the shuttle service are estimated at $2.68 million; annual operations are estimated to be approximately $1.88 million. The SIP revision requires the cost of the shuttle to be borne by Jacoby.

A TMA is to be formed for the Midtown area of the City of Atlanta. The purpose of the TMA is to gather information on performance measures to be submitted to ARC for evaluation of emissions benefits, as well as to manage alternative transportation programs within the Atlantic Steel site. Start-up costs for the TMA are estimated to be $150,000. Annual operating costs will be in the range of $250,000. The SIP revision requires Jacoby to assist with initial financial support for the TMA. As the TMA progresses, participants (i.e. employers, property managers) will pay dues to support the operation of the organization. The TMA may also be funded by the BATAD #2.

Estimated project costs and funding sources identified in the SIP revision are included in Tables 1 through 4 below.

TABLE 1.—ON-SITE TRANSPORTATION INFRASTRUCTURE COST ESTIMATES

Component	Estimate (in millions)	Funding source(s)
Streets, Sidewalks, Transit Lanes (Right of Way)	$40	Developer.
Streets, Sidewalks, Transit Lanes (Construction)	15	BATAD #2 Impact Fees.
Utilities	9	BATAD #2 Impact Fees.
Public Amenities	24	BATAD #2 Impact Fees.
Total	88	

TABLE 2.—17TH STREET BRIDGE COST ESTIMATES

Phase	Estimate (In millions)	Funding source(s)
Right of Way (Off Site)	$25	GDOT, Federal.
Preliminary Engineering and Design	4	Developer.
Construction	53	GDOT, Federal.
Total	82	

TABLE 3.—TRANSIT CAPITAL COST ESTIMATES

Component	Estimate (In millions)	Funding source(s)
Shuttle Stations	$0.52	Developer.
Shuttle Stops	0.36	Developer.
Fleet	1.8	Developer.
Total	2.68	

TABLE 4.—TRANSIT ANNUAL OPERATING COST ESTIMATE

Component	Estimate (in millions)	Funding source
Annual Operating Cost	$1.88	Developer.

EPA finds that the City of Atlanta and State of Georgia have met this criterion by providing sufficient evidence that funding has been (or will be) obligated to implement the measure.

D. Evidence That All Necessary Approvals Have Been Obtained From All Appropriate Government Entities

The Georgia Environmental Protection Division (EPD) finalized approval of the site remediation plan as evidenced by a letter from the Director of EPD, Mr. Harold F. Reheis, to Mr. Jesse J. Webb, Chief Executive Officer of Atlantic Steel Industries, and Mr. Hilburn O. Hillstead, Vice President of Atlantis 16th, L.L.C., dated December 10, 1999.

The City of Atlanta approved the rezoning of the Atlantic Steel property on April 13, 1998. The City approved the Transportation Impact Fees ordinance on June 12, 1994. The City approved the BATAD #2 on October 5, 1999. Fulton County approved the BATAD #2 on November 3, 1999. The Atlanta Board of Education approved the BATAD #2 on December 13, 1999. These approvals are evidenced by copies of the relevant ordinances and the BATAD#2, which are included in the SIP revision.

Implementation of the TCM will require approval of an Interchange Modification Report for the 17th Street bridge and approval of the National Environmental Policy Act document by FHWA. Because Atlanta is currently in a transportation conformity lapse, these approvals cannot take place until EPA approves the Atlantic Steel TCM SIP revision. FHWA is committed to working with all appropriate agencies to approve these documents once this SIP is approved.

EPA finds that the City of Atlanta and State of Georgia have met this criterion by providing sufficient evidence that all necessary approvals have been or will be obtained from all appropriate government entities.

E. Evidence That a Complete Schedule To Plan, Implement, and Enforce the Measure Has Been Adopted by the Implementing Agency or Agencies

The SIP revision contains the TCM implementation schedule listed in Table 5.

TABLE 5.—IMPLEMENTATION SCHEDULE

Timeframe and activity
01/01/2000–12/31/2000:
Complete remediation and infrastructure.
Begin design of bridge.
Begin Phase I vertical development.
01/01/2001–12/31/2001:
Complete bridge design.
Begin bridge construction.
01/01/2002–12/31/2003:
Complete bridge construction.
Complete Phase I vertical development.
Retail—1.2 million ft².
Office—1.0 million ft².
Residential—1,000 units.
Hotel—383 rooms.
High Tech—0.5 million ft².
01/01/2004–12/31/2005:
Complete Phase II vertical development:
Retail—0.3 million ft²—Total: 1.5 million ft².
Office—0.5 million ft²—Total: 1.5 million ft².
Residential—600 units—Total: 1,600 units.
Hotel—192 rooms—Total: 575 rooms.
High Tech—0.5 million ft²—Total: 1.0 million ft².
01/01/2006–build-out[1]:
Complete Phase III vertical development:
Retail—0.1 million ft²—Total: 1.6 million ft².
Office—2.5 million ft²—Total: 4.0 million ft².
Residential—1285 units—Total: 2885 units.
Hotel—575 rooms—Total: 1150 rooms.
High Tech—0.5 million ft²—Total: 1.5 million ft².

[1] The build out projections will vary. These numbers relate to the BATAD#2 projections.

This is a non-traditional TCM. It includes aspects which, if considered alone, may qualify as TCMs and other aspects which would not by themselves qualify as TCMs, but contribute to anticipated air quality benefits through this project. The resulting TCM is complex and requires a non-traditional analysis by EPA. Normally, EPA's review would focus on whether a sponsoring agency of a proposed TCM has sufficient legal authority, procedures and resources to complete a particular project. For a vanpool or high occupancy vehicle lane project, for example, this inquiry is fairly straightforward. For this project, with its overlap of land use, site design, mass transit and pedestrian elements, the inquiry is broadened considerably.

All of the parts of this TCM cannot be accomplished with a single piece of legislation or a single agreement. The City of Atlanta has therefore adopted a multi-faceted approach which has been tailored to accomplish the goal of turning an urban brownfield site into a mixed-use community which encourages and facilitates alternative modes of transportation. The two central pieces of this strategy are the zoning conditions applicable to this site adopted by the City and the creation of the BATAD#2, which allows for the reinvestment of tax revenues from the site to pay for the necessary infrastructure improvements. The following is a discussion of how the BATAD#2 and zoning conditions will allow the City of Atlanta to plan, implement, and enforce the necessary components of this TCM.

At the request of Jacoby, and with the support of the affected neighborhood groups, on April 13, 1998, the City of Atlanta adopted 27 special zoning conditions for the Atlantic Steel site that go beyond the zoning conditions typically adopted by the City. The SIP revision contains evidence that these conditions have been fully adopted by the City. Specific conditions which EPA believes support this project being classified a TCM include the following:

1. Rezone the property to C–4–C (mixed use) classification. By allowing a mix of uses the site design will limit trips as persons who work or live at the site will have retail and entertainment opportunities nearby.

2. The property will be developed in accordance with the "Use Diagram" filed with the City which includes right-of-way for bicycle lanes, sidewalks, mass transit lines and greenspace. It also limits the uses available in certain sensitive areas of the site to help maintain a desirable quality of life for residents.

3. The development will be subject to restrictive covenants which will provide for maintenance of open space areas and architectural control on all buildings through an architectural review board, which will include representatives from neighboring Home Park and Loring Heights. This condition will help provide and keep up greenspace as well as ensure a desirable quality of life for residents and visitors.

4. The developer will work with the City and neighborhood groups to limit cut-through traffic in designated areas by use of cul-de-sacs and traffic calming devices. This condition will promote pedestrian activity.

5. There will be at least seven acres of open space which will include a lake and landscaped areas as indicated in the "Primary Residential" area of the diagram. This condition will help create a pedestrian-friendly atmosphere.

6. Design standards with dimensions for streetscape, pedestrian and bike paths will be implemented as depicted on the drawing and will be installed concurrently with the street system. This condition will help ensure that non-automobile access is prioritized concurrently with road construction.

7. No "at-grade" crossing over the railroad line at Mecaslin Street will be utilized and the developer will not pursue any other crossing of Mecaslin Street north of the railroad line, except to provide a trail link and crossing for bikes and pedestrians. The developer also will construct a 12-feet wide concrete, multi-use trail connection to this crossing from the bike lanes on 17th Street and the multi-use trail. This condition will encourage pedestrian and bicycle activity.

8. The developer will incorporate people movers and other alternative forms of public transportation into its plans, subject to state, local and Federal approvals, including plans for access to the MARTA Arts Center station as well as provision for a rail corridor to the west and use its best efforts to see that such transportation is provided. This condition will contribute to the transit and pedestrian orientation of the project.

9. Only retail shops will be allowed in all buildings facing 17th street in the "Mixed Use" area. This will encourage pedestrian activity by creating a pedestrian friendly atmosphere and destinations for pedestrians.

10. The developer will use best efforts to ensure that development is phased so that proposed residential is completed before or concurrently with proposed retail/commercial. This will help ensure development of the mixed-use attributes of the site, which relates to the pedestrian orientation of the project.

11. Primary pedestrian entrances shall face public sidewalks. This condition will enhance the pedestrian friendly design of the site.

12. In the 17th Street "Mixed Use" area, no parking or driveways shall be permitted between any building and the sidewalk (with the exception of parking

garages and hotels with circular driveways). This condition will enhance the pedestrian friendly design of the site.

13. In the 17th Street "Mixed Use" area, curb cuts will be limited to one per building (except for parking garages and hotels, which may have two). This condition will enhance the pedestrian friendly design of the site.

14. In the 17th Street "Mixed Use" area, buildings shall be set back no more than 25 feet from edge of the curb, except to provide public plazas, greenspace or pedestrian space. This condition will enhance the pedestrian friendly design of the site.

15. No temporary or permanent Certificates of Occupancy will be provided by the city until the Bureau of Buildings certifies that entire landscape plan for that phase of the development has been fully implemented. This condition will help ensure that landscape, pedestrian and greenspace designs receive priority from the developer.

16. All proposed pedestrian and open space improvements must be fully implemented for that phase of development before any temporary or permanent Certificates of Occupancy shall be issued. This condition will help ensure that landscape, pedestrian and greenspace designs receive priority from the developer.

17. The Bureau of Buildings shall not issue a building permit until such time as the applicant has submitted a Transportation Management Plan for all non-residential components. This condition is designed to ensure that an important focus of the development remains consideration of pedestrians and mass transit.

18. The developer is required to meet with the local neighborhood planning unit on an annual basis to report on the status of the project. This condition will help ensure that the developer stays in communication with affected residents and gives the public an opportunity to stay involved and monitor progress at the site.

The City of Atlanta has the legal authority to enact, implement and enforce the zoning conditions described above. Further, affected citizens and businesses also have standing under Georgia law to bring a lawsuit and enforce specific zoning conditions, provided they can meet the standing requirements. By proposing this project as a TCM , adopting these zoning conditions, and by committing to implement this project as part of the SIP revision, the City of Atlanta is demonstrating that it is willing to implement and enforce the necessary measures to complete this project.

The City of Atlanta's commitment to this project is also evident by the creation of the BATAD#2. The BATAD#2, created pursuant to Georgia law, allows Atlanta to commit anticipated public tax revenues to the necessary infrastructure improvements to accomplish the goals set forth in the proposed Redevelopment Plan by the City for the site. The City will contract with the Atlanta Development Authority to serve as the City's "Redevelopment Agent" responsible for implementing the proposed Redevelopment Plan. An important consideration for EPA in analyzing a TCM proposal includes whether or not there is sufficient financial support to implement the project as well as whether there is sufficient political means to complete a project. By creating the BATAD#2, Atlanta ensures that not only will there be sufficient funds and an enforcement mechanism for them, but the BATAD#2 also contributes additional mechanisms for assisting the implementation of mass transit and pedestrian orientation at the site.

The BATAD#2 will provide funding for the construction and maintenance of sidewalks, bike-paths, open space and other quality of life attributes of the site. Jacoby will donate the right-of-way for streets, sidewalks, bike-lanes and open space consistent with the Site Plan filed under the zoning conditions. The BATAD#2 will then ensure that funding is available for transportation and other important infrastructure improvements such as waste and stormwater controls.

The BATAD#2 will be able to provide some funding for the study and implementation of mass transit service to the Atlantic Steel site and connectivity to existing MARTA rail (i.e, contribute towards a local match for securing federal transit support). As with sidewalks, bike-paths and roads, Jacoby will donate the right-of-way to either the City or MARTA (or another suitable entity) to ensure that land acquisition of the necessary right-of-way is not an impediment to the success of the transit/pedestrian orientation of the site.

The BATAD#2 will provide the City with the financial wherewithal to coordinate development activities at the site with the various stakeholders, most important, the residents, neighbors and business owners in the area. The BATAD#2 may also provide the necessary funding for the creation of a TMA for the area. A TMA can play a crucial role in developing and implementing methods to reduce congestion, VMT and unnecessary automobile trips.

Despite the non-traditional aspects of this TCM, it is still subject to the same enforceability considerations and constraints applicable to any TCM as required by the Clean Air Act and its implementing regulations. Control measures adopted into a SIP are enforceable by EPA pursuant to section 113 of the CAA (42 U.S.C. 7413). That section provides for the assessment by the Administrator of civil penalties of up to $27,500 per day per violation against a person who has violated any requirement or prohibition of an applicable implementation plan. An "applicable implementation plan" is defined as that portion of a state implementation plan, which has been approved by the Administrator. (CAA Section 302(q) (42 U.S.C. 7602(q)). Once the SIP revision is approved by the EPA, it becomes part of the State's "applicable implementation plan" or SIP, and enforceable by EPA as well as by the State. Violations of SIP measures relating to TCMs are also enforceable by citizen suit under section 304(a)(1) and (f)(3).

Given the extraordinary zoning conditions placed on the site, and the creation of the BATAD#2 with the specific objective of providing the necessary funding for requisite infrastructure improvements, EPA finds that the City of Atlanta and State of Georgia have met this criterion by providing sufficient evidence that a schedule to plan, implement, and enforce the measure has been adopted by the City.

F. Description of the Monitoring Program To Assess the Measure's Effectiveness and To Allow for Necessary In-Place Corrections or Alterations

The implementation and performance of the Atlantic Steel TCM will be monitored in accordance with the following seven main components:

1. The City of Atlanta has established zoning conditions on the Atlantic Steel property that require the project developer to complete certain activities that are also related to implementation of the TCM. (See section II.E above.) Compliance with zoning conditions is enforceable by law.

2. The SIP revision requires that the 17th Street bridge must be designed as a multi-modal facility that will provide a connection to the MARTA Arts Center station, accommodate future rail transit, and provide adequate widths dedicated for sidewalks and bicycle lanes. The SIP revision requires GDOT to ensure that the bridge will not be constructed

without these elements. In addition, there are a number of design-specific measures that will be considered in the next phase of bridge and intersection design to ensure that bicycle and pedestrian needs are met. These include: construction of narrower lanes to shorten the length of the intersection crossing; develop wider medians to provide islands; consideration of prioritized signal timing for pedestrians; use of special surface treatments for cross walks; consideration of elimination of turn lanes; and consideration of phased construction of 17th Street to provide for optimal pedestrian improvements. The SIP revision requires the City of Atlanta and GDOT to commit to work with affected stakeholders of the project to ensure that pedestrian needs are considered and a continuous flow of pedestrian movement is maintained in the design of roadways and intersections connecting the 17th Street bridge into Midtown Atlanta.

3. The SIP revision requires Jacoby to submit copies of the site plan, with revisions, to the City of Atlanta, ARC, EPD, and EPA Region 4 annually after the 17th Street bridge opens to traffic until the project is built-out. The SIP revision requires that when the project reaches two thirds build-out or after six years from the date that the bridge opens to traffic, whichever comes first, the site design will be compared to the four site design criteria targets listed in Table 6. The site design criteria will be evaluated consistent with the definitions and methodologies contained in the EPA report entitled "Transportation and Environmental Analysis of the Atlantic Steel Development Proposal," dated May 10, 1999. The comparison will evaluate whether the site meets or will meet the criteria. If the site design at this time does not meet or exceed the target values in Table 6, Jacoby must submit and receive approval from the City of Atlanta, ARC, EPD, and EPA for a revised final site plan that does. Project build-out is defined as the amount of development allowed under the conditions of zoning for the Atlantic Steel project.

TABLE 6.—ATLANTIC STEEL TCM SITE DESIGN CRITERIA

Criterion	Description	Target value
Overall density	Total number of residents + employees on site	≥12,000
Transit-oriented density [1]	Total number of residents + employees per net acre within ¼-mile of an on-site transit stop.	≥180
Activity diversity	Percent of blocks with mixed uses [2]	≥33
External street connectivity	Average distance (in feet) between site ingress/egress streets.	≤1,000—unless the City of Atlanta specifies otherwise [3]

[1] Transit-oriented density around any individual transit stop may vary significantly, but the average density around all transit stops must be equal to or greater than 180 people per net acre within ¼ mile of the stop. This measure only includes on-site acreage.

[2] Percent of blocks with mixed use. A block is defined traditionally by the area contained within streets. Classification of uses will be according to major Standard Industrial Classification codes.

[3] This is calculated by dividing the length of the site's perimeter in feet by the number of ingress/egress streets. It is possible that the City of Atlanta would prevent connectivity of some streets or close access to some streets after they are built at the request of adjacent neighborhoods. Because this would be beyond the control of developers of the Atlantic Steel property, if such an event occurs, the target value is no longer effective.

4. The SIP revision requires that the TCM be monitored annually, beginning in the year following the opening of the 17th Street bridge to traffic and biennially after the project has reached two-thirds build-out. As part of the monitoring effort, the City of Atlanta will be responsible for collecting and maintaining the following data, at a minimum:

a. Average daily VMT per resident;

b. Average daily VMT per employee working at the site;

c. The percent of all combined trips made to, from and on the site by residents and employees in modes other than single occupancy vehicles (modal splits); and

d. Origin and destination data for trips made to, from and on the site by residents and employees.

The SIP revision requires the City of Atlanta and Jacoby, through a contractor or through the TMA, to develop a plan for data collection and submit it to ARC, EPD, and EPA Region 4 for approval prior to opening of the 17th Street bridge to traffic. The SIP revision specifies that data collection will continue until ten years following redesignation by EPA of the Atlanta area to attainment under the National Ambient Air Quality Standards for ozone. The SIP revision requires that the data be evaluated consistent with the definitions and methodologies contained in the EPA report entitled "Transportation and Environmental Analysis of the Atlantic Steel Development Proposal," dated May 10, 1999. ARC will be responsible for deriving mobile source emissions obtained from the data. At any time, the City of Atlanta may choose to solicit other transportation information such as travel cost and transit patronage that are beneficial for devising strategies to reduce VMT and single occupancy automobile travel.

This data collection requirement may necessitate that EPA submit an Information Collection Request (ICR) to the Office of Management and Budget. EPA will submit the ICR at a later date. Until EPA receives approval of the ICR, any component of the monitoring of this TCM that requires a survey of ten or more people may not be enforceable.

5. The SIP revision requires that at two, three and a half, and five years after the 17th Street bridge opens to traffic, the City of Atlanta, EPD, and EPA Region 4 will compare the observed average daily VMT per resident, the observed average daily VMT per employee working at the site, and the observed percent of all combined trips made to, from and on the site by residents and employees in modes other than single occupancy vehicles with ARC's most recent estimates of the regional (Atlanta 13-county nonattainment area) averages for these measures. If either of the observed VMT measures for the site is greater than or equal to the corresponding regional average, or if the observed mode split for the site is less than or equal to the regional average, then Jacoby will identify funding or fund the creation of a TMA for a period of twenty years from the applicable date, if employers and property managers are not participating in a TMA at that time. (The SIP revision requires that employers on the Atlantic Steel site participate in a TMA and that Jacoby assist with initial financial support for the TMA.) The TMA will consult with the City of Atlanta concerning implementation of additional alternative

transportation programs that achieve the performance standards stipulated in Table 7. The SIP revision requires the City of Atlanta to ensure that these programs will be developed and implemented, as appropriate, by the TMA.

TABLE 7.—ATLANTIC STEEL TCM PERFORMANCE MEASURES

Performance measure	Description	Target value
VMT per resident	Average daily VMT for all trips made by residents of the site.	≤27.
VMT per employee	Average daily VMT for trips to and from work for employees working on site.	≤11.
Mode Split	Percent of all trips to, from and on the site made by residents and employees combined, using non-SOV modes.	≥25.

6. The SIP revision requires that starting at six years after the 17th Street bridge opens to traffic or at two-thirds build-out, whichever occurs first, and at any time thereafter, if the site is not meeting or exceeding the performance targets contained in Table 7, Jacoby will identify funding or fund the creation of a TMA for a period of twenty years from the applicable date, if employers and property managers are not participating in a TMA at that time. (The SIP revision requires that employers on the Atlantic Steel site participate in a TMA and that Jacoby assist with initial financial support for the TMA.) The SIP revision requires the TMA to consult with the City of Atlanta concerning implementation of additional alternative transportation programs that achieve the performance standards stipulated in Table 7. The SIP revision requires the City of Atlanta to ensure that these programs will be developed and implemented, as appropriate, by the TMA. Examples of suggested programs are:

a. Transit discounts for on-site employees.

b. Increased provision of shuttle bus service or other transit service.

c. Increased parking rates, by time-of-day, by facility, and by parking type, as needed.

d. Reduction of available parking facilities or spaces.

e. Carpool/vanpool matching services.

f. Providing free or highly discounted annual regional transit passes with each residential unit (included in leases and property covenants).

g. Addition of traffic calming measures, such as raised pedestrian crosswalks, sidewalk bump-outs, diagonal on-street parking, or pedestrian islands.

h. Provisions and support for neighborhood car rental, car sharing systems, and real-time ridesharing services for residents and visitors.

i. Provision of additional facilities and amenities for non-SOV users such as bus shelters, bike racks and lockers, sidewalks, bike paths, park-and-ride facilities, telephones at shelters, newsstands, convenience retail, and daycare facilities.

j. Provision of guidance for telecommuting and alternative work schedules.

k. Employee Commuter Choice incentives—employees would be given the opportunity to purchase employer-discounted transit passes and vanpool benefits using pre-tax dollars.

EPA finds that the City of Atlanta and State of Georgia have met this criterion by providing sufficient evidence that a monitoring program to assess the measure's effectiveness and to allow for necessary in-place corrections or alterations has been included in the TCM.

III. Proposed Action

EPA finds that the Atlantic Steel TCM SIP revision satisfies EPA's six TCM criteria, and therefore EPA is proposing approval of the aforementioned changes to the Georgia SIP.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely proposes to approve state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of

Unanticipated Takings" issued under the executive order. The data collection requirement may necessitate that EPA submit an ICR to the Office of Management and Budget. EPA will submit the ICR at a later date. Until EPA receives approval of the ICR, any component of the monitoring of a TCM that requires a survey of ten or more people may not be enforceable.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 3, 2000,

John H. Hankinson, Jr.,

Regional Administrator, Region 4.

[FR Doc. 00–8835 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AL52–200014; FRL–6568–5]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Alabama

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is approving the Section 111(d) Plan for the State of Alabama submitted by the Alabama Department of Environmental Management (ADEM) on April 20, 1999, for implementing and enforcing the Emissions Guidelines applicable to existing Hospital/Medical/Infectious Waste Incinerators. The Plan was submitted by the ADEM to satisfy certain Federal Clean Air Act requirements. In the Final Rules Section of this **Federal Register**, EPA is approving the Alabama State Plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action.

DATES: Comments must be received in writing by May 10, 2000.

ADDRESSES: Written comments should be addressed to Kimberly Bingham at the EPA Regional Office listed below. Copies of the documents relevant to this rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3014. Ms. Bingham can be reached at (404) 562–9038 and Bingham.Kimberly@epa.gov.

Alabama Department of Environmental Management, Air Division, 1751 Congressman W.L. Dickinson Drive, Montgomery, Alabama 36109.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham at (404) 562–9038 or Scott Davis at (404) 562–9127.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: March 16, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–8143 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6572–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Proposed deletion of the Upper Deerfield Township Sanitary Landfill Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region II Office proposes to delete the Upper Deerfield Township Sanitary Landfill Superfund Site (Site), which is located in Upper Deerfield Township, Cumberland County, New Jersey, from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. EPA and the New Jersey Department of Environmental Protection have determined that the Site poses no significant threat to public health or the environment, as defined by CERCLA; and therefore, further remedial measures pursuant to CERCLA are not appropriate.

We are publishing a direct final action along with this proposed deletion without a prior proposal because the Agency views this as a noncontroversial revision and anticipates no significant adverse or critical comments. A detailed rationale for this approval is set forth in the direct final rule. If no significant adverse or critical comments are received, no further activity is contemplated. If EPA receives significant adverse or critical comments, the direct final action will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Comments concerning this action must be received by May 10, 2000.

ADDRESSES: Comments may be mailed to: Diego M. Garcia, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, New York 10007–1866.

Comprehensive information on this Site is available for viewing at the Upper Deerfield Township Sanitary Landfill Superfund Site information repositories at the following locations: Upper Deerfield Municipal Building, Administrative Office, Building 1325, State Highway 77, Seabrook, New Jersey 08302, (609) 329–4000, and, U.S. EPA Records Center, 290 Broadway, Room 1828, New York, New York 10007–1866,Hours: 9 AM to 5 PM, Monday through Friday. Contact: Superfund Records Center, (212) 637–4308

FOR FURTHER INFORMATION CONTACT: Diego M. Garcia, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, New York 10007–1866, (212) 637–4947, by FAX at (212) 637–4393 or via e-mail at garcia.diego@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Action which is located in the Rules section of this **Federal Register**.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Dated: March 15, 2000.

William J. Muszynski,

Acting Regional Administrator, Region II.

[FR Doc. 00–8525 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 310

[Docket No. MARAD–2000–7147]

RIN 2133–AB41

Appeal Procedures for Determinations Concerning Compliance With Service Obligations, Deferments, and Waivers

AGENCY: Maritime Administration, Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Maritime Administration (MARAD) is soliciting public comment on proposed revisions to the procedures for reviewing: Determinations that a student or graduate of the U. S. Merchant Marine Academy (USMMA) or a State maritime academy that receives student incentive payments has breached the service obligation; denials of requests for deferment of the service obligation; and denials of requests for waivers of the service obligation contract. Currently, the regulations call for review by a panel composed of a representative of MARAD and representatives from the Department of the Navy, the National Oceanographic and Atmospheric Administration (NOAA), and the United States Coast Guard. The proposed revisions provide for an appeal to the Maritime Administrator, the head of the agency, rather than review by the panel. The intended effect of this regulation is to streamline the process of reaching a final agency decision and allow for timely action on requests for review.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than May 10, 2000. Comments filed late will be considered to the extent practicable.

ADDRESSES: Comments should refer to docket number MARAD–2000–7147. Written comments may be submitted by hand or mail to the Docket Management Facility, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Jay Gordon of the Office of Chief Counsel at (202) 366–5191. You may send mail to Jay Gordon, Maritime Administration, Office of Chief Counsel, Room 7228, MAR–226, 400 7th St., SW, Washington, DC, 20590–0001, or you may send e-mail to jay.gordon@marad.dot.gov.

SUPPLEMENTARY INFORMATION:

Who May File Comments?

Anyone may file written comments about proposals made in any rulemaking document that requests public comments, including, but not limited to, any state government agency, any political subdivision of a State, or any person.

How Do I Prepare and Submit Comments?

To ensure that your comments are correctly filed in the Docket, please include the docket number of this NPRM in your comments. In addition, your comments must be written in English.

We encourage you to write your primary comments in a concise fashion. You may, however, attach necessary additional documents to your comments. There is no limit on the length of the attachments. Please submit two copies of your comments, including the attachments, to the Docket Management Facility at the address given above under **ADDRESSES.** If possible, one copy should be in an unbound format to facilitate copying and electronic filing.

How Can I Be Sure That My Comments Were Received?

If you want Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail. If you send comments by e-mail, you will receive a message by e-mail confirming receipt of your comments. Your e-mail address should be noted with your comments.

Is Information That I Submit to MARAD Made Available to the Public?

When you submit information to us as part of this NPRM, during any rulemaking proceeding, or for any other reason, we may make that information publicly available unless you ask that we keep the information confidential. If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, Maritime Administration, at the address given above under **FOR FURTHER INFORMATION CONTACT** You should mark "CONFIDENTIAL" on each page of the original document that you would like to keep confidential.

In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to the Docket Management Facility at the address given above under **ADDRESSES.** When you send comments containing information claimed to be confidential business information, you should also include a cover letter setting forth with specificity the basis for any such claim (for example, it is exempt from mandatory public disclosure under the Freedom of Information Act, 5 U.S.C. 552).

We will decide whether or not to treat your information as confidential. You will be notified in writing of our decision to grant or deny confidentiality before the information is publicly disclosed and you will be given an opportunity to respond.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by the Docket Management Facility at the address and during the hours provided above under **ADDRESSES.**

Comments may also be viewed on the Internet. To read the comments on the Internet, take the following steps: Go to the Docket Management System ("DMS") Web page of the Department of Transportation (http://dms.dot.gov). On that page, click on "search." On the next page (http://dms.dot.gov/search), type in the four-digit docket number shown on the first page of this document. The docket number for this NPRM is 7147. After typing the docket number, click on "search." On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Accordingly, we recommend that you periodically check the Docket for new material.

Background

Since 1980, each individual U.S. citizen who enters the USMMA and each student at a State maritime academy who receives Federal student incentive payments is required pursuant to statute (46 U.S.C. App. 1295b(e) and 1295c(g)) to sign an agreement committing: (A) To complete the course of instruction at the relevant academy, unless the individual is separated by such institution; (B) to fulfill the requirements for a license as an officer in the merchant marine of the United States on or before the date of graduation from the USMMA or, if a student incentive payment recipient, to take the examination for a license as an officer in the merchant marine of the United States on or before the date of graduation and to fulfill the requirements for such a license not later than 3 months after the date of graduation from a State maritime academy; (C) to maintain a license as an officer in the merchant marine of the United States for at least 6 years following the date of graduation from the relevant academy; (D) to apply for an appointment as, to accept if tendered an appointment as, and to serve as a commissioned officer in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve), the United States Coast Guard Reserve, or any other Reserve unit of an armed force of the United States, for at least 6 years following the date of graduation from the relevant academy; (E) to serve the foreign and domestic commerce and the national defense of the United States for at least 5 years following the date of graduation from the USMMA or for at least 3 years following the date of graduation from a State maritime academy; and (F) to report to the Maritime Administrator on the compliance by the individual. If the official designated by the Maritime Administrator determines that the individual has breached the service obligation contract, denies a request for a deferment of the service obligation, or denies a request for a waiver of the service obligation contract, the individual may seek review of that determination(s).

Currently, review of said determination(s) is by a panel composed of a representative of MARAD and representatives from the Department of the Navy, the National Oceanographic and Atmospheric Administration, and the United States Coast Guard. There is no standing panel and, when requested in writing by the individual, the panel must be convened on an ad hoc basis. These revisions would remove the panel as the reviewing authority and provide for direct appeal to the Maritime Administrator, the head of MARAD. These revisions are designed to streamline the process of reaching a final agency decision and allow for timely review of the decisions of the designated official. It also recognizes that the fundamental concerns involved in breach determinations and waiver and deferment decisions are central to the statutory purposes of the authority and responsibility of MARAD to operate the USMMA and administer the program for incentive payments to students at State maritime academies. These programmatic concerns do not necessarily involve areas of concern to organizations, such as NOAA and the United States Coast Guard, currently designated to sit on the panel.

This NPRM is being published with an abbreviated comment period of 30 days because the proposed amendments are limited to procedural changes, affect a relatively small segment of the public, and are not technical or complex.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking has been reviewed under Executive Order 12866, and it has been determined that this is not a significant regulatory action. The rule is not likely to result in an annual effect on the economy of $100 million or more. Also, it has been determined to be a nonsignificant rule under the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because the economic impact, if any, should be minimal, further regulatory evaluation is not necessary. These amendments are intended only to simplify and clarify the procedural requirements for appeals of determinations concerning breaches of service obligations, deferments, and waivers.

Federalism

We analyzed this rulemaking in accordance with the principles and criteria contained in E.O. 13132 ("Federalism") and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The regulations have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Therefore, consultation with State and local officials was not necessary.

Executive Order 13084

The Maritime Administration does not believe that the revised regulations evolving from this NPRM will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Therefore, the funding and consultation requirements of this Executive Order would not apply. Nevertheless, this NPRM specifically requests comments from affected persons, including Indian tribal governments, as to its potential impact.

Regulatory Flexibility Act

The Maritime Administration certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. This NPRM only proposes new procedural rules for students and graduates of the USMMA or State maritime academies to appeal determinations regarding breaches of service obligations, deferments, and waivers.

Environmental Impact Statement

We have analyzed this NPRM for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order ("MAO") 600–1, "Procedures for Considering Environmental Impacts," 50 FR 11606 (March 22, 1985), the preparation of an Environmental Assessment, and an Environmental Impact Statement, or a Finding of No Significant Impact for this rulemaking is not required. This rulemaking involves administrative and procedural regulations that have no environmental impact.

Paperwork Reduction Act

This rulemaking contains no reporting requirement that is subject to OMB approval under 5 CFR part 1320, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading of this document to cross-reference this action with the Unified Agenda.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This proposed rule is the least burdensome alternative that achieves the objective of the rule.

List of Subjects 46 CFR Part 310

Grant programs—education, Reporting and recordkeeping requirements, Schools, Seamen.

Accordingly, MARAD proposes to amend 46 CFR Part 310 as follows:

PART 310—MERCHANT MARINE TRAINING

1. The authority citation for Part 310 continues to read as follows:

Authority: 46 App. U.S.C. 1295; 49 CFR 1.66.

2. Section 310.7 is amended by revising paragraph (b)(10) heading paragraph (b)(10)(ii), paragraph (b)(10)(iii) and adding a new paragraph (b)(10)(iv) to read as follows:

§ 310.7 Federal student subsistence allowances and student incentive payments.

* * * * *

(b) * * *

(10) *Determination of compliance with service obligation contract; deferment; waiver; and appeal procedures.*

* * * * *

(ii)(A) If a student or graduate disagrees with the decision of the designated official, the student or graduate may appeal that decision to the Maritime Administrator. The appeal shall set forth all the legal and factual grounds on which the student or graduate bases the appeal. Any grounds not set forth in the appeal are waived.

(B) Appeals must be filed with the Maritime Administrator within 30 calendar days of the date of receipt by such student or graduate of the written decision of the designated official. Appeals must be filed at the Office of the Secretary, Maritime Administration, Room 7210, 400 7th St., SW., Washington, DC 20590. Each decision will include a notice of appeal rights.

(C) A decision is deemed to be received by a student or graduate five (5) working days after the date it is mailed by first class mail, postage prepaid, to the address for such student or graduate listed with the Office of Maritime Labor, Training, and Safety. It is the responsibility of such student or graduate to insure that their current mailing address is on file with the Office of Maritime Labor, Training, and Safety, Room 7302, 400 7th St., SW., Washington, DC 20590.

(D) If the appeal is sent by conventional mail (through the United States Postal Service), the date of filing is determined by the postmark date. If no legible postmark date appears on the mailing, the appeal is deemed to be filed five (5) working days before the date of its receipt in the Office of the Secretary. If delivered by other than the United States Postal Service, an appeal is filed with the Maritime Administrator on the date it is physically delivered to the Office of the Secretary at the address referenced in paragraph (b)(10)(ii)(B) of this section. The date of filing by commercial delivery (not United States Postal Service) is the date it is received at the address for the Office of the Secretary set forth in paragraph (b)(10)(ii)(B) of this section. Appeals may not be submitted by facsimile or by electronic mail. Requests for extension of the time to file an appeal may be submitted by facsimile or electronic mail to the Office of the Secretary. Requests for extension of time do not stop or toll the running of the time for filing an appeal. Appeals may only be filed after the deadline if the Maritime Administrator or his designee, in their sole discretion, grants an extension.

(E) In computing the number of days, the first day counted is the day after the event from which the time period begins to run. If the date that ordinarily would be the last day for filing falls on a Saturday, Sunday, or Federal holiday, the filing period will include the first workday after that date.

Example to paragraph (b) (10) (ii)(E): If a graduate receives a decision on July 1, the 30-day period for filing an appeal starts to run on July 2. The appeal would ordinarily be timely only if postmarked on or physically delivered by July 31. If July 31 is a Saturday, however, the last day for obtaining a postmark by mailing or physical delivery would be Monday, August 2.

(iii) The Maritime Administrator shall issue a written decision for each timely appeal. This decision constitutes final agency action.

(iv) If a student or graduate fails to appeal within the time set forth in paragraph (b)(10)(ii) of this section, the decision of the designated official shall be final and constitute final agency action.

3. Section 310.58 is amended by revising paragraph (h) heading, paragraphs (h)(2), (h)(3), and (h)(4) to read as follows:

§ 310.58 Service obligation for students enrolled after April 1, 1982.

* * * * *

(h) *Determination of compliance with service obligation contract; deferment; waiver; and appeal procedures.*

* * * * *

(2)(i) If a student or graduate disagrees with the decision of the designated official, the student or graduate may appeal that decision to the Maritime Administrator. The appeal shall set forth all the legal and factual grounds on which the student or graduate bases the appeal. Any grounds not set forth in the appeal are waived.

(ii) Appeals must be filed with the Maritime Administrator within 30 calendar days of the date of receipt by such student or graduate of the written decision of the designated official. Appeals must be filed at the Office of the Secretary, Maritime Administration, Room 7210, 400 7th St. SW., Washington, DC 20590. Each decision will include a notice of appeal rights.

(iii) A decision is deemed to be received by a student or graduate five (5) working days after the date it is mailed by first class mail, postage prepaid, to the address for such student or graduate listed with the Office of Maritime Labor, Training, and Safety. It is the responsibility of such student or graduate to insure that their current mailing address is on file with the Office of Maritime Labor, Training, and Safety, Room 7302, 400 7th St., SW., Washington, DC 20590.

(iv) If the appeal is sent by conventional mail (through the United States Postal Service), the date of filing is determined by the postmark date. If no legible postmark date appears on the mailing, the appeal is deemed to be filed five (5) working days before the date of its receipt in the Office of the Secretary. If delivered by other than the United States Postal Service, an appeal is filed with the Maritime Administrator on the date it is physically delivered to the Office of the Secretary at the address referenced in paragraph (h)(2)(ii) of this section. The date of filing by commercial delivery (not United States Postal Service) is the date it is received

at the address for the Office of the Secretary set forth in paragraph (h)(2)(ii) of this section. Appeals may not be submitted by facsimile or by electronic mail. Requests for extension of the time to file an appeal may be submitted by facsimile or electronic mail to the Office of the Secretary. Requests for extension of time do not stop or toll the running of the time for filing an appeal. Appeals may only be filed after the deadline if the Maritime Administrator or his designee, in their sole discretion, grants an extension.

(v) In computing the number of days, the first day counted is the day after the event from which the time period begins to run. If the date that ordinarily would be the last day for filing falls on a Saturday, Sunday, or Federal holiday, the filing period will include the first workday after that date.

Example to paragraph (b)(10)(v): If a graduate receives a decision on July 1, the 30-day period for filing an appeal starts to run on July 2. The appeal would ordinarily be timely only if postmarked on or physically delivered by July 31. If July 31 is a Saturday, however, the last day for obtaining a postmark by mailing or physical delivery would be Monday, August 2.

(3) The Maritime Administrator shall issue a written decision for each timely appeal. This decision constitutes final agency action.

(4) If a student or graduate fails to appeal within the time set forth in paragraph (h)(2) of this section, the decision of the designated official shall be final and constitute final agency action.

Dated: April 3, 2000.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–8614 Filed 4–7–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 000323080–0080–01; I.D. 031500A]

RIN 0648–AN97

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Angling Category

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking (ANPR); request for comments.

SUMMARY: NMFS is requesting public comments regarding the geographical division of the Atlantic bluefin tuna (BFT) Angling category fishery and whether an adjustment of the north-south division line and an associated adjustment of the BFT subquota percentages allocated to each area is warranted. Over the last several BFT fishing seasons, fishery participants have stated to NMFS that the division line needs to be adjusted to increase the extent of recreational fishing opportunities and to divide the northern and southern areas in a manner consistent with current fishing patterns. NMFS wants to determine if a change to the current division line and subsequent reallocation of quota is needed to better coordinate domestic conservation and management of the fishery consistent with the objectives of the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP).

DATES: Written comments on this ANPR are invited and must be received on or before May 22, 2000.

ADDRESSES: Written comments should be sent to Rebecca Lent, Chief, Highly Migratory Species (HMS) Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3282. Comments also may be sent via facsimile (fax) to (301) 713–1917. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Pat Scida or Sarah McLaughlin, (978) 281–9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). The ATCA authorizes the Secretary of Commerce (Secretary) to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). Within NMFS, daily responsibility for management of Atlantic HMS fisheries rests with the HMS Management Division of the Office of Sustainable Fisheries.

On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the HMS FMP. The HMS FMP and its implementing regulations establish percentage quota shares for the ICCAT-recommended U.S. BFT landing quota for each of the domestic fishing categories, and include measures regarding geographic subquotas and set-asides.

Angling Category Geographical Division

In response to quota reductions in 1992, two management areas were created for the BFT Angling category fishery. The north-south division line is located at 38°47' N. latitude (Delaware Bay). Generally, the recreational fishery begins each season off the southern and mid-Atlantic states, and so a subdivision was created to ensure a late season fishery in the northern mid-Atlantic and southern New England regions. Thus, the geographic split was designed to enable NMFS to manage the early season (June/July off the Virginia to Delaware coasts) and late season (August/September off the New Jersey to Massachusetts coasts) BFT fisheries under separate quotas, corresponding with the summer feeding migration of school, large school, and small medium BFT.

For the last several BFT fishing seasons, NMFS has received comments that an adjustment to the Angling category BFT north-south division line is warranted. Specifically, vessels fishing for BFT from ports in southern New Jersey, which is in the northern area, tend to utilize fishing areas located in the southern area (i.e., offshore of Ocean City, Maryland). This pattern of activity raises two concerns with respect to the dividing line for the southern and northern areas. First, when the southern and northern areas are both open, a significant number of fish caught in the southern area are landed in the northern area and counted against the applicable northern area subquotas. Second, when the southern area is closed, vessels from southern New Jersey are effectively excluded from the school BFT fishery because the fish are generally distributed too far north to accommodate single-day trips. NMFS has received specific suggestions to move the north-south division line to the north of the Ocean City, New Jersey area or to the south of the Ocean City, Maryland area.

NMFS is requesting comments on whether the current north-south division line is adequate or whether it should be moved to increase the geographical extent of recreational fishing opportunities and to define the northern and southern areas in a manner consistent with current fishing patterns. Any change to the current

division line and subsequent reallocation of quota, must be consistent with the HMS FMP, specifically with the objectives to better coordinate domestic conservation and management of the fisheries and to simplify and streamline HMS management. For the BFT Angling category, it is NMFS' goal to ensure reasonable fishing opportunities in all geographic areas without risking overharvest of the Angling category quota.

Various options include: (1) No adjustment to the division line; (2) move the division line to the Ocean City, New Jersey area or to 39°18' N. latitude, just north of Great Egg Inlet to effectively isolate the fisheries as virtually all vessels fishing for BFT from these areas fish in the southern, early season fishery (as suggested to NMFS in previous public comments); (3) move the division line to 38° 03' N. latitude (south of Ocean City, Maryland), so that all of the fishing activity based out of Maryland, Delaware, and southern New Jersey ports takes place in one area, i.e., a newly defined northern area (as suggested to NMFS in previous public comments); (4) move the division line to another latitude that is also consistent with the HMS management objectives mentioned above; and (5) eliminate the line altogether and use NMFS' existing authority to close and open the fishery based on inseason monitoring through review of daily landing trends, availability of BFT on the fishing grounds, and any other relevant factors, to provide for maximum utilization of the quota over the longest possible period of time. Adjusting the location of the north-south division line may reduce confusion and may prevent vessels from being excluded from participating in the fishery, especially when retention limits are different in the two areas.

Angling Category BFT Subquotas

Currently, there are separate Angling category BFT quota landings allocations for each of the areas north and south of the division line (38°47' N. lat). As stated in the HMS FMP, allocations to the southern area are as follows: (1) 47.2 percent of the school BFT Angling category landings quota, minus the school BFT quota held in reserve; (2) 47.2 percent of the large school/small medium BFT Angling category quota; and (3) 66.7 percent of the large medium and giant BFT Angling category quota. Allocations to the northern area are as follows: (1) 52.8 percent of the school BFT Angling category landings quota, minus the school BFT quota held in reserve; (2) 52.8 percent of the large school/small medium BFT Angling category quota; and (3) 33.3 percent of the large medium and giant BFT Angling category quota.

If NMFS adjusts the north-south division line, revision of the north and south allocation percentages also may be considered. Various options for revising the north and south allocation percentages include: (1) Maintain the status quo, i.e., no quota allocation change; (2) revise the allocation based on a review of data regarding estimated landings of all sizes of BFT north and south of any new division line; or (3) switch the north-south allocation percentages of school through small medium BFT in conjunction with implementation of an Ocean City, New Jersey area division line, i.e., 52.8 percent for the southern area and 47.2 for the northern area (as suggested to NMFS in previous public comments).

Request for Comments

NMFS requests comments on whether the location of the north-south division line in the Angling category should be adjusted and, if so, to where; and whether the subquota allocations for the northern and southern areas should be adjusted and, if so, how. Comments received on this ANPR will assist NMFS in drafting any future proposed changes to the Atlantic HMS regulations. The public will be provided ample opportunity for written and verbal comments following publication of any proposed regulatory amendments concerning these issues.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: April 4, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–8773 Filed 4–7–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 69
Monday, April 10, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Tongass National Forest Timber; Demand Considerations; Alaska

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: A notice of availability and request for comment on draft timber sale procedures for the Tongass National Forest was published in the **Federal Register** on November 27, 1998 (Vol. 63, No. 228). The draft procedures described an approach for incorporating market and industry information in planning the annual sale program for the Tongass National Forest in accordance with Section 101 of the Tongass Timber Reform Act. The draft procedures were made available to the public at the Regional Forester's office in Juneau, Alaska, and the three Forest Supervisor's Offices in Ketchikan, Petersburg, and Sitka, Alaska. In addition, the document was posted on the internet at a location identified in press releases and briefing sessions. A total of six sets of comments were received and incorporated in the final procedures ("Responding to the Market Demand for Tongass Timber," R10–MB–413, April 2000, USDA Forest Service, Alaska Region). Implementation direction for the procedures is included in the Forest Service Sale Preparation Handbook, Region 10 Supplement 2409.18–2000–1. The Forest Service hereby gives notice that the final procedures and Forest Service directive are now available to the public.

ADDRESSES: Copies of the final procedures and Region 10 Supplement may be obtained by writing Rick Cables, Regional Forester, Alaska Region, Forest Service, USDA, P.O. Box 21628, Juneau, Alaska 99802–1628. The final procedures are also posted on the Alaska Region internet site at *www.fs.fed.us./r10/ro/epb/economic.htm*.

FOR FURTHER INFORMATION CONTACT: Frederick L. Norbury or Kathleen S. Morse, Ecosystem Planning Staff, Forest Service, USDA, P.O. Box 21628, Juneau, Alaska 99802–1628; (907) 586–8886/8809.

SUPPLEMENTARY INFORMATION:

Statutory and Regulatory Background

Section 705(a) of the Alaska National Lands Conservation Act (Pub. L. 96–487) required the Forest Service to "maintain the timber supply from the Tongass National Forest to dependent industry at a rate of four billion five hundred million board feet measure per decade." Section 101 of the Tongass Timber Reform Act (Pub. L. 101–626) removed the timber supply mandate and substituted a more general requirement that the Forest Service seek to provide a supply of timber from the Tongass which meets the annual market demand for timber from such forest and meets the market demand for timber from such forest over the planning cycle. The legislation qualified this admonishment, saying that efforts to meet market demand must be consistent with providing for the multiple use and sustained yield of all renewable forest resources. Further, such efforts are subject to appropriations, other applicable law and the requirements of the National Forest Management Act (Pub. L. 94–588).

In the Record of Decision (ROD) for the Tongass Land and Resource Management Plan (May 23, 1997) the Regional Forester made a commitment to "develop procedures to ensure that annual timber offerings are consistent with market demand." In April 1999, a new ROD for the Tongass Forest Plan was issued by Under Secretary Lyons. The 1999 ROD referenced the draft procedures, finding them to be "an appropriate methodology for the purposes of implementing the 'seek to meet market demand' language of the TTRA." The 6* draft procedures were made available for public review and comment via **Federal Register** notification on November 27, 1998 (Vol. 63, No. 228). The procedures and implementing direction have been finalized.

Summary of Procedures

The procedures estimate the volume of timber likely to be purchased from the Tongass National Forest in the coming year based on observations of industry behavior in prior years. The industry draws its annual raw material supply from an accumulated inventory of timber volume under contract, sometimes called the "buffer stock." This inventory must be large enough to keep mills operating at a steady rate while new sales are being prepared for offer and harvest. Historically, the Forest Service has attempted to allow the industry as a whole to hold the equivalent of two to three years' worth of raw material as volume under contract. The procedures suggest a similar approach but define this inventory requirement in more analytical terms.

The draft procedures assume that, at a minimum, the industry will want to maintain its existing timber inventory and will purchase timber to replace that harvested in a given year. If the existing timber inventory is lower than desired, the industry is likely to purchase more timber than is processed in order to build inventory. Commonly, if the inventory is higher than desired, the industry is likely to purchase less. By comparing the current inventory with an estimate of the desired inventory and factoring in projected annual harvest, the Forest Service can develop a range of expected timber purchases for any given year. The volume offered will be adjusted to fall within the most current estimate.

Comments and Responses

The Forest Service issued a Notice of Availability and Request for Comment on the draft procedures in the **Federal Register** on November 27, 1998 (Vol. 63, No. 228). The comment period closed January 1, 1999.

All relevant comments have been given full consideration in adoption of the final procedures and implementing direction. Comments were received from two environmental organizations, one timber industry association, two economic consulting firms, and one timber sale purchaser. All respondents were from Alaska or from entities representing Alaskan interests. A summary of the comments and responses is in the final report.

Dated: March 24, 2000.

James A. Caplan,

Deputy Regional Forester for Natural Resources.

[FR Doc. 00–8726 Filed 4–7–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–802; A–475–802; A–559–802; A–588–807]

Industrial Belts from Germany, Italy, Singapore, and Japan; Corrected Final Results of Expedited Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of correction to final results of expedited sunset reviews: industrial belts from Germany, Italy, Singapore, and Japan.

SUMMARY: On December 30, 1999, the Department of Commerce ("the Department") published in the **Federal Register** (64 FR 73511) the final results of the June 1999 sunset reviews of the antidumping duty orders on industrial belts from Germany, Italy, Singapore, and Japan. Subsequent to the publication of the final results, we identified an inadvertent error in the "Scope" section of the notice. Therefore, we are correcting and clarifying this error.

On page 73511, the error lies in the following sentence: "The merchandise covered by the antidumping duty orders on Germany and Japan includes industrial belts other than V-belts and synchronous belts used for power transmission, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (*i.e.* closed loops) belts, or in belting lengths or links from Germany and Japan." This sentence should be replaced with: "The merchandise covered by the antidumping duty order on Germany includes industrial belts, other than V-belts and synchronous belts used for power transmission, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (*i.e.* closed loops) belts, or in belting lengths or links.[1]

Further, we are inserting the following sentence, which was inadvertently left out: "The antidumping duty order on imports from Japan covers industrial V-belts and synchronous belts and other industrial belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (*i.e.*, closed loops) belts, or in belting in lengths or links."[2]

EFFECTIVE DATE: April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Carole A. Showers, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, D.C. 20230: telephone (202) 482–1930 and (202) 482–3217, respectively.

This correction is issued and published in accordance with sections 751(h) and 777(i) of the Act.

Dated: April 4, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8820 Filed 4–7–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping Duty Order of Sales at Less Than Fair Value; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From the Federal Republic of Germany*, 54 FR 25316 (June 14, 1989).

[2] *See Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured , From Japan; Final Results of Antidumping Duty Administrative Review*, 60 FR 39929 (August 4, 1995).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–847]

Persulfates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, and Partial Rescission of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on persulfates from the People's Republic of China in response to requests by the petitioner, FMC Corporation, and the following two manufacturers/exporters of the subject merchandise: Shanghai Ai Jian Import and Export Corporation, and Sinochem Jiangsu Wuxi Import and Export Corporation. In addition to these two respondents, the petitioner also requested a review of Guangdong Petroleum Chemical Import & Export Trade Corporation. The period of review is July 1, 1998, through June 30, 1999.

We have preliminarily found that sales of subject merchandise have been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties based on the difference between the export price and the normal value. We also have preliminarily determined that the review of Sinochem Jiangsu Wuxi Import & Export Trade Corporation should be rescinded.

EFFECTIVE DATE: April 10, 2000.

FOR FURTHER INFORMATION CONTACT: James Nunno, AD/CVD Enforcement Group I, Office II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0783.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (April 1998).

SUPPLEMENTARY INFORMATION:

Background

On July 15, 1999, the Department published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on persulfates from the People's Republic of China (PRC) covering the period July 1, 1998 through June 30, 1999. See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 64 FR 38181 (July 15, 1999).

On July 31, 1999, in accordance with 19 CFR 351.213(b), the petitioner requested an administrative review of Shanghai Ai Jian Import & Export Corporation (Ai Jian), Sinochem Jiangsu Wuxi Import & Export Corporation (Wuxi), and Guangdong Petroleum Chemical Import & Export Trade Corporation (Guangdong Petroleum). We also received requests for a review from Ai Jian and Wuxi on July 31, 1998. We published a notice of initiation of this review on August 30, 1999. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 64 FR 47167 (August 30, 1999).

On September 8, 1999, we issued an antidumping questionnaire to Ai Jian, Wuxi, and Guangdong Petroleum. The Department received a response from Ai

Jian in October 1999. In addition, the Department received a response from Shanghai Ai Jian Reagent Works (AJ Works) (producer for Ai Jian) in November 1999. On November 5, 1999, Wuxi notified the Department that it had not made any U.S. sales of subject merchandise during the period of review (POR). *See* the "Partial Rescission of Administrative Review" section of the notice below. Guangdong Petroleum did not respond to the Department's questionnaire.

On November 25, 1999, we issued a letter to Guangdong Petroleum asking it to indicate whether it intended to participate in this administrative review. Guangdong Petroleum did not respond to this letter.

We issued supplemental questionnaires to Ai Jian and AJ Works in January 2000, and received responses to these questionnaires in February 2000. In March 2000, we requested and received additional information from Ai Jian and AJ Works concerning chemical inputs and packing materials.

In February 2000, Ai Jian and the petitioner submitted publicly available information and comments for consideration in valuing the factors of production. In March 2000, the parties submitted rebuttal comments.

Scope of Review

The products covered by this review are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, $(NH_4)_2S_2O_8$, $K_2S_2O_8$, and $Na_2S_2O_8$. Ammonium and potassium persulfates are currently classified under subheading 2833.40.60 of the Harmonized Tariff Schedule of the United States (HTSUS). Sodium persulfate is classified under HTSUS subheading 2833.40.20. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Partial Rescission of Administrative Review

Wuxi notified the Department that it had not made any U.S. sales of subject merchandise during the POR. Entry data provided by the Customs Service confirms that there were no POR entries from Wuxi of persulfates.

Therefore, consistent with the Department's practice, we preliminarily determine to rescind this review with respect to Wuxi. *See* Stainless Steel Bar From India; Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review, 65 FR 12209 (March 8, 2000).

Separate Rates

It is the Department's policy to assign all exporters of the merchandise subject to review in non-market-economy (NME) countries a single rate, unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991) (Sparklers), as amplified in the Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (Silicon Carbide). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. With respect to evidence of a *de facto* absence of government control, the Department considers the following four factors: (1) Whether the respondent sets its own export prices independent from the government and other exporters; (2) whether the respondent can retain the proceeds from its export sales; (3) whether the respondent has the authority to negotiate and sign contracts; and (4) whether the respondent has autonomy from the government regarding the selection of management. *See* Silicon Carbide, 59 FR at 22587; *see also* Sparklers, 56 FR at 20589.

With respect to Ai Jian, for purposes of our final results for the period of review (POR) covering December 27, 1996 through June 30, 1998, the Department determined that there was an absence of *de jure* and *de facto* government control of its export activities and determined that it warranted a company-specific dumping margin. *See* Persulfates From the People's Republic of China: Final Results of Antidumping Administrative Review, 64 FR 69494 (December 13, 1999) (Persulfates First Review). For purposes of this POR, Ai Jian has responded to the Department's request for information regarding separate rates. We have found that the evidence on the record is consistent with the final results in Persulfates First Review and continues to demonstrate an absence of government control, both in law and in fact, with respect to its exports, in accordance with the criteria identified in Sparklers and Silicon Carbide.

With respect to Guangdong Petroleum, which did not respond to the Department's questionnaire, we preliminarily determine that this company does not merit a separate rate. The Department assigns a single rate to companies in a non-market economy, unless an exporter demonstrates an absence of government control. We preliminarily determine that Guangdong Petroleum is subject to the country-wide rate for this case because it failed to demonstrate an absence of government control.

Use of Facts Otherwise Available

On September 8, 1999, the Department sent Guangdong Petroleum a questionnaire and cover letter, explaining the review procedures, by air mail through FedEx International Airway Bill. A response to the questionnaire, which covered exports to the United States for the period of review, was due by October 29, 1999. We did not receive responses by the due date. On November 25, 1999, we sent a follow-up letter regarding the past due date for the questionnaire responses and noting the necessity of relying on facts available. Because we have received no responses and have not been contacted by this respondent, we determine that the use of facts available is appropriate.

Section 776(a)(2) of the Act provides that "if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

Because Guangdong Petroleum, which is part of the PRC entity (*see* "Separate Rates" section above), has failed to respond to the original questionnaire and has refused to participate in this administrative review, we find that, in accordance with sections 776(a)(2)(A) and (C) of the Act, the use of total facts available is appropriate for the PRC-wide rate. *See, e.g.*, Sulfanilic Acid From the People's Republic of China; Final Results of Antidumping Duty

Administrative Review, 65 FR 13366, 13367 (March 13, 2000).

Section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* Statement of Administrative Action ("SAA") accompanying the URAA, H.R. Doc. No. 103–316, at 870 (1994). Furthermore, "an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference." *See* Antidumping Duties; Countervailing Duties: Final Rule, 62 FR 27296, 27340 (May 19, 1997) (Final Rule). Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination from the less than fair value (LTFV) investigation, a previous administrative review, or any other information placed on the record.

Under section 782(c) of the Act, a respondent has a responsibility not only to notify the Department if it is unable to provide requested information, but also to provide a "full explanation and suggested alternative forms." Guangdong Petroleum failed to respond to our requests for information, thereby failing to comply with this provision of the statute. Therefore, we determine this respondent failed to cooperate to the best of its ability, making the use of an adverse inference appropriate. In this proceeding, in accordance with Department practice, as adverse facts available we have preliminarily assigned Guangdong Petroleum and all other exporters subject to the PRC-wide rate the petition rate of 119.02 percent, which is the PRC-wide rate established in the LTFV investigation, and the highest dumping margin determined in any segment of this proceeding. See Fresh Garlic From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 64 FR 39115 (July 21, 1999). The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner." See Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value, 63 FR 8909, 8932 (February 23, 1998). The Department also considers the extent to which a party may benefit from its own lack of cooperation in selecting a rate. See Roller Chain, Other than Bicycle, from Japan; Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review, 62 FR 60472, 60477 (November 10, 1997). It is reasonable to assume that if Guangdong Petroleum could have demonstrated that its actual dumping margin was lower than the PRC-wide rate established in the LTFV investigation, it would have participated in this review and attempted to do so.

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA as "{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* SAA at 870. The SAA states that "corroborate" means to determine that the information used has probative value. *See* id. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. Although the petition rate of 119.02 percent constitutes secondary information, the information has already been corroborated in the LTFV investigation. *See* Notice of Final Determination of Sales at Less Than Fair Value: Persulfates from The People's Republic of China, 62 FR 27222, 27224 (May 19, 1997). With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co.* v. *United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated); *see also Borden Inc.* v. *United States*, 4 F. Supp. 2d 1221, 1246–48 (CIT 1998) (the Department may not use an uncorroborated petition margin that is high when compared to calculated margins for the period of review). None of these unusual circumstances are present here; nor have we any other reason to believe that application of the rate as adverse facts available would be inappropriate for the PRC-wide rate. Thus, the 119.02 percent margin does have relevance. Accordingly, we have used the petition rate from LTFV investigation, 119.02 percent, because there is no evidence on the record indicating that the selected margin is not appropriate as adverse facts available.

Export Price

For Ai Jian, we calculated export price (EP) in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price (CEP) methodology was not otherwise warranted, based on the facts of record. We calculated EP based on packed, CIF U.S. port, or FOB PRC port, prices to unaffiliated purchasers in the United States, as appropriate. We made deductions from the starting price, where appropriate, for foreign inland freight, foreign brokerage and handling, marine insurance, and ocean freight. With respect to ocean freight, although Ai Jian asserted that it used market-economy carriers for shipments of persulfates, we could not establish, based on the submitted information, that the freight charges Ai Jian paid reflect prices set by market-economy carriers. Accordingly, for ocean freight and other movement expenses, we based the charges on surrogate values. *See* "Normal Value" section for further discussion.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the normal value (NV) using a factors-of-production methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country

prices, or constructed value under section 773(a) of the Act.

The Department has treated the PRC as an NME country in all previous antidumping cases. Furthermore, available information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Therefore, we treated the PRC as an NME country for purposes of this review and calculated NV by valuing the factors of production in a surrogate country.

Section 773(c)(4) of the Act and 19 CFR 351.408 direct us to select a surrogate country that is at a level of economic development comparable to that of the PRC. On the basis of per capita gross domestic product (GDP), the growth rate in per capita GDP, and the national distribution of labor, we find that India is at a level of economic development comparable to the PRC. *See* Memorandum from Director, Office of Policy, to Office Director, AD/CVD Group I, Office 2, dated November 8, 1999.

Section 773(c)(4) of the Act also requires that, to the extent possible, the Department use a surrogate country that is a significant producer of merchandise comparable to persulfates. For purposes of the last administrative review of this order, we found that India was a producer of persulfates based on information submitted by the respondents. See Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, and Partial Rescission of Administrative Review, 64 FR 42912, 42914 (August 6, 1999) (Persulfates First Review Preliminary Results). For purposes of this administrative review, we continue to find that India is a producer of persulfates based on information submitted by both the respondents and the petitioner. We find that India fulfills both statutory requirements for use as the surrogate country and continue to use India as the surrogate country in this administrative review. We have used publicly available information relating to India, unless otherwise noted, to value the various factors of production.

For purposes of calculating NV, we valued PRC factors of production, in accordance with section 773(c)(1) of the Act. Factors of production include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation. In examining surrogate values, we selected, where possible, the publicly available value which was: (1) An average non-export value; (2) representative of a range of prices within the POR or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive. For a more detailed explanation of the methodology used in calculating various surrogate values, *see* the Preliminary Results Factors Valuation Memorandum from the Team to the File, dated April 3, 2000 (Factors Memorandum). In accordance with this methodology, we valued the factors of production as follows:

To value ammonium sulfate, caustic soda, and sulfuric acid, we used public information from the Indian publication Chemical Weekly, as provided by both the petitioner and the respondents in their February 25, 2000 submissions. For caustic soda and sulphuric acid, because price quotes reported in the Chemical Weekly are for chemicals with a 100 percent concentration level, we made chemical purity adjustments according to the particular concentration levels of caustic soda and sulphuric acid used by respondents. For potassium sulfate and anhydrous ammonia, we relied on import prices contained in the January through August 1998 issues of Monthly Statistics of the Foreign Trade of India (Monthly Statistics), as collectively provided by the petitioner and the respondents in their February 25, 2000 submissions. Where necessary, we adjusted the values reported in the Chemical Weekly to exclude sales and excise taxes. For those values not contemporaneous with the POR, we adjusted for inflation using the wholesale price indices (WPI) published by the International Monetary Fund (IMF). We made further adjustments to account for freight costs between the suppliers and AJ Works' manufacturing facilities.

During the POR, AJ Works self-produced ammonium persulfates, which is a material input in the production of potassium and sodium persulfates. In order to value such ammonium persulfates, we calculated the sum of the materials, labor, and energy costs for ammonium persulfates based on the usage factors submitted by AJ Works on November 5, 1999, February 28, 2000, and March 15, 2000. Consistent with our methodology used in Persulfates First Review, we then applied this value to the reported consumption amounts of ammonium persulfates used in the production of potassium and sodium persulfates.

In accordance with our practice, for inputs for which we used CIF import values from India, we calculated a surrogate freight cost using the shorter of the reported distances either from the closest PRC ocean port to the factory or from the domestic supplier to the factory. See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China, 62 FR 61964, 61977 (November 20, 1997) and the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States*, 117 F.3d 1401 (Fed. Cir. 1997).

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408 (c)(3).

For electricity, we relied upon public information from an August 6, 1996, article in Business World to obtain an average price for electricity provided to industries in India. To value water we relied on public information reported in the October 1997 publication of the Second Water Utilities Data Book: Asian and Pacific Region. To value coal, we relied on import prices contained in the March 1998 issue of Monthly Statistics. We adjusted the values to reflect inflation up to the POR using the WPI published by the IMF. Additionally, we adjusted the value for coal to account for freight costs incurred between the suppliers and AJ Works.

For the reported packing materials—polyethylene bags, woven bags, polyethylene sheet/film and liner, and fiberboard—we relied upon Indian import data from the January through August 1998 issues of Monthly Statistics. For paper bags and wood pallets, we relied upon Indian import data from the March 1998 issue of Monthly Statistics. We adjusted the values to reflect inflation up to the POR using the WPI published by the IMF. Additionally, we adjusted these values to account for freight costs incurred between the suppliers and AJ Works.

To value truck freight, we used price quotes obtained by the Department from Indian truck freight companies in November 1999, and used recently in the investigation of bulk aspirin from the PRC. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China, 65 FR 116, 118 (January 3, 2000). Because the time period for this data (*i.e.*, November 1999) is later than that of the POR, we adjusted the data to reflect POR values using the WPI published by the IMF. For ocean freight we used a price quote

from Maersk, Inc. This rate was recently used in the fourth administrative review of sebacic acid from the PRC. See Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 64 FR 69503, 69507 (December 13, 1999).

For marine insurance we used the June 1998 marine insurance data used in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1996–97 Antidumping Duty Administrative Review and New Shipper Review and Determination Not To Revoke Order in Part, 63 FR 63842 (November 17, 1998). For foreign brokerage and handling expenses we used public information reported in the new shipper review of stainless steel wire rod from India. See Certain Stainless Steel Wire Rod From India; Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews, 63 FR 48184, 48185 (September 9, 1998); Factors Memorandum at page 5. We adjusted the values to reflect inflation up to the POR using the WPI published by the IMF.

For factory overhead, selling, general, and administrative expenses (SG&A), and profit, we relied on the financial statements of Calibre Chemicals Pvt. Limited (Calibre), an Indian producer of potassium persulfates and other chemicals, which were submitted by the petitioner in its February 25, 2000, submission, because this company is a producer of subject merchandise.

The petitioner also submitted the financial statements of National Peroxide Limited (National Peroxide), and asserted that while the Department should value factory overhead and profit using Calibre's financial data, the Department should use National Peroxide's data to value SG&A. The petitioner maintains as it did in Persulfates First Review Final that because Calibre produces non-subject merchandise in addition to subject merchandise, its financial data is not representative of persulfates production. However, as we stated in Persulfates First Review Final, we find this approach to be inappropriate and unwarranted. SG&A expenses are not considered to be directly related to the production of merchandise, unlike factory overhead costs. In addition, while we recognize that Calibre's financial data may not mirror the actual experience of AJ Works, this does not render Calibre's data unreliable for purposes of calculating a surrogate SG&A ratio within the context of the Department's NME methodology. Finally, because a company's profit amount is a function of its total expenses, using Calibre's financial data for factory overhead and profit, then using National Peroxide's data for SG&A, as proposed by the petitioner, results in applying a profit ratio that bears no relationship to the overhead and SG&A ratios. Therefore, for purposes of these preliminary results, we have continued to rely upon Calibre's financials for these values. See Persulfates First Review Final, 64 FR at 69499–500.

Consistent with our methodology used in Persulfates First Review, we calculated factory overhead as a percentage of the total raw material costs for subject merchandise, as opposed to calculating factory overhead as a percentage of total materials, labor, and energy costs for all products. See Persulfates First Review, 64 FR at 69498–99; Factors Memorandum at page 6. We also reclassified certain depreciation expenses from Calibre's financial statements as SG&A expenses. See Persulfates First Review, 64 FR at 69501. We removed from the profit calculation the excise duties and sales taxes. See Persulfates First Review Preliminary Results, 64 FR at 42915.

Preliminary Results of the Review

We preliminarily determine that the following margins exist for the period July 1, 1998 through June 30, 1999:

Manufacturer/Exporter	Margin (percent)
Shanghai Ai Jian Import & Export Corporation	0.82
PRC-Wide Rate	119.02

Interested parties may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of the publication of this notice or the first workday thereafter. Interested parties may submit case briefs within 30 days of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will subsequently issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

The Department shall determine and the Customs Service shall assess antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties. For assessment purposes, we do not have the information to calculate an estimated entered value. Accordingly, we have calculated importer specific duty assessment rates for the merchandise by aggregating the dumping margins calculated for all U.S. sales and dividing this amount by the total quantity of those sales. This rate will be assessed uniformly on all entries of that particular importer made during the POR.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this antidumping duty administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for Ai Jian will be that established in the final results of this administrative review; (2) the rate will continue to be 7.18 percent for Wuxi, which we determined to be entitled to a separate rate in the previous review but which did not have shipments or entries to the United States during this POR (this is the rate which currently applies to this company); (3) the cash deposit rate for all other PRC exporters, including Guangdong Petroleum, will be 119.02 percent, the PRC-wide rate established in the less-than-fair-value investigation; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of

antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 3, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8822 Filed 4–7–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–825]

Sebacic Acid From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary Results of antidumping duty administrative review of sebacic acid from the People's Republic of China

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on sebacic acid from the People's Republic of China in response to requests from the petitioner, Arizona Chemical Company, and the following two respondents: Tianjin Chemicals Import and Export Corporation and Guangdong Chemicals Import and Export Corporation. In addition to these two respondents, the petitioner also requested a review of Sinochem Jiangsu Import and Export Corporation and Sinochem International Chemicals Company. This review covers four exporters of the subject merchandise. The period of review is July 1, 1998, through June 30, 1999.

We preliminarily determine that sales have been made below normal value. Interested parties are invited to comment on these preliminary results. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties on entries subject to this review.

EFFECTIVE DATE: April 10, 2000.

FOR FURTHER INFORMATION CONTACT: James Nunno or Christopher Priddy, Office 2, AD/CVD Enforcement Group I, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0783 or (202) 482–1130, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (1999).

SUPPLEMENTARY INFORMATION:

Background

On July 15, 1999, the Department published in the **Federal Register** at 64 FR 38181 a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on sebacic acid from the People's Republic of China (PRC) covering the period July 1, 1998, through June 30, 1999.

On July 22, 1999, in accordance with 19 CFR 351.213(b), the petitioner requested that we conduct an administrative review of Tianjin Chemicals Import and Export Corporation (Tianjin), Guangdong Chemicals Import and Export Corporation (Guangdong), Sinochem International Chemicals Company, Ltd. (SICC) and Sinochem Jiangsu Import and Export Corporation (Jiangsu). On July 26, 1999, Tianjin and Guangdong also requested that we conduct an administrative review. We published a notice of initiation of this antidumping duty administrative review on August 30, 1999, at 64 FR 47167. On September 9, 1999, we issued questionnaires to the four respondents. Tianjin and Guangdong submitted responses to sections A, C, and D of the antidumping questionnaire on November 8, 1999. The Department issued its supplemental questionnaires on January 19, 2000, and received responses to the questionnaires in February 2000. Both Guangdong and Tianjin submitted additional information clarifying their reported sales and factors of production data in March 2000. SICC and Jiangsu did not respond to the Department's questionnaire.

On December 14, 1999, the Department invited interested parties to provide publicly available information (PAI) for valuing the factors of production and for surrogate country selection. We received responses from the petitioner on January 24, 2000. The respondents did not submit PAI information for purposes of the preliminary results.

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

The products covered by this order are all grades of sebacic acid, a dicarboxylic acid with the formula (CH2)8(COOH)2, which include but are not limited to CP Grade (500ppm maximum ash, 25 maximum APHA color), Purified Grade (1000 ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500 ppm maximum ash, 70 maximum ICV color). The principal difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C10 dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

Sebacic acid is currently classifiable under subheading 2917.13.00.30 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

Separate Rates

It is the Department's standard policy to assign all exporters of the merchandise subject to review in non-market-economy (NME) countries a single rate, unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991) (Sparklers), and amplified in the Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (Silicon Carbide). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative

enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. With respect to evidence of a *de facto* absence of government control, the Department considers the following factors: (1) Whether the respondent sets its own export prices independent from the government and other exporters; (2) whether the respondent can retain the proceeds from its export sales; (3) whether the respondent has the authority to negotiate and sign contracts; and (4) whether the respondent has autonomy from the government regarding the selection of management. *See* Silicon Carbide at 22587 and Sparklers at 20589.

With respect to Tianjin and Guangdong, in our final results for the period of review (POR) covering July 1, 1997, through June 30, 1998, the Department determined there was both *de jure* and *de facto* absence of government control of each company's export activities and determined that each company warranted a company-specific dumping margin. *See* Final Results of Antidumping Administrative Review: Sebacic Acid From the People's Republic of China, 64 FR 69503 (December 13, 1999) (Sebacic Acid Fourth Review). For this review, both Tianjin and Guangdong have responded to the Department's request for information regarding separate rates. We have found that the evidence on the record is consistent with the final results in the Sebacic Acid Fourth Review and continues to demonstrate an absence of both *de jure* and *de facto* government control with respect to their exports in accordance with the criteria identified in Sparklers and Silicon Carbide.

With respect to SICC and Jiangsu, which did not respond to the Department's questionnaire, we preliminarily determine that these companies do not merit a separate rate. The Department assigns a single rate to companies in a non-market economy, unless an exporter demonstrates an absence of government control. We preliminarily determine that SICC and Jiangsu are subject to the country-wide rate for this case because they failed to demonstrate an absence of government control.

Use of Facts Otherwise Available for Non-Responding Companies

On September 9, 1999, the Department sent antidumping questionnaires to SICC and Jiangsu. SICC and Jiangsu did not respond to the questionnaire. Because we have received no responses, we determine that the use of facts available is appropriate.

Section 776(a)(2) of the Act provides that "if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

Because SICC and Jiangsu, which are part of the PRC entity (*see* "Separate Rates" section above), have failed to respond to the original questionnaire and have refused to participate in this administrative review, we find that, in accordance with sections 776(a)(2)(A) and (C) of the Act, the use of total facts available is appropriate. *See, e.g.*, Sulfanilic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 65 FR 13366, 13367 (March 13, 2000).

Section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* Statement of Administrative Action ("SAA") accompanying the URAA, H.R. Doc. No. 103–316, at 870 (1994). Furthermore, "an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference." *See* Antidumping Duties; Countervailing Duties: Final Rule, 62 FR 27296, 27340 (May 19, 1997) (Final Rule). Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination from the less than fair value (LTFV) investigation, a previous administrative review, or any other information placed on the record.

Under section 782(c) of the Act, a respondent has a responsibility not only to notify the Department if it is unable to provide requested information, but also to provide a "full explanation and suggested alternative forms." SICC and Jiangsu failed to respond to our requests for information, thereby failing to comply with this provision of the statute. Therefore, we determine these respondents failed to cooperate to the best of their ability, making the use of an adverse inference appropriate. In this proceeding, in accordance with Department practice, as adverse facts available we have preliminarily assigned SICC, Jiangsu and all other exporters subject to the PRC-wide rate, the petition rate of 243.40 percent, which is the PRC-wide rate established in the LTFV investigation, and the highest dumping margin determined in any segment of this proceeding. *See* Fresh Garlic From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 64 FR 39115 (July 21, 1999). The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner." *See* Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value, 63 FR 8909, 8932 (February 23, 1998). The Department also considers the extent to which a party may benefit from its own lack of cooperation in selecting a rate. *See* Roller Chain, Other than Bicycle, from Japan; Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review, 62 FR 60472, 60477 (November 10, 1997). It is reasonable to assume that if SICC and Jiangsu could have demonstrated that their actual dumping margins were lower than the PRC-wide rate established in the LTFV investigation, they would have participated in this review and attempted to do so.

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* SAA at 870. The SAA states that "corroborate" means to determine that the information used has probative

value. *See id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. To examine the reliability of margins in the petition, we examine whether, based on available evidence, those margins reasonably reflect a level of dumping that may have occurred during the period of investigation by any firm, including those that did not provide us with usable information. This generally consists of examining, to the extent practicable, whether the significant elements used to derive the petition margins, or the resulting margins, are supported by independent sources. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant: Where circumstances indicate that the selected margin may not be relevant, the Department will attempt to find a more appropriate basis for facts available. *See, e.g.,* Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

For the initiation of the investigation, the petitioner alleged a dumping margin of 243.40 percent. *See* Initiation of Antidumping Duty Investigation; Sebacic Acid From the People's Republic of China, 58 FR 43339, 43340 (August 16, 1993). In the petition, the U.S. price was based on March 1993 price quotations obtained for sebacic acid from the PRC. The factors of production were valued, where possible, using publicly available published information for India. Where Indian values were not available, the petitioners used data from Pakistan, an appropriate surrogate country at a comparable level of economic development to the PRC. The petitioner relied on its own costs for two factors, steam and factory overhead. If we adjust the petitioner's normal value calculation by excluding steam cost and recalculate factory overhead, selling, general and administrative expenses and profit using the statistics in the Reserve Bank of India Bulletin (1992–1993), a publicly available and independent source used in other investigations of imports from the PRC, the adjusted normal value is comparable to the value calculated in the petition.

We find, therefore, for the purpose of these preliminary results that the PRC-wide margin established in the LTFV investigation is reliable. As there is no information on the record of this review that demonstrates that the rate selected is not an appropriate adverse facts available rate for the PRC-wide rate, we determine that this rate has probative value and, therefore, is an appropriate basis for facts otherwise available.

Export Price

For Tianjin and Guangdong, we calculated export price (EP), in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and because constructed export price (CEP) methodology was not otherwise warranted based on the facts of record. We calculated EP based on packed CIF prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight, foreign brokerage and handling, ocean freight, and marine insurance. With respect to ocean freight, although both respondents asserted that they used market-economy carriers for shipments of sebacic acid, we could not establish, based on the submitted information, that the freight charges the respondents paid reflect prices set by market-economy carriers. Accordingly, for ocean freight and other movement expenses, we based the charges on surrogate values. *See* "Normal Value" section for further discussion.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the normal value (NV) using a factors-of-production methodology if: (1) The merchandise is exported from an NME country, and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value (CV) under section 773(a) of the Act.

The Department has treated the PRC as an NME country in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Furthermore, none of the parties to this proceeding has contested the PRC's NME status. Therefore, we treated the PRC as an NME country for purposes of this review and calculated NV by valuing the factors of production in a surrogate country.

Section 773(c)(4) of the Act and 19 CFR 351.408 direct us to select a surrogate country that is at a level of economic development comparable to that of the PRC. On the basis of per capita gross domestic product (GDP), the growth rate in per capita GDP, and the national distribution of labor, we find that India is at a level of economic development comparable to the PRC. *See* "Memorandum from Director, Office of Policy, to Office Director, AD/CVD Group I, Office 2," dated November 8, 1999.

Section 773(c)(4) of the Act also requires that, to the extent possible, the Department use a surrogate country that is a significant producer of merchandise comparable to sebacic acid. We determined in prior reviews of this order that India was a significant producer of comparable merchandise (*i.e.,* oxalic acid). *See* Sebacic Acid Fourth Review. For this review, we find that India was a producer of oxalic acid during the POR based on the Customs Service import data. We find that India fulfills both statutory requirements for use as the surrogate country and continue to use India as the surrogate country in this administrative review. We have used publicly available information relating to India, unless otherwise noted, to value the various factors of production.

For purposes of calculating NV, we valued PRC factors of production in accordance with section 773(c)(1) of the Act. Factors of production include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation. In examining surrogate values, we selected, where possible, the publicly available value which was: (1) An average non-export value; (2) representative of a range of prices either within the POR or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive. For a more detailed explanation of the methodology used in calculating the various surrogate values, see "Preliminary Results Factors of Production Valuation Memorandum," dated April 3, 2000. We adjusted all values not contemporaneous to the POR to reflect inflation up to the POR using wholesale price indices published by the International Monetary Fund. In accordance with this methodology, we valued the factors of production as follows:

During the POR, both Hengshui Dongfeng Chemical Factory (Hengshui) and Handan Fuyang Sebacic Acid Factory (Handan) purchased castor oil

from market economy suppliers and paid for the castor oil in a market economy currency. Hengshui also purchased castor oil from NME suppliers. For all purchases of castor oil, including castor oil Hengshui purchased from NME suppliers, we used the actual price the factories paid to the market economy suppliers to calculate the factors-based NV in accordance with 19 CFR 351.408(c)(1).

We valued castor seed using 1998 price data from the Solvent Extractors Association of India provided by the petitioner in its January 24, 2000, submission. For macropore resin, we used the value for activated carbon because the Department determined in previous reviews that the valuations of these inputs are interchangeable. *See* Sebacic Acid From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, 63 FR 17367, 17369 (April 9, 1998) (Sebacic Acid Third Review). Consistent with our methodology used in the fourth review of this proceeding, we valued activated carbon using public price quotes obtained from Indian companies. *See* Sebacic Acid Fourth Review at 69506. For caustic soda, cresol, phenol, sulfuric acid, and zinc oxide, we used published market prices reported in the Chemical Weekly. For caustic soda and sulfuric acid, because price quotes reported in Chemical Weekly are for chemicals with a 100 percent concentration level, we made chemical purity adjustments according to the particular concentration levels of caustic soda and sulfuric acid used by the respondents. For sodium chloride (also referred to as sodium chlorite or vacuum salt), we used Indian import values from the Monthly Statistics of the Foreign Trade of India (Monthly Statistics) for the period April 1997 through March 1998.

Where appropriate, we adjusted the values reported in the Chemical Weekly to exclude sales and excise taxes. We made further adjustments to account for freight costs between the suppliers' buildings and the respondents' sebacic acid manufacturing facilities.

In accordance with our practice, for inputs for which we used CIF import values from India, we calculated a surrogate freight cost using the shorter of the reported distances either from the closest PRC ocean port to the factory or from the domestic supplier to the factory. *See* Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China, 62 FR 61964, 61977 (November 20, 1997) and the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States*, 117 F.3d 1401 (Fed. Cir. 1997).

We valued labor based on a regression-based wage rate in accordance with 19 CFR 351.408(c)(3).

To value electricity, we used the average rate applicable to medium industrial users throughout India as obtained from the "Our India" website (http://www.ourindia.com/power.htm) compiled by the Indian Industrial and Management Services and submitted by the petitioner on January 24, 2000. We based the value of steam coal on April 1997 through March 1998 import values from the Monthly Statistics.

We based our calculation of factory overhead, selling, general and administrative (SG&A) expenses, and profit on data contained in the April 1995 Reserve Bank of India Bulletin for the Indian metals and chemicals industries. To value factory overhead, we summed those components which pertain to overhead expenses and divided them by the sum of those components pertaining to the cost of manufacturing. We multiplied this factory overhead rate by the cost of manufacturing divided by one minus the factory overhead rate. Using the same source, we also calculated the SG&A rate as a percentage of the cost of manufacturing. We calculated profit as a percentage of the cost of production (*i.e.*, materials, energy, labor, factory overhead, and SG&A).

To value plastic and woven bags, we used import values from the Monthly Statistics. For jumbo bag valuation, we used a value from Monthly Statistics as found in the Department's Index of Factor Values for Use in Antidumping Duty Investigations Involving Products from the People's Republic of China (Index of Factor Values) found on the Department's website (http://www.ia.ita.doc.gov/factorv/prc). Additionally, we adjusted these values to account for freight costs incurred between the suppliers and sebacic acid producers.

In valuing foreign inland trucking freight, we relied upon price quotes obtained by the Department from Indian truck freight companies in November 1999; for foreign inland rail rates the Department relied upon data from Certain Helical Spring Lock Washers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 64 FR 13401 (March 18, 1999). To value ocean freight, we used a price quote from Maersk Inc., for merchandise comparable to sebacic acid (*i.e.*, oxalic acid). For marine insurance, we used the June 1998 marine insurance data collected for Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1996–97 Antidumping Duty Administrative Review and New Shipper Review and Determination Not To Revoke Order in Part, 63 FR 63842 (November 17, 1998). For foreign brokerage and handling expenses, we used public information reported in the antidumping duty investigations of sulfur dyes and stainless steel wire rod from India, respectively. *See* Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Vat Dyes from India , 58 FR 11835 (March 1, 1993); Certain Stainless Steel Wire Rod From India: Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews, 63 FR 48184 (September 9, 1998).

Consistent with the methodology employed in Sebacic Acid Fourth Review, we have determined that fatty acid, glycerine, and castor seed cake (when castor oil is self-produced) are by-products. Because they are by-products, we subtracted the sales revenue of fatty acid, glycerine, and, where applicable, castor seed cake, from the estimated production costs of sebacic acid. This treatment of by-products is also consistent with generally accepted accounting principles. *See* Cost Accounting: A Managerial Emphasis (1991) at pages 539–544. To value fatty acid and glycerine, we used prices published in Chemical Weekly. We valued castor seed cake using market prices quoted in The Economic Times of India (Mumbai) for certain months in 1997.

We also allocated a by-product credit for glycerine to the production cost for the co-product capryl alcohol. We deducted a by-product credit for glycerine from sebacic acid based on the ratio of the value of sebacic acid to the total value of both sebacic acid and capryl alcohol.

Consistent with the methodology employed in the previous administrative review, we have determined that capryl alcohol is a co-product and have allocated the factor inputs based on the relative quantity of output of this product and sebacic acid. Additionally, we have used the production times necessary to complete each production stage of sebacic acid as a basis for allocating the amount of labor, energy usage, and factory overhead among the co-product(s). This treatment of co-products is consistent with generally accepted accounting principles. *See* Cost Accounting: A Managerial Emphasis (1991) at pages 528–533. To value capryl alcohol, consistent with our methodology from

the previous administrative review, we used POR market prices reported in the Chemical Weekly and adjusted the prices for sales and excise taxes.

Preliminary Results of Review

We preliminarily determine that the following dumping margins exist for the period July 1, 1998, through June 30, 1999:

Manufacturer/exporter	Margin (percent)
Tianjin Chemicals I/E Corp	0.82
Guangdong Chemicals I/E Corp	7.51
PRC-Wide Rate	243.40

Interested parties may request a hearing within 30 days of the publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of the publication of this notice or the first workday thereafter. Interested parties may submit case briefs within 30 days of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will subsequently issue a notice of the final results of this administrative review which will include the results of its analysis of issues raised in any such written briefs no later than 120 days after the date of publication of this notice.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) For the reviewed companies named above which have separate rates (Tianjin and Guangdong), the cash deposit rates will be the rates for those firms established in the final results of this administrative review; (2) for companies previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rates will be the rate established in the most recent review of that company; (3) for all other PRC exporters of subject merchandise, the cash deposit rates will be the PRC country-wide rate indicated above; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 3, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8821 Filed 4–7–00; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–054 and A–588–604]

Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan, and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan: Final Court Decisions and Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final court decisions and amended final results of antidumping duty administrative reviews.

SUMMARY: On November 7, 1996, the Department of Commerce (the Department) published the final results of its administrative reviews of the antidumping duty order on tapered roller bearings (TRBs) and parts thereof, finished and unfinished, from Japan (A–588–604), and the antidumping finding on TRBs, four inches or less in outside diameter, and components thereof, from Japan (A–588–054) for the period October 1, 1992 through September 30, 1993. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Finding, 61 FR 57629 (November 7, 1996) (1992–93 TRBs from Japan). Subsequent to our publication of these final results, parties to the proceedings challenged certain aspects of our final results before the United States Court of International Trade (the CIT) and; in certain instances, before the United States Court of Appeals for the Federal Circuit (the Federal Circuit).

The CIT recently affirmed final remand results with respect to the 1992–93 final results. As there are now final and conclusive court decisions with respect to litigation for these parties, we are hereby amending our final results of review and will subsequently instruct Customs to liquidate entries subject to these reviews.

EFFECTIVE DATE: April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

Below is a summary of the litigation for the 1992–93 final results for which the CIT and Federal Circuit have issued final and conclusive decisions.

On November 7, 1996, we published in the **Federal Register** our notice of the final results of administrative reviews for the 1992–93 period of review (POR) for 16 manufacturers/resellers/exporters (*see 1992–93 TRBs from Japan*). Subsequent to the publication of these final results, the petitioner (The Timken Co. (Timken)) and two respondents, NSK Ltd. (NSK), and NTN Corporation (NTN), challenged various aspects of our final results before the CIT. (*See* CIT

Ct. Nos. 96–12–02686, 96–12–02730, and 96–12–02740, which were consolidated into Consolidated Court No. 96–12–02686.) The CIT has issued decisions with respect to this litigation which are now final and conclusive.

The decisions issued by the CIT and Federal Circuit with respect to the Department's final results were as follows:

- *Timken* v. *U.S.*, 989 F. Supp. 234 (CIT 1997). The CIT remanded the case and ordered the Department to: (1) treat NTN's home market discounts and NSK's return rebates, post-sales price adjustments (PSPAs), lump-sum PSPAs, and stock transfer commissions as direct expenses; (2) investigate possible dumping of relevant Honda TRB sales during the period April 1, 1993 through March 31, 1997 and, upon a determination that Honda's dumping margin has been zero or *de minimis* for this period and pursuant to a request for revocation by Honda, revoke the antidumping order with respect to Honda; (3) exclude any zero-priced sample sales from NSK's sales database; (4) recalculate the below-cost sales for NSK using the COP database submitted by NSK's related supplier of inputs; (5) (a) explain the circumstances in which it treats related-party commissions as intra-company transfers when it applies its test for determining whether a circumstance-of-sale adjustment should be made to foreign market value (FMV) for commissions, (b) explain conflicting statements as to whether NTN's commission payments were included in or excluded from indirect selling expenses for exporter's sales price (ESP) transactions, and (c) reconsider its treatment of the commission payments to NTN's related U.S. affiliate; (6) reconsider its treatment of NTN's U.S. and home market selling expenses with respect to level of trade; and (7) allow NTN's downward adjustment to U.S. indirect selling expenses for interest incurred when financing antidumping duty cash deposits.
- *Timken* v. *U.S.*, 46 F. Supp. 2d 1052 (CIT 1999). The CIT affirmed the Department's remand results and dismissed the litigation for Consolidated Court No. 96–12–02686.
- *Timken* v. *U.S.*, 1 F. Supp. 2d 1390 (CIT 1998). The CIT granted the Department's and Honda's motions for reconsideration of the Honda issue and set aside the portions of its decision in the 96–12–02686 litigation ordering the Department to investigate possible dumping by Honda during the 1993 through 1997 period. The CIT thereby affirmed the Department's revocation of Honda as described in 1992–93 TRBs from Japan.
- *NTN* v. *U.S.*, No. 99–1461 (Fed. Cir. November 5, 1999). Pursuant to NTN's voluntary motion to dismiss, the Federal Circuit dismissed NTN's appeal of the CIT's decisions in the 96–12–02686 litigation.

As there are now final and conclusive court decisions with respect to the 96–12–02686 litigation, we are amending our final results of review for NSK and NTN based on our recalculation of NSK's and NTN's rates pursuant to the remand. The amended final results margins for NSK are 11.42 percent in the A–588–054 review and 10.28 percent in the A–588–604 review. The amended final results margin for NTN in the A–588–604 review is 16.55 percent.[1] We will issue instructions to Customs to liquidate entries of subject merchandise made by NSK and NTN during this period pursuant to these amended final results.

Since the CIT affirmed the Department's revocation of Honda, we will issue instructions to Customs to liquidate entries of subject merchandise exported by Honda as described in 1992–93 TRBs from Japan at 57652.

In addition, as we have not amended the margins of any of the remaining manufacturers/resellers/exporters subject to the 1992–93 administrative reviews of TRBs from Japan, we will issue instructions to Customs to liquidate entries of subject merchandise based on the rates published in 1992–93 TRBs from Japan.

Amendment to Final Determinations

Pursuant to 19 U.S.C. 1516(f), we are now amending the final results of the 1992–93 administrative reviews of the antidumping finding and duty order on TRBs from Japan. The amended weighted-average margins are:

Manufacturer/exporter	Margin (percent)
For the A–588–054 finding:	
NSK	11.42
For the A–588–604 duty order:	
NSK	10.28
NTN	16.55

Accordingly, the Department will determine and Customs will assess appropriate antidumping duties on entries of the subject merchandise made by firms covered by the review of the period listed above. The Department will issue appraisement instructions directly to Customs.

[1] The A–588–054 antidumping finding does not cover TRBs manufactured by NTN.

Dated: March 27, 2000.

Robert LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–8823 Filed 4–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–818]

Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Expedited Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Certain cold-rolled and corrosion-resistant carbon steel flat products from Korea; final results of expedited sunset reviews.

SUMMARY: On September 1, 1999, the Department of Commerce ("the Department") initiated sunset reviews of the countervailing duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea (64 FR 47767) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties in each of these reviews, as well as inadequate response from respondent interested parties, we determined to conduct expedited sunset reviews. Based on our analysis of the substantive comments received, we find that revocation of the countervailing duty orders would be likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy rates are listed in the Final Results of Review section of this notice.

EFFECTIVE DATE: April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995,

the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to 19 CFR part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On September 1, 1999, the Department initiated sunset reviews of the countervailing duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea (64 FR 47767), pursuant to section 751(c) of the Act. We invited parties to comment. On the basis of a notice on intent to participate and adequate substantive responses filed on behalf of domestic interested parties in both reviews, and inadequate response (in these cases no response) from respondent interested parties, we determined to conduct expedited (120-day) sunset reviews, in accordance with 19 CFR 351.218(e)(1)(ii)(C). The Department has conducted these sunset reviews in accordance with sections 751 and 752 of the Act.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). These reviews concern transition orders within the meaning of section 751(c)(6)(C)(i) of the Act. Therefore, on December 22, 1999, the Department determined the sunset reviews of the countervailing duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea to be extraordinarily complicated, and, extended the time limit for completion of the final results of these reviews until not later than March 29, 2000, in accordance with section 751(c)(5)(B) of the Act.[1]

Scope of Review

The products covered by these orders are certain cold-rolled and corrosion-resistant carbon steel flat products as described below. Although the Harmonized Tariff Schedule of the United States ("HTS") subheadings are provided for convenience and customs purposes, our written descriptions of the scope of these proceedings are dispositive.

Certain Cold-Rolled Carbon Steel Flat Products

The products covered by this order include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000. Included in this order are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from this order is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

Certain Corrosion-Resistant Carbon Steel Flat Products

The merchandise covered by this order includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included in this order are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")— for example, products which have been bevelled or rounded at the edges. Excluded from this order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this order are certain clad stainless flat-rolled

[1] *See Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 71726 (December 22, 1999).

products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

Analysis of Comments Received

All issues raised in the substantive responses by parties to these sunset reviews are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 29, 2000, which is hereby adopted by this notice. The issues discussed in the attached Decision Memo include the likelihood of the continuation or recurrence of a countervailable subsidy, the net countervailable subsidy likely to prevail were the orders revoked, and the nature of the subsidy. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in the Department's Central Record Units, Room B–099.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

As a result of these reviews, the Department finds that revocation of the countervailing duty orders would likely lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

Producers/exporters/product	Net countervailable subsidy (percent)
Cold-rolled carbon steel flat products: All Korean producers/exporters	3.95
Corrosion-resistant carbon steel flat products: All Korean producers/exporters	2.69

Nature of the Subsidy

In the *Sunset Policy Bulletin*, the Department states that, consistent with section 752(a)(6) of the Act, the Department will provide to the Commission information concerning the nature of the subsidy, and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement. Because the benefits received in some of the programs were contingent on exports, these programs fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement. The remaining programs, outside the export subsidy definition under Article 3.1(a) could be found to be inconsistent with Article 6 if the net countervailable subsidy exceeds 5 percent, as measured in accordance with Annex IV of the Subsidies Agreement. The Department, however, has no information with which to calculate whether the net countervailable subsidy exceeds 5 percent, as measured in accordance with Annex IV of the Subsidies Agreement, nor do we believe it appropriate to attempt such a calculation in the course of a sunset review. Therefore, we are providing the Commission the following program descriptions.

(1) Government Equity Infusions in Pohang Iron & Steel Company, Ltd.

Government equity infusions bestow a countervailable benefit when they occur on terms inconsistent with commercial considerations. *See* 19 U.S.C. 1677(5)(A)(1988). In the investigation, the Department determined subsidy rates of 0.13 percent and 0.07 percent for certain cold-rolled carbon steel flat products and certain corrosion-resistant carbon steel flat product, respectively.

(2) Loans Inconsistent With Commercial Considerations/Preferential Access to Foreign Loans

This benefit is conferred through a disproportionately high volume of loans to the steel industry at rates that are substantially below Korea's generally available commercial interest rates. In the investigation, the Department determined subsidy rates of 2.94 percent and 1.83 percent for certain cold-rolled and certain corrosion-resistant carbon steel flat products, respectively.[2]

(3) Government Infrastructure Assistance for POSCO's Integrated Steel Mill at Kwangyang Bay

The Korean government's infrastructure development at Kwangyang Bay constituted a specific and countervailable subsidy to POSCO because POSCO was found to be the predominant user of the infrastructure. In the investigation, the Department determined subsidy rates of 0.58 percent and 0.30 percent for certain cold-rolled and certain corrosion-resistant carbon steel flat products, respectively.

(4) Dockyard Fees

In the investigation, we determined that POSCO enjoys the use of 15 berths in the Kwangyang Bay port facility at no charge. The GOK normally charges a user fee, or dockyard fee, for the use of berths at all of Korea's ports. Thus, we determined the free use of 15 berths by POSCO in the Kwangyang Bay Industrial Estate constitutes a countervailable benefit. The Department determined subsidy rates of 0.01 percent and less than 0.005 percent for certain cold-rolled and certain corrosion-resistant carbon steel flat products, respectively.

(5) Reserve for Export Loss

Under Article 22 of the Tax Exemption and Reduction Control Act (TERCL), a corporation engaged in export activities can establish a reserve amounting to the lesser of one percent of foreign exchange earnings or 50 percent of net income for the respective tax year. This program confers a benefit that constitutes an export subsidy because it provides a deferment, contingent upon export performance, of direct taxes. In the period of investigation, the Department determined that Dongbu, POSCO, and Union received benefits under this program. In the investigation, the Department determined subsidy rates of 0.03 percent, and 0.06 percent for certain cold-rolled and certain corrosion-resistant carbon steel flat products, respectively.[3]

(6) Reserve for Overseas Market Development

This program operates in a similar fashion to Article 22 of the TERCL described above. This program constitutes an export subsidy because benefits under the program are contingent upon export performance. In the investigation, the Department determined subsidy rates of 0.04 percent and 0.09 percent for certain cold-rolled and certain corrosion-resistant carbon steel flat products, respectively.

[2] On October 1, 1999, the Court of Appeals for the Federal Circuit issued an opinion affirming-in-part and reversing-in-part the Department's determination in this investigation. *AK Steel Corp. et al.* v. *United States* 192 F. 3d 1367 (CAFC Oct. 1, 1999). In that litigation, the court reviewed the Department's determination with respect to the following programs: foreign and domestic loans and government infrastructure assistance for POSCO's integrated steel mill at Kwangyang Bay including POSCO's exemption from the payment of dockyard fees. The case has been remanded to the Court of International Trade. Thus, the CAFC's decision is not yet final and conclusive.

[3] *See Preliminary Affirmative Countervailing Duty Determinations and Alignment of Final Countervailing Duty Determinations with Final Antidumping Duty Determinations: Certain Steel Products from Korea*, 57 FR 57761 (December 7, 1992)

(7) Unlimited Deduction of Overseas Entertainment Expense

Under Article 18–2 of the Corporation Tax Act and supporting legislation, entertainment expenses for domestic clients and foreign clients are eligible to be deducted from taxable income. The amount that can be deducted for domestic entertainment expenses is subject to a ceiling according to an established formula and depending on the amount of any overseas entertainment expenses claimed. There is no cap on overseas entertainment expenses. Because entertainment expense deductions are unlimited only for overseas clients, this program confers benefits which constitute export subsidies, to the extent that the overseas expenses claimed are greater than those which would have been allowed using the domestic cap formula. In the investigation, the Department determined a subsidy rate of less than 0.005 percent for both certain cold-rolled and certain corrosion-resistant carbon steel flat products.

(7) Reserve for Investment

This reserve fund program operates in the same manner as reserves for export loss and overseas market development described above. However, because this program provides benefits only to those industries that use certain production facilities outside of metropolitan Seoul, this program is a regional subsidy. In the investigation, the Department determined subsidy rates of 0.03 percent and 0.02 percent for certain cold-rolled and certain corrosion-resistant carbon steel flat products, respectively.

(8) Duty Drawback

The Government of Korea establishes an authorized loss rate for raw materials used in the manufacture of exported goods. Duty drawback includes the amount of duty remitted on the authorized loss or wastage for the raw materials. Duty drawback for loss or wastage only becomes countervailable when the allowance for this loss or wastage is unreasonable or excessive. Here, we found the duty drawback was not excessive and, therefore, was not countervailable with regard to POSCO. However, Union Steel was found to benefit from this program. The Department, therefore, calculated estimated net subsidies of 0.01 percent for both certain cold-rolled and corrosion carbon steel flat products.

(9) Preferential Utility Rates

In the investigation, the Department determined that countervailable benefits were provided to the steel industry with respect to certain discounts applied to electricity charges for certain firms. The Department determined subsidy rates of 0.03 percent and 0.02 percent for certain cold-rolled and certain corrosion-resistant carbon steel flat product, respectively.

(10) Short-Term Export Financing

The Department determined that during the period of investigation, Pohang Coated Steel Company ("POCOS"), was the only respondent to receive short-term loans contingent on exports. The calculated estimated net *ad valorem* subsidies was less than 0.005 percent for both certain cold-rolled and corrosion-resistant carbon steel flat products.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversions to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these determinations and notice in accordance with sections section 751(c), 752, and 777(i) of the Act.

Dated: March 29, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8819 Filed 4–7–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040300E]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) will hold public meetings of its Herring Oversight Committee, the joint Council/Atlantic States Marine Fisheries Commission (ASMFC) Herring Advisory Panel and the Groundfish Oversight Committee in April, 2000. Recommendations from the committees will be brought to the full Council for formal consideration and action, if appropriate.

DATES: See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held between April 24 and April 27, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Monday, April 24, 2000, 10:00 a.m.—Groundfish Oversight Committee

Location: Yoken's Conference Center, Route 1, Portsmouth NH 03801; telephone: (603) 433–3338.

A Groundfish Oversight Committee meeting is scheduled for April 11, 2000. Should the Committee need additional time to continue its discussions, another meeting will be held on April 24, 2000. Contact the Council offices after April 12 to determine if this second meeting is necessary. If held, at this meeting, the committee will continue development of management options for Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP). Agenda items include discussion of guidance received from the full Council and NMFS concerning overfishing definitions and control rules. Current overfishing definitions and control rules for the multispecies complex will be reviewed and the assumptions and policy decisions in these rules examined. The committee will determine the biological goals of the amendment in light of these discussions. The committee also will organize into subcommittees that will be tasked to develop specific management options for consideration by the full committee.

Wednesday, April 26, 2000, 10 a.m.—Joint Council/ASMFC Herring Advisory Panel Meeting

Location: Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500.

The Joint Advisory Panel will review the comments received from the public during the scoping process for a limited entry or controlled access system for the Atlantic Herring fishery. Based on this review, the advisors will recommend how to proceed in the development of such a system. The advisors will also discuss options for the protection of spawning herring and will recommend whether to make any revisions to the spawning restrictions contained in the ASMFC management plan, and whether to recommend spawning restrictions for

the Council's Atlantic Herring Fishery Management Plan. The advisors will discuss the impact of the total allowable catch on industry sectors and will determine what action, if any, should be recommended to insure the fixed gear sector has access to the fishery. The advisors will also discuss possible adjustments to the area specific total allowable catches, and may make recommendations for changes. The advisors will also elect a chair. The advisors may also discuss the annual specification process and may recommend how that process should proceed.

Thursday, April 27, 2000, 10 a.m.—Joint Council Herring Oversight Committee/ASMFC Atlantic Herring Section

Location: Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500.

The Committees will review the comments received from the public during the scoping process for a limited entry or controlled access system for the Atlantic Herring fishery. Based on this review, the Committees will decide how to proceed in the development of such a system, and will develop a schedule for a and provide initial direction to the Plan Development Team should they choose to continue development of a limited entry or controlled access system. The Committees will also discuss options for the protection of spawning herring and will decide whether to make any revisions to the spawning restrictions contained in the ASMFC management plan, and whether to recommend spawning restrictions for the Council's Atlantic Herring Fishery Management Plan. The Committees will discuss the impact of the total allowable catch on industry sectors and will determine what action, if any, should be taken to insure the fixed gear sector has access to the fishery. The Committees will also discuss possible adjustments to the area specific total allowable catches, and may make recommendations for changes. The Committee may also discuss the annual specification process and may provide direction to the Plan Development Team on how that process should proceed.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: April 4, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–8772 Filed 4–7–00; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Notice of the First Meeting of the Technology Advisory Committee

This is to give notice, pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, 10(a)(2), and Section 101–6.1015(b) of the regulations promulgated thereunder, 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Technology Advisory Committee ("TAC") will conduct a public meeting to discuss current issues related to technology in the futures and option markets. The meeting will be held on April 25, 2000, from 1:00 p.m. to 4:00 p.m., in the first floor hearing room (Room 1000) of the Commission's Washington, D.C. headquarters, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. The agenda for the meeting will be posted on the Commission's website when finalized at http://www.cftc.gov.

The TAC was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on issues arising out of technological innovation in the financial services marketplace. The purposes and objectives of the TAC are more fully set forth in its charter.

The meeting is open to the public. The Chairman of the TAC, Chairman William J. Rainer, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the TAC should mail a copy of the statement prior to the meeting to the attention of: The Technology Advisory Committee, c/o Chairman William J. Rainer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. Members of the public who wish to make oral statements should also inform Chairman Rainer in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

For further information contact De'Ana Dow, Legal Counsel to Chairman Rainer, at (202) 418–5038, or Marcia K. Blase, Legal Counsel to Commissioner Newsome, at (202) 418–5138.

Issued by the Commission in Washington, D.C. on April 5, 2000.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–8913 Filed 4–7–00; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:30 a.m., Wednesday, April 26, 2000.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–8845 Filed 4–5–00; 4:17 pm]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 00–C0009]

B & B Amusements, Inc., a Corporation, and B & B Spectaculars, L.L.C., a Limited Liability Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the Federal Register in accordance with the terms of 16 C.F.R. 1115.20(b). Published below is a provisionally-accepted

Settlement Agreement with B & B Amusements, Inc., a corporation, and B & B Spectaculars, L.L.C., a limited liability corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by April 25, 2000.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 00–C0009, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0626, 1346.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: April 2, 2000.

Sadye E. Dunn,

Secretary.

Consent Order Agreement

1. This Consent Order Agreement (hereinafter, "Agreement"), entered between B&B Amusements, Inc. (hereinafter, "Respondent B & B Amusements"), a corporation, B&B Spectaculars, L.L.C., a limited liability corporation (hereinafter, "B&B Spectaculars") and the staff of the Consumer Product Safety Commission (hereinafter, "Commission") pursuant to the procedures set forth in section 1115.20(b) of the Commission's Procedures for Consent Order Agreements, 16 C.F.R. 1115.20(b), is a compromise resolution of the matter described herein, without a hearing or a determination of issues of law and fact.

I. The Parties

2. The "staff" is the staff on the Consumer Product Safety Commission, an independent regulatory commission of the United States established pursuant to section 4 of the CPSA, 15 U.S.C. 2053.

3. Respondent B&B Amusements, Inc. is a corporate organized and existing under the laws of the State of Arizona with its principal corporate offices located at 4491 South 4th Avenue, Yuma, AZ 85365. Respondent is the operator of the Himalaya amusement ride.

4. Respondent B&B Spectaculars, L.L.C. is a limited liability corporation organized and existing under the laws of the State of Oregon with its principal corporate offices located at 4491 South 4th Avenue, Yuma, AZ 85365. Respondent is the owner of the Himalaya amusement ride.

II. Staff's Allegations

5. The staff conducted an investigation of an incident that occurred on or about March 19, 1998 at the Travis County Livestock and Rodeo Show in Austin, TX involving the Himalaya amusement ride owned by Respondent B&B Spectaculars and operated by Respondent B&B Amusements. The incident resulted in the death of a female passenger and in injuries to two other passengers.

6. The staff alleges that the Himalaya amusement ride owned by Respondent B&B Spectaculars and operated by Respondent B&B Amusements contains a defect that creates a substantial risk of injury to the public because Respondents failed to properly maintain, inspect, and operate the ride at the time of the incident involving two injuries and one death.

III. Response of Respondents

7. Respondents deny the allegations set forth by the staff in paragraphs 5 and 6 above.

8. Respondents specifically deny that the Himalaya amusement ride owned by Respondent B&B Spectaculars and operated by Respondent B&B Amusements contains a defect that creates a substantial risk of injury to the public because Respondents failed to properly maintain, inspect, and operate the ride at the time of the incident involving two injuries and one death.

IV. Agreement of the Parties

9. The Commission has jurisdiction over this matter under the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051 *et seq.*

10. Upon final acceptance by the Commission of this Consent Order Agreement, the Commission shall issue the attached Order incorporated herein by reference.

11. This Agreement is entered into for the purposes of settlement only and does not constitute an admission by Respondents or a determination by the Commission that the Himalaya amusement ride owned by Respondent B&B Spectaculars and operated by Respondent B&B Amusements contains a defect that creates a substantial risk of injury to the public because Respondents failed to properly maintain, inspect, and operate the ride at the time of the incident involving two injuries and one death.

12. Upon final acceptance of this Consent Order Agreement by the Commission, Respondents knowingly, voluntarily, and completely waive any rights they may have in this matter (a) to the issuance of a complaint; (b) to an administrative or judicial hearing; (c) to judicial review or other challenge or contest of the validity of the Commission's actions; (d) to a determination by the Commission as to whether Respondents failed to comply with the CPSA as aforesaid, (e) to a statement of findings of facts and conclusions of law; and (f) to any claims under the Equal Access to Justice Act.

13. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued, and the Commission may publicize the terms and conditions of this Consent Order Agreement.

14. Upon provisional acceptance of this Consent Order Agreement by the Commission, this Consent Order Agreement shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1115.20(b)(4) and (b)(5). If the Commission does not receive any written request not to accept the Consent Order Agreement within 15 days, the Consent Order Agreement will be deemed finally accepted on the 20th day after the date it is published in the **Federal Register**.

15. This Consent Order Agreement is a Commission order issued under section 15 of the CPSA, 15 U.S.C. 2064.

16. A violation of the incorporated Consent Order Agreement is a prohibited act under section 19(a)(5) of the CPSA, 15 U.S.C. 2068(a)(5) and may subject Respondents to civil and/or criminal penalties pursuant to sections 20 and 21 of the CPSA, 15 U.S.C. 2069 and 2070.

17. Any interested person may bring an action pursuant to section 24 of the CPSA, 15 U.S.C. 2073 in any U.S. District Court for the district where the Respondents are found or are transacting business for the purpose of enforcing the Consent Order Agreement and/or obtaining appropriate injunctive relief.

18. The provisions of the Consent Order Agreement shall apply to Respondents and each of their successors and assigns.

19. Agreements, understandings, representations, or interpretations made outside of this Consent Order Agreement may not be used to vary or to contradict its terms.

Respondent B&B Amusements, Inc.

Dated: February 18, 2000.

Steven J. Merten III,

President, B&B Amusements, Inc., 4491 S. 4th Avenue, Yuma, AZ 85365.

Respondent B&B Spectaculars, L.L.C.

Dated: February 18, 2000.

Steven J. Merten III,

Partner, B&B Spectaculars, L.L.C., 4491 S. 4th Avenue, Yuma, AZ 85365.

Commission Staff

Alan H. Schoem,

Assistant Executive Director, Office of Compliance, Consumer Safety Commission, Washington, DC 20207–0001.

Eric L. Stone,

Director, Legal Division, Office of Compliance.

Dated: March 1, 2000.

Dennis C. Kacoyanis,

Trial Attorney, Legal Division, Office of Compliance.

Order

Upon consideration of the foregoing Consent Agreement entered into between Respondent B&B Amusements, Inc., a corporation, B&B Spectaculars, L.L.C., a limited liability corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and the Respondents; and it appearing that the Consent Order Agreement is in the public interest,

I. *It Is Ordered that* the Consent Agreement be, and hereby is, accepted.

II. *It is Further Ordered that* Respondents will not operate the Himalaya amusement ride unless they take the actions set forth in sections III, IV, and V of this Order.

III. *It Is Further Ordered That* Respondents and each of their successors and assigns notify the Commission in writing at least 60 days prior to placing the Himpalay in service at each location in which Responsents intend to operate the Himalaya.

IV. *It Is Further Ordered That* Respondents and each of their successors and assigns allow the Commission or an entity acting on behalf of the Commission including, but not limited to state amusement ride safety inspectors and private amusement ride safety inspectors, to inspect the Himalaya prior to the ride being placed in service at each location in which Respondents intent to operate it.

V. *It Is Further Ordered That* Respondents and each of their successors and assigns comply with all manufacturer's recommendations and specifications including, but not limited to, parts, operation, inspection, secondary restraints, and maintenance of the Himalaya.

VI. *It Is Further Ordered That* Respondent B & B Spectaculars and each of its successors and assigns notify the Commission in writing at least 60 days prior to sale of all parts of the Himalaya. Such notice shall include the name(s), address(es), and telephone number(s) of the purchaser(s).

VII. *It Is Further Ordered* That Respondent B&B Spectaculars and each of its successors and assigns notify the Commission in writing at least 60 days prior to destroying and/or disposing of the Himalaya. Such notice shall include the name, address, and telephone number of the entity charged with destroying and/or disposing of the Himalaya and the location of the destruction and/or disposal.

VIII. *It Is Further Ordered That Respondents and each of their successors and assigns direct all required notices under the Consent Order Agreement to Alan Alan H. Schoem, Assistant Executive Director, Office of Compliance, U.S. Consumer Product Safety Commission, Washington, D.C. 20207–0001.*

Provisionally accepted and Provisional Order issued on the 3rd day of April, 2000.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00–8714 Filed 4–7–00; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE/The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Pharmacy Redesign Pilot Program

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of two-site implementation of the Pharmacy Redesign Pilot Program.

SUMMARY: This notice is to advise interested parties of a two-site implementation of the Pharmacy Redesign Pilot Program for certain military health system (MHS) beneficiaries who are 65 years of age or older, pursuant to the requirements in the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999. Specifically, Section 723 of this act mandates the pharmacy redesign to incorporate private sector "best business practices" in providing pharmacy services in the MHS, including both military medical treatment facilities (MTFs) and the mail-order and retail pharmacy benefit under TRICARE. It is projected that participation in this pilot program will extend access to a system-wide drug benefit for approximately 6,000 over-age 65 DoD eligible beneficiaries that has not been available until now. In the past, Medicare-eligible MHS beneficiaries' access to pharmacy benefits has generally been limited to the MTFs; therefore, the purpose of this pharmacy redesign pilot program is to assess the feasibility and cost of a system-side pharmacy benefit for Medicare eligible MHS beneficiaries. The pilot program is limited to two sites where up to three thousand eligible beneficiaries will be enrolled at each site. A random selection process resulted in Fleming, Kentucky and Okeechobee, Florida as the pilot sites.

The pharmacy benefit under this demonstration will require an annual $200 enrollment fee. The TRICARE retail network pharmacies will provide up to a 30-day supply of medications for a 20% co-payment with each prescription. The beneficiaries will also have access to the National Mail-Order Pharmacy Program (NMOP) where quantities up to a 90-day supply will be dispensed for a flat fee of $8 for each prescription.

The pharmacy redesign pilot program is projected to last for three (3) years and will be evaluated by an independent entity outside the Department of Defense.

EFFECTIVE DATE: Enrollment in the demonstration is projected to begin by June 1, 2000 with Delivery of services by July 1, 2000.

FOR FURTHER INFORMATION CONTACT: CAPT Charles Hostettler, Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity, (703) 681–1740.

SUPPLEMENTARY INFORMATION:

A. Background

In June 1998, the General Accounting Office (GAO) testified before the Subcommittee on Military Personnel, Committee on Armed Services, House of Representatives, that over the past several years, concern about the costs and quality of DoD's pharmacy benefit has surfaced. GAO recommended that DoD establish a more system-wide approach to managing its pharmacy benefit by establishing a uniform, incentive-based formula across its pharmacy programs. Furthermore, GAO recommended that a system-wide pharmacy benefit be granted to

Medicare-eligible retirees who are excluded from the contractor retail network and NMOP pharmacy systems.

B. Description of Project

In response to the June 1998 GAO report, the FY 1999 Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261) directed DoD to develop a system-wide pharmacy redesign plan to and implement the system-wide redesigned benefit at two sites for Medicare-eligible beneficiaries.

An eligible beneficiary for the pharmacy redesign pilot program is a member or former member of the uniformed services as described in section 1074(b) of title 10; a dependent of the member described in section 1076(a)(2)(B) or 1076(b) of title 10; or a dependent of a member of the uniformed services who died while on active duty for a period of more than 30 days, who meets the following requirements: (a) 65 years of age or older, (b) entitled to Medicare Part A, (c) enrolled in Medicare Part B, (d) resides in an implementation area, and (e) the requirement to be enrolled in Medicare Part B shall not apply in the case of an individual who at the time of attaining the age of 65 lived within 100 miles of the catchment area of a military medical treatment facility.

The pharmacy redesign implementation will be evaluated by an independent entity outside the Department of Defense. The evaluation shall include: (a) an analysis of the cost of the pharmacy redesign implementation under TRICARE, and also to the eligible individuals who participate in the pilot program, (b) an assessment of he extent to which the implementation of such system satisfies the requirements of the eligible individuals for the health care services available under TRICARE, (c) an assessment of the effect, if any, on military medical readiness, (d) a description of the rate of participation, and (e) an evaluation of any other matters that the Department considers appropriate.

The DoD component responsible for the conduct of this project is the TRICARE Management Activity.

Dated: April 3, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 00–8720 Filed 4–7–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DoD Healthcare Quality Initiative Review Panel

AGENCY: Department of Defense.

ACTION: This notice cancels the DoD Healthcare Quality Initiative Review Panel meeting, which was originally scheduled for April 27, 2000. A closed executive/administrative meeting has been scheduled for May 23, 2000, for Panel members and support staff only.

SUMMARY: This notice set forth the meeting of the DoD Healthcare Quality Initiatives Review Panel. Notice of meeting is required under The Federal Advisory Committee Act (Pub. L. 92–463).

DATES: May 23, 2000.

ADDRESSES: Sheraton Crystal City, 1800 Jefferson Davis Hwy, Arlington, VA 22202.

TIME: 8 a.m. to 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: For information please contact Gia Edmonds at (703) 933–8325.

Dated: April 3, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–8718 Filed 4–7–00; 8:45 am]

BILLING CODE 5000–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board (DSB) Task Force on Unconventional Nuclear Warfare Defense will meet in closed session on April 25–26, 2000, at Sandia National Laboratories, Kirtland Air Force Base, Albuquerque, NM, and June 8–9, 2000, tentatively at Strategic Analysis, Inc., 3601 Wilson Boulevard, Suite 500, Arlington, VA. This Task Force will determine the adequacy of DoD's ability to detect, identify, respond, and prevent unconventional nuclear attacks by terrorists or subnational entities, and the appropriate role(s) and capability of DoD to provide protection against unconventional nuclear attacks in support of homeland defense.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will review and evaluate the Department's ability to provide information

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these Defense Science Board meetings, concern matters listed in 5 U.S.C. § 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: April 3, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–8719 Filed 4–07–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 9, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5)

Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 4, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.
Title: Evaluation of the 21st Century Community Learning Centers Program.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit; Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden: Responses: 18,100. Burden Hours: 29,586.

Abstract: The program evaluation uses an experimental design for elementary school students applying to 21st Century centers and a comparison design for middle school students participating in 21st Century centers. Over a two-year period, it will include questionnaires of students, parents, and teachers; a reading test; and school and center records collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG Issues@ed.gov or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie__Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–8733 Filed 4–7 –00; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.
SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.
DATES: Interested persons are invited to submit comments on or before June 9, 2000.
SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 4, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: Revision.
Title: Progress Measures.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 1,300
Burden Hours: 6,850

Abstract: The National School-to-Work Office collects information from funded local partnerships to gather evidence on state and local progress in implementing School-to-Work systems. Data elements have included student, school, and employer involvement in School-to-Work; graduation and postsecondary transition rates for students; and funds leveraged by partnerships to sustain their School-to-Work systems. Information is used to provide an annual School-to-Work report to Congress, as well as to build state's capacity to collect and analyze information for their own system improvement purposes.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila__Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–8734 Filed 4–7–00; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.
ACTION: Notice of Proposed Information Collection Requests

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by April 12, 2000. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before June 9, 2000.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: April 4, 2000.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Applications for Grants under the Smaller Learning Communities Program.

Abstract: This application will be used to award grants to local educational agenices for the purpose of creating and implementing smaller learning environments in large high schools.

Additional Information: This program is a high priority initiative and a key part of the Administration's overall strategy to encourage the use of effective, research-based programs to create smaller, safer learning environments.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 700

Burden Hours: 45,500

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov, or should be faxed to 202–708–9346.

Comments regarding burden and/or the collection activity requirements, contact Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–8735 Filed 4–7–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–234–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

April 4, 2000.

Take notice that on March 31, 2000 CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, with an effective date of May 1, 2000:

Fifty-sixth Revised Sheet No. 32

CNG requests waiver of the filing requirements of Section 18.2 of the GT&C to relieve CNG of its obligation to make its next three quarterly stranded cost adjustment filings.

CNG states that the purpose of the rate filing is to submit CNG's quarterly revision of the Section 18.2.B Surcharge, effective for the three-month period commencing May 1, 2000. The charge for the quarter ending April 30, 2000 has been $0.0200 per Dt., as authorized by Commission order dated January 18, 2000 in Docket No. RP00–148–000. CNG's proposed section 18.2.B surcharge for the next quarterly period is $0.0217 per Dt. costs, which CNG incurred for the period of December 1999 through February 2000.

CNG states that copies of this letter of transmittal and enclosures are being served upon CNG's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8761 Filed 4–7–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–237–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

April 4, 2000.

Take notice that on March 31, 2000, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of May 1, 2000:

Fifth Revised Sheet No. 280
Seventh Revised Sheet No. 281
Seventh Revised Sheet No. 282
Fourth Revised Sheet No. 283

Columbia states that it is making this filing to revise its tariff to comply with the Commission's changes in its Order No. 637 to the right-of-first-refusal (ROFR) afforded certain firm shippers in 18 CFR Section 284.221(d)(2)(ii). In Order No. 637, the Commission revised the ROFR to limit its applicability. Columbia is revising General Terms and Conditions (GTC), Section 4, which contains the procedures for the awarding of existing firm capacity and the exercise of the ROFR on Columbia, to reflect these changes. Columbia is also revising Section 4 to be consistent with certain comparable time frames and provisions in Section 14.5(b).

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8763 Filed 4–7–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–238–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

April 4, 2000.

Take notice that on March 31, 2000, Columbia Gulf Transmission Company (Columbia Gulf), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of May 1, 2000:

Fourth Revised Sheet No. 144
First Revised Sheet No. 144A
Fifth Revised Sheet No. 145
Third Revised Sheet No. 145A
Third Revised Sheet No. 147

Columbia Gulf states that it is making this filing to revise its tariff to comply with the Commission's changes in its Order No. 637 to the right-of-first-refusal (ROFR) afforded certain firm shippers in 18 C.F.R. Section 284.221(d)(2)(ii). In Order No. 637, the Commission revised the ROFR to limit its applicability. Columbia Gulf is revising General Terms and Conditions (GTC), Section 4, which contains the procedures for the awarding of existing firm capacity and the exercise of the ROFR on Columbia Gulf, to reflect these changes.

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8764 Filed 4–7–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–24–000]

Distrigas of Massachusetts Corporation; Notice of Proposed Changes in FERC Gas Tariff

April 4, 2000.

Take notice that on March 31, 2000, Distrigas of Massachusetts Corporation (DOMAC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, to become effective June 1, 2000:

Eighth Revised Sheet No. 94

DOMAC states that the purpose of this filing is to record semiannual changes in DOMAC's index of customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8750 Filed 4–7–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–230–000]

El Paso Natural Gas Company; Notice of Revenue Crediting Report

April 4, 2000.

Take notice that on March 31, 2000, El Paso Natural Gas Company (El Paso) tendered for filing its revenue crediting report for the calendar year 1999.

El Paso states that the report details El Paso's crediting of risk sharing revenues for the calendar year 1999 in accordance with Section 25.3 of the General Terms and Conditions of its Volume No. 1–A Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before April 11, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8748 Filed 4–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–717–001]

El Paso Natural Gas Company; Notice of Application

April 4, 2000.

Take notice that on March 28, 2000, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed an application in Docket No. CP98–717–001, pursuant to Section 7(b) of the Natural Gas Act and Rule 215 of the Commission's Regulations, requesting the Commission to amend the authorization to abandon facilities granted by the Commission's order issued January 15, 1999 at Docket No. CP98–717–000, all as more fully described in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

El Paso states that in the January 15, 1999 order, the Commission granted El Paso permission and approval to abandon, by removal, to the extent practicable, three segments totaling approximately 49.16 miles, of El Paso's 12¾" O.D. El Paso-Douglas Loop Line (Line No. 1005), with appurtenances, located in Dona Ana and Luna Counties, New Mexico. Also, in the January 15, 1999 order, the Commission directed El Paso to file monthly status reports to describe the abandonment activities, including whether pipe was abandoned by removal or in place. El Paso has filed three status reports on January 12, February 11, and March 13, 2000.

El Paso further states that, as set forth in El Paso's application and responses to data requests filed in Docket No. CP98–717–000, El Paso intended to abandon the segments of pipeline by removal to the extent practicable since there may be certain areas where it is deemed more practicable to abandon the pipeline in place. El Paso indicated that areas where it may be necessary to abandon in place: pipeline underlying agricultural land; canal and drain crossings; road crossings; railroad crossings; or any area where the landowner specifies abandonment in place.

El Paso states that in the status report filed February 11, 2000, El Paso informed the Commission that El Paso had determined it was more practicable to abandon most of the pipe by transfer to El Paso's affiliate. El Paso Energy Communications (EPECC) for use as fiber optics conduit.

By letter dated March 8, 2000, the Office of Energy Projects directed El Paso to file an application seeking an amendment to its Section 7(b) authorization to reflect the new proposal for abandonment of the three segments of Line No. 1005 totaling 49.16 miles. Accordingly, El Paso is requesting amended abandonment authorization for approximately 44.0 miles of Line No. 1005 by transfer to EPECC for use as fiber optics conduit. The remaining portion of such line consisting of approximately 5.16 miles will be abandoned in place.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 25, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's Rules require that protestors provide copies of their protests to the party or parties against whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filings it makes with the Commission to every other intervenor in the proceeding, as well as an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have environmental comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in the subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules and Practice and Procedure, a hearing will be held without further notice before the

Commission or its designee on this application is no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the requested abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for El Paso to appear or be represented at the hearing.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8751 Filed 4–7–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–162–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

April 4, 2000.

Take notice that on March 29, 2000, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed a request with the Commission in Docket No. CP00–162–000, pursuant to Section 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon by removal the Belen City Gate Meter Station authorized in blanket certificate issued in Docket No. CP82–435–000, all as more fully set forth in the request on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

El Paso proposes to abandon by removal the Belen City Gate Meter Station, serving PNM Gas Services, a division of Public Service Company of New Mexico (PNMGS). El Paso states that authorization for a budget-type sales facilities and services, including the Belen City Gate Meter Station, with appurtenances was received by order issued on December 14, 1967 in Docket No. CP68–88–000. El Paso reports that the facility was required by El Paso to facilitate the delivery, measurement and sale of natural gas from its interstate transmission pipeline system to PNMGS for resale. El Paso continues that due to load growth in the Belen and Los Lunas, New Mexico areas PNMGS has expanded its distribution system, and that PNMGS has requested El Paso to construct, install and operate a new delivery point, the Belen North Delivery Point, near its newly expanded system.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8753 Filed 4–7–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–240–000]

Kern River Gas Transmission Company; Notice of Report of Fuel and Lost and Unaccounted-For Gas Factors for 1999

April 4, 2000.

Take notice that on March 31, 2000, Kern River Gas Transmission Company (Kern River) tendered a report supporting its fuel and lost and unaccounted-for gas factors for August through December 1999.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before April 11, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8766 Filed 4–7–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–23–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

April 4, 2000.

Take notice that on March 20, 2000, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Volume No. 1, the following tariff sheets, to become effective May 1, 2000.

Twenty-Ninth Revised Sheet No. 20
Twenty-Sixth Revised Sheet No. 21
Twenty-Seventh Revised Sheet No. 22
Twenty-Ninth Revised Sheet No. 24
Second Revised Sheet No. 30
First Revised Sheet No. 1402

Koch has revised the above tariff sheets to reflect minor housekeeping changes for clarification of Koch's FERC Gas Tariff.

Koch states that copies of this filing have been served upon Koch's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8754 Filed 4–7–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–228–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

April 4, 2000.

Take notice that on March 31, 2000, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to become effective April 1, 2000.

Twenty-Third Revised Sheet No. 9

National asserts that the purpose of this filing is to comply with the Commission's order issued February 16, 1996, in Docket Nos. RP94–367–000, et al. Under Article 1, Section 4, of the settlement approved in that order, National must redetermine quarterly the Amortization Surcharge to reflect revisions in the Plant to be Amortized, interest and associated taxes, and a change in the determinants. The recalculation produced an Amortization Surcharge of 8.32 cents per dth.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 of 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8758 Filed 4–7–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–227–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

April 4, 2000.

Take notice that on March 31, 2000, Panhandle Eastern Pipe Line Company (Panhande) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective May 1, 2000.

Panhandle states that this filing is made in accordance with Section 25 (Flow Through of Cash-Out Revenues in Excess of Costs and Scheduling Charges Assessed Against Affiliates) of the General Terms and Conditions (GT&C) in Panhandle's FERC Gas Tariff, First Revised Volume No. 1. The revised tariff sheets filed herewith reflect the following changes to Panhandle's currently effective Maximum Reservation Rates under Rate Schedules FT, EFT, LFT and SCT, and currently effective Maximum commodity rates under Rate Schedules IT and EIT:

(1)A ($0.01) per Dt. reduction from the Base Reservation Rate for each of the Gathering Charge Rate, Field Zone Transmission Charge Rate and Market Zone Access Charge Rate under Rate Schedules FT, EFT and LFT;

(2).A (0.06¢) per Dt. reduction from the Base Rate for each of the Gathering Charge Rate, Field Zone Transmission Charge Rate and Market Zone Access Charge Rate under Rate Schedule SCT; and

(3) A (0.03¢) per DT. reduction form the Base Rate for each of the Gathering Charge Rate, Field Zone Transmission Charge Rate and Market Zone Access Charge Rate under Rate Schedules IT and EIT.

Panhandle further states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8757 Filed 4–7–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–239–000]

Pine Needle LNG Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

April 4, 2000.

Take notice that on March 31, 2000 Pine needle LNG Company, LLC (Pine Needle) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, First Revised Tariff Sheet No. 4. The proposed effective date of the enclosed tariff sheet is May 1, 2000.

Pine Needle states that the instant filing is being submitted pursuant to Section 18 and Section 19 of the General Terms and Conditions (GT&C) of Pine Needle's FERC Gas Tariff (Tariff). Section 18 of the GT&C of Pine Needle's Tariff states that Pine Needle will file, to be effective each May 1, a redetermination of its fuel retention percentage applicable to storage services. Section 19 of the GT&C of Pine Needle's Tariff provides that Pine Needle will file, also to be effective each May 1, to reflect net changes in the Electric Power (EP) rates.

Pine Needle states that it is serving copies of the instant filing to its affected customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8765 Filed 4–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1971–000]

Poco Marketing Ltd.; Notice of Filing

April 4, 2000.

Take notice that on March 23, 2000, Poco Marketing Ltd. filed a letter recinding their permit in Docket No. ER97–2198–000, stating that they have not engaged in any electrical power purchases or sales during the time of this permit.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before April 13, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8767 Filed 4–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1972–000]

Poco Petroleum, Inc; Notice of Filing

April 4, 2000.

Take notice that on March 23, 2000, Poco Petroleum, Inc. filed a letter rescinding their permit in Docket No. ER97–2197–000, stating that they have not engaged in any electrical power purchases or sales during the time of the permit.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before April 13, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8768 Filed 4–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–235–000]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

April 4, 2000.

Take notice that on March 31, 2000, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets to be effective May 1, 2000.

Third Revised Sheet No. 5
Third Revised Sheet No. 6
Fourth Revised Sheet No. 7

REGT states that the purpose of this filing is to adjust REGT's fuel percentages and Electric Power Costs (EPC) Tracker pursuant to sections 27 and 28 of its General Terms and Conditions as well as a correction of a typographical mistake submitted in a previous filing. REGT is not proposing to change its current EPC Tracker rate of $0.0009.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.fer.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8762 Filed 4–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–231–000]

Southern Natural Gas Company; Notice of Refund Report

April 4, 2000.

Take notice that on March 31, 2000, Southern Natural Gas Company (Southern Natural) tendered for filing a Refund Report.

Southern Natural states that pursuant to Section 38.3 of the General Terms and Conditions of Southern Natural's Tariff the Refund Report sets forth Excess Storage Usage Charges to be refunded to Rate Schedule CSS customers.

Any person desiring to be heard or to protest said filings should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before April 11, 2000. Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the wet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8749 Filed 4–7–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–232–000]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

April 4, 2000.

Take notice that on March 31, 2000, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of April 1, 2000.

Tariff Sheets Applicable to Contesting Parties:

Fiftieth Revised Sheet No. 14
Seventy First Revised Sheet No. 15
Fiftieth Revised Sheet No. 16
Seventy First Revised Sheet No. 17

Tariff Sheets Applicable to Settling Parties:

Thirty Sixth Revised Sheet No. 14a
Forty Second Revised Sheet No. 15a
Thirty Sixth Revised Sheet No. 16a
Forty Second Revised Sheet No. 17a

Southern submits the revised tariff sheets to its FERC Gas Tariff Seventh Revised Volume No. 1, to reflect a change in FT/FT–NN Southern Energy Cost Surcharge, due to an increase in the FERC interest rate effective April 1, 2000.

Southern states that copies of the filing were served upon all parties listed on the official service list compiled by the Secretary in these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8760 Filed 4–7–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2964]

City of Sturgis; Notice of Authorization for Continued Project Operation

April 4, 2000.

On March 31, 1998, the City of Sturgis, licensee for the Sturgis Project No. 2964, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2964 is located on the St. Joseph River in St. Joseph County, Michigan.

The license for Project No. 2964 was issued for a period ending March 31, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2964 is issued to the City of Sturgis for a period effective April 1, 2000, through March 31, 2001, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before March 31, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that the City of Sturgis is authorized to continue operation of the Sturgis Project No. 2964 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8755 Filed 4–7–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–229–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

April 4, 2000.

Take notice that on March 31, 2000, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the revised tariff sheets identified in Appendix A to the filing. Tennessee proposes that the foregoing tariff sheets be made effective on May 1, 2000.

Tennessee states that as part of its transition to interactive Internet communications in compliance with the Federal Energy Regulatory Commission's Order No. 587–l, Tennessee has undertaken a major rewrite of its critical computer system functions. In conjunction with the rewrite, Tennessee further states that it is taking the opportunity to initiate additional modifications to its computer systems in order to streamline certain of

Tennessee's processes and to provide additional service flexibilities (collectively, hereinafter referred to as Service Upgrades). In order to provide the Service Upgrades by completion and implementation of the rewrite, Tennessee is seeking approval for certain modifications to its existing tariff and pro forma service agreements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing my be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A.Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8759 Filed 4–7–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–6–000]

Gulfstream Natural Gas System, L.L.C.; Notice of Resource Agency Meeting

April 4, 2000.

On April 20, 2000, the Office of Energy Projects staff will attend a Regulatory Coordination Team Meeting at the offices of the Florida Department of Environmental Protection, 3804 Coconut Palm Drive in Tampa, Florida, starting at 9:00 am. The meeting is part of Florida's Team Permitting Process for the Gulfstream Pipeline Project. Federal, state, and local resource agencies will be in attendance along with representatives of Gulfstream Natural Gas System, L.L.C. to discuss agency concerns, coordination logistics, and the Federal process for the Gulfstream Pipeline Project in the above referenced docket.

For additional information, contact Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8752 Filed 4–7–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–169–000]

Natural Gas Pipeline Company of America; Notice of Technical Conference

April 4, 2000.

In the Commission's order issued on February 24, 2000,[1] the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Wednesday, April 19, 2000, at 10:00 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–8756 Filed 4–7–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission Notice

Sunshine Act Meeting

April 5, 2000.

The following notice of meeting is published Pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: April 12, 2000, 10 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note: Items listed on the Agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary Telephone (202) 208–0400, For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

CONSENT AGENDA—HYDRO 739TH—MEETING APRIL 12, 2000—REGULAR MEETING

[10:00 A.M.]

CAH–1.	Docket# DI97–8	001	Georgia Pacific Corporation.
	Other# SDI97–9	001	Georgia Pacific Corporation.
CAH–2.	Docket# UL98–1	002	Great Northern Paper, Inc.
	Other# SP–2634	009	Great Northern Paper, Inc.
CAH–3.	Docket# P–2640	018	Fraser Papers, Inc.
	Other# SP–2395	011	Fraser Papers, Inc.
	P–2421	011	Fraser Papers, Inc.
	P–2473	010	Flambeau Hydro, L.L.C.
CAH–4.	Omitted.		

Consent Agenda—Electric

CAE–1.	Docket# EC00–26	000	Commonwealth Edison Company and Peco Energy Company.
CAE–2.	Docket# EC00–41	000	Commonwealth Edison Company.

[1] 90 FERC ¶ 61,182.

CONSENT AGENDA—HYDRO 739TH—MEETING APRIL 12, 2000—REGULAR MEETING—Continued

[10:00 A.M.]

CAE–3.	Docket# ER00–1635	000	Detroit Edison Company.
CAE–4.	Docket# ER00–1262	000	Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, the Potomac Edison Company and West Penn Power Company.
CAE–5.	Docket# ER00–1630	000	PJM Interconnection, L.L.C.
CAE 6.	Docket# ER00–1637	000	Cinergy Services, Inc.
CAE–7.	Docket# ER00–1659	000	New England Power Pool.
CAE–8.	Omitted.		
CAE–9.	Omitted.		
CAE–10.	Omitted.		
CAE–11.	Docket# ER99–3318	000	Mid–Continental Area Power Pool.
CAE–12.	Docket# ER00–1599	000	New England Power Pool.
CAE–13.	Docket# ER00–1675	000	Reliant Energy Desert Basin, LLC.
	Others# SER00–1676	000	Fulton Cogeneration Associates, L.P.
CAE–14.	Docket# ER00–882	000	Northern Maine Independent System Administrator, Inc.
CAE–15.	Docket# ER99–3163	000	Utilicorp United, Inc.
	Other# EL99–78	000	Utilicorp United, Inc.
	EL99–78	001	Utilicorp United, Inc.
	ER99–3163	001	Utilicorp United, Inc.
CAE–16.	Docket# QF88–21	008	Pittsfield Generating Company, L.P.
CAE–17.	Omitted.		
CAE–18.	Docket# EC00–40	000	Delmarva Power & Light Company, Atlantic City Electric Company, DPL REIT, Inc. and Conectiv Atlantic Generation, LLC.
CAE–19.	Docket# ER99–25	001	Peco Energy Company.
CAE–20.	Docket# ER99–307	001	Metropolitan Edison Company and Pennsylvania Electric Company.
CAE–21.	Docket# EL99–44	004	Arizona Public Service Company v. Idaho Power Company.
CAE–22.	Docket# ER00–555	001	California Independent System Operator Corporation.
CAE–23	Omitted.		
CAE–24.	Omitted.		
CAE–25.	Docket# EL00–52	000	Delmarva Power & Light Company and Atlantic City Electric Company.
CAE–26.	Docket# EL00–36	000	Atlantic City Electric Company, Camden Cogen, L.P., Delmarva Power & Light Company, Edison Mission Marketing & Trading, Inc., Electric Power Supply Association, FPL Energy, Inc., New Energy, Inc., Old Dominion Electric Cooperative, Peco Energy Company, PG&E Energy Trading-Power, L.P., PG&E Energy Generating Company, Sithe Power Marketing, L.P., Strategic Energy, L.L.C., Virginia Electric and Power Company, Williams Energy Marketing and Trading Company and WPS Energy Services, Inc. v. PJM Interconnection, L.L.C.
CAE–27.	Omitted.		

Consent Agenda—Gas and Oil

CAG–1.	Docket# RP00–218	000	Natural Gas Pipeline Company of America.
CAG–2.	Docket# PR00–2	000	Lee 8 Storage Partnership.
CAG–3.	Docket# PR00–3	000	Creole Gas Pipeline Corporation.
CAG–4.	Docket# RP00–163	002	Kern River Gas Transmission Company.
CAG–5.	Omitted.		
CAG–6.	Docket# RP00–157	001	Kern River Gas Transmission Company.
CAG–7.	Omitted.		
CAG–8.	Docket# RP00–176	000	ANR Pipeline Company.
CAG–9.	Omitted.		
CAG–10.	Docket# RP00–17	000	Cover Point LNG Limited Partnership.
CAG–11.	Docket# RP00–17	000	Transcontinental Gas Pipe Line Corporation.
CAG–12.	Docket# RP00–136	000	EL Paso Natural Gas Company.
CAG–13.	Docket# RP99–291	001	Transcontinental Gas Pipe Line Corporation.
CAG–14.	Docket# RP00–35	001	Viking Gas Transmission Company.
CAG–15.	Docket# RP00–63	001	Great Lakes Gas Transmission Limited Partnership.
CAG–16.	Docket# RP00–7	002	Texas Eastern Transmission Corporation.
	Others# SRP00–7	001	Texas Eastern Transmission Corporation.
CAG–17.	Docket# RP97–29	003	Panhandle Eastern Pipe Line Company.
CAG–18.	Docket# RP96–275	005	Tennessee Gas Pipeline Company.
CAG–19.	Docket# RP97–369	013	Public Service Company of Colorado, and Cheyenne Light, Fuel and Power Company.
	Other# SGP97–3	003	Amoco Production Company, Anadarko Petroleum Corporation, Mobil Oil Corporation, OXY USA, Inc. and Union Pacific Resources Company.
	GP97–4	003	Kansas Small Producer Group.
	GP97–5	003	Mesa Operating Company.
CAG–20.	Docket# CP00–35	000	Equitrans, L.P.
	Other# PR95–9	000	Three River Pipeline Company.
	PR95–9	003	Three River Pipeline Company.
CAG–21.	Omitted.		
CAG–22.	Docket# CP99–538	001	B–R Pipeline Company and Portland General electric Company.
	Other# SCP99–538	000	B–R Pipeline Company and Portland General Electric Company.
CAG–23.	Docket# CP99–94	002	Florida Gas Transmission Company.
CAG–24.	Docket# RM98–10	002	Regulation of Short-Term Natural Gas Transportation Services.

CONSENT AGENDA—HYDRO 739TH—MEETING APRIL 12, 2000—REGULAR MEETING—Continued

[10:00 A.M.]

	Other# RM98–12	002	Regulation of Interstate Natural Gas Transportation Services.
CAG–25.	Docket# CP98–74	001	ANR Pipeline Company v. Transcontinental Gas Pipe Line Corporation.
CAG–26.	Docket# PR00–9	000	PG&E Texas Pipeline, L.P.
CAG–27.	Docket# RP97–287	045	El Paso Natural Gas Company.
Hydro Agenda			
H–1.	Reserved.		
Electric Agenda			
E–1.	Reserved.		
Oil and Gas Agenda			
I.	Pipeline Rate Matters.		
PR–1.	Reserved.		
II.	Pipeline Certificate Matters.		
PC–1.	Reserved.		

David P. Boergers,

Secretary.

[FR Doc. 00–8894 Filed 4–6–00; 11:18 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6575–1]

Office of Research and Development; Board of Scientific Counselors Request for Suggestion of Candidates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for suggestions of candidates.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2), EPA, Office of Research and Development (ORD) is requesting suggestions for candidates for membership on the Board of Scientific Counselors.

The Board of Scientific Counselors (BOSC), is in its second charter renewal process, and once renewed will provide advice and recommendations to the EPA on the operation of ORD's research program. As stated in the Charter, BOSC's primary functions are to: (a) evaluate science and engineering research programs, laboratories, and research-management practices of ORD and recommend actions to improve their quality and/or strengthen their relevance to the mission of the EPA; and (b) evaluate and provide advice concerning the utilization of peer review within ORD to sustain and enhance the quality of science in EPA.

The membership of the BOSC will include a balanced representation of interested persons with professional and personal qualifications and experience to contribute to the functions of the BOSC and may be drawn from business and industry, the academia, environmental organizations and other related organizations. Committee members are appointed for terms of one to four years by the EPA Deputy Administrator.

ADDRESSES: Submit suggestions for the list of candidates to: Shirley R. Hamilton, Designated Federal Officer, Board of Scientific Counselors, Environmental Protection Agency (8701R), 1200 Pennsylvania Ave., NW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Shirley R. Hamilton at the above address or at (202) 564–6853. The Agency will not formally acknowledge or respond to suggestions.

SUPPLEMENTARY INFORMATION: Submit suggestions of candidates no later than May 5, 2000. Any interested person or organization may submit names of qualified persons. Suggestions for the list of candidates should be identified by name, occupation, organization, position, address and telephone number, and if available, email address. Candidates will be asked to submit a resume of their background, experience and qualifications and other relevant information as a part of the consideration process.

Dated: April 4, 2000.

Norine E. Noonan,

Assistant Administrator, for Research and Development.

[FR Doc. 00–8710 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6252–8]

Tampa Bay Water Regional Reservoir and Pipeline: Intent To Prepare an Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) on the reservoir and pipeline to the Alafia River located in southeast Hillsborough County, Florida.

PURPOSE: Pursuant to 40 CFR 1501.7 and in accordance with Section 102(2)(c) of the National Environmental Policy Act (NEPA), the U.S. Environmental Protection Agency (EPA) has identified the need to prepare an environmental impact statement (EIS) and therefore issues this Notice of Intent pursuant to 40 CFR 1507.7.

FOR FURTHER INFORMATION AND TO BE PLACED ON THE MAILING LIST CONTACT: Ms. Lena Scott, Environmental Protection Agency—Region 4, Office of Environmental Assessment, 61 Forsyth Street, Atlanta, Georgia 30303, Telephone (404) 562–9607 of Fax (404) 563–9598.

SUMMARY: EPA intends to prepare the EIS to evaluate Tampa Bay Water's (Authority) proposal to construct and operate a 1,200-acre reservoir and pipeline located in southeast Hillsborough County, Florida. The proposed reservoir will provide storage during high flow periods for use as potable water when surface water is not available for withdrawals. An 84-inch, 8-mile long pipeline will connect the reservoir to the South Central Hillsborough Intertie near the Alafia River withdrawal location. EPA intends to retain the services of an independent contractor to prepare the EIS using the

"third party method" as provided under 40 CFR Section 6.510(b)(3). By utilizing the third party method, EPA enters into an agreement for the Authority to engage and pay for the services of a contractor to prepare the EIS under the direction of EPA.

Need for Action: EPA awarded construction grants totaling $12,615,000 to Tampa Bay Water for the reservoir and pipeline. Based upon draft Environmental Information Documents (EID) submitted for the regional reservoir, EPA determined the EID did not adequately address potential impacts of the project and could not issue a Finding of No Significant Impact (FNSI). Known concerns include viable alternatives to the proposed action, impacts on protected wetlands, effects from inter-basin transfer of water, short- and long-term impacts on the Alafia River and Tampa Bay aquatic ecosystems from the incremental withdrawal of water resources attributable to reservoir operations, impacts on threatened and endangered species, impacts of salinity changes on aquatic organisms, sport and commercial fisheries.

Alternatives:

- EPA releases grant funds without conditions.
- EPA releases grant funds with conditions.
- EPA withholds grant funds exercising the "No Action" alternative.

Scoping: EPA will hold a public scoping meeting in which a general description of the projects and its goals will be presented. Time and meeting location will be announced in newspapers local to the project. Both oral and written comments will be accepted at the meeting to assist EPA to determine the scope of the EIS. Persons who do not attend the meeting and wish to comment on the issues are invited to respond in writing to this agency within 30 days of the scoping meeting.

Estimated Date of Release: August 30, 2001.

Responsible Official: A. Stanley Meiburg, Deputy Regional Administrator, Region 4, Environmental Protection Agency.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 00–8671 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–6574–8]

Electric Utility Steam Generating Units; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The EPA must determine whether hazardous air pollutants (HAP) emissions from electric utility steam generating units should be regulated under section 112 of the Clean Air Act (CAA), as amended, on or before December 15, 2000. The EPA's Office of Air and Radiation, Office of Air Quality Planning and Standards will hold a public meeting to provide interested persons an opportunity to provide EPA their views regarding the Agency's determination.

DATES: The public meeting will be held on June 13, 2000.

ADDRESSES: The public meeting will be held in the Lake Michigan Room, 12th floor, of the EPA Region V offices located at 77 West Jackson Boulevard, Chicago, Illinois. The meeting will be from 9:30 a.m. until 4 p.m., Central Daylight time.

FOR FURTHER INFORMATION CONTACT: Mr. William Maxwell, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5430, facsimile number: (919) 541–5450, e-mail *maxwell.bill@epa.gov*. Members of the public wishing to attend the meeting should register by phoning Ms. Libby Bradley at (919) 541–5578. Please note that space is limited to approximately 150 attendees and registrations will be accepted on a first-come, first-served basis. On or about June 1, 2000, a tentative agenda, including a list of those registered to date, will be posted to the Agency website *http://www.epa.gov/ttn/uatw/combust/utiltox*.

SUPPLEMENTARY INFORMATION: Section 112(n)(1)(A) of the CAA requires EPA to perform a study (*i.e.*, utility toxics study) of the hazards to public health anticipated to occur as a result of HAP emissions from electric utility steam generating units, after imposition of the requirements of the CAA, and to prepare a Report to Congress containing the results of the study. The Agency is to proceed with rulemaking activities under section 112 to control HAP emissions from electric utility steam generating units if EPA finds such rulemaking is appropriate and necessary after considering the results of the study. The utility toxics study was completed, and the Final Report to Congress issued on February 24, 1998. The Agency is required to make a finding as to whether it is appropriate and necessary to regulate HAP emissions from electric utility steam generating units on or before December 15, 2000.

On February 29, 2000, EPA published a notice in the **Federal Register** (65 FR 10783) requesting from the public any information or data that might be considered appropriate for the Agency to consider prior to making the regulatory determination. The deadline for submitting any such data is March 31, 2000. A public meeting is being held in order to provide the public an opportunity to present their views to EPA concerning this determination. This meeting will allow EPA to listen to public opinion on the issue of mercury and other HAP emissions from electric utility steam generating units and the regulatory determination. Members of the public wishing to present formal comments at the meeting should so indicate when registering. Individual speaking times will be limited to 10 minutes in order to give everyone an equal opportunity to speak. Seating will be limited for the meeting and advance registration is suggested. Walk-in comments will be heard on a time-available basis at the end of the session. Please note that scheduling of this public meeting does not extend the March 31, 2000 deadline for submitting additional data in response to the February 29, 2000 **Federal Register** document. Rather, this meeting provides opportunity for interested persons to make known their views to EPA.

Dated: March 27, 2000.

Robert D. Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 00–8713 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6575–4]

Meeting of the Local Government Advisory Committee and Small Community Advisory Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Local Government Advisory Committee and its Small Community Advisory Subcommittee

will meet on April 26, 2000, from 12 noon—2 p.m. EDT in Washington, DC. The meeting will be held in Room 3528 in the Ariel Rios North Building and Committee members will participate via conference call. The Committee will consider adopting recommendations to the Agency regarding its draft implementation guidance for Executive Order 13132, entitled "Federalism."

The Committee will hear comments from the public between 12:30–12:45 p.m. on the 26th. Each individual or organization wishing to address the Committee will be allowed a minimum of three minutes. Please contact the Designated Federal Officer (DFO) at the number listed below to schedule agenda time. Time will be allotted on a first come, first serve basis.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available after the meeting and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the number listed below if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible. However, seating will be on a first come, first serve basis.

DATES: The meeting will begin at 12 p.m. on Wednesday, April 26, 2000, and conclude no later than 2 p.m. on the same day.

ADDRESSES: The meeting will be held in Washington, DC at EPA Headquarters in Room 3528 of the Ariel Rios North Building located at 1200 Pennsylvania Avenue, NW.

Requests for Minutes and other information can be obtained by writing to the DFO at 1200 Pennsylvania Avenue, NW (1306A), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The DFO for this Committee is Denise Zabinski Ney. She is the point of contact for information concerning any Committee matters and can be reached by calling (202) 564–3684 or by email at ney.denise@epa.gov.

Dated: March 3, 2000.

Denise Zabinski Ney,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. 00–8834 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6575–6]

National Environmental Justice' Advisory Council; Notification of Meeting and Public Comment Period(s); Open Meetings

Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, we now give notice that the National Environmental Justice Advisory Council (NEJAC), along with the various subcommittees will meet on the dates and times described below. All times noted are Eastern Standard Time. All meetings are open to the public. Due to limited space, seating at the NEJAC meeting will be on a first-come basis. Documents that are the subject of NEJAC reviews are normally available from the originating EPA office and are *not* available from the NEJAC. The NEJAC and subcommittee meetings will take place at the Omni Hotel at CNN Center, 100 Center Street, Atlanta, GA 30335. The meeting dates are as follows: May 23 , 2000 through May 26, 2000. All times shown are Eastern Time. This is the second in a series of focused policy issue meetings for the NEJAC. To help prepare for this specific focused policy issue meeting the following background information is provided:

Request

The Charter for the National Environmental Justice Advisory Council (NEJAC) states that NEJAC shall provide independent advice to the Administrator on areas that may include, among other things, "the direction, criteria, scope, and adequacy of the EPA's scientific research and demonstration projects" relating to environment justice. In order to provide such independent advice, the Agency, through the Office of Environmental Justice (OEJ), requests that the NEJAC convene a focused and issue-oriented public meeting in Atlanta, Georgia. The meeting shall be used to receive comments on, discuss, and analyze federal efforts to make community-based strategies in the area of disease prevention and health improvement more effective. The Agency, furthermore, requests that the NEJAC produce a comprehensive report on the differing views, interests, concerns, and perspectives expressed by the stakeholder participants on the issue, and provide advice and recommendations for the Agency's review and consideration.

Issue

The meeting will focus on federal efforts to secure disease prevention and health improvement in communities where health disparities exist that may result from, or be exacerbated by, disproportionate effects of environmental pollutants and certain socioeconomic and cultural factors.

(1) What strategies and areas of research* should be pursued to achieve more effective, integrated community-based health assessment, intervention, and prevention efforts?

(2) How should these strategies be developed, implemented and evaluated so as to insure substantial participation, integration and collaboration among federal agencies, in partnership with: impacted communities; public health, medical and environmental professionals; academic institutions; state, tribal and local governments; and the private sector?

(3) How can consideration of socioeconomic status and cultural factors: (a) Contribute to health disparities and cumulative and disproportionate environmental effects; and (b) be incorporated into community health assessments?

Background

Dr. David Satcher, the Surgeon General, recently stated that a major national health goal for the next ten years should be to reduce the health disparities that exist in this country and which are especially apparent in minority, low-income, and/or indigenous communities. Equally true is that many of these same communities bear a disproportionate exposure to environmental pollutants that may underlie and/or contribute to these disparities. When such exposures are combined with other social and physical living conditions present in these environments, the potential for health disparities is magnified even further.

A growing number of researchers and community representatives have argued that one should not treat minority, low-income, and/or indigenous communities with an "all things being equal" approach. Given varying degrees of vulnerability among communities, the impacts of specific environmental pollutants on a given community's health and that community's ability to cope with such impacts often may be

*Research in this context encompasses a broad range of studies that may include basic science, applied research, and data collection. These may be carried out by: federal, state, tribal or local governments; universities; communities; industry; and/or individuals.

affected dramatically by a multiplicity of factors.

Two additional issues that arise in environmental justice communities are how community-based research is carried out and the nature and availability of health care. Environmental justice communities are defined as communities with significant minority, low-income and/or indigenous populations adversely and disproportionately impacted by environmental pollution. First, most research targeted at identifying environmentally related health problems in communities does not take into account the need to build partnerships within the community. In addition, the research is focused on finding problems not solutions. As a result, the community usually lacks a full understanding of research findings and does not have the resources or knowledge to address the problem. Second, communities usually lack access to health care and even when available, practitioners often lack training in environmental medicine and therefore may be unable to provide proper diagnosis and treatment.

Discussion

Improvements in health and living conditions are a priority for most residents of minority, low-income and/or indigenous communities. These communities also desire the ability to meaningfully participate in any decision-making process that affect their lives and to take actions to protect and improve their health. Community-based assessment, intervention and prevention efforts, *i.e.*, efforts conducted by, with, or for communities, intended to address these concerns are finally beginning to take the above into consideration.

Integrated community-based assessment, intervention and prevention strategies should lead to the following:

(1) More effective integrated community-based intervention/prevention strategies that address contributors to negative health in a community;

(2) Multi-disciplinary research that elucidates specific vulnerabilities that result from the interaction of socioeconomic factors and physical environments. These vulnerabilities may be associated with the health disparities found among minority, low-income and/or indigenous populations; and

(3) Direction on how community-based assessments can contribute to better understanding of causal relationships.

The NEJAC is being requested to provide advice and recommendations in the following specific areas:

(1) To assess the extent to which an integrated community-based public health model that includes assessment, intervention and prevention can contribute to disease prevention and health improvement in environmental justice communities;

(2) To identify the most critical gaps in community-based assessment and research and to recommend strategies that federal agencies should employ to address them;

(3) To identify ways in which a community-based model enhances ongoing research, intervention/prevention, and regulatory activities of EPA and other federal agencies; and

(4) To recommend strategies and mechanisms that should be developed and implemented to insure a more fully integrated, collaborative effort by the federal agencies, working with impacted communities and other vital partners, to reduce these health disparities.

Greater coordination, collaboration, and cooperation by multiple federal agencies is necessary. This effort should now include a number of health agencies that have been concerned with health disparities but have not recognized environmental exposures as an etiologic factor. Such agencies can play critical roles in providing solutions to environmental justice issues. EPA and other federal agencies involved to date in the upcoming NEJAC meeting include the National Institute for Environmental Health Sciences (NIEHS), the Agency for Toxic Substances and Disease Registry (ATSDR) and the National Center for Environmental Health (NCEH) which will facilitate engaging the other key public health agencies.

Meeting

Registration for the NEJAC meeting will begin on Tuesday, May 23, 2000 at 4:00 p.m. A public comment period for overall environmental justice issues is scheduled for Tuesday, May 23, 2000, from 6:30 p.m. to 9:30 p.m. On Wednesday, May 24, 2000, a second public comment period dedicated to the focused policy issue is scheduled from 6:30 p.m. to 9:30 p.m. The full NEJAC will convene Wednesday, May 24, 2000, from 8:00 a.m. to 5:00 p.m. Business will include a series of panels with expert testimony on the focused policy issue, a review of ongoing NEJAC activities and a discussion of new business items. All subcommittees of the NEJAC will meet on Thursday, May 25, 2000, from 9:00 a.m. to 5:30 p.m. The full NEJAC will reconvene Friday, May 26, 2000, from 8:00 a.m. to 5:00 p.m. for Subcommittee reports and closing discussions.

Any member of the public wishing additional information on the subcommittee meetings should contact the specific Designated Federal Official at the telephone number listed below.

Subcommittee Federal official	Telephone No.
Enforcement: Ms. Shirley Pate	202/564–2607
Health and Research:	
Mr. Lawrence Martin	202/564–6497
Mr. Chen Wen	202/260–4109
International: Ms. Wendy Graham	202/564–6602
Indigenous Peoples: Mr. Danny Gogal	202/564–2576
Waste/Facility Siting: Mr. Kent Benjamin	202/260–2822
Air and Water:	
Mr. Wil Wilson	202/564–1954
Ms. Alice Walker	202/260–1919

Members of the public who wish to participate in one of the public comment periods should pre-register by May 1, 2000. Individuals or groups making oral presentations during the public comment period will be limited to a total time of five minutes. Only one representative from a community, organization, or group will be allowed to speak. Any number of written comments can be submitted for the record. The suggested format for individuals making public comment should be as follows:

Request To Make Public Comment Speaker's Template

Name of Speaker: _____
Name of Organization/Community: _____
Address/Phone/Fax/Email: _____
Description of Concern: _____
Recommendations/Desired Outcome: _____

If you wish to submit written comments of any length (at least 50 copies), they should also be received by May 1, 2000. Comments received after that date will be provided to the Council as logistics allow. All information should be sent to the address or fax number cited below.

Registration

Pre-registration for all attendees is recommended. To receive a registration form, call the number listed below or visit the web site. Correspondence concerning registration should be sent to Tama Clare of Tetra Tech Environmental Management, Inc. at: 1881 Campus Commons, Suite 200, Reston, VA 20191, phone: 703/390–0641 or fax: 703/391–5876. Hearing-impaired individuals or non-English speaking attendees wishing to arrange

for a sign language or foreign language interpreter, may make appropriate arrangements using these numbers also. In addition, NEJAC offers a toll-free Registration Hotline at 1–888/335–4299. For on-line registration, you may visit the Internet site: *http://www.ttclients.com/nejac.*

Dated: April 4, 2000.

Marva E. King,

Acting Designated Federal Official, National Environmental Justice Advisory Council.

[FR Doc. 00–8836 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6574–5]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the National Zinc Superfund Site, with Cyprus Amax Minerals Company; St. Joe Minerals Corporation, now known as the Doe Run Resources Corporation; Horsehead Industries, Inc. d/b/a Zinc Corporation of America; and Salomon Smith Barney Holdings, Inc. ("Settling Parties"); and the United States Departments of Justice, and State, and the United States General Services Administration ("Settling Federal Agencies").

The settlement requires the Settling Parties to pay a total of $350,000.00 in reimbursement of Past Response Costs, plus an additional sum for interest on the amount calculated from the date set forth in the definition of Past Response Costs in the Settlement Agreement through the date of payment to the Hazardous Substances Superfund.

As soon as reasonably practicable after the effective date of this Agreement, and consistent with paragraph 12.1(b) of the Settlement Agreement, the United States, on behalf of the Settling Federal Agencies, shall pay to the Environmental Protection Agency Hazardous Substance Superfund $150,000.00 in reimbursement of Past Response Costs, plus an additional sum for interest on that amount calculated from the date set forth in the definition of Past Response Costs in the Settlement Agreement through the date of payment.

The settlement includes a covenant not to sue under section 107 of CERCLA, 42 U.S.C. 9607.

For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may withdraw or withhold its consent to the proposed settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before May 10, 2000.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733. A copy of the proposed settlement may be obtained from Carl Bolden (6SF–AC), U.S. Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–6713. Comments should reference the National Zinc Superfund Site, Bartlesville, Oklahoma and EPA Docket Number 6–02–98, and should be addressed to James E. Costello at the address listed below.

FOR FURTHER INFORMATION CONTACT: James E. Costello (6RC–S), U.S. Environmental Protection Agency 1445 Ross Avenue, Dallas, Texas 75202–2733 at (214) 665–8045.

Dated: March 27, 2000.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

[FR Doc. 00–8711 Filed 4–7–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting

Announcing an Open Meeting of the Board

Time and Date: 10 A.M., Wednesday, April 12, 2000.

Place: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

Status: The entire meeting will be open to the public.

Matters to be Considered During Portions Open to the Public: Proposed Rule: Authorization to Acquire Member Assets and Definition of Core Mission Activities.

Contact Person for more Information: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

William W. Ginsberg,

Managing Director.

[FR Doc. 00–8885 Filed 4–6–00; 10:28 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 24, 2000.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Robert James Coleman, Mt. Carmel, Illinois; Shane Evan Gray, St Francisville, Illinois; and Bryan Keith Loeffler, Allendale, Illinois, all as trustees; to acquire voting shares of Allendale Bancorp, Inc., Allendale, Illinois, and thereby indirectly acquire voting shares of First National Bank of Allendale, Allendale, Illinois.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Jeffrey B. and June L. Van Dyke, Plainville, Kansas; to acquire voting shares of Plainville Bancshares, Inc., Plainville, Kansas, and thereby indirectly acquire voting shares of The Plainville State Bank, Plainville, Kansas.

Board of Governors of the Federal Reserve System, April 4, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–8725 Filed 4–7–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 4, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Islands Bancorp, Beaufort, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Islands Community Bank, N.A., Beaufort, South Carolina (in organization).

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. First Central Bancshares, Inc., Lenoir City, Tennessee; to acquire 100 percent of the voting shares of First Central Bank of Monroe County, Sweetwater, Tennessee (in organization).

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Lisco State Company, Lisco, Nebraska, and First Nebraska Bancs, Inc., Sidney, Nebraska; to acquire 100 percent of the voting shares of Kimball Bancorp, Inc. Kimball, Nebraska, and thereby indirectly acquire the American National Bank, Kimball, Nebraska.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Plains Bancorp, Inc., Lubbock, Texas; to merge with Sudan Bancshares, Inc., Sudan, Texas, and thereby indirectly acquire First National Bank, Sudan, Texas.

Board of Governors of the Federal Reserve System, April 4, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–8724 Filed 4–7–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 5, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Sun Bancshares, Inc., Murrells Inlet, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of SunBank, N.A. (in organization), Murrells Inlet, South Carolina.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Wells Fargo & Company, San Francisco, California; to acquire 100 percent of the voting shares of First Commerce Bancshares, Inc., Lincoln, Nebraska; National Bank of Commerce Trust & SA, Lincoln, Nebraska; City National Bank & Trust Corporation, Hastings, Nebraska; Overland National Bank of Grand Island; Grand Island, Nebraska; First National Bank & Trust of Kearney, Kearney, Nebraska; Western Nebraska National Bank, North Platte, Nebraska; First National Bank of McCook, McCook, Nebraska; First National Bank of West Point, West Point, Nebraska; and First Commerce Bank of Colorado, N.A., Colorado Springs, Colorado.

In connection with this application, Applicant also has applied to acquire First Commerce Technology, Inc., Lincoln, Nebraska, and thereby engage in data processing activities, pursuant to § 225.28(b)(14) of Regulation Y; First Commerce Mortgage, Inc., Lincoln, Nebraska, and thereby engage in mortgage purchasing and servicing company activities, pursuant to § 225.28(b)(1) of Regulation Y; Cabela's LLC, Lincoln, Nebraska, and thereby engage in credit card joint venture activities, pursuant § 225.28(b)(1) of Regulation Y; Community Mortgage Corp., Lincoln, Nebraska, and thereby engage in mortgage origination company activities, pursuant to § 225.28(b)(1) of Regulation Y; Elleven Corp., Lincoln, Nebraska, and thereby engage in holding and operating property used by company and its subsidiaries, pursuant to § 225.22(b)(2)(vi) of Regulation Y; Commerce Affiliated Life Insurance Co., Lincoln, Nebraska, and thereby engage in captive credit life insurance company activities, pursuant to § 225.28(b)(11) of Regulation Y; and First Commerce Investors, Inc., Lincoln, Nebraska, and thereby engage in investment advisory company activities, pursuant to § 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, April 5, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–8809 Filed 4–7–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 001 0080]

Duke Energy Corporation, et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 1, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Kristin Malmberg or Gary Kennedy, Federal Trade Commission, Southwest Region, 1999 Bryan St., Suite 2150, Dallas, TX 75201. (214) 979–9381 or 979–9379.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with the accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 31, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis To Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission ("Commission") has accepted for public comment from Duke Energy Corporation ("Duke"), Phillips Petroleum Company ("Phillips"), and Duke Energy Field Services L.L.C. ("DEFS" an agreement containing Consent Order designed to remedy the anticompetitive effects resulting from: (1) Duke and Phillips' proposed merger of all of their natural gas gathering and processing businesses into DEFS; and (2) Duke's proposed acquisition of certain gas gathering and processing assets in central Oklahoma currently jointly owned by Conoco Inc. ("Conoco") and Mitchell Energy & Development Corporation ("Mitchell"). The Consent Order requires Duke to divest approximately 2780 miles of gas gathering pipeline in Kansas, Oklahoma, and Texas.

This agreement has been placed on the public record for thirty (30) days for the receipt of comments from interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's Order.

On December 16, 1999, Duke and Phillips signed a letter agreement to transfer their natural gas gathering and processing businesses to DEFS. Duke will be the majority owner of DEFS. The value of this transaction is approximately $6 billion. On December 21, 1999, Duke agreed to acquire Conoco and Mitchell's jointly held central Oklahoma gas gathering and processing assets. Gas gathering is the pipeline transportation of natural gas from a wellhead or central delivery point to a gas transmission pipeline or gas processing plant. The Commission found that the merger and acquisition may create competitive problems in counties in Kansas, Oklahoma, and Texas. The Commission's complaint alleges that Duke, Phillips, and DEFS' merger agreement and Duke's acquisition agreement with Conoco and Mitchell violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and the merger and acquisition, if consummated, would violate Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

Seven relevant markets were identified where gas producers could only turn to the parties or, at most, to one other gas gatherer, for gas gathering services. In these areas, the proposed merger and acquisition would reduce competition in the provision of gas gathering services and would likely lead to anticompetitive increases in gathering rates and an overall reduction in gas drilling and production. It is unlikely that the competition eliminated by the proposed merger and acquisition would be replaced by new entry into the gas gathering market in these areas.

The proposed Consent Order requires Duke to divest pipeline systems in these markets areas, eliminating any overlap between Duke's current holdings and what it will acquire from Phillips and the Conoco/Mitchell joint venture. The gas gathering assets to be divested are listed in Schedules A–J, with maps depicting the assets listed in Schedules C–J. Of the 2,780 miles to be divested under this Consent Order, 2,250 miles will be divested to Duke's joint venture partners for these assets. On February 28, 2000, Duke divested its interest in the Schedule A assets, 800 miles of pipe in the Westana area of Oklahoma, to Western, co-owner of the Westana Gathering Company. Duke has agreed to divest its interest in the Schedule B assets, 1,450 miles of pipe in the Austin Chalk area of Texas, to Mitchell, co-owner of Ferguson-Burleson County Gas Gathering System. The remaining 530 miles will be sold to Commission-approved buyers. The purposes of the divestitures are to ensure the continued use of the assets as gas gathering assets and to remedy the lessening of competition resulting from the acquisition.

Duke must divest the assets within 120 days of final acceptance of the Consent Order by the Commission. The Consent Order provides that if Duke fails to sell the 530 miles of pipe that currently does not have an identified buyer, it must offer additional assets for sale ("crown jewels"). If Duke fails to divest these assets, or if the sale of Mitchell is not completed, by the deadline, the Commission may appoint a trustee to sell the assets. Duke has entered into an Asset Maintenance Agreement, in which it has agreed to

maintain the assets that are being divested (as well as the "crown jewel" assets) in their current condition and provide gas gathering services on the same terms and conditions available to customers on March 1, 2000, until the assets are sold.

The purpose of this analysis is to invite public comment concerning the consent order. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–8771 Filed 4–7–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Special Emphasis Panel meeting.

A Special Emphasis panel (SEP) is a committee of a few experts selected to conduct scientific reviews of applications related to their areas of expertise. The committee members are drawn from a list of experts and designated to serve for particular individual meetings rather than for extended fixed terms of services.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b (c)(6). Grant applications are to be reviewed and discussed at this meeting. These discussions are likely to include personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

Name of SEP: Understanding the Eliminating Minority Health Disparities.

Date: May 1–2, 2000 (Open from 8 a.m. to 8:15 a.m. and closed for remainder of the meeting).

Place: Doubletree Hotel, 1750 Rockville Pike, Conference TBD, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain a roster of members or minutes of the meeting should contact Ms. Jenny Griffith, Committee management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1847.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: March 29, 2000.

John M. Eisenberg,

Director.

[FR Doc. 00–8842 Filed 4–7–00; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99P–4848]

Determination That Carbinoxamine Maleate 4 Milligrams per 5 Cubic Centimeters Elixir Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that carbinoxamine maleate (Clistin) 4 milligrams (mg) per 5 cubic centimeters (cc) elixir was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDA's) for carbinoxamine maleate 4 mg per 5 cc elixir.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. Sponsors of ANDA's do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments included what is now section 505(j)(6) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(6)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products with Therapeutic Equivalence Evaluations," generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162). Under § 314.161(a)(1) (21 CFR 314.161(a)(1)) the agency must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

In a citizen petition dated October 8, 1999 (Docket No. 99P–4848/CP1), submitted under 21 CFR 314.122, Mikart, Inc., requested that the agency determine whether carbinoxamine maleate (Clistin) 4 mg per 5 cc elixir was withdrawn from sale for reasons of safety or effectiveness. Carbinoxamine maleate (Clistin) 4 mg per 5 cc elixir was the subject of approved NDA 8–955. In the **Federal Register** of April 5, 1985 (50 FR 13661), FDA withdrew approval of NDA 8–955 for Clistin Elixir after McNeil Pharmaceutical notified the agency that Clistin Elixir was no longer being marketed under NDA 8–955 and requested the withdrawal of that application.

FDA has reviewed its records and, under § 314.161, has determined that carbinoxamine maleate 4 mg per 5 cc elixir was not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will list carbinoxamine maleate 4 mg per 5 cc elixir in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDA's that refer to carbinoxamine maleate 4 mg per 5 cc elixir as the listed drug may be approved by the agency.

Dated: April 3, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–8715 Filed 4–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2893–N]

Medicare Program; Deductible Amount for Medigap High Deductible Options for Calendar Year 2000

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the annual deductible amount of $1,530.00 for the Medicare supplemental health insurance (Medigap) high deductible options for 2000. High deductible options are those with benefit packages classified as F or J that have a high deductible feature. The deductible amount represents the annual out-of-pocket expenses (not including premiums) that a beneficiary who chooses one of these options must pay before the policy begins paying benefits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn McCann, (410) 786–7623.

SUPPLEMENTARY INFORMATION:

I. Background

Medicare Supplemental Insurance

A Medicare supplemental, or Medigap, policy is the principal type of private health insurance that a beneficiary may purchase to cover costs that Medicare does not cover. Medicare beneficiaries are responsible for certain deductibles and coinsurance amounts for both Part A (hospital insurance) and Part B (supplementary medical insurance) of the Medicare program. In addition, Medicare generally does not cover custodial nursing home care, eyeglasses, dental care, and most outpatient prescription drugs. Beneficiaries must either pay the full cost of these services themselves, or they may purchase additional private health insurance to help pay these costs. Medigap policies offer coverage for some or all of the deductibles and coinsurance amounts required by Medicare. Additionally, Medigap policies may provide coverage for some services that are not covered under Medicare.

Section 1882 of the Social Security Act (the Act) establishes, among other things, standards for Medigap policies. This section of the Act states that no Medigap policy may be issued in a State unless the policy meets the following criteria: (a) It has been approved by the Health Care Financing Administration as meeting federal standards, or (b) it complies with State laws established in accordance with section 1882(b)(1) of the Act.

The Omnibus Budget Reconciliation Act of 1990 (OBRA 90) amended the Act by standardizing Medigap benefits and requiring that no more than ten Medigap benefit packages, Plans A through J, be offered nationwide. [1] Plan A is the basic benefit package. It includes Medicare Part A hospital coinsurance plus coverage for 365 additional days over the beneficiary's lifetime, Medicare Part B coinsurance (generally 20% of Medicare-approved expenses), and coverage for the first 3 pints of blood per year. Medigap Plans B through J contain this basic benefit package, as well as different combinations of coverage for some or all of the following benefits: Medicare Part A inpatient hospital deductibles, skilled-nursing facility coinsurance, foreign travel health emergencies, at home recovery, preventive care, some prescription drug coverage, and Medicare Part B excess charges protection.

B. High Deductible Medigap Standard Policies

Section 4031(c) of the Balanced Budget Act of 1997 (BBA) added high deductible versions of two of the standard Medigap policies, or their counterparts in the waivered states. [2] Unlike the regular versions of Plans F and J, however, the high deductible versions of these policies will not begin paying benefits until the deductible amount is met. Amounts included in this deductible are the expenses that would ordinarily be paid by the regular version of the policy, including Medicare deductibles for Parts A and B. The Plan F deductible does not include the separate foreign travel emergency deductible of $250. The Plan J deductible does not include the plan's separate $250 prescription drug deductible or the plan's separate $250 deductible for foreign travel emergencies.

II. Provisions of This Notice

In 1998 and 1999, the high deductible amount was statutorily defined as $1,500.00 in section 1882(p)(11)(C)(i) of the Act. For 2000, the high deductible amount is increased by the percent increase in the Consumer Price Index (CPI) for all urban consumers (all items, U.S. city average) for the 12-month period ending with August of the preceding year. The percent increase in the CPI for all urban consumers (all items, U.S. city average) for the 12-month period ending in August 1999 was 2.26%, according to the Division of Labor Statistics, Department of Labor. A 2.26% increase in $1,500.00 is $1,533.90. Section 1882(p)(11)(C)(ii) of the Act stipulates that this amount ($1,533.90) be rounded to the nearest multiple of $10 to find the high deductible amount for the subsequent year. Rounding $1,533.90 to the nearest $10 multiple, the 2000 deductible for the Medigap high deductible options is $1,530.00.

This figure can also be found by dividing the August 1999 CPI (167.1) by the August 1998 CPI (163.4), which equals 1.022643819. Multiplying this number by the 1998/1999 deductible ($1,500.00) equals $1,533.97 which, rounded to the nearest $10 multiple, is $1,530.00.

III. Unfunded Mandates and Executive Orders

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. This notice will not have an effect on the governments mentioned, and the private sector costs will not be greater than the $100 threshold.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

We have reviewed this notice under the threshold criteria of Executive Order 13132 of August 4, 1999, Federalism, published in the **Federal Register** on August 10, 1999 (64 FR 43255). The Executive Order is effective November 2, 1999, which is 90 days after the date of this Order. We have determined that the notice does not significantly affect the rights, roles, and responsibilities of States.

Authority: Section 1882 of the Social Security Act.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

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[1] Three states (Wisconsin, Minnesota, and Massachusetts) experimented with standardizing benefits prior to enactment of federal standards. These states were granted a waiver and permitted to keep their alternative forms of Medigap standardization.

[2] In the three waivered states, high deductible versions of the plans that most closely approximate the benefits contained in Plans F and J are authorized by the Balanced Budget Act.

Dated: March 1, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 00–8774 Filed 4–7–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1110–FN]

RIN 0938–AJ90

Medicare Program; Sustainable Growth Rate for the Year 2000

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: This final notice implements section 211(a)(2)(C) of the Public Law 106–113, the Medicare, Medicaid, and State Childrens Health Insurance Program Balanced Budget Refinement Act of 1999 (BBRA), that requires us to publish a notice in the **Federal Register** not later than 90 days after the date of enactment. This notice includes, based on the best available data, our determination of (1) allowed expenditures for physicians' services under the Medicare Supplementary Medical Insurance program (Part B) for both the 9-month period of April 1, 1999 through December 31, 1999, and for calendar year 1999, (2) estimated actual expenditures for Part B physicians' services in 1999, and (3) the sustainable growth rate (SGR) for calendar year 2000.

This notice also discusses our plans for making available to the Medicare Payment Advisory Commission and the public, by March 1 of each year beginning with 2000, an estimate of the sustainable growth rate and the conversion factor for the next year and the data used in making this estimate, as required in section 211(a)(2)(A) of the BBRA.

EFFECTIVE DATE: The provisions of this notice are effective April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Marc Hartstein, (410) 786–4539.

SUPPLEMENTARY INFORMATION:

I. Background

A. Medicare Sustainable Growth Rate

Section 1848(f) of the Social Security Act (the Act), as amended by section 4503 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), enacted on August 5, 1997, replaced the Medicare Volume Performance Standard (MVPS) with a Sustainable Growth Rate (SGR). Section 1848(f)(2) of the Act specifies the formula for establishing yearly SGR targets for physicians' services under Medicare. The use of SGR targets is intended to control the actual growth in aggregate Medicare expenditures for physicians' services.

The SGR targets are not limits on expenditures. Payments for services are not withheld if the SGR target is exceeded by actual expenditures. Rather, the appropriate fee schedule update, as specified in section 1848(d)(3) of the Act, is adjusted to reflect the success or failure in meeting the SGR target. If expenditures exceed the target, the update is reduced. If expenditures are less than the target the update is increased.

As with the MVPS, the statute specifies a formula to calculate the SGR based on our estimate of the change in each of four factors. The four factors for calculating the SGR are as follows:

(1) The estimated change in fees for physicians' services.

(2) The estimated change in the average number of Medicare fee-for-service beneficiaries.

(3) The estimated projected growth in real gross domestic product (GDP) per capita.

(4) The estimated change in expenditures due to changes in law or regulations.

Section 211 of the BBRA amended sections 1848(d) and 1848(f) of the Act with respect to the physician fee schedule update and the SGR. Section 211(b) of the BBRA maintains the formula for calculating the SGR, but amends section 1848(f)(2) of the Act to apply the SGR on a calendar year (CY) basis beginning with 2000 while maintaining the SGR on a fiscal year (FY) basis for FY 1998 through FY 2000. Specifically, section 1848(f)(2) of the Act, as amended by section 211(b) of the BBRA, states that— "* * * [t]he sustainable growth rate for all physicians' services for a fiscal year (beginning with fiscal 1998 and ending with fiscal year 2000) and a year beginning with 2000 shall be equal to the product of—

(A) 1 plus the Secretary's estimate of the weighted average percentage increase (divided by 100) in the fees for all physicians' services in the applicable period involved,

(B) 1 plus the Secretary's estimate of the percentage change (divided by 100) in the average number of individuals enrolled under this part (other than Medicare + Choice plan enrollees) from the previous applicable period to the applicable period involved,

(C) 1 plus the Secretary's estimate of the projected percentage growth in real gross domestic product per capita (divided by 100) from the previous applicable period to the applicable period involved; and

(D) 1 plus the Secretary's estimate of the percentage change (divided by 100) in expenditures for all physicians' services in the applicable period (compared with the previous applicable period) which will result from changes in law and regulations, determined without taking into account estimated changes in expenditures resulting from the update adjustment factor determined under section 1834 (d)(3)(B) or (d)(4)(B) of the Act, as the case may be, minus 1 and multiplied by 100."

Under section 1848(f)(4)(C) of the Act, as added by section 211(b)(3)) of the BBRA, the term "applicable period" means—(1) a FY, in the case of FY 1998, FY 1999 and FY 2000, and (2) a CY with respect to a year beginning with 2000.

To make the transition from a FY SGR to a CY SGR in 1999 using the FY 2000 SGR, sections 211(b)(2) and (3) of the BBRA require us to calculate SGRs for both FY and CY 2000. Section 1848(d)(4)(C) of the Act, as modified by section 211(a)(1)(B) of the BBRA, requires us to determine the allowed expenditures for both the 9-month period beginning April 1, 1999 and for CY 1999. The SGR for CY 2000 is then applied to allowed expenditures for CY 1999.

In making the transition to a CY SGR system, the law essentially requires us to use the 2000 SGR twice (both FY and CY) twice to determine 2000 allowed expenditures. The FY 2000 SGR is used to determine allowed expenditures for the April 1, 1999 to December 31, 1999 period and the CY 2000 SGR is used to determine CY 2000 allowed expenditures. Since we are using the FY 2000 SGR to determine allowed expenditures for the April 1, 1999 to December 31, 1999 period, allowed expenditures have been increased for components of the SGR that may not be reflective of the increase that actually occurs over that period. For instance, the FY 2000 SGR includes a portion of the full year effect of the new prostate screening benefit that did not become effective until January 1, 2000. Similarly, other components of the SGR (that is, the increase in physician fees, fee-for-service enrollment, real per capita GDP, and legislative factors other than prostate screening benefit) may have a different rate of increase in the FY 2000 SGR than occurred in the April 1, 1999 to December 31, 1999 period.

The issue described above occurs because the law required mismatched

time periods (that is, allowed expenditures determined on the basis of an April 1 through March 30 period increased by an SGR determined on the basis of a October 1 to September 30 federal FY) to be used to determine allowed expenditures from April 1, 1997 until December 31, 1999. Another contributing factor is use of 2000 data twice (both FY and CY) in making the transition to a CY SGR system. We have analyzed the impact on allowed expenditures of the BBA and BBRA relative to a system that requires use of matched time periods in establishing the SGR from April 1, 1997 until December 31, 1999. Based on current estimates, the impact of the BBA and BBRA requirements will increase allowed expenditures in CY 2000 by 1 to 2 percent relative to a system that required use of matched time periods. This results in a permanent 1 to 2 percent increase in the physician fee schedule conversion factor.

It is important to note that the FY 2000 SGR is required to be revised based on more recent data, but, as explained below, the BBRA does not provide for revision of either the FY 1998 or the FY 1999 SGR. This means that, for the transition to a calender year SGR system, allowed expenditures for the period April 1, 1999 through December 31, 1999 (determined by applying the FY 2000 SGR to allowed expenditures for the 12-month period ending March 31, 1999) are subject to change based on revision of the FY 2000 SGR; allowed expenditures for the period January 1, 1999 through March 31, 1999 (determined using the FY 1999 SGR) are not subject to revision.

As we indicated in the **Federal Register** notice published on October 1, 1999 (64 FR 53396) before the November 29, 1999 enactment of the BBRA, the statute clearly requires that estimated values be used and there is no provision for revising estimates to reflect later data. Our actuaries estimate the elements of the SGR based on the best available data at the time the estimate is made. However, despite their best efforts there may be differences between the actuarial estimate and actual data on the rate of change in a component factor of the SGR. Our actuary's estimate of the percent change in a component of the SGR may be equal to, or higher or lower than, the actual percent change in that component, as determined based on later known information. For example, our actuaries have estimated the percent change in Medicare fee-for-service enrollees for each year under both the MVPS and the SGR. For the FY 1998 SGR, our actuarial estimate was equal to the percent change in Medicare fee for service enrollment that actually occurred. Under the MVPS, for each of FYs 1994, 1995, 1996, and 1997, our actuarial estimate of the percent change in the Medicare fee-for-service population was higher than the actual percent change, based on later known information. These differences largely resulted from more beneficiaries selecting a managed care plan and fewer beneficiaries remaining in the fee-for-service program than our actuaries estimated at the time each MVPS was published. For FY 1999, our actuarial estimate of the percent change in fee-for-service population used in the SGR notice published on November 2, 1998 (63 FR 59188) was lower than the actual percent change. (This is largely due to fewer beneficiaries selecting a managed care plan than we earlier estimated). While there are differences between the MVPS and the SGR, they have the same long term impact on payment levels due to differences between estimated and actual data. Differences between estimated and actual changes in the Medicare fee-for-service population under the MVPS resulted in a higher physician fee schedule conversion factor than would have occurred if either the estimate were what actually happened or if the MVPS had been revised based on later data. The opposite is the case for differences between estimated and actual changes in the Medicare fee-for-service population under the FY 1999 SGR.

The BBRA, however, explicitly requires revisions based on later known information, beginning with the FY 2000 SGR. In section 1848(f)(3) of the Act, as added by section 211(b)(5) of the BBRA, the first sentence following subparagraph (c) states: "Nothing in this paragraph shall be construed as affecting the sustainable growth rates established for fiscal year 1998 or fiscal year 1999." Since the BBRA does not include provisions for revising any SGR or MVPS before the FY 2000 SGR, we are not revising the MVPS or SGR (before the FY 2000 SGR) based on later known information that indicated the actual increase in a component of the SGR or MVPS was different from the earlier published estimate.

In general, the BBRA requires us to publish SGRs for 3 different time periods, no later than November 1 of each year, using the best data available as of September 1 of each year. Under section 1848(f)(3)(C)(i) of the Act, as added by section 211(b)(5) of the BBRA, the SGR is estimated and subsequently revised twice (beginning with the FY and CY 2000 SGRs) based on later data. Under section 1848(f)(3)(C)(ii) of the Act, there are no further revisions to the SGR once it has been estimated and subsequently revised in each of the 2 years following the initial estimate.

The requirement of revisions to the SGR based on later data means that we will estimate and publish an SGR for the upcoming year, the contemporaneous year, and the preceding year by not later than November 1 of each year. For example, by not later than November 1, 2002, we will publish an estimate of the SGR for CY 2003, a revision of the CY 2002 SGR estimated in the previous year, and a revision of the CY 2001 SGR first estimated two years earlier and first revised in the previous year. Under section 1848(f)(3)(C)(ii) of the Act, this would be the final revision to the CY 2001 SGR.

Sections 1848(f)(3)(A) and (B) of the Act, as added by section 211(b)(5) of the BBRA, specify special rules with respect to the SGR and the CY 2001 and CY 2002 updates. Section 1848(f)(3)(A) of the Act requires us, no later than November 1, 2000, to revise the SGRs for FY 2000 and CY 2000 and establish the SGR for CY 2001, based on the best data available, as of September 1, 2000. Section 1848(f)(3)(B) of the Act requires us, by no later than November 1, 2001, to revise the SGRs for FY 2000 and CYs 2000 and 2001 and establish the SGR for CY 2002, based on the best data available as of September 1, 2001. In accordance with section 1848(f)(3)(C)(ii) of the Act, there will be no further revisions to the FY 2000 and CY 2000 SGRs after its revision in the 2001 notice.

B. Physicians' Services

Section 1848(f)(4)(A) of the Act defines the scope of physicians' services covered by the SGR. The BBRA made no changes to this definition that was also used for the MVPS. For this reason, we are continuing to use the same definition of physicians' services for the SGR in this notice as we did in prior SGR notices and for the MVPS published in the **Federal Register** (61 FR 59717) on November 22, 1996.

II. Provisions of This Notice

This final notice implements section 211(a)(2)(C) of the BBRA that requires us to publish a one-time notice in the **Federal Register**, not later than 90 days after the date of enactment, containing—(1) Allowed expenditures for physicians' services under the Part B program for both the 9-month period of April 1, 1999 through December 31, 1999, and for CY 1999, (2) estimated actual expenditures for physicians' services in 1999, and (3) the sustainable growth rate for CY 2000.

In general, the update for a year is based on the Medicare Economic Index (MEI) as adjusted, within bounds, by the amount of actual expenditures for physicians' services compared to allowed (that is, growth target) expenditures. A key difference between the MVPS and the SGR is that the comparison of actual and allowed expenditures is made on a cumulative basis under the SGR while it was made on an annual basis under the MVPS. The "adjustment factor" in section 1848(d)(4)(B) of the Act that reflects actual expenditures compared to target expenditures is the adjustment to the MEI to reflect performance.

Section 1848(d)(3)(C) of the Act, as modified by the BBA, defines allowed expenditures for the 12-month period ending March 31, 1997 as equal to actual expenditures for physicians' services during that period (that is, April 1, 1996 through March 31, 1997), as we have estimated. Section 1848(d)(3)(C) of the Act defines allowed expenditures for subsequent 12-month periods to be equal to allowed expenditures for physicians' services for the previous year increased by the SGR for the FY which begins during the 12-month period. For example, allowed expenditures for the 12-month period April 1, 1997 through March 31, 1998 are equal to allowed expenditures for the 12-months ending March 31, 1997, increased by the SGR for FY 1998.

Table 1 shows annual and cumulative allowed expenditures for physicians' services for each of the 12-month periods between April 1, 1996 and March 31, 2000.

TABLE 1

Period	Annual allowed expenditures (in billions)	Cumulative allowed expenditures (in billions)	FY SGR
4/96–3/97	$48.9	$48.9	
4/97–3/98	49.6	98.5	FY 1998=1.5%.
4/98–3/99	49.4	147.9	FY 1999=−0.3%.
4/99–3/00	52.3	200.2	FY 2000=5.7%.

In Table 1, for the period April 1996 through March 1997, annual allowed expenditures are equal to actual expenditures for the period. Annual allowed expenditures for each subsequent year are equal to the figure from the prior April 1 through March 31 12-month period (shown in the annual allowed expenditure column) multiplied by the SGR figure one row down in the right hand column. For example, allowed expenditures from April 1997 through March 1998 are equal to $48.9 multiplied by 1.015. Cumulative allowed expenditures in a year are equal to the sum of the annual allowed expenditures figure in the same row and annual allowed expenditures for all prior years. Our current estimate of the FY 2000 SGR of 5.7 percent (2.1 percent for factor 1, -0.4 percent for factor 2, 2.7 percent for factor 3, and 1.2 percent for factor 4) reflects more recent information and correction an error made in calculation of the published FY 2000 SGR as discussed in section D below.

A. Allowed Expenditures for April 1, 1999 Through December 31, 1999

As indicated above, section 211(b) of the BBRA amended section 1848(f) of the Act to require us to calculate the SGR in future years on the basis of a CY. Section 211(a) of the BBRA similarly amends section 1848(d) of the Act to require that allowed expenditures be determined on a CY basis. Section 1848(d)(4)(C) of the Act, as amended by section 211(a)(1)(B) of the BBRA, establishes a transition to a CY allowed expenditures system in 1999.

Section 1848(d)(4)(C)(ii)(I) of the Act, as added by section 211(a)(1)(B) of the BBRA, specifies that allowed expenditures for the 9-month period beginning April 1, 1999 must be our estimate of the amount of the allowed expenditures that would be permitted for that period under section 1848(d)(3)(C) of the Act. That is, allowed expenditures for the period April 1, 1999 through December 31, 1999 are equal to a portion of the allowed expenditures for the period April 1, 1999 through March 31, 2000, that are themselves determined by applying the FY 2000 SGR to allowed expenditures for the 12-months ending March 31, 1999.

As indicated in Table 1, annual allowed expenditures for the period April 1, 1999 through March 31, 2000 are $52.3 billion. Our actuarial estimate of allowed expenditures for the 9-month period April 1, 1999 through December 31, 1999 is $39.1 billion. We determined this figure by increasing quarterly allowed expenditures from the base period by the applicable SGR and adding them to get an annual figure. For instance, we increased actual quarterly expenditures from the base period (April 1, 1996 through March 31, 1996, July 1, 1996 through September 30, 1996, and October 1, 1996 through December 31, 1996) by the SGRs for FY 1998, FY 1999, and FY 2000 to determine quarterly allowed expenditures for each respective quarter included in the April 1, 1999 through December 31, 1999 period and added together these quarterly allowed expenditures to determine the $39.1 billion annual figure. We increased quarterly base expenditures rather than annual base expenditures because it better accounts for seasonality in expenditures.

Allowed expenditures for the April 1, 1999 through the December 31, 1999 period are based on the FY 2000 SGR. As previously discussed, section 1848(f)(3) of the Act requires two revisions to the FY 2000 SGR. The first revision must be made not later than November 1, 2000 based on the best data available as of September 1, 2000; the second revision must be made not later than November 1, 2001, based on the best data available as of September 1, 2001.

B. Allowed Expenditures for Calendar Year 1999

Section 1848(d)(4)(C)(ii)(II) of the Act, as added by section 211(a)(1)(B) of the BBRA, specifies that allowed expenditures for the year of 1999 must be our estimate of the amount of the allowed expenditures that would be permitted under section 1848(d)(3)(C) of the Act for that year. We are, therefore, calculating allowed expenditures for CY 1999 as the sum of allowed expenditures for—(1) The January 1, 1999 through March 31, 1999 period; and (2) allowed expenditures for the April 1, 1999 through December 31, 1999 period.

Annual allowed expenditures for the period April 1, 1998 through March 31, 1999 are $49.4 billion. Our actuarial

estimate of allowed expenditures for the 3-month period January 1, 1999 through March 31, 1999 is $12.5 billion that was determined by updating quarterly allowed expenditures included in the January 1, 1997 through March 31, 1997 period by the SGRs for FY 1998, FY 1999 and FY 2000. Adding this figure to the $39.1 billion figure for April 1, 1999 through December 31, 1999 equals allowed expenditures for 1999 of $51.6 billion. (Due to rounding, the figures may not add precisely to the total for 2000.) Allowed expenditures for the period April 1, 1998 through March 30, 1999 are equal to allowed expenditures for the previous 12-month period increased by the FY 1999 SGR. In the **Federal Register** published on October 1, 1999 (64 FR 53396), we stated that the statute clearly requires that we use estimated values and that there is no provision for revising estimates once the applicable SGR is determined. Although section 211 of the BBRA amends the Act to require revisions to previously determined SGRs based on later data (unavailable to us at the time the SGR is initially determined), this system of revision applies prospectively, beginning with the FY 2000 SGR. As added by section 211(b)(5) of the BBRA, the flush sentence following subparagraph (C) of section 1848(f)(3) states: "Nothing in this paragraph shall be construed as affecting the sustainable growth rates established for fiscal year 1998 or fiscal year 1999."

Because there is no provision in the Act for revising the FY 1999 SGR or, consequently, the allowed expenditures for the April 1, 1998 through March 31, 1999 period, we will not revise the January 1, 1999 through March 31, 1999 portion of allowed expenditures included in the 1999 allowed expenditures. However, as indicated above, when we revise the FY 2000 SGR, allowed expenditures for April 1, 1999 through December 31, 1999 are subject to change.

C. Actual Expenditures for CY 1999

We currently estimate actual expenditures for CY 1999 to be $50.7 billion. This estimate is based on actual claims data for services furnished during CY 1999 that were received through September 30, 1999, and an estimate of expenditures for the year based on claims information received in prior years. Expenditure data for claims received after September 30, 1999 were unavailable to us at the time we made this estimate. As described in more detail below, we are making SGR data available through our web site (www.hcfa.Gov/pubforms/actuary). We will be providing quarterly expenditures under the SGR as data become available. Our estimate of actual expenditures for CY 1999 furnished in this notice will be revised as more complete claims information on 1999 expenditures becomes available to us and will be included in our web site information.

D. Sustainable Growth Rate for CY 2000

According to sections 1848(f)(2)(A) through (D) of the Act, as amended by section 211(b) of the BBRA, we have determined the CY 2000 SGR to be 5.8 percent. Our determination is based on estimates of the following four statutory factors as indicated in table 2 below:

TABLE 2

Statutory factors	Percent change
Fees	2.1
Enrollment	−0.6
Increase in Gross Domestic Product	2.5
Legislation	1.7
Total	5.8

Note: Consistent with section 1848(f)(2), the statutory factors are multiplied, not added, to produce the total (that is, 1.021 × (1 − 0.006) × 1.025 × 1.017 = 1.058.)

III. Calculation of the CY 2000 Sustainable Growth Rate

A more detailed discussion of our estimates of the four elements of the SGR follows.

Factor 1—Changes in Fees for Physicians' Services (Before Applying Legislative Adjustments) for CY 2000

This factor was calculated as a weighted average of the CY 2000 fee increases that apply for physicians' and laboratory services that are the different types of services included in the definition of physicians' services for the SGR.

Physicians' services represent approximately 89 percent of allowed charges for physicians' services under the SGR. As announced in the November 2, 1999 **Federal Register** (64 FR 59429), the physician fee schedule update (before applying the performance adjustment factor) for CY 2000 is 2.4 percent. The BBA provided for a 0.0 percent update for CY 2000 for laboratory services, which represents about approximately 11 percent of the Medicare allowed charges for physicians' services under the SGR. Table 3 shows both the physicians' and laboratory service updates that were used to determine the percentage increase in physicians' fees for CY 2000.

TABLE 3.—PHYSICIANS' AND LABORATORY SERVICE UPDATE FOR CALENDAR YEAR 2000

	2000	Weight
Physicians' Services	2.4%	.89
Laboratory Service ...	0.0%	.11

After taking into account the elements described in Table 3, we estimate that the weighted-average increase in fees for CY 2000 for physicians' services under the SGR (before applying any legislative adjustments) will be 2.1 percent.

Factor 2—The Percentage Change in the Average Number of Part B Enrollees From CY 1999 to CY 2000

This factor is our estimate of the percent change in the average number of fee-for-service enrollees for CY 2000 as compared to CY 1999. Medicare+Choice (M+C) plan enrollees, whose Medicare-covered medical care is outside the scope of the SGR, are excluded from this estimate. Our actuaries estimate that the average number of Medicare Part B fee-for-service enrollees (excluding beneficiaries enrolled in M+C plans) will decrease by 0.6 percent in calendar year 2000. This estimate was derived by subtracting estimated M+C enrollment from estimated overall Medicare enrollment as described in table 4 below.

TABLE 4

Year	Average Medicare Part B Enrollment (in millions)		
	Overall Part B	Medicare+Choice	Overall Part B, excluding Medicare+Choice
1999	37.010	6.194	30.816
2000	37.374	6.746	30.628

TABLE 4—Continued

Year	Average Medicare Part B Enrollment (in millions)		
	Overall Part B	Medicare+Choice	Overall Part B, excluding Medicare+Choice
Percent change			−0.6

Our actuaries estimate of the percent change in the average number of fee-for-service enrollees for CY 2000 compared to CY 1999 of −0.6 percent is less of a decrease than the estimate of this factor for FY 2000 because—(1) The historical base from which our actuarial estimate is made has changed (that is, we have more information on enrollment from CY 1999 that affects our estimates for future years), and (2) the applicable time period has changed from the FY to CY.

Factor 3—Estimated Real Gross Domestic Product Per Capita Growth in CY 2000

Section 1848(f)(2)(C) of the Act, as amended by section 211 of the BBRA, requires us to estimate growth in real GDP per capita. This factor is applied on a CY basis beginning with the CY 2000 SGR. We estimate that the growth in real GDP will be 2.5 percent in CY 2000.

In the FY 2000 SGR notice published on October 1, 1999 (64 FR 53396), we estimated that real GDP growth per capita for FY 2000 would be 1.8 percent. We are now estimating that real GDP growth per capita for CY 2000 to be 2.5 percent. The higher estimate is due in part to Bureau of Economic Analysis (BEA) revisions to the historical National Income and Product Accounts (NIPA) and in part due to a change in the outlook for growth in 2000. The historical revisions, released by BEA on October 29, 1999, raised historical real GDP per capita growth by 0.2 percentage points on average between 1959 through 1998, with larger differences in recent years. (For a detailed description of changes to NIPA, see Brent R. Moulton, Robert P. Parker, and Eugene P. Seskin, "A Preview of the 199 Comprehensive Revision of the National Income and Product Accounts," Survey of Current Business (August, 1999): 7–20.) Subsequently, the projections of growth in real GDP per capita for 2000 have been revised upwards to reflect these revisions. Also since the October 1, 1999 SGR notice, projections of real GDP per capita in 2000 have been revised upward to reflect stronger than expected stock market performance and less than expected buildup of inventories in preparation for Y2K in 1999. Also, the GDP growth figure in this notice is calculated on a calendar rather than a fiscal year basis. (Moving from a FY 2000 to a CY 2000 estimate of GDP results in a −0.2 percent change from 2.7 percent to 2.5 percent.)

These same methodological changes in GDP measurement also have the effect of reducing the MEI. If we were to recalculate the MEI for CY 2000, based on the GDP measurement changes, it would be 2.0 percent rather than the 2.4 percent calculated and used for the 2000 physician fee schedule update. However, since such an MEI would not be the one used in establishing the 2000 update, and since the price factor in the SGR is the "Secretary's estimate of the weighted average percentage increase in physician fees" for all physicians' services, we are using the 2.4 percent increase for the fee component of the CY 2000 SGR. Consistent with the law, we are using the 2.4 percent increase in physician fees used for the CY 2000 physician fee schedule update.

Factor 4—Percentage Change in Expenditures for Physicians' Services Resulting From Changes in Law or Regulations in CY 2000 Compared With CY 1999

Legislative changes contained in the BBA and the BBRA will have an impact on expenditures for physicians' services under the SGR in CY 2000. Section 4103 of the BBA mandates a new prostate screening benefit effective January 1, 2000. This provision is estimated to increase expenditures in CY 2000 relative to CY 1999 by 1.8 percent. Additionally, effective January 1, 2000, section 4513 of the BBA removes the requirement that a subluxation of the spine be demonstrated by an x-ray before a beneficiary can receive Medicare coverage for chiropractic services. This provision will also result in a small increase in expenditures in CY 2000. The impact of BBA Medicare Secondary Payer provisions will have small marginal impact on reducing expenditures in CY 2000.

Certain BBRA provisions will also have a small impact on expenditures in CY 2000. Section 224 of the BBRA increases payments for pap smears and will slightly increase expenditures in CY 2000. Section 221 of the BBRA postponed the implementation of payment caps on physical and occupational therapy and speech-language pathology services. The effect of this provision on physicians and independent practitioners will result in a small increase in the CY 2000 SGR.

After taking into account these provisions, the percentage change in expenditures for physicians' services resulting from changes in law or regulations is estimated to be 1.7 percent for 2000.

After it was enacted in 1997, our actuaries estimated the effect of changes in expenditures resulting from the BBA. Their estimates took into account the effect of the prostate screening benefit (effective beginning with January 1, 2000). However, we inadvertently neglected to include it as part of our estimate of factor 4 for FY 2000. Had we included the effect of this in our estimate of the changes in law or regulations, our estimate of factor 4 for FY 2000 would have been 1.5 percentage points higher and the overall FY 2000 SGR would have been 3.5 percent instead of 2.1 percent. We will incorporate the effect of the prostate screening benefit in revisions we will make to the FY 2000 SGR no later than November 1, 2000.

IV. Publication and Dissemination of Information

Section 211 of the BBRA amends section 1848(d)(1)(E) of the Act to require publication and dissemination of information related to the physician fee schedule update and SGR at two points during a year. Specifically, we must publish in the **Federal Register** not later than November 1 of each year (beginning with 2000) the conversion factor that will apply to physicians' services for the succeeding year, the update determined (under section 1848(d)(4) of the Act) for the succeeding year, and the allowed expenditures (under section 1848(d)(4) of the Act) for such succeeding year. Thus, 60 days before the conversion factor is actually implemented, we are required to publish the conversion factor that will apply for the following calendar year, as

well as the percentage update for that year and the allowed expenditures for that year. We plan to implement this provision as part of the physician fee schedule final rule that we publish by November 1 of the year before it is applicable.

In addition to this November 1 publication requirement, the BBRA amended section 1848(d)(1)(E)(ii) of the Act to require that we make available to the Medicare Payment Advisory Commission [MedPAC] and the public by March 1 of each year (beginning with 2000) an estimate of the sustainable growth rate and of the conversion factor that will apply to physicians' services for the succeeding year and the data used in making this estimate. While the statute requires dissemination of information to the MedPAC and the public, it does not require publication of this information in the **Federal Register**. In this notice, we provide information on how we intend to disseminate the information required by section 1848(d)(1)(E)(ii) of the Act and we describe the limitations of the data we plan to make available.

The statute requires that we make available the following items by March 1st of each year:

- An estimate of the SGR for the following year.
- An estimate of the physician fee schedule conversion factor for the next year and the data used in making these estimates.

We plan to make all of this information available on the HCFA web site (www.hcfa.gov/pubforms/actuary).

The March 1 estimate will not necessarily be a good predictor of the SGR that we specify by November 1 of each year. While it is the best estimate at the time, a figure specified later in the year is likely to differ from it for several different reasons.

We will have more current data on the four factors that comprise the SGR formula as of September 1 of a year for publication in the November 1st notice, than will be available by March 1. For example, for the March 1 estimate, we will need to estimate the percent change in fee-for-service enrollment for the following year although we have little information on the change in fee-for-service enrollment for the current year. Similarly, an estimate of the percent change in real GDP per capita for the subsequent year made by November 1 is likely to be better than an estimate made by March 1 of that year. In addition, an estimate of the changes in law and regulation affecting expenditures for physicians' services for the subsequent year would require an estimate of the financial impact of policy changes several months before the physician fee schedule proposed rule is published.

We also point out that there may be differences between an SGR for a year specified by November 1 and the SGR for the same year as subsequently revised based on later data. Specifically, the BBRA required the revision of the SGR for a year beginning with the FY 2000 SGR, in each of the 2 years after it is initially specified, based on more current data. Given the required revisions of the November 1 estimate, and the previously discussed limitations of the March 1 estimate, we anticipate that the March 1 estimate will not necessarily be an accurate predictor of the November 1 SGR.

The second item we are required to make available by March 1 is an estimate of the conversion factor for the following year. This factor may be even more difficult to estimate by March 1 than the SGR for the following year. The conversion factor for a year is equal to the conversion factor for the previous year updated by the physician fee schedule update. As with the MVPS, the update is equal to the MEI, adjusted (up or down) by the performance of actual expenditures compared to target expenditures (called allowed expenditures in the statute). For example, the CY 2000 update of 5.5 percent was based on an MEI of 2.4 percent and a performance adjustment of 3.0 percentage points. (These figures are multiplied, not added. The update of 5.5 percent is determined by multiplying the MEI of 2.4 percent, or 1.024, by the performance adjustment factor of 3.0 percent, or 1.030: $1.024 \times 1.03 = 1.05472$). Beginning with CY 2001, the performance adjustment compares actual expenditures from March 1, 1996 through the end of a year (2000 for the 2001 update) adjusted by the SGR for the following year (2001 for the 2001 update) to allowed expenditures from March 1, 1996 through the end of that next year (2001 for the 2001 update). (We will provide more detail on the precise formula for determining the physician fee schedule in the update notice that will be published not later than November 1, 2000.)

By March 1 of each year, however, we will have no actual data on key elements that comprise the formula for updating the conversion factor for the next year. For example, by March 1, 2000, we will have no data on actual expenditures for physicians' services under the SGR for CY 2000 since we receive expenditure information on a quarterly basis during the year, with a lag time after the quarter closes. By March 1, the first quarter of the calendar year will not even be complete.

Similarly, we are unlikely to have reasonably complete expenditure data on the last quarter of 1999. Finally, the SGR for a year also affects allowed expenditures through the end of the next year. We have already discussed why the March 1 SGR estimate is likely to change. Therefore, by March 1 of each year, we will have only estimates of the three data elements required to determine the performance adjustment to the MEI (actual expenditures for physicians' services for the current year, allowed expenditures through the end of the next year, and the SGR for the next year). We provide the above discussion to caution that the March 1 estimate of the conversion factor update for the next year is not likely to be a good predictor of the update for the year specified by November 1. It is only an estimate and will likely change based on more current information. We will make our estimate of the physician fee schedule conversion factor available on the HCFA web site (www.hcfa.gov/pubforms/actuary).

By March 1, we will also make available on the HCFA web site data used in making the estimate of the SGR and conversion factor update. Because we will not have any data on actual CY 2000 expenditures and because many elements of the SGR will probably change during the year, there are limits on the data we can provide. To provide data that will be useful, we plan, on a quarterly basis, to post on the HCFA web page quarterly expenditures for services covered by the SGR. The estimates would update prior quarters where later data were available for that quarter. Data would be posted approximately 6 months after the end of the quarter (when data for the quarter are reasonably complete).

Finally, we also point out that the two SGR elements for which there has been the largest difference between our actuaries' estimates and the actual amounts have been the fee-for-service enrollment numbers and real gross domestic product per capita. We note that more recent data on these two elements are available during a year on several web sites. Actual real GDP for a quarter is available from the home page for the Bureau of Economic Analysis of the Department of Commerce (www.bea.doc.gov). Population figures are available from the home page for the Census Bureau (www.census.gov). Real GDP per capita can be calculated from these figures. In addition, monthly M+C enrollments are currently available on the HCFA Home page (www.hcfa.gov/stats.mmcc.htm). In April of each year,

when our Office of the Actuary puts the Trustees Report on the HCFA Home page, we will also post the projections of total Medicare Part B enrollment for the current and subsequent calendar years, as well as for the preceding calendar year, consistent with the Trustees Report. Thus, the Medicare fee-for-service enrollment could be determined. With these data, during the year after March 1, the public can make estimates of actual expenditures relative to the SGR and the performance adjustment to the update for a year.

V. Waiver of Proposed Rulemaking and 30–Day-Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite prior public comment on proposed rules. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

We believe that engaging in proposed rulemaking in the context of this document is impracticable because section 211 of the BBRA requires that this final notice be published in the **Federal Register** not later than 90 days after enactment of this section on November 29, 1999. Moreover, in accordance with section 1871(b)(2) of the Act, notice and comment provisions do not apply where the law establishes a specific deadline for the implementation of a provision and the deadline is less than 150 days after the date of the enactment of the statute in which the deadline is contained. We also believe that it is unnecessary to publish a proposed notice for public comment because we have no discretion with respect to the provisions of this notice. We are implementing the statute as required by the BBRA.

Therefore, we find that notice and comment provisions are not applicable here and we are issuing this notice in final form. We also find that for the above reasons it is prudent to waive the 30 day delay in effective date.

VI. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VII. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless we certify that a notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all physicians and suppliers as small entities. Individuals and States are not included in the definition of a small entity.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. That analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million.

This notice announces only a SGR rate of increase for CY 2000 and does not affect physician expenditures in CY 2000. The SGR announced in this notice will be revised later this year. It is the revised SGR that will affect allowed expenditures for physicians' services through CY 2000 and that will be part of a formula for determining the physician fee schedule update and conversion factor for CY 2001. As indicated above, we will publish the physician fee schedule update for CY 2001 by no later than November 1, 2000. It is that update which will affect expenditures for physicians' services in CY 2001.

We are not preparing an analysis for either the RFA or section 1102(b) of the Act because we have determined, and the Secretary certifies, that this notice will not have a significant economic impact on a substantial number of small entities or on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget

VIII. Federalism

We have reviewed this final notice under the threshold criteria of Executive Order 13132 and have determined that it does not significantly affect the rights, roles, and responsibilities of States.

(Sections 1848(d) and (f) of the Social Security Act) (42 U.S.C. 1395w–4(d) and (f))

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 24, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Approved: March 24, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–8708 Filed 4–4–00; 3:42 pm]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: March 2000

AGENCY: Office of Inspector General, HHS

ACTION: Notice of program exclusions.

During the month of March 2000, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject City, State	Effective date
Program-Related Convictions	
Baez, Eduardo, Lewisburg, PA	04/20/2000
Bizayko, Yuri, Brooklyn, NY	04/20/2000
Bouska Wright, Janet Kay, Wichita, KS	04/20/2000

Subject City, State	Effective date
Broadnax, Deitrich, Irvington, NJ	04/20/2000
Burrus, Gregory A., Roxbury, CT	04/20/2000
Campbell, Vera, Bronx, NY	04/20/2000
Cassara, Carmine, Centereach, NY	04/20/2000
Colbert, Jonathan A., Ballston, NY	04/20/2000
Costa, Lynn A., New Bedford, MA	04/20/2000
Davis, Caroline Yvonne, Tacoma, WA	04/20/2000
Delgado, Ileana, Philadelphia, PA	04/20/2000
Desanto, Gary, Avoca, PA	04/20/2000
Disibio, Joseph, Staten Island, NY	04/20/2000
Glushefski, Francis M., Plymouth, PA	04/20/2000
Gomez, Gerardo, Miami, FL	04/20/2000
Gourdikian, Haig K., Glendale, CA	09/02/1999
Heang, Hoeup Karena, Long Beach, CA	04/20/2000
Hernandez, Linda Porter, Monroe, LA	04/20/2000
Hosea, Claude Thomas, New Smyrna Beach, FL	04/20/2000
Huff, Tracy Michelle Davis, Bryan, TX	04/20/2000
Island Ambulette, Inc., Kings Park, NY	04/20/2000
James, Darren J., Keyport, NJ	04/20/2000
Jamil, Irtafa, Bayside, NY	04/20/2000
Jones-Price, Antoinette, Wendell, NC	04/20/2000
Lemon, Lazarus, Pittsburgh, PA	04/20/2000
Lifechem Inc., Lexington, MA	03/21/2000
Loiseau, Gloria Jean, S Pasadena, CA	04/20/2000
Maldonado, Bernardo, Santa Rosa, PR	04/20/2000
Merriweather, Sue, Lanham, MD	04/20/2000
Morgan, John J. JR., Covington, LA	04/20/2000
Nehorayoff, Mariana, Scarsdale, NY	04/20/2000
Nemeroff, Ronald M., New York, NY	04/20/2000
Newman, Rosanna Kim, Forest Grove, OR	04/20/2000
NMC Homecare, Inc., Lexington, MA	03/21/2000
NMC Medical Products, Inc., Lexington, MA	03/21/2000
Olson, Penny Ann, Eugene, OR	04/20/2000
Parks, Homer Patrick, Weatherford, TX	04/20/2000
Pasekov, Mikhail, Brooklyn, NY	04/20/2000
Patel, Harshadray M., Yonkers, NY	04/20/2000
Paul Jeffrey Wright DDS, Mulvane, KS	04/20/2000
Pelotte, Terry L., S Windham, ME	04/20/2000
Qayyum, Abdul, Teaneck, NJ	04/20/2000
Rivas, Jacinto, Intercession City, FL	04/20/2000
Robinson-Hallam, Beverly, S. Windsor, CT	04/20/2000
Rodriguez, Jesus, Palm Springs, FL	04/20/2000
Schwartz, Douglas A., Lawrence, NY	04/20/2000
Shakhnovich, Gennady, Swampscott, MA	04/20/2000
Shukla, Kishorekumar R., Freehold, NJ	04/20/2000
Skinner, Vicki, Tempe, AZ	04/20/2000
Sophain, Tep M., Kent, WA	04/20/2000
Strum, Thomas C., Mt. Plesant Mills, PA	04/20/2000
Sulaiman, Ihab Tayseer, Oakdale, LA	04/20/2000
Sutton, James L., Chargrin Falls, OH	04/20/2000
Taylor, Jim, Jesup, GA	04/20/2000
Turovsky, Leonid, Brooklyn, NY	04/20/2000
Verian, Richard, Northridge, CA	02/24/2000
Vitale, Jack, Manalapan, NJ	04/20/2000
Walkley, Glenn S., White Deer, PA	04/20/2000
Wright, Paul Jeffrey, Mulvane, KS	04/20/2000
Yemdin, Bella, Brooklyn, NY	04/20/2000
Felony Conviction for Health Care Fraud	
Blum, Jerrold E., Bloomfield, CT	04/20/2000
Burdine, Gertrude, Alderson, VA	04/20/2000
Caturano, John, New York, NY	04/20/2000
Lenehan, Patrick D., Reeders, PA	04/20/2000
Levandowski, Ann M., Biloxi, MS	04/20/2000
Levinstim, Edwin, Goldens Bridge, NY	04/20/2000
Stanton, Tammy Sue, Salem, OR	04/20/2000
Felony Control Substances Conviction	
Grimm, Artith Loann, Daly City, CA	04/20/2000
Parkin, Valarie Coburn, Virginia Beach, VA	04/20/2000
Romosan, Vasile D., Long Island City, NY	04/20/2000
Sluck, Joann Hysock, Shenandoah, PA	04/20/2000
Sorensen, Deborah P., Sacremento, CA	04/20/2000
Ward, Anne Marshall, Troy, PA	04/20/2000
Patient Abuse/Neglect Convictions	
Ayers, Angela Michelle, N. Little Rock, AR	04/20/2000
Bakhtminoo, Reza, Studio City, CA	04/20/2000
Blackwell, Ronald S., Buffalo, NY	04/20/2000
Brown, Christopher T., Holly Hill, SC	04/20/2000
Brown, Connie, New Hebron, MS	04/20/2000
Buckland, Charlene M., Rochester, NY	04/20/2000
Cahee, Larry, Mendenhall, MS	04/20/2000
Centeno, Michelle, Cuddebackville, NY	04/20/2000
Corgnati, Susan, Bridgeville, PA	04/20/2000
Cortez, Cesar C., Lockhart, TX	04/20/2000
Davis, Mellonie Latrice, Stamps, AR	04/20/2000
Fikes, Dora Mae, New Roads, LA	04/20/2000
Gates, Peter Jr., Buffalo, NY	04/20/2000
Genovesi, Bonita A., E. Greenbush, NY	04/20/2000
Guyett, Jodi L., Utica, NY	04/20/2000
Jones, Tashara, Oxford, MS	04/20/2000
Law, Edward A. Jr., Edwards, NY	04/20/2000
Maddox, Jo Ann Lepley, Kermit, TX	04/20/2000
Martinez, Arturo, Jamaica, NY	04/20/2000
Mitchell, Jane Ann, Hot Springs Village, AR	04/20/2000
Moye, Iran, Brooklyn, NY	04/20/2000
Perez, Faustino, Bronx, NY	04/20/2000
Rosier, Marie A., Painesville, OH	04/20/2000
Swain, Walter Leon, Little Rock, AR	04/20/2000
Thompson, Lenora, Heath Springs, SC	04/20/2000
Tyner, Shanita, Rochester, NY	04/20/2000
Victor, Tara M., Hamburg, NY	04/20/2000
Watson, Patricia June, Vilonia, AR	04/20/2000
Williams, Deborah J., Jamestown, NY	04/20/2000
Williams, Vanessa C., W. Columbia, SC	04/20/2000
Woodall, Mary, Stonewall, MS	04/20/2000
Conviction for Health Care Fraud	
Grusd, Ronald Selwyn, Beverly Hills, CA	04/20/2000
Schulman, Susan R., N. Bellmore, NY	04/20/2000
Tumbleson, Alisha Kay, Clinton, AR	04/20/2000
Controlled Substance Convictions	
Benfield, Beverly H., Gate City, VA	04/20/2000
Hertz, Carole E., E. Berlin, PA	04/20/2000
License Revocation/ Suspension/Surrendered	
Appleton, Sue A., Winchester, MA	04/20/2000
Armstrong, Victor Dell, Meridian, MS	04/20/2000
Barlow, Timothy, Enterprise, AL	04/20/2000
Barnes, Timothy Anthony, Brandon, MS	04/20/2000
Bauer-Altizer, Donna E., Caro, MI	04/20/2000
Bayliss, Barbara Ann, Portsmouth, NH	04/20/2000
Bell, Gary John II, Dubois, PA	04/20/2000
Bergey, Patricia Ann, Santa Ana, CA	04/20/2000
Blount, Ronnie, Macon, GA	04/20/2000
Boyer, Billy J., Cadillac, MI	04/20/2000
Bradfield, Diane M., Jackson, MS	04/20/2000
Brewer, Joyce N., Columbia Hgts, MN	04/20/2000

Subject City, State	Effective date
Brown, Joanna Lee, Paso Robles, CA	04/20/2000
Browning, Donald B., Vista, CA	04/20/2000
Burden, Weldon Eugene III, Chesapeake, VA	04/20/2000
Cavallaro, Gaetano V., Poughkeepsie, NY	04/20/2000
Ciotti, Roberta Ceriani, Conneautville, PA	04/20/2000
Cisero, Laura, Newton, CT	04/20/2000
Clayton, Joanne R., Riverside, CA	04/20/2000
Cody, William C., Mansfield, MI	04/20/2000
Colwell, Christina Dawn, Apollo, PA	04/20/2000
Conway, Cristina L., Rockford, IL	04/20/2000
Cooney, Catherine, Manchester, CT	04/20/2000
Coonley, Kevin Gerard, Sacramento, CA	04/20/2000
Coulter, Jerry A., Erie, PA	04/20/2000
Cowley, Beverly J., Lake City, MI	04/20/2000
Curtis, Faye A., Swartz Creek, MI	04/20/2000
Cutler, Vicki Renee, Tampa, FL	04/20/2000
Daly, Maureen A., Bloomsburg, PA	04/20/2000
Davenport, Keith Charles, Camarillo, CA	04/20/2000
Davis, Maxine Cartwright, Weston, CT	04/20/2000
Davis, Bonnie, Montgomery, AL	04/20/2000
Davis, Jami Terrina, Alexander City, AL	04/20/2000
Davis, Shelia L., Greenville, MS	04/20/2000
Degange, Annette West, Pasadena, CA	04/20/2000
Dewitt, Linda Joy Padgett, Sarasota, FL	04/20/2000
Dia, Mohamed F., Torrance, CA	04/20/2000
Dougherty, Linda Hirsch, Hazleton, PA	04/20/2000
Dougovito, Michael F., Manistique, MI	04/20/2000
Dube, Philippe Abel, Edison, GA	04/20/2000
Ellis, Carolyn R., Orrtanna, PA	04/20/2000
Ernest, Judith Ann, Bradenton, FL	04/20/2000
Estes, Joel Alan, Gadsden, AL	04/20/2000
Evans, Kara K., Ariton, AL	04/20/2000
Fagan, Deborah Cieslik, Lancaster, PA	04/20/2000
Feinstein, Debra Ann, E. Stroudsburg, PA	04/20/2000
Fisher, Keith W., Maumelle, AR	04/20/2000
Fleeher, Marian A., N. Miami, FL	04/20/2000
Forberger, Dennis P., Sauk Rapids, MN	04/20/2000
Freeman, Lisa K., Front Royal, VA	04/20/2000
Gates, Tracey, Huntington, CT	04/20/2000
Geary, Penelope, East Hartford, CT	04/20/2000
George, Aimee Renee Cintron, Youngstown, OH	04/20/2000
Gilliland, Cynthia Doan, Sarasota, FL	04/20/2000
Gilmore, Jessica, Unionville, CT	04/20/2000
Glisson, Cynthia Ann Jones, Dover, FL	04/20/2000
Hardy, Patsy Gwen, Sylacauga, AL	04/20/2000
Harrison, Margaret Alice, Birmingham, AL	04/20/2000
Helman, Beth Ellen, Sacramento, CA	04/20/2000
Hicks, Amanda Marisa Herring, Columbia, MS	04/20/2000
Hicks, Sandra H., Newport News, VA	04/20/2000
Higginbotham, Leslie Carol, Crossville, AL	04/20/2000
Himes, Janet M., Bemidji, MN	04/20/2000
Holmes, Randall Nathan, Butler, PA	04/20/2000
Howard, Dawnne P., Eustis, FL	04/20/2000
Hultman, Barry W., N Branford, CT	04/20/2000
Hunter, Katherine Susan, Palatka, FL	04/20/2000
Ianelli, Maria J., Demopolis, AL	04/20/2000
Igwacho, Florence N., Greenbelt, MD	04/20/2000
Issa, Adly Mansour, Hemet, CA	04/20/2000
Jemison, Connie, Birmingham, AL	04/20/2000
Jennings, Thomas Josef, Redway, CA	04/20/2000
Johnson, Randy L., Ellsworth, ME	04/20/2000
Johnston, Anise C., Troy, AL	04/20/2000
Kane, Debbie Cheesen, Jenkintown, PA	04/20/2000
Karaviotis, Karen, Old Saybrook, CT	04/20/2000
Kartell, James P., Andover, MA	04/20/2000
Kashan, Steven, Hicksville, NY	04/20/2000
Keck, Tracey Lynn, Riverside, CA	04/20/2000
Kelly, Colleen Betty Snyder, Lehigh, FL	04/20/2000
King, Carol G., Fredricksburg, VA	04/20/2000
Kristoff, Pamela, Andover, CT	04/20/2000
Kriwox, Diane M., Edinburg, PA	04/20/2000
Lee, Karen L., Bedford, TX	04/20/2000
Lee, Yun Sheng, Redding, CA	04/20/2000
Lessard, Sharon, Westbrook, CT	04/20/2000
Lively, Indrea F., Jasper, AL	04/20/2000
Loll-Van Sickle, Patricia M., Elmer, NJ	04/20/2000
Lorren, Victoria Ann, Gadsden, AL	04/20/2000
Lotz, Margaret, Pottstown, PA	04/20/2000
Lucas, William A., Holt, MI	04/20/2000
MacDonald, John R., Dallas, TX	04/20/2000
Macias, Carlos Orosco Jr., Whittier, CA	04/20/2000
Mack, Michael D., New Baltimore, MI	04/20/2000
Manley, Apartl Dawn, Elkmont, AL	04/20/2000
Marayelle, Judith P., Santa Barbara, CA	04/20/2000
Marin, Philip G., Alameda, CA	04/20/2000
Martin, Angelyn Kinard, Duncanville, AL	04/20/2000
Martin, Ellen R. Bartlett, Huntsville, AL	04/20/2000
McGee, David R., Burlington, VT	04/20/2000
McGovern, Mary Ann, Hartford, CT	04/20/2000
McKenney, Clifton, Waterford, CT	04/20/2000
Mijanovich, James R., Columbus, NC	04/20/2000
Mills, Kay Frances, Los Altos Hills, CA	04/20/2000
Moglen, Leslie J., San Francisco, CA	04/20/2000
Moyer-Touhey, Barbara A., Pittsfield, MA	04/20/2000
Mullins, Danny R., Creola, OH	04/20/2000
Nydegger, Carmen M., St. Louis Park, MN	04/20/2000
O'Donnell, Linda M., New Brighton, MN	04/20/2000
O'Neil, Rhonda, Louisville, KY	04/20/2000
Obanion, Jessica A., Red Wing, MN	04/20/2000
Park, Hae Gun, Arcadia, CA	04/20/2000
Patron, Melinda Loraine, Coral Springs, FL	04/20/2000
Pendergrass, Alva W., Fresno, CA	04/20/2000
Pennucci, Joel Charles, N. Bennington, VT	04/20/2000
Perez, Ramon Luis, Pittsburgh, PA	04/20/2000
Peterson, Darla M., St. Cloud, MN	04/20/2000
Proulex, Dianna, Abington, VA	04/20/2000
Quackenbush, Gail, Wellsboro, PA	04/20/2000
Ralston, Carol J., Minneapolis, MN	04/20/2000
Ramos, Marcos U., Lynn, MA	4/20/2000
Reddick, Kadijatu, Springfield, VA	04/20/2000
Reichen, Kathleen M., Virginia Beach, VA	04/20/2000
Rhee, Ky Young, Tustin, CA	04/20/2000
Richey, Debra G., Shaftsbury, VT	Page 11
Ridgeway, Theresa C., Dyke, VA	04/20/2000
Robinson, Alan J., Swords Creek, VA	04/20/2000
Robinson, Andre, Richmond, VA	04/20/2000
Robinson, James Clifford, Jr., Portland, OR	04/20/2000
Rowland, Vonnie Lee, Los Angeles, CA	04/20/2000
Roy, Sharon, Harrisville, RI	04/20/2000
Sadrai-Nadjafi, Abbas, Beverly Hills, CA	04/20/2000
Samson, Michael Kevin, Morro Bay, CA	04/20/2000
Samuels, Arthur J., Felton, CA	04/20/2000
Savery, Francois L., Las Vegas, NV	04/20/2000
Scott-Hudson, Anne Christine, Chattanooga, TN	04/20/2000
Shah, Rashmikant Kantilal, Bakersfield, CA	04/20/2000

Subject City, State	Effective date
Shanfeld, Norman M., Havertown, PA	04/20/2000
Shere, Joshua, Los Angeles, CA	04/20/2000
Sherin, Patrick R., Minneapolis, MN	04/20/2000
Short, Arlene, Buffalo, NY	04/20/2000
Simington Palardis, Sherrie L., Fergus Falls, MN	04/20/2000
Smith, Philip, N. Bay Village, FL	04/20/2000
Smith, Teri Jean, Riverside, CA	04/20/2000
Srebnack, Debra Renee, Florence, AL	04/20/2000
Stanley, Robert Harvey, Fort Worth, TX	04/20/2000
Stein-Young, Eden, Branford, CT	04/20/2000
Stewart, Beverly Kay, Montgomery, AL	04/20/2000
Stewart, James Allen, Los Angeles, CA	04/20/2000
Sylvia, Michael Dean, Jupiter, FL	04/20/2000
Talbert, Kathryn Condon, Artemas, PA	04/20/2000
Teal, Mary Elizabeth, Gadsden, AL	04/20/2000
Teske, Sheila R., Lyndonville, VT	04/20/2000
Thomason, Robert N., Las Vegas, NV	04/20/2000
Thompson, Deborah L., Annville, PA	04/20/2000
Thongrivong, Phoupasith, Opelika, AL	04/20/2000
Tieszen, Frances Ann, Birmingham, AL	04/20/2000
Trefil, Jon Charles, Alibion, CA	04/20/2000
Tucker, Kenneth M., Cullman, AL	04/20/2000
Tyler, Brenda L., Remington, VA	04/20/2000
Van Dyke, Joel Wilson, Birmingham, AL	04/20/2000
Vance, Vivian Shields, Bartow, FL	04/20/2000
Vandiver, Rise K., Russell, Mt. Olive, AL	04/20/2000
Vemuri, Ramesh Babu, Elgin, IL	04/20/2000
Vicencio, Vaila Sison, Walnut, CA	04/20/2000
Voss, Robin Dawn, Hartselle, AL	04/20/2000
Waite, Verner S., Cypress, CA	04/20/2000
Waller, Parker M., Jr., Greenville, AL	04/20/2000
Wesely, Jo Anna K., St Paul, MN	04/20/2000
Wesner, Robert A., Mountville, PA	04/20/2000
Williams, Cynthia K., Wilkes-Barre, PA	04/20/2000
Williams, Amy A., Shamokin, PA	04/20/2000
Williams, Cheryl L., Ashland, OH	04/20/2000
Wittig, John H., San Diego, CA	04/20/2000
Woodard, Bart Wayne, Mesquite, TX	04/20/2000
Wright, Sonya Cassidy Pride, Batesville, MS	04/20/2000
Wuensch, Kelley, Darien, CT	04/20/2000
Federal/State Exclusion/ Suspension	
Abrams, Irving, Morganville, NJ	04/20/2000
Byrne, Rodolfo, Jamaica, NY	04/20/2000
Oscar, Alvin D., Philadelphia, PA	04/20/2000
Fraud/Kickbacks	
Acord, Ricky D., Montgomery, AL	02/04/2000
Acord, Virginia G., Pike Road, AL	02/04/2000
Acord, Price Darrell; Pike Road, AL	02/04/2000
City Ambulance of Alabama, Montgomery, AL	02/04/2000
Graydon (Owens), Peggy A., Montgomery, AL	02/04/2000
Owned/Controlled by Convicted Excluded	
Brown Chiropractic Graham, TX	04/20/2000
Cole Chiropractic Woodland Hills, CA	04/20/2000
Daniel D. Mathews, D P M, P C, Bronx, NY	04/20/2000
Easley & Easley, Hillsboro, OH	04/20/2000
Family Chiropractic Clinic of Friendswood, TX	04/20/2000
Fatima Medical Center, Inc., Miami, FL	04/20/2000
Hampton Medical Associates, Southampton, PA	04/20/2000
Hayward Chiropractic Health, Hayward, CA	04/20/2000
Jon Colbert, Inc., Monroe, NY	04/20/2000
Lake Tahoe Eyecare, Stateline, NV	04/20/2000
Lighthouse Support Svcs, Inc., Riverhead, NY	04/20/2000
Matthew Chiropractic Clinic, Fort Smith, AR	04/20/2000
Medford Family Chiropractic, Medford, OR	04/20/2000
Richard Clark Chiropractic, San Diego, CA	04/20/2000
Saint Joseph Health Center, San Jose, CA	04/20/2000
Schectman's Pharmacy, Mt. Vernon, NY	04/20/2000
Southgate Health Center, Daly City, CA	04/20/2000
Sunnyside Chiropractic Acciden, Grove City, OH	04/20/2000
Y & I Rental Medical Equip Cor., Miami, FL	04/20/2000
Default on Heal Loan	
Attig, Robert C. Jr., Blue Bell, PA	04/20/2000
Baer, Andrew M., Sharon, PA	04/20/2000
Ball, Thomas, Jr., Detroit, MI	04/20/2000
Bohn, Sara B., California, MO	04/20/2000
Buccialia, Craig M., Willow Grove, PA	04/20/2000
Chun, John H., EL Cajon, CA	04/20/2000
Clark, Freeman L., Johnson City, TN	04/20/2000
Coleman, James H. Jr., San Jose, CA	04/20/2000
Crislip, David F., Elizabethton, TN	02/24/2000
Demopoulos, Constantine, Upper Darby, PA	04/20/2000
Fallman, James M. III, Cresent City, CA	04/20/2000
Farris, Farral W., Roanoke, TX	04/20/2000
Gibson, Geoffrey J., Clearwater, FL	04/20/2000
Gullish, Amy B., Sherman Oaks, CA	04/20/2000
Ha, Dong N., Oklahoma City, OK	04/20/2000
Habbart, Joseph L., Veneta, OR	04/20/2000
Hafer, Kathryn J., Kalamazoo, MI	04/20/2000
Hall, Dudley B., Bridgeport, CT	04/20/2000
Javarone, Richard J., Oakdale, PA	04/20/2000
Kahn, Albert, San Jose, CA	04/20/2000
Kazakowitz, Harriet A., Port Richey, FL	04/20/2000
Kinsey-Green, Joy L., Indianapolis, IN	04/20/2000
Mitchell, Robert Scott, Everett, WA	02/23/2000
Mosrie, Ronnie L., Christianburg, VA	04/20/2000
Murphy, John P., Madison, WI	04/20/2000
Pairot, Alfredo A., Miami, FL	04/20/2000
Parks, Anita J., Bolivar, TN	04/20/2000
Powell, Curtis, Monrovia, CA	04/20/2000
Rodriguez, Luz M., Williamsville, NY	04/20/2000
Sparks, Stacey L., Houston, TX	04/20/2000
Tropeano, Ray, Los Alamitos, CA	04/20/2000
Vickers, Joel B., Holland, MI	04/20/2000

Dated: March 31, 2000.

Joanne Lanahan,

Director, Health Care Administrative Sanctions; Office of Inspector General.

[FR Doc. 00–8824 Filed 4–7–00; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Director's Council of Public Representatives, April 6, 2000, 8:30 AM to April 7, 2000, 1 PM, National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD, 20892 which was published in the **Federal Register** on March 27, 2000, 65 FR 16211.

The meeting will be held on April 6, 2000, from 8:30 AM to 4 PM and April 7, 2000, from 8:30 AM to adjournment.

The meeting is open to the public.

Dated: March 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8798 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Program Project Grant entitled "Roles and Regulations of p53".

Date: April 24—26, 2000.

Time: 7 PM to 12 PM.

Agenda: To review and evaluate grant applications.

Place: Fitzpatrick Manhattan Hotel, 687 Lexington Avenue, New York, NY 10022.

Contact Person: Michael B. Small, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8040, Bethesda, MD 20892, 301/402–0996.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 30, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8797 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: May 18–19, 2000.

Open: May 18, 2000, 8:30 AM to 3 PM.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, Building 31, C Wing, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: May 18, 2000, 3 PM to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C Wing, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Robert Carlsen, Director, Division of Extramural Affairs, Nat. Heart, Lung, and Blood Institute, NIH, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0260.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8804 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of person privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: April 27, 2000.

Open: 8:30 AM to 10 AM.

Agenda: To discuss matters of program relevance.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Closed: 10 AM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 200814.

Contact Person: Jerry Roberts, Scientific Review Administrator, Office of Scientific Review, National Institutes of Health, Building 38A, Bethesda, MD 20892, 301 402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: March 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy

[FR Doc. 00–8800 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee, Act as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIEHS.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Environmental Health Sciences, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIEHS.

Date: May 21–23, 2000.

Closed: May 21, 2000, 8 PM to 9:30 PM.

Agenda: To review and evaluate program information and discuss the review process.

Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27709.

Open: May 22, 2000, 8:30 AM to 5:00 PM.

Agenda: An overview of the organization and conduct of research in the Laboratory of Pharmacology and Chemistry.

Place: Nat. Institute of Environmental Health Sciences, South Campus, Conference Rooms 101 ABC, 111 T. W. Alexander Drive, Research, Triangle Park, NC 27709.

Closed: May 23, 2000, 8:30 AM to Adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Nat. Institute of Environmental Health Sciences, South Campus, Conference Rooms, 101 ABC, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: J. Carl Barrett, Scientific Director/Executive Secretary, Nat. Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–3205.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: April 4, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8785 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institutes of Neurological Disorders and Stroke.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorder and Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: May 14–16, 2000.

Closed: May 14, 2000, 7 PM to 10 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Open: May 15, 2000, 8 AM to 10:40 AM.

Agenda: To discuss program planning and program accomplishments.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Closed: May 15, 2000, 10:40 AM to 11:25 AM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Open: May 15, 2000, 12:25 PM to 3:55 PM.

Agenda: To discuss program planning and program accomplishments.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Closed: May 15, 2000, 3:55 PM to 4:55 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Closed: May 16, 2000, 8:30 AM to Adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Contact Person: Story C Landis, Director, Division of Intramural Activities, NINDS, National Institutes of Health, Building 36, Room 5A05, Bethesda, MD 20892, 301–435–2232.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 4, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8786 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the pubic in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the

discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel Special Emphasis Panel.

Date: April 11, 2000.

Time: 10 AM to 12 PM.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sean O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group Biomedical Research Review Subcommittee.

Date: June 5–6, 2000.

Time: June 5, 2000, 12 PM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Jules R. Selden, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9737, jselden@niaaa.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8787 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Child Health Research Career Development Awards.

Date: April 26, 2000.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Gopal M. Bhatnagar, Scientific Review Administrator, Division of Scientific Review National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: April 4, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8790 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Interdisciplinary Research Careers in Women's Health.

Date: April 24–25, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20853.

Contact Person: Gopal M. Bhatnagar, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: April 4, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8791 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: May 2, 2000.

Time: 3 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd.,

Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: May 10, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle, 1 Washington Circle, NW, Washington, DC 20037.

Contact Person: Lillian M. Pubols, Chief, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, lp28e@nih.gov.

Dated: April 4, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8792 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1– GRB–7 M2.

Date: April 11–13, 2000.

Time: 7:30 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: The Mayflower Hotel on the Park, 15 Central Park West, New York, NY 10023770.

Contact Person: Lakshmanan Sankaran, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building Room 6AS25F, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–6 M1 P.

Date: April 19–21, 2000.

Time: 7:30 p.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza at Dallas Market Center, 7050 Stemmons Freeway, Dallas, TX 75247.

Contact Person: Neal A. Musto, Scientific Review Administrator Review Branch, DEA, NIDDK, Natcher Building Room 6AS–37A, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: April 30–May 2, 2000.

Time: 7:30 pm to 12 pm.

Agenda: To review and evaluate grant applications.

Place: The Majestic 1500 Sutter Street, San Francisco, CA 94109.

Contact Person: Michele L. Barnard, Scientific Review Administrator, Scientific Review Administrator Review Branch, DEA, NIDDK, National Institutes of Health, Bethesda, MD 20892, 301/594–8898.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–5(M1)P.

Date: May 1–3, 2000.

Time: 7:30 pm to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Penn Tower Hotel, on the University of Penn Campus, Philadelphia, PA 19104–4385.

Contact Person: Francisco O. Calvo, Deputy Chief, Review Branch, DEA, NIDDK, National Institutes of Health, Room 6AS37D, Bldg. 45, Bethesda, MD 20892, 301–594–8897.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–D(M3).

Date: May 4, 2000.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: II Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ann A. Hagan, Chief, National Institute of Diabetes, Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Rm. 6AS37, Bldg. 45, Bethesda, MD 20892, (301) 594–8886.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 30, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8794 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal property.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–2(M4).

Date: April 3–5, 2000.

Time: 7 pm to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Sheraton Chapel Hill, One Europa Drive, Chapel Hill, NC 27514.

Contact Person: Shan S. Wong, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS43H, National Institutes of Health, Bethesda, MD 20892, (301) 594–7797.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–2 (M1).

Date: April 27–29, 2000.

Time: 7 pm to 12 pm.

Agenda: To review and evaluate grant applications.

Place: University Centre Hotel, 1535 S.W. Archer Road, Gainesville, FL 32608.

Contact Person: Shan S. Wong, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS43H, National Institutes of Health, Bethesda, MD 20892, (301) 594–7797.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology

and Hematology Research, National Institutes of Health, HHS)

Dated: March 30, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8796 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Chromosome Rearrangements and Mental Retardation.

Date: May 2–3, 2000.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: The Warwick Hotel, 5701 Main Street, Houston, TX 77005.

Contact Person: Norman Chang, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: March 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8799 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. the grant application and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institutes of Mental Health Special Emphasis Panel.

Date: April 3, 2000.

Time: 10 AM to 11 AM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sheila O'Malley, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 5, 2000.

Time: 10 AM to 11 AM.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sheila O'Malley, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8801 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: April 13, 2000.

Time: 11 AM to 12:30 PM.

Agenda: To review and evaluate grant applications.

Place: 45 Natcher Bldg, Rm 5As.25u, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Tommy L. Broadwater, Chief, Grants Review Branch, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25U, Bethesda, MD 20892, 301–594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8802 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby give of meetings of the National Advisory Allergy and Infectious Diseases Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation of other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Microbiology and Infectious Diseases Subcommittee.

Date: June 15–16, 2000.

Closed: June 15, 2000, 8:30 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Open: June 16, 2000, 8:30 am to adjournment.

Agenda: Open program advisory discussions and presentations.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Contact Person: John J. McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Allergy, Immunology and Transplantation Subcommittee.

Date: June 15–16, 2000.

Closed: June 15, 2000, 8:30 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Conference Room F1/F2, 45 Center Drive, Bethesda, MD 20892.

Open: June 16, 2000, 8:30 am to adjournment.

Agenda: Open program advisory discussions and presentations.

Place: Natcher Building, Conference Room F1/F2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: John J. McGowan, Director, Division of Extramural Activities, NIAID, Room 2142. 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee.

Date: June 15–16, 2000.

Closed: June 15, 2000, 8:30 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Open: June 16, 2000, 8:30 am to adjournment.

Agenda: Open program advisory discussions and presentations.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: John J. McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: June 15–16, 2000.

Open: June 15, 2000, 1 pm to 3:30 pm.

Agenda: The meeting of the full Council will be open to the public for general discussion and program presentations.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Closed: June 15, 2000, 3:30 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Contact Person: John J. McGowan, Director, Division of Extramural Activities, NIAID, Room 2142. 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8807 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: June 16, 2000.

Time: 8:30 am to 5:00 pm.

Agenda: The Committee will provide advice on scientific priorities, policy and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps/obstacles to progress.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, Room 4139, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7601, 301–435–3732.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiolgoy and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8808 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural

programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Library of Medicine, Board of Scientific Counselors, Lister Hill Center.

Date: May 18–19, 2000.

Open: May 18, 2000, 9 AM to 1 PM.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communication.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Closed: May 18, 2000, 1:00 PM to 2:00 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigations.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Open: May 18, 2000, 2:00 PM to 5:00 PM.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Open: May 19, 2000, 9:00 AM to 12:00 PM.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communications.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Contact Person: Jackie Duley, Program Assistant, Lister Hill National Center for Biomedical Communications, National Library of Medicine, Bldg 38A, Rm 7n–705, Bethesda, MD, 301–496–4441.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: April 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8789 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Library of Medicine.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of the individual intramural programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Library of Medicine; Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine.

Date: April 24–25, 2000.

Time: April 24, 2000, 7 pm to 10 pm.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Time: April 25, 2000, 8:30 am to 2 pm.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: David J. Lipman, Director, Natl Ctr for Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: April 4, 2000.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8793 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the dislcosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Regents of the National Library of Medicine, Subcommittee on Outreach and Public Information.

Date: May 16, 2000.

Open: 7:30 am to 8:45 pm.

Agenda: Outreach and Public Information Items.

Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine.

Date: May 16–17, 2000.

Open: May 16, 2000, 9 am to 3:25 pm.

Agenda: Administrative Reports and Program Discussion.

Place: National Library of Medicine, Board Room, Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: May 16, 2000, 3:25 pm to 3:45 pm.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Board Room, Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

Open: May 17, 2000, 9:00 am to 12:00 pm.

Agenda: Administrative Reports and Program Discussion.

Place: National Library of Medicine, Board Room, Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine, Extramural Programs Subcommittee.

Date: May 16, 2000.

Closed: 12:15 pm to 1:15 pm.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38A, HPCC Conference Room B1N30Q, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library

Assistance, National Institutes of Health, HHS)

Dated: April 4, 2000.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8794 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, April 4, 2000, 2:00 PM to April 4, 2000, 4 PM, NIH, Rockledge 2, Bethesda, MD, 20892 which was published in the **Federal Register** on March 27,2000, 65 FR 16214.

The meeting will be held on April 6, 2000 from 1:30 PM to 4:00 PM. The location remains the same. The meeting is closed to the public.

Dated: April 3, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8788 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review: Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 4, 2000.
Time: 9:00 AM to 10:00 AM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Nancy Hicks, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 5, 2000.
Time: 1:00 PM to 2:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Thomas A. Tatham, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, tathamt@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 14, 2000.
Time: 10:00 PM to 1:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Betty Hayden, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223, haydenb@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 14, 2000.
Time: 1:30 PM to 3 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Mary Custer, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7850, Bethesda, MD 20892, (301) 435–1164.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 17, 2000.
Time: 9 AM to 5 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Joseph Kimm, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178 MSC 7844, Bethesda, MD 20892, (301) 435–1249.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–1 (02)M..
Date: April 17, 2000.
Time: 2 PM to 4:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Patricia H. Hand, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767, handp@csr.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 18, 2000.
Time: 1:00 PM to 2:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Martin Slater, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, (301) 435–1149.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 18, 2000.
Time: 4 PM to 5:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Bruce Maurer, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1187.

Name of Committee: Center for Scientific Review Emphasis Panel.
Date: April 19, 2000.
Time: 3 PM to 4 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Larry Pinkus, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

Name of Committee: Center for Scientific Review Emphasis Panel.
Date: April 19, 2000.
Time: 5 PM to 6 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Bruce Maurer, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1187.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 29, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8803 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 4, 2000.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Sue Krause, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7848, Bethesda, MD 20892 (301) 435–0681.,

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8805 Filed 4–7–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 12, 2000.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Sue Krause, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7848, Bethesda, MD 20892, (301) 435–0681.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 13, 2000.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 14, 2000.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 VISA(01).

Date: April 14, 2000.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Luigi Giacometti, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 17, 2000.

Time: 1:30 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ron Manning, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892 (301) 435–1723.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 19, 2000.

Time: 1 PM to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 20, 2000.

Time: 8:30 AM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton Hotel, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Abubakar A. Shiakh, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 435–1042.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 20, 2000.
Time: 9:30 AM to 11 AM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: William C. Branche, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.
Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 20, 2000.
Time: 1 PM to 3 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Nancy Hicks, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695
Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 20, 2000.
Time: 2 PM to 3 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Alexander D. Politis, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7812, Bethesda, MD 20892, (301) 435–1225. politisa@csr.nih.gov.
Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 21, 2000.
Time: 1:30 PM to 2:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Nancy Hicks, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695.
Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 21, 2000.
Time: 2 PM to 4 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Anthony C. Chung, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7802, Bethesda, MD 20892, (301) 435–1850.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93,337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 31, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8806 Filed 4–7–00; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–23]

Notice of Submission of Proposed Information Collection to OMB; Certification Regarding Adjustment for Damage or Neglect

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 10, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0349) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Certification Regarding Adjustment for Damage or Neglect.

OMB Approval Number: 2502–0349.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: OMB approval will permit a one-time certification by mortgagees that they have acquired hazard insurance acceptable to HUD at a reasonable rate and that the mortgagee may convey fire damaged properties without a surcharge to the claim.

Respondents: Business or other for-profit.

Frequency of Submission: On Occasion.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
280		1		.50		140.

Total Estimated Burden Hours: 140.
Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 4, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–8826 Filed 4–7–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–22]

Notice of Submission of Proposed; Information Collection to OMB Management Review Report for Unsubsidized Multifamily Housing Programs

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 10, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0259) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB to review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, of applicable, (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Management Review Report for Unsubsidized Multifamily Housing Programs.

OMB Approval Number: 2502–0259.

Form Numbers: HUD–9838.

Description of the Need for the Information and Its Proposed Use: Multifamily housing lenders use the Management Report and Worksheet to evaluate the adequacy of the management at projects and to monitor and evaluate the ongoing management operations and procedures of multifamily projects.

Respondents: Business or other not-for-profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–9838	6,300		1		7		6,300

Total Estimated Burden Hours: 6,300.
Status: Reinstatement with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 4, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–8827 Filed 4–7–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Comprehensive Conservation Plan and Environmental Assessment for Arthur R. Marshall Loxahatchee National Wildlife Refuge in Palm Beach County, FL, and Notice of Meeting To Seek Public Comments on These Documents

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service, Southeast Region, has made available for public review a Draft Comprehensive Conservation Plan and Environmental Assessment for Arthur R. Marshall Loxahatchee National Wildlife Refuge in Palm Beach County, Florida, and plans to hold a public meeting in the vicinity of the refuge to solicit public comments on these documents. The Service is furnishing this notice in compliance with Service comprehensive planning policy, the National Environmental Policy Act, and implementing regulations to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain comments on the proposed plan and the other alternatives considered in the planning policy.

DATES: The Service will hold the public meeting at 6:30 p.m. on April 26, 2000, at the South County Civic Center, 16700 Jog Road, Delray Beach, Florida. The draft plan will be made available for review and comment. Written comments should be submitted no later than May 22, 2000, to the address below.

ADDRESSES: Comments and requests for copies of the draft plan and environmental assessment should be addressed to Mr. Mark J. Musaus, Refuge Manager, ARM Loxahatchee National Wildlife Refuge, 10216 Lee

Road, Boynton Beach, Florida 33437–4796, or by calling 561/732–3684.

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the above address. You may also comment via the Internet to the following address: Mark_Musaus@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at ARM Loxahatchee National Wildlife Refuge, at the above address. Finally, you may hand-deliver comments to the Refuge headquarters office at the above address. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: Arthur R. Marshall Loxahatchee National Wildlife Refuge, located 15 miles southwest of West Palm Beach, Florida, consists of 221 square miles of the remaining northern Everglades. The refuge is one of three large freshwater storage areas surrounded by levees and canals. These storage areas, built by the Army Corps of Engineers, were later placed under the jurisdiction of the South Florida Water Management District. The primary objectives of the refuge, established through an agreement between the Service and the South Florida Water Management District, is to maintain suitable habitat for a variety of wildlife native to the northern Everglades. By implementing the proposed comprehensive conservation plan, the refuge seeks to achieve the following four goals:

(1) Restore and conserve the natural diversity, abundance and ecological function of refuge flora and fauna;

(2) Conserve natural and cultural resources through partnerships, protection and acquisition from willing sellers;

(3) Develop and implement compatible wildlife-dependent recreation and environmental education programs that lead to enjoyable experiences and greater understanding of the Everglades; and

(4) Continue a partnership with the South Florida Water Management District through a new license agreement.

The Draft Comprehensive Conservation Plan/Environmental Assessment evaluates the following four alternatives for managing the refuge over the next 15 years: maintain current management; ecosystem emphasis; biological emphasis; and public use emphasis. The Fish and Wildlife Service believes that ecosystem emphasis is the best alternative to guide the refuge's future direction. In essence, this alternative will:

- Restore and maintain healthy water regimes;
- Reduce exotic and invasive plants;
- Expand the inventory and mapping of wildlife species and habitats;
- Enhance wildlife habitat for migratory and resident song birds; and
- Expand wildlife-dependent and other compatible recreation opportunities.

Dated: April 4, 2000.

Judy L. Jones,

Acting Regional Director.

[FR Doc. 00–8736 Filed 4–7–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–070–1020–XQ]

Resource Advisory Council Meeting Locations and Times

AGENCY: Bureau of Land Management, Interior.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM) council meeting of the Upper Snake River District Resource Advisory Council (RAC) will be held as indicated below. The agenda for this two-day meeting will include a field trip for members on the first day to recreation sites along the South Fork of the Snake River, and discussions on Standards and Guides Monitoring on the second day. The RAC will also hear a presentation from the staff of the Interior Columbia Basin Ecosystem Management Plan (ICBEMP) project. Other agenda items may be added between publication of this notice and the meeting. All meetings are open to the public. The public may present written or oral comments to the council. Each formal council meeting will have a time allocated for hearing public comments. The public comment period for the council meetings is listed below. Depending on the number of persons wishing to comment, and the time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations should contact David Howell at the Upper Snake River District Office, 1405 Hollipark Dr., Idaho Falls, ID 83401, or telephone (208) 524–7559.

DATES AND TIMES: The next meeting will be held May 4–5, 2000 at the BLM's Idaho Falls Field Office, 1405 Hollipark Drive in Idaho Falls, Idaho. The Field Trip to the recreational sites will begin at 1 p.m. on May 4. The RAC meeting will start at 8:30 a.m. on May 5, with public comments scheduled from 8:40–9:10 a.m.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the of the public lands.

FOR FURTHER INFORMATION CONTACT: David Howell, Upper Snake River District, 1405 Hollipark Dr., Idaho Falls, ID 83401, (208) 524–7559.

Dated: March 30, 2000.

Joe Kraayenbrink,

Idaho Falls Field Manager.

[FR Doc. 00–8727 Filed 4–7–00; 8:45 am]

BILLING CODE 4310–GG–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–377 (Review)]

Internal Combustion Industrial Forklift Trucks From Japan

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines,[2] pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on internal combustion industrial forklift trucks from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on April 1, 1999 (64 FR 15786) and determined on July 2, 1999, that it would conduct a full review (64 FR 38475, July 16, 1999). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on August 27, 1999 (64 F.R. 46952). The hearing, scheduled to be held in Washington, DC, on January 25, 2000, was cancelled as a result of a Federal Government closure in Washington, DC due to inclement weather on January 25 and 26, 2000. On January 28, 2000, the schedule was revised (65 FR 5660, February 4, 2000) and all persons who requested the opportunity to be heard at the original hearing were permitted to submit written testimony to the Commission in lieu of the public hearing.

The Commission transmitted its determination in this review to the Secretary of Commerce on April 4, 2000. The views of the Commission are contained in USITC Publication 3287 (April 2000), entitled Internal Combustion Industrial Forklift Trucks from Japan: Investigation No. 731–TA–377 (Review).

Issued: April 5, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–8779 Filed 4–7–00; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Lynn M. Bragg, Commissioner Thelma J. Askey, and Commissioner Deanna Tanner Okun dissenting.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–429 (Review)]

Mechanical Transfer Presses From Japan; Notice of Commission Determination to Conduct a Portion of the Hearing In Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing.

SUMMARY: Upon request of respondent Komatsu Ltd., the Commission has determined to conduct a portion of its hearing in the above-captioned investigation scheduled for April 4, 2000, in camera. See Commission rules 207.24(d), 201.13(m) and 201.36(b)(4) (19 CFR 207.24(d), 201.13(m) and 201.36(b)(4)). The remainder of the hearing will be open to the public. The Commission has determined that the seven-day advance notice of the change to a meeting was not possible. See Commission rule 201.35(a), (c)(1) (19 CFR 201.35(a), (c)(1)).

FOR FURTHER INFORMATION CONTACT: Donnette Rimmer, Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–0663, e-mail drimmer@usitc.gov. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–3105.

SUPPLEMENTARY INFORMATION: The Commission believes that Komatsu, Ltd. has justified the need for a closed session. Komatsu, Ltd. seeks a closed session to allow for a discussion of the U.S. industry's performance and the consequences of the antidumping order. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will begin with public presentations by those supporting continuation of the order and those supporting revocation of the order, with questions from the Commission. In addition, the hearing will include a 30-minute in camera session for a confidential presentation by Komatsu Ltd. and for questions from the Commission relating to the business proprietary information ("BPI"), followed by a 30-minute in camera rebuttal presentation by those supporting continuation of the order. For any in camera session the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation. See 19 CFR 201.35(b)(1), (2). The time for the parties' presentations and rebuttals in the in camera session will be taken from their respective overall allotments for the hearing. All persons planning to attend the in camera portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in Mechanical Transfer Presses from Japan, Inv. No. 731–TA–429 (Review), may be closed to the public to prevent the disclosure of BPI.

Issued: April 3, 2000.

By order of the Commission.

Donna R. Koehnke

Secretary.

[FR Doc. 00–8778 Filed 3–7–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the Consumer Expenditure Surveys (CES). A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before June 9, 2000.

ADDRESSES: Send comments to Sytrina D. Toon, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, N.E., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Sytrina D. Toon, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Expenditure (CE) Surveys collect data on consumer expenditures, demographic information, and related data needed by the Consumer Price Index (CPI) and other public and private data users. The continuing surveys provide a constant measurement of changes in consumer expenditure patterns for economic analysis and for future CPI revisions. The CE Surveys have been ongoing since 1979.

The data from the CE Surveys are used (1) for CPI revisions; (2) to provide a continuous flow of data on income and expenditure patterns for use in economic analysis and policy formulation; and (3) to provide a flexible consumer survey vehicle that is available for use by other Federal Government agencies. Public and private users of price statistics, including Congress and the economic policymaking agencies of the Executive Branch, rely on data collected in the CPI in their day-to-day activities. If the CE Surveys were not conducted on a continuing basis, current information necessary for more timely as well as more accurate updating of the CPI would not be available. In addition, data would not be available to respond to the continuing demand—from the public and private sectors—for current information on consumer spending.

In the Quarterly Interview Survey, each consumer unit (CU) in the sample is interviewed every three months over five calendar quarters. The sample for each quarter is divided into three panels, with CU's being interviewed every three months in the same panel of every quarter. The Quarterly Interview Survey is designed to collect data on the types of expenditures that respondents can be expected to recall for a period of three months or longer. In general the expenses reported in the Interview Survey either are relatively large, such as property, automobiles, or major appliances, or are expenses which occur on a fairly regular basis, such as rent, utility bills or insurance premiums.

The Diary (or record keeping) Survey is completed at home by the respondent family for two consecutive one-week periods. The primary objective of the Diary Survey is to obtain expenditure data on small, frequently purchased items which normally are difficult to recall over longer periods of time.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

The Quarterly Interview Survey is being updated for implementation in April of 2001. The changes made to the forms fall into three categories: (1) Expenditures of new items in the marketplace were added for use in the Consumer Price Index and in CE publications. These include such items as DSL and ISDN services and shopping warehouse clubs. (2) Similar questions were consolidated to make the survey easier and more organized for the respondent. (3) Bracketed categories of responses were added to the income sections to decrease non-response through decreasing respondent burden.

The Consumer Expenditure Surveys continuously make efforts to reduce respondent burden per case by streamlining the questionnaire. Efforts were made in this forms redesign, as follows:

- In several areas field representative instructions were added to make the forms easier to understand for the field representative and the respondent.
- The questionnaire flow was improved by moving similar questions into concise and consolidated sections.
- Wording was changed to use more current terminology.

Once the forms have been in the field the BLS will perform timing tests to determine what impact these changes have had on burden. The Consumer Expenditure Surveys continue to investigate ways to reduce respondent burden, and have plans implement further changes aimed at reducing respondent burden when computer assisted personal interviewing is implemented in 2003.

Type of Review: Revision.
Agency: Bureau of Labor Statistics.
Title: Consumer Expenditure Surveys.
OMB Number: 1220–0050.
Affected Public: Individuals or households.
Total Respondents: 18,216.
Frequency: Quarterly Interview Survey respondents are interviewed quarterly for five consecutive quarters (four time in any one year). Diary Survey respondents complete two consecutive weekly reports.
Total Responses: 68,194.
Average Time Per Response: 87.83 minutes.
Estimated Total Burden Hours: 99,820 hours.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Dated: Signed at Washington, D.C., this 4th day of April 2000.

W. Stuart Rust, Jr.,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 00–8776 Filed 4–7–00; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–1–87]

Applied Research Laboratories, Inc., Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of Applied Research

Laboratories, Inc. (ARL), for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition becomes effective on April 10, 2000 and, unless modified in accordance with 29 CFR 1910.7, continues in effect while ARL remains recognized by OSHA as an NRTL.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, D.C. 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of Applied Research Laboratories, Inc. (ARL), as a Nationally Recognized Testing Laboratory (NRTL). ARL's expansion covers the use of the additional test standards and the additional programs, listed below.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in § 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, OSHA can accept products "properly certified" by the NRTL. OSHA processes applications related to an NRTL's recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish this public notice of its final decision on an application.

ARL submitted a request, dated January 22, 1998 (see Exhibit 6A), to expand its recognition as an NRTL for 181 additional test standards. After performing an initial review of this request, the NRTL Program staff informed ARL that only 93 of the test standards met the requirements of an "appropriate test standard" set forth in 29 CFR 1910.7. In further processing the expansion request, the staff performed an on-site review of ARL's testing facility on June 8–11, 1998, and summarized the results of their evaluation in the on-site review report (see Exhibit 7). Following the review, ARL amended its application in a letter dated July 10, 1998 (see Exhibit 6B) to reduce the number of test standards requested to the 47 listed below. In its July 10 request, ARL also requested recognition for the additional programs.

The NRTL Program staff temporarily withheld its consideration of ARL's requests pending resolution by the NRTL of discrepancies noted during an audit that the staff performed at ARL's facility. ARL responded to these discrepancies in March 1999 and, after additional review, the NRTL Program staff accepted resolution of the discrepancies in September 1999, permitting OSHA to resume processing ARL's expansion request.

OSHA published the required notice in the **Federal Register** (64 FR 68388, 12/7/1999) to announce ARL's expansion application. The notice included a preliminary finding that ARL could meet the requirements for expansion of its recognition, and OSHA invited public comment on the application by February 7, 2000. OSHA received no comments concerning this application.

The most recent prior notices published by OSHA for ARL's recognition covered its initial recognition as an NRTL, which OSHA announced on August 8, 1997 (62 FR 42827), and granted on November 21, 1997 (62 FR 62356).

You may obtain or review copies of all public documents pertaining to the application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2625, Washington, D.C. 20210, telephone: (202) 693–2350. You should refer to Docket No. NRTL–1–97, the permanent record of public information on the ARL recognition.

The current address of the facility (site) that OSHA recognizes for ARL is: Applied Research Laboratories, Inc., 5371 N.W. 161st Street, Miami, Florida 33014

Final Decision and Order

The NRTL Program staff has examined the application, the on-site review report (see Exhibit 7), and other pertinent information. Based upon this examination and the staff's recommendation, OSHA finds that the Applied Research Laboratories, Inc., facility listed above has met the requirements of 29 CFR 1910.7 for expansion of its recognition to include the additional test standards, listed below, subject to the limitations and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of ARL, subject to these limitations and conditions.

Limitations

OSHA hereby expands the recognition of ARL for testing and certification of products to demonstrate conformance to the following forty seven (47) additional test standards. However, OSHA plans to include certain limitations on the recognition of some standards.

The Agency's recognition of ARL, or any NRTL, is always limited to equipment or materials (products) for which OSHA standards require third party testing and certification before use in the workplace. As a result, OSHA's recognition of an NRTL for a test standard excludes any product(s), falling within the scope of the test standard, for which OSHA has no such requirements. OSHA has determined that each standard listed below meets the requirements for an appropriate test standard prescribed in 29 CFR 1910.7(c).

Test Standards

[1] ANSI/ASME A17.5 Elevators and Escalator Electrical Equipment
ANSI Z21.1 Household Cooking Gas Appliances
ANSI Z83.7 Gas-Fired Construction Heaters
ANSI Z83.12 Gas Food Service Equipment—Baking and Roasting Ovens
ANSI Z83.18 Direct Gas-Fired Industrial Air Heaters
ANSI/UL 65 Electric Wired Cabinets
ANSI/UL 67 Electric Panelboards
ANSI/UL 73 Electric-Motor-Operated Appliances
UL 104 Elevator Door Locking Devices and Contacts
ANSI/UL 174 Household Electric Storage-Tank Water Heaters
UL 181 Factory-Made Air Ducts and Air Connectors
ANSI/UL 197 Commercial Electric Cooking Appliances
ANSI/UL 231 Power Outlets
ANSI/UL 325 Door, Drapery, Gate, Louver and Window Operator and Systems
UL 416 Refrigerated Medical Equipment
ANSI/UL 471 Commercial Refrigerators and Freezers
ANSI/UL 474 Dehumidifiers
ANSI/UL 499 Electric Heating Appliances
ANSI/UL 506 Specialty Transformers
ANSI/UL 508 Electric Industrial Control Equipment
UL 544 Electric Medical and Dental Equipment
ANSI/UL 555 Fire Dampers (previously Fire Dampers and Ceiling Dampers)
ANSI/UL 563 Ice Makers

UL 664 Commercial (Class IV) Electric Dry-Cleaning Machines
ANSI/UL 676 Underwater Lighting Fixtures
ANSI/UL 710 Exhaust Hoods for Commercial Cooking Equipment
UL 733 Oil-Fired Air Heaters and Direct-Fired Heaters
ANSI/UL 749 Household Electric Dishwashers
ANSI/UL 778 Motor-Operated Water Pumps
UL 795 Commercial-Industrial Gas-Heating Equipment
ANSI/UL 834 Heating, Water Supply, and Power Boilers—Electric
ANSI/UL 845 Motor Control Centers
ANSI/UL 935 Fluorescent-Lamp Ballasts
[2]ANSI/UL 1004 Electric Motors
ANSI/UL 1026 Electric Household Cooking and Food-Serving Appliances
ANSI/UL 1029 High-Intensity Discharge Lamp Ballasts
ANSI/UL 1081 Electric Swimming Pool Pumps, Filters and Chlorinators
[3]ANSI/UL 1262 Laboratory Equipment
ANSI/UL 1450 Motor-Operated Air Compressors, Vacuum Pumps and Painting Equipment
ANSI/UL 1570 Fluorescent Lighting Fixtures
ANSI/UL 1571 Incandescent Lighting Fixtures
ANSI/UL 1572 High Intensity Discharge Lighting Fixtures
ANSI/UL 1585 Class 2 and Class 3 Transformers
ANSI/UL 1996 Duct Heaters
UL 2021 Fixed and Location-Dedicated Electric Room Heaters
ANSI/UL 2157 Electric Clothes Washing Machines and Extractors
ANSI/UL 2158 Electric Clothes Dryers

[1]Recognition under ANSI/ASME A17.5 is limited to cab construction and associated electrical equipment.

[2] Recognition under ANSI/UL 1004 is limited to 10HP maximum electric motors.

[3] Recognition under ANSI/UL 1262 is limited to sample processing equipment.

The designations and titles of the above test standards were current at the time of the preparation of the preliminary notice, which announced ARL's application for expansion.

Programs and Procedures

OSHA is granting the request by ARL to use the two (2) supplemental programs, listed below, based upon the criteria detailed in the March 9, 1995 **Federal Register** notice (60 FR 12980, 3/9/95). This notice lists nine (9) programs and procedures (collectively, programs), eight of which an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. An NRTL's initial recognition will always include the first or basic program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product. For ARL, the initial recognition also included use of Program 4 (Acceptance of witnessed testing data). The on-site review report indicates that ARL meets the criteria for use of the following additional supplemental programs:

Program 2: Acceptance of testing data from independent organizations, other than NRTLs.
Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents.

OSHA developed the program descriptions to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under a program only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, OSHA does treat these programs as one of the three elements that defines an NRTL's scope of recognition.

Under Appendix A to 1910.7, the Agency has no obligation to provide notice of recognition for these programs. However, The NRTL Program staff has typically included such recognition in a notice when the NRTL has requested it in conjunction with a regular application. When processing an NRTL's request solely to use one or more supplemental programs, the NRTL Program staff informs the NRTL of the decision to grant or deny the request by letter only. If granted, the staff includes the additional program(s) in OSHA's web page for each NRTL.

Conditions

Applied Research Laboratories, Inc., must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA must be allowed access to ARL's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If ARL has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

ARL must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, ARL agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

ARL must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

ARL will continue to meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition;

ARL will continue to meet the requirements for recognition in all areas where it has been recognized; and

ARL will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

Signed at Washington, D.C. this 3rd day of April, 2000.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 00–8775 Filed 4–7–00; 8:45 am]

BILLING CODE 4510–26–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 99–3 CARP DD 95–98]

Distribution of 1995, 1996, 1997, and 1998 Digital Audio Recording Technology Royalties

AGENCY: Copyright Office, Library of Congress.

ACTION: Initiation of arbitration.

SUMMARY: The Copyright Office of the Library of Congress is announcing initiation of the 180-day arbitration period for the distribution of the1995–98 digital audio recording technology ("DART") royalties in the Musical Works Funds.

EFFECTIVE DATE: April 10, 2000.

ADDRESSES: All hearings and meetings for the 1995–98 DART distribution proceeding shall take place in the James Madison Memorial Building, Room LM–414, First and Independence Avenue, SE, Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel ("CARP"), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

Section 251.72 of 37 CFR provides:

> If the Librarian determines that a controversy exists among claimants to either cable, satellite carrier, or digital audio recording devices and media royalties, the Librarian shall publish in the **Federal Register** a declaration of controversy along with a notice of initiation of an arbitration proceeding. Such notice shall, to the extent feasible, describe the nature, general structure and schedule of the proceeding.

The notice published today fulfills the requirements of § 251.72 for the distribution of DART royalties in the Musical Works Funds for the years 1995, 1996, 1997, and 1998.

On May 4, 1999, the Copyright Office published a notice in the **Federal Register** requesting comment as to the existence of a controversy concerning the distribution of the 1995, 1996, 1997, and 1998 DART royalty fees in the Musical Works Funds and consolidating the consideration of the distribution of the 1995–98 Musical Works Funds into a single proceeding. 64 FR 23875 (May 4, 1999). The following parties filed comments and Notices of Intent to Participate: Carl DeMonbrun/ Polyphonic Music, Inc. ("DeMonbrun"); Broadcast Music, Inc. ("BMI"), the American Society of Composers, Authors and Publishers ("ASCAP"), SESAC, Inc. ("SESAC"), the Harry Fox Agency ("HFA"), the Songwriters Guild of America ("SGA"), and Copyright Management, Inc. ("CMI") (collectively the "Settling Parties"); James Cannings/ Can Can Music ("Cannings"); Alicia Carolyn Evelyn ("Evelyn"); and Eugene "Lambchops" Curry/ TaJai Music, Inc. ("Curry").

On September 21, 1999, the Office issued an Order announcing the precontroversy discovery schedule for the proceeding, beginning on November 15, 1999. See Order in Docket No. 99–3 CARP DD 95–98 (September 21, 1999). Prior to commencement of the 45-day precontroversy discovery period, the Office was notified that Cannings and DeMonbrun had settled their respective controversies with the Settling Parties. Thus, the parties who will appear before the CARP in the current proceeding are the Settling Parties, Evelyn, and Curry.

On November 15, 1999, the Settling Parties filed a motion requesting that the controversy be decided on the basis of written pleadings. The Office designated to the CARP the issue of whether to suspend formal hearings and decide the case on the written pleadings. See Order in Docket No. 99–3 CARP DD 95–98 (December 22, 1999).

The September 21, 1999, Order also set the initiation of the arbitration for February 28, 2000. However, the Office's duty to publish every two years a new list of arbitrators eligible to serve on a CARP rendered the February 28 initiation date unworkable. See 37 CFR 251.3. On January 14, 2000, in accordance with § 251.3(b), the Office published the list of arbitrators eligible to serve on a CARP initiated during 2000 and 2001. 65 FR 2439 (January 14, 2000). Because the time period between the publication of the arbitrator list and the February 28 initiation date was not sufficient to complete the selection of arbitrators for this proceeding, the Office reset the initiation of the arbitration to April 10, 2000. See Order in Docket No. 99–3 CARP DD 95–98 (March 14, 2000).

Selection of Arbitrators

Section 802(b) of the Copyright Act instructs the Librarian to select two arbitrators within 10 days of initiation of the proceeding. The Librarian has already completed this task, and the two arbitrators are:

The Honorable John B. Farmakides

The Honorable Harold E. Himmelman

The third arbitrator, who shall serve as Chairperson, will be selected in accordance with section 802(b).

Initiation of Proceeding

Pursuant to § 251.72 of 37 CFR, the Copyright Office of the Library of Congress is formally announcing the existence of controversies in the distribution of digital audio recording technology royalties in the Musical Works Funds for the years 1995, 1996, 1997, and 1998, and is initiating an arbitration proceeding under chapter 8 of title 17 of the United States Code to resolve distribution of these funds. The arbitration proceeding commences on April 10, 2000, and runs for a period of 180 days. The arbitrators shall file their written report with the Librarian of Congress by October 10, 2000, in accordance with § 251.53 of 37 CFR.

Scheduling of the 1995–98 DART royalty distribution proceeding is within the discretion of the CARP. The Library will publish the schedule of the proceedings, as required by 37 CFR 251.11(b), as soon as it is available.

Dated: April 4, 2000.

David O. Carson,

General Counsel.

[FR Doc. 00–8783 Filed 4–7–00; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before May 25, 2000. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the

schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301)713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Army, Deputy Chief of Staff for Intelligence (N1–AU–99–12, 4 items, 4 temporary items). Records relating to Sensitive Compartmented Information (SCI) personnel matters, SCI contractor operations, SCI facility accreditations, and physical security. Files pertain to such subjects as personnel indoctrinations and debriefings, visit requests, periodic investigations, contract security classification specifications, facility assessments and risk analyses, and surveillance countermeasures inspections. Also included are electronic copies of records created using electronic mail and word processing. This schedule allows earlier disposal of recordkeeping copies of these files, which were previously approved for disposal.

2. Department of Commerce, Bureau of Export Administration (N1–476–00–1, 18 items, 18 temporary items). Administrative and operational records of the Information Technology Team that are used to support the processing of data declarations received from the U.S. chemical industry under the Chemical Weapons Convention. Records include chemical determinations, facility agreements, meeting minutes, administrative manuals, chronological files, working papers, and an information system containing data declarations from chemical facilities that have been imaged. Also included are electronic copies of records created using electronic mail and word processing.

3. Department of Health and Human Services, Centers for Disease Control (N1–442–99–2, 6 items, 4 temporary items). Input sources for the Longitudinal Study of Aging, 1984–1990, including interview questionnaire forms, electronic data extracted from Medicare and National Death Index databases, and software and computer manuals used to access and interpret the data. Proposed for permanent retention are the master data files and supporting documentation.

4. Department of the Interior, Bureau of Land Management (N1–49–99–1, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to mineral lease sale files. Also included are recordkeeping copies of files that relate to nominations for parcels that are unavailable for leasing. Recordkeeping copies of other mineral lease sale records were previously scheduled, including final reports and maps, which are scheduled for permanent retention.

5. Department of Justice, United States Marshals Service (N1–527–00–1, 2 items, 2 temporary items). Century Date Conversion (Y2K) records that pertain to Year 2000 efforts. Records relate to the development of plans and strategies, the review of computer systems and applications, remedial efforts, and program reviews. Included are plans, contracts, policy letters, and correspondence. Also included are electronic copies of documents created using electronic mail and word processing.

6. Department of Justice, Drug Enforcement Administration (N1–170–00–1, 9 items, 6 temporary items). Chronological files of the Administrator and Deputy Administrator and records pertaining to the activities of the Executive Assistant and Special Assistant to the Administrator. Also included are electronic copies of documents created using electronic mail and word processing that are associated with files accumulated in the Office of the Administrator. Proposed for permanent retention are the Administrator's subject files, briefing books, appointment schedules, and committee and conference records.

7. Department of Justice, Justice Management Division (N1–60–00–7, 2 items, 2 temporary items). Century Date Conversion (Y2K) records that pertain to Year 2000 efforts. Records relate to the development of plans and strategies, the review of computer systems and applications, remedial efforts, and program reviews. Included are plans, contracts, policy letters, and correspondence. Also included are electronic copies of documents created using electronic mail and word processing.

8. Department of Justice, Federal Bureau of Prisons (N1–129–00–3, 5 items, 3 temporary items). Records accumulated in wardens' offices at correctional facilities. Included are strategic planning records and correspondence files pertaining to such matters as staff meetings, congressional inquiries stemming from inmate complaints, emergency guidelines, awards, program reviews, and weekly activities of component units of the facility. Also included are electronic copies of documents created using electronic mail and word processing. Audiovisual records, such as still and motion pictures, audio tapes, and video tapes, are proposed for permanent retention as are institution-specific supplements that adjust national

policies to meet the needs of individual facilities.

9. Department of Justice, Federal Bureau of Prisons (N1–129–00–4, 4 items, 4 temporary items). Records accumulated at correctional facilities consisting of chronological files, reference/subject files, and records relating to audits of the facility. Also included are electronic copies of documents created using electronic mail and word processing.

10. Department of Justice, Federal Bureau of Prisons (N1–129–00–7, 2 items, 2 temporary items). Chaplain records consisting of such files as correspondence with local churches and religious groups, meeting minutes, and lists of inmates' religious preferences. Also included are electronic copies of documents created using electronic mail and word processing.

11. Department of Justice, Federal Bureau of Prisons (N1–129–00–8, 7 items, 7 temporary items). Records relating to inmate education programs. Included are such records as enrollment listings, general equivalency diploma test scores, lesson plans, files documenting student progress, class transcripts, and minutes of meetings of education advisory committees. Also included are electronic copies of documents created using electronic mail and word processing.

12. Department of Labor, Office of Inspector General (N1–174–00–1, 14 items, 13 temporary items). Records relating to investigations of allegations of fraud, abuse, and violation of laws and regulations relating to agency personnel, programs, and operations. Included are investigative case files, an electronic case tracking system, and an electronic system containing information concerning alleged criminal activity. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of significant investigative case files are proposed for permanent retention.

13. Department of State, Office of the Legal Adviser (N1–59–00–6, 2 items, 2 temporary items). Non-precedent and non-historical extradition case files that were accumulated prior to 1974. Also included are electronic copies of documents relating to extradition case files that are created using electronic mail and word processing. Recordkeeping copies of case files that are historically valuable or established precedents were previously approved for permanent retention. Recordkeeping copies of files postdating 1974 were previously approved for disposal.

14. Department of Transportation, Federal Highway Administration (N1–406–99–2, 2 items, 2 temporary items). Records relating to highway construction and rehabilitation projects on non-Federal property accumulated after 1966. Included are such records as letters of authorization, inspection reports, project agreements, project modification documents, and copies of construction contracts. Also included are electronic copies of documents created using electronic mail and word processing. Financial information concerning projects is included in the agency's Fiscal Management Information System, which was previously approved for permanent retention. Any individual project files identified as historically valuable by the agency will be appraised by NARA on a case-by-case basis.

15. Department of Transportation, Research and Special Programs Administration (N1–467–00–1, 3 items, 3 temporary items). Electronic copies of records created using electronic mail and word processing that are associated with case files accumulated in connection with applications for relief from an agency regulation. This schedule also authorizes the agency to destroy paper records after they have been imaged and to retain scanned files longer than the previously approved retention period if they are needed for reference purposes.

16. Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms (N1–436–00–1, 1 item, 1 temporary item). Product Compliance Branch label applications records, including applications, denials, and related papers. This schedule reduces the retention period for these records, which were previously approved for disposal.

17. Department of the Treasury, Office of the Comptroller of the Currency (N1–101–97–1, 8 items, 8 temporary items). Electronic information systems of the Office of Bank Supervision Policy concerning the assessment and supervision of financial institutions. Included are master files and documentation for the Foreign Branches System, the National Bank Surveillance Video Display System, the Supervisory Monitoring System, and the Text Processing System.

18. Advisory Commission on Electronic Commerce, Agency-wide (N1–220–00–3, 17 items, 9 temporary items). Copies of **Federal Register** notices, video recordings of Commission meetings, press clippings, meeting arrangement files, financial records, research documents used to prepare the Commission's final report, public mail, and electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are such records as the Commission's charter and other records pertaining to its establishment and mission, transcripts of Commission meetings, chronological files, press releases, and the Commission's final report.

19. Armed Forces Retirement Home, Agency-wide (N1–231–00–1, 4 items, 4 temporary items). Records relating to the health care of residents of the Armed Forces Retirement Home, including the United States Soldiers' and Airmen's Home and the United States Naval Home. Included are such records as forms, reports, x-rays, and laboratory findings. Also included are electronic copies of documents created using electronic mail and word processing.

20. Environmental Protection Agency, Agency-wide (N1–412–99–12, 2 items, 2 temporary items). Agendas, meeting minutes, reports, and other records relating to internal agency committees and non-rulemaking work groups, including electronic copies of documents created using electronic mail and word processing. The schedule makes minor changes in the disposition instructions for recordkeeping copies of these files, which were previously approved for disposal.

21. Environmental Protection Agency, Agency-wide (N1–412–99–10, 9 items, 7 temporary items). Electronic and paper records relating to the agency's responsibility under its acid rain program to monitor the emissions of utility plants and the compliance by the utilities with the Clean Air Act. Software associated with three electronic systems is proposed for disposal. Electronic data and related documentation for an electronic system used to document authorizations to emit sulfur dioxide are proposed for disposal as are the data and documentation for a system pertaining to acid rain. The documentation and electronic data associated with the Emissions Tracking System are proposed for permanent retention. This electronic system tracks emissions from utilities under the acid rain program.

22. Federal Energy Regulatory Commission, Agency-wide (N1–138–99–4, 3 items, 3 temporary items). Records relating to planning, administering, and conducting management studies and surveys. Files pertain to such subjects as staffing levels, turnover rates, reference room operations, and duplicating services. Included are final reports, briefing material, work papers, and project plans. Also included are electronic copies of documents created using

electronic mail and word processing. Recordkeeping copies of files relating to substantive organizational changes were previously approved for permanent retention.

23. Federal Retirement Thrift Investment Board, Office of General Counsel (N1–474–00–1, 3 items, 3 temporary items). Electronic copies of documents created using electronic mail and word processing that pertain to legal opinions. This schedule also proposes for disposal an electronic file that contains digests and scanned images of legal opinions and provides for a reduction in the retention period for recordkeeping copies of these opinions, which were previously approved for disposal.

24. National Archives and Records Administration, Agency-wide (N1–64–00–6, 6 items, 6 temporary items). Century Date Conversion (Y2K) policy, planning, and implementation records. Included are such records as project plans, minutes of meetings, decision documents, continuity and contingency plans, documents relating to specific applications and systems reviewed, implementation plans, budget files, and Inspector General inquiries. Also included are electronic copies of documents created using electronic mail and word processing.

Dated: April 4, 2000.

Michael J. Kurtz,

Assistant Archivist for Record Services, Washington, DC.

[FR Doc. 00–8781 Filed 4–7–00; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–289]

AmerGen Energy Company, LLC, Three Mile Island Nuclear Station, Unit 1; Notice of Consideration of Approval of Transfer of Facility Operating License and Conforming Amendment and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating License No. DPR–50 for Three Mile Island Nuclear Station, Unit 1 (TMI–1), held by AmerGen Energy Company, LLC (AmerGen), as the owner and licensed operator. The transfer would result from the acquisition of PECO Energy Company's (PECO's) existing interest in AmerGen by a new generation company. This company, presently referred to in the subject application described below as GENCO, is to be a subsidiary of a new holding company, Exelon Corporation, formed from the proposed merger between PECO and Unicom Corporation (Unicom). The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer. The facility is located in Dauphin County, Pennsylvania.

According to an application for approval filed by AmerGen, AmerGen is a limited liability company formed to acquire and operate nuclear power plants in the United States. British Energy, Inc., and PECO each own 50 percent of AmerGen. Following completion of the merger between Unicom and PECO, GENCO will acquire PECO's existing 50-percent ownership interest in AmerGen. AmerGen, as owned by GENCO and British Energy, Inc., will continue to be responsible for the operation, maintenance, and eventual decommissioning of TMI–1. No physical changes to the facility or operational changes are being proposed in the application.

The proposed amendment to the operating license would add language to the license transfer conditions that were incorporated into the TMI–1 Operating License upon the initial transfer of the license to AmerGen to reflect the transfer of PECO's ownership interest in AmerGen to a new entity.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By May 1, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not, the applicant may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon: Kevin P. Gallen, Esq., Morgan, Lewis & Bockius LLP, 1800 M Street, NW., Washington, DC 20036–5869 (phone 202–467–7462, fax 202–467–7176, or e-mail kpgallen@mlb.com); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by May 10, 2000, persons may submit

written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated February 28, 2000, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http:www.nrc.gov*).

Dated at Rockville, Maryland, this 31st day of March 2000.

For the Nuclear Regulatory Commission.

Timothy Colburn,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–8739 Filed 4–7–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes; Renewal Notice

AGENCY: Nuclear Regulatory Commission.

ACTION: This notice is to announce the renewal of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) for a period of two years.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) has determined that the renewal of the charter for the Advisory Committee on the Medical Uses of Isotopes for the two year period commencing on April 4, 2000, is in the public interest, in connection with duties imposed on the Commission by law. This action is being taken in accordance with the Federal Advisory Committee Act, after consultation with the Committee Management Secretariat, General Services Administration.

The purpose of the ACMUI is to provide advice to NRC on policy and technical issues that arise in regulating the medical use of byproduct material for diagnosis and therapy. Responsibilities include providing guidance and comments on current and proposed NRC regulations and regulatory guidance concerning medical use; evaluating certain non-routine uses of byproduct material for medical use; and evaluating training and experience of proposed authorized users. The members are involved in preliminary discussions of major issues in determining the need for changes in NRC policy and regulation to ensure the continued safe use of byproduct material. Each member provides technical assistance in his/her specific area(s) of expertise, particularly with respect to emerging technologies. Members also provide guidance as to NRC's role in relation to the responsibilities of other Federal agencies as well as of various professional organizations and boards.

Members of this Committee have demonstrated professional qualifications and expertise in both scientific and non-scientific disciplines including nuclear medicine; nuclear cardiology; radiation therapy; medical physics; radiopharmacy; State medical regulation; patient's rights and care; health care administration; medical research; medical dosimetry, and Food and Drug Administration regulation.

FOR FURTHER INFORMATION CONTACT: Betty Ann Torres, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone (301) 415–0191.

Dated: April 4, 2000.

Andrew L. Bates,

Federal Advisory Committee Management Officer.

[FR Doc. 00–8738 Filed 4–7–00; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

Proposed New Appendix to Standard Review Plan (NUREG–0800), Chapter 19, "Use of Probabilistic Risk Assessment in Plant-Specific, Risk-Informed Decisionmaking: General Guidance"

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued for public comment a proposed new appendix to Chapter 19 of its Standard Review Plan (NUREG–0800). This chapter of the Standard Review Plan (SRP) identifies the roles and responsibilities of organizations in the NRC that participate in risk-informed reviews of licensees' proposals for changes to the licensing basis, identifies the types of information that may be used in fulfilling an organization's review responsibilities, and provides general guidance on how the information from a probabilistic risk assessment (PRA) can be combined with other pertinent information in the process of making a regulatory decision.

The proposed appendix is titled "Appendix D—Use of Risk Information in Review of Non-Risk Informed License Amendment Requests." The appendix is being developed to provide guidance to the NRC staff on the use of risk information in those rare instances where license amendment requests appear to meet regulatory requirements but raise significant risk concerns due to some special circumstances associated with the request. The appendix is based on the guidance contained in SECY–99–246, and approved by the Commission for interim use (Staff Requirements Memorandum dated January 5, 2000.)

DATES: The comment period expires May 31, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date. The NRC is also planning to hold a public meeting in Rockville, Maryland, to discuss the proposed appendix before the close of the comment period. The time and location of the meeting will be announced at a later date.

ADDRESSES: Written comments may be submitted to David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Nuclear Regulatory Commission, Washington, DC 20555–0001. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. You may also provide comments via the NRC's website at http://www.nrc.gov by using the e-mail link entitled "NRCREP."

FOR FURTHER INFORMATION CONTACT: Mr. Robert Palla, Office of Nuclear Reactor Regulation, Mail Stop O10H4, Washington, DC, 20555–0001; telephone (301) 415–1095; e-mail: rlp3@nrc.gov.

SUPPLEMENTARY INFORMATION: The guidance in the new appendix will be used by the NRC staff in its reviews of license amendment requests. The appendix is based on proposed guidance documented in SECY–99–246, "Proposed Guidelines for Applying Risk-Informed Decisionmaking in License Amendment Reviews." The Commission approved the use of this

guidance on an interim basis, and directed the staff to finalize the guidance and modify relevant guidance documents ensuring that stakeholders are engaged in this process (Staff Requirements Memorandum dated January 5, 2000.) The purpose of this notice is to inform the public of the proposed new appendix, and the opportunity to comment on the guidance. A final version will be issued upon resolution of public comments and review by the Director, Office of Nuclear Reactor Regulation, the NRC's Committee to Review Generic Requirements (CRGR), the Advisory Committee on Reactor Safeguards (ACRS), and the Commission. In a planned future revision to Regulatory Guide 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," the NRC plans to incorporate compatible guidance that conforms to the new SRP Appendix D.

The proposed new appendix to NUREG–0800, Chapter 19 follows:

Appendix D—Use of Risk Information in Review of Non-Risk-Informed License Amendment Requests

Areas of Review

When a license amendment request complies with the regulations and other license requirements, there is a presumption by the Commission of adequate protection of public health and safety (*Maine Yankee*, ALAB–161, 6 AEC 1003 (1973)). However, circumstances may arise in which new information reveals an unforeseen hazard or a substantially greater potential for a known hazard to occur, such as identification of an issue that substantially increases risk. In such situations, the NRC has the statutory authority to require licensee action above and beyond existing regulations to maintain the level of protection necessary to avoid undue risk to public health and safety. Section 182.a of the Atomic Energy Act of 1954, as amended, and as implemented by 10 CFR 2.102, gives the NRC the authority to require the submittal of information in connection with a license amendment request if NRC has reason to question adequate protection of public health and safety. The licensee may decline to submit such information, but it would risk having the amendment request denied if NRC cannot find that the requested amendment provides adequate protection of public health and safety.

Under unusual circumstances which could introduce significant and unanticipated risks, the NRC staff reviewers would assume the burden of demonstrating that the presumption of adequate protection is not supported by the bases for the existing staff positions despite the fact that currently specified regulatory requirements are met. Instances in which the reviewers would question licensees regarding risk are expected to be rare. The process used for identifying those situations in which risk implications are appropriate to consider and for deciding if undue risk exists is depicted in Figure 1. This process can be used in the review of both licensee-initiated risk-informed license amendment requests, as well as license amendment requests in which the licensee chooses to not submit risk information (*i.e.*, non-risk informed requests.)

License amendment requests will be screened for potential risk implications as part of the license amendment review process. Office-level license amendment review procedures provide guidance on which license amendment requests should be examined at the level of the integrated risk model due to the potential for significant impacts on plant risk [1]. In accordance with the guidance, the risk implications of a non-risk-informed submittal would be discussed with a risk analyst if the submittal:

- Significantly changes the allowed outage time (*e.g.*, outside the range previously approved at similar plants), probability of initiating event, probability of successful mitigative action, functional recovery time, or operator action requirement;
- Significantly changes functional requirements or redundancy;
- Significantly changes operations that affect the likelihood of undiscovered failures;
- Significantly affects the basis for successful safety function; or
- Could create "special circumstances" under which compliance with existing regulations may not produce the intended or expected level of safety, and plant operation may pose an undue risk to public health and safety.

Non-risk-informed license amendment requests judged to have the potential to significantly impact risk would be referred for a more detailed risk evaluation as part of the license amendment review.

Review Guidance and Procedures

For license amendment requests referred for a risk review, the reviewers should assess the requested changes, and the need for and effectiveness of any compensatory measures that might be warranted because of risk considerations, by evaluating the changes relative to the safety principles and integrated decisionmaking process defined in Regulatory Guide (RG) 1.174. The risk acceptance guidelines (Sections 2.2.4 and 2.2.5 of RG 1.174) describe acceptable levels of risk increase as a function of total core damage frequency (CDF) and large early release frequency (LERF) and the manner in which the acceptance guidelines should be applied in the review and decisionmaking process. Reviewers should note that the guidelines serve as a point of reference for gauging risk impact but are not legally binding requirements.

For non-risk informed license amendment requests, the preliminary assessment would be qualitative with a decision based on engineering judgment since quantitative risk information would not generally be presented in submittals that are not risk informed. If "special circumstances" are believed to exist, the reviewers will explore in more detail the underlying engineering issues contributing to the risk concern, and the potential risk significance of the license amendment request.

"Special circumstances" represent conditions or situations that would raise questions about whether there is adequate protection, and that could rebut the normal presumption of adequate protection from compliance with existing requirements. In such situations, undue risk may exist even when all regulatory requirements are satisfied. In general, these situations would not have been identified or specifically addressed in the development of the current set of regulations, and would be important enough to warrant the promulgation of a new regulation (*e.g.*, a risk-informed regulation) if such situations were encountered on a widespread basis. "Special circumstances" may include but not be limited to license amendment requests which, if approved, could:

- Substantially increase the likelihood or consequences of accidents that are risk-significant but beyond the design and licensing basis of the plant, for example: Proposed changes to steam generator (SG) allowable leak rates that meet Part 100 limits based on the design basis source term, but result in a large early release given a severe accident source term; or use of new materials for SG repairs that provide acceptable performance under normal and design basis accident conditions, but a reduced capability to maintain SG tube integrity in high temperature severe accident scenarios.
- Degrade multiple levels of defense, or cornerstones in the reactor oversight process, through plant operations or situations not explicitly considered in the development of the regulations, *e.g.*, advanced applications of digital instrumentation and controls without due consideration of defense-in-depth.
- Significantly reduce the availability/reliability of SSCs that are risk-significant but not required by regulations, *e.g.*, turbine driven AFW pumps provided in response to NUREG–0737, II.E.1.1, or hardened vents in Mark I containments that protect against containment over-pressure failures in accidents beyond the design basis.
- Involve changes for which the synergistic or cumulative effects could significantly impact risk, *e.g.*, large power uprate requests.

If upon further consideration it is believed that approval of the request would compromise the safety principles described in RG 1.174 and substantially increase risk relative to the risk acceptance guidelines contained in the RG, the reviewers should inform NRC management of the risk concerns, and the need to further evaluate the risk associated with the request. The general criteria that should be met are that: (1) The reviewer has knowledge that indicates that the risk impact associated with the requested change is not reflected by the licensing basis analysis, and (2) the reviewer has reason to believe that the magnitude of the risk increase may be sufficient to warrant denial of the request or to warrant attaching

[1] Following approval of the subject SRP changes, the staff will update the license amendment review procedures to include supplemental information on "special circumstances" and other conforming changes.

conditions to its approval of the request, if the request were evaluated in the context of the existing guidance for approval of risk-informed applications.

In such instances, the reviewers with management concurrence should ask the licensee to address the safety principles and the numerical guidelines for acceptable risk increases contained in RG 1.174 in their submittal. The reviewers may alternatively ask the licensee to submit the information needed for the NRC staff to make an independent risk assessment. If a licensee does not choose to address risk, the reviewers should not issue the requested amendment until they have assessed the risk implications sufficiently to determine that there is reasonable assurance that the public health and safety will be adequately protected if the amendment request is approved. A licensee's decision not to submit requested information could impede the staff's review and could also prevent the reviewers from reaching a finding that there is reasonable assurance of adequate protection. A licensee's failure to submit requested information could also be a basis for rejection pursuant to 10 CFR 2.108.

Evaluation Findings

The numerical guidance for CDF and LERF provided in RG 1.174 is intended to provide a basis for finding that there is reasonable assurance of adequate protection. Therefore, situations that exceed these values or violate the other principles would constitute a trigger point at which questions are raised as to whether the proposed change provides reasonable assurance of adequate protection. A more in-depth assessment of the special circumstances, the safety principles, and the issues identified for management attention in Section 2.2.6 of RG 1.174 should then be made in order to reach a conclusion regarding the level of safety associated with the requested change.

In making this assessment, the reviewers should be mindful to clearly differentiate the concept of adequate protection from the numerical risk acceptance guidelines. The guidelines in themselves do not constitute a definition of adequate protection, but provide an appropriate set of criteria to be used in the process for evaluating adequate protection.

It is not the NRC's policy or within the NRC's technical capabilities to allow risk to increase to a point where protection is almost, but not quite, inadequate. As discussed in RG 1.174, the uncertainty in the analyses must be considered in any finding that adequate protection is achieved. The final acceptability of the proposed change should be based on a consideration of current regulatory requirements, as well as on adherence to the safety principles, and not solely on the basis of a comparison of quantitative PRA results with numerical acceptance guidelines. The authority provided by the Atomic Energy Act and current regulations requires rejection of a license amendment request if the NRC is unable to find that adequate protection is provided.

BILLING CODE 7590-01-P

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Figure 1 - Process and Logic for Considering Risk in License Amendment Reviews

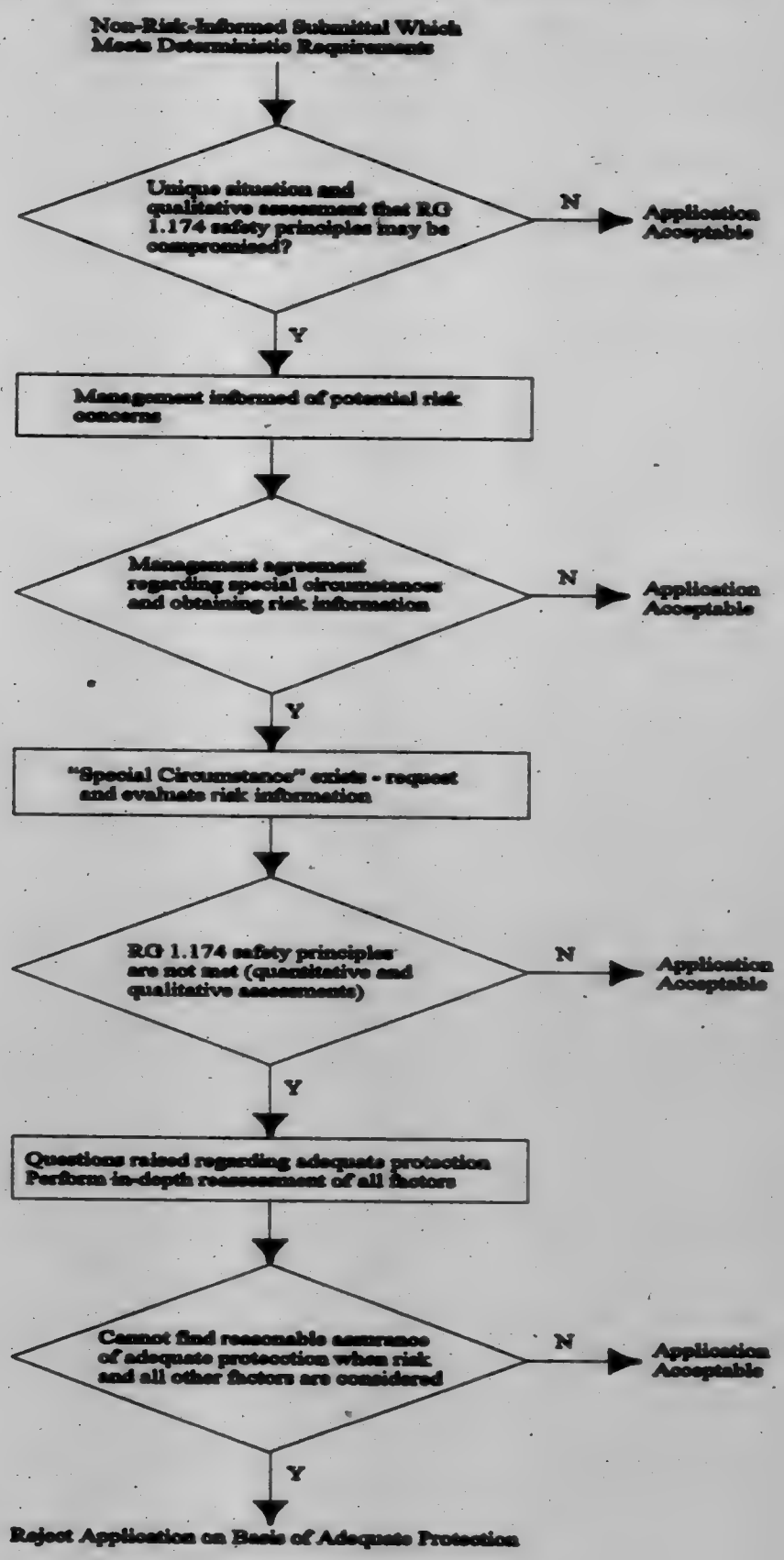

Dated at Rockville, Maryland, this 3rd day of April 2000.

For the Nuclear Regulatory Commission.

Timothy E. Collins,

Deputy Director, Division of Systems Safety and Analysis, Office of Nuclear Reactor Regulation.

[FR Doc. 00–8740 Filed 4–7–00; 8:45 am]

BILLING CODE 7590–01–C

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised and Expired Information Collection: OPM Form 1593

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) will submit to the Office of Management and Budget a request for review of a revised and expired information collection. OPM Form 1593, Federal Employment Information Customer Survey, is used by the job seeking public to express their level of satisfaction with our employment information services. Participation is voluntary.

Approximately 245,000 surveys will be completed annually. We estimate it will take 1 minute to complete this form. The total annual burden is 4,083 hours.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before June 9, 2000.

ADDRESSES: Send or deliver comments to Richard A. Whitford, Director, Washington Service Center/ Employment, Information Office, Office of Personnel Management, 1900 E Street, NW, Room 2455, Washington, DC 20415.

Janice R. Lachance,

Director.

[FR Doc. 00–8839 Filed 4–7–00; 8:45 am]

BILLING CODE 6325–01–U

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Suzy Barker, Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on March 23, 2000 (65 FR 15664). Individual authorities established or revoked under Schedules A and B and established under Schedule C between February 1, 2000, and February 29, 2000 appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established during February 2000.

The following Schedule A authority was revoked:

Corporation for National and Community Service

All positions on the Staff of the Corporation for National Community Service. No new appointment may be under this authority after September 30, 1995. Effective February 30, 2000.

Schedule B

No Schedule B authorities were established or revoked during February 2000.

Schedule C

The following Schedule C authorities were established during February 2000.

Broadcasting Board of Governors

Development Officer to the Director, International Broadcasting Bureau. Effective February 4, 2000.

Confidential Assistant to the Director, Voice of America. Effective February 22, 2000.

Consumer Product Safety Commission

Special Assistant (Legal) to the Commissioner. Effective February 17, 2000.

Department of Agriculture

Confidential Assistant to the Administrator, Rural Business Service. Effective February 8, 2000.

Staff Assistant to the Director, Legislative Liaison, Executive Secretariat and Public Affairs Staff. Effective February 9, 2000.

Senior Policy Director to the Deputy Under Secretary, Policy and Planning. Effective February 9, 2000.

Confidential Assistant to the Administrator, Rural Housing Service. Effective February 17, 2000.

Confidential Assistant Chief, Natural Resources Conservation Service. Effective February 29, 2000.

Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective February 29, 2000.

Department of Commerce

Special Assistant to the Under Secretary for Export Administration. Effective February 7, 2000.

Senior Advisor to the Director, Office of Sustainable Development and Intergovernmental Affairs. Effective February 14, 2000.

Special Counsel to the General Counsel. Effective February 16, 2000.

Department of Defense

Special Assistant to the Under Secretary of Defense for Industrial Affairs. Effective February 9, 2000.

Special Assistant for Counterterrorism/Crisis Management to the Assistant Secretary of Defense for Legislative Affairs. Effective February 10, 2000.

Assistant for Terrorism Consequence Management Policy and Programs to the Deputy Assistant Secretary of Defense. Effective February 10, 2000.

Department of Education

Confidential Assistant to the Director, White House Initiative on Hispanic Education. Effective February 29, 2000.

Confidential Assistant to the Senior Advisor to the Secretary. Effective February 29, 2000.

Department of Energy

Senior Advisor to the Assistant Secretary for Fossil Energy. Effective February 24, 2000.

Public Affairs Specialist to the Director, Office of Public Affairs. Effective February 25, 2000.

Senior Policy Advisor to the Secretary of Energy. Effective February 25, 2000.

Department of Health and Human Services

Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison). Effective February 7, 2000.

Confidential Assistant to the Executive Secretary. Effective February 7, 2000.

Department of Housing and Urban Development

Special Assistant to the Advisor to the Deputy Secretary for Management Reform. Effective February 4, 2000.

Special Events Coordinator to the Advisor to the Deputy Secretary for Management Reform. Effective February 23, 2000.

Department of the Interior

Special Assistant to the Deputy Chief of Staff. Effective February 1, 2000.

Special Assistant to the Deputy Assistant Secretary, Policy and International Affairs. Effective February 1, 2000.

Administrative Aide to the Director of Intergovernmental Affairs. Effective February 24, 2000.

Department of Justice

Chief of Staff to the Director, Community Oriented Policing Services. Effective February 14, 2000.

Special Assistant to the Director, Community Oriented Policing Services. Effective February 18, 2000.

Staff Assistant to the Director, Office of Public Affairs. Effective February 24, 2000.

Secretary (OA)/to the United States Attorney, Northern District of West Virginia. Effective February 29, 2000.

Department of Transportation

Deputy Director to the Director, Office of Congressional Affairs. Effective February 14, 2000.

Senior Advisor to the Administrator, Research and Special Programs Administration. Effective February 18, 2000.

Special Assistant to the Deputy Assistant Secretary for Aviation and International Affairs. Effective February 24, 2000.

Department of the Treasury

Attorney-Advisor to the General Counsel. Effective February 7, 2000.

Export-Import Bank of the United States

Special Assistant to the Chairman. Effective February 3, 2000.

Federal Communications Commission

Assistant Director to the Director, Office of Media Relations. Effective February 10, 2000.

Federal Emergency Management Agency

Director, Office of Public Affairs to the Director, Federal Emergency Management Agency. Effective February 17, 2000.

Federal Energy Regulatory Commission

Regulatory Policy Analyst to the Director, Office of Markets, Tariffs and Rates. Effective February 3, 2000.

Federal Maritime Commission

Special Assistant to the Commissioner. Effective February 10, 2000.

Federal Trade Commission

Confidential Assistant to the Commissioner. Effective February 14, 2000.

Office of Management and Budget

Legislative Analyst to the Associate Director for Legislative Affairs. Effective February 4, 2000.

Small Business Administration

Associate Director for Field Operations to the Associate Administrator for Field Operations. Effective February 1, 2000.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954—1958 Comp., P.218.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–8841 Filed 4–7–00; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974: Computer Matching Programs—OPM/Social Security Administration

AGENCY: Office of Personnel Management.

ACTION: Publication of notice of computer matching to comply with Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988.

SUMMARY: OPM is publishing notice of its computer matching program with the Social Security Administration (SSA) to meet the reporting requirements of Public Law 100–503. The purpose of this match is for SSA to disclose benefit information to OPM to offset specific benefits.

DATES: The matching program will begin in March 2000, or 40 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. Any public comment on this matching program must be submitted within the 30 day public period, which begins on the publication date of this notice. The matching program will continue for 18 months from the beginning date and may be extended an additional 12 months thereafter. The data exchange will begin at a date mutually agreeable between OPM and SSA after March 1, 2000, unless comments are received which will result in a contrary determination. Subsequent matches will take place on a recurring basis until one of the parties advises the other, in writing, of its intention to reevaluate, modify and/or terminate the agreement.

ADDRESSES: Send comments to William J. Washington, Acting Assistant Director for Systems, Finance and Administration, 1900 E. Street NW., Room 4312, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Marc Flaster, (202) 606–2115.

SUPPLEMENTARY INFORMATION: OPM and SSA intend to conduct a computer matching program. The purpose of this agreement is to establish the conditions under which SSA agrees to the disclosure of benefit information to OPM. The SSA records will be used in a matching program with OPM's records on surviving spouses who may be eligible to receive a Supplementary Annuity, disability retirees, and child survivor annuitants, under the Federal Employees' Retirement System (FERS). The benefits payable to these recipients are offset if paid while also in receipt of SSA benefits. OPM will use the SSA data to verify the earnings information provided directly to OPM by the recipients.

Office of Personnel Management.

Janice R. Lachance,

Director.

Report of Computer Matching Program Between the Office of Personnel Management and Social Security Administration

A. Participating Agencies

OPM and SSA.

B. Purpose of the Matching Program

Chapter 84 of title 5, United States Code (U.S.C.), requires OPM to offset specific benefits by a percentage of benefits payable under Title II of the Social Security Act. The matching will enable OPM to compute benefits at the correct rate and determine eligibility for benefits.

C. Authority for Conducting the Match Program

Chapter 84, title 5, United States Code

D. Categories of Records and Individuals Covered by the Match

The two SSA records systems involved in the match are (1) Master Files of Social Security Number (SSN) Holders and SSN Applications, 09–60–0058 (SSA/OSR) last published on March 24, 1998 at 63 FR 14165 and (2) the Master Beneficiary Record, 09–60–0090 (SSA/OSR) last published January 6, 1995 at 60 FR 2144. The OPM records consist of annuity data from its system of records entitled OPM/Central 1–Civil Service Retirement and Insurance Records, last published on October 8, 1999 at 64 FR 54930.

E. Description of Matching Program

As frequently as daily, OPM will provide SSA with an extract from the annuity master file and from pending claims snapshot records via the File Transfer Management System (FTMS). The extracted file will contain identifying information concerning the disability annuitant, child survivor, or surviving spouse who may be eligible for an annuity under FERS. Each record will be matched to SSA's records and requested information transmitted back to OPM.

F. Privacy Safeguards and Security

The personal privacy of the individuals whose names are included in the files transmitted are protected by strict adherence to the provisions of the Privacy Act of 1974 and OMB's "Guidance Interpreting the Provisions of Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988". Access to the records used in the data exchange is restricted to only those authorized employees and officials who need it to perform their official duties. Records matched or created will be stored in an area that is physically safe. Records used during this exchange and any records created by this exchange will be processed under the immediate supervision and control of authorized personnel in a manner which will protect the confidentiality of the records. The records matched and records created by the match will be transported under appropriate safeguards. Both SSA and OPM have the right to make onsite inspection or make other provisions to ensure that adequate safeguards are being maintained by the other agency.

G. Inclusive Dates of the Matching Program

This computer matching program is subject to review by the Office of Management and Budget and the Congress. OPM's report to these parties must be received at least 40 days prior to the initiation of any matching activity. If no objections are raised by either, and the mandatory 30-day public notice period for comments has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective on the date specified above. By agreement between OPM and SSA, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months under the terms set forth in 5 U.S.C. 552(a)(o)(2)(D).

[FR Doc. 00–8640 Filed 4–7–00; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF STATE

[Public Notice No. 3276]

Bureau of Oceans, International Environmental and Scientific Affairs; Public Meeting to Discuss Progress on International Harmonization of Chemical Hazard Classification and Labeling

SUMMARY: The United States Government, through an interagency working group, is preparing for a series of international meetings to further develop a harmonized system of chemical hazard classification and labeling, an effort referred to as the "globally harmonized system" or GHS. The Department of State is announcing a public meeting to review the progress since the last public meeting on October 6, 1999, and to outline the issues likely to arise in upcoming international meetings. The public meeting will take place on Thursday, April 27, 2000, from 10:00 am until noon in Room 311 of the U.S. Environmental Protection Agency, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, Virginia. To facilitate entry, attendees should bring picture identification with them. No advance registration is necessary. For further information, please contact Marie Ricciardone, U.S. Department of State, Office of Environmental Policy (OES/ENV), Room 4325, 2201 C Street NW, Washington, DC 20520; telephone (202) 647–9799; fax (202) 647–5947; e-mail RicciardoneMD@state.gov.

SUPPLEMENTARY INFORMATION: The U.S. Department of State is issuing this notice to help ensure that interested organizations and individuals are aware of and knowledgeable about the effort to internationally harmonize chemical hazard classification and labeling, and have an opportunity to offer comments. Several agencies participate in the U.S. government interagency group, including: Department of State, Environmental Protection Agency, Department of Transportation, Occupational Safety and Health Administration, Consumer Product Safety Commission, Food and Drug Administration, Department of Commerce, Department of Agriculture, Office of the U.S. Trade Representative, and National Institute of Environmental Health Sciences. For more complete information on the harmonization process, please refer to State Department Public Notice 2526, pages 15951–15957 of the **Federal Register** of April 3, 1997.

This meeting will provide an update on GHS activities since the previous public meeting on October 6, 1999 (see Department of State Public Notice 3121 on page 49834 of the **Federal Register** of September 14, 1999):

- Fourth Meeting of the Inter-Organization Program for the Sound Management of Chemicals (IOMC)/ International Labor Organization (ILO) Working Group on Hazard Communication, November 1–4, 1999, Washington, DC;
- Fifteenth Consultation of the IOMC Coordinating Group for the Harmonization of Chemical Classification Systems, November 5, 1999, Washington, DC;
- Fifth Meeting of the Organization for Economic Cooperation and Development Expert Group on Classification Criteria for Chemical Mixtures, November 8–9, 1999, Washington, DC;
- Seventeenth Session of the UN Subcommittee of Experts on the Transport of Dangerous Goods, December 6–16, 1999, Geneva, Switzerland;
- Fifth Meeting of the Expert Group on Aquatic Environmental Hazards, February 14–15, 2000, Paris, France;
- Third Meeting of the OECD Ad Hoc Expert Group on Target Organ/Systemic Toxicity of the Task Force on Harmonization of Classification and Labeling, February 16–17, 2000, Paris, France;

- Ninth Meeting of the OECD Task Force on Harmonization of Classification and Labeling, February 17–18, 2000, Paris, France.

Members of the interagency working group will also provide an overview of the U.S. preparations for upcoming international meetings:

- The Fifth Meeting of the IOMC/ILO Working Group of Hazard Communication, May 22–25, 2000, Geneva, Switzerland will consider hazard communication label elements for the public and specialized audiences, and material safety data sheets for workers;
- The Sixteenth Consultation of the IOMC Coordinating Group for the Harmonization of Chemical Classification Systems, May 26, 2000, Geneva, Switzerland will consider GHS implementation issues;
- The Sixth Meeting of the OECD Expert Group on Classification Criteria for Chemical Mixtures, May 29–31, 2000, Paris, France will develop approaches and options for a harmonized system of classifying mixtures according to their health and environmental hazards;
- The Eighteenth Session of the UN Subcommittee on Experts on the Transport of Dangerous Goods, July 3–13, 2000, Geneva, Switzerland will consider classification criteria for flammable aerosols.

Interested organizations and individuals are invited to present their views orally and/or in writing at the public meeting. Those organizations/individuals that cannot attend the April 27, 2000 meeting, but wish to submit a written comment or remain informed, should provide Eunice Mourning of the Office of Environmental Policy, U.S. Department of State (telephone 202–647–9266; fax 202–647–5947) with their statement and/or name, organization, address, telephone and fax numbers, and e-mail address. All written comments will be placed in the OSHA public docket (H–022H), which is open Monday through Friday, from 10 am until 4 pm, at the Department of Labor, Room 2625, 200 Constitution Avenue NW, Washington, DC; telephone 202–219–7894; fax: 202–219–5046. Interested organizations /individuals that wish to receive future notifications of GHS-related developments by email should contact Mary Frances Lowe of the U.S. Environmental Protection Agency at "lowe.maryfrances@epa.gov".

Dated: April 4, 2000.

Daniel T. Fantozzi,

Director, Office of Environmental Policy, Department of State.

[FR Doc. 00–8782 Filed 4–7–00; 8:45 am]

BILLING CODE 4710–06–U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Change in Meeting Time of the Industry Sector Advisory Committee on Small and Minority Business (ISAC–14)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of change in meeting time.

SUMMARY: A notice was published in the **Federal Register** dated March 28, 2000, Volume 65, Number 60, page 16450, announcing a meeting of the Industry Sector Advisory Committee on Small and Minority Business (ISAC–14) scheduled for April 10, 2000, from 9:30 a.m. to 2:45 p.m. The meeting was to be opened to the public from 9:30 a.m. to 10:30 a.m. and again from 11 a.m. to 2:45 p.m. and closed to the public from 10:30 a.m. to 11 a.m. However, due to scheduling conflicts the meeting has been rescheduled from 9:15 a.m. to 3 p.m. The meeting will be closed to the public from 9:15 a.m. until 10 a.m. and opened to the public from 10 a.m. to 3 p.m.

FOR FURTHER INFORMATION CONTACT: Ladan Manteghi, Office of the United States Trade Representative, (202) 395–6120.

Pate Felts,

Assistant U.S. Trade Representative.

[FR Doc. 00–8844 Filed 4–7–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Tampa International, Tampa, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tampa International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before May 10, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, Federal Aviation Administration, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822–5024.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Louis E. Miller, Executive Director of the Hillsborough County Aviation Authority at the following address: Tampa International Airport, Terminal Building, 3rd Level, Blue Side, Tampa, Florida 32622.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Hillsborough County Aviation Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Susan A. Moore, Program Manager, Orlando Airports District Office, Federal Aviation Administration, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822–5024, (407) 812–6331, extension 20. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tampa International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 23, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Hillsborough County Aviation Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 7, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–04–C–00–TPA.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July 1, 2002.

Proposed charge expiration date: October 1, 2007.

Total estimated net PFC revenue: $124,728,400.

Brief description of proposed project(s): Airside E development; Departure level expansion and modernization; Purchase passenger loading bridges; Taxiway J extension; Reconstruct portion Taxiway A.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On-demand air taxi/commercial operators that (1) do not enplane or deplane passengers at the Authority's main passenger terminal buildings, or (2) enplane less than 500 passengers per year at the Airport.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Hillsborough County Aviation Authority.

Issued in Orlando, Florida on March 23, 2000.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 00–7858 Filed 4–7–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Worcester and Auburn, Massachusetts

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Worcester and Auburn, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Jamie Sikora, Area Engineer, Federal Highway Administration, 55 Broadway, 10th Floor, Cambridge, MA 02142, Telephone: (617) 494–2481; or Michael E. Miller, Project Manager, Environmental Division, Massachusetts Highway Department, 10 Park Plaza, Boston, MA 02116, Telephone: (617) 973–8290.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Massachusetts Highway Department (MassHighway), will prepare an Environmental Impact Statement (EIS) on a proposal to study project alternatives potentially involving new roadway construction and major improvements to existing roads in the southwestern section of the City of Worcester and in the Town of Auburn, Massachusetts.

The project's goal is the resolution of long-standing accessibility limitations that impact local and regional travel conditions. It is intended that the project will provide improved conditions between Route 9 in the vicinity of Webster Square in Worcester and the Interstate Highway System (I–290 and I–90). It is anticipated that this improved accessibility will also benefit the on-going revitalization of the Worcester Regional Airport and the degree to which the airport can contribute to the regional airport system.

Alternatives under consideration include: (1) Taking no action (No Build); (2) the Webster Street alternative; (3) the Hope Avenue alternative; (4) the Oxford Street alternative; and (5) other feasible and prudent alternatives which may be identified during the course of the EIS. Build alternatives may include limited access highway construction on a new location, or an improvement to existing alignments.

Materials describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public forums will be held, beginning in late March 2000, and continue thru the course of the study. On January 10, 2000 a public scoping meeting was held by the Massachusetts Secretary of Environmental Affairs where comments on the scope of the study were heard, and the Secretary issued a Certificate on the Environmental Notification Form (ENF) and the scope for the Environmental Impact Report (EIR). A public meeting in April 2000 will also provide an opportunity for the public to comment on the scope for the study. Advance public notice of the time and place of this meeting will be given. A formal scoping meeting with the appropriate Federal agencies will also be held during this time frame. Upon completion of the Draft EIS, a Notice of Availability will be published in the **Federal Register** to provide information on the availability of the document for public and agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interest parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

, Issued on: March 3, 2000.

Alexander Almeida,

Project Delivery Team Leader.

[FR Doc. 00–8818 Filed 4–7–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2000–7184]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD) intentions to request approval for three years of a new information collection titled, "Voluntary Intermodal Sealift Agreement (VISA)."

DATES: Comments should be submitted on or before June 9, 2000.

FOR FURTHER INFORMATION CONTACT: Raymond R. Barberesi, Director, Office of Sealift Support, MAR–630, Room 7307, Maritime Administration, 400 Seventh Street, SW, Washington, D.C. 20590, telephone number: 202–366–2323 or fax 202–493–2180. Copies of this collection can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Voluntary Intermodal Sealift Agreement (VISA).

Type of Request: Approval of a new information collection.

OMB Control Number: 2133–(NEW).

Form Number: MA–1020.

Expiration Date of Approval: Three years from the date of approval.

Summary of Collection of Information: This information collection is in accordance with Section 708, Defense Production Act, 1950, as amended, under which participants agree to provide commercial sealift capacity and intermodal shipping services and systems necessary to meet national defense requirements. In order to meet national defense requirements, the Government must assure the continued availability of commercial sealift resources.

Need and Use of the Information: The information collection is needed by MARAD and the Department of Defense (DOD), including representatives from the U.S. Transportation Command and its components, to evaluate and assess the applicants eligibility for participation in the VISA program. The information will be used by MARAD and the U.S. Transportation Command and its components to assure the continued availability of commercial sealift resources to meet the DOD's military requirements.

Description of Respondents: Operators of qualified dry cargo vessels.

Annual Responses: 40 responses.

Annual Burden: 200 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, D.C. 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., EDT. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

Dated: April 4, 2000.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 00–8731 Filed 4–7–00; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2000–7185]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel FAIR TRADES.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S. build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before May 10, 2000.

ADDRESSES: Comments should refer to docket number MARAD–2000–7185.

Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., S.W., Washington, D.C. 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR 832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (less than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commentor's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR 388.

Vessel Proposed for Waiver of the U.S.-build Requirement:

(1) Name of vessel and owner for which waiver is requested: Name of vessel: FAIR TRADES Owner: Michael and Frances Plitman.

(2) Size, capacity and tonnage of vessel: According to the Applicant "FAIR TRADES is 50 feet long, and has a gross tonnage of 35 tons as calculated pursuant to 46 U.S.C. 14502, berths for 8 passengers for overnight charters, and can comfortably accommodate up to 12 passengers for day charters."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "We intend to operate FAIR TRADES on day and overnight charter trips on the Chesapeake Bay and its tributaries for up to 12 passengers. We intend to specialize in providing combination sailing/golfing trips while also offering more traditional sailing cruises. FAIR TRADES is berthed in Annapolis and most charters will operate within 50 nautical miles of the mouth of the Severn River."

(4) Date and place of construction and (if applicable) rebuilding. Date of construction: 1990, place of construction: France.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "Approval of this waiver will have minimal impact on other commercial passenger vessel operators. Most U.S. built vessels engaged in similar types of charters offer some kind of unique facilities or layout. FAIR TRADES was originally built for the charter trade in the Caribbean and has a unique, 4 cabin layout ideally suited for golfing groups. There are very few similarly constructed U.S. built vessels which is why we chose to buy this French boat. The design has been immensely popular in the islands and we believe it will be successful here. FAIR TRADES will not be competing with the large majority of coastwise operators that offer daily excursions. We have absolutely no interest in providing hourly harbor tour type services. Rates for chartering FAIR TRADES will be based on comparable market prices for similar vessels regardless of place of construction, most of which are operated in "bareboat" charter. There will be no attempt to "undercut" competitors; in fact, we are seeking to make a profit based on quality of service—not volume. Therefore, our

rates will be comparable to other high end charters. There are many foreign-built and U.S.-built boats, including French-built BENETEAUs, that operate legally in the Bareboat trade. It is these types of vessels with which we will really compete and their owners are not truly in the commercial service—they are individuals looking to offset the high costs of boat ownership."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "Any impact on domestic shipbuilders should be positive. In fact, successful operations with FAIR TRADES may stimulate interest among U.S. builders to design and construct similar type vessels. Since we purchased FAIR TRADES, we have spent over $50,000 for U.S. manufactured equipment to upgrade her thereby helping the local marine industry. All repair work contracted for has been performed by U.S. yards. It should be evident that FAIR TRADES is, in fact, stimulating many related marine industries."

Dated: April 4, 2000.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–8732 Filed 4–7–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** notice with a 60-day comment period was published on December 13, 1999 [64 FR 69582–69583].

DATES: Comments must be submitted on or before May 10, 2000.

FOR FURTHER INFORMATION CONTACT: Marvin Levy at the National Highway Traffic Safety Administration, Office of Research and Traffic Records (NTS–31), 202–366–5597, 400 Seventh Street, SW, Room 6240, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Five State Survey of Alcohol Targets of Opportunity.

OMB Number: 2127–New.

Type of Request: New information collection.

Abstract: The prevention of alcohol-impaired driving is one of NHTSA's top priorities in reducing deaths and injuries from motor-vehicle crashes. The Partners in Progress goal is to reduce the number of alcohol related fatalities from 15,935, in 1998 to 11,000 by the year 2005. In support of this goal, five states were awarded cooperative agreements by NHTSA to demonstrate and evaluate the effectiveness of traffic safety programs that combine increased law enforcement efforts with substantial publicity about these programs. These states were selected because of their potential for reducing the substantial number of percentage of alcohol related fatalities occurring each year within their state.

Affected Public: Those individuals and law enforcement officials from the five states evaluated to reducing driving after drinking.

Estimated Total Annual Burden: 2,499 hours.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, D.C., on April 4, 2000.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 00–8730 Filed 4–7–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–7002]

Notice of Receipt of Petition for Decision that Nonconforming 1976–1985 Rolls Royce Corniche Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1976–1985 Rolls Royce Corniche passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1976–1985 Rolls Royce Corniche passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 10, 2000.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1976–1985 Rolls Royce Corniche passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1976–1985 Rolls Royce Corniche passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1976–1985 Rolls Royce Corniche passenger cars to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1976–1985 Rolls Royce Corniche passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1976–1985 Rolls Royce Corniche passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence . . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver from the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: replacement of the convex passenger side rearview mirror.

Standard No. 114 *Theft Protection*: installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems*: rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection*: (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, and with lap belts at both rear outboard and rear center designated seating positions.

Standard No. 214 *Side Impact Protection*: installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity*: installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the non-U.S. certified 1976–1985 Rolls Royce Corniche passenger cars must be reinforced or U.S.-model bumper components must be installed to comply with the Bumper Standard found in 49 CFR Part 581.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 5, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 00–8742 Filed 4–7–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S.

Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–4535

Key to "Reasons for Delay"

1. Awaiting additional information from applicant.

2. Extensive public comment under review.

3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.

4. Staff review delayed by other priority issues or volume of exemption applications.

Meaning of Application Number Suffixes.

N—New application
M—Modification request
PM—Party to application with modification request

Issued in Washington, DC, on April 4, 2000.

J. Suzanne Hedgepeth,
Director, Office of Hazardous Materials Exemptions and Approvals.

New Exemption Applications

Application No.	Applicant	Reason for delay	Estimated date of completion
11767–N	Ausimont USA, Inc., Thorofare, NJ	1	05/31/2000
11862–N	The BOC Group, Murray Hill, NJ	4	05/31/2000
11927–N	Alaska Marine Lines, Inc., Seattle, WA	4	05/31/2000
12106–N	Air Liquide America Corporation, Houston, TX	4	05/31/2000
12125–N	Mayo Foundation, Rochester, MN	4	05/31/2000
12142–N	Aristech Chemical Corp., Pittsburgh, PA	4	05/31/2000
12146–N	Luxfer Gas Cylinders, Riverside, CA	1	04/28/2000
12148–N	Eastman Kodak Company, Rochester, NY	4	05/31/2000
12158–N	Hickson Corporation, Conley, GA	4	05/31/2000
12181–N	Aristech, Pittsburgh, PA	4	05/31/2000
12205–N	Independent Chemical Corp., Glendale, NY	4	04/28/2000
12248–N	Ciba Specialty Chemicals Corp., High Point, NC	4	04/28/2000
12277–N	The Indian Sugar & General Engineering Corp. ISGE, Haryana, IX	1	04/28/2000
12280–N	Combined Tactical Systems, Inc., Jamestown, PA	4	04/28/2000
12281–N	ABS Group, Inc., Houston, TX	4	04/28/2000
12290–N	Savage Industries, Inc., Pottstown, PA	4	04/28/2000
12992–N	Westway Trading Corporation, New Orleans, LA	4	04/28/2000
12293–N	Intercontinental Packaging Corp., Tuckahoe, NY	4	04/28/2000
12297–N	Applied Companies, Valencia, CA	1	05/31/2000
12301–N	Niklor Chemical Co., Long Beach, CA	4	04/28/2000
12307–N	Kern County Dept. of Weights & Measures, Bakersfield, CA	4	05/31/2000
12316–N	The Dow Chemical Co., Channahon, IL	4	04/28/2000
12325–N	Lifeline Technologies, Inc., Sharon Hill, PA	4	04/28/2000
12332–N	Automotive Occupant Restraints Council, Lexington, KY	4	04/28/2000
12333–N	BFI, Atlanta, GA	4	04/28/2000
12338–N	Aeronex, Inc., San Diego, CA	4	04/28/2000
12339–N	BOC Gases, Murray Hill, NJ	4	04/28/2000
12341–N	Space Systems/Loral, Palo Alto, CA	4	06/30/2000
12343–N	City Machine & Welding, Inc. of Amarillo, Amarillo, TX	1	04/28/2000
12350–N	BAC Technologies, Ltd., West Liberty, OH	4	04/28/2000
12351–N	Naleo/Exxon Energy Chemicals, L.P., Freeport, TX	4	05/31/2000
12353–N	Monson Companies, South Portland, ME	4	05/31/2000
12355–N	Union Tank Car Company, East Chicago, IN	4	05/31/2000
12356–N	Memorial Healthcare System, Pembroke Pines, FL	4	05/31/2000
12359–N	Reilly Industries, Inc., Indianapolis, IN	4	04/28/2000
6611–M	Gardner Cryogenics, Lehigh Valley, PA	1	05/31/2000
6765–M	Gardner Cryogenics, Lehigh Valley, PA	1	05/31/2000
7277–M	Structural Composites Industries, Pomona, CA	4	05/31/2000
8308–M	Tradewind Enterprises, Inc., Hillsboro, OR	4	05/31/2000
8556–M	Gardner Cryogenics, Lehigh Valley, PA	4	04/28/2000
9266–M	ERMEWA, Inc., Houston, TX	4	05/31/2000
10480–M	Gardner Cryogenics, Lehigh Valley, PA	1	05/31/2000
10656–M	Conf. of Radiation Control Program Directors, Inc., Frankfort, KY	4	05/31/2000
10672–M	Burlington Packaging, Inc., Brooklyn, NY	4	05/31/2000
10821–M	BFI Waste Systems of North America, Inc., Atlanta, GA	4	05/31/2000
10921–M	The Procter & Gamble Company, Cincinnati, OH	1	05/31/2000
10962–M	International Compliance Center, Mississauga ON L4Z 1X8, CA	4	05/31/2000
10977–M	Federal Industries Corporation, Plymouth, MN	4	05/31/2000
10987–M	Air Products and Chemicals, Inc., Allentown, PA	4	04/28/2000
11186–M	Cryenco, Inc., Denver, CO	4	05/31/2000
11248–M	HAZMATPAC, Houston, TX	4	05/31/2000
11327–M	Phoenix Services Limited Partnership, Pasadena, MD	4	05/31/2000
11406–M	Conf. of Radiation Control Program Directors, Inc., Frankfort, KY	4	04/28/2000
11537–M	JCI Jones Chemicals, Inc., Milford, VA	4	05/31/2000
11749–M	Union Tank Car Company, East Chicago, IN	4	05/31/2000
11769–M	Great Western Chemical Company, Portland, OR	4	05/31/2000
11769–M	Great Western Chemical Company, Portland, OR	4	04/28/2000
11769–M	Hydrite Chemical Company, Brookfield, WI	4	05/31/2000
11798–M	Air Products and Chemicals, Inc., Allentown, PA	1,4	05/31/2000

NEW EXEMPTION APPLICATIONS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
11903–M	Comptank Corporation, Bothwell, Ontario, CA	4	04/28/2000
12074–M	Van Hool NV, B–2500 Lier Koningshooikt, BG	1	04/28/2000
12178–M	STC Technologies, Inc., Bethlehem, PA	1	04/28/2000

[FR Doc. 00–8729 Filed 4–7–00; 8:45 am]
BILLING CODE 4910–60–M

TRADE DEFICIT REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S. Trade Deficit Review Commission.

ACTION: Notice of open public hearing.

SUMMARY: Notice is hereby given of the following hearing of the U. S. Trade Deficit Review Commission.

Name: Murray Weidenbaum, Chairman of the U.S. Trade Deficit Review Commission

The Commission is mandated to report to the Congress and the President on the causes, consequences, and solutions to the U. S. trade deficit. The purpose of this public hearing is to take testimony on (1) agricultural trade: its importance, opportunities, obstacles, and challenges for U.S. farmers and rural communities as well as its impacts; (2) U.S.-Canada trade issues; and (3) international trade for small businesses in the United States: its importance, opportunities, challenges and impacts. Witnesses will also be invited to propose policy changes.

Confirmed witnesses include Governor Mel Carnahan of Missouri and Governor Bill Graves of Kansas; Dr. Thomas M. Hoenig, President, and Dr. Alan Barkema, Vice President, of the Federal Reserve Bank of Kansas City; Leland Swenson, President of the National Farmers Union; Daniel Amstutz, President of the North American Export Grain Association; Roger Johnson, North Dakota Agriculture Commissioner; Professors Neil Harl and Dermot Hayes, Iowa State University; Professor Susan Feinberg, University of Maryland; and Professor Peter K. Kresl, Bucknell University.

Background

In fulfilling its statutory mission, the Commission is holding field hearings to collect input from industry and labor leaders, government officials, leading researchers, other informed witnesses, and the public. The Commission has already held hearings in Washington, D.C., Pittsburgh, San Francisco, Seattle, Dallas, and New York on various aspects of our trade relations. Information on these hearings can be obtained from the USTDRC website *www.ustdrc.gov*.

Professor Murray Wiedenbaum of Washington University, St. Louis, who is a former Chairman of the President's Council of Economic Advisors, chairs the Commission. The Vice Chairman is Professor Dimitri Papadimitriou, President of The Jerome Levy Economics Institute at Bard College, Annandale-on-Hudson, New York. The Kansas City, MO, hearing will be chaired by Commissioner Wayne D. Angell, Chief Economist and Senior Managing Director of Bear Stearns & Co., Inc., who is a former Vice Chairman of the Board of Governors at the Federal Reserve.

Purpose of Hearing

In light of the ongoing massive trade and current account deficits incurred by the United States, progress in improving U.S. exporters' access to foreign markets is critically important. The failure of the WTO Ministerial in Seattle to come up with a negotiating agenda for a new round of multilateral trade negotiations highlights how the consensus on reducing barriers to trade has fractured. Rebuilding the consensus on trade issues in the United States is of critical importance in addressing the large U. S. trade deficits. The work of the Commission, by analyzing the U.S. trade deficits in a non-partisan manner with the input of leading experts, will provide a reasoned and informed answer on how to respond to the trade deficit and its consequences. The findings of the Commission, while not binding, will likely form the basis for Congressional consensus building on trade policy as we enter the new century.

There will be two sessions, one in the morning and one in the afternoon, for presentations by invited witnesses on their views on the interrelationship between the trade deficit and the topics of the hearing. There will be a question and answer period between the Commissioners and the witnesses. Public participation is invited and there will be an open-mike session for public comment at the conclusion of the afternoon session. Sign-up for the open-mike session will take place in the afternoon and will be on a first come first served basis. Each individual or group making an oral presentation will be limited to a total time of 3 minutes. Because of time constraints, parties with common interests are encouraged to designate a single speaker to represent their views.

DATES AND TIMES: Wednesday, April 26, 2000, 9:00 AM–5:30 PM Central Standard Time inclusive.

ADDRESSES: The hearing will be held at the Federal Reserve Bank of Kansas City, located at 925 Grand Boulevard, Kansas City, Missouri 64198. Public seating is limited to approximately 50 seats and will be on a first come first served basis. Commercial public parking lots are available within the vicinity of the Bank.

SECURITY REQUIREMENTS: The Federal Reserve Bank of Kansas City is a secure facility and everyone must abide by security procedures. Everyone entering the facility is required to have a picture identification.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the hearing or who wishes to submit oral or written comments should contact Kathy Michels, Administrative Officer for the U.S. Trade Deficit Review Commission, 444 North Capitol Street, NW, Suite 706, Washington, DC 20001; phone 202/624–1409; or via e-mail at: *kmichels@sso.org*.

PROVIDING ORAL OR WRITTEN COMMENTS AT THE KANSAS CITY HEARING: Copies of the draft meeting agenda, when available, may be obtained from the U.S. Trade Deficit Review Commission by going to the Commission's website at www.ustdrc.gov. The Commission requests that written public statements submitted for the record be brief and concise and limited to two pages in length. Written comments (at least 35 copies) must be received at the USTDRC Headquarters Office in Washington, DC by April 17, 2000. Comments received too close to the hearing date will normally be provided to the Commission Members at its hearing.

Written comments may be provided up until the time of the hearing.

Authority: The Trade Deficit Review Commission Act, Public Law No.105–277, Div. A, section 127, 112 Stat. 2681–547 (1998), established the Commission to study the nature, causes and consequences of the United States merchandise trade and current accounts deficits and report its findings to the President and the Congress. By statute, the Commission must hold at least 4 regional field hearings and 1 hearing in Washington, DC. This is the sixth in a series of field hearings to be conducted. The schedule of hearings is available at the US Trade Deficit Review Commission website <www.ustdrc.gov>.

For the U.S. Trade Deficit Review Commission.

Dated at Washington, DC, April 4, 2000.

Allan I. Mendelowitz,

Executive Director, Trade Deficit Review Commission.

[FR Doc. 00–8748 Filed 4–7–00; 8:45 am]

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Monday,
April 10, 2000

Part II

Environmental Protection Agency

40 CFR Parts 141 and 142
National Primary Drinking Water Regulations: Long Term 1 Enhanced Surface Water Treatment and Filter Backwash Rule; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[WH–FRL–6570–5]

RIN 2040–AD18

National Primary Drinking Water Regulations: Long Term 1 Enhanced Surface Water Treatment and Filter Backwash Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this document, EPA is proposing the Long Term 1 Enhanced Surface Water Treatment and Filter Backwash Rule (LT1FBR). The purposes of the LT1FBR are to: Improve control of microbial pathogens in drinking water, including *Cryptosporidium*, for public water systems (PWSs) serving fewer than 10,000 people; prevent increases in microbial risk while PWSs serving fewer than 10,000 people control for disinfection byproducts, and; require certain PWSs to institute changes to the return of recycle flows within the treatment process to reduce the effects of recycle on compromising microbial control. Today's proposal addresses two statutory requirements of the 1996 Safe Drinking Water Act (SDWA) Amendments. First, it addresses the statutory requirement to establish a Long Term Final Enhanced Surface Water Treatment Rule (LTESWTR) for PWSs that serve under 10,000 people. Second, it addresses the statutory requirement to promulgate a regulation which "governs" the recycle of filter backwash within the treatment process of public utilities.

Today's proposed LT1FBR contains 5 key provisions for surface water and ground water under the direct influence of surface water (GWUDI) systems serving fewer than 10,000 people: A treatment technique requiring a 2-log (99 percent) *Cryptosporidium* removal requirement; strengthened combined filter effluent turbidity performance standards and new individual filter turbidity provisions; disinfection benchmark provisions to assure continued microbial protection is provided while facilities take the necessary steps to comply with new disinfection byproduct standards; inclusion of *Cryptosporidium* in the definition of GWUDI and in the watershed control requirements for unfiltered public water systems; and requirements for covers on new finished water reservoirs.

Today's proposed LT1FBR contains three key provisions for all conventional and direct filtration systems which recycle and use surface water or GWUDI: A provision requiring recycle flows to be introduced prior to the point of primary coagulant addition; a requirement for systems meeting criteria to perform a one-time self assessment of their recycle practice and consult with their primacy agency to address and correct high risk recycle operations; and a requirement for direct filtration systems to provide information to the State on their current recycle practice.

The Agency believes implementing the provisions contained in today's proposal will improve public health protection in two fundamental ways. First, the provisions will reduce the level of *Cryptosporidium* in filtered finished drinking water supplies through improvements in filtration and recycle practice resulting in a reduced likelihood of outbreaks of cryptosporidiosis. Second, the filtration provisions are expected to increase the level of protection from exposure to other pathogens (*i.e. Giardia* or other waterborne bacterial or viral pathogens). It is also important to note that while today's proposed rule contains new provisions which in some cases strengthen or modify requirements of the 1989 Surface Water Treatment Rule, each public water system must continue to comply with the current rules while new microbial and disinfectants/disinfection byproducts rules are being developed. In conjunction with the Maximum Contaminant Level Goal (MCLG) established in the Interim Enhanced Surface Water Treatment Rule, the Agency developed a treatment technique in lieu of a Maximum Contaminant Level (MCL) for *Cryptosporidium* because it is not economically and technologically feasible to accurately ascertain the level of *Cryptosporidium* using current analytical methods.

DATES: The Agency requests comments on today's proposal. Comments must be received or post-marked by midnight June 9, 2000. Comments received after this date may not be considered in decision making on the proposed rule.

ADDRESSES: Send written comments on today's proposed rule to the LT1FBR Comment Clerk: Water Docket MC 410, W–99–10, Environmental Protection Agency 401 M Street, S.W., Washington, DC 20460. Please submit an original and three copies of comments and enclosures (including references).

Those who comment and want EPA to acknowledge receipt of their comments must enclose a self-addressed stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to ow-docket@epamail.epa.gov. For additional information on submitting electronic comments see Supplementary Information Section.

Public comments on today's proposal, other major supporting documents, and a copy of the index to the public docket for this rulemaking are available for review at EPA's Office of Water Docket: 401 M Street, SW., Rm. EB57, Washington, DC 20460 from 9:00 a.m. to 4:00 p.m., Eastern Time, Monday through Friday, excluding legal holidays. For access to docket materials or to schedule an appointment please call (202) 260–3027.

FOR FURTHER INFORMATION CONTACT: Technical inquiries on the rule should be directed to Jeffery Robichaud at 401 M Street, SW., MC4607, Washington, DC 20460 or (202) 260–2568. For general information contact the Safe Drinking Water Hotline, Telephone (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION: Entities potentially regulated by the LT1FBR are public water systems (PWSs) that use surface water or ground water under the direct influence of surface water (GWUDI). The recycle control provisions are applicable to all PWSs using surface water or GWUDI, regardless of the population served. All other provisions of the LT1FBR are only applicable to PWSs serving under 10,000 people. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Public Water Systems that use surface water or ground water under the direct influence of surface water.
State, Local, Tribal or Federal Governments.	Public Water Systems that use surface water or ground water under the direct influence of surface water.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the LT1FBR. This table lists the types of entities that EPA is now aware could potentially be regulated by this rule. Other types of entities not listed in this table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the definition of public water system in § 141.3 of the Code of Federal Regulations and applicability criteria in §§ 141.76 and 141.501 of today's proposal. If you have questions regarding the applicability of the LT1FBR to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT**.

Submitting Comments

Send an original and three copies of your comments and enclosures (including references) to W–99–10 Comment Clerk, Water Docket (MC4101), USEPA, 401 M Street, SW., Washington, D.C. 20460. Comments must be received or post-marked by midnight June 9, 2000. Note that the Agency is not soliciting comment on, nor will it respond to, comments on previously published regulatory language that is included in this document to ease the reader's understanding of the proposed language.

To ensure that EPA can read, understand and therefore properly respond to comments, the Agency would prefer that commenters cite, where possible, the paragraph(s) or sections in the proposed rule or supporting documents to which each comment refers. Commenters should use a separate paragraph for each issue discussed.

Electronic Comments

Comments may also be submitted electronically to ow-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII, WP5.1, WP6.1 or WP8 file avoiding the use of special characters and form of encryption. Electronic comments must be identified by the docket number W–99–10. Comments and data will also be accepted on disks in WP 5.1, 6.1, 8 or ASCII file format. Electronic comments on this document may be filed online at many Federal Depository Libraries.

The record for this rulemaking has been established under docket number W–99–10, and includes supporting documentation as well as printed, paper versions of electronic comments. The record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays at the Water Docket, EB 57, USEPA Headquarters, 401 M Street, SW., Washington, D.C. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

List of Abbreviations Used in This Document

ASCE American Society of Civil Engineers
ASDWA Association of State Drinking Water Administrators
ASTM American Society for Testing Materials
AWWA American Water Works Association
AWWARF American Water Works Association Research Foundation
°C Degrees Centigrade
CCP Composite Correction Program
CDC Centers for Disease Control
CFE Combined Filter Effluent
CFR Code of Federal Regulations
COI Cost of Illness
CPE Comprehensive Performance Evaluation
CT The Residual Concentration of Disinfectant (mg/L) Multiplied by the Contact Time (in minutes)
CTA Comprehensive Technical Assistance
CWSS Community Water System Survey
DBPs Disinfection Byproducts
DBPR Disinfectants/Disinfection Byproducts Rule
ESWTR Enhanced Surface Water Treatment Rule
FACA Federal Advisory Committee Act
GAC Granular Activated Carbon
GAO Government Accounting Office
GWUDI Ground Water Under the Direct Influence of Surface Water
HAA5 Haloacetic acids (Monochloroacetic, Dichloroacetic, Trichloroacetic, Monobromoacetic and Dibromoacetic Acids)
HPC Heterotropic Plate Count
hrs Hours
ICR Information Collection Rule
IESWTR Interim Enhanced Surface Water Treatment Rule
IFA Immunofluorescence Assay
Log Inactivation Logarithm of (N_o/N_T)
Log Logarithm (common, base 10)
LTESWTR Long Term Enhanced Surface Water Treatment Rule
LT1FBR Long Term 1 Enhanced Surface Water Treatment and Filter Backwash Rule
MCL Maximum Contaminant Level
MCLG Maximum Contaminant Level Goal
MGD Million Gallons per Day
M-DBP Microbial and Disinfectants/Disinfection Byproducts
MPA Microscopic Particulate Analysis
NODA Notice of Data Availability
NPDWR National Primary Drinking Water Regulation
N_T The Concentration of Surviving Microorganisms at Time T
NTTAA National Technology Transfer and Advancement Act
NTU Nephelometric Turbidity Unit
PE Performance Evaluation
PWS Public Water System
Reg. Neg. Regulatory Negotiation
RIA Regulatory Impact Analysis
RFA Regulatory Flexibility Act
RSD Relative Standard Deviation
SAB Science Advisory Board
SDWA Safe Drinking Water Act
SWTR Surface Water Treatment Rule
TC Total Coliforms
TCR Total Coliform Rule
TTHM Total Trihalomethanes
TWG Technical Work Group
TWS Transient Non-Community Water System
UMRA Unfunded Mandates Reform Act
URCIS Unregulated Contaminant Information System
x log removal Reduction to $1/10^x$ of original concentration

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I. Introduction and Background

A. Statutory Requirements and Legal Authority

The Safe Drinking Water Act (SDWA or the Act), as amended in 1986, requires U.S. Environmental Protection Agency (EPA) to publish a maximum contaminant level goal (MCLG) for each contaminant which, in the judgement of the EPA Administrator, "may have any adverse effect on the health of persons and which is known or anticipated to occur in public water systems' (Section 1412(b)(3)(A)). MCLGs are to be set at a level at which "no known or anticipated adverse effect on the health of persons occur and which allows an adequate margin of safety" (Section 1412(b)(4)).

The Act was again amended in August 1996, resulting in the renumbering and augmentation of certain sections with additional statutory language. New sections were added establishing new drinking water requirements. These modifications are outlined below.

The Act requires EPA to publish a National Primary Drinking Water Regulation (NPDWR) that specifies

either a maximum contaminant level (MCL) or treatment technique (Sections 1401(1) and 1412(a)(3)) at the same time it publishes an MCLG, which is a non-enforceable health goal. EPA is authorized to promulgate a NPDWR "that requires the use of a treatment technique in lieu of establishing an MCL," if the Agency finds that "it is not economically or technologically feasible to ascertain the level of the contaminant." EPA's general authority to set MCLGs and NPDWRs applies to contaminants that may "have an adverse effect on the health of persons," that are "known to occur or there is a substantial likelihood that the contaminant will occur in public water systems with a frequency and at levels of public health concern," and for which "in the sole judgement of the Administrator, regulation of such contaminant presents a meaningful opportunity for health risk reduction for persons served by public water systems" (SDWA Section 1412(b)(1)(A)).

The 1996 amendments, also require EPA, when proposing a NPDWR that includes an MCL or treatment technique, to publish and seek public comment on an analysis of health risk reduction and cost impacts. EPA is required to take into consideration the effects of contaminants upon sensitive subpopulations (i.e., infants, children, pregnant women, the elderly, and individuals with a history of serious illness), and other relevant factors (Section 1412(b)(3)(C)).

The amendments established a number of regulatory deadlines, including schedules for a Stage 1 Disinfection Byproduct Rule (DBPR), an Interim Enhanced Surface Water Treatment Rule (IESWTR), a Long Term Final Enhanced Surface Water Treatment Rule (LTESWTR), and a Stage 2 DBPR (Section 1412(b)(2)(C)). To provide additional time for systems serving fewer than 10,000 people to comply with the IESWTR provisions and also ensure these systems implement Stage 1 DBPR and the IESWTR provisions simultaneously, the Agency split the IESWTR into two rules: the IESWR and the LT1ESWTR. The Act as amended also requires EPA to promulgate regulations to "govern" the recycle of filter backwash within the treatment process of public utilities (Section 1412(b)(14)).

Under 1412(b)(4)(E)(ii), EPA must develop a Small System Technology List for the LT1FBR. The filtration technologies listed in the Small System Compliance Technology List for the Surface Water Treatment Rule and Total Coliform Rule (EPA–815–R–98–001, September 1998) are also the technologies which would achieve compliance with the provisions of the LT1FBR. EPA will develop a separate list for the LT1FBR as new technologies become available.

Although the Act permits small system variances for compliance with a requirement of a national primary drinking water regulation which specifies a maximum contaminant level or treatment technique, Section 1415(e)(6)(B) of SDWA, excludes variances for any national primary drinking water regulation for a microbial contaminant or an indicator or treatment technique for a microbial contaminant. LT1FBR requires treatment techniques to control *Cryptosporidium* (a microbial contaminant), and as such systems governed by the LT1FBR are ineligible for variances.

Finally, as part of the 1996 SDWA Amendments, recordkeeping requirements were modified to apply to every person who is subject to a requirement of this title or who is a grantee (Section 1445(a)(1)(A)). Such persons are required to establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation.

B. Existing Regulations and Stakeholder Involvement

1. 1979 Total Trihalomethane Rule

In November 1979 (44 FR 68624) (EPA, 1979) EPA set an interim MCL for total trihalomethanes (TTHM—the sum of chloroform, bromoform, bromodichloromethane, dibromochloromethane) of 0.10 mg/l as an annual average. Compliance is defined on the basis of a running annual average of quarterly averages for four samples taken in the distribution system. The value for each sample is the sum of the measured concentrations of chloroform, bromodichloromethane, dibromochloromethane and bromoform.

The interim TTHM standard applies to community water systems using surface water and/or ground water serving at least 10,000 people that add a disinfectant to the drinking water during any part of the treatment process. At their discretion, States may extend coverage to smaller PWSs; however, most States have not exercised this option. The Stage 1 DBPR (as discussed later) contains updated TTHM requirements.

2. Total Coliform Rule

The Total Coliform Rule (TCR) (54 FR 27544, June 29, 1989) (EPA, 1989a) applies to all public water systems. The TCR sets compliance with the Maximum Contaminant Level (MCL) for total coliforms (TC) as follows. For systems that collect 40 or more samples per month, no more than 5 percent of the samples may be TC-positive; for those that collect fewer than 40 samples, no more than one sample may be TC-positive. If a system has a TC-positive sample, it must test that sample for the presence of fecal coliforms or *E. coli*. The system must also collect a set of repeat samples, and analyze for TC (and fecal coliform or *E. coli* within 24 hours of the first TC-positive sample).

In addition, any fecal coliform-positive repeat sample, *E-coli*.-positive repeat sample, or any total-coliform-positive repeat sample following a fecal coliform-positive or *E-coli*-positive routine sample constitutes an acute violation of the MCL for total coliforms. If a system exceeds the MCL, it must notify the public using mandatory language developed by the EPA. The required monitoring frequency for a system depends on the number of people served and ranges from 480 samples per month for the largest systems to once annually for the smallest systems. All systems must have a written plan identifying where samples are to be collected.

The TCR also requires an on-site inspection (referred to as a sanitary survey) every 5 years for each system that collects fewer than five samples per month. This requirement is extended to every 10 years for non-community systems using only protected and disinfected ground water.

3. Surface Water Treatment Rule

Under the Surface Water Treatment Rule (SWTR) (54 FR 27486, June 29, 1989) (EPA, 1989b), EPA set maximum contaminant level goals of zero for *Giardia lamblia*, viruses, and *Legionella* and promulgated regulatory requirements for all PWSs using surface water sources or ground water sources under the direct influence of surface water. The SWTR includes treatment technique requirements for filtered and unfiltered systems that are intended to protect against the adverse health effects of exposure to *Giardia* lamblia, viruses, and *Legionella*, as well as many other pathogenic organisms. Briefly, those requirements include (1) Requirements for maintenance of a disinfectant residual in the distribution system; (2) removal and/or inactivation of 3 log (99.9 percent) for *Giardia* and 4 log (99.99 percent) for viruses; (3) combined filter effluent turbidity performance standard of 5 nephelometric turbidity units (NTU) as a maximum and 0.5 NTU

at the 95th percentile monthly, based on 4-hour monitoring for treatment plants using conventional treatment or direct filtration (with separate standards for other filtration technologies); and (4) watershed protection and other requirements for unfiltered systems. Systems seeking to avoid filtration were required to meet avoidance criteria and obtain avoidance determination by December 30, 1991, otherwise filtration must have been provided by June 29, 1993. For systems properly avoiding filtration, later failures to meet avoidance criteria triggered a requirement that filtration be provided within 18 months.

4. Information Collection Rule

The Information Collection Rule (ICR), which was promulgated on May 14, 1996 (61 FR 24354) (EPA, 1996) applied to large public water systems serving populations of 100,000 or more. A more limited set of ICR requirements pertain to ground water systems serving between 50,000 and 100,000 people. About 300 PWSs operating 500 treatment plants were involved with the extensive ICR data collection. Under the ICR, these PWSs monitored for water quality factors affecting disinfection byproduct (DBP) formation and DBPs within the treatment plant and in the distribution system on a monthly basis for 18 months. In addition, PWSs were required to provide treatment train schematics, operating data and source water occurrence data for bacteria, viruses, and protozoa. Finally, a subset of PWSs performed treatment studies, using either granular activated carbon (GAC) or membrane processes, to evaluate DBP precursor removal and control of DBPs. Monitoring for treatment study applicability began in September 1996. The remaining occurrence monitoring began in July 1997 and concluded in December 1998.

The purpose of the ICR was to collect occurrence and treatment information to help evaluate the need for possible changes to the current microbial requirements and existing microbial treatment practices, and to help evaluate the need for future regulation of disinfectants and disinfection byproducts (DBPs). The ICR will provide EPA with additional information on the national occurrence in drinking water of (1) chemical byproducts that form when disinfectants used for microbial control react with naturally occurring compounds already present in source water; and (2) disease-causing microorganisms, including *Cryptosporidium*, *Giardia*, and viruses. Analysis of ICR data is not expected to be completed in the time frame necessary for inclusion in the LT1FBR, however if the data is available and has been quality controlled and peer reviewed during the necessary time frame, EPA will consider the datat as it refines its analysis for the final rule.

The ICR also required PWSs to provide engineering data on how they currently control for such contaminants. The ICR monthly sampling data will also provide information on the quality of the recycle waters via monthly monitoring (for 18 months) of pH, alkalinity, turbidity, temperature, calcium and total hardness, TOC, UV_{254}, bromide, ammonia, and disinfectant residual (if disinfectant is used). This data will provide some indication of the treatability of the water, the extent to which contaminant concentration effects may occur, and the potential for contribution to DBP formation. However, sampling to determine the occurrence of pathogens in recycle waters was not performed.

5. Interim Enhanced Surface Water Treatment Rule

Public water systems serving 10,000 or more people that use surface water or ground water under the direct influence of surface water (GWUDI) are required to comply with the IESWTR (63 FR 69477, December 16, 1998) (EPA, 1998a) by December of 2001. The purposes of the IESWTR are to improve control of microbial pathogens, specifically the protozoan *Cryptosporidium*, and address risk trade-offs between pathogens and disinfection byproducts. Key provisions established by the rule include: a Maximum Contaminant Level Goal (MCLG) of zero for *Cryptosporidium*; 2-log (99 percent) *Cryptosporidium* removal requirements for systems that filter; strengthened combined filter effluent turbidity performance standards of 1.0 NTU as a maximum and 0.3 NTU at the 95th percentile monthly, based on 4-hour monitoring for treatment plants using conventional treatment or direct filtration; requirements for individual filter turbidity monitoring; disinfection benchmark provisions to assess the level of microbial protection provided as facilities take the necessary steps to comply with new disinfection byproduct standards; inclusion of *Cryptosporidium* in the definition of GWUDI and in the watershed control requirements for unfiltered public water systems; requirements for covers on new finished water reservoirs; and sanitary surveys for all surface water systems regardless of size.

6. Stage 1 Disinfectants and Disinfection Byproduct Rule

The Stage 1 DBPR applies to all PWSs that are community water systems (CWSs) or nontransient noncommunity water systems (NTNCWs) that treat their water with a chemical disinfectant for either primary or residual treatment. In addition, certain requirements for chlorine dioxide apply to transient noncommunity water systems (TNCWSs). The Stage 1 DBPR (EPA, 1998c) was published at the same time as the IESWTR (63 FR 69477, December 16, 1998) (EPA, 1998a). Surface water and GWUDI systems serving at least 10,000 persons are required to comply with the Stage 1 Disinfectants and Disinfection Byproducts Rule by December 2001. Ground water systems and surface water and GWUDI systems serving fewer than 10,000 must comply with the Stage 1 Disinfectants and Disinfection Byproducts Rule by December 2003.

The Stage 1 DBPR finalizes maximum residual disinfectant level goals (MRDLGs) for chlorine, chloramines, and chlorine dioxide; MCLGs for four trihalomethanes (chloroform, bromodichloromethane, dibromochloromethane, and bromoform), two haloacetic acids (dichloroacetic acid and trichloroacetic acid), bromate, and chlorite; and NPDWRs for three disinfectants (chlorine, chloramines, and chlorine dioxide), two groups of organic disinfection byproducts TTHMs and HAA5 and two inorganic disinfection byproducts, chlorite and bromate. The NPDWRs consist of maximum residual disinfectant levels (MRDLs) or maximum contaminant levels (MCLs) or treatment techniques for these disinfectants and their byproducts. The NPDWRs also include monitoring, reporting, and public notification requirements for these compounds. The Stage 1 DBPR includes the best available technologies (BATs) upon which the MRDLs and MCLs are based. EPA believes the implementation of the Stage 1 DBPR will reduce the levels of disinfectants and disinfection byproducts in drinking water supplies. The Agency believes the rule will provide public health protection for an additional 20 million households that were not previously covered by drinking water rules for disinfection byproducts.

7. Stakeholder Involvement

EPA conducted two stakeholder meetings to solicit feedback and information from the regulated community and other concerned stakeholders on issues relating to

today's proposed rule. The first meeting was held July 22 and 23, 1998 in Lakewood, Colorado. EPA presented potential regulatory components for the LT1FBR. Breakout sessions with stakeholders were held to generate feedback on the regulatory provisions being considered and to solicit feedback on next steps for rule development and stakeholder involvement. Additionally, information was presented summarizing ongoing research and data gathering activities regarding the recycle of filter backwash. The presentations generated useful discussion and provided substantial feedback to EPA regarding technical issues, stakeholder concerns, and possible regulatory options (EPA 1999k). The second stakeholder meeting was held in Dallas, Texas on March 3 and 4, 1999. EPA presented new analyses, summaries of current research, and revised regulatory options and data collected since the July stakeholder meeting. Regional perspectives on turbidity and disinfection benchmarking components were also discussed with presentations from EPA Region VI and the Texas Natural Resources Conservation Commission. Four breakout sessions were extremely useful and generated a wide range of information, issues, and technical input from a diverse group of stakeholders (EPA 1999j).

The Agency utilized the feedback received during these two stakeholder meetings in developing today's proposed rule. EPA also mailed a draft version of the preamble for today's proposed rule to the attendees of these meetings. Several of the options which are presented today represent modifications suggested by stakeholders.

II. Public Health Risk

The purpose of this section is to discuss the health risk associated with pathogens, particularly *Cryptosporidium*, in surface waters and GWUDI. More detailed information about such pathogens and other contaminants of concern may be found in an EPA criteria document for *Giardia* (EPA 1998d), three EPA criteria documents for viruses (EPA, 1985; 1999a; 1999b), the *Cryptosporidium* and *Giardia* Occurrence Assessment for the Interim Enhanced Surface Water Treatment Rule (EPA, 1998b) and the LT1FBR Occurrence and Assessment Document (EPA 1999c). EPA requests comment on today's proposed rule, the information supporting the proposal, and the potential impact of proposed regulatory provisions on public health risk.

A. Introduction

In 1990, EPA's Science Advisory Board (SAB), an independent panel of experts established by Congress, cited drinking water contamination as one of the most important environmental risks and indicated that disease-causing microbial contaminants (i.e., bacteria, protozoa and viruses) are probably the greatest remaining health risk management challenge for drinking water suppliers (EPA/SAB, 1990). Information on the number of waterborne disease outbreaks from the U.S. Centers for Disease Control and Prevention (CDC) underscores this concern. CDC indicates that, between 1980 and 1996, 401 waterborne disease outbreaks were reported, with over 750,000 associated cases of disease. During this period, a number of agents were implicated as the cause, including protozoa, viruses and bacteria.

Waterborne disease caused by *Cryptosporidium* is of particular concern, as it is difficult to inactivate *Cryptosporidium* oocysts with standard disinfection practices (unlike pathogens such as viruses and bacteria), and there is currently no therapeutic treatment for cryptosporidiosis (unlike giardiasis). Because *Cryptosporidium* is not generally inactivated in systems using standard disinfection practices, the control of *Cryptosporidium* is dependent on physical removal processes (e.g., filtration).

The filter effluent turbidity limits specified under the SWTR were created to remove large parasite cysts such as *Giardia* and did not specifically control for smaller *Cryptosporidium* oocysts. In addition, filter backwash water recycling practices such as adding recycled water to the treatment train after primary coagulant addition may overwhelm the plant and harm efforts to control *Giardia lamblia*, *Cryptosporidium*, and emerging pathogens. Despite filtration and disinfection, *Cryptosporidium* oocysts have been found in filtered drinking water (LeChevallier, et al., 1991a; EPA, 1999c), and many of the individuals affected by waterborne disease outbreaks caused by *Cryptosporidium* were served by filtered surface water supplies (Solo-Gabriele and Neumeister, 1996). Surface water systems that filter and disinfect may still be vulnerable to *Cryptosporidium*, depending on the source water quality and treatment effectiveness. EPA believes that today's proposal, however, will ensure that drinking water treatment is operating efficiently to control *Cryptosporidium* (see Sections IV.A and IV.D) and other microbiological contaminants of concern (*e.g., Giardia*).

In order to assess the public health risk associated with consumption of surface water or GWUDI from PWSs, EPA has evaluated information and conducted analysis in four important areas discussed in the following paragraphs. These areas are: (1) The health effects of cryptosporidiosis; (2) cryptosporidiosis waterborne disease outbreak data; (3) *Cryptosporidium* occurrence data from raw surface water, raw GWUDI, finished water, and recycle stream studies; and (4) an assessment of the current baseline surface water treatment required by existing regulations.

B. Health Effects of Cryptosporidiosis and Sources and Transmission of Cryptosporidium

Waterborne diseases are usually acute (*i.e.*, sudden onset and typically lasting a short time in healthy people), and most waterborne pathogens cause gastrointestinal illness, with diarrhea, abdominal discomfort, nausea, vomiting, and/or other symptoms. Some waterborne pathogens cause or are associated with more serious disorders such as hepatitis, gastric cancer, peptic ulcers, myocarditis, swollen lymph glands, meningitis, encephalitis, and many other diseases. Cryptosporidiosis is a protozoal infection that usually causes 7–14 days of diarrhea with possibly a low-grade fever, nausea, and abdominal cramps in healthy individuals (Juranek, 1995). Unlike giardiasis for which effective antibiotic therapy is available, an antibiotic treatment for cryptosporidiosis does not exist (Framm and Soave, 1997).

There are several species of *Cryptosporidium* which have been identified, including *C. baileyi* and *C. meleagridis* (bird host); *C. muris* (mouse host); *C. nasorum* (fish host), *C. parvum* (mammalian host), and *C. serpentis* (snake host). *Cryptosporidium* parvum was first recognized as a human pathogen in 1976 (Juranek, 1995). Recently, both the human and cattle types of *C. parvum* have been found in healthy individuals, and these types, *C. felis*, and a dog type have been found in immunocompromised individuals (Pieniazek et al., 1999). Transmission of cryptosporidiosis often occurs through the ingestion of infective *Cryptosporidium* oocysts from feces-contaminated food or water, but may also result from direct or indirect contact with infected persons or mammals (Casemore, 1990; Cordell and Addiss, 1994). Dupont, et. al., 1995, found through a human feeding study that a low dose of *C. parvum* is

sufficient to cause infection in healthy adults (Dupont et. al., 1995). Animal agriculture as a nonpoint source of *C. parvum* has been implicated as the source of contamination for the 1993 outbreak in Milwaukee, Wisconsin, the largest outbreak of waterborne disease in the history of the United States (Walker et al., 1998). Other sources of *C. parvum* include discharges from municipal wastewater treatment facilities and drainage from slaughterhouses. In addition, rainfall appears to increase the concentration of *Cryptosporidium* in surface water, documented in a study by Atherholt, et al. (1998).

There is evidence that an immune response to *Cryptosporidium* exists, but the degree and duration of this immunity is not well characterized (Fayer and Ungar, 1986). Recent work conducted by Chappell, *et al.* (1999) indicates that individuals with evidence of prior exposure to *Cryptosporidium parvum* have demonstrated immunity to low doses of oocysts (approximately 500 oocysts). The investigators found the 50 percent infectious dose for previously exposed individuals (possessing a pre-existing blood serum antibody) to be 1,880 oocysts compared to 132 oocysts for individuals without prior exposure, and individuals with prior exposure who became infected shed fewer oocysts. Because of this type of immune response, symptomatic infection in communities exposed to chronic low levels of oocysts will primarily be observed in newcomers (*e.g.*, visitors, young children) (Frost *et al.*, 1997; Okhuysen *et al.*, 1998).

Sensitive populations are more likely to become infected and ill, and gastrointestinal illness among this population may be chronic. These sensitive populations include children, especially the very young; the elderly; pregnant women; and the immunocompromised (Gerba *et al.*, 1996; Fayer and Ungar, 1986; EPA 1998e). This sensitive segment represents almost 20 percent of the population in the U.S. (Gerba *et al.*, 1996). EPA is particularly concerned about the exposure of severely immunocompromised persons to *Cryptosporidium* in drinking water, because the severity and duration of illness is often greater in immunocompromised persons than in healthy individuals, and it may be fatal among this population. For instance, a follow-up study of the 1993 Milwaukee, Wisconsin, waterborne disease outbreak reported that at least 50 *Cryptosporidium*-associated deaths occurred among the severely immunocompromised (Hoxie *et al.*, 1997).

Cases of illness from cryptosporidiosis were rarely reported until 1982, when the disease became prevalent due to the AIDS epidemic (Current, 1983). As laboratory diagnostic techniques improved during subsequent years, outbreaks among immunocompetent persons were recognized as well. Over the last several years there have been a number of documented waterborne cryptosporidiosis outbreaks in the U.S., United Kingdom, Canada and other countries (Rose, 1997, Craun *et al.*, 1998).

C. Waterborne Disease Outbreaks in the United States

The occurrence of outbreaks of waterborne gastrointestinal infections, including cryptosporidiosis, may be much greater than suggested by reported surveillance data (Craun and Calderon 1996). The CDC–EPA, and the Council of State and Territorial Epidemiologists have maintained a collaborative surveillance program for collection and periodic reporting of data on waterborne disease outbreaks since 1971. The CDC database and biennial CDC-EPA surveillance summaries include data reported voluntarily by the States on the incidence and prevalence of waterborne illnesses. However, the following information demonstrates why the reported surveillance data may under-report actual outbreaks.

The U.S. National Research Council strongly suggests that the number of identified and reported outbreaks in the CDC database (both for surface and ground waters) represents a small percentage of actual waterborne disease outbreaks National Research Council, 1997; Bennett *et al.*, 1987). In practice, most waterborne outbreaks in community water systems are not recognized until a sizable proportion of the population is ill (Perz *et al.*)

Healthy adults with cryptosporidiosis may not suffer severe symptoms from the disease; therefore, infected individuals may not seek medical assistance, and their cases are subsequently not reported. Even if infected individuals consult a physician, *Cryptosporidium* may not be identified by routine diagnostic tests for gastroenteritis and, therefore, tends to be under-reported in the general population (Juranek 1995). Such obstacles to outbreak reporting indicate that the incidence of disease and outbreaks of cryptosporidiosis may be much higher than officially reported by the CDC.

The CDC database is based upon responses to a voluntary and confidential survey that is completed by State and local public health officials. CDC defines a waterborne disease outbreak as occurring when at least two persons experience a similar illness after ingesting water (Kramer *et al.*, 1996). Cryptosporidiosis water system outbreak data from the CDC database appear in Table II.1 and Table II.2.

Table II.1 illustrates the reported number of waterborne disease outbreaks in U.S. community, noncommunity, and individual drinking water systems between 1971 and 1996. According to the CDC–EPA database, a total of 652 outbreaks and 572,829 cases of illnesses were reported between 1971 and 1996 (see Table II–1). The total number of outbreaks reported includes outbreaks resulting from protozoan contamination, virus contamination, bacterial contamination, chemical contamination, and unknown factors.

TABLE II.1.—COMPARISON OF OUTBREAKS AND OUTBREAK-RELATED ILLNESSES FROM GROUND WATER AND SURFACE WATER FOR THE PERIOD 1971–1996 [1]

Water source	Total outbreaks [2]	Cases of [2] illnesses	Outbreaks in CWSs	Outbreaks in NCWSs
Ground	371 (57%)	90,815 (16%).	113	258
Surface	223 (34%)	471,375 (82%).	148	43
Other	58 (9%)	10,639 (2%).	30	19

TABLE II.1.—COMPARISON OF OUTBREAKS AND OUTBREAK-RELATED ILLNESSES FROM GROUND WATER AND SURFACE WATER FOR THE PERIOD 1971–1996 [1]—Continued

Water source	Total outbreaks [2]	Cases of [2] illnesses	Outbreaks in CWSs	Outbreaks in NCWSs
All Systems [3]	652 (100%).	572,829 (100%).	291	320

[1] Craun and Calderon, 1994, CDC, 1998.
[2] Includes outbreaks in CWSs + NCWSs + Private wells.

Epidemiological investigations of outbreaks in populations served by filtered systems have shown that treatment deficiencies have resulted in the plants' failure to remove contamination from the water. Sometimes operational deficiencies have been discovered only during post-outbreak investigations. Rose (1997) identified the following types of environmental and operating conditions commonly present in filtered surface water systems at the time cryptosporidiosis outbreaks have occurred:

- Improperly-installed, -operated, -maintained, or -interpreted monitoring
- Equipment (*e.g.*, turbidimeters);
- Inoperable flocculators, chemical injectors, or filters;
- Inadequate personnel response to failures of primary monitoring equipment;
- Filter backwash recycle;
- High concentrations of oocysts in source water with no mitigative barrier;
- Flushing of oocysts (by heavy rain or snow melt) from land surfaces upstream of the plant intakes; and
- Altered or suboptimal filtration during periods of high turbidity, with turbidity spikes detected in finished water.

From 1984 to 1994, there have been 19 reported outbreaks of cryptosporidiosis in the U.S. (Craun *et al.*, 1998). As mentioned previously, C. parvum was not identified as a human pathogen until 1976. Furthermore, cryptosporidiosis outbreaks were not reported in the U.S. prior to 1984. Ten of these cryptosporidiosis outbreaks have been documented in CWSs, NCWSs, and a private water system (Moore *et al.*, 1993; Kramer *et al.*, 1996; Levy *et al.*, 1998; ; Craun *et al.*, 1998). The remaining nine outbreaks were associated with recreational activities (Craun *et al.*, 1998). The cryptosporidiosis outbreaks in U.S. drinking water systems are presented in Table II.2.

TABLE II.2.—CRYPTOSPORIDIOSIS OUTBREAKS IN U.S. DRINKING WATER SYSTEMS

Year	Location and CWS, NCWS, or private	Cases of illness (estimated)	Source water	Treatment	Suspected cause
1984	Braun Station, TX, CWS.	117 (2,000)	Well	Chlorination	Sewage-contaminated well.
1987	Carrollton, GA, CWS	(13,000)	River	Conventional filtration/chlorination; inadequate backwashing of some filters.	Treatment deficiencies.
1991	Berks County, PA, NCWS.	(551)	Well	Chlorination	Ground water under the influence of surface water.
1992	Medford (Jackson County), OR, CWS.	(3,000; combined total for Jackson County and Talent, below).	Spring/River	Chlorination/package filtration plant.	Source not identified.
1992	Talent, OR, CWS	see Medford, OR	Spring/River	Chlorination/package filtration plant.	Treatment deficiencies.
1993	Milwaukee, WI, CWS	(403,000)	Lake	Conventional filtration	High source water contamination and treatment deficiencies.
1993	Yakima, WA, private	7	Well	N/A	Ground water under the influence of surface water.
1993	Cook County, MN, NCWS.	27	Lake	Filtered, chlorinated	Possible sewage backflow from toilet/septic tank.
1994	Clark County, NV, CWS.	103; many confirmed for cryptosporidiosis were HIV positive.	River/Lake	Prechlorination, filtration and post-filtration chlorination.	Source not identified.
1994	Walla Walla, WA, CWS.	134	Well	None reported	Sewage contamination.

Craun, *et al.*, 1998.

Six of the ten cryptosporidiosis outbreaks reported in Table II.2 originated from surface water or possibly GWUDI supplied by public drinking water systems serving fewer than 10,000 persons. The first outbreak (117 known cases, 2,000 estimated cases of illness), in Braun Station, Texas in 1984, was caused by sewage leaking into a ground water well suspected to be under the influence of surface water. A second outbreak in Pennsylvania in 1991 (551 estimated cases of illness), occurred at a well also under the influence of surface water. The third and fourth (multi-episodic) outbreaks took place in Jackson County, Oregon in 1992 (3,000 estimated cases of illness) and were linked to treatment deficiencies in the Talent, OR surface water system. A fifth outbreak (27 cases of illness) in Minnesota, in 1993, occurred at a resort supplied by lake water. Finally, a sixth outbreak (134 cases of illness) in Washington in 1994, occurred due to sewage-contaminated wells at a CWS.

Three of the ten outbreaks (Carollton, GA (1987); Talent, OR (1992); Milwaukee, WI (1993)) were caused by water supplied by water treatment plants where the recycle of filter backwash was implicated as a possible cause of the outbreak. In total, the nine outbreaks which have taken place in PWSs have caused an estimated 419,939 cases of illness. These outbreaks illustrate that when treatment in place is not operating optimally or when source water is highly contaminated, *Cryptosporidium* may enter the finished drinking water and infect drinking water consumers, ultimately resulting in waterborne disease outbreaks.

D. Source Water Occurrence Studies

Cryptosporidium is common in the environment (Rose, 1988; LeChevallier et al., 1991b). Runoff from unprotected watersheds allows the transport of these microorganisms from sources of oocysts (*e.g.*, untreated wastewater, agricultural runoff) to water bodies used as intake sites for drinking water treatment plants. If treatment operates inefficiently, oocysts may enter the finished water at levels of public health concern. A particular public health challenge is that simply increasing existing disinfection levels above those most commonly practiced for standard disinfectants (i.e., chlorine or chloramines) in the U.S. today does not appear to be an effective strategy for controlling *Cryptosporidium*.

Cryptosporidium oocysts have been detected in wastewater, pristine surface water, surface water receiving agricultural runoff or contaminated by sewage, ground water under the direct influence of surface water (GWUDI), water for recreational use, and drinking water (Rose 1997, Soave 1995). Over 25 environmental surveys have reported *Cryptosporidium* source water occurrence data from surface water or GWUDI (presented in Tables II.3 and II.4), which typically involved the collection of a few water samples from a number of sampling locations having different characteristics (e.g., polluted vs. pristine; lakes or reservoirs vs. rivers). Results are presented as oocysts per 100 liters, unless otherwise marked.

Each of the studies cited in Tables II.3 and II.4 presents *Cryptosporidium* source water occurrence information, including (where possible): (1) The number of samples collected; (2) the number of samples positive; and (3) both the means and ranges for the concentrations of *Cryptosporidium* detected (where available). However, the immunofluorescence assay (IFA) method and other *Cryptosporidium* detection methods are inaccurate and lack adequate precision. Current methods do not indicate the species of *Cryptosporidium* identified or whether the oocysts detected are viable or infectious (Frey et al., 1997). The methods for detecting *Cryptosporidium* were modeled from *Giardia* methods, therefore recovery of *Cryptosporidium* is deficient primarily because *Cryptosporidium* oocysts are more difficult to capture due to their size (*Cryptosporidium* oocysts are 4–6μθ≥m; *Giardia* cysts are 8–12μθ≥m). In addition, it is a challenge to recover *Cryptosporidium* oocysts from the filters when they are concentrated, due to the adhesive character of the organisms. Other potential limitations to the protozoan detection methods include: (1) Filters used to concentrate the water samples are easily clogged by debris from the water sample; (2) interference occurs between debris or particulates that fluoresce due to cross reactivity of antibodies, which results in false positive identifications; (3) it is difficult to view the structure of oocysts on the membrane filter or slide, resulting in false negative determinations; and (4) most methods require an advanced level of skill to be performed accurately.

Despite these limitations, the occurrence information generated from these studies demonstrates that *Cryptosporidium* occurs in source waters. The source waters for which EPA has compiled information include rivers, reservoirs, lakes, streams, raw water intakes, springs, wells under the influence of surface water and infiltration galleries. The most comprehensive study in scope and national representation (LeChevallier and Norton, 1995) will be described in further detail following Tables II.3 and II.4.

TABLE II.3.—SUMMARY OF SURFACE WATER SURVEY AND MONITORING DATA FOR CRYPTOSPORIDIUM OOCYSTS

Sample source	Number of samples (n)	Samples positive for *Cryptosporidium* (percent)[a]	Range of oocyst conc. (oocysts/100L)	Mean (oocysts/100L)	Reference
Rivers	25	100	200–11,200	2510	Ongerth and Stibbs 1987.
River	6	100	200–580,000	192,000(a)	Madore et al. 1987.
Reservoirs/rivers (polluted)	6	100	19–300	99(a)	Rose 1988.
Reservoir (pristine)	6	83	1–13	2(a)	Rose 1988.
Impacted river	11	100	200–11,200[b]	2,500(g)	Rose et al. 1988a[b].
Lake	20	71	0–2200	58(g)	Rose et al. 1988b[b].
Stream	19	74	0–24,000	109(g)	Rose et al. 1988b[b]
Raw water	85	87	7–48,400	270(g) detectable.	LeChevallier et al. 1991c.
River (pristine)	59	32	NR	29(g)	Rose et al. 1991.
River (polluted)	38	74	<0.1–4,400[b]	66(g)	Rose et al. 1991.
Lake/reservoir (pristine)	34	53	NR	9.3(g)	Rose et al. 1991.
Lake/reservoir (polluted)	24	58	<0.1–380[b]	103(g)	Rose et al. 1991.

TABLE II.3.—SUMMARY OF SURFACE WATER SURVEY AND MONITORING DATA FOR CRYPTOSPORIDIUM OOCYSTS—Continued

Sample source	Number of samples (n)	Samples positive for *Cryptosporidium* (percent)[a]	Range of oocyst conc. (oocysts/100L)	Mean (oocysts/100L)	Reference
River (all samples)	36	97	15–45 (pristine) 1000–6,350 (agricultural).	20 (pristine) 1,830 (agricultural).	Hansen and Ongerth 1991.
Protected drinking water supply (subset of all).	6	81	15–42	24(g)	Hansen and Ongerth 1991.
Pristine river, forestry area (subset of all).	6	100	46–697	162(g)	Hansen and Ongerth 1991.
River below rural community in forested area (subset of all).	6	100	54–360	107(g)	Hansen and Ongerth 1991.
River below dairy farming agricultural activities (subset of all).	6	100	330–6,350	1,072(g)	Hansen and Ongerth 1991.
Reservoirs	56	45	NR	NR	Consonery et al. 1992.
Streams	33	48	NR	NR	Consonery et al. 1992.
Rivers	37	51	NR	NR	Consonery et al. 1992.
Site 1—River source (high turbidity)	10	100	82–7,190	480	LeChevallier and Norton 1992.
Site 2—River source (moderate turbidity).	10	70	42–510	250	LeChevallier and Norton 1992.
Site 3—Reservoir source (low turbidity).	10	70	77–870	250	LeChevallier and Norton 1992.
Lakes	179	6	0–2,240	3.3 (median)	Archer et al. 1995.
Streams	210	6	0–2,000	7 (median)	Archer et al. 1995.
Finished water	262	13	0.29–57	33 (detectable)	LeChevallier and Norton 1995.
River/lake	262	52	6.5–6,510	240 (detectable)	LeChevallier and Norton 1995.
River/lake	147	20	30–980	200	LeChevallier et al. 1995.
River 1	15	73	0–2,230	188 (a) all samples 43 (g) detected.	States et al. 1995.
River 2	15	80	0–1,470	147 (a) all samples 61 (g) detected.	States et al. 1995.
Dairy farm stream	13	77	0–1,110	126 (a) all samples 55 (g) detected.	States et al. 1995.
Reservoir inlets	60	5	0.7–24	1.9(g) 1.6 (median).	LeChevallier et al. 1997b.
Reservoir outlets	60	12	1.2–107	6.1(g) 60 (median).	LeChevallier et al. 1997b.
River (polluted)	72	40	20–280	24(g)	LeChevallier et al. 1997a.
Source water	NR	24	1–5,390[c]	740(a)[c] 71(g)[c]	Swertfeger et al. 1997.
First flush (storm event)	20	35	0–41,700	NR	Stewart et al. 1997.
Grab (non-storm event)	21	19	0–650	NR	Stewart et al. 1997.
River 1	24	63	0–1,470	58(g)	States et al. 1997.
Stream by dairy farm	22	82	0–2,300	42(g)	States et al. 1997.
River 2 (at plant intake)	24	63	0–2,200	31(g)	States et al. 1997.
Reservoirs (unfiltered system)	NR	37–52[d]	15–43 (maxima)[d].	0.8–1.4[d]	Okun et al. 1997.
Raw water intakes	148	25	0.04–18	0.3	Consonery et al. 1997.
Raw water intakes (rural)	NR	NR	40–400	NR	Swiger et al. 1999.
Raw Water	100 plants	77	0.5–117	3(g)	McTigue, et al. 1998.
DE River, Winter	18	NR	NR	70 per 500L(g)	Atherholt, et al. 1998.
DE River, Spring	18	NR	NR	100 per 500L(g)	Atherholt, et al. 1998.
DE River, Summer	18	NR	NR	30 per 500L(g)	Atherholt, et al. 1998.
DE River, Fall	18	NR	NR	20 per 500L(g)	Atherholt, et al. 1998.

[a] Rounded to nearest percent.
[b] As cited in Lisle and Rose 1995.
[c] Based on presumptive oocyst count
[d] Combined monitoring results for multiple sites in large urban water supply.
[e] As cited in States et al. 1997.
(a) = arithmetic average.
(g) = geometric average.
NR = not reported, NA = not applicable.

TABLE II.4.—SUMMARY OF U.S. GWUDI MONITORING DATA FOR CRYPTOSPORIDIUM OOCYSTS

Sample source	Number of samples (n)	Samples positive for *Cryptosporidium* oocysts (percent)	Range of positive values (oocysts/100L)	Mean (oocysts/100L)[a]	Reference
Well	17 (6 wells) ..	(1 sample)	.085L	NA	Archer et al. 1995.
Ground water sources (all categories)	199 sites[b]	11[b]	0.002–0.45d	NR	Hancock et al. 1998.
Vertical wells (subcategory of above ground water sources).	149 sites[b]	5[b]	NR	NR	Hancock et al. 1998.
Springs (subcategory of above ground water sources).	35 sites[b]	20[b]	NR	NR	Hancock et al. 1998.
Infiltration galleries (subcategory of above ground water sources).	4 sites[b]	50[b]	NR	NR	Hancock et al. 1998.
Horizontal wells (subcategory of above ground water sources).	11 sites[b]	45[b]	NR	NR	Hancock et al. 1998.
Ground water	17	41.2	NR	NR	Rosen et al., 1996.
Ground water	18	5.6	.13	.13	Rose et al. 1991.
Springs	7 (4 springs)	57[b]	0.25–10	4	Rose et al. 1991.
Wells	5 sites	100	0.26–3	0.9	SAIC, 1997[c]
Vertical well Lemont Well #4 (Center Co., PA, Aug. 1992).	6	66.7	NR	NR	Lee, 1993.

[a] Geometric mean reported unless otherwise indicated.
[b] Data are presented as the percentage of positive sites.
[c] Data included are confirmed positive samples not reported in Hancock, 1998.
NA = not applicable.
NR = not reported.

The LeChevallier and Norton (1995) study collected the most samples and repeat samples from the largest number of surface water plants nationally. LeChevallier and Norton conducted the study to determine the level of *Cryptosporidium* in surface water supplies and plant effluent water. In total, surface water sources for 72 treatment plants in 15 States and 2 Canadian provinces were sampled. Sixty-seven surface water locations were examined. The generated data set covered a two-year monitoring period (March, 1991 to January, 1993) which was combined with a previous set of data (October, 1988 to June, 1990) collected from most of the same set of systems to create a database containing five samples (IFA) per site or more for 94 percent of the 67 systems sampled. *Cryptosporidium* oocysts were detected in 135 (51.5 percent) of the 262 raw water samples collected between March 1991 and January 1993, while 87 percent of the 85 samples were positive during the survey period from October, 1988 to June, 1990. The geometric mean of detectable *Cryptosporidium* was 240 oocysts/100L, with a range from 6.5 to 6510 oocysts/100L. When the 1991–1993 results (n=262) were combined with the previous results (n=85), *Cryptosporidium* was detected in 60.2 percent of the samples. The authors hypothesize the origin of the decrease in detections in the second round of sampling to be most probably linked to fluctuating or declining source water concentrations of *Cryptosporidium* oocysts from the first reporting period to the second.

LeChevallier and Norton (1995) also detected *Cryptosporidium* oocysts in 35 of 262 plant effluent samples (13.4 percent) analyzed between 1991 and 1993. When detected, the oocyst levels averaged 3.3 oocysts/100 L (range = 0.29 to 57 oocysts/100 L). A summary of occurrence data for all samples in filtered effluents for the years 1988 to 1993 showed that 32 of the water treatment plants (45 percent) were consistently negative for *Cryptosporidium*; 24 plants (34 percent) were positive once; and 15 plants (21 percent) were positive for *Cryptosporidium* two or more times between 1988 to 1993. Forty-four of the plants (62 percent) were positive for *Giardia*, *Cryptosporidium*, or both at one time or another (LeChevallier and Norton 1995).

The oocyst recoveries and densities reported by LeChevallier and Norton (1995) are comparable to the results of another survey of treated, untreated, protected (pristine) and feces-contaminated (polluted) water supplies (Rose et al. 1991). Six of thirty-six samples (17 percent) taken from potable drinking water were positive for *Cryptosporidium*, and concentrations in these waters ranged from .5 to 1.7 oocysts/100L. In addition, a total of 188 surface water samples were analyzed from rivers, lakes, or springs in 17 States. The majority of surface water samples were obtained from Arizona, California, and Utah (126 samples in all), with others from eastern States (28 samples), northwestern States (14 samples), southern States (13 samples), midwestern States (6 samples), and Hawaii (1 sample). Arithmetic average oocyst concentrations ranged from less than 1 to 4,400 oocysts/100 L, depending on the type of water analyzed. *Cryptosporidium* oocysts were found in 55 percent of the surface water samples at an average concentration of 43 oocysts/100 L.

The LeChevallier and Norton (1995) study collected the most samples and repeat samples from the most surface water plants on a national level. Therefore, the data from this study were analyzed by EPA (EPA, 1998n) to generate a distribution of source water occurrence, presented in Table II.5.

TABLE II.5.—BASELINE EXPECTED NATIONAL SOURCE WATER CRYPTOSPORIDIUM DISTRIBUTIONS

Percentile	Source water concentration (oocysts/100L)
25	103
50	231
75	516
90	1064
95	1641
Mean	470
Standard Deviation	841

Although limited by the small number of samples per site (one to sixteen samples; most sites were sampled five times), the mean concentration at the 69

sites from the eastern and central U.S. seems to be represented by a lognormal distribution.

In addition to the source water data, several studies have detected *Cryptosporidium* oocysts in finished water. The results of these studies have been compiled in Table II.6.

TABLE II.6.—SUMMARY OF U.S. FINISHED WATER MONITORING DATA FOR CRYPTOSPORIDIUM OOCYSTS

Sample source	Number of samples (n)	Samples positive for *Cryptosporidium* (percent)	Range of oocyst conc. (oocysts/100L)	Mean (oocysts/100L)	Reference
Filtered water	82	27	0.1–48	1.5	LeChevallier et al. 1991a.
Finished water (unfiltered)	6	33	0.1–1.7	0.2	LeChevallier et al. 1992.
Finished water	262	13	0.29–57	33 (detectable).	LeChevallier and Norton 1995.
Finished water (clearwell)	14	14	NR	NR	Consonery et al. 1992.
Finished water (filter effluents)	118	26	NR	NR	Consonery et al. 1992.
Site 1—Filter effluent	10	70	1–4	NR	LeChevallier and Norton 1992.
Site 2—Filter effluent	10	10	0.5	NA	LeChevallier and Norton 1992.
Site 3—Filter effluent	10	10	2	NA	LeChevallier and Norton 1992.
Finished water	1,237	7	NR	NR	Rosen et al. 1996.
Filtered (non-storm event)	87	10	0–420	NR	Stewart et al. 1997a.
Finished water	24	**8 ***13	0–0.6	0.5 (g)	States et al. 1997.
Finished water	155	2.5	0.02–0.8	0.2	Consonery et al. 1997.
Finished water	100	15	0.04–0.08	0.08 (g)	McTigue, et al. 1998.

*Plants
**Confirmed
***Presumed

These studies show that despite some treatment in place, *Cryptosporidium* may still pass through the treatment plant and into finished water.

In general, oocysts are detected more frequently and in higher concentrations in rivers and streams than in lakes and reservoirs (LeChevallier *et al.*, 1991b; Rose *et al.*, 1988a,b). Madore *et al.* (1987) found high concentrations of oocysts in a river affected by agricultural runoff (5800 oocysts/L). Such concentrations are especially significant if the contaminant removal process (*e.g.*, sedimentation, filtration) of the treatment plant is not operating effectively. Oocysts may pass through to the finished water, as LeChevallier and Norton (1995) and several other researchers also found, and infect drinking water consumers.

E. Filter Backwash and Other Process Streams: Occurrence and Impact Studies

Pathogenic microorganisms are removed during the sedimentation and/or filtration processes in a water treatment plant. Recycle streams generated during treatment, such as spent filter backwash water, sedimentation basin sludge, or thickener supernatant are often returned to the treatment train. These recycle streams, therefore, may contain high concentrations of pathogens, including chlorine-resistant *Cryptosporidium* oocysts. Recycle can degrade the treatment process, especially when entering the treatment train after the rapid mix stage, by causing a chemical imbalance, hydraulic surge and potentially overwhelming the plant's filtration capacity with a large concentration of pathogens. High oocyst concentrations found in recycle waters can increase the risk of pathogens passing through the treatment plant into finished water.

AWWA has compiled issue papers on each of the following recycle streams: Spent filter backwash water, sedimentation basin solids, combined thickener supernatant, ion-exchange regenerate, membrane concentrate, lagoon decant, mechanical dewatering device concentrate, monofill leachate, sludge drying bed leachate, and small-volume streams (*e.g.*, floor, roof, lab drains) (Environmental Engineering & Technology, 1999). In addition, EPA compiled existing occurrence data on *Cryptosporidium* in recycle streams. Through these efforts, *Cryptosporidium* occurrence data has been found for three types of recycle streams: Spent filter backwash water, sedimentation basin solids, and thickener supernatant.

Nine studies have reported the occurrence of *Cryptosporidium* for these process streams. Each study's scope and results are presented in Table II.7, and brief narratives on each major study follow the table. Note that the results of the studies, if not presented in the published report as oocysts/100L, have been converted into oocysts/100L.

TABLE II.7.—CRYPTOSPORIDIUM OCCURRENCE IN FILTER BACKWASH AND OTHER RECYCLE STREAMS

Name/location of study	Number of samples (n)	Type of sample	Cyst/oocyst concentration	Number of treatment plants sampled	Reference
Drinking water treatment facilities.	2	backflush waters from rapid sand filters.	sample 1: 26,000 oocysts/gal (calc. as 686,900 oocysts/100L). sample 2: 92,000 oocysts/gal (calc as 2,430,600 oocysts/100L)	2	Rose et al. 1986.

TABLE II.7.—CRYPTOSPORIDIUM OCCURRENCE IN FILTER BACKWASH AND OTHER RECYCLE STREAMS—Continued

Name/location of study	Number of samples (n)	Type of sample	Cyst/oocyst concentration	Number of treatment plants sampled	Reference
Thames, U.K., ...	not reported	backwash water from rapid sand filter	Over 1,000,000 oocysts/100L in backwash water on 2/19/89. 100,000 oocysts/100L in supernatant from settlement tanks during the next few days	1	Colbourne 1989.
Potable water supplies in 17 States.	not reported	filter backwash from rapid sand filters (10 to 40 L sample vol.).	217 oocysts/ 100 L (geometric mean).	not reported	Rose et al. 1991.
Name/location not reported.	not reported	raw water ..... initial backwash water	7 to 108 oocysts/100L ..... detected at levels 57 to 61 times higher than in the raw water.	not reported .... not reported	LeChevallier et al. 1991c.
Bangor Water Treatment Plant (PA).	*Round 1:* 1 (8-hour composite).	raw water ..... filter backwash ..... supernatant recycle 6 oocysts/100L.	902 oocysts/100L.	141 oocysts/ 100L. 1	Cornwell and Lee 1993.
	Round 2: 1 (8-hour composite).	raw water ..... 140 oocysts/100L ..... filter backwash supernatant recycle	850 oocysts/100L.	750 oocysts/ 100L. 1	Cornwell and Lee 1993.
Moshannon Valley Water Treatment Plant.	Round 1: 1 (8-hour composite).	raw water ..... spent backwash ..... supernatant recycle ..... sludge 13 oocysts/ 100L.	16,613 oocysts/100L.	82 oocysts/ 100L.	2,642 oocysts/100L. 1 Cornwell and Lee 1993.
	Round 2: 1 (8-hour composite).	raw water ..... supernatant recycle	20 oocysts/100L	420 oocysts/ 100L. 1	Cornwell and Lee 1993.
Plant "C"	11 samples using continuous flow centrifugation;.	39 samples using cartridge filters.	backwash water from rapid sand filters; samples collected from sedimentation basins during sedimentation phase of backwash water at depths of 1, 2, 3, and 3.3 m.	continuous flow: range 1 to 69 oocysts/100 L; 8 of 11 samples positive.	cartridge filters: ranges 0.8 to 252/100 L; 33 of 39 samples positive 1 Karanis et al. 1996.
Pittsburgh Drinking Water Treatment Plant.	24 (two years of monthly samples).	filter backwash	328 oocysts/ 100 L (geometric mean); (38 percent occurrence rate).	non-detect-13,158 oocysts/ 100L. 1	States et al. 1997.
"Plant Number 3"	not reported	raw water ..... spent backwash	140 oocysts/100L	850 oocysts/ 100L.	not reported Cornwell 1997.
"Plant C" (see Karanis, et al., 1996).	12 ..... 50	raw water ..... backwash water from rapid sand filters.	avg. 23.2 oocysts/100L (max. 109 oocysts/100L) in 8 of 12 samples.	avg. 22.1 oocysts/100L (max. 257 oocysts/ 100L) in 41 of 50 samples	1 Karanis et al 1996.
"Plant A"	1	rapid sand filter (sample taken 10 min. after start of backwashing)	150 oocysts/100L.		

The occurrence data available and reported are primarily for raw and recycle stream water. If filter backwash enters the treatment train as a slug load and disrupts the treatment process, it is possible its effects would not be readily seen in the finished water until several minutes or hours after returning the filter to service. In addition, the poor recovery efficiencies of the IFA *Cryptosporidium* detection method complicate measurements in dilute finished effluent waters.

As shown in Table II.7, the concentrations of oocysts in backwash water and other recycle streams are greater than the concentrations generally found in raw water. For example, four studies (Cornwell and Lee, 1993; States *et al.*, 1997; Rose *et al.*, 1986; and Colbourne, 1989) have reported *Cryptosporidium* oocyst concentrations in filter backwash water exceeding 10,000 oocysts/100L. Such concentrations illustrate that the treatment plant has been removing oocysts from the influent water during the sedimentation and/or filtration processes. As expected, the oocysts have concentrated on the filters and/or in the sedimentation basin sludge. Therefore, the recycling of such process streams (*e.g.*, filter backwash, thickener supernatant, sedimentation basin

sludge) re-introduces high concentrations of oocysts to the drinking water treatment train.

Recycle can potentially return a significant number of oocysts to the treatment plant in a short amount of time, particularly if the recycle is returned to the treatment process without prior treatment, equalization, or some other type of hydraulic detention. In addition, Di Giovanni, *et al.* (1999) presented data indicating that viable oocysts have been detected in filter backwash samples using a cell culture/polymerase chain reaction (PCR) method. Cell culture is a test of the viability/infectivity of the oocysts, while PCR identified the cells infected by *C. parvum*. Although recovery by IFA was poor (6 to 8 percent for backwash samples), 9 filter backwash recycle samples were found to contain viable and infectious oocysts, and the infectious agent was determined to be more than 98 percent similar in structure to *C. parvum*. Should filter backwash recycle disrupt normal treatment operations or should treatment not function efficiently due to other deficiencies, high concentrations of potentially viable, infectious oocysts may pass through the plant into finished drinking water. The recycle stream occurrence studies presented in Table II.7 are described in further detail in the following sections.

Thames, U.K. Water Utilities Experience with Cryptosporidium, Colbourne (1989)

In response to a cryptosporidiosis outbreak reported in February of 1989, Thames Water undertook an investigation of pathogen concentrations within the Farmoor conventional treatment plant's treatment train, finished and raw waters. The investigation occurred over a two month period, from February to April 1989 and included sampling of settled filter backwash, the supernatant from spent filter backwash, raw water, and water sampled at the end of various Thames distribution points.

On February 19, 1989 at the start of the outbreak investigation, a concentration of approximately 1,000,000 oocysts/100L was detected in the filter backwash water. During the first few days of the following investigation, the supernatant of the settled backwash water contained approximately 100,000 oocysts/100L. At the peak of the outbreak, thirty percent of Thames' distribution system samples were positive for oocysts, and ranged in concentration from 0.2 to 7700 oocysts/100L. Raw reservoir water contained oocyst concentrations ranging from .2 to 1400 oocysts/100L. After washing the filters twice in 24 hours, no oocysts were found in the settled backwash waters. Thames, U.K. Water Utilities determined that a storm causing intense precipitation and runoff resulted in elevated levels of oocysts in the source water which led to the high concentrations of oocysts entering the plant and subsequently deposited on the filters and recycled as filter backwash.

Survey of Potable Water Supplies for Cryptosporidium and Giardia, Rose, et al., 1991

In this survey, Rose, *et al.*, collected 257 samples from 17 States from 1985 to 1988. The samples were collected on cartridge filters and analyzed using variations of the IFA method. The reported percent recovery for the method was 29 to 58 percent. Filter backwash samples were a subset of the 257, 10 to 40 L samples were collected from rapid sand filters.

Rose, *et al.* reported the geometric mean of the backwash samples at 217 *Cryptosporidium* oocysts/100L. This was the highest reported average *Cryptosporidium* concentration of any of the water types tested, which included polluted and pristine surface and ground water sources, drinking water sources in addition to filter backwash recycle water.

Giardia and Cryptosporidium in Water Supplies, LeChevallier, et al. (1991c)

LeChevallier *et al.* conducted a study to determine "whether compliance with the SWTR would ensure control of *Giardia* in potable water supplies." Raw water and plant effluent samples were collected from 66 surface water treatment plants in 14 States and one Canadian province, although only selected sites were tested for *Cryptosporidium* oocysts in filter backwash and settled backwash water.

In the analysis of pathogen concentrations in the raw water and filter backwash water of the water treatment process, LeChevallier *et al.* (1991c) found very high oocyst levels in backwash water of utilities that had low raw water parasite concentrations. The pathogens were detected using a combined IFA method that the authors developed. *Cryptosporidium* levels in the initial backwash water were 57 to 61 times higher than in the raw water supplies. Raw water samples were found to contain from 7 to 106 oocysts/100L. LeChevallier *et al.* (1991c) also noted that when *Cryptosporidium* were detected in plant effluent samples (12 of 13 times), the organisms were also observed in the backwash samples. The study concluded that the consistency of these results shows that accumulation of parasites in the treatment filters (and subsequent release in the filter backwash recycle water) could be related to subsequent passage through treatment barriers.

Recycle Stream Effects on Water Treatment, Cornwell and Lee (1993, 1994)

The results described in Cornwell and Lee's 1993 American Water Works Association Research Foundation Report and 1994 Journal of the American Water Works Association article on the Bangor and Moshannon Valley, PA water treatment plants are consistent with the results of States *et al.* (1997). In total, Cornwell and Lee investigated eight water treatment plants, examining treatment efficiencies including several recycle streams and their impacts, and reporting a range of pathogen and other water quality data. All of the pathogen testing was conducted using the EPA IFA method refined by LeChevallier, *et al.* (1991c).

Cornwell and Lee (1993) conducted two rounds of sampling at both the Bangor and Moshannon plants, sampling the different recycle and treatment streams as eight-hour composites. They detected *Cryptosporidium* concentrations of over 16,500 *Cryptosporidium* oocysts/100L in the backwash water at an adsorption clarifier plant (Moshannon Valley) and over 850 *Cryptosporidium* oocysts/100L in backwash water from a direct filtration plant (Bangor). The parasite levels in the backwash samples were significantly higher than concentrations found in the raw source water, which contained *Cryptosporidium* oocyst concentrations of 13–20 oocysts/100L at the Moshannon Valley plant and 6–140 oocysts/100L at the Bangor plant.

In addition, Cornwell and Lee determined oocyst concentrations for two other recycle streams, combined thickener supernatant and sedimentation basin solids. The supernatant pathogen concentrations were reported at 141 *Cryptosporidium* oocysts/100L at the Bangor plant, and levels were reported at 82 to 420 oocysts/100L for the Moshannon plant in Rounds 1 and 2 of sampling, respectively. The sedimentation basin sludge was reported at 2,642 *Cryptosporidium* oocysts/100L in the clarifier sludge from the Moshannon Valley plant.

Giardia and Cryptosporidium in Backwash Water from Rapid Sand Filters Used for Drinking Water, Karanis et al. (1996) and Distribution and Removal of Giardia and Cryptosporidium in Water Supplies in Germany Karanis, et al. (1998)

Karanis *et al.* (1996 and 1998) conducted a four-year research study (samples collected from July, 1993–December, 1995) on the efficiency of *Cryptosporidium* removal by six different surface water treatment plants from Germany, all of which treat by conventional filtration. The method used was an IFA method dubbed the "EPA method", developed by Jakubowski and Ericksen, 1979.

Karanis et al. (1996) detected *Cryptosporidium* in 82 percent of the samples of backwash water from rapid sand filters of a water treatment plant ("Plant C") supplied by small rivers. Eight out of 12 raw water samples tested were positive for *Cryptosporidium* (range of 0.8 to 109 oocysts/100L). Backwash water samples collected by continuous flow centrifugation were positive for *Cryptosporidium* in 8 of 11 samples (range of 1 to 69/100L). Of 39 samples collected using cartridge filters, 33 were positive for *Cryptosporidium* (range of 0.8 to 252/100L). The authors called attention to the high detection rate of *Cryptosporidium* in the backwash waters (82 percent) of Plant C and to the fact that the supernatant following sedimentation was not free from cysts and oocysts (Karanis et al. 1996).

In the 1998 publication, Karanis et al. compiled the data from the 1996 study with more backwash occurrence data collected from another treatment plant ("Plant A"). The filter backwash of Plant A was sampled 10 minutes after the start of backwashing, and the backwash water was found to contain 150 *Cryptosporidium* oocysts/100L.

Protozoa in River Water: Sources, Occurrence, and Treatment, States, et al. (1997)

Over a two year period (July, 1994-June, 1996), States et al. sampled monthly for *Cryptosporidium* in the raw, settled, filtered and filter backwash water at the Pittsburgh Drinking Water Treatment Plant, in order to gauge the efficiency of pathogen removal at the plant. States et al. identified several sources contributing oocysts to the influent water, including sewage plant effluent, combined sewer overflows, dairy farm streams, and recycling of backwash water. All pathogen sampling was conducted with the IFA method. *Cryptosporidium* occurred in the raw Allegheny river water supplying the plant with a geometric mean of 31 oocysts/100L in 63 percent of samples collected, and ranged from non-detect to 2,333 oocysts/100L (see Table II.3 for source water information). Of the filter backwash samples, a geometric mean of 328 oocysts/100L was found at an occurrence rate of 38 percent of samples, with a range from non-detect to 13,158 oocysts/100L. The fact that the mean concentration of *Cryptosporidium* oocysts in backwash water can be substantially higher than the oocyst concentration in untreated river water suggests that recycling untreated filter backwash water can be a significant source of this parasite to water within the treatment process.

F. Summary and Conclusions

Cryptosporidiosis is a disease without a therapeutic cure, and its causative agent, *Cryptosporidium*, is resistant to chlorine disinfection. *Cryptosporidium* has been known to cause severe illness, especially in immunocompromised individuals, and can be fatal. Several waterborne cryptosporidiosis outbreaks have been reported, and it is likely that others have occurred but have gone unreported. *Cryptosporidium* has been detected in a wide range of source waters, documented in over 30 studies from the literature, and it has been found at levels of concern in filter backwash water and other recycle streams.

One of the key regulations EPA has developed and implemented to counter pathogens in drinking water is the SWTR (54 FR 27486, June 19, 1989). The SWTR requires that surface water systems have sufficient treatment to reduce the source water concentration of *Giardia* and viruses by at least 99.9 percent (3 log) and 99.99 percent (4 log), respectively. A shortcoming of the SWTR, however, is that the rule does not specifically control for *Cryptosporidium*. The first report of a recognized waterborne outbreak caused by *Cryptosporidium* was published during the development of the SWTR (D'Antonio et al. 1985).

In 1998, the Agency finalized the IESWTR that enhances the microbial pathogen protection provided by the SWTR for systems serving 10,000 or more persons. The IESWTR includes an MCLG of zero for *Cryptosporidium* and requires a minimum 2-log (99 percent) removal of *Cryptosporidium*, linked to enhanced combined filter effluent and individual filter turbidity control provisions.

Several provisions of today's proposed rule, the LT1FBR, are designed to address the concerns covered by the IESWTR, improving control of *Cryptosporidium* and other microbial contaminants, for the portion of the public served by small PWSs (i.e., serving less than 10,000 persons). The LT1FBR also addresses the concern that for all PWSs that practice recycling, *Cryptosporidium* (and other emerging pathogens resistant to standard disinfection practice) are reintroduced to the treatment process of PWSs by the recycle of spent filter backwash water, solids treatment residuals, and other process streams.

Insufficient treatment practices have been cited as the cause of several reported waterborne disease outbreaks (Rose, 1997). Rose (1997) also found that a reduction in turbidity is indicative of a more efficient filtration process. Therefore, the turbidity and filter monitoring requirements of today's proposed LT1FBR will ensure that the removal process necessary to protect the public from cryptosporidiosis is operating properly, and the recycle stream provisions will ensure that the treatment process is not disrupted or operating inefficiently. The LT1FBR requirements that address the potential for *Cryptosporidium* to enter the finished drinking water supply will be described in more detail in the following sections.

III. Baseline Information-Systems Potentially Affected By Today's Proposed Rule

EPA utilized the 1997 state-verified version of the Safe Drinking Water Information System (SDWIS) to develop the total universe of systems which utilize surface water or groundwater under the direct influence (GWUDI) as sources. This universe consists of 11,593 systems serving fewer than 10,000 persons, and 2,096 systems serving 10,000 or more persons. Given this initial baseline, the Agency developed estimates of the number of systems which would be affected by components of today's proposed rule by utilizing three primary sources: Safe Drinking Water Information Systems; Community Water Supply Survey; and Water: Stats. A brief overview of each of the data sources is described in the following paragraphs.

Safe Drinking Water Information System (SDWIS)

SDWIS contains information about PWSs including violations of EPA's regulations for safe drinking water. Pertinent information in this database includes system name and ID, population served, geographic location,

type of source water, and type of treatment (if provided).

Community Water System Survey (CWSS)

EPA conducted the 1995 CWSS to obtain data to support its development and evaluation of drinking water regulations. The survey consisted of a stratified random sample of 3,700 water systems nationwide (surface water and groundwater). The survey asked 24 operational and 13 financial questions.

Water:/Stats (WaterStats)

WaterStats is an in-depth database of water utility information compiled by the American Water Works Association. The database consists of 898 utilities of all sizes and provides a variety of data including treatment information.

Information regarding estimates of the number of systems which may potentially be affected by specific components of today's proposed rule can be found in the discussion of each proposed rule component in Section IV.

IV. Discussion of Proposed LT1FBR Requirements

A. Enhanced Filtration Requirements

As discussed earlier in this preamble, one of the key objectives of today's proposed rule is ensuring that an adequate level of public health protection is maintained in order to minimize the risk associated with *Cryptosporidium*. While the current SWTR provides protection from viruses and *Giardia*, it does not specifically address *Cryptosporidium*, which has been linked to outbreaks resulting in over 420,000 cases of gastrointestinal illness in the 1990s (403,000 associated with the Milwaukee outbreak). Because of *Cryptosporidium's* resistance to disinfection practices currently in place at small systems throughout the country, the Agency believes enhanced filtration requirements are necessary to improve control of this microbial pathogen.

In the IESWTR, the Agency utilized an approach consisting of three major components to address *Cryptosporidium* at plants serving populations of 10,000 or more. The first component required systems to achieve a 2 log removal of *Cryptosporidium*. The second component consisted of strengthened turbidity requirements for combined filter effluent. The third component required individual filter turbidity monitoring.

In today's proposed rule addressing systems serving fewer than 10,000 persons, the Agency is utilizing the same framework. Where appropriate, EPA has evaluated additional options in an effort to alleviate burden on small systems while still maintaining a comparable level of public health protection.

The following sections describe the overview and purpose of each of the rule components, relevant data utilized during development, the requirements of today's proposed rule (including consideration of additional options where appropriate), and a request for comment regarding each component.

1. Two Log *Cryptosporidium* Removal Requirement

a. Two Log Removal

i. Overview and Purpose

The 1998 IESWTR (63 FR 69477, December 16, 1998) establishes an MCLG of zero for *Cryptosporidium* in order to adequately protect public health. In conjunction with the MCLG, the IESWTR also established a treatment technique requiring 2 log *Cryptosporidium* removal for all surface water and GWUDI systems which filter and serve populations of 10,000 or more people, because it was not economically and technologically feasible to accurately ascertain the level of *Cryptosporidium* using current analytical methods. The Agency believes it is appropriate and necessary to extend this treatment technique of 2 log *Cryptosporidium* removal requirement to systems serving fewer than 10,000 people.

ii. Data

As detailed later in this section, EPA believes that the data and principles supporting requirements established for systems serving populations of 10,000 or more are also applicable to systems serving populations fewer than 10,000. The following section provides information and data regarding: (1) the estimated number of small systems subject to the proposed 2 log *Cryptosporidium* removal requirement; and (2) *Cryptosporidium* removal using various filtration technologies.

Estimate of the Number of Systems Subject to 2 log Cryptosporidium Removal Requirement

Using the baseline described in Section III of today's proposed rule, the Agency applied percentages of surface water and GWUDI systems which filter (taken from the 1995 CWSS) in order to develop an estimate of the number of systems which filter and serve fewer than 10,000 persons. This resulted in an estimated 9,133 surface water and GWUDI systems that filter which may be subject to the proposed removal requirement. Table IV.1 provides this estimate broken down by system size and type.

TABLE IV.1.—ESTIMATE OF SYSTEMS SUBJECT TO 2 LOG CRYPTOSPORIDIUM REMOVAL REQUIREMENT [a]

System type	Population served					
	<100	101–500	501–1K [b]	1K–3.3K [b]	3.3K–10K [b]	Total #Sys.
Community	888	1453	950	2022	1591	6903
Non Community	1099	374	78	64	35	1649
NTNC	214	204	82	64	17	581
Total	2201	2031	1110	2150	1643	[b]9134b

[a] Numbers may not add due to rounding
[b] K = thousands

Cryptosporidium Removal Using Conventional and Direct Filtration

During development of the LT1FBR, the Agency reviewed the results of several studies that demonstrated the ability of conventional and direct filtration systems to achieve 2 log removal of *Cryptosporidium* at well operated plants achieving low turbidity levels. Table IV.2 provides key information from these studies. A brief description of each study follows the table.

TABLE IV.2.—CONVENTIONAL AND DIRECT FILTRATION REMOVAL STUDIES

Type of treatment	Log removal	Experimental design	Researcher
Conventional	*Cryptosporidium* 4.2–5.2	Pilot plants	Patania *et al.* 1995
	Giardia 4.1–5.1	Pilot plants	Patania *et al.* 1995
	Cryptosporidium 1.9–4.0	Pilot-scale plants	Nieminski/Ongerth 1995
	Giardia 2.2–3.9	Pilot-scale plants	Nieminski/Ongerth 1995
	Cryptosporidium 1.9–2.8	Full-scale plants	Nieminski/Ongerth 1995
	Giardia 2.8–3.7	Full-scale plants	Nieminski/Ongerth 1995
	Cryptosporidium 2.3–2.5	Full-scale plants	LeChevallier and Norton 1992
	Giardia 2.2–2.8	Full-scale plants	
	Cryptosporidium 2–3	Pilot plants	LeChevallier and Norton 1992
	Giardia and Crypto 1.5–2	Full-scale plant (operation considered not optimized).	Foundation for Water Research, Britain 1994
	Cryptosporidium 4.1–5.2	Pilot Plant (optimal treatment)	Kelley *et al.* 1995
	Cryptosporidum .2–1.7	Pilot Plant (suboptimal treatment)	Dugan *et al.* 1999
			Dugan *et al.* 1999
Direct filtration	*Cryptosporidium* 2.7–3.1	Pilot plants	Ongerth/Pecaroro 1995
	Giardia 3.1–3.5	Pilot plants	Ongerth/Pecaroro 1995
	Cryptosporidium 2.7–5.9	Pilot plants	Patania *et al.* 1995
	Giardia 3.4–5.0	Pilot plants	Patania *et al.* 1995
	Cryptosporidium 1.3–3.8	Pilot plants	Nieminski/Ongerth 1995
	Giardia 2.9–4.0	Pilot plants	Nieminski/Ongerth 1995
	Cryptosporidium 2–3	Pilot plants	West *et al.* 1994
Rapid Granular Filtration (alone).	*Cryptosporidium* 2.3–4.9	Pilot plant	Swertfeger *et al.*, 1998
	Giardia 2.7–5.4		

Patania, Nancy L, et al. 1995

This study consisted of four pilot studies which evaluated treatment variables for their impact on *Cryptosporidium* and *Giardia* removal efficiencies. Raw water turbidities in the study ranged between 0.2 and 13 NTU. When treatment conditions were optimized for turbidity and particle removal at four different sites, *Cryptosporidium* removal ranged from 2.7 to 5.9 log and *Giardia* removal ranged from 3.4 to 5.1 log during stable filter operation. The median turbidity removal was 1.4 log, whereas the median particle removal was 2 log. Median oocyst and cyst removal was 4.2 log. A filter effluent turbidity of 0.1 NTU or less resulted in the most effective cyst removal, up to 1 log greater than when filter effluent turbidities were greater than 0.1 NTU (within the 0.1 to 0.3 NTU range). *Cryptosporidium* removal rates of less than 2.0 log occurred at the end of the filtration cycle.

Nieminski, Eva C. and Ongerth, Jerry E. 1995

This 2-year study evaluated *Giardia* and *Cryptosporidium* cyst removal through direct and conventional filtration. The source water of the full scale plant had turbidities typically between 2.5 and 11 NTU with a maximum of 28 NTU. The source water of the pilot plant typically had turbidities of 4 NTU with a maximum of 23 NTU. For the pilot plant achieving filtered water turbidities between 0.1–0.2 NTU, *Cryptosporidium* removals averaged 3.0 log for conventional treatment and 3.0 log for direct filtration, while the respective *Giardia* removals averaged 3.4 log and 3.3 log. For the full scale plant achieving similar filtered water turbidities, *Cryptosporidium* removal averaged 2.25 log for conventional treatment and 2.8 log for direct filtration, while the respective *Giardia* removals averaged 3.3 log for conventional treatment and 3.9 log for direct filtration. Differences in performance between direct filtration and conventional treatment by the full scale plant were attributed to differences in source water quality during the filter runs.

Ongerth, Jerry E. and Pecaroro, J.P. 1995

A 1 gallon per minute (gpm) pilot scale water filtration plant was used to measure removal efficiencies of *Cryptosporidium* and *Giardia* using very low turbidity source waters (0.35 to 0.58 NTU). With optimal coagulation, 3 log removal for both pathogens were obtained. In one test run, where coagulation was intentionally sub-optimal, the removals were only 1.5 log for *Cryptosporidium* and 1.3 log for *Giardia*. This demonstrates the importance of proper coagulation for cyst removal even though the effluent turbidity was less than 0.5 NTU.

LeChevallier, Mark W. and Norton, William D. 1992

The purpose of this study was to evaluate the relationships among *Giardia*, *Cryptosporidium*, turbidity, and particle counts in raw water and filtered water effluent samples at three different systems. Source water turbidities ranged from less than 1 to 120 NTU. Removals of *Giardia* and *Cryptosporidium* (2.2 to 2.8 log) were slightly less than those reported by other researchers, possibly because full scale plants were studied under less ideal conditions than the pilot plants. The participating treatment plants operated within varying stages of treatment optimization. The median removal achieved was 2.5 log for *Cryptosporidium* and *Giardia*.

LeChevallier, Mark W.; Norton, William D.; and Lee, Raymond G. 1991b

This study evaluated removal efficiencies for *Giardia* and *Cryptosporidium* in 66 surface water treatment plants in 14 States and 1 Canadian province. Most of the utilities achieved between 2 and 2.5 log removals for both *Giardia* and *Cryptosporidium*. When no oocysts were detected in the finished water, occurrence levels were assumed at the detection limit for calculating removal efficiencies.

Foundation for Water Research 1994

This study evaluated *Cryptosporidium* removal efficiencies for several treatment processes (including conventional filtration) using a pilot plant and bench-scale testing. Raw water turbidity ranged from 1 to 30 NTU. *Cryptosporidium* oocyst removal was between 2 and 3 log using conventional filtration. Investigators

concluded that any measure which reduced filter effluent turbidity should reduce risk from *Cryptosporidium*, and also showed the importance of selecting proper coagulants, dosages, and treatment pH. In addition to turbidity, increased color and dissolved metal ion coagulant concentration in the effluent are indicators of reduced efficiency of coagulation/flocculation and possible reduced oocysts removal efficiency.

Kelley, M.B. et al. 1995

This study evaluated two U.S. Army installation drinking water treatment systems for the removal of *Giardia* and *Cryptosporidium*. Protozoa removal was between 1.5 and 2 log. The authors speculated that this low *Cryptosporidium* removal efficiency occurred because the coagulation process was not optimized, although the finished water turbidity was less than 0.5 NTU.

West, Thomas; et al. 1994

This study evaluated the removal efficiency of *Cryptosporidium* through direct filtration using anthracite mono-media at filtration rates of 6 and 14 gpm/sq.ft. Raw water turbidity ranged from 0.3 to 0.7 NTU. Removal efficiencies for *Cryptosporidium* at both filtration rates were 2 log during filter ripening (despite turbidity exceeding 0.2 NTU), and 2 to 3 log for the stable filter run. Log removal declined significantly during particle breakthrough. When effluent turbidity was less than 0.1 NTU, removal typically exceeded 2 log. Log removals of *Cryptosporidium* generally exceeded that for particle removal.

Swertfeger et al., 1998

The Cincinnati Water Works conducted a 13 month pilot study to determine the optimum filtration media and depth of the media to replace media at its surface water treatment plant. The study investigated cyst and oocyst removal through filtration alone (excluding chemical addition, mixing, or sedimentation) and examined sand media, dual media, and deep dual media. Cyst and oocyst removal by each of the media designs was > 2.5 log by filtration alone.

Dugan et al., 1999

EPA conducted pilot scale experiments to assess the ability of conventional treatment to control *Cryptosporidium* oocysts under steady state conditions. The work was performed with a pilot plant designed to minimize flow rates and the number of oocysts required for spiking. With proper coagulation control, the conventional treatment process achieved at least 2 log removal of *Cryptosporidium*. In all cases where 2 log removal was not achieved, the plant also did not comply with the IESWTR filter effluent turbidity requirements.

All of the studies described above indicate that rapid granular filtration, when operated under appropriate coagulation conditions and optimized to achieve a filtered water turbidity level of less than 0.3 NTU, should achieve at least 2 log of *Cryptosporidium* removal. Removal rates vary widely, up to almost 6 log, depending upon water matrix conditions, filtered water turbidity effluent levels, and where and when removal efficiencies are measured within the filtration cycle. The highest log pathogen removal rates occurred in those pilot plants and systems which achieved very low finished water turbidities (less than 0.1 NTU). Other key points related to the studies include:

- As turbidity performance improves for treatment of a particular water, there tends to be greater removal of *Cryptosporidium*.
- Pilot plant study data in particular indicate high likelihood of achieving at least 2 log removal when plant operation is optimized to achieve low turbidity levels. Moreover, pilot studies represented in Table IV.2.a tend to be for low-turbidity waters, which are considered to be the most difficult to treat regarding particulate removal and associated protozoan removal.
- Because high removal rates were demonstrated in pilot studies using lower-turbidity source waters, it is likely that similar or higher removal rates can be achieved for higher-turbidity source waters.
- Determining *Cryptosporidium* removal in full-scale plants can be difficult due to the fact that data includes many non-detects in the finished water. In these cases, finished water concentration levels are assigned at the detection limit and are likely to result in over-estimation of oocysts in the finished water. This tends to under-estimate removal levels.
- Another factor that contributes to differences among the data is that some of the full-scale plant data comes from plants that are not optimized, but meet existing SWTR requirements. In such cases, oocyst removal may be less than 2 log. In those studies that indicate that full-scale plants are achieving greater than 2 log removal (LeChevallier studies in particular), the following characteristics pertain:

—Substantial numbers of filtered water measurements resulted in oocyst detections;

—Source water turbidity tended to be relatively high compared to some of the other studies; and

—A significant percentage of these systems were also achieving low filtered water turbidities, substantially less than 0.5 NTU.

- Removal of *Cryptosporidium* can vary significantly in the course of the filtration cycle (i.e., at the start-up and end of filter operations versus the stable period of operation).

Cryptosporidium Removal Using Slow Sand and Diatomaceous Earth Filtration

During development of the IESWTR, the Agency also evaluated several studies which demonstrated that slow sand and diatomaceous earth filtration were capable of achieving at least 2 log removal of *Cryptosporidium*. Table IV.3 provides key information from these studies. A brief description of each study follows the table.

TABLE IV.3.—SLOW SAND AND DIATOMACEOUS EARTH FILTRATION REMOVAL STUDIES

Type of treatment	Log removal	Experimental design	Researcher
Slow-sand filtration ..	Giardia & Cryptosporidium > 3	Pilot plant at 4.5 to 16.5°C.	Shuler and Ghosh 1991.
	Cryptosporidium 4.5	Full-scale plant	Imms et. al. 1995.
Diatomaceous earth filtration.	Giardia & Cryptosporidium > 3	Pilot plant, ...	Shuler et. al. 1990.
	Cryptosporidium 3.3–6.68	Bench scale	Ongerth & Hutton, 1997.

Shuler and Ghosh 1991

This pilot study was conducted to evaluate the ability of slow sand filters to remove *Giardia*, *Cryptosporidium*, coliforms, and turbidity. The pilot study was conducted at Pennsylvania State University using a raw water source with a turbidity ranging from 0.2–0.4 NTU. Influent concentration of

Cryptosporidium oocysts during the pilot study ranged from 1,300 to 13,000 oocysts/gallon. Oocyst removal was shown to be greater than 4 log.

Timms et al 1995

This pilot study was conducted to evaluate the efficiency of slow sand filters at removing *Cryptosporidium*. A pilot plant was constructed of 1.13 m^2 in area and 0.5 m in depth with a filtration rate of 0.3m/h. The filter was run for 4–5 weeks before the experiment to ensure proper operation. *Cryptosporidium* oocysts were spiked to a concentration of 4,000/L. Results of the study indicated a 4.5 log removal of *Cryptosporidium* oocysts.

Shuler et al 1990

In this study, diatomaceous earth (DE) filtration was evaluated for removal of *Giardia*, *Cryptosporidium*, turbidity and coliform bacteria. The study used a 0.1m^2 pilot scale DE filter with three grades of diatomaceous earth (A, B, and C). The raw water turbidity varied between 0.1 and 1 NTU. Filter runs ranged from 2 days to 34 days. A greater than 3 log removal of *Cryptosporidium* was demonstrated in the 9 filter runs which made up the study.

Ongerth and Hutton, 1997

Bench scale studies were used to define basic characteristics of DE filtration as a function of DE grade and filtration rate. Three grades of DE were used in the tests. *Cryptosporidium* removal was measured by applying river water seeded with *Cryptosporidium* to Walton test filters. Tests were run for filtration rates of 1 and 2 gpm/sq ft. Each run was replicated 3 times. Approximately 6 logs reduction in the concentration of *Cryptosporidium* oocysts was expected under normal operating conditions.

Cryptosporidium Removal Using Alternative Filtration Technologies

EPA recognizes that systems serving fewer than 10,000 individuals employ a variety of filtration technologies other than those previously discussed. EPA collected information regarding several other popular treatment techniques in an effort to verify that these treatments were also technically capable of achieving a 2 log removal of *Cryptosporidium*. A brief discussion of these alternative technologies follows along with studies demonstrating effective *Cryptosporidium* removals.

Membrane Filtration

Membrane filtration (Reverse Osmosis, Nanofiltration, Ultrafiltration, and Microfiltration) relies upon pore size in order to remove particles from water. Membranes possess a pore size smaller than that of a *Cryptosporidium* oocyst, enabling them to achieve effective log removals. The smaller the pore size, the more effective the rate of removal. Typical pore sizes for each of the four types of membrane filtration are shown below:

- Microfiltration—1–0.1 microns (μm)
- Ultrafiltration—0.1–.01 (μm)
- Nanofiltration—.01–.001 (μm)
- Reverse Osmosis—<.001 (μm)

Bag Filtration

Bag filters are non-rigid, disposable, fabric filters where water flows from inside of the bag to the outside of the bag. One or more filter bags are contained within a pressure vessel designed to facilitate rapid change of the filter bags when the filtration capacity has been used up. Bag filters do not generally employ any chemical coagulation. The pore sizes in the filter bags designed for protozoa removal generally are small enough to remove protozoan cysts and oocysts but large enough that bacteria, viruses and fine colloidal clays would pass through. Bag filter studies have shown a significant range of results in the removal of *Cryptosporidium* oocysts (0.33–3.2 log). (Goodrich, 1995)

Cartridge Filtration

Cartridge filtration also relies on physical screening to remove particles from water. Typical cartridge filters are pressure filters with glass, fiber or ceramic membranes, or strings wrapped around a filter element housed in a pressure vessel (USEPA, 1997a).

The Agency evaluated several studies which demonstrate the ability of various alternative filtration technologies to achieve 2 log removal of *Cryptosporidium* (in several studies 2 log removal of 4–5 (μm) microspheres were used as a surrogate for *Cryptosporidium*). These studies demonstrate that 2 log removal was consistently achievable in all but bag filters. Table IV.4 provides key information from these studies. A brief description of each study follows:

TABLE IV.4.—ALTERNATIVE FILTRATION REMOVAL STUDIES

Type of treatment	Log removal	Experimental design	Researcher
Microfiltration	*Cryptosporidium* 4.2–4.9 log	Bench Scale	Jacangelo *et al.* 1997.
	Giardia 4.6–5.2 log		
	Cryptosporidium 6.0—7.0 log	Pilot Plant	
	Cryptosporidium 4.3—5.0 log	Pilot Plant	Drozd & Schartzbrod, 1997.
	Cryptosporidium 7.0–7.7 log	Bench Scale	Hirata & Hashimoto, 1998.
	Microspheres 3.57–3.71 log	Full Scale	Goodrich *et al.* 1995.
Ultrafiltration	*Cryptosporidium* 4.4—4.9 log	Bench Scale	Jacangelo *et al.* 1997.
	Giardia 4.7–5.2 log		
	Cryptosporidium 5.73–5.89 log	Bench Scale	Collins *et al.* 1996.
	Giardia 5.75–5.85 log		
	Cryptosporidium 7.1–7.4 log	Bench Scale	Hirata & Hashimoto, 1998.
	Cryptosporidium 3.5 log	pilot Plant	Lykins *et al.* 1994.
	Microspheres 3–4 log		
Reverse Osmosis	Cryptosporidium > 5.7 log	Pilot Scale	Adham *et al.* 1998
	Giardia > 5.7 log.		
Hybrid Membrane	Microspheres 4.18 log	Bench Scale	Goodrich et al. 1995
Bag Filtration	Microspheres .33–3.2 log	Pilot Plant	Goodrich et al. 1995
Cartridge filtration	Microspheres 3.52–3.68 log	Pilot Plant	Goodrich et al. 1995
	Particles (5–15 um) > 2 log	Bench Scale	Land, 1998.

Jacangelo et al., 1997

Bench scale and pilot plant tests were conducted with microfiltration and ultrafiltration filters (using six different membranes) in order to evaluate microorganism removal. Bench scale studies were conducted under worst case operating conditions (direct flow filtration at the maximum recommended transmembrane pressure using deionized water slightly buffered at pH 7). Log removal ranged from 4.7 to 5.2 log removal. Pilot plant results ranged from 6.0–7.0 log removal during worst-case operating conditions (*i.e.*, direct filtration immediately after backwashing at the maximum recommended operating transmembrane pressure).

Drozd and Schartzbrod, 1997

A pilot plant system was established to evaluate the removal of *Cryptosporidium* using crossflow microfiltration (.2 µm porosity). Results demonstrated *Cryptosporidium* log removals of 4.3 to greater than 5.5 with a corresponding mean filtrate turbidity of 0.25 NTU.

Collins et. al., 1996

This study consisted of bench scale testing of *Cryptosporidium* and *Giardia* log removals using an ultrafiltration system. Log removal of *Cryptosporidium* ranged from 5.73 to 5.89 log, while removal of *Giardia* ranged from 5.75 to 5.85 log.

Hirata & Hashimoto, 1998

Pilot scale testing using microfiltration (nominal pore size of .25 µm) and ultrafiltration (nominal cut-off molecular weight (MW) 13,000 daltons) was conducted to determine *Cryptosporidium* oocyst removal. Results conducted on the ultrafiltration units ranged from 7.1 to 7.5 logs of *Cryptosporidium* removal. Results of the microfiltration studies yielded log removals from 7.0 to 7.7 log.

Lykins et al., [1994]

An ultrafiltration system was evaluated for the removal of *Cryptosporidium* oocysts at the USEPA Test and Evaluation Facility in Cincinnati, Ohio. The filter run was just over 48 hours. A 3.5 log removal of *Cryptosporidium* oocysts was observed. Additionally, twenty-four experiments were performed using 4.5 µm polystyrene microspheres as a surrogate for *Cryptosporidium* because of a similar particle distribution. Log removal of microspheres ranged from 3 to 4 log.

Adham et al., 1998

This study was conducted to evaluate monitoring methods for membrane integrity. In addition to other activities, microbial challenge tests were conducted on reverse osmosis (RO) membranes to both determine log removals and evaluate system integrity. Log removal of *Cryptosporidium* and *Giardia* was >5.7 log in uncompromised conditions, and > 4.5 log in compromised conditions.

Goodrich et al., 1995

This study was conducted to evaluate removal efficiencies of three different bag filtration systems. Average filter pore size of the filters was 1 µm while surface area ranged from 35 to 47 sq ft. Bags were operated at 25, 50 and 100 percent of their maximum flow rate while spiked with 4.5 µm polystyrene microspheres (beads) as a surrogate for *Cryptosporidium*. Bead removal ranged from .33 to 3.2 log removal.

Goodrich et al 1995.

This study evaluated a cartridge filter with a 2 µm rating and 200 square feet of surface area for removal efficiency of *Cryptosporidium* sized particles. The filter was challenge tested with 4.5 µm polystyrene microspheres as a surrogate for *Cryptosporidium*. Flow was set at 25 gpm with 50 psi at the inlet. Results from two runs under the same conditions exhibited log removals of 3.52 and 3.68.

Land, 1998

An alternative technology demonstration test was conducted to evaluate the ability of a cartridge filter to achieve 2 log removal of particles in the 5 to 15 µm range. The cartridge achieved at least 2 log removal of the 5 to 25 µm particles 95 percent of the time up to a 20 psi pressure differential. The filter achieved at least 2 log removal of 5 to 15 µm particles up to 30-psi pressure differential.

While the studies above note that alternative filtration technologies have demonstrated in the lab the capability to achieve a 2 log removal of *Cryptosporidium*, the Agency believes that the proprietary nature of these technologies necessitates a more rigorous technology-specific determination be made. Given this issue, the Agency believes that its Environmental Technology Verification (ETV) Program can be utilized to verify the performance of innovative technologies. Managed by EPA's Office of Research and Development, ETV was created to substantially accelerate the entrance of new environmental technologies into the domestic and international marketplace. ETV consists of 12 pilot programs, one of which focuses on drinking water. The program contains a protocol for physical removal of microbiological and particulate contaminants, including test plans for bag and cartridge filters and membrane filters (NSF, 1999). These protocols can be utilized to determine whether a specific alternative technology can effectively achieve a 2 log removal of *Cryptosporidium*, and under what parameters that technology must be operated to ensure consistent levels of removal. Additional information on the ETV program can be found on the Agency's website at http://www.epa.gov/etv.

iii. Proposed Requirements

Today's proposed rule establishes a requirement for 2 log removal of *Cryptosporidium* for surface water and GWUDI systems serving fewer than 10,000 people that are required to filter under the SWTR. Compliance with the combined filter effluent turbidity requirements, as described later, ensures compliance with the 2 log removal requirement. The requirement for a 2 log removal of *Cryptosporidium* applies between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer.

iv. Request for Comments

EPA requests comment on the 2 log removal requirement as discussed. The Agency is also soliciting public comment and data on the ability of alternative filtration technologies to achieve 2 log *Cryptosporidium* removal.

2. Turbidity Requirements

a. Combined Filter Effluent

i. Overview and Purpose

In order to address concern with *Cryptosporidium*, EPA has analyzed log removal performance by well operated plants (as described in the previous section) as well as filter performance among small systems to develop an appropriate treatment technique requirement that assures an increased level of *Cryptosporidium* removal. In evaluating combined filter performance requirements, EPA considered the strengthened turbidity provisions within the IESWTR and evaluated whether these were appropriate for small systems as well.

ii. Data

In an effort to evaluate combined filter effluent (CFE) requirements, EPA collected data in several areas to

supplement existing data, and address situations unique to smaller systems. This data includes:

- An estimate of the number of systems subject to the proposed strengthened turbidity requirements;
- Current turbidity levels at systems throughout the U:S. serving populations fewer than 10,000;
- The ability of package plants to meet strengthened turbidity standards; and
- The correlation between meeting CFE requirements and achieving 2 log removal of *Cryptosporidium*.

Estimate of the Number of Systems Subject to Strengthened CFE Turbidity Standards

Using the estimate of 9,134 systems which filter and serve fewer than 10,000 persons (as described in Section IV.A.1 of today's proposal), the Agency used the information contained within the CWSS database to estimate the number of systems which utilized specific types of filtration. The data was segregated based on the type of filtration utilized and the population size of the system. Percentages were derived for each of the following types of filtration:

- Conventional and Direct Filtration;
- Slow Sand Filtration;
- Diatomaceous Earth Filtration; and
- Alternative Filtration Technologies.

The percentages were applied to the estimate discussed in Section IV.A.1 of today's proposal for each of the respective population categories. Based on this analysis, the Agency estimates 5,896 conventional and direct filtration systems will be subject to the strengthened combined filter effluent turbidity standards. EPA estimates 1,756 systems utilize slow sand or diatomaceous earth filtration, and must continue to meet turbidity standards set forth in the SWTR. The remaining 1,482 systems are estimated to use alternative filtration technologies and will be required to meet turbidity standards as set forth by the State upon analysis of a 2 log *Cryptosporidium* demonstration conducted by the system.

Current Turbidity Levels

EPA has developed a data set which summarizes the historical turbidity performance of various filtration plants serving populations fewer than 10,000 (EPA, 1999d). The data set represents those systems that were in compliance with the turbidity requirements of the SWTR during all months being analyzed. The data set consists of 167 plants from 15 States. Table IV.5 provides information regarding the number of plants from each State. The data set includes plants representing each of the five population groups utilized in the CWSS (25–100, 101–500, 501–1,000, 1,001–3,300, and 3,301–10,000). The Agency has also received an additional data set from the State of California (EPA, 2000). This data has not been included in the assessments described below. The California data demonstrates similar results to the larger data set discussed below.

TABLE IV.5.—SUMMARY OF LT1FBR TURBIDITY DATA SET

State	Number of Plants
Alabama	1
California	1
Colorado	16
Illinois	13
Kansas	20
Louisiana	6
Minnesota	3
Montana	2
North Carolina	16
Ohio	4
Pennsylvania	27
South Carolina	16
Texas	23
Washington	17
West Virginia	2
Total	167

(EPA, 1999d)

This data was evaluated to assess the national impact of modifying existing turbidity requirements. The current performance of plants was assessed with respect to the number of months in which selected 95th percentile and maximum turbidity levels were met. The data show that approximately 88 percent of systems are also currently meeting the new requirements of a maximum turbidity limit of 1 NTU (Figure IV.1). With respect to the 95th percentile turbidity limit, roughly 46 percent of these systems are currently meeting the new requirement of 0.3 NTU (Figure IV.2) while approximately 70 percent meet this requirement 9 months out of the year. Estimates for systems needing to make changes to meet a turbidity performance limit of 0.3 NTU were based on the ability of systems currently to meet a 0.2 NTU. This assumption was intended to take into account a utility's concern with possible turbidity measurement error and to reflect the expectation that a number of utilities will attempt to achieve finished water turbidity levels below the regulatory performance level to assure compliance.

As depicted in Figure IV.1 and IV.2, the tighter turbidity performance standards for combined filter effluent in today's proposed rule reflect the actual, current performance many systems already achieve nationally. Revising the turbidity criteria effectively ensures that these systems continue to perform at their current level while also improving performance of a substantial number of systems that currently meet existing SWTR criteria, but operate at turbidity levels higher than proposed in today's rule.

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FIGURE IV.1

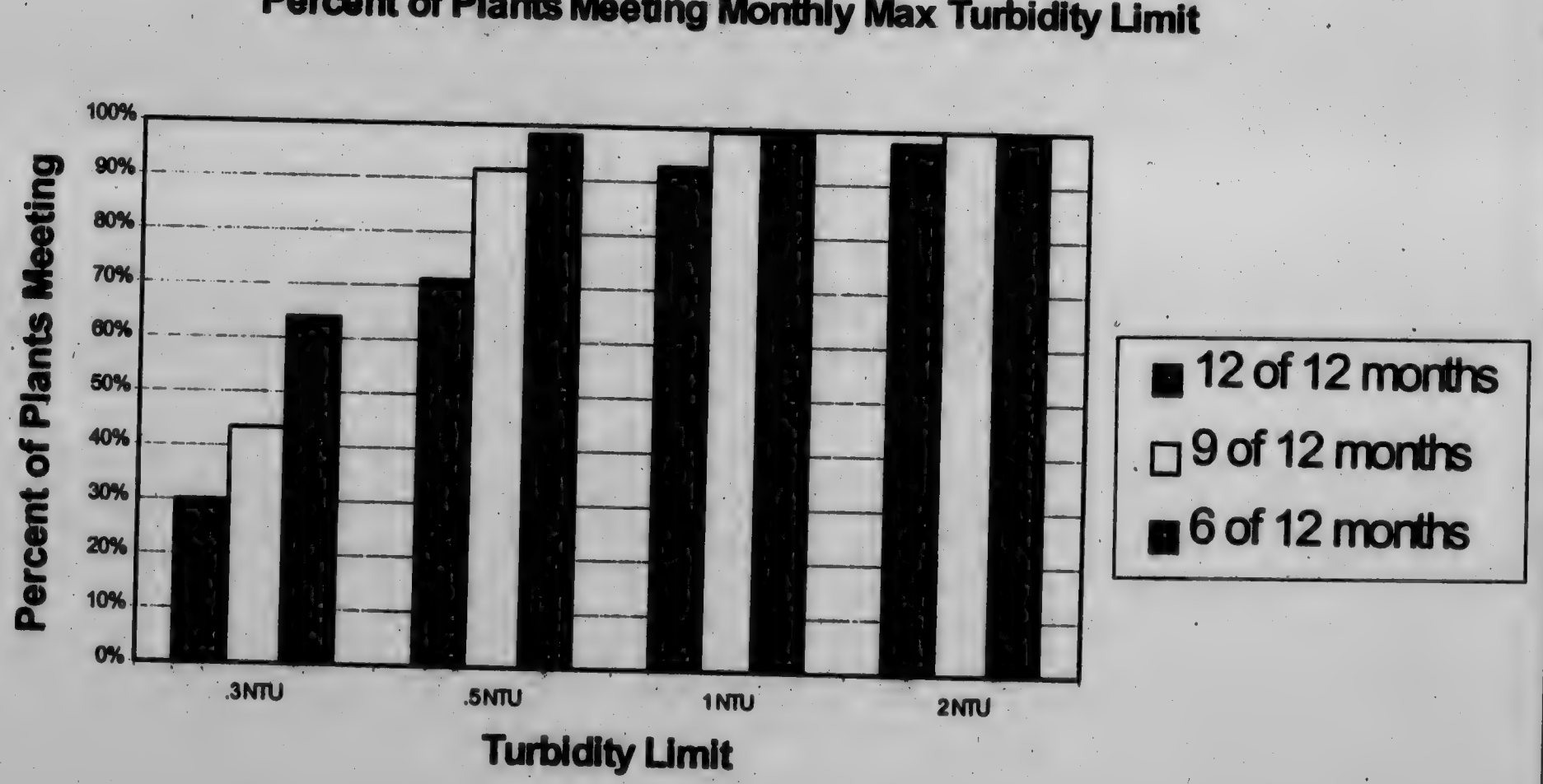
Percent of Plants Meeting Monthly Max Turbidity Limit
Percent of Plants Meeting
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
.3NTU
.5NTU
1NTU
2NTU
Turbidity Limit
12 of 12 months
9 of 12 months
6 of 12 months

FIGURE IV.2

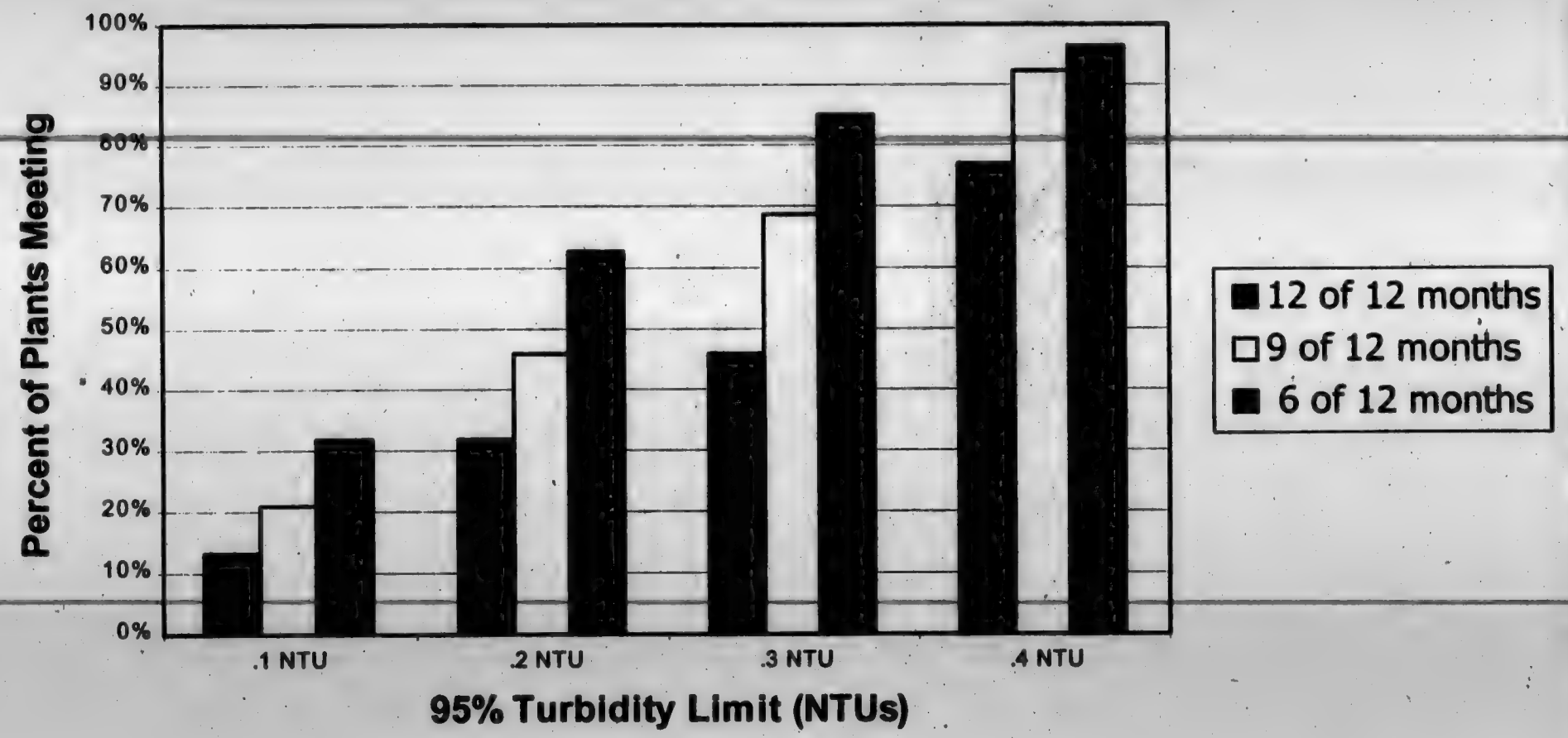

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Package Plants

During development of today's proposed rule, some stakeholders expressed concern regarding the ability of "package plants" to meet the proposed requirements. EPA evaluated these systems by gathering data from around the country. The information affirms the Agency's belief that package plants can and currently do meet the turbidity limits in today's proposed rule.

Package plants combine the processes of rapid mixing, flocculation, sedimentation and filtration (rapid sand, mixed or dual media filters) into a single package system. Package Filtration Plants are preconstructed, skid mounted and transported virtually assembled to the site. The use of tube settlers, plate settlers, or adsorption clarifiers in some Package Filtration Plants results in a compact size and more treatment capacity.

Package Filtration Plants are appropriate for treating water of a fairly consistent quality with low to moderate turbidity. Effective treatment of source waters containing high levels of or extreme variability in turbidity levels requires skilled operators and close operational attention. High turbidity or excessive color in the source water could require chemical dosages above the manufacturer's recommendations for the particular plant. Excessive turbidity levels may require presedimentation or a larger capacity plant. Specific design criteria of a typical package plant and operating and maintenance requirements can vary, but an example schematic is depicted in Figure IV.3.

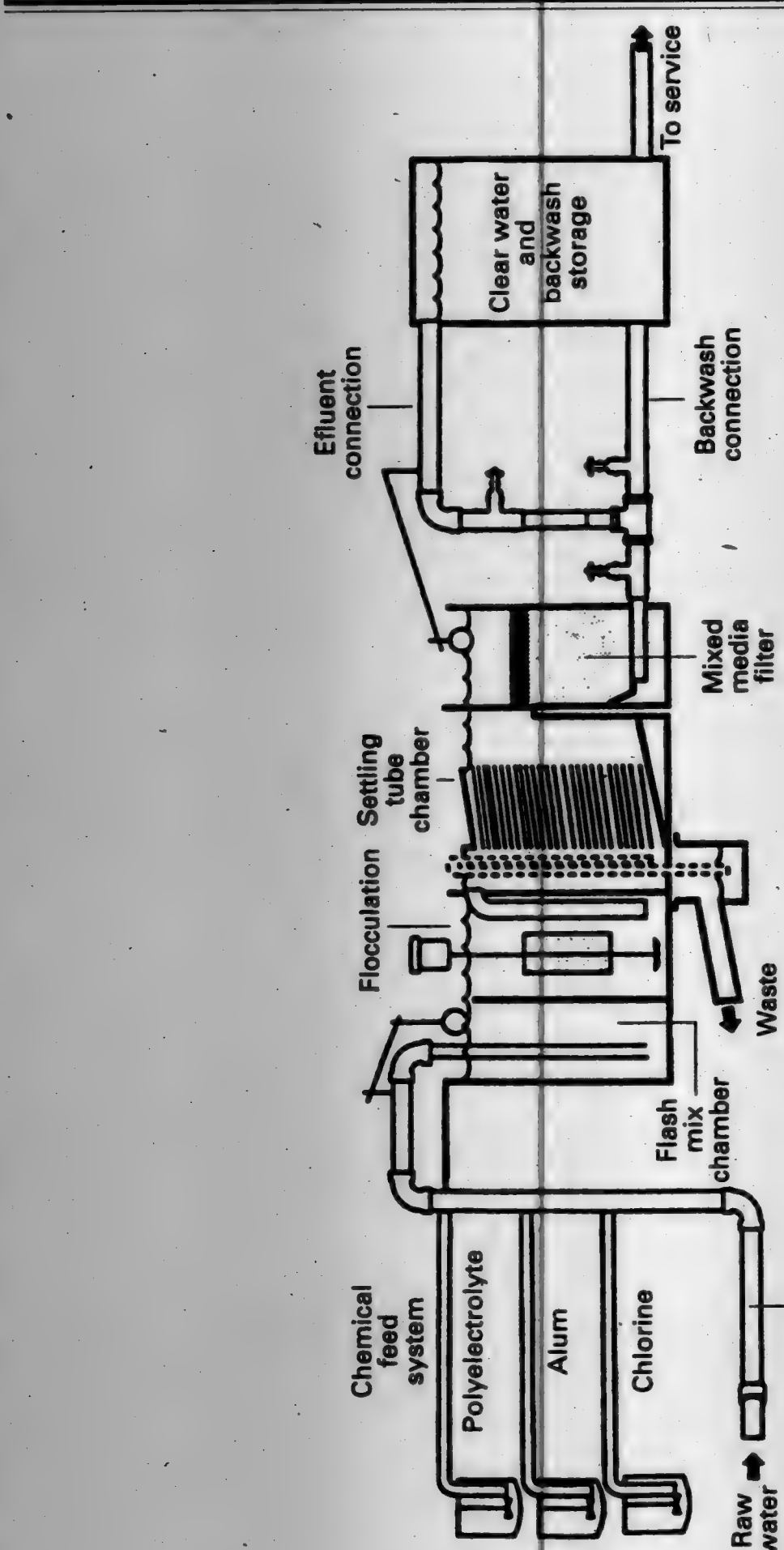

Figure IV.3 Example Package Plant Schematic

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The Agency believes that historic data show that package plants have a comparable ability to meet turbidity requirements as conventional or direct filtration systems.

A 1987 report of pilot testing using a trailer-mounted package plant system to treat raw water from Clear Lake in Lakeport, California demonstrates the ability of such systems to achieve low turbidity requirements. The raw water contained moderate to high turbidity (18 to 103 NTU). Finished water turbidities ranged from 0.07 to 0.11 NTU (EPA, 1987). Two previous studies (USEPA, 1980a,b and Cambell et al., 1995) also illustrate the ability of package systems throughout the country to meet historic turbidity performance criteria. These studies are described briefly:

Package Water Treatment Plant Performance Evaluation (USEPA, 1980a,b)

The Agency conducted a study of package water treatment systems which encompassed 36 plants in Kentucky, West Virginia, and Tennessee. Results from that study showed that the plants could provide water that met the existing turbidity limits established under the National Interim Primary Drinking Water Standards. Of the 31 plants at which turbidity measurements were made, 23 (75 percent) were found to be meeting existing standards. Of the 8 which did not meet requirements, one did not use chemical coagulants, and 6 operated less than four hours per day. (USEPA, 1980a, b)

Package Plants for Small Systems: A Field Study (Cambell et al, 1995)

This 1992 project evaluated the application of package plant technology to small communities across the U.S. The project team visited 48 facilities across the U.S. Of the 29 surface water and GWUDI systems, 21 (72 percent) had grab turbidity samples less than 0.5 NTU, the 95 percent limit which became effective in June of 1993. Twelve systems (41 percent) had values less than today's proposed 0.3 NTU 95 percent turbidity limit. (Cambell et al., 1995) It should be noted that today's rule requires compliance with turbidity limits based on 4 hour measurments.

The Agency recently evaluated Filter Plant Performance Evaluations (FPPEs) conducted by the State of Pennsylvania, in an effort to quantify the comparative abilities of package plants and conventional filtration systems to meet the required turbidity limits. The data set consisted of 100 FPPEs conducted at systems serving populations fewer than 10,000 (PADEP, 1999). Thirty-seven FPPEs were conducted at traditional conventional filtration systems while 37 were conducted at package plants or "pre-engineered" systems. The remaining 26 systems utilized other filtration technologies.

The FPPEs provided a rating of either acceptable or unacceptable as determined by the evaluation team. This rating was based on an assessment of the capability of individual unit processes to continuously provide an effective barrier to the passage of microorganisms. Specific performance goals were utilized to evaluate the performance of the system including the consistent ability to produce a finished water turbidity of less than 0.1 NTU, which is lower than the combined filter effluent turbidity requirement in today's proposed rule. Seventy-three percent of the traditional conventional filtration systems were rated acceptable and 89 percent of the package plants were rated acceptable.

The Agency also evaluated historic turbidity data graphs contained within each FPPE to provide a comparison of the ability of package plants and conventional systems to meet the 1 NTU max and 0.3 NTU 95 percent requirements that are contained in today's proposed rule. Sixty-seven percent of the conventional systems would meet today's proposed requirements while 74 percent of package systems in the data set would meet today's proposed requirements. The Agency believes that, when viewed alongside the aforementioned studies (USEPA, 1980a,b and Cambell et al., 1995), it is apparent that package systems have the ability to achieve more stringent turbidity limits.

Correlation Between CFE Requirements and 2-log Cryptosporidium Removal

Recent pilot scale experiments performed by the Agency assessed the ability of conventional treatment to control *Cryptosporidium* under steady state conditions. The work was performed with a pilot plant that was designed to minimize flow rates and as a result the number of oocyst required for continuous spiking. (Dugan et al. 1999)

Viable oocysts were fed into the plant influent at a concentration of 10^6/L for 36 to 60 hours. The removals of oocysts and the surrogate parameters turbidity, total particle counts and aerobic endospores were measured through sedimentation and filtration. There was a positive correlation between the log removals of oocysts and all surrogate parameters through the coagulation and settling process. With proper coagulation control, the conventional treatment process achieved the 2 log total *Cryptosporidium* removal required by the IESWTR. In all cases where 2 log total removal was not achieved, the plant also did not comply with the IESWTR's CFE turbidity requirements. Table IV.6 provides information on *Cryptosporidium* removals from this study.

TABLE IV.6.—LOG REMOVAL OF OOCYSTS (DUGAN ET AL. 1999)

Run	Log removal crypto	Exceeds CFE requirements
1	4.5	No.
2	5.2	No.
3	1.6	Yes, average CFE 2.1 NTU.
4	1.7	Yes, only 88% CFE under 0.3 NTU.
5	4.1	No.
6	5.1	No.
7	0.2	Yes, average CFE 0.5 NTU.
8	0.5	Yes, only 83% CFE under 0.3 NTU.
9	5.1	No.
10	4.8	No.

iii. Proposed Requirements

Today's proposed rule establishes combined filter effluent turbidity requirements which apply to all surface water and GWUDI systems which filter and serve populations fewer than 10,000. For conventional and direct filtration systems, the turbidity level of representative samples of a system's combined filter effluent water must be less than or equal to 0.3 NTU in at least 95 percent of the measurements taken each month. The turbidity level of representative samples of a system's filtered water must not exceed 1 NTU at any time.

For membrane filtration, (microfiltration, ultrafiltration, nanofiltration, and reverse osmosis) the Agency is proposing to require that the turbidity level of representative samples of a system's combined filter effluent water must be less than or equal to 0.3 NTU in at least 95 percent of the measurements taken each month. The turbidity level of representative samples of a system's filtered water must not exceed 1 NTU at any time. EPA included turbidity limits for membrane systems to allow such systems the ability to opt out of a possible costly demonstration of the ability to remove *Cryptosporidium*. The studies displayed previously in Table IV.4, demonstrate the ability of these technologies to achieve log-removals in excess of 2 log. In lieu of these turbidity limits, a public water system which utilizes membrane filtration may demonstrate to the State for purposes of membrane approval (using pilot plant studies or other means) that membrane filtration in combination with disinfection treatment consistently achieves 3 log removal and/or inactivation of *Giardia* lamblia cysts, 4 log removal and/or inactivation of viruses, and 2 log removal of *Cryptosporidium* oocysts. For each approval, the State will set turbidity performance requirements that the system must meet at least 95 percent of the time and that the system may not exceed at any time at a level that consistently achieves 3 log removal and/or inactivation of *Giardia* lamblia cysts, 4 log removal and/or inactivation of viruses, and 2 log removal of *Cryptosporidium* oocysts.

Systems utilizing slow sand or diatomaceous earth filtration must continue to meet the combined filter effluent limits established for these technologies under the SWTR (found in § 141.73 (b) and (c)). Namely, the turbidity level of representative samples of a system's filtered water must be less than or equal to 1 NTU in at least 95 percent of the measurements taken each month and the turbidity level of representative samples of a system's filtered water must at no time exceed 5 NTU.

For all other alternative filtration technologies (those other than conventional, direct, slow sand, diatomaceous earth, or membrane), public water systems must demonstrate to the State for purposes of approval (using pilot plant studies or other means), that the alternative filtration technology in combination with disinfection treatment, consistently achieves 3 log removal and/or inactivation of *Giardia* lamblia cysts, 4 log removal and/or inactivation of viruses, and 2 log removal of *Cryptosporidium* oocysts. For each approval, the State will set turbidity performance requirements that the system must meet at least 95 percent of the time and that the system may not exceed at any time at a level that consistently achieves 3 log removal and/or inactivation of *Giardia* lamblia cysts, 4 log removal and/or inactivation of viruses, and 2 log removal of *Cryptosporidium* oocysts.

iv. Request for Comments

EPA solicits comment on the proposal to require systems to meet the proposed combined filter effluent turbidity requirements. Additionally, EPA solicits comment on the following:

- The ability of package plants and/or other unique conventional and/or direct systems to meet the combined filter effluent requirements;
- Microbial attachment to particulate material or inert substances in water systems may have the effect of providing "shelter" to microbes by reducing their exposure to disinfectants (USEPA, 1999e). While inactivation of *Cryptosporidium* is not a consideration of this rule, should maximum combined filter effluent limits for slow sand and diatomaceous earth filtration systems be lowered to 1 or 2 NTU and/or 95th percentile requirements lowered to 0.3 NTU to minimize the ability of turbidity particles to "shelter" *Cryptosporidium* oocysts?
- Systems which practice enhanced coagulation may produce higher turbidity effluent because of the process. Should such systems be allowed to apply to the State for alternative exceedance levels similar to the provisions contained in the rule for systems which practice lime softening?
- Issues specific to small systems regarding the proposed combined filter effluent requirements;
- Establishment of turbidity limits for alternative filtration technologies;
- Allowance of a demonstration to establish site specific limits in lieu of generic turbidity limits, including components of such demonstration; and
- The number of small membrane systems employed throughout the country.

The Agency also requests comment on establishment of turbidity limits for membrane systems. While integrity of membranes provides the clearest understanding of the effectiveness of membranes, turbidity has been utilized as an indicator of performance (and corresponding *Cryptosporidium* log removal) for all filtration technologies. EPA solicits comment on modifying the requirements for membrane filters to meet integrity testing, as approved by the State and with a frequency approved by the State.

b. Individual Filter Turbidity

i. Overview and Purpose

During development of the IESWTR, it was recognized that performance of individual filters within a plant were of paramount importance to producing low-turbidity water. Two important concepts regarding individual filters were discussed. First, it was recognized that poor performance (and potential pathogen breakthrough) of one filter could be masked by optimal performance in other filters, with no discernable rise in combined filter effluent turbidity. Second, it was noted that individual filters are susceptible to turbidity spikes (of short duration) which would not be captured by four-hour combined filter effluent measurements. To address the shortcomings associated with individual filters, EPA established individual filter monitoring requirements in the IESWTR. For the reasons discussed below, the Agency believes it appropriate and necessary to extend individual filter monitoring requirements to systems serving populations fewer than 10,000 in the LT1FBR.

ii. Data

EPA believes that the support and underlying principles regarding the IESWTR individual filter monitoring requirements are also applicable for the LT1FBR. The Agency has estimated that 5,897 conventional and direct filtration systems will be subject to today's proposed individual filter turbidity requirements. Information regarding this estimate is found in Section IV.A.2.a of today's proposal. The Agency has analyzed information regarding turbidity spikes and filter masking which are presented next.

Turbidity Spikes

During a turbidity spike, significant amounts of particulate matter (including *Cryptosporidium* oocysts, if present) may pass through the filter. Various factors affect the duration and amplitude of filter spikes, including sudden changes to the flow rate through the filter, treatment of the filter backwash water, filter-to-waste capability, and site-specific water quality conditions. Recent experiments have suggest that surging has a significant effect on rapid sand filtration performance (Glasgow and Wheatley, 1998). An example filter profile depicting turbidity spikes is shown in Figure IV.4.

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Figure IV.4. Example Filter Profile Depicting Turbidity Spikes

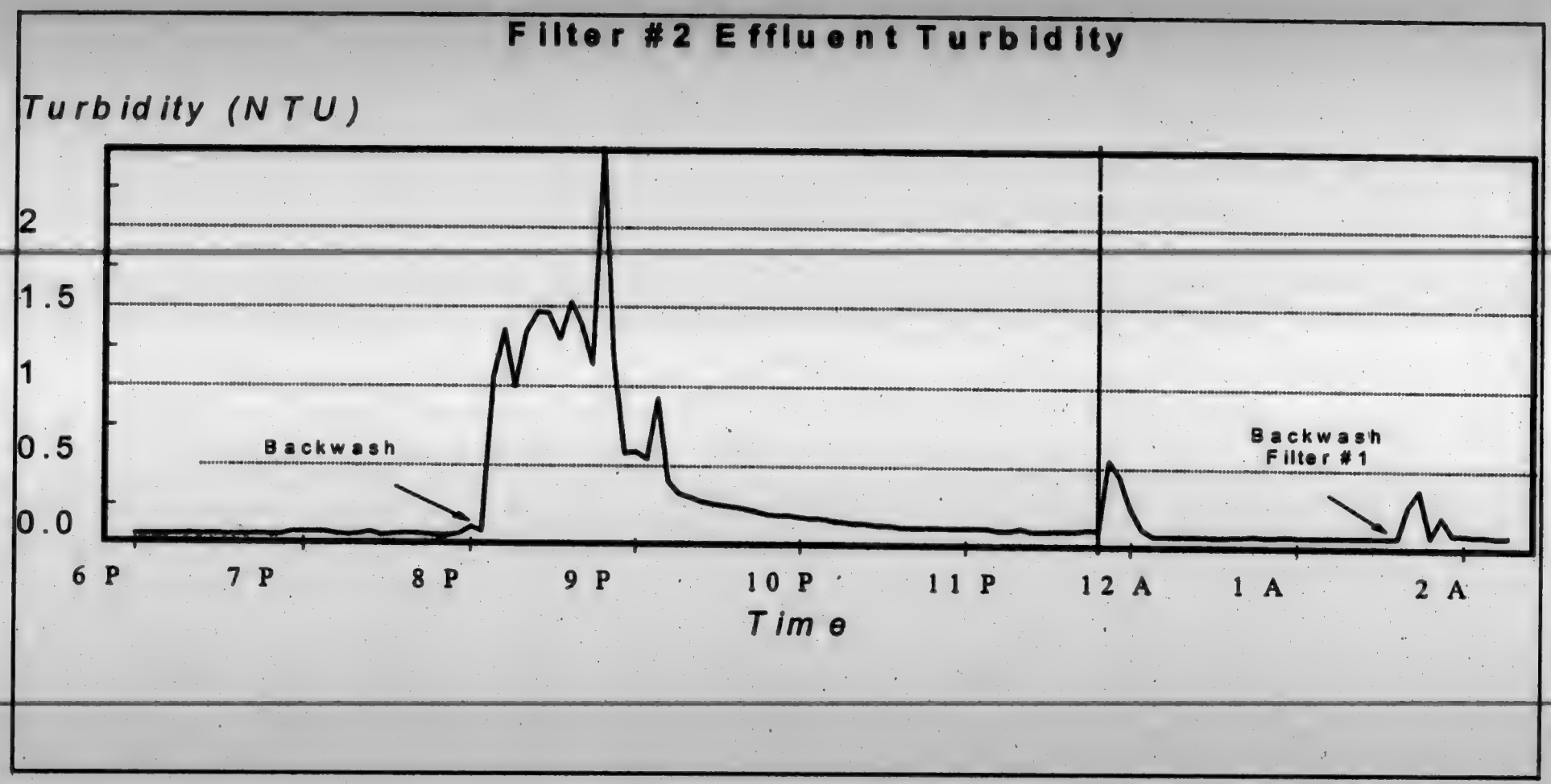

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Studies considered by both EPA and the M–DBP Advisory Committee noted that the greatest potential for a peak in turbidity (and thus, pathogen breakthrough) is near the beginning of the filter run after filter backwash or start up of operation (Amirtharajah, 1988; Bucklin, et al. 1988; Cleasby, 1990; and Hall and Croll, 1996). This phenomenon is depicted in Figure IV.4. Turbidity spikes also may occur for a variety of other reasons. These include:

- Outages or maintenance activities at processes within the treatment train;
- Coagulant feed pump or equipment failure;
- Filters being run at significantly higher loading rates than approved;
- Disruption in filter media;
- Excessive or insufficient coagulant dosage; and
- Hydraulic surges due to pump changes or other filters being brought on/off-line.

A recent study was completed which evaluated particle removal by filtration throughout the country. While the emphasis of this study was particle counting and removal, fifty-two of the 100 plants surveyed were also surveyed for turbidity with on-line turbidimeters. While all of the plants were able to meet 0.5 NTU 95 percent of the time, it was noted that there was a significant occurrence of spikes during the filter runs. These were determined to be a major source of raising the 95th percentile value for most of the filter runs. (McTigue *et al.* 1998)

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Figure IV.5a Results of Filter Turbidity Spike Analysis - Ripening Spikes by Change in Turbidity (McTigue 1998, Photorevised EPA 2000)

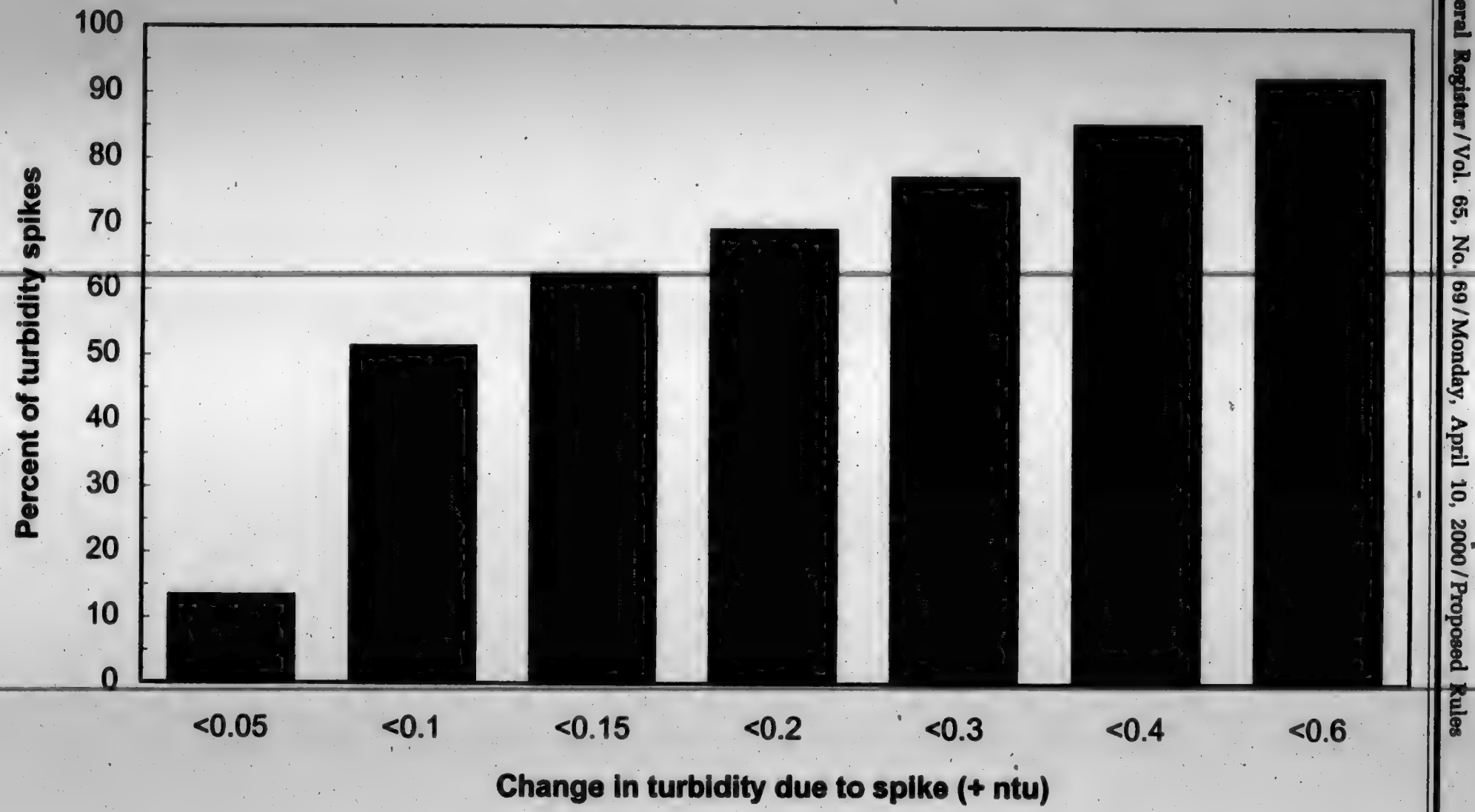

Figure IV.5b Results of Filter Turbidity Spike Analysis - Ripening Spikes by Duration (McTigue 1998, Photorevised EPA 2000)

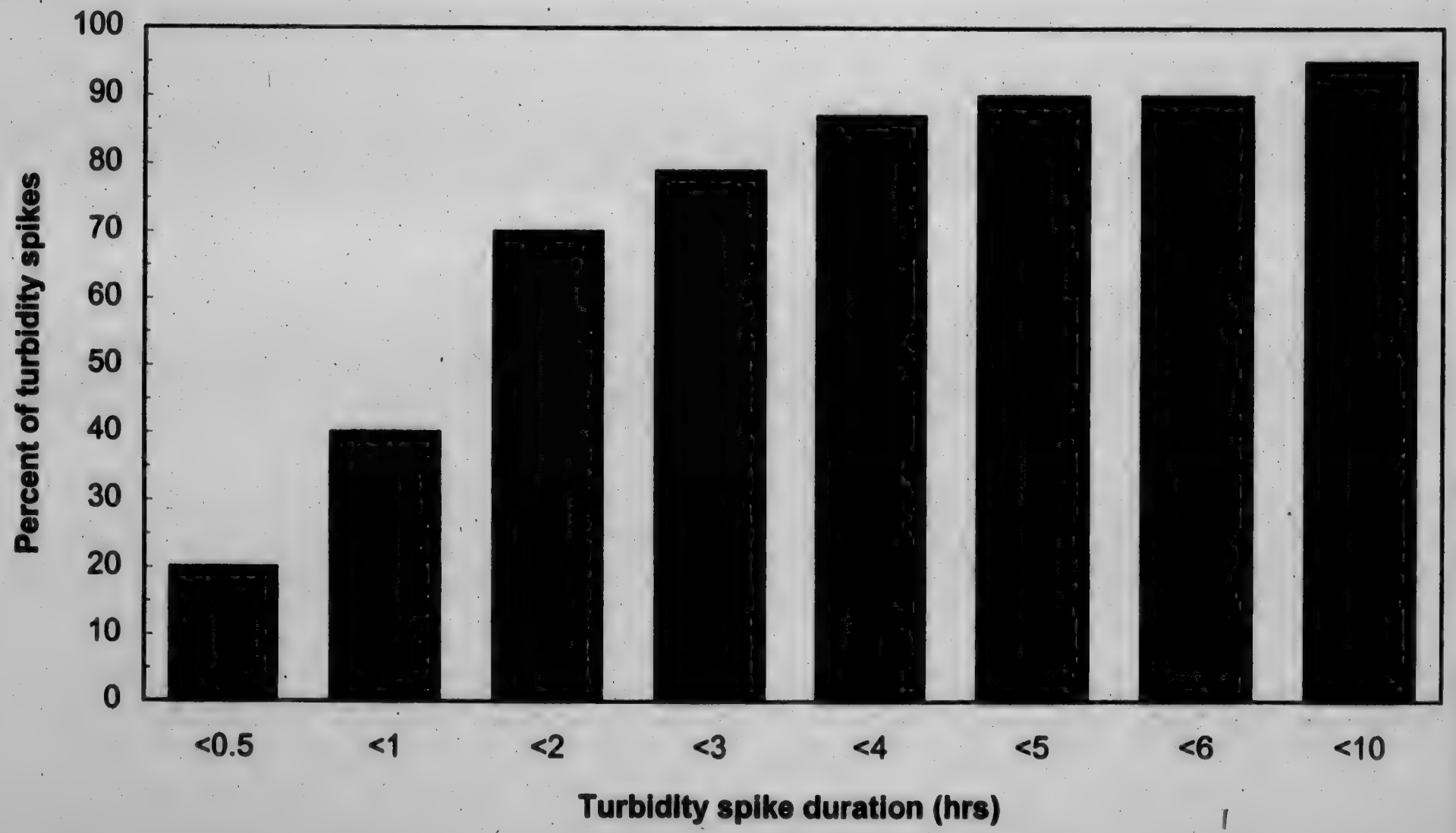

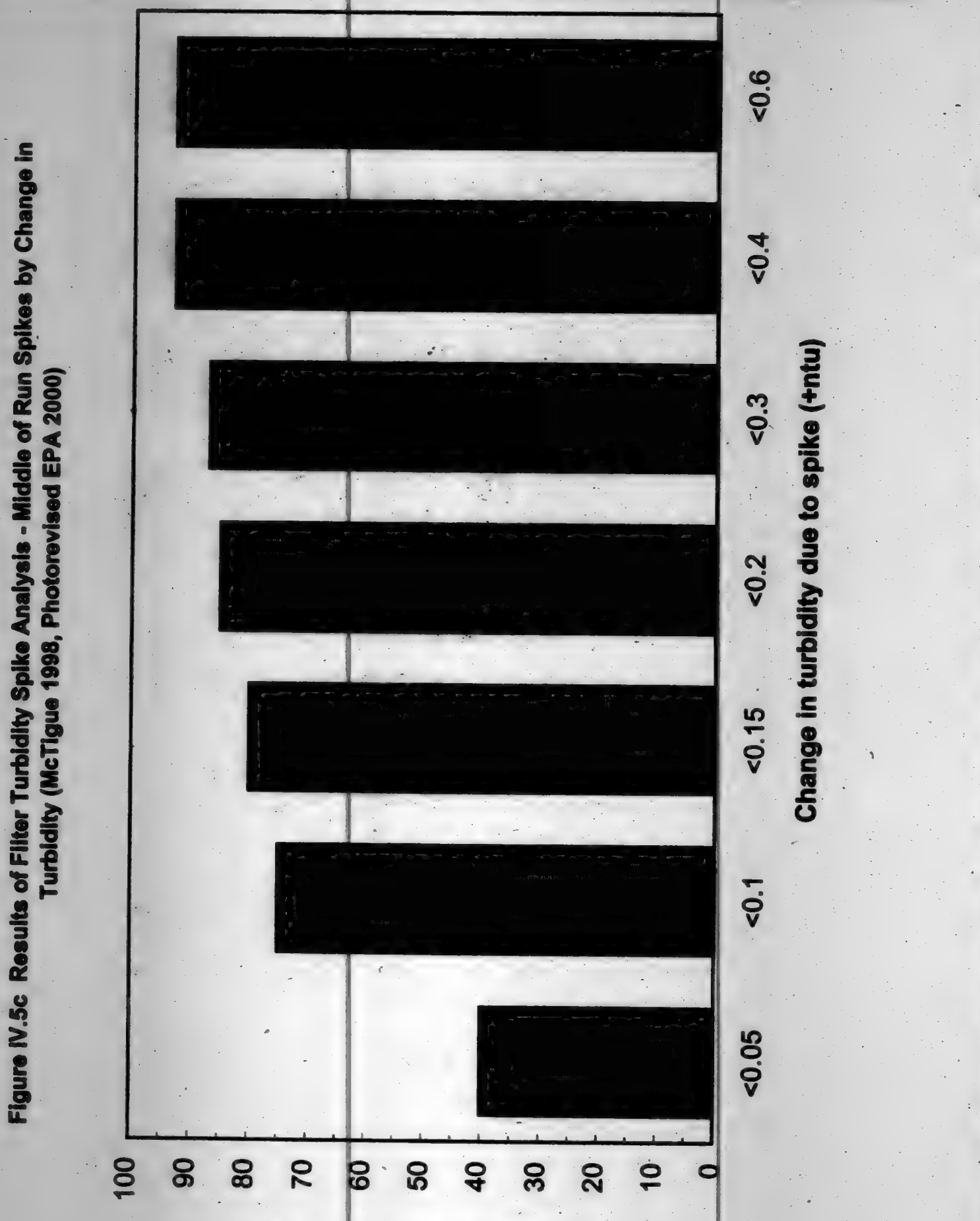

Figure IV.5c Results of Filter Turbidity Spike Analysis - Middle of Run Spikes by Change in Turbidity (McTigue 1998, Photorevised EPA 2000)

Figure IV.5d Results of Filter Turbidity Spike Analysis - Middle of Run Spikes by Change in Turbidity (McTigue 1998, Photorevised EPA 2000)

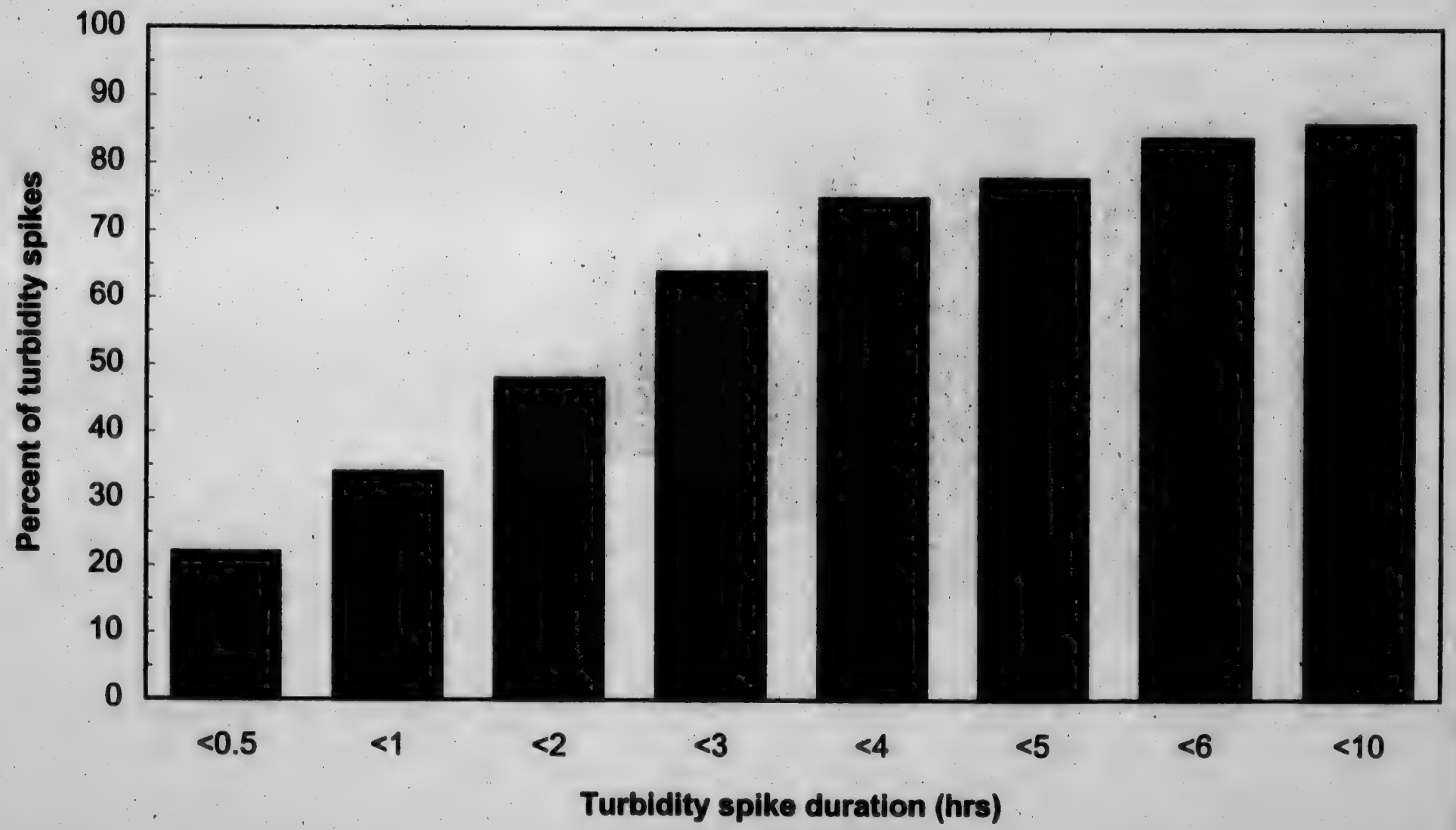

Figure IV.5e Results of Filter Turbidity Spike Analysis - End of Run Spikes by Change in Turbidity (McTigue 1998, Photorevised EPA 2000)

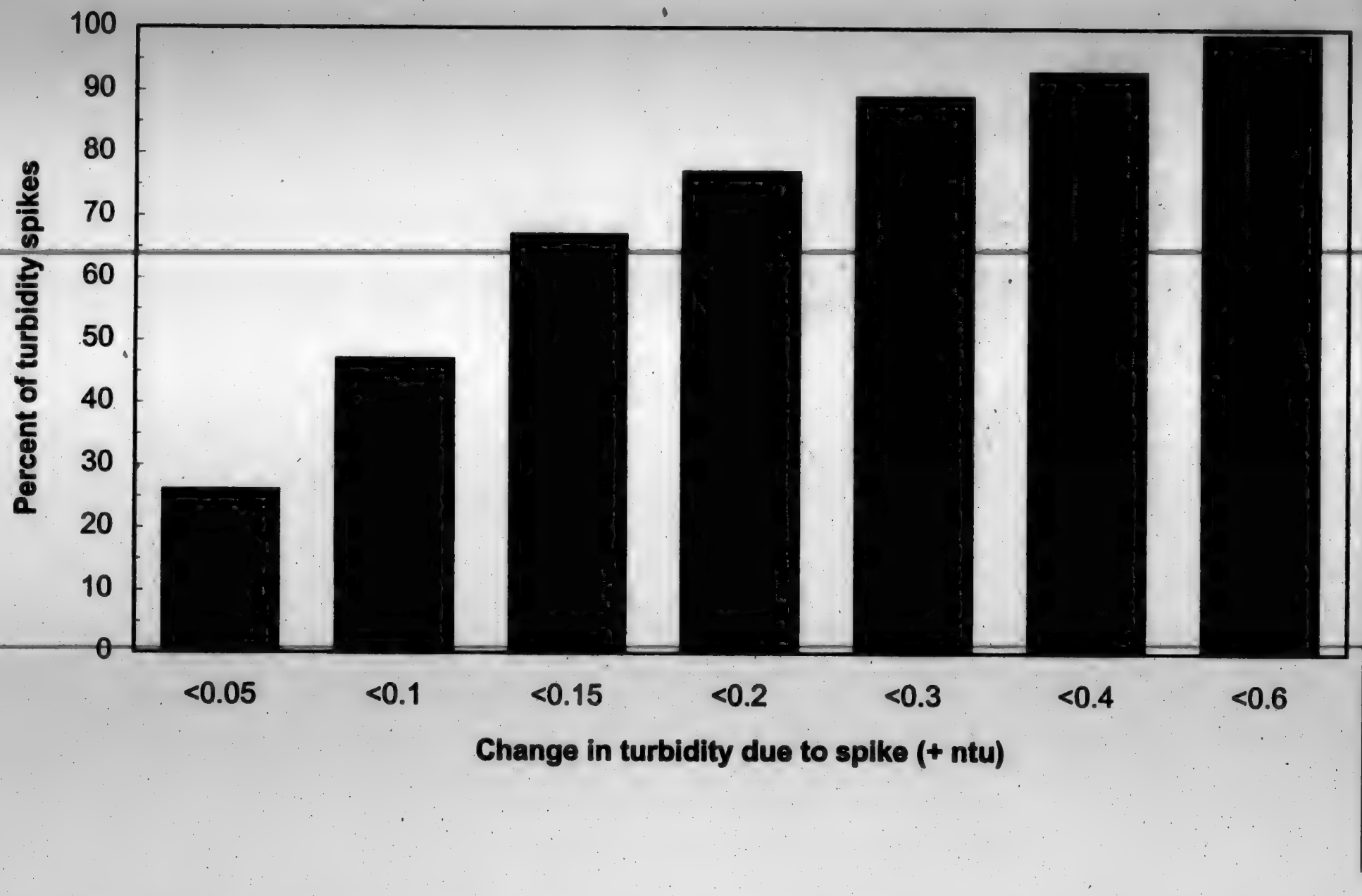

Figure IV.5f Results of Filter Turbidity Spike Analysis - End of Run Spikes by Duration (McTigue 1998, Photorevised EPA 2000)

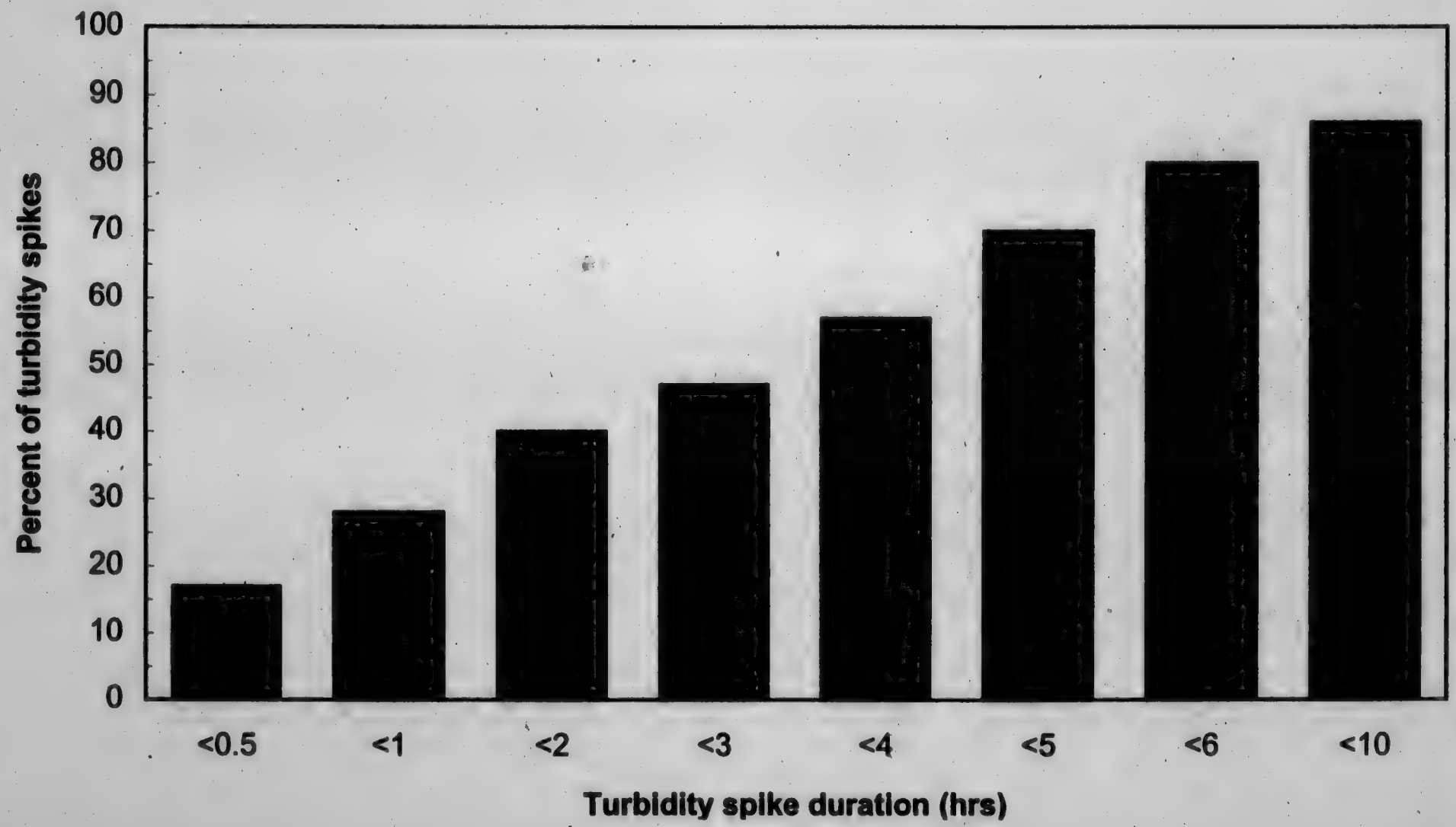

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Masking of Filter Performance

Combined Filter Effluent monitoring can mask poor performance of individual filters which may allow passage of particulates (including *Cryptosporidium* oocysts). One poorly performing filter, can be effectively "masked" by other well operated filters because water from each of the filters is combined before an effluent turbidity measurement is taken. The following example illustrates this phenomenon.

The fictitious City of "Smithville" (depicted in Figure IV.6) operates a conventional filtration plant with four rapid granular filters as shown below. Filter number 1 has significant problems because the depth and placement of the media are contributing to elevated turbidities. Filters 2, 3, and 4 do not have these problems and are operating properly.

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Figure IV.6 Schematic of Conventional Treatment Plant

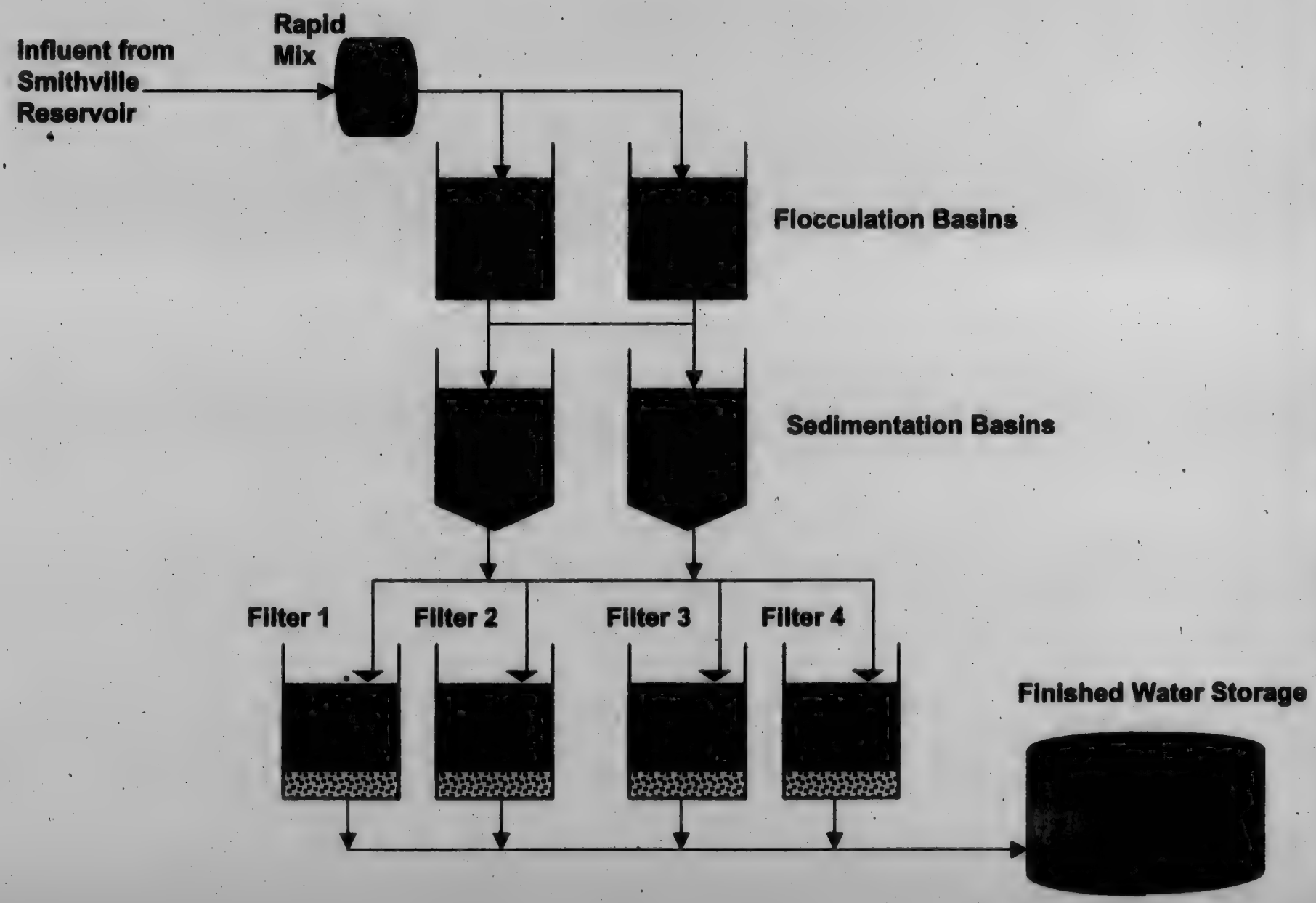

Turbidity measurements taken at the clearwell indicate 0.3 NTU. Filter 4 produces water with a turbidity of 0.08 NTU, Filter 3 a turbidity of 0.2 NTU, Filter 2 a turbidity of 0.1 NTU, and Filter 1 a turbidity of 0.9 NTU. Each filter contributes an equal proportion of water, but each is operating at different turbidity levels which contributes to the combined filter effluent of 0.32 NTU. ([0.08+0.2+0.1+0.9]÷4 = 0.32 NTU)

As discussed previously in Section IV.2.a, the Agency believes that a system must meet 0.3 NTU 95 percent of the time an appropriate treatment technique requirement that assures an increased level of *Cryptosporidium* removal. While the fictitious system described above would barely meet the required CFE turbidity, it is entirely possible that they would not be achieving an overall 2 log removal of *Cryptosporidium* with one filter achieving considerably less than 2-log removal. This issue highlights the importance of understanding the performance of individual filters relative to overall plant performance.

iii. Proposed Requirements

Today's proposed rule establishes an individual filter turbidity requirement which applies to all surface water and GWUDI systems using filtration and which serve populations fewer than 10,000 and utilize direct or conventional filtration. In developing this requirement, the Agency evaluated several alternatives (A, B and C) in an attempt to reduce the burden faced by small systems while still providing: (1) A comparable level of public health protection as that afforded to systems serving 10,000 or more people and (2) an early-warning tool systems can use to detect and correct problems with filters.

Alternative A

The first alternative considered by the Agency was requiring direct and conventional filtration systems serving populations fewer than 10,000 to meet the same requirements as established for systems serving 10,000 or more people. This alternative would require that all conventional and direct filtration systems must conduct continuous monitoring of turbidity (one turbidity measurement every 15 minutes) for each individual filter. Systems must provide an exceptions report to the State as part of the existing combined filter effluent reporting process for any of the following circumstances:

(1) Any individual filter with a turbidity level greater than 1.0 NTU based on two consecutive measurements fifteen minutes apart;

(2) Any individual filter with a turbidity greater than 0.5 NTU at the end of the first four hours of filter operation based on two consecutive measurements fifteen minutes apart;

(3) Any individual filter with turbidity levels greater than 1.0 NTU based on two consecutive measurements fifteen minutes apart at any time in each of three consecutive months (the system must, in addition to filing an exceptions report, conduct a self-assessment of the filter); and

(4) Any individual filter with turbidity levels greater than 2.0 NTU based on two consecutive measurements fifteen minutes apart at any time in each of two consecutive months (the system must file an exceptions report and must arrange for a comprehensive performance evaluation (CPE) to be conducted by the State or a third party approved by the State).

Under the first two circumstances identified, a system must produce a filter profile if no obvious reason for the abnormal filter performance can be identified.

Alternative B

The second alternative considered by the Agency represents a slight modification from the individual filter monitoring requirements of large systems. The 0.5 NTU exceptions report trigger would be omitted in an effort to reduce the burden associated with daily data evaluation. Additionally, the filter profile requirement would be removed. Requirement language was slightly modified in an effort to simplify the requirement for small system operators. This alternative would still require that all conventional and direct filtration systems conduct *continuous* monitoring (one turbidity measurement every 15 minutes) for each individual filter, but includes the following three requirements:

(1) A system must provide an exceptions report to the State as part of the existing combined effluent reporting process if any individual filter turbidity measurement exceeds 1.0 NTU (unless the system can show that the next reading is less than 1.0 NTU);

(2) If a system is required to submit an exceptions report for the same filter in three consecutive months, the system must conduct a self-assessment of the filter.

(3) If a system is required to submit an exceptions report for the same filter in two consecutive months which contains an exceedance of 2.0 NTU by the same filter, the system must arrange for a CPE to be conducted by the State or a third party approved by the State.

Alternative C

The third alternative considered by the Agency would include new triggers for reporting and follow-up action in an effort to reduce the daily burden associated with data review. This alternative would still require that all conventional and direct filtration systems must conduct *continuous* monitoring (one turbidity measurement every 15 minutes) for each individual filter, but would include the following three requirements:

(1) A system must provide an exceptions report to the State as part of the existing combined effluent reporting process if filter samples exceed 0.5 NTU in at least 5 percent of the measurements taken each month and/or any individual filter measurement exceeds 2.0 NTU (unless the system can show that the following reading was < 2.0 NTU).

(2) If a system is required to submit an exceptions report for the same filter in three consecutive months the system must conduct a self-assessment of the filter.

(3) If a system is required to submit an exceptions report for the same filter in two consecutive months which contains an exceedance of 2.0 NTU by the same filter, the system must arrange for a CPE to be conducted by the State or a third party approved by the State.

For all three alternatives the requirements regarding self assessments and CPEs are the same. If a CPE is required, the system must arrange for the State or a third party approved by the State to conduct the CPE no later than 30 days following the exceedance. The CPE must be completed and submitted to the State no later than 90 days following the exceedance which triggered the CPE. If a self-assessment is required it must take place within 14 days of the exceedance and the system must report to the State that the self-assessment was conducted. The self assessment must consist of at least the following components:

- assessment of filter performance;
- development of a filter profile;
- identification and prioritization of factors limiting filter performance;
- assessment of the applicability of corrections; and
- preparation of a filter self assessment report.

In considering each of the above alternatives, the Agency attempted to reduce the burden faced by small systems. Each of the three alternatives was judged to provide levels of public health protection comparable to those in the IESWTR for large systems. Alternative A, because it contains the

same requirements as IESWTR, was expected to afford the same level of public health protection. Alternative B, (which removes the four-hour 0.5 NTU trigger and the filter profile requirement) was expected to afford comparable health protection because the core components which provide the overwhelming majority of the public health protection (monitoring frequency, trigger which requires follow-up action, and the follow-up actions) are the same as the IESWTR. Alternative C was expected to provide comparable health protection because follow-up action is the same as under the IESWTR and a 0.5 NTU 95percent percentile trigger was expected to identify the same systems which the triggers established under the IESWTR would identify. All three were also considered useful diagnostic tools for small systems to evaluate the performance of filters and correct problems before follow-up action was necessary. The first alternative was viewed as significantly more challenging to implement and burdensome for smaller systems due to the amount of required daily data review. This evaluation was also echoed by small entity representatives during the Agency's SBREFA process as well as stakeholders at each of the public meetings held to discuss issues related to today's proposed rule. While Alternative C reduced burden associated with daily data review, it would institute a very different trigger for small systems than established by the IESWTR for large systems. This was viewed as problematic by several stakeholders who stressed the importance of maintaining similar requirements in order to limit transactional costs and additional State burden. Therefore, the Agency is proposing Alternative B as described above, which allows operators to expend less time to evaluate their turbidity data. Alternative B maintains a comparable level of public health protection as those afforded large systems, reduces much of the burden associated with daily data collection and review (removing the requirement to conduct a filter profile allows systems to review data once a week instead of daily if they so choose), yet still serves as a self-diagnostic tool for operators and provides the mechanism for State follow-up when significant performance problems exist.

iv. Request for Comments

The individual filter monitoring provisions represent a challenging opportunity to provide systems with a useful tool for assessing filters and correcting problems before State intervention is necessary or combined filter turbidity is affected and treatment technique violations occur. The Agency is actively seeking comment on this provision. Because of the complexity of this provision, specific requests for comment have been broken down into five distinct areas.

Comments on the Alternatives

EPA requests comment on today's proposed individual filter requirement and each of the alternatives as well as additional alternatives for this provision such as establishing a different frequency for individual filter monitoring (*e.g.*, 60 minute or 30 minute increments). The Agency also seeks comment or information on:

- Tools and or guidance which would be useful and necessary in order to educate operators on how to comply with individual filter provisions and perform any necessary calculations;
- Data correlating individual filter performance relative to combined filter effluent;
- Contributing factors to turbidity spikes associated with reduced filter performance;
- Practices which contribute to poor individual filter performance and filter spikes; and
- Any additional concerns with individual filter performance.

Modifications to the Alternatives

The Agency also seeks comment on a variety of proposed modifications to the individual filter monitoring alternatives discussed which could be incorporated in order to better address the concerns and realities of small surface water systems. These modifications include:

- Modification of the alternatives to include a provision which would require systems which do not staff the plant during all hours of operation, to utilize an alarm/phone system to alert off-site operators of significantly elevated turbidity levels and poor individual filter performance;
- A modification to allow conventional and direct filtration systems with either 2–3 or less filters to sample combined filter effluent continuously (every 15 minutes) in lieu of monitoring individual filter turbidity. This modification would reduce the data collection/analysis burden for the smallest systems while not compromising the level of public health protection;
- A modification to lengthen the period of time (120 days or a period of time established by the State but not to exceed 120 days) for completion of the CPE and/or a modification to lengthen the requirement that a CPE must be conducted no later than 60 or 90 days following the exceedance; and
- A modification to require systems to notify the State within 24 hours of triggering the CPE or IFA. This would inform States sooner so they can begin to work with systems to address performance of filters and conduct CPEs and IFAs as necessary.

Establishment of Subcategories

The Agency is also evaluating the need to establish subcategories in the final rule for individual filter monitoring/reporting. EPA is currently considering these three categories:

1. Systems serving populations of 3,300 or more persons;
2. Systems with more than 2 filters, but less than 3,300 persons; and
3. Systems with 2 or fewer filters serving populations fewer than 3,300 persons.

Individual filter monitoring requirements would also be based on these subcategories. Systems serving 3,300 or greater would be required to meet the same individual turbidity requirements as the IESWTR (Alternative A as described above). Systems serving fewer than 3,300 but using more than 2 filters would be required to meet a modified version of the IESWTR individual filter requirements (Alternative B as described above). Systems serving fewer than 3,300 and using 2 or fewer filters would continue to monitor and report only combined filter effluent turbidity at an increased frequency (once every 15 minutes, 30 minutes, or one hour).

Input and or comment on cut-offs for subcategories and how to apply subcategories to Alternatives is requested. The Agency would also like to take comment on additional strategies to tailor individual filter monitoring for the smallest systems while continuing to maintain an adequate level of public health protection. Such possible strategies include:

- Since small systems are often understaffed one approach would require those systems utilizing only two or fewer filters to utilize, maintain, and continually operate an alarm/phone system during all hours of operation, which alert off-site operators of significantly elevated turbidity levels and poor individual filter performance and/or automatically shuts the system down if turbidity levels exceed a specified performance level. This modification would be in addition to the proposed requirements.
- Establishing a more general modification which would require systems which do not staff the plant during all hours of operation to utilize

an alarm/phone system to alert off-site operators of significantly elevated turbidity levels and poor individual filter performance, and/or to automatically shut the system down if turbidity levels exceed a specified performance level.

• If systems with 2 or fewer filters is allowed to sample combined filter effluent in lieu of individual filter effluent with a frequency of a reading every hour and combined filter effluent turbidity exceeds 0.5 NTU, should the system be required to take grab samples of individual filter turbidity for all filters every 15 minutes until the results of those samples are lower than 0.5 NTU?

Reliability

Maintaining reliable performance at systems using filtration requires that the filters be examined at intervals to determine if problems are developing. This can mean that a filter must go off-line for replacement or upgrades of media, underdrains, backwash lines etc. In order to provide adequate public health protection at small systems, the lack of duplicate units can be a problem. EPA is considering requiring any system with only one filter to install an additional filter. The schedule would be set by the primacy agency, but the filter would have to be installed no later than 6 years after promulgation. EPA is requesting comment on this potential requirement.

Data Gathering Recordkeeping and Reporting

The Agency is evaluating data gathering/reporting requirements for systems. A system collecting data at a frequency of once every 15 minutes, (and operating) 24 hours a day, would record approximately 2800 data points for *each* filter throughout the course of the month. Although the smallest systems in operation today routinely operate on the average of 4 to 12 hours a day (resulting in 480 to 1400 data points per filter), these systems do not typically use sophisticated data recording systems such as SCADAs. The lack of modern equipment at small systems may result in difficulty with retrieving and analyzing data for reporting purposes. While the Agency intends to issue guidance targeted at aiding these systems with the data gathering requirements, EPA is also seeking feedback on a modification to the frequency of data gathering required under each of the aforementioned options. Specifically, the Agency would like to request comment on modifying the frequency for systems serving fewer than 3,300 to continuous monitoring on a 30 or 60 minute basis. EPA also requests comment on the availability and practicality of data systems that would allow small systems, State inspectors, and technical assistance providers to use individual filter turbidity data to improve performance, perform filter analysis, conduct individual filter self assessments, etc. The Agency is interested in *specific* practical combinations of data recorders, charts, hand written recordings from turbidimeters, that would accomplish this.

Failure of Continuous Turbidity Monitoring

Under today's proposed rule, the Agency requires that if there is a failure in the continuous turbidity monitoring equipment, the system must conduct grab sampling every four hours in lieu of continuous monitoring until the turbidimeter is back on-line. A system has five working days to resume continuous monitoring before a violation is incurred. EPA would like to solicit comment on modifying this component to require systems to take grab samples at an increased frequency, specifically every 30 minutes, 1 hour, or 2 hours.

B. Disinfection Benchmarking Requirements

Small systems will be required to comply with the Stage 1 Disinfection Byproduct Rule (Stage 1 DBPR) in the first calendar quarter of 2004. The Stage 1 DBPR set Maximum Contaminant Levels (MCLs) for Total Trihalomethanes (chloroform, bromodichloromethane, chlorodibromomethane, and bromoform), and five Haloacetic Acids (i.e., the sum of the concentrations of mono-, di-, and trichloroacetic acids and mono- and dibromoacetic acids.) The LT1FBR follows the principles set forth in earlier FACA negotiations, i.e., that existing microbial protection must not be significantly reduced or undercut as a result of systems taking the necessary steps to comply with the MCL's for TTHM and HAA5 set forth in Stage 1 DBPR. The disinfection benchmarking requirements are designed to ensure that risk from one contaminant is not increased while risk from another contaminant is decreased.

The Stage 1 DBPR was promulgated because disinfectants such as chlorine can react with natural organic and inorganic matter in source water and distribution systems to form disinfection byproducts (DBPs). Results from toxicology studies have shown several DBPs (e.g., bromodichloromethane, bromoform, chloroform, dichloroacetic acid, and bromate) to potentially cause cancer in laboratory animals. Other DBPs (e.g., certain haloacetic acids) have been shown to cause adverse reproductive or developmental effects in laboratory animals. Concern about these health effects may cause public water utilities to consider altering their disinfection practices to minimize health risks to consumers.

A fundamental principle, therefore, of the 1992–1993 regulatory negotiation reflected in the 1994 proposal for the IESWTR was that new standards for control of DBPs must not result in significant increases in microbial risk. This principle was also one of the underlying premises of the 1997 M–DBP Advisory Committee's deliberations, i.e., that existing microbial protection must not be significantly reduced or undercut as a result of systems taking the necessary steps to comply with the MCL's for TTHM and HAA5 set forth in Stage 1 DBPR. The Advisory Committee reached agreement on the use of microbial profiling and benchmarking as a process by which a PWS and the State, working together, could assure that there would be no significant reduction in microbial protection as the result of modifying disinfection practices in order to comply with Stage 1 DBPR.

The process established under the IESWTR has three components: (1) Applicability Monitoring; (2) Disinfection Profiling; and (3) Disinfection Benchmarking. These components have the following three goals respectively: (1) determine which systems have annual average TTHM and HAA5 levels close enough to the MCL (e.g., 80 percent of the MCL) that they may need to consider altering their disinfection practices to comply with Stage 1 DBPR; (2) those systems that have TTHM and HAA5 levels of at least 80 percent of the MCLs must develop a baseline of current microbial inactivation over the period of 1 year; and (3) determine the benchmark, or the month with the lowest average level of microbial inactivation, which becomes the critical period for that year.

The aforementioned components were applied to systems serving 10,000 or more people in the IESWTR and were carried out sequentially. In response to concerns about early implementation (any requirement which would require action prior to 2 years after the promulgation date of the rule), the Agency is considering modifying the IESWTR approach for small systems, as described in the following section. Additionally, the specific provisions have been modified to take into account

specific needs of small systems. EPA's goal in developing these requirements is to recognize the specific needs of small system and States, while providing small systems with a useful means of ensuring that existing microbial protection must not be significantly reduced or undercut as a result of systems taking the necessary steps to comply with the MCL's for TTHM and HAA5 set forth in Stage 1 DBPR.

The description of the disinfection benchmarking components of today's proposed rule will be broken into the three segments: (1) Applicability Monitoring; (2) Disinfection Profiling; and (3) Disinfection Benchmarking. Each section will provide an overview and purpose, data, a description of the proposed requirements, and request for comment.

1. Applicability Monitoring

a. Overview and Purpose

The purpose of the TTHM and HAA5 applicability monitoring is to serve as an indicator for systems that are likely to consider making changes to their disinfection practices in order to comply with the Stage 1 DBPR. TTHM samples which equal or exceed 0.064 mg/L and/or HAA5 samples equal or exceed 0.048 mg/L (80 percent of their respective MCLs) represent DBP levels of concern. Systems with TTHM or HAA5 levels exceeding 80 percent of the respective MCLs may consider changing their disinfection practice in order to comply with the Stage 1 DBPR.

b. Data

In 1987, EPA established monitoring requirements for 51 unregulated synthetic organic chemicals. Subsequently, an additional 113 unregulated contaminants were added to the monitoring requirements. Information on TTHMs has become available from the first round of monitoring conducted by systems serving fewer than 10,000 people.

Preliminary analysis of the data from the Unregulated Contaminant Information System (URCIS, Data) suggest that roughly 12 percent of systems serving fewer than 10,000 would exceed 64 μ/L or 80 percent of the MCL for TTHM (Table IV.7). This number is presented only as an indicator, as it represents samples taken at the entrance to distribution systems. In general, TTHMs and HAA5s tend to increase with time as water travels through the distribution system. The Stage 1 Disinfection Byproducts Rule estimated 20 percent of systems serving fewer than 10,000 would exceed 80 percent of the MCLs for either TTHMs or HAA5s or both. EPA is working to improve the knowledge of TTHM and HAA5 formation kinetics in the distribution systems for systems serving fewer than 10,000 people. EPA is currently developing a model to predict the formation of TTHM and HAA5 in the distribution system based on operational measurements. This model is not yet available. In order to develop a better estimate of the percent of small systems that would be triggered into the profiling requirements (i.e., develop a profile of microbial inactivation over a period of 1 year) EPA is considering the following method:

- Use URCIS data to show how many systems serving 10,000 or more people have TTHM levels at or above 0.064 mg/L;
- Compare those values to the data received from the Information Collection Rule for TTHM average values taken at representative points in the distribution system;
- Determine the mathematical factor by which the two values differ; and
- Apply that factor to the URCIS data for systems serving fewer than 10,000 people to estimate the percent of those systems that would have TTHM values at or above 0.064mg/L as an average of values taken at representative points in the distribution system.

TABLE IV.7.—TTHM LEVELS AT SMALL SURFACE SYSTEMS

[Data from Unregulated Contaminant Database, 1987–92 [1]]

System size (population served)	Total number of systems	Number of systems w/ ave. TTHM ≥ 64 μg/L (80 % of MCL)	Maximum level of ave. TTHM (μg/L)
<500	74	0 (0%)	56
501–1,000	44	6 (13.6%)	222
1,001–3,300	114	12 (10.5%)	172
3,301–10,000	116	25 (21.6%)	279
Total	348	43 (12.4%)	279

[1] In Unregulated Contaminant Database (1987–1992), there are ten States (*i.e.*, CA, DE, IN, MD, MI, MO, NC, NY, PR, WV). However, only eight of them can be identified with the data of both population and TTHM for systems serving fewer than 10,000 people (See next page).

The Agency requests comment on this approach to estimating TTHM levels in the distribution system based on TTHM levels at the entry point to the distribution system. The Agency also requests comment on the relationship of HAA5 formation relative to TTHM formation in the distribution system. Specifically, is there data to support the hypothesis that HAA5s do not peak at the same point in the distribution system as TTHMs?

The Agency also received two full years of TTHM data for seventy-four systems in the State of Missouri (Missouri, 1998). This data consisted of quarterly TTHM data, which was converted into an annual average. The data (presented in Table IV.8) demonstrates a very different picture than that displayed by the URCIS data described above. In 1996, 88 percent of the systems exceeded 64 μg/L, while in 1997, 85 percent exceeded 64 μg/L. Figure IV.7 graphically displays this data set.

TABLE IV.8.—TTHM LEVELS AT SMALL SURFACE SYSTEMS IN THE STATE OF MISSOURI
[State of Missouri, 1996, 1997]

Year	Total number of systems	Number of systems w/ ave. TTHM ≥ 64 µg/L (80 percent of MCL)	Maximum Level of Ave. TTHM (µg/L)
1996	74	65 (88%)	276
1997	75	64 (85%)	251
All years	149	129 (87%)	276

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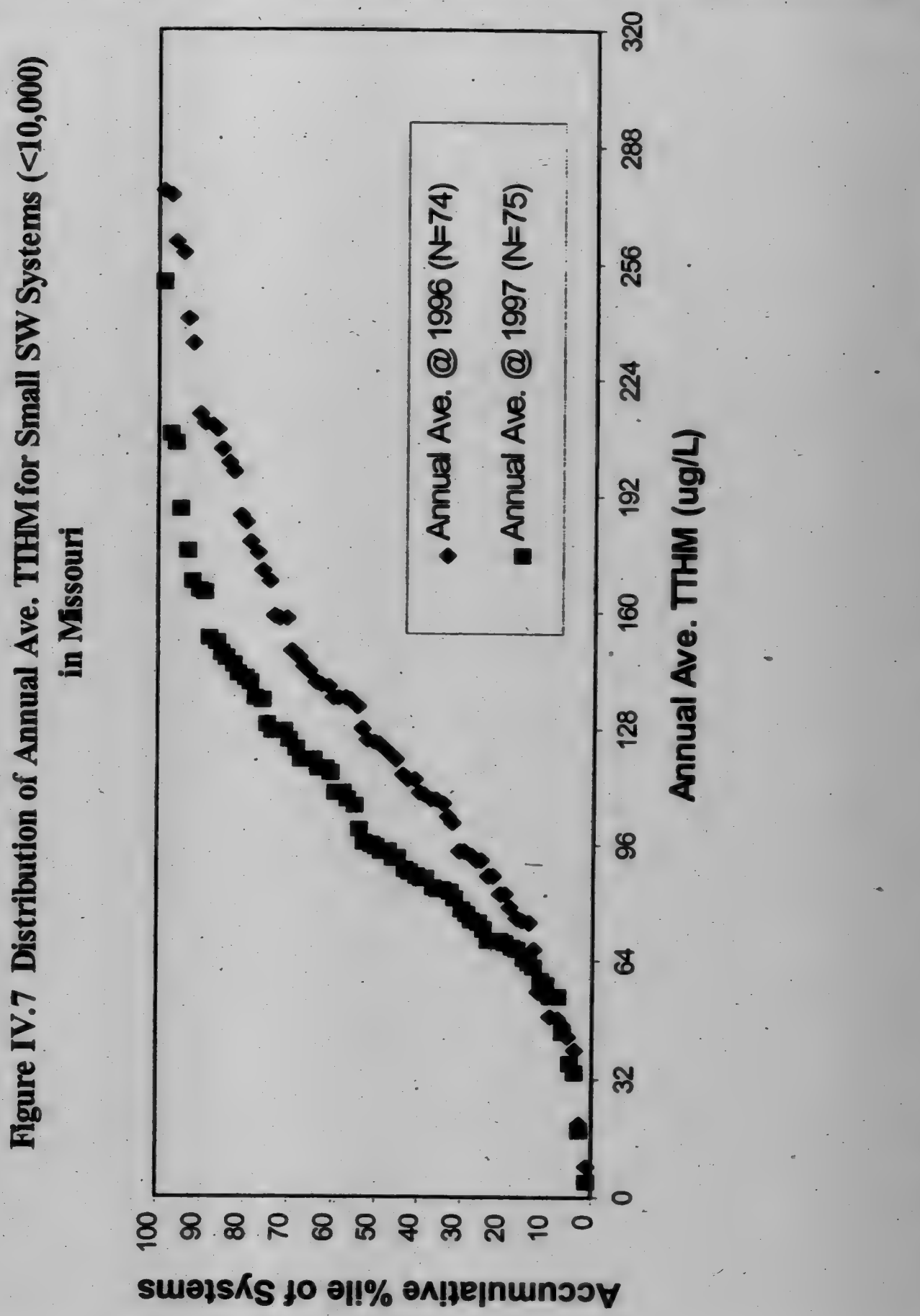

Figure IV.7 Distribution of Annual Ave. TTHM for Small SW Systems (<10,000) in Missouri

There are several potential reasons for the differences between the data shown in Tables IV.7 and IV.8. Data in Table IV.7 contains zero values which may be indicative of no sample being taken rather than a sample with a value of zero. Additionally, data shown in IV.8 was collected within the distribution system, while data in Table IV.7 was taken at the entry point to the distribution system. The data collection method used in collecting the data

shown in Table IV.8 is similar to the methodology required under the Stage 1 DBPR.

c. Proposed Requirements

EPA considered four alternatives for systems to use TTHM and HAA5 data to determine which systems whether they would be required to develop a disinfection profile. In today's proposed rule, EPA is proposing Alternative 4.

Alternative 1

The IESWTR required that systems monitor for TTHMs at four points in the distribution system each quarter. At least one of those samples must be taken at a point which represents the maximum residence time of the water in the system. The remaining three must be taken at representative locations in the distribution system, taking into account number of persons served, different sources of water and different treatment methods employed. The results of all analyses per quarter are averaged and reported to the State.

EPA considered applying this alternative to systems serving fewer than 10,000 people and requested input from small system operators and other interested parties, including the public. Based on the feedback EPA received, two other alternatives were developed for consideration (listed as Alternatives 2 and 3).

Alternative 2

EPA considered requiring systems serving fewer than 10,000 people to monitor for TTHM and HAA5 at the point of maximum residence time according to the following schedule:

- No less than once per quarter per treatment plant operated for systems serving populations between 500 and 10,000 persons; and no less than once per year per treatment plant during the month of warmest water temperature for systems serving populations less than 500. If systems wish to take additional samples, however, they would be permitted to do so.
- Systems may consult with States and elect not to perform TTHM and HAA5 monitoring and proceed directly with the development of a disinfection profile.

This alternative provides an applicability monitoring frequency identical to the DBP monitoring frequency under the Stage 1 DBPR that systems will have to comply with in 2004. In addition, it allows systems the flexibility to skip TTHM and HAA5 monitoring completely, pending State approval, and begin profiling immediately.

Alternative 3

EPA considered requiring all systems serving fewer than 10,000 people to monitor once per year per system during the month of warmest water temperature of 2002 and at the point of maximum residence time.

During the SBREFA process and during stakeholder meetings, EPA received some positive comments regarding Alternative 3 as the least burdensome approach. Other stakeholders, however, pointed out that Alternative 3 does not allow systems to measure seasonal variation as is done in Alternative 2 for systems serving populations between 500 and 10,000. Several stakeholders agreed that despite the costs, the information obtained from applicability monitoring will be useful. EPA agrees that it is valuable to systems to monitor and understand the seasonal variation in TTHM and HAA5 values, however, EPA has determined that requiring a full year of monitoring may place an excessive burden on both States and systems. In order to complete a full year of monitoring and another full year of disinfection data gathering, systems would have to start TTHM and HAA5 monitoring January of 2002.

Under SDWA, States have two years to develop their own regulations as part of their primacy requirements, EPA recognized that requiring Applicability Monitoring during this period would pose a burden on States. In response to these concerns, the Agency developed a new alternative, described in the following paragraph.

Alternative 4

Applicability Monitoring is optional and not a requirement under today's proposed rule. If a system has TTHM and HAA5 data taken during the month of warmest water temperature (from 1998–2002) and taken at the point of maximum residence time, they may submit this data to the State prior to [DATE 2 YEARS AFTER PUBLICATION OF FINAL RULE]. If the data shows TTHM and HAA5 levels less than 80 percent of the MCLs, the system does not have to develop a disinfection profile. If the data shows TTHM and HAA5 levels at or above 80 percent of the MCLs, the system would be required to develop a disinfection profile in 2003 as described later in section IV.B.2. If the system does not have, or does not gather TTHM and HAA5 data during the month of warmest water temperature and at the point of maximum residence time in the distribution system as described, then the system would automatically be required to develop a disinfection profile starting January 1 of 2003. This option still provides systems with the necessary tools for assessing potential changes to their disinfection practice, (i.e. the generation of the profile), while not forcing States to pass their primacy regulations, contact all small systems within their jurisdiction, and set up TTHM and HAA5 monitoring all within the first year after promulgation of this rule. Systems will still be able to ensure public health protection by having the disinfection profile when monitoring under Stage 1 DBPR takes effect. It should be noted that EPA estimates the cost for applicability monitoring (as described in Alternative 4) and disinfection profiling (as described in Alternative 3 in Section IV.B.2.c of this preamble) are roughly equivalent. EPA anticipates that systems with known low levels of TOC may opt to conduct the applicability monitoring while the remaining systems will develop a disinfection profile.

d. Request for Comment

EPA requests comment on the proposed requirement, other alternatives listed, or other alternatives that have not yet been raised for consideration. The Agency also requests comment on approaches for determining the percent of systems that would be affected by this requirement. Specifically:

- With respect to Alternative 4, the Agency requests comment on approaches for determining the percent of systems that might demonstrate TTHM and HAA5 levels less than 80 percent of their respective MCLs and would therefore not develop a disinfection profile.
- The Agency requests additional information (similar to the State of Missouri data discussed previously) on the current levels of TTHM and HAA5s in the distribution systems of systems serving fewer than 10,000 people.
- The Agency requests comment on developing a TTHM and HAA5 monitoring scheme during the winter months as opposed to the current monitoring scheme based on the highest TTHM/HAA5 formation potential during the month of warmest water temperature. If a relationship can be established, and shown to be consistent through geographical variations, EPA would consider modifying an alternative so that applicability monitoring would occur during the 1st quarter of 2003.
- The Agency requests comment on modifying Alternative 3, to require systems to begin monitor for TTHMs and HAA5s during the warmest water temperature month of 2003. The results of this monitoring would be used to

determine whether a system would need to develop a disinfection profile during 2004. This option is closer in structure and timing to the IESWTR and has been included for comment. It should be noted, however, that postponing the disinfection profile until 2004 would prevent systems from having inactivation data prior to their compliance date with the Stage 1 DBPR, possibly compromising simultaneous compliance.

2. Disinfection Profiling

a. Overview and Purpose

The disinfection profile is a graphical representation showing how disinfection varies at a given plant over time. The profile gives the plant operator an idea of how seasonal changes in water quality and water demand can have a direct effect on the level of disinfection the plant is achieving.

The strategy of disinfection profiling and benchmarking stemmed from data provided to the EPA and M–DBP Advisory Committee by PWSs and reviewed by stakeholders. The microbial inactivation data (expressed as logs of *Giardia lamblia* inactivation) used by the M–DBP Advisory Committee demonstrated high variability. Inactivation varied by several log on a day-to-day basis at any particular treatment plant and by as much as tens of logs over a year due to changes in water temperature, flow rate (and, consequently, contact time), seasonal changes in residual disinfectant, pH, and disinfectant demand and, consequently, disinfectant residual. There were also differences between years at individual plants. To address these variations, M–DBP stakeholders developed the procedure of profiling inactivation levels at an individual plant over a period of at least one year, and then establishing a benchmark of minimum inactivation as a way to characterize disinfection practice. This approach makes it possible for a plant that may need to change its disinfection practice in order to meet DBP MCLs to determine the impact the change would have on its current level of disinfection or inactivation and, thereby, to assure that there is no significant increase in microbial risk. In order to develop the profile, a system must measure four parameters (EPA is assuming most small systems use chlorine as their disinfection agent, and these requirements are based on this assumption):

(1) Disinfectant residual concentration (C, in mg/L) before or at the first customer and just prior to each additional point of disinfectant addition;

(2) Contact time (T, in minutes) during peak flow conditions;

(3) Water temperature (°C); and

(4) pH.

Systems convert this operational data to a number representing log inactivation values for *Giardia* by using tables provided by EPA. Systems graph this information over time to develop a profile of their microbial inactivation. EPA will prepare guidance specifically developed for small systems to assist in the development of the disinfection profile. Several spreadsheets and simple programs are currently available to aid in calculating microbial inactivation and the Agency intends to make such spreadsheets available in guidance.

b. Data

Figure IV.8a depicts a hypothetical disinfection profile showing seasonal variation in microbial inactivation.

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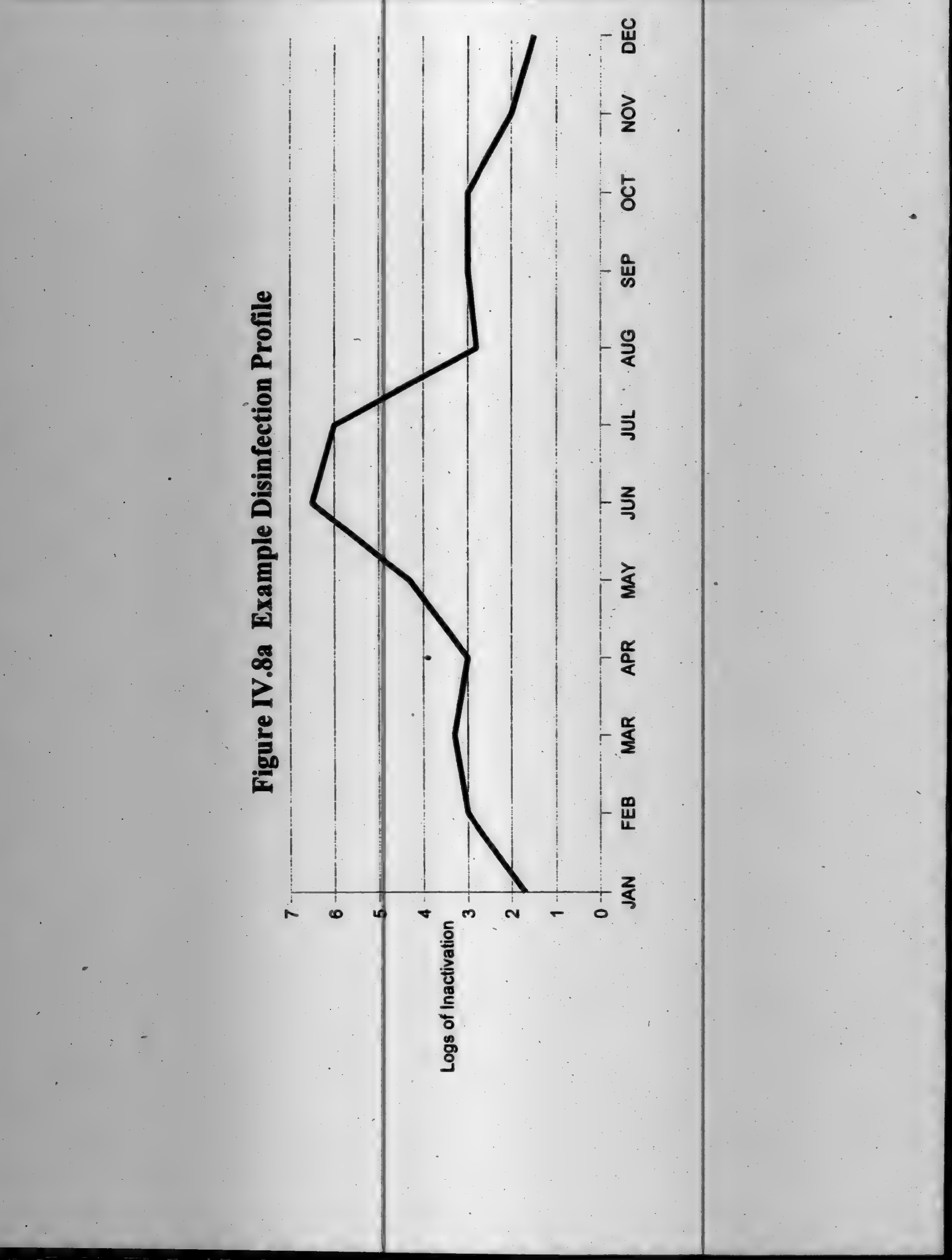

Figure IV.8a Example Disinfection Profile

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c. Proposed Requirements

EPA considered four alternatives for requiring systems to develop the disinfection profile.

Alternative 1

The IESWTR requires systems serving 10,000 or more persons to measure the four parameters described above and develop a profile of microbial inactivation on a daily basis. EPA considered extending this requirement to systems serving fewer than 10,000 persons and requested input from small system operators and other interested stakeholders including the public. EPA received feedback that this requirement would place too heavy of a burden on the small system operator for at least two reasons:

- Small system operators are not present at the plant every day; and
- Small systems often have only one operator at a plant who is responsible for all aspects of maintenance, monitoring and operation.

Alternative 2

EPA also considered not requiring the disinfection profile at all. After consideration of the feedback of small system operators and other interested stakeholders, however, EPA believes that there is a strong benefit in the plant operator knowing the level of microbial inactivation, and that the principles developed during the regulation negotiation and Federal Advisory Committee prior to promulgation of the IESWTR could be applied to small systems for the purpose of public health protection. Recognizing the potential burdens the profiling procedures placed on small systems, EPA considered two additional alternatives.

Alternative 3

EPA considered requiring *all* systems serving fewer than 10,000 persons, to develop a disinfection profile based on *weekly* measurements for one year during or prior to 2003. A system with TTHM and HAA5 levels less than 80 percent of the MCLs (based on either required or optional monitoring as described in section IV.B.1) would not be required to conduct disinfection profiling. EPA believes this alternative would save the operator time (in comparison to Alternative 1), and still provide information on seasonal variation over the period of one year.

Alternative 4

Finally, EPA considered a monitoring requirement only during a one month critical monitoring period to be determined by the State. In general, colder temperatures reduce disinfection efficiency. For systems in warmer climates, or climates that do not change very much during the course of the year, the State would identify other critical periods or conditions. This alternative reduces the number of times the operator has to calculate the microbial inactivation.

EPA considered all of the above alternatives, and in today's proposed rule, EPA is proposing Alternative 3. First, this alternative does not require systems to begin monitoring before States have two years to develop their regulations as part of primacy requirements. Given early implementation concerns, the timing of this alternative appears to be the most appropriate in balancing early implementation issues with the need for systems to prepare for implementation of the Stage 1 DBPR and ensuring adequate and effective microbial protection. Second, it allows systems and States which have been proactive in conducting applicability monitoring to reduce costs for those systems which can demonstrate low TTHM and HAA5 levels. Third, this alternative allows systems and States the opportunity to understand seasonal variability in microbial disinfection. Finally, this alternative takes into account the flexibility needed by the smallest systems while maintaining comparable levels of public health protection with the larger systems.

Request for Comments

EPA requests comment on this proposed requirement as well as Alternatives 1,2, and 4. The Agency also requests comment on a possible modification to Alternatives 1, 3 and 4. Under this modification, systems serving populations fewer than 500 would have the opportunity to apply to the State to perform the weekly inactivation calculation (although data weekly data collection would still be required). If the system decided to make a change in disinfection practice, then the State would assist the system with the development of the disinfection profile.

The Agency also requests comment on a modification to Alternative 3 which would require systems to develop a disinfection profile in 2004 only if Applicability Monitoring conducted in 2003 indicated TTHM and HAA5 levels of 80 percent or greater of the MCL. This modification would be coupled with the applicability monitoring modification discussed in the previous section.

3. Disinfection Benchmarking

a. Overview and Purpose

The DBPR requires systems to meet lower MCLs for a number of disinfection byproducts. In order to meet these requirements, many systems will require changes to their current disinfection practices. In order to ensure that current microbial inactivation does not fall below those levels required for adequate *Giardia* and virus inactivation as required by the SWTR, a disinfection benchmark is necessary. A disinfection benchmark represents the lowest average monthly *Giardia* inactivation level achieved by a system. Using this benchmark States and systems can begin to understand the current inactivation achieved at the system, and estimate how changes to disinfection practices will affect inactivation.

b. Data

Based on the hypothetical disinfection profile depicted in Figure IV.8a, the benchmark, or critical period, is the lowest level of inactivation achieved by the system over the course of the year. Figure IV.8b shows that this benchmark (denoted by the dotted line) takes place in December for the hypothetical system.

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Figure IV.8b Example Disinfection Profile with Benchmark

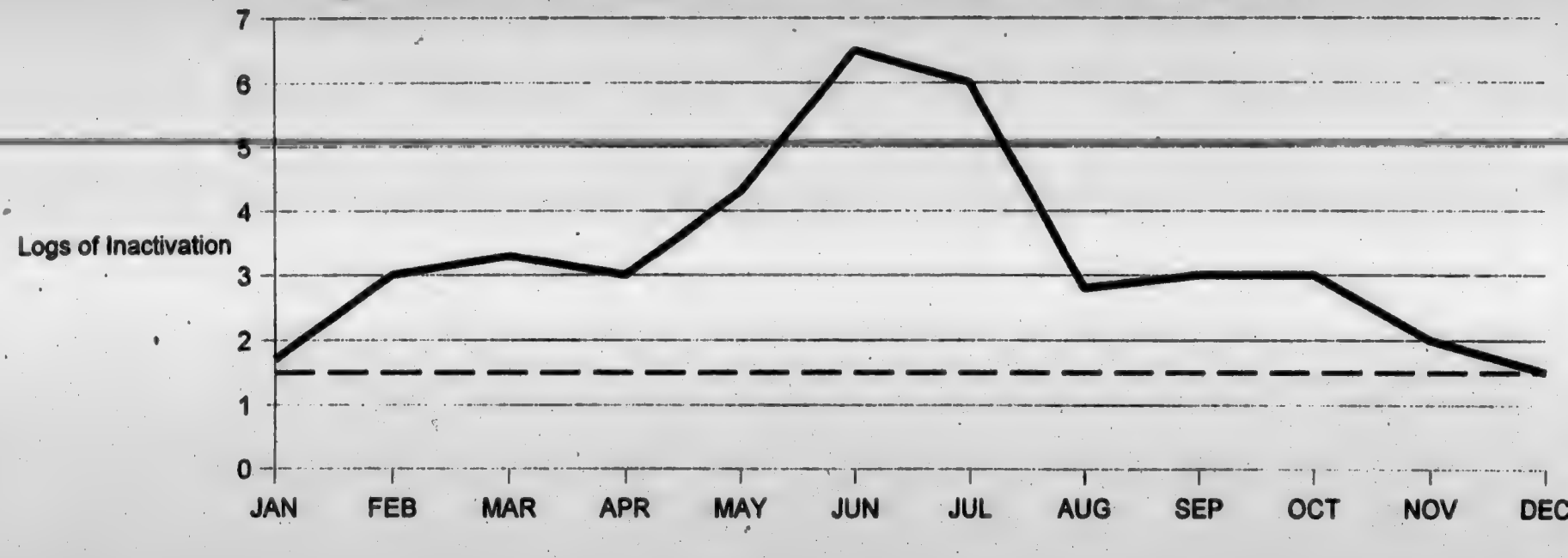

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c. Proposed Revisions

If a system is required to develop a disinfection profile pursuant to a significant change in disinfection practice, the system must comply with the approval requirements of the significant change in disinfection practice. Significant changes to disinfection practice include: moving the point of disinfection to a location which has a lower TOC concentration; switching to a disinfectant that is not approved for use with the system's type of source water; changing the disinfectant application method or process; changing the disinfectant maximum residual disinfectant level; changing the type of coagulant used (including changing from use of a coagulant to no use of a coagulant); changing the location of the point of coagulant addition; changing from conventional filtration treatment to direct filtration; changing the filter media; increasing the amount of recycle flow from backwash, sedimentation basin, or thickener processes; or making any other change that the State identifies as a significant change to disinfection practice.

d. Requirements for States and Primacy Agencies

EPA believes that it is important that States and primacy agencies making decisions about disinfection profiling and benchmarking have adequate training. EPA intends to provide technical guidance to States and primacy agencies to assist them in making these decisions. EPA also intends to work with States to provide training for States and primacy agencies. EPA is requesting comment on the appropriate roles for States and primacy agencies in making decisions about disinfection profiling and benchmarking, and on the resources that States and primacy agencies will require to implement these provisions. EPA is also requesting comment on the resources that States and primacy agencies will require to implement the requirements for systems to develop disinfection profiles and benchmarks.

EPA is proposing that States with primacy for the Surface Water Treatment Rule must adopt the disinfection profiling and benchmarking provisions for systems serving 500 or more people. EPA is proposing that States with primacy for the Surface Water Treatment Rule have the discretion to determine whether systems serving fewer than 500 people must develop disinfection profiles and benchmarks. EPA is requesting comment on this proposed approach.

e. Reporting and Recordkeeping Requirements

EPA is proposing that systems that are required to develop disinfection profiles and benchmarks must report to the State or primacy agency the following information:

(1) If a system is required to develop a disinfection profile because it has a total coliform monthly average of 5.0 or more, the system must report the total coliform monthly average for each month that the system serves water to the public.

(2) If a system is required to develop a disinfection profile because it has a fecal coliform monthly average of 1.0 or more, the system must report the fecal coliform monthly average for each month that the system serves water to the public.

(3) If a system is required to develop a disinfection profile because it has a HPC monthly average of 500 or more, the system must report the HPC monthly average for each month that the system serves water to the public.

(4) If a system is required to develop a disinfection profile because it has a total coliform monthly average of 5.0 or more, the system must report the total coliform monthly average for each month that the system serves water to the public.

(5) If a system is required to develop a disinfection profile because it has a fecal coliform monthly average of 1.0 or more, the system must report the fecal coliform monthly average for each month that the system serves water to the public.

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(2) If a system is required to develop a disinfection profile because it has a fecal coliform monthly average of 1.0 or more, the system must report the fecal coliform monthly average for each month that the system serves water to the public.

(3) If a system is required to develop a disinfection profile because it has a HPC monthly average of 500 or more, the system must report the HPC monthly average for each month that the system serves water to the public.

(4) If a system is required to develop a disinfection profile because it has a total coliform monthly average of 5.0 or more, the system must report the total coliform monthly average for each month that the system serves water to the public.

(5) If a system is required to develop a disinfection profile because it has a fecal coliform monthly average of 1.0 or more, the system must report the fecal coliform monthly average for each month that the system serves water to the public.

c. Proposed Requirements

If a system that is required to produce a disinfection profile decides to make a significant change in disinfection practice after the profile is developed, it must consult with the State and receive approval before implementing such a change. Significant changes in disinfection practice are defined as: (1) moving the point of disinfection (other than routine seasonal changes already approved by the State); (2) changing the type of disinfectant; (3) changing the disinfection process; or (4) making other modifications designated as significant by the State. Supporting materials for such consultation with the State must include a description of the proposed change, the disinfection profile developed under today's proposed rule for *Giardia lamblia* (and, if necessary, viruses for systems using ozone or chloramines), and an analysis of how the proposed change might affect the current level of *Giardia* inactivation. In addition, the State is required to review disinfection profiles as part of its periodic sanitary survey.

A log inactivation benchmark is calculated as follows:

(1) Calculate the average log inactivation for either each calendar month, or critical monitoring period (depending on final rule requirement for the profiling provisions).

(2) Determine the calendar month with the lowest average log inactivation; or lowest inactivation level within the critical monitoring period.

(3) The lowest average month, or lowest level during the critical monitoring period becomes the critical measurement for that year.

(4) If acceptable data from multiple years are available, the average of critical periods for each year becomes the benchmark.

(5) If only one year of data is available, the critical period (lowest monthly average inactivation level) for that year is the benchmark.

d. Request for Comments

EPA has included a requirement that State approval be obtained prior to making a significant change to disinfection practice. EPA requests comment on whether the rule should require State approval or whether only state consultation is necessary.

EPA also requests comment on providing systems serving fewer than 500 the option to provide raw data to the State, and allowing the State to determine the benchmark.

C. Additional Requirements

1. Inclusion of *Cryptosporidium* in definition of GWUDI

a. Overview and Purpose

Groundwater sources are found to be under the direct influence of surface water (GWUDI) if they exhibit specific traits. The SWTR defined ground waters containing *Giardia lamblia* as GWUDI. One such trait is the presence of protozoa such as *Giardia* which migrate from surface water to groundwater. The IESWTR expanded the SWTR's definition of GWUDI to include the presence of *Cryptosporidium*. The Agency believes it appropriate and necessary to extend this modification of the definition of GWUDI to systems serving fewer than 10,000 persons.

b. Data

The Agency issued guidance on the Microscopic Particulate Analysis (MPA) in October 1992 as the Consensus Method for Determining Groundwater Under the Direct Influence of Surface Water Using Microscopic Particulate Analysis (EPA, 1992). Additional guidance for making GWUDI determinations is also available (USEPA, 1994a,b). Since 1990, States have acquired substantial experience in making GWUDI determinations and have documented their approaches (Massachusetts Department of Environmental Protection, 1993; Maryland, 1993; Sonoma County Water Agency, 1991). Guidance on existing practices undertaken by States in response to the SWTR may also be found in the State Sanitary Survey Resource Directory, jointly published in December 1995 by EPA and the Association of State Drinking Water Administrators (EPA/ASDWA). AWWARF has also published guidance (Wilson et al., 1996).

Most recently, Hancock et al. (1997) used the MPA test to study the occurrence of *Giardia* and *Cryptosporidium* in the subsurface. They found that, in a study of 383 ground water samples, the presence of *Giardia* correlated with the presence of *Cryptosporidium*. The presence of both pathogens correlated with the amount of sample examined, but not with the month of sampling. There was a correlation between source depth and occurrence of *Giardia* but not *Cryptosporidium*. The investigators also found no correlation between the distance of the ground water source from adjacent surface water and the occurrence of either *Giardia* or *Cryptosporidium*. However, they did find a correlation between distance from a surface water source and generalized MPA risk ratings of high (high represents an MPA score of 20 or greater), medium or low, but no correlation was found with the specific numerical values that are calculated by the MPA scoring system. An additional two reports (SAIC 1997a and 1997b) provide data on wells with *Giardia* cyst and *Cryptosporidium* oocyst recovery and concurrent MPA analysis.

c. Proposed Requirements

In today's proposed rule, EPA is modifying the definition of GWUDI to include *Cryptosporidium* for systems serving fewer than 10,000 persons.

Under the SWTR, States were required to determine whether systems using ground water were using ground water under the direct influence of surface water (GWUDI). State determinations were required to be completed by June 29, 1994 for CWSs and by June 29, 1999 for NCWSs. EPA does not believe that it is necessary to make a new determination of GWUDI for this rule based on the addition of *Cryptosporidium* to the definition of "ground water under the direct influence of surface water". While a new determination is not required, States may elect to conduct a new analysis based on such factors as a new land use pattern (conversion to dairy farming, addition of septic tanks).

EPA does not believe that a new determination is necessary because the current screening methods appear to adequately address the possibility of *Cryptosporidium* in the ground water.

d. Request for Comments

The Agency requests comment on the proposal to modify the definition of GWUDI to include *Cryptosporidium* for systems serving fewer than 10,000 persons.

2. Inclusion of *Cryptosporidium* Watershed Requirements for Unfiltered Systems

a. Overview and Purpose

Existing SWTR requirements for unfiltered surface water and GWUDI systems require these systems to minimize the potential for source water contamination by *Giardia lamblia* and viruses. Because *Cryptosporidium* has proven resistant to levels of disinfection currently practiced at systems throughout the country, the Agency felt it imperative to include *Cryptosporidium* in the watershed control provisions wherever *Giardia lamblia* is mentioned. The IESWTR therefore, modified existing watershed regulatory requirements for unfiltered systems to include the control of

Cryptosporidium. The Agency believes it appropriate and necessary to extend this requirement to systems serving fewer than 10,000 persons.

It should be noted that today's proposed requirements do not replace requirements established for unfiltered systems under the SWTR. Systems must continue to maintain compliance with the requirements of the SWTR for avoidance of filtration. If an unfiltered system fails any of the avoidance criteria, that system must install filtration within 18 months, regardless of future compliance with avoidance criteria.

EPA anticipates that in the planned Long Term 2 Enhanced Surface Water Treatment rule, the Agency will reevaluate treatment requirements necessary to manage risks posed by *Cryptosporidium* and other microbial pathogens in both filtered and unfiltered surface water systems. In conducting this reevaluation, EPA will utilize the results of several large surveys, including the Information Collection Rule (ICR) and ICR Supplemental Surveys, to more fully characterize the occurrence of waterborne pathogens, as well as watershed and water quality parameters which might serve as indicators of pathogen risk level. The LT2ESWTR will also incorporate the results of ongoing research on removal and inactivation efficiencies of treatment processes, as well as studies of pathogen health effects and disease transmission. Promulgation of the LT2ESWTR is currently scheduled for May, 2002.

b. Data

Watershed control requirements were initially established in 1989 (54 FR 27496, June 29, 1989) (EPA, 1989b), as one of a number of preconditions that a public water system using surface water must meet to avoid filtration. The SWTR specifies the conditions under which a system can avoid filtration (40 CFR 141.71). These conditions include good source water quality, as measured by concentrations of coliforms and turbidity; disinfection requirements; watershed control; periodic on-site inspections; the absence of waterborne disease outbreaks; and compliance with the Total Coliform Rule and the MCL for TTHMs. The watershed control program under the SWTR must include a characterization of the watershed hydrology characteristics, land ownership, and activities which may have an adverse effect on source water quality, and must minimize the potential for source water contamination by *Giardia lamblia* and viruses.

The SWTR Guidance Manual (EPA, 1991a) identifies both natural and human-caused sources of contamination to be controlled. These sources include wild animal populations, wastewater treatment plants, grazing animals, feedlots, and recreational activities. The SWTR Guidance Manual recommends that grazing and sewage discharges not be permitted within the watershed of unfiltered systems, but indicates that these activities may be permissible on a case-by-case basis where there is a long detention time and a high degree of dilution between the point of activity and the water intake. Although there are no specific monitoring requirements in the watershed protection program, the non-filtering utility is required to develop State-approved techniques to eliminate or minimize the impact of identified point and non-point sources of pathogenic contamination. The guidance already suggests identifying sources of microbial contamination, other than *Giardia*, transmitted by animals, and points out specifically that *Cryptosporidium* may be present if there is grazing in the watershed.

c. Proposed Requirements

In today's proposed rule, EPA is extending the existing watershed control regulatory requirements for unfiltered systems serving fewer than 10,000 people to include the control of *Cryptosporidium*. *Cryptosporidium* will be included in the watershed control provisions for these systems wherever *Giardia lamblia* is mentioned.

Specifically, the public water system must maintain a watershed control program which minimizes the potential for contamination by *Giardia lamblia*, and *Cryptosporidium* oocysts and viruses in the water. The State must determine whether the watershed control program is adequate to meet this goal. The adequacy of a program to limit potential contamination by *Giardia lamblia* cysts, *Cryptosporidium* oocysts and viruses must be based on: The comprehensiveness of the watershed review; the effectiveness of the system's program to monitor and control detrimental activities occurring in the watershed; and the extent to which the water system has maximized land ownership and/or controlled land use within the watershed.

It should be noted that unfiltered systems must continue to maintain compliance with the requirements of the SWTR for avoidance of filtration. If an unfiltered system fails any of the avoidance criteria, that system must install filtration within 18 months, regardless of future compliance with avoidance criteria.

d. Request for Comments

EPA requests comment on the inclusion of these requirements for unfiltered systems serving fewer than 10,000 people

3. Requirements for Covering New Reservoirs

a. Overview and Purpose

Open finished water reservoirs, holding tanks, and storage tanks are utilized by public water systems throughout the country. Because these reservoirs are open to the environment and outside influences, they can be subject to the reintroduction of contaminants which the treatment plant was designed to remove. The IESWTR contains a requirement that all newly constructed finished water reservoirs, holding tanks, and storage tanks be covered. The Agency believes it appropriate and necessary to extend this requirement to systems serving fewer than 10,000 people.

b. Data

Existing EPA guidelines recommend that all finished water reservoirs and storage tanks be covered (EPA, 1991b). The American Water Works Association (AWWA) also has issued a policy statement strongly supporting the covering of reservoirs that store potable water (AWWA, 1993). In addition, a survey of nine States was conducted in the summer of 1996 (Montgomery Watson, 1996). The States which were surveyed included several in the West (Oregon, Washington, California, Idaho, Arizona, and Utah), two States in the East known to have water systems with open reservoirs (New York and New Jersey), and one midwestern State (Wisconsin). Seven of the nine States which were surveyed require by direct rule that all new finished water reservoirs and tanks be covered.

Under the IESWTR, systems serving populations of 10,000 or greater were prohibited from constructing uncovered finished water reservoirs after February 16, 1999. The Agency developed an Uncovered Finished Water Reservoirs Guidance Manual (USEPA, 1999f) which provides a basic understanding of the potential sources of external contamination in uncovered finished water reservoirs. It also provides guidance to water treatment operators for evaluating and maintaining water quality in reservoirs. The document discusses:

- Existing regulations and policies pertaining to uncovered reservoirs;
- Development of a reservoir management plan;

• Potential sources of water quality degradation and contamination;
• Operation and maintenance of reservoirs to maintain water quality; and
• Mitigating potential water quality degradation.

As discussed in the 1997 IESWTR NODA (EPA, 1997b), when a finished water reservoir is open to the atmosphere it may be subject to some of the environmental factors that surface water is subject to, depending upon site-specific characteristics and the extent of protection provided. Potential sources of contamination to uncovered reservoirs and tanks include airborne chemicals, surface water runoff, animal carcasses, animal or bird droppings and growth of algae and other aquatic organisms due to sunlight that results in biomass (Bailey and Lippy, 1978). In addition, uncovered reservoirs may be subject to contamination by persons tossing items into the reservoir or illegal swimming (Pluntze 1974; Erb, 1989). Increases in algal cells, heterotrophic plate count (HPC) bacteria, turbidity, color, particle counts, biomass and decreases in chlorine residuals have been reported (Pluntze, 1974, AWWA Committee Report, 1983, Silverman et al., 1983, LeChevallier et al. 1997a).

Small mammals, birds, fish, and the growth of algae may contribute to the microbial degradation of an open finished water reservoir (Graczyk et al., 1996a; Geldreich, 1990; Fayer and Ungar, 1986;). In one study, sea gulls contaminated a 10 million gallon reservoir and increased bacteriological growth, and in another study waterfowl were found to elevate coliform levels in small recreational lakes by twenty times their normal levels (Morra, 1979). Algal growth increases the biomass in the reservoir, which reduces dissolved oxygen and thereby increases the release of iron, manganese, and nutrients from the sediments. This, in turn, supports more growth (Cooke and Carlson, 1989). In addition, algae can cause drinking water taste and odor problems as well as impact water treatment processes. A 1997 study conducted by the City of Seattle (Seattle Public Utilities, 1997) evaluated nutrient loadings by three groups of birds at Seattle's open reservoirs. Table IV.9 indicated the amount of soluble nutrient loadings estimated over the course of the year. It shows that bird feces may contribute nutrient loadings that can enhance algal growth in the reservoir.

TABLE IV.9.—1997 NUTRIENT LOADINGS BY BIRD GROUPS IN SEATTLE'S OPEN RESERVOIRS

Reservoir	Geese		Gulls		Ducks		Overall	
	Nitr. kg/yr	Phos. kg/yr	Nitr. kg/yr	Phos. kg/yr	Nitr. kg/yr	Phos. kg/yr	Total kg/yr	Conc. (mg/L)
Beacon Hill*	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Bitter Lake	0.82	0.24	0.01	0.00	0.06	0.02	1.15	14.09
Green Lake	1.78	0.52	0.03	0.01	0.53	0.16	3.04	16.05
Lake Forest	2.23	0.65	0.36	0.11	0.07	0.02	3.43	15.09
Lincoln	0.00	0.00	0.24	0.07	0.01	0.00	0.31	3.96
Maple Leaf	2.16	0.63	0.13	0.04	0.35	0.10	3.42	15.43
Myrtle	0.00	0.00	0.08	0.02	0.01	0.00	0.12	4.35
Volunteer	0.00	0.00	0.01	0.00	0.01	0.00	0.03	0.42
West Seattle	0.40	0.12	0.38	0.11	0.02	0.01	1.03	4

c. Proposed Requirements

In today's proposed rule EPA is requiring surface water and GWUDI systems that serve fewer than 10,000 people to cover all new reservoirs, holding tanks or other storage facilities for finished water for which construction begins 60 days after the publication of the final rule in the **Federal Register**. Today's proposed rule does not apply these requirements to existing uncovered finished water reservoirs.

d. Request for Comments

EPA solicits comments regarding the requirement to require that all new reservoirs, holding tanks and storage facilities for finished water be covered.

D. Recycle Provisions for Public Water Systems Employing Rapid Granular Filtration Using Surface Water and GWUDI as a Source

Section 1412(b)(14) of the 1996 SDWA Amendments requires EPA to promulgate a regulation to govern the recycle of filter backwash within the treatment process of public water systems. The Agency is concerned that the recycle of spent filter backwash and other recycle streams may introduce additional *Cryptosporidium* oocysts to the treatment process. Adding oocysts to the treatment process may increase the risk oocysts will occur in finished water supplies and threaten public health. The Agency is further concerned because *Cryptosporidium* is not inactivated by standard disinfection practice, an important treatment barrier employed to control microbial pathogens. Oocysts returned to the plant by recycle flow therefore remain a threat to pass through filters into the finished water.

The Agency engaged in three primary information gathering activities to investigate the potential risk posed by returning recycle flows that may contain *Cryptosporidium* to the treatment process. First, the Agency performed a broad literature search to gather research papers and information on the occurrence of *Cryptosporidium* and organic and inorganic materials in recycle flows. The literature search also sought information regarding the potential impact recycle may have on plant treatment efficiency. Second, the Agency worked with AWWA, AWWSCo., and Cincinnati Water Works to develop twelve issue papers on commonly generated recycle flows (Environmental Engineering and Technology, Inc.,1999). These papers are summarized in the next section. Information from EPA's literature search was incorporated into the issue papers. Third, the Agency presented preliminary data and potential regulatory components to stakeholders, and solicited feedback, at public meetings in Denver, Colorado, and Dallas, Texas. EPA also received valuable input from representatives of small water systems through the SBREFA process.

Through the above activities, the Agency has identified four primary concerns regarding the recycle of spent filter backwash and other recycle streams within the treatment process of PWSs. The first concern is that some recycle flows contain *Cryptosporidium* oocysts, frequently at higher concentrations than plant source waters. Recycling these flows may increase the number of oocysts entering the plant and the number of oocysts reaching the filters. Loading more oocysts to the

filters could increase finished water oocyst concentrations. The second concern regards the location in the treatment process recycle flow is returned. The return of recycle at the point of primary coagulant addition or downstream of it may disrupt treatment chemistry by introducing residual coagulant or other treatment chemicals to the process stream and thereby lower plant treatment efficiency. Also, recycle flow returned to the clarification process may not achieve sufficient residence time for oocysts in the recycle flow to be removed, or it may create hydraulic currents that lower the unit's overall oocyst removal efficiency. The third concern regards direct filtration plants. Direct filtration plants do not employ clarification in their primary treatment process to remove suspended solids and oocysts; all oocyst removal is achieved by the filters. If the recycle flow is not treated before being returned to the plant, all of the oocysts captured by a filter during a filter run will be returned to the plant and again loaded to the filters. This may lead to ever increasing levels of oocysts being applied to the filters and could increase the concentration of oocysts in finished water. Therefore, it is important for direct filtration plants to provide adequate recycle flow treatment to remove oocysts and protect the integrity of the filters and finished water quality. Finally, the fourth concern is that the direct recycle of spent filter backwash without first providing treatment, equalization, or some form of hydraulic detention for the recycle flow, may cause plants to exceed State-approved operating capacity during recycle events. This can cause clarification and filter loading rates to be exceeded, which may lower overall oocyst removal provided by the plant and increase finished water oocyst concentrations.

EPA has particular concerns regarding the direct recycle of spent filter backwash water as it is produced (i.e., recycle flow is not retained in an equalization basin, treatment unit, or other hydraulic detention unit prior to reintroduction to the main treatment process) for the following reasons:

(1) Direct recycle may cause operating rates for clarification and filtration to be exceeded, which may lower overall *Cryptosporidium* removal;

(2) Direct recycle may hydraulically upset some plants, lowering overall plant treatment performance, and;

(3) Clarification and filtration operating rates may be exceeded at precisely the time recycle flow may be returning large numbers of oocysts to the treatment process.

The impact of direct recycle practice to smaller plants with few filters is of greatest concern because return of recycle flow can double or triple plant influent flow, which may hydraulically overload the plant and reduce oocyst removal.

Since standard disinfection practice does not inactivate *Cryptosporidium*, its control is entirely dependent on physical removal processes. The Agency is concerned that direct recycle may cause some plants to exceed operating capacity and thus lower their physical removal capabilities. This can increase the risk of oocysts entering the finished water and lead to an increased risk to public health.

The limited data (Cornwell and Lee, 1993) EPA has identified regarding plants with existing equalization and/or treatment indicates they may be at no greater risk of hydraulic upset or degradation of oocyst removal performance than non-recycle plants. Given current data limitations, it is reasonable to assume the presence and utilization of adequate recycle flow equalization and/or treatment processes will alleviate the potential for hydraulic disruptions and the impairment of treatment performance. Data suggesting otherwise is currently unavailable.

The potential for recycle to return significant numbers of oocysts to the treatment train does provide a general basis for concern regarding the impact of recycle practice to finished water quality. However, the Agency does not currently believe data warrants a national regulation requiring all recycle plants to provide recycle flow equalization or treatment for the following reasons:

(1) Data correlating oocyst occurrence in recycle streams to increased oocyst occurrence in finished water is unavailable;

(2) Data regarding the response of full-scale plants to recycle events is limited;

(3) Data is not available to determine the level of recycle flow equalization or treatment full-scale systems may need, if any, to control the risk of oocysts entering finished water, and;

(4) Whether and the extent to which oocyst occurrence in source water influences the necessary level of recycle treatment and equalization is unknown.

The Agency believes requiring plants that may be at greater risk due to recycle, such as direct recycle plants and direct filtration plants, to characterize their recycle practice and provide data to the State for its review provides a cost effective opportunity to increase public health protection and supply a measure of safety to finished drinking water supplies. EPA believes that today's proposal will address potentially higher risk recycle situations that may threaten the performance of some systems, and will do so by allowing State drinking water programs to consider site-specific treatment conditions and needs. The Agency believes these recycle provisions are needed to protect plant performance, the quality of finished water supplies, and to provide an additional measure of public health protection.

1. Treatment Processes That Commonly Recycle and Recycle Flow Occurrence Data

a. Treatment Processes That Commonly Recycle

The purpose of this section is to provide general background on common treatment plant processes, fundamental plant operations, and the origin of plant recycle streams. Detailed information on the specific recycle flows these processes generate are presented after this background discussion. Four general types of water treatment processes, conventional filtration, direct filtration, softening, and contact clarification, are discussed. Although there are numerous variations of these four treatment processes, only the most basic configurations are discussed here. The operation of package plants and options to returning recycle to the treatment process are also summarized.

i. Conventional Treatment Plants

Conventional water filtration plants are defined by the use of four essential unit processes: Rapid mix, coagulation/flocculation, sedimentation, and filtration. Sedimentation employs gravity settling to remove floc and particles. Particles not removed by sedimentation may be removed by the filters. Periodically, accumulated solids must be removed from the sedimentation unit. These solids, termed "residuals," are currently disposed to sanitary sewer, treated with gravity thickening, or some other process prior to returning them to plant headworks or other locations in the treatment train. Clarification processes other than sedimentation may also be used, and they also produce process residuals.

Clarification sludge may be processed on-site if the plant is equipped with solids treatment facilities. Commonly employed treatment processes include thickeners, dewatering equipment (*e.g.*, plate and frame presses, belt filter presses, or centrifuges), and lagoons. Each of these processes produces residual water streams that are currently returned to the treatment process at the

headworks or other locations prior to filtration. The volume of residuals produced by clarification depends upon the amount of solids present in the raw water, the dose and type of coagulant applied, and the concentration of solids in the treated water stream.

The one residual stream associated with filtration, spent filter backwash water, is produced during periodic backwashing events performed to remove accumulated solids from the filter. Spent filter backwash is frequently returned to the treatment process at the head of the plant, other locations prior to the filters, or disposed of to sanitary sewer or surface water. Some plants have the capability to send the filtrate produced during the filter ripening period to plant headworks, a raw water reservoir, or to a sanitary sewer or surface water rather than to the clear well as finished water. This practice, referred to as "filter-to-waste" is used to prevent solids, which pass through the filter more easily during the ripening period, from entering the finished water.

Filter backwash operations can differ significantly from plant to plant. The main variables are the time between backwashes (length of filter run), the rate of backwash flow, the duration of the backwash cycle, and the backwashing method. The time between filter backwashes is generally a function of either run time, headloss, or solids breakthrough. Both headloss and solids breakthrough can be dependent upon the quality of the sedimentation effluent. Regardless of the variable driving backwash frequency, the interval between backwashes typically vary from 24 to 72 hours. Recommended backwash frequency is every 24–48 hours (ASCE/AWWA, 1998).

There are a number of different methods that can be used to backwash a filter. These include: Upflow water only, upflow water with surface wash, and air/water backwash. Air/water backwash systems typically use 30–50 percent less water than the other two methods. The filter backwash flow rate can vary, depending on media type, water temperature, and backwash method, but generally has a maximum of 15–23 gpm/ft^2 (air/water backwash may have a lower maximum rate of 6–7 gpm/ft^2). A number of different backwash sequences are employed, but a typical backwash consists of a low rate wash (6–7 gpm/ft^2 for several minutes), followed by a high rate wash (15–23 gpm/ft^2 for 5–15 minutes), which is then followed by a final low rate wash (6–7 gpm/ft^2 for several additional minutes). Some treatment plants only use a high rate wash for 15 to 30 minutes. Backwash rates are significantly higher than filtration rates, which vary from 1 to 8 gpm/ft^2.

ii. Direct Filtration Plants

The direct filtration process is similar to conventional treatment, except the clarification process is not present. Direct filtration plants produce the same filter residual as conventional filtration plants, namely filter backwash, and may also generate a filter-to-waste flow. Direct filtration plants do not produce clarification residuals because clarification is not employed. Filter backwash may be either recycled to the head of the plant or discharged to surface waters or a sanitary sewer. Although direct filtration plants generally treat source waters that have low concentrations of suspended material, the solids loading to the filters may be higher than at conventional plants because solids are not removed in a clarification process prior to filtration. If spent filter backwash is not treated to remove solids prior to recycle, solids loading onto the filters will continue to increase over time, as an exit from the treatment process is unavailable. Filter run length may be shorter in some direct filtration plants relative to conventional plants because the solids loading to the filters may be higher due to the lack of a clarification process. The concentration of solids in the source water is a key variable in filter run length.

iii. Softening Plants

Softening plants utilize the same basic treatment processes as conventional treatment plants. Softening plants remove hardness (calcium and magnesium ions) through precipitation, followed by solids removal. Many softening plants employ a two-stage process, which consists of a rapid mix-flocculation-sedimentation sequence, in series, followed by filtration. Others use a single stage process, resembling conventional treatment plants. Precipitation of the calcium and magnesium ions is accomplished through the addition of lime (calcium hydroxide), with or without soda ash (sodium carbonate), which reacts with the calcium and magnesium ions in the raw water to form calcium carbonate and magnesium hydroxide. The precipitation of the calcium carbonate can be improved by recirculating some of the calcium carbonate sludge into the rapid mix unit because the additional solids provide nucleation points for the precipitation of calcium and magnesium. Without this recirculation, additional hydraulic detention time in the flocculation and sedimentation basins may be required to prevent excessive scale deposits in the plant clearwell or in the distribution system.

A softening plant generally has the same residual streams as a conventional plant: Filter backwash, sedimentation solids, and thickener supernatant and dewatering liquids. A filter-to-waste flow may also be generated. These residual streams are either disposed or recycled within the plant. A portion of the sedimentation basin solids are commonly recycled as the sedimentation basin solids contain significant quantities of precipitated calcium carbonate, recycle of these solids reduces the required chemical dose. Solids are generally recycled into the rapid mix chamber to maximize their effectiveness.

iv. Contact Clarification Plants

In the contact clarification process, the flocculation and clarification (and often the rapid mix) processes are combined in one unit, an upflow solids contactor or contact clarifier. Contact clarifiers are employed in both softening and non-softening processes. Raw water flows into the contact clarifier at the top of the central compartment, where chemical addition and rapid mix occurs. The water then flows underneath a skirt and into the outer sedimentation zone where solid separation occurs. A large portion of previously settled solids from the sedimentation zone is circulated to the mixing zone to enhance flocculation. The remainder of the solids are disposed to prevent their accumulation. Circulation and disposal of accumulated solids allows clarifier loading rates to be 10 to 20 times greater than loading rates for conventional sedimentation basins. Solids recirculation rates are generally different for softening and turbidity removal applications, with rates of up to 12 times the raw water flow for softening processes and up to 8 times the raw water flow for non-softening processes (ASCE/AWWA, 1998). Following clarification, treated water from the contactor is then filtered.

The residual streams from contact clarification plants are similar to those for conventional filtration plants. They include filter backwash, clarification solids, thickener supernatant, and dewatering liquids. The key operational consideration for these types of systems is the maintenance of a high concentration of solids within the skirt to allow high loading rates while maintaining adequate solids removal. Solids recirculation (*e.g.*, recycle) helps contact clarification processes maintain the necessary solids concentration.

Softening plants may also generate filter to waste flow.

v. Package Plants

Package plants are typically used to produce between a few thousand to 1 million gallons of water per day. Package plants can employ a conventional treatment train, as well as proprietary unit processes. Package plants typically include the same processes found in large plants, including coagulation, flocculation, clarification and filtration. The potential recycle streams are also comparable. The recycle of filter backwash may occur, however, the typical package plant may not be designed to convey process streams back into the plant as recycle.

vi. Summary of Recycle Disposal Options

Two recycle disposal options available to some plants are direct discharge to sanitary sewers or discharge to surface waters. Discharge of recycle waters to the municipal sewer system may occur when the treatment plant and Publicly Owned Treatment Works (POTW) are under the same authority or when the plant has access to a sanitary sewer and a POTW agrees to accept its discharge.

There may be a fee associated with discharge to a sanitary sewer system, and the total fee may vary with the volume of backwash effluent discharged as well as the amount of solids in the effluent (Cornwell and Lee, 1994). In addition to the fee requirement, discharging into the sewer system may require the plant to equalize the effluent prior to discharging to the POTW. The equalization process requires holding the effluent in tanks and gradually releasing it into the sanitary sewer system. The fee associated with sanitary sewer discharge may influence whether a plant recycles to the treatment process or discharges to a sanitary sewer.

Another option to recycle within the treatment process is the direct discharge of recycle flow to surface waters, such as creeks, streams, rivers, and reservoirs. Direct discharge is a relatively common method of disposal for water treatment plant flows. A National Pollutant Discharge Elimination System (NPDES) permit requires that certain water quality conditions be met prior to the discharge of effluent into surface waters. Treatment of the effluent prior to discharge may be required. The cost of effluent treatment may influence whether plants recycle within the treatment process or discharge to surface water.

b. Recycle Flow Occurrence Data

EPA has not regulated recycle flows in previous rulemakings. The 1996 SDWA Amendments have lead the Agency to perform an examination of recycle flow occurrence data for the first time. EPA discovered through its literature search and its work with AWWA, AWWSCo., and Cincinnati Water Works to develop the issue papers, that the amount of recycle stream occurrence data available is very limited, particularly for *Cryptosporidium*, the primary focus of this regulation. This may be because *Cryptosporidium* was identified as a contaminant of concern relatively recently and because currently available oocyst detection methods have limitations.

Twelve issue papers were developed to compile information on several commonly produced recycle streams. Each individual paper summarizes how the recycle stream is generated, the typical volume generated, characterizes the occurrence of various recycle stream constituents to the extent data allows, (*i.e.*, occurrence of *Cryptosporidium* and inorganic and organic material), and briefly discusses potential impacts of recycling the stream. The discussion of potential impacts is usually brief, due to overall data limitations and particularly due to a lack of data on *Cryptosporidium* occurrence. The 12 recycle streams examined include:

- untreated spent filter backwash water
- gravity settled spent filter backwash water
- combined gravity thickener supernatant (spent filter backwash and clarification process solids)
- gravity thickener supernatant from sedimentation basin solids
- mechanical dewatering device concentrate
- untreated basin solids
- lagoon decant
- sludge drying bed leachate
- monofill leachate membrane concentrate
- ion exchange regenerate
- minor streams

A total of 112 references were used to complete the issue papers, and AWWSCo. and Cincinnati Water Works performed sampling of non-microbial recycle stream constituents to supplement occurrence information.

Cryptosporidium occurrence data was only identified for five recycle streams, namely: untreated spent filter backwash water, gravity settled spent filter backwash water, untreated sedimentation basin solids, combined thickener supernatant, and sludge drying bed leachate. Oocysts may occur in the other recycle streams as well, but published occurrence data was not identified. The issue papers and supporting literature indicate data does not exist to correlate oocyst occurrence in recycle streams to the occurrence of oocysts in finished water. However, the issue papers did identify data showing that oocysts occur in recycle streams, often at concentrations higher than that of the source water.

Cryptosporidium is not the only constituent of recycle waters. Other common constituents are manganese, iron, aluminum, disinfection byproducts, organic carbon, *Giardia* lamblia and particles. EPA does not currently have data to indicate these constituents occur in recycle streams at levels which threaten treatment plant performance, finished water quality, or public health. Additionally, current regulations may largely control any minor risk these constituents may present. For example, organic matter in recycle flow may form disinfection byproducts in the presence of oxidants. The Stage 1 DBPR, which requires monitoring for disinfection byproducts, will identify systems experiencing disinfection byproduct occurrence above or near applicable MCLs through distribution system monitoring. Additionally, Secondary Maximum Contaminant Levels (SMCLs) have been promulgated to control occurrence of aluminum, iron, and manganese at levels of .05–.2 mg/l, .3 mg/l, and .05 mg/l, respectively. Particle levels are controlled by effluent turbidity standards and *Giardia* lamblia is controlled through a combination of disinfection and filtration requirements. EPA believes existing regulations control these recycle stream constituents. Therefore, their control is not a primary goal of today's proposal. Additionally, detailed discussion of these constituents is not provided in the below summary of the issue papers because: (1) control of *Cryptosporidium* is the focus of the recycle provisions, and; (2) concentrations of inorganic and organic materials reported in the issue papers are for recycle streams, not finished water occurrence. The recycle stream concentrations will be significantly diluted by mixing with source water.

The occurrence of recycle flow constituents other than *Cryptosporidium* is not discussed in today's preamble for the above reasons. The following discussion of recycle stream occurrence data covers only untreated spent filter backwash water, gravity settled spent filter backwash water, combined gravity thickener

supernatant (a combination of spent filter backwash and clarification process solids), gravity thickener supernatant from clarification process solids, and mechanical dewatering device liquids. These five recycle streams are discussed in detail because they are most likely to present a threat to treatment plant performance or finished water quality when recycled. For example, treated and untreated spent filter backwash water and thickener supernatant are the only two recycle streams of sufficient volume to cause plants to exceed their operating capacity during recycle events. The five recycle streams discussed below are also most likely to contain *Cryptosporidium*.

Copies of all the issue papers are available for public review in the Office of Water docket for this rulemaking. Portions of the following recycle stream descriptions use excerpts from the issue papers.

i. Untreated Spent Filter Backwash Water

Water treatment plants that employ rapid granular filtration (e.g., conventional, softening, direct filtration, contact clarification) generate spent filter backwash water. The backwash water is generated when water is forced through the filter, counter-current to the flow direction during treatment operations, to dislodge and remove accumulated particles and pathogens residing in the filter media. Backwash rates are typically five to eight times the process rate, and are used to clean the filter at the end of a filter run, which is generally 24 to 72 hours in length. Backwash operations usually last from 10 to 25 minutes. The flow rate and duration of backwashing are the primary factors that determine the volume of backwash water produced. Once the backwashing process is complete, the backwash water and entrained solids are either disposed of to a sanitary sewer, discharged to a surface water, or returned to the treatment process. Plants currently return spent filter backwash to the treatment process at a variety of locations, usually between plant headworks and clarification. Data regarding common recycle return locations is discussed in the next section of this preamble.

Spent filter backwash can be returned to the treatment process directly as it is produced, be detained in an equalization basin, or passed through a treatment process, such as clarification, prior to being returned to the plant. On a daily basis, spent filter backwash can range from 2 to 10 percent of plant production. Spent filter backwash is usually produced on an intermittent basis, but large plants with numerous filters may produce it continuously. At small and mid-size plants, large volume, short duration flows of spent filter backwash are usually produced. This may cause some plants, particularly smaller plants that recycle directly without flow equalization or treatment, to exceed their operating capacity or to experience hydraulic disruptions, both of which may negatively impact treatment efficiency and oocyst removal.

The concentrations of *Cryptosporidium* reported in the untreated spent filter backwash issue paper ranges from non-detect to a concentration of 18,421 oocysts per 100 L. This range is not amenable to formal statistical analysis, but rather provides a summary of minimum and maximum oocyst concentrations reported in available literature. Although a few studies report isolated data points of greater than 10,000 oocysts/100L for filter backwash water (Rose *et al.*, 1989; Cornwell and Lee, 1993; Colbourne, 1989), occurrence studies that collected the largest number of samples reported mean filter backwash oocyst occurrence concentrations of a few hundred oocysts per 100L (States *et al.*, 1997; Karanis *et al.*, 1996). The high concentration of oocysts found in some spent filter backwash samples is cause for concern, because oocysts are not inactivated by standard disinfection practice. They remain a threat to pass through the plant into the finished water if they are returned to the treatment process. However, current oocyst detection methods do not allow the occurrence of oocysts in spent filter backwash water to be correlated to finished water oocyst concentrations for a range of plant types, source water qualities, and recycle practices. Today's proposal does not require the installation of recycle equalization or treatment for spent filter backwash water on a national basis due to these data limitations.

The Agency is concerned that certain recycle practices, such as returning spent filter backwash to locations other than prior to the point of primary coagulant addition, or hydraulically overloading the plant with recycle flow so it exceeds its State approved operating capacity, may present risk to finished water quality and public health. Exceeding plant operating capacity during recycle events may cause greater risk to finished water quality, because plant performance is potentially being lowered at precisely the time oocysts are returned to the plant in the recycle flow. To address this concern, today's proposal requires that certain direct recycle plants that recycle spent filter backwash water and/or thickener supernatant to perform a self assessment of their recycle practice and report the results to the State. The self assessment requirements are discussed in detail later in this preamble.

ii. Gravity Settled Spent Filter Backwash Water

Gravity settled spent filter backwash water is generated by the same filter backwash process and is produced in the same volume as untreated spent filter backwash water. The difference between the two streams is that the former is treated by gravity settling prior to its return to the primary treatment process. Sedimentation treatment is usually accomplished by retaining the spent filter backwash water in a treatment unit for a period of time to allow suspended solids (including oocysts) to settle to the bottom of the basin. Polymer may be used to improve process efficiency. The water that leaves the basin is gravity settled spent filter backwash water. Removing solids from the spent filter backwash causes only a minor reduction in volume as the solids content of the untreated stream is low, usually below 1 percent.

Providing gravity settling for spent filter backwash is advantageous for two reasons. First, the sedimentation process detains the spent filter backwash in treatment basins for a period of hours, which lowers the possibility a large recycle volume will be returned to the plant in a short amount of time and cause the plant operating capacity to be exceeded. Second, treating the spent filter backwash flow can remove *Cryptosporidium* oocysts from the flow, which will reduce the number of oocysts returned to the plant.

Limited data show that sedimentation can effectively remove oocysts. Cornwell and Lee (1993) conducted limited sampling of spent filter backwash water at two plants prior to and after sedimentation treatment. The first facility practiced direct filtration and was sampled twice. The *Cryptosporidium* concentrations into and out of the sedimentation basin treating spent filter backwash were 900/100L and 140/100L, respectively, for the first sampling and 850/100L in the influent and 750/100L in the effluent for the second sampling. At the second plant a sludge settling pond received both sedimentation basin sludge and spent filter backwash, and the spent filter backwash oocyst concentration was 16,500/100L, and the treated recycle water concentration was 420/100L. In a study by Karanis (1996), *Cryptosporidium* was regularly detected in settled backwash waters. Of the 50

samples collected, 82 percent tested positive for *Cryptosporidium*. The mean value for *Cryptosporidium* was 22 oocysts/100L.

Sedimentation treatment can remove oocysts from spent filter backwash, but data indicate oocysts remain in gravity settled spent filter backwash water even after treatment. The Agency believes that sedimentation treatment for spent filter backwash waters is capable of removing oocysts and improving the quality of the water prior to recycle. However, given current data limitations, the Agency does not believe it is possible to specify, in a national regulation, the conditions (*e.g.*, source water oocyst concentrations, primary treatment train performance, concentration of oocysts in spent filter backwash, ability of sedimentation to remove oocysts under a range of conditions) under which sedimentation treatment of spent filter backwash water may be appropriate. This decision is best made by State programs to allow consideration of site-specific conditions and treatment needs.

iii. Combined Gravity Thickener Supernatant

Combined gravity thickener supernatant is derived from the treatment of filter backwash water and sedimentation basin solids in gravity thickener units. These two flows may not reside in the thickener at the same time or in equal volumes, depending on plant operations. The volume of thickener supernatant generated at a water treatment plant is a function of the type of flows it treats, the solids content of the influent stream, and the method of thickener operation. Regardless of whether a continuous or a batch process is used, a number of factors, including residuals production (a function of plant production, raw water suspended solids, and coagulant dose), volume of spent filter backwash water produced, and the level of treatment provided to thickener influent streams, directly affect the quantity of thickener supernatant produced.

The flow entering the thickener is primarily spent filter backwash water. Sedimentation basin solids is the second largest flow. Flow from dewatering devices, which is generated by the dewatering of residuals, may comprise a minor volume entering the thickener. Combined thickeners will have an influent that may be eighty-percent spent filter backwash or more by volume. About eighty-percent of the solids entering the thickener will be from the sedimentation basin sludge, as spent filter backwash water has a comparatively low solids concentration.

A recent FAX survey (AWWA, 1998) identified more than 300 water treatment plants in the United States with production capacities ranging from less than 2 mgd to greater than 50 mgd that recycle spent filter backwash water. Many of the survey respondents indicated that they recycle more than just spent filter backwash water. Based on the survey and published literature, thickener supernatant is probably the second largest and second most frequently recycled stream at water treatment facilities after spent filter backwash.

Data summarized in the issue paper showed that thickener supernatant quality varies widely, due in large part because the type and quality of recycle streams entering thickeners varies over time and from plant to plant. The turbidity, total suspended solids, and particle counts of thickener effluent are directly impacted by the quality of water loaded onto the thickener, thickener design, and thickener operation (e.g., residence time, use of polymer).

Data on the occurrence of *Cryptosporidium* was limited to two samples, with oocyst occurrence ranging from 82 to 420 oocysts per 100 L. Data is too limited, and practice varies too widely, to draw conclusions on the impact recycle of this flow may have on plant performance. However, given that the contents of the thickener have been treated and the amount of flow produced by gravity thickeners is relatively modest, it may be feasible to recycle the flow in a manner that minimizes adverse impact. Additionally, treatment plant personnel have a vested interest in optimizing thickener operation to minimize sludge dewatering and handling costs; optimization of thickener operation is likely to assist oocyst removal. However, additional data is needed to characterize the occurrence of *Cryptosporidium* and the potential impact recycle of combined thickener supernatant may have on finished water quality.

iv. Gravity Thickener Supernatant from Sedimentation Solids

Gravity settled sedimentation basin solids are sedimentation basin solids that have undergone settling to allow solid sludge components to settle to the bottom of a gravity thickener. The supernatant from the thickener is a potential recycle flow. The tank bottom is sloped to enhance solids thickening and collection and removal of settled solids is accomplished with a bottom scraper mechanism. If the supernatant is recycled, it can be returned to the plant continuously or intermittently, depending on whether the thickener is operated in batch mode. Thickeners may receive and treat both spent filter backwash water and sedimentation basin solids. For purposes of this discussion, and the data presented in the issue paper, the gravity thickener is only receiving sedimentation basin solids.

The volume of treated sedimentation basin solids supernatant generated is dependent on the amount of sludge produced in the sedimentation basin, the solids content of the sludge, and method of thickener operation. Sludge production is a function of plant production, raw water suspended solids, coagulant type, and coagulant dose. The quantity of sedimentation basin sludge supernatant is approximately 75 to 90 percent of the original volume of sedimentation basin sludge produced.

There is a very limited amount of data on the quality of thickener supernatant produced by gravity settling of only sedimentation basin solids (i.e., spent filter backwash and other flows are not added to the thickener), and no data was identified regarding the concentration of *Cryptosporidium* that occur in the supernatant. As is the case with combined gravity thickener supernatant, it is difficult to determine what impact, if any, the return of the supernatant may have on plant operations and finished water quality due to limited data. Additional data is necessary to determine the concentration of oocysts in this recycle stream, and to characterize the impact its recycle may have to plant performance.

v. Mechanical Dewatering Device Liquids

Water treatment plant residuals (usually thickened sludge) are usually dewatered prior to disposal to remove water and reduce volume. Two common mechanical dewatering devices used to separate solids from water are the belt filter press, which compresses the residuals between two continuous porous belts stretched over a series of rollers, and the centrifuge, which applies a strong centrifugal force to separate solids from water. The plate and frame press is another dewatering device that contains a series of filter plates, supported and contained in a structured frame, which separate sludge solids from water using a positive pressure differential as the driving force. Water removed from the solids with a belt filter press is called filtrate, from a filter press it is called pressate, and the water separated from the residuals with a centrifuge is referred to as centrate.

These streams will be collectively referred to as "dewatering liquid" for the following discussion.

The volume of dewatering liquid produced depends primarily on the volume and solids content of the thickened residuals fed to the mechanical dewatering device. Plants that produce small sludge volumes, and hence a low volume of thickener residuals, will process fewer residuals in the mechanical dewatering device and hence produce a smaller volume of dewatering liquid than a plant producing a large volume of solids, all else being equal. Since residuals are often thickened (typically to about 2 percent solids) prior to dewatering, the volume of the dewatering device feed stream is significantly lower than the volume of sedimentation basin residuals generated. If the sedimentation basin sludge flow is assumed to be 0.6 percent of plant production, then dewatering device flow may be approximately 0.1 to 0.2 percent of plant flow. Generally these streams are mixed in with other recycle streams prior to being returned to the plant. Mechanical dewatering devices may be operated intermittently, after a suitable volume of residuals have been produced for dewatering. The production of dewatering liquid and its recycle may not be a continuous process.

Data on the constituents in dewatering liquid were found in three references, one on belt filter press liquids, one on plate and frame pressate, and one on centrifuge centrate. Data on the occurrence of *Cryptosporidium* was not identified. Given the small, intermittent flow produced by mechanical dewatering devices, recycle flows from them are unlikely to cause plants to exceed operating capacity. However, it is possible that dewatering device liquid contains *Cryptosporidium* because it derived from solids likely to hold a large numbers of oocysts. Additional data is necessary to determine the concentration of oocysts in this recycle stream, and to characterize any impact its recycle may have to plant performance.

2. National Recycle Practices

a. Information Collection Rule

Public water systems affected by the ICR were required to report whether recycle is practiced and sample washwater (i.e., recycle flow) between the washwater treatment plant (if one existed) and the point at which recycle is added to the process train. Sampling of plant recycle flow was required prior to blending with the process train. Monthly samples were required for pH, alkalinity, turbidity, temperature, calcium and total hardness, TOC, UV_{254}, bromide, ammonia, and disinfectant residual if disinfectant was used. Systems were also required to measure recycle flow at the time of sampling, the twenty four hour average flow prior to sampling, and report whether treatment of the recycle was provided and, if so, the type of treatment. Reportable treatment types were plain sedimentation, coagulation and sedimentation, filtration, disinfection, or a description of an alternative treatment type. Plants were also required to submit a plant schematic to identify sampling locations. EPA used the sampling schematics and other reported information to compile a database of national recycle practice.

i. Recycle Practice

The Agency developed a database from the ICR sampling schematics and other reported information. Table IV.10 summarizes the plants in the database. Of the 502 plants in the database at the time the analysis was performed, 362 used rapid granular filtration.

TABLE IV.10.—RECYCLE PRACTICE AT ICR PLANTS

Plant classification	Number
All ICR plants	502
Filtration plants [a]	362
Filtration plants recycling [b]	226
Filtration plants treating recycle	148
Recycle plants serving ≥100,000	168
Recycle plants serving <100,000	58

[a] Defined as conventional, lime softening, other softening, and direct filtration plants.
[b] Plants report existence of a recycle stream, not its origin.

These plants are classified as conventional, lime softening, other softening, and direct filtration. The remaining 140 plants in the database do not employ rapid granular filtration capability and generally provide disinfection for ground water. Of the 362 filtration plants in the database, 226 (62.4 percent) reported recycling to the treatment process. Seventy-four percent of the plants that recycle serve populations greater than 100,000 and 26 percent serve populations below 100,000. Figure IV.9 shows the distribution of plants by treatment type and Figure IV.10 shows the distribution of plants by population served. Table IV.11 shows that 88 percent of ICR recycle plants use surface water. An additional one percent use GWUDI and another one percent use a combination of ground water and surface water. Therefore, 90 percent of ICR recycle plants use a source water that could contain *Cryptosporidium*.

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Figure IV.9 ICR Plants by Treatment Train Type

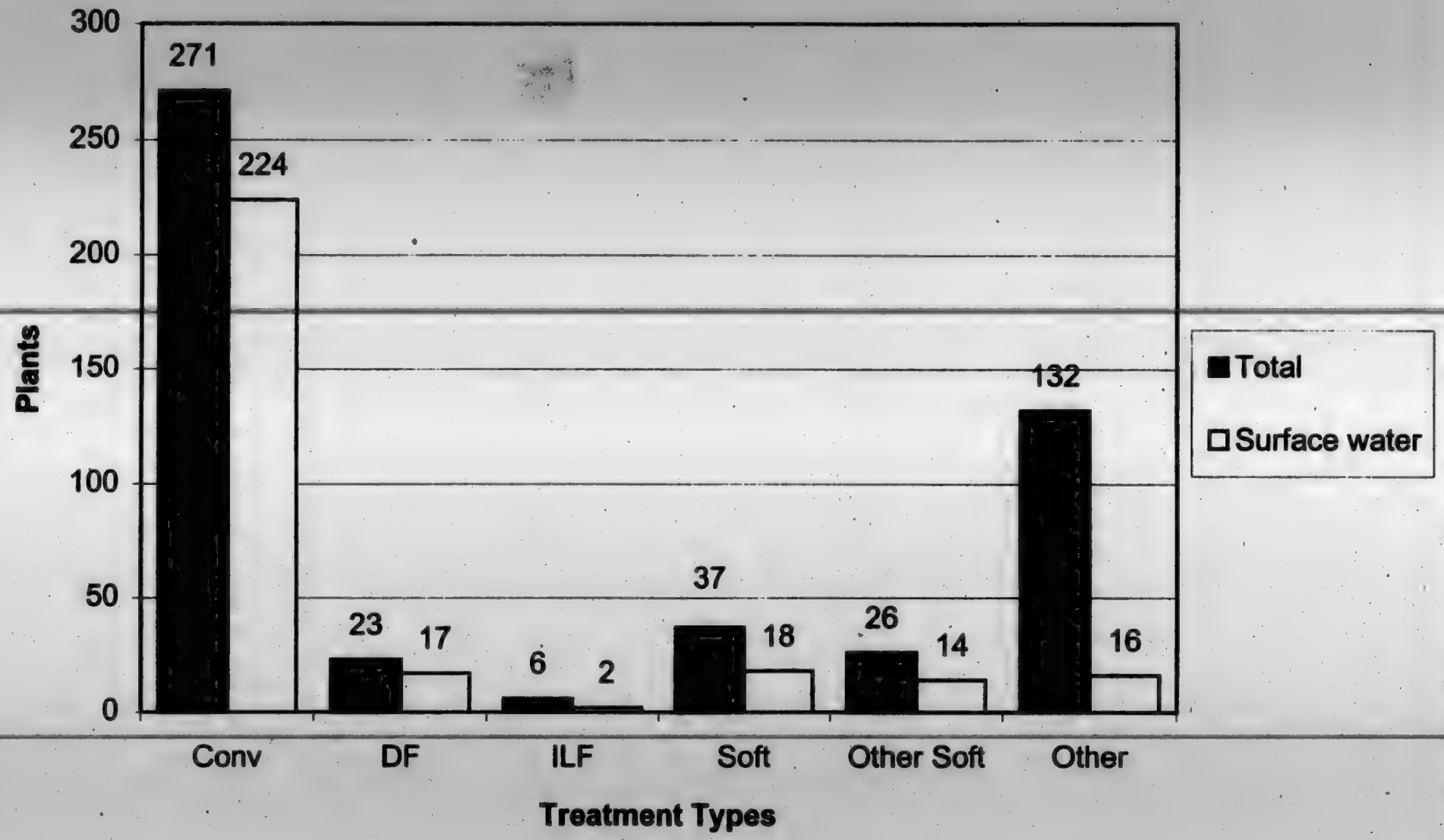

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Figure IV.10 ICR Recycle Plants by Population Served

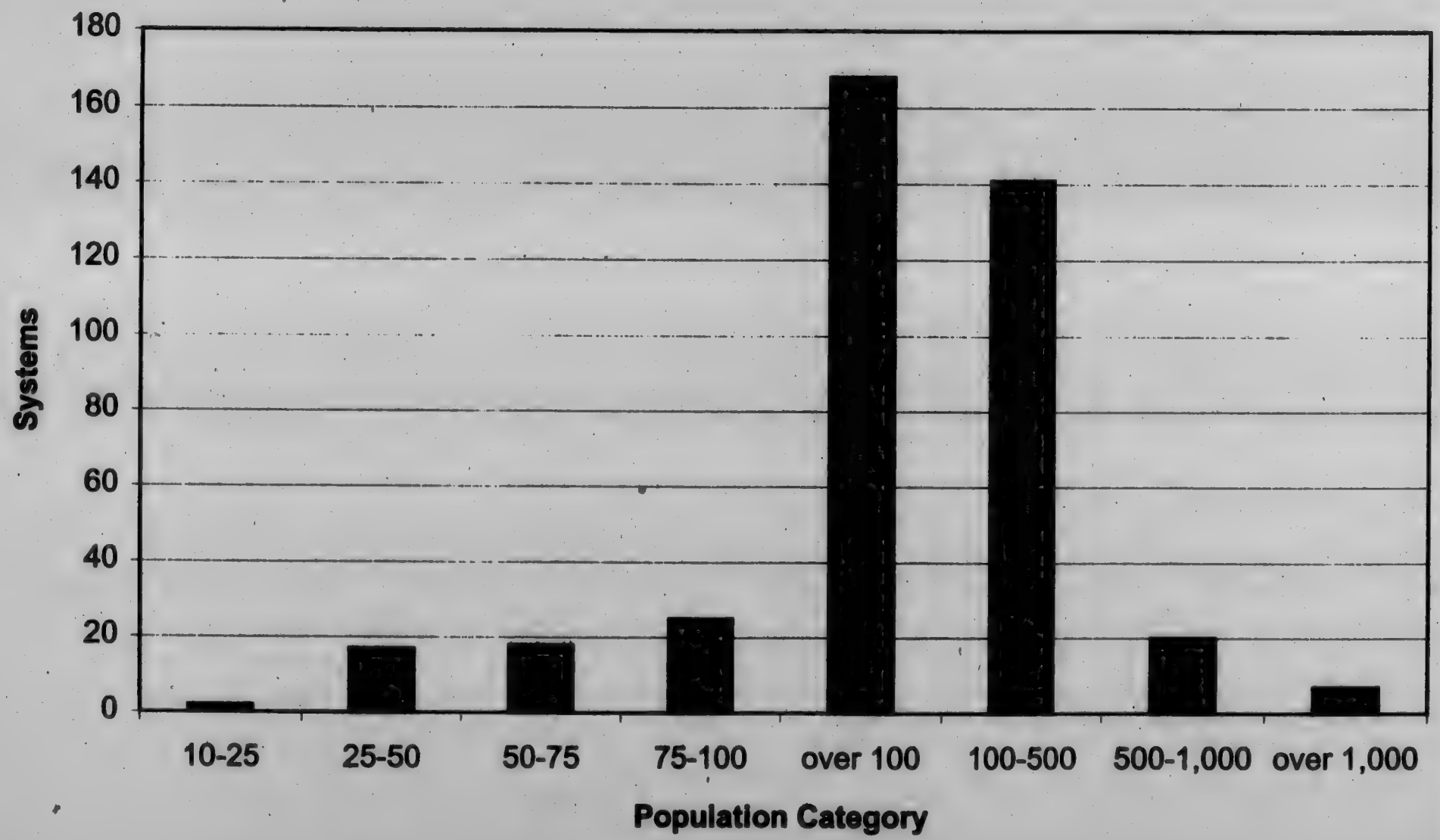

TABLE IV.11.—SOURCE WATER USE BY ICR RECYCLE PLANTS

Source water type	Number of plants	Percent of recycle plants
Total number of recycle plants	226	100
Surface Water	199	88
Ground water under the influence	3	1
Ground water and surface water	2	1
Ground water only	22	10

Table IV.12 shows that 65 percent of ICR recycle plants report providing treatment for the recycle flow. The percentage of plants providing treatment is the same for the subsets of plants serving greater than and less than 100,000 people. Sedimentation is the most widely reported treatment method, as 77 percent of plants providing treatment employ it. The database does not provide information on the solids removal efficiency of the sedimentation units. All direct filtration plants practicing recycle reported providing treatment for the recycle flow.

TABLE IV.12.—TREATMENT OF RECYCLE AT ICR PLANTS [1]

ICR recycling plants	Number of plants	Percentage of recycle plants
Number of recycle plants	226	100
Practice recycle treatment	147	65
Use sedimentation	114	77
Use sedimentation/coagulation	14	10
Use two or more treatments	14	10
Other treatment	5	3

[1] Disinfection not counted as treatment because it does not inactivate *Cryptosporidium*.

Table IV.13 indicates that 75 percent of ICR recycle plants return recycle prior to rapid mix. Fifteen percent return it prior to sedimentation, and ten percent of plants return it prior to filtration. These percentages hold for the subsets of plants serving greater than and less than 100,000 people. The data indicate that introducing recycle prior to rapid mix may be a common practice. EPA believes that introducing recycle flow prior to the point of primary coagulant addition, is the best recycle return location because it limits the possibility residual treatment chemicals in the recycle flow will disrupt treatment chemistry.

TABLE IV.13.—RECYCLE RETURN POINT

Point of recycle return	Number of plants	percent of plants
Number of recycle plants	[1]224	100
Prior to point of primary coagulant addition	169	75
Prior to sedimentation	34	15
Prior to filtration	21	10

[1] Recycle return point could not be determined for two plants.

The data provides the following conclusions regarding the recycle practice of ICR plants: (1) The recycle of spent filter backwash and other process streams is a common practice; (2) the great majority of recycle plants in the database use filtration and surface water sources; (3) a majority of plants in the database that recycle provide treatment for recycle flow, and; (4) a large majority of plants in the database that recycle (approximately 3 out of 4) recycle prior to the point of primary coagulant addition.

b. Recycle FAX Survey

The AWWA sent a FAX survey (AWWA, 1998) to its membership in June 1998 to gather information on recycle practices. Plants were not targeted based on source water type, the type of treatment process employed, or any other factor. The survey was sent to the broad membership to increase the number of responses. Responses indicating a plant recycled spent filter backwash or other flows were compiled to create a database. The resulting database included 335 plants. The database does not contain information from respondents who reported recycle was not practiced. Data from some of the FAX survey respondents also populates the ICR database. Plants in the database are well distributed geographically and represent a broad range of plant sizes as measured by capacity. Figure IV.11 shows plant distribution by capacity and Figure IV.12 by geographic location. The following discussion of FAX survey data is divided into two sections. The first discusses national recycle practice and the second discusses options for recycle disposal in lieu of returning recycle to the treatment process.

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Figure IV.11 Distribution of Fax Survey Plants by Plant Capacity

(Environmental Engineering and Technology, Inc., 1998)

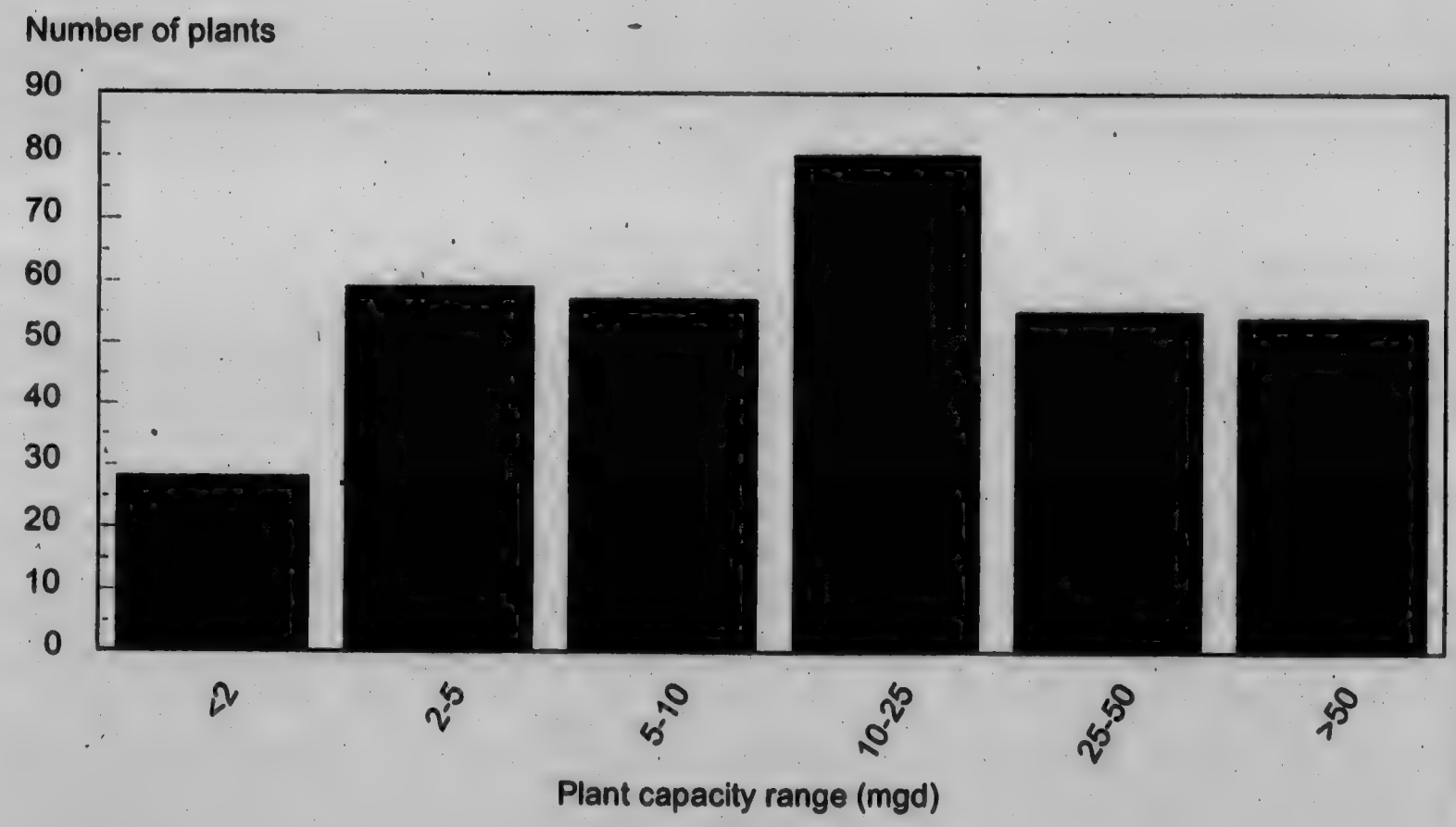

Figure IV.12 Number of Plants per State Included in AWWA Recycle Survey

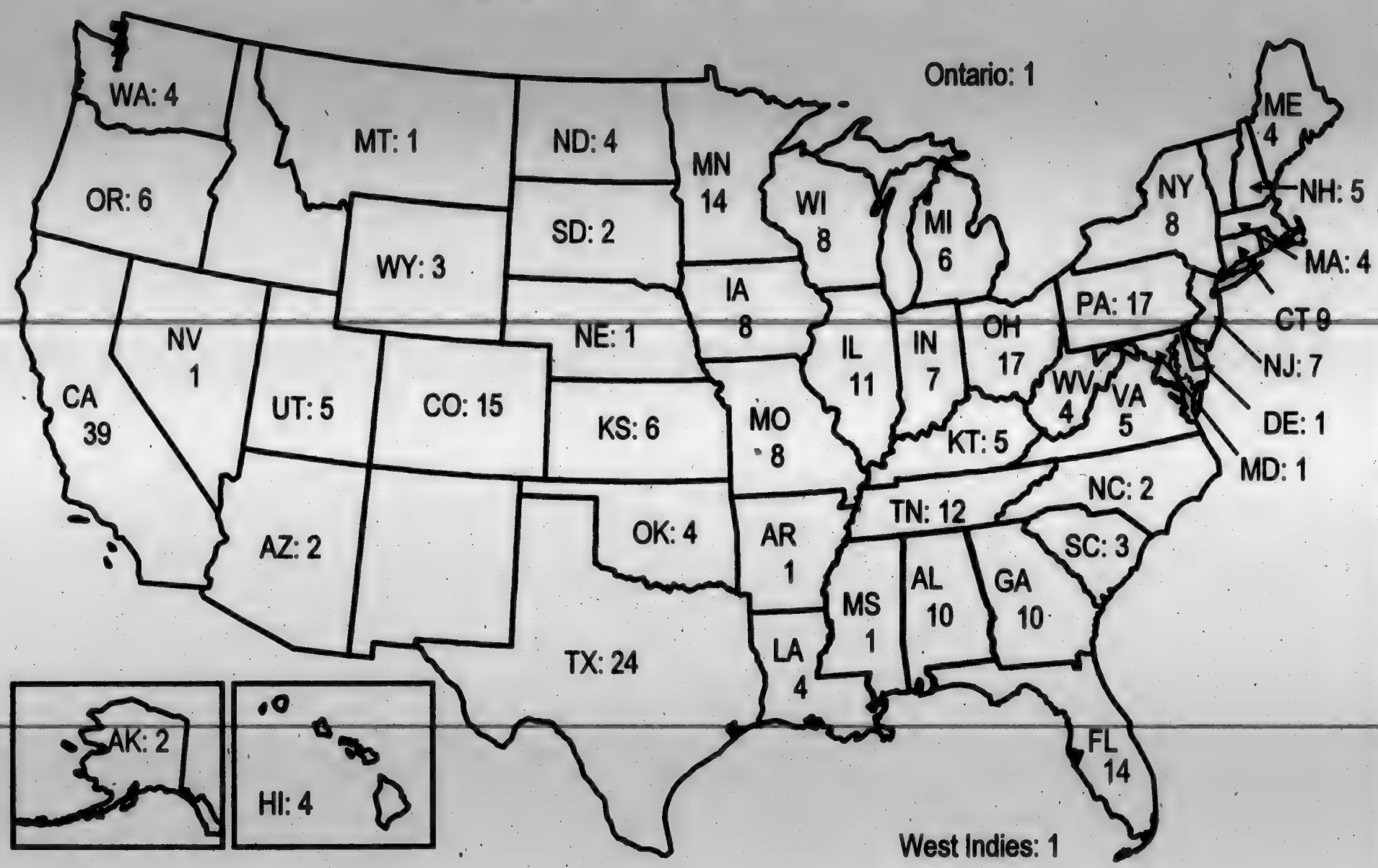

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i. Recycle Practices

Data from the AWWA survey indicate that 74 percent of surface water plants rely on recycle streams for some flow. The percentage of plants using recycle water in each of the surface water categories (which are based on plant capacity) could be calculated from the data reported in the AWWA survey. Recycle water practices are summarized in Table

TABLE

Surface	
River	
Reservoir	
Lake	
Other	
Well[1]	

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i. Recycle practice

Data summarized in Table IV.14 show that 78 percent of plants in the database rely on a surface water as their source. The percentage of plants using source water influenced by a surface water (which may contain *Cryptosporidium*) could be higher because the data do not report whether wells were pure ground water or GWUDI.

TABLE IV.14.—SOURCE WATER USED BY FAX SURVEY PLANTS

Source water type	Percent of plants
Surface Water	78
River	27
Reservoir	28
Lake	16
Other	7
Well [1]	22

[1] Wells sources not defined as either ground water or ground water under the direct influence of surface water.

Table IV.15 shows that a wide variety of treatment process types are included in the data, with conventional filtration (rapid mix, coagulation, sedimentation, filtration) representing over half of the plants submitting data. Upflow clarification is the second most common treatment process reported. Ten percent of plants in the database use direct filtration. Only four percent of plants do not use rapid granular filtration.

TABLE IV.15.—TREATMENT TRAINS OF FAX SURVEY PLANTS

Treatment process type	Percent of plants [1]
Rapid mix, coagulation, filtration	51
Upflow clarifier	21
Softening	14
Direct filtration	10
Other	4

[1] 96 percent of plant in the database provide filtration.

Table IV.16 indicates that a vast majority of plants recycle prior to the point of primary coagulant addition. Only six percent of plants returned recycle in the sedimentation basin or just prior to filtration.

TABLE IV.16.—RECYCLE RETURN POINT OF FAX SURVEY PLANTS

Return point	Percent of plants
Prior to point of primary coagulant addition	83
Pre-sedimentation (e.g., rapid mix)	11
Sedimentation basin	4
Before filtration	2

Table IV.17 shows that the majority of plants in the database provide some type of treatment for the recycle flow prior to its reintroduction to the treatment process. Approximately 70 percent of plants reported providing treatment, with sedimentation being employed by over half of these plants. Equalization, defined as a treatment technology by the survey, is practiced by 20 percent of plants in the database. Fourteen percent of plants reported using both sedimentation and equalization.

TABLE IV.17.—RECYCLE TREATMENT AT FAX SURVEY PLANTS

Treatment type	Percent of plants
No treatment	30
Treatment	70
Sedimentation	54
Equalization	20
Sedimentation and equalization	14
Lagoon	5
Others	7

Table IV.18 summarizes recycle treatment practice and frequency of direct recycle based on population served. The table illustrates that, for plants supplying data, treatment of recycle with sedimentation is provided more frequently as plant service population deceases. Plants serving populations of less than 10,000 recycle directly (27.5 percent) less frequently than plants serving populations greater than 100,000 (50 percent). The data indicate that a majority of small plants in the database may have installed equalization or sedimentation treatment to protect treatment process integrity from recycle induced hydraulic disruption. All direct filtration plants in the FAX survey provide recycle treatment or equalization.

TABLE IV.18.—RECYCLE PRACTICE BASED ON POPULATION SERVED [1]

Population served	Recycle practice			
	#Plants	Equalization	Sedimentation	Direct recycle
<10,000	43	9% (n=4)	67% (n=29)	23% (n=10)
10,000–50,000	79	10% (n=8)	57% (n=45)	33% (n=26)
50,000–100,000	35	17% (n=6)	54% (n=19)	29% (n=10)
100,000	65	35% (n=23)	23% (n=15)	42% (n=27)

[1] Based on 222 surface water plants suppling all necessary data to make determination.

FAX survey data support the following conclusions regarding the recycle practice of plants supplying data: (1) The recycle of spent filter backwash and other process streams is a common practice; (2) the majority of recycle plants use surface water as their source and are thereby at risk from *Cryptosporidium*; (3) a large majority of plants providing data recycle prior to the point of primary coagulant addition, and; (4) a majority of plants supplying data provide treatment for recycle waters prior to reintroducing them to the treatment plant. The FAX survey provides an informative snapshot of national recycle practices due to the number of recycle plants it includes, the geographic distribution of respondents, and the good representation of plants serving populations of less than 10,000 people.

ii. Options to recycle.

The FAX survey asked whether feasible alternatives to recycle are available (i.e., NPDES surface water discharge permit, pretreatment permit for discharge to POTW) and the importance of recycle to optimizing treatment performance and meeting production requirements. Responses to these questions is summarized in Table IV.19.

Table IV.19 shows that approximately 20 percent of respondents could not obtain either an NPDES surface water discharge permit or a pretreatment permit for discharge to a POTW. Approximately 90 percent of respondents stated that recycle flow is not important to meet typical demand.

Twenty-four percent of all respondents stated that returning recycle to the treatment process is important for optimal operation. "Optimal operation" was not defined by the survey and respondents may have considered not changing current plant operation (e.g., not changing current recycle practice) an aspect of optimal treatment, rather than addressing whether recycle practice is important for the plant to produce the highest quality finished water.

TABLE IV.19.—OPTIONS TO RECYCLE AS REPORTED BY FAX SURVEY PLANTS [1]

Question	Percent Yes	Percent No	Percent Unknown
Able to obtain NPDES surface discharge permit?	41% (n=131)	37% (n=120)	22% (n=70)
Able to obtain pretreatment permit for POTW discharge?	43% (n=137)	42% (n=136)	15% (n=48)
Can obtain either an NPDES or a POTW discharge permit?	60% (n=192)	19.5% (n=63)	20.5% (n=66)
Is recycle important to meet peak demand?	14% (n=44)	80% (n=257)	6% (n=20)
Is recycle important to meet typical demand?	9% (n=28)	85% (n=272)	6% (n=21)
Is recycle important to optimal operation? (All plants in survey)	24% (n=75)	70% (n=225)	6% (n=21)
Is recycle important to optimal operation? [2] (softening plants only)	13% (n=3)	83% (n=19)	4% (n=1)

[1] Number of plants varies from question to question due to different response rates.
[2] Optimal operation not defined by survey. May include overall plant operation rather than importance of recycle to producing highest possible quality finished water.

iii. Conclusions

The ICR and FAX survey data are complimentary, as the ICR data supplies a wealth of data regarding recycle practices at large capacity plants, while the FAX Survey provides data on recycle practices over a range of plant capacities. Taken together, the two data sets provide a good picture of current recycle practice. The data indicate that recycle is a common practice for plants sampled. Approximately half of the respondents providing data return recycle flow to the treatment process and 70 percent provide some type of recycle treatment. Sedimentation and equalization are the two most commonly employed treatment technologies for plants supplying data. Approximately 80 percent of plants sampled return recycle prior to the point of primary coagulant addition. Examining the recycle practices of plants in the ICR and FAX survey data show that small plants (*i.e.*, fewer than 10,000 people served) are more than twice as likely as large plants (*i.e.*, greater than 100,000 people served) to provide sedimentation for recycle treatment (58 versus 26 percent).

The FAX survey responses show that approximately half of plants providing data have an option to recycle return, whether it be an NPDES surface water discharge permit or discharge to a POTW. Eighty-five percent of respondents stated that recycle flow is not important to meet peak demand. Less than a quarter of respondents have monitored pathogen concentrations in backwash water and fewer than half have any monitoring data to characterize the quality of the backwash water.

3. Recycle Provisions for PWSs Employing Rapid Granular Filtration Using Surface Water or Ground Water Under the Direct Influence of Surface Water

a. Return Select Recycle Streams Prior to the Point of Primary Coagulant Addition

i. Overview and Purpose

Today's proposal requires that systems employing rapid granular filtration and using surface water or GWUDI as a source return filter backwash, thickener supernatant, and liquids from dewatering processes to the primary treatment process prior to the point of primary coagulant addition. The goal of this provision is to protect the integrity of chemical treatment and ensure these recycle streams are passed through as many physical removal processes as possible to provide maximum opportunity for removal of *Cryptosporidium* oocysts from the recycle flow. Since *Cryptosporidium* is resistant to standard disinfection practice, it is important that chemical treatment be optimized to protect treatment plant efficiency and that all available physical removal processes be employed to remove it.

Today's proposal requires these flows be returned prior to the point of primary coagulant addition because these streams are either of sufficient volume to cause hydraulic disruption within the treatment process when recycled and/or are likely to contain *Cryptosporidium* oocysts. Minor recycle streams, such as lab sample lines, pump packing water, and infrequent process overflows are not likely to threaten plants' hydraulic stability or contain appreciable numbers of oocysts.

Treatment plant types that need to return recycle to a location other than prior to the point of primary coagulant addition to maintain optimal treatment performance (optimal performance as indicated by finished water or intra-plant turbidity levels), plants that are designed to employ recycle flow as an intrinsic component of their operations, plants with very low influent turbidity levels that may need alternative recycle locations to obtain satisfactory suspended solids removal, or other types of plants constrained by unique treatment considerations, may apply to the State to recycle at an alternative location under today's proposal. Once approved by the State, plants may recycle to the specified location.

ii. Data

Data from the ICR and FAX Survey indicate that 75 and 78 percent of plants, respectively, return recycle prior to the point of primary coagulant addition. The "point of primary coagulant addition" was defined in both analyses as the return of recycle prior to the rapid mix unit. The FAX Survey data indicate that 77 percent of plants serving under 10,000 people recycle prior to the point of primary coagulant

addition. It also showed that 78 percent percent of all plants in the database return recycle there, which suggests that plants serving smaller populations may return recycle prior to the point of primary coagulant addition as frequently as plants serving larger populations. Other common recycle return locations are the rapid mix unit, between rapid mix and clarification, or into the clarification unit itself.

The Agency does not believe filter backwash, thickeners supernatant, or liquids from dewatering processes should be recycled at the point of primary coagulant addition or after it for three reasons:

(1) Addition of these recycle streams, which can contain residual coagulant and other treatment chemicals, after the location of primary coagulant addition, may render the chemical dose applied less effective, potentially harming the efficiency of subsequent treatment processes;

(2) Introduction of recycle into the flocculation unit or clarification unit may create hydraulic currents that exacerbate or create short circuiting, and;

(3) Recycle introduced into the clarification process may not experience sufficient residence time for adequate solids removal to occur.

The Agency is concerned that plants may not adjust chemical dosage during recycle events to account for: (1) The presence of a potentially significant amount of residual treatment chemical in recycle flow and changes in recycle flow quality, and; (2) potentially large fluctuations in plant influent flow during recycle events. EPA is concerned that changes in influent water quality and flow are not monitored on an instantaneous basis during recycle events. Since the chemistry of the recycle flow and source water may differ significantly, it is important plants mix source and recycle water to establish a uniform chemistry prior to applying treatment chemical so the dose is appropriate for the mixture. Additionally, wide fluctuation in plant influent flow during recycle events may cause chemical over-or under-dosing, which can lower overall oocyst removal efficiency. In an article concerning optimization of filtration performance, Lytle and Fox (1996) state, "The capability to instantaneously monitor treatment processes and rapidly and effectively respond to raw and filter effluent quality changes are important factors in consistently producing low turbidity water." Logdson (1987) further states, "For a plant to be operated properly, the total flow rate has to be known on an instantaneous basis or by volumetric measurement." EPA believes it is important plants diligently monitor the appropriateness of chemical dosing at all times, but particularly during recycle events, and strive for real-time chemical dose and influent flow management to optimize plant oocyst removal.

Pilot-scale research conducted by Patania *et al.* (1995) to examine the optimization of filtration found that chemical pretreatment was the most important variable determining oocyst removal by filtration. Edzwald and Kelley (1998) performed pilot-scale work to determine the ability of sedimentation, DAF, and filtration to remove *Cryptosporidium* and found that coagulation is critical to effective *Cryptosporidium* control by clarification and filtration. Bellamy *et al.* (1993) stated that the most important factor in plant performance is the use of optimal chemical dosages. Coagulation was recognized as the single most important step in the process of water clarification by Conley (1965). Ten pilot scale runs performed by Dugan *et al.* (1999) showed that coagulation has a large influence on the log removal of *Cryptosporidium* achieved by sedimentation. The importance of proper coagulation to filter performance was noted by Robeck *et al.* (1964) in pilot and full-scale work that showed proper coagulation is more important to the production of safe water than the filtration rate used. Results of direct filtration pilot studies, summarized by Trussell *et al.* (1980), showed that "effective coagulant is absolutely necessary if good effluent qualities are to be consistently produced."

Given the critical role proper chemical dosing plays in maintaining effective clarification and filtration processes, the Agency believes it is prudent and necessary to minimize the possibility recycle of spent filter backwash, thickener supernatant, and dewatering liquids will render chemical dosages applied during recycle events inaccurate, due to the presence of residual chemical or variations in influent flow, by requiring they be returned prior to the point of primary coagulant addition.

Finally, a fundamental tenet of water treatment is multiple treatment barriers should be provided to prevent microbial pathogens from entering finished water. To achieve this, conventional plants rely on coagulation, flocculation, clarification, and filtration as preventive microbial barriers. The Agency believes it is important that recycle waters be passed through each of these treatment processes to maximize the probability disinfection resistant oocysts will be removed in the plant and not enter the finished water supply.

iii. Proposed Requirements

Today's proposal requires that rapid granular filtration plants using surface water or GWUDI as a source return filter backwash, thickener supernatant, and liquids from dewatering processes prior to the point of primary coagulant addition. Plants that require an alternative recycle return location to maintain optimal finished water quality (as indicated by finished water or intra-plant turbidity levels), plants that are designed to employ recycle flow as an intrinsic component of the treatment process, or plants with unique treatment requirements or processes may apply to the State to return recycle flows to an alternative location. Plants may utilize this alternative location once granted by the State. EPA will develop detailed guidance and make it available to States and PWSs.

Softening systems may recycle process solids, but not spent filter backwash, thickener supernatant, or liquids from dewatering processes, at the point of lime addition immediately preceding the softening process to improve treatment efficiency. Literature establishes that return of process solids to point of lime addition decreases production of nuclei, increases the rate of crystallization, and increases crystal size, all of which enhance settling and process integrity (Randtke, 1999; Snoeyink and Jenkins, 1980). Contact clarification systems may recycle process solids, but not spent filter backwash, thickener supernatant, or liquids from dewatering processes, directly into the contactor to improve treatment efficiency.

iv. Request for Comments

EPA requests comment on the proposed requirements. The Agency also requests comment on the following aspects of this provision:

(1) What regulatory options are available to ensure direct recycle plants practice real-time chemical dose and influent flow management? Should flow-paced coagulant feed be required at direct recycle plants to minimize potential harmful impacts of recycle? What regulatory requirements may be applicable to ensure the integrity of the coagulation process?

(2) What treatment processes or treatment configurations may need an alternative recycle location to maintain optimal treatment?

(3) What alternative recycle locations are appropriate for such treatment configurations and what location may be inappropriate?

(4) Are there other reasons, beyond maintaining optimal treatment efficiency, to justify granting alternate recycle locations to plants? What are they?

(5) What criteria, operating practices, or other parameters should be evaluated to determine whether an alternative recycle return location should be granted?

(6) Does recycling at the point of primary coagulant addition, instead of prior to it, provide assurance that an appropriate dose of treatment chemicals will be consistently applied during recycle events? Is it necessary to mix the recycle and raw water prior to chemical addition to ensure a consistent water chemistry for chemical dosing?

(7) Are there circumstances where it would be appropriate to allow systems to recycle at the point of primary coagulant addition?

b. Recycle Requirements for Systems Practicing Direct Recycle and Meeting Specific Criteria

i. Overview and Purpose

Today's proposal requires that self assessments be performed at conventional filtration plants meeting all of the following criteria and the results of the self assessment reported to the State. The criteria are:

(1) Use of surface water or GWUDI as a source;

(2) Employ of 20 or fewer filters to meet production requirements during the highest production month in the 12 month period prior to LT1FBR's compliance date, and;

(3) Recycle spent filter backwash or thickener supernatant directly to the treatment process (*i.e.*, recycle flow is returned within the treatment process of a PWS without first passing the recycle flow through a treatment process designed to remove solids, a raw water storage reservoir, or some other structure with a volume equal to or greater than the volume of spent filter backwash water produced by one filter backwash event.)

The goal of the self assessment is to identify those direct recycle plants that exceed their State approved operating capacity, on an instantaneous basis, during recycle events. Plants are required to submit a monitoring plan to the State prior to conducting the month long self assessment monitoring. Results of self assessment monitoring must be reported to the State. The State is required to determine, by reviewing the self assessment, whether the plant's current recycle practice should be modified to protect plant performance and provide an additional measure of public health protection. The State is required to report its determination for each plant performing a self assessment to EPA and briefly summarize the reason(s) supporting each determination.

EPA selected the three aforementioned criteria to identify plants required to perform a self assessment for the following reasons. First, surface or GWUDI source waters may contain *Cryptosporidium*. Second, the hydraulic impact of recycle to plants typically employing more than 20 filters to meet production requirements should be dampened because plant influent flow is of significantly greater magnitude than the flow produced by a backwash event. Third, plants that practice direct recycle of filter backwash and/or thickener supernatant may exceed their operating capacity during recycle events due to the large volume of these streams.

ii. Data

Plants that recycle filter backwash and thickener supernatant, directly, without recycle flow equalization or treatment, may exceed their operating capacity during recycle events. Table IV.20 illustrates the magnitude by which direct recycle plants may exceed their operating capacity during recycle events. For purposes of the table, operating capacity is assumed to be either plant design flow or average flow (see example below). The values in the table are conservative, as they are likely to over predict the factor by which direct recycle plants will exceed operating capacity during recycle events. This conservatism is due to the assumed filter backwash rate of 15 gpm/ft² and the assumed backwash duration of 15 minutes, the minimum backwash rate and duration recommended by the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers (1997). Design and average flow values assumed for plant operating capacity were developed from equations presented in EPA's baseline handbook (1999g). For purposes of this example, plant design and average flow are assumed to equal State approved operating capacity to illustrate the potential for plants to exceed operating capacity during recycle events. Relevant equations and example calculations are shown below.

Example

(1) Design to average ratios:
design flow < .25 mgd; ratio design flow : average flow = 3.2:1
design flow > .25 mgd to 1 mgd; ratio design flow : average flow = 2.8:1
design flow > 1 mgd to 10 mgd; ration design flow : average flow = 2.4:1
design flow > 10 mgd; ratio design flow : average flow = 2.0:1

(2) Maximum filter size: 700 sq./ft² (EPA, 1998a)

(3) Backwash volume calculation:
Filter area (ft²) × 15 gpm/ft² × 15 minutes = volume of one backwash

(4) Design and average capacity exceedence factors:
(Backwash flow + design (or average) flow) + design flow = exceedence factor

(5) Percent Influent that is recycle:
Backwash flow ÷ (Backwash flow + design (or average flow)) = percent of influent that is backwash

(6) Design flow = State approved operating flow

TABLE IV.20.—IMPACT OF DIRECT RECYCLE

Design flow (MGD)	Number of filters	Area of one filter (sq. ft)	Volume of one backwash (gallons)	Backwash return flow (15 minute return, gpm)	Design flow (gpm)	Average flow (gpm)	Factor design flow is exceeded by during recycle (at design flow)	Percent influent that is recycle (at design flow) (percent)	Factor design flow is exceeded by during recycle (at average flow)	Percent influent that is recycle (at average flow) (percent)
.033	2	5	1,125	75	23	7	4.3	77	3.6	91
.669	4	50	11,250	750	465	166	2.6	62	2.0	82
2.02	6	100	22,500	1,500	1,403	584	2.1	52	1.5	72
8.8	8	320	72,000	4,800	6,111	2,546	1.8	44	1.2	65
14.5	10	425	95,625	6,375	10,069	5,135	1.6	39	1.1	55
42.44	18	700	157,500	10,500	29,472	14,736	1.4	26	.86	42
56.23	24	700	157,500	10,500	39,048	19,524	1.3	21	.77	35

The purpose of Table IV.20 is to illustrate the impact direct recycle can have on plant hydraulic loading and the factor by which plant operating capacity can be exceeded during recycle events. As shown in Table IV.20, a plant with two filters would process influent at over three times its operating capacity during a recycle event. Even if the plant reduced or eliminated its raw water influent flow for the duration of the event, the remaining filter would be subject to a loading rate that exceeds its operating capacity, which could harm finished water quality.

The amount of sedimentation basin or clarification process storage available during recycle events will have an impact on the hydraulic loading to the filters and the performance of the sedimentation or clarification process. The actual increase to filter loading rates may be less than predicted in Table IV.20 due to site-specific conditions. However, the potential for direct recycle plants to exceed operating capacity is cause for concern because oocyst removal can be compromised. The Agency believes 20 filters is an appropriate number for specifying which plants are required to perform a self assessment due to the results in Table IV.20 and the above considerations.

The importance of maintaining proper plant hydraulics has been acknowledged, notably by Logdson (1987) who wrote, "Both the quantity and quality of filtered water can be affected by plant hydraulics. Maximum hydraulic capacity is an obvious limitation. The adverse influences of rate of flow and flow patterns on water quality may not be so obvious, but they can be important." Fulton (1987) recognized that short circuiting can diminish the performance of settling basins, cause overloading of filters, and increase breakthrough of turbidity. Other publications (Cleasby, 1990) recognize that settled water quality deteriorates when the surface loading rate of sedimentation basins is increased. Direct recycle practice can give rise to short circuiting, cause plant operating capacity to be exceeded, and increase surface loading rates, all of which can be detrimental to *Cryptosporidium* removal.

Direct recycle practice can abruptly increase filter loading rates, which has been shown to lower filter performance. Cleasby et al. (1963) performed experimental runs with three pilot plant filters by increasing the filtration rate ten, twenty-five, and fifty-percent over various time periods and monitoring the passage of a target material during the rate increase. Conclusions drawn from the experiments were:

(1) Disturbance in filtration rate can cause filters to pass previously deposited material and the amount of material passed is dependent on the magnitude of the rate disturbance;

(2) More rapid disturbances cause more material to be flushed through the filter;

(3) The amount of material flushed through the filter is independent, or very nearly independent of disturbance's duration, and;

(4) The amount of material flushed through the filter following a disturbance is dependent on the type of material being filtered.

Pilot scale work was recently performed by Glasgow and Wheatley (1998) to investigate whether surges affect filtrate quality. Effluent turbidity and headloss within the filter media were monitored for two pilot filter columns that were surged at different magnitudes. The results were compared to control runs through the same pilot columns to determine the effect of the surge. Results indicated that surging may significantly affect full scale filter performance. Additional work is needed to confirm these results.

Recent pilot scale work by McTigue *et al.* (1998) examined the impact of doubling the filter loading instantaneously and gradually (over an 80 minute period) on pilot filters that had been in operation for a period of time or were "dirty." The experiments showed that *Cryptosporidium* removal achieved by the filters was lowered by changes in filtration rate regardless of whether loading rate was increased instantaneously or gradually. In the experiment, filter loading rates of 2 gpm/ft^2 and 4 gpm/ft^2 were doubled in six separate test runs to determine whether oocysts removal was affected. Results showed that log removal of oocysts was reduced by approximately 1.5 to 2.0 logs for when filter loading rates of 2 gpm/ft^2 and 4 gpm/ft^2 were either instantaneously and gradually doubled. The report states, "These data clearly demonstrate that any change in filter loading rate on a filter that is dirty presents a risk for breakthrough of *Giardia* and *Cryptosporidium* to the finished water, should these organisms be present in the filter." Effluent turbidity values remained low during increases in filter loading rates but particle count concentrations immediately increased with increases in loading rate. This may indicate that turbidity is not a good indicator of oocyst passage by dirty filters during filtration rate increases.

Results of three other pilot runs from the study showed that log removal of oocysts did not change when the influent oocyst concentration varied and all other treatment conditions were held constant. A four log removal of oocysts was obtained for all three runs despite influent oocyst concentrations of 4,610/L, 688/L, and 26/L. The report states, "This finding indicates that the risk for passage of large numbers of cysts to the finished water is greater when a water treatment plant receives a highly concentrated slug of cysts at its intake." The Agency believes this is an interesting conclusion, even though it is based on a limited number of pilot runs. If further pilot and full-scale work verifies this finding, it indicates that log removal of oocysts does not increase as more oocysts are loaded to plant. Recycle of flows containing oocysts would therefore increase the number of oocysts present in finished water, relative to the number of oocysts that would occur were recycle not practiced, because plant treatment efficiency would not increase to remove the additional oocysts returned by recycle.

In summary, the Agency is concerned that direct recycle of spent filter backwash, thickener supernatant, and liquids from dewatering process may increase the risk of oocyst occurrence in finished water for the following reasons:

(1) Sampling has established that oocysts occur in finished water supplies (see Table II.6 of this preamble);

(2) Data show that oocysts occur in recycle streams;

(3) Literature indicates that hydraulically overloading the sedimentation process, as may happen during direct recycle events, can harm sedimentation performance;

(4) Literature indicates increasing or abruptly changing filtration rates can lead to more material passing through filters, and;

(5) Recent pilot scale work by McTigue *et al.* (1998) and Glasgow and Wheatley (1998) indicates that filter performance can be harmed by surges and changes to filtration rate.

The Agency encourages the States to closely examine recycle self assessments performed by direct recycle plants to determine whether direct recycle poses an unacceptable risk to finished water quality and public health and needs to be modified due to the considerations cited above.

Finally, EPA realizes that State programs may use different methodologies to set plant operating capacity. States may also apply safety factors of different magnitudes when determining operating capacity. The Agency does not believe it is

appropriate to erode any safety factor or margin of safety States provide when setting operating capacity. Safety factors are provided for a reason: to provide a margin of safety to public health protection efforts. The integrity and magnitude of a safety factor should be maintained, as it is in and of itself integral to adequate public health protection. The fact a safety factor is applied when plant operating capacity is set is not a justification, *a priori*, for allowing plants to operate above said operating capacity during recycle events.

EPA also acknowledges that States may use different methodologies to set plant operating capacity. The Agency is confident that the State programs, its partners in public health protection, set plant capacity to provide necessary level of public health protection. The fact that some State programs may set plant operating capacities with different methodologies likely reflects geographical conditions and public expectations unique to certain States and sections of the country. EPA believes methodologies employed by the States results in establishment of operating capacities necessary to protect public health, meet regulatory requirements, and satisfy unique treatment needs and considerations where they exist.

iii. Proposed Requirements

Self assessments must be performed at plants meeting all of the following criteria and the results of the self assessment reported to the State:

(1) Use surface water or GWUDI as a source and employ conventional rapid granular filtration treatment;

(2) Employ of 20 or fewer filters to meet production requirements during the highest production month in the 12 month period prior to LT1FBR's compliance date, and;

(3) Recycle spent filter backwash or thickener supernatant directly to the treatment process (*i.e.*, recycle flow is returned within the treatment process of a PWS without first passing the recycle flow through a treatment process designed to remove solids, a raw water storage reservoir, or some other structure with a volume equal to or greater than the volume of spent filter backwash water produced by one filter backwash event).

Systems are required to develop and submit a recycle self assessment monitoring plan to the State no later than three months after the rule's compliance date for each plant the requirements are applicable to. At a minimum, the monitoring plan must identify the month during which monitoring will be conducted, contain a schematic identifying the location of raw and recycle flow monitoring devices, describe the type of flow monitoring devices to be used, and describe how data from the raw and recycle flow monitoring devices will be simultaneously retrieved and recorded.

The self assessment of recycle practices shall consist of the following five steps:

(1) From historical records, identify the month in the calendar year preceding LT1FBR's effective date with the highest water production.

(2) Perform the monitoring described below in the twelve month period following submission of the monitoring plan to the State.

(3) For each day of the month identified in (1), separately monitor source water influent flow and recycle flow before their confluence during one filter backwash recycle event per day, at three minute intervals during the duration of the event. Monitoring must be performed between 7:00 a.m. and 8:00 p.m. Systems that do not have a filter backwash recycle event every day between 7:00 am and 8:00 p.m. must monitor one filter backwash recycle event per day, any three days of the week, for each week during the month of monitoring, between 7:00 a.m. and 8:00 p.m. Record the time filter backwash was initiated, the influent and recycle flow at three minute intervals during the duration of the event, and the time the filter backwash recycle event ended. Record the number of filters in use when the filter backwash recycle event is monitored.

(4) Calculate the arithmetic average of all influent and recycle flow values taken at three minute intervals in (3). Sum the arithmetic average calculated for raw water influent and recycle flows. Record this value and the date the monitoring was performed. This value is referred to as event flow.

(5) After monitoring is complete, order the event flow values in increasing order, from lowest to highest, and identify the monitoring events in which plant operating capacity is exceeded.

Systems are required to submit a self assessment report to the State within one month of completing the self assessment monitoring. At a minimum, the report must provide the following information:

(1) All source and recycle flow measurements taken and the dates they were taken. For all events monitored, report the times the filter backwash recycle event was initiated, the flow measurements taken at three minute intervals, and the time the filter backwash recycle event ended. Report the number of filters in use when the backwash recycle event is monitored.

(2) All data and calculations performed to determine whether the plant exceeded its operating capacity. Report the number of event flows that exceed State approved operating capacity.

(3) A plant schematic showing the origin of all recycle flows, the hydraulic conveyance used to transport them, and their final destination in the plant.

(4) A list of all the recycle flows and the frequency at which they are returned to the plant.

(5) Average and maximum backwash flow through the filters and the average and maximum duration of backwash events in minutes, for each monitoring event, and;

(6) Typical filter run length, number of filters typically employed, and a written summary of how filter run length is determined (preset run time, headloss, turbidity level).

EPA is proposing that the State review all self assessments submitted by PWSs and report to the Agency the below information as it applies to individual plants:

(1) A finding that modifications to recycle practice are necessary, followed by a brief description of the required change and a summary of the reason(s) the change is required, or;

(2) A finding that changes to recycle practice are not necessary and a brief description of the reason(s) this determination was made.

The Agency also considered requiring all recycle plants without existing recycle flow equalization or treatment to install recycle flow equalization. As summarized in Table IV.21, several recommendations for recycle equalization and treatment have been provided. However, these recommendations are based on theoretical calculations and/or limited pilot-scale data that has not been verified by full-scale plant performance data. The Agency currently believes insufficient data is available to determine whether recycle flow equalization is necessary to protect finished water quality, and, if it is, the level of equalization required to provide protection to finished water supplies for a wide variety of source water qualities, treatment process types, and levels of treatment effectiveness. The Agency does not believe it is appropriate at this time to propose a national recycle flow equalization requirement for the following reasons:

(1) Data on the occurrence of oocysts in recycle streams, and their impact to

finished water quality upon recycle, is very limited;

(2) Data that establishes the magnitude of hydraulic disruption caused by direct recycle events for a variety of plant types, designs, and operational practices has not been identified; without this data, it is not possible to quantify how much treatment efficiency is reduced by the hydraulic disruption and the number of oocysts in the recycle flow that will enter the finished water due to the disruption. Without this information, it is not possible to specify the level of equalization necessary to control hydraulic disruption for a variety of plant configurations and operational practices with any degree of certainty and cost effectiveness, and;

(3) A uniform, national equalization standard may not be appropriate because it would not allow consideration of site-specific factors such as plant treatment efficiency, loading capacity of clarification and filtration units, source water quality, and other site-specific factors that influence the level of equalization a plant may need to control recycle event induced hydraulic disruption.

EPA believes some plants can realize substantial benefit by installing recycle flow equalization and will review data to determine the need for an equalization requirement when it becomes available. The Agency requests that commenters submit the following pilot or full-scale data to assist its effort to conduct a thorough analysis of equalization based upon the best available science:

(1) Data on the magnitude of hydraulic disruption caused by recycle events and its affect on finished water turbidity and particle count levels;

(2) Data that correlate hydraulic disruption to increased oocyst concentration in finished water, and;

(3) Any other data commenters believe that may be appropriate to analyze the need for equalization, and;

(4) Whether the regulation should require States to specify modifications to recycle practice, for all plants that exceed operating capacity during monitoring, to ensure said plants' remain below their State approved operating capacity during recycle events.

TABLE IV.21—RECOMMENDED EQUALIZATION PERCENTAGES

Source of recommendation[a]	Equalization Percentage	Is recycle treatment recommended?
Recommended Standards for Water Works. Great Lakes—Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers. 1997. Albany: Health Education Services.	10%	No.
Removal of *Cryptosporidium* Oocysts by Water Treatment Process. Foundation for Water Research Limited, United Kingdom (1994).	10%	Yes. Turbidity less than 5.0 NTU or residual of 10mg/L suspended solids in treated recycle flow.
Recycle Stream Effects on Water Treatment. Cornwell, D., and R. Lee. 1993. Denver: AWWARF.	Use equalized, continuous recycle.	Use proper waste stream treatment prior to recycle.

[a] See the reference list at the end of the preamble for complete citations.

Finally, the Agency considered requiring conventional filtration plants that recycle within the treatment process to provide sedimentation or more advanced recycle treatment and concluded a national treatment requirement is inappropriate at this time due data deficiencies. The Agency believes the following data is necessary to determine whether recycle flow treatment is necessary to protect public health and the requisite level of treatment:

(1) Significant amounts of additional data on the occurrence of oocysts for a complete range of recycle streams generated by a wide variety of source water qualities, treatment plant types, plant operational and recycle practices, and plant treatment efficiencies;

(2) Data that correlates recycle stream oocyst occurrence to finished water occurrence;

(3) Additional data on the ability of full-scale sedimentation basins to remove oocysts during normal operation and during recycle events. The Agency has identified only three full-scale studies, States *et al.* (1995), Baudin and Laîné (1998), and Kelly *et al.* (1995), that allow quantification of oocyst removal by sedimentation basins. Pilot scale work, such as Edzwald and Kelley (1998) and Dugan *et al.* (1999) is also available, but the number of studies is not extensive. The removal achieved by sedimentation and other clarification processes is critical for determining the number of oocysts loaded to the filters, the likely concentration of oocysts in various recycle streams, and the impact recycle may have on intra-plant oocyst concentrations. Good oocyst removal in the clarification process will remove a large percentage of oocysts from recycle and source water flows before they reach the filters. The amount of removal provided by primary clarification therefore has a large influence on the level of recycle flow treatment that may be needed to mitigate risk to finished water quality. Given that data on oocyst removal by sedimentation and other clarification processes is very limited, the Agency does not believe it is possible to assess the need for recycle treatment and specify a minimum treatment level that is meaningful for a wide variety of plant types and recycle practices;

(4) Data regarding the ability of DAF and other clarification processes to remove oocysts from recycle flow is very limited. This data is important, because the Agency anticipates plants may respond to any recycle treatment requirement by using DAF to treat recycle flow because of the advantages it provides relative to sedimentation. However, EPA has only identified four studies, Hall *et al.* (1995), Plummer *et al.* (1995), Edzwald and Kelley (1998), and Alvarez *et al.* (1999), that determined the ability of DAF to remove oocysts from source water. One study, by Grubb *et al.* (1997), addresses the ability of DAF to treat filter backwash waters has been identified, but sampling for oocyst removal was not performed, although turbidity and color removal were monitored and good results obtained. Additional data is needed to characterize the ability of DAF to remove oocysts from recycle flow before it can be used to meet any recycle treatment requirement;

(5) Full-scale data on the ability of sedimentation and other clarification processes to remove oocysts from recycle streams before they are returned to the plant is very limited. EPA has identified two studies, one by Cornwell and Lee (1993) and a study by Karanis *et al.* (1998) that provide data regarding

sedimentation's ability to remove oocysts from recycle flows. Additional information is needed to establish lower and upper bounds on the oocyst removal sedimentation can achieve; without this data, it is difficult to specify a feasible level of oocyst removal in a recycle flow treatment requirement;

(6) Microfiltration and ultrafiltration membranes appear to be very reliable at removing *Cryptosporidium* from source waters (Jacangelo *et al.*, 1995). However, the Agency has identified limited data regarding the ability of membranes to effectively treat recycle flow, and treatment of backwash with membranes may not be appropriate at all locations (Thompson *et al.*, 1995) due to incompatibility between membrane filter material and residual treatment chemical(s) in the backwash water. Additional information regarding the ability of microfiltration and ultrafiltration membranes to treat recycle flow is necessary to comprehensively evaluate their applicability, and;

(7) EPA is not aware of a surrogate, including turbidity, particle counts, or any other common and easy to measure parameter, that can serve as an indicator of the log removal of *Cryptosporidium* recycle flow treatment units achieve. The Agency does not believe it is economically or technically feasible to directly monitor oocyst removal by treatment units. Without an accurate, easy to measure surrogate for *Cryptosporidium* removal, the Agency does not believe it is possible to ascertain the level of treatment recycle flow treatment units achieve during routine operations.

Given the above limiting factors, the Agency does not believe it is prudent to establish a national recycle flow treatment requirement until additional data becomes available. EPA requests the following data be submitted:

(1) Data regarding intra-plant and recycle stream occurrence of oocysts;

(2) Information on the ability of individual treatment units of the primary treatment train to remove oocysts during normal, hydraulically challenged, and suboptimal chemical dose operations;

(3) Data on the ability of sedimentation and other clarification processes to remove oocysts from a wide range of recycle streams;

(4) Data on the compatibility of specific ultrafiltration and microfiltration membrane materials with residual chemicals that occur in recycle streams and data regarding the performance of these membrane materials at full and pilot scale, and;

(5) Information on potential surrogates that can be easily measured and can accurately establish the log removal of oocysts removed by recycle flow treatment processes.

iv. Request for Comments

EPA requests comment on the proposed requirements. The Agency also requests comment on the following:

(1) What other parameters could be monitored or what other overall monitoring schemes could be employed to assess whether a plant is exceeding its operating capacity?

(2) What data should the plant report to the State as part of its self assessment, beyond the monitoring data and other information listed above?

(3) Is monitoring during the highest flow month appropriate? Is monitoring during additional months necessary? Is daily monitoring necessary or would less frequent monitoring during the month be sufficient?

(4) Should systems be required to monitor and report turbidity measurements from a representative filter taken immediately preceding and after recycle events monitored during the self assessment to help characterize the impact of recycle on plant performance?

(5) Is limiting the self assessment to plants with 20 or less filters appropriate? Should the number of filters be less or greater than 20? What is the appropriate number of filters?

(6) Should systems be required to monitor sedimentation overflow rates or clarification loading rates while the recycle flow monitoring is performed?

(7) EPA requests comment on criteria that may identify recycle plants that could receive substantial benefit from implementing recycle equalization or treatment as a standard practice.

(8) What type and amount of data is required to determine whether recycle flow equalization would provide a benefit to finished water quality? What methodology could be used to determine an appropriate recycle flow equalization percentage, and how relevant are turbidity and particle counts, at various locations in a plant, to assessing an appropriate equalization percentage for a single plant or a plant type?

d. Requirements for Direct Filtration Plants that Recycle Using Surface Water or GWUDI

i. Overview and Purpose

Today's proposal requires direct filtration plants that recycle to report to the State whether flow equalization or treatment is provided for recycle flow prior to its return to the treatment process. The purpose of today's proposed requirement is to assess whether the existing recycle practice of direct filtration plants addresses potential risks. The Agency believes that direct filtration plants need to remove oocysts from recycle flow prior to reintroducing it to the treatment process.

ii. Data

Twenty-three direct filtration plants that used surface water responded to the FAX Survey (AWWA, 1998). In the FAX survey, plants could report whether they provide recycle flow equalization, sedimentation, or some other type of treatment. Of the respondents, 21 reported providing treatment for the recycle flow and two plants reported providing only equalization. In the ICR database, there were 23 direct filtration plants and fourteen of them recycled to the treatment process. All fourteen plants provide recycle treatment. It is not possible to determine the level of oocyst removal FAX survey and ICR plants achieve with available data.

The treatment train of a direct filtration plant does not have a clarification process to remove *Cryptosporidium* before they reach the filters; all oocyst removal is achieved by the filters. If recycle flow treatment is not provided, all of the oocysts captured in the filters will be returned to the treatment process in the recycle flow. Because a primary clarification process is not present to remove recycled oocysts, they are caught in a closed "loop" from which the only exit is passage through the filters into the distribution system. The Agency believes direct filtration plants should provide solids removal treatment for recycle flows to limit the number of oocysts returned to the treatment plant.

iii. Proposed Requirements

EPA is proposing that PWSs using direct filtration that recycle to the treatment process and utilize surface water or GWUDI as a source report data to the State that describes their current recycle practice. Plants should report the following information to the State:

(1) Whether recycle flow treatment or equalization is in place;

(2) The type of treatment provided for the recycle flow;

(3) If equalization, sedimentation, or some type of clarification process is used, the following information should be provided: a) physical dimensions of the unit (length, width, (or circumference) depth,) sufficient to allow calculation of volume and the

type, typical dose, and frequency with which treatment chemicals are used;

(4) The minimum and maximum hydraulic loading the treatment unit experiences, and;

(5) Maximum backwash rate, duration, typical filter run length, and the number of filters at the plant.

The State should use the above information to determine which plants need to modify recycle practice to provide additional public health protection. States are required to report to EPA whether they required individual direct filtration plants to modify recycle practice and provide a brief explanation of the reason(s) for the decision.

The Agency also considered requiring that all direct filtration plants provide a specific level of treatment for the recycle flow. However, data necessary to determine the appropriate level of treatment is unavailable. Specifically, the following data is needed:

(1) Data on the on the occurrence of oocysts in the spent filter backwash of direct filtration plants. Direct filtration plants generally use higher quality source water than conventional plants (AWWA, 1990) and it would be inaccurate to use spent filter backwash occurrence data from conventional plants to assess the level of treatment direct recycle plants may need;

(2) Data regarding the ability of sedimentation and other clarification processes to remove oocysts from recycle flows is needed to determine what may be a feasible level of treatment. This data need was treated to a detailed discussion in the previous section of the preamble;

(3) An easy to measure and accurate surrogate for oocyst removal is currently unavailable; without such a surrogate, it is not feasible to monitor the performance of recycle treatment units, and;

(4) Data on the applicability of microfiltration and ultrafiltration for treating spent filter backwash produced by direct filtration plants. This data need was discussed in detail in the previous section.

Given the lack of oocyst occurrence data for direct filtration recycle streams, and limited knowledge of the level of treatment clarification processes can achieve, the Agency does not currently believe it is possible to identify a treatment standard for direct filtration plants.

iv. Request for Comments

EPA requests comment on the proposed requirements. The Agency also requests comment on the following:

(1) Whether direct filtration plants should be required to provide treatment for recycle flows;

(2) The level of treatment direct filtration plants should achieve;

(3) Data that establishes turbidity, particle counting, or some other surrogate as an appropriate indicator of oocyst removal achieved by recycle treatment units, and;

(4) Data on the ability of clarification processes to remove oocysts and criteria that can be used to determine the applicability of specific membrane materials for treatment of spent filter backwash produced by direct filtration plants.

d. Request for Additional Comment

EPA requests comment on the following:

(1) Should the recycle of untreated clarification sludges be allowed to continue, or should the Agency ban this practice? What affect would a ban have on the operation of specific plant types, such as softening plants?

(2) Is it appropriate to apply regulatory requirements to the combined recycle flow rather than stipulating requirements for individual recycle flows? Which flows should be regulated individually and why?

V. State Implementation and Compliance Schedules

This section describes the regulations and other procedures and policies States have to adopt, or have in place, to implement today's proposed rule. States must continue to meet all other conditions of primacy in 40 CFR part 142.

Section 1413 of the SDWA establishes requirements that a State or eligible Indian tribe must meet to maintain primary enforcement responsibility (primacy) for its public water systems. These include: (1) Adopting drinking water regulations that are no less stringent than Federal NPDWRs in effect under sections 1412(a) and 1412(b) of the Act, (2) adopting and implementing adequate procedures for enforcement, (3) keeping records and making reports available on activities that EPA requires by regulation, (4) issuing variances and exemptions (if allowed by the State) under conditions no less stringent than allowed by sections 1415 and 1416, and (5) adopting and being capable of implementing an adequate plan for the provision of safe drinking water under emergency situations.

40 CFR part 142 sets out the specific program implementation requirements for States to obtain primacy for the public water supply supervision program, as authorized under section 1413 of the Act. In addition to adopting the basic primacy requirements, States may be required to adopt special primacy provisions pertaining to a specific regulation. These regulation-specific provisions may be necessary where implementation of the NPDWR involves activities beyond those in the generic rule. States are required by 40 CFR 142.12 to include these regulation-specific provisions in an application for approval of their program revisions. These State primacy requirements apply to today's proposed rule, along with the special primacy requirements discussed below.

To implement today's proposed rule, States are required to adopt revisions to § 141.2—definitions; § 141.32—public notification; § 141.70—general requirements; § 141.73—filtration; § 141.76—recycle; § 141.153—content of the reports; § 141.170—general requirements; § 142.14—records kept by States; § 142.16—special primacy requirements; and a new subpart T, consisting of § 141.500 to § 141.571.

A. Special State Primacy Requirements

In addition to adopting drinking water regulations at least as stringent as the Federal regulations listed above, EPA requires that States adopt certain additional provisions related to this regulation to have their program revision application approved by EPA. This information advises the regulated community of State requirements and helps EPA in its oversight of State programs. States which require without exception subpart H systems (all public water systems using a surface water source or a ground water source under the direct influence of surface water) to provide filtration, need not demonstrate that the State program has provisions that apply to systems which do not provide filtration treatment. However, such States must provide the text of the State statutes or regulations which specifies that public water systems using a source water must provide filtration.

EPA is currently developing, with stakeholders input, several guidance documents to aid the States and water systems in implementing today's proposed rule. This includes guidance for the following topics: Disinfection benchmarking and profiling, Turbidity, and Filter Backwash and Recycling. EPA will also work with States to develop a State implementation guidance manual.

To ensure that the State program includes all the elements necessary for a complete enforcement program, the State's application must include the

following in order to obtain EPA's approval for implementing this rule:

(1) Adoption of the promulgated LT1FBR.

(2) Description of the procedures the State will use to determine the adequacy of changes in disinfection process by systems required to profile and benchmark under § 142.16(h)(2)(ii) and how the State will consult with PWSs to approve modifications to disinfection practice.

(3) Description of existing or adoption of appropriate rules or other authority under § 142.16(h)(1) to require systems to participate in a Comprehensive Technical Assistance (CTA) activity, and the performance improvement phase of the Composite Correction Program (CCP).

(4) Description of how the State will approve a method to calculate the logs of inactivation for viruses for a system that uses either chloramines or ozone for primary disinfection.

(5) For filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration or diatomaceous earth filtration, a description of how the State will determine under § 142.16(h)(2)(iii), that a public water system may use a filtration technology if the PWS demonstrates to the State, using pilot plant studies or other means, that the alternative filtration technology, in combination with the disinfection treatment that meets the requirements of Subpart T of this title, consistently achieves 99.9 percent removal and/or inactivation of *Giardia* lamblia cysts and 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts; and a description of how, for the system that makes this demonstration, the State will set turbidity performance requirements that the system must meet 95 percent of the time and that the system may not exceed at any time a level that consistently achieves 99.9 percent removal and/or inactivation of *Giardia* lamblia cysts, 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts.

(6) Description of the criteria the State will use under § 142.16(b)(2)(vi) to determine whether public water systems completing self assessments under § 141.76 (c) are required to modify recycle practice and the criteria that will be used to specify modifications to recycle practice.

(7) Description of the criteria the State will use under § 142.16(b)(2)(vii) to determine whether direct filtration systems reporting data under § 141.76 (d) are required to change recycle practice and the criteria that will be used to specify changes to recycle practice.

(8) The application must describe the criteria the State will use under § 142.16(b)(2)(viii) to determine whether public water systems applying for a waiver to return recycle to a location other than prior to the point of primary coagulant addition, will be granted the waiver for an alternative recycle location.

B. State Recordkeeping Requirements

Today's rule includes changes to the existing record-keeping provisions to implement the requirements in today's proposed rule. States must maintain records of the following: (1) Turbidity measurements must be kept for not less than one year;

(2) disinfectant residual measurements and other parameters necessary to document disinfection effectiveness must be kept for not less than one year; (3) decisions made on a system-by-system basis and case-by-case basis under provisions of part 141, subpart H or subpart P or subpart T; (4) records of systems consulting with the State concerning a modification of disinfection practice (including the status of the consultation);

(5) records of decisions that a system using alternative filtration technologies can consistently achieve a 99 percent removal of *Cryptosporidium* oocysts as well as the required levels of removal and/or inactivation of *Giardia* and viruses for systems using alternative filtration technologies, including State-set enforceable turbidity limits for each system. A copy of the decision must be kept until the decision is reversed or revised and the State must provide a copy of the decision to the system, and; (6) records of systems required to do filter self-assessments, CPE or CCP. These decision records must be kept for 40 years (as currently required by § 142.14 for other State decision records) or until a subsequent determination is made, whichever is shorter.

C. State Reporting Requirements

Currently States must report to EPA information under 40 CFR 142.15 regarding violations, variances and exemptions, enforcement actions and general operations of State public water supply programs. Today's proposal requires States to report a list of direct recycle plants performing self assessments, whether the State required these systems to modify recycle practice, and the reason(s)modifications were or were not required and a list of direct filtration plants performing self assessments, whether the State required these systems to modify recycle practice, and the reason(s) modifications were or were not required

D. Interim Primacy

On April 28, 1998, EPA amended its State primacy regulations at 40 CFR 142.12 (63 FR 23362) (EPA 1998i) to incorporate the new process identified in the 1996 SDWA amendments for granting primary enforcement authority to States while their applications to modify their primacy programs are under review. The new process grants interim primary enforcement authority for a new or revised regulation during the period in which EPA is making a determination with regard to primacy for that new or revised regulation. This interim enforcement authority begins on the date of the primacy application submission or the effective date of the new or revised State regulation, whichever is later, and ends when EPA makes a proposed determination. However, this interim primacy authority is only available to a State that has primacy for every existing national primary drinking water regulation in effect when the new regulation is promulgated.

As a result, States that have primacy for every existing NPDWR already in effect may obtain interim primacy for this rule, beginning on the date that the State submits its final application for primacy for this rule to EPA, or the effective date of its revised regulations, whichever is later. Interim primacy is available for the following rules:

- Stage 1 Disinfectants and Disinfection Byproducts Rule (December 16, 1998)(EPA,1998c)
- Interim Enhanced Surface Water Treatment Rule (EPA,1998a)
- Consumer Confidence Report Rule (EPA, 1998f)
- Variances and Exemptions Rule (EPA, 1998g)
- Drinking Water Contaminant Candidate List (EPA, 1998h)
- Revisions to State Primacy Requirements (EPA,1998i)
- Public Notification Rule (EPA, 1999i)

In addition, a State which wishes to obtain interim primacy for future NPDWRs must obtain primacy for this rule. After the effective date of the final rule, any State that does not have primacy for this rule cannot obtain interim primacy for future rules.

E. Compliance Deadlines

Section 1412(b)(10) of SDWA provides that drinking water rules become effective 36 months after promulgation unless the Administrator

determines that an earlier time is practicable. The Administrator may also extend the effective date by an additional 24 months if capital improvements are necessary. The Agency believes the three year effective date is appropriate for all of the provisions in today's notice except for those provisions that address the return of recycle flows. The Agency believes providing a five year compliance period for systems making modifications to recycle practice is appropriate and warranted under 1412(b)(10). To effectively modify recycle practice, capital improvements, such as installing additional equipment and/or constructing new facilities, will likely be required. Specific examples of potential capital improvements are installing new piping and pumps to convey recycle flow prior to the point of primary coagulant addition and constructing equalization basins or recycle flow treatment facilities. A limited number of systems may be able to make operational modifications, per the State's determination, that will effectively address potential risks. However, the Agency believes the great majority of systems required to either relocate their recycle return location or modify recycle practice as directed by the State will need to perform capital improvements. The capital improvement process is lengthy; systems will need to engage in preliminary planning activities, consult with State and local officials, develop engineering and construction designs, obtain financing, and construct the facilities. The Agency believes the widespread need that systems making modifications to recycle practice will have for capital improvements warrants the additional 24 months for compliance purposes. The Agency solicits comment on the appropriateness of providing an additional two years for compliance with the recycle provisions. EPA seeks comment on extending the compliance deadline an extra two years because systems are expected to make capital improvements to address recycle practice. EPA also seeks comment on a similar two year extension to comply with the turbidity provisions of today's proposed rule.

II. Economic Analysis

This section summarizes the Health Risk Reduction and Cost Analysis in support of the Long Term 1 Enhanced Surface Water Treatment and Filter Backwash Rule (LT1FBR) as required by Section 1412(b)(3)(C) of the 1996 Amendments to the SDWA. In addition, under Executive Order 12866, Regulatory Planning and Review, EPA must estimate the costs and benefits of LT1FBR in a Regulatory Impact Analysis (RIA) and submit the analysis to the Office of Management and Budget (OMB) in conjunction with publication of the proposed rule. EPA has prepared an RIA to comply with the requirements of this Order and the SDWA Health Risk Reduction and Cost Analysis (EPA, 1999h). The RIA has been published on the Agency's web site, and can be found at *http://www.epa.gov/safewater*. The RIA can also be found in the docket for this rulemaking.

The goal of the following section is to provide an analysis of the costs, benefits, and other impacts of the proposed rule to support future decisions regarding the development of the LT1FBR.

A. Overview

The analysis for this rule examines the costs and benefits for five rule provisions: filter effluent turbidity, applicability monitoring, disinfection benchmark profiling, uncovered finish water reservoirs, and recycle. Several options were considered for each provision. Costs were estimated for three individual turbidity options, three profiling options, and three applicability monitoring options. In addition, costs were estimated for four different recycle options. All four recycle options require spent filter backwash, thickener supernatant, and liquids from dewatering be returned to the treatment process prior to the point of primary coagulant addition. The extent of modifications to recycle practice varies among the rule options.

The value of health benefits from the turbidity provision was estimated for the preferred option. The benefits from the other rule provisions are described qualitatively. Several non-health benefits from this rule were also considered by EPA but were not monetized. The non-health benefits of this rule include: avoided outbreak response costs and possibly reduced uncertainty and averting behavior costs. By adding the non-monetized benefits with those that are monetized, the overall benefits of these rule options increase beyond the dollar values reported.

Additional analysis was conducted by EPA to look at the incremental impacts of the various rule options, impacts on households, benefits from reductions in co-occurring contaminants, and possible increases in risk from other contaminants. Finally, the Agency evaluated the uncertainty regarding the risk, benefits, and cost estimates.

B. Quantifiable and Non-Quantifiable Costs

In estimating the costs of each rule option, the Agency considered impacts on public water systems and on States (including territories and EPA implementation in non-primacy States). The LT1FBR will result in increased costs to public water systems for improved turbidity treatment, applicability monitoring, disinfection benchmarking, covering new finished water reservoirs and modification to recycle practice. States will also face implementation costs. Most of the provisions of this rule, except the recycle provision, apply to systems using surface water or ground water under the direct influence of surface water that serve less than 10,000 people. The recycle provisions, however, apply to all surface water systems that recycle filter backwash, thickener supernatant, or liquids from dewatering.

1. Total Annual Costs

EPA estimates that the annualized cost of the preferred alternatives for the proposed rule will be $97.5 million. This estimate includes capital costs for treatment changes and start-up labor costs for monitoring and reporting activities that have been annualized assuming a 7% discount rate and a 20-year amortization period. Other cost estimates reported in this section also use these same amortization assumptions. The estimated cost of the preferred alternatives also includes annual operating and maintenance costs for treatment changes and annual labor for turbidity monitoring activities.

The turbidity provisions (including treatment changes, monitoring, and exceptions reporting) account for 70% ($68.6million annually) of total costs and the recycling provisions (*i.e.*, recycle to headworks, self assessment, and direct filtration) account for 25% ($24.5 million annually) of total costs. Utility expenditures for all provisions equal almost 93% ($90.2 million annually) of total costs; State expenditures make up the other 7% ($6.7 million annually).

To reduce the potential cost to small systems, EPA developed and evaluated the cost implications of several regulatory alternatives for four of the proposed LT1FBR provisions: individual filter turbidity monitoring, applicability monitoring, disinfection benchmark profiling, and recycle. Many of these alternatives reduce the labor burden on small systems relative to what it would be if the proposed rule used the same requirements as IESWTR. The total national costs previously

discussed only included the costs of the preferred alternatives. The following section will describe the cost estimates for each provision and discuss the cost of other alternatives that were considered.

2. Annual Costs of Rule Provisions

The national estimate of annual utility costs for the proposed turbidity provisions is based on estimates of system-level costs for the various provisions of the rule and estimates of the number of systems expected to incur each type of cost. The following paragraphs describe the cost estimates for each of the rule provisions.

Turbidity Provision Costs

The turbidity provisions are estimated to cost $69.0 million annually. This cost is associated with three primary activities that result from this provision: treatment changes, monitoring, and exceptions reporting.

The treatment costs associated with meeting the revised turbidity standard of 0.3 NTU or less are the main costs associated with the turbidity provision. EPA estimates that 2,406 systems will modify their turbidity treatment in response to this rule. These costs are estimated to be $52.2 million annually. O&M expenditures account for 59% of annual costs and the remain 41% percent is annualized capital costs.

In addition to the turbidity treatment costs, turbidity monitoring costs apply to all small surface water or GWUDI systems using conventional or direct filtration methods. There are an estimated 5,896 systems that fall under this criteria. EPA estimated the costs to utilities for three turbidity monitoring alternatives. Alternative B, the preferred alternative, excludes the exceptions report for an individual filter exceeding 0.5 NTU in two consecutive measurements, enabling systems to shift from daily to weekly analysis and review of the monitoring data. The annualized individual filter turbidity cost to public water systems for this preferred option is approximately $10.1 million. In contrast, under the IESWTR monitoring requirements of Alternative A, small systems would expend $63.3 million annually for turbidity monitoring. Alternative C, which only requires monthly analysis is estimated to cost $5.6 million annually. The total state turbidity start-up and monitoring annual costs are $4.98 million annually and is assumed to be the same for all of the three alternatives.

In addition to the turbidity treatment and monitoring costs, individual filter turbidity exceptions are estimated to cost utilities $120 thousand annually for the preferred option. State costs will be approximately $1.17 million. This cost includes the annual exception reports and annual individual filter self assessment costs. Costs are slightly higher for the other two alternative individual filter turbidity monitoring options because they result in increased number of exception reports.

Disinfection Benchmarking Costs

Disinfection benchmarking involves three components: profiling, applicability monitoring, and benchmarking. Four options were costed for applicability monitoring. Alternative 3, which uses the critical monitoring period, is estimated to cost less than $0.4 million annually. This is substantially lower than the $6.0 million estimated for Alternative 1, which has the same requirements as IESWTR. Alternative 2 requires sampling once per quarter for 4 quarters for systems serving 501–10,000, but allows systems under 500 to sample once during the critical monitoring period. This option has an annualized cost of $1.1 million. The preferred option, Alternative 4, makes it optional to sample during the critical monitoring period and is estimated to cost $0.04 million annualized.

Three options were considered for disinfection profiling and benchmarking. They differed in the frequency and duration of data collection. The preferred alternative, Alternative 2, requires weekly monitoring for one year and is estimated to have an annualized cost of $0.8 million. In comparison, Alternative 1 which requires daily data collection for one year, has an annualized cost of approximately $1.3 million. The final option, Alternative 3, requires daily monitoring for 1 month and has an estimated annualized cost of $0.5 million.

State disinfection benchmarking annualized costs are estimated to be $0.4 million. This estimate includes start-up, compliance tracking/recordkeeping, and benchmark related costs.

Covered Finished Water Reservoir Provision Costs

The proposed LT1FBR requires that new systems cover all finished water reservoirs, holding tanks, or other storage facilities for finished water. Historical construction rates suggest that new reservoirs over the next 20 years will roughly equal to five percent of the existing number of systems. Assuming then that 580 new uncovered finished water reservoirs would be built in the next 20 years, total annual costs, including annualized capital costs and one year of O&M costs are expected to be $2.6 million for this provision using a 7% discount rate. This estimate is calculated from a projected construction rate of new reservoirs and unit cost assumptions for covering new finished water reservoirs.

Recycle Provision Cost

EPA considered four different regulatory options for recycle. Each of the four options requires spent filter backwash, thickener supernatant, and liquids from dewatering be returned prior to the point of primary coagulant addition. Alternative 1, is estimated to result in an annualized cost of $16.7 million. Of the total costs of this alternative, State start-up and review costs for this alternative are only $20 to $30 thousand annually.

Alternative 2, the preferred option, further requires that conventional rapid granular filtration plants using surface water or GWUDI perform a self assessment if they recycle spent filter backwash and thickener supernatant, employ 20 or less filters, and practice direct recycle (treatment for the recycle flow or equalization in a basin that has a volume equal to the volume of spent filter backwash produced by a single filter backwash event is not provided). The results of the self assessment are reported to the State, and it specifies whether modifications to recycle practice are necessary. PWSs are required to implement the modification specified by the State. Under Alternative 2, direct filtration plants are required to submit data to the State on current recycle practice, and the State specifies whether changes to recycle practice are required. The total annualized cost of Alternative 2 is $17.4 to $24.5 million. $0.4 to $5.9 million of the total annualized cost is for the direct recycle component, $0.1 to $1.7 million is for the direct filtration component, and the remaining cost is for the requirement to return recycle prior to the point of primary coagulant addition. Of the total costs of this alternative, State start-up, review, and self assessment costs for this alternative is only $115 thousand annually.

Alternative 3 contain the same requirements for direct filtration plants and also requires the three recycle flows mentioned above be returned prior to the point of primary coagulant addition. Direct recycle plants are required to install equalization basins with a volume equal to or greater than the volume produced by two filter backwash events. The annualized cost of Alternative 3 is $55.0 to $56.7 million. Of this range, $38.1 million of

the annualized cost is directly associated with requiring direct recycle plants to install equalization, and $0.1 to $1.7 million is associated with the direct filtration component. State start-up and self assessment costs for this alternative is $95 thousand annually.

Alternative 4 requires the three recycle flows mentioned above be returned prior to the point of primary coagulant addition and also requires that all systems that recycle (conventional and direct systems) install sedimentation basins for recycle flow treatment. Systems may also install recycle flow treatment technologies that provide treatment capability equivalent or superior to sedimentation. For cost estimation purposes, sedimentation basins with tube settlers and polymer addition where used. The Agency approximated the annualized costs of this option to be $151.8 million. The sedimentation basin treatment requirement for conventional and direct filtration plants is 88% ($133.3 million) of the total annualized cost of Alternative 4. State start-up and self assessment costs for this alternative is $100 thousand annually.

3. Non-Quantifiable Costs

Although EPA has estimated the cost of all the rule's components on drinking water systems and States, there are some costs that the Agency did not quantify. These non-quantifiable costs result from uncertainties surrounding rule assumptions and from modeling assumptions. For example, EPA did not estimate a cost for systems to acquire land if they needed to build a treatment facility or significantly expand their current facility. This was not costed because many systems will be able to construct new treatment facilities on land already owned by the utility. In addition, if the cost of land was prohibitive, a system may choose another lower cost alternative such as connecting to another source. A cost for systems choosing this alternative is unquantified in our analysis.

C. Quantifiable and Non-Quantifiable Health Benefits

The primary benefits of today's proposed rule come from reductions in the risks of microbial illness from drinking water. In particular, LT1FBR focuses on reducing the risk associated with disinfection resistant pathogens, such as *Cryptosporidium*. Exposure to other pathogenic protozoa, such as *Giardia*, or other waterborne bacteria, viral pathogens, and other emerging pathogens are likely to be reduced by the provisions of this rule as well but are not quantified. In addition, LT1FBR produces nonquantifiable benefits associated with the risk reductions that result from the recycle provision, uncovered reservoirs provision, including *Cryptosporidium* in GWUDI definition, and including *Cryptosporidium* in watershed requirements for unfiltered systems.

1. Quantified Health Benefits

a. Turbidity Provisions

The quantification of benefits from this rule is focused solely on reductions in the risk of cryptosporidiosis. Cryptosporidiosis is an infection caused by *Cryptosporidium* which is an acute, self-limiting illness lasting 7 to 14 days with symptoms that include diarrhea, abdominal cramping, nausea, vomiting and fever (Juranek, 1995). The cost of illness avoided of cryptosporidiosis is estimated to have a mean of $2,016 (Harrington et al., 1985; USEPA 1999h)

The benefits of the turbidity provisions of LT1FBR come from improvements in filtration performance at water systems. The benefits analysis attempts to take into account some of the uncertainties in the analysis by estimating benefits under two different current treatment and three improved removal assumptions. The benefits analysis also used Monte Carlo simulations to derive a distribution of estimates, rather than a single point estimate.

The benefits analysis focused on estimating changes in incidence of cryptosporidiosis that would result from the rule. The analysis included estimating the baseline (pre-LT1FBR) level of exposure from *Cryptosporidium* in drinking water, reductions in such exposure resulting from treatment changes to comply with the LT1FBR, and resultant reductions of risk.

Baseline levels of *Cryptosporidium* in finished water were estimated by assuming national source water occurrence distribution (based on data by LeChevallier and Norton, 1995) and a national distribution of *Cryptosporidium* removal by treatment.

In the LT1FBR RIA, the following two assumptions were made regarding the current *Cryptosporidium* oocyst performance to estimate finished water *Cryptosporidium* concentrations. First, based on treatment removal efficiency data presented in the 1997 IEWSTR, EPA assumed a national distribution of physical removal efficiencies with a mean of 2.0 logs and a standard deviation of ± 0.63 logs. Because the finished water concentrations of oocysts represent the baseline against which improved removal from the LT1FBR is compared, variations in the log removal assumption could have considerable impact on the risk assessment. Second, to evaluate the impact of the removal assumptions on the baseline and resulting improvements, an alternative mean log removal/inactivation assumption of 2.5 logs and a standard deviation of ± 0.63 logs was also used to calculate finished water concentrations of *Cryptosporidium*.

For each of the two baseline assumptions, EPA assumed that a certain number of plants would show low, mid or high improved removal, depending upon factors such as water matrix conditions, filtered water turbidity effluent levels, and coagulant treatment conditions. As a result, the RIA considers six scenarios that encompass the range of endemic health damages avoided based on the rule.

The finished water *Cryptosporidium* distributions that would result from additional log removal with the turbidity provisions, were derived assuming that additional log removal was dependent on current removal, i.e., that sites currently operating at the highest filtered water turbidity levels would show the largest improvements or high improved removal assumption (e.g., plants now failing to meet a 0.4 NTU limit would show greater removal improvements than plants now meeting a 0.3 NTU limit).

Table VI.1 indicates estimated annual benefits associated with implementing the LT1FBR. The benefits analysis quantitatively examines endemic health damages avoided based on the LT1FBR for each of the six scenarios mentioned above. For each of these scenarios, EPA calculated the mean of the distribution of the number of illnesses avoided. The 10th and 90th percentiles imply that there is a 10 percent chance that the estimated value could be as low as the 10th percentile and there is a 10 percent chance that the estimated value could be as high as the 90th percentile. EPA's Office of Water has evaluated drinking water consumption data from USDA's 1994–1996 Continuing Survey of Food Intakes by Individuals (CSFII) Study. EPA's analysis of the CSFII Study resulted in a daily water ingestion lognormally distributed with a mean of 1.2 liters per person (EPA, 2000a). The risk and benefit analysis contained within the RIA reflects this distribution.

TABLE VI.1.—NUMBER AND VALUE OF ILLNESSES AVOIDED ANNUALLY FROM TURBIDITY PROVISIONS [a]
[Dollar amounts in billions]

Improved Log-Removal Assumption	Daily Drinking Water Ingestion and Baseline *Cryptosporidium* Log-Removal Assumptions (Mean = 1.2 Liters per person)	
	2.0 log	2.5 log
Illnesses Avoided with Low Improved *Cryptosporidium* Removal Assumption:		
Mean	62,800.0	22,800.0
10th Percentile	0.0	0.0
90th Percentile	152,000.0	43,900.0
COI Avoided with Low Improved *Cryptosporidium* Removal Assumption:		
Mean	$150.3	$53.9
10th Percentile	$0.0	$0.0
90th Percentile	$288.2	$81.4
Illnesses Avoided with Mid Improved *Cryptosporidium* Removal Assumption:		
Mean	77,500.0	27,900.0
10th Percentile	0.0	.00
90th Percentile	184,000.0	52,900.0
COI Avoided with Mid Improved *Cryptosporidium* Removal Assumption:		
Mean	$185.3	$66.2
10th Percentile	$0.0	$0.0
90th Percentile	$350.9	$98.8
Illnesses Avoided with High Improved *Cryptosporidium* Removal Assumption:		
Mean	83,600.0	30,000.0
10th Percentile	0.0	0.0
90th Percentile	196,000.0	56,500.0
COI Avoided with High Improved *Cryptosporidium* Removal Assumption:		
Mean	$199.5	$71.1
10th Percentile	$0.0	$0.0
90th Percentile	$376.7	$105.8

[a] All values presented are in January 1999 dollars.

According to the RIA performed for the LT1FBR published today, the rule is estimated to reduce the mean annual number of illnesses caused by *Cryptosporidium* in water systems with improved filtration performance by 22,800 to 83,600 cases depending upon which of the six baseline and improved *Cryptosporidium* removal assumptions was used, and assuming the 1.2 liter drinking water consumption distribution. Based on these values, the mean estimated annual benefits of reducing the illnesses ranges from $54 million to $200 million per year. The RIA also indicated that the rule could result in a mean reduction of 3 to 10 fatalities each year, depending upon the varied baseline and improved removal assumptions. Using a mean value of $5.7 million per statistical life saved, reducing these fatalities could produce benefits in the range of $16.0 million to $60 million.

Combining the value of illnesses and mortalities avoided, the total benefits range from $70 million to $260 million assuming a 1.2 liter drinking water consumption distribution.

b. Sensitivity Analysis for Recycle Provisions

Available literature research demonstrates that increased hydraulic loading or disruptive hydraulic currents, such as may be experienced when plants exceed State-approved operating capacity or when recycle is returned directly into the sedimentation basin, can disrupt filter (Cleasby, 1963; Glasgow and Wheatley, 1998; McTigue et al, 1998) and sedimentation (Fulton, 1987; Logsdon, 1987; Cleasby, 1990) performance. However, the literature does not quantify the extent to which performance can be lowered and, more specifically, does not quantify the log reduction in *Cryptosporidium* removal that may be experienced during direct recycle events.

In the absence of quantified log reduction data, the Agency performed a sensitivity analysis to estimate a range of potential benefit provided by the recycle provisions. The analysis assumes a baseline *Cryptosporidium* log removal value of 2.0. The analysis estimates the effect of recycle by reducing the average baseline log removal by a range of values (reduction ranged from 0.05 to 0.50 log) to account for the reduction in removal performance plants may experience if they exceed State-approved operating capacity or return recycle to the sedimentation basin. The installation of equalization to eliminate exceedence of State-approved operating capacity or moving the recycle return location from the sedimentation basin to prior to the point of primary coagulant addition will result in the health benefit. The benefit estimate is conservative, because it does not account for the fact that recycle returns additional oocysts to the plant.

Benefits are estimated by assuming that the installation of equalization or moving the recycle return point prior to the point of primary coagulant addition will return the plant to the baseline *Cryptosporidium* removal of 2.0 log. The difference between the number of illnesses that result from the baseline situation and the reduced performance is used to calculate the monetary benefit. The benefit is compared to the cost of returning recycle prior to the point of primary coagulant additional and the cost of installing equalization for two service populations. Service populations of 1,900 persons, which represents a plant serving fewer than 10,000 people, and a service population of 25,108, which represents a plant serving greater than 10,000 people, are used. Results are summarized in Tables IV.2 and IV.3 below.

TABLE IV.2.—BENEFIT FOR SERVICE POPULATION OF 1,900

Log removal reduction	Benefit[a] for population of 1,900	Cost[a] of moving recycle return	Cost[a] of installing equalization
0.05	$1,400	$5,200	$25,200
0.50	30,700	5,200	25,200

[a] Cost and benefit are annualized with a 7% capital cost over 20 years.

TABLE IV.3.—BENEFIT RANGE FOR SERVICE POPULATION OF 25,108

Log removal reduction	Benefit[a] for population of 25,108	Cost[a] of moving recycle return	Cost[a] of installing equalization
0.05	$18,700	$18,700	$57,200
0.50	405,800	18,700	57,200

[a] Cost and benefit are annualized with a 7% capital cost over 20 years.

Although literature research does not quantify the log reduction caused by specific recycle practices, the results of the sensitivity analysis show that the benefit a plant serving 25,108 people would realize by improving its baseline performance to 2.0 logs would range from $18,700 to $405,800. $27,256 Benefits would range from $1,400 to $30,700 for a plant serving 1,900. This benefit range supports the Agency's determination that unquantified benefits will justify costs. The determination is discussed in the Benefit Cost Determination section.

2. Non-Quantified Health and Non-Health Related Benefits

a. Recycle Provisions

The benefits associated with the filter backwash provision are unquantified because of data limitations. Specifically, there is a lack of treatment performance data to accurately model the oocysts removal achieved by individual full-scale treatment processes and the impact recycle may have on treatment unit performance and finished water quality. Additional data on the ability of unit processes (sedimentation, DAF, contact clarification, filtration) to remove oocysts from source and recycle flows, the extent to which recycle may generate hydraulic surge within plants and lower the performance of individual treatment processes, data on the potential for recycle to threaten the integrity of chemical treatment, and additional information on the occurrence of oocysts in recycle streams are all needed before an impact model can be calibrated and used as a predictive tool.

However, available data demonstrate that oocysts occur in recycle streams, often at concentrations higher than found in source water, and returning recycle streams to the plant will increase intra-plant oocyst concentrations. Data also shows that oocysts frequently occur in the finished water of treatment plants that are not operating under stressed conditions. Engineering literature also shows that proper coagulation and the maintenance of balanced hydraulic conditions within the plant (*i.e.*, not exceeding State approved sedimentation/clarification and filtration operating rates) are important to protect the integrity of the entire treatment process. Some recycle practices, such as direct recycle, can potentially upset coagulation and the proper hydraulic operation of sedimentation/clarification and filtration processes. The benefits of the recycle provisions are derived from protecting the coagulation process and the hydraulic performance of sedimentation/clarification and filtration processes. Today's recycle provisions reduce the risk posed by recycle and provided additional public health protection in the following ways:

(1) Returning spent filter backwash, thickener supernatant, and liquids from dewatering into, or downstream of, the point of primary coagulant addition may disrupt treatment chemistry by introducing residual coagulant or other treatment chemicals to the process stream. The wide variation in plant influent flow can also result in chemical over-or under-dosing if chemical dosage is not adjusted to account for flow variation. Returning the above flows prior to the point of primary coagulant addition will help protect the integrity of coagulation and protect the performance of downstream unit processes, such as clarification and filtration, that require proper coagulation be conducted to maintain proper performance. This will provide an additional measure of public health protection.

(2) The direct recycle of spent filter backwash without first providing treatment, equalization, or some form of hydraulic detention for the flow, may cause plants to exceed State-approved operating capacity during recycle events. This may lead to lower overall oocyst removal performance due to the hydraulic overload unit processes (i.e., clarification and filtration) experience and increase finished water oocyst concentrations. The self assessment provision in today's rule will help the States identify direct recycle systems that may experience this problem so modifications to recycle practice can be made to protect public health.

(3) Direct filtration plants do not employ a sedimentation basin in their primary treatment process to remove solids and oocysts; all oocyst removal is achieved by the filters. If treatment for the recycle flow is not provided prior to its return to the plant, all of the oocysts captured by a filter during a filter run will be returned to the plant and again loaded to the filters. This may lead to ever increasing levels of oocysts being applied to the filters and could increase the concentration of oocysts in finished water. Today's provision for direct recycle systems will help States identify those systems that are not obtaining sufficient oocyst removal from the recycle flow. Public health protection will be increased when systems implement modifications to recycle practice specified by the State.

The goal of the recycle provisions is to reduce the potential for oocysts getting into the finished water and causing cases of cryptosporidiosis. Other disinfection resistant pathogens may also be removed more efficiently due to implementation of these provisions.

b. Issues Associated With Unquantified Benefits

The monetized benefits from filter performance improvements are likely not to fully capture all the benefits of the turbidity provisions. EPA monetized the benefits from reductions in cryptosporidiosis by using cost-of-illness (COI) estimates. This may underestimate the actual benefits of these reductions because COI estimates do not include pain and suffering. In general, the COI approach is considered a lower bound estimate of willingness-to-pay (WTP) to avoid illnesses. EPA requests comment on the use of an appropriate WTP study to calculate the benefits of this rule.

Several non-health benefits from this rule were also considered by EPA but were not monetized. The non-health benefits of this rule include avoided outbreak response costs and possibly reduced uncertainty and averting behavior costs. By adding the non-monetized benefits with those that are monetized, the overall benefits of this rule would increase beyond the dollar values reported.

D. Incremental Costs and Benefits

EPA evaluated the incremental or marginal costs of today's proposed turbidity option by analyzing various turbidity limits, 0.3 NTU, 0.2 NTU, and 0.1 NTU. For each turbidity limit, EPA developed assumptions about which process changes systems might implement to meet the turbidity level and how many systems would adopt each change. The comparison of total compliance cost estimates show that costs are expected to increase significantly across turbidity limits. The total cost of a 0.1 NTU limit, $404.6 million, is almost eight times higher than the cost of the 0.3 NTU limit, which is $52.2 million. Similarly, the total cost of the 0.2 NTU limit, $134.1 million, is more than twice as great as the 0.3 NTU cost.

Analytical limitations in the estimation of the benefits of LT1FBR prevent the Agency from quantitatively describing the incremental benefits of alternatives. The Agency requests comment on how to analyze and the appropriateness of analyzing incremental benefits and costs for treatment techniques that address microbial contaminants.

E. Impacts on Households

The cost impact of LT1FBR at the household level was also assessed. Household costs are a way to represent water system treatment costs as costs to the system's customers. As expected, costs per household increase as system size decreases. Costs to households are higher for households served by smaller systems than larger systems for two reasons. First, smaller systems serve far fewer households than larger systems, and consequently, each household must bear a greater percentage share of capital and O&M costs. Second, filter backwash recycling may pose a greater risk because the flow of water from filter backwash recycling is a larger portion of the total water flow in smaller systems. This greater risk potential in small systems makes it more likely that some form of recycle treatment might be needed.

The average (mean) annual cost for the turbidity, benchmarking, and covered finished water provision per household is $8.66. For almost 86 percent of the 6.6 million households affected by these provisions, the per-household costs are $10 per year or less, and costs of $120 per year (i.e., $10 per month) or less for approximately 99 percent of the households. Costs exceeding $500 per household occur only for the smallest size category, and the number of affected households represent about 34 of the smallest systems. The highest per-household cost estimate is $2,177. This extreme estimate, however, is an artifact of the way the system cost distribution was generated. It is unlikely that any small system will incur annual costs of this magnitude because less costly options are available.

The average household cost for the recycle provisions is $1.80 per year for households that are served by systems that recycle. The cost per household is less than $10 per year for almost 99% of 12.9 million households potentially affected by the proposed rule. The cost per household exceeds $120 per year for less than 1800 households and it exceeds $500 per year for approximately 100 households. The maximum cost of $1,238 per year would only be incurred if a direct filtration system that serves less than 100 customers installed a sedimentation basin for backwash treatment.

There are approximately 1.5 million households served by small drinking water systems that may be affected by the recycling provisions in addition to the turbidity, benchmarking, and covered finished water provisions. The expected aggregate annual cost to these households can be approximated by the sum of the expected cost for each distribution, which is $10.45 per year.

The assumptions and structure of this analysis tend to overestimate the highest costs. To face the highest household costs, a system would have to implement all, or almost all, of the treatment activities. These systems, however, might seek less costly alternatives, such as connecting into a larger regional water system.

F. Benefits From the Reduction of Co-Occurring Contaminants

If a system chooses to install treatment, it may choose a technology that would also address other drinking water contaminants. For example, some membrane technologies installed to remove bacteria or viruses can reduce or eliminate many other drinking water contaminants including arsenic.

The technologies used to reduce individual filter turbidities have the potential to reduce concentrations of other pollutants as well. Reduction in turbidity that result from today's proposed rule are aimed at reducing *Cryptosporidium* by physical removal. It is reasonable to assume that similar microbial contaminants will also be reduced as a result of improvements in turbidity removal. Health risks from *Giardia lamblia* and emerging disinfection resistant pathogens, such as microsporidia, *Toxoplasma*, and *Cyclospora*, are also likely to be reduced as a result of improvements in turbidity removal and recycle practices. The frequency and extent that LT1FBR would reduce risk from other contaminants has not been quantitatively evaluated because of the Agency's lack of data on the removal efficiencies of various technologies for emerging pathogens and the lack of co-occurrence data for microbial pathogens and other contaminants from drink water systems.

G. Risk Increases From Other Contaminants

It is unlikely that LT1FBR will result in any increased risk from other contaminants. Improvements in plant turbidity performance will not result in any increases in risk. In addition, the benchmarking and profiling provisions were designed to minimize the potential reductions in microbial disinfection in order to lower disinfection byproduct levels to comply with the Stage 1 Disinfection Byproducts Rule. Furthermore, the filter backwash provision does not potentially increase the risk from other contaminants.

H. Other Factors: Uncertainty in Risk, Benefits, and Cost Estimates

There is uncertainty in the baseline number of systems, the risk calculation, and the cost estimates. Many of these uncertainties are discussed in more detail in previous sections of today's proposal.

First, the baseline number of systems is uncertain because of data limitation problems in SDWIS. For example, some systems use both ground and surface water but because of other regulatory requirements are labeled in SDWIS as surface water. Therefore, EPA does not have a reliable estimate of how many of these mixed systems exist. The SDWIS data on non-community water systems does not have a consistent reporting convention for population served. Some states may report the population served over the course of a year, while others may report the population served on an average day. Also, SDWIS does not require states to provide information on current filtration practices and, in some cases, it may overestimate the daily population served. For example, a park may report the population served yearly instead of daily. EPA is looking at new approaches to address these issues and both are discussed below in request for comment.

Second, there are several important sources of uncertainty that enter the benefits assessment. They include the following:

- Occurrence of *Cryptosporidium* oocysts in source waters
- Baseline occurrence of *Cryptosporidium* oocysts in finished waters
- Reduction of *Cryptosporidium* oocysts due to improved treatment, including filtration and disinfection
- Viability of *Cryptosporidium* oocysts after treatment
- Infectivity of *Cryptosporidium*
- Incidence of infections (including impact of under reporting)
- Characterization of the risk Willingness-to-pay to reduce risk and avoid costs.
- The baseline water system treatment efficiency for the removal of *Cryptosporidium* is uncertain. Turbidity measurements have been used as a means of estimating removal treatment efficiency (*i.e.* log removal). In addition to the baseline treatment efficiency estimates, improvements in treatment efficiency for *Cryptosporidium* removal that result from this rule are uncertain.

The benefit analysis incorporates all of the uncertainties associated with the benefits assessment in either the Monte Carlo simulations or the assumption of two baselines—2.0 log removal and 2.5 log removal. The results in table VI.1 show that benefits are more sensitive to the baseline log removal assumptions than the range of low to high improved removal assumptions. Third, some costs of today's proposed rule are uncertain because of the diverse nature of the modifications that may be made to address turbidity limits. Cost analysis uncertainties are primarily caused by assumptions made about how many systems will be affected by various provisions and how they will likely respond. Capital and O&M expenditures account for a majority of total costs. EPA derived these costs for a "model" system in each size category using engineering models, best professional judgement, and existing cost and technology documents. Costs for systems affected by the proposed rule could be higher or lower, which would affect total costs. Also, the filter backwash provision's flexibility for States to assess plants' need to modify recycle practices leads to some uncertainty in the estimates of how many plants will have to potentially install some form of recycle equalization or treatment. These uncertainties could either under or overestimate the costs of the rule.

I. Benefit Cost Determination

The Agency has determined that the benefits of the LT1FBR justify the costs. EPA made this determination for both the LT1 and the FBR portions of the rule separately as described below.

The Agency has determined that the benefits of the LT1 provisions justify their costs on a quantitative basis. The LT1 provisions include enhanced filtration, disinfection benchmarking and other non-recycle related provisions. The quantified benefits of $70 million to $259.4 million annually exceed the costs of $73 million at the seven percent cost of capital over a substantial portion of the range of benefits. In addition, the non-quantified benefits include avoided outbreak response costs and possibly reduced uncertainty and averting behavior costs.

The Agency has determined that the benefits of the recycle provisions (FBR) justify their cost on a qualitative basis. The recycle provisions will reduce the potential for certain recycle practices to lower or upset treatment plant performance during recycle events; the provisions will therefore help prevent *Cryptosporidium* oocysts from entering finished drinking water supplies and will increase public health protection.

The Agency strongly believes that returning *Cryptosporidium* to the treatment process in recycle flows, if performed improperly, can create additional public health risk. The Agency holds this belief for three reasons. First, returning recycle flow directly to the plant, without equalization or treatment, can cause large variations in the influent flow magnitude and influent water quality. If chemical dosing is not adjusted to reflect this, less than optimal chemical dosing can occur, which may lower the performance of sedimentation and filtration. Returning recycle flows prior to the point of primary coagulant addition will help diminish the risk of less than optimal chemical dosing and diminished sedimentation and filtration performance. Second, exceeding State-approved operating capacity, which is likely to occur if recycle equalization or treatment is not in place, can hydraulically overload plants and diminish the ability of individual unit processes to remove *Cryptosporidium*. Exceeding approved operating capacity violates fundamental engineering principles and water treatment objectives. States set limits on plant operating capacity and loading rates for individual unit processes to ensure treatment plants and individual treatment processes are operated to within their capabilities so that necessary levels of public health protection are provided. Third, returning recycle flows directly into flocculation or sedimentation basins, which can generate disruptive hydraulic currents, may lower the performance of these units and increase the risk of *Cryptosporidium* in finished water supplies.

The recycle provisions in today's proposal are designed to address those recycle practices that are inconsistent with fundamental engineering and water treatment principles. The objective of the provisions is to eliminate practices that are counter to common sense, sound engineering judgement, and that create additional and preventable risk to public health. EPA believes the public health protection benefit provided by the recycle provisions justifies their cost because they are based upon sound engineering principles and are designed to eliminate recycle practices that are very likely to create additional public health risk.

J. Request for Comment

Pursuant to Section 3142(b)(3)(C), the Agency requests comment on all aspects of the rule's economic impact analysis. Specifically, EPA seeks input into the following two issues.

NTNC and TNC Flow Estimates

As part of the total cost estimates for LT1FBR, EPA estimated the cost of the rule on NTNC and TNC water systems by using flow models. However, these flow models were developed to estimate flows only for CWS and they may not accurately represent the much smaller flows generally found in NTNC and TNC systems. The effect of the overestimate in flow would be to inflate

the cost of the rule for these systems. The Agency requests comment on an alternative flow analysis for NTNC and TNC water systems described below.

Instead of using the population served to determine the average flow for use in the rule's cost calculations, this alternative approach would re-categorize NTNC and TNC water systems based on service type (*e.g.*, restaurants or parks). Service type would be obtained from SDWIS data. However, service type data is not always available because it is a voluntary SDWIS data field. Where unavailable, the service type would be assigned based on statistical analysis. Estimates of service type design flows would be obtained from engineering design manuals and best professional judgement if no design manual specifications exist.

In addition, each service type category would also have corresponding rates for average population served and average water consumption. These would be used to determine contaminant exposure which is used in the benefit determination. For example, schools and churches would be two separate service type categories. They each would have their own corresponding average design flow, average population served (rather than the population as reported in SDWIS), and average water consumption rates. These elements could be used to estimate a rule's benefits and costs for the average church and the average school.

Mixed Systems

Current regulations require that all systems that use any amount of surface water as a source be categorized as surface water systems. This classification applies even if the majority of water in a system is from a ground water source. Therefore, SDWIS does not provide the Agency with information to identify how many mixed systems exist. This information would help the Agency to better understand regulatory impacts.

EPA is investigating ways to identify how many mixed systems exist and how many mix their ground and surface water sources at the same entry point or at separate entry points within the same distribution systems. For example, a system may have several plants/entry points that feed the same distribution system. One of these entry points may mix and treat surface water with ground water prior to its entry into the distribution system. Another entry point might use ground water exclusively for its source while a different entry point would exclusively use surface water. However, all three entry points would supply the same system classified in SDWIS as surface water.

One method EPA could use to address this issue would be to analyze CWSS data then extrapolate this information to SDWIS to obtain a national estimate of mixed systems. CWSS data, from approximately 1,900 systems, details sources of supply at the level of the entry point to the distribution system and further subdivides flow by source type. The Agency is considering this national estimate of mixed systems to regroup surface water systems for certain impact analyses when regulations only impact one type of source. For example, surface water systems that get more than fifty percent of their flow from ground water would be counted as a ground water system in the regulatory impact analysis for this rule. The Agency requests comment on this methodology and its applicability for use in regulatory impact analysis.

VII. Other Requirements

A. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et seq.

1. Background

The RFA, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

2. Use of Alternative Definition

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, "which are appropriate to the activities of the agency" after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. secs. 601(3)–(5). In addition to the above, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

EPA is proposing the LT1FBR which contains provisions which apply to small PWSs serving fewer than 10,000 persons. This is the cut-off level specified by Congress in the 1996 Amendments to the Safe Drinking Water Act for small system flexibility provisions. Because this definition does not correspond to the definitions of "small" for small businesses, governments, and non-profit organizations, EPA requested comment on an alternative definition of "small entity" in the preamble to the proposed Consumer Confidence Report (CCR) regulation (63 FR 7620, February 13, 1998). Comments showed that stakeholders support the proposed alternative definition. EPA also consulted with the SBA Office of Advocacy on the definition as it relates to small business analysis. In the preamble to the final CCR regulation (63 FR 4511, August 19, 1998). EPA stated its intent to establish this alternative definition for regulatory flexibility assessments under the RFA for all drinking water regulations and has thus used it in this proposed rulemaking.

In accordance with Section 603 of the RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) that examines the impact of the proposed rule on small entities along with regulatory alternatives that could reduce that impact. The IRFA is available for review in the docket and is summarized below.

3. Initial Regulatory Flexibility Analysis

As part of the 1996 amendments to the Safe Drinking Water Act (SDWA), Congress required the U.S. Environmental Protection Agency (EPA) to develop a Long Term Stage 1 Enhanced Surface Water Treatment Rule (LT1ESWTR) under Section 1412(b)(2)(C) which focuses on surface water drinking water systems that serve fewer than 10,000 persons. Congress also required EPA to develop a companion Filter Backwash Recycle Rule (FBRR) under Section 1412(b)(14) which will require that all surface water public water systems, regardless of size, meet new requirements governing the recycle of filter backwash within the drinking water treatment process. The goal of both the LT1ESWTR and the related FBRR is to provide additional protection from disease-causing microbial pathogens for community and non-community public water systems (PWSs) utilizing surface water.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined by systems serving fewer than 10,000 people. The small entities directly regulated by this proposed rule are surface water and systems using ground water under the direct influence of surface water (GWUDI), using filtration and serving fewer than 10,000 people. We have determined that the final rule would result in approximately 2,400 systems needing capital improvement to meet the turbidity requirements, approximately 3,360 systems would need to significantly change their

disinfection practices, and approximately 790 systems would need to make capital improvements to change the location of return of their filter backwash recycle stream. A discussion of the impacts on small entities is described in more detail in chapters six and seven of the Regulatory Impact Analysis of the LT1FBR (EPA, 1999).

The following recordkeeping and reporting burdens were projected in the IRFA:

Turbidity Monitoring and Reporting Costs

Utility monitoring activities at the plant level include data collection, data review, data reporting and monthly reporting to the State. The labor burden hours for data collection and review were calculated under the assumption that plants are using on-line monitoring, in the form of a SCADA or other automated data collection system. The data collection process requires that a plant engineer gather and organize turbidimeter readings from the SCADA output and enter them into either a spreadsheet or a log once per 8-hour shift (three times per day).

After data retrieval, the turbidity data from each turbidimeter will be reviewed by a plant engineer once per 8-hour shift (three times per day) to ensure that the filters are functioning properly and are not displaying erratic or exceptional patterns. A monthly summary data report would be prepared. This task involves the review of daily spreadsheets and the compilation of a summary report. It is assumed to take one employee 8 hours per month to prepare. Recordkeeping is expected to take 5 hours per month. Recordkeeping entails organizing daily monitoring spreadsheets and monthly summary reports.

Plant-level data will also be reviewed monthly at the system level to ensure that each plant in a system is in compliance with the rule. A system-level manager or technical worker will review the daily monitoring spreadsheets and monthly summary reports that are generated at the plant level. This task is estimated to take about 4 hours per month. Once the plant-level data have been reviewed, the system manager or technical worker will also compile a monthly system summary report. These reports are estimated to take 4 hours each month to prepare.

Disinfection Benchmarking Monitoring and Reporting Costs

It is assumed that all Subpart H systems currently collect the daily inactivation data required to generate a disinfection profile, in either an electronic or paper format, and therefore would not incur additional data collection expenses due to microbial profiling. Costs per plant are divided into costs per plant using paper data, costs per plant using mainframe data and costs per plant using PC data. Plants with paper data were assumed to represent half of the number of plants needing benchmarking, while plants with mainframe and plants with PC data each represent a quarter.

Filter Backwash Monitoring and Reporting Costs

The proposed requirements are as follows: All subpart H systems, regardless of size, that use conventional rapid granular filtration, and that return spent filter backwash, thickener supernatant, or liquids from dewatering process to submit a schematic diagram to the State showing their intended changes to move the return location above the point of primary coagulant addition.

All subpart H systems, regardless of size, that use conventional rapid granular filtration and employ 20 or fewer filters during the highest production month and that use direct recycling, to perform a self assessment of their recycle practice and report the results to the State.

All subpart H systems, regardless of system size that use direct filtration must submit a report of their recycling practices to the State. The State would then determine whether changes in recycling practices were warranted.

EPA believes that the skill level required for compliance with all of the above recordkeeping, reporting and other compliance activities are similar or equivalent to the skill level required to pass the first level of operator certification required by most States.

Relevant Federal Rules

EPA has issued a Stage 1 Disinfectants/Disinfection Byproducts Rule (DBPR) along with an Interim Enhanced Surface Water Treatment Rule (IESWTR) in December 1998, as required by the Safe Drinking Water Act Amendments of 1996. EPA proposed these rules in July 1994. The Stage 1 DBPR includes a THM MCL of 0.080 mg/L (reduced from the existing THM MCL of 0.10 mg/L established in 1979) and an MCL of 0.060 mg/L for five haloacetic acids (another group of chlorination) as well as MCLs for chlorite (1.0 mg/L) and bromate (0.010 mg/L) byproducts. The Stage 1 DBPR also finalized MRDLs for chlorine (4 mg/L as Cl_2), chloramine (4 mg/L as Cl_2) and chlorine dioxide (0.8 mg/L as ClO_2).

In addition, the Stage 1 DBPR includes requirements for enhanced coagulation to reduce the concentration of TOC in the water and thereby reduce DBP formation potential. The IESWTR was proposed to improve control of microbial pathogens and to control potential risk trade-offs related to the need to meet lower DBP levels under the Stage 1 DBPR.

None of these regulations duplicate, overlap or conflict with this proposed rule.

Significant Alternatives

As a result of consultations during the SBREFA process, and public meetings held subsequently, EPA has developed several alternative options to those presented in the IRFA, and has selected preferred alternatives for each of the turbidity, disinfection benchmarking and filter backwash recycle provisions. These alternatives were developed based on feedback from small system operators and trade associations and are designed to protect public health, while minimizing the burden to small systems. In summary, the proposed turbidity requirements are structured to require recordkeeping once a week as opposed to daily which was written in the IRFA; the proposed disinfection profile requirements are structured to be taken once per week, as opposed to daily which was written in the IRFA; and the filter backwash requirements have been scaled back significantly from those included in the IRFA, *i.e.* a ban on recycle is no longer being considered, nor are several treatment techniques now being considered that were in the IRFA prior to discussions with stakeholders. The provisions being proposed are: systems that recycle will be required to return recycle flows prior to the rapid mix unit; direct recycle systems will need to perform a self assessment to determine whether capacity is exceeded during recycle events, and States will determine whether recycle practices need to be changed based on the self-assessment; and direct filtration systems will need to report their recycle practices to the State, which will determine whether changes to recycle practices are required.

4. Small Entity Outreach and Small Business Advocacy Review Panel

As required by section 609(b) of the RFA, as amended by SBREFA, EPA also conducted outreach to small entities and convened a Small Business Advocacy Review Panel to obtain advice and recommendations of representatives of the small entities that potentially would be subject to the rule's

requirements. The SBAR Panel produced two final reports; one for the LT1 provisions and the other for the filter backwash provisions. Although the LT1 and filter backwash provisions have since been combined into the same rule, the projected economic impact of the provisions have not significantly changed, and the relevance of SERs' comments has not been affected.

The Agency invited 24 SERs to participate in the SBREFA process, and 16 agreed to participate. The SERs were provided with background information on the Safe Drinking Water Act and the LT1FBR in preparation for a teleconference on April 28, 1998. This information package included data on options as well as preliminary unit costs for treatment enhancements under consideration. Eight SERs provided comments on these materials.

On August 25, 1998, EPA's Small Business Advocacy Chair person convened the Panel under section 609(b) of the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). In addition to its chairperson, the Panel consisted of the Director of the Standards and Risk Management Division of the Office of Ground Water and Drinking Water within EPA's Office of Water, the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel for Advocacy of the Small Business Administration. The SBAR Panels reports, Final Report of the SBREFA Small Business Advocacy Review Panel on EPA's Planned Proposed Rule: Long Term 1 Enhanced Surface Water Treatment (EPA, 1998k) and the Final Report of the SBREFA Small Business Advocacy Review Panel on EPA's Planned Proposed Rule: Filter Backwash Recycling (EPA, 1998l), contain the SERs comments on the components of the LT1FBR.

The SERs were provided with additional information on potential costs related to LT1FBR regulatory options during teleconferences on September 22 and 25, 1998. Nine SERs provided additional comments during the September 22 teleconference, four SERs provided additional comments during the September 25 teleconference, and three SERs provided written comment on these materials.

In general, the SERs that were consulted on the LT1FBR were concerned about the impact of the proposed rule on small water systems (because of their small staff and limited budgets), small systems' ability to acquire the technical and financial capability to implement requirements, and maintaining flexibility to tailor requirements to the needs and limitations of small systems. Consistent with the RFA/SBREFA requirements, the Panel evaluated the assembled materials and small-entity comments on issues related to the elements of the IRFA. The background information provided to the SBAR Panel and the SERs are available for review in the water docket. A copy of the Panel report is also included in the docket for this proposed rule. The Panel's recommendations to address the SERs concerns are described next.

a. Number of Small Entities Affected

When the IRFA was prepared, EPA initially estimated that there were 5,165 small public water systems that use surface water or GWUDI. A more detailed discussion of the impact of the proposed rule and the number of entities affected is found in Section VI. None of the commenters questioned the information provided by EPA on the number and types of small entities which may be impacted by the LT1FBR. This information is based upon the national Safe Drinking Water Information System (SDWIS) database, which contains data on all public water systems in the country. The Panel believed this was a reasonable data source to characterize the number and types of systems impacted by the proposed rule.

b. Recordkeeping and Reporting

The Panel noted that some small systems are operated by a sole, part time operator with many duties beyond operating and maintaining the drinking water treatment system and that several components of the proposed rule may require significant additional operator time to implement. These included disinfection profiling, individual filter monitoring, and ensuring that short-term turbidity spikes are corrected quickly.

One SER stated that assumptions can be made that small systems will have to add an additional person to comply with the monitoring and recordkeeping portions of the rule. Another SER commented that the most viable and economical option would be to use circuit riders (a trained operator who travels between plants) to fill staffing needs, but the LT1FBR would increase the amount of time that a circuit rider would be required to spend at each plant. An additional option recommended by several SERs to reduce monitoring burden and cost was to allow the use of one on-line turbidimeter to measure several filters. This would entail less frequent monitoring of each filter but might still be adequate to ensure that individual filter performance is maintained.

The proposed LT1FBR takes into consideration the recordkeeping and reporting concerns identified by the Panel and the SERs. For example, initially the Agency considered requiring systems to develop a profile of individual filter performance. Based on concerns from the SERs this requirement was eliminated. In addition, the Agency initially considered requiring operators to record pH, temperature, residual chlorine and peak hourly flow every day. This requirement has been scaled back to once per week to meet difficulties faced by small system operators. Finally, in today's proposed rule the Agency is requesting comment on a modification to allow one on-line turbidimeter instead of several to be used at the smallest size systems (systems serving fewer than 100 people).

c. Interaction With Other Federal Rules

The Panel noted that the LT1FBR and Stage 1 DBP rules will affect small systems virtually simultaneously and that the Agency should analyze the net impact of these rules and consider regulatory options that would minimize the impact on small systems.

One SER commented that any added responsibility or workload due to regulations will have to be absorbed by him and his staff. He noted that many systems, including his own, are losing staff through attrition and are unable to hire replacements. The SER stated that he hoped the Panel was aware of the volume of rules and regulations to which small systems are currently subject. As an example, the SER stated that he had spent a week's time collecting samples for the mandated tests of the Lead and Copper rule. He noted that the sampling had delayed important maintenance to his system by over a month.

The Agency considered these comments when developing the requirements of today's proposed rule, and developed the alternatives with the realization that small systems will be required to implement several rules in a short time frame. In today's proposed rule, the preferred options attempt to minimize the impact on small systems by reducing the amount of monitoring and the amount of operator's time necessary to collect and analyze data. For example, under the IESWTR, large systems are required to monitor disinfection byproducts for 1 year to determine whether or not they must develop a disinfection profile (based on

daily measurements of operating conditions). In response to SERs concerns, the Agency is proposing to eliminate the requirement for disinfection byproduct monitoring all together. Under the proposed requirements, all systems would develop a disinfection profile based on weekly measurements of operating parameters for 1 year. Overall, this will save small system operators both time and money. The proposed rule also requests comment on several additional strategies for reducing impacts.

d. Significant Alternatives

During the SBAR panel several alternatives were discussed with the Panel and SERs. These alternatives and the Panel's recommendations are discussed next.

i. Turbidity Provisions

During the SBAR Panel, the Agency presented the IESWTR turbidity provisions as appropriate components for the LT1FBR. The Panel noted that one SER commented that it was a fair assumption that turbidity up to 1 NTU maximum and 0.3 NTU in 95% of all monthly samples is a good indicator of two log removal of *Cryptosporidium*, but stressed the need to allow operators adequate time to respond to exceedances in automated systems. They were referring to the fact the small system operators are often away from the plant performing other duties, and cannot respond immediately if the turbidity levels exceed a predetermined level. The Panel recommended that EPA consider this limitation when developing reporting and recordkeeping requirements.

The Panel also noted that another SER agreed that lowered turbidity level is a good indicator of overall plant performance but thought the 0.3 NTU limit for the 95th percentile reading was too low in light of studies which appear to show variability and inaccuracies in low level turbidity measurements. This SER referenced specific data suggesting that current equipment used to measure turbidity levels below the 0.3 NTU may nonetheless give readings above 0.3 which would put the system out of compliance. EPA has evaluated this issue in the context of the 1997 IESWTR FACA negotiations and believes that readings below the 0.3 NTU are reliable. Moreover, EPA notes that the SERs' concern was based on raw performance evaluation data that had not been fully analyzed.

Finally, the Panel recognized that several SERs supported individual filter monitoring, provided there was flexibility for short duration turbidity spikes. Other SERs, however, noted that the assumption that individual filter monitoring was necessary was unreasonable. The Panel recommended that EPA consider the likelihood and significance of short duration spikes (*i.e.*, during the first 15–30 minutes of filter operation) when evaluating the frequency of individual filter monitoring and reporting requirements and the number and types of exceedances that will trigger requirements for Comprehensive Performance Evaluations (CPEs). The Panel also noted the concern expressed by several SERs that individual filter monitoring may not be practical or feasible in all situations.

The Agency has structured today's proposed rule with an emphasis on providing flexibility for small systems. The individual filter provisions have been tailored to be easier to understand and implement and require less data analysis. For example, the operator can look at monitoring data once per week under this rule, as opposed to having to review turbidity data every day as the larger systems are required to do. The proposed rule also requests comment on several modifications to provide additional flexibility to small systems.

ii. Disinfection Benchmarking: Applicability Monitoring Provisions

None of the SERs commented specifically on the applicability monitoring provisions which are designed to identify systems that may consider cutting back on their disinfection doses in order to avoid problems with disinfection byproducts formation. The Panel noted, however, that burden on small systems might be reduced if alternative applicability monitoring provisions were adopted. In consideration of the Panel's suggestions, the Agency first considered limiting the applicability monitoring, and has now eliminated this requirement from the proposal. It is optional, however, for systems who believe their disinfection byproduct levels are below 80% of the MCL—as required under the Stage 1 DBPR.

The Panel noted SER comments that monitoring and computing *Giardia lamblia* inactivation on a daily basis for a year would place a heavy burden on operators that may only staff the plant for a few hours per day. The Panel therefore recommended that EPA consider alternative profiling strategies which ensure adequate public health protection, but will minimize monitoring and recordkeeping requirements for small system operators.

The Agency considered several alternatives to the profile development strategies, and decided to propose that systems perform the necessary monitoring and record the results once per week, instead of every day as the larger systems are required to do. This will significantly reduce burden and costs for small systems.

iii. Recycling Provisions

During the SBAR Panel, the Agency proposed several alternatives for consideration in the LT1FBR including a ban on recycle, a requirement to return recycle flow to the head of the plant, recycle flow equalization, and recycle flow treatment. The Panel noted the concern of the SERs regarding a ban on the recycle of filter backwash water. These concerns included the expense of filter backwash disposal and the economic and operational concerns of western and southwestern drinking water systems which depend on recycled flow to maintain adequate supply. The Panel strongly recommended that EPA explore alternatives to an outright ban on the recycle of filter backwash and other recycle flows.

The Panel noted that SERs supported a requirement that all recycled water be reintroduced at the head of the plant. This was considered an element of sound engineering practice. The Panel recommended that EPA consider including such a requirement in the proposed rule, and investigate whether there are small systems for which such a requirement would present a significant financial and operational burden.

The Panel noted that SERs agreed with the appropriateness of flow equalization for filter backwash. The Panel supported the concept of flow equalization as a means to minimize hydraulic surges that may be caused by recycle and the reintroduction of a large number of *Cryptosporidium* oocysts or other pathogenic contaminants to the plant in a brief period of time. The Panel noted that there are various ways of achieving flow equalization and suggested that specific requirements remain flexible.

The Panel noted the concerns of SERs regarding installation of treatment, solely for the purpose of treating filter backwash water and/or recycle streams may be costly and potentially prohibitive for small systems. The Agency addressed this concern by allowing the States to determine whether recycle flow equalization or treatment is necessary based on the results of the self assessment prepared by the system rather than requiring universal flow equalization or treatment. This will allow site-specific

factors to be considered and help minimize cost and burden.

e. Other Comments

The Panel also noted the concern of several SERs that flexibility be provided in the compliance schedule of the rule. SERs noted the technical and financial limitations that some small systems will have to address, the significant learning curve for operators with limited experience, and the need to continue providing uninterrupted service as reasons why additional compliance time may be needed for small systems. The panel encouraged EPA to keep these limitations in mind in developing the proposed rule and provide as much compliance flexibility to small systems as is allowable under the SDWA. We invite comments on all aspects of the proposal and its impacts on small entities.

The Agency structured the timing of the LT1ESWTR provisions specifically to follow the promulgation of the IESWTR. Since the IESWTR served as a template for the establishment of the LT1ESWTR provisions, the Agency decided that small systems would have an advantage by giving them an opportunity to see what was in the rule, and how it was implemented by larger systems.

Under SDWA, systems have 3 years to comply with the requirements of the final rule. If capital improvements are necessary for a particular PWS, a State may allow the system up to an additional 2 years to comply with the regulation. The Agency is developing guidance manuals to assist the compliance efforts of small entities.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1928.01) and a copy may be obtained from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. For technical information about the collection contact Jini Mohanty by calling (202) 260–6415.

The information collected as a result of this rule will allow the States and EPA to determine appropriate requirements for specific systems, in some cases, and to evaluate compliance with the rule. For the first three years after the effective date (six years after promulgation) of the LT1FBR, the major information requirements are (1) monitor filter performance and submit any exceedances of turbidity requirements (*i.e.* exceptions reports) to the State; (2) develop a 1 month recycle monitoring plan and submit both plan and results to the State; (3) submit flow monitoring plan and results to the State; and (4) report data on current recycle treatment (self assessment) to the State. The information collection requirements in Part 141, for systems, and Part 142, for States are mandatory. The information collected is not confidential.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The preliminary estimate of aggregate annual average burden hours for LT1FBR is 311,486. Annual average aggregate cost estimate is $10,826,919 for labor, $2,713,815 for capital, and $1,898,596 for operation and maintenance including lab costs which is a purchase of service. The burden hours per response is 18.9. The frequency of response (average responses per respondent) is 2.7 annually. The estimated number of likely respondents is 6,019 (the product of burden hours per response, frequency, and respondents does not total the annual average burden hours due to rounding). Most of the regulatory provisions discussed in this notice entail new reporting and recordkeeping requirements for States, Tribes, and members of the regulated public. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after April 10, 2000, a comment to OMB is best assured of having its full effect if OMB receives it by May 10, 2000. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Unfunded Mandates Reform Act

1. Summary of UMRA requirements

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under UMRA section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule, for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notification to potentially affected small governments, enabling officials of

affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and informing, educating, and advising small governments on compliance with the regulatory requirements.

2. Written Statement for Rules With Federal Mandates of $100 Million or More

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for the State, local and Tribal governments, in the aggregate, or the private sector in any one year. Thus today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. Nevertheless, since the estimate of annual impact is close to $100 million under certain assumptions EPA has prepared a written statement, which is summarized below, even though one is not required. A more detailed description of this analysis is presented in EPA's Regulatory Impact Analysis of the LT1FBR (EPA, 1999h) which is available for public review in the Office of Water docket under docket number W–99–10. The document is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket is located in room EB 57, USEPA Headquarters, 401 M St. SW, Washington, D.C. 20460. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

a. Authorizing Legislation

Today's rule is proposed pursuant to Section 1412 (b)(2)(C) and 1412(b)(14) of the SDWA. Section 1412 (b)(2)(C) directs EPA to establish a series of regulations including an interim and final enhanced surface water treatment rule. Section 1412(b)(14) directs EPA to promulgate a regulation to govern the recycling of filter backwash water. EPA intends to finalize the LT1FBR in the year 2000 to allow systems to consider the dual impact of this rule and the Stage 1 DBP rule on their capital investment decisions.

b. Cost Benefit Analysis

Section VI of this preamble discusses the cost and benefits associated with the LT1FBR. Also, the EPA's Regulatory Impact Analysis of the LT1FBR (EPA, 1999h) contains a detailed cost benefit analysis. Today's proposal is expected to have a total annualized cost of approximately $ 97.5 million using a 7 percent discount rate. At a 3 percent discount rate the annualized costs drop to $87.6 million. The national cost estimate includes cost for all of the rule's major provisions including turbidity monitoring, disinfection benchmarking monitoring, disinfection profiling, covered finished storage, and recycling. The majority of the costs for this rule will be incurred by the public sector. A more detailed discussion of these costs is located in Section VI of this preamble.

In addition, the regulatory impact analysis includes both monetized benefits and descriptions of unquantified benefits for improvements to public health and safety the rule will achieve. Because of scientific uncertainty regarding LT1FBR's exposure and risk assessment, the Agency has used Monte Carlo methods and sensitivity analysis to assess the quantified benefits of today's rule. The monetary analysis was based upon quantification of the number of cryptosporidiosis illnesses avoided due to improved particulate removal that results from the turbidity provisions. The Agency was not able to monetize the benefits from the other rule provisions such as disinfection benchmarking and covered finished storage. The monetized annual benefits of today's rule range from $70.1 million to $259.4 million depending on the baseline and removal assumptions. Better management of recycle streams required by the proposal also result in nonquantifiable health risk reductions from disinfection resistant pathogens. The rule may also decrease illness caused by *Giardia* and other emerging disinfection resistant pathogens, further increasing the benefits.

Several non-health benefits from this rule were also identified by EPA but were not monetized. The non-health benefits of this rule include outbreak response costs avoided, and possibly reduced uncertainty and averting behavior costs. By adding the non-monetized benefits with those that are monetized, the overall benefits of this rule increase beyond the dollar values reported.

Various Federal programs exist to provide financial assistance to State, local, and Tribal governments in complying with this rule. The Federal government provides funding to States that have primary enforcement responsibility for their drinking water programs through the Public Water Systems Supervision Grants program. Additional funding is available from other programs administered either by EPA, or other Federal Agencies. These include EPA's Drinking Water State Revolving Fund (DWSRF), U.S. Department of Agriculture's Rural Utilities' Loan and Grant Program, and Housing and Urban Development's Community Development Block Grant Program.

For example, SDWA authorizes the Administrator of the EPA to award capitalization grants to States, which in turn can provide low cost loans and other types of assistance to eligible public water systems. The DWSRF helps public water systems finance the cost of infrastructure necessary to achieve or maintain compliance with SDWA requirements. Each State has considerable flexibility to design its program and to direct funding toward the most pressing compliance and public health protection needs. States may also, on a matching basis, use up to ten percent of their DWSRF allotments each fiscal year to run the State drinking water program.

Furthermore, a State can use the financial resources of the DWSRF to assist small systems. In fact, a minimum of 15% of a State's DWSRF grant must be used to provide infrastructure loans to small systems. Two percent of the State's grant may be used to provide technical assistance to small systems. For small systems that are disadvantaged, up to 30% of a State's DWSRF may be used for increased loan subsidies. Under the DWSRF, Tribes have a separate set-aside which they can use. In addition to the DWSRF, money is available from the Department of Agriculture's Rural Utility Service (RUS) and Housing and Urban Development's Community Block Grant (CDBG) program. RUS provides loans, guaranteed loans, and grants to improve, repair, or construct water supply and distribution systems in rural areas and towns up to 10,000 people. In fiscal year 1997, the RUS had over $1.3 billion in available funds. Also, three sources of funding exist under the CDBG program to finance building and improvements of public faculties such as water systems. The three sources of funding include: (1) Direct grants to communities with populations over 200,000; (2) direct grants to States, which they in turn award to smaller communities, rural areas, and colonias in Arizona, California, New Mexico, and Texas; and (3) direct grants to US. Territories and Trusts. The CDBG budget for fiscal year 1997 totaled over $4 billion dollars.

c. Estimates of Future Compliance Costs and Disproportionate Budgetary Effects

To meet the UMRA requirement in section 202, EPA analyzed future compliance costs and possible disproportionate budgetary effects. The Agency believes that the cost estimates, indicated previously and discussed in

more detail in Section VI of this preamble, accurately characterize future compliance costs.

In analyzing the disproportionate impacts, EPA considered four measures:

(1) The impacts of small versus large systems and the impacts within the five small system size categories;

(2) The costs to public versus private water systems;

(3) The costs to households, and;

(4) The distribution of costs across States.

First, small systems will experience a greater impact than large systems under LT1FBR because large systems are subject only to the recycle provisions. The Interim Enhanced Surface Water Treatment Rule (IESWTR) promulgated turbidity, benchmarking, and covered finished storage provisions for large systems in December, 1998. However, small systems have realized cost savings over time due to their exclusion from the IESWTR. Also, some provisions in the LT1FBR have been modified so they would not be as burdensome for small systems. Further information on these changes can be found in section VII.A.3.of this proposal.

The second measure of impact is the relative total cost to privately owned water systems compared to the incurred by publicly owned water systems. A majority of the systems are publicly owned (60 percent of the total). As a result, publicly owned systems will incur a larger share of the total costs of the rule.

The third measure, household costs, is described in further detail in VI.E of this preamble. The fourth measure, distribution of costs across States, is described in greater detail in the RIA for today's proposed rule (EPA, 1999h). There is nothing to suggest that costs to individual systems would vary significantly from State to State, but as expected, the States with the greatest number of systems experience the greatest costs.

d. Macro-Economic Effects

As required under UMRA Section 202, EPA is required to estimate the potential macro-economic effects of the regulation. These types of effects include those on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness. Macro-economic effects tend to be measurable in nationwide econometric models only if the economic impact of the regulation reaches 0.25 percent to 0.5 percent of Gross Domestic Product (GDP). In 1998, real GDP was $7,552 billion. This proposal would have to cost at least $18 billion to have a measurable effect. A regulation of less cost is unlikely to have any measurable effect unless it is highly focused on a particular geographic region or economic sector. The macro-economic effects on the national economy from LT1FBR should not have a measurable effect because the total annual cost of the preferred option is approximately $ 97.5 million per year (at a seven percent discount rate). The costs are not expected to be highly focused on a particular geographic region or sector.

e. Summary of EPA's Consultation with State, Local, and Tribal Governments and Their Concerns

Consistent with the intergovernmental consultation provisions of section 204 of UMRA EPA has already initiated consultation with the governmental entities affected by this rule.

EPA began outreach efforts to develop the LT1FBR in the summer of 1998. Two public stakeholder meetings, which were announced in the **Federal Register**, were held on July 22–23, 1998, in Lakewood, Colorado, and on March 3–4, 1999, in Dallas, Texas. In addition to these meetings, EPA has held several formal and informal meetings with stakeholders including the Association of State Drinking Water Administrators. A summary of each meeting and attendees is available in the public docket for this rule. EPA also convened a Small Business Advocacy Review (SBAR) Panel in accordance with the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) to address small entity concerns including those of small local governments. The SBAR Panel allows small regulated entities to provide input to EPA early in the regulatory development process. In early June, 1999, EPA mailed an informal draft of the LT1FBR preamble to the approximately 100 stakeholders who attended one of the public stakeholder meetings. Members of trade associations and the SBREFA Panel also received the draft preamble. EPA received valuable comments and stakeholder input from 15 State representatives, trade associations, environmental interest groups, and individual stakeholders. The majority of concerns dealt with reducing burden on small systems and maintaining flexibility. After receipt of comments, EPA made every effort to make modifications to address these concerns.

To inform and involve Tribal governments in the rulemaking process, EPA presented the LT1FBR at three venues: the 16th Annual Consumer Conference of the National Indian Health Board, the annual conference of the National Tribal Environmental Council, and the OGWDW/Inter Tribal Council of Arizona, Inc. tribal consultation meeting. Over 900 attendees representing tribes from across the country attended the National Indian Health Board's Consumer Conference and over 100 tribes were represented at the annual conference of the National Tribal Environmental Council. At both conferences, an OGWDW representative conducted two workshops on EPA's drinking water program and upcoming regulations, including the LT1FBR.

At the OGWDW/Inter Tribal Council of Arizona meeting, representatives from 15 tribes participated. The presentation materials and meeting summary were sent to over 500 tribes and tribal organizations. Additionally, EPA contacted each of our 12 Native American Drinking Water State Revolving Fund Advisors to invite them, and representatives of their organizations to the stakeholder meetings described previously. A list of tribal representatives contacted can be found in the docket for this rule.

The primary concern expressed by State, local and Tribal governments is the difficulty the smallest systems will encounter in adequately staffing drinking water treatment facilities to perform the monitoring and reporting associated with the new requirements. Today's proposal attempts to minimize the monitoring and reporting burden to the greatest extent feasible and still accomplish the rule's objective of protecting public health. The Agency believes the monitoring and reporting requirements are necessary to ensure consumers served by small systems receive the same level of public health protection as consumers served by large systems. Summaries of the meetings have been included in the public docket for this rulemaking.

f. Regulatory Alternatives Considered

As required under Section 205 of the UMRA, EPA considered several regulatory alternatives for individual filter monitoring and disinfection benchmarking, as well as several alternative strategies for addressing recycle practices. A detailed discussion of these alternatives can be found in Section IV and also in the RIA for today's proposed rule (EPA, 1999h). Today's proposal also seeks comment on several regulatory alternatives that EPA will consider for the final rule.

g. Selection of the Least Costly, Most-Cost Effective or Least Burdensome Alternative That Achieves the Objectives of the Rule

As discussed previously, EPA has considered and requested comment on various regulatory options that would reduce *Cryptosporidium* occurrence in the finished water of surface water systems. The Agency believes that the preferred option for turbidity performance, disinfection benchmarking, and recycle management are the most cost effective combination of options to achieve the rule's objective; the reduction of illness and death from *Cryptosporidium* occurrence in the finished water of PWSs using surface water. The Agency will carefully review comments on the proposal and assess suggested changes to the requirements.

3. Impacts on Small Governments

In developing this proposal, EPA consulted with small governments to address impacts of regulatory requirements in the rule that might significantly or uniquely affect small governments. As discussed previously, a variety of stakeholders, including small governments, were provided the opportunity for timely and meaningful participation in the regulatory development process through the SBREFA panel, public stakeholder and Tribal meetings. EPA used these processes to notify potentially affected small governments of regulatory requirements being considered and provided officials of affected small governments with an opportunity to have meaningful and timely input to the regulatory development process.

In addition, EPA will educate, inform, and advise small systems, including those run by small governments, about LT1FBR requirements. One of the most important components of this outreach effort will be the Small Entity Compliance Guide, required by the Small Business Regulatory Enforcement Fairness Act of 1996. This plain-English guide will explain what actions a small entity must take to comply with the rule. Also, the Agency is developing fact sheets that concisely describe various aspects and requirements of the LT1FBR and detailed guidance manuals to assist the compliance effort of PWSs and small government entities.

D. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's rule requires the use of previously approved technical standards for the measurement of turbidity. In previous rulemakings, EPA approved three methods for measuring turbidity in drinking water. These can be found in 40 CFR, Part 141.74 (a). Turbidity is a method-defined parameter and therefore modifications to any of the three approved methods requires prior EPA approval. One of the approved methods was published by the Standard Methods Committee of American Public Health Association, the American Water Works Association, and the Water Environment Federation, the latter being a voluntary consensus standard body. That method, Method 2130B (APHA, 1995), is published in Standard Methods for the Examination of Water and Wastewater (19th ed.). Standard Methods is a widely used reference which has been peer-reviewed by the scientific community. In addition to this voluntary consensus standard, EPA approved two additional methods for the measurement of turbidity. One is the Great Lakes Instrument Method 2, which can be used as an alternate test procedure for the measurement of turbidity (Great Lakes Instruments, 1992). Second, the Agency approved revised EPA Method 180.1 for turbidity measurement in August 1993 in Methods for the Determination of Inorganic Substances in Environmental Samples (EPA–600/R–93–100) (EPA, 1993).

In 1994, EPA reviewed and rejected an additional technical standard, a voluntary consensus standard, for the measurement of turbidity, the ISO 7027 standard, an analytical method which measures turbidity at a higher wavelength than the approved test measurement standards. ISO 7027 measures turbidity using either 90° scattered or transmitted light depending on the turbidity concentration evaluated. Although instruments conforming to ISO 7027 specifications are similar to the GLI instrument, only the GLI instrument uses pulsed, multiple detectors to simultaneously read both 90° scattered and transmitted light. EPA has no data upon which to evaluate whether the separate 90° scattered or transmitted light measurement evaluations, according to the ISO 7027 method, would produce results that are equivalent to results produced using GLI Method 2, Standard Method 2130B (APHA, 1995), or EPA Method 180.1 (EPA, 1993).

Today's proposed rule also requires continuous individual filter monitoring for turbidity and requires PWSs to calibrate the individual turbidimeter according to the turbidimeter manufacturer's instructions. These calibration instructions may constitute technical standards as that term is defined in the NTTAA. EPA has looked for voluntary consensus standards with regard to calibration of turbidimeters. The American Society for Testing and Materials (ASTM) is developing such voluntary consensus standards, however, there do not appear to be any voluntary consensus standards available at this time. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

EPA plans to implement in the future a performance-based measurement system (PBMS) that would allow the option of using either performance criteria or reference methods in its drinking water regulatory programs. The Agency is currently determining the specific steps necessary to implement PBMS in its programs and preparing an implementation plan. Final decisions have not yet been made concerning the implementation of PBMS in water programs. However, EPA is currently evaluating what relevant performance characteristics should be specified for monitoring methods used in the water programs under a PBMS approach to ensure adequate data quality. EPA would then specify performance requirements in its regulations to ensure that any method used for determination of a regulated analyte is at least equivalent to the performance achieved by other currently approved methods.

Once EPA has made its final determinations regarding implementation of PBMS in programs under the Safe Drinking Water Act, EPA would incorporate specific provisions of PBMS into its regulations, which may include specification of the performance characteristics for measurement of regulated contaminants in the drinking water program regulations.

E. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or;

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

F. Executive Order 12898: Environmental Justice

Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agency missions by directing agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. The Agency has considered environmental justice related issues concerning the potential impacts of this action and consulted with minority and low-income stakeholders.

This preamble has discussed many times how the IESWTR served as a template for the development of the LT1FBR. As such, the Agency also built on the efforts conducted during the IESWTRs development to comply with E.O. 12898. On March 12, 1998, the Agency held a stakeholder meeting to address various components of pending drinking water regulations and how they may impact sensitive sub-populations, minority populations, and low-income populations. Topics discussed included treatment techniques, costs and benefits, data quality, health effects, and the regulatory process. Participants included national, State, tribal, municipal, and individual stakeholders. EPA conducted the meetings by video conference call between eleven cities. This meeting was a continuation of stakeholder meetings that started in 1995 to obtain input on the Agency's Drinking Water Programs. The major objectives for the March 12, 1998 meeting were:

(1) Solicit ideas from stakeholders on known issues concerning current drinking water regulatory efforts;

(2) Identify key issues of concern to stakeholders, and;

(3) Receive suggestions from stakeholders concerning ways to increase representation of communities in OGWDW regulatory efforts.

In addition, EPA developed a plain-English guide specifically for this meeting to assist stakeholders in understanding the multiple and sometimes complex issues surrounding drinking water regulation.

The LT1FBR applies to community water systems, non-transient non-community water systems, and transient non-community water systems that use surface water or ground water under the direct influence (GWUDI) as their source water for PWSs serving less than 10,000 people. The recycle provisions apply to all conventional and direct surface water or GWUDI systems regardless of size.

EPA believes this rule will provide equal health protection for all minority and low-income populations served by systems regulated under this rule from exposure to microbial contamination. These requirements will also be consistent with the protection already afforded to people being served by systems with larger population bases.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: 1) is determined to be economically significant as defined under E.O. 12866, and; 2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

While this proposed rule is not subject to the Executive Order because it is not economically significant as defined by E.O. 12866, we nonetheless have reason to believe that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. Accordingly, EPA evaluated available data on the health effect of *Cryptosporidium* on children. The results of this evaluation are contained in Section II.B of this preamble and in the LT1FBR RIA (EPA, 1999h). A copy of the RIA and supporting documents is available for public review in the Office of Water docket at 401 M St. SW, Washington, D.C.

The risk of illness and death due to cryptosporidiosis depends on several factors, including the age, nutrition, exposure, and the immune status of the individual. Information on mortality from diarrhea shows the greatest risk of mortality occurring among the very young and elderly (Gerba et al., 1996). Specifically, young children are a vulnerable population subject to infectious diarrhea caused by *Cryptosporidium* (CDC 1994). Cryptosporidiosis is prevalent worldwide, and its occurrence is higher in children than in adults (Fayer and Ungar, 1986).

Cryptosporidiosis appears to be more prevalent in populations that may not have established immunity against the disease and may be in greater contact with environmentally contaminated surfaces, such as infants (DuPont, et al., 1995). Once a child is infected it may spread the disease to other children or family members. Evidence of such secondary transmission of cryptosporidiosis from children to household and other close contacts has been found in many outbreak investigations (Casemore, 1990; Cordell et al., 1997; Frost et al., 1997). Chapell et al., 1999, found that prior exposure to *Cryptosporidium* through the ingestion of a low oocyst dose provides protection from infection and illness. However, it is not known whether this immunity is life-long or temporary. Data also indicate that either mothers confer short term immunity to their children or that babies have reduced exposure to *Cryptosporidium*, resulting in a decreased incidence of infection during the first year of life. For example, in a survey of over 30,000 stool sample analyses from different UK patients, the 1–5 year age group suffered a much higher infection rate than individuals less than one year of age. For children under one year of age, those older than

six months of age showed a higher rate of infection than individuals aged fewer than six months (Casemore, 1990).

EPA has not been able to quantify the differential health effects for children as a result of *Cryptosporidium*-contaminated drinking water. However, the result of the LT1FBR will be a reduction in the risk of illness for the entire population, including children. Furthermore, the available anecdotal evidence indicates that children may be more vulnerable to cryptosporidiosis than the rest of the population. The LT1FBR would, therefore, result in greater risk reduction for children than for the general population.

The public is invited to submit or identify peer-reviewed studies and data, of which EPA may not be aware, that assessed results of early life exposure to *Cryptosporidium*.

H. Consultations with the Science Advisory Board, National Drinking Water Advisory Council, and the Secretary of Health and Human Services

In accordance with section 1412 (d) and (e) of the SDWA, the Agency will consult with the National Drinking Water Advisory Council (NDWAC) and the Secretary of Health and Human Services and request comment from the Science Advisory Board on the proposed LT1FBR.

I. Executive Order 13132: Executive Orders on Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the final rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

EPA has concluded that this proposed rule may have federalism implications since it may impose substantial direct compliance costs on local governments, and the Federal government will not provide the funds necessary to pay those cost. Accordingly, EPA provides the following FSIS as required by section 6(b) of Executive Order 13132.

As discussed further in section VII.C.2.e, EPA met with a variety of State and local representatives, who provided meaningful and timely input in the development of the proposed rule. Summaries of the meetings have been included in the public record for this proposed rulemaking. EPA consulted extensively with State, local, and tribal governments. For example, two public stakeholder meetings were held on July 22–23, 1998, in Lakewood, Colorado, and on March 3–4, 1999, in Dallas, Texas. Several key issues were raised by stakeholders regarding the LT1 provisions, many of which were related to reducing burden and maintaining flexibility. The Office of Water was able to significantly reduce burden and increase flexibility by tailoring requirements to reduce monitoring, reporting, and recordkeeping requirements faced by small systems. These modifications and others aided in lowering the cost of the LT1FBR by $87 million (from $184.5 million to $97.5 million). It should be noted that this rule is important because it will reduce the level of *Cryptosporidium* in filtered finished drinking water supplies through improvements in filtration and recycle practices resulting in a reduced likelihood of outbreaks of cryptosporidiosis. The rule is also expected to increase the level of protection from exposure to other pathogens (i.e., *Giardia* and other waterborne bacterial or viral pathogens). Because consultation on this proposed rule occurred before the November 2, 1999 effective date of Executive Order 13132, EPA will initiate discussions with State and local elected officials regarding the implications of this rule during the public comment period.

J. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

EPA has concluded that this rule may significantly or unique affect the communities of Indian tribal governments. It may also impose substantial direct compliance costs on such communities. The Federal government will not provide the funds necessary to pay all the direct costs incurred by the Tribal governments in complying with the rule. In developing this rule, EPA consulted with representatives of Tribal governments pursuant to UMRA and Executive Order 13084. EPA held extensive meetings that provided Indian Tribal governments the opportunity for meaningful and timely input in the development of the proposed rule. Summaries of the meetings have been included in the public docket for this rulemaking. EPA's consultation, the nature of the government's concerns, and the position supporting the need for

this rule are discussed in Section VII.C.2.e, which addresses compliance with UMRA.

K. Likely Effect of Compliance with the LT1FBR on the Technical, Financial, and Managerial Capacity of Public Water Systems

Section 1420(d)(3) of the SDWA as amended requires that, in promulgating a NPDWR, the Administrator shall include an analysis of the likely effect of compliance with the regulation on the technical, financial, and managerial capacity of public water systems. This analysis can be found in the LT1FBR RIA (EPA, 1999h).

Overall water system capacity is defined in EPA guidance (EPA, 1998j) as the ability to plan for, achieve, and maintain compliance with applicable drinking water standards. Capacity has three components: technical, managerial, and financial.

Technical capacity is the physical and operational ability of a water system to meet SDWA requirements. Technical capacity refers to the physical infrastructure of the water system, including the adequacy of source water and the adequacy of treatment, storage, and distribution infrastructure. It also refers to the ability of system personnel to adequately operate and maintain the system and to otherwise implement requisite technical knowledge. A water system's technical capacity can be determined by examining key issues and questions, including:

- *Source water adequacy.* Does the system have a reliable source of drinking water? Is the source of generally good quality and adequately protected?
- *Infrastructure adequacy.* Can the system provide water that meets SDWA standards? What is the condition of its infrastructure, including well(s) or source water intakes, treatment, storage, and distribution? What is the infrastructure's life expectancy? Does the system have a capital improvement plan?
- *Technical knowledge and implementation.* Is the system's operator certified? Does the operator have sufficient technical knowledge of applicable standards? Can the operator effectively implement this technical knowledge? Does the operator understand the system's technical and operational characteristics? Does the system have an effective operation and maintenance program?

Managerial capacity is the ability of a water system to conduct its affairs to achieve and maintain compliance with SDWA requirements. Managerial capacity refers to the system's institutional and administrative capabilities. Managerial capacity can be assessed through key issues and questions, including:

- *Ownership accountability.* Are the system owner(s) clearly identified? Can they be held accountable for the system?
- *Staffing and organization.* Are the system operator(s) and manager(s) clearly identified? Is the system properly organized and staffed? Do personnel understand the management aspects of regulatory requirements and system operations? Do they have adequate expertise to manage water system operations? Do personnel have the necessary licenses and certifications?
- *Effective external linkages.* Does the system interact well with customers, regulators, and other entities? Is the system aware of available external resources, such as technical and financial assistance?

Financial capacity is a water system's ability to acquire and manage sufficient financial resources to allow the system to achieve and maintain compliance with SDWA requirements. Financial capacity can be assessed through key issues and questions, including:

- *Revenue sufficiency.* Do revenues cover costs? Are water rates and charges adequate to cover the cost of water?
- *Credit worthiness.* Is the system financially healthy? Does it have access to capital through public or private sources?
- *Fiscal management and controls.* Are adequate books and records maintained? Are appropriate budgeting, accounting, and financial planning methods used? Does the system manage its revenues effectively?

Systems not making significant modifications to the treatment process to meet LT1FBR requirements are not expected to require significantly increased technical, financial, or managerial capacity.

L. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write its rules in plain language. We invite your comments on how to make this proposed rule easier to understand. For example: Have we organized the material to suit your needs? Are the requirements in the rule clearly stated? Does the rule contain technical language or jargon that is not clear? Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? Would shorter sections make the final rule easier to understand? Could we improve clarity by adding tables, lists, or diagrams? What else could we do to make the rule easier to understand?

VIII. Public Comment Procedures

EPA invites you to provide your views on this proposal, approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider. Many of the sections within today's proposed rule contain "Request for Comment" portions which the Agency is also interested in receiving comment on.

A. Deadlines for Comment

Send your comments on or before June 9, 2000. Comments received after this date may not be considered in decision making on the proposed rule. Again, comments must be received or post-marked by midnight June 9, 2000.

B. Where To Send Comment

Send an original and 3 copies of your comments and enclosures (including references) to W–99–10 Comment Clerk, Water Docket (MC4101), USEPA, 401 M, Washington, D.C. 20460. Comments may also be submitted electronically to ow-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII, WP5.1, WP6.1 or WP8 file avoiding the use of special characters and form of encryption. Electronic comments must be identified by the docket number W–99–10. Comments and data will also be accepted on disks in WP 5.1, 6.1, 8 or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Those who comment and want EPA to acknowledge receipt of their comments must enclose a self-addressed stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to ow-docket@epamail.epa.gov.

C. Guidelines for Commenting

To ensure that EPA can read, understand and therefore properly respond to comments, the Agency would prefer that commenters cite, where possible, the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Commenters should use a separate paragraph for each issue discussed. Note that the Agency is not soliciting comment on, nor will it respond to, comments on previously published regulatory language that is included in this notice to ease the reader's understanding of proposed language. You may find the following

suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide solid technical information and/or data to support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate.
5. Indicate what you support, as well as what you disagree with.
6. Provide specific examples to illustrate your concerns.
7. Make sure to submit your comments by the deadline in this proposed rule.
8. At the beginning of your comments (*e.g.*, as part of the "Subject" heading), be sure to properly identify the document you are commenting on. You can do this by providing the docket control number assigned to the proposed rule, along with the name, date, and **Federal Register** citation.

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List of Subjects

40 CFR Part 141

Environmental protection, Chemicals, Indians-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 142

Environmental protection, Administrative practice and procedure, Chemicals, Indians-lands, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: March 27, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, title 40 chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

3. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

4. Section 141.2 is amended by revising the definition of "Ground water under the direct influence of surface water" and "Disinfection profile" and adding the following definitions in alphabetical order to read as follows:

§ 141.2 Definitions.

* * * * *

Direct recycle is the return of recycle flow within the treatment process of a public water system without first passing the recycle flow through a treatment process designed to remove solids, a raw water storage reservoir, or some other structure with a volume equal to or greater than the volume of spent filter backwash water produced by one filter backwash event.

* * * * *

Disinfection profile is a summary of *Giardia* lamblia inactivation through the treatment plant, from the point of disinfectant application to the first customer. The procedure for developing a disinfection profile is contained in § 141.172 (Disinfection profiling and benchmarking) in subpart P and §§ 141.530–141.536 (Disinfection profile) in subpart T of this part.

* * * * *

Equalization is the detention of recycle flow in a structure with a volume equal to or greater than the volume of spent filter backwash produced by one filter backwash event.

* * * * *

Ground water under the direct influence of surface water (GWUDI) means any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia* or *Cryptosporidium*, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions. Direct influence must be determined for individual sources in accordance with criteria established by the State. The State determination of direct influence may be based on site-specific measurements of water quality and/or documentation of well construction characteristics and geology with field evaluation.

* * * * *

Membrane Filtration means any filtration process using tubular or spiral wound elements that exhibits the ability to mechanically separate water from other ions and solids by creating a pressure differential and flow across a membrane with an absolute pore size <1 micron.

* * * * *

Operating capacity is the maximum finished water production rate approved by the State drinking water program.

* * * * *

Recycle is the return of any water, solid, or semisolid generated by plant treatment processes, operational processes, maintenance processes, and residuals treatment processes into a PWS's primary treatment processes.

* * * * *

5. Section 141.32 is amended by revising paragraph (e)(10) to read as follows:

§ 141.32 Public notification.

* * * * *

(e) * * *

(10) *Microbiological contaminants* (for use when there is a violation of the treatment technique requirements for filtration and disinfection in subpart H, subpart P, or subpart T of this part). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of microbiological contaminants are a health concern at certain levels of exposure. If water is inadequately treated, microbiological contaminants in that water may cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and any associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. EPA has set enforceable requirements for treating drinking water to reduce the risk of these adverse health effects. Treatment such as filtering and disinfecting the water removes or destroys microbiological contaminants. Drinking water which is treated to meet EPA requirements is associated with little to none of this risk and should be considered safe.

* * * * *

6. Section 141.70 is amended by revising paragraph (b)(2) and adding paragraph (e) to read as follows:

§ 141.70 General requirements.

* * * * *

(b) * * *

(2) It meets the filtration requirements in § 141.73, the disinfection

requirements in § 141.72(b) and the recycle requirements in § 141.76.

* * * * *

(e) *Additional requirements for systems serving fewer than 10,000 people.* In addition to complying with requirements in this subpart, systems serving fewer than 10,000 people must also comply with the requirements in subpart T of this part.

7. Section 141.73 is amended by adding paragraph (a)(4) and revising paragraph (d) to read as follows:

§ 141.73 Filtration.

* * * * *

(a) * * *

(4) Beginning [DATE 36 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], systems serving fewer than 10,000 people must meet the turbidity requirements in §§ 141.550 through 141.553.

* * * * *

(d) *Other filtration technologies.* A public water system may use a filtration technology not listed in paragraphs (a) through (c) of this section if it demonstrates to the State, using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of § 141.72(b), consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts and 99.99 percent removal and/or inactivation of viruses. For a system that makes this demonstration, the requirements of paragraph (b) of this section apply. Beginning December 17, 2001, systems serving at least 10,000 people must meet the requirements for other filtration technologies in paragraph (b) of this section. Beginning [DATE 36 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER], systems serving fewer than 10,000 people must meet the requirements for treatment technologies in §§ 141.550 through141.553.

8. Subpart H is amended by adding a new § 141.76 to subpart H to read as follows:

§ 141.76 Recycle Provisions.

(a) Public water systems employing conventional filtration or direct filtration that use surface water or ground water under the direct influence of surface water and recycle within the treatment process must meet all applicable requirements of this section. Requirements are summarized in the following table.

RECYCLE PROVISIONS FOR SUBPART H SYSTEMS

If you are a . . .	You are required to meet the requirements in . . .
(1) subpart H public water system employing conventional or direct filtration returning spent filter backwash, thickener supernatant, or liquids from dewatering processes concurrent with or downstream of the point of primary coagulant addition.	§ 141.76 (b).
(2) Plant that is part of a subpart H public water system, employ conventional filtration treatment, practice direct recycle, employ 20 or fewer filters to meet production requirements during the highest production month in the 12 month period [date 60 months after publication of final rule], and recycle spent filter backwash or thickener supernatant to the treatment process.	§ 141.76 (c).
(3) subpart H public water system practicing direct filtration and recycling to the treatment process.	§ 141.76 (d).

(b) Recycle return location. All subpart H systems employing conventional filtration or direct filtration and returning spent filter backwash, thickener supernatant, or liquids from dewatering processes at or after the point of primary coagulant addition must return these recycle flows prior to the point of primary coagulant addition by [DATE 60 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER]. The system must apply to the State for approval of the change in recycle location before the system implements it.

(1) All subpart H systems employing conventional filtration or direct filtration, returning spent filter backwash, thickener supernatant, or liquids from dewatering processes at or after the point of primary coagulant addition must submit a plant schematic to the State by [DATE 42 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER] showing the current recycle return location(s) for the recycle stream(s) and the new return location that will be used to establish compliance. The system must keep the plant schematic on file for review during sanitary surveys.

(2) Softening systems may recycle process solids at the point of lime addition preceding the softening process to improve treatment efficiency. Process solids may not be returned prior to the point of lime addition. Softening systems shall not return spent filter backwash, thickener supernatant, or liquids from dewatering processes to a location other than prior to the point of primary coagulant addition unless an alternate location is granted by the State.

(3) Contact clarification systems may recycle process solids directly into the contactor. Contact clarification systems shall not return spent filter backwash, thickener supernatant, or liquids from dewatering processes to a location other than prior to the point of primary coagulant addition unless an alternate location is granted by the State.

(4) Systems may apply to the State to return spent filter backwash, thickener supernatant, or liquids from dewatering processes to an alternate location other than prior to the point of primary coagulant addition.

(c) Plants that are part of subpart H public water systems that employ conventional rapid granular filtration, practice direct recycle, employ 20 or fewer filters to meet production requirements during the highest production month in the 12 month period prior to [DATE 60 MONTHS AFTER PUBLICATION OF FINAL RULE IN THE **Federal Register**], and recycle spent filter backwash or thickener supernatant to the primary treatment process shall complete a recycle self assessment, as stipulated in paragraphs(c)(1) and (c)(2) by [Date 51 Months After Date of Publication of Final Rule in the **Federal Register**]. Systems required to perform the self assessment shall:

(1) Submit a recycle self assessment monitoring plan to the State no later than [Date 39 Months After Date of Publication of Final Rule in the **Federal Register**]. At a minimum, the monitoring plan must identify the highest water production month during

which monitoring will be conducted, contain a schematic identifying the location of raw and recycle flow monitoring devices, describe the type of flow monitoring devices to be used, identify the system's State approved operating capacity, and describe how data from the raw and recycle flow monitoring devices will be simultaneously retrieved and recorded.

(2) Implement the following recycle self assessment monitoring and analysis steps:

(i) *Steps for Implementation of Recycle Self Assessment:*

(A) Identify the highest water production month during the 12 month period preceding [Date 36 Months After Date of Publication of Final Rule in the **Federal Register**].

(B) Perform the monitoring described in paragraph (c)(2)(i)(C) of this section during the 12 month period after submission of the monitoring plan to the State. The twelve month period must begin no later than [Date 39 Months After Date of Publication of Final Rule in the **Federal Register**].

(C) For each day of the month identified in paragraph (c)(2)(i)(A) of this section, separately monitor source water influent flow and recycle flow before their confluence during one filter backwash recycle event per day, at three minute intervals during the duration of the event. Monitoring must be performed between 7:00 a.m. and 8:00 p.m. Systems that do not have a filter backwash recycle event every day between 7:00 am and 8:00 p.m. must monitor one filter backwash recycle event per day, any three days of the week, for each week during the month of monitoring, between 7:00 a.m. and 8:00 p.m. Record the time filter backwash was initiated, the influent and recycle flow at three minute intervals during the duration of the event, and the time the filter backwash recycle event ended. Record the number of filters in use when the filter backwash recycle event is monitored.

(D) Calculate the arithmetic average of all influent and recycle flow values taken at three minute intervals in paragraph (c)(2)(i)(c) of this section. Sum the arithmetic average calculated for raw water influent and recycle flows. Record this value and the date the monitoring was performed. This value is referred to as event flow.

(E) After the month of monitoring is complete, order the event flows in a list of increasing order, from lowest to highest. Highlight the event flows that exceed State approved operating capacity and then sum the number of event flows highlighted.

(ii) [Reserved]

(3) Subpart H systems performing recycle self assessments are required to report the results of the self assessment and supporting documentation to the State within one month of completing raw water influent and recycle flow monitoring. The report must be submitted no later than [DATE 52 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER]. If the State determines the self assessment is incomplete or inaccurate, it may require the system to correct deficiencies or perform an additional self assessment. At a minimum, the report must contain the following information:

(i) *Minimum Information Included in Recycle Assessment Report to State:*

(A) All source and recycle flow measurements taken and the dates they were taken. For all events monitored, report the times the filter backwash recycle event was initiated, the flow measurements taken at three minute intervals, and the time the filter backwash recycle event ended. Report the number of filters in use when the backwash recycle event is monitored.

(B) All data used and calculations performed to determine whether the system exceeded operating capacity during monitored recycle events and the number of event flow values that exceeded State approved operating capacity.

(C) A plant schematic showing the origin of all recycle flows, the hydraulic conveyance used to transport them, and their final destination in the plant.

(D) A list of all the recycle flows and the frequency at which they are returned to the plant's primary treatment process.

(E) Average and maximum backwash flow rate through the filters and the average and maximum duration of the filter backwash process, in minutes.

(F) Typical filter run length and a written summary of how filter run length is determined (preset run time, headloss, turbidity breakthrough, *etc.).*

(ii) [Reserved]

(4) All subpart H systems performing self assessments are required to modify their recycle practice in accordance with the State determination by [DATE 60 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER] and keep a copy of the self assessment report submitted to the State on file for review during sanitary surveys.

(d) Subpart H public water systems practicing direct filtration and recycling to the primary treatment process are required to submit data to the State on their current recycle treatment no later than [DATE 42 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER.]

(1) Direct filtration systems submitting data to the State shall report the following information, at a minimum:

(i) *Data Submitted to States by Direct Filtration Systems:*

(A) A plant schematic showing the origin of all recycle flows, the hydraulic conveyance used to transport them, and their final destination in the plant.

(B) The number of filters used at the plant to meet average daily production requirements and average and maximum backwash flow rate through the filter and the average and maximum duration of the filter backwash process, in minutes.

(C) Whether recycle flow treatment or equalization is in place.

(D) The type of treatment provided for the recycle flow.

(E) For recycle equalization and treatment units: data on the physical dimensions of the unit (length, width (or circumference), depth,) sufficient to allow calculation of volume; typical and maximum hydraulic loading rate; type of treatment chemicals used and average dose and frequency of use, and frequency at which solids are removed from the unit, if applicable.

(ii) [Reserved]

(2) All direct filtration systems submitting data to the State are required to modify their recycle practice in accordance with the State determination no later than [DATE 60 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER] and keep a copy of the report submitted to the State on file for review during sanitary surveys.

9. Section 141.153 is amended by revising the first sentence of paragraph (d)(4)(v)(C) to read as follows:

§ 141.153 Content of the reports.

* * * * *

(d) * * *

(4) * * *

(v) * * *

(C) When it is reported pursuant to § 141.73 or § 141.173 or § 141.551: the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in § 141.73 or § 141.173, or § 141.551 for the filtration technology being used.

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10. The heading to Subpart P is revised as follows:

Subpart P—Enhanced Filtration and Disinfection-Systems Serving 10,000 or More People

* * * * *

11. Section 141.170 is amended by adding paragraph (d) to read as follows:

§ 141.170 General requirements.

* * * * *

(d) Subpart H systems that did not conduct applicability monitoring under § 141.172 because they served fewer than 10,000 persons when such monitoring was required but serve more than 10,000 persons prior to [DATE 36 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER] must comply with §§ 141.170, 141.171, 141.173, 141.174, and 141.175. These systems must also consult with the State to establish a disinfection benchmark. A system that decides to make a significant change to its disinfection practice, as described in § 141.172(c)(1)(i) through (iv) must consult with the State prior to making such change.

* * * * *

12. Part 141 is amended by adding a new subpart T to read as follows:

Subpart T—Enhanced Filtration and Disinfection—Systems Serving Fewer than 10,000 People

Sec.

General Requirements

141.500 General requirements.
141.501 Who is subject to the requirements of subpart T?
141.502 When must my system comply with these requirements?
141.503 What does subpart T require?

Finished Water Reservoirs

141.510 Is my system subject to the new finished water reservoir requirements?
141.511 What is required of new finished water reservoirs?

Additional Watershed Control Requirements

141.520 Is my system subject to the updated watershed control requirements?
141.521 What updated watershed control requirements must my system comply with?
141.522 How does the State determine whether my system's watershed control requirements are adequate?

Disinfection Profile

141.530 Who must develop a Disinfection Profile and what is a Disinfection Profile?
141.531 How does my system demonstrate TTHM and HAA5 levels below 0.064 mg/l and 0.048 mg/l respectively?
141.532 How does my system develop a Disinfection Profile and when must it begin?
141.533 What measurements must my system collect to calculate a Disinfection Profile?
141.534 How does my system use these measurements to calculate an inactivation ratio?
141.535 How does my system develop a Disinfection Profile if we use chloramines, ozone, or chlorine dioxide for primary disinfection?
141.536 If my system has developed an inactivation ratio; what must we do now?

Disinfection Benchmark

141.540 Who has to develop a Disinfection Benchmark?
141.541 What are significant changes to disinfection practice?
141.542 How is the Disinfection Benchmark calculated?
141.543 What if my system uses chloramines or ozone for primary disinfection?
141.544 What must my system do if considering a significant change to disinfection practices?

Combined Filter Effluent Requirements

141.550 Is my system required to meet subpart T combined filter effluent turbidity limits?
141.551 What strengthened combined filter effluent turbidity limits must my system meet?
141.552 If my system consists of "alternative filtration" and is required to conduct a demonstration, what is required of my system and how does the State establish my turbidity limits?
141.553 If my system practices lime softening, is there any special provision regarding my combined filter effluent?

Individual Filter Turbidity Requirements

141.560 Is my system subject to individual filter turbidity requirements?
141.561 What happens if my turbidity monitoring equipment fails?
141.562 What follow-up action is my system required to take based on turbidity monitoring of individual filters?
141.563 My system practices lime softening. Is there any special provision regarding my individual filter turbidity monitoring?

Reporting and Recordkeeping Requirements

142.570 What does subpart T require that my system report to the State?
142.571 What records does subpart T require my system to keep?

Subpart T—Enhanced Filtration and Disinfection—Systems Serving Fewer Than 10,000 People

General Requirements

§ 141.500 General requirements.

The requirements of subpart T constitute national primary drinking water regulations. These regulations establish requirements for filtration and disinfection that are in addition to criteria under which filtration and disinfection are required under subpart H of this part. The regulations in this subpart establish or extend treatment technique requirements in lieu of maximum contaminant levels for the following contaminants: *Giardia lamblia*, viruses, heterotrophic plate count bacteria, *Legionella*, *Cryptosporidium* and turbidity. The treatment technique requirements consist of installing and properly operating water treatment processes which reliably achieve:

(a) At least 99 percent (2 log) removal of *Cryptosporidium* between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer for filtered systems, or *Cryptosporidium* control under the watershed control plan for unfiltered systems.

(b) Compliance with the profiling and benchmark requirements in §§ 141.530 through 141.544.

§ 141.501 Who is subject to the requirements of subpart T?

You are subject to these requirements if your system:

(a) Is a public water system;

(b) Uses surface water or GWUDI as a source; and

(c) Serves fewer than 10,000 persons annually.

§ 141.502 When must my system comply with these requirements?

You must comply with these requirements beginning [DATE 36 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER] except where otherwise noted.

§ 141.503 What does subpart T require?

There are six requirements of this subpart which your system may need to comply with. These requirements are discussed in detail later in this subpart. They are:

(a) Any finished water reservoir for which construction begins on or after [DATE 60 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER] must be covered;

(b) Unfiltered systems must comply with updated watershed control requirements;

(c) All systems subject to the requirements of this subpart must develop a disinfection profile;

(d) All systems subject to the requirements of this subpart that are considering a significant change to their disinfection practice must develop a disinfection benchmark and receive State approval before changing their disinfection practice;

(e) Filtered systems must comply with specific combined filter effluent turbidity limits and monitoring and reporting requirements; and

(f) Filtered systems using conventional or direct filtration must

comply with individual filter turbidity limits and monitoring and reporting requirements.

Finished Water Reservoirs

§ 141.510 Is my system subject to the new finished water reservoir requirements?

All subpart H systems which serve populations fewer than 10,000 are subject to this requirement.

§ 141.511 What is required for new finished water reservoirs?

If your system initiates construction of a finished water reservoir after [DATE 60 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER the reservoir must be covered. Finished water reservoirs constructed prior to [DATE 60 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER are not subject to this requirement.

Additional Watershed Control Requirements

§ 141.520 Is my system subject to the updated watershed control requirements?

If you are a subpart H system serving fewer than 10,000 persons which does not provide filtration, you must continue to comply with all of the watershed control requirements in § 141.71, as well as the additional watershed control requirements in § 141.521.

§ 141.521 What additional watershed control requirements must my system comply with?

Your system must also maintain the existing watershed control program to minimize the potential for contamination by *Cryptosporidium* oocysts in the source water. Your system's watershed control program must, for *Cryptosporidium*:

(a) Identify watershed characteristics and activities which may have an adverse effect on source water quality; and

(b) Monitor the occurrence of activities which may have an adverse effect on source water quality.

§ 141.522 How does the State determine whether my system's watershed control requirements are adequate?

During an onsite inspection conducted under the provisions of § 141.71(b)(3), the State must determine whether your watershed control program is adequate to limit potential contamination by *Cryptosporidium* oocysts. The adequacy of the program must be based on the comprehensiveness of the watershed review; the effectiveness of your program to monitor and control detrimental activities occurring in the watershed; and the extent to which your system has maximized land ownership and/or controlled land use within the watershed.

Disinfection Profile

§ 141.530 Who must develop a Disinfection Profile and what is a Disinfection Profile?

All subpart H community and non-transient non-community water systems which serve fewer than 10,000 persons must develop a disinfection profile. A disinfection profile is a graphical representation of your system's level of *Giardia lamblia* or virus inactivation measured during the course of a year. Your system must develop a disinfection profile unless you can demonstrate to the State that your TTHM and HAA5 levels are less than 0.064 mg/l and 0.048 mg/l respectively, prior to January 7, 2003.

§ 141.531 How does my system demonstrate TTHM and HAA5 levels below 0.064 mg/l and 0.048 mg/l respectively?

In order to demonstrate that your TTHM and HAA5 levels are below 0.064 mg/L and 0.048 mg/L, respectively your system must have collected one TTHM and one HAA5 sample taken between 1998–2002. Samples must have been collected during the month with the warmest water temperature, at the point of maximum residence time in your distribution system which indicate TTHM levels below 0.064 mg/l and HAA5 levels below 0.048 mg/L. By January 7, 2003, you must submit a copy of the results to the State along with a letter indicating your intention to forgo development of a disinfection profile because of the results of the sampling. This letter, along with a copy of your TTHM and HAA5 sample lab results must be kept on file for review by the State during a sanitary survey. If the data you have collected is either equal to or exceeds either 0.064 mg/l for TTHM and/or 0.048 mg/l for HAA5s, you must develop a disinfection profile.

§ 141.532 How does my system develop a Disinfection Profile and when must it begin?

A disinfection profile consists of three steps:

(a) First, your system must collect measurements for several treatment parameters from the plant as discussed in § 141.533. Your system must begin this monitoring no later than January 7, 2003.

(b) Second, your system must use these measurements to calculate inactivation ratios as discussed in §§ 141.534 and 141.535; and

(c) Third, your system must use these inactivation ratios to develop a disinfection profile as discussed in § 141.536.

§ 141.533 What measurements must my system collect to calculate a Disinfection Profile?

Your system must monitor the parameters necessary to determine the total inactivation ratio using analytical methods in § 141.74 (a), once per week on the same *calendar* day each week as follows:

(a) The temperature of the disinfected water must be measured at each residual disinfectant concentration sampling point during peak hourly flow;

(b) If the system uses chlorine, the pH of the disinfected water must be measured at each chlorine residual disinfectant concentration sampling point during peak hourly flow;

(c) The disinfectant contact time(s) ("T") must be determined during peak hourly flow; and

(d) The residual disinfectant concentration(s) ("C") of the water before or at the first customer and prior to each additional point of disinfection must be measured during peak hourly flow.

§ 141.534 How does my system use these measurements to calculate an inactivation ratio?

Calculate the total inactivation ratio as follows, and multiply the value by 3.0 to determine log inactivation of *Giardia lamblia*:

If a system...	The system must determine...
(a) Uses only one point of disinfectant application	(1) One inactivation ratio ($CTcalc/CT_{99.9}$) before or at the first customer during peak hourly flow, or

If a system...	The system must determine...
	(2) Successive CTcalc/$CT_{99.9}$ values, representing sequential inactivation ratios, between the point of disinfectant application and a point before or at the first customer during peak hourly flow. Under this alternative, the system must calculate the total inactivation ratio by determining (CTcalc/$CT_{99.9}$) for each sequence and then adding the (CTcalc/$CT_{99.9}$) values together to determine (Σ (CTcalc/$CT_{99.9}$)). You may use a spreadsheet that calculates CT and/or contains the necessary inactivation tables.
(b) Uses more than one point of disinfectant application before the first customer.	(1) The CTcalc/$CT_{99.9}$ value of each disinfection segment immediately prior to the next point of disinfectant application, or for the final segment, before or at the first customer, during peak hourly flow using the procedure described in the above paragraph.

§ 141.535 How does my system develop a Disinfection Profile if we use chloramines, ozone, or chlorine dioxide for primary disinfection?

If your system uses either chloramines, ozone or chlorine dioxide for primary disinfection, you must also calculate the logs of inactivation for viruses. You must develop an additional disinfection profile for viruses using a method approved by the State.

§ 141.536 If my system has developed an inactivation ratio, what must we do now?

Each inactivation ratio serves as a data point in your disinfection profile. Your system will have obtained 52 measurements (one for every week of the year). This will allow your system and the State the opportunity to evaluate how microbial inactivation varied over the course of the year by looking at all 52 measurements (your Disinfection Profile). Your system must retain the Disinfection Profile data in graphic form, as a spreadsheet, or in some other format acceptable to the State for review as part of sanitary surveys conducted by the State. Your system will need to use this data to calculate a benchmark if considering changes to disinfection practices.

Disinfection Benchmark

§ 141.540 Who has to develop a Disinfection Benchmark?

If you are a subpart H system required to develop a disinfection profile under §§ 141.530 through 141.536, your system must develop a Disinfection Benchmark if you decide to make a significant change to disinfection practice. State approval must be obtained before you can implement a significant disinfection practice change.

§ 141.541 What are significant changes to disinfection practice?

Significant changes to disinfection practice are:

(a) Changes to the point of disinfection;

(b) Changes to the disinfectant(s) used in the treatment plant;

(c) Changes to the disinfection process; or

(d) Any other modification identified by the State.

§ 141.542 How is the Disinfection Benchmark Calculated?

If your system is making a significant change to its disinfection practice, it must calculate a disinfection benchmark using the following procedure:

(a) To calculate a disinfection benchmark a system must perform the following steps:

Step 1: Using the data your system collected to develop the Disinfection Profile, determine the average *Giardia lamblia* inactivation for each calender month by dividing the sum of all *Giardia lamblia* inactivations for that month by the number of values calculated for that month.

Step 2: Determine the lowest monthly average value out of the twelve values. This value becomes the disinfection benchmark.

(b) [Reserved]

§ 141.543 What if my system uses chloramines or ozone for primary disinfection?

If your system uses chloramines, ozone or chlorinated dioxide for primary disinfection your system must calculate the disinfection benchmark from the data your system collected for viruses to develop the disinfection profile in addition to the *Giardia lamblia* disinfection benchmark calculated under § 141.542. The disinfection benchmark must be calculated as described in § 141.542.

§ 141.544 What must my system do if considering a significant change to disinfection practices?

If your system is considering a significant change to the disinfection practice, it must complete a disinfection benchmark(s) as described in §§ 141.542 and 141.543 and provide the benchmark(s) to your State. Your system may only make a significant disinfection practice change after receiving State approval. The following information must be submitted to the State as part of their review and approval process:

(a) A description of the proposed change;

(b) The disinfection profile for *Giardia lamblia* (and, if necessary, viruses) and disinfection benchmark;

(c) An analysis of how the proposed change will affect the current levels of disinfection; and

(d) Additional information requested by the State.

Combined Filter Effluent Requirements

§ 141.550 Is my system required to meet subpart T combined filter effluent turbidity limits?

All subpart H systems which serve populations fewer than 10,000, and are required to filter, must meet combined filter effluent requirements. Unless your system consists of slow sand or diatomaceous earth filtration, you are required to meet the combined filter effluent turbidity limits in § 141.551. If your system uses slow sand or diatomaceous earth filtration you must continue to meet the combined filter effluent turbidity limits in § 141.73.

§ 141.551 What strengthened combined filter effluent turbidity limits must my system meet?

Your system must meet two strengthened combined filter effluent turbidity limits.

(a) The first combined filter effluent turbidity limit is a "95th percentile" turbidity limit which your system must meet in at least 95 percent of the turbidity measurements taken each month. Measurements must continue to be taken as described in § 141.74(a) and (c). The following table describes the required limits for specific filtration technologies.

If your system consists of . . .	Your 95th percentile turbidity value is . . .
(1) Conventional filtration or direct filtration	0.3 NTU.
(2) Membrane filtration	0.3 NTU or a value determined by the State (not to exceed 1 NTU) based on a demonstration conducted by the system as described in § 141.552.
(3) All other "alternative" filtration	A value determined by the State (not to exceed 1 NTU) based on the demonstration described in § 141.552.

(b) The second combined filter effluent turbidity limit is a "maximum" turbidity limit which your system may at no time exceed during the month. Measurements must continue to be taken as described in § 141.74(a) and (c). The following table describes the required limits for specific filtration technologies.

If your system consists of . . .	Your maximum turbidity value is . . .
(1) Conventional filtration or direct filtration	1 NTU.
(2) Membrane filtration	1 NTU or a value determined by the State (not to exceed 5 NTU) based on a demonstration conducted by the system as described in § 141.552.
(3) All other "alternative" filtration	A value determined by the State (not to exceed 5 NTU) based on the demonstration as described in § 141.552.

§ 141.552 If my system consists of "alternative filtration" and is required to conduct a demonstration, What is required of my system and how does the State establish my turbidity limits?

(a) If your system is required to conduct a demonstration (see tables in § 141.551), your system must demonstrate to the State, using pilot plant studies or other means, that your system's filtration, in combination with disinfection treatment, consistently achieves:

(1) 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts;

(2) 99.99 percent removal and/or inactivation of viruses; and

(3) 99 percent removal of *Cryptosporidium* oocysts.

(b) If the State approves your demonstration, it will set turbidity performance requirements that your system must meet:

(1) At least 95 percent of the time (not to exceed 1 NTU); and

(2) That your system must not exceed at any time (not to exceed 5 NTU).

§ 141.553 If my system practices lime softening, is there any special provision regarding my combined filter effluent?

If your system practices lime softening, you may acidify representative combined filter effluent turbidity samples prior to analysis using a protocol approved by the State.

Individual Filter Turbidity Requirements

§ 141.560 Is my system subject to individual filter turbidity requirements?

If your system is a subpart H system serving fewer than 10,000 people and utilizing conventional filtration or direct filtration, you must conduct continuous monitoring of turbidity for each individual filter at your system. The following requirements apply to individual filter turbidity monitoring:

(a) Monitoring must be conducted using an approved method in § 141.74(a);

(b) Calibration of turbidimeters must be conducted using procedures specified by the manufacturer;

(c) Results of individual filter turbidity monitoring must be recorded every 15 minutes;

(d) Monthly reporting must be completed according § 141.570; and

(e) Records must be maintained according to § 141.571.

§ 141.561 What happens if my system's turbidity monitoring equipment fails?

If there is a failure in the continuous turbidity monitoring equipment, the system must conduct grab sampling every four hours in lieu of continuous monitoring until the turbidimeter is back on-line. A system has five working days to resume continuous monitoring before a violation is incurred.

§ 141.562 What follow-up action is my system required to take based on turbidity monitoring of individual filters?

Follow-up action is required according to the following tables:

If the turbidity of an individual filter exceeds...	The system must...
(a) If the turbidity of an individual filter exceeds 1.0 NTU (in two consecutive recordings).	Submit an exceptions report to the State by the 10th of the month which includes the filter number(s), corresponding date(s), and the turbidity value(s) which exceeded 1.0 NTU.

If an exceptions report is submitted for the same filter...	The system must...
(b) If an exceptions report is submitted for the same filter three months in a row.	Conduct a self-assessment of the filter within 14 days of the exceedance and report that the self assessment was conducted by the 10th of the following month. The self assessment must consist of at least the following components: Assessment of filter performance; development of a filter profile; identification and prioritization of factors limiting filter performance; assessment of the applicability of corrections; and preparation of a filter self-assessment report.

If an exceptions report is submitted for the same filter...	The system must...
(c) If an exceptions report is submitted for the same filter two months in a row and both months contain exceedances of 2.0 NTU (in 2 consecutive recordings).	(1) Arrange to have a comprehensive performance evaluation (CPE) conducted by the State or a third party approved by the State no later than 30 days following the exceedance and have the evaluation completed and submitted to the State no later than 90 days following the exceedance, Unless— (2) A CPE has been completed by the State or a third party approved by the State within the 12 prior months or the system and State are jointly participating in an ongoing Comprehensive Technical Assistance (CTA) project at the system.

§ 141.563 My system practices lime softening. Is there any special provision regarding my individual filter turbidity monitoring?

If your system utilizes lime softening, you may apply to the State for alternative turbidity exceedance levels for the levels specified in the table in § 141.562. You must be able to demonstrate to the State that higher turbidity levels in individual filters are due to lime carryover only, and not due to degraded filter performance.

Reporting and Recordkeeping Requirements

§ 141.570 What does subpart T require that my system report to the State?

This subpart T requires your system to report several items to the State. The following table describes the items which must be reported and the frequency of reporting. Your system is required to report the information described below, if it is subject to the specific requirement shown in the first column.

Corresponding requirement	Description of information to report	Frequency
(a) Combined Filter Effluent Requirements.	(1)The total number of filtered water turbidity measurements taken during the month.	By the 10th of the following month.
	(2) The number and percentage of filtered water turbidity measurements taken during the month which are greater than your system's required 95th percentile limit.	By the 10th of the following month.
	(3) The date and value of any turbidity measurements taken during the month which exceed the maximum turbidity value for your filtration system.	(i) Within 24 hours of exceedance and (ii) By the 10th of the following month.
(b) Individual Filter Turbidity Requirements.	(1) That your system conducted individual filter turbidity monitoring during the month.	By the 10th of the following month.
	(2) The filter number(s), corresponding date(s), and the turbidity value(s) which exceeded 1.0 NTU during the month..	By the 10th of the following month only if— (ii) 2 consecutive values exceeded 1.0 NTU.
	(3) That a self assessment was conducted within 14 days of the date it was triggered.	(i) By the 10th of the following month (or 14 days after the self assessment was triggered only if the self assessment was triggered during the last four days of the month) only if— (ii) A self-assessment is required.
	(4) That a CPE is required and the date that it was triggered	(i) By the 10th of the following month only if— (ii) A CPE is required.
	(5) Copy of completed CPE report	Within 90 days after the CPE was triggered.
(c) Disinfection Profiling	(1) Results of applicability monitoring which show TTHM levels <0.064 mg/l and HAA5 levels <0.048 mg/l. (Only if your system wishes to forgo profiling) or that your system has begun disinfection profiling.	No later than January 7, 2003.
(d) Disinfection Benchmarking	(1) A description of the proposed change in disinfection, your system's disinfection profile for *Giardia lamblia* (and, if necessary, viruses) and disinfection benchmark, and an analysis of how the proposed change will affect the current levels of disinfection.	Anytime your system is considering a significant change to its disinfection practice.

§ 141.571 What records does subpart T require my system to keep?

Your system must keep several types of records based on the requirements of subpart T. The following table describes the necessary records, the length of time these records must be kept, and for which requirement the records pertain. Your system is required to maintain records described in this table, if it is subject to the specific requirement shown in the first column. For example, if your system uses slow sand filtration, you would not be required to keep individual filter turbidity records:

Corresponding requirement	Description of necessary records	Duration of time records must be kept
(a) Individual Filter Turbidity Requirements.	Results of individual filter monitoring	At least 3 years.
(b) Disinfection Profiling	Results of Profile (including raw data and analysis)	Indefinitely.
(c) Disinfection Benchmarking	Benchmark (including raw data and analysis)	Indefinitely.
(d) Covered Reservoirs	Date of construction for all uncovered finished water reservoirs utilized by your system.	Indefinitely.

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

13. The authority citation for Part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

14. Section 142.14 is amended by revising paragraphs (a)(3), (a)(4)(i), (a)(4)(ii) introductory text, and (a)(7) to read as follows:

§ 142.14 Records kept by States.

(a)* * *

(3) Records of turbidity measurements must be kept for not less than one year. The information retained must be set forth in a form which makes possible comparison with the limits specified in §§ 141.71, 141.73, 141.173 and 141.175, 141.550–141.553 and 141.560–141.563 of this chapter. Until June 29, 1993, for any public water system which is providing filtration treatment and until December 30, 1991, for any public water system not providing filtration treatment and not required by the State to provide filtration treatment, records kept must be set forth in a form which makes possible comparison with the limits contained in § 141.13 of this chapter.

* * * * *

(4)(i) Records of disinfectant residual measurements and other parameters necessary to document disinfection effectiveness in accordance with §§ 141.72 and 141.74 of this chapter and the reporting requirements of §§ 141.75, 141.175, and 141.570, of this chapter must be kept for not less than one year.

(ii) Records of decisions made on a system-by-system and case-by-case basis under provisions of part 141, subpart H, subpart P, or subpart T of this chapter, must be made in writing and kept at the State.

* * * * *

(7) Any decisions made pursuant to the provisions of part 141, subpart P or subpart T of this chapter.

(i) Records of systems consulting with the State concerning a modification to disinfection practice under §§ 141.172(c), 141.170(d), and 141.544 of this chapter, including the status of the consultation or approval.

(ii) Records of decisions that a system using alternative filtration technologies, as allowed under §§ 141.173(b) and § 141.552 of this chapter, can consistently achieve a 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts, 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts. The decisions must include State-set enforceable turbidity limits for each system. A copy of the decision must be kept until the decision is reversed or revised. The State must provide a copy of the decision to the system.

(iii) Records of systems required to do filter self-assessment, CPE, or CCP under the requirements of § 141.175 and § 141.562 of this chapter.

* * * * *

15. Section 142.15 is amended by adding paragraphs (c)(6) and (c)(7) and (c)(8).

§ 142.15 Reports by States.

* * * * *

(c) * * *

(6) Recycle return location. A list of all systems moving the recycle return location prior to the point of primary coagulant addition. The list must also contain all the systems the State granted alternate recycle locations, describe the alternative recycle return location, and briefly discuss the reason(s) the alternate recycle location was granted and is due [DATE 60 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

(7) Self assessment determination. A list of all systems performing self assessments must be reported to EPA. The list must state whether individual plants exceeded State approved operating capacity during self assessment monitoring and whether the State required modification to recycle practice. A brief description of the modification to recycle practice required at each plant must be provided. If a plant exceeded State approved operating capacity, and the State did not require modification of recycle practice, the State must provide a brief explanation for this decision. Self assessment results must be reported no later than [DATE 54 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

(8) Direct filtration determination. A list of all direct filtration systems recycling within the treatment process must be submitted to EPA. The list must state which systems were required to modify recycle practice and briefly describe the modification and the reason it was required. It must also identify systems not required to modify recycle practice and provide a brief description of the reason modification to recycle practice was not required. The list must be submitted no later than [DATE 54 MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

* * * * *

16. Section 142.16 is amended by adding paragraph (b)(2)(v), (b)(2)(vi), and (b)(2)(vii) and (i) to read as follows:

§ 142.16 Special primacy requirements.

* * * * *

(b) * * *

(2) * * *

(v) The application must describe the criteria the State will use to determine alternate recycle locations for public water systems applying to return spent filter backwash, thickener supernatant,

or liquids from dewatering to an alternate location other than prior to the point of primary coagulant addition.

(vi) The application must describe the criteria the State will use to determine whether public water systems completing self assessments are required to modify recycle practice and the criteria that will be used to specify modifications to recycle practice.

(vii) The application must describe the criteria the State will use to determine whether direct filtration systems are required to change recycle practice and the criteria that will be used to specify changes to recycle practice.

* * * * *

(i) *Requirements for States to adopt 40 CFR part 141, subpart T Enhanced Filtration and Disinfection.* In addition to the general primacy requirements enumerated elsewhere in this part, including the requirement that State provisions are no less stringent than the federal requirements, an application for approval of a State program revision that adopts 40 CFR part 141, subpart T Enhanced Filtration and Disinfection, must contain the information specified in this paragraph:

(1) *Enforceable requirements.* States must have rules or other authority to require systems to participate in a Comprehensive Technical Assistance (CTA) activity, the performance improvement phase of the Composite Correction Program (CCP). The State shall determine whether a CTA must be conducted based on results of a CPE which indicate the potential for improved performance, and a finding by the State that the system is able to receive and implement technical assistance provided through the CTA. A CPE is a thorough review and analysis of a system's performance-based capabilities and associated administrative, operation and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance. During the CTA phase, the system must identify and systematically address factors limiting performance. The CTA is a combination of utilizing CPE results as a basis for follow-up, implementing process control priority-setting techniques and maintaining long-term involvement to systematically train staff and administrators.

(2) *State practices or procedures.* (i) Section 141.536 of this chapter—How the State will approve a method to calculate the logs of inactivation for viruses for a system that uses either chloramines or ozone for primary disinfection.

(ii) Section 141.544 of this chapter—How the State will approve modifications to disinfection practice.

(iii) Section 141.552 of this chapter—For filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, diatomaceous earth filtration, or membrane filtration, how the State will determine that a public water system may use a filtration technology if the PWS demonstrates to the State, using pilot plant studies or other means, that the alternative filtration technology (or membrane filtration), in combination with disinfection treatment that meets the requirements of § 141.72(b) of this chapter, consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts and 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts. For a system that makes this demonstration, how the State will set turbidity performance requirements that the system must meet 95 percent of the time and that the system may not exceed at any time at a level that consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts, 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts.

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April 10, 2000

Part III

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Pharmaceuticals Production; Proposed Rule

VOL 65 ISS 69 AP 10 2000 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6564–6]

RIN 2060–AE83

National Emission Standards for Hazardous Air Pollutants for Pharmaceuticals Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: On September 21, 1998 (63 FR 50280), EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for Pharmaceuticals Production. On November 17 and 20, 1998, petitions for reconsideration and review of the September 1998 rule were filed in the U.S. Court of Appeals for the District of Columbia Circuit. The petitioners raised over 12 technical issues and concerns with the rule. Additional issues were raised by intervenors on the side of the petitioners. In this action, EPA proposes amendments to the Pharmaceuticals Production NESHAP to address these issues and to correct any other inconsistencies that were discovered during the review process.

DATES: The EPA will accept comments regarding this proposal on or before May 10, 2000.

ADDRESSES: *Comments:* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–96–03, Room M–1500, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460. The EPA requests that a separate copy of each public comment be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**). Comments may also be submitted electronically by following the instructions provided in **SUPPLEMENTARY INFORMATION.**

Docket: A docket, No. A–96–03, containing information relevant to these proposed amendments, is available for public inspection and copying between 8:30 a.m. and 5:30 p.m., Monday through Friday (except for Federal holidays) at the following address: U. S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street, SW, Washington, DC 20460. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). Alternatively, a docket index, as well as individual items contained within the docket, may be obtained by calling (202) 260–7548 or (202) 260–7549. A reasonable fee may be charged for copying docket items.

FOR FURTHER INFORMATION CONTACT: Mr. Randy McDonald, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5402, electronic mail address mcdonald.randy@epa.gov.

SUPPLEMENTARY INFORMATION:

Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Comments

Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov*. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® version 5.1, 6.1 or Corel 8 file format. All comments and data submitted in electronic form must note the docket number: A–96–03. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Ms. Melva Toomer, U.S. EPA, OAQPS Document Control Officer, 411 W. Chapel Hill Street, Room 740B, Durham, NC 27701. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Worldwide Web (WWW)

In addition to being available in the docket, an electronic copy of this proposed rule will be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities

The regulated category and entities affected by this action include:

Category	NAICS	SIC codes	Examples of regulated entities
Industry	325411 and 325412 Typically 325199	2833 and 2834 Typically 2869	• Producers of finished dosage forms of drugs (e.g., tablets, capsules, and solutions), active ingredients, or precursors. • Producers of material whose primary use is as an active ingredient or precursor.

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the regulation affected by this action. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine all of the applicability criteria in § 63.1250

of the promulgated rule, as well as in the proposed amendments to the applicability sections contained in this proposal. If you have questions regarding the applicability of these amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

We are soliciting comment on the specific proposed amendments to the Pharmaceuticals Production NESHAP that are described below. We are not seeking comment on portions of the Pharmaceuticals Production NESHAP that we are not currently proposing to change.

I. Why Are We Proposing Changes to the Rule?

On September 21, 1998, we promulgated NESHAP for Pharmaceuticals Production as subpart GGG in 40 CFR part 63. On November 17 and 20, 1998, the Pharmaceutical Research and Manufacturers of America (PhRMA) filed petitions for reconsideration and review of the promulgated Pharmaceuticals Production NESHAP in the U.S. Court of Appeals for the District of Columbia Circuit, *PhRMA* v. *EPA*, 98–1551 (D.C. Cir.). Issues raised by the petitioners included applicability of the rule, definition of a process, the 98 percent reduction requirement for certain process vents, the alternative standard, and recordkeeping requirements. The intervenors raised additional issues regarding the applicability of the rule to specialty chemical manufacturers and the clarity of the rule, especially with respect to the leak detection and repair (LDAR) provisions. On December 21, 1999, the parties filed a motion to lodge a settlement agreement with the court. The settlement agreement established a schedule by which EPA would propose revisions to the NESHAP and the preamble language agreed to by the parties. The settlement agreement provided that EPA would sign proposed rule amendments no later than 60 days after execution of the settlement. The settlement agreement also provided that EPA would sign final rule amendments no later than 180 days after the date on which the proposed amendments were signed. On February 22, 2000, the parties filed a motion to lodge a stipulation to modify the settlement agreement. The parties agreed to change the date by which EPA must sign the proposed rule amendments from 60 to 90 days after the execution of the settlement agreement (March 20, 2000). The date by which EPA must sign the final amendments was not changed (August 21, 2000). Today's proposed amendments address the issues raised by PhRMA and the intervenors of the promulgated Pharmaceuticals Production NESHAP and include corrections and clarifications to ensure that the rule is implemented as intended. Today's proposed amendments also provide some new compliance options, as well as new provisions that would reduce the burden associated with demonstrating compliance. For example, vapor balancing is proposed as a compliance option for storage tanks in § 63.1253(f), and the concept of a standard batch is proposed in § 63.1259(b)(5) that would allow an owner or operator to reduce the amount of recordkeeping by defining an operating scenario based on a range of process operating conditions.

II. What Changes Are We Proposing?

This section of the preamble describes the changes that we are proposing to make to subpart GGG and the rationale for the revisions.

A. Applicability of the Rule

We are proposing three minor changes to §§ 63.1250 and 63.1251 to clarify how applicability determinations are to be reported and what constitutes a new affected source. First, in § 63.1250(a), we are proposing to add a sentence specifying that applicability determinations are to be reported either as part of an operating permit application or as otherwise specified by the permitting authority. This change clarifies how to report applicability determinations. Second, § 63.1250(b) of the Pharmaceuticals Production NESHAP specifies the date after which construction of a dedicated pharmaceutical manufacturing process unit (PMPU) is to be considered a new source, but it did not address reconstructed PMPUs. To correct this oversight, we are proposing additional language in § 63.1250(b) to specify that dedicated PMPUs that are reconstructed after October 21, 1999 are new sources. This date corresponds with the completion of the settlement discussions (see section II.B of this preamble for a discussion of other changes to compliance dates). Third, in § 63.1251, we are proposing to add a sentence to the definition of the term "construction" to specify that adding equipment to a PMPU that is subject to existing source standards does not constitute construction, but it may constitute reconstruction. We are proposing this change to prevent any misinterpretation of the definition.

In addition to these changes, we are also proposing to clarify the intended applicability of the Pharmaceuticals Production NESHAP by revising the definition of pharmaceutical product and related definitions that are used to define the affected source. These changes would clarify when an intermediate is considered a pharmaceutical product and, therefore, subject to the rule.

1. Pharmaceutical Product Definition

We propose to revise the definition of "pharmaceutical product." In the Pharmaceuticals Production NESHAP, the definition of "pharmaceutical product," along with the definitions of "primary use," "active ingredient," and "precursor," are used to identify those manufacturing operations and facilities to which the NESHAP apply. Our intent is that the NESHAP apply to the manufacture of pharmaceutical active ingredients, final dosage products, and the manufacture of precursor chemical(s) whose ultimate primary use is to be subsequently processed through additional chemical transformations and separations into final drug products and pharmaceutical active ingredients. The definition of the term "pharmaceutical product" specifically excludes chemicals that are used as non-reactive solvents, excipients, binders, and fillers in the pharmaceutical manufacturing process. We also did not intend to regulate the manufacture of commodity chemicals under the NESHAP. The following discussion, in conjunction with the clarification in the regulatory text, is provided to assist in properly identifying those operations subject to the NESHAP.

Most pharmaceutical products are produced in a multi-step manufacturing process. Pharmaceutical manufacturers themselves may perform all of the manufacturing steps that take comparatively basic chemicals and transform them into the typically complex molecules that are the active ingredients. The active ingredients are combined with excipients, binders, and fillers to produce finished dosage forms of the drug. Manufacturers might perform all of the steps at one site or they may perform steps at the manufacturer's different production sites. The production of active ingredients and precursors by pharmaceutical manufacturers is always subject to this standard. The sites performing these manufacturing operations are typically described by § 63.1251, paragraph (4) of the pharmaceutical product definition in 40 CFR part 63, subpart GGG, as they usually will have a primary standard industrial classification (SIC) code of 2833 or 2834.

Pharmaceutical manufacturers can also purchase commercially available pharmaceutical active ingredients and intermediates from other manufacturers or chemical brokers and rely on other manufacturers to perform some of the early or intermediate steps in the pharmaceutical manufacturing process. Many chemical manufacturers have divisions that specifically manufacture these pharmaceutical active ingredients and intermediates for sale to pharmaceutical manufacturers. Finally, pharmaceutical manufacturers often contract with another manufacturer to have a particular pharmaceutical intermediate produced. The sites performing these manufacturing operations are typically described by § 63.1251, paragraph (5) of the pharmaceutical product definition in 40 CFR part 63, subpart GGG, and their pharmaceutical manufacturing operations are subject to the Pharmaceuticals Production NESHAP, even though the site's primary operations are chemical production, not pharmaceutical production.

The Pharmaceuticals Production NESHAP are not intended to apply to the manufacture of commodity chemicals which are typically the basic building blocks of the chemicals that eventually become pharmaceutical products. Commodity chemicals are chemicals manufactured and sold in large quantities by chemical manufacturers using their own processes and formulas to meet specifications typically established by the marketplace. Commodity chemicals typically have a wide variety of applications, uses, and customers. The definition of the term "pharmaceutical product" has been clarified to specifically exclude chemicals that are produced in a manufacturing process subject to subparts F and G of 40 CFR part 63, commonly referred to as the Hazardous Organic NESHAP (HON). The remainder of this discussion provides guidance on how to identify chemicals that we consider to be commodity chemicals for the purposes of the Pharmaceuticals Production NESHAP.

First, we consider the chemicals identified in the "Industrial Organic Chemical Use Trees" (Final Report, October 1983, U.S. EPA) to be commodity chemicals (sometimes also referred to as industrial chemicals) that are not regulated by the Pharmaceuticals Production NESHAP. This list, which contains approximately 650 chemicals, is simply an illustration of some of the chemicals that are not regulated by the Pharmaceuticals Production NESHAP. Chemicals listed in subparts NNN and RRR of 40 CFR part 60, many of which are referenced in the chemical use tree report, are also to be considered commodity chemicals. There are also many inorganic chemicals, gases, other organic chemicals and mixtures with non-pharmaceutical uses that are considered commodity chemicals, not active ingredients, and are not covered by the Pharmaceuticals Production NESHAP even though some portion of their production is sold to and used by the pharmaceutical industry. It would not be possible or practical to list all such chemicals in the text of the proposed amendments or in this preamble. The list would be too long and always out of date as new chemicals and mixtures are constantly created and new uses for existing chemicals and mixtures continue to be discovered. We do not intend to bring under the Pharmaceuticals Production NESHAP the manufacture of chemicals which are not produced specifically for use as an active ingredient or as a precursor to the manufacture of an active ingredient and which are not primarily used in the manufacture of pharmaceuticals.

Second, chemicals subject to the inventory update report (IUR) requirement of the Toxic Substances Control Act (TSCA), section 8(a), and the implementing regulations found in 40 CFR part 710 are likely to be commodity chemicals or chemicals that do not have any significant pharmaceutical use and, thus, will not likely be subject to the pharmaceutical standards. Unlike the reference to the chemical tree that broadly applies to the manufacture of the listed chemicals at any site, this paragraph applies to site-specific manufacturing. The IUR requires chemical manufacturers (including importers) to provide information every 4 years about chemical substances they manufacture (including imports) in annual quantities of 10,000 pounds or more at each plant site they own or control. The information required includes company name, plant site location, plant site Dun and Bradstreet number, the identity of the chemical substance, and the production volume of the chemical substance. A material that is regulated by the Food and Drug Administration (FDA) is not a "chemical substance" regulated by TSCA, and as such, would not have to be on the TSCA Inventory and would not be subject to the IUR. If a chemical manufacturing facility is reporting its production of a particular chemical under the IUR, that chemical is most likely a commodity chemical and not primarily an active ingredient or a pharmaceutical precursor. Conversely, the fact that a manufacturer does not have an IUR reporting obligation for a chemical does not necessarily have any bearing on whether the material would be a "pharmaceutical product." For example, under the IUR requirements, chemicals that are manufactured in annual quantities of less than 10,000 pounds do not have to be reported under the IUR, nor do certain polymers, inorganic chemicals, and naturally occurring materials which are not required to be placed on the TSCA Inventory.

We expect that manufacturers of finished drug products and active ingredients will have sufficiently complete knowledge of their products' use to enable them to make applicability determinations that fully comport with our intended implementation of the "pharmaceutical product" definition. Likewise, chemical manufacturing companies who market particular chemicals for use as pharmaceutical intermediates and active ingredients at the time they manufacture a chemical should be able to make accurate applicability determinations (*i.e.*, to know whether the primary use is as a pharmaceutical active ingredient or precursor). We recognize that there may be cases where the customer of the manufacturer does not inform the manufacturer of the intended use of the material due to the customer's interest in protecting its trade secrets or other competitive concerns. Chemical manufacturers who market a chemical as being used in the pharmaceutical industry or manufacture a chemical under a specific contract (toll manufacturing) with a pharmaceutical manufacturer will need to make an applicability determination at the time of manufacturing by considering information about the past and projected use of the chemical, the location to which the chemical is shipped, and other circumstances regarding the production of the chemical.

2. Definition of Precursor

We are proposing to add a definition of "precursor" to more clearly identify what materials are pharmaceutical intermediates. Our intent is to regulate the intermediate materials that are integral to the production of "active ingredients." Typically, pharmaceutical precursors are complex chemicals that have few if any commercially recognized uses outside of the production of pharmaceuticals. We are not aware of the existence of any comprehensive list of pharmaceutical intermediates and even if such a list existed, it would be difficult to keep up-

to-date. As stated above, we do not intend to bring within the Pharmaceuticals Production NESHAP the manufacture of commodity chemicals. We intend for the precursor definition to clarify where this line between pharmaceutical intermediates and commodity chemicals can be drawn.

The term "precursor" means a material produced for the purpose of producing a pharmaceutical product. It does not mean any and every chemical upstream of the finished dosage form or the active ingredient because that would ultimately encompass commodity chemicals. For example, if the pharmaceutical active or intermediate is a chemical ABCD, the precursors are those chemicals specifically produced to manufacture ABCD. If the way this pharmaceutical material is produced is to manufacture the materials AB and CD and then react AB and CD, then the precursors to ABCD are AB and CD. If the raw materials for making AB and CD are chemicals A, B, C, and D, and these chemicals are commodity chemicals or chemicals that have many uses unrelated to pharmaceutical manufacturing, they are not "precursors" for the purposes of the Pharmaceuticals Production NESHAP. Alternatively, if chemicals A, B, C, and D are primarily produced for the purpose of producing AB and CD, then they would be considered precursors and, thus, "pharmaceutical products" under the Pharmaceuticals Production NESHAP.

Materials that are intended to be pharmaceutical intermediates (i.e., precursors) frequently are manufactured according to current Good Manufacturing Practices (cGMP) (21 CFR parts 210 and 211), which have been promulgated by the FDA. The requirement for cGMP is determined by the FDA and the pharmaceutical manufacturer when the drug manufacturing process is first described in a master file or drug application. Considerations the FDA uses in requiring cGMP include the commercial availability of starting materials and how close an intermediate is to the final product form. Once the FDA and the pharmaceutical manufacturer have documented the manufacturing requirements and the process in the master file and/or drug application, this process and the requirements of cGMP must be followed no matter where the manufacturing process occurs. Thus, chemicals which are required to be manufactured according to cGMP, as shown in the master file or drug application for the ultimate active ingredient or drug product, would be considered precursors. However, a chemical may be manufactured under cGMP for reasons other than because the chemical is a precursor or active ingredient. Chemicals intended for use as binders, excipients, or fillers may be manufactured under cGMP, but these materials are excluded from coverage under the Pharmaceuticals Production NESHAP. Other chemicals or materials manufactured under cGMP are not covered by the Pharmaceuticals Production NESHAP because they do not meet the definition of an "active ingredient" (*e.g.*, food, food additives, color additives, in-vitro diagnostic substances, x-ray file, test indicator devices, and medical devices such as implants, artificial joints, surgical bandages, and stitching materials).

3. Definition of Primary Use

We are proposing changes to the primary use criteria that apply to active ingredients and precursors to avoid the unintended regulation of chemical manufacturing processes that produce chemicals that have a minor use as a pharmaceutical active ingredient or precursor. If greater than 50 percent of the projected use of a material produced by a chemical manufacturing site will be either as an active ingredient or a precursor to an active ingredient, then the material is a "pharmaceutical product," and the manufacturing operation is subject to regulation under the Pharmaceuticals Production NESHAP for the period of time it is manufacturing that material. A number of other Clean Air Act (CAA) standards have in place some type of 50 percent test to classify the manufacturing operation for regulatory applicability purposes.

A chemical manufacturer will have to consider information about past and projected uses of a chemical that is not a commodity chemical to determine whether the chemical's primary use is as a pharmaceutical product. A manufacturer should consider specific information about how its customers are using a material, if that information is available to the manufacturer. Otherwise, the chemical manufacturer will have to make assumptions about uses depending on who the customers are and based on the nature of the chemical. For example, if the manufacturer is manufacturing a chemical that is an intermediate (i.e., a chemical that will be used in a process to produce other chemicals), then the manufacturer should consider what products the customer manufactures. If the customer manufacturers pharmaceutical products (*i.e.*, has operations covered under SIC codes 2833 and 2834), the chemical manufacturer may inquire as to whether the chemical is used to manufacture an active ingredient or precursor or may assume that some or all of the chemical intermediate sent to the customer may be used as an active ingredient or precursor and produce that material subject to the Pharmaceuticals Production NESHAP. If the material sent to the same customer is not an intermediate, but rather a trade name product with a specific use or set of uses and that use or those uses would not be as an active ingredient, or as a precursor, then that quantity would not have to be considered as having a pharmaceutical use. For example, shipping a heat transfer fluid or cooling tower water treatment chemical to a pharmaceutical manufacturer does not create the presumption that the chemical is being used in the manufacture of pharmaceutical products in such a manner as to bring its manufacture under the Pharmaceuticals Production NESHAP.

The period of time to use for making the primary use determination will vary depending on the circumstances under which the chemical is manufactured. For example, if a chemical is manufactured under a specific contract with a customer or customers, then the projected use of the chemical by the customers during the period of time of the contract would be considered. Another example would be if a chemical is produced in a single campaign. The manufacturer will have to consider its customer's projected use at the start of the campaign for the material based on how the manufacturer markets the chemical and other available information to determine whether greater than 50 percent of the chemical to be produced in the upcoming campaign will be used as a pharmaceutical product, in which case the manufacturing operation would be subject to the Pharmaceuticals Production NESHAP. For the situation in which a material is manufactured on a continued basis, the primary use determination should be based on a projected annual use.

To make the primary use determination, the chemical manufacturer will use the total amount of the chemical projected to be produced over each specified period of time as the denominator, and then use as the numerator the amount of that chemical that is projected to be either used as an active ingredient and/or as a precursor for the same period of time. The chemical manufacturer will exclude from the numerator the amount of material that is used for non-

pharmaceutical uses and the amount used in the pharmaceutical industry for such uses as an excipient, binder, filler, or non-reactive solvent.

4. Definition of Active Ingredient

We are proposing to clarify the definition of "active ingredient" by identifying some of the materials that are not intended to come within the scope of this term. Because the definition of the term "active ingredient" is based on terminology used by the Federal Food Drug and Cosmetic Act, the language of what is excluded is also borrowed from that. Excluded from the definition are foods, food additives (other than vitamins and materials described in SIC codes 2833 and 2834), color additives, in-vitro diagnostic substances, x-ray film, test indicator devices, and medical devices such as implants, artificial joints, surgical bandages, and stitching materials. We never intended for the manufacture of these materials to be subject to the Pharmaceuticals Production NESHAP. The Pharmaceuticals Production NESHAP were developed to regulate the emissions from manufacturing processes that produce active ingredients and precursors.

B. Compliance Dates

1. Existing Sources

The Pharmaceuticals Production NESHAP promulgated on September 21, 1998, specifies that existing sources must be in compliance with the NESHAP no later than September 21, 2001, unless an extension is granted in accordance with § 63.1250(f)(4). We are proposing a new compliance date of October 21, 2002 because the proposed amendments are sufficiently far reaching and complex that an amended rule would effectively be a new rule warranting a new compliance date.

Section 112(a)(3) of the CAA provides that existing sources are to be in compliance with applicable emission standards "as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard." The September 21, 1998, Pharmaceuticals Production NESHAP specifies a compliance date 3 years from the issuance of that rule. Section 112(d)(6) provides authority for the Administrator to revise the emission standards issued under section 112 "no less often than every 8 years." We believe the authority to revise the standards inherently includes the authority to set new compliance dates for revised rules. Congress provided us discretion to set a compliance date for existing sources of up to 3 years in order to provide time for retrofitting of controls where necessary. Thus, due to the extensive nature of the proposed amendments, we are proposing a new compliance date.

We believe that 13 months from the otherwise applicable compliance date will be sufficient for all sources to come into compliance with the proposed amendments. However, should any source be unable to meet that compliance date because of the need to install controls that cannot be installed by that date, each source may request an extension of up to 1 year in accordance with § 63.1250(f)(6) of the proposed amendments.

2. New Sources

The Pharmaceuticals Production NESHAP specifies that new sources must comply with the NESHAP on September 21, 1998, or upon startup, whichever is later. However, an exception to this requirement was also provided. If the Pharmaceuticals Production NESHAP were more stringent than the proposed rule, the owner or operator would have until 3 years after September 21, 1998 to comply with the NESHAP. We are proposing comparable language to address the event that the final amendments would be more stringent than either the Pharmaceuticals Production NESHAP or these proposed amendments. The compliance date for complying with the final amendments and the requirements with which the owner or operator must comply until that date vary depending on the date construction or reconstruction commenced. Separate requirements are proposed for three time periods. In each case, we believe the allotted times, based on the settlement agreement, will be sufficient for all sources to come into compliance with the proposed amendments.

The first set of requirements would apply to new sources that commenced construction or reconstruction between the proposal and promulgation dates (*i.e.*, April 2, 1997 and September 21, 1998) if final amendments were to be more stringent than the Pharmaceuticals Production NESHAP. We are proposing that these sources come into compliance by September 21, 2001, and we are proposing that they comply with the April 12, 1997 proposed rule until that date.

The second set of requirements would apply to new sources that commenced construction or reconstruction between September 21, 1998 and April 10, 2000 if final amendments were to be more stringent than the Pharmaceuticals Production NESHAP. We are proposing that these sources come into compliance by October 21, 2002. In the absence of the proposed amendments, these sources would be required to comply with the NESHAP upon startup. Therefore, we are proposing that they continue to comply with the NESHAP until October 21, 2002.

The third set of requirements would apply to new sources that commence construction or reconstruction between April 10, 2000 and the date the final amendments are published if the final amendments were to be more stringent than the proposed amendments. We are proposing that these sources come into compliance by the date 1 year after publication of the final amendments, and we are proposing that they comply with the NESHAP between startup and the date 1 year after publication of the final amendments.

C. Overlapping Regulations

1. Overlap with Subpart PPP of 40 CFR Part 63

We are proposing to add a new paragraph at § 63.1250(h)(6) that would specify alternative procedures to address overlap situations between the pharmaceuticals NESHAP and the polyether polyols NESHAP in 40 CFR part 63, subpart PPP. This paragraph would specify that an owner or operator may elect to demonstrate compliance with the process vent standards in § 63.1254 by either controlling all process vents within the process by the most stringent requirements in subpart PPP (i.e., § 63.1425(b), (c)(1), (c)(3), (d), and/or (f)), or by identifying those vents that would require control under § 63.1254 and controlling only those vents by the most stringent requirements in subpart PPP. If you own or operate an affected source and you elect to demonstrate compliance with an amended subpart GGG by controlling process vents within the process in accordance with the requirements in subpart PPP, you would still be required to comply with all other requirements in subpart GGG for the corresponding PMPU (e.g., the storage tank, wastewater, and equipment leak standards and their corresponding initial and continuous compliance requirements and recordkeeping and reporting requirements). The proposed paragraph does not simply state that compliance with the requirements of subpart PPP would constitute compliance with an amended subpart GGG because it is possible that certain process vents that require control under an amended subpart GGG would not meet the applicability requirements for

control under subpart PPP. We believe the proposed requirements are reasonable because the control achieved for process vents complying with subpart PPP would be equal to or greater than the control achieved for process vents complying with an amended subpart GGG. In addition, the monitoring, recordkeeping, and reporting requirements for process vents in the two rules are similar.

2. Overlap With Resource Conservation and Recovery Act Wastewater Provisions

We are proposing several changes to § 63.1250(h)(5) to clarify compliance requirements and options for wastewater that is subject to both subpart GGG and 40 CFR parts 260 through 272. Some of the changes are needed because it is possible that the promulgated language could be interpreted to mean that every owner or operator must determine which provisions are the most stringent. This was not our intent. However, we do believe an owner or operator must determine the most stringent requirements if the owner or operator wants to comply with only one of the rules. We believe this determination is necessary because it is not possible to categorically state which rule is the most stringent. One reason for this is that wastewater conditions and systems vary from site to site. Furthermore, subpart GGG includes requirements for individual drain systems, but 40 CFR parts 260 through 272 do not.

To clarify our intent, we are proposing to delete the last sentence in the section, state in the first sentence that the owner or operator "may elect to determine" which provisions are the most stringent, and add several new statements. One of the new statements specifies that compliance with provisions of 40 CFR parts 260 through 272 that are determined to be more stringent than the requirements of subpart GGG constitutes compliance with subpart GGG. As an example of more stringent requirements that constitute compliance with subpart GGG, a second statement cites the provisions of 40 CFR parts 260 through 272 for treatment units that meet the conditions specified in § 63.1256(g)(13). This example may help to reduce the burden of making a stringency determination. To address a reporting oversight in the Pharmaceuticals Production NESHAP, the third proposed statement would require the owner or operator to identify in the Notification of Compliance Status report both the more stringent provisions of 40 CFR parts 260 through 272 with which the owner or operator will comply, and the information and procedures used to make any stringency determinations. The last of the proposed new statements specifies that § 63.1250(h)(6) does not apply if the owner or operator elects not to determine which provisions are the most stringent, and that the owner or operator must comply with the provisions in both rules. Finally, we are also proposing minor editorial changes to clarify our intent.

3. Overlap with Subpart I

Section 63.1250(h)(4) specifies procedures for equipment that is subject to both subpart GGG and 40 CFR part 63, subpart I. We are proposing several editorial changes to this section to clarify that, for equipment subject to both rules, an owner or operator may elect to comply with either the provisions in § 63.1255 or with the provisions in subpart H of 40 CFR part 63.

4. Overlapping Requirements for Offsite Cleaning and Reloading Facilities

Section II.J. of this preamble describes proposed vapor balancing provisions for storage tanks. One of these provisions is that offsite reloading and cleaning facilities must control emissions from railcars and tank trucks used in vapor balancing at the affected source by either connecting them to a closed vent system with a control device that reduces emissions by 90 percent by weight, or by connecting them to a vapor balancing system during reloading. However, we are proposing to add a new paragraph at § 63.1250(h)(1)(ii) to state that an offsite reloading or cleaning facility in compliance with all of the control requirements of any other standard in 40 CFR part 63 is in compliance with the requirements of subpart GGG.

D. Definition of Process

We are proposing to revise the definition of the term "process" in order to achieve a more uniform and replicable entity for basing applicability of the rule. The Pharmaceuticals Production NESHAP uses the concept of a process as the defining entity for applicability. The NESHAP require that the owner or operator consider emissions from all sources within a process in order to determine what requirements apply. Therefore, it is important to the overall effectiveness and uniformity of the NESHAP that the definition of process is consistently applied across the industry.

In the April 2, 1997, proposed rule, the definition of process included the concept of isolated intermediates, which was intended to encompass essentially the same set of unit operations that we are proposing today. However, during the public comment period following proposal, some commenters objected to the requirement that material be removed from the process equipment in order to be considered an isolated intermediate. Other commenters believed the concept of isolated intermediates was unnecessary; they believed that all operations leading to the production of a final pharmaceutical product could be considered a single process. In addition, we realized that the definition of isolated intermediate could be problematic because it could be interpreted in many ways. To address these concerns we decided to eliminate the concept of isolated intermediates from the definition of process for the promulgated rule. We also revised the definition to consider all operations leading up to a final pharmaceutical product, except in two circumstances. One exception is where an intermediate is used to manufacture more than one product, and the second is where an intermediate is stored for more than 30 days before subsequent processing. Although we made these changes in an effort to eliminate confusion in how to define a process, the changes had other, unintended consequences.

Since promulgation, we have learned that the 30-day storage provision could lead to different interpretations of the number of operations considered within the same process boundaries. For example, the period for which a given intermediate could or would be stored prior to further processing might vary according to production scheduling depending upon availability of materials and processing equipment, demand, and other reasons. The 30-day holding time could therefore result in constantly changing, unpredictable, and unrepeatable process boundaries. We also now realize that including all intermediate steps in the definition of process may have the same effect. This could occur because not all intermediate steps are manufactured in the same process sequence or at the same facility all the time. Nonrepeatable process boundaries are problematic because they could result in inconsistencies in the way in which the NESHAP is implemented.

To address these concerns, we are proposing to eliminate the 30-day storage provision and redraw the boundaries of a process around a more repeatable unit. The unit we selected is that of the single process "step" that results in the production of a pharmaceutical product, which could be an isolated intermediate, active

ingredient, or final dosage form of drug. The defining characteristic of the proposed process definition is that it considers all unit operations associated with generating one or more materials that are stable, isolated, and ultimately stored (see definition of product and isolated intermediate). The concept of storage has intentionally not been defined by a period of time to prevent problems comparable to those caused by the 30-day storage period in the promulgated definition. Moreover, the intent of the storage reference in the definition of isolated intermediate is to draw the boundaries of the process around the unit operations that generate a product that is stored at any time (see discussion of isolated intermediate in section II.E of this preamble). These proposed changes provide a more clearly defined final step for a process than in the originally proposed definition. In addition, because of the proposed facilitywide cap on emissions from process vents for which the owner or operator complies with the annual mass emission limit (see section II.G. of this preamble), any incentive to create additional processes would be minimized.

As a result of this proposed change in the definition of process, we are proposing changes to other provisions to ensure that an amended rule would provide the same level of emissions reductions as the promulgated rule. For details on these other proposed changes, see discussions on definition of storage tank, annual mass emission limit standards for process vents, pollution prevention (P2) provisions, and wastewater load cutoffs in sections II.F., II.G., II.K., and II.M., respectively.

E. Definition of Isolated Intermediate

As part of the change in the definition of process, we are proposing to add the term "isolated intermediate." The purpose of the term "isolated intermediate" is to provide a bright line guide for identifying the boundaries between processes. This definition, in conjunction with the definition of "process," simply provides that a process ends when an intermediate compound is placed in equipment that is used solely within the given process for purposes of storage. For example, if a compound is produced in Reactor A and then transferred directly to Reactor B, where a subsequent reaction takes place, then Reactor A and Reactor B belong to the same process because the product of Reactor A is not placed in storage equipment prior to further processing. This would be true even if two or more batches from Reactor A must be accumulated in Reactor B prior to initiating the reaction in Reactor B. As another example, assume that the compound produced in Reactor A is sometimes put into drums for temporary storage prior to subsequent processing in Reactor B. In this case, the drum storage marks the end of a process, and Reactor B represents the beginning of the next process. This would be true even if the storage is for a short time and even if the material is drummed off infrequently. All that matters for the purposes of identifying the process boundary is that storage occurs. It may sometimes be necessary to put off-spec material into storage for the period until it can be reprocessed or disposed of. We do not intend that infrequent, unplanned events such as these should create process boundaries.

F. Definition of Storage Tank

To be consistent with the proposed changes to the definition of "process," we are also proposing to revise the definition of "storage tank." The promulgated definition of "storage tank" specifies that a storage tank contains either a feedstock or a product of a process (*i.e.*, on a process flow diagram, a storage tank is located on one side of the process—either before or after it). Process tanks are tanks within a process; the tanks receive material from the process and discharge material to the same process (*i.e.*, they would have the process on both sides). Because the promulgated process definition encompassed many processing steps, we believed that the promulgated storage tank definition would mostly capture raw material and solvent storage tanks. We believed there would be few product tanks because final products would most likely not contain solvents and would be stored in drums or other containers suitable for small quantities.

However, the proposed process definition would result in far more products of processes, such as isolated intermediates. The vessels storing these products would be considered storage tanks under the promulgated definition, but the characteristics of these tanks would more likely resemble process tanks. Isolated intermediate tanks would most likely have smaller capacities than raw material or solvent storage tanks, would be expected to operate at higher than ambient temperatures, and would be more likely to experience higher throughputs and possibly more constant levels. Emissions from these process tanks could also be linked with the other operations conducted in a process on a per-batch basis. Therefore, we decided to clarify the definition of "storage tank" to include only raw material coming into the process.

We are also proposing to revise the "storage tank" definition to include solvent storage tanks located in tank farms that receive spent solvent from one or more processes. Typically, these tanks (which are generally 20,000 gallons or higher) are considered storage tanks in previous MACT standards; therefore, the proposed change would make the rule consistent with previous rules.

G. Annual Mass Emission Limit Standards for Process Vents

As a result of the proposed change to the definition of "process," we were concerned that the "shortening" of the process might have some unintended consequences relating to a reduction in the amount of HAP emissions reductions resulting from NESHAP. Under the promulgated rule, the owner or operator of an existing source can comply with the annual mass emission limit standard for as many as seven processes. The seven process limit was based on a review of emissions from the industry which showed only 168,000 pounds per year (lb/yr), out of 16,246,000 lb/yr nationwide, were emitted from processes with emissions less than 2,000 lb/yr. On average, there were seven processes per facility that contributed to this 168,000 lb/yr. With the proposed change in the definition of "process," however, an owner or operator could conceivably exempt more emissions than the 168,000 lb/yr that were originally anticipated if they could redraw process boundaries to utilize all 2,000 lb/yr of the exemption per process. An analysis of the database also indicated that, of the approximately 12 million lb/yr reduction of HAP associated with the process vent MACT alternative, about 0.5 million lb/yr of reductions would be attributed to processes left uncontrolled or to processes controlled down to 2,000 lb/yr, and the remaining 11 million lb/yr would be attributed to achieving 93 percent reduction. For the expected 100 facilities in the source category, the amount of emissions exempted by using the 2,000 lb/yr alternative would average 5,000 lbs/yr (2.5 tons) per facility.

The average emissions per facility from processes for which an owner or operator complies with the 2,000 lb/yr limit could be much higher than 5,000 lb/yr, and nationwide emissions reductions could be much lower, under these proposed amendments than under the NESHAP. To prevent this unintended result, we are proposing several changes. One change is to replace the seven process limit with a facilitywide emission limit of 4,000 lb/

yr. This change would not only preserve the emissions reductions originally anticipated from the process definition, but would also simplify the process vent provisions. A second proposed change is to extend the 2,000 lb/yr/process emission limit to include vents in processes where at least one stream was required to meet the 98 percent reduction requirement. Under the promulgated rule, the owner or operator was required to reduce emissions from these "leftover" vents by 93 percent. However, this restriction is no longer necessary because the 4,000 lb/yr facility cap would preserve the intended overall emissions reductions. Similarly, we propose eliminating the 100 lb/yr process *de minimis* cutoff because the 2,000 lb/yr process limit, or the 4,000 lb/yr facility limit, would apply to these processes as well. Finally, we are proposing to express the limits only in metric units (*i.e.*, 900 kilograms per year (kg/yr) and 1,800 kg/yr, respectively).

We are also proposing to replace the 400 lb/yr (uncontrolled) cutoff for new sources with an 1,800 kg/yr (uncontrolled) facility cap. This change was needed because the new source MACT standard would have been more stringent than the existing source MACT standard had the format and emission limit not been changed.

H. 98 Percent Standard for Process Vents at Existing Sources

We are proposing to make changes to the applicability of the 98 percent individual process vent requirement. The promulgated rule requires 98 percent control of emissions from process vents that meet the total resource effectiveness (TRE) criteria. This requirement is accompanied by a "grandfathering" provision that exempts these process vents from the 98 percent control requirement if they were controlled to at least 93 percent prior to the proposal date.

The original basis for the grandfathering provision provided in the promulgated rule is that it was not cost effective to replace existing devices that could meet the floor level of control, 93 percent, for the incremental 5 percent control. However, upon replacement (*i.e.*, starting from scratch after the useful life of the device is over), upgrading from 93 percent to 98 percent control is cost effective. The promulgated rule language inadvertently grandfathered the process rather than the control device. As a result, the promulgated rule has an unintended adverse effect on one segment of the industry (*i.e.*, nondedicated processes). Since nondedicated, multipurpose facilities are constantly undergoing product changes, the introduction of new processes, which could not be grandfathered, would drive these facilities toward replacing existing devices with devices that could meet 98 percent almost immediately. However, for dedicated processes, the promulgated grandfathering provision exempted the existing process from the 98 percent requirement indefinitely.

To correct this unintended inequity, the proposed revisions grandfather the "control device" rather than the process vent. As noted above, an aspect of the original analysis was that it was cost effective to upgrade to 98 percent control when replacing the control device. In addition, further consideration was given to the useful life of a control device. The useful life typically is 10 to 20 years, depending on the type of device. Therefore, today's proposed amendments would require an owner or operator of both types of processes to meet the 98 percent control requirement upon replacement or reconstruction of the control device, or upon reaching a date either 15 years from issuance of a facility's preconstruction permit, or April 2, 2007, whichever is later. This proposed language provides a definite date by which all such devices must be replaced. Thus, in 2007, control devices installed before the Pharmaceuticals Production NESHAP proposal will be more than 10 years old and, on average, should be about at the end of their useful lives.

In addition to these changes, we are also proposing two additional exemptions from the 98 percent control requirement. The first of these proposed provisions is designed to encourage pollution prevention (P2). Specifically, the owner or operator would be exempt from the 98 percent control requirement if the TRE vent is controlled to at least the MACT floor level of control (93 percent), and the production-indexed HAP consumption factor for the process is reduced by at least 50 percent. The second of the new provisions would allow processes containing hydrogenation vents to maintain the level of control achieved on the date of these proposed amendments while requiring at least 95 percent reduction on all other vents within the process. This provision would allow an owner or operator to control processes containing hydrogenation vents at higher levels than the floor, but less than the 98 percent requirement. We are proposing to add this language to address concerns that controlling some hydrogenation vents can be unsafe.

I. The Alternative Standard

We are proposing several changes to the alternative standard. These changes include new terminology and additional language clarifying when HAP concentrations in gas streams exiting control devices must be corrected for dilution. We are also proposing additional procedures for demonstrating compliance that an owner or operator may use in lieu of the concentration corrections. The following discussion describes our rationale for developing an alternative standard, summarizes our reasons for requiring concentration corrections and how these requirements were included in the promulgated rule, and describes our proposed changes to the alternative standard.

1. Rationale for an Alternative Standard

The Pharmaceuticals Production NESHAP and today's proposed amendments contain several options that allow an owner or operator to meet a concentration cutoff at the outlet of a control device as a means of achieving compliance with the standards. The most common option is referred to as the alternative standard which requires continuous (15-minute) monitoring of control device outlet concentration. The alternative standard also enables compliance to be evaluated at a single point (the outlet of the device) regardless of how many processes or unit operations are tied into the control device inlet. In addition, only one violation per day is assigned for each device complying with the alternative standard. In contrast, compliance with other options is evaluated on a process basis even if multiple processes are tied into a common control device. If monitoring parameters for these devices are exceeded, these exceedances could result in one violation per process per day. Therefore, the alternative standard is viewed as a critical element of the NESHAP and proposed amendments for end-of-line control devices that service numerous unit operations and processes, and it is expected to be utilized widely by the industry.

2. Correcting Concentrations for Dilution

In establishing the alternative standard, we were concerned that an owner or operator could use dilution as a means of achieving compliance with the standard. Although this practice is addressed in the General Provisions (see § 63.4(b)), we recognize that there are valid circumstances where air or inert gases are introduced into manifolds for safety and design considerations, and that these practices should not be

viewed as strictly prohibited by the above-referenced passage in the General Provisions if the effect of adding these gases can somehow be considered. Therefore, we sought to address these situations in the proposed amendments in several ways.

In § 63.1257(b)(6), the NESHAP requires that concentration measurements "be adjusted to negate the dilution effects of introducing nonaffected gaseous streams into the vent streams prior to control or measurement * * *." One of the intended results of this language was to require owners or operators complying with the alternative standard to adjust their measured concentrations by considering the amount of diluent gas introduced into the system prior to comparing this value against the concentration limit. (Another intended result of § 63.1257(b)(6) was to consider diluent gases in defining a process vent—process vents must contain at least 50 parts per million by volume (ppmv) HAP, on an undiluted and uncontrolled basis.)

Another requirement addressed combustion devices specifically. Because combustion devices operate such that the characteristics of the incoming stream are chemically changed, a simple correction for dilution at the inlet of the device will not directly and proportionally correct the concentration at the outlet of the device. Therefore, for combustion devices, the NESHAP also requires that an owner or operator consider dilution by correcting the outlet concentration to 3 percent oxygen (see § 63.1257(a)(3)). The NESHAP further states in § 63.1257(d)(3)(ii) that this correction should be made when the control device is a combustion device that uses supplemental combustion air.

The intent of the provisions described above was to require the correction only when nonaffected streams (*i.e.*, diluent gases or supplemental combustion air) were introduced into the vent or manifold. However, supplemental combustion air was not specifically defined, and the location of the referenced language (under the process vent compliance determination procedures, rather than the general compliance determination procedures) made the intent of this requirement somewhat unclear.

The 3 percent correction factor was first used in the new source performance standards (NSPS) for air oxidation unit processes, distillation operations, and reactor processes in the synthetic organic chemical manufacturing industry (40 CFR part 60, subparts III, NNN, and RRR), and later, the HON. The value of 3 percent originates from good engineering practices. For the oxygen deficient streams found in these industries, if the proper amount of supplemental combustion air is added, the outlet stream would contain approximately 3 percent oxygen. The concept of requiring the correction to 3 percent oxygen only when supplemental combustion air is used has a precedent in the Polymer Manufacturing NSPS (40 CFR part 60, subpart DDD). In the development of that standard, commenters suggested that requiring the 3 percent correction factor for high volume, low concentration streams would make compliance with a 20 part per million by volume (ppmv) outlet concentration standard difficult. We responded by identifying situations where additional air was added to the vent streams (*e.g.*, supplemental combustion air) prior to the control devices and required the correction only when these situations were encountered. In other words, if the vent streams originating from the processes and affected sources themselves were high volume, low concentration, then no correction was required. However, if nonaffected streams were added prior to control, then the NESHAP requires the correction.

This same concept was incorporated into the Pharmaceutical MACT. However, as mentioned previously, the promulgated rule was not clear on several aspects of the requirement, including the definition of supplemental combustion air, and when the requirement to correct to 3 percent oxygen should apply. In addition, the predominant reasons pharmaceutical facilities add excess air or other diluents to manifolds is not to provide the supplemental air necessary for combustion of emissions streams (the high volume, low concentration streams in the pharmaceuticals industry, by their very nature, should not require additional air for combustion), but rather for safety and design considerations. We also recognize that for these high oxygen streams, the correction requirement has the effect of lowering the 20 ppmv compliance level, perhaps significantly.

3. Proposed Changes in Terminology and Dilution Correction Requirements

To clarify the dilution correction requirements, we are proposing to revise terminology, to use the new terminology in the provisions describing the conditions under which outlet concentrations from combustion devices must be corrected, to explicitly state the procedures for correcting outlet concentrations from noncombustion devices, and to increase the compliance level for noncombustion devices from 20 ppmv to 50 ppmv.

In today's proposed amendments, we define a more general term called "supplemental gases." This term distinguishes air added to the vent stream for combustion and gases added for design or safety purposes from the affected vent streams and air required to operate combustion device burner(s). In addition, because this is a general term, it applies in all situations; it is not limited to combustion devices. The definition also clarifies that air used to operate combustion device burner(s) is not considered supplemental gas. Failure to include this clarification could allow the interpretation that every combustion device uses supplemental gases.

Using this new terminology, we are proposing to revise the current compliance option for combustion devices to require that the correction to 3 percent oxygen be made in cases where supplemental gases are added to affected streams prior to combustion. For noncombustion devices, we are proposing to add a new § 63.1257(a)(3)(ii) requiring correction to adjust outlet concentrations by the amount of supplemental gas added. This was the intent of the language in the promulgated rule. In addition to these changes, we are proposing to increase the concentration limit for noncombustion devices from 20 ppmv to 50 ppmv to be consistent with the definition of a process vent. This change would also provide a greater allowance to meet the concentration limit for devices that are perceived to be more environmentally-friendly in terms of potential for material recovery and the minimizing of secondary air pollution.

We believe an explanation of how to determine which streams are supplemental gases is warranted at this point. We are not requiring owners and operators to measure the concentration of total organic compounds (TOC) in gas streams. The proposed definition of supplemental gases indicates that process knowledge is adequate in identifying such streams. We intend that the owner or operator can qualitatively identify these streams based on their knowledge of the process and use reasonable judgement in estimating TOC or HAP concentrations. Similarly, these proposed amendments also allow owners and operators to use process knowledge in identifying affected process vents (defined by containing 50 ppmv HAP) and affected wastewater streams (defined by containing 5 ppmw HAP and a load of at least 0.05 kg/yr).

For characterizing affected wastewater, two "process knowledge"-based approaches, the use of a mass balance, and the use of published water solubility data are identified as adequate for determination of HAP wastewater concentrations. For defining process vents, these proposed amendments state that process knowledge that no HAP are present in an emission stream or the use of engineering assessments are both allowable approaches. Consistent with other guidance on process knowledge, the proposed amendments define engineering assessments broadly in § 63.1257(d)(2)(ii) and do not specify exact procedures or formulas for determining vent stream characteristics. In many cases, the exercise of identifying process vents will also result in identification of supplemental gases.

4. Proposed Alternative to HAP Concentration Correction for Combustion Devices

In addition to the proposed clarification of the 3 percent oxygen correction factor for combustion devices, we are also proposing to add an option that would allow owners and operators to monitor combustion devices for good operating practices in lieu of correcting to 3 percent oxygen when supplemental gases are used. The 20 ppmv concentration limit is based on concentrations achievable by properly operated incinerators—those with adequate residence times and combustion chamber temperatures. With the additional constraints of maintaining residence times and combustion chamber temperatures, owners and operators have economic incentives to minimize the amount of supplemental gases that are introduced prior to combustion devices. Nevertheless, we believe that it is reasonable to allow for monitoring of parameters in lieu of correcting to 3 percent oxygen when supplemental gas is added.

Therefore, we are proposing two sets of parameter levels as alternatives to correcting for dilution when supplemental gases are used in combustion devices. If the owner or operator complies with the alternative standard instead of a percent reduction requirement of 95 percent or less (*e.g.*, for some process vents and storage tanks), the owner or operator would be required to monitor for a minimum residence time of 0.5 seconds and a minimum combustion chamber temperature of 760°C. These values are consistent with parameters specified in subpart GGG for controlling emission streams from vents at wastewater collection and treatment systems. If the owner or operator complies with the alternative standard instead of a percent reduction requirement of 98 percent, the owner or operator would be required to monitor for a minimum residence time of 0.75 seconds and a minimum combustion chamber temperature of 816°C. Based on a considerable amount of data, we have concluded that properly designed and operated incinerators reduce emissions by 98 percent if they maintain these residence times and temperatures.

5. Proposed Alternative to HAP Concentration Correction for Noncombustion Devices

In addition to the proposed clarification of the concentration correction requirements described above, we are proposing an option to allow owners and operators of "dense gas" systems a simplified procedure for correction. Dense gas systems are defined as systems that are designed and operated to limit oxygen levels to less than 12 percent. We are proposing the simplified correction for dense gas systems because these systems are generally used to convey concentrated streams (above 5,000 ppmv). The proposed procedure would allow owners and operators to calculate a system flowrate setpoint. This setpoint is an indicator of stream concentration and would be monitored to demonstrate that significant dilution is not occurring. The owner or operator of a dense gas system would also be able to choose to operate at a higher flowrate than the system setpoint by making a concentration correction.

J. Vapor Balancing for Storage Tanks

We are proposing to allow vapor balancing in conjunction with the use of a pressure setting to comply with the storage tank control requirements. The vapor balancing provisions also would require that displaced vapors from the tank trucks and railcars be controlled at the reloading or cleaning facility to at least 90 percent or be vapor balanced. To demonstrate compliance with the offsite provisions, the owner or operator must obtain a certification from the cleaning and reloading facility indicating that the control requirements will be met. In general, a pressure setting of at least 2.5 pounds per square inch gage (psig) was determined to eliminate breathing losses from tanks that are typically found in this industry. As a means of demonstrating continuous compliance with the pressure setting requirement, the proposed provisions would also require the owner or operator to record the pressure vent setting during each transfer operation and to monitor the pressure relief valve on a quarterly basis to ensure no breathing losses.

K. Wastewater Standards

We are proposing several changes to the wastewater provisions. Because the proposed change in the definition of process reduces the number of steps in a process, we are proposing to reduce the wastewater load point of determination (POD) cutoffs in § 63.1256(a)(1)(i) from 1 megagram per year (Mg/yr) per process to 0.25 Mg/yr per process.

In § 63.1256(a)(5), we are proposing to clarify the offsite wastewater treatment options. Under the Pharmaceuticals Production NESHAP, offsite treatment was allowed only if the wastewater contained less than 50 ppmw of partially soluble HAP to prevent discharges that could result in significant volatilization of HAP prior to treatment. Since this objective would be met if the wastewater or residual is always managed and treated, we are proposing to add a provision to allow the wastewater to be discharged if the transferee (*i.e.*, the company or other organization accepting the discharged wastewater or residual) certifies that the wastewater or residual will be managed and treated in accordance with an amended subpart GGG. The 50 ppmw limit would still apply if this certification is not obtained, but we are also proposing to clarify the management and treatment requirements for these streams. The treatment options would be either enhanced biological treatment (§ 63.1256(g)(10)) or the 95 percent mass reduction option for biological treatment (§ 63.1256(g)(11)(i), (ii), and § 63.1256 (h)), and the management options would be either to cover the waste management units up to the activated sludge units or to demonstrate that less than 5 percent of the total soluble HAP is emitted from waste management units up to the activated sludge unit.

Another proposed change is to add specific provisions in § 63.1256(a)(3) for maintenance wastewater that differ from the provisions for process wastewater. The proposed provisions are equivalent to the provisions in the HON and other recent rules. They would require an owner or operator to prepare a description of maintenance procedures for management of maintenance wastewater as part of the startup, shutdown, and malfunction plan. Modification of the procedures would be required, as necessary.

L. Equipment Leak Provisions

We are proposing numerous clarifying changes within the LDAR provisions. One set of changes would make the difficult-to-monitor, unsafe-to-monitor, and inaccessible provisions consistent with language used in past and pending regulations (changes made to subpart H of the HON and in the proposed consolidated air rule). These changes would clarify which provisions apply to a given component and how to deal with components that cannot be accessed at any time in a safe manner. Another proposed change is to revise § 63.1255(b) to clarify which provisions in subpart H of the HON apply in these proposed amendments.

M. Pollution Prevention Provisions

We are proposing to add language to § 63.1252(e) that would allow owners and operators to merge processes for the purposes of complying with P2 provisions. This proposed change is being made because of the proposed change in the definition of a process. Our intent with regard to compliance under P2 provisions is that the owner or operator can make the P2 demonstration around the same starting and ending materials, regardless of how many "processes" the manufacture of these materials encompass. For example, consider the sequential manufacturing of four intermediates (A, B, C, and D) and the final product (E). Under the promulgated process definition, these five steps would be considered a single process. However, under the proposed revised definition, there are five processes. The proposed P2 language clarifies that owners and operators are allowed to consider any or all of these processes when demonstrating a reduction in the production-indexed consumption factor, as long as the activities covered under P2 provisions are limited to the same starting and ending materials for the baseline (before) and annual (after) demonstrations. In the above example, therefore, the owner or operator could make the P2 demonstration around processes A through E. Additionally, if the facility eliminated middle products C or D through a process optimization or improvement measure, the owner or operator could take credit for reducing the amount of HAP consumed by these steps. However, we stress that under P2 provisions, eliminating steps within a process by transferring operations elsewhere is not allowed. In addition, because the P2 provisions apply beyond the individual process level, other constraints are needed to make the provisions practical for documentation purposes. The baseline date for merged processes is 1992 (approximately 10 years prior to the compliance date) and merging a nondedicated formulation process or a nondedicated solvent recovery process with another process to claim a reduction from both processes is not allowed.

N. Initial Compliance Demonstration Provisions

1. Use of Equations in the 1978 Control Techniques Guideline (CTG) Document

In § 63.1257(d)(2), we are proposing to revise equations 13, 25, 26, and 33. These equations are used to estimate uncontrolled emissions from heating, depressurization, and vacuum system events. One of the proposed changes is to eliminate the requirement to use an average molecular weight in calculations for emission streams that contain more than one HAP. This change has no effect on the emissions estimates, but it makes the equations look more consistent with the equations in the 1978 CTG, which was our original intent. This change also does not apply to the optional approaches in the NESHAP to calculate emissions from heating and depressurization. We are also proposing to correct equation 33 and add new language that would provide additional flexibility in calculating emissions.

The proposed change to equation 13 (heating) is accomplished by simply removing the average molecular weight variable and adding the individual molecular weight to the summation term in the numerator. The NESHAP also includes instructions on how to modify equation 17 when it is used to calculate the average molecular weight for use in equation 13. The proposed change to equation 13 eliminates the need for these instructions, which were included with the definition of the HAP partial pressure in the variable list for equations 13 through 17. Therefore, we are proposing to delete these instructions.

The steps in the 1978 CTG to calculate emissions from depressurization are inconsistent with each other. Steps 6 through 9 describe how to calculate the ratio of air to total volatile organic compounds (VOC), but step 10 describes how to estimate the mass emissions of individual VOC assuming the previous steps were used to calculate the ratio of air to that individual VOC. We are proposing to replace the average molecular weight in equation 26 with individual compound molecular weights because this is consistent with the final step in the 1978 CTG. It appears this was the intent in the CTG (*i.e.*, procedures to calculate emissions from all other types of emission events are for single compounds), and we understand that this is how many pharmaceutical facilities calculate emissions from depressurization. To be consistent with this change in equation 26, we are also proposing to remove the summations from equation 25 so that it will calculate the average ratio of moles of noncondensables to moles of an individual HAP instead of the average ratio of moles of noncondensables to total HAP.

We are proposing two changes to equation 33, which is used to estimate emissions from vacuum systems. The first change is to replace the variable for the average molecular weight with one for an individual HAP molecular weight. This change alone would make the equation valid for emission streams with a single pollutant. To make the equation valid for multicomponent systems, the portion of the equation that represents the ratio of moles of condensable compounds to moles of noncondensable compounds must be replaced. To calculate the emissions of each HAP individually, the numerator of the revised ratio would be the partial pressure of the individual HAP, and the denominator would be the system pressure minus the sum of the partial pressures of all condensable compounds. Because we want to know the total HAP emissions, the proposed equation 33 multiplies the partial pressure of an individual HAP (in the numerator) by the molecular weight for that HAP, and sums over the number of HAPs in the emission stream.

To provide additional flexibility in calculating emissions, we are also proposing to add a statement in § 63.1257(d)(2)(ii) that would allow an owner or operator to calculate emissions using modified versions of the equations in § 63.1257(d)(2)(i) if they meet two conditions. First, the modified equations must have been used to meet other regulatory obligations. Second, the owner or operator must demonstrate that the results obtained using the modified equations do not affect applicability assessments or compliance determinations under these proposed amendments.

2. Process Condenser Demonstration

We are proposing to revise the initial compliance demonstration procedures for process condensers. These changes exclude from the demonstration requirement any process condensers followed by either secondary condensers that would be considered air pollution control devices or air

pollution control devices complying with the alternative standard. The original compliance procedure for process condensers was promulgated to ensure that owners and operators would accurately characterize uncontrolled emissions. If a process condenser was not operating properly, then the load to a secondary condenser or an air pollution control device (APCD) would be higher than the equations contained in the NESHAP would predict.

However, if a secondary condenser operates to cool a stream down to a temperature that corresponds to the required removal, assuming HAP load is at the level estimated by the equations (even though the load is actually higher because the process condenser doesn't work as anticipated), then the secondary condenser actually removes more HAP than is estimated by the equations and, in effect, accounts for the ineffectiveness of the process condenser. A similar effect occurs for other devices whose monitoring parameters are correlated directly with compliance, such as devices meeting the outlet concentration alternative standard. For these devices, the continuous compliance demonstration (monitoring) procedures will provide an indication that the requirements of the NESHAP are met, regardless of whether the process condenser is effective. However, in cases where no control device follows a process condenser, or where the APCD monitoring is based on testing or design evaluation at worst case conditions, either the validity of monitoring correlated to worst case conditions or actual emissions to the atmosphere depend on the effectiveness of the process condenser. Therefore, these proposed amendments require a process condenser initial demonstration for these cases.

3. Clarification of Worst-Case Testing Conditions

Although we are proposing only a minor change to the language in § 63.1257(b)(8) regarding the testing conditions for batch processes, we believe additional clarification of the intent of the worst-case provisions is warranted. Worst-case conditions are the most challenging conditions that the control device will encounter when used to control emission streams subject to the NESHAP which defines two categories of worst-case conditions: Absolute and hypothetical. Absolute worst-case conditions are based on actual emission stream characteristics. If the most challenging conditions are associated with the maximum HAP load, the NESHAP provides two time periods for defining the absolute worst-case conditions: (1) The period of time when the inlet to the control device contains at least 50 percent of the HAP load in the 8-hour period that contains the maximum HAP load, or (2) The 1-hour period when the inlet to the control device contains the maximum hourly HAP load. If the most challenging conditions are associated with a characteristic(s) other than the maximum HAP load, the absolute worst-case conditions are defined as the 1-hour period when those characteristics occur. The NESHAP cites three examples of such conditions: (1) Periods of time when the emission streams contain the maximum combined VOC and HAP load, (2) periods of time when the emission streams contain HAP(s) that approach limits of solubility for scrubbing media, and (3) periods of time when the emission streams contain HAP(s) that approach limits of adsorptivity for carbon adsorption systems. To determine the absolute worst-case conditions, the owner or operator must develop an emission profile that considers the characteristics of all of the vent streams to the control device, the design and operating characteristics of the control device, and scheduling of processes that generate the emission streams.

Hypothetical worst-case conditions are simulated conditions that are at least as challenging as the absolute worst-case conditions. As with absolute worst-case conditions, the owner or operator must develop an emission profile to determine the hypothetical worst-case conditions. The NESHAP provides two options for developing these emission profiles. One option is to determine the 1-hour period of time with the most challenging actual conditions. After these conditions are defined, the owner or operator must describe the equipment configuration, type of material to be processed, and any other characteristics of the simulated conditions under which test runs will be conducted. The owner or operator must also provide rationale for why the simulated conditions are considered to be as challenging as the most challenging actual conditions. The second option is to develop an emissions profile based on characteristics of the capture and control system that limit the maximum hourly emissions that can be routed to the control device. For example, a fan may limit the flowrate, and the concentration may be limited to a certain percentage of the lower explosive limit before a bypass valve opens.

O. Recordkeeping To Demonstrate Compliance With Process Vent Standards

We are proposing several changes to the recordkeeping and reporting procedures to clarify our intent. The provisions of § 63.1259 originally required owners and operators to calculate uncontrolled and controlled emissions for all processes in the PMPU. However, because some compliance options, such as the alternative standard, do not require such calculations to demonstrate compliance, we are proposing to specify the records required to demonstrate compliance with each option. We are also proposing the concept of a "standard" batch to clarify when uncontrolled and controlled emissions must be recalculated as part of ongoing compliance demonstrations.

The language of § 63.1259(b)(6) in the NESHAP states that the owners or operators must keep records of uncontrolled and controlled emissions per batch for each process. In specifying this recordkeeping requirement, we intended that owners and operators keep detailed records of uncontrolled and controlled emissions for each process to be operated at the facility and the number of batches of each process operated at the facility. In order to demonstrate compliance with the percent reduction requirement, only a showing of the process uncontrolled and controlled emissions would be needed since the ongoing continuous compliance demonstration was achieved through the monitoring of process parameters. Similarly, in order to demonstrate compliance with the 2,000 lb/yr emissions limit, we required records of the number of batches run at the facility, in addition to the controlled emissions, for use in calculating a summation of yearly emissions. However, because each batch in a campaign does not necessarily operate under exactly the same conditions, the emissions may vary from batch to batch. The promulgated rule does not clearly describe how to handle these variations in the continuous compliance demonstration. It could be interpreted to mean that the owner or operator must recalculate emissions for every variation in operating conditions, but this was not our intent.

To clarify our intent, we are proposing to add the concept of a standard batch. The owner or operator would create a standard batch based on a range of operating characteristics and other processing variables that affect emissions. The standard batch would become part of an operating scenario for

the process (*i.e.*, the standard batch consists of the same operating parameters as are required in the operating scenario, but the owner or operator may specify a range instead of only a single, fixed value). The owner or operator would calculate emissions for the standard batch using the characteristics that result in the highest emissions, and these results would be used in the demonstration of initial compliance with the process vent standards. If, during the processing of a particular batch, one such process variable was operated outside of the standard batch, the owner or operator would be required to recalculate uncontrolled and controlled emissions for that batch and demonstrate compliance with an amended subpart GGG. If the batch was operated within the standard batch constraints, then only a record that the batch was operated accordingly would be required.

In establishing the standard batch, owners and operators have flexibility in determining how to identify and record nonstandard batches. For example, the owner or operator should focus on the episodes that affect emissions or control efficiency. Likewise, in some cases, tracking control device parameters would be an adequate means of detecting nonstandard batches. Moreover, insignificant episodes, under the revised standard batch concept, would not require any further monitoring for "nonstandardness" during the operating period. For example, a one-time demonstration would be appropriate where a given process vent handles only a small fraction of the uncontrolled emissions from the given process, or where it is not physically possible to exceed the standard batch conditions. As another example, facilities often have head tanks within their processes. These tanks are used to measure a specified quantity of raw material prior to addition to the reactor or other unit operation. Typically, the capacity of these tanks is small—often no more than 100 or 200 gallons. If operated at ambient conditions, the potential emissions from the tank are limited only by the design capacity of the tank. In this situation, it would be sufficient to make a one-time showing that emissions from filling of the tank to capacity cannot exceed emissions under standard batch conditions.

P. Minor Technical Corrections

1. Tables 1 and 5

In Table 1, we are proposing several changes to clarify how subpart A (the General Provisions) applies to these proposed amendments. Some proposed changes correct inconsistencies. For example, we are proposing to change the requirement to conduct a performance test within 180 days of the compliance date to 150 days to be consistent with the time period to conduct necessary performance tests and submit the Notification of Compliance Status report. Other changes direct the reader to appropriate sections of the NESHAP that contain language related to the specific requirements in the General Provisions. We are also proposing to specify that the preconstruction approval requirement in § 63.5(b)(3) would not apply to facilities that are covered by 40 CFR 52.2454.

In Table 5, we are proposing to delete references to fuel gas systems. We inadvertently included these references in the NESHAP. They should be deleted because we did not include requirements specific to fuel gas systems anywhere in the NESHAP. Our intent is that fuel gas systems are a form of control device, and the requirements for control devices apply. We are also proposing changes to the control requirements for in-process tanks that meet the criteria of § 63.1252(f). Table 5 of the promulgated rule required an owner or operator to maintain a fixed roof on these tanks, and if the tank meets certain criteria, to control vent streams from the tank. However, because the tank is within the process, vents from the tank are also process vents and subject to the process vent standards. To eliminate this overlap, we are proposing to replace the vent stream control requirements in Table 5 with a statement that vents on these tanks are process vents.

2. Definitions

In addition to the changes to definitions described in other sections of this preamble, we are also proposing minor changes to definitions of many other terms to correct errors, improve clarity, or to make them consistent with other regulations.

3. Wastewater Provisions

We are proposing several minor changes and corrections to the wastewater provisions. In § 63.1256(a)(3), we are proposing to add an exemption for wastewater samples of a size not greater than reasonably necessary for the method of analysis. If the owner or operator determines that it is unsafe to perform the required seal gap measurements or inspections of a wastewater tank at the specified time, the HON specifies two compliance options. Although we intended to include both of these options in the promulgated pharmaceuticals rule, one of them was inadvertently left out. Therefore, we are proposing to add § 63.1256(b)(6)(i), which would specify that an owner or operator may measure the seal gaps or inspect the tank within 30 calendar days of the determination that the floating roof is unsafe. In § 63.1256(d)(2), we are proposing to add an option to vapor balance wastewater loading operations from containers back to the process.

In § 63.1256(g)(8), (11), and (12), the promulgated rule specifies that compliance with treatment options must be determined based on a performance test; to be consistent with other rules, we are proposing to clarify that compliance with all treatment options, except open biological treatment, may also be determined using a design evaluation. Paragraphs (g)(8) and (12) in § 63.1256 of the promulgated rule cross referenced two paragraphs that describe compliance procedures for biological treatment; we are proposing editorial changes to clarify which cross referenced section applies to open biological treatment and which applies to closed biological treatment.

Finally, to be consistent with other recent rules, we are proposing to add a provision in § 63.1257(b)(10) that would allow an owner or operator to analyze wastewater using Method 8260, as well as Method 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication No. SW–846, Third Edition, September 1986, as amended by Update I, November 15, 1992).

4. Emissions Averaging

According to § 63.1252(d)(6) of the promulgated rule, an affected source may include, in emissions averaging groups, no more than 20 storage tanks that are subject to the 90 percent reduction requirement, and no more than 20 storage tanks that are subject to the 95 percent reduction requirement. However, this provision is inconsistent with the policy we established in the HON of limiting to 20 the number of emission points in an emissions average (59 FR 19428, April 22, 1994). Section 63.1257(g) specifies that emissions averaging for storage tanks applies to all storage tanks at an affected source (*i.e.*, all storage tanks are emission points that may be grouped for emissions averaging). Therefore, we are proposing to correct § 63.1252(d)(6) by specifying that not more than 20 storage tanks at an affected source may be included in emissions averaging.

5. Initial Compliance and Monitoring

We are proposing several minor changes and corrections to the initial compliance and monitoring provisions. In § 63.1257(b)(6)(iii), we are proposing to add that Method 26A of appendix A of 40 CFR part 60 may be used to determine hydrogen chloride concentrations, and we are proposing to specify that both Methods 26 and 26A also may be used to determine hydrogen halide and halogen concentrations. In § 63.1257(d)(2)(i)(H), we are proposing a correction to the note associated with equation 36 so that an owner or operator may elect to disregard the effect of time on the emissions and simply assume all HAP in the vapor space are emitted. In § 63.1257(e), (f), and (g), we are proposing to correct symbols used to define variables in several equations, and we are proposing to correct references to several equation numbers. To reduce the burden of demonstrating compliance with the P2 provisions, we are proposing to add a statement in § 63.1257(f) that would allow an owner or operator to calculate the annual HAP consumption factor once per month if more than 10 batches are produced in a month. We are proposing to move equation 61 from § 63.1257(h)(3) to its proper location in § 63.1257(h)(2)(i). In § 63.1258(b)(6)(iii), we are proposing a change to clarify that an exceedance for a flare occurs only upon the loss of all pilot flames. Because we are proposing to change the annual mass emission limit compliance option for process vents by adding an 1,800 kg/yr facilitywide limit, we are also proposing to add a requirement in § 63.1258(c) that owners and operators demonstrate continuous compliance with this limit by calculating daily 365-day rolling summations; this requirement parallels the requirement for demonstrating compliance with the 2,000 lb/yr limits for individual processes. We are also proposing to delete from this paragraph the sentence that describes what will be considered a violation.

6. Recordkeeping and Reporting

The promulgated rule did not include any recordkeeping and reporting requirements for storage tanks with floating roofs. To correct this oversight we are proposing to add requirements to: (1) record the results of each inspection and seal gap measurement, as specified in § 63.123(c) through (e); and (2) submit the results of inspections that detected a failure or seal gap measurements that exceed required limits, as specified in § 63.122(d) through (f). Clearly, these are the same recordkeeping and reporting requirements in the HON, and they have been applied in other rules as well.

To document compliance with the annual mass emission limit for process vents, § 63.1259(b)(4) of the NESHAP requires records of rolling annual total emission calculations, but it did not specify the recordkeeping frequency. Because the NESHAP specifies that the emission limit not be exceeded in any 365-day period, we are proposing to require daily recordkeeping. In addition, we are proposing that this requirement apply to the proposed 4,000 lb/yr facilitywide emission limit, as well as to the 2,000 lb/yr limit for individual processes.

Table 1 in the NESHAP states that § 63.10(b)(2) does not apply to the NESHAP because we have specified applicable records within the NESHAP. We did not include a requirement in the NESHAP to record all maintenance performed on the air pollution control equipment, but these are important records that we should have required. Therefore, we are proposing to add a requirement to record this information in § 63.1259(a)(3)(iii).

We are proposing several statements to clarify our intent. In § 63.1260(e), we are proposing to add paragraphs (6) and (7) to reiterate requirements already stated in § 63.1257(e)(1)(ii) that data used in determining the annual average concentration of wastewater streams must be included in the precompliance report. We are proposing to edit § 63.1260(g)(1)(ii) to clarify when quarterly reporting is required. We are proposing to move a statement from the definition of the term "operating scenario" to § 63.1260(g)(2)(vii) because it deals with information the owner or operator must provide to verify that requirements for new operating scenarios have been met. In § 63.1260(h)(1), we are proposing to add a statement to clarify that process changes for which the owner or operator must submit a notification of process change means the startup of a new process.

7. Units

The NESHAP specifies most emission limits and other numerical requirements in two sets of units. This can create confusion when a parameter meets the value in one set of units but not the other. One approach to resolve this problem would be to specify the values using an unreasonable number of significant figures. However, we are proposing to simply specify all terms using only one set of units.

III. What are the administrative requirements of the rule?

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that these proposed amendments do not constitute a "significant regulatory action" because they do not add any new control requirements. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local

governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and EPA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

Today's proposed amendments will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because State and local governments do not own or operate any sources that would be subject to these proposed amendments. Thus, the requirements of section 6 of the Executive Order do not apply to today's action.

C. Executive Order 13084, Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed amendments to subpart GGG do not significantly or uniquely affect the communities of Indian tribal governments. No tribal governments own or operate sources subject to these proposed amendments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to today's action.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. Today's proposed amendments are not subject to Executive Order 13045 because they are based on technology performance, not health or safety risks. Furthermore, this rule has been determined not to be "economically significant" as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of the Pharmaceuticals Production NESHAP for any year has been estimated to be approximately $64 million (63 FR 50287, September 21, 1998), and today's proposed amendments do not add new requirements that would increase this cost. Thus, today's proposed amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that these proposed amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed amendments are not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et. seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed amendments on small entities, a small entity is defined as: (1) A small business in SIC code 2833 or 2834 that has as many as 750 employees; (2) a small business in SIC code 2869 that has as many as 1,000 employees; (3) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (4) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The EPA has determined that none of the small entities will experience a significant impact because the proposed amendments impose no additional regulatory requirements on owners or operators of affected sources.

Although these proposed amendments will not have a significant economic impact, EPA nonetheless has tried to reduce the impact of the proposed amendments on small entities. Many of the proposed amendments define optional means of compliance. For example, vapor balancing was added as an optional means of compliance for storage tanks, a facilitywide limit on the mass of process vent emissions replaces the limit on the number of processes that may comply with the process-based emission limit, additional compliance alternatives are included for process vents that meet the criteria for 98 percent control, and optional parameter monitoring is included as an alternative to correcting to 3 percent O_2 when supplemental gas is introduced to a dense gas system or a system controlled with a combustion device and the owner or operator complies with the alternative standard. The proposed amendments also include simplified recordkeeping requirements when the owner or operator documents conditions that define a standard batch, and the process is operated within that range of conditions. We continue to be interested in the potential impacts of the proposed amendments on small entities and welcome comments on issues related to such impacts.

G. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in the 1998 NESHAP under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control No. 2060–0358. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1781.01), and a copy may be obtained from Sandy Farmer by mail at U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW, Washington DC 20460, by email at *farmer.sandy@epa.gov*, or by calling (202) 260–2740.

Today's proposed amendments to the NESHAP will have no net impact on the information collection burden estimates made previously. An oversight has been corrected by adding recordkeeping and reporting requirements for storage tanks equipped with floating roofs. The promulgated rule only included recordkeeping and reporting requirements for add-on control devices for storage tanks even though add-on control devices and floating roofs were considered in the cost impacts and burden estimates. Also, the proposed amendments clarify the intent of several provisions in the 1998 NESHAP and correct inadvertent omissions and minor drafting errors in the 1998 NESHAP. Consequently, the ICR has not been revised.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Pub. L. 104–113 (March 7, 1996), directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling and analytical procedures, and business practices) that are developed or adopted by one or more voluntary consensus bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The proposed amendments to subpart GGG do not involve the proposal of any new technical standards or incorporate by reference existing technical standards. The EPA welcomes comments on this aspect of these proposed amendments and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 20, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63 of title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart GGG—National Emission Standards for Pharmaceuticals Production

2. Section 63.1250 is amended by:
a. Revising paragraph (a),
b. Revising paragraph (b),
c. Revising paragraph (c),
d. Revising paragraph (f);
e. Revising paragraph (h)(1);
f. Revising paragraphs (h)(4) and (5); and
g. Adding paragraph (h)(6).

The revisions and additions read as follows:

§ 63.1250 Applicability.

(a) *Definition of affected source.* (1) The affected source subject to this subpart consists of the pharmaceutical

manufacturing operations as defined in § 63.1251. Except as specified in paragraph (d) of this section, the provisions of this subpart apply to pharmaceutical manufacturing operations that meet the criteria specified in paragraphs (a)(1)(i) through (iii) of this section as follows:

(i) Manufacture a pharmaceutical product as defined in § 63.1251;

(ii) Are located at a plant site that is a major source as defined in section 112(a) of the Act; and

(iii) Process, use, or produce HAP.

(2) Determination of the applicability of this subpart shall be reported as part of an operating permit application or as otherwise specified by the permitting authority.

(b) *New source applicability.* A new affected source subject to this subpart and to which the requirements for new sources apply is: an affected source for which construction or reconstruction commenced after April 2, 1997, and the standard was applicable at the time of construction or reconstruction; or a pharmaceutical manufacturing process unit (PMPU) dedicated to manufacturing a single product that has the potential to emit 10 tons per year of any one HAP or 25 tons per year of combined HAP for which construction commenced after April 2, 1997 or reconstruction commenced after October 21, 1999.

(c) *General provisions.* Table 1 of this subpart specifies and clarifies the provisions of subpart A of this part that apply to an owner or operator of an affected source subject to this subpart. The provisions of subpart A specified in Table 1 are the only provisions of subpart A that apply to an affected source subject to this subpart.

* * * * *

(f) *Compliance dates.* The compliance dates for affected sources are as follows:

(1) An owner or operator of an existing affected source must comply with the provisions of this subpart no later than October 21, 2002.

(2) An owner or operator of a new or reconstructed affected source must comply with the provisions of this subpart on [date of publication of the final amendments] or upon startup, whichever is later.

(3) Notwithstanding the requirements of paragraph (f)(2) of this section, a new source which commences construction or reconstruction after April 2, 1997 and before September 21, 1998 shall not be required to comply with this subpart until September 21, 2001 if:

(i) The requirements of this subpart are more stringent than requirements of this subpart in effect before [effective date of the final rule] and contained in the 40 CFR, part (63.1200-end), edition revised as of July 1, 2000; and

(ii) The owner or operator complies with the requirements published on April 2, 1997 (62 FR 15754) during the period until September 21, 2001.

(4) Notwithstanding the requirements of paragraph (f)(2) of this section, a new source which commences construction or reconstruction after September 21, 1998 and before April 10, 2000 shall not be required to comply with this subpart until October 21, 2002 if:

(i) The requirements of this subpart are more stringent than the requirements of this subpart in effect before [effective date of the final rule]; and

(ii) The owner or operator complies with the requirements of this subpart in effect before [effective date of the final rule] during the period between startup and October 21, 2002.

(5) Notwithstanding the requirements of paragraph (f)(2) of this section, a new source which commences construction or reconstruction after April 10, 2000 and before [date of publication of final amendments] shall not be required to comply with this subpart until [date 1 year after publication of final amendments] if:

(i) The requirements of this subpart are more stringent than the requirements published on April 2, 1997 (62 FR 15754); and

(ii) The owner or operator complies with the requirements of this subpart in effect before [effective date of the final rule] during the period between startup and [date 1 year after publication of final amendments].

(6) Pursuant to section 112(i)(3)(B) of the Act, an owner or operator may request an extension allowing the existing source up to 1 additional year to comply with section 112(d) standards.

(i) For purposes of this subpart, a request for an extension shall be submitted no later than 120 days prior to the compliance dates specified in paragraphs (f)(1) through (5) of this section, except as provided in paragraph (f)(6)(ii) of this section. The dates specified in § 63.6(i) for submittal of requests for extensions shall not apply to sources subject to this subpart.

(ii) An owner or operator may submit a compliance extension request after the date specified in paragraph (f)(6)(i) of this section provided the need for the compliance extension arose after that date and before the otherwise applicable compliance date, and the need arose due to circumstances beyond reasonable control of the owner or operator. This request shall include the data described in § 63.6(i)(6)(i)(A), (B), (C), and (D).

* * * * *

(h) * * *

(1) *Compliance with other MACT standards.* (i) After the compliance dates specified in this section, an affected source subject to the provisions of this subpart that is also subject to the provisions of any other subpart of this part 63 may elect to comply with either the provisions of this subpart of the provisions of another subpart governing the maintenance of records and reporting to EPA. The affected source shall identify in the Notification of Compliance Status report required by § 63.1260(f) under which authority such records will be maintained.

(ii) After the compliance dates specified in paragraph (f) of this section, at an offsite reloading or cleaning facility subject to § 63.1253(f), compliance with the emission standards and associated initial compliance, monitoring, recordkeeping, and reporting provisions of any other subpart of this part 63 constitutes compliance with the provisions of § 63.1253(f)(7)(ii) or (iii). The owner or operator of the affected storage tank shall identify in the Notification of Compliance Status report required by § 63.1260(f) the subpart of this part 63 with which the owner or operator of the offsite reloading or cleaning facility complies.

* * * * *

(4) *Compliance with subpart I of this part.* After the compliance dates specified in this section, an affected source with equipment subject to subpart I of this part may elect to comply with either the provisions of § 63.1255 or the provisions of subpart H of this part for all such equipment. The owner or operator shall identify in the Notification of Compliance Status report required by § 63.1260(f) the provisions with which the owner elects to comply.

(5) *Compliance with other regulations for wastewater.* After the compliance dates specified in this section, the owner or operator of an affected wastewater stream that is also subject to provisions in 40 CFR parts 260 through 272 may elect to determine whether this subpart or 40 CFR parts 260 through 272 contain the more stringent control requirements (*e.g.*, design, operation, and inspection requirements for waste management units; numerical treatment standards; etc.) and the more stringent testing, monitoring, recordkeeping and reporting. Compliance with provisions of 40 CFR parts 260 through 272 that are determined to be more stringent than the requirements of this subpart

constitutes compliance with this subpart. For example, provisions of 40 CFR parts 260 through 272 for treatment units that meet the conditions specified in § 63.1256(g)(13) constitute compliance with this subpart. In the Notification of Compliance Status report required by § 63.1260(f), the owner or operator shall identify the more stringent provisions of 40 CFR parts 260 through 272 with which the owner or operator will comply. The owner or operator shall also identify in the Notification of Compliance Status report required by § 63.1260(f) the information and procedures used to make any stringency determinations. If the owner or operator does not elect to determine the more stringent requirements, the owner or operator must comply with both the provisions of 40 CFR parts 260 through 272 and the provisions of this subpart.

(6) *Compliance with subpart PPP of this part.* After the compliance dates specified in this section, an affected source with equipment in a pharmaceutical manufacturing process unit that is also part of an affected source under subpart PPP of this part may elect to demonstrate compliance with § 63.1254 by controlling all process vents in accordance with § 63.1425(b), (c)(1), (c)(3), (d), and/or (f) of subpart PPP of this part. Alternatively, the owner or operator may elect to determine which process vents must be controlled to comply with the percent reduction requirements of § 63.1254 and control only those vents in accordance with § 63.1425(b), (c)(1), (c)(3), (d), and/or (f) of subpart PPP of this part. For any pharmaceutical manufacturing process unit controlled in accordance with the requirements of § 63.1425 of subpart PPP of this part, the owner or operator must also comply with all other requirements in subpart PPP of this part. In the Notification of Compliance Status report required by § 63.1260(f), the owner or operator shall identify which pharmaceutical manufacturing process units are meeting the control requirements for process vents and all other requirements of subpart PPP of this part, and the owner or operator shall describe the calculations and other information used to identify which process vents must be controlled to comply with the percent reduction requirements of § 63.1254, if applicable.

* * * * *

3. Section 63.1251 is amended by:

a. Revising the definitions for "Active ingredient," Annual average concentration," "Construction," "Consumption," "Excipient," "Large control device," "Pharmaceutical manufacturing operations," "Pharmaceutical product," "Primary use," "Process," "Process tank," "Repaired," "Shutdown," "Small control device," "Startup," "Storage tank," and "Vapor-mounted seal";

b. Removing the definition of "Component";

c. Removing the last sentence from the definition of "Wastewater stream";

d. Revising paragraphs (3) and (8) in the definition for "Operating scenario";

e. Adding definitions in alphabetical order for "Combustion device burner," "Dense gas system," "Isolated intermediate," "Maintenance wastewater," "Precursor," "Reconstruction," "Standard batch," "Supplemental gases," and "System flowrate."

The revisions and additions read as follows:

§ 63.1251 Definitions.

* * * * *

Active ingredient means any material that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of man or other animals. This term does not include food, food additives (except vitamins and other materials described by SIC code 2833 or 2834), color additives, cosmetics, in-vitro diagnostic substances, x-ray film, test indicator devices, and medical devices such as implants, artificial joints, surgical bandages, and stitching material.

* * * * *

Annual average concentration, as used in the wastewater provisions in § 63.1256, means the total mass of partially soluble and/or soluble HAP compounds in a wastewater stream during the calendar year divided by the total mass of the wastewater stream discharged during the same calendar year, as determined according to the procedures specified in § 63.1257(e)(1)(i) and (ii).

* * * * *

Combustion device burner means a device designed to mix and ignite fuel and air to provide a flame to heat and oxidize waste organic vapors in a combustion device.

* * * * *

Construction means the onsite fabrication, erection, or installation of an affected source or a PMPU. Addition of new equipment to a PMPU subject to existing source standards does not constitute construction, but it may constitute reconstruction of the affected source or PMPU if it satisfies the definition of "Reconstruction" in this section.

Consumption means the quantity of all HAP raw materials entering a process in excess of the theoretical amount used as reactant, assuming 100 percent stoichiometric conversion. The raw materials include reactants, solvents, and any other additives. If a HAP is generated in the process as well as added as a raw material, consumption includes the quantity generated in the process.

* * * * *

Dense gas system means a conveyance system operated to limit oxygen levels below 12 percent.

* * * * *

Excipient means any substance other than the active drug or product which has been appropriately evaluated for safety and is included in a drug delivery system to either aid the processing of the drug delivery system during its manufacture; protect, support, or enhance stability, bioavailablity, or patient acceptability; assist in product identification; or enhance any other attribute of the overall safety and effectiveness of the drug delivery system during storage or use.

* * * * *

Isolated intermediate is obtained as the product of a process. An isolated intermediate is usually a product of a chemical synthesis, fermentation, or biological extraction process; several different isolated intermediates may be produced in the manufacture of a finished dosage form of a drug. Precursors, active ingredients, or finished dosage forms are considered isolated intermediates. An isolated intermediate is stored before subsequent processing. Storage occurs at any time the intermediate is placed in equipment used solely for storage, such as drums, totes, day tanks, and storage tanks. The storage of an isolated intermediate marks the end of a process.

* * * * *

Large control device means a control device that controls total HAP emissions of greater than or equal to 10 tons/yr, before control.

* * * * *

Maintenance wastewater means wastewater generated by the draining of process fluid from components in the pharmaceutical manufacturing process unit into an individual drain system in preparation for or during maintenance activities. Maintenance wastewater can be generated during planned and unplanned shutdowns and during periods not associated with a shutdown. Examples of activities that can generate maintenance wastewater include

descaling of heat exchanger tubing bundles, cleaning of distillation column traps, draining of pumps into an individual drain system, and draining of portions of the pharmaceutical manufacturing process unit for repair. Wastewater from cleaning operations is not considered maintenance wastewater.

* * * * *

Operating scenario, * * *

(3) The applicable control requirements of this subpart, including the level of required control, and for vents, the level of control for each vent;

* * * * *

(8) For reporting purposes, a change to any of these elements not previously reported, except for paragraph (5) of this definition, shall constitute a new operating scenario.

* * * * *

Pharmaceutical manufacturing operations means the facilitywide collection of PMPUs and any other equipment such as heat exchanger systems, wastewater and waste management units, or cooling towers that are not associated with an individual PMPU, but that are located at a facility for the purpose of manufacturing pharmaceutical products and are under common control.

* * * * *

Pharmaceutical product means any of the following materials, excluding any material that is a nonreactive solvent, excipient, binder, or filler, or any material that is produced in a chemical manufacturing process unit that is subject to the requirements of subparts F and G of this part 63:

(1) Any material described by the standard industrial classification (SIC) code 2833 or 2834; or

(2) Any material whose manufacturing process is described by North American Industrial Classification System (NAICS) code 325411 or 325412; or

(3) A finished dosage form of a drug, for example, a tablet, capsule, solution, etc.; or

(4) Any active ingredient or precursor that is produced at a facility whose primary manufacturing operations are described by SIC code 2833 or 2834; or

(5) At a facility whose primary operations are not described by SIC code 2833 or 2834, any material whose primary use is as an active ingredient or precursor.

* * * * *

Precursor means a material that is manufactured to undergo further chemical change or processing to ultimately manufacture an active ingredient or finished dosage form of a drug. This term does not include commodity chemicals produced by the synthetic organic chemical manufacturing industry.

* * * * *

Primary use means 50 percent or more of a material is used for a particular purpose.

Process means all equipment which collectively function to produce a pharmaceutical product or isolated intermediate (which is also a pharmaceutical product). A process may consist of one or more unit operations. For the purposes of this subpart, process includes any, all, or a combination of reaction, recovery, separation, purification, or other activity, operation, manufacture, or treatment which are used to produce a pharmaceutical product or isolated intermediate. Cleaning operations conducted are considered part of the process. Nondedicated solvent recovery operations located within a contiguous area within the affected source are considered single processes. A storage tank that is used to accumulate used solvent from multiple batches of a single process for purposes of solvent recovery does not represent the end of the process. Nondedicated formulation operations occurring within a contiguous area are considered a single process that is used to formulate numerous materials and/or products. Quality assurance and quality control laboratories are not considered part of any process. Ancillary activities are not considered a process or part of any process. Ancillary activities include boilers and incinerators (not used to comply with the provisions of § 63.1253, § 63.1254, or § 63.1256(h)), chillers and refrigeration systems, and other equipment and activities that are not directly involved (*i.e.*, they operate within a closed system and materials are not combined with process fluids) in the processing of raw materials or the manufacturing of a pharmaceutical product.

* * * * *

Process tank means a tank that is used to collect material discharged from a feedstock storage tank or unit operation and transfer this material to another unit operation within the process or to a product storage tank. Surge control vessels and bottoms receivers that fit these conditions are considered process tanks. Product storage tanks are considered process tanks and are part of the PMPU that produce the stored material. For the purposes of this subpart, vents from process tanks are considered process vents.

* * * * *

Reconstruction, as used in § 63.1250(b), shall have the meaning given in § 63.2, except that "affected or previously unaffected stationary source" shall mean either "affected facility" or "PMPU." As used in § 63.1254(a)(3)(ii)(A)(*3*), reconstruction shall have the meaning given in § 63.2, except that "source" shall mean "control device."

* * * * *

Repaired means that equipment:

(1) Is adjusted, or otherwise altered, to eliminate a leak as defined in the applicable paragraphs of § 63.1255, and;

(2) Unless otherwise specified in applicable provisions of § 63.1255, is monitored as specified in § 63.180(b) and (c) as appropriate, to verify that emissions from the equipment are below the applicable leak definition.

* * * * *

Shutdown means the cessation of operation of a continuous process for any purpose. Shutdown also means the cessation of a batch process or any related individual piece of equipment required or used to comply with this subpart as a result of a malfunction or for replacement of equipment, repair, or any other purpose not excluded from this definition. Shutdown also applies to emptying and degassing storage vessels. Shutdown does not apply to cessation of a batch process at the end of a campaign, for routine maintenance, for rinsing or washing of equipment between batches, or other routine operations.

* * * * *

Small control device means a control device that controls total HAP emissions of less than 10 tons/yr, before control.

* * * * *

Standard batch means a batch process operated within a range of operating conditions that are documented in an operating scenario. Emissions from a standard batch are based on the operating conditions that result in highest emissions. The standard batch defines the uncontrolled and controlled emissions for each emission episode defined under the operating scenario.

Startup means the setting in operation of a continuous process unit for any purpose; the first time a new or reconstructed batch process unit begins production; for new equipment added, including equipment used to comply with this subpart, the first time the equipment is put into operation; or, for the introduction of a new product/process, the first time the product or process is run in equipment. For batch process units, startup does not apply to the first time the equipment is put into operation at the start of a campaign to

produce a product that has been produced in the past, after a shutdown for maintenance, or when the equipment is put into operation as part of a batch within a campaign. As used in § 63.1255, startup means the setting in operation of a piece of equipment or a control device that is subject to this subpart.

Storage tank means a tank or other vessel that is used to store organic liquids that contain one or more HAP as raw material feedstocks. Storage tank also means a tank or other vessel in a tank farm that receives and accumulates used solvent from multiple batches of a process or processes for purposes of solvent recovery. The following are not considered storage tanks for the purposes of this subpart:

(1) Vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) Pressure vessels designed to operate in excess of 204.9 kilopascals and without emissions to the atmosphere;

(3) Vessels storing organic liquids that contain HAP only as impurities;

(4) Wastewater storage tanks; and

(5) Process tanks (including product tanks and isolated intermediate tanks).

Supplemental gases are any gaseous streams that are not defined as process vents, or closed-vent systems from wastewater management and treatment units, storage tanks, or equipment components and that contain less than 50 ppmv TOC, as determined through process knowledge, that are introduced into vent streams or manifolds. Air required to operate combustion device burner(s) is not considered supplemental gas.

* * * * *

System flowrate means the flowrate of gas entering the control device.

* * * * *

Vapor-mounted seal means a continuous seal that completely covers the annular space between the wall of the storage tank or waste management unit and the edge of the floating roof and is mounted such that there is a vapor space between the stored liquid and the bottom of the seal.

* * * * *

4. Section 63.1252 is amended by:

a. Revising the introductory paragraph;

b. Revising paragraph (d)(2);

c. Revising the first sentence in paragraph (d)(5);

d. Revising paragraph (d)(6);

e. Revising paragraph (e) introductory text;

f. Revising the second sentence in paragraph (e)(1); and

g. Adding paragraph (e)(4).

The revisions and additions read as follows:

§ 63.1252 Standards: General.

Each owner or operator of any affected source subject to the provisions of this subpart shall control HAP emissions to the level specified in this section on and after the compliance dates specified in § 63.1250(f). Initial compliance with the emission limits is demonstrated in accordance with the provisions of § 63.1257, and continuous compliance is demonstrated in accordance with the provisions of § 63.1258.

* * * * *

(d) * * *

(2) Only emission sources subject to the requirements of § 63.1253(b)(1) and (c)(1) or § 63.1254(a)(1)(i) or (a)(3) may be included in any averaging group.

* * * * *

(5) Emission points controlled to comply with a State or Federal rule other than this subpart may not be credited in an emission averaging group, unless the level of control has been increased after November 15, 1990 above what is required by the other State or Federal rule. * * *

(6) Not more than 20 processes subject to § 63.1254(a)(2), and 20 storage tanks subject to § 63.1253(b)(1) or (c)(1)(i) at an affected source may be included in an emissions averaging group.

* * * * *

(e) *Pollution prevention alternative.* Except as provided in paragraph (e)(1) of this section, an owner or operator may choose to meet the pollution prevention alternative requirement specified in either paragraph (e)(2) or (3) of this section for any PMPU or for any situation described in paragraph (e)(4) of this section, in lieu of the requirements specified in §§ 63.1253, 63.1254, 63.1255, and 63.1256. Compliance with paragraphs (e)(2) and (3) of this section shall be demonstrated through the procedures in § 63.1257(f). Any PMPU for which the owner or operator seeks to comply by using the pollution prevention alternative shall begin with the same starting material(s) and end with the same product(s). The owner or operator may not comply with the pollution prevention alternative by eliminating any steps of a process by transferring the step offsite (to another manufacturing location).

(1) * * * The hydrogen halides that are generated as a result of combustion control of emissions must be controlled according to the requirements of paragraph (g)(1) of this section.

* * * * *

(4) The owner or operator may comply with the requirements in either paragraph (e)(2) or (3) of this section for a series of processes, including situations where multiple processes are merged, subject to the following conditions:

(i) The baseline period shall be a single year beginning no earlier than the 1992 calendar year.

(ii) The term "PMPU" shall have the meaning provided in § 63.1251 except that the baseline and modified PMPUs may include multiple processes (*i.e.*, precursors, active ingredients, and final dosage form) if the owner or operator demonstrates to the satisfaction of the Administrator that the multiple processes were merged after the baseline period into an existing process or processes.

(iii) Nondedicated formulation and solvent recovery processes may not be merged with any other processes.

5. Section 63.1253 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (d); and

c. Adding paragraph (f).

The revisions and additions read as follows:

§ 63.1253 Standards: Storage tanks.

(a) Except as provided in paragraphs (d), (e), and (f) of this section, the owner or operator of a storage tank meeting the criteria of paragraph (a)(1) of this section is subject to the requirements of paragraph (b) of this section. Except as provided in paragraphs (d), (e), and (f) of this section, the owner or operator of a storage tank meeting the criteria of paragraph (a)(2) of this section is subject to the requirements of paragraph (c) of this section. Compliance with the provisions of paragraphs (b) and (c) of this section is demonstrated using the initial compliance procedures in § 63.1257(c) and the monitoring requirements in § 63.1258.

(1) A storage tank with a design capacity greater than or equal to 38 m^3 but less than 75 m^3 storing a liquid for which the maximum true vapor pressure of total HAP is greater than or equal to 13.1 kPa.

(2) A storage tank with a design capacity greater than or equal to 75 m^3 storing a liquid for which the maximum true vapor pressure of total HAP is greater than or equal to 13.1 kPa.

* * * * *

(d) As an alternative standard, the owner or operator of an existing or new affected source may comply with the storage tank standards by routing storage tank vents to a combustion control device achieving an outlet TOC concentration, as calibrated on methane or the predominant HAP, of 20 ppmv or

less, and an outlet concentration of hydrogen halides and halogens of 20 ppmv or less. If the owner or operator is routing emissions to a noncombustion control device, it must achieve an outlet TOC concentration, as calibrated on methane or the predominant HAP, of 50 ppmv or less, and an outlet concentration of hydrogen halides and halogens of 50 ppmv or less. Compliance with the outlet concentrations shall be determined by the initial compliance procedures of § 63.1257(c)(4) and the continuous emission monitoring requirements of § 63.1258(b)(5).

* * * * *

(f) *Vapor balancing alternative.* As an alternative to the requirements in paragraphs (b) and (c) of this section, the owner or operator of an existing or new affected source may implement vapor balancing in accordance with paragraphs (f)(1) through (7) of this section.

(1) The vapor balancing system must be designed and operated to route organic HAP vapors displaced from loading of the storage tank to the railcar or tank truck from which the storage tank is filled.

(2) Tank trucks and railcars must have a current certification in accordance with the U.S. Department of Transportation (DOT) pressure test requirements of 49 CFR part 180 for tank trucks and 49 CFR 173.31 for railcars.

(3) Hazardous air pollutants must only be unloaded from tank trucks or railcars when vapor collection systems are connected to the storage tank's vapor collection system.

(4) No pressure relief device on the storage tank, or on the railcar, or tank truck shall open during loading or as a result of diurnal temperature changes (breathing losses).

(5) Pressure relief devices on affected storage tanks must be set to no less than 2.5 psig at all times to prevent breathing losses. The owner or operator shall record the setting as specified in § 63.1259(b)(12) and comply with the following requirements for each pressure relief valve:

(i) The pressure relief valve shall be monitored quarterly using the method described in § 63.180(b).

(ii) An instrument reading of 500 ppmv or greater defines a leak.

(iii) When a leak is detected, it shall be repaired as soon as practicable, but no later than 5 days after it is detected, and the owner or operator shall comply with the recordkeeping requirements of § 63.1255(g)(4)(i) through (iv).

(6) Railcars or tank trucks that deliver HAPs to an affected storage tank must be reloaded or cleaned at a facility that utilizes one of the following control techniques:

(i) The railcar or tank truck must be connected to a closed-vent system with a control device that reduces inlet emissions of HAP by 90 percent by weight or greater; or

(ii) A vapor balancing system designed and operated to collect organic HAP vapor displaced from the tank truck or railcar during reloading must be used to route the collected HAP vapor to the storage tank from which the liquid being transferred originated.

(7) The owner or operator of the facility where the railcar or tank truck is reloaded or cleaned must comply with the following requirements:

(i) Submit to the owner or operator of the affected storage tank and to the Administrator a written certification that the reloading or cleaning facility will meet the requirements of this section. The certifying entity may revoke the written certification by sending a written statement to the owner or operator of the affected storage tank giving at least 90 days notice that the certifying entity is rescinding acceptance of responsibility for compliance with the requirements of this paragraph.

(ii) If complying with paragraph (f)(6)(i) of this section, demonstrate initial compliance in accordance with § 63.1257(c), demonstrate continuous compliance in accordance with § 63.1258, keep records as specified in § 63.1259, and prepare reports as specified in § 63.1260.

(iii) If complying with paragraph (f)(6)(ii) of this section, keep records of:

(A) The equipment to be used and the procedures to be followed when reloading the railcar or tank truck and displacing vapors to the storage tank from which the liquid originates, and

(B) Each time the vapor balancing system is used to comply with paragraph (f)(6)(ii) of this section.

6. Section 63.1254 is revised to read as follows:

§ 63.1254 Standards: Process vents.

(a) *Existing sources.* For each process, the owner or operator of an existing affected source must comply with the requirements in either paragraphs (a)(1) and (3) of this section or paragraphs (a)(2) and (3) of this section. Initial compliance with the required emission limits or reductions in paragraphs (a)(1) through (3) of this section is demonstrated in accordance with the initial compliance procedures described in § 63.1257(d), and continuous compliance is demonstrated in accordance with the monitoring requirements described in § 63.1258.

(1) *Process-based emission reduction requirement.*

(i) Uncontrolled HAP emissions from the sum of all process vents within a process that are not subject to the requirements of paragraph (a)(3) of this section shall be reduced by 93 percent or greater by weight, or as specified in paragraph (a)(1)(ii) of this section. Notification of changes in the compliance method shall be reported according to the procedures in § 63.1260(h).

(ii) Any one or more vents within a process may be controlled in accordance with any of the procedures in paragraphs (a)(1)(ii)(A) through (D) of this section. All other vents within the process must be controlled as specified in paragraph (a)(1)(i) of this section.

(A) To outlet concentrations less than or equal to 20 ppmv as TOC and less than or equal to 20 ppmv as hydrogen halides and halogens;

(B) By a flare that meets the requirements of § 63.11(b);

(C) By a control device specified in § 63.1257(a)(4); or

(D) In accordance with the alternative standard specified in paragraph (c) of this section.

(2) *Process-based annual mass limit.*

(i) Actual HAP emissions from the sum of all process vents within a process must not exceed 900 kilograms (kg) in any 365-day period.

(ii) Actual HAP emissions from the sum of all process vents within processes complying with paragraph (a)(2)(i) of this section are limited to a maximum of 1,800 kg in any 365-day period.

(iii) Emissions from vents that are subject to the requirements of paragraph (a)(3) of this section and emissions from vents that are controlled in accordance with the procedures in paragraph (c) of this section may be excluded from the sums calculated in paragraphs (a)(2)(i) and (ii) of this section.

(iv) The owner or operator may switch from compliance with paragraph (a)(2) of this section to compliance with paragraph (a)(1) of this section only after at least 1 year of operation in compliance with paragraph (a)(2) of this section. Notification of such a change in the compliance method shall be reported according to the procedures in § 63.1260(h).

(3) *Individual vent emission reduction requirements.*

(i) Except as provided in paragraph (a)(3)(ii) of this section, uncontrolled HAP emissions from a process vent must be reduced by 98 percent or in accordance with any of the procedures

in paragraphs (a)(1)(ii)(A) through (D) of this section if the uncontrolled HAP emissions from the vent exceed 25 tons per year, and the flow-weighted average flowrate (FR_a) calculated using Equation 1 of this subpart is less than or equal to the flowrate index (FRI) calculated using Equation 2 of this subpart.

$$FR_a = \frac{\sum_{i=1}^{n}(D_i)(FR_i)}{\sum_{i=1}^{n} D_i} \quad \text{(Eq. 1)}$$

$$FRI = 0.02 * (HL) - 1{,}000 \quad \text{(Eq. 2)}$$

Where:

FR_a=flow-weighted average flowrate for the vent, scfm
D_i=duration of each emission event, min
FR_i=flowrate of each emission event, scfm
n=number of emission events
FRI=flowrate index, scfm
HL=annual uncontrolled HAP emissions, lb/yr, as defined in § 63.1251

(ii) *Grandfathering provisions.* As an alternative to the requirements in paragraph (a)(3)(i) of this section, the owner or operator may comply with the provisions in paragraphs (a)(3)(ii)(A), (B), or (C) of this section, if applicable.

(A) *Control device operation.* If the owner or operator can demonstrate that a process vent is controlled by a control device meeting the criteria specified in paragraph (a)(3)(ii)(A)(*1*) of this section, then the control device is required to be operated according to paragraphs (a)(3)(ii)(A)(*2*), (*3*), and (*4*) of this section:

(*1*) The control device was installed on any process vent that met the conditions of paragraph (a)(3)(i) of this section on or before April 2, 1997, and was operated to reduce uncontrolled emissions of total HAP by greater than or equal to 93 percent by weight, but less than 98 percent by weight;

(*2*) The device must be operated to reduce inlet emissions of total HAP by 93 percent or by the percent reduction specified for that control device in any preconstruction permit issued pursuant to regulations approved or promulgated through rulemaking under title I (including parts C or D) of the Clean Air Act, whichever is greater;

(*3*) The device must be replaced or upgraded to achieve at least 98 percent reduction of HAP or meet any of the conditions specified in paragraphs (a)(1)(ii)(A) through (D) of this section upon reconstruction or replacement.

(*4*) The device must be replaced or upgraded to achieve at least 98 percent reduction of HAP or meet any of the conditions specified in paragraphs (a)(1)(ii)(A) through (D) of this section by April 2, 2007, or 15 years after issuance of the preconstruction permit, whichever is later.

(B) *Process operations.* If a process meets all of the conditions specified in paragraphs (a)(3)(ii)(B)(*1*) through (*3*) of this section, the required level of control for the process is the level that was achieved on or before April 2, 1997. This level of control is demonstrated using the same procedures that are used to demonstrate compliance with paragraph (a)(1) of this section.

(*1*) At least one vent in the process met the conditions of paragraph (a)(3)(i) of this section on or before April 2, 1997; and

(*2*) The overall control for the process on or before April 2, 1997 was greater than or equal to 93 percent by weight, but less than 98 percent by weight; and

(*3*) The production-indexed HAP consumption factor for the 12-month period in which the process was operated prior to the compliance date is less than one-half of the 3-year average baseline value established no earlier than the 1987 through 1989 calendar years.

(C) *Hydrogenation vents.* Processes meeting the conditions of paragraphs (a)(3)(ii)(C)(*1*) through (*3*) of this section are required to be operated to maintain the level of control achieved on or before April 2, 1997. For all other processes meeting the conditions of paragraph (a)(3)(ii)(C)(*3*) of this section, uncontrolled HAP emissions from the sum of all process vents within the process must be reduced by 95 percent or greater by weight.

(*1*) Processes containing a process vent that met the conditions of paragraph (a)(3)(i) of this section on or before April 2, 1997; and

(*2*) Processes that are controlled to greater than or equal to 93 percent by weight, but less than 98 percent by weight; and

(*3*) Processes with a hydrogenation vent that, in conjunction with all other process vents from the process that do not meet the conditions of paragraph (a)(3)(i) of this section, cannot meet the requirements of paragraph (a)(1) or (2) of this section.

(b) *New sources.* (1) Except as provided in paragraph (b)(2) of this section, uncontrolled HAP emissions from the sum of all process vents within a process at a new affected source shall be reduced by 98 percent or greater by weight or controlled in accordance with any of requirements of paragraphs (a)(1)(ii)(A) through (D) of this section. Initial compliance with the required emission limit or reduction is demonstrated in accordance with the initial compliance procedures in § 63.1257(d), and continuous compliance is demonstrated in accordance with the monitoring requirements described in § 63.1258.

(2) *Annual mass limit.* The actual HAP emissions from the sum of all process vents for which the owner or operator is not complying with paragraph (b)(1) of this section are limited to 900 kg in any 365-day period.

(c) *Alternative standard.* As an alternative standard, the owner or operator of an existing or new affected source may comply with the process vent standards by routing vents from a process to a combustion control device achieving an outlet TOC concentration, as calibrated on methane or the predominant HAP, of 20 ppmv or less, and an outlet concentration of hydrogen halides and halogens of 20 ppmv or less. If the owner or operator is routing emissions to a noncombustion control device, it must achieve an outlet TOC concentration, as calibrated on methane or the predominant HAP, of 50 ppmv or less, and an outlet concentration of hydrogen halides and halogens of 50 ppmv or less. Any process vents within a process that are not routed to this control device must be controlled in accordance with the provisions of paragraph (a) or (b) of this section, as applicable. Initial compliance with the outlet concentrations is demonstrated in accordance with the initial compliance procedures described in § 63.1257(d)(1)(iv), and continuous compliance is demonstrated in accordance with the emission monitoring requirements described in § 63.1258(b)(5).

7. Section 63.1255 is amended by:

a. Revising paragraph (a)(1);

b. Revising paragraph (a)(7);

c. Revising paragraphs (a)(10)(ii) and (iii);

d. Adding paragraphs (a)(11) and (12);

e. Revising paragraph (b);

f. Revising paragraph (c)(2)(i);

g. Revising "paragraph (b)(1)(v)" to read "paragraph (b)(4)(i)" in paragraph (c)(3)(i);

h. Revising the definitions of the terms "P_L" and "P_T" following Equation 3 in paragraph (c)(4)(iv);

i. Removing the definition of the term "P_S" following Equation 3 in paragraph (c)(4)(iv) and adding the definition of the term "P_S" following Equation 3 in paragraph (c)(4)(iv);

j. Revising "paragraph (b)(1)(vi)" to read "paragraph (b)(4)(ii)" in paragraph (c)(5)(i)(B);

k. Revising paragraphs (c)(5)(vi)(B) and (C);
l. Revising paragraphs (c)(6) and (7);
m. Revising paragraph (c)(9);
n. Revising paragraphs (d)(1)(i) and (ii);
o. Revising paragraph (e)(2);
p. Revising paragraph (e)(3) introductory text;
q. Revising paragraph (e)(3)(i);
r. Revising the definition of the term "$\%V_L$" following Equation 5 in paragraph (e)(6)(ii);
s. Revising "paragraph (b)(1)(v)" to read "paragraph (b)(4)(i)" in paragraph (e)(7)(i);
t. Adding paragraphs (e)(7)(iii)(A) through (C);
u. Revising the second sentence in paragraph (e)(9);
v. Revising paragraph (f);
w. Revising paragraph (g)(2) introductory text;
x. Revising paragraph (g)(2)(i)(A);
y. Removing paragraph (g)(2)(v), redesignating paragraphs (g)(2)(vi) through (ix) as paragraphs (g)(2)(v) through (viii), and revising redesignated paragraphs (g)(2)(vi) and (viii);
z. Revising the first sentence in paragraph (g)(3);
aa. Revising paragraph (g)(4) introductory text;
bb. Revising paragraph (g)(4)(iv);
cc. Revising paragraph (g)(4)(v)(A);
dd. Revising "§ 63.174(c)" to read "§ 63.174(c)(1)(i) and (c)(2)(ii)" in the first sentence in paragraph (g)(4)(vii)(B);
ee. Revising "§§ 63.178(c)(3)(ii) and (c)(3)(iii)" to read "§ 63.178(c)(3)(ii) and (iii)" in the first sentence in paragraph (g)(4)(viii);
ff. Revising the first sentence in paragraph (g)(5) introductory text;
gg. Removing paragraph (g)(5)(ii), redesignating paragraphs (g)(5)(iii) through (vi) as paragraphs (g)(5)(ii) through (v), and revising "appendix" to read "section" in the second sentence of redesignated paragraph (g)(5)(ii);
hh. Revising paragraph (g)(6) heading;
ii. Revising the first sentence in paragraph (g)(7) introductory text;
jj. Revising "paragraph (b)(1)(vi)" to read "paragraph (b)(4)(ii)" in paragraph (g)(7)(i)(D);
kk. Revising paragraph (h)(2) heading;
ll. Revising paragraph (h)(2)(i)(B);
mm. Revising "paragraph (b)(1)(ix)" to read "paragraph (b)(4)(iv)" in paragraph (h)(2)(ii);
nn. Revising "paragraph (b)(1)(vi)" to read "paragraph (b)(4)(ii)" in paragraph (h)(2)(iii)(B);
oo. Revising paragraph (h)(2)(iv);
pp. Revising "§ 63.1250(e)" to read "§ 63.1250(f)" in the second sentence in paragraph (h)(3)(i);
qq. Revising paragraph (h)(3)(ii) introductory text;
rr. Revising paragraphs (h)(3)(ii)(C) and (D); and
ss. Revising paragraph (h)(3)(iv);

The revisions and additions read as follows:

§ 63.1255 Standards: Equipment leaks.

(a) * * *

(1) The provisions of this section apply to pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, control devices, and closed-vent systems required by this section that are intended to operate in organic hazardous air pollutant service 300 hours or more during the calendar year within a source subject to the provisions of this subpart.

* * * * *

(7) Equipment to which this section applies shall be identified such that it can be distinguished readily from equipment that is not subject to this section. Identification of the equipment does not require physical tagging of the equipment. For example, the equipment may be identified on a plant site plan, in log entries, or by designation of process boundaries by some form of weatherproof identification. If changes are made to the affected source subject to the leak detection requirements, equipment identification for each type of component shall be updated, if needed, within 90 calendar days, or by the next Periodic Report, following the end of the monitoring period for that component, whichever is later.

* * * * *

(10) * * *

(ii) The identification on a valve in light liquid or gas/vapor service may be removed after it has been monitored as specified in paragraph (e)(7)(iii) of this section, and no leak has been detected during the follow-up monitoring.

(iii) The identification on equipment, except on a valve in light liquid or gas/vapor service, may be removed after it has been repaired.

(11) Except as provided in paragraph (a)(11)(i) of this section, all terms in this subpart that define a period of time for completion of required tasks (e.g., weekly, monthly, quarterly, annual) refer to the standard calendar periods unless specified otherwise in the section or paragraph that imposes the requirement.

(i) If the initial compliance date does not coincide with the beginning of the standard calendar period, an owner or operator may elect to utilize a period beginning on the compliance date, or may elect to comply in accordance with the provisions of paragraph (a)(11)(ii) or (iii) of this section.

(ii) Time periods specified in this subpart for completion of required tasks may be changed by mutual agreement between the owner or operator and the Administrator, as specified in subpart A of this part. For each time period that is changed by agreement, the revised period shall remain in effect until it is changed. A new request is not necessary for each recurring period.

(iii) Except as provided in paragraph (a)(11)(i) or (ii) of this section, where the period specified for compliance is a standard calendar period, if the initial compliance date does not coincide with the beginning of the calendar period, compliance shall be required according to the schedule specified in paragraph (a)(11)(iii)(A) or (B) of this section, as appropriate.

(A) Compliance shall be required before the end of the standard calendar period within which the initial compliance date occurs if there remain at least 3 days for tasks that must be performed weekly, at least 2 weeks for tasks that must be performed monthly, at least 1 month for tasks that must be performed each quarter, or at least 3 months for tasks that must be performed annually; or

(B) In all other cases, compliance shall be required before the end of the first full standard calendar period after the period within which the initial compliance date occurs.

(iv) In all instances where a provision of this subpart requires completion of a task during each of multiple successive periods, an owner or operator may perform the required task at any time during each period, provided the task is conducted at a reasonable interval after completion of the task during the previous period.

(12) In all cases where the provisions of this subpart require an owner or operator to repair leaks by a specified time after the leak is detected, it is a violation of this section to fail to take action to repair the leaks within the specified time. If action is taken to repair the leaks within the specified time, failure of that action to successfully repair the leak is not a violation of this section. However, if the repairs are unsuccessful, a leak is detected and the owner or operator shall take further action as required by applicable provisions of this section.

(b) *References.* (1) The owner or operator of a source subject to this section shall comply with the provisions of subpart H of this part, as specified in paragraphs (b)(2) through (4) of this section. The term "process unit" as used in subpart H of this part

shall be considered to be defined the same as "group of processes" for sources subject to this subpart GGG. The term "fuel gas system," as used in subpart H of this part, shall not apply for the purposes of this subpart GGG.

(2) Sections 63.160, 63.161, 63.162, 63.163, 63.167, 63.168, 63.170, 63.173, 63.175, 63.176, 63.181, and 63.182 shall not apply for the purposes of this subpart GGG. The owner or operator shall comply with the provisions specified in paragraphs (b)(2)(i) through (viii) of this section.

(i) Sections 63.160 and 63.162 shall not apply; instead, the owner or operator shall comply with paragraph (a) of this section;

(ii) Section 63.161 shall not apply; instead, the owner or operator shall comply with § 63.1251;

(iii) Sections 63.163 and 63.173 shall not apply; instead, the owner or operator shall comply with paragraph (c) of this section;

(iv) Section 63.167 shall not apply; instead, the owner or operator shall comply with paragraph (d) of this section;

(v) Section 63.168 shall not apply; instead, the owner or operator shall comply with paragraph (e) of this section;

(vi) Section 63.170 shall not apply; instead, the owner or operator shall comply with § 63.1254;

(vii) Section 63.181 shall not apply; instead, the owner or operator shall comply with paragraph (g) of this section; and

(viii) Section 63.182 shall not apply; instead, the owner or operator shall comply with paragraph (h) of this section.

(3) The owner or operator shall comply with §§ 63.164, 63.165, 63.166, 63.169, 63.177, and 63.179 in their entirety, except that when these sections reference other sections of subpart H of this part, the references shall mean those sections as specified in paragraphs (b)(2) and (4) of this section. Section 63.164 applies to compressors. Section 63.165 applies to pressure relief devices in gas/vapor service. Section 63.166 applies to sampling connection systems. Section 63.169 applies to pumps, valves, connectors, and agitators in heavy liquid service; instrumentation systems; and pressure relief devices in liquid service. Section 63.177 applies to general alternative means of emission limitation. Section 63.179 applies to alternative means of emission limitation for enclosed-vented process units.

(4) The owner or operator shall comply with §§ 63.171, 63.172, 63.174, 63.178, and 63.180 with the differences specified in paragraphs (b)(4)(i) through (vi) of this section.

(i) Section 63.171, shall apply, except § 63.171(a) shall not apply. Instead, delay of repair of equipment for which leaks have been detected is allowed if one of the following conditions exists:

(A) The repair is technically infeasible without a process shutdown. Repair of this equipment shall occur by the end of the next scheduled process shutdown.

(B) The owner or operator determines that repair personnel would be exposed to an immediate danger if attempting to repair without a process shutdown. Repair of this equipment shall occur by the end of the next scheduled process shutdown.

(ii) Section 63.172, shall apply for closed-vent systems used to comply with this section, and for control devices used to comply with this section only, except:

(A) Section 63.172(k) and (l) shall not apply. The owner or operator shall instead comply with paragraph (f) of this section.

(B) Owners or operators may, instead of complying with the provisions of § 63.172(f), design a closed-vent system to operate at a pressure below atmospheric pressure. The system shall be equipped with at least one pressure gage or other pressure measurement device that can be read from a readily accessible location to verify that negative pressure is being maintained in the closed-vent system when the associated control device is operating.

(iii) Section 63.174, shall apply except:

(A) Section 63.174(f), (g), and (h) shall not apply. Instead of § 63.174(f), (g), and (h), the owner or operator shall comply with paragraph (f) of this section. Section 63.174(b)(3) shall not apply. Instead of § 63.174(b)(3), the owner or operator shall comply with paragraphs (b)(3)(iii)(B) through (F) of this section.

(B) If the percent leaking connectors in a group of processes was greater than or equal to 0.5 percent during the initial monitoring period, monitoring shall be performed once per year until the percent leaking connectors is less than 0.5 percent.

(C) If the percent leaking connectors in the group of processes was less than 0.5 percent, but equal to or greater than 0.25 percent, during the initial or last required monitoring period, the owner or operator may elect to monitor once every 4 years. An owner or operator may comply with the requirements of this paragraph by monitoring at least 40 percent of the connectors in the first 2 years and the remainder of the connectors within the next 2 years. The percent leaking connectors will be calculated for the total of all required monitoring performed during the 4-year period.

(D) Except as provided in paragraph (b)(4)(iii)(B) of this section, if leaking connectors comprise at least 0.5 percent but less than 1.0 percent of the connectors during the last monitoring period, the owner or operator shall monitor at least once every 2 years for the next monitoring period. At the end of that 2-year monitoring period, the owner or operator shall monitor once per year if the percent leaking connectors is greater than or equal to 0.5 percent; if the percent leaking connectors is less than 0.5 percent, the owner or operator shall monitor in accordance with paragraph (b)(4)(iii)(C) or (F) of this section, as appropriate.

(E) If an owner or operator determines that 1 percent or greater of the connectors in a group of processes are leaking, the owner or operator shall monitor the connectors once per year. The owner or operator may elect to use the provisions of paragraph (b)(4)(iii)(C), (D), or (F) of this section, as appropriate, after a monitoring period in which less than 1 percent of the connectors are determined to be leaking.

(F) The owner or operator may elect to perform monitoring once every 8 years if the percent leaking connectors in the group of processes was less than 0.25 percent during the initial or last required monitoring period. An owner or operator shall monitor at least 50 percent of the connectors in the first 4 years and the remainder of the connectors within the next 4 years. If the percent leaking connectors in the first 4 years is equal to or greater than 0.35 percent, the monitoring program shall revert at that time to the appropriate monitoring frequency specified in paragraph (b)(4)(iii)(C), (D), or (E) of this section.

(iv) Section 63.178, shall apply except:

(A) Section 63.178(b), requirements for pressure testing, may be applied to all processes (not just batch processes) and to supply lines between storage and processing areas.

(B) For pumps, the phrase "at the frequencies specified in Table 1 of this subpart" in § 63.178(c)(iii) shall mean "quarterly" for the purposes of this subpart.

(v) Section 63.180 shall apply except § 63.180(b)(4)(ii)(A) through (C) shall not apply. Instead, calibration gases shall be a mixture of methane and air at a concentration of approximately, but less than, 10,000 parts per million methane for agitators; 2,000 parts per million for pumps; and 500 parts per

million for all other equipment, except as provided in § 63.180(b)(4)(iii).

(vi) When §§ 63.171, 63.172, 63.174, 63.178, and 63.180 reference other sections in subpart H of this part, the references shall mean those sections specified in paragraphs (b)(2) and (b)(4)(i) through (v) of this section, as applicable.

(c) * * *

(2)(i) *Monitoring.* Each pump and agitator subject to this section shall be monitored quarterly to detect leaks by the method specified in § 63.180(b) except as provided in § 63.177, § 63.178(b) paragraph (f) of this section, and paragraphs (c)(5) through (9) of this section.

(4) * * *

(iv) * * *

P = number of pumps found leaking as determined through periodic monitoring as required in paragraphs (c)(2)(i) and (ii) of this section

P_T = total pumps in organic HAP service, including those meeting the criteria in paragraphs (c)(5) and (6) of this section

P_S = number of pumps in a continuous process leaking within 1 quarter of startup during the current monitoring period

(5) * * *

(vi) * * *

(B) If indications of liquids dripping from the pump/agitator seal exceed the criteria established in paragraph (c)(5)(vi)(A) of this section, or if, based on the criteria established in paragraph (c)(5)(vi)(A) of this section, the sensor indicates failure of the seal system, the barrier fluid system, or both, a leak is detected.

(C) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in paragraph (b)(4)(i) of this section.

* * * * *

(6) Any pump/agitator that is designed with no externally actuated shaft penetrating the pump/agitator housing is exempt from the requirements of paragraphs (c)(1) through (3) of this section.

(7) Any pump/agitator equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals back to the process or to a control device that complies with the requirements of paragraph (b)(4)(ii) of this section is exempt from the requirements of paragraphs (c)(2) through (5) of this section.

* * * * *

(9) If more than 90 percent of the pumps in a group of processes meet the criteria in either paragraph (c)(5) or (6) of this section, the group of processes is exempt from the requirements of paragraph (c)(4) of this section.

(d) * * *

(1)(i) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve, except as provided in § 63.177 and paragraphs (d)(4) through (6) of this section.

(ii) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring process fluid flow through the open-ended valve or line, or during maintenance or repair. The cap, blind flange, plug, or second valve shall be in place within 1 hour of cessation of operations requiring process fluid flow through the open-ended valve or line, or within 1 hour of cessation of maintenance or repair. The owner or operator is not required to keep a record documenting compliance with the 1-hour requirement.

* * * * *

(e) * * *

(2) For existing and new affected sources, all valves subject to this section shall be monitored, except as provided in paragraph (f) of this section and in § 63.177 by no later than 1 year after the compliance date.

(3) *Monitoring.* The owner or operator of a source subject to this section shall monitor all valves, except as provided in paragraph (f) of this section and in § 63.177 at the intervals specified in paragraph (e)(4) of this section and shall comply with all other provisions of this section, except as provided in paragraph (b)(4)(i) of this section, § 63.178(b) and § 63.179.

(i) The valves shall be monitored to detect leaks by the method specified in § 63.180(b).

* * * * *

(6) * * *

(ii) * * *

$\%V_L$ = percent leaking valves as determined through periodic monitoring required in paragraphs (e)(2) through (4) of this section.

* * *

* * * * *

(7) * * *

(iii) * * *

(A) The monitoring shall be conducted as specified in § 63.180(b) and (c) as appropriate, to determine whether the valve has resumed leaking.

(B) Periodic monitoring required by paragraphs (e)(2) through (4) of this section may be used to satisfy the requirements of paragraph (e)(7)(iii) of this section, if the timing of the monitoring period coincides with the time specified in paragraph (e)(7)(iii) of this section. Alternatively, other monitoring may be performed to satisfy the requirements of paragraph (e)(7)(iii) of this section, regardless of whether the timing of the monitoring period for periodic monitoring coincides with the time specified in paragraph (e)(7)(iii) of this section.

(C) If a leak is detected by monitoring that is conducted pursuant to paragraph (e)(7)(iii) of this section, the owner or operator shall follow the provisions of paragraphs (e)(7)(iii)(C)(*1*) and (*2*) of this section to determine whether that valve must be counted as a leaking valve for purposes of paragraph (e)(6) of this section.

(*1*) If the owner or operator elects to use periodic monitoring required by paragraphs (e)(2) through (4) of this section to satisfy the requirements of paragraph (e)(7)(iii) of this section, then the valve shall be counted as a leaking valve.

(*2*) If the owner or operator elects to use other monitoring prior to the periodic monitoring required by paragraphs (e)(2) through (4) of this section to satisfy the requirements of paragraph (e)(7)(iii) of this section, then the valve shall be counted as a leaking valve unless it is repaired and shown by periodic monitoring not to be leaking.

* * * * *

(9) * * * Instead, the owner or operator shall monitor each valve in organic HAP service for leaks once each quarter, or comply with paragraph (e)(4)(iii) or (iv) of this section, except as provided in paragraph (f) of this section.

(f) *Unsafe to monitor/inspect, difficult to monitor/inspect, and inaccessible equipment.* (1) Equipment that is designated as unsafe to monitor, unsafe to inspect, difficult to monitor, difficult to inspect, or inaccessible is exempt from the monitoring requirements as specified in paragraphs (f)(1)(i) through (iv) of this section provided the owner or operator meets the requirements specified in paragraph (f)(2), (3), or (4) of this section, as applicable. All equipment must be assigned to a group of processes. Ceramic or ceramic-lined connectors are subject to the same requirements as inaccessible connectors.

(i) For pumps and agitators, paragraphs (c)(2), (3), and (4) of this section do not apply.

(ii) For valves, paragraphs (e)(2) through (7) of this section do not apply.

(iii) For connectors, § 63.174(b) through (e) and paragraphs (b)(3)(iii)(B) through (F) of this section do not apply.

(iv) For closed-vent systems, § 63.172(f)(1) and (2), and § 63.172(g) do not apply.

(2) *Equipment that is unsafe to monitor or unsafe to inspect.* (i) Valves, connectors, agitators, and pumps may be designated as unsafe to monitor if the owner or operator determines that monitoring personnel would be exposed to an immediate danger as a consequence of complying with the monitoring requirements referred to in paragraphs (f)(1)(i) through (iii) of this section.

(ii) Any part of a closed-vent system may be designated as unsafe to inspect if the owner or operator determines that monitoring personnel would be exposed to an immediate danger as a consequence of complying with the monitoring requirements referred to in paragraph (f)(1)(iv) of this section.

(iii) The owner or operator of equipment that is designated as unsafe to monitor must have a written plan that requires monitoring of the equipment as frequently as practicable during safe to monitor times, but not more frequently than the periodic monitoring schedule otherwise applicable to the group of processes in which the equipment is located.

(iv) For any parts of a closed-vent system designated as unsafe to inspect, the owner or operator must have a written plan that requires inspection of the closed-vent systems as frequently as practicable during safe to inspect times, but not more frequently than annually.

(3) *Equipment that is difficult to monitor or difficult to inspect.* (i) A valve, agitator, or pump may be designated as difficult to monitor if the owner or operator determines that the valve, agitator, or pump cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface, or it is not accessible in a safe manner when it is in organic HAP service.

(ii) Any part of a closed-vent system may be designated as difficult to inspect if the owner or operator determines that the equipment cannot be inspected without elevating the monitoring personnel more than 2 meters above a support surface, or it is not accessible in a safe manner when it is in organic HAP service.

(iii) At an existing source, any valve, agitator or pump within a group of processes that meets the criteria of paragraph (f)(3)(i) of this section may be designated as difficult to monitor, and any parts of a closed-vent system that meet the requirements of paragraph (f)(3)(ii) of this section may be designated as difficult to inspect. At a new affected source, an owner or operator may designate no more than 3 percent of valves as difficult to monitor.

(iv) The owner or operator of valves, agitators, or pumps designated as difficult to monitor must have a written plan that requires monitoring of the equipment at least once per calendar year or on the periodic monitoring schedule otherwise applicable to the group of processes in which the equipment is located, whichever is less frequent. For any part of a closed-vent system designated as difficult to inspect, the owner or operator must have a written plan that requires inspection of the closed-vent system at least once every 5 years.

(4) *Inaccessible, ceramic, or ceramic-lined connectors.* (i) A connector may be designated as inaccessible if it is:

(A) Buried;

(B) Insulated in a manner that prevents access to the connector by a monitor probe;

(C) Obstructed by equipment or piping that prevents access to the connector by a monitor probe;

(D) Unable to be reached from a wheeled scissor-lift or hydraulic-type scaffold which would allow access to equipment up to 7.6 meters (25 feet) above the ground; or

(E) Not able to be accessed at any time in a safe manner to perform monitoring. Unsafe access includes, but is not limited to, the use of a wheeled scissor-lift on unstable or uneven terrain, the use of a motorized man-lift basket in areas where an ignition potential exists, or access would require near proximity to hazards such as electrical lines, or would risk damage to equipment.

(ii) A connector may be designated as inaccessible if it would require elevating the monitoring personnel more than 2 meters above a permanent support surface or would require the erection of scaffold.

(iii) At an existing source, any connector that meets the criteria of paragraph (f)(4)(i) or (ii) of this section may be designated as inaccessible. At a new affected source, an owner or operator may designate no more than 3 percent of connectors as inaccessible.

(iv) If any inaccessible, ceramic, or ceramic-lined connector is observed by visual, audible, olfactory, or other means to be leaking, the leak shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in paragraph (b)(3)(i) of this section.

(v) Any connector that is inaccessible or that is ceramic or ceramic-lined is exempt from the recordkeeping and reporting requirements of paragraphs (g) and (h) of this section.

(g) * * *

(2) *General recordkeeping.* Except as provided in paragraph (g)(5)(i) of this section and in paragraph (a)(9) of this section, the following information pertaining to all equipment subject to the requirements in this section shall be recorded:

(i)(A) A list of identification numbers for equipment (except connectors that are subject to paragraph (f)(4) of this section) subject to the requirements of this section. Except for equipment subject to the recordkeeping requirements in paragraphs (g)(2)(ii) through (viii) of this section, equipment need not be individually identified if, for a particular type of equipment, all items of that equipment in a designated area or length of pipe subject to the provisions of this section are identified as a group, and the number of subject items of equipment is indicated. The list for each type of equipment shall be completed no later than the completion of the initial survey required for that component. The list of identification numbers shall be updated, if needed, to incorporate equipment changes identified during the course of each monitoring period within 90 calendar days, or by the next Periodic Report, following the end of the monitoring period for the type of equipment component monitored, whichever is later.

* * * * *

(vi) A list of equipment designated as unsafe to monitor/inspect or difficult to monitor/inspect under paragraph (f) of this section and a copy of the plan for monitoring or inspecting this equipment.

* * * * *

(viii) For equipment that the owner or operator elects to monitor as provided under § 63.178(c), a list of equipment added to batch product processes since the last monitoring period required in § 63.178(c)(3)(ii) and (iii). This list must be completed for each type of equipment within 90 calendar days, or by the next Periodic Report, following the end of the monitoring period for the type of equipment monitored, whichever is later. Also, if the owner or operator elects to adjust monitoring frequency by the time in use, as provided in § 63.178(c)(3)(iii), records demonstrating the proportion of the time during the calendar year the equipment is in use in a manner subject to the provisions of this section are required. Examples of suitable documentation are records of time in use for individual pieces of equipment or average time in use for the process unit.

(3) *Records of visual inspections.* For visual inspections of equipment subject to the provisions of paragraphs (c)(2)(iii)

and (c)(5)(iv) of this section, the owner or operator shall document that the inspection was conducted and the date of the inspection. * * *

(4) *Monitoring records.* When each leak is detected as specified in paragraph (c) of this section and § 63.164, paragraph (e) of this section and § 63.169, and §§ 63.172 and 63.174, the following information shall be recorded and kept for 5 years (at least 2 years onsite, with the remaining 3 years either onsite or offsite):

* * * * *

(iv) The maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A, after the leak is successfully repaired or determined to be nonrepairable.

(v) * * *

(A) The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. The written procedures shall be included either as part of the startup/shutdown/malfunction plan, required by § 63.1259(a)(3), or in a separate document that is maintained at the plant site. Reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

* * * * *

(5) *Records of pressure tests.* The owner or operator who elects to pressure test a process equipment train or supply lines between storage and processing areas to demonstrate compliance with this section is exempt from the requirements of paragraphs (g)(2), (3), (4), and (6) of this section.

* * *

* * * * *

(6) *Records of compressor and relief device compliance tests.* * * *

* * * * *

(7) *Records for closed-vent systems.* The owner or operator shall maintain records of the information specified in paragraphs (g)(7)(i) through (iii) of this section for closed-vent systems and control devices subject to the provisions of paragraph (b)(4)(ii) of this section.

* * *

* * * * *

(h) * * *

(2) *Notification of compliance status report.* * * *

(i) * * *

(B) Number of each equipment type (e.g., valves, pumps) in organic HAP service, excluding equipment in vacuum service.

* * * * *

(iv) Section 63.9(j) shall not apply to the Notification of Compliance Status report described in this paragraph (h)(2).

(3) * * *

(ii) For equipment complying with the provisions of paragraphs (b) through (g) of this section, except paragraph (b)(3)(iv) of this section and § 63.179 the summary information listed in paragraphs (h)(3)(ii)(A) through (L) of this section for each monitoring period during the 6-month period.

* * * * *

(C) Separately, the number of pumps and agitators for which leaks were detected as described in paragraph (c)(2) of this section, the total number of pumps and agitators monitored, and, for pumps, the percent leakers;

(D) Separately, the number of pumps and agitators for which leaks were not repaired as required in paragraph (c)(3) of this section;

* * * * *

(iv) Any revisions to items reported in earlier Notification of Compliance Status report, if the method of compliance has changed since the last report.

8. Section 63.1256 is amended by:

a. Revising paragraphs (a)(1)(i)(A) and (B);

b. Revising paragraph (a)(3);

c. Revising paragraph (a)(5) introductory text;

d. Revising paragraph (a)(5)(ii)(C);

e. Adding paragraph (a)(5)(ii)(D);

f. Adding paragraph (b)(6)(i);

g. Revising paragraphs (d)(2) introductory text and paragraph (d)(2)(i);

h. Revising paragraph (g)(8)(ii);

i. Revising paragraph (g)(11)(ii); and

j. Revising paragraph (g)(12).

The revisions and additions read as follows:

§ 63.1256 Standards: Wastewater.

(a) * * *

(1) * * *

(i) * * *

(A) The wastewater stream contains partially soluble HAP compounds at an annual average concentration greater than 1,300 ppmw, and the total soluble and partially soluble HAP load in all wastewater from the PMPU exceeds 0.25 Mg/yr.

(B) The wastewater stream contains partially soluble and/or soluble HAP compounds at an annual average concentration of 5,200 ppmw, and the total soluble and partially soluble HAP load in all wastewater from the PMPU exceeds 0.25 Mg/yr.

* * * * *

(3) *Exemptions from wastewater requirements.* (i) The following wastewaters are not subject to the wastewater provisions of this subpart:

(A) Stormwater from segregated sewers;

(B) Water from fire-fighting and deluge systems, including testing of such systems;

(C) Spills;

(D) Water from safety showers; and

(E) Samples of a size not greater than reasonably necessary for the method of analysis that is used.

(ii) *Maintenance wastewater.* Each owner or operator of a source subject to this subpart shall comply with the requirements of paragraphs (a)(3)(ii)(A) through (D) of this section for maintenance wastewater containing partially soluble or soluble HAPs listed in Tables 2 and 3 of this subpart.

(A) The owner or operator shall prepare a description of maintenance procedures for management of wastewater generated from the emptying and purging of equipment in the process during temporary shutdowns for inspections, maintenance, and repair (*i.e.*, a maintenance turnaround) and during periods which are not shutdowns (*i.e.*, routine maintenance). The descriptions shall:

(*1*) Specify the process equipment or maintenance tasks that are anticipated to create wastewater during maintenance activities; and

(*2*) Specify the procedures that will be followed to properly manage the wastewater and minimize organic HAP emissions to the atmosphere; and

(*3*) Specify the procedures to be followed when clearing materials from process equipment.

(B) The owner or operator shall modify and update the information required by paragraph (a)(3)(ii)(A) of this section as needed following each maintenance procedure based on the actions taken and the wastewater generated in the preceding maintenance procedure.

(C) The owner or operator shall implement the procedures described in paragraphs (a)(3)(ii)(A) and (B) of this section as part of the startup, shutdown, and malfunction plan required under § 63.6(e)(3).

(D) The owner or operator shall maintain a record of the information required by paragraphs (a)(3)(ii)(A) and (B) of this section as part of the startup, shutdown, and malfunction plan required under § 63.6(e)(3).

* * * * *

(5) *Offsite treatment or onsite treatment not owned or operated by the source.* The owner or operator may elect to transfer affected wastewater streams or a residual removed from such affected wastewater to an onsite treatment operation not owned or operated by the owner or operator of the source generating the wastewater or

residual, or to an offsite treatment operation.

* * * * *

(ii) * * *

(C) Section 63.6(g); or

(D) If the affected wastewater streams or residuals removed from affected wastewater streams received by the transferee contain less than 50 ppmw of partially soluble HAP, then the transferee must, at a minimum, manage and treat the affected wastewater streams and residuals in accordance with one of the following:

(*1*) Comply with paragraph (g)(10) of this section and cover the waste management units up to the activated sludge unit; or

(*2*) Comply with paragraphs (g)(11)(i), (ii), and (h) of this section and cover the waste management units up to the activated sludge unit; or

(*3*) Comply with paragraph (g)(10) of this section provided that the owner or operator of the affected source demonstrates that less than 5 percent of the total soluble HAP is emitted from waste management units up to the activated sludge unit; or

(*4*) Comply with paragraphs (g)(11)(i), (ii), and (h) of this section provided that the owner or operator of the affected source demonstrates that less than 5 percent of the total soluble HAP is emitted from waste management units up to the activated sludge unit.

* * * * *

(b) * * *

(6) * * *

(i) The owner or operator shall measure the seal gaps or inspect the wastewater tank within 30 calendar days of the determination that the floating roof is unsafe.

* * * * *

(d) * * *

(2) *Filling of large containers.* Pumping affected wastewater or a residual removed from affected wastewater into a container with a capacity greater than or equal to 0.42 m^3 shall be conducted in accordance with the conditions in paragraphs (d)(2)(i) and (ii) of this section.

(i) Comply with any one of the procedures specified in paragraphs (d)(2)(i)(A), (B), or (C) of this section.

(A) Use a submerged fill pipe. The submerged fill pipe outlet shall extend to no more than 6 inches or within two fill pipe diameters of the bottom of the container while the container is being filled.

(B) Locate the container within an enclosure with a closed-vent system that routes the organic HAP vapors vented from the container to a control device.

(C) Use a closed-vent system to vent the displaced organic vapors vented from the container to a control device or back to the equipment from which the wastewater is transferred.

* * * * *

(g) * * *

(8) * * *

(ii) *Percent mass removal/destruction option.* The owner or operator shall reduce, by removal or destruction, the mass of total partially soluble HAP compounds by 99 percent or more. The removal destruction efficiency shall be determined by the procedures specified in § 63.1257(e)(2)(ii) or (iii)(C) for noncombustion, nonbiological treatment processes; § 63.1257(e)(2)(ii) or (iii)(D) for combustion processes; § 63.1257(e)(2)(iii)(F) for open biological treatment processes; and § 63.1257(e)(2)(ii) or (iii)(G) for closed biological treatment processes.

* * * * *

(11) * * *

(ii) For open biological treatment processes, compliance shall be determined using the procedures specified in § 63.1257(e)(2)(iii)(E). For closed aerobic biological treatment processes, compliance shall be determined using the procedures specified in § 63.1257(e)(2)(ii), (iii)(E), or (iii)(G). For closed anaerobic biological treatment processes, compliance shall be determined using the procedures specified in § 63.1257(e)(2)(ii) or (iii)(G).

* * * * *

(12) *Percent mass removal/destruction option for soluble HAP compounds at new sources.* The owner or operator of a new source shall reduce, by removal or destruction, the mass flow rate of total soluble HAP from affected wastewater by 99 percent or more. The removal/destruction efficiency shall be determined by the procedures in § 63.1257(e)(2)(ii) or (iii)(C) for noncombustion, nonbiological treatment processes; § 63.1257(e)(2)(ii) and (iii)(D) for combustion processes; § 63.1257(e)(2)(iii)(F) for open biological treatment processes; and § 63.1257(e)(2)(ii) or (iii)(G) for closed biological treatment processes.

* * * * *

9. Section 63.1257 is amended by:

a. Revising paragraph (a)(3);

b. Revising paragraph (a)(5);

c. Revising paragraph (b)(6) introductory text;

d. Revising paragraph (b)(6)(iii);

e. Adding a new sentence at the end of paragraph (b)(8)(i)(A) introductory text;

f. Revising paragraph (b)(8)(i)(A)(*3*)(*i*);

g. Revising paragraph (b)(10) introductory text;

h. Revising paragraphs (b)(10)(i) and (ii);

i. Redesignating paragraphs (b)(10)(iii) through (v) as paragraphs (b)(10)(iv) through (vi) and revising redesignated paragraphs (b)(10)(iv) introductory text and (b)(10)(v);

j. Adding paragraph (b)(10)(iii);

k. Revising the second sentence in paragraph (c)(1) introductory text;

l. Revising paragraph (c)(3)(v);

m. Revising paragraphs (d)(1)(i) through (iii);

n. Revising equation 13 and the definitions of the terms "$(P_i)_{Tn}$" and "MW_i" for Equations 13 through 17 in paragraph (d)(2)(i)(C)(*1*);

o. Removing the definitions of the terms "(P_i^*)" and "(P_j^*)" for Equations 13 through 17 in paragraph (d)(2)(i)(C)(*1*) and adding definitions for the terms "P_i^*" and "P_j^*" for Equations 13 through 17 in paragraph (d)(2)(i)(C)(*1*);

p. Removing the last sentence in paragraph (d)(2)(i)(C)(2)(i);

q. Revising paragraph (d)(2)(i)(C)(*4*) introductory text;

r. Revising paragraph (d)(2)(i)(C)(*4*)(*ii*);

s. Revising the definition of the term "x_j" after Equation 24 in paragraph (d)(2)(i)(D)(2);

t. Revising paragraphs (d)(2)(i)(D)(*3*) and (*4*);

u. Revising paragraph (d)(2)(i)(E);

v. Revising paragraph (d)(2)(i)(H);

w. Adding a new sentence between the third and fourth sentences in paragraph (d)(2)(ii);

x. Revising paragraph (d)(3) introductory text;

y. Revising paragraph (d)(3)(ii)(A);

z. Adding paragraph (d)(3)(iii);

aa. Removing the definition of the term "P" following Equation 45 in paragraph (e)(2)(iii)(C)(*3*) and adding in its place the definition of the term "ρ"" in paragraph (e)(2)(iii)(C)(*3*);

bb. Revising "Equation 44" to read "Equation 46" in the first sentence in paragraph (e)(2)(iii)(C)(*5*);

cc. Removing the definition of the term "π" for Equation 47 in paragraph (e)(2)(iii)(D)(*3*) and revising the definition of the term "ρ"" for Equation 47 in paragraph (e)(2)(iii)(D)(*3*);

dd. Adding the definition of the term "ρ" for Equation 47 in paragraph (e)(2)(iii)(D)(*3*);

ee. Revising paragraph (e)(2)(iii)(E)(*3*) introductory text;

ff. Revising "Equation 49" to read "Equation 50" in the first sentence in paragraph (e)(2)(iii)(E)(*3*)(*ii*);

gg. Revising the definitions of the terms "QMW_a, QMW_b" and "QMG_b" for Equation 51 in paragraph (e)(2)(iii)(G)(*3*);

hh. Revising the first sentence in paragraph (f)(1)(iii)(B);

ii. Revising paragraph (f)(2)(ii)(A); and

jj. Redesignating paragraphs (h)(2)(i) and (h)(3) as paragraphs (h)(3) and (4), revising redesignated paragraph (h)(3), and removing Equation 61 from redesignated paragraph (h)(4).

The revisions and additions read as follows:

§ 63.1257 Test methods and compliance procedures.

(a) * * *

(3) *Outlet concentration correction for supplemental gases.* (i) *Combustion devices.* Except as provided in § 63.1258(b)(5)(ii)(A), for a combustion device used to comply with an outlet concentration standard, the actual TOC, organic HAP, and hydrogen halide and halogen must be corrected to 3 percent oxygen if supplemental gases, as defined in § 63.1251, are added to the vent stream or manifold. The integrated sampling and analysis procedures of Method 3B of 40 CFR part 60, appendix A, shall be used to determine the actual oxygen concentration ($\%O_{2d}$). The samples shall be taken during the same time that the TOC or total organic HAP or hydrogen halides and halogen samples are taken. The concentration corrected to 3 percent oxygen (C_d) shall be computed using Equation 7A of this subpart:

$$C_c = C_m\left(\frac{17.9}{20.9 - \%O_{2d}}\right) \quad \text{(Eq. 7A)}$$

Where:

C_c = concentration of TOC or total organic HAP or hydrogen halide and halogen corrected to 3 percent oxygen, dry basis, ppmv

C_m = total concentration of TOC or total organic HAP or hydrogen halide and halogen in vented gas stream, average of samples, dry basis, ppmv

$\%O_{2d}$ = concentration of oxygen measured in vented gas stream, dry basis, percent by volume

(ii) *Noncombustion devices.* Except as provided in § 63.1258(b)(5)(ii)(B), if a control device other than a combustion device is used to comply with a TOC, organic HAP, or hydrogen halide outlet concentration standard, the owner or operator must correct the actual concentration for supplemental gases using Equation 7B of this subpart; process knowledge and representative operating data may be used to determine the fraction of the total flow due to supplemental gas.

$$C_a = C_m\left(\frac{V_s + V_a}{V_a}\right) \quad \text{(Eq. 7B)}$$

Where:

C_a = corrected outlet TOC, organic HAP, and hydrogen halides and halogens concentration, dry basis, ppmv

C_m = actual TOC, organic HAP, and hydrogen halides and halogens concentration measured at control device outlet, dry basis, ppmv

V_a = total volumetric flow rate of all gas streams vented to the control device, except supplemental gases

V_s = total volumetric flow rate of supplemental gases

* * * * *

(5) *Initial compliance with alternative standard.* Initial compliance with the alternative standards in §§ 63.1253(d) and 63.1254(c) for combustion devices is demonstrated when the outlet TOC concentration is 20 ppmv or less, and the outlet hydrogen halide and halogen concentration is 20 ppmv or less. Initial compliance with the alternative standards in §§ 63.1253(d) and 63.1254(c) for noncombustion devices is demonstrated when the outlet TOC concentration is 50 ppmv or less, and the outlet hydrogen halide and hydrogen concentration is 50 ppmv or less. To demonstrate initial compliance, the owner or operator shall be in compliance with the monitoring provisions in § 63.1258(b)(5) on the initial compliance date. The owner or operator shall use Method 18 to determine the predominant organic HAP in the emission stream if the TOC monitor is calibrated on the predominant HAP.

* * * * *

(b) * * *

(6) The following methods are specified for concentration measurements:

* * * * *

(iii) Method 26 or 26A of appendix A of part 60 shall be used to determine hydrogen chloride, hydrogen halide and halogen concentrations in control device efficiency determinations or in the 20 ppmv outlet hydrogen halide concentration standard.

* * * * *

(8) * * *

(i) * * *

(A) * * * The owner or operator must consider all relevant factors, including load and compound-specific characteristics in defining absolute worst-case conditions.

* * * * *

(*3*) * * *

(*i*) Periods when the stream contains the highest combined VOC and HAP load, in lb/hr, described by the emission profiles in paragraph (b)(8)(ii) of this section;

* * * * *

(10) *Wastewater testing.* Wastewater analysis shall be conducted in accordance with paragraph (b)(10)(i), (ii), (iii), (iv), or (v) of this section.

(i) *Method 305.* Use procedures specified in Method 305 of 40 CFR part 63, appendix A, and comply with requirements specified in paragraph (b)(10)(vi) of this section.

(ii) *Method 624, 625, 1624, or 1625.* Use procedures specified in Method 624, 625, 1624, or 1625 of 40 CFR part 136, appendix A, and comply with requirements in paragraph (b)(10)(vi) of this section.

(iii) *Method 8260 or 8270.* Use procedures specified in Method 8260 or 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, Third Edition, September 1986, as amended by Update I, November 15, 1992. As an alternative, an owner or operator may use any more recent, updated version of Method 8260 or 8270 approved by the EPA. For the purpose of using Method 8260 or 8270 to comply with this subpart, the owner or operator must maintain a formal quality assurance program consistent with either Section 8 of Method 8260 or Method 8270, and this program must include the following elements related to measuring the concentrations of volatile compounds:

(A) Documentation of site-specific procedures to minimize the loss of compounds due to volatilization, biodegradation, reaction, or sorption during the sample collection, storage, and preparation steps.

(B) Documentation of specific quality assurance procedures followed during sampling, sample preparation, sample introduction, and analysis.

(C) Measurement of the average accuracy and precision of the specific procedures, including field duplicates and field spiking of the material source before or during sampling with compounds having similar chemical characteristics to the target analytes.

(iv) *Other EPA methods.* Use procedures specified in the method, validate the method using the procedures in paragraph (b)(10)(iv)(A) or (B) of this section, and comply with the procedures in paragraph (b)(10)(vi) of this section.

* * * * *

(v) *Methods other than an EPA method.* Use procedures specified in the method, validate the method using the procedures in paragraph (b)(10)(iv)(A) of this section, and comply with the requirements in paragraph (b)(10)(vi) of this section.

* * * * *

(c) * * *

(1) * * * Initial compliance with the outlet concentration requirement of § 63.1253(d) is demonstrated by fulfilling the requirements of paragraph (a)(5) of this section.

* * * * *

(3) * * *

(v) When the phrase "the maximum true vapor pressure of the total organic HAP's in the stored liquid falls below the values defining Group 1 storage vessels specified in table 5 or table 6 of this subpart" is referred to in § 63.120(b)(1)(iv), the phrase "the maximum true vapor pressure of the total organic HAP in the stored liquid falls below 13.1 kPa" shall apply for the purposes of this subpart.

* * * * *

(d) * * *

(1) * * *

(i) Initial compliance with § 63.1254(a)(2)(i) is demonstrated when the actual emissions of HAP from the sum of all process vents within a process is less than or equal to 900 kg/yr. Initial compliance with § 63.1254(a)(2)(ii) is demonstrated when the actual emissions of HAP from the sum of all process vents in compliance with § 63.1254(a)(2)(i) is less than or equal to 1,800 kg/yr. Uncontrolled HAP emissions and controlled HAP emissions shall be determined using the procedures described in paragraphs (d)(2) and (3) of this section.

(ii) Initial compliance with the percent reduction requirements in § 63.1254(a)(1)(i), § 63.1254(a)(3), and § 63.1254(b) is demonstrated by:

(A) Determining controlled HAP emissions using the procedures described in paragraph (d)(3) of this section, and uncontrolled HAP emissions determined using the procedures described in paragraph (d)(2) of this section, and demonstrating that the reductions required by § 63.1254(a)(1)(i), § 63.1254(a)(3), and § 63.1254(b) are met; or

(B) Controlling the process vents using a device meeting the criteria specified in paragraph (a)(4) of this section.

(iii) Initial compliance with the outlet concentration requirements in § 63.1254(a)(1)(ii)(A), § 63.1254(a)(3), and § 63.1254(b)(1) is demonstrated when the outlet TOC concentration is 20 ppmv or less and the outlet hydrogen halide and halogen concentration is 20 ppmv or less. The owner or operator shall demonstrate compliance by fulfilling the requirements in paragraph (a)(6) of this section.

* * * * *

(2) * * *

(i) * * *

(C) * * *

(*1*) * * *

$$E = \frac{\sum_{i=1}^{n}\left((P_i^*)(x_i)(MW_i)\right)}{760 - \sum_{j=1}^{m}\left((P_j^*)(x_j)\right)} \times \Delta\eta \quad \text{(Eq. 13)}$$

* * * * *

P_i^* = vapor pressure of each HAP in the vessel headspace at any temperature between the initial and final heatup temperatures, mmHg

P_j^* = vapor pressure of each condensable VOC (including HAP) in the vessel headspace at any temperature between the initial and final heatup temperatures, mmHg

* * *

$(P_i)_{Tn}$ = partial pressure of each HAP in the vessel headspace at initial (T1) and final (T2) temperature

MW_i = molecular weight of the individual HAP * * *

* * * * *

(*4*) If the vessel contents are heated to the boiling point, emissions must be calculated using the procedure in paragraphs (d)(2)(i)(C)(*4*)(*i*) and (*ii*) of this section.

* * * * *

(*ii*) While boiling, the vessel must be operated with a properly operated process condenser. An initial demonstration that a process condenser is properly operated is required for some process condensers, as described in paragraph (d)(2)(iii) of this section.

(D) * * *

(*2*) * * *

x_j = mole fraction of each condensable (including HAP) in the liquid phase

* * * * *

(*3*) The average ratio of moles of noncondensable to moles of an individual HAP in the emission stream is calculated using Equation 25 of this subpart; this calculation must be repeated for each HAP in the emission stream:

$$n_{Ri} = \frac{\left(\frac{P_{nc1}}{(P_i^*)(x_i)} + \frac{P_{nc2}}{(P_i^*)(x_i)}\right)}{2} \quad \text{(Eq. 25)}$$

Where:

n_{Ri} = average ratio of moles of noncondensable to moles of individual HAP

P_{nc1} = initial partial pressure of the noncondensable gas, as calculated using Equation 23 of this subpart

P_{nc2} = final partial pressure of the noncondensable gas, as calculated using Equation 24 of this subpart

P_i^* = vapor pressure of each individual HAP

x_i = mole fraction of each individual HAP in the liquid phase

n = number of HAP compounds

i = identifier for a HAP compound

(*4*) The mass of HAP emitted shall be calculated using Equation 26 of this subpart:

$$E = (V_{nc1} - V_{nc2}) \times \frac{P_{atm}}{RT} \times \sum_{i-1}^{n} \frac{MW_i}{n_{Ri}} \quad \text{(Eq. 26)}$$

Where:

E = mass of HAP emitted

V_{nc1} = initial volume of noncondensable gas in the vessel, as calculated using Equation 21 of this subpart

V_{nc2} = final volume of noncondensable gas in the vessel, as calculated using Equation 22 of this subpart

n_{Ri} = average ratio of moles of noncondensable to moles of individual HAP, as calculated using Equation 25 of this subpart

P_{atm} = atmospheric pressure, standard

R = ideal gas law constant

T = temperature of the vessel, absolute

MW_i = molecular weight of each HAP

* * * * *

(E) *Vacuum systems.* Emissions from vacuum systems may be calculated using Equation 33 of this subpart if the air leakage rate is known or can be approximated.

$$E = \frac{(La)(t)}{MW_{nc}}\left(\frac{\sum_{i=1}^{n} P_i MW_i}{P_{system} - \sum_{j=1}^{m} P_j}\right) \quad \text{(Eq. 33)}$$

Where:

E = mass of HAP emitted

P_{system} = absolute pressure of receiving vessel or ejector outlet conditions, if there is no receiver

P_i = partial pressure of the HAP at the receiver temperature or the ejector outlet conditions
P_j = partial pressure of condensable (including HAP) at the receiver temperature or the ejector outlet conditions
La = total air leak rate in the system, mass/time
MW_{nc} = molecular weight of noncondensable gas
t = time of vacuum operation
MWi = molecular weight of the individual HAP in the emission stream, with HAP partial pressures calculated at the temperature of the receiver or ejector outlet, as appropriate

* * * * *

(H) *Empty vessel purging.* Emissions from empty vessel purging shall be calculated using Equation 36 of this subpart (Note: The term $e^{-Fv/v}$ can be assumed to be 0):

* * * * *

(ii) * * * Modified versions of the engineering evaluation methods in paragraphs (d)(2)(i)(A) through (H) may be used if the owner or operator demonstrates that they have been used to meet other regulatory obligations and they do not affect applicability assessments or compliance determinations under this subpart GGG.

* * *

* * * * *

(3) *Controlled emissions.* An owner or operator shall determine controlled emissions using the procedures in either paragraph (d)(3)(i) or (ii) of this section.

* * * * *

(ii) * * *

(A) The performance test shall be conducted by performing emission testing on the inlet and outlet of the control device following the test methods and procedures of § 63.1257(b). Concentrations shall be calculated from the data obtained through emission testing according to the procedures in paragraph (a)(2) of this section.

* * * * *

(iii) *Initial compliance demonstration for condensers.*

(A) *Air pollution control devices.* During periods in which a condenser functions as an air pollution control device, controlled emissions shall be calculated using the emission estimation equations described in paragraph (d)(3)(i)(B) of this section.

(B) *Process condensers.* During periods when the condenser is operating as a process condenser, the owner or operator is required to demonstrate that the process condenser is properly operated if the process condenser meets either of the criteria described in paragraphs (d)(2)(iii)(B)(*1*) and (*2*) of this section. The owner or operator must either measure the condenser exhaust gas temperature and show it is less than the boiling or bubble point of the substance(s) in the vessel, or perform a material balance around the vessel and condenser to show that at least 99 percent of the material vaporized while boiling is condensed. The initial demonstration shall be conducted for all appropriate operating scenarios and documented in the Notification of Compliance report described in § 63.1260(f).

(*1*) The process condenser is not followed by an air pollution control device; or

(*2*) The air pollution control device following the process condenser is not a condenser or is not meeting the alternative standard of § 63.1254(c).

* * * * *

(e) * * *
(2) * * *
(iii) * * *
(C) * * *
(*3*) * * *

ρ= density of the wastewater, kg/m^3

* * * * *

(D) * * *
(*3*) * * *

ρ= density of the wastewater stream, kg/m^3

* * * * *

p = number of runs

* * * * *

(E) * * *

(*3*) *Destruction efficiency.* The owner or operator shall comply with the provisions in either paragraph (e)(2)(iii)(E)(*3*)(*i*) or (*ii*) of this section. Compliance is demonstrated if the destruction efficiency, E, is equal to or greater than 95 percent.

* * * * *

(G) * * *
(*3*) * * *

QMW_a, QMW_b = mass flow rate of partially soluble and/or soluble HAP compounds in wastewater entering (QMW_a) and exiting (QMW_b) the treatment process, kilograms per hour (as calculated using Equations 44 and 45)
QMG_b = mass flow rate of partially soluble and/or soluble HAP compounds in vented gas stream exiting the control device, kg/hr

* * * * *

(f) * * *
(1) * * *
(iii) * * *

(B) For batch processes, the annual factor shall be calculated either every 10 batches for the 12-month period preceding the 10th batch (10-batch rolling average) or a maximum of once per month, if the number of batches is greater than 10 batches per month. * * *

(2) * * *
(ii) * * *

(A) The mass of HAP calculated using Equation 55 of this subpart:

$$M = [kg/kg]_b (0.75 - P_R)(M_{prod}) \quad \text{(Eq. 55)}$$

Where:

$[kg/kg]_b$ = the baseline production-indexed HAP consumption factor, in kg/kg
M_{prod} = the annual production rate, in kg/yr
M = the annual reduction required by add-on controls, in kg/yr
P_R = the fractional reduction in the annual kg/kg factor achieved using pollution prevention where P_R is ≥0.5

* * * * *

(h) * * *

(3) Equations 60 and 61 of this subpart shall be used to calculate total HAP emissions:

$$E_{TU} = \sum_{i=1}^{n} E_{Ui} \quad \text{(Eq. 60)}$$

$$E_{TC} = \sum_{i=1}^{n} E_{Ci} \quad \text{(Eq. 61)}$$

Where:

E_{Ui} = yearly uncontrolled emissions from process i
E_{Ci} = yearly actual emissions for process i
E_{TU} = total yearly uncontrolled emissions
E_{TC} = total yearly actual emissions
n = number of processes included in the emissions average

* * * * *

10. Section 63.1258 is amended by:
a. Revising paragraph (b)(5);
b. Revising paragraph (b)(6)(iii);
c. Revising the first sentence in paragraph (b)(8) introductory text; and
d. Revising paragraph (c).

The revisions read as follows:

§ 63.1258 Monitoring requirements.

* * * * *

(b) * * *

(5) *Monitoring for the alternative standards.* (i) For control devices that are used to comply with the provisions of § 63.1253(d) or 63.1254(c), the owner or operator shall monitor and record the outlet TOC concentration and the outlet hydrogen halide and halogen concentration every 15 minutes during the period in which the device is

functioning in achieving the HAP removal required by this subpart. A TOC monitor meeting the requirements of Performance Specification 8 or 9 of appendix B of part 60 shall be installed, calibrated, and maintained according to § 63.8. The owner or operator need not monitor the hydrogen halide and halogen concentration if, based on process knowledge, the owner or operator determines that the emission stream does not contain hydrogen halides or halogens.

(ii) An owner or operator complying with the alternative standard using control devices in which supplemental gases are added to the vents or manifolds must either correct for supplemental gases as specified in § 63.1257(a)(3) or comply with the requirements of paragraph (b)(5)(ii)(A) or (B) of this section.

(A) *Provisions for combustion devices.* As an alternative to correcting for supplemental gases as specified in § 63.1257(a)(3), the owner or operator may monitor residence time and firebox temperature according to the requirements of paragraphs (b)(5)(ii)(A)(*1*) and (*2*) of this section. Monitoring of residence time may be accomplished by monitoring flowrate into the combustion chamber.

(*1*) If complying with the alternative standard instead of achieving a control efficiency of 95 percent or less, the owner or operator must maintain a minimum residence time of 0.5 seconds and a minimum combustion chamber temperature of 760°C.

(*2*) If complying with the alternative standard instead of achieving a control efficiency of 98 percent or less, the owner or operator must maintain a minimum residence time of 0.75 seconds and a minimum combustion chamber temperature of 816°C.

(B) *Provisions for dense gas systems.* As an alternative to correcting for supplemental gases as specified in § 63.1257(a)(3), for noncombustion devices used to control emissions from dense gas systems, as defined in § 63.1251, the owner or operator shall monitor flowrate as specified in paragraphs (b)(5)(ii)(B)(*1*) through (*4*) of this section.

(*1*) Use Equation 63 of this subpart to calculate the system flowrate setpoint at which the average concentration is 5,000 ppmv TOC:

$$F_s = \frac{721 \times E_{am}}{5{,}000} \qquad \text{(Eq. 63)}$$

Where:

F_s = system flowrate setpoint, scfm
E_{am} = annual emissions entering the control device, lbmols/yr

(*2*) Annual emissions used in Equation 63 of this subpart must be based on the actual mass of organic compounds entering the control device, as calculated from the most representative emissions inventory data submitted within the 5 years before the Notification of Compliance Status report is due. The owner or operator must recalculate the system flowrate setpoint once every 5 years using the annual emissions from the most representative emissions inventory data submitted during the 5-year period after the previous calculation. Results of the initial calculation must be included in the Notification of Compliance Status report, and recalculated values must be included in the next Periodic report after each recalculation. For all calculations after the initial calculation, to use emissions inventory data calculated using procedures other than those specified in § 63.1257(d), the owner or operator must submit the emissions inventory data calculations and rationale for their use in the Notification of Process Change report or an application for a part 70 permit renewal or revision.

(*3*) In the Notification of Compliance Status report, the owner or operator may elect to establish both a maximum daily average operating flowrate limit above the flowrate setpoint and a reduced outlet concentration limit corresponding to this flowrate limit. The owner or operator may also establish reduced outlet concentration limits for any daily average flowrates between the flowrate setpoint and the flowrate limit. The correlation between these elevated flowrates and the corresponding outlet concentration limits must be established using Equation 64 of this subpart:

$$C_a = \frac{F_s}{F_a} \times 50 \qquad \text{(Eq. 64)}$$

Where:

C_a = adjusted outlet concentration limit, dry basis, ppmv
50 = outlet concentration limit associated with the flowrate setpoint, dry basis, ppmv
F_s = system flowrate setpoint, scfm
F_a = actual system flowrate limit, scfm

(*4*) The owner or operator must install and operate a monitoring system for measuring system flowrate. The flowrate into the control device must be monitored and recorded at least once every hour. The system flowrate must be calculated as the average of all values measured during each 24-hour operating day. The flowrate monitoring device must be accurate to within 5 percent of the system flowrate setpoint, and the flowrate monitoring device must be calibrated annually.

(C) *Flow rate evaluation for noncombustion devices.* To demonstrate continuous compliance with the requirement to correct for supplemental gases as specified in § 63.1257(a)(3)(ii) for noncombustion devices, the owner or operator must evaluate the volumetric flow rate of supplemental gases, V_s, and the volumetric flow rate of all gases, V_a, each time a new operating scenario is implemented based on process knowledge and representative operating data. The procedures used to evaluate the flow rates, and the resulting correction factor used in Equation 7B of this subpart, must be included in the Notification of Compliance Status report and in the next Periodic report submitted after an operating scenario change.

(6) * * *

(iii) Each loss of all pilot flames for flares.

* * * * *

(8) *Violations.* Exceedances of parameters monitored according to the provisions of paragraphs (b)(1)(ii), (iv) through (ix), and (b)(5)(ii)(A) and (B) of this section, or excursions as defined by paragraphs (b)(7)(i) through (iii) of this section, constitute violations of the operating limit according to paragraphs (b)(8)(i), (ii), and (iv) of this section.

* * *

* * * * *

(c) *Monitoring for emission limits.* The owner or operator of any affected source complying with the provisions of § 63.1254(a)(2) shall demonstrate continuous compliance with the 900 and 1,800 kg/yr emission limits by calculating daily 365-day rolling summations of emissions. For any owner or operator opting to switch compliance strategy from the 93 percent control requirement to the annual mass emission limit method, as described in § 63.1254(a)(1)(i), the rolling summations, beginning with the first day after the switch, must include emissions from the past 365 days.

* * * * *

11. Section 63.1259 is amended by:

a. Revising paragraph (a)(3)(i);

b. Revising paragraph (a)(3)(iii);

c. Revising paragraph (b)(4);

d. Revising paragraphs (b)(5)(i) and (b)(5)(ii);

e. Removing paragraph (b)(6), redesignating paragraphs (b)(7) through (b)(11) as paragraphs (b)(6) through (b)(10), and revising the redesignated paragraphs (b)(6) and (b)(9); and

f. Adding paragraphs (b)(11) and (12).

The revisions and additions read as follows:

§ 63.1259 Recordkeeping requirements.

(a) * * *

(3) * * *

(i) The owner or operator shall record the occurrence and duration of each malfunction of the process operations or of air pollution control equipment used to comply with this subpart, as specified in § 63.6(e)(3)(iii).

* * * * *

(iii) For each startup, shutdown, or malfunction, the owner or operator shall record all information necessary to demonstrate that the procedures specified in the affected source's startup, shutdown, and malfunction plan were followed, as specified in § 63.6(e)(3)(iii), and shall record all maintenance performed on the air pollution control equipment, as specified in § 63.10(b)(2)(iii); alternatively, the owner or operator shall record any actions taken that are not consistent with the plan, as specified in § 63.6(e)(3)(iv).

* * * * *

(b) * * *

(4) For purposes of compliance with the annual mass limits of § 63.1254(a)(2) and § 63.1254(b)(2), daily records of the rolling annual total emissions.

(5) * * *

(i) For processes or process vents that are in compliance with the percent reduction requirements of § 63.1254(a)(1), (a)(3), or § 63.1254(b)(1) and containing vents controlled to less than the percent reduction requirement, the following records are required:

(A) Standard batch uncontrolled and controlled emissions for each process;

(B) Actual uncontrolled and controlled emissions for each nonstandard batch; and

(C) A record whether each batch operated was considered a standard batch.

(ii) For processes in compliance with the annual mass limits of § 63.1254(a)(2) or § 63.1254(b)(2), the following records are required:

(A) The number of batches per year for each batch process;

(B) The operating hours per year for continuous processes;

(C) Standard batch uncontrolled and controlled emissions for each process;

(D) Actual uncontrolled and controlled emissions for each nonstandard batch;

(E) A record whether each batch operated was considered a standard batch.

(6) Wastewater concentration per POD or process, except as provided in § 63.1256(a)(1)(ii).

* * * * *

(9) Description of worst-case operating conditions as required in § 63.1257(b)(8).

* * * * *

(11) If the owner or operator elects to comply with § 63.1253(b) or (c) by installing a floating roof, the owner or operator must keep records of each inspection and seal gap measurement in accordance with § 63.123(c) through (e) as applicable.

(12) If the owner or operator elects to comply with the vapor balancing alternative in § 63.1253(f), the owner or operator must keep records of the DOT certification required by § 63.1253(f)(2) and the pressure relief vent setting and the leak detection records specified in § 63.1253(f)(5).

* * * * *

12. Section 63.1260 is amended by:

a. Adding paragraphs (e)(6) and (7);

b. Revising paragraph (g)(1)(ii);

c. Revising paragraph (g)(2)(vii);

d. Adding paragraph (g)(2)(viii);

e. Adding a new sentence after the first sentence in paragraph (h)(1) introductory text; and

f. Revising the reference "§ 63.10(d)(4)(ii)" to read "§"63.10(d)(5)(ii)" in the last sentence in paragraph (i).

The revisions and additions read as follows:

§ 63.1260 Reporting requirements.

* * * * *

(e) * * *

(6) Data and other information supporting the determination of annual average concentrations by process simulation as required in § 63.1257(e)(1)(ii).

(7) Bench scale or pilot-scale test data and rationale used to determine annual average concentrations as required in § 63.1257(e)(1)(ii)(C).

* * * * *

(g) * * *

(1) * * *

(ii) Quarterly reports shall be submitted when the source experiences an exceedance of a temperature limit monitored according to the provisions of § 63.1258(b)(1)(iii) or an exceedance of the outlet concentration monitored according to the provisions of § 63.1258(b)(1)(x) or § 63.1258(b)(5). Once an affected source reports quarterly, the affected source shall follow a quarterly reporting format until a request to reduce reporting frequency is approved. If an owner or operator submits a request to reduce the frequency of reporting, the provisions in § 63.10(e)(3)(ii) and (iii) shall apply, except that the phrase "excess emissions and continuous monitoring system performance report and/or summary report" shall mean "Periodic report" for the purposes of this section.

* * * * *

(2) * * *

(vii) Each new operating scenario which has been operated since the time period covered by the last Periodic report. For each new operating scenario, the owner or operator shall provide verification that the operating conditions for any associated control or treatment device have not been exceeded, and that any required calculations and engineering analyses have been performed. For the initial Periodic report, each operating scenario for each process operated since the compliance date shall be submitted.

(viii) If the owner or operator elects to comply with the provisions of § 63.1253(b) or (c) by installing a floating roof, the owner or operator shall submit the information specified in § 63.122(d) through (f) as applicable. References to § 63.152 from § 63.122 shall not apply for the purposes of this subpart.

(h) * * *

(1) * * * For the purposes of this section, a process change means the startup of a new process, as defined in § 63.1251. * * *

* * * * *

13. Section 63.1261 is revised to read as follows:

§ 63.1261 Delegation of Authority.

(a) This subpart can be administered by EPA, or a delegated authority such as a State, local, or tribal agency. If the Administrator has delegated authority to a State, local, or tribal agency, then that agency has the authority to administer and enforce this subpart. To find out if this subpart is delegated to a State, local, or tribal agency, the appropriate EPA Regional Office should be contacted.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are as follows:

(1) Approval of alternatives to the emission standards in §§ 63.1252 through 63.1256 under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.1257 as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.1258 as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under §§ 63.1259 and 63.1260 as defined in § 63.90.

14. Table 1 to subpart GGG is amended by:

a. Revising the column heading "Comments" to read "Explanation";

b. Revising the entries "63.5(b)(3)," "63.7(a)(1)," "63.9(h)," "63.9(j)," "63.9(a)–(d)," "63.9(e)," "63.9(g)(1)," "63.9(g)(3)," "63.10(a)," "63.10(b)(1)," "63.10(b)(3)," and "63.10(c)–(d)(2);"

c. Removing the entry "63.7(a)(2)(i–ix)" and adding in its place the entry "63.7(a)(2)(i)–(ix);"

d. Removing the entry "63.8(b)(3)–(c)(3)" and adding in its place the entry "63.8(b)(3)–(c)(4);"

e. Removing the entry "63.8(c)(4–5)" and adding in its place the entry "63.8(c)(5);"

f. Removing the entry "63.8(c)6)–(8)" and adding in its place the entry "63.8(c)(6)–(8)."

The revisions and additions read as follows:

TABLE 1.—TO SUBPART GGG. GENERAL PROVISIONS APPLICABILITY TO SUBPART GGG

General provisions reference	Summary of requirements	Applies to subpart GGG	Explanation and comments
63.5(b)(3)	New construction/reconstruction	Yes	Except for changes and additions authorized under § 52.2454 of this title. However, the requirement to submit the Precompliance report at least 90 days before the compliance date still applies
63.7(a)(1)	Performance testing requirements	Yes	Subpart GGG also specifies required testing and compliance procedures
63.7(a)(2)(i–ix)		Yes	Except substitute "150 days" instead of "180 days."
63.8(b)(3)–(c)(4)	CMS requirements	Yes	§ 63.1259 also specifies recordkeeping for CMS.
63.8(c)(5)	COMS operation requirements	No.	
63.8 (c)(6–8)	CMS calibration and malfunction provisions	No	Calibration procedures are provided in § 63.1258.
63.9(a)–(d)	Notification requirements—Applicability and general information.	Yes	§ 63.1260(b) also specifies initial notification requirement.
63.9(e)	Notification of performance test	Yes	§ 63.1260(l) also specifies notification requirement for performance test.
63.9(g)(1)	Additional notification requirements for sources with CMS.	Yes	§ 63.1260 (d) also specifies notification requirement for performance evaluation.
63.9(g)(3)	Notification that criterion to continue use of alternative to relative accuracy testing has been exceeded.	Yes	§ 63.1260(d) also specifies notification requirement for performance evaluation.
63.9(h)	Notification of compliance status	Yes	Specified in § 63.1260(f). Due 150 days after compliance date.
63.9(j)	Change in information provided	No	Subpart GGG specifies procedures for notification of changes.
63.10(a)	Recordkeeping requirements	Yes.	
63.10(b)(1)	Records retention	Yes	Also stated in § 63.1259.
63.10(b)(3)	Records retention for sources not subject to relevant standard.	Yes	Also stated in § 63.1259 (a)(2).
63.10(c)–(d)(2)	Other recordkeeping and reporting provisions	Yes	Also stated in § 63.1259 (a)(4).

15. Table 5 to subpart GGG is revised to read as follows:

TABLE 5. TO SUBPART GGG.—CONTROL REQUIREMENTS FOR ITEMS OF EQUIPMENT THAT MEET THE CRITERIA OF § 63.1252(F)

Item of equipment	Control requirement[a]
Drain or drain hub	(a) Tightly fitting solid cover (TFSC); or (b) TFSC with a vent to either a process or to a control device meeting the requirements of § 63.1256(h)(2); or

TABLE 5. TO SUBPART GGG.—CONTROL REQUIREMENTS FOR ITEMS OF EQUIPMENT THAT MEET THE CRITERIA OF § 63.1252(F)—Continued

Item of equipment	Control requirement[a]
	(c) Water seal with submerged discharge or barrier to protect discharge from wind.
Manhole[b]	(a) TFSC; or (b) TSFC with a vent to either a process or to a control device meeting the requirements of § 63.1256(h)(2); or (c) If the item is vented to the atmosphere, use a TFSC with a properly operating water seal at the entrance or exit to the item to restrict ventilation in the collection system. The vent pipe shall be at least 90 cm in length and not exceeding 10.2 cm in nominal inside diameter.
Lift station	(a) TFSC; or (b) TFSC with a vent to either a process or to a control device meeting the requirements of § 63.1256(h)(2); or (c) If the lift station is vented to the atmosphere, use a TFSC with a properly operating water seal at the entrance or exit to the item to restrict ventilation in the collection system. The vent pipe shall be at least 90 cm in length and not exceeding 10.2 cm in nominal inside diameter. The lift station shall be level controlled to minimize changes in the liquid level.
Trench	(a) TFSC; or (b) TFSC with a vent to either a process or to a control device meeting the requirements of § 63.1256(h)(2); or (c) If the item is vented to the atmosphere, use a TFSC with a properly operating water seal at the entrance or exit to the item to restrict ventilation in the collection system. The vent pipe shall be at least 90 cm in length and not exceeding 10.2 cm in nominal inside diameter.
Pipe	Each pipe shall have no visible gaps in joints, seals, or other emission interfaces.
Oil/Water separator	(a) Equip with a fixed roof and route vapors to a process or equip with a closed-vent system that routes vapors to a control device meeting the requirements of § 63.1256(h)(2); or (b) Equip with a floating roof that meets the equipment specifications of § 60.693(a)(1)(i), (a)(1)(ii), (a)(2), (a)(3), and (a)(4).
Tank	Maintain a fixed roof and consider vents as process vents.[c]

[a] Where a tightly fitting solid cover is required, it shall be maintained with no visible gaps or openings, except during periods of sampling, inspection, or maintenance.
[b] Manhole includes sumps and other points of access to a conveyance system.
[c] A fixed roof may have openings necessary for proper venting of the tank, such as pressure/vacuum vent, j-pipe vent.

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Part IV

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 411 and 489
Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 411 and 489

[HCFA–1112–P]

RIN 0938–AJ93

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule sets forth updates to the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs), for fiscal year 2001. Furthermore, it specifically proposes changes to the SNF PPS case-mix methodology. Annual updates to the PPS rates are required by section 1888(e) of the Social Security Act, as amended by the Medicare, Medicaid and State Child Health Insurance Program Balanced Budget Refinement Act of 1999, related to Medicare payments and consolidated billing for SNFs. In addition, this proposed rule sets forth certain conforming revisions to the regulations that are necessary in order to implement amendments made to the Act by section 103 of the Medicare, Medicaid and State Child Health Insurance Program Balanced Budget Refinement Act of 1999.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on June 9, 2000.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1112–P, P.O. Box 8013, Baltimore, MD 21244–8013.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–15–03, 7500 Security Boulevard, Baltimore, MD 21244–8150.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1112–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's office at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 to 5 p.m. (phone: (202) 690–7061).

FOR FURTHER INFORMATION CONTACT:

Dana Burley, (410) 786–4547 or Sheila Lambowitz, (410) 786–7605 (for information related to the case-mix classification methodology).

John Davis, (410) 786–0008 (for information related to the Wage Index).

Bill Ullman, (410) 786–5667 (for information related to consolidated billing).

Steve Raitzyk, (410) 786–4599 (for information related to the facility-specific transition rates).

Bill Ullman, (410) 786–5667 and Susan Burris (410) 786–6655 (for general information).

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In addition, because of the many terms to which we refer by abbreviation in this rule, we are listing these abbreviations and their corresponding terms in alphabetical order below:

ADL—Activity of Daily Living
BBA—Balanced Budget Act of 1997
BBRA—Balanced Budget Refinement Act of 1999
BLS—(U.S.) Bureau of Labor Statistics
CPI—Consumer Price Index
HCFA— Health Care Financing Administration
HCPCS—HCFA Common Procedure Coding System
IFC—Interim Final Rule with Comments
MDS—Minimum Data Set
MSA—Metropolitan Statistical Area
PPI—Producer Price Index
PPS—Prospective Payment System
PRM—Provider Reimbursement Manual

RUG—Resource Utilization Group
SCHIP—State Child Health Insurance Program
SNF—Skilled Nursing Facility

I. Background

A. Current System for Payment of Skilled Nursing Facility Services Under Part A of the Medicare Program

Section 4432 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) mandated the implementation of a per diem prospective payment system (PPS) for skilled nursing facilities (SNFs), covering all costs (routine, ancillary, and capital) of covered SNF services furnished to beneficiaries under Part A of the Medicare program, effective for cost reporting periods beginning on or after July 1, 1998. The SNF PPS payment methodology features a case-mix adjustment that utilizes data from the comprehensive assessment process required for every SNF beneficiary in order to group them clinically in terms of their degree of resource intensity. The case-mix adjustment is designed to ensure that the amount of the PPS per diem payment is appropriate to the individual beneficiary's actual condition, and is sufficient to purchase the full range of care and services that a beneficiary with a particular clinical profile would typically be expected to require. We are setting forth this proposed rule in accordance with section 1888(e)(4)(H)(ii) of the Social Security Act (the Act), which requires us to publish each year in the **Federal Register** any changes in the case-mix classification system that we use to make the case-mix adjustment. Although we are not proposing any other changes in the overall PPS payment methodology at present, we are nonetheless including a detailed discussion of the overall payment methodology in section I.C. below, in order to provide a context for the proposed changes to the case-mix classification system. In addition, we are incorporating revisions based on the Medicare, Medicaid and State Child Health Insurance Program (SCHIP) Balanced Budget Refinement Act of 1999 (BBRA). Major elements of the system were implemented in an interim final rule that was published in the **Federal Register** on May 12, 1998 (63 FR 26252), and in a final rule that was published in the **Federal Register** on July 30, 1999 (64 FR 41644). These elements are discussed in greater detail in section I.C. below, and include:

- *Rates:* Per diem Federal rates were established for urban and rural areas using allowable costs from fiscal year (FY) 1995 cost reports. These rates also included an estimate of the cost of services that, before July 1, 1998, had been paid under Part B but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. Rates are case-mix adjusted using a refined classification system (Resource Utilization Groups, version III (RUG–III)) based on beneficiary assessments (using the Minimum Data Set (MDS) 2.0). The proposed refinement to the RUG classification system is based on critical analysis which examined various options to account more precisely for the variation in non-therapy ancillary services in our payments and the care needs of medically complex patients. The proposed RUG refinement includes the addition of new categories and incorporation of an ancillary index, as discussed in further detail in section II.B. In addition, the Federal rates are adjusted by the hospital wage index to account for geographic variation in wages. At this time, data for the FY 2001 hospital wage index is not yet available; therefore, the index applied in this proposed rule is the same index used in the July 30, 1999 update notice. We will be updating the wage index in the final rule using the latest hospital wage data. Further, the rates are adjusted annually using an SNF market basket index. Lastly, as a result of section 101 of the BBRA, for SNF services furnished on or after April 1, 2000, and before the later of October 1, 2000, or implementation by the Secretary of Health and Human Services of a refined RUG system, per diem adjusted payments are increased by 20 percent for 15 RUGs falling under categories for Extensive Services, Special Care, Clinically Complex, High Rehabilitation and Medium Rehabilitation. This 20 percent increase serves solely as a temporary, interim adjustment to the payment rates and RUG–III classification system as published in the final rule of July 30, 1999, until we have had the opportunity to implement the case-mix refinements proposed in this rule. At that point, the temporary adjustment afforded by the 20 percent increase will no longer be applicable, as payment will be made in accordance with the newly-refined RUGs. The RUG–III groups to which this adjustment applies are: SE3, SE2, SE1, SSC, SSB, SSA, CC2, CC1, CB2, CB1, CA2, CA1, RHC, RMC and RMB. In addition, for FY 2001 and FY 2002, the adjusted Federal per diem payment to a facility is increased by 4 percent in each year, calculated exclusive of the 20 percent RUG rate increase.
- *Transition:* The SNF PPS includes a 3-year, phased transition that blends a facility-specific payment rate with the Federal case-mix adjusted rate. The blend used changes for each cost reporting period after a facility migrates to the new system. For most facilities, the facility-specific rate is based on allowable costs from FY 1995. As a result of section 102 of the BBRA of 1999, SNFs may elect immediate transition to the Federal rate on or after December 15, 1999 for cost reporting periods beginning on or after January 1, 2000. There is no such election for cost reporting periods beginning before January 1, 2000. SNFs may elect immediate transition up to 30 days after the start of their cost reporting period.
- *Coverage:* The PPS statute did not change Medicare's fundamental requirements for SNF coverage. However, because RUG–III classification is based, in part, on the beneficiary's need for skilled nursing care and therapy, we have attempted where possible to coordinate claims review procedures with the outputs of beneficiary assessment and RUG–III classifying activities. For example, we believe that when an initial Medicare required (5-day) assessment, properly completed, places the beneficiary in one of the upper RUG–III classifications that we designate as representing a covered level of SNF care (see section II.E. of this preamble), this provides the basis for us to assume that the beneficiary needed such care upon admission and at least up until the assessment reference date for the initial Medicare-required assessment. We will, however, continue to make individual review determinations for claims of those individuals who classify in one of the lower RUG–III categories.
- *Consolidated Billing:* The statute includes a billing provision that requires a SNF to submit consolidated Medicare bills for its beneficiaries for virtually all services that are covered under either Part A or Part B. The statute excludes a small list of services (primarily those of physicians and certain other types of practitioners). As discussed later in this preamble, section 103 of the BBRA has identified certain additional services for exclusion, effective April 1, 2000.

As noted above, an interim final rule implementing the SNF PPS was published in the **Federal Register** on May 12, 1998, for which the comment period was initially scheduled to close on July 13, 1998. A subsequent notice extended the public comment period for an additional 60 days (July 13, 1998, (63 FR 37498)), and a second notice reopened the comment period for another 30 days (November 27, 1998 (63 FR 65561)). In addition, a correction notice was published October 5, 1998 (63 FR 53301) that made a number of

minor technical and editorial corrections to the interim final rule. In the July 30, 1999, final rule we responded to the public comments received on the interim final rule and made a number of modifications in the regulation. This final rule was followed by a correction notice published on November 4, 1999 (64 FR 60122), which made a technical correction to the final rule's preamble. Also on July 30, 1999, we issued an update notice (64 FR 41684), followed by a correction notice published on October 5, 1999 (64 FR 54031). We have also issued several Program Memoranda on claims processing and billing under the SNF PPS that are available on the SNF PPS home page at the HCFA website on the Internet, at the following location: <www.hcfa.gov/Medicare/snfpps.htm>

B. Requirements of the Balanced Budget Act of 1997 for Updating the Prospective Payment System for Skilled Nursing Facilities

As described above, section 1888(e)(4)(H) of the Act requires that we publish in the **Federal Register**:

1. The unadjusted Federal per diem rates to be applied to days of covered SNF services furnished during the FY.

2. The case-mix classification system to be applied with respect to these services during the FY.

3. The factors to be applied in making the area wage adjustment with respect to these services.

In addition, in the July 30, 1999 final rule, we indicated that we would announce any changes to the guidelines for Medicare level of care determinations related to Part A SNF services or to the RUG–III classifications.

This proposed rule updates the rates as mandated by the Medicare statute.

C. The Medicare, Medicaid and State Child Health Insurance Program (SCHIP) Balanced Budget Refinement Act of 1999

As a result of enactment of the BBRA, there are several new provisions that result in adjustments to the PPS for SNFs. The following highlights the major provisions involving the PPS for SNFs:

Temporary Increase in Payment for Certain High Cost Residents

As noted previously, section 101 of the BBRA provides for a temporary, 20 percent increase in the per diem adjusted payment rates for 15 specified RUGs, falling under categories for Extensive Services, Special Care, Clinically Complex, High Rehabilitation and Medium Rehabilitation. The specific RUC–III groups to which this adjustment applies are: SE3, SE2, SE1, SSC, SSB, SSA, CC2, CC1, CB2, CB1, CA2, CA1, RHC, RMC, and RMB. The statute provides that the 20 percent increase takes effect with SNF services that are furnished on or after April 1, 2000, and continues until the later of October 1, 2000, or implementation by the Secretary of a refined RUG system. Thus, the 20 percent increase serves solely as a temporary, interim adjustment to the payment rates and RUG–III classification system as published in the final rule of July 30, 1999, until we have implemented the case-mix refinements that we now propose elsewhere in this document, which we expect to accomplish by October 1, 2000. Once we have implemented the case-mix refinements, the temporary adjustment afforded by the 20 percent increase will no longer be applicable, as we will then make payment in accordance with the newly-refined RUGs.

For FY 2001 and FY 2002, section 101 of the BBRA also provides for an across-the-board increase in the adjusted Federal per diem payment rates by 4 percent in each year, calculated exclusive of the 20 percent RUG rate increase discussed above. Unlike the 20 percent increase, which is targeted at certain particular RUG–III groups, this 4 percent increase will apply equally to all RUG groups.

Election For Immediate Transition to Federal Rate

As noted earlier, under section 102 of the BBRA, all SNFs may now elect to bypass the transition and be paid based upon 100 percent of the Federal rate. This election applies to cost reporting periods beginning on or after January 1, 2000. There is no such election for cost reporting periods beginning before January 1, 2000. SNFs may make this election beginning on or after December 15, 1999 and up to 30 days after the start of their cost reporting periods. An election to bypass the transition is effective for all subsequent periods and cannot be rescinded once it is effective. Further information can be found in Program Memorandum A–99–53.

Special Payment Adjustment for Certain SNFs

Section 155 of the BBRA provides that PPS payments to certain SNF providers located in Baldwin or Mobile County, Alabama, will be based on 100 percent of their facility specific rates for cost reporting periods that begin in FY 2000 or FY 2001. In addition, it requires that the facility specific portion of their payment rate be calculated using data from their cost reporting period beginning in FY 1998. In order to be eligible for this special payment, a SNF must meet the following criteria: began participation in the Medicare program before January 1, 1995; have at least 80 percent of the total inpatient days of the facility in the cost reporting period beginning in FY 1998 comprised of persons entitled to Medicare; and, be located in Baldwin or Mobile County, Alabama.

Special SNF PPS Payment Provisions for SNFs with Certain Types of Patient Populations

Section 105 of the BBRA adds paragraph (12) to section 1888(e) of the Act and permits certain SNFs to receive 50 percent of the facility specific rate and 50 percent of the Federal per diem rate, effective from November 29, 1999, until September 30, 2001. In order to be eligible, a SNF must: have been certified as an SNF under Medicare prior to July 1, 1992; be a hospital-based facility; and, in the cost reporting period beginning in FY 1998, have had a patient population, eligible for Part A benefits, of which at least 60 percent were "immuno-compromised secondary to an infectious disease," with "specific diagnoses specified by the Secretary." The statute gives the Secretary the authority to specify the diagnosis associated with this provision, and we believe the legislative history provides some guidance concerning the application of this provision. The House Ways and Means Committee report (H. Rep. 106–436, Part 1 at 47) indicates that this provision is directed at facilities that serve "* * * very specialized patients * * * whose medical conditions are not well-accounted for in the RUG classification system." The Senate Finance Committee Report (S. Rep. 106–199 at 8) indicates the need to study "* * * alternative payment methods for skilled nursing facilities that specialize in providing care to extremely high cost, chronically ill populations * * *" such as "a facility that exclusively specializes in caring for AIDS patients * * *" In light of this general Congressional intent, we believe that the scope of this provision should be limited and propose that this provision be applied to human immunodeficiency virus (HIV) as coded in ICD–9–CM with the following code: 042.

Provision for Part B Add-Ons for Facilities Participating in the Nursing Home Case-Mix and Quality (NHCMQ) Demonstration Project

Under prior law, section 1888(e)(3) of the Act provided for an add-on to the

payment rates for Part B services furnished during the course of a Part A covered stay for those facilities that did not participate in the demonstration that preceded SNF PPS. However, the Act did not provide for a similar add-on for facilities that did participate in the demonstration project. Therefore, section 104 of the BBRA amended section 1888(e)(3) to provide that SNFs that had participated in the Nursing Home Case Mix and Quality Demonstration (NHCMQ) project are eligible for the inclusion of a Part B add-on amount in their facility specific PPS rates. This provision is effective as if included in the enactment of the BBA and, therefore, applies to all cost reporting periods subject to the PPS transition.

For the purpose of computing facility specific rates, the base year for providers participating in the NHCMQ demonstration project is calendar year 1997 rather than FY 1995 (which is the base year for SNFs not participating in the demonstration project). Therefore, the Part B add-on amounts for the demonstration SNFs will be calculated using data from the appropriate periods in 1997. Because of the time period necessary for us to compute these amounts, existing Part B data from 1995 will be updated for inflation and used as the bases for payment on an interim basis until we can develop the final amounts using the 1997 data, at which point earlier payments will be adjusted to reflect the correct data.

Exclusion of Certain Additional Services from the SNF PPS Bundle and Consolidated Billing

The original SNF PPS legislation in the BBA identified several service categories that were excluded from the SNF consolidated billing requirement, as well as from the bundled Part A payment made under the SNF PPS itself. Effective with services furnished on or after April 1, 2000, section 103(a) of the BBRA has amended section 1888(e)(2)(A) to exclude certain additional types of services from the consolidated billing requirement, thus allowing these services to be billed separately to Part B. Section 103(b) of the BBRA has also amended section 1888(e)(4)(G) to provide for a corresponding proportional reduction in Part A SNF payments, beginning with FY 2001. We discuss these additional excluded service categories in section V. of this preamble, on consolidated billing.

D. Skilled Nursing Facility Prospective Payment—General Overview

The Medicare SNF PPS was implemented for cost reporting periods beginning on or after July 1, 1998. Under the PPS, SNFs are paid through per diem prospective case-mix adjusted payment rates applicable to all covered SNF services. These payment rates cover all the costs of furnishing covered skilled nursing services (that is, routine, ancillary, and capital-related costs) other than costs associated with approved educational activities. Covered SNF services include posthospital SNF services for which benefits are provided under Part A and all items and services that, before July 1, 1998, had been paid under Part B (other than physician and certain other services specifically excluded under the BBA) but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. (For a complete discussion of these provisions, see the May 12, 1998 interim final rule (63 FR 26252)).

1. Payment Provisions—Federal Rate

The statute sets forth a fairly prescriptive methodology for calculating the amount of payment under the SNF PPS. The PPS utilizes per diem Federal payment rates based on mean SNF costs in a base year updated for inflation to the first effective period of the PPS. We developed the Federal payment rates using allowable costs from hospital-based and freestanding SNF cost reports for reporting periods beginning in FY 1995. The data used in developing the Federal rates also incorporate an estimate of the amounts that would be payable under Part B for covered SNF services to individuals who were receiving Part A covered services in an SNF. In developing the rates for the initial period, we updated costs to the first effective year of PPS (15-month period beginning July 1, 1998) using a SNF market basket index, and standardized for facility differences in case-mix and for geographic variations in wages. Providers that received "new provider" exemptions from the routine cost limits were excluded from the database used to compute the Federal payment rates. In addition, costs related to payments for exceptions to the routine cost limits were excluded from the database used to compute the Federal rates. In accordance with the formula prescribed in the BBA, we set the Federal rates at a level equal to the weighted mean of freestanding costs plus 50 percent of the difference between the freestanding mean and weighted mean of all SNF costs (hospital-based and freestanding) combined. We compute and apply separately the payment rates for facilities located in urban and rural areas. In addition, we adjust the portion of the Federal rate attributable to wage related costs by a wage index.

The Federal rate also incorporates adjustments to account for facility case-mix using a classification system that accounts for the relative resource utilization of different patient types. This classification system, RUG–III, utilizes beneficiary assessment data (from the Minimum Data Set or MDS) completed by SNFs to assign beneficiaries into one of 178 groups. The May 12, 1998 interim final rule (63 FR 26252) has a complete and detailed description of the original (44 group) RUG–III classification system. A detailed discussion of the proposed changes to the RUG classification system is found in Section II.B. of this proposed rule.

The Federal rates reflected in this notice update the rates in the July 30, 1999 update notice (64 FR 41684) by a factor equal to the SNF market basket index minus 1 percentage point. According to section 1888(e)(4)(E)(ii) of the Act, for FYs 2001 and 2002, we will update the rate by adjusting the current rates by the SNF market basket change minus 1 percentage point. For subsequent FYs, we will adjust the rates by the applicable SNF market basket change.

2. Payment Provisions—Transition Period

Beginning with a provider's first cost reporting period beginning on or after July 1, 1998, there is a transition period covering three cost reporting periods. During the transition period, SNFs receive a payment rate comprising a blend between the Federal rate and a facility-specific rate based on each facility's FY 1995 cost report. Under section 1888(e)(2)(E)(ii) of the Act, SNFs that received their first payment from Medicare on or after October 1, 1995 receive payment according to the Federal rates only.

For SNFs subject to transition, the composition of the blended rate varies depending on the year of transition. For the first cost reporting period beginning on or after July 1, 1998, we make payment based on 75 percent of the facility-specific rate and 25 percent of the Federal rate. In the next cost reporting period, the rate consists of 50 percent of the facility-specific rate and 50 percent of the Federal rate. In the following cost reporting period, the rate consists of 25 percent of the facility-specific rate and 75 percent of the Federal rate. For all subsequent cost

reporting periods, we base payments entirely on the Federal rates.

As noted earlier, in accordance with section 102 of the BBRA, SNFs that would otherwise be subject to the statutory three-year, phased transition from facility-specific to Federal rates, may elect to bypass the transition and go directly to the full Federal rate. This amendment applies to elections made on or after December 15, 1999, except that no election will be effective for a cost reporting period beginning before January 1, 2000; an election is effective for a cost reporting period beginning no earlier than 30 days before the date of the election.

3. Payment Provisions—Facility-Specific Rate

For most facilities, we compute the facility-specific payment rate utilized for the transition using the allowable costs of SNF services for cost reporting periods beginning in FY 1995 (cost reporting periods beginning on or after October 1, 1994 and before October 1, 1995). Included in the facility-specific per diem rate is an estimate of the amount that would be payable under Part B for covered SNF services furnished during FY 1995 to individuals who were beneficiaries of the facility and receiving Part A covered services. The facility-specific rate, in contrast to the Federal rates, includes amounts paid to SNFs for exceptions to the routine cost limits. In addition, we also take into account "new provider" exemptions from the routine cost limits, but only to the extent that routine costs do not exceed 150 percent of the routine cost limit.

We update the facility-specific rate for each cost reporting period after FY 1995 to the first cost reporting period beginning on or after July 1, 1998 (the initial period of the PPS) by a factor equal to the SNF market basket percentage increase minus 1 percentage point. For FYs 1998 and 1999, we updated this rate by a factor equal to the SNF market basket increase minus 1 percentage point, and in each subsequent year, we will update it by the applicable SNF market basket increase.

Appeals Rights

In enacting SNF PPS, Congress imposed limitations on the rights of SNFs to appeal their new payment rates (section 1888(e)(8) of the Social Security Act). Similar to the hospital PPS, the new SNF system begins with a transition period, wherein a portion of the payment rates (that is, the facility-specific rate) is based upon the facilities' costs in a base period (cost reporting periods beginning in 1995). The facility-specific portion of the rate phases out over the course of a three year cost reporting transition period, after which the SNFs will be paid on a fully Federal rate. The statutory language removes the Federal portion of the rate from administrative and judicial review, while allowing for a limited review of the facility-specific portion of the rate related to an SNFs Part A historical costs from the 1995 base year. The language of the interim final rule with comment and the Medicare Provider Reimbursement Manual (PRM) contemplate situations where adjustments are made to the reimbursement amounts allowable in the base year that are used to set the facility-specific portion of a provider's PPS rate. Adjustments may be made in the cost report settlement process and/or providers may have appealed specific cost report adjustments. Where adjustments are made to the base year costs either through final settlement of the cost report or as a result of an appeal of the base year Notice of Program Reimbursement (NPR), such adjustments may be applied to the facility-specific portion of the PPS rate for any cost years that are open or are within the time periods subject to reopening under the regulations at 42 CFR 405.1885. Additionally, providers may challenge the facility-specific portion of their rates by appealing the facility-specific rate notice they receive from their fiscal intermediary before the start of SNF PPS. The fiscal intermediaries will apply any adjustments resulting from a successful challenge to this rate notice to all open transition years. Providers may also challenge their facility-specific rates by appealing their transition year NPRs. Adjustments obtained through a NPR challenge will only be applied to the year under appeal. Moreover, in accordance with the judicial review prohibitions contained in section 1888(e)(8)(B) of the Act, all reviews of facility-specific rates are limited to challenges relating to specific Medicare Part A costs in the base year.

II. Update of Payment Rates Under the Prospective Payment System for Skilled Nursing Facilities

A. Federal Prospective Payment System

This rule sets forth a proposed schedule of Federal prospective payment rates applicable to Medicare Part A SNF services beginning October 1, 2000. The schedule incorporates per diem Federal rates designed to provide Part A payment for all costs of services furnished to a beneficiary of an SNF during a Medicare-covered stay.

1. Cost and Services Covered by the Federal Rates

The Federal rates apply to all costs (that is, routine, ancillary, and capital related costs) of covered SNF services other than costs associated with operating approved educational activities as defined in § 413.85. Under section 1888(e)(2) of the Act, covered SNF services include posthospital SNF services for which benefits are provided under Part A (the hospital insurance program), as well as all items and services (other than those services excluded by statute) that, before July 1, 1998, were paid under Part B (the supplementary medical insurance program) but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. (These excluded service categories are discussed in greater detail in section V.B.2. of the May 12, 1998 interim final rule (63 FR 26295–97). Also, as mentioned previously, section 103 of the BBRA has identified certain additional types of services for exclusion from the SNF PPS bundle, and has provided for a corresponding proportional reduction in Part A SNF payments beginning with FY 2001.).

2. Methodology Used for the Calculation of the Federal Rates

The methodology to compute the unadjusted Federal rates incorporates several changes since we published the final rule on July 30, 1999 (64 FR 41684). First, to facilitate the incorporation of our proposed refinement to the case mix classification system, we are creating a new component of the payment rates to account for non-therapy ancillary services. This component is being created by moving the non-therapy ancillary costs used in establishing the nursing case-mix component of the payment rates to a separate component. For the payment rates associated with urban areas, 43.4 percent of the nursing case mix component is related to non-therapy ancillary services (including Part B services). For the payment rates associated with rural areas, 42.7 percent of the nursing case mix component is related to non-therapy ancillary services (including Part B services). These percentages were previously identified in a **Federal Register** notice dated November 27, 1998 (63 FR 65561). This new component of the payment rates is presented in Tables 1 and 2 of this proposed rule.

In addition, in accordance with section 103 of the BBRA, the Federal rates will be adjusted to reflect the

exclusion of certain items and services from consolidated billing, as explained previously. The complexity and time necessary for computing the numeric adjustment itself does not allow us to present it in this proposed rule. However, we describe the general methodology that we plan to use later in this preamble (in the discussion of the PPS Rate Tables). As required by the statute, the rates are updated using the latest market basket percentage minus 1 percentage point. For a complete description of the multi-step process, see the May 12, 1998 interim final rule. In addition, based on section 101 of the BBRA, we have provided for a 4 percent increase in the adjusted Federal rate for FY 2001. This 4 percent adjustment is not reflected in the rate tables (Tables 1, 2, 5, and 6 of this proposed rule). In accordance with the statute, it is applied after all adjustments (wage and case-mix). See the example in Section III; Table 9, of this proposed rule.

The SNF market basket is used to adjust each per diem component of the Federal rates forward to reflect cost increases occurring between the midpoint of the Federal FY beginning October 1, 1999 and the midpoint of the Federal FY beginning October 1, 2000, and ending September 30, 2001, to which the payment rates apply. In accordance with section 1888(e)(4)(B) of the Act, the payment rates are updated between FY 2000 and FY 2001 by a factor equivalent to the annual market basket index percentage increase minus 1 percentage point. This factor is equal to 1.01833. Tables 1 and 2 below reflect the updated components of the unadjusted Federal rates.

TABLE 1.—UNADJUSTED FEDERAL RATE PER DIEM: URBAN

Rate component	Nursing case-mix	Medical ancillary	Therapy case-mix	Therapy non-case mix	Non-case-mix
Per Diem Amount	$64.49	$49.45	$85.79	$11.32	$58.25

TABLE 2.—UNADJUSTED FEDERAL RATE PER DIEM: RURAL

Rate component	Nursing case-mix	Medical ancillary	Therapy case-mix	Therapy non-case mix	Non-case-mix
Per Diem Amount	$62.50	$46.58	$99.11	$12.10	$59.32

B. Case-Mix Adjustment and Options

As required by the BBA, HCFA must publish the SNF PPS case-mix classification methodology applicable for the next Federal FY before August 1 of each year. This proposed rule discusses options for refinements to the RUG–III system, describes ongoing research and analyses, shares the initial results that we propose be incorporated into the Medicare PPS system effective October 1, 2000, and solicits comments from all interested parties. During the next 60 days, comments will be reviewed and considered, additional analyses will be conducted, and final decisions will be made on the need for, and types of, RUG–III refinements to be implemented. A final rule will then be promulgated before August 1, 2000.

Research Goals

We commissioned a study to review the RUG–III classification system with particular emphasis on the care needs of medically complex Medicare beneficiaries and the variation in non-therapy ancillary services within RUG–III categories. This project is a major priority for us, the provider industry, and others. The initial research identified potential refinements to the system that we propose to implement effective October 1, 2000.

A key part of this research was the exploration of potential refinements to the Extensive Services category. Previous research showed that the Extensive category is associated with the highest per diem non-therapy ancillary costs of any of the RUG–III categories. The research also indicated that, while the Extensive Services category did capture a disproportionate share of high cost beneficiaries, there was considerable variance in costs within this category as well as within other categories. In the current project, additional studies were conducted to extend the analysis of non-therapy ancillary costs and within-group variance to other RUG–III categories.

The researchers focused on the following analyses to identify options, and the results were used to develop the proposed RUG–III refinements discussed in this rule:

1. Evaluate the ability of the current RUG–III system to predict variance in drug, respiratory or other non-therapy ancillary costs.

2. Evaluate the ability of specific MDS items to predict variance in non-therapy ancillary costs, and identify the MDS items most closely associated with differences in non-therapy ancillary costs.

3. Design/test potential refinements to the RUG–III methodology.

A detailed description of the methodology used to conduct these analyses is included in the Technical Appendix A to this proposed rule.

Data Sources

Since ensuring the equity and accuracy of the SNF PPS has been, and continues to be, a major HCFA priority, the studies were initiated shortly after the introduction of the new payment system. In fact, the research was conducted before actual PPS claims and acuity data became available. For this reason, the analyses described here were conducted using a large cross-linked research data base that included clinical assessment data collected from the Federally-mandated MDS, drug information, our claims data, and organizational data on nursing home providers. The data sets used in the analyses are described below:

Minimum Data Set (MDS)

MDS data were collected from 6 states: Kansas, Maine, Mississippi, Ohio, South Dakota, and Texas. (As explained in Technical Appendix A, we were unable to utilize data from a seventh state, New York, due to that state's use of an all-inclusive payment rate.) These states were selected because the MDS data had been collected and used for rate-setting purposes prior to the start of the Medicare SNF PPS (either through the HCFA Case-Mix Demonstration Project or for state Medicaid payment systems), and provided a greater number of MDS records over a longer period of time than available from any other source. In addition, previous demonstration

project reliability studies and state validation activities indicated a generally high level of data accuracy.

MDS data used in this study were for calendar years 1995, 1996 and 1997 (except for Texas, where data were only available for 1997), and included assessments for Medicare beneficiaries, Medicaid recipients and private pay patients. While some states required MDS assessments for all beneficiaries admitted to the SNF regardless of the length of stay, most of the assessments were prepared following the Federal guidelines in effect at the time; that is, assessments required by day 14 of the SNF admission.

MDS Drug Data

Facilities participating in the HCFA Case-Mix Demonstration project submitted medications data as part of their MDS assessments. In addition, several of the states, including Maine, South Dakota, and Ohio, required the medications data with every MDS, regardless of payor source. The medications reported on the MDSs were collected from seven states, the six states used for this study, plus New York (see Technical Appendix A for details on the use of New York data).

Up to 18 medications administered during the assessment reference period can be reported on an MDS record. The MDS drug data were cleansed and verified through a combination of manual examination (by either a clinical pharmacist or physician) and computerized reclassification of National Drug Codes (NDC). The data were then ordered into therapeutic groups for easier analysis.

SNF Claims

All SNF Medicare claims spanning the years 1995 through 1997 were downloaded from the HCFA Data Center and matched to MDS files. The files were constructed so that there are multiple observations per SNF stay if multiple MDS assessments were performed.

Staff Time Measurement (STM) Study Data

This analysis incorporated HCFA STM Study data (combined 1995 and 1997). The May 12, 1998 interim final rule described the STM Study, and the methodology used to incorporate the STM data into Medicare PPS rate-setting. These data were used to impute staff time costs for the observations used in this study.

On-Line Survey Certification and Reporting System (OSCAR) Data

The OSCAR data provide facility-level information, such as the results from annual survey inspections and information regarding facility type. OSCAR data from 1991 through 1998 were linked serially into a longitudinal file. The analytic database constructed for this research has been merged to this longitudinal OSCAR file through the linking of facility identifiers, using the OSCAR information from the survey dates closest to the MDS assessment data.

Case Mix Research Findings

While maintaining the general structure of RUG–III, we found that the two most viable ways to refine the system are by adding new categories and end splits to the system, and by developing a new index system to reflect the variation of non-therapy ancillary service costs. Adoption of these refinements will add additional groups to the case-mix system, somewhat increasing its complexity. This proposed change also may introduce some initial uncertainty for providers, who would have to become familiar with the refined system and modify existing operational and support systems.

In evaluating a particular change, we first identified the drawbacks of that change (for example, added complexity of the RUG–III model and time and effort required by providers, contractors, and beneficiaries to assimilate the change). Then, to evaluate the overall desirability of the potential change, we weighed these drawbacks against the benefits, such as the expected improvement in payment and clinical accuracy. In addition, we evaluated potential refinements in terms of possible incentives and disincentives related to access, quality and cost-effectiveness of SNF care. We incorporated this analysis into our evaluation of potential RUG–III refinements.

After careful review and extensive analysis, we then identified several possible RUG–III refinements that will improve the accuracy of SNF PPS payments. One such refinement is the development of new categories for beneficiaries who qualify for both the RUG–III Rehabilitation and Extensive Services categories. As expected, our analyses indicated that ancillary costs were much higher for Medicare beneficiaries in the Extensive Services category than for those in other categories. There are also a significant number of beneficiaries who would classify into the Extensive Services category based on clinical conditions but who, because they are also receiving rehabilitation services, classify into one of the Rehabilitation categories instead (due to the hierarchical logic of the RUG–III classification system). These beneficiaries carry with them the same non-therapy ancillary costs associated with their complex clinical needs even though they are classified into a RUG–III Rehabilitation category.

The high costs for beneficiaries in the Extensive Services category suggest that the payment rate for Extensive Services should be increased. However, increasing the payment rate without further adjustments could adversely affect provider incentives to provide therapy to beneficiaries requiring Extensive Services. Therefore, we expanded the scope of the proposed refinement to include a new category for beneficiaries who qualify for both Extensive Services and a RUG–III Rehabilitation category.

Our research findings showed little or no correlation between the groups within the Extensive Services category (that is, SE1, SE2, SE3) and the level of rehabilitation services used. For this reason, the structure for the new hierarchy level proposed here would mirror that of the existing Rehabilitation categories. Thus, we would add to the current RUG–III model fourteen (14) new "Rehabilitation and Extensive Services" sub-categories that use the same Rehabilitation sub-category and ADL splits as the current system (See Table 4 for the proposed RUG–III structure).

The second component of the proposed refinement is the development of a separate "non-therapy ancillary" index based on clinical variables on the MDS. We tested MDS items to identify clinical conditions and services that are predictive of non-therapy ancillary costs. First, we analyzed each MDS variable independently, and identified all MDS items that had a significant positive relationship (at the 5 percent level) with per diem non-therapy ancillary costs. Next, we identified combinations of MDS items that were associated with significant cost differences. We then evaluated variables for clinical validity and potential incentive effects. For example, we rejected consideration of indwelling catheters as case-mix adjustors due to the potential negative incentive factors associated with their use in the index. See Table 3 for a list of MDS items that were found to be associated with significant differences in ancillary costs.

Once we identified the critical predictive variables, we investigated a

number of index model approaches. We developed weighted and unweighted versions of a non-therapy ancillary index. Both versions improved the variance prediction of the case-mix system. The unweighted index model assigns a non-therapy ancillary level based on a count of the variables (selected MDS items) associated with non-therapy ancillary costs. Under the weighted index model, different weights are assigned to the selected MDS items based on the difference in costs associated with the item. In this study, the researchers assigned the weights based on quantitative analysis of the data. With both indices, thresholds were determined to form subgroups which vary logically in cost. However, these cost variations relate to the research data base, and need to be verified against the national MDS/Medicare claims data base.

The grouping logic used for the refined RUG–III is very similar to that currently used. The same 108 MDS items that are used to classify beneficiaries into the 44 RUG–III groups will be used to classify beneficiaries into the refined RUG–III subcategories in either the unweighted or weighted index models. It is only at the last level of classification that additional MDS items are considered. The MDS items used for the last step of classification include some of the 108 items that are used for the first level of classification in addition to some others, either alone or in combinations.

The last step to grouping using the unweighted index model (UWIM) that we are proposing is based on a count of clinical variables, up to a maximum of 11. There are 11 "domains," some of which are comprised of multiple MDS clinical variables. The clinical conditions and services that define the domains are shown in Table 3. Within a domain, any one clinical variable, or combination of variables, satisfies the criteria for being included in the count for classification into one of the refined RUG–III groups. For example, the first domain is "Parenteral/IV feeding with greater than 76 percent total calories." In order for the domain to be counted for determining the final step in RUG–III classification in the UWIM, the MDS items K5a and K6a must be coded to reflect the receipt by the beneficiary of at least 76 percent of total nutrition received via parenteral or IV feeding in the previous 7 days.

Other domains are comprised of many more MDS items than the parenteral/IV feeding domain. An example of this is the domain entitled, "Oxygen and either pneumonia or respiratory infection with fever, or pneumonia or respiratory infection, chronic obstructive pulmonary disease, congestive heart failure, coronary artery disease with shortness of breath." This domain will only count once toward classification even though it is possible for a beneficiary to have values for all of these clinical conditions. As soon as the grouper software identifies that one combination of MDS items' values is present on the MDS that satisfies this domain, it will credit the case with a count of 1 in addition to whatever other domain criteria are satisfied by the MDS.

The identified clinical variables are used for classification of every Medicare MDS in the Clinically Complex category and above, regardless of the other qualifying conditions and services reported on the MDS. This means that a beneficiary who has a count of 2 of the relevant clinical variables, will classify into the "3" level of the particular refined RUG–III subcategory for which he or she qualifies. As described above, the "3" level signifies a count of 1 or 2 of the clinical variables used for determining the non-therapy ancillary end split.

For example, a beneficiary who has pneumonia, an ADL sum score of 8, dehydration, a fever, and a surgical wound that requires twice daily dressing changes, will classify to the Special Care category. Within the Special Care category, the ADL score of 8 will classify this beneficiary into the "SC" subcategory. The count of the items that are used to make the final classification is 2, as the pneumonia and the wound care with dressing changes are the two clinical variables that will affect classification of this beneficiary to the SC3 group.

TABLE 3.—MDS ITEMS ASSOCIATED WITH DIFFERENCES IN ANCILLARY CHARGES—REFINED VARIABLE LIST FOLLOWING CLINICAL INPUT

MDS items domains	Percent of sample	Regression coefficient	Standard error	t–Statistic
Parenteral/IV with >76 percent total calories	1	153.97	14.63	10.53
Tracheostomy	1	109.87	16.57	6.63
Suctioning	2	106.76	10.23	10.43
IV Medication	15	77.33	3.71	20.86
Oxygen and either pneumonia or resp. inf. with fever, or pneumonia or resp. inf., COPD, CHF, CAD with SOB	44	26.42	2.60	10.17
Pneumonia	10	25.64	4.06	6.32
Tube feeding with >76 percent total calories	6	23.21	4.33	5.36
Respiratory Infection	7	18.81	4.87	3.87
Application of dressing with/with-out topical medication and presence of ulcers or other skin lesions/ wounds	5	13.38	5.15	2.60
Skin wound/ulcer care	25	7.01	2.77	2.53
Stage 4 Pressure Ulcer	4	6.87	3.09	2.22

Notes: N = 8,087 (Based on analysis of test sample only—20 percent of observations)
Data Source: Medicare MDS and SNF Claims Data 1995–1997, excluding ME, OH, SD.

Using the selected MDS items, we calculated a non-therapy ancillary index score for each MDS and classified them to the appropriate non-therapy ancillary level. We are including a more detailed description of the non-therapy ancillary index methodology in Technical Appendix A.

An index model can differ with respect to the RUG-III categories to which the model is applied. Two options that we considered were to apply the index model only to the Extensive Services category (including beneficiaries in rehabilitation who also qualify for Extensive Services) or to apply the index option to a broader group of RUG-III categories. The research indicated very little difference in ancillary costs for beneficiaries in the

Impaired Cognition, Behavior and Physical Function categories. Differences in ancillary costs were identified within the Rehabilitation, Clinically Complex, Special Care, and Extensive Services groups. For this reason, we propose to apply the non-therapy ancillary index model to all residents in the Clinically Complex category or above (where over 90 percent of Medicare patients fall). In addition, we propose to apply a single non-therapy ancillary index factor to each of the lower levels of the RUG-III model (that is, Impaired Cognition, Behavior, and Physical Function).

Index models can also be applied differently across RUG-III levels. The most straightforward method is to apply a fixed dollar amount for each level of the index. In this case, the add-on for a non-therapy ancillary index score of 3 would be the same regardless of the beneficiary's RUG-III group. Separate indices can also be calculated for each level of the hierarchy. In this case, the dollar amount of the non-therapy ancillary index level of 3 would be different for beneficiaries in different levels of the RUG-III hierarchy, for example, clinically complex, special care, rehabilitation, etc. Separate indices are more appropriate when there is significant inter-group variance. Using the research data base, we found significant variation. In projecting rates for both the UWIM (Tables 5 and 6) and WIM 2 (Technical Appendix A, Tables 6.1 and 6.2) models, we calculated separate index values for each of the 8 proposed hierarchy levels. This approach will be analyzed and evaluated using the national PPS/MDS data base.

Finally, index models can also differ with respect to the number of non-therapy ancillary index groups that are used. Six groups were developed for the weighted index model. Four groups were used for the unweighted model. The weighted index model performs slightly better than its unweighted counterpart. However, it adds a significant level of complexity both in terms of the number of additional RUG-III variations and the addition of a new type of MDS scoring methodology based on cost instead of clinical criteria. In addition, as stated above, the weighted index model break points are not representative of national ancillary costs.

On the other hand, the unweighted index model relies on a count of MDS items to differentiate among index levels, an approach similar to that used currently in RUG-III for classification into the Extensive Services category. At this phase of our analysis, we have concluded that the added complexity of the weighted model offsets any benefits gained. Therefore, we are proposing the unweighted non-therapy ancillary index model that will be applied to the combined Rehabilitation/Extensive Services, Rehabilitation, Extensive Services, Special Care and Clinically Complex categories of the RUG-III hierarchy.

Adopting a new Extensive Services with Rehabilitation category and adding a non-therapy ancillary index component will require modifications to the naming conventions used to identify each RUG-III group. Based on these recommendations, we have updated the RUG-III structure to incorporate the proposed refinements, as displayed in Table 4. These proposed RUG-III groups are based upon the existing 3 digit RUG-III coding structure, but will designate the non-therapy ancillary level as well as the RUG-III category.

The first letter of the RUG-III code defines the hierarchy level. First, a new hierarchy level is being added to recognize beneficiaries needing a combination of Extensive and Rehabilitation Services. The codes used to reflect the hierarchy level are also being expanded to identify separately each level of Rehabilitation (that is, Ultra High, Very High, High, Medium and Low) either in combination with Extensive Services or separately.

RUG CODE—FIRST LETTER

Hierarchy	Code
Extensive with Rehabilitation:	
Ultra High	J
Very High	K
High	L
Medium	M
Low	N
Rehabilitation:	
Ultra High	U
Very High	V
High	W
Medium	X
Low	Y
Extensive Services	E
Special Services	S
Clinically Complex	C
Impaired Cognition	I
Behavior	B
Reduced Physical Function	P

The second letter of the proposed RUG–III coding structure is an alpha character that indicates the final group assigned after the RUG–III end-splits (that is, ADLs, depression, restorative nursing) have been calculated.

The third digit of the proposed RUG–III coding structure will indicate the non-therapy ancillary index level. In the unweighted non-therapy ancillary model, there are 4 levels determined by the number of MDS non-therapy ancillary qualifying items (See Table 4 for the complete list of qualifiers.)

Index level	Number qualifiers met
5	6 or more.
4	3–5.
3	1–2.
2	0.
1	Regular—for impaired cognition behavior and physical function categories.

For example, under the current RUG–III model, a beneficiary whose MDS reflects an ADL sum score of 11, a tracheostomy, suctioning, pneumonia, IV medications and receipt of 380 minutes per week of physical therapy, would group into the RHB rehabilitation group.

In the refined RUG-III model with the unweighted non-therapy ancillary index, this beneficiary would group into the LB4 group with the first digit, L, indicating a combination of Extensive Services and High Rehabilitation, the second digit, B, indicating the ADL level of 11, and the third digit, 4, indicating the non-therapy ancillary level for a beneficiary with 4 qualifiers. See Table 4 for a crosswalk from the current RUG-III groups to the new groups.

In Example 2, we will show the proposed classification for a beneficiary who receives no rehabilitation services. This beneficiary is a quadriplegic, who has an ADL sum score of 17, a stage 4 pressure ulcer, treatment for the pressure ulcer, pneumonia, and daily respiratory therapy. This beneficiary currently classifies into the Special Care category, into the SSC group. In the refined classification system he or she will group into the SA4 group, showing that he or she is in the Special Care category, with an ADL sum score of 17–18, and 3–5 of the MDS non-therapy ancillary qualifiers.

A naming convention has also been established for the weighted model. The first 2 digits are the same as for the unweighted model. The third digit, the non-therapy ancillary indicator, uses alpha characters A through F, with "F" as the lowest ancillary level.

TABLE 4.—RUG REFINEMENT CROSSWALK

Current RUG–III group	Description of category	Non-therapy ancillary split	Refined RUG–III group
	Rehab: At least 720 minutes/week in 1 disciplines, one discipline at least 5 days/week Extensive: At least one of the following: IV feeding in last 7 days, IV medications in last 14 days, suctioning in last 14 days, tracheostomy care in last 14 days, ventilator/respirator in last 14 days ADL Sum Score: 16–18	6	JA5
		3–5	JA4
		1–2	JA3
		0	JA2
	Rehabilitation: As above for ultra high rehabilitation Extensive: As above ADL Sum Score: 9–15	6	JB5
		3–5	JB4
		1–2	JB3
		0	JB2
	Rehabilitation: As above for ultra high rehabilitation Extensive: As above ADL Sum Score: 7–8	6	JC5
		3–5	JC4
		1–2	JC3
		0	JC2
	Rehabilitation: At least 500 minutes/week. At least one discipline 5 days/week Extensive: As above ADL Sum Score: 16–18	6	KA5
		3–5	KA4
		1–2	KA3
		0	KA2
	Rehabilitation: As above for Very High Rehabilitation Extensive: As above ADL Sum Score: 9–15	6	KB5
		3–5	KB4
		1–2	KB3
		0	KB2
	Rehabilitation: As above for Very High Rehabilitation Extensive: As above ADL Sum Score: 7–8	6	KC5
		3–5	KC4
		1–2	KC3
		0	KC2
	Rehabilitation: High Rehabilitation: At least 325 minutes/week. One discipline at least 5 times/week. Extensive: As above. ADL Sum Score: 13–18	6	LA5
		3–5	LA4
		1–2	LA3
		0	LA2
	Rehabilitation: As above for High Rehabilitation Extensive: As above ADL Sum Score: 8–12	6	LB5
		3–5	LB4
		1–2	LB3
		0	LB2
	Rehabilitation: As above for High Rehabilitation Extensive: As above ADL Sum Score: 7	6	LC5
		3–5	LC4
		1–2	LC3
		0	LC2
	Rehabilitation: Medium Rehabilitation: At least 150 minutes/week. Must have therapy on 5 days, any discipline combination. Extensive: As above ADL Sum Score: 15–18	6	MA5
		3–5	MA4
		1–2	MA3
		0	MA2
	Rehabilitation: As above for Medium Rehabilitation Extensive: As above ADL Sum Score: 8–14	6	MB5
		3–5	MB4
		1–2	MB3
		0	MB2

TABLE 4.—RUG REFINEMENT CROSSWALK—Continued

Current RUG–III group	Description of category	Non-therapy ancillary split	Refined RUG–III group
	Rehabilitation: As above for Medium Rehabilitation Extensive: As above ADL Sum Score: 7	6	MC5
		3–5	MC4
		1–2	MC3
		0	MC2
	Rehabilitation: Low Rehabilitation: At least 45 minutes/week on at least 3 days/week. Nursing Rehabilitation therapy must be provided in two activities, for 15 minutes, 6 days/week. Extensive: As above ADL Sum Score: 14–18	6	NA5
		3–5	NA4
		1–2	NA3
		0	NA2
	Rehabilitation: As above for Low Rehabilitation Extensive: As above. ADL Sum Score: 7–13	6	NB5
		3–5	NB4
		1–2	NB3
		0	NB2
ULTRA HIGH RUC.	Rehabilitation: At least 720 minutes/week in at least 2 therapy disciplines. At least one discipline must be provided at least 5 days/week. ADL Sum Score: 16–18	6	UA5
		3–5	UA4
		1–2	UA3
		0	UA2
RUB	Rehabilitation: As above for Ultra High Rehabilitation ADL Sum Score: 9–15	6	UB5
		3–5	UB4
		1–2	UB3
		0	UB2
RUA	Rehabilitation: As above for Ultra High Rehabilitation ADL Sum Score: 4–8	6	UC5
		3–5	UC4
		1–2	UC3
		0	UC2
RVC	Rehabilitation: Very High Rehabilitation: At least 500 minutes/week. One discipline at least 5 days/week. ADL Sum Score: 16–18	6	VA5
		3–5	VA4
		1–2	VA3
		0	VA2
RVB	Rehabilitation: As above for Very High Rehabilitation ADL Sum Score: 9–15	6	VB5
		3–5	VB4
		1–2	VB3
		0	VB2
	Rehabilitation: As above for Very High Rehabilitation ADL Sum Score: 4–8	6	VC5
		3–5	VC4
		1–2	VC3
		0	VC2
RHC	Rehabilitation: High Rehabilitation: At least 325 minutes/week and at least one discipline 5 days/week. ADL Sum Score: 13–18	6	WA5
		3–5	WA4
		1–2	WA3
		0	WA2
RHB	Rehabilitation: As above for High Rehabilitation ADL Sum Score: 8–12	6	WB5
		3–5	WB4
		1–2	WB3
		0	WB2
RHA	Rehabilitation: As above for High Rehabilitation ADL Sum Score: 4–7	6	WC5
		3–5	WC4
		1–2	WC3
		0	WC2

TABLE 4.—RUG REFINEMENT CROSSWALK—Continued

Current RUG–III group	Description of category	Non-therapy ancillary split	Refined RUG–III group
RMC	Rehabilitation: At least 150 minutes/week and at least 5 days/week in one therapy discipline ...	6	XA5
		3–5	XA4
		1–2	XA3
		0	XA2
RMB	Rehabilitation: As above for Medium Rehabilitation ...	6	XB5
	ADL Sum Score: 8–14		
		3–5	XB4
		1–2	XB3
		0	XB2
RMA	Rehabilitation: As above for Medium Rehabilitation ...	6	XC5
	ADL Sum Score: 4–7		
		3–5	XC4
		1–2	XC3
		0	XC2
RLB	Rehabilitation: Low Rehabilitation: At least 45 minutes/week on at least 3 days/week. Nursing rehabilitation therapy must be provided in two activities, for 15 minutes, 6 days/week.	6	YA5
	ADL Sum Score: 14–18		
		3–5	YA4
		1–2	YA3
		0	YA2
RLA	Rehabilitation: As above for Low Rehabilitation ...	6	YB5
	ADL Sum Score: 4–13		
		3–5	YB4
		1–2	YB3
		0	YB2
SE3	EXTENSIVE SERVICES—(if ADL <7, beneficiary classifies to Special Care) ...	6	EA5
	IV feeding in the past 7 days (K5a).		
	IV medications in the past 14 days (P1ac).		
	Suctioning in the past 14 days (P1ai).		
	Tracheostomy care in the last 14 days (P1aj).		
	Ventilator/respirator in the last 14 days (P1al).		
	ADL Sum Score: 7–18.		
		3–5	EA4
	Qualification for the EA, EB, EC levels is dependent on ADL score and additional clinical qualifiers identified in the Special Care and Clinically Complex criteria. No change from the current RUG–III system.	1–2	EA3
		0	EA2
SE2	Extensive Services: As above ...	6	EB5
	ADL Sum Score: 7–18		
		3–5	EB4
		1–2	EB3
		0	EB2
SE1	Extensive Services: As above ...	6	EC5
	ADL Sum Score: 7–18		
		3–5	EC4
		1–2	EC3
		0	EC2
SSC	SPECIAL CARE—(if ADL <7 beneficiary classifies to Clinically Complex) ...	6	SA5
	Multiple Sclerosis (I1w) and an ADL score of 10 or higher ...		
	Quadriplegia (I1z) and an ADL score of 10 or higher ...		
	Cerebral Palsy (I1s) and an ADL score of 10 or higher ...		
	Respiratory therapy (P1bdA must = 7 days) ...		
	Ulcers, pressure or stasis; 2 or more of any stage (M1a,b,c,d) *and* treatment (M5a, b,c,d,e,g,h)		
	Ulcers, pressure; any stage 3 or 4 (M2a) *and* treatment (M5a,b,c,d,e,g,h) ...		
	Radiation therapy (P1ah) ...		
	Surgical, Wounds (M4g) *and* treatment (M5f,g,h) ...		
	Open Lesions (M4c) *and* treatment (M5f,g,h) ...		
	Tube Fed (K5b) and Aphasia (I1r) *and* feeding accounts for at least 51 percent of daily calories (K6a = 3 or 4) OR at least 26 percent of daily calories and 501cc daily intake (K6b = 2,3,4 or 5).		
	Fever (J1h) with Dehydration (J1c), Pneumonia (Ie2),Vomiting (J1o) or Weight loss (K 3a) ...		
	Fever (J1h) with Tube Feeding (K5b) *and*, as above, (K6a = 3 or 4) &/or (K6b = 2,3,4, or 5) ...		
	ADL Sum Score: 17–18 ...	3–5	SA4

TABLE 4.—RUG REFINEMENT CROSSWALK—Continued

Current RUG–III group	Description of category	Non-therapy ancillary split	Refined RUG–III group
		1–2	SA3
		0	SA2
SSB	Special Care: As above	6	SB5
	ADL Sum Score: 15–16		
		3–5	SB4
		1–2	SB3
		0	SB2
SSA	Special Care: As above	6	SC5
	ADL Sum Score: 7–14		
		3–5	SC4
		1–2	SC3
		0	SC2
CC2	CLINICALLY COMPLEX—	6	CA5
	Burns (M4b)		
	Coma (B1) *and* Not awake (N1=d) *and* completely ADL dependent (G1aa, G1ba, G1ha, G1ia=4 or 8).		
	Septicemia (I2g)		
	Pneumonia (I2e)		
	Foot/Wounds (M6b,c) *and* treatment (M6f)		
	Internal Bleed (J1j)		
	Dialysis (P1ab)		
	Tube Fed (K5b) and feeding accounts for: at least 51% of daily calories (K6a=3 or 4) OR 26 percent of daily calories and 501cc daily intake (K6b=2, 3, 4 or 5).		
	Dehydration (J1c)		
	Oxygen therapy (P1ag)		
	Transfusions (P1ak)		
	Hemiplegia (I1v) *and* an ADL score or 10 or higher		
	Chemotherapy (P1aa)		
	No. Of Days in last 14 there were Physician Visits and order changes:		
	visits >=1 days and order changes >=4 days; or visits >=2 days and order changes on >=2 days.		
	Diabetes mellitus (I1a) *and* injections on 7 days (O3>=7).		
	ADL Sum Score: 17–18	3–5	CA4
	Positive for Signs of Depression		
CC1	Clinically Complex: As above	6	CB5
	ADL Sum Score: 17–18		
	No signs of depression	3–5	CB4
		1–2	CB3
		0	CB2
CB2	Clinically Complex: As above	6	CC5
	ADL Sum Score: 12–16	3–5	CC4
	Positive for Signs for Depression		
		1–2	CC3
		0	CC2
CB1	Clinically Complex: As above	6	CD5
	ADL Sum Score: 12–16	3–5	CD4
	No signs of depression	1–2	CD3
		0	CD2
CA2	Clinically Complex: As above	6	CE5
	ADL Sum Score: 4–11	3–5	CE4
	Positive for Signs of Depression	1–2	CE3
		1	CE2
CA1	Clinically Complex: As above	6	CF5
	ADL Sum Score: 4–11	3–5	CF4
	No Signs of Depression		
		1–2	CF3
		0	CF2
IB2	Impaired Cognition: Score on MDS2.0 Cognitive Performance Scale >= 3		IA1
	Receiving Nursing rehabilitation therapy in two activities, for 15 minutes, 6 days/week.		
	ADL Sum Score: 6–10.		
IB1	Impaired Cognition: Score on MDS2.0 Cognitive Performance Scale >= 3		IB1
	ADL Sum Score: 6–1		
IA2	Impaired Cognition: Score on MDS2.0 Cognitive Performance Scale >= 3		IC1
	Receiving Nursing rehabilitation therapy in two activities, for 15 minutes, 6 days/week.		
	ADL Sum Score: 4–5.		

TABLE 4.—RUG REFINEMENT CROSSWALK—Continued

Current RUG–III group	Description of category	Non-therapy ancillary split	Refined RUG–III group
IA1	Impaired Cognition: Score on MDS2.0 Cognitive Performance Scale >= 3 ADL Sum Score: 4–5		ID1
BB2	BEHAVIOR ONLY Coded on MDS 2.0 items: 4+ days a week—wandering, physical or verbal abuse, inappropriate behavior or resists care; or hallucinations, or delusions checked. Receiving Nursing rehabilitation therapy in two activities, for 15 minutes, 6 days/week. ADL Sum Score: 6–10.		BA1
BB1	Behavior: As above No nursing rehabilitation received ADL Sum Score: 6–10		BB1
BA2	Behavior: As above Nursing Rehabilitation received, at level described above ADL Sum Score: 4–5		BC1
BA1	Behavior: As above No nursing rehabilitation received ADL Sum Score: 4–5		BD1
PE2	Physical Function Impaired Nursing Rehabilitation received, at level described above ADL Sum Score:16–18		PA1
PE1	Physical Function Impaired ADL Sum Score: 16–18		PB1
PD2	Physical Function Impaired Nursing Rehabilitation received, at level described above ADL Sum Score:11–15		PC1
PD1	Physical Function Impaired ADL Sum Score: 11–15		PD1
PC2	Physical Function Impaired Nursing Rehabilitation received, at level described above ADL Sum Score: 9–10		PE1
PC1	Physical Function Impaired ADL Sum Score: 9–10		PF1
PB2	Physical Function Impaired Nursing Rehabilitation received, at level described above ADL Sum Score: 6–8		PG1
PB1	Physical Function Impaired ADL Sum Score: 6–8		PH1
PA2	Physical Function Impaired Nursing Rehabilitation received, at level described above ADL Sum Score: 4–5		PI1
PA1	Physical Function Impaired ADL Sum Score: 4–5		PJ1
BC1		((1))	BC1

[1]Default Code

Additional Research Plans

As noted above, we performed the RUG–III refinement analyses on a research data base rather than on PPS Medicare claims and MDS data. The research data base was appropriate and extremely useful in testing hypotheses, and identifying areas where refinements could be introduced. However, research data always have limitations, and HCFA and contractor staff have identified several areas of concern. Fortunately, since actual PPS claims and MDS data are now available, we are already conducting additional analyses of the unweighted and weighted models to address these concerns and validate the research findings.

For this proposed rule, we have developed Tables 5 and 6 to illustrate the application of the proposed refinement to the RUG–III classification system on the FY 2001 Federal per diem rates. In addition, for comparison purposes, we have developed rate tables for the WIM2 model that are shown in Technical Appendix A (Tables 6.1 and 6.2). However, in reviewing these tables, it is important to recognize the following limitations:

The nursing index is a critical factor in accurately calibrating the system to link payment to acuity levels. The nursing indices shown in Tables 5 through 6 assume that the distribution of the actual Medicare population is the same as the distribution of the research data base. We are now reworking these calculations using national PPS data to ensure accurate calibration of the system.

Using the actual PPS data base also adjusts for a second data limitation: the extent to which MDS data reflects short stay patients. The research data base utilized MDS assessments from 1995 through 1997, a period when MDSs were often not completed for beneficiaries who were in a SNF for less than 14 days. By contrast, the PPS data base includes short-stay beneficiaries, and we will take any special needs of this population into account by using actual PPS data to validate the initial findings.

In addition, the methodology used to adjust non-therapy ancillary charges to cost used the older, non-therapy ancillary charges and facility cost-to-charge ratios. In developing the PPS data base, we will use PPS claims data and the latest available cost-to-charge ratios.

Using the smaller research data base, it was not always possible to obtain a

large number of observations in some of the RUG–III groups to fully determine ancillary costs with the necessary level of precision. For that small number of RUG–III groups, the researchers imputed ancillary costs, and applied these imputed costs to the non-therapy ancillary index used in the rate-setting projections. Using the national PPS data base will allow better differentiation between the non-therapy ancillary index levels for the new, combined Rehabilitation and Extensive Services categories, particularly in index levels 2 and 3 of the unweighted model (and B and C of the weighted model.) (See Tables 5 and 6 for the UWIM model and Technical Appendix A Tables 6.1 and 6.2 for the WIM2 model.)

Finally, we will continue the process of identifying possible negative incentives associated with MDS items used in the non-therapy ancillary index. We will carefully evaluate each item before incorporating it into the final index. Then, we will develop methods to monitor coding practices and to identify changes in coding patterns for use in medical review, quality assurance and program integrity activities. We will issue clarifications, through Program Memoranda and other appropriate means, of MDS requirements needed to maintain the integrity of the RUG–III system.

Using the national PPS data base, we will recalculate the distribution of the beneficiary population across RUG–III categories, including the proposed combined Rehabilitation and Extensive Services category. Then, we will perform the necessary analyses and sensitivity tests to compare the results with those derived from the research data base. We will reevaluate program options (for example, unweighted vs. weighted non-therapy ancillary index, etc.) based on the additional analyses, and modify the proposed refinements as needed. We expect these final analyses to be available in late Spring 2000, and we plan to incorporate them in the final rule to be issued before August 1, 2000.

PPS Rate Tables

We are confident that the additional analyses based on national data will confirm the need for refinements in the RUG–III model by adding the new combined Extensive and Rehabilitation Service groups and by creating a new non-therapy ancillary index. However, it is very likely the values of some of the model components (for example, average ancillary cost by RUG–III group, frequency distribution by RUG–III group, relative weights, etc.) will be further refined through use of the national data base. For this reason, it is important to understand that the values contained in these tables will likely change in the final rule.

While we are confident that these research findings are based on sound methodology, it is certainly possible that additional testing will identify new issues or support variations of the models to those presented here. We remain open to suggestions during the comment period and will carefully evaluate the validation analyses before proceeding to final rulemaking. To illustrate the impact of these proposed changes based on the best data currently available, we have developed rate Tables 5 and 6 using the unweighted model. (For an additional discussion of the weighted model, including a schedule of rates, see Technical Appendix A.) These projections should not be viewed as final nursing indices, non-therapy ancillary indices, or payment rates.

Further, as noted above, we based the non-therapy ancillary indices on the mean adjusted derived cost (that is, charges adjusted by facility ancillary cost-to-charge ratios) of non-therapy ancillary services. Mean costs were calculated separately for each of the eight proposed levels of the RUG–III hierarchy. For the research data base, we used the cost-to-charge ratio applicable to the service date of the claim. For the follow up analyses using actual PPS claims data, we are using the most recent available cost-to-charge ratio. We expect that using the newer cost-to-charges ratios will enhance the accuracy of the calculations. However, due to the lag time between SNF PPS claims submission and cost report processing, it is impossible to match the claims service dates perfectly with the cost report period used for the cost-to-charge ratios. For the SNF PPS data base, we are proposing to use approximately 9 months of claims data starting from January 1, 1999, the date almost all providers became subject to PPS. The cost reports for calendar year 1999 are not due until April 2000.

Finally, the research findings in this proposed rule include the use of "imputed" data in situations where the cell size (for example, number of records meeting the criteria for a specific RUG–III group, etc.) was too small for accurate measurement. When using the national data base, we expect that the relevant data cells will be adequately populated and that all analyses used in developing the final rule will be based on actual rather than imputed data.

These tables reflect two adjustments in particular. First, our nursing and therapy staff time indices (combined 1995 and 1997 staff time data) currently used to establish PPS rates have been adjusted to reflect the new combined Extensive Services with Rehabilitation categories. Second, we have adjusted the nursing case mix component of the rate to remove the non-therapy ancillary component that is part of the current nursing index used in PPS rate-setting. We will need to adjust one or both of these components based on the additional analyses.

We integrated these proposed refinements into the rate-setting methodology, and we list the estimated per diem Federal rates for 178 separate RUG–III classification groups in Tables 5 and 6. We list the case-mix adjusted payment rates separately for urban and rural SNFs (178 each), with the corresponding case-mix index values. These tables list the rates in total and by component. The application of the wage index, described later in this section, is the final adjustment applied to the projected Federal rates in these tables.

In accordance with section 101 of the BBRA, we will make a four percent upward adjustment to the adjusted per diem Federal rate for FY 2001. This estimated adjustment is shown in Table 9.

Finally, these projected rates do not reflect the BBRA requirement (section 103) to reduce the Part A SNF payment rates to account for those services that are newly excluded from consolidated billing and, thus, will be separately billable to Part B by the supplier. As mentioned in section II.A.2. above, because of the complexity of the process and the amount of time needed to implement this requirement, we are unable at present to adjust the proposed rates to reflect this. However, we will make these adjustments prospectively in the final rule establishing payment rates for FY 2001, using the methodology described below.

In order to compute the level of this adjustment, we propose to determine the per diem amount of allowed charges associated with the specific HCPCS codes identified in the statute (and later in this rule) using the same 1995 data on Part B services used in establishing the Federal rates. These data are described in detail in section II.A.2.b of the May 12, 1998 interim final rule (63 FR 26251) and final rule (64 FR 41644) associated with the implementation of the SNF PPS. The per diem amount will be subtracted from the non-therapy ancillary component of the Federal rates shown in Tables 5 and 6 of this rule. We expect this adjustment to be minimal.

Summary of Proposed RUG–III Refinements

Based on the research described here, we are proposing the addition of new RUG–III groups to recognize the needs of Medicare beneficiaries with both heavy medical and rehabilitation needs and the development of an unweighted index model that would account more precisely for the variation in non-therapy ancillary services. Since the research shows substantial ancillary cost variation in the Rehabilitation and Extensive Services, Rehabilitation, Extensive Services, Special Care, and Clinically Complex categories, we have proposed four ancillary index levels to capture variation in ancillary costs accurately. Since beneficiaries in the Impaired Cognition, Behavior, and Physical Function categories exhibited a much smaller ancillary cost variation, we calculated a single ancillary add-on amount. The ancillary add-on amounts were calculated separately for each of the eight proposed RUG–III categories.

The refinements will achieve important improvements in the PPS model, and allow for more accurate payment rates. In addition, after further analysis and review of public comments, we may adjust these proposed refinements further to reflect actual PPS experience.

Collection of Medication Data

In the interim final rule published in the **Federal Register** on May 12, 1998, we stated that we would require facilities to complete and include MDS Section U with their Medicare MDS submissions beginning October 1, 1999. Subsequently, in the final rule published in the **Federal Register** on July 30, 1999, we announced a delay of that requirement and stated our intention to require completion of Section U beginning October 1, 2000. However, we are currently unable to implement the collection of medication data on the MDS beginning October 1, 2000. Accordingly, we will not require completion and submission of Section U of the MDS beginning October 1, 2000, as we had planned. We are currently examining issues related to the implementation of this requirement and we plan to address this matter when we implement the SNF PPS payment update for FY 2001.

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Table 5

CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDICES

URBAN

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Compo-nent	Total Rate
JA5	1.71	6.87	2.25	$110.28	$339.72	$193.03		$58.25	$701.28
JA4	1.71	2.89	2.25	$110.28	$142.91	$193.03		$58.25	$504.47
JA3	1.71	1.33	2.25	$110.28	$65.77	$193.03		$58.25	$427.33
JA2	1.71	1.33	2.25	$110.28	$65.77	$193.03		$58.25	$427.33
JB5	1.39	6.87	2.25	$89.64	$339.72	$193.03		$58.25	$680.64
JB4	1.39	2.89	2.25	$89.64	$142.91	$193.03		$58.25	$483.83
JB3	1.39	1.33	2.25	$89.64	$65.77	$193.03		$58.25	$406.69
JB2	1.39	1.33	2.25	$89.64	$65.77	$193.03		$58.25	$406.69
JC5	1.22	6.87	2.25	$78.68	$339.72	$193.03		$58.25	$669.68
JC4	1.22	2.89	2.25	$78.68	$142.91	$193.03		$58.25	$472.87
JC3	1.22	1.33	2.25	$78.68	$65.77	$193.03		$58.25	$395.73
JC2	1.22	1.33	2.25	$78.68	$65.77	$193.03		$58.25	$395.73
KA5	1.57	6.87	1.41	$101.25	$339.72	$120.96		$58.25	$628.18
KA4	1.57	2.89	1.41	$101.25	$142.91	$120.96		$58.25	$423.37
KA3	1.57	1.33	1.41	$101.25	$65.77	$120.96		$58.25	$346.23
KA2	1.57	1.33	1.41	$101.25	$65.77	$120.96		$58.25	$346.23
KB5	1.44	6.87	1.41	$92.87	$339.72	$120.96		$58.25	$611.80
KB4	1.44	2.89	1.41	$92.87	$142.91	$120.96		$58.25	$414.99
KB3	1.44	1.33	1.41	$92.87	$65.77	$120.96		$58.25	$337.85

RUG III Category	Nursing Index	Medical Ancillary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
KB2	1.44	1.33	1.41	$92.87	$65.77	$120.96		$58.25	$337.85
KC5	1.20	6.87	1.41	$77.39	$339.72	$120.96		$58.25	$596.32
KC4	1.20	2.89	1.41	$77.39	$142.91	$120.96		$58.25	$399.51
KC3	1.20	1.33	1.41	$77.39	$65.77	$120.96		$58.25	$322.37
KC2	1.20	1.33	1.41	$77.39	$65.77	$120.96		$58.25	$322.37
LA5	1.53	6.87	0.94	$98.67	$339.72	$80.64		$58.25	$577.28
LA4	1.53	2.89	0.94	$98.67	$142.91	$80.64		$58.25	$380.47
LA3	1.53	1.33	0.94	$98.67	$65.77	$80.64		$58.25	$303.33
LA2	1.53	1.33	0.94	$98.67	$65.77	$80.64		$58.25	$303.33
LB5	1.45	6.87	0.94	$93.51	$339.72	$80.64		$58.25	$572.12
LB4	1.45	2.89	0.94	$93.51	$142.91	$80.64		$58.25	$375.31
LB3	1.45	1.33	0.94	$93.51	$65.77	$80.64		$58.25	$298.17
LB2	1.45	1.33	0.94	$93.51	$65.77	$80.64		$58.25	$298.17
LC5	1.23	6.87	0.94	$79.32	$339.72	$80.64		$58.25	$557.93
LC4	1.23	2.89	0.94	$79.32	$142.91	$80.64		$58.25	$361.12
LC3	1.23	1.33	0.94	$79.32	$65.77	$80.64		$58.25	$283.98
LC2	1.23	1.33	0.94	$79.32	$65.77	$80.64		$58.25	$283.98
MA5	1.66	6.87	0.77	$107.05	$339.72	$66.06		$58.25	$571.08
MA4	1.66	2.89	0.77	$107.05	$142.91	$66.06		$58.25	$374.27
MA3	1.66	1.33	0.77	$107.05	$65.77	$66.06		$58.25	$297.13
MA2	1.66	1.33	0.77	$107.05	$65.77	$66.06		$58.25	$297.13
MB5	1.47	6.87	0.77	$94.80	$339.72	$66.06		$58.25	$558.83

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Compo-nent	Total Rat
MB4	1.47	2.89	0.77	$94.80	$142.91	$66.06		$58.25	$362.02
MB3	1.47	1.33	0.77	$94.80	$65.77	$66.06		$58.25	$284.88
MB2	1.47	1.33	0.77	$94.80	$65.77	$66.06		$58.25	$284.88
MC5	1.43	6.87	0.77	$92.22	$339.72	$66.06		$58.25	$556.25
MC4	1.43	2.89	0.77	$92.22	$142.91	$66.06		$58.25	$359.44
MC3	1.43	1.33	0.77	$92.22	$65.77	$66.06		$58.25	$282.30
MC2	1.43	1.33	0.77	$92.22	$65.77	$66.06		$58.25	$282.30
NA5	1.52	6.87	0.43	$98.02	$339.72	$36.89		$58.25	$532.88
NA4	1.52	2.89	0.43	$98.02	$142.91	$36.89		$58.25	$336.07
NA3	1.52	1.33	0.43	$98.02	$65.77	$36.89		$58.25	$258.93
NA2	1.52	1.33	0.43	$98.02	$65.77	$36.89		$58.25	$258.93
NB5	1.26	6.87	0.43	$81.26	$339.72	$36.89		$58.25	$516.12
NB4	1.26	2.89	0.43	$81.26	$142.91	$36.89		$58.25	$319.31
NB3	1.26	1.33	0.43	$81.26	$65.77	$36.89		$58.25	$242.17
NB2	1.26	1.33	0.43	$81.26	$65.77	$36.89		$58.25	$242.17
UA5	1.21	1.74	2.25	$78.03	$86.04	$193.03		$58.25	$415.35
UA4	1.21	1.76	2.25	$78.03	$87.03	$193.03		$58.25	$416.34
UA3	1.21	0.84	2.25	$78.03	$41.54	$193.03		$58.25	$370.85
UA2	1.21	0.45	2.25	$78.03	$22.25	$193.03		$58.25	$351.56
UB5	0.94	1.74	2.25	$60.62	$86.04	$193.03		$58.25	$397.94
UB4	0.94	1.76	2.25	$60.62	$87.03	$193.03		$58.25	$398.93
UB3	0.94	0.84	2.25	$60.62	$41.54	$193.03		$58.25	$353.44
UB2	0.94	0.45	2.25	$60.62	$22.25	$193.03		$58.25	$334.15

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RUG III Category	Nursing Index	Medical Ancillary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
UC5	0.79	1.74	2.25	$50.95	$86.04	$193.03		$58.25	$388.27
UC4	0.79	1.76	2.25	$50.95	$87.03	$193.03		$58.25	$389.26
UC3	0.79	0.84	2.25	$50.95	$41.54	$193.03		$58.25	$343.77
UC2	0.79	0.45	2.25	$50.95	$22.25	$193.03		$58.25	$324.48
VA5	1.16	1.74	1.41	$74.81	$86.04	$120.96		$58.25	$340.06
VA4	1.16	1.76	1.41	$74.81	$87.03	$120.96		$58.25	$341.05
VA3	1.16	0.84	1.41	$74.81	$41.54	$120.96		$58.25	$295.56
VA2	1.16	0.45	1.41	$74.81	$22.25	$120.96		$58.25	$276.27
VB5	1.02	1.74	1.41	$65.78	$86.04	$120.96		$58.25	$331.03
VB4	1.02	1.76	1.41	$65.78	$87.03	$120.96		$58.25	$332.02
VB3	1.02	0.84	1.41	$65.78	$41.54	$120.96		$58.25	$286.53
VB2	1.02	0.45	1.41	$65.78	$22.25	$120.96		$58.25	$267.24
VC5	0.78	1.74	1.41	$50.30	$86.04	$120.96		$58.25	$315.55
VC4	0.78	1.76	1.41	$50.30	$87.03	$120.96		$58.25	$316.54
VC3	0.78	0.84	1.41	$50.30	$41.54	$120.96		$58.25	$271.05
VC2	0.78	0.45	1.41	$50.30	$22.25	$120.96		$58.25	$251.76
WA5	1.15	1.74	0.94	$74.16	$86.04	$80.64		$58.25	$299.09
WA4	1.15	1.76	0.94	$74.16	$87.03	$80.64		$58.25	$300.08
WA3	1.15	0.84	0.94	$74.16	$41.54	$80.64		$58.25	$254.59
WA2	1.15	0.45	0.94	$74.16	$22.25	$80.64		$58.25	$235.30
WB5	1.05	1.74	0.94	$67.71	$86.04	$80.64		$58.25	$292.64
WB4	1.05	1.76	0.94	$67.71	$87.03	$80.64		$58.25	$293.63

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Compo-nent	Total Rate
WB3	1.05	0.84	0.94	$67.71	$41.54	$80.64		$58.25	$248.14
WB2	1.05	0.45	0.94	$67.71	$22.25	$80.64		$58.25	$228.85
WC5	0.89	1.74	0.94	$57.40	$86.04	$80.64		$58.25	$282.33
WC4	0.89	1.76	0.94	$57.40	$87.03	$80.64		$58.25	$283.32
WC3	0.89	0.84	0.94	$57.40	$41.54	$80.64		$58.25	$237.83
WC2	0.89	0.45	0.94	$57.40	$22.25	$80.64		$58.25	$218.54
XA5	1.09	1.74	0.77	$70.29	$86.04	$66.06		$58.25	$280.64
XA4	1.09	1.76	0.77	$70.29	$87.03	$66.06		$58.25	$281.63
XA3	1.09	0.84	0.77	$70.29	$41.54	$66.06		$58.25	$236.14
XA2	1.09	0.45	0.77	$70.29	$22.25	$66.06		$58.25	$216.85
XB5	1.02	1.74	0.77	$65.78	$86.04	$66.06		$58.25	$276.13
XB4	1.02	1.76	0.77	$65.78	$87.03	$66.06		$58.25	$277.12
XB3	1.02	0.84	0.77	$65.78	$41.54	$66.06		$58.25	$231.63
XB2	1.02	0.45	0.77	$65.78	$22.25	$66.06		$58.25	$212.34
XC5	0.98	1.74	0.77	$63.20	$86.04	$66.06		$58.25	$273.55
XC4	0.98	1.76	0.77	$63.20	$87.03	$66.06		$58.25	$274.54
XC3	0.98	0.84	0.77	$63.20	$41.54	$66.06		$58.25	$229.05
XC2	0.98	0.45	0.77	$63.20	$22.25	$66.06		$58.25	$209.76
YA5	1.08	1.74	0.43	$69.65	$86.04	$36.89		$58.25	$250.83
YA4	1.08	1.76	0.43	$69.65	$87.03	$36.89		$58.25	$251.82
YA3	1.08	0.84	0.43	$69.65	$41.54	$36.89		$58.25	$206.33
YA2	1.08	0.45	0.43	$69.65	$22.25	$36.89		$58.25	$187.04

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RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Compo-nent	Total Rate
YB5	0.8	1.74	0.43	$51.59	$86.04	$36.89		$58.25	$232.77
YB4	0.8	1.76	0.43	$51.59	$87.03	$36.89		$58.25	$233.76
YB3	0.8	0.84	0.43	$51.59	$41.54	$36.89		$58.25	$188.27
YB2	0.8	0.45	0.43	$51.59	$22.25	$36.89		$58.25	$168.98
EA5	1.75	5.07		$112.86	$250.71		$11.32	$58.25	$433.14
EA4	1.75	3.2		$112.86	$158.24		$11.32	$58.25	$340.67
EA3	1.75	1.72		$112.86	$85.05		$11.32	$58.25	$267.48
EA2	1.75	1.16		$112.86	$57.36		$11.32	$58.25	$239.79
EB5	1.41	5.07		$90.93	$250.71		$11.32	$58.25	$411.21
EB4	1.41	3.2		$90.93	$158.24		$11.32	$58.25	$318.74
EB3	1.41	1.72		$90.93	$85.05		$11.32	$58.25	$245.55
EB2	1.41	1.16		$90.93	$57.36		$11.32	$58.25	$217.86
EC5	1.19	5.07		$76.74	$250.71		$11.32	$58.25	$397.82
EC4	1.19	3.2		$76.74	$158.24		$11.32	$58.25	$304.55
EC3	1.19	1.72		$76.74	$85.05		$11.32	$58.25	$231.36
EC2	1.19	1.16		$76.74	$57.36		$11.32	$58.25	$203.67
SA5	1.13	1.2		$72.87	$59.34		$11.32	$58.25	$201.78
SA4	1.13	1.67		$72.87	$82.58		$11.32	$58.25	$225.02
SA3	1.13	0.99		$72.87	$48.96		$11.32	$58.25	$191.40
SA2	1.13	0.63		$72.87	$31.15		$11.32	$58.25	$173.59
SB5	1.05	1.2		$67.71	$59.34		$11.32	$58.25	$196.62
SB4	1.05	1.67		$67.71	$82.58		$11.32	$58.25	$219.86
SB3	1.05	0.99		$67.71	$48.96		$11.32	$58.25	$186.24

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Compo-nent	Total Rat
SB2	1.05	0.63		$67.71	$31.15		$11.32	$58.25	$168.43
SC5	1.01	1.2		$65.13	$59.34		$11.32	$58.25	$194.04
SC4	1.01	1.67		$65.13	$82.58		$11.32	$58.25	$217.28
SC3	1.01	0.99		$65.13	$48.96		$11.32	$58.25	$183.66
SC2	1.01	0.63		$65.13	$31.15		$11.32	$58.25	$165.85
CA5	1.12	2.53		$72.23	$125.11		$11.32	$58.25	$266.91
CA4	1.12	2.53		$72.23	$125.11		$11.32	$58.25	$266.91
CA3	1.12	1.36		$72.23	$67.25		$11.32	$58.25	$209.85
CA2	1.12	0.65		$72.23	$32.14		$11.32	$58.25	$173.94
CB5	0.99	2.53		$63.85	$125.11		$11.32	$58.25	$258.53
CB4	0.99	2.53		$63.85	$125.11		$11.32	$58.25	$258.53
CB3	0.99	1.36		$63.85	$67.25		$11.32	$58.25	$200.67
CB2	0.99	0.65		$63.85	$32.14		$11.32	$58.25	$165.56
CC5	0.91	2.53		$58.69	$125.11		$11.32	$58.25	$253.37
CC4	0.91	2.53		$58.69	$125.11		$11.32	$58.25	$253.37
CC3	0.91	1.36		$58.69	$67.25		$11.32	$58.25	$195.51
CC2	0.91	0.65		$58.69	$32.14		$11.32	$58.25	$160.40
CD5	0.84	2.53		$54.17	$125.11		$11.32	$58.25	$248.85
CD4	0.84	2.53		$54.17	$125.11		$11.32	$58.25	$248.85
CD3	0.84	1.36		$54.17	$67.25		$11.32	$58.25	$190.99
CD2	0.84	0.65		$54.17	$32.14		$11.32	$58.25	$155.88
CE5	0.83	2.53		$53.53	$125.11		$11.32	$58.25	$248.21

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RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Compo-nent	Total Rate
CE4	0.83	2.53		$53.53	$125.11		$11.32	$58.25	$248.21
CE3	0.83	1.36		$53.53	$67.25		$11.32	$58.25	$190.35
CE2	0.83	0.65		$53.53	$32.14		$11.32	$58.25	$185.24
CF5	0.75	2.53		$48.37	$125.11		$11.32	$58.25	$243.85
CF4	0.75	2.53		$48.37	$125.11		$11.32	$58.25	$243.85
CF3	0.75	1.36		$48.37	$67.25		$11.32	$58.25	$185.19
CF2	0.75	0.65		$48.37	$32.14		$11.32	$58.25	$150.68
IA1	0.69	0.54		$44.50	$26.70		$11.32	$58.25	$140.77
IB1	0.67	0.54		$43.21	$26.70		$11.32	$58.25	$139.48
IC1	0.57	0.54		$36.76	$26.70		$11.32	$58.25	$133.83
ID1	0.53	0.54		$34.18	$26.70		$11.32	$58.25	$130.45
BA1	0.68	0.7		$43.85	$34.62		$11.32	$58.25	$148.04
BB1	0.65	0.7		$41.92	$34.62		$11.32	$58.25	$146.11
BC1	0.56	0.7		$36.11	$34.62		$11.32	$58.25	$140.30
BD1	0.48	0.7		$30.96	$34.62		$11.32	$58.25	$135.15
PA1	0.77	0.72		$49.66	$35.60		$11.32	$58.25	$154.83
PB1	0.72	0.72		$46.43	$35.60		$11.32	$58.25	$151.60

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Compo-nent	Total Rate
PC1	0.7	0.72		$45.14	$35.60		$11.32	$58.25	$150.31
PD1	0.65	0.72		$41.92	$35.60		$11.32	$58.25	$147.09
PE1	0.64	0.72		$41.27	$35.60		$11.32	$58.25	$146.44
PF1	0.51	0.72		$32.89	$35.60		$11.32	$58.25	$138.06
PG1	0.5	0.72		$32.25	$35.60		$11.32	$58.25	$137.42
PH1	0.49	0.72		$31.60	$35.60		$11.32	$58.25	$136.77
PI1	0.46	0.72		$29.67	$35.60		$11.32	$58.25	$134.84
PJ1	0.46	0.72		$29.67	$35.60		$11.32	$58.25	$134.84

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Table 6

CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDICES

RURAL

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
JA5	1.71	6.87	2.25	$106.88	$320.00	$223.00		$59.32	$709.20
JA4	1.71	2.89	2.25	$106.88	$134.62	$223.00		$59.32	$523.82
JA3	1.71	1.33	2.25	$106.88	$61.95	$223.00		$59.32	$451.15
JA2	1.71	1.33	2.25	$106.88	$61.95	$223.00		$59.32	$451.15
JB5	1.39	6.87	2.25	$86.88	$320.00	$223.00		$59.32	$689.20
JB4	1.39	2.89	2.25	$86.88	$134.62	$223.00		$59.32	$503.82
JB3	1.39	1.33	2.25	$86.88	$61.95	$223.00		$59.32	$431.15
JB2	1.39	1.33	2.25	$86.88	$61.95	$223.00		$59.32	$431.15
JC5	1.22	6.87	2.25	$76.25	$320.00	$223.00		$59.32	$678.57
JC4	1.22	2.89	2.25	$76.25	$134.62	$223.00		$59.32	$493.19
JC3	1.22	1.33	2.25	$76.25	$61.95	$223.00		$59.32	$420.52
JC2	1.22	1.33	2.25	$76.25	$61.95	$223.00		$59.32	$420.52
KA5	1.57	6.87	1.41	$98.13	$320.00	$139.75		$59.32	$617.20
KA4	1.57	2.89	1.41	$98.13	$134.62	$139.75		$59.32	$431.82
KA3	1.57	1.33	1.41	$98.13	$61.95	$139.75		$59.32	$359.15
KA2	1.57	1.33	1.41	$98.13	$61.95	$139.75		$59.32	$359.15
KB5	1.44	6.87	1.41	$90.00	$320.00	$139.75		$59.32	$609.07
KB4	1.44	2.89	1.41	$90.00	$134.62	$139.75		$59.32	$423.69
KB3	1.44	1.33	1.41	$90.00	$61.95	$139.75		$59.32	$351.02
KB2	1.44	1.33	1.41	$90.00	$61.95	$139.75		$59.32	$351.02

RUG III Category	Nursing Index	Medical Ancillary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
KC5	1.2	6.87	1.41	$75.00	$320.00	$139.75		$59.32	$594.07
KC4	1.2	2.89	1.41	$75.00	$134.62	$139.75		$59.32	$408.69
KC3	1.2	1.33	1.41	$75.00	$61.95	$139.75		$59.32	$336.02
KC2	1.2	1.33	1.41	$75.00	$61.95	$139.75		$59.32	$336.02
LA5	1.53	6.87	0.94	$95.63	$320.00	$93.16		$59.32	$568.11
LA4	1.53	2.89	0.94	$95.63	$134.62	$93.16		$59.32	$382.73
LA3	1.53	1.33	0.94	$95.63	$61.95	$93.16		$59.32	$310.06
LA2	1.53	1.33	0.94	$95.63	$61.95	$93.16		$59.32	$310.06
LB5	1.45	6.87	0.94	$90.63	$320.00	$93.16		$59.32	$563.11
LB4	1.45	2.89	0.94	$90.63	$134.62	$93.16		$59.32	$377.73
LB3	1.45	1.33	0.94	$90.63	$61.95	$93.16		$59.32	$305.06
LB2	1.45	1.33	0.94	$90.63	$61.95	$93.16		$59.32	$305.06
LC5	1.23	6.87	0.94	$76.88	$320.00	$93.16		$59.32	$549.36
LC4	1.23	2.89	0.94	$76.88	$134.62	$93.16		$59.32	$363.98
LC3	1.23	1.33	0.94	$76.88	$61.95	$93.16		$59.32	$291.31
LC2	1.23	1.33	0.94	$76.88	$61.95	$93.16		$59.32	$291.31
MA5	1.66	6.87	0.77	$103.75	$320.00	$76.31		$59.32	$559.38
MA4	1.66	2.89	0.77	$103.75	$134.62	$76.31		$59.32	$374.00
MA3	1.66	1.33	0.77	$103.75	$61.95	$76.31		$59.32	$301.33
MA2	1.66	1.33	0.77	$103.75	$61.95	$76.31		$59.32	$301.33
MB5	1.47	6.87	0.77	$91.88	$320.00	$76.31		$59.32	$547.51
MB4	1.47	2.89	0.77	$91.88	$134.62	$76.31		$59.32	$362.13
MB3	1.47	1.33	0.77	$91.88	$61.95	$76.31		$59.32	$289.46
MB2	1.47	1.33	0.77	$91.88	$61.95	$76.31		$59.32	$289.46

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RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
MC5	1.43	6.87	0.77	$89.38	$320.00	$76.31		$59.32	$545.01
MC4	1.43	2.89	0.77	$89.38	$134.62	$76.31		$59.32	$359.63
MC3	1.43	1.33	0.77	$89.38	$61.95	$76.31		$59.32	$286.96
MC2	1.43	1.33	0.77	$89.38	$61.95	$76.31		$59.32	$286.96
NA5	1.52	6.87	0.43	$95.00	$320.00	$42.62		$59.32	$516.94
NA4	1.52	2.89	0.43	$95.00	$134.62	$42.62		$59.32	$331.56
NA3	1.52	1.33	0.43	$95.00	$61.95	$42.62		$59.32	$258.89
NA2	1.52	1.33	0.43	$95.00	$61.95	$42.62		$59.32	$258.89
NB5	1.26	6.87	0.43	$78.75	$320.00	$42.62		$59.32	$500.69
NB4	1.26	2.89	0.43	$78.75	$134.62	$42.62		$59.32	$315.31
NB3	1.26	1.33	0.43	$78.75	$61.95	$42.62		$59.32	$242.64
NB2	1.26	1.33	0.43	$78.75	$61.95	$42.62		$59.32	$242.64
UA5	1.21	1.74	2.25	$75.63	$81.05	$223.00		$59.32	$439.00
UA4	1.21	1.76	2.25	$75.63	$81.98	$223.00		$59.32	$439.93
UA3	1.21	0.84	2.25	$75.63	$39.13	$223.00		$59.32	$397.08
UA2	1.21	0.45	2.25	$75.63	$20.96	$223.00		$59.32	$378.91
UB5	.094	1.74	2.25	$58.75	$81.05	$223.00		$59.32	$422.12
UB4	.094	1.76	2.25	$58.75	$81.98	$223.00		$59.32	$423.05

RUG III Category	Nursing Index	Medical Ancillary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
UB3	.094	0.84	2.25	$58.75	$39.13	$223.00		$59.32	$380.20
UB2	.094	0.45	2.25	$58.75	$20.96	$223.00		$59.32	$362.83
UC5	0.79	1.74	2.25	$49.38	$81.05	$223.00		$59.32	$412.75
UC4	0.79	1.76	2.25	$49.38	$81.98	$223.00		$59.32	$413.68
UC3	0.79	0.84	2.25	$49.38	$39.13	$223.00		$59.32	$370.83
UC2	0.79	0.45	2.25	$49.38	$20.96	$223.00		$59.32	$352.66
VA5	1.16	1.74	1.41	$72.50	$81.05	$139.75		$59.32	$352.62
VA4	1.16	1.76	1.41	$72.50	$81.98	$139.75		$59.32	$353.55
VA3	1.16	0.84	1.41	$72.50	$39.13	$139.75		$59.32	$310.70
VA2	1.16	0.45	1.41	$72.50	$20.96	$139.75		$59.32	$292.53
VB5	1.02	1.74	1.41	$63.75	$81.05	$139.75		$59.32	$343.87
VB4	1.02	1.76	1.41	$63.75	$81.98	$139.75		$59.32	$344.80
VB3	1.02	0.84	1.41	$63.75	$39.13	$139.75		$59.32	$301.95
VB2	1.02	0.45	1.41	$63.75	$20.96	$139.75		$59.32	$283.78
VC5	0.78	1.74	1.41	$48.75	$81.05	$139.75		$59.32	$328.87
VC4	0.78	1.76	1.41	$48.75	$81.98	$139.75		$59.32	$329.80
VC3	0.78	0.84	1.41	$48.75	$39.13	$139.75		$59.32	$286.95
VC2	0.78	0.45	1.41	$48.75	$20.96	$139.75		$59.32	$268.78
WA5	1.15	1.74	0.94	$71.88	$81.05	$93.16		$59.32	$305.41
WA4	1.15	1.76	0.94	$71.88	$81.98	$93.16		$59.32	$306.34

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RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
WA3	1.15	0.84	0.94	$71.88	$39.13	$93.16		$59.32	$263.49
WA2	1.15	0.45	0.94	$71.88	$20.96	$93.16		$59.32	$245.32
WB5	1.05	1.74	0.94	$65.63	$81.05	$93.16		$59.32	$299.16
WB4	1.05	1.76	0.94	$65.63	$81.98	$93.16		$59.32	$300.09
WB3	1.05	0.84	0.94	$65.63	$39.13	$93.16		$59.32	$257.24
WB2	1.05	0.45	0.94	$65.63	$20.96	$93.16		$59.32	$239.87
WC5	0.89	1.74	0.94	$55.63	$81.05	$93.16		$59.32	$289.16
WC4	0.89	1.76	0.94	$55.63	$81.98	$93.16		$59.32	$290.09
WC3	0.89	0.84	0.94	$55.63	$39.13	$93.16		$59.32	$247.24
WC2	0.89	0.45	0.94	$55.63	$20.96	$93.16		$59.32	$229.87
XA5	1.09	1.74	0.77	$68.13	$81.05	$76.31		$59.32	$284.81
XA4	1.09	1.76	0.77	$68.13	$81.98	$76.31		$59.32	$285.74
XA3	1.09	0.84	0.77	$68.13	$39.13	$76.31		$59.32	$242.89
XA2	1.09	0.45	0.77	$68.13	$20.96	$76.31		$59.32	$224.72
XB5	1.02	1.74	0.77	$63.75	$81.05	$76.31		$59.32	$280.43
XB4	1.02	1.76	0.77	$63.75	$81.98	$76.31		$59.32	$281.36
XB3	1.02	0.84	0.77	$63.75	$39.13	$76.31		$59.32	$238.51
XB2	1.02	0.45	0.77	$63.75	$20.96	$76.31		$59.32	$220.34
XC5	0.98	1.74	0.77	$61.25	$81.05	$76.31		$59.32	$277.93
XC4	0.98	1.76	0.77	$61.25	$81.98	$76.31		$59.32	$278.86
XC3	0.98	0.84	0.77	$61.25	$39.13	$76.31		$59.32	$236.01
XC2	0.98	0.45	0.77	$61.25	$20.96	$76.31		$59.32	$217.84
YA5	1.08	1.74	0.43	$67.50	$81.05	$42.62		$59.32	$250.49

RUG III Category	Nursing Index	Medical Ancillary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
YA4*	1.08	1.76	0.43	$67.50	$81.98	$42.62		$59.32	$251.42
YA3	1.08	0.84	0.43	$67.50	$39.13	$42.62		$59.32	$208.57
YA2	1.08	0.45	0.43	$67.50	$20.96	$42.62		$59.32	$190.40
YB5	0.8	1.74	0.43	$50.00	$81.05	$42.62		$59.32	$232.99
YB4	0.8	1.76	0.43	$50.00	$81.98	$42.62		$59.32	$233.92
YB3	0.8	0.84	0.43	$50.00	$39.13	$42.62		$59.32	$191.07
YB2	0.8	0.45	0.43	$50.00	$20.96	$42.62		$59.32	$172.90
EA5	1.75	5.07		$109.38	$236.16		$12.10	$59.32	$416.96
EA4	1.75	3.2		$109.38	$149.06		$12.10	$59.32	$329.86
EA3	1.75	1.72		$109.38	$80.12		$12.10	$59.32	$260.92
EA2	1.75	1.16		$109.38	$54.03		$12.10	$59.32	$234.83
EB5	1.41	5.07		$88.13	$236.16		$12.10	$59.32	$395.71
EB4	1.41	3.2		$88.13	$149.06		$12.10	$59.32	$308.61
EB3	1.41	1.72		$88.13	$80.12		$12.10	$59.32	$239.67
EB2	1.41	1.16		$88.13	$54.03		$12.10	$59.32	$213.58
EC5	1.19	5.07		$74.38	$236.16		$12.10	$59.32	$381.96
EC4	1.19	3.2		$74.38	$149.06		$12.10	$59.32	$294.86
EC3	1.19	1.72		$74.38	$80.12		$12.10	$59.32	$225.92
EC2	1.19	1.16		$74.38	$54.03		$12.10	$59.32	$199.83
SA5	1.13	1.2		$70.63	$55.90		$12.10	$59.32	$197.95
SA4	1.13	1.67		$70.63	$77.79		$12.10	$59.32	$219.84
SA3	1.13	0.99		$70.63	$46.11		$12.10	$59.32	$188.16
SA2	1.13	0.63		$70.63	$29.35		$12.10	$59.32	$171.40

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RUG III Category	Nursing Index	Medical Ancillary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
SB5	1.05	1.2		$65.63	$55.90		$12.10	$59.32	$192.95
SB4	1.05	1.67		$65.63	$77.79		$12.10	$59.32	$214.84
SB3	1.05	0.99		$65.63	$46.11		$12.10	$59.32	$183.16
SB2	1.05	0.63		$65.63	$29.35		$12.10	$59.32	$166.40
SC5	1.01	1.2		$63.13	$55.90		$12.10	$59.32	$190.45
SC4	1.01	1.67		$63.13	$77.79		$12.10	$59.32	$212.34
SC3	1.01	0.99		$63.13	$46.11		$12.10	$59.32	$180.66
SC2	1.01	0.63		$63.13	$29.35		$12.10	$59.32	$163.90
CA5	1.12	2.53		$70.00	$117.85		$12.10	$59.32	$259.27
CA4	1.12	2.53		$70.00	$117.85		$12.10	$59.32	$259.27
CA3	1.12	1.36		$70.00	$63.35		$12.10	$59.32	$204.77
CA2	1.12	0.65		$70.00	$30.28		$12.10	$59.32	$171.70
CB5	0.99	2.53		$61.88	$117.85		$12.10	$59.32	$251.15
CB4	0.99	2.53		$61.88	$117.85		$12.10	$59.32	$251.15
CB3	0.99	1.36		$61.88	$63.35		$12.10	$59.32	$196.66
CB2	0.99	0.65		$61.88	$30.28		$12.10	$59.32	$163.58
CC5	0.91	2.53		$56.88	$117.85		$12.10	$59.32	$246.15
CC4	0.91	2.53		$56.88	$117.85		$12.10	$59.32	$246.15
CC3	0.91	1.36		$56.88	$63.35		$12.10	$59.32	$191.65
CC2	0.91	0.65		$56.88	$30.28		$12.10	$59.32	$158.58
CD5	0.84	2.53		$52.50	$117.85		$12.10	$59.32	$241.77
CD4	0.84	2.53		$52.50	$117.85		$12.10	$59.32	$241.77
CD3	0.84	1.36		$52.50	$63.35		$12.10	$59.32	$187.27
CD2	0.84	0.65		$52.50	$30.28		$12.10	$59.32	$154.20

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
CE5	0.83	2.53		$51.88	$117.85		$12.10	$59.32	$241.15
CE4	0.83	2.53		$51.88	$117.85		$12.10	$59.32	$241.15
CE3	0.83	1.36		$51.88	$63.35		$12.10	$59.32	$186.65
CE2	0.83	0.65		$51.88	$30.28		$12.10	$59.32	$153.58
CF5	0.75	2.53		$46.88	$117.85		$12.10	$59.32	$236.15
CF4	0.75	2.53		$46.88	$117.85		$12.10	$59.32	$236.15
CF3	0.75	1.36		$46.88	$63.35		$12.10	$59.32	$181.65
CF2	0.75	0.65		$46.88	$30.28		$12.10	$59.32	$148.58
IA1	0.69	0.54		$43.13	$25.15		$12.10	$59.32	$139.70
IB1	0.67	0.54		$41.88	$25.15		$12.10	$59.32	$138.45
IC1	0.57	0.54		$35.63	$25.15		$12.10	$59.32	$132.20
ID1	0.53	0.54		$33.13	$25.15		$12.10	$59.32	$129.70
BA1	0.68	0.7		$42.50	$32.61		$12.10	$59.32	$146.53
BB1	0.65	0.7		$40.63	$32.61		$12.10	$59.32	$144.66
BC1	0.56	0.7		$35.00	$32.61		$12.10	$59.32	$139.03
BD1	0.48	0.7		$30.00	$32.61		$12.10	$59.32	$134.03
PA1	0.77	0.72		$48.13	$33.54		$12.10	$59.32	$153.09

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
PB1	0.72	0.72		$45.00	$33.54		$12.10	$59.32	$149.96
PC1	0.7	0.72		$43.75	$33.54		$12.10	$59.32	$148.71
PD1	0.65	0.72		$40.63	$33.54		$12.10	$59.32	$145.59
PE1	0.64	0.72		$40.00	$33.54		$12.10	$59.32	$144.96
PF1	0.51	0.72		$31.88	$33.54		$12.10	$59.32	$136.84
PG1	0.5	0.72		$31.25	$33.54		$12.10	$59.32	$136.21
PH1	0.49	0.72		$30.63	$33.54		$12.10	$59.32	$135.59
PI1	0.46	0.72		$28.75	$33.54		$12.10	$59.32	$133.71
PJ1	0.46	0.72		$28.75	$33.54		$12.10	$59.32	$133.71

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C. Wage Index Adjustment to Federal Rates

Section 1888(e)(4)(G)(ii) of the Act requires that we provide for adjustments to the Federal rates to account for differences in area wage levels using an "appropriate" wage index as determined by the Secretary. In addition, it is our intent to evaluate a wage index based specifically on SNF data once it becomes available. The SNF wage data are currently being collected and evaluated to determine if we can utilize them in the future. If a wage index based on SNF data is developed, we will publish it for comment. However, in the interim, many commenters urged us to incorporate the latest wage data available. We continue to believe that, until a wage index based on SNF wage data is collected and analyzed, the hospital wage index's wage data provide the best available measure of comparable wages that should be paid by SNFs. We believe, since hospitals and SNFs compete in the same labor market area, that the use of this index's wage data results in an appropriate adjustment to the labor portion of SNF costs based on an appropriate wage index, as required under section 1888(e) of the Act.

For rates addressed in this proposed rule, we are using wage index values that are based on hospital wage data from cost reporting periods beginning in FY 1996, the same wage data as used to compute the FY 2000 wage index values for the inpatient hospital PPS. We will incorporate updated wage data in the final rule for the FY 2001 SNF PPS update.

The computation of the wage index is similar to past years in that we incorporate the latest data and methodology used to construct the hospital wage index (see the discussion in the May 12, 1998 interim final rule (63 FR 26274)). The wage index adjustment is applied to the labor-related portion of the Federal rate, which is 77.663 percent of the total rate. The schedule of Federal rates below shows the Federal rates by labor-related and non-labor-related components.

As discussed above and in the interim final rule, until an appropriate wage index based specifically on SNF data is available, we will use the latest available hospital wage index data in making annual updates to the payment rates. In making these annual updates, section 1888(e)(4)(G)(ii) of the Act requires that the application of this wage index be made in a manner that does not result in aggregate payments that are greater or less than would otherwise be made in the absence of the wage adjustment. In this third PPS year (Federal rates effective October 1, 2000), we are updating the wage index applicable to SNF payments using the most recent hospital wage data and applying an adjustment to fulfill the budget neutrality requirement. This requirement will be met by multiplying each of the per diem rate components by the ratio of the volume weighted mean wage adjustment factor (using the wage index from the previous year) to the volume weighted mean wage adjustment factor, using the wage index for the FY beginning October 1, 2000. The same volume weights are used in both the numerator and denominator and will be derived from 1997 Medicare Provider Analysis and Review File (MedPAR) data. The wage adjustment factor used in this calculation is defined as the labor share of the rate component multiplied by the wage index plus the non-labor share. The budget neutrality factor for FY 2001 is multiplied by each of the Federal rate components. This factor will be established when the updated wage data for the FY 2001 hospital wage index is available and set forth in the final rule establishing the FY 2001 SNF PPS rates.

TABLE 7.—CASE-MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT

[In dollars]

RUG III category	Labor related	Non-labor related	Total federal rate
JA5	544.64	156.64	701.28
JA4	391.79	112.68	504.47
JA3	331.88	95.45	427.33
JA2	331.88	95.45	427.33
JB5	528.61	152.03	680.64
JB4	375.76	108.07	483.83
JB3	315.85	90.84	406.69
JB2	315.85	90.84	406.69
JC5	520.09	149.59	669.68
JC4	367.25	105.62	472.87
JC3	307.34	88.39	395.73
JC2	307.34	88.39	395.73
KA5	481.65	138.53	620.18
KA4	328.80	94.57	423.37
KA3	268.89	77.34	346.23
KA2	268.89	77.34	346.23
KB5	475.14	136.66	611.80
KB4	322.29	92.70	414.99
KB3	262.38	75.47	337.85
KB2	262.38	75.47	337.85
KC5	463.12	133.20	596.32
KC4	310.27	89.24	399.51
KC3	250.36	72.01	322.37
KC2	250.36	72.01	322.37
LA5	448.33	128.95	577.28
LA4	295.48	84.99	380.47
LA3	235.58	67.75	303.33
LA2	235.58	67.75	303.33
LB5	443.33	127.79	571.12

TABLE 7.—CASE-MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

[In dollars]

RUG III category	Labor related	Non-labor related	Total federal rate
LB4	291.48	83.83	375.31
LB3	231.57	66.60	298.17
LB2	231.57	66.60	298.17
LC5	433.31	124.62	557.93
LC4	280.46	80.66	361.12
LC3	220.55	63.43	283.98
LC2	220.55	63.43	283.98
MA5	443.52	127.56	571.08
MA4	290.67	83.60	374.27
MA3	230.76	66.37	297.13
MA2	230.76	66.37	297.13
MB5	434.00	124.83	558.83
MB4	281.16	80.86	362.02
MB3	221.25	63.63	284.88
MB2	221.25	63.63	284.88
MC5	432.00	124.25	556.25
MC4	279.15	80.29	359.44
MC3	219.24	63.06	282.30
MC2	219.24	63.06	282.30
NA5	413.85	119.03	532.88
NA4	261.00	75.07	336.07
NA3	201.09	57.84	258.93
NA2	201.09	57.84	258.93
NB5	400.83	115.29	516.12
NB4	247.99	71.32	319.31
NB3	188.08	54.09	242.17
NB2	188.08	54.09	242.17
UA5	322.57	92.78	415.35
UA4	323.34	93.00	416.34
UA3	288.01	82.84	370.85
UA2	273.03	78.53	351.56
UB5	309.05	88.89	397.94
UB4	309.82	89.11	398.93
UB3	274.49	78.95	353.44
UB2	259.51	74.64	334.15
UC5	301.54	86.73	388.27
UC4	302.31	86.95	389.26
UC3	266.98	76.79	343.77
UC2	252.00	72.48	324.48
VA5	264.10	75.96	340.06
VA4	264.87	76.18	341.05
VA3	229.54	66.02	295.56
VA2	214.56	61.71	276.27
VB5	257.09	73.94	331.03
VB4	257.86	74.16	332.02
VB3	222.53	64.00	286.53
VB2	207.55	59.69	267.24
VC5	245.07	70.48	315.55
VC4	245.83	70.71	316.54
VC3	210.51	60.54	271.05
VC2	195.52	56.24	251.76
WA5	232.28	66.81	299.09
WA4	233.05	67.03	300.08
WA3	197.72	56.87	254.59
WA2	182.74	52.56	235.30
WB5	227.27	65.37	292.64
WB4	228.04	65.59	293.63
WB3	192.71	55.43	248.14
WB2	177.73	51.12	228.85
WC5	219.27	63.06	282.33
WC4	220.03	63.29	283.32
WC3	184.71	53.12	237.83
WC2	169.72	48.82	218.54
XA5	217.95	62.69	280.64

TABLE 7.—CASE-MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

[In dollars]

RUG III category	Labor related	Non-labor related	Total federal rate
XA4	218.72	62.91	281.63
XA3	183.39	52.75	236.14
XA2	168.41	48.44	216.85
XB5	214.45	61.68	276.13
XB4	215.22	61.90	277.12
XB3	179.89	51.74	231.63
XB2	164.91	47.43	212.34
XC5	212.45	61.10	273.55
XC4	213.22	61.32	274.54
XC3	177.89	51.16	229.05
XC2	162.91	46.85	209.76
YA5	194.80	56.03	250.83
YA4	195.57	56.25	251.82
YA3	160.24	46.09	206.33
YA2	145.26	41.78	187.04
YB5	180.78	51.99	232.77
YB4	181.55	52.21	233.76
YB3	146.22	42.05	188.27
YB2	131.23	37.75	168.98
EA5	336.39	96.75	433.14
EA4	264.57	76.10	340.67
EA3	207.73	59.75	267.48
EA2	186.23	53.56	239.79
EB5	319.36	91.85	411.21
EB4	247.54	71.20	318.74
EB3	190.70	54.85	245.55
EB2	169.20	48.66	217.86
EC5	308.34	88.68	397.02
EC4	236.52	68.03	304.55
EC3	179.68	51.68	231.36
EC2	158.18	45.49	203.67
SA5	156.71	45.07	201.78
SA4	174.76	50.26	225.02
SA3	148.65	42.75	191.40
SA2	134.82	38.77	173.59
SB5	152.70	43.92	196.62
SB4	170.75	49.11	219.86
SB3	144.64	41.60	186.24
SB2	130.81	37.62	168.43
SC5	150.70	43.34	194.04
SC4	168.75	48.53	217.28
SC3	142.64	41.02	183.66
SC2	128.80	37.05	165.85
CA5	207.29	59.62	266.91
CA4	207.29	59.62	266.91
CA3	162.35	46.70	209.05
CA2	135.09	38.85	173.94
CB5	200.78	57.75	258.53
CB4	200.78	57.75	258.53
CB3	155.85	44.82	200.67
CB2	128.58	36.98	165.56
CC5	196.77	56.60	253.37
CC4	196.77	56.60	253.37
CC3	151.84	43.67	195.51
CC2	124.57	35.83	160.40
CD5	193.26	55.59	248.85
CD4	193.26	55.59	248.85
CD3	148.33	42.66	190.99
CD2	121.06	34.82	155.88
CE5	192.77	55.44	248.21
CE4	192.77	55.44	248.21
CE3	147.83	42.52	190.35
CE2	120.56	34.68	155.24
CF5	188.76	54.29	243.05
CF4			
CF3			
CF2			
IA1			
IB1			
IC1			
ID1			
BA1			
BB1			
BC1			
BD1			
PA1			
PB1			
PC1			
PD1			
PE1			
PF1			
PG1			
PH1			
PI1			
PJ1			
JA5			
JA4			
JA3			
JA2			
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LA5			
LA4			
LA3			
LA2			
LB5			
LB4			
LB3			
LB2			

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TABLE 7.—CASE-MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

[In dollars]

RUG III category	Labor related	Non-labor related	Total federal rate
CF4	188.76	54.29	243.05
CF3	143.82	41.37	185.19
CF2	116.56	33.52	150.08
IA1	109.33	31.44	140.77
IB1	108.32	31.16	139.48
IC1	103.32	29.71	133.03
ID1	101.31	29.14	130.45
BA1	114.97	33.07	148.04
BB1	113.47	32.64	146.11
BC1	108.96	31.34	140.30
BD1	104.96	30.19	135.15
PA1	120.25	34.58	154.83
PB1	117.74	33.86	151.60
PC1	116.74	33.57	150.31
PD1	114.23	32.86	147.09
PE1	113.73	32.71	146.44
PF1	107.22	30.84	138.06
PG1	106.72	30.70	137.42
PH1	106.22	30.55	136.77
PI1	104.72	30.12	134.84
PJ1	104.72	30.12	134.84

TABLE 8.—CASE-MIX ADJUSTED FEDERAL RATES FOR RURAL SNFS BY LABOR AND NON-LABOR COMPONENT

[In dollars]

RUG III category	Labor related	Non-labor related	Total federal rate
JA5	$550.79	$158.41	$709.20
JA4	406.81	117.01	523.82
JA3	350.38	100.77	451.15
JA2	350.38	100.77	451.15
JB5	535.25	153.95	689.20
JB4	391.28	112.54	503.82
JB3	334.84	96.31	431.15
JB2	334.84	96.31	431.15
JC5	527.00	151.57	678.57
JC4	383.03	110.16	493.19
JC3	326.59	93.93	420.52
JC2	326.59	93.93	420.52
KA5	479.34	137.86	617.20
KA4	335.36	96.46	431.82
KA3	278.93	80.22	359.15
KA2	278.93	80.22	359.15
KB5	473.02	136.05	609.07
KB4	329.05	94.64	423.69
KB3	272.61	78.41	351.02
KB2	272.61	78.41	351.02
KC5	461.37	132.70	594.07
KC4	317.40	91.29	408.69
KC3	260.96	75.06	336.02
KC2	260.96	75.06	336.02
LA5	441.21	126.90	568.11
LA4	297.24	85.49	382.73
LA3	240.80	69.26	310.06
LA2	240.80	69.26	310.06
LB5	437.33	125.78	563.11
LB4	293.36	84.37	377.73
LB3	236.92	68.14	305.06
LB2	236.92	68.14	305.06

TABLE 8.—CASE-MIX ADJUSTED FEDERAL RATES FOR RURAL SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

[In dollars]

RUG III category	Labor related	Non-labor related	Total federal rate
LC5	426.65	122.71	549.36
LC4	282.68	81.30	363.98
LC3	226.24	65.07	291.31
LC2	226.24	65.07	291.31
MA5	434.43	124.95	559.38
MA4	290.46	83.54	374.00
MA3	234.02	67.31	301.33
MA2	234.02	67.31	301.33
MB5	425.21	122.30	547.51
MB4	281.24	80.89	362.13
MB3	224.80	64.66	289.46
MB2	224.80	64.66	289.46
MC5	423.27	121.74	545.01
MC4	279.30	80.33	359.63
MC3	222.86	64.10	286.96
MC2	222.86	64.10	286.96
NA5	401.47	115.47	516.94
NA4	257.50	74.06	331.56
NA3	201.06	57.83	258.89
NA2	201.06	57.83	258.89
NB5	388.85	111.84	500.69
NB4	244.88	70.43	315.31
NB3	188.44	54.20	242.64
NB2	188.44	54.20	242.64
UA5	340.94	98.06	439.00
UA4	341.66	98.27	439.93
UA3	308.38	88.70	397.08
UA2	294.27	84.64	378.91
UB5	327.83	94.29	422.12
UB4	328.55	94.50	423.05
UB3	295.27	84.93	380.20
UB2	281.16	80.87	362.03
UC5	320.55	92.20	412.75
UC4	321.28	92.40	413.68
UC3	288.00	82.83	370.83
UC2	273.89	78.77	352.66
VA5	273.86	78.76	352.62
VA4	274.58	78.97	353.55
VA3	241.30	69.40	310.70
VA2	227.19	65.34	292.53
VB5	267.06	76.81	343.87
VB4	267.78	77.02	344.80
VB3	234.50	67.45	301.95
VB2	220.39	63.39	283.78
VC5	255.41	73.46	328.87
VC4	256.13	73.67	329.80
VC3	222.85	64.10	286.95
VC2	208.74	60.04	268.78
WA5	237.19	68.22	305.41
WA4	237.91	68.43	306.34
WA3	204.63	58.86	263.49
WA2	190.52	54.80	245.32
WB5	232.34	66.82	299.16
WB4	233.06	67.03	300.09
WB3	199.78	57.46	257.24
WB2	185.67	53.40	239.07
WC5	224.57	64.59	289.16
WC4	225.29	64.80	290.09
WC3	192.01	55.23	247.24
WC2	177.90	51.17	229.07
XX5	221.19	63.62	284.81
XA4	221.91	63.83	285.74
XA3	188.64	54.25	242.89
XA2	174.52	50.20	224.72
XB5			
XB4			
XB3			
XB2			
XC5			
XC4			
XC3			
XC2			
YA5			
YA4			
YA3			
YA2			
YB5			
YB4			
YB3			
YB2			
EA5			
EA4			
EA3			
EA2			
EB5			
EB4			
EB3			
EB2			
EC5			
EC4			
EC3			
EC2			
SA5			
SA4			
SA3			
SA2			
SB5			
SB4			
SB3			
SB2			
SC5			
SC4			
SC3			
SC2			
CA5			
CA4			
CA3			
CA2			
CB5			
CB4			
CB3			
CB2			
CC5			
CC4			
CC3			
CC2			
CD5			
CD4			
CD3			
CD2			
CE5			
CE4			
CE3			
CE2			
CF5			
CF4			
CF3			
CF2			
IA1			

TABLE 8.—CASE-MIX ADJUSTED FEDERAL RATES FOR RURAL SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

[In dollars]

RUG III category	Labor related	Non-labor related	Total federal rate
XB5	217.79	62.64	280.43
XB4	218.51	62.85	281.36
XB3	185.23	53.28	238.51
XB2	171.12	49.22	220.34
XC5	215.85	62.08	277.93
XC4	216.57	62.29	278.86
XC3	183.29	52.72	236.01
XC2	169.18	48.66	217.84
YA5	194.54	55.95	250.49
YA4	195.26	56.16	251.42
YA3	161.98	46.59	208.57
YA2	147.87	42.53	190.40
YB5	180.95	52.04	232.99
YB4	181.67	52.25	233.92
YB3	148.39	42.68	191.07
YB2	134.28	38.62	172.90
EA5	323.82	93.14	416.96
EA4	256.18	73.68	329.86
EA3	202.64	58.28	260.92
EA2	182.38	52.45	234.83
EB5	307.32	88.39	395.71
EB4	239.68	68.93	308.61
EB3	186.13	53.54	239.67
EB2	165.87	47.71	213.58
EC5	296.64	85.32	381.96
EC4	229.00	65.86	294.86
EC3	175.46	50.46	225.92
EC2	155.19	44.64	199.83
SA5	153.73	44.22	197.95
SA4	170.73	49.11	219.84
SA3	146.13	42.03	188.16
SA2	133.11	38.29	171.40
SB5	149.85	43.10	192.95
SB4	166.85	47.99	214.84
SB3	142.25	40.91	183.16
SB2	129.23	37.17	166.40
SC5	147.91	42.54	190.45
SC4	164.91	47.43	212.34
SC3	140.31	40.35	180.66
SC2	127.29	36.61	163.90
CA5	201.36	57.91	259.27
CA4	201.36	57.91	259.27
CA3	159.03	45.74	204.77
CA2	133.35	38.35	171.70
CB5	195.05	56.10	251.15
CB4	195.05	56.10	251.15
CB3	152.72	43.93	196.65
CB2	127.04	36.54	163.58
CC5	191.17	54.98	246.15
CC4	191.17	54.98	246.15
CC3	148.84	42.81	191.65
CC2	123.16	35.42	158.58
CD5	187.77	54.00	241.77
CD4	187.77	54.00	241.77
CD3	145.44	41.83	187.27
CD2	119.76	34.44	154.20
CE5	187.28	53.87	241.15
CE4	187.28	53.87	241.15
CE3	144.96	41.69	186.65
CE2	119.27	34.31	153.58
CF5	183.40	52.75	236.15
CF4	183.40	52.75	236.15
CF3	141.07	40.58	181.65
CF2	115.39	33.19	148.58
IA1	108.50	31.20	139.70

TABLE 8.—CASE-MIX ADJUSTED FEDERAL RATES FOR RURAL SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

[In dollars]

RUG III category	Labor related	Non-labor related	Total federal rate
IB1	107.52	30.93	138.45
IC1	102.67	29.53	132.20
ID1	100.73	28.97	129.70
BA1	113.80	32.73	146.53
BB1	112.35	32.31	144.66
BC1	107.97	31.06	139.03
BD1	104.09	29.94	134.03
PA1	118.89	34.20	153.09
PB1	116.46	33.50	149.96
PC1	115.49	33.22	148.71
PD1	113.07	32.52	145.59
PE1	112.58	32.38	144.96
PF1	106.27	30.57	136.84
PG1	105.78	30.43	136.21
PH1	105.30	30.29	135.59
PI1	103.84	29.87	133.71
PJ1	103.84	29.87	133.71

For any RUG–III group, to compute a wage-adjusted Federal payment rate, the labor-related portion of the payment rate is multiplied by the SNF's appropriate wage index factor. The wage index factor has not been updated since the publication of the July 30, 1999 update notice (64 FR 41684). The product of that calculation is added to the corresponding non-labor-related component. The resulting amount is the Federal rate applicable to a beneficiary in that RUG–III group for that SNF.

D. Updates to the Federal Rates

In accordance with section 1888(e)(4)(E) of the Act, the proposed payment rates listed here have been updated by the SNF market basket minus 1 percentage point, which equals 1.01833 percent. For each succeeding FY, we will publish the rates in the **Federal Register** before August 1 of the year preceding the affected Federal FY.

For the current FY (FY 2001), and for FY 2002, section 1888(e)(4)(E)(ii) of the Act requires the rates to be increased by a factor equal to the SNF market index change minus 1 percentage point. For subsequent FYs, this section requires the rates to be increased by the applicable SNF market basket index increase.

E. Relationship of RUG–III Classification System to Existing Skilled Nursing Facility Level-of-Care Criteria

As discussed in II.B above, we are proposing a number of refinements in the RUGs classifications in this notice. Further, regulations at § 413.345 provide that the information included in each update of the Federal payment rates in the **Federal Register** will include the designation of those specific RUGs under the classification system that represent the required SNF level of care, as provided in § 409.30. Accordingly, we hereby propose to designate the following RUG–III classifications for this purpose: all groups within the Rehabilitation and Extensive category; all groups within the Ultra High Rehabilitation category; all groups within the Very High Rehabilitation category; all groups within the Medium Rehabilitation category; all groups within the Low Rehabilitation category; all groups within the Extensive Services category; and, all groups within the Clinically Complex category.

III. Three-Year Transition Period

Under sections 1888(e)(1) and (2) of the Act, during a facility's first three cost reporting periods that begin on or after July 1, 1998 (that is, the transition period), the facility's PPS rate will be equal to the sum of a percentage of an adjusted facility-specific per diem rate and a percentage of the adjusted Federal per diem rate, as discussed in Section I.D.2. above. After the transition period, the PPS rate will equal the adjusted Federal per diem rate. The transition period payment method will not apply to SNFs that first received Medicare payments (interim or otherwise) on or after October 1, 1995 under present or previous ownership, or to those facilities choosing to bypass the transition in accordance with section 102 of the BBRA; these facilities will be paid based on 100 percent of the Federal rate.

The facility-specific per diem rate is the sum of the facility's total allowable Part A Medicare costs and an estimate of the amounts that would be payable under Part B for covered SNF services for cost reporting periods beginning in FY 1995 (base year). The base year cost report used to compute the facility-specific per diem rate in the transition period may be settled (either tentative or final) or as-submitted for Medicare payment purposes. Under section 1888(e)(3) of the Act, any adjustments to the base year cost report made as a result of settlement or other action by the fiscal intermediary, including cost limit exceptions and exemptions, or results of an appeal, will result in a revision to the facility-specific per diem rate. The instructions for calculating the facility-specific per diem rate are described in detail in the May 12, 1998 interim final rule. In order to implement section 104 of the BBRA, for providers that received payment under the RUG–III demonstration during a cost reporting period that began in calendar year 1997, we will determine their facility-specific per diem rate using the methodology described below.

It is possible that some providers participated in the demonstration but did not have a cost reporting period that began in calendar year 1997. For those providers, we will determine their

facility-specific per diem rate by using the calculations outlined in the May 12, 1998 **Federal Register** interim final rule (63 FR 26251, section III. (A)(1)(a), (b), or (c)). As with the facility-specific per diem applicable to other providers, the allowable costs will be subject to change based on the settlement of the cost report used to determine the total payment under the demonstration. In addition, we derive a special market basket inflation factor to adjust the 1997 costs to the midpoint of the rate setting period (October 1, 2000 to September 30, 2001.)

Step 1—Determine the aggregate payment during the cost reporting period that began in calendar year 1997—RUG–III payment plus routine capital costs plus ancillary costs (other than occupational therapy, physical therapy, and speech pathology).

Step 2—Divide the amount in Step 1, by the applicable total inpatient days for the cost reporting period.

Step 3—Adjust the amount in Step 2, by 1.094828 (inflation factor).

Step 4—Add the amount determined in step 3, to the appropriate Part B add-on amount determined according to Program Memorandum transmittal no. A–99–53 (December 1999).

The amount in Step 4 is the facility-specific rate that is applicable for the facility's first cost reporting period beginning on or after October 1, 2000.

Computation of the Skilled Nursing Facility Prospective Payment System Rate During the Transition:

For the first three cost reporting periods beginning on or after July 1, 1998 (the transition period), an SNF's payment under the PPS is the sum of a percentage of the facility-specific per diem rate and a percentage of the adjusted Federal per diem rate. Under section 1888(e)(2)(C) of the Act, for the first cost reporting period in the transition period, the SNF payment will be the sum of 75 percent of the facility-specific per diem rate and 25 percent of the Federal per diem rate. For the second cost reporting period, the SNF payment will be the sum of 50 percent of the facility-specific per diem rate and 50 percent of the Federal per diem rate. For the third cost reporting period, the SNF payment will be the sum of 25 percent of the facility-specific per diem rate and 75 percent of the Federal per diem rate. For all subsequent cost reporting periods beginning after the transition period, the SNF payment will be equal to 100 percent of the Federal per diem rate. An example is given below computing the SNF PPS rate and SNF payment.

Example of computation of adjusted PPS rates and SNF payment:

Using the XYZ SNF described in Table 9, the following shows the adjustments made to the facility-specific per diem rate and the Federal per diem rate to compute the provider's actual per diem PPS payment in the transition period. XYZ's 12-month cost reporting period begins October 1, 2000. (This is the provider's second cost reporting period under the transition.)

STEP 1

Compute:	
Facility-specific per diem rate	$570.00
Market Basket Adjustment (Table 10.C)	x 1.13320
Adjusted facility-specific rate	$645.92

Step 2

Compute Federal per diem rate:

TABLE 9

[SNF XYZ from above is located in State College, PA with a wage index of 0.9138.]

RUG group	Labor portion*	Wage index	Adjusted labor	Nonlabor portion*	Adjusted rate	4 percent adjustment	Medicare days	Payment
VA5	$264.10	0.9138	$241.33	$75.96	$317.29	$329.98	50	$16,499
WA5	232.28	0.9138	212.26	66.81	279.07	290.23	50	14,512
Total							100	31,011

*From Table 7.

STEP 3

Apply transition period percentages:	
Facility-specific per diem rate $645.92 × 100 days =	$64,592
Times transition percentage (50 percent)	.50
Actual facility-specific PPS payment	32,296
Federal PPS payment	31,011
Times transition percentage (50 percent)	.50
Actual Federal PPS payment	15,506

STEP 4

Compute total PPS payment:	
XYZ's total PPS payment ($32,296 + $15,506)	47,802

IV. The Skilled Nursing Facility Market Basket Index

Section 1888(e)(5)(A) of the Act requires the Secretary to establish an SNF market basket index (input price index) that reflects changes over time in the prices of an appropriate mix of goods and services included in the SNF PPS. This rule incorporates the latest estimates of the SNF market basket index at the time of this proposed rule. The final rule will incorporate updated

projections based on the latest available projections as of that point in time. Accordingly, as described below, we have developed a SNF market basket index that encompasses the most commonly used cost categories for SNF routine services, ancillary services, and capital-related expenses. In the May 12, 1998 **Federal Register**, we included a complete discussion on rebasing the SNF market basket to FY 1992, and revising the index to include capital and ancillary costs. There are 21 separate cost categories and respective price proxies. These cost categories were illustrated in Tables 4.A, 4.B, and Appendix A, found in the May 12, 1998 **Federal Register**.

Each year we calculate a revised labor-related share based on the relative importance of labor-related cost categories in the input price index. Table 10.A below summarizes the updated labor-related share for FY 2001.

TABLE 10.A—FY 2001 LABOR-RELATED SHARE

Cost category	FY 2000 relative importance	FY 2001 relative importance
Wages and Salaries	56.647	56.744
Employee Benefits	12.321	12.405
Nonmedical Professional Fees	1.959	1.953
Labor-Intensive Services	3.738	3.733
Capital-related	2.880	2.826
Total	77.545	77.663

The forecasted rates of growth used to compute the projected SNF market basket percentages, described in the next section, are shown in Table 10.B.

TABLE 10.B—SKILLED NURSING FACILITY TOTAL COST MARKET BASKET, FORECASTED CHANGE, 1997–2002

Fiscal years beginning October 1	Skilled nursing facility total cost market basket
October 1996, FY 1997	2.4
October 1997, FY 1998	2.8
October 1998, FY 1999	2.8
October 1999, FY 2000	3.1
October 2000, FY 2001	2.8
October 2001, FY 2002	2.9
Forecasted Average: 2000–2002	2.9

Source: Standard & Poor's DRI HCC, 4th QTR, 1999; ❶USSIM/TREND25YR1199 ❷CISSIM/TRENDLONG1199.

Released by HCFA, OACT, National Health Statistics Group

Use of the Skilled Nursing Facility Market Basket Percentage:

Section 1888(e)(5)(B) of the Act defines the SNF market basket percentage as the percentage change in the SNF market basket index, described in the previous section, from the midpoint of the prior FY (or period) to the midpoint of the current FY (or other period) involved. The facility-specific portion and Federal portion of the SNF PPS rates addressed in this proposed rule are based on cost reporting periods beginning in the base year, Federal FY 1995. For the Federal rates, the percentage increases in the SNF market basket index will be used to compute the update factors occurring between the midpoint of FY 2000 and the midpoint of FY 2001. We used the Standard & Poor's DRI CC, 4th quarter 1999 historical and forecasted percentage increases of the revised and rebased SNF market basket index for routine, ancillary, and capital-related expenses, described in the previous section, to compute the update factors. Finally, the update factors, as described below, will be used to adjust the base year costs for computing the facility-specific portion and Federal portion of the SNF PPS rates.

A. Facility-Specific Rate Update Factor

Under section 1888(e)(3)(D)(i) of the Act, for the facility-specific portion of the SNF PPS rate, we will update a facility's base year costs up to the corresponding cost reporting period beginning October 1, 2000, and ending September 30, 2001, by the SNF market basket percentage. We took the following steps to develop the 12-month cost reporting period facility-specific rate update factors shown in Table 10.C.

For the facility rate, we developed factors to inflate data from cost reporting periods beginning October 1, 1994, through September 30, 1995, to the corresponding cost reporting period beginning in FY 2001. According to section 1888(e)(3)(D) of the Act, the years through FY 1999 were inflated at a rate of market basket minus 1 percentage point, while FY 2000 and FY 2001 are to be inflated at the full market basket rate of increase.

1. We first determined the total growth from the midpoint of each 12-month cost reporting period that began during the period from October 1, 1994, through September 30, 1995, to the midpoint of the corresponding period beginning in FY 2001.

2. From this total growth, we determined the average annual growth rate for each time span.

3. We subtracted 1 percentage point from each average annual growth rate through FY 1999.

4. These reduced average annual growth rates were converted to cumulative growth rates, using market basket minus one for the first four years, and with full market basket for the final two years. (For example, if the time span were for 9 years, we would inflate at the market basket minus 1 percentage point annual rate for 7 years and at annual market basket rate for 2 additional years).

TABLE 10.C—UPDATE FACTORS[1] FOR FACILITY-SPECIFIC PORTION OF THE SNF PPS RATES—ADJUST TO 12-MONTH COST REPORTING PERIODS BEGINNING ON OR AFTER OCTOBER 1, 2000 AND BEFORE OCTOBER 1, 2001 FROM COST REPORTING PERIODS BEGINNING IN FY 1995 (BASE YEAR)

If 12-month cost reporting period in initial period begins	Adjust from 12-month cost reporting period in base year that begins	Using update factor of
October 1, 2000	October 1, 1994	1.13320
November 1, 2000	November 1, 1994	1.13302
December 1, 2000	December 1, 1994	1.13276
January 1, 2001	January 1, 1995	1.13260
February 1, 2001	February 1, 1995	1.13273
March 1, 2001	March 1, 1995	1.13315
April 1, 2001	April 1, 1995	1.13363
May 1, 2001	May 1, 1995	1.13391
June 1, 2001	June 1, 1995	1.13401
July 1, 2001	July 1,1995	1.13411

TABLE 10.C—UPDATE FACTORS [1] FOR FACILITY-SPECIFIC PORTION OF THE SNF PPS RATES—ADJUST TO 12-MONTH COST REPORTING PERIODS BEGINNING ON OR AFTER OCTOBER 1, 2000 AND BEFORE OCTOBER 1, 2001 FROM COST REPORTING PERIODS BEGINNING IN FY 1995 (BASE YEAR)—Continued

If 12-month cost reporting period in initial period begins	Adjust from 12-month cost reporting period in base year that begins	Using update factor of
August 1, 2001	August 1, 1995	1.13443
September 1, 2001	September 1, 1995	1.13497

[1] Source: Standard & Poor's DRI, 1st Qtr 2000; ●USSIM/TREND25YR0299●CISSIM/CONTROL991

B. Federal Rate Update Factor

To update each facility's costs up to the common period, we:

1. Determined the total growth from the average market basket level for the period of October 1, 1999 through September 30, 2000 to the average market basket level for the period of October 1, 2000 through September 30, 2001.

2. Calculated the rate of growth between the midpoints of the two periods.

3. Calculated the annual average rate of growth for number 2, above.

4. Subtracted 1 percentage point from this annual average rate of growth.

5. Using the annual average minus 1 percentage point rate of growth, determined the cumulative growth between the midpoints of the two periods specified above.

This revised update factor was used to compute the Federal portion of the SNF PPS rate shown in Tables 1 and 2.

V. Consolidated Billing

Section 4432(b) of the BBA sets forth a consolidated billing requirement applicable to all SNFs providing Medicare services. SNF consolidated billing is a comprehensive billing requirement (similar to the one that has been in effect for inpatient hospital services for well over a decade), under which the SNF itself is responsible for billing Medicare for virtually all of the services that its beneficiaries receive. As with hospital bundling, the law contains a list of services (primarily those of physicians and certain other types of medical practitioners) that are excluded from SNF consolidated billing and, thus, can be separately billed to Part B directly by the outside entity that furnishes them to the Medicare beneficiary (see section 1888(e)(2)(A)(ii) of the Act).

Section 103(a)(2) of the BBRA added section 1888(e)(2)(A)(iii) to the Act to provide for the exclusion of certain additional types of services from SNF consolidated billing, effective with services furnished on or after April 1, 2000. The original statutory exclusions enacted by the BBA consisted of a number of broad service categories, and encompassed all of the individual services that fall within those categories. By contrast, the additional exclusions enacted in the BBRA apply only to certain specified, individual services within a number of broader service categories that otherwise remain subject to consolidated billing. Within the affected service categories—that is, chemotherapy items and their administration, radioisotope services, and customized prosthetic devices—the exclusion applies only to those individual services that are specifically identified by HCPCS code in the legislation itself, while all other services within those broader categories remain subject to consolidated billing. See Table 11, Post-BBA Consolidated Billing Exclusions. We have issued Program Memorandum (PM) no. AB–00–18 (March 2000), which lists the HCPCS codes of those particular services identified by the BBRA as excluded from consolidated billing.

TABLE 11.—POST-BBA CONSOLIDATED BILLING EXCLUSIONS

Exclusion	Exclusion authority	Effective date	Comments
Chemotherapy & Administration	Section 103 of BBRA; section 1888(e)(2)(A) (iii) (II) and (III) of the Act.	4/1/2000	Only applies to those HCPCS codes specified in legislation; Excluded regardless of whether they are furnished in a hospital or nonhospital setting.
Radioisotope Services	Section 103 of BBRA; section 1888(e)(2)(A) (iii) (IV) of the Act.	4/1/2000	Only applies to those HCPCS codes specified in legislation; Excluded regardless of whether they are furnished in a hospital or nonhospital setting.
Customized prosthetic devices	Section 103 of BBRA; section 1888(e)(2)(A) (iii) (V) of the Act.	4/1/2000	Only applies to those HCPCS codes specified in legislation; Excluded regardless of whether they are furnished in a hospital or nonhospital setting.
Ambulance Services furnished in conjunction with Part B Dialysis services.	Section 103 of BBRA; section 1888(e)(2)(A) (iii) (I) of the Act.	4/1/2000	Subject to the medical necessity requirements that apply to ambulance services generally.
Outpatient hospital services that HCFA has identified (see Program Memorandum A–98–;37, 11/1998) as being beyond the general scope of SNF care plans, along with associated ambulance services: • Cardiac catheterization; • CT scans; • Magnetic resonance imaging (MRIs);	§ 411.15(p)(2)(x) and (p)(3)(iii), as promulgated in the SNF PPS Interim Final Rule (5/12/1998).	7/1/1998	Excluded from consolidated billing only when furnished in the outpatient hospital setting.

TABLE 11.—POST-BBA CONSOLIDATED BILLING EXCLUSIONS—Continued

Exclusion	Exclusion authority	Effective date	Comments
• Ambulatory surgery involving the use of an operating room; • Emergency services; • Radiation therapy; • Angiography; • Venous and lymphatic procedures			

The BBRA Conference report (H.R. Conf. Rep. No. 106–479 at 854) characterizes the individual services that this legislation targets for exclusion as "* * * high-cost, low probability events that could have devastating financial impacts because their costs far exceed the payment [SNFs] receive under the prospective payment system * * *." According to the conferees, section 103(a) "is an attempt to exclude from the PPS certain services and costly items that are provided infrequently in SNFs * * *." Some chemotherapy drugs, which are relatively inexpensive and are administered routinely in SNFs, were excluded from this provision [and thus continue to be subject to consolidated billing requirements]. Id.

Further, we note that the exceptionally costly and intensive outpatient hospital services, such as magnetic resonance imaging (MRIs) and cardiac catheterization, that we identified previously under the regulations at § 411.15(p)(3)(iii) (see the preamble discussion in the May 12, 1998 interim final rule at 63 FR 26298–99, and in the July 30, 1999 final rule at 64 FR 41675–76) are excluded from consolidated billing only when furnished in the outpatient hospital setting. By contrast, as indicated in Table 11, the services identified in section 103 of the BBRA are excluded regardless of whether they are furnished in a hospital or nonhospital setting.

In addition, section 103(a)(2) of the BBRA excludes from consolidated billing those ambulance services that are furnished to an SNF beneficiary in conjunction with dialysis services that are covered under Part B. We note that Part B dialysis services themselves are already excluded from consolidated billing (see regulations at 42 CFR 411.15(p)(2)(vii)), as are those ambulance services that are furnished to a beneficiary who is not considered an SNF "resident" for consolidated billing purposes (see § 411.15(p)(2)(x))—for example, a beneficiary who receives one of the excluded outpatient hospital services under § 411.15(p)(3)(iii). The BBRA Conference Committee report further indicates that the newly excluded ambulance services (that is, those needed to transport a SNF resident who receives Part B dialysis services offsite at a certified dialysis facility) still remain subject to the overall medical necessity requirement that applies to ambulance services generally; that is, that ambulance coverage is available only in those situations where the use of other means of transportation is medically contraindicated. (H.R. Conf. Rep. No. 106–479 at 854.)

Further, we note that the statutory exclusion of those ambulance services that are furnished to SNF residents in conjunction with Part B dialysis services does not extend to ambulance services furnished to SNF residents in conjunction with any of the other types of services that this section of the BBRA identifies as excluded. For example, when a SNF resident is temporarily transported offsite via ambulance to receive a type of chemotherapy that is excluded by the BBRA, the ambulance services themselves remain subject to the SNF consolidated billing provision, and are not separately billable to Part B.

Section 103 of the BBRA also gives the Secretary the authority to designate additional, individual services for exclusion within each of the specified service categories. The BBRA Conference report notes that "* * * [n]ew, extremely costly items may come into use or codes may change over time", H.R. Conf. Rep. No. 106–479 at 854 and the discretionary authority provided in the BBRA affords the Secretary the flexibility to revise the exclusion list as warranted by changing conditions that may occur in the future. For example, we note that the BBRA's conference agreement requests the GAO to conduct a review, by July 1, 2000, of the appropriateness of the codes that this legislation has designated for exclusion from consolidated billing. We will carefully consider the GAO's findings to determine whether further refinements in the exclusion list are warranted.

Also, we note that the BBRA made a number of technical corrections in the provisions of the BBA. One of these corrections, section 321(g)(2) of the BBRA, has revised the statute at section 1833(h)(5)(A)(iii) of the Act to make it clear that clinical diagnostic tests furnished to a SNF resident are subject to the consolidated billing requirement.

Finally, while we have implemented consolidated billing in connection with services furnished to SNF residents during Medicare-covered stays, we have not yet implemented so-called "Part B" consolidated billing, in connection with services furnished to SNF residents who are in noncovered stays. As we explained in the July 30, 1999 final rule, the overriding need to accomplish systems renovations in time to achieve Year 2000 (Y2K) compliance forced us to delay certain other projects that involved significant systems modifications of their own, including the implementation of this aspect of consolidated billing. Now that the Y2K-related systems changes have been completed, we have been able to resume work on these other projects. In this context, we have been reexamining some of the operational implications of consolidated billing that are specific to implementing the "Part B" aspect of this provision.

For example, under regulations at § 411.15(p)(3)(iv), if a beneficiary leaves the SNF and then returns within 24 hours of departure, his or her status as an SNF "resident" (for consolidated billing purposes) continues during the absence, regardless of whether the SNF has effected a formal discharge. This would make the SNF responsible for billing Medicare for any services that a beneficiary receives during a temporary absence of up to 24 hours, other than those that are specifically excluded (see the preamble discussion in the SNF PPS interim final rule (63 FR 26298 through 26299, May 12, 1998)). Since consolidated billing is currently in effect only for those SNF stays that are covered by Part A and paid by the PPS, this essentially means that such a beneficiary remains a SNF "resident" after leaving the SNF only if he or she then returns to the SNF by midnight, thus making the day of departure a covered Part A day. However, once

consolidated billing is fully implemented, this will effectively convert the policy regarding services furnished during a beneficiary's temporary absence from the current "midnight rule" to the full "24 hour rule" described in the regulations.

As explained in the SNF PPS interim final rule, we initially established a 24-hour window in the regulations in order to prevent a SNF from being able to unbundle a particular service merely by sending a beneficiary offsite briefly to receive the service as an outpatient of a hospital or clinic. However, we note that SNFs basically have a financial incentive to unbundle such services only in connection with a resident whose stay is covered under Part A, since unbundling the service would mean that it could be paid separately under Part B, rather than out of the global per diem amount that Part A pays the SNF for the covered stay itself. By contrast, a resident who is in a noncovered stay does not qualify for comprehensive coverage of the entire institutional package of care under Part A, but only for Part B coverage of the individual medical and other health services specified in section 1861(s) of the Act. This means that when a SNF resident is in a noncovered stay, Part B would pay individually for each covered medical or other health service furnished to that resident, regardless of whether the SNF or an outside supplier submits the bill.

Thus, as the financial incentives for unbundling are associated with covered stays, we believe that it may be appropriate to have a standard with regard to SNF "resident" status that, in actual practice, is not more stringent for noncovered stays. We could revise the regulations at § 411.15(p)(3)(iv) to provide for continuing a beneficiary's "resident" status during a temporary absence only if he or she returns by midnight of the day of departure. This would, in effect, utilize the same standard that currently applies to covered stays for noncovered stays as well, and we invite comments on the appropriateness of such a revision.

As a point of clarification, we note that the phrase "midnight of the day of departure" refers to the midnight that immediately follows the actual moment of departure, rather than to the midnight that immediately precedes it (see, for example, the discussion of a "leave of absence" in section 3103.3 of the Medicare Intermediary Manual, Part 3 (HCFA Pub. 13–3), which indicates that the day a patient returns to the hospital from a leave of absence "* * * is counted as an inpatient day if he is present *at midnight of that day*" (emphasis added)). Thus, under this policy, a patient "day" begins at 12:01 A.M., and midnight of a particular day occurs at the very end of that day rather than at the very beginning. For example, under the "midnight rule," if a beneficiary begins a leave of absence from the SNF at 10:00 A.M. on July 1 but subsequently returns to the SNF by 12:00 A.M. that night, the beneficiary would continue to be considered a "resident" of the SNF, for consolidated billing purposes, during his or her absence. By contrast, if the beneficiary does not return to the SNF until 1:00 A.M. on the morning of July 2, his or her "resident" status, for consolidated billing purposes, would end as of 10:00 A.M. on July 1, and would not resume until the actual point of readmission to the SNF (that is, as of 1:00 A.M. on July 2).

VI. Provisions of the Proposed Rule

The provisions of this proposed rule are as follows:

- In § 411.15, paragraph (p)(2)(vii) would be revised to exclude from consolidated billing those ambulance services that are furnished to an SNF resident in conjunction with dialysis services that are covered under Part B.
- In § 411.15, paragraph (p)(2) would also be revised to list the additional services that the BBRA has excluded from consolidated billing.
- In § 411.15, paragraph (p)(3)(iv), the phrase "within 24 consecutive hours" would be revised to read "by midnight of the day of departure".
- In § 489.20, paragraph (s) would be revised to list the additional services that BBRA has excluded from consolidated billing, and a conforming change would be made in § 489.21(h).
- In § 489.20, paragraph (s)(7) would be revised to exclude from consolidated billing those ambulance services that are furnished to an SNF resident in conjunction with dialysis services that are covered under Part B.
- Section 489.20(s)(11) and § 411.15(p)(2)(xi), would be revised to reflect editorial revisions in the paragraphs concerning the transportation costs of electrocardiogram equipment.

VII. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et.seq.).

VIII. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IX. Regulatory Impact Analysis

We have examined the impacts of this rule as required by Executive Order (EO) 12866, the Unfunded Mandates Reform Act (UMRA) (Pub. L. 104–4), the Regulatory Flexibility Act (RFA) (Pub. L. 96–354), and the Federalism Executive Order (EO) 13132.

Executive Order 12866 directs agencies to assess costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This notice is a major rule as defined in Title 5, United States Code, section 804(2), because we estimate its impact will be to increase the payments to SNFs by approximately $900 million in FY 2001. The update set forth in this notice applies to payments in FY 2001. Accordingly, the analysis that follows describes the impact of this one year only. In accordance with the requirements of the Act, we will publish a notice for each subsequent FY that will provide for an update to the payment rates and include an associated impact analysis.

The UMRA also requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule will have no consequential effect on State, local, or tribal governments. We believe the private sector cost of this rule falls below these thresholds as well.

Executive Order 13132 (effective November 2, 1999), establishes certain requirements that an agency must meet when it promulgates regulations that impose substantial direct compliance costs on State and local governments,

preempts State law, or otherwise have Federalism implications. As stated above, this rule will have no consequential effect on State and local governments.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most SNFs and most other providers and suppliers are small entities, either by virtue of their nonprofit status or by having revenues of $5 million or less annually. For purposes of the RFA, all States and tribal governments are not considered to be small entities, nor are intermediaries or carriers. Individuals and States are not included in the definition of a small entity. The policies contained in this rule would update the SNF PPS rates by increasing the payment rates published in the July 30, 1999 notice, but will not have a significant effect upon small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this notice will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

A. Background

This notice sets forth proposed updates of the SNF PPS rates contained in the update notice, published on July 30, 1999. Table 13 below, presents the projected effects of the policy changes in the SNF PPS update notice, as well as statutory changes effective for FY 2001, on various SNF categories. We estimate the effects of each policy change by estimating payments while holding all other payment variables constant. We use the best data available, but we do not attempt to predict behavioral responses to our policy changes, and we do not make adjustments for future changes in such variables as days or case-mix.

This analysis incorporates the latest estimates of growth in service use and payments under the Medicare SNF benefit based on Medicare claims from 1998. Some of the data used for this analysis are the same data used to develop the impact analysis associated with the SNF PPS update notice promulgated on July 30, 1999 (64 FR 41684). These data were used to estimate the effects of changing only one payment variable at a time. We have also utilized MDS 2.0 data from the States used for the RUG–III refinement research (described in section 2.B earlier) to illustrate the effect of case mix refinements on the classification of the patient population in the study States. In addition, we are unable at this time to demonstrate the distributional impact of these case mix refinements on facility payments but anticipate doing so in the final rule planned for later this year.

We have used the best avaliable data on SNF case mix in calculating the FY 2001 impact for this proposed rule; however, we note that the data currently available on Medicare SNF claims and MDS 2.0 do not reflect the refined case mix classification system and case-mix indices proposed in this rule. While we still have only a partial database of SNF PPS claims and MDS 2.0 data at the present time due to the phased-in manner in which SNFs came into the PPS, we are confident that sufficient national data reflecting the distribution of payments and service days under the new RUG–III classification model can be assembled before promulgation of the final rule associated with this update. While the refinement to the case-mix classification system results in no greater or lesser aggregate payments to SNFs under the Medicare SNF PPS, we believe it is important to estimate the potential distributional impact of incorporating the refined RUG–III case-mix groups and indices. Consequently, for the final rule implementing the FY 2001 SNF PPS rates, we anticipate using such a national data base of SNF PPS claims and MDS 2.0 data to estimate more accurately the impact of this update, including the distributional effect of the case-mix refinements on payments for different facility types and locations. However, based on the data currently available, we believe that the method we have used to develop the impact analysis for this proposed rule offers the most accurate estimate of the FY 2001 update to the SNF PPS.

For this proposed rule, we have attempted to convey a sense of the effect of the case-mix refinements on the classification of residents in SNFs. Below, we have prepared Table 12 which displays the distribution of patients in the six-state sample used to develop the case-mix refinements, as shown for both the existing RUG–III groups and for the refined model proposed in this rule. This table details a comparison of the distribution of an identical group of Medicare patients across both the existing and proposed RUG–III classification models. In addition, Table 6, in Technical Appendix A accompanying this rule, illustrates a comparison of the distribution of this same group of patients across the existing RUG–III system and the alternate ancillary index refinement approach (WIM2) discussed earlier in this proposed rule.

TABLE 12.—DISTRIBUTIONAL SHIFTS OF BENEFICIARIES BETWEEN EXISTING RUG–III–MODEL AND THE REFINED MODEL PROPOSED IN THIS RULE

RUG III category	Existing RUG–III	Refined RUG III category	Refined RUG–III (UWIM)
RUC+SE		JA5	14
RUC+SE		JA4	91
RUC+SE		JA3	78
RUC+SE		JA2	0
RUB+SE		JB5	9
RUB+SE		JB4	82
RUB+SE		JB3	190
RUB+SE		JB2	0
RUA+SE		JC5	0
RUA+SE		JC4	4
RUA+SE		JC3	23
RUA+SE		JC2	0

TABLE 12.—DISTRIBUTIONAL SHIFTS OF BENEFICIARIES BETWEEN EXISTING RUG–III–MODEL AND THE REFINED MODEL PROPOSED IN THIS RULE—Continued

RUG III category	Existing RUG–III	Refined RUG III category	Refined RUG–III (UWIM)
RVC+SE		KA5	5
RVC+SE		KA4	80
RVC+SE		KA3	75
RVC+SE		KA2	0
RVB+SE		KB5	2
RVB+SE		KB4	77
RVB+SE		KB3	169
RVB+SE		KB2	0
RVA+SE		KC5	0
RVA+SE		KC4	13
RVA+SE		KC3	18
RVA+SE		KC2	0
RHC+SE		LA5	12
RHC+SE		LA4	89
RHC+SE		LA3	143
RHC+SE		LA2	0
RHB+SE		LB5	1
RHB+SE		LB4	37
RHB+SE		LB3	91
RHB+SE		LB2	0
RHA+SE		LC5	0
RHA+SE		LC4	0
RHA+SE		LC3	1
RHA+SE		LC2	0
RMC+SE		MA5	40
RMC+SE		MA4	333
RMC+SE		MA3	376
RMC+SE		MA2	0
RMB+SE		MB5	5
RMB+SE		MB4	183
RMB+SE		MB3	563
RMB+SE		MB2	2
RMA+SE		MC5	0
RMA+SE		MC4	1
RMA+SE		MC3	15
RMA+SE		MC2	0
RLB+SE		NA5	0
RLB+SE		NA4	12
RLB+SE		NA3	28
RLB+SE		NA2	0
RLA+SE		NB5	0
RLA+SE		NB4	4
RLA+SE		NB3	31
RLA+SE		NB2	0
RUC	971	UA5	1
RUC		UA4	63
RUC		UA3	424
RUC		UA2	300
RUB	3072	UB5	1
RUB		UB4	106
RUB		UB3	1100
RUB		UB2	1584
RUA	1222	UC5	0
RUA		UC4	30
RUA		UC3	349
RUA		UC2	816
RVC	853	VA5	1
RVC		VA4	53
RVC		VA3	350
RVC		VA2	289
RVB	2812	VB5	0
RVB		VB4	81
RVB		VB3	1091
RVB		VB2	1392
RVA	1383	VC5	0

TABLE 12.—DISTRIBUTIONAL SHIFTS OF BENEFICIARIES BETWEEN EXISTING RUG–III MODEL AND THE REFINED MODEL PROPOSED IN THIS RULE—Continued

RUG III category	Existing RUG–III	Refined RUG III category	Refined RUG–III (UWIM)
RVA		VC4	41
RVA		VC3	471
RVA		VC2	840
RHC	1808	WA5	0
RHC		WA4	75
RHC		WA3	721
RHC		WA2	768
RHB	1795	WB5	0
RHB		WB4	38
RHB		WB3	601
RHB		WB2	1027
RHA	900	WC5	0
RHA		WC4	23
RHA		WC3	309
RHA		WC2	567
RMC	3834	XX5	0
RMC		XA4	205
RMC		XA3	1601
RMC		XA2	1279
RMB	7142	XB5	0
RMB		XB4	160
RMB		XB3	2487
RMB		XB2	3742
RMA	2426	XC5	0
RMA		XC4	68
RMA		XC3	801
RMA		XC2	1541
RLB	404	YA5	0
RLB		YA4	18
RLB		YA3	182
RLB		YA2	164
RLA	703	YB5	0
RLA		YB4	19
RLA		YB3	249
RLA		YB2	400
SE3	2059	EA5	106
SE3		EA4	1021
SE3		EA3	932
SE3		EA2	0
SE2	2944	EB5	65
SE2		EB4	913
SE2		EB3	1934
SE2		EB2	32
SE1	272	EC5	0
SE1		EC4	33
SE1		EC3	227
SE1		EC2	12
SSC	3129	SA5	2
SSC		SA4	391
SSC		SA3	1907
SSC		SA2	829
SSB	3598	SB5	0
SSB		SB4	370
SSB		SB3	2168
SSB		SB2	1060
SSA	6251	SC5	0
SSA		SC4	424
SSA		SC3	3688
SSA		SC2	2139
CC2	58	CA5	0
CC2		CA4	1
CC2		CA3	26
CC2		CA2	29
CC1	309	CB5	0
CC1		CB4	18

TABLE 12.—DISTRIBUTIONAL SHIFTS OF BENEFICIARIES BETWEEN EXISTING RUG–III–MODEL AND THE REFINED MODEL PROPOSED IN THIS RULE—Continued

RUG III category	Existing RUG–III	Refined RUG III category	Refined RUG–III (UWIM)
CC1		CB3	171
CC1		CB2	120
CB2	282	CC5	0
CB2		CC4	9
CB2		CC3	104
CB2		CC2	149
CB1	1423	CD5	0
CB1		CD4	36
CB1		CD3	619
CB1		CD2	788
CA2	802	CE5	0
CA2		CE4	18
CA2		CE3	319
CA2		CE2	465
CA1	4977	CF5	0
CA1		CF4	107
CA1		CF3	2075
CA1		CF2	2795
IB2	60	IA1	60
IB1	585	IB1	585
IA2	12	IC1	12
IA1	379	ID1	379
BB2	1	BA1	1
BB1	52	BB1	52
BA2	2	BC1	2
BA1	71	BD1	71
PE2	41	PA1	41
PE1	401	PB1	401
PD2	119	PC1	119
PD1	1184	PD1	1184
PC2	33	PE1	33
PC1	342	PF1	342
PB2	39	PG1	39
PB1	602	PH1	602
PA2	40	PI1	40
PA1	1185	PJ1	1185

We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, very susceptible to forecasting errors due to other changes in the forecasted impact time period. Some examples of such possible events are newly legislated general Medicare program funding changes by the Congress, or changes specifically related to SNFs. In addition, changes to the Medicare program may continue to be made as a result of the BBA. Although these changes may not be specific to SNF PPS, due to the nature of the Medicare program the changes may interact, and the complexity of the interaction of these changes could make it very difficult to predict accurately the full scope of the impact upon SNFs.

B. Impact of This Proposed Rule

As stated previously in this preamble, the aggregate increase in payments associated with this update is estimated to be $900 million. There are three areas of change that produce this increase for facilities—

1. The effect of the Federal transition, that results in many facilities being paid 75 percent at the Federal rate and 25 percent at the facility-specific rate instead of the current 50 percent Federal rate and 50 percent facility-specific rate. There is also the additional effect of the BBRA option to bypass the transition and be paid according to 100 percent of the Federal rate;

2. The implementation of various other provisions in the BBRA; and,

3. The total change in payments from FY 2000 levels to FY 2001 levels. This includes all of the previously noted changes in addition to the effect of the update to the rates.

As seen in table 13 below, some of these areas result in increased aggregate payments and others tend to lower them. The breakdown of the various categories of data in the table are as follows:

In column one, the first row of the table includes the effects on all facilities. The next six rows show the effects on facilities split by hospital-based versus freestanding and urban versus rural. The rest of the table shows the effects on urban versus rural status by census region.

The second column in the table shows the number of facilities in the impact database. The third column shows the effect of the transition to the Federal rates. It includes the impact of the normal progression of facilities in the transition to new cost reporting periods

and, therefore, blended payment amounts (that is, facility-specific versus Federal rates) as well as those facilities that, as a result of the BBRA, elect to bypass the transition and go immediately to the full Federal rate). This change has an overall effect of raising payments by .3 percent, with most of the increase coming from freestanding facilities. There are several regions that have decreased payments due to this provision, but the majority (and most populous) of the regions evidence higher payments, with the largest increase being in the New England and mid-Atlantic regions for both urban and rural facilities.

We estimate that approximately 51 percent of SNFs currently under the transition will elect to be paid based on 100 percent of the Federal rate. Of these facilities, we estimate 22 percent are hospital-based and 78 percent are freestanding.

The fourth column shows the projected effect of the 4 percent add-on to the adjusted Federal rate mandated by the BBRA. As expected, this provision results in an increase in payments for all facilities. However, as seen in the table, the varying effect of the SNF PPS transition results in a distributional impact of this provision. In addition, since this increase only applies to the Federal portion of the payment rate, the effect on total expenditures is less than 4 percent.

The fifth column of the table shows the effect of the update to the Federal and facility-specific payment rates. It reflects an update to the Federal rates of 1.833 percent, which is equivalent to the market basket increase minus 1 percentage point, as required by law. In addition, it reflects an update to the facility-specific rates of 2.833 percent, which is equivalent to the full market basket increase for this period. For this analysis, it is assumed that payments will increase by 2.0 percent in total if there are no behavioral changes by the facilities. As can be seen from this table, the effects of the update itself do not vary significantly by specific types of providers or by location.

The sixth column of the table shows the effect of all of the changes on the FY 2001 payments. This includes all of the previous changes, including the update to this year's payment rates by the market basket. Therefore, it is assumed that payments will increase by 5.8 percent in total, assuming facilities do not change their care delivery and billing practices in response. As can be seen from this table, the combined effects of all of the changes vary much more widely by specific types of providers and by location. For example, freestanding facilities enjoy more significant payment increases due to the policy changes, while the effects of the transition tend to diminish the increase for hospital-based providers.

TABLE 13.—PROJECTED IMPACT OF FY 2001 UPDATE TO THE SNF PPS

	Number of facilities	Transition to federal rates (percent)	Add on to federal rates (percent)	Update change (percent)	Total FY 2001 change (percent)
Total	9037	0.3	3.4	2.0	5.8
Urban	6300	0.0	3.4	2.0	5.5
Rural	2737	1.4	3.5	1.9	6.9
Hospital based urban	683	−6.1	2.9	2.1	−1.3
Freestanding urban	5617	1.2	3.5	2.0	6.8
Hospital based rural	533	−3.2	3.2	2.0	1.9
Freestanding rural	2204	2.5	3.6	1.9	5.8
Urban by region:					
New England	630	6.1	3.8	1.9	12.2
Middle Atlantic	877	5.1	3.7	1.9	11.1
South Atlantic	959	−2.0	3.2	2.0	3.2
East North Central	1232	1.5	3.5	1.9	7.0
East South Central	212	−1.3	3.3	2.0	4.0
West North Central	469	0.3	3.4	2.0	5.8
West South Central	519	−6.8	2.9	2.1	−2.1
Mountain	303	−4.6	3.0	2.1	0.3
Pacific	1070	−2.5	3.2	2.0	2.6
Rural by region:					
New England	88	6.0	3.9	1.9	12.2
Middle Atlantic	144	4.0	3.7	1.9	9.9
South Atlantic	373	0.6	3.5	2.0	6.2
East North Central	561	2.6	3.6	1.9	8.3
East South Central	255	−0.4	3.4	2.0	5.0
West North Central	581	3.9	3.6	1.9	9.7
West South Central	354	−3.2	3.2	2.0	1.9
Mountain	204	0.2	3.4	2.0	5.7
Pacific	151	1.7	3.6	1.9	7.4

Notes:
1. The effects of the various changes are not additive.
2. The percent differences illustrated in this table are measured against the policies and payment rates in effect for FY 2000 as described in the SNF PPS Notice published on July 30, 1999 (64 FR 42684).
3. This table reflects Federal payment rates based on the case-mix methodology and wage index used for FY 2000. As explained in the text, the FY 2001 wage index and national case-mix data based on the refined RUG–III model are not currently available, but will be for the final rule.

In the final rule implementing the SNF PPS update for FY 2001, we will revise the estimates listed in Table 13 to reflect the final FY 2001 payment rates as well as the latest available data on estimates of program growth in services and expenditures. Table 13 will also incorporate two additional columns showing the projected distributional effect of the refined case-mix classification system based on actual MDS 2.0 data and updated wage index

across the various facility types and locations, as discussed earlier. We will also indicate the impact of the reduction in the Federal rates to account for the new services excluded from consolidated billing under section 103 of the BBRA.

As discussed earlier in this rule, Section 101 of the BBRA provides for a 20 percent positive adjustment to the adjusted Federal rates associated with 15 RUG–III groups for the period of April 1, 2000 through October 1, 2000. In addition, it provides for a four percent positive adjustment to the Federal rates associated with all RUG–III categories for FY 2001 and FY 2002, regardless of whether refinements to the case-mix adjustment are implemented. However, were we not to implement case-mix refinements such as those proposed in this rule for FY 2001, the Federal rates for this period would be based on the existing RUG–III model currently in use and maintain the 20 percent adjustments to the 15 specified RUG–III groups. As indicated in Table 13, the effect of this proposed rule will be an increase in expenditures of 900 million dollars (or +5.8 percent) over the payment rates and policies as described in the SNF PPS Notice published on July 30, 1999 (64 FR 41684). However, were we not to implement case-mix refinements, the effect of this BBRA provision would be a larger increase in expenditures equaling 1.9 billion dollars (or +12.5 percent). At the present time, we are unable to illustrate the distributional impact of maintaining this 20 percent add-on, but will attempt to develop the data to allow us to do so for the final rule associated with the FY 2001 update. It is important to note that such a result would also have negative consequences for the beneficiary. Section 101 of the BBRA provides the 20 percent add-on for certain RUG–III rehabilitation groups, resulting in higher payments for such groups even though they are associated with a lower intensity of service than other rehabilitation groups. This results in a perverse incentive where some facilities may choose to provide less rehabilitation services to beneficiaries in order to receive the higher payments. Because this provision of the law takes effect on April 1, 2000, it may already be resulting in a reduction of needed services. Adoption of the refinements proposed in this rule would eliminate this perverse incentive.

As noted previously, we are proposing the addition of new RUG–III categories to recognize the needs of Medicare beneficiaries with both heavy medical and rehabilitation needs and to account more precisely for the variation in non-therapy ancillary services. The refinements will achieve important improvements in the PPS and allow for more accurate payment rates, thus meeting our responsibility to provide for equitable payments to providers while ensuring access to quality SNF care for Medicare beneficiaries. In evaluating the different options, it is important to analyze the overall impact of implementing a refined case-mix system. Adoption of any of these refinements will increase the complexity of the PPS and may introduce some initial uncertainty for providers, who would have to become familiar with the refined system and modify existing operational and support systems. As discussed in section II.B of this proposed rule, we propose adoption of the UWIM model because we believe it best represents an appropriate balance between improvements in the accuracy of our payments and the complexity and uncertainty which results from changes of this nature.

Finally, in accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

X. Federalism

We have reviewed this final rule under the threshold criteria of Executive Order 13132, Federalism, and we have determined that it does not significantly affect the rights, roles, and responsibilities of States.

List of Subjects

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR chapter IV would be amended as follows:

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

A. Part 411 is amended as set forth below:

1. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Exclusions and Exclusion of Particular Services

2. Section 411.15 is amended by:

A. Republishing the introductory text.

B. Revising paragraphs (p)(2)(vii) and (p)(2)(xi).

C. Adding new paragraphs (p)(2)(xii), (p)(2)(xiii), (p)(2)(xiv), and (p)(2)(xv).

D. Revising paragraph (p)(3)(iv).

§ 411.15 Particular services excluded from coverage.

The following services are excluded from coverage.

* * * * *

(p) *Services furnished to SNF residents.* * * *

(2) *Exceptions.* The following services are not excluded from coverage:

* * * * *

(vii) Dialysis services and supplies, as defined in section 1861(s)(2)(F) of the Act, and those ambulance services that are furnished in conjunction with them.

* * * * *

(xi) The transportation costs of electrocardiogram equipment (HCPCS code R0076), but only with respect to those electrocardiogram test services furnished during 1998.

(xii) Those chemotherapy items identified, as of July 1, 1999, by HCPCS codes J9000–J9020; J9040–J9151; J9170–J9185; J9200–J9201; J9206–J9208; J9211; J9230–J9245; and J9265–J9600.

(xiii) Those chemotherapy administration services identified, as of July 1, 1999, by HCPCS codes 36260–36262; 36489; 36530–36535; 36640; 36823; and 96405–96542.

(xiv) Those radioisotope services identified, as of July 1, 1999, by HCPCS codes 79030–79440.

(xv) Those customized prosthetic devices (including artificial limbs and their components) identified, as of July 1, 1999, by HCPCS codes L5050–L5340; L5500–L5611; L5613–L5986; L5988; L6050–L6370; L6400–6880; L6920–L7274; and L7362–L7366, which are delivered for a resident's use during a stay in the SNF and intended to be used by the resident after discharge from the SNF.

(3) *SNF resident defined.* * * *

(iv) The beneficiary is formally discharged (or otherwise departs) from the SNF, unless the beneficiary is readmitted (or returns) to that or another SNF by midnight of the day of departure.

* * * * *

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

B. Part 489 is amended to read as follows:

1. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Essentials of Provider Agreements

2. Section 489.20 is amended by:

A. Republishing the introductory text and paragraph (s) introductory text.

B. Revising paragraphs (s)(7) and (s)(11).

C. Adding new paragraphs (s)(12), (s)(13), (s)(14), and (s)(15).

§ 489.20 Basic commitments.

The provider agrees to the following:

* * * * *

(s) In the case of an SNF, either to furnish directly or make arrangements (as defined in § 409.3 of this chapter) for all Medicare-covered services furnished to a resident (as defined in § 411.15(p)(3) of this chapter) of the SNF, except the following:

* * * * *

(7) Dialysis services and supplies, as defined in section 1861(s)(2)(F) of the Act, and those ambulance services that are furnished in conjunction with them.

* * * * *

(11) The transportation costs of electrocardiogram equipment (HCPCS code R0076), but only with respect to those electrocardiogram test services furnished during 1998.

(12) Those chemotherapy items identified, as of July 1, 1999, by HCPCS codes J9000–J9020; J9040–J9151; J9170–J9185; J9200–J9201; J9206–J9208; J9211; J9230–J9245; and J9265–J9600.

(13) Those chemotherapy administration services identified, as of July 1, 1999, by HCPCS codes 36260–36262; 36489; 36530–36535; 36640; 36823; and 96405–96542.

(14) Those radioisotope services identified, as of July 1, 1999, by HCPCS codes 79030–79440.

(15) Those customized prosthetic devices (including artificial limbs and their components) identified, as of July 1, 1999, by HCPCS codes L5050–L5340; L5500–L5611; L5613–L5986; L5988; L6050–L6370; L6400–6880; L6920–L7274; and L7362–L7366, which are delivered for a resident's use during a stay in the SNF and intended to be used by the resident after discharge from the SNF.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 20, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Approved: March 27, 2000.

Donna E. Shalala,

Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

Technical Appendix A—Technical Features of the RUG–III Refinements Analyses

The purpose of the research discussed in this proposed rule is to develop potential refinements to the PPS that would better ensure accurate and equitable payment. An analytic (or research) data base consisting of linked MDS assessments and Medicare claims data was developed, and used to perform the analyses described in this proposed rule.

A. Creation of Analytic Sample

In creating the analytic sample used to develop and test potential refinements, we were guided by the desire to have a large, representative sample and the need to exclude assessments likely to contain reporting errors. Our original sample included 733,300 MDS assessments from seven States, representing the years 1995 through 1997. We then reduced this sample through implementation of the following exclusion criteria:

1. Exclude all assessments from New York. All assessments from New York were excluded from analyses that used Medicare claims data because many facilities in the State billed SNF stays using an all-inclusive rate. Because these facilities did not use the revenue codes that we used to measure prescription drug, respiratory therapy or other non-therapy ancillary charges, measured ancillary charges for most New York beneficiaries were zero in some or all of the revenue codes analyzed for this study. The exclusion of New York results in the removal of 525,215 of the 733,300 total MDS assessments from our analytic sample.

2. Exclude all assessments for which a cost-to-charge ratio could not be calculated. Medicare cost report data were used to calculate the facility-specific ratio of Total Part A allowed cost to total Part A charges for each facility in each year. Facilities missing Medicare cost reports for at least two years between 1995 and 1997 were excluded because we were not able to calculate cost-to-charge ratios for the facility. This resulted in the exclusion of 93,314 additional assessments.

3. Exclude all facilities for which the correlation between a measure of drug costs calculated from Section U and one calculated from Medicare claims data was less than zero. We used drug charge data derived from Medicare claims in the refinement analyses, but used the Section U data to identify facilities with unreliable drug cost data. For facilities that have a negative correlation between the two drug cost measures, there is a concern about inaccurate reporting on either claims or MDS assessments at the facility level, and these facilities were excluded. This step resulted in the exclusion of 10,915 MDS assessments.

4. Exclude all beneficiaries with per diem ancillary charges greater than $1,000. Two hundred fifty-three (253) observations with per diem total ancillary charges greater than $1,000 were excluded from the refinement analyses. Summary measures of statistical performance such as R-squared are typically sensitive to outliers, and these extreme values were judged unlikely to be accurate. In addition, such values have disproportionate leverage in the design of potential refinements. The exclusion of extreme outliers in refinement analyses does not mean that their costs cannot be considered when determining payment rates.

The resulting analytic sample included 103,603 assessments, which were assigned randomly to either the test or validation samples. We assigned approximately 60 percent of this sample—61,929 assessments—to the test sample which was used to develop and test potential refinements. The remaining 41,674 assessments comprised the validation sample.

B. Characteristics of the Sample

Table 1 shows the sociodemographic characteristics of the sample stratified by an aggregate of the RUG–III categories. The majority of beneficiaries were female (65 percent), with little variation in the proportion across the RUG–III categories. Beneficiaries classified in the Behavior category were less likely to be male (37 percent) and those in the Physical Function categories were the least likely to be male (30 percent). The majority of beneficiaries were white, of non-Hispanic origin (84 percent). Approximately nine percent of beneficiaries were black and 2 percent were Hispanic. Overall, nearly one quarter of the beneficiaries were severely cognitively impaired. Among beneficiaries classified in a Rehabilitation category, 35 percent were moderately impaired and 14 percent were severely cognitively impaired. The distribution of cognitive impairment among those classified as Reduced Physical Function was similar to that of the Rehabilitation category. Beneficiaries classified as Extensive Services or Special Care also had a similar distribution of cognitive impairment level. Approximately one third of each were moderately impaired. Thirty-nine percent of beneficiaries were classified as dependent in activities of daily living and only 7 percent with no limitations. Beneficiaries in the Behavior category were most likely to have only minimal limitations in physical functioning (28 percent). Beneficiaries classified in the Clinically Complex (14 percent), Cognitively Impaired (13 percent), or Physical Function (14 percent) categories were also more likely to have minimal limitations relative to the other RUG–III categories. Beneficiaries in the Extensive Services (58 percent) and Special Care (56 percent) categories were most likely to be classified as dependent in activities of daily living.

The active clinical diagnoses documented for beneficiaries in the sample are shown

stratified by RUG–III group on Table 1.1. Cardiovascular diseases were common in beneficiaries. Overall, 20 percent of beneficiaries had coronary artery disease. Cardiac arrhythmia was present in 14 percent of beneficiaries. Overall, nearly one quarter of beneficiaries had congestive heart failure and 9 percent had peripheral vascular diseases. On average, 43 percent of beneficiaries had documented hypertension. While the distribution of beneficiaries with coronary artery disease appeared similar across RUG–III groups, congestive heart failure and arrhythmia were more common in the Extensive Services, Special Care, and Clinically Complex categories. For most of the cardiovascular conditions, beneficiaries in the Impaired Cognition category were less likely to have these diseases relative to other RUG–III categories. A similar, but attenuated pattern was noted for beneficiaries in the Behavior category.

Neurological diseases were also common. Overall, 9 percent of beneficiaries had Alzheimer's disease documented. Twenty-eight percent had other dementia documented. Nearly one quarter of beneficiaries had an active clinical diagnosis of stroke and 6 percent had Parkinson's disease. While the proportion of beneficiaries with Parkinson's disease did not vary by RUG–III group, the proportion with other neurological conditions varied substantially by RUG–III group. Beneficiaries in the Impaired Cognition group were more likely to have Alzheimer's disease (22 percent) and other dementia (54 percent) documented and less likely to have had a stroke (15 percent) compared to other RUG–III groups. Similar to the Impaired Cognition group, beneficiaries in the Behavior category were more likely to have other dementia (41 percent) and less likely to have had a stroke (12 percent) compared to other RUG–III groups, but this category had a similar proportion of beneficiaries with Alzheimer's disease. The distribution of neurological conditions among beneficiaries classified as Extensive Services, Special Care, and Clinically Complex was similar. A third of beneficiaries classified as Extensive Services and Special Care had non-Alzheimer's dementia and one quarter had suffered a stroke.

Only 5 percent of beneficiaries had anxiety and 16 percent had depression documented as a diagnosis on the MDS. Across RUG–III groups, the proportion of beneficiaries with anxiety and depression was similar. However, the prevalence of anxiety (8 percent) and depression (22 percent) was higher in the Behavior category. Twelve percent of beneficiaries had cataracts and 7 percent had glaucoma. These conditions did not vary substantially by RUG–III group. Overall, septicemia was rare (1 percent), and only 8 percent of beneficiaries had pneumonia, while 17 percent had urinary tract infections. Beneficiaries in the Extensive Services category were more likely to have septicemia (2 percent), pneumonia (17 percent), and urinary tract infections (24 percent) compared to other RUG–III categories. Other diagnoses and conditions were common. Twenty-one percent of beneficiaries had allergies, 19 percent had anemia, 22 percent had arthritis, 22 percent had diabetes, and 12 percent had cancer. Beneficiaries in the Rehabilitation, Extensive Services, Special Care, and Clinically Complex categories were more likely to have these conditions relative to the Impaired Cognition and Behavioral Problem categories. The prevalence of hypothyroidism (10 percent) did not vary by RUG–III group.

Pooling across all States and the three years, there is little variation by RUG–III group in total daily drug cost as measured by Section U. Median costs within the Rehabilitation groups range from approximately $6.50 (Low Rehabilitation) to approximately $9.00 (Ultra-high Rehabilitation) whereas the lowest costs of medications were experienced by the Impaired Cognition category (approximately $3.00). The groups with the higher interquartile range (approximately $13) were the Extensive Services categories and some of the Rehabilitation groups (for example, RVC was approximately $12). The Impaired Cognition category also demonstrated the least variation in costs of medications, with an interquartile range of approximately $5.

To better understand which classes of drugs may be driving costs, we classified the drugs according to fourteen major therapeutic classes. The most expensive therapeutic drug classes are anti-infective agents (Median: $6.53) and biologics (Median: $9.73). The least expensive therapeutic drug classes are analgesics (Median: $0.10) and nutritional products (Median: $0.18). The proportion of beneficiaries within each of the major RUG–III categories are shown in Table 1.2. Variations in medication use across RUG–III groups were apparent for many medication classes and corresponded to observed variations in the active clinical diagnoses shown by RUG–III group in Table 1.1. Beneficiaries were least likely to be on biologics (1 percent) and anti-neoplastics (2 percent), regardless of RUG–III class. The majority of beneficiaries were on at least one cardiovascular medication, with substantial variation across RUG–III groups. Beneficiaries in the Rehabilitation category (67 percent) and in the Clinically Complex category (64 percent) were the most likely to be receiving at least one cardiovascular medication. Beneficiaries in the Impaired Cognition (47 percent) and Behavior (53 percent) categories were the least likely to be receiving cardiovascular medications.

Similar trends were observed across RUG–III groups for both gastrointestinal agents and endocrine/metabolic agents. More than half of beneficiaries had taken at least one gastrointestinal agent with beneficiaries in the Rehabilitation categories (67 percent) the most likely to use gastrointestinal products and beneficiaries in the Impaired Cognition or Behavioral Problem categories the least likely to receive these drugs (approximately 50 percent). With endocrine and metabolic agents, over one third of beneficiaries in the Rehabilitation, Extensive Services, Special Care, and Clinically Complex categories received these drugs, relative to approximately 25 percent of other RUG–III groups. Beneficiaries in the Rehabilitation, Extensive Services, Special Services, and Clinically Complex categories were most likely to be on anti-infective agents, with over 25 percent of beneficiaries in each on these medications. Among these RUG–III groups, beneficiaries in the the Extensive Services categories were the most likely to be taking anti-infective agents (39 percent). Less than 15 percent of beneficiaries in other RUG–III groups received these drugs.

Overall, 47 percent received at least one analgesic. Impaired Cognition (32 percent) and Behavior beneficiaries (39 percent) were less likely to receive analgesics than those in the Rehabilitation category (60 percent). Similar trends were apparent with hematological agents (approximately 20 percent Impaired Cognition vs. approximately 35 percent in the Rehabilitation groups), and topical agents (approximately 20 percent vs. approximately 37 percent in the Special Care groups). Conversely, beneficiaries in the Impaired Cognition (approximately 46 percent) and Behavior (over 50 percent) categories were more likely to receive CNS drugs relative to the other RUG–III groups (approximately 33 percent).

The highest proportion of total costs due to anti-infective use is found in the Extensive Services and Clinically Complex groups, with approximately 50 percent of drug costs attributable to the anti-infective agents. Use of biologics was relatively infrequent (approximately 1.2 percent) and the proportion of drug costs due to these agents was highly variable among the users, regardless of RUG–III group. Among people receiving anti-neoplastic medications (approxmiately 2.2 percent of beneficiaries), these agents accounted for one quarter of their total daily drug cost (Median: 27 percent; 25th percentile: 13 percent; 75th percentile: 49 percent). Regardless of RUG–III group, this measure is highly variable. While nearly one third of all beneficiaries received an endocrine medication, these agents only accounted for 8 percent of the total daily drug costs among users. Cardiovascular medications accounted for 18 percent of the total daily drug cost, which varies slightly across RUG–III group (+/– approximately 4 percent). There appears to be slightly less variation in this measure among the Extensive Services, Special Care, and Clinically Complex groups as compared to other RUG–III categories. Among the 19 percent of beneficiaries using respiratory medications, 12 percent of their drug costs were due to these agents. Higher median proportions and greater variability occurred at the end splits within the aggregate RUG–III categories. A similar pattern is observed among users of gastrointestinal agents. These medications accounted for only 13 percent (median) of the total daily costs. This measure is highly variable, regardless of RUG–III group. Only 5 percent of beneficiaries had used a genitourinary medication, accounting for only 13 percent of total drug costs (median value). This measure varied slightly across RUG–III groups.

TABLE 1.—SOCIODEMOGRAPHIC CHARACTERISTICS OF RESIDENTS OF SNF STAYS BY RUG–III GROUP

	All	Rehabilitation	Extensive services	Special care	Clinically complex	Impaired cognition	Behaviors only	Physical function reduced
Male	35	37	36	34	36	35	37	30
Race/Ethnicity:								
White	84	90	83	83	82	80	84	83
Hispanic	2	1	2	2	2	3	3	2
Black	9	6	9	9	9	11	8	9
Asian/Pacific Islander	0.5	0.2	0.7	0.5	0.6	0.7	0.7	0.6
American Indian	1	0.7	2	2	2	1	1	1
Missing=	3	.9	3	4	4	3	3	3
Cognitive Impairment:●								
Mild (CPS: 0–1)	41	51	33	35	47	0	50	53
Moderate (CPS: 2–4)	35	35	31	34	35	67	50	32
Severe (CPS: 5–6)	23	14	34	31	17	33	0	14
Physical Functioning:								
Minimal limitations	7	6	0	3	14	13	28	14
Moderate limitations	44	53	37	36	51	58	49	47
Dependent	39	18	58	56	31	20	7	26
Missing=	9	23	6	4	4	9	16	12

● CPS = Cognitive Performance Scale.
=Missing data percentages shown when greater than 3% missing data occurred.
Totals may not equal 100% due to rounding.

TABLE 1.1—ACTIVE CLINICAL DIAGNOSES FOR BENEFICIARIES BY RUG–III GROUP

	All	Rehabilitation	Extensive services	Special care	Clinically complex	Impaired cognition	Behaviors only	Physical function reduced
Heart/Circulation:								
Coronary artery disease	20	14	22	22	22	21	19	21
Cardiac arrhythmia	14	15	16	15	14	11	8	12
Congestive heart failure	24	22	27	25	27	16	20	21
Hypertension	43	44	42	42	44	37	40	42
Peripheral vascular diseases	9	8	10	12	9	6	7	7
Other cardiovascular diseases	20	20	21	21	21	16	16	17
Neurological:								
Alzheimer's disease	9	5	9	9	8	22	11	8
Other dementia	28	18	30	30	27	54	41	28
Cerebrovascular disease	23	26	24	25	25	15	12	16
Parkinson's disease	6	5	6	6	5	6	5	6
Psychiatric:								
Anxiety	5	6	5	5	6	5	8	5
Depression	16	17	15	17	18	15	22	15
Sensory:								
Cataract	12	6	14	14	14	14	13	13
Glaucoma	7	5	7	7	7	6	8	7
Infections:								
Septicemia	1	1	2	1	1	0	0	0
Pneumonia	8	8	17	8	10	0	0	0
Urinary tract infection	17	16	24	19	13	10	9	12
Other:								
Allergies	21	23	22	22	21	14	19	17
Anemia	19	16	23	22	19	15	14	17
Arthritis	22	22	23	22	21	17	19	24
Cancer	12	11	14	13	13	7	8	9
Emphysema/COPD	15	14	17	15	19	10	14	10
Diabetes mellitus	22	22	22	23	24	15	19	18
Hypothyroidism	10	10	10	10	10	9	9	9
Osteoporosis	8	9	8	8	8	6	6	9

TABLE 1.2—DRUG UTILIZATION BY THERAPEUTIC CLASS AND RUG–111 GROUP

	All	Rehabilitation	Extensive services	Special care	Clinically complex	Impaired cognition	Behaviors only	Physical function reduced
Anti-infectives	26	29	39	28	23	12	12	16
Biologics	1	0.3	1	2	1	1	1	1
Anti-neoplastics	2	2	2	2	3	1	2	1
Endocrine	31	36	30	30	33	22	26	26
Cardiovascular	61	67	59	59	64	51	55	58
Respiratory	19	23	21	18	23	9	17	13
Gastrointestinal	61	67	60	62	62	47	53	58
Genitourinary	5	6	5	5	5	4	3	5
CNS	36	43	32	33	38	46	55	34
Analgesics	47	60	43	45	44	32	39	44
Neuromuscular	13	13	13	13	12	14	18	12
Hematological	30	35	30	31	29	20	19	26
Topical	30	26	34	37	28	20	20	23

C. Test and Validation Samples

The recursive strategies employed by stepwise regression, AID, and other fitting techniques may produce over-optimistic measures of variance explanation. For that reason, assessment of the explanatory power of alternative models required use of data that were not used in forming the models themselves. We selected at random 60 percent of the sample for use as a test sample and the remaining 40 percent for use as a validation sample. Refinements to RUG–III were developed based solely on analysis of the test sample and evaluated solely on their performance with the validation sample. Since aberrations in the test sample that may have influenced the design of refinements were absent in the validation sample, any unsupported features of the proposed models should be exposed by this approach.

D. Creation of Measure of Non-therapy Ancillary Charges From SNF Claims

Medicare Part A SNF claims were used to measure the perdiem ancillary charges. For ancillary charges developed using Medicare claims data, it was not possible to identify items with a date of service that corresponds to the period covered by the MDS assessment (used to establish the RUG–III classification). Per diem charges were calculated using Medicare claims with a covered date within a specified range of a date covered by MDS assessment. Operationally, per diem charges are derived by the sum of the charges of the ancillary therapies divided by the number of days covered by claims.

We then estimated the costs of non-therapy ancillaries, using revenue codes as extracted from the claims data. First, we identified target revenue codes and categorized charges into these conceptually meaningful categories. The categories and their related revenue codes included the following: prescription drugs/pharmacy (250–259), drugs requiring ID (630–639), IV therapy (260–269), medical and surgical supplies (270–270; 620–622), respiratory services (410–419), laboratory (300–309), oxygen (600–604), and dialysis (820–829, 830–839, 880–889).

1. Cost-to-Charge Multiplier

It is important to note that the actual ancillary costs for beneficiaries in the sample are not observed. The covered charges reported in claims are routinely discounted by the intermediary responsible for processing on the basis of audited reasonable cost. Inclusion of ancillary charges without further adjustment in our measure of per diem ancillary charges would overstate the true level of reimbursable costs, since these charges are routinely discounted before payment under the present system.

Using the appropriate annual SNF cost report (that is, the cost report for the service period covered by the claim), conversion factors were computed for each SNF included in the research data base. To be as consistent as possible, we calculated one average discount factor (the ratio of total Part A allowed cost to total Part A charges) for each facility in each year. This discount factor was applied to the facility's ancillary charges before analysis to approximate the costs of ancillary services.

E. Analysis and Findings—RUG–III Refinements

As shown by previous research and confirmed in this study, the RUG–III Extensive Services groups are associated with the highest per diem non-therapy ancillary charges of any of the RUG–III classifications, including the rehabilitation categories. For the purposes of this project, ancillary costs were divided into three categories: medications (by far the most critical predictor of overall ancillary costs), respiratory therapy, and other ancillaries. This research also showed significantly higher non-therapy ancillary costs and intra-group variance related to the variety of ancillary supplies and services needed to treat the various acute and severe health conditions characterizing beneficiaries who classify into the Extensive Services category. Figures 1 through 3 compare the mean, per diem costs of ancillary services for beneficiaries in the Extensive Services category with those of beneficiaries in other RUG–III categories.

Another key to more accurate accounting of the cost(s) associated with treating Extensive Services beneficiaries is disentangling some of the overlap between the Extensive Services and Rehabilitation categories. Under the current PPS system, the payment rate (under an index maximization approach) is the same for beneficiaries who qualify for both Extensive Services and one of the top three rehabilitation categories (Ultra High, Very High and High Rehabilitation) as for those beneficiaries who qualify only for one of the top three rehabilitation categories. Using this research data base, we found a significant number of beneficiaries qualifying for both Extensive Services and Rehabilitation.

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Figure 1: Comparison of Estimated Drug Costs by RUG-III Category

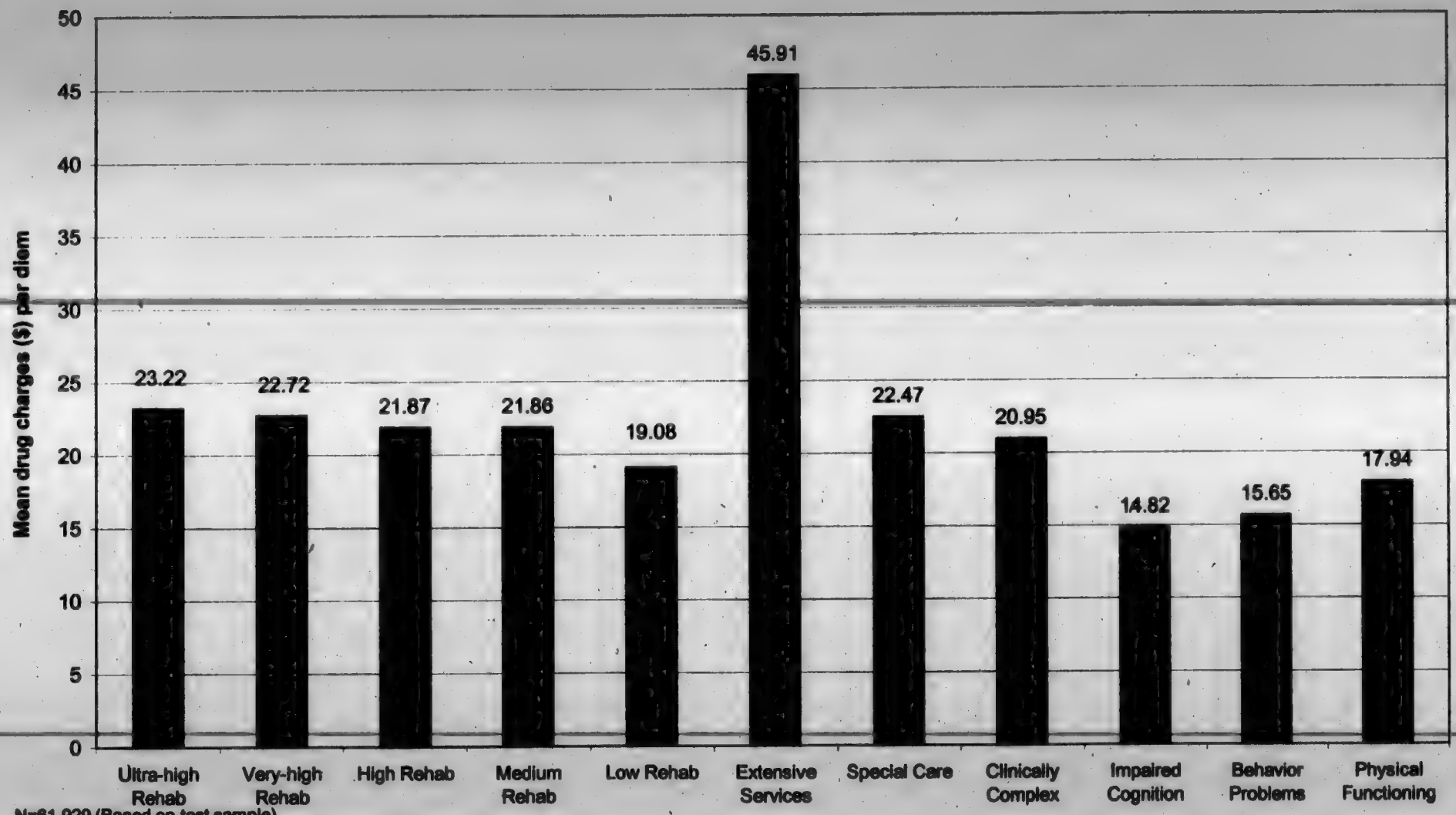

N=61,929 (Based on test sample)
Data Source: Medicare SNF claims, 1995-1997 and Minimum Data Set

Figure 2: Comparison of Respiratory Therapy Costs by RUG-III Category

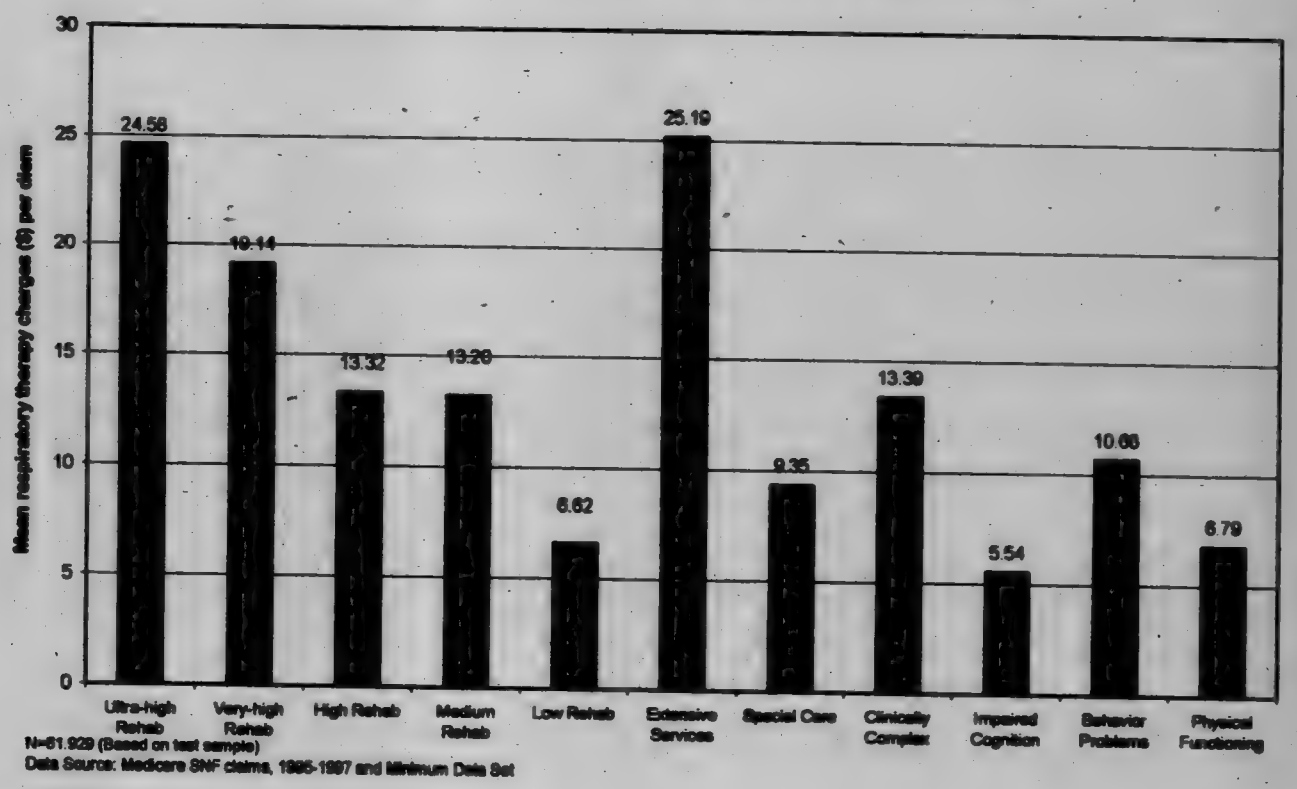

Figure 3 : Comparison of Other Non-therapy Ancillary Costs by RUG-III Category

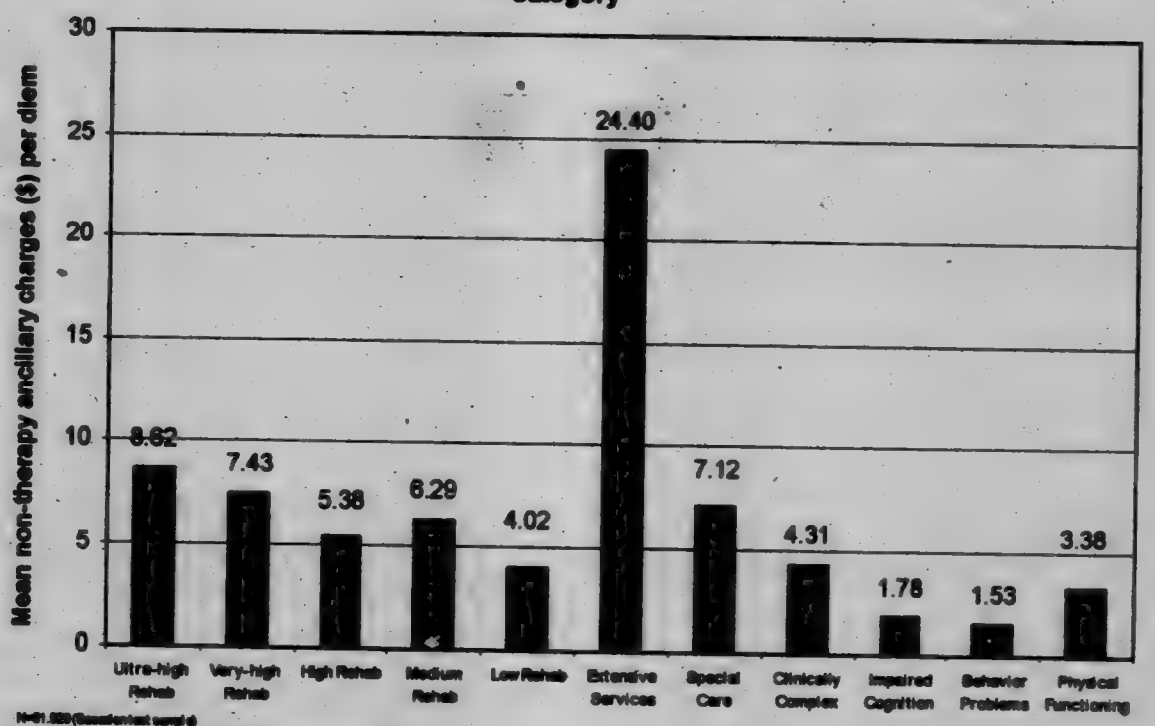

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1. Costs for Beneficiaries Who Qualify for Both Extensive Services and Rehabilitation

As shown in Figures 4 through 7, across all three ancillary categories, costs were significantly higher for beneficiaries who qualified for both Extensive Services and Rehabilitation compared to those who qualify only for a Rehabilitation category. Therefore, we considered whether those qualifying for both categories should be separately identified.

- Across all five Rehabilitation categories, mean prescription drug costs were approximately double for beneficiaries who qualified for both Extensive Services and Rehabilitation, compared to those who qualified only for Rehabilitation. (See Figure 4 for comparison of drug charges across all five Rehabilitation categories based on whether the beneficiary also qualified for Extensive Services.)
- A similar pattern was observed for respiratory therapy. Across all five rehabilitation categories, respiratory therapy costs were more than twice as high for beneficiaries who also qualified for Extensive Services as for those who qualified only for Rehabilitation (Figure 5).
- Other non-therapy ancillary costs were considerably higher for beneficiaries who qualified for both Rehabilitation and Extensive Services than for those who qualified for Rehabilitation but not Extensive Services (Figure 6).
- Total average ancillary charges for beneficiaries who qualified for both Rehabilitation and Extensive Services were also significantly higher than for those qualifying only for rehabilitation (Figure 7).

Based on these results, it makes sense, for statistical, incentive-related, and clinical reasons, to consider potential refinements which reflect the higher costs of beneficiaries in the Rehabilitation categories who also qualify for Extensive Services.

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Figure 4: Comparison of Drug Costs for Rehabilitation Residents Based on Whether the Resident also Qualifies for Extensive Services

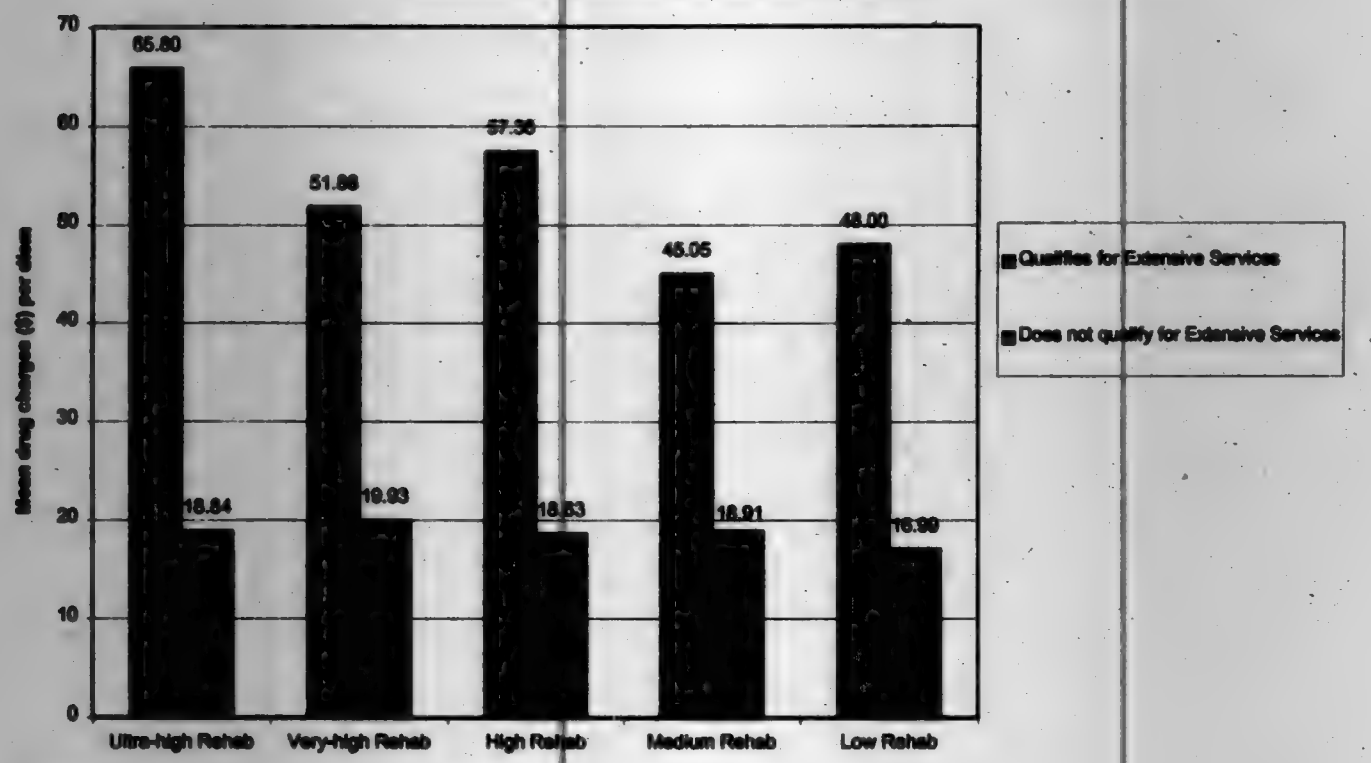

N=69,835 (Based on last sample residents in a RUG-III rehabilitation category)
Data Source: Medicare SNF claims, 1995-1997 and Minimum Data Set

Figure 5: Comparison of Respiratory Therapy Costs for Rehabilitation Residents Based on Whether the Resident also Qualifies for Extensive Services

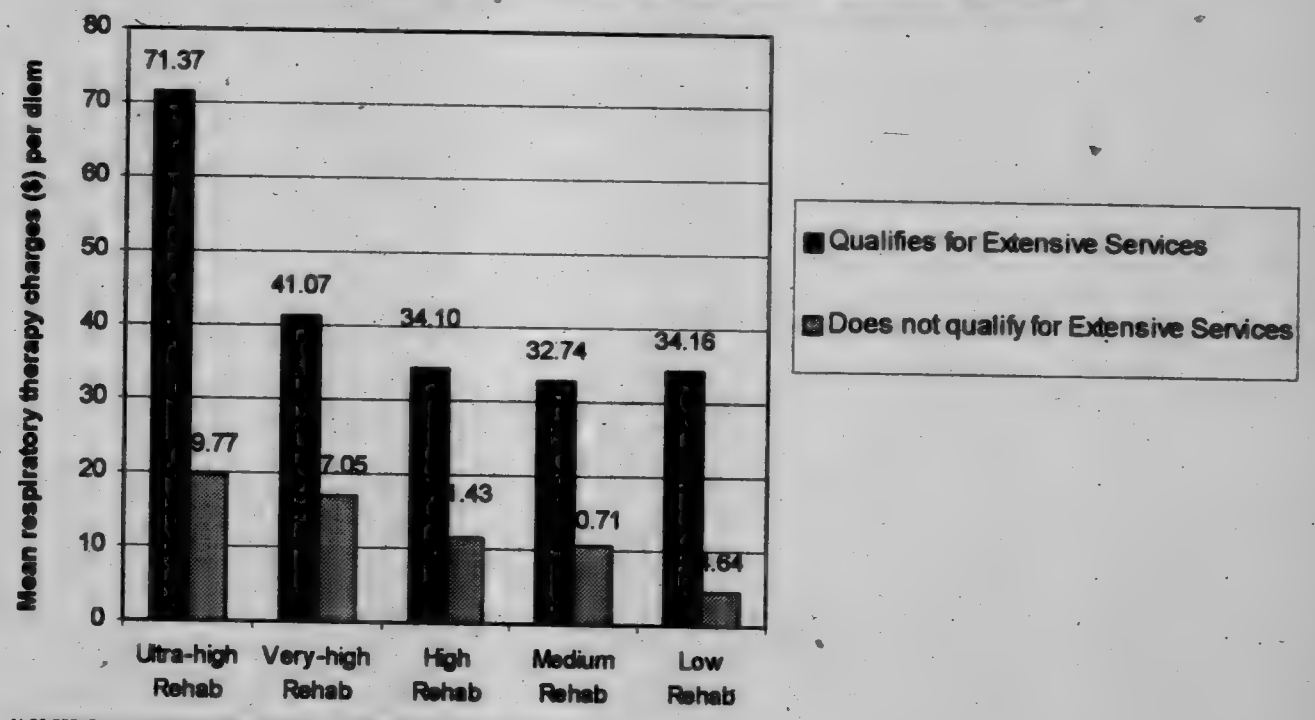

N=29,625 (Based on test sample resident in a RUG-III rehabilitation category)
Data Source: Medicare SNF claims, 1995-1997 and Minimum Data Set

Figure 6: Comparison of Other Ancillary Costs for Rehabilitation Residents Based on Whether the Resident also Qualifies for Extensive Services

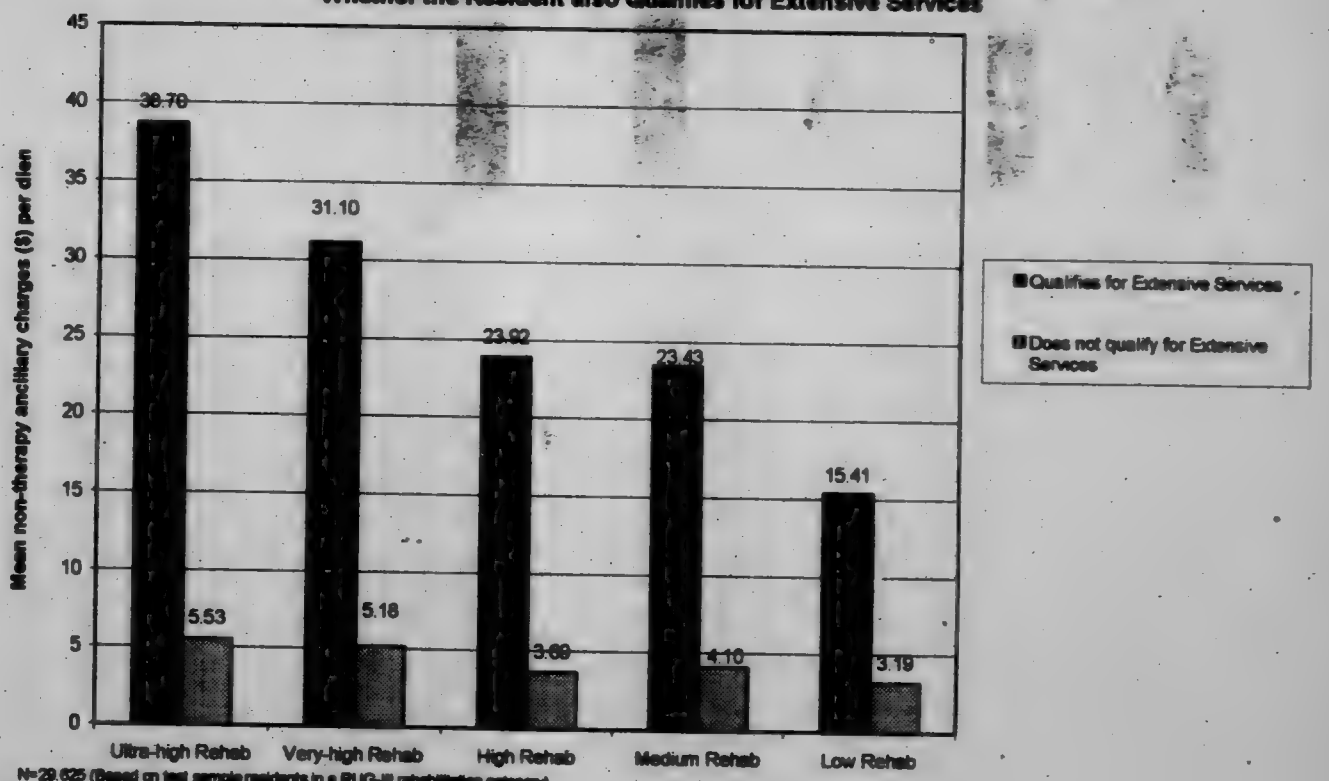

N=29,625 (Based on test sample residents in a RUG-III rehabilitation category)
Data Source: Medicare SNF claims, 1995-1997 and Minimum Data Set

Figure 7: Comparison of Total Ancillary Costs for Rehabilitation Residents Based on Whether the Resident also Qualifies for Extensive Services

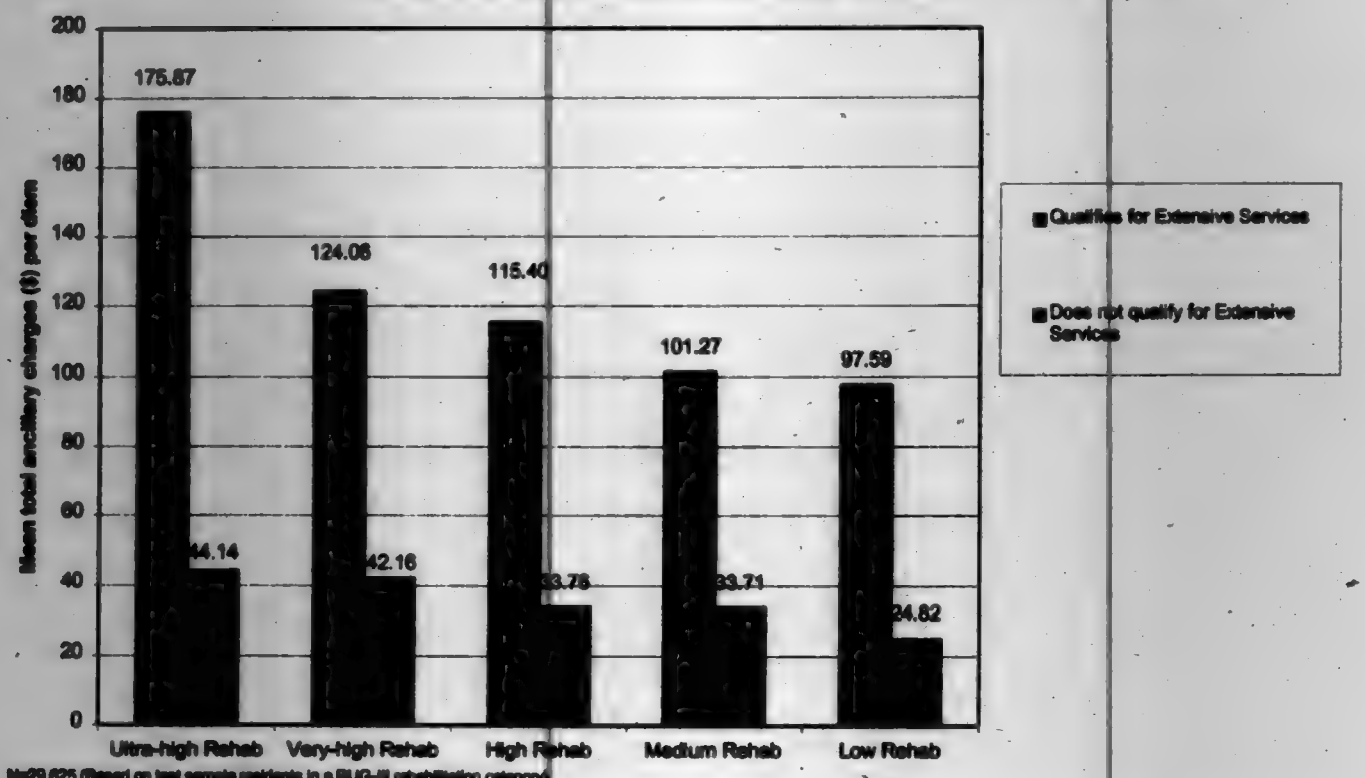

N=23,625 (Based on last sample residents in a RUG-III rehabilitation category)
Data Source: Medicare SNF claims, 1995-1997 and Minimum Data Set

BILLING CODE 4120-03-C

These cost differences suggested that a potential refinement could be based on interactions between existing RUG–III categories. Such a change could be implemented in either of two ways:

- A new terminal split within the current RUG–III Rehabilitation groups based on whether the beneficiary also qualified for Extensive Services. These changes would be reflected in changes in the Case Mix Index (CMI) for nursing in calculating payments for the Rehabilitation categories.
- A new RUG–III category for beneficiaries who qualify for both Extensive Services and Rehabilitation. The new category (which could be called "Rehabilitation and Extensive Services") would be at the top of the hierarchical case-mix system.

2. Non-Therapy Ancillary Index Models

In addition, variations in non-therapy ancillary costs could be addressed through several types of index model-based refinements. There are a number of ways that index model-based refinements can be implemented:

- The models can be based on an unweighted count of the number of index model variables present or on a weighted index that assigns a relative cost factor to each of the index model variables.
- The index models can differ with respect to the RUG–III categories to which the model is applied.
- The index models can differ with respect to the number of index groups that are used.
- The index models can also vary based on the thresholds used to define groups. For the weighted index model, beneficiaries were classified based on their predicted costs.
- The index model can be applied separately to each major category; that is, each level of the RUG–III hierarchy.

In our analysis of ancillary costs, the results did not indicate strong interaction effects. There were two implications of this finding. First, the variables effects were principally additive and models which develop indexes are indicated. Second, the appropriate approach was to use regression analysis to form indexes, rather than PC-Group to identify tree models. (It should be noted that PC-Group still has some unique capabilities, employed later, to help identify optimal thresholds for an index.)

One way an index model could be used is in an "add-on" system for predicting non-therapy ancillary charges. RUG–III could be used for predicting staff time costs and the non-therapy ancillary index would be "added-on" to determine the total payment rate for beneficiaries with given characteristics. The motivation for this approach is that RUG–III has been well tested and validated for predicting staff time costs, but was not designed to capture variance in non-therapy ancillary charges. Although such a system can be described as consisting of two components, it could easily be implemented as an integrated system, as though the non-therapy ancillary component defined a new set of end-splits to RUG–III.

The index model approach allowed for a large number of items to be considered simultaneously in determining payment rates, including additional measures of severity that are not reflected in RUG–III. We designed both weighted and unweighted versions of a non-therapy ancillary index for each level of the RUG–III hierarchy, and showed that both versions resulted in large improvements in the proportion of the variance predicted by the case-mix system and some improvement in the system's ability to identify high-cost beneficiaries. The weighted version allowed items that predict much higher costs (such as receipt of IV medications) to have more impact on predicted costs than less-influential items such as shortness of breath. For this study, the weights were assigned by the researchers based on a combination of expert opinion and a comparison of cost data for the various MDS items. The weighted index model exhibited enhanced explanatory power, but at the cost of additional complexity and subjectivity.

F. Model Performance

We tested a number of potential refinements, but selected only the most powerful alternative from each type for presentation here. The most promising types of potential refinements are summarized in Table 2, and discussed below.

1. RUG–III CMI Adjustment: This potential refinement improved the ability of the case-mix system to capture variance in ancillary and total costs. Changes to the CMI alone (that is, changes to the payment rates associated with different groups but no changes to the case-mix system) will reduce the proportion of beneficiaries for whom costs are greater than payment, but will not affect the proportion of variance in costs captured by the case-mix system. The current RUG–III methodology accounted for about 6 percent of the variance in ancillary charges and 11 percent of the variance in total costs (See Table 2).

TABLE 2.—STATISTICAL PERFORMANCE OF POTENTIAL RUG–III REFINEMENTS–MODEL DESCRIPTION

Model description	Number of groups	R-squared validation sample (test sample)		Min/Max δ	Specificity and sensitivity analyses validation sample	
		Ancillary charges (percent)	Total costs (percent)		Specificity ★ (percent)	Sensitivity ◆
RUG–III—(CMI changes only)	44	5.9 (6.5)	11.0 (11.2)	111/239	91.7	26.1%
RUG III (version 2001) RUG–III with new category "Extensive Services and Rehabilitation".	58	7.8 (8.3)	13.7 (13.7)	116/355	91.5	27.8
WIM 1—Weighted index model applied to Extensive Services (includes new category "Extensive Services and Rehabilitation").	58 plus a six-group ancillary add-on system.	11.2 (12.5)	16.8 (17.6)	114/458	91.5	31.7%
WIM 2—Weighted index model applied to Extensive Services beneficiaries (includes new category "Extensive Services and Rehabilitation") and to Rehabilitation, Special Care, and Clinically Complex.	58 plus a six-group ancillary add-on system.	13.4 (14.2)	19.0 (19.4)	111/456	92.3	32.2%
UWIM—Unweighted index model applied to Extensive Services (includes new category "Extensive Services and Rehabilitation") and to Rehabilitation, Special Care, and Clinically Complex.	58 plus a four-group ancillary add-on system.	10.9 (12.6)	17.1 (18.0)	104/447	92.0	30.8%

Notes:
▲: Predicted total costs for the lowest and highest reimbursed groups in the refined case mix system.
†: Note that all index model-based refinements also include the "Extensive Services and Rehabilitation" category.
★: Specificity is measured as the proportion of beneficiaries who are not in the top 10 percent of predicted ancillary charges and also not in the top 10 percent in terms of actual ancillary charges.
◆: Sensitivity is measured as the proportion of beneficiaries in the top 10 percent in terms of both predicted and actual ancillary charges.
Data sources: Medicare claims, Minimum Data Set 1995–1997.

2. RUG–III (proposed, version 2001): Adding the new Extensive Services and Rehabilitation categories resulted in small improvements in statistical performance. The validation sample R-squared increased to 7.8 percent for ancillary charges, an increase of about 2 percent relative to RUG–III, and to 13.7 percent for total costs. However, the improvements associated solely with a change in the RUG–III (proposed, version 2001) methodology were substantially less than those produced by the other potential refinements that incorporated a combination of RUG–III and index model-based refinements.

In conducting this analysis, new CMIs had to be constructed. For this research, the CMIs were developed from the same 1995 through 1997 staff time measurement studies that were used to construct the indices used under the current RUG–III methodology. (See Table 3)

3. Weighted Index Model (WIM1): Under WIM1, Extensive Services beneficiaries (including those in the new Extensive Services and Rehabilitation categories) would receive an ancillary "add-on" based on the beneficiary's predicted, per diem ancillary costs for the index model qualifiers. The ancillary index has 6 groups with break points at costs at the 50th percentile or below, from the 51st through 75th percentile, from the 76th through 90th percentile, from the 91st through 95th percentile, from the 96th through 98th percentile, and the 99th percentile. The break points were calculated separately for each level of the RUG–III hierarchy.

Application of WIM1 resulted in some improvement relative to RUG–III (proposed, version 2001). For the validation sample, the model accounted for 11 percent of the variance in ancillary charges and 17 percent of the variance in total costs. Nearly 32 percent of beneficiaries in the top 10 percent of ancillary charges were also in the top 10 percent in terms of predicted costs, compared to 27.8 percent for RUG–III (proposed, version 2001).

4. Weighted Index Model 2 (WIM2): Model WIM2 extends the use of the non-therapy ancillary index to 40 RUG–III (proposed, version 2001) groups (14 Rehabilitation/ Extensive Services, 3 Extensive Services, 14 Rehabilitation, 3 Special Care and 6 Clinically Complex groups), and accounted for 19 percent of the variance in total costs and 13 percent of the variance in ancillary charges. This was more than twice the R-squared of the existing RUG–III or the proposed RUG–III (version 2001) alone. The range of payments was similar to that of WIM1. Using WIM2, 32 percent of beneficiaries in the top 10 percent in terms of actual ancillary charges were also in the top 10 percent in terms of predicted ancillary charges.

Table 4 shows the distribution of Medicare beneficiaries in the 6 non-therapy ancillary index levels by RUG–III (proposed version 2001) category. The cut-off points used to define these groups are the same as for WIM1.

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Table 3 -- Mean Resident and Non-Resident Specific Minutes for Nursing and Therapy Disciplines by RUG-III+ Group

RUG-III Group**	RUG-III Group Name	Number of Residents	Total LPN Minutes/Day	LPN Resident Specific Minutes/Day	LPN Non-Resident Specific Min/Day***
1	RUC+SE	9	84.89	61.44	23.44
3	RUA+SE	1	112.00	90.00	22.00
5	RVB+SE	17	40.41	20.88	19.53
7	RHC+SE	26	48.69	26.31	22.38
9*	RHA+SE				
11	RMB+SE	31	62.68	39.06	23.61
13	RLB+SE	5	59.00	31.60	27.40
15	RUC	36	46.03	29.44	16.58
17	RUA	81	39.49	22.60	16.89
19	RVB	105	42.54	26.96	15.58
21	RHC	54	45.04	28.24	16.80
23	RHA	41	27.51	16.78	10.73
25	RMB	179	38.05	22.82	15.22
27	RLB	21	46.52	24.14	22.38
29	SE3	70	101.33	70.47	30.86
31	SE1	19	57.68	33.79	23.89

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Total RN Minutes/ Day	RN Resident Specific Minutes/Day	RN Non-Resident Specific Min/Day***
160.67	106.67	54.00
[illegible]	[illegible]	[illegible]
29.00	21.00	8.00
[illegible]	[illegible]	[illegible]
156.47	95.18	61.30
[illegible]	[illegible]	[illegible]
130.42	82.04	48.39
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
166.61	97.16	69.45
[illegible]	[illegible]	[illegible]
119.60	51.20	68.40
[illegible]	[illegible]	[illegible]
100.75	56.89	43.86
[illegible]	[illegible]	[illegible]
64.98	36.77	28.21
[illegible]	[illegible]	[illegible]
85.90	46.53	39.36
[illegible]	[illegible]	[illegible]
94.85	52.89	41.96
[illegible]	[illegible]	[illegible]
89.76	49.66	40.07
[illegible]	[illegible]	[illegible]
88.69	47.98	40.71
[illegible]	[illegible]	[illegible]
69.38	37.76	31.62
[illegible]	[illegible]	[illegible]
143.56	91.31	52.24
[illegible]	[illegible]	[illegible]
80.79	48.05	32.74

Total Nurse Aide Minutes/ Day	Nurse Aide Resident Specific Minutes/Day	Nurse Aide Non-Resident Specific Minutes/Day***
200.67	111.67	89.00
[illegible]	[illegible]	[illegible]
140.00	84.00	56.00
[illegible]	[illegible]	[illegible]
129.35	74.24	55.12
[illegible]	[illegible]	[illegible]
155.39	93.81	61.58
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
147.07	85.03	62.03
[illegible]	[illegible]	[illegible]
169.80	110.40	59.40
[illegible]	[illegible]	[illegible]
174.86	108.39	66.47
[illegible]	[illegible]	[illegible]
97.91	54.10	43.82
[illegible]	[illegible]	[illegible]
138.37	84.77	53.60
[illegible]	[illegible]	[illegible]
166.48	103.70	62.78
[illegible]	[illegible]	[illegible]
102.59	51.17	51.41
[illegible]	[illegible]	[illegible]
140.13	78.54	61.59
[illegible]	[illegible]	[illegible]
196.33	122.67	73.67
[illegible]	[illegible]	[illegible]
193.50	124.09	69.41
[illegible]	[illegible]	[illegible]
191.79	128.68	63.11

Table 3 -- Mean Resident and Non-Resident Specific Minutes for Nursing and Therapy Disciplines by RUG-III+ Group

RUG-III Group**	RUG-III Group Name	Number of Residents	Total LPN Minutes/Day	LPN Resident Specific Minutes/Day	LPN Non-Resident Specific Min/Day***
1	RUC+SE	9	84.89	61.44	23.44
3	RUA+SE	1	112.00	90.00	22.00
5	RVB+SE	17	40.41	20.89	19.53
7	RHC+SE	25	48.69	26.31	22.38
9*	RHA+SE				
11	RMB+SE	31	62.68	39.06	23.61
13	RLB+SE	6	59.00	31.60	27.40
15	RUC	38	46.03	29.44	16.58
17	RUA	61	39.49	22.60	16.89
19	RVB	165	42.54	26.96	15.58
21	RHC	58	45.84	28.24	16.60
23	RHA	48	27.51	16.78	10.73
25	RMB	179	38.05	22.82	15.22
27	RLB	28	46.52	24.14	22.38
29	SE3	70	101.33	70.47	30.86
31	SE1	19	57.68	33.79	23.89

Total RN Minutes/ Day	RN Resident Specific Minutes/Day	RN Non-Resident Specific Min/Day***
160.67	106.67	54.00
29.00	21.00	8.00
159.47	98.16	61.30
130.42	82.04	48.38
165.81	97.16	68.45
119.60	51.20	68.40
100.75	56.98	43.85
64.98	38.77	26.21
85.89	49.53	39.36
94.85	52.89	41.96
89.76	49.69	40.07
88.60	47.89	40.71
69.39	37.76	31.62
143.58	91.31	52.24
80.79	48.05	32.74

Total Nurse Aide Minutes/ Day	Nurse Aide Resident Specific Minutes/Day	Nurse Aide Non-Resident Specific Minutes/Day***
209.67	111.67	98.00
140.00	84.00	56.00
129.35	74.24	55.12
155.39	93.81	61.58
147.07	85.05	62.02
169.89	110.49	59.40
174.86	108.39	66.47
97.91	54.10	43.82
138.37	84.77	53.60
166.48	103.70	62.78
102.59	61.17	61.41
140.23	78.64	61.59
196.33	122.67	73.67
193.53	124.09	69.41
191.79	128.68	63.11

Table 3 -- Mean Resident and Non-Resident Specific Minutes for Nursing and Therapy Disciplines by RUG-III+ Group (cont.)

Total Nursing Minutes/Day	Total Nursing Resident Specific Minutes/Day	Total Nursing Resident Non-Specific Minutes/Day***	PT Resident Specific Minutes/Day	PT Asst Resident Specific Minutes/Day
446.22	279.67	166.56	11.78	19.78
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
281.00	195.00	86.00	35.00	9.00
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
326.29	190.18	136.12	14.59	13.94
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
334.50	202.04	132.46	13.77	5.85
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
376.32	220.77	155.55	15.71	6.32
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
348.60	192.80	155.80	5.80	1.00
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
321.64	194.53	127.11	19.81	19.33
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
202.35	113.25	89.10	22.80	16.85
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
266.87	157.95	108.92	18.78	10.82
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
306.33	184.53	121.80	14.52	8.72
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
219.83	117.34	102.49	16.17	13.44
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
266.95	149.08	117.87	13.45	9.36
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
312.14	184.52	127.62	5.38	3.81
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
438.29	285.63	152.66	2.19	0.43
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
329.95	210.26	119.68	0.00	0.00

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Table 3 – Mean Resident and Non-Resident Specific Minutes for Nursing and Therapy Disciplines by RUG-III+ Group (cont.)

Total Nursing Minutes/Day	Total Nursing Resident Specific Minutes/Day	Total Nursing Resident Non-Specific Minutes/Day***	PT Resident Specific Minutes/Day	PT Asst Resident Specific Minutes/Day
446.22	279.67	166.56	11.78	19.78
281.00	195.00	86.00	35.00	9.00
326.29	190.18	136.12	14.59	13.94
334.50	202.04	132.46	13.77	5.85
376.32	220.77	155.55	15.71	6.32
348.60	192.80	155.80	5.60	1.00
321.64	194.53	127.11	19.81	19.33
202.35	113.25	89.10	22.80	16.85
266.87	157.95	108.92	18.78	10.82
306.33	184.54	121.80	14.52	8.72
219.83	117.34	102.49	16.17	13.44
266.95	149.08	117.87	13.45	9.36
312.14	184.52	127.62	5.38	3.81
439.29	285.63	152.66	2.19	0.43
329.95	210.26	119.68	0.00	0.00

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In the Regulatory Impact Analysis, we showed the distributional impact of these case mix refinements using the UWIM model proposed in this rule. Table 6 shows the distributional shifts of beneficiaries between the existing RUG–III model and the WIM2 Option. In addition, Tables 6.1 and 6.2 show the projected rates using the WIM2 model. (See Table 12 in the Proposed rule for the UWIM model.)

5. Unweighted Index Model (UWIM): This model is the unweighted counterpart to WIM2. While this model performed better than the current RUG–III and proposed RUG–III (version 2001) models, it was slightly outperformed by WIM2. However, we regard the unweighted model as preferable to WIM2, for two reasons. First, it is relatively simple, and employs a more familiar methodology similar to that used in classifying beneficiaries into the Extensive Services groups. Second, in developing the weighted models, the researchers had to rely more heavily on imputed data to develop the number of index levels, and the cut-off points. Therefore, even though the WIM models appear to have slightly more predictive power, they are based upon more subjective criteria. However, the WIM models are subject to additional testing using the full PPS data base, and, based on the results, this model may be reconsidered.

UWIM accounted for 11 percent of the variance in ancillary charges and 17 percent of the variance in total costs. The sensitivity and specificity of the model were slightly less than for WIM2. Using UWIM, beneficiaries are split into four groups based on the number of index model variables present.

Number of qualifiers	Ancillary level
0	2
1–2	3
3–5	4
6 or more	5

Table 5 shows the distribution of Medicare beneficiaries in the 4 non-therapy ancillary index levels by RUG–III (proposed, version 2001) category.

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Table 4: Ancillary Costs for the WIM-2 model

UWIM category	Index value	N	Mean	Std Dev
Extensive Services and Ultra-high rehabilitation	A	44	$379.17	$219.12
	B	144	$251.90	$222.56
	C	100	$145.76	$178.46
	D	203	$96.96	$156.52
Extensive Services and Very-high rehabilitation	A	21	$264.43	$265.28
	B	138	$193.93	$215.39
	C	82	$100.09	$110.60
	D	197	$71.04	$132.08
Extensive Services and High rehabilitation	A	22	$255.12	$275.27
	B	111	$175.47	$201.53
	C	69	$85.08	$115.60
	D	170	$70.77	$140.72
	E	2	$77.96	$62.64
Extensive Services and Medium-high rehabilitation	A	105	$244.00	$230.21
	B	384	$155.87	$191.61
	C	329	$90.62	$132.19
	D	715	$56.82	$96.35
	E	3	$28.54	$4.68
	F	2	$15.52	$21.95
Extensive Services and Low rehabilitation	A	1	$165.37	
	B	15	$199.05	$246.09
	C	22	$68.78	$110.57
	D	37	$71.75	$139.60
Ultra-high rehabilitation	A	3	$228.29	$43.38
	B	7	$331.89	$330.38
	C	65	$149.43	$135.78
	D	409	$103.47	$104.59
	E	1586	$46.32	$77.92
	F	2704	$39.75	$57.84
Very high rehabilitation	A	1	$487.34	
	B	9	$259.17	$205.85
	C	75	$134.76	$113.26
	D	446	$102.17	$123.40
	E	1552	$40.51	$70.95
	F	2526	$27.95	$54.91
High rehabilitation	B	10	$235.35	$230.47
	C	68	$82.56	$114.13
	D	404	$58.93	$125.13
	E	1281	$33.03	$58.37
	F	2366	$22.45	$40.82
Medium rehabilitation	A	3	$345.68	$405.23
	B	27	$138.10	$206.93
	C	194	$122.65	$127.15
	D	1221	$71.74	$92.00
	E	3867	$33.09	$57.70
	F	6572	$23.17	$42.59
Low rehabilitation	A	1	$110.11	
	B	2	$120.58	$144.20
	C	18	$67.05	$66.12
	D	126	$47.61	$76.52
	E	320	$23.60	$31.37
	F	565	$18.72	$26.58
Extensive Services	A	392	$234.65	$238.69
	B	1486	$124.09	$172.45
	C	1342	$79.62	$128.69
	D	1932	$65.16	$112.79
	E	79	$40.40	$55.35
	F	44	$40.67	$86.90
Special Care	A	12	$110.75	$165.66
	B	143	$122.50	$175.16
	C	491	$71.86	$104.30
	D	2158	$63.88	$95.86
	E	6129	$32.71	$56.66
	F	4045	$20.23	$48.66
Clinically complex	C	134	$94.91	$125.47
	D	1461	$59.99	$101.97
	E	1904	$30.72	$70.06
	F	4332	$20.66	$48.81
Impaired cognition	N/A	1016	$22.14	$44.91
Behavior problems	N/A	126	$27.86	$60.17

Table 5.: Ancillary Costs for the UWIM model

UWIM category	Index value	N	Mean	Std Dev
Extensive Services and Ultra-high rehabilitation	5	23	$440.86	$221.53
	4	179	$250.41	$221.34
	3	294	$109.75	$160.61
Extensive Services and Very-high rehabilitation	5	7	$434.36	$260.65
	4	172	$164.67	$194.10
	3	267	$89.76	$148.70
Extensive Services and High rehabilitation	5	13	$215.16	$274.93
	4	128	$174.02	$192.56
	3	238	$78.42	$146.35
Extensive Services and Medium-high rehabilitation	5	46	$254.30	$232.45
	4	518	$154.70	$186.87
	3	964	$65.44	$111.17
	2	2	$15.52	$21.95
Extensive Services and Low rehabilitation	4	16	$129.90	$193.26
	3	59	$88.83	$156.84
Ultra-high rehabilitation	5	2	$76.99	$2.28
	4	200	$97.85	$113.29
	3	1895	$57.80	$90.04
	2	2728	$30.69	$57.66
Very high rehabilitation	5	1	$80.60	
	4	178	$111.96	$123.99
	3	1931	$54.19	$90.76
	2	2565	$28.24	$55.86
High rehabilitation	4	136	$86.92	$128.46
	3	1648	$45.41	$82.24
	2	2385	$22.68	$41.35
Medium rehabilitation	4	434	$85.32	$121.86
	3	4925	$42.37	$69.89
	2	6634	$23.25	$42.80
Low rehabilitation	4	37	$59.55	$76.75
	3	432	$29.99	$48.14
	2	568	$18.64	$26.52
Extensive Services	5	171	$213.62	$219.82
	4	2012	$125.24	$172.80
	3	3283	$71.86	$126.72
	2	58	$45.61	$89.51
Special Care	5	2	$48.76	$13.44
	4	1202	$68.90	$103.25
	3	8093	$40.98	$73.06
	2	4211	$26.48	$48.98
Clinically complex	4	189	$97.38	$125.70
	3	3398	$51.88	$86.31
	2	4499	$26.19	$50.48
Impaired cognition	1	1016	$22.14	$44.91
Behavior problems	1	126	$27.86	$60.17
Reduced physical functioning	1	3986	$28.11	$57.93

N= 61,871 (58 records could not be used to calculate the UIWIM Ancillary Index level
Data sources: Medicare MDS and SNF Claims Data 1995-1997

Table 6
Distributional Shifts of Beneficiaries
Between Existing RUG-III Model and the WIM2 Option

RUG III Category	Existing RUG-III		Ancillary Index	WIM 2
RUC+SE			A	26
RUC+SE			B	68
RUC+SE			C	47
RUC+SE			D	42
RUC+SE			E	
RUC+SE			F	
RUB+SE			A	18
RUB+SE			B	70
RUB+SE			C	48
RUB+SE			D	145
RUB+SE			E	
RUB+SE			F	
RUA+SE			A	
RUA+SE			B	6
RUA+SE			C	5
RUA+SE			D	16
RUA+SE			E	
RUA+SE			F	
RVC+SE			A	10
RVC+SE			B	66
RVC+SE			C	32

RUG III Category	Existing RUG-III	Ancillary Index	WIM 2
RVC+SE		D	52
RVC+SE		E	
RVC+SE		F	
RVB+SE		A	11
RVB+SE		B	64
RVB+SE		C	47
RVB+SE		D	126
RVB+SE		E	
RVB+SE		F	
RVA+SE		A	
RVA+SE		B	9
RVA+SE		C	3
RVA+SE		D	19
RVA+SE		E	
RVA+SE		F	
RHC+SE		A	17
RHC+SE		B	81
RHC+SE		C	49
RHC+SE		D	96
RHC+SE		E	1
RHC+SE		F	
RHB+SE		A	5
RHB+SE		B	30

RUG III Category	Existing RUG-III	Ancillary Index	WIM 2
RHB+SE		C	20
RHB+SE		D	73
RHB+SE		E	1
RHB+SE		F	
RHA+SE		A	
RHA+SE		B	
RHA+SE		C	
RHA+SE		D	1
RHA+SE		E	
RHA+SE		F	
RMC+SE		A	84
RMC+SE		B	242
RMC+SE		C	180
RMC+SE		D	243
RMC+SE		E	
RMC+SE		F	
RMB+SE		A	21
RMB+SE		B	120
RMB+SE		C	149
RMB+SE		D	458
RMB+SE		E	3
RMB+SE		F	2
RMA+SE		A	

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RUG III Category	Existing RUG-III	Ancillary Index	WIM 2
RMA+SE		B	2
RMA+SE		C	
RMA+SE		D	14
RMA+SE		E	
RMA+SE		F	
RLB+SE		A	
RLB+SE		B	14
RLB+SE		C	11
RLB+SE		D	15
RLB+SE		E	
RLB+SE		F	
RLA+SE		A	1
RLA+SE		B	1
RLA+SE		C	11
RLA+SE		D	22
RLA+SE		E	
RLA+SE		F	
RUC	971	A	
RUC		B	1
RUC		C	13
RUC		D	85
RUC		E	388
RUC		F	301

RUG III Category	Existing RUG-III	Ancillary Index	WIM 2
RUB	3072	A	
RUB		B	
RUB		C	32
RUB		D	206
RUB		E	966
RUB		F	1587
RUA	1222	A	3
RUA		B	6
RUA		C	20
RUA		D	118
RUA		E	232
RUA		F	816
RVC	853	A	
RVC		B	2
RVC		C	10
RVC		D	70
RVC		E	320
RVC		F	291
RVB	2812	A	
RVB		B	2
RVB		C	37
RVB		D	212
RVB		E	919
RVB		F	1394

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RUG III Category	Existing RUG-III	Ancillary Index	WIM 2
RVA	1383	A	1
RVA		B	5
RVA		C	28
RVA		D	164
RVA		E	313
RVA		F	841
RHC	1808	A	
RHC		B	
RHC		C	23
RHC		D	119
RHC		E	651
RHC		F	771
RHB	1795	A	
RHB		B	
RHB		C	25
RHB		D	155
RHB		E	459
RHB		F	1027
RHA	900	A	
RHA		B	10
RHA		C	20
RHA		D	130
RHA		E	171

RUG III Category	Existing RUG-III	Ancillary Index	WIM 2
RHA		F	568
RMC	3834	A	
RMC		B	3
RMC		C	57
RMC		D	325
RMC		E	1418
RMC		F	1282
RMB	7142	A	
RMB		B	1
RMB		C	84
RMB		D	564
RMB		E	1993
RMB		F	3747
RMA	2426	A	3
RMA		B	23
RMA		C	53
RMA		D	332
RMA		E	456
RMA		F	1543
RLB	404	A	
RLB		B	1
RLB		C	5
RLB		D	38

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RUG III Category	Existing RUG-III	Ancillary Index	WIM 2
RLB		E	155
RLB		F	165
RLA	703	A	1
RLA		B	1
RLA		C	13
RLA		D	88
RLA		E	165
RLA		F	400
SE3	2059	A	239
SE3		B	785
SE3		C	555
SE3		D	480
SE3		E	
SE3		F	
SE2	2944	A	146
SE2		B	683
SE2		C	714
SE2		D	1297
SE2		E	72
SE2		F	32
SE1	272	A	7
SE1		B	18
SE1		C	73

RUG III Category	Existing RUG-III	Ancillary Index	WIM 2
SE1		D	155
SE1		E	7
SE1		F	12
SSC	3129	A	
SSC		B	11
SSC		C	92
SSC		D	458
SSC		E	1738
SSC		F	830
SSB	3598	A	
SSB		B	5
SSB		C	93
SSB		D	509
SSB		E	1923
SSB		F	1068
SSA	6251	A	12
SSA		B	127
SSA		C	306
SSA		D	1191
SSA		E	2468
SSA		F	2147
CC2	58	A	
CC2		B	

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RUG III Category	Existing RUG-III	Ancillary Index	WIM 2
CC2		C	
CC2		D	14
CC2		E	15
CC2		F	29
CC1	309	A	
CC1		B	
CC1		C	6
CC1		D	61
CC1		E	121
CC1		F	121
CB2	262	A	
CB2		B	
CB2		C	7
CB2		D	49
CB2		E	56
CB2		F	150
CB1	1423	A	
CB1		B	
CB1		C	20
CB1		D	258
CB1		E	374
CB1		F	771
CA2	802	A	

RUG III Category	Existing RUG-III	Ancillary Index	WIM 2
CA2		B	
CA2		C	18
CA2		D	182
CA2		E	137
CA2		F	465
CA1	4977	A	
CA1		B	
CA1		C	83
CA1		D	897
CA1		E	1201
CA1		F	2796
IB2	60		60
IB1	565		565
IA2	12		12
IA1	379		379
BB2	1		1
BB1	52		52
BA2	2		2

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RUG III Category	Existing RUG-III	Ancillary Index	WIM 2
BA1	71		71
PE2	41		41
PE1	401		401
PD2	119		119
PD1	1184		1184
PC2	33		33
PC1	342		342
PB2	39		39
PB1	602		602
PA2	40		40
PA1	1185		1185

Table 6.1
CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDICES - WIM 2 URBAN

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Compo-nent	Total Rat
JAA	1.71	6.33	2.25	$110.28	$313.02	$193.03		$58.25	$674.58
JAB	1.71	4.25	2.25	$110.28	$210.16	$193.03		$58.25	$571.72
JAC	1.71	2.28	2.25	$110.28	$112.75	$193.03		$58.25	$474.31
JAD	1.71	1.54	2.25	$110.28	$76.15	$193.03		$58.25	$437.71
JAE	1.71	1.08	2.25	$110.28	$53.41	$193.03		$58.25	$414.97
JAF	1.71	0.36	2.25	$110.28	$17.80	$193.03		$58.25	$379.36
JBA	1.39	6.33	2.25	$89.64	$313.02	$193.03		$58.25	$653.94
JBB	1.39	4.25	2.25	$89.64	$210.16	$193.03		$58.25	$551.08
JBC	1.39	2.28	2.25	$89.64	$112.75	$193.03		$58.25	$453.67
JBD	1.39	1.54	2.25	$89.64	$76.15	$193.03		$58.25	$417.87
JBE	1.39	1.08	2.25	$89.64	$53.41	$193.03		$58.25	$394.33
JBF	1.39	0.36	2.25	$89.64	$17.80	$193.03		$58.25	$358.72
JCA	1.22	6.33	2.25	$78.68	$313.02	$193.03		$58.25	$642.98
JCB	1.22	4.25	2.25	$78.68	$210.16	$193.03		$58.25	$540.12
JCC	1.22	2.28	2.25	$78.68	$112.75	$193.03		$58.25	$442.71
JCD	1.22	1.54	2.25	$78.68	$76.15	$193.03		$58.25	$406.11
JCE	1.22	1.08	2.25	$78.68	$53.41	$193.03		$58.25	$383.37
JCF	1.22	0.36	2.25	$78.68	$17.80	$193.03		$58.25	$347.76
KAA	1.57	6.33	1.41	$101.25	$313.02	$120.96		$58.25	$593.48
KAB	1 57	4.25	1.41	$101.25	$210.16	$120.96		$58.25	$490.62
KAC	1.57	2.28	1.41	$101.25	$112.75	$120.96		$58.25	$393.21
KAD	1.57	1.54	1.41	$101.25	$76.15	$120.96		$58.25	$356.61
KAE	1.57	1.08	1.41	$101.25	$53.41	$120.96		$58.25	$333.87
KAF	1.57	0.36	1.41	$101.25	$17.80	$120.96		$58.25	$298.26

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RUG III Category	Nursing Index	Medical Ancillary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
KBA	1.44	6.33	1.41	$92.87	$313.02	$120.96		$58.25	$585.10
KBB	1.44	4.25	1.41	$92.87	$210.16	$120.96		$58.25	$482.24
KBC	1.44	2.28	1.41	$92.87	$112.75	$120.96		$58.25	$384.83
KBD	1.44	1.54	1.41	$92.87	$76.15	$120.96		$58.25	$348.23
KBE	1.44	1.08	1.41	$92.87	$53.41	$120.96		$58.25	$325.49
KBF	1.44	0.36	1.41	$92.87	$17.80	$120.96		$58.25	$289.88
KCA	1.20	6.33	1.41	$77.39	$313.02	$120.96		$58.25	$569.62
KCB	1.20	4.25	1.41	$77.39	$210.16	$120.96		$58.25	$466.76
KCC	1.20	2.28	1.41	$77.39	$112.75	$120.96		$58.25	$369.35
KCD	1.20	1.54	1.41	$77.39	$76.15	$120.96		$58.25	$332.75
KCE	1.20	1.08	1.41	$77.39	$53.41	$120.96		$58.25	$310.01
KCF	1.20	0.36	1.41	$77.39	$17.80	$120.96		$58.25	$274.40
LAA	1.53	6.33	0.94	$98.67	$313.02	$80.64		$58.25	$550.58
LAB	1.53	4.25	0.94	$98.67	$210.16	$80.64		$58.25	$447.72
LAC	1.53	2.28	0.94	$98.67	$112.75	$80.64		$58.25	$350.31
LAD	1.53	1.54	0.94	$98.67	$76.15	$80.64		$58.25	$313.71
LAE	1.53	1.08	0.94	$98.67	$53.41	$80.64		$58.25	$290.97
LAF	1.53	0.36	0.94	$98.67	$17.80	$80.64		$58.25	$255.36
LBA	1.45	6.33	0.94	$93.51	$313.02	$80.64		$58.25	$545.42
LBB	1.45	4.25	0.94	$93.51	$210.16	$80.64		$58.25	$442.56
LBC	1.45	2.28	0.94	$93.51	$112.75	$80.64		$58.25	$345.15
LBD	1.45	1.54	0.94	$93.51	$76.15	$80.64		$58.25	$308.55
LBE	1.45	1.08	0.94	$93.51	$53.41	$80.64		$58.25	$285.81
LBF	1.45	0.36	0.94	$93.51	$17.80	$80.64		$58.25	$250.20
LCA	1.23	6.33	0.94	$79.32	$313.02	$80.64		$58.25	$531.23
LCB	1.23	4.25	0.94	$79.32	$210.16	$80.64		$58.25	$428.37

RUG III Category	Nursing Index	Medical Ancillary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
LCC	1.23	2.28	0.94	$79.32	$112.75	$80.64		$58.25	$330.96
LCD	1.23	1.54	0.94	$79.32	$76.15	$80.64		$58.25	$294.36
LCE	1.23	1.08	0.94	$79.32	$53.41	$80.64		$58.25	$271.62
LCF	1.23	0.36	0.94	$79.32	$17.80	$80.64		$58.25	$236.01
MAA	1.66	6.33	0.77	$107.05	$313.02	$66.06		$58.25	$544.38
MAB	1.66	4.25	0.77	$107.05	$210.16	$66.06		$58.25	$441.52
MAC	1.66	2.28	0.77	$107.05	$112.75	$66.06		$58.25	$344.11
MAD	1.66	1.54	0.77	$107.05	$76.15	$66.06		$58.25	$307.51
MAE	1.66	1.08	0.77	$107.05	$53.41	$66.06		$58.25	$284.77
MAF	1.66	0.36	0.77	$107.05	$17.80	$66.06		$58.25	$249.16
MBA	1.47	6.33	0.77	$94.80	$313.02	$66.06		$58.25	$532.13
MBB	1.47	4.25	0.77	$94.80	$210.16	$66.06		$58.25	$429.27
MBC	1.47	2.28	0.77	$94.80	$112.75	$66.06		$58.25	$331.86
MBD	1.47	1.54	0.77	$94.80	$76.15	$66.06		$58.25	$295.26
MBE	1.47	1.08	0.77	$94.80	$53.41	$66.06		$58.25	$272.52
MBF	1.47	0.36	0.77	$94.80	$17.80	$66.06		$58.25	$236.91
MCA	1.43	6.33	0.77	$92.22	$313.02	$66.06		$58.25	$529.55
MCB	1.43	4.25	0.77	$92.22	$210.16	$66.06		$58.25	$426.69
MCC	1.43	2.28	0.77	$92.22	$112.75	$66.06		$58.25	$329.28
MCD	1.43	1.54	0.77	$92.22	$76.15	$66.06		$58.25	$292.68
MCE	1.43	1.08	0.77	$92.22	$53.41	$66.06		$58.25	$269.94
MCF	1.43	0.36	0.77	$92.22	$17.80	$66.06		$58.25	$234.33
NAA	1.52	6.33	0.43	$98.02	$313.02	$36.89		$58.25	$506.18
NAB	1.52	4.25	0.43	$98.02	$210.16	$36.89		$58.25	$403.32
NAC	1.52	2.28	0.43	$98.02	$112.75	$36.89		$58.25	$305.91
NAD	1.52	1.54	0.43	$98.02	$76.15	$36.89		$58.25	$269.31

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RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Compo-nent	Total Rate
NAE	1.52	1.08	0.43	$98.02	$53.41	$36.89		$58.25	$246.57
NAF	1.52	0.36	0.43	$98.02	$17.80	$36.89		$58.25	$210.96
NBA	1.26	6.33	0.43	$81.26	$313.02	$36.89		$58.25	$489.42
NBB	1.26	4.25	0.43	$81.26	$210.16	$36.89		$58.25	$386.56
NBC	1.26	2.28	0.43	$81.26	$112.75	$36.89		$58.25	$289.15
NBD	1.26	1.54	0.43	$81.26	$76.15	$36.89		$58.25	$252.55
NBE	1.26	1.08	0.43	$81.26	$53.41	$36.89		$58.25	$229.81
NBF	1.26	0.36	0.43	$81.26	$17.80	$36.89		$58.25	$194.20
UAA	1.21	6.65	2.25	$78.03	$328.84	$193.03		$58.25	$658.15
UAB	1.21	4.61	2.25	$78.03	$227.96	$193.03		$58.25	$557.27
UAC	1.21	2.73	2.25	$78.03	$135.00	$193.03		$58.25	$464.31
UAD	1.21	1.9	2.25	$78.03	$93.96	$193.03		$58.25	$423.27
UAE	1.21	0.84	2.25	$78.03	$41.54	$193.03		$58.25	$370.85
UAF	1.21	0.57	2.25	$78.03	$28.19	$193.03		$58.25	$357.50
UBA	0.94	6.65	2.25	$60.62	$328.84	$193.03		$58.25	$640.74
UBB	0.94	4.61	2.25	$60.62	$227.96	$193.03		$58.25	$539.86
UBC	0.94	2.73	2.25	$60.62	$135.00	$193.03		$58.25	$446.90
UBD	0.94	1.9	2.25	$60.62	$93.96	$193.03		$58.25	$405.86
UBE	0.94	0.84	2.25	$60.62	$41.54	$193.03		$58.25	$353.44
UBF	0.94	0.57	2.25	$60.62	$28.19	$193.03		$58.25	$340.09
UCA	0.79	6.65	2.25	$50.95	$328.84	$193.03		$58.25	$631.07
UCB	0.79	4.61	2.25	$50.95	$227.96	$193.03		$58.25	$530.19
UCC	0.79	2.73	2.25	$50.95	$135.00	$193.03		$58.25	$437.23
UCD	0.79	1.9	2.25	$50.95	$93.96	$193.03		$58.25	$396.19
UCE	0.79	0.84	2.25	$50.95	$41.54	$193.03		$58.25	$343.77
UCF	0.79	0.57	2.25	$50.95	$28.19	$193.03		$58.25	$330.42

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Compo-nent	Total Rat
VAA	1.16	6.65	1.41	$74.81	$328.84	$120.96		$58.25	$582.86
VAB	1.16	4.61	1.41	$74.81	$227.96	$120.96		$58.25	$481.98
VAC	1.16	2.73	1.41	$74.81	$135.00	$120.96		$58.25	$389.82
VAD	1.16	1.9	1.41	$74.81	$93.96	$120.96		$58.25	$347.98
VAE	1.16	0.84	1.41	$74.81	$41.54	$120.96		$58.25	$295.56
VAF	1.16	0.57	1.41	$74.81	$28.19	$120.96		$58.25	$282.21
VBA	1.02	6.65	1.41	$65.78	$328.84	$120.96		$58.25	$573.83
VBB	1.02	4.61	1.41	$65.78	$227.96	$120.96		$58.25	$472.95
VBC	1.02	2.73	1.41	$65.78	$135.00	$120.96		$58.25	$379.99
VBD	1.02	1.9	1.41	$65.78	$93.96	$120.96		$58.25	$338.95
VBE	1.02	0.84	1.41	$65.78	$41.54	$120.96		$58.25	$286.53
VBF	1.02	0.57	1.41	$65.78	$28.19	$120.96		$58.25	$273.18
VCA	0.78	6.65	1.41	$50.30	$328.84	$120.96		$58.25	$558.35
VCB	0.78	4.61	1.41	$50.30	$227.96	$120.96		$58.25	$457.47
VCC	0.78	2.73	1.41	$50.30	$135.00	$120.96		$58.25	$364.51
VCD	0.78	1.9	1.41	$50.30	$93.96	$120.96		$58.25	$323.47
VCE	0.78	0.84	1.41	$50.30	$41.54	$120.96		$58.25	$271.05
VCF	0.78	0.57	1.41	$50.30	$28.19	$120.96		$58.25	$257.70
WAA	1.15	6.65	0.94	$74.16	$328.84	$80.64		$58.25	$541.89
WAB	1.15	4.61	0.94	$74.16	$227.96	$80.64		$58.25	$441.01
WAC	1.15	2.73	0.94	$74.16	$135.00	$80.64		$58.25	$348.85
WAD	1.15	1.9	0.94	$74.16	$93.96	$80.64		$58.25	$307.01
WAE	1.15	0.84	0.94	$74.16	$41.54	$80.64		$58.25	$254.59
WAF	1.15	0.57	0.94	$74.16	$28.19	$80.64		$58.25	$241.24
WBA	1.05	6.65	0.94	$67.71	$328.84	$80.64		$58.25	$535.44

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RUG III Category	Nursing Index	Medical Ancillary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
WBB	1.05	4.61	0.94	$67.71	$227.96	$80.64		$58.25	$434.56
WBC	1.05	2.73	0.94	$67.71	$135.00	$80.64		$58.25	$341.60
WBD	1.05	1.9	0.94	$67.71	$93.96	$80.64		$58.25	$300.56
WBE	1.05	0.84	0.94	$67.71	$41.54	$80.64		$58.25	$248.14
WBF	1.05	0.57	0.94	$67.71	$28.19	$80.64		$58.25	$234.79
WCA	0.89	6.65	0.94	$57.40	$328.84	$80.64		$58.25	$525.13
WCB	0.89	4.61	0.94	$57.40	$227.96	$80.64		$58.25	$424.25
WCC	0.89	2.73	0.94	$57.40	$135.00	$80.64		$58.25	$331.29
WCD	0.89	1.9	0.94	$57.40	$93.96	$80.64		$58.25	$290.25
WCE	0.89	0.84	0.94	$57.40	$41.54	$80.64		$58.25	$237.83
WCF	0.89	0.57	0.94	$57.40	$28.19	$80.64		$58.25	$224.48
XAA	1.09	6.65	0.77	$70.29	$328.84	$66.06		$58.25	$523.44
XAB	1.09	4.61	0.77	$70.29	$227.96	$66.06		$58.25	$422.56
XAC	1.09	2.73	0.77	$70.29	$135.00	$66.06		$58.25	$329.60
XAD	1.09	1.9	0.77	$70.29	$93.96	$66.06		$58.25	$288.56
XAE	1.09	0.84	0.77	$70.29	$41.54	$66.06		$58.25	$236.14
XAF	1.09	0.57	0.77	$70.29	$28.19	$66.06		$58.25	$222.79
XBA	1.02	6.65	0.77	$65.78	$328.84	$66.06		$58.25	$518.93
XBB	1.02	4.61	0.77	$65.78	$227.96	$66.06		$58.25	$418.05
XBC	1.02	2.73	0.77	$65.78	$135.00	$66.06		$58.25	$325.09
XBD	1.02	1.9	0.77	$65.78	$93.96	$66.06		$58.25	$284.05
XBE	1.02	0.84	0.77	$65.78	$41.54	$66.06		$58.25	$231.63
XBF	1.02	0.57	0.77	$65.78	$28.19	$66.06		$58.25	$218.28
XCA	0.98	6.65	0.77	$63.20	$328.84	$66.06		$58.25	$516.35
XCB	0.98	4.61	0.77	$63.20	$227.96	$66.06		$58.25	$415.47
XCC	0.98	2.73	0.77	$63.20	$135.00	$66.06		$58.25	$322.51

RUG III Category	Nursing Index	Medical Ancillary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
XCD	0.98	1.9	0.77	$63.20	$93.96	$66.06		$58.25	$281.47
XCE	0.98	0.84	0.77	$63.20	$41.54	$66.06		$58.25	$229.05
XCF	0.98	0.57	0.77	$63.20	$28.19	$66.06		$58.25	$215.70
YAA	1.08	6.65	0.43	$69.65	$328.84	$36.89		$58.25	$493.63
YAB	1.08	4.61	0.43	$69.65	$227.96	$36.89		$58.25	$392.75
YAC	1.08	2.73	0.43	$69.65	$135.00	$36.89		$58.25	$299.79
YAD	1.08	1.9	0.43	$69.65	$93.96	$36.89		$58.25	$258.75
YAE	1.08	0.84	0.43	$69.65	$41.54	$36.89		$58.25	$206.33
YAF	1.08	0.57	0.43	$69.65	$28.19	$36.89		$58.25	$192.98
YBA	0.8	6.65	0.43	$51.59	$328.84	$36.89		$58.25	$475.57
YBB	0.8	4.61	0.43	$51.59	$227.96	$36.89		$58.25	$374.69
YBC	0.8	2.73	0.43	$51.59	$135.00	$36.89		$58.25	$281.73
YBD	0.8	1.9	0.43	$51.59	$93.96	$36.89		$58.25	$240.69
YBE	0.8	0.84	0.43	$51.59	$41.54	$36.89		$58.25	$188.27
YBF	0.8	0.57	0.43	$51.59	$28.19	$36.89		$58.25	$174.92
EAA	1.75	5.37		$112.86	$265.55		$11.32	$58.25	$447.98
EAB	1.75	2.84		$112.86	$140.44		$11.32	$58.25	$322.87
EAC	1.75	1.82		$112.86	$90.00		$11.32	$58.25	$272.43
EAD	1.75	1.49		$112.86	$73.68		$11.32	$58.25	$256.11
EAE	1.75	0.92		$112.86	$45.49		$11.32	$58.25	$227.92
EAF	1.75	0.93		$112.86	$45.99		$11.32	$58.25	$228.42
EBA	1.41	5.37		$90.93	$265.55		$11.32	$58.25	$426.05
EBB	1.41	2.84		$90.93	$140.44		$11.32	$58.25	$300.94
EBC	1.41	1.82		$90.93	$90.00		$11.32	$58.25	$250.50
EBD	1.41	1.49		$90.93	$73.68		$11.32	$58.25	$234.18
EBE	1.41	0.92		$90.93	$45.49		$11.32	$58.25	$205.99

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RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Compo-nent	Total Rat
EBF	1.41	0.93		$90.93	$45.99		$11.32	$58.25	$206.49
ECA	1.19	5.37		$76.74	$265.55		$11.32	$58.25	$411.86
ECB	1.19	2.84		$76.74	$140.44		$11.32	$58.25	$286.75
ECC	1.19	1.82		$76.74	$90.00		$11.32	$58.25	$236.31
ECD	1.19	1.49		$76.74	$73.68		$11.32	$58.25	$219.99
ECE	1.19	0.92		$76.74	$45.49		$11.32	$58.25	$191.80
ECF	1.19	0.93		$76.74	$45.99		$11.32	$58.25	$192.30
SAA	1.13	2.72		$72.87	$134.50		$11.32	$58.25	$276.94
SAB	1.13	2.8		$72.87	$138.46		$11.32	$58.25	$280.90
SAC	1.13	1.64		$72.87	$81.10		$11.32	$58.25	$223.54
SAD	1.13	1.46		$72.87	$72.20		$11.32	$58.25	$214.64
SAE	1.13	0.75		$72.87	$37.09		$11.32	$58.25	$179.53
SAF	1.13	0.6		$72.87	$29.67		$11.32	$58.25	$172.11
SBA	1.05	2.72		$67.71	$134.50		$11.32	$58.25	$271.78
SBB	1.05	2.8		$67.71	$138.46		$11.32	$58.25	$275.74
SBC	1.05	1.64		$67.71	$81.10		$11.32	$58.25	$218.38
SBD	1.05	1.46		$67.71	$72.20		$11.32	$58.25	$209.48
SBE	1.05	0.75		$67.71	$37.09		$11.32	$58.25	$174.37
SBF	1.05	0.6		$67.71	$29.67		$11.32	$58.25	$166.95
SCA	1.01	2.72		$65.13	$134.50		$11.32	$58.25	$269.20
SCB	1.01	2.8		$65.13	$138.46		$11.32	$58.25	$273.16
SCC	1.01	1.64		$65.13	$81.10		$11.32	$58.25	$215.80
SCD	1.01	1.46		$65.13	$72.20		$11.32	$58.25	$206.90
SCE	1.01	0.75		$65.13	$37.09		$11.32	$58.25	$171.79
SCF	1.01	0.6		$65.13	$29.67		$11.32	$58.25	$164.37

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Compo-nent	Total Rate
CAA	1.12	2.17		$72.23	$107.31		$11.32	$58.25	$249.11
CAB	1.12	2.17		$72.23	$107.31		$11.32	$58.25	$249.11
CAC	1.12	2.17		$72.23	$107.31		$11.32	$58.25	$249.11
CAD	1.12	1.6		$72.23	$79.12		$11.32	$58.25	$220.92
CAE	1.12	0.89		$72.23	$44.01		$11.32	$58.25	$185.81
CAF	1.12	0.59		$72.23	$29.18		$11.32	$58.25	$170.98
CBA	0.99	2.17		$63.85	$107.31		$11.32	$58.25	$240.73
CBB	0.99	2.17		$63.85	$107.31		$11.32	$58.25	$240.73
CBC	0.99	2.17		$63.85	$107.31		$11.32	$58.25	$240.73
CBD	0.99	1.6		$63.85	$79.12		$11.32	$58.25	$212.54
CBE	0.99	0.89		$63.85	$44.01		$11.32	$58.25	$177.43
CBF	0.99	0.59		$63.85	$29.18		$11.32	$58.25	$162.60
CCA	0.91	2.17		$58.69	$107.31		$11.32	$58.25	$235.57
CCB	0.91	2.17		$58.69	$107.31		$11.32	$58.25	$235.57
CCC	0.91	2.17		$58.69	$107.31		$11.32	$58.25	$235.57
CCD	0.91	1.6		$58.69	$79.12		$11.32	$58.25	$207.38
CCE	0.91	0.89		$58.69	$44.01		$11.32	$58.25	$172.27
CCF	0.91	0.59		$58.69	$29.18		$11.32	$58.25	$157.44
CDA	0.84	2.17		$54.17	$107.31		$11.32	$58.25	$231.05
CDB	0.84	2.17		$54.17	$107.31		$11.32	$58.25	$231.05
CDC	0.84	2.17		$54.17	$107.31		$11.32	$58.25	$231.05
CDD	0.84	1.6		$54.17	$79.12		$11.32	$58.25	$202.86
CDE	0.84	0.89		$54.17	$44.01		$11.32	$58.25	$167.75
CDF	0.84	0.59		$54.17	$29.18		$11.32	$58.25	$152.92
CEA	0.83	2.17		$53.53	$107.31		$11.32	$58.25	$230.41
CEB	0.83	2.17		$53.53	$107.31		$11.32	$58.25	$230.41

RUG III Category	Nursing Index	Medical Ancillary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
CEC	0.83	2.17		$53.53	$107.31		$11.32	$58.25	$230.41
CED	0.83	1.6		$53.53	$79.12		$11.32	$58.25	$202.22
CEE	0.83	0.89		$53.53	$44.01		$11.32	$58.25	$167.11
CEF	0.83	0.59		$53.53	$29.18		$11.32	$58.25	$152.28
CFA	0.75	2.17		$48.37	$107.31		$11.32	$58.25	$225.25
CFB	0.75	2.17		$48.37	$107.31		$11.32	$58.25	$225.25
CFC	0.75	2.17		$48.37	$107.31		$11.32	$58.25	$225.25
CFD	0.75	1.6		$48.37	$79.12		$11.32	$58.25	$197.06
CFE	0.75	0.89		$48.37	$44.01		$11.32	$58.25	$161.95
CFF	0.75	0.59		$48.37	$29.18		$11.32	$58.25	$147.12
IAR	0.69	0.51		$44.50	$25.22		$11.32	$58.25	$139.29
IBR	0.67	0.51		$43.21	$25.22		$11.32	$58.25	$138.00
ICR	0.57	0.51		$36.76	$25.22		$11.32	$58.25	$131.55
IDR	0.53	0.51		$34.18	$25.22		$11.32	$58.25	$128.97
BAR	0.68	0.64		$43.85	$31.65		$11.32	$58.25	$145.87
BBR	0.65	0.64		$41.92	$31.65		$11.32	$58.25	$143.14
BCR	0.56	0.64		$36.11	$31.65		$11.32	$58.25	$137.33
BDR	0.48	0.64		$30.96	$31.65		$11.32	$58.25	$132.18
PAR	0.77	0.64		$49.66	$31.65		$11.32	$58.25	$150.88

RUG III Category	Nursing Index	Medical Ancillary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
PBR	0.72	0.64		$46.43	$31.65		$11.32	$58.25	$147.65
PCR	0.7	0.64		$45.14	$31.65		$11.32	$58.25	$146.36
PDR	0.65	0.64		$41.92	$31.65		$11.32	$58.25	$143.14
PER	0.64	0.64		$41.27	$31.65		$11.32	$58.25	$142.49
PFR	0.51	0.64		$32.89	$31.65		$11.32	$58.25	$134.11
PGR	0.5	0.64		$32.25	$31.65		$11.32	$58.25	$133.47
PHR	0.49	0.64		$31.60	$31.65		$11.32	$58.25	$132.82
PIR	0.46	0.64		$29.67	$31.65		$11.32	$58.25	$130.89
PJR	0.46	0.64		$29.67	$31.65		$11.32	$58.25	$130.89

Table 6.2
CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDICES - WIM 2 RURAL

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
JAA	1.71	6.33	2.25	$106.88	$294.85	$223.00		$59.32	$684.05
JAB	1.71	4.25	2.25	$106.88	$197.97	$223.00		$59.32	$587.17
JAC	1.71	2.28	2.25	$106.88	$106.20	$223.00		$59.32	$495.40
JAD	1.71	1.54	2.25	$106.88	$71.73	$223.00		$59.32	$460.93
JAE	1.71	1.08	2.25	$106.88	$50.31	$223.00		$59.32	$439.51
JAF	1.71	0.36	2.25	$106.88	$16.77	$223.00		$59.32	$405.97
JBA	1.39	6.33	2.25	$86.88	$294.85	$223.00		$59.32	$664.05
JBB	1.39	4.25	2.25	$86.88	$197.97	$223.00		$59.32	$567.17
JBC	1.39	2.28	2.25	$86.88	$106.20	$223.00		$59.32	$475.40
JBD	1.39	1.54	2.25	$86.88	$71.73	$223.00		$59.32	$440.93
JBE	1.39	1.08	2.25	$86.88	$50.31	$223.00		$59.32	$419.51
JBF	1.39	0.36	2.25	$86.88	$16.77	$223.00		$59.32	$385.97
JCA	1.22	6.33	2.25	$76.25	$294.85	$223.00		$59.32	$663.42
JCB	1.22	4.25	2.25	$76.25	$197.97	$223.00		$59.32	$556.54
JCC	1.22	2.28	2.25	$76.25	$106.20	$223.00		$59.32	$464.77
JCD	1.22	1.54	2.25	$76.25	$71.73	$223.00		$59.32	$430.30
JCE	1.22	1.08	2.25	$76.25	$50.31	$223.00		$59.32	$408.88
JCF	1.22	0.36	2.25	$76.25	$16.77	$223.00		$59.32	$375.34
KAA	1.57	6.33	1.41	$98.13	$294.85	$139.75		$59.32	$592.05
KAB	1.57	4.25	1.41	$98.13	$197.97	$139.75		$59.32	$495.17
KAC	1.57	2.28	1.41	$98.13	$106.20	$139.75		$59.32	$403.40
KAD	1.57	1.54	1.41	$98.13	$71.73	$139.75		$59.32	$368.93
KAE	1.57	1.08	1.41	$98.13	$50.31	$139.75		$59.32	$347.51
KAF	1.57	0.36	1.41	$98.13	$16.77	$139.75		$59.32	$313.97
KBA	1.44	6.33	1.41	$90.00	$294.85	$139.75		$59.32	$583.92
KBB	1.44	4.25	1.41	$90.00	$197.97	$139.75		$59.32	$487.04

RUG III Category	Nursing Index	Medical Ancillary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
KBC	1.44	2.28	1.41	$90.00	$106.20	$139.75		$59.32	$395.27
KBD	1.44	1.54	1.41	$90.00	$71.73	$139.75		$59.32	$360.80
KBE	1.44	1.08	1.41	$90.00	$50.31	$139.75		$59.32	$339.38
KBF	1.44	0.36	1.41	$90.00	$16.77	$139.75		$59.32	$305.84
KCA	1.2	6.33	1.41	$75.00	$294.85	$139.75		$59.32	$568.92
KCB	1.2	4.25	1.41	$75.00	$197.97	$139.75		$59.32	$472.04
KCC	1.2	2.28	1.41	$75.00	$106.20	$139.75		$59.32	$380.27
KCD	1.2	1.54	1.41	$75.00	$71.73	$139.75		$59.32	$345.80
KCE	1.2	1.08	1.41	$75.00	$50.31	$139.75		$59.32	$324.38
KCF	1.2	0.36	1.41	$75.00	$16.77	$139.75		$59.32	$290.84
LAA	1.53	6.33	0.94	$95.63	$294.85	$93.16		$59.32	$542.96
LAB	1.53	4.25	0.94	$95.63	$197.97	$93.16		$59.32	$446.08
LAC	1.53	2.28	0.94	$95.63	$106.20	$93.16		$59.32	$354.31
LAD	1.53	1.54	0.94	$95.63	$71.73	$93.16		$59.32	$319.84
LAE	1.53	1.08	0.94	$95.63	$50.31	$93.16		$59.32	$298.42
LAF	1.53	0.36	0.94	$95.63	$16.77	$93.16		$59.32	$264.88
LBA	1.45	6.33	0.94	$90.63	$294.85	$93.16		$59.32	$537.96
LBB	1.45	4.25	0.94	$90.63	$197.97	$93.16		$59.32	$441.08
LBC	1.45	2.28	0.94	$90.63	$106.20	$93.16		$59.32	$349.31
LBD	1.45	1.54	0.94	$90.63	$71.73	$93.16		$59.32	$314.84
LBE	1.45	1.08	0.94	$90.63	$50.31	$93.16		$59.32	$293.42
LBF	1.45	0.36	0.94	$90.63	$16.77	$93.16		$59.32	$259.88
LCA	1.23	6.33	0.94	$76.88	$294.85	$93.16		$59.32	$524.21
LCB	1.23	4.25	0.94	$76.88	$197.97	$93.16		$59.32	$427.33
LCC	1.23	2.28	0.94	$76.88	$106.20	$93.16		$59.32	$335.56
LCD	1.23	1.54	0.94	$76.88	$71.73	$93.16		$59.32	$301.09
LCE	1.23	1.08	0.94	$76.88	$50.31	$93.16		$59.32	$279.67

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RUG III Category	Nursing Index	Medical Ancillary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
LCF	1.23	0.36	0.94	$76.88	$16.77	$93.16		$59.32	$246.13
MAA	1.66	6.33	0.77	$103.75	$294.85	$76.31		$59.32	$534.23
MAB	1.66	4.25	0.77	$103.75	$197.97	$76.31		$59.32	$437.35
MAC	1.66	2.28	0.77	$103.75	$106.20	$76.31		$59.32	$345.58
MAD	1.66	1.54	0.77	$103.75	$71.73	$76.31		$59.32	$311.11
MAE	1.66	1.08	0.77	$103.75	$50.31	$76.31		$59.32	$289.69
MAF	1.66	0.36	0.77	$103.75	$16.77	$76.31		$59.32	$256.15
MBA	1.47	6.33	0.77	$91.88	$294.85	$76.31		$59.32	$522.36
MBB	1.47	4.25	0.77	$91.88	$197.97	$76.31		$59.32	$425.48
MBC	1.47	2.28	0.77	$91.88	$106.20	$76.31		$59.32	$333.71
MBD	1.47	1.54	0.77	$91.88	$71.73	$76.31		$59.32	$299.24
MBE	1.47	1.08	0.77	$91.88	$50.31	$76.31		$59.32	$277.82
MBF	1.47	0.36	0.77	$91.88	$16.77	$76.31		$59.32	$244.28
MCA	1.43	6.33	0.77	$89.38	$294.85	$76.31		$59.32	$519.86
MCB	1.43	4.25	0.77	$89.38	$197.97	$76.31		$59.32	$422.98
MCC	1.43	2.28	0.77	$89.38	$106.20	$76.31		$59.32	$331.21
MCD	1.43	1.54	0.77	$89.38	$71.73	$76.31		$59.32	$296.74
MCE	1.43	1.08	0.77	$89.38	$50.31	$76.31		$59.32	$275.32
MCF	1.43	0.36	0.77	$89.38	$16.77	$76.31		$59.32	$241.78
NAA	1.52	6.33	0.43	$95.00	$294.85	$42.62		$59.32	$491.79
NAB	1.52	4.25	0.43	$95.00	$197.97	$42.62		$59.32	$394.91
NAC	1.52	2.28	0.43	$95.00	$106.20	$42.62		$59.32	$303.14
NAD	1.52	1.54	0.43	$95.00	$71.73	$42.62		$59.32	$268.67
NAE	1.52	1.08	0.43	$95.00	$50.31	$42.62		$59.32	$247.25
NAF	1.52	0.36	0.43	$95.00	$16.77	$42.62		$59.32	$213.71
NBA	1.26	6.33	0.43	$78.75	$294.85	$42.62		$59.32	$475.54

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
NBB	1.26	4.25	0.43	$78.75	$197.97	$42.62		$59.32	$378.66
NBC	1.26	2.28	0.43	$78.75	$106.20	$42.62		$59.32	$286.89
NBD	1.26	1.54	0.43	$78.75	$71.73	$42.62		$59.32	$252.42
NBE	1.26	1.08	0.43	$78.75	$50.31	$42.62		$59.32	$231.00
NBF	1.26	0.36	0.43	$78.75	$16.77	$42.62		$59.32	$197.46
UAA	1.21	6.65	2.25	$75.63	$309.76	$223.00		$59.32	$667.71
UAB	1.21	4.61	2.25	$75.63	$214.73	$223.00		$59.32	$572.68
UAC	1.21	2.73	2.25	$75.63	$127.16	$223.00		$59.32	$485.11
UAD	1.21	1.9	2.25	$75.63	$88.50	$223.00		$59.32	$446.45
UAE	1.21	0.84	2.25	$75.63	$39.13	$223.00		$59.32	$397.08
UAF	1.21	0.57	2.25	$75.63	$26.55	$223.00		$59.32	$384.50
UBA	.094	6.65	2.25	$58.75	$309.76	$223.00		$59.32	$650.83
UBB	.094	4.61	2.25	$58.75	$214.73	$223.00		$59.32	$555.80
UBC	.094	2.73	2.25	$58.75	$127.16	$223.00		$59.32	$468.23
UBD	.094	1.9	2.25	$58.75	$88.50	$223.00		$59.32	$429.57
UBE	.094	0.84	2.25	$58.75	$39.13	$223.00		$59.32	$380.20
UBF	.094	0.57	2.25	$58.75	$26.55	$223.00		$59.32	$367.62
UCA	0.79	6.65	2.25	$49.38	$309.76	$223.00		$59.32	$641.46
UCB	0.79	4.61	2.25	$49.38	$214.73	$223.00		$59.32	$546.43
UCC	0.79	2.73	2.25	$49.38	$127.16	$223.00		$59.32	$458.86
UCD	0.79	1.9	2.25	$49.38	$88.50	$223.00		$59.32	$420.20
UCE	0.79	0.84	2.25	$49.38	$39.13	$223.00		$59.32	$370.83
UCF	0.79	0.57	2.25	$49.38	$26.55	$223.00		$59.32	$358.25
VAA	1.16	6.65	1.41	$72.50	$309.76	$139.75		$59.32	$581.33
VAB	1.16	4.61	1.41	$72.50	$214.73	$139.75		$59.32	$486.30
VAC	1.16	2.73	1.41	$72.50	$127.16	$139.75		$59.32	$398.73
VAD	1.16	1.9	1.41	$72.50	$88.50	$139.75		$59.32	$360.07

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RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
VAE	1.16	0.84	1.41	$72.50	$39.13	$139.75		$59.32	$310.70
VAF	1.16	0.57	1.41	$72.50	$26.55	$139.75		$59.32	$298.12
VBA	1.02	6.65	1.41	$63.75	$309.76	$139.75		$59.32	$572.58
VBB	1.02	4.61	1.41	$63.75	$214.73	$139.75		$59.32	$477.55
VBC	1.02	2.73	1.41	$63.75	$127.16	$139.75		$59.32	$389.98
VBD	1.02	1.9	1.41	$63.75	$88.50	$139.75		$59.32	$351.32
VBE	1.02	0.84	1.41	$63.75	$39.13	$139.75		$59.32	$301.95
VBF	1.02	0.57	1.41	$63.75	$26.55	$139.75		$59.32	$289.37
VCA	0.78	6.65	1.41	$48.75	$309.76	$139.75		$59.32	$557.58
VCB	0.78	4.61	1.41	$48.75	$214.73	$139.75		$59.32	$462.55
VCC	0.78	2.73	1.41	$48.75	$127.16	$139.75		$59.32	$374.98
VCD	0.78	1.9	1.41	$48.75	$88.50	$139.75		$59.32	$336.32
VCE	0.78	0.84	1.41	$48.75	$39.13	$139.75		$59.32	$286.95
VCF	0.78	0.57	1.41	$48.75	$26.55	$139.75		$59.32	$274.37
WAA	1.15	6.65	0.94	$71.88	$309.76	$93.16		$59.32	$534.12
WAB	1.15	4.61	0.94	$71.88	$214.73	$93.16		$59.32	$439.09
WAC	1.15	2.73	0.94	$71.88	$127.16	$93.16		$59.32	$351.52
WAD	1.15	1.9	0.94	$71.88	$88.50	$93.16		$59.32	$312.86
WAE	1.15	0.84	0.94	$71.88	$39.13	$93.16		$59.32	$263.49
WAF	1.15	0.57	0.94	$71.88	$26.55	$93.16		$59.32	$250.91
WBA	1.05	6.65	0.94	$65.63	$309.76	$93.16		$59.32	$527.87
WBB	1.05	4.61	0.94	$65.63	$214.73	$93.16		$59.32	$432.84
WBC	1.05	2.73	0.94	$65.63	$127.16	$93.16		$59.32	$345.27
WBD	1.05	1.9	0.94	$65.63	$88.50	$93.16		$59.32	$306.61
WBE	1.05	0.84	0.94	$65.63	$39.13	$93.16		$59.32	$257.24
WBF	1.05	0.57	0.94	$65.63	$26.55	$93.16		$59.32	$244.66

RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
WCA	0.89	6.65	0.94	$55.63	$309.76	$93.16		$59.32	$517.87
WCB	0.89	4.61	0.94	$55.63	$214.73	$93.16		$59.32	$422.84
WCC	0.89	2.73	0.94	$55.63	$127.16	$93.16		$59.32	$335.27
WCD	0.89	1.9	0.94	$55.63	$88.50	$93.16		$59.32	$296.61
WCE	0.89	0.84	0.94	$55.63	$39.13	$93.16		$59.32	$247.24
WCF	0.89	0.57	0.94	$55.63	$26.55	$93.16		$59.32	$234.66
XAA	1.09	6.65	0.77	$68.13	$309.76	$76.31		$59.32	$513.52
XAB	1.09	4.61	0.77	$68.13	$214.73	$76.31		$59.32	$418.49
XAC	1.09	2.73	0.77	$68.13	$127.16	$76.31		$59.32	$330.92
XAD	1.09	1.9	0.77	$68.13	$88.50	$76.31		$59.32	$292.26
XAE	1.09	0.84	0.77	$68.13	$39.13	$76.31		$59.32	$242.89
XAF	1.09	0.57	0.77	$68.13	$26.55	$76.31		$59.32	$230.31
XBA	1.02	6.65	0.77	$63.75	$309.76	$76.31		$59.32	$509.14
XBB	1.02	4.61	0.77	$63.75	$214.73	$76.31		$59.32	$414.11
XBC	1.02	2.73	0.77	$63.75	$127.16	$76.31		$59.32	$326.54
XBD	1.02	1.9	0.77	$63.75	$88.50	$76.31		$59.32	$287.88
XBE	1.02	0.84	0.77	$63.75	$39.13	$76.31		$59.32	$238.51
XBF	1.02	0.57	0.77	$63.75	$26.55	$76.31		$59.32	$225.93
XCA	0.98	6.65	0.77	$61.25	$309.76	$76.31		$59.32	$506.64
XCB	0.98	4.61	0.77	$61.25	$214.73	$76.31		$59.32	$411.61
XCC	0.98	2.73	0.77	$61.25	$127.16	$76.31		$59.32	$324.04
XCD	0.98	1.9	0.77	$61.25	$88.50	$76.31		$59.32	$285.38
XCE	0.98	0.84	0.77	$61.25	$39.13	$76.31		$59.32	$236.01
XCF	0.98	0.57	0.77	$61.25	$26.55	$76.31		$59.32	$223.43
YAA	1.08	6.65	0.43	$67.50	$309.76	$42.62		$59.32	$479.20
YAB	1.08	4.61	0.43	$67.50	$214.73	$42.62		$59.32	$384.17
YAC	1.08	2.73	0.43	$67.50	$127.16	$42.62		$59.32	$296.60

RUG III Category	Nursing Index	Medical Ancillary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
YAD	1.08	1.9	0.43	$67.50	$88.50	$42.62		$59.32	$257.94
YAE	1.08	0.84	0.43	$67.50	$39.13	$42.62		$59.32	$208.57
YAF	1.08	0.57	0.43	$67.50	$26.55	$42.62		$59.32	$195.99
YBA	0.8	6.65	0.43	$50.00	$309.76	$42.62		$59.32	$461.70
YBB	0.8	4.61	0.43	$50.00	$214.73	$42.62		$59.32	$366.67
YBC	0.8	2.73	0.43	$50.00	$127.16	$42.62		$59.32	$279.10
YBD	0.8	1.9	0.43	$50.00	$88.50	$42.62		$59.32	$240.44
YBE	0.8	0.84	0.43	$50.00	$39.13	$42.62		$59.32	$191.07
YBF	0.8	0.57	0.43	$50.00	$26.55	$42.62		$59.32	$178.49
EAA	1.75	5.37		$109.38	$250.13		$12.10	$59.32	$430.93
EAB	1.75	2.84		$109.38	$132.29		$12.10	$59.32	$313.09
EAC	1.75	1.82		$109.38	$84.78		$12.10	$59.32	$265.58
EAD	1.75	1.49		$109.38	$69.40		$12.10	$59.32	$250.20
EAE	1.75	0.92		$109.38	$42.85		$12.10	$59.32	$223.65
EAF	1.75	0.93		$109.38	$43.32		$12.10	$59.32	$224.12
EBA	1.41	5.37		$88.13	$250.13		$12.10	$59.32	$409.68
EBB	1.41	2.84		$88.13	$132.29		$12.10	$59.32	$291.84
EBC	1.41	1.82		$88.13	$84.78		$12.10	$59.32	$244.33
EBD	1.41	1.49		$88.13	$69.40		$12.10	$59.32	$228.95
EBE	1.41	0.92		$88.13	$42.85		$12.10	$59.32	$202.40
EBF	1.41	0.93		$88.13	$43.32		$12.10	$59.32	$202.87
ECA	1.19	5.37		$74.38	$250.13		$12.10	$59.32	$395.93
ECB	1.19	2.84		$74.38	$132.29		$12.10	$59.32	$278.09
ECC	1.19	1.82		$74.38	$84.78		$12.10	$59.32	$230.58
ECD	1.19	1.49		$74.38	$69.40		$12.10	$59.32	$215.20
ECE	1.19	0.92		$74.38	$42.85		$12.10	$59.32	$188.65
ECF	1.19	0.93		$74.38	$43.32		$12.10	$59.32	$189.12

RUG III Category	Nursing Index	Medical Ancillary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
SAA	1.13	2.72		$70.63	$126.70		$12.10	$59.32	$268.75
SAB	1.13	2.8		$70.63	$130.42		$12.10	$59.32	$272.47
SAC	1.13	1.64		$70.63	$76.39		$12.10	$59.32	$218.44
SAD	1.13	1.46		$70.63	$68.01		$12.10	$59.32	$210.06
SAE	1.13	0.75		$70.63	$34.94		$12.10	$59.32	$176.99
SAF	1.13	0.6		$70.63	$27.95		$12.10	$59.32	$170.00
SBA	1.05	2.72		$65.63	$126.70		$12.10	$59.32	$263.75
SBB	1.05	2.8		$65.63	$130.42		$12.10	$59.32	$267.47
SBC	1.05	1.64		$65.63	$76.39		$12.10	$59.32	$213.44
SBD	1.05	1.46		$65.63	$68.01		$12.10	$59.32	$205.06
SBE	1.05	0.75		$65.63	$34.94		$12.10	$59.32	$171.99
SBF	1.05	0.6		$65.63	$27.95		$12.10	$59.32	$165.00
SCA	1.01	2.72		$63.13	$126.70		$12.10	$59.32	$261.25
SCB	1.01	2.8		$63.13	$130.42		$12.10	$59.32	$264.97
SCC	1.01	1.64		$63.13	$76.39		$12.10	$59.32	$210.94
SCD	1.01	1.46		$63.13	$68.01		$12.10	$59.32	$202.56
SCE	1.01	0.75		$63.13	$34.94		$12.10	$59.32	$169.49
SCF	1.01	0.6		$63.13	$27.95		$12.10	$59.32	$162.50
CAA	1.12	2.17		$70.00	$101.08		$12.10	$59.32	$242.50
CAB	1.12	2.17		$70.00	$101.08		$12.10	$59.32	$242.50
CAC	1.12	2.17		$70.00	$101.08		$12.10	$59.32	$242.50
CAD	1.12	1.6		$70.00	$74.53		$12.10	$59.32	$215.95
CAE	1.12	0.89		$70.00	$41.46		$12.10	$59.32	$182.88
CAF	1.12	0.59		$70.00	$27.48		$12.10	$59.32	$168.90
CBA	0.99	2.17		$61.88	$101.08		$12.10	$59.32	$234.38
CBB	0.99	2.17		$61.88	$101.08		$12.10	$59.32	$234.38

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RUG III Category	Nursing Index	Medical Ancillary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
CBC	0.99	2.17		$61.88	$101.08		$12.10	$59.32	$234.38
CBD	0.99	1.6		$61.88	$74.53		$12.10	$59.32	$207.83
CBE	0.99	0.89		$61.88	$41.46		$12.10	$59.32	$174.76
CBF	0.99	0.59		$61.88	$27.48		$12.10	$59.32	$160.78
CCA	0.91	2.17		$56.88	$101.08		$12.10	$59.32	$229.38
CCB	0.91	2.17		$56.88	$101.08		$12.10	$59.32	$229.38
CCC	0.91	2.17		$56.88	$101.08		$12.10	$59.32	$229.38
CCD	0.91	1.6		$56.88	$74.53		$12.10	$59.32	$202.83
CCE	0.91	0.89		$56.88	$41.46		$12.10	$59.32	$169.76
CCF	0.91	0.59		$56.88	$27.48		$12.10	$59.32	$155.78
CDA	0.84	2.17		$52.50	$101.08		$12.10	$59.32	$225.00
CDB	0.84	2.17		$52.50	$101.08		$12.10	$59.32	$225.00
CDC	0.84	2.17		$52.50	$101.08		$12.10	$59.32	$225.00
CDD	0.84	1.6		$52.50	$74.53		$12.10	$59.32	$198.45
CDE	0.84	0.89		$52.50	$41.46		$12.10	$59.32	$165.38
CDF	0.84	0.59		$52.50	$27.48		$12.10	$59.32	$151.40
CEA	0.83	2.17		$51.88	$101.08		$12.10	$59.32	$224.38
CEB	0.83	2.17		$51.88	$101.08		$12.10	$59.32	$224.38
CEC	0.83	2.17		$51.88	$101.08		$12.10	$59.32	$224.38
CED	0.83	1.6		$51.88	$74.53		$12.10	$59.32	$197.83
CEE	0.83	0.89		$51.88	$41.46		$12.10	$59.32	$164.76
CEF	0.83	0.59		$51.88	$27.48		$12.10	$59.32	$150.78
CFA	0.75	2.17		$46.88	$101.08		$12.10	$59.32	$219.38
CFB	0.75	2.17		$46.88	$101.08		$12.10	$59.32	$219.38
CFC	0.75	2.17		$46.88	$101.08		$12.10	$59.32	$219.38
CFD	0.75	1.6		$46.88	$74.53		$12.10	$59.32	$192.83
CFE	0.75	0.89		$46.88	$41.46		$12.10	$59.32	$159.76

RUG III Category	Nursing Index	Medical Ancillary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
CFF	0.75	0.59		$46.88	$27.48		$12.10	$59.32	$145.78
IAR	0.69	0.51		$43.13	$23.76		$12.10	$59.32	$138.31
IBR	0.67	0.51		$41.88	$23.76		$12.10	$59.32	$137.06
ICR	0.57	0.51		$35.63	$23.76		$12.10	$59.32	$130.81
IDR	0.53	0.51		$33.13	$23.76		$12.10	$59.32	$128.31
BAR	0.68	0.64		$42.50	$29.81		$12.10	$59.32	$143.73
BBR	0.65	0.64		$40.63	$29.81		$12.10	$59.32	$141.86
BCR	0.56	0.64		$35.00	$29.81		$12.10	$59.32	$136.23
BDR	0.48	0.64		$30.00	$29.81		$12.10	$59.32	$131.23
PAR	0.77	0.64		$48.13	$29.81		$12.10	$59.32	$149.36
PBR	0.72	0.64		$45.00	$29.81		$12.10	$59.32	$146.23
PCR	0.7	0.64		$43.75	$29.81		$12.10	$59.32	$144.98
PDR	0.65	0.64		$40.63	$29.81		$12.10	$59.32	$141.86
PER	0.64	0.64		$40.00	$29.81		$12.10	$59.32	$141.23
PFR	0.51	0.64		$31.88	$29.81		$12.10	$59.32	$133.11
PGR	0.5	0.64		$31.25	$29.81		$12.10	$59.32	$132.48

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RUG III Category	Nursing Index	Medical Ancil-lary Index	Therapy Index	Nursing Component	Med. Ancillary Component	Therapy Component	Therapy Non-Case-Mix Component	Non-Case-Mix Component	Total Rate
PHR	0.49	0.64		$30.63	$29.81		$12.10	$59.32	$131.86
PIR	0.46	0.64		$28.75	$29.81		$12.10	$59.32	$129.98
PJR	0.46	0.64		$28.75	$29.81		$12.10	$59.32	$129.98

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The models described here focus on those upper RUG–III categories that are reflective of the skilled care needs of Medicare beneficiaries. However, since there are a small number of beneficiaries in the research data base who may be classified into one of the lower RUG–III levels, we also applied the WIM and UWIM models to the Impaired Cognition, Behavior, and Physical Function categories. Almost all the beneficiaries in these three levels of the RUG–III hierarchy

grouped into the two lowest non-therapy ancillary index levels. In fact, in the UWIM model, 90 percent of the Impaired Cognition, 87.8 percent of the Behavior and 85 percent of the Physical Function observations fell into the lowest level of the non-therapy ancillary index. In these analyses, we did find a relationship between costs and the index value for these beneficiaries. However, including these groups in the model resulted in minimal additional improvement in statistical performance (See Table 7).

While these groups have not been included in the refinements proposed in this rule, we will include these RUG–III categories in additional analyses using the full PPS data base. Based on the results, we will review the applicability of the non-therapy ancillary index to the Impaired Cognition, Behavior, and Physical Function categories.

TABLE 7.—STATISTICAL PERFORMANCE OF POTENTIAL RUG–III REFINEMENTS—MODEL DESCRIPTION

Model description	Number of groups	R-squared validation sample (test sample)	
		Ancillary charges (percent)	Total costs (percent)
UWIM—Unweighted index model applied to Extensive Services residents (includes new category "Extensive Services and Rehabilitation") jkand to Rehabilitation, Special Care, and Clinically Complex residents.	58 plus a four-group ancillary add-on system.	10.9 −12.6	17.1 −18.0
UWIM–ALL-Unweighted index model applied to all residents (including new "Extensive Services and Rehabilitation" category).	58 plus a four-group ancillary add-on system.	10.9 −12.7	17.1 −18.2

Data sources: Medicare claims, Minimum Data Set 1995–1997.

G. RUG–III Medications Data

Although the bulk of the development and analysis of potential RUG–III refinements to date have been based on Medicare claims data, the Section U drug cost data holds unique promise as a source of detailed information on the drug use of particular beneficiaries. In the coming months, once the characteristics of these new data are more fully understood, we plan to use Section U drug cost data to analyze the behavior of high-cost individuals as well as the potential effects of case mix refinements.

1. Creation of MDS-Based Drug Cost Measures

The following types of pricing are available in the Medispan Master Drug Data Base: Average wholesale price (AWP), Direct Price, Wholesaler Acquisition Cost, HCFA Federal Financial Participation (FFP) limit price, Average AWP, and the generic equivalent average price. While we translated the medications listed on the MDS with NDC codes to therapeutic classes and sub-classes, we needed to cross-link the two data systems to identify the cost of the medications. We used the average wholesale price (AWP) for medication costs for several reasons. The AWP is a national figure and not subject to regional influence resulting from purchasing contracts and other local market factors. This helps to account for the cost of dispensing. Using AWP is conservative when the price of a medication is relatively low or high, and AWP is not subject to institutional cost-shifting. Additionally, AWP, compared to other pricing options, was found to yield the lowest amount of missing cost data.

In evaluating the drug regimens of beneficiaries in our sample, we realized that because of the way some drugs are packaged, the AWP price may reflect a price for multiple doses. Examples include injectables, inhalants, elixirs, and other drugs that indicated a multi-day supply in the drug description. We generated a printout of all potential problems of this sort. A clinical pharmacist reviewed the potential appropriateness of multiple use and long-acting dosage forms and unique treatment regimens for bundling. The Physician Desk Reference, the Red Book and other sources were used in addition to the documented AWP to determine a likely constant by which to divide the cost for each potential problem. In many instances, not enough information was available to make an appropriate estimate. In these cases, the drug cost remained as indicated by the AWP.

While we were able to successfully map NDC codes to drug names (nested within therapeutic classes and sub-classes), successfully matching to a drug cost required more information. Specifically, assigning an AWP to a drug requires both the strength of the drug administered and complete information regarding the frequency with which the medication was administered. Unfortunately, many of the NDC codes included in the MDS data did not include information regarding strength.[1] For example, we may know that a beneficiary received aspirin, but we do not know if it was 80 mg, 325 mg, or some other strength. As a result, we have substantial missing cost data. Because of the extent of missing data, we opted to impute the drug costs as opposed to excluding cases for which we did not have complete drug cost information. Analyses of the extent of missing data revealed that missing data did not vary by RUG group, State, year, or type of medication.

Nonetheless, by imputing missing drug costs, we have introduced random variations in the data that were not generated by the underlying process that we are attempting to model. Consequently, variables that explain variance in non-missing data will have no explanatory power for imputed data. The coefficients on these variables will, therefore, be biased toward zero. This bias will be small if the proportion of total variance attributable to imputation is small. However, variables explicitly or implicitly used in the imputation process may have explanatory power with regard to the imputed values. For example, if the RUG group is implicitly used as part of the imputation process, it theoretically could explain more of the variance in the dependent variable simply because RUG was used as part of the imputation algorithm. The coefficients of the variables used to impute cost data may be amplified relative to other coefficients in the explanatory models. Depending on the correlation between the RUG groups and other variables, these coefficients will also be biased in unpredictable ways. This problem could be small if the between-group variance is small (overall variance can be broken down into between-group and within-group components). Given the potential for introducing bias in our models, we opted to create two imputation algorithms.

2. RUG-Based Imputation Method

We assigned drug costs based on NDC codes recorded on Section U of the MDS evaluation forms using the following algorithm. First, if the NDC code was listed among the approximately 150,000 codes tracked by Medispan, we used the pricing information collected by Medispan. If the NDC code was not listed, but the exact name of the generic drug was listed, we calculated pricing as follows. In those instances where the RUG code (as calculated for our recording purposes and provided on the "raw" data files) was observed among beneficiaries using the drug, if only one cost was associated with the drug, it was used. If multiple costs were associated, the most likely cost was chosen based on the distribution of observed costs among beneficiaries. If the RUG code was not observed, we applied the process to a pooled distribution over all of the medication codes observed among all of the MDS records for all of the beneficiaries. If we could not match the exact generic name, we sought a match for the leading words in the generic name, and if matched, we applied the same approach (that is, selecting the most likely drug cost based on the RUG distribution). In cases where no reasonable match could be found, no price was assigned to the medication. This algorithm was iterative over the observed distribution among beneficiaries.

[1] The MDS instruction manual references NDC codes which do not contain drug strength information.

3. State and Year-Based Imputation Method

Because of our concerns regarding bias, we implemented a similar, but alternative algorithm to estimate the drug costs based on data contained in Section U of the MDS. We thought that missing data might vary systematically by State owing to differing data collection procedures (and software) among States. Further, we considered that coding of drugs might have improved over time. If both assumptions were true, the pattern of missing data would vary systematically through time and place. It follows that an imputation method based on time and place would be reasonable. If the NDC code was not listed among the 150,000 Medispan codes, but the exact name of the generic drug was listed, we calculated pricing as follows. If only one cost was associated with the drug within a given State and year, it was used. If multiple costs were associated, we chose the most likely cost based on the distribution of observed costs among beneficiaries. If we could not match the exact generic name, we sought a match for the leading words in the generic name, and if matched, we applied the same approach (that is, selecting the most likely drug cost using the State and year). In cases where no reasonable match could be found, no price was assigned to the medication. As with the RUG-based imputation measure, this algorithm was iterative over the observed distribution among beneficiaries.

During the course of initial analyses, we noted discrepancies between costs as measured by MDS Section U and costs as measured by SNF claims. The discrepancies between the Section U-based drug cost measure and the drug cost measure estimated from SNF claims may be due to several factors. The pharmacy cost detail codes used from the SNF claim include treatments that would not necessarily be included on the Section U according to the MDS instructions. For example, radiation treatment supplies and other procedure-related drug supplies are clearly not included on Section U. Furthermore, while applying the cost to charge ratio for pharmacy charges might appear to estimate "costs", this adjustment may only capture the administrative step-down from the facility cost report since, in all but the largest facilities, consultant pharmacy firms supply all drugs to beneficiaries. The charge to the facility includes both its "cost" (from the pharmaceutical firm or supplier) as well as the value-added labor of the facility's consultant pharmacists who perform its drug utilization review, along with any mark-up that the consultant pharmacy contractor applies. These charges for services provided represent "costs" to the facility, and so applying the facility cost to charge ratio only discounts its administrative step-down. Finally, in most States and areas, the typical practice in nursing homes is for a new admission to have a 30-day blister pack ordered for each specified drug the resident was taking upon admission to the nursing home. Since most residents came from the hospital where drugs are dispensed daily, they generally arrive at the nursing home with less than a one-day supply of medications. As a result, the transition and ordering of medications must be very quick. In turn, the "charge" for the drug will, in many instances, include drugs that may have already been changed by the 14th day of the stay, when the MDS Section U would be completed. The net result of this practice of delivering and billing for a full 30-day supply is a higher observed cost than would be produced by estimating per diem drug cost based on an enumeration of the drugs received.

Thus, we believe that Section U-based drug cost measures may eventually provide further insight into drug utilization patterns in the SNF population as these potential sources of data inconsistency yield to further analysis. However, in view of the delay in implementing the collection of medication data on the MDS, and given the current need to address and resolve these issues before proceeding, the analysis of potential RUG-III refinements described in this report was based on SNF claims data.

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Cessna Aircraft Co.; comments due by 4-17-00; published 2-22-00
Rolls-Royce plc; comments due by 4-17-00; published 2-16-00
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TREASURY DEPARTMENT

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Hyperinflationary currency; definition; comments due by 4-20-00; published 1-13-00

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Appeals regulations and rules of practice—
Subpoenas; clarification; comments due by 4-17-00; published 2-15-00

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 1000/P.L. 106–181

Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Apr. 5, 2000; 114 Stat. 61)

Last List March 21, 2000

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-038-00001-6)	5.00	[5] Jan. 1, 1999
3 (1997 Compilation and Parts 100 and 101)	(869-042-00002-1)	22.00	[1] Jan. 1, 2000
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700-1199	(869-042-00005-6)	31.00	Jan. 1, 2000
1200-End, 6 (6 Reserved)	(869-042-00006-4)	48.00	Jan. 1, 2000
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27-52	(869-042-00008-1)	35.00	Jan. 1, 2000
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13	(869-038-00036-9)	25.00	Jan. 1, 1999
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CFR Index and Findings Aids	(869-038-00047-4)	46.00	Jan. 1, 1999
Complete 1998 CFR set		951.00	1998
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Subscription (mailed as issued)		247.00	1998
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Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.

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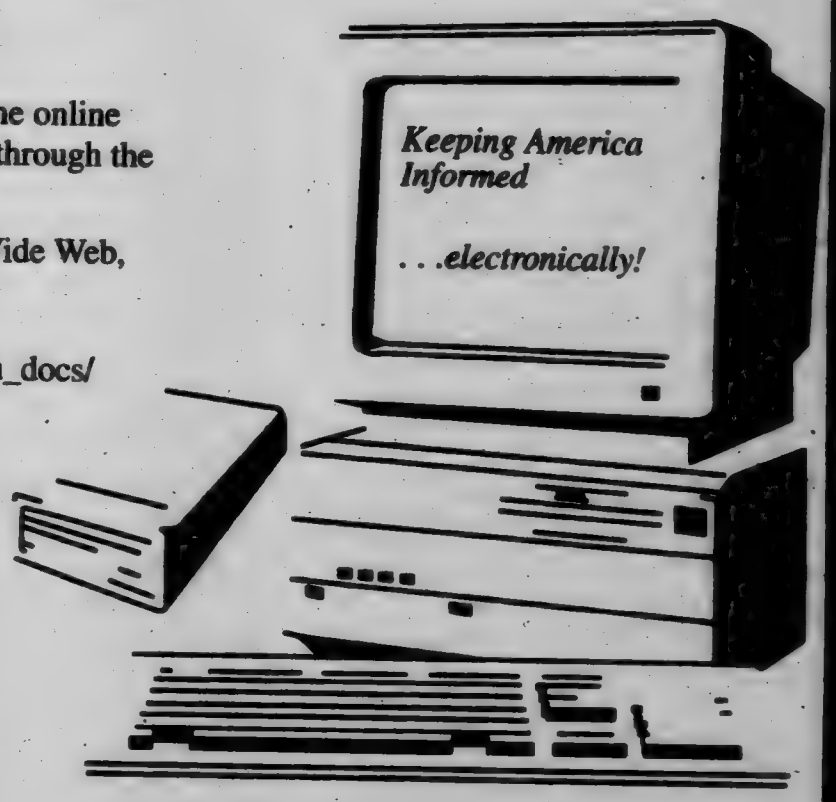

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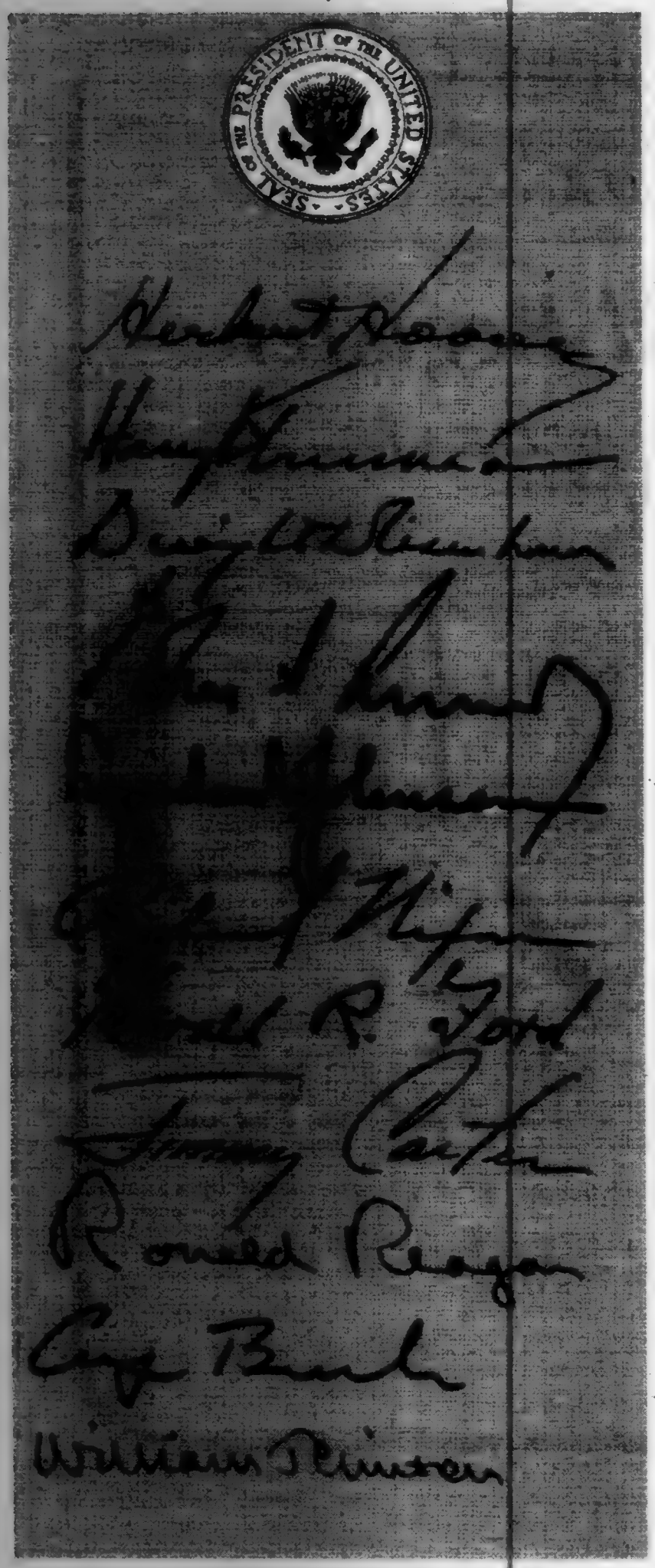

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Rules and Regulations

Federal Register
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MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure to clarify what a party in a Board proceeding must do to get a copy of the hearing tape recording or written transcript, to provide that the official hearing record may be a video tape recording, and to comply with the President's Memorandum on Plain Language. The amendment also informs a non-party who wants a copy of a hearing tape recording or written transcript to send a request under the Board's Freedom of Information Act regulations (5 CFR part 1204). The purpose of the amendment is to guide parties to MSPB cases, representatives, and non-parties on the appropriate way to get copies of hearing tape recordings and written transcripts.

EFFECTIVE DATE: April 11, 2000.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: The Board's current rule at 5 CFR 1201.53(a) provides that a verbatim record of a hearing in a Board case must be prepared under the supervision of the judge. The amendment to this rule published today makes clear that a verbatim record, the single official record of the hearing, will be kept in the Board's copy of the appeal file. The amendment also makes clear that an audio tape recording, video tape recording, or written transcript will be the official hearing record. Under the Board's current rule at 5 CFR 1201.53(b), a copy of a hearing tape recording or written transcript is to be made available to a party upon request and upon payment of costs. The amendment to 5 CFR 1201.53(b) published today requires that parties send requests for copies of hearing tape recordings or written transcripts to the adjudicating regional or field office or to the Clerk of the Board as appropriate. Because the current rule at 5 CFR 1201.53(b) only states procedures for parties to request copies of hearing tape recordings or written transcripts, the amendment notifies non-parties that their requests for copies of hearing tape recordings or written transcripts are controlled by the Board's rules at 5 CFR part 1204 (Freedom of Information Act). In addition, the amendment provides that only hearing tape recordings or written transcripts prepared by the official hearing reporter will be accepted by the Board as the official record of the hearing. The amendment to 5 CFR 1201.53(c) clarifies procedures for parties to request an exception to payment of the cost for hearing tape recordings or written transcripts. The current rule at 5 CFR 1201.53(d) has been amended because it refers to written transcripts and the Board now tape records its hearings. The new section 5 CFR 1201.53(e) includes a revision of 5 CFR 1201.54 Thus, the current rule at 5 CFR 1201.54 has been removed.

The Board is publishing this rule as a final rule in accordance with 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

PART 1201—[AMENDED]

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701, unless otherwise noted).

2. Section 1201.53 is revised to read as follows:

§ 1201.53 Record of proceedings.

(a) *Preparation.* A word-for-word record of the hearing is made under the judge's guidance. It is kept in the Board's copy of the appeal file and it is the official record of the hearing. Only hearing tape recordings or written transcripts prepared by the official hearing reporter will be accepted by the Board as the official record of the hearing. When the judge assigned to the case tape records a hearing (for example, a telephonic hearing in a retirement appeal), the judge is the "official hearing reporter" under this section.

(b) *Copies.* When requested and when costs are paid, a copy of the official record of the hearing will be provided to a party. A party must send a request for a copy of a hearing tape recording or written transcript to the adjudicating regional or field office, or to the Clerk of the Board, as appropriate. A request for a copy of a hearing tape recording or written transcript sent by a non-party is controlled by the Board's rules at 5 CFR part 1204 (Freedom of Information Act). Requests for hearing tape recordings or written transcripts under the Freedom of Information Act must be sent to the appropriate Regional Director, the Chief Administrative Judge of the appropriate MSPB Field Office, or to the Clerk of the Board at MSPB headquarters in Washington, DC.

(c) *Exceptions to payment of costs.* A party may not have to pay for a hearing tape recording or written transcript if he has a good reason. If a party believes he has a good reason and the request is made before the judge issues and initial decision, the party must sent the request for an exception to the judge. If the request is made after the judge issues an initial decision, the request must be sent to the Clerk of the Board. The party must clearly state the reason for the request in an affidavit or sworn statement.

(d) *Corrections to written transcript.* Corrections to the official written transcript may be made on motion by a party or on the judge's own motion. Motions for corrections must be filed within 10 days after the receipt of a written transcript. Corrections of the official written transcript will be made only when substantive errors are found and only with the judge's approval.

(e) *Official record.* Exhibits, the official hearing record, if a hearing is held, all papers filed, and all orders and decisions of the judge and the Board, make up the official record of the case.

§ 1201.54 (Removed)

3. Section 1201.54 is removed in its entirety.

Dated: April 5, 2000.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 00–8861 Filed 4–10–00; 8:45 am]

BILLING CODE 7400–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 99–102–2]

Ports Designated for Exportation of Horses; Dayton, OH

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On February 17, 2000, the Animal and Plant Health Inspection Service published a direct final rule. (See 65 FR 8013–8014, Docket No. 99–102–1.) The direct final rule notified the public of our intentions to amend the "Inspection and Handling of Livestock for Exportation" regulations by adding Dayton International Airport in Dayton, OH, as a port of embarkation and Instone Air Services, Inc., as the export inspection facility for equines for that port. We did not receive any written adverse comments or written notice of intent to submit adverse comments in response to the direct final rule.

EFFECTIVE DATE: The effective date of the direct final rule is confirmed as: April 17, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Morley Cook, Senior Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–6479.

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 136, 136a, 612, 613, 614, and 618; 46 U.S.C. 466a, and 466b; 49 U.S.C. 1509(d); 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 5th day of April 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–8936 Filed 4–10–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM171, Special Conditions No. 25–160–SC]

Special Conditions: Airbus A300 Model B2–1A, B2–1C, B4–2C, B2K–3C, B4–103, B2–203, B4–203 Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Airbus A300 Model B2–1A, B2–1C, B4–2C, B2K–3C, B4–103, B2–203, B4–203 airplanes modified by Electronic Cable Specialists. These airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The installation of Honeywell Classic Navigator Systems will use advanced electronics when compared to the Inertial Navigation Systems. The applicable type certification regulations do not contain adequate or appropriate safety standards for the protection of this system from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is March 31, 2000. Comments must be received on or before May 26, 2000.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–114), Docket No. NM171, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM171. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Connie Beane, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2796; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM171." The postcard will be date stamped and returned to the commenter.

Background

On November 29, 1999, Electronic Cable Specialists, 5300 West Franklin Drive, Franklin, Wisconsin 53132, applied for a Supplemental Type Certificate (STC) to modify Airbus A300 Model B2–1A, B2–1C, B4–2C, B2K–3C, B4–103, B2–203, B4–203 airplanes approved under Type Certificate No. A35EU. These are transport category airplanes with twin engines, and a seating capacity of up to 267 passengers. The modification incorporates the installation of Honeywell Classic Navigator Systems. Each system consists of a Honeywell HT–9100 Navigation Management System, a Super Attitude Heading Reference System, and a Digital to Analog Adapter. These advanced systems use electronics to a far greater extent than the original Inertial Navigation Systems and may be more susceptible to electrical and magnetic interference. This disruption of signals could result in loss of attitude or present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Electronic Cable Specialists must show that Airbus A300 Model B2–1A, B2–1C, B4–2C, B2K–3C, B4–103, B2–203, B4–203 airplanes, as changed, continue to meet the applicable

provisions of the regulations incorporated by reference in Type Certificate No. A35EU, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for the modified Airbus A300 Model B2–1A, B2–1C, B4–2C, B2K–3C, B4–103, B2–203, B4–203 airplanes includes 14 CFR part 25, dated February 1, 1965, as amended by Amendments 25–1 through 25–21.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Airbus A300 Model B2–1A, B2–1C, B4–2C, B2K–3C, B4–103, B2–203, B4–203 airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Airbus A300 Model B2–1A, B2–1C, B4–2C, B2K–3C, B4–103, B2–203, B4–203 airplanes must comply with the part 25 fuel vent and exhaust emission requirements of 14 CFR part 34 and the part 25 noise certification requirements of 14 CFR part 36.

Special conditions, as appropriate, are issued in accordance with § 11.49, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Electronic Cable Specialists apply at a later date for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Airbus A300 Model B2–1A, B2–1C, B4–2C, B2K–3C, B4–103, B2–203, B4–203 airplanes will incorporate a new navigation system, which was not available at the time of certification of these airplanes, that performs critical functions. This system may be vulnerable to high intensity radiated fields (HIRF) external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Airbus A300 Model B2–1A, B2–1C, B4–2C, B2K–3C, B4–103, B2–203, B4–203 airplanes, which require that new electrical and electronic systems, such as the Honeywell Navigator Systems, that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1, or 2 below:

1. A minimum threat of 100 volts per meter root-mean-square (rms) electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Field Strength (volts per meter)		
Frequency	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

Applicability

As discussed above, these special conditions are applicable Airbus A300 Model B2–1A, B2–1C, B4–2C, B2K–3C, B4–103, B2–203, B4–203 airplanes modified by Electronic Cable Specialists. Should Electronic Cable Specialists apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on Airbus A300 Model B2–1A, B2–1C, B4–2C, B2K–3C, B4–103, B2–203, B4–203 airplanes modified by Electronic Cable Specialists. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis Airbus A300 Model B2–1A, B2–1C, B4–2C, B2K–3C, B4–103, B2–203, B4–203 airplanes modified by Electronic Cable Specialists.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, March 31, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 00–8849 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–57–AD; Amendment 39–11667; AD 2000–07–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 and –200PF Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757–200 and –200PF series airplanes, that requires repetitive detailed visual inspections to detect loose fuse pins in the outboard beam attachment and forward trunnion support on the main landing gear (MLG) and to detect corrosion on the structure adjacent to the fuse pin; and corrective actions, if necessary. This amendment also requires eventual replacement of the fuse pins with new corrosion resistant steel (CRES) fuse pins, which constitutes terminating action for the repetitive inspections. This amendment is prompted by a report of damaged fuse pins caused by corrosion. The actions specified by this AD are intended to prevent corroded fuse pins, which could result in the MLG separating from the wing, and consequent damage to the airplane and possible rupture of the wing fuel tank.

DATES: Effective May 16, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 16, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207.

This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James G. Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2783; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757–200 and –200PF series airplanes was published in the Federal Register on October 6, 1999 (64 FR 54227). That action proposed to require repetitive detailed visual inspections to detect loose fuse pins in the outboard beam attachment and forward trunnion support on the main landing gear (MLG) and to detect corrosion on the structure adjacent to the fuse pin; and corrective actions, if necessary. That action also proposed to require eventual replacement of the fuse pins with new corrosion resistant steel (CRES) fuse pins, which would constitute terminating action for the repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

Request To Change Repetitive Inspection Interval

The commenter requests that the proposed repetitive inspection interval be changed from 3,000 flight cycles or 24 months (whichever occurs first) to either 36 months or to 3,000 flight cycles or 24 months (whichever is later). The commenter states that 3,000 flight cycles does not correspond to the 24-month calendar time. The commenter adds that 36 months would more closely reflect the amount of time it takes for its airplanes to accumulate 3,000 flight cycles.

The FAA does not concur with this request. This AD addresses corrosion of the fuse pins, which is a time-related phenomenon. Therefore, the critical element of the repetitive inspection interval in this case is the amount of calendar time that passes between inspections, rather than the number of flight cycles accumulated. Therefore, the FAA finds that the repetitive inspection interval of 3,000 flight cycles or 24 months, whichever occurs first, is appropriate to address the identified unsafe condition in a timely manner and to ensure an adequate level of safety. No change to the final rule is necessary.

Revised Service Information

Since the issuance of the proposed AD, the FAA has reviewed and approved Boeing Service Bulletin 757–57A0054, Revision 1, including Appendix A, both dated December 16, 1999. (The original issue of the service bulletin is referenced in the proposal as the appropriate source of service information for accomplishment of the actions required by this AD.) Revision 1 is essentially equivalent to the original issue; however, Revision 1 adds references to optional parts and changes certain compliance recommendations. Revision 1 recommends that, if the alloy steel fuse pins have already been replaced on an airplane that was four years (or more) old, the inspection of those pins can be extended to within four years or 6,000 flight cycles after installation. A new paragraph (b) has been added to the final rule to specify the revised compliance time for those particular airplanes.

The FAA also has revised the final rule to include Revision 1 of the service bulletin as an additional source of service information. Further, the FAA has revised references to the original

issue of the service bulletin to include Appendix A, dated November 5, 1998.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 805 airplanes of the affected design in the worldwide fleet. The FAA estimates that 350 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $21,000, or $60 per airplane, per inspection cycle.

It will take approximately 440 work hours per airplane to accomplish the required replacement, at an average labor rate of $60 per work hour. The manufacturer has committed previously to its customers that it will bear the cost of replacement parts. As a result, the cost of those parts are not attributable to this AD. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $9,240,000, or $26,400 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–07–13 Boeing: Amendment 39–11667. Docket 99–NM–57–AD.

Applicability: Model 757–200 and -200PF series airplanes, line numbers 1 through 806 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent corroded fuse pins, which could result in the main landing gear (MLG) separating from the wing, and consequent damage to the airplane and possible rupture of the wing fuel tank, accomplish the following:

Repetitive Inspections

(a) Perform a detailed visual inspection to detect loose fuse pins in the outboard beam attachment and forward trunnion support on the MLG and to detect corrosion on the structure adjacent to the fuse pin, in accordance with Boeing Alert Service Bulletin 757–57A0054, including Appendix A, dated November 5, 1998, or Boeing Service Bulletin 757–57A0054, Revision 1, including Appendix A, dated December 16, 1999; at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD. Thereafter, repeat the inspection at intervals not to exceed 3,000 flight cycles or 24 months, whichever occurs first, until accomplishment of paragraph (d) of this AD.

(1) Prior to 4 years since date of manufacture of the airplane; or

(2) Within 3,000 flight cycles or 24 months after the effective date of this AD, whichever occurs first.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) For airplanes on which the alloy steel fuse pins were replaced prior to the effective date of this AD: Perform the initial inspection required by paragraph (a) of this AD within 4 years or 6,000 flight cycles after installation of the pins, whichever occurs later. Thereafter, accomplish the repetitive inspections required by paragraph (a) of this AD at the time specified in that paragraph.

Corrective Action

(c) If any loose fuse pin or corrosion on the structure adjacent to the fuse pin is detected during any inspection required by paragraph (a) of this AD, prior to further flight, perform the applicable corrective action [i.e., detailed visual inspections for cracks or corrosion, repair of discrepant parts, and replacement of fuse pin] in accordance with Boeing Alert Service Bulletin 757–57A0054, including Appendix A, dated November 5, 1998, or Boeing Service Bulletin 757–57A0054, Revision 1, including Appendix A, dated December 16, 1999. Replacement of an alloy steel fuse pin with a new corrosion resistant steel (CRES) fuse pin constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD for that fuse pin only.

Terminating Action

(d) At the next scheduled MLG overhaul, or within 12 years after the effective date of this AD, whichever occurs first, replace all alloy steel fuse pins with new CRES fuse pins in the outboard beam attachment and forward trunnion support on the MLG in accordance with Boeing Alert Service Bulletin 757–57A0054, including Appendix A, dated November 5, 1998, or Boeing Service Bulletin 757–57A0054, Revision 1, including Appendix A, dated December 16, 1999. Accomplishment of the action specified in this paragraph constitutes terminating action for the repetitive inspection requirements of this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA,

Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The actions shall be done in accordance with Boeing Alert Service Bulletin 757–57A0054, including Appendix A, dated November 5, 1998, or Boeing Service Bulletin 757–57A0054, Revision 1, including Appendix A, dated December 16, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on May 16, 2000.

Issued in Renton, Washington, on April 3, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8685 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–42–AD; Amendment 39–11650; AD 2000–06–09]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Arrius 1A Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Turbomeca Arrius 1A series turboshaft engines, that requires installation of module TU63, which provides a separate supply of fuel for one of the 10 main injectors of the fuel injection system. This action is prompted by reports of unexpected power loss during test flights. The actions specified by this AD are intended to prevent unexpected power loss, which could result in an uncommanded in-flight engine shutdown, autorotation, and forced landing.

DATES: Effective June 12, 2000. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of June 12, 2000.

ADDRESSES: The service information referenced in the rule may be obtained from Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 64 40 00, fax (33) 05 59 64 60 80. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Glorianne Niebuhr, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7132, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Turbomeca Turboshaft Arrius 1A series turboshaft engines was published in the **Federal Register** on December 1, 1999 (64 FR 67206). That action proposed to require installation of module TU63, which provides a separate supply of fuel for one of the 10 main injectors of the fuel injection system. That action was prompted by reports of cracked injection wheels. That condition, if not corrected, could result in an unexpected power loss, which could result in an in-flight engine shutdown, autorotation, and a forced landing.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received.

Economic Analysis

There are approximately 100 engines of the affected design in the worldwide fleet. The FAA estimates that nine engines installed on aircraft of US registry would be affected by this AD, that it would take approximately 1 work hour per engine to accomplish the actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $5,500 per engine. Based on these figures, the total cost impact of the AD on US operators is estimated to be $50,040. The manufacturer has advised the DGAC that they may provide module TU63 at no cost to the operator, thereby substantially reducing the cost impact of this rule.

Regulatory Impact

This rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–06–09 Turbomeca: Amendment 39–11650. Docket 99–NE–42–AD.

Applicability: Turbomeca Arrius 1A series turboshaft engines, installed on but not limited to Ecureuil AD355 series helicopters.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless

of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To prevent unexpected power loss, which could result in an uncommanded in-flight engine shutdown, autorotation, and forced landing, accomplish the following:

Installation of Module TU63

(a) Install module TU63 in accordance with the Instructions for Incorporation of Turbomeca Arrius Service Bulletin (SB) No. 319 73 0016, Revision 1, dated December 22, 1997, at the earliest of the following after the effective date of this AD:

(1). The next shop visit, or
(2). Within 120 cycles-in-service, or
(3). Within 30 days.

Definition

(b) For the purpose of this AD, a shop visit is defined as whenever the engine is removed from the helicopter for maintenance.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

Ferry Flights

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions required by this AD shall be done in accordance with Turbomeca Arrius Service Bulletin (SB) No. 319 73 0016, Revision 1, dated December 22, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 64 40 00, fax (33) 05 59 64 60 80. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment becomes effective on June 12, 2000.

Issued in Burlington, Massachusetts, on March 20, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–7456 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–11–AD; Amendment 39–11652; AD 2000–06–11]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Makila 1 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Turbomeca Makila 1 series turboshaft engines, that requires a one-time visual inspection of the scavenge and lubrication systems for obstruction due to coke deposits, then reconditioning of the engine oil system prior to return to service. This amendment is prompted by a report of an in-flight engine shutdown due to roller bearings contaminated by certain types of detergent oil. The actions specified by the proposed AD are intended to prevent in-flight engine shutdown due to roller bearing failure following oil contamination.

DATES: Effective June 12, 2000. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of June 12, 2000.

ADDRESSES: The service information referenced in the rule may be obtained from Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 64 40 00, fax (33) 05 59 64 60 80. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Glorianne Niebuhr, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (781) 238–7132, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Turbomeca Makila 1 series turboshaft engines was published in the **Federal Register** on December 8, 1999 (64 FR 68642). That action proposed to require a one-time visual inspection of the scavenge and lubrication systems for obstruction due to coke deposits, then reconditioning of the engine oil system prior to return to service. That action was prompted by report of an in-flight engine shutdown due to roller bearings contaminated by certain types of detergent oil. That condition, if not corrected, could result in an in-flight engine shutdown due to roller bearing failure following oil contamination.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received.

Economic Analysis

There are approximately 1,076 engines of the affected design in the worldwide fleet. The FAA estimates that 5 engines installed on aircraft of U.S. registry would be affected by this AD, that it would take approximately 14 work hours per engine to accomplish the actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,200.

Regulatory Impact

This rule does not have federalism implications, as defined in Executive Order 13132, because it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy

of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–06–11 Turbomeca: Amendment 39–11652. Docket 99–NE–11–AD.

Applicability: Turbomeca Makila 1A and 1A1 turboshaft engines, installed on but not limited to Aerospatiale AS 332 Super Puma, AS 532 Cougar, and SA 330 Puma helicopters.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent in-flight engine shutdown due to roller bearing failure following oil contamination, accomplish the following:

Inspection and Repair

(a) Within 25 hours time-in-service (TIS) after the effective date of this AD, accomplish the following:

(1) For engines that have been operated with 7.5 centistoke (cSt) oil for more than 100 hours TIS, and for engines whose operators can not show documentation that the engine has been operated with 7.5 cSt oil for 100 hours or less TIS, accomplish the following:

(i) Perform a one-time visual inspection of the scavenge and lubrication systems for obstruction due to coke deposits and repair as required, in accordance with section 2.A. and 2.B. of the 'Instructions for incorporation' section of Turbomeca Makila 1 Service Bulletin (SB) No. A298 71 0137, dated December 22, 1997.

(ii) Replace the oil with approved oil other than 7.5 cSt and then recondition and check the engine oil system in accordance with section 2.C. and 2.D.(1) Of Turbomeca Makila 1 SB No. A298 71 0137, dated December 22, 1997, prior to return to service.

(2) For engines that have been operated with 7.5 cSt oil for 100 hours or less TIS, replace the oil with approved oil other than 7.5 cSt and then recondition the engine oil system prior to return to service, in accordance with section 1.A.(2)(b) of Turbomeca Makila 1 SB No. A298 71 0137, dated December 22, 1997.

Alternative Method of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

Ferry Flights

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions required by this AD shall be done in accordance with Turbomeca Makila 1 SB No. A298 71 0137, dated December 22, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 64 40 00, fax (33) 05 59 64 60 80. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(e) This amendment becomes effective on June 12, 2000.

Issued in Burlington, Massachusetts, on March 21, 2000.

David A. Downey,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–7761 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–33–AD; Amendment 39–11653; AD 2000–06–12]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Artouste III Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Turbomeca Artouste III series turboshaft engines, that requires smoke emissions checks after every ground engine shutdown. If smoke is detected, this AD would require inspecting for fuel flow. If fuel flow is not detected, the engine may have injection wheel cracks, which would require removing the engine from service for repair. If fuel flow is detected, the engine may have a malfunctioning electric fuel cock, which would require removing the electric fuel cock from service and replacing it with a serviceable part. This action is prompted by reports of cracked injection wheels. The actions specified by this AD are intended to prevent injection wheel cracks, which could result in an in-flight engine shutdown.

DATES: Effective June 12, 2000. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of June 12, 2000.

ADDRESSES: The service information referenced in the rule may be obtained from Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 64 40 00, fax (33) 05 59 64 60 80. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Glorianne Niebuhr, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7132, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Turbomeca Turboshaft Artouste III series turboshaft engines was published in the **Federal Register** December 8, 1999 (64 FR 68644). That action proposed to require

smoke emissions checks after every ground engine shutdown. If smoke is detected, that action would require inspecting for fuel flow. If fuel flow is not detected, the engine may have injection wheel cracks, which would require removing the engine from service for repair. If fuel flow is detected, the engine may have a malfunctioning electric fuel cock, which would require removing the electric fuel cock from service and replacing it with a serviceable part. That action was prompted by reports of cracked injection wheels. That condition, if not corrected, could result in an in-flight engine shutdown.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 2,279 engines of the affected design in the worldwide fleet. The FAA estimates that 184 engines installed on rotorcraft of U.S. registry would be affected by this AD, that it would take approximately 1 work hour per engine to accomplish the actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $3,500 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $655,040.

Regulatory Impact

This rule does not have federalism implications, as defined in Executive Order 13132, because it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–06–12 Turbomeca: Amendment 39–11653. Docket 99–NE–33–AD.

Applicability: Turbomeca Artouste III B-B1–D series turboshaft engines, installed on but not limited to Eurocopter SA 315 LAMA and SA 316 Alouette III helicopters.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To prevent injection wheel cracks, which could result in an in-flight engine shutdown, accomplish the following:

Smoke Check

(a) Following every engine ground shutdown, accomplish the following in accordance with Turbomeca Artouste III Service Bulletin (SB) No. 218 72 0099, dated September 14, 1998:

(1) After every flight, check for smoke emissions through the exhaust pipe, air intake, or turbine casing drain during rundown and after every engine shutdown. If a smoke emission has been noticed, check the fuel system before the next flight to identify the origin of the smoke emissions.

(2) If smoke is not detected, no action is required until the next engine ground shutdown.

(3) If smoke is detected, inspect for fuel flow in accordance with paragraph 2.B.(1) and 2.B.(2) of the referenced SB.

(i) If fuel flow is not detected, prior to further flight, remove the engine from service and replace with a serviceable engine.

(ii) If fuel flow is detected, remove the electric fuel cock from service and replace with a serviceable part in accordance with section 2.B.(4) and 2.B.(5) of the referenced SB .

(iii) Before entry into service, perform an engine ground run and check the fuel system again for smoke emissions through the exhaust pipe, air intake, or turbine casing drain during engine rundown and after shutdown; if smoke emissions still remain after replacement of the electric fuel cock, prior to further flight, remove the engine from service and replace with a serviceable engine.

(b) For the purpose of this AD, a serviceable engine is defined as an engine that does not exhibit smoke emissions.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

Ferry Flights

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the rotorcraft to a location where the inspection requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions required by this AD shall be done in accordance with Turbomeca Artouste III Service Bulletin (SB) No. 218 72 0099, dated September 14, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 64 40 00, fax (33) 05 59 64 60 80. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment becomes effective on June 12, 2000.

Issued in Burlington, Massachusetts, on March 21, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–7762 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–81–AD; Amendment 39–11660; AD 2000–07–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD requires repetitive inspections to detect cracking of the lower corners of the door frame and cross beam of the forward cargo door, and corrective actions, if necessary. This AD also requires eventual modification of the outboard radius of the lower corners of the door frame and reinforcement of the cross beam of the forward cargo door, which would constitute terminating action for the repetitive inspections. This amendment is prompted by reports indicating that fatigue cracks have been detected in the lower corners of the door frame and cross beam of the forward cargo door. The actions specified by this AD are intended to prevent fatigue cracking of the lower corners of the door frame and cross beam of the forward cargo door, which could result in rapid depressurization of the airplane.

DATES: Effective May 16, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 16, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98134–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Nenita Odesa, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2557; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes was published in the **Federal Register** on August 20, 1999 (64 FR 45477). That action proposed to require repetitive inspections to detect cracking of the lower corners of the door frame and cross beam of the forward cargo door, and corrective actions, if necessary. That action also proposed to require eventual modification of the outboard radius of the lower corners of the door frame and reinforcement of the cross beam of the forward cargo door, which would constitute terminating action for the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Allow Repair In Lieu of Replacement

Regarding the proposed requirement to replace any cracked door frame with a new door frame, one commenter questions whether there is no level of damage that can be repaired. The commenter states that it would be preferable for operators to repair a cracked door frame when possible, and only replace the door frame with a new door frame if damage is beyond repair limits.

The FAA infers that the commenter is requesting that paragraph (a)(2)(i) of the proposal be revised to allow repair of the door frame, in lieu of replacement of the door frame with a new door frame, when cracking is within repair limits. The FAA concurs with this request. The FAA finds that it may be possible for damage within certain limits to be repaired. However, no service information that defines allowable limits for repairable damage is available. Without established limits and defined repair procedures, all proposed repairs on the door frame must be approved by the FAA or an authorized Boeing Company Designated Engineering Representative (DER). The FAA has revised paragraph (a)(2)(i) and added paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) to this final rule, to provide repair of a cracked door frame and replacement of a cracked door frame with a new door frame as two alternatives for compliance with paragraph (a)(2)(i) of this AD. (Operators should note that regardless of which alternative for compliance is accomplished, this AD requires installation of a cross beam repair and reinforcement modification of the cross beam, as specified in paragraph (a)(2)(i) of this AD, and modification of the repaired or replaced door frame, as specified in paragraph (a)(2)(ii) of this AD.)

Request To Increase Threshold for Terminating Action

One commenter requests that the compliance time for the terminating action be increased from four years, as proposed, to 75,000 total flight cycles, as required by AD 90–06–02, amendment 39–6489 (55 FR 8372, March 7, 1990). The commenter states that a compliance threshold based on calendar time, rather than on the total number of flight cycles, is inconsistent, because fatigue cracking is related to cabin pressurization cycles. Further, the commenter states that the proposed threshold of four years will cause unnecessary cost to operators that have relatively new or low-flight-cycle airplanes.

The FAA partially concurs with the commenter's request. The FAA does not concur that a threshold of 75,000 total flight cycles for accomplishment of the terminating action, as currently required by AD 90–06–02, provides an adequate level of safety. However, the FAA does concur that fatigue cracking is a function of pressurization cycles and, thus, a threshold based on flight cycles should be included for the terminating action. Therefore, paragraphs (c) and (d) of this final rule have been revised to specify accomplishment of the actions required by that paragraph within 4 years or 12,000 flight cycles after the effective date of this AD, whichever occurs later.

Request To Increase Compliance Time

For the initial inspections specified in paragraphs (a) and (b) of the proposal, one commenter requests, for certain airplanes, an increase in the proposed compliance time of one year or 4,500 flight cycles after the effective date of this AD, whichever occurs later, to prior to the accumulation of 12,000 total flight cycles on the cargo door. The commenter states that, "if an operator

has accurate accounting of the history of the cargo door, then the number of flight cycles for this door can be determined."

Another commenter requests that the compliance time for the initial inspections specified in paragraphs (a) and (b) of the proposal be increased to between 15,000 and 20,000 total flight cycles. That commenter states that a compliance time of one year or 4,500 flight cycles is "harsh for young aircraft." The commenter also claims that cracking in the door frames does not start until 20,000 to 30,000 total flight cycles.

The FAA does not concur with the commenters' requests to increase the compliance time for the inspections. In the preamble of the proposal, the FAA explained the difference between the compliance time stated in the service bulletin and the proposed compliance time by stating that the number of total flight cycles for an airplane may not be a good indicator of the number of total flight cycles for the forward cargo door. For example, a door may have been removed from an airplane with many total flight cycles and installed on an airplane with fewer total flight cycles. Also, the FAA has received a report indicating that a cracked door frame was found on an airplane that had accumulated 15,700 total flight cycles. This report contradicts the second commenter's claim that cracking of the door frames does not start until 20,000 to 30,000 total flight cycles. In view of the nature of the cracking and the severity of the unsafe condition addressed by this AD (rapid depressurization of the airplane), the FAA finds that it would be inappropriate to extend the compliance time for the actions required by this AD. No change to the final rule is necessary in this regard.

Request for Clarification on Replacement Door Frame

One commenter requests that paragraph (a)(2)(i) of the proposal be revised to specify a part number or modification status for the replacement door frame. The FAA infers that the commenter is stating that, by making the proposed paragraph (a)(2)(i) more specific, paragraph (a)(2)(ii) would be unnecessary and could be removed from the AD. The commenter states that it is not clear why a new door frame should have to be modified, and points out that no specific instructions are provided for modification of new door frames. The commenter also states that introduction of a new door frame that does not require additional modification [such as the modification described in paragraph (a)(2)(ii) of the proposal] is in order.

The FAA does not concur with the commenter's request. To date, the manufacturer has not issued service information that provides specific instructions on how to modify new door frames. Without such instructions, the FAA cannot provide specific instructions for modification of replaced door frames and, therefore, cannot revise paragraphs (a)(2)(i) and (a)(2)(ii) of this AD. The FAA anticipates that the manufacturer will issue a new revision of the service bulletin that, among other things, will include instructions for modification of replaced door frames. However, based on the nature of the cracking and the unsafe condition addressed by this AD, the FAA finds that it would be inappropriate to delay this AD until the manufacturer issues a new revision of the service bulletin.

With regard to the commenter's question of why it is necessary to modify new door frames, as stated in the preamble of the proposal, the FAA has received reports that cracks have been detected in redesigned door frames, though these frames were supposed to be less susceptible to fatigue cracking. No new design has been developed. Therefore, to prevent any more cracking, the FAA has determined that it is necessary to require a reinforcement modification on newly installed door frames. There is no door frame currently available that is acceptable for installation without such modification. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 3,100 Model 737–100, –200, –200C, –300, –400, and –500 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,400 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspections required by this AD on U.S. operators is estimated to be $84,000, or $60 per airplane, per inspection cycle.

It will take approximately 38 work hours per airplane to accomplish the required terminating modifications at an average labor rate of $60 per work hour. Required parts will cost $1,865 per airplane. Based on these figures, the cost impact of the terminating modifications required by this AD on U.S. operators is estimated to be $5,803,000, or $4,145 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–07–06 Boeing: Amendment 39–11660. Docket 99–NM–81–AD.

Applicability: All Model 737–100, –200, –200C, –300, –400, and –500 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the lower corners of the door frame and cross beam of the forward cargo door, which could result in rapid depressurization of the airplane, accomplish the following:

High Frequency Eddy Current Initial/ Repetitive Inspections

(a) Within 1 year or 4,500 flight cycles after the effective date of this AD, whichever occurs later, perform a high frequency eddy current (HFEC) inspection to detect cracking of the lower corners (forward and aft) of the door frame of the forward cargo door in accordance with Boeing 737 Nondestructive Test Manual, Part 6, Section 51–00–00, Figure 4 or Figure 23.

(1) If no cracking is detected, repeat the HFEC inspection thereafter at intervals not to exceed 4,500 flight cycles, until the requirements of paragraph (c) of this AD have been accomplished.

(2) If any cracking is detected during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish the requirements of paragraphs (a)(2)(i) AND (a)(2)(ii) of this AD, which constitute terminating action for the repetitive inspections required by paragraph (a)(1) of this AD.

(i) Accomplish the requirements of paragraph (a)(2)(i)(A) OR (a)(2)(i)(B) of this AD, and install a cross beam repair and reinforcement modification of the cross beam in accordance with Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994.

(A) Repair the door frame of the forward cargo door in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair or modification method to be approved by the Manager, Seattle ACO, as required by this paragraph; and paragraphs (a)(2)(ii), (b)(2), (b)(3)(ii), and (c)(2) of this AD; the Manager's approval letter must specifically reference this AD.

(B) Replace the door frame of the forward cargo door with a new door frame in accordance with Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994.

(ii) Modify the repaired or replaced door frame of the forward cargo door in accordance with a method approved by the Manager, Seattle ACO, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings.

Detailed Visual Initial/Repetitive Inspections

(b) Within 1 year or 4,500 flight cycles after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect cracking of the cross beam (*i.e.*, upper and lower chord and web sections) of the forward cargo door in accordance with Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation or assembly to detect damage, failure or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 4,500 flight cycles until the requirements of paragraph (c) of this AD have been accomplished.

(2) If any cracking is detected on the lower chord section of the cross beam during any inspection required by paragraph (b) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle ACO, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings.

(3) If any cracking is detected on any area excluding the lower chord section of the cross beam (*i.e.*, upper chord and web section) during any inspection required by paragraph (b) of this AD, prior to further flight, accomplish the requirements of paragraph (b)(3)(i) or (b)(3)(ii), as applicable, of this AD, which constitute terminating action for the repetitive inspections required by paragraph (b)(1) of this AD.

(i) For airplanes with line numbers 1 through 1231: Install a cross beam repair and preventative modification of the outboard radius of the lower corners (forward and aft) of the door frame in accordance with Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994.

Note 3: Due to implications and consequences associated with cracking, this AD does not allow the option of replacing the door frame as an alternative method of compliance to installing the preventative modification.

(ii) For airplanes with line numbers 1232 and subsequent: Install a cross beam repair and preventative modification of the outboard radius of the lower corners (forward and aft) of the door frame in accordance with a method approved by the Manager, Seattle ACO or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings.

Terminating Action

(c) Within 4 years or 12,000 flight cycles after the effective date of this AD, whichever occurs later: Install the preventative modification of the outboard radius of the lower corners (forward and aft) of the door frame and the reinforcement modification of the cross beam of the forward cargo door in accordance with paragraph (c)(1) or (c)(2) of this AD, as applicable. Accomplishment of paragraph (c)(1) or (c)(2) of this AD, as applicable, constitutes terminating action for the repetitive inspections required by paragraphs (a)(1) and (b)(1) of this AD.

(1) For airplanes with line numbers 1 through 1231: Accomplish the preventative modification and the reinforcement modification in accordance with Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994.

(2) For airplanes with line numbers 1232 and subsequent: Accomplish the preventative modification and the reinforcement modification in accordance with a method approved by the Manager, Seattle ACO or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings.

Modifications Previously Accomplished

(d) For all airplanes on which modifications of the forward lower corner of the door frame and the cross beam of the forward cargo door were accomplished in accordance with Boeing Service Bulletin 737–52–1100, dated August 25, 1988, or Revision 1, dated July 20, 1989, or in accordance with the requirements of AD 90–06–02, amendment 39–6489: Within 4 years or 12,000 flight cycles after the effective date of this AD, whichever occurs later, install the reinforcement modification of the aft corner of the door frame of the forward cargo door in accordance with Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994. Accomplishment of such modification constitutes terminating action for the repetitive inspections required by this AD.

Note 4: Accomplishment of Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994, does not supersede the requirements of AD 90–06–02, amendment 39–6489.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be

used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) Except as provided by paragraphs (a)(2)(i)(A), (a)(2)(ii), (b)(2), (b)(3)(ii), and (c)(2) of this AD; the actions shall be done in accordance with Boeing Service Bulletin 737–52–1100, Revision 2, dated March 31, 1994; and Boeing 737 Nondestructive Test (NDT) Manual, D6–37239, Part 6, Section 51–00–00, Figure 4 or Figure 23; dated August 5, 1997, as applicable. Boeing 737 NDT Manual contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
Title Page	Not Shown	Not Shown.
List of Effective Pages, Pages 1, 2.	Not Shown	Aug. 5, 1997.
List of Effective Pages, Page 2A.	Not Shown	Feb. 5, 1997.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98134–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on May 16, 2000.

Issued in Renton, Washington, on March 31, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8515 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–65–AD; Amendment 39–11665; AD 2000–07–11]

RIN 2120–AA64

Airworthiness Directives; Industrie Aeronautiche e Meccaniche Model Piaggio P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Industrie Aeronautiche e Meccaniche (I.A.M.) Model Piaggio P–180 airplanes. This AD requires repetitively inspecting the brake assembly rods and tubings for wear or damage, and replacing any worn or damaged parts. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this AD are intended to prevent the brake hydraulic fluid from leaking because of the brake assembly rods contacting the brake valve tubing, which could result in the inability to adequately stop the airplane during ground operations.

DATES: Effective May 29, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 29, 2000.

ADDRESSES: Service information that applies to this AD may be obtained from I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–65–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Randy Griffith, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4126; facsimile: (816) 329–4091.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all I.A.M. Model Piaggio P–180 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 22, 1999 (64 FR 71694). The NPRM proposed to require repetitively inspecting the brake assembly rods and tubings for wear or damage, and replacing any worn or damaged parts.

Accomplishment of the proposed inspections as specified in the NPRM would be required in accordance with Piaggio Service Bulletin (Mandatory) No.: SB–80–0107, Original Issue: April 30, 1999. Accomplishment of any necessary replacement as specified in the NPRM would be required in accordance with the maintenance manual.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 4 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 3 workhours per airplane to accomplish the initial inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the initial inspection on U.S. operators is estimated to be $720, or $180 per airplane.

These figures only take into account the cost of the initial inspection and do not take into account the costs of any replacements necessary or repetitive inspections. The FAA has no way of determining the number of parts that will need replacement or the number of inspections each owner/operator of the affected airplanes will incur.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on

the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

2000–07–11 Industrie Aeronautiche E Meccaniche: Amendment 39–11665; Docket No. 99–CE–65–AD.

Applicability: Model Piaggio P–180 airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent the brake hydraulic fluid from leaking because of the brake assembly rods contacting the brake valve tubing, which could result in the inability to adequately stop the airplane during ground operations, accomplish the following:

(a) Within the next 150 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 150 hours TIS, inspect the brake system assembly for wear or damage. Accomplish the inspection in accordance with the Accomplishment Instructions in Piaggio Service Bulletin (Mandatory) No.: SB–80–0107, Original Issue: April 30, 1999.

(b) If any worn or damaged parts are found during any inspection required by this AD, prior to further flight, replace the parts in accordance with the appropriate maintenance manual. The repetitive inspections required by paragraph (a) of this AD still apply after replacing any worn or damaged parts.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Piaggio Service Bulletin (Mandatory) No.: SB–80–0107, Original Issue: April 30, 1999, should be directed to I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(f) The inspections required by this AD shall be done in accordance with Piaggio Service Bulletin (Mandatory) No.: SB–80–0107, Original Issue: April 30, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Italian AD 99–219, dated June 22, 1999.

(g) This amendment becomes effective on May 29, 2000.

Issued in Kansas City, Missouri, on March 29, 2000.

Brian A. Hancock,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8512 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–232–AD; Amendment 39–11662; AD 2000–07–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 777 series airplanes, that requires replacement of the clevis ends on the tie rods for the center stowage bin supports with improved clevis ends. This amendment is prompted by a report that, under ultimate load conditions, the aluminum clevis ends on the tie rods for the center stowage bin supports can break. The actions specified by this AD are intended to prevent broken tie rods, which could result in the center stowage bins dropping onto the passenger seats below, causing possible injury to the occupants.

DATES: Effective May 16, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 16, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Julie Alger, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport

Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue S.W., Renton, Washington 98055–4056; telephone (425) 227–2779; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 777 series airplanes was published in the Federal Register on October 27, 1999 (64 FR 57794). That action proposed to require replacement of the clevis ends on the tie rods for the center stowage bin supports with improved clevis ends.

Explanation of New Service Information

Since the issuance of the proposal, the FAA has reviewed and approved Boeing Service Bulletin 777–25–0120, Revision 1, dated March 16, 2000. Revision 1 of the service bulletin is substantially similar to the original issue (which was referenced in the proposal as the appropriate source of service information for accomplishment of the proposed actions) and adds no additional airplanes to the effectivity listing. Revision 1 clarifies certain procedures described in the service bulletin. Accomplishment of the actions specified in Revision 1 of the service bulletin is intended to adequately address the unsafe condition described previously. Therefore, paragraph (a) of this final rule has been revised to reference Revision 1 of the service bulletin as the appropriate source of service information for the accomplishment of the requirements of that paragraph. In addition, a new "NOTE 2" has been added to this AD (and other notes have been renumbered accordingly) to specify that replacement of clevis ends prior to the effective date of this AD in accordance with the original issue of the service bulletin is acceptable for compliance with paragraph (a) of this AD.

Explanation of Change to Applicability

Operators should note that Revision 1 of the service bulletin deletes three airplanes from the effectivity listing. The intent of the service bulletin was accomplished prior to delivery of those airplanes. Therefore, the applicability statement of this final rule has been revised accordingly.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

No Objection to the Proposal

One commenter states that it has no objection to the proposed rule.

Compliance Time May Impact Service

One commenter states that it agrees with the proposed compliance time of four years. However, the commenter is concerned that the proposed replacement is intended to be accomplished during a scheduled maintenance visit, and, therefore, the replacement will not be accomplished on some airplanes for three or four years. The commenter also states that any change to the proposed time of compliance would impact service to the public. The commenter makes no specific request for a change to this AD.

The FAA acknowledges the commenter's point that the replacement required by this AD has the potential to impact service to the public. In developing an appropriate compliance time for this action, the FAA considered not only the manufacturer's recommendation (as specified in Boeing Service Bulletin 777–25–0120, dated February 11, 1999), but also the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the modification. In consideration of these items, the FAA has determined that four years represents an appropriate interval of time allowable wherein the modifications can be accomplished during scheduled maintenance intervals for the majority of affected operators, and an acceptable level of safety can be maintained. No change to the final rule is necessary in this regard.

Request To Increase Cost Estimate

One commenter estimates that the replacement of clevis ends specified in Boeing Service Bulletin 777–25–0120 will require 44 work hours instead of the 20 work hours estimated in the service bulletin. (The cost estimate in the NPRM for accomplishment of the replacement on Model 777–200 series airplanes is 12 work hours, excluding the time to gain access and close up.) The FAA infers that the commenter is requesting that the cost estimate be increased in the final rule.

The FAA does not concur with the commenter's request. The number of work hours necessary to accomplish the required actions, specified as 12 in the cost impact information below, was provided to the FAA by the manufacturer based on the best data available to date. This number represents the "direct" costs of the specific actions required by this AD: the time necessary to perform only the actions actually required by this AD. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up; planning time; or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 168 Model 777–200 and 16 Model 777–300 series airplanes of the affected design in the worldwide fleet.

The FAA estimates that 41 Model 777–200 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per airplane to accomplish the required replacement of clevis ends, and that the average labor rate is $60 per work hour. Required parts will cost approximately $15,938 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $682,978, or $16,658 per airplane.

Currently, there are no Model 777–300 airplanes on the U.S. Register that will be affected by this AD. However, should an unmodified airplane be imported and placed on the U.S. Register in the future, it would take approximately 17 work hours per airplane to accomplish the actions required by this AD, at an average labor rate of $60 per work hour. Required parts would cost approximately $18,457 per airplane. Based on these figures, the cost impact of the replacement required by this AD on these airplanes is estimated to be $19,477 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–07–06 Boeing: Amendment 39–11662. Docket 99–NM–232–AD.

Applicability: Model 777 series airplanes, line numbers 2 through 103 inclusive, 105 through 119 inclusive, 121 through 161 inclusive, 163 through 177 inclusive, and 179 through 186 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent broken tie rods, which could result in the center stowage bins dropping onto the passenger seats below, causing possible injury to the occupants, accomplish the following:

Replacement

(a) Within 4 years after the effective date of this AD, replace the aluminum clevis ends on the tie rods for the center stowage bin supports with new steel clevis ends, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777–25–0120, Revision 1, dated March 16, 2000.

Note 2: Accomplishment of the replacement of clevis ends with new steel clevis ends prior to the effective date of this AD in accordance with Boeing Service Bulletin 777–25–0120, dated February 11, 1999, is acceptable for compliance with paragraph (a) of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The replacement shall be done in accordance with Boeing Service Bulletin 777–25–0120, Revision 1, dated March 16, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on May 16, 2000.

Issued in Renton, Washington, on March 31, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8513 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–205–AD; Amendment 39–11661; AD 2000–07–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 series airplanes, that requires modification of wing center box angle fittings at frame 47. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent reduced structural integrity of the wing center box angle fittings at frame 47 due to fatigue cracking.

DATES: Effective May 16, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 16, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to

include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 series airplanes was published in the **Federal Register** on January 27, 2000 (65 FR 4386). That action proposed to require modification of wing center box angle fittings at frame 47.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter states that it is not affected by the proposal.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 38 airplanes of U.S. registry will be affected by this AD, that it will take approximately 430 work hours per airplane to accomplish the required modification, and that the average labor rate is $60 per work hour. Required parts will cost approximately $8,840 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,316,320, or $34,640 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–07–07 Airbus Industrie: Amendment 39–11661. Docket 99–NM–205–AD.

Applicability: Model A300 series airplanes, as listed in Airbus Service Bulletin A300–53–0298, Revision 03, dated November 26, 1998; certificated in any category; except those on which Airbus Service Bulletin A300–53–0282 or Airbus Service Bulletin A300–53–0291 has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wing center box angle fittings at frame (FR) 47, accomplish the following:

(a) Prior to the accumulation of the applicable threshold specified in the "MANDATORY TH" column of the table in paragraph 1.B.(4) of the service bulletin, or within 6,500 flight cycles after the effective date of this AD, whichever occurs later: Except as required by paragraph (b) of this AD, modify the wing center box angle fittings at FR 47 (including removing certain sealant and fasteners, performing rotating probe inspections to detect cracking, cold working certain fastener holes, installing new fasteners and sealant, and repairing damage), in accordance with Airbus Service Bulletin A300–53–0298, Revision 03, dated November 26, 1998.

Note 2: Operators should note that the area required to be modified by paragraph (a) of this AD remains subject to the requirements of AD 96–13–11, amendment 39–9679, after modification.

(b) Where Airbus Service Bulletin A300–53–0298, Revision 03, dated November 26, 1998, specifies that Airbus be contacted for repair instructions for certain damage conditions, this AD requires that such damage conditions be repaired prior to further flight in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Except as provided by paragraph (b) of this AD, the modification shall be done in accordance with Airbus Service Bulletin A300–53–0298, Revision 03, dated November 26, 1998, which contains the following list of effective pages:

Page number	Revision level shown on page	Date shown on page
1–21, 32–40, 42–46, 67, 68, 71–74, 93, 94, 103–110, 151, 157–161, 205–214.	03	November 26, 1998.
22–31, 41, 47–55, 57–66, 69, 70, 75–92, 95–102, 152–156, 163–204, 215.	Original	October 14, 1993.
56, 102A, 102B, 111–150	1	March 17, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 1999–076–267(B), dated February 24, 1999.

(f) This amendment becomes effective on May 16, 2000.

Issued in Renton, Washington, on March 31, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8514 Filed 4–10–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–53–AD; Amendment 39–11666; AD 2000–07–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727 series airplanes, that requires repetitive structural inspections of certain aging airplanes, and repair, if necessary. This amendment also provides for optional terminating action for the repetitive inspections. This amendment is prompted by reports of incidents involving fatigue cracking and corrosion in transport category airplanes that are approaching or have exceeded their economic design service goal. The actions specified by this AD are intended to prevent degradation of the structural capabilities of the affected airplanes. This AD relates to the recommendations of the Airworthiness Assurance Task Force assigned to review Model 727 series airplanes, which indicate that, to assure long term continued operational safety, various structural inspections should be accomplished.

DATES: Effective May 16, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 16, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 727 series airplanes was published in the **Federal Register** on June 25, 1999 (64 FR 34168). That action proposed to require repetitive structural inspections of certain aging airplanes, and repair, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

The Air Transport Association (ATA) of America, on behalf of three of its members, indicates that these members generally support the proposal. One of those members states that it does not operate any Boeing Model 727–200 series airplanes, line numbers 1 through 1214; another member has no objections to the proposed rule; and another member has no objection to the intent of the proposed rule but proposes certain clarifications.

Requests To Correct References

Two commenters state that a number of incorrect references are cited in the proposed AD. The commenters recommend changing references from "AD 94–05–04" to "AD 90–06–09" in the "Other Relevant Rulemaking" and "Differences Between Proposed Rule and Service Bulletin" sections of the proposed AD, the applicability of the proposed AD, and paragraph (d) of the proposed AD [cited as paragraphs (g)(1) and (g)(2) in the final rule]. One of the commenters contends that Revision 3 of Boeing Service Bulletin 727–57–0127, dated August 24, 1989 (which is referenced in Boeing Document Number D6–54860), clearly references repetitive inspections at intervals of 14,000 flight cycles. However, the Boeing document only specifies an inspection in accordance with Note 2 of Revision 3 of the service bulletin, and Note 2 does not refer to the repetitive inspections. Another of the commenters contends that Revision 2 of the service bulletin, dated February 13, 1976, was cited in the Boeing document and was mandated by AD 94–07–08.

Although the "Other Relevant Rulemaking" and "Differences" sections are not included in the final rule, the FAA concurs that it is necessary to change all references from "AD 94–05–04" to "AD 90–06–09" because the proposed AD incorrectly referenced AD 94–05–04. However, with regard to the correct revision number of the service bulletin, the FAA points out that AD 94–07–08 specifies Revision 3 rather than Revision 2 of the service bulletin, and that Revision 2 of the service bulletin is relevant to AD 90–06–09. To clarify the applicability of the final rule,

the FAA has changed the AD reference, and clarified that the actions are to be accomplished for certain airplanes on which the modification specified by either Revision 2 or Revision 3 of the service bulletin has not been accomplished. In addition, the AD references are changed in paragraphs (g)(1) and (g)(2) of the final rule.

Request To Extend Compliance Time for Initial Inspection

The commenter states that the compliance time in paragraph (a) of the proposed AD should be extended. That compliance time assumes that all Model 727 series airplanes have exceeded the initial inspection threshold, as it requires the initial inspection within 2,000 flight cycles [a phase-in (grace) period] after the effective date of the AD. The commenter points out that Note 2 in Part III of the Accomplishment Instructions of Boeing Service Bulletin 727–57–0127, Revision 3, specifies a threshold of 16,000 flight cycles and a phase-in period if an airplane has exceeded that threshold. The commenter has reviewed the active fleet of Model 727 series airplanes and has found that, at the present time, there are 36 airplanes that have accumulated less than 14,000 total flight cycles. The commenter also states that if the initial inspection has been accomplished in accordance with AD 94–07–08, that AD also requires repetitive inspection intervals of 14,000 total flight cycles. Therefore, the commenter recommends extending the compliance time in paragraph (a) of the proposed AD.

The FAA concurs that the compliance time should be extended, and that whether the initial inspection has or has not been accomplished in accordance with AD 94–07–08 should be considered. Therefore, paragraph (a) of the final rule has been revised to specify the inspection requirements for those airplanes on which the initial inspection has not been accomplished in accordance with AD 94–07–08, and a new paragraph (b) has been added to specify the inspection requirements for those airplanes on which the initial inspection has been accomplished in accordance with AD 94–07–08. [Paragraphs (a)(1) and (a)(2) of the proposed AD have been renumbered as paragraphs (c) and (d) in the final rule.]

Request To Clarify Type of Inspection

One commenter states that although the proposed AD requires a "dye penetrant inspection," Revision 3 of the Boeing service bulletin only specifies a "penetrant inspection," and does not reference a Boeing process specification, Non-Destructive Test manual reference, or any other kind of reference as to the type of penetrant inspection (*e.g.*, dye or fluorescent) that should be performed.

The FAA acknowledges that clarification of the type of inspection is necessary. Paragraph (a)(1) of the proposed rule specifies a "dye penetrant inspection" in accordance with Boeing Service Bulletin 727–57–0127, Revision 3, and Boeing Standard Overhaul Practices Manual D6–51702, Chapter 20–20–02, Revision 79, dated March 1, 1999. Although the service bulletin specifies a "penetrant inspection," Figure 1 of the Standard Overhaul Practices Manual specifies a "fluorescent dye penetrant inspection (Type I)." Based on the type of inspection included in the manual, the FAA has clarified the type of inspection specified in the preamble and paragraph (c) of the final rule.

Request To Clarify Terminating Action Required by AD 94–07–08

One commenter states that operators have expressed concerns that another AD is being written to mandate the inspections required by Boeing Service Bulletin 727–57–0127 [Revision 3], when AD 94–07–08 currently mandates such inspections. However, the proposed AD does not state that it will supersede the inspection requirements of Service Bulletin 727–57–0127, as mandated by AD 94–07–08. Therefore, the commenter recommends adding a note to the proposed AD stating that "Upon incorporation of the requirements of this AD, the inspection requirements of Boeing Service Bulletin 727–57–0127 mandated by AD 94–07–08 may be deleted."

The FAA acknowledges the concern expressed by the commenter that the proposed AD requires inspections currently required by paragraph (a) of AD 94–07–08. In response, the FAA has clarified in paragraph (g)(1) of the final rule that accomplishment of the inspections required by this AD constitutes terminating action for the inspections required by paragraph (a) of AD 94–07–08, as specified in Boeing Service Bulletin 727–57–0127, Revision 3.

Request To Delete Reference to Corrosion

One commenter states that, although the summary of the proposed AD states that the AD was prompted by reports of incidents involving fatigue cracking and corrosion found on older airplane models, Boeing Service Bulletin 727–57–0127 only addresses fatigue cracking and does not address corrosion. The FAA infers that the commenter suggests deleting the reference to corrosion in the summary of the proposed rule.

The FAA does not concur. Although the service bulletin does not include a reference to corrosion and only includes a reference to fatigue cracking, the FAA points out that the Working Group's reference to Boeing Document Number D6–54860, "Aging Airplane Service Bulletin Structural Modification Program—Model 727," Revision C, dated December 11, 1989 (as cited in the Discussion paragraph of the proposed AD), was established to address problems associated with both fatigue cracking and corrosion. In light of this, the FAA considers that the reference to corrosion is appropriate, and no change to the final rule is necessary in this regard.

Request To Clarify Inspection Requirement for Airplanes in Groups 4 and 5

One commenter recommends revising "Other Relevant Rulemaking" in the proposed AD to clarify that AD 94–07–08 inadvertently omitted the requirement to mandate repetitive inspections for certain wing ribs on airplanes in groups 4 and 5, because Section 4 of Boeing Document Number D6–54860 references Revision 2 of Boeing Service Bulletin 727–57–0127. The commenter adds that Revision 3 of the service bulletin specifies an additional rib inspection for airplanes in groups 4 and 5 only, and no additional requirements for airplanes in groups 1, 2, 3, and 6.

Although "Other Relevant Rulemaking" is not included in the final rule, the FAA acknowledges that AD 94–07–08 inadvertently omitted a requirement for the repetitive inspections. However, the FAA points out that the commenter was mistaken in stating that Boeing Document Number D6–54860, references Revision 3 (rather than Revision 2) of the service bulletin. In addition, Revision 3 of the service bulletin does include the additional rib inspection for airplanes in groups 4 and 5. Therefore, no change to the final rule is necessary in this regard.

Request To Allow Later Revisions of Service Bulletins

One commenter states that, in the "Initial Inspection" section of the NPRM, the reference documents for accomplishing the dye penetrant and high frequency eddy current inspections include a specific revision number for the service bulletin. The commenter suggests adding "or later revisions" so that when future revisions are released, there will not be any confusion as to which revision to use.

The FAA does not concur with the request to revise the AD to reference later revisions of the service bulletin, because it cannot approve the use of a document that does not yet exist. In addition, when a service bulletin is referenced in an AD, the use of the phrase, "or later FAA-approved revisions," violates Office of the Federal Register regulations regarding approval of materials that are incorporated by reference. Therefore, the FAA has determined that it is necessary to specify a certain revision number for all service bulletins specified in the final rule. However, the FAA points out that operators may submit any requests to use a later service bulletin through an appropriate FAA Principal Maintenance Inspector, as provided for by paragraph (h) of this AD.

Request To Revise Inspection Intervals

One commenter recommends extending the inspection intervals in paragraph (b) of the proposed AD to give credit for the accomplishment of initial or previous inspections in accordance with AD 94–07–08, and basing the next required inspection interval on the date the previous inspection was accomplished.

The FAA does not concur that it is necessary to revise the inspection intervals required by paragraph (b) of the proposed AD [cited as paragraph (e) of the final rule] because paragraph (a) of the proposed AD [cited as paragraph (b) of the final rule] states that the initial inspection is required within 2,000 flight cycles after the effective date of this AD, "unless accomplished within the last 12,000 flight cycles in accordance with AD 94–07–08." Therefore, the proposed AD provides credit for a previous inspection that was accomplished within 12,000 flight cycles; as a result, the proposed AD allows operators to repeat the inspection within 14,000 flight cycles after the last inspection. No change to the final rule is necessary in this regard.

Explanation of Change Made to the Proposal

The FAA has revised paragraph (c) of the proposed rule that requires repair in accordance with Boeing Service Bulletin 727–57–0127, Revision 3. That paragraph, renumbered as paragraph (f) in the final rule, adds that repair also may be accomplished in accordance with a method approved by the FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 975 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 538 airplanes of U.S. registry will be affected by this AD, that it will take approximately 300 work hours per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspections required by this AD on U.S. operators is estimated to be $9,684,000, or $18,000 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action rather than continue the repetitive inspections, it would take approximately 900 work hours per airplane to accomplish the modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $31,144 per airplane. Based on these figures, the cost impact of this optional terminating action is estimated to be $85,144 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–07–12 Boeing: Amendment 39–11666. Docket 99-NM–53-AD.

Applicability: Model 727–100, –100C, and –200 series airplanes, line numbers 1 through 1214 inclusive; certificated in any category; except those on which the modification specified by either Boeing Service Bulletin 727–57–0127, Revision 2, dated February 13, 1976, or Boeing Service Bulletin 727–57–0127, Revision 3, dated August 24, 1989, has been installed.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of the structural capabilities of the affected airplanes, accomplish the following:

Initial Inspection

(a) For those airplanes on which the initial inspection has not been accomplished in accordance with AD 94–07–08, amendment

39–8866: Prior to the accumulation of 16,000 total flight cycles or within 2,000 flight cycles after the effective date of this AD, whichever occurs later, accomplish the inspections required by either paragraph (c) or (d) of this AD.

(b) For those airplanes on which the initial inspection has been accomplished in accordance with AD 94–07–08, amendment 39–8866: Within 2,000 flight cycles after the effective date of this AD, unless accomplished within the last 12,000 flight cycles in accordance with AD 94–07–08, accomplish the inspections required by either paragraph (c) or (d) of this AD.

(c) Perform a fluorescent dye penetrant inspection (Type I) to detect cracking of certain wing ribs at the rib-to-stringer attachment in the areas specified in Boeing Service Bulletin 727–57–0127, Revision 3, dated August 24, 1989; in accordance with Boeing Standard Overhaul Practices Manual D6–51702, Chapter 20–20–02, Revision 79, dated March 1, 1999.

(d) Perform a high frequency eddy current inspection to detect cracking of certain wing ribs at the rib-to-stringer attachment in the areas specified in Boeing Service Bulletin 727–57–0127, Revision 3, dated August 24, 1989; in accordance with Boeing Commercial Jet Nondestructive Test Manual, Chapter 51–00–00, Part 6, dated August 5, 1997.

Repetitive Inspections and Corrective Action

(e) If no crack is detected during any inspection required by either paragraph (c) or (d) of this AD, repeat the applicable inspection thereafter at intervals not to exceed 14,000 flight cycles.

(f) If any crack is detected during any inspection required by either paragraph (c) or (d) of this AD, prior to further flight, repair in accordance with Boeing Service Bulletin 727–57–0127, Revision 3, dated August 24, 1989; or in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD. Repeat the applicable inspection thereafter at intervals not to exceed 14,000 flight cycles, following accomplishment of the repair.

Terminating Action

(g)(1) Accomplishment of the actions required by this AD constitutes terminating action for the inspections required by paragraph (a) of AD 94–07–08, as specified in Boeing Service Bulletin 727–57–0127, Revision 3, dated August 24, 1989.

(2) Accomplishment of the structural modifications specified in either Boeing Service Bulletin 727–57–0127, Revision 2, dated February 13, 1976; or Revision 3, dated August 24, 1989; constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate. An alternative method of compliance that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(j) Except as provided by paragraph (f) of this AD, the repairs shall be done in accordance with Boeing Service Bulletin 727–57–0127, Revision 3, dated August 24, 1989; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on May 16, 2000.

Issued in Renton, Washington, on March 31, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8516 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–40–AD; Amendment 39–11658; AD 2000–07–04]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, that requires repetitive tests of the flight idle backup system of the propeller control system; repetitive inspections to determine the level of wear of the pins and bushings of the cam followers on the power lever rods of the engine controls; and follow-on corrective actions, if necessary. This amendment also requires eventual replacement of the power lever and condition lever rods of the engine controls with new, improved parts, which constitutes terminating action for the repetitive tests and inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the flight idle backup system. In the event of failure of the primary propeller control system, such failure of the flight idle backup system could lead to uncommanded movement of the pitch of the propeller blade to below flight idle and into reverse thrust during flight, and consequent reduced controllability of the airplane.

DATES: Effective May 16, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 16, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes was published in the **Federal Register** on June 11, 1999 (64 FR 31520). That action proposed to require repetitive tests of the flight idle backup system of the propeller control system; repetitive inspections to determine the level of wear of the pins and bushings of the cam followers on the power lever rods of the engine controls; and follow-on corrective actions, if necessary. That action also proposed to require eventual

replacement of the power lever and condition lever rods of the engine controls with new, improved parts, which constitutes terminating action for the repetitive tests and inspections.

Comment Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter, the manufacturer, requests that paragraph (a) of the proposed AD be revised. The commenter states that, by requiring FAA or Luftfahrt-Bundesamt (LBA) approval if any discrepancy is discovered during the flight idle backup test required by paragraph (a), the AD would impose an undue hardship against operators of Dornier Model 328–100 series airplanes. The commenter suggests that paragraph (a) be revised to specify that if any discrepancy is detected, the inspection required by paragraph (b) should be performed prior to further flight. The commenter further suggests that, if Type C wear is found during that inspection, the power lever microswitches should be adjusted or calibrated; if Type A or B wear is found, the rod should be replaced per paragraph (f) of the AD, or the pin and bushing should be replaced as specified in paragraph C, section 6, of Dornier Alert Service Bulletin ASB 328–76–024, Revision 1, dated August 5, 1998 (which was cited as the appropriate source of service information for accomplishment of the inspections).

The FAA partially concurs. The FAA concurs that, if any discrepancy is found during the test required by paragraph (a) of the AD, accomplishment of the inspection required by paragraph (b) of the AD prior to further flight, with applicable corrective actions, constitutes an acceptable alternative to immediate repair in accordance with an FAA- or LBA-approved method. The FAA does not concur with the request to revise paragraph (a) to require such action solely, since both methods constitute acceptable corrective actions. To require only accomplishment of paragraph (b), and follow-on actions, as the commenter suggests, would also necessitate a reopening of the comment period, and thus further delay issuance of the final rule.

However, the FAA has determined that such an option may be incorporated into the AD as an alternative method of compliance to the repair required by paragraph (a). A new paragraph (a)(2) has been included in the final rule to specify such an option, with the provision that adjustment or calibration of the power lever microswitches must also be accomplished if Type C wear is found. Regarding findings of Type A or B wear, the FAA considers the existing follow-on corrective actions specified in paragraphs (c) and (d) of the AD to be adequate [those actions are required depending on the type of wear found during the inspection required by paragraph (b) of the AD]. Additionally, since replacement of all rods with improved rods is already an acceptable terminating action for the requirements of the AD, as specified in paragraph (f) of the AD, operators may choose to accomplish such corrective action at an earlier time if desired. No change is made to the final rule in regard to findings of Type A or B wear.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required test, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the test required by this AD on U.S. operators is estimated to be $3,000, or $60 per airplane, per test cycle.

It will take approximately 1 work hour per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $3,000, or $60 per airplane, per inspection cycle.

It will take approximately 10 work hours per airplane to accomplish the required replacement, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $30,000, or $600 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–07–04 Dornier Luftfahrt GMBH: Amendment 39–11658. Docket 99–NM–40–AD.

Applicability: Model 328–100 series airplanes having serial numbers (S/N) 3005 through 3098 inclusive, and S/N 3100, 3103, 3104, 3106, 3107, 3109, and 3110, on which Dornier Service Bulletin SB–328–76–268, dated August 11, 1998, or Revision 1, dated December 9, 1998, has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been

otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the flight idle backup system, which, in the event of failure of the primary propeller control system, could lead to uncommanded movement of the pitch of the propeller blade to below flight idle and into reverse thrust during flight, and consequent reduced controllability of the airplane, accomplish the following:

Flight Idle Backup Test

(a) Prior to the accumulation of 3,000 total flight hours, or within 3 days after the effective date of this AD, whichever occurs later, perform a test of the flight idle backup system of the propeller control system in accordance with Dornier Alert Service Bulletin ASB–328–76–024, Revision 1, dated August 5, 1998. If any discrepancy is detected, prior to further flight, accomplish the actions required by either paragraph (a)(1) or (a)(2) of this AD. Repeat the test thereafter at intervals not to exceed 1 day until accomplishment of the requirements of paragraph (c), (d), (e), or (f), as applicable.

(1) Repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Luftfahrt-Bundesamt (LBA) (or its delegated agent). Or

(2) Accomplish the inspection required by paragraph (b) of this AD, and the applicable follow-on corrective actions required by paragraph (c), (d), or (e) of the AD; AND, if Type C wear is found during the inspection required by paragraph (b), prior to further flight, adjust or calibrate the power lever microswitches in accordance with Dornier Airplane Maintenance Manual JIC 76–11–05–820–000.

Inspection of Cam Followers of Power Lever Rods

(b) Prior to the accumulation of 3,000 total flight hours, or within 7 days after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to determine the level of wear of the pins and bushings of the cam followers of the power lever rods of the engine controls, in accordance with Dornier Alert Service Bulletin ASB–328–76–024, Revision 1, dated August 5, 1998. Classify the level of wear for each power lever rod as specified in paragraphs (b)(1), (b)(2), and (b)(3) and accomplish the requirements of paragraph (c), (d), or (e) of this AD, as applicable, at the times specified in that paragraph.

(1) Type A wear: The bushing is worn such that the pin is visible in one or more locations.

(2) Type B wear: The bushing is worn, but the pin is not visible.

(3) Type C wear: The bushing is not worn.

Corrective Actions

(c) For power lever rods on which Type A wear is detected during the inspection required by paragraph (b) of this AD: Within 900 flight hours after accomplishment of that inspection, accomplish the requirements of paragraph (c)(1) or (c)(2) of this AD in accordance with Dornier Alert Service Bulletin ASB–328–76–024, Revision 1, dated August 5, 1998. Accomplishment of paragraph (c)(1) or (c)(2) terminates the tests required by paragraph (a) of this AD for that power lever rod only.

(1) Replace the power lever rod with a new power lever rod.

(2) Replace the pins and bushings with new pins and bushings, and accomplish paragraphs (c)(2)(i) and (c)(2)(ii) of this AD.

(i) Thereafter, accomplish follow-on inspections and corrective actions (i.e. inspections for wear or looseness of the replaced pins and bushings), at the times and in accordance with the Accomplishment Instructions of the alert service bulletin; and,

(ii) Within 900 flight hours after replacement of the pins and bushings, replace the power lever rod with a new power lever rod.

(d) For power lever rods on which Type B wear is detected during the inspection required by paragraph (b) of this AD: Thereafter, accomplish follow-on inspections and corrective actions at the times and in accordance with the Accomplishment Instructions of Dornier Alert Service Bulletin ASB–328–76–024, Revision 1, dated August 5, 1998, until the requirements of paragraph (f) of this AD are accomplished.

(e) For power lever rods on which Type C wear is detected during the inspection required by paragraph (b) of this AD: Determination of Type C wear terminates the tests required by paragraph (a) of this AD for that power lever rod only. Thereafter, accomplish follow-on inspections and corrective actions at the times and in accordance with the Accomplishment Instructions of Dornier Alert Service Bulletin ASB–328–76–024, Revision 1, dated August 5, 1998, until the requirements of paragraph (f) of this AD are accomplished.

Terminating Action

(f) Within 6 months after the effective date of this AD: Replace the power lever and condition lever rods of the engine controls with new, improved parts in accordance with Dornier Service Bulletin SB–328–76–268, Revision 1, dated December 9, 1998. Accomplishment of the replacement constitutes terminating action for the requirements of this AD.

Note 2: Replacement of the power lever and condition lever rods accomplished prior to the effective date of this AD in accordance with Dornier Service Bulletin SB–328–76–268, dated August 11, 1998, is considered acceptable for compliance with paragraph (f) of this AD.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance. Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(i) Except as required by paragraphs (a)(1) and (a)(2) of this AD, the actions shall be done in accordance with Dornier Alert Service Bulletin ASB–328–76–024, Revision 1, dated August 5, 1998; and Dornier Service Bulletin SB–328–76–268, Revision 1, dated December 9, 1998; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in German airworthiness directive 1998–344/3, dated February 11, 1999.

(j) This amendment becomes effective on May 16, 2000.

Issued in Renton, Washington, on March 31, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8517 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–1]

Amendment to Class E Airspace; Creston, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Creston, IA.

DATE: The direct final rule published at 65 FR 5763 is effective on 0901 UTC, June 15, 2000.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 7, 2000 (65 FR 5763). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 15, 2000. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Dated: Issued in Kansas City, MO on March 30, 2000.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–8963 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–2]

Amendment to Class E Airspace; Ord, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Ord, NE.

DATES: The direct final rule published at 65 FR 5764 is effective on 0901 UTC, June 15, 2000.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 7, 2000 (65 FR 5766). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 15, 2000. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 30, 2000.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–8964 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–55]

Amendment to Class E Airspace; O'Neill, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at O'Neill, NE.

DATES: The direct final rule published at 65 FR 5766 is effective on 0901 UTC, June 15, 2000.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 7, 2000 (65 FR 5766). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 15, 2000. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 30, 2000.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–8965 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–5]

Amendment to Class E Airspace; Monticello, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Monticello, IA.

DATES: The direct final rule published at 65 FR 5770 is effective on 0901 UTC, June 15, 2000.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 7, 2000 (65 FR 5770). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 15, 2000. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 30, 2000.

Herman J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–8966 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–56]

Amendment to Class E Airspace; Grand Island, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Grand Island, NE.

DATES: The direct final rule published at 65 FR 5765 is effective on 0901 UTC, June 15, 2000.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 7, 2000 (65 FR 5765). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 15, 2000. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 30, 2000.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–8967 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 870, 888, and 890

[Docket No. 99N–2210]

Cardiovascular, Orthopedic, and Physical Medicine Diagnostic Devices; Reclassification of Cardiopulmonary Bypass Accessory Equipment, Goniometer Device, and Electrode Cable Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is reclassifying from class I into class II the cardiopulmonary bypass accessory equipment device that involves an electrical connection to the patient, the goniometer device, and the electrode cable. FDA is also exempting these devices from the premarket notification requirements. FDA is reclassifying these devices on its own initiative based on new information. FDA is taking this action to establish sufficient regulatory controls that will provide reasonable assurance of the safety and effectiveness of these devices.

DATES: This regulation is effective May 11, 2000.

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Background (Proposed Rule)

On August 9, 1999 (64 FR 43114), FDA, on its own initiative, proposed to reclassify the following devices from class I to class II: (1) Cardiopulmonary bypass accessory equipment, when intended to be used in the cardiopulmonary bypass circuit to support, adjoin, or connect components, or to aid in the setup of the extracorporeal line; (2) the goniometer device, which is an AC-powered device, when intended to evaluate joint function by measuring and recording ranges of motion, acceleration, or forces exerted by a joint; and (3) the electrode cable device, which is an electrode cable device composed of strands of insulated electrical conductors laid together around a central core and intended for medical purposes to connect an electrode from a patient to a diagnostic machine.

In addition to general controls, FDA identified two special controls that FDA believes are adequate to control the risks to health described for these devices: (1) On May 9, 1997, FDA issued a final rule establishing a performance standard for electrode lead wires and patient cables. The agency determined that the performance standard is needed to prevent electrical connections between patients and electrical power sources. In the preamble to the May 9, 1997, final rule establishing this standard, FDA identified cardiopulmonary bypass accessory equipment, the goniometer, and the electrode cable as devices that would be subject to this standard after they were reclassified into class II; and (2) based on the available information, FDA also identified a guidance document entitled "Guidance on the Performance Standard for Electrode Lead Wires and Patient Cables." The guidance provides information on electrocution hazards posed by unprotected patient electrical connectors. The guidance is intended to help affected parties understand the steps needed to achieve compliance with the performance standard for electrode lead wires and patient cables.

Since May 11, 1998, electrode lead wires or patient cables have been required to comply with the ECG Cables and Lead Wires, ANSI/AAMI EC 53–1995 standard if they are intended for use with any of the following devices:

1. Breathing frequency monitors,
2. Ventilatory effort monitors (Apnea detectors),
3. Electrocardiographs (ECG's),
4. Radio frequency physiological signal transmitters and receivers,
5. Cardiac monitors,
6. Electrocardiograph electrodes (including pre-wired ECG electrodes),
7. Patient transducer and electrode cables (including connectors),
8. Medical magnetic tape recorders (e.g. Holter monitors),
9. Arrhythmia detectors and alarms,
10. Telephone electrocardiograph transmitters and receivers.

Manufacturers and users had an additional 2 years to prepare for the second phase of implementation of the standard. Beginning on May 9, 2000, any electrode lead wire or patient cable lead intended for use with any medical device must comply with the standard. The performance standard incorporates the specific requirements of international standard, IEC–60601, clause 56.3(c), which requires leads to be constructed in such a manner as to preclude patient contact with hazardous voltages or, for certain devices, contact with electrical ground. Design changes and labeling changes need to be

considered by manufacturers and importers of these devices. Adapters can be used to convert devices already in the marketplace so they can accept electrode wires and patient cables that comply with the new performance standard.

II. Comments

FDA invited interested persons to submit written comments on the proposed rule. FDA received one comment. The comment objected that the rule should not apply to battery-powered goniometers.

FDA agrees in part. Some battery-powered goniometers have cables and leads that connect them to displays and other devices. Because devices that use electrode lead wires and patient cables present the risk of electrocution to the patient, FDA believes that these devices should be in class II and subject to the standard. Goniometers that do not use electrode lead wires and patient cables will remain in class I and will be exempt from premarket notification. FDA is also revising the identification section in § 888.1500 (21 CFR 888.1500). Presently, it refers only to AC-powered devices. Since publication of that proposed rule, FDA has found several battery-powered goniometers to be substantially equivalent to the goniometer identified in § 888.1500(a). FDA is revising this section to include battery-powered devices.

III. Exemption From Premarket Notification

A. FDA Is Exempting These Devices From Premarket Notification

On November 21, 1997, the President signed into law the FDA Modernization Act (FDAMA) (Public Law 105–115). Section 206 of FDAMA, in part, added a new section 510(m) to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(m). Section 510(m)(1) of the act requires FDA, within 60 days after enactment of FDAMA, to publish in the **Federal Register** a list of each type of class II device that does not require a report under section 510(k) of the act to provide reasonable assurance of safety and effectiveness. Section 510(m) of the act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**. FDA published that list in the **Federal Register** of January 21, 1998 (63 FR 3142). Section 510(m)(2) of the act provides that 1 day after the date of publication of the list under section 510(m)(1) of the act, FDA may exempt a device on its own initiative or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. FDA has determined that, for the devices proposed for class II in this rule, the special controls along with general controls other than premarket notification will provide reasonable assurance of the safety and effectiveness of these devices. Therefore, FDA is exempting these devices from the premarket notification requirements subject to the applicable limitations on exemptions.

B. Certain Cardiopulmonary Bypass Equipment Will Remain in Class I

FDAMA also added a new section 510(l) to the act which provides that a class I device is exempt from the premarket notification requirements under section 510(k) of the act, unless the device is intended for a use which is of substantial importance in preventing impairment of human health or it presents a potential unreasonable risk of illness or injury. FDA refers to the devices that meet these criteria as "reserved." In the **Federal Register** of February 2, 1998 (63 FR 5387), FDA published a list of devices it considered reserved and that require premarket notification and a list of devices it believed met the exemption criteria in FDAMA. FDA invited comments on the February 2, 1998, notice. In the **Federal Register** of November 12, 1998 (63 FR 63222), after reviewing the comments submitted on the February 2, 1998, **Federal Register** notice, FDA proposed to designate which devices require premarket notification, and which are exempt, subject to limitations, under notice and comment rulemaking proceedings under new section 510(l) of the act. One comment on the proposed rule stated that, for cardiopulmonary bypass accessory equipment, the "reserved" designation should be limited to accessory equipment that involves an electrical connection to the patient. FDA agrees with this comment and, on January 14, 2000 (65 FR 2296), FDA issued a final rule on exemptions from premarket notification to adopt this comment. In this rule, FDA stated that cardiopulmonary bypass accessory equipment that does not involve electrical connection to the patient is a class I device and is exempt from the premarket notification requirements.

IV. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Based on the May 9, 1997 (62 FR 25477), **Federal Register**, a final rule was issued establishing a performance standard for electrode lead wires and patient cables, which included and applied to the cardiopulmonary bypass accessory equipment that involves an electrical connection to the patient, the goniometer, and the electrode cable. FDA's analysis determined that the imposition of the performance standard would not have a significant economic impact on a substantial number of small entities. This reclassification will have no economic effect other than the imposition of this standard. In addition, the rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VI. Paperwork Reduction Act of 1995

FDA has determined that this rule contains no collections of information. Therefore, clearance from the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Parts 870, 888, and 890

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 870, 888, and 890 are amended as follows:

PART 870—CARDIOVASCULAR DEVICES

1. The authority citation for 21 CFR part 870 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 870.4200 is revised to read as follows:

§ 870.4200 Cardiopulmonary bypass accessory equipment.

(a) *Identification.* Cardiopulmonary bypass accessory equipment is a device that has no contact with blood and that is used in the cardiopulmonary bypass circuit to support, adjoin, or connect components, or to aid in the setup of the extracorporeal line, e.g., an oxygenator mounting bracket or system-priming equipment.

(b) *Classification.* (1) Class I. The device is classified as class I if it does not involve an electrical connection to the patient. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 870.9.

(2) Class II (special controls). The device is classified as class II if it involves an electrical connection to the patient. The special controls are as follows:

(i) The performance standard under part 898 of this chapter, and

(ii) The guidance document entitled "Guidance on the Performance Standard for Electrode Lead Wires and Patient Cables." The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 870.9.

PART 888—ORTHOPEDIC DEVICES

3. The authority citation for 21 CFR part 888 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

4. Section 888.1500 is revised to read as follows:

§ 888.1500 Goniometer.

(a) *Identification.* A goniometer is an AC-powered or battery powered device intended to evaluate joint function by measuring and recording ranges of motion, acceleration, or forces exerted by a joint.

(b) *Classification.* (1) Class I (general controls) for a goniometer that does not use electrode lead wires and patient cables. This device is exempt from the premarket notification procedures of subpart E of part 807 of this chapter subject to § 888.9.

(2) Class II (special controls) for a goniometer that uses electrode lead wires and patient cables. The special controls consist of:

(i) The performance standard under part 898 of this chapter, and

(ii) The guidance entitled "Guidance on the Performance Standard for Electrode Lead Wires and Patient Cables." This device is exempt from the premarket notification procedures of subpart E of part 807 of this chapter subject to § 888.9.

PART 890—PHYSICAL MEDICINE DEVICES

5. The authority citation for 21 CFR part 890 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

6. Section 890.1175 is amended by revising paragraph (b) to read as follows:

§ 890.1175 Electrode cable.

* * * * *

(b) *Classification.* Class II (special controls). The special controls consist of:

(1) The performance standard under part 898 of this chapter, and

(2) The guidance document entitled "Guidance on the Performance Standard for Electrode Lead Wires and Patient Cables." This device is exempt from the premarket notification procedures of subpart E of part 807 of this chapter subject to § 890.9.

Dated: March 2, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–8850 Filed 4–10–00; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN107–1a; FRL–6573–8]

Approval and Promulgation of Implementation Plan; Indiana Particulate Matter Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On February 3, 1999, the State of Indiana Department of Environmental Management (IDEM) submitted a site-specific State Implementation Plan (SIP) request to revise Particulate Matter (PM) emission limits for a facility owned by Central Soya Company, Inc., located in Indianapolis, Marion County, Indiana. Central Soya is converting its grain elevator from a processing to a storage facility. The SIP revision request reflects changes in emission limits resulting from the shutdown of various operations at the plant, and provides new emission limits reflecting the addition of new operations.

The projected PM emission decrease associated with the elimination of selected activities at the facility is 71.22 tons per year. The projected PM emission increases associated with the changes in operations at the facility is 14.81 tons per year. The overall change is a projected net decrease in PM emissions of approximately 56 tons per year from the facility. Because Indiana's Central Soya SIP revision request is consistent with the Clean Air Act and applicable policy, EPA is approving it.

DATES: This rule is effective on June 12, 2000, unless EPA receives adverse written comments by May 11, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. You can inspect copies of the State Plan submittal at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommended that you contact Mark J. Palermo at (312) 886–6082 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Environmental Engineer, at (312) 886–6084.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us" or "our" are used, we mean EPA. Also, whenever we refer to "Central Soya", we mean Central Soya Company, Incorporated, at 1102 West 18th Street in Marion County, Indianapolis, Indiana.

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I. What Is EPA Approving in This Action?

EPA is approving a requested revision to Indiana SIP rule 326 IAC 6–1–12 for Central Soya, as submitted by Indiana to EPA with a letter dated February 3, 1999. The rule addresses particulate matter concentration and annual emission limits for a number of sources at Central Soya's Marion County, Indianapolis, Indiana facility. Indiana submitted additional technical support information on February 23, 1999. The revision reflects the elimination of old processes and the addition of new operations at the facility. We are approving mass rate limits reflected in both an annual rate, which represents a cap on the total emissions for that source, and a concentration limit in grains per dry standard cubic feet (grains/dscf).

II. The Indiana State Plan Requirement

What Pollutant Does This Revision Affect?

This revision provides for the reduction in emissions of particulate matter from the sources which are closed down, and an increase in emissions for additional sources. Particulate emissions should change from a total of 71.22 tons per year, the previously approved emission level, to 14.81 tons per year. This represents a net emissions decrease of approximately 56 tons of PM per year.

What Is the Existing State Requirement for This Source?

Prior to this SIP revision request, Central Soya had been subject to particulate matter emission limits for a boiler and a number of other sources and operations under 326 IAC 6–1–12(a). Those limits, as noted in the record of public hearing of the Air Pollution Control Board, are as follows:

Source description	Tons/year	Grains per dry standard cubic foot
Vogt Boiler	32.3	[1] 0.350
Toasting Feed Mill	5.0	0.013
Dry Soybean Meal	5.6	0.03
Soybean Meal Cooler	10.2	0.03
Pellet Cooler (South)	7.4	0.03
Feed Pellet Cooler (North)	9.0	0.034
Bean Bowl Storage	0.2	0.001
Conveyor System Aspiration	0.42	0.001
Truck Pit Receiving Area	1.1	0.006

[1] lb/MMBtu.

What Are the Changes Requested by Central Soya?

Central Soya asked the State to amend 326 IAC 6–1–12 to eliminate a number of sources and add several new sources. Central Soya has reported that the following sources (identified by point input I.D.) are no longer in operation: (01) Vogt Boiler; (02) Toasting Mill Feed; (03) Dry Soybean Mill; (04) Soybean Meal Cooler; (05) Pellet Cooler South; (06) Feed Pellet Cooler North; (08) Bean Bowl Storage; (09) Conveyor System Aspiration; and (10) Truck Pit. Central Soya has asked the State to delete these sources from the State rule.

Central Soya also requested that EPA approve the revised emission limits applicable to (09A) Elevator Gallery Belt Trippers; (09B) Elevator Gallery Belt Loaders (East and West); and (09C) Elevator Grain Dryer Conveying Legs. Central Soya also requested that the State add two other sources to the inventory: (10A) Elevator #1 Truck and Rail Receiving System and Basement, and (10B) Elevator #2 Truck and Rail Receiving System. The Indiana Air Pollution Control Board approved these changes on November 1, 1998.

What Are the Criteria for Approving Changes to Central Soya SIP Requirements?

The general criteria used by EPA to evaluate such emissions trades, or "bubbles," under the Clean Air Act are set out in the EPA's Emissions Trading Policy Statement (ETPS) (see 51 FR 43814, December 4, 1986). The ETPS allows a State to forego a modeling analysis in those trades where the "applicable net baseline emissions do not increase and in which the sum of the emissions increases, looking only at the increasing sources, totals less than 25 tons per year of particulate matter." EPA considers that such trades will have, at most, a "de minimis" impact on local air quality. 51 FR 43844.

In the case of Central Soya, Indiana also elected to perform a "Level II" modeling analysis under the ETPS. A Level II analysis must include emissions from the sources involved in the trade, and must demonstrate that the air quality impact of the trade does not exceed set significance levels. For PM, the significance levels are 10 micrograms per cubic meter ($\mu g/m^3$) for any 24-hour period, and 5 $\mu g/m^3$ for any annual period.

The modeling analysis submitted by the IDEM in support of the requested Central Soya SIP revision is consistent with a Level II analysis. The analysis shows that the SIP revision request will not cause or contribute to any exceedances of the PM NAAQS. The maximum modeled PM air quality impacts were 1.8 $\mu g/m^3$ in 24-hours, and 0.0 $\mu g/m^3$ on an annual basis. Therefore, IDEM has demonstrated that this SIP revision will not have a significant impact on air quality.

III. The Indiana Plan for Particulate Matter

Who Is Affected by This SIP Revision?

This revision reduces the emissions of particulate matter from selected sources in the Central Soya facility, as well as the facility as a whole. The reductions come about because of the change in operations at the plant. The State reports that the facility underwent a change from a processing plant to exclusively a storage facility. Citizens of Marion County living near the facility will benefit from the reductions because the net overall change should be a positive impact on air quality.

Did the Public Have an Opportunity To Comment on the Changes?

The State published a public notice on November 3, 1997, and December 23, 1997, to inform citizens that the revised plan was available for review and public

[1] See 56 FR 56694 (November 6, 1991). On June 9, 1999, EPA revoked the one-hour ozone standard for eastern Massachusetts. See 64 FR 30911 (June 9, 1999). EPA has proposed to reinstate that standard. See 64 FR 57424 (October 25, 1999).

comment. Indiana held two Air Pollution Control Board meetings on the Central Soya rule changes on December 3, 1997 and February 4, 1998. The State did not receive any adverse comment regarding these changes.

What Revisions Are We Approving?

Previous to this SIP revision request, Central Soya had been subject to particulate matter emission limits for a boiler and a number of other sources and operations under 326 IAC 6–1–12(a). These approved limits are noted in the record of public hearing of the Air Pollution Control Board.

Indiana has amended rule 326 IAC 6–1–12(a) to eliminate a number of sources, resulting in a reduction of annual particulate matter emissions from Central Soya. Indiana has added five sources to the rule. These are: Elevator Gallery Belt Trippers; Elevator Gallery Belt Loaders (East and West); Elevator Grain Dryer Conveying Legs; Elevator #1 Truck and Rail Receiving System and Basement; and Elevator #2 Truck and Rail Receiving System. The State-approved emission limits for the five new sources are listed in the following table:

Source description	Tons/year	Grains per dry standard cubic foot
Elevator Gallery Belt Tripper (East and West)	0.92	0.006
Elevator Gallery Belt Loaders (East and West)	0.70	0.006
Elevator Grain Dryer Conveying Legs	1.01	0.006
Elevator #1 Truck/Rail Receiving System and Basement	7.23	0.006
Elevator #2 Truck/Rail Receiving System	4.95	0.006

How Did Indiana Show That the Changes to the SIP Are Approvable?

The State's technical support document included a table of the changes in emissions at the Central Soya facility for the sources listed. These changes, as published in the November 1, 1998 Indiana Register, Volume 22, Number 2 (page 417), indicate that the decreases in PM emissions should total 71.22 tons per year and the increases should total 14.81 tons per year. This represents a net decrease in emissions of 56.41 tons per year.

The State also performed air emissions ambient modeling. The modeling shows that impacts are below the Level II significant impact levels of 10.0 $\mu g/m^3$ for the 24-hour and 5.0 $\mu g/m^3$ for the annual time averaged period.

IV. Review and Approval of the Indiana SIP Revision for Central Soya Company, Inc.

Why Is Indiana's SIP Revision Approvable?

The revision to this SIP is approvable because the changes requested by the State meet the requirements of the Clean Air Act and EPA's bubble policy, as noted above. Also, the emissions increases should have, at most, a "de minimis" impact on air quality as a result of the concurrent emissions reductions.

Are the Particulate Matter Air Quality Standards and Public Health Protected as a Result of the Approval of This SIP Submission?

The particulate matter air quality standard and public health should be protected by this SIP revision. The Clean Air Act and applicable policy permit changes to the State's implementation plan without the need for a detailed technical review under certain carefully circumscribed situations. These include emission changes in which there is a net reduction in emissions. This approach should ensure that ambient air quality standards will be attained and maintained, and public health protected. The request being approved today results in a net reduction in particulate matter emissions.

When Will This Rule Change Become Federally Enforceable?

This revision will become Federally enforceable on the effective date of this approval.

V. Final Rulemaking Action

In this rulemaking action, EPA approves the Central Soya Company, Incorporated SIP submission as a revision to the Indiana SIP. The revision eliminates a total of nine source operations and adds five new operations. It has the overall effect of reducing the emissions of particulate matter from the facility. The Indiana Air Pollution Control Board approved the revision and published it in the Indiana Register, Volume 22, Number 2, page 417, dated November 1, 1998. EPA is publishing this direct final approval without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse written comments be filed. This action will be effective June 12, 2000, without further notice unless EPA receives relevant adverse written comment by May 11, 2000. Should the Agency receive such comments, it will publish a final rule informing the public that this direct final action will not take effect. Any parties interested in commenting on this action should do so at this time. If no comments are received, the public is advised that this action will be effective on June 12, 2000.

VI. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal

government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of

this action must be filed in the United States Court of Appeals for the appropriate circuit by June 12, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 28, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(130) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(130) On February 3, 1999, Indiana submitted a site specific SIP revision request for the Central Soya Company, Incorporated, Marion County, Indiana. The submitted revision amends 326 IAC 6–1–12(a), and provides for revised particulate matter emission totals for a number of source operations at the plant. The revision reflects the closure of nine operations and the addition of five new ones, resulting in a net reduction in particulate matter emissions.

(i) *Incorporation by reference.* The entry for Central Soya Company, Incorporated contained in Indiana Administrative Code Title 326: Air Pollution Control Board, Article 6: Particulate Rules, Rule 1: Nonattainment Area Limitations, Section 12: Marion County. Subsection (a) amended at 22, Indiana Register 416, effective October 16, 1998.

[FR Doc. 00–8828 Filed 4–10–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA063–01–7200a; A–1–FRL–6574–7A]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Revised VOC Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving two State Implementation Plan (SIP) revisions submitted by the Commonwealth of Massachusetts. These SIP submittals include revisions to regulations for controlling volatile organic compound (VOC) emissions, including emissions from marine vessel loading and consumer products. The intended effect of this action is to approve the revised regulations into the Massachusetts SIP. This action is being taken in accordance with the Clean Air Act (CAA).

DATES: This direct final rule is effective on June 12, 2000 without further notice, unless EPA receives adverse comment by May 11, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning Unit (mail code CAQ), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 918–1047.

SUPPLEMENTARY INFORMATION: This section is organized as follows:

What action is EPA taking?

What are the CAA requirements for marine vessels?

How has Massachusetts addressed these CAA requirements?

What were the issues outlined in EPA's conditional approval of Massachusetts' marine vessel rule?

How has Massachusetts addressed these issues?

What revisions did Massachusetts make to its VOC definition?

How does Massachusetts' VOC definition compare to EPA's VOC definition?

What revisions did Massachusetts make to its consumer products rule?

Why is EPA approving Massachusetts' SIP submittals?

What is the process for EPA's approval of these SIP revisions?

What Action Is EPA Taking?

EPA is approving Massachusetts' revised 310 CMR 7.24(8) "Marine Volatile Organic Liquid Transfer" and incorporating this rule into the Massachusetts SIP. EPA is also approving definitions in 310 CMR 7.00 which are associated with the marine vessel rule. EPA is also approving Massachusetts' revised 310 CMR 7.00 definition of "volatile organic compound" and an amendment to Massachusetts' 310 CMR 7.25 "Best Available Controls for Consumer and Commercial Products" and incorporating these regulations into the Massachusetts SIP.

What Are the CAA Requirements for Marine Vessels?

Section 183(f) of the CAA requires EPA to promulgate reasonably available control technology (RACT) standards to reduce VOC emissions from the loading and unloading of tank vessels. Furthermore, on November 12, 1993 (58 FR 60021), marine vessels were added to the list of those categories for which EPA will promulgate a maximum achievable control technology (MACT) standard. On September 19, 1995 (60 FR 48388), EPA promulgated both RACT and MACT standards for marine tank vessels. Section 183(f)(4) of the CAA states that after EPA promulgates such standards, no State may adopt, or attempt to enforce, less stringent standards for tank vessels subject to EPA's regulation.

In addition, section 182(b)(1) of the amended CAA requires States with ozone nonattainment areas classified as moderate and above to develop reasonable further progress plans to reduce VOC emissions by 15 percent within these areas by 1996 when compared to 1990 baseline VOC emission levels. Also, section 182(b)(2)(C) of the CAA requires that RACT be implemented for all major VOC sources by May 31, 1995. Pursuant to the Clean Air Act Amendments of 1990, the Commonwealth of Massachusetts was designated as serious nonattainment for ozone.[1]

Therefore, in Massachusetts, sources with the potential to emit greater than

[1] See 56 FR 56694 (November 6, 1991). On June 9, 1999, EPA revoked the one-hour ozone standard for eastern Massachusetts. See 64 FR 30911 (June 9, 1999). EPA has proposed to reinstate that standard. See 64 FR 57424 (October 25, 1999).

50 tpy are considered major VOC sources. Furthermore, Massachusetts is located in the Northeast Ozone Transport Region (OTR). The entire Commonwealth is, therefore, subject to section 184(b) of the amended CAA. Section 184(b) requires that RACT be implemented for all major VOC sources (defined as 50 tons per year for sources in the OTR).

How Has Massachusetts Addressed These CAA Requirements?

In response to the above CAA requirements, Massachusetts adopted 310 CMR 7.24(8) to control VOC emissions from marine vessel transfer operations. On August 27, 1996 (61 FR 43973), EPA issued a conditional approval of Massachusetts' 310 CMR 7.24(8) marine vessel rule. EPA's conditional approval cited two outstanding issues associated with Massachusetts' regulation.

What Were the Issues Outlined in EPA's Conditional Approval of Massachusetts' Marine Vessel Rule?

EPA's conditional approval of Massachusetts' marine vessel rule cited the following two outstanding issues associated with this regulation: (1) a lack of monitoring requirements; and (2) emission limits for ballasting operations.

(1) Lack of Monitoring Requirements

Massachusetts' marine vessel rule requires that, upon initial startup of the air pollution control equipment, the owner or operator of a marine terminal conduct an initial performance test in order to demonstrate compliance. However, the initially adopted version of the rule did not require the facility to demonstrate continued compliance as is generally required of VOC sources. Specifically, as noted in EPA's conditional approval, the regulation should require that certain parameters be monitored continuously while marine vessel loading or ballasting operations are occurring and that records be kept of any periods of operation during which the previously established parameter boundaries are exceeded.[2]

(2) Emission Limits for Ballasting Operations

The marine vessel rule that Massachusetts initially adopted applies to the loading of an organic liquid and to ballasting operations. However, the emissions limitations of the rule do not apply to ballasting operations. EPA's conditional approval noted that, although EPA's national marine vessel rule does not apply to ballasting operations, the absence of emission limitations for ballasting operations in Massachusetts' rule is inconsistent with the VOC emission reductions claimed in Massachusetts' reasonable further progress (RFP) plan for the Boston-Worcester-Lawrence ozone nonattainment area. Specifically, Massachusetts 1990 base year inventory shows that uncontrolled marine vessel transfer operations result in 3.2 tons of VOC per summer day (tpsd), which includes 2.8 tpsd from ballasting and 0.4 tpsd from loading operations. Massachusetts' initial marine vessel rule SIP submittal states that ballasting emissions will be reduced by 2.1 tpsd. This statement assumes that ballasting operations are subject to a 95 percent control efficiency requirement (i.e., 0.95 control efficiency × 0.8 rule effectiveness × 2.8 tpsd uncontrolled = 2.1 tpsd reduction). Therefore, EPA's conditional approval stated that Massachusetts' marine vessel rule should require that ballasting operations be subject to the emission limitations stated in section 7.24(8)(c)(1)(B) of the rule.

How Has Massachusetts Addressed These Issues?

On October 17, 1997, Massachusetts submitted a SIP revision containing a revised version of its marine vessel rule 310 CMR 7.24(8). Massachusetts' revised marine vessel rule adequately addresses the two issues outlined in EPA's conditional approval.

(1) Lack of Monitoring Requirements

In Massachusetts' revised rule, a new provision has been added which requires emission control equipment to be monitored in accordance with the procedures specified in EPA's national marine vessel rule, specifically sections 63.564(e) through (j) of 40 CFR part 63, subpart Y. Massachusetts has, therefore, adequately addressed the issue of monitoring requirements.

The revised rule also includes a reference to the vapor-tightness pressure test procedures in EPA's national rule, specifically section 63.565(c)(1) of 40 CFR part 63, subpart Y. Previously, Massachusetts' rule required that these tests be "conducted in accordance with procedures specified by the DEP and EPA."

(2) Emission Limits for Ballasting Operations

In Massachusetts' revised rule, the requirement for marine terminal owners to install and operate equipment to control VOC emissions which result solely from ballasting operations has been rescinded. However, the revised rule states that, if a system is in place to control emissions from gasoline loading operations, then that system must also be used to control ballasting emissions. In such a case, ballasting emissions are subject to the emission limits of the rule.

Massachusetts' revision is acceptable since ballasting emissions in Massachusetts are now known to be less significant than originally estimated. As previously stated, Massachusetts had initially calculated uncontrolled ballasting emissions to be 2.8 tpsd. However, as reported in Massachusetts public hearing background document, industry data has subsequently shown that 1994 uncontrolled ballasting emissions were only 0.4 tpsd. Massachusetts plans to adjust future emissions inventory estimates of ballasting emissions to reflect this lower level of emissions.

In addition, as previously mentioned, EPA's national marine vessel rule does not apply to ballasting operations. In promulgating this rule, EPA noted that the U.S. Coast Guard has regulations which address ballasting and that "the relatively low amount of actual emissions associated with ballasting does not justify dual regulation of ballasting."

What Revisions Did Massachusetts Make to Its VOC Definition?

On July 30, 1996, Massachusetts submitted a SIP revision containing revisions to its 310 CMR 7.00 definition of the term "volatile organic compound." In the revised definition, acetone has been added to the list of compounds that are exempt from the definition of VOC because of their negligible photochemical reactivity. The revised definition also clarifies that the previously adopted exemption for volatile methyl siloxanes is specifically for "cyclic, branched, or linear, completely methylated siloxanes." EPA promulgated an exemption for acetone in its definition of VOC on June 16, 1995 (60 FR 31633) and an exemption for cyclic, branched, or linear, completely methylated siloxanes on October 5, 1994 (59 FR 50693).

[2] See the monitoring requirements of EPA's national marine vessel rule (especially sections 63.564 (e),(g), and (h)) and/or the monitoring requirements Massachusetts has imposed on other types of VOC sources (e.g., 310 CMR 7.18(2)(e)).

How Does Massachusetts' VOC Definition Compare to EPA's VOC Definition?

Massachusetts' revised VOC definition is consistent with EPA's VOC definition codified at 40 CFR 51.100(s), with the exception of more recent revisions to EPA's definition which were promulgated subsequent to Massachusetts' July 30, 1996 SIP submittal. EPA promulgated these additional revisions on October 8, 1996 (61 FR 52848), August 25, 1997 (62 FR 44900), and April 9, 1998 (63 FR 17331). These revisions add more compounds to the list of those exempted from the definition of VOC because of their negligible photochemical reactivity. Massachusetts' VOC definition also does not include an exemption for perchloroethylene which was promulgated by EPA on February 7, 1996 (61 FR 4588). As stated in EPA's exemption rulemakings, States are not obligated to exclude from control as a VOC those compounds that EPA has found to be negligibly reactive. However, EPA will no longer enforce measures controlling the exempted compounds as part of a federally-approved SIP. EPA's exemption rulemakings also state that a State may not take credit for controlling the EPA-exempted compounds in its ozone control strategy. Nor may reductions of EPA-exempted compounds be used as emission reduction credits or offsets to be traded against the emission of non-exempt compounds. Massachusetts is not taking credit for reductions of EPA-exempted compounds in its rate of progress plans and does not allow trading of exempt for non-exempt emissions.

What Revisions Did Massachusetts Make to Its Consumer Products Rule?

On July 30, 1996, Massachusetts submitted revisions to its 310 CMR 7.25 "Best Available Controls for Consumer and Commercial Products." In this rule, minor clarifications were made to the definition of the term "waterproofing sealer." The revised definition is consistent with EPA's national rule codified at 40 CFR part 59, subpart D "National VOC Emission Standards for Architectural Coatings."

Why Is EPA Approving Massachusetts' SIP Submittals?

EPA is approving Massachusetts' revised marine vessel rule because the Commonwealth has successfully addressed the issues outlined in EPA's earlier conditional approval. EPA is also approving Massachusetts revised VOC definition and clarifications to its consumer product rule because these revisions are consistent with current EPA guidance. Further information on Massachusetts' October 17, 1997 and July 30, 1996 SIP submittals and EPA's evaluation of these submittals can be found in a memorandum dated September 7, 1999 entitled "Technical Support Document—Massachusetts—Revised VOC Rules." Copies of this document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section.

What Is the Process for EPA's Approval of These SIP Revisions?

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This action will be effective June 12, 2000 without further notice unless the Agency receives adverse comments by May 11, 2000.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 12, 2000 and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Final Action

EPA is approving Massachusetts' revised 310 CMR 7.24(8) "Marine Volatile Organic Liquid Transfer" and incorporating this rule into the Massachusetts SIP. EPA is also approving the following definitions in 310 CMR 7.00 which are associated with the marine vessel rule: "combustion device," "leak," "leaking component," "lightering or lightering operation," "loading event," "marine tank vessel," "marine terminal," "marine vessel," "organic liquid," and "recovery device." EPA is also approving Massachusetts' revised 310 CMR 7.00 definition of "volatile organic compound" and an amendment to Massachusetts' 310 CMR 7.25 "Best Available Controls for Consumer and Commercial Products" and incorporating these regulations into the Massachusetts SIP.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission

that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 12, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping.

Dated: March 24, 2000.

Mindy S. Lubber,

Regional Administrator, EPA New England.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart W—Massachusetts

§ 52.1119 [Amended]

2. Remove § 52.1119(a)(2).

3. Section 52.1120 is amended by adding paragraphs (c)(115) and (c)(121) to read as follows:

§ 52.1120 Identification of plan

* * * * *

(c) * * *

(115) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on October 17, 1997 and July 30, 1996.

(i) Incorporation by reference.

(A) 310 CMR 7.24(8) "Marine Volatile Organic Liquid Transfer" effective in the Commonwealth of Massachusetts on October 5, 1997.

(B) Definition of "volatile organic compound" in 310 CMR 7.00 "Definitions" effective in the Commonwealth of Massachusetts on June 28, 1996.

(C) Definition of "waterproofing sealer" in 310 CMR 7.25 "Best Available Controls for Consumer and Commercial Products" effective in the Commonwealth of Massachusetts on June 28, 1996.

(ii) Additional materials

(A) Nonregulatory portions of the submittal.

* * * * *

(121) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on January 11, 1995 and March 29, 1995.

(i) Incorporation by reference.

(A) Definitions of "combustion device," "leak," "leaking component," "lightering or lightering operation," "loading event," "marine tank vessel," "marine terminal," "marine vessel," "organic liquid," and "recovery device" in 310 CMR 7.00 "Definitions" effective in the Commonwealth of Massachusetts on January 27, 1995.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

4. In § 52.1167, Table 52.1167 is amended by adding new entries to existing state citations for 310 CMR 7.00 and 310 CMR 7.25; and by adding new state citation 310 CMR 7.24(8).

§ 52.1167 EPA-approved Massachusetts State regulation

* * * * *

TABLE 52.1167.—EPA-APPROVED MASSACHUSETTS REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
*	*	*	*	*	*	*
310 CMR 7.00	Definitions	7/30/96	4/11/00	[Insert *FR* citation from published date].	115	Definition of "volatile organic compound" revised.
*	*	*	*	*	*	*
310 CMR 7.00	Definitions	1/11/95 3/29/95	4/11/00	[Insert *FR* citation from published date].	121	Definitions associated with marine vessel rule.
*	*	*	*	*	*	*
310 CMR 7.24(8)	Marine Volatile Organic Liquid Transfer.	10/17/97	4/11/00	[Insert *FR* citation from published date].	115	

TABLE 52.1167.—EPA-APPROVED MASSACHUSETTS REGULATIONS—Continued

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
310 CMR 7.25	Best Available Controls for Consumer and Commercial Products.	7/30/96	4/11/00	[Insert *FR* citation from published date].	115	Definition of "water-proofing sealer" revised.

[FR Doc. 00–8830 Filed 4–10–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6575–7]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Notice of acceptability.

SUMMARY: This notice expands the list of acceptable substitutes for ozone-depleting substances (ODS) under the Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program.

EFFECTIVE DATE: April 11, 2000.

ADDRESSES: Information relevant to this notice is contained in Air Docket A–91–42, Central Docket Section, South Conference Room 4, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone: (202) 260–7548. The docket may be inspected between 8:00 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Kelly Davis at (202) 564–2303 or fax (202) 565–2096, Environmental Protection Agency, Stratospheric Protection Division, Mail Code 6205J, Washington, DC 20460. Overnight or courier deliveries should be sent to the office location at 501 3rd Street, NW., Washington, DC 20001. The Stratospheric Protection Hotline can be reached at (800) 296–1996. Further information can be found at EPA's Ozone Depletion World Wide Web site at "http://www.epa.gov/ozone/title6/snap/".

SUPPLEMENTARY INFORMATION:

I. Section 612 Program
  A. Statutory Requirements
  B. Regulatory History
II. Listing of Acceptable Substitutes
  A. Refrigeration and Air Conditioning
  B. Foam Blowing
III. Additional Information
Appendix A—Summary of Acceptable Decisions

I. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.
- *Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.
- *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substance to or delete a substance from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional 6 months.
- *90-Day Notification*—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.
- *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.
- *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published rulemaking (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning; foam blowing; solvents cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors compose the principal industrial sectors that historically consumed the largest volumes of ozone-depleting compounds.

As described in this original rule for the SNAP program, EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substance. Consequently, by this notice EPA is adding substances to the list of acceptable alternatives without first requesting comment on new listings.

EPA does, however, believe that notice-and-comment rulemaking is required to place any substance on the list of prohibited substitutes, to list a substance as acceptable only under certain conditions, to list substances as acceptable only for certain uses, or to remove a substance from either the list of prohibited or acceptable substitutes.

Updates to these lists are published as separate notices of rulemaking in the **Federal Register**.

The Agency defines a "substitute" as any chemical, product substitute, or alternative manufacturing process, whether existing or new, intended for use as a replacement for a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to substitute manufacturers, but may include importers, formulators or end-users, when they are responsible for introducing a substitute into commerce.

A complete chronology of SNAP decisions and the appropriate **Federal Register** citations can be found at EPA's Ozone Depletion World Wide Web site at http://www.epa.gov/ozone/title6/snap/chron.html. This information is also available from the Air Docket (see **ADDRESSES** section above for contact information).

II. Listing of Acceptable Substitutes

This section presents EPA's most recent acceptable listing decisions for substitutes in the refrigeration and foams sectors. For copies of the full list of SNAP decisions in all industrial sectors, contact the EPA Stratospheric Protection Hotline at (800) 296–1996.

The sections below presents a detailed discussion of the substitute listing. The table summarizing today's listing decisions is in Appendix A. The comments contained in the table in Appendix A provide additional information, but are not legally binding under section 612 of the Clean Air Act. Thus, adherence to recommendations in the comments section of the table is not mandatory for use of a substitute. In addition, the comments should not be considered comprehensive with respect to other legal obligations pertaining to the use of the substitute. However, EPA strongly encourages users of acceptable substitutes to apply all comments to their use of these substitutes. In many instances, the comments simply refer to standardized operating practices that have already been identified in existing industry and/or building-code standards. Thus, many of the comments, if adopted, would not require significant changes in existing operating practices for the affected industry.

A. Refrigeration and Air Conditioning

1. Acceptable Substitutes

(a) Furan (C_4F_8O). *Furan is acceptable as a substitute for CFC-114 in retrofits of existing uranium isotope separation processing equipment.* Furan, a perfluorocarbon (PFC), does not contribute to stratospheric ozone depletion. The environmental characteristics of concern for this compound are its extremely high global warming potential and long atmospheric lifetime. Long atmospheric lifetimes make the warming effects of PFCs essentially irreversible. As a result, PFCs are included in the Climate Change Action Plan, which broadly instructs EPA to use section 612 of the CAA, as well as voluntary programs, to control emissions.

Despite these concerns, EPA has listed several PFCs as acceptable replacements for CFC-114 in uranium isotope separation processing. PFCs have physical and thermodynamic properties that make them the only viable alternatives to CFC-114 in this end-use that have been identified as of this time. PFCs offer high dielectric resistance, noncorrosivity, thermal stability, materials compatibility, chemical inertness, low toxicity, and nonflammability.

In this end-use, Furan may offer some advantages over other PFCs currently listed as acceptable. The most significant advantage may be that its vapor pressure is lower which results in lower leak rates and a reduced likelihood that new leaks will be created in the system. Another distinction between Furan and other alternatives examined relates to the relatively low molecular weight of the compound. The low molecular weight relative to the material being processed makes it easy to separate Furan from the process stream.

EPA is listing Furan as acceptable in retrofit and existing uranium isotope separation system designs only. For new equipment designs in this end-use, EPA believes other alternatives may exist or may be developed to meet the needs of newly designed systems. Users of Furan should note that if other alternatives become available, EPA may determine to list Furan as unacceptable due to the availability of other suitable substitutes. If EPA took such action, EPA could also consider whether to grandfather existing uses. EPA's 1994 SNAP rulemaking specifies the criteria EPA would use in making a decision to grandfather existing uses (59 FR 13057; March 18, 1994).

EPA urges industry to continue to search for other long-term alternatives for this end-use that do not have high GWPs and long atmospheric lifetimes. In cases where users must use PFCs, they should make every effort to minimize emissions. Users are also strongly encouraged to recover, recycle, and/or destroy these fluids during servicing and after the end of the equipment's useful life.

B. Foam Blowing

1. Acceptable Substitutes

(a) Saturated Light Hydrocarbons C3-C6. *Saturated Light Hydrocarbons C3-C6 are acceptable as a substitute for HCFC-141b in all foam end-uses, except as a HCFC replacement in spray foam applications. (Spray foam applications fall under the Rigid Polyurethane Spray and Commercial Refrigeration, and Sandwich Panels end-use.). Today's action does not affect previous decisions made by EPA to list specific hydrocarbon blowing agents as acceptable in spray foam. The acceptability of hydrocarbons as HCFC-141b replacements in spray foam applications will be determined on a product-by-product basis until standard industry practices/training become more established.* C3–C6 saturated light hydrocarbons are already acceptable substitutes for CFC-11 in all foam end-uses, and for HCFC-141b in some foam end-uses (rigid polyurethane and polyisocyanurate laminated boardstock, rigid polyurethane appliance, and polyurethane integral skin). Today's action expands the acceptable applications for C3-C6 saturated light hydrocarbons as substitutes for HCFCs in the following applications/end-uses: rigid polyurethane commercial refrigeration and sandwich panels, rigid polyurethane slabstock and other foams, polystyrene extruded insulation boardstock and billet, phenolic insulation board and bunstock, and polyolefin. Hydrocarbon blowing agents have no ozone depletion potential, low global warming potentials, and are low in toxicity. However, these agents are flammable and should be handled with proper precautions.

The flammability of hydrocarbon blowing agents are of particular concern in spray foam applications where a controlled factory environment is not possible. The potential for explosion or fire highlights the need for safety training. While training can not provide an absolute guarantee of safety, EPA believes that a comprehensive training program, if implemented properly, can adequately control risks associated with use of potentially flammable hydrocarbon-blown spray foam systems.

In December 1999, EPA listed Exxsol Blowing Agents, a specific hydrocarbon pentane blend, as acceptable in all foam end-uses (64 FR 68039) including spray foam. Draft training materials for spray foam applications were provided to EPA

and are available through the Air Docket (Docket A–91–42, Category IX–B, Background Documents for Notice 11). EPA may list other hydrocarbon blowing agents as acceptable for spray foam applications if companies wishing to distribute or use hydrocarbons in spray foam applications establish safety training programs. Interested parties should contact EPA.

III. Additional Information

Contact the Stratospheric Protection Hotline at (800) 296–1996, Monday–Friday, between the hours of 10:00 a.m. and 4:00 p.m. (EST). For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rulemakings under the SNAP program, as well as all EPA publications on protection of stratospheric ozone, are available from EPA's Ozone Depletion World Wide Web site at "http://www.epa.gov/ozone/title6/snap/" and from the Stratospheric Protection Hotline whose number is listed above.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: March 29, 2000.

Paul Stolpman,

Director, Office of Atmospheric Programs, Office of Air and Radiation.

APPENDIX A: SUMMARY OF ACCEPTABLE DECISIONS

End-use	Substitute	Decision	Comments
Refrigeration and Air Conditioning Sector			
Uranium Isotope Separation Processing (Retrofit).	Furan for CFC–114	Acceptable	EPA urges industry to continue to search for other long-term alternatives for this end-use that do not contain substances with such high GWPs and long atmospheric lifetimes. In cases where users must adopt PFCs, they should make every effort to minimize emissions. Users are also strongly encouraged to recover, recycle, and/or destroy these fluids during servicing and after the end of the equipment's useful life.
Foam Blowing			
All foam end-uses, except as a HCFC–141b replacement in spray foam applications (see comments).	Saturated Light Hydrocarbons C3–C6 for HCFC–141b.	Acceptable	Today's action does not affect previous decisions made by EPA to list specific hydrocarbon blowing agents as acceptable in spray foam. The acceptability of hydrocarbons as HCFC–141b replacements in spray foam applications will be determined on a product-by-product basis until standard industry practices/training become more established. EPA may list other hydrocarbon blowing agents as acceptable for spray foam applications if companies wishing to distribute or use hydrocarbons in spray foam applications establish safety training programs. Interested parties should contact EPA.

[FR Doc. 00–8958 Filed 4–10–00; 8:45 am]
BILLING CODE 6560–50–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 410, 411, 414, 415, and 485

[HCFA–1065–CN]

RIN 0938–AJ61

Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2000

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of final rule with comment period.

SUMMARY: This document corrects technical errors that appeared in the final rule with comment period published in the **Federal Register** on November 2, 1999, entitled "Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2000."

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Diane Milstead, (410) 786–3355.

SUPPLEMENTARY INFORMATION:

Background

In FR Doc. 99–28367 of November 2, 1999, (64 FR 59380), there were a number of technical errors. The errors relate to the omission of language discussing payment for pulse oximetry, temperature gradient studies and venous pressure determinations and the removal of the x-ray requirement before chiropractic manipulation; acceptance of the RUC recommendations for work relative value units (RVUs); RUC recommendations for CPT codes 17276 and 95165; a comment on codes in the "zero work" pool; discussion of CPT code 61862 and the correct billing procedures; and regulations text definitions concerning the coverage of prostate screening. Additionally there are various revisions to Addenda B and C.

The provisions in this correction notice are effective as if they had been included in the document published in the **Federal Register** on November 2, 1999, that is, January 1, 2000.

Discussion of Addenda B and C

1. On page 39626 of the July 22, 1999 proposed rule, we discussed revising the work RVUs for certain pediatric surgical services to reflect more appropriate data. We inadvertently omitted these work RVU changes from Addendum B of the November 2, 1999 final rule. Entries on the pages listed below are corrected as follows: Page 59451 for CPT code 21740; page 59476 for CPT codes 38550 and 38555; page 59477 for CPT code 39503; page 59479 for CPT codes 42810 and 42815; page 59480 for CPT codes 43305, 43310, 43312, and 43831; page 59482 for CPT codes 45120 and 45121; page 59483 for CPT codes 46715, 46716, 46730, 46735,

46740, and 46751; page 59484 for CPT codes 47700 and 47701; page 59485 for CPT codes 49215, 49495, 49580, 49600, 49605, and 49606; page 59488 for CPT code 51940; and page 59495 for CPT code 60280. These corrections are reflected in correction number 8 to follow.

2. On page 59421 of the November 2, 1999 final rule, we assigned 5.85 work RVUs to CPT code 61885. We inadvertently omitted this value from Addenda B and C. Entries on the pages listed below are corrected as follows: Page 59497 and page 59582 for CPT code 61885. These corrections are reflected in correction number 9 to follow.

3. In Addendum B, we assigned incorrect status indicators for the following CPT codes: Page 59553 for CPT codes 94760 and 94761; and page 59578 for HCFA Common Procedure Coding System (HCPCS) codes Q0183, Q0184, Q0185, Q0186, Q1001, Q1002, Q1003, Q1004, and Q1005. These corrections are reflected in correction number 10 to follow.

4. On page 39630 of the July 22, 1999 proposed rule, we discussed accepting the RUC work RVU recommendations for five CPT codes that were carrier priced for 1999. The status of these codes would also change from Carrier Priced (C) to Active (A) in the final rule. We inadvertently omitted the work RVUs, status indicator, and correct global indicator changes from Addendum B of the final rule. Entries on the pages listed below are corrected as follows: Page 59473 for CPT code 35500; page 59475 for CPT code 36823; page 59476 for CPT code 38792; page 59495 for CPT 60650 (renumbered from CPT code 56321 for which we accepted the RUC recommendation); page 59476 for CPT code 38120 (renumbered from CPT code 56345 for which we accepted the RUC recommendation); and page 59481 for CPT code 44201 (renumbered from CPT code 56347 for which we accepted the RUC recommendation). In addition, we failed to reflect the practice expense values assigned to these codes. These corrections are reflected in correction 11 to follow.

5. In Addendum B, we inadvertently published incorrect global periods for CPT codes 33968, 47560, 62263, 96570 and 96571. Entries on pages listed below are corrected as follows: Pages 59472 and 59582 for CPT code 33968; page 59484 for CPT code 47560; pages 59497 and 59582 for CPT code 62263; and pages 59556 and 59583 for CPT codes 96570 and 96571. These corrections are reflected in correction number 12 to follow.

6. On page 39629 of the July 22, 1999 proposed rule, we proposed changing ventricular assist device insertions, CPT codes 33975 and 33976, to an XXX global and reducing the work RVUs accordingly. In the November 2, 1999 final rule, in Addendum B, we changed the global periods to XXX but inadvertently failed to reduce the work RVUs as stated in the proposed rule. Entries on the page listed below are corrected as follows: Page 59472 for CPT codes 33975 and 33976. In addition, we failed to show the adjustments to the CPEP data made to accommodate the changing global periods. These corrections are reflected in correction number 13 to follow.

7. In Addendum B, we inadvertently assigned incorrect practice expense and malpractice RVUs to HCPCS codes G0102, G0104, G0105, and incorrect malpractice relative value units for CPT codes 59000 through 59899. Entries on the pages listed below are corrected as follows: Page 59571 for HCPCS codes G0102, G0104, and G0105; pages 59494 and 59495 for CPT codes 59000 through 59899. These corrections are reflected in correction number 14 to follow.

8. On pages 59448 and 59582 of Addendum B, we assigned an incorrect procedure status and global period to CPT code 20979. Entries on pages listed below are corrected as follows: Pages 59448 and 59582 for CPT code 20979. These corrections are reflected in correction number 15 to follow.

9. In Addendum B, we inadvertently assigned incorrect practice expense RVUs for HCPCS codes G0106, G0106–26, G0106–TC, G0120, G0120–26, G0120–TC, G0170, G0171 and CPT code 45378–53. Entries on pages listed below are corrected as follows: Page 59571 for HCPCS codes G0106, G0106–26, G0106–TC, G0120, G0120–26 and G0120–TC; page 59572 and page 59583 for G0170 and G0171; and page 59482 for CPT 45378–53. These corrections are reflected in correction number 16 to follow.

10. We incorrectly denoted that CPT code 40814 was not applicable in a non-facility setting. On page 59477 of Addendum B, the applicable practice expense values are included for the nonfacility setting for CPT code 40814. These corrections are reflected in correction number 17 to follow.

11. In Addendum B, we assigned incorrect practice expense and/or malpractice RVUs for HCPCS codes G0163, G0163–26, G0163–TC, G0164, G0164–26, G0164–TC, G0165, G0165–26, and G0165–TC. Entries on the pages listed below are corrected as follows: Page 59571 for HCPCS codes G0163, G0163–26, and G0163–TC and page 59572 for G0164, G0164–26, G0164–TC, G0165, G0165–26 and G0165–TC. These corrections are reflected in correction number 18 to follow.

Correction of Errors

In FR Doc. 99–28367 of November 2, 1999, make the following corrections:

1. On page 59395, second column, after the sixth full paragraph, add the following:

CPT code 17276, Destruction, malignant lesion, any method scalp, neck, hands, feet, genitalia; lesion diameter over 4.0cm

The RUC forwarded a recommendation for supplies. We accepted the recommendation but deleted what appeared to be duplicated gauze supplies."

2. On page 59398, first column, after the last paragraph insert the following:

"CPT Code 95165, professional services for the supervision and provision of antigens for allergen immunotherapy.

The nature of the RUC's recommendation regarding this code was significantly different than its recommendations regarding other codes. The RUC did not examine the direct expense inputs for code 95165 but commented on the definition of dose used for claims involving this code. Because the direct expense inputs have not been reviewed, we believe that it is not appropriate to revise the practice expense value at this time."

3. On page 59406, in the last line of column two, insert the words ", in Table 7," between the words "95956" and "should".

4. On page 59413, column three, after line 7, add the following:

"Result of Evaluation of Comments:

We are adopting our proposal to bundle payment for these services beginning January 2000 with the exception of code 94762, which we will continue to pay separately when continuous overnight monitoring is medically necessary as a separate procedure.

M. Removal of Requirement for X-ray Before Chiropractic Manipulation

We are conforming our regulations to section 4513(a) of the BBA that deleted the requirement that a spinal subluxation be demonstrated by an x-ray for a chiropractor to receive payment under Medicare Part B for manual manipulation of the spine to correct a subluxation.

Comment: We received one comment requesting we revise § 410.22 (Limitations on services of a chiropractor) to recognize chiropractors as physicians for purposes of ordering and furnishing diagnostic tests and other services and supplies related to manual manipulation for treatment of subluxation of the spine.

Response: We believe that extending the scope of services of the chiropractor to include other services, such as ordering and furnishing diagnostic tests, is inconsistent with section 1861(r) of the Act. Thus, we cannot implement this comment.

Comment: Two commenters expressed concern that the x-ray requirement has been removed without being replaced by clear"

5. On page 59418, in the third column, line 6 from the top, replace "69" with "85", and line 9, replace "31" with "15".

§ 410.39 [Corrected]

6. On page 59440, in the second column, § 410.39 is corrected by adding paragraphs (a)(4) and (a)(5) as follows:

§ 410.39 Prostate cancer screening tests: Conditions for and limitations on coverage.

* * * * *

(a) * * *

(4) A physician for purposes of this provision means a doctor of medicine or osteopathy (as defined in section 1861(r)(1) of the Act) who is fully knowledgeable about the beneficiary, and who would be responsible for explaining the results of the screening examination or test.

(5) A physician assistant, nurse practitioner, clinical nurse specialist, or certified nurse midwife for purposes of this provision means a physician assistant, nurse practitioner, clinical nurse specialist, or certified nurse midwife (as defined in sections 1861(aa) and 1861(gg) of the Act) who is fully knowledgeable about the beneficiary, and who would be responsible for explaining the results of the screening examination or test.

* * * * *

7. On page 59440, in the second and third columns, in § 410.39, paragraphs (b) and (d), add the phrase "as defined in paragraphs (a)(4) or (a)(5) of this section," after the word "midwife."

Addendum B [Corrected]

8. In the table of Addendum B, the following CPT codes are corrected to read as follows:

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician Work RVUs[3]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
21740		A	Reconstruction of sternum	16.80	NA	NA	15.80	12.78	1.95	NA	NA	34.55	31.53	090
38550		A	Removal, neck/armpit lesion	6.92	NA	NA	5.24	4.38	0.50	NA	NA	12.66	11.80	090
38555		A	Removal, neck/armpit lesion	14.14	NA	NA	11.47	9.68	1.53	NA	NA	27.14	25.35	090
39503		A	Repair of diaphragm hernia	37.54	NA	NA	14.98	21.16	3.28	NA	NA	55.76	61.96	090
42810		A	Excision of neck cyst	3.25	4.77	4.09	3.83	3.62	0.27	8.29	7.61	7.35	7.14	090
42815		A	Excision of neck cyst	7.07	NA	NA	6.06	7.35	0.55	NA	NA	13.68	14.97	090
43305		A	Repair esophagus and fistula	17.39	NA	NA	12.60	13.74	1.32	NA	NA	31.31	32.45	090
43310		A	Repair of esophagus	27.47	NA	NA	17.64	18.04	3.07	NA	NA	48.18	48.58	090
43312		A	Repair esophagus and fistula	30.50	NA	NA	23.15	19.02	3.46	NA	NA	57.11	52.98	090
43881		A	Place gastrostomy tube	7.84	NA	NA	4.15	4.90	0.74	NA	NA	12.73	13.48	090
45120		A	Removal of rectum	25.00	NA	NA	11.45	14.62	2.31	NA	NA	38.76	41.93	090
45121		A	Removal of rectum and colon	27.51	NA	NA	12.98	12.35	2.65	NA	NA	43.14	42.51	090
46715		A	Repair of anovaginal fistula	7.46	NA	NA	4.31	4.06	0.86	NA	NA	12.63	12.38	090
46716		A	Repair of anovaginal fistula	12.85	NA	NA	6.50	6.54	1.21	NA	NA	20.56	20.60	090
46730		A	Construction of absent anus	22.39	NA	NA	11.74	11.70	1.91	NA	NA	36.04	36.00	090
46735		A	Construction of absent anus	27.02	NA	NA	12.15	13.15	2.59	NA	NA	41.76	42.76	090
46740		A	Construction of absent anus	24.19	NA	NA	10.40	11.47	2.31	NA	NA	36.90	37.97	090
46751		A	Repair of anal sphincter	8.77	NA	NA	5.53	4.98	0.86	NA	NA	15.16	14.61	090
47700		A	Exploration of bile ducts	15.62	NA	NA	8.23	8.26	1.37	NA	NA	25.22	25.25	090
47701		A	Bile duct revision	29.55	NA	NA	13.21	11.06	2.87	NA	NA	45.63	43.48	090
49215		A	Excise sacral spine tumor	23.20	NA	NA	10.50	9.86	2.18	NA	NA	35.88	35.24	090
49495		A	Repair inguinal hernia, init	5.84	NA	NA	3.67	4.54	0.56	NA	NA	10.07	10.94	090
49580		A	Repair umbilical hernia	3.34	NA	NA	2.74	3.47	0.34	NA	NA	6.42	7.15	090
49600		A	Repair umbilical lesion	10.98	NA	NA	5.66	5.69	0.95	NA	NA	17.57	17.60	090
49605		A	Repair umbilical lesion	24.94	NA	NA	11.31	10.31	2.20	NA	NA	38.45	37.45	090
49606		A	Repair umbilical lesion	21.31	NA	NA	8.89	8.96	1.91	NA	NA	32.11	32.16	090
51940		A	Correction of bladder defect	28.43	NA	NA	13.36	16.96	1.90	NA	NA	43.71	47.31	090
60280		A	Remove thyroid duct lesion	5.87	NA	NA	4.86	6.06	0.48	NA	NA	11.21	12.41	090

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[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.

9. In the table of Addenda's B and C, the following CPT code is corrected to read as follows:

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs[4]	Year 2000 transitional non-facility PE RVUs[4]	Fully implemented facility PE RVUs[4]	Year 2000 transitional facility PE RVUs[4]	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
61885		A	Implant neurostim one array	5.85	NA	NA	4.86	6.06	0.48	NA	NA	11.21	12.41	090

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10. In the table of Addendum B, the following HCPCS codes are corrected to read as follows:

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs[4]	Year 2000 transitional non-facility PE RVUs[4]	Fully implemented facility PE RVUs[4]	Year 2000 transitional facility PE RVUs[4]	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
Q0183		X	Nonmetabolic active tissue	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0184		X	Metabolically active tissue	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0185		X	Metabolic active D/E tissue	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q0186		X	Paramedic intercept, rural	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs [4]	Year 2000 transitional non-facility PE RVUs [4]	Fully implemented facility PE RVUs [4]	Year 2000 transitional facility PE RVUs [4]	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
Q1001		X	Ntiol category 1	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q1002		X	Ntiol category 2	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q1003		X	Ntiol category 3	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q1004		X	Ntiol category 4	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
Q1005		X	Ntiol category 5	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
94760		T	Measure blood oxygen level	0.00	0.08	0.18	0.08	0.18	0.02	0.10	0.20	0.10	0.20	XXX
94761		T	Measure blood oxygen level	0.00	0.15	0.42	0.15	0.42	0.05	0.20	0.47	0.20	0.47	XXX

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[4] PE RVUs = Practice Expense Relative Value Units.

11. In the table of Addendum B, the following CPT codes are corrected to read as follows:

CPT [1]/ HCPCS [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Year 2000 trasitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
35500		A	Harvest vein for bypass	6.45	NA	NA	2.43	2.43	0.73	NA	NA	9.61	9.61	ZZZ
36823		A	Insert cannula(s)	21.00	NA	NA	11.54	11.54	0.67	NA	NA	33.21	33.21	090
38120		A	Laparoscopic splenectomy	17.00	NA	NA	7.83	7.83	1.04	NA	NA	25.87	25.87	090
38792		A	Identify sentinel node	0.52	NA	NA	0.20	0.20	0.01	NA	NA	0.73	0.73	000
44201		A	Laparoscopic jejunostomy	9.78	NA	NA	3.61	3.61	1.35	NA	NA	14.74	14.74	090
60650		A	Laparoscopy adrenalectomy	20.00	NA	NA	9.10	9.10	1.35	NA	NA	30.45	30.45	090

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12. In the table of Addenda's B and/or C, the following CPT codes are corrected to read as follows:

CPT [1]/ HCPC [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Year 2000 trasitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
33968		A	Remove aortic assist device	0.64	0.25	0.25	0.25	0.25	0.27	1.16	1.16	1.16	1.16	000
47560		A	Laparoscopy w/ cholangio	4.89	N/A	N/A	1.95	2.48	0.46	N/A	N/A	7.30	7.83	000
62263		A	Lysis epidural adhesions	6.02	4.61	4.61	2.18	2.18	0.88	11.51	11.51	9.08	9.08	010
96570		A	Photodynamic tx, 30 min	1.10	0.71	0.71	0.43	0.43	0.28	2.09	2.09	1.81	1.81	ZZZ
96571		A	Photodynamc tx, addl 15 min	0.55	0.31	0.31	0.21	0.21	0.28	1.14	1.14	1.04	1.04	ZZZ

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[4] PE RVUs = Practice Expense Relative Value Units.

13. In table of Addendum B, the following CPT codes are corrected to read as follows:

CPT [1]/ HCPC [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Year 2000 trasitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
33975		A	Implant ventricular device	21.00	NA	NA	16.80	16.10	2.86	NA	NA	40.66	39.96	XXX
33976		A	Implant ventricular device	23.00	NA	NA	18.65	19.82	3.91	NA	NA	45.56	46.73	XXX

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[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.

14. In table of Addendum B, the following CPT codes are corrected to read as follows:

CPT [1]/ HCPC [2]	MOD	Status	Description	Physician work RVUs [3]	Fully implemented non-facility PE RVUs	Year 2000 trasitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
G0102		A	Prostate ca screening; dre	0.17	0.51	0.37	0.06	0.09	0.01	0.69	0.55	0.24	0.27	XXX
G0104		A	CA screen; flexi sigmoidscope	0.96	1.35	1.34	0.33	0.46	0.07	2.38	2.37	1.36	1.49	000
G0105		A	Colorectal scrn; hi risk ind	3.70	5.99	5.24	1.29	2.86	0.26	9.95	9.20	5.25	6.82	000
59000		A	Amniocentesis	1.30	1.54	1.30	0.49	0.77	0.19	3.03	2.79	1.98	2.26	000
59012		A	Fetal cord puncture, prenatal	3.45	NA	NA	1.38	2.11	0.51	NA	NA	5.34	6.07	000
59015		A	Chorion biopsy	2.20	1.27	1.29	0.85	1.08	0.32	3.79	3.81	3.37	3.60	000
59020		A	Fetal contract stress test	0.66	0.78	1.06	0.78	1.06	0.21	1.65	1.93	1.65	1.93	000
59020	26	A	Fetal contract stress test	0.66	0.26	0.53	0.26	0.53	0.13	1.05	1.32	1.05	1.32	000
59020	TC	A	Fetal contract stress test	0.00	0.52	0.53	0.52	0.53	0.08	0.60	0.61	0.60	0.61	000
59025		A	Fetal non-stress test	0.53	0.43	0.55	0.43	0.55	0.10	1.06	1.18	1.06	1.18	000
59025	26	A	Fetal non-stress test	0.53	0.20	0.31	0.20	0.31	0.08	0.81	0.92	0.81	0.92	000
59025	TC	A	Fetal non-stress test	0.00	0.23	0.24	0.23	0.24	0.02	0.25	0.26	0.25	0.26	000
59030		A	Fetal scalp blood sample	1.99	NA	NA	0.77	1.24	0.30	NA	NA	3.06	3.53	000
59050		A	Fetal monitor w/ report	0.89	NA	NA	0.34	0.61	0.12	NA	NA	1.35	1.62	XXX
59051		A	Fetal monitor/interpret only	0.74	NA	NA	0.28	0.58	0.10	NA	NA	1.12	1.12	XXX
59100		A	Remove uterus lesion	12.35	NA	NA	6.05	5.27	1.80	NA	NA	20.20	19.42	090

CPT[1]/ HCPC[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Year 2000 trasitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
59120		A	Treat ectopic pregnancy	11.49	NA	NA	5.73	7.13	1.67	NA	NA	18.89	20.29	090
59121		A	Treat ectopic pregnancy	11.67	NA	NA	5.84	5.64	1.70	NA	NA	19.21	19.21	090
59130		A	Treat ectopic pregnancy	14.22	NA	NA	6.89	6.68	2.07	NA	NA	23.18	22.97	090
59135		A	Treat ectopic pregnancy	13.88	NA	NA	6.76	8.73	2.01	NA	NA	22.65	24.62	090
59136		A	Treat ectopic pregnancy	13.18	NA	NA	6.49	6.62	1.92	NA	NA	21.59	21.72	090
59140		A	Treat ectopic pregnancy	5.46	NA	NA	3.40	4.23	0.79	NA	NA	9.65	10.48	090
59150		A	Treat ectopic pregnancy	6.89	NA	NA	3.95	4.44	1.00	NA	NA	11.84	12.33	090
59151		A	Treat ectopic pregnancy	7.86	NA	NA	4.01	6.68	1.15	NA	NA	13.02	15.69	090
59160		A	D & C after delivery	2.71	3.30	3.24	2.07	2.63	0.39	6.40	6.34	5.17	5.73	010
59200		A	Insert cervical dilator	0.79	1.19	0.89	0.29	0.3	0.11	2.09	1.79	1.19	1.20	000
59300		A	Episiotomy or vaginal repair	2.41	1.56	1.32	0.92	0.73	0.34	4.31	4.07	3.67	3.48	000
59320		A	Revision of cervix	2.48	NA	NA	1.30	1.62	0.36	NA	NA	4.14	4.46	000
59325		A	Revision of cervix	4.07	NA	NA	1.92	2.53	0.59	NA	NA	6.58	7.19	000
59350		A	Repair of uterus	4.95	NA	NA	1.84	2.84	0.73	NA	NA	7.52	8.52	000
59400		A	Obstetrical care	23.06	NA	NA	13.44	14.86	3.35	NA	NA	39.85	41.27	MMM
59409		A	Obstetrical care	13.50	NA	NA	5.08	7.69	1.97	NA	NA	20.55	23.16	MMM
59410		A	Obstetrical care	14.78	NA	NA	6.01	8.6	2.15	NA	NA	22.94	25.53	MMM
59412		A	Antepartum manipulation	1.71	1.16	1.24	0.65	0.99	0.25	3.12	3.20	2.61	2.95	MMM
59414		A	Deliver placenta	1.61	NA	NA	1.13	1.19	0.24	NA	NA	2.98	3.04	MMM
59425		A	Antepartum care only	4.81	4.62	3.88	4.62	3.1	0.71	10.14	9.40	10.14	8.62	MMM
59426		A	Antepartum care only	8.28	7.85	6.61	7.81	5.25	1.20	17.33	16.09	17.29	14.73	MMM
59430		A	Care after delivery	2.13	1.14	0.78	1.14	0.68	0.32	3.59	3.23	3.59	3.13	MMM
59510		A	Cesarean delivery	26.22	NA	NA	15.40	16.87	3.82	NA	NA	45.44	46.91	MMM
59514		A	Cesarean delivery only	15.97	NA	NA	6.01	8.97	2.32	NA	NA	24.30	27.26	MMM
59515		A	Cesarean delivery	17.37	NA	NA	7.56	10.2	2.53	NA	NA	27.46	30.10	MMM
59525		A	Remover uterus after cesarean	8.54	NA	NA	3.19	3.66	1.24	NA	NA	12.97	13.44	ZZZ
59610		A	Vbac delivery	24.62	NA	NA	9.36	12.82	3.58	NA	NA	37.56	41.02	MMM
59612		A	Vbac delivery only	15.06	NA	NA	5.77	8.03	2.20	NA	NA	23.03	25.29	MMM
59614		A	Vbac care after delivery	16.34	NA	NA	6.29	8.74	2.38	NA	NA	25.01	27.46	MMM
59618		A	Attempted Vbac delivery	27.78	NA	NA	10.51	14.43	4.05	NA	NA	42.34	46.26	MMM
59620		A	Attempted Vbac delivery only	17.53	NA	NA	6.67	9.30	2.55	NA	NA	26.75	29.38	MMM
59622		A	Attempted Vbac after care	18.93	NA	NA	7.27	10.05	2.76	NA	NA	28.96	31.74	MMM
59812		A	Treatment of miscarriage	3.25	4.21	4.07	2.23	3.06	0.48	7.94	7.80	5.96	6.79	090
59820		A	Care of miscarriage	4.01	4.40	4.24	2.52	3.3	0.59	9.00	8.84	7.12	7.90	090
59821		A	Treatment of miscarriage	4.47	4.87	3.91	2.71	2.83	0.66	10.00	9.04	7.84	7.96	090
59830		A	Treat uterus infection	6.11	NA	NA	3.64	4.28	0.89	NA	NA	10.64	11.28	090
59840		R	Abortion	3.01	4.64	4.07	2.14	2.82	0.44	8.09	7.52	5.59	6.27	010
59841		R	Abortion	5.24	6.01	5.04	3.35	3.71	0.75	12.00	11.03	9.34	9.70	010
59850		R	Abortion	5.91	NA	NA	2.52	3.43	0.86	NA	NA	9.29	10.20	090
59851		R	Abortion	5.93	NA	NA	2.87	3.76	0.86	NA	NA	9.66	10.55	090
59852		R	Abortion	8.24	NA	NA	4.34	5.16	1.19	NA	NA	13.77	14.59	090
59855		R	Abortion	6.12	NA	NA	3.17	3.83	0.89	NA	NA	10.18	10.84	090
59856		R	Abortion	7.48	NA	NA	3.55	4.55	1.09	NA	NA	12.12	13.12	090
59857		R	Abortion	9.29	NA	NA	4.28	5.52	1.36	NA	NA	14.93	16.17	090
59866		R	Abortion (mpr)	4.00	NA	NA	1.55	2.33	0.58	NA	NA	6.13	6.91	000
59870		A	Evacuate mole of uterus	4.28	NA	NA	2.85	3.01	0.62	NA	NA	7.75	7.91	090
59871		A	Remove cerclage suture	2.13	1.89	1.91	0.81	1.37	0.32	4.34	4.36	3.26	3.82	000
59898		C	Laparo proc, ob care/delivery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY
59899		C	Maternity care procedure	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	YYY

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[3] + Indicates RVUs are not used for Medicare payment.
[4] PE RVUs = Practice Expense Relative Value Units.

15. In table of Addenda B and C, the following CPT code is corrected to read as follows:

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
20979		N	U.S. bone stimulation	0.17	0.25	0.25	0.07	0.07	0.01	0.43	0.43	0.25	0.25	XXX

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[4] PE RVUs = Practice Expense Relative Value Units.

16. In the table of Addendum B, the following CPT codes are corrected to read as follows:

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 Transitional non-facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 Transitional non-facility total	Fully implemented facility total	Year 2000 Transitional facility total	Global
G0106		A	Colon CA screen; barium enema	0.99	2.51	2.66	2.51	2.66	0.15	3.65	3.80	3.65	3.80	XXX
G0106	26	A	Colon CA screen; barium enema	0.99	0.27	0.38	0.27	0.38	0.04	1.30	1.41	1.30	1.41	XXX
G0106	TC	A	Colon CA screen; barium enema	0.00	2.24	2.28	2.24	2.28	0.11	2.35	2.39	2.35	2.39	XXX
G0120	A	A	Colon ca scrn barium enema	0.99	2.51	2.66	2.51	2.66	0.15	3.65	3.80	3.65	3.80	XXX
G0120	26	A	Colon ca scrn barium enema	0.99	0.27	0.38	0.27	0.38	0.04	1.30	1.41	1.30	1.41	XXX
G0120	TC	A	Colon ca scrn barium enema	0.00	2.24	2.28	2.24	2.28	0.11	2.35	2.39	2.35	2.39	XXX
G0170		A	Skin biograft	1.50	3.14	3.14	1.10	1.10	0.39	5.03	5.03	2.99	2.99	10
G0171		A	Skin biograft add-on	0.38	0.30	0.30	0.15	0.15	0.39	1.07	1.07	0.92	0.92	ZZZ
45378	53	A	Diagnostic colonoscopy	0.96	1.35	1.34	0.33	0.46	0.07	2.38	2.37	1.36	1.49	000

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17. In the table of Addendum B, the following CPT code is corrected to read as follows:

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 Transitional non-facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 Transitional non-facility total	Fully implemented facility total	Year 2000 Transitional facility total	Global
40814		A	Excise/repair mouth lesion	3.42	3.64	3.58	3.64	2.70	0.25	7.31	7.25	7.31	6.37	90

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[4] PE RVUs = Practice Expense Relative Value Units.

18. In the table of Addendum B, the following HCPCS codes are corrected to read as follows:

CPT[1]/ HCPCS[2]	MOD	Status	Description	Physician work RVUs[3]	Fully implemented non-facility PE RVUs	Year 2000 transitional non-facility PE RVUs	Fully implemented facility PE RVUs	Year 2000 transitional facility PE RVUs	Malpractice RVUs	Fully implemented non-facility total	Year 2000 transitional non-facility total	Fully implemented facility total	Year 2000 transitional facility total	Global
G0163		A	PET for rec of colorectal ca	1.50	56.21	56.21	56.21	56.21	2.06	59.77	59.77	59.77	59.77	XXX
G0163	26	A	PET for rec of colorectal ca	1.50	0.58	0.58	0.58	0.58	0.05	2.13	2.13	2.13	2.13	XXX
G0163	TC	A	PET for rec of colorectal ca	0.00	55.63	55.63	55.63	55.63	2.01	57.64	57.64	57.64	57.64	XXX
G0164		A	PET for lymphoma staging	1.87	56.35	56.35	56.35	56.35	2.06	60.28	60.28	60.28	60.28	XXX
G0164	26	A	PET for lymphoma staging	1.87	0.72	0.72	0.72	0.72	0.05	2.64	2.64	2.64	2.64	XXX
G0164	TC	A	PET for lymphoma staging	0.00	55.63	55.63	55.63	55.63	2.01	57.64	57.64	57.64	57.64	XXX
G0165		A	PET, rec of melanoma/met ca	1.50	56.21	56.21	56.21	56.21	2.06	59.77	59.77	59.77	59.77	XXX
G0165	26	A	PET, rec of melanoma/met ca	1.50	0.58	0.58	0.58	0.58	0.05	2.13	2.13	2.13	2.13	XXX
G0165	TC	A	PET, rec of melanoma/met ca	0.00	55.63	55.63	55.63	55.63	2.01	57.64	57.64	57.64	57.64	XXX

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(Section 1848 of the Social Security Act (42 U.S.C. 1395w–4)) (Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 23, 2000.

Brian P. Burns,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 00–8717 Filed 4–10–00; 8:45 am]
BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 96–98; FCC 99–238]

Revision of the Commission's Rules Specifying the Portions of the Nation's Local Telephone Networks that Incumbent Local Telephone Companies Must Make Available to Competitors

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of January 18, 2000 (65 FR 2542) a report and order and final rule, 47 CFR 51.319, specifying which portions of their telephone networks incumbent local exchange carriers must make available to competitive telecommunications carriers as unbundled network elements. The document, as published, inadvertently removed a portion of 52.319 that the Commission added to the rule previously on January 10, 2000 (65 FR 1331) addressing the obligation of incumbent local exchange carriers to make available the high frequency portion of the local loop as a new network element. The purpose of this correction is to add this portion of the rule back into 47 CFR 51.319.

DATES: Effective on April 11, 2000.

FOR FURTHER INFORMATION CONTACT: Jodie Donovan-May, Policy and Program Planning Division, Common Carrier Bureau, at (202) 418–1580.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a report and order and final rule in the **Federal Register** of January 18, 2000 (65 FR 2542). As published, this final rule inadvertently removed paragraph (h). The Commission had added paragraph (h) to § 51.310 in a report and order and final rule published in the **Federal Register** of January 10, 2000 (65 FR 1331). This correction adds paragraph (h) back into the Commission's final rule.

Specifically, in rule FR Doc. 00–1036 published on January 18, 2000 (65 FR 2542), make the following correction:

1. On page 2554, in the third column, in § 51.319, paragraph (h) is added to read as follows:

§ 51.319 Specific unbundling requirements.

* * * * *

(h) *High frequency portion of the loop.* (1) The high frequency portion of the loop network element is defined as the frequency range above the voiceband on a copper loop facility that is being used to carry analog circuit-switched voiceband transmissions.

(2) An incumbent LEC shall provide nondiscriminatory access in accordance with § 51.311 of these rules and section 251(c)(3) of the Act to the high frequency portion of a loop to any requesting telecommunications carrier for the provision of a telecommunications service conforming with § 51.230 of these rules.

(3) An incumbent LEC shall only provide a requesting carrier with access to the high frequency portion of the loop if the incumbent LEC is providing, and continues to provide, analog circuit-switched voiceband services on the particular loop for which the requesting carrier seeks access.

(4) *Control of the loop and splitter functionality.* In situations where a requesting carrier is obtaining access to the high frequency portion of the loop, the incumbent LEC may maintain control over the loop and splitter

equipment and functions, and shall provide to requesting carriers loop and splitter functionality that is compatible with any transmissfon technology that the requesting carrier seeks to deploy using the high frequency portion of the loop, as defined in this subsection, provided that such transmission technology is presumed to be deployable pursuant to § 51.230.

(5) *Loop conditioning.* (i) An incumbent LEC must condition loops to enable requesting carriers to access the high frequency portion of the loop spectrum, in accordance with §§ 51.319(a)(3), and 51.319(h)(1). If the incumbent LEC seeks compensation from the requesting carrier for line conditioning, the requesting carrier has the option of refusing, in whole, or in part, to have the line conditioned, and a requesting carrier's refusal of some or all aspects of line conditioning will not diminish its right of access to the high frequency portion of the loop

(ii) Where conditioning the loop will significantly degrade, as defined in § 51.233, the voiceband services that the incumbent LEC is currently providing over that loop, the incumbent LEC must either:

(A) Locate another loop that has been or can be conditioned, migrate the incumbent LEC's voiceband service to that loop, and provide the requesting carrier with access to the high frequency portion of the alternative loop; or

(B) Make a showing to the relevant state commission that the original loop cannot be conditioned without significantly degrading voiceband services on that loop, as defined in § 51.233, and that there is no adjacent or alternative loop available that can be conditioned or to which the customer's voiceband service can be moved to enable line sharing.

(iii) If the relevant state commission concludes that a loop cannot be conditioned without significantly degrading the voiceband service, the incumbent LEC cannot then or subsequently condition that loop to provide advanced services to its own customers without first making available to any requesting carrier the high frequency portion of the newly-conditioned loop.

(6) *Digital loop carrier systems.* Incumbent LECs must provide to requesting carriers unbundled access to the high frequency portion of the loop at the remote terminal as well as the central office, pursuant to § 51.319(a)(2) and § 51.319(h)(1).

(7) *Maintenance, repair, and testing.* (i) Incumbent LECs must provide, on a nondiscriminatory basis, physical loop test access points to requesting carriers at the splitter, through a cross-connection to the competitor's collocation space, or through a standardized interface, such as an intermediate distribution frame or a test access server, for the purposes of loop testing, maintenance, and repair activities.

(ii) An incumbent seeking to utilize an alternative physical access methodology may request approval to do so from the relevant state commission, but must show that the proposed alternative method is reasonable, nondiscriminatory, and will not disadvantage a requesting carrier's ability to perform loop or service testing maintenance or repair.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–8843 Filed 4–10–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–584; MM Docket No. 98–196; RM–9304, RM–9492, RM–9548, RM–9547]

Radio Broadcasting Services; Texas and Oklahoma

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to counterproposals in this proceeding filed by First Broadcasting Management, LLC, KCYT–FM License Corporation; Gain-Air, Inc., WBAP/KSCS Operating, Ltd., Blue Bonnet Radio, Inc., Heftel Broadcasting Corporation, Metro Broadcasters-Texas, Inc., Jerry Snyder and Associates, Inc., and Hunt Broadcasting, this document granted multiple channel substitutions and changes of community of license in Cross Plains, Allen, Benbrook, Brownwood, Burkburnnett, Campbell, Clifton, Coleman, Commerce, Detroit, Graham, Granbury, Haskell, Kerens, Mason, Jacksboro, McKinney, Muenster, San Saba, Snyder, Terrell, Vernon, Waco, and Wichita Falls, TX; Alva, Anadarko, Antlers, Ardmore, Atoka, Comanche, Dickson, Duncan, Durant, Eldorado, Hugo, and Lone Grove, OK. *See* Supplementary Information. With this action, the proceeding is terminated.

DATES: Effective May 4, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report and Order* in MM Docket No. 98–198 adopted March 8, 2000, and released March 21, 2000. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center at Portals II, CY–A257, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3805, 1231 20th Street, NW, Washington, DC 20036. Specifically, this document substitutes Channel 293A for Channel 294C at Muenster, Texas, and modifies the license of Station KXGM–FM to specify operation on Channel 294C. In order to accommodate Channel 294C at Muenster, it substitutes Channel 294C for Channel 296C1 at Granbury, Texas, reallots Channel 296C1 to Benbrook, Texas, and modifies the license of Station KDXT to specify operation on Channel 296C1 at Benbrook. It also substitutes Channel 294C2 for Channel 282C2 at Detroit, Texas, and substitutes Channel 284A for Channel 272A at Antlers, Oklahoma. It also substitutes Channel 295A for Channel 296A at McKinney, Texas, reallots Channel 296A to Campbell, Texas, and modifies the license of Station KZDF to specify operation on Channel 296A at Campbell. It substitutes Channel 294A for Channel 296C3 at Lone Grove, Oklahoma, and modifies the license of Station KYNZ to specify operation on Channel 263C3. To accommodate Channel 263C3 at Lone Grove, it substitutes Channel 296C3 for Channel 292A at Durant, Oklahoma, and modifies the license of Station KLBC to specify operation on Channel 292A. In order to accommodate Channel 296A at Campbell, it substitutes Channel 296A for Channel 295A at Terrell, Texas, reallots Channel 295A to Kerens, Texas, and modifies the license of Station KZDL to specify operation on Channel 295A at Kerens. The Channel 296C1 allotment at Benbrook requires the substitution of Channel 296C3 for Channel 234C3 at Graham, Texas, and modification of the license of Station KWKQ to specify operation on Channel 234C3; the substitution of Channel 296C3 for Channel 272C3 at Coleman, Texas, and the modification of the license of Station KSTA–FM to specify operation on Channel 272C3; and the substitution of Channel 296A for Channel 277A at Waco, Texas, and the modification of the license of Station KWBU to specify operation on Channel 277A. In order to allot Channel 277A at Waco, it substitutes Channel 277C3 for

Channel 281C3 at Clifton, Texas, and modifies the license of Station KWOW to specify operation on Channel 281C3. In order to allot Channel 281C3 to Clifton, it substitutes Channel 281C1 for Channel 245C1 at Brownwood, Texas, and modifies the license of Station KXYL–FM to specify operation on Channel 245C1. In order to allot Channel 245C1 to Brownwood, it substitutes Channel 246A for Channel 291A at San Saba, Texas, and modifies the license of Station KBAL–FM to specify operation on Channel 291A. It also substitutes Channel 277C3 for Channel 277C at Commerce, Texas, reallots Channel 277C to Allen, Texas, and modifies the license of Station KEMM to specify operation on Channel 277C at Allen. In order to allot Channel 277C to Allen, it substitutes Channel 277C1 for Channel 272C1 at Wichita Falls, Texas, and modifies the license of Station KWFS to specify operation on Channel 272C1; and substitutes Channel 276C2 for Channel 271A at Atoka, Oklahoma, and modifies the license of Station KHKC to specify operation on Channel 298A. In order to allot Channel 272C1 to Wichita Falls, it substitutes Channel 273A for Channel 280A at Wichita Falls, Texas, and modifies the license of Station KQXC to specify operation on Channel 280; substitutes Channel 272A for Channel 276A at Vernon, Texas, and modifies the license of Station KVWC to specify operation on Channel 276A; substitutes Channel 272A for Channel 246A at Duncan, Oklahoma, and modifies the license of Station KKEN to specify operation on Channel 246A. In order to allot Channel 246A to Duncan, it substitutes Channel 246A for Channel 287A at Comanche, Oklahoma, and modifies the license of Station KDDQ to specify operation on Channel 287A. In order to allot Channel 287A to Comanche, it substitutes Channel 284C for Channel 284C1 at Burkburnett, Texas, and modifies the license of Station KYYI to specify operation on Channel 284C1. In order to allot Channel 280A to Wichita Falls, it substitutes Channel 279C1 for Channel 278C at Anadarko, Oklahoma, and modifies the license of Station KPRT to specify operation on Channel 278C. In order to allot Channel 278C to Anadarko, it substitutes Channel 278C1 for Channel 248C2 at Alva, Oklahoma; and substitutes Channel 278C3 for Channel 224A at Dickson, Oklahoma. It also substitutes Channel 237A for Channel 238A at Jacksboro, TX, and modifies the construction permit of Station KJKB to specify operation on Channel 238A. In order to allot Channel 238A to Jacksboro, it substitutes Channel 238C for Channel 246C1 at Haskell, Texas, and modifies the license of Station KVRP to specify operation on Channel 246C1. In order to allot Channel 246C1 to Haskell, it substitutes Channel 246A for Channel 255A at Snyder, Texas, and substitutes Channel 246A for Channel 245A at Eldorado, Oklahoma. *See* 63 FR 63016, November 10, 1998. The reference coordinates for the Channel 296C1 allotment at Benbrook, Texas, are 32–26–17 and 97–49–06. The reference coordinates for the Channel 296A allotment at Campbell, Texas, are 33–12–41 and 95–51–39. The reference coordinates for the Channel 296C3 allotment at Lone Grove, Oklahoma, are 34–15–01 and 97–07–42. The reference coordinates for the Channel 292A allotment at Durant, Oklahoma, are 34–00–07 and 96–25–19. The reference coordinates for the Channel 297C2 allotment at Lawton, Oklahoma, are 34–37–35 and 98–19–05. The reference coordinates for the Channel 295A allotment at Kerens, Texas, are 32–08–15 and 96–19–10. The reference coordinates for the Channel 234C3 allotment at Graham, Texas, are 33–02–39 and 98–46–27. The reference coordinates for the Channel 272C3 allotment at Coleman, Texas, are 31–51–16 and 99–25–36. The reference coordinates for the Channel 277A allotment at Waco, Texas, are 31–31–51 and 97–09–10. The reference coordinates for the Channel 281C3 allotment at Clifton, Texas, are 31–47–40 and 97–27–17. The reference coordinates for the Channel 245C1 allotment at Brownwood, Texas, are 31–42–16 and 99–00–05. The reference coordinates for the Channel 291A allotment at San Saba, Texas, are 31–11–26 and 98–42–55. The reference coordinates for the Channel 277C allotment at Allen, Texas, are 33–33–36 and 96–57–35. The reference coordinates for the Channel 272C1 allotment at Wichita Falls, Texas, are 34–03–57 and 98–45–05. The reference coordinates for the Channel 271A allotment at Atoka, Oklahoma, are 34–29–22 and 96–08–07. The reference coordinates for the Channel 280A allotment at Wichita Falls, Texas, are 33–53–50 and 98–32–33. The reference coordinates for the Channel 276A allotment at Vernon, Texas, are 34–09–12 and 99–16–09. The reference coordinates for the Channel 246A allotment at Duncan, Oklahoma, are 34–03–43 and 97–58–05. The reference coordinates for the Channel 287A allotment at Comanche, Oklahoma, are 34–22–50 and 98–06–02. The reference coordinates for the Channel 284C1 allotment at Burkburnett, Texas, are 34–05–35 and 98–52–44. The reference coordinates for the Channel 278C allotment at Anadarko, Oklahoma, are 35–23–18 and 98–37–41. The reference coordinates for the Channel 248C2 allotment at Alva, Oklahoma, are 36–58–32 and 98–42–21. The reference coordinates for the Channel 298C3 allotment at Wellington, Texas, are 34–49–13 and 100–14–29. The reference coordinates for the Channel 224A allotment at Dickson, Oklahoma, are 34–07–17 and 96–58–49. The reference coordinates for the Channel 238A allotment at Jacksboro, Texas, are 33–19–53 and 98–10–54. The reference coordinates for the Channel 246C1 allotment at Haskell, Texas, are 33–09–40 and 99–48–57. The reference coordinates for the Channel 249A allotment at Snyder, Texas, are 32–43–04 and 100–55–02. The reference coordinates for the Channel 245A allotment at Eldorado, Oklahoma, are 34–28–24 and 99–38–54. The reference coordinates for the Channel 239C1 allotment at Ardmore, Oklahoma, are 34–09–42 and 97–09–11. The reference coordinates for the Channel 240C1 allotment at Mineral Wells, Texas, are 32–39–15 and 98–11–58. The reference coordinates for the Channel 237C2 allotment at Howe, Texas, are 33–31–09 and 96–47–05. The reference coordinates for the Channel 282C2 allotment at Detroit, Texas, are 33–47–21 and 95–33–07. The reference coordinates for the Channel 272A allotment at Antlers, Oklahoma, are 34–18–05 and 95–33–06.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Part 73 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202(b) [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended, as follows:

a. By removing Channel 293A and adding Channel 294C at Muenster.

b. By removing Granbury, Channel 294C and adding Benbrook, Channel 296C1.

c. By removing McKinney, Channel 295A and adding Campbell, Channel 296A.

d. By removing Terrell, Channel 296A and adding Kerens, Channel 295A.

e. By removing Channel 296C3 and adding Channel 234C3 at Graham.

f. By removing Channel 296C3 and adding Channel 272C3 at Coleman.
g. By removing Channel 296A and adding Channel 277A at Waco.
h. By removing Channel 277C3 and adding Channel 281C3 at Clifton.
i. By removing Channel 281C1 and adding Channel 245C1 at Brownwood.
j. By removing Channel 246A and adding Channel 291A at San Saba.
k. By removing Commerce, Channel 277C3 and adding Allen, Channel 277C.
l. By removing Channel 277C1 and Channel 273A and adding Channel 272C1 and Channel 280A at Wichita Falls.
m. By removing Channel 272A and adding Channel 276A at Vernon.
n. By removing Channel 284C and adding Channel 284C1 at Burkburnett.
o. By removing Channel 278C3 and adding Channel 298C3 at Wellington.
p. By removing Channel 237A and adding Channel 238A at Jacksboro.
q. By removing Channel 238C and adding Channel 246C1 at Haskell.
r. By removing Channel 246A and adding Channel 255A at Snyder.
s. By removing Channel 294C2 and adding Channel 282C2 at Detroit.

3. Section 73.202(b), The Table of FM Allotments under Oklahoma, is amended, as follows:
a. By removing Channel 294A and adding Channel 296C3 at Lone Grove.
b. By removing Channel 296C3 and adding Channel 292A at Durant.
c. By removing Channel 276C2 and adding Channel 271A at Atoka.
d. By removing Channel 272A and adding Channel 246A at Duncan.
e. By removing Channel 246A and adding Channel 287A at Comanche.
f. By removing Channel 279C1 and adding Channel 278C at Anadarko.
g. By removing Channel 278C1 and adding Channel 248C2 at Alva.
h. By removing Channel 278C3 and adding Channel 224A at Dickson.
i. By removing Channel 246A and adding Channel 245A at Eldorado.
j. By removing Channel 284A and adding Channel 272A at Antlers.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–8851 Filed 4–10–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991228352–0012–02; I.D. 040500A]

Fisheries of the Exclusive Economic Zone Off Alaska; Rock Sole by Catcher Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for rock sole by catcher vessels that are non-exempt under the American Fisheries Act (AFA) in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the interim 2000 BSAI AFA catcher vessel sideboard amount of rock sole.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 6, 2000, until 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The amount of the interim 2000 BSAI AFA catcher vessel rock sole sideboard harvest limit was established as 2,921 metric tons (mt) in accordance with § 679.63 (b)(1)(ii)(A) by the Emergency Interim Rule to Implement Major Provisions of the American Fisheries Act (65 FR 4520, January 28, 2000).

In accordance with § 679.20(d)(1)(iv), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the sideboard harvest limit of rock sole for non-exempt AFA catcher vessels will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,500 mt, and is setting aside the remaining 421 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is closing directed fishing for rock sole by non-exempt AFA catcher vessels in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent exceeding the interim 2000 BSAI AFA catcher vessel sideboard of rock sole in the BSAI. A delay in the effective date is impracticable and contrary to the public interest. The rock sole AFA catcher vessel sideboard harvest limit directed fishing allowance will soon be reached. Further delay would only result in exceeding the harvest limitation. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 5, 2000.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–8932 Filed 4–6–00; 3:11 pm]

BILLING CODE 3510–22–F

VOL 65 ISS 70 AP 11 2000 UMI

Proposed Rules

Federal Register
Vol. 65, No. 70
Tuesday, April 11, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

11 CFR Parts 101, 102, 104, 109, 114, 9003, and 9033

[Notice 2000–7]

Electronic Filing of Reports by Political Committees

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission is seeking comment on proposed rules to implement a mandatory electronic filing system for reports of campaign finance activity filed with the agency. Political committees and other persons would be required to file electronically when either their total contributions or total expenditures within a calendar year exceed $50,000. The Commission has had a voluntary electronic filing system in place since 1996. Voluntary electronic filing would still be an option for political committees and persons who do not exceed the $50,000 threshold. This mandatory system is designed to reflect recent changes in the Federal Election Campaign Act of 1971. Please note that the draft rules that follow do not represent a final decision by the Commission on the issues presented by this rulemaking. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before May 11, 2000.

ADDRESSES: All comments should be addressed to Rosemary C. Smith, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, NW, Washington, DC 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to insure legibility. Electronic mail comments should be sent to Electronfile@fec.gov. Commenters sending comments by electronic mail should include their full name, electronic mail address and postal service address within the text of their comments. Comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. The Commission will make every effort to have public comments posted on its web site within ten business days of the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary Smith, Assistant General Counsel, or Cheryl Fowle, Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On September 29, 1999, Public Law 106–58 amended the Federal Election Campaign Act of 1971 ("the Act" or "FECA") to require, *inter alia*, that the Commission draft rules requiring persons who are required to file reports, designations or statements with the agency to "maintain and file a designation, statement or report for any calendar year in electronic form accessible by computers if the person has, or has reason to expect to have, aggregate contributions or expenditures in excess of a threshold amount determined by the Commission * * *" 113 Stat. 476 (1999). The new law requires this system to be in place for reports covering periods after December 31, 2000.

The new law also requires the Commission to amend its regulations to add a system of administrative fines for violations of reporting requirements and to require candidates and their authorized committees to aggregate and report data on an election cycle-to-date rather than a calendar year-to-date basis. These two topics are being addressed in two separate rulemakings.

Current Commission regulations at 11 CFR 104.18 invite committees to voluntarily file electronically regardless of their level of financial activity. The new law maintains the voluntary system for political committees or persons who do not exceed, or who do not have reason to expect to exceed, the threshold of financial activity.

The goals of the electronic filing system include more complete and rapid on-line access to reports on file with the Commission, reduced paper filing and manual processing, and more efficient and cost-effective methods of operation for filers and for the Commission. The amendment to the FECA requires that the Commission make electronically filed reports, designations or statements available on its web site not later than 24 hours after the Commission receives the filing. Currently, reports that are filed under the voluntary system of electronic filing are posted in viewable form on the Commission's web site within five minutes and detailed data are available in the Commission's databases within 24 to 48 hours (depending on the time of receipt). In contrast, under the current paper filing system, the time between receipt of a report and its appearance in viewable form on the Commission's web site is 48 hours. Additionally, while some summary data is available in the Commission's indexes within 48 hours, it can take as long as 30 days before the detailed data filed on paper is available in those databases. Thus, the greater the number of pages that are filed electronically, the greater the volume of data that is almost instantly available. Additionally, decreasing the volume of paper filed will decrease the processing time of the reports that are filed on paper, making them more rapidly available in the Commission's databases.

Before such a system for mandatory electronic filing can be successfully implemented, two main factors must be considered. First, what is the optimal threshold that maximizes the disclosure benefits of electronic filing yet does not encumber the regulated community? Second, what are the technical and formatting requirements for electronically filed reports? The Commission seeks comments on both of these concerns.

Threshold

Proposed paragraph (a) of 11 CFR 104.18 states that political committees and other persons who are required to file with the agency must file electronically if they have, or have reason to expect to have, aggregate contributions or expenditures exceeding $50,000 in a calendar year.

The Commission proposes $50,000 as the appropriate threshold for all political committees and other persons because, as discussed below, data from the 1996 and 1998 election cycles [1]

[1] Please note that the data used to calculate these percentages are approximated from the Commission's databases. For the purpose of determining the appropriate threshold, the following approximations were used: For authorized committees: Contributions are the total

Continued

indicate that at that threshold, the goals of the statutory amendment are optimized and the effect on the political committees and other persons is minimized.

A. Candidates and Authorized Committees

Under the proposed rules, candidates and their authorized committees who file with the agency would be required to file electronically if they have, or have reason to expect to have, aggregate contributions or expenditures exceeding $50,000 in a calendar year.

Data from the 1996 and 1998 election cycles show that this threshold would make 98% to 98% [2] of all financial activity reported by House and Presidential campaign committees almost immediately available on both the FEC's web site and in the agency's on-line databases. The historical information shows that of the 1,837 to 2,231 authorized committees filing with the Commission between 1995 and 1998, 31% to 44% of the committees (599 to 982 committees) had aggregate contributions or expenditures exceeding $50,000. These authorized committees filed 43% to 73% of the reports (2,162 to 12,646 reports), and 73% to 88% (66,569 to 282,339 pages) of the total number of pages filed by authorized committees. If 73% to 88% of the total number of pages filed by authorized committees is filed electronically, the Commission can manually process the remaining 12% to 29% of the pages more quickly to substantially reduce the amount of time before the information is available in Commission databases.

The amendments to the FECA require that those who meet the threshold must file "designations, statements or reports" electronically. Therefore, under the proposed regulations, any candidate who expects to have aggregate contributions or expenditures exceeding $50,000 would be required to electronically file his or her Statement of Candidacy (FEC Form 2), and his or her authorized committee would be required to file its Statement of Organization (FEC Form 1) electronically. Additionally, under the proposed rules, all committees that have Internet web sites would be required to provide the address of their web sites as part of their address on Form 1. Committees that are required to file electronically, and that have electronic mail addresses, would be required to include their electronic mail addresses as part of the address on Form 1.

Please note, however, that the mandatory electronic filing provisions of Public Law 106–58 and new paragraph (a) of 11 CFR 104.18 apply only to those candidates and authorized committees who are required to file reports, statements and designations with the FEC. Therefore, mandatory electronic filing does not apply to candidates for United States Senate because Senate candidates must file with the Secretary of the Senate. Senate candidates are, however, invited to electronically file an **unofficial** copy of their reports, designations and statements with the FEC for the purposes of faster disclosure.

Furthermore, under current Commission regulations, as a condition of receiving public funding Presidential candidates are required to agree to file electronically if their data is computerized. 11 CFR 9003.1(b)(11) and 9033.1(b)(13). In order for primary candidates to receive matching funds, they must raise $100,000 ($5,000 in each of 20 states). The Commission proposes removing electronic filing as a condition for receiving public funding because these federally financed Presidential candidates will already have exceeded the $50,000 threshold and will already be filing electronically. Consequently, 11 CFR 9003.1(b)(11) and 9033.1(b)(13) would be deleted.

If a $50,000 threshold is adopted, the effect on candidates and authorized committees would be minimal since, based on the 1996 and 1998 election cycle data, only the largest 30% to 40% of registered authorized committees would be required to file electronically.

B. Party Committees

The Commission is proposing that party committees be required to file electronically if they have, or have reason to expect to have, aggregate contributions or expenditures exceeding $50,000 in a calendar year.

At the $50,000 level, historical data from the 1996 and 1998 election cycles show that of the 373 to 451 party committees filing with the Commission, 36% to 41% of them (142 to 182 committees) consistently disclosed over 99% (between $213 million and $459 million) of party activity. Of the total number of pages filed by party committees, 93% to 96% (71,598 to 210,242 pages) would have been filed electronically, thereby greatly decreasing the amount of paper processing by the committees and the FEC and considerably increasing the amount of data that would be almost immediately available.

Based on the 1996 and 1998 election cycle data, the impact on party committees should be relatively small since only 36% to 41% of all party committees registered with the Commission during those election cycles would have been required to file electronically. Thus, the smallest 59% to 64% of party committees could continue to file paper reports.

C. Nonconnected Committees

The Commission is proposing that nonconnected committees be required to file electronically if they have, or have reason to expect to have, aggregate contributions or expenditures exceeding $50,000 in a calendar year.

At the $50,000 level, in the 1996 and 1998 election cycles, of the 840 to 933 nonconnected committees filing with the Commission, 15% to 22% of them (128 to 202 committees) disclosed 88% to 93% of the activity by nonconnected committees (representing approximately $29 million to $65 million of the total $33 million to $70 million disclosed by nonconnected committees). Additionally at that level, 59% to 68% (16,794 to 44,907 pages) of the total number of pages filed by nonconnected committees would have been filed electronically, causing a significant decrease in paper processing and a corresponding increase in the amount of data more rapidly disclosed.

The number of nonconnected committees affected should be relatively small since the historical data from the 1996 and 1998 election cycles show that only the largest 15% to 22% of the nonconnected committees registered with the Commission would have been required to file electronically.

D. Separate Segregated Funds

The Commission is proposing that the separate segregated funds (SSFs) of corporations and labor organizations be required to file electronically if they have, or have reason to expect to have, aggregate contributions or expenditures exceeding $50,000 in a calendar year.

At the $50,000 level, in the 1996 and 1998 election cycles, of the 2,938 to 2,976 SSFs registered with the Commission, 22% to 28% of them (632

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of individual contributions plus party contributions plus other committee contributions plus candidate contributions plus candidate loans; and expenditures were considered to be operating expenditures. For unauthorized committees: Contributions consist of total receipts minus nonfederal transfers in; and expenditures are equal to total disbursements minus the nonfederal share of expenditures.

[2] Because the data was taken over a period of two election cycles that included a Presidential-election year (1996), a midterm election year (1998) and two non-election years (1995 and 1997), the number of committees, reports and pages filed and financial figures vary—increasing in election years, descreasing in non-election years. The percentages and numbers used in this document are the high and low figures of the four year span. Please note that the high or low percentage may have come from one year and the high or low actual number may have come from a different year.

to 825 committees) disclosed 85% to 89% ($138 million to $211 million) of the total SSF financial activity. This represents 63% to 68% (between 94,670 and 110,864 pages) of the total number of pages filed by SSFs. Based on historical data, the decrease in the amount of paper filed would represent approximately 100,000 pages of data and hundreds of millions of dollars available almost instantly on the Commission's web site and in the agency's databases.

The impact on SSFs should be small considering that, in the 1996 and 1998 election cycles, only 22% to 28% of all SSFs registered with the Commission would have been required to file electronically. Thus, the smallest 72% to 78% (approximately 2,300 committees) of SSFs would continue to have the option of filing paper reports.

E. Other Persons

The amendment to the FECA requires that "a person" who is required to file under the Act must file electronically if he or she exceeds, or has reason to expect to exceed, the threshold. Therefore, in addition to the committees discussed above, the Commission proposes to apply the $50,000 threshold to any other persons defined in 11 CFR 110.10 who are required to file a "designation, statement or report" with the Commission (e.g., individuals making independent expenditures in excess of $50,000, or corporations or labor organizations making communications to their restricted classes at a cost of more than $50,000). Thus, under the proposed rules, these other persons would be required to file electronically if they have, or have reason to expect to have, aggregate contributions or expenditures exceeding $50,000 in a calendar year.

Data from the 1996 and 1998 election cycles show that the between 7% and 19% (between 2 and 24 persons) of other persons filing with the Commission had aggregate contributions or aggregate expenditures exceeding $50,000 in a calendar year. During that four year period, those persons who exceeded the threshold accounted for 33% and 50% of all activity by other persons in the non-election years, and as high 94% of all activity by other persons in the Presidential election year and 91% in the midterm election year.

The effect of the proposed rule on this category of filer should be small because historical data show that the number of these other filings is very small. For example, in the 1995 and 1997 (the non-election years), only two of 28 and 23 filers (less than 10% in each case), respectively, would have been required to file electronically under the proposed rules. In 1996 and 1998 (1996 being a Presidential election year), the total numbers of filers who would have been affected were 24 of 128 filers (19%) and 13 of 75 filers (17%), respectively.

F. All Committees

The historical data for the 1996 and 1998 election cycles show that if a $50,000 mandatory electronic filing threshold had been in place at that time, hundreds of thousands of pages would have been filed electronically, dramatically decreasing the amount of paper processed by both committees and the Commission. Additionally, the amount of financial data that would have been almost instantly disclosed by electronic filing would have been between $544 million and $1.2 billion.

Please note that the amendments to the FECA require that those who meet the threshold must file "designations, statements or reports" electronically. Therefore, under the proposed regulations, committees that have reason to expect to have aggregate contributions or expenditures exceeding $50,000 would be required to electronically file their Statements of Organization (Form 1). Additionally, under the proposed rules, all committees that have official web sites would be required to include the Internet address of their web sites as part of their address on Form 1. Committees that are required to file electronically and that have electronic mail addresses would be required to provide their electronic mail addresses as part of the address on Form 1.

The Commission seeks comments on thresholds both lower and higher for all committees and other persons. For example, should there be different thresholds for different types of committees? Should there be only one threshold but at a level different than that proposed? Should separate segregated funds of corporations and labor organizations have a lower threshold because their administrative and solicitation costs may be paid by their connected organization?

G. Joint Fundraising Representatives

The Commission proposes that joint fundraising representatives (*see* 11 CFR 102.17) be required to file electronically if they have, or have reason to expect to have, total contributions or total expenditures exceeding the $50,000 threshold. Thus, if, for example, a joint fundraiser raises total contributions of $65,000 that it divides equally between the three participating committees, including itself, the joint fundraising representative would be required to file electronically.

H. "Have Reason To Expect To Have Aggregate Contributions or Expenditures" Above the Threshold

The Commission requests comments on how to implement the statutory requirement that persons file electronically if they "* * * have reason to expect to have * * *" aggregate contributions or expenditures above the threshold amount. Two tests that are included in the proposed rules at 11 CFR 104.18(a)(3) are—(1) a committee should expect to have financial activity above the $50,000 threshold if it exceeded this amount during the comparable year of the previous election cycle; or (2) a committee should expect to have financial activity exceeding the threshold if the committee's aggregate contributions or expenditures exceeded the threshold during the previous calendar year.

Comments are sought on three other possible approaches that are not included in the proposed rules—(1) Should the Commission base the expectation solely on the committee's or person's own projections during the year? If so, at what point during the year will political committees and other persons be expected to make the projection? Should it be a one-time forecast at the beginning of the year or a rolling projection that changes as necessary throughout the calendar year? (2) Should new committees having no historical data on which to base a projection, base their expectations of aggregate contributions and expenditures on historical data for similarly situated committees in the previous election cycle; or should such new committees be presumed to have no reason to expect to exceed the threshold until such time as they actually do so? (3) Should a committee have reason to expect to exceed the threshold if it raises or spends more than one quarter of the proposed yearly threshold in the first calendar quarter, or if it raises or spends more than half the threshold in the first half of the calendar year? For example, should a committee be required to file electronically if it raises $30,000 in the first calendar quarter on the grounds that it has reason to expect to exceed the $50,000 threshold within the calendar year?

I. Cash on Hand and Outstanding Debt

The Commission proposes that for purposes of the contribution and expenditure thresholds, cash on hand or debt that is outstanding at the beginning of the calendar year would not be

included. Thus, the calculation in the proposed rules that follow takes into account only those contributions received or expenditures made, or expected to be received or made, within the calendar year.

J. Filing for the Calendar Year

The statutory amendment to the Act requires that persons who are required to file with the Commission must "maintain and file a designation, statement or report for any calendar year in electronic form accessible by computers if the person has, or has reason to expect to have, aggregate contributions or expenditures in excess of a threshold amount determined by the Commission * * *" 113 Stat. 476 (1999). The Commission seeks comments on whether the threshold should be calculated on a "per election cycle basis" rather than on the proposed "per calendar year" basis. If so, should an election cycle threshold be used for authorized committees only or for all committees and other persons? Please note that for House candidates, the election cycle will generally cover approximately two years, while it may extend to over four years for Presidential candidates. *See* 11 CFR 100.3(b).

The proposed amendments to 11 CFR 104.18 would not require persons to electronically refile any reports, statements or designations that were properly filed on paper earlier in the calendar year or earlier in the election cycle. For example, if an authorized committee files its April quarterly report on paper because it has not exceeded and does not expect to exceed the appropriate threshold and, if in June it exceeds the $50,000 threshold, the committee would have to electronically file its July quarterly report, but would not be expected to go back and electronically refile the April report.

In the current voluntary electronic filing regulations at 11 CFR 104.18(a), electronic filers are required to continue filing electronically for the remainder of the calendar year unless the Commission determines that an extraordinary and unforeseen circumstance makes electronic filing impracticable. The Commission seeks comment on whether a similar provision allowing a committee or other person to stop filing electronically within the calendar year due to extraordinary and unforeseen circumstances should be included in the proposed rules for mandatory electronic filers.

Technical Issues

A. Computerization of Data and FECFile Software

The Commission's computer systems are capable of receiving all reports that might be required under the proposed regulations. However, the Commission's FECFile software, which is available from the agency at no cost, does not currently generate all required forms. For example, the FECFile software does not currently generate FEC Forms 1 and 2 (Statement of Organization and Statement of Candidacy, respectively), FEC Form 3P for Presidential candidates, FEC Form 4 for Convention and Host Committees to report their receipts and disbursements, FEC Form 5 for persons other than political committees reporting independent expenditures, or FEC Form 7 for reporting corporate and labor organization communications to their restricted classes. The Commission plans to update the FECFile software to generate FEC Forms 1 and 2 by January 1, 2001, and anticipates that FECFile will generate FEC Forms 3P, 4, 5 and 7 in the near future.

The Commission seeks comments as to whether those committees filing comments on this rulemaking currently use a computer to maintain records, prepare reports, and/or file reports. In particular, would the filing threshold established by the proposed rules necessitate the purchase of computer hardware?

B. Formatting and Standardization Requirements

The Commission proposes to maintain the standardization requirements that are present in the current voluntary electronic filing system. When the voluntary electronic filing system was designed, the Commission created "The Federal Election Commission's Electronic Filing Specifications Requirements" (EFSR) document and invited comment on that document at that time. The EFSR is available at no charge on the Commission's web site. The Commission is currently updating the EFSR and intends to use specifications embodied in the updated EFSR for this mandatory electronic filing program. The Commission again requests comment on the EFSR from software vendors and other interested parties based on their experience with the voluntary electronic filing system. Commenters should submit their comments on the EFSR in the manner requested in the **ADDRESSES** section of this notice. Technical comments on the EFSR will be forwarded to the Data Systems Development Division.

Please note that the validation program that checks incoming reports is also being updated. For example, upon completion of this update, the program will no longer accept forms on which the figures disclosed within the report do not add up to the figures reported on the detailed summary page and forms indicating the incorrect type of report.

Additional Issues

A. Filing by Letter

Proposed changes to the Commission's regulations would require that some statements required by the Act that can currently be filed by letter must be electronically filed using the proper FEC form when the threshold has been exceeded or is expected to be exceeded. The statements that would be affected are: (1) The Statement of Candidacy, FEC Form 2 (11 CFR 101.1(a)); (2) Amendments to the Statement of Organization, FEC Form 1 (11 CFR 102.2(a)(2)); (3) Individuals reporting independent expenditures,[3] FEC Form 5 (11 CFR 109.2); and (4) Qualified Nonprofit Corporations reporting independent expenditures,[4] FEC Form 5 (11 CFR 109.2 and 114.10(e)). The Commission proposes adding language to clarify that only those committees and other persons who are not required to file electronically under the proposed regulations may file these statements by letter. Currently, FEC Forms 1, 2 and 5 are not available on FECFile software. *But see* "Technical Issues," above. The Commission requests comments on this proposed change.

B. Non-filers

The statute makes electronic filing mandatory for those persons who exceed or who expect to exceed the threshold set by the Commission. Consequently, political committees and other persons who are required to file electronically, but who fail to do so, may be subject to the Commission's enforcement process for non-filers and may have their names published as non-filers. This includes those who are required to file electronically but who file paper reports instead. Additionally, in 1999, Congress amended 2 U.S.C. 437g(a)(4) and (6)(A) to authorize the Commission to impose an administrative fine on late and non-

[3] Note that, under 11 CFR 104.4(c) and 105.4, independent expenditures in favor or opposing candidates for the U.S. Senate must be filed with the Secretary of the Senate and, therefore, would not be subject to this proposed regulation.

[4] *Ibid.*

filers pursuant to a fine schedule. The Commission is in the process of developing a new program to implement the amendment.

C. Comments From Other Federal, State and Local Jurisdictions

Finally, the Commission is interested in the experience of other Federal, state and local jurisdictions that have implemented a financial threshold based mandatory electronic filing program. What issues were considered in setting the threshold amounts? What were the potential and real barriers to the committees affected?

D. Conclusion

The Commission welcomes comments on any other issues raised by the new statutory requirements regarding mandatory electronic filing.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

These proposed rules if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that the Commission's proposed thresholds are set at a sufficiently high level that most, if not all, small political committees would not be required to file electronically, although they could continue to do so voluntarily. In the event any small committees do exceed the proposed threshold, the economic impact would not be significant because the committees may obtain the FECFile software from the Commission at no cost, and the Commission anticipates this software will generate all required forms.

List of Subjects

11 CFR Part 101

Political candidates, Reporting and recordkeeping requirements.

11 CFR Part 102

Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 109

Elections, Reporting and recordkeeping requirements.

11 CFR Part 114

Business and industry, Elections, Labor.

11 CFR Part 9003

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9033

Campaign funds, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, subchapters A, E and F of chapter I of title 11 of the Code of Federal Regulations would be amended as follows:

PART 101—CANDIDATE STATUS AND DESIGNATIONS (2 U.S.C. 432(e))

1.The authority citation for part 101 would be revised to read as follows:

Authority: 2 U.S.C. 432(e), 434(a)(11), 438(a)(f).

2. Section 101.1 would be amended by revising paragraph (a) to read as follows:

§ 101.1 Candidate designations (2 U.S.C. 432(e)(1)).

(a) *Principal campaign committee.* Within 15 days after becoming a candidate under 11 CFR 100.3, each candidate, other than a nominee for the office of Vice President, shall designate in writing a principal campaign committee in accordance with 11 CFR 102.12. A candidate shall designate his or her principal campaign committee by filing a Statement of Candidacy on FEC Form 2, or, if the candidate is not required to file electronically under 11 CFR 104.18, by filing a letter containing the same information (that is, the individual's name and address, party affiliation and office sought, the District and State in which Federal office is sought, and the name and address of his or her principal campaign committee) at the place of filing specified at 11 CFR part 105. Each principal campaign committee shall register, designate a depository and report in accordance with 11 CFR parts 102, 103 and 104.

* * * * *

PART 102—REGISTRATION, ORGANIZATION AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433).

3. The authority citation for part 102 would be revised to read as follows:

Authority: 2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), 441d.

4. Section 102.2 would be amended by revising paragraphs (a)(1)(vi) and (a)(2), and adding (a)(1)(vii) to read as follows:

§ 102.2 Statement of organization: Forms and committee identification number (2 U.S.C. 433(b), (c)).

(a)(1) * * *

(vi) A listing of all banks, safe deposit boxes, or other depositories used by the committee;

(vii) The Internet address of the committee's official web site, if such a web site exists. If the committee is required to file electronically under 11 CFR 104.18, its electronic mail address, if such an address exists.

(2) Any change or correction in the information previously filed in the Statement of Organization shall be reported no later than 10 days following the date of the change or correction by filing an amended Statement of Organization or, if the political committee is not required to file electronically under 11 CFR 104.18, by filing a letter noting the change(s). The amendment need list only the name of the political committee and the change or correction.

* * * * *

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

5. The authority citation for part 104 would be revised to read as follows:

Authority: 2 U.S.C. 431, 434, 438(a)(8) and (b) and 439a.

6. Section 104.18 would be revised to read as follows:

§ 104.18 Electronic filing of reports (2 U.S.C. 432(d) and 434(a)(11)).

(a) *Mandatory.* (1) Political committees and other persons required to file reports with the Commission, as provided in 11 CFR parts 105 and 107, must file reports in an electronic format that meets the requirements of this section if —

(i) The political committee or other person has received contributions or has reason to expect to receive contributions aggregating in excess of $50,000 in any calendar year; or (ii)The political committee or other person has made expenditures or has reason to expect to make expenditures aggregating in excess of $50,000 in any calendar year.

(2) Once any political committee or other person described in paragraph (a)(1) of this section exceeds or has reason to expect to exceed the appropriate threshold, the political committee or person must file electronically all subsequent reports covering financial activity for the remainder of the calendar year. All electronically filed reports must pass the Commission's validation program in accordance with paragraph (e) of this section.

(3) A political committee or other person has reason to expect to receive aggregate contributions or to make aggregate expenditures over the threshold amount in paragraph (a)(1) of this section if its aggregate contributions or aggregate expenditures exceeded the threshold in the comparable year in the previous election cycle, or its aggregate contributions or aggregate expenditures exceeded the threshold in the previous calendar year.

(b) *Voluntary.* A political committee or other person who files reports with the Commission, as provided in 11 CFR Part 105, and who is not required to file electronically under paragraph (a) of this section, may choose to file its reports in an electronic format that meets the requirements of this section. If a political committee or other person chooses to file its reports electronically, all electronically filed reports must pass the Commission's validation program in accordance with paragraph (e) of this section. The committee or other person must continue to file in an electronic format all reports covering financial activity for that calendar year, unless the Commission determines that extraordinary and unforeseeable circumstances have made it impracticable for the political committee or other person to continue filing electronically.

(c) *Definition.* For purposes of this section, report means any statement, designation or report filed with the Commission.

(d) *Format specifications.* Reports filed electronically shall conform to the technical specifications described in the Federal Election Commission's Electronic Filing Specifications Requirements. The data contained in the computerized magnetic media provided to the Commission shall be organized in the order specified by the Electronic Filing Specifications Requirements.

(e) *Acceptance of reports filed in electronic format; validation program.*

(1) Each political committee or other person who submits an electronic report shall check the report against the Commission's validation program before it is submitted, to ensure that the files submitted meet the Commission's format specifications and can be read by the Commission's computer system. Each report submitted in an electronic format under this section shall also be checked upon receipt against the Commission's validation program. The Commission's validation program and the Electronic Filing Specification Requirement are available on request and at no charge.

(2) A report that does not pass the validation program will not be accepted by the Commission and will not be considered filed. If a political committee or other person submits a report that does not pass the validation program, the Commission will notify the political committee or other person that the report has not been accepted.

(f) *Amended reports.* If a political committee or other person files an amendment to a report that was filed electronically, the political committee or other person shall also submit the amendment in an electronic format. The political committee or other person shall submit a complete version of the report as amended, rather than just those portions of the report that are being amended. In addition, the amended report shall contain electronic flags or markings that point to the portions of the report that are being amended.

(g) *Signature requirements.* The political committee's treasurer, or any other person having the responsibility to file a designation, report or statement under this subchapter, shall verify the report in one of the following ways: by submitting a signed certification on paper that is submitted with the computerized media; or by submitting a digitized copy of the signed certification as a separate file in the electronic submission. Each verification submitted under this section shall certify that the treasurer or other signatory has examined the report or statement and, to the best of the signatory's knowledge and belief, it is true, correct and complete. Any verification under this section shall be treated for all purposes (including penalties for perjury) in the same manner as a verification by signature on a report submitted in a paper format.

(h) *Schedules and forms with special requirements.* The following list of schedules, materials, and forms have special signature and other requirements and reports containing these documents shall include, in addition to providing the required data within the electronic report, either a paper copy submitted with the political committee's or other person's electronic report or a digitized version submitted as a separate file in the electronic submission: Schedule C–1 (Loans and Lines of Credit From Lending Institutions), including copies of loan agreements required to be filed with that Schedule, Schedule E (Itemized Independent Expenditures), Form 5 (Report of Independent Expenditures Made and Contributions Received), and Form 8 (Debt Settlement Plan). The political committee or other person shall submit any paper materials together with the electronic media containing the report.

(i) *Preservation of reports.* For any report filed in electronic format under this section, the treasurer or other person required to file any report under the Act shall retain a machine-readable copy of the report as the copy preserved under 11 CFR 104.14(b)(2). In addition, the treasurer or other person required to file any report under the Act shall retain the original signed version of any documents submitted in a digitized format under paragraphs (g) and (h) of this section.

PART 109—INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 434(c))

7. The authority for part 109 would be revised to read as follows:

Authority: 2 U.S.C. 431(17), 434(a)(11) and (c), 438(a)(8), 441d.

8. Section 109.2 would be amended by revising the introductory text of paragraph (a) to read as follows:

§ 109.2 Reporting of independent expenditures by persons other than a political committee (2 U.S.C. 434(c)).

(a) Every person other than a political committee, who makes independent expenditures aggregating in excess of $250 during a calendar year shall file a report on FEC Form 5 or, if the person is not required to file electronically under 11 CFR 104.18, a signed statement with the Commission or Secretary of the Senate in accordance with 11 CFR 104.4(c).

* * * * *

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

9. The authority citation for part 114 would be revised to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 434(a)(11), 437d(a)(8), 438(a)(8) and 441b.

10. Section 114.10 would be amended by revising paragraph (e)(1)(ii) to read as follows:

§ 114.10 Nonprofit corporations exempt from the prohibition on independent expenditures.

* * * * *

(e) * * *

(1) * * *

(ii) This certification may be made either as part of filing FEC Form 5 (independent expenditure form) or, if the corporation is not required to file electronically under 11 CFR 104.18, by submitting a letter in lieu of the form. The letter shall contain the name and address of the corporation and the

signature and printed name of the individual filing the qualifying statement. The letter shall also certify that the corporation has the characteristics set forth in paragraphs (c)(1) through (c)(5) of this section.

* * * * *

PART 9003—ELIGIBILITY FOR PAYMENTS

11. The authority citation for part 9003 would continue to read as follows:

Authority: 26 U.S.C. 9003 and 9009(b).

§ 9003.1 [Amended]

12. Section 9003.1 would be amended by removing paragraph (b)(11).

PART 9033—ELIGIBILITY FOR PAYMENTS

13. The authority citation for part 9033 would continue to read as follows:

Authority: 26 U.S.C. 9033 and 9039(b).

§ 9033.1 [Amended]

14. Section 9033.1 would be amended by removing paragraph (b)(13).

Dated: April 5, 2000.

Darryl R. Wold,

Chairman, Federal Election Commission.

[FR Doc. 00–8884 Filed 4–10–00; 8:45 am]

BILLING CODE 6715–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–66–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all EMBRAER Model EMB–120 series airplanes, that currently requires repetitive visual checks or inspections to verify that the flight idle stop system circuit breakers are closed, and repetitive functional tests to determine if the backup flight idle stop system is operative. This action would require modification of the secondary flight idle stop system, which would terminate the repetitive actions. This proposal also would remove certain airplanes from the applicability. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent an inoperative backup flight idle stop system.

DATES: Comments must be received by May 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–66–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Linda Haynes, Aerospace Engineer, Propulsion Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6091; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–66–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–66–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 12, 1992, the FAA issued AD 92–16–51, amendment 39–8355 (57 FR 40838, September 8, 1992), applicable to all EMBRAER Model EMB–120 series airplanes, to require repetitive visual checks or inspections to verify that the flight idle stop system circuit breakers are closed, and functional tests to determine if the backup flight idle stop system is operative. That action was prompted by a report of an overspeed condition that occurred on both engines of one airplane during flight; both of the circuit breakers in the backup flight idle stop system circuit were open, which may have contributed to this condition. The requirements of that AD are intended to prevent an inoperative backup flight idle stop system and potential engine failure.

Related Rulemaking

A related AD [AD 90–17–12, amendment 39–6696 (55 FR 33107, August 14, 1990)], applicable to certain EMBRAER Model EMB–120 series airplanes, was issued to require installation of an electromechanical lockout device to prevent movement of the power control levers below the flight idle position while the airplane is in flight. Operators should note that issuance of this proposed AD would not remove or alter the requirements of AD 90–17–12.

Actions Since Issuance of AD 92–16–51

In the preamble to AD 92–16–51, the FAA indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered. Additionally, since issuance of AD 92–16–51, the Departmento de Aviacao Civil (DAC), which is the airworthiness

authority for Brazil, has advised the FAA that the reliability of the secondary flight idle stop system (SFISS) has been low, and that the SFISS has been shown to be vulnerable to certain maintenance-originated failure modes. The manufacturer has developed a modification that adequately addresses the unsafe condition identified by this AD, and the FAA has determined that further rulemaking action is indeed necessary; this proposed AD follows from that determination.

The actions specified by the proposed AD are intended to increase the SFISS reliability and add a failure annunciation. These actions are intended to prevent an inoperative backup flight idle stop system, and will terminate the requirements of AD 92–16–51.

Explanation of Relevant Service Information

EMBRAER has issued three service bulletins that affect different groups of airplanes and describe procedures for modification of the SFISS for EMBRAER Model EMB–120 series airplanes.

Service Bulletin 120–76–0015, Change No. 05, dated September 9, 1999, describes procedures for replacing the single-coil solenoid, the back-lighted cockpit indicators, and the resistor dimmer with new parts; installing two new relays in the SFISS; and replacing the existing solenoid assembly (comprising a solenoid and stop mechanism) and power control bellcrank with new parts.

Service Bulletin 120–76–0018, Change No. 01, dated September 9, 1999, describes procedures for replacing the solenoid assemblies, certain circuit breakers, and lighted indicators with new, improved parts; installing a terminal board, resistors, wiring, and relays; and changing the power sources.

Service Bulletin 120–76–0022, dated September 9, 1999, describes procedures for replacing the solenoid assemblies and the power control bellcrank with new parts; reidentifying the solenoid assemblies; and installing two new cover/clamp-supports.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DAC classified these service bulletins as mandatory and issued Brazilian airworthiness directive 90–07–04R4, dated October 4, 1999, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 92–16–51 to continue to require repetitive visual checks or inspections to verify that the flight idle stop system circuit breakers are closed, and repetitive functional tests to determine if the backup flight idle stop system is operative. This proposed AD would require modification of the SFISS, which would terminate the requirements for the repetitive actions. The actions of the proposed AD would be required to be accomplished in accordance with the service bulletins described previously.

Revised Applicability

This proposed AD would revise the applicability of AD 92–16–51 to remove airplanes on which an equivalent modification, which adequately addresses the identified unsafe condition, is installed during production.

Cost Impact

There are approximately 230 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 92–16–51 take approximately 5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $69,000, or $300 per airplane, per inspection cycle.

The approximate cost, at an average labor rate of $60 per work hour, for the modifications proposed by this AD are listed below.

Service Bulletin	Work hours	Parts cost	Cost per airplane
120–76–0015:			
Part I	4	$4,376	$4,616
Part II	2	14,331	14,451
120–76–0018	50	20,000—(varies with config.)	23,000
120–76–022:			
Part I	2	14,150	14,270
Part II	2	2,429	2,549
Part III	2	14,229	14,349

Therefore, based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to range from $2,549 to $23,000 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44

FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8355 (57 FR 40838, September 8, 1992), and by adding a new airworthiness directive (AD), to read as follows:

EMPRESA BRASILEIRA DE AERONAUTICA S.A. (EMBRAER): Docket 2000–NM–66–AD. Supersedes AD 92–16–51, Amendment 39–8355.

Applicability: Model EMB–120 series airplanes, certificated in any category; serial numbers 120004 through 120354 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an inoperative backup flight idle stop system, accomplish the following:

Restatement of Certain Requirements of AD 92–16–51:

(a) For all airplanes: Within 5 days after September 23, 1992 (the effective date of AD 92–16–51, amendment 39–8355), and thereafter prior to the first flight of each day until the requirements of paragraph (d) of this AD have been accomplished, accomplish paragraph (a)(1) or (a)(2) of this AD, as applicable:

(1) For airplanes on which an inspection window has been installed on the left lateral console panel that permits visibility of the flight idle stop solenoid circuit breakers: Using an appropriate light source, perform a visual check to verify that both "FLT IDLE STOP SOL" circuit breakers CB0582 and CB0583 for engine 1 and engine 2 are closed.

Note 2: This check may be performed by a flight crew member.

Note 3: Instructions for installation of an inspection window can be found in EMBRAER Information Bulletin 120–076–0003, dated November 19, 1991; or EMBRAER Service Bulletin 120–076–0014, dated July 29, 1992.

(2) For airplanes on which an inspection window has not been installed on the left lateral console panel: Perform a visual inspection to verify that both "FLT IDLE STOP SOL" circuit breakers CB0582 and CB0583 for engine 1 and engine 2 are closed.

(b) As a result of the check or inspection performed in accordance with paragraph (a) of this AD: If circuit breakers CB0582 and CB0583 are not closed, prior to further flight, reset them and perform the functional test specified in paragraph (c) of this AD.

(c) Within 5 days after September 23, 1992, and thereafter at intervals not to exceed 75 hours time-in-service, or immediately following any maintenance action where the power levers are moved with the airplane on jacks, until the requirements of paragraph (d) of this AD have been accomplished, conduct a functional test of the backup flight idle stop system for engine 1 and engine 2 by performing the following steps:

(1) Move both power levers to the "MAX" position.

(2) Turn the aircraft power select switch on.

(3) Open both "AIR/GROUND SYSTEM" circuit breakers CB0283 and CB0286 to simulate in-flight conditions with weight-off-wheels. Wait for at least 15 seconds, then move both power levers back toward the propeller reverse position with the flight idle gate triggers raised. Verify that the power lever for each engine cannot be moved below the flight idle position, even though the flight idle gate trigger on each power lever is raised.

(4) If the power lever can be moved below the flight idle position, prior to further flight, restore the backup flight idle stop system to the configuration specified in EMBRAER Service Bulletin 120–076–0009, Change No. 4, dated November 1, 1990, and perform a functional test.

Note 4: If the power lever can be moved below flight idle, this indicates that the backup flight idle stop system is inoperative.

(5) Move both power levers to the "MAX" position.

(6) Close both "AIR/GROUND SYSTEM" circuit breakers CB0283 and CB0286. Wait for at least 15 seconds, then move both power levers back toward the propeller reverse position with the flight idle gate triggers raised. Verify that the power lever for each engine can be moved below the flight idle position.

(7) If either or both power levers cannot be moved below the flight idle position, prior to further flight, inspect the backup flight idle stop system and the flight idle gate system, and accomplish either paragraph (c)(7)(i) or (c)(7)(ii) of this AD, as applicable:

(i) If the backup flight idle stop system is failing to disengage with weight-on-wheels, prior to further flight, restore the system to the configuration specified in EMBRAER Service Bulletin 120–076–0009, Change No. 4, dated November 1, 1990.

(ii) If the flight idle gate system is failing to open even though the trigger is raised, prior to further flight, repair in accordance with the EMBRAER Model EMB–120 maintenance manual.

(8) Turn the power select switch off. The functional test is completed.

New Requirements of This AD:

(d) Within 18 months after the effective date of this AD, modify the secondary flight idle stop system (SFISS), as specified by paragraph (d)(1), (d)(2), or (d)(3), as applicable, of this AD. Accomplishment of the modification constitutes terminating action for the requirements of this AD.

(1) For airplane serial number 120068: Modify the SFISS in accordance with Parts I and II of EMBRAER Service Bulletin 120–76–0015, Change No. 05, dated September 9, 1999.

(2) For airplanes having serial numbers 120004 through 120067 inclusive and 120069 through 120344 inclusive, on which the actions specified by the original issue of EMBRAER Service Bulletin 120–76–0018, dated September 17, 1998, have not been accomplished: Modify the SFISS in accordance with EMBRAER Service Bulletin 120–76–0018, Change No. 01, dated September 9, 1999.

(3) For airplanes having serial numbers 120345 through 120354 inclusive; and for airplanes having serial numbers 120004 through 120345 inclusive, on which the actions specified by the original issue of EMBRAER Service Bulletin 120–76–0018, dated September 17, 1998, have been incorporated: Modify the SFISS in accordance with Part I, II, or III, as applicable, of EMBRAER Service Bulletin 120–76–0022, dated September 9, 1999.

Note 5: Accomplishment of the requirements of paragraph (d) of this AD does not remove or otherwise alter the requirement to perform the repetitive (400-flight-hour) CAT 8 task checks specified by the Maintenance Review Board (MRB).

Alternative Methods of Compliance

(e)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance, approved previously for paragraphs (a), (b), and (c) of AD 92–16–51, are considered to be approved as alternative methods of compliance with the inspection requirements of paragraphs (a), (b), and (c) of this AD. No alternative methods of compliance have been approved in accordance with AD 92–16–51 as terminating action for this AD.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 7: The subject of this AD is addressed in Brazilian airworthiness directive 90–07–04R4, dated October 4, 1999.

Issued in Renton, Washington, on April 5, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8993 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–64–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A330 and A340 series airplanes. This proposal would require repetitive inspections to check the play of the eye-end of the piston rod of the elevator servo-controls, and follow-on corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct excessive play of the eye-end of the piston rod of the elevator servo-control, which could result in failure of the elevator servo-control.

DATES: Comments must be received by May 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–64–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–64–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–64–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340 series airplanes. The DGAC advises that it has received a report of a broken piston rod of an elevator servo-control. The failure has been attributed to the degradation of the Teflon liner from the eye-end spherical bearing of the piston rod. This condition, if not corrected, could result in failure of the elevator servo-control.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A330–27–3062 (for Model A330 series airplanes) and A340–27–4072 (for Model A340 series airplanes), both Revision 01, dated July 21, 1999. These service bulletins describe procedures for repetitive inspections to check the play of the piston rod eye-end of the elevator servo-controls. Corrective actions for small amounts of play involve replacing the rod eye-end with a new SARMA or NMB rod eye-end. Corrective actions for greater amounts of play involve performing a dye penetrant inspection of the servo-control to detect cracking, and replacing the rod eye-end of a crack-free servo-control with a new SARMA or NMB rod eye-end or replacing a cracked servo-control with a new servo-control.

The DGAC classified these service bulletins as mandatory and issued French airworthiness directives 2000–025–109(B) R1 (for Model A330 series airplanes) and 2000–024–135(B) R1 (for Model A340 series airplanes), both dated March 8, 2000, in order to ensure the continued airworthiness of these airplanes in France.

The Airbus service bulletins refer to SAMM Service Bulletin SC4800–27–34–06, dated January 2, 1999, as an additional source of service information for accomplishment of the dye penetrant inspection.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has

kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Differences Between Proposed AD and Relevant Service Information

The service bulletins identify various compliance times for replacement of the rod eye-end, depending on the amount of play detected; the French airworthiness directives support those criteria. However, this proposed AD would require that all corrective actions be accomplished prior to further flight, regardless of the findings. The FAA has determined that, because of the safety implications and consequences associated with such a discrepancy, any subject rod eye-end that is found to have an amount of play exceeding specified limits must be replaced or further inspected prior to further flight.

In addition, the service bulletins recommend that the repetitive inspections specified therein be accomplished at the operators' respective C-checks. However, this proposed AD would require that the repetitive inspections be performed at 15-month intervals, in consonance with the DGAC's recommendations. Maintenance schedules including C-checks may vary from operator to operator; therefore, the FAA finds it necessary to specify a time limit for accomplishment of the inspections. The proposed repetitive interval corresponds to a normal C-check for the majority of affected operators.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this proposed AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 2 work hours to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed AD would be $120 per airplane, per inspection cycle.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 2000–NM–64–AD.

Applicability: Model A330 and A340 series airplanes, certificated in any category, equipped with any "SAMM" elevator servo-control having any part number SC4800–2 through SC4800–8 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct excessive play of the eye-end of the piston rod of the elevator servo-controls, which could result in failure of the elevator servo-control, accomplish the following:

(a) Within 30 months since date of manufacture of the airplane, or within 500 flight hours after the effective date of this AD, whichever occurs later, perform an inspection to check the play of the piston rod eye-ends of the elevator servo-controls, in accordance with Airbus Service Bulletin A330–27–3062 (for Model A330 series airplanes) or A340–27–4072 (for Model A340 series airplanes), both Revision 01, both dated July 21, 1999. Thereafter, repeat the inspection at intervals not to exceed 15 months.

(1) If any play that is 0.0059 inch (0.15 mm) or greater and less than 0.0118 inch (0.30 mm) is detected: Prior to further flight, replace the rod eye-end with a new SARMA or NMB rod eye-end, in accordance with the applicable service bulletin.

(2) If any play that is 0.0118 inch (0.30 mm) or greater is detected: Prior to further flight, perform a dye penetrant inspection to detect cracking of the servo-control, in accordance with the applicable service bulletin.

(i) If no crack is detected: Prior to further flight, replace the rod eye-end with a new SARMA or NMB rod eye-end, in accordance with the applicable service bulletin.

(ii) If any crack is detected: Prior to further flight, replace the servo-control with a new servo-control, in accordance with the applicable service bulletin.

Note 2: Accomplishment of an inspection in accordance with Airbus Service Bulletin A330–27–3062 (for Model A330 series airplanes) or A340–27–4072 (for Model A340 series airplanes), both dated February 5, 1999; is considered acceptable for compliance with the initial inspection requirements of paragraph (a) of this AD.

Note 3: The Airbus service bulletins reference SAMM Service Bulletin SC4800–27–34–06, dated January 2, 1999, as an additional source of service information for accomplishment of the dye penetrant inspection specified by paragraph (a)(2) of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in French airworthiness directives 2000–025–109(B) R1 (for Model A330 series airplanes) and 2000–024–135(B) R1 (for Model A340 series airplanes), both dated March 8, 2000.

Issued in Renton, Washington, on April 5, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8994 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–228–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, –30, and –40 Series Airplanes, and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD) applicable to certain McDonnell Douglas Model DC–10 series airplanes, and KC–10A (military) airplanes, that would have required repetitive inspections to detect failure of the attachment fasteners located in the banjo No. 4 fitting of the vertical stabilizer. That proposed AD also would have required a one-time inspection to detect cracking of the flanges and bolt holes of the banjo No. 4 fitting, and repair or replacement of the attachment fasteners with new, improved fasteners. In addition, the proposed AD would have required a one-time inspection to determine whether certain fasteners are installed in the banjo No. 4 fitting of the vertical stabilizer, and follow-on actions, if necessary. That proposal was prompted by reports of failure of certain fasteners installed in the banjo No. 4 fitting of the vertical stabilizer. This new action revises, among other actions, the proposed rule by amending certain corrective actions. The actions specified by this new proposed AD are intended to prevent cracking of the attachment fasteners of the vertical stabilizer, which could result in loss of fail-safe capability of the vertical stabilizer and reduced controllability of the airplane.

DATES: Comments must be received by May 8, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–228–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5224; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–228–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–228–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on November 23, 1998 (63 FR 64664). That NPRM would have required repetitive inspections to detect failure of the attachment fasteners located in the banjo No. 4 fitting of the vertical stabilizer. That NPRM also would have required a one-time inspection to detect cracking of the flanges and bolt holes of the banjo No. 4 fitting, and repair or replacement of the attachment fasteners with new, improved fasteners. In addition, that NPRM would have required a one-time inspection to determine whether certain fasteners are installed in the banjo No. 4 fitting of the vertical stabilizer, and follow-on actions, if necessary. That NPRM was prompted by reports of failure of certain fasteners installed in the banjo No. 4 fitting of the vertical stabilizer. That condition, if not corrected, could result in cracking of the

attachment fasteners of the vertical stabilizer, which could result in loss of fail-safe capability of the vertical stabilizer and reduced controllability of the airplane.

Comments Received That Result in a Change to the Proposal

Due consideration has been given to the following comments received in response to the NPRM.

Request to Limit Applicability of Paragraph (c) of the AD

One commenter requests that the visual inspection of the second oversize fasteners, part number (P/N) S4931917–8Y, as required by paragraph (c) of the proposed AD, apply only to airplanes that have not accomplished the requirements of AD 96–07–01, amendment 39–9549 (61 FR 12015, March 25, 1996) in accordance with McDonnell Douglas Service Bulletin DC10–55–023, Revision 03, dated March 25, 1998 [which also was referenced in the proposed AD as an appropriate source of service information for accomplishment of the actions specified in paragraph (b)].

The FAA concurs with the commenter's request. The FAA finds that second oversize fasteners, P/N S4931917–8Y, would not have been installed if the requirements of paragraph (b) of the AD had been accomplished in accordance with McDonnell Douglas Service Bulletin DC10–55–023, Revision 03, dated March 25, 1998, or if the requirements of AD 96–07–01 had been accomplished in accordance with Revision 03 of that service bulletin. Therefore, paragraph (c) of the final rule is revised accordingly.

Request for Clarification of Requirements

One commenter states that the proposed AD is not clear on what the terminating action requirements are if the second oversize fasteners, P/N S4931917–8Y, are found installed on previously modified airplanes. The commenter states that paragraphs (c)(3)(i) and (c)(3)(ii) of the proposed AD indicate that terminating action should be accomplished in accordance with paragraph (b) of the proposed AD. In the transmittal sheet of Revision 03 of McDonnell Douglas Service Bulletin DC10–55–023, it states that S4931917–8Y fasteners are to be repetitively inspected and finally replaced with HLT717B–8 fasteners if found on previously modified airplanes. It is understood that if the fasteners are found and there is no failure, they can be simply replaced. However, this statement does not indicate what must be done if failed fasteners are found during these repetitive inspections. The commenter contends that the current wording of the proposed rule implies that in the situation of a failed fastener found during a repetitive inspection, all twelve bolts must be removed and eddy current inspections must be accomplished before the new fasteners, P/N HLT717B–8, are installed. The commenter disagrees with this action due to the possibility of sustaining damage to the previously cold worked holes with correct fasteners installed, which would require additional oversize or repair. The commenter asserts that only the affected holes with failed fasteners should be eddy current bolt hole inspected, not all holes.

The FAA concurs that clarification is necessary. Paragraph (c)(3) of the AD provides corrective actions if second oversize fasteners P/N S4931917–8Y are installed. The FAA has determined that removal of fasteners and inspection of fastener holes is not necessary for holes that do not have second oversize fasteners P/N S4931917–8Y installed. The FAA's intent in paragraph (c)(3)(i) of the AD was to require repetitive external inspections thereafter at intervals not to exceed 1,500 landings until the requirements of paragraph (b) of this AD are accomplished, and eventually require accomplishment of the requirements of paragraph (b) of the AD again. The FAA's intent in paragraph (c)(3)(ii) of the AD was to require accomplishment of the requirements of paragraph (b) of this AD for the failed fastener and its associated fastener hole only. Therefore, the FAA has revised paragraphs (c)(3)(i) and (c)(3)(ii) of the AD to reflect this clarification.

Another commenter requests that the wording of paragraph (c)(3)(i) of the proposed AD be clarified as to when the second oversize fasteners, P/N S4931917–8Y, must be replaced. The commenter contends that it is possible to interpret the proposed AD in a way that would require replacement of all the fasteners by April 24, 2001, which is the date for compliance to paragraph (b) of the proposed AD. However, the 1,500 landing compliance time required by paragraph (c) of the proposed AD for the initial inspection could occur after April 24, 2001, for operators that have accomplished the modification in accordance with McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996.

The FAA agrees that clarification is necessary. As discussed previously, the requirements of paragraph (c)(3)(i) of the AD are intended to provide an acceptable level of safety through the use of repetitive external visual inspections until the requirements of paragraph (b) of the proposed AD are accomplished. The FAA acknowledges that maintenance scheduling conflicts may arise because of the compliance times associated with the new actions required by the proposed AD and the actions retained from the superseded AD. Therefore, paragraph (c)(3)(i) has been revised to allow a minimum of 1,500 landings, from the initial inspection, to accomplish the replacement of second oversize fasteners, P/N S4931917–8Y.

Explanation of Change to Proposal

The FAA has added a note to the final rule to clarify the definition of a detailed visual inspection.

Conclusion

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 420 airplanes of the affected design in the worldwide fleet. The FAA estimates that 242 airplanes of U.S. registry will be affected by this AD.

Since the issuance of AD 96–07–01, the manufacturer has revised its estimate of the work hours necessary to perform the actions that are currently required by that AD. McDonnell Douglas Service Bulletin DC10–55–023, Revision 03, reflects the manufacturer's revised estimates; and the cost information, below, also has been revised to refer to the new estimates.

The visual inspection that is currently required by AD 96–07–01, and retained in this AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the visual inspection currently required by that AD on U.S. operators is estimated to be $14,520, or $60 per airplane, per inspection cycle.

The eddy current inspection that is currently required by AD 96–07–01, and retained in this AD, takes approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the eddy current inspection currently required by that AD on U.S. operators is estimated to be $58,080, or $240 per airplane.

The replacement of the 12 attachment fasteners of the banjo No. 4 fitting that is currently required by AD 96–07–01,

and retained in this AD, takes approximately 14 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $250 per airplane. Based on these figures, the cost impact of the replacement currently required by that AD on U.S. operators is estimated to be $263,780, or $1,090 per airplane.

The new inspection that is proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $14,520, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator that has already completed the replacement of the attachment fasteners of the banjo No. 4 fitting in accordance with AD 96–07–01 be required to repeat the replacement, it would take approximately 14 additional work hours, at an average labor rate of $60 per work hour. Additional parts would cost $150 per airplane. Based on these figures, the cost impact of any necessary repetition of the replacement is estimated to be $990 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9549 (61 FR 12015, March 25, 1996), and by adding a new airworthiness directive (AD) to read as follows:

McDonnell Douglas: Docket 98–NM–228–AD. Supersedes AD–96–07–01, Amendment 39–9549.

Applicability: Model DC–10–10, –15, –30, and –40 series airplanes, and KC–10A (military) airplanes; as listed in McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the attachment fasteners of the vertical stabilizer, which could result in loss of fail-safe capability of the vertical stabilizer and reduced controllability of the airplane, accomplish the following:

(a) Except as required by paragraph (c)(3) of this AD, within 1,500 landings after April 24, 1996 (the effective date of AD 96–07–01, amendment 39–9549): Perform an external visual inspection, using a minimum 5X power magnifying glass, to detect any failure of the 12 attachment fasteners located in the banjo No. 4 fitting of the vertical stabilizer (as specified in McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; or McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996, or Revision 03, dated March 25, 1998). Perform this inspection in accordance with procedures specified in McDonnell Douglas Nondestructive Testing Manual, Chapter 20–10–00, or McDonnell Douglas Nondestructive Testing Standard Practice Manual, Part 09.

(1) If no failure is detected, repeat the external visual inspection thereafter at intervals not to exceed 1,500 landings until the requirements of paragraph (b) of this AD are accomplished.

(2) If any failure is detected, prior to further flight, accomplish the requirements of paragraph (b) of this AD.

(b) Except as required by paragraphs (a)(2) and (c)(3)(ii) of this AD, within 5 years after April 24, 1996: Perform an eddy current surface inspection to detect cracking of the forward and aft flanges; and an eddy current bolt hole inspection of the bolt holes of the banjo No. 4 fitting; in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; or McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996, or Revision 03, dated March 25, 1998.

Note 2: Paragraph (b) of this AD does not require that eddy current bolt hole inspections be accomplished for the bolt holes of the banjo No. 4 fitting if the attachment fasteners were replaced prior to April 24, 1996, in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, dated December 17, 1992.

(1) If no cracking is detected, prior to further flight, replace the 12 attachment fasteners located on the banjo No. 4 fitting with new, improved attachment fasteners, in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, dated December 17, 1992, or Revision 1, dated December 17, 1993; or McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996, or Revision 03, dated March 25, 1998. After the effective date of this AD, only Revision 03 of the service bulletin shall be used.

(i) Accomplishment of the replacement in accordance with the original issue of the service bulletin constitutes terminating action for the requirements of paragraph (a) of this AD, provided that the eddy current surface inspection of the forward and aft flanges is accomplished in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; or McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996, or Revision 03, dated March 25, 1998.

(ii) Accomplishment of the replacement in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; or McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996, or Revision 03, dated March 25, 1998; constitutes terminating action for the requirements of paragraph (a) of this AD, provided that the eddy current surface inspection of the forward and aft flanges, and the eddy current bolt hole inspection of the bolt holes of the banjo No. 4 fitting, are accomplished in accordance with Revision 1, Revision 02, or Revision 03 of the service bulletin.

(2) If any cracking is detected, prior to further flight, repair either in accordance with Figure 6 or Figure 7, as applicable, of

Chapter 55–20–00, Volume 1, of the DC–10 Structural Repair Manual; or in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(c) For airplanes that have not accomplished the requirements of paragraph (b) in accordance with McDonnell Douglas Service Bulletin DC–55–023, Revision 3, dated March 25, 1998: Within 1,500 landings after the effective date of this AD, perform a one-time detailed visual inspection to determine whether second oversize fasteners having part number (P/N) S4931917–8Y are installed in the banjo No. 4 fitting of the vertical stabilizer.

Note 3: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If second oversize fasteners having P/N S4931917–8Y are *not* installed, and the actions required by paragraph (b) of this AD have been accomplished, no further action is required by this AD.

(2) If second oversize fasteners having P/N S4931917– 8Y are *not* installed, and the actions required by paragraph (b) of this AD have *not* been accomplished: Within 1,500 landings after the last inspection performed in accordance with paragraph (a) of this AD, repeat that inspection, and perform the follow-on actions specified by paragraph (a) of this AD.

(3) If second oversize fasteners having P/N S4931917– 8Y *are* installed, prior to further flight, perform an external visual inspection to detect any failure of the 12 attachment fasteners located in the banjo No. 4 fitting of the vertical stabilizer in accordance with paragraph (a) of this AD.

(i) If no failure is detected, accomplish the actions specified in paragraph (c)(3)(i)(A) and (c)(3)(i)(B) of this AD.

(A) For any hole that has a P/N S4931917–8Y fastener installed: Repeat the external visual inspection thereafter at intervals not to exceed 1,500 landings until the requirements of paragraph (b) of this AD are accomplished.

(B) For any hole that has a P/N S4931917–8Y fastener installed: Within 5 years after April 24, 1996, or within 1,500 landings from the inspection required by paragraph (c)(3) of this AD, whichever occurs later, accomplish the requirements of paragraph (b) of this AD.

(ii) If any failure is detected, prior to further flight, accomplish the requirements of paragraph (b) of this AD for the failed fastener and its associated fastener hole only.

(d) As of the effective date of this AD, no person shall install a second oversize fastener having part number (P/N) S4931917–8Y in the banjo No. 4 fitting of the vertical stabilizer on any airplane.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 5, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8995 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN107–1b; FRL–6573–9]

Approval and Promulgation of Implementation Plan; Indiana Particulate Matter Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve Indiana's State Plan revision to control particulate matter emissions from selected facilities at Central Soya Company, Incorporated in Marion County Indiana, submitted on February 3, 1999. The revision to the State Plan eliminates nine sources of particulate matter and adds 5 new sources. The emissions from the new sources do not exceed 25 tons per year and represents a net overall reduction in annual emissions.

DATES: Written comments must be received on May 11, 2000.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Paskevicz, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6084.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: March 28, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–8829 Filed 4–10–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–063–01–7200b; A–1–FRL–6574–6]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Revised VOC Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve two State Implementation Plan (SIP) revisions submitted by the Commonwealth of Massachusetts. These SIP submittals include revisions to regulations for controlling volatile organic compound (VOC) emissions, including emissions from marine vessel loading and consumer products. In the Final Rules section of this **Federal Register**, EPA is approving Massachusetts' SIP submittals as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before May 11, 2000.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air

Quality Planning Unit (mail code CAQ), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 918–1047.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: March 29, 2000.

Mindy S. Lubber,

Regional Administrator, EPA New England.

[FR Doc. 00–8831 Filed 4–10–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 032900C]

RIN 0648–AN25

Fisheries of the Exclusive Economic Zone Off Alaska; Allocation of Pacific Cod among Vessels Using Hook-and-line or Pot Gear in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 64 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This amendment would apportion the hook-and-line or pot gear (fixed gear) allocation of total allowable catch (TAC) of Pacific cod in the Bering Sea and Aleutian Islands management area (BSAI) among hook-and-line catcher-processor vessels, hook-and-line catcher vessels, and pot gear vessels. This action responds to socio-economic needs of the fishing industry that have been identified by the Council and intends to promote the goals and objectives of the FMP.

NMFS is requesting comments from the public on the proposed amendment, copies of which may be obtained from the Council (see **ADDRESSES**).

DATES: Comments on Amendment 64 must be submitted by June 12, 2000.

ADDRESSES: Comments must be sent to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel. Hand- or courier-delivered comments may be sent to the Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801. Comments may also be sent via facsimile (fax) to 907–586–7465. Comments will not be accepted if submitted via e-mail or the Internet. Copies of Amendment 64 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for the amendments are available from the North Pacific Fishery Management Council at 605 West 4th Ave. Suite 306, Anchorage, AK 99501, telephone 907–271–2809.

FOR FURTHER INFORMATION CONTACT: James Hale, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, after receiving a fishery management plan or amendment, immediately publish a notice in the **Federal Register** that the fishery management plan or amendment is available for public review and comment. This action constitutes such notice for Amendment 64 to the BSAI FMP. NMFS will consider the public comments received during the comment period in determining whether to approve this amendment.

The groundfish fisheries in the Exclusive Economic Zone (3 to 200 miles offshore) of the BSAI are managed by NMFS under the BSAI groundfish FMP, which was prepared by the Council under the Magnuson-Stevens Act, Pub. L. 94–265, 16 U.S.C. 1801, and approved and implemented by NMFS in 1981.

Amendment 64, if approved, would establish separate Pacific cod directed fishing allowances for different sectors of vessels using hook-and-line or pot gear. These allowances are intended to reflect relative Pacific cod harvest shares since the mid 1990s. Under the proposed amendment, the Regional Administrator, NMFS, Alaska Region, annually would estimate the amount of Pacific cod taken as incidental catch in directed fisheries for groundfish other than Pacific cod by vessels using hook-and-line or pot gear and deduct that amount from the portion of Pacific cod TAC annually allocated to hook-and-line or pot gear (51 percent of the TAC). The remainder would be further allocated as directed fishing allowances for the different hook-and-line and pot gear users (sectors) as follows:

(a) Catcher/processor vessels using hook-and-line gear–80 percent;

(b) Catcher vessels using hook-and-line gear–0.3 percent;

(c) Vessels using pot gear–18.3 percent; and

(d) Catcher vessels less than 60 ft (18.3 meters) length overall (LOA) that use either hook-and-line or pot gear–1.4 percent.

Specific provisions for the accounting of these directed fishing allowances and the transfer of unharvested amounts of these allowances to other vessels using hook-and-line or pot gear would be set forth in regulations implementing the proposed amendment.

Amendment 64 would expire December 31, 2003. Continuing the proposed allocations of Pacific cod or selecting new allocation percentages after this date would require Council adoption and NMFS' approval of a new FMP amendment. In adopting an expiration date for the proposed amendment, the Council reasoned that 3 years would be sufficient time for the hook-and-line or pot gear sector allocations of Pacific cod to address the issue of increasing competition for BSAI Pacific cod before reconsidering the issue in light of other proposed changes impending for the BSAI Pacific cod groundfish fisheries, including proposed gear or species endorsements on permits issued under the license limitation program.

Public comments are being solicited on this proposed amendment through the end of the comment period specified in this notice. A proposed rule that would implement the amendment may be published in the **Federal Register** for public comment following NMFS' evaluation under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by close of business on the last day of the comment period of the amendment to be considered in the decision to approve or disapprove the amendment. All comments received by the end of the comment period, whether specifically directed to the amendment or to the

proposed rule, will be considered in the decision.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 4, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–8872 Filed 4–10–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 70
Tuesday, April 11, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection, Comment Request—Food Stamp Program: State Issuance and Participation Estimates—Form FNS–388

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) is publishing for public comment a summary of a proposed information collection. The proposed collection is to reinstate a previously approved collection under OMB No. 0584–0081 for the Food Stamp Program for the form FNS–388, State Issuance and Participation Estimates.

DATES: Comments on this notice must be received by June 12, 2000 to be assured of consideration.

ADDRESSES: Send comments and requests for copies of this information collection to Barbara Hallman, Chief, State Administration Branch, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302. Copies of the estimate of the information collection can be obtained by contacting Ms. Hallman.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, telephone number (703) 305–2383.

SUPPLEMENTARY INFORMATION:

Title: Form FNS–388, State Issuance and Participation Estimates.

OMB Number: 0584–0081.

Expiration Date: Expired.

Type of Request: Reinstatement of a previously approved collection.

Abstract: Section 18(b) of the Food Stamp Act limits the value of allotments paid to food stamp households to an amount not in excess of the appropriation for the fiscal year. If allotments in any fiscal year would exceed the appropriation, the Secretary of Agriculture is required to direct State agencies to reduce the value of food stamp allotments to the extent necessary to stay within appropriated funding limits.

Section 18(a) of the Food Stamp Act requires the Secretary of Agriculture to submit a monthly report to Congress setting forth the Secretary's best estimate of the second preceding month's expenditures for the Food Stamp Program as well as the cumulative total for the fiscal year. In each monthly report the Secretary is required to also state whether supplemental appropriations will be needed to support the operation of the program through the end of the fiscal year. The timeliness and accuracy of the data available to the Secretary prior to submitting this report will have a direct effect upon any request for supplemental appropriations that may be submitted and the manner in which allotments will be reduced if the supplemental appropriation is not provided. While benefit reductions have never been ordered in the past under Section 18(b) nor are they anticipated based on current data, the Department must continue to monitor actual program costs against the appropriation.

Section 11(e)(12) of the Food Stamp Act requires that the State Plan of Operations shall provide for the submission of reports required by the Secretary of Agriculture. State agencies are required to report on a monthly basis on the FNS–388, State Issuance and Participation Estimates, estimated or actual issuance and participation data for the current month and previous month, and actual participation data for the second preceding month. The FNS–388 report provides the necessary data for an early warning system to enable the Department to fulfill its reporting requirements to Congress.

State agencies in general only submit one Statewide FNS–388 per month. The exception is that State agencies which choose to operate both a coupon system and an electronic benefit transfer (EBT) system or which choose to operate an approved alternative issuance demonstration project such as a cash-out system submit a separate report for each type of issuance system. State agencies are converting from coupons to EBT. In July 1999, 39 States and the District of Columbia operated an EBT system and 31 operated EBT statewide. With additional States moving from paper coupons to EBT in the next few months, few States will be expected to temporarily submit more than one FNS–388 report per month at any one time. With State agency automated information systems, the separate report for a secondary issuance system or an alternative issuance demonstration project should have a negligible impact on the burden.

In addition, State agencies are required to submit a project area breakdown on the FNS–388 of issuance and participation data twice a year. This data is useful in identifying project areas that are required to do photo identification of heads of households or to operate fraud detection units in accordance with the Act.

Beginning July 1993, State agencies were allowed to submit the FNS–388 data electronically to the national database files stored in FNS' Food Stamp Program Integrated Information System in lieu of a paper report. The voluntary changeover from paper to electronic reporting of FNS–388 data by States was done as part of FNS' State Cooperative Data Exchange Project. This project is being expanded over time as more FNS forms are transferred to

electronic formats for State data entry. As of July 1999, 45 State agencies submit the FNS–388 data electronically and 8 State agencies submit paper reports.

Respondents: State agencies that administer the Food Stamp Program.

Estimated Number of Respondents: 53.

Estimated Number of Responses per Respondent:

Form FNS–388: 53 State agencies 12 times a year.

Form FNS–388A: 53 State agencies twice a year.

Estimate of Burden:

Form FNS–388: The State agencies submit Form FNS–388 10 times per year at an estimate of 5.60 hours per respondent, or 2,970 hours annually for all respondents. The remaining two FNS–388 submissions with a public assistance (PA) and non-public assistance (NA) caseload breakout are covered under the FNS–388A twice a year submissions (see below).

Form FNS–388A: The State agencies submit a more detailed FNS–388 (with PA and NA breakout) twice a year and FNS–388A project area breakdown twice a year at an estimate of 14.8 hours per respondent, or 1,572 hours annually for all respondents.

Estimated Total Annual Burden on Respondents: The annual reporting and recordkeeping burden for OMB No. 0584–0081 is estimated to be 4,542 hours.

Dated: March 22, 2000.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 00–8937 Filed 4–10–00; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Forest Service

Willamette Provincial Advisory Committee (PAC); Meeting

AGENCY: Forest Service.

SUMMARY: The Willamette Province Advisory Committee (PAC) will meet on Thursday, April 20, 2000. The meeting is scheduled to begin at 9 a.m., and will conclude at approximately 2 p.m. The meeting will be held at the Salem Office of the Bureau of Land Management; 1717 Fabry Road, SE., Salem, Oregon; (503) 375–5646. The tentative agenda includes:

(1) REO update, (2) Information sharing, (3) Public forum; (4) Update on FS Roadless Area Initiative and Roads Strategy, (5) Panel discussion, Fish management in the Willamette Basin.

The Public Forum is tentatively scheduled to begin at 10:30 a.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the April 20 meeting by sending them to Designated Federal Official Neal Forrester at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Neal Forrester; Willamette National Forest; 211 East Seventh Avenue; Eugene, Oregon 97401; (541) 465–6924.

Dated: April 4, 2000.

Y. Robert Iwamoto,

Deputy Forest Supervisor.

[FR Doc. 00–8886 Filed 4–10–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes in the National Handbook of Conservation Practices

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: Notice is hereby given of the intention of the Natural Resources Conservation Service (NRCS) to issue a series of new or revised conservation practice standards in its National Handbook of Conservation Practices. These standards include Heavy Use Area Protection; Irrigation System, Tailwater Recovery; Pest Management; Pipeline; and Watering Facility. These standards are used to convey national guidance when developing Field Office Technical Guide Standards used in the States. NRCS State conservationists who choose to adopt these practices for use within their States will incorporate them into Section IV of their Field Office Technical Guide. These practices may be used in conservation systems that treat highly erodible land or on land determined to be wetland.

DATES: Comments will be received for a 60-day period commencing with the date of publication. This series of new or revised conservation practice standards will be adopted after the close of the 60-day period.

FOR FURTHER INFORMATION CONTACT: Single copies of these standards are available from NRCS–CED in Washington, DC. Submit individual inquiries and return any comments in writing to William Hughey, National Agricultural Engineer, Natural Resources Conservation Service, Post Office Box 2890, Room 6139–S, Washington, DC 20013–2890. Telephone Number 202–720–5023. The standards are also available and can be downloaded from the Internet at: http://www.ftw.nrcs.usda.gov/practice__stds.html.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available for public review and comment proposed revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law. For the next 60 days, NRCS will receive comments relative to the proposed changes. Following that period, a determination will be made by NRCS regarding disposition of those comments, and a final determination of change will be made.

Signed at Washington, D.C., on March 31, 2000.

Pearlie S. Reed,

Chief, Natural Resources Conservation Service.

[FR Doc. 00–8974 Filed 4–10–00; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures.

Form Numbers: N/A.

Agency Approval Number: 0651–0024.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Burden: 5,283 hours annually.

Number of Respondents: 5,601 responses annually.

Avg. Hours Per Response: Based on PTO time and motion studies, the agency estimates that it will take the

public 80 minutes to create a nucleotide/amino acid sequence listing in an application. In the electronic version of the sequence listing, EFS BIO, it is estimated that it will take 10 minutes to create and submit a sequence listing in an application.

Needs and Uses: Nucleotide and amino acid sequence disclosure information is used by the PTO during the examination process to determine the patentability of an application by effectively examining the sequences in order to process the data more efficiently. The PTO also uses the data after examination to support publication of issued patents. In addition, the sequences are used by the PTO during participation with the European and Japanese Patent Offices in a Trilateral Sequence Exchange project, thereby facilitating the international exchange of published sequence data. After patent publication, the public and the bar associations can search the nucleotide/amino acid sequence listings. Applicants use the sequence data when preparing both national and international patent applications.

Affected Public: Individuals or households, business or other for-profit institutions, not-for-profit institutions, farms, the Federal government, and state, local, or tribal governments.

Frequency: As applied for when patent applicants submit a patent application (both national and international applications) containing nucleotide and/or amino acid sequence disclosure data within their patent applications.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, Office of the Chief Information Officer, (202) 482–3272, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 or via e-mail at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: April 4, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–8882 Filed 4–10–00; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Processing Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Processing Equipment Technical Advisory Committee will meet on May 11, 2000, 9:00 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

Agenda

Open Session

1. Opening remarks by the Chairman
2. Presentation of papers or comments by the public
3. Update of Wassenaar Arrangement negotiations
4. Status of Computerized Numerical Controller (CNC) software
5. Status of definition for "specially designed"
6. Recommendations from the Committee

Closed Session

7. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available for the open session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements of the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials, the Committee suggests that presenters forward the materials prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BXA MS:3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 11, 1999, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC 20230. For more information, contact Lee Ann Carpenter on (202) 482–2583.

Dated: April 6, 2000.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 00–8945 Filed 4–10–00; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Critical Infrastructure Assurance Office; Announcement of a Workshop on Public Key Infrastructure for Advanced Network Technologies

AGENCY: Bureau of Export Administration, Critical Infrastructure Assurance Office.

ACTION: Notice of Public Meeting/Workshop.

SUMMARY: The Critical Infrastructure Assurance Office (CIAO) invites interested parties to attend a workshop on April 27–28, 2000, on Public Key Infrastructures for Advanced Network Technologies. The workshop is designed to promote the deployment and use of a high confidence public key infrastructure and related security technologies for advanced networks and distributed government applications in E-commerce and related critical systems.

DATES: The workshop will be held on April 27–28, 2000, starting at 8:30 am until 5:00 pm.

ADDRESSES: The workshop will be held at the National Institute of Standards and Technology (NIST), Building 101, Lecture Room A. Gaithersburg, MD, 20899. Attendance is open to all interested persons, but seating is limited. Therefore, registration for attendance will be accepted on a first-come basis. To register please contact Wanda Rose at (202) 589–3241 or by E-mail: *Wanda.Rose@ciao.gov*.

FOR FURTHER TECHNICAL INFORMATION CONTACT: Robert Rosenthal, Critical Infrastructure Assurance Office, 1800 G St., NW, 8th floor, Washington, D.C. 20006; Phone number: (202) 589–3231; E-mail: *Robert.Rosenthal@ciao.gov*.

SUPPLEMENTARY INFORMATION:

● The workshop is designed to promote the deployment and use of a high confidence public key infrastructure and related security technologies for advanced networks and distributed government applications in E-commerce and related critical systems in banking and finance, energy, transportation, and telecommunications sectors.

- The workshop is intended to contribute to the development of collaborative interagency research and development agenda executed under the High Confidence Systems and Software, Large Scale Networking, and Critical Infrastructure Protection Research and Development Programs.
- The workshop is designed to identify opportunities for U.S. government agencies to develop collaborative experiments and test beds that address issues related to scalability, interoperability, testing and robustness in the face of attacks on public key infrastructure systems; and to facilitate discussion between people who understand public key infrastructure technology and those who might propose policies and legal frameworks.
- In addition, the workshop will explore technology transfer opportunities that enable new markets for next generation public key infrastructures for the Internet and will facilitate movement of public key infrastructure towards becoming a high confidence assured Internet service.

Copies of the agenda for the workshop will be available on CIAO's web site: www.CIAO.gov.

William A. Reinsch,

Under Secretary for Export Administration.

[FR Doc. 00–8944 Filed 4–10–00; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Postponement of Final Results of Second Antidumping Duty Administrative Review and Third New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of the time limit for the final results in the second antidumping duty administrative review and third new shipper review of the antidumping duty order on brake rotors from the People's Republic of China.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the second antidumping duty administrative review and third new shipper review of the antidumping duty order on brake rotors from the People's Republic of China. This review covers the period April 1, 1998, through March 31, 1999.

EFFECTIVE DATE: April 11, 2000.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Terre Keaton, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–1280, respectively.

Postponement of Final Results of Review

The Department of Commerce ("the Department") published the preliminary results of the second antidumping administrative review and third new shipper review on brake rotors from the People's Republic of China ("PRC") on December 29, 1999 (64 FR 73007). The current deadline for the final results in these reviews is April 27, 2000. In accordance with section 751(a)(3)(A) of the Tariff Act of 1930 ("the Act"), as amended, we determine that it is not practicable to complete these reviews within the original time frame because of the Department's decision to verify certain respondents in these reviews (*see* March 29, 2000, letter from Deputy Assistant Secretary Richard W. Moreland to Mr. Leslie Glick, counsel for the petitioner in these reviews). We are currently unable to conduct verification and allow sufficient opportunity for the submission of interested party comments, prior to the current final results deadline. Thus, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department is extending the time limit for completion of the final results of these reviews until October 24, 2000, which is 300 days after the date on which the notice of the preliminary results was published in the **Federal Register**.

Dated: April 4, 2000.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 00–8986 Filed 4–10–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–810]

Certain Cut-to-Length Carbon Steel Plate From Mexico: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 11, 2000.

FOR FURTHER INFORMATION CONTACT: Eric Greynolds or Michael Grossman, at (202) 482–6071 or (202) 482–3146, respectively, AD/CVD Enforcement, Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce ("the Department") to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested. However, if it is not practicable to complete the preliminary results of review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days.

Background

On October 1, 1999, the Department published a notice of initiation of administrative review of the countervailing duty order on certain cut-to-length carbon steel plate from Mexico, covering the period January 1, 1998 through December 31, 1998 (64 FR 53318). The preliminary results are currently due no later than May 2, 2000.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore the Department is extending the time limit for completion of the preliminary results until no later than August 30, 2000. See Decision Memorandum from John Brinkmann, Acting Director, AD/CVD Enforcement, Office VI, to Holly Kuga, Acting Deputy Assistant Secretary for Import Administration, Group II, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: April 5, 2000.

Holly Kuga,

Acting Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 00–8985 Filed 4–10–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–817]

Continuation of Antidumping Duty Order: Electroluminescent Flat Panel Displays and Display Glass From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Continuation of Antidumping Duty Order: Electroluminescent Flat Panel Displays and Display Glass from Japan.

SUMMARY: On August 2, 1999, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty order on electroluminescent flat panel displays and display glass ("EL FPD") from Japan is likely to lead to continuation or recurrence of dumping (64 FR 41915). On March 30, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on EL FPD from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (65 FR 16962). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on EL FPD from Japan.

EFFECTIVE DATE: April 11, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Carole A. Showers, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–3217, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 1999, the Department initiated, and the Commission instituted, a sunset review (64 FR 41915 and 64 FR 41951, respectively) of the antidumping duty order on electroluminescent flat panel displays and display glass from Japan pursuant to section 751(c) of the Act. As a result of its review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked (*see Electroluminescent Flat Panel Displays and Display Glass From Japan; Final Results of Antidumping Duty Sunset Review*, 65 FR 11979 (March 7, 2000)).

On March 30, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on electroluminescent flat panel displays and display glass from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Electroluminescent Flat Panel Displays From Japan*, 65 FR 16962 (March 30, 2000) and USITC Publication 3285, Investigation No. 731–TA–469 (Review) (March 2000)).

Scope

The product covered by this antidumping duty order covers EL FPDs from Japan. EL FPDs are large area, matrix addressed displays, no greater than four inches in depth, with a pixel count of 120,000 or greater, whether complete or incomplete, assembled or unassembled. EL FPDs incorporate a matrix of electrodes that, when activated, apply an electrical current to a solid compound of electroluminescent material (*e.g.*, zinc sulfide) causing it to emit light. Included are monochromatic, limited color, and full color displays used to display text, graphics, and video. EL FPDs, whether or not integrated with additional components, exclusively dedicated to and designed for use in EL FPDs, is defined as processed glass substrates that incorporate patterned row, column, or both types of electrodes and, also, typically incorporate a material that reacts to a change in voltage (*e.g.*, phosphor) and contact pads for interconnecting drive electronics.

All types of FPDs are currently classifiable under subheadings 8543, 8803, 9013, 9014, 9017.90.00, 9018, 9022, 9026, 9027, 9030, 9031, 8471.92.30, 8471.92.40, 8473.10.00, 8473.21.00, 8473.30.40, 8442.40.00, 8466, 8517.90.00, 8528.10.80, 8529.90.00, 8531.20.00, 8531.90.00, and 8541 of the Harmonized Tariff Schedule ("HTS"). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of the antidumping duty order on EL FPDs would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on EL FPDs from Japan. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751 (c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this orders not later than March 2005.

Dated: April 5, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8984 Filed 4–10–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–508–605]

Industrial Phosphoric Acid From Israel: Notice of Extension of Time Limit for Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 11, 2000.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the countervailing duty order on industrial phosphoric acid from Israel. The review covers the period January 1, 1998 through December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Sean Carey or Jonathan Lyons, AD/CVD Enforcement Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–3964 or (202) 482–0374, respectively.

Postponement of Preliminary Results of Review

On October 1, 1999, the Department published a notice of initiation of an administrative review of the countervailing duty order on industrial phosphoric acid from Israel, covering

the period January 1, 1998 through December 31, 1998 (64 FR 53318). The preliminary results are currently due no later than May 2, 2000.

Section 751(a)(3)(A) of the Tariff Act, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested. However, if it is not practicable to complete the preliminary results within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for a preliminary determination to a maximum of 365 days.

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the preliminary results to no later than August 30, 2000. *See* Memorandum from Richard O. Weible to Joseph A. Spetrini, dated April 5, 2000, which is on file in the Central Records Unit, Room B–099 of the main Commerce Building. This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: April 5, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary Enforcement Group III,

[FR Doc. 00–8983 Filed 4–10–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040400A]

Atlantic Highly Migratory Species (HMS) Fishery Management Plan; Second Errata Sheet

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability.

SUMMARY: NMFS announces the availability of a second errata sheet for the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) published in April, 1999.

ADDRESSES: Copies of the HMS FMP, both errata sheets, the final rule, and supporting documents can be obtained from Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz, (301) 713–2347.

SUPPLEMENTARY INFORMATION: In a September 1997 Report to Congress, NMFS identified north Atlantic swordfish, west Atlantic Bluefin tuna, and large coastal sharks as overfished. The HMS FMP, including a final environmental impact statement, was published in April, 1999, to comply with provisions of the Magnuson-Stevens Fishery Conservation and Management Act for fisheries identified as overfished, and the final rule implementing actions included in the HMS FMP and Amendment 1 to the Atlantic Billfish Fishery Management Plan was published on May 28, 1999 (64 FR 29090). Since the publication of the HMS FMP, a number of typographical mistakes and other errors have been noted throughout its three volumes. The first errata sheet was announced on December 14, 1999 (64 FR 69742). The second errata sheet corrects errors that were noted since then.

Dated: April 5, 2000

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–8870 Filed 4–10–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 033000A]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Highly Migratory Species Plan Development Team (HMSPDT) will hold a video conference work session.

DATES: The work session will be held on Wednesday, April 26, 2000, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The video conference will be accessible to the public via viewing stations at the NMFS offices in La Jolla, CA; Long Beach, CA; Portland, OR; and Seattle WA. See **SUPPLEMENTARY INFORMATION** for the addresses.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dan Waldeck, Pacific Fishery Management Council; 503–326–6352.

SUPPLEMENTARY INFORMATION: The addresses of the locations are:

NMFS, Southwest Fisheries Science Center, Large Conference Room, 8604 La Jolla Shores Drive, La Jolla, CA 92038;

NMFS Southwest Region, Conference Room, 501 W. Ocean Blvd., Long Beach, CA 90802;

NMFS Pacific Conference Room, 525 NE. Oregon, Portland, OR 97232;

NMFS Northwest Region, Regional Directors Conference Room, 7600 Sand Point Way NE., Bldg. 1, Seattle, WA 98115.

The primary purposes of the work session are to: (1) discuss organization and outline of the Fisheries Management Plan (FMP) for Highly Migratory Species (HMS); and (2) for HMSPDT members to report progress on draft sections of the FMP.

Management measures that may be adopted in the FMP for HMS Fisheries off the West Coast include permit and reporting requirements for commercial and recreational harvest of HMS resources, time and/or area closures to minimize gear conflicts or bycatch, adoption or confirmation of state regulations for HMS fisheries, and allocations of some species to non-commercial use. The FMP is likely to include a framework management process to add future new measures, including the potential for collaborative management efforts with other regional fishery management councils with interests in HMS resources. It would also include essential fish habitat and habitat areas of particular concern, including fishing and non-fishing threats, as well as other components of FMPs required under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The proposed FMP, and its associated regulatory analyses, would be the Council's fourth FMP for the exclusive economic zone off the West Coast. Development of the FMP is timely, considering the new mandates under the Magnuson-Stevens Act, efforts by the United Nations to promote conservation and management of HMS resources through domestic and international programs, and the increased scope of activity of the Inter-American Tropical Tuna Commission in HMS fisheries in the eastern Pacific Ocean.

Although non-emergency issues not contained in the HSMPDT meeting agenda may come before the HMSPDT for discussion, those issues may not be

the subject of formal HMSPDT action during these meetings. HMSPDT action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the HMSPDT's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at 503–326–6352 at least 5 days prior to the meeting date.

Dated: April 5, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–8942 Filed 4–10–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040300F]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council's (Council) Pelagics Plan Team (PPT) members will hold a meeting.

DATES: The meeting will be held May 2, 2000 through May 4, 2000, from 8:30 a.m. to 5:00 p.m. each day.

ADDRESSES: The meeting will be held at the Council office, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The PPT meeting will discuss and may make recommendations to the Council on the following agenda items:

1. Pelagic fisheries annual report modules;
2. 1st quarter 2000 Hawaii and American Samoa longline fishery report;
3. Results of tagging of yellowfin and bigeye in Hawaii;
4. Shark fishery management;
5. Report of Recreational Fisheries Data Task Force;
6. Turtle management and recent litigation;
7. Bycatch categories;
8. National Plan of Action-Fishing Capacity;
9. Marine debris;
10. Area closure for large pelagic fishing vessels around the islands of American Samoa;
11. Managing seabird-longline fishery interactions;
12. 6th Multi-lateral High Level Conference;
13. Other international fishery issues;
14. Review of Pelagics Advisory Panel recommendations; and
15. Other business as required.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: April 4, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–8871 Filed 4–10–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040400D]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Regional Fishery Management Council will hold a joint meeting of its Bottomfish Plan Team (BPT), Crustaceans Plan Team and Advisory Panel (CPT/AP), and a joint meeting of its Coral Reef Ecosystem Plan Team, Ecosystem and Habitat Advisory Panel, Bottomfish Plan Team and Advisory Panel, CPT/AP, Precious Corals Plan Team and Advisory Panel, and Native and Indigenous Rights Advisory Panel (joint advisory body meeting). The primary purpose of the joint meeting is to work toward consensus on preferred measures to be included in the coral reef ecosystem fishery management plan and provide direction on how to fully address revisions and requirements.

DATES: The meetings will be held April 25–28, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Honolulu, Hawaii. See **SUPPLEMENTARY INFORMATION** for specific locations.

Council address: Western Pacific Fishery Management Council, 1164 Bishop Street, Honolulu, Hawaii, 96813

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; (808) 522–0220.

SUPPLEMENTARY INFORMATION:

Meeting Dates, Times, Locations and Agendas

The joint advisory bodies will discuss and may make recommendations to the Council on the agenda items listed here. The order in which agenda items will be addressed is tentative.

Tuesday, April 25, 2000, from 9:00–5:00 p.m.—BPT meeting jointly with CPT/AP

Location: Western Pacific Fishery Management Council office conference rooms, 1164 Bishop Street, Honolulu, Hawaii, 96813 (808) 522–0220.

1. Environmental Impact Statements (EISs) for Bottomfish and Crustaceans Fishery Management Plans (FMPs)
2. Addition of Commonwealth of the Northern Mariana Islands and Pacific Remote Island Areas to Crustaceans FMP.
   A. Management Unit Species (MUS) to be included
   B. Initial management measures
   C. Other issues
3. Bycatch reporting (Sustainable Fisheries Act (SFA) requirement).

Tuesday, April 25, 2000, at 10:30 a.m.—CPT/AP and BPT meet separately

Location: Western Pacific Fishery Management Council office conference rooms, 1164 Bishop Street, Honolulu, Hawaii, 96813 (808) 522–0220.

BPT

1. Amendments and framework actions

A. Mau zone new entry criteria
B. Coral Reef Plan permitting measures
(i) Non-managed species in Northwestern Hawaiian Islands (NWHI) caught in bottomfish fishery
(ii) Non-managed species in main Hawaiian Islands caught in bottomfish fishery
2. Annual Report review and development of research plan for bottomfish fisheries
A. Review Status of 1998 Annual Report Recommendations
B. Identify problems and possible solutions for uncompleted recommendations
C. Review 1999 Annual Report modules and recommendations
(i) American Samoa
(ii) Guam
(iii) Hawaii
(iv) Northern Mariana Island
D. 1999 Annual Report region-wide recommendations
E. Research plan for Western Pacific Region bottomfish fisheries
(i) Review other bottomfish research needs (annual report recommendations, program planning, NMFS, etc.)
(ii) Consider new information needs and develop recommendations
(iii) Prioritize research needs and recommendations
3. Other business

CPT/AP

1. Stock Assessment and Fishery Economics Report
A. 1999 Annual Report
B. Strategy for future stock assessments
2. 2000 lobster harvest guideline
3. Research plans
A. Industry-NMFS cooperative research agreement
B. NMFS plan for lobster tagging
C. Other comprehensive research needed
4. Consideration of amendment to replace NWHI lobster assessment model
A. Review of Council action
B. Aspects for developing a fully integrated dynamic model
C. Proposed amendment options/ schedule
D. Five-year review (due June 2001)
5. Possible additions to Crustaceans MUS (e.g., shrimp, red crab)
6. Revision to address SFA overfishing requirements
7. Other business
8. Summary of recommendations

Wednesday, April 26, 2000, from 9:00 a.m.–5:00 p.m.—Joint advisory body meeting

Location: Pagoda Hotel International Ballroom, 1525 Rycroft Street, Honolulu, Hawaii; (808) 941–6611.

1. Summary of Council's modified preferred alternative for draft Coral Reef Ecosystem FMP/preliminary draft environmental impact statement
A. Fishing permit and reporting requirements
B. Allowable fishing gear and methods
C. Marine Protected Areas (MPAs)
D. Framework actions
E. Formal process for PT coordination
2. Review of impacts or concerns regarding existing FMP fisheries and coral reefs (habitat, protected species, ecosystem, other)
A. Bottomfish
B. Crustaceans
C. Precious Corals
D. Indigenous rights
3. Review of previous advisory body recommendations on draft FMP
A. MPAs (location, size, restrictions)
B. Allowable gear/use
C. Permit and reporting requirements
D. Framework actions
E. MUS
F. SFA/Essential Fish Habitat(EFH)
G. Other
4. Discussion toward consensus on preferred measures
A. Permit & reporting/report form/ MUS
B. Gear/methods
C. MPAs: location/boundaries/ restrictions
D. Framework actions/additions
E. SFA/EFH/Habitat Areas of Particular Concern
F. Research plans
G. Process for PT coordination

Thursday, April 27, 2000, from 8:30 a.m.–12:00 noon—joint advisory body meeting

Location: Pagoda Hotel East Ballroom, 1525 Rycroft Street, Honolulu, Hawaii; (808) 941–6611.

Continue discussion toward consensus on preferred measures

Thursday, April 27, 2000, from 1:30–5:00 p.m.—Coral Reef Plan Team and Ecosystems & Habitat Advisory Panel, BPT and Advisory Panel, CPT/AP, Precious Corals Plan Team and Advisory Panel, and Native and Indigenous Rights Advisory Panel, meeting separately

Location: Western Pacific Fishery Management Council office conference rooms, 1164 Bishop Street, Honolulu, Hawaii, 96813 (808) 522–0220.

Further discussion of issues from above

Friday, April 28, 2000, from 8:30–5:00 p.m.—Separate meetings: each advisory body meets separately (or joint Plan Team and Advisory Panel)

Location: Western Pacific Fishery Management Council office conference rooms, 1164 Bishop Street, Honolulu, Hawaii, 96813 (808) 522–0220.

1. Final discussion and recommendations to Council on above issues
2. Other business

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds (see **FOR FURTHER INFORMATION CONTACT**) at least 5 days prior to the meeting dates.

Dated: April 5, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–8941 Filed 4–10–00; 8:45 am]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032800C]

Fisheries of the Exclusive Economic Zone Off Alaska; Application for an Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of an application for an exempted fishing permit.

SUMMARY: This notice announces receipt of a joint application for an exempted fishing permit (EFP) from Groundfish Forum Inc. and At-Sea Processors Association. If awarded, this permit would be used for limited testing of a device for the Pacific cod fisheries in the Bering Sea and Gulf of Alaska that would lower halibut bycatch rates without significantly lowering catch rates of Pacific cod. It is intended to promote the objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish

Fishery of the Bering Sea and Aleutian Islands Area (FMPs).

ADDRESSES: Copies of the EFP application are available by writing to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Sue Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION: The FMPs and the implementing regulations at 50 CFR parts 679.6 and 600.745(b) authorize issuance of EFPs to allow fishing that would otherwise be prohibited. Procedures for issuing EFPs are contained in the implementing regulations.

NMFS received a joint application for an EFP from Mr. John Gauvin, Groundfish Forum Inc. and Mr. Trevor McCabe, At-Sea Processors Association. The purpose of the EFP would be to conduct limited testing of a device for the Pacific cod fisheries in the Bering Sea and Gulf of Alaska that would lower Pacific halibut bycatch rates without significantly lowering catch rates of cod. The project would be conducted in coordination with gear development scientists at the Alaska Fisheries Science Center, NMFS, who would help the applicants select the most promising Pacific halibut excluder design for testing using criteria set out in the EFP application. Results from the EFP could be used by the groundfish trawl industry, the North Pacific Fishery Management Council (Council), and NMFS to develop fishing methods or effective regulatory measures to reduce halibut bycatch in the Pacific cod trawl fisheries.

In accordance with regulations, NMFS has determined that the proposal warrants further consideration and has initiated consultation with the Council by forwarding the application to the Council. The Council will consider the EFP application during its April 12 - 17, 2000, meeting, which will be held at the Hilton Hotel, Anchorage, AK. The applicants have been invited to appear in support of the application if the applicant desires.

A copy of the application is available for review from NMFS (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 5, 2000.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–8943 Filed 4–10–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Availability (NOA) of Record of Decision (ROD) on the Realistic Bomber Training Initiative (RBTI) Final Environmental Impact Statement (FEIS)

On March 24, 2000, the United States Air Force signed the Record of Decision (ROD) for the RBTI training proposal, and has selected Alternative B (Lancer Military Operations Area (MOA) and Instrument Route 178) for implementation. RBTI is designed to more effectively and efficiently train B–1 and B–52 aircrews assigned to Dyess and Barksdale Air Force Bases (AFBs). RBTI proposes linking existing military training routes (with minor modifications) to the proposed Lancer MOA, and an electronic scoring site system. RBTI will provide realistic combat training by providing sequenced training scenarios closely resembling combat situations that require every crewmember working together to successfully complete. Lastly, RBTI will also make more efficient use of limited flight hours by reducing low-value transit time to current training ranges.

Based on the analysis presented in the FEIS released in February, agency input, and public comments, the Air Force has selected the alternative that will best achieve their goal of balancing readiness training with environmental and community concerns. Where feasible, the Air Force developed mitigation measures and/or management actions to minimize the environmental impact and address concerns and comments of agencies and the public. Additionally, the Federal Aviation Administration (FAA) was a cooperating agency in the preparation of the FEIS. The Air Force will continue to work with the FAA, other federal and state agencies, and local communities to solicit their inputs during and after the establishment of the RBTI.

Any questions regarding this matter should be directed to the Dyess AFB Public Affairs Office, 466 5th Street, Dyess AFB, TX 79607 or call 915–696–2861.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–8863 Filed 4–10–00; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Grant Exclusive Patent Licenses

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations (CFRs), which implements Public Law 96–517, the Department of the Air Force announces its intention to grant PDR, Inc., a company doing business in Foxboro, MA, exclusive licenses in any right, title and interest the Air Force has in U.S. Patent Application Nos. 09/299,928 and 09/300,053, respectively. The first listed invention is entitled "Method and Apparatus for Depositing Thin Films of Group III Nitrides and Other Films and Devices Made Therefrom" with the second invention entitled "Process for the Manufacture of Group III Nitride Targets for Use in Sputtering and Similar Equipment." Each invention is related to making GaN films and products and both applications were filed in the U.S. Patent and Trademark Office on April 27, 1999.

Each license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within 60 days from the date of publication of this Notice. Information concerning the application may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to Mr. Randy Heald, Associate General Counsel (Acquisition), SAF/GCQ, 1500 Wilson Blvd., Suite 304, Arlington, VA 22209–2310. Mr. Heald can be reached at 703–588–5091 or by fax at 703–588–8037.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–8864 Filed 4–10–00; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF ENERGY

Notice of Availability of a Financial Assistance Solicitation

AGENCY: U.S. Department of Energy (DOE), National Energy Technology Laboratory (NETL).

ACTION: Notice of Availability of a Financial Assistance Solicitation.

SUMMARY: The Department of Energy announces that it intends to conduct a competitive Program Solicitation (DE–PS26–00BC15304) and award financial assistance (cooperative agreements) for

the program entitled "Identification and Demonstration of Preferred Upstream Management Practices (PUMP) for the Oil Industry." The Department of Energy (DOE) National Energy Technology Laboratory (NETL), on behalf of the National Petroleum Technology Office (NTPO), seeks cost-shared research and development applications for identification of preferred management practices (PMP) addressing a production barrier in a region and the documentation of these practices for use by the oil industry. The near-term goal is to increase current domestic oil production quickly.

Awards will be made to a limited number of applicants based on the economic and technical merit of the application, the integrated approach and technical understanding, the technical and management capabilities of the applicant organization(s), the planned technology transfer activities, and availability of DOE funding.

FOR FURTHER INFORMATION CONTACT: Keith R. Miles, U.S. Department of Energy, National Energy Technology Laboratory, Acquisition and Assistance Division, P.O. Box 10940, MS 921–143, Pittsburgh PA 15236–0940, Telephone: (412) 386–5984, FAX: (412) 386–6137, E-mail: miles@netl.doe.gov.

SUPPLEMENTARY INFORMATION:

Solicitation Number: DE–PS26–00BC15304.

Awards: DOE anticipates issuing financial assistance (cooperative agreements) for each project selected. DOE reserves the right to support or not support, with or without discussions, any or all applications received in whole or in part, and to determine how many awards will be made. Subject to availability of funding, DOE expects to provide funds totaling $4.8 million. The program seeks to sponsor projects for a single budget/project period of 24 months or less. Due to the low risk and near-term nature of the PUMP program and the potential for a process or technology demonstration, all applicants are required to cost share at a minimum of 50% of the project total. Details of the cost sharing requirement, and the specific funding levels are contained in the solicitation.

Solicitation Release Date: This Program Solicitation (available in both WordPerfect 6.1 and Portable Document Format (PDF)) is expected to be ready for release on or about April 15, 2000 and will be available from NETL's World Wide Web Server Internet System at *http://www.netl.doe.gov/business.* Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Background: The National Petroleum Technology Office of the Department of Energy (DOE) Office of Fossil Energy (FE) has authorized DOE's National Energy Technology Lab (NETL) to act on its behalf and solicit cost-shared applications for identification of preferred management practices (PMP) addressing a production barrier in a region and the documentation of these practices for use by the industry. The near-term goal is to increase current domestic oil production quickly.

The mission of the Department of Energy's Fossil Energy Oil Program is driven by the needs of the oil producers. The overall program is designed to develop unique technologies and processes to locate untapped resources; to extend the life of domestic energy resources; and to reduce well abandonment—all essential to maximizing the production of domestic resources while protecting our environment. The National Petroleum Technology Office's Preferred Upstream Management Practices (PUMP) program as a part of this overall goal is designed to facilitate production of existing oil reserves more quickly without sacrificing efficiency or environmental protection.

Based on prior successful results from demonstrations of under-utilized or advanced technology coupled with reservoir characterization, the DOE Oil Program seeks to demonstrate that the identification and use of PMP can overcome regional constraints to increased production. The program will accept proposals that combine the identification of preferred management practices (PMP) to overcome regional production constraints and aggressive technology transfer that will promote the use of those practices. Barriers can be identified as technical, physical, regulatory, environmental, or economic. The selected projects are expected to employ the following four (4) strategies in order to have a rapid impact on production: (1) focus on regions that present the biggest potential for additional oil production quickly, (2) integrate solutions to technological, economic, regulatory, and data constraints, (3) demonstrate the validity of these practices either through field demonstration during the project or documentation of well-run successful past demonstration, and (4) use known technology transfer mechanisms.

Using a regional approach where the projects will have a wide applicability, an integrated approach scheduling tasks along parallel paths to facilitate a quicker response, and operating with existing networks, the production results in the field should be accelerated. The documentation and evaluation of the PMP will be a valuable resource to all producers in the applicable area and possibly other regions as well.

This program expects near-term results and actions that will create data or technological resources suitable for long-term use. Teaming is encouraged and the proposal partners could include, but not be limited to, producers, producer organizations, universities, service companies, State agencies or organizations, non-Federal research laboratories, and Native American Tribes or Corporations. They will demonstrate practices and/or technologies that can increase production, increase cost savings, or rapid returns on the capital investments of the operators. New technologies/processes or under-used but effective applications of existing technologies/processes critical to a region will be demonstrated.

The DOE will make publicly available over the Internet the data on preferred practices resulting from this program. The resulting publicly available databases of the preferred practices will be interactive, Internet accessible, should include both technologies and practices, and address constraints in the exploration, production, or environmental areas.

Issued in Pittsburgh, PA on April 4, 2000.

Dale A. Siciliano,

Deputy Director, Acquisition and Assistance Division.

[FR Doc. 00–8892 Filed 4–10–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–142–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

April 5, 2000.

Take notice that on March 29, 2000, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–1046, filed a request with the Commission in Docket No. CP00–142–000, pursuant to section 157.205 and 157.21(b) of the

Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon approximately 410 feet of 2-inch pipeline, appurtenances, and a point of delivery to Columbia Gas of Virginia, Inc. (CGV), all located in Fauquier County, Virginia authorized in blanket certificate issued in Docket No. CP83–76–000, all as more fully set forth in the request on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

There are no other points of delivery associated with this section of pipeline. The proposed abandonment will not result in any loss or reduction in service to any customers.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8900 Filed 4–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–048]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

April 5, 2000.

Take notice that on March 31, 2000, El Paso Natural Gas Company (El Paso) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective April 1, 2000:

Twenty-Eighth Revised Sheet No. 30
Twenty-Third Revised Sheet No. 31
Fifth Revised Sheet No. 31A

El Paso states that the above tariff sheets are being filed to implement a specific negotiated rate transaction in accordance with the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8903 Filed 4–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–286–002]

Granite State Gas Transmission, Inc; Notice of Compliance Filing

April 5, 2000

Take notice that on March 31, 2000, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed below for effectiveness on April 1, 2000.

Substitute First Revised Sheet No. 10
Substitute Fourth Revised Sheet No. 24
Substitute Second Revised Sheet No. 141
Substitute Second Revised Sheet No. 142
Substitute Third Revised Sheet No. 144
Substitute First Revised Sheet No. 145
Substitute First Revised Sheet No. 146
Substitute First Revised Sheet No. 147
Substitute First Revised Sheet No. 148
Substitute First Revised Sheet No. 149
Substitute First Revised Sheet No. 150
Substitute First Revised Sheet No. 441

Granite State explains that the purpose of this filing is to comply with the March 17, 2000, order issued in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8906 Filed 4–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–233–000]

Midwestern Gas Transmission Company; Notice of Tariff Filing

April 5, 2000.

Take notice that on March 31, 2000, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised Tariff sheets identified in Appendix A to the filing. Midwestern proposes that the tariff sheets be made effective on May 1, 2000.

Midwestern states that as part of its transition to interactive Internet communications in compliance with the Commission's Order No. 587–I it has undertaken a major rewrite of its critical computer system functions. In conjunction with the rewrite, Midwestern further states that it is taking the opportunity to initiate additional modifications to its computer systems in order to streamline certain of Midwestern's processes and to provide additional service flexibilities (collectively, hereinafter referred to as Service Upgrades). In order to provide the Service Upgrades by completion and implementation of the rewrite, Midwestern is seeking approval for certain modifications to its existing tariff and pro forma service agreements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the

Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commissions's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8910 Filed 4–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–226–000]

Mississippi Canyon Gas Pipeline, LLC, Notice of Proposed Changes in FERC Gas Tariff

April 5, 2000.

Take notice that on March 31, 2000, Mississippi Canyon Gas Pipeline, LLC (MCGP) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with a proposed effective date of May 1, 2000:

Second Revised Sheet No. 27
Original Sheet No. 27A

MCGP states that the purpose of this filing is for MCGP to obtain from its FT–2 shippers on an annual basis an updated production profile. This will enable MCGP to better utilize its existing capacity and to determine when new capacity should be added.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8909 Filed 4–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–014]

Natural Gas Pipeline Company of America; Notice of Proposed Change in FERC Gas Tariff

April 5, 2000.

Take notice that on March 31, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing to be a part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Original Sheet Nos. 26E, 26F, 26G and 26H, to be effective April 1, 2000.

Natural states that the purpose of this filing is to implement negotiated rate transactions with Central Illinois Light Company, Ameren Intermediate Holding Co., Inc and The Peoples Gas Light and Coke Company under Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff. Natural further states that these transactions are being filed in accordance with the Commission's ruling that a transportation rate inclusive of surcharges would be considered a negotiated rate transaction.

Natural requests waiver of the Commission's Regulations to the extent necessary to permit Original Sheet Nos. 26E, 26F, 26G and 26H to become effective April 1, 2000.

Natural states that copies of the filing are being mailed to its customers, interested state commissions and all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8905 Filed 4–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–012]

PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Changes in FERC Gas Tariff

April 5, 2000.

Take notice that on March 31, 2000, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, with an effective date of April 1, 2000:

Eighth Revised Sheet No. 7
Fifth Revised Sheet No. 7A
Original Sheet No. 7B

PG&E GT–NW states that these sheets are being filed to reflect the implementation of a eight negotiated rate agreements.

PG&E GT–NW states that copies of this filing has been served on PG&E GT–NW's jurisdictional customers, and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Docket No. RP99–518–012 Commission and are

available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8907 Filed 4–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket No. CP00–137–000

Reliant Energy Gas Transmission Company; Notice of Application

April 5, 2000.

Take notice that on March 27, 2000, Reliant Energy Gas Transmission Company (REGT), 1111 Louisiana Street, Houston, Texas 77210, filed in Docket No. CP00–137–000 an application pursuant to section 7(c) of the Natural Gas Act and part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations for a certificate of public convenience and necessity authorizing REGT to construct certain facilities in Hot Spring County, Arkansas to reconfigure its system to enable deliveries to be diverted from its Line AC to other portions of its system in Arkansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Specifically, REGT proposes to construct: (1) Approximately 2.2 miles of 20-inch pipeline, to be designated as Line ACT–4 and paralleling its Line AC; (2) one 20–inch main line valve with bypass on its Line S–3–S; and (3) one 20–inch mainline valve between Line S–3–S and its Line T at the existing Perla Junction. REGT states that the proposed facilities will allow up to 158,500 Dth/d of natural gas to be diverted from Line AC into Line T and other portions of REGT's system in Arkansas. Total cost is estimated to be $1.5 million, for which REGT requests rolled-in rate treatment.

REGT has executed a firm transportation contract with Pine Bluff Energy LLC (Pine Bluff), for no less than 10 years, with a contract demand of 40,000 Dth/d. Pine Bluff is currently constructing an electric power cogeneration plant adjacent to facilities owned by International Paper in Jefferson County, Arkansas. Pine Bluff is said to have leased capacity in International Paper's existing plant line. Upon completion of Pine Bluff's power plant, REGT, under its blanket authority, will install a delivery tap on REGT's Line T, in Grant County, Arkansas, to provide transportation service to Pine Bluff.

Pine Bluff has requested that firm service commence by October 1, 2000, and REGT request that Commission authorization be granted no later than July 31, 2000.

Any question regarding this amendment should be directed to Kevin P. Erwin, Senior Counsel, Reliant Energy Gas Transmission Company, P.O. Box 61867, Houston, Texas 77208–1867, at (713) 207–5232.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 26, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A persons does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for REGT to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8899 Filed 4–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–200–052]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

April 5, 2000.

Take notice that on March 31, 2000, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised volume No. 1, the following tariff sheets to be effective April 1, 2000:

Third Revised Sheet No. 8F
Fourth Revised Sheet No. 8H
First Revised Sheet No. 8J
Fourth Revised Sheet No. 8L
Third Revised Sheet No. 8G
First Revised Sheet No. 8I
First Revised Sheet No. 8K

REGT states that the purpose of this filing is to reflect the expiration of existing negotiated rate contracts.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://ww.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 00–8902 Filed 4–10–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–236–000]

Reliant Energy Gas Transmission Company; Notice of Revenue Credit Report

April 5, 2000.

Take notice that on March 31, 2000, Reliant Energy Gas Transmission Company (REGT) submitted its Annual Revenue Crediting Filing pursuant to its FERC Gas Tariff, Fifth Revised Volume No. 1, Section 5.7(c)(ii)(2)(B) (Imbalance Cash Out), Section 23.2(b)(iv) (IT and SBS Revenue Crediting) and Section 23.7 (IT Revenue Credit), together with supporting workpapers.

REGT states that its filing addresses the period from February 1, 1999 through January 31, 2000. The IT and FT Cash Balancing Revenue Credits and the IT Revenue Credit for the period reflected in this filing are zero. REGT states that since REGT's current tariff sheets already reflect zero Cash Balancing and IT Revenue Credits, no tariff revisions are necessary.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before April 11, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 00–8911 Filed 4–10–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–8–002]

South Georgia Natural Gas Company; Notice of Fuel Adjustment Filing

April 5, 2000.

Take notice that on March 31, 2000, South Georgia Natural Gas Company (South Georgia) made a filing to reconcile its fuel retention volumes for a metering anomaly that resulted in negative Lost and Unaccounted For volumes for the period May 1998 to September 1998. South Georgia proposes to make refunds to its customers to resolve this metering anomaly.

South Georgia states that copies of the filing were served upon all parties listed on the official service list compiled by the Secretary in this proceeding, other interested parties and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before April 12, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 00–8912 Filed 4–10–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–97–001]

Southern Natural Gas Company; Notice of GSR Filing

April 5, 2000.

Take notice that on March 31, 2000, Southern Natural Gas Company (Southern) made a filing in accordance with Article VII of the Stipulation and Agreement in Docket Nos. RP89–224–012, et al. (Settlement) approved by Commission order on September 29, 1995 to update its GSR surcharge. Under Article VII, Southern is required to adjust the GSR volumetric surcharge that was placed into effect January 1, 2000, based on actual GSR costs incurred and the actual GSR revenues collected in 1999 from parties supporting the Settlement. As a result of updating the information through the end of 1999 Southern proposes to retain the $.0004/Dth GSR volumetric surcharge which was placed in effect on January 1, 2000.

Southern states that copies of the filing were served upon all parties listed on the official service list compiled by the Secretary in these proceedings.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such proteststs must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 00–8908 Filed 4–10–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–288–003]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

April 5, 2000.

Take notice that on March 31, 2000, Transwestern Pipeline Company (Transwestern) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to become effective on April 1, 2000:

First Revised Sheet No. 5B.05
Original Sheet No. 5B.06

Transwestern states that the above sheets are being filed to implement a specific negotiated rate transaction in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Transwestern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 384.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8904 Filed 4–10–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF00–2011–000, et al.]

U.S. Department of Energy, et al.; Electric Rate and Corporate Regulation Filings

March 31, 2000.

Take notice that the following filings have been made with the Commission:

1. U.S. Department of Energy, Bonneville Power Administration

[Docket Nos. EF–2011–000]

Take notice that on March 21, 2000, the Bonneville Power Administration (BPA) tendered for filing a proposed rate adjustment to its rate schedule FPS–96 pursuant to section 7(a)(2) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839e(a)(2). Pursuant to Section 300.20 of the Commission's regulations (18 CFR 300.20), BPA seeks interim approval of its proposed rates effective May 19, 2000 Pursuant to Section 300.21 of the Commission's regulations (18 CFR 300.21), BPA seeks interim approval and final confirmation of the proposed rates for the periods set forth in this notice.

BPA requests approval effective May 19, 2000, through September 30, 2006, for the FPS–96R Firm Power Products and Services Rate adjustment. BPA states that this approval is necessary for it to compete and assure cost recovery.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Nitrogen Limited

[Docket No. EG00–119–000]

Take notice that on March 28, 2000, Nitrogen Limited (Applicant), with its principal office at Windmill Hill Business Park, White Hill Way, Swindon, Wiltshire, England SW1A 1JT, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant states that it will own a 680 megawatt natural gas-fired electric generating facility located in Lincolnshire, England (the Facility). Electric energy produced by the Facility will be sold at wholesale to the Power Pool of England and Wales. In no event will any electric energy be sold to consumers in the United States.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Northeast Utilities Service Company

[Docket Nos. ER95–1686–007, ER96–496–009, ER97–1359–000, OA97–300–000, and ER98–4604–000]

Take notice that on March 27, 2000, Northeast Utilities Service Company (NUSCO), tendered for filing a refund report in compliance with the Commission's order in *Northeast Utilities Service Company*, 89 FERC ¶ 61,184 (1999).

Comment date: April 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Consolidated Edison Energy, Inc.

[Docket No. ER00–865–001]

Take notice that on March 27, 2000, Consolidated Edison Energy, Inc. (Con Edison Energy) tendered revisions to its market-based rate tariffs in compliance with the Commission's February 24, 2000 order in this proceeding.

Con Edison Energy states that a copy of this filing has been sent to all purchasers under the affected rate schedules and to all persons designated for service on the official service list.

5. Entergy Services, Inc.

[Docket No. ER00–1933–000]

Take notice that on March 27, 2000 Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a new Attachment M to its Open Access Transmission Tariff, designated as FERC Electric Tariff Original Volume No. 3, addressing transmission business practices related to source and sink information required for reserving and scheduling point-to-point transmission service.

Comment date: April 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Revelation Energy Resources Corporation

[Docket No. ER97–765–006]

Take notice that on March 22, 2000, Revelation Energy Resources Corporation filed a quarterly report for the quarter ended December 31, 1999 for information only.

7. City of Mishawaka, Indiana and Indiana Michigan Power Company

[Docket No. ER00–1968–000]

Take notice that on March 23, 2000, the City of Mishawaka, Indiana (City)

and Indiana Michigan Power Company filed, pursuant to Section 3.F of FERC Electric Tariff WS, a Notice to Terminate the System Sales Clause.

Comment date: April 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. New York Independent System Operator, Inc.

[Docket No. ER00–1969–000]

Take notice that on March 27, 2000, the New York Independent System Operator, Inc. (NYISO) filed a Request for Suspension of Market-Based Pricing for 10-Minute Reserves and to Shorten Notice Period and proposed tariff changes related thereto.

A copy of this filing was served upon all persons on the Commission's official service list in Docket Nos. ER97–1523–000, OA97–470–000 and ER97–4234–000, not consolidated, and all parties who have executed Service Agreements under the ISO OATT and the ISO Services Tariff.

Comment date: April 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. The Detroit Edison Company

[Docket No. ER00–1974–000]

Take notice that on March 27, 2000, The Detroit Edison Company (Detroit Edison) tendered for filing Service Agreements (the Service Agreement) for Short-term Firm Point-to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, between Detroit Edison and Nordic Electric, L.L.C., (Customer) dated as of March 15, 2000. The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing.

Detroit Edison requests that the Service Agreements be made effective as rate schedules as of March 28, 2000.

Comment date: April 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Cleco Utility Group Inc.

[Docket No. ER00–1976–000]

Take notice that on March 27, 2000 Cleco Utility Group Inc., Transmission services (CLECO) filed their service agreement for non firm point-to-point transmission service under its Open Access Transmission Tariff with Conectiv Energy Supply, Inc.

CLECO requests an effective date of March 27, 2000.

Comment date: April 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER00–1977–000]

Take notice that on March 27, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities Company (KU) (hereinafter Companies) tendered for filing an executed unilateral Service Agreement between the Companies and PG&E Energy Trading—Power, L.P. under the Companies Rate Schedule MBSS.

Comment date: April 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER00–1978–000]

Take notice that on March 27, 2000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP) tendered for filing a Non-Firm and a Short-Term Firm Point-to-Point Transmission Service Agreement between NSP and FPL Energy Power Marketing, Inc.

NSP requests that the Commission accept the Agreement effective March 7, 2000, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: April 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

[Docket No. ER00–1979–000]

Take notice that on March 27, 2000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP) tendered for filing a Short-Term Firm Point-to-Point Transmission Service Agreement between NSP and El Paso Energy Marketing Company.

NSP requests that the Commission accept the agreement effective March 1, 2000, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: April 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Consumers Energy Company

[Docket No. ER00–1980–000]

Take notice that on March 27, 2000, Consumers Energy Company (Consumers) tendered for filing executed service agreements for Firm and Non-Firm Point-to-Point Transmission Service with Engage Energy US, L.P.

The agreements were pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison) and have an effective date of March 21, 2000.

Copies of the filed agreements were served upon the Michigan Public Service Commission, Detroit Edison, and Engage Energy US, L.P.

Comment date: April 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Panda Gila River, L.P.

[Docket No. ER00–1981–000]

Take notice that on March 27, 2000, Panda Gila River, L.P. (Panda Gila River), tendered for filing pursuant to Section 205 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1, and for the purpose of permitting Panda Gila River to assign transmission capacity and to resell Firm Transmission Rights, to be effective no later than sixty (60) days from the date of its filing.

Panda Gila River intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Panda Gila River sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither Panda Gila River nor any of its affiliates is in the business of transmitting or distributing electric power.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: April 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Panda Oneta Power, L.P.

[Docket No. ER00–1982–000]

Take notice that on March 27, 2000, Panda Oneta Power, L.P. (Panda Oneta), tendered for filing pursuant to the Section 205 of the Commission's Rules of Practice and Procedures, 18 CFR 205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1, and for the purpose of permitting Panda Oneta to assign transmission capacity and to resell Firm Transmission Rights, to be effective no later than sixty (60) days from the date of its filing.

Panda Oneta intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Panda Oneta sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither Panda Oneta nor any of its affiliates is in the business of transmitting or distributing electric power.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: April 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Illinois Power Company

[Docket No. ER00–1991–000]

Take notice that on March 27, 2000, Illinois Power Company filed their quarterly report for the quarter ending December 31, 1999.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. The Montana Power Company

[Docket No. ER00–1992–000]

Take notice that on March 28, 2000, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an executed Network Integration Transmission Service Agreement and Network Operating Agreement with Central Montana Electric Power Cooperative Inc. under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Central Montana Electric Power Cooperative Inc.

Comment date: April 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Cleco Utility Group Inc.

[Docket No. ER00–1993–000]

Take notice that on March 28, 2000 Cleco Utility Group Inc., Transmission services (CLECO), tendered for filing their service agreements for non-firm and short term firm point-to-point transmission services under its Open Access Transmission Tariff with British Columbia Power Exchange Corporation (Powerex).

CLECO requests an effective date of March 27, 2000.

Comment date: April 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Avista Corporation

[Docket No. ER00–1994–000]

Take notice that on March 28, 2000, Avista Corporation tendered for filing notice that Rate Schedule FERC No. 27, under the Commission's Docket No. ER92–824–000, previously filed with the Federal Energy Regulatory Commission by Avista Corporation, formerly known as The Washington Water Power Company, under its FERC Electric Rate Tariff Original Volume No. 4, with Public Service Company of New Mexico is to be terminated, effective March 23, 2000 by the request of Public Service Company of New Mexico per its letter dated March 16, 2000.

Notice of the cancellation has been served upon the Public Service Company of New Mexico.

Comment date: April 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. New Century Services, Inc.

[Docket No. ER00–1995–000]

Take notice that on March 28, 2000, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Long-Term Firm Point-to-Point Transmission Service between the Companies and Southwestern Public Service Company—Wholesale Merchant Function.

Comment date: April 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. New Century Services, Inc.

[Docket No. ER00–1996–000]

Take notice that on March 28, 2000, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Long-Term Firm Point-to-Point Transmission Service between the Companies and Public Service Company of Colorado—Bulk Power Sales Group.

Comment date: April 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Bradley G. Ritz

[Docket No. ID–3477–000]

Take notice that on March 28, 2000, the above-named individual filed with the Federal Energy Regulatory Commission an application for authority to hold an interlocking position in the Van Buren Revolving Loan Fund and Northern Maine Independent System Administrator, Inc.

Comment date: April 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–8895 Filed 4–10–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–66–000, et al.];

Consolidated Water Power Company, et al.; Electric Rate and Corporate Regulation Filings

April 4, 2000.

Take notice that the following filings have been made with the Commission:

1. Consolidated Water Power Company

[Docket No. EC00–66–000]

Take notice that on March 23, 2000, Consolidated Water Power Company (CWPCo), a wholly-owned subsidiary of Consolidated Papers, Inc. (Consolidated Papers), on its own behalf and on behalf of Stora Enso Oyj (Stora Enso, and together with CWPCo, the Applicants), tendered for filing an application pursuant to section 203 of the Federal Power Act and Part 33 of the Regulations of the Commission for an order authorizing the merger of Consolidated Papers with Stora Enso

Acquisition, Inc., a subsidiary of Stora Enso. (the "Transaction"). The Transaction is being made pursuant to the terms of the Agreement and Plan of Merger dated as of February 22, 2000, between Stora Enso and Consolidated Papers.

Comment date: May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Lakewood Cogeneration Limited Partnership

[Docket No. EC00–68–000]

Take notice that on March 29, 2000, Lakewood Cogeneration Limited Partnership (LCLP), a Delaware limited partnership, submitted an application, pursuant to 18 CFR 33, seeking authority under Section 203 of the Federal Power Act for a change in control of the ownership of LCLP. LCLP owns a 238 MW natural gas-fired exempt wholesale generating facility located in Lakewood Township, New Jersey.

HYDRA–CO Enterprises, Inc., an indirect subsidiary of CMS Energy Corporation, has agreed to sell its 80% direct or indirect ownership interests in LCLP to Consolidated Edison Development, Inc., a subsidiary of Consolidated Edison, Inc.

Comment date: April 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Riverside Generating Company, L.L.C.

[Docket No. EG00–99–000]

Take notice that on March 28, 2000, Riverside Generating Company, L.L.C., 1000 Louisiana, Suite 5800, Houston, Texas filed with the Federal Energy Regulatory Commission an amendment to its application in the above-referenced docket for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Comment date: April 25, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Indeck Operations, Inc.

[Docket No. EG00–120–000]

Take notice that on March 29, 2000, Indeck Operations, Inc. filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. Indeck Operations, Inc. is a privately held Illinois corporation, which will operate a gas-fired generation facility located in Rockford, Illinois (the Facility).

The Facility will consist of two simple-cycle gas-fired combustion turbine driven synchronous generators and associated accessories, with a maximum power production capacity of approximately 300 MW. The plant will be an "eligible facility" within the meaning of section 32(a)(2) of the Public Utility Holding Company Act of 1935 because it will be used for the generation of electric energy exclusively for sale at wholesale.

Comment date: April 25, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Indeck-Rockford Equipment, L.L.C.

[Docket No. EG00–121–000]

Take notice that on March 29, 2000, Indeck-Rockford Equipment, L.L.C. filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. Indeck-Rockford, L.L.C. is an Illinois limited liability company and the initial owner of the generating equipment to be used at a gas-fired facility located in Rockford, Illinois (the Facility).

The Facility will consist of two simple-cycle gas-fired combustion turbine driven synchronous generators and associated accessories, with a maximum power production capacity of approximately 300 MW. The plant will be an "eligible facility" within the meaning of section 32(a)(2) of the Public Utility Holding Company Act of 1935 because it will be used for the generation of electric energy exclusively for sale at wholesale.

Comment date: April 25, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Indeck-Rockford, L.L.C.

[Docket No. EG00–122–000]

Take notice that on March 29, 2000, Indeck-Rockford, L.L.C. filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. Indeck-Rockford, L.L.C. is an Illinois limited liability company created for the purpose of causing the construction and owning and/or operating a gas-fired facility located in Rockford, Illinois (the Facility).

The Facility will consist of two simple-cycle gas-fired combustion turbine driven synchronous generators and associated accessories, with a maximum power production capacity of approximately 300 MW. The plant will be an "eligible facility" within the meaning of section 32(a)(2) of the Public Utility Holding Company Act of 1935 because it will be used for the generation of electric energy exclusively for sale at wholesale.

Comment date: April 25, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. Williams Energy Marketing & Trading Company

[Docket No. ER00–2030–000]

Take notice that on March 29, 2000, Williams Energy Marketing & Trading Company (Williams EM&T) tendered for filing pursuant to section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d (1994), and part 35 of the Commission's Regulations, 18 CFR part 35, its Third Revised FERC Electric Rate Schedule No. 1.

The primary purpose of the filing is to update Williams EM&T's existing FERC Electric Rate Schedule No. 1 to expand Williams EM&T's existing wholesale ancillary services authority. Specifically, in addition to Williams EM&T's current wholesale ancillary services authority in California, the Third Revised FERC Electric Rate Schedule No. 1 would provide wholesale ancillary services authority in the New England Power Pool, the New York Power Pool, the Pennsylvania-New Jersey-Maryland Inter-connection, and other markets. The revised Rate Schedule also makes other minor changes.

Williams EM&T requests waiver of the prior notice requirements of Section 35.3 of the Commission's regulations, 18 CFR 35.3, to permit its Third Revised FERC Electric Rate Schedule No. 1 to become effective as of May 1, 2000.

Comment date: April 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. PPL Electric Utilities Corporation

[Docket No. ER00–2031–000]

Take notice that on March 29, 2000, PPL Electric Utilities Corporation filed a Notice stating that effective May 29, 2000, Rate Schedule FERC No. 111, effective on July 1, 1992 and filed with the Federal Energy Regulatory Commission by PPL Electric Utilities Corporation, formerly known as PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon New York power Authority.

Comment date: April 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. PPL Electric Utilities Corporation

[Docket No. ER00–2032–000]

Take notice that on March 29, 2000, PPL Electric Utilities Corporation filed a Notice stating that effective May 29, 2000, Rate Schedule FERC No. 76, effective on December 3, 1982 and filed with the Federal Energy Regulatory Commission by PPL Electric Utilities Corporation, formerly known as PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon Consolidated Edison Company of New York, Inc.

Comment date: April 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. PPL Electric Utilities Corporation

[Docket No. ER00–2033–000]

Take notice that on March 29, 2000, PPL Electric Utilities Corporation filed a Notice stating that effective May 29, 2000, Rate Schedule FERC No. 102 effective on February 15, 1991 and filed with the Federal Energy Regulatory Commission by PPL Electric Utilities Corporation, formerly known as PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon GPU Service Corporation.

Comment date: April 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. PPL Electric Utilities Corporation

[Docket No. ER00–2034–000]

Take notice that on March 29, 2000, PPL Electric Utilities Corporation file a Notice stating that effective May 29, 2000, Rate Schedule FERC No. 131, effective on June 1, 1994 and filed with the Federal Energy Regulatory Commission by PPL Electric Utilities Corporation, formerly known as PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon Potomac Electric Power Company.

Comment date: April 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. PPL Electric Utilities Corporation

[Docket No. ER00–2035–000]

Take notice that on March 29, 2000, PPL Electric Utilities Corporation filed a Notice stating that effective May 29, 2000, Rate Schedule FERC No. 142, effective on October 12, 1994 and filed with the Federal Energy Regulatory Commission by PPL Electric Utilities Corporation, formerly known as PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon Consolidated Edison Company of New York, Inc.

Comment date: April 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. PPL Electric Utilities Corporation

[Docket No. ER00–2036–000]

Take notice that on March 29, 2000, PPL Electric Utilities Corporation filed a Notice stating that effective May 29, 2000, Rate Schedule FERC No. 143, effective on October 12, 1994 and filed with the Federal Energy Regulatory Commission by PPL Electric Utilities Corporation, formerly known as PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon Dynegy Inc.

Comment date: April 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–8898 Filed 4–10–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–67–000, et al.]

Louisville Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

March 30, 2000.

Take notice that the following filings have been made with the Commission:

1. Louisville Gas and Electric Company, and Merger Sub

[Docket No. EC00–67–000]

Take notice that on March 24, 2000, Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU) on behalf of themselves and their affiliates holding jurisdictional assets (collectively, the LG&E Companies) and Merger Sub, submitted for filing an application under Section 203 of the Federal Power Act (16 U.S.C. 824b) and Part 33 of the Commission's Regulations (18 CFR 33.1) seeking the Commission's approval and related authorizations to effectuate the indirect change in control over jurisdictional assets of the LG&E companies that will occur as a result of the merger of an indirect, wholly-owned subsidiary of PowerGen plc (Merger Sub) with and into LG&E Energy Corp. (LEC), the parent holding company of the LG&E Companies. Through the merger, LEC, which will be the surviving entity, and the LG&E Companies will become indirect, wholly-owned subsidiaries of PowerGen plc ("PowerGen"), a public limited company organized under the laws of England and Wales.

The Application requests waiver of the requirements to file exhibits B, C, D, E, and F as specified in Section 33.3 of the Commission's regulations. The Application states that it includes all other information and exhibits required by Part 33 of the Commission's regulations and the Commission's Merger Policy Statement, and that the Merger Application easily satisfies the criteria set forth in the Commission's Merger Policy Statement. The Application requests that the Commission grant approval without condition, modification or an evidentiary, trial-type hearing. The Application states that the parties are seeking to close the transaction expeditiously and thus the Applicants have requested Commission approval by the end of July, 2000.

The Applicants have served copies of the filing on the state commissions of Kentucky, Virginia, and Tennessee and the parties of Docket No. EC98–2–000.

Comment date: May 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. The FirstEnergy Operating Companies

[Docket Nos. ER97–412–004, ER97–413–003 and ER98–1932–001]

Take notice that on March 24, 2000, the FirstEnergy Operating Companies tendered for filing a compliance refund report pursuant to the Commission's February 9, 2000 Letter Order, 90 FERC ¶ 61,111.

The FirstEnergy Operating Companies state that a copy of the filing has been served on the customers receiving refunds and the public utilities commissions of Ohio and Pennsylvania.

Comment date: April 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Northern Indiana Public Service Company and NIPSCO Energy Services, Inc.

[Docket Nos. ER97–458–003 and ER96–1431–012]

Take notice that on March 23, 2000, Northern Indiana Public Service Company and NESI Power Marketing, Inc. submitted an updated market power analysis. The market power analysis is required by the orders granting authority to make power sales at market-based rates.

Comment date: April 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Select Energy, Inc.

[Docket No. ER00–952–001]

Take notice that on March 24, 2000, Select Energy, Inc. (Select) tendered revisions to its market-based rate tariffs in compliance with the Commission's February 23, 2000 order in this proceeding.

Select states that a copy of this filing has been sent to all purchasers under the affected rate schedules and to all persons designated for service on the official service list for this proceeding.

Comment date: April 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. The Connecticut Light and Power Company

[Docket No. ER00–963–001]

Take notice that on March 24, 2000, The Connecticut Light and Power Company (CL&P) tendered revisions to its market-based rate tariff in compliance with the Commission's February 23, 2000 order in this proceeding.

CL&P states that a copy of this filing has been sent to all purchasers under the affected rate schedules and to all persons designated for service on the official service list in this proceeding.

Comment date: April 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. North American Power Brokers, Inc.

[Docket No. ER00–1973–000]

Take notice that on March 24, 2000, North American Power Brokers, Inc. filed a Notice of Succession notifying the Commission that North American Power Brokers, Inc. has changed its name to Enermetrix.com.

Comment date: April 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Sarah M. Barpoulis, Anthony Chovanec, William A. Collier, Mark C. Cowan, Michael E. Flinn, J. Stephen Gilbert, Anthony G. Haramis, Lyndell E. Maddox, Leslie K. McNew, James M. Richter, Stanley A. Ross, Kyle B. Sherrington, Daniel A. Valenti and Deborah F. Witmer

[Docket Nos. ID–3467–000, ID–3468–000, ID–3469–000, ID–3141–003, ID–3470–000, ID–3147–002, ID–3471–000, ID–3137–003, ID–3472–000, ID–3144–002, ID–3473–000, ID–3474–000, ID–3475–000, and ID–3476–000]

Take notice that on March 21, 2000, PG&E Energy Trading—Power Holdings Corporation, with its principal place of business at 1100 Louisiana, Suite 1000, Houston, Texas 77002 filed with the Federal Energy Regulatory Commission an application for authority to hold interlocking positions on behalf of its directors and officers (Applicants), under Section 305(b) of the Federal Power Act, 16 U.S.C. 825(b).

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–8896 Filed 4–10–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES00–23–000, et al.]

Rochester Gas and Electric Corporation., et al. Electric Rate and Corporate Regulation Filings

March 29, 2000.

Take notice that the following filings have been made with the Commission:

1. Rochester Gas and Electric Corporation

[Docket No. ES00–23–000]

Take notice that on March 23, 2000, Rochester Gas and Electric Corporation tendered for filing an application pursuant to Section 204 of the Federal Power Act seeking authorization to issue short-term secured and unsecured promissory notes between June 1, 2000, and May 31, 2002, in an amount not to exceed $200,000,000.

Comment date: April 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Bonneville Power Administration

[Docket No. NJ00–2–000]

Take notice that on March 22, 2000, Bonneville Power Administration (Bonneville), tendered for filing a Petition for Declaratory Order Finding the Merchant Function May Have Access to Customer-Specific Hourly Metered Load Data under the Commission's Standards of Conduct.[1]

Comment date: April 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Citizens Utilities Company

[Docket No. ES98–23–001]

Take notice that on March 22, 2000, Citizens Utilities Company (Citizens) submitted a request under Section 204 of the Federal Power Act to extend the authorization granted under Docket No.

[1] Open Access Same-Time Information System (Formerly Real-Time Information network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991–1996 ¶ 31,035 (April 24, 1996), Order No. 889–A, *order on rehearing*, 62 FR 12484 (March 14, 1997), III FERC Stats. & Regs. ¶ 31,049 (March 4, 1997); Order No. 889–B, *rehearing denied*, 62 FR 64715 (December 9, 1997), III FERC Stats. & Regs. ¶ 31,253 (November 25, 1997).

ES98–23–000 for 60-days. On April 23, 1998, the Commission authorized Citizens to issue no more than $294.5 million of securities in support of or to guarantee securities issued by various governmental or quasi-governmental bodies. The Commission also waived the competitive bidding and negotiated placement requirements in 18 CFR 34.2.

Comment date: April 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Alcoa Power Generation, Inc., Alcoa, Inc., Tapoco, Inc., Yadkin, Inc., Alcoa Generating Corporation, Long Sault, Inc., and Colockum Transmission Company, Inc.

[Docket No. OA99–3–000]

Take notice that on February 25, 2000, Alcoa Power Generating, Inc., tendered for filing revised standards of conduct Order Nos. 889 *et seq.*[2] on behalf of Alcoa, Inc., Tapoco, Inc., Yadkin, Inc., Alcoa Generating Corporation, Long Sault, Inc., and Colockum Transmission Company, Inc. (Alcoa).

Alcoa states that it served copies of the filing on the service list in this proceeding.

5. Green Mountain Power Corporation

[Docket No. ER00–1958–000]

Take notice that on March 24, 2000, Green Mountain Power Corporation (GMP), tendered for filing a service agreement for New Hampshire Electric Cooperative, Inc., to take service under its Network Integration Transmission Service tariff.

Copies of this filing have been served on each of the affected parties, the Vermont Public Service Board and the Vermont Department of Public Service.

Comment date: April 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. New Century Services, Inc.

[Docket No. ER00–1959–000]

Take notice that on March 24, 2000, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Long Term Firm Point-to-Point Transmission Service between the Companies and Southwestern Public Service Company—Wholesale Merchant Function.

Comment date: April 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. FirstEnergy System

[Docket No. ER00–1960–000]

Take notice that on March 24, 2000, FirstEnergy System tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for Statoil Energy Services, Inc., (the Transmission Customer). Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is April 01, 2000, for the above mentioned Service Agreement in this filing.

Comment date: April 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. UtiliCorp United Inc.

[Docket No. ER00–1961–000]

Take notice that on March 24, 2000, UtiliCorp United Inc. (UtiliCorp), tendered for filing service agreements with Conectiv Energy Supply, Inc., for service under its Short-Term Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: April 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. UtiliCorp United Inc.

[Docket No. ER00–1962–000]

Take notice that on March 23, 2000, UtiliCorp United Inc. (UtiliCorp), tendered for filing Service agreements with Conectiv Energy Supply, Inc., for service under its Non-Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: April 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Southwest Power Pool, Inc.

[Docket No. ER00–1963–000]

Take notice that on March 24, 2000, Southwest Power Pool, Inc., tendered for filing notice that effective March 31, 2000, Rate Schedule Nos. 25 and 26, effective date June 1, 1998, and filed with the Federal Energy Regulatory Commission by Southwest Power Pool Inc., are to be canceled.

Notice of the proposed cancellation has been served upon Illinova Power Marketing, Inc., (formerly, Illinois Power Company).

Comment date: April 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Detroit Edison Company Docket and Consumers Energy Company

[Docket No. ER00–1964–000]

Take notice that on March 24, 2000, Consumers Energy Company (Consumers), on behalf of itself and Detroit Edison Company (Detroit Edison), tendered for filing an addendum to various coordination rate schedules that would permit the incremental cost of sulfur dioxide (SO2) emissions allowances to be included in the calculation of rates under those rate schedules. The rate schedules affected are: Consumers Energy Company Rate Schedules FERC No. 22, 23 and 45 and Detroit Edison Company Rate Schedules FERC No. 11, 12 and 26. The change is designed to conform the rate schedules to the Commission's rule regarding the ratemaking treatment of SO2 emissions allowances for Phase II units issued under the Clean Air Act Amendments of 1990.

Copies of the filing were served upon the other parties to the above-listed rate schedules as well as upon the Michigan Public Service Commission.

Comment date: April 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Southwest Power Pool, Inc.

[Docket No. ER00–1965–000]

Take notice that on March 24, 2000, Southwest Power Pool, Inc. (SPP), tendered for filing revised service agreements for Firm Point-to-Point Transmission Service, Non-Firm Point-to-Point Transmission Service and Loss Compensation Service with PPL Electric Utilities Corporation, d/b/a/ PPL Utilities. Earlier versions of these agreements identifying PP&L, Inc., as the Transmission Customer were filed by the Commission and accepted as Service Agreement Nos. 138, 139 and 186 to SPP's FERC Electric Tariff Volume No. 1, respectively.

SPP seeks an effective date of March 14, 2000, for these agreements.

Comment date: April 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Edison Sault Electric Company

[Docket No. ER00–1966–000]

Take notice that on March 24, 2000, Edison Sault Electric Company (Edison

[2] Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991–1996 ¶ 31,035 (April 24, 1996), Order No. 889–A, *order on rehearing*, 62 FR 12484 (March 14, 1997), III FERC Stats. & Regs. ¶ 31,049 (March 4, 1997); Order No. 889–B, *rehearing denied*, 62 FR 64715 (December 9, 1997), III FERC Stats. & Regs. ¶ 31,253 (November 25, 1997).

Sault), tendered for filing Amendment No. 1 to Supplemental Agreement No. 8 to the Contract for Electric Service between Edison Sault and Cloverland Electric Cooperative, Inc., (Cloverland) dated April 9, 1999.

Copies of the filing were served upon Cloverland.

Comment date: April 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Cordova Energy Company LLC

[Docket No. ER00–1967–000]

Take notice that on March 24, 2000, Cordova Energy Company LLC (Cordova), tendered for filing an agreement under which it will sell power to MidAmerican Energy Company.

Cordova requests an effective date of July 20, 2000.

Cordova states that is has served a copy of the filing on the Illinois Commerce Commission, the Iowa Utilities Board, and the South Dakota Public Utilities Commission.

Comment date: April 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Avista Corporation

[Docket No. ER00–1970–000]

Take notice that on March 20, 2000, Avista Corporation tendered for filing a Certificate of Concurrence for the 1999–2000 Operating Procedures under the Pacific Northwest Coordination Agreement (PNCA) filed by Puget Sound Energy, Inc., in Docket No. ER00–1583.

Comment date: April 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Northern Border Pipeline Company

[Docket No. MG00–5–001]

Take notice that on March 24, 2000, Northern Border Pipeline Company (Northern Border), tendered for filing revised standards of conduct in response to the Commission's February 29, 2000 Order (90 FERC ¶ 61,219 (2000)).

Northern Border states that it has served copies of this filing to all parties on the official service list in this proceeding.

Comment date: April 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–8897 Filed 4–10–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application to Amend License and Soliciting Comments, Motions To Intervene, and Protests

April 5, 2000.

a. *Application Type:* Application to Amend License for the Tapoco Project.

b. *Project No:* 2169–013.

c. *Date Filed:* February 24, 2000.

d. *Applicant:* Alcoa Power Generating Inc., Tapoco Division.

e. *Name of Project:* Tapoco Hydroelectric Project.

f. *Location:* On the Cheoah and Little Tennessee Rivers, in Graham and Swain Counties, North Carolina, and Blount and Monroe Counties, Tennessee. The project utilize approximately 370 acres Nanthahala National Forest lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* B. Julian Polk, Alcoa Power Generating Inc., Tapoco Division, 300 North Hall Road, Alcoa, TN 37701–2516 (423) 977–3321.

i. *FERC Contact:* Any questions on this notice should be addressed to R. Feller at (202) 219–2796 or by e-mail at rainer.feller@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* 30 days from the issuance date of this notice.

Please include the project number (2169–013) on any comments or motions filed.

k. *Description of Filing:* Alcoa Power Generating Inc., Tapoco Division proposes to perform upgrades of the hydroelectric generation units at two of the project's developments. The proposed activities consist of replacing the existing turbine runners and rewinding of the generators. The proposed upgrades would increase the net project capacity from 326.5 MW to 359.0 MW, and the net hydraulic capacity of the project would increase from 33,456 cfs to 35,132 cfs.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or motion to intervene in accordance with the requirements of Rules of Practice and Procedure,18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service or Responsive Documents—Any filing must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representative.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8901 Filed 4–10–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6576–7]

Access to Confidential Business Information by Enrollees Under the Senior Environmental Employment Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized grantee organizations under the Senior Environmental Employment (SEE) Program, and their enrollees; access to information which has been submitted to EPA under the environmental statutes administered by the Agency. Some of this information may be claimed or determined to be confidential business information (CBI).

DATES: Comments concerning CBI access will be accepted on or before April 17, 2000.

FOR FURTHER INFORMATION CONTACT: Susan Street, National Program Director, Senior Environmental Employment Program (3641), U.S. Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460. Telephone (202) 260–2573.

SUPPLEMENTARY INFORMATION: The Senior Environmental Employment (SEE) program is authorized by the Environmental Programs Assistance Act of 1984 (Pub. L. 98–313), which provides that the Administrator may "make grants or enter into cooperative agreements" for the purpose of "providing technical assistance to: Federal, State, and local environmental agencies for projects of pollution prevention, abatement, and control." Cooperative agreements under the SEE program provide support for many functions in the Agency, including clerical support, staffing hot lines, providing support to Agency enforcement activities, providing library services, compiling data, and support in scientific, engineering, financial, and other areas.

In performing these tasks, grantees and cooperators under the SEE program and their enrollees may have access to potentially all documents submitted under the Resource Conservation and Recovery Act, Clean Air Act, Clean Water Act, Safe Drinking Water Act, Federal Insecticide, Fungicide and Rodenticide Act, and Comprehensive Environmental Response, Compensation, and Liability Act, to the extent that these statutes allow disclosure of confidential information to authorized representatives of the United States (or to "contractors" under the Federal Insecticide, Fungicide, and Rodenticide Act). Some of these documents may contain information claimed as confidential.

EPA provides confidential information to enrollees working under the following cooperative agreements:

Cooperative agreement number	Organization
CQ–827602	National Older Worker Career Center, Inc.
CQ–827603	NOWCC.
CQ–827604	NOWCC.
CQ–827605	NOWCC.
CQ–827606	NOWCC.
CQ–827607	NOWCC.
CQ–827655	NOWCC.
CQ–827656	NOWCC.
CQ–827657	NOWCC.
CQ–827658	NOWCC.
CQ–827659	NOWCC.
CQ–827660	NOWCC.
CQ–827661	NOWCC.
CQ–825084	National Caucus and Center on Black Aged, Inc.
CQ–826278	NCBA.
CQ–826377	NCBA.
CQ–827211	NCBA.
CQ–827212	NCBA.
CQ–827213	NCBA.
CQ–827214	NCBA.
CQ–827216	NCBA.
CQ–827217	NCBA.
CQ–827847	NCBA.
CQ–827848	NCBA.
CQ–827849	NCBA.
CQ–827850	NCBA.
CQ–827865	NCBA.
CQ–828031	NCBA.
CQ–828032	NCBA.
CQ–828033	NCBA.
QS–826702	NCBA.
CQ–826228	National Association for Hispanic Elderly.
CQ–826229	NAHE.
CQ–827938	NAHE.
QS–827189	NAHE.
QS–827210	NAHE.
CQ–822810–02	National Asian Pacific Center on Aging.
CQ–825448	NAPCA.
CQ–825520	NAPCA.
CQ–826340	NAPCA.
CQ–828075	NAPCA.
CQ–828126	NAPCA.
CQ–825438	National Council On the Aging, Inc.
CQ–825527	NCOA.
CQ–826218	NCOA.
CQ–827255	NCOA.
CQ–827273	NCOA.
CQ–827274	NCOA.
CQ–825528	National Senior Citizens Education and Research Center.
CQ–825529	NSCERC.
CQ–825530	NSCERC.
CQ–826279	NSCERC.
CQ–826776	NSCERC.
CQ–827332	NSCERC.
CQ–827333	NSCERC.
CQ–827334	NSCERC.
CQ–827335	NSCERC.
CQ–827415	NSCERC.

Among the procedures established by EPA confidentiality regulations for granting access is notification to the submitters of confidential data that SEE grantee organizations and their enrollees will have access. 40 CFR 2.201(h) (2) (iii). This document is intended to fulfill that requirement.

The grantee organizations are required by the cooperative agreements to protect confidential information. SEE enrollees are required to sign confidentiality agreements and to adhere to the same security procedures as Federal employees.

Dated: March 20, 2000.

Donald W. Sadler,

Director, Human Resources Staff #1.

[FR Doc. 00–8956 Filed 4–10–00; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting; Sunshine Act Notice

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on April 13, 2000, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Vivian L. Portis, Secretary to the Farm Credit Administration Board (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board

meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

OPEN SESSION

A. *Approval of Minutes*
—March 9, 2000 (Open)
B. *Reports*
—FCS Building Association's Quarterly Report
—Office of Examination's Annual Report on the Conditions of the System
C. *New Business*
1. *Regulations*
—OFI Lending [12 CFR Parts 614, 615, and 618] (ANPRM)
—Regulatory Burden-Phase II [12 CFR Chapter VI] (Notice)
—Participations [12 CFR Part 614] (Final)
2. *Other*
—Corporate Approvals Report
—Central Valley PCA Consolidation with Pacific Coast FCS, an ACA

Dated: April 6, 2000.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 00–9044 Filed 4–7–00; 10:46 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

April 4, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 12, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0093.

Title: Application for Renewal of Radio Station License.

Form Number: FCC 405.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 2,500 filings in any given year.

Estimated Time per Response: 2.25 hours.

Frequency of Response: Every ten years.

Total Annual Burden: 5,625 hours.

Total Annual Costs: $337,500 in filing fees (2,500 filings x $135 = $337,500). Filing fee amounts vary depending upon the specific service for which application is made. Most Form 405 services are subject to a $135 filing fee.

Needs and Uses: FCC Form 405 is used by common carriers and Multipoint Distribution Service non-common carriers to apply for renewal of radio station licenses. Section 307(c) of the Communications Act limits the term of common carrier radio licenses to ten years and requires that written applications be submitted for renewal. FCC Form 405 is required by 47 CFR parts 5, 21, 23, and 25 of the Commission's rules. Form 405 is being revised to reflect the fact that respondents no longer file this form for applications for services in Parts 22 and 101 of the Commission's rules. Respondents now file FCC Form 601 for applications for those services.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–8889 Filed 4–10–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, April 17, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals concerning renovation of a Federal Reserve Bank building. (This item was originally announced for a closed meeting on April 3, 2000.)

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: April 7, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–9117 Filed 4–7–00; 2:57 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office for Civil Rights; Statement of Organization Functions and Delegations of Authority

Part A of the Office of the Secretary, Statement of Organization, Functions, and Delegation of Authority for the Department of Health and Human Services is being amended at, Chapter AT, Office for Civil Rights (OCR), as last amended at 57 FR 14723, 4/22/92. The changes are to streamline the OCR headquarters by establishing an Office of the Deputy Director, who will have day-to-day responsibility for OCR

functions, and realigning the headquarters program operations, policy, and resource management functions into the following components; Program, Policy and Training Division; Voluntary Compliance and Outreach Division; and a Resources Management Division. The changes are as follows:

I

Delete Section AT.00 Mission, At.10 Organization, and AT.20 Functions paragraph A through the first paragraph of C.4, and replace with the following:

Section AT.00 Mission

The Department of Health and Human Services, through the Office for Civil Rights, promotes and ensures that people have equal access to and opportunity to participate in and receive services in all HHS programs without facing unlawful discrimination. Through prevention and elimination of unlawful discrimination, the Office for Civil Rights helps HHS carry out its overall mission of improving the health and well-being of all people affected by its many programs. Ensuring the nondiscriminatory provision of services funded or provided directly by the Department is a continuing challenge to all of the Department's employees.

Section AT.10 Organization

The Office for Civil Rights is led by a Director who reports to the Secretary. The Director also serves as the Secretary's Special Assistant for Civil Rights and is responsible for overall coordination of the Department's civil rights compliance and enforcement activities. The Office is comprised of the following components:

Office of the Director (ATA)
Office of the Deputy Director (ATB)
- Program, Policy and Training Division (ATB1)
- Voluntary Compliance and Outreach Division (ATB2)
- Resource Management Division (ATB3)
- Regional Offices for Civil Rights (ATD1 through ATDX)

Section AT.20 Functions

A. Office of the Director (ATA). As the Department's chief officer for the enforcement of the nondiscrimination provisions of law and as adviser to the Secretary on civil rights, the Director is responsible for the overall leadership and operations of the Office for Civil Rights; establishes policy and serves as adviser to the Secretary on civil rights issues, including intra-departmental activities aimed at incorporating civil rights compliance into programs the Department administers and/or operates directly; sets overall direction and priorities of the Office through budget requests, strategic planning, and results-oriented operating and performance plans; maintains liaison with other Federal departments and agencies charged with civil rights enforcement responsibilities; coordinates with the White House on civil rights and related policies; maintains liaison with the Congress in coordination and consultation with the Assistant Secretary for Legislation, notifying appropriate Congressional committees of significant civil rights developments and informing members of compliance developments affecting recipients of Federal funds in their Congressional districts; determines policies and standards for civil rights investigations, enforcement and voluntary compliance and outreach programs in coordination with the Secretary and other Federal agencies; represents the Secretary before Congress and the Executive Office of the President on matters relating to civil rights; and solicits the participation of program beneficiaries and recipients of HHS funds in implementing the Department's civil rights enforcement, voluntary compliance and outreach programs.

A Principal Deputy Director serves as the alter ego of the Director and acts for the Director in his/her absence. The Office of the Director ensures that all documents requiring review or approval by the Director are assigned, cleared and/or monitored for timely action/responses to the Office's stakeholders and customers, including the Secretary, Departmental components, Congress, other government agencies, beneficiary and advocacy organizations, and the public. The Office of the Director includes an Executive Secretariat function and a central support services coordination function.

B. Office of the Deputy Director (ATB). This office is headed by a Deputy Director who reports to the Office of the Director, OCR. The Deputy Director coordinates the day-to-day operations of headquarters, overseeing program operations, policy development, and administrative, budget and human resources activities, including OCR's internal coordination responsibilities.

The Office of the Deputy Director includes three headquarters units that report to the Deputy Director: (1) the Program, Policy and Training Division; (2) the Voluntary Compliance and Outreach Division; and (3) the Resource Management Division. OCR Regional Managers also report to the Deputy Director.

1. Program, Policy and Training Division (ATB1). This Division develops policy and assists in implementation of OCR's compliance and enforcement program; plans and coordinates OCR's high priority civil rights program initiatives; assesses results of compliance activities, including, but not limited to, reviewing challenges; conducts policy and HHS program-related research; advises OCR staff nationwide on case development and quality; assists in developing negotiation, enforcement, and litigation strategies; identifies training needs and designs training programs for OCR staff; develops civil rights surveys; manages media and public relations; coordinates OCR's inter-governmental relations activities; and provides civil rights and program advice to OCR staff nationwide, other HHS components and external stakeholders.

2. Voluntary Compliance and Outreach Division (ATB2). This Division provides technical assistance to and conducts pre-grant reviews of providers/applicants seeking Medicare certification and other program participation funded by the Department to determine their ability to comply with civil rights requirements; provides guidance and assistance to OCR field offices, in coordination with the Program, Policy and Training Division, for ensuring uniform and efficient implementation of pre-grant processing policies and procedures; maintains civil rights assurance of compliance forms for permanent reference; maintains liaison with and provides civil rights technical assistance and advisory services to HHS Operating Divisions (OPDIVS), national advocacy, beneficiary, and provider groups, and to other Federal departments and agencies with respect to civil rights outreach programs, initiatives, and mandates.

3. Resource Management Division (ATB3). This Division implements OCR's administrative, financial, information resource management (IRM), data collection, and personnel functions. The Division formulates and executes OCR's budget; designs and maintains systems and data bases; administers OCR networks, including Internet and Intranet coordination; develops management, administrative and IRM policy; and manages personnel processing and performance management and employee recognition systems.

4. Regional Office for Civil Rights (ATD1 through ATDX). The Regional Managers, Office for Civil Rights report directly to the Deputy Director.

II. Delegations of Authority

All delegations and redelegations of authority to officials of the Office for Civil Rights that were in effect prior to the effective date of this reorganization shall continue in effect pending further redelegation.

Dated: March 22, 2000.

John J. Callahan,

Assistant Secretary for Management and Budget.

[FR Doc. 00–8858 Filed 4–10–00; 8:45 am]

BILLING CODE 4153–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Privacy Act of 1974; Computer Matching Programs—Department Of Veterans Affairs

AGENCY: Administration for Children and Families, DHHS.

ACTION: Notice of a Computer Matching Program to Comply with Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988.

SUMMARY: In compliance with Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988, we are publishing a notice of a computer matching program that ACF will conduct on behalf of itself, the Health Care Financing Administration (HCFA), and the Food and Nutrition Service (FNS), utilizing Veterans Affairs pension and compensation information and State Public Assistance Agency records.

ADDRESSES: Interested parties may comment on this notice by writing to the Director, Office of State Systems Policy, Administration for Children and Families, Aerospace Building, 370 L'Enfant Promenade, SW, Washington, DC 20447. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Director, Office of State Systems Policy, Administration for Children and Families, Aerospace Building, 370 L'Enfant Promenade, SW, Washington, DC 20447, Telephone Number (202) 401–6959.

DATES: We filed a report of the subject ACF matching program with the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives and the Office of Information and Regulatory Affairs, the Office of Management and Budget on March 31, 2000.

SUPPLEMENTARY INFORMATION:

A. General

Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988, amended the Privacy Act (5 U.S.C. 552a) by adding certain protections for individuals applying for and receiving Federal benefits. The law regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State and local government records.

The amendments require Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with source agencies;

(2) Provide notification to applicants and beneficiaries that their records are subject to matching;

(3) Verify match findings before reducing, suspending or terminating an individual's benefits or payments;

(4) Furnish detailed reports to Congress and OMB; and

(5) Establish a Data Integrity Board that must approve matching agreements.

B. ACF Computer Match Subject to Pub. L. 100–503

Below is a brief description followed by a detailed notice of a computer match that ACF will be conducting as of May 1, 2000 or later.

ACF computer match with Department of Veterans Affairs (VA). Purpose: To detect and determine the amount of benefit overpayment to public assistance recipients by verifying client VA pension and compensation circumstances using VA automated data files.

Notice of Computer Matching Program

State Public Assistance Agencies will match public assistance client records with VA compensation and pension records.

A. Participating Agencies

ACF, VA and State Public Assistance Agencies (SPAAs).

B. Purpose of the Matching Program

The purpose of this matching program is to provide the SPAAs listed in attachment A with data from the VA benefit and compensation file for the states to determine eligibility and insure fair and equitable treatment in the delivery of benefits attributable to funds provided by the Federal Government. The SPAAs, listed in attachment A, will provide ACF with a file of Medicaid, Temporary Assistance to Needy Families (TANF), general assistance and Food Stamp clients. VA will provide ACF with a file of individuals receiving VA compensation and pension benefits. The Defense Manpower Data Center (DMDC), in the role of a contractor providing computer support services to ACF, will match the SPAAs, listed in attachment A, files with the VA file and provide ACF with VA pension and compensation benefit information for all matched records. ACF will in turn provide the SPAAs with the appropriate VA information. The SPAAs listed in attachment A, will use the VA information to verify client circumstances for eligibility and for fair and equitable treatment, and to initiate adverse action when appropriate.

C. Authority for Conducting the Matching Program

The legal authority for this match is section 402 of the Social Security Act (42 U.S.C. 602) and section (b)(3) of the Privacy Act (5 U.S.C. 552a).

D. Categories of Records and Individuals Covered by the Match

VA will disclose information from the VA Compensation, Pension, and Education and Rehabilitation Records—VA (58 VA 21/22), contained in the Privacy Act Issuances, 1997 Compilation.

ACF will match this information with State Public Assistance Agencies Client Eligibility files.

E. Inclusive Dates of the Match

This computer match will begin no sooner than 30 days from the date HHS publishes a Computer Matching Notice in the **Federal Register** or 30 days from the date copies of the approved agreement and the notice of the matching program are sent to the Congressional committee of jurisdiction under subsections (0)(2)(B) and (r) of the Privacy Act, as amended, or 30 days from the date the approved agreement is sent to the Office of Management and Budget, whichever is later, provided no comments are received which result in a contrary determination.

F. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program should submit comments to the Director, Office of State Systems Policy, Administration for Children and Families, Aerospace Building, 370 L'Enfant Promenade, SW, Washington, DC 20447.

Dated: April 5, 2000.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Attachment A: ACF Public Assistance Reporting Information System (PARIS) Project

Participating State Public Assistance Agencies

1. Connecticut Department of Social Services
2. District of Columbia Department of Social Services
3. Florida Division of Public Assistance
4. Illinois Department of Public Aid
5. Kansas Department of Social and Rehabilitation Services
6. Louisiana Department of Social Services
7. Maryland Department of Human Resources
8. Massachusetts Department of Transitional Assistance
9. Nebraska Department of Social Services
10. New York Department of Social Services
11. North Carolina Department of Human Resources
12. Ohio Department of Human Services
13. Oklahoma Department of Human Services
14. Pennsylvania Department of Public Welfare
15. South Dakota Department of Social Services
16. Tennessee Department of Human Services
17. Texas Department of Human Services
18. Utah Department of Workforce Services and Department of Health
19. Virginia Department of Social Services

[FR Doc. 00–8961 Filed 4–10–00; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–317]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection;

Title of Information Collection: Evaluation of Qualified Medicare Beneficiary (QMB) and Specified Low-Income Medicare Beneficiary (SLMB) Outreach Activities;

Form No.: HCFA–R–317 (OMB# 0938-NEW);

Use: State Medicaid and other State agencies that assist the Medicare population will be queried regarding specific outreach activities to Medicare beneficiaries that qualify for QMB-only and SLMB-only benefits. With this information, the effectiveness of specific outreach activities can then be evaluated. The results of the evaluation can be used to identify those outreach activities that are most cost effective. For effective outreach activities, the results can also be used to determine optimal levels of outreach efforts (*e.g.*, expenditures).;

Frequency: Annually;

Affected Public: State, Local or Tribal Government;

Number of Respondents: 51;

Total Annual Responses: 51;

Total Annual Hours: 102.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 4, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–8866 Filed 4–10–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–228]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the Information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. Due to an unanticipated event and the fact that this collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320, we are requesting an emergency review.

In an effort to comply with OMB's terms of clearance, HCFA hired a contractor to conduct a study of issues raised by the ACR form in use at the time, and to develop recommendations to further reduce the workload needed to complete a new form. The project

took longer to complete than expected which delayed the submission of the form for OMB approval. However, the statute (section 1854(a) of the Social Security Act) specifically requires this report to be submitted to HCFA by July 1 of each year. The form is used to price the M+C plan to be offered to Medicare beneficiaries and HCFA must approve the pricing structure of the M+C plan before it can be offered to Medicare beneficiaries.

We feel significant improvements were made to the form which are intended to simplify the methodology and submission, to reduce the amount of reporting burden and backup needed, and to provide more flexibility to users.

HCFA is requesting OMB review and approval of this collection by June 1, 2000, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by May 22, 2000. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: Revision of a currently approved collection;

Title of Information Collection: Adjusted Community Rate (ACR) and Supporting Regulations in 42 CFR 422.306, 422.501, and 422.510;

Form No.: HCFA–R–228 (OMB# 0938–0742);

Use: This collection effort will be used to price the M+C plan offered to Medicare beneficiaries by an M+C organization. Organizations submitting the Adjusted Community Rate form would include all M+C organizations plus any organization intending to contract with HCFA as a M+C organization. These current M+C organization contractors will be required to submit this form no later than July 1, 2000 for the calendar year 2001.;

Frequency: Annually;

Affected Public: Businesses or other for profit, Not-for-profit institutions;

Number of Respondents: 1,200;

Total Annual Responses: 1,200;

Total Annual Hours Requested: 114,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of Information requirements. However, as noted above, comments on these Information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by May 22, 2000:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: April 4, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–8865 Filed 4–10–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of argali (*Ovis ammon*) Status Report for the Republic of Tajikistan

AGENCY: Fish and Wildlife Service.

ACTION: Notice of the availability of the contract report "Current Population Status of the Parmir Arhar (argali) in Tajikistan."

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of a report titled "Current Population Status of the Pamir Arhar (Argali) in Tajikistan". This work is part of the continuing evaluation by the Service of the populations of argali in accordance with the species' listing under the U.S. Endangered Species Act. The Service is making copies of the report available to the public for informational purposes.

DATES: The Service will accept requests to obtain a photocopy of the report for 60 days after April 11, 2000.

ADDRESSES: Send your requests to the Chief, Branch of Permits, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203. You may also send your request by fax to Room 700, Arlington, Virginia 22203. You may also send your request by fax to (703) 358–2281, to the attention of Mike Carpenter.

FOR FURTHER INFORMATION CONTACT: Mike Carpenter, Office of Management Authority, telephone (703) 358–2104 or fax (703) 358–2281, (see **ADDRESSES** section)

SUPPLEMENTARY INFORMATION: In 1999 the Service contracted with Dr. A. K. Fedosenko of the Department of Conservation and Rational Use of Game Resources of the Russian Federation to conduct a survey of the argali (*Ovis ammon polii*) population in the eastern portion of the Republic of Tajikistan. This survey is part of the continuing review of the status of populations of argali (*Ovis ammon*) listed as threatened under the Endangered Species Act and effected by the Special Rule at 50 CFR 17.40(j). The present report is a continuation of the 1994 status review of the threatened argali populations completed for the Service by Dr. Anna Lushchekina and Dr. Fedosenko and presents the results of the 1999 survey in the same context as the previous data for the area.

Dated: April 5, 2000.

Kristen Nelson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–8888 Filed 4–10–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

National Satellite Land Remote Sensing Data Archive Advisory Committee, Committee Meeting

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, the National Satellite Land Remote Sensing Data Archive (NSLRSDA) Advisory Committee will meet at or near the U.S. Geological Survey (USGS) National Center in Reston, VA. The Committee, comprised of 15 members from academia, industry, government, information science, natural science, social science, and policy/law, will provide the USGS with advice and consultation on defining and accomplishing the NSLRSDA'a archiving and access goals to carry out the requirements of the Land Remote

Sensing Policy Act; on priorities of the NSLRSDA's tasks; and, on issues of archiving, data management, science, policy, and public-private partnerships.

Topics to be reviewed and discussed by the Committee include determining the content of and upgrading the basic data set as identified by the Congress; metadata content and accessibility; product characteristics, availability, and delivery; and archiving, data access, and distribution policies.

DATES AND LOCATION: April 26–28, 2000, commencing at 8:45 a.m. April 26 and adjourning at 2 pm on April 28. Meeting will be held at the USGS National Center in Reston, Virginia, Room BA102A on April 26–27. On April 28, the meeting will be held at the Hyatt Dulles.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Holm, Acting Chief, Data Services Branch, U.S. Geological Survey, EROS Data Center, Sioux Falls, South Dakota, 57198 at (605) 594–6142 or email at holm@usgs.gov.

SUPPLEMENTARY INFORMATION: Meetings of the National Satellite Land Remote Sensing Data Archive Advisory Committee are open to the public. Previous Committee meeting minutes are available for public review at http://edc.usgs.gov/programs/nslrsda/advcomm.html.

Dated: April 5, 2000.

Richard E. Witmer,

Chief Geographer.

[FR Doc. 00–8854 Filed 4–10–00; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–010–1430–ER/–010–G0–0253]

Emergency Road Closure, Sandoval County, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Road Closure of Access.

SUMMARY: Notice is hereby given that effective April 11, 2000, a road located within the SE¼SE¼NW¼ of section 8, T. 23 N., R. 1 W., NMPM, is closed to all forms of access except as specifically authorized by the Bureau of Land Management. The closed area is commonly known as the Gallina Road north of Cuba. The purpose of this road closure is to prevent unnecessary degradation of resources, undue environmental damage and to ensure resource protection on public lands.

The emergency access closure is in accordance with the provisions of 43 CFR 8364.1. This designation remains in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Joe Jaramillo, Realty Specialist at Bureau of Land Management, Albuquerque Field Office, 435 Montano NE, Albuquerque, New Mexico 87107, (505) 761–8779.

Dated: April 14, 2000.

Steve W. Anderson,

Assistant Field Manager, Division of Lands and Minerals.

[FR Doc. 00–8867 Filed 4–10–00; 8:45 am]

BILLING CODE 4310–AG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–040–1410–00–HX]

Opening Order

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The State of Alaska applications for selection made under Section 6(b) of the Alaska Statehood Act of July 7, 1958, 43 U.S.C. prec. 21 (1994), and under section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1994), become effective without further action by the State upon publication of this public land order in the **Federal Register**. Land not conveyed to the State is opened and will be subject to the terms and condition of Public Land Order No. 5180, as amended, and any other withdrawals of record.

Seward Meridian

Lot 1, U.S. Survey No. 3570, Alaska, containing 3.15 acres.

Seward Meridian

T. 6 N., R. 11 W.,
Section 31, Lots 40, 41, and 42, containing 3.75 acres.

FOR FURTHER INFORMATION CONTACT: Karen Collis, Realty Specialist, Bureau of Land Management, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507, 907–267–1210.

Nick Douglas,

Field Manager.

[FR Doc. 00–8867 Filed 4–10–00; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Park Service, Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Notice of Meeting Cancellation

Notice is hereby given in accordance with the Federal Advisory Committee Act that the meeting of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission previously scheduled for Tuesday, April 18, 2000 in San Francisco will be canceled.

The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties. Members of the Commission are as follows:

Mr. Richard Bartke, Chairman,
Ms. Amy Meyer, Vice Chair,
Ms. Susan Giacomini Allan,
Mr. Douglas Siden,
Mr. Michael Alexander,
Mr. Dennis J. Rodoni,
Ms. Lennie Roberts,
Ms. Yvonne Lee,
Ms. Carlota del Portillo,
Mr. Trent Orr,
Mr. Redmond Kernan,
Ms. Betsey Cutler,
Mr. Gordon Bennett,
Ms. Anna-Marie Booth,
Mr. John J. Spring,
Dr. Edgar Wayburn,
Mr. Mel Lane,
Mr. Doug Nadeau.

Dated: March 31, 2000.

Brian O'Neill,

General Superintendent, Golden Gate National Recreation Area.

[FR Doc. 00–8881 Filed 4–10–00; 8:45 am]

BILLING CODE 4310–70–P

OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS

[FR00N–0001]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Special Trustee for American Indians.

ACTION: Notice of Requests for Extension of Information Collection Approvals.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44

U.S.C. 3501 *et seq.*), the Office of the Special Trustee for American Indians (OST) announces the following Information Collection Requests (ICRs) have been submitted to the Office of Management and Budget (OMB) for review and approval: Application for Technical Assistance, OMB No. 1035–0001; Application for Technical Assistance to Withdraw Tribal Funds from Trust Status (General), OMB No. 1035–0002; and Application to Withdraw Tribal Funds from Trust Status, OMB No. 1035–0003. The ICRs describe the nature of the information collections and their expected burdens and costs; where appropriate, they include the actual data collection instruments.

DATES: Comments must be submitted on or before May 11, 2000.

Request for Comments: You may send or deliver comments to the addressee in the **ADDRESSES** section below. Please put the document number on your comments found in brackets in the heading of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days to assure maximum consideration. We solicit your specific comments as to:

(1) Whether the proposed information collections are necessary for the proper performance of our agency's functions, including whether the information has practical usefulness.

(2) The accuracy of our burden estimates of the collections of information.

(3) How to enhance the quality, utility, and clarity of the information to be collected.

(4) How to minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Sarah Yepa at OST by phone at (505) 248–5711, by email at sarah__yepa@ost.doi.gov.

SUPPLEMENTARY INFORMATION:

Titles: Application for Technical Assistance, OMB No. 1035–0001; Application for Technical Assistance to Withdraw Tribal Funds from Trust Status (General), OMB No. 1035–0002; and Application to Withdraw Tribal Funds from Trust Status, OMB No. 1035–0003. The requests to OMB are to extend these currently approved collections for three years.

Abstract: The American Indian Trust Fund Management Reform Act of 1994 (the Reform Act) allows tribes to withdraw their money held in trust by the U.S. Government. To withdraw their money, tribes must first submit an application and get approval from the Secretary of the Interior. The Reform Act also allows tribes to apply for technical assistance and financial assistance to complete the application. Section 1200.13 tells tribes how to submit an application to withdraw their money and Section 1200.14 tells them how they can apply for technical assistance and financial assistance. These information collections allow us to collect documents associated with tribes withdrawing their funds held in trust and applying for technical assistance to withdraw funds under 25 CFR 1200. Responses to these collections of information are required to obtain or retain a benefit. A **Federal Register** notice required under 5 CFR 1320.8(d), soliciting comments on proposed renewal of these collections of information, was published on 12/21/99 (FR99N–0001); no comments were received.

Burden Statement: The current information collection authorizations expire March 31, 2000. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The application forms and burden estimates are:

1. OMB No. 1035–0001, OST Form No. SF–424A, Application for Technical Assistance to Withdraw Tribal Funds from Trust Status (Specific Budget):

Respondents: American Indian Tribes
Annual Respondents and Responses—12
Estimated Burden Per Response—39 hours
Estimated Annual Burden—468 hours

2. OMB No. 1035–0002, OST Form No. SF–424, Application for Technical Assistance to Withdraw Tribal Funds from Trust Status (General):

Respondents: American Indian Tribes
Annual Respondents and Responses—12
Estimated Burden Per Response—13 hours
Estimated Annual Burden—156 hours

3. OMB No. 1035–0003, Application to Withdraw Tribal Funds from Trust Status

Respondents: American Indian Tribes
Annual Respondents and Responses—12
Estimated Burden Per Response—342 hours
Estimated Annual Burden—4104 hours

Addresses: Please address your comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Interior Department, 725 17th Street, NW, Washington, DC 20503.

Please also send a copy of your comments to: Ms. Sarah Yepa, Office of Trust Funds Management, Office of the Special Trustee for American Indians, 505 Marquette, N.W., Suite 1000, Albuquerque, NM 87102.

Dated: March 30, 2000.

Donna Erwin,

Director, Office of Trust Funds Management.

[FR Doc. 00–8868 Filed 4–10–00; 8:45 am]

BILLING CODE 4310–2W–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the Compact Council for the National Crime Prevention and Privacy Compact

AGENCY: Federal Bureau of Investigation.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Compact Council created by the National Crime Prevention and Privacy Compact Act of 1998 (Compact). Thus far, the federal government and five states are parties to the Compact which governs the exchange of criminal history records for licensing, employment, and similar purposes. The Compact also provides a legal framework for the establishment of a cooperative Federal-state system to exchange such records.

The United States Attorney General appointed fifteen persons from federal and state agencies to serve on the Compact Council. The Council will prescribe system rules and procedures for the effective and proper operation of the system.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement with the Compact Council or wishing to address this session of the Compact Council should notify Mr. Emmet A. Rathbun at (304) 625–2720, at least 24 hours prior to the start of the session. The notification should contain the requestor's name and corporate designation, consumer affiliation, or government designation, along with a short statement describing the topic to be addressed, and the time needed for the presentation. Requestors will ordinarily be allowed not more than 15 minutes to present a topic.

DATES AND TIMES: The Compact Council will meet in open session from 9 a.m. until 5 p.m. on May 23–24, 2000.

ADDRESS: The meeting will take place at the Swissotel Atlanta, 3391 Peachtree Road, NE, Atlanta, Georgia, telephone (404) 365–0065.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mr. Emmet A. Rathbun, Unit Chief, Programs Development Section, CJIS Division, FBI, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0147, telephone (304) 625–2720, facsimile (304) 625–5388.

Dated: March 31, 2000.

Don M. Johnson,

Section Chief, Programs Development Section, Federal Bureau of Investigation.

[FR Doc. 00–8883 Filed 4–10–00; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Existing Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Extension of a Currently Approved Collection.

National Corrections Reporting Program

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 13, 2000, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until May 11, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* National Corrections Reporting Program.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Forms: NCRP–1A, NCRP–1B, NCRP–1C, and NCRP–1D. Corrections Unit, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* State Departments of Corrections. The National Corrections Reporting Program is the only national level data collection that provides information on sentence length, expected time to be served in prison, actual time served by released prisoners, method of release, time served on parole, type of parole discharge, offense composition of offenders entering and exiting prison and parole, and other characteristics of inmates and parolees. The data is used by Department of Justice officials, the U.S. Congress, prison administrators, researchers, and policy makers to assess current trends and patterns in the Nation's correctional populations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 41 respondents will take on average 2 hours to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,196 hours annual burden.

If additional information is required contact: Ms Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue NW, Washington, DC 20530.

Dated: April 6, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–8998 Filed 4–10–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,313; NAFTA–03670]

PacifiCorp Shareholders Services and Investor Relations Departments, Portland, OR; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at PacifiCorp Shareholders Services and Investor Relations Departments, Portland, Oregon. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–37,313 and NAFTA–03670; PacifiCorp Shareholders Services and Investor Relations Dept., Portland, Oregon (March 28, 2000)

Signed in Washington, D.C. this 29th day of March, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–8927 Filed 4–10–00; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,240]

Chevron Products Company, Roosevelt, UT; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Chevron Products Company, Roosevelt, Utah. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–37,240; Chevron Products Company, Roosevelt, Utah (March 29, 2000)

Signed in Washington, D.C. this 29th day of March, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–8914 Filed 4–10–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,346]

Enaid Sportswear, Inc., New York, New York; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 14, 2000, in response to a worker petition which was filed on behalf of workers at Enaid Sportswear, Inc., New York, New York.

The subject firm closed on September 30, 1999. The Department has been unable to locate principals of the firm on otherwise obtain information to reach a determination on worker eligibility. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 27th day of March 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–8930 Filed 4–10–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,438]

Georgia Pacific Corporation, Building Products Division, OSB Mill, Woodland, ME; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 13, 2000 in response to a worker petition which was filed by the union on behalf of workers at Georgia Pacific Corporation, Building Products Division, OSB Mill, Woodland, Maine.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 24th day of March, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–8928 Filed 4–10–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,211; NAFTA–03584]

Masonite Corporation, Pilot Rock, OR; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Masonite Corporation, Pilot Rock, Oregon. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–37,211 and NAFTA–03584; Masonite Corporation, Pilot Rock, Oregon (March 28, 2000)

Signed in Washington, D.C. this 29th day of March, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–8926 Filed 4–10–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,442]

Philips Lighting Company, Fairmont, WV; Notice of Negative Determination on Reconsideration

On November 23, 1999, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on December 21, 1999 (64 FR 244, Pages 71502–71503).

The Department initially denied TAA to workers of the Fairmont facility because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The Department's findings determined that separations of workers during the relevant period were the result of fluctuations in demand and a domestic transfer of production. The determination also stated that Philips Lighting Company does not import flourescent lighting products.

The petitioners requesting reconsideration asserted that the company is importing lighting products such as those produced at Fairmont in recent periods and that equipment transferred to a foreign location was being used to manufacture products formerly produced at Fairmont.

The Department's initial Negative Determination noted that workers of the Fairmont facility were covered by a previous TAA certification through April 15, 1999. Thus, the instant investigation focused on separations that have occurred since April 15, 1999.

On reconsideration, the Department conducted further investigation and obtained additional information from the subject firm. The Department has concluded that, although the company does in fact import flourescent lighting products, it does not import any products such as those produced at Fairmont within the past two years. The further investigation substantiated the previous finding that separations of workers from the Fairmont facility in the second half of 1999 were attributable to the transfer of production of certain flourescent lighting products to another domestic location of the subject firm. The further investigation also substantiated previous findings that equipment transferred from the Fairmont plant to a foreign location included such items as fork lifts and that no equipment transferred to the

foreign location is being used to produce articles manufactured at Fairmont during the relevant period.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Philips Lighting Company, Fairmont, West Virginia.

Signed at Washington, D.C., this 31st day of March, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–8915 Filed 4–10–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 21, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 21, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 20th day of March, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 03/20/00]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,470	Radionic's, Inc (Wrks)	Salinas, CA	03/10/00	Communicators, Keypads.
37,471	Huffy Bicycles (Comp)	Southhaven, MS	02/24/00	Bicycles.
37,472	MCNIC Oil and Gas Co (Wrks)	Detroit, MI	02/21/00	Natural Gas.
37,473	Far East International (Wrks)	Hunt. Beach, CA	03/05/00	Custom Doors.
37,474	Now Fabrics, Inc (Comp)	New York, NY	03/01/00	Knitted Fabrics.
37,475	Findlay Industries (Wrks)	Johnstown, OH	03/07/00	Auto Interior Trim Products.
37,476	Triten Leathergoods (Comp)	Johnson City, TN	03/06/00	Business Leather Accessories.
37,477	Pinewood Casuals, Inc (Comp)	Philipsburg, PA	02/21/00	Men's Suit Pants.
37,478	Hartwell Sports (Comp)	Hartwell, GA	02/25/00	Knit Shirts.
37,479	Rocky Shoes and Boots (UNITE)	Nelsonville, OH	03/10/00	Occupational Boots.
37,480	Chevron Info. Technology (Comp)	San Francisco, CA	03/10/00	Provides Support to Parent Co.
37,481	Inland Refining (Comp)	Woods Cross, UT	03/08/00	Oil and Gas.
37,482	Quantum Corp (Comp)	Colorado Sprg, CO	02/29/00	Computer Storage Drives.
37,483	American Identity (Comp)	Ocean Springs, MS	03/08/00	Headwear.
37,484	Calgon Corp (Wrks)	Ellwood City, PA	03/06/00	Specialty Chemicals.
37,485	Rising Eagle Enterprises (Comp)	East Tawas, MI	03/09/00	Cameras.
37,486	Down River Forest (AWPP)	Woodland, WA	03/06/00	Wood Trim, Molding, Block Panels.
37,487	Alta Gold Co (Wrks)	Fernley, NV	03/07/00	Gold.
37,488	Tyco Electronics (Comp)	Marion, KY	03/07/00	Electrical Relays and Circuit Breakers.
37,489	Hasbro Manufacturing Serv (Comp)	El Paso, TX	03/07/00	Toys.
37,490	Brechteen (Wrks)	Chesterfield, MI	03/10/00	Sausage Casings.
37,491	Cherrybell Mfg Corp (Comp)	Tucson, AZ	02/28/00	Ladies' Underwear.
37,492	ISO Electronics, Inc (Comp)	Indianapolis, IN	03/08/00	Resistors and Diodes.
37,493	Levi Strauss & Co (Wrks)	El Paso, TX	03/09/00	Pants.
37,494	Border Apparel, Inc (UNITE)	El Paso, TX	02/17/00	Jeans.
37,495	Wolverine Tube, Inc (Comp)	Roxboro, NC	02/20/00	Copper Tube.

[FR Doc. 00–8929 Filed 4–10–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,105]

Weiser Lock, a Masco Subsidiary Including Leased Workers of Interim Personnel, ADECCO Employment Services, Inc., TRC Staffing Services, Inc., Tucson, AZ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 28, 1999, applicable to workers of Weiser Lock, a Masco Subsidiary, Tucson, Arizona. The notice will be published soon in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that some employees of Weiser Lock were leased from Interim Personnel, Adecco Employment Services, Inc., and TRC Staffing Services, Inc. to produce residential door hardware at the Tucson, Arizona plant. Worker separations occurred at these companies as a result of worker separations at Weiser Lock, a Masco Subsidiary, Tucson, Arizona.

Based on these findings, the Department is amending the certification to include workers of Interim Personnel, Adecco Employment Services, Inc., and TRC Staffing Services, Inc. leased to Weiser Lock, a Masco Subsidiary, Tucson, Arizona.

Accordingly, the Department is amending the certification to reflect this matter.

The amended notice applicable to TA–W–37,105 is hereby issued as follows:

"All workers of Weiser Lock, a Masco Subsidiary, Tucson, Arizona and leased workers of Interim Personnel, Adecco Employment Services, Inc., and TRC Staffing Services, Inc., Tucson, Arizona engaged in the production of residential door hardware for Weiser Lock, A Masco Subsidiary, Tucson, Arizona who became totally or partially separated from employment on or after November 19, 1998 through December 28, 2001 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 3rd day of April, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–8916 Filed 4–10–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 21, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 21, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, D.C. this 27th day of March, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 03/27/00]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,496	Zin Plas (Co.)	Grand Rapids, MI	03/10/00	Plumbing Components.
37,497	Russell Athletic (Co.)	Ashland, AL	03/10/00	Knit Apparel.
37,498	Corbin Ltd (UNITE)	Huntington, WV	03/08/00	Trousers.
37,499	Lenox China (GMP)	Pomona, NJ	03/03/00	Fine China Dinnerware.
37,500	Ultra Building Systems (Wkrs)	S. Hackensack, NJ	02/15/00	Vinyl Windows.
37,501	Stant, Inc. (Wkrs)	Connersville, IN	03/13/00	Chrome Plating Fuel Rail and Components.
37,502	Leica Microsystems (Wkrs)	Depew, NY	03/17/00	Scientific and Ophthalmic Instrumentation.
37,503	Swiss-M-Tex (Wkrs)	Travelers Rest, SC	03/18/00	Schiffli Embroidery.
37,504	MTF, Inc (Wkrs)	West Lawn, PA	03/15/00	Finish Yarn.
37,505	Fedco Automotive Co. (Wkrs)	Buffalo, NY	03/09/00	Heater Cores.
37,506	Ingersoll Rand (Wkrs)	Los Angeles, CA	03/04/00	Door Locks and Door Lock Parts.
37,507	American Identity (Co.)	Canton, SD	03/08/00	Outerwear Jackets.
37,508	Meritor Automotive (UAW)	Oshkosh, WI	03/02/00	Axles, Transmissions.
37,509	May Apparel (The) (Co.)	Mebane, NC	03/09/00	Infant and Childrens Apparel.
37,510	Cliftex Corp (UNITE)	New Bedford, MA	03/13/00	Men's Sportswear.
37,511	Avent—Kimberly Clark (Co.)	Tucson, AZ	03/13/00	Disposable Surgical Gowns, Caps, etc.
37,512	London International (Co.)	Dothan, AL	01/10/00	Condoms.
37,513	Apparel Sales & Printing (Co.)	Andrews, SC	03/06/00	Tee-Shirts.
37,514	C and L Textiles Corp. (Co.)	New York, NY	03/03/00	Knitted Fabric.

APPENDIX—Continued
[Petitions instituted on 03/27/00]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,515	Sierra Pacific Apparel (Co.)	Visalia, CA	03/14/00	Jeans—Men, Women and Children.
37,516	Finishing 2000 (Co.)	El Paso, TX	03/14/00	Finish Jeans.
37,517	U.S. Sales Corp. (Wkrs)	San Fernando, CA	03/07/00	Direct Mail Distribution.
37,518	Double "L" Learning (Wkrs)	Tupelo, MS	03/15/00	Provides Childcare.
37,519	Air Products & Chemicals (Co.)	Pace, FL	03/17/00	Methanol and Methylamines.

[FR Doc. 00–8921 Filed 4–10–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3578]

Court Metal Finishing, Inc., Flint, MI; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of February 2, 2000, petitioners request administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance (NAFTA–3578) for workers or the subject firm. The denial notice was signed on January 6, 2000, and published in the **Federal Register** on January 14, 2000 (65 FR 2433).

The petitioners present information regarding customer imports from Mexico of articles like or directly competitive with those produced at the workers' firm.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C. this 31st day of March 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–8922 Filed 4–10–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—03516, et al.]

Delphax Corporation; A Xerox Company, Canton, Massachusetts, etc.

In the matter of: Delphax Corporation, a Xerox Company, Canton, Massachusetts; Including Leased Workers of: Accountemps, Braintree, Massachusetts; Judge Technical Service, Needham, Massachusetts; MMD Temps, Natick, Massachusetts; TAC Engineering, Newton, Massachusetts; New England Engineers & Design, Norwood, Massachusetts; Prosource, Waltham, Massachusetts; Strategy Tech Services, Westboro, Massachusetts; TAC Staffing, Dedham, Massachusetts; Techaid, Waltham, Massachusetts; Technical Personnel Services, Andover, Massachusetts; Winter, Wyman, Boston, Massachusetts, NAFTA—03516A, Delphax Corporation, A Xerox Company, Salem, New Hampshire, NAFTA—03516B; Delphax Corporation, A Xerox Company; Farmington, Connecticut.

Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on June 3, 1999, applicable to workers of Delphax Corporation, A Xerox Company, Canton, Massachusetts, including its leased workers from the following firms: Accountemps; Judge Technical Service; MMD Temps; TAC engineering; New England Engineers & Design; ProSource, Strategy Tech Services; TAC Staffing; TechAid; Technical Personnel Services; and Winter, Wyman. The notice was published in the **Federal Register** on December 28, 1999 (64 FR 72693).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information received from the company shows that worker separations occurred at the Salem, New Hampshire and Farmington, Connecticut locations of Delphax Corporation. A Xerox Company, when they close in March and April, 2000 respectively. The workers provided engineering, support services, sales and marketing services to support the production of printers (DocuPrint 900/1300 models) at the Canton, Massachusetts facility.

The intent of the Department's certification is to include all workers of Delphax Corporation, A Xerox Company, who were adversely affected by a shift of production to Canada.

Accordingly, the Department is amending the certification to include workers of Delphax Corporation, A Xerox Company, Salem, New Hampshire and Farmington, Connecticut locations.

The amended notice applicable to NAFTA–03516 is hereby issued as follows:

"All workers of Delphax Corporation, A Xerox Company, Canton, Massachusetts and all temporary workers of Accountemps; Judge Technical Services; MMD Temps; TAC Engineering; New England Engineers & Design; ProSource; Strategy Tech Services; TAC Staffing; TechAid; Technical Personnel Services; and Winter, Wyman (NAFTA–0316) engaged in employment related to the production of printers (DocuPrint 900/1300 models) at the Canton, Massachusetts facility, and all workers of Delphax Corporation, A Xerox Company, Salem, New Hampshire (NAFTA–03516A) and Farmington, Connecticut (NAFTA–3516B) who became totally or partially separated from employment on or after October 12, 1998 through November 18, 2001 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, D.C. this 3rd day of April, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–8917 Filed 4–10–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3769]

The Diana Knitting Corporation, Johnstown, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 8, 2000, in response to a worker petition which was filed on behalf of workers at The Diana Knitting Corporation, Johnstown, New York.

An active certification covering the petitioning group of workers at the subject firm remains in effect (NAFTA–3727E). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 3rd day of April, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–8923 Filed 4–10–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3789]

McCain Foods, Burley, ID; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 7, 2000, in response to a petition filed on the same date on behalf of workers at McCain Foods, Burley, Idaho.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 4th day of April, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–8924 Filed 4–10–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement—Transitional Adjustment Assistance Implementation Act (Pub.L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250 (b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub.L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request is filed in writing with the Director of DTAA not later than April 21, 2000.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown below not late than April 21, 2000.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, NW, Washington, DC 20210.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

APPENDIX

[03/28/2000]

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Renewable Energies (Co.)	Slatyfork, WV	02/14/2000	NAFTA–3,731	Fuel.
Custom Emblems (Wkrs)	Tampa, FL	02/21/2000	NAFTA–3,732	Embroidery & name tags.
Langenberg Hat (Wkrs)	New Haven, MO	02/18/2000	NAFTA–3,733	Hat & caps.
FNA Acquisition (Co.)	Mooresville, NC	02/18/2000	NAFTA–3,734	Prints & dyed fabrics.
Corporate Expressions Group (Co.)	Salisbury, NC	02/18/2000	NAFTA–3,735	Administrative services.
Square D (IBEW)	Oshkosh, WI	02/18/2000	NAFTA–3,736	Transformers.
Elliott Corporation (Wkrs)	Gillett, WI	02/10/2000	NAFTA–3,737	Welding gloves.
Quaker Oats (UFCW)	St. Joseph, MO	02/17/2000	NAFTA–3,738	Ready to eat cereal.
Southside Sportswear (Co.)	Florence, SC	02/18/2000	NAFTA–3,739	Sewing of children's shirts & pants.
Preston Trucking (GT)	Pittsburg, PA	02/14/2000	NAFTA–3,740	Hauling freight.
McMoRan Exploration (Co.)	Pecos, TX	02/15/2000	NAFTA–3,741	Molten elemental sulpur.
Target (Wkrs)	Naperville, IL	02/18/2000	NAFTA–3,742	Retail store.
Border Apparel Laundry (UNITE)	El Paso, TX	02/16/2000	NAFTA–3,743	Jeans.
Kenro (Co.)	Fredonia, WI	02/21/2000	NAFTA–3,744	Fiberglass trays.
Alphabet (UNITE)	El Paso, TX	02/15/2000	NAFTA–3,745	Automotive parts.
Brunswick Bicycles (Co.)	Onley, IL	02/28/2000	NAFTA–3,746	Bicycles.
Briggs Industries (Wrks)	Robinson, IL	02/28/2000	NAFTA–3,747	Plumbing products.
Circular Banding (Co.)	Athens, GA	02/08/2000	NAFTA–3,748	Elastic bands.
Emerson Electric (Wkrs)	Rogers, AR	02/23/2000	NAFTA–3,749	Laminations framebands shafts.

APPENDIX—Continued
[03/28/2000]

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
VDO North America (Co.)	Cheshire, CT	02/18/2000	NAFTA–3,750	Automotive components.
York International (UAW)	Waynesboro, PA	02/22/2000	NAFTA–3,751	Oil separators.
Epson Portland (Wkrs)	Hillsboro, OR	02/22/2000	NAFTA–3,752	Printers.
GCC Cutting (Wkrs)	El Paso, TX	01/22/2000	NAFTA–3,753	Fabric cutting.
Oshkosh B'Gosh (UFCW)	Oshkosh, WI	02/23/2000	NAFTA–3,754	Childrens wear & childrens books.
Raco—Hubbell (Wkrs)	Southbend, IN	02/21/2000	NAFTA–3,755	Steel electrical box's fittings.
Vermont Castings Majestic Products (Wkrs).	Huntington, IN	02/24/2000	NAFTA–3,756	Sales & administrative services.
Conoco (Co.)	Oklahoma City, OK	02/23/2000	NAFTA–3,757	Oil and gas.
Rite Industries (Co.)	High Point, NC	02/28/2000	NAFTA–3,758	Dyes.
John Clark (Co.)	Denver, CO	02/23/2000	NAFTA–3,759	Underground mining equipment.
Burnsville Apparel (Co.)	Wadesboro, NC	02/24/2000	NAFTA–3,760	Thermal underwear & turtlenecks.
General Electric (Wkrs)	Somersworth, NH	02/28/2000	NAFTA–3,761	Residential meters.
Alliance Labeling & Decorating (Wkrs)	Allentown, PA	02/28/2000	NAFTA–3,762	Labeled glass & plastic bottles.
Ithaca Industries (Co.)	Glennville, GA	02/28/2000	NAFTA–3,763	Men's & women's under & outer garments.
Ametek (Co.)	Bartow, FL	02/28/2000	NAFTA–3,764	Automotive gauge.
Bassett Upholster (Wkrs)	Duman, AR	02/29/2000	NAFTA–3,765	Furniture upholster.
Valley Cities Apparel (Wkrs)	Sayre, PA	02/28/2000	NAFTA–3,766	Sportswear & sleepwear.
ISA Cutting Room Services (UNITE)	El Paso, TX	02/29/2000	NAFTA–3,767	Cut men's & women's pants & slacks.
Donaldson Company (Wkrs)	Oelwein, IA	01/21/2000	NAFTA–3,768	Bent bolt clamps & freon filters.
Diana Knitting (The) (Co.)	Johnstown, NY	02/08/2000	NAFTA–3,769	Activewear/knitwear.
TI Group Automotive Systems (Co.)	Maquoketa, IA	02/18/2000	NAFTA–3,770	Fabricated tubing assemblies.
Bula (Co.)	Durango, CO	02/29/2000	NAFTA–3,771	Fleece hats & mittens etc.
Russell—Jerzees Activewear (Co.)	Geneva, AL	03/01/2000	NAFTA–3,772	Knit apparel.
Hamrick's (Co.)	Jonesville, SC	03/01/2000	NAFTA–3,773	Ladies apparel.
Brandon Manufacturing (Co.)	Shreveport, LA	03/01/2000	NAFTA–3,774	Metal parts, stators.
Award Windows (Wkrs)	Ferndale, WA	03/01/2000	NAFTA–3,775	Commercial windows.
Pincus Brothers (UNITE)	Philadelphia, PA	03/02/2000	NAFTA–3,776	Cut & sew men's suits.
Quaker Oats (Wkrs)	Shiremanstown, PA	03/03/2000	NAFTA–3,777	Ready to eat cereals.
Caretek (Co.)	Denver, CO	03/02/2000	NAFTA–3,778	Fleece apparel.
Atessa (UNITE)	Philadelphia, PA	03/02/2000	NAFTA–3,779	Men's suit coats & pants.
Smithville Sportswear (Co.)	Smithville, TN	03/06/2000	NAFTA–3,780	Men's & women's knit apparel.
Rochester Button (Wkrs)	South Buston, VA	03/03/2000	NAFTA–3,781	Polyester buttons.
LaCrosse Footwear (Wkrs)	LaCrosse, WI	03/03/2000	NAFTA–3,782	Molded outsoles.
Link Door Controls (Co.)	Ronkonkoma, NY	02/29/2000	NAFTA–3,783	Motors.
Eastman Kodak (Co.)	Rochester, NY	02/29/2000	NAFTA–3,784	Graphics finishing.
Cross Creek Apparel (Co.)	Mount Airy, NC	03/06/2000	NAFTA–3,785	Knit shirts & pants.
Royal Bank of Canada (Wkrs)	New York, NY	02/09/2000	NAFTA–3,786	Financial services.
Cherrybell (Co.)	Tucson, AZ	03/06/2000	NAFTA–3,787	Ladies underwear.
ISO Electronics (Co.)	Indianapolis, IN	03/10/2000	NAFTA–3,788	Circuit boards.
McCain Foods (UFCW)	Burley, ID	03/07/2000	NAFTA–3,789	French fries.
3–I (Co.)	Murrells Inlet, SC	03/08/2000	NAFTA–3,790	Cutting & sewing.
House of Perfection—Williston Mfg. (Co.).	Williston, SC	03/09/2000	NAFTA–3,791	Childrenswear.
Great American Knitting Mills (Co.)	Bally, PA	03/08/2000	NAFTA–3,792	Gold toe men's socks.
PJC Sportswear (Wkrs)	Brooklyn, NY	03/07/2000	NAFTA–3,793	Beachwear, bathing suits.
Meritor Automotive (UAW)	Oshkosh, WI	03/07/2000	NAFTA–3,794	Brakes, transmissions.
Rohm and Haas (IUOE)	Philadelphia, PA	03/07/2000	NAFTA–3,795	Ion exchange resins & herbicides.
C and L Textiles (Co.)	New York, NY	03/07/2000	NAFTA–3,796	Knit fabric & women's garments.
Raytheon Systems (Wkrs)	El Segundo, CA	01/31/2000	NAFTA–3,797	Jet aircraft & radar systems.
Kimberly Clark (Co.)	Cleburne, TX	03/07/2000	NAFTA–3,798	Disposable protective apparel.
Tyco Electronics (Wkrs)	Marion, KY	03/06/2000	NAFTA–3,799	Electrical relays & circuit breakers.
Hartwell Industries (Co.)	Hartwell, GA	03/10/2000	NAFTA–3,800	Knit shirts.
May Apparel Group (Co.)	Mebane, NC	03/10/2000	NAFTA–3,801	Clothing and apparel.
Levi Strauss (Wkrs)	El Paso, TX	03/10/2000	NAFTA–3,802	Jeans.
Rising Eagle (Co.)	East Tawas, MI	03/10/2000	NAFTA–3,803	Reloading of single use cameras.
Border Apparel (UNITE)	El Paso, TX	02/28/2000	NAFTA–3,804	Jeans—Men and Women.
Avent—Kimberly Clark (Co.)	Tucson, AZ	03/15/2000	NAFTA–3,805	Disposable surgical products.
MTF (Wkrs)	West Lawn, PA	03/17/2000	NAFTA–3,806	Men's and boy's activewear.
Toshiba Display Devices (IBEW)	Horseheads, NY	03/20/2000	NAFTA–3,807	Color picture tubes for TV's.
Woodgrain Millwork (Co.)	Lakeview, OR	03/20/2000	NAFTA–3,808	Pine mouldings.
Fedco Automotive (Wkrs)	Buffalo, NY	03/21/2000	NAFTA–3,809	Heater cores.

[FR Doc. 00–8920 Filed 4–10–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3691]

S. Bent & Bros., Inc., Gardner, MA; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on January 31, 2000, in response to a petition filed on the same day by the IUE Local 154–136B FW, on behalf of workers at S. Bent & Bros., Inc., Gardner, Massachusetts.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 4th day of April, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–8925 Filed 4–10–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03615]

Tandycrafts, Inc., Tandyarts, Inc./ Impulse Designs Pinnacle Art and Frame Division Van Nuys, California; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on March 11, 1999, applicable to workers of Tandycrafts, Inc., Pinnacle Art and Frame Division, Van Nuys, California. The notice was published in the **Federal Register** on January 14, 2000 (65 FR 2433).

At the request of the company and State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of framed art, mirrors and photo frames. New information shows that in November, 1993, Tandycrafts, Inc. purchased Impulse Designs and formed a new company called Tandyarts, Inc./Impulse Designs. The company also reports that workers separated from employment at Tandycrafts, Inc., Pinnacle Art and Frame Division had their wages reported under a separate unemployment insurance (UI) tax account for Tandycrafts, Incorporated, Tandyarts, Inc./Impulse Designs, Pinnacle Art and Frame Division, Van Nuys, California.

Based on these findings, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of Tandycraft, Inc., Pinnacle Art and Frame Division who were adversely affected by imports from Mexico.

The amended notice applicable to NAFTA–03615 is hereby issued as follows:

"All workers of Trandycraft, Inc., Tandyarts, Inc./Impulse Designs, Pinnacle Art and Frame Division, Van Nuys, California who became totally or partially separated from employment on or after August 23, 1998 through December 22, 2001 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, D.C. this 3rd day of April, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–8919 Filed 4–10–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—03582]

Weiser Lock, a Masco Subsidiary Including Leased Workers of Interim Personnel Adecco Employment Services, Inc. TRC Staffing Services, Inc. Tucson, Arizona; Amended Certification Regarding Eligibility To Apply for NAFTA—Transitional Adjustment Assistance

In accordance with section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on December 28, 1999, applicable to workers of Weiser Lock, A Masco Subsidiary, Tucson, Arizona. The notice was published in the **Federal Register** on January 14, 2000 (65 FR 2433).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that some workers of Weiser Lock were leased from Interim Personnel, Adecco Employment Services, Inc., and TRC Staffing Services, Inc. to produce residential door hardware at the Tucson, Arizona plant. Worker separations occurred at these companies as a result of worker separations at Weiser Lock, A Masco Subsidiary, Tucson, Arizona.

Based on these findings, the Department is amending the certification to include workers from Interim Personnel, Adecco Employment Services, Inc., and TRC Staffing Services, Inc., Tucson, Arizona leased to Weiser Lock, A Masco Subsidiary, Tucson, Arizona.

Accordingly, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of Weiser Lock, A Masco Subsidiary, Tucson, Arizona adversely affected by a shift of production to Mexico.

The amended notice applicable to NAFTA—03582 is hereby issued as follows:

"All workers of Weiser Lock, A Masco Subsidiary, Tucson, Arizona and leased workers of Interim Personnel, Adecco Employment Services, Inc., and TRC Staffing Services, Inc., Tucson, Arizona engaged in the production of residential door hardware for Weiser Lock, A Masco Subsidiary, Tucson, Arizona who became totally or partially separated from employment on or after November 19, 1998 through December 28, 2001 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, D.C. this 3rd day of April, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–8918 Filed 4–10–00; 8:45 am]
BILLING CODE 4510–30–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors; Correction

A notice of a meeting of the Board of Directors was published on April 7, 2000 (65 FR 18377). Items 4 and 5 in the agenda for the Open Session were incorrect. This notice contains the correct text, and for the convenience of the reader, the meeting agenda is being republished.

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on April 15, 2000. The meeting will begin at 10:00 a.m. and continue until conclusion of the Board's agenda.

LOCATION: Marriott Wardman Park Hotel, 2660 Woodley Road, N.W., Washington, DC 20008.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR § 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

Matters To Be Considered

Open Session

1. Approval of agenda.
2. Approval of minutes of the Board's meeting of January 28–29, 2000.
3. Approval of minutes of the executive session of the Board's meeting of January 28–29, 2000.
4. Approval of minutes of the Board's teleconference meeting of November 29, 1999.
5. Approval of minutes of the Annual Performance Reviews Committee's meeting of November 19, 1999.
6. Approval of minutes of the Annual Performance Reviews Committee's teleconference meeting of January 24, 2000.
7. Approval of minutes of the November 19, 1999 meeting of the Committee on Provision for the Delivery of Legal Services.
8. Approval of minutes of the Operations & Regulations Committee's meeting of November 19, 1999.
9. Chairman's Report.
10. Members' Report.
11. Inspector General's Report.
12. President's Report.
13. Report on the status of Strategic Planning by the Corporation.
14. Review of the Corporation's Consolidated Operating Budget, Expenses and Other Funds Available through February 29, 2000.
15. Consider and act on the Board's meeting schedule, including designation of locations, for calendar year 2001.
16. Consider and act on the extension of John McKay's contract of employment as President of the Corporation.

Closed Session

17. Briefing[1] by the Inspector General on the activities of the Office of Inspector General.
18. Consider and act on the Office of Legal Affairs' report on potential and pending litigation involving the Corporation.

Open Session

19. Consider and act on other business.
20. Public Comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel and Secretary of the Corporation, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8800.

Dated: April 4, 2000.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel and Corporate Secretary.

[FR Doc. 00–9052 Filed 4–7–00; 11:17 am]

BILLING CODE 7050–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Sunshine Act Meetings

TIME AND DATE: 10 a.m., Thursday, April 13, 2000.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Final Rule: Amendment to Part 701, NCUA's Rules and Regulations, Secondary Capital Accounts.
2. Final Rule: Amendment to Part 707, NCUA's Rules and Regulations, Truth in Savings.
3. Appeal from a Federal Credit Union of the Regional Director's Denial of a Field of Membership Expansion Request.

RECESS: 11 a.m.

TIME AND DATE: 11:30 a.m., Thursday, April 13, 2000.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under Part 723 of NCUA's Rules and Regulations. Closed pursuant to exemptions (8) and (9)(A)(ii).
2. Field of Membership Appeal. Closed pursuant to exemption (8).
3. One (1) Personnel Matters. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 00–9072 Filed 4–7–00; 12:49 pm]

BILLING CODE 7535–01–M

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 CFR § 1622.2 & 1622.3.

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by May 8, 2000. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1030.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541, has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in

Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

1. *Applicant:* Anne A. Sturz, Department of Marine Sciences, University of San Diego, 5998 Alcala Park, San Diego, CA 92110–2492.

Permit Application No: 2001–006.

Activity for Which Permit is Requested: Take, Enter Antarctic Specially Protected Areas and Import into the U.S.A. the applicant proposes to enter Area D (Pendulum Cove) of Antarctic Specially Protected Area #140, Shore of Port Foster, Deception Island, for the purpose of collecting shallow seawater samples, see floor sediments (5 grabs of 50 grams each), 50 grams of sand for chemical analyses for comparison to sea floor sediments, and 1 liter of new snow from the shore at Pendulum Cove. Based on previous samples collected in other areas of Deception Island, the chemical analyses of water column samples indicated that dissolved iron is present as a result of hydrothermal fluid, at least in part from dispersed flow near Pendulum Cove. The chemical analyses of new snow may reveal something about aerosol sources of iron. The applicant will import collected samples into the U.S. for further chemical analyses at the University of San Diego.

Location: ASPA 140—Area D (Pendulum Cove), Port Foster, Deception Island, South Shetland Island.

Dates: May 15, 2000 to June 15, 2000.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 00–8852 Filed 4–10–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Modification Received under the Antarctic Conservation Act of 1978, P.L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by May 8, 2000. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1030.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

Description of Permit Modification Requested: The Foundation issued a permit (2000–001) to Dr. Steven D. Emslie on September 21, 1999. The issued permit allows the applicant access to certain Antarctic Specially Protected Areas in order to conduct surveys and excavations of modern and abandoned penguin colonies by surveying ice-free areas to locate evidence of a breeding colony (pebble and/or bone concentrations, and rich vegetation). Not all sites will be visited in single season and access depends upon research vessel cruise tracks and accessibility to the site(s). The sites visited would be sampled by placing a test pit, no more than 1x1 meter in size, in the colony and excavating in 5–10 cm level until bedrock or non-ornithogenic sediments are encountered. To minimize impacts, test pits will be placed in areas with little or no vegetation when possible. Upon completion of the excavation, test pits would be refilled and any vegetation disturbed on the surface replaced. Collected sediments will be taken to the laboratory for processing. Sediments will be washed through fine-mesh screens; all organic remains will be sorted from the sediments and preserved for identification and analysis.

The applicant proposes access additional Antarctic Specially Protected Areas only on an opportunity basis depending upon vessel cruise tracks and schedules. The additional ASPA's are listed under Location, below:

Location

ASPA 104—Sabrina Island, Balleny Island
ASPA 105—Beaufort Island
ASPA 107—Dion Islands
ASPA 108—Green Island, Berthelot Islands
ASPA 112—Coppermine Peninsula, Robert Island
ASPA 115—Legotellerie Island, Marguerite Bay
ASPA 116—New College Valley, Caughley Beach, Cape Bird
ASPA 117—Avian Island, Northwest Marguerite Bay
ASPA 126—Byers Peninsula, Livingston Island
ASPA 133—Harmony Point, Nelson Island
ASPA 134—Cierva Point, Danco Coast
ASPA 149—Cape Shirref, Livingston Island
ASPA 150—Ardley Island, King George Island
ASPA 154—Cape Evans, Ross Island

Dates: January 1, 2000 to December 31, 2005.

Nadene G. Kennedy,

Permit Officr, Office of Polar Programs.

[FR Doc. 00–8853 Filed 4–10–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Policy Statement on Cooperation with States at Commercial

Nuclear Power Plants and Other Production or Utilization Facilities.

2. *Current OMB approval number:* 3150–0163.

3. *How often the collection is required:* On occasion—when a State wishes to observe NRC inspections or perform inspections for NRC.

4. *Who is required or asked to report:* Those States interested in observing or performing inspections.

5. *The number of annual respondents:* Maximum of 50, although not all States have participated in the program.

6. *The number of hours needed annually to complete the requirement or request:* An average estimate of 10 hours per State or 500 hours if all States participated in the program.

7. *Abstract:* States wishing to enter into an agreement with NRC to observe or participate in NRC inspections at nuclear power facilities are requested to provide certain information to the NRC to ensure close cooperation and consistency with the NRC inspection program as specified by the Commission's Policy of Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities. Submit, by June 12, 2000, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW, (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (*http://www.nrc.gov/NRC/PUBLIC/OMB/index.html*) The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 5th day of April, 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–8048 Filed 4–10–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–461]

Amergen Energy Company, LLC, Clinton Power Station; Notice of Consideration of Approval of Transfer of Facility Operating License and Conforming Amendment and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating License No. NPF–62 for Clinton Power Station, held by AmerGen Energy Company, LLC (AmerGen), as the owner and licensed operator. The transfer would result from the acquisition of PECO Energy Company's existing interest in AmerGen by a new generation company. This company, presently referred to in the subject application described below as GENCO, is to be a subsidiary of a new holding company Exelon Corporation formed from the proposed merger between PECO Energy Company (PECO) and Unicom Corporation (Unicom). The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer. The facility is located in DeWitt County, Illinois.

According to an application for approval filed by AmerGen, AmerGen is a limited liability company formed to acquire and operate nuclear power plants in the United States. British Energy, Inc. and PECO each own 50% of AmerGen. Following completion of the merger between Unicom and PECO, GENCO will acquire PECO's existing 50% ownership interest in AmerGen. AmerGen, as owned by GENCO and British Energy, Inc. will continue to be responsible for the operation, maintenance, and eventual decommissioning of Clinton Power Station. No physical changes to the facility or operational changes are being proposed in the application.

The proposed amendment to the operating license would add language to the license transfer conditions that were incorporated into the Clinton Operating License upon the initial transfer of the license to AmerGen, to reflect the transfer of PECO's ownership interest in AmerGen to a new entity.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below

By May 1, 2000 any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not, the applicant may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or

petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon:

Mr. Kevin P. Gallen, Esq., Morgan, Lewis & Bockius LLP, 1800 M Street, N. W., Washington, D.C. 20036–5869; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by May 11, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated February 28, 2000, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http:www.nrc.gov*).

Dated at Rockville, Maryland this 6th day of April 2000.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–8950 Filed 4–10–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8989; License No. SMC–1559]

Envirocare of Utah and The Snake River Alliance; Receipt of Request for Action Under 10 CFR 2.206

Notice is hereby given that by petitions dated February 24, 2000, and March 13, 2000, the Snake River Alliance and Envirocare of Utah, respectively, have requested that the Nuclear Regulatory Commission (NRC) take action with regard to protecting public health and safety. The petitioners request that the NRC assume responsibility for Formerly Utilized Sites Remedial Action Program (FUSRAP) radioactively contaminated material and ensure its proper disposal in an NRC-licensed facility.

As the basis for these requests, the petitioners state that the NRC, under Sections 81 and 84 of the Atomic Energy Act (AEA), was given authority by Congress to regulate all 11e.(2) material regardless of when it was generated.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Material Safety and Safeguards. As provided by Section 2.206, appropriate action will be taken on this petition within a reasonable time. Copies of the petitions are available for inspection at the Commission's Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

Dated at Rockville, Maryland this 4th day of April, 2000.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Deputy Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–8949 Filed 4–10–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Intent To Prepare a Draft Supplement to the Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities and To Hold a Public Meeting for the Purpose of Scoping and To Solicit Public Input into the Process

Notice is hereby given that the U. S. Nuclear Regulatory Commission (NRC, the Commission) intends to prepare a draft supplement to the Final Generic Environmental Impact Statement (GEIS) on Decommissioning of Nuclear Facilities (NUREG–0586, August 1988) and to hold public scoping meetings for the purpose of soliciting comments. Although NUREG–0586 covered all NRC-licensed facilities, this supplement will address only the decommissioning of nuclear power reactors.

The NRC will hold a public scoping meeting on April 27, 2000, at the Radisson Hotel Lisle-Naperville (telephone: 630–505–1000), 3000 Warrenville Road, Lisle, Illinois 60532–3665, to present an overview of the proposed supplement to the GEIS and to accept public comment on its proposal. The public scoping meeting will begin at 7:00 p.m. and continue to 10:00 p.m.

The meeting will be transcribed and will include (1) A presentation by the NRC staff on the reasons for preparing a supplement to the GEIS and the environmental issues related to power reactor decommissioning to be addressed in the GEIS, and (2) the opportunity for interested government agencies, private organizations, and individuals to provide comments. Anyone wishing to attend or present oral comments at this meeting may preregister by contacting Mr. Dino C. Scaletti by telephone at 1–800–368–5642, extension 1104, or by Internet to the NRC at DGEIS@nrc.gov, 1 week prior to a specific meeting. Members of the public may also register to provide oral comments up to 15 minutes prior to the start of each meeting. Individual oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Scaletti's attention no later than 1 week prior to a specific meeting, so that the NRC staff can determine whether the request can be accommodated.

Any interested party may submit comments related to the NRC's intent to supplement the GEIS for consideration by the NRC staff. To be certain of consideration, comments on the intent to prepare the supplement must be received by July 15, 2000. Comments received after the due date will be considered if it is practical to do so. At this time, comments are being sought only on the intent to prepare the supplement. The NRC staff currently projects issuance of the draft supplement for comment in early 2001. Comments on the draft supplement will be solicited at that time. Written comments should be sent to Chief, Rules and Directives Branch, Division of Administrative Services, Mail Stop T–6 D59, U.S. Nuclear Regulatory

Commission, Washington, DC 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Submittal of electronic comments may be sent by the Internet to the NRC at DGEIS@nrc.gov. All comments received by the Commission, including those made by Federal, State, and local agencies, Indian tribes, or other interested persons, will be made available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, in Washington, DC. Also, publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room).

FOR FURTHER INFORMATION, CONTACT: Mr. Dino C. Scaletti, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Mr. Scaletti can be contacted at the aforementioned telephone number.

Dated at Rockville, Maryland, this 6th day of April 2000.

For the Nuclear Regulatory Commission.

Dino C. Scaletti,

Senior Project Manager, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–8951 Filed 4–10–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Power Authority of the State of New York; Facility Operating License No. DPR–64 Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated March 14, 2000, Mr. David A. Lochbaum, on behalf of the Union of Concerned Scientists, the Nuclear Information & Resource Service, the PACE Law School Energy Project, and Public Citizen's Critical Mass Energy Project (Petitioners), has requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to Indian Point Nuclear Generating Unit 2 (IP2), owned and operated by the Consolidated Edison Company of New York (the licensee).

The Petitioner requested that the NRC issue an order to the licensee preventing the restart of IP2, or modify the licensee for IP2 to limit it to zero power, until (1) all four steam generators are replaced, (2) the steam generator tube integrity concerns identified in Dr. Joram Hopenfeld's differing professional opinion (DPO) and in Generic Safety Issue GSI–163 are resolved, and (3) potassium iodide tablets are distributed to residents and businesses within the 10–mile emergency planning zone (EPZ) or stockpiled in the vicinity of IP2. (The DPO process provides for the review of concerns raised by individual NRC employees who disagree with a position adopted by the NRC staff.)

As the basis for the request that the NRC prevent the licensee from restarting IP2 until all four steam generators are replaced, the Petitioner states that IP2 is equipped with Westinghouse Model 44 steam generators and that all other operating power plants in the United States that were originally equipped with Westinghouse Model 44 steam generators have replaced them. The Petitioner also states that the IP2 steam generators have had an average of 10 percent of their tubes removed from service and that many other tubes have crack indications.

As the basis for the request that the NRC prevent the licensee from restarting IP2 until the DPO filed by Dr. Hopenfeld is resolved, the Petitioner states that the length of time that the staff has taken to resolve this issue has undermined the NRC's four stated objectives: (1) Maintain safety, (2) increase public confidence, (3) improve regulatory efficiency and effectiveness, and (4) reduce unnecessary regulatory burden. The Petitioner also cites Idaho National Engineering Laboratory findings that support Dr. Hopenfeld's opinion.

As the basis for the request that the NRC prevent the licensee from restarting IP2 until potassium iodide tablets have been distributed to people and businesses within the 10-mile EPZ, the Petitioner states that the incident at IP2 demonstrated the potential for a more serious accident. The Petitioner also states that distributing potassium iodide tablets could reduce the consequences from a postulated accident.

The request that the NRC prevent the licensee from restarting IP2 until all four steam generators are replaced is being treated pursuant to 10 CFR 2.206 of the Commission's Regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by Section 2.206, appropriate action will be taken on this Petition within a reasonable time.

The request that the NRC prevent the licensee from restarting IP2 until the DPO filed by Dr. Hopenfeld is resolved and until potassium iodide tablets are distributed to people and businesses within the 10-mile EPZ or stockpiled in the vicinity of IP2 is not being treated pursuant to 10 CFR 2.206 of the Commission's regulations and shall be handled by separate correspondence.

A copy of the Petition is available for inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www/nrc.gov).

Dated at Rockville, Maryland, this 5th day of April 2000.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–8947 Filed 4–10–00; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension

Form S–2, SEC File No. 270–60, OMB Control No. 3235–0072
Form F–1, SEC File No. 270–249, OMB Control No. 3235–0258
Form F–2, SEC File No. 270–250, OMB Control No. 3235–0257
Form F–3, SEC File No. 270–251, OMB Control No. 3235–0256
Form F–7, SEC File No. 270–331, OMB Control No. 3235–0383
Form F–8, SEC File No. 270–332, OMB Control No. 3235–0378
Form F–X, SEC File No. 270–336, OMB Control No. 3235–0379
Form DF, SEC File No. 270–430, OMB Control No. 3235–0482
Schedule 13E–4F, SEC File No. 270–340, OMB Control No. 3235–0375
Schedule 14D–1F, SEC File No. 270–338, OMB Control No. 3235–0376
Schedule 14D–9F, SEC File No. 270–339, OMB Control No. 3235–0382

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (Commission) has submitted to the Office of Management and Budget requests for extension on the previously

approved collections of information discussed below.

Form S–2 is used for registration of securities of certain issuers. The Form S–2 provides investors with the necessary information to make investment decisions regarding securities offered to the public. The likely respondents will be public companies. The information collected must be filed with the Commission. All information is provided to the public upon request. Form S–2 takes 470 burden hours to prepare and is filed by 101 respondents for a total of 47,470 burden hours.

Form F–1 is a registration statement of securities of certain foreign private issuers. Form F–1 provides the public with the necessary information to make informed investment decisions regarding securities offered to the public by foreign private issuers. The information provided on Form F–1 is mandatory. All information on Form F–1 is reported to the public upon request. Form F–1 takes approximately 1,868 burden hours to prepare and is filed by 170 respondents. It is estimated that 25% of the 317,560 total burden hours (79,390 hours) would be prepared by the company.

Form F–2 is a registration statement of securities of certain foreign private issuers. Form F–2 provides the public with the necessary information to make informed investment decisions regarding securities offered to the public by foreign private issuers. The information provided on Form F–2 is mandatory. All information on Form F–2 is provided to the public upon request. Form F–2 takes approximately 559 hours to prepare and is filed by 5 respondents. It is estimated that 25% of the 2,795 total burden hours (699 hours) would be prepared by the company.

Form F–3 is a registration statement of securities of certain foreign issuers offered pursuant to certain types of transactions. Form F–3 provides the public with the necessary information to make informed investment decisions regarding securities offered to the public by foreign private issuers. The information provided on Form F–3 is mandatory. All information on Form F–3 is provided to the public upon request. Form F–3 takes approximately 166 burden hours to prepare and is filed by 150 respondents. It is estimated that 25% of the 24,900 total burden hours (6,255 hours) would be prepared by the company.

Form F–7 is a registration statement of securities of certain Canadian issuers offered for cash upon the exercise of rights granted to existing securityholders. Form F–7 provides the public with the necessary information to make informed investment decisions regarding securities offered to the public. The information provided on Form F–7 is mandatory. All information is provided to the public upon request. It takes approximately 1 burden hour to prepare and is filed by 5 respondents.

Form F–8 is a registration statement of securities of certain Canadian issuers to be issued in exchange offers or a business combination. Form F–8 provides the public with the necessary information to make informed investment decisions. The information provided on Form F–8 is mandatory. All information on Form F–8 is provided to the public upon request. Form F–8 takes one burden hour to prepare and is filed by 16 respondents. It is estimated that 25% of the 16 total burden hours (4 hours) would be prepared by the company.

Form F–X is used to appoint an agent for service of process by Canadian issuers registering securities on Form F–7, F–8, F–9 or F–10 or filing periodic reports on Form 40–F under the Securities Exchange Act of 1934. The information required on form F–X provides investors with the necessary information when considering investing in Canadian companies. form F–X takes 2 burden hours to prepare and is filed by 129 respondents. It is estimated that 25% of the 258 total burden hours (64.5 hours) would be prepared by the company.

Form DF is used to allow registrants to identify a filing that was filed late because of electronic filing difficulties in order to preserve the timeliness of the filing. This form is required by all issuers who are required to file on EDGAR. In addition, Form DF is required to be filed on occasion. All information provided on Form DF is provided to the public upon request. Form DF takes 12 minutes to prepare and is filed by 500 respondents for a total of 100 burden hours.

Schedule 13E–4F may be used by any issuer incorporated or organized under the laws of Canada making a tender offer for the issuer's own securities, where less than 20% of the class of such issuer's securities that is subject of the tender offer is held of record by U.S. residents. The information required by Schedule 13E–4F must be filed with the Commission. All information is provided to the public upon request. Schedule 13E–4F takes 2 burden hours to prepare and is filed by 3 respondents for a total of 6 burden hours.

Schedule 14D–1F may be used by any person making a cash tender or exchange offer for securities of any issuer incorporated or organized under the laws of Canada that is a foreign private issuer, where less than 40% of the outstanding class of such issuer's securities that is the subject of the offer is held by U.S. holders. The information required by Schedule 14D–1F must be filed with the Commission. All information is provided to the public upon request. Schedule 14D–1F takes 2 burden hours to prepare and is filed by 5 respondents for a total of 10 burden hours.

Schedule 14D–9F is used by any issuer incorporated or organized under the laws of Canada, or by any director or officer of such issuer, where the issuer is the subject of tender offer for a class of its securities filed on Schedule 14D–1F. The information required by Schedule 14D–9F must be filed with the Commission. All information is provided to the public upon request. Schedule 14D–1F takes 2 burden hours to prepare and is filed by 5 respondents for a total of 10 burden hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503, and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 31, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8874 Filed 4–10–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24376; 812–11896]

Penn Series Funds, Inc., et al.; Notice of Application

April 4, 2000.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 19f–2 under the Act.

SUMMARY OF APPLICATION: The order would permit applicants to enter into and materially amend investment subadvisory agreements without obtaining shareholder approval.

APPLICANTS: Penn Series Funds, Inc. (the "Company"), on behalf of its series (the "Funds"), and Independence Capital Management, Inc. ("ICMI").

FILING DATES: The application was filed on December 20, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the SEC orders a hearing. Interested persons may request a hearing be writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 27, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549–0609. Applicants, 600 Dresher Road, Horsham, Pennsylvania 19044.

FOR FURTHER INFORMATION CONTACT: J. Amanda Machen, Senior Counsel, (202) 942–7120, or Christine Y. Greenlees, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Company, a Maryland corporation, is registered under the Act as an open-end management investment company. The Company currently consists of nine Funds, each with different investment objectives and policies. The Funds currently serve as the investment medium for variable life insurance policies and variable annuity contracts issued by The Penn Mutual Life Insurance Company ("Penn Mutual") and its subsidiary, The Penn Insurance and Annuity Company, and will serve as the investment medium for variable contracts that in the future are issued by Penn Mutual or its affiliates.

2. ICMI serves as the investment adviser for each of the Funds and is registered under the Investment Advisers Act of 1940 ("Advisers Act"). ICMI provides investment advisory services to the Funds under three separate investment advisory agreements with the Company (the "Advisory Agreements"). In its capacity as investment adviser, ICMI recommends the selection or termination of one or more sub-advisers ("Managers") to each Fund's board of directors ("Board"). In addition, ICMI oversees and monitors the performance of the Managers and may reallocate a Fund's assets among Managers. Each Manager recommended by ICMI is approved by the Board of each Fund, including a majority of directors who are not "interested persons," as defined in section 2(a)(19) of the Act (the "Independent Directors"). Each Fund pays ICMI a fee for its services based on the Fund's net assets.

3. ICMI has entered into sub-advisory agreements ("Subadvisory Agreements") with four Managers, each of which is registered or is exempt from registration as an investment adviser under the Advisers Act, and none of which is an affiliate of ICMI. Subject to general supervision by ICMI and the Board, each Manager is responsible for the day-to-day management of the assets of a particular Fund or a portion of the assets assigned to such Manager if managed by more than one Manager (each Fund with a Manager, a "Manager of Managers Fund"). ICMI pays the Managers out of the fees ICMI receives from the Funds.

4 Applicants request an order to permit ICMI to enter into and amend Subadvisory Agreements without obtaining Shareholder approval.[1] The requested relief will not extend to a Manager that is an "affiliated person" (as defined in section 2(a)(3) of the Act) of either a Fund or ICMI, other than by reason of serving as Manager of the Fund "Affiliated Manager").[2]

[1] The term "Shareholder" includes variable life and annuity contract owners having the voting interest in a separate account for which the Funds serve as a funding medium.

[2] Applicants also request relief for: (a) future series of the Company; and (b) all subsequently registered open-end management investment companies and their portfolios that in the future: (i) are advised by ICMI or any entity controlling, controlled by, or under common control (as defined in section 2(a)(9) of the Act) with ICMI, (ii) use the "manager of managers" strategy as described in the application, and (iii) comply with the terms and conditions of the application ("Future Funds"). The Company is the only existing investment company that currently intends to rely on the order.

Applicants' Legal Analysis

1. Section 15(a) of the Act makes it unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by a majority of the investment company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act authorizes the SEC to exempt persons or transactions from the provisions of the Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request relief under section 6(c) from section 15(a) of the Act and rule 18f–2 under the Act. For the reasons discussed below, applicants state that the requested relief meets the standard of section 6(c).

3. Applicants assert that the Shareholders, in effect, hire ICMI to manage a Fund's assets by using external Managers, in combination with ICMI's Manager selection and monitoring process, rather than by hiring its own employees to manage assets directly. Applicants believe that Shareholders expect that ICMI will, under the overall authority of the Board, take responsibility for overseeing the Managers and recommending their hiring, termination and replacement. Applicants argue that the requested relief will reduce Fund expenses associated with Shareholder meetings and solicitation of proxies and enable the Funds to operate more efficiently. Applicants also note that the Advisory Agreements will remain subject to the requirements of section 15 of the Act and rule 18f–2 under the Act, including the requirements for Shareholder approval.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Before any Fund may relay on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of each Fund's Shareholders, or, in the case of a Future Fund whose public Shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder

before offering shares of any Future Fund to the public.

2. The prospectus for each Manager of Managers Fund will disclose the existence, substance and effect of any order granted pursuant to the application. In addition, each Manager of Managers Fund will hold itself out to the public as employing the "manager of managers" approach described in the application. The prospectus for each Manager of Managers Fund will prominently disclose that ICMI has ultimate responsibility to oversee the Managers and recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of any new Manager, ICMI will furnish Shareholders all information about the new Manager that would be included in a proxy statement. To meet this obligation, ICMI will provide Shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

4. ICMI will not enter into a Subadvisory Agreement with any Affiliated Manager without such agreement, including the compensation to be paid thereunder, being approved by the Shareholders of the applicable Manager of Managers Fund.

5. At all times, a majority of the Company's Board will be Independent Directors, and the nomination of new or additional Independent Directors will be at the discretion of the then existing Independent Directors.

6. When a Manager change is proposed for a Manager of Managers Fund with an Affiliated Manager, the Company's Board, including a majority of the Independent Directors, will make a separate finding, reflected in the applicable Fund's Board minutes, that such change is in the best interests of the Fund and its Shareholders and does not involve a conflict of interest from which ICMI or the Affiliated Manager derives an inappropriate advantage.

7. ICMI will provide general management services to each Manager of Managers Fund, including overall supervisory responsibility for the general management and investment of each Manager of Managers Fund's securities portfolio, and, subject to Board review and approval, will (i) set each Manager or Managers Fund's overall investment strategies, (ii) recommend and select Managers, (iii) allocate, and when appropriate, reallocate a Manager of Managers Fund's assets among its Managers when a Fund has more than one Manager, (iv) monitor and evaluate Manager performance, and (v) implement procedures designed to ensure that the Manager complies with the Manager of Managers Fund's investment objectives, policies, and restrictions.

8. No director or officer of the Company, or director or officer of ICMI will own, directly or indirectly (other than through a pooled investment vehicle over which such person does not have control), any interest in a Manager, except for (i) ownership of interests in ICMI or any entity that controls, is controlled by or is under common control with ICMI; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Manager or an entity that controls, is controlled by, or is under common control with a Manager.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8875 Filed 4–10–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of April 10, 2000.

A closed meeting will be held on Wednesday, April 12, 2000 at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and (17) CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, April 12, 2000 will be:

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: April 6, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–9014 Filed 4–6–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [65 FR 17547, April 3, 2000].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: April 3, 2000.

CHANGE IN THE MEETING: Cancellation of Meeting.

The closed meeting scheduled for Thursday, April 6, 2000 at 11 a.m., was cancelled.

Dated: April 7, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–9057 Filed 4–7–00; 11:30 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–42615; File No. SR–CBOE–00–03)

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Rejecting RAES Orders in Certain Limited Situations

April 3, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 22, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. In this proposed rule change, CBOE seeks to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

extend a pilot program that was first approved by the Commission on November 22, 1999.[3] On March 22, 2000, CBOE filed Amendment No. 1 to the proposed rule change.[4] The Commission received eight comment letters on the pilot program.[5] The Exchange's response to these comment letters can be found in Item IV. The Commission is publishing this notice and order to solicit comments on the proposal from interested persons and to approve the proposal on an accelerated basis for a 6 month pilot that will expire on August 22, 2000.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to extend, for a 6 month period, a pilot program that provides for certain orders to be rejected from RAES for manual handling in certain limited situations. The text of the proposed rule change is available at the CBOE and at the Commission's public reference room.

[3] *See* Release No. 34–42168 (November 22, 1999), 64 FR 66952 (November 30, 1999) (File No. SR–CBOE–99–61).

[4] In Amendment No. 1, the CBOE amended the filing to respond to questions from the Commission staff and to incorporate these responses into the text of the rule filing. In addition, the CBOE proposed to adopt an Interpretation that provides protection for orders kicked out of RAES when the prevailing market bid or offer is equal to the best bid or offer on the Exchange's book. This Interpretation, which was part of CBOE's rules until October 1999, would apply to option classes where the Automated Book Priority system has not been implemented (Interpretation .04 to CBOE Rule 6.8). *See* letter from Timothy Thompson, Director, Regulatory Affairs, CBOE, to Elizabeth King, Associate Director, Division of Market Regulation, Commission, dated March 21, 2000 ("Amendment No. 1").

[5] *See* letters from George Brunelle, Law Offices of George Brunelle, to Secretary, Commission, dated December 20, 1999 ("Brunelle Letter 1"); James I. Gelbort, to Jonathan G. Katz, Secretary, Commission, dated December 21, 1999 ("Gelbort Letter"); Thomas Peterffy, Chairman, and David M. Battan, Vice President and General Counsel, Interactive Brokers, The Timber Hill Group, to Jonathan G. Katz, Secretary, Commission, dated December 21, 1999 ("IB Letter"); Linda S. Tors, to Jonathan G. Katz, Secretary, Commission, dated January 6, 2000 ("Tors Letter"); Thomas Coyle, to Jonathan G. Katz, Secretary, Commission, dated January 3, 2000 ("Coyle Letter"); John Rohde, to Jonathan G. Katz, Secretary, Commission, dated January 9, 2000 ("Rohde Letter"); Brent Houston, Senior Vice President, Capital Markets, Datek Online, to Jonathan G. Katz, Secretary, Commission, dated February 1, 2000 ("Datek Letter"); George Brunelle, Brunelle & Hadjikow, to Jonathan G. Katz, Secretary, Commission, dated March 23, 2000 ("Brunelle Letter 2"). The Division of Market Regulation received Brunelle Letter 2 on March 28, 2000. In Brunelle Letter 2, the commenter generally reiterates the comments from his previous letter (Brunelle Letter 1) and also comments on another CBOE rule filing, SR–CBOE–99–57.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item V below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to extend, for an additional 6 month period, the pilot program that provides (where the Exchange's Automated Book Priority ("ABP") system has been implemented) for certain orders to be rejected from RAES for manual handling in the limited situation where the bid or offer for a series of options generated by the Exchange's Autoquote system becomes crossed or locked with the best bid or offer for that series as established by a booked order. The Exchange believes this limited kick-out situation provided by the pilot program is the best alternative currently available to the Exchange to address the particular risk presented by the unusual situation where the Autoquote crosses or locks with an order in the Exchange's book. In fact, as described further below, the Exchange has found that only 0.44% of all orders (in those classes where the ABP system has been implemented) routed to RAES would be rejected pursuant to the pilot program.

1. Background

The Exchange's ABP system allows an order entered into RAES to trade directly with an order on the Exchange's customer limit order book in those cases where the prevailing market bid or offer is equal to the best bid or offer on the Exchange's book.[6] The Commission approved the Exchange's rules implementing the ABP system in October 1999,[7] however, these rule changes do not become operative in a particular class until the Exchange implements the ABP system in that class.[8] In those classes in which the ABP system has yet not been implemented, orders are still subject to Interpretation .04, which requires an order to be rerouted from RAES in the event that an order in the book is establishing the prevailing best bid or offer (whichever one is relevant to the particular order).[9] The Exchange is not proposing to provide this extra protection to orders that are rejected where the ABP system has been implemented for a number of reasons. First, as the Exchange noted in its original filing, in most cases where the order is kicked out due to an Autoquote inversion, the booked order already will have been traded in open outcry before the incoming RAES orders are received. In addition, the Exchange's systems have been designed such that a rejected order will normally be routed directly to the Exchange's electronic brokerage terminal ("PAR") in the trading crowd and will appear on that PAR machine instantaneously. Consequently, these rejected orders will routinely be represented in the trading crowd within a matter of seconds of being rejected. These orders will be entitled, by virtue of the firm quote rule, to be executed at the bid or offer displayed when that order reaches the trading station.

As described in the prior filing, in the course of planning for the implementation of the ABP system, the Exchange became aware of an unintended consequence of the operation of the ABP system. That is, the Exchange realized that in situations where the best bid or offer for one or more series of a particular class is established by one or more orders in the

[6] In the event that the order in the book is for a smaller number of contracts than the RAES order, the balance of the RAES order would be assigned to participating market makers at the same price at which the rest of the order is to be executed

[7] *See* Release No. 34–41995 (October 8, 1999), 64 FR 56547 (October 20, 1999) (File No. SR–CBOE–99–29).

[8] As of February 10, 2000, ABP has been implemented in over 150 classes of equity options on the Exchange floor, including many of the most actively traded option classes. ABP has been implemented in options classes at every trading station on the floor. As the Exchange has noted to Commission staff, the Exchange will continue to roll out ABP to the other option classes on the floor in any orderly manner—in a manner designed to ensure the continued integrity of the ABP system.

[9] In those classes where ABP has not yet been implemented, when a RAES order is entered into the Exchange's Order Routing System at a time when the prevailing market bid or offer is equal to the best bid or offer on the Exchange's book, the order generally is routed electronically to a Floor Broker's terminal or work station in the crowd subject to the volume parameters of each firm. Today, the orders are routed to the Floor Brokers instead of being automatically executed in the crowd at the market price, because execution with the crowd would be inconsistent with CBOE Rule 6.45, which provides that bids or offers displayed on the customer limit order book are entitled to priority over other bids or offers at the same price. Until ABP is implemented in the particular class, the first such order rerouted from RAES due to a situation in which the book touches the market is entitled to be filled at the prevailing quote at the time the order was rerouted. *See* Amendment No. 1.

book, the market makers logged into RAES for that class of options would be subject to a substantial risk in the event that the market in the underlying stock moved significantly and quickly in a direction that made the booked order substantially better than the price calculated by CBOE's Autoquote formula. In that event, while the booked order would quickly be executed, CBOE represents that the ABP system may not be able to react quickly enough to remove the executed order from the limit order book. As a result, once ABP is implemented, orders entered in RAES would automatically be executed against the stale bid or offer still being shown in the book notwithstanding the booked order having already been executed. CBOE contends that this result could cause direct and substantial economic disadvantage to the market makers who are obligated to participate in RAES executions.[10] The Exchange believes there is no question that the consequence of implementing ABP without addressing this substantial increased risk is that (i) market makers may choose not to participate on RAES (thus, affecting the liquidity of those lower volume series traded on RAES and endangering the viability of RAES itself) and/or (ii) market makers may request the Equity Procedure Committee to either reduce the size of orders eligible for RAES or to take some series off of RAES (thus, eliminating significant advances in automatic execution that our customers have requested).

As mentioned in that prior filing, the Exchange expected the number of orders that would be rejected from RAES under this proposed rule would represent only a small subset of the orders that were rejected in those same classes before ABP was implemented in those classes. In fact, the Exchange has found that the number of kick-outs resulting from the implementation of this system is a remarkably small percentage of the RAES-eligible orders. Of the 150 classes in which ABP had been implemented as of February 14, the Exchange found that only 44 of those classes had an ABP order on that day. Over the course of that day, 5908 orders were routed to RAES in those particular 44 classes accounting for 41,102 contracts. Of those 5908 orders, 1054 orders (representing 9017 contracts) were handled by ABP, *i.e.* they were traded against orders in the book and in some cases also against market makers at the price of the booked order. In all 44 classes during the course of the day, there were only 26 orders (representing 130 contracts) rejected from RAES due to the Autoquote bid or offer crossing or locking with the price of the booked order.[11] This is, on average, less than one order per day per class that was rejected pursuant to the pilot program and amounts to only 0.44% of the orders routed to RAES in those 44 classes and only 0.31% of all the contracts routed to RAES in those 44 classes.[12] It should also be noted that if ABP had not been implemented in those classes, all 1054 orders that were handled by ABP would have been rejected from RAES for manual handling because of the situation in which the book touches the market. With ABP in place along with the limited kick-out, only 2.46% of the orders (and 1.44% of the contracts) that would have been rejected without ABP are now rejected with ABP.

Other Alternatives

The Exchange believes that the present alternative of rejecting RAES orders in the limited situation it has described is the most effective way to provide the benefits of the ABP system without creating such a great risk to Exchange market makers that they choose not to participate on RAES, or that they encourage the appropriate Floor Procedure Committee to offer only a few active series on RAES. During the 6 month pilot period, the Exchange will continue to seek other alternatives to having these orders rejected. Among the alternatives the Exchange is presently considering are: (i) Having the Autoquote system generate an order that will be traded on RAES in those cases where the Autoquote crosses with the book value and (ii) having an income order trade against the book order at the book price for the volume in the book and then having the balance of the incoming order trade at the next best available price whether it is another booked order or against the market makers logged onto RAES at the best market maker quote whether from Autoquote or verbalized by a market maker. The Exchange will continue to search for alternatives to develop its systems to provide the best opportunities for its customers. As it is, Exchange customers who enter orders in the RAES system in those classes where the ABP system has been implemented are much less likely to have their orders rejected for manual handling today than they were before the implementation of ABP along with the limited kickout provided by the pilot program.

Monthly Study

The Exchange is committing to provide a study each month during the pilot program detailing the number of kickouts that the Exchange experienced pursuant to the pilot program during the previous month.

2. Statutory Basis

The CBOE believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5)[13] of the Act in that it is designed to remove impediments to a free and open market

[10] CBOE explains the potential risk market makers could be subject to by implementing the ABP system without the proposed "carve out" by way of example. Assume that in a volatile stock (where the maximum order size for RAES has been established at 50 contracts) small customer orders in the book are establishing the best bid in six different series. In one particular series, Series A, assume that the CBOE market is 5 (bid)—5⅛ (offer), with a book order to buy 5 contracts at $5 (which establishes the best bid). Assume further that the price of the underlying internet stock drops precipitously in a matter of seconds. When the underlying moves, the Exchange's Autoquote system will also update CBOE market makers' quotes for the options overlying that stock. Assume with the drop in the underlying, the Exchange's Autoquote system establishes a bid and offer of 4¾–⅞ for Series A. (The same scenario would play out with the other five series whose best bid is established by an order in the book.) The order in the book representing the best bid will likely be immediately executed by the crowd in the auction market. For some period of time after the trade has been consummated in open outcry, however, the bid will still be displayed as CBOE's bid while the Order Book Official physically punches the keys to take the bid down from the display. During this period, the displayed bid of 5 in the book will be out of line with the theoretical bid of 4¾ generated by CBOE's Autoquote system. In the meantime, traders who have equipped themselves with the necessary computer equipment and communications facilities could have identified the pricing disparity between the theoretical price of the options and the displayed best bids, could automatically generate orders to sell the affected options and route those orders to RAES. If RAES is allowed to operate as it does under normal circumstances, each order to sell that arrives at the Exchange from these investors, for so long as the out-of-line book bid continues to be displayed, will be assigned to market makers in the trading crowd who are logged on to RAES. These market makers in turn will be obligated to buy at the $5 bid, which could now be significantly away from the theoretical bid. Of course, the same adverse consequences could be experienced in the other five series of the class in which the bid was established by a booked order

[11] In those 44 classes in which an ABP order was received, 26 orders were rejected. While there was a limited concentration of the kickouts in certain classes, no class had more than 5 kickouts for the entire day. Of the 26 rejects, 19 of them occurred in five classes as follows: CSCO (Cisco Systems)—5, YHOO (Yahoo! Inc.)—4, CMGI (CMGI Inc.)—4, AOL (America Online, Inc.)—3, QCOM (Qualcomm Inc.)—3.

[12] Of course, a more revealing statistic might be the percentage of RAES orders rejected compared to all RAES orders received in those 150 classes in which ABP had been implemented, not only those classes in which an ABP order was received. The percentages for the 150 ABP classes would be significantly lower than they are for the 44 classes alone.

[13] 15 U.S.C. 78f(b)(5).

and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participant, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Summary of Comments

The Commission received eight comment letters on the pilot program.[14] All of the commenters disapprove of the pilot program and ask the Commission not to extend it. Generally, the commenters assert that the pilot program protects CBOE market makers and disadvantages retail customers.[15] A few firms commented on the linking of the options exchanges.[16] The linking issues, however, is not the subject of this filing.

One commenter argues that the pilot program allows CBOE market makers to abandon their firm quote responsibilities.[17] He states that CBOE's Autoquote system does not reflect public bids or offers, but only the activity of a CBOE computer. The commenters asserts that, for example, when this system locks or crosses CBOE's bid as established by a customer limit order, the pilot program will allow market makers to abandon the prevailing public quotation, and to reject all incoming sell orders which would otherwise be entitled to trade against the best published bid. The commenter goes on to state that after these sell orders have been redirected to the crowd, these orders will most likely be executed at an inferior price.

In addition, this commenter believes that CBOE's arguments supporting the pilot program are flawed. He notes that CBOE supports the pilot by arguing that without it, market makers might avoid participating on RAES or might widen their quotes, both in response to the risk created by potential arbitrage situations. He further notes, however, that CBOE also states that it does not anticipate that the potential arbitrage situation will occur that frequently and therefore, the pilot program will have a minimal impact on the market. In sum, he argues that CBOE's support of the proposal is flawed because it simultaneously argues that makers may be exposed to tremendous risk, but the situations creating this risk will occur very infrequently.

Another commenter also refutes CBOE's arguments supporting the pilot program.[18] In particular, the commenter notes that CBOE's fear that market makers may not participate on RAES should be balanced with some of CBOE's other RAES initiatives, such as requiring all DPMs to participate in automatic execution systems and earlier attempts to decrease the number of market makers participating in RAES. Further, the commenter addresses CBOE's argument about market makers widening their quotes by asserting that CBOE already permits double-width quotes in many volatile options classes and also allows market makers to specify a RAES size limit that is less than the class maximum.

In addition, this commenter argues that the changes to various exchanges' automatic execution systems may create public confusion and unfairly restrict customers' trading opportunities. Before the approval of the ABP system and the pilot program, the commenter asserts that public customers knew how their orders would be handled when these orders reached the CBOE floor. When the ABP system was approved, the commenter notes that CBOE deleted Interpretation .04, which provided protection for kicked-out RAES orders, because CBOE believed that the ABP system would reduce or eliminate kick-outs. However, after approval of the ABP system, the commenter points out that CBOE subsequently expanded the situations in which RAES orders could be kicked-out through a series of rule filings, including the pilot program. According to the commenter, the effect of all of these changes is that CBOE still has the ability to kick-out orders, but it no longer has a rule in place which protects these kicked-out orders.

Two broker-dealers commented that the pilot program has an adverse impact on the trading strategies of their customers.[19] In particular, these firms maintain that they have created order routing systems that send customer orders to the market with the best price, and these order routing systems rely on firm quotes and automatic execution. They assert that the kick-out feature of the pilot program hurts their order routing systems because the price displayed by CBOE might not actually be the price that their customers receive. Further, they argue that once an order is kicked-out, their customers lose the advantages of an automatic execution system such as RAES, which according to these commenters, include the ability to modify or cancel orders online. Three other individuals also share these comments.[20]

All of the commenters argue that the pilot program does not allow customers to take advantage of certain trading opportunities, including arbitrage situations. For example, one commenter asserts that the essence of successful options trading, and of successful arbitrage, is the identification of a pricing disparity between the theoretical price of the option and the displayed best bid or offer.[21] This commenter believes that the pilot program, with its kick-out feature, does not allow traders to take advantage of these opportunities.

Two commenters offer suggestions on how to eliminate the need for the pilot program. One of these commenters believes that if CBOE provides additional staff to help take out the booked order when the booked order is locked or crossed by the Autoquote price, the need for the pilot program would be eliminated.[22] The other commenter suggests that when an Autoquote price touches the price of a book order, the system should automatically execute the book order against a market maker.[23] The commenter believes that this would eliminate the need for the pilot program because it would eliminate the possibility of a book order being locked or crossed with the Autoquote price.

In the alternative, this commenter suggests that if the pilot program is to continue, then CBOE should be required to notify broker-dealers that automatic execution is not available in a particular options series. the commenter believes that CBOE should post this notification at least three seconds prior to removing the options series from the automatic execution system. In addition, this commenter believes that the pilot program should not be extended because it gives no incentive to CBOE to fix its systems.

IV. The Exchange's Response to the Commenters

Seven comment letters were submitted on the original proposed rule change: one by Interactive Brokers; one by James Gelbort; one by George

[14] *See supra* note 5.

[15] *See, e.g.*, Brunelle Letter 1, Gelbort Letter, Tors Letter, Rohde Letter and Datek Letter.

[16] *See* IB Letter, Datek Letter.

[17] *See* Brunelle Letter 1.

[18] *See* Gelbort Letter.

[19] *See* IB Letter, Datek Letter.

[20] *See* Tors Letter, Rohde Letter, Coyle Letter.

[21] *See* Brunelle Letter 1.

[22] *See* Gelbort Letter.

[23] *See* IB Letter.

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Brunelle on behalf of a private investment firm client; one by Thomas Coyle; one by Linda S. Tors; one by John Rohde; and one from Datek Online.[24] It should be noted that all but three of the letters—the IB Letter, the Gelbort Letter, and the Brunelle Letter 1—were sent to the Commission after the public comment period had expired; the Datek letter was sent more than one month after the comment period ended. Nevertheless, the Exchange is addressing the arguments raised in each of the letters.

Stripped of their rhetoric and inaccuracies, these letters all essentially argue that the Exchange's proposed rule should be disapproved because it does not allow, in their opinion, for the smooth operation of a certain business model of which they presumably want to take advantage. A central theme of many of the letters is that the type of kick-out provided for by this rule (and other procedures at other exchanges) is a step backward in a technological world that is providing quicker and better access for customers to automatic execution systems. What these letters ignore is that the Exchange has continually expanded access to RAES over the last few years by increasing the eligible RAES order size, and that with this new kick-out there are actually fewer orders rejected from RAES today (not more as these letters suggest) than there were just a few months ago before the ABP system was put in place.[25] Before the implementation of ABP in a particular class, every incoming RAES-eligible order would be rejected from RAES in those cases in which a booked order was establishing the best price on that side of the market against which the order would be traded. In those classes where ABP is in place, an incoming RAES-eligible order is only rejected from RAES if the booked order is establishing the best price on the side of the market against which the order would be traded and if the Autoquote bid or offer (as appropriate) crosses or locks with that book price.

The letters also wrongly assume that there is no public benefit to this kick-out[26] and that the proposal was established merely to protect the Exchange's market makers from suffering losses or to protect the market makers' "advantages."[27] Again, these letters ignore the fact that, unlike the professional traders who commented on the pilot program, market makers have become subject to ever greater obligations that have been imposed by Exchange rules. In fact, the ABP system obligates the Exchange's market makers to trade up to fifty (50) contracts (the maximum RAES order size) at a price that was established by a public customer and not by the market makers.

One of the commenters suggested that the book staff have an incentive to continue to display a book price that is crossed or locked with the Autoquote system.[28] Of course, it should be apparent from everything the Exchange has explained why the DPM book staff has an incentive to take down the already traded book price as soon as possible. The longer the book price remains, the more orders that will be sent to the Exchange trying to trade at the erroneous price and the more orders that will subsequently be rejected due to the pilot program. The Exchange's DPMs have an incentive from a customer service standpoint and for the sake of running an efficient business to ensure the displayed prices are accurate and that the prices of orders that are traded are taken down as soon as possible.

While the above discussion addresses the arguments presented in all of the comment letters, the Exchange wanted to address individually some of the letters which raise some issues that are particularly troubling because they state inaccuracies and/or misrepresent the Exchange's intentions.

Brunelle Letter 1

The Brunelle Letter 1, which was sent on behalf of a "private investment firm" who chose to remain anonymous, states that the CBOE is arguing that "the public can have RAES, or they can have the Firm Quote Rule * * * but not both." This statement is contrary to the Exchange's rules and to Exchange practice. In fact, the Exchange's firm quote rule, CBOE Rule 8.51, states in paragraph (a)(2) that "the appropriate Floor Procedure Committee * * * may establish a different firm quote requirement for a particular class of options that is not less than the RAES contract limit and no more than 50 contracts." By virtue of this rule, every order entered for the maximum RAES eligible size or less is entitled to firm quote treatment. This means that every RAES-eligible order, including those that are rejected in the limited circumstance permitted by the pilot program, will absolutely receive firm quote treatment whether through RAES or after having been rejected from RAES. Because the Exchange has developed systems that route those rejected orders instantaneously to electronic PAR terminals in the trading crowd, in most cases these orders will be executed at the prevailing quotes within a few seconds of when they were entered.

Gelbort Letter

The Gelbort Letter states that the "CBOE does not propose to expand the ABP system to insure that booked bids or offers are, in fact, rapidly executed by crossed or locked Autoquotes." As the Exchange has stated herein, the Exchange has in fact considered and continues to consider expanding the ABP system to have the Autoquotes trade against the booked orders. It was simply not possible at the time ABP was implemented to change the system to allow for this to happen and so the method chosen for dealing with the problem was the one with the Exchange determined was the least disruptive of those feasible alternatives.

Mr. Gelbort continues by arguing that "[e]ven in an electronic world, on-floor traders continue to enjoy significant advantages." In fact, what Mr. Gelbort completely neglects to point out is that any "advantages" that on floor traders may have once enjoyed have been eroded over the years as customers have gained access to computers that allow them to identify opportunities for trading and have allowed them to transit orders nearly instantaneously to the floor. In fact, the Exchange has facilitated the erosion of these "advantages" by remaining at the forefront of developing systems that allow for quick access, by increasing the order size eligible for automatic execution, and by guaranteeing that RAES orders will be filled at the NBBO if the NBBO is no more than the step-up amount better than the CBOE best quote. What Mr. Gelbort also conveniently neglects to mention is that in spite of the instantaneous access to the Exchange's markets, high speed computers, and a wealth of information at their fingertips, the professional traders enjoy one enormous advantage over Exchange market makers. They have absolutely no obligation to trade at a particular price, unlike Exchange market makers. CBOE market makers who are logged onto RAES, however, are obligated to trade incoming RAES orders at the disseminated price or better when they are assigned the trade even if that price was established by a

[24] CBOE did not receive a copy of Brunelle Letter 2.

[25] As described above, only 2.46% of the orders (1.44% of the contracts) rejected before the implementation of ABP are rejected pursuant to the pilot program. If the number of rejected orders were compared to all RAES orders in those classes in which ABP had been implemented these percentages would be even smaller.

[26] *See* Brunelle Letter 1 at 1, "Without any countervailing benefit to the public markets. * * *"

[27] *Id.*

[28] *See* IB Letter.

small order in the Exchange's book that was better than the price any CBOE market maker was willing to pay for that particular series.

Mr. Gelbort also argues that the result of these rules is to lead to "needless public confusion." As stated earlier, however, the Exchange has already pointed out that it has gone to great lengths to inform the public of those limited circumstances where an order may be rejected from RAES pursuant to the pilot program both by filing the proposal for pubic comment and by issuing regulatory circulars on the matter. The reasons why an order may be rejected from RAES pursuant to this proposal are clearly defined and have been clearly stated. Mr. Gelbort's final paragraph on the subject rule filing, at the bottom of page 4, is a series of inaccuracies and self-serving statements. Mr. Gelbort argues that if the keystrokes have not been made to trade a booked order it is due to "inattention rather than some inherent systems delay." In fact, at most trading stations there are traders who specifically look for situations where the Autoquotes become crossed with a booked order and trade them immediately. However, even though it takes only "a few quick keystrokes" to trade the order, this is all the time it takes for the RAES system to be flooded with orders from multiple customers. This is particularly true when the DPM staff has to trade more than one booked order at the same time.[29] As far as Mr. Gelbort's assertion that the CBOE has been willing to provide additional book terminals and trained personnel DPMs that request them (presumably to suggest that this could solve the problem without the need for rejecting RAES orders), while this is true and remains true, this is not a solution to the particular problem. The Autoquote system may become crossed with a booked order at any time in any options class across the floor and by the time the situation arises it will be too late to transfer staff as Mr. Gelbort no doubt knows.

Mr. Gelbort continues by correctly stating that DPMs have been assigned to all equity option classes and argues that this should eliminate any concern about market makers not participating on RAES if this particular kick-out were not employed because DPMs, at least, are required to participate on RAES at all times. Mr. Gelbort's conclusion is flawed for a number of reasons. First, the Exchange does not believe it is ideal in most instances for DPMs alone to participate on RAESs. Non-DPM market makers, however, are not required to log onto RAES unless they are present in the trading pit and they have logged on at a prior time in the particular expiration cycle. In fact, to the extent market makers are logged onto the RAES system, these market makers will have an incentive to ensure that the quotes are updated and accurate. In addition, regardless of whether a DPM is logged onto RAES, if the risk involved in trading over RAES becomes so great, the DPM will likely request the Floor Procedure Committee to remove all but the most active series from RAES.

IB Letter

Like the Gelbort Letter, the IB Letter draws faulty conclusions from failing to have access to a number of facts. Like the Gelbort Letter, the IB Letter suggests there are better alternatives than rejecting orders from RAES when the Autoquotes cross with the price of a booked order. Interactive Brokers makes this statement without knowing what alternatives the Exchange considered (and continues to consider) and without knowing what time and effort might be involved in instituting Interactive Brokers' preferred solution to deal with the issue. The simple fact of the matter is that the Exchange, Interactive Brokers and Mr. Gelbort all share the same ultimate goal, to have the CBOE's systems operate in the most efficient manner with the fewest disruptions. However, the Exchange is also concerned about providing market makers with the proper incentives to provide the best and tightest markets for the benefit of all customers. Until the Exchange is confident that the quality of its markets will not be compromised by subjecting market makers to undue risk for which they cannot reasonably account, it should not be forced to adopt any particular methodology for dealing with the issue at hand merely because it happens to more easily accommodate the particular system designed by one firm.

Interactive Brokers' entire first argument on pages 2–4 of the IB Letter is predicated on the notion that the number of exceptions to automatic execution is growing on the options exchanges. However, as discussed previously, the number of kick-outs that result from the current pilot program is only a very small subset of the orders that have been kicked out in situations before ABP was implemented on the Exchange. It is the Exchange's judgment, however, that although it is not ideal, it would prefer the limited number of kick-outs provided for by the pilot program than to risk losing liquidity on RAES or having series taken off of RAES.

Interactive Brokers, in fact, suggests an alternative solution on page 5 to deal with the Exchange's particular concern that the Exchange is already considering. Namely, Interactive Brokers suggests that when an Autoquote price touches the price of a booked order, the system should automatically execute the booked order against a market maker. The CBOE agrees that this may well be a longer term solution to the particular issue. In light of the complexities of the RAES system and the Exchange's other current system priorities (including a conversation to decimalization), "fixing" the problem would entail more than "a few of programming work" as Interactive Brokers suggests.

Finally, Interactive Brokers argues that in lieu of disapproving the proposed rule that the Exchange be required to post in electronic form, accessible to broker-dealer routing systems, a notification that automatic execution is not available for a particular option series. Interactive Brokers argues this notice should be accessible at least three seconds prior to such options series being removed from the automatic execution system. The Exchange is, in fact, exploring having a code placed next to its disseminated quotes that indicates when the best quote for a particular series is being established by a booked order. The Exchange believes it may be able to provide such notice in the near future and this would undoubtedly benefit Interactive Brokers' system. It would not be feasible to wait three seconds to remove the series from automatic execution, however, because the instant that a booked order becomes the CBOE's best bid or offer, the market makers become subject to the risk that the pilot program was designed to manage.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549–0609. Copies of submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

[29] The Exchange estimates that for one series it will generally take the DPM book staff 1 to 4 seconds to complete the transaction. Of course, there are some instances where more than one booked order may be traded at the same time. As soon as the booked order is traded, the book-Autoquote inversion will generally cease to exist and all incoming RAES orders after that point will be automatically traded and not rejected from RAES.

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–00–03 and should be submitted by May 2, 2000.

VI. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposal is consistent with the requirements of the Act.[30] In particular, the Commission finds the proposal is consistent with Section 6(b)(5)[31] of the Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to remove impediments to a free and open market and to protect investors and the public interest.

In extending this pilot, the Commission has balanced the commenters concerns with those expressed by CBOE. The Commission notes that CBOE has provided figures the show that kick-outs under this pilot program occur infrequently. Specifically, on February 14, 2000, CBOE conducted a study to determine how often kick-outs from RAES occurred as a result of this pilot program. On that date, CBOE found that out of the 150 classes for which the ABP system had been implemented, only 44 of those classes had an order executed through the ABP system, *i.e.*, the RAES order interacted with an order on the limit order book. In those 44 classes, 1054 orders (representing 9017 contracts) were executed through the ABP system. In those same 44 classes, only 26 orders (representing 130 contracts) were rejected from RAES due to the Autoquote system locking or crossing CBOE's best bid or offer as established by the book. Moreover, the orders rejected from RAES as a result of this pilot represent a small percentage of the total amount of orders routed to RAES in these 44 options classes on February 14 (5908 orders representing 41,102 contracts). These figures support CBOE's position that kick-outs under this pilot program occur infrequently.

Nevertheless, the Commission is mindful of the commenters concerns. In particular, the Commission agrees with the commenters that there are other solutions than the one employed by CBOE in this pilot program. In this filing, CBOE listed two alternative solutions. One of these alternatives involves having an incoming order trade against the book order at the book price for the volume in the book and then having the balance of the incoming order trade at the next best available price—whether it is with another booked order or with a market makers logged onto RAES. This alternative would allow customer orders to interact with orders on the limit order book, but would eliminate the risk to market makers of executing a RAES order for the maximum eligible size when the limit order is for a smaller number of contracts. In this regard, the CBOE has represented that it will continue work on systems changes to address the situation when the Autoquote system locks or crosses CBOE's best bid or offer as established by the book and has assigned a high priority these systems changes. CBOE stated that it is confident that these changes could be implemented by the end of this calendar year, after it has completed the projects needed for it to convert to decimal trading.[32]

In the meantime, the Commission agrees with one of the commenters that CBOE should provide protection to kicked-out orders in options classes where the ABP system has not yet been implemented. When the ABP system was originally proposed, CBOE represented that the ABP system, by allowing RAES orders to interact directly with orders in the exchange's limit order book, would reduce or eliminate the need for kick-outs. Because of this representation, CBOE eliminated Interpretation .04, which provided protection for orders that had been kicked-out. As of the date of this filing, CBOE has not implemented the ABP system on a floor-wide basis. The Commission therefore believes that Amendment No. 1, which re-adopts Interpretation .04, should help provide protection to orders kicked-out in those classes in which the ABP system has not been implemented. CBOE also stated that it would continue to roll out the ABP system in those classes in which it had not yet been implemented.

In light of the likely benefits to customer limit orders expected to be gained by the continued implementation of the ABP system, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Further, the Commission notes that the CBOE has agreed to provide monthly reports to the Commission regarding the number of times an incoming RAES order is rejected pursuant to this pilot.[33]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[34] that the proposed rule change (SR–CBOE–00–03) is hereby approved through August 22, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[35]

Margaret H. McFarland,

Deputy Secretary.

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[30] In addition, pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[31] 15 U.S.C. 78f(b)(5).

[32] *See* Amendment No. 1 at 2.

[33] The extension of this pilot should not be interpreted as suggesting that the Commission is predisposed to approving the proposal permanently.

[34] 15 U.S.C. 78s(b)(2).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42617; File No. SR–EMCC–00–3]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Exclusion of Excess Clearing Fund Deposits in the Calculation of an Inter-Dealer Broker Member's Minimum Margin Amount

April 4, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 30, 2000, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily EMCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change provides EMCC the right, in its discretion, to exclude from an inter-

[1] 15 U.S.C. 78s(b)(1).

dealer member's "minimum margin amount" additional margin that such member has posted to the clearing fund due to its contra-party's failure to timely submit one or more trades to EMCC once the underlying trade(s) have been compared or settled.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. EMCC has prepared summaries set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

EMCC's rules require that inter-dealer broker members ("IDBs") be margined in the same way as dealer members. Rule 4, Section 5(A) of EMCC's Rules requires members' clearing fund deposits to equal the greater of (i) their daily margin amount (*i.e.*, the amount calculated for each member on each business day) and (ii) their minimum margin amount (*i.e.*, their "floor"). The floor is the amount equal to the largest single daily margin amount computed for a member during the relevant calendar month and the previous calendar month.

As EMCC has developed and expanded its membership base, there have been concerns about the effect of the late trade matching on IDBs. That is, where an IDB and one of its contra-parties submit a trade on a timely basis but the other contra-party dealer does not, the IDB will be required to post additional clearing fund with EMCC. EMCC's Addendum B requires the late submitting dealer in that situation to cover the IDB's financing cost for the excess clearing fund deposit. Addendum B does not, however, address the impact of such additional margin requirement on the computation of the IDB's floor. The intent of requiring the additional margin from the IDB is to cover EMCC's risk exposure until the trade is compared or settled. As written, the IDB Member would have to maintain that additional amount on deposit as its floor for an additional 30 to 60 days. Accordingly, the proposed rule would amend Rule 4 to permit EMCC, in its discretion, to exclude the additional margin from the calculation of the IDB's floor once the underlying trade(s) have been compared or settled and thus return the excess clearing fund so posted by the IDB.

This rule change should encourage IDBs to become participants in EMCC, and therefore facilitate the prompt and accurate clearance and settlement of emerging market securities transactions. The proposed rule change is therefore consistent with the requirements of section 17A(b)(3)(F) of the Act, as amended, and the rules and regulations thereunder.

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with section 17A(b)(3)(F) of the Act, as amended, and the rules and regulations thereunder. Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[4] The Commission believes that EMCC's proposal to exclude from the calculation of an IDB's minimum margin amount clearing fund deposits which are made by an IDB due to the failure of a contra-party dealer to submit a trade in a timely fashion is consistent with EMCC's safeguarding obligations because EMCC will be able to so adjust the minimum margin amount only (1) for an IDB and not a dealer member, (2) where the IDB has deposited the additional margin because of the untimely submission of trade(s) by one of its dealer counterparties, and (3) where the trade(s) have been compared or settled.

EMCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication on the notice of filing. The Commission finds good cause to approve the rule change prior to the thirtieth day after publication of notice because so approving will permit EMCC to immediately exclude the additional margin requirement in the computation of the IDB's floor. This should encourage more IDBs to become participants in EMCC which should contribute to the safe and efficient clearance and settlement of emerging market debt securities.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of EMCC. All submissions should refer to File No. SR–EMCC–00–3 and should be submitted by May 2, 2000.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–EMCC–00–3) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

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[2] A copy of the text of EMCC's proposed rule change and the attached exhibits are available at the Commission's Public Reference Section or through EMCC.

[3] The Commission has modified the text of the summaries prepared by EMCC.

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42619; File No. SR–NASD–00–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Its Corporate Financing Rule

April 4, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on January 21, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, NASD Regulations, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulations. NASD Regulation filed Amendments No. 1,[3] No. 2,[4] and No. 3[5] to the proposed rule change on March 6, 2000, March 21, 2000, and March 30, 2000, respectively, the substance of which has been incorporated into this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation proposes to amend NASD Conduct Rule 2710. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

2710. Corporate Financing Rule—Underwriting Terms and Arrangements

(a) Definitions: No change.

(b) Filing Requirements

(1)–(5) No change.

(6) Information Required to be Filed

(A) Any person filing documents pursuant to subparagraph (4) above shall provide the following information with respect to the offering:

(i)–(iii) No change.

(iv) [a statement addressing the factors in subparagraph c)(4)(C) and(D), where applicable;]

[(v)] a detailed explanation of any other arrangement entered into during the [12-month] *180-day* period immediately preceding the filing *date* of the *public* offering, which arrangement provides for the receipt of any item of value [and/]or the transfer of any warrants, options, or other securities from the issuer to the underwriter and related persons; and

[(iv)] (*v*) a detailed explanation and any documents related to:

a. the modification of any *information or representation previously provided to the Association or of any* item of underwriting compensation[,]; *or*

b. any new arrangement that provides for the receipt of any additional item of value by the underwriter and related persons subsequent to the [review and approval of such compensation] *issuance of an opinion of no objections to the underwriting terms and arrangements* by the Association *and within 90 days immediately following the effective date of the public offering.*

(B) No change.

(7)–(12) No change.

(c) Underwriting Compensation and Arrangements

(1)–(2) No change.

(3) Items of Compensation

(A) For purposes of determining the amount of underwriting compensation received or to be received by the underwriter and related persons pursuant to subparagraph (2) above, the following items and all other items of value received or to be received by the underwriter and related persons in connection with or related to the distribution of the *public* offering, as determined pursuant to subparagraph (4) below shall be included:

(i)–(v) No change.

(iv) financial consulting and advisory fees whether in the form of cash, securities, or any other item of value;

(vii) *common or preferred* stock, options, warrants, and other *equity* securities, *including debt securities convertible to or exchangeable for equity securities* [including securities] received [as underwriting compensation, for example]:

a. [in connection with] *for arranging* a private placement of securities for the issuer.

b. for providing or arranging *a loan, credit facility, or* bridge financing for the issuer;

c. as a finder's fee;

d. for *providing* consulting services to the issuer; [and]

e. [securities purchase] *as an investment* in private placement made by the issuer; *or*

f. at the time of the public offering;

(viii)–(x) No change.

(xi) commissions, expense reimbursements, or other compensation to be received by the underwriter and related persons as a result of the exercise or conversion, within twelve (12) months following the effective date of offerings, of warrants, options, convertible securities, or similar securities distributed as part of the *public* offering; *and*

(xii) fees of a qualified independent underwriter[; and].

[(xiii) compensation, including expense reimbursements, paid in the six (6) months prior to the initial or amended filing of the prospectus or similar documents to any member or person associated with a member for a public offering that was not completed.]

(B) *Notwithstanding paragraph (c)(3)(A) above, the calculation of underwriting compensation shall not include:*

(i) [E] expenses customarily borne by an issuer, such as printing costs; SEC, "blue sky" and other registration fees; Association filing fees; and accountant's fees, [shall be excluded from underwriter's compensation] whether or not paid through an underwriter;

(ii) compensation, including expense reimbursements, previously paid to any member in connection with a proposed public offering that was not completed, if the member does not participate in the revised public offering; and

(iii) financial consulting and advisory fees, on the basis of information that establishes that an ongoing relationship between the issuer and the financial advisor or consultant was established more than twelve months before the filing date of the public offering.

(4) Determination of Whether Compensation Is Received in Connection With the Offering

(A) All items of value received [or to be received] by the underwriter and

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] Letter from Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 3, 2000 ("Amendment No.. 1"). Amendment No. 1 makes certain clarifying and non-substantive changes to the proposed rule change.

[4] Letter from Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulations, to Katherine A. England, Assistant Director, Division, Commission, dated March 20, 2000 ("Amendment No. 2"). Amendment No. 2 revises the language of proposed Rule 2710(c)(4)(D)(i) relating to "members of a group." Amendment No. 2 also states that NASD Regulations consents to a 90 day extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

[5] Letter from Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated March 29, 2000 ("Amendment No. 3"). Amendment No. 3 states NASD Regulation's rationale for deleting the exception from the current Venture Capital lock-up in Rule 2710(c)(C)(i) for transactions in which a qualified independent underwriter provides a pricing opinion and performs due diligence.

related persons during the [twelve (12) months] *180-day* period immediately preceding the filing *date* of the registration statement or similar document, and at the time of [and subsequent to] the public offering, will be [examined to determine whether such items of value are] *considered to be* underwriting compensation in connection with the *public* offering [and, if received during the six (6) month period immediately preceding the filing of the registration statement or similar document, will be presumed to be underwriting compensation received in connection with the offering, provided, however, that such presumption may be rebutted on the basis of information satisfactory to the Association to support a finding that the receipt of an item is not in connection with the offering and shall not include cash discounts or commissions received in connection with a prior distribution of the issuer's securities].

[(B) Items of value received by an underwriter and related person more than twelve (12) months immediately preceding the date of filing of the registration statement or similar document will be resumed not to be underwriting compensation. However, items received prior to such twelve (12) month period may be included as underwriting compensation on the basis of information to support a finding that receipt of the item is in connection with the offering.]

[(C) For purposes of determining whether any item of value received or to be received by the underwriter and related persons is in connection with or related to the distribution of the public offering, the following factors, as well as any other relevant factors and circumstances, shall be considered:]

[(i) the length of time between the date of filing of the registration statement or similar document and:]

[a. the date of the receipt of the item of value;]

[b. the date of any contractual agreement for services for which the item of value was or is to be received; and]

[c. the date the performance of the service commenced, with a shorter period of time tending to indicate that the item is received in connection with the offering;]

[(ii) the details of the services provided or to be provided for which the item of value was or is to be received;]

[(iii) the relationship between the services provided or to be provided for which the item of value was or is to be received and:]

[a. the nature of the item of value;]

[b. the compensation value of the item; and]

[c. the proposed public offering;]

[(iv) the presence or absence of arm's length bargaining or the existence of any affiliate relationship between the issuer and the recipient of the item of value, with the absence of arm's length bargaining or the presence of any affiliation tending to indicate that the item of value is received in connection with the offering.]

[(D) For purposes of determining whether securities received or to be received by the underwriter and related persons are in connection with or related to the distribution of the public offering, the factors in subparagraph (C) above and the following factors shall be considered:]

[(i) any disparity between the price paid and the offering price or the market price, if a bona fide independent market exists at the time of acquisition, with a greater disparity tending to indicate that the securities constitute compensation;]

[(ii) the amount of risk assumed by the recipient of the securities, as determined by:]

[a. the restrictions on exercise and resale;]

[b. the nature of the securities (*e.g.*, warrant, stock, or debt); and]

[c. the amount of securities, with a larger amount of readily marketable securities without restrictions on resale or a warrant for securities tending to indicate that the securities constitute compensation; and]

[(iii) the relationship of the receipt of the securities to purchases by unrelated purchasers on similar terms at approximately the same time, with an absence of similar purchases tending to indicate that the securities constitute compensation.]

[(E) Notwithstanding the provisions of subparagraph (3)(A)(vi) above, financial consulting and advisory fees may be excluded from underwriting compensation upon a finding by the Association, on the basis of information satisfactory to it, that an ongoing relationship between the issuer and the underwriter and related person has been established at least twelve (12) months prior to the filing of the registration statement or similar document or that the relationship, if established subsequent to that time, was not entered into in connection with the offering, and that actual services have been or will be rendered which were not or will not be in connection with or related to the offering.]

(B) Securities of the issuer acquired by the underwriter and related persons before the filing date of a public offering will be considered to be received for purposes of subparagraph (c)(4)(A) and (E) as of the date of the:

(i) closing of a private placement, if the securities were purchased from or received as compensation for the private placement;

(ii) execution of an agreement for a loan or credit facility, if the securities were received as compensation for the loan or credit facility; or

(iii) transfer of beneficial ownership of the securities to a consultant, if the securities were received as compensation for consulting services.

(C) All items of value received by the underwriter and related persons during the 90-day period immediately following the effective date of a public offering will be examined to determine whether such items of value are considered underwriting compensation in connection with the public offering.

(D) For purposes of subparagraph (c)(4)(E) below, the following terms will have the meanings stated below.

(i) An entity will include a group of legal entities that either:

a. are contractually obligated to make co-investments and have previously made at least one such investment; or

b. have filed a Schedule 13D or 13G with the SEC that identifies the entities as members of a group who have agreed to act together for the purpose of acquiring, holding, voting or disposing of equity securities of an issuer for purposes of Section 13(d) or 13(g) of the Securities Exchange Act of 1934.

(ii) An institutional investor will mean any individual or entity that has at least $50 million invested in securities in the aggregate in its portfolio or under management; provided that an institutional investor will not include any member participating in the public offering, any of its associated or affiliated persons, or an immediate family member of its associated or affiliated persons.

(E) Notwithstanding subparagraph (c)(4)(A) above, the following acquisitions of securities will not be considered underwriting compensation:

(i) Purchases and Loans by Certain Entities—Securities of the issuer purchased in a private placement or received as compensation for a loan or credit facility more than 90 days before the filing date of the public offering, by certain entities if:

a. the entity:

1. either:

A. manages capital contributions of $100 million or more, at least $75 million of which has been committed by persons that are not underwriters or related persons; or

B. manages capital contributions of $25 million or more, at least 75% of

which has been committed by persons that are not underwriters or related persons;

2. is a separate and distinct legal entity from the member and is not registered as a broker/dealer;

3. makes investments or loans subject to the evaluation and review of individuals who have a contractual or fiduciary duty to select investments and loans based on the risks and rewards to the entity and not based on opportunities for the member to earn investment banking revenues;

4. does not participate directly in investment banking fees received by the member for underwriting public offerings;

5. is engaged primarily in the business of making investments in or loans to private or start-up companies or companies in the early process of developing products or services, or participating in leveraged buy-out transactions; and

b. the member maintains and enforces written procedures reasonably designed to ensure that the member's participation in the public offering is not contingent on the entity's participation in the private placement or loan.

(ii) Investments In and Loans to Certain Issuers—Securities of the issuer purchased in a private placement or received as compensation for a loan or credit facility more than 90 days before the filing date of the public offering, by certain entities if:

a. the entity:

1. manages capital contributions or loan commitments of at least $50 million;

2. is a separate and distinct legal entity from the member and is not registered as a broker/dealer;

3. does not participate directly in investment banking fees received by the member for underwriting public offerings;

4. is engaged primarily in the business of making investments in or loans to private or start-up companies or companies in the early process of developing products or services, or participating in leveraged buy-out transactions; and

b. institutional investors beneficially own at least 33% of the total number of the issuer's equity securities outstanding on a fully diluted basis;

c. an institutional investor is a member of the issuer's board of directors;

d. the transaction was approved by a majority of the issuer's board of directors and by the affirmative vote of institutional investors that are board members;

e. the total amount of securities received by all entities related to each member does not exceed 5% of the total number of the issuer's equity securities outstanding on a fully diluted basis; and

f. the member maintains and enforces written procedures reasonably designed to ensure that the member's participation in the public offering is not contingent on the entity's participation in the private placement or loan.

(iii) Private Placements With Institutional Investors—Securities of the issuer purchased in or received as placement agent compensation for a private placement more than 90 days before the filing date of the public offering if:

a. institutional investors purchase at least 51% of the total offering (comprised of the total number of securities, on a fully diluted basis, sold in the private placement and received as placement agent compensation by a member);

b. an institutional investor was the lead negotiator with the issuer to establish the terms of the private placement;

c. the underwriter and related persons (excluding any entities qualified under paragraph (c)(4)(D)(i) above):

1. have not, in the aggregate, purchased or received as placement agent compensation more than 20% of the total offering; and

2. have purchased securities that were at the same price and with the same terms as the securities purchased by other investors; and

d. the member maintains and enforces written procedures reasonably designed to ensure that its participation in the public offering will not be contingent on its participation in the private placement.

(iv) Purchases Under a preemptive Right—Securities of the issuer under a right of preemption if:

a. the right of preemption was granted either:

1. by contract or the terms of the security in connection with a purchase from a private placement of the issuer's securities made more than 180 days before the filing date of the public offering; or

2. in connection with a security purchased from a public offering or the public market; and

b. the purchase under the right of preemption:

1. was exercised in connection with a private placement of the issuer's securities that was for cash;

2. was to all similar preemptive right holders;

3. was at the same price and had the same terms as the securities purchased by other investors; and

4. did not increase the purchaser's percentage ownership of the same class of securities of the issuer.

(5) Valuation of Non-Cash Compensation

For purposes of determining the value to be assigned to securities received as underwriting compensation, the following criteria and procedures shall be applied:

(A) [No underwriter and related person may receive a security or a warrant for a security as compensation in connection with the distribution of a public offering that is different than the security to be offered to the public unless the security received as compensation has a bona fide independent market, provided, however, that: (i) in exceptional and unusual circumstances, upon good cause shown, such arrangement may be permitted by the Association; and (ii) in an offering of units, the underwriter and related persons may only receive a warrant for the unit offered to the public where the unit is the same as the public unit and the terms are no more favorable than the terms of the public unit.]

An underwriter and related person may not receive a security (including securities in a unit) or a warrant for a security as underwriting compensation in connection with a public offering unless: (i) the security received or the security underlying the warrant received is identical to the security offered to the public or to a security with a bona fide independent market; or (ii) the arrangement, upon good cause shown, is permitted by the Association.

(B) [s] *S*ecurities that are not options, warrants or convertible securities shall be valued on the basis of:

(i) the difference between [the per security cost and]:

a. either the market price per security on the date of acquisition, [where a] *or, if no* bona fide independent market exists for the security, [or] the [proposed (and actual)] public offering price per security; *and*

b. the per security cost;

(ii) multiplied by the number of securities received or to be received as underwriting compensation;

(iii) divided by the *public* offering proceeds; and

(iv) multiplied by one hundred [(100)].

(C) [o] *O*ptions, warrants or convertible securities *("warrants")* shall be valued on the basis of [the following formula]:

(i) the [proposed (and actual)] public offering price per security multiplied by .65 [(65%)];

(ii) minus the difference between:

a. the exercise or conversion price per [security] *warrant;* and

b. either the market price per security on the date of acquisition, [where a] *or, if no* bona fide independent market exists for the security, [or] the [proposed (and actual)] public offering price per security;

(iii) divided by two [(2)];

(iv) multiplied by the number of *securities underlying the* warrants[, options, and convertible securities received or to be received as underwriting compensation];

(v) less the total price paid for the [securities] *warrants;*

(vi) divided by the *public* offering proceeds; and

(vii) multiplied by one hundred [(100)].

(D) [a lower value equal to 80% and 60% of the calculated value shall be assigned if securities, and where relevant, underlying securities, are or will be restricted from sale, transfer, assignment or other disposition for a period of one and two years, respectively, beyond the one-year period of restriction required by subparagraph (7)(A)(i) below.] *A lower value equal to 10% of the calculated value shall be assigned for each 180-day period that the securities or underlying securities are restricted from sale or other disposition beyond the 180-day period of restriction required by subparagraph (c)(7)(A)(i) below. The transfers permitted by subparagraphs (c)(7)(B)(i)(c) and (d) are not available for the sale of such securities.*

(6) Unreasonable Terms and Arrangements

(A) No change.

(B) Without limiting the foregoing, the following terms and arrangements, when proposed in connection with [the distribution of] a public offering of securities, shall be unfair and unreasonable:

(i)–(vii) No change.

(viii) the receipt by the underwriter and related persons of underwriting compensation consisting of any option, warrant or convertible security [which] *that:*

a.–f. No change.

g. has anti-dilution terms designed to provide the underwriter and related persons with disproportionate rights, privileges and economic benefits which are not provided to the purchasers of the securities offered to the public (or the public shareholders, if in compliance with subparagraph (5)(A) above); *or*

h. has anti-dilution terms designed to provide for the receipt or accrual of cash dividends prior to the exercise or conversion of the security[;or];

[i. is convertible or exercisable or otherwise is on terms more favorable than the terms of the securities being offered to the public;]

(ix)–(x) No change.

[(xi) stock numerical limitation. The receipt by the underwriter and related persons of securities which constitute underwriting compensation in an aggregate amount greater than ten (10) percent of the number or dollar amount of securities being offered to the public, which is calculated to exclude:]

[a. any securities deemed to constitute underwriting compensation;

b. any securities issued or to be issued pursuant to an overallotment option;]

[c. in the case of a "best efforts" offering, any securities not actually sold; and]

[d. any securities underlying warrants, options, or convertible securities which are part of the proposed offering, except where acquired as part of a unit;]

(xii)–(xiv) Renumbered (xi)-(xiii).

(C) In the event that the underwriter and related persons receive securities deemed to be underwriting compensation in an amount [constituting] *that results in* unfair and unreasonable compensation [pursuant to the stock numerical limitation in subparagraph (B)(ix) above], the recipient shall return any excess securities to the issuer or the source from which received at cost and without recourse, except that [in exceptional and unusual circumstances], upon good cause show, a different arrangement may be permitted.

(7) Restrictions on Securities

(A) [No member or person associated with a member shall participate in a] *Any* public offering *in* which [does not] *a member or person associated with a member participates must* comply with the following requirements:

(i) *any common or preferred stock, options, warrants, and other equity* securities [deemed to be underwriting compensation], *including debt securities convertible to or exchangeable for equity securities, of the issuer beneficially owned by an underwriter and related person at the time of effectiveness of the public offering* shall not be sold, transferred, assigned, pledged or hypothecated by any person, except as provided in subparagraph (B) below, for a period of [(a) one year] *180 days immediately* following the effective date of the *public* offering [for which the securities were received.];

[However, securities deemed to be underwriting compensation may be transferred to any member participating in the offering and the bona fide officers or partners thereof and securities which are convertible into other types of securities or which may be exercised for the purchase of other securities may be so transferred, converted or exercised if all securities so transferred or received remain subject to the restrictions specified herein for the remainder of the initially applicable time period;]

[(ii) certificates or similar instruments representing securities restricted pursuant to subparagraph (i) above shall bear an appropriate legend describing the restriction and stating the time period for which the restriction is operative;] and

[(iii)] *(ii)* securities [to be] received by a member as underwriting compensation shall only be issued to a member participating in the offering and the [bona fide] officers or partners thereof.

(B) [The provisions of] *Notwithstanding* subparagraph (A) [notwithstanding] *above, the following shall not be prohibited:*

(i) the transfer of any security:

a. by operation of law or by reason of reorganization of the issuer [shall not be prohibited.];

b. to any member participating in the offering and the officers or partners thereof, if all securities so transferred remain subject to the restrictions in subparagraph (A) above for the remainder of the applicable time period;

[(C) Venture capital restrictions. When a member participates in the initial public offering of an issuer's securities, such member or any officer, director, general partner, controlling shareholder or subsidiary of the member or subsidiary of such controlling shareholder or a member of the immediate family of such persons, who beneficially owns any securities of said issuer at the time of filing of the offering, shall not sell such securities during the offering or sell, transfer, assign or hypothecate such securities for ninety (90) days following the effective date of the offering unless:]

[(i) the price at which the issue is to be distributed to the public is established at a price no higher than that recommended by a qualified independent underwriter who does not beneficially own 5% or more of the outstanding voting securities of the issuer, who shall also participate in the preparation of the registration statement and the prospectus, offering circular, or similar document and who shall exercise the usual standards of "due diligence" in respect thereto; or]

[(ii)] *c. if* the aggregate amount of such securities held by [such a member and its related persons enumerated above would] *an underwriter and its related persons do* not exceed 1% of the securities being offered; *or*

d. if the class of security qualifies as an "actively traded security" for purposes of SEC Regulation M as of the date of effectiveness of the public offering; and

(ii) the exercise or conversion of any security, if all securities received remain subject to the restrictions in subparagraph (A) above for the remainder of the applicable time period.

(8) Conflicts of Interest. No change.

(d) Exemptions

Pursuant to the Rule 9600 Series, the Association may exempt a member or person associated with a member from the provisions of this Rule for good cause shown.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

(a) Current Corporate Financing Rule

(1) Scope of the Corporate Financing Rule

NASD Conduct Rule 2710 ("Corporate Financing Rule" or "Rule") is intended to ensure that the underwriting terms and arrangements of a public offering [6] in which an NASD member participates [7] are fair and reasonable. The Rule requires a member to file certain information with NASD Regulation about the underwriting arrangements of a public offering in which the member participates. The Corporate Financing Department ("Department") of NASD Regulation reviews this information prior to commencement of the offering in order to determine whether the underwriting compensation and other terms and arrangements meet the requirements of applicable NASD rules.[8]

The Corporate Financing Rule regulates, among other matters, the total amount of underwriting compensation that the "underwriter" and related persons [9] may receive in connection with a public offering. The term "underwritten and related persons" includes all broker/dealers (and the associated persons [10] and affiliates [11] of the broker/dealers) participating in any capacity in the proposed public offering, as well as other non-broker/dealers who act as counsel, finders, or consultants, or are members of the immediate family, or are related persons [12] to other persons in the definition. In order to facilitate the following discussion, participating broker/dealers and their associated persons, affiliates, and related persons are together referred to as "members."

(2) Calculating Underwriting Compensation

The Corporate Financing Rule currently provides in paragraph (c)(4) that any item of values as set forth in Rule 2710(c)(3)(A), including certain securities of the issuer,[13] acquired by the underwriter and related persons within the 12-month period before the filing date of a proposed public offering will be examined by the Department to determine whether it was acquired "in connection with the public offering" and therefore, is deemed to be underwriting compensation. The Rule presumes that any such item of value acquired within the six-month period before filing is underwriting compensation, but this presumption may be rebutted by the member based on information satisfactory to the Department.[14]

The Corporate Financing Rule currently requires in paragraphs (c)(4)(C) and (D) that the Department weigh as many as ten different factors to determine whether the item of value received by the underwriter and related persons within the 12-month period before the filing date of a public offering is received "in connection with the public offering" and, therefore, included in the calculation of underwriting compensation. In many cases, an

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[6] Rule 2720(b)(14) defines "public offering" as "any primary or secondary distribution of securities made pursuant to a registration statement or offering circular including exchange offers, rights offerings, offerings made pursuant to a merger or acquisition, straight debt offerings, offerings pursuant to SEC Rule 504, and all other securities distributions of any kind whatsoever, except any offering made pursuant to an exemption from registration under Sections 4(1), 4(2), or 4(6) of the Securities Act of 1933, as amended, or pursuant to SEC Rule 504 if the securities are "restricted securities" under SEC Rule 144(a)(3), SEC Rule 505, or SEC Rule 506 adopted under the Securities Act of 1933, as amended. The term public offering shall exclude exempted securities as defined in Section 3(a)(12) of the Act." This definition of "public offering" also applies to Rule 2710.

[7] Rule 2710(a)(4) defines "participation" or "participating in a public offering" as "participation in the preparation of the offering or other documents, participation in the distribution of the offering on an underwritten, non-underwritten, or any other basis, furnishing of customer and/or broker lists for solicitation, or participation in any advisory or consulting capacity to the issuer related to the offering, but not the preparation of an appraisal in a savings and loan conversion or a bank offering or the preparation of a fairness opinion pursuant to SEC Rule 13e–3."

[8] Rule 461(b)(6) under the Securities Act of 1933, as amended, provides that the Commission may refuse to accelerate the effective date of an offering if the "NASD has not issued a statement expressing no objections to the compensation and other arrangements." *See* 17 CFR 230.461(b)(6).

[9] Rule 2710(a)(6) defines "underwriter and related persons" as "underwriters, underwriter's counsel, financial consultants and advisors, finders, members of the selling or distribution group, any member participating in the public offering, and any and all other persons associated with or related to and members of the immediate family of any of the aforementioned persons."

[10] Article I, paragraph (ee) of the NASD By-Laws defines "associated person of a member" as "(1) any natural person registered under the Rules of the Association; or (2) a sole proprietor, partner, officer, director, or branch manager of a member, or a natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the NASD under the By-Laws or the Rules of the Association."

[11] For purposes of Rules 2710 and 2720, Rule 2720(b)(1) provides that an "affiliate" presumptively includes "(1) a company that beneficially owns 10 percent or more of the outstanding voting securities of a member; (2) a member that beneficially owns 10 percent or more of the outstanding voting securities of a company; and (3) a company and a member that are under the common control of a person or company who beneficially owns 10 percent or more of the outstanding voting securities of the company and/or member or who has the power to direct the management or policies of the company and/or member. The Department's long-standing practice is to deem any company or member that comes within these presumptions to be an affiliate."

[12] In SR–NASD–01–19, the NASD stated that "[t]he concept of whether the person is 'related to' any of the enumerated persons in the definition is determined by whether there is an investment or business relationship between the parties an is based on objective facts." *See* Securities Exchange Act Release No. 29928 (Nov. 12 1991), 56 FR 58257 (Nov. 18, 1991).

[13] The term "issuer" is defined in Rule 2710(a)(2) to include "[t]he issuer of the securities offered to the public, any selling security holders offering securities to the public, any affiliate for the issuer or selling security holder, and the officers or general partners, directors, employees and security holders thereof."

[14] Rule 2710(c)(4)(B) provides that items of value received more than 12 months before the filing date of the public offering are presumed not to be underwriting compensation unless the staff has satisfactory information supporting a conclusion that the item is additional underwriting compensation.

underwriter or related person has acquired unregistered equity securities [15] of the issuer. Members typically acquire these unregistered securities as an investment in a private placement, as compensation for the member's services as private placement agent, or for providing a loan or credit facility to the issuer.

The Rule requires the staff to consider the following factors—as well as "any other relevant factors and circumstances"—to determine whether securities have been received in connection with the public offering:

- The length of time between the date of the receipt of the security and the filing date;
- Details of any services provided;
- The presence or absence of arm's length bargaining;
- The disparity between the price paid for a security and the proposed public offering price;
- The existence of restrictions on exercise and resale;
- The nature of the securities;
- The amount of securities; and
- The relationship of the receipt of securities to purchases by other unrelated purchasers.

The factor-weighing process requires the staff to review each acquisition of the issuer's securities by members on a case-by-case basis. The value of any securities that the Department determines are underwriting compensation, as calculated under Rule 2710(c)(5), is added to the underwriting discount or commission and any fees or reimbursements received by underwriting syndicate to determine whether the compensation is unfair or unreasonable.

(3) Restrictions on Resale

Securities included in the calculation of underwriting compensation are also restricted by the Rule from sale for one year following the effective date of the offering under Rule 2710(c)(7)(A) ("compensation lock-up"). In the case of an initial public offering, if the members and certain senior persons and subsidiaries of the member hold securities of the issuer that are not deemed to be underwriting compensation, a 90-day lock-up is nonetheless imposed under Rule 2710(c)(7)(B) ("venture capital lock-up").[16]

(4) Limitation on Amount of Securities

Rule 2710(c)(6)(B)(xi) limits the amount of securities that can be received by the underwriter and related persons as underwriting compensation to 10% of the number of securities to be sold in the public offering ("stock numerical limitation").

(b) Changes in the Capital Markets

In recent years, many NASD members have expanded the variety of services that they provide to their corporate financing clients. These services may include venture capital investment, consulting, commercial lending, and investment banking. Moreover, the pace of corporate financing activities has accelerated, and the time period between private fundraising and the issuer's initial public offering has often been shortened. These developments necessitate a review of the Corporate Financing Rule to ensure that it accommodates the modern, legitimate capital financing activities of NASD members, while continuing to protect investors and issuers from unreasonable underwriting activities.

The current subjective, factor-weighing process for determining whether securities were acquired in connection with a public offering is an inefficient method to achieve these objectives. The subjectivity hampers the Department's ability to provide clear and predictable guidance to members. The consequences under the Rule of a particular venture capital or other private placement financing are sometimes uncertain until a public offering is filed and the Department's review is completed. This uncertainty unnecessarily complicates the capital-raising process, to the detriment of issuers and investors.

(c) Description of Proposed Rule Change

(1) Summary of Proposed Rule Change

NASD Regulation proposes to amend the Corporate Financing Rule to allow members to provide legitimate capital-raising services to issuers, while adopting restrictions that are designed to minimize the opportunity for abusive practices by members. NASD Regulation also proposes to eliminate or revise other burdensome and obsolete provisions, including rules regulating the exercise price of warrants received as underwriting compensation and the treatment of fees paid to a previous underwriter for an uncompleted offering. In addition, the proposed rule change would clarify a member's obligation to update previously filed information.

(2) Treatment of Securities As Underwriting Compensation

(i) Six-Month Pre-Offering Objective Test

The proximity of an acquisition of equity securities of an issuer (or any other item of value) to filing date of its public offering has proven to be the most significant factor in determining whether those securities constitute underwriting compensation. The Department has found that the application of the six-month presumption contained in the Rule generally minimizes the opportunity for abusive practices by members. Application of a longer time period has typically been unnecessary to achieve this goal.

NASD Regulation proposes to amend the Corporate Financing Rule to provide greater clarity and predictability regarding whether equity securities [17] of the issuer and other items of value acquired by the underwriter and related persons constitute underwriting compensation. The proposed rule change would replace the twelve-month review period, the six-month presumption, and the subjective review factors with an objective standard in Rule 2710(c)(4)(A) under which all items of value acquired during the 180-day period immediately preceding the filing date of the registration statement or similar document and at the time of the public offering will constitute underwriting compensation. The proposed rule change would also provide four safe harbors from this general standard.[18] These safe harbors are described below.

Replacement of the existing subjective analysis with an objective, bright-line test would provide greater clarity and predictability concerning application of the Rule to specific transactions. Consequently, members and their venture capital and lending affiliates should find it easier to determine at the time of a private placement or other financing whether their investment will be treated as underwriting

[15] Securities purchased in the public market are not considered to be "items of value."

[16] The venture capital lock-up only applies to securities of the issuer held by the member, or any officer, director, general partner, controlling shareholder or subsidiary of the member, or by a subsidiary of a controlling shareholder of the member, or by a member of the immediate family of such persons. In comparison, the compensation lock-up applies to all securities considered to be underwriting compensation that are held by the underwriter and related persons, as defined by Rule 2710(a)(b)

[17] The proposed rule change would clarify that the securities that will be considered to be underwriting compensation include common or preferred stock, options, warrants, and debt securities convertible to or exchangeable for equity securities.

[18] Regardless of when an underwriter or related person acquires securities of the issuer, or the availability of any safe harbor, all securities held by the underwriter and related persons are proposed to be subject to a lock-up on their sale, as described below.

compensation when the subsequent public offering is filed with the Department for review.

(ii) Safe Harbor Provisions

NASD Regulation proposes four safe harbors from the determination that certain acquisitions of securities during the 180-day review period are deemed to be underwriting compensation.[19] The four safe harbors are intended to identify acquisitions that occur in *bona fide* capital-raising transactions and would impose restrictions designed to minimize the opportunity for abusive practices.

The First three safe harbors in proposed Rule 2710(c)(4)(E)(i)–(iii), would be available for acquisitions by certain entities that regularly make venture capital investments; for acquisitions in issuers with significant institutional investor involvement in their corporate governance; and for acquisitions in private placements that have significant institutional investor participation. The fourth safe harbor in Rule 2710(c)(4)(E)(iv) would exempt acquisitions that occur from the exercise of a preemptive right to purchase.

The first three safe harbors would be available only for acquisitions that occur more than 90 days before the filing date of the public offering. These safe harbors would also require that the member maintain and enforce written procedures reasonably designed to ensure that the member's participation in the public offering is not contingent on the acquiring party's participation in the private placement or loan.

(A) Safe Harbor No. 1—Purchases And Loans By Certain Entities

The first safe harbor, proposed in Rule 2710(c)(E)(i), is intended for acquisitions of the issuer's securities by certain entities that routinely make venture capital investments or provide loans or credit facilities. The safe harbor would be available (1) To any qualifying entities related to any member participating in an offering; (2) for purchases in a private placement and for the receipt of securities as compensation for a loan or credit facility; and (3) without any limitation on the amount of securities purchased or received.

(1) Legal Entity/Registration

The related entity would have to be a legal entity that is separate and distinct from the member and not registered as a broker/dealer. The term "entity" would be defined in new Rule 2710(c)(4)(D)(i) to include a group of legal entities that either are contractually obligated to make co-investments and have previously made at least one such investment or have filed a Schedule 13D or 13G with the SEC that identifies the entities as members of a group who have agreed to act together for the purpose of acquiring, holding, voting or disposing of equity securities of an issuer for purposes of Section 13(d) or 13(g) of Act.

(2) Venture Capital/Fiduciary Duty

The related entity must also be "primarily engaged in the business of making investments in or loans to private or start-up companies or companies in the early process of developing products or services, or participating in leveraged buy-out transactions." The related entity can make investments or loans that are under the safe harbor only if they are subject to the evaluation and review of individuals who have a contractual or fiduciary duty to select investments and loans based on the risks and rewards to the related entity and not based on opportunities for the member to earn investment banking revenues.

(3) Sharing in Investment Banking Fees

The related entity could not participate directly in investment banking fees received by the member for underwriting public offerings.

(4) Captil Under Management

The related entity would have to either (1) manage capital contributions of $100 million or more, at least $75 million of which has been committed by persons that are not underwriters or related persons; or (2) manage capital contributions of $25 million or more, at least 75% of which has been committed by persons that are not underwriters or related persons.[20] The requirement for significant third-party capital would protect against potentially abusive situations, as the related entity must make its investment or lending decision in the interest of investors who are not underwriters or related persons.

(B) Safe Harbor No. 2—Investments in and Loans to Certain Issuers

The second safe harbor, proposed in Rule 2710(c)(4)(E)(ii), is intended for acquisitions of securities of issuers that have significant institutional investor involvement in their corporate governance. The proposed safe harbor would be available for acquisitions by qualifying related entities: (1) in a private placement; and (2) as compensation for a loan or credit facility, with a limitation on the amount acquired.

(1) 5% Limitation on Acquisition

The total amount of securities acquired by all entities that are related to a single member could not exceed 5% of the issuer's outstanding equity securities, on a fully diluted basis. The 5% limitation would apply on a member-by-member basis when more than one member proposes to rely on this safe harbor.

(2) Related Entity Qualifications

The related entity would have to manage capital contributions and loan commitments of at least $50 million. Unlike the first safe harbor, there would not be a requirement that the entity manage third-party capital contributions. The related entity would also have to be a separate legal entity and not registered as a broker/dealer; could not participate directly in the member's investment banking fees; and would have to be primarily engaged in the business of making venture capital investments.

(3) 33% Institutional Investor Ownership

The proposed safe harbor would require that institutional investors beneficially own at least 33% of the total number of the issuer's equity securities outstanding on a fully diluted basis. The term "institutional investor" would be defined in Rule 2710(c)(4)(D)(ii) to include any individual or entity (including a group of legal entities as proposed to be defined in Rule 2710(c)(4)(D)(i)) that has at least $50 million invested in securities in the aggregate in its portfolio or under management and is not (1) a member participating in the public offering; (2) any of the member's associated or affiliated persons; or (3) an immediate family member of any associated or affiliated person of the member.[21]

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[19] The Department will maintain its authority under the Rule 9600 Series to grant exemptions on a case-by-case basis from the determination that certain securities are deemed to be underwriting compensation. The Department expects to exercise this authority sparingly and only in exceptional and unusual circumstances.

[20] In both instances, such third-party capital commitments could come from members and their associated and affiliated persons, so long as those members do not participate in the public offering.

[21] An institutional investor could be a member, or a person associated or affiliated with a member, that is not participating in the public offering.

(4) Participation on and Vote of Board of Directors

At least one of those institutional investors would have to serve as a member of the issuer's board of directors and the transaction would have to be approved by a majority of the issuer's board of directors and by an affirmative vote of the institutional investors that are board members.

(C) Safe Harbor No. 3—Private Placements with Institutional Investors

The third safe harbor, proposed in Rule 2710(c)(4)(E)(iii), is intended for acquisitions in private placements with significant institutional investor participation. The safe harbor would be available for purchases of securities in a private placement and for the receipt of securities as placement agent compensation.

(1) 20% of Total Offering Limitation

The underwriter and related persons could not, in the aggregate, acquire more than 20% of the "total offering". The "total offering" would be defined to consist of the total number of securities, on a fully diluted basis, sold in the private placement *and* received as placement agent compensation by a member.[22] The 20% calculation would exclude purchases by those affiliates and other related persons of a member that would be qualified to acquire securities of the issuer under the first safe harbor.

(2) Same Terms and Price

All securities purchased by the underwriter and related persons from the private placement must have the same terms[23] and be purchased at the same price[24] as securities purchased by the other investors.

(3) 51% Institutional Investor Participation

Institutional investors would have to purchase at least 51% of the total offering.[25] In addition, an institutional investor would have to be the lead negotiator with the issuer to establish the terms of the private placement. This requirement would not prevent an underwriter or related person from participating in the negotiation of the terms of the private placement.

(D) Safe Harbor No. 4—Purchases Under a Preemptive Right

The fourth safe harbor, proposed in Rule 2710(c)(4)(E)(iv), is intended for any acquisition of the issuer's securities by any underwriter or related person that is made pursuant to a right of preemption, whether that preemptive right was granted by contract, by the terms of the securities, or by applicable law.[26] Purchases pursuant to a right of preemption generally do not raise the sorts of concerns that the Rule was designed to address because they are based on a purchase right granted to the purchaser in a prior investment. The right of preemption merely protects the purchaser from dilution when the company issues additional securities.

(1) Requirements Applicable to Acquisition of Preemptive Right

If the security with a preemptive right was acquired from a private placement, the private placement would have to occur more than 180 days before the filing date of the public offering. If the security with a preemptive right was acquired from the public market or from a public offering, there would be no limitation on when the security must have been purchased, *i.e.*, the security could have been purchased less than 180 days before the subsequent public offering is filed.

(2) Requirements Applicable to Purchase under the Preemptive Right

Under the safe harbor: (1) the right of preemption must be exercised in connection with a private placement of the issuer's securities for cash; (2) the private placement must be to all similar preemptive right holders; (3) the price and terms of the securities purchased must be the same as that for all other investors in the private placement; and (4) the purchaser may not, through the exercise of its preemptive rights, increase its ownership of the same class of securities of the issuer.

(iii) Calculation of the 180-Day Review Period

The 180-day review period and the 90-day safe harbor period are proposed to be calculated from the filing date of a public offering with the appropriate regulatory authority in order to provide a readily identifiable standard. Consistent with existing Department practice, the "filing date" for purposes of this calculation would be the *earlier* of the date of filing with the SEC, state securities commission, or other regulatory authority, or the date of filing with the Association. Thus, if an offering is filed with the SEC before it is filed with the NASD, the "filing date" will be the SEC filing date. In addition, offerings submitted to the SEC for review on a confidential basis will be considered filed with the SEC as of the date of the confidential submission for purposes of Rule 2710.

(iv) Determination of when Securities are Considered "Received"

The purposed rule change would adopt Rule 2710 (c)(4)(B) to clarify when securities will be considered to be "received" under the Rule for purposes of the 180-day review period under Rule 2710(c)(4)(A) and the 90-day safe harbor period under Rule 2710(c)(4)(E). Securities purchased from or received as compensation for a private placement will be deemed to have been received on the date of the closing of the private placement.[27] Securities received as compensation for a loan or credit facility will be deemed to have been received on the date the loan or credit facility agreement is executed. Securities received for consulting services to the issuer will be deemed to have been received on the date that beneficial ownership of the securities is transferred to the consultant. These proposals are consistent with existing Departmental practice.

(v) 90-Day Post-Offering Objective Test

Rule 2710(c)(4)(A) permits the staff to examine items of value received "subsequent to the public offering" to determine whether the items of value are considered to be underwriting compensation in connection with the

[22] For example, if the private placement consists of 100,000 shares of common stock and the issuer pays placement agent compensation to a member that includes a warrant for 10,000 shares of common stock, the total offering is 110,000 shares of common stock. The acquisition by the underwriter and related persons that are not qualified to purchase under the first safe harbor could not exceed 22,000 shares of common stock. Of these 22,000 shares, 10,000 shares would be accounted for by the warrant and up to 12,000 shares could be purchased as an investment.

[23] A security would be considered to have the same terms if it is a security of the same class with the same rights as the security sold to other investors. Thus, in a unit offering, the unit purchased by a member must be composed of the same number and type of securities and any exerciseable security within a unit must have the same exercise price as the exerciseable security within the unit purchased by other investors.

[24] If the purchasing member is also acting as placement agent, purchases by the member at a price that is net of the commission it receives for sales to the other investors will be considered to be "at the same price" for purposes of this provision.

[25] In the example provided above, institutional investors must purchase at least 56,100 shares of the total offering of 110,000. *See supra*, n.22.

[26] The Corporate Financing rule does not prohibit a member from exercising a preemptive right to purchase securities from the issuer's public offering. However, such purchases by members, their associated and related persons, and affiliates are regulated by SEC Regulation M and the NASD's Free-Riding and Withholding Interpretation, IM–2110–1. *See also* Securities Exchange Act Release No. 42325 (Jan. 10, 2000), 65 FR 2656 (Jan. 18, 2000).

[27] The Department relies on the closing date rather than the date of a commitment letter because a commitment letter does not transfer beneficial ownership of the securities.

public offering. The ability of the staff to include items of value received after the public offering in the calculation of underwriting compensation is necessary to avoid circumvention of the Rule.

In order to provide greater clarity concerning the extent of the "subsequent" time period, the proposed rule change would replace this language with new Rule 2710(c)(4)(C), under which items of value received within the 90-day period immediately following the effective date of a public offering would be examined to determine whether they constitute underwriting compensation.

(vi) Valuation of Warrants

Rule 2710(c)(6)(B)(viii)(i) provides that any option, warrant or convertible securities received by the underwriter and related persons as underwriting compensation may not be convertible or exercisable on terms more favorable than the terms of the securities being offered to the public. The provision, therefore, prohibits members from receiving compensation in the form of warrants that have an exercise price below the proposed public offering price.

The Rule requires that the warrants be valued, that they be included in the calculation of the underwriting compensation, and that they be subject to the Rule's compensation provisions. Therefore, the requirement that members revise the exercise price of their warrants seems unnecessary and Rule 2710(c)(6)(B)(viii)(i) is proposed to be deleted.

The proposed rule change would amend Rule 2710(c)(5)(A), which prohibits the payment of underwriting compensation in the form of securities that are not identical to those offered to the public or to a security that has a bona fide independent market, in order to clarify the application of this prohibition.

(3) Restrictions on Resale of Securities

As discussed above, the Corporate Financing Rule currently imposes a one-year compensation lock-up on securities that constitute underwriting compensation or, in the case of an initial public offering, a 90-day venture capital lock-up on all securities held by members and certain senior persons and subsidiaries.

(i) Background—Compensation Lock-Up

The compensation lock-up was adopted primarily to protect the aftermarket in a new security from the potential for fraud and manipulation that exists when a member is an underwriter, actively trades the securities, and is a selling securityholder. These multiple roles for a broker/dealer were a basic concern discussed at length in the Report of the Special role for a broker/dealer were a basic concern discussed at length in the Report of the Special Study of the Securities Markets of the Securities and Exchange Commission issued in 1963 ("Special Study").[28] In the testimony underlying the Special Study, industry members also stated that sales of an underwriter's private placement investments in an issuer shortly after the completion of an offering creates a negative appearance as the member has previously recommended the purchase of the security to its customers.

(ii) Background—Venture Capital Lock-Up

The venture capital lock-up was intended to address similar potentials for abuse in the context of an initial public offering, by imposing a lock-up restriction that prohibits the sale of *any* of the issuer's securities (not just those considered to be underwriting compensation) held by a member and certain senior persons and subsidiaries at the time of the offering and for 90 days thereafter. The venture capital lock-up does provide exceptions for *de minimis* transactions and transactions in which a qualified independent underwriter[29] provides due diligence and a pricing opinion.

(iii) Proposed 180-Day Lock-Up

NASD Regulation understands that it is common industry practice to impose a 180-day lock-up on the securities of the issuer held by certain officers and directors of the issuer. Consistent with this industry practice, NASD Regulation proposes to amend Rule 2710(c)(7)(A) and delete Rule 2710(c)(7)(C) to impose a 180-day lock-up on all equity securities of the issuer held by the underwriter and related persons at the time of effectiveness of the public offering. Securities purchased from the public market would not be subject to the lock-up. The new 180-day lock-up would replace the one-year compensation lock-up and the 90-day venture capital lock-up. It would apply to both initial public offerings" and to secondary offerings, subject to the following exceptions in amended Rule 2710(c)(7)(B) for:

- Transfers of otherwise restricted securities that occur by operation of law or by reason of reorganization of the issuer;
- Transfers to participating members and their officers and partners, so long as the transferred securities remain subject to any remaining lock-up period;
- Transfers if a member and its related persons do not, in the aggregate, own more than 1% of the securities being offered; and
- The exercise of securities, so long as the exercised securities remain subject to any remaining lock-up period.

In addition, secondary offerings of securities would be able to rely on an exception for transfers of securities that qualify as an "actively traded security" for purposes of SEC Regulation M as of the date of effectiveness of the public offering.[30]

The proposal would eliminate the existing exception in Rule 2710(c)(7)(C)(i) from the venture capital lock-up for transactions in which a qualified independent underwriter provides a pricing opinion and performs due diligence. The exception does not adequately address the potential negative impact of immediate sales of members' securities into the after-market of an initial public offering or of securities with a thinly traded market nor the conflicts-of-interest present when an underwriter is also a selling securityholder.

The proposed 180-day lock-up would address the concerns discussed in Part 1, Chapter IV of the Special Study related to the disposition of securities considered underwriting compensation. The Special Study did not focus on a particular time period that was appropriate for such a lock-up, but note with approval testimony that underwriting compensation securities were held by underwriters for some time period after the initial public offering and the practice of one broker/dealer that imposed a minimum six-month holding period.[31]

The discussion in the Special Study expressed concern regarding the opportunities for fraud and manipulation in the after-market of a company's initial public offering when a member is an underwriter, actively trades the securities, and is a selling securityholder, stating that the underwriter may be placed "in situations where its duties and obligations to the issuer's stockholders, its own customers, and the general investing public may come into conflict.

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[28] Report of the Special Study of the Securities Markets of the Securities and Exchange Commission, 88th Cong., 1st Session, House Document No. 95, Part 1, Chapter IV.

[29] The term "qualified independent underwriter" is defined in NASD Rule 2720(b)(15).

[30] Under SEC Regulation M, a security is considered to be an "actively traded security" if it has at least $1 million average daily trading volume and $150 million public float value. 17 CFR 242.100 through 242.105.

[31] Special Study, at 541–542.

* * *"[32] NASD Regulation believes it is appropriate to extend the protections intended for the after-market of an initial public offering to secondary offering of securities that do not have a sufficiently liquid market to address these conflicts-of-interest and to apply the lock-up to all equity securities of the issuer held by underwriters and related persons. This category of persons would include broker/dealers that are participating in the public offering and all of the broker/dealer's associated, affiliated, and related persons.[33]

The proposed exception for sales of an "actively traded security" will permit a member to sell the issuer's equity securities during the lock-up period in the case of a secondary public offering only if the security's market has sufficient liquidity to decrease the opportunity for a member to engage in fraud and manipulation in connection with the sale transaction. As stated by the Commission, "[t]he costs of manipulating such securities generally are high. In addition, because actively-traded securities are widely followed by the investment community, aberrations in price are more likely to be discovered and quickly corrected. Moreover, actively-traded securities are generally traded on exchanges or other organized markets with high levels of transparency and surveillance."[34]

(iv) Lower Compensation Value for Longer Lock-Up

In valuing any securities considered to be underwriting compensation, current Rule 2710(c)(5)(D) permits a lower valuation when the securities are subject to a lock-up beyond the one-year compensation lock-up period. This paragraph would be amended to discount the compensation value of securities by 10% for each 180-day period that the securities (or underlying securities) are restricted from sale beyond the proposed 180-day lock-up period.

When a person agrees to such a longer lock-up in order to obtain a lower compensation value for the securities, the person would not be able to later rely on the exceptions from the 180-day lock-up for *de minimis* sales and sales of an "actively traded security." However, the other exceptions would be available.

(v) Restrictive Legend

The proposed rule change would delete Rule 2710(c)(7)(A)(ii), which requires that certificates representing any security subject to a lock-up bear a restrictive legend describing the lock-up. NASD Regulation understands that members are required to obtain a CUSIP number for the securities subject to the lock-up imposed by the rule that is different from the number assigned to other securities of the same issue. NASD Regulation proposes to delete this requirement, as it places an unintended burden on members that is unnecessary. Members would still be required to establish appropriate written procedures pursuant to NASD Rule 3010(b)(1) for ensuring compliance with the proposed 180-day lock-up.

(4) Stock Numerical Limitation

(i) Elimination of Requirement

The proposed rule change would eliminate the 10% stock numerical limitation in Rule 2710(c)(6)(B)(xi) on the amount of securities that participating underwriters and related persons may receive as underwriting compensation. The Rule already restricts the total value of all items that a member may receive as compensation, and Rule 2720 addresses the conflicts-of-interest that may arise when a member is an affiliate of the issuer. Therefore, the stock numerical limitation is unnecessary to achieve the purposes of the Rule.

(ii) Sales of Securities Considered to be Underwriting Compensation

Rule 2710(c)(6)(C) requires that when the stock numerical limitation has been exceeded, the recipient of the securities must return any excess securities to the issuer or the source from which received at cost and without recourse. A different arrangement may be permitted by the Association. In light of the proposed elimination of the stock numerical limitation, this provision would be amended to apply to an acquisition of securities that results in unfair and unreasonable compensation.

(5) Other Amendments[35]

(i) Types of Securities Considered to be Items of Value

NASD Regulation proposes to amend Rule 2710(c)(3)(vii) to make non-substantive amendments to the description of the types of equity securities that are considered items of value to be included in the calculation of underwriting compensation.

(ii) Exclusions From the Calculation of Underwriting Compensation

The proposed rule change would amend Rule 2710(c)(3)(B) to put into one place all items of value that will be excluded from the calculation of underwriting compensation.

(A) Payments to a Previous Underwriter

Rule 2710(c)(3)(A)(xiii) requires the Department to include any fees paid to a previous underwriter that failed to complete a public offering in the calculation of underwriting compensation for a subsequent underwriter. This provision is intended to restrict the total amount of compensation paid to all underwriters, but it has imposed an unfair restriction on the compensation of replacement underwriters. Consequently, the proposed rule change would delete this provision.

The proposed rule change would further codify this determination in new Rule 2710(c)(3)(B)(ii) by excluding from the calculation of underwriting compensation any payment to a member in connection with a proposed public offering that was not completed, if the member does not participate in the revised offering.[36]

(B) Consulting Agreements

The requirements of Rule 2710(c)(4)(E) would be moved to new Rule 2710(c)(3)(B)(iii), which would continue to exclude from the calculation of underwriting compensation any payments received under a consulting agreement entered into more than one year before the filing date of the public offering.

(iii) Members' Obligation to File Information

Current Rule 2710(b) requires that members file certain documents and

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[32] Special Study, at 539.

[33] In comparison, the current one-year compensation lock-up only covers those securities deemed to be underwriting compensation and, therefore, does not restrict the resale of other securities of the issuer by participating members. Further, the current 90-day venture capital lock-up only applies in the case of an initial public offering and only covers securities held by the member, its officers, directors, and certain of its affiliates. The 90-day venture capital lock-up, therefore, does not apply to secondary offerings and does cover securities held by other associated, affiliated, and related persons to the member.

[34] Securities Act Release No. 7375 (Dec. 20, 1996); 62 FR 520 (Jan. 3, 1997).

[35] The proposed rule change includes non-substantive amendments to Rule 2710 that are intended to provide clarity and consistency.

[36] NASD Rule 2710(c)(6)(B)(iv) would continue to prohibit payment of any compensation by an issuer to a member in connection with an offering of securities that is not completed according to the terms of agreement between the issuer and underwriter, except for reimbursement of out-of-pocket accountable expenses actually incurred by the member.

other information with the Department in connection with a public offering. The Department must rely on the adequacy and accuracy of the information filed by members in order to carry out its regulatory obligations under the rules that apply to public offerings of securities. To the extent, therefore, that a member or its counsel or other agent fails to provide all of the facts necessary for the Department's review of a public offering, files inaccurate information, fails to update or correct previously filed information, or fails to comply with representations made to the Department, the member would violate the Rule and NASD Conduct Rule 2110 (the Association's basic ethical conduct rule).

The proposed rule change would clarify this obligation of the member in several respects. First, Rule 2710(b)(6)(A)(v) would be amended to require members to provide the Department with a detailed explanation and documents related to a modification of any information or representation previously provided to the Association or of any item of underwriting compensation. Thus, in the event that the member (or member's counsel or other agent) determines that subsequent events have made inaccurate any information or representations previously provided to the Department, the member must inform the Department regarding the change. This obligation applies regardless of whether the change occurs before or after the issuance of the Department's opinion of a "no objections" to the underwriting terms and arrangements.

Second, proposed Rule 2710(b)(6)(A)(v)(b) would provide that if an underwriter or related person receives any additional item of value subsequent to the Department's issuance of a "no objections" opinion and within 90 days following the offering's effective date, then the member must provide a detailed explanation and any documents related to the new arrangement to the Department.

The proposed rule change would also delete Rule 2710(b)(6)(iv), as it requires the submission of information addressing the subjective review factors in Rules 2710(c)(4)(C) and (D). As set forth above, paragraphs (C) and (D) are proposed to be deleted.

(d) Implementation of Proposed Rule Change

NASD Regulation proposes to implement the proposed rule change upon approval by the SEC. Any public offering filed subsequent to the adoption of the amendments and any public offering that had been filed with the Department but for which a "no objections" letter has yet to be issued, would be subject to the new requirements. In addition, with respect to public offerings for which a "no objections" letter has been issued at the time the amendments are adopted, the one-year compensation lock-up on securities would be shortened to 180 days and members could rely on the exceptions from the 180 day lock-up.[37] Upon adoption of the amendments, any securities that are subject to the 90-day venture capital lock-up would remain subject to that lock-up until it expires, but any person holding such securities could rely on the exceptions from the 180-day lock-up.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[38] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just equitable principles of trade and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change will burdensome rules that no longer distinguish between *bona fide* capital-raising and lending practices and abusive arrangements and will minimize the opportunity for abusive practices by members in connection with underwriting public offerings of securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not solicited on the proposed rule change. However, NASD Notice to Members 98–81 requested comment on whether any NASD rules are obsolete. NASD Regulation received a comment letter from The Bond Market Association ("TBMA") that included two recommended amendments to Rule 2710 that are pertinent to the proposed rule change.[39] The recommendations of TBMA to amend other provisions of Rule 2710 are under consideration by the Association and are not pertinent to the proposed rule change.

TBMA recommends that the subjective review factors of Rule 2710(c)(4)(D) be amended to consider whether there is a bona fide business purpose for an acquisition of securities.[40] Rule 2710(c)(4)(D) is proposed to be deleted and Rule 2710(c)(4)(A) would be amended to adopt an objective, bright-line test to include in the calculation of underwriting compensation all items of value received by the underwriter and related persons during the 180-day period immediately preceding the filing of the public offering and during the public offering. Thus, the subjective factor proposed by TBMA is no longer necessary to the Department's review of underwriting compensation.

In addition, TBMA recommends that Rule 2710(c)(5)(A) be amended to permit the underwriter and related person to receive as compensation a security different than the security offered to the public if there is a reasonable method to value the security received.[41] The proposed rule change would amend Rule 2710(c)(5)(A) to clarify the current language of the provision, which allows the Department to permit the underwriter and related person to receive a security that is different than the security offered to the public and that does not have a *bona fide* independent market, if good cause can be shown for the arrangement. One of the considerations in permitting such an arrangement would be whether the Department can value the security for compensation purposes. In the absense of a *bona fide* independent market for a security, the decision on whether a security that is different than the security to be offered to the public can be reliably valued is subjective and, therefore, not amenable to codification.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

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[37] For these offerings, the lock-up period would apply only to securities deemed to be underwriting compensation, as required by current Rule 2710(c)(7)(A)(i). Telephone call between Katherine England, Assistant Director, Division, Commission, Sonia Patton, Attorney, Division, Commission, and Suzanne Rothwell, Chief Counsel, Corporate Financing, NASD Regulation (March 28, 2000).

[38] 15 U.S.C. 78*o*–3(b)(6).

[39] Letter dated January 15, 1999, from TBMA, to Joan Conley, Office of the Corporate Secretary, NASD Regulation ("TBMA").

[40] TBMA Letter, at 18.

[41] *Id.*

(ii) as to which NASD Regulation consents,[42] the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–00–04 and should be submitted by May 26, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[43]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8876 Filed 4–10–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42618; File No. SR–NASD–00–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Extending the Pilot Program for the Nasdaq Application of the OptiMark System

April 4, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 28, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by Nasdaq. On March 30, 2000, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The Exchange filed the proposed rule change, as amended, pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to extend the pilot period for the Nasdaq application of the OptiMark System (the "Nasdaq Application") for an additional six months from April 3, 2000. No changes to the existing rule language are being proposed.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 5, 1999, the Commission approved a proposed rule change filed by the NASD to implement the Nasdaq Application.[6] The Nasdaq Application permits NASD members and their customers to enter large orders in Nasdaq stocks into an anonymous matching system that has been designed, developed, and patented by OptiMark Technologies, Inc. ("OptiMark Match") and has been integrated into Nasdaq's facilities in Trumbull, Connecticut. The anonymity offered by this facility limits the market impact of trading in larger quantities of securities and provides NASD members with a new, additional tool to trade Nasdaq securities more effectively.

The Nasdaq Application allows NASD members (and if sponsored by NASD members, customers of such members) to enter trading interests, called profiles, into Nasdaq-operated systems where those profiles are collected and matched periodically by the OptiMark Match. As currently approved, these matches occur no more frequently than every five minutes. In addition to matching profiles entered directly into the system, the Nasdaq Application incorporates bids and offers in the Nasdaq Quote Montage, creates profiles for such quotes, and includes the quotes in the next match. The OptiMark Match then attempts to match contra interests at the best prices and sizes according to the rules of the match process. If the system finds that a quote profile matches another profile, the system sends a message to the market participant (via the Nasdaq SelectNet system) seeking to trade at the market participant's quoted price or better and at round lot sizes, up to the amount quoted by that market participant.

The Commission approved the Nasdaq Application on a pilot basis for a six-month period ending April 3, 2000.[7] The Commission's rationale for limiting the period was based partly on the perceived need to enhance certain aspects of clearing brokers' capabilities to monitor trading activity occurring in the Nasdaq Application. Nasdaq is in the process of adding new features to the Nasdaq Application that address all of the stated concerns regarding clearing and anonymity, and plans to file with

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[42] NASD Regulation has consented to a 90-day extension of the time period for Commission action. *See* Amendment No. 2, *supra* n. 4.

[43] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* March 30, 2000 letter from Peter R. Geraghty, Assistant General Counsel, Nasdaq, to Rebekah Liu, Special Counsel, Division of Market Regulation, SEC ("Amendment No. 1"). In Amendment No. 1, Nasdaq requested that the proposed rule change be filed under Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b–4(f)(6). Nasdaq also requested that the Commission waive the 5-day notice of its intent to file the proposal by treating the original proposed rule change as the prefiling notice required under Rule 19b–4(f)(6); and requested that the Commission waive the 30-day period before the proposal becomes effective to permit the proposed rule change to become immediately effective.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] Securities Exchange Act Release No. 41967 (September 30, 1999), 64 FR 54704 (October 7, 1999)(SR–NASD–98–85).

[7] See *supra* note 6.

the Commission a proposed change reflecting these new features. Because these new features will not be in place until the second quarter 2000 and must be subject to notice and comment before approval, the pilot will end prior to such time periods. Nasdaq believes that the Nasdaq Application provides benefits to the market and should be allowed to continue to operate as currently operating for an additional six months to permit Nasdaq to implement the system changes that address the Commission's concerns.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[8] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national markets system, and, in general to protect investors and the public interests.

Nasdaq also believes the proposed rule change is consistent with Section 11A of the Act[9] in general, and Section 11A(a)(1)(A)[10] in particular, by promoting economically efficient execution of securities transactions, fair competition among markets, the best execution of customer orders, and an opportunity for orders to be executed without the participation of a dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Nasdaq has neither solicited nor received written comments on the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which the proposed rule change was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Commission finds that it is appropriate to accelerate the effective date of the proposed rule change and to permit the proposed rule change to become immediately effective because the proposed simply extends a previously approved pilot program for an additional six months. By extending the pilot program, the Commission will enable Nasdaq to continue to offer this additional trading mechanism without interruption. In addition, the Commission finds that Nasdaq provided the required prefiling written notice of its intent to file this proposed rule change when it filed the original proposed rule change.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–00–14 and should be submitted by May 2, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8877 Filed 4–10–00; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78o-3(b)(6).
[9] 15 U.S.C. 78k-1.
[10] 15 U.S.C. 78k-1(a)(1)(C).
[11] 15 U.S.C. 78s(b)(3)(A).
[12] 17 CFR 240.19b–4(f)(6).
[13] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).
[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42607; File No. SR–NASD–00–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Release of Disciplinary Information

April 3, 2000

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 16, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice of the proposed rule change to solicit comments on the proposal from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend IM–8310–2 of the Association, to provide for the publication of all final, litigated decisions issued by the Office of Hearing Officers ("OHO"),[3] the National Adjudicatory Council ("NAC"), and the NASD Board, regardless of sanctions imposed. Below is the text of the proposed rule change. Proposed new language is in *italics*.

* * * * *

IM–8310–2. Release of Disciplinary Information

(a) through (c) No change.

(d)(1) The Association shall release to the public information with respect to

[1] 15 U.S.C. 78s(b)(1)
[2] 17 CFR 240.19b–4.
[3] The OHO issues decisions rendered by Hearing Officers (default decisions) and Hearing Panels.

any disciplinary decision issued pursuant to the Rule 9000 Series imposing a suspension, cancellation or expulsion of a member; or suspension or revocation of the regulation of a person associated with a member; or suspension or barring of a member or person associated with a member from association with all members; or imposition of monetary sanctions of $10,000 or more upon a member or person associated with a member; or containing an allegation of a violation of a Designated Rule; and may also release such information with respect to any disciplinary decision or group of decisions that involve a significant policy or enforcement determination where the release of information is deemed by the President of NASD Regulation, Inc. to be in the public interest. The Association also may release to the public information with respect to any disciplinary decision issued pursuant to the Rule 8220 Series imposing a suspension or cancellation of the member or a suspension of the association of a person with a member, unless the National Adjudicatory Council determines otherwise. The National Adjudicatory Council may, in its discretion, determine to waive the requirement to release information with respect to a disciplinary decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice.

The Association may release to the public information on any other final, litigated, disciplinary decision issued pursuant to the Rule 8220 Series or Rule 9000 Series, not specifically enumerated in this paragraph, regardless of sanctions imposed, so long as the names of the parties and other identifying information is redacted.

(2) No changes.

(e) through (m) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Some, but not all, NASD disciplinary decisions are currently available in electronic legal research databases, such as Westlaw, Lexis-Nexis, and Books on Screen. Interpretive Material 8310–2 (the "Interpretation") permits the NASD to release any disciplinary decision: (1) Imposing a suspension, cancellation or expulsion of a member; (2) imposing a suspension or revocation of the registration of any associated person; (3) imposing a suspension or barring a member or associated person from association with all members; (4) imposing monetary sanctions of $10,000 or more on a member or associated person; (5) containing an alleged violation of a Designated Rule; or (6) deemed by the President of NASD Regulation to involve a significant policy or enforcement determination where the release of information would be in the public interest.

Disciplinary decisions provide guidance in how NASD rules are to be interpreted and enforced. The Association believes that providing vendors of legal research databases with all final, litigated decision issued by the OHO, the NAC, and the NASD Board, edited to prevent the disclosure of the identities of respondents upon whom minimal or no sanctions are imposed, is in the public interest.

Accordingly, the Association is proposing to amend the Interpretation to provide for the publication of all final, litigated decisions issued by the OHO, the NAC, and the NASD Board, regardless of sanctions imposed. However, the names of the parties and other identifying information mentioned in the decisions that do not meet the current enumerated publication criteria, as outlined in the Interpretation (and listed above), will be redacted from these decisions. Settlements, Letters of Acceptance, Waivers and Consents ("AWCs"), and Minor Rule Violation Plan letters are excluded from the proposal. This proposal will not have any impact on the information contained in or disclosed by the Central Registration Depository system.

The Association will make all decisions covered under this proposal available that were issued after August 7, 1997, the effective date of the most recent significant changes to the NASD Code of Procedure.[4] The Association believes that the disciplinary decisions issued after August 7, 1997, are of special value in providing a clearer picture of the Association's current application and interpretation of its substantive and procedural rules. The Association does not believe that the benefits that would arise from publishing decisions that pre-date August 7, 1997, justify the administrative burdens that would result from having to redact the names of parties and other identifying information from these decisions.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change is consistent with Section 15A(b)(7) of the Act[6] in that it works to adequately safeguard the interests of investors while establishing fair and reasonable rules for its members and persons associated with its members. The NASD also believes that the proposed changes are consistent with Section 15A(b)(8) of the Act[7] in that they further the statutory goals of providing a fair procedure for disciplining members and associated persons.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and

[4] *See* Special NASD Notice to Members 97–55 (August 1997).

[5] 15 U.S.C. 78o–3(b)(6).

[6] 15 U.S.C. 78o–3(b)(7).

[7] 15 U.S.C. 78o–3(b)(8).

publishes its reasons for so finding or (ii) as to which the sale-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–05 and should be submitted by May 2, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8878 Filed 4–10–00; 8:45 am]

BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

DEPARTMENT OF COMMERCE

Request for Public Views

April 3, 2000.

AGENCIES: Office of the United States Trade Representative and Department of Commerce.

ACTION: Request for public views on procedures for obtaining trade policy advice from nongovernmental organizations.

SUMMARY: Recently the United States Trade Representative (the USTR) and the Secretary of Commerce (the Secretary) announced a joint initiative to enhance opportunities for nongovernmental organizations to provide their views to the Administration on key trade issues. As part of that initiative USTR and Commerce are seeking comments and suggestions from the public on ways to strengthen channels of communication between these groups and the Administration on trade policy matters.

DATES: Written comments should be sent no later than July 10, 2000 to the Office of the United States Trade Representative at the address indicated below.

FOR FURTHER INFORMATION: Contact Pate Felts, Assistant USTR for Intergovernmental Affairs and Public Liaison ((202) 395–6120), or Patrick Morris, Director of the Office of Export Promotion Coordination, Department of Commerce ((202) 482–4501).

SUPPLEMENTARY INFORMATION: Congress and the Administration have established a variety of advisory committees from which the Executive Branch solicits and obtains advice on trade policy matters, including from environmental, labor, and consumer groups. Section 2155 of title 19, U.S. Code, establishes a three-tier trade policy advisory committee system, with one committee addressing overall policy advice, several committees providing advice on more specific policy issues, and a larger number of committees covering sectoral, technical, or functional issues.

The Administration seeks trade policy advice from environmental, labor, consumer, and other groups through three advisory committees. Specifically, the Advisory Committee for Trade Policy and Negotiations (ACTPN) provides the President and the USTR with broad advice on trade matters. The ACTPN membership is drawn from chief executive officers of agriculture, consumer, environment, industry, and labor groups. The President has also established a Trade and Environment Policy Advisory Committee (TEPAC), which primarily addresses trade and environment issues. TEPAC members are drawn from agriculture, consumer, environmental, industry, and labor groups, and from non-federal governments. A Labor Advisory Committee (LAC) provides advice on trade issues and labor. The LAC is administered by the Department of Labor and is composed exclusively of labor union representatives.

The Administration seeks trade policy advice on environmental, labor, consumer, and other issues in other ways as well. For example, in formulating specific U.S. objectives in major trade negotiations, USTR routinely solicits written comments from the public, consults with interested constituencies, holds public hearings, and meets with a broad spectrum of non-governmental groups at their request.

On January 11, 2000, the Secretary and the USTR announced an initiative to seek views from the public on ways to enhance the effectiveness of Administration efforts to obtain advice from non-governmental organizations on important trade policy matters. Through this notice, USTR and Commerce are seeking comments from the public on changes to the advisory committee system that would help to ensure that the Administration obtains timely, relevant trade policy advice from consumer, environmental, labor, and other non-governmental organizations.

Public Comments

Persons wishing to submit written comments should provide twenty (20) typed copies no later than July 10, 2000 to Gloria Blue, Office of the U.S. Trade Representative, Room 122, 600 17th Street, NW., Washington, DC 20508.

Written comments submitted in connection with this request will be available for inspection in the USTR Reading Room. An appointment to review the file at USTR may be made by calling Brenda Webb (202) 395–6186. The USTR Reading Room is located at the Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC and is open to the public from 9:30 a.m. to 12 noon, and from 1 p.m. to 4 p.m., Monday through Friday.

Pate Felts,

Assistant United States Trade Representative, Intergovernmental Affairs and Public Liaison.

Michael J. Copps,

Assistant Secretary for Trade Development, U.S. Department of Commerce.

[FR Doc. 00–8931 Filed 4–10–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25.905–X, Minimizing the Hazards From Propeller Blade and Hub Failures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed Advisory Circular (AC) 25.905–X and request for comments.

[8] 17 CFR 200.30–3(a)(12).

SUMMARY: This notice announces the availability of and requests comment on a proposed advisory circular (AC) that provides methods acceptable to the Administrator for showing compliance with the airworthiness standards for propeller installations on transport category airplanes. The guidance provided in the AC supplements the engineering and operational judgment that must form the basis of any compliance findings relative to design precautions that should be taken to minimize the hazards to an airplane in the event that a propeller blade fails or is released by a hub failure. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before June 12, 2000.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Attn: Michael Dostert, FAA, Transport Airplane Directorate, Aircraft Certification Service, Propulsion/Mechanical Systems Branch, ANM–112, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jill DeMarco, Program Management Branch, ANM–114, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1313.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. Commenters must identify the AC by title and submit comments in duplicate to the address specified above. The Transport Airplane Directorate will consider all communications received on or before the closing date for comments before issuing the final AC.

Availability of Proposed AC

The proposed AC can be found and downloaded from the Internet at *http://www.faa.gov/avr/air/airhome.htm*, at the link titled "Draft AC's" under the "Available Information" drop-down menu. A paper copy of the proposed AC may be obtained by contacting the person named above under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Discussion

Proposed AC 25.905–X, "Minimizing the Hazards from Propeller Blade and Hub Failures," has been prepared to provide guidance on one means of demonstrating compliance with the requirements of § 25.905, "Propellers," of Title 14, Code of Federal Regulations (CFR) part 25, commonly referred to as part 25 of the Federal Aviation Regulations (FAR). Part 25 contains the airworthiness standards applicable to transport category airplanes.

The means of compliance described in proposed AC 25.905–X is intended to provide guidance to supplement the engineering and operational judgment that must form the basis of any compliance findings relative to paragraph § 25.905(d). That paragraph addresses design precautions that should be taken to minimize the hazards to an airplane in the event that a propeller blade fails or is released by a hub failure.

In accordance with § 25.905(d), the hazards that must be considered include:

1. Damage to structure and vital systems due to the impact of a failed or released blade, and

2. The consequent unbalance created by such failure or release.

The proposed AC addresses the hazards associated with damage created by the impact of failed or released propeller blades, and provides a discussion of design practices to minimize such hazards. However, it does not address the hazard associated with unbalance created by such failure or release.

Harmonization of Standards and Guidance

The proposed AC is based on recommendations submitted to the FAA by the Aviation Rulemaking Advisory Committee (ARAC). The FAA tasked ARAC (63 FR 50954, September 23, 1998) to provide advice and recommendations on "harmonizing" certain sections of part 25 (including § 25.1183) with the counterpart standards contained in Joint Aviation Requirements (JAR) 25. The goal of "harmonization tasks," such as this, is to ensure that:

- Where possible, standards and guidance do not require domestic and foreign parties to manufacture or operate to different standards for each country involved; and
- The standards and guidance adopted are mutually acceptable to the FAA and the foreign aviation authorities.

The guidance contained in the proposed AC has been harmonized with that of the JAA, and provides a method of compliance that has been found acceptable to both the FAA and JAA.

Issued in Renton, Washington, on March 31, 2000.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8848 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Record of Decision for the 1999 Final Supplemental Environmental Impact Statement for 1992 Environmental Impact Statement for Master Plan Development, Indianapolis International Airport

AGENCY: Federal Aviation Administration (FAA, DOT).

ACTION: Notice of availability of a record of Decision.

SUMMARY: The FAA is issuing this notice to advise the public that the FAA Regional Administrator has approved and signed the Record of Decision (ROD) for implementation of air traffic control noise abatement procedures and land use mitigation measures at Indianapolis International Airport on March 20, 2000.

ADDRESSES: The Record of Decision is available for review at: Federal Aviation Administration, Airspace Branch, AGL–520, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Ms. Annette Davis, Environmental Specialist, AGL–520.E, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (847) 294–8091.

SUPPLEMENTARY INFORMATION: The FAA is issuing this notice of availability of its March 20, 2000 Record of Decision to assure that all persons have notification that the FAA has decided to implement the air traffic control noise abatement procedures and land use mitigation measures for Indianapolis International Airport contained in the 1999 Final Supplemental Environmental Impact Statement for the 1992 Environmental Impact Statement for the 1992 Environmental Impact Statement for Master Plan Development.

Issued in Des Plaines, Illinois on March 22, 2000.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 00–8971 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Prepare an Environmental Impact Statement and to Hold an Environmental Scoping Meeting for Runway Safety Area Improvements at Groton-New London Airport, Groton, Connecticut

AGENCY: Federal Avation Administration, DOT.

ACTION: Notice of Public Environmental Scoping Meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing notice to advise the public that an Environmental Impact Statement (EIA) will be prepared for a proposal by the State of Connecticut to construct Runway Safety Area improvements to Runway 5–23 at Groton-New London Airport, Groton, Connecticut. To ensure that all significant issues related to the proposed action are identified a public scoping meeting will be held.

FOR FURTHER INFORMATION CONTACT: Frank Smigelski, Environmental Specialist, Airports Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803. Telephone number: 781–238–7613.

SUPPLEMENTARY INFORMATION: Because of the potential for significant adverse environmental impact, primarily to wetlands and estuarine resources adjacent to the runway, comments and suggestions are invited from federal, state and local agencies and other interested members of the public on order to ensure that a full range of issues related to the proposed project are identified and addressed in the scope of work for the EIS. Comments and suggestions may be mailed to the FAA at the above address.

Public Scoping Meeting

In order to provide public input, a scoping meeting for federal, state and local agencies and other interested members of the public will be held on May 10, 2000 at 11:00 a.m. at the Connecticut Air National Guard AVCARD Facility, 139 Tower Road, Groton-New London Airport, Groton, CT. The scoping meeting will include a field tour of the project area. Representatives of federal, state and local agencies and other interested members of the public are encouraged to attend and comment. Additional Information may be obtained by contacting FAA at the above address or telephone number.

Issued in Burlington, Massachusetts on March 30, 2000.

Vincent A. Scarano,

Manager, Airports Division FAA, New England Region.

[FR Doc. 00–8972 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application to Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Sawyer International Airport, Marquette, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Sawyer International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 11, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, MI 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Harold R. Pawley, Airport Manager, of the Sawyer International Airport, at the following address: 225 Airport Avenue, Gwinn, MI 49841.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Marquette under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Gilbert, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, MI 48111 (734–487–7281). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Sawyer International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 22, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Marquette County was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 18, 2000.

The following is a brief overview of the application:

PFC Application No.: 00–05–C–00–SAW.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 1, 2000.

Proposed charge expiration date: October 30, 2002.

Total estimated PFC revenue: $369,235.00.

Brief description of proposed projects: (1) North Access Road to terminal, (2) FAR Part 77 grading, (3) VOR/DMS, (4) Rehabilitate terminal apron, (5) Rehabilitate hangar, (6) Terminal lighting, (7) Groove Runway 1/19, (8) Runway 1/19 joint repairs, (9) Taxiway relighting, (10) Rehabilitate taxiway and construct taxi streets, (11) ILS paving, (12) Renovate ARFF building, (13) Environmental Assessment for North Access Road and Runway 13/31, (14) North Access Road (design only).

Class or classes of air carriers that the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT"**.

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the Sawyer International Airport.

Issued in Des Plaines, Illinois, on March 29, 2000.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 00–8973 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Randolph and Tucker Counties, West Virginia

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Supplemental Environmental Impact Statement (SEIS) will be prepared for the Kerens-to-Parsons portion of the proposed Appalachian Corridor H highway project.

FOR FURTHER INFORMATION CONTACT: Henry E. Compton, Division Environmental Coordinator, Federal Highway Administration, West Virginia Division, Geary Plaza, Suite 200, 700 Washington Street East, Charleston, West Virginia 25301, Telephone: (304) 347–5268.

SUPPLEMENTARY INFORMATION: In accordance with a court approved settlement agreement, the FHWA in cooperating with the West Virginia Department of Transportation (WVDOH) will prepare a supplemental environmental impact statement (SEIS) to examine one or more potential alignment shifts for the Kerens-to-Parsons portion of the proposed Appalachian Corridor H highway in Randolph and Tucker Counties, West Virginia. A Record of Decision (ROD) for the entire Appalachian Corridor H Highway (FHWA–WV–EIS–92–01–F) from Aggregates to the WV/VA state line, a distance of approximately 100 miles, was approved on August 2, 1996. The proposed Kerens-to-Parsons project will provide a divided four-lane, partial control of access highway on new location for a distance of approximately 20 miles. The purpose of this project is to provide safe and efficient travel between the population centers of Randolph (Elkins/Kerens Area) and Tucker (Parsons Area) counties, while also contributing to the completion of Corridor H in West Virginia.

Alternates under consideration in the SEIS will be: (1) The no action alternative, (2) the preferred alternative that was approved in the 1996 ROD, and (3) one or more alternatives that avoid impacts to the Corricks Ford Battlefield. Based on preliminary studies, it is expected that the avoidance alternatives considered in the SEIS will include one or more alignments that would shift the project to the north, resulting in additional connections to US 219, WV Route 72, and County Route 17 in the vicinity of Parsons. However, final decisions on the scope of the SEIS will be made only after an opportunity for comment by interested agencies and the public during the scoping process, which will occur in early to mid-April 2000.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have expressed or are known to have an interest in this proposal.

To ensure the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities to this program)

Issued on: March 28, 2000.

Henry E. Compton,

Environmental Coordinator, Charleston, West Virginia.

[FR Doc. 00–8869 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Aberdeen Carolina and Western Railway

[Docket Number FRA–1999–6067]

The Aberdeen Carolina and Western Railway (ACWR) seeks a permanent waiver of compliance with the *Safety Glazing Standards*, 49 CFR 223.11(c), which requires certified glazing in all locomotive windows, except those locomotives used in yard service. ACWR seeks this waiver for locomotive number 1132. The owner states that the locomotive would be used one way (20 miles) as back-up power for a dinner/excursion train operating on weekends between Aberdeen and Pinehurst, North Carolina.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 1999–6067) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW, Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, DC on April 4, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–8855 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Buffalo Southern Railroad, Inc.

Docket Number FRA–1999–6069

The Buffalo Southern Railroad, Inc. (BSOR) seeks a permanent waiver of compliance with the Safety Glazing Standards, 49 CFR 223.11(c), which requires certified glazing in all locomotive windows, except those locomotives used in yard service. BSOR seeks this waiver for five locomotives, numbers 5010, 107, 100, 93 and 105. BSOR states that they operate on 30 miles of track at speeds not to exceed 20

mph between Buffalo and Gowanda, New York. They also state that all locomotives are equipped with shatterproof type safety glazing and have never experienced any problems with window breakage or vandalism.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 1999–6069) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW, Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov*.

Issued in Washington, D.C. on April 4, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–8856 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 of the Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

National Railroad Passenger Corporation

[Docket No. FRA–2000–7199]

The National Railroad Passenger Corporation (Amtrak) seeks a temporary waiver of compliance with section 203 of FRA's Passenger Equipment Safety Standards (49 CFR part 238). On October 18, 1999, Amtrak, pursuant to 49 CFR 238.203, filed a "grandfathering" petition with FRA (Docket No. FRA–1999–6404), in which it requested approval to continue using five trainsets manufactured by Talgo, Inc. in the Pacific Northwest that do not meet the buff strength standards specified in Part 238. Section 203 of that part provides that use of non-compliant equipment subject to a grandfathering petition must cease on May 8, 2000, unless FRA has approved the petition by that date.

Amtrak, in its petition for waiver, states that it believes there is a significant risk that FRA, will be unable to resolve administrative issues concerning information in the docket, obtain final comments from all interested parties, and then perform its own internal analysis and issue a final decision by May 8, 2000. Amtrak further states that "in order to ensure there is no short term [service] disruption, Amtrak feels that it is essential that FRA extend the period during which operation of Talgo equipment is permissible beyond the current May 8, 2000 date, until a date that is 30 days after the date on which FRA acts finally on Amtrak's grandfathering petition."

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA's Docket Clerk at Federal Railroad Administration, Office of Chief Counsel, 1120 Vermont Avenue, MS 10, Washington, DC, 20590, in writing, by April 20, 2000 and specify the basis for their request.

All other communications concerning this proceeding should identify the appropriate docket number (*e.g.* Docket No. FRA–2000–7199) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–40–1 (Plaza Level), 400 7th Street, SW, Washington, DC 20590. Communications received by April 26, 2000 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9:00 am—5:00 pm) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov*.

Issued in Washington, DC on April 6, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–8935 Filed 4–6–00; 3:11 pm]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Union Pacific Railroad Company

(Docket Number FRA–1999–5755)

Union Pacific Railroad Company (UP) seeks a permanent waiver of compliance from certain provisions of the Power Brakes and Drawbars regulations, 49 CFR part 232, at Proviso Yard in Chicago, Illinois. Specifically, UP requests relief from the requirements of 49 CFR 232.12(i)(1), which requires that when a train airbrake system is tested from a yard test plant, the air source must be connected to the end of the train which will be nearest to the hauling road locomotive.

UP provides the following information to justify this request. At Proviso Yard, trains are regularly made up and depart from Yard Four. The tracks in Yard Four hold approximately 60 cars. Most trains consist of one hundred or more cars, which requires a double or triple over be made to make up an outbound train. The standard procedure is to fill one or more tracks with the head end portion and set the rear end portion as a rear end fill in an adjacent track. When this rear end fill is short (thirty cars or less), it presents an operational and safety problem. Yard air is at the extreme ends of Yard Four. If the rear fill is set at the end of the yard where hauling locomotives are attached,

it requires the carman to either walk thirty car lengths or more to apply the end-of-train device (EOT) or cross several tracks with the EOT in order to install the device to the rear of the train. Either alternative presents both a safety factor for the carman and a time factor for completing the air test, since there are no access roads for the carmen to use.

Based on the above, UP believes that a permanent waiver permitting the yard air source to be applied to the rear end fill at Proviso's Yard Four would improve the safety and efficiency of operations without any adverse effect on safety.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 1999–5755) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov*.

Issued in Washington, DC on April 4, 2000.

Grady C. Cothen, Jr.

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–8857 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Announcing the First Quarterly Meeting of the Crash Injury Research and Engineering Network

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting Announcement.

SUMMARY: This notice announces the First Quarterly Meeting of members of the Crash Injury Research and Engineering Network. CIREN is a collaborative effort to conduct research on crashes and injuries at eight Level 1 Trauma Centers which are linked by a computer network. Researchers can review data and share expertise, which could lead to a better understanding of crash injury mechanisms and the design of safer vehicles.

DATE AND TIME: The meeting is scheduled from 8:30 a.m. to 5:00 p.m. on May 5, 2000.

ADDRESSES: The meeting will be held in Room 6200–04 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street, SW, Washington, DC.

SUPPLEMENTARY INFORMATION: The CIREN System has been established and crash cases have been entered into the database by each Center. NHTSA has held three Annual Conferences (two in Detroit and one in conjunction with STAPP in San Diego) where CIREN research results were presented. Further information about the three previous CIREN conferences is available through the NHTSA website at: *http://www-nrd.nhtsa.dot.gov/bio__and__trauma/ciren-final.htm*.

NHTSA plans to begin holding quarterly meetings on a regular basis to disseminate this information to interested parties. This is the first such meeting. The topic for this meeting is lower extremity injuries in motor vehicle crashes. Subsequent meetings have tentatively been scheduled for July and October. These quarterly meetings will be in lieu of an annual CIREN conference.

FOR FURTHER INFORMATION CONTACT: Mrs. Donna Stomski, Office of Human-Centered Research, 400 Seventh Street, SW, Room 6220, Washington, DC 20590, telephone: (202) 366–5662.

Issued on: April 5, 2000.

Joseph N. Kanianthra,

Acting Associate Administrator for Research and Development, National Highway Traffic Safety Administration.

[FR Doc. 00–8940 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–7112]

Notice of Receipt of Petition for Decision That Nonconforming 1987–1989 Bentley Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1987–1989 Bentley passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1987–1989 Bentley passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 11, 2000.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle

originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1987–1989 Bentley passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1987–1989 Bentley passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1987–1989 Bentley passenger cars to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1987–1989 Bentley passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1987–1989 Bentley passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver from the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of high mounted stop lamps.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the convex passenger side rearview mirror.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) installation of automatic lap and shoulder belts at each front designated seating position. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the non-U.S. certified 1987–1989 Bentley passenger cars must be reinforced or U.S.-model bumper components must be installed to comply with the Bumper Standard found in 49 CFR Part 581.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 6, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 00–8938 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2000–7173]

Notice of Receipt of Petition for Decision that Nonconforming 1988–1990 Jaguar XJS and XJ6 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1988–1990 Jaguar XJS and XJ6 passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1988–1990

Jaguar XJS and XJ6 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 11, 2000.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies of Baltimore, Maryland ("J.K.")(Registered Importer 90–006) has petitioned NHTSA to decide whether 1988–1990 Jaguar XJS and XJ6 passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1988–1990 Jaguar XJS and XJ6 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1988–1990 Jaguar XJS and XJ6 passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1988–1990 Jaguar XJS and XJ6 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1988–1990 Jaguar XJS and XJ6 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence . . . ,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver from the Steering Control System* (for all vehicles except the 1990 Jaguar XJS, to which the standard is inapplicable because the vehicle meets the frontal barrier crash test requirements in paragraph S5.1 of Standard No. 208), 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 1988–1990 Jaguar XJS and XJ6 passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) replacement of the speedometer with one calibrated in miles per hour. The petitioner states that owing to a shortage of dealer available parts for earlier models, these parts may be purchased from aftermarket Jaguar suppliers, and that in some cases the instrument clusters will be replaced with complete units as opposed to individual parts.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: Inspection of all vehicles, and, where necessary, (a) installation of U.S.-model headlamps and front sidemarker lamps; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarker lights; (c) installation of a U.S.-model high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard on vehicles that are not already so equipped.

Standard No. 111 *Rearview Mirror*: replacement of the passenger side rearview mirror with a U.S.-model component on vehicles that are not already so equipped.

Standard No. 114 *Theft Protection*: installation of a warning buzzer and a warning buzzer microswitch in the steering lock assembly on vehicles that are not already so equipped.

Standard No. 118 *Power Window Systems*: installation, on vehicles that are not already so equipped, of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 Occupant Crash Protection:

All vehicles: installation of a safety belt warning buzzer, wired to the driver's seat belt latch.

1988–1989 Jaguar XJS and the 1988–1990 Jaguar XJS: replacement of the motorized automatic belts with U.S.-model components on vehicles that are not already so equipped. The petitioner states that these vehicles are equipped with combination lap and shoulder belts at the rear outboard seating positions and with a lap belt at the rear center seating position.

1990 Jaguar XJS: replacement of the driver's side air bag and knee bolster with U.S.-model components on vehicles that are not already so equipped. The petitioner states that these vehicles are equipped with combination lap and shoulder belts at the front and rear outboard seating positions, and "with rear center seat lap belt."

Standard No. 214 *Side Impact Protection*: installation of U.S.-model doorbars in vehicles that are not already so equipped.

The petitioner states that all vehicles will be inspected prior to importation to ensure that they comply with the parts marking requirements of the Theft Prevention Standard at 49 CFR Part 541, and that these markings will be embossed or engraved on any required parts from which they are missing.

The petitioner also states that a vehicle identification plate must be affixed to the vehicle near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 6, 2000.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 00–8939 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Research and Special Programs Administration

Results of a Departmentwide Program Evaluation of the Hazardous Materials Transportation Programs (HMPE)

AGENCY: Office of Inspector General (OIG) and Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of Findings and Recommendations.

SUMMARY: This notice announces the completion of a Departmentwide Program Evaluation of the Hazardous Materials Transportation Programs. The program evaluation found that the Department's hazardous materials program is working reasonably well, but could be improved through Departmentwide strategic planning and program coordination, more focused delivery, and better data. To address these findings, the program evaluation recommended that DOT establish a focal point to administer and deliver a Departmentwide hazardous materials program, aimed at intermodal and cross-modal issues, to provide for more effective deployment of its resources. DOT should also place more emphasis on hazardous materials safety in its Strategic and Performance Plan(s) to better guide program delivery and measure results. Furthermore, the program evaluation recommended that the Department develop DOT-wide strategies to focus more on high-risk or problem shippers through targeted outreach activities and inspections, and strengthen its training standards to improve industry safety practices and compliance with the hazardous materials regulations to reduce incidents. The program evaluation also recommended that DOT take steps to improve its hazardous materials data Departmentwide and develop ways to increase data availability and usefulness. The results of the Hazardous Materials Program Evaluation (HMPE) are intended to improve the effectiveness and efficiency of the Department's hazardous materials program. Copies of the Executive Summary and full report are available electronically through DOT at: http://hazmat.dot.gov/hmpe.htm.

FOR FURTHER INFORMATION CONTACT: Jackie A. Goff, Esq., 202–493–0326, or George A. Whitney, 202–366–4831, HMPE Co-Chairs, U.S, Department of Transportation; 400 Seventh Street SW, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On March 9, 1999, DOT published a Notice in the **Federal Register** (64 FR 11528) announcing the initiation of an internal Departmentwide Program Evaluation of the Hazardous Materials Transportation Programs. In that Notice it was announced that the HMPE team was being jointly lead by the Office of Inspector General (OIG) and the Research and Special Programs Administration (RSPA). The HMPE team was staffed by 10 full-time persons, including at least one full-time person from the OIG and RSPA and each of the following DOT Operating Administrations: the United States Coast Guard; the Federal Aviation Administration; the Federal Motor Carrier Safety Administration; and the Federal Railroad Administration.

The HMPE team examined the Federal hazardous materials transportation law, the program structure defined by the delegation of authority within DOT, and assessed program delivery. The HMPE was intended to determine the effectiveness of DOT's current hazardous material programs, including the division of responsibilities across and within modes, and the allocation of resources dedicated to specific functions. The HMPE focused on cross-modal issues, including an analysis and critique of DOT's current program intervention tools (regulation, education, training, outreach, inspection, and enforcement).

The scope of the HMPE included those activities covered by 49 CFR parts 106 (Rulemaking Procedures) and 107 (Hazardous Materials Program Procedures), and the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180. International shipments of hazardous materials were also included in the scope of the HMPE to permit a review of the International Maritime Dangerous Goods Code (IMDG) and the International Civil Aviation Organization's Technical Instructions on the Transportation of Dangerous Goods by Air (ICAO), both of which are authorized by HMR as alternative standards for many of the requirements in the HMR for shipments destined for import export.

II. Findings

There are roughly 300 million hazardous materials shipments in the nation each year and the vast majority of these shipments arrive at their destinations safely. In 1998, there were 15,322 reported hazardous materials incidents, including 429 serious incidents; 13 deaths; and 198 injuries. Although this is a relatively good safety record, given the total amount of shipments and movements, there remains the potential for catastrophic incidents in the transportation of hazardous materials where multiple fatalities, serious injuries, large-scale evacuations, and other costs to society could result.

Total tons of hazardous materials produced are forecast to grow by 2 percent per year. Growth in the amount of hazardous materials transported by air and intermodally could be 4 times and 3 times faster, respectively, than the overall production growth. Therefore, the potential risk to the public may also increase unless effective safeguards are in place. The Department has responsibility for protecting the public

from the inherent risks associated with transporting hazardous materials.

The HMPE team found that DOT's hazardous materials programs work reasonably well but could be improved. The hazardous materials programs lack Departmentwide strategic planning and direction necessary to ensure effective deployment of resources, and there are insufficient reliable data upon which to make informed program decisions. The program evaluation's major findings were:

- The Secretarial delegations do not provide for Departmentwide coordination or oversight of the five Operating Administrations responsible for ensuring hazardous materials safety. To address this, DOT needs to establish a focal point to administer and deliver a Departmentwide hazardous materials program, aimed at intermodal and cross-modal issues, to provide for more effective deployment of resources. DOT should also place more emphasis on hazardous materials safety in its Strategic and Performance Plan(s) to better guide program delivery and measure results.
- Shippers of hazardous materials generally receive less attention Departmentwide than carriers, yet they offer the greatest opportunity to improve safety. Shippers are a common element across the Operating Administrations, perform critical functions early in the transportation stream, and can impact safety system-wide. As a result, the Department needs to develop Departmentwide strategies and actions to focus more on high-risk or problem shippers through targeted outreach and inspection activities.
- Human error continues to be the single greatest contributing factor in hazardous materials incidents and DOT has not been effective in changing this trend. To address this, in part, DOT should strengthen its training standards to improve industry safety practices and compliance with the HMR to reduce incidents. Also, the traveling public is largely unaware of the dangers of the hazardous materials they bring into the transportation system and the dangerous consequences of unsafe driver actions around vehicles, especially those transporting hazardous materials. Accordingly, DOT needs to develop a coordinated, national campaign to increase the traveling public's awareness of the dangers of hazardous materials and reduce the risk of hazardous materials incidents.
- DOT lacks reliable, accurate, and timely data to measure program effectiveness and make informed program delivery and resource decisions. DOT needs to improve hazardous materials census, incident, compliance, and budget data Departmentwide and develop ways to increase data availability and usefulness. DOT should also improve its analysis of incident data to better understand the root causes of hazardous materials incidents and address these through Departmentwide hazardous materials actions and broader safety program initiatives.
- In addition, a number of areas were identified requiring further analysis or other actions related to: better understanding undeclared shipments; the complexity and adequacy of the current regulations; safety gaps related to hazardous materials shipments in the US mail; enhanced inspection authority; and ways to improve DOT's current performance measure.

III. Recommendations

The HMPE team recommends the hazardous materials program be improved by:

- Strengthening strategic planning and coordination by establishing an institutional capacity in the Department to administer and deliver a coordinated hazardous materials program with the authority to establish Departmentwide policy, program objectives, and priorities and focus budget and resource strategies. For example, if analysis of inspection and incident data revealed that improper preparation of closure devices on plastic drums was becoming a problem, the recommended institutional capacity would be able to develop Departmentwide objectives and strategies to address the issue.
- Enhancing program delivery by identifying and focusing more on high-risk or problem shippers, more effectively using all available tools at DOT's disposal, and identifying other critical points in the transportation stream for program focus. For example, problem shippers, such as those with many hazardous materials incidents, may be targeted for inspections, while infrequent hazardous materials shippers may benefit more from outreach.
- Improving outreach aimed at the traveling public by better educating passengers on what materials are hazardous and should not be carried aboard, or placed in stowed luggage on, planes, trains, and buses. DOT should also take steps to increase public awareness about the dangerous consequences of unsafe driver actions around vehicles transporting hazardous materials.
- Strengthening the training regulations and tasking the institutional capacity to work with RSPA, the other Operating Administrations, and industry to identify ways to ensure hazardous materials employees are adequately trained to carry out their jobs in a safe manner.
- Using strike force inspections to cross-train inspectors as well as enforce regulations. Strike force operations concentrate inspectors from the Operating Administrations and other Federal, state, and local agencies at intermodal locations for a specific time period to conduct hazardous materials inspections of more than one mode of transportation using that targeted location. In addition to enforcing compliance, strike force operations can be used to train inspectors from one Operating Administration on the issues, problems, and regulatory requirements of other Operating Administrations.
- Enriching the quality of hazardous materials data by tasking the Bureau of Transportation Statistics to work with the Operating Administrations to determine data needs, collection strategies, and analytical techniques.
- Having the new institutional capacity address several regulatory and programmatic issues identified by the team during the program evaluation, but which were too complex or time consuming for this program evaluation.

Summary findings of the HMPE were published in the combined DOT Performance Plan (FY 2001) and Report (FY 1999) dated March 31, 2000, in support of the Government Performance and Results Act. An electronic copy of the HMPE Executive Summary and the full HMPE report is available on the internet at: http://hazmat.dot.gov/hmpe.htm.

Issued in Washington, DC on April 5, 2000.

Jackie A. Goff,

Co-Chair, Hazardous Materials Program Evaluation Team.

George A. Whitney,

Co-Chair, Hazardous Materials Program Evaluation Team.

[FR Doc. 00–8847 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Change of Meeting Location

The location of the meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 9 a.m. on Wednesday, April 12, 2000, notice of which was published in the **Federal Register** on March 30 (65 FR 17000), has been changed. The new location is the Sheraton West Palm

Beach Hotel, 630 Clearwater Park Road, West Palm Beach, Florida.

Issued at Washington, D.C. on April 7, 2000.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 00–9073 Filed 4–10–00; 8:45 am]

BILLING CODE 4910–61–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Final Rule—Administrative Offset, Collection of Past-Due Child Support

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the "Final Rule—Administrative Offset, Collection of Past-Due Child Support".

DATES: Written comments should be received on or before June 12, 2000.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Programs Branch, Room 144, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Mary MacLeod, Manager, Customer Liaison Branch, Room 439F, 401—14th Street, SW, Washington, DC 20227, (202) 874–7451.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Final Rule—Administrative Offset, Collection of Past-Due Child Support.

OMB Number: 1510–0069.

Form Number: N/A.

Abstract: The Debt Collection Improvement Act of 1996 authorizes the collection of past-due child support by offset of nontax Federal payments. Executive Order 13019 of September 28, 1996, requires Treasury to promptly develop and implement procedures necessary to implement this authority.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: State, Local or Tribal Government.

Estimated Number of Respondents: 54.

Estimated Time Per Respondent: 103 hours.

Estimated Total Annual Burden Hours: 5,562.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: April 4, 2000.

Nancy C. Fleetwood,

Assistant Commissioner, Debt Management Services.

[FR Doc. 00–8860 Filed 4–10–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0073]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine the amount of educational benefits payable to veterans or eligible persons.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 12, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0073" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Enrollment Certification, VA Form 22–1999. (NOTE: A reference to VA Form 22–1999 also includes VA Forms 22–1999–1, 22–1999–2, and 22–1999–3 unless otherwise specified. VA Forms 22–1999–1, 22–1999–2, and 22–1999–3 contain the same information as VA Form 22–1999.)

OMB Control Number: 2900–0073.

Type of Review: Extension of a currently approved collection.

Abstract: Educational institutions and job establishments use VA Form 22–1999 to report information concerning the enrollment or reenrollment into training of veterans, service persons, reservists, and other eligible persons. The information collected on VA Form 22–1999 is used by VA to determine the amount of educational benefits payable to the trainee during the period of

enrollment or training and to determine whether the trainee has requested an advanced payment of benefits. Without the information, VA would not have a basis upon which to make payment.

Affected Public: Not-for-profit institutions, Business or other for-profit, and State, Local or Tribal Government.

Estimated Annual Burden: 120,975 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion (The number of responses per respondent will vary according to the number of trainees who receive VA benefits at the educational institution or job training establishment during a 12-month period).

Estimated Annual Responses: 725,802.

Estimated Number of Respondents: 7,514.

Dated: March 23, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–8859 Filed 4–10–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to identify individuals at risk for stress-related illnesses.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 12, 2000.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–NEW" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff (202) 273–8310 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Study of Individuals at Risk for Stress Related Illness, VA Form 10–21036(NR).

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: This survey collection is intended for the development of "psychological and biomedical measurements for early identification of individuals at risk for stress-related illness." VA proposes to design and validate a psychometrically sound inventory of psychosocial risk and resilience factors that will be empirically related to self-reported physical and mental health and health-related quality of life in Gulf War veterans. The inventory will include assessments of multiple dimensions of war-zone stress, predeployment vulnerabilities, and reentry-postwar circumstances.

Affected Public: Individuals or households.

Estimated Annual Burden: 525 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 700.

Dated: March 17, 2000.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–8975 Filed 4–10–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0180]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, without change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine whether or not proprietary education institutions receiving Federal financial assistance are in compliance with the applicable civil rights statute and regulations.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 12, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0180" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites

comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Compliance Report of Proprietary Institutions, VA Form 27–4274.

OMB Control Number: 2900–0180.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VA Form 27–4274 is used to determine whether or not proprietary educational institutions receiving Federal financial assistance are in compliance with applicable civil rights statute and regulations. The collected information is used to identify areas that may indicate, statistically, disparate treatment of minority group members.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 124 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 124.

Dated: March 24, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–8976 Filed 4–10–00; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0104]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 11, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0104."

SUPPLEMENTARY INFORMATION:

Title: Report of Accidental Injury in Support of Claim for Compensation or Pension, VA Form 21–4176.

OMB Control Number: 2900–0104.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used in support of claims for disability benefits based on a disability that is the result of an accident. The information given by the veteran is used as a source to gather specific data regarding the accident and to afford the veteran an opportunity to provide information from his or her own knowledge regarding the accident.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 29, 1999, at page 66693.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,200 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 4,400.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0104" in any correspondence.

Dated: March 2, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–8977 Filed 4–10–00; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0105]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 11, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0105."

SUPPLEMENTARY INFORMATION:

Title: Statement of Witness to Accident, VA Form Letter 21–806.

OMB Control Number: 2900–0105.

Type of Review: Extension of a currently approved collection.

Abstract: The form letter is used to gather information to support veterans' claims for disability benefits based on disability(ies) which is/are the result of an accident. The information given by a witness to the accident is used as a source to gather specific data regarding the accident and to obtain from the witness opinions as well as facts based on his or her own knowledge and beliefs regarding the accident. Benefits may be paid if a disability is incurred in the line of duty and is not the result of the veteran's own willful misconduct.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 29, 1999, on pages 66693 and 66694.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,400 hours.

Estimated Average Burden Per Respondent: 20 minutes.
Frequency of Response: On occasion.
Estimated Number of Respondents: 13,200.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 12035, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0105" in any correspondence.

Dated: March 17, 2000.

By direction of the Secretary.

Sandra S. McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 00–8978 Filed 4–10–00; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0132]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 11, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0132."

SUPPLEMENTARY INFORMATION:

Title: Veteran's Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant, VA Form 26–4555.

OMB Control Number: 2900–0132.

Type of Review: Extension of a currently approved collection.

Abstract: VA grants for specially adapted housing and special housing adaptations for disabled veterans are authorized under Title 38, U.S.C., 2101(a) and (b). VA Form 26–4555 is used to gather information to determine the veteran's eligibility to specially adapted housing or special home adaptation grant.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 2, 1999, at pages 67624–67625.

Affected Public: Individuals or households.

Estimated Annual Burden: 133 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 800.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 12035, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0132" in any correspondence.

Dated: March 2, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service

[FR Doc. 00–8979 Filed 4–10–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0133]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 11, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0133."

SUPPLEMENTARY INFORMATION:

Title: Application for Amounts on Deposit for Deceased Veteran, VA Form 21–6898.

OMB Control Number: 2900–0133.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–6898 is used to determine the individual(s) who may be entitled to accrued benefits of deceased beneficiaries.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 29, 1999, at page 66694.

Affected Public: Individuals or households.

Estimated Annual Burden: 175 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 700.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0133" in any correspondence.

Dated: March 2, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–8980 Filed 4–10–00; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

Fund Availability Under the VA Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs is announcing the availability of funds for applications for assistance under the grant component of VA's Homeless Providers Grant and Per Diem Program. This Notice contains information concerning the program, application process, and amount of funding available.

DATES: An original completed and collated grant application (plus three completed collated copies) for assistance under the VA Homeless Providers Grant and Per Diem Program must be received in Mental Health Strategic Health Care Group, Washington, DC, by 4:00 PM Eastern Time on May 31, 2000. Applications may not be sent by facsimile (FAX). In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their material to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

FOR A COPY OF THE APPLICATION PACKAGE, CONTACT: The Grant and Per Diem Program at (toll-free) 1–877–332–0334 or download directly from VA's Special Homeless Assistance Programs and Initiatives web page at: http://www.va.gov/health/homeless/grants.htm. For a document relating to the VA Homeless Providers Grant and Per Diem Program, see the final rule codified at 38 CFR Part 17.700.

SUBMISSION OF APPLICATION: Original completed and collated grant application (plus three copies) must be submitted to the following address: Mental Health Strategic Health Care Group (116E), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Applications must be received in the Mental Health Strategic Health Care Group by the application deadline.

FOR FURTHER INFORMATION CONTACT: Roger Casey, VA Homeless Providers Grant and Per Diem Program, Mental Health Strategic Health Care Group (116E), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420; (toll-free) 1–877–332–0334.

SUPPLEMENTARY INFORMATION: This Notice announces the availability of funds for assistance under VA's Homeless Providers Grant and Per Diem Program for eligible entities to: (1) Expand existing projects; or (2) develop new programs or new components of existing projects. This program is authorized by Public Law 102–590, the Homeless Veterans Comprehensive Service Programs Act of 1992, as amended. Funding applied for under this Notice may be used for: (1) Remodeling or alteration of existing buildings; (2) acquisition of buildings, acquisition and rehabilitation of buildings; (3) new construction; and (4) acquisition of vans for outreach to and/or transportation for homeless veterans. Applicants may apply for more than one type of assistance.

Although a separate Notice has been published announcing funding availability for the Per Diem Component of the program, grant applicants seeking such assistance should indicate this request on the application submitted for a grant. The applicants who are awarded grants will not be required to complete a separate application for per diem assistance. VA will review those portions of the grant application that pertain to per diem.

Grant applicants may not receive assistance to replace funds provided by any State or local government to assist homeless persons. A proposal for an existing project that seeks to shift its focus by changing the population to be served or the precise mix of services to be offered is not eligible for consideration. No more than 25 percent of services available in projects funded through this grant program may be provided to clients who are not receiving those services as veterans.

Authority: VA's Homeless Providers Grant and Per Diem Program is authorized by Sections 3 and 4 of Public Law 102–590, the Homeless Veterans Comprehensive Service Programs Act of 1992 (38 USC 7721 note) and has been extended through Fiscal Year 2003 by Public Law 106–117. The program is implemented by the final rule codified at 38 CFR Part 17.700. The final rule was published in the **Federal Register** on June 1, 1994, and February 27, 1995, and revised February 11, 1997. The regulations can be found in their entirety in 38 CFR, Volume 1, Sec. 17.700 through 17.731, revised July 1, 1997. Funds made available under this Notice are subject to the requirements of those regulations.

Allocation

Approximately $13 million is available for the grant component of this program.

Application Requirements

The specific grant application requirements will be specified in the application package. The package includes all required forms and certifications. Conditional selections will be made based on criteria described in the application. Applicants who are conditionally selected will be notified of the additional information needed to confirm or clarify information provided in the application. Applicants will then have approximately one month to submit such information.

If an applicant is unable to meet any conditions for grant award within the specified time frame, VA reserves the right to not award funds and to use the funds available for other grant and per diem applicants.

Dated: April 4, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

[FR Doc. 00–8981 Filed 4–10–00; 8:45 am]

BILLING CODE 8320–01–U

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Federal Register

Tuesday,
April 11, 2000

Part II

Environmental Protection Agency

40 CFR Part 434

Coal Mining Point Source Category; Amendments to Effluent Limitations Guidelines and New Source Performance Standards; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 434

[FRL–6571–9]

RIN 2040–AD24

Coal Mining Point Source Category; Amendments to Effluent Limitations Guidelines and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to amend the current regulations for the Coal Mining Point Source Category by adding two new subcategories to the existing regulation. First, EPA proposes to establish a new subcategory that will address pre-existing discharges at coal remining operations. EPA also proposes to establish a second new subcategory that will address drainage from coal mining reclamation areas in the arid and semiarid western United States. This proposal would not otherwise change the existing regulations.

The establishment of new subcategories has the potential to create significant environmental benefits at little or no additional cost to the industry. Establishing the Coal Remining Subcategory will encourage remining activities and will reduce hazards associated with abandoned mine lands. The new subcategory has the potential to significantly improve water quality by reducing the discharge of acidity, iron, manganese, and sulfate from abandoned mine lands. EPA projects total monetized annual benefits of $0.70 million to $1.2 million. Additionally, EPA expects that this regulation will result in significant ecological and public safety benefits that could not be quantified and/or monetized. EPA projects that the annual compliance cost for this new subcategory will be $0.33 million to $0.76 million.

EPA estimates that the proposed Western Alkaline Coal Mining Subcategory will result in a net cost savings to affected surface mine operators. The monetized and non-monetized benefits for this subcategory are a result of adopting alternative sediment control technologies for reclamation areas in the arid west. These technologies are projected to increase the volume of storm water drainage to arid watersheds and avoid the disturbance of 26,000 acres, thus reducing severe erosion, sedimentation, hydrologic imbalance, and water loss. EPA projects that the proposed subcategory will result in annualized monetized benefits of $43,000 to $769,000.

DATES: Comments on the proposed regulation must be received on or before July 10, 2000. Public meetings will be held during the comment period. Further details of the public meetings, including dates and specific locations, will be published in the **Federal Register** at a later date.

ADDRESSES: Send written comments on the proposed rule to Mr. Joseph Vitalis (4303); U.S. Environmental Protection Agency; 1200 Pennsylvania Ave, NW; Washington, DC 20460. Comments delivered by hand should be brought to Room 641, West Tower; 401 M Street, SW Washington, DC. Please submit any references cited in your comments. Submit an original and three copies of your written comments and enclosures. No facsimiles (faxes) will be accepted. For information on how to submit electronic comments see "**SUPPLEMENTARY INFORMATION,** How to Submit Comments."

A copy of the supporting documents cited in this proposal is available for review at EPA's Water Docket; Room EB57, 401 M Street, SW, Washington, DC 20460. A copy of the record supporting proposal of a Western Alkaline Coal Mining Subcategory is also available for review at the Office of Surface Mining Library, 1999 Broadway, 34th Floor, Denver, CO. The public record for this rulemaking has been established under docket number W–99–13, and includes supporting documentation, but does not include any information claimed as Confidential Business Information (CBI). For access to docket materials, please call (202) 260–3027 between 9:00 a.m. and 3:30 p.m., Monday through Friday, excluding Federal holidays, to schedule an appointment. For access to docket materials at the Office of Surface Mining Library, please call (303) 844–1436 between 8:00 a.m. and 4:00 p.m. to schedule an appointment.

See the **SUPPLEMENTARY INFORMATION** section for locations of the public meetings regarding this proposal.

FOR FURTHER INFORMATION CONTACT: For additional technical information contact John Tinger at (202) 260–4992 or *"Tinger.John@epa.gov"*; or Joseph Vitalis at (202) 260–7172. For additional economic information contact Kristen Strellec at (202) 260–6036 or *"Strellec.Kristen@epa.gov"*.

SUPPLEMENTARY INFORMATION:

Regulated Entities: Entities potentially regulated by this action include:

Category	Examples of regulated entities	SIC codes	NAICS codes
Industry	Operations engaged in the remining of abandoned surface and underground coal mines and coal refuse piles for remaining coal reserves in areas containing discharges defined as "pre-existing'. Operations engaged in coal mine reclamation activities in the arid and semiarid western coal region.	1221 1222 1231	212111 212112 212113

The preceding table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware potentially could be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 434.70 and 434.80 of today's rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Locations of Public Meetings

Public meetings regarding proposal of the Western Alkaline Coal Mining Subcategory will likely be held in Gillette, WY; Flagstaff, AZ; and Denver, CO during the public comment period. Public meetings regarding proposal of the Remining Subcategory also will likely be held near Charleston, WV; Lexington, KY; and Zanesville, OH during the public comment period. Further details of the public meetings, including dates and specific locations, will be published in the **Federal Register** at a later date. If you wish to present formal comments at the public meetings, you should have a written copy for submittal. No meeting materials will be distributed in advance

of the public meetings; all materials will be distributed at the meetings.

How to Submit Comments

Comments also may be submitted electronically to *vitalis.joseph@epa.gov*. Electronic comments must be submitted as a Word Perfect 5/6/7/8 or ASCII file. Please avoid using special characters, form and encryption. Electronic comments must be identified with the docket number (W–99–13). EPA also will accept comments and data on disks in WP 5/6/7/8 or ASCII file format. Electronic comments on this document may be filed online at some Federal Depository Libraries. No Confidential Business Information (CBI) should be sent via e-mail.

Supporting Documentation

The proposed regulations are supported by several key documents:

1. *"Coal Remining Best Management Practices Guidance Manual"* (EPA 821–R–00–007). This document describes abandoned mine land conditions and the performance of Best Management Practices (BMPs) that have been implemented at remining operations for over ten years. The BMP Guidance Manual is a technical reference document that presents research and data concerning the prediction and prevention of acid mine drainage to the waters of the United States.

2. *"Coal Remining Statistical Support Document"* (EPA 821–R–00–001). This document establishes the statistical methodology for establishing baseline conditions and setting discharge limits at remining sites.

3. *"Development Document for Proposed Effluent Limitations Guidelines and Standards for the Western Alkaline Coal Mining Subcategory"* (EPA 821–R–00–008): This document presents EPA's technical conclusions concerning the Western Alkaline Mining Subcategory proposal.

4. *"Economic and Environmental Impact Assessment of Proposed Effluent Limitations Guidelines and Standards for the Coal Mining Industry: Remining and Western Alkaline Subcategories"* (EPA–821–B–00–002): This document presents the methodology employed to assess economic and environmental impacts of the proposed rule and the results of the analysis.

Major supporting documents are available from the National Service Center for Environmental Publications (NSCEP), 11029 Kenwood Road, Cincinnati, OH 45242, (800) 490–9198; *http://www.epa.gov/ncepi*. You can obtain copies of this preamble and rule at http://www.epa.gov/OST/guide.

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I. Legal Authority

These regulations are proposed under the authority of sections 301, 304, 306, 308, 402, 501, and 502 of the Clean Water Act, 33 U.S.C. 1311, 1314, 1316, 1318, 1342, 1361, and 1363.

II. Background

A. Statutory Authorities

1. Clean Water Act

Congress adopted the Clean Water Act (CWA) to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters' (section 101(a), 33 U.S.C. 1251(a)). To achieve this goal, the CWA prohibits the discharge of pollutants into navigable waters except in compliance with the statute. The Clean Water Act confronts the problem of water pollution on a number of different fronts. Its primary reliance, however, is in establishing restrictions on the types and amounts of pollutants discharged from various industrial, commercial and public sources of wastewater.

Direct dischargers must comply with effluent limitations in National Pollutant Discharge Elimination System ("NPDES") permits; indirect dischargers must comply with pretreatment standards. These limitations and standards are established by regulation for categories of industrial dischargers and are based on the degree of control that can be achieved using various levels of pollution control technology.

a. Best Practicable Control Technology Currently Available (BPT)—Section 304(b)(1) of the CWA. Effluent limitations guidelines based on BPT apply to discharges of conventional, toxic, and non-conventional pollutants from existing sources. BPT guidelines are generally based on the average of the best existing performance in terms of pollution control by plants in a particular industrial category or subcategory. In establishing BPT, EPA considers the cost of achieving pollution reductions in relation to the pollution reduction benefits, the age of equipment and facilities, the processes employed, process changes required, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and other factors the Administrator deems appropriate. CWA Section 304(b)(1)(B). Where the pollution control performance of existing sources for a category or subcategory is uniformly inadequate, EPA may set BPT by

transferring technology used in a different subcategory or category.

b. Best Available Technology Economically Achievable (BAT)—Section 304(b)(2) of the CWA. In general, BAT effluent limitations guidelines are based on the degree of pollution control achievable by applying the best available technology economically achievable for facilities in the industrial subcategory or category. The CWA requires BAT for controlling the direct discharge of toxic and non-conventional pollutants. The factors considered in determining BAT for a category or subcategory include the age of the equipment and facilities involved, the process employed, potential process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and other factors the Administrator deems appropriate. EPA retains considerable discretion in assigning the weight to be accorded these factors. Generally, economic achievability is determined on the basis of total costs to the industrial subcategory and their effect on the overall industry's (or subcategory's) financial health. As with BPT, where existing performance is uniformly inadequate, BAT may be transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, such as product substitution, even when these technologies are not common industry practice. The CWA does not require cost-benefit comparison in establishing BAT.

c. Best Conventional Pollutant Control Technology (BCT)—Section 304(b)(4) of the CWA.

The 1977 amendments to the CWA established BCT as an additional level of control for discharges of conventional pollutants from point sources other than publicly owned treatment works. In addition to other factors specified in section 304(b)(4)(B), the CWA requires that BCT limitations be established in light of a two part "cost-reasonableness" test. EPA published a methodology for the development of BCT limitations which became effective August 22, 1986 (51 FR 24974, July 9, 1986).

Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demanding pollutants (measured as BOD_5), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501).

d. New Source Performance Standards (NSPS)—Section 306 of the CWA. NSPS reflect effluent reductions that are achievable based on the best available demonstrated control technology. New facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the most stringent controls attainable through the application of the best available control technology for all pollutants (i.e., conventional, nonconventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

e. Pretreatment Standards for Existing Sources (PSES)—Section 307(b) of the CWA—and Pretreatment Standards for New Sources (PSNS)—section 307(b) of the CWA. Pretreatment standards are designed to prevent the discharge of pollutants to a publicly-owned treatment works (POTW) which pass through, interfere, or are otherwise incompatible with the operation of the POTW. Since none of the facilities to which this rule applies discharge to a POTW, pretreatment standards are not being considered as part of this rulemaking.

f. CWA Section 304(m) Requirements. Section 304(m) of the CWA, added by the Water Quality Act of 1987, requires EPA to establish schedules for (1) reviewing and revising existing effluent limitations guidelines and standards and (2) promulgating new effluent guidelines. On January 2, 1990 (55 FR 80), EPA published an Effluent Guidelines Plan, which established schedules for developing new and revised effluent guidelines for several industry categories. The Natural Resources Defense Council, Inc., challenged the Effluent Guidelines Plan in a suit filed in the U.S. District Court for the District of Columbia (*NRDC* v. *Browner*, Civ. No. 89–2980). On January 31, 1992, the Court entered a consent decree (the "304(m) Decree"), which established schedules for EPA's proposal and promulgation of effluent guidelines for a number of point source categories. The most recent Effluent Guidelines Plan was published in the **Federal Register** on September 4, 1998 (63 FR 47285). This plan required, among other things, that EPA propose the Coal Mining Guidelines by December 1999 and promulgate the Guidelines by December 2001. On November 19, 1999, the court modified the decree revising the deadline for proposal to March 31, 2000. The deadline of December 2001 for promulgation of these guidelines was not modified.

2. Pollution Prevention Act

The Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101 *et seq.*, Pub. L. 101–508, November 5, 1990) "declares it to be the national policy of the United States that pollution should be prevented or reduced whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or release into the environment should be employed only as a last resort * * *" (Sec. 6602; 42 U.S.C. 13101(b)). In short, preventing pollution before it is created is preferable to trying to manage, treat or dispose of it after it is created.

The PPA directs EPA to, among other things, "review regulations of the EPA prior and subsequent to their proposal to determine their effect on source reduction" (Sec. 6604; 42 U.S.C. 13103(b)(2)). Source reduction reduces the generation and release of hazardous substances, pollutants, wastes, contaminants, or residuals at the source, usually within a process. The term source reduction "includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training or inventory control. * * * The term "source reduction" does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to or necessary for the production of a product or the providing of a service" (42 U.S.C. 13102(5)). In effect, source reduction means reducing the amount of a pollutant that enters a waste stream or that is otherwise released into the environment prior to out-of-process recycling, treatment, or disposal.

In this proposed rule, EPA encourages pollution prevention by requiring the use of site-specific Best Management Practices (BMPs) that are integral to remining operations in abandoned mine lands and to reclamation activities in the arid and semiarid western coal regions. These BMPs, under each subcategory, are designed and implemented to improve existing conditions and to reduce pollutant discharges at the source, thereby reducing the need for treatment.

B. Current Requirements for the Coal Mining Point Source Category

1. EPA Regulations at 40 CFR Part 434

On October 9, 1985 (50 FR 41296), EPA promulgated effluent limitations guidelines and standards that are in effect today under 40 CFR part 434. Currently, there are four subcategories: Coal Preparation Plants and Coal Preparation Plant Associated Areas; Acid or Ferruginous Mine Drainage; Alkaline Mine Drainage; and Post-Mining Areas. Additionally, there is a subpart for Miscellaneous Provisions. The subcategories include BPT, BAT, and NSPS limitations for TSS, pH, iron, manganese, and/or settleable solids (SS).

2. Surface Mining Control and Reclamation Act

In 1977, Congress enacted the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. 1201 *et seq.*, to address the environmental problems associated with coal mining on a nationwide basis. SMCRA created the Office of Surface Mining Reclamation and Enforcement (OSM) within the Department of Interior, which is responsible for preparing regulations and assisting the States financially and technically to carry out regulatory activities.

Title V of the statute gives OSM broad authority to regulate specific management practices before, during, and after mining operations. OSM has promulgated comprehensive regulations to control both surface coal mining and the surface effects of underground coal mining (30 CFR parts 700 *et seq*). Implementation of these requirements has significantly improved mining practices, control of water pollution, and protection of other resources. Title IV of SMCRA addresses the problem of presently abandoned coal mines by authorizing and funding abandoned mine reclamation projects.

All mining operations subject to today's proposal must also comply with SMCRA requirements. EPA has worked extensively with OSM in the preparation of this proposal in order to ensure that the requirements proposed today are consistent with OSM requirements.

3. Rahall Amendment

As part of 1987 amendments to the CWA, Congress added section 301(p), often called the Rahall Amendment, to provide incentives for remining abandoned mine lands that pre-date the passage of SMCRA in 1977. Section 301(p) provides an exemption for remining operations from the BAT effluent limits for iron, manganese, and pH for pre-existing discharges from abandoned mine lands. Instead, a permit writer may set site-specific, numerical BAT limits for pre-existing discharges determined based on Best Professional Judgement (BPJ). The permit effluent limits may not allow discharges to exceed pre-existing "baseline" levels of iron, manganese, and pH. In addition, the permit applicant must demonstrate that the remining operation "will result in the potential for improved water quality from the remining operation." The Rahall Amendment defines remining as "a coal mining operation which began after February 4, 1987 at a site on which coal mining was conducted before August 3, 1977," which was the effective date of the Surface Mining Control and Reclamation Act. Thus, the Rahall Amendment attempted to encourage remining by allowing operators not to treat degraded pre-existing discharges to the levels set in EPA's current effluent limitations guidelines for coal mining.

Despite the statutory authority provided by the Rahall Amendment, coal mining companies and most States remain hesitant to pursue remining without formal EPA approval and guidelines. Today's Document proposes to establish requirements for determining baseline pollutant loadings in pre-existing discharges. It also proposes to specify how to determine site-specific BAT requirements for remining operations and how to demonstrate the potential for environmental improvement from a remining operation.

4. Clean Water Action Plan

On October 18, 1997, the 25th anniversary of the enactment of the Clean Water Act, Vice President Gore called for a renewed effort to restore and protect water quality. EPA and other Federal agencies were directed to develop a Clean Water Action Plan (CWAP) that would continue to provide clean water successes and would address three major goals: (1) Enhanced protection from public health threats caused by water pollution; (2) more effective control of polluted runoff; and (3) promotion of water quality protection on a watershed basis.

Based on the efforts of interagency work groups and comments from the public, EPA and other Federal agencies developed the final CWAP on February 14, 1998. One of several Key Actions specifically identified to implement the goals of the CWAP was EPA's project to re-examine 40 CFR part 434 to "better address coal mining in arid western areas" and "to address coal remining operations."

III. Scope of Proposal

Today, EPA is proposing effluent limitations and performance standards for the Coal Remining Subcategory and for the Western Alkaline Coal Mining Subcategory. The new subcategories will be added to the existing regulations for the Coal Mining Point Source Category found in 40 CFR part 434. The new subcategories will create a set of standards and requirements for the specific waste streams defined in today's proposal.

The existing provisions will continue to apply to discharges produced or generated in active mining areas, which include the active mining areas of remining operations. Section 434.11(b) defines active mining area as "the area, on and beneath land, used or disturbed in activity related to the extraction, removal, or recovery of coal from its natural deposits. This term excludes coal preparation plants, coal preparation plant associated areas and post-mining areas." Wastewater discharges produced or generated by active coal mining operations will not be affected by this proposed regulation and will remain subject to the effluent limitations already established in part 434.

Additionally, in accordance with section 434.61, any waste stream subject to this proposed rule that is commingled with a waste stream subject to another subpart of part 434 will be required to meet the most stringent limitations applicable to any component of the combined waste stream. EPA's proposed regulatory text simply maintains the current regulatory approach on this issue.

A. Coal Remining Subcategory

The effluent limitations and standards proposed for the Coal Remining Subcategory apply to pre-existing discharges that are located within areas of a coal remining operation and that are not commingled with waste streams from active mining areas. Coal remining is the mining of surface mine lands, underground mine lands, and coal refuse piles that were abandoned prior to August 3, 1977.

EPA's rationale for the proposed Remining Subcategory is discussed in Section VI.

B. Western Alkaline Coal Mining Subcategory

The effluent limitations and performance standards for the Western Alkaline Coal Mining Subcategory apply to alkaline mine drainage from

reclamation areas associated with western coal mining operations.

"Alkaline mine drainage" is defined in the existing regulations as "mine drainage which, before any treatment, has a pH equal to or greater than 6.0 and total iron concentration of less than 10 mg/L." 40 CFR 434.11(c). "Reclamation area" is defined in the existing regulations as "the surface area of a coal mine which has been returned to required contour and on which revegetation (specifically, seeding or planting) work has commenced." 40 CFR 434.11(l). EPA is not proposing to make any changes to these existing definitions.

EPA is proposing to define a "western coal mining operation" in arid or semiarid areas as a surface or underground coal mining operation located in the interior western United States, west of the 100th meridian west longitude, in an arid or semiarid environment with an average annual precipitation of 26.0 inches or less. This definition is consistent with the way OSM currently identifies and addresses western coal mining operations (see 30 CFR 701.5 and 30 CFR 816.116) and with SMCRA's provisions with respect to arid and semiarid lands (i.e., extended liability time frames for areas with less than 26 inches of annual precipitation, protection of the alluvial valley floors found in the western environments, and recognition of geological, hydrological and ecological differences found in arid and semiarid environments).

EPA discusses the rationale for the proposed Western Alkaline Coal Mining Subcategory in Section VI.

IV. Industry Profile

A. Coal Mining Industry

The United States is divided into three major coal producing regions termed the Appalachian, Interior, and Western regions. The States included in each are as follows:

- Western Coal Region—Alaska, Arizona, California, Colorado, Montana, New Mexico, North Dakota, Utah, Washington, and Wyoming;
- Appalachian Coal Region—Alabama, Georgia, Eastern Kentucky, Maryland, Ohio, Pennsylvania, Tennessee, Virginia and West Virginia; and
- Interior Coal Region—Arkansas, Illinois, Iowa, Kansas, Western Kentucky, Louisiana, Missouri, Oklahoma, and Texas.

Historically, the Appalachian Region has been the Nation's most important source of coal, accounting for about three-fourths of the total annual production as recently as 1970. In 1970, most of the coal produced domestically was mined east of the Mississippi River (567.8 million tons east of the Mississippi River, compared to 44.9 million tons west of the Mississippi River). Appalachian coals are predominantly bituminous, with a high Btu content and a wide range of sulfur content. Coal in this Region generally occurs in beds that tend to be less than 15 feet thick.

There are two distinct coal-producing areas in the Interior Region. The Illinois Basin, which includes most of Illinois, parts of Indiana and western Kentucky, produces high Btu bituminous coal with medium to high sulfur content. The second major coal producing area in this Region consists of the lignite fields within the Coastal Plain along the Gulf of Mexico.

The Western Coal Region contains extensive deposits of sub-bituminous, low sulfur-content coal. This coal occurs in thick coal seams and shallow overburden conditions that enable the extraction of large volumes at relatively low cost. Consequently, these coal resources represent a highly competitive fuel in the power generation market based on chemical qualities and cost per kilowatt-hour.

Production from U.S. surface coal mines has increased by more than 90 percent since 1970, and there have been dramatic changes in the domestic production of coal due to environmental concerns and market demands. Environmental laws have increased government regulation of the industry. In addition, the Clean Air Act emission requirements to reduce acid rain have shifted market demand to lower sulfur content fuel sources. With this change in the coal market, coal production in the west has increased, and is now nearly equal to that in the Appalachian region (Energy Information Administration, Coal Industry Annual, 1997). In 1970, the Appalachian Region produced a total of 427.6 million tons. The Interior Region total production was 149.9 million tons. By comparison, in 1970, the Western Region produced only 35.1 million tons. By 1993, the market share of production from eastern coal mines had dropped to 55 percent (516.2 million tons), while western mine output had increased to 45 percent (429.2 million tons).

In 1997 the United States produced 1.09 billion short tons of coal, with the Appalachian Region producing approximately 468 million short tons, the Interior Region producing approximately 172 million short tons and the Western Region producing approximately 451 million short tons. While domestic coal production has increased since 1970, fewer operating mines exist today. In 1991, the number of mines producing coal was less than half the number in 1976 (e.g., 6,553 mines in 1976 compared to 3,022 mines in 1991). Coal-fired electric power generating plants are the largest single source of domestically produced primary energy.

B. Coal Remining Subcategory

Coal mining in the eastern United States has been an important industry for several centuries. The lack of adequate environmental controls, until recently, has produced hundreds of thousands of acres of abandoned mine land. Prior to passage of SMCRA in 1977, reclamation of coal mining sites was not a Federal requirement, and drainage from these abandoned mine lands has become the number one water quality problem in Appalachia.

Based on information supplied by the Interstate Mining Compact Commission (IMCC) and OSM's Abandoned Mine Land Inventory System (AMLIS), EPA estimates there currently are over 1.1 million acres of abandoned coal mine lands in the United States. These have produced over 9,709 miles of streams polluted by acid mine drainage. In addition, there are over 18,000 miles of abandoned highwalls, 16,326 acres of dangerous piles and embankments, and 874 dangerous impoundments. Of the land disturbed by coal mining between 1930 and 1971, only 30 percent has been reclaimed to acceptable levels. Several States have indicated that acid mine drainage from abandoned coal mine land is their most serious water pollution problem.

Streams that are impacted by acid mine drainage characteristically have low pH levels (less than 6.0 standard units) and contain high concentrations of sulfate, acidity, dissolved iron and other metals. These conditions commonly will not support fish or other aquatic life. The flows from abandoned mine lands can range from unmeasurable to huge torrents of thousands of gallons per minute. Ninety percent of acid mine drainage comes from coal mines (mostly underground mines) that were abandoned prior to the enactment of SMCRA. Many of the streams impacted by acid mine drainage could be resources for drinking water and the propagation and maintenance of aquatic life, and could support water-based recreation if they were remediated. Their restoration also would contribute to the enhancement of regional economies in areas that have been socio-economically disadvantaged for decades.

Development of modern surface-mining techniques has allowed for more efficient removal of coal deposits and more effective implementation of BMPs that provide pollution abatement and remediation. Consequently, mining is now feasible in areas where mining was previously uneconomical.

More than ten years of remining under the requirements of the Rahall Amendment have demonstrated success in improving abandoned mine land and acid mine drainage. IMCC member States have estimated that there are currently 150 mining companies in ten States involved in remining operations (under either Rahall-type permits or current 40 CFR part 434 limitations) or in operations affecting abandoned mine lands. These companies are producing at least 25 million tons of coal annually, and are employing approximately 3,000 people. To date, approximately 1,072 permits that include coal remining operations have been issued. Of these 1,072 permits, 330 (31 percent) are Rahall-type permits where the operator is required to meet a determined baseline limit for pre-existing discharges. Approximately 300 of these Rahall-type permits are in Pennsylvania alone. Of the 1,072 remining permits, 742 (69 percent) are non-Rahall permits where all discharges must meet current effluent limitations. These permits have tended to be issued at sites where the effects of acid mine drainage are not as significant. Remining operations are affecting approximately 270 abandoned coal refuse piles; 1,600 abandoned surface mines; and 1,100 abandoned underground mines. Information provided by IMCC indicates that there are approximately 2,100 coal refuse piles; 2,000 abandoned surface mines (plus 228,000 acres); and over 8,000 abandoned underground mines that have the potential for remining. Information provided by IMCC is discussed in the Coal Remining BMP Guidance Manual and is included in Section 7.0 of the Rulemaking Record.

Many States have not been able to establish the guidelines and procedures required to issue Rahall permits. However, IMCC member States have indicated that they would be able to establish formal remining programs under guidelines set forth under an EPA effluent limitation Coal Remining subcategory. With the establishment of State remining programs, mine operators would be more inclined to enter into remining projects as discussed in Section VI.

C. Western Alkaline Coal Mining Subcategory

EPA is proposing to address western alkaline mines which would be defined as mines that are (1) west of the 100th meridian, (2) have annual precipitation of 26 inches or less, (3) are in an arid or semiarid environment, and (4) produce alkaline mine drainage. Western coal producing States qualifying are: Arizona, Colorado, Utah, Montana, New Mexico, Wyoming, and all coal fields in North Dakota located west of the 100th meridian.

Coal mining operations in arid and semiarid western regions operate under environmental conditions that are significantly different from those in other regions of the United States. Western arid and semiarid areas are naturally unstable with highly eroded landscapes that are created by flash flood runoff transporting large volumes of sediment. Water resources are severely limited and highly valuable. Specific differences include:

- Precipitation—Annual precipitation averages 26 inches or less, with about one-half occurring as snowfall and one-half as rainfall. The average annual precipitation received by relevant western coal-producing States are: Arizona—13 inches; Colorado—16 inches; Montana—15 inches; New Mexico—13 inches; and Wyoming—13 inches. Rainfall is commonly received during localized, high-intensity, short-duration thunderstorms.
- Temperature—Temperatures fluctuate over wide daily ranges of 30° to 50°F and extreme seasonal ranges (−40° to 115°F). These temperature fluctuations contribute to the physical weathering of surface materials.
- Solar intensity—Solar energy is high and humidity is characteristically very low. As a result, evapotranspiration normally exceeds precipitation. Water infiltration and retention in soil is limited, which results in severe soil moisture deficits, extremely limited surface water resources, and poor vegetative growth.
- Erosion—Natural soils tend to be erosion prone and soil-forming materials frequently erode faster than they are formed. Soil that does form can be poorly developed with low organic matter and limited plant nutrient content. Soil moisture content is low and precipitation easily mobilizes sediment.
- Hydrology—Drainage systems are composed primarily of dry washes and arroyos. These drainage features provide an unlimited source of sediment that may be mobilized by flash flooding. For approximately eleven months per year, the washes and arroyos are dry, flowing only in response to precipitation runoff. Runoff is frequently characterized by high volume, high velocity, sediment laden, turbulent flows with tremendous kinetic energy. Flows can be expected to contain sediment concentrations ranging upwards to 500,000 mg/L during flash flood runoff events.
- Vegetation—Areas are characterized by discontinuous and sparsely distributed grasses, shrubs and trees. The major vegetation types are desert grass and brush, and open forests with pinyon-juniper and ponderosa pine.

EPA has identified 46 surface coal mines in the western region that potentially will be affected by this proposed rule (two percent of the total number of coal mines in the United States). These mines produce approximately one-third of the total annual U.S. coal production.

V. Summary of Data Collection Activities

A. Expedited Guidelines Approach

EPA is developing this regulation using an expedited rulemaking process. This process relies on stakeholder support to develop the initial technology and regulatory options. At various stages of information gathering, OSM, States, Tribes, industry, EPA and other stakeholders have presented and discussed their preferred options and identified differences in opinion. EPA developed this proposal more quickly than a typical effluent guidelines proposal, and the proposal contains less information than EPA usually provides for effluent guidelines. EPA expects to identify any gaps and gather additional information through the public comment process.

EPA encourages full public participation in developing the final Coal Remining and Western Alkaline Coal Mining Guidelines. This expedited rulemaking process relies more on open communication between EPA, the regulated community, and other stakeholders, and less on formal data and information gathering mechanisms. The expedited guidelines approach is suitable when EPA, States, industry, and other stakeholders have a common goal in regards to the purpose of the effluent guidelines. EPA believes this is the case with the Coal Remining and Western Alkaline Coal Mining rulemaking. EPA is proposing to allow site-specific effluent limits for pre-existing discharges at remining operations and alternative sediment control technologies at western alkaline mine reclamation operations. EPA believes that this rule will provide

better environmental results than the current requirements. EPA welcomes comment on all options and issues and encourages commenters to submit additional data during the comment period. EPA also is willing to meet with interested parties during the comment period to ensure that EPA considers the views of all stakeholders and the best possible data upon which to base a decision for the final regulation.

As part of the expedited approach to this rulemaking, EPA has chosen not to gather data using the time consuming approach of a Clean Water Act Section 308 questionnaire. Rather, EPA is using data voluntarily submitted by industry, permitting authorities, vendors, academia, and others, along with data EPA can develop in a limited period of time. Because all of the facilities affected by this proposal are direct dischargers, EPA did not conduct an outreach survey to POTWs.

Throughout regulatory development, EPA has worked with representatives from the U.S. Office of Surface Mining Reclamation and Enforcement, the Interstate Mining Compact Commission, State regulatory authorities, the Western Interstate Energy Board (WIEB), the National Mining Association (NMA), the coal mining industry, and research organizations to submit data and develop effluent limitations guidelines and standards that represent the appropriate level of technology (e.g., BAT, BCT, BPT, and NSPS).

EPA plans to continue its data gathering efforts for support of the final rule. EPA may publish a subsequent document of data availability for data either generated by EPA or submitted after this proposal and used by EPA to develop the final rule.

Databases and reports containing the information and data provided and used by EPA in support of this rule proposal are available in the Rulemaking Record. The following summarizes the data EPA has collected in support of this proposal.

B. Coal Remining Data Collection Activities

Following promulgation of the final effluent limitation guidelines for the Coal Mining industry in 1985, EPA began working with the Pennsylvania Department of Environmental Resources (now the Pennsylvania Department of Environmental Protection or "PADEP"), the Office of Surface Mining (now the Office of Surface Mining Reclamation and Enforcement or "OSM") and various stakeholders to address the remining issue.

In 1988, EPA, PADEP, Pennsylvania State University, and Kohlmann Ruggiero Engineers developed a computer software package (Coal Remining Best Professional Judgement Analysis, Record Section 3.2.6) to enable best professional judgement (BPJ) analyses for remining operations. The software includes a Surface Mine Materials Handling and Cost Module, a Baseline Pollution Load Statistics Module, and a Water Treatment Cost Calculation Module. It has been used by the Commonwealths of Pennsylvania and Virginia to prepare NPDES Coal Remining Permits. The software is designed to:

- Input and revise pre-existing pollution discharge data;
- Calculate baseline pollution loads and perform additional statistical analyses on pre- and post-mining discharge data;
- Calculate capital and annual wastewater treatment cost;
- Input and revise mining plans;
- Simulate mining operations for a production rate and the associated mining costs;
- Compare mining plans and costs with and without abatement plans and evaluate abatement procedures; and
- Calculate relative mining costs with and without wastewater treatment costs added.

Pennsylvania DEP provided EPA with 41 remining permit application modules submitted by Pennsylvania remining operations. These modules are included in the Record at Section 3.2.4, and are titled Module 26: Remining of Areas with Pre-existing Pollutional Discharges. The modules follow the BPJ analyses provided in the EPA and PADEP Coal Remining—Best Professional Judgement Analysis ("REMINE") User's Manual and Software Package. Eleven of these modules were submitted to EPA as part of data packages demonstrating BMP implementation at remining sites. The remaining 30 modules (ten modules from each of three Bureau Mining Offices) were submitted to EPA as representative of approximately 10 percent of Pennsylvania's Rahall permit operations to date. The modules include the following information:

- Abandoned mine land and mine drainage quantities and descriptions;
- Baseline pollution load summaries;
- Detailed descriptions of BMP abatement plans and descriptions of how they are expected to reduce baseline pollution loadings and improve environmental conditions;
- Detailed calculations including materials costs and handling costs for each step of the abatement plan;
- Detailed calculations of construction, operation, and maintenance costs for treatment of pre-existing discharges to current effluent limits; and
- Anticipated pollution reduction benefit resulting from implementation of the abatement plan, including impacts on discharge quality and quantity.

EPA reviewed information provided in these permit modules that compared the cost of treating pre-existing discharges to existing effluent limitations verses the implementation of site-specific BMP plans with the potential to improve baseline pollution loading. This cost comparison portion of Module 26 was completed in 40 of 41 respondents. In all 40 cases, remining was considered not economically feasible if treatment of pre-existing discharges to current effluent limits was required. In the same 40 cases, remining was economically feasible if the abatement plan was implemented as proposed.

In 1996, IMCC, EPA, and OSM formed a Remining Task Force and expanded investigations of opportunities to encourage remining of abandoned coal mines consistent with the requirements of SMCRA and the CWA. In February 1998, IMCC, EPA and OSM released a discussion paper entitled "Water Quality Issues Related to Coal Remining" that is included in the Rulemaking Record at Section 8.1. The paper provided an overview of current discussions between State and Federal agencies regarding water quality issues and concerns pertaining to coal remining operations. The paper focused on opportunities to encourage remining through adjustments to the current regulatory regime while assuring adequate protection of surface and ground water quality. The paper also presented several approaches for providing remining incentives, including the use of effluent limits set at baseline discharge levels for pre-existing discharges. IMCC collected written comments from environmental groups, industry, Federal agencies, and State agencies. The comments generally supported and recognized the value of remining, although commenters expressed some differences of opinion regarding regulatory approaches.

As discussed in Section VI, the discussion paper also presented an alternative BMP-based remining permit approach in which the permit focuses on implementation of BMPs, and does not include numerical limits for pre-existing discharges. Some commenters were concerned that reliance on the implementation of BMPs in lieu of numeric limitations could result in backsliding from existing requirements.

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The Remining Task Force believes that BMPs can result in improved water quality and, in certain cases, can qualify as BAT for achieving standards required by the Clean Water Act.

To support this rulemaking, the IMCC submitted data and information specific to abandoned mine lands on pre-existing discharge water quality, BMP implementation, and remining activities in the eastern coal regions. IMCC member States and State regulatory authorities provided sixty-one data packages from Alabama, Kentucky, Pennsylvania, Tennessee, Virginia and West Virginia that include the following data and information:

- Remining permit applications and approved remining permits;
- Abandoned mine land reclamation project plans and results;
- Descriptions of abandoned mine conditions and extent of abandoned mine land;
- BMP implementation plans targeting pre-existing discharges and abandoned mine land;
- Site geology and overburden analysis data;
- Water quality data (surface water, ground water, and pre-existing discharges);
- Best professional judgement analysis of treatment and BMP implementation plans;
- Topographic maps indicating permit areas, active mining areas, pre-existing conditions, and water quality monitoring points;
- Mining operation plans; and
- Unit costs of best management practices.

EPA assessed portions of these data to determine the types and effectiveness of remining operations, abandoned mine land reclamation projects, and BMP implementation procedures that have occurred throughout the affected coal regions. EPA evaluated data packages from closed remining operations as case studies of the effectiveness of BMPs and of remining in terms of improving pre-existing water quality and non-water quality environmental conditions. Detailed case studies are provided in each section of the Coal Remining Best Management Practices Guidance Manual. Information and data provided in these data packages were compiled into a Coal Remining Database that is included in the Rulemaking Record at Section 3.5.1.

On September 3, 1998, IMCC distributed a Solicitation Sheet to States to collect information regarding the extent of existing abandoned mine land, characteristics of current remining operations, type and extent of BMP implementation, remining industry production and employment statistics, and potential for remining operations. Twenty States responded and IMCC submitted the responses to EPA. EPA used this information to develop a profile of the remining industry, estimate the potential for remining activity, and provide an indication of the types and efficiencies of BMPs currently being implemented during remining operations. State responses are included in the Rulemaking Record at Section 3.2.2. A detailed summary of these responses is provided in the Coal Remining BMP Guidance Manual, Appendix C.

In support of BMP implementation evaluation, PADEP provided EPA with a database containing summary pre- and post-mining water quality data and the associated BMPs for 112 closed remining sites throughout the bituminous coal regions of Pennsylvania (Record Section 3.2.3). EPA believes these are the most extensive data currently available for assessment of the water quality impacts of BMP implementation at remining operations. Data from 231 pre-existing discharges affected by BMPs at these closed sites were used to assess the efficiencies of remining BMPs in terms of water quality improvement. The data often demonstrate improvement in, or elimination of, the pollution loadings of acidity, iron, manganese, sulfate, and aluminum, and are presented in Appendix B of the Coal Remining BMP Guidance Manual. Detailed results of this assessment are presented in Section 6 of the Coal Remining BMP Guidance Manual.

C. Western Alkaline Coal Mining Data Collection Activities

In developing the portion of this proposal related to western mines, EPA has worked with a Western Coal Mining Work Group composed of representatives from OSM, the Western Interstate Energy Board (WIEB), State regulatory authorities, the National Mining Association (NMA), and other industry stakeholders to identify, compile and analyze existing information and data.

This work group has supplied EPA with data and information to support the development of new sediment control requirements relying on BMPs for surface reclamation activities in Western Alkaline coal mines. NMA supplied EPA with a number of reports supporting the need for, and feasibility of, establishing a separate Western Alkaline Coal Mining Subcategory. The reports include the following information and supporting data:

- Performance evaluation studies to determine the effectiveness of sediment control BMPs implemented at sites with environmental conditions similar to those of the arid and semiarid western coal region;
- In-stream monitoring programs evaluating background sediment;
- Site-specific sediment control plans targeting arid and semiarid western watersheds;
- Cost evaluations of BMP implementation and treatment requirements; and
- Case studies of mine sites in Arizona, New Mexico, and Wyoming.

The work group also supplied EPA with a mine modeling study sponsored by the National Mining Association and reviewed by OSM. The study compared the predicted performance, costs and benefits of current 40 CFR part 434 Guidelines to the requirements proposed for this rulemaking for a representative model mine in the arid western coal region. Characterization of background water quality, soil loss rates, and sediment yield were predicted using computer models for both pre-mining (undisturbed) and post-mining (reclamation) conditions. The study estimated that the cost of compliance with the proposed subcategory requirements for a typical western surface coal mine will be less than the cost of meeting the existing 40 CFR part 434 guidelines. Details of this study are included in Section 3.3 of the Rulemaking Record and are summarized in the Development Document for Proposed Effluent Limitations Guidelines and Standards for the Western Alkaline Coal Mining Subcategory.

EPA identified, compiled, and analyzed additional sources of existing information and data during the development of this proposed rule including:

- Final NPDES Storm Water Multi-Sector General Permit for Industrial Activities, 60 FR 50804, September 29, 1995. This document includes a section on storm water discharges from inactive coal mines and selected areas within active coal mines, and presents an overview and descriptions of applicable BMPs;
- Sediment control guidelines from State regulatory programs (Wyoming DEQ, Land Quality Division, Guideline No. 15; New Mexico's 19 NMAC 8.2 Subpart 20, Section 2009);
- Performance evaluations demonstrating effectiveness of BMPs (Water Engineering & Technology Studies); and
- Computer-based, predictive soil loss models developed by government,

academia, and industry to model and assess erosion, soil loss, and sediment yields from disturbed lands; capable of determining effectiveness of BMPs on erosion control and sediment production prior to field use (SEDCAD 4.0; Revised Universal Soil Loss Equation (RUSLE); Erosion and Sediment Impacts (EASI) Model).

This information is included in Section 4.3 of the rulemaking record, and is discussed in the Development Document for Proposed Effluent Limitations Guidelines and Standards for the Western Alkaline Coal Mining Subcategory.

VI. Development of Proposed Effluent Limitations Guidelines

A. Coal Remining Subcategory

The effluent limitations and standards proposed for the Coal Remining Subcategory would apply to pre-existing discharges located in areas of a coal remining operation that are not commingled with waste streams from active mining areas.

As noted previously in Section III, coal remining is the mining of surface mine lands, underground mine lands, and coal refuse piles that were abandoned prior to the enactment of the Surface Mining Control and Reclamation Act on August 3, 1977. Acid mine drainage from abandoned coal mines is damaging a significant number of waterways in the Appalachian and mid-continent Coal Regions of the Eastern United States. Information gathered from the Interstate Mining Compact Commission (IMCC) and OSM's Abandoned Mine Land Inventory System (AMLIS) indicates there are over 1.1 million acres of abandoned coal mine lands and over 9,709 miles of streams polluted by acid mine drainage in Appalachia alone.

Acid mine drainage can result from abandoned surface and underground coal mines and coal refuse piles. If acid-forming minerals are present in significant quantities, exposure to air and water can result in the formation of acid mine drainage. At abandoned underground mines, large reservoirs of acid mine drainage can continue to be replenished by ground water movement through the mineral-bearing rocks, creating more acid mine drainage. Water from these "mine pools" seeps through the hillsides or flows freely from abandoned mine entries, enters streams, and deposits metal-rich precipitates downstream.

In 1977, Congress included a provision in SMCRA to establish a fund (the Abandoned Mine Land Program) to address abandoned mine lands, with the highest priority given to cleaning up sites that pose a threat to the health, safety, and general welfare of people. Of the $3.6 billion of high priority (Priority 1 and 2) coal related abandoned mine land (AML) problems in the AML Program inventory, $2.5 billion, or 69 percent, have yet to be funded and reclaimed. Current estimates indicate that ninety percent of the $1.9 billion coal related environmental (Priority 3) problems in the AML inventory have not been funded and reclaimed (OSM Abandoned Mine Land Program, 1999). Although progress has been made in cleaning up abandoned sites, the funds released have not been sufficient to correct the majority of the environmental and safety problems associated with the large numbers of abandoned mine land sites.

EPA recognizes that one of the most successful means for improvement of abandoned mine land is for coal mining companies to remine abandoned areas and extract the coal reserves that remain. EPA also recognizes that if abandoned mine lands are ignored during coal mining of adjacent areas, a time-critical opportunity for reclaiming the abandoned mine land is lost. Once coal mining operations have ceased on the adjacent areas, there is little incentive for operators to return.

During remining operations, acid-forming materials are removed with the extraction of the coal, pollution abatement BMPs are implemented under applicable regulatory requirements, and the abandoned mine land is reclaimed. During remining, many of the problems associated with abandoned mine land, such as dangerous highwalls, vertical openings, and abandoned coal refuse piles can be corrected at no cost to OSM's Abandoned Mine Land Program. Furthermore, implementation of appropriate BMPs during remining operations can be effective at improving the water quality of pre-existing discharges. For example, implementation of appropriate BMPs during 112 remining operations in Pennsylvania was effective in improving or eliminating acidity loading in 45 percent of the pre-existing discharges, total iron loading in 44 percent of the discharges, and total manganese in 42 percent of the discharges. This improvement resulted in reduced annual pollutant loadings of up to 5.8 million pounds of acidity, 189,000 pounds of iron, 11,400 pounds of manganese, and 4.8 million pounds of sulfate. The environmental benefits associated with reclamation of abandoned mine lands are discussed further in Section IX of this document.

The current regulations at 40 CFR part 434 create a disincentive for remining because of their high compliance costs. Moreover, the potential of the statutory exemption contained in the Rahall Amendment to overcome this disincentive and derive the maximum environmental benefits from remining operations has not been fully realized in the absence of implementing regulations. If mining companies face substantial potential liability or economic loss from remining, they will continue to focus on mining virgin areas and ignore abandoned mine lands that may contain significant coal resources. Based on information collected in support of this proposal, EPA believes that remining operations are environmentally preferable to ignoring the coal resources in abandoned mine lands. EPA is soliciting comment on this conclusion, and on potential options that may be environmentally preferable to the new subcategory being proposed today.

As described in Section II of this document, Congress attempted to address the problems associated with acid mine drainage at abandoned mine lands by passing the Rahall Amendment to provide incentives to encourage coal remining. The Rahall Amendment (section 301(p)) allows permit writers to issue NPDES permits for remining sites with requirements less stringent than those in the existing regulations for some pollutant limits. Specifically, section 301(p) allows permit writers to use best professional judgement (BPJ) to set site-specific BAT limits determined for pre-existing discharges. These limits may not exceed baseline levels of iron, manganese, and pH. The operator must also demonstrate that the remining operation will result in the potential for improved water quality. The statute does not specify how to determine site-specific BAT, baseline pollutant discharge levels, or the potential for improved water quality and has left these up to each permitting authority to determine.

The statute does not allow site-specific limits for TSS. EPA also is not proposing alternative limitations for total suspended solids (TSS) or settleable solids (SS) in pre-existing discharges. EPA believes the current level of sediment control is necessary during surface disturbance operations to avoid sedimentation and erosion that can clog streams, increase the risk of flooding, impair land stability, and destroy aquatic habitats. Except for the alternate SS effluent limitations for 10-year, 24-hour precipitation events provided in 40 CFR 434.63, existing effluent limits for TSS and SS will

continue to apply to pre-existing discharges.

Since passage of the Rahall Amendment, seven States have established formal remining programs that have issued approximately 330 Rahall permits with numerical limits for pre-existing discharges that are less stringent than those in the existing regulations. Of these 330 Rahall Remining permits, approximately 300 were issued by the Commonwealth of Pennsylvania. Of the remaining thirty Rahall permits, ten were issued by Alabama, eight by West Virginia, four by Kentucky, three by Virginia, three by Ohio, and two by Maryland. Under these Rahall permits, remining operations must meet the alternate numeric limits specified in the permits and must implement site-specific BMPs. These BMPs include special handling of acid-producing materials, daylighting of abandoned underground mines, control of surface water and ground water, control of sediment, addition of alkaline material, and passive treatment. Remining operations currently underway have proven to be a viable means of remediating the environmental conditions associated with these abandoned mine lands without imposing a significant cost burden on industry (Skousen, Water Quality Changes and Costs of Remining in Pennsylvania and West Virginia, 1997).

A discussion paper released by IMCC, EPA and OSM in February 1998 (Discussion Paper on Water Quality Issues Related to Remining) and discussed further in Section V of this document, presented an alternative BMP-based remining permit approach where implementation of BMPs is the central focus of permitting. This alternative would not impose any numerical limits for pre-existing discharges, but only would require implementation of selected BMPs. The IMCC Remining Task Force believes that BMPs can result in improved water quality and, in certain cases, can qualify as BAT for achieving standards required by the Clean Water Act. EPA is considering conditions under which remining permits based solely on BMP implementation in lieu of numerical effluent limits may be appropriate. In addition, EPA recently accepted a Coal Remining and Reclamation Project XL proposal from the Pennsylvania Department of Environmental Protection. Once finalized, this pilot project is expected to provide a substantial amount of data about the feasibility of using the BMP-based remining permit approach in eight different watersheds throughout Pennsylvania. EPA does not currently have sufficient information on the environmental effectiveness and potential regulatory structure for such an approach, and is not including permits based solely on BMPs in today's proposal. EPA is soliciting additional comments and data supporting BMP-based remining permits and situations for which they may be appropriate.

Despite the statutory authority provided by the Rahall Amendment, coal mining companies and most States remain hesitant to pursue remining without formal EPA approval and guidelines. The Rahall Amendment requires application of the best available technology economically achievable on a case-by-case basis, using best professional judgment to set specific numerical effluent limitations in each permit. However, it does not provide guidelines for how to determine baseline pollutant loadings in pre-existing discharges. It also does not provide guidance on how to determine site-specific BAT requirements for a remining operation, or how to demonstrate the potential for environmental improvement from a remining operation. Without standardized procedures for developing effluent limits for pre-existing discharges, many States with extensive abandoned mine lands have not initiated formal remining programs.

EPA is today proposing a new remining subcategory with effluent limitation guidelines based on a combination of numeric limits and non-numeric BMP requirements. EPA is proposing a standardized procedure for determining pollutant loadings for baseline and compliance monitoring. This procedure is described in Appendix B of this proposed regulation. Example calculations using these procedures and further discussion of EPA's determination of these procedures are provied in the Coal Remining Statistical Support Document. EPA intends these proposed regulations to control pre-existing discharges at remining operations in a manner consistent with requirements under the Rahall Amendment. In effect, these proposed requirements are effluent limitation guidelines authorized under section 304(b) of the CWA, but are also implementing regulations for section 301(p), providing EPA's interpretation of unspecified aspects of that provision. Section 301(p) requires the permit to establish BAT on a case-by-case basis, using best professional judgment to set specific numerical effluent limitations for pH, iron, and manganese in each permit. The operator must demonstrate that the coal remining operation will result in the potential for improved water quality, and in no event may pH, iron, or manganese discharges exceed the levels discharged prior to the remining operation. No discharge from, or affected by, the remining operation may exceed State water quality standards. EPA solicits comments on the consistency of the proposal with the Rahall Amendment and existing State remining programs.

Under the proposed regulations, the permit would contain specific numeric and non-numeric requirements, constituting BPT and BAT. The numeric requirements would be established on a case-by-case basis in compliance with standardized requirements for statistical procedures and monitoring to establish baseline. The numeric effluent limitations set at baseline levels would ensure that in no event will the pollutant discharges exceed the discharges prior to remining, as required by section 301(p)(2). The stringency of the non-numeric permit provisions would be established using best professional judgement to evaluate the adequacy of the selected BMPs contained in a pollution abatement plan. The pollution abatement plan would demonstrate that the remining operation will result in the potential for improved water quality, as also required by section 301(p)(2). Together, the numeric and non-numeric requirements would constitute BPT and BAT.

EPA is proposing to require operators to use BMPs by proposing that remining operators must develop and implement a site-specific pollution abatement plan for each remining site. EPA is proposing that the pollution abatement plan must identify the characteristics of the remining area and the pre-existing discharges at the site; identify design specifications for selected best management practices; and include periodic inspection and maintenance schedules. The pollution abatement plan must demonstrate that there is a potential for water quality improvement, as required by the Rahall Amendment.

EPA is also proposing that this pollution abatement plan must be developed for the entire "pollution abatement area." By applying the pollution abatement plan to the entire pollution abatement area, the proposed Remining Subcategory effluent limitations would cover all pre-existing discharges that are hydrologically connected to the active mining area, but that are not commingled with active mining discharges. EPA is proposing to define the "pollution abatement area" as the part of the permit area that is causing or contributing to the baseline pollution load, including areas that

would need to be affected to reduce the pollution load. This is similar to the definition used by Pennsylvania's remining program in Pennsylvania's Chapter 87, Subchapter F Surface Mining Regulations (Record Section 1.3). The success of the abatement plan is premised on a hydrological connection between the pollution abatement area and the baseline pollutant load. If there is no hydrologic connection between the pre-existing discharge and the operator's remining and reclamation efforts, there can be no water quality improvement. For further information on this rationale see The Preliminary Engineering Cost Manual for Development of BPJ Analysis, 1986, Kohlmann Ruggiero for PA DER and EPA. EPA is providing a supporting document, the Coal Remining Best Management Practices Guidance Manual to assist industry and permit writers in the development and implementation of the pollution abatement plan.

EPA is soliciting comment on the definition of pollution abatement area. EPA is also soliciting comment on any additional requirements for the pollution abatement plan that would ensure the proper use, design and implementation of BMPs.

In many cases, EPA believes that the requirements for the pollution abatement plan will be satisfied by an approved SMCRA plan. However, EPA or the State NPDES permitting authority will review the plan and will retain the authority to recommend additional or incremental BMPs as necessary to ensure that implementation of the identified BMPs is consistent with Clean Water Act requirements.

EPA is proposing regulatory text to make it clear that the requirements of this subcategory apply only to pre-existing discharges that are not commingled with waste streams from active mining areas. This will ensure that all mine drainage produced by the active mining operation is treated to meet existing part 434 guidelines. Any wastewater that is commingled with active mining wastewater would be subject to the most stringent limitations applicable to any component of the wastestream. This maintains the current regulatory approach expressed in section 434.61, that in cases where wastestreams subject to two different effluent limits are commingled, the combined discharge is subject to the more stringent limitation.

During remining, it may be necessary or even preferable for an operator to intercept and/or commingle a pre-existing discharge with active mining wastewater. This wastewater would then be required to meet the more stringent applicable limitations for active coal mining operations and would not be covered by the conditions of the proposed Coal Remining Subcategory. However, that pre-existing discharge may not be eliminated by the remining activity and may remain after remining in the area has been completed. In this instance the pre-existing discharge would no longer be commingled with active mining wastewater. EPA is proposing that a discharge that is no longer being commingled would become subject to the Coal Remining Subcategory requirements which bar an increase in pollutant loadings from baseline conditions.

EPA does not believe that a pre-existing discharge that has been intercepted or commingled should have to continue to meet the more stringent effluent limitations applicable to active mining operations after this activity has been completed. If EPA were to require that pre-existing discharges that are commingled with wastewater remain subject to effluent limitations designed for active mining operations once interception or commingling has ceased, EPA believes it would create a significant disincentive for remining activities. Based on anecdotal and historical evidence of current mining activities, mining companies may try to avoid intercepting pre-existing discharges because they do not want to assume the liability for future treatment of discharges that were not the result of their mining operations. This can result in a "donut hole" in the permitted area, to which BMPs are not applied and from which pre-existing acid mine drainage continues to be discharged. In many cases, EPA believes that the most environmentally beneficial approach would be for the coal operation to physically intercept this pre-existing discharge, treat the discharge to current standards during active mining and reclamation, implement BMPs, and then allow the pre-existing discharge to continue discharging at or below baseline pollutant levels. This approach is consistent with the way Pennsylvania has been implementing the Rahall provisions. Another option for a remining operator would be to divert the discharge stream away from the active mining area. In this case, the pre-existing discharge that has been diverted would be subject to the proposed subcategory effluent limitations, and the mine operator would have to implement BMPs and demonstrate that the pollutant loadings of the diverted discharge stream have not been increased.

These proposed limitations and standards would apply to coal remining operators under new remining permits. EPA is considering coverage of existing remining operations with Rahall-type permits and established BPJ limitations. EPA is also considering situations where coal remining operations seek reissuance of an existing remining permit. In both cases, EPA believes that it may not be feasible for a remining operator to re-establish baseline pollutant levels during active remining. Therefore, EPA is considering an alternative where pre-existing discharges at these operations would remain subject to baseline pollutant levels established during the original permit application. EPA is soliciting comment on the applicability of the proposed Coal Remining Subcategory in regard to both cases.

EPA expects this new subcategory to provide further incentives for industry to remine abandoned mine lands, which will result in reclamation of abandoned mine lands that would otherwise remain unreclaimed and hazardous. EPA solicits comment on the potential for improving hazardous conditions and improving acid mine drainage based on implementation of this subcategory. EPA also solicits comment on the proposed applicability of the remining subcategory as it relates to intercepted pre-existing discharges.

1. BPT for the Coal Remining Subcategory

EPA today proposes BPT effluent limitations for the Coal Remining Subcategory to control identified conventional, toxic, and non-conventional pollutants. For further information on the basis for the limitations and technologies selected, see the Coal Remining BMP Guidance Manual.

As previously described in Section II, section 304(b)(1)(A) of the CWA requires EPA to identify effluent reductions attainable through the application of "best practicable control technology currently available for classes and categories of point sources." Generally, EPA determines BPT effluent levels based upon the average of the best existing performance by facilities of various sizes, ages, and unit processes within each industrial category or subcategory. In establishing BPT, EPA considers the cost of achieving pollution reductions in relation to the pollution reduction benefits, the age of equipment and facilities, the processes employed, process changes required, engineering aspects of the control technologies, non-

water quality environmental impacts, and other factors the Administrator deems appropriate.

EPA is proposing that BPT for the Coal Remining Subcategory be defined through a combination of numeric and non-numeric standards. Specifically, EPA is proposing that the best practicable control technology currently available for remining operations is implementation of a pollution abatement plan that incorporates BMPs designed to improve pH and reduce pollutant loadings of iron and manganese, and a requirement that such pollutant levels are not increased over baseline conditions. This is essentially the level of treatment currently required under permits issued in accordance with the Rahall Amendment, which has been demonstrated to be currently available by remining facilities included in EPA's Coal Remining database (Record Section 3.5.1) and in Pennsylvania's study of 112 closed remining sites (Record Section 3.5.3).

In order to evaluate available technologies to determine BPT, EPA relied on data from 41 remining operations in Pennsylvania. This data is contained in Section 3.2.4 of the regulatory record. All of these facilities used various combinations of BMPs as their pollutant control technology. EPA reviewed the expected performance, cost, and design of the BMPs used by these remining operations. EPA determined that the facilities were able to show potential for significant removals of loading as compared to pre-existing discharge conditions. EPA also determined that design and implementation of a BMP plan should, in most cases, achieve reductions below baseline discharge levels.

This same data from Pennsylvania supports a conclusion that the proposed pollution abatement plan requiring use of BMPs also represents the best available technology economically achievable (BAT) levels of control. Section 301(p) allows permit writers to use best professional judgement (BPJ) to set site-specific BAT limits determined for pre-existing discharges. Pennsylvania completed this BAT determination for 40 of 41 respondents. Pennsylvania's remining permit modules indicated that the only more stringent technology available included chemical addition, precipitation, and settling. In all 40 cases, remining was considered not economically feasible if treatment of pre-existing discharges to current effluent limits was required. In the same 40 cases, remining was economically feasible if the abatement plan was implemented as proposed. Thus, the Pennsylvania remining permits issued under Rahall were issued as BAT permits. This conclusion is supported by the adoption of the Rahall Amendment by Congress in 1987. At that time, Congress recognized that remining was not being conducted on abandoned mine lands because of the cost and liability of requiring treatment to meet existing regulations and authorized less stringent requirements for remining operations.

Therefore, EPA is proposing that the implementation of a pollution abatement plan represents BAT level of control. Furthermore, EPA is aware that permits containing these BMPs are in place and are being implemented by a large number of operators. Thus, EPA is proposing that pollution abatement plans also represent the average of the best technology currently available.

The problem with setting numeric effluent limitations representing the reductions achieved through implementation of a pollution abatement plan is that it is difficult to project the results, in terms of measured improvements in pollutant discharges, that will be produced through the application of any given BMP or group of BMPs at a particular site. EPA believes that the Coal Remining BMP Guidance Manual compiles the best information available on appropriate application and projected performance of all currently identified BMPs applicable to coal remining operations. However, the Coal Remining BMP Guidance Manual provides only reasonable estimates of ranges of projected performance and efficiency. There are numerous variables associated with the design and application of a particular BMP at a particular site, let alone multiple BMPs at a site. Additionally, all of these estimates are subject to substantial uncertainties. In some cases, despite appropriate design and implementation of a BMP plan, there may be little or no improvement over baseline discharges. Thus, it is simply not practicable to project the expected numeric improvements that will occur for a specific pre-existing discharge through application of a particular BMP plan. As a consequence, EPA is proposing to establish a non-numeric requirement to implement a pollution abatement plan incorporating implementation of BMPs designed to reduce the pollutant levels of pH, iron and manganese in pre-existing discharges.

EPA interprets the CWA as authorizing the Agency to establish non-numeric effluent limitations where it is infeasible to establish numeric effluent limitations. Section 502 of the Act defines "effluent limitation" as "*any* restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources." (Emphasis added.) This language does not restrict the form of effluent limitations to only numeric limits. The courts have held, in the context of permits, that the CWA does not require EPA to set numeric limits where such limits are infeasible. "When numerical effluent limitations are infeasible, EPA may issue permits with conditions designed to reduce the level of effluent discharges to acceptable levels. This may well mean opting for a gross reduction in pollutant discharge rather than the fine-tuning suggested by numerical limitations. But this ambitious statute is not hospitable to the concept that the appropriate response to a difficult pollution problem is not to try at all." *Natural Resources Defense Council* v. *Costle*, 568 F.2d 1369, 1380 (D.C. Cir. 1977). EPA's NPDES permit regulations reflect this longstanding interpretation in 40 CFR 122.44(k), which provides that permits may include BMPs to supplement, or in lieu of, numeric effluent limitations when "numeric effluent limitations are infeasible" or "the practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of [the] CWA." Sections 402(a)(2) and 501 further authorize EPA to prescribe as wide a range of permit conditions as the Agency deems appropriate to assure compliance with applicable effluent limits. EPA believes that the same considerations underlying the court's statutory interpretation with respect to non-numeric effluent limitations in permits also support an interpretation that the Agency may establish non-numeric effluent limitation regulations where numeric limitations are infeasible. Because it is infeasible here to express the expected performance of the identified best practicable control technology in numeric terms, EPA believes that establishment of non-numeric effluent limitations is authorized under, and is necessary to carry out, the purposes and intent of the CWA.

Although it is not feasible to establish numeric limits predicting pollutant reductions, it is possible to calculate baseline pollutant levels in pre-existing discharges. Moreover, the record indicates that application of appropriately designed BMPs should be able to prevent any increase in pollutant loadings for pre-existing discharges. Accordingly, it is feasible to set a

minimum numeric requirement based on baseline pollutant levels. Therefore, EPA is today proposing to establish numeric effluent limitations that require that the pollutant levels for pH, iron and manganese do not increase over baseline levels. EPA is proposing a uniform methodology to use for this calculation. Baseline level determination and monitoring procedures are presented in the Coal Remining Statistical Support Document.

EPA requests comment on how to describe and structure the requirement to design and implement a pollution abatement plan to reduce pollutant loadings from pre-existing discharges. EPA has proposed a fairly general qualitative description of the requirement, which leaves it up to the permit writer to determine whether in a particular case BPT or BAT would require additional or more intensive BMPs than identified in an applicant's proposed plan. The proposed regulation would require that an operator identify the characteristics of the remining area and the pre-existing discharges at the site, identify design specifications for selected BMPs, and include periodic inspection and maintenance schedules. These requirements are intended to help the permit writer evaluate the likely cost and efficacy of the proposed plan in relation to the conditions existing at the site. EPA requests comment on whether there are additional criteria that EPA could establish to provide applicants and permit writers further guidance in determining whether a particular BMP plan meets the regulatory criteria. For example, the requirement to develop and implement a pollution abatement plan to maintain or reduce pollution in pre-existing discharges is a fairly general directive for what the plan should achieve. EPA requests comment on how the regulations could better define the type of plan that would constitute BPT and BAT.

The primary alternative control technology that EPA could determine to be BPT would be to require remining operations to treat pre-existing discharges to meet the effluent guideline limitations for active mining discharges. As discussed above, EPA does not believe that this is a practical option for remining operations, given cost and liability concerns. EPA is requesting comment and data for any other treatment technologies that would be economically feasible and available for control of pre-existing discharges to meet more stringent limitations.

EPA projects that the annual compliance cost for this new subcategory will be approximately $330,000 to $759,000.

2. BCT for the Coal Remining Subcategory

In July 1986, EPA promulgated a methodology for establishing BCT effluent limitations. EPA evaluates the reasonableness of BCT candidate technologies—those that are technologically feasible—by applying a two-part cost test: (1) a POTW test; and (2) an industry cost-effectiveness test.

EPA first calculates the cost per pound of conventional pollutant removed by industrial dischargers in upgrading from BPT to a BCT candidate technology and then compares this cost to the cost per pound of conventional pollutants removed in upgrading POTWs from secondary treatment. The upgrade cost to industry must be less than the POTW benchmark of $0.25 per pound (in 1976 dollars).

In the industry cost-effectiveness test, the ratio of the incremental BPT to BCT cost divided by the BCT cost for the industry must be less than 1.29 (i.e., the cost increase must be less than 29 percent).

In today's proposal, EPA is proposing to establish BCT effluent limitations guidelines equivalent to the BPT guidelines for the Coal Remining Subcategory. In developing BCT limits, EPA considered whether there are technologies that achieve greater removals of conventional pollutants than proposed for BPT, and whether those technologies are cost-reasonable according to the BCT Cost Test. EPA identified no technologies that can achieve greater removals of conventional pollutants than proposed for BPT that are also cost-reasonable under the BCT Cost Test, and accordingly EPA proposes BCT effluent limitations equal to the proposed BPT effluent limitations guidelines.

3. BAT for the Coal Remining Subcategory

As discussed above, EPA concluded that the requirement to design and implement a pollution abatement plan represents BAT and that there are no more stringent technologies that are economically achievable. The pollution abatement plan is required to be designed to control conventional, toxic and non-conventional pollutants, and the plan must reflect levels of control consistent with BAT for toxic and non-conventional pollutants. Of course, EPA expects that a facility will have a single plan to control all pollutants. In addition, EPA would expect that the permit writer would determine the adequacy of the plan based on the Coal Remining BMP Guidance Manual. As discussed above, EPA concluded that it is infeasible to express BAT as a numeric limit. EPA is proposing to set a combination of site-specific numeric and non-numeric effluent limitation guidelines for BAT identical to those for BPT for iron and manganese.

4. NSPS for the Coal Remining Subcategory

In today's proposal, EPA did not consider any regulatory options for new sources for the Coal Remining Subcategory. By definition, pre-existing discharges at abandoned mine lands covered by this proposal were in existence prior to passage of SMCRA in 1977. Therefore, EPA is designating pre-existing discharges existing sources. EPA is proposing that pre-existing discharges are subject to requirements proposed for BPT, BCT, and BAT. NSPS effluent limitations are not applicable to this subcategory. A new discharge from remining operations that is not designated as a pre-existing discharge must meet applicable effluent limitations at sections 434.35, 434.45, or 434.55, as appropriate.

B. Western Alkaline Coal Mining Subcategory

The effluent limitations and performance standards for the Western Alkaline Coal Mining Subcategory apply to alkaline mine drainage from reclamation areas associated with western coal mining operations.

Alkaline mine drainage is defined in the existing regulations as "mine drainage which, before any treatment, has a pH equal to or greater than 6.0 and total iron concentration of less than 10 mg/L." Reclamation area is defined in the existing regulation as "the surface area of a coal mine which has been returned to required contour and on which revegetation (specifically, seeding or planting) work has been commenced." EPA is not proposing to make any changes to these existing definitions.

EPA is proposing to define a western coal mining operation in arid or semiarid areas as a surface or underground coal mining operation located in the interior western United States, west of the 100th meridian west longitude, in an arid or semiarid environment with an average annual precipitation of 26.0 inches or less. This definition is consistent with the definition for western coal mining currently used by OSM (30 CFR 701.5 and 30 CFR 816.116).

The existing effluent guidelines for reclamation areas establish BPT, BAT, and NSPS numeric effluent limits based on the use of sedimentation pond technology. The discharge from

reclamation areas must meet effluent limitations for settleable solids and pH. The existing guidelines apply to all reclamation areas throughout the United States, regardless of climate, topography, or type of drainage (i.e., acid or alkaline). The existing guidelines do not take into consideration the dramatic differences in naturally occurring sedimentation that can result from the different environmental conditions in the arid and semiarid coal regions compared to the eastern United States.

The existing guidelines establish relatively stringent controls on the amount of sediment that can be discharged into waterways from post-mined areas. In the arid west, data have shown that the use of sedimentation ponds becomes necessary for compliance. Although sedimentation ponds are proven to be effective at reducing sediment discharge, EPA believes that there are numerous non-water quality impacts that may harm the environment when sedimentation ponds are necessary to meet discharge requirements for reclamation areas in the arid and semiarid west. Sedimentation ponds in reclamation areas are designed to capture and store water from a precipitation event and then slowly release the water in a continuous, low-velocity discharge. EPA believes that the slow release of water containing low amounts of sediment has caused negative environmental impacts in arid regions. The negative impacts caused by the predominant use of sedimentation ponds include disruption of the natural hydrologic and sediment balance, stream channel instability, and water loss due to evaporation.

EPA is proposing a new subcategory for reclamation areas of western alkaline coal mines primarily because of negative impacts caused by the predominant use of sedimentation ponds in arid regions as is necessary to meet the current guidelines.

In arid and semiarid western coal mine regions, climate, topography, soils, vegetation, and hydrologic components all combine to form a hydrologic balance that is naturally sediment rich. Sediment is defined as all undissolved organic and inorganic material transported or deposited by water. In arid regions, the natural vegetative cover is sparse and rainfall is commonly received during localized, high-intensity, short-duration thunderstorms. These conditions contribute to flash-floods and turbulent flows that readily transport large amounts of sediment. Runoff from natural, undisturbed arid lands may contain up to several hundred thousand milligrams per liter TSS.

Fluvial areas and receiving channels in the arid west have developed according to the natural conditions present in arid regions. The receiving channels are primarily ephemeral arroyos that transport large volumes of flow and sediment. The natural conditions of these channels may be affected by the alteration of sediment concentration and flow volume as a result of constructed sedimentation ponds. Discharge of sediment-free water from a sedimentation pond may actually accelerate channel erosion because the sediment-free water will entrain sediment from the channel immediately below the pond. Later, when the sedimentation pond is removed, drainage from the reclaimed area will flow uninterrupted into the downstream watershed. This return to natural flow volumes and sediment concentrations essentially "shocks" the drainage channel and may be extremely disruptive to the fluvial and hydrologic balance that has developed based on the sedimentation pond discharge. Severe channel reconfiguration can occur at this stage, making the area more susceptible to instability and erosion than the pre-mining undisturbed conditions. EPA is soliciting comment on the environmental impacts and benefits associated with the predominant use of sedimentation ponds in the arid west for control of sediment from post-mining areas.

For arid and semiarid western coal mines, EPA believes that the most environmentally responsible goal is to reclaim the land such that the natural sediment loadings and hydrologic balance of undisturbed conditions is maintained at post-mined lands. EPA solicits comment on this conclusion, and on the problems that are associated with disturbing the hydrologic balance in arid regions.

Following the 1985 promulgation of the current regulations, new and more accurate sediment control modeling, designs and plans have been developed and evaluated for use with drainage from reclamation areas at coal mines in the western United States. The States of Wyoming and New Mexico have developed regulations to allow the use of sediment control BMPs to prevent environmental problems associated with predominant use of sedimentation ponds. These State program BMP applications are considered to meet the sediment control provisions of SMCRA and are sanctioned by the delegated Clean Water Act regulatory authority in each State. These regulations include specific provisions to allow the use of BMPs and avoid the unique environmental problems that are associated with the predominant use of sedimentation ponds on coal mine reclamation areas. Provisions under SMCRA related to sediment control require coal mining operations to be conducted so as to prevent, to the extent possible, using the best technology currently available, additional contributions of suspended solids to streamflow, or run-off outside the permit area. Corresponding regulations are found at 30 CFR 816.45 which include the above language and also require the permittee to minimize erosion and meet the more stringent of applicable State and Federal effluent standards. The standards contained in this Western Alkaline Coal Mining Subcategory will be the framework for designing, installing, and maintaining sediment control measures that are expected to function as designed in a manner to meet the statutory and regulatory provisions for sediment control and modeling predictions.

Under Wyoming's Coal Rules and Regulations, Chapter IV, alternative sediment control measures may be used when it can be demonstrated that drainage will either meet effluent limitation standards or will not degrade receiving waters. Wyoming's regulations and accompanying guidance (Wyoming Department of Environmental Quality, Land Quality Division, Guideline No. 15, Alternative Sediment Control Measures) state that appropriate sediment control measures shall be designed, constructed, and maintained using best technology currently available to prevent additional contributions of sediment to streams or to runoff outside the affected area.

Under New Mexico's "ASC Windows Program" (19 NMAC 8.2 Subpart 20, Section 2009), SMCRA requirements to pass all disturbed area runoff through sedimentation ponds can be waived if the operator demonstrates that erosion is sufficiently controlled and that the quality of area runoff is as good as, or better than, that of water entering the permit area. The operator's plan for alternative sediment control must demonstrate that there will be no increase in the sediment load to receiving streams. Several mine operations in New Mexico have applied for and received reclamation liability bond releases for lands where sediment control BMP plans were implemented. These sites demonstrated that there was no additional annual contribution of suspended solids to the hydrologic regime of the area and that runoff from regraded areas had characteristics

similar to runoff from undisturbed areas.

In order to maintain natural conditions on reclamation areas, EPA is proposing that non-numeric effluent limits be based on the design, implementation, and maintenance of BMPs. Sediment control BMP technologies for the coal mining industry are well known and established. Common BMPs used at post-mining coal areas include regrading, revegetation, mulching, check dams, vegetated channels, and contour terracing as well as sedimentation ponds. The range and implementation of available BMPs are summarized in the Development Document for Proposed Effluent Limitations Guidelines and Standards for the Western Alkaline Coal Mining Subcategory. All of these BMPs are designed to stabilize the soil and control the amount of sediment released into the environment.

Erosion and sediment control plans and technology application have evolved since the passage of SMCRA and the promulgation of the current 40 CFR part 434 effluent limitations guidelines. Extensive monitoring and case studies have been performed on arid and semiarid lands to characterize the nature and extent of erosion occurring within these areas. Computer sediment modeling of arid and semiarid fluvial systems has advanced significantly, evolving into site-specific models that are able to account for local environmental factors found within the region. Under this proposed subcategory, prediction models will be used to design site-specific BMP plans that are effective in the arid and semiarid western coal regions. Sedimentation ponds may be used in conjunction with other BMPs to prevent additional contributions of sediment to streamflow or to runoff outside reclamation areas.

Specifically, EPA is proposing a requirement to develop and implement site-specific sediment control plans that would apply in lieu of numeric limits for pH and settleable solids applicable under current guidelines for reclamation areas. EPA is proposing that a mine operator must develop a site-specific sediment control plan for surface reclamation areas. The sediment control plan must identify BMPs and present design, construction, and maintenance specifications for the BMPs, and their expected effectiveness. The goal of the site-specific sediment control plan would be to specify BMPs sufficient to control sediment discharges from the reclamation area so that they do not exceed natural background levels. The proposed regulations would require the operator to demonstrate, using watershed models accepted by the regulatory authority, that implementation of the selected BMPs would meet this goal. The permit would then incorporate the site-specific sediment control plan and would require the operator to implement the plan.

EPA is proposing to establish requirements for site-specific sediment control plans based on computer modeling in lieu of nationally applicable numerical effluent limitations. As discussed above in Section VI.A.1, such requirements are authorized as non-numeric effluent limitations where it is infeasible to establish numeric effluent limitations.

EPA believes that determining compliance based on numerical standards for runoff from BMPs is infeasible due to the environmental conditions present in Western coal mine reclamation areas. As mentioned previously, precipitation events are often localized, high-intensity, short-duration thunderstorms. Rain may fall in one area of a watershed while other areas remain dry. This makes it extremely difficult to evaluate overall performance of the BMPs. Additionally, watersheds and reclaimed mine lands often cover vast and isolated areas. These factors combine to make it burdensome for a CWA permit authority to extract periodic, meaningful samples on a timely basis to determine if a facility is meeting effluent limitations for settleable solids. The difficulty of sample collection is described in the Phase I Report: Technical Information Package provided by the Western Coal Mining Work Group (Record Section 3.3.1).

Requirements based on BMP plans would ease the implementation burden of the rule and allow a permit authority to determine compliance on a regular basis. A permit authority would be able to visit the site and determine if BMPs have been implemented according to the site's sediment control plan. The permit authority would not have to wait for a significant precipitation event to determine compliance, and the facility would have the opportunity to improve BMP implementation prior to a precipitation event. EPA believes a key factor in using BMPs is the opportunity for continual inspection and maintenance by coal mine personnel to ensure that sediment control measures will continue to function as designed. Under SMCRA, inspections of the coal mining operations are conducted monthly. EPA is soliciting comments on the appropriateness of BMP inspection to determine compliance with the requirements of this subcategory and on recommended procedures for, and frequency of, such inspections. Because it is infeasible here to determine compliance and performance of the BMPs in numeric terms, EPA believes that establishment of non-numeric effluent limitations for this subcategory is authorized under and is necessary to carry out the purposes and intent of the CWA.

In addition, EPA believes that there are several advantages to establishing requirements for site-specific sediment control plans based on computer modeling in lieu of nationally applicable numerical effluent limitations. First, according to the applicability of the proposed subcategory, the discharge associated with this subcategory is alkaline, not acidic. Therefore, EPA does not believe that pH monitoring is necessary for reclamation areas associated with alkaline coal mines.

Also, existing regulations (40 CFR part 434.63) allow for alternative limitations during precipitation events of the specified magnitudes, which may generate a significant amount of sediment, especially in the arid West. Under the proposed subcategory, the BMP plan requirement would not allow for alternative (i.e., less stringent) limits because computer models are able to account for precipitation events that typically occur in the arid west. The BMP plan requirement would be based on a demonstration that the average yearly sediment yield will not increase over undisturbed conditions, and would consider precipitation events. NMA's model mine study Draft Western Alkaline Mining Subcategory—Mine Modeling and Performance Cost-Benefit Analysis (Record Section 3.3.6) conducted in support of this proposal predicted sediment yield and BMP effectiveness based on a 24-hour, 10-year storm event. Under the proposed requirements, the coal mine operator would have to design and construct sediment controls that are adequate for high precipitation events rather than meeting the existing alternative limitations during these events. Sediment control measures under BMP plans would be designed to control annual sediment yield, not only the 10-year, 24-hour storm. This would result in retaining more soil on the slopes, rather than collecting it in a sedimentation pond. At the same time, sediment control measures under BMP plans would no longer allow the exemptions provided during high intensity flows exceeding a 10-year, 24-hour storm event in which only pH

limits apply under the current regulations (434.63(a)(2)).

The Western Coal Mining Work Group has suggested that EPA consider applying the new subcategory to all non-process water. Non-process water would include runoff from pre-stripping areas (i.e., development areas where brushing, topsoil salvage, and other types of general construction earthwork are being conducted). EPA has considered including non-process water from other areas, but does not believe there is sufficient data to expand the applicability of the proposed Western Alkaline Coal Mining Subcategory at this time. EPA solicits comment on the appropriateness of expanding the applicability of this proposed subcategory to include the control of non-process water from other coal mining related areas.

EPA expects that, in general, the sediment control plan will largely consist of materials generated as part of the SMCRA permit application. The SMCRA permit application process requires a coal mining operator to submit an extensive reclamation plan, documentation, and analysis to OSM or the permitting authority for approval. The requirements of the reclamation plan are specified in 30 CFR 780.18 *Reclamation plan: General requirements.*

In brief summary, some of the OSM requirements that also directly relate to this proposal include requirements for coal mining operators to provide: A description of coal mining operations; a plan for regrading mined lands; a plan for revegetating mined lands; a description of baseline ground water and surface water characteristics; and an analysis of the hydrologic and geologic impacts caused by the reclamation activity.

Specifically, the plan requires a "probable hydrologic consequences (PHC) determination." 30 CFR 780.21 (f) (3) states:

> The PHC determination shall include findings on: (i) Whether adverse impacts may occur to the hydrologic balance; (ii) Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface or ground water supplies; (iii) Whether the proposed operation may proximately result in contamination, diminution or interruption of an underground or surface source of water within the proposed permit or adjacent areas which is used for domestic, agricultural, industrial or other legitimate purpose; and (iv) What impact the proposed operation will have on: (A) Sediment yields from the disturbed area; (B) acidity, total suspended and dissolved solids, and other important water quality parameters of local impact; (C) flooding or streamflow alteration; (D) ground water and surface water availability; and (E) other characteristics as required by the regulatory authority.

Additional OSM requirements relevant to the proposed sediment control plan are given in Section 780.2 (h) "Hydrologic reclamation plan."

> The application shall include a plan, with maps and descriptions, indicating how the relevant requirements of part 816, including Secs. 816.41 to 816.43, will be met. The plan shall be specific to the local hydrologic conditions. It shall contain the steps to be taken during mining and reclamation through bond release to minimize disturbances to the hydrologic balance within the permit and adjacent areas; to prevent material damage outside the permit area; to meet applicable Federal and State water quality laws and regulations; and to protect the rights of present water users. The plan shall include the measures to be taken to: Avoid acid or toxic drainage; prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow; provide water-treatment facilities when needed; control drainage; restore approximate premining recharge capacity and protect or replace rights of present water users. The plan shall specifically address any potential adverse hydrologic consequences identified in the PHC determination prepared under paragraph (f) of this section and shall include preventive and remedial measures.

Based on these requirements, EPA believes that plans developed to comply with SMCRA requirements will usually fulfill the requirements proposed by EPA for sediment control plans. The requirement to use modeling techniques also is consistent with OSM reclamation plans, and mining facilities already submit a watershed model as part of their SMCRA reclamation plan. EPA believes modeling is particularly valuable in arid and semiarid areas where the infrequency of precipitation makes it difficult to gather data. While EPA is not proposing to require that operators use a specific model, the operator would have to use the same model as was, or will be, used to acquire the SMCRA permit. This would ensure that the model used will be consistent with OSM requirements and reclamation plans. While EPA is proposing that an appropriate sediment control plan will depend on the sediment yield calculation, these models also typically calculate additional parameters for undisturbed areas and reclamation areas for expected storm events including: total runoff volume, peak sediment yield, peak sediment concentration, average annual sediment yield and average annual peak water discharge. A guidance manual entitled "Guidelines for the Use of the Revised Universal Soil Loss Equation (RUSLE) Version 1.06 on Mined Lands, Construction Sites, and Reclaimed Lands" published in August, 1998 describes the use of RUSLE for watershed modeling. Additionally, SEDCAD™ 4.0 is a widely accepted model for predicting BMP performance and is currently being used by many mine sites. NMA describes use of RUSLE 1.06 and SEDCAD 4.0 models in the Mine Modeling and Performance Cost-Benefit Analysis (Record Section 3.3.6) to determine the costs and loadings for a representative model mine associated with this proposed subcategory.

EPA is proposing to define the term "sediment yield" to mean the sum of the soil losses from a surface minus deposition in macro-topographic depressions, at the toe of the hillslope, along field boundaries, or in terraces and channels sculpted into the hillslope. This definition is consistent with the definition established for the RUSLE modeling program. EPA solicits comment on this definition of sediment yield and on the appropriateness of using this parameter as the basis for determining sediment loadings.

EPA is soliciting comment on establishing non-numeric effluent limits in the form of a requirement to develop and implement a BMP-based sediment control plan rather than setting numeric effluent limitations.

1. BPT for the Western Alkaline Coal Mining Subcategory

EPA today proposes BPT effluent limitations for the Western Alkaline Coal Mining Subcategory to control sediment discharge from reclamation areas. For further information on the basis for the limitations and technologies selected see the Development Document for Proposed Effluent Limitations Guidelines and Standards for the Western Alkaline Coal Mining Subcategory.

As previously described in Section II, section 304(b)(1)(A) of the CWA requires EPA to identify effluent reductions attainable through the application of "best practicable control technology currently available for classes and categories of point sources." Generally, EPA determines BPT effluent levels based upon the average of the best existing performance by facilities of various sizes, ages, and unit processes within each industrial category or subcategory. In establishing BPT, EPA considers the cost of achieving pollution reductions in relation to the pollution reduction benefits, the age of equipment and facilities, the processes employed, process changes required, engineering aspects of the control technologies, non-water quality environmental impacts,

and other factors the Administrator deems appropriate.

EPA is proposing that BPT for the Western Coal Mining Subcategory consist of designing and implementing BMPs to maintain the average annual sediment yield equal to or below pre-mined, undisturbed conditions. EPA is proposing this new subcategory primarily because of the negative non-water quality environmental impacts created by the current requirements.

Current requirements for reclamation areas (40 CFR part 434, subpart E) establish BPT, BAT, and NSPS based on the use of sedimentation pond technology, and set effluent limitations for settleable solids and pH. The existing guidelines apply to all reclamation areas throughout the United States, regardless of climate, topography, or type of mine drainage (i.e., acid or alkaline).

Existing effluent limitation guidelines establish relatively stringent controls on the amount of settleable solids that can be discharged into waterways from reclamation areas. Although sedimentation ponds are proven to be effective at reducing sediment discharge, EPA believes that there are numerous non-water quality impacts that may harm the environment when sedimentation ponds are required to meet current effluent limits. The negative non-water quality impacts associated with existing regulations include: disturbing the natural hydrologic balance of arid western drainage areas; accelerating erosion; reducing groundwater recharge; reducing water availability; and impacting large areas of land for pond construction. A further discussion of these impacts can be found in Sections IV and IX of this document.

EPA believes that the current requirements are not appropriate for arid and semiarid western reclamation areas because of the negative non-water quality impacts associated with the predominant use of sedimentation ponds, as discussed above. The appropriate goal for reclamation and discharges from post-mined lands should be to mimic the natural conditions of the area that were present prior to mining activities. In order to do this, it is necessary to maintain the hydrologic balance and sediment loadings of natural, undisturbed conditions on post-mined lands. EPA believes that use of BMPs to control sediment discharges is the only effective alternative control technology to sedimentation ponds. Therefore, EPA is proposing that BPT consist of designing and implementing BMPs projected to maintain the average annual sediment yield equal to or below pre-mined, undisturbed conditions. This would ensure that natural conditions are maintained. In order to achieve these results, EPA would require that the coal mining operator develop a sediment control plan and run models. Requirements are further described in the proposed regulatory text.

As discussed in Section X of this document, EPA estimates that today's proposal will result in a net cost savings to all affected surface mine operators, and will be at worst cost-neutral for affected underground operators (although EPA believes that most will also incur cost savings). Therefore, implementing these standards will result in no facility closures or negative economic impact to the industry. EPA projects that the proposed subcategory will result in annualized monetized benefits of $43,000 to $769,000.

2. BCT for the Western Alkaline Coal Mining Subcategory

In today's proposal, EPA is not proposing effluent limitations for any conventional pollutant and hence need not propose to establish BCT limitations for this subcategory at this time.

3. BAT for the Western Alkaline Coal Mining Subcategory

EPA is proposing that BAT be equivalent to BPT for this subcategory to control sediment discharge for reclamation areas. Existing effluent limitations guidelines established BAT based upon sedimentation pond technology. However, as previously noted, non-water quality impacts can occur that may harm the environment when sedimentation ponds are required to comply with current effluent limits for settleable solids. EPA is proposing that BAT consist of designing and implementing BMPs projected to maintain the average annual sediment yield equal to or below pre-mined, undisturbed conditions, which is equivalent to proposed BPT.

EPA has not identified any more stringent treatment technology that could represent BAT level of control for maintaining discharge levels of settleable solids consistent with natural, undisturbed conditions on post-mined land in the arid west. EPA is therefore proposing that BAT standards be established equivalent to BPT. Further, as discussed in Section X of this document, EPA estimates that today's proposal will result in a net cost savings to all affected surface mine operators, and will be at worst cost-neutral for affected underground operators. Therefore, implementing BAT standards will result in no facility closures or negative economic impact to the industry.

4. NSPS for the Western Alkaline Coal Mining Subcategory

As discussed for BAT, EPA has not identified any more stringent treatment technology option that it considers to represent NSPS level of control for discharges from post-mined land. Further, EPA estimates that today's proposal will result in a net cost savings to all affected surface mine operators, and will be at worst cost-neutral to affected underground operators. Therefore, implementing of NSPS standards will result in no barrier to entry based upon the establishment of this level of control for new sources. EPA is therefore proposing that NSPS standards be established equivalent to BAT.

VII. Statistical and Monitoring Procedures for the Coal Remining Subcategory

A. Statistical Procedures for the Coal Remining Subcategory

EPA's proposed statistical procedures are presented in Appendix B of the proposed regulation and described in detail in the Coal Remining Statistical Support Document. These procedures apply to the Coal Remining Subcategory.

The objective of these statistical procedures is to provide a method for deciding when the pollutant levels of a discharge exceed baseline pollutant levels. These procedures are intended to provide a good chance of detecting a substantial, continuing state of exceedance, while reducing the likelihood of a "false alarm." To do this, it is essential to a have an adequate duration and frequency of sample collection to determine baseline and to determine compliance.

In developing these procedures, EPA considered the statistical distribution and characteristics of discharge loadings from pre-existing discharges, the suitability of parametric and non-parametric statistical procedures for such data, the number of samples required for these procedures to perform adequately and reliably, and the balance between false positive and false negative decision error rates. EPA also considered the cost involved with sample collection as well as delays in permit approval during the establishment of baseline, and is concerned that increased sampling could potentially discourage remining. In order to sufficiently characterize pollutant levels during baseline determination and during each annual

monitoring period, EPA is requiring that at least one sample result be obtained per month for a period of 12 months.

It is possible that one year of sampling may not accurately characterize baseline levels, because discharge flows can vary among years in response to inter-year variations in rainfall and ground water flow. There is some risk that the particular year chosen to characterize baseline flows and loadings will be a year of atypically high or low flow or loadings. There may be a need to evaluate differences among baseline years in loadings and flows, based on further analysis of data. Using such information, EPA may provide optional statistical procedures in a final rulemaking and in the final version of the Coal Remining Statistical Support Document that could be used to account for the uncertainty in characterizing baseline from a one-year sample duration, or that could be used to account for the unrepresentative character of a baseline sampling year. Such procedures could employ modifications of the proposed statistical procedures that use estimates of the variance among baseline years in loadings, developed from long-term datasets. Such procedures could employ adjustments to the baseline sample statistics to account for a baseline sampling year that was atypical in rainfall or discharge flow; such an adjustment could be a factor (multiplier) or a statistical equation estimated by regression.

The proposed statistical procedures are intended to provide environmental protection and to ensure compliance with the effluent limitation guidelines for BPT, BAT, and BCT. EPA has not yet evaluated quantitatively the error rates of these decision procedures. EPA intends to evaluate the decision error rates of each procedure by computer simulations. EPA solicits comments on the proposed statistical procedures presented in Appendix B of the proposed regulation for calculating limits and warning levels using baseline and post-baseline data: Baseline Determination and Compliance Monitoring for Pre-existing Discharges at Remining Operations. Development of these procedures is described in the Coal Remining Statistical Support Document. In particular, EPA solicits comments on (1) the details of the proposed statistical methodologies, (2) the relative merits of Procedures A and B, (3) the merits of other statistical procedures that commenters may propose, (4) the advantages and disadvantages of the use of accelerated monitoring and decision rules based upon accelerated monitoring, and (5) the effectiveness of the proposed statistical procedures in correctly indicating when baseline conditions have been exceeded and in providing reasonable protection from incorrectly deciding that baseline conditions have been exceeded. Depending upon comments and associated evidence, and depending upon EPA's further evaluations, EPA may modify or reject these procedures, or may change the recommended sample amount, to provide suitable decision error rates.

B. Monitoring To Establish Baseline Conditions and To Demonstrate Compliance for the Coal Remining Subcategory

EPA evaluated the duration and frequency of sampling necessary to apply the proposed statistical procedures. Those procedures are used to compare the levels of baseline loadings to the levels of loadings during remining or the period when the discharge is permitted. Without an adequate duration and frequency of sampling, the statistical procedures would often fail to detect genuine exceedance of baseline conditions.

Based on the considerations described below, EPA is proposing that the smallest acceptable number and frequency of samples is 12 monthly samples, taken consecutively over the course of one year. EPA believes this number represents the absolute minimum.

EPA considered an adequate number of samples per year to be that number that would allow an appropriate statistical procedure to detect a difference, between a baseline year and a remining year, in the mean or median loading, of one standard deviation (determined for the baseline loadings), with a probability (power) of at least 0.75.

The t-test is an appropriate statistical procedure for a yearly comparison because loadings from mine discharges appear to be approximately distributed log-normally, and thus logarithms of loadings are expected to be approximately distributed normally. The (non-parametric) Wilcoxon-Mann-Whitney test is also appropriate for yearly comparisons and has a power nearly equal to that of the t-test when applied to normally distributed data. EPA determined that annual comparisons of baseline to remining years based upon 12 samples in each year were expected to have a power 0.75 to detect a difference of one standard deviation.

An increase of one standard deviation can represent a large increase in loading, given the large variability of flows and loadings observed in mine discharges. The coefficient of variation (CV) is the ratio of standard deviation to mean. Sample CVs for iron loadings range approximately from 0.25 to 4.00, and commonly exceed 1.00. Sample CVs for manganese loadings range approximately from 0.24 to 5.00. When the CV equals 1.00, an increase of the average loading by one standard deviation above baseline implies a doubling of the loading.

The duration, frequency, and seasonal distribution of sampling are important aspects of a sampling plan, and can affect the precision and accuracy of statistical estimates as much as can the number of samples. To avoid systematic bias, sampling, during and after baseline determination, should systematically cover all periods of the year during which substantial discharge flows can be expected.

Unequal sampling of months could bias the baseline mean or median toward high or low loadings by over-sampling of high-flow or low-flow months. However, unequal sampling of different time periods can be accounted for using statistical estimation procedures appropriate to stratified sampling. Stratified seasonal sampling, possibly with unequal sampling of different time periods, is a suitable alternative to regular monthly sampling, provided that correct statistical estimation procedures for stratified sampling are applied to estimate the mean, median, variance, interquartile range, and other quantities used in the proposed statistical procedures.

There may be acceptable alternatives to the proposed minimum duration and frequency of one sample per month for twelve months. EPA has not thoroughly evaluated the merits of alternative sampling plans. Alternative plans could be based upon subdivision of the year into distinct time periods that might be sampled with different intensities, or could be based on other types of stratified sampling plans that attempt to account for seasonal variations. Seasonal stratification has the potential to provide a basis for more precise estimates of baseline characteristics, if the sampling plan is designed and executed correctly and if results are calculated using appropriate statistical estimators.

EPA solicits comments on the requirements for the number of samples to determine and monitor baseline, the sampling duration and frequency, and the plan of sampling over time. In particular, EPA solicits comments on (1) the adequacy of a sampling plan consisting of twelve monthly observations of concentration and flow

to calculate a monthly loading, (2) the advantages and disadvantages of seasonally-stratified sampling or other plans for sampling over time, (3) the adequacy of a baseline characterization based upon one year of sampling and the likelihood and consequences of the baseline year being atypical of long-term baseline conditions, and (4) the effectiveness of the proposed sampling requirements in correctly indicating when baseline conditions have been exceeded and in providing reasonable protection from incorrectly deciding that baseline conditions have been exceeded.

C. Additional Pollutant Parameters in Pre-existing Discharges

Although EPA is proposing to regulate iron, manganese, and pH, which is a subset of the parameters regulated under the current guidelines and which are the parameters addressed by the Rahall Amendment, EPA is considering establishing limitations or monitoring requirements for additional parameters that may also be indicators that a discharge is the result of coal mine operations. Acidity has been selected in Pennsylvania preferentially to pH because a baseline load can be calculated for acidity, whereas pH does not readily lend itself to calculation of load. In addition, pH is a measurement of effective hydrogen ion concentration and does not measure potential hydrogen ions that are generated during neutralization by the hydrolysis of metals such as iron, manganese and aluminum. Typically, the (passive) treatment systems and chemical addition used for acid mine drainage are designed with regards to acidity or net alkalinity (i.e., alkalinity minus acidity) and not pH. EPA is soliciting comments and data regarding the merits of acidity, net alkalinity, and pH as regulated parameters, or as parameters required to be monitored but not regulated.

Many mining operations also routinely monitor sulfate, which, in the temperate climate of the Appalachian Basin, is considered the most stable and reliable indicator of coal mine drainage (Lovell, 1985, The Chemistry of Mine Drainage, and McCurry, 1986, Characterization of Ground Water Contamination Associated with Coal Mines in West Virginia). Under most conditions associated with mining and mine drainage in the Appalachian Region and the Interior Basin, sulfate does not easily leave solution and is a direct indicator of pyrite oxidation (acid mine drainage production). EPA is soliciting comments and data regarding the merits of using sulfate as a parameter for assessment of pollution loading from pre-existing discharges as an unregulated requirement for monitoring.

VIII. Non-Water Quality Environmental Impacts of Proposed Regulations

The elimination or reduction of pollution has the potential to aggravate other environmental problems. Under sections 304(b) and 306 of the CWA, EPA is required to consider these non-water quality environmental impacts (including energy requirements) in developing effluent limitations guidelines and NSPS. In compliance with these provisions, EPA has evaluated the effect of this proposed regulation on air pollution, solid waste, energy requirements, and safety.

Today's proposed rule does not require the implementation of treatment technologies that result in any increase in air emissions, in solid waste generation or in energy consumption over present industry activities.

Non-water quality environmental impacts are a major consideration for this rule because the rule is intended to improve or eliminate a number of existing non-water quality environmental and safety problems. Remining operations have improved or eliminated adverse non-water quality environmental conditions such as abandoned and dangerous highwalls, dangerous spoil piles and embankments, dangerous impoundments, subsidence, mine openings, and clogged streams that pose a threat to health, safety, and the general welfare of people. EPA expects this proposed rule to improve or eliminate these hazardous conditions at abandoned mine sites and believes that remining has the potential to eliminate nearly three million feet of dangerous highwall in the Appalachian and mid-Continent coal regions.

EPA also does not expect this proposed rule to have an adverse impact on health, safety, and the general welfare of people in the arid and semiarid western coal region. The intent of the rule is to allow runoff to flow naturally from disturbed and reclaimed areas. EPA believes this is preferable to retention in sedimentation ponds that is accompanied by periodic releases of runoff containing sediment imbalances potentially disruptive to land stability. Alternate sediment control technologies in these regions address and alleviate adverse non-water quality environmental conditions such as: quickly eroding stream banks, water loss through evaporation, soil and slope instability, and lack of vegetation.

Based on this evaluation, EPA prefers the options proposed under these new subcategories over existing AML conditions in the eastern United States and over the hydrologic imbalances produced by application of current regulations in the western arid United States.

IX. Environmental Benefits Analysis

This section presents EPA's estimates of the environmental benefits that would occur under the proposed regulatory options. EPA's complete benefits assessment can be found in Benefits Assessment of Proposed Effluent Limitations Guidelines and Standards for the Coal Mining Industry: Remining and Western Alkaline Subcategories (hereafter referred to as the "Benefits Assessment"; Record Section 5.0). A detailed summary is also contained in Economic and Environmental Impact Analysis of Proposed Effluent Limitations Guidelines and Standards for the Coal Mining Industry: Remining and Western Alkaline Subcategories (hereafter referred to as the "EA").

A. Coal Remining Subcategory

The water quality improvements associated with the proposed rule for remining depend on (1) changes in annual permitting rates for remining; (2) characteristics of sites selected for remining; and (3) the type and magnitude of the environmental improvements expected from remining. The subcategory is designed to standardize and facilitate the remining permitting process to increase future permitting rates. Remining permits in Pennsylvania increased by an estimated factor of three to eight following State implementation of a regulation that is similar to today's proposed remining rule. EPA believes that implementing today's proposed rule is likely to have a similar effect on other States with remineable coal reserves and similar acid mine drainage problems. The type and magnitude of site-specific water quality improvements under the proposed rule are not expected to be dramatically different than those that have occurred under existing requirements in Pennsylvania.

Of approximately 9,500 miles of acid mine drainage impacted streams in States where coal mining has previously occurred (Record Section 3.2.2), EPA estimates that 2,900 to 4,800 miles may be improved by remining, with a predicted 1,100 to 2,100 miles improved significantly. Based on the range of expected stream mile improvements per 1,000 acres of Abandoned Mine Land (AML) reclaimed (one to six) and an average of 38 acres of AML reclamation per permit, EPA estimates

approximately 0.04 to 0.2 miles of stream improvement per remining project. EPA estimates that AML sites affected by the proposed rule have an average of 70 highwall feet per acre. EPA also estimates that an additional 216,000 to 307,000 feet of highwall (41 to 58 miles) will be targeted for removal each year as a result of the proposed rule. EPA solicits comments on additional or alternative sources of data for estimating the extent of AML affected by the proposed rule.

EPA assessed the potential impacts of remining BMPs on water quality using pollutant loadings data from pre-existing discharges at 13 mines included in EPA's Coal Remining Database (Record Section 3.5.1). Approximately 58 percent of the post-baseline observations showed a decrease in mean pollutant loadings. Approximately half of these sites (27 percent of the post-baseline observations) showed a statistically significant decrease in loadings. The 13 mines examined by EPA are active remining operations; decreases in pollutant loads are expected to become more significant with time. In comparison, Pennsylvania's Remining Site Study of 112 closed remining sites (Record Section 3.5.3) found significant decreases or elimination of loadings for acidity, total iron and total manganese in 44 percent, 42 percent, and 41 percent respectively, of the pre-existing discharges monitored. The Pennsylvania Remining Site Study focused on sites reclaimed to at least Stage II bond release standards, so that the mitigating impacts of BMPs had ample time to take effect. EPA solicits comments on alternative or additional data sources for assessing the impacts of remining BMPs.

Remining generates human health benefits by reducing the risk of injury at AML sites and reducing discharge of acid mine drainage to waterways that are drinking water sources. However, the human health benefits associated with consumption of water and organisms are not likely to be significant because (1) acid mine drainage constituents are not bioaccumulative, and adverse health effects associated with fish consumption are therefore not expected; and (2) public drinking water sources are treated for most acid mine drainage constituents associated with adverse health effects. Eliminating safety hazards by closing abandoned mine openings, regrading highwalls, stabilizing unstable spoils, and removing hazardous waterbodies potentially prevents injuries and saves lives.

EPA evaluated the potential impacts to human and aquatic life by comparing the number of water quality criteria exceedances in receiving water bodies in the baseline (pre-remining) and post-baseline sampling periods for 11 remining sites in the Coal Remining Database for which relevant data exist. Exceedances of the human health criterion for pH (water plus organism consumption, field pH) were eliminated at two sites while exceedances of chronic aquatic life criteria were eliminated for pH (field pH) at two sites and iron at two sites. Exceedances of the acute aquatic life criterion for manganese were eliminated at two sites. Although surface water quality data examined indicate changes in the number of water quality exceedances due to remining, nine of the 11 sites consist of active remining operations where the full environmental impacts of BMPs have yet to be realized. Correlations between pre-existing discharge loads and pollutant concentrations in receiving water can be used to determine the extent to which remining BMPs are responsible for changes in surface water quality. However, the lack of sufficient data on relevant sources of acid mine drainage upstream from pre-existing discharges at the selected mine sites made it difficult to estimate these correlations.

Remining and the associated reclamation of AML is expected to generate ecological and recreational benefits by (1) improving terrestrial wildlife habitat, (2) reducing pollutant concentrations below levels that adversely affect aquatic biota, and (3) improving the aesthetic quality of land and water resources. EPA was able to quantify and monetize some of the benefits expected from increased remining using a benefits transfer approach. The benefits transfer approach relies on information from existing benefit studies applicable to assessing the benefits of improved environmental conditions at remining sites. Benefits are estimated by multiplying relevant values from the literature by the additional acreage reclaimed under the remining subcategory.

EPA used the following assumptions to estimate annual benefit values for ecological improvements: (1) 3,100 to 4,400 acres will be permitted for reclamation under the proposed subcategory; (2) 57 percent of the acres permitted will actually be reclaimed (1,800 to 2,500 acres) ; (3) 38 percent to 44 percent of acres reclaimed per year are expected to be associated with significant decreases in AMD pollutant loads to surface water bodies; and (4) annualized benefits from remining begin to occur five years after permit issuance and are calculated for a five year period. EPA assumed that 57 percent of the acres permitted would actually be reclaimed based on a study of 105 remining permits in Pennsylvania (Hawkins, 1995, Characterization and Effectiveness of Remining Abandoned Coal Mines in Pennsylvania). The study found that on average, a remining site had 67 AML acres, of which 38 acres (or 57 percent), were actually reclaimed. The assumption that 38 to 44 percent of acres reclaimed would be associated with significant decreases in AMD pollutant loads was based on the results of Pennsylvania's study of 112 closed remining sites, which showed significant decreases in loads of acidity (44 percent), manganese (41 percent), iron (42 percent), and aluminum (38 percent) of the associated pre-existing discharges. A detailed explanation of all assumptions is provided in the Benefits Assessment document.

EPA estimated water-related ecological benefits using the benefits transfer approach with values taken from a benefit-cost study of surface mine reclamation in central Appalachia by Randall et al. (1978, Reclaiming Coal Surface Mines in Central Appalachia: A Case Study of the Benefits and Costs). EPA's analysis is based on two values from the study: (1) Degradation of life-support systems for aquatic and terrestrial wildlife and recreation resources, valued at $37 per acre per year (1998$); and (2) aesthetic damages, valued at $140 per acre per year (1998$). EPA estimated nonuse benefits using a widely accepted approach developed by Fisher and Raucher (1984, Intrinsic Benefits of Improved Water Quality: Conceptual and Empirical Perspectives), where nonuse benefits are estimated as one-half of the estimated water-related recreational use benefits. The estimated water-related benefits range from $0.53 to $0.89 million per year.

Reclaiming the surface area at AML sites will enhance the sites' appearance and improve wildlife habitats, positively affecting populations of various wildlife species, including game birds. This is likely to have a positive effect on wildlife-oriented recreation, including hunting and wildlife viewing. EPA estimated land-related ecological benefits using the benefits transfer approach with values taken from a study of improved opportunities for hunting and wildlife viewing resulting from open space preservation by Feather et al. (1999, Economic Valuation of Environmental Benefits and the Targeting Conservation Programs). EPA's analysis is based on two values from the study: (1) The average wildlife viewing value, $21 per acre per year;

and (2) the improved pheasant hunting value, $7 per acre per year. Based on an aggregate value of $28 per acre per year, EPA estimates land-related benefits of $0.20 to $0.29 million per year.

The sum of the estimated monetary values of the different benefit categories results in total annual benefits of $0.73 to $1.17 million from implementing the proposed remining subcategory. This estimate does not include benefit categories that EPA was unable to quantify and/or monetize, which include human health and safety impacts. A more detailed discussion of the benefits analysis is contained in both the EA and the Benefits Assessment.

B. Western Alkaline Coal Mining Subcategory

Only a small percentage of potentially affected western coal mines discharge to permanent or perennial water bodies. Information about receiving waters is available for 39 of the existing western surface coal mines, and 30 of these discharge to intermittent or ephemeral creeks, washes, or arroyos. Only two of the mines list a permanent water drainage feature as the primary receiving water. It is therefore difficult to describe the benefits of the Western subcategory in terms of the use designations referenced in the section 101(a) goals of the Clean Water Act.

The environmental conditions and naturally high sediment yields in arid and semiarid coal regions are discussed in Section IV. The potential impacts of the predominant use of sedimentation ponds to control settleable solids in these regions include reduced sediment loads to natural drainage features, reduced downstream flood peaks and runoff volumes, and downstream channel bed and bank changes. The environmental and water quality effects of these hydrologic impacts include: (1) Reducing ground water recharge, (2) shrinking biological communities consisting of and reliant upon riparian and hydrophytic vegetation, (3) degrading downstream channel beds from "clean" water releases, and (4) accelerating erosion.

Site-specific alternative sediment control plans incorporating BMPs designed and implemented to control sediment and erosion have the potential to provide both land and water-related benefits. Land-related benefits include decreased surface area disturbance, increased soil conservation, and improved vegetation. Surface disturbance is estimated to decrease by approximately 1,700 acres per year across all existing potentially affected surface mine sites in the western region. Vegetative cover may increase by five percent when BMPs are used.

EPA was only able to monetize land-related benefits associated with decreased surface area disturbance. Hunting benefits from increased availability of undisturbed open space were estimated to be between $0.37 and $2.46 per acre per year based on Feather et al. (1999) and Scott et al. (1998). Annual land-related benefits of the proposed subcategory range from $5,500 to $36,500 per year, based on the value of enhanced hunting opportunities. However, this estimate does not account for a number of benefit categories, including nonuse ecological benefits that may account for the major portion of land-related benefits in relatively unpopulated areas such as those affected by the proposed rule.

Water-related benefits include improved hydrologic and fluvial stability in the watersheds affected by western mining operations. These benefits will be site-specific and depend upon the nature of environmental quality changes; the current in-stream water uses, if any, and; the population expected to benefit from increased water quantity. EPA estimated water-related benefits using the estimated mean "willingness to pay" (WTP) values for preservation of perennial stream flows adequate to support abundant stream side plants, animals and fish from Crandall et al. (1992, Valuing Riparian Areas: A Southwestern Case Study). The WTP value is applied to water-based recreation consumers residing in counties affected by western mining operations discharging to, or affecting, water bodies with perennial flow. EPA identified seven perennial streams located in six counties that are likely to be affected by the proposed rule. The estimated monetary value of recreational water-related benefits for these streams ranges from $25,000 to $488,000. As noted above, EPA estimates that nonuse benefits are equal to one-half of the water-related recreational benefits, or $12,500 to $244,000 per year.

Total estimated annualized benefits from implementing the proposed subcategory range from $43,000 to $768,500. This estimate does not include benefit categories that EPA was unable to quantify and/or monetize, which include increased vegetative cover and some additional recreational and non-use benefits associated with western alkaline coal mine reclamation areas. A more detailed discussion of the benefits analysis is contained in both the EA and the Benefits Assessment.

X. Economic Analysis

A. Introduction, Overview, and Sources of Data

This section presents EPA's estimates of the economic impacts that would occur under the proposed regulatory options. The economic impacts are evaluated for each subcategory for BPT, BCT, BAT, and NSPS as applicable. The description of each proposed option and the rationale for selection are given in Section VI of today's document. EPA's detailed economic impact assessment can be found in Economic and Environmental Impact Analysis of Proposed Effluent Limitations Guidelines and Standards for the Coal Mining Industry: Remining and Western Alkaline Subcategories (referred to as the "EA"). EPA also prepared the Coal Remining and Western Alkaline Mining: Economic and Environmental Profile (Record Section 5.0) in support of today's proposal.

This section of today's document describes the segment of the coal industry that would be impacted by the rule (i.e., the number of firms and number of mines that would incur costs or realize savings under the proposed rule), the financial condition of the potentially affected firms, the aggregate cost or cost savings to that segment, and economic impacts attributed to the proposed rule. The section also discusses impacts on small entities and presents a cost-benefit analysis. This discussion will form the basis for EPA's findings on regulatory flexibility, presented in Section XI.B. All costs are reported in 1998 dollars unless otherwise noted. As described in Section V of this document, EPA developed this proposal using an expedited rulemaking procedure. Therefore, EPA's economic analysis relied on industry profile information voluntarily provided by stakeholders, on data compiled from individual mining permits, and on data from publicly available sources. For the Coal Remining Subcategory, EPA obtained information on abandoned mine lands from the Abandoned Mine Lands Information System (AMLIS) maintained by the Office of Surface Mining (Record Section 3.5.2), the National Abandoned Lands Inventory System (NALIS) database maintained by the Pennsylvania Department of Environmental Protection (Record Section 3.5.5), and a survey of states conducted by the Interstate Mining Compact Commission (Record Section 3.2.2). For Western Alkaline mines, EPA relied on industry profile data developed and submitted to EPA by the Western Coal Mining Work Group as

described in Section V. Specifically, the work group provided data on: coal mine operator, mine location, annual production, reclamation permit numbers, acres of land reclaimed, and reclamation bond amounts. This information is included in Section 3.3 of the Record.

Data on the coal industry as a whole, including coal production, employment, and prices, as well as information on individual western alkaline underground mines, were obtained from various Energy Information Administration (EIA) sources, including the 1997 Coal Industry Annual, the 1998 Annual Energy Outlook, and the 1992 Census of Mineral Industries. EPA used the Security and Exchange Commission's (SEC's) Edgar database, which provides access to various filings by publicly held firms, such as 8Ks and 10Ks, for financial data and information on corporate structures. EPA also used a database maintained by Dun & Bradstreet, which provides estimates of employment and revenue for many privately held firms, and obtained industry financial performance data from Leo Troy's Almanac of Business and Industrial Financial Ratios.

B. Method for Estimating Compliance Costs

The costs and savings of today's proposal are associated with modeling requirements, BMP implementation, baseline monitoring, and performance monitoring. For each option and geographic area, EPA estimated economic baseline conditions based on existing State and Federal regulations and current industry practices. For remining, EPA assumed as economic baseline conditions remining under a Rahall permit, pursuant to section 301(p), rather than comparing to compliance with current Part 434 regulations. Following this, EPA estimated the incremental compliance costs for each option proposed.

1. Coal Remining Subcategory

EPA projected costs for each remining site by calculating the cost of increased monitoring requirements for determining baseline, the cost of potential increases in compliance monitoring requirements, and the potential costs associated with implementing the required pollution abatement plan. To assess the increased monitoring requirements of the proposal, EPA evaluated current State requirements for operations permitted under the Rahall provision and calculated the proposed monitoring costs that exceed the current State requirements. Current State sample collection requirements for determining and monitoring baseline are included in the Record at Section 3.4.

Although EPA estimated that the Remining Subcategory would be applicable to 64 to 91 remining sites and 3,810 to 5,400 acres annually, EPA projects that fewer sites would realize costs or benefits from this proposal. As noted throughout this proposal, the Commonwealth of Pennsylvania has an advanced remining program and EPA does not believe that the proposal will have a measurable impact on Pennsylvania's remining activities. Therefore, EPA did not include Pennsylvania's remining sites in the estimation of costs or benefits. EPA's cost and benefit analysis were calculated for a total of 43 to 61 sites representing 3,100 to 4,400 permitted acres each year. EPA estimates that approximately 1,800 to 2,500 of these acres would actually be reclaimed each year. Table X. B.1 shows the various estimates EPA used in the estimation of costs and benefits.

TABLE X. B.1.—ANNUAL ESTIMATES OF AFFECTED REMINING SITES USED IN THE ECONOMIC ANALYSES

Additional sites permitted	Number of sites	Acres	Used in analysis of:
All types, all states (initial estimate)	64–91	3,812–5,401	
All types, excluding PA	43–61	3,111–4,407	Monitoring costs for selected states; NPDES permitting authority costs.
10% of surface & under-ground sites only (no coal refuse piles), excluding PA.	3.9–5.6	309–438	Costs of additional BMPs.
Additional acres reclaimed: (57% of acres permitted, all types excluding PA).		1,773–2,512	Benefits from recreational use of reclaimed land.
Additional acres reclaimed expected to have significant decreases in AMD pollutant loads (37.6–44.4% of additional reclaimed acres).		667–1,115	Benefits from recreational use of improved water bodies; Aesthetic improvements in water bodies; Non-use benefits.

2. Western Alkaline Coal Mining Subcategory

The proposed subcategory will include alkaline drainage from reclamation areas at surface and underground coal mines located west of the 100th meridian in arid or semiarid environments with average annual precipitation of 26 inches or less. EPA's Coal Remining and Western Alkaline Mining: Economic and Environmental Profile provides profile information on the 47 surface coal mines and 24 underground coal mines EPA initially believed to be in the scope of the proposed subcategory. However, EPA determined that one of the surface mines profiled was already in the final reclamation stage and would not be affected by today's proposal; hence only the remaining 46 surface mines were included in the analyses of costs and benefits.

The only incremental cost attributed to the proposed subcategory is associated with the watershed modeling requirements discussed in Section VI. Information provided by OSM (Record Section 7.2) indicates that most coal mine operators already perform modeling (to support their SMCRA permit applications) that is sufficient to meet today's proposed requirements. The information also indicates that a typical underground operator would not incur any additional modeling costs as a result of today's proposed rule due to the small acreage and lack of complexity associated with surface reclamation areas at underground mines.

Although EPA believes that compliance with the proposed rule would result in operational savings for both surface mine operators and many underground producers, EPA did not estimate the savings for underground producers due to data limitations. The industry profile submitted by the Western Coal Mining Work Group did not provide information on disturbance acreage, mine life, or bond amounts for the underground mines, and the model mine analysis addressed conditions typical of surface mines rather than underground mines. It was therefore not possible to estimate cost savings associated with the proposed

subcategory for reclamation of surface areas at underground mines. However, any savings are likely to be small given the limited acreage and lack of complexity associated with these reclamation areas. Hence, EPA assumes that today's proposal would be cost-neutral for underground operators. EPA solicits any data or comments regarding these assumptions. The remainder of this section considers only the 46 active existing surface mines in its discussion.

C. Costs and Cost Savings of the Regulatory Options

1. Coal Remining Subcategory

Under the proposed rule, EPA is requiring that operators conduct one year of monthly sampling to characterize the baseline pollutant levels for pH, iron (total), and manganese (total). Although most states with remining activities have similar requirements, remining sites in Alabama and Kentucky will be required to add six samples annually. EPA did not have data for Illinois, Indiana, or Tennessee because the remining operations that occur in these States do not incorporate Rahall provisions for pre-existing discharges. EPA has conservatively assumed monitoring costs for 12 additional samples annually for these states. Information representing current State sampling requirements is included in the Record at Section 5.

Although EPA is not requiring a specific monitoring frequency to demonstrate compliance, EPA has assumed monthly compliance monitoring for costing purposes. Most states already have similar requirements, with the exception of Ohio, which currently requires quarterly modeling. Again, EPA did not have data for Illinois, Indiana, or Tennessee because these states do not incorporate Rahall provisions in their remining permits. For these states, EPA has conservatively assumed that an additional 12 compliance monitoring samples per year would be required for five years.

Because each remining site will typically have more than one pre-existing discharge, EPA reviewed Pennsylvania remining sites to estimate the average number of pre-existing discharges per site. EPA used this calculated average of four pre-existing discharges per site for estimating baseline determination and compliance monitoring costs (Record Section 3.3.1). Additionally, EPA assumed that remining operators would have to purchase and install flow weirs to comply with the baseline monitoring requirements in the States that do not incorporate Rahall provisions in their remining permits. These assumptions result in an upper bound estimate of additional monitoring costs for the 43 to 61 potentially affected sites per year.

EPA estimates the total annual incremental monitoring costs to be in the range of $133,500 to $193,500. Of this, between $83,000 and $120,000 is associated with incremental baseline monitoring requirements and between $50,500 and $73,500 results from incremental compliance monitoring during the five year mining period. Detailed assumptions and calculations are presented in the EA.

In addition to monitoring, remining operators must develop and implement a site-specific pollution abatement plan for each remining site. In many cases, EPA believes that the requirements for the pollution abatement plan will be satisfied by an approved SMCRA plan. However, EPA recognizes that some operators may be required to implement additional or more intensive BMPs under the proposed rule beyond what is included in a SMCRA-approved pollution abatement plan.

EPA developed a general estimate of the potential costs of additional BMPs based on review of the existing remining permits contained in the Coal Remining Database (Record Section 3.5.1), and on information provided in the Coal Remining BMP Guidance Manual. EPA determined that the most likely additional BMP that NPDES permit writers might require would be a one-time increase in the amount of alkaline material used as a soil amendment to prevent the formation of acid mine drainage. EPA assumed that an average mine facility requiring additional BMPs would need to increase its alkaline addition by a rate of 50 to 100 tons per acre to meet the additional NPDES permit review requirements. EPA estimated an average cost for alkaline addition of $12.90/ton, and assumed that 10 percent of surface and underground remining sites would be required to incur these additional BMP costs. Because the typical BMP for coal refuse piles is simply removal of the pile, no incremental BMP costs would be incurred for these sites. Based on EPA's estimate that between 309 and 438 acres could be required to implement additional or more intensive BMPs each year, the estimated annual cost of additional BMP requirements would range from $199,500 to $565,000.

Based on the above assumptions, the total estimated incremental costs associated with the proposed rule range from $333,000 to $758,500 per year. These costs are based on EPA's estimates of what is likely to happen in the future, and they would be incurred by new remining operations. Table X. C.1 summarizes the incremental costs associated with the proposed subcategory.

TABLE X. C.1.—ANNUAL COSTS FOR THE REMINING SUBCATEGORY

Monitoring Costs	$133,500–$193,500
Additional BMPs	$199,500–565,000
Total Compliance Costs	$333,000–758,500

2. Western Alkaline Coal Mining Subcategory

The cost impacts of the proposed subcategory will vary, depending on site-specific conditions at each eligible coal mine. However, based on data and information gathered to date, EPA believes that the costs of reclamation under today's proposal will be less than or equal to reclamation costs under the existing effluent guidelines for each individual operator, and thus to the subcategory as a whole.

EPA expects that, in general, the sediment control plan will largely consist of materials generated as part of the SMCRA permit application. The SMCRA permit application process requires that a coal mining operator submit an extensive reclamation plan, documentation and analysis to OSM or the permitting authority for approval. Based on these requirements, EPA believes that plans developed to comply with SMCRA requirements will usually fulfill the requirements proposed by EPA for sediment control plans.

EPA believes that the only incremental cost attributed to the proposed subcategory is associated with the watershed modeling requirements discussed in Section VI of today's document. The requirement to use modeling techniques is also consistent with OSM reclamation plans. While

OSM does not specifically require modeling, most coal mine operators already perform watershed modeling to support their SMCRA permit applications that is sufficient to meet today's proposed requirements. However, some incremental costs may occur in cases where the rule increases model complexity. Information provided by OSM indicates that a typical surface mine operator may incur a one-time additional cost of zero to $50,000 to meet the modeling requirements in today's proposal. These figures represent the additional modeling effort attributed to today's proposed requirements; they do not represent the total cost associated with watershed modeling. Although most sites would not incur additional modeling costs, EPA conservatively assumes that all 46 existing surface operators would incur additional modeling costs of $50,000. This assumption results in a total cost estimate of $327,500 on an annualized basis. These costs would be offset by cost savings discussed below.

EPA projects that cost savings for this subcategory would result from lower capital and operating costs associated with implementing the proposed BMP plans, and from an expected reduction in the reclamation bonding period. The cost savings for controls based on BMPs were calculated for a representative model mine and were submitted by the Western Coal Mining Work Group. The cost model is discussed in detail in the Development Document for Proposed Effluent Limitations Guidelines and Standards for the Western Alkaline Coal Mining Subcategory and is included in the Record at Section 3.3.2. The cost estimates of the model mine relied on data taken from case study mine permit applications, mine records, technical resources and industry experience. The study estimated capital costs (design, construction and removal of ponds and BMPs) and operating costs (inspection, maintenance, and operation) over the anticipated bonding period.

Cost savings for reclamation at existing surface mines were calculated by extrapolating the cost savings from the model mine. The present value of savings over a 10-year period for the model mine was calculated to be $672,000 (annualized at seven percent) or $1,764 saving per acre. EPA used the projected disturbance acreage divided by the remaining mine life to estimate the annual acres reclaimed at each existing mine site. This information was available for 26 mines and totaled 9,880 acres per year, or an average of 380 annual acres per mine. EPA assumed that the remaining 20 mines with incomplete data would each reclaim the average 380 acres per year, resulting in a total of 17,480 acres. Based on an average savings of $1,764 per acre, EPA projects that the proposed subcategory will result in annual savings of $30.8 million. EPA solicits comment on this approach for estimating reclamation cost savings.

EPA has also calculated cost savings that may result from earlier Phase II bond release. The OSM hydrology requirements to release performance bonds at Phase II at 30 CFR part 800.40(c)(1), requires compliance with the existing 0.5 ml/L effluent standard. The Western Coal Mining Work Group, in its draft Mine Modeling and Performance Cost Report (Record Section 3.3.2) estimates that the typical post-mining Phase II bonding period can be ten years or more under the current effluent guidelines. Reclamation areas must achieve considerable maturity before they are capable of meeting the existing standard. The BMP-based approach in today's proposal uses the inspection of BMP design, construction, operation and maintenance to demonstrate compliance instead of the current sampling and analysis of surface water drainage for reclamation success evaluations. The report estimates that the BMP-based approach would reduce the time it takes reclaimed lands to qualify for Phase II bond release to about five years.

EPA used the following assumptions to estimate cost savings due to earlier Phase II bond release: (1) a Post-mining Phase II bonding period of ten years under the current effluent guidelines and five years under the proposed subcategory; (2) twenty-five percent of the reported bond amount would be released at the end of Phase II; and (3) surety bonds were used, with annual fees between $3.75 and $5.50 per thousand. Twenty-six mines provided information necessary to calculate associated bond savings. The total estimated savings for these mines range from $197,000 to $289,000 when annualized at seven percent over the five year permit period. EPA assumes that the remaining 20 mines for which savings could not be calculated would achieve the average savings per mine ($7,600 to $11,100) resulting in total annualized savings between $349,000 and $511,500. Detailed assumptions and calculations are contained in the EA.

The estimated net savings in compliance costs associated with the proposed subcategory, considering additional modeling costs and the savings to mining operations in sediment control and bonding costs, is estimated to be approximately $31 million, as shown in Table X. C.2.

TABLE X. C.2.—ANNUAL COSTS AND COST SAVINGS FOR THE WESTERN ALKALINE SUBCATEGORY

[Discounted at 7%]

Incremental Modeling Costs	$327,500
Sediment Control Costs (Savings)	($30,835,000)
Earlier Phase 2 Bond Release (Savings)	($349,000–$511,500)
Total Compliance Costs (Savings)	($30,857,000–$31,019,000)

D. Economic Impacts of Proposed Options

1. Economic Impacts of Proposed Coal Remining Subcategory

As discussed in Section VI, EPA is proposing BPT, BCT, and BAT that have an equivalent technical basis and is not proposing NSPS limitations for the Remining Subcategory. EPA believes that the proposed option will not impact existing remining permits. For new permits, remining operators will have the ability to choose among potential remining sites, and will only select sites that they believe are economically achievable to remine. Furthermore, any additional BMPs required by the NPDES authority under the proposed rule will be site-specific, with economic achievability considered in making a BPJ determination. The proposed requirements will not create any barriers to entry in coal remining, but instead are specifically designed to encourage new remining operations. Hence, the Agency finds no significant negative impacts to the industry associated with the proposed subcategory.

The implementation of a pollution abatement plan containing BMPs may impose additional costs beyond what is included in a SMCRA-approved

pollution abatement plan. At the same time, the proposed subcategory may increase profits at remining sites by providing an incentive to mine coal from abandoned mine land areas that may have been avoided in the absence of implementing regulations. The proposed subcategory will also affect the relative profitability of remining different types of sites, with the potential to encourage remining of the sites with the worst environmental impacts. An analysis by the Department of Energy (DOE) of potential remining sites estimated an average coal recovery of between 2,300 and 3,300 tons per acre of remined land (1993, Coal Remining: Overview and Analysis). At these coal recovery rates, the estimated steady state annual increase in acres being remined would produce between 7.1 and 14.5 million tons of coal per year. This represents only 1.5 to 3.1 percent of total 1997 Appalachian coal production of 468 million tons. The same DOE report noted that, given the general excess capacity in the coal market, it is likely that coal produced from new remining sites will simply displace coal produced elsewhere, with no net increase in production overall. The proposed remining subcategory is therefore not expected to have a significant impact on overall coal production or prices.

2. Economic Impacts of Proposed Western Alkaline Coal Mining Subcategory

As discussed in Section VI, EPA is proposing BPT, BAT, and NSPS limitations that have an equivalent technical basis for the Western Alkaline Coal Mining Subcategory. EPA concludes that nearly all economic impacts are positive for the proposed option and finds the preferred option to be a cost savings to the industry and thus, economically achievable. Because reclamation costs under today's proposal will be less than or equal to those under the existing effluent guidelines for all individual operators, and thus, to the subcategory as a whole, no facility closures or direct job losses associated with post-compliance closure are expected. However, EPA estimated changes in labor requirements attributed to the proposed subcategory by extrapolating from the model mine results, which calculated changes in labor hours associated with those erosion and sediment control structures that were used, or no longer used, under either the existing guidelines or the proposed subcategory for the model mine. The results indicated that the proposed subcategory would reduce annual labor requirements by approximately 0.2 work years for the model mine. EPA assumed that each of the 46 western alkaline surface mines would experience the same employment impact as predicted by the model mine study (Record Section 3.3.6), resulting in the loss of 9.2 full-time employees (FTEs) per year. This represents 0.1 percent of the total 1997 coal mine employment (6,862 FTEs) in the western alkaline region States.

The cost savings associated with the proposed subcategory are not expected to have a substantial impact on the industry average cost of mining per ton of coal, and therefore are not expected to have major impacts on coal prices. While the savings are substantial in the aggregate and for some individual mine operators, on average they represent a small portion of the total value of coal produced from the affected mines. As described in the EA, the estimated savings from the proposed subcategory are equivalent to only 0.6 percent of the value of production at 25 mines for which enough information was available to make site-specific estimates of savings. As with the Coal Remining Subcategory, the proposed Western Alkaline Coal Mining Subcategory is not expected to result in significant industry-level changes in coal production or prices.

EPA is proposing NSPS limitations equivalent to the limitations that are proposed for BPT and BAT for the Western Alkaline Coal Mining Subcategory. In general, EPA believes that new sources will be able to comply at costs that are similar to or less than the costs for existing sources, because new sources can apply control technologies more efficiently than sources that need to retrofit for those technologies. Specifically, here, to the extent that existing sources have already incurred costs associated with installing sedimentation ponds, new sources would be able to avoid such costs. There is nothing about today's proposal that would give existing operators a cost advantage over new mine operators; therefore, NSPS limitations will not present a barrier to entry for new facilities.

E. Additional Impacts

1. Costs to the NPDES Permitting Authority

Additional costs will be incurred by the NPDES permitting authority to review new permit applications and issue revised permits based on the proposed rule. Under the proposed rule, NPDES permitting authorities will review baseline pollutant levels and proposed pollution abatement plans for the Coal Remining Subcategory and watershed modeling results and sediment control plans for the Western Alkaline Coal Mining Subcategory.

EPA estimates that permit review will require an average of 35 hours of a permit writer's time per site and that permit writers receive an hourly wage of $31.68. Based on these assumptions, total annual costs to the NPDES permitting authorities range from $47,500 to $67,500 for the 43 to 61 additional sites that can be expected to be permitted under the proposed subcategory. An upper bound estimate of costs associated with implementing the proposed western subcategory assumes that all 46 existing surface mine permits are renewed. The total incremental annual cost would be $12,500 per year when annualized over the 5-year permit life (using a seven percent discount rate). Total additional permit review costs for the proposed rule are therefore estimated to be between $60,000 and $80,000 per year. A detailed analysis is contained in the EA.

2. Community Impacts

The proposed rule could have community-level and regional impacts if it significantly altered the competitive position of coal produced in different regions of the country, or led to growth or reductions in employment in different regions and communities. As described in the EA, the proposed rule is not likely to have significant impacts on relative coal production in the West versus the East. The proposed Remining Subcategory is likely to shift the location of production and employment toward eligible abandoned mine lands, but not to increase national coal production and employment or affect coal prices significantly overall.

EPA projects that impacts of the proposed Western Alkaline Coal Mine Subcategory on mine employment will also be minor. As discussed above, EPA estimated a reduction in labor requirements of 9.2 FTEs per year by extrapolating from the model mine results. This represents 0.1 percent of the total 1997 coal mine employment in the western alkaline region States. Regional multipliers relating total direct and indirect employment to coal industry employment range from 2.6 to 3.2 for the western alkaline region states (U.S. Bureau of Economic Analysis, Regional Input-Output Modeling Systems, "RIMSII"). Therefore, the total impact on employment, direct and indirect, that may result from the proposed western alkaline subcategory is a reduction of between 24 and 29 FTEs per year. This reduction in

employment might be offset if lower costs under the proposed subcategory encourage growth in coal mining in the western alkaline region.

3. Foreign Trade Impacts

EPA does not project any foreign trade impacts as a result of the proposed effluent limitations guidelines and standards. U.S. coal exports consist primarily of Appalachian bituminous coal, especially from West Virginia, Virginia and Kentucky (U.S. DOE/EIA, Coal Data: A Reference; U.S. DOE/EIA Coal Industry Annual 1997). Coal imports to the U.S. are insignificant. Impacts are difficult to predict, since coal exports are determined by economic conditions in foreign markets and changes in the international exchange rate for the U.S. dollar. However, no foreign trade impacts are expected given the relatively small projected increase in production and projected lack of impact on costs of production or prices.

F. Cost-effectiveness Analysis

Cost-effectiveness calculations are used during the development of effluent limitations guidelines and standards to compare the efficiency of regulatory options in removing toxic and non-conventional pollutants. Cost-effectiveness is calculated as the incremental annual cost of a pollution control option per incremental pollutant removal. The increments are considered relative to another option or to a benchmark, such as existing treatment. In cost-effectiveness analysis, pollutant removals are measured in toxicity normalized units called "pounds-equivalent." The cost-effectiveness value, therefore, represents the unit cost of removing an additional pound-equivalent of pollutants. In general, the lower the cost-effectiveness value, the more cost-efficient the regulation will be in removing pollutants, taking into account their toxicity. While not required by the Clean Water Act, cost-effectiveness analysis is a useful tool for evaluating regulatory options for the removal of toxic pollutants.

While cost-effectiveness results are usually reported in the Notice of Proposed Rulemaking for effluent guidelines, such results are not presented in today's document because of the nature of the two subcategories. For the Coal Remining Subcategory, EPA is unable to predict pollutant reductions that would be achieved at future remining operations. As described in Section VI, it is difficult to project the results, in terms of measured improvements in pollutant discharges, that will be produced through the application of any given BMP or group of BMPs at a particular site. EPA is therefore unable to calculate cost-effectiveness. For the Western Alkaline Coal Mining Subcategory, cost-effectiveness was not calculated because there are no incremental costs attributed to the proposed option.

G. Cost Benefit Analysis

EPA estimated and compared the costs and benefits for each of the proposed subcategories. EPA concludes that both subcategories have the potential to create significant environmental benefits at little or no additional cost to the industry. The cost and benefit categories that the Agency was able to quantify and monetize for the proposed Coal Remining Subcategory are shown in Table X. G.1. The monetized annual benefit estimates ($734,000 to $1,175,500) substantially outweigh the projected annual costs ($380,500 to $825,500).

TABLE X. G.1.—ANNUALIZED SOCIAL COSTS AND BENEFITS OF PROPOSED REMINING SUBCATEGORY

Social Costs (Discounted at 7%):	
Industry Compliance Costs	$330,000–$758,500
NPDES Permitting Costs	$47,500–$67,500
Total Social Costs	$380,500–$865,000
Monetized Social Benefits (Discounted at 3%):	
Recreational use of improved water bodies	$100,500–$168,000
Aesthetic improvements to water bodies	$380,000–$635,500
Non-use (related to improved water bodies)	$51,500–$86,000
Total Water-Related Benefits	$532,000–$889,500
Recreational use of reclaimed land	$202,000–$286,000
Total Monetized Benefits	$734,000–$1,175,500

In addition to the monetized benefits shown in Table X. G.1, the increase in remining is projected to result in the removal of some 216,000 to 307,000 feet of highwall each year, with benefits in increased public safety. The increased remining also has the potential to recover an estimated 7.1 to 14.5 million tons of coal per year that might otherwise remain unrecovered, with a value of approximately $188.5 to $ 385.0 million (based on an average 1997 value per ton of coal in Appalachia of $26.55).

The proposed Western Alkaline Coal Mining Subcategory is projected to result in net cost savings to society while increasing environmental benefits to society. The industry compliance costs consist of watershed modeling costs and are offset by cost savings associated with the proposal, specifically reduced costs for sediment control and earlier Phase II bond release. Total annual cost savings to society are expected to be approximately $31 million. The proposed subcategory is also expected to result in annual environmental benefits valued between $43,000 and $768,500—with the majority of benefits resulting from recreational use of waters with improved water flow. Table X. G.2 summarizes the social costs and benefits of the proposed Western Alkaline Coal Mining Subcategory.

TABLE X. G.2.—ANNUAL SOCIAL COSTS/SAVINGS AND BENEFITS OF THE PROPOSED WESTERN SUBCATEGORY

Social Costs and Cost Savings (Discounted at 7%):	
Associated Industry Cost Savings	($31,183,000–$31,346,000)
Industry Compliance Costs	$327,500
NPDES Permitting Costs	$12,500
Total Social Cost Savings	($30,845,000–$31,007,000)
Monetized Benefits (Discounted at 3%):	
Avoided surface disturbance	$5,500–$36,500
Recreational benefits from improved water flow	$25,000–$488,000
Non-use benefits	$12,500–$244,000
Total Monetized Benefits	$43,000–$768,500

XI. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has 500 or fewer employees (based on SBA size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impact of today's proposed rule on small entities, I certify that this action will not have significant economic impact on a substantial number of small entities. In determining whether a rule has significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. EPA projects that the proposed subcategory for Western alkaline mines results in cost savings for all small surface mine operators. For all small underground mine operators, EPA projects no incremental costs, and the Agency believes that many are likely to experience some cost savings. Section X of this document discusses the likely cost savings associated with the subcategory in more detail. As described in Section III of this document, the current regulations at 40 CFR part 434 create a disincentive for remining by imposing limitations on pre-existing discharges for which compliance is cost prohibitive. Despite the statutory authority for exemptions from these limitations provided by the Rahall Amendment, coal mining companies and States remain hesitant to pursue remining without formal EPA guidelines. The proposed remining subcategory provides standardized procedures for developing effluent limits for pre-existing discharges, thereby eliminating the uncertainty involved in interpreting and implementing current Rahall requirements. The proposed subcategory for remining is intended to remove barriers to the permitting of remining sites with pre-existing discharges, and is therefore expected to encourage remining activities by small entities. Thus, we have concluded that today's proposed rule will relieve regulatory burden for all small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-

effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the proposed rule, if promulgated, would not contain a Federal mandate that will result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year. Although the proposed rule will impose some permit review and approval requirements on regulatory authorities, EPA has determined that this cost burden will be less than $80,000 annually. Accordingly, today's proposal is not subject to the requirements of sections 202 and 205 of UMRA. EPA has determined that this proposal contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, is not subject to the requirements of section 203 of the UMRA. The proposal, if promulgated, would not establish requirements that would apply to small governments.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No.1944.01) and a copy may be obtained from Sandy Farmer by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr.

Today's proposed rule requires an applicant to submit baseline monitoring and a pollution abatement plan for coal mining operations involved in remediation of abandoned mine lands and the associated acid mine drainage during extraction of remaining coal resources. In addition, today's proposed rule requires an applicant involved in reclamation of coal mining areas in arid regions to submit a sediment control plan for sediment control activities. Information collection is needed to determine whether these plans will achieve the reclamation and environmental protection pursuant to the Surface Mining Control and Reclamation Act and the Clean Water Act. Without this information, Federal and State regulatory authorities cannot review and approve permit application requests. Data collection and reporting requirements associated with these activities are substantively covered by the "Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan—30 CFR part 780" ICR, OMB Control Number 1029–0036. Data collection and reporting requirements from today's proposed rule that may not be included in the 30 CFR part 780 ICR are: some incremental baseline and annual monitoring and some sediment yield modeling.

The initial burden for coal mining and remining sites under the proposed rule is estimated at 74,478 hours and $2,614,538 for baseline determination monitoring at remining sites and additional sediment yield modeling at Western Alkaline mining sites. The initial burden associated with preparation of a site's pollution abatement plan or sediment control plan is already covered by an applicable SMCRA ICR. For the Western Alkaline Subcategory, EPA estimates that 46 sites per year will experience an initial reporting burden of 72,588 hours; or an average of 1,578 hours and $50,000 per facility. For the Remining Subcategory, EPA estimated that 78 sites per year will experience an initial reporting burden of 1,890 hours; or an average of 24 hours and $4,033 per facility. The annual burden for coal mining and remining sites under the proposed rule is estimated at 3,024 hours and $189,302 for annual monitoring at coal remining sites. There is no annual burden associated with the Western Alkaline Subcategory. For the Remining Subcategory, the duration of the ICR is three years. EPA estimated that 234 sites (78 sites × 3 years) will each experience an annual burden of 13 hours and $809. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after April 11, 2000, a comment to OMB is best assured of having its full effect if OMB receives it by May 11, 2000. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Pub L. No. 104–113 Sec. 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, business

practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's proposed rule requires dischargers to monitor for TSS, magnesium, iron, and pH. All of these analytes are required to be measured using consensus standards that are specified in the tables at 40 CFR part 136.3.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

F. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule will not impose substantial costs on States and localities. The rule establishes effluent limitations imposing requirements that apply to coal mining facilities when they discharge wastewater. The rule does not apply directly to States and localities and will only affect State and local governments when they are administering CWA permitting programs. The proposed rule, at most, imposes minimal administrative costs on States that have an authorized NPDES program. (These States must incorporate the new limitations and standards in new and reissued NPDES permits). Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult extensively with State officials in developing this proposal, as discussed in Section V of this document.

In addition, in the spirit of this Executive Order and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The Executive Order "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is neither "economically significant" as defined under Executive Order 12866, nor does it concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Although EPA has identified sites in the western United States with existing coal mining operations that are located on Tribal lands, EPA projects that this proposal will generate a net cost savings for these mine sites. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

Nevertheless, EPA consulted with representatives of tribal governments. EPA has identified sites in the western United States with existing coal mining operations that are located on Tribal lands. With assistance from its American Indian Environmental Office, EPA has identified five Tribes as having lands in the western U.S. with, or having an interest in, coal mining activities. The Tribes are the Navajo Nation, the Hopi Tribe, the Crow Tribe, the Southern Ute Indian Tribe, and the Northern Cheyenne Tribe. EPA representatives met with Tribal officials from the Navajo Nation during coal mine site visits in New Mexico and Arizona in August 1998 to review environmental conditions and the applicability of the proposed regulation. In December 1999, EPA sent meeting invitations to Tribal Chairmen, Directors of Tribal Environmental Departments, and other representatives of the five Tribes with existing or potential interest in coal mining, and met with Tribal representatives from the Navajo Nation and Hopi Tribes in Albuquerque, NM on December 16, 1999 to consult on the proposed amendments to the existing effluent limitations guidelines, and to discuss plans for involvement at public

meetings in western locations. As a result of this consultation, EPA has agreed to a comment period on this Document of 90 days and has agreed to provide a copy of the relevant portions of the Rulemaking Record at the western location identified in the **ADDRESSES** section of this document. EPA has also agreed to hold public meetings in three locations that are convenient for attendance by Tribal representatives.

I. Plain Language Directive

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. We invite your comments on how to make this proposed rule easier to understand. For example, have we organized the material to suit your needs? Are the requirements in the rule clearly stated? Does the rule contain technical language or jargon that isn't clear? Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? Would more (but shorter) sections be better? Could we improve clarity by adding tables, lists, or diagrams? What else could we do to make the rule easier to understand?

XII. Solicitation of Data and Comments

A. Specific Data and Comment Solicitation

EPA has solicited comments and data on many individual topics throughout this preamble. EPA incorporates each and every such solicitation here, and reiterates its interest in receiving data and comments on the issues addressed by those solicitations. In addition, EPA particularly requests comments and data on the following issues:

1. Regulatory Proposal

a. EPA solicits comments on the data and methods used to determine the benefit and cost impact values supporting this proposed regulation. (Refer to Section IX and Section X)

b. EPA solicits comment on the belief that this proposed rule will provide better environmental results than the current requirements. (Refer to Section III, Section IV, and Section VI)

c. EPA is soliciting comments on the potential impact of the proposed rule on small entities and on issues related to such impacts. (Refer to Section XI.B)

2. Coal Remining Subcategory Proposal

a. EPA believes that encouraging remining operations through the proposed subcategory has the potential for improving hazardous conditions and improving acid mine drainage from abandoned mine lands. EPA is soliciting comment on this conclusion and on potential options that may be environmentally preferable to the proposed Remining subcategory. EPA is also soliciting comments and additional data on the extent of abandoned mine land that may be affected by the proposed rule. (Refer to Section VI.A and Section IX.A)

b. EPA is soliciting comments on the proposed statistical procedures presented in Appendix B of the proposed regulation for calculating baseline limits and determining compliance with baseline limits and on the requirements for the number of samples, the sampling duration and frequency, and the plan of sampling over time. EPA is also soliciting comments and data on the feasibility of using acidity, net alkalinity, pH, and sulfate as parameters for assessment of pollution loading from pre-existing discharges. (Refer to Section VII.B and Section VII.C)

c. EPA is soliciting comments on the consistency of the proposed Remining subcategory with the Rahall Amendment and with existing State remining programs. (Refer to Section VI.A)

d. EPA is soliciting comments on the definition for pollution abatement area and on any additional requirements of pollution abatement plans that would ensure the proper use, design and implementation of BMPs for compliance with the proposed regulations. EPA also is soliciting comments on how the proposed regulations could better define a pollution abatement plan that would constitute BPT and on other treatment technologies that would be economically feasible and available for control of pre-existing discharges. (Section VI.A)

e. EPA is soliciting comments on the proposed applicability of the coal remining subcategory as it relates to commingling pre-existing discharges with active mining wastewater. (Refer to Section VI.A)

f. EPA is soliciting comments on the legal basis and technical support for alternative permits incorporating only BMP-based requirements with no numeric limits and for information on conditions to determine a site's eligibility. (Refer to Section VI.A)

g. EPA requests comment on how to describe and structure the requirement to design and implement a pollution abatement plan to reduce pollutant loadings from pre-existing discharges. (Refer to Section VI.A)

h. EPA requests comment on how the regulations could better define the type of plan that would constitute BPT and BAT. (Refer to Section VI.A)

i. EPA is soliciting comment on the applicability of the proposed Coal Remining Subcategory in regard to permit reissuance and Rahall-type permits. (Refer to Section VI.A)

3. Western Alkaline Coal Mining Subcategory Proposal

a. EPA is soliciting comments and data on the appropriateness of expanding the applicability of this proposed subcategory to include the control of non-process water drainage from active mining areas in the arid and semiarid region. (Refer to Section VI.B)

b. EPA is soliciting comments on the environmental impacts and benefits associated with operating sedimentation ponds in the arid and semiarid west and on the problems that are associated with disturbing the hydrologic balance in arid regions. (Refer to Section VI.B)

c. EPA also is soliciting comment on the appropriateness of establishing effluent limitations requiring only BMP plans rather than setting numeric limitations based on treatment technologies for drainage from reclamation areas in these regions. (Refer to Section VI.B)

d. EPA is soliciting comment on the appropriateness of BMP inspection to determine compliance with requirements of this subcategory. EPA also is soliciting comment on recommended procedures for and frequency of such inspections. (Refer to Section VI.B)

e. As applies to the Western Alkaline Coal Mining Subcategory, EPA defines "sediment yield" to mean the sum of the soil losses from a surface minus deposition in macro-topographic depressions, at the toe of the hillslope, along field boundaries, or in terraces and channels sculpted into the hillslope. EPA is soliciting comments on the definition of sediment yield and on the appropriateness of using this parameter as the basis for determining sediment loadings. (Refer to Section VI.B)

f. EPA is soliciting comments on the approach used to estimate reclamation cost savings that EPA expects will result from the proposed Western Alkaline Subcategory and on EPA's assumption that today's proposed subcategory would be cost neutral for underground operators. (Refer to Section X)

B. General Solicitation

EPA encourages public participation in this rulemaking. EPA asks that comments address any perceived deficiencies in the record supporting this proposal and that suggested revisions or corrections be supported by data. In addition, EPA requests

comments on the various methods of handling supporting data and information and on the applicability of these proposed guidelines, as they relate to the definitions for coal remining and western alkaline coal mining.

EPA invites all parties to coordinate their data collection activities with EPA to facilitate mutually beneficial and cost-effective data submissions. Please refer to the **FOR FURTHER INFORMATION** section at the beginning of this preamble for technical contacts at EPA.

To ensure that EPA can properly respond to comments, EPA prefers that commenters cite, where possible, the paragraph(s) or sections in the document or supporting documents to which each comment refers. Please submit an original and two copies of your comments and enclosures (including references).

Appendix A to the Preamble: Definitions, Acronyms, and Abbreviations Used in This Document

Act—Clean Water Act
Agency—U.S. Environmental Protection Agency
Alkaline mine drainage—mine drainage which, before any treatment, has a pH equal to or greater than 6.0 and total iron concentration of less than 10 mg/L
AML—Abandoned mine land
AMLIS—Abandoned Mine Land Inventory System
ASTM—American Society of Testing and Materials
BADCT—The best available demonstrated control technology, for new sources under section 306 of the Clean Water Act
Baseline—Pre-existing pollution loading. Baseline will be determined according to the protocol set forth by EPA in promulgation of this proposed rule
BAT—The best available technology economically achievable, under section 304(b)(2)(B) of the Clean Water Act
BCT—Best conventional pollutant control technology under section 304(b)(4)(B) of the Clean Water Act
BMP—Best management practices
BOD—Biochemical oxygen demand
BPJ—Best professional judgement
BPT—Best practicable control technology currently available, under section 304(b)(1) of the Clean Water Act
CBI—Confidential Business Information
CFR—Code of Federal Regulations
Clean Water Act—Federal Water Pollution Control Act Amendments (33 U.S.C. 1251 *et seq.*)
Conventional pollutants—Constituents of wastewater as determined by section 304(a)(4) of the Clean Water Act, including, but not limited to, pollutants classified as biochemical oxygen demanding, suspended solids, oil and grease, fecal coliform, and pH
CV—Coefficient of variation
CWA—Clean Water Act
CWAP—Clean Water Action Plan
Direct discharger—A facility that discharges or may discharge pollutants to waters of the United States
EPA—U.S. Environmental Protection Agency
FDF—Fundamentally different factors—Variance
FR—Federal Register
FTE—Full-time employees
ICR—Information Collection Request
IMCC—Interstate Mining Compact Commission
Indirect discharger—A facility that introduces wastewater into a publicly owned treatment works
IRFA—Initial Regulatory Flexibility Analysis
NAICS—North American Industry Classification System
NCA—National Coal Association
NMA—National Mining Association
NPDES—National Pollutant Discharge Elimination System
NRDC—Natural Resources Defense Council, Incorporated
NSPS—New source performance standards under section 306 of the Clean Water Act
NTTAA—National Technology Transfer and Advancement Act
OMB—Office of Management and Budget
OSM/OSMRE—Office of Surface Mining, Reclamation and Enforcement
PADEP—Pennsylvania Department of Environmental Protection
PRA—Paperwork Reduction Act
PHC—Probable Hydrologic Consequence
Pollution abatement area—The part of the permit area that is causing or contributing to the baseline pollution load, including areas that must be affected to bring about significant improvement of the baseline pollution load, and which may include the immediate location of the discharges.
POTW—Publicly-owned treatment works
PPA—Pollution Prevention Act of 1990
Pre-existing discharge—Any discharge resulting from mining activities conducted prior to August 3, 1977.
PSNS—Pretreatment standards for new sources
Reclamation area—the surface area of a coal mine that has been returned to required contour and on which revegetation (specifically, seeding or planting) work has been commenced.
Remining—Coal remining refers to a coal mining operation that began after February 4, 1987 at a site on which coal mining was conducted before August 3, 1977.
RFA—Regulatory Flexibility Act
RUSLE—Revised Universal Soil Loss Equation
SBA—Small Business Administration
SBREFA—Small Business Regulatory Enforcement Fairness Act
Sediment—All undissolved organic and inorganic material transported or deposited by water.
Sediment Yield—the sum of the soil losses from a surface minus deposition in macro-topographic depressions, at the toe of the hillslope, along field boundaries, or in terraces and channels sculpted into the hillslope.
SIC—Standard Industrial Classifications
SMCRA— Surface Mining Control and Reclamation Act
SS—Settleable Solids
TMDL—Total Maximum Daily Loads
Toxic Pollutants—The pollutants designated by EPA as toxic in 40 CFR 401.15.
TSS—Total Suspended Solids
UMRA—Unfunded Mandates Reform Act
U.S.C.—United States Code
WIEB—Western Interstate Energy Board
WTP—Willingness to pay

List of Subjects in 40 CFR Part 434

Environmental protection, Mines, Reporting and recordkeeping requirements, Water pollution control.

Dated: March 30, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 434 is proposed to be amended as follows:

PART 434—[AMENDED]

1. The authority citation for part 434 continues to read as follows:

Authority: 33 U.S.C. 1311 1314(b), (c), (e), and (g), 1316(b) and (c), 1317(b) and (c), and 1361.

2. Amend § 434.11 by adding paragraphs (u), (v), (w), (x), (y), and (z) to read as follows:

§ 434.11 General definitions.

(u) The term "coal remining operation" means a coal mining operation at a site on which coal mining was conducted prior to August 3, 1977.

(v) The term "pollution abatement area" means the part of the permit area that is causing or contributing to the baseline pollution load, including areas that would need to be affected to reduce the pollution load.

(w) The term "pre-existing discharge" means any discharge resulting from mining activities conducted prior to August 3, 1977.

(x) The term "sediment" shall mean undissolved organic and inorganic material transported or deposited by water.

(y) The term "sediment yield" means the sum of the soil losses from a surface minus deposition in macro-topographic depressions, at the toe of the hillslope, along field boundaries, or in terraces and channels sculpted into the hillslope.

(z) The term "western coal mining operation" means a surface or underground coal mining operation located in the interior western United States, west of the 100th meridian west longitude, in an arid or semiarid environment with an average annual precipitation of 26.0 inches or less.

3. Revise § 434.50 to read as follows:

§ 434.50 Applicability.

The provisions of this subpart are applicable to discharges from post-mining areas, except as provided in § 434.80.

4. Add subpart G, consisting of §§ 434.70 through 434.74, to read as follows:

Subpart G—Coal Remining

Sec.
434.70 Applicability.
434.71 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).
434.72 Effluent limitations attainable by application of the best available technology economically achievable (BAT).
434.73 Effluent limitations attainable by application of the best conventional pollutant control technology (BCT).
434.74 New source performance standards (NSPS).

Subpart G—Coal Remining

§ 434.70 Applicability.

This subpart applies to pre-existing discharges that are located within pollution abatement areas of a coal remining operation and that are not commingled with waste streams from active mining areas. Pre-existing discharges that are commingled with waste streams from active mining areas are subject to the provisions of § 434.61. Pre-existing dischargers that have been, but are no longer commingled with waste streams from active mining areas, are subject to the provisions of this part. The effluent limitations in this subpart apply to pre-existing discharges until the appropriate SMCRA authority has authorized bond release.

§ 434.71 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

(a) Except as provided in 40 CFR 125.30 through 125.32, the following effluent limits apply to pre-existing discharges:

EFFLUENT LIMITATIONS

Pollutant	Requirement
(1) Iron, total	May not exceed baseline loadings (as defined by Appendix B).
(2) Manganese, total	May not exceed baseline loadings (as defined by Appendix B).
(3) pH:	
(i) If all baseline observations are within the range of 6.0 to 9.0	Single observations must be in range of 6.0 to 9.0.
(ii) If any baseline observation is <6.0	Single observations must be ≥ lower limit (as defined by Appendix B) and ≤ 9.0.
(iii) If any baseline observation is > 9.0	Single observations must be ≤ upper limit (as defined in Appendix B) and ≥ 6.0.
(4) TSS	May not exceed 70.0 mg/L for any 1 day. Average of daily values for 30 consecutive days may not exceed 35.0 mg/L.[1]

[1] Except as provided in § 434.63

(b) Additionally, the operator must submit a pollution abatement plan for the pollution abatement area to the permit authority, that in the Best Professional Judgement (BPJ) of the permit writer, represents the Best Available Technology (BAT) currently available. The plan must be incorporated into the permit as an effluent limitation, and must be designed to reduce the pollution load from pre-existing discharges. The plan must identify characteristics of the pollution abatement area and the pre-existing discharges, and describe design specifications for selected best management practices (BMPs). The plan must include periodic inspection and maintenance schedules. The BMPs must be implemented as specified in the plan.

§ 434.72 Effluent limitations attainable by application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, pre-existing discharges must comply with the effluent limitations listed in § 434.71 for iron and manganese. The operator must also submit and implement a pollution abatement plan that, in the Best Professional Judgement (BPJ) of the permit writer, reflects BAT levels of control.

§ 434.73 Effluent limitations attainable by application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, pre-existing discharges must comply with the effluent limitations listed in § 434.71 for pH and total suspended solids. The operator must also submit and implement a pollution abatement plan as specified in § 434.71.

§ 434.74 New source performance standards (NSPS).

NSPS effluent limitations are not applicable to this subcategory. Pre-existing discharges that are located in pollution abatement areas of a coal remining operation and are not commingled with waste streams from active mining areas are considered existing sources and must meet BPT, BAT, and BCT effluent limitations at §§ 434.71 through 434.73.

5. Add subpart H, consisting of §§ 434.80 through 434.84, to read as follows:

Subpart H—Western Alkaline Coal Mining

Sec.
434.80 Applicability.
434.81 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).
434.82 Effluent limitations attainable by application of the best available technology economically achievable (BAT).
434.83 Effluent limitations attainable by application of the best conventional pollutant control technology (BCT). [Reserved]
434.84 New source performance standards (NSPS).

Subpart H—Western Alkaline Coal Mining

§ 434.80 Applicability.

This subpart applies to alkaline mine drainage from reclamation areas associated with western coal mining operations. Reclamation areas not associated with western coal mining operations or that produce acid mine drainage are subject to the provisions established in Subpart E-Post-Mining Areas. The effluent limitations in this subpart apply until the appropriate SMCRA authority has authorized bond release.

§ 434.81 Effluent limitations attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, the following effluent

limitations apply to alkaline mine drainage from reclamation areas of western coal mining operations:

(a) A western coal mining operator must submit a site-specific sediment control plan for surface reclamation areas to the permitting authority. The sediment control plan must be incorporated into the permit as an effluent limitation. The sediment control plan must identify best management practices. It also must describe design specifications, construction specifications, maintenance schedules, criteria for inspection, as well as expected performance and longevity of the best management practices.

(b) A western coal mining operator must run a watershed model and submit results demonstrating that implementation of the sediment control plan will result in average annual sediment yields that will not be greater than background levels from pre-mined, undisturbed conditions. The operator must use the same watershed model that was or will be used to acquire the SMCRA permit.

(c) A western coal mining operator must design, implement, and maintain sediment control measures in the manner specified in the sediment control plan.

§ 434.82 Effluent limitations attainable by application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing western coal mining operation subject to this subpart must meet the effluent limitations listed in § 434.81.

§ 434.83 Effluent limitations attainable by application of the best conventional pollutant control technology (BCT). [Reserved]

§ 434.84 New source performance standards (NSPS).

Any new source western coal mining operation subject to this subpart must meet the effluent limitations listed in § 434.81.

6. Add appendix B to part 434 to read as follows:

Appendix B to Part 434—Baseline Determination and Compliance Monitoring for Pre-existing Discharges at Remining Operations

I. Summary

1. This appendix presents the procedures to be used for establishing effluent limitations for pre-existing discharges at coal remining operations, in accordance with the requirements set forth in this part, Coal Remining Subcategory. The requirements specify that pollutant levels of total iron, total manganese, and pH in pre-existing discharges shall not exceed baseline pollutant levels. The procedures described in this appendix shall be used for determining site-specific, baseline pollutant levels, and for determining discharge exceedances during coal remining operations. Procedures A and B are alternatives—either one may be selected by a permitting authority. Because pH data examined by EPA do not appear to be well-described by a log-normal distribution, EPA recommends the use of Procedure A for determining pH limits and exceedances.

2. Below are the steps for running Procedures A and B for determining baseline and compliance with baseline pollution loading. Examples of these procedures are provided in Appendix A of EPA's *Coal Remining Statistical Support Document*. In order to sufficiently characterize pollutant levels during baseline determination and during each annual monitoring period, it is required that at least one sample result be obtained per month for a period of 12 months.

3. In those cases where any baseline observation is above 9.0 standard pH units, an upper limit or trigger and compliance should be determined in the same way limits and compliance are determined for pollutant loadings. If the upper limit determined in this manner is less than 9.0, the limit may be set at 9.0. In cases where any baseline observation for pH is less than 6.0 standard pH units, lower limits or triggers and compliance determinations for pH should be determined using transformed data (Y = 14—pH). Once the lower limit or trigger is determined for Y, it should be transformed back (14—Limit for Y), to apply as standard pH units. If the lower limit determined in this manner is greater than 6.0, then the limit may be set at 6.0.

II. Procedure A for Comparing Baseline and Monitoring Loading Observations

Procedure A implements a single observation trigger, and a subtle trigger used for annual comparisons.

A. Calculation and Application of Single Observation Trigger (L)

Step 1. Count the number of baseline observations taken for the parameter of interest. Label this number n.

Step 2. Order all baseline loading observations from lowest to highest. Let the lowest number (minimum) be $x_{(1)}$, the next lowest be $x_{(2)}$, and so forth until the highest number (maximum) is $x_{(n)}$.

Step 3. If less than 17 baseline observations were obtained, then the single observation trigger (L) will equal the maximum of the baseline observations ($x_{(n)}$). Go to step 4.

If at least 17 baseline observations were obtained, calculate the median (M) of all baseline observations:

Instructions for calculation of M:

If n is odd, then M equals $x_{(n/2 + 1/2)}$.

For example, if there are 17 observations, then $M = X_{(17/2 + 1/2)} = x_{(9)}$, the 9th highest observation.

If n is even, then M equals $0.5 * (x_{(n/2)} + x_{(n/2 + 1)})$.

For example, if there are 18 observations, then M equals 0.5 multiplied by the sum of the 9th and 10th highest observations.

(a) Calculate M_1 as the median of the subset of observations that range from the calculated M to the maximum $x_{(n)}$

(b) Calculate M_2 as the median of the subset of observations that range from the calculated M_1 to $x_{(n)}$.

(c) Calculate M_3 as the median of the subset of observations that range from the calculated M_2 to $x_{(n)}$.

(d) Calculate the single observation trigger (L) as the median of the subset of observations that range from the calculated M_3 to $x_{(n)}$.

Note: When subsetting the data for each of steps 3a–3d, the subset should include all observations greater than or equal to the median calculated in the previous step. If the median calculated in the previous step is not an actual observation, it is not included in the new subset of observations. The new median value will then be calculated using the median procedure, based on whether the number of points in the subset is odd or even.

Step 4. If a monitoring observation exceeds L, immediately begin weekly monitoring for four weeks (four weekly samples).

Step 5. If any two observations exceed L during weekly monitoring, declare exceedance of the baseline pollution loading.

B. Calculation and Application of Subtle Trigger (T)

Step 1. Calculate M and M_1 of the baseline loading data as described in step 3 for the Single observation trigger above.

Step 2. Calculate M_{-1} as the median of the baseline data which are less than or equal to the sample median M.

Step 3. Calculate $R=(M_1-M_{-1})$.

Step 4. The subtle trigger (T) is calculated as:

$$T = M + \frac{1.58 * [(1.25 * R)]}{\left(1.35 * \sqrt{n}\right)}$$

where n is the number of baseline loading observations.

Step 5. To compare baseline loading data to observations from the annual

monitoring period, repeat steps 1–3 for the set of monitoring observations. Label the results of the calculations M' and R'. Let m be the number of monitoring observations.

Step 6. The subtle trigger (T') of the monitoring data is calculated as:

$$T' = M' - \frac{1.58 * [(1.25 * R')]}{\left(1.35 * \sqrt{m}\right)}$$

Step 7. If T' > T , conclude that the median loading of the monitoring observations has exceeded the median loading during the baseline period, and declare an exceedance of the baseline pollution loading.

III. Procedure B for Comparing Baseline and Monitoring Loading Observations

Procedure B implements a single observation limit and warning level, a Cumulative Sum limit and warning level, and the Wilcoxon-Mann-Whitney test for annual comparisons. The Cumulative Sum test is run each time a new observation is acquired during monitoring, to test for an increase in the mean of the loading observations.

A. Calculation and Application of Single Observation Limit

Step 1. Count the number of baseline loading observations taken for the parameter of interest. Label this number n.

Step 2. Take the natural logarithm of all baseline loading observations. Label the observations $y_1, y_2, y_{31}, \ldots, y_n$.

Step 3. Calculate the average of all the natural logarithms. Label the average E_y.

Step 4. Calculate A using the equation:

$$A = \frac{1}{1 - \left(\frac{2}{n} * 0.5\right)}$$

Step 5. Calculate s_y^2 using the equation:

$$s_y^2 = A * \sum \frac{\left[\left(y_i - E_y\right)^2\right]}{n-1}, \text{ with i ranging from 1 to n.}$$

Step 6. Calculate E_x using the equation:

$$E_x = \exp\left(E_y + 0.5\, s_y^2\right)$$

Step 7. Calculate the single observation limit as:

$$\exp\left[E_y + \left(2.3263 * \sqrt{s_y^2}\right)\right]$$

If the single observation limit is exceeded by any monitoring observation, then declare an exceedance of the baseline pollution loading.

B. Single Observation Warning Level

Step 1. Calculate the warning level as:

$$\exp\left[E_y + \left(1.6449 * \sqrt{s_y^2}\right)\right]$$

where E_y and s_y^2 are calculated in steps 3 and 5 of the single observation limit procedure. If the warning level, but not the single-observation limit, is reached, then an investigation and further action should be considered.

Step 2. Keep and report a graph showing the monitoring observations plotted against month or successive observation times, and also showing the single observation limit, warning level, and E_x.

C. Calculation and Application of Cumulative Sum (Cusum) Limit

This procedure is used to determine whether there is an increase in the mean of monitoring observations, and should be run after each new observation has been collected.

Step 1. Let n be the number of monitoring observations.

Step 2. Take the natural logarithm of all the monitoring loading observations.

Step 3. Order the log-transformed observations based on collection time, and label them so that Y_1 is the first observation taken, Y_2 is the second observation taken, and so forth. Y_n is the last observation taken.

Step 4. Calculate K using the equation:

$K = E_y + 0.25 * s_y$,

where E_y is the baseline mean calculated in step 3 of the single observation limit procedure, and s_y is the square root of the baseline variance calculated in step 5 of the single observation limit procedure.

Step 5. Calculate C_1 using the equation:

$C_1 = Y_1 - K$.

Step 6. Calculate C_2 using the equation:

$C_2 = C_1 + (Y_2 - K)$

If C_2 is negative, then let $C_2 = 0$.

Step 7. Calculate C_3 using the equation:

$C_3 = C_2 + (Y_3 - K)$

If C_3 is negative, then let $C_3 = 0$.

Step 8. Repeat step 7 for each of the remaining times, using the general equation (let t be some time between 3 and n):

$C_t = C_{t-1} + (Y_t - K)$

If C_t is negative, then let $C_t = 0$.

Step 9. Calculate H using the equation:

$H = 8.0 * s_y$

H is the Cusum limit, not to be exceeded by any C_t.

Step 10. If any C_t reaches or exceeds H, then declare an exceedance of the baseline pollution loading.

Step 11. Keep and report a graph showing C_t versus successive observation times and showing the Cusum limit H.

D. Cusum Warning Level

Step 1. Let W_1 be the Cumulative Sum warning level for the first observation collected, W_2 be the Cumulative Sum warning level for the second observation taken, and so forth.

Step 2. Calculate K_w and H_w using the equations:

$K_w = E_y + 0.5 * s_y$,

$H_w = 3.5 * s_y$

Step 3. Calculate W_t by using steps 5 through 8 of the Cusum limit procedure, replacing K with K_w.

Step 4. If any W_t reaches or exceeds H_w, then an investigation and further action should be considered.

Step 5. Keep and report a chart W_t vs. month or successive observation time, and showing the Cusum warning level H_w. Consider making an investigation and taking action when the warning level is reached.

E. Annual comparisons

Compare baseline year loadings with current annual loadings using the Wilcoxon-Mann-Whitney test. Instructions for running the test are below:

Step 1. Steps for running Wilcoxon-Mann-Whitney test:

(a) Let n be the number of baseline loading observations taken, and let m be the number of monitoring loading observations taken.

(b) Order the combined baseline and monitoring observations from smallest to largest (the observations do not need to be log-transformed for this test).

(c) Assign a rank to each observation based on the assigned order: the smallest observation will have rank 1, the next smallest will have rank 2, and

so forth, up to the highest observation, which will have rank n + m.

If two or more observations are tied (have the same value), then the average rank for those observations should be used. For example, suppose the following four values are being ranked: 3, 4, 6, 4.

Since 3 is the lowest of the four numbers, it would be assigned a rank of 1. The highest of the four numbers is 6, and would be assigned a rank of 4. The other two numbers are both 4. Rather than assign one a rank of 2 and the other a rank of 3, the average of 2 and 3 (i.e., 2.5) is given to both numbers.

(d) Sum all the assigned ranks of the n baseline observations, and let this sum be S_n.

(e) Obtain the critical value (C) from Table 1. For the case where 12 monthly samples were collected for both baseline and monitoring (i.e., n=12 and m=12), the critical value is 121.

(f) Compare C to S_n. If S_n is less than C, then the monitoring loadings have exceeded the baseline loadings. Alternatively, calculate S_m as the sum of ranks for the monitoring observations; if S_m exceeds $C' = [n(n+m+1) - C]$, then the monitoring loadings have exceeded the baseline loadings.

STEP 2.—EXAMPLE CALCULATIONS FOR WILCOXON-MANN-WHITNEY TEST

Baseline Data	8.0	9.0	9.0	10.0	12.0	15.0	17.0	18.0	21.0	23.0	28.0	30.0
Monitoring Data	9.0	10.0	11.0	12.0	13.0	14.0	16.0	18.0	20.0	24.0	29.0	31.0
Baseline Ranks	1.0	3.0	3.0	5.5	8.5	12.0	14.0	15.5	18.0	19.0	21.0	23.0
Monitoring Ranks	3.0	5.5	7.0	8.5	10.0	11.0	13.0	15.5	17.0	20.0	22.0	24.0

Note.—Sum of Ranks for Baseline is Sn = 143.5, critical value is Cn, m = 121.

TABLE 1 TO APPENDIX B.—CRITICAL VALUES (C) OF THE WILCOXON-MANN-WHITNEY TEST (FOR A ONE-SIDED TEST AT THE 95% LEVEL)

[In order to find the appropriate critical value, match column with correct n (number of baseline observations) to row with correct m (number of monitoring observations)]

m \ n	10	11	12	13	14	15	16	17	18	19	20
10	83	98	113	129	147	165	185	205	227	249	273
11	87	101	117	134	152	171	191	211	233	256	280
12	90	105	121	139	157	176	197	218	240	263	288
13	93	109	126	143	162	182	202	224	247	271	295
14	97	113	130	148	167	187	208	231	254	278	303
15	100	117	134	153	172	193	214	237	260	285	311
16	104	121	139	157	177	198	220	243	267	292	318
17	107	124	143	162	183	204	226	250	274	300	326
18	111	128	147	167	188	209	232	256	281	307	334
18	114	132	151	172	193	215	238	263	288	314	341
20	118	136	156	176	198	221	244	269	295	321	349

[FR Doc. 00–8533 Filed 4–10–00; 8:45 am]
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Federal Register

Tuesday,
April 11, 2000

Part III

Department of Transportation

Office of the Secretary

Privacy Act of 1974: Systems of Records; Notice

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: Systems of Records

AGENCY: Operating Administrations, DOT.

ACTION: Notice to amend and delete systems of records.

SUMMARY: The United States Department of Transportation is publishing its Privacy Act System of Records notices subject to the Privacy Act of 1974 (5 USC 552a) in their entirety. This notice incorporates a Purpose statement and makes any other minor changes or deletions to existing notices.

EFFECTIVE DATE: April 11, 2000.

ADDRESSES: Send comments to the Privacy Act Officer, United States Department of Transportation, 400 7th St., SW., Washington DC 20590.

FOR FURTHER INFORMATION CONTACT: Vanester M. Williams at (202) 366–1771.

SUPPLEMENTARY INFORMATION: These minor changes are not within the purview of subsection (r) of the Privacy Act of 1974, as amended, which requires the submission of a new or altered systems report. In addition, several departmental systems of records are being deleted as they are either covered by another system of record or are no longer in use.

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Notice of Systems of Records

The identification of the operating unit or units within the Department to which the particular system of records pertains appears as 'DOT' followed by a designating abbreviation. The abbreviations and their meanings are as follows:

OST—Office of the Secretary of Transportation.
CG—United States Coast Guard.
FAA—Federal Aviation Administration.
FHWA—Federal Highway Administration.
FRA—Federal Railroad Administration.
MARAD—Maritime Administration.
NHTSA—National Highway Traffic Safety Administration.
RSPA—Research and Special Programs Administration.
SLS—Saint Lawrence Seaway Development Corporation.
TSC—Transportation Systems Center.
FTA—Federal Transit Administration.

General Routine Uses Under the Privacy Act of 1974

The following routine uses apply, except where otherwise noted or where obviously not appropriate, to each system of records maintained by the Department of Transportation, DOT.

1. In the event that a system of records maintained by DOT to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

2. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a DOT decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

3. A record from this system of records may be disclosed, as a routine use, to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4a. Routine Use for Disclosure for Use in Litigation. It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or other Federal agency conducting litigation when

(a) DOT, or any agency thereof, or

(b) Any employee of DOT or any agency thereof (including a member of

the Coast Guard), in his/her official capacity, or

(c) Any employee of DOT or any agency thereof (including a member of the Coast Guard), in his/her individual capacity where the Department of Justice has agreed to represent the employee, or

(d) The United States or any agency thereof, where DOT determines that litigation is likely to affect the United States, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or other Federal agency conducting the litigation is deemed by DOT to be relevant and necessary in the litigation, provided, however, that in each case, DOT determines that disclosure of the records in the litigation is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

4b. Routine Use for Agency Disclosure in Other Proceedings. It shall be a routine use of records in this system to disclose them in proceedings before any court or adjudicative or administrative body before which DOT or any agency thereof, appears, when

(a) DOT, or any agency thereof, or

(b) Any employee of DOT or any agency thereof (including a member of the Coast Guard) in his/her official capacity, or

(c) Any employee of DOT or any agency thereof (including a member of the Coast Guard) in his/her individual capacity where DOT has agreed to represent the employee, or (d) The United States or any agency thereof, where DOT determines that the proceeding is likely to affect the United States, is a party to the proceeding or has an interest in such proceeding, and DOT determines that use of such records is relevant and necessary in the proceeding, provided, however, that in each case, DOT determines that disclosure of the records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

5. The information contained in this system of records will be disclosed to the Office of Management and Budget, OMB in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

6. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual. In such cases, however, the Congressional office does not have greater rights to records than the individual. Thus, the disclosure may be withheld from delivery to the individual where the file contains investigative or actual information or other materials which are being used, or are expected to be used, to support prosecution or fines against the individual for violations of a statute, or of regulations of the Department based on statutory authority. No such limitations apply to records requested for Congressional oversight or legislative purposes; release is authorized under 49 CFR 10.35(9).

7. One or more records from a system of records may be disclosed routinely to the National Archives and Records Administration in records management inspections being conducted under the authority of 44 USC 2904 and 2906.

8. [Reserved]

9. DOT may make available to another agency or instrumentality of any government jurisdiction, including State and local governments, listings of names from any system of records in DOT for use in law enforcement activities, either civil or criminal, or to expose fraudulent claims, regardless of the stated purpose for the collection of the information in the system of records. These enforcement activities are generally referred to as matching programs because two lists of names are checked for match using automated assistance. This routine use is advisory in nature and does not offer unrestricted access to systems of records for such law enforcement and related antifraud activities. Each request will be considered on the basis of its purpose, merits, cost effectiveness and alternatives using Instructions on reporting computer matching programs to the Office of Management and Budget, OMB, Congress and the public, published by the Director, OMB, dated September 20, 1989.

10. It shall be a routine use of the information in any DOT system of records to provide to the Attorney General of the United States, or his/her designee, information indicating that a person meets any of the disqualifications for receipt, possession, shipment, or transport of a firearm under the Brady Handgun Violence Prevention Act. In case of a dispute concerning the validity of the information provided by DOT to the Attorney General, or his/her designee, it shall be a routine use of the information in any DOT system of records to make any disclosures of such information to the National Background Information Check System, established by the Brady Handgun Violence Prevention Act, as may be necessary to resolve such dispute.

Appendix I—Location of CG Districts and Headquarters Units

1. Commander, 1st Coast Guard District, 408 Atlantic Avenue, Boston, MA 02110–3350.

2. Commander, 5th Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, VA 23704–5004.

3. Commander, 7th Coast Guard District, 909 SE First Ave., Brickell Plaza Federal Bldg., Miami, FL 33131–3050.

4. Commander, 8th Coast Guard District, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130–3396.

5. Commander, 9th Coast Guard District, 1240 East 9th St., Cleveland, OH 44199–2060.

6. Commander, 11th Coast Guard District, Coast Guard Island, Alameda, CA 94501–5100.

7. Commander, 13th Coast Guard District, Jackson Federal Bldg, 915 Second Ave., Seattle, WA 98174–1067.

8. Commander, 14th Coast Guard District, Prince Kalaniaaole, Federal Building, 300 Ala Moana Blvd., 9th Floor, Honolulu, HI 96580–4982.

9. Commander, 17th Coast Guard District, PO Box 25517, Juneau, Alaska 99802–5517.

10. Superintendent, United States Coast Guard Academy, 15 Mogehan Ave., New London, CT 06320–8100.

11. Commanding Officer, United States Coast Guard Yard, 2401 Hawkins Point Road, Bldg. 1, Baltimore, MD 21226–1797.

12. Commanding Officer, United States Coast Guard Training Center, 1 Munro Avenue, Cape May, NJ 08204.

13. Commanding Officer, United States Coast Guard Institute, 5900 SW 64th Street, Room 235, Oklahoma City, OK 73169–6990.

14. Commanding Officer, U.S Coast Guard, Aircraft Repair & Supply Center, Elizabeth City, NC 27909–5001.

15. Commanding Officer, United States Coast Guard Aviation, 8501 Tanner Williams Road, Mobile, AL 36608–8322.

16. Commanding Officer, United States Coast Guard, 7323 Telegraph Rd., Alexandria, VA 22315–3940.

17. Commanding Officer, United States Coast Guard Reserve, Training Center, Yorktown, VA 23690–5000.

18. Commanding Officer, United States Coast Guard, Training Center, 599 Tomales Road, Petaluma, CA 94952–5000.

19. Commanding Officer, United States Coast Guard Aviation, Technical Training Center, Elizabeth City, NC 27909–5003.

20. Commanding Officer, U.S. Coast Guard, Research and Development Center, 1082 Shennecossett Road, Groton, CT 06340–6096.

21. Commanding Officer, U.S. Coast Guard, Human Resources Services and Information Center, Federal Bldg., 444 SE Quincy St., Topeka, KS 66683–3591.

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SYSTEM NAME:

DOT Grievance Records Files.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Records are maintained in the personnel office that services the aggrieved employee if the grievance was processed under Departmental Personnel Manual, DPM 771–1, Agency Administrative Grievance System, pursuant to 5 CFR part 771. If processed under a negotiated grievance procedure from an approved labor agreement on behalf of a member, of a group of members, of a recognized collective bargaining unit, or if processed by the union, the grievance record is maintained in the office of the official administering the labor agreement pertaining to the collective bargaining unit. Addresses of servicing personnel offices are as follows: USCG Civilian Personnel Office, CGPC–CPM, 2100 2nd Street SW., Room 6224, Washington, DC 20593–00001; Federal Highway Administration, Office of Human Resources, 400 7th Street, SW., Room 4317,Washington, DC 20590; Federal Railroad Administration, Office of Human Resources, 1120 Vermont Ave, NW, RAD–10, Stop 30, Washington, DC 20005; Federal Transit Administration, Office of Human Resources, TAD–30, Room 9113, Washington, DC 20590; Office of Inspector General, Office of Human Resources, JM–20, Room 7107, Washington, DC 20590; Maritime Administration, Office of Personnel, MAR–360, Room 8101, Washington, DC 20590; National Highway Traffic Safety Administration, Office of Human Resources, NAD–20, Room 5306, Washington, DC 20590; Departmental Office of Human Resource Management, Departmental Director, M–10, Room 7411,Washington, DC 20590; Transportation Administrative Service Center, Human Resource Services, SVC–190, Room 2225, Washington, DC 20590; Research and Special Programs Administration, Office of Human Resources Management, DMA–40, Room 7108, Washington, DC 20590; Research and Special Programs Administration, VOLPE National Transportation Systems Center, Human Resources Management Division, DTS–84, Room 2–122, 55 Broadway, Cambridge, MS 02142–1093; Saint Lawrence Seaway Development Corporation, Office of Administration, PO Box 520, 180 Andrews Street, Massena, NY 13662–0520; Surface Transportation Board, 1925 K Street, NW., Suite 880, Washington, DC 20423; Federal Aviation Administration, National Headquarters, Office of Personnel, AHP–1, Room 500E, 800 Independence Avenue, SW., Washington, DC 20591; Federal Aviation Administration, Alaskan Region, 222 West 7th Avenue, PO Box 14, Anchorage, AK 99513–7587; Federal Aviation Administration, Western Pacific Region, PO Box 92007, World Postal Center, Los Angeles, CA 90009; Federal Aviation Administration, Southern Region, PO Box 20636, Atlanta, GA 30320; Federal Aviation Administration, Great Lakes Region, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018; Federal Aviation Administration, New England Region; 12 New England Executive Park, Burlington, MA 01803; Federal Aviation Administration, Central Region, 601 East 12th Street, Kansas City, MO 64106; Federal Aviation Administration, Eastern Region, Fitzgerald Federal Building, JFK International Airport, Jamaica, NY 11430; Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137–4298; Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, WA 98055–4056; Federal Aviation Administration, William J. Hughes, Technical Center, Atlantic City Intl Airport, Atlantic City, NJ 08405; Federal Aviation Administration; Mike Monroney Aeronautical Center, PO Box 25082, Oklahoma City, OK 73125.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former DOT employees who have submitted grievances with their respective administrations under OPM Letter 771–1, or grievances pertaining to members of DOT Collective Bargaining Units which were submitted in accordance with negotiated grievance procedures.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records relating to grievances filed by or on behalf of DOT: statements of employees, witnesses, reports of interviews and hearings, fact-finders and/or arbitrator's findings and recommendations, copies of decisions and correspondence and exhibits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7121; 5 CFR part 771.

PURPOSE(S):

Determine validity of grievance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in performance of their authorized duties. Provide information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Names of the individuals on whom they are maintained, or by names and local identification of unions.

SAFEGUARDS:

These records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

RETENTION AND DISPOSAL:

These records may be disposed of 3 years after closing of the case. Disposal is by shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Human Resource Management, M–10, United States Department of Transportation, 400 7th Street, SW., Room 7411, Washington, DC 20590

NOTIFICATION PROCEDURE:

Same as "System Manager."

RECORD ACCESS PROCEDURES:

Same as "System Manager."

CONTESTING RECORD PROCEDURES:

Same as "System Manager."

RECORD SOURCE CATEGORIES:

Individual on whom the records is maintained. Testimony of witnesses. Agency officials. Related correspondence from organization or persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/ALL 5

SYSTEM NAME:

Employee Counseling Services Program Records.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Employee Counseling Service, which provides counseling to the employee.

Other Federal, state, or local government, or private sector agency or institution providing counseling services.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former DOT employees who have been counseled or otherwise treated regarding alcohol or drug abuse or for personal or emotional health problems.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documentation of visits to employee counselors (Federal, state, local government, or private) and the diagnosis, recommended treatment, results of treatment, and other notes or records of discussions held with the employee made by the counselor. Documentation of treatment by a private therapist or a therapist at a Federal, state, local government, or private institution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301 and 7901, 21 U.S.C. 1101, 42 U.S.C. 4541 and 4561, and 44 U.S.C. 3101.

PURPOSE(S):

Document the nature of the individual's problem and progress made and to record an individual's participation in and the results of community or private sector treatment or rehabilitation programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclose information to qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report or otherwise disclose patient identities in any manner (when such records are provided to qualified researchers employed by DOT, all patient identifying information shall be removed). Disclose information, when an individual to whom a record pertains is mentally incompetent or under legal disability, to any person who is responsible for the care of the individual. DOT's General Routine Uses do not apply to this system. Whenever possible, a partial disclosure will be made or a summary of the contents of the record will be disclosed.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are retrieved by the name or social security number of the individual on whom they are maintained or by a unique case file identifier.

SAFEGUARDS:

These records are maintained in locked file cabinets with regular access strictly limited to employees directly involved in the DOT's Employee Counseling Services Program.

RETENTION AND DISPOSAL:

Records are maintained for three to six years after the employee's last contact with DOT's Employee Counseling Services Program.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Office of the Secretary, M–10, Department of Transportation, Room 7411, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Contact the DOT Employee Counseling Services Program coordinator who arranged for counseling or treatment.

RECORD ACCESS PROCEDURES:

Same as "Notification Procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification Procedure."

RECORD SOURCE CATEGORIES:

Individual to whom it applies, the supervisor of the individual if the individual was referred by the Supervisor, the Employee Counseling Service Program staff member who records the counseling session, and therapists or institutions providing treatment.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/ALL 6

SYSTEM NAME:

Workers' Compensation Information System.

SECURITY CLASSIFICATION:

Sensitive, unclassified.

SYSTEM LOCATION:

These records are maintained at the Departmental Office of Human Resource Management, Office of the Secretary, in Washington, DC; at the operating administration human resource management offices in Washington, DC, and in their in regional offices and centers; and at the Departmental Personnel and Policy Division at the Mike Monroney Aeronautical Center in Oklahoma City, Oklahoma.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current and former DOT employees who file (d) claims for Federal Employees' Compensation, FEC, or report work-related injuries or occupational health-related illnesses.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of information that is derived from DOT personnel and payroll records, and from Federal Employees' Compensation claims records maintained by the Department of Labor/Office of Workers' Compensation Programs, OWCP. OWCP records include information regarding claims filed by DOT employees, members of the US Coast Guard Auxiliary, and students at the US Merchant Marine Academy.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapter 8101 *et seq.*, 20 CFR 1.1 *et seq.*, 5 U.S.C. 552a, and Department of Labor and DOT implementing regulations.

PURPOSE(S):

The purpose of this system of records is to establish and maintain an automated data/information base that is used to improve claims management of the Federal Employees Compensation program within the Department; develop policy guidance; and promote training programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are maintained in accordance with law and regulation in order to ensure proper and efficient management of the Federal Employees Compensation program within DOT. These records are required to assure compliance with the law and regulations and for maintaining program cost analysis and comparison information. These records provide occupation-related data including personnel data for the purpose of determining patterns of injury or illness and determining case disposition information. They are a source of information for purposes of controverting claims when appropriate, monitoring recovery of injured employees and offering of light duty assignments. Records in this system

may also be integrated with other DOT program-related personnel information as required for the sound policy or fiscal management of the program and the agency's mission, or in response to legislative and/or administrative initiatives or requirements. These records may be used as a source of information for the development of policy guidance and/or training programs, for program review and evaluation purposes, and for the provision of management information on an as required or ad hoc basis. Users include DOT human resource management officials, safety and health officials, supervisors, and managers.

These records are to be held in confidence and no information shall be disclosed except:

a. To the Department of Labor, OWCP, OSHA, the DOT Office of Inspector General, and/or OPM for review of appropriate case and/or investigative actions in collaboration with them.

b. Also, see the Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders, magnetic tape and disk. Storage is at the geographic location of the servicing human resource management offices, the Headquarters human resource management policy offices, and the Departmental Personnel and Payroll Division at the Mike Monroney Aeronautical Center in Oklahoma City, Oklahoma.

RETRIEVABILITY:

Records are maintained by employee name, social security and FEC case numbers, and regional/location identifiers.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Direct access to the automated database must be authorized by the Departmental Manager, Department of Transportation Workers' Compensation Program.

RETENTION AND DISPOSAL:

These records are maintained and disposed of in accordance FPMR 101 0911.4, General Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Departmental Manager, Department of Transportation Workers' Compensation Program, Office of the Secretary, Departmental Office of Human Resource Management, 400 Seventh Street SW., Washington, DC 20590.

Office of Labor and Employee Relations, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

Chief, Office of Civilian Personnel, United States Coast Guard, 200 Second Street SW., Washington, DC 20593.

Director, Office of Human Resources, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590.

Director, Office of Personnel, Federal Railroad Administration, 1120 Vermont Avenue NW, Washington, DC 20005.

Director, Office of Human Resources, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

Director, Office of Human Resources, Federal Transit Administration, 400 Seventh Street SW., Washington, DC 20590.

Director, Office of Personnel, Maritime Administration, 400 Seventh Street SW., Washington, DC 20590.

Director, Office of Human Resource Management, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590.

Principal, Human Resource Services, Transportation Administrative Service Center, 400 Seventh Street SW., Washington, DC 20590.

Director, Office of Human Resources, Office of Inspector General, 400 Seventh Street SW., Washington, DC 20590.

Director, Office of Administration, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, Massena, NY 13662–1763.

Department of Transportation, Regional Human Resource Management Officers.

NOTIFICATION PROCEDURE:

Individuals wishing to know if their records appear in this system of records may inquire in person or writing to the system manager.

RECORD ACCESS PROCEDURES:

Individuals who desire information about themselves contained in this system of records should contact or address their inquiries to the system manager.

CONTESTING RECORD PROCEDURES:

Individuals who desire to contest records about themselves contained in this system should contact or address their inquiries to the system manager.

RECORD SOURCE CATEGORIES:

Information contained in this system is received from DOT records or OWCP records received from and maintained on DOT and its employees, members of the US Coast Guard Auxiliary, and students at the US Merchant Marine Academy.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/ALL 7

SYSTEM NAME:

Departmental Accounting and Financial Information System, DAFIS.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

The system is located in Department of Transportation, DOT Accounting offices and selected program, policy, and budget Offices. These offices are located within the Office of the Secretary, OST, the Research and Special Programs Administration, RSPA, the Federal Aviation Administration, FAA, the United States Coast Guard, USCG, the Federal Highway Administration, FHWA, the National Highway Traffic Safety Administration, NHTSA, the Federal Transit Administration, FTA, the Maritime Administration, MARAD, and the Federal Railroad Administration, FRA. These offices exercise systems and operational control over applicable records within the system. The system software is centrally maintained by the Federal Aviation Administration's Mike Monroney Aeronautical Center, Oklahoma City, Oklahoma. Some centralized reporting functions are performed at Oklahoma City.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system will cover: All civilian employees of the FAA, USCG, NHTSA, FHWA, OST, RSPA, FRA, FTA, and MARAD; and, the military employees of USCG as their Operating Administrations are implemented on the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories include payment records for non-payroll related expenses, payment records for payroll made off-line, collection records for payroll offsets, and labor cost records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The purpose for collecting the data in the DAFIS System of Records is to control and facilitate the accounting and reporting of financial transactions for DOT.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Accounting office personnel use these records to: Provide employees with off-line paychecks, travel advances, travel reimbursements, and other official reimbursements; Facilitate the distribution of labor charges for costing purposes; Track outstanding travel advances, receivables, and other non-payroll amounts paid to employees, etc; and, Clear advances that were made through the system in the form of off-line paychecks, payments for excess household goods made on behalf of the employee, garnishments, overdue travel advances, etc. See Prefatory Statement of General Routine Uses.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tape, magnetic disk, microforms, and in file folders. Storage of file folders and microforms is at the geographic location of the servicing accounting office. Magnetic tape and disk records are maintained at the central maintenance site in Oklahoma City.

RETRIEVABILITY:

Records are retrieved by employee social security number. Retrieval is accomplished by use of telecommunications.

SAFEGUARDS:

Access to magnetic tape and disk records is limited to authorized agency personnel through password security. Hardcopy files are accessible to authorized personnel and are kept in locked file cabinets during non-duty hours.

RETENTION AND DISPOSAL:

Original payment vouchers and supporting documentation are retained on site at the accounting office for a period of three years. Certain transportation documents are forwarded to the General Service Administration for audit during that period. After three years, records are sent to GSA's Records Centers for storage. Records are destroyed after ten years and three months.

SYSTEM MANAGER(S) AND ADDRESS:

DAFIS Accounting Manager (B–30), Office of the Secretary, Office of Financial Management, 400 Seventh Street SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Inquiries should be directed to the manager of the accounting Office supporting the employee's agency. Agency accounting Managers will contact the DAFIS System Managers listed above if any centralized support is required for responses.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Information is provided by the employee directly or through the DOT Consolidated Uniform Payroll System.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

DOT/ALL 8

SYSTEM NAME:

Employee Transportation Facilitation.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, Transportation Administrative Service Center, TASC, Facilities Service Center, Parking Management Office, 400 Seventh Street, SW., Room P2–0327, Washington, DC 20590. Field installations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Holders of parking permits and members of carpools and vanpools. Applicants for ridesharing information. Recipients of match letters for carpooling. Applicants and recipients of fare subsidies issued by DOT.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of holders of parking permits and records of carpool and vanpool members. Records and reports of status of rideshare applications. Copies of applications and match letters received by rideshare applicants. Applications and certifications of fare subsidy recipients. Records and reports of disbursements to fare subsidy recipients. Information on local public mass transit facilities and fare subsidy programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 49 U.S.C. 322.

PURPOSE(S):

Parking management and fare subsidy management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Carpool listing produced for use in creating or enlarging carpools or vanpools. Used for production of listings and reports. Used for periodic review or revalidation. Used as part of a program designed to ensure eligibility for, and receipt of, fare subsidy. See Prefatory Statement of General Routine Uses.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies (collecting on behalf of the United States Government) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in hard copy or electronically, depending on the number of entries at each installation. Storage is at the geographic location of the servicing office.

RETRIEVABILITY:

Records can be retrieved by name or by ZIP code of residence.

SAFEGUARDS:

Except for carpool listings, access is accorded only to parking and fare subsidy management offices. Printout of carpool listing used in matching program has name, agency, DOT permit number, and work telephone number only and is available upon request.

RETENTION AND DISPOSAL:

Data are deleted and not retained on ADP once the individual leaves the system for any reason (*i.e.*, is no longer on the ridesharing listing, is no longer a member of a carpool or vanpool, or no longer receives a fare subsidy). Record copies of monthly reports and listings are retained at each installation, headquarters and field, for three years, forwarded to the Federal Records Center for two more years, and then destroyed. Consolidated reports of all installations are retained at headquarters for three years, forwarded to the Federal Records Center for two more years, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Transportation Services Section, TASC Facilities Services Center, Department of Transportation, 400 Seventh Street, SW., Room P2–0327, Washington, DC 20590. Field installations.

NOTIFICATION PROCEDURES:

Same as System manager.

RECORD ACCESS PROCEDURES:

Same as System manager.

CONTESTING RECORD PROCEDURES:

Same as System manager.

RECORD SOURCE CATEGORIES:

Applications submitted by individuals for parking permits, carpool and vanpool membership, ridesharing information, and fare subsidies; from notifications from other Federal agencies in the program; and from periodic certifications and reports regarding fare subsidies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/ALL 9

SYSTEM NAME:

Identification Media Record Systems.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Department of Transportation, DOT.

a. TASC Security Operations, SVC–150, 400 7th Street, SW., Washington, DC 20590; (for OST and all DOT Operating Administrations except those below).

b. Commandant, G–CAS, United States Coast Guard Headquarters, G–0, Washington, DC 20591 and District and Area Offices.

c. Federal Aviation Administration, Office of Civil Aviation Security, 800 Independence Avenue, SW., Washington, DC 20591; and each FAA Regional and Center Civil Aviation Security Divisions/Staff.

d. Federal Highway Administration, Operations and Services Divisions, 400 7th Street, SW., Washington, DC 20590, and all FHWA Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former employees and contractor employees in the Office of the Secretary, United States Coast Guard, Federal Aviation Administration, Federal Highway Administration, Federal Transit Administration, Federal Railroad Administration, National Highway Traffic Safety Administration, St. Lawrence Seaway Development Corporation, Research and Special Programs Administration, Bureau of Transportation Statistics, Maritime Administration, and Transportation Administrative Service Center.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications, photographs, receipts for DOT identification cards and official credentials, temporary building passes, security badges, and applications for other identification needed for official duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 49 U.S.C. 322.

PURPOSE(S):

To provide a ready concentration of employee personal data to facilitate issuance, accountability, and recovery of required identification media issued to employees and contractors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are maintained for control and accountability of DOT identification cards, credentials, and security badges issued to DOT employees, former employees, and contractors for identification purposes and admittance to the DOT facilities or for other official duties. See Preparatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The storage is on computer disks, magnetic tape, and paper forms in file folders.

RETRIEVABILITY:

Retrieval from the system is by name, social security number, date of birth, or identification card number and can be accessed by authorized individuals.

SAFEGUARDS:

Computers provide privacy and access limitations by requiring a user name and password match. Access to decentralized segments are similarly controlled. Only those personnel with a need to have access to the system are given user names and passwords. Data are manually and/or electronically stored in a locked room with limited access.

RETENTION AND DISPOSAL:

Information including applications, photographs and identification media, will be destroyed within one year of termination of employment.

SYSTEM MANAGER(S) AND ADDRESS:

a. Principal, TASC Security Operations, SVC–150, Department of Transportation, 400 7th Street, SW., Washington, DC 20590 (address for OST and all DOT operating administrations except those below).

b. For USCG: Commandant, G–0, United States Coast Guard, Washington, DC 20593.

c. For FAA: Director, Civil Aviation Security, Federal Aviation Administration, and 800 Independence Avenue, SW., Washington, DC 20591.

d. For FHWA: Chief, Operations and Services Division, Federal Highway Administration, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as System Manager, except that for USCG, notification should be given to Commandant, G–TIS.

RECORD ACCESS PROCEDURES:

Same as Notification procedure.

CONTESTING RECORD PROCEDURES:

Same as Notification procedure. Correspondence contesting records must include the full name and social security number of the individual concerned and documentation justifying the claim.

RECORDS SOURCE CATEGORIES:

Individuals on whom the record is maintained.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/ALL 10

SYSTEM NAME:

Debt Collection File.

SECURITY CLASSIFICATION:

Sensitive, unclassified.

SYSTEM LOCATION:

Federal Aviation Administration, General Ledger Branch, Mike Monroney Aeronautical Center, and 6500 S. MacArthur Blvd., Oklahoma City, OK 73125.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons currently or formerly associated with the Department of Transportation, DOT who are financially indebted to the United States Government under some particular service or program of the DOT other than under a contract. Individuals may include current, retired, or formerly employed DOT personnel or personnel from other Federal agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information varies depending on the individual debtor, and includes the history of debt collection activity on the individual. Normally, the name, Social Security Number, SSN, address, amount of debt or delinquent amount, basis of the debt, date debt arose, office referring debt, collection efforts, credit reports, debt collection letters and correspondence to or from the debtor relating to the debt. Correspondence with employing agencies of debtors or Office of Personnel Management or Department of Defense, as appropriate, requesting that action begin to collect the delinquent debt through voluntary or involuntary offset procedures against the employee's salary or compensation due a retiree.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Claims Collection Act of 1966 (Pub.L. 89–508), 31 U.S.C. Chapter 37, Subchapter I, General, and Subchapter II, Claims of the United States Government; Debt Collection Act of 1982, Pub.L. 97–365; 5 U.S.C. 5514, Installment Deduction for Indebtedness (salary offset); section 206 of Executive Order 11222; Executive Order 9397; and 49 CFR part 92, Salary Offset, DOT.

PURPOSE(S):

For the administrative management and collection of all delinquent debts, including past due loan payments, overpayments, fines, penalties, fees, damages, interest, leases, sales of real or personal property, etc., due to the DOT and debts due to other Federal departments and agencies that may be referred to the DOT for collection to the extent DOT controls funds due the debtor. This system provides for the implementation of the salary-offset provisions of 5 U.S.C. 5514, the administrative offset provisions of 31 U.S.C. 3716 and the provisions of the Federal Claims Collection Standards, FCCS. It applies to personal rather than contract debts. Guidance regarding contract debts is contained in the Federal Acquisition Regulation. Records in this record system are subject to use in authorized and approved computer matching programs regulated under the Privacy Act of 1974 (5 U.S.C. 552a), as amended, for debt collection purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the United States General Accounting Office, GAO, Department of Justice, United States Attorney, or other Federal agencies for further collection action on any delinquent account when circumstances warrant. To a debt collection agency for the purpose of collection administered by the DOT. Debtor's name, Social Security Number, the amount of debt, and the history of the debt may be disclosed to any Federal agency where the individual debtor is employed or receiving some form of remuneration for the purpose of enabling that agency to collect a debt owed the United States Government on DOT's behalf by counseling the debtor for voluntary repayment or by initiating administrative or salary offset procedures under the provisions services to recover monies owed to the United States Government under certain programs or services of the Debt Collection Act of 1982 (Pub.L. 97–365). To the Internal Revenue Service, IRS, by computer matching to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim by DOT against the taxpayer pursuant to 26 U.S.C. 6103(m)(2) and in accordance with 31 U.S.C. 3711, 3217, and 3718. Note: Redisclosure of a mailing address from the IRS may be made only for the purpose of debt collection, including to a debt collection agency in order to facilitate the collection or compromise of a Federal claim under the Debt Collection Act of 1982, except that a mailing address to a consumer reporting agency is for the limited purpose of obtaining a commercial credit report on the particular taxpayer. Any such address information obtained from the IRS will not be used or shared for any other DOT purpose or disclosed to another Federal, state, or local agency which seeks to locate the same individual for its own debt collection purpose. Data base information consisting of debtor's name, Social Security Number, and amount owed may be disclosed to the Defense Manpower Data Center, DMDC, Department of Defense, the United States Postal Service or to any other Federal, state, or local agency for the purpose of conducting an authorized computer matching program in compliance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended, so as to identify and locate delinquent debtors in order to start a recoupment process on an individual basis of any debt owed DOT by the debtor arising out of any administrative or program activities or services administered by DOT. Disclosure of personal and financial information from this system on current, retired, or former employees of DOT or United States Coast Guard members may be made to any creditor Federal agency seeking assistance for the purpose of that agency requesting voluntary repayment or implementing administrative or salary offset procedures in the collection of unpaid financial obligations owed the United States Government from an individual affiliated with the DOT. An exception to this routine use is an individual's mailing address obtained from the IRS pursuant to 26 U.S.C. 6103(m)(2).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this record system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The disclosure, once determined to be valid and overdue, is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number, (Social Security Number; the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The storage for records on personal computers is kept on floppy disks. Storage on microcomputers is first downloaded onto a floppy disk and then locked in a file cabinet. Data kept in paper file folders are locked in file cabinets.

RETRIEVABILITY:

Records are retrieved by name or Social Security Number.

SAFEGUARDS:

Computers provide privacy and access limitation by requiring a user name and password match. These records are available only to those persons whose official duties require such access. Records are kept in limited access areas during duty hours and in locked cabinets at all other times.

RETENTION AND DISPOSAL:

Records are disposed of when ten years old except documents needed for an ongoing investigation in which case the record will be retained until no longer needed for the investigation. Data tracks on floppy disks are overwritten a minimum of three times.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Transportation, Director, Office of Financial

Management, B–30, 400 Seventh Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the particular DOT operating administration or component in care of the System location above. Individual should furnish full name, Social Security Number, current address and telephone number.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from the individual, creditor agencies, Federal employing agency of debtor, collection agencies, Federal, state or local agencies furnishing identifying information and/or address of debtor, as well as other internal DOT records such as payroll information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/ALL 11

SYSTEM NAME:

Integrated Personnel and Payroll System, IPPS.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

United States Department of Transportation, DOT, Office of the Secretary, OST, 400 7th Street, SW., Washington, DC 20590. Working copies of certain records are held by OST, all DOT Operating Administrations, Office of the Inspector General, OIG, and the National Transportation Safety Board, NTSB. DOT provides personnel and payroll services to NTSB on a reimbursable basis, although NTSB is not a DOT entity. This is done for economy and convenience since both organizations' missions are transportation oriented and located in the same geographic areas.).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prospective, present, and former employees in the Office of the Secretary of Transportation, OST, Bureau of Transportation Statistics, BTS, Federal Aviation Administration, FAA, Federal Highway Administration, FHWA, Federal Railroad Administration, FRA, Federal Transit Administration, FTA, Maritime Administration, MARAD, National Highway Traffic Safety Administration, NHTSA, Office of the Inspector General, OIG, Research and Special Programs Administration, RSPA, St. Lawrence Seaway Development Corporation, SLSDC, Transportation Administrative Service Center, TASC, National Transportation Safety Board, NTSB, and civilian employees of the United States Coast Guard, USCG.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains those records required to insure that an employee receives his or her pay and personnel benefits as required by law. It includes, as appropriate: Service Record, Employee Record, Position Identification Strip, Claim for 10-Point Veteran Preference, Request for Referral Eligibles, Request and Justification for Selective Factors and Quality Ranking Factors, Certification of Insured Employee's Retired Status, Federal Employees' Group Life Insurance, FEGLI, Notification of Personnel Action, Notice of Short-Term Employment, Request for Insurance, FEGLI, Designation of Beneficiary, FEGLI, Notice of Conversion Privilege, Agency Certification of Insurance Status, FEGLI, Request for Approval of Non-Competitive Action, Appointment Affidavits, Declaration of Appointee, Agency Request to Pass Over a Preference Eligible or Object to an Eligible, Official Personnel Folder, Official Personnel Folder Tab Insert, Incentive Awards Program Annual Report, Application for Leave, Monthly Report of Federal Civilian Employment, Payroll Report of Federal Civilian Employment, Semi-annual Report of Federal Participation in Enrollee Programs, Request for Official Personnel Folder (Separated Employee), Statement of Prior Federal Civilian and Military Service, Personal Qualifications Statement, Continuation Sheet for Standard Form 171 "Personal Qualifications Statement", amendment to Personal Qualifications Statement, Job Qualifications Statement, Statement of Physical Ability for Light Duty Work, Request, Authorization, Agreement and Certification for Training, United States Government Payroll Savings Plan-Consolidated Quarterly Report, financial Disclosure Report, Information Sheet Financial Disclosure-Report, Payroll for Personal Services, Pay Receipt for Cash Payment to Transferable, Payroll Change Slip, Payroll for Personal Service payroll Certification and Summary—Memorandum, Record of Leave Data, Designation of Beneficiary—Unpaid Compensation of Deceased Civilian Employee, United States Savings Bond Issue File Action Request, Subscriber List for Issuance of United States Savings Bonds, Request for Payroll Deductions for Labor Organization Dues, Revocation of Voluntary Authorization for Allotment of Compensation for Payment of Labor Organization dues, Request by Employee for Payment of Salaries or Wages by Credit to Account at a Financial Organization, Designation of Beneficiary— Unpaid Compensation of Deceased Civilian Employee, United States Savings Bond Issue File Action Request, Authorization for Purchase and Request for Change: United States Series EE Savings Bond, Request by Employee for Allotment of Pay for Credit to Savings Accounts with a Financial Organization, Application for Death Benefits—Civil Service Retirement System, Application for Retirement—Civil Service Retirement System, Superior Officer's Statement in Connection with Disability Retirement, Physician's Statement for Employee Disability Retirement Purposes, Transmittal of Medical and Related Documents for Employee Disability Retirement, Request for Medical Records (To Hospital or Institution) in Connection with Disability Retirement, Application for Refund of Retirement Deductions, Application to Make Deposit or Redeposit, Application to Make Voluntary Contribution, Request for Recovery of Debt Due the United States (Civil Service Retirement System), Register of Separations and Transfers—Civil Service Retirement System, Register of Adjustments—Civil Service Retirement System, Annual Summary Retirement Fund Transactions, Designation of Beneficiary Civil Service Retirement System, Health Benefits Registration Form—Federal Employees Health Benefits Program, Notice of Change in Health Benefits Enrollment, Transmittal and Summary Report to Carrier Federal Employees Health Benefits Program, Report of Withholding and Contributions for Health Benefits, Group Life Insurance, and Civil Service Retirement, Report of Withholdings and Contributions, Employee Service Statement, Election of Coverage and Benefits, Designation of Beneficiary, Position Description, Inquiry for United States Government Use Only, Application for Retirement—Foreign Service Retire System, Designation of Beneficiary, Application for Refund of Retirement Contributions (Foreign Service Retirement System), Election to Receive Extra Service Credit Towards Retirement (or Revocation Thereof), Application for Service Credit,

Employee Suggestion Form, Meritorious Service Increase Certificate, Foreign Service Emergency Locator Information, Labor Distribution Data, Leave Record, Leave Summary, Individual Pay Card, Time and Attendance Report, Time and Attendance Report (For Use Abroad).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 322.

PURPOSE(S):

The purpose for collecting the data in the IPPS System of Records is to control and facilitate payment of salaries to DOT civilian employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Records are maintained for control and accountability of: Pay and allowances; permanent and temporary pay changes; pay adjustments; travel advances and allowances; leave balances for employees; earnings and deductions by pay periods, and pay and earning statements for employees; management information as required on an ad hoc basis; payroll checks and bond history; union dues; withholdings to financial institutions, charitable organizations and professional associations; summary of earnings and deductions; claims for reimbursement sent to the General Accounting Office, GAO; federal, state, and local taxes withholdings; and list of FICA employees for management reporting. 2. To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator System, FPLS and Federal Tax Offset System for use in locating individuals and identifying their income sources to establish paternity, establish and modify orders of support and for enforcement action. 3. To the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement. 4. To Office of Child Support Enforcement for release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Storage is on magnetic disks, magnetic tape, microforms, and paper forms in file folders.

RETRIEVABILITY:

Retrieval from the system is by social security number, employee number, organization code, or home address; these can be accessed only by individuals authorized such access.

SAFEGUARDS:

Computers provide privacy and access limitations by requiring a user name and password match. Access to decentralized segments is similarly controlled. Only those personnel with a need to have access to the system are given user names and passwords. Data are manually and/or electronically stored in locked rooms with limited access.

RETENTION AND DISPOSAL:

The IPPS records are retained and disposed in compliance with the General Records Schedules, National Archives and Records Administration, Washington, DC 20408. The following schedules apply: General Records Schedule 1, Civilian Personnel Records, Pages 1 thru 22, Items 1 through 39; and General Records Schedule 2, Payrolling and Pay Administration Records, Pages 1 thru 6, Items 1 thru 28.

SYSTEM MANAGER(S) AND ADDRESS:

Contact Chief, Financial Management IT Deployment Staff (B–35) at the United States Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Individuals wishing to know if their records appear in this system of records may inquire in person or in writing to the system manager.

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager." Correspondence contesting records must include the full name and social security number of the individual concerned and documentation justifying the claims.

RECORD SOURCE CATEGORIES:

Data are collected from the individual employees, time and attendance clerks, supervisors, official personnel records, personal financial statements, correspondence with the debtor, records relating to hearings on the debt, and from the Departmental Accounting and Financial Information system of records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/ALL 12

SYSTEM NAME:

DOT Mentoring Records System.

SECURITY CLASSIFICATION:

Sensitive.

System location:

Department of Transportation, DOT TASC Computer Center, 400 7th Street, SW., Washington, DC 20590–0001

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. All DOT personnel registering to become mentors.

b. All DOT personnel registering to be mentees.

CATEGORIES OF RECORDS IN THE SYSTEM:

All categories of records are electronic and/or paper, and may include identifying information, such as name, office routing symbol, office phone and fax numbers, e-mail address, last four digits of the social security number, grade, and employing administration. All records reflect:

a. Name.
b. Operating Administration.
c. Last four digits of social security number.
d. Routing Symbol.
e. State employed.
f. Age range.
g. Pay plan.
h. Series.
i. Civilian or Military grade.
j Work phone.
k. Work Fax.
l. Work e-mail address.
m. Work skills (Optional narrative).
n. Interests (Optional narrative).
o. Hobbies (Optional narrative).

Records for employees of the United States Coast Guard, both military and civilian may also include:

1. Collateral duties.
2. Coast Guard training Received.
3. Coast Guard qualification codes.
4. Commissioning source.
5. Education level/Type of degree.
6. Ethnicity.
7. Marital status.
8. Current OPFAC.

This information is optional for USCG employees only.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

5 U.S.C. 4103.

PURPOSE(S):

This system will be used to match prospective DOT mentors with employees interested in becoming mentees. The system will also be used to monitor the number of employees participating in the DOT Mentoring Program, store participants pass words, contact participants for survey purposes, provide mentor names to senior departmental and human resource management officials, and measure the success of cross modal mentoring.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. To DOT HRM personnel to evaluate interest in the program.

b. To DOT HRM personnel to transmit survey instruments to participants.

c. To DOT HRM personnel to determine the amount of cross modal participation.

d. To Senior Management Officials for review.

Also, see the prefatory statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The storage is on a DOT server, with restricted access.

RETRIEVABILITY:

Retrieval from the system is by category (mentor/mentee), and can be accessed by the administrators of the DOT mentoring program database.

SAFEGUARDS:

Computers provide privacy and access limitations by requiring a user name and password match. Access to decentralized segments is similarly controlled. Only those personnel administering the DOT Mentoring Program database are given user names and passwords.

RETENTION AND DISPOSAL:

Records disposition schedule as developed by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Jan B. Karicher, Departmental Office of Human Resources Management, M–13, Department of Transportation 400 Seventh Street, SW., Washington, DC, 20590–0001.

NOTIFICATION PROCEDURE:

Inquiries should be directed to: United States Department of Transportation, Departmental Director of Human Resource Management (M–10), 400 7th Street, SW., Washington, DC 20590–001.

RECORD ACCESS PROCEDURES:

Individuals may access their own data through Internet, to the DOT HRM Home Page.

CONTESTING RECORD PROCEDURES:

NA.

RECORD SOURCE CATEGORIES:

Individual registrants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 501

SYSTEM NAME:

Auxiliary Management Information System, AUXMIS.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

U.S. Coast Guard Operations System Center, G–OPB, 600 Coast Guard Dr., Kearneysville, WV 25430.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All present Coast Guard Auxiliarists. All Auxiliarists disenrolled since 1996.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal information (name, address, birth date, Social Security Number, SSN, phone number). Auxiliary qualifications information (Instructor, Examiner, Specialty). Auxiliary activities information (patrols conducted, classes taught). Information on facilities—boats, radio stations or aircraft—owned by Auxiliarists.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 14 U.S.C. 632, 830, 831; 49 CFR 1.45, 1.46; COMDTINST M16790.1E.

PURPOSE(S):

Primary management tool for the Coast Guard Auxiliary program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Cumulative unit and individual activity summaries for use as a management tool by Coast Guard District, Area and Headquarters program managers, Coast Guard field units, Coast Guard District Directors of Auxiliary, DIRAUX all Auxiliary units. Identification of all Auxiliary members. Alphabetical nationwide cross-reference listing for use by headquarters and district office staffs. Mailing labels for national, district and program specific mailings to auxiliary membership. An annual summary of all member specific information is mailed directly to respective members. Used by: Chief, Office of Auxiliary and staff; Coast Guard Groups and commands; District Directors of Auxiliary, DIRAUX and staff; Various elected and appointed office holders of the Auxiliary. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

AUXMIS II master records contain personal and activity information concerning USCG Auxiliary members. The approximately 40,000 records presently in the system are stored in a Progress Relation Database Management System on DLT tapes using Net Backup and are stored off-site.

RETRIEVABILITY:

The current AUXMIS II master file resides on a HP–755 hardware suite with a Unix 10.2 operating system. Information is retrieved by number and name of the individual and can be accessed by those DIRAUX and other designated users with access to the database through CGDN or modem connection at anytime.

SAFEGUARDS:

The master files cannot be accessed without the proper user identification and password. Eight user access levels have delimiters to restrict the domains in which a user can view and/or change member information.

RETENTION AND DISPOSAL:

Retention of weekly tape files is 180 days, then erased. Retention of disk files is 1 week, and then updated. Retention of the year-end tape file is permanent.

SYSTEM MANAGER(S) AND ADDRESS:

United States Coast Guard, Office of Command and Control Architecture, Commandant, G–OCC, U.S. Coast Guard, 2100 2nd Street, SW., Washington, DC 20593–0001. U.S. Coast Guard, Office of Auxiliary, Commandant, G–OCX, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant, G–SII–2, United States Coast Guard Headquarters, Office of Information Management, 2100 2nd

Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Individual Auxiliary members can view their AUXMIS II record through a designated person with restricted domain user access from their Flotilla or Division. At any time, members of the Auxiliary can request access to their personal, hardcopy "member jacket" file located at their respective DIRAUX office.

CONTESTING RECORD PROCEDURES:

Record content can be contested at any time and, if error is found, all DIRAUX level users have the access to correct individual records. Restricted domain user access provides members the means to correct their own address, name and phone numbers.

RECORD SOURCE CATEGORIES:

All records pertaining to Auxiliary members are derived from forms filled out by the individuals involved on a voluntary basis.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 503

SYSTEM NAME:

Motorboat Registration.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Department of Transportation, Commandant, G–OPB, United States Coast Guard, CG, 2100 2nd Street, SW., Washington, DC 20593–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Boat owner registering for the issuance of boat identification numbers for boats recorded in the State of Alaska.

CATEGORIES OF RECORDS IN THE SYSTEM:

Boat owner name, address, and boat information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 14 U.S.C. 632, 46 U.S.C. 2301; 49 CFR 145, 146

PURPOSE(S):

Administer the Coast Guard's boating safety program.

ROUTINE USES OF RECORDS MAINTAINED THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are maintained in file cabinets.

RETRIEVABILITY:

By name/number.

SAFEGUARDS:

Only authorized office personnel have access to subject files. All personnel screened prior to allowing access. Building secured and guarded after duty hours.

RETENTION AND DISPOSAL:

Records are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, United States Coast Guard, Office of Boating Safety, G–OPB, Department of Transportation, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Department of Transportation, United States Coast Guard Headquarters, Commandant, G–SII, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Department of Transportation, United States Coast Guard Headquarters, Commandant, G–SII–2, 2100 2nd Street, SW., Washington, DC 20593–0001.

CONTESTING RECORD PROCEDURES:

Same as "Record access procedures"

RECORD SOURCE CATEGORIES:

Individual applicant.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 505

SYSTEM NAME:

Recreational Boating Law Enforcement Case Files.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Department of Transportation, United States Coast Guard,CG, Coast Guard District Offices and Headquarters unit offices for records of incidents in their localities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Owners/operators of vessels found in violation of Federal recreational boating laws or regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case files containing names of violators, their addresses and social security numbers, together with descriptions of boats and notations of the alleged violations of Federal boating laws, and copies of correspondence relating to the disposition of any penalty involved.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(5 U.S.C. 301; 14 U.S.C. 89a, 93(a)&(c), 632; 16 U.S.C. 1431; 49 CFR 1.45, 1.46)

PURPOSE(S):

Determine enforcement action to be taken by the Coast Guard.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552(b)(12). Disclosures may be made from this system to consumer reporting agencies (collecting on behalf of the U. S. Government) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Index cards, logbooks, and file folders.

RETRIEVABILITY:

Name of individual in alphabetical file, or by civil penalty case number.

SAFEGUARDS:

Information available only to authorized personnel. Files maintained in office in building that is secured during non-working hours and has a roving guard patrol.

RETENTION AND DISPOSAL:

Records in system maintained for three years before disposal by mutilation or burning. Records on reported warnings are destroyed after 1 year (paper files).

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, G–OPB, Chief, Office of Boating Safety, Department of Transportation, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Department of Transportation, Commandant,G–SII, United States Coast

Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Procedures may be obtained by writing to or visiting the local Coast Guard District or Unit where incident occurred. Proof of identity will be required prior to release of records. A military identification card, driver's license or similar document is considered suitable identification.

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Reports of Coast Guard boarding officers and marine safety investigations as well as from reports by.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system may be exempt from disclosure under the provisions of 5 U.S.C. 552a (k)(2) which provide in part, that investigatory material complied for law enforcement purposes may be withheld from disclosure to the extent that the identity of the source of the information would be revealed by disclosing the investigatory record, and the source has received an express guarantee that his identity would be held in confidence, or prior to December 31, 1974, if the source received an implied promise that his identity would be held in confidence.

DOT/CG 507

SYSTEM NAME:

Coast Guard Supplement to the Manual of Courts Martial Investigations.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Department of Transportation, Commandant, G–L United States Coast, CG, Office of the Chief Counsel, 2100 2nd Street, SW., Washington, DC 20593–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian employees of the Coast Guard and other individuals who may be involved in any Coast Guard investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigations into injuries to Coast Guard personnel, mishaps involving vessels, aircraft and vehicles. Incidents involving, explosions, for loss or destruction of classified material. Circumstances involving equipment failures and property damage, loss or destruction. Circumstances involving violation of standards of conduct personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(5 U.S.C. 301; 14 U.S.C. 93(e), 632; 49 CFR 1.45, 1.46).

PURPOSE(S):

Resolution of claims against the Coast Guard as well as claims asserted by the government.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

Reports are transmitted to the Veterans Administration to assist that agency in determining entitlement to benefits administered by it. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICY AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Storage cabinets.

RETRIEVABILITY:

Name of person, vessel or other facility involved in investigation.

SAFEGUARDS:

Authorized personnel are granted access to these records in connection with the performance of their official duties.

RETENTION AND DISPOSAL:

Records are maintained in division files for three years and then forwarded to Federal Records Depository.

SYSTEMS MANAGER(S) AND ADDRESS:

Department of Transportation, Commandant,G–L, U.S. Coast Guard, Office of the Chief Counsel, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Department of Transportation, Commandant, G–SII–2 United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure".

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure".

RECORD SOURCE CATEGORIES:

Coast Guard investigating officers, military and civilian personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 508

SYSTEM NAME:

Claims and Litigation.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Department of Transportation, Commandant (G–L), United States Coast Guard (CG), 2100 2nd Street, SW., Washington, DC 20593–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons in litigation with the Coast Guard.

CATEGORIES OF RECORDS IN THE SYSTEM:

SUITS AND CLAIMS FOR AND AGAINST THE COAST GUARD.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(5 U.S.C. 301; 5 U.S.C. 3301; 14 U.S.C. 1.45, 33 U.S.C. 2712(e); 33 CFR 133.21; 49 CFR 1.45, 1.46; E. O. 12777; COMDTINST M5890.9)

PURPOSE(S):

Determination of claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File cabinets.

RETRIEVABILITY:

Two card index files, one alphabetic and one numeric, maintained for cross reference.

SAFEGUARDS:

Access is regularly limited to Coast Guard and civilian employees of the Claims and Litigation Division granted in connection with official duties.

RETENTION AND DISPOSAL:

Maintained for five years and then forwarded to the Federal Records Center. Card index files retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, G–L, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Department of Transportation, Commandant, G-SII–2, United States

Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification Procedure".

CONTESTING RECORD PROCEDURES:

Same as "Notification Procedure".

RECORD SOURCE CATEGORIES:

Coast Guard military and civilian personnel, members of the public, and Coast Guard investigating officers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 509

SYSTEM NAME:

Non-Judicial Punishment Report.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Department of Transportation, Commandant, G–L, United States Coast Guard, CG, 2100 2nd Street, SW., Washington, DC 20593–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Coast Guard military personnel who have been subject to non-judicial punishment proceedings under Article 15, Uniform Code of Military Justice.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of Proceedings under Article 15, Uniform Code of Military Justice.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(5 U.S.C. 301, 10 U.S.C. 815; 14 U.S.C. 632; 49 CFR 1.45, 1.46.)

PURPOSE(S):

Military justice administration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records provide statistical data concerning the number of proceedings held, units holding proceedings, offenses committed, punishments imposed, and background data of individuals concerned. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File cabinets.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Records are made available to authorized personnel. Records are maintained in building with limited access during non-working hours and with roving security patrol.

RETENTION AND DISPOSAL:

Disposal procedures not as yet established. Back-up material disposed of after introduction into system.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, G–L, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Department of Transportation, Commandant, G–SII–2, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure".

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure".

RECORD SOURCE CATEGORIES:

Individual service records and from proceedings conducted.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 510

SYSTEM NAME:

Records of trial: Special, General and Summary Courts Martial.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Department of Transportation, Commandant, G–L, United States Coast Guard, CG, 2100 2nd Street, SW., Washington, DC 20593–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who is tried by court martial in the Coast Guard.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of trial.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 10 U.S.C. 865; 14 U.S.C. 632; 49 CFR 1.45, 1.46; E.O. 11835 (January 27, 1975, paragraph 94b).

PURPOSE(S):

Documentation of Coast Guard courts martial.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file cabinets.

RETRIEVABILITY:

Alphabetically by name of individual.

SAFEGUARDS:

Maintained in file cabinets in building with limited access during non-working hours and with roving security patrol.

RETENTION AND DISPOSAL:

Retained permanently. Maintained for two years, reviewed by System Manager and then transferred to Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Transportation, Commandant, G–L, Office of the Chief Counsel, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Department of Transportation, United States Coast Guard Headquarters, Commandant, G–SII, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure".

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure".

RECORD SOURCE CATEGORIES:

Trial proceedings and subsequent statutory reviews—Court of Military Review, Court of Appeals for the Armed Services, and Chief Counsel of the Coast Guard.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 511

SYSTEM NAME:

Legal Assistance Case File System.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, Commandant, G–L, United States Coast Guard, CG, 2100 2nd Street, SW.,

Washington, DC 20593–0001. United States Coast Guard District Legal Offices and Legal Offices of Coast Guard Units.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Coast Guard military members seeking personal legal assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information concerning the matters handled by these officers for clients.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 10 U.S.C. 1044, 1054; 14 U.S.C. 632, 44 U.S.C. 3101; 49 CFR 1.45, 1.46

PURPOSE(S):

Provide legal assistance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are also used to prepare statistical reports concerning a legal officer's time utilization.

The Prefatory Statement of Routine Uses applies to records in this system only to the extent that their disclosure would not constitute a violation of the judicially recognized privilege attaching to attorney-client communications and of the ethical and professional responsibilities of lawyers under the American Bar Association's Code of Professional Responsibility.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Normally, written records kept in file folders.

RETRIEVABILITY:

Alphabetical indexes by name of member.

SAFEGUARDS:

Kept in office space or filing cabinets, which are normally locked during non-working hours. Building patrolled by roving security guards after duty hours.

RETENTION AND DISPOSAL:

Records retained as long as needed to serve client or as long as deemed necessary by the legal officer. Disposal is by whatever means considered appropriate by the legal officer, depending on contents of the record involved.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, G–L, Office of the Chief Counsel, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. District or unit legal offices:

NOTIFICATION PROCEDURE:

Commandant, (G–SII–2, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Office of Chief Counsel at Coast Guard Headquarters or within the legal offices in the various Coast Guard districts or units, dependent on where legal assistance was rendered.

CONTESTING RECORD PROCEDURES:

Same as "Record access procedures".

RECORD SOURCE CATEGORIES:

Client involved and as a result of any subsequent investigation by the legal officer on behalf of the client.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 526

SYSTEM NAME:

Adjudication and Settlement of Claims System.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Commandant, G–WP, United States Coast Guard, 2100 2nd Street, SW., Washington, DC 20593–0001. Coast Guard Districts and Units.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active, Reserve, and Retired military members; civilian employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claims arising out of disputes concerning amounts of pay received.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 5 U.S.C. 5514; 14 U.S.C. 632, 461; 37 U.S.C. 1007; 49 CFR 1.45, 1.46.

PURPOSE(S):

Determine entitlement of claimants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To use as precedent setting data in the resolution of similar questions in the future. Used by authorized Coast Guard officials and officials of the IRS, GAO, and the Civil Service Commission, as required. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored manually in file folders.

RETRIEVABILITY:

Claimant name.

SAFEGUARDS:

Access is limited to authorized officials by screening of personnel. Maintained in Government building having roving security guards after duty hours.

RETENTION AND DISPOSAL:

After adjudication and settlement, most submissions are retained for precedent setting value, as required.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, G–WP, Director, Personnel Management Directorate, United States Coast Guard Headquarters, 2100 2nd Street, SW, Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant, G–SII, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure".

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure".

RECORD SOURCE CATEGORIES:

Individual, CG payroll offices, legal staff, investigators, Director of Personnel and Management, Comptroller General, GAO, and congressional correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 528

SYSTEM NAME:

Centralized Reserve Pay and Retirement System.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

United States Coast Guard, Human Resources Service and Information Center, 444 SE Quincy St., Topeka, KS 66683–3591. District Offices and other Field Units.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Coast Guard Reservists.

CATEGORIES OF RECORDS IN THE SYSTEM:

Master Pay and Retirement Point Credits Record. Master Personnel Data Accounting Record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 10 U.S.C. 1331; 10 U.S.C. 12731; 14 U.S.C. 632; 49 CFR 1.45, 1.46

PURPOSE(S):

Prepare monthly payroll and all associated listings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Preparation of budgets. Accounting. Compute pay and points. Compilation of data. Report earnings to state and city taxing authorities. Used by authorized Coast Guard, IRS, GAO, and other Agency Officials as required. See Prefatory Statement of General Routine Uses; 3 through 5 do not apply.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to "Consumer reporting agencies" (collecting on behalf of the United States Government) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfilm of payroll retained in Reserve Pay Branches and Districts. Records are filed manually in filing cabinets.

RETRIEVABILITY:

Alphabetically by name of Reservist and CG Unit Number.

SAFEGUARDS:

Access is regularly limited to user staff members. Records are stored in secured building after duty hours.

RETENTION AND DISPOSAL:

Microfilm and records are retained until member is discharged or retired. Three years subsequent to retirement or discharge, records are transferred to a Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, G–WT, Director, Reserve and Training Directorate, United States Coast Guard, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant, G–SII, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure".

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure".

RECORD SOURCE CATEGORIES:

District Commander and Office of Reserve, Individual Unit Commanding Officers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 533

SYSTEM NAME:

Retired Pay and Personnel System.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

United States Coast Guard, CG, Human Resources Service and Information Center, 444 SE. Quincy St., Topeka, KS 66683–3591.

CATEGORIES OF INDIVIDUALS:

Annuitants. Lighthouse Keeper Retirees. Honorary Retirees. USCG Retirees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Pay and Personnel data of military retirees, annuitants, lighthouse keepers and retirees. Personnel data of honorary retirees. Accounts receivable and accounts payable.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 10 U.S.C. 421–424, 1201, 1401; 14 U.S.C. 632; 49 CFR 1.45, 1.46.

PURPOSE(S):

Make payments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

W–2 wage and federal tax reporting to the Internal Revenue Service. Reports of earnings to State and city taxing authorities. Listing of currently retiring officers, home addresses and mailing labels used by authorized USCG and USCG affiliated organizations. Reports and information exchanged with the Veterans Administration, Office of Personnel Management, Social Security Administration, Department of Defense, and the Red Cross. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to "consumer reporting agencies" (collecting on behalf of the United States Government) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are filed manually in file folders. Microfilm is stored in the retired pay branch. Check tapes are filed in tape library.

RETRIEVABILITY:

Records and microfilm are indexed alphabetically, check tapes are indexed by tape number. Retrieved by name/number.

SAFEGUARDS:

Access is regularly limited to user staff members under supervisory control. Stored in government building having roving security guard after duty hours.

RETENTION AND DISPOSAL:

Records are retained in the Retired Pay Branch for 3 years subsequent to retiree's or annuitant's death, and then forwarded to a Federal Records Center. Magnetic tapes are retained 18 months, microfilm for 6 years (required by GAO) then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Management Directorate, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. Notification procedure: Department of Transportation, Commandant, G–SII, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. Written request must be signed by the individual.

RECORD ACCESS PROCEDURES:

Procedure may be obtained by writing to or visiting Commandant, G–SII at the address in "Notification Procedure" or the local Coast Guard District or unit office for the area in which an individual's duty station is located. Proof of identity will be required prior to affording an individual access to records. A military identification card, a driver's license, or similar document will be considered suitable identification.

CONTESTING RECORD PROCEDURES:

Same as "Record access procedures".

RECORD SOURCE CATEGORIES:

Individuals, Coast Guard personnel and payroll offices.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 534

SYSTEM NAME:

Travel and Transportation of Household Effects.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Commandant, G–WP, U.S. Coast Guard Headquarters, Director, Personnel Management Directorate, 2100 2nd Street, SW., Washington, DC 20593–0001. District Office and Headquarters' units.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military members, retired military members, and civilian employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Travel claims, transportation claims, government bills of lading, applications for shipment of household effects.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 10 U.S.C. 1147; 14 U.S.C. 512, 632; 37 U.S.C. 406; 49 CFR 1.45, 1.46

PURPOSE(S):

Payment of household and transportation claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Vouchers submitted for payment of claims, for audit of claims for payment, to account for cost of moving household goods, advice of shipment of household goods for reporting of funds expended, and for payment of claims. Used by General Accounting Office in connection with the performance official duties. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICY AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Filed manually in file folders.

RETRIEVABILITY:

Schedule numbers and/or individual name.

SAFEGUARDS:

Access is regularly limited to user staff members. Stored in a building secured after duty hours.

RETENTION AND DISPOSAL:

Records are kept for 3 years, and then transferred to a Federal Records Center. Exception: Schedule 98–Ts (Freight and Transportation) are forwarded to General Accounting Office, GAO after 3 months.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, G–WP, Director, Personnel Management Directorate, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant, G–SII, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. Written request must be signed by the individual.

RECORD ACCESS PROCEDURES:

Procedure may be obtained by writing to or visiting Commandant, G-SII) at the address in "Notification procedure" or the local Coast Guard District or unit office for the area in which an individual's duty station is located. Proof of identity will be required prior to affording an individual access to records. A military identification card, a driver's license, or similar document will be considered suitable identification.

CONTESTING RECORD PROCEDURES:

Same as "Record access procedure".

RECORD SOURCE CATEGORIES:

Individual subject of the record. Ground freight and transportation carriers and agents. Airline companies. Personnel offices. Other responsible agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 535

SYSTEM NAME:

Coast Guard Exchange System, CGES and Morale, Welfare and Recreation, MWR Program.

SYSTEM CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Commandant, G–WP, United States Coast Guard Headquarters, Director, Personnel Management Directorate, 2100 2nd Street, SW., Washington, DC 20593–0001. CG Districts, Maintenance and Logistics Commands and Headquarters Units.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees. Active duty and retired military members. Military dependents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payroll records. Accounting records for CGES/MWR loans. Listing of bad checks. Job applications. Correspondence. Membership applications. Accounts receivable. Investigatory reports involving abuse of facilities. Accounting records for CGES/MWR.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 5 U.S.C. 2105; 10 U.S.C. 1059, 1146, 1587; 14 U.S.C. 632; 49 CFR 1.45, 1.46.

PURPOSE(S):

Maintain financial and personnel records for Coast Guard non-appropriated fund entities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Payroll for CGES/MWR employees. Personnel actions. Accounting purposes. Budget and inventory controls. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on tape, disc, drums and punched cards. Manual records may be stored in file folders and/or credit ledgers, card files, and notebooks.

RETRIEVABILITY:

Indexed alphabetically.

SAFEGUARDS:

Access is regularly limited to authorized personnel. Building is secured after duty hours.

RETENTION AND DISPOSAL:

Records are retained until usefulness has expired and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, G–WP, Director, Personnel Management Directorate, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant, G–SII, United States Coast Guard Headquarters, 2100 2nd

Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure".

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure".

RECORD SOURCE CATEGORIES:

Individual record subject. Previous employees. Employment agencies. Civilian and military investigative reports. General correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 536

SYSTEM NAME:

Contract and Real Property File System.

SYSTEM CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Commandant, G–CFM, United States Coast Guard Headquarters, Chief of Staff, 2100 2nd Street, SW., Washington, DC 20593–0001. District and Headquarters Units.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals doing business with the Coast Guard. Employees of prime and sub-contractors. Individuals requiring use of CG property. Military members and civilian employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contracts and related files. Real property and leased family housing files. Bidders list. Minority compliance records. Payment schedule files relating to Admiralty and Tort claims. Personnel claims. Collection register. Open purchase order file. Correspondence files and vendor lists. Information on employees of contractors, job level and pay of these employees. Permits, licenses and easement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 2571; 14 U.S.C. 92(f), 93(o), 632, 666, 685; 49 CFR 1.45, 1.46; COMDTINST 5100.47.

PURPOSE(S):

Determine compliance of contractors with minimum wages for certain skills and trades on government contracts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Recordkeeping of payments and collection. Determine potential for contracting with the government. Record issuance of personal property and maintain inventories. Determine contractor responsibilities and liability. Used by the General Accounting Office, GAO in performance of duties. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manually filed in file folders, maintained on tape/card three ring binders, and in hard cover books.

RETRIEVABILITY:

Retrieved by individual/company name, number, construction job, and/or location.

SAFEGUARDS:

Access restricted to authorized personnel only, some records in locked safe and/or filing cabinet. Maintained in building having roving security guard after duty hours.

RETENTION AND DISPOSAL:

Some records retained indefinitely; some retained 3, 4 or 6 years, then destroyed or forwarded to a Federal Records Center for an additional 7 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, G–CFM, United States Coast Guard Headquarters, Chief of Staff, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant, G–SII, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure".

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure".

RECORD SOURCE CATEGORIES:

Individuals. Contractors. Contract employees. Bidders. Financial institutions. Insurance Companies. Community associations. Other agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 537

SYSTEM NAME:

FHA Mortgage Insurance for Servicemen.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Commandant, G–WP, United States Coast Guard Headquarters, Director, Personnel Management Directorate, 2100 2nd Street, SW., Washington, DC 20593–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Coast Guard Military Personnel who have applied for Federal Housing Administration Mortgage Insurance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Selected aspects of FHA Mortgage Insurance Records for military personnel, including copies of Form DD–802, "Request for and Certificate of Eligibility" and Form DD–803, "Certificate of Termination."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 14 U.S.C. 632, 680–689; 49 CFR 1.45, 1.46

PURPOSE(S):

Enroll, terminate, and verify eligibility of members in FHA 222 Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Verify that billings from HUD are correct, and payable from Coast Guard funds.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manually in closed file cases.

RETRIEVABILITY:

By named individual, alphabetically.

SAFEGUARDS:

Access is regularly limited to user staff members. After duty hours, the building is patrolled by roving security guards.

RETENTION AND DISPOSAL:

Files are maintained as long as a member is covered by an insured mortgage loan; 3 years after, files are forwarded to Federal Records Center. Destroyed 4 years after case files are closed.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, G–WP, Director, Personnel Management Directorate, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant, G–SII, United States Coast Guard Headquarters, 2100 2nd Street SW., Washington, DC 20593–0001. The written request should include the requester's name in full and signature.

RECORD ACCESS PROCEDURES:

Procedures may be obtained by writing Commandant, G–SII, at the address above, or by visiting the Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. Proof of identity will be required prior to affording an individual access to his records. A military identification card, a driver's license, or similar document will be considered suitable identification.

CONTESTING RECORD PROCEDURES:

Same as "Record access procedures".

RECORD SOURCE CATEGORIES:

Individual concerned and the Federal Housing Administration.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 571

SYSTEM NAME:

Physical Disability Separation System.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Commander, U.S. Coast Guard Personnel Command, 2100 2nd St., SW., Rm. 1504, Washington, DC 20593–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USCG active duty personnel, USCG Reserve personnel on active duty orders for periods greater than 29 days, and USCG personnel separated or retired for physical disability.

CATEGORIES OF RECORDS IN THE SYSTEM:

Central Physical Evaluation Board files. Formal Physical Evaluation Board files. Physical Review Council files. Physical Disability Appeal Board files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 1216, 14 U.S.C. 366, 632; 49 CFR 1.45, 1.46.

PURPOSE(S):

Physical disability separation and retirement proceedings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Department of Veteran Affairs for assistance in determining the eligibility of individuals for benefits administered by that agency and available to USPHS or DOD medical personnel in connection with the performance of their official duties. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, microfilm, magnetic tape, punched cards, machine lists, discs, and other computerized or machine readable media.

RETRIEVABILITY:

Name, social security number, and the diagnosis or International Classification of Diseases, ICD code.

SAFEGUARDS:

Records are maintained in locked filing equipment in controlled access rooms. Records are accessible only to authorized personnel. Computer terminals are located in supervised areas, with access controlled by password or other user code system.

RETENTION AND DISPOSAL:

Retained two years after disposition then transferred to Federal Records Center, St. Louis, MO.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Coast Guard, Personnel Command, 2100 2nd St., SW., Rm. 1504, Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Notarized written requests should contain the full name and social security number of the member and be addressed to: Commandant, G–SII–2, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure".

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure".

RECORD SOURCE CATEGORIES:

Information in records developed through proceedings of administrative bodies listed in "Categories of records" above.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 572

SYSTEM NAME:

USCG Military Personnel Health Record System.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Member's unit or the Coast Guard health care facilities at which the member or dependents receive treatment.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty, reserve, and retired members of the uniformed services and their dependents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of medical and dental treatment, including x-rays. Physical Examinations. ADP Records containing due date for physical/dental and eye examinations, inoculations, screening tests and results of actions required by Coast "Guard or other federal state or local government or agency. Records concerning line of duty determination and eligibility for disability benefits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 1071–1107; 14 U.S.C. 632; 49 CFR 1.45, 1.46

PURPOSE(S):

Determine suitability of members for overseas assignments and to develop automated information relating to medical readiness in wartime and contingence operations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. Provided to federal, state, or local governments and agencies to compile statistical data for research and auditing; to provide quality assurance; to report medical conditions and other data required by law; to aid in preventive health and communicable disease control programs.

b. Provided to the Joint Commission on Accreditation of Healthcare Organizations to evaluate health care provided, personnel and facilities for professional certification and hospital accreditation; to provide quality services.

c. Records of communicable disease are provided to the Department of Defense to analyze the results, to ensure uniformity of record keeping, and to centralize production of reports for all uniformed services.

d. Provided to the Department of Defense or other federal, state, or local governments and agencies for casualty identification purposes.

e. Provided to the Social Security Administration and Veterans Administration for use in determining an individual's entitlement to benefits administered by those agencies.

f. Provided to the Public Health Service, Department of Defense, or Veterans Administration medical personnel or to personnel or facilities providing care to eligible beneficiaries under contract in connection with medical treatment of individuals.

Records are provided to the Department of Health and Human Services for purposes of the Federal Medical Care recovery set. Records are available to the Public Health Service or DOD medical personnel in connection with medical treatment of individuals at USPHS or DOD facilities. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Individual files are in folders. Portions of records are automated at some units.

RETRIEVABILITY:

Name or social security number of member or dependents.

SAFEGUARDS:

Room or cabinets in which records are located are locked when unattended. Access limited to these records at all times by personnel screening.

RETENTION AND DISPOSAL:

a. Active Duty Personnel: Individual medical files are retained at the members' unit or medical administration office for so long as individual is assigned to the particular area. When the member is reassigned, the individual medical file is transferred to the new duty station upon reassignment of member. Upon separation or retirement, the individual medical file is incorporated into the Official Officer Service Records System, DOT/CG 626, or Enlisted Personnel Records System, DOT/CG 629, as appropriate.

b. Retired Personnel: Individual medical files are retained at the medical facility for a period of 4 years from date of last activity. Transferred to National Personnel Records Center (Military Personnel Records). 9700 Page Blvd, St. Louis, MO 63132, 4 years after last report.

c. Dependents: Individual medical files are retained at the medical treatment facility for period of 4 years from date of last activity. Transferred to new duty station of sponsor upon written request of dependent. Records not transferred are forwarded to National Personnel Records Center, CPR, 111 Winnebago Street, St. Louis, MO 63118, and 4 years after last activity.

d. Reserve Personnel: Individual medical files are retained in custody of the reserve group or unit, or district commander(s) for so long as the reservist is assigned to the particular area. When the member is reassigned, the individual medical file is transferred to the new reserve group or unit or district commander as appropriate. Upon separation or retirement, the individual medical file is incorporated into Official Coast Guard Reserve Service Record System, DOT/CG 676

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, G–WK, United States Coast Guard Headquarters, Director, Health and Safety Directorate, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant, G–SII–2, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

a. Active Duty personnel: Health care facility where the record is located, or see "Notification Procedure".

b. Retired Personnel and all Dependents: Health care facility where the record is/was located, or: (Retired) National Personnel Records Center, (Military Personnel Records) 9700 Page Blvd., St. Louis, MO 63132; (Dependents) National Personnel Records Center, CPR, 111 Winnebago Street, St. Louis, MO 63118

Reserve Personnel: Reserve group or unit or district commander of the district where command is located, or see "Notification Procedure".

The decision to release medical records directly to the individual shall be made by medical practitioner per 49 CFR 10.35(c).

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Medical facilities where beneficiaries treated or examined. Investigations resulting from illness or injury. The individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 573

SYSTEM NAME:

United States Public Health Services, PHS Commissioned Officer Corps Staffing and Recruitment Files.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Commandant, G–WK, United States Coast Guard Headquarters, Director, Health and Safety Directorate, 2100 2nd Street, SW., Washington, DC 20593–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

PHS commissioned officers assigned to duty with the Coast Guard.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel records, assignment preference, reference questionnaires, background information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 1043, 14 U.S.C. 93(r), 632, 645; 42 U.S.C. 213, 253; 49 CFR 1.45, 1.46.

PURPOSE(S):

Assist administrators in assigning personnel to area requiring their specific skills.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Monitor career development of personnel assigned to program. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

By name of individuals.

SAFEGUARDS:

During working hours access is controlled by office personnel, during non-working hours building is patrolled by roving security patrol.

RETENTION AND DISPOSAL:

Records are retained during period of an individual's assignment to the Coast Guard. Thereafter, records are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, G–WK, Director, Health and Safety Directorate, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant, G–SII–2, United States Coast Guard Headquarters, 2100 2nd

Street, SW., Washington, DC 20593–0001. Written request must be signed by the individual.

RECORD ACCESS PROCEDURES:

Procedures may be obtained by writing to or visiting Commandant, G-SII–2 at the address in "Notification procedures". Proof of identity will be required prior to release of records. A military identification card, driver's license or similar document will be considered suitable identification

CONTESTING RECORD PROCEDURES:

See "Record access procedures".

RECORD SOURCE CATEGORIES:

Previous employers, educational institutions, references, Coast Guard Medical Administrators and the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 576

SYSTEM NAME:

USCG Non-Federal Invoice Processing System, NIPS.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Commandant, G–WK, United States Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001. Commander, Maintenance and Logistics Command Atlantic, Health Services Division, Governor's Island Building 400, New York, NY 10004–5100. Commander, Maintenance and Logistics Command Pacific, Health Services Division, Coast Guard Island, Alameda, CA 94501–5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty, reserve, and retired members of the uniformed services and their eligible dependents, and non-Federal health care providers that have rendered services to eligible beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence, memoranda, and related documents concerning potential and actual health care invoices for processing by NIPS. Medical and dental treatment records provided to the individual that are the subject of an invoice for non-federal health care provided to an eligible beneficiary. Automated data processing, ADP records containing identifying data on individuals including: Units of assignment and address, home address, and information necessary to process and monitor bills for payment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 1091, 14 U.S.C. 93(r), 632; 49 CFR 1.45, 1.46.

PURPOSE(S):

Review of cost data and appropriateness of care.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Medical information, including records of health care and medical invoices may be disclosed to health care professionals, auditing, utilization and peer review organizations to support a government claim. See Prefatory Statement of General routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Storage of individual files is in folders. Portions of records are extracted in an ADP data base. ADP data is maintained in hard disk and magnetic tape storage.

RETRIEVABILITY:

Name or Social Security Number of member or dependents sponsor. Name of Member's Unit. Name or tax identification number of non-Federal health care providers.

SAFEGUARDS:

Room and cabinets in which records are located are locked when unattended. There are roving guard patrols during non-duty hours. Access to records is regularly limited to those directly involved in managing claims. Records in the ADP database are retrievable only by those with authorized access to ADP equipment and the database is protected by standard ADP security measures including the use of passwords.

RETENTION AND DISPOSAL:

Retained for 1 year; transferred to a Federal Record Storage Facility and retained for an additional 5 years 3 months, and destroyed thereafter.

SYSTEM MANAGER:

Commandant, G–WK, Director, Health and Safety Directorate, United States Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Send a written request with patient's name, sponsor's name and social security number, to the System Location for the MLC where care was rendered. The request must be signed by the individual, or if a minor dependent, by the parent or guardian. Commander, Maintenance and Logistics Command Atlantic, Health Services Division, Governor's Island, New York, NY 10004–5100, or Commander, Maintenance and Logistics Command Pacific, Health Services Division, Coast Guard Island, Alameda, CA 94501–5100, as appropriate.

RECORD ACCESS PROCEDURES:

Write or visit the appropriate Commander, MLC at the address given in "Notification procedure." Responsible for where the care was received.

CONTESTING RECORD PROCEDURES:

Same as "Record access procedures."

RECORD SOURCE CATEGORIES:

From the individual, individual's spouse, parent or guardian. Medical facilities (United States Coast Guard, Department of Defense, uniformed Services Treatment Facility, or non-Federal, provider) where beneficiaries are treated. For Active Duty personnel—the Official Officer Service Records System, DOT/CG 626, and the Enlisted Personnel Record System; DOT/CG 629. For Reserve personnel—the Official Coast Guard Reserve Service Record System, DOT/CG 676. Investigations resulting from illness or injury.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 577

SYSTEM NAME:

USCG Federal Medical Care Recovery Act, FMCRA Record System.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

U.S. Coast Guard, Health and Safety Directorate, 2100 2nd Street, SW., Washington, DC 20593–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty, reserve, and retired members of the uniformed services and their eligible dependents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence, memoranda, and related documents concerning potential ad actual FMCRA claims, and copies of medical and dental treatment provided to the individual subject of the claim, and copies of medical bills associated with civilian care provided at government expense. Automated data

processing, ADP records containing identifying data on individuals, unit of assignment and address, home address, the amount of the claim, the amount paid to the government on the claim, dates of correspondence sent, due dates of reply, claim number, date claim opened, and date claim closed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 14 U.S.C. 632; 42 U.S.C. 2651–2653; 49 CFR 1.45, 1.46.

PURPOSE(S):

Managing, processing, and collecting claims for the government.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to attorneys and insurance companies involved in settling and litigating claims. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Storage of individual files is in folders. Portions of records are extracted in ADP database. ADP database will be maintained in hard disk and magnetic tape storage.

RETRIEVABILITY:

Name or social security number of member, retiree or dependent.

SAFEGUARDS:

Room and cabinets in which records are located are locked when unattended. Roving guard patrol during non-duty hours. Access to records limited to those directly involved in managing claims with a need to know. Records in ADP database retrievable only to those with authorized access to ADP equipment and database is protected by standard ADP.

RETENTION AND DISPOSAL:

Records are retained at USCG Headquarters for 1 year; transferred to a Federal Records Storage Facility and retained for an additional 5 years, 3 months for a total of 6 years, 3 months and destroyed thereafter.

SYSTEM MANAGER(S) AND ADDRESS:

Health and Safety Directorate, United States Coast Guard, Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Send a written request with the client's name, sponsor's name and social security number to the system manager. The request must be signed by the individual, or if a minor dependent, by the parent or guardian.

RECORD ACCESS PROCEDURES:

Write or visit: Commandant, G–WK, U.S. Coast Guard, Attn: FMCRA Section, 2100 Second Street, SW., Washington, DC 20593–0001.

CONTESTING RECORD PROCEDURES:

Same as "Record access procedures."

RECORD SOURCE CATEGORIES:

From the individual, or if a minor, the parent or guardian. Medical facilities (U.S. Coast Guard, Department of Defense, Uniformed Services Treatment Facility, or Civilian Facility) where beneficiaries are treated. Injury investigations. Attorneys and insurance companies involved in the claim. For Active Duty personnel—the Official Officer Service Records System; DOT/CG 626, and the Enlisted Personnel Records System; DOT/CG 629. For reserve personnel—the Official Coast Guard Reserve Service Record System, DOT/CG 676.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 586

SYSTEM NAME:

Chemical Transportation Industry Advisory Committee.

SECURITY CLASSIFICATION:

Unclassified-sensitive.

SYSTEM LOCATION:

Commandant, G–M, United States Coast Guard, 2100 2nd Street, SW., Washington, DC 20593–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Committee members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Address, phone number. Biographical sketch. Committee information. Minutes of meetings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 14 U.S.C. 632; 49 CFR 1.45, 1.46.

PURPOSE(S):

Arranging meetings, keeping records of committee business, determine committee membership.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

By committee name/individual name.

SAFEGUARDS:

Personnel screening prior to granting access. Building has roving security after hours.

RETENTION AND DISPOSAL:

Permanently retained.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant (G–M), United States Coast Guard Headquarters, Chief, Marine Safety and Environmental Protection, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant, G–SII–2, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. Written request must be signed by the individual.

RECORD ACCESS PROCEDURES:

Procedures may be obtained by writing to or visiting Commandant, G–SII–2, at the address in "Notification Procedure." Proof of identity will be required prior to granting access. A military identification card, driver's license or similar document is considered suitable identification.

CONTESTING RECORD PROCEDURES:

Same as "Record access procedures'.

RECORD SOURCE CATEGORIES:

From the individual of record.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 588

SYSTEM NAME:

Marine Safety Information System, MSIS.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

United States Coast Guard (USCG), Operations Systems Center, 175 Murall Drive, Martinsburg, WV 25401.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals with established relationship(s) associates to maritime vessels that are included in the Marine Safety Information System, MSIS. Specifically, information on vessel owners, operators, masters, crew and/or agents can be stored in MSIS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information on maritime vessels and vessel characteristics including: Vessel identification data, registration data, port visits, inspection data, documentation data, port safety boardings, casualties, pollution incidents, and civil violations if applicable and associated information (data pertaining to people or organizations associated with vessels) for owners, operators, agents, and possibly crew members. Statements submitted by Coast Guard relating to boardings, investigations as a result of a pollution and/or casualty incident, as well as any violations of United States law, along with civil penalty actions taken as a result of such violations. Such reports could contain names of passengers on vessels, as well as witnesses to such violations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 14 U.S.C. 632; 33 U.S.C. 1228; 46 U.S.C. 2102, 3301, 3714, 3717, 6101, 6102, 6307(c)", 6301, 7101, 7309; 49 CFR 1.45, 1.46.

PURPOSE(S):

Build a safety performance history of vessels, their owners, operators and facilities, thereby enhancing safety.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

MSIS primarily supports operational decision making in implementing and enforcing marine safety and environmental programs. In addition, the system is used by field units for the issuance of Certificates of Documentation, Certificates of Inspections, port safety boardings, monitoring cargo transfers, capturing data on pollution incidents and casualties, and for reporting of violations resulting from these incidents. MSIS Records may be disclosed to the following United States Government entities.

(1) United States Department of Commerce, National Technical Information Service, NTIS: Characteristics of vessels documented by the USCG and owner information. This information is the same as that published in the annual publication "Merchant Vessels of the United States," CG–408 (also known as "the blue book"). This information is distributed on tape and is sold to the public.

(2) United States Customs Service, USCS: Characteristics of vessel, United States ports visited and owner information. USCG information is compared to USCS vessel and/or owner information.

(3) Military Sealift Command (MSC): Characteristics of vessels. USCG information is compared to MSC vessel information.

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Storage of all records is in an ADP data base operated and maintained by the United States Coast Guard. All data is retained indefinitely.

RETRIEVABILITY:

Records are retrieved by:

a. Vessel name or vessel identification number, VIN.

b. Facility name or facility identifying number, FIN.

c. Involved parties name, IPN, (owner, operators, agent, etc.).

d. Casualty case number.

e. Pollution incident case number.

SAFEGUARDS:

The MSIS falls under the guidelines of the Operations System Center in Martinsburg, WV. This computer facility has its own approved System Security Plan which provides that:

a. The system be maintained in a secure computer room with access restricted to authorized personnel only.

b. Access to the building must be authorized and is limited. A Sensitive Application Certification (SAC) has been approved for the MSIS.

The United States Coast Guard will operate the MSIS in consonance with Federal security regulations, policy, procedures, standards and guidance for implementing the Automated Information Systems Security Program.

c. Only authorized Department of Transportation personnel, and authorized United States Government contractors conducting system maintenance may access MSIS records.

d. Access to records password protected and the scope of access for each password is limited to the official need of each individual authorized access.

e. Additional protection is afforded by the use of two password security.

RETENTION AND DISPOSAL:

Record retention is indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

United States Coast Guard, Information Management Division, G–MIR–2, 2100 2nd Street, SW, Washington, DC 20593–0001. Notification Procedure: Submit a written request noting the information desired and for what purpose the information will be used. A first party request should be specifically noted. The request must be signed by the individual, or his/her legal representative. Send the request to: Commandant, G–SII, United States Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001

RECORD ACCESS PROCEDURES:

Same as Notification procedures.

CONTESTING RECORD PROCEDURES:

Same as Notification procedures.

RECORD SOURCE CATEGORIES:

All information entered into the MSIS is gathered from boardings, inspections, and Documentation offices in the course of normal routine business. This information is gathered from the owners, operators, crew members, agents, passengers, witnesses, United States Coast Guard personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system of records may be exempt from disclosure under the provisions of 5 U.S.C. 552a (k)(2). However, in specific cases where maintenance of information results in the denial of a right, privileges or benefits to which the individual is entitled, the information will be released in accordance with section (k)(2). This provides in part that investigatory material compiled for law enforcement purposes may be withheld from disclosure to the extent the identity of the source of the information would be revealed by disclosing the investigatory record, and the source has received an express promise that his/her identity would be held in confidence.

DOT/CG 589

SYSTEM NAME:

United States Merchant Seamen's Records.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Commandant, G–M, United States Coast Guard, CG, 2100 2nd Street, SW.,

Washington, DC. 20593–0001. Marine Inspection Office or the Marine Safety Office where the seaman was documented.

CATEGORIES OF INDIVIDUALS:

United States Merchant Seamen.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel File. Shipping Articles. Locator List. Log Books. Seamen's License Records. Fingerprint Records. Disciplinary Records. Security Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C 301; 14 U.S.C. 632; 46 U.S.C. 2103, 7319, 7701, 8701; 14 CFR 12.02–25; 49 CFR 1.45, 1.46.

PURPOSE(S):

Administering the Commercial Vessel Safety Program to determine domestic and international qualifications for the issuance of licenses, documents and staff officer certifications.

ROUTINE USES OF THE RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Provide information to other Federal Agencies, such as the Veterans' Administration, the Social Security Administration, etc. in connection with benefits and services administered by those agencies; to provide information to private organizations when considered beneficial to the seaman. See Prefatory Statement of General Routine Use.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to "consumer reporting agencies" (collecting on behalf of the United States Govt.) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files are stored at a secure, controlled access site managed by contract personnel; on-site government oversight is provided by the Coast Guard's National Maritime Center. Electronic records are stored on a secure database server at the Coast Guard Operations Systems Center.

RETRIEVABILITY:

Alphabetical order by last name, first name, middle name. Retrieval is made by name and cross-indexed by identifying number (*e.g.* Social Security Number, "Z" number, or Continuous Discharge Book number).

SAFEGUARDS:

The active personnel records are stored in a locked room at a contractor's site. Access to the room is regularly limited to trained employees of the contractor and to National Maritime Center personnel. National Maritime Center personnel provide full time oversight. Computer records are retrievable only by approved Coast Guard and contractor personnel. Passwords are required by all personnel who access the system and the system records the name of the user each time a record is accessed. Each user's access is limited to only that portion of the overall file that has previously been determined to the user's needs.

RETENTION AND DISPOSAL:

Paper personnel files are held at the contractor's site for five years past the last activity with the file. They are then transferred to the Federal Records Center in Suitland, MD. Disciplinary Records are maintained in paper form. Administrative Law Judge's Decisions and Orders and Appeal File are transferred to a Federal Records Center after 5 years. Commandant's Decision on Appeal and National Transportation Safety Board Decisions and Orders are retained. Disciplinary Record Cards are destroyed upon notice of death.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commandant, G–M, United States Coast Guard Headquarters, Marine Safety and Environmental Protection, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

United States Coast Guard Headquarters, Commandant, G–SII, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" or the Marine Inspection Office or Marine Safety Office where the document was issued locally.

CONTESTING RECORD PROCEDURES:

Same as "Record access procedures."

RECORD SOURCE CATEGORIES:

Personnel File—seamen, United States Coast Guard officials, other Federal Agencies and employer. Shipping Articles Vessels' operators, seamen, masters of vessels, State Department, and Coast Guard officials. Disciplinary Records—Investigating Officers at the various Marine Inspection and Marine Safety Offices.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system of records may be exempt from disclosure under the provisions of 5 USC 552a (k)(2).

DOT/CG 590

SYSTEM NAME:

Vessel Identification System, VIS.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

United States Coast Guard, USCG, Operations Systems Center, 600 Coast Guard Drive, Kearneysville, WV 25430–3000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals with established relationship(s)/association to vessels that are state-numbered and/or titled and United States Coast Guard-documented, and that are included in the Vessel Identification System, VIS. Specifically, owners, or agents of such vessels, as well as lienholders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Vessel identification information and vessel characteristics on state-numbered and/or titled vessels or Coast Guard-documented vessels. Personal information including: Name of each owner, address of principal place of residence of at least one owner, mailing address if different than the principal place of residence, and either an owner's social security number, date of birth and driver's license number, or other identifier. Records containing lienholder and insurance information including: Name of lienholder, and city and state of principal place of residence or business of each lienholder. Law enforcement status code (stolen, recovered, lost, destroyed, or abandoned), law enforcement hold, reporting agency, originating case number, National Crime Information Center, NCIC, number, VIS user identification, incident location, last sighted date/time/location, law enforcement contact and phone number, and hours of operations. Records containing vessel registration information including: registration and, if applicable title number including effective and expiration date, issuing authority, and, for Coast Guard documented vessels, the official number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 14 U.S.C. 632; 46 U.S.C. 12501–12507; 49 CFR 1.45, 1.46

PURPOSE(S):

Provide a nationwide pool of state-numbered and/or titled and United States Coast Guard-documented vessels that will assist in identification and recovery of stolen vessels, deter vessel theft and fraud, and other purposes relating to the ownership of vessels.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Federal and state numbering and titling officials for the purposes of tracking, registering and titling vessels. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated data processing (ADP) database operated and maintained by the United States Coast Guard.

RETRIEVABILITY:

Vessel owner or business name; Vessel owner's social security number or alternate identifier (*e.g.* DOB, driver's license number, or taxpayer identification number); vessel hull identification number, HIN; State certificate of number; title number.; United States Coast Guard official number; USCG vessel name and hailing port.

SAFEGUARDS:

The VIS falls under the guidelines of the United States Coast Guard Operations System Center, OSC in Martinsburg, WV. This computer facility has its own approved System Security Plan.

RETENTION AND DISPOSAL:

Records of active cases are retained until they become inactive; inactive cases are archived and retained for 50 years. Records will be selected to be archived into an off-line file for any vessel that has been inactive for a period of 10 years. Copies of backups are stored at an off-site location.

SYSTEM MANAGER (S) AND ADDRESS:

Information Resource Division, System Development Division, G–MRI–3; United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant, G–SII, USCG Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure".

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure".

RECORD SOURCE CATEGORIES:

Participating States and the National Crime Information Center, NCIC.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system of records may be exempt from disclosure under the provisions of 5 U.S.C. 552a (k)(2).

DOT/CG 591

SYSTEM NAME:

Merchant Vessel Documentation System, Manual.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Automated: United States Coast Guard, USCG, Operations Systems Center, 600 Coast Guard Drive, Kearneysville, WV 25430–3000. Manual: United States Coast Guard, USCG, National Vessel Documentation Center, 2039 Stonewall Jackson Drive, Falling Waters, WV 25419–9502.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Vessel owners. Mortgagees. Vessel buyers and sellers. Lien claimants. Vessel builders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Vessel owner information. Vessel information. Instruments of record (bills of sale, mortgages, etc.).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 14 U.S.C. 632; 46 U.S.C. 12119, 12502, 46 CFR part 67; 49 CFR 1.45, 1.46

PURPOSE(S):

Establish the eligibility of vessels for documentation, record and track documented vessels, issue marine documents and record instruments of record (bills of sale, mortgages, etc.).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Publication of the annual MERCHANT VESSELS OF THE UNITED STATES. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Index of owners maintained by Commandant, G–MVD. All other records maintained at home port of vessel by vessel name.

RETRIEVABILITY:

Name of vessel owner.

SAFEGUARDS:

Personnel screening.

RETENTION AND DISPOSAL:

Listings of vessel owners constantly updated by additions and deletions (automated). Field office vessel folders transferred to FRC two years after change of vessel's home port or 2 years after removal of vessel from documentation (manual).

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, G–M, Chief, Marine Safety and Environmental Protection, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant, G–SII, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" or the local Coast Guard District Office.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures."

RECORD SOURCE CATEGORIES:

Vessel owners, Mortgagees, lien claimants, vessel sellers and buyers, Coast Guard admeasures, and vessel builders.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 592

SYSTEM NAME:

Registered/Applicant Pilot Eligibility Folder.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Commander, Ninth Coast Guard District, Great Lakes Pilotage Staff, 1240 East Ninth St., Cleveland, OH 44199–2060.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States registered pilots and applicant pilots suitable registered to

perform pilotage duties aboard foreign vessels on the Great Lakes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application for registration, renewal of registration, annual report of physical examination, Coast Guard license data, and examination for registration.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 14 U.S.C. 632, 709; 49 CFR 1.45, 1.46.

PURPOSE(S):

Document pilot registration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Training program needs, retirements, statistical compilations, and negotiations with Canadian authorities to assure equitable participation by U.S. registered pilots with Canadian registered pilots. See Prefatory Statement of General Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file folders.

RETRIEVABILITY:

Name and pilot registration number.

SAFEGUARDS:

Screened by office personnel prior to use. Locked in cabinets during non-working hours.

RETENTION AND DISPOSAL:

Records are maintained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Ninth Coast Guard District, Great Lakes Pilotage Staff, 1240 East Ninth Street, Cleveland, OH 44199–2060.

NOTIFICATION PROCEDURE:

Same as "System manager".

RECORD ACCESS PROCEDURES:

Same as "System manager".

CONTESTING RECORD PROCEDURES:

Same as "System manager".

RECORD SOURCE CATEGORIES:

Individual's original application for U.S. Pilot's registration and individual's yearly report of medical examination.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 611

SYSTEM NAME:

Investigative Case System.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Commandant, G–O–CGIS, United States Coast Guard, CG, 2100 2nd Street, SW., Washington, DC 20593–0001. Coast Guard District Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Coast Guard military personnel, merchant marine personnel, port and dock workers, and persons under investigation for violations of laws and regulations administered by the Coast Guard.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel security investigations, national agency check results, criminal investigation, counterintelligence investigations, computerized case control system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 14 U.S.C. 2, 89a, 93(e), 632; 33 U.S.C. 1221; 14 U.S.C. 632; COMDTINST 5830.1

PURPOSE(S):

Security clearances.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Actions by commanders under the Uniform Code of Military Justice. Career advancement of United States Coast Guard military personnel. Approval of merchant seamen documents. Access of individuals to port facilities. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Investigative dossiers and 3x5 card retrieval system.

RETRIEVABILITY:

By name and/or case number.

SAFEGUARDS:

Alarm controlled spaces, locked and/or limited access file cabinets and office spaces. Using receipt control, automatic data processing, ADP system cannot be penetrated for data through terminals, or otherwise, located outside the United States Coast Guard computer center without use of proper administrative controls. Release of dossiers to accredited personnel on "need-to-know' basis only.

RETENTION AND DISPOSAL:

Dossiers retained 50 years from date of birth. Deceased, retirees and others separated are held one year from separation. Dossiers are retired to the Washington National Federal Records Center for further retention of 30 years. 3x5 Cards are annotated to recall retired dossiers if necessary. Computer printouts are retained for 10 years then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Operations, G–O, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant, G–SII, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" or the local Coast Guard District Office.

CONTESTING RECORD PROCEDURES:

Same as "Record access procedures."

RECORD SOURCE CATEGORIES:

National Agency Checks, background investigations, criminal investigations, interviews, records checks, observations, statements.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system of records may be exempt from disclosure under the provisions of 5 U.S.C. 552a (k)(2), (5), and (7).

DOT/CG 612

SYSTEM NAME:

Port Security Card System.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Commandant, G–O–CGIS, United States Coast Guard Headquarters, CG, 2100 2nd Street, SW., Washington, DC 20593–0001. District Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons regularly employed on vessels and water front facilities, or persons having regular public or private business with the operation, maintenance, or administration of vessels and cargoes or waterfront facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for port security cards awaiting processing. Processed applications indicating those granted or denied port security cards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 14 U.S.C. 2, 91, 632; 33 CFR 125; 49 CFR 1.45, 1.46.

PURPOSE(S):

Determine eligibility for issuance of Port Security Cards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files, 3x5 cards.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Maintained in file cabinets in secure areas. Personnel are screened prior to granting access.

RETENTION AND DISPOSAL:

Retained for 8 years, then destroyed by mutilating, shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, G–O, Chief, Operations, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant, G–SII, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as 'Notification Procedure' or the local Coast Guard District or unit office.

CONTESTING RECORD PROCEDURES:

Same as "Record access procedures."

RECORD SOURCE CATEGORIES:

Individual applications. National Agency checks. Other records already at Coast Guard Headquarters, if any.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system of records may be exempt from disclosure under the provisions of 5 U.S.C. 552a(k)(2).

DOT/CG 622

SYSTEM NAME:

Military Training and Education Records.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Director, Reserve and Training Directorate, G–WT, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. District and Headquarters Units.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Coast Guard Military Personnel (Commissioned Officers, Commissioned Warrant Officers, Cadets, and Enlisted Personnel).

CATEGORIES OF RECORDS IN THE SYSTEM:

General Service Correspondence Course. Off-Duty Education Records. Professional Training Records. Non-traditional Educational Support Records. Achievement and Aptitude Test Results. Academic Performance Records. Correspondence Course Rate Advancement Records. Military Performance Records. Admissions Processing Records. Grade Reporting Records. Cadet Academic Status Records. Transcript Maintenance Records. Cadet Discipline Status Records. Military Personnel Records. Military Training Schedules Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 14 U.S.C. 93(g), 632; 49 CFR 1.45, 1.46.

PURPOSE(S):

Evaluation and measurement of training performance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Statistical summaries. Input to personnel records. Partial criteria for selection and admission to service/professional schools. Partial criteria for selection to postgraduate education programs. Criteria for admission to the Coast Guard. Criteria for retention in service Schools. Criteria for promotion. See Prefatory Statement of General Routine Uses, 3 through 5 do not apply.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders stored in file cabinets. Portions are stored on ADP equipment.

RETRIEVABILITY:

Name, rate, class number, cadet code number, and Social Security Number.

SAFEGUARDS:

Records are kept in file cabinets in offices that are locked during off-duty hours. Those records stored in ADP equipment may only be accessed through use of a user access code.

RETENTION AND DISPOSAL:

Personal History, Service History and School Conduct and Military Performance records are kept for one year. Academic and Correspondence Course records are kept for five years. Aptitude and Achievement Test results, as a part of Training and Education records, are kept for five years. Records are destroyed by mutilating, shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Reserve and Training Directorate, G–WT, United States Coast Guard Headquarters, 2100 2nd Street, SW,, Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

United States Coast Guard, Headquarters, Commandant, G–SII, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as 'Notification Procedure' or the local Coast Guard activity where assigned for training.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures."

RECORD SOURCE CATEGORIES:

Official military personnel records, test results, instructors and supervisors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system of records may be exempt under 5 U.S.C. 552a(k)(5), (6), and (7).

DOT/CG 623

SYSTEM NAME:

Military Pay and Personnel System.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

United States Coast Guard, CG, Department of Transportation Computer Center, 400 7th Street, SW., Washington, DC 20590–0001. United States Coast Guard Human Resources Service and Information Center, 444 SE. Quincy Street, Topeka, KS 66683–3591. United States Coast Guard, 2100 2nd Street, SW., Washington, DC 20593–0001. Unit maintaining the individual's

pay and personnel record and permanent duty unit.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Coast Guard military personnel, active duty and reserve. Retired reserve Coast Guard military personnel waiting for pay at age 60. Active duty National Oceanic and Atmospheric Administration, NOAA officers. Personnel separated from service in all the preceding categories.

CATEGORIES OF RECORDS IN THE SYSTEM:

Identifying information, such as name(s), date of birth, home residence, mailing address, social security number, payroll information, and home telephone number. Work experience, educational level achieved, and specialized education or training obtained in and outside of military service. Military duty assignments, ranks held, pay and allowances, personnel actions such as promotions, demotions, or separations. Enrollment or declination of enrollment in insurance programs. Performance evaluation. Individual's desires for future assignments, training requested, and notations by assignment officers. Information for determinations of waivers and remissions of indebtedness to the United States Government. Information for the purpose of validating legal requirements for garnishment of wages.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

5 U.S.C. 301; 14 U.S.C. 92(l), 632; 5 U.S.C. 5501–5597; 49 CFR 1.45, 1.46.

PURPOSE(S):

Administer the Coast Guard pay and personnel system.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Department of Treasury for the purpose of disbursement of salary, United States Savings Bonds, allotments, or travel claim payments. To government agencies to disclose earnings and tax information. To the Department of Defense and Veterans Administration for determinations of benefit eligibility for military members and their dependents. To contractors to manage payment and collection of benefit claims. To the Department of Defense for manpower and readiness planning. To the Comptroller General for the purpose of processing waivers and remissions. To contractors for the purpose of system enhancement, maintenance, and operations. To federal, state, and local agencies for determination of eligibility for benefits connected with the Federal Housing Administration programs. To provide an official of another federal agency information needed in the performance of official duties to reconcile or reconstruct data files in support of functions for which the records were collected and maintained. To an individual's spouse, or person responsible for the care of the individual concerned when the individual to whom the record pertains is mentally incompetent, critically ill or under other legal disability for the purpose of assuring the individual is receiving benefits or compensation they are entitled to receive. To a requesting government agency, organization, or individual the home address and other relevant information on those individuals who, it is reasonably believed, might have contracted an illness, been exposed to, or suffered from a health hazard while a member of government service. To businesses for the purpose of electronic fund transfers or allotted pay transactions authorized by the individual concerned. To credit agencies and financial institutions for the purpose of processing credit arrangements authorized by the individual concerned. To other government agencies for the purpose of earnings garnishment. To prepare the Officer Register and Reserve Officer Register which is provided to all Coast Guard officers and the Department of Defense. To other federal agencies and collection agencies for the collection of indebtedness and outstanding travel advances to the federal government. The home mailing addresses and telephone numbers of members and their dependent/s to duly appointed Family Ombudsman and personnel within the Coast Guard for the purpose of providing entitlement information to members or their dependents.

See Prefatory Statement of General Routine Uses, 3 and 5 do not apply.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer disks, magnetic tape microfilm, and paper forms in file folders.

RETRIEVABILITY:

Name or social security number.

SAFEGUARDS:

Computers provide privacy and access limitations by requiring a user name and password match. Access to decentralized segments are similarly controlled. Only those personnel with a need to have access to the system are given user names and passwords. The magnetic tape backups have limited access in that users must justify the need and obtain tape numbers and volume identifiers from a central source before they are provided data tapes. Paper record and microfilm records are in limited access areas in locking storage cabinets.

RETENTION AND DISPOSAL:

Leave and Earnings Statements, and pay records are microfilmed and retained on site four years, then archived at the Federal Record Center, and destroyed when 50 years old. The official copy of the personnel record is maintained in the Official Officer Service Records, DOT/CG 626 for active duty officers, the Enlisted Personnel Record System, DOT/CG 629 for active duty enlisted personnel or the Official Coast Guard Reserve Service Record, DOT/CG 576 for inactive duty reservists. Duplicate magnetic copies of the pay and personnel record are retained at an off site facility for a useful life of seven years. Paper records for waivers and remissions are retained on site six years three months after the determination and then destroyed. Paper records to determine legal sufficiency for garnishment are retained on site six years three months after the member separates from the service or the garnishment is terminated and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

For active duty members of the Coast Guard: Chief, Office of Personnel, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. For Coast Guard inactive duty reserve members and retired Coast Guard reservists awaiting pay at age 60: Chief, Office of Reserve Affairs, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. For Coast Guard Waivers and Remissions: Chief, Personnel Services Division, G–PMP, Office of Personnel, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20590–0001. For records used to determine legal sufficiency for garnishment of wages and pay records: Commanding Officer, LGL, United States Coast Guard Human Resources Service and Information Center, 444 SE. Quincy Street, Topeka, KS 66683–3591. For data added to the decentralized data segment the commanding officer, officer-in-charge of the unit handling the

individual's pay and personnel record, or Chief, Administrative Services Division for individuals whose records are handled by Coast Guard Headquarters. For NOAA members: National Oceanic and Atmospheric Administration, Commissioned Personnel Division, 11400 Rockville Pike, Rockville, MD 20852.

NOTIFICATION PROCEDURE:

For all information on Coast Guard members other than below: United States Coast Guard Headquarters, G-SII, 2100 2nd Street, SW., Washington, DC 20593–0001. For records used to determine legal sufficiency for garnishment of wages and pay records: Commanding Officer, United States Coast Guard Human Resources Service and Information Center, 444 S.E. Quincy Street, Topeka, KS 66683–3591. For data added to the decentralized data segment the commanding officer, officer-in-charge of the unit handling the individual's pay and personnel record, or Chief, Administrative Services Division for individuals whose records are handled by Coast Guard Headquarters. Addresses for the units handling the individual's pay and personnel record are available from the individual's commanding officer. For all information on NOAA members: National Oceanic and Atmospheric Administration, Commissioned Personnel Division, 11400 Rockville Pike, Rockville, MD 20852.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure".

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure".

RECORD SOURCE CATEGORIES:

Official Officer Service Records, DOT/CG 626. Enlisted Personnel Record System, DOT/CG 629. Official Coast Guard Reserve Service Record, DOT/CG 676. Individual, Coast Guard personnel officials, National Oceanic and Atmospheric Administration personnel officials, and the Department of Defense.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 624

SYSTEM NAME:

Personnel Management Information System, PMIS.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

United States Coast Guard, Commanding Officer Human Resources Service and Information Center, 444 SE Quincy St., Topeka, KS 66683–3591.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All regular Coast Guard personnel on active duty. All reserve Coast Guard personnel on extended active duty and Reserve personnel on initial active duty for training.

CATEGORIES OF RECORDS IN THE SYSTEM:

A single computer record that currently contains about 450 data elements on each member. Some data elements are used only for enlisted, others only for officers. The file contains personal information such as name, place of birth, rank, location, etc. The file also contains pay date elements which will form the basis for deriving pay entitlements for Coast Guard military personnel under the Joint Uniform Military Pay System, JUMPS.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 14 U.S.C. 92(I), 632; 49 CFR 1.45, 1.46.

PURPOSE(S):

Produce a number of personnel reports used throughout the Coast Guard.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses, 3 through 5 do not apply.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this systems to 'consumer reporting agencies' (collecting on behalf of the United States Govt.) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The storage is on computer disks with tape backups. The file is updated once a week. Once a month the file is dumped to a tape file for historical purposes.

RETRIEVABILITY:

Name or Social Security Number or a combination of personal and non-personal characteristics.

SAFEGUARDS:

The computer provides privacy and access limitations by requiring a user name and password match. In addition each element of the file has its own level of accessibility which must be held by the user. Only those staff components at Headquarters with a need to have access to the file are given user names and passwords. Access to the "Time Share" extract is similarly controlled. The backup tapes and monthly dumps also have limited access in that users must justify the need before they are provided the tape numbers.

RETENTION AND DISPOSAL:

End-of-Year system backup tapes and day-to-day transaction tapes are retained indefinitely. Statistical and other report extract tapes are recycled into the system and consequently destroyed. Paper working files are disposed of in accordance with current record disposal instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, G–WP, United States Coast Guard Headquarters, Director, Personnel Management Directorate, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant, G–SII, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure".

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure".

RECORD SOURCE CATEGORIES:

Official service record entries prepared by field units.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 625

SYSTEM NAME:

Officer Selection and Appointment System.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Department of Transportation, DOT, Commander, United States Coast Guard, Personnel Command, 2100 2nd St., SW., Rm. 1422, Washington, DC 20593–0001.

Records are also located at Director, Coast Guard Recruiting Center, 4200 Wilson Blvd., Suite 450, Arlington, VA 22203 and individual recruiting offices.

Use Appendix I for locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for Coast Guard Officer Candidate School or direct commission programs of the Coast Guard.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in the system is supplied by applicants and also by persons, other than the applicants, who submit information pertinent to the suitability of the applicants for commissioned service in the Coast Guard.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 591, 12201, 14 U.S.C. 211–295, 632; 49 CFR 1.45, 1.46.

PURPOSE(S):

The primary purpose is to aid officials and employees of the Coast Guard in the performance of their duties in managing and contributing to the recruitment and appointment of men and women for officer programs in the regular and reserve components of the Coast Guard.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Attorney General of the United States or his authorized representatives in connection with litigation, fraudulent enlistment or other matters under the jurisdiction of such agencies. Official employees of the Veterans Administration and Selective Service Administration in the performance of their official duties related to enlistment and reenlistment eligibility and related benefits. The Senate or the House of Representatives of the United States or any committee or subcommittee on matters within their jurisdiction requiring disclosure of files or records of personnel covered by this system.

See Prefatory Statement of General Routine Uses, 3 through 5 do not apply.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

N/A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in file folders.

RETRIEVABILITY:

The system is indexed alphabetically by name of applicant and is retrieved by name.

SAFEGUARDS:

Records kept in file cabinets locked after working hours. Buildings have 24-hour security guards and limited access.

RETENTION AND DISPOSAL:

Application files for non-selected officer candidate applicants are destroyed after six months and non-selected applicants for direct commission are destroyed after one year. Files for all selected applicants are placed in the selectee's officer personnel folder.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Transportation , Commander, U. S. Coast Guard Personnel Command, 2100 2nd St., SW., Rm. 1422, Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Department of Transportation, United States Coast Guard Headquarters, Commandant, G–SII, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Procedure may be obtained by writing to or visiting Commandant, G–SII at the address in "Notification Procedure" or to the applicable Coast Guard District Office. A letter request should contain full name, address, social security number, approximate date of application, and signature. Proof of identification will consist of military identification card, driver's license or other official identification.

CONTESTING RECORD PROCEDURES:

Same as "Record access procedures."

RECORD SOURCE CATEGORIES:

Coast Guard recruiting personnel and employee processing application. Medical personnel conducting physical examination and private physicians providing consultations or patient history. Character and employer references named by applicants. Educational institutions, staff and faculty members. Selective Service Commission. Local state and Federal law enforcement agencies. Prior or current military service record. Commanding officer of Coast Guard unit, if active duty. Coast Guard offices charged with personnel security clearance functions.

Other Coast Guard officials and employees in the performance of their official duties and as specified by current instructions and regulations promulgated by competent authority.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system of records may be exempt from disclosure under the provisions of 5 U.S.C. 552a(k)(5), which provide, in part, that investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be withheld from disclosure but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to December 31, 1974, under an implied promise that the identity of the source would be held in confidence. Portions of this system of records may be exempt from disclosure under the provisions of 5 U.S.C. 552a(k)(7), which provide, in part, that evaluation material used to determine potential for promotion in the armed services may be withheld from disclosure but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of a source would be held in confidence, or, prior to December 31, 1974, under an implied promise that the identity of the source would be held in confidence.

DOT/CG 626

SYSTEM NAME:

Official Officer Service Records.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Commander, U.S. Coast Guard Personnel Command, 2100 2nd St., SW., Rm. 1422, Washington, DC 20593–0001. National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63112. Individual officer's unit.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Commissioned officers of the Coast Guard on active duty, permanent or disability retired lists. Regular officers who resign and do not accept a Reserve commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

General file & service record card. Fitness File & Officer Summary Records. Medical File. Medical History for officers on the Temporary Disability Retired List.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 14 U.S.C. 93®, 632; 10 U.S.C. 1071–1107, 1475–1480, 14 U.S.C. 251–295; 49 CFR 1.45, 1.46.

PURPOSE(S):

Normal administrative procedures, including assignment, promotion, training, special recognition, etc.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Physical Evaluation Boards. Board for Correction of Military Records. Answering of Congressional and personal inquiries initiated by the individual whose record is concerned. Preparation of forms, statements compilations, and computations necessary in the daily personnel administration of each individual entering reentering or leaving the Coast Guard. (Routine personnel administration requires copies of this and other service record material to be included in administrative files physically separated from the record; however, the original of this material will be included in the official service record maintained at Coast Guard Headquarters). Furnishing of information (authorized and specified by the individual concerned) normally concerned with employment, educational or veteran benefits, claims or applications. Furnishing specified material in an officer's service record pursuant to the order of a court of competent jurisdiction. Personnel from other Federal Agencies in the conduct of official business, as authorized by the Chief, Officer Personnel Management Division or Chief, Reserve Personnel Management Division, or their designated representative. See Prefatory Statement of General Routine Uses, 3 through 5 do not apply.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this systems to "consumer reporting agencies" (collecting on behalf of the United States Government) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on paper and in digitized form. The paper records are stored in files in a controlled access area. The digitized records are stored on hard drives accessed via password by designated Coast Guard personnel.

RETRIEVABILITY:

Individual records are indexed and retrievable by name and/or last four digits of member's service number.

SAFEGUARDS:

During working hours physical access to records is controlled by the Personnel Command, CGPC. Records are maintained in a central storage area locked behind two separate doors during non-working hours in the building, which has roving and static security patrols.

RETENTION AND DISPOSAL:

Each individual record is maintained at Coast Guard Headquarters until three months after retirement/resignation, after which is shipped to the National Personnel Records Center (Military Personnel Records), 9700 Page Boulevard, St. Louis, MO 63132. After the separation documents are received, records of Reserve Officers released from active duty and Regular Officers who resign and accept Reserve Commissions are sent to the United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Coast Guard, Personnel Command, 2100 2nd St., SW., Rm. 1422, Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant, G–SII, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure".

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure".

RECORD SOURCE CATEGORIES:

Personal interview and voluntary submissions by individuals. Training/Educational Reports. Fitness Reports. USCG District Offices and other operating units of the Coast Guard.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system of records may be exempt from disclosure under the provisions of 5 U.S.C. 552a(k)(5), which provide, in part, that investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be withheld from disclosure, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to December 31, 1974, under an implied promise that the identity of the source would be held in confidence. Portions of this system of records may be exempt from disclosure under the provisions of 5 U.S.C. 552a(k)(7), which provide, in part, that evaluation material used to determine potential for promotion in the armed services may be withheld from disclosure but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the government under an express promise that the identity of the source would be held in confidence, or, prior to December 31, 1974, under an implied promise that the identity of the source would be held in confidence.

DOT/CG 627

SYSTEM NAME:

Enlisted Recruiting Selection Record System.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Commander, U. S. Coast Guard Personnel Command, 2100 2nd St., SW., Rm. 1422, Washington, DC 20593–0001. Director, Coast Guard Recruiting Center, 4200 Wilson Blvd., Suite 450, Arlington, VA 22203 and Coast Guard recruiting offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records and correspondence pertaining to prospective applicants, applicants for regular and reserve enlisted programs, and any other individuals who have initiated correspondence pertaining to enlistment in the United States Coast Guard.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records and correspondence in both automated and non-automated forms concerning personal history, education, professional qualifications, mental aptitude, physical qualifications, character and interview appraisals, National Agency Checks and certifications, service performance and congressional or special interests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 503, 504, 1168, 1169, 1475–1480; 14 U.S.C. 350–373, 632; 49 CFR 1.45, 1.46.

PURPOSE(S):

The primary purpose is to serve for officials and employees of the United States Coast Guard, in the performance of their duties in managing and contributing to the recruitment program of the Coast Guard and Coast Guard Reserves.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Comptroller General or any of his authorized representatives, upon request, in the course of the performance of duties of the General Accounting Office relating to the management or quality of military recruitment. Officials and employees of other Departments and agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the management or quality of military recruitment. Officials and employees of the Veterans Administration and Selective Service System in the performance of their official duties related to enlistment and reenlistment eligibility and related benefits. Such contractors and their employees as are or may be operating in accordance with an approved official contract with the United States Government. See Prefatory Statement of General Routine Uses; 3 through 5 do not apply.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on magnetic tape. Paper records are stored in file folders.

RETRIEVABILITY:

Alphabetically by name of subject and social security number.

SAFEGUARDS:

Records are accessible only to authorized personnel within the Coast Guard recruiting organization and are handled with security procedures appropriate for documents marked "For Official Use Only."

RETENTION AND DISPOSAL:

Records are normally maintained for two years and then disposed of by mutilating, shredding, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U. S. Coast Guard, Personnel Command, 2100 2nd St., SW., Rm. 1422, Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant,G–SII–2, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure".

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure".

RECORD SOURCE CATEGORIES:

Coast Guard recruiting personnel and administrative staff. Medical personnel or private physicians providing consultations or patient history. Character and employer references. Educational institutions, staff and faculty members. Selective Service System. Local, State, and Federal law enforcement agencies. Prior or current military service records. Members of Congress. Other officials and employees of the Coast Guard, Department of Defense and components thereof, in the performance of their duties and as specified by current instructions and regulations promulgated by competent authority.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system of records may be exempt from disclosure under the provisions of 5 U.S.C. 552a(k)(5), which provide, in part, that investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualification of Federal civilian employment, military service, Federal contracts, or access to classified information may be withheld from disclosure but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence or, prior to December 31, 1974, under an implied promise that the identity of the source would be held in confidence. Portions of this system of records may be exempt from disclosure under the provisions of 5 U.S.C. 552a(k)(7), which provide, in part, that evaluation material used to determine for promotion in the armed services may be withheld from disclosure but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of a source would be held in confidence, or, prior to December 31, 1974, under an implied promise that the identity of the source would be held in confidence.

DOT/CG 628

SYSTEM NAME:

Officer, Enlisted, and Recruiter Selection System File.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Commander, U.S. Coast Guard, Personnel Command, 2100 2nd St., SW., Rm. 1422, Washington, DC 20593–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian or military personnel who have taken the following tests: United States Navy Officer Qualification Test, OQT; United States Navy and United States Marine Corps Aviation Selection Test (AST); United States Navy Basic Test Battery, BTB (retests); the Cooperative Tests for Advanced Electronic Training, AET TESTS; the 16 Personality Factor Test used for screening of enlisted personnel for recruiting duty; Professional Examination for Merchant Mariners.

CATEGORIES OF RECORDS IN THE SYSTEM:

Answer sheets, electronic files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 14 U.S.C. 632; 46 U.S.C. 7306, 7313, 7316; 49 CFR 1.45, 1.46.

PURPOSE(S):

Provide test results if an applicant (military or civilian) applies for an officer program or is already in the military and interested in a certain training program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses: 3 through 5 do not apply.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, case files, and electronic media.

RETRIEVABILITY:

By name or electronically by social security number.

SAFEGUARDS:

Combination-type safe, locked files. Test results are given only on a need to know basis to authorized personnel. Only custodian of safes and alternate custodian have access.

RETENTION AND DISPOSAL:

Test answer sheets are destroyed after 2 years. Card file—destroyed after 4 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Coast Guard, Personnel Command, 2100 2nd St., SW., Rm. 1422, Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant, G–SII, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Individuals concerned and United States Coast Guard recruiting officials. United States Marine Corps officials. United States Navy Recruiting officials, United States Navy Bureau of Medicine Surgery officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system are exempt under the provisions of 5 U.S.C. 552a(k)(5), (6), and (7).

DOT/CG 629

SYSTEM NAME:

Enlisted Personnel Record System.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Commander, U.S. Coast Guard Personnel Command, 2100 2nd St., SW., Rm. 1422, Washington, DC 20593–0001. District offices and Headquarters Units.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All enlisted members of the Coast Guard now serving on active duty (including enlisted members of the Reserve on extended active duty), and members who have been temporarily or permanently retired or discharged.

CATEGORIES OF RECORDS IN THE SYSTEM:

Enlisted contract package, record of emergency, data, leave records, performance ratings, administrative remarks, medical records. All other requisite Coast Guard personnel forms, and pertinent miscellaneous correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 1071–1107, 12201, 14 U.S.C. 350–373, 632; 49 CFR 1.45, 1.46.

PURPOSE(S):

Normal administrative procedures, including assignment, promotion, training, special recognition, etc.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Data are provided to the Veterans Administration for determination of an individual's eligibility for benefits administered by that agency, and to medical facilities maintained by the Department of Health, Education and Welfare in conjunction with medical treatment afforded an individual. See Prefatory Statement of General Routine Uses: 3 through 5 do not apply.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this systems to "consumer reporting agencies" (collecting on behalf of the United States Government) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in files in a room with controlled access. Digitized records are stored on hard drives accessed via password by designated Coast Guard personnel.

RETRIEVABILITY:

Name of individual or the last three digits of individual's social security number.

SAFEGUARDS:

Records maintained at Coast Guard Headquarters are located in a central storage area, locked behind two separate doors during non-working hours, in a building with a roving security patrol. Records at field units are maintained in Government office buildings with off-duty hours security. During working hours, access to records is controlled by office personnel.

RETENTION AND DISPOSAL:

Maintained at CGPC until three months after an enlisted member is discharged, permanently retired for physical disability, or retired for years of service, after which records are transmitted for permanent storage to National Personnel Records Center, (Military Personnel Records), GSA, 9700 Page Boulevard, St. Louis, MO. 63132. In the case of members transferred to the Reserve, their records are sent to Commandant (G-WT) after separation documents are received.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Coast Guard, Personnel Command, 2100 2nd St., SW., Rm. 1422, Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant, G–SII, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" or the local Coast Guard District or unit administrative officer for the area in which an individual's duty station is located.

CONTESTING RECORD PROCEDURES:

Same as "Record access procedures."

RECORD SOURCE CATEGORIES:

Information is obtained from the individual, and Coast Guard Officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system may be exempt under the provisions of 5 U.S.C. 552a(k)(5) and (7).

DOT/CG 630

SYSTEM NAME:

Coast Guard Family Housing.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Commandant, G–WP, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. Each Integrated Support Command and Headquarters Unit.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian personnel of all pay grades who made application for government and/or government leased housing. Military personnel who make applications in locating community housing. Certain government employees occupying government housing. Military or civilian personnel who have corresponded with the President, a Congressman, or the Commandant concerning family housing.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applicants name, pay grade, marital status, current address and dependent information maintained for the Coast Guard Housing System. Includes housing survey; computer data summaries are maintained for the family housing survey. Copies of correspondence from individual to the President, a Congressman or the Commandant, inquiry sheets, and replies maintained for Congressional correspondence files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 14 U.S.C. 475, 620, 632, 681, 687; 49 CFR 1.45, 1.46.

PURPOSE(S):

Placing the applicant in government owned or leased housing or community housing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Assessing housing needs of District and Headquarters Units. Answering inquiries from individuals, Congressmen or the Commandant concerning family housing. Preparing Budgets. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File Folder.

RETRIEVABILITY:

Name of individual, Coast Guard command, and date received.

SAFEGUARDS:

Maintained in locked file cabinets and desk file drawers.

RETENTION AND DISPOSAL:

Maintained until applicant is placed in housing, then destroyed. Records concerning Congressional correspondence are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, G–WP, Director, Personnel Management Directorate, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant, G–SII, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" or the local Coast Guard District Office.

CONTESTING RECORD PROCEDURES:

Same as "Record access procedures."

RECORD SOURCE CATEGORIES:

Applicant, individuals who complete family housing survey forms, initiate correspondence concerning family housing, and Coast Guard Officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 631

SYSTEM NAME:

Family Advocacy Case Record System.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Commandant, G–WP, U.S. Coast Guard Headquarters, 2100 2nd St. SW., Washington, DC 20593–0001. District, Maintenance and Logistics Command, MLC, or Headquarters Unit Social Worker's office, at the duty station of the sponsor, and at selected medical facilities. District, MLC, or Headquarters Unit Family Advocacy Representative, FAR under whose jurisdiction an incident occurred.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty, reserve and retired personnel and dependents entitled to care at Coast Guard or any other military medical and dental facility whose abuse or neglect is brought to the attention of appropriate authorities, and persons suspected of abusing or neglecting such beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical records of suspected and confirmed cases of family member abuse or neglect, investigative reports, correspondence, family advocacy committee reports, follow up and evaluation reports, and any other supportive data assembled relevant to individual family advocacy program files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 14 U.S.C. 632, 42 U.S.C. 5101, 5102; 49 CFR 1.45, 1.46.

PURPOSE(S):

Coordination of the Coast Guard's Family Advocacy program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To Federal, State and Local government or private agencies for coordination of family advocacy programs, medical care, mental health treatment, civil or criminal law enforcement, and research into the causes and prevention of family domestic violence. To individuals or organizations providing family support program care under contract to the Federal Government. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, microfilm, magnetic tape, punched cards, machine lists, discs, and other computerized or machine readable media.

RETRIEVABILITY:

Name, social security number, types of incidents, etc.

SAFEGUARDS:

Maintained in various kinds of locked filing equipment in specified monitored or controlled access rooms or areas. Records are accessible only to authorized personnel. Computer terminals are located in supervised areas, with access controlled by password or other user code system.

RETENTION AND DISPOSAL:

Records will be maintained at a decentralized location until the case is closed or the sponsor is separated. Upon case closure or separation of the sponsor, the record will be transferred to Commandant, G–WPW. The record will be retained for 5 years from case closure or date of last action. At the end of 5 years the record will be destroyed, except for information concerning certain minor Coast Guard dependents who were victims or suspected victims of child abuse, neglect or sexual abuse will be retained until the dependent attains majority.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, G–WP, Director, Personnel Management Directorate, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant, G–SII, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. MLC, district, or unit where the individual is assigned.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Reports from medical personnel, educational institutions, law enforcement agencies, public and private health and welfare agencies, Coast Guard personnel and private individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Part of this system may be exempt under 5 U.S.C. 552a(k)(2) and (5).

DOT/CG 632

SYSTEM NAME:

Uniformed Services Identification and Privilege Card Record System.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Commandant, G–WP, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Dependents of United States Coast Guard personnel (active, retired, reserve and deceased). Former Coast Guard personnel who have been rated by the Veterans Administration as one-hundred percent disabled and their eligible dependents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for Uniformed Service Identification and Privilege Card, DD–1172. Verification for eligibility to possess the Identification and Privilege Card, DD–1173. Pertinent miscellaneous correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 14 U.S.C. 632, 49 CFR 1.45, 1.46; E.O. 9397; COMDTINST 5512.1.

PURPOSE(S):

Verify that an applicant is entitled to be issued an Identification and Privilege Card.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Verification provided to other Armed Forces authorized personnel as required. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Alphabetical by name.

SAFEGUARDS:

Maintained in file cabinets. During working hours access to records is controlled by office personnel. During non-working hours building is patrolled by roving security guards.

RETENTION AND DISPOSAL:

Retained for 10 years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Management Directorate, G–WP, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant, G–SII, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Sponsor and/or dependents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 633

SYSTEM NAME:

Coast Guard Civilian Personnel Security Program.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Commandant, G–WP, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. Each District Office and Headquarters Unit.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Coast Guard Civilian Personnel. Applicants for civilian positions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of civilian security clearance granted. Correspondence and requests concerning civilian personnel security actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 5102, 14 U.S.C. 632; 49 CFR 1.45, 1.46.

PURPOSE(S):

Determine eligibility for access to classified information under Executive Order 11652.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Suitability for sensitive positions. See Prefatory Statement of General Routine Uses; 3 through 5 do not apply.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder—3x5 Index cards.

RETRIEVABILITY:

By name of individual.

SAFEGUARDS:

Kept in locked cabinets and safes. Individual identification is required for users of records.

RETENTION AND DISPOSAL:

Upon termination of employment investigative files for civilians, which serve as a basis for security clearances, are returned to the Office of Personnel Management. A name record of type of investigation is kept for 5 years and then destroyed by burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Management Directorate, G–WP, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant, G–SII, United States Coast Guard, Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" or the local office or unit.

CONTESTING RECORD PROCEDURES:

Same as "Record access procedures."

RECORD SOURCE CATEGORIES:

Civil Service Investigative Reports, Personnel Security Clearance requests and forms SF–85, SF–86 and SF–171.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system of records may be exempt from disclosure under the provisions of 5 U.S.C. 552a(k)(5) and (7).

DOT/CG 634

SYSTEM NAME:

Child Care Program Record System.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

At the facility where the care was provided or is being provided.

CATEGORIES OF INDIVIDUALS COVERED BY SYSTEM:

Children enrolled in a U.S. Coast Guard child care program. Children being cared for in U.S. Coast Guard family quarters. Eligible children of active duty members of the Uniformed Services and children of Federal employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information about the family; medical history of child; authorization for emergency medical care; permission for field trips; authorization to release child to someone other than parent;

establishment of eligibility for participation in State or Federally sponsored programs; communication between the care provider and parents about child; and other necessary records to protect health and safety of children.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 14 U.S.C. 515, 632; 49 CFR 1.45, 1.46; COMDTINST 1754.15.

PURPOSE(S):

Administer the Coast Guard's Child Care Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Provided to Federal, State, or local governments and agencies to report medical conditions and other data required by law; to aid in preventive health and communicable disease control problems. Provided to Department of Agriculture for use in determining eligibility to participate in the Child Care Food Program. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on forms in file folders or in computer file.

RETRIEVABILITY:

Name of child.

SAFEGUARDS:

Files are maintained in a secured filing cabinet. Access is regularly limited to authorized center staff. Files for child care in U.S. Coast Guard family quarters are maintained in a cabinet or drawer in the quarters.

RETENTION AND DISPOSAL:

Child's record file is destroyed 3 years after date of last action. Registration/medical forms may be sent to another facility if child transfers. CCFP eligibility records are transferred to an audit file at the end of each year where they are not retrieved by child's name. Audit records are destroyed after 3 years or after audited, whichever is sooner.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Management Directorate, G–WP, United States Coast Guard Headquarters, Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant, G–SII, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. Child care facility that provided care.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Parents or medical personnel familiar with the child's medical history.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 636

SYSTEM NAME:

Personal Affairs Record System Coast Guard Military Personnel.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Commandant, G–WK, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. Each District and Headquarters Unit. See Appendix I for locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty and retired Coast Guard military personnel who have been subject to damage arising out of domestic relations disputes, alleged personal indebtedness, and claims of alleged paternity.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Case files containing complaint concerning alleged personal indebtedness, complaints arising out of domestic relations disputes, claims of alleged paternity. Files contain correspondence including investigative steps, response to complaints and follow up correspondence on recurring complaints. Index card files contain summary of material contained in case file for each reference.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 1058; 14 U.S.C. 632; 42 U.S.C. 666; 49 CFR 1.45, 1.46.

PURPOSE(S):

Resolve complaints in an expeditious manner.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

For reference in development of future policy. See Prefatory Statement of General Routine Uses; 3 through 5 do not apply.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Case file and card index file.

RETRIEVABILITY:

Alphabetical listing.

SAFEGUARDS:

Kept in locked filing cabinet. Personnel are screened prior to granting access.

RETENTION AND DISPOSAL:

Maintained for 5 years after action completed and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Management Directorate, G–WK, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant, G–SII, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" or the local Coast Guard District Office or unit for the area in which an individual's duty station is located.

CONTESTING RECORD PROCEDURES:

Same as "Record access procedures."

RECORD SOURCE CATEGORIES:

Complainants, their legal representatives, and Coast Guard officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 637

SYSTEM NAME:

Appointment of Trustee or Guardian for Mentally Incompetent Personnel.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Commandant, G–WP, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. Each District and Headquarters Unit.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty and retired Coast Guard military personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to the mental incompetency of certain Coast Guard personnel. Records used to assist Coast Guard Officials in appointing trustees for mentally incompetent Coast Guard persons.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 1443, 1448, 1449; 14 U.S.C. 632; 37 U.S.C. 601–604; 33 CFR 49.05; 49 CFR 1.45, 1.46.

PURPOSE(S):

Maintain information to determine eligibility for VA benefits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information to prospective appointees, including but not limited to relatives, lawyers, physicians or other designated representatives; and Department of Veterans Affairs upon request for the determination of eligibility for benefits administered by that agency. See Prefatory Statement of General Routine Uses; 3 through 5 do not apply.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Locked file cabinet.

RETRIEVABILITY:

Alphabetical listing.

SAFEGUARDS:

Stored in locked file cabinets. Access restricted to representatives of incompetent.

RETENTION AND DISPOSAL:

Maintained for 5 years after action is complete then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Management Directorate, G–WP, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant, G–SII, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" or the local Coast Guard District office or unit having custody of the records.

CONTESTING RECORD PROCEDURES:

Same as "Record access procedures."

RECORD SOURCE CATEGORIES:

Coast Guard officials, legal representatives of individuals and/or individuals concerned and complainants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 638

SYSTEM NAME:

U.S.C.G Alcohol Abuse Prevention Program Record System.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Commander, Atlantic Area, United States Coast Guard, 431 Crawford Street, Portsmouth, VA 23704. Commander, Pacific Area, United States Coast Guard, Coast Guard Island, Alameda, CA 94501–5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Coast Guard personnel receiving alcohol rehabilitation treatment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, Prior Service, Rate/Rank, Date of Birth, History of Alcohol Abuse, Treatment Center, Dates of Treatment, Notes on Aftercare, and Final Disposition and Type.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 5 U.S.C. 7901; 14 U.S.C. 632; 42 U.S.C. 4541; 49 CFR 1.45, 1.46; COMDTINST M6330.1.

PURPOSE(S):

Administer the Coast Guard Alcohol Abuse Prevention program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses; 3 through 5 do not apply.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on file cards (3″ × 5″) and/or a computer data base.

RETRIEVABILITY:

By the name of the individual.

SAFEGUARDS:

Maintained in locked filing cabinets. The computer database is protected by password access limited to Alcohol Program Managers.

RETENTION AND DISPOSAL:

Destroyed three years after last activity.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, G–WK, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001–0001.

NOTIFICATION PROCEDURE:

Same as "System location".

RECORD ACCESS PROCEDURES:

Same as "System location".

CONTESTING RECORD PROCEDURES:

Same as "System location".

RECORD SOURCE CATEGORIES:

Personnel records. Medical records. Security records. Treatment facility reports. Post treatment aftercare reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 639

SYSTEM NAME:

Request for Remission of Indebtedness.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Commandant, G–WP, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. Each District and Headquarters Unit.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active Duty Enlisted Coast Guard Personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence, requests with endorsements, research material, paneling action, Commandant's decisions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 14 U.S.C. 461, 632; 49 CFR 1.45, 1.46.

PURPOSE(S):

Aid in making determinations based on the best interests of the individual and the Government.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses: 3 through 5 do not apply.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Locked filing cabinets.

RETRIEVABILITY:

Alphabetical listing.

SAFEGUARDS:

Locked filing cabinets.

RETENTION AND DISPOSAL:

Retained for 5 years after decision is made, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Management Directorate, G–WP, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant, G–SII, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure", or the local Coast Guard District or unit for the area in which an individual's duty station is located.

CONTESTING RECORD PROCEDURES:

Same as "Record access procedures."

RECORD SOURCE CATEGORIES:

Individual, and Coast Guard Officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 640

SYSTEM NAME:

Outside Employment of Active Duty Coast Guard Personnel.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Commandant (G–WP), United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. Each District Office and Headquarters Unit.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active Duty and Reserve Coast Guard Personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence relating to individual's request for part time employment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 14 U.S.C. 92(I), 632; 49 CFR 1.45, 1.46; COMDTINST 1000.6A

PURPOSE(S):

Determine suitability for off duty employment for Coast Guard members.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses; 3 through 5 do not apply.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Locked filing cabinets.

RETRIEVABILITY:

Alphabetical listing.

SAFEGUARDS:

Kept in locked filing cabinet. Access restricted to individuals who request outside employment, and authorized Coast Guard officials. Proper identification required.

RETENTION AND DISPOSAL:

Retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Management Directorate (G–WP), United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure" or the local Coast Guard District Office or unit for the area in which an individual's duty station is located.

CONTESTING RECORD PROCEDURES:

Same as "Record access procedures.

RECORD SOURCE CATEGORIES:

Individual, and Coast Guard officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 641

SYSTEM NAME:

Coast Guard Special Needs Program.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Commandant, G–WP, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. District, Maintenance and Logistics Command (MLC), or Headquarters Unit Social Worker's Office, Headquarters Unit Family Advocacy Representative, FAR, at the duty station of the sponsor, and at selected medical facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty and retired Coast Guard personnel and their dependents who have diagnosed medical, physical, psychological, or educational need which constitutes a developmental disability or handicapped condition. Active duty Coast Guard personnel and their dependents considered for overseas assignment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Extracts or copies of medical, educational and psychological records of member and/or dependents with special needs, follow-up and evaluation reports, and any other data relevant to individual special needs program files or overseas screening.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 14 U.S.C. 335, 632; 49 CFR 1.45, 1.46; COMDTINST 1754.7A.

PURPOSE(S):

Provide for Federal Government agency coordination of special needs programs, medical care, mental health treatment, and monitoring and tracking special needs families.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder, microfilm, magnetic tape, punched cards, machine lists, discs, and other computerized or machine readable media.

RETRIEVABILITY:

Name, social security number and the diagnosis or International Classification of Diseases, ICD, code of the special needs condition.

SAFEGUARDS:

Various kinds of locked filing equipment in specified monitored or controlled access rooms or areas. Records are accessible only to authorized personnel. Computer terminals are located in supervised areas, with access controlled by password or other user code system.

RETENTION AND DISPOSAL:

Maintained at a decentralized location until the sponsor is separated or the dependent is no longer diagnosed as

having special needs. Upon separation of the sponsor or when the dependent is no longer diagnosed as having special needs, the record will be transferred to Commandant, G–WPW. After a 3-year retention, the record is destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Personnel and Training, G–WP, United States Coast Guard, Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant, G–SII, United States Coast Guard, Washington, DC 20593–0001. MLC, district, or unit where the individual is assigned.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure".

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure".

RECORD SOURCE CATEGORIES:

Medical personnel, mental health and educational institutions, public and private health and welfare agencies and Coast Guard personnel and private individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 642

SYSTEM NAME:

Joint Maritime Information Element, JMIE, Support System, JSS.

SECURITY CLASSIFICATION:

Classified.

SYSTEM LOCATION:

United States Coast Guard, Operations Systems Center, Martinsburg, WV 25401.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals with established relationship(s)/association(s) to maritime vessels that are included in the Joint Maritime Information Element, JMIE, Support System, JSS: Ship owners, passengers and crew.

CATEGORIES OF RECORDS IN THE SYSTEM:

Maritime vessels and vessel characteristics including: Performance data, vessel identification data, registration data, movements, reported locations, activity and associate information (data pertaining to people or organizations associated with vessels) for owners, passengers, and crew members. Reports submitted by Coast Guard crews relating to boardings and/or overflights, as well as any violations of United States law, along with enforcement actions taken during boarding. Such reports could contain names of passengers on vessels, as well as owners and crew members. Vessels and associates known, suspected or alleged to be involved in contraband trafficking. Within the JMIE Support System, contraband is meant to refer to any item that is illegally imported/exported to/from the United States via maritime activity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

United States Coast Guard, 14 U.S.C. 89. United States Customs Service, 19 U.S.C. 1589A(2). Drug Enforcement Administration, 21 U.S.C. 800—900. Immigration and Naturalization Service, 8 U.S.C. 1551.

PURPOSE(S):

Maintaining suspect lists, enforcing United States laws dealing with items such as counter narcotics, fisheries, and boating safety.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Ship location and associated information such as declared cargo, ownership, crew members, passengers, reported historical profiles relating to travel, cargo and ports of call may be reported to federal, state, and/or local law enforcement officials for purposes of intercepting ships and inspecting cargo and ship structures. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Storage of all records is in an ADP database operated and maintained by the United States Coast Guard. Privacy Act data are stored and controlled separately from other information in the database. Classified and non-classified information from consortium members and other sources is merged into a classified database. Dynamic information on vessel location and movements is obtained daily and stored on-line (disk resident) for a period of two (2) years. Other information such as characteristics, identification status and associate records is updated at prescribed intervals of three (3) months to one year to remain current and is retained indefinitely. Classified information, downloaded from the host and then extracted from the PC workstations and recorded on paper (or magnetic media), may be stored at user sites in classified storage containers or on secured magnetic media. Unclassified information is stored in accordance with each user sites' handling procedures. All records provided to a JSS subscriber in response to a "specific name" query, will be kept in an audit record and retained for a minimum of five (5) years or the life of the system, whichever is longer.

RETRIEVABILITY:

Matching individual name, Social Security Number, passport number, or the individual's relationship to the vessel (*e.g.*, owner, shipper, consignee, crew member, passenger, etc.). Controls have been installed to ensure information on individuals is not retrievable or accessed by members of the intelligence community.

SAFEGUARDS:

JMIE has its own approved System Security Plan.

RETENTION AND DISPOSAL:

Records relating to ship characteristics are retained indefinitely. Records of a transitory nature (relative to ship locations, and individuals identified as passengers or crew, etc.) are maintained on line for a minimum of two (2) years, then purged per General Records Schedule 23. Audit records, maintained to document JSS user access to information relating to specific individuals, are maintained for five (5) years, or the life of the system, whichever is longer. Access to audit records will only be granted to authorized personnel approved by the Executive Agent. Information retrieved from the host and stored at user sites will be disposed of in accordance with the requirements for classified and sensitive information.

SYSTEM MANAGER AND ADDRESS:

Chief, Office of Law Enforcement and Defense Operations, United States Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001 ATTN: JMIE Program Manager.

NOTIFICATION PROCEDURE:

Commanding Officer, United States Coast Guard Operations Systems Center, Martinsburg, WV 25401.

RECORD ACCESS PROCEDURE:

Same as "Notification procedure".

CONTESTING RECORD PROCEDURES:

Same as record access procedure.

RECORD SOURCE CATEGORIES:

Federal, State and local law enforcement agencies, other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Under subsections (j)(2) and (k)(1) and (2) of the Privacy Act (5 U.S.C. 552a), portions of this system of records are exempt.

DOT/CG 671

SYSTEM NAME:

Biographical Statement.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Commandant, G–CP, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Key DOT officials, USCG flag officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual biographical data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 302; 14 U.S.C. 632; 49 CFR 1.45, 1.46.

PURPOSE(S):

For Public Affairs Staff to use as records for publicity.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Personnel Office—uses records for promotion. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper forms and correspondence are stored in filing cabinets.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Stored in building having roving security guards during non-working hours. Personnel are screened prior to granting access.

RETENTION AND DISPOSAL:

Transferred to historical file upon termination of active duty.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, G–CP, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant, G–SII, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Individual named in file.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 676

SYSTEM NAME:

Official Coast Guard Reserve Service Record.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

United States Coast Guard, CG, Commandant, G–WT, 2100 2nd Street, SW., Washington, DC 20593–0001. Each Coast Guard District Reserve office (for District records). For official records on discharged, retired, and separated former members: General Services Administration (GSA), National Personnel Records Center (Military Personnel Records), 9700 Page Boulevard, St. Louis, MO 63132.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Reserve officer and enlisted personnel (not on extended active duty) in an active, inactive, retired, discharged, separated or former member status; including those Reservists released from extended active duty to fulfill a specified term of obligated inactive reserve service. Enrolled and disenrolled members of the Temporary Coast Guard Reserve.

CATEGORIES OF RECORDS IN THE SYSTEM:

Official career history of each Reservist.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 1209, 10147, 12102, 12735, 14 U.S.C. 251–295, 632; 49 CFR 1.45, 1.46.

PURPOSE(S):

Ensure fulfillment of normal administrative personnel procedures, including examining and screening for completeness and accuracy of records correspondence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Screening of service records for advancement, promotion, or retention of individual Reservists by various Reserve. Furnishing of information (authorized and specified by the individual concerned) to other agencies or individuals (specified by the individual concerned) normally concerned with employment, educational or Veteran's benefits, claims, or applications. Furnishing specified material in a Reservist's service record pursuant to the order of a court of competent jurisdiction. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this systems to "consumer reporting agencies" (collecting on behalf of the United States govt.) as defined in the Fair Credit Reporting Act (15 (U.S.C. 1681a(f)) or the Federal Claims Collecting Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained on paper assembled and filed in one official service record per member.

RETRIEVABILITY:

Name and/or triple terminal digit of member's service number.

SAFEGUARDS:

Service records are maintained in a central storage area locked behind two separate doors. During non-working hours the building security consists of roving and static security patrols. During working hours physical access to records is controlled by Records control Branch personnel.

RETENTION AND DISPOSAL:

Individual records are maintained at CG Headquarters until six months after an enlisted member's separation from the service (three months for officers), after which it is transmitted for permanent storage to the Military Personnel Record Center, MPRC, National Personnel Records Center, NPRC, 9700 Page Boulevard, St. Louis, MO 63132. For retired members, the service record is shipped to NPRC upon retirement.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, G–WT, Director, Reserve and Training Directorate,

United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Commandant, G–SII, United States Coast Guard Headquarters, 2100 2nd Street, SW, Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure", or the District Office in which an individual's duty station is located.

CONTESTING RECORD PROCEDURES:

Same as "Record Access Procedures."

RECORD SOURCE CATEGORIES:

The individual concerned, CG Headquarters, District offices, and other CG units.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system of records may be exempt from disclosure under the provisions of 5 U.S.C 552a(k)(5), and (6).

DOT/CG 677

SYSTEM NAME:

Coast Guard Reserve Personnel Mobilization System

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Commandant, G–WT, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. Commander, Reserve in each Coast Guard District Office (except 17th). Each District and Headquarters Unit.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Reserve officer and enlisted personnel (not on extended active duty) in an Active or Retired status, including those Reservists released from extended active duty to fulfill a specified term of obligated inactive Reserve service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Mobilization and qualification cards and orders. Initial, Annual, and Retired Screening and Qualification Questionnaires.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C 301; 10 U.S.C 10207, 12301, 12321; 14 U.S.C 632; 49 CFR 1.45, 1.46.

PURPOSE(S):

Fulfillment of normal administrative procedures including the examining and screening for completeness and accuracy of records, correspondence pertaining thereto as a basis for assignment to active duty for training, special active duty for training or extended active duty and mobilization billets.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained on paper, punched cards and magnetic tape.

RETRIEVABILITY:

Name and/or social security account number.

SAFEGUARDS:

Safeguards and controls afforded this system of records are similar to those normally employed "For Official Use Only" material, both at Headquarters and District Offices. Records are maintained in locked secure areas when not in use and personnel screening is employed prior to granting access.

RETENTION AND DISPOSAL:

The majority of records in this system (in any form) are generally destroyed immediately after the expiration of their useful life, except those retained in the aforementioned "dead files" (which are subsequently destroyed one year after placement in the file). The major exceptions to this policy are the Screening and Qualification Questionnaires, which are filed in the Reservists District Service Record. Records are destroyed by mutilating, shredding or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, G–WT, United States Coast Guard Headquarters, Director, Reserve and Training Directorate, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURES:

Commandant, G–SII, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORDS ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

The individual, CG Headquarters and CG District Offices.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/CG 678

SYSTEM NAME:

Reserve Personnel Management Information System, Automated.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Commandant, G–WT, Director, Reserve and Training Directorate, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Reserve officers and enlisted personnel in an active or inactive status, including retired reservist, and those reservists released from extended active duty to fulfill a specific term of inactive obligated service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, social security number, present and last five grades or rates, educational background, civilian and military, foreign language and proficiency, history of unit assignments and dates assigned, duty status, date of birth, date of enlistment, appointment or extension, AFQT scores, source of entry, date of commission, prior service, date of expiration of obligation, anniversary data on pay base date, aviation pay and administrative pay, training rate, reserve category and class, training/pay category, data on ADT for last five years, number of dependents, Federal withholding exemptions, Selective Service induction certification, date of completion of Ready obligation, officer experience indicator, last screening date and result, civilian occupation, date of last National Agency Check, Background Investigation and security clearance, domestic emergency volunteer, date of last physical and immunization, data on special active duty for training and extended active duty, annual training date, total retirement points and satisfactory years of service for retirement purpose, current year retirement point accounting data, including inactive duty training participation, correspondence course activity, taxable wages paid and withholdings, uniform allowances, Servicemen's Group Life Insurance, SGLI information, mailing address, and work and home phone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 12301–12321; 14 U.S.C. 632; 49 CFR 1.45, 1.46.

PURPOSE(S):

Personnel administration of individual reservists and the overall management of the reserve program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Treasury Department to complete payroll checks. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system to "consumer reporting agencies" collecting on behalf of the United States Govt. as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The storage is on computer disks with magnetic tape backups. The file is updated weekly.

RETRIEVABILITY:

By Social Security Number.

SAFEGUARDS:

Magnetic tapes are stored in locked storage areas when not in use and are accounted for at all times during actual use. Personnel screening prior to granting access.

RETENTION AND DISPOSAL:

Magnetic tapes are used, corrected and updated until the tapes become physically deteriorated after which they are destroyed. A reservist's address is maintained on file for approximately one year after discharge, to allow for processing of annual point statements and W–2 forms. Audit trails are maintained indefinitely and the Master Personnel file and Pay and Points file are continually updated.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, G–WT, Director, Reserve and Training Directorate, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Requests to determine if this system contains information on any individual should be made in person or in writing to: Commandant, G–SII, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

The individual, Coast Guard Headquarters and district offices, and the various operating units of the Coast Guard.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/FAA 801

SYSTEM NAME:

Aircraft Registration System.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Aircraft Registration Branch, Federal Aviation Administration, Mike Monroney Aeronautical Center, Oklahoma City, OK 73125.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Aircraft owners, lien holders, and lessees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Aircraft types. Current registration status and ownership of aircraft. Aircraft to be registered, or aircraft that have been registered and are now temporarily de-registered. United States Registration Number assignment. Airworthiness of aircraft. Aircraft Registration. Major repair and alteration maintenance inspection forms. Revalidation and use forms. Lien and collateral documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 40101, 44103, 44107.

PURPOSE(S):

Provide a register of United States civil aircraft to aid in the national defense and to support a safe and economically strong civil aviation system. To determine that aircraft are registered in accordance with the provisions of 49 U.S.C. 44103. To serve as a data source for management information for production of summary descriptive statistics and analytical studies in support of agency functions for which the records are collected and maintained. To provide data for internal FAA safety program purposes. To provide data for development of the aircraft registration statistical system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(a) Support investigative efforts of investigation and law enforcement agencies of Federal, State, and foreign governments. (b) Serve as a repository of legal documents used by individuals and title search companies to determine the legal ownership of an aircraft. (c) Provide aircraft owners and operators information about potential mechanical defects or unsafe conditions of their aircraft in the form of airworthiness directives. (d) Provide supporting information in court cases concerning liability of individuals in lawsuits. (e) Locate specific individuals or specific aircraft for accident investigation, violation, or other safety related requirements. (f) Prepare an Aircraft Registry in magnetic tape and microfiche form as required by ICAO agreement, containing information on aircraft owners by name, address, United States Registration Number, and type of aircraft. Make aircraft registration data available to the public, (g) See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, and on digital read-write disks, magnetic tape, microfilm, and microfiche.

RETRIEVABILITY:

Records are filed by registration number, but may be retrieved by name of the current registered owner.

SAFEGUARDS:

Records are stored in areas open only to authorized employees and by special permission.

RETENTION AND DISPOSAL:

If records are microfiched: (1) Original Records. Destroy original records after microfiche is determined to be an adequate substitute for paper records; (2) Microfiche of Original Records. Destroy when it is determined that the aircraft is no longer in existence. If records are not microfiched: Destroy when it is determined that the aircraft is no longer in existence.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Aircraft Registration Branch, AFS–750, Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

Individuals, manufacturers of aircraft, maintenance inspectors, mechanics, and FAA officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/FAA 807

SYSTEM NAME:

Traffic Control at the Mike Monroney Aeronautical Center (formerly named Law Enforcement Records and Central Files).

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Office of Facility Management, AMP–1, Mike Monroney Aeronautical Center (MMAC), Oklahoma City, OK 73125.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

MMAC employees, tenants, and visitors, with registered vehicles. Individuals cited for parking and/or traffic violations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Vehicle registration and traffic violations files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

PURPOSE:

To carry out such functions as vehicle registration and traffic control; to control access and maintain an orderly traffic flow on a government facility.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in files and containers and in password protected electronic databases located in rooms secured with the FAA locking system.

RETRIEVABILITY:

Individual name, other personal identifier, and/or registration number.

SAFEGUARDS:

Files are retained in a secured work area accessible only by consent of an on duty guard or by Office of Facility Management personnel.

RETENTION AND DISPOSAL:

Identification credentials including parking permits: Destroy credentials three months after return to issuing office. Related identification credential papers such as vehicle registrations: Destroy after all listed credentials are accounted for. Reports, statements of witnesses, warning notices, and other papers relating to arrests and traffic violations: Destroy when 2 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Office of Facility Management, AMP–1, Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125.

NOTIFICATION PROCEDURES:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

Individuals registering/operating vehicles.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/FAA 811

SYSTEM NAME:

Employee Health Record System.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

FAA Washington, regional, and center medical facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FAA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Basic medical record of an FAA employee, including medical examination reports, laboratory findings, correspondence, health awareness program participation records, and related papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 79–658, Title 5 U.S.C. Section 7901.

PURPOSE(S):

Document employee health unit visits and nature of complaint or physical examination findings, treatment rendered and case disposition. Prepare analytical and statistical studies and reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In approved security files and containers, and in computer databases.

RETRIEVABILITY:

By name and social security number.

SAFEGUARDS:

Access to and use of these records in manual or automated form is protected by being physically located behind locked doors and computer access is password protected. Adding or deleting information to the file is limited to the medical staff, physician, nurse, or occupational health specialists.

RETENTION AND DISPOSAL:

These records are destroyed 6 years after the date of last entry.

SYSTEM MANAGER(S) AND ADDRESS:

Regional Flight Surgeon within region where the clinic is located. Manager, Clinical Specialties Division, AAM–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

Information contained in this system comes from the employee and from attending physicians, nurses, and occupational health specialists, and from associated medical reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/FAA 813

SYSTEM NAME:

Civil Aviation Security.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Office of Associate Administrator for Civil Aviation Security, in Washington,

DC; the FAA Regional Civil Aviation Security Divisions; the Civil Aviation Security Division at the Mike Monroney Aeronautical Center in Oklahoma City, Oklahoma; and the Civil Aviation Security Staff at the FAA Technical Center, Atlantic City, New Jersey; and various Federal records Centers located throughout the country.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have been involved or might be involved in crimes against civil aviation or air piracy/sabotage threats, data regarding K–9 handlers, and information regarding Federal Air Marshals, FAM.

CATEGORIES OF RECORDS IN THE SYSTEM:

Hijacking or attempted hijacking incidents at airports or aboard civil aviation aircraft; other civil aviation criminal acts; information of K–9 assignments to airports, K–9 handler evaluations; and information necessary to manage the FAM program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 49 U.S.C., Chapter 449, Air Transportation Security, enacted as Pub. L. 103–272 on July 5, 1994; authority for funding FAA K–9 program is the Omnibus Consolidated Appropriations Act of 1997, Pub. L. 104–208.

PURPOSE(S):

Prepare alerts, bulletins, summaries, reports, and policy statements of incidents affecting civil aviation security.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Inform airport and air carrier security officials and officers regarding air piracy/civil aviation sabotage threats. Preparation of alerts, bulletins, and summaries of incidents regarding threats to civil aviation for distribution to authorized government and aviation recipients for use in affecting appropriate changes/modifications to civil aviation security. Prepare summaries, reports, and policy statements for development and change of security procedures in civil aviation, which will be distributed to appropriate government, and aviation-oriented organizations, which have direct civil aviation security responsibilities. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Approved security files and containers, in file folders, on lists and forms, and in computer processable storage media.

RETRIEVABILITY:

By name or other personal identifying symbols.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access and use. Appropriate physical, technical, and administrative safeguards as prescribed by FAA security directives applicable to both manual and automated record systems reinforce this record management principle.

RETENTION AND DISPOSAL:

These records are destroyed or retired to the area Federal Records Center, FRC, and then destroyed in accordance with current version of FAA Order 1350.15, Records Organization, Transfer and Destruction Standards. The retention and destruction period for each record varies depending on the type of record, category of investigation, or significance of the information contained in the record. All records are destroyed by approved methods.

SYSTEM MANAGER(S) AND ADDRESS:

For the Washington Metropolitan area, excluding Eastern Region jurisdiction:

Office of the Associate Administrator for Civil Aviation Security, 800 Independence Avenue, SW., Washington, DC 20591. Manager, Civil Aviation Security Division, of the appropriate region. For the jurisdiction of the FAA Technical Center:

Manager, Civil Aviation Security Staff, FAA Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405. For the jurisdiction of the Mike Monroney Aeronautical Center:

Manager, Civil Aviation Security Division, Mike Monroney Aeronautical Center, PO Box 25082, Oklahoma City, OK, 73125.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

FAA records; Federal, State, or local agencies; foreign sources; public record sources; first party; and third parties.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system are exempt under 5 U.S.C. 552a(k)(1) and (k)(2).

DOT/FAA 815

SYSTEM NAME:

Investigative Record System.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Office of the Associate Administrator for Civil Aviation Security in Washington, DC; the FAA regional Civil Aviation Security Divisions; the Civil Aviation Security Division at the Mike Monroney Aeronautical Center in Oklahoma City, Oklahoma; the Civil Aviation Security Staff at the FAA Technical Center, Atlantic City, New Jersey; and the various Federal Records Centers located throughout the country.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former applicants for FAA employment. Current and former FAA employees. Individuals considered for access to classified information or restricted areas and/or security determinations such as current and former contractors, employees of contractors, experts, instructors, and consultants to federal programs. Aircraft owners. Flight instructors. Airport operators. Pilots, mechanics, designated FAA representatives. Other individuals certified by the FAA. Individuals involved in tort claims against the FAA. Employees, grantees, subgrantees, contractors, subcontractors, and applicants for FAA-funded programs. Other individuals who are of investigative interest to the FAA, law enforcement, or investigative agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Results of investigations and inquiries conducted by the Office of the Associate Administrator for Civil Aviation Security, the FAA regional Civil Aviation Security Divisions, the Mike Monroney Aeronautical Center Civil Aviation Security Division, and the FAA Technical Center, Civil Aviation Security Staff; information received in various formats as the result of investigations conducted by federal, state, local, and foreign investigative or law enforcement agencies, which relate to the mission and function of the Associate Administrator for the Office of Civil Aviation Security and field

elements; and information received in various formats as the result of investigations conducted by authorized personnel of the FAA, other federal agencies, state and local drug enforcement agencies regarding the actual or probable violation by pilots, aircraft owners, or aircraft mechanics of civil and criminal laws regulating controlled substances.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 49 U.S.C., chapter 449, Air Transportation Security, enacted as Pub. L. 103–272 on July 5, 1994; Transportation Safety Act of 1974; FAA Drug Enforcement Assistance Act of 1988; Executive Order, E.O., 10450, Security Requirements for government Employment; E.O. 12968, Access to Classified Information; and E.O. 12829, National Industrial Security Program.

PURPOSE(S):

To maintain in an orderly fashion the categories of records listed above, in order that the FAA may conduct its investigations and personnel security programs in an efficient manner and document official actions taken on the basis of information contained in these records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) To the Department of Justice when: (a) The agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or, (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected. (2) To disclose the records in a proceeding before a court or adjudicative body, including an administrative tribunal or hearing, before which the agency is authorized to appear, when:

(a) The agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or, (d) the United States, where the agency determines the litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected. (3) To authorized representatives of United States air carriers where air safety might be affected. (4) To authorized representatives of federal, state, local agencies and departments, including the District of Columbia, and foreign governments, who require access to the file pursuant to an investigation or inquiry conducted for use in law enforcement activities, either civil or criminal, or to expose fraudulent claims. (5) See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored in approved security file cabinets and containers, in file folders, on lists and forms, and in computer processable storage media.

RETRIEVABILITY:

These records are retrieved by name or other identifying symbols.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access and use. Computer processing of information is conducted within established FAA computer security regulations. A risk assessment of the FAA computer facility used to process this system of records has been accomplished.

RETENTION AND DISPOSAL:

These records are destroyed or retired to the area Federal Records Center and then destroyed in accordance with the current version of FAA Order 1350.15, Records Organization, Transfer and Destruction Standards. The retention and destruction period for each record varies depending on the type of record, category of investigation, or significance of the information contained in the record. All records are destroyed by approved methods.

SYSTEM MANAGER(S) AND ADDRESS:

For the Washington Metropolitan area, excluding Eastern Region jurisdiction: Office of the Associate Administrator for Civil Aviation Security, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. For the geographical area under the jurisdiction of the various regions: Manager, Civil Aviation Security Division, of the appropriate region. (See the FAA Directory for addresses). For the jurisdiction of the FAA Technical Center: Manager, Civil Aviation Security Staff, FAA Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405.

For the jurisdiction of the Mike Monroney Aeronautical Center:

Manager, Civil Aviation Security Division, FAA Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

Subject individual, interviews, review of records, and other authorized applicable investigative techniques.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system are exempt under 5 U.S.C. 552a(j)(2) and 5 U.S.C. 552a(k)(1), (2) and (5).

DOT/FAA 816

SYSTEM NAME:

Tort Claims and Personal Property Claims Record System.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Office of the Chief Counsel, Litigation Division, AGC–400, Federal Aviation Administration, 400 7th Street, SW., Washington, DC 20590, and in the Office of the Assistant Chief Counsels and the Logistics Divisions in the regions and centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Tort and property claimants who have filed claims against the Government/FAA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports, vouchers, witness statements, legal decisions, and related

material pertaining to claims by or against the Government resulting from FAA transactions, other than litigation cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Tort Claims Act, 28 U.S.C. 2671, *et seq.*; Military Personnel and Civilian Employees Claims Act of 1964, 31 U.S.C. 3701, 3721.

PURPOSE(S):

Permit the administrative settlement of tort and Federal employees personal property claims against the government.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Investigation. Reference. Court action. Doubtful claims are sent by Accounting Division to GAO for adjudication. Some larger claims go to Department of Justice for approval or disapproval. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored in approved file cabinets and containers.

RETRIEVABILITY:

These records are indexed by name.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Records are maintained on a computer system. The computer system is password protected.

RETENTION AND DISPOSAL:

These records are destroyed 3 years after the final decision is rendered.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Assistant Chief Counsel, Litigation Division, Federal Aviation Administration, 400 Seventh Street, SW., Washington, DC, 20590. Regional and center counsels and regional and center Logistics Division Managers.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

Claimant, investigation reports, and courts.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/FAA 821

SYSTEM NAME:

Litigation Information Management Systems.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

This system of records is maintained within the Office of the Assistant Chief Counsel for Litigation, FAA, 400 Seventh Street, SW., Washington, DC 20590, and at the Office of Assistant Chief Counsel for each Region and Center.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This file contains information on Litigants, Claimants, Decedents, Plaintiff's Attorney, FAA Attorney and Department of Justice Attorney.

CATEGORIES OF RECORDS IN THE SYSTEM:

Litigation and claim pleadings, discovery material, related documents (including background data on individual, or decedent involved), memoranda, correspondence, and other material necessary to respond to claims or prepare for litigation or hearings. Types of claims or litigation:

Aircraft accidents, auto accidents, personnel and general litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Tort Claims Act, 28 U.S.C. 2671, *et seq.*; Military Personnel and civilian Employees claims Act of 1964, 31 U.S.C. 3701, 3721.

PURPOSE(S):

Case management/record management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On computer database and password protected. Also, data are stored in lockable and unlockable file cabinets, individuals' attorneys' offices, binders, index files and in computers.

RETRIEVABILITY:

Access is by name, location of accident, and/or docket number.

SAFEGUARDS:

Data from these files are retrievable only by persons within the Office of the Assistant Chief Counsel for Litigation or Regional Counsels. Access to offices is limited to agency employees and those accompanied by agency employees.

RETENTION AND DISPOSAL:

Litigation files are kept for 2 years after case is closed, then sent to the Federal Records Center. All other records in this system are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Chief Counsel, Litigation Division, AGC-400, Office of Chief Counsel, Federal Aviation Administration, 400 Seventh Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

Employees of the Office of Chief Counsel, Federal courts, individuals and their attorney, FAA records, litigation files, etc.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/FAA 822

SYSTEM NAME:

Aviation Medical Examiner System.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Aeromedical Education Division, AAM–400, FAA Civil Aeromedical Institute, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S. MacArthur Blvd. P.O. Box 25082, Oklahoma City, OK 73125. Regional Flight Surgeons in all regional headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Private civilian physicians (United States and foreign) designated as AMEs. Selected United States military flight surgeons designated as AMEs. Selected United States Federal medical officers designated as AMEs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes records necessary to: Determine professional qualifications of physicians designated

(initially and subsequently) as AMEs; identify the type and location of AMEs within the AME program; monitor AMEs performance in support of the Medical Certification Program; and monitor AMEs compliance with mandatory training (initial and periodic) and other AME designation requirements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C 44702.

PURPOSE(S):

Determine professional qualifications and designation authorization (initial and subsequent) of AMEs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Document the necessary information on AMEs whose designation has been revoked or retired. Support effective and efficient communications between the FAA and its designated AMEs. Maintain a database to support the management of the AME program. Provide the public with the names and addresses of AMEs who provide FAA medical certification services. Policy determination regarding the AME program. Locating and obtaining support of qualified AMEs. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer processable storage media and hard copy files.

RETRIEVABILITY:

By AME name, AME number, region, state, county, and city.

SAFEGUARDS:

File rooms with restricted access by authorized personnel only. Computer processing of AME information is conducted within established FAA computer security regulations.

RETENTION AND DISPOSAL:

Hard copy files are retained by the Aeromedical Education Division on all active AMEs (civilian, military, and Federal), and on AMEs who have been inactive for less than 10 years. Hard copy files of AMEs who have been inactive for 10 years or more, but less than 25 years, are stored by the Federal Records Center. Hard copy files of AMEs who have been inactive for 25 or more years are destroyed by the Federal Records Center. Computerized AME records are updated continuously for all active AMEs. Computerized records of AMEs who have been inactive for less than 25 years are maintained in the system; and those AMEs inactive for 25 or more years are deleted. Hard copy files of United States civilian AMEs (excluding foreign civilian, military, and Federal AMEs) are also retained by the Regional Flight Surgeon Offices. When these regional AME files become inactive, they are immediately transferred to the Aeromedical Education Division.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Aeromedical Education Division, AAM–400, FAA Civil Aeromedical Institute, Federal Aviation Administration Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125. Regional Flight Surgeons within Region where the AME is designated.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

Aviation Medical Examiners. Additional background information on civilian AMEs may be obtained directly from the Federation of State Medical Boards of the United States.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/FAA 825

SYSTEM NAME:

Petitions for Rulemaking—Public Dockets.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Office of the Chief Counsel, Federal Aviation Administration, AGC–200, Washington, DC 20591.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons petitioning for a change in the Federal Aviation Regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Petitions for rulemaking, correspondence, documents showing disposition of the petition, and public comments on any resulting NPRM.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 106(g), 40101, 40103, 40106, 40109, 40113, 44701, 44702, 44711.

PURPOSE(S):

Make available for public review documents concerning petitions for rulemaking.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Unlocked file cabinets.

RETRIEVABILITY:

Exemption number, docket number, or alphabetical listing of petitioner names.

SAFEGUARDS:

Access through request to Dockets Specialist.

RETENTION AND DISPOSAL:

Transferred to Federal Records Center when inactive; destruction not authorized.

SYSTEM MANAGER(S) AND ADDRESS:

Docket and Regulations Technician, Office of the Chief Counsel, AGC–200, FAA, 800 Independence Avenue, SW., Washington, DC 20591.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

Petitions for rulemaking.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/FAA 826

SYSTEM NAME:

Petitions for Exemption, Other than Medical Exemption—Public Dockets.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Office of the Chief Counsel, AGC–200, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons petitioning for an exemption (other than medical) under the Federal Aviation Regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Petitions for exemptions, supplementary information, correspondence and the grant or denial of the exemption.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 106(g), 40101, 40103, 40106, 40109, 40113, 44701, 44702, 44711.

PURPOSE(S):

Make available for public review documents concerning petitions for exemption (other than medical exemptions).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Original and copies of records stored in unlocked file cabinets.

RETRIEVABILITY:

Exemption number, docket number, or alphabetical listing of petitioner names.

SAFEGUARDS:

Access through request to Dockets Specialist.

RETENTION AND DISPOSAL:

Transferred to Federal Records Center when inactive; destruction not authorized.

SYSTEM MANAGER(S) AND ADDRESS:

Rules Docket Section, AGC–200, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Ave. SW., Washington DC 20591.

NOTIFICATION PROCEDURE:

Same as System manager.

RECORD ACCESS PROCEDURES:

Same as System manager.

CONTESTING RECORD PROCEDURES:

Same as System manager.

RECORD SOURCE CATEGORIES:

Petitions for exemptions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/FAA 827

SYSTEM NAME:

Environmental Litigation Files.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Office of the Chief Counsel, FAA, Washington, DC, and Regional Counsel and airport divisions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Litigants, witnesses, plaintiff's attorney, FAA attorney, Department of Justice Attorney, etc.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information on litigation, pleadings, discovery material, related documents, (including background data on individual involved), memoranda, correspondence, and other material necessary to respond to claim or prepare for litigation or hearings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Environmental Policy Act of 1969, 42 U.S.C. 4321, Airport Environmental requirements, 49 U.S.C. 47106(c), Section 4(f) of the Department of Transportation Act, 49 U.S.C. 303, and other applicable environmental laws, regulations, and Executive Orders.

PURPOSE(S):

Litigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders stored in locked and unlocked file cabinets and individual attorney's offices.

RETRIEVABILITY:

Caption of the particular litigation, which may include an individual's name or corporation or trade association name.

SAFEGUARDS:

Access regularly by Office of Chief Counsel personnel only; material is accessible only in facilities with building access controls and in storage retrieval regularly only by Office of the Chief Counsel personnel.

RETENTION AND DISPOSAL:

Files are kept for 2 years after case has been closed and then sent to Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Airports/Environmental Law Division, AGC–600, Office of the Chief Counsel, FAA, 800 Independence Avenue, SW., Washington, DC 20591.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

Federal courts, individuals and their attorneys, FAA records, litigation files, etc.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/FAA 828

SYSTEM NAME:

Physiological Training System.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Aeromedical Education Division, AAM–400, FAA Civil Aeromedical Institute, Mike Monroney Aeronautical Center, 6500 S. MacArthur Blvd., P.O. Box 25082, Oklahoma City, OK 73125.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Certificated Airmen.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records necessary to establish qualifications of eligibility to receive physiological training, maintain accountability of funds required for training and transfer of funds to involved agencies, and to provide proper evidence of training.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 44703, and 14 CFR 61.31.

PURPOSE(S):

Maintain appropriate documentation on individuals who apply for and complete physiological training conducted by, or coordinated through the FAA Aeromedical Education Division.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Determine individual training qualifications. Receipt and transfer of training funds. Maintain individual records of training completion. See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy files and computer processable storage media.

RETRIEVABILITY:

By name and location of training.

SAFEGUARDS:

File access is regularly restricted to Aeromedical Education Division personnel. The information is password protected. Passwords are changed every 30 days. The screen automatically closes if the computer is not used within 15 minutes, and would require a password to reopen the file.

RETENTION AND DISPOSAL:

Records are destroyed when 5 years old. (Applications, Hold Harmless Statements, Chamber Flight Records)

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Aeromedical Education Division, AAM–400, FAA Civil Aeromedical Institute, Mike Monroney Aeronautical Center, PO Box 25082, Oklahoma City, OK 73125.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

Covered individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/FAA 830

SYSTEM NAME:

Representatives of the Administrator.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Federal Aviation Administration. Mike Monroney Aeronautical Center, Regulatory Support Division, AFS–600, and Civil Aviation Registry, AFS–700, Oklahoma City, Oklahoma 73125. Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Flight Standards District Offices, FSDO. Manufacturing Inspection District Offices, MIDO. Aircraft Certification Divisions. Flight Standards Divisions. Aircraft Certification Offices, ACO. Air Traffic Headquarters. Regional or field offices that designate Air Traffic control Tower Operator Examiners. International Field Offices, IFO.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Designated Pilot Examiners, DPE. Designated Mechanic Examiners, DME. Designated Parachute Rigger Examiners, DPRE. Applicants for the technical personnel examiners for DPEs, DMEs, DPREs. Designated Engineering Representatives. Designated Manufacturing Inspection Representatives. Designated Airworthiness Representatives. Organizational Designated Airworthiness Representatives.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, place of residence, company name (when delegated as an organization), mailing address, social security number (if applicable), certificate number, and work and/or home telephone number. Applications for designee. Records of qualification. Certification. Appointment authorization. Training. Dates of renewal and termination. Employment history. Reasons for termination (if applicable).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 40101, 40113, 44701, 44702, and 44703.

PURPOSE(S):

Required in connection with applications for and issuance of authorizations to be Representatives of the Administrator. Used to identify and maintain a list of applicants for future appointment, as necessary. Used to record validation and approval of new designees. To promote the standardization of designees by tracking training, accomplishments, and the limitations of current designees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Provide the public with the names and addresses of certain categories of representatives who may provide service to them. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, on lists, on forms, and on computer-accessible storage media. Records are also stored in microfiche, microfilm, and electronic optical storage.

RETRIEVABILITY:

Name, birth date, social security number, or any other identification number of the individual on whom the records are maintained.

SAFEGUARDS:

Manual records: Strict information handling procedures have been developed to cover the use, transmission, storage, and destruction of personal data in hard copy form. These procedures are periodically reviewed for compliance. Automated processing Computer processing of personal information is conducted within the guidelines of established FAA computer security regulations. A risk assessment of the FAA computer facility used to process this system of records has been accomplished.

RETENTION AND DISPOSAL:

Records destroyed 5 years after designation becomes inactive, or when no longer needed, whichever is sooner.

SYSTEM MANAGER(S) AND ADDRESS:

Federal Aviation Administration, Manager, Designee Standardization Branch, AFS–640, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, Oklahoma 73125. Aircraft Certification Divisions. Aircraft Certification Offices. Manufacturing Inspection District Offices. Flight Standards District Offices. Air Traffic Control Offices.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

Individual to whom it applies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/FAA 833

SYSTEM NAME:

Quarters Management Information System.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Federal Aviation Administration, Alaskan Region, 222 W. 7th Ave., #14, Anchorage, AK 99513–7587.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees occupying FAA owned or leased housing. Employees and agencies that lease FAA housing in Alaska.

CATEGORIES OF RECORDS IN THE SYSTEM:

Housing records, leases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5911(f), OMB Circular A–45.

PURPOSE(S):

Establish regional rental rates for quarters; maintain status of housing; maintain up-to-date list of persons occupying FAA units.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Establish and terminate payroll deductions for collection of housing rent through request to the appropriate payroll office. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Filing cabinet, Real Estate and Utilities Branch AAL–54.

RETRIEVABILITY:

Station location, unit numbers, name of employee, number of dependents, pay period rental rate.

SAFEGUARDS:

Retrieved only by agency personnel and used only in the conduct of official business. Paper copy kept in a locked file cabinet with two people having access to the key. Quarters Management Information System, QMIS, is on only one person's computer and it requires a password to access this computer.

RETENTION AND DISPOSAL:

End of year reports are retained for 5 years.

SYSTEM MANAGER(S) AND ADDRESS:

Federal Aviation Administration, Housing Manager, AAL–50, 222 W. 7th Ave., #14, Anchorage, AK 99513–7587.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

FAA Employees. Employees of other agencies that lease housing from FAA.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/FAA 837

SYSTEM NAME:

Newsletter Photographs and Biographical Information.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Office of Public Affairs, FAA, 800 Independence Avenue, SW., Washington, DC, 20591. Public Affairs Offices at: Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125. Eastern Region, Federal Bldg., JFK International Airport, Jamaica, NY 11430. Great Lakes Region, 2300 E. Devon Avenue, Des Plaines, IL 60018. Northwest Mountain Region, 1601 Lind Ave., SW., Renton, WA 98055. Southern Region, P.O. Box 20636, Atlanta, GA 30320. Biographies of key FAA officials are on the FAA web page at HTTP://WWW.FAA.GOV/APA/BIOS.HTM

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FAA employees and other individuals who may appear with them in candid photographs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical data; portrait and candid photographs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 106(f).

PURPOSE(S):

Provide information to the public—particularly the news media—and for use in employee publications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in file cabinets.

RETRIEVABILITY:

Alphabetically by name, or publication date.

SAFEGUARDS:

These records are stored in filing drawers that remain locked at all times. There are two keyholders in the office; therefore, access to these drawers is limited to these employees only on an as-needed basis.

RETENTION AND DISPOSAL:

Retained as long as individual or event is newsworthy, following which they are destroyed. In certain cases, material is transferred to the Office of the Historian.

SYSTEM MANAGER(S) AND ADDRESS:

Same as "System Location."

NOTIFICATION PROCEDURE:

Same as "System Manager."

RECORD ACCESS PROCEDURES:

Same as "System Manager."

CONTESTING RECORD PROCEDURES:

Same as "System Manager."

RECORD SOURCE CATEGORIES:

FAA employees and other individuals who may appear with them in candid photographs.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/FAA 845

SYSTEM NAME:

Administrators Correspondence Control and Hotline Information System, ACCIS, Administrator's Hotline Information System, AHIS, and Consumer Hotline Information System, CHIS, Formerly Administrators Correspondence Control and Hotline Information System."

SYSTEM LOCATION:

Correspondence files are located in the Office of the Executive Secretariat, AOA–3, and Hotline files are located in the Hotline Operations Program Office, AOA–20. Both categories of records in the Washington headquarters offices of the Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who write, call (including HOTLINE calls), or are referred in writing by a second party, to the Administrator, to the Deputy Administrator, and their immediate offices; individuals who write, call, or are referred in writing by a second party to the Secretary, to the Deputy Secretary, and their immediate offices and the correspondence which has been referred to the Federal Aviation Administration; individuals who are the subject of an action requiring approval or action by one of the forenamed, such as appeals, actions, training, awards, foreign travel, promotions, selections,

grievances, delegations, application of waivers from the Federal Aviation Administration, etc.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence files contain correspondence submitted by, or on behalf of, an individual including resumes, letters of reference, etc; responses to such correspondence and calls, staff recommendations on actions requiring approval or action by the Administrator, the Deputy Administrator, the Secretary, and the Deputy Secretary. Hotlines files contain call records, correspondence, reports, and related documents accumulated by the staff in the course of operation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101.

PURPOSE(S):

Correspondence files: Documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities. Hotlines files: Documentation of calls made by agency employees and consumers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Referral to the appropriate action office within or outside the Department or agency for preparation of a response. Referral, to the appropriate agency for actions involving matters or law, of regulations beyond the responsibility of the agency or Department, such as the Department of Justice in matters of law enforcement. As a data source for management information, such as briefing material on hearings, trend analysis, responsiveness, etc. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer processable media, microfilm, and hardcopy access to the records will be by means of identification numbers and passwords known only to the user and the system managers.

RETRIEVABILITY:

Retrieved by control number, suspense date, correspondence date, subject matter, last name and location of originator and addressee, constituent's name, action office, and type.

SAFEGUARDS:

Terminal access through the system's software for ACCIS is limited to the Office of the Administrator. Access to the records of the AHIS and CHIS is limited to the staff of the Hotline Operations Program Office. Information is retrieved by means of a user ID and password known only to each user.

RETENTION AND DISPOSAL:

The Administrators Correspondence Control and Information System hard copies are destroyed after the material is microfilmed. Microfilm is retained permanently. The Administrator's Hotline hard copies and magnetic records are destroyed after 5 years. The Consumer Hotline hard copies and magnetic records are destroyed after 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

Administrator's Correspondence control and Information System: Director, Executive Secretariat, Office of the Administrator, AOA–3, Administrator's and Consumer Hotline Systems: Manager, Hotline Operations Program Office, AOA–20, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

Correspondence, records of calls from individuals, including HOTLINE calls, their representatives, or sponsors. Responses to incoming correspondence and records of calls. Related material for background as appropriate.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/FAA 847

SYSTEM NAME:

Aviation Records on Individuals (Formerly, General Air Transportation Records on Individuals).

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Federal Aviation Administration, FAA, Mike Monroney Aeronautical Center, MMAC, Oklahoma City, Oklahoma 73125: Civil Aeromedical Institute, Aeromedical Certification Division, AAM–300; Regulatory Support Division, AFS–600; Civil Aviation Registry, Airmen Certification Branch, AFS–760. Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Flight Standards District Offices, FSDOs. Certificate Management Offices, CMOs. Certificate Management Field Offices, CMFOs. International Field Offices. Civil Aviation Security Field Offices, CASFO's. FAA regional offices. Electronic enforcement litigation tracking system records are located in the offices of the Regional Counsel, Directorate Counsel and Chief Counsel.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current certificated airmen, airmen whose certificates have expired, airmen who are deceased, airmen rejected for medical certification, airmen with special certification, and others requiring medical certification. Air traffic controllers in air route traffic control centers, terminals, and flight service stations and applicants for these positions. Holders of and applicants for airmen certificates, airmen seeking additional certifications or additional ratings, individuals denied certification, airmen holding inactive certificates, airmen who have had certificates revoked. Persons who are involved in aircraft accidents or incidents; pilots, crewmembers, passengers, persons on the ground, and witnesses. Individuals against whom the Federal Aviation Administration has initiated administrative action or legal enforcement action for violation of certain Federal Aviation Regulations, FAR, or Department of Transportation Hazardous Materials Regulations, HMR.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name(s), date of birth, place of residence, mailing address, social security number, and airman certificate number Records that are required to determine the physical condition of an individual with respect to the medical standards established by FAA. Records concerning applications for certification, applications for written examinations, results of written tests, applications for inspection authority, certificates held, ratings, stop orders, and requests for duplicate certificates. Reports of fatal accidents, autopsies, toxicological studies, aviation medical examiner reports, medical record printouts, nonfatal reports, injury reports, accident name cards, magnetic tape records of fatal accidents,

physiological autopsy, and consulting pathologist's summary of findings. Records of accident investigations, preliminary notices of accident injury reports, engineering analyses, witness statements, investigators' analyses, pictures of accident scenes. Records concerning safety compliance notices, letters of warning, letters of correction, letters of investigation, letters of proposed legal enforcement action, final action legal documents in enforcement actions, correspondence of Regional Counsels, Office of Chief Counsel, and others in enforcement cases. Also included are electronic enforcement litigation tracking system records located in the Offices of the Regional Counsel, Directorate Counsel and Chief Counsel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 40101, 40113, 44701, 44703.

PURPOSE(S):

Issuance of airmen certificates by the Federal Aviation Administration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(a) Provide basic airmen certification and qualification information to the public upon request. (b) Disclose information to the National Transportation Safety Board, NTSB, in connection with its investigation responsibilities. (c) Provide information about airmen to Federal, state, and local law enforcement agencies when engaged in the investigation and apprehension of drug-law violators. (d) Provide information about enforcement actions arising out of violations of the Federal Aviation Regulations to government agencies, the aviation industry, and the public upon request. (e) Disclose information to another Federal agency, or to a court or an administrative tribunal, when the Government or one of its agencies is a party to a judicial proceeding before the court or involved in administrative proceedings before the tribunal. (f) See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from these systems to "consumer reporting agencies" (collecting on behalf of the United States Government) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)) and to debt collection agencies as defined by inference in the Federal Collection Act of 1966 (31 U.S.C. 3711(f)(1)) as amended.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, on lists and forms, and in computer processable storage media. Records are also stored on microfiche and roll microfilm.

RETRIEVABILITY:

Name, birth date, social security account number, airman certificate number, or other identification number of the individual on whom the records are maintained. Sex. Accident number and/or incident number, and administrative action or legal enforcement numbers.

SAFEGUARDS:

Manual records: Strict information handling procedures have been developed to cover the use, transmission, storage, and destination of personal data in hard copy form. These are periodically reviewed for compliance. Automated Processing (FAA Systems): Computer processing of personal information is conducted within established FAA computer security regulations. A risk assessment of the FAA computer facility used to process this system of records has been accomplished. Automated Processing (Commercial Computer Contractor): Computer programs operated on commercial security levels and record element restrictions to prevent release of data to unauthorized parties.

RETENTION AND DISPOSAL:

These records are destroyed or retired to the area Federal Records Center and then destroyed in accordance with current version of FAA Order 1350.15, Records Organization, Transfer and Destruction Standards. The retention and destruction period for each record varies depending on the type of record.

SYSTEM MANAGER(S) AND ADDRESS:

The address for the system managers listed below is: Federal Aviation Administration, Mike Monroney Aeronautical Center, PO Box 25082, 6500 South MacArthur Blvd., Oklahoma City, Oklahoma 73125.

RECORDS CONCERNING AVIATION MEDICAL CERTIFICATION:

Manager, Aeromedical Certification Division, AAM–300, FAA certification records and general airman records: Manager, Airmen Certification Branch, AFS–760, Records concerning aircraft accidents and incidents, Manager, Operational Systems Branch, AFS–620, Records concerning administrative and legal enforcement action: FAA enforcement information system data bases for administrative and legal enforcement actions: Manager, Operational Systems Branch, AFS–620, Official FAA enforcement files: The Office of Chief Counsel, the Office of Regional Counsel, or the investigating FAA field office, as appropriate. The address of the appropriate FAA legal or field office maintaining the official agency enforcement file may be obtained from AFS–620.

ELECTRONIC ENFORCEMENT LITIGATION TRACKING SYSTEM RECORDS:

Offices of the Regional Flight Counsel, Directorate counsel, and Chief Counsel. Aviation medical certification records from regional files: Regional Flight Surgeon within the region where examination was conducted. Visit or call the local FAA office in the area in which you reside for any proper regional address.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

Medical Information: Information is obtained from Aviation Medical Examiners, individuals themselves, consultants, hospitals, treating or examining physicians, and other Government agencies. Airmen Certification Records: Information is obtained from the individual to whom the records pertain, FAA aviation safety inspectors, and FAA designated representatives. Written test scores are derived from answers given by individuals. Actions filed by FAA personnel. General Aviation Accident/Incident Records and Air Carrier Incident Records: Information is obtained from Aviation Medical Examiners, pathologists, accident investigations, medical laboratories, law enforcement officials, and FAA employees. Data are also collected from manufacturers of aircraft, and involved passengers. Administrative Action and Legal Enforcement Records: Information is obtained from witnesses, Regional Counsels, the National Transportation Safety Board, Civil Aviation Security personnel, Flight Standards personnel, Aeronautical Center personnel, and the Office of Chief Counsel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Portions of this system are exempt under 5 U.S.C. 552a(k)(2).

DOT/FAA 851

SYSTEM NAME:

Administration and Compliance Tracking in an Integrated Office Network.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Federal Aviation Administration, FAA, Office of Aviation Medicine, Drug Abatement Division, 800 Independence Avenue, SW., Washington, DC 20591.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Medical review officers, company anti-drug program managers, other contact names, and individuals who call the FAA to self-disclose, who are directly involved in the implementation and maintenance of drug and alcohol testing programs in conjunction with the aviation industry.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, company and office telephone numbers of program managers who are in charge of the everyday operation of drug and alcohol testing programs for aviation companies, other persons who are contacts for facilities directly involved in drug and alcohol testing for the aviation industry, medical review officers (physicians) who review test results for the aviation companies, and individuals with company name and telephone numbers who call the FAA to self-disclose non-compliance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Omnibus Transportation Employee Testing Act of 1991 (49 U.S.C. 45101–45106), 14 CFR part 61, *et al.*

PURPOSE(S):

Support the information resource, reporting and archival needs of the Drug Abatement Division.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in an automated information system.

RETRIEVABILITY:

Name of an individual or by a unique case file identifier.

SAFEGUARDS:

Computer processing of information would be conducted within established FAA computer security regulations. A risk assessment of the FAA computer facility used to process this system of records has been accomplished.

RETENTION AND DISPOSAL:

The FAA has requested a retention and disposal schedule to destroy 5 years from creation date. That request is pending approval from the National Archives and Records Administration, NARA.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Drug Abatement Division, AAM–800, Office of Aviation Medicine, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

FAA records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/FHWA 204

SYSTEM NAME:

Federal Highway Administration, FHWA, Motor Carrier Safety Proposed Civil and Criminal Enforcement Cases, DOT/FHWA.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Office of Motor Carrier Enforcement, HMCE, 400 7th Street, SW., Room 4432A, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers, agents or employees of motor carriers, including drivers who have been the subject of investigation for Motor Carrier Safety regulation violations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Motor Carrier safety regulation violations and identifying features.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Motor Carrier Safety Act of 1984, 49 U.S.C. 521(b).

PURPOSE(S):

Decide enforcement action, and for use as historical documents in case of appeal.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses. Routine use number 5 does not apply to this system of records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders in the Field Legal Services' offices.

RETRIEVABILITY:

Names of individuals.

SAFEGUARDS:

Only Office of Chief Counsel or Field Legal Services employees and Office of Motor Carrier and Highway Safety, OMCHS, employees have regular access to the files.

RETENTION AND DISPOSAL:

The records are retained for one year and then are generally sent to the local Federal Records Centers for an additional three-year period.

SYSTEM MANAGER(S) AND ADDRESS:

FHWA, Office of Chief Counsel, 400 Seventh Street, SW., Room 4224, Washington, DC 20590; FHWA Resource Centers, Field Legal Services.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

Individuals, motor carrier files, OMCHS file information as gathered by OMCHS investigators, etc.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

5 U.S.C. 552 (c)(3), (d), (e)(4)(G), (H), and (I), (f) to the extent they contain investigative material compiled for law enforcement purposes in accordance with 5 U.S.C. 552a(k)(2).

DOT/FHWA 213

SYSTEM NAME:

Driver Waiver/Exemption File.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Department of Transportation, Federal Highway Administration, FHWA, Office

of Motor Carrier Research and Standards, HMCS, 400 7th Street, SW., Washington, DC 20590; FHWA Resource Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Operators of interstate commercial motor vehicles that transport certain commodities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for waiver (usually involving physical disability); final disposition of request for waiver; and waiver renewal.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Motor Carrier Safety Act of 1984 (49 U.S.C. 31136(e) and TEA–21 (49 U.S.C. 31315).

PURPOSE(S):

Monitor drivers of commercial motor vehicles who operate in interstate commerce and have been identified as physically impaired.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses. Routine use number 5 is not applicable to this system of records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained in file folders in file cabinets.

RETRIEVABILITY:

The records are filed by driver's name.

SAFEGUARDS:

Files are classified as sensitive and are regularly accessible only by designated employees within the Resource Centers and Office of Motor Carrier and Highway Safety.

RETENTION AND DISPOSAL:

The files are retained while the driver waivers are active. The inactive driver waiver files are purged every 3 years.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Transportation, Federal Highway Administration, Office of Motor Carrier Research and Standards, HMCS, 400 Seventh Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

Application for Waiver or Waiver Renewal.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/FHWA 215

SYSTEM NAME:

Travel Advance File.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Department of Transportation, Federal Highway Administration, FHWA, Office of Budget and Finance, 400 Seventh Street, SW., Washington, DC 20590; Federal Aviation Administration, Southern Region, Travel and Transportation Section, ASO–22A, Campus Building, Room C–210E, 1701 Columbia Avenue, College Park, GA 30337; and the FHWA Federal Lands Division Offices (Eastern, Central, and Western).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who are not eligible for the contractor-issued credit card and other groups of employees, and first-duty hires.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record of travel advances and repayments.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

5 U.S.C. 5707; 41 CFR part 301.

PURPOSE(S):

Controlling the repayments of travel advances to FHWA personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" (collecting on behalf of the United States Govt.) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Open advances are maintained on a 5 x 8 inch form. In an automated travel management system, no advance is required (*i.e.*, paperless).

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Locked file cabinet.

RETENTION AND DISPOSAL:

The files are retained for 6 years and 3 months after period covered by account, pursuant to General Records Schedule 6.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Transportation, Federal Highway Administration, Office of Budget and Finance, HABF, Team Leader, Travel Policy and Operations, 400 Seventh Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

Individuals on whom the records are maintained.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/FHWA 216

SYSTEM NAME:

Travel Authorization and Voucher—Relocation Allowances (First Duty or Permanent Change of Station).

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Department of Transportation, Federal Highway Administration, FHWA, Office of Budget and Finance, HABF, 400 Seventh Street, SW., Washington, DC 20590; Federal Aviation Administration, MMAC Travel and Transportation Branch, AMZ–130, 6500 So. MacArthur Blvd., Oklahoma City, OK 73169.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

First duty and permanent change of station employees within the FHWA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Travel voucher(s), copies of third party payments (*i.e.*, Government Bill of

Lading, GBL, carrier bills, contractor invoice(s) for services, Administrative Notices (*i.e.*, adjustment(s) to vouchered claim, taxable and non-taxable income, withholding tax allowance(s), if applicable, taxes withheld), and IRS 4782's (Summary of Calendar Year of All Reimbursements, including taxes withheld).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5707; 41 CFR part 302.

PURPOSE(S):

Support the payments to employees and serves as support for updated employee earnings records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this systems to " consumer reporting agencies" (collecting on behalf of the United States Govt.) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on an 8 x 10 inch form in file folders.

RETRIEVABILITY:

The files are indexed by name.

SAFEGUARDS:

Supervised by the Team Leader, Travel Policy and Operations in FHWA and the Division Manager, Financial Operations in FAA.

RETENTION AND DISPOSAL:

Destroy after 6 years, pursuant to General Records Schedule 9.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Transportation, Federal Highway Administration, Office of Budget and Finance, HABF, Team Leader, Travel Policy and Operations, 400 Seventh Street, SW., Washington, DC 20590; and Division Manager, MMAC Travel and Transportation Branch, AMZ–130, 6500 MacArthur Blvd., Oklahoma City, OK 73169.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

Individuals on whom the records are maintained.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/FHWA 217

SYSTEM NAME:

Accounts Réceivable.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Department of Transportation, Federal Highway Administration, Office of Budget and Finance, HABF, 400 Seventh Street, SW., Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals indebted to the Federal Highway Administration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Amount of indebtedness.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

Monitor and control accounts receivable and support bills of collection issued to debtors of the Federal Highway Administration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this systems to "consumer reporting agencies" (collecting on behalf of the United States Govt.) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and loose-leaf binders.

RETRIEVABILITY:

Filed by name.

SAFEGUARDS:

Supervised by Chief, Accounting Team.

RETENTION AND DISPOSAL:

Transfer to the Federal Records Center when 3 years old. Destroy 6 years and 3 months after period covered by the account.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Transportation, Federal Highway Administration, Office of Budget and Finance, HABF, Chief, Accounting Team, 400 Seventh Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

Employer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/FRA 106

SYSTEM NAME:

Occupational Safety and Health Reporting System.

SECURITY CLASSIFICATION:

Unclassified, Sensitive.

SYSTEM LOCATION:

Department of Transportation, DOT, Federal Railroad Administration, FRA, Office of Administration, Office of Safety, Office of Safety Assurance and Compliance, RRS–12, 1120 Vermont Avenue, NW., Stop 25 Washington DC 20590–0001

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

FRA employees (injuries and illnesses) FRA employees involved in government property accidents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Federal Occupation Injuries and Illnesses Survey (Standard Form OSHA–102) Departmental Accident/ Injury Reports DOT Forms 3902 1.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Occupational Safety and Health Act of Employees, (Executive Order 12196); Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters, (Title 29 CFR part 1960); Management of Building and Grounds, (Title 41 CFR parts 101–20); and Occupational Safety and Management Program (DOT Order 3902.7A).

PURPOSE(S):

To track employees injuries, illnesses, and accidents involved in government

property to develop causative trends, accident prevention policies, and correct safety items.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Maintain accident records per departmental orders. Provide data to Office of the Secretary. Develop causative trends Use for corrective accident prevention. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this System to Aconsumer reporting agencies (collecting on behalf of the United States Government) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1982(31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on copies of basic documents.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Physical security consists of file drawer with data; records provide to authorized individuals by FRA Safety Manager after physical Screening.

RETENTION AND DISPOSAL:

FRA Safety Manager, Department of Transportation Federal Railroad Administration, Office of Administration, Office of Safety Assurance and Compliance, RRS–12, 1120 Vermont Avenue, NW., Stop 25, Washington DC 20590–0001.

NOTIFICATION PROCEDURE:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCES CATEGORIES:

Documents provided by the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/FRA 130

SYSTEM NAME:

Enforcement Case System.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, DOT, Federal Railroad Administration, Office of the Chief Counsel, Safety Law Division, RCC–10, 1120 Vermont Avenue, NW., Stop 10, Washington, DC 20590–0001. Each Regional Office and Department of Transportation, DOT, Federal Railroad Administration, Office of Safety Assurance and Compliance, RRS–10, 1120 Vermont Avenue, NW., Stop 25, Washington, DC 20590–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals that have allegedly failed to comply with certain railroad safety statutes and regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Facts and circumstances surrounding alleged rail safety violations by individuals; recommendations for enforcement actions; and enforcement cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.); Safety Appliance Acts, (45 U.S.C. 1–16); Locomotive Inspection Act, (45 U.S.C. 22–34); Accident Reports Act, (45 U.S.C. 38–43); Hours of Service Act, (45 U.S.C. 61–64a); Signal Inspection Act, (49 App. U.S.C. 26); Federal Railroad Safety Act of 1970 (45 U.S.C. 421 *et seq.*); 18 U.S.C. 1001; and Rail Safety Improvement Act of 1988 (Pub. L. 100–342).

PURPOSE(S):

To provide information concerning enforcement actions for violations of safety statutes and regulations to government agencies and the regulated industry in order to provide them with information necessary to carry out their responsibilities, and to the public in order to increase the deterrent effect of the actions and keep the public apprised of how the laws are being enforced. Determine whether cases should be forwarded to the Office of Chief Counsel for prosecution and to otherwise accomplish the mission of the Office of Safety.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclose pertinent information to any source from which additional information is requested in the course of conducting an investigation to the extent necessary to identify the purpose(s) of the request and identify the information requested. Provide notice of the investigation and its outcome to the individual's employing railroad or shipper, or other railroad related to the case through joint facilities or trackage rights in order to give those entities information they may need to assist in preventing a recurrence of noncompliance. To be reviewed by the Safety Division and to form the basis, or support for, civil and/or criminal enforcement actions against the individuals involved. The general routine uses in the prefatory statement apply to all of these files.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this systems to A consumer reporting agencies (collecting on behalf of the United States Government) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, file cabinets and an automated tracking system.

RETRIEVABILITY:

Records are retrievable by name of individual and/or his or her employer.

SAFEGUARDS:

Access limited to authorized officials. Manual records are maintained in file cabinets that are locked after working hours. Automated records are password protected.

RETENTION AND DISPOSAL:

Appropriate records retention schedules will be applied and disposal will be by shredding. Certain automated records will be retained indefinitely to provide complete compliance histories.

SYSTEM MANAGER(S) AND ADDRESS:

Enforcement Case System Manager, Department of Transportation, Federal Railroad Administration, Office of the Chief Counsel, Safety Law Division, RCC–10, 1120 Vermont Avenue, NW., Stop 10, Washington, DC 20590–0001.

NOTIFICATION PROCEDURE:

Inquiries should be directed to: Federal Railroad Administration, Assistant Chief Counsel, Safety Law Division, Office of the Chief Counsel, 1120 Vermont Avenue, NW., Stop 10, Washington, DC 20590–0001.

RECORD ACCESS PROCEDURES:

Contact (202) 493–6053 or write to the System Manager for information on procedures for gaining access to records.

CONTESTING RECORD PROCEDURES:

Same as "record access procedure."

RECORD SOURCE CATEGORIES:

Information is obtained directly from the individual or from other persons with personal knowledge of the facts and circumstances involved.

EXEMPTIONS:

None.

DOT/MARAD 1

SYSTEM NAME:

Attendance, Leave and Payroll Records of Employees and Certain Other Persons.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Maritime Administration, Division of Accounting Operations, MAR–330, 400 7th Street, SW., Room 7325, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Maritime Administration employees and certain other employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, date of birth, social security number and employee number, service computation date, grade, step, and salary; organization (code), retirement or FICA data, as applicable; federal, state, and local tax deductions, as appropriate; optional Government life insurance deduction(s), health insurance deduction and plan or code; cash award data; jury duty data; military leave data; pay differentials; union dues deductions; allotments, by type and amount; financial institution code and employee account number; leave status and leave data of all types (including annual, compensatory, jury duty, maternity, military retirement advisability, sick, transferred, absence without leave, and without pay); time and attendance records including number of regular, overtime, holiday, Sunday, and other hours worked; pay period number and ending date; cost of living allowances; mailing address; co-owner and/or beneficiary of bonds, marital status and number of dependents; and "Notification of Personnel Action." The individual records listed herein are included only as pertinent or applicable to the individual employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5101–5115, 31 U.S.C. 3512.

PURPOSE(S):

Transmittal of data to United States Treasury and employee-designated financial institutions to effect issuance of paycheck to employees and distribution of pay according to employee directions for saving bonds, allotments, and other authorized purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Reporting: Tax withholding to Internal Revenue Service and appropriate state and local taxing authorities; FICA deductions to the Social Security Administration; dues deduction to labor unions; withholding for health and life insurance to the insurance carriers and the United States Office of Personnel Management; charity contribution deductions to agents of charitable institutions; annual W–2 statements to taxing authorities and the individual; wage, employment, and separation information to state unemployment compensation agencies, to the Department of Labor to determine eligibility for unemployment compensation, and to housing authorities for low-cost housing applications; injury compensation claims to Office of Workers Compensation Program at the Department of Labor. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this systems to 'consumer reporting agencies' (collecting on behalf of the United States Govt.) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual and automated.

RETRIEVABILITY:

By name or social security number.

SAFEGUARDS:

Physical, technical, and administrative security is maintained, with all storage equipment and/or rooms locked when not in use. Admittance, when open, is restricted to authorized personnel only. All payroll personnel and computer operators and programmers are instructed and cautioned on the confidentiality of the records.

RETENTION AND DISPOSAL:

Retained on site until after GAO audit, then disposed of, or transferred to Federal Records Storage Center in accordance with the fiscal record programs approved by GAO, as appropriate, or General Record Schedules of GSA. Dispose of when 3 years old

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Accounting Operations, MAR–330, Maritime Administration, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Division of General and International Law, Office of the Chief Counsel, MAR–221, Maritime Administration, 400 7th Street, SW., Washington, DC 20590.

RECORD ACCESS PROCEDURES:

.Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

The individual. Those authorized by individual to furnish information. Supervisors. Timekeepers. Personnel Offices. IRS.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/MARAD 2

SYSTEM NAME:

Accounts Receivable.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Maritime Administration, Division of Accounting Operations, MAR–330, 400 7th Street, SW., Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Debtors owing money to MARAD, including employees, former employees, business firms, general public and institutions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address; amount owed, and service, overpayment or other accounting therefore; invoice number, if any.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701–09, Federal Property Management Regulation 101–7, Treasury Fiscal Requirements Manual 31 U.S.C. 3711.

PURPOSE(S):

Billing debtors, reporting delinquent debts to credit bureaus, referrals to the General Accounting Office and the Department of Justice, reporting to Office of Personnel Management for liquidating debts from retirement and other benefits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this systems to 'consumer reporting agencies' (collecting on behalf of the United States Govt.) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual.

RETRIEVABILITY:

By name, and invoice number as appropriate.

SAFEGUARDS:

Physical security; handling by authorized personnel only.

RETENTION AND DISPOSAL:

Retained until payment is received and account is audited, and then disposed of in accordance with Records Control Schedule. Disposed of when 3 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Accounting Operations, Maritime Administration, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Division of General Law and International Law, Office of the Chief Counsel, Maritime Administration, 400 7th Street, SW., Washington, DC 20590.

RECORD ACCESS PROCEDURES:

Same as Notification procedure.

CONTESTING RECORD PROCEDURES:

Same as Notification procedure.

RECORD SOURCE CATEGORIES:

The individual. Those authorized by the individual to furnish information. Contracting officer as appropriate. Accounting records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/MARAD 3

SYSTEM NAME:

Freedom of Information and Privacy Request Records.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Division of General Law and International Law, Office of the Chief Counsel; and Office of the Secretary; Maritime Administration, 400 7th Street, SW., Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have requested records under the Freedom of Information and/or Privacy Acts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incoming requests; correspondence developed during processing of requests; initial and final determination letters; records summarizing pertinent facts about requests and action taken; copy or description of records released; description of records denied. Copies of records denied are often kept with these files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, 552a.

PURPOSE(S):

Used by DOT and MARAD management and legal personnel to assure that each request receives an appropriate reply and to compile data for the required annual reports on activities under the Acts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Chronologically by date of initial determination. By name of requester and date.

SAFEGUARDS:

Privacy Act request records are stored in file cabinets in secured premises with access limited to those whose official duties require access. Freedom of Information Act request records are generally available to the public with the exception of records denied.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with the appropriate record disposition authorization approved by the Archivist of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of General and International Law, Office of the Chief Counsel, Maritime Administration, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System Manager."

RECORD SOURCE CATEGORIES:

The individual. Records derived from processing Freedom of Information and Privacy Act requests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/MARAD 4

SYSTEM NAME:

Visitor Logs and Permits for Facilities Under MARAD Control.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Administrative Service and Procurement, United States Merchant Marine Academy, Kings Point, NY 11024; James River Reserve Fleet, Drawer "C", Fort Eustis Virginia 23604; Beaumont Reserve Fleet, PO Box 6355, Beaumont, Texas 77705; Suisun Bay Reserve Fleet, PO Box 318, Benicia, California 94510.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Non-Federal visitors, Federal personnel entering facilities after duty hours, and employees seeking parking and firearm permits.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, place of birth, citizenship, physical characteristics, type and number of firearms and amount of ammunition, purpose of visit, affiliation, time in and time out, license numbers, and records of violations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

50 App U.S.C. 1744, 46 App U.S.C. 1111, and 46 App U.S.C. 1114.

PURPOSE(S):

To keep records of non-Federal visitors, Federal personnel entering facilities after duty hours, and employees seeking parking and firearm permits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by name, or date and time.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Retained on site for five years, then disposed of in accordance with unit's Record Control Schedule. Destroy 5 years after final entry or 5 years after date of document, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent of respective Reserve Fleets and Chief, Fire and Security, United States Merchant Marine Academy, Kings Point, New York 11024–1699.

NOTIFICATION PROCEDURE:

Division of General and International Law, Office of the Chief Counsel, Maritime Administration, MARB221, 400 7th Street, SW., Washington, DC 20590.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

The individual. Those authorized by the individual to furnish information. Employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/MARAD 5

SYSTEM NAME:

Travel Records (Domestic and Foreign) of Employees and Certain Other Persons.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Division of Accounting Operations, Maritime Administration, MAR–330, 400 7th Street, SW., Washington, DC 20590; United States Merchant Marine Academy Travel Clerk, United States Merchant Marine Academy, Kings Point, New York 11024.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, Consultants, Advisory Committee Members, and official requests of the Department.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, social security number, destination, itinerary, mode and purpose of travel; dates; expenses including amounts advanced (if any), amounts claimed, and amounts reimbursed; travel orders, travel vouchers, receipts, and passport record card.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

13 U.S.C. 3701(a)(3).

PURPOSE(S):

Transmittal to United States Treasury for payment, to State Department for passports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this systems to 'consumer reporting agencies' (collecting on behalf of the United States Govt.) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual.

RETRIEVABILITY:

Filed by name, social security number, or travel order number.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in secured rooms or secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Retained according to GSA Federal Travel Regulations, and then disposed of according to unit's Records Control Schedule. Destroy when 3 years old or upon separation of the bearer, whichever is sooner.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Accounting Operations, MAR–330, Maritime Administration, 400 7th Street, SW., Washington, DC 20590; United States Merchant Marine Academy Travel Clerk, United States Merchant Marine Academy, Kings Point, NY 11024.

NOTIFICATION PROCEDURE:

Division of General and International Law, Office of the Chief Counsel, Maritime Administration, 400 7th Street, SW., Washington, DC 20590.

RECORD ACCESS PROCEDURES:

Same as Notification Procedure.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedure.

RECORD SOURCE CATEGORIES:

The individual. Those authorized by the individual to furnish information. Supervisors. Finance (or accounting) office standard references.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/MARAD 6

SYSTEM NAME:

Executive Correspondence Files.

SECURITY CLASSIFICATION:

Unclassified—Sensitive.

SYSTEM LOCATION:

Office of Maritime Administrator, MAR–100, Maritime Administration, 400 7th Street, SW., Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who correspond with top-level officials in MARAD and express views or seek information or assistance. Freedom of Information Act or Privacy Act requests is not indexed in this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system may include the name and address of correspondent, summary of subject matter, original correspondence, official response, referral letters, memoranda or notes concerning subject of the correspondence, or copies of any enclosures. The records in the system are arranged chronologically by date of official Agency action, numerically by control number assigned to each items of correspondence and by name of correspondent.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 49 U.S.C. 322.

PURPOSE(S):

To prepare statistical reports for management on correspondence volume or topics of public interest.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by personnel in the Office of the Maritime Administrator and administrative offices to assure that each request receives an appropriate and timely reply. Information from or copies of the records may be provided to the original addresses of the original correspondence. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper form.

RETRIEVABILITY:

By control number, by correspondent's name, by subject, and by date.

SAFEGUARDS:

Paper records are stored in file cabinets on secured premises with access limited to personnel whose official duties require access.

RETENTION AND DISPOSAL:

Records are disposed in accordance with the appropriate record disposition schedule approved by the Archivist of the United States. Transfer closed files to Records Center when 5 years old. Offer to archivist when the latest records are 20 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Maritime Administrator, MAR–100, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Division of General and International Law, Office of the Chief Counsel, MAR–221, Maritime Administration, 400 7th Street, SW., Washington, DC 20590.

RECORD ACCESS PROCEDURES:

Same as Notification Procedure.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedure.

RECORD SOURCE CATEGORIES:

The correspondent, referral source, Department employees involved in processing the correspondence, and other individuals, as required to prepare an appropriate response.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/MARAD 7

SYSTEM NAME:

Litigation, Claims and Administrative Proceeding Records.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Office of Chief Counsel, MAR–220, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals the subject of any litigation which MARAD is involved; individuals who make administrative claims or appeals against MARAD; individuals who are the subjects of claims and administrative actions brought by MARAD; individuals who may have provided statements or other evidence with respect to any of the above.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, addresses, social security account numbers, statements of claims and analysis thereof, investigatory reports, opinion of law, and pleadings, motions, depositions, rulings, opinions citation particulars (description of vehicle, date of birth, physical characteristics, driving permit or license data, vehicle license data, etc.) and other litigation and claims documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

46 app U.S.C. 1114 and 1241a, and 50 app U.S.C. 1291a.

PURPOSE:

Records of individuals subject of any litigation and claims proceedings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by name.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Destroyed 5 years after date of document.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, Maritime Administration, MAR–220, 400 Seventh Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Division of General and International Law, Office of the Chief Counsel, Maritime Administration, MAR–226, 400 Seventh Street, SW., Washington, DC 20590.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification Procedure."

RECORD SOURCE CATEGORIES:

Subject claimant or plaintiff. Those authorized by the foregoing to furnish information. Whatever other sources are pertinent to the nature of the case.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(1), (k)(2) and (k)(5), this system is exempt from portions of the act.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/MARAD 8

SYSTEM NAME:

Property Accountability Files.

SECURITY CLASSIFICATION:

Unclassified, sensitive

SYSTEM LOCATION:

Office of Management Services and Procurement Maritime Administration, 400 7th Street, SW., Washington, DC 20590. Department of Administrative Service and Procurement, United States Merchant Marine Academy, Kings Point, NY 11024. Office of Ship Operations, Division of Reserve Fleet, Maritime Administration, MAR–612, 400 7th Street, SW., Washington, DC 20590. James River Reserve Fleet, Drawer "C", Fort Eustis Virginia 23604; Beaumont Reserve Fleet, P.O. Box 6355, Beaumont, Texas 77705; Suisun Bay Reserve Fleet, P.O. Box 318, Benicia, California 94510; National Maritime Research Center, United States Merchant Marine Academy, Kings Point, NY 11024.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, general public, institutions, and anyone who charges out or signs for property or other materials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; telephone number; identification of property or equipment; home and business address; employee I.D. number; position; job title; grade; organization; explanation for items not accounted for, correspondence; clearances; and key number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 483(b).

PURPOSE(S):

Tracking system for anyone who charges out or signs for property or other materials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this systems to "consumer reporting agencies" (collecting on behalf of the United States Govt.) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper copy of file folders and trays.

RETRIEVABILITY:

Filed alphabetically by name.

SAFEGUARDS:

Records are located in lockable metal file cabinets, or lockable desks, or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Retained 2 years after property is accounted for.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Supply Operations Division, MAR–313, Maritime Administration, 400 7th Street, SW., Washington, DC 20590. Administrative Services Office, United States Merchant Marine Academy, Kings Point, NY 11024. Director, National Maritime Research Center, United States Merchant Marine Academy, Kings Point, NY 11024. Chief, Division of Reserve Fleet, MAR–612, Maritime Administration, 400 7th St, SW., Washington, DC 20590. Superintendent, James River Reserve Fleet, Drawer "C", Fort Eustis, Virginia 23604; Superintendent, Beaumont Reserve Fleet, PO Box 6355, Beaumont, Texas 77705; Superintendent, Suisun Bay Reserve Fleet, PO Box 318, Benicia, California 94510.

NOTIFICATION PROCEDURE:

Division of General and International Law, Office of the Chief Counsel, MAR–220, Maritime Administration, 400 7th Street, SW., Washington, DC 20590.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Subject individual. Those authorized by the individual to furnish information. Book cards. Supply person providing the equipment.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/MARAD 9

SYSTEM NAME:

Records of Cash Receipts.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Director, Office of Accounting, MAR–330, Maritime Administration, 400 7th Street, SW., Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals paying for goods or services, reimbursing overpayments, or otherwise delivering cash to the Department.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, the goods or services purchased, amount, date, check number, division or office, bank deposit, treasury deposit number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

46 app U.S.C. 1114.

PURPOSE(S):

System for individuals paying for goods and or services, reimbursement of overpayments, delivery of cash to the Department.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual and machine-readable.

RETRIEVABILITY:

Name and/or account or case number.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Permanently maintained.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Accounting, MAR–330, MARAD, 400 7th St., SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Division of General and International Law, MAR–221, Office of Chief Counsel, Maritime Administration, 400 7th Street, SW., Washington, DC 20590.

RECORD ACCESS PROCEDURES:

Same as Notification Procedure.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedure.

RECORD SOURCE CATEGORIES:

Subject individual. Those authorized by the individual to furnish information.

EXEMPTIONS CLAIMED FOR SYSTEM:

None.

DOT/MARAD 10

SYSTEM NAME:

Employee's Personnel Files Not Covered by Notices of Other Agencies.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Director, Office of Personnel, Maritime Administration, MAR–360, 400 7th Street, SW., Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

All personnel records in MARAD which are subject to the Privacy Act but are not covered in the notices of systems of records published by the Office of Personnel Management, Merit Systems Protection Board, or Equal Employment Opportunity Commission. The records of this system may include, but are not limited to: Employee Development; Incentive Awards; Employee Relations; Grievance Records; Medical; Career Management Program; Ship Personnel; Employee Overseas Assignments; Minority Group Statistics Program; Work Performance and Appraisal Records; including supervisory records which have been disclosed; Re-Employment and Priority Placement Programs; Within-Grade Denials (Reconsideration File); and, Automated Employee Information System.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

46 App U.S.C. 1111.

PURPOSE(S):

To provide information to officials or labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual and machine-readable.

RETRIEVABILITY:

Filed by name and/or social security number.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in secured rooms or secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Retained according to Unit's Records Control Schedule. Records are kept until employee retires and then 90 days after retirement records are sent to OPM and/or records center. If employees transfer to another government agency, the records are transferred to that government agency.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Personnel, Maritime Administration, MAR–360, 400 7th Street, SW, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Division of General and International Law, MAR–221, Office of Chief Counsel, Maritime Administration, 400 7th Street, SW, Washington, DC 20590.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Subject individual and those authorized by the individual to furnish information. Others involved in references of the individual. Physicians. Employee's supervisor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/MARAD 11

SYSTEM NAME:

Biographical Files.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Office of Public Affairs, Maritime Administration, MAR–240, 400 7th Street, SW, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Key present and former Maritime Administration personnel, and members of Advisory Board to the United States Merchant Marine Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical information, which may include date and place of birth; education; military service; present position; employment history; field of research; publications; inventions and patents; awards and honors; memberships and affiliations; present and past residences; telephone numbers; names, ages, and addresses of family members; hobbies and outside interests; and photograph of individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

46 App U.S.C. 1114.

PURPOSE(S):

Use in connection with written articles, oral interviews, speaking engagements, retirement and obituary notices, and other purposes of public information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Distributed to the press, other government agencies, and the general public. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders or notebooks.

RETRIEVABILITY:

By name alphabetically or by position or work unit.

SAFEGUARDS:

Records are located in locked metal file cabinets or locked rooms during non-business hours.

RETENTION AND DISPOSAL:

Record retention and disposal is in accord with operating unit's Records Control Schedule. Dispose of 2 years after separation of the subject official.

SYSTEM MANAGER(S) AND ADDRESS:

Public Affairs Officer, MAR–240, Maritime Administration, 400 7th Street, SW, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Division of General and International Law, MAR–221, Office of the Chief Counsel, Maritime Administration, 400 7th Street, SW, Washington, DC 20590.

RECORD ACCESS PROCEDURES:

Same as "Notification Procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification Procedure."

RECORD SOURCE CATEGORIES:

The individual. Other sources such as news releases, articles and publications relating to the subject individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/MARAD 12

SYSTEM NAME:

Applications to United States Merchant Marine Academy (USMMA).

SYSTEM CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Office of Admissions, United States Merchant Marine Academy, Kings Point, NY 11204.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for admission to the Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; address; name of nominating Congressman and congressional district; social security number; citizenship; sex; marital status; scholastic background; names of relatives who attended the Academy; high school record; personality record (compiled by high school authorities); seaman's experience; military service data; and biographical sketch. (Form: KP 2–65).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

46 App U.S.C. 1295b.

PURPOSE(S):

Determine admissions to the Academy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Advise Member of Congress or other nominating authority of the outcome of an individual's candidacy. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual and automated.

RETRIEVABILITY:

Filed alphabetically by last name.

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

If admitted, the application becomes part of the Midshipman's Personnel Record for permanent retention. The file is transferred to the Federal Records Center after 5 years. If not admitted, it is retained for one year and destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Admissions, United States Merchant Marine Academy, Kings Point, NY 11204.

NOTIFICATION PROCEDURE:

Division of General and International Law, MAR–221. Office of the Chief Counsel, Maritime Administration, 400 7th Street, SW, Washington, DC 20590.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Subject individual, the individual's high school officials, references, and those authorized by the individual to furnish information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(5), this system is exempt from portions of the act.

DOT/MARAD 13

SYSTEM NAME:

Cadet Files, State Maritime Academies, "SIPSAM".

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Office of Maritime Labor and Training, Maritime Administration, MAR–240, 400 7th Street, SW, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former cadets enrolled in the Student Incentive Payments, SIP, Program at the State Maritime Academies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; service number; date of change in pay; re-enrollment or reinstatement; dis-enrollment; date of graduation; and service obligation. (Forms: MA–1005, MA–850 and MA–890).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Merchant Marine Act, 1936 (as amended) Title XIII B Maritime Education and Training (46 App. U.S.C. 1295c).

PURPOSE(S):

Monitor the service, employment and academic obligations of the SIP recipients.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by last name.

SAFEGUARDS:

Records are located in lockable file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

The records are retained until six years after graduation and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Labor and Training, Maritime Administration, MAR–250, 400 7th Street, SW, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Division of General and International Law, Office of the Chief Counsel, MAR–221, Maritime Administration, 400 7th Street, SW, Washington, DC 20590.

RECORD ACCESS PROCEDURES:

Same as "Notification Procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification Procedure."

RECORD SOURCE CATEGORIES:

The subject student. State Merchant Marine Academies. Those authorized by the student to furnish information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/MARAD 14

SYSTEM NAME:

Citizenship Statements and Affidavits.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

For bidders on surplus vessels: Division of Ship Disposals and Foreign Transfers, MAR–630, Maritime Administration, 400 7th Street, SW, Washington, DC 20590. For all other purposes: Office of Chief Counsel, MAR–220, Maritime Administration, 400 7th Street, SW, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers and shareholders of non-personal applicants and individual applicants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; date and place of birth; nationality, and naturalization data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

46 App U.S.C. 802, 803, 808, 1114 and 50 app U.S.C. 1744.

PURPOSE(S):

Keep track of officers and shareholders of non-personal applicants and individual applicants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this systems to "consumer reporting agencies" (collecting on behalf of the United States Govt.) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by applicant's name, name of individual, or vessel name.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

The records are transferred to the Federal Records Center after five years where they are retained for twenty years or the time period of the ship mortgage, whichever is longer.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Ship Disposals and Foreign Transfers, MAR–630, and Office of the Chief Counsel, MAR–220, Maritime Administration, 400 7th Street, SW, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Division of General and International Law, Office of the Chief Counsel, MAR–221, Maritime Administration, 400 7th Street, SW, Washington, DC 20590.

RECORD ACCESS PROCEDURES:

Same as "Notification Procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification Procedure."

RECORD SOURCE CATEGORIES:

Subject applicant and individual. Those authorized by the foregoing to furnish information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/MARAD 15

SYSTEM NAME:

General Agent's Protection and Indemnity and Second Seaman's Insurance: WSA and NSA.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Office of Marine Insurance, Maritime Administration, MAR–575, 400 7th Street, SW, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (*e.g.*, seamen, passengers, stevedores) filing claims against general agents for death, disability, loss of personal effects, detention and repatriation and property damage.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claimant's name; address; mariner's document number; sea service record; disciplinary records; selective service classification; names of parents; marriage and divorce data; social security number; alien registration and citizenship data; medical information; next-of-kin; wages per month; birth date; witness statements; investigator's report; names of counsel; and executors and administrators of estates (Forms: MA–574, MA–570, MA–269, MA–26 and 270).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

46 app U.S.C. 1101, 1114, 191–1205 and 50 app U.S.C. 1744.

PURPOSE(S):

Evaluate filed claims, negotiate settlements, award money, contest or initiate lawsuits; and arrange for proper medical treatment by establishing seaman's eligibility for acceptance under regulations of Public Health Service, United States Department of Health and Human Services, or other appropriate medical facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE FOR CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by seaman's name and vessel's name.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

The records are transferred to the Federal Records Center after one year where they are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Marine Insurance, Maritime Administration, MAR–575, 400 7th Street, SW, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Division of General and International Law, MAR–221, Office of the Chief Counsel, Maritime Administration, 400 7th Street, SW, Washington, DC 20590.

RECORD ACCESS PROCEDURES:

Same as Notification Procedure.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedure.

RECORD SOURCE CATEGORIES:

Subject individual. The individual's attorney. Adjusters, investigators. Attorneys. Office of Marine Insurance. Witnesses. The Marine Index Bureau. Those authorized by the individual to furnish information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/MARAD 16

SYSTEM NAME:

Marine Training School Registrants.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Maritime Administration regional offices: Eastern—26 Federal Plaza, New York, N.Y. 10007; Central—No. 2 Canal Street, New Orleans, LA 70130; Western—211 Main Street, RM 1112, San Francisco, CA 94105; and Great Lakes—2300 E. Devon Avenue, Des Plaines, IL 60018.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Each seafarer enrolling in an agency training course.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; address; position title; owner's document number; social security number; certificate number; sponsoring

organization; course completed; date of course completion; course grade; date of birth; and telephone number (Forms: MA–1005 and 1006).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

46 app U.S.C. 1114, 1295b, 1295c, 1295d, and 1295g.

PURPOSE(S):

Verification of attendance and performance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by student's name.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose duties require access.

RETENTION AND DISPOSAL:

The records are transferred to the Federal Records Center one year after graduation or termination and disposed of 60 years after date of enrollment.

SYSTEM MANAGER(S) AND ADDRESS:

Training Facility Registrar in region where the training was taken; see System Location.

NOTIFICATION PROCEDURE:

Division of General and International Law, MAR–221, Office of the Chief Counsel, Maritime Administration, 400 7th Street, SW, Washington, DC 20590.

RECORD ACCESS PROCEDURES:

Same as "Notification Procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification Procedure."

RECORD SOURCE CATEGORIES:

The student. The training instructors. Those authorized by the individual to furnish information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/MARAD 17

SYSTEM NAME:

Waivers of Liability to Board Reserve Fleet Vessels and Other Craft Located at United States Merchant Marine Academy.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Beaumont Reserve Fleet, PO Box 6355, Beaumont, Texas 77705; James River Reserve Fleet, Drawer "C", Fort Eustis, Virginia 23604; and Suisun Bay Reserve Fleet, PO Box 318, Benicia, California 94510; United States Merchant Marine Academy, Kings Point, Long Island, New York 11024–1699.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals boarding Reserve Fleet vessels.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, affiliation, date, and signature (Form: MA–118).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

46 app U.S.C. 1295b, 1295g, and 50 app U.S.C. 1744.

PURPOSE(S):

Limit Governments liability for any damage suffered by certain persons aboard RRF/NDRF ships.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE OF CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by name.

SAFEGUARDS:

Records are located in lockable metal file cabinets or metal file cabinets in secured rooms or in secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are maintained for three years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Superintendent of Respective Reserve Fleets; and United States Merchant Marine Academy, Kings Point, New York 11024.

NOTIFICATION PROCEDURE:

Division of General and International Law, Office of the Chief Counsel, MAR–221, Maritime Administration, 400 7th Street, SW, Washington, DC 20590.

RECORD ACCESS PROCEDURES:

Same as Notification Procedure.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedure.

RECORD SOURCE CATEGORIES:

Subject individual. Those authorized by the individual to furnish information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/MARAD 18

SYSTEM NAME:

National Defense Executive Reserve.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Division of National Security Plans, MAR–620, Maritime Administration, 400 7th Street, SW, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Nominees and members of the National Defense Executive Reserve.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; home address; photograph; brief career history; names of close relatives; marital status; previous Government experience; previous residences; current and recent employment; citizenship; social security number; business and residence telephone numbers; security clearance; statement of understanding; request for appointment; appointment affidavits; secrecy agreement; sex; date and place of birth; education; and professional and other memberships.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

46 app U.S.C. 1295e, 1295g and 1126–1.

PURPOSE(S):

Transferring data to the Federal Preparedness Agency pursuant to E.O. 11179.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Alphabetically by last name.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Retained until one year after individual's appointment is terminated or until death and then discarded.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of National Security Plans, MAR–620, Maritime Administration, same as above address.

NOTIFICATION PROCEDURE:

Division of General and International Law, Office of the Chief Counsel, MAR–221, Maritime Administration, 400 7th Street, SW, Washington, DC 20590.

RECORD ACCESS PROCEDURES:

Same as "Notification Procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification Procedure."

RECORD SOURCE CATEGORIES:

The individual. Those authorized by the individual to furnish information. The investigator performing personal and security investigation. Sources contacted by the investigator.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/MARAD 20

SYSTEM NAME:

Seamen's Awards for Service, Valor, etc.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Office of Maritime Labor and Training, MAR–250, Maritime Administration, 400 7th Street, SW, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Seamen given awards for service, valor, etc.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; address; mariner's document number; social security number; and names of ships.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

46 App. U.S.C. 2001–2007.

PURPOSE(S):

Provide information to the seamen and family members upon request.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper copy in file folders and on magnetic tape.

RETRIEVABILITY:

Files are maintained alphabetically by name of seaman.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Paper records containing letters of commendation, name of seamen, address, name of vessel and mariner's document number are transferred to the Federal Records Center immediately, where they are retained for 75 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Maritime Labor and Training, MAR–250, Maritime Administration, 400 7th Street, SW, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Division of General and International Law, Office of the Chief Counsel, MAR–221, Maritime Administration, 400 7th Street, SW, Washington, DC 20590.

RECORD ACCESS PROCEDURES:

Same as Notification procedure.

CONTESTING RECORD PROCEDURES:

Same as Notification procedure.

RECORD SOURCE CATEGORIES:

Subject individual. The individual's co-workers. Witnesses to incidents. Those authorized by the individual to furnish information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/MARAD 21

SYSTEM NAME:

Seaman's Employment Analysis Records.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation Computer Center, SVC–172, 400 7th Street, SW, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Merchant seamen who sailed the previous calendar year.

CATEGORIES OF RECORDS IN THE SYSTEM:

Social security number; date of birth; records of United States Coast Guard issued documents; voyage employment information (*e.g.*, ship and date signed on); and maritime schools attended.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

46 app U.S.C. 1295g.

PURPOSE(S):

To ensure an adequate supply of American mariners.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on computer disks.

RETRIEVABILITY:

Filed by social security number.

SAFEGUARDS:

In addition to technical securities, the records are located in secured rooms or premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Refreshed and maintained only for current available calendar year.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Maritime Labor and Training, Maritime Administration, MAR–250, 400 7th Street, SW, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Division of General and International Law, MAR–221, Office of the Chief

Counsel, Maritime Administration, 400 7th Street, SW, Washington, DC 20590.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

United States Coast Guard.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

DOT/MARAD 22

SYSTEM NAME:

Seaman's Unclaimed Wages (Vietnam Conflict).

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Division of Accounting Operations, MAR–330, Maritime Administration, 400 7th Street, SW, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Seamen owed wages for service aboard Government vessels operated by general agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; social security number; employing general agent; and wages due and owing.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

46 app U.S.C. 1114(B), 1241a, and 50 app U.S.C. 1291(a).

PURPOSE(S):

Reporting wages owed.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Paper records are filed alphabetically by name and by social security number.

SAFEGUARDS:

Paper records are secured in lockable metal file cabinets. Records are located in secured areas with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Retained until such time as claim is resolved or wages are disbursed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Accounting Operations, MAR–330, Maritime Administration, 400 7th Street, SW, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Division of General and International Law, Office of the Chief Counsel, MAR–221, Maritime Administration, 400 7th Street, SW, Washington, DC 20590.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

The general agents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/MARAD 24

SYSTEM NAME:

USMMA Non-Appropriated Fund Employees.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Office of the Commandant of Midshipmen; Office of the Director of Athletics; Office of the General Manager, Ship's Service; Officer's Club; Junior Officer's Mess; Petty Officers Club; Fiscal Control Office; and Department of Administrative Services and Procurement, all at United States Merchant Marine Academy, Kings Point, N.Y. 11024.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current and former employees of non-appropriated fund activities since 1970.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; telephone number; social security number; address; date of birth; height; weight; birthplace; employment history; special qualifications; education summary; references; personnel actions showing positions held and salary paid; insurance coverage; and letters of commendation or reprimand.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

46 app U.S.C. 1295g.

PURPOSE(S):

Track information on non-appropriated fund employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12):

Disclosures may be made from this systems to "consumer reporting agencies" (collecting on behalf of the United States Govt.) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Alphabetically by employee's name.

SAFEGUARDS:

Records are located in lockable metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant of Midshipmen; Director of Athletics; General Manager, Ship's Service; President, Officer's Club; Manager, Junior Officers Mess; President, Petty Officers Club; Head, Department of Budget and Accounts; and Head, Department of Administrative Services and Procurement, all at United States Merchant Marine Academy, Kings Point, N.Y. 11024.

NOTIFICATION PROCEDURE:

Division of General and International Law, MAR–221, Office of the Chief Counsel, Maritime Administration, 400 7th Street, SW, Washington, DC 20590.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification Procedure."

RECORD SOURCE CATEGORIES:

Subject employee. Those authorized by the employee to furnish information. Past employers and references. The employee's supervisor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(5), this system is exempt from portions of the act.

DOT/MARAD 25

SYSTEM NAME:

USMMA Graduates.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Office of External Affairs, United States Merchant Marine Academy, Kings Point, NY 11024.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All graduates of USMMA, since 1942, and some parents of graduates.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; address (home and business); vocation; class year; social security number; employee's name and address; years of maritime service, at sea and ashore; military service; maritime licenses; post-graduate education; honors and awards; and union affiliation. Graduate registration for job-placement also contains graduate's preferred salary and job location.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

46 app U.S.C. 1295g.

PURPOSE(S):

Make employment referrals, to compile statistical reports for Congress on the professional progress of the graduates, and to mail alumni publications, notices, and announcements. The users are the Director, Office of External Affairs and his immediate administrative staff, prospective employers, Congress and its Members, the United States Merchant Marine Academy Alumni Association, Inc., the United States Merchant Marine Academy Foundation, Inc. and the commercial contractor providing automated services for the United States Merchant Marine Academy Foundation, Inc.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The database is used for communication with alumni (*e.g.*, magazine, homecoming, etc), placement opportunities for alumni, fundraising records, and congressional districts. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and basic information are on magnetic tape.

RETRIEVABILITY:

Alphabetically by name, and by social security number.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access. Records on tape also are subject to physical securities, including those maintained by contract.

RETENTION AND DISPOSAL:

The records are kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of External Affairs, United States Merchant Marine Academy, Kings Point, N.Y. 10024.

NOTIFICATION PROCEDURE:

Division of General and International Law, MAR-221, Office of the Chief Counsel, Maritime Administration, 400 7th Street, SW, Washington, DC 20590.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

A questionnaire voluntarily returned by graduates every few years. Graduates asking to be registered for job-placement. Families of graduates. Public and private employment of graduates. Persons nominating graduates for alumni awards. United States Merchant Marine Academy Alumni Association, Inc. Published articles naming graduates.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/MARAD 26

SYSTEM NAME:

USMMA Midshipmen Deposit Account Records.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Budgets and Accounts, United States Merchant Marine Academy, Kings Point, NY 11024.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current midshipmen.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, social security number, and all midshipmen activity fee deposits to the Academy.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

46 app U.S.C. 1295g.

PURPOSE(S):

Track activity fee deposits to the Academy.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed by class year and then alphabetically by name.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in metal file cabinets in secured rooms or in secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Maintained for one year after graduation or separation, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Head, Department of Budgets and Accounts, United States Merchant Marine Academy, Kings Point, NY 11024.

NOTIFICATION PROCEDURE:

Division of General and International Law, MAR–221, Office of the Chief Counsel, Maritime Administration, 400 7th Street, SW, Washington, DC 20590.

RECORD ACCESS PROCEDURES:

Same as "Notification Procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification Procedure."

RECORD SOURCE CATEGORIES:

Midshipmen. Those authorized by midshipman to furnish information. Department of Budgets and Accounts personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/MARAD 27

SYSTEM NAME:
USMMA Midshipman Grade Transcripts.

SECURITY CLASSIFICATION:
Unclassified, sensitive.

SYSTEM LOCATION:
Registrar's Office, United States Merchant Marine Academy, Kings Point, NY 11024.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
All present and past midshipmen.

CATEGORIES OF RECORDS IN THE SYSTEM:
Name; social security numbers; courses taken; grades received; and cumulative average.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:
46 app U.S.C. 1295g.

PURPOSE(S):
Record academic status of past and present midshipmen.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:
Sent to other schools or employers when requested by the midshipman. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:
None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
Paper records in file folders, paper records in file drawers, microfilm records, and magnetic tape.

RETRIEVABILITY:
Alphabetically by midshipman's name.

SAFEGUARDS:
Records are located in lockable metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:
Transfer to Federal Records Center five years after graduation. Destroy sixty years after graduation.

SYSTEM MANAGER(S) AND ADDRESS:
Registrar, United States Merchant Marine Academy, Kings Point, N.Y. 10024.

NOTIFICATION PROCEDURE:
Division of General and International Law, MAR–221, Office of the Chief Counsel, Maritime Administration, 400 7th Street, SW, Washington, DC 20590.

RECORD ACCESS PROCEDURES:
Same as "Notification Procedure."

CONTESTING RECORD PROCEDURES:
Same as "Notification Procedure."

RECORD SOURCE CATEGORIES:
The midshipman. Those authorized by the midshipman to furnish information. Faculty. Registrar's staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:
None.

DOT/MARAD 28

SYSTEM NAME:
USMMA Midshipman Medical Files.

SECURITY CLASSIFICATION:
Unclassified, sensitive.

SYSTEM LOCATION:
Medical Department, United States Merchant Marine Academy, Kings Point, NY 11024.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
All midshipmen.

CATEGORIES OF RECORDS IN THE SYSTEM:
Complete medical history prior to and during enrollment at the Academy.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:
46 app U.S.C. 1295g.

PURPOSE(S):
Maintain health of midshipmen.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:
See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:
None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
Paper records in file folders.

RETRIEVABILITY:
Filed alphabetically by midshipman's name.

SAFEGUARDS:
Records are located in lockable metal file cabinets or in metal file cabinets in secured rooms or in secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:
Radiographic file salvage five years after graduation. All other documents combine within MA–18 Midshipmen Personnel Records after graduation. If not appointed as Midshipman, the record is retained for one year and destroyed.

SYSTEM MANAGER(S) AND ADDRESS:
Medical Officer, United States Merchant Marine Academy, Kings Point, N.Y. 11024.

NOTIFICATION PROCEDURE:
Division of General and International Law, MAR–221, Office of the Chief Counsel, Maritime Administration, 400 7th Street, SW, Washington, DC 20590.

RECORD ACCESS PROCEDURES:
Same as Notification procedure.

CONTESTING RECORD PROCEDURES:
Same as Notification procedure.

RECORD SOURCE CATEGORIES:
Subject applicant or midshipman. Those authorized by foregoing to furnish information. Individual's physician. Academy medical officers. Contract medical personnel. Private and other medical personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:
Pursuant to 5 U.S.C. 552a(k)(5), this system is exempt from portions of the act.

DOT/MARAD 29

SYSTEM NAME:
USMMA Midshipman Personnel Records.

SECURITY CLASSIFICATION:
Unclassified, sensitive.

SYSTEM LOCATION:
Office of the Commandant of Midshipman, United States Merchant Marine Academy, Kings Point, NY 11024.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
All current and former midshipmen since inception of the Academy in 1942. Also, all cadet corps personnel from 1938 to 1942.

CATEGORIES OF RECORDS IN THE SYSTEM:
Nominations to United States Merchant Marine Academy; College Board Scores; high school transcript; name; address; social security number; parent's name and address and occupation; relatives who attended USMMA; number of brothers and sisters; medical report; height; weight; color of hair; color of eyes; complexion; commendations; record of disciplinary cases; resignation notice; graduation certification; and report of deficiencies.

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

46 app U.S.C. 1295g.

PURPOSE(S):

Record personnel matters on USMMA midshipmen.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this systems to "consumer reporting agencies" (collecting on behalf of the United States Govt.) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Alphabetically by midshipman's name.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in metal file cabinets in secured rooms or in secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Retained on site for five years after graduation, then disposed of in accordance with the unit's record control schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant of Midshipman, United States Merchant Marine Academy, Kings Point, NY 11024.

NOTIFICATION PROCEDURE:

Division of General and International Law, MAR–221, Office of the Chief Counsel, Maritime Administration, 400 7th Street, SW, Washington, DC 20590.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

The subject midshipman. Faculty administrators and midshipman corps officers who provide copies to the midshipman. Former employers, teachers, and school authorities, and references. Government or private physicians. United States Navy Security Officers. Those authorized by the midshipman to furnish the information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(5), this system is exempt from portions of the act.

DOT/MARAD 20

SYSTEM NAME:

Commitment Agreements.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Maritime Administration, Academies Program Officer, Office of Maritime Labor, Training & Safety, MAR–250, 400 Seventh Street, SW, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Students, graduates of United States Merchant Marine Academy and State maritime academies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files containing information of students, graduates of United States Merchant Marine Academy and State maritime academies. Information may contain addresses, social security numbers, and medical information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

46 App. U.S.C. 1295b(e).

PURPOSE(S):

Determine if a student or graduate of the United States Merchant Marine Academy, USMMA, or subsidized student or graduate of a State maritime academy has a waivable/deferrable situation that prevents him/her from fulfilling the requirements for their service obligation contract.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Notice of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File information is on computer with hard copy back up material in metal cabinets in a secured room.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Files are retrievable only through information known to the Academy Program Officer or other persons authorized to perform data input tasks.

RETENTION AND DISPOSAL:

Files held until completion of eight-year service obligation period or as determined by the Maritime Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Maritime Administration, Academies Program Officer, Office of Maritime Labor, Training & Safety, 400 Seventh Street, SW, Rm. 7302, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

Students, graduates of the United States Merchant Marine Academy and State maritime academies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/NHTSA 401

SYSTEM NAME:

Docket System.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, National Highway Traffic Safety Administration, NHTSA, Office of Information Resource Management, Technical Information Services, NAD–40, 400 7th Street, SW, Room 5111, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have commented on notices of NHTSA appearing in the **Federal Register**. Authors of reports that are added to the docket as background information.

CATEGORIES OF RECORDS IN THE SYSTEM:

Summary of the nature of the comment or the report, date written and filed, author affiliation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 CFR Part 7 7.45, and Part 7, App.F.

PURPOSE(S):

Gather information for use in the NHTSA Reference Docket

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To gather information on responses to rules promulgated by NHTSA. Users are both NHTSA staff members and public. Other uses include searching for background data on standards, determining areas for further research, and preparation for litigation. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual file.

RETRIEVABILITY:

By individual name.

SAFEGUARDS:

Records are maintained in a Technical Reference Library.

RETENTION AND DISPOSAL:

Indefinitely held.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Information Resource Management, Technical Information Services, Department of Transportation, National Highway Traffic Safety Administration, NAD–40, Room 5111, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

From letters freely sent to NHTSA by the public; publications used by engineers in writing standards.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/NHTSA 402

SYSTEM NAME:

Highway Safety Literature Personal Author File.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, National Highway Traffic Safety Administration, NHTSA, Transportation Research Board, 2101 Constitution Ave., NW., Washington, DC 20418.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Writers of technical articles and reports who have authored publications selected for inclusion in the Highway Safety Literature database.

CATEGORIES OF RECORDS IN THE SYSTEM:

Bibliographic information giving title of article, book, or paper written; journal or other publication in which it appears; date of publication; abstract. The file is similar in nature to the card catalog of a library.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 49 U.S.C. 322.

PURPOSE(S):

Gather technical articles and reports for inclusion in NHTSA's Highway Safety Literature catalog.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Users are principally NHTSA staff members and their contractors who require literature searches prior to performing research. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape.

RETRIEVABILITY:

By individual name.

SAFEGUARDS:

Records are stored in file cabinets.

RETENTION AND DISPOSAL:

Records are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Information Resource Management, Technical Information Services, Department of Transportation, National Highway Traffic Safety Administration, NAD–40, 400 7th Street, SW., Room 5111, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

Publications related to highway safety.

EXEMPTIONS CLAIMED FOR SYSTEM:

None.

DOT/NHTSA 411

SYSTEM NAME:

General Public Correspondence System.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, National Highway Traffic Safety Administration, NHTSA, Office of the Executive Secretariat, NOA–10, 400 7th Street, SW., Room 5221, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have requested information or advice from the Agency.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence with individuals who have requested information or advice on promoting devices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 49 U.S.C. 322.

PURPOSE (S):

Provide agency with background information on number of issues, reports, etc., and/or who seek guidance from NHTSA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Reference purposes. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In file folders.

RETRIEVABILITY:

By individual name.

SAFEGUARDS:

Conserva-Files; locked when not in use.

RETENTION AND DISPOSAL:

Records are retained for one year and are then discarded.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Transportation, National Highway Traffic Safety

Administration, Office of the Executive Secretary, NOA–10, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

Individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/NHTSA 413

SYSTEM NAME:

Odometer Fraud Data Base Files.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, National Highway Traffic Safety Adm., NHTSA, Safety Assurance (NSA–01), Odometer Fraud Staff (NSA–20), 400 Seventh Street, SW., Room 5321, Washington, DC 20590

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Suspects, defendants, witnesses, informants, automobile dealers, and victims of odometer fraud.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information on suspects, defendants, witnesses, informants, motor vehicles, automobile dealers, victims and other related data obtained through Federal grand jury subpoenas. Information may contain addresses, dates of birth, financial data, criminal history records, business records, and numerous other data obtained through Federal grand jury subpoenas.

PURPOSES(S):

To gather information to be used in allegations of odometer fraud.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Files are maintained for use in criminal investigations and to support criminal prosecutions by the United States Department of Justice. Data are released also to authorized State and Federal law enforcement agencies and personnel and to victims under 42 U.S.C. 10606(b)(7). See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder storage and in an electronic database.

RETRIEVABILITY:

By individual name, dealer name, complainant name, case number and vehicle identification number.

SAFEGUARDS:

Locked files and restricted electronic access. Files are regularly used only by members of the Odometer Fraud Staff.

RETENTION AND DISPOSAL:

Retained for five years after case is closed, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Transportation, National Highway Traffic Safety Administration, Attn: Chief, Odometer Fraud Staff, 400 Seventh Street, SW., Room 6208, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

Victims, automobile dealers, banks, State motor vehicle departments, State and Federal law enforcement agencies, and other sources used during the course of criminal investigations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/NHTSA 415

SYSTEM NAME:

Office of Defects Investigation/Defects Information System, ODI/DIMS.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, National Highway Traffic Safety Administration, NHTSA, Office of Defects Investigation, NSA–01, 400 7th Street, SW., Room 2403, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Vehicle owners.

CATEGORIES OF RECORDS IN THE SYSTEM:

Vehicle identification, vehicle problem.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

PURPOSE(S):

To gather information/evidence in the conduct of alleged defective vehicles or vehicle equipment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Check complaints about vehicle defects to spot trends, resulting in investigations of the vehicle model. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Disc pack and paper file.

RETRIEVABILITY:

Identification number for each vehicle owner.

SAFEGUARDS:

Coded entry numbers.

RETENTION AND DISPOSAL:

Eight years or indefinite.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Special Projects Staff, Department of Transportation, National Highway Traffic Safety Administration, NHTSA, Office of Defects Investigation, NSA–10, 400 7th Street, SW., Room 5326, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Department of Transportation, National Highway Traffic Safety Administration, NHTSA, Director, Office of Information Resource Management, Technical Information Services, NAD–40, 400 7th St., SW., Room 5111, Washington, DC 20590.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure".

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure".

RECORD SOURCE CATEGORIES:

General public, State highway offices, insurance companies, vehicle manufacturers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/NHTSA 417

SYSTEM NAME:

National Driver Register, NDR.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, National Highway Traffic Safety Administration, NHTSA. Office of Research and Traffic Records, Driver and Traffic Records Division, NTS–24, 400 7th Street, SW., Room 6124, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have had their driver's license denied, withdrawn, revoked or suspended for cause, or who have been convicted of certain services traffic violations as reported by State/Territorial driver licensing authorities.

CATEGORIES OF RECORDS IN THE SYSTEM:

NDR records include: The reporting jurisdiction, the subject's full name, other names used, date of birth, driver license number and/or social security number (if used by the reporting jurisdiction), sex, height, weight, eye color, the reason for withdrawal, the date of the withdrawal, and the date eligible for restoration of driving privilege or the date license was actually restored. Frequently the physical data are not provided by the reporting agency.

PURPOSE(S):

To provide information regarding individuals who have had their driver licenses revoked, suspended or otherwise denied for cause, or who have been convicted of certain traffic violations, etc.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Provide identification of drivers who have had their licenses withdrawn, suspended, revoked or otherwise denied for cause, or who have been convicted of certain traffic violations, in response to inquiries from State or Federal driver licensing officials. See Prefatory Statement of General routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The NDR master file is maintained on disk storage. Source data received as manual input (i.e. forms, letters) are converted to disk storage. Source data received on magnetic tape are converted into printed listings. All source data are batch filed.

RETRIEVABILITY:

The master file is indexed by surname and refined by program application using screening criteria such as given names, date of birth and physical characteristics.

SAFEGUARDS:

The data files are maintained in a building under surveillance by a 24-hour guard force. In addition, the spaces in which the files are maintained are equipped with lockable doors, which are locked when vacated. All NDR employees are briefed on NDR security requirements and their responsibilities.

RETENTION AND DISPOSAL:

Records of actions that have been canceled or rescinded are purged from the file upon receipt of notification from the reporting jurisdiction. Other records are retained for seven or five years depending on the reason for withdrawal of the individual's license. Withdrawals for drunk driving, hit and run, fatal accident, felony and misrepresentation are retained for seven years. Records of "habitual offenders" as stipulated by certain states are retained indefinitely, unless otherwise requested by the reporting state. All other master file records are retained for five years. Magnetic tape records are erased by degaussing, using 86db degaussing equipment, prior to disposing of the tapes. Shredding destroys paper source data reports of withdrawal.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, National Driver Register, National Highway Traffic Safety Administration, NTS–24, Department of Transportation, Room 6124, Washington, DC 20590.

NOTIFICATION PROCEDURE: SAME AS "SYSTEM MANAGER."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES;

Same as "System manager."

RECORD SOURCE CATEGORIES:

Driver licensing administrators of the States, and the District of Columbia, or the agencies within the jurisdictions responsible for such records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/NHTSA 422

SYSTEM NAME:

Temporary Exemption Petitions.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, National Highway Traffic Safety Administration, NHTSA, Office of Chief Counsel, NCC–01, 400 7th Street, SW., Room 5219, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Petitioners (commercial entities) seeking exemption from Federal motor vehicle safety standards.

CATEGORIES OF RECORDS IN THE SYSTEM:

Income statement and balance sheets, production information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 30113.

PURPOSE(S):

Gather information regarding exemptions and possible penalties on Federal motor vehicle safety standards.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

For consultation by attorneys while file is active; copies in public docket. See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Office files.

RETRIEVABILITY:

Temporary exemptions; filed by corporation's names.

SAFEGUARDS:

Available only to the System manager and his secretary.

RETENTION AND DISPOSAL:

Permanent retention.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Staff Attorney, Department of Transportation, National Highway Traffic Safety Administration, Office of Chief Counsel, NCC–01, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Department of Transportation, National Highway Traffic Safety Administration, Office of Chief Counsel, NCC–01, 400 7th Street, SW., Room 5219, Washington, DC 20590.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

Petitioners.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/NHTSA 431

SYSTEM NAME:

Civil Penalty Enforcement Files.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, National Highway Traffic Safety Administration, Office of the Chief Counsel, NCC–01, 400 7th Street, SW., Room 5219, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons against whom civil penalties are sought or contemplated for violations of NHTSA-administered statutes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigatory records of alleged violations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 30165.

PURPOSE(S):

Gather information for use by agency in possible civil suits for penalty violations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Office files.

RETRIEVABILITY:

Files in CIR numerical order.

SAFEGUARDS:

Available only to the System Manager and his secretary.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Senior Staff Attorney, Department of Transportation, National Highway Traffic Safety Administration, Office of Chief Counsel, NCC–01, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Department of Transportation, National Highway Traffic Safety Administration, Office of Chief Counsel, NCC–01, 400 7th Street, SW., Room 5219, Washington, DC 20590.

RECORD ACCESS PROCEDURES:

Same as "Notification procedure."

CONTESTING RECORD PROCEDURES:

Same as "Notification procedure."

RECORD SOURCE CATEGORIES:

NHTSA investigations and tests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/NHTSA 436

SYSTEM NAME:

Contract Grievance Records.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, National Highway Traffic Safety Administration, NHTSA, Office of Human Resources, NAD–20, 400 7th Street, SW., Room 5306, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees in the non-professional exclusive unit covered by the NHTSA/AFGE contract of March 5, 1974.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information or documents relating to a decision by the Administration or an arbitrator affecting an individual.

PURPOSE(S):

To substantiate or deny allegations relating to employee grievances.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to the Federal Labor Relation Authority in connection with an Unfair Labor Practice Procedure or to respond to the appeal of an arbitration award. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and index cards.

RETRIEVABILITY:

Retrieved by names of grievant(s).

SAFEGUARDS:

Access limited to those with official "need to know." Personnel screening is employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

The records are maintained up to 3 years and then retired to the Washington National Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Human Resources, Department of Transportation, National Highway Traffic Safety Administration, NAD–20, 400 7th Street, SW., Room 5306, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

Individual to who record pertains and/or representative; agency officials; employees; witnesses; official documents; etc.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/NHTSA 463

SYSTEM NAME:

Motor Vehicle Importation Information, MVII.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, National Highway Traffic Safety Administration, Office of Vehicle Safety Compliance, NSA–32, 400 7th Street, SW., Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Importers or declarants of imported motor vehicles and motor vehicles equipment, both private and commercial.

CATEGORIES OF RECORDS IN THE SYSTEM:

Forms HS–7, declaration on motor vehicles and motor vehicle equipment subject to Federal Motor Vehicle Safety Standards. Customs reports of declarations and inspections. Records relating to refusal of entry or penalties, and in some instances law enforcement and court records in alleged fraud cases.

PURPOSE(S):

Gather information on importation compliance of motor vehicle and motor vehicle equipment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records may be released to the Environmental Protection Agency for compliance with the Clean Air Act and to the United States Customs Service for import requirements. Released to State divisions of motor vehicles for state purposes and to law enforcement agencies in alleged fraud cases. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper forms and computer disc tapes.

RETRIEVABILITY:

By name of importer or declarant, addressee(s) vehicle or vehicle identification, customs district and entry number, and port of entry.

SAFEGUARDS:

Disc or tape may be accessed only by discrete identification code known to the System Manager and staff. Hard paper copies are maintained in locked cabinets.

RETENTION AND DISPOSAL:

Hard paper copy is retained one year if no official claims are lodged against importer or declarant. Disc and tapes retained for period of United States Customs Service statute of limitations before erasure.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Verification Division, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, NSA–32, Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

Forms executed by importers or declarants for the NHTSA, United States Customs Service, and the Environmental Protection Agency.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/OST 003

SYSTEM NAME:

Allegations of Infringement of United States Patents.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Office of the Secretary of Transportation, Office of the General Counsel, 400 7th Street, SW., Room 10102, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who believe that an agency of the Department of Transportation is infringing a United States patent owned by the individual. Categories of records in the system: Copies of correspondence alleging that agencies of the Department of Transportation have infringed, or are infringing, United States patents owned by the originators of the correspondence. Copies of replies by the Department Patent Counsel to the originator of the allegation. Copies of correspondence forwarding the allegation to the particular Department agency accused for their comment; their replies to Patent Counsel. Copies of correspondence between the Department of Transportation and the Department of Justice concerning the allegations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of correspondence alleging that agencies of the Department of Transportation have infringed, or are infringing, United States patents owned by the originators of the correspondence. Copies of replies by the Department Patent Counsel to the originator of the allegation. Copies of correspondence forwarding the allegation to the particular Department agency accused for their comment; their replies to Patent Counsel. Copies of correspondence between the Department of Transportation and the Department of Justice concerning the allegations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

28 U.S.C. 1498.

PURPOSE(S):

Document allegations that agencies of the Department of Transportation have infringed, or are infringing, United States patents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used as a record of allegations and Patent Counsel's actions thereon. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders stored in file cabinets.

RETRIEVABILITY:

Indexed individually by name in alphabetical sequence.

SAFEGUARDS:

Records are disclosed only to individuals with established legal interest or legal "need to know."

RETENTION AND DISPOSAL:

Transfer to Federal Records Center two years after close of file; destroy 25 years after close of file.

SYSTEM MANAGER(S) AND ADDRESS:

Mailing address: Patent Counsel, C–15, United States Department of Transportation, and Washington, DC 20590. Office Location: 400 7th Street, SW., Room 10102.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System Manager."

RECORD SOURCE CATEGORIES:

Patent owners.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/OST 004

SYSTEM NAME:

Board for Correction of Military Records, BCMR.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, DOT, Office of the Secretary, OST, Office of the General Counsel, 400 7th Street, SW., Room 4100, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel requesting the Board for Correction of Military Records to correct their military records.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of actions of the General Counsel acting under delegated

authority approving or disapproving BCMR cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1552.

PURPOSE(S):

Used as a record of the General Counsel's action in individual BCMR cases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders stored in file cabinets (Conserv-a-File).

RETRIEVABILITY:

Indexed individually by name in alphabetical sequence.

SAFEGUARDS:

Files are kept in the office of the Assistant General Counsel. Requests are referred to the Executive Secretary, BCMR.

RETENTION AND DISPOSAL:

Retained indefinitely for precedential purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Mailing Address: Assistant General Counsel for Environmental, Civil Rights and General Law, C–10, United States Department of Transportation, Washington, DC 20590. Office Location: 400 7th Street, SW., Room 10102.

NOTIFICATION PROCEDURE:

Contact "System manager."

RECORD ACCESS PROCEDURES:

Contact "System manager."

CONTESTING RECORD PROCEDURES:

Same as "Record access procedure."

RECORD SOURCE CATEGORIES:

Official agency records; hearings, documentary material from outside the agency.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/OST 012

SYSTEM NAME:

Files Relating to Personnel Hearings.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, DOT, Office of the Secretary, OST, Office of the General Counsel, 400 7th Street, SW., Room 10102, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Certain employees of the Office of the Secretary who have availed themselves of the opportunity for a hearing in certain personnel matters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Certain employees of the Office of the Secretary who have availed themselves of the opportunity for a hearing in certain personnel matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

Notices of proposed adverse actions, answers of employees, notices of decisions, and supporting material.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1215, 1216, 7503(c), 7513(e), 7521, and 7543(e).

PURPOSE(S):

A record of the legal services performed and reference material for future cases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by agency management in the preparation and conduct of administrative hearings. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders stored in file cabinets (Conserv-a-File).

RETRIEVABILITY:

Indexed individually by name in alphabetical sequence.

SAFEGUARDS:

Files are kept in the office of the Assistant General Counsel.

RETENTION AND DISPOSAL:

Retire in 3 years; destroy in 6 years.

SYSTEM MANAGER(S) AND ADDRESS:

Mailing Address: Assistant General Counsel for Environmental, Civil Rights and General Law, C–10, United States Department of Transportation, Washington, DC 20590. Office Location: 400 7th Street, SW., Room 10102.

NOTIFICATION PROCEDURE:

Apply to System manager.

RECORD ACCESS PROCEDURES:

Apply to System manager.

CONTESTING RECORD PROCEDURES:

Same as "Record access procedure."

RECORD SOURCE CATEGORIES:

Official agency records; hearings; documentary material from outside the agency.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/OST 016

SYSTEM NAME:

General Investigations Record System

SECURITY CLASSIFICATION:

Unclassified (law enforcement sensitive).

SYSTEM LOCATION:

TASC Security Operations, SVC–150, Department of Transportation, DOT, 400 7th Street, SW. Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOT employees and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Incident reports covering occurrences relating to the security of DOT personnel and headquarters buildings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 49 U.S.C. 322.

PURPOSE(S):

To maintain computerized records covering the security of DOT personnel and headquarters buildings. To develop proper responses to patterns of incidents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses; 5 and 9 do not apply.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this systems to "consumer reporting agencies" (collecting on behalf of the United States Govt.) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders. Paper records in case folders in manual filing system.

RETRIEVABILITY:

By name or incident title.

SAFEGUARDS:

Files are maintained in a locked room with appropriate access controls. Access to the files is restricted to authorized personnel on a "need-to-know" basis. With appropriate access controls.

RETENTION AND DISPOSAL:

Records older than 5 years are deleted.

SYSTEM MANAGER(S) AND ADDRESS:

Principal, TASC Security Operations, SVC–150, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "Record access procedure."

RECORD SOURCE CATEGORIES:

These records contain information obtained from interviews; review of records and other authorized techniques.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigative data compiled for law enforcement purposes may be exempt from the access provisions pursuant to 5 U.S.C. 552a (j)(2), (k)(1) or (2).

DOT/OST 019

SYSTEM NAME:

Individual Personal Interests in Intellectual Property.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, DOT, Office of the Secretary, OST, Office of the General Counsel, 400 7th Street, SW., Room 10102, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Inventors employed by or having contractual relationships with the Department of Transportation and other Government agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Invention disclosures, Government Patents Branch cases, patent applications, issued patents, and license agreement files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 322.

PURPOSE(S):

Used by Patent Counsel and staff as a record of determination of rights in inventions, determination of novelty and patent ability, determination of patent coverage, and allocation of rights in issued patents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders stored in file cabinets.

RETRIEVABILITY:

Indexed individually by name in alphabetical sequence.

SAFEGUARDS:

Records are disclosed only to individuals who have legal interest in the records or legal "need to know."

RETENTION AND DISPOSAL:

Transfer to Federal Records Center two years after close of file; destroy 25 years after close of file.

SYSTEM MANAGER(S) AND ADDRESS:

Mailing Address: Patent Counsel, C–15, United States Department of Transportation, and Washington, DC 20590. Office Location: 400 7th Street, SW., Room 10102.

NOTIFICATION PROCEDURE:

Apply to "System manager."

RECORD ACCESS PROCEDURES:

Apply to "System manager."

CONTESTING RECORD PROCEDURES:

Same as "Record access procedures"

RECORD SOURCE CATEGORIES:

Individual inventors, technical evaluators, and United States Patent and Trademark Office.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/OST 035

SYSTEM NAME:

Personnel Security Record System.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, Transportation Administrative Service Center, Security Operations, SVC–150, 400 7th Street, SW., Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOT applicants, employees, former employees, contractors, and detailees to DOT from other Federal agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of personnel security processing, personal data on investigative and employment forms completed by the individual, reports of investigations, records of security and suitability determinations, records of access authorizations granted, documentation of security briefings/debriefings received, record of security violations by the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 49 U.S.C. 322.

PURPOSE(S):

To make suitability determinations for employment or retention in government service, assignment to sensitive duty positions and access to classified information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by Departmental personnel security representatives, including contractor personnel, for making security determinations and granting access authorizations, by Departmental personnel management officials for making suitability determinations, by representatives of other Federal agencies with which the individual is seeking employment, and by Federal agencies conducting official inquiries to the extent that the information is relevant and necessary to the requesting agency's inquiry, and by Departmental officials, to the extent necessary, to identify the individual to sources from whom information is requested for any of the foregoing purposes to inform the source of the nature and purpose of the request and to indicate the type of information requested. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12):

Disclosures may be made from this systems to "consumer reporting agencies" (collecting on behalf of the United States Govt.) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Completed forms and typed pages in individual folders in a manual filing system, and on a manual system control cards.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Stored in locked room with proprietary lock or in approved security safe. Access limited to authorized staff members.

RETENTION AND DISPOSAL:

Retained in accordance with General Records Schedule 18. Authorized destruction done by secure means used for classified materials.

SYSTEM MANAGER(S) AND ADDRESS:

Principal, TASC Security Operations, SVC–150, Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as System manager.

RECORD ACCESS PROCEDURES:

Same as System manager. However, information compiled solely for the purpose of determining suitability, eligibility, or qualification for Federal civilian employment or access to classified information may be exempted from the access provisions pursuant to 5 U.S.C. 552a(k)(5).

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

Investigative sources contacted in personnel security investigations, National Agency Check and Written Inquiry and similar investigations; investigative reports reviewed at other Government agencies; personal history statements, employment applications and other data provided by the individual and/or other agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Information compiled solely for the purpose of determining suitability, eligibility, or qualification for federal civilian employment or access to classified information may be exempted from the access provisions pursuant to 5 U.S.C. 552a(k)(1) and/or (5).

DOT/OST 037

SYSTEM NAME:

Records relating to Applications for Senate Confirmation of Proposed Executive Appointments to the Department of Transportation.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, DOT, Office of the Secretary, OST, Office of the Assistant General Counsel for Environmental, Civil Rights and General Law, 400 7th Street, SW., Room 10102, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals nominated for top executive positions of the Department of Transportation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Financial data and biographical data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. 101, Executive Order 12731, and regulations of the Office of Government Ethics.

PURPOSE(S):

Data submitted to the General Counsel as reviewing official by subject individual for use by the Senate Commerce Committee to determine if there would be a conflict of interest, or the appearance of a conflict of interest, in subject's appointment to the Department of Transportation.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Legal sized documents located in locked safe.

RETRIEVABILITY:

Individual names filed alphabetically.

SAFEGUARDS:

Physical security consists of filing records in safe; data released to Senate Commerce Committee and authorized officials only of the Department.

RETENTION AND DISPOSAL:

Records are retained for 6 years then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Mailing Address: Deputy General Counsel, C–2, United States Department of Transportation, and Washington, DC 20590. Office Location: 400 7th Street, SW., Room 10428.

NOTIFICATION PROCEDURE:

Inquiries may be addressed to the Deputy General Counsel at the address above, either in person or in writing. If written the individual must provide a notarized signature.

RECORD ACCESS PROCEDURES:

Access to records requires the individual to contact in person or write the Deputy General Counsel.

CONTESTING RECORD PROCEDURES:

Contest of a record is also through the Deputy General Counsel.

RECORD SOURCE CATEGORIES:

Subject individual provides Documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/OST 041

SYSTEM NAME:

Correspondence Control Mail, CCM.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, Office of the Secretary, OST, Executive Secretariat, 400 7th Street, SW., Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who write, or are referred in writing by a second party, to the Secretary, Deputy Secretary, Deputy Under Secretary, and their immediate offices. Individuals who are the subject of an action requiring approval or action by one of the forenamed, such as appeal actions, training, awards, foreign travel, promotions, selections, grievances, and discipline.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence submitted by, or on behalf of, an individual, including resumes, letters of reference, etc. Responses to such correspondence. Staff recommendations on actions requiring approval or action by one of the forenamed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 CFR 1.23(j).

PURPOSE(S):

The purpose of the system is to provide history of correspondence addressed to and signed by the Secretary and Deputy Secretary of Transportation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Referral to the appropriate action office within or outside the Department for preparation of a response. Referral to the appropriate agency for actions involving matters of law or regulation beyond the responsibility of the Department, such as the Civil Service Commission for employee appeals, the Department of Justice in matters of law enforcement, etc. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer disc and—selectively—on microfilm for all records since 1/1/74. In hard copy for all records prior to 1/1/74.

RETRIEVABILITY:

Indexed by name of correspondent, referring individual, and subject category (*e.g.*, "employment" for applicants) from 1/1/74 on. Indexed by name of correspondent prior to 1/1/74.

SAFEGUARDS:

Computer microfilm records, and remote reader terminals, which permit random access to the system records, are locked after office hours. During office hours computer is accessible only through terminals operated by, and under the surveillance of, authorized employees of the Executive Secretary.

RETENTION AND DISPOSAL:

Hard-copy records for 1967–1969 and duplicate microfilms for 1974–1989 are in the custody of National Archives and Records Administration, NARA. Microfilm Records from 1990 and following are retained in the Departmental headquarters building. Records are retired to NARA on a space-needed basis.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Transportation, DOT, Office of the Secretary, OST, Executive Secretariat, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Inquiries should be directed to the System Manager. Helpful information, in addition to the individual's name, includes date(s), subject matter, and addressee(s) of the incoming correspondence, and date(s) and author(s) of the response(s).

RECORD ACCESS PROCEDURES:

Contact System Manager for information on procedures for gaining access to records.

CONTESTING RECORD PROCEDURES:

Contact System Manager for information on procedures for contesting records. Appeals should be directed to the Secretary of Transportation, if request for Modification or deletion is denied.

RECORD SOURCE CATEGORIES:

Correspondence from individual, his representative or sponsor. Responses to incoming correspondence. Related material provided for background as appropriate.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/OST 045

SYSTEM NAME:

Unsolicited Contract or Research and Development Proposals Embodying Claims of Proprietary Rights.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, DOT, Office of the Secretary, OST, Office of the General Counsel, 400 7th Street, SW., Room 10102, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who believe they have original and innovative ideas in the field of transportation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of descriptions of proposed innovations or inventions and methods of carrying out the proposal. Evaluations by Patent Counsel of the adequacy and propriety of restrictive markings on the proposals and correspondence of the Patent Counsel pertaining thereto.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 322.

PURPOSE(S):

Used as a record of Patent Counsel's action in individual unsolicited proposal cases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders stored in file cabinets (Conserv-a-File).

RETRIEVABILITY:

Indexed individually by name and subject in alphabetical sequence.

SAFEGUARDS:

Records are disclosed only in accordance with the terms of restrictive markings agreed upon between submitter and DOT.

RETENTION AND DISPOSAL:

Transfer to storage when three years old; Destroy after six years.

SYSTEM MANAGER(S) AND ADDRESS:

Mailing Address: Patent Counsel, C–15, United States Department of Transportation, Washington, DC 20590. Office Location: 400 7th Street, SW., Room 10102.

NOTIFICATION PROCEDURE:

Apply to "System manager."

RECORD ACCESS PROCEDURES:

Apply to "System manager."

CONTESTING RECORD PROCEDURES:

Same as "Record access procedure."

RECORD SOURCE CATEGORIES:

Forwarded by individual or by the DOT office to whom unsolicited proposal was addressed.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/OST 046

SYSTEM NAME:

Visit Control Records System.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, Transportation Administrative Service Center (TASC), Security Operations, SVC–150, 400 7th Street, SW., Room 10401, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DOT employees, Industrial Security contractor employees, non-employee visitors to DOT facilities during security hours.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record of clearance certification (level, date granted and basis) on employees to visit facilities or attend meetings involving classified

information. Record of security clearance data for visitors to DOT facility from other agencies and from contractors. Record of individuals other than employees who are authorized access to DOT facilities during security hours.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 49 U.S.C. 322.

PURPOSE(S):

Maintain a record of clearances for individuals attending classified meetings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Confirming to the proper authorities the security clearance for individuals requiring access to classified information; identifying individuals authorized to be present in DOT facilities. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored in an alarm-secured area in a locked Lek-Triever file.

RETRIEVABILITY:

By name.

SAFEGUARDS:

Stored in locked room with proprietary lock, available only to authorized staff members.

RETENTION AND DISPOSAL:

Maintained until expiration of visit, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Principal, TASC Security Operations, SVC–150, Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

Security clearance information furnished by personnel security officers. Visit data furnished by individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/OST 056

SYSTEM NAME:

Garnishment Files.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, DOT, Office of the Secretary, OST, Office of the General Counsel, Office of the Assistant General Counsel for Environmental, Civil Rights and General Law, 400 7th Street, SW., Room 10102, Washington, DC 20590 and Office of the Chief Counsel of employing DOT agency.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the, DOT, including members of the Coast Guard, whose pay is sought to be attached under section 459 of the Social Security Act, 42 U.S.C. 659, for alimony or child support, or under 5 U.S.C. 5520a, for commercial debt.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and court orders, and copies thereof, concerning attachment of employees' pay.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 659; 5 U.S.C. 5520a.

PURPOSE(S):

Used as record of garnishments and Garnishment Attorney's action thereon.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders stored in the Garnishment Attorney's office.

RETRIEVABILITY:

Indexed individually by name in alphabetical order.

SAFEGUARDS:

Records are disclosed only to individuals with established legal interest or legal "need to know."

RETENTION AND DISPOSAL:

Retained for as long as the attachment of pay continues and thereafter as needed for precedential value.

SYSTEM MANAGER(S) AND ADDRESS:

Mailing Address: Garnishment Attorney, C–10, United States Department of Transportation, Washington, DC 20590. Office Location: 400 7th Street, SW., Room 10102.

NOTIFICATION PROCEDURE:

Apply to "System manager."

RECORD ACCESS PROCEDURES:

Apply to "System manager."

CONTESTING RECORD PROCEDURES:

Apply to "System manager."

RECORD SOURCE CATEGORIES:

Data are obtained from state courts and agencies, private attorneys, custodians of children of DOT employees, and federal pay records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/OST 057

SYSTEM NAME:

Honors Attorney Recruitment Files, DOT/OST.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, DOT, Office of the Secretary, OST, Office of the General Counsel, 400 7th Street, SW., Room 10428, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Third-year law students and recent law school graduates.

CATEGORIES OF RECORDS IN THE SYSTEM:

Resumes, transcripts, copies of Personnel Form 171. Authority for maintenance of the system: 49 U.S.C. 323.

PURPOSES:

Used by General Counsel, Chief Counsels, and their staffs in filling job vacancies for attorneys.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders in file cabinets.

RETRIEVABILITY:

Indexed individually by name in alphabetical order.

SAFEGUARDS:

Records are disclosed only to individuals who have legal interests in the records or a legal need-to-know.

RETENTION AND DISPOSAL:

Retained at system location for 5 years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Mailing Address: Special Assistant to the General Counsel, C–4, United States Department of Transportation, Washington, DC 20590. Office Location: 400 7th Street, SW., Room 10428.

NOTIFICATION PROCEDURE:

Contact the "System manager."

RECORD ACCESS PROCEDURES:

Contact the "System manager."

CONTESTING RECORD PROCEDURES:

Same as "Record access procedure."

RECORD SOURCE CATEGORIES:

Law students, recent law school graduates, General Counsel, Chief Counsels and their staffs.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/OST 059

SYSTEM NAME:

Files of the Board for Correction of Military Records, BCMR, for the Coast Guard.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, DOT, Office of the Secretary, OST, Office of the General Counsel, Board for Correction of Military Records, 400 7th Street, SW., Room 4100, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed applications for relief before the Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications and related documents, Board decisions, and official military records of applicants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1552.

PURPOSE:

Used by the Chairman, the Board, the Executive Secretary, and Staff in determining whether to grant relief to applicants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by the Coast Guard in presenting its views to the Board concerning pending cases. Also used by applicant and his representative. Used by the General Counsel and his/her staff in determining whether to approve decisions of the Board. See Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders stored in file cabinets.

RETRIEVABILITY:

Indexed individually by name in one of two alphabetical sequences representing pending and closed cases. Also indexed by docket number. Pending cases filed by docket number; closed cases filed alphabetically.

SAFEGUARDS:

Records are disclosed only to the applicant, his representative, interested members of Congress, and the Coast Guard.

RETENTION AND DISPOSAL:

Transfer of official military record of individual separated from service to Federal Records Center when case closed; transfer of official military record of Active or Reserve member to Coast Guard Headquarters when case closed; retention of application file in all cases.

SYSTEM MANAGER(S) AND ADDRESS:

Mailing Address: Executive Secretary, Board for the Correction of Military Records, C–60, United States Department of Transportation, Washington, DC 20590. Office Location: 400 7th Street, SW., Room 4100.

NOTIFICATION PROCEDURE:

Apply to "System manager."

RECORD ACCESS PROCEDURES:

Apply to "System manager."

CONTESTING RECORD PROCEDURES:

Same as "Record access procedure."

RECORD SOURCE CATEGORIES:

United States Coast Guard, Veterans Administration, individual applicants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/OST 100

SYSTEM NAME:

Investigative Record System.

SECURITY CLASSIFICATION:

Unclassified—sensitive.

SYSTEM LOCATION:

Office of Inspector General, DOT/OST, 400 Seventh Street, SW., Washington, DC 20590. OIG Regional Offices in Baltimore, MD; Atlanta, GA; Chicago, IL; Fort Worth, TX; San Francisco, CA; and New York, NY; and Federal Records Center (FRC), Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former DOT employees, DOT contractors and employees as well as grantees, sub-grantees, contractors, subcontractors and their employees and recipients of DOT monies, and other individuals or incidents subject to investigation within the purview of the Inspector General Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Results of investigations and inquiries conducted by Inspector General, OST; reports of investigations conducted by other departmental, Federal, state, and local investigative agencies which relate to the mission and function of the Inspector General; reports and indices relating to "hotline" complaints; and investigative case index card files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, 5 U.S.C. App.

PURPOSE(S):

Document the administration of investigations and inquiries conducted under of the Inspector General Act of 1978.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information contained in the Investigative Records System is collected and maintained in the administration of the Inspector General Act of 1978 (Pub. L. 95–452) to investigate, prevent, and detect fraud and abuse in departmental programs and operations. Material gathered is used for prosecutive, civil, or administrative actions. These records may be disseminated, depending on jurisdiction to: DOT Officials in the administration of their responsibilities; other Federal, State, local, or foreign agencies or administrations, having interest or jurisdiction in the matter. See also Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper records in case folders in manual filing system and on index cards.

RETRIEVABILITY:

By name or incident title.

SAFEGUARDS:

Investigative files and case index files are maintained in several spaces with appropriate access controls. Access to investigative files is restricted to authorized personnel on a "need to know" basis.

RETENTION AND DISPOSAL:

Investigative material is destroyed by secure means used for classified materials. Central OIG investigative files are maintained in OIG Headquarters, from where the files are transferred to the FRC Washington, DC, at prescribed intervals and destroyed in accordance with the following schedule:

Lead Cases. Case files and temporary contents are destroyed 180 days after transmittal of the investigative report and permanent case documents to the case control office.

Official Case Folders. Official Investigative Case Folders are maintained for a period of 2 years in OIG Headquarters upon completion of legal or administrative action and transferred to the FRC Washington, DC, where they are held and destroyed 10 years from the date of receipt by FRC Washington, DC.

Investigative and Hotline Indices. Destroyed 20 years after date of creation.

OIG Hotline Files. Transferred to FRC Washington, DC, 2 years after completion of legal or administrative action. Destroyed 10 years from date of receipt by FRC Washington, DC.

General Investigative and Hotline Files. Retained in OIG Headquarters and Field Offices. Destroyed when 5 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General for Investigations, JI–1, Office of Inspector General, Department of Transportation, 400 Seventh Street, SW., Room 9210, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

These records contain information obtained from interviews, review of records and other authorized investigative techniques.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigative data compiled for law enforcement purposes may be exempt from the access provisions pursuant to 5 U.S.C. 552a (j)(2), (k)(1), or (k)(2).

DOT/OST 101

SYSTEM NAME:

Transportation Inspector General Reporting System, TIGR.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Office of Inspector General, DOT/OST, 400 Seventh Street, SW., Washington, DC 20590

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All active employees of the OIG, with history data on previous employees maintained for 2 years. Present and former DOT employees, DOT contractors and employees as well as grantees, subgrantees, contractors, subcontractors and their employees and recipients of DOT monies, and other individuals or incidents subject to investigation within the purview of the Inspector General Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's current position and employment status, assignments, travel, experience, training, with the following personal data: Name, social security account number, date of birth, service computation date, career status, address, assigned station, job series, education, grade, minority status, and personnel transaction date. Investigative information consists of investigation targets' name and social security account number, organization name, type of investigation, offense data, source of referral data and action taken.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, 5 U.S.C. App.

PURPOSE(S):

The purpose of the system is to provide individuals with a need to know with specific information related to (1) time and attendance of employees; (2) workload status reports; (3) security clearance alerts; (4) travel information, etc.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Security clearance notification alerts may be provided to an examined activity in advance of visits by OIG personnel if information to be examined requires a secret clearance or above; (2) time and attendance reports will be used to track temporary duty travel frequency and duration, to categorize indirect time for periodic reports, and to accrue staff hour data on assigned projects; (3) planned annual leave reporting will be used by various managers for workload planning and travel scheduling; (4) assignments information and workload status information will be used by managers to control audits and investigations, and to maximize effectiveness of staff resources; (5) miscellaneous personnel information will be used by staff managers to determine training needs, promotional eligibility, education and background, and professional organization participation; (6) information will be used to produce resource management reports; (7) travel information will be used by managers to control temporary duty travel, travel costs and issuances of travel orders; and (8) investigative information is collected and maintained in the administration of the Inspector General Act of 1978 (Pub. L. 95–452) to investigate, prevent, and detect fraud and abuse in departmental programs and operations. Material gathered is used for investigative case management. See also Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Active reports on magnetic disk, with backup active records and inactive records maintained on magnetic tape.

RETRIEVABILITY:

Records will be retrievable through employee social security number, by name, or incident title, with selected records having certain secondary keys consisting of certain other data elements, listed in the "Categories of Records in the System."

SAFEGUARDS:

(1) Records will be maintained in a private library not accessible by any unauthorized user; (2) authorized user identification codes will be tied to multiple password system to afford additional protection; (3) any attempt to bypass the password protection system will result in "Log-Off" from the system or denial of access to data if access to system is authorized; (4) physical access

to system documentation, hardcopy printouts, personal data files, and terminals will be restricted to authorized personnel by maintaining a secure environment in the headquarters office; (5) access to data will be restricted to those who require it in the performance of their official duties and the individual who is the subject of the record (or authorized representative); and (6) tape files will be maintained in an environmentally secure vault area when not in use.

RETENTION AND DISPOSAL:

Records will be maintained for 2 years after they become inactive. All inactive records will be maintained on magnetic tape within the computer center and will be afforded the same safeguards as active records. Machine-resident records will be destroyed at the end of the 2-year period. Hard copy records will be retained until the records are replaced or become obsolete.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Information Resource Management, JM–10, Office of Inspector General, Department of Transportation, 400 7th Street, SW., Room 7117, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

(1) Official personnel folder; (2) other personnel documents; (3) activity supervisors; (4) individual applications and forms; and (5) information obtained from interviews, review of records and other authorized investigative techniques.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigative data compiled for law enforcement purposes may be exempt from the access provisions pursuant to 5 U.S.C. 552a(j)(2), (k)(l), or (k)(2).

DOT/RSPA 02

SYSTEM NAME:

National Defense Executive Reserve, NDER, File.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Some records are held only in the Office of Emergency Transportation while others are held at various locations in the custody of officials in the several regions, as indicated in the paragraph labeled "Categories of records" below. Holdings of the Regional Directors-designate and Deputy Directors-designate are partial duplications of the Regional Emergency Transportation Coordinator, RETCO, files and may be accessed through the applicable RETCO. The RETCO and the Regional Emergency Transportation Representative, RETREP, for each region may be contacted directly at the addresses shown below. The Regional Director-designate and Deputy Director-designate for each region may be contacted by addressing mail in care of the RETCO for that region at the address shown in the following list: Regions 1 and 2, First Coast Guard District, 408 Atlantic Avenue, Boston, MA 02110. Region 3, Federal Highway Administration, 10 South Harvard Street, Suite 4000, Baltimore, MD 21201. Region 4, Federal Aviation Administration Southern Region, PO Box 20636, Atlanta, GA 30320. Region 5, Federal Highway Administration, 19900 Governors Drive, Suite 301 Olympia fields, IL 60461 Region 6, Federal Aviation Administration Southwest Region, 2601 Meacham Blvd., Ft. Worth, TX 76137–4298. Region 7, Federal Highway Administration, P.O. Box 419715, Kansas City, MO 64141. Region 8, Federal Highway Administration, 555 Zang Street, Room 400, Denver, CO 80225. Region 9, Pacific Area United States Coast Guard, Coast Guard Island, Alameda, CA 94501. Region 10, 13th Coast Guard District, Federal Bldg., Rm. 3590, 915 Second Ave., Seattle, WA 98174Alaska Region, Federal Aviation Administration Alaskan Region, 222 W 7th Ave., #14, Anchorage, AK 99513. Emergency Facilities Liaison Officer, FAA Records Center, West King Street and South Maple Avenue, Martinsburg, WV 25401.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Upper, middle, and lower management members of the transportation industry, university professors, lawyers, labor leaders, and businessmen who are candidates for membership in NDER, active members of NDER, or who are former members whose membership has been terminated by death, resignation or involuntary release, and emeritus members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel and security forms completed by individuals consisting of applications, statements of understanding by employers, security and identification data from individuals, certificates of appointment and reappointment and a personal data sheet for each Reservist which presents a summary of pertinent data including a photograph.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Defense Production Act of 1950 and Executive Order 11179.

PURPOSE(S):

This is a government-wide program to recruit and train a cadre of volunteer executives from the private sector to serve in key Federal management positions during periods of national defense emergencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Internal personnel management of the NDER for the Department of Transportation, which includes staff action and exchange of data with the Office of the Director, Federal Emergency Management Agency, who is responsible for the entire National Defense Executive Reserve Program. These records are available to the Secretary, any Secretarial Officer, Head of an Operating Administration, or their designated subordinates who require access in the pursuit of their duties, to the Director and staff of OET, and the RETCOs and their staff.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Individual records are maintained in a manual system in a locked file room consisting of a filing jacket with the individual's name tabbed and containing all papers pertaining to him or her, except the following, which are maintained as stated. Mailing lists are maintained using a personal computer.

RETRIEVABILITY:

Indexed alphabetically by name. Retrieved manually.

SAFEGUARDS:

Maintained in metal file containers or other standard office equipment.

RETENTION AND DISPOSAL:

Held for five years from date of separation and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Research and Special Programs Administration (DPB–30), Director of Emergency Transportation, Department of Transportation (Room 8330), Washington, DC 20590.

NOTIFICATION PROCEDURE:

Inquiries may be addressed to any of the offices and officials listed under "System locations". Individuals requesting such information must sign the request personally and include in the text of the request suitable identification. Alternatively, personal visits to the above locations with presentation of suitable identification will enable individual to learn of and have access to his or her record.

RECORD ACCESS PROCEDURES:

Individual may secure or obtain information on procedures for gaining access to records by (1) referral to the information sheet issued to him or (2) addressing a written query to the offices cited under 'System location' above (except the Emergency Facilities Liaison Officer, FAA Records Center, West King Street and South Maple Avenue, Martinsburg, WV 25401, which maintains duplicate files in storage only) or (3) presenting himself or herself in person to those offices.

CONTESTING RECORD PROCEDURES:

Same as "Record access procedures."

RECORD SOURCE CATEGORIES:

Personal data submitted by the individual; data from his or her employer; recommendations for the system: Investigative data compiled for law enforcement purposes may be exempt from access pursuant to 5 U.S.C. 552a (j)(2), (k)(1), or (k)(2). From colleagues; mailing data from existing distribution system.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/RSPA 04

SYSTEM NAME:

Transportation Research Activities Information Service, TRAIS.

SECURITY CLASSIFICATION:

Unclassified, Sensitive

SYSTEM LOCATION:

Department of Transportation, DOT, Research & Special Programs Administration, RSPA, Transportation Systems Center, TSC, Kendall Square, Cambridge, MA 02142.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Program/Project Managers and research investigators.

CATEGORIES OF RECORDS IN THE SYSTEM:

Notification of Technical Research and Development.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 112(d)(3).

PURPOSE(S):

To maintain information concerning on-going and completed research and development accomplishments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information on on-going and completed research and development accomplishments. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer disc storage and magnetic tape.

RETRIEVABILITY:

Retrievable by keywords and unique accession number assigned by Data Base Administrator; batch process or on-line interaction.

SAFEGUARDS:

Physical security—user identification and passwords.

RETENTION AND DISPOSAL:

Up to three-year retention and then tape is reused which destroys previous data.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Transportation Research Activity Information Services Branch, TST–25.1, Department of Transportation, Office of the Secretary, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

Contract Awards from Contracting Offices, Publication of Technical Report.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/RSPA 05

SYSTEM NAME:

Transportation Research Information Service On Line, TRIS-On-Line.

SECURITY CLASSIFICATION:

Unclassified, Sensitive.

SYSTEM LOCATION:

Department of Transportation, DOT, Office of the Secretary, OST, System physically located at the: Battelle Laboratories, Columbus, OH.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Program/Project Managers and authors of reports.

CATEGORIES OF RECORDS IN THE SYSTEM:

Notification of technical research and technical reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 112(d)(3).

PURPOSE(S):

To maintain information concerning on-going and completed research and development accomplishments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information on on-going and completed research and development accomplishments. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer disc storage and magnetic tape.

RETRIEVABILITY:

Retrievable by keywords and accession number assigned by Data Base Administrator, batch or on-line interaction.

SAFEGUARDS:

Physical security—User identification keywords and passwords.

RETENTION AND DISPOSAL:

Up to five-year accessibility, tape goes to archival storage.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Transportation Research Information Services Branch, TST–25.1, Department of Transportation, Office of the Secretary, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Same as "System manager."

RECORD ACCESS PROCEDURES:

Same as "System manager."

CONTESTING RECORD PROCEDURES:

Same as "System manager."

RECORD SOURCE CATEGORIES:

Contract awards received from Contracting Offices, Publication of Technical Reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/RSPA 06

SYSTEM NAME:

Emergency Alerting Schedules.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

These records are located in the national headquarters of the Offices of the Secretary; the heads of operating administrations, regional offices of the Regional Emergency Transportation Coordinators, the Regional Administrators, Directors and Commanders of the operating administrations and in headquarters of operating administrations divisions, district commands, and other field offices of the Department.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Professional and clerical employees and military members of the United States Government, Directors—designate and Deputy Directors—designate and members of the National Defense Executive Reserve who have been given emergency billet assignments within the Department of Transportation Emergency Structure.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Alerting Charts and Schedules show names and office and home telephone numbers of individuals in calling sequence and are listed by national headquarters and by regional offices; also contain similar listings designed for management convenience within DOT and the operating elements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

DOT Order 1910.2C, dated May 1980.

PURPOSE(S):

A team of individuals who can carry out the essential functions of the Department of Transportation if the need arises.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

For identification of individuals required to ensure viability of DOT in the immediate preattack—transattack—postattack period of a national defense emergency. Available to the Secretarial Officers, heads of operating administrations or designated subordinates (national and regional) and to individuals listed. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Publication is maintained in stock, in listings in each office of record, and in standard filing equipment in locked file rooms.

RETRIEVABILITY:

Manually by position listing.

SAFEGUARDS:

Metal file containers or other standard office equipment secured in a locked file room during office duty hours.

RETENTION AND DISPOSAL:

Retained until republished then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Emergency Transportation, DET–1, Department of Transportation, Research and Special Programs Administration, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Inquiries may be addressed to any of the offices listed under "System Locations." Individuals requesting such information must sign the request and include suitable identification. Alternatively, personal visits to the above locations with presentation of the above credentials will enable individual to learn of and have access to his or her record.

RECORD ACCESS PROCEDURES:

Individual may secure or obtain information on procedures for gaining access to records by (1) referral to the information sheet issued to him or (2) addressing a written query to the offices cited under System Location, (except the Facility Manager, FAA Records Center, West King Street and South Maple Avenue, Martinsburg, WV 25401, who maintains duplicate files in storage only) or (3) presenting himself to those offices.

CONTESTING RECORD PROCEDURES:

Same as "Record access procedures."

RECORD SOURCE CATEGORIES:

Office or Agency of employment.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/RSPA 08

SYSTEM NAME:

Technical Pipeline Safety Committees for Natural Gas and Hazardous Liquid.

SECURITY CLASSIFICATION:

Unclassfied, sensitive.

SYSTEM LOCATION:

Department of Transportation, DOT, Research and Special Programs Administration, Office of Pipeline Safety, 400 7th Street, SW., Room 2335, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of Technical Pipeline Safety Standards Committee. Members of Technical Hazardous Liquid Pipeline Safety Standards Committee. Intermittent consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical data in support of member's nomination.

Letters announcing member's appointment/reappointment. Personnel Actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 CFR Parts 190 through 195

PURPOSE(S):

To provide a guiding group to ensure that the interests of all pipeline stakeholders are represented, for providing a forum for discussing program plans and activities of the Office of Pipeline Safety.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General reference purposes for support functions.

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In file folders.

RETRIEVABILITY:

Alphabetically by name within subject area.

SAFEGUARDS:

Room locked after hours, most information is public knowledge.

RETENTION AND DISPOSAL:

Kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Advisory Committee Executive Director, Department of Transportation,

Office of Pipeline Safety, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Address inquiries to System manager including individual's name.

RECORD ACCESS PROCEDURES:

Information may be obtained from the System manager.

CONTESTING RECORD PROCEDURES:

Same as for Access above.

RECORD SOURCE CATEGORIES:

Biographical Information (DOT Form F 1120.1) Travel Vouchers (SF 1012). Certificate of Consultant's Services. Press Releases. Administrative Correspondence/Memorandums.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/RSPA 09

SYSTEM NAME:

Hazardous Materials Incident Telephonic Report System.

SECURITY CLASSIFICATION:

Sensitive.

SYSTEM LOCATION:

United States Department of Transportation, The John A. Volpe National Transportation Systems Center Kendall Square, Cambridge, MA 02142

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals included in the system are those making telephonic reports, either as a private citizen or as a representative of the company involved, to the National Response Center, NRC, operated by the USCG or to the EPA or to the USCG Office of Marine Safety, Security & Environmental Protection, OMSSEP, of certain releases of hazardous materials. The system may also contain information on individuals affected by reported incidents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of telephonic reports of incidents involving the release of hazardous materials or environmental pollutants received by the NRC acting on behalf of the Research and Special Programs Administration, RSPA, the USCG, and/or the EPA, or made by or to the EPA or the OMSSEP USCG.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 CFR 191.5 and 195.52.

PURPOSE(S):

To provide early notification of hazardous liquid and natural gas pipeline releases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To disclose pertinent information to Federal, state, and local governmental agencies responsible for responding to incidents involving the release of hazardous materials to assist in efforts to protect life, health, safety, and environmental conditions; to enforce related Federal, state, and local regulations; or to evaluate or develop regulatory programs. To disseminate information on the transportation of hazardous materials to industrial, commercial, educational, scientific, research, or private entities to assess trends, risks, consequences, or other potentialities associated with the release of hazardous materials during transportation, or to analyze factors affecting hazardous materials incidents. To disseminate information to the public media for use in informing the public of issues related to the transportation of hazardous materials. The general routine uses in the prefatory statement apply to these records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on magnetic media.

RETRIEVABILITY:

Records are retrievable by all entered fields including the names of individuals included in the record.

SAFEGUARDS:

Access to all computer files is controlled through user-name/password access procedures. The computer on which data is recorded is maintained in an access-controlled room in an access-controlled building.

RETENTION AND DISPOSAL:

Records are retained permanently on magnetic disk or tape.

SYSTEM MANAGER(S) AND ADDRESS:

For records collected by the Office of Hazardous Materials Transportation, RSPA, pursuant to 49 CFR 171.15: Information Systems Manager, Office of Hazardous Materials Transportation, DHM–63, Research and Special Programs Administration, United States Department of Transportation, Washington, DC 20590.

For records collected by the Office of Pipeline Safety, RSPA, pursuant to 49 CFR 191.5, 49 CFR 195.52, 49 CFR 192.612, and 49 CFR 195.413: Information Resources Manager, Office of Pipeline Safety, DPS–21, Research and Special Programs Administration, United States Department of Transportation, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Inquiries should be directed to the appropriate system manager at the given address.

RECORD ACCESS PROCEDURES:

Contact the appropriate system manager at the given address for information on procedures for gaining access to records.

CONTESTING RECORD PROCEDURES:

Same as record access procedures.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the individuals covered by this system; companies; Federal, state, and local governmental agencies; and other entities reporting releases of hazardous materials that occurred during transportation or that affect the environment.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/RSPA 10

SYSTEM NAME:

Hazardous Materials Incident Written Report System.

SECURITY CLASSIFICATION:

Unclassified, Sensitive.

SYSTEM LOCATION:

United States Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC, 20590, United States Department of Transportation, The John A. Volpe National Transportation Systems Center, Kendall Square, Cambridge, MA 02142.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals included in the system are those affected by releases of hazardous materials during transportation (including transportation by pipeline) whose names and other personal information may have been included in narrative descriptions of the incident.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of incidents involving the release of hazardous materials during transportation (including transportation by pipeline) submitted by the carrier pursuant to 49 CFR 171.16, 191.9, 191.15, 195.54, and 195.58.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 CFR 191.9 through 191.27 and 195.54, 195.55.

PURPOSE(S):

To provide written reports for hazardous liquid and natural gas pipeline releases, and annual reports for natural gas pipeline operator total mileage and description of operator's system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To disclose pertinent information to Federal, state, and local governmental agencies responsible for oversight of incidents involving the release of hazardous materials to assist in efforts to protect life, health, and safety; to enforce related Federal, state, and local regulations; or to evaluate or develop regulatory programs. To disseminate information on the transportation of hazardous materials to industrial, commercial, educational, scientific, research, or private entities to assess trends, risks, consequences, or other potentialities associated with the release of hazardous materials during transportation, or to analyze factors affecting hazardous materials incidents. To disseminate information to the public media for use in informing the public of issues related to the transportation of hazardous materials. The general routine uses in the prefatory statement apply to these records.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on magnetic disk. Duplicate paper, microfilm or electronic image copies are also retained by RSPA in file cabinets.

RETRIEVABILITY:

Computer records are retrievable by all entered fields including the name of individuals included in the record. Paper, microfilm, and electronic image copies are not retrievable by individual name or other personal identifier except through use of the search capabilities of the computer records.

SAFEGUARDS:

Access to all computer and electronic images are controlled through user-name/password access procedures. The computer on which data is recorded is maintained in an access-controlled room in an access-controlled building. Paper and microfilm copies are stored in a room locked during non-duty hours.

RETENTION AND DISPOSAL:

Records are retained permanently on magnetic disk or tape. Paper or microfilm copies are also retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

For records collected by the Office of Hazardous Materials Transportation, RSPA, pursuant to 49 CFR 171.16: Information Systems Manager, Office of Hazardous Materials Transportation, DHM–63, Research and Special Programs Administration, United States Department of Transportation, Washington, DC 20590. For records collected by the Office of Pipeline Safety, RSPA, pursuant to 49 CFR 191.9, 191.15, 195.54, or 195.58: Information Resources Manager, Office of Pipeline Safety, DPS–21, Research and Special Programs Administration, United States Department of Transportation, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Inquiries should be directed to the appropriate system manager at the given address.

RECORD ACCESS PROCEDURES:

Contact the appropriate system manager at the given address for information on procedures for gaining access to records.

CONTESTING RECORD PROCEDURES:

Same as "Record access procedures."

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by individuals acting on behalf of the carriers that experience releases of hazardous materials during transportation (including transportation by pipeline).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/RSPA 11

SYSTEM NAME:

Hazardous Materials Information Requests System.

SECURITY CLASSIFICATION:

Unclassified, Sensitive.

SYSTEM LOCATION:

United States Department of Transportation, Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC 20590; United States Department of Transportation, The John A. Volpe National Transportation Systems Center, Kendall Square, Cambridge, MA 02142.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals included in the system are those requesting information from the Hazardous Materials Information Systems, HMIS, or requesting the Research and Special Programs Administration, RSPA, publication, North American Emergency Response Guidebook.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of requests for information from governmental, commercial, or public media entities, or from private citizens.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 CFR Parts 191.9 through 191.27 and 195.54, 195.55.

PURPOSE(S):

To provide written reports for hazardous liquid and natural gas pipeline releases, and annual reports for natural gas pipeline operator total mileage and description of operator's system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to requests for information maintained on the hazardous Materials Information System; to control the handling of such responses; and to provide statistical information on the offices' responsibility for responding to such requests. To disseminate information concerning the availability of the North American Emergency Response Guidebook or revisions to it to interested parties in order to ensure that users of the Guidebook have the most current available guidance information. The general routine uses in the prefatory statement apply to these records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on magnetic disk. Duplicate paper copies of recent reports are retained by RSPA offices in file folders.

RETRIEVABILITY:

Computer records are retrievable by all entered fields including the names of individuals included in the record. Paper copies are not retrievable by individual name or other personal identifier except through use of the search capabilities of the computer records.

SAFEGUARDS:

Access to all computer files is controlled through user-name/password

access procedures, which limit access to the files to authorized agency personnel and to contract personnel whose duties directly involve the creation and use of these files. The computer on which data is recorded is maintained in an access-controlled room in an access-controlled building. Paper copies are stored in a room locked during non-duty hours.

RETENTION AND DISPOSAL:

Records are retained permanently on magnetic disk or tape. Paper copies are retained according to need in a room locked during non-duty hours, and disposed of as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

For records maintained by the Office of Hazardous Materials Transportation, RSPA: Information Systems Manager, Office of Hazardous Materials Transportation, DHM–63, Research and Special Programs Administration, United States Department of Transportation, Washington, DC 20590.

For records maintained by the Office of Pipeline Safety, RSPA: Information Resources Manager, Office of Pipeline Safety, DPS–21, Research and Special Programs Administration, United States Department of Transportation, Washington, DC 20590.

NOTIFICATION PROCEDURE:

Inquiries should be directed to the appropriate system manager at the given address.

RECORD ACCESS PROCEDURES:

Contact the appropriate system manager at the given address for information on procedures for gaining access to records.

CONTESTING RECORD PROCEDURES:

Same as record access procedures.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by individuals, companies, and other entities requesting information from the HMIS or copies of the Emergency Response Guidebook.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/SLS 151

SYSTEM NAME:

Claimants Under Federal Tort Claims Act.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of the Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Room 5424, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals presenting claims for damages to personal property, or personal injuries, or death resulting in connection with Corporation activities, other than claims by Federal Government employees under Federal Employees' Compensation Act (5 U.S.C. 8102).

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim documents on which are recorded name, address, age and marital status of claimants and details of claims, documented evidence relevant to the claims provided by claimants, and relevant, internal Corporation investigation documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 28 U.S.C. 2675 and 33 U.S.C. 5984(a)(4).

PURPOSE(S):

Information will be used in evaluating claims. Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by Chief Counsel and other Federal government officials to determine allowability of claims. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders.

RETRIEVABILITY:

Records are retrieved by name.

SAFEGUARDS:

Records are kept in locked file cabinets and are accessible only to the Chief Counsel and persons authorized by him.

RETENTION AND DISPOSAL:

Records are retained indefinitely since they are not extensive and are used for reference.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Room 5424, Washington, DC 20590.

NOTIFICATION PROCEDURES:

An individual may inquire, in writing, to the system manager.

RECORD ACCESS PROCEDURES:

An individual may gain access to his/her records by written request to:

Chief Counsel, Saint Lawrence Seaway Development Corporation, PO Box 44090, Washington, DC 20026–4090.

CONTESTING RECORD PROCEDURES:

Contest of these records will be directed to the following: Director, Office of Finance, Saint Lawrence Seaway Development Corporation, PO Box 520, Massena, NY 13662–0520.

RECORD SOURCE CATEGORIES:

Information is obtained directly from claimants on Standard Form 95 and supporting documentation provided by claimants and relevant, internal Corporation investigation documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/SLS 152

SYSTEM NAME:

Data Automation Program Records.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Saint Lawrence Seaway Development Corporation, Office of Finance, PO Box 520, 180 Andrews Street, Massena, N.Y. 13662–0520.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payroll and leave records, work measurement records, and travel vouchers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 44 U.S.C. 3101, 33 U.S.C. 984(a)(4)

PURPOSE(S):

This system integrates leave, payroll, work measurement, and travel Voucher records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

1. Payroll and voucher disbursement: GAO audits. 2. To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services Federal Parent Locator System, FPLS, and Federal Tax Offset System for use in locating individuals and identifying their income sources to establish paternity, Establish and modify orders of support and for enforcement action.

3. To the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security Numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement. 4. To Office of Child Support Enforcement for release to the Department of the Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return. 5. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to 'consumer reporting agencies' (collecting on Behalf of the United States Government) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape reels, diskettes, microfilm cassettes and supporting documents.

RETRIEVABILITY:

Records are retrieved by name and social security number.

SAFEGUARDS:

Records are kept in locked file cabinets or locked rooms accessible to Appropriate supervisor, his/her immediate assistants and secretary.

RETENTION AND DISPOSAL:

Records are retained in accordance with General Accounting Office and National Archives and Records Administration requirements. System manager(s) and address: Director of Finance, Saint Lawrence Seaway Development Corporation, PO Box 520, 180 Andrews Street, Massena, N.Y. 13662–0520.

NOTIFICATION PROCEDURE:

Individuals may inquire, in writing, to the System manager.

RECORD ACCESS PROCEDURES:

Individuals may gain access to his/her records by submitting a written request to the system manager.

CONTESTING RECORD PROCEDURES:

Contest of these records should be directed to the system manager.

RECORD SOURCE CATEGORIES:

Information contained in this system would come from Saint Lawrence Seaway Development Corporation records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/TSC 700

SYSTEM NAME:

Automated Management Information System.

SYSTEM LOCATION:

Department of Transportation, DOT, Volpe National Transportation Systems Center, Volpe, Computer Center, DTS–23, 55 Broadway, Cambridge, MA 02142–1093.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Volpe employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains job related information associated with the following applications: ADP services, property management, rocurement requests, contract information, travel information, program and related job plans, space utilization, and other pertinent management information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C 328, Volpe Center Working Capital Fund; 5 U.S.C 301.

PURPOSE(S):

For computer facility planning; budget analysis; procurement tracking; contract administration; property control.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The general purposes of this system are intended for internal management and control, including: Computer facility planning. ADP cost distribution. Budget and planning analysis. Procurement tracking. Procurement statistics and analysis. Information of travel incurred. Contract administration. Control of property. Control of building space. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape and disk.

RETRIEVABILITY:

Indexed by employees name, project number, procurement number, contract number, travel number, work plan budget number.

SAFEGUARDS:

Access to the systems and their associated data bank is available through the utilization of the unique project and programmer numbers, and the passwords known only by the authorized custodians. Access to reports is controlled by the Reports Distribution function of the Administrative Directorate on a need-to-know basis. For normal working requirements, the reports are distributed to the functional areas responsible for the data generation. Access to the computer room and its associated areas where data and reports are stored is delineated in the Volpe ADP Facility Document on Safeguards and Controls.

RETENTION AND DISPOSAL:

The systems are permanent unless replaced. The data banks, for the most part, are related to fiscal year activity.

Subsequent to the fiscal year, the data banks become either part of the history file of the system or are maintained by themselves for historical reasons.

Data records are deleted from the data banks on an as-required basis, and subsequently are eliminated from associated reports.

Reports used as daily working papers are retained only until updated reports are produced and then the old reports are discarded. Official closing reports corresponding to month-end and fiscal-year-end periods are retained for longer periods and are not subject to any disposal procedure.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Computer Center, DTS–23, Department of Transportation, Volpe National Transportation Systems Center, 55 Broadway, Cambridge, MA 02142–1093.

NOTIFICATION PROCEDURES:

Information may be obtained from the System manager.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the System manager. An individual may gain access to his/her data by written request.

CONTESTING RECORD PROCEDURES:

Contest of this data will be made to the System Manager. If administrative resolvement is not satisfactory to the individual, appeals may be filed in writing with the Secretary of Transportation addressed to the General

Counsel as follows: Department of Transportation, Office of the Secretary, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590.

RECORD SOURCE CATEGORIES:

Employee, Personnel Office, Communications Office, Security Office.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/TSC 702

SYSTEM NAME:

Legal Counsel Information Files.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, DOT, Volpe National Transportation Systems Center, Volpe, Office of Chief Counsel, DTS–14, 55 Broadway, Cambridge, MA 02142–1093.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former Volpe employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Counseling records relating to Standards of Conduct, post-employment restrictions, or other legal matters involving individual employee(s); individual claims; grievances, personnel actions and related litigation; and employee confidential financial disclosure reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 328, Volpe Center Working Capital Fund; 28 U.S.C. 1346; 28 U.S.C. ch. 171; 5 U.S.C. ch. 77, 5 U.S.C. ch. 71; 42 U.S.C. 2000e–16; 29 CFR part 1614; 5 U.S.C. App. 4.

PURPOSE(S):

To promote compliance with Standards of Conduct, conflict of interest, and other laws, and to enable legal counsel render consistent legal advice.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records and the information they contain may be used for internal management and control, to promote compliance with Standards of Conduct, conflict of interest, and other laws, and to enable legal counsel to render consistent advice in legal matters.

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper record folders.

RETRIEVABILITY:

Indexed by employee's name and/or by subject matter.

SAFEGUARDS:

Records are maintained in locked file cabinets and secure safe.

RETENTION AND DISPOSAL:

As prescribed in applicable record retention schedules.

SYSTEM MANAGER AND ADDRESS:

Chief Counsel, DTS–14, Volpe National Transportation Systems Center, Research and Special Programs Administration, United States Department of Transportation, 55 Broadway, Cambridge, MA 02142–1093.

NOTIFICATION PROCEDURES:

Information may be obtained from the System manager.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the System manager.

An individual may gain access to his/her records by written request.

CONTESTING RECORD PROCEDURES:

An individual may seek to contest information contained in his/her records by written request made to the System Manager. If administrative resolution is not satisfactory to the individual, appeals may be filed in writing with the Secretary of Transportation addressed to the General Counsel as follows: Department of Transportation, Office of the Secretary, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590.

RECORD SOURCE CATEGORIES:

Information contained in this system of records is provided by employees, Supervisors, Legal Office, Personnel Office and various Federal administrative agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/TSC 703

SYSTEM NAME:

Occupational Safety and Health Reporting System.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, DOT, Volpe National Transportation Systems Center, Volpe, Human Resources Management Division, DTS–84, 55 Broadway, Cambridge, MA 02142–1093.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Volpe employees, in-house contractor personnel and visitors who have suffered work-related occupational illnesses, injuries or are involved in Government property accidents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Federal Occupational Injuries and Illnesses Survey form. DOT Accident/Injury Reports, DOT forms 3902.1 through 8. Department of Labor, Office of Workers Compensation Programs, OWCP, for payment of medical bills and worker compensation, as applicable.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 328, Volpe Center Working Capital Fund; Executive Order 12196, Occupational Safety and Health Program for Federal Employees, dated 2/27/80; 5 U.S.C. 7902.

PURPOSE(S):

For accident prevention.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The general purposes of these records are intended for internal management and control, and also for accident prevention.

The routine uses of the Department of Labor forms are for (1) submission to doctors and medical institutions rendering services to individuals and (2) to the Office of Workers Compensation Programs, Department of Labor, for payment of medical bills and worker compensation, applicable. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Forms, computerized database, and other paper records.

RETRIEVABILITY:

Indexed by individual's name.

SAFEGUARDS:

Records are maintained in locked file cabinets and folders are stamped For Official Accident Prevention Use Only.

RETENTION AND DISPOSAL:

Records are retained for five years and then destroyed by shredding.

SYSTEM MANAGER AND ADDRESS:

Chief, Engineering and Operations Branch, DTS–874, Department of Transportation, Volpe National Transportation Systems Center, 55 Broadway, Cambridge, MA 02142–1093.

NOTIFICATION PROCEDURES:

Information may be obtained from the System manager.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the System manager. An individual may gain access to his/her records by written request.

CONTESTING RECORD PROCEDURES:

Contest of this data will be made to the System Manager. If administrative resolution is not satisfactory to the individual, appeals may be filed in writing with the Secretary of Transportation addressed to the General Counsel as follows: Department of Transportation, Office of the Secretary, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590.

RECORD SOURCE CATEGORIES:

Documents provided by the individual concerned and immediate supervisor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/TSC 704

SYSTEM NAME:

Stand-By Personnel Information.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, DOT, Volpe National Transportation Systems Center, Volpe, Financial Management Division, Budget Branch, DTS–821, 55 Broadway, Cambridge, MA 02142–1093.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Volpe technical directorate personnel currently not fully assigned to authorized projects.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee work project status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 328, Volpe Center Working Capital Fund; 5 U.S.C. 301.

PURPOSE(S):

For administrative reference and scheduling of projects, budgeting, and overhead classification.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The general purposes of these files are intended for internal management and control, including administrative reference and scheduling of work projects, budgeting and overhead classification. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic Files in Excel format.

RETRIEVABILITY:

Stored as spreadsheet identified by pay period ending date.

SAFEGUARDS:

Records are maintained in password protected files with access limited to Budget Branch PCs.

RETENTION AND DISPOSAL:

Files are maintained for one (1) additional year following completion of current fiscal year. Files are then deleted.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Budget Branch, DTS–821, Department of Transportation, Volpe National Transportation Systems Center, 55 Broadway, Cambridge, MA 02142–1093.

NOTIFICATION PROCEDURES:

Information may be obtained from the System manager.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the System manager. An individual may gain access to his/her records by written request.

CONTESTING RECORD PROCEDURES:

Contest of this data will be made to the System manager. If administrative resolution is not satisfactory to the individual, appeals may be filed in writing with the Secretary of Transportation addressed to the General Counsel as follows: Department of Transportation, Office of the Secretary, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590.

RECORD SOURCE CATEGORIES:

Supervisor.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/TSC 707

SYSTEM NAME:

Labor Distribution System.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, DOT, Volpe National Transportation Systems Center (Volpe), Financial Management Division, Accounting Branch, DTS–823, 55 Broadway, Cambridge, MA 02142–1093.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Volpe employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains information delineating the time and charges, including fringe and project overhead, that Volpe employees worked. The main association of the time and charges is with employee job assignment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 328, Volpe Center Working Capital Fund; 5 U.S.C. 301.

PURPOSE(S):

For administrative reference, cost management, and labor assignments and expenditures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The general purposes of this system are intended for internal management and control, including:

Administrative reference.

Cost management.

Labor assignments and expenditures as they relate to both the project and the employee.

Reconciliation of Payroll and Labor system data.

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b) (12): Disclosures may be made from this system to consumer reporting agencies (collecting on behalf of the United States Govt.) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 USC 3701 (a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Excel spreadsheets, magnetic tape and disk.

RETRIEVABILITY:

System data is indexed by employee's number (Social Security Number) and Work Plan Budget, WPB, number within Project Plan Agreement, PPA, number.

Labor Distribution Forms (Excel spreadsheets) are indexed by Volpe Center organization code (DTS #) and SSN.

SAFEGUARDS:

Access to the system and its associated database is available through the utilization of the unique project and programmer numbers, and the passwords known only by the authorized custodians. Access to reports is controlled by the Reports Distribution function of the Administrative Directorate on a need-to-know basis. For normal working requirements, the reports are distributed to the functional areas responsible for the data generation. Month-end management reports do not contain SSN data.

Access to the computer room and its associated areas where data and reports are stored is delineated in the Volpe ADP Facility Document on Safeguards and Controls.

RETENTION AND DISPOSAL:

The system is permanent unless replaced. The database is related to fiscal year activity. Subsequent to the fiscal year, the database becomes part of the system's history file. Data records are deleted from the database on an as required basis, and subsequently are eliminated from associated reports. Any record deleted from database must have zero dollars associated with it and must be authorized by System Manager, with the reason documented in writing. Reports used as daily working papers are retained only until updated reports are produced and then the old reports are discarded. All reports containing SSN data are shredded. Official record copy reports are subject to retirement in accordance with General Records Schedules, GRS.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Accounting Branch, DTS–823, Department of Transportation, Volpe National Transportation Systems Center, 55 Broadway, Cambridge, MA 02142–1093.

NOTIFICATION PROCEDURES:

Information may be obtained through the Chief, Accounting Branch, DTS–823 at the address under System Location.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the System manager.

CONTESTING RECORD PROCEDURES:

An individual may gain access to his/her data by written request. Contest of this data will be made to the System manager. If administrative resolution is not satisfactory to the individual, appeals may be filed in writing with the Secretary of Transportation addressed to the General Counsel as follows:

Department of Transportation, Office of the Secretary, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590.

RECORD SOURCE CATEGORIES:

Volpe form entitled Labor Distribution Form.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

None.

DOT/TSC 712

SYSTEM NAME:

Automated Personnel/Communications/Security System.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, DOT, Volpe National Transportation Systems Center (Volpe), Computer Center, DTS–23, 55 Broadway, Cambridge, MA 02142–1093

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Volpe employees and tenants from other government agencies and on-site contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the pertinent information for activities involved with Personnel, Communications, and Security. Contains photographs of Volpe Center employees.

Contains information about an individual relating to:

Social security number.
Salary.
Birth date.
Veteran preference.
Tenure.
Handicap.
Grade.
Marital status.
Service computation date.
Home address and telephone number.
Volpe location including building and telephone number.
Security clearance level and date granted.
CSC title and classification code.
Competitive level.
Parking info—vehicle registration and description.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 328, Volpe Center Working Capital Fund; 5 U.S.C. 301.

PURPOSE(S):

For administrative reference, and as a source for management information for producing summary statistics and registers in support of personnel, communications, and security functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The general purposes of this system are intended for internal management and control, including:

Administrative reference.

Source for management information for producing summary statistics and registers in support of the Personnel, Communications and Security functions.

Source for Volpe Center Intranet information.

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b) (12): Disclosures may be made from this systems to consumer reporting agencies (collecting on behalf of the United States Govt.) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701 (a) (3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape and disk.

Hard copy files (letter size and 5 x 8 cards).

Volpe Center Intranet.

RETRIEVABILITY:

Indexed by employee's number, employee's name.

SAFEGUARDS:

Access to the systems and their associated databases and files is available through the utilization of the unique project and programmer numbers, and the passwords known only by the authorized custodians.

Access to reports is controlled by the Reports Distribution function of the Administrative Directorate on a need-to-know basis. For normal working requirements, the reports are distributed to the functional areas responsible for the data generation. Access to the computer room and its associated areas where data and reports are stored is delineated in the Volpe ADP Facility Document on Safeguards and Controls.

RETENTION AND DISPOSAL:

The systems are permanent unless replaced. The databases are related to both fiscal year and calendar year activity. Subsequent to the appropriate period, the databases become either part of the history file of the system or are maintained by themselves for historical reasons. Data records are deleted from the databases on an as-required basis, and subsequently are eliminated from associated reports. Reports used as daily working papers are retained only until updated reports are produced and then the old reports are discarded. Official closing reports corresponding to month-end, fiscal-year-end and calendar year-end periods are retained for longer periods and are not subject to any rigid disposal procedure.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Administrative Services Branch, DTS–872, Department of Transportation, Volpe National Transportation Systems Center, 55 Broadway, Cambridge, MA 02142–1093.

NOTIFICATION PROCEDURES:

Information may be obtained through the Chief, Administrative Services Branch from the: Department of Transportation, Volpe National Transportation Systems Center, Chief, Computer Center, DTS–23, 55 Broadway, Cambridge, MA 02142–1093.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the System manager.

CONTESTING RECORD PROCEDURES:

An individual may gain access to his/her records by written request. Contest of this data will be made to the System Manager. If administrative resolution is not satisfactory to the individual, appeals may be filed in writing with the Secretary of Transportation addressed to the General Counsel as follows: Department of Transportation, Office of the Secretary, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590.

RECORD SOURCE CATEGORIES:

Employee, Personnel Office, Communications Office, Security Office.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

DOT/TSC 714

SYSTEM NAME:

Health Unit Employee Medical Records.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

Department of Transportation, DOT, Volpe National Transportation Systems Center, Volpe, Human Resources Management Division, DTS–84, Health Unit/Building 1, 9th Floor, 55 Broadway, Cambridge, MA 02142–1093.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Volpe employees, tenant organization employees, and support service contractor personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual Health Record Cards.
Individual Health Record Case Files.
Register of Visits.
Laser Eye Tests.
Pre-employment Physical Examinations, Health Justification Placement Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 328, Volpe Center Working Capital Fund; Executive Order 12196, Occupational Safety and Health Program for Federal Employees, dated 2/27/80; 5 U.S.C. 7901.

PURPOSE(S):

To maintain a medical history of any person who receives services from the Health Unit.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The general purposes of these Federal and tenant records are to maintain a medical history of any Volpe employee, including contractor personnel, who receives services from the Health Unit; ensure applicants for licenses to drive Government vehicles meet physical requirements; and lasers are not adversely affecting employee's eyes. The routine uses of these records are to respond to requests from other Doctors, Universities and Insurance Companies, and to submit medical reports to the Department of Labor, Office of Employees Compensation, to meet requirements of the Occupational Safety and Health Act of 1970 and DOT/Volpe Safety Program. See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Cards, forms, logs and other paper records.

RETRIEVABILITY:

Indexed by employee's name and social security number.

SAFEGUARDS:

Records are maintained in locked file cabinets and room secured when no one is there. Information from records is provided only with consent of employee.

RETENTION AND DISPOSAL:

In accordance with GRS No.1: Individual Health Record Cards are maintained until separation and sent to St. Louis. Individual Health Record Case Files are maintained until separation. They are then sent to St. Louis. Registers of visits maintained until 2 years after last date in log or register. Upon termination of employment with Volpe, latest Laser Eye Tests and Government Driver's Tests records are combined with Health Record Case Files and disposed of as part of these files. Pre-employment Physical Examinations, Health Justification Placement Records, and Disability Retirement Examination become part of the official personnel folder, OPF, upon separation, and are transferred to the NPRS, St. Louis, MO, 30 days after separation, where they are disposed of in accordance with GRS. No. 1, Item 1.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Human Resources Management Division, DTS–84, Department of Transportation, Volpe National Transportation Systems Center, 55 Broadway, Cambridge, MA 02142–1093.

NOTIFICATION PROCEDURES:

Information may be obtained through the Chief, Human Resources Management Division, from the resident physician or nurse, Volpe Health Unit.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the System Manager.

CONTESTING RECORD PROCEDURES:

An individual may gain access to his/her records by written request. Contest of this data will be made to the System Manager. If administrative resolution is not satisfactory to the individual, appeals may be filed in writing with the Secretary of Transportation addressed to the General Counsel as follows: Department of Transportation, Office of the Secretary, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590.

RECORD SOURCE CATEGORIES:

Employee; Health Unit Doctor/Nurse; Volpe Safety Officer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Deletions—system number/name	Reason for deleting
DOT/OST 006 (Confidential Statement of Employment and Financial Interests)	Covered under OGE/GOVT–2.
DOT/OST 008 (Departmental Advisory Committee Files, DOT/OST)	Not retrievable by name or personal identifier.
DOT/OST 011 (Discrimination Complaint Investigative Files)	Covered under EEOC/GOVT–1.
DOT/OST 013 (Employee Management Convenience Files)	Covered under OPM/GOVT–1 and OPM/GOVT–2.
DOT/OST 014 (Employment Applications Files)	Covered under OPM/GOVT–5.
DOT/OST 026 (Personnel Convenience Files)	Covered under OPM/GOVT–1.
DOT/OST 043 (Telephone Directory and Locator System)	Covered under DOT/ALL 11.
DOT/OST 063 (Civil Rights Case Tracking System)	Covered under EEOC/GOVT–1.
DOT/OST 032 (Management Operating Records System)	Covered under OPM/GOVT–1 and GSA/GOVT–3.
DOT/ALL 002 (Safety Management Information System)	No longer maintained.
DOT/ALL 004 (Station Message Detail Recording)	Covered under DOT/ALL 011.
DOT/FAA 810 (Discrimination Complaint Files)	Covered under EEOC/GOVT–1.
DOT/FAA 814 (Equal Employment Opportunity Minority/Female Statistical Reporting System).	Covered under OPM/GOVT–7.
DOT/FAA 820 (Pending Legislation (Employee's) Private Relief & Public/Private Laws (Employee's) Private Relief.	No longer maintained.
DOT/FAA 843 (World Home Address System)	No longer maintained.
DOT/FAA 839 (Printing Branch Distribution System)	FAA no longer maintains.
DOT/CG 561 (Port Safety Reporting System Individual Violation Histories)	No longer maintained.
DOT/CG 587 (Investigation of Marine Safety Laws or Regulations)	No longer maintained.
DOT/CG 516 (Coast Guard Military Discrimination Complaints System	No longer maintained.
DOT/CG 517 (Complaints of Discrimination System)	No longer maintained.
DOT/MARAD 007 (Litigation, Claims and Administrative Proceeding Records)	No longer maintained.
DOT/MARAD 019 (Non-Attorney Practitioner Applications and Section 807 Reports)	No longer maintained.
DOT/NHTSA 403 (Active Contract Run)	No longer maintained.
DOT/NHTSA 423 (Vendor Edit Table Listing (employees))	Covered under GSA/GOVT–4.
DOT/NHTSA 424 (Offerors Mailing List)	No longer maintained.
DOT/NHTSA 432 (EEO Counseling Program and Discrimination Complaint File)	Covered by EEOC/GOVT–1.
DOT/NHTSA 435 (Investigations and Security)	No longer maintained.
DOT/NHTSA 451 (Medical Records and Research Data)	Covered under OPM/GOVT–10.
DOT/NHTSA 455 (Debt Complaint File)	No longer maintained.
DOT/NHTSA 457 (Reference Files B Medical Records)	Covered under OPM/GOVT 10.
DOT/NHTSA 458 (Investigations of Alleged Misconduct or Conflict of Interest)	Covered under DOT/OST 100.
DOT/NHTSA 466 (NHTSA Employee Travel Advance and Expense File)	Covered under GSA/GOVT–3.
DOT/NHTSA 471 (National Driver Advisory Committee B Membership/Nominee File)	No longer maintained.
DOT/FTA 175 (Personnel Convenience Files)	Covered under OPM/GOVT–1 and OPM/GOVT–2.
DOT/FTA 178 (Minority Recruitment File)	Covered under OPM/GOVT–5.
DOT/FTA 180 (Occupational Safety and Health Accident Reporting System)	Covered under DOL/GOVT–1.
DOT/FTA 190 (Employee Travel Records)	Covered under GSA/GOVT–4.
DOT/FTA 191 (Travel Advance File)	Covered under GSA/GOVT–3.
DOT/FTA 195 (Confidential Statements of Employment and Financial Interests)	Covered under OGE/GOVT–2.
DOT/FTA 196 (Office of Technical Assistance and Safety (TTS) Mailing List	No longer maintained.
DOT/FRA 104 (Statement of Employment and Financial Interest)	Covered under OGE/GOVT–2.
DOT/FRA 105 (Employee Travel Records)	Covered under GSA/GOVT–4.
DOT/FRA 112 (Personnel & Pay Management Information System)	Covered under DOT/ALL–7, DOT/ALL-11, and OPM/GOVT–1.
DOT/FRA 113 (Regional Personnel Convenience Files)	Covered under OPM/GOVT–1 and OPM/GOVT–2.
DOT/FRA 114 (Transportation Test Center Employee Service Record File)	No longer maintained.
DOT/FRA 115 (Travel Advance Records)	Covered under GSA/GOVT–4.
DOT/FRA 132 (Office of Safety Individual Enforcement Case File)	Covered under DOT/FRA–130.
DOT/TSC 701 (Employee Travel Records)	Covered under GSA/GOVT–4.
DOT/TSC 708 (Combined Federal Campaign Information)	Covered under DOT/ALL–11.
DOT/TSC 709 (Minority Information Files)	Covered under OPM/GOVT–1, OPM/GOVT–2 and OPM/GOVT–5.
DOT/TSC 715 (Bi-Weekly Personnel Status Report)	Covered under OPM/GOVT–1.
DOT/RSPA–003 (Security Management Records)	Covered under DOT/OST 035.
Routine Use (DOT General Routine Use #8)	Covered under Exemption (b)(1) of the Privacy Act.

Dated: March 31, 2000.

Vanester M. Williams,

Privacy Act Coordinator, Department of Transportation.

[FR Doc. 00–8505 Filed 4–10–00; 8:45 am]

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Federal Register

Tuesday,
April 11, 2000

Part IV

Department of Education

National Awards Program for Effective Teacher Preparation; Inviting Applications for New Awards for Fiscal Year 2000 and Eligibility and Selection Criteria; Notices

DEPARTMENT OF EDUCATION

National Awards Program for Effective Teacher Preparation; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of Program: The National Awards Program for Effective Teacher Preparation recognizes entities with effective preparation programs for elementary school teachers or secondary school mathematics teachers that lead to improved student learning. The FY 2000 competition, the first competition under this new awards program, focuses on entities that meet the eligibility and selection criteria for this program, as published elsewhere in this issue of the **Federal Register**.

Eligible Applicants: Institutions of higher education and other entities in the States (including the District of Columbia, Puerto Rico, and the outlying areas) that prepare elementary teachers, or middle or high school mathematics teachers, for initial certification, including alternative certification.

Applications Available: April 7, 2000.

Deadline for Transmittal of Applications: July 3, 2000.

Deadline for Intergovernmental Review: September 1, 2000.

Funds Available: None, although the Department intends to pay the cost of having successful applicants attend a national ceremony at which the awardees will be publicly honored and recognized. The Department also intends to pay some of the costs associated with having successful applicants make presentations on their teacher preparation programs at regional or national conferences.

Estimated Number of Awards: Up to 5.

Note: The Department is not bound by any estimates in this notice.

Page Limit: Applicants are to address the selection criteria that apply to this competition in the application narrative of the application. The application narrative must be limited to the equivalent of no more than 30 pages, plus a one-page abstract, using the following standards:

- A page is 8.5″ x 11″, one-sided only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger.

Our reviewers will not read any pages of your application that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

Eligibility, Application, and Selection Criteria: The eligibility, application, and selection criteria, and selection procedures, in the notice of eligibility and selection criteria for this program, as published elsewhere in this issue of the **Federal Register**, apply to this competition.

For Applications and Further Information Contact: Sharon Horn, Office of Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue, NW., room 506E, Washington, DC 20208–5644. Telephone: (202) 219–2203 or FAX to (202) 219–2198. Inquiries also may be sent by e-mail to: sharon__horn@ed.gov

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area, at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Program Authority: 20 U.S.C. 8001.

Dated: April 6, 2000.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 00–8934 Filed 4–6–00; 1:51 pm]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

National Awards Program for Effective Teacher Preparation

AGENCY: Office of Educational Research and Improvement (OERI), Department of Education.

ACTION: Notice of Eligibility And Selection Criteria.

SUMMARY: The Assistant Secretary for OERI announces eligibility and selection criteria to govern competitions under the National Awards Program for Effective Teacher Preparation for fiscal year (FY) 2000 and future years. Using these criteria, the awards program will recognize programs that effectively prepare elementary school teachers or secondary school mathematics teachers and that lead to improved student learning.

EFFECTIVE DATE: These eligibility and selection criteria are effective May 11, 2000.

FOR FURTHER INFORMATION CONTACT: Sharon Horn, Office of Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue, NW., room 506E, Washington, DC 20208–5644. Telephone: (202) 219–2203 or FAX to (202) 219–2198. Inquiries also may be sent by e-mail to: sharon__horn@ed.gov If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice announces eligibility and selection criteria to govern applications for recognition that are submitted under the National Awards Program for Effective Teacher Preparation. The criteria established in this notice would be used to select award recipients in the program's initial year, FY 2000, and in subsequent fiscal years.

This new program, which is part of a continuing effort to honor excellence in education, is the result of an increased emphasis across the country on teacher quality and the well-established principle that high-quality K–12 teachers are critical to the ability of children in our nation's schools to achieve to high standards. The program represents the first systematic approach for identifying entities that have successfully linked their programs for preparing teachers to improved student

achievement at the K–12 level. We believe that the current emphasis on heightened academic standards for elementary and secondary students and the need for teachers to gain the knowledge and skills necessary to teach to those standards makes this program, which focuses attention on those teacher preparation programs that are particularly effective in preparing teachers who, in turn, are effective in helping students improve their learning, all the more timely.

The Assistant Secretary for OERI published a Notice of Proposed Eligibility and Selection Criteria for this program in the **Federal Register** on January 21, 2000 (65 FR 3427). As stated in that notice, we recognize that demonstrating the link between teacher preparation programs and the ability of program graduates to improve student learning is not an easy task. Nevertheless, the difficulty involved makes that link no less critical. We intend to select for awards no more than five pre-service teacher preparation programs that are on the leading edge in this effort. Our chief goal in recognizing these programs is to foster an understanding of how these noteworthy programs design their teacher preparation activities to increase K–12 student achievement and how their approaches can be replicated or built upon by other institutions that prepare teachers. For that reason, the criteria for selecting award recipients, as described in this notice, focus significantly on the ability of applicants to provide compelling evidence of effectiveness in preparing teachers who positively impact student learning.

The timeliness of this new awards program is also supported by the fact that institutions producing teachers, and the states that certify them, are increasingly coming under scrutiny as the public seeks higher standards and greater accountability for public schools and school teachers. The Department, as well as many States, is currently implementing new accountability measures and reporting requirements for States and for colleges and universities receiving Federal grants to support teacher training programs. Some institutions have already implemented accountability measures, while others have started to take steps to improve and to become accountable for the teachers they train. We hope that bringing attention to those teacher preparation programs that are effective in this area will serve to assist other programs in their efforts to improve their level of accountability.

In order to align the program with nation-wide efforts to improve achievement levels in math and reading, this awards program will focus, in its initial year, on programs that prepare elementary teachers (since elementary school teachers often teach both math and reading) and programs that prepare middle or high school mathematics teachers or both. Thus, to be selected for an award, applicants must be able to show that their graduates are effective in helping all students improve their learning in reading and mathematics at the elementary level or mathematics at the middle and high school level or both. By "all students," we mean the diverse population of students that graduates of teacher education programs may encounter in the classroom or other educational setting, including regular and special education students, students from diverse backgrounds, and students with limited English proficiency. The selection process will also depend on the ability of applicants to demonstrate that their graduates have a depth of content knowledge in mathematics and reading or both, acquire general and content-specific pedagogical knowledge and skills, and develop skills to examine attitudes and beliefs about learners and the teaching profession.

Note: This notice does not solicit applications. A notice inviting applications under this competition is published elsewhere in this edition of the **Federal Register**.

Analysis of Comments and Changes

In response to the Assistant Secretary's invitation in the notice of proposed eligibility and selection criteria, two parties submitted comments. An analysis of the comments and of the changes in the eligibility and selection criteria since publication of the notice of proposed criteria follows.

Generally, we do not discuss technical and other minor changes; nor do we discuss comments that are unrelated to the content of the eligibility or selection criteria. Substantive issues are addressed below under the appropriate section to which they pertain.

Eligible Applicants

Comments: One commenter questioned whether the proposed eligibility (and selection) criteria placed greater emphasis on achievement in reading, as opposed to mathematics, at the elementary school level.

Discussion: As noted in the preamble discussion above, and in the notice of proposed eligibility and selection criteria, the National Awards Program for Effective Teacher Preparation is focused, in this first year, on the preparation of both reading and mathematics teachers at the K–12 level. It is anticipated that an entity that prepares elementary school teachers will focus its application on increased student learning in reading and mathematics since program graduates teaching in elementary schools typically teach both subjects. Each discipline—reading and math—is given equal emphasis in this awards program. On the other hand, entities that prepare middle school teachers or high school teachers (or both) must focus their applications on increased student learning in mathematics, a discipline routinely taught in middle and high schools.

Changes: None.

Background and Program Description

Comment: One commenter suggested that applicants be required to consider addressing, as part of the background description of their program, any applicable State or district policies affecting their efforts in preparing teachers.

Discussion: In addition to requiring applicants to provide the mission statement, goals and objectives, and components of their teacher preparation program, the Background section of the proposed selection criteria instructed applicants to consider including certain types of information (*e.g.*, recruitment policies, program structure, resources, etc.) as part of a full description of their program. We agree that teacher preparation programs also may be affected by State or local policies regarding, for example, academic course requirements for teachers, or other factors that relate to the training of teachers in a certain geographic region. Thus, we have amended the proposed criteria to include applicable State or district policies among the list of items applicants can consider addressing in their applications. We also note, however, that the list of items to be considered, other than the mission, goals and objectives, and program components, are provided only as examples. Applicants are advised to address any one or more of the identified factors, or other factors, that are most pertinent to their teacher preparation program.

Changes: This section of the proposed selection criteria has been amended to refer to State or district policies as an area that applicants may address as part of the description of their program.

Program's Criteria for Effectiveness

Comment: One commenter suggested that the proposed criteria under this section be modified to require an explanation of the specific standards on

which the applicant's program is based. The commenter indicated that requiring applicants to explain the standards they follow—whether they be State licensure, higher education, K–12, or other applicable standards—will draw attention to the criteria used by award recipients in their efforts to prepare effective teachers.

Discussion: In this section of the proposed selection criteria, the question is posed to applicants, "What are the criteria the program uses to evaluate [the effectiveness of its teacher preparation program]?" This question is designed to ensure that each applicant describes the relevant standards that it uses to evaluate its program and guide improvements and modifications. Nevertheless, we agree that referring to specific examples of standards that might be used in this regard (*e.g.*, the standards issued by the National Council for Accreditation of Teacher Education (NCATE) as identified by the commenter, state teacher licensure standards, or other criteria) will further guide applicants in addressing this question.

Changes: This section of the proposed selection criteria has been amended to identify some examples of the types of standards that entities use for purposes of evaluating the effectiveness of their teacher preparation program.

Evidence of Effectiveness

Comment: One commenter asked that applicants be required to demonstrate the impact that their teacher preparation program has on learning for *all* students and not just on certain populations of students.

This commenter also pointed out that applicants may face certain obstacles in collecting data on teachers, or on K–12 students, that is needed to demonstrate the effectiveness of their program. For instance, the commenter noted that it may be difficult for entities preparing teachers to track graduates who teach in other geographic regions, while data on reading or math achievement by K–12 students, if used by an applicant, will vary by State depending upon how often, and the extent to which, students in the State are tested. For these reasons, the commenter suggested that applicants be asked to discuss in the application any intervening factors that impact the evaluation of their teacher preparation program.

Discussion: We fully agree with the concern expressed by the commenter that applicants focus on improved learning for all students and believe that the proposed criteria made clear that selection for an award will be based significantly on the extent to which an applicant can demonstrate that their program for preparing teachers leads to improved student achievement for all students taught by program graduates. As noted above, and in the preamble guidance to the notice of proposed criteria, "all students" refers to the diverse population of students that teachers may work with in the classroom (or other appropriate educational setting). Thus, applicants should provide evidence of their program's effectiveness on learning for regular education students, students receiving special education, students from diverse ethnic backgrounds, students with limited English proficiency, students in urban and rural areas, and any other identified population of students, to the extent that program graduates teach such populations and to the extent that such evidence is available.

In addition, we agree with the commenter that applicants are likely to encounter different challenges in collecting data and compiling their evidence of effectiveness. Consequently, this section of the final selection criteria will invite applicants to discuss those challenges and how they have overcome any such obstacles in order to evaluate their program.

Changes: This section of the proposed selection criteria has been amended to include a note inviting applicants to discuss factors affecting their data collection efforts and their success in dealing with these factors in the course of evaluating the effectiveness of their graduates.

Eligibility, Application, and Selection Criteria

Eligible Applicants

Eligible applicants are institutions in the States (including the District of Columbia, Puerto Rico, and the outlying areas) that prepare elementary teachers, or middle or high school mathematics teachers, for initial certification. Institutions of higher education as well as institutions that are not part of a college or university are eligible to apply. Since this program focuses on initial preparation of teachers, alternative certification programs are eligible, while in-service programs are not.

For purposes of this notice, a "teacher preparation program" refers to a defined set of experiences that, taken as a whole, prepares participants for initial (or alternative) certification to teach. Detailed instructions for applying for this award, including formatting instructions, are provided within the application package and must be followed to receive an award.

Application Content Requirements

Applicants are free to develop their application in any way they choose as long as they comply with the requirements set out in the application package. In evaluating applications for the National Awards Program for Effective Teacher Preparation, reviewers will look to see whether the application, taken as a whole, demonstrates that the applicant's teacher preparation program leads to improved teacher effectiveness and increased student achievement at the K–12 level. In doing so, reviewers will be guided by the extent to which and how well applicants address the following components of the application, the most important of which concern objective evidence of effectiveness under Section C of the application.

Sections A, B, and D of the application provide reviewers with information describing the teacher preparation program and its potential as an example for others. Reviewers will use the information in these three sections to determine the extent to which there is a logical connection between the various aspects of the program and the results achieved. In other words, they will check for consistency between the information provided in these sections and the applicant's claims of effectiveness under section C.

In section C, applicants provide formative, summative, and confirming evidence that their program is effective in preparing graduates who are able to help all K–12 students improve their learning in reading and mathematics at the elementary level or mathematics at the middle or high school level.

Where appropriate, the following sections of the application include one or more questions that are designed to help applicants formulate their responses.

A. Background and Program Description

In this section, applicants must provide the mission statement, goals and objectives, and the components of their teacher preparation program and explain how these items relate to the effective preparation of elementary teachers or middle and/or high school mathematics teachers.

In responding to this section, applicants are encouraged to provide information about:

1. Recruitment policies for faculty and candidates.

2. Selection procedures for faculty and candidates.

3. Program structure (*e.g.*, course and field experiences, support for preservice and novice teachers, mechanisms for monitoring participants' progress).

4. State or district policies or mandates that affect the components of the teacher preparation program.

5. Resources that support the program.

6. Methods for collaboration between the program and K–12 schools.

7. Graduation or completion criteria and rates.

8. Job placement and retention rates of graduates.

B. Program's Criteria for Effectiveness

In this section, applicants must describe the principles, standards, or other criteria that the applicant uses to judge the effectiveness of its teacher preparation program.

Note: Applications are not being evaluated against a given set of principles for all programs, but are expected to include relevant criteria for guiding program improvement and modifications).

In responding to this section, applicants should consider the following questions:

1. What are the criteria or standards (*e.g.*, NCATE, INTASC, NBPTS, NCTM, state teacher licensure requirements and other appropriate standards) the program uses to evaluate its effectiveness?

2. How does the program ensure that program components such as courses and instructional practices are consistent with the evaluation criteria or standards under Question 1?

C. Evidence of Effectiveness

In this section, applicants must provide three separate types of evidence that demonstrates the effectiveness of their teacher preparation program: formative, summative, and confirming evidence.

"Formative evidence" refers to the use of data to make adjustments to the program throughout its various stages. These data are collected as participants (*i.e.*, preservice teachers) move through the program.

"Summative evidence" demonstrates that the program is effective in helping graduates acquire the necessary knowledge and skills to improve student learning. Summative evidence is collected as preservice teachers complete the program.

"Confirming evidence" links teacher preparation and K–12 student learning by demonstrating that program graduates are effective in helping all K–12 students improve their learning. Confirming evidence is collected on graduates who are employed by schools or districts.

Applicants would supply a brief description for each evidence item submitted. This description must include information about the nature of the data, the methods used to collect the data, and a summary of the data analysis.

In responding to this section, applicants must consider the following questions:

1. What evidence is there that the program, described in section A, gathers data about the effectiveness of the various stages of the program and uses that data to make improvements to the program? (Formative evidence)

2. What evidence is there that the program is effective in helping graduates acquire the knowledge and skills needed to improve student learning in reading and mathematics for all elementary school students or in mathematics for all middle or high school students? (Summative evidence)

Note: Summative evidence in this section should address graduates' content knowledge, pedagogical knowledge and skills, and skills to examine beliefs about learners and teaching as a profession.

3. What evidence is there that the program's graduates are effective in helping all K–12 students improve their learning in reading and mathematics at the elementary level or mathematics at the middle or high school level? (Confirming evidence)

Note: If there are obstacles that affect data collection (*e.g.*, local or State regulations prohibit the release of student data), applicants may describe these factors and explain how they have overcome any obstacles to collecting data for purposes of evaluating the effectiveness of their program.

D. Implications for the Field

A primary goal of this awards program is to share with the public effective examples that might be adopted or otherwise used by others to improve teacher preparation programs throughout the country. In this section, applicants must discuss the challenges they have faced and overcome in administering their teacher preparation program, as well as the resulting lessons they have learned.

In responding to this section, applicants should consider the following:

1. What is at least one significant challenge that the program encountered within the last five years and how was it overcome? (Note: Since demonstrating the link between teacher preparation and K–12 student learning is a primary focus of the awards program, applicants should consider describing challenges related to this issue.)

2. What lessons that would benefit others have been learned about designing, implementing, or evaluating a program that prepares graduates who are effective in helping improve student learning for all K–12 students?

3. What program materials (*e.g.*, videos, Web sites, course outlines, manuals, strategies, processes) are available that could benefit others?

4. How have or could you help others adapt the aspects of your program that contribute most to graduates' effectiveness with K–12 students?

Selection Criteria

Reviewers will evaluate the information provided in each application based on three criteria: rigor, sufficiency, and consistency. These criteria, and the performance levels applicable to each, are identified in the rubric shown in Figure 1. Reviewers will use this rubric as the review instrument to judge the quality of each application.

The Evidence of Effectiveness provided by an applicant under section C, the most critical portion of the application, will be evaluated on the basis of its rigor and sufficiency. The level of "rigor" applied to the evidence submitted will be determined by the extent to which the qualitative or quantitative data presented is found to be valid and reliable. The level of "sufficiency" applied to the evidence submitted will be determined by the adequacy and the extent of the data provided.

The application as a whole will be evaluated on the basis of its consistency. The level of "consistency" of the application will be based on the extent to which there is a logical link between various aspects of the program as described in Sections A, B, and D of the application and the evidence of effectiveness provided under Section C. For example, if an applicant indicates in sections A, B, or D of its application that field experiences are important to the preparation of teachers, then the application should describe the variety of field experiences that are spread over the duration of the program and also include, for purposes of "consistency," documentation of the effectiveness of these experiences.

The rubric in Figure 1 identifies a range of performance levels, from 1 to 4, that reviewers will use to judge the quality of an application with regard to the three criteria—rigor, sufficiency, and consistency. Reviewers will assign a level of the rubric, 1 to 4, for each criterion based on their judgment of how well the information provided in the application matches the descriptions in the rubric of the relevant performance levels. Prior to reviewing applications,

reviewers will receive extensive training in using the rubric to ensure inter-rater reliability.

FIGURE 1.—RUBRIC FOR EVALUATING EVIDENCE OF EFFECTIVENESS

Performance levels	Selection criteria		
	Rigor	Sufficiency	Consistency
4	The evidence is highly credible. The data are valid and indicators are free of bias. Reliability is supported by multi-year data from several sources.	There are extensive data that support claims of effectiveness. The evidence includes data from multiple sources with multiple indicators.	Components of the program are consistent with the vision of the program. Program components are monitored to determine if they are being instituted as designed. Evidence supports an intended, logical link between the program components and the outcomes. The evidence supports the link between program components and program success. The consistencies support the credibility of the evidence.
3	The evidence is credible. Validity has been addressed for most of the data. There may be some questions of bias. Reliability is supported by two or more years of data from at least one data source.	There are adequate data to support the claims of effectiveness. There are multiple sources of evidence and multiple indicators for at least one source.	There are minor inconsistencies between the vision of the program and program components. Some components of program may not be monitored or there may be some inconsistencies between the evidence provided and the identified successful components of the program. The inconsistencies do not weaken the credibility of the evidence.
2	The evidence has limited credibility. The rigor is compromised by issues of bias or validity/reliability. There are no multiyear data from any source.	There are limited data to support the claims of effectiveness. The data are collected from only one or two sources. There are no multiple indicators for the data source(s).	There are several inconsistencies between the vision of the program and program components. There are significant inconsistencies between the evidence provided and the identified successful components of the program. The inconsistencies raise questions about the credibility of the evidence.
1	The evidence has little or no credibility. The rigor is significantly compromised by issues of bias, or there is not enough information to determine rigor. The data lack validity/ Reliability. There is no multi-year data.	There are not enough data to support claims of effectiveness. There is only a single source of data.	There are numerous inconsistencies between the vision of the program and its components. The evidence provided is not linked to the components of the program that have been identified as contributing to the program's success. The inconsistencies raise significant questions about the credibility of the evidence.

Selection Procedures

Award recipients will be selected through a five-stage process.

Stage 1. During the first stage, applications will be initially screened by Department staff to determine whether the submitting party meets the eligibility requirements and whether the application contains all necessary information (including the three types of evidence required under section C) and meets the formatting requirements.

Stage 2. The second stage of review, to determine up to 10 semi-finalists, will be conducted by non-Departmental teams representing a broad range of teacher educators, practitioners (*e.g.*, mathematicians, mathematics educators, K–12 teachers, reading specialists), and policymakers (*e.g.*, superintendents, school board members, principals) who will evaluate the quality of the applications against the selection criteria and applicable performance levels.

Stage 3. In the third stage, non-Department expert teams (team members would differ from the reviewers involved in Stages 2) will conduct site visits to verify information presented in the semi-finalists' applications and, to the extent available, to collect additional information. These teams will draft site-visit reports of their findings.

Stage 4. During the fourth stage, a non-Departmental national awards panel (panel members will differ from the reviewers involved Stages 2 and 3) will review the semi-finalist applications and site visit reports. Panel members will then present final recommendations to the Department on which teacher preparation programs merit national recognition.

Stage 5. In the fifth and final stage, the Department will review data collected throughout the review process and select for national recognition no more than 5 applications of the highest quality. The Secretary intends to publicly honor and recognize these awardees at a national ceremony in Washington, DC.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and

obtain information needed to achieve the goals.

These eligibility and selection criteria address the National Education Goal that the Nation's teaching force will have the content knowledge and teaching skills needed to instruct all American students for the next century.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document is intended to provide early notification of our specific plans and actions for this program.

Program Authority: 20 U.S.C. 8001.

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Dated: April 6, 2000.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

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Federal Communications Commission

47 CFR Part 1

Assessment and Collection of Regulatory Fees for Fiscal Year 2000; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 00–58; FCC 00–117]

Assessment and Collection of Regulatory Fees for Fiscal Year 2000

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 2000. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees. For fiscal year 2000 sections 9(b)(2) and (3) provide for annual "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees. These revisions will further the National Performance Review goals of reinventing Government by requiring beneficiaries of Commission services to pay for such services.

DATES: Comments are due on or before April 24, 2000, and reply comments are due on or before May 5, 2000.

FOR FURTHER INFORMATION CONTACT: Terry Johnson, Office of Managing Director at (202) 418–0445 or Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION:
Adopted: March 29, 2000; Released: April 3, 2000.

By the Commission:

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I. Introduction

1. By this *Notice of Proposed Rulemaking*, the Commission commences a proceeding to revise its Schedule of Regulatory Fees in order to collect the amount of regulatory fees that Congress, pursuant to section 9(a) of the Communications Act, as amended, has required it to collect for Fiscal Year (FY) 2000.[1]

2. Congress has required that we collect $185,754,000 through regulatory fees in order to recover the costs of our enforcement, policy and rulemaking, international and user information activities for FY 2000.[2] This amount is $13,231,000 or approximately 7.67% more than the amount that Congress designated for recovery through regulatory fees for FY 1999.[3] Thus, we are proposing to revise our fees in order to collect the increased amount that Congress has specified. Additionally, we propose to amend the Schedule in order to simplify and streamline it.[4]

3. In proposing to revise our fees, we adjusted the payment units and revenue requirement for each service subject to a fee, consistent with sections 159(b)(2) and (3). In addition, we are proposing changes to the fees pursuant to public interest considerations. The current Schedule of Regulatory Fees is set forth in §§ 1.1152 through 1.1156 of the Commission's rules.[5]

II. Background

4. Section 9(a) of the Communications Act of 1934, as amended, authorizes the Commission to assess and collect

[1] 47 U.S.C. 159(a).

[2] Public Law 105–277 and 47 U.S.C. 159(a)(2).

[3] *Assessment and Collection of Regulatory Fees for Fiscal Year 1999*, FCC 98–200, released June 18, 1999, 64 FR 35831 (Jul. 1, 1999).

[4] 47 U.S.C. 159(b)(3).

[5] 47 CFR 1.1152 through 1.1156.

annual regulatory fees to recover the costs, as determined annually by Congress, that it incurs in carrying out enforcement, policy and rulemaking, international, and user information activities.[6] See Attachment G for a description of these activities. In our *FY 1994 Fee Order*,[7] we adopted the Schedule of Regulatory Fees that Congress established, and we prescribed rules to govern payment of the fees, as required by Congress.[8] Subsequently, we modified the fee Schedule to increase the fees in accordance with the amounts Congress required us to collect in each succeeding fiscal year. We also amended the rules governing our regulatory fee program based upon our experience administering the program in prior years.[9]

5. As noted, for FY 1994 we adopted the Schedule of Regulatory Fees established in section 9(g) of the Act. For fiscal years after FY 1994, however, sections 9(b)(2) and (3), respectively, provide for "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees.[10] Section 9(b)(2), entitled "Mandatory Adjustments," requires that we revise the Schedule of Regulatory Fees to reflect the amount that Congress requires us to recover through regulatory fees.[11]

6. Section 9(b)(3), entitled "Permitted Amendments," requires that we determine annually whether additional adjustments to the fees are warranted, taking into account factors that are in the public interest, as well as issues that are reasonably related to the payer of the fee. These amendments permit us to "add, delete, or reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services."[12]

7. Section 9(i) requires that we develop accounting systems necessary to adjust our fees pursuant to changes in the costs of regulation of various services that are subject to a fee, and for other purposes.[13] For FY 1997, we relied for the first time on cost accounting data to identify our regulatory costs and to develop our FY 1997 fees based upon these costs. Also, for FY 1997, we limited the increase in the amount of the fee for any service in order to phase in our reliance on cost-based fees for those services whose revenue requirement would be more than 25 percent above the revenue requirement which would have resulted from the "mandatory adjustments" to the FY 1997 fees without incorporation of costs. This methodology, which we continued to use for FY 1998, enabled us to develop regulatory fees which we believed would be more reflective of our costs of regulation, and allowed us to make revisions to our fees based on the fullest extent possible, while still consistent with the public interest, on the actual costs of regulating those services that are subject to a fee. However, we found that developing a regulatory fee structure based on cost information did not produce the desired results. We were anticipating that our regulatory costs would level off or, perhaps, decline causing these adjustments to decrease from the 25 percent towards zero. Since our regulatory costs have continued to rise, this methodology was discontinued. Therefore, we chose to base the FY 1999 fees only on the basis of "Mandatory Adjustments". Finally, section 9(b)(4)(B) requires us to notify Congress of any permitted amendments 90 days before those amendments go into effect.[14]

[6] 47 U.S.C. 159(a).
[7] 59 FR 30984 (Jun. 16, 1994).
[8] 47 U.S.C. 159(b), (f)(1).
[9] 47 CFR 1.1151 *et seq.*
[10] 47 U.S.C. 159(b)(2), (b)(3).
[11] 47 U.S.C. 159(b)(2).
[12] 47 U.S.C. 159(b)(3).
[13] 47 U.S.C. 159(i).

III. Discussion

A. Summary of FY 2000 Fee Methodology

8. As noted, Congress has required that the Commission recover $185,754,000 for FY 2000 through the collection of regulatory fees, representing the costs applicable to our enforcement, policy and rulemaking, international, and user information activities.[15]

9. In developing our proposed FY 2000 fee schedule, we determined that we should continue to use the same general methodology for "Mandatory Adjustments" to the Fee Schedule that we used in developing the FY 1999 fee schedule because our regulatory costs continue to rise, and using cost information to determine a regulatory fee schedule does not produce the desired result of collecting the amount required by Congress. Therefore, we estimated the number of payment units[16] for FY 2000 in order to determine the aggregate amount of revenue we would collect without any revision to our FY 1999 fees. Then we compared this revenue amount to the $185,754,000 that Congress has required us to collect in FY 2000 and pro-rated the difference among all the existing fee categories.

10. Once we established our tentative FY 2000 fees, we evaluated proposals made by Commission staff concerning "Permitted Amendments" to the Fee Schedule and to our collection procedures. These proposals are discussed in paragraphs 15–19 and are factored into our proposed FY 2000 Schedule of Regulatory Fees, set forth in Attachment D.

11. Finally, we have incorporated, as Attachment F, proposed Guidance containing detailed descriptions of each fee category, information on the individual or entity responsible for paying a particular fee and other critical information designed to assist potential fee payers in determining the extent of their fee liability, if any, for FY 2000.[17] In the following paragraphs, we describe in greater detail our proposed methodology for establishing our FY 2000 regulatory fees.

B. Development of FY 2000 Fees

i. Adjustment of Payment Units

12. In calculating FY 2000 regulatory fees for each service, we adjusted the estimated payment units for each service because payment units for many services have changed substantially since we adopted our FY 1999 fees. We obtained our estimated payment units through a variety of means, including our licensee data bases, actual prior year payment records, and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure the accuracy of these estimates. Attachment B provides a summary of how revised payment units were determined for each fee category.[18]

ii. Calculation of Revenue Requirements

13. We next multiplied the revised payment units for each service by the FY 1999 fees for each category to determine how much revenue we would collect without any change to the FY 1999 Schedule of Regulatory Fees. The

[14] 47 U.S.C. 159(b)(4)(B).
[15] 47 U.S.C. 159(a).
[16] Payment units are the number of subscribers, mobile units, pagers, cellular telephones, licenses, call signs, adjusted gross revenue dollars, etc. which represent the base volumes against which fee amounts are calculated.

[17] We also will incorporate a similar Attachment in the *Report and Order* concluding this rulemaking. That Attachment will contain updated information concerning any changes made to the proposed fees adopted by the *Report and Order*.
[18] It is important to also note that Congress' required revenue increase in regulatory fee payments of approximately 7.67 percent in FY 2000 will not fall equally on all payers because payment units have changed in several services. When the number of payment units in a service increase from one year to another, fees do not have to rise as much as they would if payment units had decreased or remained stable. Declining payment units have the opposite effect on fees.

amount of revenue which we would collect without changes to the Fee Schedule is approximately $191.6 million. This amount is approximately $5.9 million more than the amount the Commission is required to collect in FY 2000. We then adjusted the revenue requirements for each category on a proportional basis, consistent with section 9(b)(2) of the Act, to obtain an estimate of the revenue requirements for each fee category so that the Commission could collect $185,754,000 as required by Congress. Attachment C provides detailed calculations showing how we determined the revised revenue amounts to be raised for each service.

iii. Recalculation of Fees

14. Once we determined the revenue requirement for each service and class of licensee, we divided the revenue requirement by the number of estimated payment units (and by the license term, if applicable, for "small" fees) to obtain actual fee amounts for each fee category. These calculated fee amounts were then rounded in accordance with section 9(b)(3) of the Act. See Attachment C.

iv. Proposed Changes to Fee Schedule

15. We examined the results of our calculations to determine if further adjustments of the fees and/or changes to payment procedures were warranted based upon the public interest and other criteria established in 47 U.S.C. 159(b)(3).[19] As a result of this review, we are proposing the following "Permitted Amendments" to our Fee Schedule:

a. INTELSAT Satellites

16. The Commission, relying on portions of the legislative history of section 9, previously concluded that Comsat was exempt from section 9 fees for its INTELSAT space stations. Assessment and Collection of Regulatory Fees for Fiscal Year 1998, 13 FCC Rcd 19820 (1998), 63 FR 35847 (July 1, 1998); Assessment and Collection of Regulatory Fees for Fiscal Year 1997, 12 FCC Rcd 17161 (1997), 62 FR 37408 (July 11, 1997). In *PanAmSat Corp.* v. *FCC*, 198 F.3d 890 (D.C.Cir.1999), the court found that neither the statute itself nor the legislative history relied upon by the Commission was conclusive on the question of Comsat's liability for section 9 fees in these circumstances. It remanded the issue to the Commission for reconsideration of Comsat's exemption.[20]

17. On March 17, 2000 Congress enacted the Open Market Reorganization for the Betterment of International Telecommunications Act (the ORBIT Act).[21] Section 641[c] of the ORBIT Act provides:

"[c] PARITY of TREATMENT—Notwithstanding any other law or executive agreement, the Commission shall have the authority to impose similar regulatory fees on the United States signatory which it imposes on other entities providing similar services."[22]

In light of this statutory language, it is clear that, for FY 2000, Comsat as the United States signatory to INTELSAT is subject to regulatory fees.[23] We request comment on how we should implement this provision to achieve parity of treatment between Comsat and satellite operators that are subject to regulatory fees. Specifically, we request comment on whether for the year 2000 we should assess regulatory fees for all space stations in geostationary orbit, including satellites that are the subject of Comsat's activities, in the amount of $94,650 per satellite. Such comments also may address how the nature of Comsat services via INTELSAT may provide a basis for a different fee and state what type of fee would be appropriate to achieve parity of treatment.[24]

b. Interstate Telephone Service Providers

18. The Commission is required under the Communications Act of 1934, as amended,[25] to establish procedures that will finance interstate telecommunications relay services (TRS), universal service support mechanisms, administration of the North American Numbering Plan (NANPA), and shared costs of the local number portability (LNPA) program. In a series of separate proceedings, the Commission has already established procedures that permits the administrators of these programs to collect contributions from all providers of telecommunications services in support of the above mandates.[26] In 1999, as part of its paperwork streamlining efforts, the Commission amended its rules and required contributors to file only a single form FCC Form 499–A, Telecommunications Reporting Worksheet, and eliminated FCC Form 431, TRS Fund Worksheet.[27] Previously, Form 431, TRS Fund Worksheet, was used to obtain base revenue data from which telephone services regulatory fees were calculated. Because of this form change, it is no longer feasible to obtain base telephone services revenue data using adjusted gross interstate revenues as derived from data previously provided on FCC Form 431, TRS Fund Worksheet. Therefore, beginning in FY 2000, we are proposing that the interstate telephone services regulatory fee be derived from interstate and international end-user revenues data submitted on FCC Form 499–A, Telecommunications Reporting Worksheet, rather than from data provided on Form 431, TRS Fund Worksheet. A copy of the form and instructions can be downloaded at: <*http://www.fcc.gov/formpage.html*>.

19. All providers of telecommunications services within the United States, with very limited exceptions, must file an FCC Form 499–A, Telecommunications Reporting Worksheet. For this filing, the United States is defined as the contiguous United States, Alaska, Hawaii, American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Navassa Island, the Northern Mariana Islands, Palmyra, Puerto Rico, the U.S. Virgin Islands, and Wake Island. Each legal entity that provides interstate telecommunications service for a fee, including each affiliate or subsidiary of an entity, must complete and file separately a copy of the Telecommunications Reporting Worksheet.

20. For purposes of determining who must file Form 499–A, the term "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. For the purpose of

[19] In FY 1997 and FY 1998 we limited increases to 25%. For FY 1999 and FY 2000, none of the proposed fee increases exceed 25%.

[20] As directed by the court, the Commission will consider the section 9 satellite fees for FY 1998; however, that consideration will be separate from this proceeding.

[21] Public Law 106–180, 114 Stat. 48 (2000).

[22] Comsat is the United States Signatory to INTELSAT.

[23] As directed by the court, the Commission will also consider the Section 9 fees for FY 1998; however, that consideration will be separate from this proceeding.

[24] Note that without the INTELSAT satellites, the fee per satellite would be $126,525.

[25] 47 U.S.C. 151, 225, 251, 254.

[26] These contributions are separate and apart from regulatory fees collected to fund the Commission's operations.

[27] *1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms*, Report and Order, FCC 99–175, CC Docket No. 98–171 (rel. July 14, 1999), 64 FR 41320 (July 30, 1999)(*Contributor Reporting Requirements Order*).

filing the Telecommunication Reporting Worksheet, the term "interstate telecommunications" includes, but is not limited to, the following types of services: wireless telephony including cellular and personal communications services (PCS); paging and messaging services; dispatch services; mobile radio services; operator services; access to interexchange service; special access; wide area telecommunications services (WATS); subscriber toll-free services; 900 services; message telephone services (MTS); private line; telex; telegraph; video services; satellite services; and resale services. For example, all local exchange carriers provide access services and, therefore, provide interstate telecommunications. Included are entities that offer interstate telecommunications services for a fee to the public, even if only a narrow or limited class of users could use the services. Also included are entities that provide interstate telecommunications services to entities other than themselves for a fee on a private, contractual basis. In addition, owners of pay telephones, sometimes referred to as "pay telephone aggregators," must file the worksheet. Most telecommunications carriers must file the worksheet even if they qualify for the *de minimis* exemption under the commission's rules for universal service.[28]

21. With the introduction of a new form, FCC Form 499–A, it is no longer feasible to base the interstate telephone services regulatory fee on the adjusted gross interstate revenues because this data was derived from a previously used form (FCC 431) to contribute to the Telecommunication Relay Services Fund. Therefore, beginning in FY 2000, we are proposing that the interstate and international telephone services regulatory fee be derived from interstate and international end-user revenues as submitted by providers on FCC Form 499–A, Telecommunications Reporting Worksheet, as part of the telecommunications provider reporting requirements. The following providers are exempt from paying the interstate telephone service provider regulatory fees: interstate service providers that have mobile service or satellite service revenue, but no local or toll service;[29] government entities within the meaning of the term 47 CFR 1.1162; and carriers whose payment obligation would be less than $10.[30] Note, the interstate telephone service provider fee is based on interstate and international end-user revenues for local and most toll services only. Filers are not allowed to deduct any expenses from subject interstate and international end-user revenues.

C. Procedures for Payment of Regulatory Fees

22. Generally, we propose to retain the procedures that we have established for the payment of regulatory fees. Section 9(f) requires that we permit "payment by installments in the case of fees in large amounts, and in the case of small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payer." See 47 U.S.C. 159(f)(1). Consistent with section 9(f), we are again proposing to establish three categories of fee payments, based upon the category of service for which the fee payment is due and the amount of the fee to be paid. The fee categories are (1) "standard" fees, (2) "large" fees, and (3) "small" fees.

i. Annual Payments of Standard Fees

23. As we have in the past, we are proposing to treat regulatory fee payments by certain licensees as "standard fees" which are those regulatory fees that are payable in full on an annual basis. Payers of standard fees are not required to make advance payments for their full license term and are not eligible for installment payments. All standard fees are payable in full on the date we establish for payment of fees in their regulatory fee category. The payment dates for each regulatory fee category will be announced either in the *Report and Order* terminating this proceeding or by public notice in the **Federal Register** pursuant to authority delegated to the Managing Director.

ii. Installment Payments for Large Fees

24. While we are mindful that time constraints may preclude an opportunity for installment payments, we propose that regulatees in any category of service with a liability of $12,000 or more be eligible to make installment payments and that eligibility for installment payments be based upon the amount of either a single regulatory fee payment or combination of fee payments by the same licensee or regulatee. We propose that regulatees eligible to make installment payments may submit their required fees in two equal payments (on dates to be announced) or, in the alternative, in a single payment on the date that their final installment payment is due. Due to statutory constraints concerning notification to Congress prior to actual collection of the fees, however, it is unlikely that there will be sufficient time for installment payments, and that regulatees eligible to make installment payments will be required to pay these fees on the last date that fee payments may be submitted. The dates for installment payments, or a single payment, will be announced either in the *Report and Order* terminating this proceeding or by public notice published in the **Federal Register** pursuant to authority delegated to the Managing Director.

iii. Advance Payments of Small Fees

25. As we have in the past, we are proposing to treat regulatory fee payments by certain licensees as "small" fees subject to advance payment consistent with the requirements of section 9(f)(2). We propose that advance payments will be required from licensees of those services that we decided would be subject to advance payments in our FY 1994 *Report and Order*, and to those additional payers set forth herein.[31] We are also proposing that payers of advance fees will submit the entire fee due for the full term of their licenses when filing their initial, renewal, or reinstatement application. Regulatees subject to a payment of small fees shall pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested license. In the event that the required fee is adjusted following their payment of the fee, the payer would not be subject to the payment of a new fee until filing an application for renewal or reinstatement of the license. Thus, payment for the full license term would be made based upon the regulatory fee applicable at the time the application is filed. The effective date for payment of small fees established in this proceeding will be announced in our *Report and Order* terminating this proceeding or by public notice published in the **Federal Register** pursuant to authority delegated to the Managing Director.

iv. Minimum Fee Payment Liability

26. As we have in the past, we are proposing that regulatees whose total regulatory fee liability, including all categories of fees for which payment is due by an entity, amounts to less than

[28] 47 CFR 54.708.

[29] However, these service providers may be subject to payment of regulatory fees under other categories, *e.g.* space stations.

[30] See 47 U.S.C. 159(h); *see also* para 29, *infra*.

[31] Applicants for new, renewal and reinstatement licenses in the following services will be required to pay their regulatory fees in advance: Land Mobile Services, Microwave Services, Marine (Ship) Service, Marine (Coast) Service, Private Land Mobile (Other) Services, Aviation (Aircraft) Service, Aviation (Ground) Service, General Mobile Radio Service (GMRS), 218–219 MHz Service (if any applications should be filed), Rural Radio Service, and Amateur Vanity Call Signs.

$10 will be exempted from fee payment in FY 2000.

v. Standard Fee Calculations and Payment Dates

27. As noted, the time for payment of standard fees and any installment payments will be announced in our *Report and Order* terminating this proceeding or will be published in the **Federal Register** pursuant to authority delegated to the Managing Director. For licensees, permittees and holders of other authorizations in the Common Carrier, Mass Media, and Cable Services whose fees are not based on a subscriber, unit, or circuit count, we are proposing that fees be paid for any authorization issued on or before *October 1, 1999*. Regulatory fees are due and payable by the holder of record of the license or permit of the service as of October 1, 1999. A pending change in the status of a license or permit that is not granted as of that date is not effective, and the fee is based on the classification that existed on that date. Where a license or authorization is transferred or assigned after October 1, 1999, the fee shall be paid by the licensee or holder of the authorization on the date that the payment is due.

28. In the case of regulatees whose fees are based upon a subscriber, unit or circuit count, the number of a regulatee's' subscribers, units or circuits on *December 31, 1999*, will be used to calculate the fee payment. [32] Regulatory fees are due and payable by the holder of record of the license or permit of the service as of December 31, 1999. A pending change in the status of a license or permit that is not granted as of that date is not effective, and the fee is based on the classification that existed on that date. Where a license or authorization is transferred or assigned after December 31, 1999, the fee shall be paid by the licensee or holder of the authorization on the date that the payment is due.

D. Schedule of Regulatory Fees

29. The Commission's proposed Schedule of Regulatory Fees for FY 2000 is contained in Attachment D of this *NPRM*.

[32] Cable system operators are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. **Note:** Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Cable system operators may base their count on "a typical day in the last full week" of December 1999, rather than on a count as of December 31, 1999.

IV. Procedural Matters

A. Comment Period and Procedures

30. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 24, 2000, and reply comments on or before May 5, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[33]

31. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. However, if multiple docket or rulemaking numbers appear in the caption of this proceeding, commenters must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by e-mail via Internet. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address.>" A sample form and directions will be sent in reply.

32. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street SW., TW–A325, Washington, DC 20554.

33. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Terry Johnson, Office of Managing Director, Federal Communications Commission, 445 12th Street, SW., 1–C807, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Microsoft ™ Word 97 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case MD Docket No. 00–58, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street NW., Washington, DC 20036.

Documents filed in this proceeding will be available for public inspection during regular business hours in the FCC Reference Center, of the Federal Communications Commission, Room CY–A257, 445 12th Street SW., Washington, DC 20554, and will be placed on the Commission's Internet Home Page http://www.fcc.gov.

[33] *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

B. Ex Parte Rules

34. This is a permit-but-disclosed notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules.[34]

C. Initial Regulatory Flexibility Analysis

35. As required by the Regulatory Flexibility Act,[35] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals suggested in this document. The IRFA is set forth as Attachment A. Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the *NPRM*, and must have a separate and distinct heading, designating the comments as responses to the IRFA. The Consumer Information Bureau, Reference Information Center, shall send a copy of this *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

D. Authority and Further Information

36. Authority for this proceeding is contained in sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.[36] It is ordered that this *NPRM* is adopted. It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall

[34] 47 CFR 1.1202, 1.1203 and 1026(a).

[35] See 5 U.S.C. 603.

[36] 47 U.S.C. 154(i)–(j), 159, & 303(r).

send a copy of this *NPRM*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

37. Further information about this proceeding may be obtained by contacting the Fees Hotline at (202) 418–0192.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Attachment A: Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),[37] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the present *Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2000.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the IRFA provided in paragraph 33. The Commission will send a copy of the *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[38] In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.[39]

I. Need for, and Objectives of, the Proposed Rules

2. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of its Schedule of Regulatory Fees. For Fiscal Year 2000, we intend to collect regulatory fees in the amount of $185,754,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its proposed revised fees, as contained in the attached Schedule of Regulatory Fees, in the most efficient manner possible and without undue burden on the public.

II. Legal Basis

3. This action, including publication of proposed rules, is authorized under sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.[40]

[37] 5 U.S.C. 603. The RFA, 5 U.S.C. 601 *et. seq.* has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[38] 5 U.S.C. 603(a).

[39] *Id.*

[40] 47 U.S.C. 154(i) and (j), 159, and 303(r).

III. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[41] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[42] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[43] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[44] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[45] Nationwide, as of 1992, there were approximately 275,801 small organizations.[46] "Small governmental jurisdiction"[47] generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[48] As of 1992, there were approximately 85,006 such jurisdictions in the United States.[49] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[50] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96 percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

[41] 5 U.S.C. 603(b)(3).

[42] *Id.* 601(6).

[43] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

[44] Small Business Act, 15 U.S.C. 632 (1996).

[45] 5 U.S.C. 601(4).

[46] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[47] 47 CFR 1.1162

[48] 5 U.S.C. 601(5).

[49] U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

[50] *Id.*

Cable Services or Systems

5. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually.[51] This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than $11 million in revenue.[52]

6. The Commission has developed its own definition of a small cable system operator for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.[53] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.[54] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

7. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[55] The Commission has determined that there are 66,690,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 666,900 subscribers shall be deemed a small operator, if its annual revenues, when combined with

[51] 13 CFR 121.201, SIC code 4841.

[52] *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, SIC code 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[53] 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393 (1995), 60 FR 10534 (Feb. 27, 1995).

[54] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[55] 47 U.S.C. 543(m)(2).

the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[56] Based on available data, we find that the number of cable operators serving 666,900 subscribers or less totals 1,450.[57] We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000,[58] and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

8. *Other Pay Services.* Other pay television services are also classified under Standard Industrial Classification (SIC) 4841, which includes cable systems operators, closed circuit television services, direct broadcast satellite services (DBS),[59] multipoint distribution systems (MDS),[60] satellite master antenna systems (SMATV), and subscription television services.

Common Carrier Services and Related Entities

9. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be data the Commission publishes in its *Trends in Telephone Service* report.[61] However, in a recent news release, the Commission indicated that there are 4,144 interstate carriers.[62] These carriers include, *inter alia,* local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

10. The SBA has defined establishments engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees.[63] Below, we discuss the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

11. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[64] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[65] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

12. *Total Number of Telephone Companies Affected.* The U.S. Bureau of the Census ("Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[66] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, covered specialized mobile radio providers, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small ILECs because they are not "independently owned and operated."[67] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the proposed rules, if adopted.

13. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[68] According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.[69] All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by the proposed rules, if adopted.

14. *Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[70] According to the most recent *Telecommunications Industry Revenue* data, 1,348 incumbent carriers reported that they were engaged in the provision

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[56] *Id.* 76.1403(b).

[57] Paul Kagan Associates, Inc., *Cable TV Investor,* Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[58] We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.1403(b) of the Commission's rules. *See* 47 CFR 76.1403(d).

[59] Direct Broadcast Services (DBS) are discussed with the international services, *infra.*

[60] Multipoint Distribution Services (MDS) are discussed with the mass media services, *infra.*

[61] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service,* Table 19.3 (March 2000).

[62] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service,* Table 19.3 (March 2000)

[63] 13 CFR 121.201, Standard Industrial Classification (SIC) codes 4812 and 4813. *See also* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987).

[64] 5 U.S.C. 601(3).

[65] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket, 96–98, First Report and Order, 11 FCC Rcd 15499, 16144–45 (1996), 61 FR 45476 (Aug. 29, 1996).

[66] U.S. Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size,* at Firm Size 1–123 (1995) (*1992 Census*).

[67] *See generally* 15 U.S.C. 632(a)(1).

[68] *1992 Census, supra,* at Firm Size 1–123.

[69] 13 CFR 121.201, SIC code 4813.

[70] *Id.*

of local exchange services.[71] We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,348 providers of local exchange service are small entities or small ILECs that may be affected by the proposed rules, if adopted.

15. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[72] According to the most recent *Trends in Telephone Service* data, 171 carriers reported that they were engaged in the provision of interexchange services.[73] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 171 small entity IXCs that may be affected by the proposed rules, if adopted.

16. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than except radiotelephone (wireless) companies.[74] According to the most recent *Trends in Telephone Service* data, 212 CAP/CLECs carriers and 10 other LECs reported that they were engaged in the provision of competitive local exchange services.[75] We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 212 small entity CAPs and 10 other LECs that may be affected by the proposed rules, if adopted.

17. *Operator Service Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[76] According to the most recent *Trends in Telephone Service* data, 24 carriers reported that they were engaged in the provision of operator services.[77] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 24 small entity operator service providers that may be affected by the proposed rules, if adopted.

18. *Pay Telephone Operators.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[78] According to the most recent *Trends in Telephone Service* data, 615 carriers reported that they were engaged in the provision of pay telephone services.[79] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 615 small entity pay telephone operators that may be affected by the proposed rules, if adopted.

19. *Resellers (including debit card providers).* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies.[80] According to the most recent *Trends in Telephone Service* data, 388 toll and 54 local entities reported that they were engaged in the resale of telephone service.[81] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 388 small toll entity resellers and 54 small local entity resellers that may be affected by the proposed rules, if adopted.

20. *Toll-Free 800 and 800-Like Service* Subscribers.[82] Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 and 800-like service ("toll free") subscribers. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use.[83] According to our most recent data, at the end of January 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers that had been assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 7,692,955 small entity 800 subscribers, fewer than 7,706,393 small entity 888 subscribers, and fewer than 1,946,538 small entity

[71] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

[72] 13 CFR 121.201, SIC code 4813.

[73] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

[74] 13 CFR 121.201, SIC code 4813.

[75] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

[76] 13 CFR 121.201, SIC code 4813.

[77] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

[78] 13 CFR 121.201, SIC code 4813.

[79] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

[80] 13 CFR 121.201, SIC code 4813.

[81] FCC, Common Carrier Bureau, Industry Analysis Division, *Trends in Telephone Service*, Table 19.3 (March 2000).

[82] We include all toll-free number subscribers in this category, including 888 numbers.

[83] FCC, CCB Industry Analysis Division, *FCC Releases, Study on Telephone Trends*, Tbls. 21.2, 21.3 and 21.4 (February 19, 1999).

877 subscribers may be affected by the proposed rules, if adopted.

INTERNATIONAL SERVICES

21. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).[84] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[85] According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $9.999 million.[86] The Census report does not provide more precise data.

22. *International Broadcast Stations.* Commission records show that there are 20 international broadcast station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition. However, the Commission estimates that only six international broadcast stations are subject to regulatory fee payments.

23. *International Public Fixed Radio (Public and Control Stations).* There are 3 licensees in this service subject to payment of regulatory fees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition.

24. *Fixed Satellite Transmit/Receive Earth Stations.* There are approximately 2,679 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

25. *Fixed Satellite Small Transmit/Receive Earth Stations.* There are approximately 2,679 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of fixed satellite transmit/receive earth stations that would constitute a small business under the SBA definition.

26. *Fixed Satellite Very Small Aperture Terminal (VSAT) Systems.* These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more hub stations. The Commission has processed 377 applications. We do not request nor collect annual revenue information, and thus are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.

27. *Mobile Satellite Earth Stations.* There are 11 licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

28. *Radio Determination Satellite Earth Stations.* There are four licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

29. *Space Stations (Geostationary).* Commission records reveal that there are 64 Geostationary Space Station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of geostationary space stations that would constitute a small business under the SBA definition.

30. *Space Stations (Non-Geostationary).* There are 12 Non-Geostationary Space Station licensees, of which only three systems are operational. We do not request nor collect annual revenue information, and thus are unable to estimate the number of non-geostationary space stations that would constitute a small business under the SBA definition.

31. *Direct Broadcast Satellites.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of "Cable and Other Pay Television Services."[87] This definition provides that a small entity is one with $11.0 million or less in annual receipts.[88] As of December 1996, there were eight DBS licensees. However, the Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that would be impacted by these proposed rules. Although DBS service requires a great investment of capital for operation, there are several new entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as small businesses, if independently owned and operated.

Mass Media Services

32. *Commercial Radio and Television Services.* The proposed rules and policies will apply to television broadcasting licensees and radio broadcasting licensees.[89] The SBA defines a television broadcasting station that has $10.5 million or less in annual receipts as a small business.[90] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[91] Included in this industry are commercial, religious, educational, and other television stations.[92] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[93] Separate establishments primarily engaged in producing taped television program materials are

[84] An exception is the Direct Broadcast Satellite (DBS) Service, *infra.*

[85] 13 CFR 120.121, SIC code 4899.

[86] *1992 Economic Census Industry and Enterprise Receipts Size Report,* Table 2D, SIC code 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[87] 13 CFR 120.121, SIC code 4841.

[88] 13 CFR 121.201, SIC code 4841.

[89] While we tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this *Notice* we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply. We reserve the right to adopt, in the future, a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to the proposed rules in this *Notice,* and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities. *See Report and Order in MM Docket No. 93–48 (Children's Television Programming),* 11 FCC Rcd 10660, 10737–38 (1996), 61 FR 43981 (Aug. 27, 1996), *citing* 5 U.S.C. 601(3).

[90] 13 CFR 121.201, SIC code 4833.

[91] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1,* Appendix A–9 (1995) (*1992 Census, Series UC92–S–1*).

[92] *Id.; see* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987), at 283, which describes "Television Broadcasting Stations" (SIC code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

[93] *1992 Census, Series UC92–S–1,* at Appendix A–9.

classified under another SIC number.[94] There were 1,509 television stations operating in the nation in 1992.[95] That number has remained fairly constant as indicated by the approximately 1,616 operating television broadcasting stations in the nation as of September 30, 1999.[96] For 1992,[97] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.[98] Only commercial stations are subject to regulatory fees.

33. Additionally, the Small Business Administration defines a radio broadcasting station that has $5 million or less in annual receipts as a small business.[99] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[100] Included in this industry are commercial, religious, educational, and other radio stations.[101] Radio broadcasting stations, which primarily are engaged in, radio broadcasting and which produce radio program materials are similarly included.[102] However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.[103] The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than $5 million in revenue in 1992.[104] Official Commission records indicate that 11,334 individual radio stations were operating in 1992.[105] As of September 30, 1999, Commission records indicate that 12,615 radio stations were operating, of which 7,832 were FM stations.[106] Only commercial stations are subject to regulatory fees.

34. Thus, the rules may affect approximately 1,616 full power television stations, approximately 1,200 of which are considered small businesses.[107] Additionally, the proposed rules will affect some 12,615 full power radio stations, approximately 11,670 of which are small businesses.[108] These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 2,194 low power television stations (LPTV).[109] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

Alternative Classification of Small Stations

35. An alternative way to classify small radio and television stations is by number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity Rule (EEO) for broadcasting.[110] Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and record keeping requirements.[111] We estimate that the total number of broadcast stations with 4 or fewer employees is approximately 5,186, of which 340 are television stations.[112]

Auxiliary, Special Broadcast and Other Program Distribution Services

36. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.[113]

37. There are currently 3,237 FM translators and boosters, and 2,964 TV translators.[114] The FCC does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe, however, that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either $5 million for a radio station or $10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.[115]

38. *Multipoint Distribution Service (MDS).* This service involves a variety of transmitters, which are used to relay programming to the home or office, similar to that provided by cable television systems.[116] In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years

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[94] *Id.*, SIC code 7812 (Motion Picture and Video Tape Production); SIC code 7922 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs).

[95] FCC News Release No. 31327 (Jan. 13, 1993); *1992 Census, Series UC92–S–1*, at Appendix A–9.

[96] FCC News Release, "Broadcast Station Totals as of September 30, 1999."

[97] A census to determine the estimated number of Communications establishments is performed every five years, in years ending with a "2" or "7." See *1992 Census, Series UC92–S–1*, at III.

[98] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[99] 13 CFR 121.201, SIC code 4832.

[100] *1992 Census, Series UC92–S–1*, at Appendix A–9.

[101] *Id.*

[102] *Id.*

[103] *Id.*

[104] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[105] FCC News Release, No. 31327 (Jan. 13, 1993).

[106] FCC News Release, "Broadcast Station Totals as of September 30, 1999."

[107] We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 1997 total of 1558 TV stations to arrive at 1,200 stations categorized as small businesses.

[108] We use the 96% figure of radio station establishments with less than $5 million revenue from the Census data and apply it to the 12,088 individual station count to arrive at 11,605 individual stations as small businesses.

[109] FCC News Release, No. 7033 (Mar. 6, 1997).

[110] The Commission's definition of a small broadcast station for purposes of applying its EEO rules was adopted prior to the requirement of approval by the SBA pursuant to section 3(a) of the Small Business Act, 15 U.S.C. 632(a), as amended by section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Public Law 102–366, 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Public Law 103–403, 301, 108 Stat. 4187 (1994). However, this definition was adopted after public notice and the opportunity for comment. *See Report and Order* in Docket No. 18244, 23 FCC 2d 430 (1970), 35 FR 8925 (Jun. 6, 1970).

[111] *See, e.g.*, 47 CFR 73.3612 (Requirement to file annual employment reports on Form 395 applies to licensees with five or more full-time employees). *See also, Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding*, FCC 00–20, released February 2, 2000 ("*Review of EEO Rules*").

[112] *See Review of EEO Rules*, Appendix B, Sec. C [from compilation of 1997 Broadcast Station Annual Employment Reports (FCC Form 395–B), Equal Employment Opportunity Staff, Mass Media Bureau, FCC].

[113] 13 CFR 121.201, SIC code 4832.

[114] FCC News Release, *Broadcast Station Totals as of September 30, 1999*, No. 71831 (Jan. 21, 1997).

[115] 15 U.S.C. 632.

[116] For purposes of this item, MDS includes both the single channel Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS).

not in excess of $40 million.[117] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[118] These stations were licensed prior to implementation of section 309(j) of the Communications Act of 1934, as amended.[119] Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas.[120] The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a small business. There are 2,050 MDS stations currently licensed. Thus, we conclude that there are 1,634 MDS providers that are small businesses as deemed by the SBA and the Commission's auction rules. It is estimated, however, that only 1,650 MDS licensees are subject to regulatory fees, and the number which are small businesses is unknown.

Wireless and Commercial Mobile Services

39. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[121] According to the Bureau of the Census, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[122] Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent *Telecommunications Industry Revenue* data, 808 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.[123] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 808 small cellular service carriers that may be affected by the proposed rules, if adopted.

40. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.[124] According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[125] Therefore, if this general ratio continues in 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

41. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz *Third Report and Order*, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[126] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[127] The SBA has approved these definitions.[128] An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[129] Nine hundred and eight (908) licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction.[130]

42. *Private and Common Carrier Paging.* The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[131] At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Telecommunications Industry Revenue* data, 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data.[132] We do not have

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[117] 47 CFR 1.2110 (a)(1).

[118] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, 10 FCC Rcd 9589 (1995), 60 FR 36524 (Jul. 17, 1995).

[119] 47 U.S.C. 309(j).

[120] *Id.* A Basic Trading Area (BTA) is the geographic area by which the Multipoint Distribution Service is licensed. *See* Rand McNally *1992 Commercial Atlas and Marketing Guide*, 123rd Edition, pp. 36–39.

[121] 13 CFR 121.201, SIC code 4812.

[122] *1992 Census, Series UC92–S–1*, at Table 5, SIC code 4812.

[123] *Trends in Telephone Service*, Table 19.3 (March 2000).

[124] 13 CFR 121.201, Standard Industrial Classification (SIC) code 4812.

[125] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

[126] 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068–70, at paras. 291–295 (1997).

[127] 220 MHz Third Report and Order, 12 FCC Rcd at 11068–69, para. 291.

[128] *See* Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

[129] *See generally* Public Notice, "220 MHz Service Auction Closes," Report No. WT 98–36 (Wireless Telecom. Bur. Oct. 23, 1998).

[130] Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," Report No. AUC–18–H, DA No. 99–229 (Wireless Telecom. Bur. Jan. 22, 1999).

[131] 13 CFR 121.201, SIC code 4812.

[132] *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 small paging carriers that may be affected by the proposed rules, if adopted. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

43. *Mobile Service Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. As noted above in the section concerning paging service carriers, the closest applicable definition under the SBA rules is that for radiotelephone (wireless) companies,[133] and the most recent *Telecommunications Industry Revenue* data shows that 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services.[134] Consequently, we estimate that there are fewer than 172 small mobile service carriers that may be affected by the proposed rules, if adopted.

44. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[135] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[136] These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.[137] No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.[138] Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

45. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

46. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[139] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[140] We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[141] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

47. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.[142] Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[143] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

48. *Specialized Mobile Radio (SMR).* The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years.[144] In the context of 900 MHz SMR, this regulation defining "small entity" has been approved by the SBA; approval concerning 800 MHz SMR is being sought.

49. The proposed fees in the NPRM apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this IRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

50. For geographic area licenses in the 900 MHz SMR band, there are 60 who qualified as small entities. For the 800 MHz SMR's, 38 are small or very small entities.

51. *Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need

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[133] 13 CFR 121.201, SIC code 4812.

[134] *Trends in Telephone Service*, Table 19.3 (February 19, 1999).

[135] *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order*, FCC 96–278, WT Docket No. 96–59, paras. 57–60 (released Jun. 24, 1996), 61 FR 33859 (Jul. 1, 1996); *see also* 47 CFR 24.720(b).

[136] *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order*, FCC 96–278, WT Docket No. 96–59, para. 60 (1996), 61 FR 33859 (Jul. 1, 1996).

[137] *See, e.g.*, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5581–84 (1994).

[138] FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released Jan. 14, 1997).

[139] The service is defined in § 22.99 of the Commission's Rules, 47 CFR 22.99.

[140] BETRS is defined in §§ 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

[141] 13 CFR 121.201, SIC code 4812.

[142] The service is defined in § 22.99 of the Commission's Rules, 47 CFR 22.99.

[143] 13 CFR 121.201, SIC code 4812.

[144] 47 CFR 90.814(b)(1).

to be evaluated within its own business area.

52. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. However, the Commission's 1994 Annual Report on PLMRs [145] indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the proposed rules in this context could potentially impact every small business in the United States.

53. *Amateur Radio Service.* We estimate that 8,000 applicants will apply for vanity call signs in FY 2000. All are presumed to be individuals. All other amateur licensees are exempt from payment of regulatory fees.

54. *Aviation and Marine Radio Service.* Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. Therefore, the applicable definition of small entity is the definition under the SBA rules for radiotelephone communications.[146]

55. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. Therefore, for purposes of our evaluations and conclusions in this IRFA, we estimate that there may be at least 712,000 potential licensees which are individuals or are small entities, as that term is defined by the SBA. We estimate, however, that only 16,800 will be subject to FY 2000 regulatory fees.

56. *Fixed Microwave Services.* Microwave services include common carrier,[147] private-operational fixed,[148] and broadcast auxiliary radio services.[149] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.*, an entity with no more than 1,500 persons.[150] We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

57. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[151] There are a total of approximately 127,540 licensees within these services. Governmental entities [152] as well as private businesses comprise the licensees for these services. As indicated *supra* in paragraph four of this IRFA, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.[153] All licensees in this category are exempt from the payment of regulatory fees.

58. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The services include the citizen's band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).[154] Inasmuch as the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. We are unable at this time to estimate the number of other licensees that would qualify as small under the SBA's definition; however, only GMRS licensees are subject to regulatory fees.

59. *Offshore Radiotelephone Service.* This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.[155] At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small under the SBA's definition for radiotelephone communications.

60. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic

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[145] Federal Communications Commission, *60th Annual Report, Fiscal Year 1994*, at 116.

[146] 13 CFR 121.201, SIC code 4812.

[147] 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's Rules).

[148] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[149] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. *See* 47 CFR 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[150] 13 CFR 121.201, SIC 4812.

[151] With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's Rules, 47 CFR 90.15 through 90.27. The police service includes 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of 40,512 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The 1,460 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15 through 90.27. The 19,478 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33 through 90.55.

[152] 47 CFR 1.1162.

[153] 5 U.S.C. 601(6).

[154] Licensees in the Citizens Band (CB) Radio Service, General Mobile Radio Service (GMRS), Radio Control (R/C) Radio Service and Family Radio Service (FRS) are governed by Subpart D, Subpart A, Subpart C, and Subpart B, respectively, of part 95 of the Commission's Rules. 47 CFR 95.401 through 95.428; 95.1 through 95.181; 95.201 through 95.225; 47 CFR 95.191 through 95.194.

[155] This service is governed by subpart I of part 22 of the Commission's Rules. *See* 47 CFR 22.1001 through 22.1037.

area WCS licensees affected includes these eight entities.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

61. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 ("FCC Remittance Advice"), and pay a regulatory fee based on the number of licenses or call signs.[156] Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499–A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.*, cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

62. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. As an option, licensees are permitted to file electronically or on computer diskette to minimize the burden of submitting multiple copies of the FCC Form 159. This latter, optional procedure may require additional technical skills. Applicants who pay small fees in advance supply fee information as part of their application and do not need to use FCC Form 159.

63. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment fee of 25 percent in addition to the required fee.[157] Until payment is received, no new or pending applications will be processed, and existing authorizations may be subject to rescission.[158] Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.[159] Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq.*, and the *Debt Collection Improvement Act of 1996*, Public Law 194–134. Appropriate enforcement measures, e.g., interest as well as administrative and judicial remedies, may be exercised by the Commission. Thus, debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[160]

64. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities that believe they have been placed in the wrong regulatory fee category or are experiencing extraordinary and compelling financial hardship, upon a showing that such circumstances override the public interest in reimbursing the Commission for its regulatory costs, may request a waiver, reduction or deferment of payment of the regulatory fee.[161] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will accept a petition to defer payment along with a waiver or reduction request.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

65. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. As described in Section IV of this IRFA, *supra*, we have created procedures in which all fee-filing licensees and regulatees use a single form, FCC Form 159, and have described in plain language the general filing requirements. We have also created Attachment F, *infra*, which gives "Detailed Guidance on Who Must Pay Regulatory Fees." Because the collection of fees is statutory, our efforts at proposing alternatives are constrained and, throughout these annual fee proceedings, have been largely directed toward simplifying the instructions and necessary procedures for all filers. At this time, we invite comment on other alternatives that might simplify our fee procedures or otherwise benefit small entities, while remaining consistent with our statutory responsibilities in this proceeding.

66. *The Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999*, Public Law 105–277 requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, as amended, has required the Commission to collect for Fiscal Year (FY) 2000.[162] As noted, we seek comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small entities.

67. With the use of actual cost accounting data for computation of

[156] The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (*e.g.*, Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) Is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

[157] 47 U.S.C. 1.1164(a).

[158] 47 U.S.C. 1.1164(c).

[159] Public Law 104–134, 110 Stat. 1321 (1996).

[160] 31 U.S.C. 7701(c)(2)(B).

[161] 47 U.S.C. 1.1166.

[162] 47 U.S.C. 159(a).

regulatory fees, we found that some fees which were very small in previous years would have increased dramatically. The methodology proposed in this *NPRM* minimizes this impact by limiting the amount of increase and shifting costs to other services which, for the most part, are larger entities.

68. Several categories of licensees and regulatees are exempt from payment of regulatory fees. *See, e.g.,* footnote 149, *supra,* and Attachment F of the *NPRM, infra.*

VI. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

69. None.

Attachment B—Sources of Payment Unit Estimates for FY 2000

In order to calculate individual service fees for FY 2000, we adjusted FY 1999 payment units for each service to more accurately reflect expected FY 2000 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. We tried to obtain verification for these estimates from multiple sources and, in all cases, we compared FY 2000 estimates with actual FY 1999 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 2000 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 2000 payment units are based on FY 1999 actual payment units, it does not necessarily mean that our FY 2000 projection is *exactly* the same number as FY 1999. It means that we have either rounded the FY 2000 number or adjusted it slightly to account for these variables.

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, 218–219 MHz[163], Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Mobile Services	Based on industry estimates of growth between FY 1999 and FY 2000 and Wireless Telecommunications Bureau projections of new applications and average number of mobile units associated with each application.
CMRS Messaging Services	Based on industry estimates of the number of units in operation.
AM/FM Radio Stations	Based on actual FY 1999 payment units.
UHF/VHF Television Stations	Based on actual FY 1999 payment units.
AM/FM/TV Construction Permits	Based on actual FY 1999 payment units.
LPTV, Translators and Boosters	Based on actual FY 1999 payment units.
Auxiliaries	Based on Wireless Telecommunications Bureau (WTB) projections.
MDS/MMDS	Based on actual FY 1999 payment units.
Cable Antenna Relay Service (CARS)	Based on actual FY 1999 payment units.
Cable Television System Subscribers	Based on Cable Services Bureau and industry estimates of subscribership.
Interstate Telephone Service Providers	Based on actual FY 1999 interstate revenues associated with the Telecommunications Reporting Worksheet, adjusted to take into consideration FY 2000 revenue growth in this industry as estimated by the Common Carrier Bureau.
Earth Stations	Based on actual FY 1999 payment units.
Space Stations (GSOs & NGSOs)	Based on International Bureau licensee data bases.
International Bearer Circuits	Based on actual FY 1999 payment units.
International HF Broadcast Stations, International Public Fixed Radio Service.	Based on actual FY 1999 payment units.

ATTACHMENT C: CALCULATION OF REVENUE REQUIREMENTS AND PRO-RATA FEES

Fee category	FY 2000 payment units	×	FY 1999 fee	×	Payment years	=	Computed FY 2000 revenue requirement	Pro-rated revenue requirement[1]	Rounded new FY 2000 regulatory fee	Expected FY 2000 revenue
PLMRS (Exclusive Use)	3,800		13		5		247,000	239,408	13	239,408
Microwave	6,250		13		10		812,500	787,525	13	787,525
218–219 MHz (Formerly IVDS)	0		13		10		0	0	0	0
Marine (Ship)	6,300		7		10		441,000	427,444	7	427,444
GMRS/PLMRS (Shared Use)	59,000		7		5		2,065,000	2,001,526	7	2,001,526
Aviation (Aircraft)	3,300		7		10		231,000	223,889	7	223,889

[163] The Wireless Telecommunications Bureau's staff advises that they do not anticipate receiving any applications for 218–219 MHz (formerly IVDS) in FY 2000.

ATTACHMENT C: CALCULATION OF REVENUE REQUIREMENTS AND PRO-RATA FEES—Continued

Fee category	FY 2000 payment units	×	FY 1999 fee	×	Payment years	=	Computed FY 2000 revenue requirement	Pro-rated revenue requirement [1]	Rounded new FY 2000 regulatory fee	Expected FY 2000 revenue
Marine (Coast)	1,500		7		5		52,500	50,886	7	50,886
Aviation (Ground)	1,750		7		5		61,250	59,367	7	59,367
Amateur Vanity Call Signs	8,000		1.4		10		112,000	108,557	1.4	112,000
AM Class A	72		1,942		1		139,824	135,526	1,875	135,000
AM Class B	1,155		1,491		1		1,722,105	1,669,171	1,450	1,674,750
AM Class C	806		738		1		594,828	576,544	715	576,290
AM Class D	2,001		970		1		1,940,970	1,881,308	940	1,880,940
FM Classes A, B1 & C3	2,656		1,491		1		3,960,096	3,838,370	1,445	3,851,200
FM Classes B, C, C1 & C2	2,555		1,942		1		4,961,810	4,809,293	1,875	4,790,625
AM Construction Permits	60		260		1		15,600	15,120	250	15,000
FM Construction Permits	341		780		1		265,980	257,804	755	257,455
Satellite TV	70		1,300		1		91,000	88,203	1,250	87,500
Satellite TV Construction Permit	4		460		1		1,840	1,783	445	1,780
VHF Markets 1–10	44		41,225		1		1,813,900	1,758,144	39,950	1,757,800
VHF Markets 11–25	54		34,325		1		1,853,550	1,796,575	33,275	1,796,850
VHF Markets 26–50	67		23,475		1		1,572,825	1,524,479	22,750	1,524,250
VHF Markets 51–100	115		13,150		1		1,512,250	1,465,766	12,750	1,466,250
VHF Remaining Markets	195		3,400		1		663,000	642,621	3,300	643,500
VHF Construction Permits	19		2,775		1		52,725	51,104	2,700	51,300
UHF Markets 1–10	70		15,550		1		1,088,500	1,055,041	15,075	1,055,250
UHF Markets 11–25	75		11,775		1		883,125	855,979	11,425	856,875
UHF Markets 26–50	102		7,300		1		744,600	721,712	7,075	721,650
UHF Markets 51–100	148		4,350		1		643,800	624,011	4,225	625,300
UHF Remaining Markets	163		1,175		1		191,525	185,638	1,150	187,450
UHF Construction Permits	93		2,900		1		269,700	261,410	2,800	260,400
Auxiliaries	22,500		12		1		270,000	261,701	12	261,701
International HF Broadcast	5		520		1		2,600	2,520	505	2,525
LPTV/Translators/ Boosters	2,710		290		1		785,900	761,743	280	758,800
CARS	1,687		55		1		92,785	89,933	53	89,933
Cable Systems	66,690,000		0.48		1		32,011,200	31,027,233	0.47	31,027,233
Interstate Telephone Service Providers	73,900,000,000		0.00121		1		89,419,000	86,670,419	0.00117	86,670,419
CMRS Mobile Services (Cellular/Public Mobile)	82,000,000		0.32		1		26,240,000	25,433,429	0.31	25,433,429
CMRS Messaging Services	38,900,000		0.04		1		1,556,000	1,508,171	0.04	1,508,171
MDS/MMDS/LMDS	3,036		285		1		865,260	838,663	275	834,900
International Bearer Circuits	595,614		7		1		4,169,298	4,041,141	7	4,041,141
International Public Fixed	3		410		1		1,230	1,192	395	1,185
Earth Stations	2,679		180		1		482,220	467,397	175	468,825
Space Stations (Geostationary)	63.5		130,550		1		6,201,125	6,010,513	94,650	6,010,275
Space Stations (Non-geostationary)	3		180,800		1		542,400	525,728	175,250	525,750
Total Estimated Revenue Collected	.....		.....		.....		191,644,821	185,754,000	.....	185,753,420

ATTACHMENT C: CALCULATION OF REVENUE REQUIREMENTS AND PRO-RATA FEES—Continued

Fee category	FY 2000 payment units	×	FY 1999 fee	×	Payment years	=	Computed FY 2000 revenue requirement	Pro-rated revenue requirement [1]	Rounded new FY 2000 regulatory fee	Expected FY 2000 revenue
Total Revenue Requirement	.....		.....		.....		185,754,000	185,754,000	.....	185,754,000
Difference	.....		.....		.....		5,890,821	0	.....	(243)

[1] 0.969261778 factor applied.

ATTACHMENT D: FY 2000 SCHEDULE OF REGULATORY FEES

[Proposed]

Fee category	Annual regulatory fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	13
Microwave (per license) (47 CFR part 101)	13
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	13
Marine (Ship) (per station) (47 CFR part 80)	7
Marine (Coast) (per license) (47 CFR part 80)	7
General Mobile Radio Service (per license) (47 CFR part 95)	7
PLMRS (Shared Use) (per license) (47 CFR part 90)	7
Aviation (Aircraft) (per station) (47 CFR part 87)	7
Aviation (Ground) (per license) (47 CFR part 87)	7
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.40
CMRS Mobile Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.31
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.04
Multipoint Distribution Services (Includes MMDS & LMDS)(per call sign) (47 CFR parts 21 and 101)	275
AM Radio Construction Permits	250
FM Radio Construction Permits	755
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10	39,950
Markets 11–25	33,275
Markets 26–50	22,750
Markets 51–100	12,750
Remaining Markets	3,300
Construction Permits	2,700
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10	15,075
Markets 11–25	11,425
Markets 26–50	7,075
Markets 51–100	4,225
Remaining Markets	1,150
Construction Permits	2,800
Satellite Television Stations (All Markets)	1,250
Construction Permits—Satellite Television Stations	445
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	280
Broadcast Auxiliary (47 CFR part 74)	12
CARS (47 CFR part 78)	53
Cable Television Systems (per subscriber) (47 CFR part 76)	.47
Interstate Telephone Service Providers (per revenue dollar)	.00117
Earth Stations (47 CFR part 25)	175
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	94,650
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	175,250
International Bearer Circuits (per active 64KB circuit)	7
International Public Fixed (per call sign) (47 CFR part 23)	395
International (HF) Broadcast (47 CFR part 73)	505

RADIO STATION REGULATORY FEES

Population served	AM class A	AM class B	AM class C	AM class D	FM classes A, B1 & C3	FM classes B, C, C1 & C2
<20,000	400	300	200	250	300	400
20,001–50,000	800	625	300	425	625	800
50,001–125,000	1,325	850	425	650	850	1,325
125,001–400,000	1,950	1,350	625	775	1,350	1,950
400,001–1,000,000	2,725	2,200	1,200	1,450	2,200	2,725

RADIO STATION REGULATORY FEES—Continued

Population served	AM class A	AM class B	AM class C	AM class D	FM classes A, B1 & C3	FM classes B, C, C1 & C2
>1,000,000	4,375	3,575	1,725	2,225	3,575	4,375

ATTACHMENT E: COMPARISON BETWEEN FY 1999 & FY 2000 PROPOSED REGULATORY FEES

Fee category	Annual regulatory fee FY 1999	NPRM proposed fee FY 2000	Annual regulatory fee FY 2000
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	13	13	
Microwave (per license) (47 CFR part 101)	13	13	
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	13	13	
Marine (Ship) (per station) (47 CFR part 80)	7	7	
Marine (Coast) (per license) (47 CFR part 80)	7	7	
General Mobile Radio Service (per license) (47 CFR part 95)	7	7	
PLMRS (Shared Use) (47 CFR part 90)	7	7	
Aviation (Aircraft) (per station) (47 CFR part 87)	7	7	
Aviation (Ground) (per license) (47 CFR part 87)	7	7	
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.40	1.40	
CMRS Mobile Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.32	.31	
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.04	.04	
Multipoint Distribution Services (Includes MMDS and LMDS)(per call sign) (47 CFR part 21 and 101)	285	275	
AM Construction Permits	260	250	
FM Construction Permits	780	755	
TV (47 CFR part 73) VHF Commercial:			
Markets 1–10	41,225	39,950	
Markets 11–25	34,325	33,275	
Markets 26–50	23,475	22,750	
Markets 51–100	13,150	12,750	
Remaining Markets	3,400	3,300	
Construction Permits	2,775	2,700	
TV (47 CFR part 73) UHF Commercial:			
Markets 1–10	15,550	15,075	
Markets 11–25	11,775	11,425	
Markets 26–50	7,300	7,075	
Markets 51–100	4,350	4,225	
Remaining Markets	1,175	1,150	
Construction Permits	2,900	2,800	
Satellite Television Stations (All Markets)	1,300	1,250	
Construction Permits—Satellite Television Stations	460	445	
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	290	280	
Broadcast Auxiliary (47 CFR part 74)	12	12	
CARS (47 CFR part 78)	55	53	
Earth Stations (47 CFR part 25)	180	175	
Cable Television Systems (per subscriber) (47 CFR part 76)	.48	.47	
Interstate Telephone Service Providers (per revenue dollar)	.00121	.00117	
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	130,550	94,650	
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	180,800	175,250	
International Bearer Circuits (per active 64KB circuit)	7	7	
International Public Fixed (per call sign) (47 CFR part 23)	410	395	
International (HF) Broadcast (47 CFR part 73)	520	505	

FY 1999 RADIO STATION REGULATORY FEES

Population served	AM class A	AM class B	AM class C	AM class D	FM classes A, B1 & C3	FM classes B, C, C1 & C2
<20,000	430	325	225	275	325	430
20,001–50,000	825	650	325	450	650	825
50,001–125,000	1,350	875	450	675	875	1,350
125,001–400,000	2,000	1,400	675	825	1,400	2,000
400,001–1,000,000	2,750	2,250	1,250	1,500	2,250	2,750
>1,000,000	4,400	3,600	1,750	2,250	3,600	4,400

FY 2000 RADIO STATION REGULATORY FEES

Population served	AM class A	AM class B	AM class C	AM class D	FM classes A, B1 & C3	FM classes B, C, C1 & C2
<20,000	400	300	200	250	300	400
20,001–50,000	800	625	300	425	625	800
50,001–125,000	1,325	850	425	650	850	1,325
125,001–400,000	1,950	1,350	625	775	1,350	1,950
400,001–1,000,000	2,725	2,200	1,200	1,450	2,200	2,725
>1,000,000	4,375	3,575	1,725	2,225	3,575	4,375

Attachment F: Detailed Guidance on Who Must Pay Regulatory Fees

1. The guidelines below provide an explanation of regulatory fee categories established by the Schedule of Regulatory Fees in section 9 (g) of the Communications Act,[164] as modified in the instant *NPRM*. Where regulatory fee categories need interpretation or clarification, we have relied on the legislative history of section 9, our own experience in establishing and regulating the Schedule of Regulatory Fees for Fiscal Years (FY) 1994, 1995, 1996, 1997, 1998 and 1999 and the services subject to the fee schedule. The categories and amounts set out in the schedule have been modified to reflect changes in the number of payment units, additions and changes in the services subject to the fee requirement and the benefits derived from the Commission's regulatory activities, and to simplify the structure of the schedule. The schedule may be similarly modified or adjusted in future years to reflect changes in the Commission's budget and in the services regulated by the Commission.[165]

2. *Exemptions.* Governments and nonprofit entities are exempt from paying regulatory fees and should not submit payment. A nonprofit entity is required to have on file with the Commission an IRS Determination Letter documenting that it is exempt from taxes under section 501 of the Internal Revenue Code or the certification of a governmental authority attesting to its nonprofit status. In instances where the IRS Determination Letter or the letter of certification from a governmental authority attesting to its nonprofit status is not sufficiently current, the nonprofit entity may be asked to submit more current documentation. The governmental exemption applies even where the government-owned or community-owned facility is in competition with a commercial operation. Other specific exemptions are discussed below in the descriptions of other particular service categories.

1. Private Wireless Radio Services

3. Two levels of statutory fees were established for the Private Wireless Radio Services—exclusive use services and shared use services. Thus, licensees who generally receive a higher quality communication channel due to exclusive or lightly shared frequency assignments will pay a higher fee than those who share marginal quality assignments. This dichotomy is consistent with the directive of section 9, that the regulatory fees reflect the benefits provided to the licensees.[166] In addition, because of the generally small amount of the fees assessed against Private Wireless Radio Service licensees, applicants for new licenses and reinstatements and for renewal of existing licenses are required to pay a regulatory fee covering the entire license term, with only a percentage of all licensees paying a regulatory fee in any one year. Applications for modification or assignment of existing authorizations do not require the payment of regulatory fees. The expiration date of those authorizations will reflect only the unexpired term of the underlying license rather than a new license term.

a. Exclusive Use Services

4. *Private Land Mobile Radio Services (PLMRS) (Exclusive Use):* Regulatees in this category include those authorized under part 90 of the Commission's Rules to provide limited access Wireless Radio service that allows high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These services, using the 220–222 MHz band and frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Services (SMRS).[167] For FY 2000, PMRS licensees will pay a $13 annual regulatory fee per license, payable for an entire five or ten year license term at the time of application for a new, renewal, or reinstatement license.[168] The total regulatory fee due is either $65 for a license with a five-year term or $130 for a license with a 10-year term.

5. *Microwave Services:* These services include private and commercial microwave systems and private and commercial carrier systems authorized under part 101 of the Commission's Rules to provide telecommunications services between fixed points on a high quality channel of communications. Microwave systems are often used to relay data and to control railroad, pipeline, and utility equipment. Commercial systems typically are used for video or data transmission or distribution. For FY 2000, Microwave licensees will pay a $13 annual regulatory fee per license, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $130 for the ten-year license term.

6. *218–219 MHz (Formerly Interactive Video Data Service (IVDS)):* The 218–219 MHz service is a two-way, point-to-multi-point radio service allocated high quality channels of communications and authorized under part 95 of the Commission's Rules. The 218–219 MHz service provides information, products, and services, and also the capability to obtain responses from subscribers in a specific service area. The 218–219 MHz service is offered on a private carrier basis. The Commission does not anticipate receiving any applications in the 218–219 MHz service during FY 2000. However, for FY 2000, we propose that the annual regulatory fee for 218–219 MHz licensees be set at $13 should there be any applications submitted. The total regulatory fee due would be $130 for the ten-year license term.

[164] 47 U.S.C. 159(g)

[165] 47 U.S.C. 159(b)(2), (3).

[166] 47 U.S.C. 159(b)(1)(A).

[167] This category only applies to licensees of shared-use private 220–222 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected not to change to the Commercial Mobile Radio Service (CMRS). Those who have elected to change to the CMRS are referred to paragraph 14 of this Attachment.

[168] Although this fee category includes licenses with ten-year terms, the estimated volume of ten-year license applications in FY 2000 is less than one-tenth of one percent and, therefore, is statistically insignificant.

b. Shared Use Services

7. *Marine (Ship) Service:* This service is a shipboard radio service authorized under part 80 of the Commission's Rules to provide telecommunications between watercraft or between watercraft and shore-based stations. Radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats. The Telecommunications Act of 1996 gave the Commission the authority to license certain ship stations by rule rather than by individual license. The Commission exercises that authority. Thus, private boat operators sailing entirely within domestic U.S. waters and who are not otherwise required by treaty or agreement to carry a radio, are no longer required to hold a marine license, and they will not be required to pay a regulatory fee. For FY 2000, parties required to be licensed and those choosing to be licensed for Marine (Ship) Stations will pay a $7 annual regulatory fee per station, payable for an entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $70 for the ten-year license term.

8. *Marine (Coast) Service:* This service includes land-based stations in the maritime services, authorized under part 80 of the Commission's Rules, to provide communications services to ships and other watercraft in coastal and inland waterways. For FY 2000, licensees of Marine (Coast) Stations will pay a $7 annual regulatory fee per call sign, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $35 per call sign for the five-year license term.

9. *Private Land Mobile Radio Services (PLMRS) (Shared Use):* These services include Land Mobile Radio Services operating under parts 90 and 95 of the Commission's Rules. Services in this category provide one- or two-way communications between vehicles, persons or fixed stations on a shared basis and include radiolocation services, industrial radio services, and land transportation radio services. For FY 2000, licensees of services in this category will pay a $7 annual regulatory fee per call sign, payable for an entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $35 for the five-year license term.

10. *Aviation (Aircraft) Service:* These services include stations authorized to provide communications between aircraft and between aircraft and ground stations and include frequencies used to communicate with air traffic control facilities pursuant to part 87 of the Commission's Rules. The Telecommunications Act of 1996 gave the Commission the authority to license certain aircraft radio stations by rule rather than by individual license. The commission exercises that authority. Thus, private aircraft operators flying entirely within domestic U.S. airspace and who are not otherwise required by treaty or agreement to carry a radio are no longer required to hold an aircraft license, and they will not be required to pay a regulatory fee. For FY 2000, parties required to be licensed and those choosing to be licensed for Aviation (Aircraft) Stations will pay a $7 annual regulatory fee per station, payable for the entire ten-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $70 per station for the ten-year license term.

11. *Aviation (Ground) Service:* This service includes stations authorized to provide ground-based communications to aircraft for weather or landing information, or for logistical support pursuant to part 87 of the Commission's Rules. Certain ground-based stations which only serve itinerant traffic, i.e., possess no actual units on which to assess a fee, are exempt from payment of regulatory fees. For FY 2000, licensees of Aviation (Ground) Stations will pay a $7 annual regulatory fee per license, payable for the entire five-year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee is $35 per call sign for the five-year license term.

12. *General Mobile Radio Service (GMRS):* These services include Land Mobile Radio licensees providing personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications pursuant to part 95 of the Commission's Rules. For FY 2000, GMRS licensees will pay a $7 annual regulatory fee per license, payable for an entire five-year license term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $35 per license for the five-year license term.

c. Amateur Radio Vanity Call Signs

13. *Amateur Vanity Call Signs:* This category covers voluntary requests for specific call signs in the Amateur Radio Service authorized under part 97 of the Commission's Rules. Applicants for Amateur Vanity Call-Signs will continue to pay a $1.40 annual regulatory fee per call sign, as prescribed in the FY 1999 fee schedule, payable for an entire ten-year license term at the time of application for a vanity call sign until the FY 2000 fee schedule becomes effective. The total regulatory fee due would be $14 per license for the ten-year license term.[169] For FY 2000, Amateur Vanity Call Sign applicants will again pay a $1.40 annual regulatory fee per call sign, payable for an entire ten-year term at the time of application for a new, renewal or reinstatement license. The total regulatory fee due is $14 per call sign for the ten-year license term.

d. Commercial Wireless Radio Services

14. *Commercial Mobile Radio Services (CMRS) Mobile Services:* The Commercial Mobile Radio Service (CMRS) is an "umbrella" descriptive term attributed to various existing broadband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Mobile Services include certain licensees which formerly were licensed as part of the Private Radio Services (*e.g.*, Specialized Mobile Radio Services) and others formerly licensed as part of the Common Carrier Radio Services (*e.g.*, Public Mobile Services and Cellular Radio Service). While specific rules pertaining to each covered service remain in separate parts 22, 24, 27, 80 and 90, general rules for CMRS are contained in part 20. CMRS Mobile Services will include: Specialized Mobile Radio Services (part 90);[170] Broadband Personal Communications Services (part 24), Public Coast Stations (part 80); Public Mobile Radio (Cellular, 800 MHz Air-Ground Radiotelephone, and Offshore Radio Services) (part 22); and Wireless Communications Service (part 27). Each licensee in this group will pay an annual regulatory fee for each mobile or cellular unit (mobile or telephone number), assigned to its customers, including resellers of its

[169] Section 9(h) exempts "amateur radio operator licenses under part 97 of the Commission's rules (47 CFR part 97)" from the requirement. However, section 9(g)'s fee schedule explicitly includes "Amateur vanity call signs" as a category subject to the payment of a regulatory fee.

[170] This category does not include licensees of private shared-use 220 MHz and 470 MHz and above in the Specialized Mobile Radio (SMR) service who have elected to remain non-commercial. Those who have elected not to change to the Commercial Mobile Radio Service (CMRS) are referred to paragraph 4 of this Attachment.

services. For FY 2000, the regulatory fee is $.31 per unit.

15. *Commercial Mobile Radio Services (CMRS) Messaging Services:* The Commercial Mobile Radio Service (CMRS) is an "umbrella" descriptive term attributed to various existing narrowband services authorized to provide interconnected mobile radio services for profit to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public. CMRS Messaging Services include certain licensees which formerly were licensed as part of the Private Radio Services (*e.g.*, Private Paging and Radiotelephone Service), licensees formerly licensed as part of the Common Carrier Radio Services (*e.g.*, Public Mobile One-Way Paging), licensees of Narrowband Personal Communications Service (PCS) (*e.g.*, one-way and two-way paging), and 220–222 MHz Band and Interconnected Business Radio Service. While specific rules pertaining to each covered service remain in separate parts 22, 24 and 90, general rules for CMRS are contained in part 20. Each licensee in the CMRS Messaging Services will pay an annual regulatory fee for each unit (pager, telephone number, or mobile) assigned to its customers, including resellers of its services. For FY 2000, the regulatory fee is $.04 per unit.

16. Finally, we are reiterating our definition of CMRS payment units to make it clear that fees are assessable on each PCS or cellular telephone and each one-way or two-way pager capable of receiving or transmitting information, whether or not the unit is "active" on the "as-of" date for payment of these fees. The unit becomes "feeable" if the end user or assignee of the unit has possession of the unit and the unit is capable of transmitting or receiving voice or non-voice messages or data and the unit is either owned and operated by the licensee of the CMRS system or a reseller, or the end user of a unit has a contractual agreement for the provision of a CMRS service from a licensee of a CMRS system or a reseller of a CMRS service. The responsible payer of the regulatory fee is the CMRS licensee. For example, John Doe purchases a pager and contractually obtains paging services from Paging Licensee X. Paging Licensee X is responsible for paying the applicable regulatory fee for this unit. Likewise, Cellular Licensee Y donates cellular phones to a high school and the high school either pays for or obtains free cellular service from Cellular Licensee Y. In this situation, Cellular Licensee Y is responsible for paying the applicable regulatory fees for these units.

2. Mass Media Services

17. The regulatory fees for the Mass Media fee category apply to broadcast licensees and permittees. Noncommercial Educational Broadcasters are exempt from regulatory fees.

a. Commercial Radio

18. These categories include licensed Commercial AM (Classes A, B, C, and D) and FM (Classes A, B, B1, C, C1, C2, and C3) Radio Stations operating under part 73 of the Commission's Rules.[171] We have combined class of station and city grade contour population data to formulate a schedule of radio fees which differentiate between stations based on class of station and population served. In general, higher class stations and stations in metropolitan areas will pay higher fees than lower class stations and stations located in rural areas. The specific fee that a station must pay is determined by where it ranks after weighting its fee requirement (determined by class of station) with its population. The regulatory fee classifications for Radio Stations for FY 2000 are as follows:

FY 2000 RADIO STATION REGULATORY FEES

Population served	AM class A	AM class B	AM class C	AM class D	FM classes A, B1 & C3	FM classes B, C, C1 & C2
<20,000	400	300	200	250	300	400
20,001–50,000	800	625	300	425	625	800
50,001–125,000	1,325	850	425	650	850	1,325
125,001–400,000	1,950	1,350	625	775	1,350	1,950
400,001–1,000,000	2,725	2,200	1,200	1,450	2,200	2,725
>1,000,000	4,375	3,575	1,725	2,225	3,575	4,375

19. Licensees may determine the appropriate fee payment by referring to a list which will be provided as an attachment to the final *Report and Order* in this proceeding. This same information will be available on the FCC's internet world wide web site (http://www.fcc.gov) by calling the FCC's National Call Center (1–888–225–5322), and may be included in the Public Notices mailed to each licensee for which we have a current address on file (**Note:** Non-receipt of a Public Notice does not relieve a licensee of its obligation to submit its regulatory fee payment).

b. Construction Permits—Commercial AM Radio

20. This category includes holders of permits to construct new Commercial AM Stations. For FY 2000, permittees will pay a fee of $250 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable and licensees would be required to pay the applicable fee for the designated group within which the station appears.

c. Construction Permits—Commercial FM Radio

This category includes holders of permits to construct new Commercial FM Stations. For FY 2000, permittees will pay a fee of $755 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a regulatory fee based upon the designated group within which the station appears.

d. Commercial Television Stations

22. This category includes licensed Commercial VHF and UHF Television Stations covered under part 73 of the Commission's Rules, except commonly owned Television Satellite Stations, addressed separately below. Markets are Nielsen Designated Market Areas (DMA) as listed in the *Television&Cable Factbook*, Stations Volume No. 68, 2000

[171] The Commission acknowledges that certain stations operating in Puerto Rico and Guam have been assigned a higher level station class than would be expected if the station were located on the mainland. Although this results in a higher regulatory fee we believe that the increased interference protection associated with the higher station class is necessary and justifies the fee.

Edition, Warren Publishing, Inc. The fees for each category of station are as follows:

VHF Markets 1–10—$39,950
VHF Markets 11–25—33,275
VHF Markets 26–50—22,750
VHF Markets 51–100—12,750
VHF Remaining Markets—3,300
UHF Markets 1–10—$15,075
UHF Markets 11–25—11,425
UHF Markets 26–50—7,075
UHF Markets 51–100—4,225
UHF Remaining Markets—1,150

e. Commercial Television Satellite Stations

23. Commonly owned Television Satellite Stations in any market (authorized pursuant to Note 5 of § 73.3555 of the Commission's Rules) that retransmit programming of the primary station are assessed a fee of $1,250 annually. Those stations designated as Television Satellite Stations in the 2000 Edition of the *Television and Cable Factbook* are subject to the fee applicable to Television Satellite Stations. All other television licensees are subject to the regulatory fee payment required for their class of station and market.

f. Construction Permits—Commercial VHF Television Stations

24. This category includes holders of permits to construct new Commercial VHF Television Stations. For FY 2000, VHF permittees will pay an annual regulatory fee of $2,700. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

g. Construction Permits—Commercial UHF Television Stations

25. This category includes holders of permits to construct new UHF Television Stations. For FY 2000, UHF Television permittees will pay an annual regulatory fee of $2,800. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

h. Construction Permits—Satellite Television Stations

26. The fee for UHF and VHF Television Satellite Station construction permits for FY 2000 is $445. An individual regulatory fee payment is to be made for each Television Satellite Station construction permit held.

i. Low Power Television, FM Translator and Booster Stations, TV Translator and Booster Stations

27. This category includes Low Power UHF/VHF Television stations operating under part 74 of the Commission's Rules with a transmitter power output limited to 1 kW for a UHF facility and, generally, 0.01 kW for a VHF facility. Low Power Television (LPTV) stations may retransmit the programs and signals of a TV Broadcast Station, originate programming, and/or operate as a subscription service. This category also includes translators and boosters operating under part 74 which rebroadcast the signals of full service stations on a frequency different from the parent station (translators) or on the same frequency (boosters). The stations in this category are secondary to full service stations in terms of frequency priority. We have also received requests for waivers of the regulatory fees from operators of community based Translators. These Translators are generally not affiliated with commercial broadcasters, are nonprofit, nonprofitable, or only marginally profitable, serve small rural communities, and are supported financially by the residents of the communities served. We are aware of the difficulties these Translators have in paying even minimal regulatory fees, and we have addressed those concerns in the ruling on reconsideration of the FY 1994 *Report and Order*. Community based Translators are exempt from regulatory fees. For FY 2000, licensees in low power television, FM translator and booster, and TV translator and booster category will pay a regulatory fee of $280 for each license held.

j. Broadcast Auxiliary Stations

28. This category includes licensees of remote pickup stations (either base or mobile) and associated accessory equipment authorized pursuant to a single license, Aural Broadcast Auxiliary Stations (Studio Transmitter Link and Inter-City Relay) and Television Broadcast Auxiliary Stations (TV Pickup, TV Studio Transmitter Link, TV Relay) authorized under part 74 of the Commission's Rules. Auxiliary Stations are generally associated with a particular television or radio broadcast station or cable television system. This category does not include translators and boosters (see paragraph 26 *infra*). For FY 2000, licensees of Commercial Auxiliary Stations will pay a $12 annual regulatory fee on a per call sign basis.

k. Multipoint Distribution Service

29. This category includes Multipoint Distribution Service (MDS), Local Multipoint Distribution (LMDS), and Multichannel Multipoint Distribution Service (MMDS), authorized under parts 21 and 101 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. For FY 2000, MDS, LMDS, and MMDS stations will pay an annual regulatory fee of $275 per call sign.

3. Cable Services

a. Cable Television Systems

30. This category includes operators of Cable Television Systems, providing or distributing programming or other services to subscribers under part 76 of the Commission's Rules. For FY 2000, Cable Systems will pay a regulatory fee of $.47 per subscriber.[172] Payments for Cable Systems are to be made on a per subscriber basis as of December 31, 1999. Cable Systems should determine their subscriber numbers by calculating the number of single family dwellings, the number of individual households in multiple dwelling units, *e.g.*, apartments, condominiums, mobile home parks, etc., paying at the basic subscriber rate, the number of bulk rate customers and the number of courtesy or fee customers. In order to determine the number of bulk rate subscribers, a system should divide its bulk rate charge by the annual subscription rate for individual households. See FY 1994 *Report and Order*, Appendix B at paragraph 31.

b. Gable Antenna Relay Service

31. This category includes Cable Antenna Relay Service (CARS) stations used to transmit television and related audio signals, signals of AM and FM Broadcast Stations, and cablecasting from the point of reception to a terminal point from where the signals are distributed to the public by a Cable Television System. For FY 2000, licensees will pay an annual regulatory fee of $53 per CARS license.

4. Common Carrier Services

a. Commercial Microwave (Domestic Public Fixed Radio Service)

32. This category includes licensees in the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, and Digital Electronic Message Service, authorized under part 101 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. These services are now included in the Microwave category (see paragraph 5 *infra*).

[172] Cable systems are to pay their regulatory fees on a per subscriber basis rather than per 1,000 subscribers as set forth in the statutory fee schedule. See FY 1994 *Report and Order* at paragraph 100.

b. Interstate Telephone Service Providers

33. This category includes all providers of local and telephone services to end users. Covered services include the interstate and international portion of wireline and fixed wireless local exchange service, local and long distance private line services for both voice and data, dedicated and network packet and packet-like services, long distance message telephone services, and other local and toll services. Providers of such services are referred to herein as "interstate telephone service providers".

Interstate service providers include CAP/CLECs, incumbent local exchange carriers (local telephone operating companies), Interexchange carriers (long distance telephone companies), wireless telephone service carriers that provide fixed local or toll services (Cellular, Personal Communications Service, and Specialized Mobile Radio), local resellers, OSPs (operator service providers that enable customers to make away from home calls and to place calls with alternative billing arrangements), payphone service providers, pre-paid card, private service providers, satellite carriers that provide fixed local or message toll services, shared tenant service providers, toll resellers, *and other* local and other service providers.

In order to avoid imposing any double payment burden on resellers, we base the regulatory fee on end-user revenues. Accordingly, interstate telephone service providers, including resellers, must submit fee payments based upon their proportionate share of interstate and international end-user revenues for local and toll services. We use the terms end-user revenues, local service and toll service, based on the methodology used for calculating contributions to the Universal Service support mechanisms.[173] Interstate telephone service providers do not pay the Common Carrier regulatory fee on revenue from the provision of intrastate local and toll services, wireless monthly and local message services, satellite toll services, carrier's carrier telecommunications services, customer premises equipment, Internet service and non-telecommunications services. For FY 2000, carriers must multiply their interstate and international revenue from subject local and toll services by the factor 0.00117 to determine the appropriate fee for this category of service. Regulatees may want to use the following worksheet to determine their fee payment:

CALENDAR 1999 REVENUE INFORMATION

[Show amounts in whole dollars]

1	Service provided by U.S. carriers that both originates and terminates in foreign points. Form 499–A Line 412(e).	
2	Interstate end-user revenue from all telecommunications services. Form 499–A Line 420(d)	
3	International end-user revenue from all telecommunications services exception international-to-international. Form 499–A Line 420(e).	
4	Total interstate and international end-user revenues (Sum of Lines 1, 2 and 3)	
5	End user interstate mobile service monthly and activation charges. Form 499–A Line 409(d)	
6	End user international mobile service monthly and activation charges. Form 499–A Line 409(e)	
7	End user interstate mobile service message charges including roaming charges but excluding toll charges. Form 499–A Line 410(d).	
8	End user international mobile service message charges including roaming charges but excluding toll charges. Form 499–A Line 410(e).	
9	End user interstate satellite service. Form 499–A Line 416(d)	
10	End user international satellite service. Form 499–A Line 416(e)	
11	Total end user interstate and international mobile and satellite service revenue. (Sum lines 5 through 10).	
12	Total end-user interstate and international revenues from local and subject toll services (Line 4 minus Line 11).	
13	Common carrier fee factor	.00117
14	2000 Regulatory Fee (Line 12 times Line 13) [1]	

[1] You are exempt from filing if the amount on line 14 is less than $10.

5. International Services

a. Earth Stations

34. Very Small Aperture Terminal (VSAT) Earth Stations, equivalent C-Band Earth Stations and antennas, and earth station systems comprised of very small aperture terminals operate in the 12 and 14 GHz bands and provide a variety of communications services to other stations in the network. *VSAT* systems consist of a network of technically-identical small Fixed-Satellite Earth Stations which often include a larger hub station. VSAT Earth Stations and C-Band Equivalent Earth Stations are authorized pursuant to part 25 of the Commission's Rules. *Mobile Satellite Earth Stations,* operating pursuant to part 25 of the Commission's Rules under blanket licenses for mobile antennas (transceivers), are smaller than one meter and provide voice or data communications, including position location information for mobile platforms such as cars, buses, or trucks.[174] *Fixed-Satellite Transmit/Receive and Transmit-Only Earth Station antennas,* authorized or registered under part 25 of the Commission's Rules, are operated by private and public carriers to provide telephone, television, data, and other forms of communications. Included in this category are telemetry, tracking and control (TT&C) earth stations, and earth station uplinks. For FY 2000, licensees of VSATs, Mobile Satellite Earth Stations, and Fixed-Satellite Transmit/Receive and Transmit-Only Earth Stations will pay a fee of $175 per authorization or registration *as well as*

[173] *See* 1998 Biennial Regulatory Review—Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, Report and Order, FCC 99–175, CC Docket No. 98–171 (rel. July 14, 1999), 64 FR 41320 (Jul. 30, 1999) (Contributor Reporting Requirements Order).

[174] Mobile earth stations are hand-held or vehicle-based units capable of operation while the operator or vehicle is in motion. In contrast, transportable units are moved to a fixed location and operate in a stationary (fixed) mode. Both are assessed the same regulatory fee for FY 2000.

a separate fee of $175 for each associated Hub Station.

35. *Receive-only earth stations.* For FY 2000, there is no regulatory fee for receive-only earth stations.

b. Space Stations (Geostationary Orbit)

36. Geostationary Orbit (also referred to as Geosynchronous) Space Stations are domestic and international satellites positioned in orbit to remain approximately fixed relative to the earth. Most are authorized under part 25 of the Commission's Rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. In addition, this category includes Direct Broadcast Satellite (DBS) Service which includes space stations authorized under part 100 of the Commission's rules to transmit or re-transmit signals for direct reception by the general public encompassing both individual and community reception. For FY 2000, entities authorized to operate geostationary space stations (including DBS satellites) will be assessed an annual regulatory fee of $94,650 per operational station in orbit. Payment is required for any geostationary satellite that has been launched and tested and is authorized to provide service.

c. Space Stations (Non-Geostationary Orbit)

37. Non-Geostationary Orbit Systems (such as Low Earth Orbit (LEO) Systems) are space stations that orbit the earth in non-geosynchronous orbit. They are authorized under part 25 of the Commission's rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. For FY 2000, entities authorized to operate Non-Geostationary Orbit Systems (NGSOs) will be assessed an annual regulatory fee of $175,250 per operational system in orbit. Payment is required for any NGSO System that has one or more operational satellites operational. In our FY 1997 *Report and Order* at paragraph 75 we retained our requirement that licensees of LEOs pay the LEO regulatory fee upon their certification of operation of a single satellite pursuant to section 25.120(d). We require payment of this fee following commencement of operations of a system's first satellite to insure that we recover our regulatory costs related to LEO systems from licensees of these systems as early as possible so that other regulatees are not burdened with these costs any longer than necessary. Because section 25.120(d) has significant implications beyond regulatory fees (such as whether the entire planned cluster is operational in accordance with the terms and conditions of the license) we are clarifying our current definition of an operational LEO satellite to prevent misinterpretation of our intent as follows:

Licensees of Non-Geostationary Satellite Systems (such as LEOs) are assessed a regulatory fee upon the commencement of operation of a system's first satellite as reported annually pursuant to §§ 25.142(c), 25.143(e), 25.145(g), or upon certification of operation of a single satellite pursuant to § 25.120(d).

d. International Bearer Circuits

38. Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers (either domestic or international) activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Payment of the fee for bearer circuits by non-common carrier submarine cable operators is required for circuits sold on an indefeasible right of use (IRU) basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *Compare* FY 1994 *Report and Order* at 5367. Payment of the international bearer circuit fee is also required by non-common carrier satellite operators for circuits sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. The fee is based upon active 64 kbps circuits, or equivalent circuits. Under this formulation, 64 kbps circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 kbps circuit equivalent of larger bit stream circuits. For example, the 64 kbps circuit equivalent of a 2.048 Mbps circuit is 30 64 kbps circuits. Analog circuits such as 3 and 4 kHz circuits used for international service are also included as 64 kbps circuits. However, circuits derived from 64 kbps circuits by the use of digital circuit multiplication systems are not equivalent 64 kbps circuits. Such circuits are not subject to fees. Only the 64 kbps circuit from which they have been derived will be subject to payment of a fee. For FY 2000, the regulatory fee is $7 for each active 64 kbps circuit or equivalent. For analog television channels we will assess fees as follows:

Analog television channel size in MHz	Number of equivalent 64 kbps circuits
36	630
24	288
18	240

e. International Public Fixed

39. This fee category includes common carriers authorized under part 23 of the Commission's Rules to provide radio communications between the United States and a foreign point via microwave or HF troposcatter systems, other than satellites and satellite earth stations, but not including service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. For FY 2000, International Public Fixed Radio Service licensees will pay a $395 annual regulatory fee per call sign.

f. International (HF) Broadcast

40. This category covers International Broadcast Stations licensed under part 73 of the Commission's Rules to operate on frequencies in the 5,950 kHz to 26,100 kHz range to provide service to the general public in foreign countries. For FY 2000, International HF Broadcast Stations will pay an annual regulatory fee of $505 per station license.

Attachment G: Description of FCC Activities

Authorization of Service: The authorization or licensing of radio stations, telecommunications equipment, and radio operators, as well as the authorization of common carrier and other services and facilities. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with authorization activities.[175]

Policy and Rulemaking: Formal inquiries, rulemaking proceedings to establish or amend the Commission's rules and regulations, action on petitions for rulemaking, and requests for rule interpretations or waivers; economic studies and analyses; spectrum planning, modeling, propagation-interference analyses, and allocation; and development of equipment standards. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with policy and rulemaking activities.

[175] Although Authorization of Service is described in this exhibit, it is *not* one of the activities included as a feeable activity for regulatory fee purposes pursuant to section 9(a)(1) of the Act. 47 U.S.C. 159(a)(1).

Enforcement: Enforcement of the Commission's rules, regulations and authorizations, including investigations, inspections, compliance monitoring, and sanctions of all types. Also includes the receipt and disposition of formal and informal complaints regarding common carrier rates and services, the review and acceptance/rejection of carrier tariffs, and the review, prescription and audit of carrier accounting practices. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with enforcement activities.

Public Information Services: The publication and dissemination of Commission decisions and actions, and related activities; public reference and library services; the duplication and dissemination of Commission records and databases; the receipt and disposition of public inquiries; consumer, small business, and public assistance; and public affairs and media relations. Includes policy direction, program development, legal services, and executive direction, as well as support services associated with public information activities.

Attachment H: Factors, Measurements and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages

AM Stations

Specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern RMS figure (mV/m @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in sections 73.150 and 73.152 of the Commission's rules.[176] Radiation values were calculated for each of 72 radials around the transmitter site (every 5 degrees of azimuth). Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure M3. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the city grade (5 mV/m) contour was predicted for each of the 72 radials. The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 1990 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

FM Stations

The maximum of the horizontal and vertical HAAT (m) and ERP (kW) was used. Where the antenna HAMSL was available, it was used in lieu of the overall HAAT figure to calculate specific HAAT figures for each of 72 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the propagation curves specified in section 73.313 of the Commission's rules to predict the distance to the city grade (70 dBuV/m or 3.17 mV/m) contour for each of the 72 radials.[177] The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 1990 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

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[176] 47 U.S.C. 73.150 and 73.152.

[177] 47 U.S.C. 73.313.

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Part VI

Department of Education

34 CFR Parts 75 and 611
Teacher Quality Enhancement Grants Program; Final Rule and Notice

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DEPARTMENT OF EDUCATION

34 CFR Parts 75 and 611

Teacher Quality Enhancement Grants Program

AGENCY: Office of Postsecondary Education, Department of Education

ACTION: Final regulations.

SUMMARY: The Assistant Secretary for Postsecondary Education issues regulations for the three grant programs included in the Teacher Quality Enhancement Grants Program, sections 202–204 of the Higher Education Act of 1965, as amended (HEA). These regulations contain selection criteria that will be used to select applicants for awards under the State Program, Partnership Program, and Teacher Recruitment Program. These regulations also contain certain other requirements that would apply to the programs.

DATES: These regulations are effective May 11, 2000.

FOR FURTHER INFORMATION CONTACT: Kathy Price, Higher Education Programs, Office of Postsecondary Education, Office of Policy, Planning, and Innovation, 1990 K Street, NW, Washington, D.C. 20006–8525: Telephone: (202) 502–7775. Inquiries also may be sent by e-mail to: Kathy—Price@ed.gov or by FAX to: (202) 502–7775. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Background

On October 8, 1998, the President signed into law the Higher Education Amendments of 1998 (Pub. L. 105–244). This law addresses the Nation's need to ensure that new teachers enter the classroom prepared to teach all students to high standards by authorizing, as Title II of the Higher Education Act (HEA), the Teacher Quality Enhancement Grants for States and Partnerships (Teacher Quality Programs). The new Teacher Quality Enhancement Grants Program provides an historic opportunity to effect positive change in the recruitment, preparation, licensing, and on-going support of teachers in America.

The new Teacher Quality Enhancement Grants Program consists of three different competitive grant programs: (1) The State Grants Program, which is designed to help States promote a broad array of improvements in teacher licensure, certification, preparation, and recruitment; (2) the Partnership Grants for Improving Teacher Preparation Program, which is designed to have schools of education, schools of arts and sciences, high-need local educational agencies (LEAs), and others work together to ensure that new teachers have the content knowledge and skills their students need of them when they enter the classroom; and (3) the Teacher Recruitment Grants Program, which is designed to help schools and school districts with severe teacher shortages to secure the high-quality teachers that they need. Together, these programs are designed to increase student achievement by supporting comprehensive approaches to improving teacher quality.

State Grants Program (State Program)

The State Grants Program offers a unique opportunity to support far-reaching efforts to redesign teacher education. Through the policy leadership of Governors, State legislatures, and other important partners, the program can assure the statewide support so essential to bringing about the important policy changes needed in teacher recruitment, preparation, licensing and certification, and retention. States are in the position to increase the expectations for newly state-certified and licensed teachers as well as test for and reward high-quality teaching.

Under the program, each State may develop a program application that focuses on activities it chooses to conduct in one or more areas that are key to improving the quality of new teachers. In this regard, areas in which a State may propose to focus include:

Teacher licensure, certification, and preparation policies and practices, including rigorous alternative routes to certification;

- Reforms that hold institutions of higher education (IHE) with teacher preparation programs accountable for preparing teachers who are highly competent in academic content areas and possess strong teaching skills;
- Wholesale redesign of teacher preparation programs, in collaboration with the schools of arts and sciences, in ways that promote stronger academic content and subject-matter knowledge of students in those programs;
- Improved linkages between IHEs and K–12 schools, with more time spent by college faculty and teacher education students in K–12 classrooms, and greater use of technology in the teacher education programs;
- Use of new strategies to attract, prepare, support, and retain highly competent teachers in high-poverty urban and rural areas;
- Redesign and improvement of existing teacher professional development programs to improve the content knowledge, technology skills, and teaching skills of practicing teachers;
- Improved accountability for high-quality teaching through performance-based compensation and the expeditious removal of incompetent or unqualified teachers while ensuring due process; and
- Efforts to address the problem of social promotion and to prepare teachers to deal with the issues raised by ending social promotion.

Partnership Grants for Improving Teacher Education (Partnership Program)

The purpose of the Partnership Program is to improve student learning by bringing about fundamental change and improvement in traditional teacher education programs. Through multi-year awards to a limited number of highly-committed partnerships, the Partnership Program is intended to ensure that new teachers have the content knowledge and teaching skills they need when they enter the classroom. Section 203(a) and (b) of the HEA provides that partnerships eligible for awards must comprise, at a minimum, a partnership institution, a school of arts and science, and a high-need LEA as the law defines these terms. Partnerships also may include other entities that can contribute expertise, resources or both to the teacher preparation project. A key aspect of the program is the active participation of all members of the partnership in the design and implementation of project activities.

By law, successful applicants must propose to implement certain activities:

- The reform of teacher preparation programs so that these programs become accountable for producing teachers who are highly competent in the academic content areas in which they plan to teach;
- The provision of high quality and sustained pre-service clinical experiences and mentoring for new teachers, together with a substantial increase in the interaction between teachers, principals, and higher education faculty; and
- The creation of opportunities for enhanced and ongoing professional development that improves the academic content knowledge of teachers

in fields in which they are or will be certified to teach.

Beyond these minimum requirements, the Partnership Program supports activities that propose to educate teachers in ways that reflect up-to-date knowledge from research and effective practice, and embody high teaching standards. These activities include the preparation of teachers to work with diverse student populations so that all students they will teach can achieve to high State and local content and performance standards, and implementation of instructional programs whose effectiveness has been demonstrated through research.

The Partnership Program also seeks to—

- Offer alternative routes into teaching to individuals who may have had careers in other professions, in the military or in other fields, and to educational paraprofessionals;
- Prepare teachers to successfully integrate technology into teaching and learning;
- Require prospective teachers to participate in intensive, structured, and clinically-based experiences with master teachers;
- Offer continuous assistance to graduates during their initial years in the classroom; and
- Prepare school principals, superintendents, and other school administrators to employ strong management and leadership skills that can help increase student achievement.

Teacher Recruitment Grants Program (Teacher Recruitment Program)

The Teacher Recruitment Program is designed to address the challenge of America's teacher shortage by making significant and lasting systemic changes to the ways that teachers are recruited, prepared, and supported as new teachers in high-need schools. The Teacher Recruitment Program supports projects that use funds to—

- Award scholarships to help students pay the costs of tuition, room, board, and other expenses of completing a teacher training program;
- Provide support services, if needed, to enable scholarship recipients to complete postsecondary education programs; and
- Provide for follow-up services to former scholarship recipients during their first three years of teaching.

Alternatively, funds may be used to develop and implement effective mechanisms to ensure that high-need LEAs and schools are able to effectively recruit highly qualified teachers.

Both States and eligible partnerships may receive awards under the Teacher Recruitment Program. For both States and partnerships, effective relationships and partnerships among all those who will implement project activities are keys to effective Teacher Recruitment Program activities. In particular, out of these partnerships and relationships will come (1) the recruitment strategies that are so vital to meeting the severe teaching needs of the high-need LEAs, (2) the kind of teacher preparation programs, which are built around effective support from both schools of education and schools of arts and science and other areas of the IHE, that recruited individuals will need in order to be effective teachers to the diverse student populations in those LEAs, and (3) the support services these individuals will need once they begin to teach.

The Teacher Recruitment Program also anticipates that projects will provide prospective teachers with high-quality teacher preparation and induction programs that—

- Set high standards for teaching;
- Reflect the best research and practice known across the country; and
- Prepare teachers to use technology in their classrooms.

Finally, all three of the Teacher Quality Enhancement Grant Programs anticipate that when program funding ceases, the work that States and partnerships have begun will be sustained. Therefore, the ability and willingness of grantees to sustain activities after the end of the project are key determinants of success. Section 205(a)(2) of Title II permits an eligible state or eligible partnership to receive only one grant award under each of the State, Partnership, and Teacher Recruitment Programs.

On February 11, 2000, the Secretary published a notice of proposed rulemaking (NPRM) for this part in the **Federal Register** (65 FR 6936–6946). In the preamble to the NPRM, the Secretary discussed on pages 6938 through 6940 the content of proposed regulations for these programs. The major issues addressed by the NPRM included—

- The content of selection criteria for grant competitions conducted under the three Teacher Quality Programs;
- The use of a pre-application process to determine which applicants should be invited to submit full applications under the Partnership Program and Teacher Recruitment Program;
- The elements of a workplan that all applicants for any of the three Teacher Quality Programs would be required to submit with their full applications;
- The applicability of a maximum eight-percent indirect cost rate for all IHE and nonprofit organizations in their use of Teacher Quality Program funds.
- The requirement that recipients of State Program grants provide for each year of their grant, from non-federal sources, an amount equal to 50 percent of the State Program grant award to carry out the activities supported by the grant.

As noted in the section of this preamble entitled "Analysis of Comments and Changes," these final regulations correct a few errors contained in the NPRM, such as the proposed requirement that applicants for Partnership or Teacher Recruitment Program grant awards submit a detailed workplan with their pre-applications rather than, as intended, with their full program applications. Otherwise, while these regulations in a few places clarify language that had been proposed, there are no differences between the final regulations and those proposed in the February 11, 2000 NPRM.

In addition, these regulations include two technical changes for which public comment is not necessary. First, these regulations correct an error made in the final regulations governing scholarships provided with Teacher Quality Program funds, which were published in the **Federal Register** on January 12, 2000 (65 FR 1780–1787). As published, § 611.43(d) requires grantees offering a scholarship to ensure that the scholarship agreement the recipient executes includes the current rate of interest, as provided by the Department. This provision was not included in the proposed regulations to govern the scholarships published on November 5, 1999 at 64 FR 60632–60646, but was added to the final regulations to clarify the grantees' responsibility to add the applicable interest rate annually to the approved scholarship agreements. We added this provision to establish the interest rate that would apply to any scholarship funds received under that agreement in the event the scholarship recipient failed to meet the service obligation and instead had to repay the scholarship.

However, the terms of the scholarship agreement provide that the recipient is not liable for repayment of the scholarship until the Department first has determined that he or she has not fulfilled the service obligation. Therefore, in accordance with 31 U.S.C. 3717, the rate of interest that should apply to the amount of scholarship that a recipient must repay for failure to meet the service obligation is the rate in effect when the indebtedness is established, not the rate in effect when the recipient received the scholarship. Section 611.43(d) has been amended to

reflect this change by deleting the additional provision added to the final regulations. Scholarship recipients who have executed scholarship agreements with a stated rate of interest prior to the effective date of these regulations will be given a choice of—

- Retaining this rate of interest for the portion of their scholarship they have received prior to the effective date of these regulations; or
- Having the interest rate in effect if and when the recipient fails to meet the service obligation apply to both this portion of the scholarship and to scholarship amount received after the regulations' effective date.

In addition, these regulations amend § 75.60(b) of the Education Department General Administrative Regulations (EDGAR). Section 75.60(b) contains a list of Departmental scholarship, fellowship, discretionary grant, and loan programs for which an individual who has received financial assistance must be current in any payments that are due as a condition of eligibility for financial assistance under this or other Department programs. When § 75.60 was proposed on August 18, 1992 (53 FR 31580), the Department announced its intent to apply this rule generally to all Department scholarship or fellowship programs to which part 75 applies. Since part 75 applies to the Teacher Quality Programs and to all other Department discretionary grant programs, we now are adding the Teacher Quality Programs to the list of programs in § 75.60 that are covered by this rule.

Analysis of Comments and Changes

In response to the Assistant Secretary's invitation in the NPRM, we received two comments. An analysis of the comments follows. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make.

Comment: The commenters questioned several aspects of the proposed regulations, and asked us to clarify the language of a number of provisions. For example, they objected to language in proposed § 611.2 that would have all those who wish to receive grant awards under the Partnership or Teacher Recruitment Programs submit detailed workplans as part of those pre-applications. One commenter requested that we revisit page limitations of pre-applications in view of the changes in criteria from those used last year under the Partnership program for FY 1999 grants. The commenter asked that we clarify how the Department would implement the tie-breaking measure for applications with the most impact on the nation's Empowerment Zones and Enterprise Communities § 611.2), specifically whether we would use factors such as the number of affected Empowerment Zones and Enterprise Communities, or the number of teachers whom a proposed project would recruit to teach in their schools. The commenter also asked that we clarify how the competitive preference for the State Grants Program (§ 611.13) would work, and how the preference differs from more general State Program activities that the statute authorizes. Finally, the commenter recommended that we clarify aspects of the pre-application and general application selection criteria for the Partnership Program, and general selection criteria for the State Program, to clarify these criteria and the points to be awarded under them.

Discussion: In view of the comment, we have modified the proposed regulations in a number of ways. Sections 611.2 and 611.3 now clarify that only applicants submitting a full application for a Teacher Quality Program grant must submit a detailed workplan. Those submitting pre-applications under the Partnership or Teacher Recruitment Programs will not need to submit workplans with their pre-applications. The final regulations also correct several technical errors that the commenter identified in the proposed regulations. The program application packages, and not these regulations, identify the maximum number of points that reviewers will award applications under the elements of each criterion.

We continue to believe that the proposed language in § 611.2, which would resolve any ties in scoring applications on the basis of a project's relative impact on the nation's Empowerment Zones and Enterprise Communities, is adequate. It provides the Department the latitude to resolve ties on a case-by-case basis in ways that permit us comprehensively to examine the likely impact of a project on the nation's Empowerment Zones and Enterprise Communities. With regard to the proposed competitive preference in § 611.13, we agree with the commenter that each of the three activities entitling an applicant to a preference mirrors activities that section 202 of Title II authorizes. However, the competitive preference in § 611.13 reflects statutory requirements of section 205(b)(2) of the HEA, in which Congress identified certain allowable State Program activities as deserving of this preference.

Changes: The final regulations for this part have been revised accordingly.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These regulations address the National Education Goal that the Nation's teaching force will have the content knowledge and teaching skills needed to instruct all American students for the next century.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, two regulations announced included in these final regulations are being issued without public comment. The correction of § 611.43(d) reflects a legal requirement governing when a Teacher Quality program scholarship recipient incurs liability for failure to meet the service obligation, and hence no public comment is needed. The amendment to § 75.60(b) of EDGAR, which includes the Teacher Quality Enhancement Grants Program in the list of Department programs for which individuals must be current in their payments or be ineligible for further financial assistance provided by Department programs is a technical amendment. The Department already took public comment on the content of § 75.60(b) before the regulation was published as a final regulation on August 18, 1992 (53 FR 31580). Therefore, under 5 U.S.C. 553(b)(B), the Secretary has determined that proposed regulations are unnecessary and contrary to the public interest.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372

and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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Note: The official version of the document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number 84.336: Teacher Quality Enhancement Grants Program)

List of Subjects

34 CFR part 75

Administrative practice and procedure, Education Department, Grant programs—education, Grant administration, Incorporation by reference, Performance reports, Reporting and recordkeeping requirements, Unobligated funds.

34 CFR part 611

Colleges and universities, Elementary and secondary education, Grant programs—education.

Dated: April 5, 2000.

Claudio R. Prieto,

Acting Assistant Secretary for Postsecondary Education.

For the reasons stated in the preamble, the Secretary amends parts 75 and 611 of title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474

2. Section 75.60 is amended by adding a new paragraph (b) (7) to read as follows:

§ 75.60 Individuals ineligible to receive assistance.

* * * * *

(b) * * *

(7) A scholarship awarded under the Teacher Quality Enhancement Grants Program (20 U.S.C. 1021 *et seq.*).

PART 611—TEACHER QUALITY ENHANCEMENT GRANTS PROGRAM

1. The authority citation for part 611 continues to read as follows:

Authority: 20 U.S.C. 1021 *et seq.*, unless otherwise noted.

2–3. Sections 611.2 and 611.3 are added to Subpart A of part 611 to read as follows:

§ 611.2 What management plan must be included in a Teacher Quality Enhancement Grants Program application?

(a) In addition to a description of the proposed multiyear project, timeline, and budget information required by 34 CFR 75.112 and 75.117 and other applicable law, an applicant for a grant under this part must submit with its application under paragraphs (a)(1), (a)(2)(iii), or (a)(3)(iii) of § 611.3, as appropriate, a management plan that includes a proposed multiyear workplan.

(b) At a minimum, this workplan must identify, for each year of the project—

(1) The project's overall objectives;

(2) Activities that the applicant proposes to implement to promote each project objective;

(3) Benchmarks and timelines for conducting project activities and achieving the project's objectives;

(4) The individual who will conduct and coordinate these activities;

(5) Measurable outcomes that are tied to each project objective, and the evidence by which success in achieving these objectives will be measured; and

(6) Any other information that the Secretary may require.

(c)(1) In any application for a grant that is submitted on behalf of a partnership, the workplan also must identify which partner will be responsible for which activities.

(2) In any application for a grant that is submitted on behalf of a State, the workplan must identify which entities in the State will be responsible for which activities.

(Approved by the Office of Management and Budget under control number 1840–0007.)

(Authority: 20 U.S.C. 1021 *et seq.*)

§ 611.3 What procedures does the Secretary use to award a grant?

The Secretary uses the selection procedures in 34 CFR 75.200 through 75.222 except that—

(a) *Application procedures for each program.* (1) For the State Grants Program, the Secretary evaluates applications for new grants on the basis of the selection criteria and competitive preference contained in §§ 611.11 through 611.13.

(2) For the Partnership Grants Program, the Secretary—

(i) Uses a two-stage application process to determine which applications to fund;

(ii) Uses the selection criteria in §§ 611.21 through 611.22 to evaluate pre-applications submitted for new grants, and to determine those applicants to invite to submit full program applications; and

(iii) For those applicants invited to submit full applications, uses the selection criteria and competitive preference in §§ 611.23–611.25 to evaluate the full program applications.

(3) For the Teacher Recruitment Grants Program, the Secretary—

(i) Uses a two-stage application process to determine which applications to fund;

(ii) Uses the selection criteria in § 611.31 to evaluate pre-applications submitted for new grants, and to determine those applicants to invite to submit full program applications; and

(iii) For those applicants invited to submit full applications, uses the selection criteria in § 611.32 to evaluate the full program applications.

(b) *Required budgets in pre-applications.* An applicant that submits a pre-application for a Partnership Program or Teacher Recruitment Program grant under paragraphs (b)(2)(ii) and (b)(3)(ii) must also submit any budgetary information that the

Secretary may require in the program application package.

(c) *Tie-breaking procedures.* In the event that two or more applicants are ranked equally for the last available award under any program, the Secretary selects the applicant whose activities will focus (or have most impact) on LEAs and schools located in one (or more) of the Nation's Empowerment Zones and Enterprise Communities.

(Approved by the Office of Management and Budget under control number 1840–0007.)

(Authority: 20 U.S.C. 1021 *et seq.*)

4. Subpart B, consisting of §§ 611.11 through 611.13, is added to part 611, to read as follows:

Subpart B—State Grants Program

611.11 What are the program's general selection criteria?
611.12 What additional selection criteria are used for an application proposing teacher recruitment activities?
611.13 What competitive preference doe the Secretary provide?

§ 611.11 What are the program's general selection criteria?

Subpart B—State Grants Program

In evaluating the quality of applications, the Secretary uses the following selection criteria.

(a) *Quality of project design.* (1) The Secretary considers the quality of the project design.

(2) In determining the quality of the project design, the Secretary considers the extent to which—

(i) The project design will result in systemic change in the way that all new teachers are prepared, and includes partners from all levels of the education system;

(ii) The Governor and other relevant executive and legislative branch officials, the K–16 education system or systems, and the business community are directly involved in and committed to supporting the proposed activities;

(iii) Project goals and performance objectives are clear, measurable outcomes are specified, and a feasible plan is presented for meeting them;

(iv) The project is likely to initiate or enhance and supplement systemic State reforms in one or more of the following areas: teacher recruitment, preparation, licensing, and certification;

(v) The applicant will ensure that a diversity of perspectives is incorporated into operation of the project, including those of parents, teachers, employers, academic and professional groups, and other appropriate entities; and

(vi) The project design is based on up-to-date knowledge from research and effective practice.

(b) *Significance.* (1) The Secretary considers the significance of the project.

(2) In determining the significance of the project, the Secretary considers the extent to which—

(i) The project involves the development or demonstration of promising new strategies or exceptional approaches in the way new teachers are recruited, prepared, certified, and licensed;

(ii) Project outcomes lead directly to improvements in teaching quality and student achievement as measured against rigorous academic standards;

(iii) The State is committed to institutionalize the project after federal funding ends; and

(iv) Project strategies, methods, and accomplishments are replicable, thereby permitting other States to benefit from them.

(c) *Quality of resources.* (1) The Secretary considers the quality of the project's resources.

(2) In determining the quality of the project resources, the Secretary considers the extent to which—

(i) Support available to the project, including personnel, equipment, supplies, and other resources, is sufficient to ensure a successful project;

(ii) Budgeted costs are reasonable and justified in relation to the design, outcomes, and potential significance of the project; and

(iii) The applicant's matching share of the budgeted costs demonstrates a significant commitment to successful completion of the project and to project continuation after federal funding ends.

(d) *Quality of management plan.* (1) The Secretary considers the quality of the project's management plan.

(2) In determining the quality of the management plan, the Secretary considers the following factors:

(i) The extent to which the management plan, including the workplan, is designed to achieve goals and objectives of the project, and includes clearly defined activities, responsibilities, timelines, milestones, and measurable outcomes for accomplishing project tasks.

(ii) The adequacy of procedures to ensure feedback and continuous improvements in the operation of the project.

(iii) The qualifications, including training and experience, of key personnel charged with implementing the project successfully.

(Approved by the Office of Management and Budget under control number 1840–0007.)

(Authority: 20 U.S.C. 1021 *et seq.*)

§ 611.12 What additional selection criteria are used for an application proposing teacher recruitment activities?

In reviewing applications that propose to undertake teacher recruitment activities, the Secretary also considers the following selection criteria:

(a) In addition to the elements contained in § 611.11(a) (Quality of project design), the Secretary considers the extent to which the project addresses—

(1) Systemic changes in the ways that new teachers are to be recruited, supported and prepared; and

(2) Systemic efforts to recruit, support, and prepare prospective teachers from disadvantaged and other underrepresented backgrounds.

(b) In addition to the elements contained in § 611.11(b) (Significance), the Secretary considers the applicant's commitment to continue recruitment activities, scholarship assistance, and preparation and support of additional cohorts of new teachers after funding under this part ends.

(c) In addition to the elements contained in § 611.11(c) (Quality of resources), the Secretary considers the impact of the project on high-need LEAs and high-need schools based upon—

(1) The amount of scholarship assistance the project will provide students from federal and non-federal funds;

(2) The number of students who will receive scholarships; and

(3) How those students receiving scholarships will benefit from high-quality teacher preparation and an effective support system during their first three years of teaching.

(Approved by the Office of Management and Budget under control number 1840–0007.)

(Authority: 20 U.S.C. 1021 *et seq.*)

§ 611.13 What competitive preference does the Secretary provide?

The Secretary provides a competitive preference on the basis of how well the State's proposed activities in any one or more of the following statutory priorities are likely to yield successful and sustained results:

(a) Initiatives to reform State teacher licensure and certification requirements so that current and future teachers possess strong teaching skills and academic content knowledge in the subject areas in which they will be certified or licensed to teach.

(b) Innovative reforms to hold higher education institutions with teacher preparation programs accountable for preparing teachers who are highly competent in the academic content areas and have strong teaching skills.

(c) Innovative efforts to reduce the shortage (including the high turnover) of highly competent teachers in high-poverty urban and rural areas.

(Approved by the Office of Management and Budget under control number 1840–0007.)

(Authority: 20 U.S.C. 1021 *et seq.*)

5. Subpart C, consisting of §§ 611.21 through 611.25, is added to part 611, to read as follows:

Subpart C—Partnership Grants Program

611.21 What are the program's selection criteria for pre-applications?
611.22 What additional selection criteria are used for pre-application that proposes teacher recruitment activities?
611.23 What are the program's general selection criteria for full applications?
611.24 What additional selection criteria are used for a full application that proposes teacher recruitment activities?
611.25 What competitive preference does the Secretary provide?

Subpart C—Partnership Grants Program

§ 611.21 What are the program's selection criteria for pre-applications?

In evaluating the quality of pre-applications, the Secretary uses the following selection criteria.

(a) *Project goals and objectives.* (1) The Secretary considers the goals and objectives of the project design.

(2) In determining the quality of the project goals and objectives, the Secretary considers the following factors:

(i) The extent to which the partnership's vision will produce significant and sustainable improvements in teacher education.

(ii) The needs the partnership will address.

(iii) How the partnership and its activities would be sustained once federal support ends.

(b) *Partnering commitment.* (1) The Secretary considers the partnering commitment embodied in the project.

(2) In determining the quality of the partnering commitment, the Secretary considers the following factors:

(i) Evidence of how well the partnership would be able to accomplish objectives working together that its individual members could not accomplish working separately.

(ii) The significance of the roles given to each principal partner in implementing project activities.

(c) *Quality and comprehensiveness of key project components.* (1) The Secretary considers the quality and comprehensiveness of key project components in the process of preparing new teachers.

(2) In determining the quality and comprehensiveness of key project components in the process of preparing new teachers, the Secretary considers the extent to which—

(i) Specific activities are designed and would be implemented to ensure that students preparing to be teachers are adequately prepared, including activities designed to ensure that they have improved content knowledge, are able to use technology effectively to promote instruction, and participate in extensive, supervised clinical experiences;

(ii) Specific activities are designed and would be implemented to ensure adequate support for those who have completed the teacher preparation program during their first years as teachers; and

(iii) The project design reflects up-to-date knowledge from research and effective practice.

(d) *Specific project outcomes.* (1) The Secretary considers the specific outcomes the project would produce in the preparation of new teachers.

(2) In determining the specific outcomes the project would produce in the preparation of new teachers, the Secretary considers the following factors:

(i) The extent to which important aspects of the partnership's existing teacher preparation system would change.

(ii) The way in which the project would demonstrate success using high-quality performance measures.

(Approved by the Office of Management and Budget under control number 1840–0007.)

(Authority: 20 U.S.C. 1021 *et seq.*)

§ 611.22 What additional selection criteria are used for a pre-application that proposes teacher recruitment activities?

In reviewing pre-applications that propose to undertake teacher recruitment activities, the Secretary also considers the following selection criteria:

(a) In addition to the elements contained in § 611.21(a) (Project goals and objectives), the Secretary considers the extent to which—

(1) The partnership's vision responds to LEA needs for a diverse and high quality teaching force, and will lead to reduced teacher shortages in these high-need LEAs; and

(2) The partnership will sustain its work after federal funding has ended by recruiting, providing scholarship assistance, training and supporting additional cohorts of new teachers.

(b) In addition to the elements contained in § 611.21(c) (Quality and comprehensiveness of key project components), the Secretary considers the extent to which the project will—

(1) Significantly improve recruitment of new students, including those from disadvantaged and other underrepresented backgrounds; and

(2) Provide scholarship assistance and adequate training to preservice students, as well as induction support for those who become teachers after graduating from the teacher preparation program.

(c) In addition to the elements contained in § 611.21(d) (Specific project outcomes), the Secretary considers the extent to which the project addresses the number of new teachers to be produced and their ability to teach effectively in high-need schools.

(Approved by the Office of Management and Budget under control number 1840–0007.)

(Authority: 20 U.S.C. 1021 *et seq.*)

§ 611.23 What are the program's general selection criteria for full applications?

In evaluating the quality of applications, the Secretary uses the following selection criteria.

(a) *Quality of project design.* (1) The Secretary considers the quality of the project design.

(2) In determining the quality of the project design, the Secretary considers the following factors:

(i) The extent of evidence of institution-wide commitment to high quality teacher preparation that includes significant policy and practice changes supported by key leaders, and which result in permanent changes to ensure that preparing teachers is a central mission of the entire university.

(ii) The extent to which the partnership creates and sustains collaborative mechanisms to integrate professional teaching skills, including skills in the use of technology in the classroom, with strong academic content from the arts and sciences.

(iii) The extent of well-designed and extensive preservice clinical experiences for students, including mentoring and other forms of support, implemented through collaboration between the K–12 and higher education partners.

(iv) Whether a well-planned, systematic induction program is established for new teachers to increase their chances of being successful in high-need schools.

(v) The strength of linkages within the partnership between higher education and high-need schools or school districts so that all partners have important roles in project design, implementation, governance and evaluation.

(vi) Whether the project design is based on up-to-date knowledge from research and effective practice, especially on how students learn.

(b) *Significance of project activities.* (1) The Secretary considers the significance of project activities.

(2) In determining the significance of the project activities, the Secretary considers the following factors:

(i) How well the project involves promising new strategies or exceptional approaches in the way new teachers are recruited, prepared and inducted into the teaching profession.

(ii) The extent to which project outcomes include preparing teachers to teach to their State's highest K–12 standards, and are likely to result in improved K–12 student achievement.

(iii) The extent to which the partnership has specific plans to institutionalize the project after federal funding ends.

(iv) The extent to which the partnership is committed to disseminating effective practices to others and is willing to provide technical assistance about ways to improve teacher education.

(v) How well the partnership will integrate its activities with other education reform efforts underway in the State or communities where the partners are located, and will coordinate its work with local, State or federal teacher training, teacher recruitment, or professional development programs.

(c) *Quality of resources.* (1) The Secretary considers the quality of resources of project activities.

(2) In determining the quality of resources, the Secretary considers the extent to which—

(i) Support available to the project, including personnel, equipment, supplies, and other resources, is sufficient to ensure a successful project;

(ii) Budgeted costs are reasonable and justified in relation to the design, outcomes, and potential significance of the project; and

(iii) The applicant's matching share of the budgeted costs demonstrates a significant commitment to successful completion of the project and to project continuation after federal funding ends.

(d) *Quality of management plan.* (1) The Secretary considers the quality of the management plan.

(2) In determining the quality of the management plan, the Secretary considers the following factors:

(i) The extent to which the management plan, including the work plan, is designed to achieve goals and objectives of the project, and includes clearly defined activities, responsibilities, timelines, milestones, and measurable outcomes for accomplishing project tasks.

(ii) The extent to which the project has an effective, inclusive, and responsive governance and decision-making structure that will permit all partners to participate in and benefit from project activities, and to use evaluation results to ensure continuous improvements in the operations of the project.

(iii) The qualifications, including training and experience, of key personnel charged with implementing the project successfully.

(Approved by the Office of Management and Budget under control number 1840–0007.)

(Authority: 20 U.S.C. 1021 *et seq.*)

§ 611.24 What additional selection criteria are used for a full application that proposes teacher recruitment activities?

In reviewing full applications that propose to undertake teacher recruitment activities, the Secretary also considers the following selection criteria:

(a) In addition to the elements contained in § 611.23(a) (Quality of project design), the Secretary considers the extent to which the project reflects—

(1) A commitment to recruit, support and prepare additional well-qualified new teachers for high-need schools;

(2) Appropriate academic and student support services; and

(3) A comprehensive strategy for addressing shortages of well-qualified and well-trained teachers in high-need LEAs, especially teachers from disadvantaged and other underrepresented backgrounds.

(b) In addition to the elements contained in § 611.23(b) (Significance of project activities), the Secretary considers the extent to which the project promotes the recruitment, scholarship assistance, preparation, and support of additional cohorts of new teachers.

(c) In addition to the elements contained in § 611.23(c) (Quality of resources), the Secretary considers the impact of the project on high-need LEAs and high-need schools based upon—

(1) The amount of scholarship assistance the project will provide students from federal and non-federal funds;

(2) The number of students who will receive scholarships; and

(3) How those students receiving scholarships will benefit from high-quality teacher preparation and an effective support system during their first three years of teaching.

(Approved by the Office of Management and Budget under control number 1840–0007.)

(Authority: 20 U.S.C. 1021 *et seq.*)

§ 611.25 What competitive preference does the Secretary provide?

The Secretary provides a competitive preference on the basis of how well the project includes a significant role for private business in the design and implementation of the project.

(Approved by the Office of Management and Budget under control number 1840–0007.)

(Authority: 20 U.S.C. 1021 *et seq.*)

6. Subpart D, consisting of §§ 611.31 and 611.32, is added to part 611, to read as follows:

Subpart D—Teacher Recruitment Grants Program

611.31 What are the program's selection criteria for pre-applications?
611.32 What are the program's general selection criteria?

Subpart D—Teacher Recruitment Grants Program

§ 611.31 What are the program's selection criteria for pre-applications?

In evaluating pre-applications, the Secretary considers the following criteria:

(a) *Project goals and objectives.* (1) The Secretary considers the goals and objectives of the project design.

(2) In determining the quality of the project goals and objectives, the Secretary considers how the partnership or State applicant intends to—

(i) Produce significant and sustainable improvements in teacher recruitment, preparation, and support; and

(ii) Reduce teacher shortages in high-need LEAs and schools, and improve student achievement in the schools in which teachers who participate in its project will teach.

(b) *Partnership commitment.* (1) The Secretary considers the partnering commitment embodied in the project.

(2) In determining the quality of the partnering commitment, the Secretary considers the following factors:

(i) What the partnership, or the State and its cooperating entities, can accomplish by working together that could not be achieved by working separately.

(ii) How the project proposed by the partnership or State is driven by the needs of LEA partners.

(c) *Quality of key project components.* (1) The Secretary considers the quality of key project components.

(2) In determining the quality of key project components, the Secretary considers the following factors:

(i) The extent to which the project would make significant and lasting systemic changes in how the applicant recruits, trains, and supports new

teachers, and reflects knowledge gained from research and practice.

(ii) The extent to which the project would be implemented in ways that significantly improve recruitment, scholarship assistance to preservice students, training, and induction support for new entrants into teaching.

(d) *Specific project outcomes.* (1) The Secretary considers the specific outcomes the project would produce in the recruitment, preparation, and placement of new teachers.

(2) In determining the specific outcomes the project would produce in the recruitment, preparation, and placement of new teachers, the Secretary considers the following factors:

(i) The number of teachers to be produced and the quality of their preparation.

(ii) The partnership's or State's commitment to sustaining the work of the project after federal funding has ended by recruiting, providing scholarship assistance, training, and supporting additional cohorts of new teachers.

(Approved by the Office of Management and Budget under control number 1840–0007.)

(Authority: 20 U.S.C. 1021 *et seq.*)

§ 611.32 What are the program's general selection criteria?

In evaluating the quality of full applications, the Secretary uses the following selection criteria.

(a) *Quality of the project design.* (1) The Secretary considers the quality of the project design for ensuring that activities to recruit and prepare new teachers are a central mission of the project.

(2) In considering the quality of the project design for ensuring that activities to recruit and prepare new teachers are a central mission of the project, the Secretary considers the extent to which the project design—

(i) Shows evidence of institutional or (in the case of a State applicant) State-level commitment both to recruitment of additional new teachers, and to high-quality teacher preparation that includes significant policy and practice changes supported by key leaders and that result in permanent changes to current institutional practices;

(ii) Creates and sustains collaborative mechanisms to integrate professional teaching skills, including skills in the use of technology in the classroom, with academic content provided by the school of arts and sciences;

(iii) Includes well-designed academic and student support services as well as carefully planned and extensive preservice clinical experiences for students, including mentoring and other forms of support, that are implemented through collaboration between the K–12 and higher education partners;

(iv) Includes establishment of a well-planned, systematic induction program for new teachers that increases their chances of being successful in high-need schools;

(v) Includes strong linkages among the partner institutions of higher education and high-need schools and school districts (or, in the case of a State applicant, between the State and these entities in its project), so that all those who would implement the project have important roles in project design, implementation, governance, and evaluation;

(vi) Responds to the shortages of well-qualified and well-trained teachers in high-need school districts, especially from disadvantaged and other underrepresented backgrounds; and

(vii) Is based on up-to-date knowledge from research and effective practice.

(b) *Significance.* (1) The Secretary considers the significance of the project.

(2) In determining the significance of the project, the Secretary considers the extent to which—

(i) The project involves promising new strategies or exceptional approaches in the way new teachers are recruited, prepared, and inducted into the teaching profession;

(ii) Project outcomes include measurable improvements in teacher quality and in the number of well-prepared new teachers, that are likely to result in improved K–12 student achievement;

(iii) The project will be institutionalized after federal funding ends, including recruitment, scholarship assistance, preparation, and support of additional cohorts of new teachers;

(iv) The project will disseminate effective practices to others, and provide technical assistance about ways to improve teacher recruitment and preparation; and

(v) The project will integrate its activities with other education reform activities underway in the State or communities in which the project is based, and will coordinate its work with local, State, and federal teacher recruitment, training, and professional development programs.

(c) *Quality of resources.* (1) The Secretary considers the quality of the project's resources.

(2) In determining the quality of the project's resources, the Secretary considers the extent to which—

(i) The amount of support available to the project, including personnel, equipment, supplies, student scholarship assistance, and other resources is sufficient to ensure a successful project.

(ii) Budgeted costs are reasonable and justified in relation to the design, outcomes, and potential significance of the project.

(iii) The applicant's matching share of budgeted costs demonstrates a significant commitment to successful completion of the project, and to project continuation after federal funding ends.

(d) *Quality of management plan.* (1) The Secretary considers the quality of the project's management plan.

(2) In determining the quality of the management plan, the Secretary considers the following factors:

(i) The extent to which the management plan, including the workplan, is designed to achieve goals and objectives of the project, and includes clearly defined activities, responsibilities, timelines, milestones, and measurable outcomes for accomplishing project tasks.

(ii) The extent to which the project has an effective, inclusive, and responsive governance and decisionmaking structure that will permit all partners to participate in and benefit from project activities, and to use evaluation results to continuously improve project operations.

(iii) The qualifications, including training and experience, of key personnel charged with implementing the project successfully.

(Approved by the Office of Management and Budget under control number 1840–0007.)

(Authority: 20 U.S.C. 1021 *et seq.*)

7. Section 611.43 is amended by revising paragraph (d) to read as follows:

§ 611.43 What are the consequences of a scholarship recipient's failure to meet the service obligation?

* * * * *

(d) *Interest.* In accordance with 31 U.S.C. 3717 and 34 CFR part 30, the Secretary charges interest on the unpaid balance that the scholarship recipient owes. However, except as provided in § 611.44(d), the Secretary does not charge interest for the period of time that precedes the date on which the scholarship recipient is required to begin repayment.

* * * * *

8. Subpart F of part 611 is revised to read as follows:

Subpart F—Other Grant Conditions

Subpart F—Other Grant Conditions

611.61 What is the maximum indirect cost rate that applies to a recipient's use of program funds?
611.62 What are a grantee's matching requirements?

§ 611.61 What is the maximum indirect cost rate that applies to a recipient's use of program funds?

Notwithstanding 34 CFR 75.560–75.562 and 34 CFR 80.22, the maximum indirect cost rate that any recipient of funds under the Teacher Quality Enhancement Grants Program may use to charge indirect costs to these funds is the lesser of—

(a) The rate established by the negotiated indirect cost agreement; or

(b) Eight percent.

(Authority: 20 U.S.C. 1021 *et seq.*)

§ 611.62 What are a grantee's matching requirements?

(a)(1) Each State receiving a grant under the State Grants Program or Teacher Recruitment Grants Program must provide, from non-federal sources, an amount equal to 50 percent of the amount of the grant to carry out the activities supported by the grant.

(2) The 50 percent match required by paragraph (a)(1) of this section must be made annually during the project period, with respect to each grant award the State receives.

(b) Each partnership receiving a grant under the Partnership Grant Program or the Teacher Recruitment Grant Program must provide, from non-federal sources, an amount equal to—

(1) 25 percent of the grant award for the first year of the grant;

(2) 35 percent of the grant award for the second year of the grant; and

(3) 50 percent of the grant award for each succeeding year of the grant.

(c) The match from non-federal sources required by paragraphs (a) and (b) of this section may be made in cash or in kind.

(Authority: 20 U.S.C. 1021 *et seq.*)

[FR Doc. 00–8890 Filed 4–10–00; 8:45 am]
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DEPARTMENT OF EDUCATION

[CFDA No. 84.336]

Teacher Quality Enhancement Grants Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of Program: The program provides grants to States and to partnerships to promote improvements in the quality of new teachers with the ultimate goal of increasing student achievement in the nation's pre-K–12 classrooms. For FY 2000, a new competition will be conducted under the State Grants Program (State Program) and the Partnership Program for Improving Teacher Education (Partnership Program). The purpose of the State Program is to improve the quality of a State's teaching force by supporting the implementation of comprehensive statewide reform activities in areas such as teacher licensing and certification, accountability for high-quality teacher preparation, and recruitment. The purpose of the Partnership Program is to promote significant improvements in teacher education by strengthening the vital role of K–12 educators in the design and implementation of effective teacher education programs, and by increasing collaboration among these practitioners and departments of arts and sciences and schools of education.

Eligible Applicants: State Grants (including the District of Columbia, Puerto Rico and the insular areas)—States that did not receive an FY 1999 grant under the State Program.

Partnership Grants—Partnerships comprised, at a minimum, of an institution of higher education with an eligible teacher preparation program, a school of arts and sciences, and a high-need local educational agency (LEA). These terms are defined in section 203 of the Higher Education Act and in regulations for this program in 34 CFR 611.1. Partnerships that received an FY 1999 grant under this program are not eligible for this competition.

Applications Available: April 11, 2000.

Deadline for Transmittal of Applications: State Grants—June 12, 2000.

Partnership Grants—Pre-applications: May 26, 2000; Final Applications: August 15, 2000.

Deadline for Intergovernmental Review: August 9, 2000.

Available Funds: State Grants—$7,900,000; Partnership Grants—$6,300,000.

Estimated Range of Awards: State Grants—$1,000,000–$2,000,000 per year; Partnership Grants—$1,000,000–$2,000,000 per year.

Estimated Average Size of Awards: State Grants—$1.5 million per year; Partnership Grants—$1.5 million per year.

Estimated Number of Awards: State Grants—6; Partnership Grants—5.

Note: The Department is not bound by any estimates in this notice.

Project Period: State Grants—up to 36 months; Partnership Grants—up to 60 months.

Page Limits:

Note: The application narrative is where you, the applicant, address the selection criteria reviewers use in evaluating your pre-application or application.

Pre-applications for Partnership Grants—If you are submitting a pre-application for a Partnership grant, you must limit your pre-application narrative to the equivalent of no more than 10 pages and your estimated budget information to the equivalent of no more than three pages.

State Grants and Final Applications for Partnership Grants—If you are submitting an application for a State grant or a final application for a Partnership grant, you must limit your narrative to the equivalent of no more than 50 pages and your accompanying work plan to the equivalent of no more than 10 pages. Submit the work plan as an appendix. In addition, you must limit your budget narrative to the equivalent of no more than 10 pages and your evaluation plan to the equivalent of no more than five pages.

For the pre-application or application narrative, work plan, budget narrative, and evaluation plan, the following standards apply:

- A page is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text, including titles, headings, quotations, references, and captions.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).
- For tables, charts, or graphs also use a font that is either 12-point or larger or no smaller than 10 pitch.

Our reviewers will not read any of the specified sections of your application that

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 97, 98 and 99. (b) The regulations for this program in 34 CFR part 611, published in this edition of the **Federal Register**.

Pre-Application Technical Workshops: We will be conducting four regional technical assistance workshops to assist prospective applicants.

1. *Tempe:* April 13, 2000, 8:30 a.m. to 1:00 p.m., Arizona State University, Payne Bldg., Room 129, Tempe, Arizona (Registration: 8:30 to 9:00 a.m.) Contact Person: Kathy Langerman, (480) 965–3146 or klang@asu.edu

2. *Boston:* April 18, 2000, 8:30 a.m. to 1:00 p.m., Boston College, Lower Dining Hall, Heights Room, 140 Commonwealth Avenue, Chestnut Hill, Massachusetts (Registration: 8:30 to 9:00 a.m.) Contact Person: Pamela Herrup, (617) 552–0763 or herrup@bc.edu

3. *Milwaukee:* April 20, 2000, 8:30 a.m. to 1:00 p.m., University of Wisconsin-Milwaukee, University Center for Continuing Education (UCCE), 161 W. Wisconsin Avenue, Room 7970, Milwaukee, Wisconsin (Registration: 8:30 to 9:00 a.m.) Contact Person: Linda Post, (414) 229–4884 or lpost@uwm.edu

4. *Miami:* April 25, 2000, 8:30 a.m. to 1:00 p.m., University of Miami, University Center, Section A, Flamingo Ballroom, 1306 Stanford Drive, Coral Gables, Florida (Registration: 8:30 to 9:00 a.m.) Contact Person: Martha Kairuz (305) 284–5937 or mkairuz@umiami.ir.miami.edu

Any interested parties are invited to attend these workshops.

Assistance to Individuals with Disabilities at the Technical Assistance Workshops—The meeting sites are accessible to individuals with disabilities. The Department will provide a sign language interpreter at each of the scheduled workshops. An individual with a disability who will need an auxiliary aid or service other than an interpreter to participate in the meeting (*e.g.*, assistive listening device, or materials in an alternate format) should notify the Department at least two weeks before the scheduled workshop date. Although we will attempt to meet a request received after this date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it. Requests for assistance should be directed by contacting the Teacher Quality Program Office as directed in the **FOR FURTHER INFORMATION CONTACT** section. There is no pre-registration for these workshops. For additional workshop information, you may visit the Teacher Quality website at: http://www.ed.gov/offices/OPE/heatqp/index.html or contact the

person designated as contact for each workshop site listed.

FOR FURTHER INFORMATION OR APPLICATIONS: Brenda Shade, Teacher Quality Program, Office of Postsecondary Education, U.S. Department of Education, 1990 K Street NW, Room 6152, Washington, DC 20006–8525. Telephone Number: (202) 502–7773. The e-mail address for Ms. Shade is Brenda__Shade@ed.gov

The fax number is (202) 502–7699. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION OR APPLICATIONS CONTACT** section.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:
http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C. 1021 et seq.

Dated: April 5, 2000.

Claudio R. Prieto

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 00–8891 Filed 4–10–00; 8:45 am]
BILLING CODE 4000–01–U

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Tuesday,
April 11, 2000

Part VII

Environmental Protection Agency

Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations; Notice

VOL 65 ISS 70 AP 11 2000 UMI

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6576–3]

Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations

AGENCY: Environmental Protection Agency (EPA, or Agency).

ACTION: Final Policy Statement.

SUMMARY: EPA today issues its revised final policy on "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," commonly referred to as the "Audit Policy." The purpose of this Policy is to enhance protection of human health and the environment by encouraging regulated entities to voluntarily discover, promptly disclose and expeditiously correct violations of Federal environmental requirements. Incentives that EPA makes available for those who meet the terms of the Audit Policy include the elimination or substantial reduction of the gravity component of civil penalties and a determination not to recommend criminal prosecution of the disclosing entity. The Policy also restates EPA's long-standing practice of not requesting copies of regulated entities' voluntary audit reports to trigger Federal enforcement investigations. Today's revised Audit Policy replaces the 1995 Audit Policy (60 FR 66706), which was issued on December 22, 1995, and took effect on January 22, 1996. Today's revisions maintain the basic structure and terms of the 1995 Audit Policy while clarifying some of its language, broadening its availability, and conforming the provisions of the Policy to actual Agency practice. The revisions being released today lengthen the prompt disclosure period to 21 days, clarify that the independent discovery condition does not automatically preclude penalty mitigation for multi-facility entities, and clarify how the prompt disclosure and repeat violation conditions apply to newly acquired companies. The revised Policy was developed in close consultation with the U.S. Department of Justice (DOJ), States, public interest groups and the regulated community. The revisions also reflect EPA's experience implementing the Policy over the past five years.

DATES: This revised Policy is effective May 11, 2000.

FOR FURTHER INFORMATION CONTACT: Catherine Malinin Dunn (202) 564–2629 or Leslie Jones (202) 564–5123. Documentation relating to the development of this Policy is contained in the environmental auditing public docket (#C–94–01). An index to the docket may be obtained by contacting the Enforcement and Compliance Docket and Information Center (ECDIC) by telephone at (202) 564–2614 or (202) 564–2119, by fax at (202) 501–1011, or by email at docket.oeca@epa.gov. ECDIC office hours are 8:00 am to 4:00 pm Monday through Friday except for Federal holidays. An index to the docket is available on the Internet at www.epa.gov/oeca/polguid/enfdock.html. Additional guidance regarding interpretation and application of the Policy is also available on the Internet at www.epa.gov/oeca/ore/apolguid.html.

SUPPLEMENTARY INFORMATION: This Notice is organized as follows:

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C. Incentives for Self-Policing
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2. Reduction of Gravity-Based Penalties by 75%
3. No Recommendation for Criminal Prosecution
4. No Routine Request for Environmental Audit Reports
D. Conditions
1. Systematic Discovery
2. Voluntary Discovery
3. Prompt Disclosure
4. Discovery and Disclosure Independent of Government or Third-Party Plaintiff
5. Correction and Remediation
6. Prevent Recurrence
7. No Repeat Violations
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9. Cooperation
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F. Effect on State Law, Regulation or Policy
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I. Explanation of Policy

A. Introduction

On December 22, 1995, EPA issued its final policy on "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" (60 FR 66706) (Audit Policy, or Policy). The purpose of the Policy is to enhance protection of human health and the environment by encouraging regulated entities to voluntarily discover, disclose, correct and prevent violations of Federal environmental law. Benefits available to entities that make disclosures under the terms of the Policy include reductions in the amount of civil penalties and a determination not to recommend criminal prosecution of disclosing entities.

Today, EPA issues revisions to the 1995 Audit Policy. The revised Policy reflects EPA's continuing commitment to encouraging voluntary self-policing while preserving fair and effective enforcement. It lengthens the prompt disclosure period to 21 days, clarifies that the independent discovery condition does not automatically preclude Audit Policy credit in the multi-facility context, and clarifies how the prompt disclosure and repeat violations conditions apply in the acquisitions context. The revised final Policy takes effect May 11, 2000.

B. Background and History

The Audit Policy provides incentives for regulated entities to detect, promptly disclose, and expeditiously correct violations of Federal environmental requirements. The Policy contains nine conditions, and entities that meet all of them are eligible for 100% mitigation of any gravity-based penalties that otherwise could be assessed. ("Gravity-based" refers to that portion of the penalty over and above the portion that represents the entity's economic gain from noncompliance, known as the "economic benefit.") Regulated entities that do not meet the first condition—systematic discovery of violations—but meet the other eight conditions are eligible for 75% mitigation of any gravity-based civil penalties. On the criminal side, EPA will generally elect not to recommend criminal prosecution

by DOJ or any other prosecuting authority for a disclosing entity that meets at least conditions two through nine—regardless of whether it meets the systematic discovery requirement—as long as its self-policing, discovery and disclosure were conducted in good faith and the entity adopts a systematic approach to preventing recurrence of the violation.

The Policy includes important safeguards to deter violations and protect public health and the environment. For example, the Policy requires entities to act to prevent recurrence of violations and to remedy any environmental harm that may have occurred. Repeat violations, those that result in actual harm to the environment, and those that may present an imminent and substantial endangerment are not eligible for relief under this Policy. Companies will not be allowed to gain an economic advantage over their competitors by delaying their investment in compliance. And entities remain criminally liable for violations that result from conscious disregard of or willful blindness to their obligations under the law, and individuals remain liable for their criminal misconduct.

When EPA issued the 1995 Audit Policy, the Agency committed to evaluate the Policy after three years. The Agency initiated this evaluation in the Spring of 1998 and published its preliminary results in the **Federal Register** on May 17, 1999 (64 FR 26745). The evaluation consisted of the following components:

- An internal survey of EPA staff who process disclosures and handle enforcement cases under the 1995 Audit Policy;
- A survey of regulated entities that used the 1995 Policy to disclose violations;
- A series of meetings and conference calls with representatives from industry, environmental organizations, and States;
- Focused stakeholder discussions on the Audit Policy at two public conferences co-sponsored by EPA's Office of Enforcement and Compliance Assurance (OECA) and the Vice President's National Partnership for Reinventing Government, entitled "Protecting Public Health and the Environment through Innovative Approaches to Compliance";
- A **Federal Register** notice on March 2, 1999, soliciting comments on how EPA can further protect and improve public health and the environment through new compliance and enforcement approaches (64 FR 10144); and
- An analysis of data on Audit Policy usage to date and discussions amongst EPA officials who handle Audit Policy disclosures.

The same May 17, 1999, **Federal Register** notice that published the evaluation's preliminary results also proposed revisions to the 1995 Policy and requested public comment. During the 60-day public comment period, the Agency received 29 comment letters, copies of which are available through the Enforcement and Compliance Docket and Information Center. (See contact information at the beginning of this notice.) Analysis of these comment letters together with additional data on Audit Policy usage has constituted the final stage of the Audit Policy evaluation. EPA has prepared a detailed response to the comments received; a copy of that document will also be available through the Docket and Information Center as well on the Internet at www.epa.gov/oeca/ore/apolguid.html.

Overall, the Audit Policy evaluation revealed very positive results. The Policy has encouraged voluntary self-policing while preserving fair and effective enforcement. Thus, the revisions issued today do not signal any intention to shift course regarding the Agency's position on self-policing and voluntary disclosures but instead represent an attempt to fine-tune a Policy that is already working well.

Use of the Audit Policy has been widespread. As of October 1, 1999, approximately 670 organizations had disclosed actual or potential violations at more than 2700 facilities. The number of disclosures has increased each of the four years the Policy has been in effect.

Results of the Audit Policy User's Survey revealed very high satisfaction rates among users, with 88% of respondents stating that they would use the Policy again and 84% stating that they would recommend the Policy to clients and/or their counterparts. No respondents stated an unwillingness to use the Policy again or to recommend its use to others.

The Audit Policy and related documents, including Agency interpretive guidance and general interest newsletters, are available on the Internet at www.epa.gov/oeca/ore/apolguid. Additional guidance for implementing the Policy in the context of criminal violations can be found at www.epa.gov/oeca/oceft/audpol2.html.

In addition to the Audit Policy, the Agency's revised Small Business Compliance Policy ("Small Business Policy") is also available for small entities that employ 100 or fewer individuals. The Small Business Policy provides penalty mitigation, subject to certain conditions, for small businesses that make a good faith effort to comply with environmental requirements by discovering, disclosing and correcting violations. EPA has revised the Small Business Policy at the same time it revised the Audit Policy. The revised Small Business Policy will be available on the Internet at www.epa.gov/oeca/smbusi.html.

C. Purpose

The revised Policy being announced today is designed to encourage greater compliance with Federal laws and regulations that protect human health and the environment. It promotes a higher standard of self-policing by waiving gravity-based penalties for violations that are promptly disclosed and corrected, and which were discovered systematically—that is, through voluntary audits or compliance management systems. To provide an incentive for entities to disclose and correct violations regardless of how they were detected, the Policy reduces gravity-based penalties by 75% for violations that are voluntarily discovered and promptly disclosed and corrected, even if not discovered systematically.

EPA's enforcement program provides a strong incentive for compliance by imposing stiff sanctions for noncompliance. Enforcement has contributed to the dramatic expansion of environmental auditing as measured in numerous recent surveys. For example, in a 1995 survey by Price Waterhouse LLP, more than 90% of corporate respondents who conduct audits identified one of the reasons for doing so as the desire to find and correct violations before government inspectors discover them. (A copy of the survey is contained in the Docket as document VIII–A–76.)

At the same time, because government resources are limited, universal compliance cannot be achieved without active efforts by the regulated community to police themselves. More than half of the respondents to the same 1995 Price Waterhouse survey said that they would expand environmental auditing in exchange for reduced penalties for violations discovered and corrected. While many companies already audit or have compliance management programs in place, EPA believes that the incentives offered in this Policy will improve the frequency and quality of these self-policing efforts.

D. Incentives for Self-Policing

Section C of the Audit Policy identifies the major incentives that EPA

provides to encourage self-policing, self-disclosure, and prompt self-correction. For entities that meet the conditions of the Policy, the available incentives include waiving or reducing gravity-based civil penalties, declining to recommend criminal prosecution for regulated entities that self-police, and refraining from routine requests for audits. (As noted in Section C of the Policy, EPA has refrained from making routine requests for audit reports since issuance of its 1986 policy on environmental auditing.)

1. Eliminating Gravity-Based Penalties

In general, civil penalties that EPA assesses are comprised of two elements: the economic benefit component and the gravity-based component. The economic benefit component reflects the economic gain derived from a violator's illegal competitive advantage. Gravity-based penalties are that portion of the penalty over and above the economic benefit. They reflect the egregiousness of the violator's behavior and constitute the punitive portion of the penalty. For further discussion of these issues, see "Calculation of the Economic Benefit of Noncompliance in EPA's Civil Penalty Enforcement Cases," 64 FR 32948 (June 18, 1999) and "A Framework for Statute-Specific Approaches to Penalty Assessments," #GM–22 (1984), U.S. EPA General Enforcement Policy Compendium.

Under the Audit Policy, EPA will not seek gravity-based penalties for disclosing entities that meet all nine Policy conditions, including systematic discovery. ("Systematic discovery" means the detection of a potential violation through an environmental audit or a compliance management system that reflects the entity's due diligence in preventing, detecting and correcting violations.) EPA has elected to waive gravity-based penalties for violations discovered systematically, recognizing that environmental auditing and compliance management systems play a critical role in protecting human health and the environment by identifying, correcting and ultimately preventing violations.

However, EPA reserves the right to collect any economic benefit that may have been realized as a result of noncompliance, even where the entity meets all other Policy conditions. Where the Agency determines that the economic benefit is insignificant, the Agency also may waive this component of the penalty.

EPA's decision to retain its discretion to recover economic benefit is based on two reasons. First, facing the risk that the Agency will recoup economic benefit provides an incentive for regulated entities to comply on time. Taxpayers whose payments are late expect to pay interest or a penalty; the same principle should apply to corporations and other regulated entities that have delayed their investment in compliance. Second, collecting economic benefit is fair because it protects law-abiding companies from being undercut by their noncomplying competitors, thereby preserving a level playing field.

2. 75% Reduction of Gravity-based Penalties

Gravity-based penalties will be reduced by 75% where the disclosing entity does not detect the violation through systematic discovery but otherwise meets all other Policy conditions. The Policy appropriately limits the complete waiver of gravity-based civil penalties to companies that conduct environmental auditing or have in place a compliance management system. However, to encourage disclosure and correction of violations even in the absence of systematic discovery, EPA will reduce gravity-based penalties by 75% for entities that meet conditions D(2) through D(9) of the Policy. EPA expects that a disclosure under this provision will encourage the entity to work with the Agency to resolve environmental problems and begin to develop an effective auditing program or compliance management system.

3. No Recommendations for Criminal Prosecution

In accordance with EPA's Investigative Discretion Memo dated January 12, 1994, EPA generally does not focus its criminal enforcement resources on entities that voluntarily discover, promptly disclose and expeditiously correct violations, unless there is potentially culpable behavior that merits criminal investigation. When a disclosure that meets the terms and conditions of this Policy results in a criminal investigation, EPA will generally not recommend criminal prosecution for the disclosing entity, although the Agency may recommend prosecution for culpable individuals and other entities. The 1994 Investigative Discretion Memo is available on the Internet at http://www.epa.gov/oeca/ore/ aed/comp/acomp/a11.html.

The "no recommendation for criminal prosecution" incentive is available for entities that meet conditions D(2) through D(9) of the Policy. Condition D(1) "systematic discovery" is not required to be eligible for this incentive, although the entity must be acting in good faith and must adopt a systematic approach to preventing recurring violations. Important limitations to the incentive apply. It will not be available, for example, where corporate officials are consciously involved in or willfully blind to violations, or conceal or condone noncompliance. Since the regulated entity must satisfy conditions D(2) through D(9) of the Policy, violations that cause serious harm or which may pose imminent and substantial endangerment to human health or the environment are not eligible. Finally, EPA reserves the right to recommend prosecution for the criminal conduct of any culpable individual or subsidiary organization.

While EPA may decide not to recommend criminal prosecution for disclosing entities, ultimate prosecutorial discretion resides with the U.S. Department of Justice, which will be guided by its own policy on voluntary disclosures ("Factors in Decisions on Criminal Prosecutions for Environmental Violations in the Context of Significant Voluntary Compliance or Disclosure Efforts by the Violator," July 1, 1991) and by its 1999 Guidance on Federal Prosecutions of Corporations. In addition, where a disclosing entity has met the conditions for avoiding a recommendation for criminal prosecution under this Policy, it will also be eligible for either 75% or 100% mitigation of gravity-based civil penalties, depending on whether the systematic discovery condition was met.

4. No Routine Requests for Audit Reports

EPA reaffirms its Policy, in effect since 1986, to refrain from routine requests for audit reports. That is, EPA has not and will not routinely request copies of audit reports to trigger enforcement investigations. Implementation of the 1995 Policy has produced no evidence that the Agency has deviated, or should deviate, from this Policy. In general, an audit that results in expeditious correction will reduce liability, not expand it. However, if the Agency has independent evidence of a violation, it may seek the information it needs to establish the extent and nature of the violation and the degree of culpability.

For discussion of the circumstances in which EPA might request an audit report to determine Policy eligibility, see the explanatory text on cooperation, section I.E.9.

E. Conditions

Section D describes the nine conditions that a regulated entity must

meet in order for the Agency to decline to seek (or to reduce) gravity-based penalties under the Policy. As explained in section I.D.1 above, regulated entities that meet all nine conditions will not face gravity-based civil penalties. If the regulated entity meets all of the conditions except for D(1)—systematic discovery—EPA will reduce gravity-based penalties by 75%. In general, EPA will not recommend criminal prosecution for disclosing entities that meet at least conditions D(2) through D(9).

1. Systematic Discovery of the Violation Through an Environmental Audit or a Compliance Management System

Under Section D(1), the violation must have been discovered through either (a) an environmental audit, or (b) a compliance management system that reflects due diligence in preventing, detecting and correcting violations. Both "environmental audit" and "compliance management system" are defined in Section B of the Policy.

The revised Policy uses the term "compliance management system" instead of "due diligence," which was used in the 1995 Policy. This change in nomenclature is intended solely to conform the Policy language to terminology more commonly in use by industry and by regulators to refer to a systematic management plan or systematic efforts to achieve and maintain compliance. No substantive difference is intended by substituting the term "compliance management system" for "due diligence," as the Policy clearly indicates that the compliance management system must reflect the regulated entity's due diligence in preventing, detecting and correcting violations.

Compliance management programs that train and motivate employees to prevent, detect and correct violations on a daily basis are a valuable complement to periodic auditing. Where the violation is discovered through a compliance management system and not through an audit, the disclosing entity should be prepared to document how its program reflects the due diligence criteria defined in Section B of the Policy statement. These criteria, which are adapted from existing codes of practice—such as Chapter Eight of the U.S. Sentencing Guidelines for organizational defendants, effective since 1991—are flexible enough to accommodate different types and sizes of businesses and other regulated entities. The Agency recognizes that a variety of compliance management programs are feasible, and it will determine whether basic due diligence criteria have been met in deciding whether to grant Audit Policy credit.

As a condition of penalty mitigation, EPA may require that a description of the regulated entity's compliance management system be made publicly available. The Agency believes that the availability of such information will allow the public to judge the adequacy of compliance management systems, lead to enhanced compliance, and foster greater public trust in the integrity of compliance management systems.

2. Voluntary Discovery

Under Section D(2), the violation must have been identified voluntarily, and not through a monitoring, sampling, or auditing procedure that is required by statute, regulation, permit, judicial or administrative order, or consent agreement. The Policy provides three specific examples of discovery that would not be voluntary, and therefore would not be eligible for penalty mitigation: emissions violations detected through a required continuous emissions monitor, violations of NPDES discharge limits found through prescribed monitoring, and violations discovered through a compliance audit required to be performed by the terms of a consent order or settlement agreement. The exclusion does not apply to violations that are discovered pursuant to audits that are conducted as part of a comprehensive environmental management system (EMS) required under a settlement agreement. In general, EPA supports the implementation of EMSs that promote compliance, prevent pollution and improve overall environmental performance. Precluding the availability of the Audit Policy for discoveries made through a comprehensive EMS that has been implemented pursuant to a settlement agreement might discourage entities from agreeing to implement such a system.

In some instances, certain Clean Air Act violations discovered, disclosed and corrected by a company prior to issuance of a Title V permit are eligible for penalty mitigation under the Policy. For further guidance in this area, see "Reduced Penalties for Disclosures of Certain Clean Air Act Violations," Memorandum from Eric Schaeffer, Director of the EPA Office of Regulatory Enforcement, dated September 30, 1999. This document is available on the Internet at www.epa.gov/oeca/ore/apolguid.html.

The voluntary requirement applies to discovery only, not reporting. That is, any violation that is voluntarily discovered is generally eligible for Audit Policy credit, regardless of whether reporting of the violation was required after it was found.

3. Prompt Disclosure

Section D(3) requires that the entity disclose the violation in writing to EPA within 21 calendar days after discovery. If the 21st day after discovery falls on a weekend or Federal holiday, the disclosure period will be extended to the first business day following the 21st day after discovery. If a statute or regulation requires the entity to report the violation in fewer than 21 days, disclosure must be made within the time limit established by law. (For example, unpermitted releases of hazardous substances must be reported immediately under 42 U.S.C. 9603.) Disclosures under this Policy should be made to the appropriate EPA Regional office or, where multiple Regions are involved, to EPA Headquarters. The Agency will work closely with States as needed to ensure fair and efficient implementation of the Policy. For additional guidance on making disclosures, contact the Audit Policy National Coordinator at EPA Headquarters at 202–564–5123.

The 21-day disclosure period begins when the entity discovers that a violation has, or may have, occurred. The trigger for discovery is when any officer, director, employee or agent of the facility has an objectively reasonable basis for believing that a violation has, or may have, occurred. The "objectively reasonable basis" standard is measured against what a prudent person, having the same information as was available to the individual in question, would have believed. It is not measured against what the individual in question thought was reasonable at the time the situation was encountered. If an entity has some doubt as to the existence of a violation, the recommended course is for the entity to proceed with the disclosure and allow the regulatory authorities to make a definitive determination. Contract personnel who provide on-site services at the facility may be treated as employees or agents for purposes of the Policy.

If the 21-day period has not yet expired and an entity suspects that it will be unable to meet the deadline, the entity should contact the appropriate EPA office in advance to develop disclosure terms acceptable to EPA. For situations in which the 21-day period already has expired, the Agency may accept a late disclosure in the exceptional case, such as where there are complex circumstances, including where EPA determines the violation could not be identified and disclosed within 21 calendar days after discovery.

EPA also may extend the disclosure period when multiple facilities or acquisitions are involved.

In the multi-facility context, EPA will ordinarily extend the 21-day period to allow reasonable time for completion and review of multi-facility audits where: (a) EPA and the entity agree on the timing and scope of the audits prior to their commencement; and (b) the facilities to be audited are identified in advance. In the acquisitions context, EPA will consider extending the prompt disclosure period on a case-by-case basis. The 21-day disclosure period will begin on the date of discovery by the acquiring entity, but in no case will the period begin earlier than the date of acquisition.

In summary, Section D(3) recognizes that it is critical for EPA to receive timely reporting of violations in order to have clear notice of the violations and the opportunity to respond if necessary. Prompt disclosure is also evidence of the regulated entity's good faith in wanting to achieve or return to compliance as soon as possible. The integrity of Federal environmental law depends upon timely and accurate reporting. The public relies on timely and accurate reports from the regulated community, not only to measure compliance but to evaluate health or environmental risk and gauge progress in reducing pollutant loadings. EPA expects the Policy to encourage the kind of vigorous self-policing that will serve these objectives and does not intend that it justify delayed reporting. When violations of reporting requirements are voluntarily discovered, they must be promptly reported. When a failure to report results in imminent and substantial endangerment or serious harm to the environment, Audit Policy credit is precluded under condition D(8).

4. Discovery and Disclosure Independent of Government or Third Party Plaintiff

Under Section D(4), the entity must discover the violation independently. That is, the violation must be discovered and identified before EPA or another government agency likely would have identified the problem either through its own investigative work or from information received through a third party. This condition requires regulated entities to take the initiative to find violations on their own and disclose them promptly instead of waiting for an indication of a pending enforcement action or third-party complaint.

Section D(4)(a) lists the circumstances under which discovery and disclosure will not be considered independent. For example, a disclosure will not be independent where EPA is already investigating the facility in question. However, under subsection (a), where the entity does not know that EPA has commenced a civil investigation and proceeds in good faith to make a disclosure under the Audit Policy, EPA may, in its discretion, provide penalty mitigation under the Audit Policy. The subsection (a) exception applies only to civil investigations; it does not apply in the criminal context. Other examples of situations in which a discovery is not considered independent are where a citizens' group has provided notice of its intent to sue, where a third party has already filed a complaint, where a whistleblower has reported the potential violation to government authorities, or where discovery of the violation by the government was imminent. Condition D(4)(c)—the filing of a complaint by a third party—covers formal judicial and administrative complaints as well as informal complaints, such as a letter from a citizens' group alerting EPA to a potential environmental violation.

Regulated entities that own or operate multiple facilities are subject to section D(4)(b) in addition to D(4)(a). EPA encourages multi-facility auditing and does not intend for the "independent discovery" condition to preclude availability of the Audit Policy when multiple facilities are involved. Thus, if a regulated entity owns or operates multiple facilities, the fact that one of its facilities is the subject of an investigation, inspection, information request or third-party complaint does not automatically preclude the Agency from granting Audit Policy credit for disclosures of violations self-discovered at the other facilities, assuming all other Audit Policy conditions are met. However, just as in the single-facility context, where a facility is already the subject of a government inspection, investigation or information request (including a broad information request that covers multiple facilities), it will generally not be eligible for Audit Policy credit. The Audit Policy is designed to encourage regulated entities to disclose violations before any of their facilities are under investigation, not after EPA discovers violations at one facility. Nevertheless, the Agency retains its full discretion under the Audit Policy to grant penalty waivers or reductions for good-faith disclosures made in the multi-facility context. EPA has worked closely with a number of entities that have received Audit Policy credit for multi-facility disclosures, and entities contemplating multi-facility auditing are encouraged to contact the Agency with any questions concerning Audit Policy availability.

5. Correction and Remediation

Under Section D(5), the entity must remedy any harm caused by the violation and expeditiously certify in writing to appropriate Federal, State, and local authorities that it has corrected the violation. Correction and remediation in this context include responding to spills and carrying out any removal or remedial actions required by law. The certification requirement enables EPA to ensure that the regulated entity will be publicly accountable for its commitments through binding written agreements, orders or consent decrees where necessary.

Under the Policy, the entity must correct the violation within 60 calendar days from the date of discovery, or as expeditiously as possible. EPA recognizes that some violations can and should be corrected immediately, while others may take longer than 60 days to correct. For example, more time may be required if capital expenditures are involved or if technological issues are a factor. If more than 60 days will be required, the disclosing entity must so notify the Agency in writing prior to the conclusion of the 60-day period. In all cases, the regulated entity will be expected to do its utmost to achieve or return to compliance as expeditiously as possible.

If correction of the violation depends upon issuance of a permit that has been applied for but not issued by Federal or State authorities, the Agency will, where appropriate, make reasonable efforts to secure timely review of the permit.

6. Prevent Recurrence

Under Section D(6), the regulated entity must agree to take steps to prevent a recurrence of the violation after it has been disclosed. Preventive steps may include, but are not limited to, improvements to the entity's environmental auditing efforts or compliance management system.

7. No Repeat Violations

Condition D(7) bars repeat offenders from receiving Audit Policy credit. Under the repeat violations exclusion, the same or a closely-related violation must not have occurred at the same facility within the past 3 years. The 3-year period begins to run when the government or a third party has given the violator notice of a specific violation, without regard to when the original violation cited in the notice

actually occurred. Examples of notice include a complaint, consent order, notice of violation, receipt of an inspection report, citizen suit, or receipt of penalty mitigation through a compliance assistance or incentive project.

When the facility is part of a multi-facility organization, Audit Policy relief is not available if the same or a closely-related violation occurred as part of a pattern of violations at one or more of these facilities within the past 5 years. If a facility has been newly acquired, the existence of a violation prior to acquisition does not trigger the repeat violations exclusion.

The term "violation" includes any violation subject to a Federal, State or local civil judicial or administrative order, consent agreement, conviction or plea agreement. Recognizing that minor violations sometimes are settled without a formal action in court, the term also covers any act or omission for which the regulated entity has received a penalty reduction in the past. This condition covers situations in which the regulated entity has had clear notice of its noncompliance and an opportunity to correct the problem.

The repeat violation exclusion benefits both the public and law-abiding entities by ensuring that penalties are not waived for those entities that have previously been notified of violations and fail to prevent repeat violations. The 3-year and 5-year "bright lines" in the exclusion are designed to provide regulated entities with clear notice about when the Policy will be available.

8. Other Violations Excluded

Section D(8) provides that Policy benefits are not available for certain types of violations. Subsection D(8)(a) excludes violations that result in serious actual harm to the environment or which may have presented an imminent and substantial endangerment to public health or the environment. When events of such a consequential nature occur, violators are ineligible for penalty relief and other incentives under the Audit Policy. However, this condition does not bar an entity from qualifying for Audit Policy relief solely because the violation involves release of a pollutant to the environment, as such releases do not necessarily result in serious actual harm or an imminent and substantial endangerment. To date, EPA has not invoked the serious actual harm or the imminent and substantial endangerment clauses to deny Audit Policy credit for any disclosure.

Subsection D(8)(b) excludes violations of the specific terms of any order, consent agreement, or plea agreement. Once a consent agreement has been negotiated, there is little incentive to comply if there are no sanctions for violating its specific requirements. The exclusion in this section also applies to violations of the terms of any response, removal or remedial action covered by a written agreement.

9. Cooperation

Under Section D(9), the regulated entity must cooperate as required by EPA and provide the Agency with the information it needs to determine Policy applicability. The entity must not hide, destroy or tamper with possible evidence following discovery of potential environmental violations. In order for the Agency to apply the Policy fairly, it must have sufficient information to determine whether its conditions are satisfied in each individual case. In general, EPA requests audit reports to determine the applicability of this Policy only where the information contained in the audit report is not readily available elsewhere and where EPA decides that the information is necessary to determine whether the terms and conditions of the Policy have been met. In the rare instance where an EPA Regional office seeks to obtain an audit report because it is otherwise unable to determine whether Policy conditions have been met, the Regional office will notify the Office of Regulatory Enforcement at EPA headquarters.

Entities that disclose potential criminal violations may expect a more thorough review by the Agency. In criminal cases, entities will be expected to provide, at a minimum, the following: access to all requested documents; access to all employees of the disclosing entity; assistance in investigating the violation, any noncompliance problems related to the disclosure, and any environmental consequences related to the violations; access to all information relevant to the violations disclosed, including that portion of the environmental audit report or documentation from the compliance management system that revealed the violation; and access to the individuals who conducted the audit or review.

F. Opposition to Audit Privilege and Immunity

The Agency believes that the Audit Policy provides effective incentives for self-policing without impairing law enforcement, putting the environment at risk or hiding environmental compliance information from the public. Although EPA encourages environmental auditing, it must do so without compromising the integrity and enforceability of environmental laws. It is important to distinguish between EPA's Audit Policy and the audit privilege and immunity laws that exist in some States. The Agency remains firmly opposed to statutory and regulatory audit privileges and immunity. Privilege laws shield evidence of wrongdoing and prevent States from investigating even the most serious environmental violations. Immunity laws prevent States from obtaining penalties that are appropriate to the seriousness of the violation, as they are required to do under Federal law. Audit privilege and immunity laws are unnecessary, undermine law enforcement, impair protection of human health and the environment, and interfere with the public's right to know of potential and existing environmental hazards.

Statutory audit privilege and immunity run counter to encouraging the kind of openness that builds trust between regulators, the regulated community and the public. For example, privileged information on compliance contained in an audit report may include information on the cause of violations, the extent of environmental harm, and what is necessary to correct the violations and prevent their recurrence. Privileged information is unavailable to law enforcers and to members of the public who have suffered harm as a result of environmental violations. The Agency opposes statutory immunity because it diminishes law enforcement's ability to discourage wrongful behavior and interferes with a regulator's ability to punish individuals who disregard the law and place others in danger. The Agency believes that its Audit Policy provides adequate incentives for self-policing but without secrecy and without abdicating its discretion to act in cases of serious environmental violations.

Privilege, by definition, invites secrecy, instead of the openness needed to build public trust in industry's ability to self-police. American law reflects the high value that the public places on fair access to the facts. The Supreme Court, for example, has said of privileges that, " [w]hatever their origins, these exceptions to the demand for every man's evidence are not lightly created nor expansively construed, for they are in derogation of the search for truth." *United States* v. *Nixon*, 418 U.S. 683, 710 (1974). Federal courts have unanimously refused to recognize a privilege for environmental audits in the context of government investigations. See, *e.g.*, *United States* v. *Dexter Corp.*, 132 F.R.D. 8, 10 (D.Conn. 1990)

(application of a privilege "would effectively impede [EPA's] ability to enforce the Clean Water Act, and would be contrary to stated public policy.") Cf. In re Grand Jury Proceedings, 861 F. Supp. 386 (D. Md. 1994) (company must comply with a subpoena under Food, Drug and Cosmetics Act for self-evaluative documents).

G. Effect on States

The revised final Policy reflects EPA's desire to provide fair and effective incentives for self-policing that have practical value to States. To that end, the Agency has consulted closely with State officials in developing this Policy. As a result, EPA believes its revised final Policy is grounded in commonsense principles that should prove useful in the development and implementation of State programs and policies.

EPA recognizes that States are partners in implementing the enforcement and compliance assurance program. When consistent with EPA's policies on protecting confidential and sensitive information, the Agency will share with State agencies information on disclosures of violations of Federally-authorized, approved or delegated programs. In addition, for States that have adopted their own audit policies in Federally-authorized, approved or delegated programs, EPA will generally defer to State penalty mitigation for self-disclosures as long as the State policy meets minimum requirements for Federal delegation. Whenever a State provides a penalty waiver or mitigation for a violation of a requirement contained in a Federally-authorized, approved or delegated program to an entity that discloses those violations in conformity with a State audit policy, the State should notify the EPA Region in which it is located. This notification will ensure that Federal and State enforcement responses are coordinated properly.

For further information about minimum delegation requirements and the effect of State audit privilege and immunity laws on enforcement authority, see "Statement of Principles: Effect of State Audit/Immunity Privilege Laws on Enforcement Authority for Federal Programs," Memorandum from Steven A. Herman et al, dated February 14, 1997, to be posted on the Internet under www.epa.gov/oeca/oppa.

As always, States are encouraged to experiment with different approaches to assuring compliance as long as such approaches do not jeopardize public health or the environment, or make it profitable not to comply with Federal environmental requirements. The Agency remains opposed to State legislation that does not include these basic protections, and reserves its right to bring independent action against regulated entities for violations of Federal law that threaten human health or the environment, reflect criminal conduct or repeated noncompliance, or allow one company to profit at the expense of its law-abiding competitors.

H. Scope of Policy

EPA has developed this Policy to guide settlement actions. It is the Agency's practice to make public all compliance agreements reached under this Policy in order to provide the regulated community with fair notice of decisions and to provide affected communities and the public with information regarding Agency action. Some in the regulated community have suggested that the Agency should convert the Policy into a regulation because they feel doing so would ensure greater consistency and predictability. Following its three-year evaluation of the Policy, however, the Agency believes that there is ample evidence that the Policy has worked well and that there is no need for a formal rulemaking. Furthermore, as the Agency seeks to respond to lessons learned from its increasing experience handling self-disclosures, a policy is much easier to amend than a regulation. Nothing in today's release of the revised final Policy is intended to change the status of the Policy as guidance.

I. Implementation of Policy

1. Civil Violations

Pursuant to the Audit Policy, disclosures of civil environmental violations should be made to the EPA Region in which the entity or facility is located or, where the violations to be disclosed involve more than one EPA Region, to EPA Headquarters. The Regional or Headquarters offices decide whether application of the Audit Policy in a specific case is appropriate. Obviously, once a matter has been referred for civil judicial prosecution, DOJ becomes involved as well. Where there is evidence of a potential criminal violation, the civil offices coordinate with criminal enforcement offices at EPA and DOJ.

To resolve issues of national significance and ensure that the Policy is applied fairly and consistently across EPA Regions and at Headquarters, the Agency in 1995 created the Audit Policy Quick Response Team (QRT). The QRT is comprised of representatives from the Regions, Headquarters, and DOJ. It meets on a regular basis to address issues of interpretation and to coordinate self-disclosure initiatives. In addition, in 1999 EPA established a National Coordinator position to handle Audit Policy issues and implementation. The National Coordinator chairs the QRT and, along with the Regional Audit Policy coordinators, serves as a point of contact on Audit Policy issues in the civil context.

2. Criminal Violations

Criminal disclosures are handled by the Voluntary Disclosure Board (VDB), which was established by EPA in 1997. The VDB ensures consistent application of the Audit Policy in the criminal context by centralizing Policy interpretation and application within the Agency.

Disclosures of potential criminal violations may be made directly to the VDB, to an EPA regional criminal investigation division or to DOJ. In all cases, the VDB coordinates with the investigative team and the appropriate prosecuting authority. During the course of the investigation, the VDB routinely monitors the progress of the investigation as necessary to ensure that sufficient facts have been established to determine whether to recommend that relief under the Policy be granted.

At the conclusion of the criminal investigation, the Board makes a recommendation to the Director of EPA's Office of Criminal Enforcement, Forensics, and Training, who serves as the Deciding Official. Upon receiving the Board's recommendation, the Deciding Official makes his or her final recommendation to the appropriate United States Attorney's Office and/or DOJ. The recommendation of the Deciding Official, however, is only that—a recommendation. The United States Attorney's Office and/or DOJ retain full authority to exercise prosecutorial discretion.

3. Release of Information to the Public

Upon formal settlement, EPA places copies of settlements in the Audit Policy Docket. EPA also makes other documents related to self-disclosures publicly available, unless the disclosing entity claims them as Confidential Business Information (and that claim is validated by U.S. EPA), unless another exemption under the Freedom of Information Act is asserted and/or applies, or the Privacy Act or any other law would preclude such release. Presumptively releasable documents include compliance agreements reached under the Policy (see Section H) and descriptions of compliance management systems submitted under Section D(1).

Any material claimed to be Confidential Business Information will be treated in accordance with EPA regulations at 40 CFR Part 2. In determining what documents to release, EPA is guided by the Memorandum from Assistant Administrator Steven A. Herman entitled "Confidentiality of Information Received Under Agency's Self-Disclosure Policy," available on the Internet at www.epa.gov/oeca/sahmemo.html.

II. Statement of Policy—Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations

A. Purpose

This Policy is designed to enhance protection of human health and the environment by encouraging regulated entities to voluntarily discover, disclose, correct and prevent violations of Federal environmental requirements.

B. Definitions

For purposes of this Policy, the following definitions apply:

"Environmental Audit" is a systematic, documented, periodic and objective review by regulated entities of facility operations and practices related to meeting environmental requirements.

"Compliance Management System" encompasses the regulated entity's documented systematic efforts, appropriate to the size and nature of its business, to prevent, detect and correct violations through all of the following:

(a) Compliance policies, standards and procedures that identify how employees and agents are to meet the requirements of laws, regulations, permits, enforceable agreements and other sources of authority for environmental requirements;

(b) Assignment of overall responsibility for overseeing compliance with policies, standards, and procedures, and assignment of specific responsibility for assuring compliance at each facility or operation;

(c) Mechanisms for systematically assuring that compliance policies, standards and procedures are being carried out, including monitoring and auditing systems reasonably designed to detect and correct violations, periodic evaluation of the overall performance of the compliance management system, and a means for employees or agents to report violations of environmental requirements without fear of retaliation;

(d) Efforts to communicate effectively the regulated entity's standards and procedures to all employees and other agents;

(e) Appropriate incentives to managers and employees to perform in accordance with the compliance policies, standards and procedures, including consistent enforcement through appropriate disciplinary mechanisms; and

(f) Procedures for the prompt and appropriate correction of any violations, and any necessary modifications to the regulated entity's compliance management system to prevent future violations.

"Environmental audit report" means the documented analysis, conclusions, and recommendations resulting from an environmental audit, but does not include data obtained in, or testimonial evidence concerning, the environmental audit.

"Gravity-based penalties" are that portion of a penalty over and above the economic benefit, *i.e.*, the punitive portion of the penalty, rather than that portion representing a defendant's economic gain from noncompliance.

"Regulated entity" means any entity, including a Federal, State or municipal agency or facility, regulated under Federal environmental laws.

C. Incentives for Self-Policing

1. No Gravity-Based Penalties

If a regulated entity establishes that it satisfies all of the conditions of Section D of this Policy, EPA will not seek gravity-based penalties for violations of Federal environmental requirements discovered and disclosed by the entity.

2. Reduction of Gravity-Based Penalties by 75%

If a regulated entity establishes that it satisfies all of the conditions of Section D of this Policy except for D(1)—systematic discovery—EPA will reduce by 75% gravity-based penalties for violations of Federal environmental requirements discovered and disclosed by the entity.

3. No Recommendation for Criminal Prosecution

(a) If a regulated entity establishes that it satisfies at least conditions D(2) through D(9) of this Policy, EPA will not recommend to the U.S. Department of Justice or other prosecuting authority that criminal charges be brought against the disclosing entity, as long as EPA determines that the violation is not part of a pattern or practice that demonstrates or involves:

(i) A prevalent management philosophy or practice that conceals or condones environmental violations; or

(ii) High-level corporate officials' or managers' conscious involvement in, or willful blindness to, violations of Federal environmental law;

(b) Whether or not EPA recommends the regulated entity for criminal prosecution under this section, the Agency may recommend for prosecution the criminal acts of individual managers or employees under existing policies guiding the exercise of enforcement discretion.

4. No Routine Request for Environmental Audit Reports

EPA will neither request nor use an environmental audit report to initiate a civil or criminal investigation of an entity. For example, EPA will not request an environmental audit report in routine inspections. If the Agency has independent reason to believe that a violation has occurred, however, EPA may seek any information relevant to identifying violations or determining liability or extent of harm.

D. Conditions

1. Systematic Discovery

The violation was discovered through:

(a) An environmental audit; or

(b) A compliance management system reflecting the regulated entity's due diligence in preventing, detecting, and correcting violations. The regulated entity must provide accurate and complete documentation to the Agency as to how its compliance management system meets the criteria for due diligence outlined in Section B and how the regulated entity discovered the violation through its compliance management system. EPA may require the regulated entity to make publicly available a description of its compliance management system.

2. Voluntary Discovery

The violation was discovered voluntarily and not through a legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit, judicial or administrative order, or consent agreement. For example, the Policy does not apply to:

(a) Emissions violations detected through a continuous emissions monitor (or alternative monitor established in a permit) where any such monitoring is required;

(b) Violations of National Pollutant Discharge Elimination System (NPDES) discharge limits detected through required sampling or monitoring; or

(c) Violations discovered through a compliance audit required to be performed by the terms of a consent order or settlement agreement, unless the audit is a component of agreement terms to implement a comprehensive environmental management system.

3. Prompt Disclosure

The regulated entity fully discloses the specific violation in writing to EPA within 21 days (or within such shorter time as may be required by law) after the entity discovered that the violation has, or may have, occurred. The time at which the entity discovers that a violation has, or may have, occurred begins when any officer, director, employee or agent of the facility has an objectively reasonable basis for believing that a violation has, or may have, occurred.

4. Discovery and Disclosure Independent of Government or Third-Party Plaintiff

(a) The regulated entity discovers and discloses the potential violation to EPA prior to:

(i) The commencement of a Federal, State or local agency inspection or investigation, or the issuance by such agency of an information request to the regulated entity (where EPA determines that the facility did not know that it was under civil investigation, and EPA determines that the entity is otherwise acting in good faith, the Agency may exercise its discretion to reduce or waive civil penalties in accordance with this Policy);

(ii) Notice of a citizen suit;

(iii) The filing of a complaint by a third party;

(iv) The reporting of the violation to EPA (or other government agency) by a "whistleblower" employee, rather than by one authorized to speak on behalf of the regulated entity; or

(v) imminent discovery of the violation by a regulatory agency.

(b) For entities that own or operate multiple facilities, the fact that one facility is already the subject of an investigation, inspection, information request or third-party complaint does not preclude the Agency from exercising its discretion to make the Audit Policy available for violations self-discovered at other facilities owned or operated by the same regulated entity.

5. Correction and Remediation

The regulated entity corrects the violation within 60 calendar days from the date of discovery, certifies in writing that the violation has been corrected, and takes appropriate measures as determined by EPA to remedy any environmental or human harm due to the violation. EPA retains the authority to order an entity to correct a violation within a specific time period shorter than 60 days whenever correction in such shorter period of time is feasible and necessary to protect public health and the environment adequately. If more than 60 days will be needed to correct the violation, the regulated entity must so notify EPA in writing before the 60-day period has passed. Where appropriate, to satisfy conditions D(5) and D(6), EPA may require a regulated entity to enter into a publicly available written agreement, administrative consent order or judicial consent decree as a condition of obtaining relief under the Audit Policy, particularly where compliance or remedial measures are complex or a lengthy schedule for attaining and maintaining compliance or remediating harm is required.

6. Prevent Recurrence

The regulated entity agrees in writing to take steps to prevent a recurrence of the violation. Such steps may include improvements to its environmental auditing or compliance management system.

7. No Repeat Violations

The specific violation (or a closely related violation) has not occurred previously within the past three years at the same facility, and has not occurred within the past five years as part of a pattern at multiple facilities owned or operated by the same entity. For the purposes of this section, a violation is:

(a) Any violation of Federal, State or local environmental law identified in a judicial or administrative order, consent agreement or order, complaint, or notice of violation, conviction or plea agreement; or

(b) Any act or omission for which the regulated entity has previously received penalty mitigation from EPA or a State or local agency.

8. Other Violations Excluded

The violation is not one which (a) resulted in serious actual harm, or may have presented an imminent and substantial endangerment, to human health or the environment, or (b) violates the specific terms of any judicial or administrative order, or consent agreement.

9. Cooperation

The regulated entity cooperates as requested by EPA and provides such information as is necessary and requested by EPA to determine applicability of this Policy.

E. Economic Benefit

EPA retains its full discretion to recover any economic benefit gained as a result of noncompliance to preserve a "level playing field" in which violators do not gain a competitive advantage over regulated entities that do comply. EPA may forgive the entire penalty for violations that meet conditions D(1) through D(9) and, in the Agency's opinion, do not merit any penalty due to the insignificant amount of any economic benefit.

F. Effect on State Law, Regulation or Policy

EPA will work closely with States to encourage their adoption and implementation of policies that reflect the incentives and conditions outlined in this Policy. EPA remains firmly opposed to statutory environmental audit privileges that shield evidence of environmental violations and undermine the public's right to know, as well as to blanket immunities, particularly immunities for violations that reflect criminal conduct, present serious threats or actual harm to health and the environment, allow noncomplying companies to gain an economic advantage over their competitors, or reflect a repeated failure to comply with Federal law. EPA will work with States to address any provisions of State audit privilege or immunity laws that are inconsistent with this Policy and that may prevent a timely and appropriate response to significant environmental violations. The Agency reserves its right to take necessary actions to protect public health or the environment by enforcing against any violations of Federal law.

G. Applicability

(1) This Policy applies to settlement of claims for civil penalties for any violations under all of the Federal environmental statutes that EPA administers, and supersedes any inconsistent provisions in media-specific penalty or enforcement policies and EPA's 1995 Policy on "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations."

(2) To the extent that existing EPA enforcement policies are not inconsistent, they will continue to apply in conjunction with this Policy. However, a regulated entity that has received penalty mitigation for satisfying specific conditions under this Policy may not receive additional penalty mitigation for satisfying the same or similar conditions under other policies for the same violation, nor will this Policy apply to any violation that has received penalty mitigation under other policies. Where an entity has failed to meet any of conditions D(2) through D(9) and is therefore not eligible for penalty relief under this Policy, it may still be eligible for penalty

relief under other EPA media-specific enforcement policies in recognition of good faith efforts, even where, for example, the violation may have presented an imminent and substantial endangerment or resulted in serious actual harm.

(3) This Policy sets forth factors for consideration that will guide the Agency in the exercise of its enforcement discretion. It states the Agency's views as to the proper allocation of its enforcement resources. The Policy is not final agency action and is intended as guidance. This Policy is not intended, nor can it be relied upon, to create any rights enforceable by any party in litigation with the United States. As with the 1995 Audit Policy, EPA may decide to follow guidance provided in this document or to act at variance with it based on its analysis of the specific facts presented. This Policy may be revised without public notice to reflect changes in EPA's approach to providing incentives for self-policing by regulated entities, or to clarify and update text.

(4) This Policy should be used whenever applicable in settlement negotiations for both administrative and civil judicial enforcement actions. It is not intended for use in pleading, at hearing or at trial. The Policy may be applied at EPA's discretion to the settlement of administrative and judicial enforcement actions instituted prior to, but not yet resolved, as of the effective date of this Policy.

(5) For purposes of this Policy, violations discovered pursuant to an environmental audit or compliance management system may be considered voluntary even if required under an Agency "partnership" program in which the entity participates, such as regulatory flexibility pilot projects like Project XL. EPA will consider application of the Audit Policy to such partnership program projects on a project-by-project basis.

(6) EPA has issued interpretive guidance addressing several applicability issues pertaining to the Audit Policy. Entities considering whether to take advantage of the Audit Policy should review that guidance to see if it addresses any relevant questions. The guidance can be found on the Internet at www.epa.gov/oeca/ore/apolguid.html.

H. Public Accountability

EPA will make publicly available the terms and conditions of any compliance agreement reached under this Policy, including the nature of the violation, the remedy, and the schedule for returning to compliance.

I. Effective Date

This revised Policy is effective May 11, 2000.

Dated: March 30, 2000.

Steven A. Herman,

Assistant Administrator for Enforcement and Compliance Assurance.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–6576–4]

Small Business Compliance Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Policy Statement.

SUMMARY: The Environmental Protection Agency (EPA) today issues its revised final *Small Business Compliance Policy* to expand the options allowed under the Policy for discovering violations and to establish a time period for disclosure. This Policy was originally titled the *Policy on Compliance Incentives for Small Businesses*. This Policy is intended to promote environmental compliance among small businesses by providing incentives for voluntary discovery, prompt disclosure, and prompt correction of violations. The Policy accomplishes this in two ways: by setting forth guidelines for the Agency to apply in reducing or waiving penalties for small businesses that come forward to disclose and make good faith efforts to correct violations, and by deferring to State, local and Tribal governments that offer these incentives. Major revisions released today include lengthening the prompt disclosure period from 10 to 21 calendar days and broadening the applicability of the Policy to violations uncovered by small businesses through any means of voluntary discovery.

DATES: This policy is effective May 11, 2000.

ADDRESSES: Additional documentation relating to the development of this policy is contained in the Office of Enforcement and Compliance Assurance (OECA) public docket (EC–P–1999–009). An index to the docket may be obtained by contacting the Enforcement and Compliance Docket and Information Center by telephone at (202) 564–2614 or (202) 564–2119, by fax at (202) 564–1011, or by email at docket.oeca@epa.gov. Office hours are 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. An additional contact is Ginger Gotliffe (202) 564–7072; fax (202) 564–009; e-mail: gotliffe.ginger@epa.gov.

SUPPLEMENTARY INFORMATION:

Introduction

Five years ago, EPA reorganized its compliance programs. This reorganization was undertaken by Administrator Browner with a goal of making EPA's enforcement and compliance programs more effective in protecting public health, safety and the environment. The reorganization also improved and enhanced EPA's ability to reach out to small businesses with information to help them comply with environmental requirements. Five years after the reorganization, EPA conducted outreach efforts to obtain feedback on compliance and enforcement activities, on ways to further improve public health, safety and the environment through compliance efforts, and on actions the Agency has taken over the past five years. From these and other outreach efforts and from meetings and conference calls with interested stakeholder groups, OECA received feedback that improvements were needed to both its Audit Policy and to its Small Business Policy. In response to that feedback, OECA reviewed ways to improve these Policies.

Background and History

EPA issued two incentives policies in 1995 and 1996. The "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," informally known as the "Audit Policy," was issued in December 1995. See 60 FR 66706 (Dec. 22, 1995). The purpose of the Audit Policy, which is available to entities of any size, is to enhance protection of human health, safety and the environment by encouraging regulated businesses to voluntarily discover, promptly disclose, expeditiously correct and prevent violations of federal environmental law. Benefits available to businesses that qualify for the Audit Policy include reductions in the amount of civil penalties and no recommendation for prosecution of potential criminal violations. The Audit Policy has been recently modified, and the Final revised Audit Policy is being published today in the **Federal Register**.

To address the special needs of small businesses EPA issued the "Policy on Compliance Incentives for Small Businesses," which is commonly called the "Small Business Policy," in June 1996. See 61 FR 27984 June 3, 1996. The Small Business Policy implements section 223 of the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996. The term "small business" will be used throughout this Policy, however this term will also cover entities such as small governments and small organizations as defined in SBREFA. Under the existing Small Business Policy, EPA will waive or reduce civil penalties whenever a small business makes a good faith effort to comply with environmental requirements by discovering violations as part of a government sponsored compliance assistance program or a voluntary environmental audit, promptly disclosing those violations, and correcting them in a timely manner. If the small business meets all the criteria in the policy, including violation history, correction timeframe, and lack of harm, EPA will waive 100% of the gravity component of the civil penalty. Moreover, EPA will defer to State, local and Tribal actions that are consistent with the criteria set forth in this Policy. The Small Business Policy provides penalty reduction as an incentive for small businesses, who are less likely than large businesses to have sophisticated environmental expertise, to ask for compliance assistance. This policy was also simpler for small businesses to use.

There are several notable differences between the existing Audit Policy and Small Business Policy. First, the policies allow penalty reduction for violations discovered in different ways. The Audit Policy addresses violations discovered through systematic methods such as audits as well as through non-systematic methods. The Small Business Policy applies only to violations discovered through audits and during government sponsored on-site compliance assistance activities. Second, the penalty reduction granted by the policies varies. The Audit Policy provides 100% reduction of the gravity component of the penalty (explained below) for systematic discoveries (i.e., part of a regular audit program) and 75% for non-systematic discoveries. The Small Business Policy grants provides up to 100% reduction of the gravity component of the penalty for violations discovered either through regular audits or during government sponsored on-site compliance assistance activities. Finally, the period within which violations must be corrected is different. Under the Audit Policy, businesses must correct a violation within up to 60 days of its discovery of the violation to qualify for penalty reduction. Under the Small Business Policy, a business must generally correct a violation within 180 days of its discovery to qualify for penalty reduction, and within 360 days if the correction involves pollution prevention modifications.

In addition to these notable differences, the Audit Policy addresses several issues not covered by the Small Business Policy; criminal conduct and multi-facility disclosures. The Small Business Policy is inapplicable for criminal violations. Violations that may involve criminal conduct can be addressed under the Audit Policy. In the unlikely situation where a disclosure involves a multi-facility business, the Agency will identify the relevant

provisions of the Audit and Small Business Policies.

Changes to Policy

EPA is today making several major changes to the Small Business Compliance Policy. All of these changes will make it easier for small businesses to take advantage of the Small Business Compliance Policy. These changes result from EPA's evaluation of comments received on our proposed modification of the Small Business Compliance Policy, which was published on July 29, 1999. See 64 FR 41116.

The following sections discuss the two major changes that we have made to the Small Business Compliance Policy: expansion of options for discovery of violations and lengthening the disclosure period.

1. Expanded Options for Discovery of Violations

Comments submitted to EPA suggested that this Policy should be expanded to include violations that are discovered by a variety of compliance assistance activities, including participation in compliance programs or the use of tools that have been developed or sponsored by EPA, the States, and local, private and non-profit assistance providers. Based on its evaluation of those comments, EPA has decided in the revised Small Business Compliance Policy to allow small businesses to obtain penalty relief if violations are discovered by any voluntary means in addition to discovery as the result of government sponsored on-site compliance assistance activities or environmental audits. For example, voluntary discovery could result from compliance management systems (CMSs), pollution prevention assessments, participation in mentoring programs, training classes, use of on-line compliance assistance centers, and use of checklists. These programs and activities need not be associated with environmental regulatory agencies, but may be associated with any public, private, or non-profit organization. The Agency wants to encourage participation in those programs or activities that could increase compliance, improve efficiency, and reduce pollution.

There are a variety of activities and sources of information that a small business can use to learn more about environmental regulatory requirements. EPA and the States provide various forms of compliance assistance. Some State assistance programs are run as confidential services to the small business community. If a small business wishes to obtain a corrections period under this policy after receiving compliance assistance from a confidential program, the business must promptly disclose the violations to the EPA or the State or Tribal government agency which is applying a similar policy and comply with the other provisions of this Policy.

2. Clarify and Lengthen the Disclosure Period

This revised Small Business Compliance Policy extends the time period within which the small business must fully disclose a violation from 10 to 21-calendar days. The original Policy required "prompt disclosure" for compliance assistance discovery and 10 day disclosure for discoveries made through an environmental audit. Lengthening the disclosure period to 21 calendar days regardless of how the violation was discovered will give small businesses more opportunity to make use of the Small Business Compliance Policy while allowing EPA to get timely reporting of violations. Such timely reporting provides the Agency with clear notice of violations that have or may have occurred and the opportunity to respond if necessary, as well as an accurate picture of a given businesses's compliance record. Lengthening the disclosure period to 21 calendar days is also consistent with a similar change that EPA made to the Audit Policy.

EPA received comment that there might be situations where small businesses would not able to disclose within the 21 calendar day period. Therefore the revised Small Business Compliance Policy addresses this issue. Where the 21 calendar day disclosure period has not expired and a small business knows that it will be unable to disclose within that time period, the small business is advised to contact the appropriate EPA Office before the period expires to request additional time. For situations in which the 21 calendar day disclosure period has already expired, the Agency may accept a late disclosure in the exceptional case, such as where there are complex circumstances. In such instances, the small business will need to demonstrate that an exceptional case exists.

With the broadening of the options for the discovery of violations, there was some concern by one commenter in a follow-up conversation about the event that triggers the beginning of the 21 calendar day disclosure period. The 21 calendar day disclosure period begins when the small business discovers that a violation has, or may have, occurred. Discovery occurs when any officer, director, employee or agent of the facility becomes aware of any facts that reasonably lead him or her to believe that a violation has or may have occurred at the facility.

Other Issues Addressed by Public Comment

There were also issues that the public commented on, either through outreach activities or in response to the Agency's proposed modifications. These covered reduction of penalties, implementation of the policy, and the combination of the Audit Policy and the Small Business Compliance Policy.

1. Penalty Reduction

EPA did not change the Small Business Compliance Policy provisions on reducing or eliminating the gravity component of civil penalties that it would otherwise seek. Civil penalties are made up of two components: a gravity component and an economic benefit component. The gravity component typically reflects the nature of the violations, the duration of the violations, the environmental, safety or public health impacts of the violations, good faith efforts by the business to promptly remedy the violation, and the business's overall record of compliance with environmental requirements. Under this Policy, the Agency will grant 100% reduction of the gravity component of the penalty for violations provided all the other criteria in the policy are met. The Agency believes the incentive of 100% reduction of the gravity component should encourage small businesses to disclose violations promptly and correct them within the specified time period.

The economic benefit component typically reflects any monetary advantage a small business has derived from the violations. For example, if a small business significantly reduced its expenses by not purchasing and installing an emission control device to meet regulatory requirements, then that small business has gained an economic benefit or advantage over its competitors who have complied with the environmental requirements. We received a comment that the possibility of being subject to the economic benefit component of a civil penalty would keep small businesses from using the policy. However, other commenters stated that the economic benefit component should be retained to protect law abiding small businesses from being placed at a competitive disadvantage to those which do not comply.

EPA retains discretion to consider and collect economic benefit where a significant benefit was gained, although based on its experience, the Agency

does not anticipate the need to exercise this discretion often. To date, the vast majority of the disclosures under the Audit Policy and all of the disclosures under the Small Business Compliance Policy have not necessitated recovery of economic benefit.

2. Implementation of the Policy

EPA has modified the Small Business Compliance Policy in format and language to provide the information in a more understandable manner. This in part helps to respond to comments about how we have implemented the Policy. In addition, when they become available, EPA will provide a fact sheet, contact list, and other information about the Policy at the EPA web site (*http://www.epa.gov/oeca/smbusi.html*) to increase the usefulness of the Policy. We will also ensure that other internet sites such as EPA's Small Business Ombudsman web site and the Compliance Assistance Center's web sites (9 Centers available at http://www.epa.gov/oeca/centers) link to this information about the Policy. EPA staff and other compliance assistance activities and initiatives will also provide information about the Small Business Compliance Policy.

Enhanced implementation of the Policy also involves improved procedures and coordination within EPA. EPA Headquarters and Regional staff working on the Audit Policy as well as this Small Business Compliance Policy are coordinating on issues and procedures to ensure national consistency in its application and to improve the timeliness of the Agency's review of each disclosure. In most circumstances, EPA will respond to a small business within 60 days of disclosure of a violation.

3. Combining Both Compliance Incentives Policies

As part of the Agency's evaluations of the Audit and Small Business Policies and given the similarities between the two Policies, EPA asked for comments on the advisability of combining them. In particular, the Agency was interested in whether small businesses would be more likely to audit (or seek compliance assistance) and self-disclose violations if the two policies were merged. EPA received a range of comments supportive of combining the two policies if doing so would simplify the process for small businesses. After a careful review, EPA decided that it is preferable for small businesses to have a separate policy tailored specifically for them. The Small Business Compliance Policy: (1) Is shorter and simpler, (2) contains additional benefits for small businesses such as a longer correction period and 100% penalty reduction of the gravity component for all covered violations, and (3) can be more easily distributed with compliance assistance materials developed just for small businesses.

We expect these changes to enable more small businesses to use the policy and thereby promote environmental compliance.

Small Business Compliance Policy

A. Introduction and Purpose

The Small Business Compliance Policy is intended to promote environmental compliance among small businesses by providing incentives for them to make use of compliance assistance programs, environmental audits, or compliance management systems (CMS), or to participate in any activities that may increase small businesses' understanding of the environmental requirements with which they must comply. The Policy accomplishes this in two ways: by waiving or reducing civil penalties to which a small business might otherwise be subject, and by deferring to States and local governments or tribal authorities that offer these incentives consistent with the criteria established in this Policy.

EPA will waive or reduce the gravity component of civil penalties whenever a small business makes a good faith effort to comply with environmental requirements by:

(1) Voluntarily discovering a violation,

(2) Promptly disclosing the violation within the required time period, and

(3) Expeditiously correcting the violation within the proper timeframe.

To obtain the benefits of the Policy, the facility must also meet criteria on violation history, lack of harm, and criminal conduct.

B. Background

This Policy implements section 223 of the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996.

C. Applicability

This Policy applies to facilities owned by small businesses as defined here. A small business is a person, corporation, partnership, or other entity that employs 100 or fewer individuals (across all facilities and operations owned by the small business).[1] Entities, as defined under SBREFA, also include small governments and small organizations. Facilities that are operated by municipalities or other local governments may be covered under the Small Communities Policy (see *http://www.epa.gov/oeca/scpolcy.html*). Facilities that are disclosing violations involving multiple facilities should refer to the sections on multiple facilities in the Policy on Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations (the Audit Policy) of April 11, 2000.

This Policy supersedes the previous version of the policy which was called the Policy on Compliance Incentives for Small Businesses and became effective on June 10,1996. To the extent that this Policy may differ from the terms of applicable enforcement response policies (including penalty policies) under media-specific programs, this document supersedes those policies.

D. How Small Businesses Can Qualify for Penalty Reduction

EPA will eliminate or reduce the gravity component of civil penalties against small businesses based on the following criteria:

1. Discovery is Voluntary

The small business discovers a violation on its own before an EPA or State inspection. For example, a small business may discover violations after receiving compliance assistance, conducting an environmental audit or participating in mentoring programs. Other activities that may be useful in discovering violations include establishing CMS, using compliance checklists, reading materials on complying with environmental requirements, using compliance assistance center web sites, and attending training classes.

The violation must be identified voluntarily, and not through a monitoring or sampling requirement prescribed by statute, regulation, permit, judicial or administrative order, or consent agreement. For example, emissions violations discovered through a continuous emissions monitor (or alternative monitor established in a permit), violations of National Pollutant Discharge Elimination System (NPDES) discharge limits discovered through required sampling or monitoring, and violations discovered through a compliance audit required to be performed by terms of a consent order or settlement order are not eligible for penalty reduction under the policy.

[1] The number of employees should be considered as full-time equivalents on an annual basis, including contract employees. Full-time equivalents means 2,000 hours per year of employment. For example, see 40 CFR 372.3.

2. Disclosure Period is Met

i. The small business must voluntarily disclose a specific violation fully and in writing to EPA or the State within 21 calendar days after the small business has discovered that the violation has occurred, or may have occurred. Prompt disclosure is evidence of the small business's good faith in wanting to achieve or return to compliance as soon as possible. For purposes of this Policy, the time at which a small business discovers that a violation has or may have occurred begins when any officer, director, employee, or agent of the facility becomes aware of any facts that reasonably lead him or her to believe that a violation may exist. If a small business has some doubt as to the existence of a violation, EPA recommends that the business make a prompt disclosure and allow the regulatory authorities to make a definitive determination. This will ensure that the small business meets the disclosure period requirement.

ii. The disclosure of the violation must occur before the violation was otherwise discovered by, or reported to EPA, the appropriate state or local regulatory agency. See section F.1 of the Policy below. Good faith also requires that a small business cooperate with EPA and in a timely manner provide such information requested by EPA to determine applicability of this Policy.

iii. If a small business wishes to obtain a corrections period after receiving compliance assistance from a confidential assistance program, the business may still take advantage of the policy by disclosing the violation to the appropriate regulatory agency.

3. Violation is Corrected

The business corrects the violation within the corrections period set forth below. Small businesses are expected to remedy the violations within the shortest practicable period of time. Correcting the violation includes remediating any environmental harm associated with the violation, as well as putting into place procedures to prevent the violation from happening again.

i. For any violation that cannot be corrected within 90 calendar days of its discovery, the small business must submit a written schedule, or the agency may, at its sole discretion, elect to issue a compliance order with a schedule, as appropriate. The small business must correct any violations within 180 calendar days after the date that they were discovered.

ii. If the small business intends to correct the violation by putting into place pollution prevention measures, the business may take an additional period of up to 180 calendar days, *i.e.*, up to a period of 360 calendar days from the date the violation is discovered.

4. When the Policy Does Not Apply

The Policy *does not* apply if:

a. The facility has the following noncompliance history:

i. It has previously *received* a warning letter, notice of violation, or field citation, or been subject to a citizen suit or any other enforcement action by a government agency for a violation of the same requirement within the past three years.

ii. It has been granted penalty reduction under this Policy (or a similar State or Tribal policy) for a violation of the same or a similar requirement within the past three years.

iii. It has been subject to two or more enforcement actions for violations of environmental requirements in the past five years, even if this is the first violation of this particular requirement.

b. The violation was discovered through an information request, inspections, field citations, reported to a federal, state or local agency by a member of the public or a "whistleblower" employee, identified in notices of citizen suits, previously reported to an agency, or through an investigation unless the facility can demonstrate that it did not know that the agency had initiated the investigation and has disclosed in good faith.

c. The violation has caused actual serious harm to public health, safety, or the environment;

d. The violation is one that may present an imminent and substantial endangerment to public health, safety or the environment; or

e. The violation involves criminal conduct.

E. Penalty Reduction Guidelines That EPA Will Follow

EPA will exercise its enforcement discretion to eliminate or reduce civil penalties as follows.

1. EPA will waive the gravity component of the civil penalty if a small business satisfies all of the criteria in section D. If, however a small business has obtained a significant economic benefit from the violation(s), EPA will still waive 100% of the gravity component of the penalty, but may seek the full amount of the significant economic benefit associated with the violations.[2] EPA anticipates that such a significant economic benefit will occur infrequently. However, EPA retains its discretion to ensure that small businesses that comply with public health protections are not put at a serious competitive disadvantage by those who have not complied.

2. If a small business does not fit within the guideline E.1.immediately above, this Policy does not provide any special penalty reduction. However, if a small business has otherwise made a good faith effort to comply, EPA has discretion, pursuant to its applicable enforcement response or penalty policies, to waive or reduce civil penalties.[3]

3. Further, the Agency's enforcement response and penalty policies may allow for penalty reduction where the small business is able to document an inability to pay all or a portion of the penalty. Penalty reduction in this situation allows the small business to stay in business and to finance compliance. See *Guidance on Determining a Violator's Ability to Pay a Civil Penalty* of December 1986 (see http://www.epa.gov/oeca/ore/aed/comp/acomp/a1.html). Penalties also may be reduced pursuant to the *Final EPA Supplemental Environmental Projects Policy* of May 1998 (63 FR 24796, June 5, 1998, available at http://www.epa.gov/oeca/sep/sepfinal.html) and *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations Policy of April 11, 2000.*

4. This Policy sets forth how the Agency expects to exercise its enforcement discretion in deciding on an appropriate enforcement response and determining an appropriate civil penalty for violations by small businesses. It states the Agency's views as to the proper allocation of enforcement resources. This Policy is not final agency action and is intended as guidance. It does not create any rights, duties, obligations, or defenses, implied or otherwise, in any third parties.

F. Enforcement for Violations Not Promptly Corrected

To ensure that this Policy enhances and does not compromise public health and the environment, a business remains subject to all applicable enforcement response policies (which may include discretion whether or not to take formal enforcement action) for all violations that were not remedied within the corrections period. The

[2] The "gravity component" of the penalty includes everything except the economic benefit amount.

[3] For example, in some media specific penalty policies, the penalty calculation may be reduced to account for good faith efforts to comply.

penalty in such action may include the time period before and during the correction period.

G. Applicability to States and Tribes

Small businesses may take advantage of small business policies that many States have developed. EPA recognizes that states and tribes are partners in enforcement and compliance assurance and may have adopted their own penalty mitigation policies in Federally-authorized, approved or delegated programs. Therefore, EPA will generally defer to State and Tribal penalty mitigation for self disclosures as long as the State policy meets minimum requirements for Federal delegation and is generally consistent with the criteria set forth in this Policy. Whenever a State agency or Tribe provides a penalty waiver or mitigation or a correction period to a small business pursuant to this Policy or a similar policy, that State or Tribe should notify the appropriate EPA Region to ensure coordination and to request that EPA defer to that action. Similarly, EPA will notify the appropriate State agency or Tribe whenever EPA applies this policy to ensure coordination and request the States defer to EPA's action. Regional contacts, along with other materials about the Policy, will be posted at the EPA web page (*http://www.epa.gov/oeca/smbusi.html*) as they become available.

H. Effective Date

This revised Policy is effective May 11, 2000.

Dated: April 5, 2000.

Sylvia K. Lowrance,

Acting Assistant Administrator for Enforcement and Compliance Assurance.

[FR Doc. 00–8955 Filed 4–10–00; 8:45 am]

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Federal Register

Tuesday,
April 11, 2000

Part IX

Department of Education

Office of Special Education and Rehabilitative Services; List of Correspondence; Notice

VOL 65 ISS 70 AP 11 2000 UMI

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services List of Correspondence

AGENCY: Department of Education.

ACTION: List of Correspondence from October 1, 1999 through December 31, 1999.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act (IDEA). Under section 607(d) of IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of IDEA or the regulations that implement IDEA.

FOR FURTHER INFORMATION CONTACT: JoLeta Reynolds or Rhonda Weiss. Telephone: (202) 205–5507. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–5465 or the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday, except Federal holidays.

Individuals with disabilities may obtain a copy of this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Formats Center. Telephone: (202) 205–8113.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued between October 1, 1999 and December 31, 1999.

Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part A—General Provisions

Section 607—Requirements for Prescribing Regulations

Topic Addressed: Policy Interpretation Under Part B of the Individuals With Disabilities Education Act

• OSEP memorandum 00–1 dated October 7, 1999 to Chief State School Officers, regarding the determination that the letter dated October 8, 1998 to Wisconsin Superintendent of Public Instruction John T. Benson regarding public charter schools contained an interpretation that raised an issue of national significance to the implementation of Part B of IDEA.

Part B—Assistance for Education of All Children With Disabilities

Section 611—Authorization; Allotment; Use of Funds; Authorization of Appropriations

Topic Addressed: Use of Funds

• Letter dated December 27, 1999 to Northern Mariana Islands Federal Program Officer William Matson, regarding whether use of Part B funds for the purchase of a school bus to be used exclusively to meet the special needs of eligible disabled students is an allowable cost.

Section 612—State Eligibility

Topic Addressed: Free Appropriate Public Education

• Letter dated November 8, 1999 to Fredric B. Garner, M.D., clarifying that decisions about services provided to each child must be based on each child's special education and related services needs, and that the entitlement under Part B of IDEA is to a free appropriate public education, and not to a particular label.

Topic Addressed: Least Restrictive Environment

• Letter dated November 19, 1999 to Montgomery County Maryland Public Schools Department of Special Education Director Raymond W. Bryant, regarding the application of the least restrictive environment requirements to the proposed movement of children with disabilities from special education centers to other settings, including requirements to make available a continuum of alternative placements and to give parents written prior notice in accordance with the change of placement procedures.

• Letter dated December 27, 1999 to individual, (personally identifiable information redacted), regarding whether a State is compelled to maintain a special or residential school placement within a State if an appropriate placement for a child with a disability is available at no cost to the parents.

Topic Addressed: Children With Disabilities Placed in Private Schools by Their Parents

• Letter dated November 15, 1999 to Baton Rouge, Louisiana Special Education Department Director Sharon M. Crary, regarding the requirement for public agencies to expend a proportionate share of available Federal funds on services for parentally-placed private school children with disabilities, even though districts can count for purposes of generating Part B funds only those parentally-placed private school children with disabilities whom they are serving, and clarifying the two required child counts for these children.

Topic Addressed: State Educational Agency General Supervisory Responsibility

• Letter dated October 29, 1999 to Washington State Director of Special Education Douglas Gill, responding to an inquiry about the doctrine of *res judicata* and clarifying that a State is not relieved of its obligation to resolve an issue raised in a complaint filed with the State if the merits of that issue were not decided in a prior due process hearing involving the same parties.

• Letter dated December 3, 1999 to California Department of Education Chief Deputy Superintendent Leslie Fausset, regarding the State's longstanding failure to exercise its general supervisory responsibility effectively through a corrective action plan to achieve State-wide compliance and the State's tardiness in submitting a report as required under the special conditions to its Federal Fiscal Year (FFY) 1999 Part B of IDEA grant award.

• Letter dated December 17, 1999 to Attorney Marc Grober regarding requirements for States receiving IDEA FFY 1998 and FFY 1999 Part B funds to provide assurances in order to comply with the IDEA Amendments of 1997.

• Letter dated December 27, 1999 to Pennsylvania Big Spring School District Superintendent Dr. William Kerr Cowden, regarding the provisions in the IDEA Amendments of 1997 that reduce unnecessary paperwork, and clarifying that States may impose their own requirements to govern the education of students with disabilities, as long as those State requirements are not in conflict with Federal requirements.

Topic Addressed: Personnel Standards

• Letter dated December 1, 1999 to individual (personally identifiable

information redacted), regarding personnel shortages of special education teachers in New Hampshire and the provisions under the IDEA Amendments of 1997 that may relate to such shortages.

Topic Addressed: Information Required for State Program Grants

• OSEP memorandum 00–4 dated November 3, 1999 to State Directors of Special Education, clarifying the eligibility documentation and public participation requirements that States must meet to comply with Part B of IDEA.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Individualized Education Programs

• Letter dated October 6, 1999 to Winston-Salem and Forsyth County Schools, North Carolina Attorney Douglas S. Punger, regarding the ability of the parents of a child with autism to invite parents of other students with disabilities to their child's individualized education program (IEP) meeting, and the responsibility of the IEP team to determine, if appropriate, whether a child with autism should receive applied behavioral analysis.

Section 615—Procedural Safeguards

Topic Addressed: Student Discipline

• Letter dated December 7, 1999 to Iacocca Professor of Education Perry A. Zirkel, regarding the requirements in the IDEA Amendments of 1997 and the March 12, 1999 final regulations that are applicable to students with disabilities removed from their current placements for more than 10 school days in a school year.

Section 619—Preschool Grants

Topic Addressed: Procedures for Allocating Preschool Grants

• Letter dated October 21, 1999 to New York State Education Department Deputy Commissioner Lawrence Gloeckler, regarding New York's distribution of section 619 funds to eligible entities, and confirming that ineligible entities cannot receive future awards under the Preschool Grants program.

• Letter dated November 24, 1999 to New York State Education Department Deputy Commissioner Lawrence Gloeckler, regarding the State's discretion to require its local educational agencies that place preschool age students with disabilities in approved private preschool special education programs to provide those programs with an amount equal to the flow-through dollars generated by the individual students, and clarifying that if LEAs provide section 619 funds to those schools, those funds must be used in accordance with the requirements of Part B of IDEA, including the applicable cost principles.

Part C—Infants and Toddlers With Disabilities

Sections 631–641

Topic Addressed: Definitions

• Letter dated December 15, 1999 to Permanent Judicial Commission on Justice for Children Member Sheryl Dicker, clarifying that the Part C regulatory definition of "parent," like the statutory definition applicable under both Parts B and C of IDEA, does not include the "State" if the State is the child's guardian.

Section 635—Requirements for Statewide System

Topic Addressed: State Lead Agency General Supervisory Responsibility

• Letter dated December 15, 1999 to Mississippi State Health Officer Dr. E.F. Thompson, Jr., regarding a Part C State lead agency's general supervisory responsibility to ensure State-wide compliance within its Part C system and to identify whether deficiencies in some districts exist in other districts and to correct all identified deficiencies.

Section 640—Payor of Last Resort

Topic Addressed: Payments by CHAMPUS and TRICARE Program Funds for Early Intervention Services

• Letter dated December 21, 1999 to TRICARE Management Activity, requesting clarification of, and amendment to, a Department of Defense proposed regulation to provide that CHAMPUS and TRICARE is first payor for early intervention services under Part C of IDEA, as required by the IDEA Amendments of 1997.

Electronic Access to This Document

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(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: April 6, 2000.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitation Services.

[FR Doc. 00–8962 Filed 4–10–00; 8:45 am]

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Federal Register

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Part X

The President

Proclamation 7287—National Volunteer Week, 2000

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Presidential Documents

Title 3—

The President

Proclamation 7287 of April 7, 2000

National Volunteer Week, 2000

By the President of the United States of America

A Proclamation

Each year our Nation is blessed by the service of more than 100 million Americans who take time out of their busy lives to reach out to those in need. Volunteers come from every age group and walk of life, yet they share a common conviction: that by giving of themselves, they can bridge the divide between strangers, create stronger families, and build better communities.

National Volunteer Week offers us a chance to thank the many volunteers whose work and compassion add so much to the quality of our lives. It also gives those who have never volunteered the opportunity to learn more about the many organizations that would benefit from their time and talents. People who enjoy sports can volunteer at a Special Olympics event; those who love the arts can work as docents in a gallery or historic home; those who love to read can share that love through a literacy program.

Our success with the AmeriCorps program demonstrates the power and promise of community service in America. Since we passed the National and Community Service Trust Act in 1993, more than 150,000 young people have served in AmeriCorps. They have taught or mentored more than 4 million children; helped to immunize more than a million people; worked to build some 11,000 homes; and sparked a new spirit of community service across our Nation. In my proposed budget for fiscal 2001, I have included funding to reach our goal of 100,000 AmeriCorps members in service each year. I have also outlined a new AmeriCorps Reserves program that will allow us to call upon AmeriCorps alumni during times of special need, such as following natural disasters. The Corporation for National Service will commit $10 million to create a new "E-corps"—750 qualified AmeriCorps volunteers who will help to bring digital opportunity to communities by providing technical support to school computer systems, tutoring at Community Technology Centers, and offering technical training for careers in the information technology sector. Through a new Community Coaches program, we will place adults in 1,000 schools to help engage students in service programs that will connect them to the wider community. And through new Youth Empowerment Grants, we will reward social entrepreneurship among young people who are seeking solutions to problems such as youth violence and alienation.

Dr. Martin Luther King, Jr., reminded us that "everyone can be great because anyone can serve." During National Volunteer Week, let us pause to thank all who have responded to that call to greatness, and let each of us make our own commitments to volunteer in our neighborhoods and communities.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 9 through April 15, 2000, as National Volunteer Week. I call upon all Americans to observe this week with appropriate programs, ceremonies, and activities to express appreciation to the volunteers among us for their commitment to service and to encourage the spirit of volunteerism in our families and communities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of April, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 00–9207
Filed 4–10–00; 11:16 am]
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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H.R. 5/P.L. 106–182

Senior Citizens' Freedom to Work Act of 2000 (Apr. 7, 2000; 114 Stat. 198)

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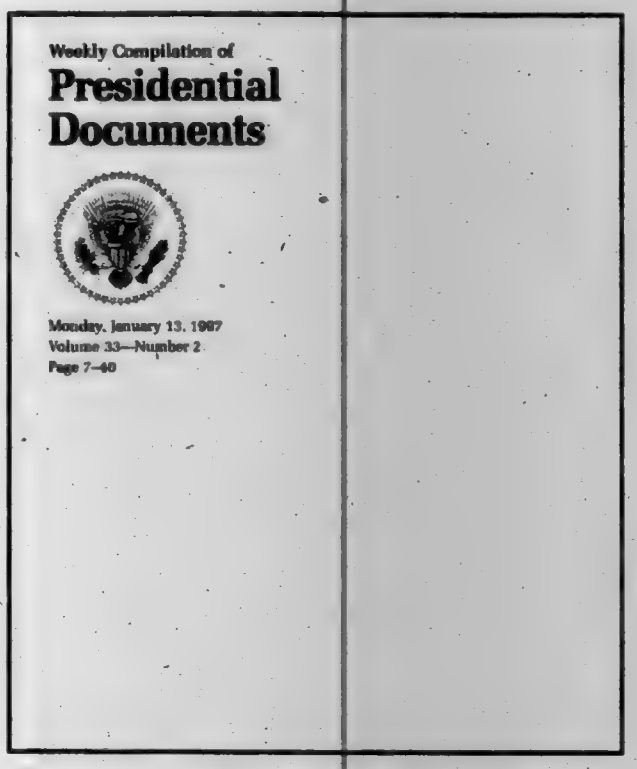

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Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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5 CFR P

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AGENCY:
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ACTION: F
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Rules and Regulations

Federal Register
Vol. 65, No. 71
Wednesday, April 12, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 550 and 553

RIN 3206–AI92

Repeal of Dual Compensation Reductions for Military Retirees

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to implement the repeal of reductions in military retired or retainer pay required of some military retirees employed in civilian positions. Section 651 of the National Defense Authorization Act for Fiscal Year 2000 repeals section 5532 of title 5, United States Code, effective October 1, 1999. This Act repeals two reductions in military retired or retainer pay previously required of some retired members of the uniformed services when they became Federal employees.

DATES: These regulations are effective April 12, 2000. Comments must be received by June 12, 2000.

ADDRESSES: Send written comments to Mary Lou Lindholm, Associate Director for Employment, Office of Personnel Management, Room 6500; 1900 E Street, NW., Washington, DC 20415–9500.

FOR FURTHER INFORMATION CONTACT: Laurence T. Lorenz on (202) 606–0830, FAX (202) 606–0390, or e-mail ltlorenz@opm.gov.

SUPPLEMENTARY INFORMATION:

Background

On October 5, 1999, President Clinton signed S. 1059, the National Defense Authorization Act for Fiscal Year 2000, Public Law 106–65. Section 651 of this Act repeals section 5532 of title 5, United States Code, effective retroactively to October 1, 1999. This action ended two reductions in retired or retainer pay previously required of retired members of a uniformed service who are employed in civilian offices or positions of the U.S. Government. This repeal affects positions in the legislative, executive, and judicial branches of the Government of the United States (including Government corporations, nonappropriated fund instrumentalities under the jurisdiction of the armed forces, and the U.S. Postal Service).

Two Reductions Ended

This repeal ends the following two reductions in military retired pay that applied to some Federal employees who had retired from a uniformed service:

1. The pay cap that limited the combined total of Federal civilian basic pay plus military retired pay to $110,700 (Executive Level V) for all Federal employees who retired from a uniformed service; and

2. The partial reduction in retired pay required of retired officers of a regular component of a uniformed service.

As a consequence of the repeal, exceptions and waivers to the reductions for military retirees approved by OPM under criteria in 5 CFR 553, or by agencies under delegated authority, are no longer needed.

GPPA Revised

The Guide to Processing Personnel Actions (GPPA) prior to January 2, 2000 required sending a copy of the Notification of Personnel Action (SF–50) for retired members of a uniformed service to the appropriate uniformed service finance center for all covered personnel actions. OPM and the Department of Defense agreed that this Act eliminated the statutory basis for sending a copy of personnel actions effective on or after October 1, 1999. Accordingly, OPM eliminated this requirement in GPPA Update 33, dated January 2, 2000. Agencies should not send covered personnel actions for military retirees with effective dates on or after October 1, 1999.

Service Credit and Preference Limitations Unchanged

The repeal of 5 U.S.C. 5532 does not repeal two other parts of the Dual Compensation Act of 1964. This Act adopted a "fresh start" policy for military retirees and established limits on service credit and veterans' preference to ensure that military retirees did not receive unfair advantages in pay and tenure over civilian employees, including other veterans. As a result, unlike other former service members, retired members of a uniformed service generally cannot count their service time as creditable service for retention (RIF), annual leave accrual, and retirement purposes (see 5 U.S.C. 3501(a), 3502(a), 6303(a) and 8411(c)). On the other hand, retirement does not change a service member's entitlement to veterans' preference in the employment process.

Reductions for Civilian Retirees Unchanged

This repeal does not affect the reduction in salary required of reemployed civilian annuitants under the Civil Service Retirement System (CSRS) and Federal Employees' Retirement System (FERS). Agencies may continue to request waivers of these reductions when appropriate under criteria in 5 CFR 553 and 5 U.S.C. 8344 or 8468.

Employee Questions

The uniformed services finance centers are responsible for making all adjustments in military retired or retainer pay. Employee questions regarding restoration of retired pay should be directed to the appropriate uniformed service finance center. These finance centers are identified in Chapter 8, of the Guide to Processing Personnel Actions, page 8–19, issued February 26, 1999 *[http://www.opm.gov/feddata/GPPA/Gppa.htm]*.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking because it would be contrary to the public interest to delay access to benefits provided by law. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to waive the effective date and make this amendment effective in less than 30 days in order to implement immediately statutory language in Sec. 651 of the National Defense Authorization Act for Fiscal Year 2000, Public Law 106–65, that is effective retroactively to October 1, 1999.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because the regulations apply only to appointment procedures for certain employees in Federal agencies.

Executive Order 12866, Regulatory Review

This interim rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects

5 CFR Part 550

Administrative practice and procedure, Government employees, Claims, Wages.

5 CFR Part 553

Administrative practice and procedure, Government employees, Military Personnel, Retirement, Wages.

Office of Personnel Management.

Janice R. Lachance

Director.

Accordingly, OPM is amending parts 550 and 553 of title 5, Code of Federal Regulations, as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart F—[Removed and Reserved]

1. The authority citation for subpart F continues to read as follows:

Authority: 5 U.S.C. 5532.

2. Subpart F consisting of §§ 550.601, 550.602 and 550.603 is removed and reserved.

PART 553—REEMPLOYMENT OF MILITARY AND CIVILIAN RETIREES TO MEET EXCEPTIONAL EMPLOYMENT NEEDS

3. The authority citation for part 553 is revised to read as follows:

Authority: 5 U.S.C. 8344, 8468, Sec. 651, Pub. L. 106–65 (113 STAT. 664).

4. Section 553.101 is revised to read as follows:

§ 553.101 Applicability.

This part applies to employment of civilian annuitants who would be subject to termination of annuity or annuity offset under 5 U.S.C. 8344 or 5 U.S.C. 8468. Agencies may request exceptions as provided in subpart B of this part from the reemployed annuitant provisions of 5 U.S.C. 8344 (for Civil Service Retirement System annuitants) or 8468 (for Federal Employees' Retirement System annuitants), as appropriate.

5. In § 553.102, paragraph (c) is revised to read as follows:

§ 553.102 Definitions.

* * * * *

(c) Retiree, as used in this part refers to an annuitant as defined in paragraph (b) of this section.

6. In § 553.103, paragraph (b) is revised to read as follows:

§ 553.103 General policy.

* * * * *

(b) Application of exceptions. An exception to the salary offset provisions of 5 U.S.C. 8344 or 8468 authorized by OPM or an agency under this part applies only to the particular individual for whom it was authorized and only while that individual continues to serve in the same or a successor position. The exception terminates upon the individual's assignment to a different position unless a new exception is authorized under the provisions of this part.

7. In § 553.201, paragraph (c)(2), is revised to read as follows:

§ 553.201 Requesting OPM approval for reemployment without reduction in individual cases.

* * * * *

(c) * * *

(2) *Need for the individual's services.* The agency must show either that the individual is uniquely qualified for the emergency response work to be done or that the number of positions to be filled and/or urgency of response justifies making the particular appointment without further delay. OPM will not approve reemployment without penalty under 5 U.S.C. 8344, or 8468 solely to meet normal seasonal workload fluctuations.

8. In § 553.203, paragraph (b) is revised to read as follows:

§ 553.203 Status of individuals serving without reduction.

* * * * *

(b) *Retired members of the uniformed services.* Except for individuals to whom paragraph (a) of this section is applicable, retired members of uniformed services are considered employees for the purposes of subchapter III of chapter 83 or chapter 84 of title 5, United States Code, subject to the same conditions as apply to any other employees.

[FR Doc. 00–8838 Filed 4–11–00; 8:45 am]

BILLING CODE 6325–01–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV00–932–1 FIR]

Olives Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which decreased the assessment rate established for the California Olive Committee (Committee) for the 2000 and subsequent fiscal years from $26.18 to $21.73 per ton of olives handled. The Committee is responsible for local administration of the marketing order which regulates the handling of olives grown in California. Authorization to assess olive handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal year began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: May 12, 2000.

FOR FURTHER INFORMATION CONTACT: Diane Purvis, Marketing Assistant, and Rose Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901; Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the

"order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866. This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California olive handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessment olives beginning on January 1, 2000, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues the decrease in the assessment rate established for the Committee for the 2000 and subsequent fiscal years from $26,18 per ton to $21.73 per ton of olives handled.

The California olive marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California olives. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1999 and subsequent fiscal years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on December 9, 1999, and unanimously recommended fiscal year 2000 expenditures of $2,472,235 and an assessment rate of $21.73 per ton of olives. In comparison, last year's budgeted expenditures were $1,845,185. Recommended budget expenditures for research are significantly higher this year because of higher anticipated research expenses. The higher research budget of $868,550 is needed to fund: (1) Continued research and development of the mechanical olive harvester and (2) scientific studies to develop chemical or biological defenses to counteract a potential threat from the olive fruit fly in the California production area.

The following table compares major budget expenditure recommendations for the 2000 fiscal year with those from last year.

Budget Expenditure	1999	2000
Administration	$346,485	$356,190
Research	302,000	868,550
Market Development	1,190,500	1,212,495

The assessment rate recommended by the Committee was derived by considering anticipated expenses, an estimated assessable tonnage, and additional pertinent factors. The estimate of assessable olives for the 2000 fiscal year is 113,750 tons. This compares to an assemble tonnage of 67,990 for fiscal year 1999. The increase in fiscal year 2000, due in large part to the alternate-bearing nature of olives, allowed the Committee to lower the assessment rate from $26.18 to $21.73 per ton, a decrease of $4.45. Income derived from handler assessments, interest, and carryover of reserve funds will be adequate to cover budgeted expenses. Funds in the reserve at the end of fiscal year 2000 will be less than the maximum permitted by § 932.40 of the order (approximately one fiscal year's expenses).

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available for the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's fiscal year 2000 budget and those for subsequent fiscal years will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,200 producers of olives in the production area and 3 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. None of the olive handlers may be classified as small entities, while the majority of olive producers may be classified as small entities.

This rule continues the decrease in the assessment rate established for the Committee and collected from handlers for the 2000 and subsequent fiscal years from $26.18 per ton to $21.73 per ton of olives. The Committee unanimously recommended fiscal year 2000 expenditures of $2,472,235 and an assessment rate of $21.73 per ton. The assessment rate of $21.73 is $4.45 lower than the 1999 rate. The estimated

quantity of assessable olives for the 2000 fiscal year is 113,750 tons. Thus, the $21.73 rate should be adequate to meet this year's budgeted expenses, when combined with funds from the authorized reserve and interest income.

The following table compares major budget expenditure recommendations for the 2000 fiscal year with those from last year.

	Budget Expenditure	
	1999	2000
Administration	$346,485	$356,190
Research	302,000	868,550
Market Development	1,190,500	1,212,495

The higher research budget of $868,550 is needed to fund: (1) Continue research and development of the mechanical olive harvester and (2) scientific studies to develop chemical and scientific defenses to counteract a potential threat from the olive fruit fly in the California production area.

A lower assessment rate was recommended for fiscal year 2000 because the estimated 2000 fiscal year assessable tonnage is approximately 40 percent larger than last fiscal years tonnage, due in large part to the alternate bearing nature of the crop. A comparison of assessable tonnage for fiscal year 2000 with the two previous fiscal years is listed below:

1998	1999	2000
85,585	67,990	113,750

The Committee reviewed and unanimously recommended fiscal year 2000 expenditures of $2,472,235, which reflects increases in the research, market development, and administrative budgets. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Executive Subcommittee, the Research Subcommittee, and the Marketing Subcommittee. Alternate spending levels were discussed by these groups, based upon potential reductions in the funding of various research and marketing projects. The Committee determined it was not necessary to increase the assessment rate to cover these expenses because the increased estimated tonnage will provide sufficient funds to cover anticipated expenses. The assessment rate of $21.73 per ton of assessable olives was derived by considering anticipated expenses, as estimated assessable tonnage of olives, and additional pertinent factors.

A review of historical and preliminary information pertaining to the current fiscal year indicates that the grower revenue for the 1999–2000 crop year will approximate $64,126,725. With an assessment rate of 421.73 per ton and assessable tonnage totaling 113,750 tons, the Committee's assessment revenue for fiscal year 2000 will be $2,471,788, or approximately 3.9 percent of grower revenue.

This action continues to decrease in the assessment obligation imposed on handlers for fiscal year 2000 by $506,187. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the California olive industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 9, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on California olive handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on January 19, 2000 (65 FR 2839). Copies of that rule were also mailed or sent via facsimile to all commodity handlers. Finally, the interim final rule was made available through the Internet by the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on March 20, 2000, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORAMTION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

PART 932—OLIVES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 932 which was published at 65 FR 2839 on January 19, 2000, is adopted as a final rule without change.

Dated: April 4, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–9038 Filed 4–11–00; 8:45 am]

BILLING CODE 3410–02–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1206

RIN 2700–AC36

Availability of Agency Records to Members of the Public

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule; technical amendment.

SUMMARY: This amendment to NASA's regulations on availability of agency records to members of the public clarifies an inconsistency in the provisions relating to notice to submitters of commercial information.

DATES: Effective April 12, 2000.

ADDRESSES: Freedom of Information Act Officer, Code PO, NASA Headquarters, Washington, DC 20546

FOR FURTHER INFORMATION CONTACT: Kellie N. Robinson, 202/358–2265, or Sharon S. Seward, 202/358–2085.

SUPPLEMENTARY INFORMATION: The National Aeronautics and Space Administration published a Final Rule to revise its Freedom of Information Act (FOIA) regulations on July 22, 1999 (64 FR 39404), in accordance with the EFOIA of 1996 as amended by Public Law 104–231. This amendment provides clarification of an inconsistency in that Final Rule. This amendment removes § 1206.610(e)(4) so that § 1206.610(e) is consistent with the provisions of § 1206.610(d).

List of Subjects in 14 CFR Part 1206

Freedom of information.

Dated: March 23, 2000.

Daniel S. Goldin,

Administrator.

Accordingly as set forth above, NASA amends 14 CFR chapter V as follows:

PART 1206—AVAILABILITY OF AGENCY RECORDS TO MEMBERS OF THE PUBLIC

1. The authority citation for part 1206 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 42 U.S.C. 2473.

§ 1206.610 [Amended]

2. In § 1206.610, remove paragraph (e)(4).

[FR Doc. 00–8769 Filed 4–11–00; 8:45 am]

BILLING CODE 7510–01–P

RAILROAD RETIREMENT BOARD

20 CFR Parts 325, 330, 335, and 336

RIN 3220–AB39

Registration for Railroad Unemployment Benefits; Sickness Benefits; Determination of Daily Benefit Rates; Duration of Normal and Extended Benefits

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations to incorporate amendments made to the Railroad Unemployment Insurance Act, which shortened the waiting period for receipt of benefits under the RUIA, changed the method of computing the daily benefit rate, and eliminated certain extended benefits.

EFFECTIVE DATE: This rule will be effective May 12, 2000.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Senior Attorney, (312) 751–4945, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Public Law 104–251 (110 Stat. 3161), commonly known as the Railroad Unemployment Insurance Act Amendments of 1996, amended the Railroad Unemployment Insurance Act (RUIA) to shorten the waiting period for receipt of unemployment and sickness benefits payable under that statute, to change the method of computing the daily benefit rate, and to eliminate certain extended payments of benefits, and the Board amends its regulations under the RUIA to conform to those amendments.

Section 325.1 is amended to reflect the change in the waiting period for unemployment benefits from 14 days to seven days. As amended, § 325.1 would provide that unemployment benefits are payable to any qualified employee for each day of unemployment in excess of seven in his or her first two-week registration period, and then for up to ten days of unemployment in any subsequent registration period within the same period of continuing unemployment. However, if the unemployment is the result of a strike, no benefits are payable for the first day 14 days of unemployment. For purposes of applying the seven-day waiting period, a period of continuing unemployment would end when an employee exhausts his or her unemployment benefits for a benefit year. Section 325.1 would also be amended to incorporate a definition of "period of continuing unemployment", a concept added by the 1996 amendments. The concept of a period of continuing unemployment was added to the RUIA so as to permit the continued payment of benefits from one benefit year to the next without a new waiting period if the period of unemployment runs from one year to the next. Finally, § 325.1 is amended to provide that if an employee's earnings in a registration period exceed the monthly compensation base for the applicable base year, then no unemployment benefits are payable in that registration period. For example, for benefit year 2000 the base year is calendar year 1999 in which the monthly compensation base was $970. No benefits are payable for any days of unemployment in the benefit year beginning July 1, 2000, for any registration period in which the employee earns more than $970. An employee who declines suitable work during a registration period is treated as having earned the amount of earnings he would have received had he not declined employment.

Section 330.2 is amended to provide that the maximum daily benefit rate under the RUIA is the monthly compensation base, as computed under 20 CFR part 302, multiplied by 5%, rounded down to the nearest $1. This change is the result of a change in the RUIA enacted under the 1996 amendments. The Board will publish the maximum daily benefit rate for the upcoming benefit year by June 1 of each year.

Section 335.6 is revised to reflect the same changes with respect to the waiting period for sickness benefits that the amendments to § 325.1 make with respect to unemployment benefits.

Finally, § 336.13 is revised, and § 336.14 is amended to reflect a change in the payment of extended benefits made by the 1996 amendments. Under the RUIA, as amended, an employee with ten or more years of service will receive a maximum of 65 days of extended unemployment or sickness benefits after the employee has exhausted his or her normal 130 days of unemployment or sickness.

The Board published this rule as a proposed rule on December 3, 1999 (64 FR 67811), and invited comments by February 1, 2000. No comments were received.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866; therefore no regulatory impact analysis is required. There are no information collections associated with these rules.

List of Subjects in 20 CFR Parts 325, 330, 335, and 336

Railroad employees, Railroad unemployment and sickness benefits.

For the reasons set out in the preamble, the Railroad Retirement Board amends chapter II, title 20 of the Code of Federal Regulations as follows:

PART 325—REGISTRATION FOR RAILROAD UNEMPLOYMENT BENEFITS

1. The authority citation for part 325 continues to read as follows:

Authority: 45 U.S.C. 362(i) and 362(l).

2. Paragraphs (a) through (d) of § 325.1 are revised, paragraph (e) is redesignated as paragraph (h), and new paragraphs (e) through (g) are added as follows:

§ 325.1 General.

(a) *Day of unemployment.* A "day of unemployment" is a calendar day on which an employee, although ready and willing to work, is unemployed, and on which no remuneration is payable and for which the employee has registered, as required by this part. The amount of compensable days of unemployment shall be computed in accordance with this section.

(b) *Registration period.* Except for registration periods in extended unemployment benefit periods, a "registration period" means a period of 14 consecutive days beginning with the first day for which an employee registers following:

(1) His or her last day of work, or

(2) The last day of the employee's last preceding registration period, and with respect to which the employee properly files a claim for benefits on such form and in such manner as the Board prescribes.

(c) *General waiting period.* Benefits are payable to any qualified employee for each day of unemployment in excess of seven during his or her first registration period in a period of continuing unemployment if such period of continuing unemployment is his or her initial period of continuing unemployment beginning in the benefit year, and then for each day of unemployment in excess of four during any subsequent registration period within the same period of continuing unemployment. A strike waiting period, described in paragraph (d) of this section, will satisfy a general waiting period with respect to a benefit year.

(d) *Strike waiting period.* If a qualified employee has a period of continuing unemployment that includes days of unemployment due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which he or she was last employed, no benefits are payable for his or her first 14 days of unemployment due to such stoppage of work. For subsequent days of unemployment due to the same stoppage of work, benefits are payable for days of unemployment in excess of four in each subsequent registration period within the period of continuing unemployment. If such period of continuing unemployment ends because the employee has exhausted his or her benefits as provided for under part 336 of this chapter, but the stoppage of work continues, benefits are payable for days of unemployment in excess of seven in the employee's first registration period in a new period of continuing unemployment based upon the same stoppage of work and for days of unemployment in excess of four in subsequent registration periods in the same period of continuing unemployment.

(e) *Period of continuing unemployment.* A "period of continuing unemployment" means a single registration period that includes more than four days of unemployment or a series of consecutive periods each of which includes more than four days of unemployment, or a series of successive registration periods, each of which includes more than four days of unemployment, if each succeeding registration period begins within 15 days after the last day of the immediately preceding registration period. An employee's period of continuing unemployment ends on the last day of a benefit year in which he or she exhausts rights to unemployment benefits as provided for in part 336 of this chapter.

(f) *Computation of compensable days.* (1) *Example 1.* An employee has an initial period of continuing unemployment from June 14 through July 25 and is unemployed on all days in that period. The employee's first registration period covers June 14 to June 27, and his subsequent registration periods cover June 28 to July 11 and July 12 to July 25. Under paragraph (c) of this section, a one-week waiting period applies to his first registration period and the employee is therefore paid benefits for days of unemployment in excess of seven in that period. The employee is then paid benefits for days of unemployment in excess of four in each of the two ensuing registration periods. [Note: if this employee's period of continuing unemployment had been the result of a strike in the establishment, premises, or enterprise at which the employee was last employed, then under paragraph (d) of this section, no benefits would be payable for the period June 14 to June 27, and benefits would then be payable for days of unemployment in excess of four in each of the ensuing registration periods.]

(2) *Example 2.* Same facts as in example 1, but the employee is unemployed again beginning August 18. Since August 18 is more than 15 days after July 25, the end of his last registration period, the employee begins a new period of continuing unemployment. The employee's first registration period in the new period of continuing unemployment covers August 18 to August 31. The employee is paid benefits for days of unemployment in excess of seven in that registration period because that period is the employee's first registration period in a new period of continuing unemployment commencing in the benefit year beginning July 1, and he or she did not previously have a waiting period in any registration period earlier in that benefit year. The employee's next registration period covers September 1 to September 14, and the employee returned to work on September 12. In that registration period, the employee has 11 days of unemployment and is therefore paid benefits for days of unemployment in excess of four.

(3) *Example 3.* Same facts as in examples 1 and 2, but the employee then has a new period of continuing unemployment beginning November 1 in the same benefit year. November 1 to November 14 is the employee's first registration period in that period of continuing unemployment. The employee is paid benefits for days of unemployment in excess of four in that registration period and for days of unemployment in excess of four in any subsequent registration period in the same benefit year because earlier in the benefit year the employee had a registration period, August 18 to August 31, in which he or she satisfied the waiting period.

(g) *Remuneration exceeds base year compensation.* (1) No benefits are payable to any otherwise eligible employee for any day of unemployment in a registration period where the total amount of remuneration, as defined in part 322 of this chapter, payable to the employee during a registration period exceeds the amount of the base year monthly compensation base. For this purpose an employee is considered to have received the amount he would have earned except for the fact that he declined suitable work available to him or her during the registration period.

(2) Days of unemployment which are not compensable by virtue of paragraph (g)(1) of this section shall nevertheless be counted as days of unemployment for purposes of determining whether the general waiting period, as described in paragraph (c) of this section, has been satisfied, and for purposes of determining a period of continuing unemployment.

PART 330—DETERMINATION OF DAILY BENEFIT RATES

3. The authority citation for part 330 continues to read as follows:

Authority: 45 U.S.C. 362(l).

4. Section 330.1 is revised to read as follows:

§ 330.1 Introduction.

The Railroad Unemployment Insurance Act provides for the payment of benefits, at a specified daily benefit rate, to any qualified employee for his or her days of unemployment or days of sickness, subject to a maximum amount per day. The "daily benefit rate" for an employee is the amount of benefits that he or she may receive for each compensable day of unemployment or sickness in any registration period in a period of continuing unemployment or sickness.

5. Paragraphs (b), (c), and (d) of § 330.2 are revised to read as follows:

§ 330.2 Computation of daily benefit rate.

* * * * *

(b) *Maximum daily benefit rate.* The maximum daily benefit rate is the

product of the monthly compensation base, as computed under part 302 of this chapter, for the base year immediately preceding the beginning of the benefit year, multiplied by five percent. If the maximum daily benefit rate so computed is not a multiple of $1.00, the Board will round it down to the nearest multiple of $1.00.

(c) *When increase effective.* Whenever the annual application of the formula in paragraph (b) of this section triggers an increase in the maximum daily benefit rate, such increase will apply to days of unemployment or days of sickness in registration periods beginning after June 30 of the calendar year immediately following the base year referred to in paragraph (b) of this section.

(d) *Notice.* Whenever the annual application of the formula in paragraph (b) of this section triggers an increase in the maximum daily benefit rate, or if the annual application of the formula does not trigger an increase, the Board will publish a notice in the **Federal Register** explaining how it computed the maximum daily benefit rate for the year. The Board will also notify each employer of the maximum amount of the daily benefit rate. The Board will make the computation as soon as it has computed the amount of the monthly compensation base under part 302 of this chapter and will publish notice as soon as possible thereafter, but in no event later than June 1 of each year. Information as to the current amount of the maximum daily benefit rate will also be available in any Board district or regional office.

* * * * *

PART 335—SICKNESS BENEFITS

6. The authority citation for part 335 continues to read as follows:

Authority: 45 U.S.C 362(i) and 362(l).

7. Section 335.6 is revised to read as follows:

§ 335.6 Payment of sickness benefits.

(a) *General rule.* Except as provided in this section, benefits are payable to any qualified employee for each day of sickness after the fourth consecutive day of sickness in a period of continuing sickness, as defined in § 335.1(c), but excluding four days of sickness in any registration period in such period of continuing sickness.

(b) *Waiting period.* Benefits are payable to any qualified employee for each day of sickness in excess of seven during his or her first registration period in a period of continuing sickness if such period of continuing sickness is his or her initial period of continuing sickness beginning in the benefit year. For this purpose, the first registration period in a period of continuing sickness is the registration period that first begins with four consecutive days of sickness and includes more than four days of sickness. For the purpose of computing benefits under this section, a period of continuing sickness ends on the last day of a benefit year in which the employee exhausts rights to sickness benefits as provided for under part 336 of this chapter.

(c) *Computation of compensable days.* (1) *Example 1.* An employee has an initial period of continuing sickness from June 14 through July 25, and all days in that period are days of sickness. The employee's first registration period covers June 14 to June 27, and his or her subsequent registration period covers June 28 to July 11, and July 12 to July 25. In the one-week waiting period the employee is paid benefits for days of sickness in excess of seven. In each of the two ensuing registration periods the employee is paid benefits for days of sickness in excess of four.

(2) *Example 2.* Same facts as in Example 1, but the employee later has a new period of continuing sickness based upon a different illness or impairment beginning September 17. The employee's first registration period in his or her new period of continuing sickness covers September 17 to September 30. The employee is paid benefits for days of sickness in excess of seven in that 14-day period because that period is his or her first registration period in a new period of continuing sickness commencing in the benefit year beginning July 1, and he or she did not previously have a waiting period in any registration period earlier in the benefit year.

(3) *Example 3.* Same facts as in examples 1 and 2, but the employee then has a new period of continuing sickness beginning January 1 in the same benefit year. January 1 to January 14 is the employee's first registration period in that period of continuing sickness. The employee is paid benefits for days of sickness in excess of four in that registration period because earlier in the benefit year he or she had a registration period, September 17 to September 30, in which he or she satisfied the initial seven-day waiting period.

(d) *Amount payable.* The gross amount of sickness benefits for any registration period in a period of continuing sickness shall be computed by multiplying the number of compensable days of sickness in such registration period by the employee's daily benefit rate, as computed under part 330 of this chapter.

PART 336—DURATION OF NORMAL AND EXTENDED BENEFITS

8. The authority citation for part 336 continues to read as follows:

Authority: 45 U.S.C. 362(l).

9. Section 336.13 is revised to read as follows:

§ 336.13 Years of service requirement.

(a) *Eligibility.* For the purposes of this part, an employee is not eligible for extended unemployment or sickness benefits if he or she does not have at least 10 years of railroad service. An employee who has 120 service months, as defined in part 210 of this chapter, whether or not consecutive, is considered to have 10 years of railroad service.

(b) *Initial determination.* The Board will determine whether an employee has 10 years of railroad service on the basis of reports filed by employers pursuant to part 209 of this chapter. The number of years of service shown in the Board's records will be accepted as correct for the purposes of this part, unless the employee claims credit for more service than that shown in the Board's records and such additional service is verified, subject to part 211 of this chapter.

(c) *Effective date.* An employee acquires ten years of railroad service as of the first day with respect to which creditable compensation is attributable in his 120th month of service.

10. In § 336.14, paragraphs (a), (c), and (d) are revised to read as follows:

§ 336.14 Extended benefit period.

(a) *Defined.* An extended benefit period consists of seven consecutive 14-day registration periods.

* * * * *

(c) *Ending date.* An employee's extended benefit period ends on the 97th day after it began. If an employee attains age 65 during an extended sickness benefit period, such extended benefit period will terminate on the day next preceding the date on which the employee attains age 65, except that it may continue for the purpose of paying benefits for his or her days of unemployment, if any, during such extended period. If an extended sickness benefit period terminates because the employee has attained age 65, and if at that point the employee has rights to normal sickness benefits, the employee will be paid normal sickness benefits if he or she is otherwise entitled to payment thereof.

(d) *Maximum number of compensable days.* Extended benefits may be paid for a maximum of 65 days of

unemployment (or 65 days of sickness, as the case may be) within an employee's extended benefit period.

Dated: March 24, 2000.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 00–8025 Filed 4–11–00; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 876

[Docket No. 92N–0445]

Gastroenterology-Urology Devices; Effective Date of Requirement for Premarket Approval of the Penile Inflatable Implant

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the penile inflatable implant, a generic type of medical device intended for the treatment of erectile dysfunction. This regulation reflects FDA's exercise of its discretion to require PMA's or PDP's for preamendments devices and is consistent with FDA's stated priorities and Congress' requirement that class III devices are to be regulated by FDA's premarket review. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the amendments), the Safe Medical Devices Act of 1990, and the Food and Drug Administration Modernization Act of 1997.

DATES: This rule is effective April 12, 2000.

FOR FURTHER INFORMATION CONTACT: John H. Baxley, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of November 23, 1983 (48 FR 53023), FDA published a final rule classifying into class III (premarket approval) the penile inflatable implant, a medical device. Section 876.3350 (21 CFR 876.3350) of FDA's regulations setting forth the classification of the penile inflatable implant applies to: (1) Any penile inflatable implant that was in commercial distribution before May 28, 1976, and (2) any device that FDA has found to be substantially equivalent to a penile inflatable implant in commercial distribution before May 28, 1976.

In the **Federal Register** of April 28, 1993 (58 FR 25902), FDA published a proposed rule, under section 515(b) of the act (21 U.S.C. 360e(b)), to require the filing of PMA's or PDP's for the classified penile inflatable implant and all substantially equivalent devices (hereinafter referred to as the April 1993 proposed rule). In accordance with section 515(b)(2)(A) of the act, FDA included in the preamble, the agency's proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the premarket approval requirements of the act, and (2) the benefits to the public from use of the device.

The preamble also provided an opportunity for interested persons to submit comments on the proposed rule and the agency's proposed findings. Under section 515(b)(2)(B) of the act, it also provided an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. Any petition requesting a change in the classification of the penile inflatable implant was required to be submitted by May 13, 1993. The comment period initially closed on June 28, 1993. In the **Federal Register** of July 1, 1993 (58 FR 35416), FDA extended the comment period for 60 days to August 27, 1993, to ensure that there was adequate time for preparation and submission of comments on the proposed rule.

The agency received 32 comments in response to the April 1993 proposed rule. These comments were from physicians and other health care providers, professional organizations, physician groups, manufacturers, and consumers and other individuals. Most of the comments supported the proposed rule.

This regulation is final upon publication and requires PMA's or notices of completion of a PDP for all penile inflatable implants classified under § 876.3350 and all devices that are substantially equivalent to them. PMA's or notices of completion of a PDP for these devices must be filed with FDA within 90 days of the effective date of this regulation. (See section 501(f)(1)(A) of the act (21 U.S.C. 351(f)(1)(A)).) This regulation does not include the penile rigidity implant (21 CFR 876.3630).

II. Summary and Analysis of Comments and FDA's Response

A. General Comments

(Comment 1) FDA received 23 comments from individual physicians and 2 comments from professional medical organizations. Although the majority of these comments did not object to the proposed call for PMA's or PDP's, they voiced the following common concerns: (1) Erectile dysfunction is a serious medical problem affecting tens of millions of American men and their partners, (2) removal of this device from the U.S. market would be detrimental to public health, and (3) citing the 25 years of use of the device, sufficient historical data exist to evaluate the safety and effectiveness of the penile inflatable implant. This last concern was also noted in two comments from penile inflatable implant manufacturers, which stated that the decades of medical literature regarding the risks and benefits of this device provide sufficient evidence of its safety and effectiveness. Several comments remarked that FDA has overstated the risks of the inflatable penile implant.

FDA agrees that erectile dysfunction is a significant medical problem that negatively affects the lives of more than 10 million men in the United States. Furthermore, since penile inflatable implants represent an important option in the treatment of erectile dysfunction, FDA agrees with these comments that removal of the penile inflatable implant from the market would negatively impact public health. As a result of this concern, FDA has taken the following steps to promote the continued availability of the penile inflatable implant during the call for PMA's or PDP's: (1) FDA issued the guidance document entitled "Draft Guidance for Preparation of PMA Applications for Penile Inflatable Implants" in March 1993 (the 1993 guidance document) to provide industry with detailed recommendations on the content of PMA's; (2) FDA has communicated closely with each penile inflatable implant manufacturer to address the concerns identified in the proposed rule using least burdensome methods, as well as provided recommendations on the design of preclinical and clinical studies; and (3) FDA intentionally postponed the call for PMA's or PDP's to allow manufacturers to collect

sufficient data to support the filing of a PMA or PDP.

FDA agrees with the comments that there is a significant amount of information in the published and unpublished literature regarding the penile inflatable implant. However, to FDA's knowledge, these studies are neither sufficiently detailed nor properly designed to perform a statistically valid evaluation of the safety and effectiveness of any of the specific device models currently on the market. As recommended in the 1993 guidance document, PMA's or PDP's should contain safety and effectiveness information on the specific device model(s) proposed in the application. Although a large body of historical data exists regarding the clinical outcomes of models of penile inflatable implants that are no longer marketed, there is less information available regarding the safety and effectiveness of currently-marketed models. However, if sufficient historical information exists to document the safety and effectiveness of a particular penile inflatable implant model that a manufacturer desires to market, or if data about earlier models are directly relevant to a particular device, FDA encourages the use of these data in support of a PMA or PDP for that model.

While FDA agrees that the April 1993 proposed rule may have overstated the risks of some of the specific penile inflatable implant models that are currently on the market, we believe that the information in the proposed rule represents a reasonable estimate of the risks and benefits of the entire category of penile inflatable implants. As noted in many of these comments, manufacturers have made numerous design modifications to improve the reliability of the penile inflatable implant and the medical community continues to improve the patient selection criteria, patient counseling information, operative technique, and postoperative care to reduce the incidence of complications. Therefore, FDA expects the rates of complications reported in PMA's or PDP's for particular penile inflatable implants to be lower than estimated from a review of the literature on the entire device category. However, in writing the proposed call for PMA's or PDP's, FDA must consider the risks and benefits of all penile inflatable implants that currently have legally marketed status in the United States.

(Comment 2) FDA received one comment from a penile inflatable implant recipient, who is supportive of the proposed call for PMA's or PDP's. This consumer has received a total of four devices to date, and his most recent device has failed, requiring replacement. He states that the penile inflatable implant affects both his quality of life and manhood.

FDA agrees that the potential benefits of a penile inflatable implant include improvements in quality of life and self-image, and notes that these secondary benefits of penile inflatable implant implantation were cited in the proposed call for PMA's or PDP's. Furthermore, FDA believes that requiring the submission of PMA's or PDP's for the penile inflatable implant will allow FDA to assess the risks and benefits of specific devices in order to determine whether there is reasonable assurance of their safety and effectiveness.

(Comment 3) One comment stated that FDA's assessment of the risks of penile inflatable implants is inconsistent with FDA's assessment of the risks of class II silicone prostheses such as the bone cap (21 CFR 888.3000), chin prosthesis (21 CFR 878.3550), the ear prosthesis (21 CFR 878.3590), and the finger joint prosthesis (21 CFR 888.3230).

FDA is aware of the existence of information on silicone and silicone-containing prostheses, and expects that applicants may include such information in their submissions to support the safety and effectiveness of the penile inflatable implant. However, FDA does not believe that the existing information on silicone and silicone-containing prostheses can be used as the sole basis of establishing the safety and effectiveness of the penile inflatable implant, and believes that a determination of safety and effectiveness of the penile inflatable implant must be made, at least in part, on data collected on each particular device for which a PMA or PDP is submitted. FDA will consider all information contained in PMA's and PDP's in determining whether there is reasonable assurance of safety and effectiveness of this device.

(Comment 4) Many comments noted that FDA was incorrect in stating that some penile inflatable implant models contain silicone gel. These comments concluded, therefore, that the risks of silicone gel do not apply to the penile inflatable implant.

FDA disagrees with the comments that no penile inflatable implant contains silicone gel. Although silicone gel has never been used as a penile inflatable implant inflation medium, FDA is aware of at least one device model, no longer marketed in the United States, that contained silicone gel within its cylinder tip. FDA agrees with the comments that the potential risks of silicone gel are not applicable to penile inflatable implants that do not contain silicone gel.

The agency would not expect PMA's or PDP's for those devices to address the risks related to silicone gel.

(Comment 5) One comment objected that Congress never intended "old" preamendments medical devices to undergo the same scrutiny as "new" postamendments medical devices.

FDA does not believe that Congress intended to differentiate between "old" preamendments devices and "new" postamendments device with respect to the requirement that valid scientific evidence is needed to support PMA approval. Neither section 513(a)(3) (21 U.S.C. 360c(a)(3)) nor section 515(d) of the act makes any distinction between "old" and "new" devices with regard to any aspect of the requirement for PMA approval.

(Comment 6) One comment stated that FDA should allow an appropriate timeframe prior to issuance of the call for PMA's or PDP's for the following reasons: (1) FDA needs sufficient time to develop additional guidance on the data requirements for PMA's and PDP's; (2) since several of the main suppliers of silicone and polyurethane raw materials have announced a planned withdrawal of these products from the market, penile inflatable implant manufacturers need sufficient time to qualify and test new materials; and (3) device manufacturers need sufficient time to collect the preclinical and clinical data recommended by FDA.

FDA believes there has been sufficient time for PMA and PDP sponsors to develop data and address the issues identified as potential risks. Section 515(b) of the act does not require the agency to provide guidance on the contents of specific PMA's. However, FDA issued the 1993 guidance document to provide industry with detailed recommendations on the appropriate data to be included in PMA's and PDP's for penile inflatable implants. The 1993 guidance document is available from the Internet at www.fda.gov/cdrh/ode/oderp810.html. In order to receive the 1993 guidance document via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system and then enter the document number (810) followed by the pound sign (#). Follow the remaining voice prompts to complete your request. While the 1993 guidance document continues to remain in effect, FDA plans to revise this document in the near future to incorporate many of the comments subsequently received from

the industry and public. Furthermore, the agency encourages penile inflatable implant manufacturers to meet with FDA before submitting a PMA or PDP to obtain additional guidance regarding the recommended data to submit to demonstrate the safety and effectiveness of each specific device model proposed for market approval.

In addition, the period of time between the classification of the device in 1983 and the date by which PMA's must be filed is more than 16 years. Thus, FDA believes that sufficient time and guidance have been provided to allow sponsors to develop the data for a PMA submission.

FDA agrees that dialogue with industry and with the scientific community and medical community is important. To elicit early public discussion on the 1993 guidance document and the agency's plans to call for PMA's or PDP's for the penile inflatable implant, FDA called a meeting of the Gastroenterology and Urology Devices Advisory Panel on April 15, 1993, to discuss these topics. Following publication of the proposed call for PMA's or PDP's, FDA communicated closely with each penile inflatable implant manufacturer to address the concerns identified by FDA in the April 1993 proposed rule, as well as provide recommendations on the design of preclinical and clinical studies for their particular device models. Furthermore, FDA staff have been and continue to be accessible to discuss PMA and PDP content information with industry and the scientific and medical community.

(Comment 7) One comment stated that FDA was incorrect in its determination that the penile inflatable implant has a high priority for initiating a proceeding to require premarket approval due to inappropriate comparison to potential adverse effects of silicone gel breast implants and due to the volume of Medical Device Reports (MDR's) received to date for penile inflatable implants. The comment further noted that an early call for PMA's or PDP's is unwarranted since the penile inflatable implant was not included in the January 6, 1989 (54 FR 550), list of 31 "high priority" preamendments class III devices.

FDA believes the call for PMA's or PDP's for this device cannot be considered an "early" call in light of its classification in 1983 and the proposed call for PMA's in 1993.

By adding section 515(i) to the act in the Safe Medical Devices Act of 1990 (Public Law 101–629), Congress made it clear that it expected FDA to move forward expeditiously to either require premarket approval or notices of completion of PDP for all preamendments class III devices or to reclassify them into class I or class II. Therefore, FDA believes that it is appropriate to issue this final rule at this time.

B. Infection

(Comment 8) There were 19 comments on the risk of infection. Several comments stated that the incidence of infection associated with the implantation of penile inflatable implants is not any higher than it is for other implantation surgeries. Many of these comments further stated that the risk of infection is minimized by proper patient selection, meticulous attention to sterile technique during device implantation, and adherence to appropriate postoperative precautions. Several comments stated that infection, if it occurs, often can be successfully controlled without the need for device removal if it is recognized early and treated with appropriate aggressive antibiotic therapy with or without drainage and wound irrigation. One comment added that infections of penile inflatable implants only rarely result in an inability to replace the device due to corporeal fibrosis and cavernositis.

FDA agrees that the risk of infection can be minimized by proper patient selection, surgical precautions, and postoperative care. However, FDA believes that it is important for studies submitted in a PMA or PDP to provide accurate information on the incidence and consequences of infection associated with the implantation of the penile inflatable implant. As noted in the 1993 guidance document, FDA is requesting information on the incidence of infection for this device.

C. Migration and Extrusion

(Comment 9) There were 13 comments regarding the risks of migration and extrusion. These comments stated that migration and extrusion of penile inflatable implants occur infrequently, are directly related to infection or excessive pressure of the prosthesis on surrounding tissues, and are minimized by properly placing an appropriately sized device using appropriate surgical techniques. For these reasons, several comments stated that migration and extrusion should not be labeled as "significant risks" of implantation of the device.

While FDA agrees that migration and extrusion can be minimized by proper device sizing and placement, insufficient information is available to determine the frequency of this event or its effects. Therefore, FDA believes that it is important for studies submitted in a PMA or PDP to provide accurate information on the incidences of migration and extrusion associated with the implantation of the penile inflatable implant.

FDA disagrees with the comment that migration and extrusion are not significant risks. Migration and extrusion of the penile inflatable implant can lead to surgical intervention, making them serious risks to health. As noted in the 1993 guidance document, FDA is requesting information to address the incidences of migration and extrusion for this device.

D. Erosion

(Comment 10) There were 13 comments regarding the risk of erosion. These comments stated that, similar to migration and extrusion, erosion of penile inflatable implants occurs infrequently, is directly related to infection or excessive pressure of the prosthesis on surrounding tissues, and is minimized by properly placing an appropriately sized device using appropriate surgical techniques. For these reasons, several comments stated that erosion should not be labeled as a "significant risk" of implantation of the device.

While FDA agrees that the risk of erosion can be minimized by proper device sizing and placement, insufficient information is available to determine the frequency of this event or its consequences. Therefore, FDA believes that it is important for studies submitted in a PMA or PDP to provide accurate information on the incidence of erosion associated with the implantation of the penile inflatable implant.

FDA disagrees with the comment that erosion is not a significant risk. Erosion of the penile inflatable implant can require surgical intervention, making it a serious risk to health. As noted in the 1993 guidance document, FDA is requesting information to address the incidence of erosion for this device.

E. Fibrous Capsule Formation

(Comment 11) FDA received 15 comments regarding the risk of fibrous capsule formation. Most of these comments stated that fibrous capsule formation is part of the body's normal reaction to an implanted device, and is not harmful to the patient. One comment stated that fibrous capsule formation does not adversely affect the function of the penile inflatable implant, while several others acknowledged that the fibrotic capsule can keep the reservoir or other device components from completely filling, thus hindering the ability of the device

to fully inflate or deflate. Many of the comments regarding the effect of fibrous capsule formation upon inflation and deflation of the penile inflatable implant further stated that this risk can be minimized by leaving the device deflated during the healing period so that the capsule formed around the reservoir minimally impedes refilling. One comment further stated that FDA was wrong to refer to fibrous capsule formation as a "foreign body reaction," since fibrotic reactions are not only related to the material of the implant but also to other factors such as loading forces on the implant and the patient's biological tendency to form a scar. Two comments stated that fibrous capsule formation is only problematic with static prostheses, such as breast implants, and, therefore, is not a concern with penile inflatable implants.

FDA agrees that fibrous capsule formation is part of the body's normal reaction to all implanted devices including penile inflatable implants, and is usually not life-threatening. Also, FDA recognizes that the severity of this risk to health is dependent upon multiple factors other than foreign body reaction. Furthermore, FDA agrees that the risk of inflation/deflation difficulties secondary to fibrous capsule formation around the reservoir can be minimized by proper postoperative care. However, FDA believes that fibrous capsule formation can affect the function of the penile inflatable implant and is potentially serious. Severe fibrous capsule formation has been reported to impede the ability of the penile inflatable implant to operate as it is designed, which reduces or eliminates the benefit of the device. In addition, the recipient may then elect to have his implant surgically explanted and have a second device implanted. This additional surgery makes fibrous capsule formation a potentially serious adverse event. As noted in the 1993 guidance document, FDA is requesting information to address the incidence of fibrous capsule formation for this device.

F. Mechanical Malfunctions

(Comment 12) There were 14 comments regarding the risk of mechanical malfunction. All of these comments stated that while early models of penile inflatable implants were associated with high rates of mechanical malfunction, improvements in device design and implantation technique have steadily decreased the failure rate. Several of these comments added that the mechanical malfunction rate of current device designs ranges from "rare" to 1 to 3 percent. One comment added that FDA's statement that a penile inflatable implant "should not be considered a lifetime implant" is inaccurate, since prostheses may be expected to endure indefinitely with the proviso that there is a risk of mechanical failure.

FDA agrees that the mechanical malfunction rate of the penile inflatable implant has significantly decreased as compared to early models. Despite this observed trend, however, insufficient information is available to determine the frequency of this event for each of the particular device models that manufacturers intend to market following the effective date of this regulation. Therefore, FDA believes that it is important for studies submitted in a PMA or PDP to provide accurate information on the incidence of mechanical malfunction associated with the implantation of the penile inflatable implant.

FDA disagrees with the comment that the penile inflatable implant can be considered a lifetime implant. As complex mechanical devices, penile inflatable implants are subject to wear over time and, therefore, have finite lifetimes. The fact that each device carries the risk of mechanical failure, as acknowledged in the comment, underscores the need to inform patients that the device should not be expected to function indefinitely.

G. Iatrogenic Disorders

(Comment 13) FDA received 11 comments regarding the risk of iatrogenic disorders. These comments stated that iatrogenic disorders occur infrequently, are minimized with proper operative technique and surgeon experience, are not directly related to the device, and are medical issues outside the domains of clinical testing and premarket review.

FDA agrees that iatrogenic disorders are infrequent events which are reduced through adherence to proper surgical technique. FDA also agrees that the medical community has had a major role in defining these surgical practices in an effort to minimize the incidence of iatrogenic disorders. However, FDA believes that iatrogenic disorders are, in part, device related, since issues of sizing, device assembly, and implantation technique are influenced by the specific device design being implanted. As a result, FDA believes that iatrogenic disorders should be evaluated in the clinical testing and premarket review of penile inflatable implants so that the product-specific information obtained from such testing is appropriately incorporated into the labeling of that device model. As noted in the 1993 guidance document, FDA is requesting information to address the incidence of iatrogenic disorders for this device.

H. Patient Dissatisfaction

(Comment 14) There were 14 comments regarding the risk of patient dissatisfaction. These comments stated that patient dissatisfaction is infrequent and is only rarely the primary cause for reoperation. Additionally, many comments stated that patient dissatisfaction is the result of the patient having unrealistic expectations regarding the postimplantation appearance and function of his penis, and that this situation can be minimized by requiring thorough preoperative counseling regarding the realistic outcomes of device implantation. One physician comment stated that none of his patients had ever asked him to have a penile inflatable implant removed due to dissatisfaction.

FDA agrees that the majority of patients who receive penile inflatable implants report satisfaction with their device. Additionally, FDA concurs with the comments that patient dissatisfaction is typically the result of the patient having unrealistic expectations regarding the implant, and can be minimized by patient educational measures such as patient labeling and physician counseling. However, since patient dissatisfaction can ultimately require surgical intervention, FDA considers patient dissatisfaction a risk that should be addressed by manufacturers. Furthermore, since implantation of a penile inflatable implant may destroy any latent erectile capability the patient may have had, as well as make other, more conservative forms of treatment for erectile dysfunction difficult or impossible, dissatisfied patients are left with few recourses. To assess and optimize the adequacy of information materials available to potential implant recipients, FDA believes it is essential to evaluate the frequency of this event and its consequences. Therefore, FDA believes it is important for studies submitted in a PMA or PDP to provide accurate information on the incidence of patient dissatisfaction associated with the implantation of the penile inflatable implant.

I. Human Carcinogenicity

(Comment 15) Sixteen comments were received regarding the risk of human carcinogenicity. These comments stated that there is no evidence in the medical literature that the penile inflatable implant is associated with the development of

cancer. Furthermore, nine of these comments were from physicians, who stated that they had not observed carcinogenicity in their personal experiences with these devices. One physician comment added that while carcinogenicity has not been proven to occur with the penile inflatable implant, further research is necessary to rule out this potential complication. Several comments stated that silicone causes solid state tumors in rodents, a phenomenon thought to be restricted to rodents and not applicable to humans. These comments also stated that epidemiological studies have not found that women with silicone breast implants, which contain silicone elastomers similar or identical to those used in the penile inflatable implant, are at an increased risk for cancer. Several comments stated that human carcinogenicity should be removed from the list of significant risks associated with the penile inflatable implant.

FDA believes that the potential carcinogenicity for this device remains unknown. The agency continues to believe that carcinogenicity is a potential risk that must be assessed in a PMA or PDP.

J. Human Reproductive and Teratogenic Effects

(Comment 16) There were 16 comments related to human reproductive and teratogenic effects. These comments stated that there is no evidence that the penile inflatable implant is teratogenic. Nine comments from physicians stated that they had not observed reproductive and teratogenic effects in their personal experiences with these devices, one of whom added that further research is necessary to rule out this potential complication. Two comments stated that since most implant patients are beyond the age of fathering children, the risks of reproductive problems and teratogenic effects are not significant concerns. Furthermore, the small numbers of patients who do receive a device during their reproductive ages would not warrant a prospective study. Several comments stated that human reproductive and teratogenic effects should be removed from the list of significant risks associated with the penile inflatable implant.

FDA agrees that there are no published studies showing that penile inflatable implants are associated with toxic reproductive effects or teratogenic effects. However, FDA believes that the reproductive and/or teratogenic effects of these products remain potential risks that should be assessed in a PMA or PDP.

K. Immune Related Connective Tissue Disorders—Immunological Sensitization

(Comment 17) There were 16 comments regarding the risks of immune related connective tissue disorders and immunological sensitization. These comments stated that there is no evidence that the penile inflatable implant causes either immune related connective tissue disorders or immunological sensitization. Nine comments from physicians stated that they had not observed connective tissue disorders and other immunological effects in their personal experiences with these devices. Two comments stated that further research is necessary to rule out this potential complication. Several comments stated that no definitive link between silicone and autoimmune diseases has been established. Furthermore, several comments stated that since the diseases most frequently associated with autoimmune responses occur at a lower frequency in men than women, it may be impossible to extrapolate the findings from any study of silicone breast implants to the penile inflatable implant. Several comments stated that immune related connective tissue disorders and immunological sensitization should be removed from the list of significant risks associated with the penile inflatable implant.

FDA agrees that no definitive causal relationship has been established between immunological effects and/or connective tissue disorders and the penile inflatable implant. Epidemiological data published within the last several years (Refs. 3, 4, and 5) addressing the relationship between silicone breast prostheses and autoimmune diseases or connective tissue diseases indicate that silicone breast prostheses have not caused a large increase in the incidence of connective tissue disease in women with breast implants. However, the possibility of a smaller, increased risk of immunological effects among men with penile inflatable implants, or of an atypical, as yet undefined, syndrome or disease, cannot be eliminated based on these data. FDA is aware that differences in the incidence of such disorders between men and women make extrapolation of the results of breast implant studies to the outcome of the penile inflatable implant difficult. In the 1993 guidance document, FDA recommends that a cohort of penile inflatable implant recipients be regularly monitored for the occurrence of such adverse events as part of an active surveillance program for a minimum of 5 years postimplantation. FDA continues to believe that adverse immune related connective tissue disorders and immunological sensitization remain potential risks that must be assessed in a PMA or PDP, but FDA does not believe that 5 years of prospective data collection on a specific product will be necessary before PMA approval or PDP completion.

L. Biological Effects of Silica

(Comment 18) Five comments stated that fumed amorphous silica is so tightly bound in the silicone elastomer components of the penile inflatable implant that the fumed amorphous silica is biologically inactive. For that reason, these comments believed that the presence of fumed amorphous silica is not a risk to health of the penile inflatable implant. Two other comments stated that complications related to the release of silica from the penile inflatable implant have not been observed, although one of these comments added that further research is necessary to rule out this potential complication.

FDA does not believe there is sufficient information to eliminate fumed amorphous silica as a potential risk to health associated with the penile inflatable implant, particularly since the amount of fumed amorphous silica is varied in order to achieve the desired physical characteristics of the device's components. Consequently, the agency believes that this potential risk to health should be addressed in a PMA or PDP.

M. Silicone Particle Shedding, Silicone Gel Leakage, and Associated Migration

(Comment 19) There were seven comments regarding the risk of silicone particle shedding. Four of these comments stated that small, but clinically insignificant, quantities of silicone particles have been noted in the periprosthetic tissues and inguinal lymph nodes of some penile inflatable implant recipients. Two comments stated that there is no evidence of silicone particle shedding from the penile inflatable implant. One comment stated that minimal, if any, silicone particle shedding occurs with this device. Several of these comments concluded that silicone particle shedding is not a risk of the penile inflatable implant.

Based upon information presented in the comments, FDA agrees that silicone particle shedding is not a risk to health of the penile inflatable implant. Although silicone particle shedding and subsequent migration have been reported with penile inflatable implants (Ref. 1), the quantity of such particles was minimal and no deleterious effects

were associated with this finding. Furthermore, subsequent research published after the proposed call for PMA's and PDP's was unable to document evidence of silicone particle migration (Ref. 2). FDA, therefore, does not believe silicone particle shedding is a risk that needs to be addressed in PMA's or PDP's for these devices.

(Comment 20) Several comments stated that silicone gel leakage and migration are not risks to health of this device since there are no penile inflatable implants that contain silicone gel.

FDA disagrees with the comments that no penile inflatable implant contains silicone gel. As stated in response to comment 4 of this document, FDA is aware of at least one device model, no longer marketed in the United States, that contained silicone gel within its cylinder tip. FDA agrees with the comments that the potential risks of silicone gel leakage and migration are not applicable to penile inflatable implants that do not contain silicone gel.

N. Degradation of Polyurethane Elastomer

(Comment 21) There were three comments regarding the risk of polyurethane elastomer degradation. These comments stated that: (1) Currently marketed penile inflatable implants do not use polyurethane as a surface material, (2) in vitro testing regarding the degradation of polyurethane may not be predictive of degradation in vivo, and (3) there is no evidence in the literature of the release of either methylene diamine or toluene diamine in vivo from polyurethane.

FDA is aware of at least two penile inflatable implant models that have polyurethane elastomer as one of their surface materials; therefore, the agency does not agree with the comment that this material is not used. Furthermore, since the available information regarding the degradation of polyurethane elastomer is inconclusive, FDA does not believe there is sufficient information to eliminate it as a potential risk to health associated with the penile inflatable implant. Consequently, the agency believes that this potential risk to health should be addressed in a PMA or PDP. FDA believes that this potential risk is only applicable to penile inflatable implants that employ polyurethane elastomer as a surface, patient-contacting material.

O. Other Reported Complications

(Comment 22) Several comments were received regarding the "other reported complications" of the penile inflatable implant (i.e., hematoma, chronic pain, erythema, edema, ulceration, necrosis, scarring, and urinary retention). These comments stated that these complications either occur infrequently, are transient, or are not judged by patients or physicians to be severe.

FDA believes that insufficient information is available to determine the frequency of these events or their consequences. Therefore, FDA believes that it is important for studies submitted in a PMA or PDP to provide accurate information on the incidence of all complications associated with the implantation of the penile inflatable implant.

P. Benefits of the Device

(Comment 23) Many comments were received regarding FDA's description of the benefit of the penile inflatable implant. Several comments objected to FDA's statement that "device implantation is a discretionary surgical procedure performed for reasons related to quality of life, rather than medical reasons." One comment stated that the benefits of the penile inflatable implant include penile reconstruction, in addition to quality of life improvement. This comment added that while many patients benefit with an improved quality of life, medical necessity and need are important indications for the use of penile inflatable implants. Another comment noted that the penile inflatable implant is, in fact, used to correct a medical problem—erectile dysfunction. A third comment argued that restoration of erectile function is analogous to surgical procedures to restore vision or hearing, or to salvage a limb, all of which could potentially be regarded as discretionary surgical procedures to improve quality of life.

Lastly, several comments stated that the benefits of the penile inflatable implant include improvement of quality of life, and the psychological benefits of the device should not be underestimated or undervalued. Furthermore, a comment from a penile inflatable implant recipient stated that the device impacts his "quality of life and manhood."

As stated in the proposed call for PMA's or PDP's, FDA believes that the penile inflatable implant is designed to provide sufficient penile rigidity to permit sexual intercourse. The proposed rule further states that this device is intended for the treatment of erectile dysfunction resulting from many medical conditions, such as diabetes mellitus, spinal cord injury, Peyronie's disease, and pelvic surgery. FDA continues to believe that device implantation is usually elective in nature, and the agency agrees with the comments that the primary benefit of the penile inflatable implant is restoration of erectile function. As noted by these comments, however, many implant recipients also benefit with an improved quality of life and FDA does not intend to underestimate or undervalue this benefit.

(Comment 24) Three comments objected to FDA's reference to improved fertility as being an intended benefit of the penile inflatable implant. One comment agreed with the April 1993 proposed rule, noting that a benefit of the device is the restoration of the ability for young men with erectile dysfunction to father children naturally.

FDA agrees that restoration of male fertility should not be listed as a benefit of the penile inflatable implant. Although this device may have provided an opportunity for a small number of patients to father children naturally, the agency acknowledges that this consequence of the device should not be listed as a benefit of the penile inflatable implant for the following reasons: (1) The primary reason for device implantation is the treatment of erectile dysfunction; (2) no penile inflatable implant manufacturer promotes their device with the claim of restoration of fertility; and (3) the majority of penile inflatable implant candidates are beyond the age of which they desire to father children. The agency's response to these comments is consistent with the recommendations provided at an April 15, 1993, meeting of the Gastroenterology and Urology Devices Advisory Panel.

Q. Need for Risk/Benefit Information

(Comment 25) Two comments objected to FDA's proposal that PMA's and PDP's analyze the prior treatment history and presurgical workup of penile inflatable implant recipients. They stated that it is physicians, in consultation with patients, who should decide the choice of treatment for erectile dysfunction, and that devices should not be treated any differently in this respect than pharmaceuticals where a physician has many different drugs available to treat a disorder and chooses the appropriate one based on the patient's needs.

FDA agrees that it should not interfere with the practice of medicine. However, the agency believes that manufacturers have a responsibility to report the circumstances of use of their device in the product's labeling, especially due to the potential for irreversible effects following implantation of a penile inflatable implant. Consequently, FDA believes that information regarding the

prior treatment history and presurgical workup of penile inflatable implant recipients should be reported in a PMA or PDP to ensure that labeling for the product will provide reasonable assurance of safe and effective use.

(Comment 26) Three comments stated that quality of life and psychological evaluations are not useful to judge the effectiveness of the penile inflatable implant since the primary goal of device implantation is restoration of erectile function. Two of these comments added that: (1) Manufacturers do not make claims regarding psychological benefit, (2) it is inappropriate for FDA to require a manufacturer to demonstrate this benefit, (3) there are no accepted tests for measuring the psychological impact of the penile inflatable implant, and (4) existing tests for psychological well-being and self-esteem are confounded by multiple life variables, including the patient's and partner's general health, sexual functioning, and understanding of the potential complications when making the decision to have a penile inflatable implant. One comment stated that assessment of psychological benefit would likely require large clinical studies.

FDA agrees that the primary benefit derived from implantation of a penile inflatable implant is restoration of erectile function. However, FDA continues to believe that the potential quality of life and psychological benefits offered by the device are important, albeit secondary, components of the device's effectiveness. Although FDA agrees that designing studies to assess the psychological benefit of implantation with a penile inflatable implant may be difficult, FDA believes the psychological impact of the device can and should be assessed in a PMA or PDP as a secondary effectiveness measure. The agency will accept a variety of types of scientific evidence in support of a PMA or PDP, as long as the data constitute valid scientific evidence within the meaning of 21 CFR 860.7(c)(2) (e.g., a validated quality of life patient questionnaire can provide data to address this issue).

R. PMA Contents

(Comment 27) FDA received two extensive comments on the types of manufacturing information, preclinical testing, and clinical data that should be required in a PMA for a penile inflatable implant, as well as several general comments on the appropriate contents of a PMA. Additionally, FDA received one comment proposing detailed modifications to the quality of life, satisfaction, and psychological evaluation recommendations stated in the proposed call for PMA's and PDP's.

FDA agrees with many of the points raised in these comments. Although the 1993 guidance document describes the general types of manufacturing, preclinical, and clinical data that FDA believes can support approval of a PMA for a penile inflatable implant, the agency realizes that other, scientifically sound methods exist for addressing the identified risks and benefits of the device and encourages manufacturers to document the safety and effectiveness of their device using the least burdensome approaches. In fact, FDA has agreed to the use of many of these alternative approaches for the collection and analysis of data in its past interactions with penile inflatable implant manufacturers. Furthermore, FDA intends to revise the 1993 guidance document to incorporate many of these comments.

III. Findings With Respect to Risks and Benefits

A. Degree of Risk

1. Infection

Infection is a risk associated with any surgical implant procedure, including the penile inflatable implant. Compromised device sterility and surgical techniques may be a major contributing factor to this risk. Infection may result in the removal of the implant and may result in an inability to replace the device due to corporeal fibrosis and scarring.

2. Migration and Extrusion

Migration refers to the movement of the components of the penile inflatable implant within the body. In some cases, a portion of the implant migrates externally ("extrusion"). The cylinders and pump can migrate either proximally or distally, leading to inadequate support of the glans penis, difficulty in manipulating the pump, or pressure necrosis with subsequent erosion. Extrusion is usually associated with wound dehiscence at the site of incision, but can also occur secondary to erosion. Factors contributing to migration and extrusion include implantation of a device that is too large, iatrogenic injury to the surrounding tissues, and infection. Migration and extrusion of the penile inflatable implant can lead to surgical intervention.

3. Erosion

Erosion is the breakdown of tissue adjacent to the device. The cylinders can erode through the distal urethra, the pump can erode through the scrotal wall, and, rarely, the reservoir can erode through the bladder or bowel. Factors contributing to erosion include implantation of a device that is too large, iatrogenic injury to the surrounding tissues, and infection. Erosion may lead to device extrusion, and can require surgical intervention.

4. Fibrous Capsular Formation

The formation of a fibrous capsule around the components of the penile inflatable implant is a risk associated with this device. Fibrous capsule formation around the reservoir and/or pump may either cause spontaneous inflation of the cylinders or prevent the cylinders from completely deflating. Significant fibrous capsular formation may be corrected by device manipulation, corrective surgery, or surgical removal of the device and adjacent tissues. The effects of fibrous capsule formation vary from reduced satisfaction with the implant to explantation.

5. Mechanical Malfunctions

As with other prosthetic devices intended to restore a physiologic function, penile inflatable implants may mechanically malfunction. Reported types of mechanical malfunctions include leakage, cylinder rupture, cylinder aneurysm, spontaneous inflation/deflation, tubing kinks, and pump valve failure. Mechanical malfunctions may be caused by improper device handling or improper surgical technique, or problems with the device's design or manufacturing process. Surgical intervention to remove or replace the device is required if the patient desires a functional prosthesis.

6. Iatrogenic Disorders

Improper device handling, inadequate or vigorous dilatation, aggressive dissection, malpositioning of the device, cylinder suturing, and cylinder missizing are among the preventable complications caused as a result of surgical technique. Iatrogenic disorders may be responsible for various adverse conditions necessitating device removal and/or replacement.

7. Patient Dissatisfaction

If patients are not provided information and counseling regarding the risks and benefits of the penile inflatable implant prior to implantation, they may not have realistic expectations of the physical, psychological, and functional outcomes of the device. Uninformed patients may be dissatisfied with the device due to complications such as unresolved pain, as well as disappointment in cosmetic appearance,

concealability, rigidity/firmness, and penile sensation. Some dissatisfied patients have elected to have the device surgically removed because the implant did not meet their expectations.

8. Human Carcinogenicity

The potential for developing cancer as a result of the long-term implantation of the penile inflatable implant cannot be eliminated as a potential risk associated with this device.

9. Human Reproductive and Teratogenic Effects

Although FDA is not aware of data indicating that the penile inflatable implant is associated with reproductive and teratogenic effects, the potential for teratogenicity and other reproductive adverse effects as a result of long-term implantation of the device cannot be eliminated as a possible risk to health.

10. Immune Related Connective Tissue Disorders—Immunological Sensitization

The potential for developing immunological effects and/or connective tissue disorders as a result of long-term exposure to the penile inflatable implant remains uncertain. Since the publication of the proposed rule 6 years ago, new epidemiological data (Refs. 3, 4, and 5) addressing the relationship between silicone breast prostheses and autoimmune diseases or connective tissue diseases indicate that silicone breast prostheses have not caused a large increase in the incidence of connective tissue disease in women with breast implants. However, the possibility of a smaller, increased risk of immunological effects among men with penile inflatable implants, or of an atypical, as yet undefined, syndrome or disease, cannot be eliminated based on these data.

11. Biological Effects of Silica

Amorphous fumed silica is bound to the silicone in the elastomer of the penile inflatable implant. Silica presents a potential risk which should be addressed in a PMA or PDP.

12. Silicone Gel Leakage and Associated Migration

Small quantities of silicone gel are present in at least one model of penile inflatable implant. Silicone gel leakage and associated migration are potential risks which should be addressed in a PMA or PDP for any device that contains this material.

13. Degradation of Polyurethane Elastomer

Polyurethane elastomer materials, which have been used as surface materials in some penile inflatable implants, may degrade over time and release degradation products which are potential carcinogens in animals. When present, polyurethane elastomer degradation is a potential risk that should be addressed in a PMA or PDP.

14. Other Reported Complications

Other reported complications associated with implantation of the penile inflatable implant include hematoma, chronic pain, erythema, edema, ulceration, necrosis, scarring, and urinary retention, which should be addressed in a PMA or PDP.

B. Benefits of the Device

The penile inflatable implant is intended to restore the ability to have an erection in men with erectile dysfunction. It has the potential to be an effective treatment for erectile dysfunction. Implant recipients may also benefit from an improved quality of life.

IV. Final Rule

Under section 515(b)(3) of the act, FDA is adopting the findings as published in the preamble to the April 1993 proposed rule and is issuing this final rule to require premarket approval of the generic type of device, the penile inflatable implant, by revising § 876.3350(c).

Under the final rule, a PMA or a notice of completion of a PDP is required to be filed on or before July 11, 2000, for any penile inflatable implant that was in commercial distribution before May 28, 1976, or that has been found by FDA to be substantially equivalent to such a device on or before July 11, 2000. An approved PMA or a declared completed PDP is required to be in effect for any such device on or before 180 days after FDA files the application.

Any other penile inflatable implant that was not in commercial distribution before May 28, 1976, or that has not been found by FDA to be substantially equivalent to such a device on or before July 11, 2000, is required to have an approved PMA or a declared completed PDP in effect before it may be marketed.

If a PMA or a notice of completion of a PDP for a penile inflatable implant is not filed on or before the 90th day past the effective date of this regulation, that device will be deemed adulterated under section 501(f)(1)(A) of the act (21 U.S.C. 351(f)(1)(A)), and commercial distribution of the device will be required to cease immediately. The device may, however, be distributed for investigational use, if the requirements of the investigational device exemption (IDE) regulations (part 812) (21 CFR part 812) are met.

Under § 812.2(d) of the IDE regulations, FDA hereby stipulates that, on the effective date of this rule, the exemptions from the IDE requirements in § 812.2(c)(1) and (c)(2) will no longer apply to clinical investigations of the penile inflatable implant. Further, FDA concludes that investigational penile inflatable implants are significant risk devices as defined in § 812.3(m) and advises that, as of the effective date of this rule, the requirements of the IDE regulations regarding significant risk devices will apply to any clinical investigation of a penile inflatable implant. For any penile inflatable implant that is not the subject of a timely filed PMA or PDP, an IDE must be in effect under § 812.20 on or before 90 days after the effective date of this regulation or distribution of the device must cease. FDA advises all persons presently sponsoring a clinical investigation involving the penile inflatable implant to submit an IDE application to FDA no later than 60 days after the effective date of this final rule to avoid the interruption of ongoing investigations.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. The Office of Management and Budget (OMB) has determined that this final rule is a significant regulatory action subject to review under the Executive Order.

FDA expects that only two manufacturers will submit a PMA or PDP for the penile inflatable implant. FDA does not believe that two companies are a significant number of small entities. FDA estimates that it costs up to $1 million to develop and submit a PMA or PDP for this type of device. As noted previously, the penile inflatable implant was classified into class III on November 23, 1983, and FDA published a proposed rule to require a PMA or PDP for this device on April 28, 1993. Thus, manufacturers have long been aware of the need to develop information in support of a PMA or a PDP. The cost of developing the data, therefore, has been spread over the past several years. Moreover, since the publication of the proposed rule, FDA has been working closely with both manufacturers to assist them in preparing for the submission of a PMA or a PDP, and one has successfully completed a PDP for two device models. FDA estimates based on such information as is publicly available, that these two companies have annual revenues in excess of several hundred million dollars. FDA, therefore, believes that this final rule will not be an undue burden on these manufacturers. The agency therefore certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VII. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3530). The burden hours required for § 876.3350(c) are reported and approved under OMB Control No. 0910–0231.

VIII. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. These references may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

1. Barrett, D. M., D. C. O'Sullivan, A. A. Maliza, H. M. Reiman, and P. C. Abell-Aleff, "Particle Shedding and Migration From Silicone Genitourinary Prosthetic Devices," *The Journal of Urology*, 146:319–322, 1991.

2. Fishman, I. J. and F. N. Flores, "Retrospective Review of Pelvic Lymph Nodes in Patients with Previously Implanted Silicone Penile Prosthesis," *The Journal of Urology*, 149:355A, 1993.

3. Hennekens, C. H., I. Lee, N. Cook, P. R. Hebert, E. W. Karlson, F. LaMotte, J. E. Manson, and J. E. Buring, "Self-reported Breast Implants and Connective-Tissue Diseases in Female Health Professionals," *Journal of the American Medical Association*, 275:616–621, 1996.

4. Silverman, B. G., S. L. Brown, R. A. Bright, R. G. Kaczmarek, J. B. Arrowsmith-Lowe, and D. A. Kessler, "Reported Complications of Silicone Gel Breast Implants: An Epidemiologic Review," *Annals of Internal Medicine*, 124:744–756, 1996.

5. Institute of Medicine, "Safety of Silicone Breast Implants," National Academy Press, Washington, DC, 1999.

List of Subjects in 21 CFR Part 876

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 876 is amended as follows:

PART 876—GASTROENTEROLOGY–UROLOGY DEVICES

1. The authority citation for 21 CFR part 876 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

2. Section 876.3350 is amended by revising paragraph (c) to read as follows:

§ 876.3350 Penile inflatable implant.

* * * * *

(c) *Date premarket approval application (PMA) or notice of completion of a product development protocol (PDP) is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before July 11, 2000, for any penile inflatable implant that was in commercial distribution before May 28, 1976, or that has, on or before July 11, 2000, been found to be substantially equivalent to a penile inflatable implant that was in commercial distribution before May 28, 1976. Any other penile inflatable implant shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

Dated: March 24, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–9002 Filed 4–11–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 8

RIN 2900–AJ78

National Service Life Insurance

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; technical amendment.

SUMMARY: This document amends the Department of Veterans Affairs regulations regarding payments of premiums for National Service Life Insurance by correcting cross-references.

DATES: *Effective date:* April 12, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanne Derrick, Attorney-Advisor, Department of Veterans Affairs Regional Office and Insurance Center, P.O. Box 8079, Philadelphia, Pennsylvania 19101, telephone number (215) 842–2000, ext. 4277, fax number (215) 381–3504.

SUPPLEMENTARY INFORMATION: In a final rule published in the **Federal Register** on February 15, 2000 (65 FR 7437), VA redesignated certain sections in 38 CFR part 8. This document makes changes regarding cross-references to reflect these redesignations.

Since this document makes only non-substantive changes, we are dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

The Catalog of Federal Domestic Assistance Program number for this regulation is 64.103.

List of Subjects in 38 CFR Part 8

Disability benefits, Life insurance, Loan programs-veterans, Military personnel, Veterans.

Approved: April 6, 2000.

Thomas O. Gessel,

Director, Office of Regulations Management.

Accordingly, 38 CFR part 8 is corrected by making the following correcting amendments:

PART 8—NATONAL SERVICE LIFE INSURANCE

1. The authority citation for part 8 continues to read as follows:

Authority: 38 U.S.C. 501, 1901–1929, 1981–1988, unless otherwise noted.

§ 8.3 [Amended]

2. In § 8.3(a)(5), remove "(§ 8.9)" and add, in its place, "(§ 8.2(d))".

3. In § 8.3(a)(7), remove "(§ 8.17)" and add, in its place, "(§ 8.14)".

4. In § 8.3(b)(3), remove "(§ 8.17)" and add, in its place, "(§ 8.14)".

§ 8.6 [Amended]

5. In § 8.6, remove "§§ 8.3, 8.4 or 8.5" and add, in its place, "§§ 8.2 or 8.3".

§ 8.7 [Amended]

6. In § 8.7(a), remove "§ 8.11" and add, in its place, "§ 8.8".

§ 8.9 [Amended]

7. In § 8.9, remove "§ 8.11" and add, in its place, "§ 8.8"; and, in both places it appears, remove "§ 8.11(a)" and add, in its place, "§ 8.8(a)".

§ 8.10 [Amended]

8. In § 8.10(g), remove "§§ 8.17 and 8.18" and add, in its place, "§§ 8.14 and 8.15".

§ 8.11 [Amended]

9. In § 8.11(a), remove "§ 8.17(b)" and add, in its place, "§ 8.14(b)".

§ 8.24 [Amended]

10. In § 8.24, remove "§ 8.25" and add, in its place, "§ 8.22".

[FR Doc. 00–9035 Filed 4–11–00; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–6576–2]

Withdrawal of Certain Federal Human Health and Aquatic Life Water Quality Criteria Applicable to Rhode Island, Vermont, the District of Columbia, Kansas and Idaho

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In 1992, EPA promulgated Federal regulations establishing water quality criteria for toxic pollutants for several States, including Rhode Island, Vermont, the District of Columbia, Kansas and Idaho. These States have now adopted, and EPA has approved, human health and aquatic life water quality criteria. In this action, EPA is amending the Federal regulations to withdraw certain human health and aquatic life criteria applicable to these States. EPA is withdrawing its criteria applicable to these States without a notice and comment rulemaking because the States' adopted criteria are no less stringent than the Federal criteria.

DATES: This rule is effective April 12, 2000.

ADDRESSES: The administrative record for consideration of Rhode Island and Vermont's criteria is available for public inspection at EPA Region 1, Office of Water, 1 Congress Street, Suite 1100, Boston MA 02114–1505 during normal business hours of 9:00 a.m. to 5:00 p.m. The administrative record for consideration of the District of Columbia human health criteria is available at EPA Region 3, Water Protection Division, 1650 Arch St, Philadelphia PA 19103–2029 during normal business hours of 9:00 am to 5:00 pm. The administrative record for consideration of Kansas's human health and aquatic life criteria is available for public inspection at EPA Region 7, Water Resources Protection Branch, 901 North 5th Street, Kansas City, Kansas 66101 during normal business hours of 8:00 a.m. to 4:30 p.m. The administrative record for consideration of Idaho's aquatic life criteria is available for public inspection at EPA Region 10, Office of Water, 1200 Sixth Avenue, Seattle, Washington 98101 during normal business hours of 8:00 a.m. to 4:30 p.m

FOR FURTHER INFORMATION CONTACT: Thomas J. Gardner at EPA Headquarters, Office of Water (4305), 1200 Pennsylvania Ave NW, Washington, D.C., 20460 (tel: 202–260–7309). For questions regarding Rhode Island and Vermont, contact Bill Beckwith in EPA's Region 1 at 617–918–1544. For questions regarding the District of Columbia, contact Garrison Miller in EPA's Region 3 at 215–814–5745. For questions regarding Kansas, contact Ann Jacobs in EPA's Region 7 at 913–551–7930. For questions regarding Idaho, contact Lisa Macchio in EPA's Region 10 at 206–553–1834.

SUPPLEMENTARY INFORMATION:

Potentially Affected Entities

Citizens concerned with water quality in Rhode Island, Vermont, Kansas, the District of Columbia and Idaho may be interested in this rulemaking. Entities discharging toxic pollutants to waters of the United States in these States could be affected by this rulemaking since criteria are used in determining NPDES permit limits. Potentially affected categories and entities include:

Category	Examples of potentially affected entities
Industry	Industries discharging toxic pollutants to surface waters in Rhode Island, Vermont, District of Columbia, Kansas and Idaho.
Municipalities	Publicly-owned treatment works discharging toxic pollutants to surface waters in Rhode Island, Vermont, District of Columbia, Kansas and Idaho.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be potentially affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the applicability criteria in § 131.36 of title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the appropriate person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Background

In 1992, EPA promulgated a final rule (known as the "National Toxics Rule", or "NTR") to establish numeric water quality criteria for 12 States and two Territories (hereafter "States") that had failed to comply fully with section 303(c)(2)(B) of the Clean Water Act ("CWA") (57 FR 60848). The criteria, codified at 40 CFR 131.36, became the applicable water quality standards in those 14 jurisdictions for all purposes and programs under the CWA effective February 5, 1993.

When a State adopts criteria that meet the requirements of the CWA, EPA will issue a rule amending the NTR to withdraw its criteria. Section 553 of the Administrative Procedure Act, U.S.C. 533(b)(B) provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA has determined that, if the State's criteria are no less stringent than the Federal regulations, additional comment on the criteria is unnecessary. EPA finds that this constitutes good cause for issuing this final rule without notice and comment. EPA has determined that the States criteria are no less stringent than the

NTR criteria because they are identical, identical when rounded using conventional rounding techniques, or more stringent. For the same reason, and because this rule relieves a restriction, EPA has determined that good cause exists to waive the requirement for a 30-day period before the amendment becomes effective and therefore, the amendment will be immediately effective.

Rhode Island

On August 6, 1997, Rhode Island adopted revisions to its surface water quality standards (Regulation EVM 112–88.97–1), regarding human health criteria. Rhode Island adopted human health criteria for toxic pollutants contained in the NTR. EPA Region 1 approved the State's human health criteria on January 15, 1999, because Rhode Island's numeric criteria for the protection of human health were consistent with the CWA and EPA's implementing regulations at 40 CFR Part 131. By adoption of numeric criteria, Rhode Island complied with the requirements of Section 303(c)(2)(b) of the CWA to have numeric criteria for toxic pollutants. EPA Region 1 requested that the Agency withdraw the Federal criteria applicable to Rhode Island for which the State now has numeric criteria.

In today's action, EPA is withdrawing Rhode Island from the NTR for those criteria that the State has adopted that are no less stringent than the Federal criteria in the NTR. Rhode Island adopted, and EPA approved, a human health (organisms only) criterion of 50 µg/l for arsenic. The value promulgated in the NTR for this criterion is 0.14 µg/l. Rhode Island will remain in the NTR for this criterion. In a separate, upcoming action, EPA will propose to remove Rhode Island from the NTR for this criterion and provide for public comment. Additionally, Rhode Island adopted, and EPA approved, human health criteria of 18 mg/l and 59 mg/l (water and organisms, and organisms only, respectively) for bis(2)ethylhexyl pthalate. The values promulgated in the NTR are 18 µg/l and 59 µg/l, respectively. Rhode Island will remain in the NTR for these criteria.

Vermont

On July 12, 1994, Vermont adopted revisions to its surface water quality standards (Appendix C, *Vermont Water Quality Standards*, effective August 1, 1994). EPA Region 1 approved the State's adoption of criteria for all toxics contained in the NTR on December 5, 1996, because they are consistent with the CWA and EPA's implementing regulations at 40 CFR Part 131. EPA Region 1 requested that the Agency withdraw the Federal criteria applicable to Vermont for which the State now has numeric criteria.

In today's action, EPA is withdrawing Vermont from the NTR for certain human health and aquatic life criteria where the State adopted criteria that are no less stringent than the Federal criteria. Vermont adopted, and EPA approved, a human health (organisms only) criterion of 1.5 µg/l for arsenic. The value promulgated in the NTR for this criterion is 0.14 µg/l. Vermont will remain in the NTR for this criterion. In a separate, upcoming action, EPA will propose to remove Vermont from the NTR for this criterion and provide for public comment. Additionally, Vermont adopted and EPA approved, an aquatic life criterion continuous concentration (CCC) of 0.8 µg/l for gamma-BHC. The value promulgated for this criterion in the NTR was 0.08. Vermont will remain in the NTR for this criterion.

District of Columbia

On March 4, 1994, the District of Columbia adopted revisions to its surface water quality standards [amended Chapter 11 of Title 21 DCMR pursuant to the authority set forth in Section 5 of the Water Pollution Control Act of 1984, D.C. Law 5–188, effective March 16, 1985, D.C. Code Section 6–924 (1988) and Mayor's Order 85–152, September 12, 1985], adopting human health criteria to protect from effects related to fish consumption. EPA Region 3 approved these revisions on November 4, 1996, because the District's numeric criteria are consistent with section 303(c)(2)(B) of the Clean Water Act and EPA's implementing regulations at 40 CFR Part 131. EPA Region 3 requested that the Agency withdraw the Federal human health (organism only) criteria applicable to the District for which the District now has numeric criteria.

In today's action, EPA is withdrawing the District of Columbia from the NTR for those human health "organism only" criteria that the District has adopted that are no less stringent than the Federal criteria in the NTR. The District remains in the NTR for organism + water human health criteria. The District removed the drinking water use for the only water body in the District designated for that use. EPA approved the removal of this use and, in a separate upcoming action, EPA will propose to remove the District from the NTR for organism + water human health criteria and will provide for public comment.

Kansas

On June 29, 1994, Kansas adopted revisions to its water quality standards (K.A.R. 28–16–28) regarding both human health and aquatic life criteria, and submitted them to EPA Region 7 for review and approval on October 31, 1994. On February 19, 1998, EPA Region 7 approved certain new or revised water quality criteria for the protection of human health and aquatic life because they are consistent with section 303(c)(2)(B) of the CWA and EPA's implementing regulations at 40 CFR 131, and requested that the Agency withdraw the Federal criteria applicable to Kansas for which the State now has numeric criteria. Additionally, on June 29, 1999, Kansas adopted new and revised ambient water quality criteria for additional pollutants. They were submitted to EPA for review and approval on August 10, 1999. On January 19, 2000, EPA Region 7 approved these additional criteria because they are also consistent with section 303(c)(2)(B) of the CWA and EPA's implementing regulations at 40 CFR 131, and requested that the Agency withdraw the Federal criteria applicable to Kansas for which the State now has numeric criteria.

In today's action, EPA is removing Kansas from the NTR for certain human health and aquatic life criteria because the State's adopted criteria are no less stringent than the Federal criteria. Kansas remains in the NTR for arsenic (human health—organisms only) and cadmium (acute and chronic aquatic life). For these pollutants, Kansas adopted criteria that are less stringent than the Federal rule. In a separate, upcoming action, EPA will propose to withdraw the NTR criteria for these pollutants and provide for public comment. In addition, Kansas remains in the NTR for certain other toxic pollutants for which it has not yet adopted numeric criteria.

In addition, EPA is modifying the NTR for Kansas to reflect the State's adoption of a 10^{-6} risk level for carcinogens and a change in nomenclature for one of the State's use classifications.

Idaho

On August, 24, 1994, Idaho adopted revisions to its surface water quality standards (Title 1, chapter 2, Section 250 of the Idaho Administrative Code). For all aquatic life toxic pollutants, Idaho adopted the NTR criteria by reference. On June 25, 1996, EPA Region 10 approved the criteria because they were identical to the Federal criteria. EPA Region 10 requested that the

Agency withdraw the Federal criteria applicable to Idaho for which the State now has numeric criteria.

In today's action, EPA is withdrawing Idaho from the NTR for all aquatic life criteria because the State adopted criteria that are identical to the Federal criteria.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA made such a good cause finding, including the reasons therefore, and established an immediate effective date of April 12, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804 (2).

List of Subjects in 40 CFR Part 131

Environmental protection, Indians—lands, Intergovernmental relations, Water pollution control.

Dated: April 4, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

§ 131.36 [Amended]

2. Section 131.36 is amended by:

a. Revising the table in paragraph (d)(1)(ii).

b. Revising the table in paragraph (d)(2)(ii).

c. Revising the table in paragraph (d)(5)(ii).

d. Revising the table in paragraph (d)(9)(i).

e. Revising the table in paragraph (d)(9)(ii).

f. In paragraph (d)(9)(iii) by revising "State-proposed" to read "State-adopted".

g. Removing and reserving paragraph (d)(13).

The revisions read as follows:

§ 131.36 Toxics criteria for those states not complying with Clean Water Act Section 303(c)(2)(B).

* * * * *

(d) * * *

(1) * * *

(ii) * * *

Use classification	Applicable criteria
Class A	These classifications are assigned the criteria in Column D1—#2, 68
Class B waters where water supply use is designated	
Class B waters where water supply use is not designated	
Class C;	
Class SA;	
Class SB;	
Class SC	

(2) * * *

(ii) * * *

Use classification	Applicable criteria
Class A	This classification is assigned criteria in: Column B2—#105
Class B waters where water supply use is designated	
Class B waters where water supply use is not designated	These classifications are assigned all the criteria in: Column B2—#105 Column D2—#2
Class C.	

* * * * *

(5) * * *

(ii) * * *

Use classification	Applicable criteria
Class C	This classification is assigned the additional criteria in: Column B2—#10, 118, 126 Column D1—#15, 16, 44, 67, 68, 79, 80, 81, 88, 114, 116, 118.

* * * * *

(9) * * *

(i) * * *

Section (2)(A)—Special Aquatic Life Use Waters
Section (2)(B)—Expected Aquatic Life Use Waters
Section (2)(C)—Restricted Aquatic Life Use Waters
Section (3)—Domestic Water Supply.
Section (4)—Food Procurement Use.

(ii) * * *

Use classification	Applicable criteria
Sections (2)(A), (2)(B), (2)(C), (4).	These classifications are each assigned criteria as follows: Column B1, #2, 4 Column B2, #4 Column D2, #2, 12, 21, 29, 39, 46, 68, 79, 81, 86, 93, 104, 114, 118
Section (3)	This classification is assigned all criteria in: Column D1, all except #1, 9, 12, 14, 15, 17, 22, 33, 36, 39, 44, 75, 77, 79, 90, 112, 113, and 115.

(iii) The Human Health Criteria shall be applied at the State adopted 10^{-6} risk level.

* * * * *

[FR Doc. 00–8957 Filed 4–11–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300973A; FRL–6496–4]

RIN 2070–AB78

Ethoxylated Propoxylated (C_{12}–C_{15}) Alcohols; Tolerance Exemption, Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document makes a technical correction to the exemption from the requirement of a tolerance for residues of a range of polymers, α-alkyl (C_{12}–C_{15})-ω-hydroxypoly (oxypropylene)poly(oxyethylene) copolymers (where the poly(oxypropylene) content is 3-60 moles and the poly(oxyethylene) content is 5-80 moles, when used as an inert ingredient (surfactant) in or on growing crops, when applied to raw agricultural commodities after harvest, or to animals.

DATES: This technical correction is effective April 12, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–6304; and e-mail address: boyle.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**–Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300973A. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. What Action is EPA Taking?

In the **Federal Register** of May 26, 1999 (64 FR 28480) (FRL–6081–3), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide tolerance petition (PP 8E4950) by Omnichem S.A., Industrial Research Park, 1348 Louvain-La-Neuve, Belgium. This notice included a summary of the petition prepared by the petitioner, including a statement of the number average molecular weight of the range of polymers. There were no comments received in response to the notice of filing.

In the **Federal Register** of February 28, 2000 (65 FR 10401) (FRL–6491–3), EPA issued a rule establishing an exemption from the requirement of a tolerance for residues of a range of polymers α-alkyl (C_{12}–C_{15})-ω-hydroxypoly (oxypropylene)poly (oxyethylene)copolymers (where the poly(oxypropylene) content is 3-60 moles and the poly(oxyethylene) content is 5-80 moles in or on growing crops, when applied to raw agricultural commodities after harvest, or to animals when used as an inert ingredient (surfactant). The number average molecular weight, which is routinely included in the tolerance exemption expression, was inadvertently omitted from the tolerance exemption expression in § 180.1001(c) and (e). This rule corrects the tolerance exemption to include the molecular weight as a limitation.

III. Why is this Technical Correction Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment, because EPA is amending the tolerance exemption expression that was previously issued to include the number average molecular weight. The preamble to the previously published Final Rule discussed how the number average molecular weeight was one of the criteria for identifying low risk polymers. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

IV. Do Any of the Regulatory Assessment Requirements Apply to this Action?

No. This final rule implements a technical amendment to the Code of Federal Regulations to reflect a technical correction to a previously

issued Final Rule, and it does not otherwise impose or amend any requirements. As such, the Office of Management and Budget (OMB) has determined that a technical correction is not a "significant regulatory action" subject to review by OMB under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Nor does this rule contain any information collection requirements that require review and approval by OMB pursuant to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.).

Because this action is not economically significant as defined by section 3(f) of Executive Order 12866, this action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action will not result in environmental justice related issues and does not, therefore, require special consideration under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). Since the Agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administration Procedure Act or any other statute (see Unit IV), this action is not subject to provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. Nor does this action significantly or uniquely affect the communities of tribal governments as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). This action does not involve any technical standards that require the Agency's consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order.

For information about the applicability of the regulatory assessment requirements to the final rule that was issued on February 28, 2000 (65 FR 10401) (FRL–6491–3), please refer to the discussion in Unit XII of that document.

V. Will EPA Submit this Final Rule to Congress and the Comptroller General?

Yes. The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. (5 U.S.C. 808(2)). EPA has made such a good cause finding for this final rule, and established an effective date of April 12, 2000. Pursuant to 5 U.S.C. 808(2), this determination is supported by the brief statement in Unit III. of this document. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 22, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is corrected as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a, 371.

2. In § 180.1001, the table in paragraph (c) is corrected by revising the entry beginning with "α-alkyl (C_{12}-C_{15})" and the table to paragraph (e) is corrected by revising the entry beginning with "α-alkyl (C_{12}-C_{15})-ω-hydroxypoly (oxypropylene)poly (oxyethylene)copolymers" to read as follows:

§ 180.1001 Exemptions from the requirements of a tolerance.

* * * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
α-alkyl (C_{12}-C_{15})-ω-hydroxypoly (oxypropylene)poly (oxyethylene)copolymers (where the poly(oxypropylene) content is 3-60 moles and the poly(oxyethylene) content is 5-80 moles), the resulting ethoxylated propoxylated (C_{12}-C_{15}) alcohols having a minimum molecular weight (in amu) of 1,500, CAS Reg. No. 68551–13–3.	Not to exceed 20% of pesticide formulations	Surfactant
* * * * * * *		

* * * * * * * *

(e)* * *

Inert ingredients	Limits	Uses
* * * * * * *		
α-alkyl (C_{12}-C_{15})-ω-hydroxypoly (oxypropylene)poly (oxyethylene)copolymers (where the poly(oxypropylene) content is 3-60 moles and the poly(oxyethylene) content is 5-80 moles), the resulting ethoxylated propoxylated (C_{12}-C_{15}) alcohols having a minimum molecular weight (in amu) of 1,500, CAS Reg. No. 68551–13–3.	Not to exceed 20% of pesticide formulations	Surfactant
* * * * * * *		

[FR Doc. 00–8264 Filed 4–11–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act.

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act.

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Jefferson (FEMA Docket No. 7293).	Unincorporated Areas	May 12, 1999, May 19, 1999, *Birmingham News.*	Mr. Gary White, President of the Jefferson County Board of Commissioners, Courthouse, Room A–360, Birmingham, Alabama 35263.	Aug. 17, 1999	010217 E
Connecticut: Fairfield (FEMA Docket No. 7293.	Town of Wilton	June 17, 1999, June 24, 1999, Wilton Bulletin.	Mr. Robert H. Russell, First Selectman of the Town of Wilton, Wilton Town Hall, 238 Danbury Road, Wilton, Connecticut 06897.	Sept. 22, 1999	090020 C
Florida: Orange (FEMA Docket No. 7293).	City of Ocoee	June 24, 1999, July 1, 1999, *The Orlando Sentinel.*	The Honorable S. Scott Vandergrift, Mayor of the City of Ocoee, City Hall, 150 North Lakeshore Drive, Ocoee, Florida 34761–2258.	June 17, 1999	120185 C
Illinois: Will (FEMA Docket No. 7293).	City of Crest Hill	March 25, 1999, April 1, 1999, *The Herald-News.*	The Honorable Donald R. Randich, Mayor of the City of Crest Hill, 1610 Plainfield Road, Crest Hill, Illinois 60435.	June 30, 1999	170699 D
Illinois: Kane (FEMA Docket No. 7293).	Village of Hampshire ...	April 28, 1999, May 5, 1999, *Hampshire Register-News.*	Mr. William Schmidt, Hampshire Village President, P.O. Box 457, 234 South State Street, Hampshire, Illinois 60140.	July 27, 1999	170327 C
Kentucky: Fayette (FEMA Docket No. 7293).	Lexington-Fayette Urban County Government.	June 23, 1999, June 30, 1999, *Lexington Herald.*	The Honorable Pam Miller, Mayor of the Lexington-Fayette Urban County Government, 200 East Main Street, 12th Floor, Lexington-Fayette Government Building, Lexington, Kentucky, 40507.	June 16, 1999	210067 C
Minnesota: Anoka (FEMA Docket No. 7293).	City of Coon Rapids	April 9, 1999, April 16, 1999, *Coon Rapids Herald.*	The Honorable Lonni McCauley, Mayor of the City of Coon Rapids, 11155 Robinson Drive, Coon Rapids, Minnesota 55433.	July 15, 1999	270011 A
North Carolina: Guilford (FEMA Docket No. 7293).	City of Greensboro	May 25, 1999, June 1, 1999, *News and Record.*	The Honorable Carolyn S. Allen, Mayor of the City of Greensboro, One Governmental Plaza, P.O. Box 3136, Greensboro, North Carolina 27402.	May 17, 1999	375351 C
Ohio: Lake (FEMA Docket No. 7293).	Village of Madison	March 30, 1999, April 6, 1999, *The News-Herald.*	The Honorable David G. Reed, Jr., Mayor of the Village of Madison, 126 West Main Street, Madison, Ohio 44057–0007.	Mar. 23, 1999	390316 B

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Pennsylvania: Lancaster (FEMA Docket No. 7293).	Township of East Donegal.	April 28, 1999, May 5, 1999, *Lancaster Newspaper.*	Mr. Allen D. Esbenshade, President, Board of Supervisors, Township Municipal Office, 190 Rock Point Road, Marietta, Pennsylvania 17547.	April 16, 1999	421768 B

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 31, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–9067 Filed 4–11–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7309]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Morgan	City of Decatur	January 25, 2000, February 1, 2000, *The Decatur Daily News.*	The Honorable Julian Price, Mayor of the City of Decatur, P.O. Box 488, Decatur, Alabama 35602.	May 1, 2000	010176 D
Alabama: Jefferson.	City of Homewood	April 28, 1999, May 5, 1999, *Birmingham News.*	The Honorable Barry R. McCulley, Mayor of the City of Homewood, P.O. Box 59666, Homewood, Alabama 35259.	Apr. 21, 1999	015006 D
Florida: Charlotte	Unincorporated Areas.	May 10, 1999, May 17, 1999, *Charlotte Herald Sun.*	Mr. Jan Winters, Charlotte County Administrator, 18500 Murdock Circle, Room 536, Port Charlotte, Florida 33948–1094.	Apr. 30, 1999	120061 D&E
Georgia: Bartow ...	City of Cartersville	February 17, 2000, February 24, 2000, *The Daily Tribune News.*	The Honorable Sam C. Smith, Mayor of the City of Cartersville, 1 North Erwin Street, P.O. Box 1390, Cartersville, Georgia 30120.	May 24, 2000	130209 F
Georgia: Bartow ...	Unincorporated Areas.	February 17, 2000, February 24, 2000, *The Daily Tribune News.*	Mr. Clarence Brown, Bartow County Commissioner, 135 West Cherokee Avenue, Suite 251, Cartersville, Georgia 30120.	May 24, 2000	130463 F
Georgia: Catoosa	Unincorporated Areas.	March 8, 2000, March 15, 2000, *Catoosa County News.*	Mr. Jim Callaway, Catoosa County Manager, Catoosa County Courthouse, 7694 Nashville Street, Ringgold, Georgia 30736.	Feb. 28, 2000	130028 D
Georgia: Chatham	Unincorporated Areas.	March 13, 2000, March 20, 2000, *Savannah Morning News.*	Dr. Billy Hair, Chairman of the Chatham County Board of Commissioners, 124 Bull Street, P.O. Box 8161, Savannah, Georgia 31412.	June 18, 2000	130030 C
Georgia: Chatham	Town of Pooler	March 13, 2000, March 20, 2000, *Savannah Morning News.*	The Honorable Earl Carter, Mayor of the Town of Pooler, 100 Southwest Highway 80, Pooler, Georgia 31322.	June 18, 2000	130261 A
Georgia: Gwinnett	Unincorporated Areas.	January 12, 2000, January 19, 2000, *Gwinnett Daily Post.*	Mr. Wayne Hill, Chairman of the Gwinnett County, Board of Commissioners 75 Langley Drive, Lawrenceville, Georgia 30045.	Dec. 29, 1999	130322 C
Illinois: DuPage	Unincorporated Areas.	March 10, 2000, March 17, 2000, *Daily Herald.*	Mr. Robert J. Schillerstrom, Chairman, DuPage County Board, DuPage Center, 421 North Country Farm Road, Wheaton, Illinois 60187.	Mar. 3, 2000	170197 B
Illinois: Cook & DuPage.	Village of Hanover Park.	May 25, 1999, June 1, 1999, *Elgin Courier News & The Daily Herald.*	Mr. Irwin Boch, Village of Hanover Park President, 2121 West Lake Street, Hanover Park, Illinois 60103–4398.	May 18, 1999	170099 D
Illinois: Cook	Village of Indian Head Park.	February 9, 2000, February 16, 2000, *Suburban Life Citizen.*	Mr. Richard S. Pellegrino, President of the Village of Indian Head Park, 201 Acacia Drive, Indian Head Park, Illinois 60525.	Feb. 3, 2000	170110 D
Illinois: Madison ...	Unincorporated Areas.	January 7, 2000, January 14, 2000, *The Intelligencer.*	Mr. Rudolph J. Papa, Madison County Board Chairman, Madison County Administration Building, 157 North Main Street, suite 165, Edwardsville, Illinois 62025–1964.	Dec. 28, 1999	170436 D
Illinois: Cook	Village of Schaumburg.	January 5, 2000, January 12, 2000, *Daily Herald.*	Mr. Al Larson, Schaumburg Village President, 101 Schaumburg Court, Schaumburg, Illinois 60193–1899.	Dec. 29, 1999	170158 D
Illinois: Cook	Village of Schaumburg.	February 9, 2000, February 16, 2000, *Daily Herald.*	Mr. Al Larson, Schaumburg Village President, 101 Schaumburg Court, Schaumburg, Illinois 60193–1899.	Feb. 1, 2000	170158 D
Illinois: Cook	Village of Streamwood.	January 13, 2000, January 20, 2000, *Daily Herald.*	Ms. Billie D. Roth, Streamwood Village President, Village Hall, 301 East Irving Park road, Streamwood, Illinois 60107.	Jan. 4, 2000	170166 D
Illinois: Will and Cook.	Village of Tinley Park.	March 8, 2000, March 15, 2000, *Daily Southtown.*	The Honorable Edward J. Zabrocki, Mayor of the Village of Tinley Park, 16250 South Oak Park Avenue, Tinley Park, Illinois 60477.	Mar. 31, 2000	170169 C
Illinois: Madison ...	City of Wood River	January 7, 2000, January 14, 2000, *The Telegraph.*	The Honorable Lon A. Smith, Mayor of the City of Wood River, 111 North Wood River Avenue, Wood River, Illinois 62095–1938.	Apr. 12, 2000	170451 C

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Indiana: Elkhart	Unincorporated Areas.	June 21, 1999, June 28, 1999, *The Elkhart Truth.*	Mr. Amos J. Sheets, Elkhart County Commissioner, 1117 North Second Street, Goshen, Indiana 46526.	Sept. 26, 1999	180056 D
Indiana: Allen	City of Fort Wayne	January 7, 2000, January 14, 2000, *The Journal Gazette.*	The Honorable Paul Helmike, Mayor of the City of Fort Wayne, 1 Main Street, Room 900, Fort Wayne, Indiana 46802–1804.	Dec. 29, 1999	180003 E
Indiana: Hancock	City of Greenfield	June 25, 1999, July 2, 1999, *Daily Reporter.*	The Honorable Patricia Elmore, Mayor of the City of Greenfield, P.O. Box 456, Greenfield, Indiana 46140.	Sept. 30, 1999	180084 D
Indiana: Hendricks	Unincorporated Areas.	March 9, 2000, March 16, 2000, *Hendricks County Flyer.*	Mr. John D. Clampitt, President of the Hendricks, County Commissioners, 355 South Washington, No. 204, Danville, Indiana 46122.	June 14, 2000	180415 B
Kentucky: Daviess	Unincorporated Areas.	June 1, 1999, June 8, 1999, *Messenger Inquirer.*	The Honorable Reid Haire, Daviess County Judge/Executive, Daviess County Courthouse, P.O. Box 1716, Owenboro, Kentucky 42302–1716.	May 24, 1999	210062 D
Michigan: Macomb	Township of Macomb.	January 4, 2000, January 11, 2000, *The Macomb Daily.*	Mr. John D. Brennan, Macomb Township Supervisor, 19925 Twenty-Three Mile Road, Macomb, Michigan 48042.	Dec. 28, 1999	260445 B
New York: Madison.	Town of Madison	January 12, 2000, January 19, 2000, *Oneida Daily Dispatch.*	Mr. Bert L. Snyder, Madison Town Supervisor, P.O. Box 256, Hamilton, New York 13402–0256.	July 5, 2000	361292 D
New York: Niagara	City of Niagara Falls.	January 13, 2000, January 20, 2000, *Niagara Gazette.*	The Honorable James C. Galie, Mayor of the City of Niagara Falls, City Hall, 745 Main Street, Niagara Falls, New York 14302.	July 5, 2000	360506 C
New York: Seneca	Town of Seneca Falls.	January 13, 2000, January 20, 2000, *Finger Lake Times & The Reveille/Between the Lakes.*	Ms. Janette T. Pfeiff, Supervisor for the Town of Seneca Falls, 10 Fall Street, Seneca Falls, New York 13148.	July 5, 2000	360756 D
New York: Niagara	Town of Wheatfield.	December 13, 1999, December 20, 1999 *The Gazette.*	Mr. Timothy E. Demler, Town of Wheatfield Supervisor, 2800 Church Road, North Tonawanda, New York 14120–1099.	June 6, 2000	360513 D
North Carolina: Avery.	Town of Banner Elk.	January 6, 2000, January 13, 2000, *The Mountain Times.*	The Honorable Deka Tate, Mayor of the Town of Banner Elk, Town Hall, P.O. Box 156, Banner Elk, North Carolina 28604.	Dec. 30, 1999	370011 D
North Carolina: Gaston.	City of Gastonia ...	January 14, 2000, January 21, 2000, *The Gaston Gazette.*	The Honorable Jeannie Stultz, Mayor of the City of Gastonia, P.O. Box 1748, 181 South Street, Gastonia, North Carolina 28053–1748.	Jan. 6, 2000	370100 D
North Carolina: Mecklenburg.	Unincorporated Areas.	January 4, 2000, January 11, 2000, *The Charlotte Observer.*	Mr. Gerald G. Fox, Mecklenburg County Manager, 600 East 4th Street, Charlotte, North Carolina 28202–2835.	Apr. 9, 2000	370158 D
North Carolina: Mecklenburg.	Unincorporated Areas.	January 21, 2000, January 28, 2000, *Charlotte Observer.*	Mr. Gerald G. Fox, Mecklenburg County Manager, 600 East 4th Street, Charlotte, North Carolina 28202–2835.	Jan.14, 2000	370158 D
North Carolina: Northampton.	Unicorporated Areas.	July 31, 1999, *Roanoke-Chowan Daily News.*	Mr. William E. Daniels, Northampton County Manager, P.O. Box 808, Jackson, North Carolina 27845,.	Sept. 29, 1999	370173 D
Ohio: Cuyahoga ...	City of Garfield Heights.	March 16, 2000, March 23, 2000, *Neighborhood News.*	The Honorable Thomas Longo, Mayor of the City of Garfield Heights, 5107 Turney Road, Garfield Heights, Ohio 44125.	June 21, 2000	390109 B
Ohio: Cuyahoga ...	City of Highland Heights.	June 3, 1999, June 10, 1999, *The Plain Dealer.*	The Honorable Fran Hogg, Mayor of the City of Highland Heights, 5827 Highland Road, Highland Heights, Ohio 44143.	Sept. 8, 1999	390110 D
Ohio: Lake	Unincorporated Areas.	January 21, 2000, January 28, 2000, *The Herald-News.*	Mr. Robert E. Aufuldish, President of the Lake County, Board of Commissioners, 105 Main Street, Painesville, Ohio 44077.	Jan.14, 2000	390771 C

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Ohio: Shelby	Unincorporated Areas.	February 10, 2000, February 17, 2000, *The Sidney Daily News.*	Mr. Larry Klainhans, Chairman, Shelby County Board of Commissioners, 129 East Court Street, Suite 100, Sidney, Ohio 45365.	May 17, 2000	390503 C
Ohio: Montgomery	City of Trotwood ...	December 22, 1999, December 29, 1999, *Trotwood Independent.*	The Honorable Sara Combs, Mayor of the City of Trotwood, 35 North Olive Road, Trotwood, Ohio 45426.	Mar. 28, 2000	390417 D
Pennsylvania: Berks.	Township of Cumru.	January 6, 2000, January 13, 2000, *Reading Eagle/Times.*	Mr. William Shea, Township of Cumru Manager, 1775 Welsh Road, Mohnton, Pennsylvania 19540.	Apr. 11, 2000	420130 D
Pennsylvania: Berks.	Borough of Kenhorst.	January 6, 2000 January 13, 2000, *Reading Eagle/Times.*	The Honorable Gerald P. Nally, Mayor of Borough of Kenhorst, 339 South Kenhorst Boulevard, Kenhorst, Pennsylvania 19607.	Apr. 11, 2000	420135 D
Pennsylvania: Montgomery.	Township of Lower Merion.	April 22, 1999 April 29, 1999, *Main Line Times.*	Mr. David Latshaw, Manager of the Township of Lower Merion, 75 East Lancaster Avenue, Ardmore, Pennsylvania 19003.	July 28, 1999	420701 D
Pennsylvania: Chester.	Township of Valley	February 8, 2000, February 15, 2000, *The Daily Local News.*	Mr. Grover E. Koon, Chairperson, Township of Valley Board of Supervisors, P.O. Box 467, Coatesville, Pennsylvania 19320.	Feb. 1, 2000	421206 D
South Carolina: York.	Unincorporated Areas.	May 27, 1999, June 3, 1999, *The Yorkville Enquirer.*	Mr. Carl Gullick, Chairman of the York County Council, P.O. Box 66, York, South Carolina 29745.	Sept. 1, 1999	450193 D
Tennessee: Selby	Town of Collierville	March 23, 2000, March 30, 2000, *The Collierville Herald.*	The Honorable Linda Kerley, Mayor of the Town of Collierville, 160 North Main Street, Suite 850, Memphis, Tennessee 38103.	June 28, 2000	470263 E
Tennessee: Shelby.	Unincorporated Areas.	March 23, 2000, March 30, 2000, *The Collierville Herald.*	The Honorable Jim Rout, Mayor of Shelby County, 160 North Main Street, Suite 850, Memphis, Tennessee 38103.	June 28, 2000	470214
Virginia: Warren ...	Town of Front Royal.	February 1, 2000, February 8, 2000, *Northern Virginia Daily.*	Mr. Richard Anzolut, Jr., Town of Front Royal Manager, P.O. Box 1650, Front Royal, Virginia 22630.	Jan. 27, 2000	510167 B

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 31, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–9066 Filed 4–11–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below.

Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
Northport (City), Tuscaloosa County (FEMA Docket No. 7295)	
Twomile Creek Tributary No. 5:	
Approximately 100 feet upstream of confluence with Twomile Creek	*184
Approximately 710 feet upstream of confluence with Twomile Creek	*186
Maps available for inspection at the City of Northport City Hall, 3500 McFarland Boulevard, Northport, Alabama.	
Tuscaloosa (City), Tuscaloosa County (FEMA Docket No. 7295)	
Bee Branch:	
At confluence with Hurricane Creek	*214
Approximately 1,600 feet downstream of westbound Route 59	*278
Cottondale Creek Tributary No. 1:	
At confluence with Cottondale Creek	*249
Approximately 1,600 feet upstream of 56th Street East Dam	*298
Cottondale Creek Tributary No. 1A:	
At confluence with Cottondale Creek Tributary No. 1	*268
Approximately 2,450 feet upstream of center point of Interstate 59 and 20/JVC Road culvert	*288
Cypress Creek:	
Approximately 2,400 feet downstream of Kauloosa Avenue	*148
Approximately 800 feet downstream of Springshill Drive	*301
Cribbs Mill Creek:	
Approximately 1,000 feet downstream of 2nd Avenue East	*181
Approximately 630 feet upstream of East 17th Street	*259
Moody Swamp Tributary No. 2:	
Approximately 660 feet downstream of 31st Street	*142
Approximately 525 feet downstream of 25th Street	*159
Moody Swamp Tributary No. 3:	
Approximately 175 feet downstream of Martin Luther King Jr. Boulevard	*141
Approximately 200 feet upstream of 10th Avenue	*179
Maps available for inspection at the City of Tuscaloosa Planning Office, City Hall, 2201 University Boulevard, Tuscaloosa, Alabama.	
Tuscaloosa County (Unincorporated Areas) (FEMA Docket No. 7295)	
Bee Branch:	
Approximately 1,600 feet downstream of Westbound Route 59	*278
Approximately 400 feet downstream of Westbound Route 59	*284
Approximately 100 feet upstream of confluence with Twomile Creek	*184
Approximately 710 feet upstream of confluence with Twomile Creek	*186
Maps available for inspection at the City of Northport City Hall, 3500 McFarland Boulevard, Northport, Alabama.	
Tuscaloosa (City), Tuscaloosa County (FEMA Docket No. 7295)	
Bee Branch:	
At confluence with Hurricane Creek	*214
Approximately 1,600 feet downstream of westbound Route 59	*278
Cottondale Creek Tributary No. 1:	
At confluence with Cottondale Creek	*249
Approximately 1,600 feet upstream of 56th Street East Dam	*298
Cottondale Creek Tributary No. 1A:	
At confluence with Cottondale Creek Tributary No. 1	*268
Approximately 2,450 feet upstream of center point of Interstate 59 and 20/JVC Road culvert	*288
Cypress Creek:	
Approximately 2,400 feet downstream of Kauloosa Avenue	*148
Approximately 800 feet downstream of Springshill Drive	*301
Cribbs Mill Creek:	
Approximately 1,000 feet downstream of 2nd Avenue East	*181
Approximately 630 feet upstream of East 17th Street	*259
Moody Swamp Tributary No. 2:	
Approximately 660 feet downstream of 31st Street	*142
Approximately 525 feet downstream of 25th Street	*159
Moody Swamp Tributary No. 3:	
Approximately 175 feet downstream of Martin Luther King Jr. Boulevard	*141
Approximately 200 feet upstream of 10th Avenue	*179
Maps available for inspection at the City of Tuscaloosa Planning Office, City Hall, 2201 University Boulevard, Tuscaloosa, Alabama.	
Tuscaloosa County (Unincorporated Areas) (FEMA Docket No. 7295)	
Bee Branch:	
Approximately 1,600 feet downstream of Westbound Route 59	*278
Approximately 400 feet downstream of Westbound Route 59	*284
Maps available for inspection at the Tuscaloosa County Planning Department, 2902 6th Street, Tuscaloosa, Alabama.	
CONNECTICUT	
Shelton (City), Fairfield County (FEMA Docket No. 7303)	
Farmill River:	
Approximately 160 feet upstream from confluence of Means Brook	*236
Approximately 140 feet upstream of Farmill Road	*355
Maps available for inspection at the Shelton City Hall, 54 Hill Street, Shelton, Connecticut.	
Wallingford (Town), New Haven County (FEMA Docket No. 7303)	
Quinnipiac River:	
Approximately 1,560 feet downstream of Toelles Road	*23
Approximately 1.09 miles upstream of Oak Street	*70
Maps available for inspection at the Town of Wallingford Department of Planning & Zoning, 45 South Main Street, Wallingford, Connecticut.	
GEORGIA	
Blue Ridge (City), Fannin County (FEMA Docket No. 7295)	
Mineral Springs Creek:	
Approximately 650 feet upstream of private drive	*1,669
Approximately 720 feet upstream of private drive	*1,671
Maps available for inspection at the Fannin County Land Development Office, 171 Church Street, Blue Ridge, Georgia.	
Fannin County (Unincorporated Areas) (FEMA Docket No. 7295)	
Wilscot Creek:	
Approximately 580 feet downstream of Old Dial Road	*1,726
Approximately 0.73 mile upstream of State Route 60	*1,920
Sugar Creek:	
Approximately 50 feet downstream of CSX Transportation	*1,509
At Maxwell Road	*1,830
Stanley Creek:	
Approximately 200 feet downstream of Aska Road	*1,764

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 0.64 mile upstream of Stanley Creek Road	*1,816
Big Creek:	
At confluence with Toccoa River	*1,820
Approximately 1.53 miles upstream of Big Creek Road	*1,943
Noontootla Creek:	
At confluence with Toccoa River	*1,838
Approximately 1.04 miles upstream of Doublehead Gap Road	*2,025
Fightingtown Creek:	
Approximately 0.21 mile downstream of West Tennessee Avenue	*1,460
Approximately 1.57 miles upstream of Old Highway 2	*1,805
Cooper Creek:	
Approximately 0.51 mile downstream of State Route 60	*2,002
Approximately 3.54 miles upstream of State Route 60	*2,087
Hothouse Creek:	
Approximately 2.61 miles downstream of State Route 60	*1,502
Approximately 1.35 miles upstream of Laurel Springs Road	*1,681
Middle Reach Toccoa River:	
Approximately 3.01 miles downstream of Shallowford Road	*1,720
Approximately 1.1 miles upstream of Doublehead Gap Road	*1,880
Upper Reach Toccoa River:	
At confluence with Cooper Creek	*2,002
Approximately 0.53 mile upstream of Private Drive (2nd)	*2,041
Hemptown Creek:	
Approximately 300 feet downstream of Cutcane Road	*1,563
Approximately 0.85 mile upstream of Holly Ridge Lane	*1,804
Lower Reach Toccoa River:	
Approximately 400 feet upstream from CSX Transportation	*1,468
Approximately 600 feet upstream from CSX Transportation	*1,468
Maps available for inspection at the Fannin County Land Development Office, 171 Church Street, Blue Ridge, Georgia.	
Floyd County (Unincorporated Areas) (FEMA Docket No. 7299)	
Coosa River:	
Approximately 1.20 miles downstream of the confluence of Horseleg Creek	*594
Approximately 0.36 mile upstream of the confluence of Horseleg Creek	*595
Horseleg Creek:	
At Horseleg Creek Road southwest	*596
Just downstream of confluence of South Fork Horseleg Creek	*607
South Fork Horseleg Creek:	
Approximately 475 feet downstream of Terry Lane	*626
Approximately 449 feet upstream of Terry Lane	*630
Maps available for inspection at the Floyd County Public Works, 337 Blacks Bluff Road, Rome, Georgia.	
McCaysville (City), Fannin County (FEMA Docket No. 7295)	
Toccoa River:	
Approximately 200 feet south of intersection of Hill Road and River Road	*1,468
Maps available for inspection at the McCaysville City Hall, 223 Blue Ridge Drive, McCaysville, Georgia.	
Rome (City), Floyd County (FEMA Docket No. 7299)	
Coosa River:	
Approximately 1.20 miles downstream of confluence of Horseleg Creek (at corporate limits)	*594
Approximately 1,800 feet downstream of the confluence of Etowah River	*595
Etowah River:	
Approximately 2,400 feet upstream of the confluence of Tributary A	*600
Little Dry Creek:	
At Chariton Street	*597
At Redmond Road	*597
Maps available for inspection at the City of Rome Building Inspection Department, 601 Broad Street, Rome, Georgia.	
ILLINOIS	
Buffalo Grove (Village), Lake County (FEMA Docket No. 7263)	
Des Plaines River:	
At Lake-Cook county boundary	*644
Approximately 0.89 mile upstream of Deerfield Road	*646
Aptakisic Creek:	
Approximately 625 feet upstream of Milwaukee Avenue	*645
Approximately 1,900 feet upstream of Busch Parkway	*646
Maps available for inspection at the Buffalo Grove Engineer's Office, 50 Raupp Boulevard, Buffalo Grove, Illinois.	
DeKalb (City), DeKalb County (FEMA Docket No. 7199)	
South Branch Kishwaukee River:	
Approximately 0.8 mile downstream of Bethany Road	*833
Approximately 0.38 mile upstream of East-West Toll Road	*854
Maps available for inspection at the City of DeKalb City Hall, Engineering Department, 200 South Fourth Street, DeKalb, Illinois.	
DeKalb County (Unincorporated Areas) (FEMA Docket No. 7199)	
South Branch Kishwaukee River:	
Approximately 1,480 feet downstream of County Line Road	*732
At Gurler Road	*856
Blue Heron Creek:	
At the confluence with East Branch South Branch Kishwaukee River	*824
Approximately 5 feet upstream of State Route 23	*840
East Branch South Branch Kishwaukee River:	
At the confluence with South Branch Kishwaukee River	*824
At Barber Greene Road	*842
Little Rock Creek:	
Approximately 1.6 miles downstream of Oak Street	*717
At Duffy Road	*748
Maps available for inspection at the DeKalb County Administrator Building, 110 East Sycamore Street, Sycamore, Illinois.	
Genoa (City), DeKalb County (FEMA Docket No. 7199)	
South Branch Kishwaukee River:	
Approximately 0.4 mile downstream of Soo Line Railroad	*794
Approximately 1.4 miles upstream of State Highway 72	*801
Maps available for inspection at the Genoa City Hall, Public Works, 113 North Genoa Street, Genoa, Illinois.	
Gurnee (Village), Lake County (FEMA Docket No. 7263)	
Des Plaines River:	
Approximately 500 feet downstream of Belvidere Road	*665
Approximately 2.45 miles upstream of Skokie Highway	*669
Gurnee Tributary:	
At confluence with Des Plaines River	*667
At State Route 132 (approximately 250 feet upstream of Wisconsin Central Limited Railroad)	*667
Suburban Country Club Tributary:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 50 feet upstream of Wisconsin Central Limited Railroad	*668
Approximately 1,100 feet upstream of Unnamed Road	*668
Maps available for inspection at the Gurnee Village Engineering Department, 325 North O'Plaine Road, Gurnee, Illinois.	
Hinckley (Village), DeKalb County (FEMA Docket No. 7199)	
Little Rock Creek:	
Approximately 750 feet downstream of Oak Street	*729
Approximately 1,000 feet upstream of South View Street	*734
Maps available for inspection at the Village of Hinckley Village Hall, 131 East Lincoln Avenue, Hinckley, Illinois.	
Kingston (Village), DeKalb County (FEMA Docket No. 7199)	
South Branch Kishwaukee River:	
Approximately 0.29 mile downstream of Main Street	*786
Approximately 0.79 mile upstream of Main Street	*789
Maps available for inspection at the Kingston City Hall, 101 East Railroad, P.O. Box 214, Kingston, Illinois.	
Kirkland (Village), DeKalb County (FEMA Docket No. 7199)	
South Branch Kishwaukee River:	
Approximately 1,300 feet downstream of Kirkland Road	*758
At Pearl Street	*763
Maps available for inspection at the Village of Kirkland Municipal Building, 511 West Main Street, Kirkland, Illinois.	
Lake County (Unincorporated Areas) (FEMA Docket No. 7263)	
Des Plaines River:	
At Lake-Cook county boundary	*644
At state boundary	*676
Des Plaines River Tributary (at Russell):	
At confluence with Des Plaines River	*675
Just downstream of Kilbourne Road	*675
Suburban Country Club Tributary:	
At confluence with Des Plaines River	*668
Just downstream of Delaney Road	*668
Bull Creek:	
Confluence with Des Plaines River	*661
Approximately 140 feet upstream of Unnamed Road	*661
Tributary No. 1:	
At confluence with Des Plaines River	*658
Just downstream of confluence of Tributary No. 1 with Meadow Haven Creek	*658
Aptakisic Creek:	
At confluence with Des Plaines River	*645
Approximately 1,900 feet upstream of Busch Parkway	*646
Mill Creek:	
Downstream side of Skokie Highway (U.S. Route 41)	*670
Approximately 1,100 feet downstream of Dilleys Road	*670
Maps available for inspection at the Lake County Office of Planning and Development, Division of Building and Zoning, 5th Floor, 18 North County Street, Waukegan, Illinois.	
Des Plaines River:	
Approximately 1,900 feet upstream of State Route 60 (Townline Road) (at corporate limits)	*652
Upstream side of Buckley Road (at corporate limits)	*660
Maps available for inspection at the Libertyville Village Public Works Department, Engineering Division, 200 East Cook Avenue, Libertyville, Illinois.	
Lincolnshire (Village), Lake County (FEMA Docket No. 7263)	
Des Plaines River:	
Approximately 1.76 miles upstream of Deerfield Road	*647
Approximately 0.95 mile downstream of Halfday Road (State Route 22)	*647
Maps available for inspection at the Lincolnshire Village Hall, One Olde Half Day Road, Lincolnshire, Illinois.	
Mettawa (Village), Lake County (FEMA Docket No. 7263)	
Des Plaines River:	
Approximately 1.02 miles downstream of State Route 60 (Townline Road)	*650
Approximately 0.68 mile downstream of Rockland Road	*655
Maps available for inspection at the Mettawa Village Hall, 1000 Allanson Road, Mundelein, Illinois.	
Riverwoods (Village), Lake County (FEMA Docket No. 7263)	
Des Plaines River:	
Approximately 600 feet upstream of Lake-Cook Road	*645
Approximately 0.92 mile upstream of Deerfield Road	*646
Maps available for inspection at the Riverwoods Village Hall, 300 Portwine Road, Riverwoods, Illinois.	
Sycamore (City), DeKalb County (FEMA Docket No. 7199)	
South Branch Kishwaukee River:	
Approximately 1,000 feet upstream of Coltonville Road	*832
Approximately 1,500 feet downstream of Bethany Road	*835
East Branch South Branch Kishwaukee River:	
At approximately 0.47 mile downstream of Brick Road	*826
At approximately 0.5 mile downstream of State Route 64	*836
Blue Heron Creek:	
Approximately 950 feet downstream of Brickville Road	*834
Approximately 250 feet downstream of Brickville Road	*835
Maps available for inspection at the Sycamore City Hall, Engineering Department, 535 DeKalb Avenue, Sycamore, Illinois.	
Vernon Hills (Village), Lake County (FEMA Docket No. 7263)	
Des Plaines River:	
Approximately 1.02 miles downstream of State Route 60 (Townline Road)	*650
Approximately 1,900 feet upstream of State Route 60 (Townline Road) at corporate limits	*650
Maps available for inspection at the Vernon Hills Public Works Department, 490 Greenleaf Drive, Vernon Hills, Illinois.	
Wadsworth (Village), Lake County (FEMA Docket No. 7263)	
Des Plaines River:	
Approximately 1.16 miles downstream of McCarthy Road	*669
Approximately 1.6 miles upstream of Wadsworth Road	*671
Mill Creek:	
At confluence with Des Plaines River	*670
Approximately 1,100 feet downstream of Dilleys Road	*670
Maps available for inspection at the Wadsworth Village Hall, 14155 Wadsworth Road, Wadsworth, Illinois.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
INDIANA	
New Albany (City), Floyd County (FEMA Docket No. 7247)	
Fall Run:	
At confluence with Falling Run	*443
At downstream side of Grant Line Road	*443
Falling Run:	
At Ohio River levee	*438
At Janie Drive	*474
Middle Creek:	
Approximately 150 feet downstream of State Route 111	*448
Approximately 75 feet upstream of upstream crossing of Southern Railway	*472
Vincennes Run:	
At confluence with Middle Creek	*448
Approximately 70 feet upstream of Eagle Lane	*471
Maps available for inspection at the City of New Albany City-County Building, Board of Public Works, Room 317, 311 Hauss Square, New Albany, Indiana.	
Easton (Town), Bristol County (FEMA Docket No. 7303)	
Gowards Brook:	
Approximately 1,300 feet downstream of Norton Avenue	*94
Approximately 100 feet upstream of State Route 106	*141
Maps available for inspection at the Town of Easton Planning & Zoning Department, 136 Elm Street, Easton, Massachusetts.	
Randolph (Town), Norfolk County (FEMA Docket No. 7299)	
Cochato River:	
At downstream corporate limits	*105
At Randolph/Holbrook corporate limits, approximately 1,200 feet upstream of Private Dam	*119
Maps available for inspection at the Randolph Town Hall, 1 Turner Lane, Randolph, Massachusetts.	
MICHIGAN	
Howell (City), Livingston County (FEMA Docket No. 7283)	
Thompson Lake:	
Entire shoreline within community	*907
Bogue Creek:	
Approximately 530 feet downstream of Sluice Gate	*892
Approximately 590 feet upstream of Sluice Gate	*907
Maps available for inspection at the City Hall, 611 East Grand River, Howell, Michigan.	
MINNESOTA	
Houston (City), Houston County (FEMA Docket No. 7303)	
Root River:	
Approximately 0.5 mile downstream of Grant Street (State Route 76)	*682
Approximately 0.6 mile upstream of Grant Street (State Route 76)	*686
Outlet A–1:	
Approximately 100 feet south of intersection of Washington and Elm Streets	*682
Outlet A–2:	
Approximately 400 feet north of intersection of Plum and Grant Streets	*681
Outlet B:	
Approximately 150 feet northeast of intersection of Henderson and Elm Streets	*679
Maps available for inspection at the Houston City Hall, 105 West Maple Street, Houston, Minnesota.	
MISSISSIPPI	
Shubuta (Town), Clarke County (FEMA Docket No. 7291)	
Chickasawhay River:	
Approximately 2,900 feet downstream of First Street (County Route 612)	*191
Approximately 1.26 miles upstream of First Street (County Route 612)	*197
Maps available for inspection at the Shubuta Town Hall, 156 Eucutta Street, Shubuta, Mississippi.	
NEW JERSEY	
Bay Head (Borough), Ocean County (FEMA Docket No. 7251)	
Atlantic Ocean:	
At the intersection of Grove Avenue and Club Drive	*5
At intersection of Karge Street and Main Street	#1
Approximately 400 feet east from the intersection of East Avenue and Chadwick Street	*15
Bay Head Harbor:	
At intersection of Grove Street and Holly Avenue	*5
Approximately 1,000 feet northwest of intersection of Lake Avenue and Johnson Street	*5
Maps available for inspection at the Bay Head Borough Hall, 81 Bridge Avenue, Bay Head, New Jersey.	
NEW YORK	
Watson (Town), Lewis County (FEMA Docket No. 7295)	
Black River:	
At approximately 140 feet downstream of downstream corporate limits	*743
At upstream corporate limits	*747
Maps available for inspection at the Watson Town Hall, Clerk's Office, Star Route, Lowville, New York.	
NORTH CAROLINA	
Albemarle (City), Stanly County (FEMA Docket No. 7299)	
Little Long Creek:	
From a point approximately 1,200 feet downstream of Morgan Road	*410
To a point approximately 100 feet downstream of Centerview Church Road	*478
Poplin Creek:	
At the confluence with Little Long Creek	*416
To a point approximately 0.50 mile downstream of Aquadale Road	*419
Town Creek:	
At the confluence with Little Long Creek	*446
To a point approximately 9.75 feet downstream of Snuggs Road	*449
Maps available for inspection at the City of Albemarle Engineering Department, 144 North Second Street, Albemarle, North Carolina.	
Davidson County (Unincorporated Areas) (FEMA Docket No. 7303)	
Hasty Creek:	
Approximately 800 feet upstream of confluence with Hunts Fork	*720
Approximately 250 feet downstream of NCSR 1781	*747
Payne Creek:	
Approximately 225 feet downstream of NCSR 1757	*736
Approximately 0.96 mile upstream of confluence of Payne Creek Tributary	*766
Payne Creek Tributary:	
At confluence with Payne Creek	*744
Approximately 1.1 miles upstream from Canterbury Road	*782
Rich Fork:	
Approximately 0.5 mile downstream of NCSR 1755	*709
Approximately 0.4 mile upstream of NCSR 1741	*765
Rich Fork Tributary:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At confluence with Rich Fork	*765
Approximately 780 feet upstream of NCSR 1739	*780
Stream No. 97:	
At confluence with Stream No. 99	*747
Approximately 0.74 mile upstream from confluence with Stream No. 99	*764
Stream No. 99:	
At confluence with Payne Creek	*731
Approximately 0.71 mile upstream from confluence of Stream No. 97	*778
Maps available for inspection at the Davidson County Governmental Center, 913 Greensboro Street, Lexington, North Carolina.	
Lexington (City), Davidson County (FEMA Docket No. 7303)	
Darr Branch:	
At confluence with Abbotts Creek	*641
Downstream side of Tanyard Street	*724
Darr Drain:	
At confluence with Darr Branch	*652
Approximately 1,025 feet upstream of Young Drive	*676
Nokomis Branch:	
At confluence with Darr Branch	*659
Approximately 80 feet upstream of North Pine Street	*743
Twin Creek:	
At a point approximately 250 feet upstream of confluence with Abbotts Creek	*635
Approximately 0.43 mile upstream of confluence with Abbotts Creek	*661
Twin Creek Tributary:	
Approximately 475 feet upstream of confluence with Abbotts Creek	*636
At a point approximately 1,600 feet upstream of confluence with Abbotts Creek	*654
Maps available for inspection at the City of Lexington Community Development Department, 28 West Center Street, Lexington, North Carolina.	
Stanly County (Unincorporated Areas) (FEMA Docket No. 7299)	
Little Long Creek:	
From a point approximately 1,200 feet downstream of Morgan Road	*410
To a point approximately 200 feet downstream of Morgan Road	*412
Rocky River:	
At a point approximately 3.1 miles downstream of State Route 1145 (River Road)	*475
At a point approximately 300 feet at upstream county boundary	*482
Maps available for inspection at the Stanly County Planning & Zoning Department, 201 South Second Street, 3rd Floor, Albemarle, South Carolina.	
OHIO	
Warren County (Unincorporated Areas) (FEMA Docket No. 7309)	
Bear Run:	
Approximately 120 feet upstream of Hopkins Road	*727
Approximately 25 feet upstream of Zoar Road	*818
Newman Run:	
At downstream side of U.S. Route 42	*721
At confluence with North Fork Newman Run	*767
North Fork Newman Run:	
At confluence with Newman Run	*767
At upstream side of Lytle Road	*974
Salt Run:	
Approximately 1,350 feet upstream of confluence with Little Miami River	*599
Approximately 30 feet on the upstream side of Morrow-Cozdale Road	*842
Satterthwaites Run:	
Approximately 0.79 mile above the confluence with the Little Miami River Mill Run Channel	*808
At the upstream side of Lytle Road	*971
Maps available for inspection at the Warren County Map Room, 320 East Silver Street, Lebanon, Ohio.	
Waynesville (Village), Warren County (FEMA Docket No. 7309)	
Satterthwaites Run:	
Approximately 400 feet downstream of U.S. Route 42	*725
At upstream corporate limits	*837
Maps available for inspection at the Waynesville Village Hall, 291 Church Street, Waynesville, Ohio.	
PENNSYLVANIA	
Freeport (Borough), Armstrong County (FEMA Docket No. 7291)	
Buffalo Creek:	
At confluence with Allegheny River	*768
Approximately 0.22 mile upstream of CONRAIL spur	*768
Allegheny River:	
At downstream corporate limits	*768
Approximately 0.27 mile downstream of upstream corporate limits	*769
Maps available for inspection at the Freeport Borough Council Chambers, 414 Market Street, Freeport, Pennsylvania.	
Gilpin (Township), Armstrong County (FEMA Docket No. 7291)	
Allegheny River:	
Approximately 1,420 feet downstream of Lock and Dam No. 5	*771
Approximately 150 feet upstream of Lock and Dam No. 5	*775
Kiskiminetas River:	
At confluence with the Allegheny River	*771
Approximately 1,400 feet upstream of the confluence with the Allegheny River	*771
Maps available for inspection at the Gilpin Township Municipal Building, Route 66, Leechburg, Pennsylvania.	
South Buffalo (Township), Armstrong County (FEMA Docket No. 7291)	
Allegheny River:	
Approximately 600 feet downstream of CONRAIL	*770
Approximately 125 feet upstream of Lock and Dam No. 5	*775
Maps available for inspection at the South Buffalo Township Municipal Office, 384 Iron Bridge Road, Freeport, Pennsylvania.	
TENNESSEE	
Dyer County (Unincorporated Areas) (FEMA Docket No. 7303)	
Obion River:	
Approximately 75 feet downstream of the Tennessee Kentucky Railroad	*270
Approximately 2.81 miles upstream of State Route 78	*279
Jones Creek:	
Approximately 1,400 feet upstream of the confluence of Light Creek	*287
Approximately 1.4 miles upstream of the confluence of Light Creek	*289
Maps available for inspection at the Dyer County Courthouse, Building Inspector's Office, #1 Veteran's Square, Dyersburg, Tennessee.	
Greeneville (Town), Greene County (FEMA Docket No. 7303)	
Frank Creek:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 375 feet downstream of Tusculum Boulevard	*1,424
Approximately 750 feet upstream of Viking View Estates Road	*1,458
Richland Creek:	
Approximately 1,550 feet downstream of East McKee Street	*1,431
Approximately 2,150 feet upstream of East Church Street	*1,486
Maps available for inspection at the Greeneville Town Hall, 200 North College Street, Greeneville, Tennessee.	
Sweetwater (City), Monroe County (FEMA Docket No. 7303)	
Sweetwater Creek:	
Approximately 0.33 mile downstream of Southern Railway	*903
Approximately 200 feet downstream of State Route 68	*917
Maps available for inspection at the Sweetwater City Hall, 203 Monroe Street, Sweetwater, Tennessee.	
VERMONT	
Bellows Falls (Village), Windham County (FEMA Docket No. 7303)	
Connecticut River:	
At a point approximately 0.85 mile upstream from Bellows Falls Dam	*299
At a point approximately 500 feet upstream of Bellows Falls Dam	*298
Maps available for inspection at the Town of Rockingham, Town Clerk's Office, Village Square, Rockingham, Vermont.	
Rockingham (Town), Windham County (FEMA Docket No. 7303)	
Connecticut River:	
A point approximately 0.78 mile upstream of Bellows Falls Dam	*270
A point approximately 1.34 miles upstream of the confluence of Commissary Brook	*279
Williams River:	
At the confluence with the Connecticut River	*287
A point approximately 80 feet upstream of U.S. Route 5	*289
Maps available for inspection at the Rockingham Town Hall, Clerk's Office, Village Square, Rockingham, Vermont.	
WEST VIRGINIA	
Jackson County (Unincorporated Areas) (FEMA Docket No. 7303)	
Mill Creek:	
Just downstream of State Highway 87	*589
Just downstream of County Highway 21	*599
Maps available for inspection at the Jackson County Courthouse, Main Street, Ripley, West Virginia.	
Ripley (City), Jackson County (FEMA Docket No. 7303)	
Mill Creek:	
Approximately 450 feet downstream of U.S. Route 33	*593
At confluence of Sycamore Creek	*595
At upstream corporate limits	*599
Maps available for inspection at the Ripley Municipal Building, 113 South Church Street, Ripley, West Virginia.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 31, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 20, and 43

[CC Docket No. 99-301, FCC 00-114]

Local Competition and Broadband Reporting

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission announces the adoption of a program to collect basic information about the status of local telephone service competition and the deployment of advanced telecommunications capability, also known as broadband. The Commission will use this information to help inform it craft its regulations in a manner that encourages development in these markets. The Commission further intends that this information will inform other policy makers and consumers about these markets. By understating the state of local telephony service competition and the deployment of broadband services, the Commission will be better able to fulfill its statutory obligations.

DATES: *Effective Date:* May 12, 2000. *Compliance Date:* For the first filing respondents must submit 1999 year-end data by May 15, 2000.

FOR FURTHER INFORMATION CONTACT: Scott Bergmann or Ellen Burton, Industry Analysis Division, Common Carrier Bureau, at (202) 418-0940. For additional information concerning the information collections contained in the Report and Order (Order) contact Judy Boley at 202-418-0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (Order) released March 30, 2000 (FCC 00-114), issued in response to the Notice of Proposed Rulemaking released by the Commission on October 22, 1999 (FCC 99-301). The full text of the Order is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW, Washington, DC 20554. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (202) 857-3800, 1231 20th Street, NW, Washington, DC 20037. Additionally, the complete item is available on the Commission's website at <http://www.fcc.gov/Bureaus/Common_Carrier/Orders/2000/>.

Outreach Workshops: In an effort to inform respondents and answer questions regarding their filings, the Commission will hold two workshops in the Commission's Meeting Room at 445 12th Street, SW, Washington, DC 20554. The workshops will be held on April 17, 2000 and May 1, 2000. Details will be provided by Public Notice released by the Commission.

Electronic Access and Filing

You may obtain the latest version of the form (FCC Form 477) from the Common Carrier Bureau's website at <http://www.fcc.gov/broadband/data>. The form is best accessed using Excel 97. However, other comparable spreadsheet software programs may access a version of the form that will be located at the same website.

Summary of the Report and Order

1. In the Order summarized here, we adopt an information collection program to collect basic information about the status of local telephone service competition and the deployment of advanced telecommunications capability, also known as broadband. We conclude that we need timely and reliable information about the pace and extent of developing local competition in different geographic areas in order to

evaluate the effectiveness of actions that this Commission and the states are taking to promote local competition. We also conclude that we need timely and reliable information to assess the deployment of broadband services, as required by section 706 of the Telecommunications Act of 1996.

2. Moreover, we conclude that this information would allow us to avoid "one size fits all" regulation, and, specifically, to reduce regulation wherever we can pursuant to new sections 10 and 11 of the Act. 47 U.S.C. 160, 161. The Commission adopts a simple filing that should enable it to make better informed decisions, while placing as low a burden as possible on reporting entities.

3. Throughout the Order, we explain our reasons for the conclusions we reach. We assessed commenters' proposals for alternative means of collecting the needed information. The following text represents a brief summary of conclusions adopted in the Order.

4. *Types of Entities that Must Report:* In the Order, we discuss the types of entities that must report data describing the extent and intensity of local competition and the extent of broadband services deployment. Based on our determination that we need comprehensive data about developing competition for local telephone service, we decide that all local exchange carriers (LECs), both incumbent and competitive, should complete the applicable portions of Form 477 if they meet our defined threshold for deployment of service. We conclude that we should require local exchange carriers to complete Parts II and V of the form for each state in which they provide 10,000 or more voice-grade equivalent lines or wireless channels. Further, we require any facilities-based provider of mobile telephony (defined here as, real time, two-way switched voice service that is interconnected with the public switched network utilizing an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless handoffs of subscriber calls) to complete Part III of the form for each state in which it has 10,000 or more subscribers.

5. We next turn to a consideration of those entities that should report data on deployment of broadband services. The Order concludes that given our broad statutory mandate under section 706 of the Telecommunications Act of 1996, to evaluate the deployment of broadband services, regardless of the transmission media or technology employed, we should collect data from a wide range of broadband providers. More specifically, we require providers of what we term "one-way broadband" and "full broadband" services to complete the applicable portions of Form 477, to the extent that they exceed the broadband reporting threshold. For purposes of the data collection, "full broadband" service is defined, consistent with the *Advanced Telecommunications Report*, as having an information carrying capacity of over 200 Kilobits per second (Kbps) in each direction, simultaneously. *An Inquiry Concerning the Deployment of Advanced Telecommunications Capabilities to All Americans in a Reasonable and Timely Fashion*, 14 FCC 2d 2398, paragraphs 20 through 25 (*Advanced Telecommunications Report*). "One-way broadband" service is defined as having an information carrying capacity of over 200 Kilobits per second (Kbps) in only one direction. Actual or potential providers of broadband services may include: LECs (incumbent and competitive), cable television companies, utilities, MMDS/MDS/ "wireless cable" carriers, other fixed wireless providers, mobile wireless carriers (both terrestrial and satellite-based), government entities, and others. We believe that only by casting our net wide enough to include all such entities can we discern progress, or the lack of it, in meeting the goals stated in the *Advanced Telecommunications Report*. We thus conclude that any entity that provides at least 250 full or one-way broadband service lines (or wireless channels) or has at least 250 full or one-way broadband customers in a state should be required to complete Parts I and V of Form 477 for that state.

6. *Frequency of Reports:* We decide that we can best balance our need for timely information with our desire to minimize the reporting burden on respondents by requiring providers to report data on a semi-annual basis. Given our desire to collect data to be used in the second Advanced Telecommunications Report, we direct that all respondents should file their end-of-year 1999 data on May 15, 2000. Thereafter, entities will report end-of-year data on March 1st and data as of June 30th on September 1st.

7. *Definition of Reporting Area:* To minimize the burden the reporting requirement places on reporting entities, we conclude that information should be reported by state. To aid our understanding of developments within a given state, we also require the reporting entity to provide the Commission with a list of Zip Codes in which they have at least one subscriber.

8. *Confidentiality of Data:* We continue to believe that the value of this data collection is significantly enhanced by making as much information as possible available to the public. At the same time, we conclude that we can achieve this goal in a manner that ensures the non-disclosure of confidential provider-filed data. We discuss, below, our affirmative policies for handling this information and we believe that these policies will allay commenter concerns that legitimately protectible information would be released to the public. We do not, in this Order, make findings about whether the data elements requested in the reporting form would satisfy the Commission's articulated standard for non-disclosure of competitively sensitive information, but we do make clear that our rules for requesting non-disclosure of confidential information will be available to all filers of the FCC Form 477. Moreover, for purposes of this information collection, we take steps to simplify the procedures for requesting confidential treatment of data. Our rules for requesting non-disclosure of competitively sensitive information afford sufficient protection to providers and appropriately balance the concerns of parties submitting information with the interests of the public in obtaining access to that information. We also make clear that we will not release information that is the subject of non-disclosure requests until persons requesting confidential treatment are afforded all of the procedural protections provided by our confidentiality rules. We expect that these policies will allow us to accomplish our goal of making as much information as possible available to the public while ensuring that service providers can file data with confidence that any information found to be competitively sensitive under our rules will not be disclosed.

9. We note that several commenters express concern over the potential for competitive harm that release of the gathered data could cause and, in particular, about the ability of competitors to take the data submitted and tailor market strategies to quash nascent competition, protect areas that are being subjected to increased competition, or deploy facilities to defend strongholds. Again, we believe that our confidentiality rules afford appropriate protection of legitimately protectible information, but we take additional steps to clarify our existing rules for treatment of competitively-sensitive data because we expect that some of the respondents to this form may be less familiar with Commission practices. The Commission's policy on

confidential treatment of information submitted pursuant to a survey or study is to "allow survey and study respondents to request confidential treatment pursuant to Section 0.459 to the extent they can show by a preponderance of the evidence a case for non-disclosure consistent with the Freedom of Information Act (FOIA)." Assessment of the confidentiality of the information is made on a case-by-case basis and action on confidentiality requests is routinely deferred until a request for inspection is made.

10. We also recognize that there is considerable diversity in the way that individual service providers handle the data pertaining to their operations. Indeed, it is our understanding that some providers release considerable data about the nature of their operations, while others more closely safeguard such data, including the type of data that we request in the reporting form. We anticipate that providers will request confidential treatment for data filed where they deem it appropriate. In these cases, and in accordance with the Commission's rules, we will honor all parties' requests for confidential treatment of information that they identify as competitively sensitive until persons requesting confidential treatment are afforded all of the procedural protections provided by our confidentiality rules. Moreover, in such cases, we agree with those commenters who suggest that we can aggregate much of the data—for example, by carrier class and to the state level—so that it does not identify the individual provider in our regularly published reports.

11. We also take an additional step to reduce provider concerns about the release of information identified as competitively sensitive by making it easier for providers to request confidential treatment of their data. In particular, we place a check-box on the first page of the FCC Form 477 that allows providers to request non-disclosure of all or portions of their submitted data without filing at this point in the process the detailed confidentiality justification required by our rules. Thus, where parties seek confidential treatment, they need only check the well-marked box on the first page of the form and provide a completed and a redacted version of the form, as explained fully in the instructions to the Form 477. If the Commission receives a request for, or proposes disclosure of, the information contained in the Form 477, the provider will be notified and required to make the full showing under our rules. Given the unique nature of this data collection, these streamlined procedures for requesting non-disclosure should greatly improve the ability of smaller providers and providers that are less familiar with the Commission's rules to request confidential treatment of their data. We expect that this will lead to a greater level of compliance with this information collection and will give providers confidence that protectible data will not be published in our regular reports.

12. *Part I: Broadband Data.* Without making a prospective decision about whether these data elements would satisfy the Commission's standard for non-disclosure, we state our intention not to publish in our publicly-available reports individual provider-filed data for the broadband (Part I) portion of the form, even where providers do not seek non-disclosure of this data. At this time, we do not have sufficient evidence in the record to make a universally applicable decision about the competitive sensitivity of all of the Part I Broadband information for all providers, but we do agree to aggregate this information in a way that does not identify the individual provider data in our reports because commenters have made at least an initial showing that all or most of the data filed in these sections is typically held confidential by providers of these services. Our decision not to publish individual provider submissions from the Part I Broadband section reflects the particular and limited purposes of this data collection and our desire to maximize the level of voluntary compliance with the information collection. While this is a mandatory collection, we wish to collect as much, and as accurate, information as possible about the status of broadband deployment in a short period of time. We also, as part of this information collection, encourage service providers that are below the reporting thresholds to report data on a voluntary basis. Moreover, particularly with respect to the Part I broadband data, we conclude that we can achieve substantially the same public benefits by releasing this information in an aggregated fashion without any potential risk of competitive harm on the part of respondents. Given the unique nature of this information collection, we believe that this extra step will improve compliance, thus enhancing our understanding of the broadband market, without any material diminution in value of the information collection. Thus, we agree to publish in our regular reports data from Part I of the form only once it has been aggregated, for example by provider class, regardless of whether parties request confidential treatment on the broadband portion of the form.

13. *Parts II and III: Local Competition Data.* With respect to the data filed in Parts II and III of the form concerning wireline and wireless local telephone service, we will also report data in a manner that aggregates and does not identify the identity of providers where providers have requested non-disclosure of the data. We do not decide in advance to publish all of the data filed in Part II of the form in an aggregated fashion, however, because it is our experience that portions of this data are already made publicly available by the individual companies or from other sources. We note, for example, that the local competition market is characterized by incumbent firms that routinely make available their line count data, similar to that reported in Part II of the form. Similarly, competitive LECs in some states are required to submit line count data and this information is routinely made publicly available. We expect that such providers reporting data in Part II of the form will not request non-disclosure of data that has already been made publicly available and that the Commission will be able to publish this data in our reports. Concerning the Part III mobile telephony data, we recognize that mobile telephony providers argue that state-by-state subscriber counts are not routinely made publicly available. We do not, however, have sufficient evidence to make an across-the-board finding at this time. Accordingly, providers submitting data concerning these services may check the box on Form 477 to request confidential treatment of their data, which will afford them the protection of the Commission's confidentiality rules.

14. We emphasize that apart from publicly available information, which we anticipate reporting, we intend to publish the local competition data in our local competition reports only to the level of detail necessary to provide an understanding of how local competition is developing. We therefore agree with those commenters who suggest that we can aggregate much of the data—for example, by carrier class and to the state level—so that it does not identify the individual provider in our regularly published reports. This reporting approach, as well as providers' ability to request confidential treatment under our rules, should maximize the level of voluntary compliance with the information collection.

15. *Part V: Zip Code Data.* In the particular case of Zip Code data (*i.e.*, the lists of Zip Codes where service is offered), the Commission intends to

report information on Zip Codes served, but it will not release the identity of specific providers in a given Zip Code. Public release of Zip Code data in this manner is appropriate, we believe, because it does not reveal information about the actual subscribership levels for any particular provider, but only indicates the presence of one or more providers in the given Zip Code. Although we think it unlikely that any provider would consider this limited release to reveal competitively sensitive information, we do not limit parties' ability to seek non-disclosure of such data under the Commission's rules.

16. *Sharing data with State Commissions.* Finally, because we wish to maximize the value of this information collection for states, we conclude that the Chief of the Common Carrier Bureau may release the information collected under this program to the state commissions, subject to certain conditions. A state commission may view all data submitted on a carrier specific basis, by entities filing data for that commission's state, provided that the state has appropriate protections in place (which may include confidentiality agreements or designation of information as proprietary under state law) that would preclude disclosure of any confidential information. However, where state laws afford less protection than federal FOIA laws, the higher federal standard will prevail. We are aware that there are two states that have "open records" statutes that may prevent the state from providing confidential protection for sensitive provider information. In these situations, we will work with these state commissions to enable them to obtain access to such information in a manner that addresses the state's need for this information and also protects the confidential nature of the provider's sensitive information. We anticipate that these actions will give state commissions a valuable and unique view into the state of local competition and broadband deployment in their states. In addition, we hope that this will further our goal of reducing the overall reporting burdens placed on entities in these markets by minimizing the need for additional information collection programs at the state level.

17. We conclude that these policies, taken as a whole, most effectively balance provider concerns with our broader goals for this proceeding. As stated in the Notice, by making the information available, consumers, investors, and policy makers will be better able to make informed decisions on the development of these markets. Such information has value because a better-informed marketplace promotes a more efficient marketplace. Also, by allowing public release of as much of the information as possible, associations, scholars, and others will be able to use the information in their independent analyses of Commission policies, thereby aiding the Commission in crafting regulations that address specific market problems and eliminating those regulations that have outlived their usefulness.

18. *Electronic Filing:* We adopt the method proposed in the Notice for collection of the information through electronic filing except to modify the allowable methods of submission. Specifically, the form will be made available to reporting entities on the Common Carrier Bureau's website at <www.fcc.gov/broadband/data> and will utilize Excel 97 software, as well as other comparable spreadsheet software programs. Carriers and other entities that must comply with this requirement may submit their completed forms to a specified e-mail address or forward to the Commission diskette copies. Regardless of whether the reporting entity e-mails its submission or mails diskette copies, an officer of the reporting entity must submit a "Certification Statement" to the Commission attesting to the truthfulness of the data submitted. We conclude that this filing system will ensure, for both the reporting entities and the Commission, that the burdens of the program are minimized and that unnecessary expenditures for compliance are not incurred. Also, by allowing diskette submissions, reporting parties seeking confidential treatment can further ensure that the information submitted is protected.

19. To ensure that this information collection program does not outlive its usefulness, the reporting requirement adopted in the Order will terminate in five years, unless the Commission takes affirmative steps to preserve it.

20. *Data to be Reported:* We describe, in the Order, the specific items set out in the data collection form. A brief description of the data collection form follows, with greater detail found in the complete Order.

21. Part I of the form collects information about the number of broadband lines in service to consumers. This includes information about both "full broadband" lines, with information carrying capacity in excess of 200 Kbps in both directions, simultaneously, and asymmetric "one way broadband" lines, with information carrying capacity in excess of 200 Kbps in one direction but not both.

22. Part II of the form collects information from incumbent LECs and competitive LECs about the number of voice-grade equivalent lines and fixed wireless channels in service to provide local exchange or exchange access service. We also require respondents to provide information about the extent to which they use their own facilities in providing these lines or wireless channels, and the extent to which they use the facilities or services of other LECs in doing so.

23. Part III of the form collects information about mobile telephony subscribership.

Final Paperwork Reduction Act of 1995 Analysis

24. As required by the Paperwork Reduction Act of 1995, the *Local Competition and Broadband Deployment Notice* invited the general public and the Office of Management and Budget (OMB) to comment on the proposed information collection requirements contained in the Notice. On December 22, 1999, OMB approved the proposed information collection, as submitted to OMB. [1] In this Order, we adopt the proposed Local Competition and Broadband Reporting form, but modify our proposal to reflect comments received from OMB and other commenters. The revised Local Competition and Broadband Reporting has been approved by OMB. The OMB Control Number is 3060–0816.

Final Regulatory Flexibility Act Analysis

25. As required by the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the Notice issued in this proceeding, FCC 99–301, October 22, 1999. The Commission sought written comment in the Notice, including comments on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Public Law 104–121, 110 Stat. 847 (1996).

(1) Need for, and Objectives of, the Local Competition and Broadband Reporting Order

26. The Commission initiated this proceeding to determine whether it should require certain providers of communications services to report a limited amount of information about the

[1] *See* Letter from Donald R. Arbuckle, Office of Management and Budget, to Judy Boley, Federal Communications Commission (Dec. 22, 1999).

development of local telephone competition and the deployment of broadband services as mandated by the Telecommunications Act of 1996. In this Order, we adopt rules to collect basic information about two important aspects of communications: the status of local telephone service competition and the deployment of "advanced telecommunications capability." The 1996 Act—in particular, sections 251 and 271—tasked the Commission and the states with important roles in opening local telephone markets to competition. Moreover, the Commission needs timely and reliable information on broadband deployment given that section 706 of the 1996 Act requires the Commission to issue periodic reports on the state of broadband deployment. The information collected pursuant to this program will materially improve our ability to develop, evaluate, and revise policy in these critical areas and will provide valuable benchmarks not only for this Commission but for other policy makers and consumers. Further, the information collection program adopted in this Order is the least burdensome means available to fulfill these statutory obligations.

(2) Summary of Significant Issues Raised by Public Comment in Response to the IRFA

27. In the IRFA, we stated that we would seek to minimize the burden imposed on smaller entities by establishing thresholds for reporting that balanced the needs of the Commission to receive data on the development of local competition and deployment of broadband against the burden such reporting places on smaller entities. In response to the Notice, the Commission received comments from 37 parties and held a series of *ex parte* meetings with potential respondents to the information collection adopted in this Order. Among those parties, only the Office of Advocacy, United States Small Business Administration (SBA) and the Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), commented specifically on the IRFA. We note that many other commenters raised issues about the proposed rules and we encourage readers of this FRFA to consult the complete text of this Order, which describes in detail our analysis of commenter proposals.

28. In its comments to the IRFA, SBA expresses concern that the proposed threshold for reporting broadband data (1,000 broadband lines nationwide) may be set too low and, therefore, include a number of smaller entities that would be unduly burdened by the reporting requirement. As a result, SBA recommends that the Commission raise the reporting threshold to at least 5,000 lines nationwide or "significantly reduce the burden on the small businesses that would be replying." OPASTCO, in its comments, commends the Commission for its efforts to exempt smaller entities and urges the Commission to adopt an existing SBA definition of small companies: those with fewer than 1,500 employees. We note that other commenters, while not in direct response to the IRFA, disagree with SBA and OPASTCO and urge the Commission to adopt its proposed reporting threshold.

29. In an effort to balance the needs of the Commission with the costs our data gathering may place on smaller entities, the Commission has modified the thresholds for reporting and the frequency of filing reports, and other aspects of the requirements. We believe that these modifications satisfy SBA's request that we significantly reduce the burdens for those small entities that must comply. For example, by adopting a state level threshold (250 broadband lines in a given state), we ensure that reporting entities have a significant presence in a given state, before having to complete the form for that state. Moreover, we conclude that this threshold is set to allow the Commission to comply with Congress' charge in section 706 of the 1996 Act to determine whether advanced telecommunications capability, commonly known as "broadband," is being deployed to *all* Americans. In order to gain the comprehensive understanding—as called for in section 706—of the broadband market, particularly in rural and inner-city areas and among demographic groups that are traditionally underserved, it is necessary to gather data from entities that are most likely to serve these areas and groups, which include some smaller entities.

30. Among the other actions taken to reduce the overall burden on small entities, we decouple the broadband and local competition reporting thresholds. In the Notice, the Commission tentatively concluded that any provider meeting the threshold requirement for the broadband part of the form would be required to complete the local competition part of the form, whether or not the entity met the threshold for that part, if the entity provides services listed in that part of the form. We note that the representatives of traditionally smaller providers opposed this linkage of reporting thresholds. By eliminating this linkage, we reduce reporting burdens on these traditionally smaller providers.

31. To further reduce the potential burden this data gathering program may place on smaller entities the Commission, in this Order, has also reduced the frequency of reporting from quarterly to semi-annually. In this regard, we accept the suggestions of many commenters that reducing the frequency of reporting is a measurable way to decrease the burden placed on reporting entities. We necessarily decline SBA's invitation to adopt an annual filing basis, because we conclude that the rapidly changing nature of the local competition and broadband markets necessitate more regular data collections.

32. Supporting the proposal in the Notice, SBA further encourages the Commission to collect information on a statewide basis. In this Order, we adopt our proposal and require providers to report data on a state-by-state basis. To supplement this data, we ask providers of broadband and local exchange services to provide a list of the Zip Codes in which they serve at least one customer. We conclude that reporting scheme best balances our need to achieve geographically disaggregated information while minimizing burdens on all entities, including small entities.

33. Finally, we note SBA's suggestion that small carriers be allowed to file data on a voluntary basis. While the Commission concludes that it is necessary to adopt a mandatory reporting mechanism, we agree with SBA that smaller, exempted providers should be invited to file data on a voluntary basis. Thus, we encourage small providers to file the new FCC Form 477 even if they do not meet the reporting thresholds for mandatory reporting.

34. Overall, we believe that our approach (*e.g.*, changing thresholds to the state level, decoupling the thresholds for different parts of the form, and reducing the reporting frequency to semi-annually) will result in a program that is not overly burdensome on reporting entities, and thus balances the concerns raised by SBA and other commenters with the Commission's need to gain a better understanding of developments in these markets.

(3) Description and Estimate of the Number of Small Entities to Which Rules Will Apply

35. In the IRFA, the Commission included a description and estimate of the number of small entities to which its proposed rules would apply. No commenters addressed the issue. In this

Order, the Commission decides that local exchange carriers and providers of mobile telephony services that serve 10,000 or more voice-grade equivalent lines or wireless channels (or mobile telephony subscribers) in a given state and any entity that provides 250 or more full or one-way broadband lines or channels in a given state, must report data about those services provided in that state. Based on data available to it at present, the Commission estimates that approximately 200 of the nation's local exchange carriers and between 100–200 mobile telephony providers will be required to comply with the requirement. We do not have concrete data on which to base a precise estimate of the number of broadband providers that may be required to report. We set out, however, a detailed description of the types of entities that may be required to comply with the reporting requirement and we detail our understanding of the number of small entities within each of these categories.

36. To estimate the number of small entities that will be affected by the rules, we first consider the statutory definition of "small entity" under the RFA. The RFA generally defines "small entity" as having the same meaning as the term "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees. We first discuss the number of small telephone companies falling within these SIC categories, then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

37. The most reliable source of information regarding the total numbers of common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator* report, derived from filings made in connection with the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 4,144 interstate carriers. These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

38. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

39. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities because they are not "independently owned and operated." For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms that may be affected by the decisions and rules in the Order.

40. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities. Although it seems certain that some of these carriers are not independentiy owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules in the Order.

41. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, and Resellers.* Neither the Commission nor SBA has developed a definition of small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TRS). According to our most recent data, there are 1,560 LECs and CAPs, 171 IXCs, 24 OSPs, and 388 resellers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,410 small entity LECs, 151 IXCs, 129 CAPs, 32 OSPs, and 351 resellers that may be affected by the decisions and rules in the Order.

42. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.

According to SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned are operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules in the Order.

43. *Cellular, PCS, SMR and Other Mobile Service Providers.* In an effort to further refine our calculation of the number of radiotelephone companies that may be affected by the rules adopted herein, we consider the data that we collect annually in connection with the TRS for the subcategories Wireless Telephony (which includes Cellular, PCS, and SMR) and Other Mobile Service Providers. We will utilize the closest applicable definition under SBA rules—which, for both categories, is for telephone companies other than radiotelephone (wireless) companies, however, to the extent that the Commission has adopted definitions for small entities providing PCS and SMR services, we discuss those definitions. According to our most recent TRS data, 732 companies reported that they are engaged in the provision of Wireless Telephony services and 23 companies reported that they are engaged in the provision of Other Mobile Services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Wireless Telephony Providers and Other Mobile Service Providers, except as described below, that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 732 small entity Wireless Telephony Providers and fewer than 23 small entity Other Mobile Service Providers that may be affected by the decisions and rules in the Order.

44. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for "very small business" was added, and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining "small entity" in the context of broadband PCS auctions have been approved by SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. However, licenses for Blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we estimate that the number of small broadband PCS licenses will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by SBA and the Commissioner's auction rules.

45. *SMR Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. The definition of a "small entity" in the context of 800 MHz SMR has been approved by the SBA, and approval for the 900 MHz SMR definition has been sought. The rules may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. Consequently, we estimate, for purposes of this FRFA, that all of the extended implementation authorizations may be held by small entities, some of which may be affected by the decisions and rules in the Order.

46. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we estimate that the number of geographic area SMR licensees that may be affected by the decisions and rules in the Order includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we conclude, for purposes of this FRFA, that all of the licenses may be awarded to small entities, some of which may be affected by the decisions and rules in the Order.

47. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, if this general ratio continues to 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition, some of which may be affected by the decisions and rules in the Order.

48. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz *Third Report and Order* we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. We have defined a small business as an entity that, together with its affiliates and controlling principals, has average

gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. 908 licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of October 7, 1999, the Commission had granted 681 of the Phase II 220 MHz licenses won at a first auction and an additional 221 Phase II licenses won at a second auction.

49. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

50. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (*BETRS*). We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

51. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA definition.

52. *Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission is unable at this time to estimate the number of, if any, small businesses that could be impacted by the proposed rules. However, the Commission's 1994 Annual Report on PLMRs indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the rules in this context could potentially impact every small business in the United States. We note, however, that because the vast majority of these licensees are end-users, not providers of telephony or broadband services, they would not be directly affected by the rules adopted in this Order.

53. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this FRFA, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.*, an entity with no more than 1,500 persons. We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

54. *Offshore Radiotelephone Service.* This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small entities under the SBA's definition for radiotelephone communications.

55. *Wireless Communications Services.* This service can be used for fixed, mobile, radio location and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees that may be affected by the decisions and rules adopted in the Order includes these eight entities.

56. *Satellite Services.* The Commission has not developed a definition of small entities applicable to satellite service licensees. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts. According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $9.999 million. The Census report does not provide more precise data.

57. In addition to the estimates provided above, we consider certain additional entities that may be affected by the data collection from broadband service providers. Because section 706 requires us to monitor the deployment of broadband regardless of technology or transmission media employed, we anticipate that some broadband service providers will not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

58. *Cable services or systems.* The SBA has developed a definition of small

entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than $11 million in revenue.

59. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

60. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 66,000,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 660,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 660,000 subscribers or less totals 1,450. We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total of 66,000,000 subscribers, and we have based our fee revenue estimates on that figure.

61. *Multipoint Distribution Systems (MDS):* The Commission has defined "small entity" for the auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified as small entities.

62. MDS is also heavily encumbered with licensees of stations authorized prior to the auction. The SBA has developed a definition of small entities for pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators which did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of $11 million annually. Therefore, for purposes of this FRFA, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules, some which may be affected by the decisions and rules adopted in the Order.

63. *Electric Services (SIC 4911):* The SBA has developed a definition for small electric utility firms. The Census Bureau reports that a total of 1379 electric utilities were in operation for at least one year at the end of 1992. According to SBA, a small electric utility is an entity whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reports that 447 of the 1379 firms listed had total revenues below five million dollars.

64. *Electric and Other Services Combined (SIC 4931):* The SBA has classified this entity as a utility whose business is less than 95% electric in combination with some other type of service. The Census Bureau reports that a total of 135 such firms were in operation for at least one year at the end of 1992. The SBA's definition of a small electric and other services combined utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 45 of the 135 firms listed had total revenues below five million dollars.

65. *Combination Utilities, Not Elsewhere Classified (SIC 4939):* The SBA defines this utility as providing a combination of electric, gas, and other services which are not otherwise classified. The Census Bureau reports that a total of 79 such utilities were in operation for at least one year at the end of 1992. According to SBA's definition, a small combination utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 63 of the 79 firms listed had total revenues below five million dollars.

(4) Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

66. The very focus of this proceeding is whether the Commission should require certain providers of communications services to report a limited amount of information about the development of local telephone competition and the deployment of broadband services. The Order concludes that the Commission should undertake such a data collection and that local exchange carriers and providers of mobile telephony services that serve 10,000 or more voice-grade equivalent lines or channels statewide, and any entity that provides 250 or more full or one-way broadband lines or channels statewide, should report specifically targeted information. The Order sets out in detail the types of providers that should report, exempting smaller providers, frequency of reports, data to be reported, and method of reporting. In particular, we conclude in the Order that given the comprehensive data to be obtained from large and medium size providers, it can exempt most small providers from completing the survey without materially affecting its ability to assess the development of local telephone competition and the deployment of broadband services.

(5) Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

67. The most significant step taken to minimize the impact of these rules on small entities is the adoption of reporting thresholds. For example, the Commission makes specific provision to exempt most smaller carriers from the requirement to report local telephone competition data. The Commission concludes that carriers with fewer than 10,000 statewide voice-grade equivalent lines or channels (or mobile telephony subscribers, in the case of mobile telephony providers) should be exempted from the reporting requirement for that state. Based on this exemption, the Commission estimates that only approximately 200 of the nation's largest local exchange carriers would remain subject to the

requirement. Similarly, the Commission exempts the smallest broadband providers by adopting a broadband reporting threshold. Thus, firms that provide fewer than 250 full or one-way broadband lines or wireless channels in a given state need not report data for that state.

68. Among significant alternatives, the Commission considered whether it might rely on publicly available data or voluntary surveys, in lieu of a mandatory data collection program. The Commission concludes other publicly available information sources present less than complete pictures of actual conditions and trends in developing local service markets and in the deployment of broadband. Further, the Commission considered the need for, and size of, its exemptions for small entities. The Commission concludes that the thresholds adopted will allow it to exempt most smaller carriers from completing the form without materially affecting its ability to assess the development of local competition and the deployment of broadband services. The Commission also accepted other suggestions that will reduce burdens on entities, including decoupling reporting thresholds, adopting a less frequent reporting schedule, and allowing providers to report on a state-by-state basis.

69. *Report to Congress.* The Commission will send a copy of the Local Competition and Broadband Reporting Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Local Competition and Broadband Reporting Report and Order, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Local Competition and Broadband Reporting Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

Ordering Clause

70. Accordingly, *it is ordered* that, pursuant to sections 1–5, 10, 11, 201–205, 215, 218–220, 251–271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, 160, 161, 201–205, 215, 218–220, 251–271, 303(r), 332, 403, 502, and 503 and pursuant to section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, this order, with all attachments, is hereby adopted.

71. That the requirements and regulations established in this Order shall become effective May 12, 2000. The Commission shall place a notice in the **Federal Register** announcing the effective date of the requirements and regulations adopted herein.

72. That providers subject to the requirements and regulation established in this Order shall complete and file the Local Competition and Broadband Reporting Form (FCC Form 477) no later than May 15, 2000 and semi-annually thereafter.

73. That the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Local Competition and Broadband Reporting Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (1981).

Paperwork Reduction Act

The action contained in this Order summarized here contains a modified information collection.

OMB Approval Number: 3060–0816.

Title: "Local Competition and Broadband Reporting, CC Docket No. 99–301."

Form Number: FCC Form 477.

Type of Review: Revision of Existing Collection.

Respondents: Business or Not-for-profit institutions, including small businesses.

Burden Estimate: Average burden per respondent—

Number of Respondents: up to 255.

Estimated Time Per Response Per State: 11.1.

Number of Reports Per Year: 2.

Average States Per Respondents: 5.3.

Total Annual Burden: Up to 29,924 person-hours.

Estimated Costs per Respondent: $0.00.

Needs and Uses: The information collection will be used by the Commission to gather information on the state of the development of local competition and broadband deployment. Without such information, the Commission faces significant difficulty in assessing the development of these markets and, therefore, is less able to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

List of Subjects

47 CFR Parts 1 and 43

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

47 CFR Part 20

Communications common carriers. Federal Communications Commission.

William F. Caton,
Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Parts 1, 20 and 43 as follows:

PART 1—PRACTICES AND PROCEDURES

1. The authority citation for part 1 is revised to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 303(r), 309.

2. In part 1, subpart U is added to read as follows:

Subpart U—Implementation of Section 706 of the Telecommunications Act of 1996; Commission Collection of Advanced Telecommunications Capability Data

Sec.
1.6000 Purpose.
1.6001 Scope and content of filed reports.
1.6002 Frequency of reports.

§ 1.6000 Purpose.

The purpose of this subpart is to set out the terms by which certain commercial and government-controlled entities report data to the Commission concerning the deployment of advanced telecommunications capability, defined pursuant to 47 U.S.C. 157 as "high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology," and the deployment of services that are competitive with advanced telecommunications capability.

§ 1.6001 Scope and content of filed reports.

(a) Definitions. Terms used in this subpart have the following meanings:

(1) *Facilities-based providers.* Those entities that provide broadband services over their own facilities or over Unbundled Network Elements (UNEs), special access lines, and other leased lines and wireless channels that the entity obtains from a communications service provider and equips as broadband.

(2) *Full broadband lines or wireless channels.* Lines or wireless channels

with information carrying capability in excess of 200 Kbps in both directions simultaneously.

(3) *One-way broadband lines or wireless channels.* Lines or wireless channels with information carrying capability in excess of 200 Kbps in at least one direction, but not both.

(4) *Own facilities.* Lines and wireless channels the entity actually owns and facilities that it obtained the right to use from other entities as dark fiber or satellite transponder capacity.

(b) All commercial and government-controlled entities, including but not limited to common carriers and their affiliates (as defined in 47 U.S.C. 153 (1)), cable television companies, Multichannel Multipoint Distribution Service (MMDS/MDS) "wireless cable" carriers, other fixed wireless providers, terrestrial and satellite mobile wireless providers, utilities and others, which are facilities-based providers and are providing at least 250 full or one-way broadband lines or wireless channels in a given state, or provide full or one-way broadband service to at least 250 end-user consumers in a given state, shall file with the Commission a completed FCC Form 477, in accordance with the Commission's rules and the instructions to the FCC Form 477, for each state in which they exceed this threshold.

(c) Respondents identified in paragraph (b) of this section shall file the FCC Form 477 on diskette or via e-mail, as directed in the instructions to the FCC Form 477. Upon submission of each report, an original certification letter (as contained in the instructions to FCC Form 477) signed by the responsible official shall be mailed to the Commission.

(d) Respondents may make requests for Commission non-disclosure of provider-specific data contained in FCC Form 477 under § 0.459 of this chapter by so indicating on Form 477 at the time that the subject data are submitted. The Commission shall make all decisions regarding non-disclosure of provider-specific information, except that the Chief of the Common Carrier Bureau may release provider-specific information to a state commission, provided that the state commission has protections in place that would preclude disclosure of any confidential information.

(e) Respondents identified in paragraph (b) of this section shall file a revised version of FCC Form 477 if and when they discover a significant error in their filed FCC Form 477. For counts, a difference amounting to 5 percent of the filed number is considered significant. For percentages, a difference of 5 percentage points is considered significant.

(f) Failure to file the FCC Form 477 in accordance with the Commission's rules and the instructions to the Form 477 may lead to enforcement action pursuant to the Act and any other applicable law.

§ 1.6002 Frequency of reports.

Entities subject to the provisions of § 1.6001 shall file reports semi-annually. Reports shall be filed each year on or before March 1st (reporting data about the status of their broadband deployment as of December 31 of the prior year) and September 1st (reporting data about the status of their broadband deployment as of June 31 of the current year). Entities becoming subject to the provisions of § 1.6001 for the first time within a calendar year shall file data for the reporting period in which they become eligible and semi-annually thereafter. Entities subject to the provisions of § 1.6001 shall make an initial filing of the FCC Form 477 on May 15, 2000 (reporting data about the status of their broadband deployment as of December 31, 1999).

PART 20—COMMERCIAL MOBILE RADIO SERVICES

3. The authority citation for part 20 is revised to read as follows:

Authority: 47 U.S.C. 154, 160, 251–254, 303, and 332 unless otherwise noted.

4. In § 20.15, paragraph (b)(1) is revised to read as follows:

§ 20.15 Requirements under Title II of the Communications Act.

* * * * *

(b) * * *

(1) File with the Commission copies of contracts entered into with other carriers or comply with other reporting requirements, or with §§ 1.781 through 1.814 and 43.21 of this chapter; except that commercial radio service providers that offer broadband service, as described in § 1.6001(a) or mobile telephony are required to file reports pursuant to §§ 1.6000 and 43.11 of this chapter to the extent that they meet the thresholds as set out in §§ 1.6001(b) and 43.11(a) of this chapter. For purposes of this section *mobile, telephony* is defined as real-time, two-way switched voice service that is interconnected with the public switched network utilizing an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless handoff of subscriber calls.

* * * * *

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

5. The authority citation for part 43 continues to read as follows:

Authority: 47 U.S.C. 154; Telecommunications Act of 1996, Public Law 104–104, secs. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220 as amended.

6. In § 43.01, paragraph (b) is revised and paragraph (d) is added to read as follows:

§ 43.01 Applicability

* * * * *

(b) Except as provided in paragraphs (c) and (d) of this section, carriers becoming subject to the provisions of the several sections of this part for the first time, shall, within thirty (30) days of becoming subject, file the required data as set forth in the various sections of this part.

* * * * *

(d) Common carriers subject to the provisions of § 43.11 shall file data semi-annually. Reports shall be filed each year on or before March 1st (reporting data about their deployment of local exchange services as of December 31 of the prior year) and September 1st (reporting data about their deployment of local exchange services as of June 31 of the current year). Common carriers becoming subject to the provisions of § 43.11 for the first time within a calendar year shall file data for the reporting period in which they become eligible and semi-annually thereafter. Common carriers subject to the provisions of § 43.11 shall make an initial filing of the FCC Form 477 on May 15, 2000 (reporting data about their deployment of local exchange services as of December 31, 1999).

7. Section 43.11 is added to read as follows:

§ 43.11 Reports of local exchange competition data

(a) All common carriers and their affiliates (as defined in 47 U.S.C. 153 (1)) providing telephone exchange or exchange access service (as defined in 47 U.S.C. 153 (16) and (47)) or commercial mobile radio service (CMRS) providers offering mobile telephony (as defined in section 20.15(b)(1) of this chapter), which provide at least 10,000 voice-grade equivalent lines or wireless channels or have at least 10,000 end-user consumers in a given state, shall file with the Commission a completed FCC Form 477, in accordance with the Commission's rules and the instructions

to the FCC Form 477, for each state in which they exceed this threshold.

(b) Respondents identified in paragraph (a) of this section shall file the FCC Form 477 on diskette or via e-mail, as directed in the instructions to the FCC Form 477. Upon submission of each report, an original certification letter (as contained in the instructions to FCC Form 477) signed by the responsible official shall be mailed to the Commission.

(c) Respondents may make requests for Commission non-disclosure of provider-specific data contained in the Form 477 under § 0.459 of this chapter by so indicating on the Form 477 at the time that the subject data are submitted. The Commission shall make all decisions regarding non-disclosure of provider-specific information, except that the Chief of the Common Carrier Bureau may release provider-specific information to a state commission, provided that the state commission has protections in place that would preclude disclosure of any confidential information.

(d) Respondents identified in paragraph (b) of this section shall file a revised version of FCC Form 477 if and when they discover a significant error in their filed FCC Form 477. For counts, a difference amounting to 5 percent of the filed number is considered significant. For percentages, a difference of 5 percentage points is considered significant.

(e) Failure to file FCC Form 477 in accordance with the Commission's rules and the instructions to Form 477 may lead to enforcement action pursuant to the Act and any other applicable law.

[FR Doc. 00–9187 Filed 4–11–00; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF34

Endangered and Threatened Wildlife and Plants; Threatened Status for the Santa Ana Sucker

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), determine threatened status according to the Endangered Species Act of 1973, as amended (Act), for the Santa Ana sucker (*Catostomus santaanae*). The species is threatened by potential habitat destruction, natural and human-induced changes in streamflows, urban development and related land-use practices, intensive recreation, introduction of nonnative competitors and predators, and demographics associated with small populations. The final rule invokes the Federal protection afforded by the Act for the Santa Ana sucker within the Los Angeles, San Gabriel, and Santa Ana River drainages.

DATES: The effective date of this rule is May 12, 2000.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California 92008.

FOR FURTHER INFORMATION CONTACT: Glen W. Knowles, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (telephone 760–431–9440; facsimile 760–431–9624).

SUPPLEMENTARY INFORMATION:

Background

The Santa Ana sucker (*Catostomus santaanae*) is a recognized species and member of the sucker family (*Catostomidae*) (Robbins *et al.* 1991). The Santa Ana sucker was originally described as *Pantosteus santa-anae* by Snyder (1908). The genus *Pantosteus* was reduced to a subgenus of *Catostomus*, and the hyphen was omitted from the specific name in a subsequent revision of the nomenclature (Smith 1966). Smith and Koehn (1971) and Smith (1992) continued to recognize *Pantosteus* as a subgenus, although several authors have followed earlier usage (Miller 1959) in recognizing *Pantosteus* as a genus related to *Catostomus* (Minckley 1973; Minckley *et al.* 1986).

Moyle (1976a) described the Santa Ana sucker as being less than 16 centimeters (cm) (6.3 inches (in.)) in length. The species is silvery below and darker along the back, with irregular blotches and pigmented membranes connecting the rays of the tail (Moyle 1976a).

The Santa Ana sucker inhabits streams that are generally small and shallow, with currents ranging from swift (in canyons) to sluggish (in the bottomlands). All the streams are subject to periodic severe flooding (Moyle 1976a). Santa Ana suckers appear to be most abundant where the water is cool (less than 22° Celsius (72° Fahrenheit)), unpolluted, and clear, although they can tolerate and survive in seasonally turbid water (Moyle 1976a; Moyle and Yoshiyama 1992). Santa Ana suckers feed mostly on algae, diatoms, and detritus scraped from rocks and other hard substrates, with aquatic insects making up a very small component of their diet. Larger fish generally feed more on insects than do smaller fish (Greenfield *et al.* 1970; Moyle 1976a).

Santa Ana suckers generally reach sexual maturity in just over 1 year and typically do not live more than 3 years (Greenfield *et al.* 1970). Spawning generally occurs from early April to early July, with a peak in spawning activity occurring in late May and June (Greenfield *et al.* 1970; Moyle 1976a). The spawning period may be variable and protracted, however. Recent field surveys on the East Fork of the San Gabriel River found evidence of an extended spawning period. These surveys found small juveniles (<30 millimeters (mm) standard length (<1.2 in.)) in December (1998) and March (1999) at the San Gabriel River site (U.S. Geological Survey (USGS) data, *in litt.* 1999). This data indicates that spawning may be very protracted in this stream, and begin as early as November. The fecundity of the Santa Ana sucker appears to be exceptionally high for a small sucker species (Moyle 1976a). Total fecundity of six females, ranging in size from 78 mm (3.1 in.) to 158 mm (6.2 in.), ranged from 4,423 to 16,151 eggs (Greenfield *et al.* 1970). The combination of early sexual maturity, a protracted spawning period, and high fecundity should allow the Santa Ana sucker to quickly repopulate streams following periodic flood events that could decimate populations (Moyle 1976a).

Historically, the Santa Ana sucker appeared to be native to the rivers and larger streams of the Los Angeles Basin—the Los Angeles, San Gabriel, and Santa Ana River drainage systems in Los Angeles, Orange, Riverside, and San Bernardino Counties (Smith 1966). Although historic records are scarce, Santa Ana suckers presumably ranged from near the Pacific Ocean to the uplands of the Los Angeles and San Gabriel River systems, and to at least where Pump House #1 is now located (near the San Bernardino National Forest boundary) in the Santa Ana River (Swift *et al.* 1993; Camm Swift, Icthyologist Consultant, pers. comm. 1996). Although the Santa Ana sucker was described as common in the 1970s (Moyle 1976a), the species has experienced declines throughout most of its range (Moyle *et al.* 1995; Swift *et al.* 1993). The species is now restricted to three noncontiguous populations:

lower Big Tujunga Creek (Los Angeles River drainage); the East, West, and North Forks of the San Gabriel River (San Gabriel River drainage); and the lower and middle Santa Ana River (Santa Ana River drainage) (Moyle *et al.* 1995; Swift *et al.* 1993). A population also occurs in portions of the Santa Clara River drainage system in Ventura and Los Angeles Counties. The Santa Clara population is presumed to be an introduced population, although this presumption is based on the absence of the species from early collections, and not on any documented records of introduction (Hubbs *et al.* 1943; Miller 1968; Moyle 1976a; Bell 1978). The Santa Clara River population was not included in the proposal to list the Santa Ana sucker as threatened because of its presumed introduced status (see the proposed rule, 64 FR 3915, for further details on this population). In this document, we define the native range of the Santa Ana sucker, as outlined in the proposed rule, to include populations in the Los Angeles River, San Gabriel River, and Santa Ana River drainage systems.

Los Angeles River System

Although historically present, the species may now be extirpated from the Los Angeles River (Swift *et al.* 1993). Santa Ana suckers are still found in portions of Big Tujunga Creek (a tributary of the Los Angeles River) between Big Tujunga Dam and Hansen Dam. Surveys downstream of the Big Tujunga Dam found the species to be present but rare (fewer than 20 individuals collected at each site) just below the dam, as well as in the vicinities of Delta Flat and Wildwood. The species was found to be abundant (an estimated 200 individuals collected) near Stoneyvale (Mike Wickman, Angeles National Forest, *in litt.* 1996). Several thousand Santa Ana suckers were observed in a visual survey of Big Tujunga Creek in small sections from the confluence of Little Tujunga Creek to the Foothill Boulevard bridge in May 1999 (C. Swift, pers. com. 1999). Santa Ana suckers were also common in visual surveys of Big Tujunga Creek from Foothill Boulevard to the intersection of Oro Vista and Mt. Gleason Avenues in May 1999 (Glen Knowles, U.S. Fish and Wildlife Service, *in litt.* 1999a); however, by October 1999, this reach had dried up entirely. Santa Ana suckers were abundant in October 1999 in the approximately 1-mile-long stretch of flowing waters of Big Tujunga and Haines Canyon Creeks between the 210 Freeway and Hansen Dam, as were two other rare native fish species, arroyo chub (*Gila orcutti*) and Santa Ana speckled dace (*Rhinichthys osculus* ssp.). Santa Ana suckers could not be found in other parts of the Big Tujunga Creek in October 1999, which were dry except for a few isolated shallow pools (G. Knowles, *in litt.* 1999a). In late summer and autumn of dry years, Big Tujunga Creek becomes a dry wash for much of its length. During these times, Santa Ana suckers may be restricted to about 1 mile of stream in the Los Angeles River Basin. We estimate that the Santa Ana sucker has lost approximately 80 percent of its historic native range in the Los Angeles River Basin. The portions of Big Tujunga Creek currently occupied by the Santa Ana sucker constitute approximately 25 percent of the total remaining native range of the species. Approximately 60 percent of the current range of the Santa Ana sucker in the Los Angeles River Basin occurs on private lands. The remaining 40 percent of the range in the Los Angeles River Basin occurs on Angeles National Forest lands managed by the U.S. Forest Service (USFS).

San Gabriel River System

Santa Ana suckers were common in the San Gabriel River below Morris Dam, near Fish Canyon, until the mid-1970s (C. Swift, *in litt.* 1999a). However, no suckers were found in surveys conducted below Morris Dam in 1995 (Dr. Tom Haglund, University of California, Los Angeles, *in litt.* 1996). Santa Ana suckers were also absent from 1998 surveys in the mainstem San Gabriel River at Browns Gulch, below Morris Dam, and at Rainbow Ranch (Chambers Group 1999). Santa Ana suckers were present in 1998 Chamber Group surveys of the West Fork of the San Gabriel River (Chambers Group 1999); however, surveys conducted by California Department of Fish and Game (CDFG) in 1998 and 1999 failed to locate suckers in the West Fork (Ray Ally, CDFG, *in litt.* 1999; Robert C. Hight, CDFG, *in litt.* 1999). However, CDFG did find Santa Ana suckers in Bear Creek, a tributary of the West Fork San Gabriel River, in June 1999 (R. Ally, CDFG, *in litt.* 1999). Quarterly surveys indicated suckers were common in the East Fork of the San Gabriel Rives throughout 1999 (Mike Saiki, USGS Biological Resources Division (BRD), pers. comm. 1999). Thus, the Santa Ana sucker now appears extant only upstream of the confluence of the East, West, and North Forks of the San Gabriel River. Furthermore, the population of Santa Ana suckers in the North Fork is small, and the population in the West Fork appears to be declining. The portions of the San Gabriel River occupied by the Santa Ana sucker constitute approximately 15 percent of the total remaining native range of the species. However, data gathered during sampling indicates that the San Gabriel River may contain the most individuals of any remaining population (R. Ally, *in litt.* 1996; Mike Guisti, CDFG, *in litt.* 1996; M. Wickman, *in litt,* 1996; Juan Hernandez, CDFG, *in litt.* 1997; M. Saiki, pers. com. 1999). We estimate that the Santa Ana sucker has lost approximately 75 percent of its native range in the San Gabriel River. Approximately 15 percent of the current range of the Santa Ana sucker in the San Gabriel River Basin occurs on private lands. The remaining 85 percent of the range in the San Gabriel River Basin occurs in the Angeles National Forest. Even with the substantial decrease in the sucker's range in the San Gabriel River drainage system, Moyle and Yoshiyama (1992) considered this population of Santa Ana suckers to be the only viable population within the species' native range.

Santa Ana River System

In 1986 and 1987, several hundred Santa Ana suckers were observed in the Santa Ana River downstream of Prado Dam (C. Swift, pers. comm. 1996). By 1996, a general fish survey below Prado Dam yielded only 5 suckers from a total of 271 fishes captured (M. Guisti, CDFG, *in litt.* 1996). In April 1987, only five suckers were found during a sampling effort above the Prado Dam from the City of Norco to about 5 kilometers (km) (3.1 miles (mi)) upstream. In addition to fish being scarce above the dam, no small individuals were observed, indicating the possibility of little or no reproduction occurring in the area (Moyle and Yoshiyama 1992). In 1991, sampling indicated that, although fishery habitat in the Santa Ana River was primarily fair to poor, Santa Ana suckers were abundant between Norco and Riverside (Chadwick and Associates 1992). Additionally, evidence suggested Santa Ana suckers were using tributaries, including Tequesquite Arroyo, Sunnyslope Channel, and Anza Park Drain, for spawning and nurseries (Chadwick and Associates 1996). Seventy-six Santa Ana suckers were taken in three collections about 2.0 km (1.2 mi) below Hamner Avenue, Anaheim County, in the summer of 1997. An extensive survey of the Santa Ana River between Weir Canyon Road and Hamner Avenue, in Anaheim County, during the summer of 1998 yielded 42 Santa Ana suckers. All were juveniles less than 70 mm (2.8 in.) long (C. Swift, *in litt,* 1998). However, recently, in surveys between September

and November 1999, seven adult suckers were captured near River Road, Riverside—three in the main-stem Santa Ana River, and four in the diversion channel that diverts most of the river's flow into the Prado Wetlands (C. Swift, *in litt.* 1999). Snorkel surveys of the Santa Ana River between Mission Boulevard and Riverside Avenue in Riverside in November 1999 found several pockets of tens to hundreds of Santa Ana suckers, usually in the deepest areas of the stream (C. Swift, pers. comm. 1999). Although Chadwick and Associates (1991) collected one Santa Ana sucker in this area near Mission Boulevard in March 1991, they stated that this reach probably would not support viable populations of fishes due to elevated levels of "chlorine and unionized ammonia" in this reach and unsuitable breeding substrates. Recent surveys in September and December 1999 in the Metropolitan Water District crossing near the Van Buren Avenue bridge in Riverside captured 48 and 16 suckers, respectively, although these individuals appeared to be in poorer body condition than those in the San Gabriel River (Barbara Martin, USGS, BRD, pers. comm. 1999). Extensive surveys of the Santa Ana River at Imperial Highway in December 1998 and March, June, September, and December 1999 failed to record any Santa Ana suckers (B. Martin, pers. comm. 1999).

Chadwick and Associates (1996) noted that length-frequency analysis indicates Santa Ana suckers are naturally reproducing in the Santa Ana River system. However, they asserted that Santa Ana sucker population decreases, as evidenced by 1996 surveys, were due to high flows in the basin between 1991 and 1996 (M. Guisti, *in litt.*, 1996). T. Haglund (*in litt.* 1996) contended that a large number of suckers reported in tributaries are juveniles and may be the progeny of very few adults. The presence of juveniles in surveys at the Metropolitan Water District Crossing, in March, June, and September 1999, represent positive evidence of recruitment, despite the apparent lack of suitable spawning habitat at that site (M. Saiki, pers. comm. 1999).

Santa Ana suckers occur in the lower portions of the Santa Ana River, with current survey records from the vicinity of Weir Canyon Road in Anaheim to Riverside Avenue in Riverside, but are now apparently absent from the upper reach of the river in the San Bernardino Mountains (Moyle and Yoshiyama 1992; Swift *et al.* 1993). We estimate that the Santa Ana sucker has lost approximately 70 percent of its native range in the Santa Ana River. The portions of the Santa Ana River occupied by the Santa Ana sucker constitute approximately 60 percent of the total remaining native range of the species. Approximately 75 percent of the range of the species in the Santa Ana River Basin occurs on private lands. The balance is within State, county, city, and regional park lands, with a small portion, 3 percent, on military lands.

In summary, the Santa Ana sucker has declined throughout significant portions of its range. The species has lost approximately 75 percent of its native range. Recent population densities range from approximately 246 fish in 2.9 km (1.8 mi) on the East Fork of the San Gabriel River (J. Hernandez, *in litt.* 1997) to 16 fish in 1.6 km (1.0 mile) of the Santa Ana River in December 1999 (USGS Survey Data, *in litt.* 1999). This overall reduction in range, and the more localized reductions in numbers, are particularly surprising given the high fecundity and apparent broad habitat tolerances of the species. Urbanization, water diversions, dams, introduced competitors and/or predators, and other human-caused disturbances likely are playing a role in the decline of the species. These factors have also been implicated in the decline of other western suckers (Minckley *et al.* 1991; Scoppettone and Vinyard 1991).

The decline of the Santa Ana sucker is also part of a greater overall decline of freshwater fishes in Southern California. The Los Angeles Basin was or is home to at least seven native species of freshwater fishes that have been declining or have been extirpated since the 1930s (Swift *et al.* 1993). Four of these species, the steelhead (*Oncorhynchus mykiss*), the Pacific lamprey (*Lampetra tridentata*), the Pacific brook lamprey (*Lampetra* cf. *pacifica*), and the unarmored three-spined stickleback (*Gasterosteus aculeatus williamsoni*), have been extirpated from the Los Angeles Basin since the 1950s. Two others, the Santa Ana speckled dace (*Rhinichthys osculus*), and the arroyo chub (*Gila orcutti*), have become rare in the Los Angeles Basin (Swift *et al.* 1993).

Previous Federal Action

On September 6, 1994, we received a petition under the Act (16 U.S.C. 1531 *et seq.*) to list the Santa Ana sucker (*Catostomus santaanae*), Santa Ana speckled dace (*Rhinichthys osculus*), and Shay Creek threespine stickleback (*Gasterosteus aculeatus*) as endangered species. The petition was submitted by the Sierra Club Legal Defense Fund, Inc., on behalf of seven groups including the California-Nevada Chapter of the American Fisheries Society, The Nature School, California Sportfishing Protection Alliance, Friends of the River, Izaak Walton League of America, California Trout, and Trout Unlimited. We deferred processing this petition because of other higher priority listing actions and severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996.

On July 9, 1996, we published a 90-day petition finding (61 FR 36021) that substantial information had been presented indicating listing may be warranted for the Santa Ana sucker. On November 26, 1996, we published a notice initiating a status review for the Santa Ana sucker (61 FR 60073). On April 3, 1997, we published a 12-month finding (62 FR 15872) that listing the Santa Ana sucker was warranted, but precluded by higher listing priorities. On January 26, 1999, we proposed threatened status for the Santa Ana sucker within its native historic range of the Los Angeles, San Gabriel and Santa Ana River Systems (64 FR 3915). After the close of the comment period, we received seven requests to reopen the comment period. These requests asked us to consider new information gained from ongoing studies on the species, and to consider the use of a special rule under section 4(d) of the Act to implement a long-term conservation program for the species in the Santa Ana River. On December 16, 1999, we reopened the comment period to satisfy the public notice requirements of the Act and our regulations (50 CFR 424.16(c)(vi)), and to consider new scientific information (64 FR 70209).

The processing of this final rule conforms with our Final Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority (Priority 3) is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority (Priority 4). The processing of this final rule is a Priority 2 action.

Summary of Comments and Recommendations

In the January 26, 1999, proposed rule (64 FR 3915), we requested interested parties to submit factual reports or information that might contribute to development of a final rule. The 60-day comment period closed on March 29, 1999. We contacted appropriate Federal and State agencies, county and city governments, scientific organizations, and other interested parties. We reopened the comment period on December 16, 1999, to satisfy the public notice requirements of the Act and to consider new scientific information. The reopened comment period closed on January 3, 2000. We published public notices of the proposed rule in the *Los Angeles Times*, the *Orange County Register*, and the *Riverside Press Enterprise* on December 17, 1999, which invited general public comment. We did not receive any requests for a public hearing.

During the public comment periods, we received written comments from 45 individuals, organizations, and State and local agencies. Of the comments received, 32 were in support of listing, 3 were opposed, and 10 were neutral. Some commenters submitted updated status information on the Santa Ana sucker and new information on possible threats to the species. This information has been incorporated in the "Background" and "Summary of Factors Affecting the Species" sections. We address all other comments received during the comment periods in the following summary of issues. Comments of a similar nature are grouped into a single issue.

Issue 1: Several commenters felt that the Santa Ana sucker should be listed as an endangered species, rather than a threatened species.

Our Response: Most of these comments did not provide additional information or criteria to justify listing the species as endangered. Those commenters who did provide a basis for endangered status identified potential habitat destruction, natural and human-induced changes in streamflows, urban development and related land-use practices, intensive recreation, the introduction of nonnative competitors and predators, and demographics associated with small populations as reasons that remaining populations were threatened with extinction. We agree that multiple factors threaten the Santa Ana sucker (see "Summary of Factors Affecting the Species" section). However, we do not believe the Santa Ana sucker meets the Act's definition of endangered, which is a species "in danger of extinction throughout all or a significant portion of its range." The Act defines a threatened species as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range" (section 3(19)). Although current population estimates do not exist for any of the sucker populations, all of the currently known populations within the native range were surveyed in 1999. In each drainage, suckers were locally common in 1999, and no populations appeared to be in imminent danger of extinction. We conclude that the remaining populations that constitute the native range of Santa Ana sucker are likely to become in danger of extinction in the foreseeable future. Therefore, the Act's definition of a threatened species fits the current situation of the Santa Ana sucker best.

Issue 2: Some commenters expressed support for designating critical habitat and felt that we should designate critical habitat for the species at the time of listing. Other commenters offered specific recommendations for areas to list as critical habitat, or requested that we not designate critical habitat in specific stream reaches.

Our Response: In this rule, as in the proposed rule, we find that critical habitat is not determinable because the biological needs of the Santa Ana sucker are not sufficiently known to identify an area as critical habitat. When a "not determinable" finding is made, we must, within 2 years of the publication date of the original proposed rule, propose the designation of critical habitat unless such designation is found to be not prudent. For a more detailed evaluation of our critical habitat finding for the Santa Ana sucker, and an explanation of "not determinable" and "not prudent" findings, please see the "Critical Habitat" section.

Issue 3: Some commenters requested that we list the Santa Clara population as threatened or endangered. Another commenter asked if the Santa Clara River population would require any increased protection because of its possible role in the recovery of the species.

Our Response: In the proposed rule, we identified only those Santa Ana sucker populations within the native range of the species for listing as threatened. The native range of the Santa Ana sucker is considered to be the rivers and streams of the Los Angeles, San Gabriel, and Santa Ana River Basins. The Santa Clara population is presumed to be an introduced population, although this presumption is based on its absence from early collections, and not on a documented record of introduction (Hubbs *et al.* 1943; Miller 1968; Moyle 1976a; Bell 1978). Therefore, the Santa Clara River population was not included in the proposal to list the species.

We believe that the Santa Ana sucker has lost about 75 percent of its historic native range. Considering the total remaining range of the species as all those areas currently occupied by the Santa Ana sucker, including both native and introduced populations, the portions of the Santa Clara River occupied by the species constitute approximately 50 percent of the total remaining range of the species. In light of the current status of the Santa Ana sucker, and the portion of the remaining range that occurs in the Santa Clara River system, further evaluation of the Santa Clara population is needed to determine its role in the recovery of the species. If the Santa Clara River population is determined to be crucial to the recovery of the species, we may need to reevaluate the status of this population under the Act.

Issue 4: Several commenters expressed the opinion that recreational suction dredging actually benefits the Santa Ana sucker, and that such suction dredging should be allowed to continue in streams occupied by the species.

Our Response: Suction dredging is the use of a suction system to remove and return material at the bottom of a stream, river, or lake for the extraction of minerals. Suction dredging in California is regulated by the CDFG under section 228 of the California Code of Regulations and by the U.S. Army Corps of Engineers (USACE) under section 404 of the Clean Water Act. The USFS may also regulate this activity by closing streams to dredging on Forest Service lands. The USACE does not require a section 404 permit for holders of a CDFG 5653 Standard Dredge Permit, but does require a 404 permit for all other types of dredging. Suction dredge operators are required to obtain a permit from CDFG, which is valid for a calender year (J. Reese, USACE, *in litt.* 1995; CDFG, *in litt.* 1999). In 1999, all counties where the Santa Ana sucker naturally occur were open to suction dredging (Los Angeles, Orange, and Riverside Counties); however, the East Fork of the San Gabriel River and portions of the West Fork of the San Gabriel River are covered by special regulation. The East Fork is the only stream containing Santa Ana suckers that is commonly subject to suction dredging. CDFG issues special dredge permits for this stream with conditions to exclude dredging from April 1 to June 30. The closed period is to allow

resident fish and amphibians to spawn without interference from dredging. CDFG issued approximately 200 special dredging permits in 1995 for the East Fork, the first year the stream had been dredged legally in 15 years. This number has decreased steadily to approximately 40 special dredging permits issued in 1999 (Dwayne Maxwell, CDFG, pers. comm. 1999).

Few studies exist on suction dredging and its effects on aquatic ecosystems. Of the studies conducted, most indicate that the effects of a single suction dredge on overall habitat and on benthic (bottom of the stream) aquatic insect communities are highly localized and short term, but vary with stream gradient, flow regime, and sediment load characteristics of the stream (Griffith and Andrews 1981; Harvey *et al.* 1982; Thomas 1985; Harvey 1986; Hall 1988; Somer and Hassler 1992). In general, suction dredging removes all substrates smaller than the diameter of the intake nozzle and deposits them as large, unstable piles just downstream from the dredge. Harvey *et al.* (1982) found that on the American River, Yuba River, and Butte Creek, California, settleable solids and sedimentation rate both increased within several meters of the suction dredge, but rapidly returned to ambient levels downstream. Turbidity, however, was more variable. Streams with higher clay content substrates experienced greater long-lasting changes in turbidity. As with the work by Harvey *et al.* (1982), Thomas (1985) found during a study on Gold Creek in Missoula County, Montana, that suction dredging had only localized, short-term effects on insects living in the soil. Just after dredging, numbers of soil-living insects were significantly reduced in the dredged area. However, within 10 meters (32.5 feet) downstream of the dredged area, insect numbers and turbidity were normal. Within a month, aquatic insect numbers had returned to normal in the dredged section of the stream (Thomas 1985). In addition, Somer and Hassler (1992) found that, while the species composition of benthic insects was altered within sections of streams adjacent to suction dredging, overall abundance remained the same.

Thomas (1985) observed cutthroat trout opportunistically feeding on invertebrates dislodged by a suction dredge. In some circumstances, habitat may be temporarily created by suction dredging. Harvey (1986) observed that fish occupying a riffle during late summer in Butte Creek, California, moved into a newly created dredge excavation, presumably seeking deeper water. Harvey found that adult fishes in general were not sensitive to dredging; however, riffle sculpin (*Cottus gulosus*), a benthic species, was displaced from suction-dredged areas, probably due to disturbance of its microhabitat. Harvey also suspected that the microhabitats of speckled dace (*Rhinichthys osculus*) would also be deleteriously altered by suction dredging.

Although the effects of recreational suction dredging on adult fishes may range from beneficial to deleterious, such dredging appears to have strong negative impacts to early life stages of fishes. Griffith and Andrews (1981) found a mortality rates of up to 100 percent for cutthroat trout (*Oncorhynchus clarki*) eggs and fry, and rainbow trout (*O. mykiss*) un-eyed eggs and sac fry that pass through a suction dredge. Harvey and Lisle (1998) noted that passing through a suction dredge would likely kill eggs, larvae, and fry of other types of fishes as well, including suckers (Catostomidae). Harvey *et al.* (1995) concluded that small larvae of fish such as suckers are easily damaged by physical disturbance caused by the dredge, but adults and juveniles are unlikely to be directly affected by suction dredges since they can either avoid or survive the passage through a dredge. In a review of the current literature on suction dredging, Harvey and Lisle (1998) concluded that while effects from dredging may be minor and local in some situations, fisheries managers would be prudent to consider dredging to be a harmful practice in streams that support threatened or endangered species.

No studies exist that specifically address the effects of suction dredging on Santa Ana suckers. In the proposed rule, we concluded that suction dredging may impact larvae and eggs of Santa Ana suckers, particularly if dredging is concentrated in an area containing spawning suckers. Santa Ana suckers and speckled dace, another species in the East Fork of the San Gabriel River, appear to prefer larger unconsolidated cobble substrates. These types of substrates may actually be created by suction dredging (Harvey and Lisle 1998). Also, suction dredging may provide local increases in food resources for fish (Thomas 1985). However, as stated above, suction dredging could result in mortality of eggs or larvae during spawning periods, and so should be excluded from Santa Ana sucker habitats during spawning. We will continue to evaluate the overall effects of suction dredging on Santa Ana suckers and provide specific recommendations to CDFG and the USFS based on those results.

Issue 5: We received comments that the Service should consider the application of a special rule under section 4(d) of the Act for the Santa Ana sucker in the Santa Ana River. The special rule would exempt certain activities from the take prohibitions of the Act, so long as a Service-approved Santa Ana sucker conservation plan is funded and implemented. The conservation plan would provide for the conservation of the species within the Santa Ana River watershed.

Our Response: Under section 4(d) of the Act, we have the authority to issue regulations as deemed necessary and advisable to provide for the conservation of a species listed as threatened. We are interested in pursuing collaborative, proactive efforts to conserve the Santa Ana sucker. A special rule under section 4(d) could provide an incentive for State, county, and local jurisdictions, as well as private land owners, to protect and conserve the Santa Ana sucker. This special rule could potentially provide for substantial conservation of the Santa Ana sucker. The comments we received from the County of Orange, Orange County Water District, and Santa Ana River Watershed Group provided background information to consider the possibilities of a special rule under section 4(d). If our review of this information indicates that the application of a special rule under 4(d) to facilitate the conservation of the Santa Ana sucker warrants further evaluation, we will publish in the **Federal Register** a notice of intent to consider such a rule.

Issue 6: Commenters expressed concerns about the effects of listing the Santa Ana sucker on the continued use of the San Gabriel Canyon Off Highway Vehicle Area (SGCOHVA), located at the confluence of the East and West Forks of the San Gabriel River in the Angeles National Forest.

Our Response: Although surveys in 1999 failed to record the Santa Ana sucker in the West Fork of the San Gabriel River (R. Ally, CDGF, *in litt.* 1999), the species was found within 1.6 km (1.0 mile) of the SGCOHVA during 1999 surveys of the East Fork (G. Knowles, *in litt.* 1999b). Therefore, we conclude that Santa Ana suckers can be expected to occur in the SGCOHVA.

The commenters stated that the use of the SGCOHVA would have minimal impact to the species because off-road vehicles are not used in streams but cross streams only to access other areas of the SGCOHVA. However, the operation of off-road vehicles in the SGCOHVA could adversely affect Santa Ana sucker habitat due to increased

sedimentation to the stream from erosion, or alteration of channel morphology from the physical disturbance of crossing the stream. In addition, one recent study found that certain types of stream crossings can act as barriers to fish movement (Warren and Pardew 1998), although temporary ford crossings, such as those currently in the SGCOHVA, were not a significant barrier to fish dispersal. Since the overall impact of the SGCOHVA to Santa Ana suckers is not currently known, further evaluation is required. Under section 7 of the Act, Federal agencies are required to insure, through consultation with us, that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species. The USFS would need to consult with us on the impacts that off-road vehicles in the SGCOHVA, or other ongoing and future activities on national forest lands, would have on Santa Ana suckers.

Issue 7: Several commenters were concerned that future efforts to repatriate the Santa Ana sucker into streams of the upper Santa Ana River Drainage would adversely impact the operation of hydroelectric facilities in the area.

Our Response: No decision has been made to reestablish Santa Ana suckers into areas formerly occupied by the species. However, considering the large amount of habitat loss (the Santa Ana sucker is believed to be extirpated from about 75 percent of its former range), reintroduction of Santa Ana suckers into formerly occupied habitats may be an important component of a recovery plan for the species. A decision to reintroduce the Santa Ana suckers to formerly occupied areas would be part of the recovery efforts for the species and would include analysis under and compliance with the Act, National Environmental Policy Act (NEPA), and other applicable Federal laws and regulations. Such analysis would include an evaluation of the impacts reintroduction would have on hydroelectric facilities and ways to minimize potential conflicts.

Issue 8: Commenters were concerned that listing the Santa Ana sucker would impair the ability of flood control districts to protect upland property from flooding. A commenter stated that the Santa Ana sucker has managed to adapt to the long history of flood control and maintenance activities in the Santa Ana River, and therefore, these activities should be allowed to continue. According to the commenters, flood control districts are willing to work with us to develop plans that would promote the recovery of the Santa Ana sucker to the "maximum extent possible."

Our Response: The issue of flood control in Santa Ana sucker habitat is of critical importance. We disagree that the species has managed to adapt to flood control activity in the Santa Ana River. Flood control activity, such as bank stabilization, channelization, vegetation removal, drop structures, and the construction of dams, dikes, and diversions, has been implicated as a key factor responsible for the decline of not only the Santa Ana sucker but six other species of freshwater fishes native to the Los Angeles Basin (Swift *et al.* 1993). An example of the adverse impacts of flood control activity on this species is the Santa Ana River at Imperial Highway (State Highway 90) near Anaheim. Santa Ana suckers were common at this site in the late 1980s and early 1990s. During the last 15 years, the USACE has undertaken various flood control activities at the site. The river has been channelized, riparian vegetation removed, and banks stabilized with rip rap and concrete. Santa Ana suckers have not been recorded in this reach since 1996. Although the exact reasons for the apparent disappearance of Santa Ana suckers from this area may never be known, the drastic changes to its habitat by flood control activities are plausibly a key factor (Chadwick and Associates 1996; Robert Fisher, pers. comm. 1999; M. Saiki, pers. comm. 1999).

We commend the willingness of the flood control districts to work with us to develop a plan to recover the Santa Ana sucker. The Santa Ana River, within the jurisdiction of various flood control districts, contains some of the best remaining occupied habitat for Santa Ana suckers within this drainage, and the protection and enhancement of this habitat likely will be crucial to the recovery of the species. Certain flood control activities are regulated by the USACE under section 404 of the Clean Water Act. Under section 7 of the Act, Federal agencies are required to insure, through consultation with us, that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any listed species. The impacts of ongoing and future flood control activities to Santa Ana sucker would be addressed during the section 7 consultation process. In addition, we are considering proposing special regulations under the authority of section 4(d) of the Act that would promote the conservation of the Santa Ana sucker by exempting certain activities from the take prohibitions of the Act in association with implementing locally prepared, Service-approved programs that would contribute to the overall conservation of the species (see "Issue 5").

Issue 9: Commenters expressed the concern that the listing of the Santa Ana sucker is premature because sound scientific evidence does not exist demonstrating that the species populations are decreasing, because surveys have been inadequate to document declining populations, and because apparent declines represent natural variation in population size resulting from climate cycles and not from human-induced changes to ecosystems.

Our Response: We estimate that the Santa Ana sucker has been eliminated from about 75 percent of its former native range. This loss has been caused by habitat destruction, natural and human-induced changes in streamflows, urban development and related land-use practices, and the introduction of nonnative competitors and predators (Moyle *et al.* 1995; Swift *et al.* 1993). The utilization of the rivers of the Los Angeles Basin for irrigation began as early as 1821, and was extensive by the 1880s (Miller 1961). The demands of an increasing human population in the Los Angeles area resulted in an extreme level of utilization of the Los Angeles Basin Rivers that was apparent as early as 1930, when McGlashan (1930) wrote of the Santa Ana River, "Probably no other stream of its size in the United States is made to serve greater or more varied uses." By the 1950s, urbanization of the greater Los Angeles metropolitan area had resulted in severe declines of the native fish fauna of the Los Angeles Basin, such that four fish species had been extirpated from the basin (Swift *et al.* 1993). This urbanization resulted in conversion of Santa Ana sucker habitat to the concrete-lined storm drains that now constitute the lowermost reaches of the Los Angeles, San Gabriel, and Santa Ana Rivers (Mount 1995) (*see* "Summary of Factors Affecting the Species" section). Moyle and Yoshiyama (1992) stated, "[e]ven though Santa Ana suckers seem to be quite generalized in their habitat requirements, they are intolerant of polluted or highly modified streams." The impacts associated with urbanization are likely the primary cause of the extirpation of Santa Ana suckers from lower reaches of the Los Angeles, San Gabriel, and Santa Ana Rivers. We, therefore, disagree with the contention that sound scientific evidence does not exist demonstrating that the species is decreasing. The decline of the Santa Ana sucker and the destruction of its habitat are well documented (Miller 1961; Moyle 1976a;

Moyle and Yoshiyama 1992; Swift *et al.* 1993; Moyle *et al.* 1995).

Issue 10: Commenters expressed the belief that the newly completed Seven Oaks Dam, upstream from the present range of Santa Ana sucker in the Santa Ana River, would not act as a barrier to upstream fish movement. The only flows connecting the upper and lower Santa Ana River Basins in the last 40 years have been extreme flood flows, which would cause Santa Ana suckers to be lost downstream. In fact, commenters felt that Seven Oaks Dam would be beneficial for the species by reducing the amount of fine particles and sand deposited downstream in flood flows, sediments that threaten Santa Ana sucker habitat in the Santa Ana River.

Our Response: We agree that the surface flows of the Santa Ana River between Riverside and Seven Oaks Dam have long been diverted to provide water for the communities in southwestern San Bernardino County and western Riverside County. We also agree that this dewatered stretch, and not the dam, is the current primary barrier to the movement of Santa Ana suckers upstream in the Santa Ana River. However, records from the 1940s indicate that Santa Ana suckers were once a common resident in the now dewatered stretch of the Santa Ana River near San Bernardino. The restoration of a more perennial flow to these areas may make these areas suitable for Santa Ana suckers. Ideally, connectivity between the upper and lower portions of the drainage would allow for gene flow throughout the population. However, even if water was returned to dry reaches of the Santa Ana River, Seven Oaks Dam would prevent movement of Santa Ana suckers between formerly occupied upstream habitats and the lower reaches they occupy now. Thus, Seven Oaks Dam represents a more permanent barrier to the movement of fishes than dewatered sections of the stream.

We agree that sediment load characteristics of the Santa Ana River have been modified downstream from Seven Oaks Dam. However, the ultimate effects on sediment characteristics of the Santa Ana River downstream of the newly completed Seven Oaks Dam are, at best, difficult to predict. In general, streams below newly closed dams are changed through narrowing and deepening of their channels and coarsening of their beds. This generally results in an armored condition of the river bed just below the dam, such that the bed is lined with relatively large particles that were mobile during high flood flows before the dam was closed but are now too heavy to be moved by the new regime (Graf 1988; Mount 1995). Also, most dams have a high trap efficiency, meaning that they trap most sediment. Only the finer sediments get through (Mount 1995). So, although we cannot know for certain what effect the newly completed Seven Oaks Dam will have on the Santa Ana River downstream, we can generally predict that it will result in a decrease of coarser materials and an increase in finer substrates delivered to downstream reaches. Seven Oaks Dam will further prevent the Santa Ana River from functioning as a natural river, a scenario that has often had numerous negative impacts on the aquatic environment (Hunt 1988; Harden 1996; McCully 1996), as well as on the resident fish populations [Miller 1961; Moyle 1976a; Minckley and Deacon 1991; Mount 1995).

Peer Review

In accordance with the interagency peer review policy published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population status, and supportive biological and ecological information for the taxon under consideration for listing. The purpose of such review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists. We requested four individuals, who possess expertise in Santa Ana sucker biology and Catostomid ecology, and whose affiliations include academia, a Federal agency, and a private company, to review the proposed rule by the close of the comment period. Two individuals responded to our request, and we have addressed their comments in the previous section of the rule, and in updating the "Background" and "Summary of Factors Affecting the Species" sections.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) issued to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more factors described in section 4(a)(1) of the Act. These factors and their application to the Santa Ana sucker (*Catostomus santaanae*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Moyle and Yoshiyama (1992) concluded that the native range of the Santa Ana sucker is largely coincident with the Los Angeles metropolitan area. Intensive urban development of the area has resulted in water diversions, extreme alteration of stream channels, changes in the watershed that result in erosion and debris torrents, pollution, and the establishment of introduced nonnative fishes. Moyle and Yoshiyama (1992) stated, "[e]ven though Santa Ana suckers seem to be quite generalized in their habitat requirements, they are intolerant of polluted or highly modified streams." The impacts associated with urbanization are likely the primary cause of the extirpation of this species from lowland reaches of the Los Angeles, San Gabriel, and Santa Ana Rivers.

As the Los Angeles urban area expanded, the Los Angeles Basin rivers (the Los Angeles, Santa Ana, and San Gabriel Rivers) were highly modified, channelized, or moved in an effort to either capture water runoff or protect property. As Moyle (1976a) stated, "[t]he lower Los Angeles River is now little more than a concrete storm drain." The same is true for the Santa Ana and San Gabriel Rivers. These channelized rivers and canals with uniform and altered substrates do not appear to be suitable for sustaining Santa Ana sucker populations (Swift *et al.* 1993; Chadwick and Associates 1996), and the species appears to persist only in reaches that remain relatively unchannelized. Past and continuing projects have resulted (or will result) in channelization of the Santa Ana River throughout most of the range of the Santa Ana sucker in Orange County. Urban development also threatens the Santa Ana sucker in the Los Angeles and Santa Ana River Basins. This urban development has also resulted in changes in water quality and quantity and the hydrologic regime of these rivers. The Santa Ana sucker is one of seven native freshwater fish species of the Los Angeles Basin that have declined drastically in the last 70 years. Four of these species, the steelhead, Pacific lamprey, Pacific brook lamprey, and the unarmored threespine stickleback have been extirpated from the Los Angeles Basin since the 1950s, and two others are very rare (Santa Ana speckled dace and arroyo chub), presumably due to the same factors that have caused the decline of the Santa Ana sucker (Swift *et al.* 1993) (For an example of the apparent effects of

channelization on Santa Ana suckers, see "Issue 8" in the "Summary of Comments and Recommendations" section).

All three river systems have dams that isolate and fragment fish populations. These dams have likely resulted in some populations being excluded from suitable spawning and rearing tributaries. Reservoirs created by the dams also provide areas where introduced predators and competitors can live and reproduce (Moyle and Light 1996) (see factor C of this section). The newly completed Seven Oaks Dam, upstream from the present range of Santa Ana sucker in the Santa Ana River, forms a barrier for the upstream movement of fish and further isolates Santa Ana sucker populations from their native range in the headwaters of the system.

The population of Santa Ana suckers in the West Fork of the San Gabriel River is threatened by accidental high flows from Cogswell Reservoir, which have devastated this section of stream several times in the past (Moyle and Yoshiyama 1992; Haglund and Baskins 1992; T. Haglund, *in litt.* 1996). T. Haglund (*in litt.* 1996) stated that, "[t]he West Fork population was wiped out by a sluicing event (removal of sediment by releasing a sudden flow of water) from Cogswell Dam in 1981 (anecdotal data) but recolonized from tributaries that acted as refugia. However, data (from CDFG, no date) suggest that the suckers have never returned to their former abundance." Santa Ana suckers have biological adaptations that allow the fish to quickly repopulate streams following periodic flood events (Moyle *et al.* 1995). However, successive high flows could eliminate the sucker population in the West Fork of the San Gabriel River by rapidly depleting the individuals soon after they migrate into the mainstem from tributaries. Proposals for additional sluicing or other sediment removal activities from the Cogswell reservoir on the San Gabriel River system are being considered (R. C. Hight, *in litt.* 1999). The potential effects of the proposed sediment management project may also degrade the habitat of the Santa Ana sucker by depositing large amounts of silt on the streambed, causing a rapid increase in suspended sediments in the water column.

The petitioners contended that suction dredge mining has increased in the Cattle Canyon tributary to the East Fork of the San Gabriel River, thereby threatening the Santa Ana sucker. A commenter indicated that no suction dredging has occurred in Cattle Canyon and suggested that the petitioners took Moyle and Yoshiyama (1992) out of context (Gerald Hobbs, Public Lands Action Committee, *in litt.* 1996, 1999). The CDFG (Patricia Wolf, CDFG, *in litt.* 1996) indicated they are not aware of suction dredging in the Cattle Canyon tributary to the East Fork of the San Gabriel River. However, they had issued nearly 200 Special Dredge Permits for the East Fork of the San Gabriel River in 1995, the first time the East Fork had been dredged in 15 years. This number has dropped to approximately 40 Special Dredge Permits issued in 1999 for the East Fork San Gabriel River (D. Maxwell, CDFG, pers. comm. 1999). Even though surveys from 1996 through 1999 indicate the East Fork of the San Gabriel River continues to maintain a healthy Santa Ana sucker population (R. Ally, *in litt.* 1996; J. Hernandez, *in litt.* 1997;, M. Saiki, pers. comm. 1999), suction dredging may impact larvae and eggs of Santa Ana suckers, particularly if dredging is concentrated in an area containing spawning suckers. Harvey and Lisle (1998) recommended that, given the uncertainty concerning the effects of suction dredging, fisheries managers would be wise to assume that suction dredging is a harmful practice in streams that support threatened or endangered species. (See "Issue 4" in the "Summary of Comments and Recommendations" section.)

Recreational activities on forest lands may also pose some threat to Santa Ana sucker habitat quality. Annually, thousands of people from the Los Angeles metropolitan area and adjacent urban communities use wilderness and nonwilderness areas within the Big Tujunga Creek and San Gabriel Forks areas of the Angeles National Forest for recreation. The impact of large numbers of people using these areas include destruction of streambank vegetation, streambank erosion, and the disposal of untreated human waste and other refuse into the creeks, all of which degrade water quality (D. Maxwell, CDFG, pers. comm. 1999). Given the projected growth of the Los Angeles metropolitan area, this threat should increase.

Although the Santa Ana sucker evolved under conditions that presumably included droughts, water diversions and management practices threaten the continued existence of the species. For example, stretches of the upper Santa Ana River have been permanently dewatered, eliminating Santa Ana sucker populations and migration through these reaches to other areas (Swift *et al.* 1993). As previously discussed, channelization of the rivers of the Los Angeles Basin, water quality degradation, and dam construction have all combined to degrade and eliminate historic Santa Ana sucker habitat. Future human population and urban growth of the basin will further stress the natural resources of the basin and likely exacerbate these conditions by further destruction and degradation of Santa Ana sucker habitat.

Degradation of water quality in the Santa Ana and Los Angeles Rivers may threaten the Santa Ana sucker (Moyle and Yoshiyama 1992). Suckers are common in some areas upstream from Prado Dam where several water treatment facilities discharge into the Santa Ana River (Chadwick and Associates 1992). Chadwick and Associates (1992) attributed high sucker numbers to adequate water supplies discharged by the treatment facilities and the presence of tributaries that offer spawning areas and refugia for suckers. However, they did note that the Santa Ana River between Mission Boulevard and Interstate 10 probably would not support viable populations of fishes, due, in part, to "elevated levels of chlorine and unionized ammonia." Overall, Santa Ana sucker numbers are much reduced in the Santa Ana River, and the Santa Ana River population appears to be less healthy than populations in other rivers occupied by the species (Moyle and Yoshiyama 1992; M. Saiki, pers. comm. 1999; P. Wolf, *in litt.* 1996).

The small mile-long stretch of Big Tujunga and Haines Canyon Creeks that appears to provide a critical refugia for the Santa Ana sucker, as well as the arroyo chub and Santa Ana speckled dace, is threatened by the potential water quality impacts of a proposed golf course development to be built just upstream of Interstate 210 (Bill Eick, *in litt.* 1999). Cohen *et al.* (1999) reviewed studies of 36 golf courses around the United States in an effort to evaluate the impacts to water quality by golf courses. Although no toxicologically significant impacts were observed by the authors, maximum allowable concentrations of pesticides and related chemicals for aquatic organisms occasionally were exceeded. Moreover, maximum contaminant levels/health advisory levels were frequently exceeded for various pesticides and ground water nitrate-nitrogen. Although the water quality tolerances of Santa Ana suckers are unknown, in general, point and non-point source pollution (*e.g.*, urban runoff, sedimentation) have significantly degraded the water quality in most of the native range of the Santa Ana sucker.

In an effort to identify what environmental variables affect the Santa Ana sucker, the Biological Resources Division of the USGS, in conjunction with the Orange County Water District,

County of Orange, Los Angeles County Department of Public Works, and the Service, is nearing completion of a study of the factors affecting Santa Ana sucker abundance. Initial results from this study indicate that tissue concentrations of inorganic and organic contaminants from Santa Ana suckers from the San Gabriel and Santa Ana Rivers were not unusually high. However, measurements of electrical conductance and turbidity did show significant negative correlations with Santa Ana sucker abundance, indicating that Santa Ana suckers are less tolerant where conditions are more turbid and contain more salts (M. Saiki, pers. comm. 1999). Based on available information, we conclude that increased turbidity and associated deposition of fine particles and sand likely threaten the Santa Ana sucker population in the Santa Ana River by decreasing the availability of cobble and other hard substrates and altering the water quality preferred by the species (Moyle and Yoshiyama 1992).

B. Overutilization for Commercial, Sporting, Scientific, or Educational Purposes

We are not aware of any commercial or recreational demand for the Santa Ana sucker. Although the CDFG reported that Santa Ana suckers had been illegally caught with gill and throw nets in the Santa Ana River below Prado Dam (Lt. M. Maytorena, CDFG, pers. comm. 1997), the relative impact of illegal harvesting of the species is unknown.

C. Disease or Predation

Moyle and Yoshiyama (1992) concluded that introduced brown trout (*Salmo trutta*) may have caused the extirpation of the Santa Ana sucker from the upper Santa Ana River in the San Bernardino Mountains. The petitioners noted that centrarchid (sunfishes) and bullheads prey on suckers. In the Los Angeles River, such introduced predators aggregate in pools during droughts and are presumably feeding on native fishes, including Santa Ana suckers (Sierra Club Legal Defense Fund, *in litt.* 1994). Similar conditions exist in the Santa Ana River. Predation by introduced fishes in combination with habitat destruction has been implicated in the decline of other species of suckers in the Southwest (Minckley *et al.* 1991; Scoppettone and Vinyard 1991) and on native fishes in general in California (Moyle 1976b).

Initial results from the USGS study mentioned above indicate that the presence of nonnative fish species was more strongly correlated with the absence of Santa Ana suckers than any water quality variable. Strongly significant negative associations were found with common carp (*Cyprinus carpio*), largemouth bass (*Micropterus salmoides*), bluegill (*Lepomis macrochirus*), and fathead minnow (*Pimephales promelas*), indicating nonnative fishes may exclude Santa Ana suckers by competition, or eliminate suckers through predation (M. Saiki, pers. comm. 1999). Nonnative introduced fishes have long been recognized as having far-reaching negative impacts to native fishes in North America (Moyle *et al.* 1986). Accordingly, introduced predators and competitors likely threaten the continued existence of Santa Ana suckers throughout most of the range of the species.

D. The Inadequacy of Existing Regulatory Mechanisms

Despite existing regulatory mechanisms and conservation activities accomplished to date by private, State, and Federal entities, the Santa Ana sucker has continued to decline throughout a significant portion of its range. Existing regulatory mechanisms that might provide some protection for the Santa Ana sucker if it was not listed include the California Endangered Species Act, California Environmental Quality Act (CEQA), NEPA, Clean Water Act, Federal Endangered Species Act (where the Santa Ana sucker occurs in areas where other federally listed species are located), and land management or conservation measures by Federal, State, or local agencies or by private groups and organizations.

The State of California considers the Santa Ana sucker a "species of special concern." However, the Santa Ana sucker is not listed as endangered or threatened by the State, and "species of special concern" are afforded no protection under the California Endangered Species Act.

CEQA requires full public disclosure of the potential environmental impact of proposed projects. This law also obligates disclosure of environmental resources within proposed project areas and may enhance opportunities for conservation efforts. However, CEQA does not guarantee that such conservation efforts will be implemented. The public agency with primary authority or jurisdiction over the project is designated as the lead agency under CEQA, and is responsible for conducting a review of the project and consulting with other agencies concerned with resources affected by the project. Section 15065 of the CEQA guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Although not currently listed under the California Endangered Species Act, the Santa Ana sucker would likely qualify as a rare species under section 15380 of the CEQA guidelines and thus would be given the same consideration under CEQA as those species that are officially listed with the State. Once significant impacts are identified, the lead agency may either require mitigation for effects through changes in the project or decide that overriding considerations justify approval of a project with significant impacts. In the latter case, projects may be approved that cause significant environmental damage, such as resulting in the loss of habitat supporting State-listed species. Protection of listed species through CEQA is, therefore, not assured.

NEPA requires an intensive environmental review of projects that may adversely affect a federally listed species, but project proponents are not required to avoid impacts to nonlisted species. The primary purpose of NEPA is to require Federal agencies to fully disclose impacts that would result from their proposed actions, and to make findings regarding the significance of those impacts. It does not require that resources be protected.

Lead agencies responsible under CEQA and/or NEPA have made determinations that have adversely affected, or would adversely affect, the Santa Ana sucker and its habitat. Examples of projects that have been completed or are currently undergoing the review process under CEQA and/or NEPA that would impact this species include the Santa Ana River Mainstem Project, containing multiple projects including Seven Oaks Dam and the raising of Prado Dam, and the continued channelization of the Santa Ana River in Orange County. The reviews for these projects have not addressed the effects of the proposed actions on the Santa Ana sucker, despite its status as a species proposed for listing. Similarly, on the San Gabriel River, proposed silt removal from Cogswell Dam may adversely affect the sucker. While projects altering a stream course are subject to review under section 1601 or 1603 of the California Fish and Game Code, such State regulations have not prevented habitat loss or sufficiently protected habitats to prevent the decline of the Santa Ana sucker.

Section 404 of the Clean Water Act currently affords some protection for the Santa Ana sucker. However, the Clean Water Act, by itself, does not provide

adequate protection for the Santa Ana sucker. Although the objective of the Clean Water Act is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (33 U.S.C. 1251), this law contains no specific provisions to address the conservation needs of rare species. USACE is the Federal agency with primary responsibility for administering the section 404 program. Under section 404, nationwide permits may be issued for certain activities that are considered to have minimal impacts, including minor dredging and discharges of dredged material, some road crossings, and minor bank stabilization (December 13, 1996; 61 FR 65873). USACE seldom withholds authorization of an activity under nationwide permits unless the existence of a listed threatened or endangered species would be jeopardized. Activities that do not qualify for authorization under a nationwide permit, including projects that would result in more than minimal adverse environmental effects, either individually or cumulatively, may be authorized by an individual permit or regional general permit, which are typically subject to more extensive review. Regardless of the type of permit deemed necessary under section 404, rare species such as the Santa Ana sucker may receive no special consideration with regard to conservation or protection unless they are listed under the Act.

As part of the section 404 review process, we provide comments to USACE on nationwide permits and individual permits under the Fish and Wildlife Coordination Act. Our comments are only advisory, although procedures exist for elevating permit review within the agencies when disagreements between us and USACE arise concerning the issuance of a permit. In practice, the section 404 permit review process has often proven to be inadequate to protect unlisted but rare species, such as the Santa Ana sucker.

The Santa Ana sucker may receive a small amount of protection from the overlap of its habitat with two federally endangered birds, the least Bell's vireo (*Vireo bellii pusillus*) and the southwestern willow flycatcher (*Empidonax traillii extimus*). Consideration for these listed bird species protects some areas from projects that could ultimately damage Santa Ana sucker habitat. However, protection is limited because these listed bird species occupy different areas and have dissimilar ecological requirements from the Santa Ana sucker. Although the federally endangered San Bernardino kangaroo rat (*Dipodomys merriami parvus*) also occurs along the Santa Ana River, this listed mammal occurs upstream from the present range of the Santa Ana sucker. Therefore, the presence of the San Bernardino kangaroo rat will have little effect on the status or protection afforded the sucker.

USFS lands encompass approximately 15 percent of the current native range of the Santa Ana sucker. Although a small percentage of the range is within a designated wilderness area, the majority of the range on USFS lands is not under wilderness management. Wilderness designation offers no direct regulatory protection to the sucker, but it does reduce some human-induced impacts on the stream. For example, motorized equipment is excluded from these areas. This restriction reduces or eliminates all motorized recreation and mining activities within the wilderness areas. Because these types of activities may harm Santa Ana sucker populations and habitats, wilderness designation offers some indirect benefit to the species. Santa Ana sucker habitat on USFS is also not subject to the development pressures existing on private land. However, this protection likely is partially offset by the recreational impacts discussed earlier (see factor "A").

E. Other Natural or Manmade Factors Affecting its Continued Existence

Periodic wildfires could adversely affect Santa Ana suckers by eliminating vegetation that shades the water and moderates water temperature, or by producing silt-and-ash-laden runoff that can significantly increase the turbidity of rivers. Although recent fires, including the 1996 Biedebach Fire (near the vicinity of Prairie Fork on the East Fork of the San Gabriel River) and the 1999 Bridge Fire (adjacent to the West and North Forks of the San Gabriel River), did not burn the riparian corridor, they may have contributed increased runoff and siltation to the creek.

The high degree of fragmentation of the remaining Santa Ana sucker populations makes the species especially vulnerable to random events, environmental factors, and loss of genetic variability. A small population size increases the rate of inbreeding and may allow increased expression of deleterious recessive genes occurring in the population (known as inbreeding depression). Loss of genetic variability, through random genetic drift (random gene frequency changes in a small population due to chance), reduces the ability of small populations to respond successfully to environmental stresses. Most of the lowland river habitats have been lost, and the remaining populations of Santa Ana suckers are low in numbers, with the exception of the San Gabriel Forks populations. Although Santa Ana suckers are locally common in what remains of their native range, the total population size of any one of the remaining native populations is still relatively small. Random events, such as floods, variations of annual weather patterns, predation and associated demographic uncertainty (conditions affected by chance events, such as sex ratios, that influence survival and reproduction in small populations), or other environmental stresses and human-caused factors, such as chemical spills, may lead to the demise of the remnant populations in the Los Angeles or Santa Ana Basins.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining its status. Based on this evaluation, the preferred action is to list the Santa Ana sucker (*Catostomus santaanae*) as threatened. While not in immediate danger of extinction, the Santa Ana sucker is likely to become an endangered species in the foreseeable future if the present threats continue and populations decline further.

Critical Habitat

Critical habitat is defined in section 3, paragraph (5)(A), of the Act as the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection; and specific areas outside the geographical area occupied by a species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Critical habitat designation, by definition, directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. According to Service regulations (50 CFR 424.12(a)), critical habitat is not determinable if information sufficient to perform required analysis of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Section 4(b)(2) of the Act requires us to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. The Secretary may exclude any area from critical habitat if he determines that the economic benefits of such exclusion outweigh the conservation benefits of designation, unless to do so would result in the extinction of the species.

In designating critical habitat, we consider the following requirements of the species: Space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring; and, generally, habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of this species (see 50 CFR 424.12(b)). In addition to these factors, we also focus on the known physical and biological features (primary constituent elements) within the designated area that are essential to the conservation of the species and may require special management considerations or protection. The essential features for the Santa Ana sucker may include, but are not limited to, spawning sites, food resources, and water quality and quantity (see 50 CFR 424.12(b)).

We conclude that the knowledge and understanding of the biological needs and environmental limitations of the Santa Ana sucker and the primary constituent elements of its habitat are insufficient to determine critical habitat for the fish. We believe that the Santa Ana sucker is intolerant of highly polluted waters, but little information is available concerning this possible limiting factor. Furthermore, in the Santa Ana River, suckers remain extant, although rare, in the lower reaches where water quality is degraded relative to the headwaters. We need additional information on the environmental limits of the sucker to enable us to accurately designate critical habitat for the Santa Ana sucker throughout its range. The physical and biological features including but not limited to water chemistry, water temperature, instream flows, streambed substrate and structure, and fauna and flora of the aquatic environment that supports the Santa Ana sucker are the features about which we need additional information. In an effort to gain these data, the Orange County Water District, the County of Orange, Los Angeles County Department of Public Works, the National Fish and Wildlife Foundation, the Biological Resources Division of USGS, and the Service have funded and implemented research on the environmental limitations of the Santa Ana Sucker. The study is nearing completion and has already identified some environmental parameters, including water quality (e.g., turbidity and conductivity) and some biological parameters (introduced nonnative fish species) associated with variations in population densities. These correlations will help guide future research to focus on the variable(s) most likely to limit sucker populations.

When a "not determinable" finding is made, we must, within 2 years of the publication date of the original proposed rule, propose the designation of critical habitat, unless the designation is found to be not prudent. Initial results of the USGS–Santa Ana sucker study have been incorporated into this rule. A final report should be available later this year. We will use this study and other new information to reevaluate our knowledge of the species and, if determined prudent, propose critical habitat for the Santa Ana sucker. We will continue in our efforts to obtain more information on Santa Ana sucker biology and ecology, including distribution, population density, and essential habitat characteristics, particularly in regard to water quality. We will also use the information resulting from these efforts to identify measures needed to achieve conservation of the species, as defined under the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States, and requires that recovery plans be carried out for all listed species. Funding may be available through section 6 of the Act for the State to conduct recovery activities. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat, if designated. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us, under section 7(a)(2) of the Act.

Federal agencies expected to consult with us under section 7 regarding the Santa Ana sucker include USACE and the Environmental Protection Agency because of their permitting authority under section 404 of the Clean Water Act. The USFS may consult with us on its activities on the Angeles National Forest and Los Padres National Forest. These agencies either administer lands/waters containing the Santa Ana sucker or authorize, fund, or otherwise conduct activities that may affect this species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife not covered by a special rule. These prohibitions, codified at 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or

ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. Regulations governing permits are at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, permits also are available for zoological exhibition, educational purposes, or special uses consistent with the mission of the Act.

As published in the **Federal Register** (59 FR 34272) on July 1, 1994, our policy is to identify to the maximum extent practicable those activities that would or would not be likely to constitute a violation of section 9 of the Act if a species is listed. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within a species' range. We believe the following actions would not likely result in a violation of section 9:

(1) Actions that may affect the Santa Ana sucker and are authorized, funded, or carried out by a Federal agency when the action is conducted in accordance with any reasonable and prudent alternatives or reasonable and prudent measures to minimize the impacts of take identified by us in accordance with section 7 of the Act; and

(2) Possession, transport within or between States, and import and export, with proper permits, of Santa Ana suckers that were legally collected prior to the date of publication in the **Federal Register** of the final regulation adding this species to the list of threatened and endangered species.

Activities that we believe could potentially harm the Santa Ana sucker and result in a violation of section 9 of the Act include, but are not limited to:

(1) Take of Santa Ana suckers without a permit, which includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions;

(2) Possessing, selling, delivering, carrying, transporting, or shipping illegally taken Santa Ana suckers;

(3) Unauthorized interstate and foreign commerce (commerce across State and international boundaries) and import/export;

(4) Introduction of nonnative species that compete or hybridize with, or prey on Santa Ana suckers;

(5) Unauthorized destruction or alteration of Santa Ana sucker habitat by dredging, channelization, diversion, dewatering through groundwater withdraw, in-stream vehicle operation or rock removal, or other activities that result in the destruction or significant degradation of cover, channel stability, substrate composition, water quality, water temperature, and migratory corridors; and

(6) Discharging or dumping of toxic chemicals, silt, organic waste, or other pollutants (such as may result from mining, land development or land management activities) into waters supporting Santa Ana suckers that results in death or injury to the species or results in the destruction or degradation of cover, channel stability, substrate composition, water quality, water temperature, and migratory corridors used by the species for foraging, cover, migration, and spawning.

We will review other activities not identified above on a case-by-case basis to determine if a violation of section 9 of the Act may be likely to result from such activity. We do not consider these lists to be exhaustive and provide them as information to the public.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–6241; facsimile 503/231–6243)

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. For additional information concerning permit and associated requirements for threatened wildlife, see 50 CFR 17.32.

References Cited

A complete list of all references cited herein is available upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this document is Glen W. Knowles, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under FISHES, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
•	•	•	•	•	•	•	•
Sucker, Santa Ana ..	*Catostomus santaanae.*	U.S.A. (CA)	Los Angeles River basin, San Gabriel River basin, Santa Ana River basin.	T	694	NA	NA
•	•	•	•	•	•	•	•

Dated: March 31, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–8999 Filed 4–11–00; 8:45 am]

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SUPPLEM

Proposed Rules

Federal Register
Vol. 65, No. 71
Wednesday, April 12, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–07]

Proposed Establishment of Class E Airspace; Wadena, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Wadena, MN. An Area Navigation (RNAV) Standard Instrument Approach procedure (SIAP) to Runway (Rwy) 34 has been developed for Wadena Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action would create controlled airspace for Wadena Municipal Airport.

DATES: Comments must be received on or before May 22, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 00–AGL–07, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–AGL–07." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Wadena, MN, by creating controlled airspace for Wadena Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Wadena, MN [New]

Wadena Municipal Airport, MN
(Lat. 46°26′51″ N., long. 95°12′41″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Wadena Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on March 22, 2000.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 00–8968 Filed 4–11–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–08]

Proposed Establishment of Class E Airspace; Minneapolis, Flying Cloud Airport, Minnesota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Minneapolis, Flying Cloud Airport, MN. Flying Cloud Airport is served by Federal Aviation Regulations Part 135 (14 CFR Part 135) air carrier operations. Controlled airspace extending upward from the surface is needed to contain aircraft executing instrument flight procedures and provide a safer operating environment when the control tower is closed. The airport meets the minimum communications and weather observation and reporting requirements for controlled airspace extending upward from the surface. This action proposes to create controlled airspace with a 4.0-mile radius for this airport.

DATES: Comments must be received on or before May 22, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 00–AGL–08, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–AGL–08." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Minneapolis, Flying Cloud Airport, MN, to accommodate and Part 135 air carrier aircraft executing instrument flight rules procedure during periods when the control tower is closed. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from the surface of the earth are published in paragraph 6002 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. .

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 6002 Class E airspace designated as a surface area.

AGL MN E2 Minneapolis, Flying Cloud Airport, NM [New]

Flying Cloud Airport, MN
(Lat. 44°49′ 38″ N., long. 93°27′26″ W.)
Within an 4.0-mile radius of the Minneapolis, Flying Cloud Airport. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on March 22, 2000.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 00–8969 Filed 4–11–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–09]

Proposed Establishment of Class E Airspace; Minneapolis, Anoka County-Blaine Airport, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Minneapolis, Anoka County-Blaine Airport, MN. Akoka County-Blaine Airport is served by Federal Aviation Administration Part 135 (14 CFR Part 135) air carrier operations. Controlled airspace extending upward from the surface is needed to contain aircraft executing instrument flight procedures and provide a safer operating environment when the control tower is closed. The airport meets the minimum communications and weather observation and reporting requirements for controlled airspace extending upward from the surface. This action proposes to create controlled airspace with a 3.9-mile radius for this airport.

DATES: Comments must be received on or before May 22, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 00–AGL–09, 2300 East Devon Avenue, Des Plaines, Illinois.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comment to Airspace Docket No. 00–AGL–09." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of The Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons' interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Minneapolis, Anoka County-Blaine Airport, MN, to accommodate Part 135 air carrier aircraft executing instrument flight rules procedure during periods when the control tower is closed. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from the surface of the earth are published in paragraph 6002 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedure (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963., Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 6002 Class E airspace designated as a surface area.

* * * * *

AGL MN E2 Minneapolis, Anoka County-Blaine Airport, MN [New]

Anoka County-Blaine Airport, MN
(Lat. 45°08′42″ N., long 93° 12′ 41″ W.)

Within a 3.9-mile radius of the Minneapolis, Anoka County-Blaine Airport. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on March 22, 2000.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 00–8970 Filed 4–11–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–208254–90]

RIN 1545–AO72

Source of Compensation for Labor of Personal Services; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations under section 861 describing the appropriate basis for determining the source of income from labor or personal services performed partly within and partly without the United States.

DATES: The public hearing originally scheduled for Wednesday, April 19, 2000, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: LaNita Van Dyke of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Friday, January 21, 2000 (64 FR 3401), announced that a public hearing was scheduled for Wednesday, April 19, 2000, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 861 of the Internal Revenue Code. The public comment period for these proposed regulations expired on Wednesday, March 29, 2000. The outlines of topics to be addressed at the hearing were due on Wednesday, March 29, 2000.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Wednesday, April 5, 2000, no one has requested to speak. Therefore, the public hearing scheduled for Wednesday, April 19, 2000, is cancelled.

Cynthia Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 00–9004 Filed 4–11–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–777]

RIN 1218–AB36

Ergonomics Program Standard Informal Public Hearings

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Proposed rule; extension of informal public hearing.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is extending the dates of the informal public hearing on the proposed Ergonomics Program standard (64 FR 65768, November 23, 1999) in Portland, Oregon. OSHA has added two additional days to the Portland hearing, which will now be held from April 24, 2000 through May 5, 2000.

DATES: *Informal Public Hearing:* The hearing in Washington, DC, began at 9:30 a.m., March 13, 2000, at the Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210. The hearing in Washington is scheduled to run through April 7, 2000. The hearing will continue in Chicago, Illinois, from April 11, 2000 through April 21, 2000. In Portland, the hearing will run from April 24, through May 5, 2000. The hearings will begin at 8:30 a.m. each day in Chicago and Portland.

Notice of Intention To Appear at the Informal Public Hearing: Notices of intention to appear at the informal public hearing were required to have been postmarked to January 24, 2000.

ADDRESSES: The informal public hearing in Washington, DC, is being held in the Auditorium of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. In Chicago, the hearing will be held at the State of Illinois Building, James R. Thompson Center (Assembly Hall), 100 West Randolph Street. In Portland, the hearing is being held at the Mark Hatfield Federal Court House, 1000 Southwest 3rd Avenue.

FOR FURTHER INFORMATION CONTACT: OSHA's Ergonomics Team at (202) 693–2116, or visit the OSHA Homepage at *www.osha.gov*.

SUPPLEMENTARY INFORMATION: The amended schedule, as well as any additional updates, is available on OSHA's web site, *http://www.osha.gov*. Participants whose scheduled

presentation times have changed have already received notification of these changes.

Authority: This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued under sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 1911.

Signed at Washington, DC, this 5th day of April, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 00–9000 Filed 4–11–00; 8:45 am]

BILLING CODE 4510–26–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 2

[FRL–6575–5]

Revised Freedom of Information Act Regulations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) proposes to revise its regulations implementing the Freedom of Information Act (FOIA). EPA is streamlining and condensing its regulations, in accordance with the principles of the National Performance Review, and is using simpler language whenever possible. The regulations also reflect the principles established by President Clinton and Attorney General Reno in their FOIA Policy Memoranda dated October 4, 1993, as well as Attorney General Reno's recent restatement of those principles in a FOIA Policy Memorandum dated September 3, 1999. In addition, the regulations contain new provisions implementing the Electronic Freedom of Information Act Amendments of 1996, reflect developments in case law under the FOIA, and update cost figures for calculating and charging fees.

DATES: Comments must be received on or before May 12, 2000.

ADDRESSES: Please send any comments on this proposed rule to Jeralene B. Green, Office of Environmental Information (2822), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Public comments on this proposed rule will be available for review at EPA's Air and Radiation Docket and Information Center (6102), Attention Docket Number FOIA–2000–01, 401 M Street, SW., Room M–1500, Waterside Mall (ground floor), Washington, DC 20460. This Docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, or by calling (202) 260–7548. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Jeralene B. Green, (202) 260–1050.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Rule

EPA is proposing this comprehensive revision to 40 CFR part 2, subpart A, to add new provisions to implement the Electronic Freedom of Information Act Amendments of 1996, Public Law 104–231, to update the fee schedule, and to incorporate changes to the language and structure of the regulations. New provisions implementing the amendments are found at § 2.101(c) (electronic availability of records), § 2.104(b) (timing of responses), § 2.104(f) (expedited processing), § 2.104(g) (deletion marking), § 2.104(i)(3) (volume estimation), § 2.106(b)(3) (format of disclosure), and § 2.106(b)(8) (electronic searches).

Proposed changes to the Agency's fee schedule are found at § 2.106(c) and (d). The duplication charge will remain the same at fifteen (15) cents per page, while document search and review charges will increase to $4.00, $7.00, and $10.25 per quarter hour for clerical, professional, and managerial time, respectively. The amount at or below which the Agency will not charge a fee will be $14.00.

II. Statutory Authority

EPA is proposing this rule under the authority of 5 U.S.C. 301, 552 (as amended), and 553.

III. Regulatory Flexibility Act, as Amended

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small enfities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

EPA has determined that this proposed rule will have only a small economic impact on the small entities that submit FOIA requests to EPA for records. Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. EPA's proposed fees are nominal and have been calculated to recover only the direct costs of processing a FOIA request. The revision to the fee schedule is minimal and reflects a more specific breakdown of direct costs by the kind of EPA employee involved in processing a FOIA request. Therefore, under 5 U.S.C. 605(b), I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

This proposed rule does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* It pertains solely to the dissemination of information under the FOIA.

V. Environmental Impact

This proposed rule is expected to have no environmental impact. It pertains solely to the dissemination of information under the FOIA.

VI. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), EPA must determine whether this proposed rule is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this proposed rule is not a "significant regulatory action" under the terms of

Executive Order 12866 and therefore is not subject to OMB review.

VII. Executive Order 13132 on Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule simply revises EPA's regulations implementing the FOIA. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

VIII. Executive Order 13084 on Consultation With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of Executive Order 13084 do not apply to this proposed rule.

IX. Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, for any rule subject to section 202, EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that this proposed rule does not include a federal mandate as defined in UMRA. This proposed rule does not include a federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more, and does not establish regulatory requirements that may significantly or uniquely affect small governments.

X. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

EPA believes Executive Order 13045 applies only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

XI. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when EPA decides not to use available and applicable voluntary consensus standards.

This proposed rule does not involve any technical standards, and EPA is not considering the use of any voluntary consensus standards. Accordingly, this proposed rule is not subject to the requirements of the NTTAA.

List of Subjects 40 CFR Part 2

Environmental protection, Administrative practice and procedure, Confidential business information, Freedom of information, Government employees.

Dated: March 31, 2000.

Margaret N. Schneider,

Principal Deputy Assistant Administrator.

For the reasons set out above, EPA proposes to amend 40 CFR part 2 as follows:

PART 2—PUBLIC INFORMATION

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301, 552 (as amended), 553; secs. 114, 205, 208, 301, and 307, Clean Air Act, as amended (42 U.S.C. 7414, 7525, 7542, 7601, 7607); secs. 308, 501 and 509(a), Clean Water Act, as amended (33 U.S.C. 1318, 1361, 1369(a)); sec. 13, Noise Control Act of 1972 (42 U.S.C. 4912); secs. 1445 and 1450, Safe Drinking Water Act (42 U.S.C. 300j–4, 300j–9); secs. 2002, 3007, and 9005, Solid Waste Disposal Act, as amended (42 U.S.C. 6912, 6927, 6995); secs. 8(c), 11, and 14, Toxic Substances Control Act (15 U.S.C. 2607(c), 2610, 2613); secs. 10, 12, and 25, Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136h, 136j, 136w); sec. 408(f), Federal Food, Drug and Cosmetic Act, as amended (21 U.S.C. 346(f)); secs. 104(f) and 108, Marine Protection Research and Sanctuaries Act of 1972 (33 U.S.C. 1414(f), 1418); secs. 104 and 115, Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9604 and 9615); sec. 505, Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 2005).

2. Subpart A is revised to read as follows:

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

Sec.

2.100 General provisions.
2.101 Where requests for records are to be filed.
2.102 Procedures for making requests.
2.103 Responsibility for responding to requests.
2.104 Responses to requests.
2.105 Preservation of records.
2.106 Fees.
2.107 Other rights and services.

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

§ 2.100 General provisions.

(a) This subpart contains the rules that the Environmental Protection Agency (EPA or the Agency) follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. Information routinely provided to the public as part of a regular EPA activity may be provided to the public without following this subpart. As a matter of policy, EPA makes discretionary disclosures of records or information exempt under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court.

(b) As used in this subpart, the term "component" includes the offices of the Administrator, the Deputy Administrator, the Assistant Administrators, the Regional Administrators, the General Counsel, the Inspector General, the Chief Financial Officer, the Associate Administrators, and the headquarters staff offices.

(c) When documents responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, such as, but not limited to, the Government Printing Office or the National Technical Information Service, EPA will inform the requester of the steps necessary to obtain records from these sources.

§ 2.101 Where requests for records are to be filed.

(a) You may request records by writing to the Headquarters Freedom of Information Operations Staff (1105), Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; (202) 260–4048; FAX: (202) 260–4499. If you believe the records sought may be located in an EPA regional office, you should send your request to the appropriate regional Freedom of Information Officer as indicated in the following list:

(1) Region I (CT, ME, MA, NH, RI, VT): EPA, Freedom of Information Officer, One Congress Street, Suite 1100, Boston, MA 02114–2023; (617) 918–1103; FAX: (617) 918–1124.

(2) Region II (NJ, NY, PR, VI): EPA, Freedom of Information Officer, 290 Broadway, 26th Floor, New York, NY 10007–1866; (212) 637–3668; FAX: (212) 637–5046.

(3) Region III (DE, DC, MD, PA, VA, WV): EPA, Freedom of Information Officer, 1650 Arch Street, Philadelphia, PA 19103–2029; (215) 814–5553; FAX: (215) 814–5102.

(4) Region IV (AL, FL, GA, KY, MS, NC, SC, TN): EPA, Freedom of Information Officer, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–3104; (404) 562–8034; FAX: (404) 562–8054.

(5) Region V (IL, IN, MI, MN, OH, WI): EPA. Freedom of Information Officer, 77 West Jackson Boulevard, Chicago, IL 60604–3507; (312) 886–2942; FAX: (312) 886–6686.

(6) Region VI (AR, LA, NM, OK, TX): EPA, Freedom of Information Officer, 1445 Ross Avenue, Dallas, TX 75202–2733; (214) 665–6597; FAX: (214) 665–2146.

(7) Region VII (IA, KS, MO, NE): EPA, Freedom of Information Officer, 901 North Fifth Street, Kansas City, KS 66101; (913) 551–7764; FAX: (913) 551–7066. Subpart A. Procedure

(8) Region VIII (CO, MT, ND, SD, UT, WY): EPA, Freedom of Information Officer, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6940; FAX: (303) 312–6961.

(9) Region IX (AZ, CA, HI, NV, AS, GU): EPA, Freedom of Information Officer, 75 Hawthorne Street, San Francisco, CA 94105; (415) 744–1593; FAX: (415) 744–1605.

(10) Region X (AK, ID, OR, WA): EPA, Freedom of Information Officer, 1200 Sixth Avenue, Seattle, WA 98101; (206) 553–8665; FAX: (206) 553–0149.

(b) EPA provides access to all records that the FOIA requires an agency to make regularly available for public inspection and copying. Each component is responsible for determining which of the records it generates are required to be made publicly available and for providing access by the public to them. Each component will also maintain and make available for public inspection and copying a current subject-matter index of such records. Each index will be updated regularly, at least quarterly, with respect to newly-included records.

(c) All records created by EPA on or after November 1, 1996, which the FOIA requires an agency to make regularly available for public inspection and copying, will be made available electronically through EPA's worldwide web site, located at http://www.epa.gov, or, upon request, through other electronic means. EPA will also include on its worldwide web site the current subject-matter index of all such records.

§ 2.102 Procedures for making requests.

(a) How made and addressed. You may make a request for EPA records by writing directly to the Freedom of Information Officer of the component as listed in § 2.101(a). Only written requests for records will be accepted for processing under this subpart. If you are making a request for records about yourself, see 40 CFR part 16, which implements the Privacy Act of 1974. If you are making a request for records about another individual, either a written authorization signed by that individual permitting disclosure of those records to you or proof that that individual is deceased (for example, a copy of a death certificate or an obituary) will help EPA to process your request. For records located at EPA headquarters, or in those instances when you cannot determine which EPA office to send your request, you may send it to the Headquarters Freedom of Information Operations Staff (1105), Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. That office will forward your request to the component(s) it believes most likely to have the records that you want. Your request will be considered received as of the date it is received by the FOIA

office. Misdirected requests will not be considered received by EPA until the appropriate FOIA office receives the request. For the quickest possible handling, you should mark both your request letter and its envelope "Freedom of Information Act Request."

(b) EPA officers and employees will attempt in good faith to comply with requests for inspection or disclosure of EPA records made orally, by telephone or otherwise, but such requests are not required to be processed in accordance with this subpart.

(c) Description of records sought. You must describe the records you are seeking in enough detail to enable EPA personnel to locate them with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter. If known, you should include any file designations or descriptions for the records that you want. As a general rule, the more specific you are about the records or type of records that you want, the more likely EPA will be able to locate those records in response to your request. If EPA determines that your request does not reasonably describe the records, it will tell you either what additional information you need to provide or why your request is otherwise insufficient. EPA will also give you an opportunity to discuss and modify your request to meet the requirements of this section. Should it be necessary for you to provide a revised description of the records you are seeking, the time necessary to do so will be excluded from the 20 working day period (or any extension of such period) that EPA has to respond to your request as discussed in § 2.104.

(d) Agreement to pay fees. If you make a FOIA request, EPA will consider your request to be an agreement that you will pay all applicable fees charged under § 2.106, up to $25.00, unless you seek a waiver of fees. The EPA component responsible for responding to your request ordinarily will confirm this agreement in writing. When making a request, you may specify a willingness to pay a greater or lesser amount.

§ 2.103 Responsibility for responding to requests.

(a) *In general.* Except as stated in paragraphs (c), (d), and (e) of this section, the Freedom of Information Office of the component that has possession of that record is the component responsible for responding to you. In determining which records are responsive to a request, a component will include only those records in its possession as of the date the Freedom of Information Office of the component receives the request. If any other date is used, the component will inform you of that date.

(b) *Authority to grant or deny requests.* The head of a component, or the component head's designee, has been delegated authority to grant or deny any request for a record of that component.

(c) *Consultations and referrals.* When a component receives a request for a record in its possession, it will determine whether another component, or another agency of the Federal government, is better able to determine whether the record is exempt from disclosure under the FOIA and, if so, whether it should be disclosed as a matter of administrative discretion. If the receiving component determines that it is best able to process the record in response to the request, then it will do so. If the receiving component determines that it is not best able to process the record, then it will either:

(1) Respond to you regarding the record you have requested, after consulting with the component or agency best able to determine whether to disclose it and with any other component or agency that has a substantial interest in it; or

(2) Refer the responsibility for responding to your request regarding that record to the component best able to determine whether to disclose it, or to another agency that originated the record (but only if that agency is subject to FOIA). Ordinarily, the component or agency that originated a record will be presumed to be best able to determine whether to disclose it.

(d) *Law enforcement information.* Whenever a request is made for a record containing information that relates to an investigation of a possible violation of law and was originated by another component or agency, the receiving component will either refer the responsibility for responding to the request regarding that information to that other component or agency or will consult with that other component or agency prior to making any release determination.

(e) *Notice of referral.* Whenever a component refers all or any part of the responsibility for responding to a request to another component or agency, it ordinarily will notify you of the referral and inform you of the name of each component or agency to which the request has been referred and of the part of the request that has been referred.

§ 2.104 Responses to requests.

(a) The Deputy Administrator, Assistant Administrators, Regional Administrators, General Counsel, Inspector General, Chief Financial Officer, Associate Administrators, and heads of headquarters staff offices are delegated the authority to issue initial determinations to release or deny the release of responsive records. The authority to issue initial determinations denying the release of records, except for records that have been claimed as confidential business information (CBI), may be redelegated to the division director level or equivalent, but not lower. The authority to issue initial determinations denying the release of records that have been claimed as CBI, as discussed in subpart B of this part 2, may be redelegated to levels below the division director level or equivalent.

(b) Components ordinarily will respond to requests no later than twenty (20) working days from the date the request is received. Requests ordinarily will be responded to according to their order of receipt.

(c) On receipt of a request, the Freedom of Information Office ordinarily will send an acknowledgment letter advising you of the date it was received and of the processing number assigned to the request for future reference.

(d) Multitrack processing. (1) A component may use two or more processing tracks by distinguishing between simple and complex requests based on the amount of work and/or time needed to process the request, including limits based on the number of pages involved. If a component does so, it will advise you of the processing track in which your request has been placed and of the limits of the different processing tracks.

(2) A component using multitrack processing may place your request in its slower track(s) while providing you the opportunity to limit the scope of your request in order to qualify for faster processing within the specified limits of the component's faster track(s). A component doing so will contact you either by telephone or by letter, whichever is most efficient in each case.

(e) Unusual circumstances. When the time limits for processing a request cannot be met because of unusual circumstances and the component determines to extend the time limits on that basis, the component will notify you in writing, as soon as practicable, of the unusual circumstances and of the date by which the component expects processing of the request to be completed. When the extension is for more than ten (10) working days, the

component will provide you with an opportunity either to modify the request so that it may be processed within the ten-day time limit extension or to arrange an alternative time period with the component for processing the original or modified request.

(f) Expedited processing. (1) Requests or appeals will be taken out of order and given expedited treatment whenever EPA determines that such requests or appeals involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about an actual or alleged Federal government activity, if the information is requested by a person primarily engaged in disseminating information to the public.

(2) A request for expedited processing may be made at the time of the initial request for records or before processing of the request has been completed. For a prompt determination, you must send a request for expedited processing to the proper component.

(3) If you are seeking expedited processing, you must submit a statement, certified to be true and correct to the best of your knowledge and belief, explaining in detail the basis for the request. For example, if you fit within the category described in paragraph (f)(1)(ii) of this section and are not a full-time member of the news media, you must establish that you are a person whose primary professional activity or occupation is information dissemination, although it need not be your sole occupation. If you fit within the category described in paragraph (f)(1)(ii) of this section, you must also establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally.

(4) Within ten (10) working days from the date of your request for expedited processing, the proper component will decide whether to grant your request and will notify you of the decision. If your request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If your request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

(g) Grants of requests. Once a component makes a determination to grant a request in whole or in part, it will release the records or parts of records to you and notify you of any applicable fee charged under § 2.106. Records released in part will be annotated, whenever technically feasible, with the applicable FOIA exemption(s) at that part of the record from which the exempt information was deleted.

(h) Adverse determinations of requests. Once a component makes an adverse determination of a request, it will notify you of that determination in writing. An adverse determination consists of a determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that what has been requested is not a record subject to the FOIA; a determination on any disputed fee matter, including a denial of a request for a fee waiver; and a denial of a request for expedited treatment.

(i) The letter denying a request for records in whole or in part will be signed by the head of the component, or the component head's designee, and will include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason(s) for the denial, including any FOIA exemption applied by the component in denying the request;

(3) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through annotated deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption; and

(4) A statement that the denial may be appealed under, and a description of the requirements of paragraph (j) of this section.

(j) Appeals of adverse determinations. If you are dissatisfied with any adverse determination of your request by a component, you may appeal that determination to the Headquarters Freedom of Information Operations Staff (1105), Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. The appeal must be made in writing, and it must be submitted to the Headquarters Freedom of Information Operations Staff no later than thirty (30) calendar days from the date of the letter denying the request. The appeal letter may include as much or as little related information as you wish, as long as it clearly identifies the determination being appealed (including the assigned FOIA request number, if known). For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal." Unless the Administrator directs otherwise, the General Counsel or his/her designee will act on behalf of the Administrator on all appeals under this section, except that:

(1) In the case of an adverse determination on an initial request by the General Counsel or his/her designee, the Administrator or his/her designee will act on the appeal;

(2) An adverse determination on an initial request by the Administrator will be the final action of the Agency; and

(3) An appeal will not be acted on if the request becomes a matter of FOIA litigation.

(k) The decision on an appeal will be made normally, in writing, within twenty (20) working days of its receipt by the Headquarters Freedom of Information Operations Staff. A decision affirming a component's adverse determination in whole or in part will contain a statement of the reason(s) for the decision, including any FOIA exemption(s) applied, and inform you of the FOIA provisions for judicial review of the decision. If the component's adverse determination is reversed or modified on appeal, you will be notified in a written decision. This written decision will either have the requested information that has been determined on appeal to be releasable attached to it, or your request will be returned to the component so that it may be reprocessed in accordance with the appeal decision.

(l) If you wish to seek judicial review of any adverse determination, you must first appeal that adverse determination under this section.

§ 2.105 Preservation of records.

Each component shall preserve all correspondence pertaining to the FOIA requests that it receives, as well as copies of all requested records, until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Records shall not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

§ 2.106 Fees.

(a) In general. Components will charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (l) of this section. Requesters will pay fees by

check or money order made payable to the U.S. Environmental Protection Agency.

(b) Definitions. For purposes of this section:

(1) "Commercial use request" means a request from or on behalf of a person who seeks information for a use or purpose that furthers his/her commercial, trade, or profit interests, which can include furthering those interests through litigation. Components will determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because a component has reasonable cause to doubt a requester's stated use, the component will provide the requester a reasonable opportunity to submit further clarification.

(2) "Direct costs" means those expenses that the Agency actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating duplication equipment. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(3) "Duplication" means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, microform, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others. Components will honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format.

(4) "Educational institution" means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by, and is made under the auspices of, a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

(5) "Noncommercial scientific institution" means an institution that is not operated on a "commercial" basis, as that term is defined in paragraph (b)(1) of this section, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by, and is made under the auspices of, a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

(6) "Representative of the news media" or "news media requester" means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but components will also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial use. However, a request for records supporting the news-dissemination function of the requester will not be considered to be for a commercial use.

(7) "Review" means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes processing any record for disclosure (for example, doing all that is necessary to redact it and prepare it for disclosure). Review costs are recoverable even if a record ultimately is not disclosed. Review time includes time spent considering any formal objection to disclosure made by a business submitter requesting confidential treatment, but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) "Search" means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. Components will ensure that searches are done in the most efficient and least expensive manner reasonably possible. For example, components will not search line-by-line where duplicating an entire document would be quicker and less expensive.

(c) Fees to be charged. (1) There are four categories of requests. Fees for each of these categories will be charged as follows:

(i) Commercial use requests. A requester seeking access to records for a commercial use will be charged for the time spent searching for the records, reviewing the records for possible disclosure, and for the cost of each page of duplication. The charges for searching for and/or reviewing the records may be charged even if no responsive records are found or if the records are located but are determined to be exempt from disclosure.

(ii) Educational or non-commercial scientific requests. Requesters from educational or scientific institutions, whose purpose is scholarly, noncommercial research, will be charged only for the cost of record duplication, except that the first 100 pages of duplication will be furnished at no charge.

(iii) News media requests. Requesters who are representatives of the news media, and whose purpose in seeking records is noncommercial, will be charged only for the cost of duplication, except that the first 100 pages of duplication will be furnished at no charge.

(iv) All other requests. Requesters not covered by one of the three categories in paragraphs (c)(1)(i) through (iii) of this section will be charged for the full cost of search and duplication, except that the first two hours of search time and the first 100 pages of duplication will be furnished without charge. The charges for searching for the records will be assessed even if no responsive records are found or if the records are located but are determined to be exempt from disclosure.

(2) In responding to FOIA requests, components will charge the following fees unless a waiver or reduction of fees has been granted under paragraph (l) of this section:

(i) Search. (A) Search fees will be charged for all requests except for those made by educational institutions, noncommercial scientific institutions, or representatives of the news media subject to the limitations of paragraph (d) of this section. Components will charge for time spent searching even if no responsive records are found or if the

records are located but are determined to be exempt from disclosure.

(B) For searches and retrievals of requested records, either manually or electronically, conducted by clerical personnel, the fee will be $4.00 for each quarter hour of time. For searches and retrievals of requested records, either manually or electronically, requiring the use of professional personnel, the fee will be $7.00 for each quarter hour of time. For searches and retrievals of requested records, either manually or electronically, requiring the use of managerial personnel, the fee will be $10.25 for each quarter hour of time.

(C) When searches and retrievals are conducted by contractors, requesters will be charged for the actual charges up to but not exceeding the rate which would have been charged had EPA employees conducted the search. The costs of actual computer resource usage in connection with such searches will also be charged, to the extent they can be determined.

(ii) Duplication. Duplication fees will be charged to all requesters, subject to the limitations of paragraph (d) of this section. For either a photocopy or a computer-generated printout of a record (no more than one copy of which need be supplied), the fee will be fifteen cents per page. For electronic forms of duplication, other than a computer-generated printout, components will charge the direct costs of that duplication. Such direct costs will include the costs of the requested electronic medium on which the copy is to be made and the actual operator time and computer resource usage required to produce the copy, to the extent they can be determined.

(iii) Review. Review fees will be charged only to requesters who make a commercial use request. Review fees will be charged only for the initial record review (that is, the review done when a component is deciding whether an exemption applies to a particular record or portion of a record at the initial request level). No charge will be made for review at the administrative appeal level for an exemption already applied. However, records or portions of records withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies; the costs of that review will be charged when it is made necessary by a change of circumstances. Review fees will be charged at the same rates as those charged for a search under paragraph (c)(1)(i) of this section.

(d) Limitations on charging fees. (1) No search or review fees will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media.

(2) No search fee or review fee will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(3) Except for requesters seeking records for a commercial use, components will provide without charge:

(i) The first 100 pages of duplication; and

(ii) The first two hours of search.

(4) Whenever a total fee calculated under paragraph (c) of this section is $14.00 or less for any request, no fee will be charged.

(5) The provisions of paragraphs (d)(3) and (4) of this section are complementary. This means that for requesters other than those seeking records for a commercial use, no fee will be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than $14.00.

(e) Notice of anticipated fees in excess of $25.00. When a component determines or estimates that the fees to be charged under this section will amount to more than $25.00, the component will notify the requester of the actual or estimated amount of the fees, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the component will advise the requester that the estimated fee may be only a portion of the total fee. When a requester has been notified that actual or estimated fees will amount to more than $25.00, EPA will do no further work on the request until the requester agrees to pay the anticipated total fee. EPA will memorialize any such agreement in writing. A notice under this paragraph will offer the requester an opportunity to discuss the matter with Agency personnel in order to reformulate the request to meet the requester's needs at a lower cost.

(f) Charges for other services. Apart from the other provisions of this section, when a component chooses as a matter of administrative discretion to provide a special service—such as certifying that records are true copies or sending records by other than ordinary mail—the direct costs of providing the service ordinarily will be charged.

(g) Charging interest. EPA may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by the Agency. EPA will follow the provisions of the Debt Collection Act of 1982 (Public Law 97–365), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset. No penalty will be assessed against FOIA requesters for exercising their statutory right to ask that a fee be waived or reduced or to dispute a billing. If a fee is in dispute, penalties will be suspended.

(h) Delinquent requesters. If requesters fail to pay all fees within 60 calendar days of the fees assessment, they will be placed on a delinquency list. Subsequent FOIA requests will not be processed until payment of the overdue fees has first been made.

(i) Aggregating requests. When a component reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the component may aggregate those requests and charge accordingly. Components may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. When requests are separated by a longer period, components will aggregate them only if there exists a solid basis for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(j) Advance payments. (1) For requests other than those described in paragraphs (j)(2) and (3) of this section, a component will not require the requester to make an advance payment (that is, a payment made before EPA begins or continues work on a request). Payment owed for work already completed (that is, a prepayment before copies are sent to a requester) is not an advance payment.

(2) When a component determines or estimates that a total fee to be charged under this section will be more than $250.00, it may require the requester to make an advance payment of an amount up to the amount of the entire anticipated fee before beginning to process the request, except when it receives a satisfactory assurance of full payment from a requester that has a history of prompt payment.

(3) When a requester has previously failed to pay a properly charged FOIA fee to any component or agency within 30 calendar days of the date of billing, a component may require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before the component begins to process a new

request or continues to process a pending request from that requester.

(4) When a component requires advance payment or payment due under paragraph (j)(3) of this section, the request will not be considered, and EPA will do no further work on the request until the required payment is made.

(k) Other statutes specifically providing for fees. The fee schedule of this section does not apply to fees charged under any other statute that specifically requires an agency to set and collect fees for particular types of records. When records responsive to requests are maintained for distribution by agencies operating such statutorily based fee schedule programs, components will inform requesters of the steps for obtaining records from those sources so that they may do so most economically.

(l) Waiver or reduction of fees. (1) Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (c) of this section when a component determines, based on all available information, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) To determine whether the first fee waiver requirement is met, components will consider the following factors:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government." The subject of the requested records must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, not remote.

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding when nothing new would be added to the public's understanding.

(iii) The contribution to an understanding of the subject by the public is likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding." The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public will be considered. It will be presumed that a representative of the news media will satisfy this consideration.

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities. The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent. Components will not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is "important" enough to be made public.

(3) To determine whether the second fee waiver requirement is met, components will consider the following factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. Components will consider any commercial interest of the requester (with reference to the definition of "commercial use request" in paragraph (b)(1) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters will be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

(ii) The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. Components ordinarily will presume that when a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(4) When only some of the requested records satisfy the requirements for a waiver of fees, a waiver will be granted for only those records.

(5) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (l) (2) and (3) of this section, insofar as they apply to each request. Components will exercise their discretion to consider the cost-effectiveness of their investment of administrative resources in deciding whether to grant waivers or reductions of fees. Requests for the waiver or reduction of fees must be submitted along with the request or before processing of the request has been completed.

§ 2.107 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as a right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

[FR Doc. 00–8837 Filed 4–11–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7307]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of

the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Alabama	Cowarts (Town), Houston County.	Crawford Creek	Approximately 1,325 feet downstream of Omusee Road.	None	*228
			Just upstream of Omusee Road	None	*233
Maps available for inspection at the Cowarts Town Hall, 800 Jester Street, Cowarts, Alabama.					
Send comments to The Honorable Robert Hall, Mayor of the Town of Cowarts, 800 Jester Street, Cowarts, Alabama 36321.					
Alabama	Dothan (City), Houston County.	Rock Creek	Approximately 50 feet upstream of the confluence with Little Choctawhatchee River.	*227	*228
			At Murray Road	*310	*312
		Beaver Creek Tributary 1	Approximately 300 feet downstream of Honeysuckle Road.	*271	*270
			Approximately 100 feet upstream of State Route 52.	None	*305
		Poplar Spring Branch	At the confluence with Omusee Creek	None	*216
			At a point approximately 300 feet upstream of U.S. Route 84.	None	*283
		Rocky Branch	Approximately 150 feet upstream of the confluence with Omusee Creek.	None	*231
			At East Wilson Street	*302	*301
		Cypress Creek	Approximately 1,700 feet upstream of Hodgesville Road.	None	*227
			Approximately 60 miles upstream of East Coe Dairy Road.	None	*291
		Buelah Creek	Approximately 1,500 feet upstream of the confluence with Omusee Creek.	None	*233
			Approximately 1.04 miles upstream of Headland Avenue.	None	*276

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Omusee Creek	Approximately 50 feet upstream of the confluence of Golf Creek.	None	*208
			Approximately 0.33 miles upstream of Old Kinsey Road.	None	*230
		Gold Creek	At the confluence with Omusee Creek	None	*208
			At Prevatt Road	None	*264
		Crawford Creek	At the confluence with Golf Creek	None	*208
			Approximately 1,325 feet downstream of Omusee Road.	None	*228
		Cypress creek	At the confluence with Cypress Creek	*245	*250
		Tributary 1	Approximately 1,500 feet upstream of Cottonwood Road.	None	*281
		Cypress Creek	Just upstream of Third Avenue	None	*240
		Tributary 2	Just upstream of dirt trail	None	*296
		Chipola Creek	At Fuller Road	*238	*240
			Just upstream of Taylor Road	None	*282
		Chipola Creek	At the confluence with Chipola Creek	None	*266
		Tributary	Approximately 0.41 mile upstream of Bruner Road.	None	*284
		Beaver Creek Tributary 2	Approximately 250 feet upstream from the confluence with Beaver Creek.	None	*223
			Approximately 530 feet upstream of most upstream dam.	None	*249
		Beaver Creek Tributary 3	At the confluence with Beaver Creek Tributary 2.	None	*247
			Just downstream of Enterprise Highway	None	*298
		Harrison Mill Creek	Approximately 0.37 mile upstream of the confluence with Little Choctawhatchee River.	None	*205
			Approximately 0.5 mile upstream of Bethlehem Road.	None	*224
		Cooper Creek	Approximately 1,725 feet upstream of Lucy Grade Road.	None	*205
			Approximately 190 feet upstream of Fowler Road.	None	*219
		Unnamed Tributary to Beulah Creek	At the confluence with Beulah Creek	None	*276
			Approximately 340 feet upstream of the confluence with Beulah Creek.	None	*277

Map available for inspection at the Dothan City Hall, 125 North St. Andrews, Dothan, Alabama.
end comments to The Honorable Chester Sowell, Mayor of the City of Dothan, P.O. Box 2128, Dothan, Alabama 36302.

Alabama	Houston County	Rocky Branch	At the confluence with Omusee Creek	None	*231
	(Unincorporated Areas).		Approximately 150 feet upstream of Confluence with Omusee Creek.	None	*231
		Chipola Creek	Approximately 300 feet downstream of South Park Avenue.	None	*250
			Approximately 1,275 feet upstream of Bruner Road.	None	*261
		Golf Creek	At the confluence of Omusee Creek	None	*208
			At the confluence of Crawford Creek	None	*208
		Cypress Creek	At the confluence of Cypress Creek	None	*238
		Tributary 2	Approximately 450 feet upstream of Reservoir Outlet.	None	*270
		Cooper Creek	At confluence with Cowarts Creek	None	*192
			Approximately 2,000 feet upstream of Lucy Grade Road.	None	*208
		Beaver Creek	At the confluence of Beaver Creek	None	*223
		Tributary 2	Approximately 250 feet upstream of the confluence of Beaver Creek.	None	*223
		Omusee Creek	Approximately 1,580 feet downstream of Watson Bridge Road.	None	*207
			At the confluence of Beulah Creek and Burdeshaw Mill Creek.	None	*233
		Crawford Creek	At the confluence of Gold Creek	None	*208
			Approximately 1.175 feet upstream of State Route 52.	None	*227
		Cypress Creek	Approximately 525 feet downstream of Hodgesville Road.	None	*223

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 350 feet downstream of confluence of Cypress Creek Tributary 1.	None	*250
Alabama	Taylor (Town), Houston County.	Chipola Creek	Approximately 30 feet downstream of Fuller Road.	None	*238
			Approximately 100 feet upstream of Fuller Road.	None	*238

Maps available for inspection at the Taylor Town Hall, 1469 South County Road 59, Taylor, Alabama.

Send comments to the Honorable Michael Tucker, Mayor of the Town of Taylor, 1469 South County Road 95, Taylor, Alabama 36301.

Connecticut	Meriden (City), New Haven County.	Quinnipiac River	At downstream corporate limits	*73	*70
			Approximately 1.04 miles upstream of Oregon Road.	*100	*101
		Sodom Brook	Approximately 0.53 mile downstream of Coe Avenue.	*93	*92
			At downstream side of Leonard Street	*138	*137
		Harbor Brook	Approximately 0.58 mile downstream of Coe Avenue.	*92	*91
			At confluence of Willow and Spoon Shop Brooks.	*201	*205
		Spoon Shop Brook	At confluence with Harbor Brook	*201	*205
			At Birdsey Avenue	*368	*370
		Willow Brook	At confluence with Harbor Brook	*201	*205
			Approximately 0.7 mile upstream of Cinema Road.	*282	*283
		Crow Hollow Brook	At confluence with Sodom Brook	*100	*99
			Approximately 70 feet upstream of West Main Street.	*192	*193

Maps available for inspection at the Meriden City Hall, 142 East Main Street, Meriden, Connecticut.

Send comments to The Honorable Joseph Marinan, Mayor of the City of Meriden, 142 East Main Street, Meriden, Connecticut 06450.

Connecticut	Middletown (City), Middlesex County.	Longhill Brook	Approximately 130 feet downstream of South Main Street.	*53	*52
			Just upstream of Wesleyan Roadd	*188	*187
		Longhill Brook Diversion Channel.	At the downstream confluence with Longhill Brook.	*80	*82
			At the upstream confluence with Longhill Brook.	*91	*98
		Roundhill Brook	At the confluence with Longhill Brook	*85	*88

Maps available for inspection at the Middletown City Hall, 45 DeKoven Drive, Middletown, Connecticut.

Send comments to The Honorable Domenique S. Thornton, Mayor of the City of Middletown, P.O. Box 1300, Middletown, Connecticut 06457.

Connecticut	South Windsor (Town), Hartford County.	Avery Brook	Approximately 1,475 feet downstream of Benedict Drive.	*175	*176
			Approximately 340 feet downstream of Beelzebub Road.	None	*226

Maps available for inspection at the South Windsor Town Hall, 1540 Sullivan Avenue, South Windsor, Connecticut.

Send comments to Mr. Matthew Galligan, South Windsor Town Manager, South Windsor Town Hal, 1540 Sullivan Avenue, South Windsor, Connecticut 06074.

Florida	Polk County (Unincorporated Areas).	Seward Lake	Entire shoreline within community	None	*136
		Hidden Lake	Entire shoreline within community	None	*134
		Sick Lake	Entire shoreline within community	None	*134
		Reedy Creek	A point approximately 16.1 miles above mouth.	None	*67
			A point approximately 19.9 miles above mouth.	None	*68
		Lake Crago	Entire shoreline within community	None	*134

Maps available for inspection at the Polk County Engineering Department, 330 West Church Street, Bartow, Florida.

Send comments to Mr. Jim W. Keene, Manager of Polk County, P.O. Box 9005, Drawer CA01, Bartow, Florida 33831.

Georgia	Americus (City), Sumter County.	Town Creek	Approximately 500 feet downstream of Magnolia Street.	*331	*330

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 225 feet upstream of Rigas Road.	None	*373
		Mill Creek Tributary	Approximately 800 feet downstream of CSX Transportation.	None	*385
			Approximately 130 feet upstream of State Route 27.	*338	*339
Maps available for inspection at the Americus City Hall, Community Development Department, 101 West Lamar Street, Americus, Georgia. Send comments to Ms. Sybil Smith, City of Americus Chief Administrative Officer, P.O. Box M, Americus, Georgia 31709.					
Georgia	Rockdale County (Unincorporated Areas).	Lake Capri Tributary	Approximately 400 feet downstream of the Lake Capri Dam.	*719	*720
			Approximately 1,200 feet upstream of Capistrano Dam.	*735	*734
		Hammock Creek	At confluence of Yellow River	None	*711
			Approximately 0.28 mile upstream of Humphries Road.	None	*814
		Yellow River	Approximately 2,950 feet upstream of Irwan Bridge Road.	*710	*711
			At county boundary	*718	*719
		Big Haynes Creek	Approximately 3,800 feet upstream from State Route 138.	None	*740
			Approximately 2,850 feet upstream from Aaralson Mill Road.	None	*752
Maps available for inspection at the Rockdale County Department of Public Services, 2570 Old Covington Highway, Conyers, Georgia. Send comments to Mr. Norman Wheeler, Chairman of the Rockdale County Board of Commissioners, 922 Court Street, Conyers, Georgia 30012.					
Georgia	Sumter County (Unincorporated Areas).	Muckalee Creek	At the confluence of Mill Creek	None	*321
			Approximately 1,800 feet upstream of confluence of Wolf Creek.	None	*333
		Mill Creek Tributary	Approximately 700 feet downstream of CSX Transportation.	None	*339
			Approximately 1,500 feet downstream of U.S. Route 280.	None	*375
Maps available for inspection at the Code Enforcement Office, Sumter County Courthouse, West Lamar Street, Americus, Georgia. Send comments to Mr. J. Wade Halstead, Chairman of the Sumter County Board of Commissioners, P.O. Box 295, Americus, Georgia 31709.					
Illinois	Beach Park (Village), Lake. County	Bull Creek (near Waukegan).	Just upstream of Talmadge Avenue	*627	*625
			Approximately 725 feet upstream of the upstream crossing of Beach Road.	None	*627
Maps available for inspection at the Beach Park Village Hall, 11270 West Wadsworth Road, Beach Park, Illinois. Send comments to Mr. Milt Jenson, President of the Village of Beach Park, 11270 West Wadsworth Road, Beach Park, Illinois 60099.					
Illinois	Hickory Hills (City), Cook County.	Lucas Ditch	Approximately 1,000 feet upstream of Lucas Ditch Out-Off Tributary.	*595	*594
			Approximately 0.41 mile upstream of Lucas Ditch Cut-Off Tributary.	*595	*594
Maps available for inspection at the City of Hickory Hills Building Department, 8652 West 95th Street, Hickory Hills, Illinois. Send comments to The Honorable Roy J. Faddis, Mayor of the City of Hickory Hills, 8652 West 95th Street, Hickory Hills, Illinois 60457.					
Illinois	LaSalle (City), LaSalle County.	Illinois River	Approximately 0.82 mile downstream of State Route 351.	*462	*463
			Approximately 0.95 mile upstream of Illinois Central Railroad.	*463	*465
Maps available for inspection at the LaSalle City Hall, 745 Second Street, LaSalle, Illinois. Send comments to The Honorable Arthur Washkowiak, Mayor of the City of LaSalle, 745 Second Street, LaSalle, Illinois 61301.					
Illinois	LaSalle County (Unincorporated Areas).	Goose Creek	At downstream corporate limits	None	*509
			At upstream corporate limits	None	*516
		Illinois River	Approximately 2.5 miles downstream of State Route 251.	None	*462
			Approximately 1.1 miles upstream of South Main Street (State Route 170).	None	*497
		Fox River	At the confluence with the Illinois River	None	*472

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 850 feet downstream of Clear Creek.	None	*554
		Prairie Creek	At the confluence with the Vermilion River.	None	*573
			A point approximately 2,850 feet upstream of Otter Creek Road.	None	*628
		Vermilion River	Upstream of Oakley Road	None	*567
			Approximately 0.77 mile upstream of Bridge Street.	None	*580
		Clark Run Creek	At confluence with Illinois River	None	*466
			Approximately 625 feet upstream of abandoned Illinois and Michigan Canal.	None	*473
		Coal Run Creek	Approximately 50 feet upstream of South Otter Creek Road.	None	*614
			Approximately 585 feet upstream of South Otter Creek Road.	None	*615
		Rat Run	At the confluence with the Illinois River	None	*494
			At the Missouri, Kansas, Texas Railroad	None	*501
		Lake Holiday	Entire shoreline within community	None	*644
		First Creek	Approximately 970 feet upstream of confluence with Little Vermilion River.	None	*715
			Approximately 250 feet upstream of 6th Street.	None	*719
		First Creek Tributary	Approximately 350 feet upstream of 17th Street.	None	*740
			At 17th Street	None	*740
		South Branch Coal Run Creek.	Downstream side of South Otter Creek	None	*614
			Approximately 425 feet upstream of South Otter Creek Street.	None	*615
		Ponding Area	Approximately 1,800 feet northwest of intersection of West Church Street and Johnson Street.	None	#1

Maps available for inspection at the LaSalle County Courthouse, County Clerk's Office, 707 Etna Road, Ottawa, Illinois.
Send comments to Mr. Joseph Hettel, Chairman of the LaSalle County Board of Commissioners, 707 Etna Road, Ottawa, Illinois 61350.

Illinois	Marseilles (City), LaSalle County.	Illinois River	Approximately 4,200 feet downstream of Main Street.	None	*479
			Approximately 15,500 feet upstream of Main Street.	None	*492

Maps available for inspection at the Marseilles City Hall, 209 Lincoln Street, Marseilles, Illinois.
Send comments to The Honorable John C. Knudson, Mayor of the City of Marseilles, 209 Lincoln Street, Marseilles, Illinois 61341.

Illinois	McCook (Village), Cook County.	East Avenue Ditch	At East Avenue	None	*648
			Approximately 1,550 feet upstream of East Avenue.	None	*648

Maps available for inspection at the McCook Village Hall, 50th & Glencoe Avenue, McCook, Illinois.
Send comments to The Honorable Emil T. Sergo, Mayor of the Village of McCook, 5000 Glencoe Avenue, P.O. Box 1501, McCook, Illinois 60525

Illinois	Millington (Village), LaSalle County.	Fox River	Approximately 1.6 miles upstream of Interstate 80.	*555	*553
			Approximately 400 feet upstream of confluence of Clear Creek.	*557	*555
		Clear Creek	At confluence with the Fox River	*557	*555
			At the Burlington Northern Railroad	*557	*556

Maps available for inspection at the Millington Village Hall, Walnut Street, Millington, Illinois.
Send comments to Ms. Janet Blue, Millington Village President, Walnut Street, P.O. Box 371, Millington, Illinois 60537.

Illinois	North Utica (Village), LaSalle County.	Clark Run Creek	Approximately 0.46 mile downstream of crossing of the abandoned Illinois and Michigan Canal.	*465	*466
			Approximately 700 feet downstream of confluence of the abandoned Illinois and Michigan Canal.	*465	*466
		Illinois River	Approximately 0.38 mile downstream of State Route 178.	*465	*466

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 0.55 mile upstream of State Route 178.	*465	*466
Maps available for inspection at the North Utica Village Hall, 245 Johnson Street, Utica, Illinois.					
Send comments to Mr. Joseph M. Carey, North Utica Village President, 245 Johnson Street, Utica, Illinois 61373.					
Illinois	Ottawa (City), La-Salle County.	Goose Creek	Approximately 400 feet downstream of Champlain Street.	*476	*472
			Approximately 150 feet upstream of Champlain Street.	*476	*475
		Illinois River	Approximately 0.4 mile downstream of Burlington Northern Railroad.	*472	*471
			Approximately 4,400 feet upstream of confluence of Fox River.	None	*473
		Fox River	Approximately 500 feet upstream of confluence with the Illinois River.	*473	*472
			Approximately 0.98 mile upstream of confluence of Goose Creek.	None	*474
Maps available for inspection at the Ottawa City Hall, 301 West Madison Street, Ottawa, Illinois.					
Send comments to The Honorable Robert M. Eschbach, Mayor of the City of Ottawa, Ottawa City Hall, 301 West Madison Street, Ottawa, Illinois 61350.					
Illinois	Palatine (Village), Cook County.	Salt Creek, Arlington Heights.	At confluence with Salt Creek, Arlington Heights Branch.	*719	*717
		Branch Anderson Drive Tributary.	Approximately 450 feet upstream of Evergreen Drive.	None	*719
		Salt Creek,	Upstream side of Northwest Highway	*714	*711
		Arlington Heights Branch	Downstream side of Quentin Road	None	*711
		Salt Creek	Approximately 1,900 feet downstream of Euclid Avenue.	*727	*725
			Downstream side of Roselle Road	*767	*764
		Salt Creek Tributary C	Approximately 1,200 feet upstream of Quentin Road.	*740	*750
			Downstream side of Roselle Road	None	*765
		Buffalo Creek Tributary A	Approximately 200 feet upstream of Dundee Road.	*744	*743
			At confluence with Salt Creek Arlington Heights Branch.	None	*759
Maps available for inspection at the Palatine Village Hall, 200 East Wood Street, Palatine, Illinois.					
Send comments to Mr. Michael Cassady, Palatine Village Manager, 200 East Wood Street, Palatine, Illinois 60067.					
Illinois	Peru (City), LaSalle County.	Illinois River	Approximately 7,350 feet downstream of State Route 251.	*461	*462
			A point approximately 2,600 feet upstream of State Route 251.	*462	*463
Maps available for inspection at the Peru City Clerk's Office, 1727 Fourth Street, Peru, Illinois.					
Send comments to The Honorable Donald L. Baker, Mayor of the City of Peru, P.O. Box 299, Peru, Illinois 61354.					
Illinois	Seneca (Village), LaSalle County.	Illinois River	Approximately 1.1 miles downstream of South Main Street (State Route 170).	None	*494
			Approximately 400 feet upstream of upstream county boundary.	*498	*497
		Rat Run	Approximately 2,750 feet downstream of Main Street (State Route 170).	*492	*494
			Approximately 1,000 feet downstream of Main Street (State Route 170).	*493	*494
Maps available for inspection at the Seneca Village Hall, 116 West Williams Street, Seneca, Illinois.					
Send comments to The Honorable David Yeck, Mayor of the Village of Seneca, 116 West Williams Street, Seneca, Illinois 61360.					
Illinois	Sheridan (Village), LaSalle County.	Fox River	At the downstream corporate limits	None	*542
		Approximately 1,725 feet upstream of North 41st Road.	None	*545	
Maps available for inspection at the Sheridan Village Hall, Engineer's Office, Robinson Street, Sheridan, Illinois.					
Send comments to The Honorable James D. Allen, Mayor of the Village of Sheridan, P.O. Box 222, Sheridan, Illinois 60551.					
Illinois	Waukegan (City), Lake County.	Bull Creek (near Waukegan).	Approximately 175 feet upstream of North Shore Avenue.	*654	*651

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Just upstream of the upstream crossing of Beach Road.	*669	*665

Maps available for inspection at the Waukegan City Hall, 106 North Utica, Waukegan, Illinois.
Send comments to The Honorable Bill Durkin, Mayor of the City of Waukegan, 106 North Utica, Waukegan, Illinois 60085.

Illinois	Winnebago County (Unincorporated Areas).	Manning Creek	At confluence with Kishwaukee River	None	*729
			Approximately 0.52 mile upstream of Lyford Road.	None	*857
		Unnamed Tributary to South Kent Creek.	Just downstream of U.S. Route 20	None	*765
			Approximately 1,600 feet upstream of Frontage Road.	None	*782
		Kishwaukee River	Just upstream of Interstate 90	None	*729
			Approximately 1,400 feet upstream of Interstate 90.	None	*729

Maps available for inspection at the Winnebago County Highway Department, 424 North Springfield Road, Rockford, Illinois.
Send comments to Ms. Christine Cohn, Chairman of the Winnebago County Board of Supervisors, 404 Elm Street, Rockford, Illinois 61101.

Illinois	Winnetka (Village), Cook County.	Skokie River	Approximately 150 feet downstream of Winnetka Road.	None	*625
			Approximately 1,200 feet upstream of Tower Road.	*625	*626
		Lake Michigan	Entire shoreline within community	*584	*585

Maps available for inspection at the Winnetka Village Hall, 510 Green Bay Road, Winnetka, Illinois.
Send comments to Ms. Louise Holland, President of the Village of Winnetka, Village Hall, 510 Green Bay Road, Winnetka, Illinois 60093.

Maine	Andrews Island, Knox County.	Atlantic Ocean	Approximately 2,000 feet northeast of Nash Point.		*20
			At the island of The Neck, west side of Andrews Island.		*10

Maps available for inspection at the Land Use Regulation Commission, AMHI Complex, Harlow Building, Hospita Street, Augusta, Maine.
Send comments to Mr. Fred Todd, Manager, Land Use and Regulation Commission, 22 State House Station, Augusta, Maine 04333–0022.

New Hampshire	Holderness (Town), Grafton County.	Pemigewasset River	At downstream corporate limits	*485	*483
			At upstream corporate limits	*490	*489

Maps available for inspection at the Holderness Town Office, Route 3, Holderness, New Hampshire.
Send comments to Mr. Steve Huff, Chairman of the Town of Holderness Board of Selectmen, P.O. Box 203, Holderness, New Hampshire 03245.

New Hampshire	Plymouth (Town), Grafton County.	Pemigewasset River	Approximately 1.2 miles downstream of the confluence with Glove Hollow Brook.	*483	*481
			Approximately 1.3 miles upstream of Interstate 95.	*490	*489

Maps available for inspection at the Plymouth Town Hall, 6 Post Office Square, Plymouth, New Hampshire.
Send comments to Mr. Steve Panagoulis, Chairman of the Town of Plymouth Board of Selectmen, Plymouth Town Hall, 6 Post Office Square, Plymouth, New Hampshire 03264.

New Jersey	Chatham (Borough), Morris County.	Passaic River	Approximately 175 feet downstream of Main Street.	*181	*180
			Approximately 300 feet upstream of Stanley Avenue.	*204	*205

Maps available for inspection at the Chatham Borough Hall, 54 Fairmount Avenue, Chatham, New Jersey.
Send comments to Mr. Henry M. Underhill, Chatham Borough Administrator, 54 Fairmount Avenue, Chatham, New Jersey 07928.

New Jersey	Chatham (Township), Morris County.	Passaic River	Approximately 0.38 mile downstream of Mount Vernon Avenue.	*204	*205
			Approximately 1,520 feet upstream of Snyder Avenue.	*214	*212

Maps available for inspection at the Chatham Township Hall, 58 Meyersville Road, Chatham, New Jersey.
Send comments to The Honorable Tom Patterson, Mayor of the Township of Chatham, 58 Meyersville Road, Chatham, New Jersey 07928.

New Jersey	Hanover (Township), Morris County.	Whippany River	At Troy Road	*179	*177

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Black Brook	At confluence of Black Brook	*183	*182
			At confluence with Whippany River	*183	*182
			Approximately 1,300 feet upstream of the confluence of Pinch Brook.	*183	*182
Maps available for inspection at the Township of Hanover Engineering Department, 1000 Route 10, Whippany, New Jersey. Send comments to Mr. Joseph Giorgio, Hanover Township Administrator, P.O. Box 250, Whippany, New Jersey 07981.					
New Jersey	Harmony (Township), Warren County.	Delaware River	At downstream corporate limits	*202	*201
			A point approximately 260 feet upstream of the upstream corporate limits.	*230	*232
		Buckhorn Creek	At confluence with Delaware River	*221	*225
			A point approximately 1,800 feet upstream of confluence with Delaware River.	*224	*225
Maps available for inspection at the Harmony Township Hall, 3003 Belvidere Road, Phillipsburg, New Jersey. Send comments to The Honorable Henry Skirbat, Mayor of the Township of Harmony, 3003 Belvidere Road, Phillipsburg, New Jersey 08865.					
New Jersey	Long Hill (Township), Morris County.	Passaic River	Approximately 0.9 mile downstream of Passaic Valley Road.	*213	*212
			Approximately 1,500 feet upstream of White Bridge Road.	None	*230
Maps available for inspection at the Long Hill Municipal Building, 1802 Long Hill Road, Millington, New Jersey. Send comments to Mr. Joseph Manning, Long Hill Township Administrator, 1802 Long Hill Road, Millington, New Jersey 07946.					
New York	Cold Brook (Village), Herkimer County.	Sheet Flow	Approximately 880 feet north of intersection of State Route 8 and Rose Valley Road along east side of State Route 8.	None	#2
			Approximately 1,170 feet north of intersection of State Route 8 and Military Road along east side of State Route 8.	None	#2
			Approximately 1,720 feet north of intersection of State Route 8 and Military Road along the west side of State Route 8.	None	#2
Maps available for inspection at the Cold Brook Village Hall, 457 Main Street, Cold Brook, New York. Send comments to The Honorable Juan Butera, Mayor of the Village of Cold Brook, P.O. Box 215, Cold Brook, New York 13324.					
New York	Lancaster (Town), Erie County.	Little Buffalo Creek	At confluence with Cayuga Creek	None	*679
			At a point approximately 1,200 feet upstream of Schwartz Road.	None	*723
		Scajaquada Creek	At Service Place	*696	*697
			At a point approximately 600 feet upstream of Stoneledge Drive.	None	*711
		Plum Bottom Creek	Upstream side of Steinfeldt Road	*685	*686
			At a point approximately 720 feet upstream of Cemetery Road.	*700	*702
		Ellicott Creek	Approximately 1,700 feet upstream of Transit Road.	*701	*702
			Approximately 100 feet upstream of Pavement Road.	None	*729
Maps available for inspection at the Town of Lancaster Building Inspector's Office, 11 West Main Street, Lancaster, New York. Send comments to Mr. Robert Giza, Lancaster Town Supervisor, 21 Central Avenue, Lancaster, New York 14086.					
New York	Monroe (Town), Orange County.	Palm Brook	Approximately 72 feet upstream of State Route 17.	None	*657
			Approximately 0.3 mile upstream of Raywood Drive.	None	*760
Maps available for inspection at the Town of Monroe Building Department, 11 Stage Road, Monroe, New York. Send comments to Mr. Mike Frerichs, Monroe Town Supervisor, 11 Stage Road, Monroe, New York 10950.					
New York	Oneida (City), Madison County.	Higinbotham Brook	At abandoned railroad	*429	*428
			Approximately 460 feet upstream of State Route 5.	None	*479

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State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the City of Oneida Municipal Building, 109 Main Street, Oneida, New York. Send comments to Honorable James Chappell, Mayor of the City of Oneida, 109 North Main Street, Oneida, New York 13421.					
New York	Peru (Town), Clinton County.	Ausable River	Approximately 0.59 mile downstream of U.S. Route 9.	*102	*103
			Approximately 0.83 mile upstream of U.S. Route 9.	None	*116
		Little Ausable River	Upstream side of Delaware and Hudson Railroad Bridge.	*102	*103
			Downstream side of Jarvis Road	None	*321
		Silver Stream	Approximately 320 feet downstream of U.S. Route 9.	*102	*103
			Downstream side of I–87 Northbound	None	*185
		Button Brook	At confluence with Little Ausable River	None	*284
			Downstream side of Peasleeville Road	None	*366
Maps available for inspection at the Peru Town Hall, 3036 Main Street, Peru, New York. Send comments to Mr. Kenneth T. Jahn, Supervisor of the Town of Peru, 3036 Main Street, P.O. Box 596, Peru, New York 12972.					
North Carolina	Franklin County (Unincorporated Areas).	Lake Royale	Approximately 3,000 feet east of intersection of Baptist Church Road and Sledge Road.	None	*191
		Tar River	A point approximately 1.20 miles upstream of North Main Street.	None	*207
			A point approximately 1.66 miles upstream of North Main Street.	None	*211
Maps available for inspection at the Franklin County Planning and Development Office, 215 East Nash Street, Louisburg, North Carolina. Send comments to Mr. James Moss, Chairman of the Franklin County Board of Commissioners, 113 Market Street, Louisburg, North Carolina 27549.					
North Carolina	Louisburg (Town), Franklin County.	Tar River	A point approximately 1.2 miles upstream of North Main Street.	None	*207
			A point approximately 1.66 miles upstream of North Main Street.	None	*211
Maps available for inspection at the Louisburg Town Hall, 110 West Nash Street, Louisburg, North Carolina. Send comments to The Honorable Lucy Allen, Mayor of the Town of Louisburg, 110 West Nash Street, Louisburg, North Carolina 27549.					
Ohio	Warren County (Unincorporated Areas).	Bear Run	Approximately 120 feet upstream of Hopkins Road.	*726	*727
			Approximately 25 feet upstream of Zoar Road.	None	*818
		Newman Run	At downstream side of U.S. Route 42	None	*721
			At confluence with North Fork Newman Run.	None	*767
		North Fork Newman Run	At confluence with Newman Run	None	*767
			At upstream side of Lytle Road	None	*974
		Salt Run	Approximately 1,350 feet upstream of confluence with Little Miami River.	None	*599
			Approximately 30 feet on the upstream side of Morrow-Cozdale Road.	None	*842
		Satterthwaites Run	Approximately 0.79 mile above the confluence with the Little Miami River Mill Run Channel.	None	*808
			At the upstream side of Lytle Road	None	*971
Maps available for inspection at the Warren County Map Room, 320 East Silver Street, Lebanon, Ohio. Send comments to Mr. Larry Crisenbery, President of the Warren County Board of Commissioners, 320 East Silver Street, Lebanon, Ohio 45036.					
Ohio	Waynesville (Village), Warren County.	Satterthwaites Run	Approximately 400 feet downstream of U.S. Route 42.	None	*725
			At upstream corporate limits	None	*837
Maps available for inspection at the Waynesville Village Hall, 291 Church Street, Waynesville, Ohio. Send comments to Mr. R. Kevin Harper, Waynesville Village Manager, P.O. Box 657, Waynesville, Ohio 45068.					
Pennsylvania	Allen (Township), Northampton County.	Lehigh River	Approximately 1.03 miles upstream of State Route 329.	*302	*304
			Approximately 1.02 miles downstream of State Route 145.	*323	*321
		Catasauqua Creek	A point approximately 0.52 mile downstream of dam.	None	*303

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Hokendauqua Creek	Approximately 150 feet upstream of Private Road.	None	*326
			Approximately 0.4 mile downstream of State Route 329.	None	*321
			Approximately 1,320 feet upstream of State Route 329.	None	*329

Maps available for inspection at the Allen Township Hall, 4714 Indian Trail Road, Northampton, Pennsylvania.
Send comments to Mr. Paul Balliet, Chairman of the Township of Allen Board of Supervisors, 4714 Indian Trail Road, Northampton, Pennsylvania 18067.

Pennsylvania	Ayr (Township), Fulton County.	Big Cove Creek	Approximately 0.6 mile downstream of the corporate limits.	None	*848
			At the corporate limits	None	*865

Maps available for inspection at the Ayr Township Building, 979 Buchanan Trail, McConnellsburg, Pennsylvania.
Send comments to Mr. Martin Harr, Chairman of the Ayr Township Board of Commissioners, P.O. Box 212, McConnellsburg, Pennsylvania 17233.

Pennsylvania	Bethelehem (City), Northampton County.	Lehigh River	Just downstream of Freemansburg Highway bridge.	*224	*223
		Saucon Creek	Approximately 0.18 mile upstream of CONRAIL Railroad.	*239	*236
			At the confluence of Lehigh River	*226	*224
			At the centerline of Friedensville Road	*276	*277

Maps available for inspection at the Bethlehem City Hall, Planning Office, 10 East Church Street, Bethlehem, Pennsylvania.
Send comments to The Honorable Donald T. Cunningham, Jr., Mayor of the City of Bethlehem, 10 East Church Street, Bethlehem, Pennsylvania 18018.

Pennsylvania	Bethlehem (Township), Northampton County.	Lehigh River	Approximately 1.97 miles upstream of Chain Dam.	*209	*210
			Approximately 0.8 mile downstream of Freemansburg Highway bridge.	*220	*221

Maps available for inspection at the Bethlehem Township Municipal Building, 4225 Easton Avenue, Bethlehem, Pennsylvania.
Send comments to Mr. Jeff J. Bartlett, Acting Bethlehem Township Manager, 4225 Easton Avenue, Bethlehem, Pennsylvania 18020.

Pennsylvania	East Allen (Township), Northampton County.	Monocacy Creek	Downstream of Mill Street	None	*406
			Approximately 1,000 feet downstream of Mill Street.	None	*406

Maps available for inspection at the East Allen Township Offices, 5344 Nor-Bath Boulevard, Northampton, Pennsylvania.
Send comments to Mr. Roger Unangst, Chairman of the Township of East Allen Board of Supervisors, 5344 Nor-Bath Boulevard, Northampton, Pennsylvania 18067.

Pennsylvania	Easton (City), Northampton County.	Lehigh River	Approximately 528 feet downstream of Easton Dam.	*192	*195
			Approximately 1.55 miles upstream of Chain Dam.	*209	*208
		Delaware River	Approximately 1 mile upstream of Interstate 78.	*188	*191
			Approximately 1.23 miles upstream of confluence with Bushkill Creek.	*198	*199

Maps available for inspection at the Easton City Hall, 1 South Third Street, Easton, Pennsylvania.
Send comments to The Honorable Thomas F. Goldsmith, Mayor of the City of Easton, 1 South Third Street, Easton, Pennsylvania 18042.

Pennsylvania	East Rockhill (Township), Bucks County.	East Branch Perkiomen Creek.	A point approximately 50 feet upstream of East Callowhill Road.	*317	*315
			Approximately 620 feet upstream of East Callowhill Road.	*318	*317

Maps available for inspection at the East Rockhill Township Office, 1622 Ridge Road, Perkasie, Pennsylvania.
Send comments to Mr. John Cressman, Chairman of the Township of East Rockhill Board of Supervisors, 1622 Ridge Road, Perkasie, Pennsylvania 18944.

Pennsylvania	Emmaus (Borough), Lehigh County.	Little Lehigh Creek	At downstream corporate limits	*324	*331
			At upstream corporate limits	*329	*337

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State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Emmaus Borough Hall, 28 South Fourth Street, Emmaus, Pennsylvania. Send comments to The Honorable Winfield Iost, Mayor of the Borough of Emmaus, 28 South Fourth Street, Emmaus, Pennsylvania 18049.					
Pennsylvania	Forks (Township), Northampton County.	Delaware River	Approximately 1.16 miles upstream of confluence with Bushkill Creek.	*198	*199
			Approximately 0.54 mile downstream of confluence with Mud Run.	*207	*206
Maps available for inspection at the Forks Township Hall, 1606 Sullivan Trail, Easton, Pennsylvania. Send comments to Mr. David Hoff, Chairman of the Township of Forks Board of Supervisors, 1606 Sullivan Trail, Easton, Pennsylvania 18040.					
Pennsylvania	Freemansburg (Borough), Northampton County.	Lehigh River	Approximately 420 feet upstream of confluence with Nancy Creek.	*221	*222
			Approximately 1.26 miles downstream of confluence with Monocacy Creek.	*229	*226
Maps available for inspection at the Freemansburg Borough Hall, 600 Monroe Street, Freemansburg, Pennsylvania. Send comments to The Honorable Gerald Yob, Mayor of the Borough of Freemahsburg, 600 Monroe Street, Freemansburg, Pennsylvania 18017.					
Pennsylvania	Glendon (Borough), Northampton County.	Lehigh River	Approximately 0.31 mile downstream of Glendon Parkway.	*194	*195
			Approximately 0.27 mile upstream of Chain Dam.	*204	*203
Maps available for inspection at the Glendon Borough Hall, 24 Franklin Street, Easton, Pennsylvania. Send comments to The Honorable Charles Seip, Mayor of the Borough of Glendon, 24 Franklin Street, Easton, Pennsylvania 18042.					
Pennsylvania	Hellertown (Borough), Northampton County.	Saucon Creek	Approximately 1,435 feet downstream of confluence of Black River.	*259	*260
			Approximately 540 feet downstream of Meadows Road.	*298	*296
Maps available for inspection at the Hellertown Borough Municipal Building, 685 Main Street, Hellertown, Pennsylvania. Send comments to Mr. James Sigworth, Hellertown Borough Manager, 685 Main Street, P.O. Box A, Hellertown, Pennsylvania 18055–0222.					
Pennsylvania	Lehigh (Township), Northampton County.	Lehigh River	Approximately 1.02 miles downstream of State Route 145.	*322	*321
			At the county boundary	*387	*388
Maps available for inspection at the Lehigh Township Municipal Building, 1069 Municipal Road, Walnutport, Pennsylvania. Send comments to Mr. Richard Demko, Chairman of the Lehigh Township Board of Supervisors, 1609 Municipal Road, Walnutport, Pennsylvania 18088.					
Pennsylvania	Lower Mount Bethel (Township), Northampton County.	Delaware River	Approximately 0.44 mile downstream of confluence with Mud Run.	*206	*207
			Just downstream of the Riverton-Belvidere Highway bridge.	*256	*255
Maps available for inspection at the Lower Mount Bethel Township Hall, 6984 South Delaware Drive, Martins Creek, Pennsylvania. Send comments to Mr. Anthony Gasparetti, Chairman of the Lower Mount Bethel Township Board of Supervisors, P.O. Box 257, Martins Creek, Pennsylvania 18063.					
Pennsylvania	Lower Saucon (Township), Northampton County.	Lehigh River	Approximately 1.61 miles upstream of Chain Dam.	*208	*209
			Just upstream of Freemansburg Highway bridge.	*222	*223
		Saucon Creek	Approximately 50 feet upstream of Friedensville Road.	*277	*278
			At the county boundary	*333	*337

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Lower Saucon Township Hall, 3700 Old Philadelphia Pike, Bethlehem, Pennsylvania. Send comments to Mr. Jeffrey Zettlemoyer, Assistant Lower Saucon Township Manager, 3700 Old Philadelphia Pike, Bethlehem, Pennsylvania 18015.					
Pennsylvania	McConnellsburg (Borough), Fulton Conty.	Big Cove Creek	At the corporate limits (south)	None	*855
			At the corporate limits (north)	None	*871
Maps available for inspection at the Fulton County Courthouse, North 2nd Street, McConnellsburg, Pennsylvania. Send comments to The Honorable Max Stenger, Mayor of the Borough of McConnellsburg, 112 Lincolnh Way East, McConnellsburg, Pennsylvania 17233.					
Pennsylvania	North Catasauqua (Borough), Northampton County.	Lehigh River	At the county boundary	*280	*281
			Approximately 1,900 feet downstream of confluence with Dry Run.	*285	*287
Maps Available for inspection at the North Catasauqua Borough Hall, 1066 Fourth Street, North Catasauqua, Pennsylvania. Send comments to Mr. Joseph Keglovits, President of the Borough of North Catasauqua, 1066 Fourth Street, Catasauqua, Pennsylvania 18032.					
Pennsylvania	Northampton (Borough), Northampton County.	Lehigh River	Approximately 1,900 feet downstream of confluence with Dry Run.	*285	*287
			Approximately 1.16 miles upstream of Route 329.	*302	*305
Maps available for inspection at the Northampton Borough Municipal Office, 1401 Laubach Avenue, Northampton, Pennsylvania. Send comments to Mr. Charles Bodnar, President of the Northampton Borough Council, 1401 Laubach Avenue, P.O. Box 70, Northampton, Pennsylvania 18067–0070.					
Pennsylvania	North Whitehall (Township), Lehigh County.	Fells Creek	At the confluence with the Lehigh River	*318	*315
			A point approximately 750 feet upstream of Neffs-Laurys Road.	None	*546
Maps available for inspection at the North Whitehall Township Municipal Building, 3256 Levans Road, Coplay, Pennsylvania. Send comments to Ms. Janet Talotta, Chairman of the North Whitehall Township Board of Supervisors, 3256 Levans Road, Coplay, Pennsylvania 18037.					
Pennsylvania	Palmer (Township), Northampton County.	Lehigh River	Approximately 0.63 mile downstream of Chain Dam.	*202	*195
			Approximately 1.71 miles upstream of Chain Dam.	*210	*209
Maps available for inspection at the Palmer Township Hall, 3 Weller Place, Palmer, Pennsylvania. Send comments to Mr. Jeffrey Young, Chairman of the Palmer Township Board of Supervisors, 3 Weller Place, P.O. Box 3039, Palmer, Pennsylvania 18043.					
Pennsylvania	Perkasie (Borough), Bucks County.	East Branch Perkiomen Creek.	At downstream corporate limits	*308	*307
			Approximately 620 feet upstream of East Callowhill Road.	*318	*317
Maps available for inspection at the Perkasie Borough Office, 311 South 9th Street, Perkasie, Pennsylvania. Send comments to Mr. John L. Cornelius, Perkasie Borough Manager, P.O. Box 275, Perkasie, Pennsylvania 18944.					
Pennsylvania	Plainfield (Township), Northampton County.	West Branch Little Bushkill Creek.	Approximately 460 feet downstream of State Route 512.	None	*682
			Approximately 300 feet downstream of Male Street.	None	*689
Maps available for inspection at the Plainfield Township Hall, 6292 Sullivan Trail, Nazareth, Pennsylvania. Send comments to Mr. Randy Lieberman, Chairman of the Township of Plainfield Board of Supervisors, 6292 Sullivan Trail, Nazareth, Pennsylvania 18064.					
Pennsylvania	Portland (Borough), Northampton County.	Delaware River	Approximately 0.36 mile downstream of confluence with Jacoby Creek.	*293	*294

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 0.60 mile upstream of confluence with Jacoby Creek.	*298	*299

Maps available for inspection at the Portland Borough Building, 1 Division Street, Portland, Pennsylvania.

Send comments to The Honorable Kay Bucci, Mayor of the Borough of Portland, P.O. Box 295, Portland, Pennsylvania 18351.

Pennsylvania	Sellersville (Borough), Bucks County.	East Branch Perkiomen Creek.	Approximately 150 feet downstream of CONRAIL bridge.	*302	*303
			At upstream corporate limits	*308	*307

Maps available for inspection at the Sellersville Borough Hall, 140 East Church Street, Sellersville, Pennsylvania.

Send comments to The Honorable Joseph F. Hufnagle, Sr., Mayor of the Borough of Sellersville, 140 East Church Street, Sellersville, Pennsylvania 18960.

Pennsylvania	Todd (Township), Fulton County.	Big Cove Creek	Approximately 50 feet downstream of State Route 16.	None	*865
			Approximately 0.6 mile upstream of State Route 16.	None	*887

Maps available for inspection at the Todd Township Building, 2998 East Dutch Corner Road, McConnellsburg, Pennsylvania.

Send comments to Mr. Mack Clevenger, Chairman of the Todd Township Board of Supervisors, P.O. Box 243, McConnellsburg, Pennsylvania 17233.

Pennsylvania	Upper Mt. Bethel (Township), Northampton County.	Delaware River	Just downstream of Riverton-Belvidere Highway bridge.	*256	*255
			Approximately 110 feet downstream of the county boundary.	*314	*313

Maps available for inspection at the Mt. Bethel Township Hall, 387 Ye Olde Highway, Mt. Bethel, Pennsylvania.

Send comments to Mr. Lewis L. Donatelli, Sr., Chairman of the Upper Mt. Bethel Township Board of Supervisors, 387 Ye Olde Highway, Mt. Bethel, Pennsylvania 18343.

Pennsylvania	Walnutport (Borough), Northampton County.	Lehigh River	Approximately 1.05 miles downstream of Route 946 (Main Street).	*356	*366
			Approximately 0.4 mile upstream of Route 946 (Main Street).	*366	*367

Maps available for inspection at the Walnutport Borough Offices, 417 Lincoln Avenue, Walnutport, Pennsylvania.

Send comments to Mr. William Turk, President of the Walnutport Borough Council, 120 Lincoln Avenue, Walnutport, Pennsylvania 18068.

Pennsylvania	West Easton (Borough), Northampton County.	Lehigh River	Approximately 0.88 mile downstream of Glendon Parkway.	*192	*195
			Approximately 50 feet downstream side of 25th Street.	*197	*195

Maps available for inspection at the West Easton Borough Hall, 237 7th Street, West Easton, Pennsylvania.

Send comments to Mr. Carl Persion, West Easton Borough Council President, 237 7th Street, West Easton, Pennsylvania 18042.

Pennsylvania	West Rockhill (Township), Bucks County.	East Branch Perkiomen Creek.	At the upstream side of CountyLine Road	*275	*276
			Approximately 550 feet downstream of CONRAIL bridge.	*302	*301

Maps available for inspection at the West Rockhill Township Hall, 1028 Ridge Road, Sellersville, Pennsylvania.

Send comments to Mr. Richard Derstine, Chairman of the Township of West Rockhill Board of Supervisors, 1028 Ridge Road, Sellersville, Pennsylvania 18960.

Pennsylvania	Williams (Township), Northampton County.	Lehigh River	Approximately 0.27 mile upstream of Chain Dam.	*204	*203
			Approximately 1.61 miles upstream of Chain Dam.	*208	*209
		Delaware River	At the county boundary	*163	*165
			Approximately 1 mile upstream of Interstate 78.	*186	*191

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Williams Township Municipal Building, 655 Cider Press Road, Easton, Pennsylvania. Send comments to Mr. Jeffery Marsh, Williams Township Manager, 655 Cider Press Road, Easton, Pennsylvania 18042.					
Pennsylvania	Wilson (Borough), Northampton County.	Lehigh River	Approximately 500 feet downstream of 25th Street.	*197	*195
			Approximately 950 feet upstream of 25th Street.	*197	*195
Maps available for inspection at the Wilson Borough Hall, 2040 Hay Terrace, Easton, Pennsylvania. Send comments to Mr. David S. Perruso, President of the Wilson Borough Council, 2040 Hay Terrace, Easton, Pennsylvania 18042.					
Rhode Island	Coventry (Town), Kent County.	Tributary A1	Approximately 400 feet upstream of the confluence with South Branch Pawtuxet River.	*241	*239
			Approximately 55 feet upstream of Flat River Road.	*254	*246
		Tributary A2	A point approximately 37 feet upstream of Bike Path.	*254	*241
			A point approximately 85 feet upstream of Bike Path.	*254	*241
Maps available for inspection at the Coventry Town Hall, 1670 Flat River Road, Coventry, Rhode Island. Send comments to Mr. Francis Frobel, Coventry Town Manager, Coventry Town Hall, 1670 Flat River Road, Coventry, Rhode Island 02816.					
Virginia	Danville (City), Pittsylvania County.	Apple Branch	At confluence with Dan River	None	*418
			Approximately 25 feet upstream of Northmont Boulevard.	None	*535
		Dan River	At downstream corporate limits	*395	*396
			Approximately 970 feet downstream of upstream corporate limits.	*457	*458
		Sandy Creek	At confluence with Dan River	*421	*424
			At downstream side of U.S. Route 58	*423	*424
		Sandy River	At confluence with Dan River	*424	*427
			Just downstream of old U.S. Route 58	*426	*427
		Pumpkin Creek	At confluence with Dan River	*400	*401
			750 feet upstream of State Route 265	*400	*401
		Jackson Branch	At confluence with Dan River	*401	*403
			Approximately 1,725 feet upstream of Goodyear Boulevard (Whitmell Street).	*402	*403
		Fall Creek	At confluence with Dan River	*403	*404
			100 feet downstream of Halifax Street	*403	*404
Maps available for inspection at the Department of Community Development, 427 Patton Street, Danville, Virginia. Send comments to Mr. Lyle Lacy, Interim City Manager, P.O. Box 3300, Danville, Virginia 24543.					
Virginia	Monterey (Town), Highland County.	West Straight Creek	Approximately 120 feet downstream of the downstream corporate limits.	None	*2,847
			Approximately 615 feet upstream of Mill Alley.	None	*2,965
Maps available for inspection at the Town of Monterey Building and Zoning Office, Courthouse Annex, Spruce Street, Monterey, Virginia. Send comments to The Honorable Janice S. Warner, Mayor of the Town of Monterey, P.O. Box 460, Monterey, Virginia 24465.					
West Virginia	Moorefield (Town), Hardy County.	Unnamed Ponding Area	Approximately 500 feet southwest of the intersection of U.S. Route 220 and Monroe Avenue.	*805	*804
		South Branch Potomac River.	Unnamed tributary from downstream corporate limits to Spring Avenue.	None	*798
Maps available for inspection at the Moorefield Town Hall, 206 Winchester Avenue, Moorefield, West Virginia. Send comments to The Honorable Larry P. Snyder, Mayor of the Town of Moorefield, 206 Winchester Avenue, Moorefield, West Virginia 26836.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 31, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–9065 Filed 4–11–00; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 43

[CC Docket No. 98–137, CC Docket No. 99–117, AAD File No. 98–26; FCC 00–119]

1998 Biennial Regulatory Review—Review of Depreciation Requirements for Incumbent Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the primary goal of the Commission is to determine whether there are circumstances under which Commission depreciation requirements could be eliminated for price-cap carriers in a manner that serves the public interest. In reaching this goal it is important to ensure that the consumers are protected against harmful rate impacts that could result from unregulated depreciation practices. The Commission remains concerned, and seeks to assure, that any changes in depreciation practices do not adversely impact consumers and competition.

DATES: Written comments by the public on the proposed information collections are due April 17, 2000. Reply comments must be received on or before April 28, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before June 12, 2000.

ADDRESSES: Federal Communications Commission, 445—12th Street, SW, TW–A325, Washington, DC 20554. In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW, Washington, DC 20503 or via the Internet to Edward.Springer@omb.eop.gov. For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: JoAnn Lucanik, Accounting Safeguards Division, Common Carrier Bureau at (202) 418–0873 or Andy Mulitz, Chief, Legal Branch, Accounting Safeguards Division, Common Carrier Bureau at (202) 418–0827. For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: The Further Notice of Proposed Rulemaking (FNPRM) in CC Docket No. 98–137, CC Docket No. 99–117 and AAD File No. 98–86, adopted on March 31, 2000 and released on April 3, 2000, is available for inspection and copying during normal business hours in the FCC Reference Information Center (RIC), 445 12th Street, SW, TW–A325, Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20036 (202) 857–3800.

This FNPRM contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Paperwork Reduction Act

This FNPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this FNPRM; OMB notification of action is due 60 days from date of publication of this FNPRM in the **Federal Register**.

Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–0168.

Title: Reports of Proposed Changes in Depreciation Rates—Section 43.43.

Form No.: N/A.

Type of Review: Revision of existing collection.

Respondents: Business or other for-profit.

Number of Respondents: 10.

Estimated Time Per Response: 4000 hours (avg).

Total Annual Burden: 40,000 hours.

Cost to Respondents: $0.

Needs and Uses: The FNPRM seeks comment on a proposal to provide relief from the Commission's depreciation prescription process for price cap incumbent LECs. Generally, the proposal provides for a price cap incumbent LEC to adjust the net book costs on its regulatory books to its financial book levels and amortize the difference over a five year period; forego the opportunity to seek recovery of the amortized difference in any state and/or interstate rates through a low-end adjustment, an exogenous adjustment, an above-cap filing or any other recovery mechanism; use the same depreciation factors and rates for both regulatory and financial accounting purposes; submit information concerning its depreciation accounts, including forecast additions and retirements for major network accounts and replacement plans for digital central offices; use the amortized amount in the calculation of regulated earnings; and report costs that reflect both amortization as a one time write-off and as amortized over the five year period. If adopted, the proposal would most likely eliminate the waiver process set forth in the R&O.

Synopsis of Notice

In their *March 3, 2000 letter,* Incumbent Local Exchange Carriers (ILECs) participating in the Coalition for Affordable Local and Long Distance (CALLS) modified plan identified a potential alternative joint waiver approach to achieving the objectives set forth in the *Depreciation Order* released on December 30, 1999 (FCC 99–397), 65 FR 18926 (April 7, 2000). Specifically,

the letter outlines steps that the ILECs propose to take to achieve freedom from depreciation requirements, including: (1) use of the same depreciation factors and rates for both federal regulatory and financial accounting purposes; (2) submission of information concerning their depreciation accounts when significant changes to depreciation factors are made; and (3) use of a straight-line amortization over a five-year period to account for the difference between the reserve balances on their regulatory books and the corresponding balances on their financial books. The ILECs indicated that, under their proposal, the amortization expense for each year would be included in the calculation of regulated earnings (treated as an above-the-line expense) when reporting to the Commission. The ILECs would agree, however, that the amortization would have no effect on interstate price caps or their interstate rates and would commit not to seek recovery of the amortization expense through a low-end adjustment, an exogenous adjustment, or an above-cap filing. Also, under this proposal, the ILECs would commit not to seek recovery of the interstate amortization expense through any action at the state level, including any action on UNE rates.

The primary goal of this proceeding is to determine whether there are circumstances under which our depreciation requirements could be eliminated for price-cap carriers in a manner that serves the public interest. In reaching this goal, it is important to ensure that consumers are protected against harmful rate impacts that could result from unregulated depreciation practices. Further, while we seek to eliminate burdensome regulatory requirements, we remain committed to assuring that such elimination does not have any adverse impact on the development of local competition. Also, because many of the state regulatory commissions use our cost models and often rely on our depreciation prescriptions for state ratemaking purposes, we seek to ensure that elimination of our depreciation requirements will not have any adverse impact at the state level.

The conditions we established in the *Depreciation Order*, pursuant to which a carrier could seek a waiver from the depreciation requirements, were found to largely mitigate any adverse impacts that could occur when carriers are given freedom from depreciation regulation. Prominent among these conditions was a requirement to write-off, below-the-line, the difference between the carriers' regulatory and financial book costs. The *Depreciation Order* identified this one-time write-off as one means to eliminate the disparity that exists between financial and regulatory books and to ensure that these expenses would not be unjustifiably recovered in consumer rates. Under a five-year amortization proposal, the differential between the carriers' financial and regulatory books would be eliminated in five years.

We seek comment on whether an above-the-line amortization of the difference between the price-cap carriers' regulated and financial book costs over a five-year period, combined with a commitment not to seek recovery of the amortization and not to base any application for federal or state rate increases (through a low-end adjustment or other means) on any portion of the amortization over the course of the five year period adequately protects consumers from adverse rate impacts and otherwise meets the policy goals of the *Depreciation Order*. If not, are there additional steps that would eliminate or minimize these concerns? We specifically invite state commissions to comment on whether the depreciation changes discussed herein will have an adverse impact on local rates or competition. If so, we seek comment from states on specific actions we might take to protect against such adverse impacts.

We also seek comment on whether it is appropriate, under a five-year amortization approach, coupled with a commitment not to seek recovery of any portion of the amortization from federal or state rates, to include the amortization amount in the calculation of regulated earnings in the carriers' reports to the Commission. If so, what protections, if any, will ensure that the carriers' reported earnings, which would include the amortization expense, are not used in applications for rate increases under low-end adjustment, above cap price filings, or other mechanisms to justify rate increases. For example, should price-cap ILECs be required to periodically report costs that reflect what their costs would have been had the write-off been taken as a one-time below-the-line event or maintain records that reflect the amortization factored-in and factored-out, particularly where the carrier may be seeking price increases under low-end adjustments or some other mechanism? We seek comment on whether a five-year amortization accounting treatment has an adverse impact on reported earnings, and if so, what, if any, action the Commission should take to address these impacts. We also seek comment on what measures we should take to account for and monitor the proposed amortization process.

In the *Depreciation Order*, we found that, in order to prevent any inappropriate and undesirable fluctuations in high cost support or the rates for interconnection and UNEs due to changes in depreciation factors or rates caused by carriers no longer subject to the Commission's depreciation requirements, we would continue to maintain realistic ranges of depreciable life and salvage factors for each of the major plant accounts for use in the cost models. Thus, we required that carriers agree to provide information about their depreciable plant accounts, including forecast additions and retirements for major network accounts, replacement plans for digital central offices, and information concerning relative investments in fiber and copper cable. We seek comment on the timing of the carriers' data submissions to the Commission and the scope of such submissions that will be needed to periodically update depreciation factors for use in the cost models.

Finally, we note that audits of the continuing property records (CPR) of the Regional Bell Operating Companies (RBOCs) are before the Commission, as are the results of a joint State-Federal audit of GTE's CPRs. The CPR audits found that, combined, these carriers could not account for approximately $5 billion of central office equipment and recommended that these amounts be written-off their regulatory books of account. We estimate that a five-year amortization, if applied to these carriers, would result in a reduction of approximately $28 billion in asset value from their regulated books of accounts. Given the size of the write-off proposed by the audits, we seek comment on whether, if the RBOCs and GTE bring their regulatory book balances to the levels of their financial book levels, the CPR audit findings are rendered moot. In particular, we seek comment on whether an accounting treatment that results in a non-recoverable amortization of a substantial portion of a carrier's investment provides a legitimate basis to terminate the CPR audits.

Procedural Issues

A. Ex Parte Presentations

This is a permit but disclose rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See*

generally 47 CFR 1.1202, 1.1203, and 1.1206.

B. Supplemental Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have no more than 1,500 employees. This rulemaking action is supported by sections 4(i), 4(j), 201–205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 254, and 403.

This Further Notice seeks comment on what conditions would be appropriate to eliminate the prescription of depreciation rates for price-cap ILECs. As noted, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small ILECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small ILECs in the RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts. We note, however, that the action we propose in this rulemaking proceeding does not apply to small ILECs, but would apply only to price-cap ILECs subject to Commission depreciation requirements.

We certify that the proposal in this Further Notice, if adopted, will not have a significant economic impact on a substantial number of small entities. Pursuant to long-standing rules, ILECs with annual operating revenues exceeding the indexed revenue threshold must comply with the Commission's depreciation prescription process. This Further Notice proposes, under appropriate conditions, to eliminate these depreciation requirements. These changes should be easy and inexpensive for ILECs to implement and will not require costly or burdensome procedures. We therefore expect that the potential impact of the proposed rules, if such are adopted, is beneficial and does not amount to a possible significant economic impact on affected entities. If commenters believe that the proposals discussed in the Further Notice require additional RFA analysis, they should include a discussion of these issues in their comments.

The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this Further Notice, including this initial certification, to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

This Further Notice seeks comment on the timing of price-cap ILECs' data submissions to the Commission and the scope of such submissions that are needed by the Commission to periodically update depreciation factors for use in the cost models. As part of our continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on information collections contained in this Further Notice of Proposed Rulemaking, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this Further Notice of Proposed Rulemaking. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

D. Comment Filing Procedures

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 17, 2000. Interested parties may file reply comments on or before April 28, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW Room TW–A325, Washington, DC 20554.

Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Debbie Byrd, Accounting Safeguards Division, 445 12th Street, SW, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case CC Docket No. 98–137, CC Docket No. 99–117, and AAD File No. 98–26), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the

Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20037.

Written comments by the public on the proposed information collections are due on or before April 17, 2000 and reply comments or due on or before April 28, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before June 12, 2000. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW, Washington, DC 20503 or via the Internet to fain_t@al.eop.gov.

Ordering Clauses

Pursuant to the authority contained in sections 4(i), 4(j), 201(b), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201(b), 303(r), and 403, this Further Notice of Proposed Rulemaking is adopted.

The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration, 5 U.S.C. 605(b).

Federal Communications Commission.

Kenneth P. Moran,

Chief, Accounting Safeguards Division.

[FR Doc. 00–9230 Filed 4–11–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG02

Endangered and Threatened Wildlife and Plants; Proposed Determination of Endangered Status for *Astragalus Holmgreniorum* (Holmgren Milk-Vetch) and *Astragalus Ampullarioides* (Shivwits Milk-Vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service (Service), propose to determine endangered species status under the Endangered Species Act (Act) of 1973, as amended, for two perennial herbs, *Astragalus holmgreniorum* (Holmgren milk-vetch) and *Astragalus ampullarioides* (Shivwits milk-vetch). Three small populations of *A. holmgreniorum* exist in Washington County, Utah and adjacent Mohave County, Arizona. Five small populations of *A. ampullarioides* exist in Washington County, Utah. Significant portions of the habitat of both species are subject to disturbance from urban development, off-road vehicles (ORVs), grazing, displacement by exotic weeds, and mineral development. A determination that *A. holmgreniorum* and *A. ampullarioides* are endangered species would implement the Federal protections provided by the Act for these plants.

DATES: Comments from all interested parties must be received by June 12, 2000. Public hearing requests must be received by May 30, 2000.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Lincoln Plaza, Suite 404, 145 East 1300 South, Salt Lake City, Utah 84115. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John L. England, Botanist, Utah Field Office, at the address listed above (telephone: 801/524–5001).

SUPPLEMENTARY INFORMATION:

Background

Astragalus holmgreniorum (Holmgren milk-vetch) was first collected as a scientific specimen in 1941 by Melvin Ogden. Rupert Barneby and Noel and Patricia Holmgren rediscovered the species in 1979. Barneby (1980) recognized the species as a unique taxon occurring in a localized area on the Arizona-Utah border, and named it for its co-discovers. *A. ampullarioides* (Shivwits milk-vetch) was first collected near Shem in Washington County, Utah by Duane Atwood in 1976. The species was originally described by Stanley Welsh (1986) as a variety of *A. eremiticus*. Barneby (1989) questioned the taxonomic significance of the species and submerged *A. eremiticus* var. *ampullarioides* within typical *A. eremiticus*. Later research work by Harper and Van Buren (1998), and Stubben (1997) demonstrated significant genetic and ecological differences between typical *A. eremiticus* and *A. eremiticus* var. *ampullarioides*. Welsh (1998) revised the species' taxonomy elevating the taxon to full species status as *A. ampullarioides*. Both species are narrowly distributed Mojave Desert endemics restricted to the immediate vicinity of St. George, Utah.

A member of the pea family (Fabaceae), *Astragalus holmgreniorum* grows close to the ground and is a herbaceous (non-woody) perennial that produces small purple flowers in the spring, and dies back to its root crown (base of the stalk where roots begin) after the flowering season. The plant's pinnately compound (arranged on opposite sides of the stem in a row) leaves arise directly from the root crown. The leaves are pressed close to the ground, and are 4 to 13 centimeters (cm) (1.5 to 5.1 inches (in)) long, and have 9 to 15 leaflets. The leaflets are 0.8 to 1.6 cm (0.3 to 0.6 in) long and are broadly obovate (oval with the narrow end towards the base of the leaf) in shape. The flowers of *A. holmgreniorum* are purple, 1.8 to 2.4 cm (0.7 to 0.9 in) long, and 0.6 to 0.9 cm (0.2 to 0.4 in) wide and have the distinctive papilionaceous flower shape of a legume (pea-like flower with 5 petals that include a large petal on top enclosing 2 lateral petals and 2 smaller lower petals). The flowers are borne in a raceme inflorescence (flowers occur along a stalk), commonly with 6 to 16 flowers. The peduncle (flower stalk) is 2 to 8.5 cm (0.8 to 3.6 in) long and arises directly from the root crown. The peduncle is erect during anthesis (period the flower is open) and is prostrate, with the plant's leaves in fruit (Barneby 1980; 1989; Welsh, *et al.* 1987; Stubben 1997). The fruits are pods 3 to 5 cm (1 to 2 in) long and 0.6 to 0.9 cm (0.2 to 0.4 in) across. The pods retain seeds even after the pods fully open up along the margin. With age, each pod eventually drys out and opens up at both the top and bottom ends (Barneby 1989; Stubben 1997).

Astragalus holmgreniorum grows on the shallow, sparsely vegetated soils derived primarily from the Virgin limestone member of the Moenkopi Formation. The species is a principal member of a warm-desert shrub vegetative community dominated by the following perennial shrubs: desert goldenhead (*Acamptopappus sphaerocephalus*), white burrobush (*Ambrosia dumosa*), range ratany (*Krameria parvifolia*), and Anderson wolfberry (*Lycium andersonii*). In addition, plant species associated with *A. holmgreniorum* include several perennial and annual forbs and grasses; most significant are the introduced

weedy species foxtail brome (*Bromus rubens*), storksbill (*Erodium cicutarium*), and African mustard (*Malcolmia africana*) (Stubben 1997; Armstrong and Harper 1991; Van Buren 1992; Harper and Van Buren 1998).

Only three populations of *Astragalus holmgreniorum* are known. The species' primary population exists on the Arizona (Mohave County) and Utah (Washington County) border approximately 11 kilometers (km) (7 miles (mi)) south of the center of St. George, Utah (Stubben 1997). This population is fragmented by Interstate Highway 15, areas of urban development, and spotty natural habitat occurrences. The number of individual plants in all the species' populations varies considerably from year to year. This population averages from 4,000 to 5,000 plants in an average year to about 9,000 to 10,000 plants in years with wet winters (Stubben 1997; R. Van Buren, Utah Valley State College, Orem, Utah, pers. comm. 1998). The second population of about 1,000 plants is approximately 8 km (5 mi) west of St. George (Stubben 1997; Van Buren 1992). The third population consist of about 300 plants, and is located approximately 15 km (9 mi) east of St. George (Stubben 1997). The small number of populations and restricted habitat of this species make it vulnerable to human-caused and natural environmental disturbances. Urban expansion of St. George and highway and power line construction have destroyed significant portions of the species' potential habitat and threaten additional occupied habitat. The species is also threatened by ORV use, displacement by exotic weeds, mineral exploration and development (Harper 1997; Stubben 1997).

Astragalus ampullarioides (Shivwits milk-vetch) is a perennial, herbaceous plant that is considered a tall member of the pea family, although some plants appear shorter because of grazing impacts. Stems may grow along the ground or to a height of 20 to 50 cm (8 to 20 in). However, ungrazed flowering stems may attain a height of 1 meter (40 in). Its leaves are pinnately compound, 4 to 18 cm (1.6 to 7.1 in) long, and have 11 to 23 elliptical leaflets. Each plant produces about 45 small cream-colored flowers about 2 cm (0.8 in) long on a single stalk in the spring. Seeds are produced in small pods, and the plant dies back to its root crown after the flowering season. The fruit is a short, broad pod between 0.8 and 1.5 cm (0.3 to 0.6 in) in length and 0.6 to 1.2 cm (0.2 to 0.5 in) in width (Barneby 1989; Welsh 1986, 1998; Welsh, *et al.* 1987).

Differences between *Astragalus ampullarioides* and typical *A. eremiticus*, which is also found in Washington County, Utah, are apparent from the following morphological and ecological characteristics: (1) *A. ampullarioides* has more flowers in each inflorescence, (2) *A. ampullarioides* has more elongated flower stalks, (3) *A. ampullarioides* has wider pods, (4) *A. ampullarioides* has taller plants, (5) *A. ampullarioides* has hollow stems, *A. eremiticus* stems are solid, and (6) *A. ampullarioides* plants are highly palatable to grazing animals, whereas typical *A. eremiticus* is seldom if ever eaten (Barneby 1989; Welsh 1986, 1998; Welsh, *et al.* 1987; Van Buren 1992; Harper and Van Buren 1998). The variation between the two species is also apparent at the genetic level. DNA analysis of *Astragalus* species, have shown significant differences in genetic markers between *A. ampullarioides and A. eremiticus* (Stubben 1997).

Astragalus ampullarioides grows on the Chinle geological formation at five separate sites in Washington County, Utah. These sites are distributed on a narrow band of the exposed Chinle formation over a distance of about 40 km (25 mi) near the City of St. George, Utah. These 5 populations contain about 1,000 individual plants (R. Van Buren, pers. comm. 1998). Two of the five populations occur near Shivwits on the western edge of the species' range. One population occurs on the Shivwits Indian Reservation and contains about 50 individual plants (L. England, pers. comm. 1999); the other population occurs on Bureau of Land Management (BLM) land and contains about 135 individual plants (Utah Natural Heritage Program 1999). Three other populations occur near Harrisburg Junction on the eastern edge of the species' range. One of these populations occurs on a mixture of State and BLM lands and contains about 300 individual plants (L. England, pers. comm. 1999). Another population occurs on BLM lands and contains four plants (Utah Natural Heritage Program 1999). The third population is located within commercial and residential development and contains about 200 individual plants (Utah Natural Heritage Program 1999). Native plant species normally associated with *A. ampullarioides* include: beautiful bluedicks (*Dichlostemma pulchellum*), birdsfoot trefoil (*Lotus humistratus*), snakeweed (*Gutierrezia microcephala*), mariposa lily (*Calochortus flexuosus*), and several other Mojave Desert plants. Currently the most significant plant species associated with *A. ampullarioides* are the introduced weedy species foxtail brome (*Bromus rubens*), cheat grass (*B. tectorum*), storksbill (*Erodium cicutarium*), and African mustard (*Malcolmia africana*) (Armstrong and Harper 1991; Van Buren 1992, 1998; Harper and Van Buren 1998).

Astragalus ampullarioides is threatened by the same activities as *A. holmgreniorum*. In addition, *A. ampullarioides* also is heavily grazed by most wild and domestic herbivores, and one of its five populations is threatened by activities associated with clay quarry mining and unauthorized waste disposal (Harper 1997). *A. ampullarioides* is restricted to clay soils derived from outcrops of the Chinle formation which naturally limits its potential habitat and population (R. Van Buren pers. comm. 1998).

Previous Federal Action

Section 12 of the Act (16 U.S.C. 1533 *et seq.*) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. We published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) announcing our decision to treat the Smithsonian report as a petition within the context of section 4(c)(2) now section 4(b)(3) of the Act), and our intention to review the status of those plants.

The July 1975 notice was updated by a notice in the **Federal Register** on December 15, 1980 (45 FR 82480). On November 28, 1983, we amended the 1980 notice (48 FR 53640) and added *Astragalus holmgreniorum* as a category 2 candidate species. Category 2 candidates were defined as taxa for which information indicated that proposing to list the taxa as endangered or threatened was possibly appropriate but substantial data on biological vulnerability and threats were not currently known or on file to support a listing proposal. A later Notice of Review published on February 21, 1990 (55 FR 6185), maintained *A. holmgreniorum* as a category 2 species and included *A. eremiticus* var. *ampullarioides* (a synonym of A. *ampullarioides*) as a category 2 species.

Based on new biological and threat information (Armstrong and Harper 1991; Van Buren 1992) we identified *Astragalus holmgreniorum* as a category 1 candidate in the 1993 plant Notice of Review (58 FR 51133). At that time, category 1 candidates comprised taxa for which we had significant biological

information to propose the species as endangered or threatened.

In the February 28, 1996, Notice of Review (61 FR 7596), we ceased using the category designations for candidates and included both *Astragalus holmgreniorum* and *A. ampullarioides* (*A. eremiticus* var. *ampullarioides*) as candidate species. Candidate species are those for which we have on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered.

On June 2, 1999, we received a petition from Peter Galvin of the Southwest Center for Biological Diversity, Tucson, Arizona to list both *Astragalus holmgreniorum* and *A. ampullarioides* as endangered species under the Act. The petition specified endangered status because of the rarity of the plant and the significant population and individual losses of both plants. The petition also requested designation of critical habitat concurrent with the listing. Inasmuch as *Astragalus holmgreniorum* and *A. ampullarioides* are currently designated candidate species with assigned listing priorities of two and three, respectively, we consider them already under petition and covered by a warranted but precluded finding. We responded to this petition on June 14, 1999, notifying the petitioner that our Endangered Species Petition Management Guidance issued in July 1996 considers a petition for a candidate species as redundant, and as such will be treated as a second petition. We also notified the petitioner that preparation of a proposed rule for listing of *A. holmgreniorum* and *A. ampullarioides* was ongoing and would be published in the **Federal Register** in the near future.

The processing of this final rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. This proposed rule for *Astragalus holmgreniorum* and *A. ampullarioides* is a Priority 3 action and is being completed in accordance with the current Listing Priority Guidance. If it is determined that an emergency situation exists for either or both species, the species will be elevated to Priority 1.

Peer Review

In accordance with interagency policy published on July 1, 1994 (59 FR 34270), upon publication of this proposed rule in the **Federal Register** we will solicit expert reviews by at least three specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomic, biological, and ecological information for *Ambrosia pumila*. The purpose of such a review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including the input of appropriate experts.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Astragalus ampullarioides* (Welsh) Welsh (Shivwits milk-vetch) and *A. holmgreniorum* Barneby (Holmgren milk-vetch) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The entire population of *Astragalus holmgreniorum* and most of the population of *A. ampullarioides* are vulnerable to habitat loss and extirpation due to urban growth and development in the St. George area of Washington County, Utah. St. George is a rapidly growing "sun-belt" city. The human population of the St. George area has grown from about 48,000 in 1990 to over 75,000 in 1999, and is projected to double within the next 20 years. Construction of residential housing destroyed occupied and potential habitat of both species during the last 5 years (Harper 1997; Stubben 1997; R. Van Buren, pers. comm. 1998). The continued demand for land for urban expansion of Washington County communities threatens all populations of *A. holmgreniorum* and the eastern populations of *A. ampullarioides* (Harper 1997; Stubben 1997). Residential and commercial development, along with associated construction of new roads, highways, electric power transmission lines, pipelines, airports, residential and commercial buildings, recreational facilities such as golf courses, and maintenance of existing roads will encroach and threaten the habitat of both species.

Habitat degradation from ORV use is increasing within both species' habitats. Both *Astragalus holmgreniorum* and *A. ampullarioides* are in the same general area as the listed plant species *Arctomecon humilis* (dwarf bear-poppy), which has been severely impacted by ORV use and urban development (Harper 1997; R. Van Buren, pers. comm. 1998). Conservation measures to protect the recently listed Mohave Desert tortoise (*Gopherus agassizii*) population from development may have caused a change in urbanization patterns that may lead to an increase in urban development and encroachment into the habitat of *A. holmgreniorum* and *A. ampullarioides* (Stubben 1997; Harper 1997; D. Pietrzak, BLM, St. George, Utah, pers. comm. 1993). Patterns of urban, commercial, and residential expansion north of St. George City were affected by conservation efforts for the Desert tortoise including the Washington County Habitat Conservation Plan. Significant areas of potential community growth in the St. George area, especially between the city and the Arizona border, are within the occupied habitat of *A. holmgreniorum* and *A. ampullarioides*.

In Utah, occupied *Astragalus holmgreniorum* and *A. ampullarioides* habitat occurs on Federal (BLM), State of Utah, Tribal (Shivwits Band of the Paiute Tribe) and private land. In Arizona, *A. holmgreniorum* is restricted to State of Arizona lands immediately adjacent to the Utah border. Private and State lands may be subject to land use changes such as an increase in urban development. Federal lands with populations of *A. holmgreniorum* may be subject to exchange or sale to the States or private parties. The State of Utah had proposed to the BLM to acquire lands that harbor the largest portion of the *A. holmgreniorum* population in exchange for occupied desert tortoise habitat north of St. George in Washington County (Stubben 1997; D. Pietrzak, pers. comm. 1993). A private land developer has proposed to develop much of the Utah portion of the

A. holmgreniorum habitat for a planned residential community. A major highway is proposed for construction through the *A. holmgreniorum* habitat between St. George and the Arizona border. A proposed planned community development near Harrisburg Junction has the potential to destroy one of the three eastern *A. ampullarioides* populations (Rosenberg Associates 1999). An electric power transmission line is proposed to pass through the two western *A. ampullarioides* populations. Gypsum mining operations occur adjacent to occupied *A. holmgreniorum* habitat south of St. George. An existing clay pit now being used as an unauthorized waste disposal area occurs adjacent to occupied *A. ampullarioides* habitat east of St. George. Both of these mining-related activities have the potential to destroy both *A. holmgreniorum* and *A. ampullarioides* habitat.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Astragalus holmgreniorum and *A. ampullarioides* have no known commercial, recreational, or scientific use at this time. There is no evidence of overcollection by botanists and/or horticulturists at this time.

C. Disease or Predation

We have no information to indicate that diseases threaten the continued survival of either *Astragalus holmgreniorum* or *A. ampullarioides.*

Astragalus ampullarioides is extremely palatable to both wildlife and domestic livestock, but *A. holmgreniorum* is not. The two western *A. ampullarioides* populations currently are overgrazed, often to the point that reproduction is forgone due to the loss of the entire flower and fruit of virtually every plant in the population (Harper 1997; Harper and Van Buren 1998).

D. The Inadequacy of Existing Regulatory Mechanisms

There are no Federal or State laws or regulations directly protecting *Astragalus holmgreniorum* and *A. ampullarioides* or their habitat. However, the BLM Manual 6840 states that "The BLM shall carry out management, consistent with multiple use, for the conservation of candidate species and their habitats and shall ensure that actions authorized, funded, or carried out do not contribute to the need to list any of these species as Threatened or Endangered." The BLM has incorporated its intent to conserve these species into the *Dixie Resource Area Proposed Management Plan and Final Environmental Impact Statement* (BLM 1998). However, the location of these species in areas valued for future urban expansion makes the long term security of their habitat, even on Federal lands, questionable. Listing the species under the Act will reinforce the BLM'S ability to conserve habitat on Federal lands. There is no legal protection for either species on State of Arizona or State of Utah lands or on private property.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Past habitat disturbance has caused the proliferation of introduced annual weeds into both species' occupied habitat (Harper 1997). Foxtail brome, cheatgrass, storksbill, and African mustard are now the dominant species within the plant communities of both *Astragalus holmgreniorum* and *A. ampullarioides* (Stubben 1997; Harper and Van Buren 1998; Van Buren 1999). Both species are vulnerable to displacement by introduced weeds (Harper 1997; Harper and Van Buren 1998; Stubben 1997; Van Buren 1999).

Because of the low numbers of individuals, low number of populations, and restricted habitats of both *Astragalus holmgreniorum* and *A. ampullarioides*, these plants are vulnerable to human disturbances, which may increase the negative impacts of natural disturbances to populations of these species. The numbers of individuals and populations are sufficiently low that future losses may result in the loss of population viability. The extremely small and disjunct populations of *A. ampullarioides* may be vulnerable to a loss of genetic viability (Harper 1997; Harper and Van Buren 1998).

We have carefully assessed the best scientific and commercial information available concerning the past, present, and future threats faced by these species in making this proposed rule. Threats to *Astragalus holmgreniorum* and *A. ampullarioides*, including development of land for residential and urban use, habitat modification from human disturbances, competition with non-native plant species, and impacts from mining and grazing activities, imperil the continued existence of these species. Much of the habitat where these species occur is suitable for development and for modification by mining and grazing, and is unprotected from these threats. Because of the high potential of these threats to result in the extinction of both species, the preferred action is to list *A. holmgreniorum* and *A. ampullarioides* as endangered. The Act defines an endangered species as one in danger of extinction throughout all or a significant portion of its range. Endangered status reflects the vulnerability of these species to factors that may adversely affect these species and their extremely limited habitat.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) states that the processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 and FY 2001 as allowed by our funding allocation for that year. As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing

actions required by the Act. Deferral of the critical habitat designation for *Astragalus holmgreniorum* and *A. ampullarioides* will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of these species without further delay.

We propose that critical habitat is prudent for *Astragalus holmgreniorum* and *A. ampullarioides*. In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we believe that designation of critical habitat for *A. holmgreniorum* and *A. ampullarioides* would be prudent.

Due to the small number of populations, both *Astragalus holmgreniorum* and *A. ampullarioides* are vulnerable to unrestricted collection, vandalism, or other disturbance. We are concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, at this time we do not have specific evidence for either *A. holmgreniorum* or *A. ampullarioides* of taking, vandalism, collection, or trade of this species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of these species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we propose that critical habitat is prudent for *Astragalus holmgreniorum* and *A. ampullarioides*.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to these species, and the magnitude and immediacy of those threats. We will make the final critical habitat determination with the final listing determination for *Astragalus holmgreniorum* and *A. ampullarioides*. If this final critical habitat determination is prudent, we will develop a proposal to designate critical habitat for *A. holmgreniorum* and *A. ampullarioides* as soon as feasible, considering our workload priorities. Unfortunately, for the immediate future, most of Region 6's listing budget must be directed to complying with numerous court orders and settlement agreements, as well as final listing determinations with statutory deadlines.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing can encourage and result in public awareness and conservation actions by Federal, State, Tribal (Shivwits Band of the Paiute Tribe), and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Funding may be available through section 6 of the Act for the States to conduct recovery activities. The protection required by Federal agencies and prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Considerable portions of the habitat of both *Astragalus holmgreniorum* and *A. ampullarioides* are on lands under Federal jurisdiction managed by the BLM. The BLM is responsible for insuring that all activities and actions on lands that they manage are not likely to jeopardize the continued existence of *A. holmgreniorum* and *A. ampullarioides*. Proposed highway and power line projects within the habitat of both species would require Federal permits from the Federal Highway Administration and Federal Energy Regulatory Commission. These agencies, also, must insure that actions which they permit are not likely to jeopardize the continued existence of both species. In addition, sections 2(c)(1) and 7(a)(1) of the Act require Federal agencies to utilize their authorities in furtherance of the purposes of the Act to carry out conservation programs for endangered and threatened species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove these species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, damaging, or destruction of such plants in knowing violation of any State law or regulation, or in the course of a violation of State criminal trespass law. Certain exceptions to the prohibitions apply to

our agents and agents of State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. We anticipate that few trade permits would be sought or issued for *Astragalus holmgreniorum* and *A. ampullarioides* because these species are not common in the wild and are unknown in cultivation.

It is our policy, published in the **Federal Register** (59 FR 34272) on July 1, 1994, to identify to the maximum extent practicable those activities that would or would not be likely to constitute a violation of section 9 of the Act if a species is listed. The intent of this policy is to increase public awareness of the effect of the species' listing on proposed and ongoing activities within its range. Collection of listed plants or activities that would damage or destroy listed plants on Federal lands are prohibited without a Federal endangered species permit. Such activities on non-Federal lands would constitute a violation of section 9 of the Act if they were conducted in knowing violation of State law or regulation, or in the course of violation of State criminal trespass law. Otherwise such activities would not constitute a violation of the Act on non-Federal lands.

Questions regarding whether specific activities, such as changes in land use, will constitute a violation of section 9 should be directed to the Utah Field Office (see **ADDRESSES** section). Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to: Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. In particular, comments are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) The location of any additional population of these species and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Final promulgation of the regulation on these species will take into consideration the comments and any additional information we receive, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor, Utah Field Office (see **ADDRESSES** section).

National Environmental Policy Act

We have determined that an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any collections of information that require Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018–0094. This rule does not alter that information collection requirement. For additional information concerning permits and associated requirements for endangered plant species, see 50 CFR 17.62 and 17.63.

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Author

The primary author of this proposed rule is John L. England, U.S. Fish and Wildlife Service, Utah Ecological Services Field Office, Salt Lake City, Utah (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reason given in the preamble, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1561–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	*
Astragalus ampullarioides.	Shivwits milk-vetch	U.S.A. (UT)	Fabaceae	E		NA	NA
Astragalus holmgreniorum.	Holmgren milk-vetch	U.S.A. (AZ, UT)	Fabaceae	E		NA	NA
*	*	*	*	*	*	*	*

Dated: March 29, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–9070 Filed 4–11–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 112399D]

Fisheries Off West Coast States and in the Western Pacific; Petition for Rulemaking on the Prohibition of Shark Finning and Related Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of petition for rulemaking; request for comments.

SUMMARY: NMFS announces receipt of, and requests public comment on, a petition for rulemaking. The Western Pacific Fisheries Coalition (Petitioner), consisting of the Hawaii Fishermen's Foundation and Hawaii Audubon Society, has petitioned the Secretary of Commerce (Secretary) to prohibit shark finning (i.e., removal of only the fins and returning the remainder of the shark to the sea), and implement measures to require full utilization of sharks harvested in fisheries conducted under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP).

DATES: Comments on the petition must be received by NMFS no later than May 12, 2000.

ADDRESSES: Written comments should be sent to, and copies of the petition are available from, Dr. Charles Karnella, Administrator, Pacific Islands Area Office, NMFS, 1601 Kapiolani Blvd., Rm 110, Honolulu, HI 96814. Please mark the outside of the envelope "Shark Petition." Comments also may be sent via facsimile (fax) to 808-973-2941. Comments submitted via e-mail or Internet will not be accepted.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, 808-973-2935 ext. 207, fax 808-973-2941, e-mail *alvin.katekaru@noaa.gov*

SUPPLEMENTARY INFORMATION: The fishery affected by this petition for rulemaking is primarily the Hawaii-based longline fishery, which is managed according to the FMP developed by the Western Pacific Regional Fishery Management Council (Council). The Secretary has management authority, under the Magnuson-Stevens Fishery Conservation and Management Act, over the shark resources in the U.S. Exclusive Economic Zone of the western Pacific region.

The purpose of the petition is to facilitate maximum utilization of sharks harvested in the western Pacific, particularly in the Hawaii longline fishery. The Petitioner maintains that the continued unrestricted practice of shark finning in the fishery is wasteful and could lead to overexploitation of certain vulnerable shark species that are managed under the FMP. A prohibition on shark finning would be consistent with the United Nations Food and Agriculture Organization's International Plan of Action for the Conservation and Management of Sharks.

The Petitioner requests the Secretary to amend the FMP and to promulgate regulations for the western Pacific region that would govern the possession at-sea and landing of sharks, as well as implement restrictions on the sale/purchase of sharks, similar to those contained in the regulations implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (50 CFR 635.30(c); 64 FR 29090, May 28, 1999). Such regulations would be precautionary and would likely reduce the harvest of Pacific shark stocks, including the relatively abundant blue shark.

NMFS requests comments on the petition for rulemaking. NMFS recognizes that shark fin transshipments and importation of processed shark fins into the United States are closely related to the conservation and management issues raised in this petition. In addition to comments on the petition for rulemaking, NMFS requests public comment addressing the practice of shark finning as it relates to transshipments and importation of processed fins. NMFS will consider this information in determining whether to proceed with the development of regulations requested by the Petitioner.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 7, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–9071 Filed 4–7–00; 3:54 pm]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 71
Wednesday, April 12, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Little Bear-Wilson Timber Sale, Gallatin National Forest, Gallatin County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service intends to prepare an environmental impact statement to document the analysis and disclose the environmental impacts of a proposed action to manipulate forest vegetation on about 500 acres. This area lies about 13 miles south of Bozeman, Montana.

The proposed action would harvest timber on about 500 acres. The purpose of this timber harvest is to provide revenue to facilitate the funding of land exchanges as directed in the Gallatin Land Consolidation Act of 1998 (PL 105–267). Approximately 2.5 miles of temporary roads will be constructed to facilitate removal of wood products. These temporary roads will be obliterated following post-harvest activities. Approximately 3.8 miles of existing road will be reconstructed. As estimated 50 to 100 miles of existing road will be closed to use by passenger vehicle (highway vehicles greater than 50 inches wide). Watershed restoration treatments would depend on the individual road conditions but could include road closures by using gates, berms or other barriers; installing water bars, removing culverts, ripping/seeding/slashing, and in a few segments, recontouring. Some roads may be converted to trails. All main roads which have been historically open to the public, such as Little Bear road, would remain open to motorized use. Where consistent with the purpose of providing land exchange revenues, treatments to improve the visual quality altered by past clearcutting will be used.

DATES: Initial comments concerning the scope of the analysis should be received in writing no later than May 12, 2000.

ADDRESSES: Send written comments to Jan Lerum, District Ranger, 3710 Fallon Street, Suite C, Bozeman, MT 59718. The responsible official is David P. Garber, Forest Supervisor, Gallatin National Forest.

FOR FURTHER INFORMATION CONTACT: Marsha Hollander, Project Leader, Bozeman Ranger District, at (406) 522–2558.

SUPPLEMENTARY INFORMATION: No clearcutting or permanent road construction is proposed. About 257 acres to be harvested in which 85% of the mature trees are cut and 15% left. About 156 acres to be harvested in which 60% of the mature trees are cut and 40% left. About 59 acres to be harvested in which 50% of the mature trees are cut and 50% left. About 28 acres to be harvested in which 90% of the mature trees are cut and 10% left. Site-specific, forest plan amendments may be proposed for visual quality, road Density and vegetation structural diversity standards.

The project area is located in the Little Bear, Big Bear, Wilson, and Jack Creek drainages (specifically, T3S, R5E, Section 32; T4S, R4E, Sections 12, 16 and 24; and T4S, R5E, sections 4, 8, 14, 16, 18, 19 and 22, PMM). The scope of this proposal is limited to timber harvest, post harvest regeneration treatments, area improvements, road restoration and related mitigation requirements within the project area.

Public participation is important to this analysis. Part of the goal of public involvement is to identify additional issues and to refine the general, tentative issues. A scoping notice describing the project was mailed to those who requested information on timber harvest activities on the Gallatin National forests. The United States Fish and Wildlife Service will be consulted concerning effects to threatened and endangered species.

Preliminary issues identified by Forest Service specialists include effects to water quality, sensitive, threatened, and endangered wildlife species habitat, big game security, sensitive fish species habitat, visual quality, recreational access, old growth forests, and timber sale revenue. The analysis will consider all reasonably foreseeable activities.

People may visit with Forest Service officials at any time during the analysis and prior to the decision. Two periods are specifically designated for comments on the analysis: (1) During the scoping process and (2) during the draft EIS period.

During the scoping process, the Forest Service is seeking information and comments from Federal, State and local agencies and other individuals or organization who may be interested in or affected by the proposed action. The agency invites written comments and suggestions on this action, particularly in terms of identification of issues and alternative development.

The draft EIS should be available for review in August, 2000. The final EIS is scheduled for completion in January, 2001.

The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of the draft environmental impact statement must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338, (E.D. Wis. 1980)* Because of these court rulings, it is important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific

as possible. It is helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The responsible official will make the decision on this proposal after considering comments and responses, environmental consequences discussed in the final EIS, and applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Dated: March 24, 2000.

David P. Garber,

Forest Supervisor.

[FR Doc. 00–9015 Filed 4–11–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 of the Department of Commerce (the Department) Regulations (19 CFR 351.213 (1999)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than the last day of April 2000, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in April for the following periods:

	Period
Antidumping Duty Proceedings	
Canada: Sugar and Syrups,* A–122–085	4/1/99–12/31/99
France: Sorbitol, A–427–001	4/1/99–12/31/00
Greece: Electrolytic Manganese Dioxide, A–484–801	4/1/99–12/31/00
Japan: Calcium Hypochlorite*, A–588–401	4/1/99–12/31/99
Japan: Electrolytic Manganese Dioxide*, A–588–806	4/1/99–12/31/00
Japan: 3.5″ Microdisks and Media Thereof*, A–588–802	4/1/99–12/31/99
Kenya: Standard Carnations*, A–779–602	4/1/99–12/31/99
Mexico: Fresh Cut Flowers*, A–201–601	4/1/99–12/31/99
Norway: Fresh and Chilled Atlantic Salmon, A–403–801	4/1/99–12/31/00
Republic of Korea: Color Television Receivers*, A–580–008	4/1/99–12/31/99
Taiwan: Color Television Receivers*, A–583–009	4/1/99–12/31/99
The People's Republic of China: Brake Rotors, A–570–846	4/1/99–12/31/00
Turkey: Certain Steel Concrete Reinforcing Bars, A–489–807	4/1/99–12/31/00
Countervailing Duty Proceedings	
Norway: Fresh and Chilled Atlantic Salmon, C–403–802	4/1/99–12/31/99
Peru: Pompon Chrysanthemums, C–333–601	4/1/99–12/31/99
Suspension Agreements	
None.	

*Order revoked effective 01/01/2000.

In accordance with section 351.213 of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. In recent revisions to its regulations, the Department had changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 771(9) of the Act, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Department of Commerce Regulations, 62 FR 27295, 27424 (May 19, 1997)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other supplies) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, Department of Commerce, 14t Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building, Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administration Review of

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of April 2000. If the Department does not receive, by the last day of April 2,000, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: April 6, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 00–9107 Filed 4–11–00; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–854]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Tin Mill Products From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 12, 2000.

FOR FURTHER INFORMATION CONTACT: Samantha Denenberg or Linda Ludwig, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–1386 and (202) 482–3833, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to the regulations at 19 CFR part 351 (April 1999).

Preliminary Determination

We preliminarily determine that Certain Tin Mill Products ("TMP") from Japan are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice. For all the following companies, the Department has used adverse facts available for their estimated margin: Nippon Steel Corporation ("NSC"); Kawasaki Steel Corporation ("Kawasaki"); NKK Corporation ("NKK"); and Toyo Kohan ("Toyo"). *See* Case History section.

Case History

On November 17, 1999, the Department initiated an antidumping duty investigation on imports of Certain Tin Mill Products from Japan (Notice of Initiation of Antidumping Investigations: Certain Tin Mill Products from Japan (64 FR 66892 (November 30, 1999)) ("Initiation Notice"). Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage (*see* 64 FR 69730 (December 14, 1999)). Throughout the months of January and February, the Department received numerous filings from respondents (*i.e.*, Kawasaki, NKK, NSC) and other interested parties (*i.e.*, H.J. Heinz Co.; Silgan Containers Corp.; ITOCHU International; Maui Pineapple Co., Ltd.; NAPP Systems, Inc.; Reynolds Metals Co.; Fuji Photo Film, Inc.; Mitsui & Co. (U.S.A.), Inc.; Eastman Kodak Co.; and Berlin Metals Inc.). On January 27, 2000 and February 7, 2000, Weirton Steel Corporation, the Independent Steelworkers Union, and the United Steelworkers of America, AFL–CIO (collectively "petitioners"), submitted comments to the Department requesting that the scope exclude certain TMP from the scope of the investigation. On March 13, 2000, March 31, 2000, and April 3, 2000, petitioners filed letters agreeing to amend the scope of the investigation to exclude various types of tin mill products (*see* Scope Amendment Memorandum from Richard Weible to Joseph A. Spetrini, April 5, 2000).

On December 3, 1999, petitioners submitted a proposal for model match criteria. On December 15, 1999, the Department issued proposed model match criteria to all interested parties. On December 22 and December 29, 1999, NKK and NSC submitted comments on our proposed model matching criteria.

On December 20, 1999, the United States International Trade Commission ("ITC") notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Japan. On December 21, 1999, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from Japan (64 FR 71497).

On November 30, 1999, the Department issued Section A of its antidumping duty questionnaire to NSC, Kawasaki, NKK, and Toyo. On December 15, 1999, the Department again issued Section A of the antidumping duty questionnaire to Toyo's headquarters in Japan because Toyo no longer had legal representation. On December 14, 1999, the Department received NKK and Kawasaki's responses to Question 1 of Section A. On December 15, 1999, the Department received MITI's response to the Department's request for information on the Japanese producers. On December 15, 1999, NSC informed the Department that it would not be participating in the TMP investigation. On December 21, 1999, Toyo informed the Department that it would not be participating in the TMP investigation.

On January 5, 2000, the Department issued Sections B–E of its antidumping duty questionnaire to Kawasaki and NKK. On January 20, 2000, petitioners filed comments on Kawasaki's section A response. On January 21, 2000, petitioners filed comments on NKK's section A response. On February 11, 2000 both Kawasaki and NKK informed the Department that they would not be participating in the TMP investigation.

Scope of Investigation

The scope of this investigation includes tin mill flat-rolled products that are coated or plated with tin, chromium or chromium oxides. Flat-rolled steel products coated with tin are known as tin plate. Flat-rolled steel products coated with chromium or chromium oxides are known as tin-free steel or electrolytic chromium-coated steel. The scope includes all the noted tin mill products regardless of thickness, width, form (in coils or cut sheets), coating type (electrolytic or otherwise), edge (trimmed, untrimmed or further processed, such and scroll cut), coating thickness, surface finish, temper, coating metal (tin, chromium, chromium oxide), reduction (single- or double-reduced), and whether or not coated with a plastic material.

All products that meet the written physical description are within the scope of this investigation unless specifically excluded. The following

products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- Single reduced electrolytically chromium coated steel with a thickness 0.238 mm (85 pound base box) (±10%) or 0.251 mm (90 pound base box) (±10%) or 0.255 mm (±10%) with 770 mm (minimum width) (−0/+1.588 mm) by 900 mm (maximum length if sheared) sheet size or 30.6875 inches (minimum width) (−0/+ 1/16 inch) and 35.4 inches (maximum length if sheared) sheet size; with type MR or higher (per ASTM) A623 steel chemistry; batch annealed at T2½ anneal temper, with a yield strength of 31 to 42 kpsi (214 to 290 Mpa); with a tensile strength of 43 to 58 kpsi (296 to 400 Mpa); with a chrome coating restricted to 32 to 150 mg/m²; with a chrome oxide coating restricted to 6 to 25 mg/m² with a modified 7B ground roll finish or blasted roll finish; with roughness average (Ra) 0.10 to 0.35 micrometers, measured with a stylus instrument with a stylus radius of 2 to 5 microns, a trace length of 5.6 mm, and a cut-off of 0.8 mm, and the measurement traces shall be made perpendicular to the rolling direction; with an oil level of 0.17 to 0.37 grams/base box as type BSO, or 2.5 to 5.5 mg/m² as type DOS, or 3.5 to 6.5 mg/m² as type ATBC; with electrical conductivity of static probe voltage drop of 0.46 volts drop maximum, and with electrical conductivity degradation to 0.70 volts drop maximum after stoving (heating to 400 degrees F for 100 minutes followed by a cool to room temperature).
- Single reduced electrolytically chromium or tin-coated steel in the gauges of 0.0040 inch nominal, 0.0045 inch nominal, 0.0050 inch nominal, 0.0061 inch nominal (55 pound base box weight), 0.0066 inch nominal (60 pound base box weight), and 0.0072 inch nominal (65 pound base box weight), regardless of width, temper, finish, coating or other properties.
- Single reduced electrolytically chromium coated steel in the gauge of 0.024 inch, with widths of 27.0 inches or 31.5 inches, and with T–1 temper properties.
- Single reduced electrolytically chromium coated steel, with a chemical composition of 0.005% max carbon, 0.030% max silicon, 0.25% max manganese, 0.025% max phosphorous, 0.025% max sulfur, 0.070% max aluminum, and the balance iron, with a metallic chromium layer of 70–130 mg/m², with a chromium oxide layer of 5–30 mg/m², with a tensile strength of 260–440 N/mm², with an elongation of 28–48%, with a hardness (HR–30T) of 40–58, with a surface roughness of 0.5–1.5 microns Ra, with magnetic properties of Bm (KG) 10.0 minimum, Br (KG) 8.0 minimum, Hc (Oe) 2.5–3.8, and μ 1400 minimum, as measured with a Riken Denshi DC magnetic characteristic measuring machine, Model BHU–60.
- Bright finish tin-coated sheet with a thickness equal to or exceeding 0.0299 inch, coated to thickness of ¾ pound (0.000045 inch) and 1 pound (0.00006 inch).

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS"), under HTSUS subheadings 7210.11.0000, 7210.12.0000, 7210.50.0000, 7212.10.0000, and 7212.50.0000 if of non-alloy steel and under HTSUS subheadings 7225.99.0090, and 7226.99.0000 if of alloy steel. Although the subheadings are provided for convenience and Customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The Period of Investigation ("POI") is October 1, 1998 through September 30, 1999.

Facts Available

Section 776(a)(2) of the Act provides that, if an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination.

In this case, NSC and Toyo indicated that they would not participate in the Department's investigation and did not provide the Department with information requested and needed to calculate a dumping margin. Therefore, we determine that NSC and Toyo withheld information requested by the Department. Accordingly, the Department finds it necessary to use the facts otherwise available for these respondents in accordance with section 776(a)(2)(A) of the Act.

With respect to Kawasaki and NKK, both companies responded to Section A of the Department's questionnaire. However, both companies failed to respond to Sections B-C of the Department's questionnaire. On February 11, 2000, Kawasaki and NKK informed the Department that they would not be submitting responses to section B-C of the Department's questionnaire. Therefore, the Department determines that Kawasaki and NKK withheld information requested by the Department. Because the Department is lacking complete information, we find it necessary to use the facts otherwise available for Kawasaki and NKK in accordance with section 776(a)(2)(A) of the Act.

In selecting from among the facts otherwise available, section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See also* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103–316, Vol. I, at 870 (1994) ("SAA"). In this case, NSC and Toyo completely failed to respond to the Department's questionnaires notwithstanding warnings under section 782(d) that the information was necessary and that failure to provide it could result in the use of the facts available. Further, the companies indicated that they would not participate in the Department's investigation. Because of the companies' complete lack of participation in this investigation, we find that the companies failed to cooperate to the best of their abilities, and that section 782(e) of the Act does not apply. Accordingly, when selecting among the facts available, we find that the use of an adverse inference is warranted in accordance with section 776(b) of the Act.

With respect to Kawasaki and NKK, while the companies did respond to the Department's section A questionnaires, neither company responded to the Department's Sections B-C questionnaires. In light of these facts, the Department finds that Kawasaki and NKK failed to act to the best of their abilities to comply with the Department's requests for information under section 776(b) of the Act. Because of this finding, section 782(e) of the Act is not applicable. Thus, the Department has determined that, in selecting among the facts otherwise available, an adverse inference is warranted for these companies as well.

Section 776(b) states that an adverse inference may include reliance on information derived from the petition or any other information placed on the record. *See also* SAA at 829-831. As adverse facts available, the Department is assigning to NSC, Kawasaki, NKK, and Toyo a dumping margin of 95.29 percent, which was calculated from petition information placed on the record by petitioners on October 28, 1999 and November 8, 1999, and represents the highest petition margin.

As explained in detail in the "Corroboration" section below, we are using this information because it represents the best price-to-price comparison on the record. Further, the Department determines that use of this margin accomplishes the statute's aim of encouraging participation. As the SAA provides, where a party has not cooperated in a proceeding:

> Commerce * * * may employ adverse inferences about the missing information to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. In employing adverse inferences, one factor the agencies will consider is the extent to which a party may benefit from its own lack of cooperation. SAA at 870.

Section 776(c) of the Act provides that, when the Department relies on secondary information (which includes information from the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See* SAA at 870.

We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose. *See* Import Administration Antidumping Duty ("AD") Investigation Initiation Checklist (November 17, 1999), for a discussion of the margin calculations in the petition. In addition, in order to determine the probative value of the margins in the petition in accordance with section 776(c) of the Act, we examined the key elements of the export price ("EP") and normal value ("NV") calculations on which the margins in the petition were based. Petitioners constructed normal values based on the average prices of tin mill products sold in Japan by NSC to large end users during June 1999. Petitioners determined that, because NSC is the largest producer of the subject merchandise in the Japanese market, NSC's prices would be representative of the normal value in the Japanese tin mill market. The Japanese home market prices for five sample models of tin plate products and thirteen sample models of tin free steel were obtained by foreign market research consultants in Japan. The prices used in the calculation of NV were delivered, VAT exclusive prices. Petitioners derived NV by deducting a commission from the delivered price, which represents payment made to large trading companies. Petitioners also deducted expenses for freight, handling, and other movement related expenses such as storage during transportation and tolls. For the calculation of dumping margins, petitioners compared the average unit value for all five sample sales of tin plate to the average customs value for the corresponding HTSUS item for the month of June 1999, and the average unit value for all thirteen sample sales of tin free steel to the average customs value for the corresponding HTSUS item for the month of June 1999.

The estimated dumping margins in the petition were based on a comparison between NSC's home market prices and U.S. prices derived from IM–145 statistics. The Department determined the adequacy and accuracy of the information from which the petition margins were calculated by reviewing all of the data presented and by requesting clarification and confirmation from petitioners and their sources as needed (*see* Petition on Certain Tin Mill Products from Japan: Deficiency Questionnaire, November 3, 1999). As the EP values were derived by using IM–145 statistics, the Department notes that no further corroboration is necessary because the source is official U.S. import statistics (*see* Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from the People's Republic of China, 62 FR 51410, 51412 (October 1, 1997)). Our review of the EP and NV calculations indicated that the information in the petition has probative value, as relevant information included in the margin calculations in the petition are from public sources concurrent with the POI (*e.g.*, IM–145 statistics and interest rates).

All Others

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. Our recent practice under these circumstances has been to assign as the "all others" rate the simple average of the margins in the petition. *See* Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Canada, 64 FR 15457 (March 31, 1999); Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Italy, 64 FR 15458, 15459 (March 21, 1999).

We are basing the "all others" rate on the simple average of margins in the petition, including information placed on the record by petitioners on November 8, 1999, which is 32.52 percent (*see* Memorandum of Analysis for the Preliminary Results of the Antidumping Duty Investigation of Certain Tin Mill Products from Japan, April 5, 2000).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the dumping margin indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The dumping margins are as follows:

	Margin (Percent)
Exporter/Manufacturer:	
Kawasaki Steel Corporation ...	95.29
Nippon Steel Corporation	95.29
NKK Corporation	95.29
Toyo Kohan	95.29
All Others	32.52

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination, or 45 days after our final determination, whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than thirty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than thirty-five days after publication of this notice. A list of authorities used and an executive summary of issues should accompany

any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held thirty-seven days after publication of this notice, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination no later than 75 days after this preliminary determination.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: April 5, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–9106 Filed 4–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–428–817]

Certain Cut-to-Length Carbon Steel Plate From Germany: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 12, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Copyak at (202) 482–2209, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(*A*) of the Act allows the Department to extend the time period for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On November 4, 1998, the Department published a notice of initiation of administrative review of the countervailing duty order on certain cut-to-length carbon steel plate from Germany, covering the period January 1, 1997, through December 31, 1997 (64 FR 60161). As of October 29, 1998, the Department had deferred that administrative review for one year (63 FR 58009). On October 1, 1999, the Department published a notice of initiation of administrative review of the countervailing duty order on certain cut-to-length carbon steel plate from Germany, covering the period January 1, 1998, through December 31, 1998 (64 FR 53318). The preliminary results of these two administrative reviews are currently due no later than May 2, 2000.

Extension of the Time Limit for Preliminary Results

We determine that it is not practicable to complete the preliminary results of these reviews within the original time limit. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than August 30, 2000. See Memorandum from John Brinkman, Acting Director, AD/CVD Enforcement Office VI, to Holly A. Kuga, Acting Deputy Assistant Secretary for Import Administration, Group II, dated March 31, 2000, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: April 4, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 00–9105 Filed 4–11–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advanced Technology Program

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 12, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, N.W., Washington, D.C. 20230 or via the Internet (LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Barbara Lambis, Senior Policy and Operations Advisor, Advanced Technology Program, National Institute of Standards and Technology, 100 Bureau Drive, Stop 4700, Room 333, Administration Building, Gaithersburg, MD 20899–4700 or via the Internet (Barbara.Lambis@nist.gov).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Advanced Technology Program (ATP) is administered by the National Institute of Standards and Technology (NIST). ATP is a competitive, cost-sharing program designed for the federal government to work in partnership with industry to foster the development and broad dissemination of challenging, high-risk technologies that offer the potential for significant, broad-based economic benefits for the nation. This program provides multi-year funding through the use of cooperative agreements to single companies and to industry-led joint ventures. To receive ATP financial assistance, ATP solicits

proposals from U.S. businesses and industry-led joint ventures consisting of U.S. businesses, universities, governmental laboratories, and non-profit independent research organizations. The information provided through the proposal process is used to make funding decisions, and once funded, reports are required to monitor the progress of projects. Awardees may also be requested to participate in special economic studies.

II. Method of Collection

The proposal information is submitted in writing. The monitoring/case studies' reports are provided by various means, including in writing, orally (by telephone and during site visits), and electronically.

III. Data

OMB Number: 0693–0009.

Agency Form Number(s): NIST 1262 and NIST–1263.

Type of Review: Revision and extension for a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 925 annually.

Estimated Time Per Response: 20–30 hours for proposals and 1–3 hours for monitoring/case studies' reports.

Estimated Total Annual Burden Hours: 16,275.

Estimated Total Annual Cost: $0 (no capital expenditures required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: April 5, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–9053 Filed 4–11–00; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Submission For OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: User Evaluation of DARPA Communicator Systems.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: New collection.

Burden Hours: 120.

Number of Respondents: 160.

Average Hours Per Response: 5 minutes.

Needs and Uses: The Defense Advanced Research Projects Agency (DARPA) has provided funds to NIST to evaluate the DARPA Communicator implementations that have been built by research groups also funded by DARPA for that purpose. The evaluation is user-based and the users are paid research subjects. The subjects will fill out a user questionnaire that is intended to assess their user-satisfaction and subjective opinion about various aspects of each system that are being objectively measured. The information collected is intended to achieve three goals: (1) help implementors of Communicator programs to identify the successes and weaknesses of their implementations; (2) enable the research sponsor (DARPA) to identify and measure progress in order to assess the success of the program; and (3) advance the state of research knowledge about metrics and evaluation of task-based spoken dialogue systems.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at lengelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: April 6, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–9054 Filed 4–11–00; 8:45 am]

BILLING CODE 3510–13–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

March 31, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, special shift and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also

see 64 FR 54871, published on October 8, 1999.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 31, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 4, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on April 6, 2000, you are directed to adjust the current limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Nepal:

Category	Adjusted twelve-month limit [1]
336/636	334,217 dozen.
340	478,914 dozen.
342/642	291,570 dozen.
347/348	907,501 dozen.
640	115,279 dozen.
641	247,762 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–9043 Filed 4–11–00; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Petition HP 00–3 Requesting a Ban of Candle Wicks Containing Lead and of Candles Containing Such Wicks

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission has received two submissions, one from Public Citizen and one jointly from the National Apartment Association (NAA) and the National Multi Housing Council (NMHC), that contain requests that the Commission ban lead-containing candles and wicks sold for candle-making that contain lead. These requests have been docketed collectively as a petition under the Federal Hazardous Substances Act (FHSA) (Petition No. HP 00–3). The Commission solicits written comments concerning the petition from all interested parties.

DATES: Comments on the petition should be received in the Office of the Secretary by June 12, 2000.

ADDRESSES: Comments on the petition should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Consumer Product Safety Commission, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Comments may also be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned "Petition HP 00–3—Candle Wicks Containing Lead." Copies of the petition are available by writing or calling the Office of the Secretary.

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Docket Control and Communications Specialist, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0800 ext. 1502.

SUPPLEMENTAL INFORMATION: The Commission has received two submissions, one from Public Citizen and one jointly from the National Apartment Association (NAA) and the National Multi Housing Council (NMHC), that request the Commission to ban lead-containing candles and wicks sold for candle-making that contain lead. These have been docketed collectively as a petition under the Federal Hazardous Substances Act (FHSA) (Petition No. HP 00–3). The submissions argue that the lead in candle wicks produces hazardous combustion materials when the candles are used, creating a lead poisoning hazard for occupants, particularly children.

Public Citizen's submission also asked that the Commission recall such products. This request has not been docketed as part of the petition because this action does not require rulemaking. (This request will be considered separately by the Office of Compliance.) In addition, Public Citizen's submission asked that the Commission ban candles in metal containers that contain lead. This request has not been docketed as part of the petition because the submission did not provide facts to explain why such action is necessary, as required by the Commission's rules for petitions, 16 CFR 1051.5(a)(4).

The Commission solicits comments on the petition, particularly regarding the potential costs and benefits of the requested rule.

Comments to CPSC should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504–0800. Comments may also be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned "Petition HP 00–3—Candle Wicks Containing Lead."

Interested parties may obtain a copy of the petition from the CPSC's website at http://www.cpsc.gov or by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800. A copy of the petition is available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, room 501, 4330 East-West Highway, Bethesda, Maryland 20814.

Dated: April 5, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00–9013 Filed 4–11–00; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Commission Agenda and Priorities/ Government Performance and Results Act (GPRA); Public Hearing

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public hearing.

SUMMARY: The Commission will conduct a public hearing to receive views from all interested parties about its agenda and priorities for Commission attention during fiscal year 2002, which begins October 1, 2001, and about its current strategic plan, to be revised and submitted to Congress September 30, 2000, pursuant to the Government Performance and Results Act (GPRA). Participation by members of the public is invited. Written comments and oral presentations concerning the Commission's agenda and priorities for fiscal year 2002, and strategic plan will become part of the public record.

DATES: The hearing will begin at 10 a.m. on May 22, 2000. The Office of the Secretary must receive written comments and requests from members of the public desiring to make oral presentations not later than May 8, 2000. Persons desiring to make oral presentations at this hearing must submit a written text of their presentations not later than May 15, 2000.

ADDRESSES: The hearing will be in room 420 of the East-West Towers Building, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments, requests to make oral presentations, and texts of oral presentations should be captioned "Agenda, Priorities and Strategic Plan" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Comments, requests, and texts of oral presentations may also be filed by telefacsimile to (301) 504–0127 or by e-mail to cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: For information about the hearing, a copy of the strategic plan, or to request an opportunity to make an oral presentation, call or write Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800; telefacsimile (301) 504–0127; or by e-mail to cpsc-os@cpsc.gov. The strategic plan can also be obtained from the CPSC website at www.cpsc.gov.

SUPPLEMENTARY INFORMATION: Section 4(j) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2053(j)) requires the Commission to establish an agenda for action under the laws it administers, and, to the extent feasible, to select priorities for action at least 30 days before the beginning of each fiscal year. Section 4(j) of the CPSA provides further that before establishing its agenda and priorities, the Commission shall conduct a public hearing and provide an opportunity for the submission of comments. In addition, section 306(d) of the Government Performance and Results Act (GPRA) (5 U.S.C. 306(d)) requires the Commission to seek comments from interested parties on the agency's strategic plan. The plan provides an overall guide to the formulation of future agency actions and budget requests. A revised strategic plan will be submitted to the Office of Management and Budget and Congress not later than September 30, 2000.

The Office of Management and Budget requires all Federal agencies to submit their budget requests 13 months before the beginning of each fiscal year. The Commission is formulating its budget request for fiscal year 2002, which begins on October 1, 2001. This budget request must reflect the contents of the agency's strategic plan developed under GPRA.

Accordingly, the Commission will conduct a public hearing on May 22, 2000, to receive comments from the public concerning its GPRA strategic plan, and agenda and priorities for fiscal year 2002: The Commissioners desire to obtain the views of a wide range of interested persons including consumers; manufacturers, importers, distributors, and retailers of consumer products; members of the academic community; consumer advocates; and health and safety officers of state and local governments.

The Commission is charged by Congress with protecting the public from unreasonable risks of injury associated with consumer products. The Commission enforces and administers the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*); the Federal Hazardous Substances Act (15 U.S.C. 1261 *et seq.*); the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*); the Poison Prevention Packaging Act (15 U.S.C. 1471 *et seq.*); and the Refrigerator Safety Act (15 U.S.C. 1211 *et seq.*). Standards and regulations issued under provisions of those statutes are codified in the Code of Federal Regulations, title 16, chapter II.

While the Commission has broad jurisdiction over products used by consumers, its staff and budget are limited. Section 4(j) of the CPSA expresses Congressional direction to the Commission to establish an agenda for action each fiscal year and, if feasible, to select from that agenda some of those projects for priority attention. These priorities are reflected in the current strategic plan developed under GPRA.

Persons who desire to make oral presentations at the hearing on May 22, 2000, should call or write Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, telefax (301) 504–0127, or e-mail, cpsc-os@cpsc.gov, no later than May 8, 2000. Persons who desire a copy of the current strategic plan may call or write Rockelle Hammond, office of the Secretary, CPSC, Washington DC 20207, telephone (301) 504–0800, (301) 504–0127, or may obtain it from the Commission's website at www.cpsc.gov.

Presentations should be limited to approximately ten minutes. Persons desiring to make presentations must submit the written text of their presentations to the Office of the Secretary not later than May 15, 2000. The Commission reserves the right to impose further time limitations on all presentations and further restrictions to avoid duplication of presentations. The hearing will begin at 10 a.m. on May 22, 2000 and will conclude the same day.

The Office of the Secretary should receive written comments on the Commission's strategic plan, and agenda and priorities for fiscal year 2002, not later than May 8, 2000.

Dated: April 5, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 00–9012 Filed 4–11–00; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Department of Defense, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics)/Office of the Director, International Cooperation.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Director, International Cooperation, announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 12, 2000.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Director, International Cooperation, Attention: Mr. Roger Golden, 3070 Defense Pentagon, Washington, DC 20301–3070.

FOR FURTHER INFORMATION CONTACT: To request further information on this proposed information collection or to

obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Mr. Roger Golden, Office of the Director, International Cooperation, (703) 695–0271.

Title, Associated Form, and OMB Number: Defense Export Loan Guarantee (DELG) Application, DD Form 2747, OMB Control Number 0704–0391.

Needs and Uses: The collection of information is necessary to review and process applications for loan guarantees issued under 10 U.S.C. 2540 for defense exports.

Affected Public: Businesses or other for profit, Small businesses or organizations.

Annual Burden Hours: 20.

Number of Respondents: 20.

Responses to Respondent: 1.

Average Burden per Response: 1 Hour.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are defense suppliers or exporters, lenders or nations, who are requesting a DoD guarantee of a private sector loan in support of the sale or long term lease, to certain eligible countries, of U.S. defense articles, services or design and construction services. The completed form will enable the department to determine whether the proposed transaction meets statutory guidance for program implementation.

Dated: April 6, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 00–9062 Filed 4–11–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

New Challenge Program

AGENCY: Department of Defense (DoD).

ACTION: Notice.

SUMMARY: Section 812 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65) requires DoD to implement "a plan to provide for increased innovative technology for acquisition programs of the Department of Defense from commercial private sector entities, including small-business concerns." To accomplish this, DoD will implement at new "Challenge" program on a pilot basis in at least 20 Acquisition Category 1 or 2 programs, starting in fiscal year 2001. A full description of the new program is discussed under Supplementary Information. DoD seeks comments on the program, particularly on such issues as: (i) Program implementation during the pilot period; (ii) criteria for evaluating the pilot program; and (iii) consideration in deciding whether and how to continue the program after the pilot period.

DATES: Comments are due no later than May 12, 2000.

FOR FURTHER INFORMATION CONTACT: Jon Baron, OUSD(AT&L)/SADBU, 1777 North Kent Street, Suite 9100, Arlington, VA 22209; telephone (703) 588–8636; facsimile (703) 588–7561; email baronj@acq.osd.mil.

SUPPLEMENTARY INFORMATION: The Under Secretary of Defense for Acquisition, Technology, and Logistics has approved the recommendation of an Integrated Product Team that DoD implement a new "Challenge" program on a pilot basis in at least 20 Acquisition Category (ACAT) 1 or 2 programs. A summary of the Team's main findings; the provision it has developed for inclusion in the solicitations of participating acquisition programs; and the procedures for acquisition program office implementation of the Challenge program follow.

The Under Secretary of Defense for Acquisition, Technology, and Logistics will request that each Military Department nominate for participation in the pilot (i) by June 1, 2000, at least four ACAT 1 or 2 programs that will initiate a contracting action for a new phase of the program in FY 2001; and (ii) by June 1, 2001, at least 3 other ACAT 1 or 2 programs that will initiate a contracting action for a new phase of the program in FY 2002. The Military Departments will be asked to include among their nominations competitive and sole-source development programs and production programs (especially production programs involving significant modifications) and, if desired, a maintenance program. In order to facilitate a systematic evaluation of the pilot effort, the Military Departments will be asked to identify, for each nominated program, an acquisition program of similar size, scope, and phase of acquisition to participate in a control group.

The Under Secretary of Defense for Acquisition, Technology, and Logistics asked the Director of the Office of Small and Disadvantaged Business Utilization (SADBU) to coordinate this initiative and report on its implementation on a semi-annual basis. The Military Departments will be asked to provide their Department's nominated programs to Jon Baron (tel. 703/588–8636; fax 703/588–7561; email baronj@acq.osd.mil) by the designated dates. For each nominee, the Military Departments will be asked to identify both the acquisition program manager and a point of contact in the responsible Program Executive Office.

In addition, the Under Secretary of Defense for Acquisition, Technology, and Logistics asked the Director, SADBU, in consultation with the Military Departments, to develop metrics of the effectiveness of the pilot program and to arrange for an independent evaluation of the program. The evaluation should include a preliminary report by May 1, 2002 addressing (i) whether the program appears to be accomplishing its goals, and (ii) whether and how the program should be continued after the pilot period.

Summary of the Team's Main Findings and Goals

Main findings: After the competition in an acquisition program has ended and a prime contractor is selected for contract award, that prime contractor generally faces little competitive pressure to bring innovative new technologies from commercial firms into the program.

Indeed, the Team found that, in some cases, the prime contractors resist the adoption of outside technologies or seek to bring subsystem work-in-house, even when there are more capable and innovative sources outside the firm. This finding is consistent with the results of a 1997 Defense Science Board study, which found that DoD's vertically-integrated prime contractors have economic incentives to use in-house suppliers in ways that are at odds with DoD's interest in fostering competition and innovation at the subsystem level.

In this respect, defense procurement markets differ significantly from competitive commercial markets, where there are competitive pressures to bring innovative new technologies into a program throughout development and production, and to outsource when stronger capabilities exist outside the firm.

Based on its findings, the Team developed a set of recommendations designed to:

(i) Foster competition among alternative technological approaches and suppliers wherever possible in the development of subsystems of DoD acquisition programs. The rationale is that such competition is needed to create the incentives for the development and rapid insertion into

acquisition programs of technological innovations developed by commercial firms, including small technology companies.

(ii) Create other incentives and opportunities for insertion of new technology during the course of an acquisition program (*e.g.*, technology upgrade cycles).

The Team recommended a provision to be inserted into the solicitations of DoD acquisition programs and a set of procedures for acquisition program office implementation of the Challenge program.

Provision To Be Inserted Into the Solicitations of Acquisition Programs

I. This Acquisition Program Is Participating in the New "Challenge" Program, Based on Section 812 of Public Law 106–65

The Challenge program, as approved for implementation by the Under Secretary of Defense for Acquisition, Technology and Logistics (USD(AT&L)), is designed to:

(A) Foster competition among alternative technological approaches and suppliers wherever possible in the development of subsystems of DoD acquisition programs. The rationale is that such competition is needed to create the incentives for the development and rapid insertion into acquisition programs of technological innovations developed by commercial firms, including small technology companies. These innovations are essential to reducing the cost and improving the performance of acquisition programs.

(B) Create other incentives and opportunities for insertion of new technology throughout the acquisition cycle.

II. As Part of the Challenge Program, Your Firm Is Required To Submit a Brief Innovative Technology Insertion Plan as Part of Its Proposal (No More Than Five Pages in Length)

In the Insertion Plan, please describe how your firm plans to implement the following practices, which are encouraged to foster subtier competition and technology insertion from commercial firms:

(A) *Competitive sourcing of subsystem development and production.* Please list the 10 subsystems involving the largest expenditure of federal funds under this contract, and also any other subsystems that offer significant opportunities for technology insertion. (Please show the expected federal funding associated with each listed subsystem.) Indicate:

(a) Which of these subsystems your firm will award to another firm (unaffiliated with your firm) that has already been selected through a competitive process; and

(b) Which of these subsystems your firm will award to a source that will be selected in the future through a competitive process.

(B) *Adaptability of the acquisition program and its subsystems, through such features as open-system architecture, to enable a wide array of competing approaches to the subsystems' design and production.* Please describe the adaptability of the acquisition program and the proposed subsystems listed in (A).

(C) *Technology upgrade cycles, to foster the insertion of new cost-saving and performance-enhancing technologies into the acquisition program and its subsystems through the course of the contract.* For the acquisition program and the subsystems listed in (A), please describe (i) the features that will be subject to technology upgrade cycles, and (ii) the nature of those cycles and the extent to which they will involve competitive sourcing.

(D) Subcontracting of the RDT&E effort to small technology companies, which are a particularly potent source of innovation and effective vehicle for technology insertion. Please indicate the total amount of RDT&E funding provided under the contract that your firm plans to outsource to small businesses, as defined in 13 CFR 121.702 to include firms which employ not more than 500 employees, including affiliates, and which are at least 51 percent owned and controlled by U.S. citizens or permanent resident aliens.

Please also identify incentives that your firm would like to be included in the contract to facilitate successful implementation of the Insertion Plan, including (i) an award fee, or an award-fee bonus, that is based on your firm's progress in successfully implementing the Insertion Plan; and/or (ii) (for production or maintenance contracts:) opportunities for your firm to share significantly in the cost savings and performance benefits resulting from the technology insertion, through such mechanisms as Value Engineering Change Proposals. Where appropriate, identify the technologies or subsystems to which these incentives might be applied.

III. If Your Firm's Proposal Is Selected for Contract Award, Its Insertion Plan Will Be Included as a Requirement in the Contract. The Contract Will Also Provide That

(A) Your firm establish a comparable Challenge program and process in awarding subcontracts for the major subsystems (i.e., those expected to involve an expenditure for RDT&E of more than $25 million, or for procurement of more than $75 million under this contract).

(B) Your firm's Insertion plan, and the Insertion Plan of your firm's major subsystem suppliers, be publicly released on the USD(AT&L) web site, so that potential offerors are made aware of the competitive opportunities that are available.

(C) Your firm receive significant incentives for successful implementation of its Insertion Plan, as described in the last paragraph of Section II.

(D) Your firm provide written notification to the acquisition program office, with a copy to the Office of the USD(AT&L) (attn: *baronj@acq.osd.mil*), before undertaking actions including the following that may be incompatible with the Insertion Plan in the contract:

(a) Your firm proposes not to competitive source a subsysten or upgrade designated for competitive sourcing in its Insertion Plan, and instead to use in-house source;

(b) Your firm's competitive sourcing results in the proposed selection of an in-house supplier; or

(c) Your firm proposes to reduce the amount of RDT&E funds designated in the Insertion Plan for outsourcing to small technology companies. Such proposed actions may not be undertaken without government approval.

(E) Your firm submit a brief annual report (no more than five pages) on its progress in implementing the Insertion Plan to both the acquisition program office and the Office of the USD(AT&L)(attn: *baronj@acq.osd.mil*), for inclusion in the Challenge program's report to the USD(AT&L).

Procedures for Acquisition Program Office Implementation of the Challenge Program

(A) Please include the provision above (or a reasonable variation containing its main elements) in your Office's program solicitation to potential offerors.

(B) *In competitive acquisitions,* include the quality of the Innovative Technology Insertion Plan as a significant source selection criterion, with the specific weighting to be determined by the contracting officer in conjunction with the source selection authority.

In sole-source acquisitions, the Insertion Plan of the offeror is subject to an independent review before contract award by a panel appointed by the Program Executive Officer (or

equivalent individual) under whom this acquisition program falls, who is encouraged to include significant participation from individuals outside the acquisition program office. The review panel will—

(a) Where feasible, use the Insertion Plans developed in other, competitive acquisitions as a benchmark for assessing the sole-source offeror's Innovation Plan; and

(b) Provide specific recommendations to the acquisiton program manager and the contracting officer on whether and how the offeror's Insertion Plan should be improved before it is included in the contract.

The reviewers' recommendations and the extent to which they are implemented in the contract, will be included in the Challenge program's report to the USD(AT&L).

(C) For the firm that is selected for contract award, include as requirements of the contact (i) the firm's Innovative Technology Insertion Plan, and (ii) the items listed in Section III of the solicitation provision above. The acquisition program office is particularly encouraged to work with the contractor to include in the contract significant positive incentives for successful implementation of the Insertion Plan, as discussed in Section III (C) of the solicitation provision.

(D) If, after contract award, the contractor proposes, through written notification (per Section III (D) of the solicitation provision), to undertake actions that may be incompatible with its Insertion Plan, such actions are subject to government review and approval through the following process.

(a) The acquisition program office, after consultation with the Office of the USD(AT&L) (POC: Jon Baron,OUSD(AT&L)/SADBU, tel. 703/588–8636, fax 703/588–7561, email baronj@acq.osd.mil), will make an initial determination of whether the proposed action potentially represents a non-trivial deviation from the letter or intent of the Insertion Plan contract.

(b) If such a determination is made, the proposed action will be subject to an independent review by a panel (i) appointed by the Program Executive Officer (or equivalent individual) under whom this acquisition program falls, and (ii) consisting of individuals outside the acquisition program office. The contractor will be asked to show that conditions have significantly changed since the contract was awarded, such that there are substantial and compelling reasons why the potential supplier base cannot now adequately meet the requirement. The contractor's proposed action and rationale will be publicly released for comment by potential suppliers and others. Based on such inputs and the criterion described above, the reviewers will make a formal recommendation to the acquisition program manager and the contracting officer on whether to approve or disapprove the proposed action. The reviewers' recommendation, and the contracting officer's resulting action, will be included in the Challenge program's report to the USD(AT&L).

Dated: April 4, 2000.

Patricia L. Toppings.

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–9061 Filed 4–11–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Inventions for Licensing; Government-Owned Inventions

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

U.S. Patent Application Serial No. 09/296,802 entitled "An Interactive Communication System Permitting Increased Collaboration Between Users", filing date: April 23, 1999, Navy Case No. 78947.

U.S. Patent Application Serial No. 09/296,746 entitled "Computer Software for Converting A General Purpose Computer Network Into An Interactive Communications System", filing date: April 23, 1999, Navy Case No. 79258.

U.S. Patent Application Serial No. 09/296,757 entitled "A Method for Facilitating Collaborative Development Efforts Between Widely Dispersed Users", filing date: April 23, 1999, Navy Case No. 79259.

ADDRESSES: Requests for copies of the patent applications cited should be directed to the Naval Surface Warfare Center, Dahlgren Laboratory, Code CD222, 17320 Dahlgren Road, Building 183, Room 015, Dahlgren, VA 22448–5100, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: James B. Bechtel, Patent Counsel, Naval Surface Warfare Center, Dahlgren Laboratory, Code CD222, 17320 Dahlgren Road, Building 183, Room 015, Dahlgren, VA 22448–5100, telephone (540)–653–8061.

(Authority: 35 U.S.C. 207, 37 CFR Part 404).

Dated: March 28, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–9016 Filed 4–11–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–015]

Natural Gas Pipeline Company of America; Notice of Proposed Change in FERC Gas Tariff

April 6, 2000.

Take notice that on April 3, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing to be a part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Original Sheet No. 261, to be effective April 1, 2000.

Natural states that the purpose of this filing is to implement a negotiated rate transaction with Duke Energy Trading and Marketing Services, L.L.C. (Duke) under Rate Schedules FTS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff. Natural states that it has filed by a separate filing the executed negotiated rate agreement between Natural and Duke.

Natural requests waiver of the Commission's Regulations to the extent necessary to permit Original Sheet No. 261 to become effective April 1, 2000.

Natural states that copies of the filing are being mailed to its customers, interested state commissions and all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–9032 Filed 4–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–63–000]

New York State Electric & Gas Corporation, Complainant v. New York, Independent System Operator, Respondent; Notice of Filing

April 6, 2000.

Take notice that on March 31, 2000, New York State Electric & Gas Corporation (NYSEG) submitted a Complaint pursuant to Section 206 of the Federal Power Act against the New York Independent System Operator (NYISO). The Complainant seeks to correct the NYISO tariff and market implementation flaws associated with operating reserves and to compel the NYISO to use Temporary Extraordinary Procedures (TEP).

Copies of the filing were served upon the NYISO and other interested parties.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before April 13, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before April 13, 2000.

David P. Boergers,

Secretary.

[FR Doc. 00–9030 Filed 4–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–241–000]

Public Utilities Commission of the State of California v. El Paso Natural Gas Company, El Paso Merchant Energy-Gas, L.P., and El Paso Merchant Energy Company; Notice of Complaint

April 6, 2000.

Take notice that on April 4, 2000, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, and Section 5 of the Natural Gas Act, 15 U.S.C. 717d, the Public Utilities Commission of the State of California (CPUC) filed a Complaint against El Paso Natural Gas Company (El Paso) and its marketing affiliates, El Paso Merchant Energy-Gas, L.P. and El Paso Merchant Energy Company (collectively El Paso Merchant), challenging the justness and reasonableness and anti-competitive effects of three contracts between El Paso and El Paso Merchant (dated February 15–17, 2000) in which El Paso Merchant acquired approximately 1220 MMcf/d of firm capacity rights on El Paso to the California border. The CPUC's Complaint further raises affiliate abuse issues relating to El Paso Merchant's acquisition and use of these capacity rights on El Paso.

The CPUC specifically requests that the Commission issue an order terminating El Paso's contracts with El Paso Merchant, or, at a minimum, that the Commission require El Paso Merchant to release on a short-term basis any unused firm transportation rights under these contracts. In addition, the CPUC requests that the Commission order El Paso to delete restrictions (under one of the contracts) on the recallability of Block II capacity rights.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before April 24, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before April 24, 2000.

David P. Boergers,

Secretary.

[FR Doc. 00–9031 Filed 4–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. No. RP97–408–011]

Trailblazer Pipeline Company; Notice of Compliance Filing

April 6, 2000.

Take notice that on March 31, 2000, Trailblazer Pipeline Company (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective April 1, 2000.

Trailblazer states that the purpose of this filing is to implement base rates and tariff provisions reflected in its Amended Stipulation and Agreement (Settlement) in Docket No. RP97–408. The Federal Energy Regulatory Commission (Commission) approved the Settlement in its orders issued April 28, 1999 and August 3, 1999. The presiding Administrative Law Judge has terminated the proceeding.

Trailblazer requests waivers of the Commission's Regulations to the extent necessary to permit the tariff sheets submitted to become effective April 1, 2000.

Trailblazer states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 first Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–9033 Filed 4–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–006

TransColorado Gas Transmission Company; Notice of Tariff Filing

DATES: April 6, 2000.

ADDRESSES: Take notice that on March 29, 2000, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Sixth Revised Sheet No. 21, to be effective April 1, 2000.

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

TransColorado states that the tendered tariff sheets revises TransColorado's Tariff to implement a new negotiated-rate transportation service agreement between TransColorado and Duke Energy Trading and Marketing, LLC, to be effective April 1, 2000. TransColorado requested wavier of 18 CFR 154.207 so that the tendered tariff sheet may become effective April 1, 2000.

TransColorado states that a copy of this filing has been served upon all parties to this proceeding. TransColorado's customers, the Colorado Public Utilities Commission and New Mexico Public Regulatory Commission.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–9034 Filed 4–11–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–771–003, et al.]

Tucson Electric Power Company, et al.; Electric Rate and Corporate Regulation Filings

April 3, 2000.

Take notice that the following filings have been made with the Commission:

1. Tucson Electric Power Company

[Docket No. ER00–771–003]

Take notice that on March 29, 2000, Tucson Electric Power Company (Tucson), tendered for filing an amendment to its March 9, 2000 compliance filing.

Comment date: April 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Southwest Power Pool, Inc.

[Docket No. ER00–1829–000]

Take notice that on March 28, 2000, Southwest Power Pool, Inc. (SPP), tendered for filing revised requested effective dates of January 1, 2001, January 1, 2002, and January 1, 2003, respectively, for three executed service agreements for firm point-to-point transmission service under the SPP Tariff with Tenaska Power Services Company (Tenaska).

SPP states that the revised requested effective dates correspond to the actual dates service is to commence under each of the three agreements and that those dates replace the effective dates inadvertently requested when the agreements were filed in Docket No. ER00–1829–000 on March 7, 2000.

Copies of this filing were served upon Tenaska and Entergy Power Marketing Corporation (Entergy).

Comment date: April 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Southern California Edison Company

[Docket No. ER98–441–018]

Take notice that on March 28, 2000, Reliant Energy Etiwanda, LLC and Reliant Energy Mandalay, LLC tendered for filing a compliance report regarding refunds as required by the Commission's Order issued January 31, 2000 approving the Stipulation and Agreement filed in the above-captioned proceeding on September 8, 1999.

Comment date: April 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Company

[Docket No. ER99–723–003]

Take notice that on March 28, 2000, Florida Power & Light Company tendered for filing a compliance report showing monthly refunds required under the Commission order approving a settlement in this docket.

Comment date: April 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Cinergy Services, Inc.

[Docket No. ER00–1984–000]

Take notice that on March 28, 2000, Cinergy Services, Inc., tendered for filing an Interconnection Agreement entered into by and between Cinergy Services, Inc. (Cinergy) and WestFork Land Development Company, LLC (WestFork) dated as of March 9, 2000.

The Interconnection Agreement between the parties provides for the interconnection of the Wheatland Facility to the 345 kV transmission line from the Gibson Generating Station to the Qualitech Substation, both of which substations are owned by PSI Energy, Inc., a Cinergy utility operating company. In addition, the Interconnection Agreement sets forth the entire agreement and understanding of the parties and further defines the continuing responsibilities and obligations of the parties with respect thereto.

Cinergy states that it has served a copy of its filing upon the Indiana Utility Regulatory Commission and Enron North America.

Comment date: April 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–1985–000]

Take notice that on March 28 , 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 30 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of January 21, 2000 or on a date as determined by the

Commission to Ameren Services Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: April 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–1986–000]

Take notice that on March 28, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 34 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of February 18, 2000 or on a date as determined by the Commission to GPU Energy.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: April 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–1987–000]

Take notice that on March 28 , 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 32 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of February 10, 2000 or on a date as determined by the Commission to CMS Marketing, Services & Trading Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: April 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–1988–000]

Take notice that on March 28, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 31 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of February 2, 2000 or on a date as determined by the Commission to Cargill-Alliant, LLC.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: April 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–1989–000]

Take notice that on March 28, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 33 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of February 17, 2000 or on a date as determined by the Commission to Southern Company Services Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: April 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–1990–000]

Take notice that on March 28 , 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 29 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of January 8, 2000 or on a date as determined by the Commission to Illinois Power Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: April 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. PPL Electric Utilities Corporation

[Docket No. ER00–1997–000]

Take notice that on March 29, 2000, PPL Electric Utilities Corporation (formerly PP&L, Inc.) (PPL Utilities), tendered for filing the Susquehanna Steam Electric Station Transmission Agreement between PPL Utilities and Allegheny Electric Cooperative, Inc. (Allegheny), dated March 18, 1977.

PPL Utilities has served a copy of this filing on Allegheny.

Comment date: April 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–1998–000]

Take notice that on March 29, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Amendment No. 2 to Supplement No. 5 to the Market Rate Tariff to incorporate a Netting Agreement with American Electric Power Service Corporation into the tariff provisions.

Allegheny Energy Supply Company requests a waiver of notice requirements to make the Amendment effective as of March 22, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: April 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Allegheny Energy Service Corporation, on Behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–1999–000]

Take notice that on March 29, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Amendment No. 4 to Supplement No. 9 to the Market Rate Tariff to incorporate a Netting Agreement with Strategic Energy, LLC into the tariff provisions.

Allegheny Energy Supply Company requests a waiver of notice requirements to make the Amendment effective as of March 6, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: April 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Cleco Utility Group, Inc.

[Docket No. ER00–2000–000]

Take notice that on March 29, 2000, Cleco Utility Group, Inc., Transmission Services tendered for filing, pursuant to Section 205 of the Federal Power Act, a network integration transmission service agreement and a network operating agreement with an internal division of itself, Cleco Utility Group, Inc., Retail Energy Services, establishing the provision of network transmission service to serve the city of Gueydan, Louisiana under the existing Cleco Utility Group, Inc., open access transmission tariff.

Cleco Utility Group, Inc., requests an effective date for these agreements under its open access transmission tariff of March 31, 2000.

Comment date: April 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. American Electric Power Service Corporation

[Docket No. ER00–2001–000]

Take notice that on March 29, 2000, the American Electric Power Service Corporation (AEPSC), tendered for filing blanket service agreements by the AEP Companies under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5.

AEPSC respectfully requests waiver of notice to permit the service agreements to be made effective as specified in the submittal letter to the Commission with this filing.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: April 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Detroit Edison Company

[Docket No. ER00–2002–000]

Take notice that on March 29, 2000, Detroit Edison Company (Detroit Edison) tendered for filing Service Agreements for wholesale power sales transactions (the Service Agreements) under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff).

Comment date: April 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–9029 Filed 4–11–00; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6576–9]

Agency Information Collection Activities: Continuing Collection; Comment Request; Confidentiality Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Confidentiality Rules, EPA ICR No. 1665.03, OMB Control No. 2020–0003, expiration date May 31, 2000. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 12, 2000.

ADDRESSES: U.S. Environmental Protection Agency, Office of Environmental Information, Office of Information Collection, Mailstop 2822, 1200 Pennsylvania Ave., NW, Washington, DC 20460. Interested persons may obtain a copy of the ICR without charge.

FOR FURTHER INFORMATION CONTACT: Rebecca Moser, Office of Information Collection, Collection Strategies Division, Information Strategies Branch; Phone, 202–260–6780; Fax, 202–260–8550; Email, *moser.rebecca@epa.gov.*

SUPPLEMENTARY INFORMATION: Affected entities: Entities potentially affected by this action are those who characterize the information they provide to EPA as confidential business information (CBI).

Title: Confidentiality Rules, OMB Control No. 2020–0003, EPA ICR No. 1665.03, expiring May 31, 2000.

Abstract: The U.S. Environmental Protection Agency (EPA) administers a number of environmental protection statutes (e.g., the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Resource Conservation and Recovery Act; the Comprehensive

Environmental Response, Compensation, and Liability Act; the Federal Water Pollution Control Act; and others), which require it to collect data from thousands of facilities in many economic sectors. The data often provide information on toxic chemicals, industrial processes, waste streams, regulatory compliance; and in many cases, businesses that submit the data claim it as confidential business information (CBI). EPA established the procedures described in 40 CFR Part 2, Subpart B, to protect the confidentiality of information as well as the rights of the public under FOIA. In accordance with these regulations, when EPA finds it necessary to make a final confidentiality determination (e.g., in response to a FOIA request or in the course of rulemaking or litigation), it notifies the affected business and provides it with an opportunity to submit comments (i.e., a substantiation). This ICR relates to the collection of information that will assist EPA in determining whether previously submitted information is entitled to confidential treatment.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: EPA estimates that in response to the procedures outlined in 40 CFR Part 2, Subpart B, the Agency would notify 543 businesses and provide them with an opportunity to submit comments explaining why previously submitted information should be treated as confidential. Of the 543 businesses, EPA estimates that approximately 443 industries would respond by submitting substantiations. The Agency estimates that it takes industry approximately 14 hours and $464.43 in labor costs to prepare and submit each substantiation; or a total of 6,202 hours at a cost of $205,742.49 in labor for all 443 substantiations. For those 100 businesses that do not submit substantiations, they are still likely to spend approximately 1 hour at a cost of $32.04 in labor to review EPA's notice, examine the information in question, and make a decision not to respond; or a total of 100 hours at a cost of $3,204.00 in labor costs for reviewing and deciding not to respond in 100 cases. The total burden on industry to review and, if desired, respond to 543 EPA substantiation requests is 6,302 hours at a cost of $208,946.49 in labor.

In addition, when EPA utilizes the services of contractors/subcontractors in implementing 40 CFR, Part 2, Subpart B, all contractor/subcontractor employees who may be given access to confidential information must first sign confidentiality agreements stating that they will honor the terms of the contract/subcontract which requires the protection of CBI.

In addition, contractor/subcontractor businesses must maintain a file of all such agreements. EPA estimates that there are about 129 contractor/subcontractor businesses that handle CBI in connection with their work for EPA each year. These 129 contractor/subcontractor businesses together have a total of approximately 658 employees who must sign confidentiality agreements each year. Each employee would need approximately 0.1 hour to review and sign an agreement, at a cost of $3.34 in labor; employees' review and signature of all agreements would require approximately 65.8 hours at a cost of $2197.72 in labor per year. In addition, each subcontractor/contractor business would need approximately 0.5 hour at a cost of $8.07 in labor per year to maintain a file of employee confidentiality agreements; the 129 contractor/subcontractor businesses together would require a total of 64.5 hours at a labor cost of $1041.03 to maintain a file of confidentiality agreements. The total burden for signing and maintaining confidentiality agreements would thus be 130.3 hours at a cost of $3238.75.

The overall burden for handling confidentiality claims—including the substantiation process and the signing and maintaining of confidentiality agreements—would be 6432:3 hours at a total labor cost of $212,185.24 per year. EPA estimates that no capital costs or operation and maintenance costs would be incurred as a result of this information collection.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjusting the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: April 4, 2000.

Oscar Morales,

Director, Collection Strategies Divisio, Office of Information Collection

[FR Doc. 00–9094 Filed 4–11–00; 8:45 am]

BILLING CODE 6560–60–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6577–5]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at 260–2740,or email at Farmer.sandy@epa.gov,and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No.1773.02; New and Amended Reporting and Recordkeeping Requirements for

NESHAP from Hazardous Waste Combustors; in 40 CFR part 63, subparts A and EEE; was approved 02/25/2000; OMB No. 2060-0349; expires 02/28/2003.

(Note: EPA will request OMB to change OMB No. 2060–0349 to a 2050 series number since it is now the responsibility of the Office of Solid Waste).

EPA ICR No. 0275.07; Pre-award Compliance Review Report for All Applicants Requesting Federal Financial Assistance; in 40 CFR part 7; was approved 02/25/2000; OMB No. 2090–0014; expires 02/28/2003.

EPA ICR No. 1842.02; Notice of Intent for Storm Water Discharges Associated with Construction Activity under a NPDES General Permit; in 40 CFR part 122; was approved 03/01/2000; OMB No. 2040–0188; expires 03/31/2003.

EPA ICR No. 0318.08; Clean Water Needs Survey; was approved 03/02/2000; OMB No. 2040–0050; expires 12/31/2001.

EPA ICR No. 0827.05; Construction Grants Program; in 40 CFR part 35,subpart I; was approved 03/03/2000; OMB No. 2040–0027; expires 03/31/2003.

EPA ICR No. 0909.06; Construction Grants Delegation to States; in 40 CFR part 35, subpart J; was approved 03/03/2000; OMB No. 2040-0095; expires 03/31/2003.

EPA ICR No. 1898.02 Public Water System Supervision program Public Notification Requirements; in 40 CFR part 141; was approved 03/07/2000; OMB No. 2040–0209; expires 06/30/2002.

EPA ICR No. 1892.02; A Pilot Study of Children's Total Exposure to Persistent Pesticides and Other Persistent Organic Pollutants; in 40 CFR part 141; was approved 03/20/2000; OMB No. 2080–0061; expires 03/31/2003.

EPA ICR No. 1711.03; Voluntary Customer Service Satisfaction Survey; was approved 03/20/2000; OMB No. 2090–0019; expires 03/31/2003.

EPA ICR No. 1654.03; Reporting Requirements under EPA's Water Alliances for Voluntary Efficiency (WAVE) Program; was approved 03/27/2000; OMB No. 2040–0164; expires 03/31/2003

Extensions of Expiration Dates

EPA ICR No. 0011.09; Selective Enforcement Auditing and Record-keeping Requirements for On-Highway HDE, Non-road Compression Ignition Engines, and On-Highway Light-Duty Vehicles and Light-Duty Trucks; in 40 CFR part 90, subpart F; OMB No. 2060–0064; on 02/29/2000 OMB extended the expiration date through 08/31/2000.

EPA ICR No. 1001.06; Polychlorinated Biphenyls (PCBs) Exclusions, Exemptions, and Use Authorizations; in 40 CFR part 761; OMB No. 2070–0008; on 02/29/2000 OMB extended the expiration date through 08/31/2000.

EPA ICR No. 1774.01; Information Collection Activities Associated with EPA's Mobile Air Conditioner Retrofitting Program; in 40 CFR part 82; OMB No. 2060–0350; on 02/29/2000 OMB extended the expiration date through 05/31/2000.

EPA ICR No. 1710.02; Residential Lead-Based Paint Hazard Disclosure Requirements; in 40 CFR part 745, subpart F; OMB No. 2070–0151; on 02/29/2000 OMB extended the expiration date through 05/31/2000.

EPA ICR No. 0574.10; Premanufacture Review Reporting and Exemption Requirements for New and New Use Chemicals; in 40 CFR parts 720, 721, 723, and 725; OMB No. 2070–0012; on 02/29/2000 OMB extended the expiration date through 05/31/2000.

EPA ICR No. 1619.02; EPA Indoor Environmental Quality Questionnaire; OMB No. 2060–0244; on 02/29/2000 OMB extended the expiration date through 05/31/2000.

EPA ICR No. 1139.05; TSCA Section 4 Test Rules, Consent Orders and Test Rule Exemptions; in 40 CFR part 790; OMB No. 2070–0033; on 02/29/2000 OMB extended the expiration date through 05/31/2000.

EPA ICR No. 1381.05; Recordkeeping and Reporting Requirements for Solid Waste Disposal Facilities and Practices, Recordkeeping and Reporting Requirements; in 40 CFR part 258; OMB No. 2050–0122; on 03/01/2000 OMB extended the expiration date through 06/30/2000.

EPA ICR No.1717.02; NESHAP for Off-Site Waste and Recovery Operations; in 40 CFR part 63, subpart DD; OMB No. 2060–0313; on 03/02/2000 OMB extended the expiration date through 05/31/2000.

EPA ICR No. 0180.05; Emission Recall Audit Program Owner Questionnaire; in 40 CFR part 85, subparts S and T; OMB No. 2060–0046; on 03/09/2000 OMB extended the expiration date through 09/30/2000.

EPA ICR No. 1564.04; NSPS for Small Industrial-Commercial-Institutional Steam Generating Units; in 40 CFR part 60, subpart Dc; OMB No. 2060–0202; on 03/09/2000 OMB extended the expiration date through 06/30/2000.

EPA ICR No. 1084.05; Amendments to NSPS for Nonmetallic Mineral Processing Plants; in 40 CFR part 60, subpart OOO; OMB No. 2060-0050; on 03/09/2000 OMB extended the expiration date through 06/30/2000.

EPA ICR No. 0994.06; Beach Closing Survey Report on the Great Lakes; OMB No. 2090–0003; on 03/16/2000 OMB extended the expiration date through 09/30/2000.

EPA ICR No. 1427.05; National Pollutant Discharge Elimination System (NPDES) Compliance Assessment/Certification Information; in 40 CFR parts 122 and 501; OMB No. 2040–0110; on 03/16/2000 OMB extended the expiration date through 09/30/2000.

EPA ICR No. 1643.03; Amended Application Requirements for the Approval and Delegation of Federal Air Toxic Programs to State and Local Agencies; in 40 CFR part 63, subpart E; OMB No. 2060–0264; on 03/20/2000 OMB extended the expiration date through 05/31/2000.

EPA ICR No. 1157.05; NSPS for Flexible Vinyl and Urethane Coating and Printing; in 40 CFR part 60, subpart FFF; OMB No. 2060-0073; on 03/21/2000 OMB extended the expiration date through 06/30/2000.

EPA ICR No. 1596.04; Significant New Alternatives Policy (SNAP) Program under Title VI of the Clean Air Act Amendments of 1990; in 40 CFR part 82, subpart G; OMB No. 2060–0226; on 03/23/2000 OMB extended the expiration date through 07/31/2000.

EPA ICR No. 1160.05; NSPS for Wool Fiberglass Insulation Manufacturing Plants; in 40 CFR part 60.680, subpart PPP; OMB No. 2060–0114; on 03/23/2000; OMB extended the expiration date through 08/31/2000.

EPA ICR No. 1072.05; NSPS for Lead Acid Battery Manufacturing Plants, Recordkeeping and Reporting Requirements; in 40 CFR part 60, subpart KK; OMB No. 2060–0081; on 03/23/2000 OMB extended the expiration date through 06/30/2000.

Comments Filed

EPA ICR No. 1923.01; Radon in Drinking Water; on 03/03/2000 OMB filed comment.

EPA ICR No. 1922.01; Storage, Treatment, Transportation, and Disposal of Mixed Waste; on 03/13/2000 OMB filed comment.

Dated: April 7, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–9095 Filed 4–11–00; 8:45 am]

BILLING CODE 6560–60–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6576–6]

Notice of Prevention of Significant Deterioration (PSD) Final Determination for Knauf Fiberglass, GmbH, Shasta Lake, CA

AGENCY: Environmental Protection Agency.

ACTION: Notice of final action.

SUMMARY: The purpose of this notice is to announce that, on March 14, 2000, the Environmental Protection Agency (EPA) Environmental Appeals Board (Board) dismissed all petitions for review of a permit issued for the Knauf Fiberglass, GmbH, by the Shasta County Air Quality Management District (District) pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations under 40 CFR 52.21.

DATES: The effective date for the Board's decision is March 14, 2000.

FOR FURTHER INFORMATION CONTACT: Duong Nguyen, Permits Office, Air Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1142.

SUPPLEMENTARY INFORMATION: On August 17, 1999, the District issued a revised Authority to Construct (ATC) to Knauf Fiberglass for the construction of a new fiberglass manufacturing facility in Shasta Lake, CA. The revised ATC was issued after the Board remanded the original permit to the District following the first round of petitions to include a revised Best Available Control Technology (BACT) analysis and environmental justice (EJ) documentation provided by EPA, Region 9. The revised ATC, issued on August 17, 1999, also constituted a final PSD Permit under 40 CFR 52.21 and the terms of the District's delegation of authority from the U.S. EPA under 40 CFR 52.21(u). Subsequent to the issuance of the revised ATC, the Board received 65 petitions for review from citizens, citizen groups, and another fiberglass manufacturer. On March 14, 2000, the Board denied review of all 65 petitions for the following reasons: (1) Many of the petitions failed to meet the Board's requirement that issues be raised with specificity; (2) most of the miscellaneous issues raised in the petitions are outside the scope of review for this post-remand appeal; (3) the supplemental BACT analysis and revised BACT determination provide ample support for the District's final decisions on BACT and the revised permit conditions on PM10 emissions; (4) the petitioners failed to contradict Region 9's EJ analysis showing that the proposed facility's will not have disproportionately high or adverse human health or environmental effects on a minority or low-income population; and (5) the new National Emission Standards for Hazardous Air Pollutants (NESHAP) requirement applicable to the fiberglass manufacturing industry was appropriately cross-referenced in the revised permit. (See *In re: Knauf Fiberglass, GmbH,* PSD Appeal Nos. 99–8 through 99-72.)

Pursuant to 40 CFR 124.19(f)(2), for purposes of judicial review, final Agency action occurs when a final PSD permit is issued and Agency review procedures are exhausted. This notice, being published today in the FR, constitutes notice of the final Agency action denying review of the PSD permit. If available, judicial review of these determinations under section 307(b)(1) of the CAA may be sought only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which this determination is published in the FR. Under section 307(b)(2) of this Act, this determination shall not be subject to later judicial review in any civil or criminal proceedings for enforcement.

Dated: March 30, 2000.

David P. Howekamp,

Director, Air Division, Region IX.

[FR Doc. 00–9096 Filed 4–11–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00653; FRL–6552–7]

Solutions by Design; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be tranferred to Solutions by Design in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Solutions by Design has been awarded multiple contracts to perform work for OPP, and access to this information will enable Solutions by Design to fulfill the obligations of the contract.

DATES: Solutions by Design will be given access to this information on or before April 17, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–7248; e-mail address: johnson.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affect by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**–Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. Contractor Requirements

Under contract number, 68-W9-9011 the contractor will perform the following: Deal with the analysis, design, development, installation and maintenance of OPP applications developed in Lotus Notes and their interconnectivity to other applications developed in Oracle. The Project Officer or his/her designee, after a written determination by the appropriate program office, may disclose FIFRA CBI to the contractor necessary to carry out work required under this contract.

The contract involves no subcontractors.

OPP has determined that the contract described in this document involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

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Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with Solutions by Design, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Solutions by Design is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Solutions by Design until the requirements in this document have been fully satisfied. Records of information provided to Solutions by Design will be maintained by EPA Project Officers for the contract. All information supplied to Solutions by Design by EPA for use in connection with the contract will be returned to EPA when Solutions by Design has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: March 29, 2000.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 00–8960 Filed 4–11–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00656; FRL–6554–1]

State FIFRA Issues Research and Evaluation Group (SFIREG) Pesticide Operations and Management Working Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) Pesticide Operations and Management Working Committee will hold a 2–day meeting, beginning on April 17, 2000 and ending on April 18, 2000. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, April 17, 2000 from 8:30 a.m. Pacific Standard time (p.s.t.) to 5:00 p.m. p.s.t. and Tuesday, April 18, 2000 from 8:30 a.m. p.s.t. to 2:30 p.s.t..

ADDRESSES: The meeting will be held at the Sir Francis Drake Hotel on Union Square, 450 Powell Street, San Francisco, CA 94102.

FOR FURTHER INFORMATION CONTACT: Philip H. Gray, SFIREG Executive Secretary, P.O. Box 1249, Hardwick, VT 05843–1249; (802) 472–6956; fax: (802) 472–6957; e-mail address: aapco@plainfield.bypass.com or Elaine Y. Lyon, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703) 305–5306; fax number: (703) 308–1850; e-mail address: lyon.elaine@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general, but all parties interested in SFIREG's information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into the EPA's decision-making process are invited and encouraged to attend the meetings and participate as appropriate.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. You may also obtain electronic copies of the minutes, and certain other related documents that might be available electronically, from the Association of American Pesticide Control Officials (AAPCO) Internet Home Page at http://aapco.ceris.purdue.edu/doc/index.html. To access this document, on the Home Page select "SFIREG" and then look up the entry for this document under the "SFIREG Meetings."

2. *By mail.* Philip H. Gray, SFIREG Executive Secretary, P.O. Box 1249, Hardwick, VT 05843–1249.

III. Purpose of Meeting

Tentative Agenda:

1. Anti-Bacterial pesticide product labeling.

2. Pesticide product "contaminants" other than active ingredients.

3. Experimental Use Permits - Regulations and Procedures.

4. Update on Consumer Labeling Initiative.

5. Update and discussion on 25(b) pesticide regulatory notice.

6. Update and discussion on conditional registration.

7. Update and discussion on isomer pesticide products.

8. Inspector credential initiative.

9. Results and use of inspector training survey.

10. Update on rodenticide stakeholders labeling initiative.

11. Update and discussion on Internet distribution of pesticides.

12. Update on drift minimization.

13. Discussion of "Keep Out of Reach of Children" issue paper.

14. Discussion of "Reentry Label Statements" issue paper.

15. Discussion of OECA worker protection standard audit.

16. American Water Works Association letter to EPA on subject and enforcement implications.

17. Update on phosphine labeling initiative.

18. Discussion on genetically modified, plant pesticide labeling/enforcement issues.

19. Update from the Office of Pesticide Programs.

20. Update from the Office of Enforcement and Compliance Assurance.

21. Other topics as appropriate.

List of Subjects

Environmental protection.

Dated: April 6, 2000.

Jay Ellenberger,

Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 00–9098 Filed 4–11–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00621A; FRL–6552–1]

Pesticides; Data Submitter Rights for Data Submitted In Support of Tolerance Actions; Notice of Availability; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On January 19, 2000 (65 FR 2947) (FRL–6385–7), EPA announced the availability for comment of a paper discussing options to enable the Agency to appropriately implement the new provisions contained in section 408(i) of the Federal Food, Drug, and Cosmetic Act (FFDCA) to address exclusive use and compensation rights for data submitted to EPA in support of tolerance and tolerance exemption actions. The comment period closed on March 20, 2000. However, the Agency received requests to extend the comment period. This notice announces the reopening of the comment period for an additional 30 days.

DATES: Comments, identified by docket control number OPP–00621A must be received on or before May 12, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00621A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Cameo G. Smoot, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5454; fax number: (703) 305–5884; e-mail address: smoot.cameo@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to you if you submit data to EPA in support of establishing or maintaining tolerances for pesticides, or are a pesticide registrant or a person applying for pesticide registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). You may also be interested in commenting if you submit data to EPA in support of an exemption from a tolerance. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. You may obtain a copy of the options paper described in this notice by accessing this **Federal Register** notice using the **Federal Register** Environmental Documents cite on EPA's Internet and selecting "Related Documents." Hard copies of the options paper are available by consulting with the person listed under **FOR FURTHER INFORMATION CONTACT.**

2. *In person.* The Agency has established an official record for this action under docket control number OPP–00621A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00621A in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00621A. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior

notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA is reopening the comment period for an additional 30 days and will continue to make available for comment an options paper on exclusive use and data compensation rights for data submitted to the Agency in support of tolerance and tolerance exemption actions. As part of the Food Quality Protection Act of 1996, Congress amended section 408(i) of the FFDCA addressing such rights. The Agency is currently evaluating how to implement this new provision and is seeking public comment. The options paper briefly discusses the new section 408(i) of the FFDCA and the Agency's practices regarding data compensation and exclusive use; the current compensation and exclusive use process the Agency implements under section 3 of FIFRA; and presents three options for implementing the new provision. The options represent different interpretations focusing on who the data submitters may be. However, the Agency also seeks comments on other interpretations of section 408(i) and suggested procedures for implementing whatever option the commenter prefers.

EPA will consider the comments received and develop a detailed proposal for implementing data rights under section 408(i) of FFDCA.

List of Subjects

Environmental protection, Pesticide tolerances, Data compensation.

Dated: April 4, 2000.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 00–9097 Filed 4–11–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–934; FRL–6551–8]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the amendment of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments identified by docket control number PF–934, must be received on or before May 12, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–934 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, fungicide Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9354; e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–934. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m.,

Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–934 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–934. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 5, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the amendment to a pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

American Cyanamid Company

PP 7F4816

EPA has received an amendment to pesticide petition (7F4816) from American Cyanamid Company, Global Agricultural Products Research Division, P.O. Box 400, Princeton, NJ 08543-0400 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of dimethomorph (E,Z)4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]-morpholine in or on the raw agricultural commodity (RAC) imported grapes at 3.5 parts per million (ppm) and in or on imported grape, raisin, at 6 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* Radiolabeled dimethomorph was applied to grape vines at 0.8 lb. active ingredient per acre (ai/acre) for 4 consecutive weeks, giving a total application rate of 3.2 lb. ai/acre. The amount of total radioactive residue (TRR) in or on grapes harvested 35 days following the last of these applications was 14.6 ppm. Parent dimethomorph accounted for 87.3% of the TRR (12.7 ppm). No metabolites were identified that require regulation.

2. *Analytical method.* FAMS 002-04 is a reliable high performance liquid chromatography (HPLC) method for the determination of dimethomorph residues in grape and raisin.

3. *Magnitude of residues.* The residue data were collected from studies having multiple applications (3–11) of dimethomorph with a maximum seasonal rate of up to 2.94 lb. ai/acre. The resulting dimethomorph residues in the RAC grape ranged from < 0.01 ppm (the limit of quantitation (LOQ) of the

method) to 2.55 ppm. Residues of dimethomorph upon processing of grape to raisin were concentrated by a factor of 1.8x. Residues of dimethomorph did not concentrate upon processing of grape to juice or wine. Therefore, tolerances of 3.5 ppm in/on imported grape and 6.0 ppm in/on imported raisins are proposed.

B. Toxicological Profile

The toxicity of dimethomorph has been studied extensively and there is a complete data base to address the acute and chronic effects, effects on genetic material, the potential for carcinogenicity, or teratogenicity, and effects on reproductive performance or growth of offspring. EPA has previously evaluated the available toxicological data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also, considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The toxicological profile for dimethomorph which supports this petition for tolerances of dimethomorph in or on imported grapes and imported raisins was previously published in the **Federal Register** final rule of October 13, 1998 (63 FR 545587) (FRL–6036–7).

C. Aggregate Exposure

1. *Dietary exposure.* To assess the potential chronic dietary exposure to dimethomorph residues for all tolerances in effect early in 1999, EPA used the dietary exposure evaluation model (DEEM 89) to conduct a chronic dietary (food only) exposure analysis. In conducting this analysis, EPA made very conservative assumptions: that all commodities having dimethomorph tolerances contain residues of dimethomorph and those residues are at the level of the tolerance. These assumptions result in an overestimate of human dietary exposure. All section 18 tolerances (cantaloupes, watermelons, cucumbers, squash, and tomatoes) were included in this assessment along with tolerances for cereal grains crops, and potatoes. The results of the analysis were theoretical maximum residue contributions (TMRC) that were equivalent to the following percentages of the population adjusted dose (PAD) (equivalent to the reference dose (RfD), as EPA removed the extra 10x safety factor): U.S. population (total), 2%; nursing infants, 0.6%; non-nursing infants, 2.4%; children 1–6 years, 4.3%; and children 7–12 years, 3%. In a similar analysis utilizing data derived by TAS, Inc., the chronic dietary exposure to dimethomorph was evaluated for tolerances pending at that time for imported commodities of hops, tomato, and grape (at 2 ppm with no tolerance for raisin proposed). The assumptions made in this assessment were likewise very conservative: all of these commodities (domestically-produced and imported) contain residues of dimethomorph and residues at the level of the tolerance. The results of the analyses were TMRC values that were equivalent to the following percentages of the PAD: U.S. population (total), 1.58%; all infants, 2.38%; non-nursing infants, 2.6%; children 1–6 years, 4.39%; and children 7–12 years, 1.81%. From these two analyses, American Cyanamid had previously concluded that the chronic dietary exposure to dimethomorph from all established and pending tolerances was less than 10% of the PAD for the U.S. population and for population subgroups (e.g., for children 1–6 years, 4.3% plus 4.39%). This conclusion was supported by conservative assumptions and the expiration of the section 18 tolerances for tomato commodities. Given these factors, an increase of the proposed tolerance for imported grape from 2 ppm to 3.5 ppm and the addition of a 6 ppm tolerance for raisin is not expected to exceed the allowed chronic dietary exposures.

i. *Food—acute dietary exposure.* An acute dietary risk assessment is not required because no acute toxicological endpoints were identified by EPA for dimethomorph.

ii. *Drinking water.* The tolerances proposed in this petition are for imported commodities, thus there is no direct impact of establishment of these tolerances on domestic drinking water. Currently, the only federally-registered food/feed use of dimethomorph in the United States is on potato crops. For this use, the drinking water level of concern (DWLC) from chronic exposure to dimethomorph was estimated by EPA to be 3,400 parts per billion (ppb) for the U.S. population and for males 13 years and older; 2,900 ppb for females 13 years and older; and 960 ppb for children (1–6 years of age). These levels are all much greater than that calculated from the generic estimated environmental concentration (GENEEC; 24 ppb for 56 days) which simulates the residues in surface water. Dimethomorph residues in ground water were also estimated using the screening concentration in ground water model, SCI-GRO, but these estimates were significantly lower than those obtained from the GENEEC model. Given the low levels of dimethomorph residues as estimated by the GENEEC model and the large margin of exposure (40x–142x), the registered food use of dimethomorph does not meet or exceed a level of concern for residues in drinking water.

2. *Non-dietary exposure.* Currently, there are no registered residential uses for dimethomorph in the United States. Thus, an assessment of non-dietary exposure is not relevant to this petition.

D. Cumulative Effects

There is no information to indicate that any toxic effects produced by dimethomorph would be cumulative with those of any other chemical. The fungicidal mode of action of dimethomorph is unique; dimethomorph inhibits cell wall formation only in Oomycete fungi. The result is lysis of the cell wall which kills growing cells and inhibits spore formation in mature hyphae. This unique mode of action and limited pest spectrum suggest that there is little or no potential for cumulative toxic effects in mammals. In addition, the toxicity studies submitted to support this petition do not indicate that dimethomorph is a particularly toxic compound. No toxic end-points of potential concern were identified.

E. Safety Determination

1. *U.S. population.* The PAD is 0.1 milligram/kilogram bodyweight per day (mg/kg bwt/day), based on a no observed adverse effect level (NOAEL) of approximately 10 mg/kg bwt/day (200 ppm) from a 2–year dietary toxicity study in rats that demonstrated decreased body weight and liver foci in females at 750 ppm. The PAD is calculated using an uncertainty factor of 100. The combined TMRC for all current and pending dimethomorph tolerances will utilize less than 100% of the PAD for the general U.S. population. Since EPA generally has no concern for exposures below 100% of the PAD, EPA should conclude that there is a reasonable certainty that no harm will result from aggregate exposure to dimethomorph residues as result of establishment of the requested tolerances.

2. *Infants and children.* The results of the studies submitted to support this package provide no evidence that dimethomorph caused reproductive, developmental or fetotoxic effects. No such effects were noted at dose levels which were not maternally toxic. There is no evidence to indicate that children or infants would be more sensitive than adults to toxic effects caused by exposure to dimethomorph. The NOAELs observed in the developmental

and reproductive studies were 6 to 65 times higher than the NOAEL used to establish the PAD. Further, the combined TMRC values for all current and pending dimethomorph tolerances will utilize less than 100% of the PAD for each of these subgroups. Therefore, the registrant believes that the results of the toxicology and metabolism studies support both the safety of dimethomorph to humans based on the intended use as a fungicide on imported grapes and raisins and the granting of the requested tolerances

F. International Tolerances

There are no Codex tolerances established for dimethomorph.

[FR Doc. 00–8959 Filed 4–11–00; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–929; FRL–6498–8]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–929, must be received on or before May 12, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–929 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Indira Gairola, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–6379; e-mail address: gairola.indira@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–929. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–929 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–929. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

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the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petitions. Additional data may be needed before EPA rules on the petitions.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 3, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

The petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the view of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summaries announce the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. LignoTech USA, Inc.

6E4705

EPA has received a pesticide petition (6E4705) from LignoTech USA, Inc., 100 Highway 51 South, Rothschild, WI 54474–1198 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for residues of humic acid, sodium salt when used as an inert ingredient in pesticide formulations applied to growing crops, raw agricultural commodities (RAC) after harvest, or to animals. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, LignoTech USA, Inc. has submitted the following information, data and arguments in support of their petition.

A. Product Identity

1. *Product chemistry.* Humic substances are ubiquitous in the environment, including soils, fresh water and oceans. Humic acid, sodium salt (synonym: sodium humate) has been defined as the portion of soil organic matter that is soluble in base and insoluble in mineral acid or alcohol. A variety of brown materials, not occurring in soil, have also, been designated humic acids. Two examples of the latter are the dark-colored substances from coal and from marine sediment.

Humic acid (CAS No. 68131–04–4) is a hydrophilic, reversible colloid whose molecular weight ranges from 2,000 daltons for the more soluble form to 500,000 daltons for the less soluble form. The average molecular weight for humic acids is in the 20,000–50,000 daltons range. Chemically, humic acids are complex, polymeric polyhydroxy acids formed by the process of degradation of organic matter under the action of soil microorganisms and ground worms.

Most humic acids of commercial use are produced by extraction of naturally occurring lignite and brown coals with alkali. The sodium salt of humic acid is produced by extraction of Leonardite with sodium hydroxide.

2. *Proposed use practice.* Humic acid, sodium salt is proposed for use as an inert ingredient in pesticide formulations that would typically be applied to growing crops. Humic acid, sodium salt has been used safely in commercial agriculture for many years, and is generally applied via tank mixing with fertilizers, and/or pesticides, or as granules. Humates such as humic acid, sodium salt are beneficial to growing plants, and are reported to affect germination speed, nutrient uptake, promote root and plant growth, and increase pesticide effectiveness. Use levels of humic acid, sodium salt are anticipated to be in the range of 5 to 50% by weight of the product formulation, with the typical use level expected to be in the 5 to 10% use range. It is anticipated that humic acid, sodium salt would be added directly to the pesticide active ingredient at the time of manufacture/formulation, or it would be tank-mixed with the pesticide at the time of application.

3. *Magnitude of residues.* It is not expected that, when used as proposed, humic acid, sodium salt would result in residues that would remain in human food items.

B. Toxicological Profile

1. *Acute toxicity.* Humic acid, sodium salt is ubiquitous in the environment, and is derived from soil or soil deposits. Sodium humates and humic acids are generally recognized as having low mammalian, aquatic and avian toxicity. Toxicity testing of LignoTech USA, Inc.'s humic acid, sodium salt product (trade name: Lignosol UVB; code number: D–1109) indicated an acute oral toxicity of $LD_{50} > 5,000$ milligrams/kilograms (mg/kg) Toxicity Category IV, no primary skin irritation Toxicity Category IV, and mild eye irritation Toxicity Category III. The results of these acute toxicity studies indicate Toxicity Category III or IV, which pose

no significant human health risks. Published literature reports that humic acid is nongenotoxic, nonteratogenic and nonmutagenic to test animals. There are no reports in the literature of humic acid, sodium salt causing disease or injury to man or other animals. No incidents of hypersensitivity have been reported in the published literature by researchers, manufacturers or users.

2. *Genotoxicty.* A study published on the *in vivo* cytogenic effects of natural humic acid determined that "humic acid has not been demonstrated to be genotoxic either *in vitro* or *in vivo*."

3. *Endocrine disruption.* To date there is no evidence to suggest that humic acid, sodium salt functions in a manner similar to any known hormone, or that it acts as an endocrine disrupter.

C. Aggregate Exposure

1. *Dietary exposure.* Dietary exposure from use of humic acid, sodium salt in pesticide formulations is minimal. Even if exposure occurred, the lack of reports of disease in man or animals indicates there is no risk for these exposures.

i. *Food.* Dietary exposure from use of humic acid, sodium salt in pesticide formulations is minimal. Residues of humic acid, sodium salt are not expected on agricultural commodities. Humic substances are ubiquitous in nature and have been used for many years in commercial agriculture without adverse effect.

ii. *Drinking water.* Humic substances are ubiquitous in nature, including soils, fresh water and oceans. Increased drinking water exposure from use of humic acid, sodium salt in pesticide formulations would not be expected. Humic acid, sodium salt has been widely used in commercial agriculture for many years without adverse effect.

2. *Non-dietary exposure.* The potential for non-dietary exposure to the general population, including infants and children, is unlikely as the proposed use sites of pesticide formulations that would contain humic acid, sodium salt are commercial, agricultural and horticultural settings. However, non-dietary exposures would not be expected to pose any quantifiable risk due to a lack of residues of toxicological concern. In addition, the personal protective equipment required for use of most pesticide formulations mitigates the potential for exposure to applicators and handlers of the proposed products, when used in commercial, agricultural and horticultural settings.

D. Cumulative Effects

It is not expected that, when used as proposed, humic acid, sodium salt would result in residues that would remain in human food items. Data on humic acid, sodium salt has shown a lack of toxicity to humans or other animal species, as well as no information in the literature indicating a cumulative effect with any other compound. A cumulative risk assessment is therefore, not necessary.

E. Safety Determination

1. *U.S. population.* Humic substances are ubiquitous in the environment. Based on known acute toxicity studies, humic acid, sodium salt is not toxic to humans. There have been no reports of toxins or secondary metabolites associated with humic acid, sodium salt, and the acute toxicity studies conducted have shown that it is nontoxic and nonirritating to test animals. Published literature reports that humic acid is nongenotoxic, nonteratogenic and nonmutagenic to test animals. Residues of humic acid, sodium salt are not expected on agricultural commodities, and therefore, exposure to the general U.S. population, from the proposed uses, is not anticipated.

2. *Infants and children.* Residues of humic acid, sodium salt, when used in pesticide formulations, are not expected on agricultural commodities. There is a reasonable certainty of no harm for infants and children from exposure to humic acid, sodium salt from the proposed use.

F. International Tolerances

There are no international tolerances or tolerance exemptions for humic acid, sodium salt. No CODEX maximum residue levels have been established for humic acid, sodium salt.

2. PURAC America Inc.

5E4510

EPA has received a pesticide petition (15E4510) from PURAC America Inc., Barclay Boulevard, Lincolnshire Corporate Center, Lincolnshire, IL 60069 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for ethyl lactate when used as an inert ingredient in pesticide formulations applied to growing crops, RAC's after harvest or animals . EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Toxicological Profile

1. *Acute toxicity.* The oral LD_{50} of butyl lactate in rats is greater than 2,000 mg/kg (top dose tested-per OECD Guideline No. 401). No mortality or macroscopic effects were noted. The (inhalation) LC_{50} for butyl lactate is 5,140 mg/kg (top aerosol concentration generated). It is known that lactates hydrolyze to lactic acid and the corresponding alcohol. No mortality or macroscopic effects at autopsy were noted. All animals gained weight during the 14–day observation period. The only clinical signs noted were decreased breathing frequency and wet head or fur during exposure and shortly after.

2. *Genotoxicity.* Ames testing of similar lactate (ethyl lactate) did not show any activity. Butyl lactate should give similar results in these tests.

3. *Reproductive and developmental toxicity.* Developmental and mutagen testing has not been conducted on butyl lactate, but ethyl lactate a similar lactate, has been evaluated. Dermal developmental testing of ethyl lactate in rats day 6–15 of gestation did not produce any developmental effects or other signs of toxicity in the dams or fetus other than skin irritation in the dams at the top dose (3.619 grams/kilograms (g/kg)).

4. *Subchronic toxicity.* Subacute inhalation studies have been conducted on two similar lactates (ethyl, isobutyl), but not on butyl lactate. Degenerative changes in the nasal cavity were noted in both studies. For ethyl lactate the effects were noted at 600 mg/m^3 and higher, primarily in the olfactory epithelium. In the case of isobutyl lactate, effects were seen at 400 mg/m^3 and above, but less severe than ethyl lactate at the same concentrations. The affected areas tended to be more respiratory than olfactory epithelium for isobutyl lactate. The no observed adverse effect level (NOAEL) in both studies is 200 mg/m^3. Based on the similarity of effects and kinetic parameters it appears that lactic acid is most likely the cause of the lactate toxicity. Butyl lactate would be expected to give similar results in a subacute inhalation test.

5. *Animal metabolism.* The *in vitro* hydrolysis of lactate esters (methyl, ethyl, butyl, pentyl, isoamyl, isopropyl, isobutyl, 2-ethylhexyl) in rat olfactory epithelium homogenate has been evaluated. In general of the eight lactates evaluated, the rat nasal epithelium showed increased capacity to hydrolyze the lactates and increased affinity with increasing molecular

weight (increase in alcohol chain length). The *in vitro* hydrolysis kinetic parameters were similar for ethyl and isobutyl lactate (Kmax 1. 11 0. 7 mM, Vmax 70 and 180 nmol/min/mg respectively).

6. *Metabolite toxicology.* Butyl lactate is readily hydrolyzed to lactic acid and N butyl alcohol (both are exempt from requirements for tolerance 40 CFR 180.1001). Lactic acid is a normal metabolite in humans and is found in or added to foods (21 CFR 172.515). Lactic acid oral LD_{50} in rats is 3,730 mg/kg. It is not active in mutagenic tests. It will produce skin and eye irritation at high concentrations. The sodium salt of lactic acid is used in cosmetics as a skin moisturizer and parental solutions in the pharmaceutical industry. Butyl alcohol is found in certain foods and beverages and is used as an approved flavoring agent (21 CFR 172.515). It is used as a solvent in fingernail products. Butyl alcohol oral LD_{50} in rats ranges from 700–2,100 mg/kg. It is not active in mutagenic tests. It will produce skin and eye irritation at high concentrations. It is not a developmental hazard in animals. Its primary effect in man is intoxication and narcosis.

B. Aggregate Exposure

Non-dietary exposure. Butyl lactate will be used in animal, pre- harvest and post-harvest applications as a solvent, diluent, coalescence agent, surfactant and emulsifier at levels up to 50. It will be applied, at a maximum of 2–3 times per crop. The low vapor pressure would tend to keep airborne exposure low.

3. PURAC America Inc.

5E4515

EPA has received a pesticide petition (15E4515) from PURAC America Inc., 111 Barclay Boulevard, Lincolnshire Corporate Center, Lincolnshire, IL 60069 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for ethyl lactate when used as an inert ingredient in pesticide formulations applied to growing crops, RACs after harvest or animals. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Toxicological Profile

1. *Acute toxicity.* The oral LD_{50} of ethyl lactate in rats is greater than 2,000 mg/kg (top dose tested-per OECD Guideline No. 401). No mortality or macroscopic effects were noted. All animals gained weight after 3 days. The inhalation LC_{50} for ethyl lactate is 5,400 mg/m^3 (top aerosol concentration generated). It is known that lactates hydrolyze to lactic acid and the corresponding alcohol. No mortality was noted. Macroscopic effects at autopsy revealed pale lungs with dark spots.

2. *Genotoxicity.* A *Salmonella*/Mammalian-Microsome Plate Assay (Ames) of ethyl lactate in five tester strains with and without metabolic activation did not show mutagenic activity.

3. *Reproductive and developmental toxicity.* Dermal developmental testing of ethyl lactate in groups of 25 pregnant rats was conducted at 0, 0.517, 1.551, or 3.619 g/kg/day for day 6–15 of gestation. No developmental effects or other sign of toxicity in the dams or fetus other than skin irritation in the dams at the top dose was observed. The matemal NOAEL (based on skin irritation) is greater than 1.551 g/kg/day. The developmental NOAEL was greater than 3.619 g/kg.

4. *Subchronic toxicity.* Subacute inhalation studies have been conducted on ethyl lactate. Degenerative changes in the nasal cavity were noted in both studies. Groups of rats (5 male and 5 females) were exposed by inhalation for 6 hours/day, 5 days/week for 4 weeks and then held 28 additional days before sacrifice. Exposure was 0, 150, 600, or 2,500 mg/m^3 of ethyl lactate in the first study and 0, 25, 75, or 200 milligram/milliliter (mg/mL) in the second study. For ethyl lactate the effects were noted at 600 mg/m^3 and higher, primarily damage in the olfactory epithelium. The NOAEL was 200 mg/m^3.

5. *Animal metabolism.* The *in vitro* hydrolysis of lactate esters (methyl, ethyl, butyl, pentyl, isoamyl, isopropyl, isobutyl, 2-ethylhexyl) in rat olfactory epithelium homogenate has been evaluated. In general of the eight lactates evaluated, the rat nasal epithelium showed increased capacity to hydrolyze the lactates and increased affinity with increasing molecular weight (increase in alcohol chain length). Based on the similarity of effects and kinetic parameters it appears that lactic acid is most likely the cause of the lactate toxicity. An *in vivo* absorption and hydrolysis study in rats with ethyl lactate demonstrated 80% hydrolysis in rat plasma in 60 minutes at room temperature. Ethyl lactate was detected in the portal blood indicate partial absorption by the gut.

6. *Metabolite toxicology.* Ethyl lactate is readily hydrolyzed to lactic acid and ethyl alcohol (both which are listed as inert ingredients exempt from requirements for tolerance - 40 CFR 180.1001). These breakdown products are also listed as synthetic flavoring substances (21 CFR 172.515). Lactic acid is a metabolic break down product of all lactates, It is a normal metabolite in humans and is found in or added to foods (21 CFR 172.515). Lactic acid oral LD_{50} in rats is 3,730 mg/kg. It is not active in mutagenic tests. It will produce skin and eye irritation at high concentrations. The sodium salt of lactic acid is used in cosmetics as a skin moisturizer and parental solutions in the pharmaceutical industry. Ethyl alcohol occurs naturally as a product of fermentation of carbohydrates. It is the primary alcohol in beer, wine and liquor and is found in certain foods and other beverages and is used as a favoring agent (21 CFR 172.515). It is used as a chemical intermediate and as a solvent in perfumers, cosmetics, adhesives, inks and preservatives. Ethyl alcohol oral LD_{50} in rats is 13,700 mg/kg. It is not active in mutagenic tests. It will produce mild skin irritation at high concentrations (dryness). It is a developmental hazard causing fetal alcohol syndrome in humans. Its primary acute effect in man is intoxication and narcosis. It can cause chronic liver damage.

B. Aggregate Exposure

Non-dietary exposure. Ethyl lactate will be used in animal, pre-harvest and post-harvest applications as a solvent, diluent, coalescence agent, surfactant and emulsifier at levels up to 50%. It will be applied, at a maximum of 2–3 times per crop. The low vapor pressure would tend to keep airborne exposure low.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–6577–4]

Clean Water Act Section 303(d): Availability of Total Maximum Daily Loads (TMDLs) and Determinations That TMDLs Are Not Needed

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for comment of the administrative record file for 19 TMDLs, and the calculations for these TMDLs prepared by EPA Region 6 for waters listed in the Mermentau and Vermilion/Teche river basins, under section 303(d) of the Clean Water Act (CWA). The above TMDLs were completed in response to the October 1, 1999, Court Order in the *Sierra Club, et al.* v. *Clifford et al.*, No. 96–0527 (E.D. La. Oct. 1, 1999). This Court Order required EPA to establish TMDLs for CWA section 303(d) listed waters in several basins, including the Mermentau and Vermilion/Teche river basins. This notice also announces the availability for comment of EPA determinations that TMDLs are not needed for 46 waterbody/pollutant combinations in the Mermentau and Vermilion/Teche river basins and an additional 2 listings in the Pearl River basin.

DATES: Comments must be submitted to EPA on or before May 12, 2000.

ADDRESSES: Comments on the 19 TMDLs and notice that TMDLs are not needed for 48 waterbodies should be sent to Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. For further information, contact Ellen Caldwell at (214) 665–7513. Copies of the TMDLs and their respective calculations may be viewed at www.epa.gov/region6/water/tmdl.htm, or obtained by writing or calling Ms. Caldwell at the above address. The administrative record file for these TMDLs is available for public inspection at the above address as well. Please contact Ms. Caldwell to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

SUPPLEMENTARY INFORMATION: In 1996, two Louisiana environmental groups, the Sierra Club and Louisiana Environmental Action Network (Plaintiffs), filed a lawsuit in Federal Court against the United States Environmental Protection Agency (EPA). Among other claims, plaintiffs alleged EPA failed to fulfill a mandatory duty under CWA section 303(d), submission of a reasonable schedule and establishment of TMDLs for all Louisiana waters not satisfying water quality standards.

By the October 1, 1999, judgment (*Sierra Club, et al.* v. *Clifford et al.*, No. 96–0527 [E.D. La. Oct. 1, 1999]), the Court disapproved EPA's proposed 12-year TMDL schedule. The Court, in part, ordered the following EPA actions:

(1) The defendants, EPA, shall prepare total maximum daily loads for Louisiana waters identified as not meeting water quality standards according to the following schedule:

(a) By December 31, 1999, for all of the waters in the Mermentau and Vermilion/Teche basins.

(b) By December 31, 2001, for all of the waters in the Calcasieu and Ouachita basins.

(c) By December 31, 2003, for all of the waters in the Barataria and Terrebonne basins.

(d) By December 31, 2005, for all of the waters in the Red and Sabine basins.

(e) By December 31, 2006, for all of the waters in the Pontchartrain basins.

(f) By December 31, 2007, for all of the waters in the Mississippi, Atchafalaya, and Pearl basins.

(2) The defendants, EPA, shall add or delete waters to the schedule as new data confirms that the waters are or are not meeting water quality standards. If a water is deleted from the identification of waters that do not meet water quality standards, the defendants need not prepare a total maximum daily load for the water. If an additional water is identified as not meeting water quality standards, the defendants shall prepare a total maximum daily load for the water by the applicable deadline in the schedule if the water is identified at least one year prior to the deadline. If the additional water is identified less than one year before the total maximum load would be due under the schedule, the defendants shall have discretion to prepare the load by the scheduled deadline or to extend the schedule.

(3) The defendants, EPA, may determine if the State of Louisiana wishes to assist the EPA in preparing any or all of the total maximum daily loads required by this schedule. If Louisiana elects to assume responsibility for preparation of any of the total maximum daily loads, it shall submit the load to the defendants by the dates indicated in the schedule described above. The defendants shall approve or disapprove any total maximum daily load submitted by the state within 30 days of its submission. If the defendants disapprove any total maximum daily load, the defendants shall prepare a total maximum load for the water within 30 days after the date of its disapproval. If after assuming responsibility for the preparation of any total maximum daily load, the state fails to submit the load to the EPA by the required deadline, the defendants shall prepare the total maximum daily load within 60 days after the deadline.

Consistent with earlier EPA representations, the administrative record file and calculations for the following nineteen TMDLs, prepared on waters located within the Mermentau and Vermilion/Teche basins, are available for review and comment:

Subsegment	Waterbody name	Pollutant
050201	Bayou Plaquemine Brule.	Mercury.
050101	Bayou Des Cannes.	Mercury.
050702	Seventh Ward Canal (Intracoastal Waterway).	Mercury.
060203	Chicot Lake	Mercury.
050901	Coastal waters of the Gulf of Mexico (Mermentau River Basin Coastal).	Mercury.
061201	Coastal waters of the Gulf of Mexico (Vermilion-Teche RB-CB&G).	Mercury.
050101	Bayou Des Cannes.	Fecal Coliform
050201	Bayou Plaquemine Brule.	Fecal Coliform
050301	Bayou Nezpique	Fecal Coliform
050501	Bayou Queue de Tortue.	Turbidity
060208	Bayou Boeuf	Fecal Coliform
060301	Bayou Teche	Fecal Coliform
060401	Bayou Teche	Fecal Coliform
060801	Vermilion River	Fecal Coliform
060802	Vermilion River	Fecal Coliform
060801	Vermilion River	Dissolved Oxygen
060801	Vermilion River	Nitrogen
060802	Vermilion River	Dissolved Oxygen
060802	Vermilion River	Nitrogen.

EPA regulations provide for public participation when the Agency establishes TMDLs. By this notice, and pursuant to 40 CFR part 130.7(d)(2), EPA is seeking comment on the above 19 TMDLs. While these TMDLs were prepared consistent with short time frames provided in the October 1, 1999, Court Order, EPA recognizes the importance of preparing both, timely and accurate TMDLs. Thus, EPA requests the public to provide any significant data and information that may impact these 19 TMDLs. If such data and information is submitted during the public comment period, EPA may determine it is necessary to revise any one, or some of the 19 TMDLs. After consideration of data and information submitted during the public comment period, and making any appropriate revisions, EPA will forward the TMDLs

to the Court and the Louisiana Department of Environmental Quality (LDEQ). LDEQ will incorporate the TMDLs into its current water quality management plan.

Through this notice, EPA is also making available for comment EPA's February 25, 2000 determination that TMDLs are not needed for 46 waterbody/pollutant combinations in the Mermentau and Vermilion/Teche river basins and 2 in the Pearl River basin.

In response to the Court's October 1, 1999 Order, EPA on October 28, 1999 disapproved Louisiana's 1998 CWA section 303(d) list and, on November 1, 1999, submitted to the Court a Court Ordered CWA section 303(d) list and administrative record. EPA made the Court Ordered List available for public comment on November 29, 1999 (64 FR 66635). After review of water quality data and monitoring information and public comments, EPA issued a Modified Court Ordered CWA section 303(d) list on February 25, 2000. As part of that decision, EPA determined that 46 waterbody/pollutant combinations in the Mermentau and Vermilion/Teche basins and 2 in the Pearl River basin should be removed from the Court Ordered CWA section 303(d) list. The rationale for the determinations is set out in the Decision Document for the Modified Court Ordered § 303(d) List and further explained in Appendix E of that document and provided as follows:

050101 Bayou Des Cannes—Headwaters to Mermentau
- Copper ..... New data shows it is meeting Water Quality Standards (WQS).
- Lead ..... New data shows it is meeting WQS.

050201 Bayou Plaquemine Brule—Headwaters to Bayou Des Cannes
- Lead ..... New data shows it is meeting WQS.
- Phosphorus .. New data shows it is meeting WQS.
- Turbidity ..... New data shows it is meeting WQS.

050301 Bayou Nezpique—Headwaters to Mermentau
- Copper ..... New data shows it is meeting WQS.
- Lead ..... New data shows it is meeting WQS.

050401 Mermentau River — Origin to Lake Arthur
- Phosphorus .. Assessment of data shows it is meeting WQS.
- Copper ..... New data shows it is meeting WQS.
- Lead ..... New data shows it is meeting WQS.
- Mercury ..... New data shows it is meeting WQS.
- Suspended Solids. New data shows it is meeting WQS.

050501 Bayou Queue de Tortue—Headwaters to Mermentau
- Lead ..... New data shows it is meeting WQS.

050601 Lacassine Bayou—Headwaters to Intracoastal Waterway
- Phosphorus .. Assessment of data shows it is meeting WQS.
- Suspended Solids. New data shows it is meeting WQS.
- Turbidity ..... New data shows it is meeting WQS.
- Lead ..... New data shows it is meeting WQS.

050703 White Lake
- Siltation ..... Assessment of data and information shows it is meeting WQS.
- Turbidity ..... Assessment of data and information shows it is meeting WQS.
- Lead ..... New data shows it is meeting WQS.

050801 Mermentau River—Catfish Point Control Structure to Gulf of Mexico (Estuarine)
- Copper ..... New data shows it is meeting WQS.

060101 Spring Creek—Headwaters to Cocodrie Lake
- Siltation ..... Assessment of data shows it is meeting WQS.
- Turbidity ..... New data shows it is meeting WQS.
- Cadmium ..... New data shows it is meeting WQS.
- Copper ..... New data shows it is meeting WQS.
- Lead ..... New data shows it is meeting WQS.
- Mercury ..... New data shows it is meeting WQS.

060102 Cocodrie Lake
- Cadmium ..... Original basis for listing determined to be inaccurate.
- Copper ..... Original basis for listing determined to be inaccurate.
- Lead ..... Original basis for listing determined to be inaccurate.

060201 Bayou Cocodrie from US Highway 167 to the Boeuf-Cocodrie Diversion Canal
- Lead ..... New data shows it is meeting WQS.

060203 Chicot Lake
- Copper ..... New data shows it is meeting WQS.
- Lead ..... New data shows it is meeting WQS.

060204 Bayou Courtableau—Origin to West Atchafalaya Borrow Pit Canal
- Lead ..... New data shows it is meeting WQS.

060205 Bayou Teche—Headwaters at Bayou Courtableau to I–10
- Lead ..... New data shows it is meeting WQS.

060401 Bayou Teche—Keystone Locks & Dam to Charenton Canal
- Phosphorus .. Assessment of data shows it is meeting WQS.

060501 Bayou Teche—Charenton Canal to Wax Lake Outlet
- Phosphorus .. Assessment of data shows it is meeting WQS.

060702 Lake Fausse Point and Dauterive Lake
- Phosphorus .. Assessment of data shows it is meeting WQS.

060801 Vermilion River—Headwaters at Bayou Fusilier-Bourbeaux Junction to New Flanders (Ambassador Caffery Bridge)
- Phosphorus .. Assessment of data shows it is meeting WQS.
- Cadmium ..... New data shows it is meeting WQS.
- Lead ..... New data shows it is meeting WQS.

060802 Vermilion River from New Flanders (Ambassador Caffery Bridge) New Bridge, LA Hwy 3073 to Intracoastal Waterway
- Phosphorus .. Assessment of data shows it is meeting WQS.
- Lead ..... New data shows it is meeting WQS.

060902 Bayou Carlin (Delcambre Canal) Lake Peigneur to Bayou Petite Anse (Estuarine)
- Copper ..... New data shows it is meeting WQS.

061104 Vermilion Bay
- Copper ..... New data shows it is meeting WQS.

090101 Pearl River
- Copper ..... New data shows it is meeting WQS.

090202 West Pearl River
- Copper ..... New data shows it is meeting WQS.

110507 Bayou Anacoco
- Dioxin ..... Original basis for listing determined to be inaccurate, dioxin included with priority organics listing.

EPA request the public to provide any significant data or information warranting revision of EPA's decision to remove these 48 waterbody/pollutant combinations. If such data or information is submitted during the public comment period, EPA may revise the Modified Court Ordered List accordingly. EPA is not requesting comment on any other aspect of its February 25, 2000, decision on the Modified Court Ordered CWA section 303(d) list.

Dated: March 25, 2000.

Oscar Ramirez, Jr.,

Acting Director, Water Quality Protection Division, Region 6.

[FR Doc. 00–9093 Filed 4–11–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting, Thursday, April 13, 2000

April 6, 2000.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, April 13, 2000, which is scheduled to commence at 9:30 a.m. in room TW–C305, at 445 12th Street, S.W., Washington, D.C.

Item No.	Bureau	Subject
1	Common Carrier	TITLE: Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; and Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers (CC Docket No. 94–129). SUMMARY: The Commission will reconsider petitions for reconsideration of the Second Report and Order pursuant to Section 258 of the Act, which prohibits a carrier from submitting or executing changes in a subscriber's telephone service except in accordance with the Commission's verification procedures.
2	Cable Services	TITLE: Closed Captioning and Video Description of Video Programming; Implementation of Section 305 of the Telecommunications Act of 1996; and Accessibility of Emergency Programming (MM Docket No. 95–176). SUMMARY: The Commission will consider a Second Report and Order concerning the accessibility of emergency information programming to persons with hearing disabilities.
3	Office of Plans and Policy and Office of Engineering and Technology.	TITLE: Compatibility Between Cable Systems and Consumer Electronics Equipment. SUMMARY: The Commission will consider a Notice of Proposed Rule Making addressing the issues of labeling digital television sets to indicate their capability to operate with cable television systems and of licensing terms for copy protection technology.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its__inc@ix.netcom.com. Their Internet address is http;//www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communication Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–9120 Filed 4–7–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1316–DR]

Alaska; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska (FEMA–1316–DR), dated February 17, 2000, and related determinations.

EFFECTIVE DATE: April 4, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Alaska is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 17, 2000:

Aleutians East Borough, Bethel Census Area, Bristol Bay Borough, Dillingham Census Area, Denali Borough, Fairbanks North Star Borough, Kodiak Island Borough, Lake and Peninsula Borough, Southeast Fairbanks Census Area, and Wade Hampton Census Area for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 00–9069 Filed 4–11–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 217–011700

Title: DSEN/CSAV Slot Charter Agreement.

Parties:

DSR-Senator Lines GmbH ("DSEN")
Compania Sud Americana de Vapores S.A. ("CSAV")

Synopsis: The proposed agreement authorizes CSAV to charter container slots from DSEN in the trade between United States East Coast ports and points, and ports and points in North Europe.

Agreement No.: 201101.

Title: Tampa—Tampa Bay Marine Terminal Wharfage Incentive Agreement.

Parties:

Tampa Port Authority
Tampa Bay International Terminals, Inc.

Synopsis: The proposed agreement provides for a wharfage incentive. The agreement runs through March 31, 2001.

By Order of the Federal Maritime Commission.

Dated: April 7, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–9100 Filed 4–11–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicant

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, D.C. 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

CPS International Inc., 1869 N.W. 97th Street, Miami, FL 33172, Officers: Rodrigo Cordon, President (Qualifying Individual) Alberto Ubilla, Vice President

K-Way Express, 9000 Bellanca Ave., #110, Los Angeles, CA 90045, Kenny Kyusup Kim, Sole Proprietor

CMS Shipping Co., 11099 S. La Cienega Blvd., Suite 246, Los Angeles, CA 90045, Chi M. Hwang, Sole Proprietor

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Ambert Inc. d/b/a African Express Lines, 249 Merrifield Avenue, Oceanside, NY 11572, Officer: Selina Megertichian, President (Qualifying Individual)

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants

Kudley Trans-Port International, Inc., 1100 Cesery Blvd., #5, Jacksonville, FL 32211, Officers: Frank M. Walters, Vice President (Qualifying Individual); David D. Rudley, President

Dated: April 7, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–9101 Filed 4–11–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 5, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. The Dai-Ichi Kangyo Fuji Trust & Banking Co., Ltd., Tokyo, Japan; to acquire 100 percent of the voting shares of DKF Trust Company (USA), New York, New York.

2. Mizuho Holdings, Inc., Tokyo, Japan; to become a bank holding company by acquiring 100 percent of the voting shares of The Dai-Ichi Kangyo Bank of California, Los Angeles, California; The Fuji Bank and Trust Company, New York, New York; The Industrial Bank of Japan Trust Company, New York, New York; IBJ Whitehall Bank & Trust Company, New York, New York; and DKF Trust Company, (USA) New York, New York. Upon conversion to a "bank" as defined by the Bank Holding Company Act.

In connection with this proposal, Mizuho Holdings, Inc., Tokyo, Japan has applied to acquire a variety of nonbanking activities in the United States performed by subsidiaries of The Dai-Ichi Kangyo Bank, Limited, The Fuji Bank, Limited, The Industrial Bank of Japan, Limited, all located in Tokyo, Japan, including companies that engage in, including lending activities pursuant to section 225.28(b)(1) and (b)(2) of Regulation Y; leasing activities, pursuant to section 225.28(b)(3), trust services, pursuant to section 225.28(b)(5), providing investment advice, pursuant to 225.28(b)(6), data processing pursuant to 225.28(b)(14); and securities activities pursuant to 225.28(b)(8) of Regulation Y. These nonbanking activities and companies are described in the notice filed with the Federal Reserve Bank of New York. Mizuho Holding, Inc., also proposes to engage de novo indirectly in industrial loan company activities, pursuant to Section 225.28(b)(4) of Regulation Y.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. SouthernBank Holdings, Inc., Buford, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of SouthernBank, N.A. (in organization), Buford, Georgia.

Board of Governors of the Federal Reserve System, April 6, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–9055 Filed 4–11–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 982 3180]

CMO Distribution Centers of America, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the

draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 5, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Tom Carter, Federal Trade Commission, Southwest Region, 1999 Bryan St., Suite 2150, Dallas, TX. 75201–6803. (214) 979–9372

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 5, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania, Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Seciton4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis or Proposed Consent Order To and Public Comment

The Federal Trade Commission has accepted, subject to final approval, and agreement to a proposed Consent Order ("proposed order") from CMO Distribution Centers of America, Inc., and Kalon Samulonis, individually and as an officer of CMO Distribution Centers of America, Inc.

The proposed consent order has been placed on the public record for thirty (30) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns advertisements on the Internet for a product called "CMO," described as a form of cetylmyristoleate, said to be derived from beef. CMO is purportedly useful in the treatment of cure of arthritis and other diseases. According to the proposed respondents' advertising, CMO affects the human immune system in one of two courses of treatment, each lasting less than three weeks. The proposed respondent claimed their product permanently relieves the symptoms of osteoarthritis and reheumatoid arthritis and reverses the effects of the disease. CMO was also claimed to be useful for the treatment, mitigation, prevention, and cure of most forms of arthritis and a number of other diseases.

The Commission's complaint charges that the proposed respondents engaged in deceptive advertising in violation of Section 5 and 12 of the FTC Act by making unsubstantiated claims that their CMO products: (1) Are effective in the mitigation, treatment, prevention, and cure of all forms of arthritis, except gouty arthritis; (2) relieve all symptoms of arthritis, including pain, impaired mobility, swelling, and deformity; (3) are as effective as, or superior to, prescription medications for the treatment of arthritis and the relief of arthritis symptoms; (4) are effective in the treatment of multiple sclerosis, leukemia, lupus, emphysema, cancer, benign prostate hyperplasia, silicone breast disease, asthma, fibromyalgia, and scleroderma; and (5) are completely safe and without harmful side effects, even at extremely high doses.

The complaint further alleges that the proposed respondents made false claims that: (1) Clinical studies prove that CMO is a safe and effective treatment for virtually all forms of arthritis except gouty arthritis; (2) CMO is accepted by the medical community; (3) Time magazine reported in its October 28, 1996 issue that CMO™ is one of the most promising developments in arthritis research; and (4) the Arthritis Foundation has not commented on CMO, except to suggest that when taking CMO, patients should consult their physicians before reducing steroids or other medications.

The proposed order contains provisions designed to remedy the violations charged and to prevent proposed respondents from engaging in similar acts in the future.

Paragraph I of the proposed order prohibits proposed respondents from making any representation that CMO or any similar product: (1) Is effective in the mitigation, treatment, prevention, or cure of arthritis; (2) provides significant relief from symptoms of arthritis, including pain, swelling, impaired mobility, or deformity; (3) is as effective as, or superior to, prescription medications for the treatment of arthritis or the relief of arthritis symptoms: (4) is effective in the treatment of multiple sclerosis, leukemia, lupus, emphysema, cancer, benign prostate hyperplasia, silicone breast disease, asthma, fibromyalgia, or scleroderma; or (5) is safe or has not adverse side effects, unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Paragraph II of the proposed order prohibits proposed respondents from making any representations about the performance, safety, efficacy, or health benefits of CMO or any other food, dietary supplement, or drug, unless the claims are substantiated by competent and reliable scientific evidence.

Paragraph III of the proposed order prohibits proposed respondents from using the name "cmocure," using the word "cure" in an address or telephone number, or using any other name, address, or telephone number in marketing a food, dietary supplement, drug, or program, to represent a cure for any disease or health-related condition, unless the respondents possess and rely upon competent, reliable scientific evidence substantiating the representation.

Paragraph IV of the proposed order prohibits the proposed respondents from misrepresenting that a product or program is endorsed or approved by any governmental, professional, or private organization or association, or complies with standards or guidelines established by such organization or association.

Paragraph V of the proposed order prohibits proposed respondents from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

Paragraph VI of the proposed order prohibits proposed respondents from representing that the experience represented by any user testimonial or endorsement of any product or program represents the typical or ordinary

experience of members of the public who use the product or program, unless the representation is true, and competent and reliable scientific evidence substantiates that claim, or respondents clearly and prominently disclose either: (1) What the generally expected results would be for users or the product or program; or (2) the limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

Paragraph VII of the proposed order provides that proposed respondents are not prohibited from making representations which are specifically permitted by regulations of the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990. Paragraph VIII of the proposed order provides that proposed respondents are not prohibited from making representations for a drug that are permitted under tentative final or final standards issued by the Food and Drug Administration or under any new drug application approved by that agency.

Paragraph IX of the proposed order requires that proposed respondents: (1) Not disseminate to any distributor any material containing any representations prohibited by the order; (2) not authorize any distributor to make any representations prohibited by the order; (3) send a required notice to each distributor with whom proposed respondents have done business since January 1, 1996, requesting that the distributor cease using advertising or promotional materials containing unsubstantiated claims for CMO, requesting distributors not to make unsubstantiated oral representations, informing the distributor of this settlement, and not including any other documents in the mailing; (4) for a period of three (3) years following service of the order, send the required notice to each distributor who has not previously received the notice; the notices shall be sent with the first shipment of respondents' products to the distributor; (5) require distributors to submit to proposed respondents all advertising and promotional materials and claims for any products or programs covered by the order for review prior to their dissemination and publication, and not authorize distributors to disseminate materials and claims unless they comply with the order; alternatively, proposed respondents must furnish to distributors marketing materials that comply with the order and require the distributors to submit for review all advertising and promotional materials for a particular product covered by the order that contain representations that are not substantially similar to the representations for the same product or program contained in the marketing materials most recently provided to the distributors by proposed respondents; and (6) use reasonable efforts to monitor distributors' advertising and promotional activities, immediately terminate the right of any distributor who disseminates advertisements or marketing material or makes oral representations prohibited by the order, and immediately provide information to the Federal Trade Commission about any such distributor and the materials used. "Distributor" is defined in the proposed order to mean any person who purchased a product covered by the order from the respondents for resale or at a discounted or wholesale price unavailable to the general public at the time of the purchase, or who has purchased more than twelve bottles or packages of a covered product from respondents within a twelve-month period.

Paragraph X of the proposed order requires the proposed respondents to send a prescribed notice to each person, other than a distributor, who purchased respondents' CMO products and can be identified through a diligent search of respondents' records. The notice offers a refund of the purchase price and any shipping or handling charges to customers who purchased respondents' CMO product for personal use or the use of a family member and who make a request for a refund within ninety days of the date of the notice. Paragraph XI of the proposed order requires the proposed respondents to submit a report to the Federal Trade Commission specifying the actions they have taken to comply with the provisions of Paragraph X. Paragraph XII of the proposed order requires proposed respondents to retain for five years after the last correspondence to which they pertain and to make available to the Federal Trade Commission on request, copies of notification letters, communications with distributors, and other materials relating to the requirements of Paragraph IX and Paragraph X.

Paragraph XIII of the proposed order contains record keeping requirements for materials that substantiate, qualify, or contradict covered claims and requires proposed respondents to keep and maintain all advertisements and promotional materials containing any representation covered by the proposed order. In addition, Paragraph XIV requires distribution of a copy of the consent decree to current and future officers and agents. Further, Paragraph XV requires the filing of a compliance report. Paragraph XVI of the proposed order requires the respondents to notify the Federal Trade Commission in advance of any change in the corporation that may affect compliance obligations arising under the order.

Finally, Paragraph XVII of the proposed order provides for the termination of the order after twenty years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–9074 Filed 4–11–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 982 3181]

EHP Products, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 8, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Tom Carter, Federal Trade Commission, Southwest Region, 1999 Bryan St., Suite 2150, Dallas, TX. 75201–6803. (214) 979–9372.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final

approved, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 5, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania. Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed Consent Order ("proposed order") from EHP Products, Inc., and Elaine H. Parrish, individually and as an officer of EHP Products, Inc.

The proposed consent order has been placed on the public record for thirty (30) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns advertisements on the Internet and print advertisements provided to consumers and prospective distributors, for a product called cetyl myristoleate ("CMO"), purportedly useful in the treatment, prevention, or cure of arthritis and other diseases. Purportedly, the substance, in one or two courses of treatment, each lasting four weeks or less, provides long term relief from the symptoms of osteoarthritis and rheumatoid arthritis. CMO is also claimed to be useful for the treatment, mitigation, prevention, and cure of most forms of arthritis and a number of other diseases.

The Commission's complaint charges that the proposed respondents engaged in deceptive advertising in violation of Sections 5 and 12 of the FTC Act by making unsubstantiated claims that their CMO products: (1) Are safe and effective in the mitigation, treatment, prevention, and cure of most forms of arthritic conditions, including rheumatoid arthritis and osteoarthritis; (2) significantly relieve pain, swelling, and tenderness caused by arthritis; (3) are effective in the mitigation, treatment, and cure of hepatitis C, emphysema, obstructive lung disease, spinal stenosis, eczema, psoriasis, aches and pains of the back and extremities, fibromyalgia, tendonitis, systemic lupus erythematosus, scleroderma, bursitis, temperomandibular joint disease, gout, arthropathy, osteitis, osteochondritis, osteomalacia, osteomyelitis; (4) are effective in the prevention of fever blisters, colds, flu, and allergy symptoms; and (5) effectively lower cholesterol, blood pressure, and blood sugar levels.

The complaint further alleges that the proposed respondents made false claims that (1) the issuance of two patents proves that the respondents' products are effective in treating and alleviating the symptoms of rheumatoid arthritis and osteoarthritis; and that (2) laboratory tests prove that respondents' CMO products promote resistance to pain, swelling, and tenderness caused by arthritis.

The proposed order contains provisions designed to remedy the violations charged and to prevent proposed respondents from engaging in similar acts in the future.

Paragraph I of the proposed order prohibits proposed respondents from making any representation that CMO or any similar product: (1) Is safe or effective in the mitigation, treatment, prevention, or cure of arthritic conditions, including rheumatoid arthritis and osteoarthritis; (2) significantly relieves pain, swelling, or tenderness caused by arthritis; (3) is effective in the mitigation, treatment, or cure of hepatitis C, emphysema, obstructive lung disease, spinal stenosis, eczema, psoriasis, aches and pains of the back and extremities, fibromyalgia, tendonitis, systemic lupus erythematosus, scleroderma, bursitis, temperomandibular joint disease, gout, arthropathy, rheumatism, osteitis, osteochondritis, osteomalacia, or osteomyelitis; (4) is effective in the prevention of fever blisters, colds, flu, or allergy symptoms; or (5) effectively lowers cholesterol, blood pressure, or blood sugar levels, unless, at the time the representation is made, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

Paragraph II of the proposed order prohibits proposed respondents from making any representations about the performance, safety, efficacy, or health benefits of CMO or any other food, drug, dietary supplement, or program, unless the claims are substantiated by competent and reliable scientific evidence.

Paragraph III of the proposed order prohibits proposed respondents from misrepresenting that the issuance of a patent proves the safety or efficacy of any product or program. Additionally, Paragraph IV of the proposed order prohibits proposed respondents from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

Paragraph V of the proposed order prohibits proposed respondents from representing that the experience represented by any user testimonial or endorsement of any product or program represents the typical or ordinary experience of members of the public who use the product or program, unless the representation is true, and competent and reliable scientific evidence substantiates that claim, or respondents clearly and prominently disclose either: (1) What the generally expected results would be for users or the product or program; or (2) the limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

Paragraph VI of the proposed order provides that proposed respondents are not prohibited from making representations which are specifically permitted by regulations of the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990. Paragraph VII of the proposed order provides that proposed respondents are not prohibited from making representations for a drug that are permitted under tentative final or final standards issued by the Food and Drug Administration or under any new drug application approved by that agency.

Paragraph VIII of the proposed order requires that proposed respondents: (1) Not disseminate to any distributor any material containing any representations prohibited by the order; (2) not authorize any distributor to make any representations prohibited by the order; (3) send a required notice to each distributor with whom proposed respondents have done business since

January 1, 1996, requesting that the distributor cease using any advertising or promotional materials containing unsubstantiated claims for CMO, requesting distributors not to make unsubstantiated oral representations, informing the distributor of this settlement, and not including any other documents in the mailing; (4) for a period of three (3) years following service of the order, send the required notice to each distributor who has not previously received the notice; the notices shall be sent with the first shipment of respondents' products to the distributor; (5) require distributors to submit to proposed respondents all advertising and promotional materials and claims for any products or programs covered by the order for review prior to their dissemination and publication, and not authorize distributors to disseminate materials and claims unless they comply with the order; alternatively, proposed respondents must furnish to distributors marketing materials that comply with the order and require the distributors to submit for review all advertising and promotional materials for a particular product covered by the order that contain representations that are not substantially similar to the representations for the same product or program contained in the marketing materials most recently provided to the distributors by proposed respondents; and (6) use reasonable efforts to monitor distributors' advertising and promotional activities, immediately terminate the right of any distributor who disseminates advertisements or making material or makes oral representations prohibited by the order, and immediately provide information to the Federal Trade Commission about any such distributor and the materials used. "Distributor" is defined in the proposed order to mean any person who purchased a product covered by the order from proposed respondents for resale or at a discounted or wholesale price unavailable to the general public as the time of the purchase, or who has purchased more than twelve bottles or packages of a covered product from respondents within a twelve-month period.

Paragraph IX of the proposed order requires proposed respondents to send a prescribed notice to each person, other than a distributor, who purchased respondents' CMO products and can be identified through a diligent search of respondents' records. The notice offers a refund of the purchase price of the CMO products and an allowance for shipping and handing charges to customers who purchased respondents' CMO product for personal use or the use of a family member and who make an initial request for a refund within ninety days of the date of this notice. The notice further provides that, if any refund request from a single purchaser is for greater than three bottles of a product covered by the order, the purchaser may be required to return all unopened bottles of the product, at the expense of respondents, to receive a refund. Paragraph X of the proposed order requires proposed respondents to submit a report to the Federal Trade Commission specifying the actions they have taken to comply with the provisions of Paragraph IX. Paragraph XI of the proposed order requires proposed respondents to retain for five years after the last correspondence to which they pertain and to make available to the Federal Trade Commission on request, copies of notification letters, communications with distributors, and other materials relating to the requirements of Paragraph VIII and Paragraph IX.

Paragraph XII of the proposed order contains record keeping requirements for materials that substantiate, qualify, or contradict covered claims and requires proposed respondents to keep and maintain all advertisements and promotional materials containing any representation covered by the proposed order. In addition, Paragraph XIII requires distribution of a copy of the consent decree to current and future officers and agents. Paragraph XIV of the proposed order requires the respondents to notify the Federal Trade Commission in advance of any change in the corporation that may affect compliance obligations arising under the order. Further, Paragraph XV requires the filing of a compliance report.

Finally, Paragraph XVI of the proposed order provides for the termination of the order after twenty years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

By direction of the Commission,

Donald S. Clark,

Secretary.

[FR Doc. 00–9075 Filed 4–11–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 992 3225]

Michael D. Miller; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 5, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Richard Cleland, FTC/S–4002, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–3088.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 5, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and

copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Michael D. Miller, individually and doing business as Natural Heritage Enterprises ("Miller").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves alleged unsubstantiated representations that "Rene Caisse's Original Herbal Tea Remedy," also known as "Rene Caisse's Essiac Tea" or "Essiac Tea" ("Essiac Tea") is effective for treating or curing a number of diseases including, among others, cancer, leukemia, diabetes, and AIDS/HIV. The complaint alleges that these representations were made through the following means, taken together: The visible portion of Miller's Internet Web sites and in the metatags and mouseover text. In addition, according to the FTC complaint, through the visible portion of his Internet advertisements, Miller falsely represented that clinical evidence proves that Essiac Tea is an effective cancer cure; that "recommended [Web] sites" to which respondent's home page links are independent Web sites not associated with Miller or Natural Heritage; and, impliedly, that the experiences of persons giving testimonials are representative of the typical experience of those using the product.

The proposed consent order contains provisions designed to prevent Miller from engaging in similar acts and practices in the future.

Part I of the order prohibits Miller from representing, without competent and reliable scientific evidence substantiating the representation, that any Essiac product, service, or program, or any other food, drug, or dietary supplement, is effective in the treatment or cure of certain enumerated diseases; that the product, service, or program is effective in the mitigation, treatment, prevention, or cure of any disease or illness; or about the health benefits, performance, safety, or efficacy of any such product, service, or program.

Part II of the order provides that Miller shall not mispresent the connection or association between any Web site created and/or maintained by Miller and any other Web site, or the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research.

Part III of the order provides that Miller shall not represent that the experience represented by any user testimonial or endorsement of the product, service, or program represents the typical or ordinary experience of members of the public who use the product, service, or program, unless the representation is substantiated or Miller discloses, clearly and prominently, in close proximity to the endorsement or testimonial, either what the generally expected results would be for users of the product, or the limited applicability of the endorser's experience to what consumers may generally expect to achieve.

Parts I, II, and III apply to representations that are either express or implied, and specifically apply to representations communicated in any manner, including claims made by means of meta tags or mouseover text.

Part IV of the order requires respondent to deliver to the Commission a list, in the form of a sworn affidavit, of all consumers who purchased an Essiac product from respondent on or after September 15, 1996, and to send to all such consumers, by first class mail, an exact copy of a notice with information about the scientific research on Essiac tea.

Part V of the order requires respondent to pay seventeen thousand five hundred dollars ($17,500) in redress. The funds paid by respondent, together with any accrued interest, shall, in the discretion of the Commission, be used by the Commission to provide direct redress to purchasers of an Essiac product in connection with the acts or practices alleged in the complaint, and to pay any attendant costs of administration; or, if the Commission determines, in its sole discretion, that redress to purchasers of this product is wholly or partially impracticable or is otherwise unwarranted, any funds not so used shall be paid to the United States Treasury.

Part IV of the order states that representation for any drug that is permitted in labeling for such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration, are not prohibited by the order. The order also does not prohibit respondent from making any representation for any product that is specifically permitted in labeling for such product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

Parts VII–XII of the order require Miller to keep copies of relevant advertisements and materials substantiating or calling into question claims made in the advertisements; to provide copies of the order to certain of its personnel; to notify the Commission of changes in the company that may affect the order; to notify the Commission of his current address and employment status, and any changes in address or in employment status; and to file compliance reports with the Commission Part XIII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–9076 Filed 4–11–00; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Office of Communications

Cancellation of a Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The Department of State is cancelling the following Standard Form because of no usage:

OF 212, Allotment of Pay—Application and Authorization to Make, Change, or Discontinue.

DATES: Effective April 12, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: March 28, 2000.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 00–9039 Filed 4–11–00; 8:45 am]

BILLING CODE 6820–34–M

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

Sunshine Act Meeting; Trustees Meeting; United States Capitol Building, Room HC–6, May 2, 2000, 4:00–5:30 pm

1. Call to Order by Chairman Staats.
2. Approval of Minutes for the 1999 Annual Meeting.
3. Consideration to reauthorize the Truman Scholarship Summer Institute for 2001–2006.
4. Review of selection of the 2000 Truman Scholars.
5. Report by the Executive Secretary.
6. Status of the Foundation's assets.
7. Status of appointments and vacancies on the Board of Trustees.
8. New Business.

Adjournment.

Dated: March 30, 2000.

Louis H. Blair,

Executive Secretary.

[FR Doc. 00–9211 Filed 4–10–00; 12:16 pm]

BILLING CODE 6820–AD–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Empowerment Zones and Enterprise Communities (EZ/EC) Health Improvement Capacity Survey—NEW—The Office of the Assistant Secretary for Planning and Evaluation is proposing a survey of directors of EZ/ECs to assess their capacity to engage in health improvement planning efforts. Recognizing that EZ/ECs represent some of the nation's most economically disadvantaged and ethnically diverse urban and rural areas, this project is designed to measure the level of interest, commitment and priority assigned to reducing health disparities in these localities. Respondents: EZ/EC Directors; Number of Respondents: 136; Frequency of Response: one time; Average Burden per Response: 20 minutes; Total Annual Burden: 46 hours.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, room 10235, 725 17th Street NW, Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW, Washington, DC, 20201. Written comments should be received within 30 days of this notice.

Dated: April 4, 2000.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 00–9010 Filed 4–11–00; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–00–32]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) is providing an opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC/ATSDR Reports Clearance Officer at (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to CDC/ATSDR Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Interstate Control of Communicable Diseases—New—The Food and Drug Administration (FDA) and Centers for Disease Control and Prevention (CDC) are planning to consolidate regulations related to controlling the spread of communicable diseases, thereby increasing their efficiency and effectiveness. Currently, the regulations contained in Part 1240 of Title 21, Code of Federal Regulations, which pertain to interstate control of communicable diseases, are administered by FDA. Regulations to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States are separately promulgated in Part 71 of Title 42, Code of Federal Regulations and are administered by the CDC. FDA is transferring to CDC certain sections of 21 CFR Part 1240 that relate to restrictions on interstate travel of any person who is in the communicable period of cholera, plague, smallpox, typhus, or yellow fever, or who, having been exposed to any such disease, is in the incubation period thereof.

Of the regulations being transferred, 21 CFR 1240.50 (Certain communicable diseases; special requirements), contains a requirement for reporting certain information to the Federal government. Specifically, this regulation requires any person who is in the communicable period of cholera, plague, smallpox, typhus or yellow fever, or who, having been exposed to any such disease, is in the incubation period thereof, to apply for and receive a permit from the Surgeon General or his authorized representative in order to travel from one State or possession to another.

Control of disease transmission within the States is considered to be the province of State and Local health authorities, with Federal assistance being sought by those authorities on a cooperative basis, without application of Federal regulations. The regulations formerly administered by FDA and being assumed by CDC were developed to facilitate Federal action in the event of large outbreaks of disease requiring a coordinated effort involving several States, or in the event of inadequate local control. While it is not known whether, or to what extent, situations may arise in which these regulations would be invoked, contingency planning for domestic emergency preparedness is not uncommon. Should this occur, the reporting and recordkeeping requirements contained

in the regulations will be used by CDC to carry out quarantine responsibilities as required by law.

Because of the uncertainty about whether a situation will ever arise precipitating CDC's enforcement of this rule, the following data collection burden estimate was prepared using the article Smallpox: An Attack Scenario, Tara O'Toole; Emerging Infectious Diseases, Vol. 5, No. 4, Jul–Aug. 1999. This article describes the aftermath of a hypothetical domestic public health emergency situation involving smallpox virus. Of the potentially 15,000 persons infected with smallpox, the data collection assumes that one-fourth of these would apply for a permit to move from one state to another while in the communicable period of or having been exposed to smallpox. Should the event be different and/or involve a different number of people, the burden would vary accordingly. There is no cost to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Applicants	3,750	1	0.25	937.5
Total	3,750			937.5

Dated: April 5, 2000.

Charles Gollmar,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–9045 Filed 4–11–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–20–00]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

CDC Application for Distance Learning Program, Laboratory Training, and other Training—Revision—The Public Health Practice Program Office (PHPPO) in conjunction with the Public Health Training Network (PHTN) and the National Laboratory Training Network (NLTN) at CDC includes the Distance Learning Program which offers self-study, computer-based training, satellite broadcast, video courses, instructor-led field courses, and lab courses related to public health professionals worldwide. Employees of hospitals, universities, medical centers, laboratories, state and federal agencies, and state and local health departments apply for training in an effort to learn up-to-date public health procedures. The "Application for Training" forms are the official applications used for all training activities conducted by the CDC. The Continuing Education (CE) Program, which includes CDC's accreditation to provide Continuing Medical Education (CME), Continuing Nurse Education (CNE), and Continuing Education Unit (CEU) for almost all training activities, requires a unique identifying number, preferably the respondent's Social Security Number (SSN), to positively identify and track individuals who have been awarded CE credit. It is often necessary to identify individuals currently enrolled in courses, or to retrieve historical information as to when a particular individual completed a course or several courses over a time period. This information provides the basis for producing a requested transcript or determining if a person is enrolled in more than one course. The use of the SSN is the only positive way of assigning a unique number to a unique individual for this purpose. However, the use of the SSN is voluntary; if a student chooses not to submit a SSN, CDC assigns a unique identifier. The reason the SSN, rather than an arbitrary assigned number, is preferred is because students are not likely to remember an arbitrary number. A student's participation in the curriculum of self-study courses sometimes spans a number of years. The SSN is necessary for eliminating duplicate enrollments, for properly crediting students with completed course work who have similar names or have changed addresses, or for generating transcripts of previous completed course work on a cumulative basis. Due to the volume of enrollments, CDC Form 36.5 has been previously approved and used for years as an optical mark scan form. Use of this form, along with the use of the SSN, greatly enhances CDC's capability to process a much greater volume of enrollments in less time with much greater accuracy. The total annual burden hours are 4584.

Respondents	No. of respondents	No. of responses/ respondent	Avg. burden of response (in hrs.)	Total burden (in hours)
Application for Training CDC—0.759A	6,300	1	5/60	525
Application for Laboratory Training—CDC–32.1	10,000	1	5/60	833
Application for Distance Learning Program—CDC 36.5	40,000	1	10/60	6,666
Total				8,024

Dated: April 3, 2000.

Charles Gollmar,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 00–9046 Filed 4–11–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care and Development Fund Annual Aggregate Report, ACF–800.

OMB No.: 0970–0150.

Description: This legislatively mandated report collects program and participant data on children and families receiving direct Child Care and Development Fund services. Aggregate data is collected and used to determine the program scope, types of providers, methods of child care delivery, and to provide a report to Congress.

Respondents: States, the District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	No. of responses per respondent	Average burden hours per response	Total burden hours
ACF–800	56	1	50	2,800
Estimated Total Annual Burden Hours.				2,800

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: April 6, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–9011 Filed 4–11–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Innovative Food Safety Projects; Availability of Grants; Request for Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Office of Regulatory Affairs (ORA), Division of Federal-State Relations (DFSR) is announcing the availability of grant funds for the support of an innovative food safety program. Approximately $250,000 will be available in fiscal year 2000. FDA anticipates making at least five awards, not to exceed $50,000 (direct and indirect costs combined) per award per year. Support of these grants will be for 1 year. The number of grants funded will depend on the quality of the applications received and the availability of Federal funds to support the grant. These grants are not intended to fund or conduct food inspections.

DATES: Submit applications by June 12, 2000. Each application must be submitted under separate cover. Do NOT submit more than one application (with copies) per envelope.

ADDRESSES: Application forms are available from, and completed applications should be submitted to Cynthia M. Polit, Grants Management Specialist (HFA–520), Food and Drug Administration, 5600 Fishers Lane, rm. 2129, Rockville, MD 20857, 301–827–7180, e-mail: cpolit@oc.fda.gov (Applications hand-carried or commercially delivered should be addressed to 5630 Fishers Lane, rm. 2129, Rockville, MD 20857.)

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management aspects of this notice: Cynthia M. Polit (address and telephone number given above).

Regarding the programmatic aspects of this notice: Richard H. Barnes, Director, or Anne Hope Scott, Project Officer, DFSR, Office of Regulatory Affairs, Food and Drug Administration (HFC–150), 5600 Fishers Lane, rm. 12–07, Rockville, MD 20857, 301–827–6906, Internet site: vm.fda.gov/ora/fed__state.

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA will support projects covered by this notice under section 1701 [300u] of the Public Health Service Act (42 U.S.C. 241). FDA's project program is described in the Catalog of Federal Domestic Assistance No. 93.245, and applicants are limited to food safety regulatory agencies of State and local governments. The FDA strongly encourages all award recipients to provide a smoke-free workplace and to discourage the use of all tobacco products. This is consistent with the FDA mission to protect and advance the physical and mental health of the American people.

FDA urges applicants to submit work plans that address specific objectives of "Healthy People 2000." Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, stock No. 017–0010–0474–0) through Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, 202–512–1800.

II. Background

ORA is the inspection component of FDA and has some 1,100 investigators and inspectors who cover the country's approximately 95,000 FDA-regulated businesses. These investigators and inspectors inspect more that 15,000 facilities a year. In addition to the standard inspection program, they conduct special investigations, food inspection recall audits, perform

consumer complaint inspections and sample collections. FDA has relied on the States in assisting with the above duties through formal contracts, partnership agreements, and other informal arrangements. Under the President's Food Safety Initiative (FSI), the demands on both the agency and the States will increase. Procedures need to be reviewed and innovative changes made that will increase effectiveness and efficiency and conserve resources. ORA will support FSI by providing: (1) Effective and efficient compliance of regulatory products; and (2) high quality, science-based work that results in maximizing consumer protection.

Under FSI, FDA is mandated to develop innovative food safety programs that would be utilized nationally by State and local food safety regulatory agencies. Even though the American food supply is among the safest in the world, millions of Americans are stricken by illness each year caused by the food they consume, and some 7,000 Americans a year, primarily the very young and elderly, die as a result. The goal of FSI is to further reduce the incidence of foodborne disease to the greatest extent possible. Innovative food safety programs that are developed at the State and local levels and have national implication could enhance programs that are developed at the Federal level.

A. Project Goals, Definitions, and Examples

The specific objective of this program will be to complement, develop, or improve State and local food safety programs that would have applicability to food safety programs nationwide. Applications that fulfill the following specific project objectives will be considered for funding. Each application must address only one project. Applicants may apply for more than one project area, but must submit a separate application for each project. These grants are not to fund or conduct food inspections for food safety regulatory agencies. Applications relating to the Retail Food Program area should be applicable to program improvement processes for FDA's draft entitled "Recommended National Retail Food Regulatory Program Standards" (http://vm.cfsan.fda.gov/~dms/ret-toc.html) (see review criteria).

There are two key project areas identified for this effort:

1. Inspection

Development of innovative regulatory inspection methods or techniques for the inspection process of various food establishments in order to improve effectiveness and efficiency. Innovative Regulatory Program Methodology projects must demonstrate an effect on factors which contribute to foodborne illness in all, or a segment of, food industry programs. For example, projects could address key elements from the draft entitled "Recommended National Retail Food Regulatory Program Standards," such as the five Food Code Interventions (management knowledge, employee health, hands as a vehicle of contamination, time/temperature relationships, and consumer advisory), or the five Centers for Disease Control and Prevention risk factors (improper holding temperature, inadequate cooking, contaminated equipment, unsafe source, and poor personal hygiene). Another example of projects in this area could include innovative regulation and compliance strategies for State and local food safety regulatory agencies. The goal of these projects should be to achieve efficient and effective compliance with regulations that impact contributing factors to foodborne illness.

2. Education and Health Information Dissemination

Development of innovative education projects and materials for State and local food safety regulatory officials that foster consistency and uniform application of State and local food regulations. These education projects and/or materials must be reproducible by other State and local food safety regulatory agencies. These projects may incorporate concurrent education of both State and local food safety regulatory agencies and the food industry.

B. Applicability

All grant application projects that are developed at State and local levels *must* have national implication or application that can enhance Federal, State, and local food regulatory programs and reduce factors that cause foodborne illness. At the discretion of FDA, successful project formats will be made available to interested Federal, State, and local food safety regulatory agencies. No grant will be awarded for projects that do not support the FDA Food Code.

III. Reporting Requirements

Semiannual progress reports as well as a Final Program Progress Report and a Final Financial Status Report (FSR) (SF–269) are required. An original FSR and two copies shall be submitted to FDA's Chief Grants Management Officer within 90 days of the expiration date of the grant. The Final Program Progress Report must provide full written documentation of the project, copies of any results, as described in the grant application, and an analysis and evaluation of the results of the project. The documentation must be in a form and contain sufficient detail that other State and local food safety regulatory agencies could reproduce the final project.

Program monitoring of recipients will be conducted on an ongoing basis and written reports will be reviewed and evaluated at least semiannually by the Project Officer. Project monitoring may also be in the form of telephone conversations between the Project Officer/Grants Management Specialist and the Principal Investigator and/or a site visit with appropriate officials of the recipient organization. The results of these monitoring activities will be duly recorded in the official file and may be available to the recipient upon request.

IV. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of a grant. These grants will be subject to all policies and requirements that govern the project grant programs of FDA, including the provisions of 42 CFR part 52 and 45 CFR parts 74 and 92. The regulations issued under Executive Order 12372 also apply to this program and are implemented through Department of Health and Human Services (DHHS) regulations at 45 CFR part 100. Executive Order 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. A current listing of SPOC's is included in the application kit. The SPOC should send any State review process recommendations to FDA's administrative contact (address listed above). The due date for the State process recommendations is no later than 60 days after the deadline date for the receipt of applications. FDA does not guarantee to accommodate or explain SPOC comments that are received after the 60 day cut-off.

B. Eligibility

These grants are available only to State and local government food regulatory agencies (see SPOC requirements stated previously).

C. Length of Support

The length of support will be for 1 year from date of award.

V. Review Procedure and Criteria

All applications submitted in response to this request for application (RFA) will first be reviewed by grants management and program staff for responsiveness. If applications are found to be nonresponsive, they will be returned to the applicant without further consideration. An application will be considered nonresponsive if any of the following criteria are not met: (1) If it is received after the specified receipt date; (2) if the total dollar amount exceeds $50,000; (3) if all required signatures are not on the face page or assurance pages of the application; or (4) if there is no original signature copy.

Responsive applications will be reviewed and evaluated for scientific and technical merit by an ad hoc panel of experts in the subject field of the specific application. Responsive applications will also be subject to a second level of review by a National Advisory Council for concurrence with the recommendations made by the first level reviewers. Final funding decisions will be made by the Commissioner of Food and Drugs or her designee.

Applicants are strongly encouraged to contact FDA to resolve any questions regarding criteria prior to the submission of their application. All questions of a technical or programmatic nature must be directed to ORA's program staff (address above) and all questions of an administrative or financial nature must be directed to the grants management staff (address above). Applications will be given an overall score and judged based on all of the following criteria:

1. Applications relating to the Retail Food Program (http://vm.cfsan.fda.gov/~dms/ret-toc.html) only: The outcomes of the project should be applicable to program improvement process for FDA's draft entitled "Recommended National Retail Food Regulatory Program Standards." (http://vm.cfsan.fda.gov/~dms/ret-toc.html). These standards will serve as a guide to regulatory retail food program managers for the design and management of a regulatory retail food program. The standards apply to the operation, management, and promotion of a regulatory retail food program focused on the reduction of risk factors known and suspected to cause foodborne illness. FDA's draft entitled "Recommended National Retail Food Regulatory Program Standards" are found on the Internet site at http://www.cfsan.fda.gov/~dms/ret-toc.html or contact your local FDA Regional Retail Food Specialist from the list provided in the application packet.

2. Application budgets must remain within the $50,000 cap for combined direct and indirect costs. Applications exceeding this dollar amount will be returned as nonresponsive.

3. Applications must provide in detail, a sound rationale and appropriate grant design to address the objectives of the RFA and the project must be reproducible within the national regulatory framework.

4. Applications must include a detailed explanation of the desired goals and outcomes of the project.

5. Applications must include a full description of the project design, a detailed implementation plan, methods of execution, and timeline for completion. The application must include a detailed description of measures of effectiveness and a description of the source documents or data collection methods for establishing the baseline for measurement.

6. Applications must address the adequacy of facilities, expertise of project staff, equipment, data bases, and support services needed for the project.

VI. Submission Requirements

The original and two copies of the completed Grant Application Form PHS–5161–1 (revised 6/99) for State and local governments, with copies of the appendices for each of the copies, should be delivered to Cynthia M. Polit (address above). The application receipt date is June 12, 2000. No supplemental or addendum material will be accepted after the receipt date.

The outside of the mailing package and item 2 of the application face page should be labeled "Response to RFA–FDA–ORA–00–Project I" or "RFA–FDA–ORA–Project II." Submit only one project application (an original and two copies) per package.

VII. Method of Application

A. Submission Instructions

Applications will be accepted during working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established receipt date. Applications will be considered received on time if sent or mailed on or before the receipt date as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and they will be returned to the applicant. Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.

Do not send applications to the Center for Scientific Research, National Institutes of Health (NIH). Any application that is sent to NIH, that is then forwarded to FDA and not received in time for orderly processing, will be deemed nonresponsive and returned to the applicant. Instructions for completing the application are included in Form PHS–5161–1. FDA is unable to receive applications through the Internet.

B. Format for Application

Submission of the application must be on Grant Application Form PHS–5161–1 (rev 6/99). All instructions for the enclosed Standard Form 424 (SF–424) should be followed using the nonconstruction application pages.

The face page of the application should indicate "RFA–FDA–ORA–00–Project I," or "RFA–FDA–ORA–Project II."

Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Information collection requirements requested on Form PHS–5161–1 were approved and issued under Office of Management and Budget Circular A–102.

C. Legend

Unless disclosure is required by FOIA as amended (5 U.S.C. 552), as determined by the freedom of information officials of DHHS or by a court, data contained in the portions of this application which have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted and/or proprietary information shall not be used or disclosed except for evaluation purposes.

Dated: April 5, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–9063 Filed 4–11–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1223]

International Conference on Harmonisation; E11: Clinical Investigation of Medicinal Products in the Pediatric Population

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft guidance entitled "E11: Clinical Investigation of Medicinal Products in the Pediatric Population." The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft guidance sets forth critical issues in pediatric drug development and approaches to the safe, efficient, and ethical study of medicinal products in the pediatric population. The draft guidance is intended to encourage and facilitate the timely development of pediatric medicinal products internationally.

DATES: Submit written comments by May 30, 2000.

ADDRESSES: Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Copies of the draft guidance are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573. Single copies of the draft guidance may be obtained by mail from the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852, or by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. Copies may be obtained from CBER's FAX Information System at 1–888–CBER–FAX or 301–827–3844.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: M. Dianne Murphy, Center for Drug Evaluation and Research (HFD–2), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Regarding the ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In October 1999, the ICH Steering Committee agreed that a draft guidance entitled "E11: Clinical Investigation of Medicinal Products in the Pediatric Population" should be made available for public comment. The draft guidance is the product of the Efficacy Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Efficacy Expert Working Group.

In accordance with FDA's good guidance practices (62 FR 8961, February 27, 1997), this document is being called a guidance, rather than a guideline.

The draft guidance sets forth critical issues in pediatric drug development and approaches to the safe, efficient, and ethical study of medicinal products in the pediatric population. The draft guidance addresses the following clinical study issues: (1) Considerations when initiating a pediatric program for a medicinal product; (2) timing of initiation of pediatric studies during medicinal product development; (3) types of studies (pharmacokinetic, pharmacokinetic/pharmacodynamic, efficacy, safety); (4) age categories for studies; and (5) ethics of pediatric clinical investigation. The draft guidance is not comprehensive, but is intended to be used in conjunction with other ICH guidances and documents from regional regulatory authorities and pediatric societies. The draft guidance is intended to encourage and facilitate the timely development of pediatric medicinal products internationally.

This draft guidance represents the agency's current thinking on clinical investigation of medicinal products in the pediatric population. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance on or before May 30, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guidance is available on the Internet at http://www.fda.gov/cder/guidance/index.htm or at http://www.fda.gov/cber/publications.htm.

The text of the draft guidance follows:

E11: Clinical Investigation of Medicinal Products in the Pediatric Population [1]

1. Introduction

1.1 Objectives of the Guidance

The number of medicinal products currently labeled for pediatric use is limited. It is the goal of this guidance to encourage and facilitate timely pediatric medicinal product development internationally. The

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guidance provides an outline of critical issues in pediatric drug development and approaches to the safe, efficient, and ethical study of medicinal products in the pediatric population.

1.2 Background

Other ICH documents on the following topics include relevant information impacting on pediatric studies:

- E2: Clinical Safety Data Management
- E3: Structure and Content of Clinical Study Reports
- E4: Dose-Response Information to Support Drug Registration
- E5: Ethnic Factors in the Acceptability of Foreign Clinical Data
- E6: Good Clinical Practice
- E8: General Considerations for Clinical Trials
- E9: Statistical Principles for Clinical Trials
- E10: Choice of Control Group in Clinical Trials
- M3: Nonclinical Safety Studies for the Conduct of Human Clinical Trials for Pharmaceuticals
- Q1: Stability Testing
- Q2: Validation of Analytical Procedures
- Q3: Impurity Testing

1.3 Scope of the Guidance

Specific clinical study issues addressed include: (1) Considerations when initiating a pediatric program for a medicinal product; (2) timing of initiation of pediatric studies during medicinal product development; (3) types of studies (pharmacokinetic, pharmacokinetic/pharmacodynamic (PK/PD), efficacy, safety); (4) age categories for studies; and (5) ethics of pediatric clinical investigation. This guidance is not intended to be comprehensive; other ICH guidances as well as documents from regional regulatory authorities and pediatric societies provide additional detail.

1.4 General Principles

Pediatric patients should be given medicines that have been appropriately evaluated for their use. Safe and effective pharmacotherapy in pediatric patients requires the timely development of information on the proper use of medicinal products in pediatric patients of various ages and, often, the development of pediatric formulations of those products. Major advances in formulation chemistry and in pediatric study design ensure that this goal can be achieved.

Drug development programs should include the pediatric patient population when a product is being developed for a disease/condition in adults and it is anticipated the product will be used in the pediatric population. The ethical imperative to obtain knowledge of the effects of medicinal products in pediatric patients has to be balanced against the ethical imperative to protect each pediatric patient in clinical studies. This responsibility is shared by companies, regulatory authorities, health professionals, and society as a whole.

2. Guidance

2.1 Issues When Initiating a Pediatric Medicinal Product Development Program

Data on the appropriate use of medicinal products in the pediatric population should be available unless the use of a specific medicinal product in pediatric patients is clearly inappropriate. The initiation of clinical studies in relation to studies conducted in adults, which may be influenced by regional public health and medical needs, is discussed in section 2.3. In general, pediatric studies should not delay completion of adult studies and availability of a medicinal product for adults. Justification for timing and the approach to the clinical program needs to be clearly addressed with regulatory authorities at an early stage.

The decision to proceed with a pediatric development program, and the nature of the program, for a medicinal product involves consideration of many factors, including:

- The prevalence of the condition to be treated in the pediatric population
- The seriousness of the condition to be treated
- The availability and suitability of alternative treatments for the condition in the pediatric population, including the efficacy and the adverse event profile (including any unique pediatric safety issues) of those treatments
- Whether the medicinal product is novel or one of a class of compounds with known properties
- Whether there are unique pediatric indications for the medicinal product
- The age ranges of patients likely to be treated with the medicinal product
- Unique pediatric (developmental) safety concerns about the medicinal product, including any nonclinical safety issues
- Potential need for pediatric formulation development

Of these factors, most important is the presence of a serious disease without good current therapy. This situation suggests relatively urgent and early initiation of pediatric studies.

Information from nonclinical safety studies to support a pediatric clinical program is discussed in ICH M3, section 11. It should be noted that the most relevant safety data for pediatric studies come ordinarily from adult human exposure. Repeat-dose toxicology and reproductive toxicology/genotoxicology would generally be available. The need for juvenile animal studies should be considered on a case-by-case basis and be based on developmental toxicology concerns.

2.2 Pediatric Formulations

There is a need for pediatric formulations that permit accurate dosing and enhance patient compliance. For oral administration, different types of formulations (suspensions, "sprinkles," chewable tablets) and different flavors and colors may be more acceptable in one region than another. Several formulations, such as liquids, suspensions, and chewable tablets, may be needed or desirable for pediatric patients of different ages. Different concentrations of these various formulations may also be necessary. Consideration should be given to the development of alternative approaches for delivery of medicinal products such as patches or suppositories.

For injectable formulations, the concentration of the medicinal product needs to be compatible with the doses to be administered, including doses for small premature infants if the drug is to be used in that population. This compatibility may require a more dilute solution to allow accurate administration of the dose using available syringes and administration pumps or a more concentrated solution where fluid restriction imposed for very small patients is a concern. For medicinal products supplied as single-use vials, consideration should be given to dose-appropriate single-dose packaging, conditions for safe multiple use of preservative-free vials, or addition of preservatives. Some excipients (e.g., benzyl alcohol) may be toxic, particularly in the preterm newborn. Depending on the active substance and excipients, appropriate use of the medicinal product in the newborn may require a new formulation or appropriate information about dilution of an existing formulation. International harmonization on the acceptability of formulation excipients and of validation procedures will help ensure that appropriate formulations are available for the pediatric population everywhere (see ICH guidances on topics Q1 through Q3).

2.3 Timing of Studies

During clinical development, the timing of pediatric studies should be flexible and will depend on the medicinal product, the type of disease being treated, safety considerations, and the efficacy and safety of alternative treatments. Since development of pediatric formulations can be difficult and time consuming, it is important to consider the development of these formulations early in medicinal product development.

2.3.1 Medicinal Products for Diseases Predominantly or Exclusively Affecting Pediatric Patients

In this case, the entire development program will be conducted in the pediatric population except for initial safety and tolerability data, which will usually be obtained from adults. Some products may reasonably be studied only in the pediatric population even in the initial phases, e.g., when studies in adults would yield little useful information or expose them to inappropriate risk. Examples include surfactant for respiratory distress syndrome in preterm infants and therapies targeted at metabolic or genetic diseases unique to the pediatric population.

2.3.2 Medicinal Products Intended to Treat Serious or Life-Threatening Diseases, Occurring in Both Adults and Pediatric Patients, for Which There Are Currently No or Limited Therapeutic Options

In this case, medicinal product development should begin early in the pediatric population, following initial safety data and reasonable evidence of potential benefit. Pediatric study results should be part of the marketing application data base. In circumstances where this has not been possible, lack of data should be justified in detail.

2.3.3 Medicinal Products Intended to Treat Other Diseases and Conditions

In this case, where the medicinal product will be used in pediatric patients but there is less urgency than in the previous cases, studies might begin at various phases of clinical development or, if a safety concern exists, even after substantial postmarket experience in adults. Companies should have a clear plan for pediatric studies and reasons for their choice of when to initiate them. Testing of these medicinal products in the pediatric population would usually not begin until Phase 2 or 3. In most cases, only limited pediatric data would be available at the time of application submission, but more would be expected after marketing. Even for a nonserious disease, if the medicinal product represents a major therapeutic advance for the pediatric population, studies should begin as early in development as possible, and the submission of pediatric data would be expected in the application. Lack of data should be justified in detail. As the development of many new chemical entities is discontinued in Phase 1 and 2 adult trials for lack of efficacy or an unacceptable side effect profile, very early initiation of testing in pediatric patients might needlessly expose these patients to a compound that will be of no benefit. Thus, it is important to carefully weigh risk/benefit and therapeutic need in deciding when to start studies.

2.4 Types of Studies

The principles outlined in ICH E4, E5, E6, and E10 apply to pediatric studies. Several pediatric-specific issues are worth noting. When a medicinal product is studied in pediatric patients in one region, the intrinsic (e.g., pharmacogenetic) and extrinsic (e.g., diet) factors that could impact the extrapolation of data to other regions should be considered.

When the medicinal product is to be used in the pediatric population for the same indication(s) as those studied and approved in adults, the disease process is similar in adults and pediatric patients, and the outcome of therapy is likely to be comparable, extrapolation from adult efficacy data may be appropriate. In such cases, pharmacokinetic studies in all the age ranges of pediatric patients likely to receive the medicinal product, together with safety or other studies, may provide adequate information for use by allowing selection of pediatric doses that will produce blood levels similar to those observed in adults. If this approach is taken, adult pharmacokinetic data should be available to plan the pediatric studies.

When a medicinal product is to be used in younger pediatric patients for the same indication(s) as those studied in older pediatric patients, the disease process is similar, and the outcome of therapy is likely to be comparable, extrapolation of efficacy from older to younger pediatric patients may be possible. This approach may be necessary where assessment of outcome variables is particularly difficult in younger patients (e.g., forced expiratory volume (FEV1) below the age of 6 years). In such cases, pharmacokinetic studies in all relevant age groups of pediatric patients likely to receive the medicinal product, together with safety studies, may be sufficient to provide adequate information for pediatric use.

A pharmacokinetic approach may not be sufficient for medicinal products where blood levels are not known to correspond with efficacy or where there is concern that the concentration-response relationship may differ between the adult and pediatric populations. Where the comparability of the disease course or outcome of therapy in pediatric patients is expected to be similar, but the appropriate blood levels are not clear, it may be possible to use measurements of a pharmacodynamic effect to confirm the expectations of effectiveness and to define the dose and concentration needed to attain that pharmacodynamic effect. Such studies would provide increased confidence that achieving a given exposure to the medicinal product in pediatric patients will result in the desired therapeutic outcomes. A PK/PD approach could avoid the need for clinical efficacy studies.

For certain products, it may be useful to determine blood levels for purposes of safety assessment (e.g., to determine relative systemic exposure for topically applied agents).

When novel indications are being sought for the medicinal product in pediatric patients, or where the disease course and outcome of therapy are likely to be different in adults and pediatric patients, clinical efficacy studies in the pediatric population would need to be conducted. Similarly, in situations where a pharmacokinetic approach is not applicable, such as for topically active products, studies may need to include clinical endpoints or appropriate alternative assessments.

2.4.1 Pharmacokinetics

Pharmacokinetic studies generally should be performed to support formulation development, determine pharmacokinetic parameters in different age groups to support dosing recommendations, and understand PK/PD relationships where these may differ from adults. Bioequivalence comparisons of pediatric formulations with the adult oral formulation typically should be done in adults. Definitive pharmacokinetic studies for dose selection across age ranges where the medicinal product is likely to be used should be conducted in the pediatric population.

Pharmacokinetic studies in the pediatric population differ from most adult PK studies in that they are generally conducted in patients with the disease. This may lead to higher intersubject variability, but the data better reflect clinical use.

For medicinal products that exhibit linear pharmacokinetics in adults, single-dose pharmacokinetic studies in the pediatric population may often be sufficient to ascertain correct dosing. This can be corroborated, if indicated, by sparse population sampling in multidose clinical studies. Any nonlinearity in absorption, distribution, and elimination in adults and any duration-of-effect-related changes would suggest the need for steady state studies in the pediatric population. All these approaches are facilitated by knowledge of adult pharmacokinetic parameters. Knowing the pathways of clearance (renal and metabolic) of the medicinal product and understanding the age-related changes of those processes will often be helpful in planning pediatric studies.

Dosing recommendations for most medicinal products used in the pediatric population are usually based on milligrams (mg)/kilograms (kg) up to a maximum adult dose. While dosing on a mg/square meter basis might be preferred, clinical experience indicates that errors in measuring height or length (particularly in smaller children and infants) and calculation errors of surface area from weight and height are common. For some medications (e.g., medications with a narrow therapeutic index, such as those used in oncology), surface-area-guided dosing may be necessary, but with extra care to ensure proper dose calculation.

Practical Considerations to Facilitate Pharmacokinetic Studies

The volume of blood withdrawn should be minimized in pediatric studies; institutional review boards/independent ethics committees (IRB's/IEC's) generally establish the maximum amount of blood (usually on a milliliters (mL)/kg or percentage of total blood volume basis) that may be taken for experimental purposes. Several approaches can be used to minimize the amount of blood drawn:

- Use of sensitive assays (gas chromatography/mass spectroscopy, tandem mass spectroscopy) for parent drugs and metabolites to decrease the volume of blood required per sample
- Use of laboratories experienced in handling small volumes of blood for pharmacokinetic analyses and for laboratory safety studies (blood counts, clinical chemistry)
- Collection of routine, clinical blood samples wherever possible at the same time as samples are obtained for pharmacokinetic analysis
- Use of population pharmacokinetic approaches to minimize the number of samples obtained from each patient. Techniques include:

— Sparse sampling approaches where each patient contributes as few as 2 to 4 observations at predetermined times to an overall "population area-under-the-curve"

— Population pharmacokinetic analysis using the most useful sampling time points derived from modeling of adult data

— The use of indwelling catheters, etc., to minimize distress as discussed in section 2.6.5.

2.4.2 Efficacy

The principles in study design, statistical considerations and choice of control groups detailed in ICH E6, E9, and E10 generally apply to pediatric efficacy studies. There are, however, certain unique features to pediatric studies. The potential for extrapolation of efficacy from studies in adults to pediatric patients or from older to younger pediatric patients is discussed in section 2.4. Where efficacy studies are needed, it may be necessary to develop, validate, and employ different endpoints for specific age and developmental subgroups. Measurement of subjective symptoms such as pain requires different assessment instruments for patients

of different ages. Responses of chronic diseases may vary in patients with early stages of disease and in patients with years of disability and organ dysfunction. Many diseases in the preterm and term newborn infant are unique or have unique manifestations precluding extrapolation of efficacy from older pediatric patients and calling for novel methods for outcome assessment.

2.4.3 Safety

Reporting requirements for adverse events, as described in ICH guidances on E2 topics and ICH E6, apply to pediatric studies. Age-appropriate, normal laboratory values and clinical measurements should be used in adverse event reporting. Unexpected exposures to medicinal products (accidental ingestions, etc.) may provide the opportunity to obtain safety and pharmacokinetic information and to maximize understanding of dose-related side effects.

Medicinal products may affect physical and cognitive growth and development, and the adverse event profile may differ in pediatric patients. Because developing systems may respond differently than matured adult organs, some adverse events that occur in pediatric patients may not be identified in adult studies. In addition, the dynamic processes of growth and development may not manifest an adverse event acutely but at a later stage of growth and maturation. Long-term studies, either while patients are on chronic therapy or during the post-therapy period, may be needed to determine possible effects on skeletal, behavioral, cognitive, sexual, and immune maturation and development.

2.4.4 Postmarketing Experience

Normally the pediatric data base is limited at the time of approval. Therefore, postmarketing and long-term followup studies and surveillance are particularly important. They may provide safety and/or efficacy information for subgroups within the pediatric population or additional information for the entire pediatric population.

2.5 Age Classification of Pediatric Patients

Any classification of the pediatric population into age categories is arbitrary, but classification provides an initial basis for thinking about study design in pediatric patients. As discussed below, decisions about how to stratify studies and data by age need to consider developmental biology and pharmacology. Thus, a flexible approach is necessary to ensure that studies reflect current knowledge of pediatric pharmacology.

If the clearance pathways of a medicinal product are well established and the ontogeny of the pathways understood, age categories for pharmacokinetic evaluation might be chosen based on any "break point" where clearance is likely to change dramatically. Sometimes, it may be more appropriate to collect data over broad age ranges and examine the effect of age as a continuous covariant. For efficacy, different endpoints may be established for pediatric patients of different ages, and the age groups might not correspond to the categories presented below. Dividing the pediatric population into too many small age groups might needlessly increase the number of patients required. In longer term studies, pediatric patients may move from one age category to another; the study design and statistical plans should prospectively take into account changing numbers of patients within a given age category.

The following is suggested as a possible categorization. Ages are defined in completed days, months, or years.

- Preterm newborn infants
- Term newborn infants (0 to 27 days)
- Infants and toddlers (28 days to 23 months)
- Children (2 to 11 years)
- Adolescents (12 to 16 to 18 years (dependent on region))

2.5.1 Preterm Newborn Infants

The study of medicinal products in preterm newborn infants presents specific challenges because of the unique pathophysiology and responses to therapy in this population. The complexity and ethical considerations of studying preterm infants suggest the need for careful protocol development with expert input from neonatologists and neonatal pharmacologists. Only rarely will it be possible to extrapolate efficacy from studies in adults or even in older pediatric patients to the preterm infant.

The category of preterm infants is not a homogeneous group of patients. A 25-week gestation, 500-gram (g) newborn is very different from a 30-week gestation newborn weighing 1,500 g. A distinction should also be made for low-birth-weight babies as to whether they are immature or growth retarded. Essential features to be considered in this age range include: (1) Gestational age at birth and age after birth (adjusted age); (2) immaturity of renal and hepatic clearance mechanisms; (3) protein binding and displacement issues (particularly bilirubin); (4) penetration of medicinal products into the central nervous system (CNS); (5) unique neonatal disease states (e.g., respiratory distress syndrome of the newborn, patent ductus arteriosus, primary pulmonary hypertension); (6) unique susceptibilities of the preterm newborn (e.g., necrotizing enterocolitis, intraventricular hemorrhage, retinopathy of prematurity); (7) rapid and variable maturation of all physiologic and pharmacologic processes leading to different dosing regimens with chronic exposure; and (8) transdermal absorption of medicinal products and other chemicals. Study design issues that should be considered include: (1) Weight/age (gestational and postnatal) stratification, (2) small blood volumes (a 500-g infant has 40 mL of blood), (3) small numbers of patients at a given center and differences in care among centers, and (4) difficulties assessing outcomes.

2.5.2 Term Newborn Infants (0 to 27 days)

While term newborn infants are developmentally more mature than preterm newborn infants, many of the physiologic and pharmacologic principles discussed above also apply to term infants. Volumes of distribution of medicinal products may be different from those in older pediatric patients because of different body water and fat content and high body-surface-area-to-weight ratio. The blood-brain barrier is still not fully mature, and medicinal products and endogenous substances (e.g., bilirubin) may gain access to the CNS with resultant toxicity. Oral absorption of medicinal products may be less predictable than in older pediatric patients. Hepatic and renal clearance mechanisms are immature and rapidly changing; doses may need to be adjusted over the first weeks of life. Many examples of increased susceptibility to toxic effects of medicinal products result from limited clearance in these patients (e.g., chloramphenicol grey baby syndrome). On the other hand, term newborn infants may be less susceptible to some types of adverse effects (e.g., digoxin-induced arrhythmias, aminoglycoside nephrotoxicity).

2.5.3 Infants and Toddlers (28 days to 23 months)

This is a period of CNS maturation associated with completion of myelination. During this time, the immune system is rapidly developing, and both total body growth and brain growth are rapid. Oral absorption becomes more reliable. Hepatic and renal clearance pathways continue to mature rapidly. Clearance of many drugs on a mg/kg basis may exceed adult values by 1 to 2 years of age. The developmental pattern of maturation is dependent on specific pathways of clearance. There is often considerable interindividual variability in maturation.

2.5.4 Children (2 to 11 years)

Most pathways of drug clearance (hepatic and renal) are mature, with clearance often exceeding adult values. Changes in clearance of a drug may be dependent on maturation of specific metabolic pathways.

Specific strategies should be addressed in protocols to ascertain any effects of the medicinal product on growth and development. Children achieve several important milestones of psychomotor development that could be adversely affected by CNS-active drugs. Similarly, entry into school and increased cognitive and motor skills may affect a child's ability to participate in some types of efficacy studies (e.g., FEV1, pain assessment scales). Among factors useful in determining the effects of a medicinal product on children are skeletal growth, weight gain, school attendance, and school performance. Recruitment of patients should ensure adequate representation across the age range in this category. This is important to ensure a sufficient number of younger patients for evaluation. Stratification by age within this category often is unnecessary, but it may be appropriate to stratify patients based on pharmacokinetic and/or efficacy endpoint considerations.

The onset of puberty is highly variable and occurs earlier in girls, in whom normal onset of puberty may occur as early as 9 years of age. Puberty can affect the apparent activity of enzymes that metabolize drugs, and dose requirements for some medicinal products on a mg/kg basis may decrease dramatically (e.g., theophylline). In some cases, it may be appropriate to specifically assess the effect of puberty on a medicinal product by studying pre- and postpubertal pediatric patients. In

other cases, it may be appropriate to record Tanner stages of pubertal development or obtain biological markers of puberty and examine data for any potential influence of pubertal changes.

2.5.5 Adolescents (12 to 16 to 18 years (dependent on region))

This is a period of sexual maturation; medicinal products may interfere with the actions of sex hormones and impede development. Pregnancy testing and, in relevant studies, review of sexual activity and contraceptive use become necessary.

This is also a period of rapid growth. Medicinal products and illnesses that delay or accelerate the onset of puberty can have a profound effect on the pubertal growth spurt and, by changing the pattern of growth, may affect final height. Evolving cognitive and emotional changes could potentially influence the outcome of clinical studies.

Many diseases are also influenced by the hormonal changes around puberty (e.g., insulin resistance increases in diabetes mellitus, seizures may recur around menarche, frequency and severity of migraine and asthma change). Hormonal changes may thus influence the results of clinical studies.

Within this age group, adolescents are assuming responsibility for their own health and medication. Noncompliance is a special problem, particularly when medicinal products (for example, steroids) affect appearance. In clinical studies, compliance checks are important. Recreational use of unprescribed drugs should be specifically considered and monitored.

The upper age limit was arbitrarily set and may vary among regions. It may be possible to include older adolescents in adult studies, although issues of compliance may present problems. Given some of the unique challenges of adolescence, it may be appropriate to consider studying adolescent patients (whether they are to be included in adult or separate protocols) in centers knowledgeable and skillful in the care of this special population.

2.6 Ethical Issues in Pediatric Studies

The pediatric population represents a vulnerable subgroup. Therefore, special measures are needed to protect the rights of pediatric study participants and to shield them from undue risk. The purpose of this section is to provide a framework to ensure that pediatric studies are conducted ethically.

To be of benefit to those participating in a clinical study, as well as to the rest of the pediatric population, a clinical study must be properly designed to ensure the quality and interpretability of the data obtained. In addition, participants in clinical studies are expected to obtain some direct or indirect benefit from the clinical study except under the special circumstances discussed in ICH E6 ("Good Clinical Practice," section 4.8.14).

2.6.1 Institutional Review Board/ Independent Ethics Committee (IRB/IEC)

The roles and responsibilities of IRB's/ IEC's as detailed in ICH E6 are critical to the protection of study participants. When protocols involving the pediatric population are reviewed, there should be IRB/IEC members, or experts consulted by the IRB/ IEC, who are knowledgeable in pediatric ethical, clinical, and psychosocial issues.

2.6.2 Recruitment

Recruitment of study participants should occur in a noncoercive manner. While reimbursement and subsistence costs may be covered in the context of a pediatric clinical study, coercive inducements (financial or other), either to the parents or to the child, are not appropriate.

When studies are conducted in the pediatric population, an attempt should be made to include individuals representing the demographics of the region and the disease being studied, unless there is a valid reason for restricting enrollment.

2.6.3 Consent

Pediatric study participants are dependent on their parents or guardians who take legal responsibility for the participants' welfare and safety; fully informed consent should be obtained from the legal guardian in accordance with regional laws or regulations. All participants should be fully informed about the study in language and terms they are able to understand. Participants should assent to enroll in a study (age of assent to be determined by IRB's/IEC's). Participants of appropriate intellectual maturity should personally sign and date either a separately designed, written assent form or the written informed consent. In all cases, participants should be made aware of their rights to decline to participate or to withdraw from the study at any time. A participant's wish to withdraw from a study must be respected. There may be circumstances in therapeutic studies where, in the opinion of the investigator, parents, and IRB/IEC, the welfare of a pediatric patient would be jeopardized by his or her failing to participate in the study; the patient's agreement or assent may be waived under such circumstances. Emancipated or mature minors (as defined by local laws) may be capable of giving autonomous consent.

Information that can be obtained in a less vulnerable, consenting population should not be obtained in a more vulnerable population or one unable to provide individual consent. Studies in handicapped or institutionalized pediatric populations should be limited to diseases or conditions found principally or exclusively in these populations, or where the disease or condition in these pediatric patients would be expected to alter the disposition or pharmacodynamic effects of a medicinal product.

2.6.4 Minimizing Risk

However important a study may be to prove or disprove the value of a treatment, participants may suffer injury as a result of inclusion in the study, even if the whole community benefits. Every effort should be made to anticipate and reduce known hazards. Investigators should be fully aware before the start of a clinical study of all relevant preclinical and clinical toxicity of the medicinal product. To minimize risk in pediatric clinical studies, those conducting the study should be properly trained and experienced in studying the pediatric population, including the evaluation and management of potential pediatric adverse events.

In designing studies, every attempt should be made to minimize the number of participants and of procedures, consistent with good study design. Mechanisms should be in place to ensure that a study can be rapidly terminated should an unexpected hazard be noted.

2.6.5 Minimizing Distress

Repeated invasive procedures may be painful or frightening. Discomfort can be minimized if studies are designed and conducted by investigators experienced in the treatment of pediatric patients.

Protocols and investigations should be designed specifically for the pediatric population (not simply re-worked from adult protocols) and approved by a competent and experienced IRB/IEC.

Practical considerations to ensure that participants' experiences in clinical studies are positive and to minimize discomfort and distress include the following:

- Personnel knowledgeable and skilled in dealing with the pediatric population and its age-appropriate needs, including skill in performing pediatric procedures
- A physical setting with furniture, play equipment, activities, andfood appropriate for age
- Conducting studies in a familiar environment such as the hospital or clinic where participants normally receive their care
- Using approaches to minimize discomfort of procedures, such as:
  — Topical anesthesia to place IV catheters
  — Indwelling catheters rather than repeated venipunctures for blood sampling
  — Collection of some protocol-specified blood samples when routine clinical samples are obtained

IRB's/IEC's should consider how many venipunctures are acceptable in an attempt to obtain blood samples for a protocol and ensure a clear understanding of procedures if an indwelling catheter fails to function over time. The participant's right to refuse further investigational procedures must be respected.

Dated: April 5, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–9064 Filed 4–11–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration

(FDA). The meeting will be open to the public.

Name of Committee: Cardiovascular and Renal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 1, 2000, from 8:30 a.m. to 5:30 p.m., and on May 2, 2000, from 9 a.m. to 5:30 p.m.

Location: National Institutes of Health, 9000 Rockville Pike, Bldg. 10, Clinical Center, Jack Masur Auditorium, Bethesda, MD.

Contact Person: Joan C. Standaert, Center for Drug Evaluation and Research (HFD–110), Food and Drug Administration, Woodmont II Bldg., 1451 Rockville Pike, Rockville, MD 20752, 419–259–6211, or John M. Treacy (HFD–21), 301–827–7001 or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12533. Please call the Information Line for up-to-date information on this meeting.

Agenda: On May 1, 2000, the committee will discuss new drug applications (NDA) 21–188, Vanlev® (omapatrilat) Bristol Myers Squibb to be indicated for hypertension, and NDA 19–901, Altace® (ramipril) Capsules, King Pharmaceuticals, Inc., to be indicated for significant reduction of mortality, myocardial infarction, stroke, revascularization procedures, and heart failure in high risk patients. On May 2, 2000, the committee will discuss NDA 20–807/S–004, Refludan® [lepirudin(-DNA) for injection] Aventis Pharmaceuticals, Inc., to be indicated for anticoagulation in adult patients with acute coronary syndromes (unstable angina and acute myocardial infarction without ST segment elevations on electrocardiogram (EKG).

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 24, 2000. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9:30 a.m. on May 1, 2000. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 24, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C., app. 2).

Dated: April 4, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–9003 Filed 4–11–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–482]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Methodology for Estimating Waiver Costs of HCFA Demonstration Projects;

Form No.: HCFA–482 (OMB# 0938–0408);

Use: The information collected is intended to provide guidance to individuals responsible for the preparation of waiver cost estimates for HCFA demonstrations. These estimates are used in analysis of potential costs and benefits associated with implementing a proposed policy.;

Frequency: Other: On Occasion;

Affected Public: State, Local or Tribal Government, Individuals or Households, Business or other for-profit, and Not-for-profit institutions;

Number of Respondents: 25;

Total Annual Responses: 25;

Total Annual Hours: 2,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 20, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–9017 Filed 4–11–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–314]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to

minimize the information collection burden.

Type of Information Collection Request: New Collection;

Title of Information Collection: Medicare+Choice Beneficiary Notices, Volume 1 and Supporting Regulations in 42 CFR 422.60;

Form No.: HCFA–R–314 (OMB# 0938–NEW);

Use: HCFA is requesting approval of 5 Medicare+Choice (M+C) election notices that M+C organizations will be required to send to Medicare beneficiaries who submit applications for enrollment. The notices will be used to inform Medicare beneficiaries of the status and outcome of an application to enroll in a M+C organization. All M+C organizations will be required to use the language in these notices, but may print the notices on their business letterhead. Neither HCFA nor the M+C organizations will use such notices to collect and analyze data on beneficiary M+C enrollment. They are for information purposes only.;

Frequency: On occasion, One time only;

Affected Public: Business or other for-profit, and Individuals or Households;

Number of Respondents: 2,853,347;

Total Annual Responses: 2,853,347;

Total Annual Hours: 109,314.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards Attention: Dawn Willinghan Room N2–14–26 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 29, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–9018 Filed 4–11–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–193]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, DHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection.

Title of Information Collection: "Important Message About Medicare Rights: Admission, Discharge, & Appeals." Title XVIII Section 1866(a)(1)(M) and Supporting Regulations in 42 CFR 466.78, 489.20, 489.34, 489.32, 411.404, 412.42, 417.440.

Form No.: HCFA–R–193 (OMB #0938–0692).

Use: Hospitals participating in the Medicare program have agreed to distribute "Important Message About Medicare Rights: Admission, Discharge, & Appeals" to beneficiaries during the course of their hospital stay and inform them of their impending discharge. Receiving this information will provide all Medicare beneficiaries with some ability to participate and/or initiate discussions concerning actions that may affect their Medicare coverage, payment, and appeal rights in response to hospital notification that their care will no longer continue.

Frequency: Other: As needed.

Affected Public: Individuals or Households, Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government.

Number of Respondents: 6,293.

Total Annual Responses: 11,000,000.

Total Annual Hours: 1,100,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 29, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–9019 Filed 4–11–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0245]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality,

utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR, part 1320. This is necessary to ensure compliance with section 1895 of the Social Security Act. We cannot reasonably comply with the normal clearance procedures because section 1895 of the Social Security Act requires us to begin paying home health agencies under a prospective payment system for cost reporting periods beginning October 1, 2000. In order to be able to do that, we must be able to revise current OASIS schedules and make them available to home health providers, allowing sufficient time for training. Moreover, current HAVEN software, used to transmit OASIS data, and new grouper software used to assign a case mix will need to be revised/developed, tested, and produced before being made available to providers and vendors. If emergency clearance for these requested changes is obtained, current production schedules will allow for a summer release of the revised HAVEN software and the new grouper software and would allow for adequate staff training of the product and its appropriate use. It is in the public interest for the HHAs to be able to be ready to collect data timely.

HCFA is requesting OMB review and approval of this collection by April 21, 2000, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by April 17, 2000. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Request: Revision of a currently approved collection; *Title of Information Collection:* Collection of OASIS Data for Prospective Payment System Purposes and for Masking Data; *HCFA Form Number:* HCFA–R–0245 (OMB approval #: 0938–0760); *Use:* We are requesting emergency clearance of our proposal to modify the currently approved OASIS forms HCFA–R–245D for purposes of case mix adjustment of payment rates under home health PPS and to modify the OASIS data assessment schedule to allow for the preservation of masking of personally identifiable information for the non-Medicare/non-Medicaid individuals; *Frequency:* On occasion; *Affected Public:* Businesses or other for-profit, Not-for-profit institutions, Federal Government, State, Local, or Tribal Government; *Number of Respondents:* 8,200; *Total Annual Responses:* 8,200; *Total Annual Burden Hours:* 967,600.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/reg/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by April 17, 2000.

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26. 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–0262, Attn: Julie Brown HCFA–R–245

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: April 4, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–9119 Filed 4–10–00; 9:38 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. CFDA 93.576]

Office of Refugee Resettlement Microenterprise Development

AGENCY: Office of Refugee Resettlement (ORR), ACF, DHHS.

ACTION: Notice of availability of FY 2000 discretionary funds for refugee microenterprise development.

SUMMARY: ORR invites eligible entities to submit competitive grant applications for microenterprise development for refugees.

Applications will be accepted pursuant to the Director's discretionary authority under section 412(c) of the Immigration and Nationality Act (INA) (8 U.S.C. 1522), as amended.

Applications will be screened and evaluated as indicated in this program announcement. Awards will be contingent on the outcome of the competition and the availability of funds.

DATES: The closing date for submission of applications is June 12, 2000. See Part IV of this announcement for more information on submitting applications.

FOR FURTHER INFORMATION CONTACT: Marta Brenden at (202) 205–3589, *MBrenden@ACF.DHHS.GOV.* Application materials are also available from Marta Brenden at the Office of Refugee Resettlement, 370 L'Enfant Promenade SW, Washington DC 20447 and on the ORR website at *www.acf.dhhs.gov/program/orr.*

SUPPLEMENTARY INFORMATION: This program announcement consists of four parts:

Part I: Background, legislative authority, funding availability, CFDA Number, Applicant eligibility, project and budget periods, length of application, program purpose and scope, client eligibility, allowable activities, and treatment of program income.

Part II: General instructions for preparing a full project description.

Part III: The Review Process—Intergovernmental review, initial ACF

screening, competitive review, funding reconsideration, and review criteria.

Part IV: The Application—Application materials, application development, application submission information, certifications, regulations and reporting.

Paperwork Reduction Act of 1995 (Pub. L. 104–13): Public reporting burden for this collection of information is estimated to average 25 hours, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. The following information collections are included in the program announcement: OMB Approval No. 0970–0139, ACF UNIFORM PROJECT DESCRIPTION (UPD) which expires 10/31/2000. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Part I

Background

ORR has supported the field of microenterprise development since 1991 with grants to various State governments, community economic development agencies, community action and other human service agencies, local Mutual Assistance Associations and voluntary agencies. Organizations with successful programs have typically been those with a long-term commitment to microenterprise and to its adaptation to the refugee experience. They have committed agency resources to support refugee programs, and their work in refugee microenterprise has been consistent with the overall agency mission. A public or private non-profit agency interested in receiving funding under this announcement must analyze its organizational capacity to work with refugees who are economically poor, have limited English language proficiency, and have neither assets nor American business experience. In fact, most newly arrived refugees do not qualify for commercial loans or for admission into mainstream microenterprise development programs for these reasons.

Refugees do, however, bring positive attributes to microenterprise projects: a diverse and rich array of business ideas, skills, experiences, and ambitions. These characteristics have been largely responsible for the success of the ORR initiative to date. During the last eight years, refugees have started or expanded over 800 micro-businesses, and over 89 percent of these businesses have survived. ORR grantees have provided over $3 million in financing to these entrepreneurs, and the loan repayment rate is close to 100 percent. By commonly accepted measures of performance, (business survival rates, loan default rates etc.) the ORR programs have excelled, frequently leading the field in achievement. More importantly, over 4000 refugees have gained new entrepreneurial skills and knowledge, and the additional business income is helping refugee families to achieve economic self-sufficiency.

Building on our experience of the last eight years, ORR seeks in this announcement to continue support to this field, particularly on behalf of those refugees who, because of language and cultural barriers, are unlikely to gain access to commercial loans or business training through other programs. To be successful in this competition, refugee-serving organizations must demonstrate their agency's capacity to provide the technical expertise to help refugees start or expand businesses. Economic development agencies must show how they will modify their existing programs to effectively serve refugees.

Legislative Authority—This program is authorized by section 412(c)(1)(A) of the Immigration and Nationality Act (INA)(8 U.S.C. 1522(c)(1)(A)) which authorizes the Director "to make grants to, and enter into contracts with, public or private nonprofit agencies for projects specifically designed—(i) to assist refugees in obtaining the skills which are necessary for economic self-sufficiency, including projects for job training, employment services, day care, professional refresher training, and other recertification services; (ii) to provide training in English where necessary (regardless of whether the refugees are employed or receiving cash or other assistance); and (iii) to provide where specific needs have been shown and recognized by the Director, health (including mental health) services, social services, educational and other services." In addition, section 412(a)(4)(A)(i) authorizes the Director to make loans for the purpose of carrying out this section.

The FY 2000 Appropriation Act for the Department of Health and Human Services (Pub. L. 106–113) appropriates funds for refugee and entrant assistance activities authorized by these provisions of the INA.

Funding Availability

ORR expects to make available approximately $2.2 million for Microenterprise Development in amounts ranging from $100,000–$160,000 for about 15–20 awards.

The Director reserves the right to award less, or more, than the funds described, in the absence of worthy applications, or under such other circumstances as may be deemed to be in the best interest of the government.

CFDA Number " 93.576

Applicant Eligibility

Eligible grantees are public and private non-profit organizations and agencies of State governments that are responsible for the refugee program under 45 CFR 400.5.

Project and Budget Periods

This announcement invites applications for project periods up to 3 years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for 3 years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the 3 year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Length of Application

Applicants are encouraged to limit program narratives to 25 pages (double-spaced on standard, letter-size paper, in 12 point font) plus no more than 25 pages of appended material. This limitation of 20 pages per program area should be considered as a maximum, and not necessarily a goal.

Microenterprise Development: Program Purpose and Scope

The purpose of microenterprise development is to assist refugees in becoming economically self-sufficient and to help refugee communities in developing employment and capital resources.

Applicants may request funds for microenterprise services generally to include business technical assistance or short-term training, credit in the form of microloans, the administrative costs of managing the project and, if applicable, a revolving microloan fund. Projects should be designed in a manner that is culturally and linguistically appropriate for the refugee population.

Projects should be designed with an understanding of the characteristics of the local refugee populations: employment rates, welfare status, length of time in the U.S., interest in micro-businesses, and English language proficiency. Applicants should also be familiar with the capital needs and

capital market gaps for refugee entrepreneurs, and should demonstrate how refugees will gain access to business credit.

Successful applications will demonstrate an understanding of the economic opportunities in the community for refugees and have established working partnerships with the communities' refugee resettlement services network, with existing microenterprise organizations (where they are present) and with financial institutions.

ORR will not fund applications which propose to subgrant or contract all or most of the proposed activities under this initiative to an unrelated entity. This does not bar subgranting or contracting for specific services or activities.

Client Eligibility

Eligibility for refugee social services includes persons who meet all requirements of 45 CFR 400.43 (as amended by 65 FR 15409 (March 22, 2000)) and 45 CFR 401.2 (Cuban and Haitian entrants). The targeted refugee population for these programs may include refugees who are receiving public assistance or subsidies and/or who lack the financial resources, credit history, or personal assets to qualify for business loans or assistance through commercial institutions. Refugees may participate regardless of their date of arrival in the U.S. Grantees will be responsible for documenting refugee client eligibility.

Allowable Activities

Project components may include one-on-one business consultation and training, training in classroom settings, access to business credit, individual or peer group lending, and follow-up technical assistance to help stabilize or expand refugee businesses. ORR funds may also be used for the administrative costs associated with managing a microloan fund.

Microloans consist of small amounts of credit, generally in sums less that $15,000, extended to low-income entrepreneurs for start-up or very small microenterprises. Applicants may elect to establish cooperative relationships with one or more of the community's financial institutions to obtain access to commercial loan funds. Alternatively, ORR funds may be used for microloans to individual refugee entrepreneurs in sums not to exceed $15,000 (of ORR monies). These funds may be disbursed through individual loans or through peer lending mechanisms, through a revolving loan fund. Requests for ORR grant funds for a revolving loan fund may not exceed $50,000 in the first budget period. Grantees will be responsible for establishing written lending policies and procedures, and for collecting and servicing loan repayments.

ORR supports the use of commercial lending institutions for refugee borrowers to leverage the limited amount of ORR funds available for this purpose, and to provide borrowers with the opportunity to establish credit-worthy histories with traditional lenders. To that end, ORR does not encourage the use of below-market rates of interest for the loan funds. Conversely, grantees may not charge refugees interest rates that exceed four percentage points above the New York prime lending rate at the time of loan approval.

Microloans will have a maximum maturity of three years. They may be used for working capital, inventory, supplies, furniture, fixtures, machinery, tools, equipment, building renovation, and/or leasehold improvements.

Microloan funds may not be used for the following types of businesses:

- As venture capital for established businesses that are attempting major Expansion;
- For enterprises engaged in gambling or speculation;
- For any illegal activity or production, or for the service or distribution of illegal products;
- For purposes not related to microenterprise development, e.g., for the purchase of a personal-use automobile.

Treatment of Program Income

Projects with revolving loan funds may earn and retain program income in the form of interest (on individual loans or from loan loss reserves). Specifically, program income funds may be retained by the project to expand the pool of credit in accordance with 45 CFR 74.24 (b)(1), (b)(2) and (e) for non-profit organizations and 45 CFR 92.25 (g)(2) (for governmental entities). Similarly, repaid loan principal is to be treated as program income and placed in the revolving loan fund for re-lending. Program income may be retained by the grantee so long as the use of these funds furthers the objectives of the grant and is consistent with the Federal statute under which the grant was made.

Any fees or charges imposed on refugee clients by the grantee or its subcontractors or affiliates (e.g., loan processing or training fees) must be disclosed in the application and pre-approved by ORR.

Successful grantees will be expected to coordinate their policies and procedures for developing and administering refugee microenterprise projects with the existing refugee microenterprise services network. To ensure an exchange of technical and training information among programs, all grantees are encouraged to attend two ORR training meetings during each year of their participation in this program area. Grant funds may be used to offset the cost of attendance.

Part II: General instructions for preparing a full project description

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered to be relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those that will not be used in support of the specific project for which funds are requested.

General Instructions

Cross-referencing should be used rather than repetition. ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. (Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.) Pages should be numbered and a table of contents should be included for easy reference.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived. For example, when applying for a grant to establish a neighborhood child care center, describe who will occupy the facility, who will use the facility, how the facility will be used, and how the facility will benefit the community which it will serve. For example, when applying for microenterprise development assistance, describe the prospective clients in terms of numbers, national origin, interest in microenterprise and what business opportunities are available to refugees in the community.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of microloans made. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

Identify the kinds of data to be collected, maintained, and/or disseminated. Note that clearance from the U.S. Office of Management and Budget might be needed prior to a "collection of information" that is "conducted or sponsored" by ACF. List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Geographic Location

Describe the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

Staff and Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

Organization Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Third-Party Agreements

Include written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Letters of Support

Provide statements from community, public and commercial leaders that support the project proposed for funding.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, "Federal resources" refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s); and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: Costs of tangible, non-expendable, personal property, having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, an applicant may use its own definition of equipment provided that such equipment would at least include all equipment defined above.

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgment that the applicant is accepting a lower rate than allowed.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application which contain this information.

Non-Federal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

Total Direct Charges, Total Indirect Charges, Total Project Costs

Self explanatory.

Part III: The Review Process

A. Intergovernmental Review: State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

Note: State/Territory Participation in the Intergovernmental Review Process Does not Signify Applicant Eligibility for Financial Assistance under a Program. A Potential Applicant must meet the Eligibility Requirements of the Program for Which it is Applying Prior to Submitting an Application to its SPOC, if Applicable, or to ACF.

The jurisdictions not listed no longer participate in the process but grant applicants are still eligible to apply for the grant even if your state, territory, commonwealth, etc. does not have a "state single point of contact." Jurisdictions without "state single points of contacts" include: Alabama; Alaska; American Samoa; Colorado; Connecticut; Kansas; Hawaii; Idaho; Louisiana; Massachusetts; Minnesota; Montana; Nebraska; New Jersey; Ohio; Oklahoma; Oregon; Palau; Pennsylvania; South Dakota; Tennessee; Vermont; Virginia; and Washington.

This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to the Office of Management and Budget and the State in question. Changes to the list will only be made upon formal notification by the State. Also, this listing is published biannually in the Catalogue of Federal Domestic Assistance.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to

comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule. When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, 370 L'Enfant Promenade SW, 6th Floor, Washington DC, 20447 ATTN: Ms. Daphne Weeden.

A list of the Single Points of Contact for each State and Territory is included with the application materials for this announcement.

OMB State Single Point of Contact Listing

Arizona

Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315, FAX: (602) 280–8144, e-mail: jonis@ep.state.az.us.

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412 Little Rock, Arkansas 72203, Telephone: (501) 682–1074, FAX: (501) 682–5206.

California

Grants Coordinator, Office of Planning and Research/State Clearinghouse, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone: (916) 323–7480, FAX: (916) 323–3018.

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Office of the Budget, 540 S. duPont Hi., Suite 5, Dover, Delaware 19901, Telephone: (302) 739–3326 FAX: (302) 739–5661.

District of Columbia

Charles Nichols, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW—Suite 1200, Washington, DC 20005, Telephone: (202) 727–6537, FAX: (202) 727–161,7 e-mail: charlesnic@yahoo.com or cnichols-ogmd@dcgov.org.

Florida

Cherie L. Trainor, Coordinator, Florida State Clearinghouse, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399–2100, Telephone: (850) 922–5438 or (850) 414–5495, FAX: (850) 414–0479, e-mail: cherie.trainor@dca.state.fl.us.

Georgia

Debra S. Stephens, Coordinator, Georgia State Clearinghouse, 270 Washington Street, S.W.—8th Floor, Atlanta, Georgia 30334, Telephone: (404) 656–3855, FAX: (404) 656–7901, e-mail:ssda@mail.opb.state.ga.us.

Illinois

Virginia Bova, State Single Point of Contact, Illinois Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, Illinois 60601, Telephone: (312) 814–6028, FAX: (312) 814–1800.

Indiana

Frances Williams, State Budget Agency, 212 State House, Indianapolis, Indiana 46204–2796, Telephone: (317) 232–5619, FAX: (317) 233–3323.

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, FAX: (515) 242–4809.

Kentucky

Kevin J. Goldsmith, Director, John-Mark Hack, Deputy Director, Sandra Brewer, Executive Secretary, Intergovernmental Affairs, Office of the Governor, 700 Capitol Avenue, Frankfort, Kentucky 40601, Telephone: (502) 564–2611, FAX: (502) 564–2849.

Maine

Joyce Benson, State Planning Office, 184 State Street, 38 State House Station, Augusta, Maine 04333, Telephone: (207) 287–3261, FAX: (207) 287–6489.

Maryland

Linda C. Janey, JD, Manager, Clearinghouse and Plan Review Unit, Maryland Office of Planning, 301 W. Preston Street—Room 1104, Baltimore, Maryland 21201–2305, Telephone: (410) 767–4491, FAX: (410) 767–4480, e-mail: Linda@mail.op.state.md.us.

Michigan

Richard Pfaff, Southeast Michigan Council of Governments, 660 Plaza Drive—Suite 1900, Detroit, Michigan 48226, Telephone: (313) 961–4266, FAX: (313) 961–4869.

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 455 North Lamar Street, Jackson, Mississippi 39202–3087, Telephone: (601) 359–6762, FAX: (601) 359–6764.

Missouri

Lois Pohl/Carol Meyer, Federal Assistance Clearinghouse, Office Of Administration, P.O. Box 809, Room 915, Jefferson Building, Jefferson City, Missouri 65102, Telephone: (573) 751–4834, FAX: (573) 522–4395.

Nevada

Heather Elliott, Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone: (702) 687–6367, FAX: (702) 687–3983.

New Hampshire

Jeffrey H. Taylor Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, Office of State Planning, 2 ½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, FAX: (603) 271–1728.

New Mexico

Nick Mandell, Local Government Division, Room 201, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–4991, FAX: (505) 827–4948.

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Marsha Roth, Albany, New York 12224, Telephone: (518) 474–1605, FAX: (518) 486–5617.

North Carolina

Chrys Baggett, Director, North Carolina State Clearinghouse, Office of the Secretary of Administration, 116 West Jones Street—Suite 5106, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, FAX: (919) 733–9571.

North Dakota

Jim Boyd, North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Department 105, Bismarck, North Dakota 58505–0170, Telephone: (701) 328–2094, FAX: (701) 328–2308.

Rhode Island

Kevin Nelson, Review Coordinator, Department of Administration, Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 222–2656, FAX: (401) 222–2083.

South Carolina

Omegia Burgess, State Single Point of Contact, Budget and Control Board, Office of State Budget, 1122 Ladies Street—12th Floor, Columbia, South Carolina 29201, Telephone: (803) 734–0494, FAX: (803) 734–0645.

Texas

Tom Adams, Single Point of Contact, State of Texas, Governor's Office of Budget and Planning, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711–2428, Telephone: (512) 463–1771, FAX: (512) 936–2681, e-mail: tadams@governor.state.tx.us.

Utah

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538–1535, FAX: (801) 538–1547.

West Virginia

Judith Dryer, Chief Program Manager, West Virginia Development Office, Building #6, Room 645, State Capitol, Charleston, West Virginia 25305, Telephone: (304) 558–0350, FAX: (304) 558–0362.

Wisconsin

Jeff Smith, Section Chief, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–0267, FAX: (608) 267–6931.

Wyoming

Matthew Jones, State Single Point of Contact, Office of the Governor, 200 West 24th Street, State Capital, Room 124, Cheyenne, Wyoming 82002, FAX: (307) 632–3909

Territories

Guam

Mr. Giovanni T. Sgambelluri, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone: 011–671–472–2285, FAX: 011–671–472–2825.

Puerto Rico

Norma Burgos/Jose E. Caro, Chairwoman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (809) 727–4444 or (809) 723–6190, FAX: (809) 724–3270 or (809) 724–3103.

Northern Mariana Islands

Mr. Alvaro A. Santos, Executive Officer, Office of Management and Budget, Office of the Governor, Saipan, MP 96950, Telephone: (670) 664–2256, FAX: (670) 664–2272.

Please direct all questions and correspondence about intergovernmental review to: Ms. Jacoba T. Seman, Federal Programs Coordinator, Telephone: (670) 664–2289, FAX: (670) 664–2272

Virgin Islands

Nellon Bowry, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802.

Please direct all questions and correspondence about intergovernmental review to: Daisey Millen, Telephone: (809) 774–0750, FAX: (809) 776–0069.

B. Initial ACF Screening

Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date and submitted in accordance with the instructions in this announcement and (2) the applicant is eligible for funding.

C. Competitive Review and Evaluation Criteria

Applications which pass the initial ACF screening will be evaluated and rated by an independent review panel on the basis of specific evaluation criteria. The evaluation criteria were designed to assess the quality of a proposed project, and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to the evaluation criteria within the context of this program announcement.

D. Review Criteria

1. Objectives and Need for Assistance.

Quality of the description of the prospective refugee communities' profile with respect to welfare utilization, English language proficiency, length of time in the U.S., interest in microbusinesses; and the description of local capital needs and capital market gaps for refugee microentrepreneurs. (20 points).

2. Approach

Adequacy and appropriateness of the program approach or design: such as, project goals and structure (policies, procedures, activities); training and technical assistance; loan funds and lending criteria and fees, if included in the design; whether the business targets are start-ups, expansions, or both; partner agencies; and credit enhancements, such as loan loss reserves. (30 points).

3. Organization Profiles

Demonstrated organizational and management capacity including bilingual/bicultural competent services, and experience serving refugees and other economically disadvantaged populations; description of experience in organizational management including copies of the last two fiscal year financial statements, with balance sheets and income statements; description of experience in management of loan funds, including a projected monthly cash flow chart for the loan fund for the three year period beginning October 1, 2000; experience in collaboration with the specific refugee community(ies) and coalition building among refugee and non-refugee service providers. (15 points).

4. Results and Expected Benefits

Extent to which the expected outcomes and unit costs of the project are appropriate, consistent with reported nationwide performance in microenterprise projects, and reasonable in relation to the proposed activities; the impact of loan funds, business income, and business assets on clients' welfare status, if applicable. Projected outcomes for business income, business survivability and reductions in welfare utilization. (20 points).

5. Budget and Budget Justification

Appropriateness and reasonableness of the proposed budget to include the relative distribution of funds for administrative costs, training or technical assistance, and loan capital. Application should include project timelines and a narrative justification supporting each budget line item. (15 points).

Part IV: Application Submission

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ACF. Application materials including forms and instructions are available from the contact named under the **ADDRESSES** section in the preamble of this announcement.

Each application should include one signed original and two additional copies.

Each application narrative portion should not exceed 25 double-spaced pages in a 12-pitch font. Attachments and appendices should not exceed 25 pages and should be used only to provide supporting documentation such as maps, administration charts, position descriptions, resumes, and letters of intent for partnership agreements. Please do not include books or video tapes as they are not easily reproduced and are, therefore, inaccessible to the reviewers. Each page should be numbered sequentially, including the attachments or appendices.

A. Application Forms

Applicants for financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF 424A, Budget Information—Non-construction Programs; SF 424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. An application with an original signature and two copies is required.

B. Application Deadlines

The closing date for submission of applications is June 12, 2000. Mailed applications postmarked after the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee

Resettlement, Attention: Ms. Daphne Weeden.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications handcarried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, the Office of Refugee Resettlement, 6th Floor, Aerospace Building, 901 D Street, SW, Washington, DC 20447 between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note "Attention: Ms. Daphne Weeden."

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mails service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

For Further Information on Application Deadlines Contact: Ms. Daphne Weeden, Administration for Children and Families, Office of Refugee Resettlement, 370 L'Enfant Promenade SW, 6th Floor, Washington, DC 20447, (202) 401–4577.

Standard Language Concerning the Certifications, Assurances, and Disclosure Required for Non-Construction Programs

Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, "Assurances: Non-Construction Programs." Applicants must sign and return the Standard Form 424B with their applications. Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000.

Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

Applicants must make the appropriate certification of their compliance with the Drug Free Workplace Act of 1988. By signing and submitting the application, the applicant is providing the certification and *need not mail back* the certification with the applications.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for an award. By signing and submitting the application, the applicant is providing the certification *need not mail back* the certification with the applications.

Applicable Grant Administration Regulations: Applicable DHHS grant administration regulations can be found in 45 CFR Part 74 or 92.

Reporting Requirements: Grantees are required to file the Financial Status Report (SF–269) and Program Performance Reports on a semi-annual basis. Funds issued under these awards must be accounted for and reported upon separately from all other grant activities. Although ORR does not expect the proposed projects to include evaluation activities, it does expect grantees to maintain adequate records to track and report on project outcomes. The official receipt point for all reports and correspondence is the ORR Grants Officer, Ms. Daphne Weeden, Administration for Children and Families/Office of Refugee Resettlement, 370 L'Enfant Promenade SW, 6th Floor, Washington, DC 20447, Telephone: (202) 401–4577. An original and one copy of each report shall be submitted within 30 days of the end of each reporting period directly to the Grants Officer. The mailing address is: Ms. Daphne Weeden, Administration for Children and Families, Office of Refugee Resettlement, 370 L'Enfant Promenade SW, 6th Floor, Washington, DC 20447. A final Financial and Program Report shall be due 90 days after the budget expiration date or termination of grant support.

Dated: April 6, 2000.

Lavinia Limón,

Director, Office of Refugee Resettlement.

[FR Doc. 00–9113 Filed 4–11–00; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project

Phase I of the National Evaluation of the Comprehensive Community Mental Health Services for Children and Their Families Program (0930–0171—Extension, revision). The core and comparison studies of the evaluation collect information on child and family demographics, child mental health status, and service system development. In the core study, data were collected from children and families at intake into services, 6 months later, and every 12 months thereafter while the children

remain in services. In the comparison study component, information is collected at intake, 6 months, 12 months, 24 months, and annually thereafter. In both studies, data were collected annually from grantees' administrators and providers.

SAMHSA's Center for Mental Health Services (CMHS) is seeking OMB approval for a 4-month extension of approval for the comparison study of this evaluation of integrated child mental health service systems funded by CMHS to allow sufficient follow-up data to be collected. The comparison study of the evaluation collects information on child and family demographics, and child mental health status and social functioning. The table below summarizes burden for this extension.

Respondent	Average number of respondents	Average number of responses	Average hours per response	Total burden
Currently approved				1493
Caregivers	701	.43	.56	169
Youth	420	.30	1.16	146
Administrators/providers	0	0	0	0
Total	1121			315

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 5, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–9108 Filed 4–11–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–XU; GP0–0185]

AGENCY: Bureau of Land Management, Spokane District, DOI.

NOTICE: Notice of Field Tour of the Eastern Washington Resource Advisory Council.

ACTION: Field Tour of the Eastern Washington Resource Advisory Council; April 20, 2000, in Spokane, Washington.

SUMMARY: The Eastern Washington Resource Advisory Council will take a field tour on April 20, 2000. The tour will start at 8:30 a.m., at the Spokane District Office of the Bureau of Land Management, 1103 N. Fancher Road, Spokane, Washington 99212–1275. The Council will visit the Rock Creek Acquisition in Adams and Whitman Counties, Washington. Topics to be addressed included wildlife-based recreation issues. The tour will conclude no later than 4:00 p.m. The tour is open to the public but no transportation will be provided.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington 99212; or call 509–536–1200.

Dated: April 6, 2000.

Gary J. Yeager,

Acting District Manager.

[FR Doc. 00–9049 Filed 4–11–00; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–935–1430–ET; COC–28584, COC–28576, COC–28620]

Public Land Order No. 7441; Partial Revocation of Secretarial Orders Which Established Power Site Reserve No. 92 and Power Site Classification No. 32; Opening of Land Under Section 24 of the Federal Power Act; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes two Secretarial orders insofar as they affect 1,910.36 acres of public lands withdrawn for the Bureau of Land Management's Power Site Reserve No. 92 and Power Site Classification No. 32. This order also opens, subject to Section 24 of the Federal Power Act, 7 acres of National Forest System land in Power Site Reserve No. 32 to disposal. These actions will allow for consummation of pending land exchanges. All the lands have been open to mineral leasing and, under the provisions of the Mining Claims Rights Restoration Act of 1955, to mining.

EFFECTIVE DATE: May 12, 2000.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Orders dated December 30, 1909, and April 29, 1922, which established Power Site Reserve No. 92 and Power Site Classification No. 32, respectively, are hereby revoked insofar as they affect the following described public lands:

New Mexico Principal Meridian

T. 49 N., R. 9 E.,
- Sec. 10, E½SW¼ and SE¼;
- Sec. 11, SW¼SW¼;
- Sec. 13, SE¼SE¼NE¼, E½E½NE¼SE¼, SW¼NW¼SE¼, and SE¼SE¼;
- Sec. 14, N½;
- Sec. 15, N½NE¼NE¼, SW¼NE¼NE¼, and NW¼NE¼;
- Sec. 24, E½NE¼.

T. 49 N., R. 10 E.,
- Sec. 19, lots 3, 9, 10, and lots 12 to 15, inclusive, NW¼NE¼, S½NE¼, NE¼NW¼, E½SW¼SW¼, SE¼SW¼, and S½SE¼;
- Sec. 30, NE¼NE¼.

T. 50 N., R. 8 E.,
- Sec. 10, NE¼ and NW¼SE¼;
- Sec. 13, NE¼SW¼;
- Sec. 14, SE¼NE¼;
- Sec. 16, W½NE¼.

T. 50 N., R. 9 E.,
- Sec. 19, NW¼NW¼ and NE¼SE¼;
- Sec. 32, N½NE¼.

The areas described aggregate 1,910.36 acres in Fremont and Chaffee Counties.

2. At 9 a.m. on May 12, 2000, the lands described in paragraph 1, will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received on or prior to 9 a.m on May 12, 2000, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The State of Colorado has waived their preference right for public highway or material sites as provided by

the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1994).

4. The lands described in paragraph 1 have been open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. 621 (1994). However, since the act applies only to lands withdrawn for power purposes, provisions of the act are no longer applicable. The lands have been and will remain open to mineral leasing.

5. By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1994), and pursuant to the determination by the Federal Energy Regulatory Commission in DVCO–553–000, it is ordered as follows:

At 9 a.m. on May 12, 2000, the following described National Forest System land withdrawn by the Secretarial Order dated July 2, 1910, which established Power Site Reserve No. 32, will be opened to such forms of disposition as may by law be made of National Forest System lands, subject to the provisions of Section 24 of the Federal Power Act as specified by the Federal Energy Regulatory Commission determination DVCO–553–000 and subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

Roosevelt National Forest

Sixth Principal Meridian

T. 4 S., R. 78W.,
Sec. 26, that portion of lot 16 west of Highway No. 9.

The area described contains 7 acres of National Forest System land in Summit County.

6. The land described in paragraph 5 has been and will remain open to mineral leasing and to location and entry under the provisions of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. 621 (1994).

Dated: March 21, 2000.

Sylvia V. Baca,

Assistant Secretary of the Interior.

[FR Doc. 00–9020 Filed 4–11–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–ET; MTM 024829]

Public Land Order No. 7440; Revocation of Department of the Air Force Withdrawals; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes, in their entirety, two public land orders which withdrew public lands for the use of the United States Air Force for military and communication site purposes. The lands are no longer needed for military purposes and the revocation is needed to permit development of a recreation area and interpretative site. This action will open 66.37 acres to surface entry, mining, and mineral leasing. The lands have been and will remain open to disposal of mineral materials under the Act of July 31, 1947, 30 U.S.C. 601–604 (1994).

EFFECTIVE DATE: May 12, 2000.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–896–5052.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 1758 and Public Land Order No. 2186, as corrected by Public Land Order No. 2230, which withdrew public lands for use of the Department of the Air Force for military and communication site purposes, are hereby revoked in their entirety:

Principal Meridian, Montana

T. 17 N., R. 20 E.,
Sec. 19, NE¼, that part described as beginning at a point which is S. 23°13′33″ E., 6880.73 feet from the northwest corner of sec. 18, T. 17 N., R. 20 E., thence N. 37°16′10″ W., 65.56 feet; N. 52°43′50″ E., 100.00 feet; S. 37°16′10″ E., 30.00 feet to a point which is S. 24°01′12″ E., 6826.53 feet from the northwest corner of sec. 18; S. 37°16′10″ E., 70.00 feet; S. 52°43′50″ W., 100.00 feet; N. 37°16′10″ W., 34.44 feet to the point of beginning. S½, that part described as beginning at a point N. 16°27′ W., 1314.22 feet from the southeast corner of said sec. 19, thence S. 0°12′ W., 118.97 feet; N. 89°48′ W., 624.26 feet; N. 44°48′ W., 323.12 feet; N. 89°48′ W., 157.00 feet; S. 58°12′ W., 338.35 feet; N. 89°48′ W., 503.00 feet; S. 72°12′ W., 508.00 feet; N. 89°48′ W., 420.00 feet; N. 65°48′ W., 433.76 feet; N. 0°12′ E., 535.00 feet; N. 59°12′ E., 540.00 feet; S. 77°48′ E., 535.00 feet; N. 73°12′ E., 692.00 feet; S. 89°48′ E., 830.00 feet; S. 0°12′ W., 188.48 feet; S. 89°48′ E., 621.67 feet; S. 0°12′ W., 790.00 feet to the point of beginning.
Sec. 20, NE¼NE¼, that part described as follows: Tract No. F, Part 1: Beginning at a point N. 44°22′00″ E., 5986.83 feet from the southwest corner of said sec. 20; thence N. 8°16′30″ W., 298.00 feet; N. 81°43′30″ E., 796.60 feet; S. 8°16′30″ E., 320.00 feet; S. 81°43′30″ W., 496.60 feet; S. 8°16′30″ E., 100.00 feet; S 81°43′30″ W., 300.00 feet; N. 8°16′30″ W., 122.00 feet to the point of beginning.

The areas described aggregate 66.37 acres in Fergus County.

2. At 9 a.m. on May 12, 2000, the lands shall be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on May 12, 2000, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on May 12, 2000, the lands shall be opened to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: March 20, 2000.

Sylvia V. Baca,

Assistant Secretary of the Interior.

[FR Doc. 00–9021 Filed 4–11–00; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–650–1430–ET; CACA 2642 01]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 22,331.83 acres of public lands in Kern County to protect the Desert Tortoise Natural Area. This notice closes the

lands for up to 2 years from surface entry and mining. The lands will remain open to mineral leasing and the Materials Act of 1947. Up to 3,206.52 acres of non-federally owned lands would be subject to this withdrawal if they are acquired by the United States in the future by exchange, donation, or purchase. The Desert Tortoise Natural Area was originally withdrawn, for a term of 20 years, by Public Land Order number 5694, which expired on February 4, 2000. The Bureau of Land Management has determined that the lands should be withdrawn for an additional 20 years, which is the purpose of this proposed action.

DATES: Comments and requests for a public meeting must be received by July 11, 2000.

ADDRESSES: Comments and meeting requests should be sent to the Field Manager, BLM Ridgecrest Field Office (CA–650), 300 South Richmond Road, Ridgecrest, California 93555.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office, 916–978–4675 or Janet Eubanks, BLM California District Office, 909–697–5376.

SUPPLEMENTARY INFORMATION: On March 13, 2000, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public lands from location and entry under the mining laws, subject to valid existing rights:

Public Lands

Mount Diablo Meridian, California

T. 30 S., R. 38 E.,
- Sec. 13, lots 1, 2, 9, 10, and 11, E½SE¼, and 90.11 acres of S½ lying easterly of Koehn Dry Lake per Dependent Resurvey approved July 30, 1971;
- Sec. 23, lots 6, 7, 8, 11, and 12, E½SE¼, and unnumbered lots with 5.72, 19.06, 21.29 and 37.04 acres;
- Sec. 24, lots 1 to 3, inclusive, and lots 5 to 16, inclusive;
- Sec. 25;
- Sec. 26, lots 1, 2, 4, and 5, E½, and SW¼;
- Sec. 34, S½;
- Sec. 35;
- Sec. 36, NE¼NE¼, S½NE¼, W½, NW¼NE¼SE¼, S½NW¼SE¼, E½NW¼SW¼SE¼, S½SW¼SE¼, and SE¼SE¼.

T. 31 S., R. 38 E.,
- Secs. 1 to 4, inclusive;
- Sec. 5, S½;
- Sec. 8;
- Sec. 9, N½, SE¼, N½NE¼SW¼SW¼, N½NE¼NW¼SW¼, and E½SW¼;
- Sec. 10;
- Sec. 11, N½, SW¼, NW¼SE¼, S½SE¼SE¼, S½N½SE¼SE¼, S½NE¼SE¼, and W½SW¼SE¼;
- Sec. 12;
- Sec. 13, E½NE¼, S½NW¼NE¼, W½NW¼NW¼NE¼, W½E½NW¼NW¼NE¼, E½NE¼NW¼, E½NW¼NW¼, NW¼NW¼NW¼, N½SW¼NW¼, SW¼SW¼SW¼NW¼, SE¼NE¼SE¼SW¼, E½E½NW¼SE¼SW¼, NW¼NW¼SE¼SW¼, SW¼SW¼SE¼SW¼, E½SW¼SE¼SW¼, S½SE¼SW¼SE¼, NW¼SE¼SE¼, SW¼SW¼SE¼SE¼, SE¼SE¼SE¼, and E½E½SW¼SE¼SE¼;
- Sec. 14;
- Sec. 15, E½, SW¼, SE¼NW¼, W½NE¼NW¼, N½NW¼NW¼, SW¼NW¼SW¼NW¼, SE¼NE¼SW¼NW¼, and S½SW¼NW¼;
- Sec. 16, E½, E½W½, NW¼NW¼, NE¼NE¼SW¼NW¼, S½NW¼SW¼NW¼, N½S½SW¼/NW¼, E½W½SW¼, NW¼NW¼SW¼, and NW¼SW¼SW¼;
- Sec. 17, N½;
- Sec. 18, lots 3 and 4, E/12, and E½NW¼;
- Sec. 19, N½N½ of lot 1 of the NW¼, S½ of lot 1 of the NW¼, lots 1 and 2 of the SW¼ and E½;
- Sec. 20;
- Sec. 21, NW¼NE¼, SE¼SW¼NE¼, SE¼SE¼NE¼, N½SE¼NE¼, NW¼NW¼, SE¼NW¼, N½NE¼SW¼, NW¼SW¼, SE¼SW¼, E½NE¼SE¼, E½E½NW¼NE¼SE¼, E½NW¼SE¼, NW¼NW¼SE¼, W½SW¼SW¼SE¼, SE¼SW¼SE¼, E½W½SE¼SE¼, and E½SE¼SE¼;
- Sec. 22;
- Sec. 23, W½SW¼, SE¼SW¼, and S½NE¼SW¼;
- Secs. 24 and 26;
- Sec. 27, NE¼NE¼, E½NW¼NE¼, SW¼NW¼NE¼, SW¼NE¼, W½NE¼NE¼NW¼, W½NE¼NW¼, S½SE¼NW¼NE¼, S½N½NW¼NW¼, S½S½NW¼NW¼, N½SW¼NW¼, N½S½SW¼NW¼, SE¼SW¼SW¼NW¼, SW¼SE¼NW¼, N½SW¼, SW¼SW¼, and SE¼;
- Secs. 28 to 30, inclusive;
- Sec. 31, lots 1 and 2 of the NW¼, lots 1 and 2 of the SW¼, N½NE¼, SE¼NE¼, N½SE¼, and SW¼SE¼SE¼;
- Sec. 32;
- Sec. 33, N½NE¼, W½W½SW¼NE¼, E½E½SW¼NE¼, N½SE¼NE¼, N½NE¼NW¼, N½S½NE¼NW¼, SE¼SW¼NE¼NW¼, NW¼NW¼, S½NW¼, E½NE¼SW¼, W½W½NE¼SW¼, NW¼NW¼SW¼, S½NW¼SW¼, N½SW¼SW¼, SW¼SW¼SW¼, N½SE¼SW¼, W½SW¼SE¼SW¼, W½NW¼NE¼SE¼, W½SE¼, and N½SE¼SE¼;
- Sec. 34.

T. 32 S., R. 38 E.,
- Sec. 4 and 6;
- Sec. 5, lots 15, 28, 31, 41, 49, 51, 99, 103, 113, 119, 136, 142, 170, 191, 200, 218 and 223 of Tract No. 2714, as per map filed December 7, 1962 in Book 13 Pages 94 to 98, inclusive of maps in the office of the county recorder of said county.

The areas described aggregate 22,331.83 acres in Kern County.

In addition, if any of the non-federally owned lands within the area described below are acquired by the United States in the future by exchange, donation, or purchase, those lands will be subject to this withdrawal:

Non-Federally Owned Lands

Mount Diablo Meridian, California

T. 30 S., R. 38 E.
- Sec. 36, NW¼NE¼, E½NE¼SE¼, SW¼NE¼SE¼, N½NW¼SE¼, NE¼SW¼SE¼, and W½NW¼SW¼SE¼.

T. 31 S., R. 38 E.,
- Sec. 9, S½NE¼NW¼SW¼, NW¼NW¼SW¼, S½NW¼SW¼, S½NE¼SW¼SW¼, NW¼SW¼SW¼, and S½SW¼SW¼;
- Sec. 11, N½NE¼SE¼, E½SW¼SE¼, and N½N½SE¼SE¼;
- Sec. 13, NE¼NW¼NE¼, E½E½NW¼NW¼NE¼, SW¼NE¼, W½NE¼NW¼, SW¼NW¼NW¼, SE¼SW¼NW¼, N½SW¼SW¼NW¼, SE¼SW¼SW¼NW¼, SE¼NW¼, N½SW¼, SW¼SW¼, N½NE¼SE¼SW¼, SW¼NE¼SE¼SW¼, W½E½NW¼SE¼SW¼, SW¼NW¼SE¼SW¼, NW¼SW¼SE¼SW¼, SE¼SE¼SW¼, N½SE¼, N½SW¼SE¼, SW¼SW¼SE¼, N½SE¼SW¼SE¼, NW¼SW¼SE¼, W½E½SW¼SE¼SE¼ and NE¼ SE¼ SE¼;
- Sec. 15, E½NE¼NW¼, S½NW¼NW¼, N½N½SW¼NW¼, SE¼NW¼SW¼NW¼, SW¼NE¼SW¼NW¼;
- Sec. 16, N½NW¼SW¼NW¼, NW¼NE¼SW¼NW¼, S½NE¼SW¼NW¼, S½S½SW¼NW¼, SW¼NW¼SW¼, and SW¼SW¼SW¼;
- Sec. 17, S½;
- Sec. 18, lots 1 and 2;
- Sec. 19, lot 2 of the NW¼ and S½N½ of lot 1 of the NW¼;
- Sec. 21, NE¼NE¼, W½SW¼NE¼, NE¼SW¼NE¼, SW¼SE¼NE¼, NE¼NW¼, SW¼NW¼, SW¼SW¼, S½NE¼SW¼, W½NW¼NE¼SE¼, W½E½NW¼NE¼SE¼, SW¼NE¼SE¼, SW¼NW¼SE¼, N½SW¼SE¼, E½SW¼SW¼SE¼, and W½W½SE¼SE¼;
- Sec. 23, N½, N½NE¼SW¼, and SE¼;
- Sec. 27, W½NW¼NE¼, SE¼NE¼, E½NE¼NE¼NW¼, N½SE¼NE¼NW¼, N½N½NW¼NW¼, N½S½NW¼NW¼, SW¼SW¼SW¼NW¼, S½SE¼SW¼NW¼, N½SE¼NW¼, SE¼SE¼NW¼, and SE¼SW¼;
- Sec. 31, SW¼NE¼, SW¼SE¼, N½SE¼SE¼, and SE¼SE¼SE¼;
- Sec. 33, W½E½SW¼NE¼, E½W½SW¼NE¼, S½SE¼NE¼, S½SE¼NE¼NW¼, SW¼SW¼NE¼NW¼, E½W½NE¼SW¼, NE¼NW¼SW¼, SE¼SW¼SW¼, E½SW¼SE¼SW¼,

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SE¼SE¼SW¼, E½NW¼NE¼SE¼, NE¼NE¼SE¼, S½NE¼SE¼, and S½SE¼SE¼.

T. 32 S., R. 38 E.,

Sec. 5, lot 2 of the N½, portion of lot 1 of the NW¼, portion of lot 1 of the NE¼, N½S½, and a portion of the S½S½, excluding lots 15, 28, 31, 41, 49, 51, 99, 103, 113, 119, 136, 142, 170, 191, 200, 218 and 223 of Tract No. 2714, as per map filed December 7, 1962 in Book 13 Pages 94 to 98, inclusive of maps in the office of the county recorder of said county.

The areas described aggregate 3,201.52 acres in Kern County.

The purpose of the proposed withdrawal is to assure long term protection and preservation of the public lands and lands proposed to be acquired in the Desert Tortoise Natural Area.

Until July 11, 2000, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Field Manager, Bureau of Land Management, Ridgecrest Field Office.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Field Manager, Ridgecrest Field Office by July 11, 2000. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the public lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are those which are compatible with the use of the lands, as determined by BLM.

Dated: March 27, 2000.

David McIlnay,

Chief, Branch of Lands.

[FR Doc. 00–9022 Filed 4–11–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Peabody Museum at Harvard University, Cambridge, MA, which meets the definition of "object of cultural patrimony" under section 2 of the Act.

The cultural item consists of a memorial totem pole, approximately 20 feet in length, bearing the Brown Bear crest.

Until 1899, the pole stood in front of the Hoots-Hit house on the beach at Old Cape Fox village, Alaska. The clan leader of the house at that time was Big Thomas. The totem pole was removed from Cape Fox by the Harriman Alaska Expedition in July 1899 when the expedition's steamer anchored near the village. Later, Charles Palache who was a member of the expedition solicited the pole from Edward Harriman as a gift to the Peabody Museum.

Consultation evidence indicates that at the time of collection by the Harriman Alaska Expedition the pole depicting the Brown Bear crest was considered the communal property of the Teikweidi of the Saanya Kwaan, and could not have been alienated, appropriated, or conveyed by any individual.

Based on the above-mentioned information, officials of the Peabody Museum of Archaeology and Ethnology have determined that pursuant to 43 CFR 10.2 (d)(4), this cultural item has ongoing historical, traditional, and cultural importance central to the Teikweidi of the Saanya Kwaan, and could not have been alienated, appropriated, or conveyed by any individual. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between this item and the Cape Fox Corporation of the Saanya Kwaan on behalf of the Teikweidi.

This notice has been sent to officials of the Cape Fox Corporation and the Organized Village of Saxman. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Barbara Isaac, Coordinator for Repatriation, Peabody Museum of Archaeology and Ethnology, 11 Divinity Avenue, Cambridge, MA 022138, telephone: (617) 496–3702, before May 12, 2000. Repatriation of this object to the Cape Fox Corporation of the Saanya Kwaan may begin after that date if no additional claimants come forward.

Dated: April 4, 2000.

Muriel Crespi,

Acting Departmental Consulting Archeologist, Archeology and Ethnography Program.

[FR Doc. 00–8997 Filed 4–11–00; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–825–826 (Final)]

Certain Polyester Staple Fiber From Korea And Taiwan

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigations.

EFFECTIVE DATE: April 5, 2000.

FOR FURTHER INFORMATION CONTACT: Jozlyn Kalchthaler (202–205–3457), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On March 30, 2000, the Department of Commerce notified the Commission of its final determinations. The Commission must make its final determinations in antidumping investigations within 45 days after notification of Commerce's final determinations, or in this case by May 15, 2000. The Commission is revising its schedule to conform with this statutory deadline.

The Commission's new schedule for the investigations is as follows: the Commission will make its final release of information on April 28, 2000; and final party comments are due on May 2, 2000.

For further information concerning these investigations see the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rule.

By order of the Commission.

Issued: April 5, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–9114 Filed 4–11–00; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Proposed Collection; Comment Request

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: National Endowment for the Humanities (NEH) is soliciting public comments on the proposed information collection described below. The proposed information collection will be sent to the Office of Management and Budget (OMB) for review, as required by the provisions of the Paperwork Reduction Act of 1995.

DATES: Comments on this information collection must be submitted on or before June 12, 2000.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW, Room 311, Washington, D.C. 20506, or by email to: *sdaisey@neh.gov.* Telephone: 202–606–8494.

SUPPLEMENTARY INFORMATION: The National Endowment for the Humanities will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This notice is soliciting comments from members of the public and affected agencies. NEH is particularly interested in comments which help the agency to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

This Notice also lists the following information:

Type of Review: Extension of a currently approved collection.

Agency: National Endowment for the Humanities.

Title of Proposal: Generic Clearance Authority for the National Endowment for the Humanities.

OMB Number: 3136–0134.

Affected Public: Applicants to NEH grant programs, reviewers of NEH grant applications, and NEH grantees.

Total Respondents: 20,563.

Frequency of Collection: On occasion.

Total Responses: 20,569.

Average Time per Response: Varied according to type of information collection.

Estimated Total Burden Hours: 91,301 hours.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request. The will also become a matter of public record.

John W. Roberts,

Deputy Chairman.

[FR Doc. 00–9041 Filed 4–11–00; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Company, Zion Nuclear Power Station, Units 1 and 2; Notice of Receipt and Availability for Comment of the Post Shutdown Decommissioning Activities Report and Notice of Public Meeting

The U.S. Nuclear Regulatory Commission (the Commission) is in receipt of and is making available for public comment, the Post-Shutdown Decommissioning Activities Report (PSDAR) for Zion Nuclear Power Station, Units 1 and 2 (ZNPS), located in Zion, Illinois.

ZNPS has been shut down since February 1997. Commonwealth Edison Company (ComEd) certified the permanent shutdown on February 13, 1998, and on March 9, 1998, certified that all fuel had been removed from the reactor vessels. In accordance with 10 CFR 50.82(a)(2), upon docketing of the certifications, the facility operating license no longer authorizes ComEd to operate the reactor or to load fuel into the reactor vessel. By letter dated February 14, 2000, ComEd submitted its PSDAR to the Commission in accordance with the requirements of 10 CFR 50.82.

In the PSDAR, ComEd has identified the planned decommissioning activities and schedule for ZNPS, provided an estimate of expected costs, and discussed the reasons for concluding that the environmental impacts associated with site-specific decommissioning activities are bounded by the appropriate previously issued environmental impact statements. ComEd has chosen to put ZNPS in a safe storage condition until 2013 at which time decontamination and dismantlement activities are scheduled to begin.

The Commission staff will conduct a public meeting at the Zion-Benton High School, 3901 21st Street, Zion, Illinois on April 26, 2000 to provide an opportunity for members of the public to raise issues and concerns related to the ZNPS PSDAR. The meeting is scheduled for 7 p.m.–10 p.m., and will be moderated by Dr. Donald Moon and Mr. Peter Cioni. This meeting is a formal part of the decommissioning process. There will be an opportunity for members of the public to ask questions of the NRC staff and ComEd representatives and to make comments related to the PSDAR. The meeting will be transcribed. For more information, contact Dino C. Scaletti, Project Directorate IV & Decommissioning, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–1104.

The PSDAR is available for public inspection at the Commission's Public Document Room located at the Gelman Building, 2120 L Street, NW, Washington, DC, and is accessible electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

Dated at Rockville, Maryland, this 5th day of April 2000.

For the Nuclear Regulatory Commission.

Dino C. Scaletti,

Senior Project Manager, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–9060 Filed 4–11–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

Southern Nuclear Operating Company and Edwin I. Hatch Nuclear Plant; Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

Southern Nuclear Operating Company (SNC) has submitted an application for renewal of operating licenses DPR–57and NPF–5 for an additional 20 years of operation at the Edwin I. Hatch Nuclear Plant, Units 1 and 2 (Hatch). Hatch is located in Appling County, Georgia. The application for renewal was submitted by letter dated February 29, 2000, pursuant to 10 CFR Part 54. A notice of receipt of application, including the environmental report (ER), was published in the **Federal Register** on March 10, 2000 (65 FR 13061). A notice of acceptance for docketing of the application for renewal of the facility operating license was published in the **Federal Register** on April 3, 2000 (65 FR 17543). The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement in support of the review of the license renewal application and to provide the public an opportunity to participate in the environmental scoping process as defined in 10 CFR 51.29.

In accordance with 10 CFR 54.23 and 10 CFR 51.53(c), SNC submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR Part 51 and is available for public inspection at the Commission's Public Document Room in the Gelman Building, 2120 L Street, N.W., Washington, DC, 20003–1527. In addition, the Appling County Library, located at 242 East Parker Street, Baxley, GA, 31513, has agreed to make the ER available for public inspection.

This notice advises the public that the NRC intends to gather the information necessary to prepare a plant-specific supplement to the Commission's "Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants," (NUREG–1437) in support of the review of the application for renewal of the Hatch operating licenses for an additional 20 years. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. 10 CFR 51.95 requires that the NRC prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with the National Environmental Policy Act (NEPA) and the NRC's regulations found in 10 CFR Part 51.

The NRC will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in this scoping process by members of the public and local, State, and Federal government agencies is encouraged. The scoping process for the supplement to the GEIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of the supplement to the GEIS.

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth.

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant.

d. Identify any environmental assessments and other environmental impact statements (EISs) that are being or will be prepared that are related to but are not part of the scope of the supplement to the GEIS being considered.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of environmental analyses and the Commission's tentative planning and decision-making schedule.

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies.

h. Describe how the supplement to the GEIS will be prepared, including any contractor assistance to be used.

The NRC invites the following entities to participate in the scoping process:

a. The applicant, Southern Nuclear Operating Company.

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.

d. Any affected Indian tribe.

e. Any person who requests or has requested an opportunity to participate in the scoping process.

f. Any person who intends to petition for leave to intervene.

Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Notice of opportunity for a hearing regarding the renewal application was the subject of the aforementioned **Federal Register** notice of acceptance for docketing. Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold a public meeting for the Hatch license renewal supplement to the GEIS. The scoping meeting will be held at the small auditorium at the Southeastern Technical Institute 3001 East First Street, Vidalia, Georgia, on Wednesday, May 10, 2000. There will be two sessions to accommodate interested parties. The first session will convene at 1:30 p.m. and will continue until 4:30 p.m. The second session will convene at 7 p.m. with a repeat of the overview portions of the meeting and will continue until 10:00 p.m. Both meetings will be transcribed and will include (1) an overview by the NRC staff of the National Environmental Policy Act (NEPA) environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; (2) an overview by SNC of the proposed action, Hatch license renewal, and the environmental impacts as outlined in the ER; and (3) the opportunity for interested Government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. Persons may register to attend or present oral comments at the meeting on the NEPA scoping process by contacting Mr. James H. Wilson by telephone at 1 (800) 368–5642, extension 1108, or by Internet to the NRC at hatcheis@nrc.gov no later than May 5, 2000. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time

available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Wilson's attention no later than May 5, 2000, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scoping process for the supplement to the GEIS to Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6 D 59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. To be considered in the scoping process, written comments should be postmarked by June 9, 2000. Electronic comments may be sent by the Internet to the NRC at *hatcheis@nrc.gov*. Electronic submissions should be sent no later than June 9, 2000, to be considered in the scoping process. Comments will be available electronically and accessible through the NRC's Public Electronic Reading Room (PERR) link *http://www.nrc.gov/NRC/ADAMS/index.html* at the NRC Homepage.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection through the PERR link. The staff will then prepare and issue for comment the draft supplement to the GEIS, which will be the subject of separate notices and a separate public meeting. Copies will be available for public inspection at the above-mentioned addresses, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final supplement to the GEIS, which will also be available for public inspection.

Information about the proposed action, the supplement to the GEIS, and the scoping process may be obtained from Mr. Wilson at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 4th day of April 2000.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation

[FR Doc. 00–9058 Filed 4–11–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–1093 (which should be mentioned in all correspondence concerning this draft guide), is titled "Guidance and Examples for Identifying 10 CFR 50.2 Design Bases." This guide is being developed to provide a better understanding of the term "design bases" as defined in 10 CFR 50.2. This better understanding is to help the industry and the NRC staff implement the regulations that use the term design bases. This guide proposes the endorsement of the Nuclear Energy Institute document, Appendix B, "Guidelines and Examples for Identifying 10 CFR 50.2 Design Bases," to NEI 97–04, "Design Bases Program Guidelines."

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by June 15, 2000.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV*. Electronic copies of this draft guide, under Accession Number ML003691412, are available in NRC's Public Electronic Reading Room, which can also be accessed through NRC's web site, <*WWW.NRC.GOV*>. For information about the draft guide and the related documents, contact Mr. S.L. Magruder at (301) 415–3139; e-mail SLM1@NRC.GOV.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by fax to (301)415–2289, or by e-mail to <DISTRIBUTION@NRC.GOV>. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 31st day of March 2000.

For the Nuclear Regulatory Commission.

Charles E. Ader,

Director, Program Management, Policy Development & Analysis Staff Office of Nuclear Regulatory Research.

[FR Doc. 00–9059 Filed 4–11–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24378; File No. 812–11884]

The Manufacturers Life Insurance Company of North America, et al., Notice of Application

April 5, 2000.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an order under Section 6(c) of the Investment Company Act of 1940 (the

"1940 Act" or "Act") granting exemptions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act, and Rule 22c–1 thereunder, to permit the recapture of credits applied to purchase payments made under certain deferred variable annuity contracts.

SUMMARY OF APPLICATION: Applicants seek an order to permit the recovery of certain credits applied to purchase payments made under: (i) Certain deferred variable annuity contracts ("Contracts") that The Manufacturers Life Insurance Company of North America ("Manulife North America") issues through The Manufacturers Life Insurance Company of North America Separate Account A ("the Account"), and (ii) contracts that Manulife North America may issue in the future through the Account, any of its other separate accounts, or any separate accounts that it may establish in the future ("Manulife North America Future Accounts") and that The Manufacturers Life Insurance Company of New York) "Manulife New York") may issue in the future through The Manufacturers Life Insurance Company of New York Separate Account A ("the Variable Account"), any of its other separate accounts or any separate accounts that it may establish in the future) "Manulife New York Future Accounts"; collectively with the Manulife North America Future Accounts, the "Future Accounts"), which contracts are substantially similar in all material respects to the Contracts ("Future Contracts"). Applicants also request that the order extend to any other National Association of Securities Dealers, Inc. ("NASD") member broker-dealer controlling, controlled by, or under common control with the Insurance Companies, whether existing or created in the future, that serves as a distributor or principal underwriter of the Contracts or any Future Contracts offered through the Accounts or any Future Accounts (collectively, "Affiliated Broker-Dealers").

APPLICANTS: The Manufacturers Life Insurance Company of North America, The Manufacturers Life Insurance Company of New York (collectively, "the Insurance Companies"), The Manufacturers Life Insurance Company of North America Separate Account A, The Manufacturers Life Insurance Company of New York Separate Account A (collectively, "the Accounts"), Manufacturers Securities Services, LLC ("MSS"), and any of the Insurance Companies' other separate accounts or separate accounts that the Insurance Companies may establish in the future ("Future Accounts") to support Future Contracts issued by the Insurance Companies (collectively, "Applicants").

FILING DATE: The application was filed on December 14, 1999, and amended on March 29, 2000.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 on April 27, 2000 and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Betsy A. Seel, Esq., Manulife Financial, 73 Tremont Street, Boston, Massachusetts 02108; copy to John W. Blouch, Esq., Jones & Blouch L.L.P., 1025 Thomas Jefferson St., NW, Suite 410 East, Washington, DC 20007–0805.

FOR FURTHER INFORMATION CONTACT: Paul G. Cellupica, Senior Counsel, or Keith Carpenter, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. Manulife North America is a stock life insurance company organized under the laws of Delaware in 1979. Its principal business is offering variable annuity contracts in 48 states (excluding New York), the District of Columbia and Puerto Rico. The ultimate parent of Manulife North America is The Manufacturers Life Insurance Company, a Canadian stock life insurance company ("Manulife"). Manulife Financial Corporation is the holding company of Manulife and its subsidiaries, collectively known as Manulife Financial.

2. Manulife New York is a stock life insurance company organized under the laws of New York in 1992. Its principal business is offering variable annuity contracts in New York. Manulife New York is a wholly-owned subsidiary of Manulife North America.

3. The Account was established in 1984 by Manulife North America as a separate account under Delaware law and is registered with the Commission as a unit investment trust under the Act. The Account funds the variable benefits available under the Contracts and other variable annuity contracts issued by Manulife North America. The offering of the Contracts by Manulife North America is registered under the Securities Act of 1933. That portion of the assets of the Account that is equal to the reserves and other contract liabilities with respect to the Account is not chargeable with liabilities arising out of any other business of Manulife North America. Any income, gains or losses, realized or unrealized, from assets allocated to the Account are, in accordance with the various contracts, credited to or charged against the Account without regard to other income, gains or losses of Manulife North America.

4. The Variable Account was established in 1992 by Manulife New York as a separate account under New York law and is registered with the Commission as a unit investment trust under the Act. The Variable Account funds the variable benefits available under the contracts issued by Manulife New York. That portion of the assets of the Variable Account that is equal to the reserves and other contract liabilities with respect to the Variable Account is not chargeable with liabilities arising out of any other business of Manulife New York. Any income, gains or losses, realized or unrealized, from assets allocated to the Variable Account are, in accordance with the various contracts, credited to or charged against the Variable Account without regard to other income, gains or losses of Manulife New York.

5. MSS is a Delaware limited liability company controlled by Manulife North America and is the principal underwriter of the Contracts. MSS is also the principal underwriter of certain contracts issued by Manulife New York. MSS is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the NASD. Sales of the Contracts are made by registered representatives of broker-dealers authorized by MSS to sell the Contracts. Such registered representatives are also licensed insurance agents of Manulife North America.

6. The Contracts are flexible purchase payment individual deferred combination fixed and variable annuity contracts. They may be issued pursuant to either non-qualified retirement plans or plans qualifying for special income tax treatment such as individual retirement accounts and annuities, pension and profit-sharing plans for corporations and sole proprietorships or partnerships, tax sheltered annuities, and state and local government deferred compensation plans.

7. The minimum initial purchase payment for a Contract is $10,000. The minimum subsequent purchase payment is $30. Manulife North America may limit total Contract purchase payments to $1,000,000.

8. Upon receipt of a purchase payment from a Contract owner, Manulife North America adds a payment enhancement or credit to the owner's Contract (the "Credit"). Manulife North America funds Credits from its general account assets and allocates Credits among investment options in the same proportion as the applicable purchase payment. The Credit depends upon the cumulative amount of purchase payments and is payable as a percentage of specific purchase payments as set forth in the chart below. A higher Credit percentage may be applied to an initial purchase payment where the Contract owner has executed a letter of intent to make total purchase payments within 13 months of the Contract date sufficient to achieve one of the higher breakpoints shown below ("Letter of Intent").

[In percent]

Cumulative purchase payments	Credit rates		
	Guaranteed rate (contracts issued prior to January 1, 1999)	Promotional rate* (contracts issued on or after January 1, 1999 but prior to June 21, 1999)	Promotional rate* (contracts issued on or after June 21, 1999)
Less than $500,000	3.0	4.0	5.0
$500,000 or more but less than $2,500,000	4.0	5.0	5.5
$2,500,000 or more	5.0	6.0	6.0

*Promotional Credit rates are being offered for initial and subsequent purchase payments with respect to all Contracts issued on or after January 1, 1999, with the higher promotional rates applicable to Contracts issued after June 21, 1999. The promotional Credits may be terminated at any time and, if terminated, will not be applied to initial or subsequent purchase payments made after the date of termination except in the context of a Letter of Intent. The promotional rates applicable to the initial purchase payment under a Letter of Intent will continue in effect for the 13-month Letter of Intent completion period regardless of a termination generally of the promotional rates during such period.

9. Manulife North America recovers certain Credits from a Contract owner under the following circumstances: (i) Any Credit applied if the owner returns the Contract for a refund during the 10-day "free look" period; (ii) any Credits applied within 12 months preceding the date of death that results in payment of a death benefit; and (iii) any "Excess Credits" (defined below) applied to purchase payments made pursuant to a Letter of Intent where total purchase payments received within 13 months from the Contract date do not equal or exceed the applicable breakpoint for the Credits applied. In the event of such recovery, the Contract owner retains any earnings attributable to the Credit or Excess Credit allocated to his or her account value. If there is a decline in the value of accumulation units for an investment to which a Credit or Excess Credit has been allocated, Manulife North America retains the right to recover the original amount of the Credit or Excess Credit. The recovery of Credits or Excess Credits will be effected by canceling accumulation units equal in value to the full amounts to be recovered, the number of such units to be calculated at the accumulation unit value next determined. Amounts recovered will be withdrawn from each investment option in the same proportion that the value of the investment account of each investment option bears to the Contract value.

10. The free look period is the 10-day period during which an owner may return a Contract after it has been delivered. Upon such return, the owner receives a full refund of the Contract value, less any debt and any Credit. No withdrawal charge applies to the refund. The refund amount may be more or less than the owner's purchase payment, unless the applicable state law requires that the full amount of the purchase payment be refunded.

11. The Contract's death benefit provision states that a death benefit will be paid to the Contract owner's specified beneficiary (or a surviving Contract owner, if any) if the Contract owner dies before annuity payments begin. The death benefit during the first nine Contract years will be the greater of: (a) The Contract value less any Credits applied in the 12-month period prior to the date of death, or (b) the excess of (i) the sum of all purchase payments over (ii) the sum of any partial withdrawals. After the ninth Contract year, the death benefit will be the greater of: (a) The Contract value less any Credits applied in the 12-month period prior to the date of death; (b) the excess of (i) the sum of all purchase payments over (ii) the sum of any amounts deducted in connection with partial withdrawals; or (c) the death benefit on the last day of the ninth Contract year, plus the sum of all purchase payments made and any amount deducted in connection with partial withdrawals since then. If there is any debt under the Contract, the death benefit equals the death benefit as described above less such debt.

12. Manulife North America applies a higher Credit percentage to an initial purchase payment where the Contract owner has executed a Letter of Intent to make total purchase payments within 13 months of the Contract date sufficient to achieve such higher Credit percentage. If the total purchase payments received within such 13-month period do not equal or exceed the amount of the breakpoint for such higher Credit percentage, Manulife North America may recover the "Excess Credit," that is, the amount by which the Credit applied to the Contract exceeds the Credit that would have been applied to the actual purchase payments made had the Contract owner not submitted a Letter of Intent. The Contract owner bears the risk that, if the Letter of Intent is not fulfilled, the value of the Contract may be less than it would have been if the owner had not executed a Letter of Intent. If the amount recovered exceeds the Contract value, Manulife North

America will terminate the Contract without value.

13. Contract owners may allocate their purchase payments among a number of sub-accounts of the Account. Each sub-account invests in shares of a corresponding portfolio of Manufacturers Investment Trust (the "Trust"), an open-end management investment company registered under the Act. Manulife North America may, subject to compliance with applicable law, add other sub-accounts, eliminate or combine existing sub-accounts or transfer assets in one sub-account to another sub-account established by Manulife North America or an affiliated company.

14. The Contracts provide for various withdrawal and annuity payout options, as well as transfer privileges among sub-accounts, dollar cost averaging, and other features. The Contracts provide for the following charges: (i) a withdrawal or contingent deferred sales charge ("CDSC") as a percentage of amounts withdrawn attributable to purchase payments that have been in the Contract less than ten complete years, with the applicable percentage charge declining from a maximum of 8.5% in years one and two to 0.0% in year ten and thereafter; (ii) a $40 annual administration fee; (iii) a daily administration fee in an amount equal on an annual basis to 0.30% of the value of each variable investment account, deducted from each sub-account; (iv) a daily mortality and expense risks charge in an amount equal on an annual basis to 1.25% of the value of each variable investment account, deducted from each sub-account; and (v) any applicable state or local premium taxes up to 3.5%, depending on the owner's state of residence or the state in which the Contract was sold. In addition, assets invested in portfolios of the Trust are charged with the annual operating expenses of those portfolios. The CDSC is not applied against Credits or Excess Credits.

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission, pursuant to Section 6(c) of the Act, grant the exemptions requested below with respect to the Contracts, and any Future Contracts funded by the Accounts or Future Accounts, that are issued by the Insurance Companies and underwritten or distributed by MSS or Affiliated Broker-Dealers. Applicants undertake that Future Contracts will be substantially similar in all material respects to the Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants seek exemption pursuant to Section 6(c) from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extent deemed necessary to permit Manulife North America to issue Contracts and Future Contracts, and Manulife New York to issue Future Contracts, that provide for the issuance of Credits upon the receipt of purchase payments and the subsequent recovery of: (i) Any Credit applied if an owner returns a Contract or a Future Contract for a refund during the free look period; (ii) any Credits applied within 12 months preceding the date of death that results in payment of a death benefit; and (iii) any Excess Credits applied to purchase payments made pursuant to a Letter of Intent where total purchase payments received within 13 months from the Contract or Future Contract date do not equal or exceed the amount of the applicable breakpoint for the Credit applied.

3. Applicants represent that it is not administratively feasible to track asset-based charges against Credits in the Accounts after the Credits have been applied. Accordingly, the asset-based charges applicable to the Accounts will be assessed against the entire amounts held in the Accounts, including Credits, during the free look period, the 12-month recovery periods with respect to death benefits, and the 13-month period for fulfillment of a Letter of Intent. As a result, during such period, the aggregate asset-based charges assessed against an owner's annuity account value will be higher than they would have been if the owner's annuity account value did not include any Credits.

4. Subsection (i) of Section 27 of the Act provides that Section 7 does not apply to any registered separate account variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless such contract is a redeemable security. Section 2(a)(32) defines a "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his or her proportionate share of the issuer's current net assets, or the cash equivalent thereof.

5. Applicants submit that the recovery of Credits and Excess Credits in the circumstances set forth in the Application do not deprive an owner of his or her proportionate share of the issuer's current net assets. Applicants state that an owner's interest in the Credit allocated to his or her annuity account value upon receipt of an initial purchase payment is not vested until the applicable free look period has expired without return of the Contract. Similarly, Applicants state that an owner's interest in Credits allocated to his or her annuity account within 12 months preceding the date of death resulting in payment of a death benefit, or in the Excess Credit allocated to such account within 13 months preceding the fulfillment of a Letter of Intent, also is not vested. Until the right to recovery has expired and any Credit or Excess Credit has vested, Applicants submit that Manulife North America retains the right and interest therein. Thus, Applicants argue that when Manulife North America recovers any Credit or Excess Credit, it is merely retrieving its own assets. The owner is not deprived of a proportionate share of the Account's assets because the owner's interest in such Credit or Excess Credit has not vested. Moreover, according to Applicants, Manulife North America does not recover any earnings attributable to Credits or Excess Credits.

6. Applicants further submit that permitting an owner to retain a Credit upon the exercise of the free look return provision, or a Credit allocated within 12 months of the date of death, or an Excess Credit under circumstances of non-fulfillment of a Letter of Credit, would be unfair and would deny the Insurance Companies a reasonable measure of protection against anti-selection. Anti-selection can generally be described as a risk that Contract owners obtain an undue advantage based on elements of fairness to the Insurance Companies and the actuarial and other factors they take into account in designing the Contracts. The risk here is that, rather than spreading purchase payments over a number of years, an owner might seek to manipulate Contract provisions in a manner that

leaves the Insurance Companies little time to recover the cost of the Credit or Excess Credit. For example, permitting an owner to retain a Credit upon the exercise of the free look return would encourage the purchase of Contracts for a quick profit upon return rather than with the intention of making a long-term investment. Similarly, an owner would have an incentive to make a very large purchase payment shortly before death or to execute a Letter of Intent with no intention of fulfilling it in order to obtain Credits or Excess Credits the cost of which the Insurance Companies would be unable to recover. As stated above, the amounts recovered will equal the Credits or Excess Credits provided by the Insurance Companies from general account assets, and any gains attributable thereto will remain a part of the owner's Contract value. For the foregoing reasons, Applicants submit that the provisions for recovery of Credits and Excess Credits under the Contracts do not violate Section 2(a)(32) and 27(i)(2)(A) of the 1940 Act. However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from Sections 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the issuance and subsequent recovery of Credits and Excess Credits under the circumstances described in the Application with respect to Contracts and Future Contracts, without the loss of relief from Section 27 provided by Section 27(i).

7. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by Section 22(a). Rule 22c–1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. The Insurance Companies' recovery of Credits and Excess Credits as]described in the Application might arguably be viewed as involving the redemption of redeemable securities for a price other than one based on the current net asset value of the Accounts.

8. Applicants believe that the recovery of the Credits and Excess Credits does not violate Section 22(c) of the Act or Rule 22c–1. Such recovery does not involve either of the harms that Rule 22c–1 was intended to eliminate or reduce, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices.

9. Applicants submit that the recovery of Credits and Excess Credits does not pose such a threat of dilution. In effecting recoveries, the Insurance Companies will redeem interests in an owner's Contract at a price determined on the basis of the current net asset value of the sub-accounts(s) to which the owner's Contract value is allocated. The amounts recovered will equal the Credits or Excess Credits that the Insurance Companies have paid our of general account assets. The owners will be entitled to retain any investment gains attributable to the Credits or Excess Credits, and the amounts of such gains will be determined on the basis of the current net asset values of the applicable sub-accounts. Under these circumstances, in Applicants' view, the recovery of the Credits or Excess Credits does not involve dilution. Applicants further submit that the second harm that Rule 22c–1 was designed to address, namely speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recovery of Credits or Excess Credits.

10. Applicants contend that, because neither of the harms that Rule 22c–1 was meant to address are found in the recovery of Credits or Excess Credits, Rule 22c–1 and Section 22(c) should not be construed as applicable thereto. However, to avoid any uncertainly in this regard, Applicants request an exemption from the provisions of Section 22(c) and Rule 22c–1 to the extent deemed necessary to permit them to recover Credits and Excess Credits under the Contracts and Future Contracts as described in the Application.

11. Applicants submit that their request for an order that applies to Future Accounts and Future Contracts that are substantially similar in all material respects to the Contracts and underwritten or distributed by MSS or Affiliated Broker-Dealers is appropriate in the public interest. Such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Investors will not receive any benefit or additional protection if Applicants are required repeatedly to seek exemptive relief presenting no issue under the Act that has not already been addressed in the Application. Having Applicants file additional applications would impair Applicants' ability effectively to take advantage of business opportunities as they arise. Applicants undertake that Future Contracts funded by the Accounts or by Future Accounts which seek to rely on the order issued pursuant to this Application will be substantially similar in all material respects to the Contracts.

Conclusion

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provision of the Act, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 00–9037 Filed 4–11–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42621; File No. SR–DTC–00–6]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Revising the By-Laws

April 5, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 31, 2000, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been primarily prepared by DTC. The Commission is publishing this notice and order to solicit comments on the proposed rule

[1] 15 U.S.C. 78s(b)(1).

change from interested persons and to grant accelerated approval on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to revise DTC's By-Laws.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to revise DTC's By-Laws in order to take advantage of changes to the New York Banking Law that provide greater flexibility and to conform DTC's By-Laws to the By-Laws of DTC's parent, The Depository Trust and Clearing Corporation.[3] The principal changes will:

- Allow annual stockholder's meetings to take place in April instead of in March;
- Allow annual stockholder's meetings to take place wherever the Board of Directors shall determine instead of just in New York City;
- Provide that once a quorum is reached at a Board meeting, the Board of Directors can continue conducting business at that Board meeting as long as at least one-third of the directors are present;
- Allow DTC's Board of Directors to fix the number of directors from time to time rather than require the stockholders to do so; and
- Delete references to Senior Executive Vice Presidents, Executive Vice Presidents, and Senior Vice Presidents because the title of Managing Director is replacing those titles.

DTC believes that the proposed rule change is consistent with the requirements of Section 17 of the Act[4] and the rules and regulations thereunder applicable to DTC because the proposed rule change make changes to DTC's By-Laws but does not affect participant's rights with respect to fair representation.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(C) of the Act[5] requires that the rules of a clearing agency assure the fair representation of its shareholders or members and participants in the selection of its directors. The Commission believes that DTC's proposal is consistent with this obligation because the proposed changes should not affect DTC's participant's right or ability to be fairly represented in the selection of DTC's directors or in the administration of DTC's affairs.

DTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice of filing because such approval will allow DTC to immediately amend its By-Laws so that DTC's and DTCC's By-Laws are consistent.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provision of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filings also will be available for inspection and copying at DTC's principal office. All submissions should refer to File No. SR–DTC–00–6 and should be submitted by May 3, 2000.

V. Order

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–00–6) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–9079 Filed 4–11–00; 8:45 am]

BILLING CODE 8010–01–M

[2] The Commission had modified parts of these statements.

[3] The changes to DTC's By Laws are attached as Exhibit 2 to DTC's filing, which is available through the Commission's Public Reference Section or through DTC.

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78q–1(b)(3)(C).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42622; File No. SR– NSCC–00–2]

Self-Regulatory Organizations; National Securities Clearing Corporations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Revising the By-Laws

April 5, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] notice is hereby given that on March 31, 200, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been primarily prepared by NSCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval on the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to revise NSCC's By-Laws.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to revise NSCC's By-Laws in order to take advantage of changes to the New York Business Corporation Law that provide greater flexibility and to conform NSCC's By-Laws to the By-Laws of NSCC's parent, The Depository Trust and Clearing Corporation.[3] The principal changes will:

- Allow annual stockholder's meetings to take place in April instead of in March;
- Allow annual stockholder's meetings to take place wherever the Board of Directors shall determine instead of just in New York City;
- Provide that once a quorum is reached at a Board meeting, the Board of Directors can continue conducting business at the Board meeting as long as at least one-third of the directors are present;
- Allow NSCC's Board of Directors to fix the number of directors from time to time rather than require the stockholders to do so; and
- Delete references to Senior Executive Vice Presidents, Executive Vice Presidents, and Senior Vice Presidents because the title of Managing Director is replacing those titles.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17 of the Act[4] and the rules and regulations thereunder applicable to NSCC because the proposed rule change make changes to NSCC's By-Laws but does not affect participants' rights with respect to fair representation.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any other written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(C) of the Act[5] requires that the rules of a clearing agency assure the fair representation of its shareholders or members and participants in the selection of its directors. The Commission believes that NSCC's proposal is consistent with this obligation because the proposed changes should not affect NSCC's participants' right or ability to be fairly represented in the selection of NSCC's directors or in the administration of NSCC's affairs.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice of filing because such approval will allow NSCC to immediately amend its By-laws so that NSCC's and DTCC's By-Laws are consistent.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at NSCC's principal office. All submissions should refer to File No. SR–NSCC–00–2 and should be submitted by May 3, 2000.

V. Order

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–00–2) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 00–9078 Filed 4–11–00; 8:45 am]
BILLING CODE 8010–01–M

[2] The Commission has modified parts of these statements.

[3] The changes to NSCC's By Laws are attached as Exhibit A to NSCC's filing, which is available through the Commission's Public Reference Section or through NSCC.

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78q–1(b)(3)(C).

[6] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice #3267]

Secretary of State's Arms Control and Nonproliferation Advisory Board; Notice of Closed Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app 2 § 10(a)(2)(1996), the Secretary of State announces the following Arms Control and Nonproliferation Advisory Board (ACNAB) meetings:

Date	Location
April 12, 2000	Department of State, Washington, DC.
May 8–9, 2000	Department of State, Washington, DC.
June 5–6, 2000	Department of State, Washington, DC.
July 19–20, 2000	SANDIA, Albuquerque, NM.
August 28–29, 2000	Department of State, Washington, DC.
September 21–22, 2000.	Livermore National Laboratory, Livermore, CA.
October 26–27, 2000	Department of State, Washington, DC.
November 2–3, 2000	Patrick Air Force Base, Cocoa Beach, FL.
December 5–6, 2000	Department of State, Washington, DC.

Pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app 2 § 10(d)(1996), and in accordance with Executive Order 12958, in the interest of national defense and foreign policy, it has been determined that these Board meetings will be closed to the public, since the ACNAB members will be reviewing and discussing classified matters.

The purpose of this Advisory Board is to advise the President and the Secretary of State on scientific, technical, and policy matters affecting arms control. The Board will review specific arms control and nonproliferation issues. Members will be briefed on current U.S. policy and issues regarding negotiations such as the Convention on Conventional Weapons and the Chemical and Biological Weapons Convention.

The Board deeply regrets the short notice which was necessitated by a medical emergency. For more information concerning the meetings, please contact Robert Sherman, Executive Director, Arms Control and Nonproliferation Advisory Board, at (202) 647–1192.

Dated: April 6, 2000.

Robert Sherman,

Executive Director, Secretary of State's Arms Control and Nonproliferation Advisory Board, U.S. Department of State.

[FR Doc. 00–9081 Filed 4–7–00; 3:54 pm]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice 3264]

Advisory Committee on International Communications and Information Policy; Meeting Notice

The Department of State is announcing a special meeting of its Advisory Committee on International Communications and Information Policy. The Committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communication services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country interests.

This special meeting will take the format of a hearing to solicit and receive testimony on the subject of "best practices" used by telecommunications regulators, competition authorities, and legislatures, etc. outside the United States that facilitate competition in the provision of telecommunications services and/or networks.

The purpose of the Advisory Committee soliciting this testimony is to develop a list of these best policies implemented by countries outside the United States that will be helpful to the Department of State and the U.S. Government more broadly in recognizing and promoting pro-competitive telecommunications practices abroad. The intent is that these will provide concrete examples of where and how telecommunications competition has been implemented successfully. These "best practices" may take the form of the adoption of general policies, particular sets of rules, particular pricing regimes, specific enforcement intiatives, a particular form of regulation or specific transition requirement in moving from a monopoly situation to a competitive environment.

The target audience from whom the Advisory Committee would like to solicit this testimony includes the telecommunications and information technology industries, consumer groups, academia, lawyers, and consultants, as well as from the general public.

The Advisory Committee requests that interested parties provide written submissions, not to exceed two pages for each best practice (not counting attachments), that answer the following questions:

Best Practice

1. What is the best practice? (Describe it. What competitive issues does it address? How has the practice been pro-competitive?)
2. Who implemented the practice and how transferable does the submitter think it will be to other countries?
3. What next steps can be taken to improve this practice?
4. Identify your name, organization, and contact information (phone number and e-mail address). Please state whether someone from your organization is willing to attend the meeting scheduled for May 15, 2000 at the Department of State in Washington to briefly present this suggestion (3–5 minute presentation depending upon the number of suggestions submitted).

Written material must be submitted electronically to the Executive Secretary of the Advisory Committee, Timothy C. Finton, at <fintontc@state.gov> no later than 5:00 p.m. (Eastern Daylight Time) on Wednesday, May 3. Additionally, hardcopies of submissions may be mailed to Timothy C. Finton at EB/CIP, Room 4826, U.S. Department of State, 2201 C Street, NW., Washington, DC to be received by May 3.

The meeting will be held on Monday, May 15, 2000, from 9:30 a.m.–11:30 a.m. in Room 1107 of the Main Building of the U.S. Department of State, located at 2201 "C" Street, NW., Washington, DC 20520.

Members of the public may attend these meetings up to the seating capacity of the room. While the meeting is open to the public, admittance to the State Department Building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company, social security number, date of birth, and citizenship to Timothy C. Finton at <fintontc@state.gov>. All attendees for this meeting must use the 23rd Street entrance. One of the following valid ID's will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID. Non-U.S. Government attendees must be escorted by State Department personnel at all times when in the State Department building.

For further information, contact Timothy C. Finton, Executive Secretary of the Committee, at (202) 647–5385 or <fintontc@state.gov>.

Dated: April 4, 2000.

Timothy C. Finton,

Executive Secretary of the Advisory Committee on International Communications and Information Policy, Department of State.

[FR Doc. 00–9102 Filed 4–11–00; 8:45 am]

BILLING CODE 4710–45–U

DEPARTMENT OF STATE

[Public Notice No. 3266]

Advisory Committee on International Economic Policy Open Meeting Notice

The Advisory Committee on International Economic Policy (ACIEP) will meet from 9 a.m. to 1 p.m. on Tuesday, June 13, 2000, in Room 1107, U.S. Department of State, 2201 C Street, NW, Washington, DC 20520. The meeting will be hosted by Committee Chairman R. Michael Gadbaw and Under Secretary of State for Economic, Business, and Agricultural Affairs Alan P. Larson.

The ACIEP serves the U.S. Government in a solely advisory capacity concerning issues and problems in international economic policy. The objective of the ACIEP is to provide expertise and insight on these

issues that are not available within the U.S. Government.

Topics for the June 13 meeting will be:

- Priority Democracies: Colombia, Indonesia, Nigeria, Ukraine.
- U.S.-EU Summit Issues.
- G–8 Summit Preview,
- Updates on:

— Sanctions
— Biotechnology
— China—WTO Accession
— Other Current Foreign Policy Issues

The public may attend these meetings as seating capacity allows. The media is welcome but discussions are off the record. Admittance to the Department of State building is by means of a pre-arranged clearance list. In order to be placed on this list, please provide your name, title, company or other affiliation if appropriate, social security number, date of birth, and citizenship to the ACIEP Executive Secretariat by fax (202) 647–5936 (Attention: Carol Thompson) or email: (thompsonce@state.gov) by June 6th. On the date of the meeting, persons who have registered should come to the 23rd Street entrance. One of the following valid means of identification will be required for admittance: a U.S. driver's license with photo, a passport, or a U.S. Government ID.

For further information about the meeting, contact Carol Thompson, ACIEP Secretariat, U.S. Department of State, Bureau of Economic and Business Affairs, Room 3638, Main State, Washington, DC 20520.

The ACIEP is creating a working group comprised of experts in fields such as science, academia, agriculture, consumer interests, environment, and industry to examine issues regarding new agricultural technologies, including biotechnology. This group will generate recommendations on international aspects of new agricultural technologies and will report back to the full committee. The group will be comprised of approximately 20 people.

Those interested in participating in the working group should send a resume/CV by April 28 to: Agricultural Office, Attention: S. Kenny, Department of State, 2201 C St NW, Room 3526, Washington, DC 20520, Fax: 202–647–1894, Email: kennyse@state.gov, thompsonce@state.gov.

Dated: April 5, 2000.

William J. McGlynn,

Executive Secretary of the Advisory Committee on International Economic Policy, U.S. Department of State.

[FR Doc. 00–9103 Filed 4–11–00; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–7205]

Management of High-Speed Commercial Vessel Traffic

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Coast Guard is holding a public meeting to solicit comments on the impact of high-speed commercial vessels, both ferries and cargo vessels, on the users of the navigable waters of the United States. The growth of fast ferries in some metropolitan areas is increasing because these ferries appear to be viable options to highway commuting. Likewise, the logistical preference for "just in time" supply increases the likelihood that operation of fast cargo vessels will grow. By their speed and potential numbers, high-speed commercial vessels introduce another dimension into the conventional mix of slower commercial vessels, fishing vessels, and recreational vessels.

Some mariners already believe the waterways to be too congested with existing vessels. The Coast Guard hopes to receive input from all stakeholders on this issue so it can determine if there is a need for regulatory and other policy action that will enhance waterways safety for all vessels. It is particularly interested in which options should be dealt with locally, and which have regional or national implications. It will consider all comments received from this meeting and those submitted to the docket to formulate policy on the management of national waterways.

DATES: The public meeting is scheduled for Tuesday, May 2, 2000, from 8:30 a.m. to 4 p.m.; but will conclude before 4 p.m. if we finish early. Comments and related material must reach the Docket Management Facility on or before July 2, 2000.

ADDRESSES: The public meeting will take place at the Executive Inn, Bayside Room, 1755 Embarcadero, Oakland, CA.

To make sure your comments and related materials enter the docket just once, please submit them by just one of the following means:

(1) By mail to the Docket Management Facility [USCG–2000–7205], U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public will become parts of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access the public docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this public meeting, contact Lieutenant Commander George H. Burns III, Office of Waterways Management Safety and Security (G–MWP–2), Coast Guard, telephone 202–267–0550, e-mail *GBurns@comdt.uscg.mil.* We request that those attending the meeting contact LCDR Burns to ensure that adequate space is available. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, phone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage your participation by attending the meeting or by submitting comments and related material on this subject or in response to the questions in this notice. If you submit written comments, please include your name and address, and identify this notice [USCG–2000–7205] and the reason for each comment. You may submit your comments and material by mail, delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Facility at the address under **ADDRESSES**. If you want acknowledgement of receipt of your comments, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received whether submitted in writing to the docket or presented during the meeting.

Background and Purpose

The number of users competing for space on navigable waterways of the U.S. has increased. Commercial vessels have grown in size and number of transits; the inshore fishing fleet continues to be strong; and confidence in our economy has prompted more people to buy recreational craft. Operations of high-speed commercial vessels are also gaining in popularity nationwide. By all accounts, the market in the U.S. for fast ferries is active and growing. San Francisco Bay, Seattle, New York, Boston, and Washington, D.C., all have growing or planned operations of such ferries. The use of these ferries, especially in the nation's coastal metropolitan areas, is likely to be the next attempted solution for traffic gridlock shore-side. Further, fast cargo vessels are under construction for intra-port, coastal, and transoceanic routes.

Detailed Coast Guard policy to address issues of waterway management associated with high-speed commercial vessels is in its formative stages. The Coast Guard wants to work with our partners in industry, our advisory committees, and other stakeholders in the use of waterways to frame our policy. High-speed commercial vessels will pose great challenges, but the Coast Guard views the development and financial success of these vessels as a genuine benefit of new technology. Operation of these vessels may enhance the quality of life for the general public, as well as ensure the continued development of the nation's maritime transportation system.

Obvious issues of safety, waterway capacity, and congestion will need to be properly addressed. In addition to policy made at the national level, we expect the active participation by local Harbor Safety Committees in the achievement of appropriate management controls for risks due to operation of high-speed commercial vessels. Coast Guard field units will work closely with local industry and other waterway users to deal effectively with these vessels. In general, well-trained, -equipped and -crewed vessels, whose operators engage in a participatory partnership with the Coast Guard and other waterway users, may benefit from less governmental supervision. We envision local Harbor Safety Committees as ideal linchpins in the coordination of national and local approaches to managing risks due to operation of these vessels.

Questions

1. What are the most practical, immediate navigational and other operational challenges faced by operators of high-speed commercial vessels? What measures (public, private, local, national) would have the most impact on meeting those challenges?

2. What are the likely impacts of wakes of high-speed commercial vessels?

3. How many high-speed commercial vessels are passenger ferries that need to operate on reliable schedules? How does reduced visibility, such as fog, affect them?

4. Taking account of your vessel's characteristics, what do you, as an operator of a high-speed commercial vessel, believe to be a safe speed relative to stopping-distance in clear or restricted visibility, or during darkness?

5. Has the operation of high-speed commercial vessels improved the competitiveness or the financial well-being of your company?

6. What is your projection for growth in the number of high-speed commercial vessels where your vessel operates?

7. While operating a conventional commercial vessel, have you experienced any navigational problems when encountering high-speed commercial vessels? What problems?

8. What are the most critical issues for recreational boating raised by high-speed commercial vessels? Have you, as a recreational boater, encountered any navigational problems when encountering such vessels?

9. Would you change any Inland Rules of the Road to account for the operation of high-speed commercial vessels? For example, would you change the Rules on steering and sailing or those on lights or shapes? Would a distinctive light or system of lights be helpful? Which of these would be best?

10. Is there a need for special policies or rules on waterway management for high-speed commercial vessels? If so, which should the policies or rules be—local, regional, or national?

11. Does the safe operation of high-speed commercial vessels call for consistency of treatment at the regional or national level? If so, which issues of waterway management in particular call for it?

12. Is there a role for local coordinating bodies (such as Harbor Safety Committees) of the marine transportation system in developing policy or in managing waterways for the operation of high-speed commercial vessels? If so, what role do you envision?

13. What operational measures would enhance the safety of high-speed commercial vessels, while facilitating their use? These measures could entail—

a. Fewer restrictions rather than more;

b. Voluntary or mandatory traffic lanes;

c. Controls based on traffic load at certain periods of the day;

d. Controls based on port-specific traffic conditions or patterns;

e. Slow-down zones for high-speed cargo vessels entering port from sea; or

f. Participation in Vessel Traffic Management.

Information on Services for Individuals with Disabilities

For information on facilities or services for people with disabilities, or to request special assistance at the meeting, contact Lieutenant Commander George H. Burns III, Office of Waterways Management Safety and Security (G-MWP–2), Coast Guard, telephone 202–267–0550, e-mail *GBurns@comdt.uscg.mil* as soon as possible.

Dated: April 7, 2000.

Joseph J. Angelo,

Director of Standard, Marine Safety and Environmental Protection.

[FR Doc. 00–9116 Filed 4–7–00; 4:16 pm]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Prince George's, and Charles Counties, Maryland

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Prince George's and Charles Counties, Maryland.

FOR FURTHER INFORMATION CONTACT: Ms. Pamela S. Stephenson, Environmental Protection, Specialist, Federal Highway Administration, The Rotunda, Suite 220, 711 West 40th Street, Baltimore, Maryland 21211, Telephone: (410) 962–4342, ext. 145.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Maryland State Highway Administration (SHA) and the US Army Corps of Engineers, will prepare a combined Tier I/Tier II Environment Impact Statement (EIS) for the US 301 Transportation Study-Southern Corridor. The study limits encompass a total of 39 miles within both the US 301 corridor, from the Governor Nice Bridge crossing of the Potomac River to the

301/MD5 interchange at T.B., and the MD 5 corridor from T.B. to the Capital Beltway (I–95/I–495). Within the Southern Corridor limits, there are four definable areas: the MD 5 corridor, LaPlata corridors, US 301 south of LaPlata to the Governor Nice Bridge and US 301 through the Waldorf area.

The EIS for this study will combine two tiered levels of documentation. Tier I documentation will be completed for the MD 5 and the LaPlata corridors, as well as for US 301 south of LaPlata to the Governor Nice Bridge. Tier II (or traditional NEPA studies) documentation will be completed for US 301 through the Waldorf area, due to the more immediate need for improvements in this area.

Existing and projected growth population and development is resulting in severe traffic congestion throughout southern Maryland, especially within Waldorf area. The roadways within and adjacent to the Waldorf area will soon reach capacity during peak travel periods and will be unable to accommodate increasing traffic volumes. This study will evaluate improvements, which will address safety problems and accommodate existing and projected travel demand. Alternatives for the Waldorf area will include the No-Build, Transportation Systems Management (TSM)/ Transportation Demand Management (TDM) measures, Existing road upgrades and Bypass Alternative(s) east and west of existing US 301. The goal is to receive Location Approval on one or a combination of alternative for this area.

For the remaining corridors (MD 5, LaPlata, and south of LaPlata to the Governor Nice Bridge), the current level of traffic congestion is less acute. SHA has identified these corridors, where development is likely to occur and where preservation of right-of-way (within the specific corridor) may be needed to maintain options for future transportation improvements. The goal is to receive approval on a selected corridor(s), which will permit the use of federal funds for the purpose of hardship and protective right-of-way acquisition. The goal is to receive approval on a selected corridor(s), which will permit the use of federal funds for the purpose of hardship and protective right-of-way acquisition. This would ensure that land for implementing transportation options would still be available in this corridor(s) when the anticipated need for future improvements becomes more apparent.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens and citizen groups who have previously expressed or are known to have an interest in this proposal. A Public Hearing is tentively scheduled for the Fall of 2000. The draft EIS will be available for public and agency review and comment prior to a Public Hearing. Public notice will be given of the availability of the Draft EIS for review and of the time and place of this hearing.

Project scoping activities include formation of the US 301 Task Force, with representatives of Federal, State and Local governments, elected officials, local area civic, environmental and business leaders, and land owners. A series of Task Force environmental and business leaders, and land owners. A series of Task Force Informational Workshops and Public Hearings were held on June 17, June 19, and July 9, 1996, in Bowie, Waldorf and Upper Marlboro, respectively. The meeting reviewed the history of the US 301 Task Force and its goals and also presented its preliminary recommendations consisting of the integration of new local land use policies, transportation demand strategies and transit and highway options. Since that time, a series of Public Workshops were held on September 14, September 15, and September 23, 1999 to share with the public conceptual improvements for the Waldorf area and identify the corridors for future improvement for the LaPlata area and MD 5 corridor.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestion are invited from all interested parties. Comments or questions concerning these proposed actions and EIS should be directed to FHWA at the address provide above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulation implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: March 22, 2000.

Pamela S. Stephenson,

Environmental Protection Specialist, Baltimore, Maryland.

[FR Doc. 00–9026 Filed 4–11–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–1999–5381]

Implementation Information for Ferry Boat Discretionary Program Funds

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; issuance of final selection criteria for FY 2001 and beyond.

SUMMARY: This document provides implementation information on the Ferry Boat Discretionary (FBD) program for fiscal year 2001 and beyond. A memorandum with this information will be issued each year of the program to division offices soliciting candidate projects from State transportation agencies for FBD program funding.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Wasley, Office of Program Administration, (202) 366–4658; or Mr. Harold Aikens, Office of the Chief Counsel, (202) 366–0764; Federal Highway Administration, 400 Seventh Street SW., Washington D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. Dockets, Room PL–401, by using the universal resource locator (URL) *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the **Federal Register**'s home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara*.

The solicitation memorandum will be available each year of the program on the FHWA web site at: *http://www.fhwa.dot.gov/discretionary*.

Background

On April 26, 1999, at 64 FR 20350, the FHWA solicited comments on the selection criteria to be used by the FHWA for evaluating candidate projects for the FBD program for FY 2001 and beyond. These are the same general selection criteria that the FHWA has

used for several years to evaluate candidates for this discretionary program.

Discussion of Comments

No comments or views were received in response to this invitation to submit written comments to the selection criteria to be used by the FHWA in docket number FHWA–1999–5381 by June 25, 1999.

The FHWA, therefore, will continue to use these same basic selection criteria for FY 2001 and beyond for the FBD discretionary program. A selection criterion may be added for an individual year that reflects a special emphasis area, but for the most part the selection criteria will remained unchanged.

Authority: 23 U.S.C. 129(c) and 315; and 49 CFR 1.48.

Issued on: April 3, 2000.

Kenneth R. Wykle,

Federal Highway Administrator.

The text of the FHWA implementation information to accompany solicitation memoranda for FBD projects for FY 2001 and beyond follows:

Ferry Boat Discretionary Program: Program Information

Background

The Ferry Boat Discretionary (FBD) Program, which provides a special funding category for the construction of ferry boats and ferry terminal facilities, was created by Section 1064 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Public Law 102–240). Section 1207 of the Transportation Equity Act for the 21st Century (TEA–21) (Public Law 105–178) reauthorized the FBD funding category through FY 2003.

Statutory References

23 U.S.C. 129(c); sec 1064, Pub. L. 102–240, 105 Stat. 1914 (1991)(ISTEA); sec. 1207, Pub. L. 105–178, 112 Stat. 107 (1998) (TEA–21).

FUNDING

[In millions of dollars]

Fiscal Year	1998	1999	2000	2001	2002	2003
Competitive	30	18	18	18	18	18
NHS Set-aside	20	20	20	20	20	20

The TEA–21 provides $30 million in fiscal year 1998 and $38 million in each of fiscal years 1999 through 2003 for the construction of ferry boats and ferry terminals in accordance with 23 U.S.C. 129(c). The TEA–21 requires that $20 million from each of fiscal years 1999 through 2003 be set-aside for marine highway systems that are part of the National Highway System for use by the States of Alaska ($10 million), New Jersey ($5 million), and Washington ($5 million). As a result, for each of fiscal years 1999 through 2003, the amount of FBD funding available for open competition among all States is $18 million with a non-competitive amount of $20 million set-aside for Alaska, New Jersey, and Washington.

The $18 million available for open competition is also impacted by any obligation limitation imposed on the Federal-aid highway program under the provisions of TEA–21 section 1102(f), Redistribution of Certain Authorized Funds. Under this provision, any funds authorized for the program for the fiscal year, which are not available for obligation due to the imposition of an obligation limitation, are not allocated for the FBD program, but are redistributed to the States by formula as STP funds.

After these reductions, it is expected that approximately $14 million will be available for candidate projects each of fiscal years 2000 through 2003. This available funding may also increase or decrease each year depending on the obligation limitation calculation and on the estimated receipts to the Highway Trust Fund.

Federal Share

In accordance with section 1064(b) of the ISTEA, the Federal share of the costs for any project eligible under this program is 80 percent.

Obligation Limitation

The FBD discretionary funds are subject to obligation limitation; however, 100 percent obligation authority is normally provided with the allocation of funds for the selected projects. The obligation limitation reduces the available funding for the program under the provisions of the TEA–21 section 1102(f) discussed above.

For FY 1999, obligation of the FBD funds was controlled by a special requirement included in the FY 1999 Omnibus Appropriations Act (Public Law 105–277). The Act limited the obligation of FBD funds during FY 1999 to $38 million. Consequently, there was not enough obligation authority to cover both fiscal years 1998 and 1999 funding allocated to the States. Therefore, distribution of the FY 1999 obligation authority was on an "as needed" basis during FY 1999.

For FY 2000, a proportional share of obligation authority accompanied allocated funds.

Eligibility

As specified in section 1064(b) of the ISTEA, this program is for the construction of ferry boats and ferry terminal facilities in accordance with 23 U.S.C. 129. Proposals should meet the basic eligibility criteria in 23 U.S.C. 129(c).

Competitive FBD funds are available for improvements to ferry boats or ferry boat terminals where:

- The ferry facility is providing a link on a public road (other than Interstate) or the ferry facility is providing passenger only ferry service.
- The ferry and/or ferry terminal to be constructed or improved is either publicly owned, publicly operated, or a public authority has majority ownership interest where it is demonstrated that the ferry operation provides substantial public benefits.
- The ferry does not operate in international water except for Hawaii, Puerto Rico, Alaska, and for ferries between a State and Canada.

The set-aside discretionary funds for marine highway systems for use by the States of Alaska, New Jersey, and Washington are available for the construction or refurbishing of ferry boats and ferry terminals and their approaches that are part of the NHS. In general, a proposed project must meet the eligibility criteria set forth in 23 U.S.C. 129(b) and (c), with the following requirements specifically applying to location of the projects and the type of activity eligible for funding:

- For a ferry facility that provides a direct link on the NHS, both the ferry boat (must transport four wheel vehicles) and the ferry terminals,

including approaches, are eligible for funding.

• For a ferry facility that lies at the end of an approved connector to the NHS, only the ferry terminal (can serve either vehicle or passengers) and approach is eligible for funding. The ferry boats serving the ferry terminal are not eligible for funding.

Selection Criteria

Several criteria are used to evaluate the submitted candidates for selection for the competitive portion of the FBD program. Although there are no statutory criteria and FHWA has not established regulatory criteria for selection of FBD projects, the following criteria are considered in the evaluation of candidates for this program:

• Expeditious completion of project—Consideration is given to requests that will expedite the completion of a viable project. This is a project's ability to expeditiously complete usable facilities within the limited funding amounts available.

• Leveraging of private or other public funding—Because the annual requests for funding far exceed the available FBD funds, commitment of other funding sources to complement the requested FBD funding is an important factor.

• Amount of FBD funding—The requested amount of funding is a consideration. Realizing the historically high demand of funding under this program, modest sized requests for funding (generally less than $2 million) to allow more States to receive funding under this program are given added consideration.

• State priorities—For States submitting more than one project, consideration is given to the individual States priorities.

• National geographic distribution of funding within the FBD program—Consideration is given to selecting projects over time among all the States competing for funding.

Because the concept of equity was important in the development of TEA–21, project selection will also consider national geographic distribution among all of the discretionary programs as well as congressional direction or guidance provided on specific projects or programs.

Solicitation Procedure

Each year, usually around March, a memorandum is sent from the FHWA Headquarters Office of Program Administration to the FHWA division offices requesting the submission of candidate projects for the following fiscal year's funding. The FHWA division offices provide this solicitation request to the State transportation departments, who are the only agencies that can submit candidates. The State transportation departments coordinate with local agencies within their respective States in order to develop viable candidate projects. The State transportation departments submit the candidate applications to the FHWA division offices, who send them in to the Office of Program Administration. Candidate projects are due in FHWA Headquarters on a specific date in July (usually around the middle of July).

The specific timetable for the solicitation process for any particular fiscal year is provided in the solicitation memorandum.

The candidate project applications are reviewed and evaluated by the Office of Program Administration and an allocation plan is prepared for presentation of the candidate projects to the Office of the Federal Highway Administrator, where the final selection of projects for funding is made. The announcement of the selected projects and the allocation of funds is usually accomplished by the middle of November.

Set-aside FBD funds are allocated directly to the three named States with no solicitation.

Submission Requirements

Only State transportation departments may submit applications for funding under this program. Although there is not a prescribed format for a project submission, the following information must be included to properly evaluate the candidate projects. The applications must be submitted electronically in either Word Perfect or MS Word format. With the exception of the project area map, all of the following must be included to consider the application complete. Those applications that do not include these items are considered incomplete and will be returned.

1. State(s) in which the project is located. If more than one State, indicate which State is the applicant.

2. County(ies) in which the project is located.

3. U.S. Congressional District No.(s) in which the project is located.

4. U.S. Congressional Member's Name(s) for each District.

5. Facility or Project Name commonly used to describe the facility or project.

6. Service Termini and Ports—Describe the ferry boat operation including the name of water crossing. A statement must be included for ferry boat operations carrying motorized vehicles, describing the link in the roadway system. Clearly identify any "passenger only" ferry service, and explain how the ferry service is linked to public transportation or is part of a transit system. Also, for each project indicate if the project is part of an existing link or service, or if it is new service. Also identify if the ferry operates in domestic, foreign, or international waters.

7. Ownership/Operation—Specify which of the following apply (a, b, or c):

(a) The boat or terminal is publicly-owned. The term "publicly-owned" means that the title for the boat or terminal must be vested in a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality.

(b) The boat or terminal is publicly-operated. The term "publicly-operated" means that a public entity operates the boat or terminal.

(c) The boat or terminal is "majority publicly-owned" (as opposed to public owned). This means that more than 50 percent of the ownership is vested in a public entity. If so, does it provide substantial public benefits? Documentation of substantial public benefits, concurred in by the division office, is required for ferry facilities that are in majority public ownership.

8. Current and Future Traffic—Provide a general description of the type and nature of traffic, both current and future (projected) average daily traffic and/or average daily passenger volumes, on the ferry route if available. If the ferry links public roads or is a link on a highway route, provide the functional classification of the public road or route that the project is located. The general description could include information on year round or seasonal service; commuter, recreational or visitor ridership; traffic generators and attractions.

9. Proposed Work—Describe the project work that is to be completed under this particular request, and whether this is a complete project or part of a larger project.

10. Amount of Federal FBD Discretionary Funds Requested—Indicate the total cost of the proposed work along with the amount of FBD funds being requested for FY 2001 (the maximum Federal share for this program is 80 percent). The State may request partial funding (less than the 80 percent maximum), committing a larger portion of State or local funds. If the State is willing to accept partial funding of the request, that should be indicated. Partial funding along with the commitment of other funds (see item 11 below) will be used to determine leveraging of funds, and allow funding

to more projects, since the requests far exceed the funding available.

11. Commitment of Other Funds—Indicate the amounts and sources of any private or other public funding being provided as part of this project. Only indicate those amounts of funding that are firm and documented commitments from the entity controlling the funds.

12. Previous FBD Discretionary Funding—Indicate the amount and Federal fiscal year of any previous FBD discretionary funds received for this project, terminals or ferry boats operating on this route or transit system. Only include previous FBD discretionary funds, not other funding sources.

13. Future Funding Needs—Indicate the estimated future funding needs for the ferry boat operation, including vessels and terminals, if known. Also, provide estimated time schedules for implementing future projects.

14. Project Purpose and Benefits—Each State's request for ferry boat discretionary funds must describe the project benefits and purpose. This information should not be lengthy, it should be in short and concise (three to five) statements. Layman's language should be used to the extent possible so as to be understood by a reader that is not closely familiar with the highway and ferry boat operations. This information will also be used for briefings and bulletins.

15. Project Area Map—A readable location/vicinity map showing the ferry route and terminal connections is helpful if available. The map may be submitted electronically along with the candidate application or separately as a hard copy (black and white, letter or legal paper size).

State Transportation Agency Responsibilities

1. Coordinate with State and local agencies within the State to develop viable candidate projects.

2. Ensure that the applications for candidate projects meet the submission requirements outlined above.

3. Establish priorities. If the State submits more than one candidate project, we request that the State rank the projects according to the State's overall needs and priorities.

4. Submit the applications to the local FHWA division office, in advance of the established FHWA Headquarters deadline (contained in the FHWA Headquarter's solicitation memorandum). The Division's request for candidate projects should allow enough time to meet the responsibilities outlined below and any additional coordination as mutually agreed upon.

FHWA Division Office Responsibilities

1. Provide the solicitation memorandum and this program information to the State transportation agency.

2. Request candidate projects be submitted by the State to the FHWA division office to meet submission deadline established in the solicitation memorandum.

3. Review all candidate applications submitted by the State prior to sending them to FHWA Headquarters to ensure that they are eligible, complete and meet the submission requirements.

4. Submit the candidate applications to FHWA Headquarters by the established submission deadline.

FHWA Headquarters Program Office Responsibilities

1. Solicit candidates from the States through annual solicitation memorandum.

2. Review candidate project submissions and compile program and project information for preparation of allocation plan.

3. Submit allocation plan to the Office of the Federal Highway Administrator for use in making final project selections.

4. Allocate funds for the selected projects.

FHWA Headquarters Program Office Contact

Mr. Jack Wasley, Highway Engineer, Office of Program Administration, Phone: (202) 366–4658, Fax: (202) 366–3988, E-mail: *jack.wasley@fhwa.dot.gov.*

[FR Doc. 00–9080 Filed 4–11–00; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2000–7204]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD) intentions to request approval for three years of an existing information collection entitled "Request for Transfer of Ownership, Registry, and Flag, or Charter, Lease, or Mortgage of U.S. Citizen Owned Documented Vessels,"

DATES: Comments should be submitted on or before June 12, 2000.

FOR FURTHER INFORMATION CONTACT: Raymond R. Barberesi, Director, Office of Sealift Support, MAR–630, Maritime Administration, 400 Seventh Street, SW, Room 7307, Washington, D.C. 20590, telephone number—202–366–2323 or 202–493–2180. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: "Request for Transfer of Ownership, Registry, and Flag, or Charter, Lease, or Mortgage of U.S. Citizen Owned Documented Vessels".

Type of Request: Approval of an existing information collection.

OMB Control Number: 2133–0006.

Form Number: MA–29, MA–29A, MA–29B (Note: MA–29A is only used in cases of a National Emergency.)

Expiration Date of Approval: Three years from the date of approval.

Summary of Collection of Information: In accordance with Section 9 of the Shipping Act, 1916, as amended, the Maritime Administration is required to approve the sale, transfer, charter, lease, or mortgage of U.S. documented vessels to non-citizens, or the transfer of such vessels to foreign registry and flag, or the transfer of foreign flag vessels by their owners as required by various contractual requirements.

Need and Use of the Information: This information collection requires a vessel owner to submit an application for a prospective foreign transfer of a U.S.-flag vessel. This information will assist in the determination of whether the vessel proposed for transfer will initially require retention under the U.S.-flag statutory regulation. In such instances, the application is reviewed and cleared for approval by specialists within MARAD and the Department of Defense, U.S. TRANSCOM.

Description of Respondents: Respondents are vessel owners who have applied for foreign transfer of U.S.-flag vessels.

Annual Responses: 100 responses.

Annual Burden: 200 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, D.C. 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this

burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., EDT. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

By Order of the Maritime Administrator.

Dated: April 6, 2000.

Joel C. Richard.

Secretary.

[FR Doc. 00–9042 Filed 4–11–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33822]

Tuscola and Saginaw Bay Railway Company—Acquisition and Operation Exemption—Grand Trunk Western Railroad Incorporated, and Central Michigan Railway Company

Tuscola and Saginaw Bay Railway Company (TSBY), a Class III common carrier, has filed a verified notice of exemption under 49 CFR 1150.41 for its acquisition of a Grand Trunk Western Railroad Incorporated (GTW) rail line extending from milepost 105.0 to milepost 109.46, in Owosso, MI, including a short connecting track extending from milepost 63.9 (approximately milepost 107.5 on the first segment) to milepost 64.4, in Owosso, a total distance of approximately 4.96 miles (Owosso Trackage).[1] Additionally, as part of the exemption, TSBY's seeks to continue operations on the Durand-Owosso Line as follows: (1) Over GTW's line between milepost 94.0 and milepost 97.5, in Durand; (2) over Central Michigan Railway Company's (CMGN) main line between milepost 97.5, in Durand, and milepost 105, in Owosso; and (3) within CMGN's San Yard, between milepost 105 and milepost 106, in Owosso. The total distance of TSBY's operations on the Durand-Owosso Line is approximately 12 miles.[2]

Apparently unaware until recently that further regulatory authorization was needed, TSBY did not file its verified notice of exemption with the Board until March 30, 2000. Thus, the effective date of the exemption is April 6, 2000 (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33822, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Kevin M. Sheys, Esq., Oppenheimer Wolff Donnelly & Bayh LLP, 1350 Eye Street, N.W., Suite 200, Washington, DC 20005–3324.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: April 4, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary,

[FR Doc. 00–8946 Filed 4–11–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Treasury Inspector General for Tax Administration

Proposed Collection: Confirmation Letter 001 (Levy)

AGENCY: Treasury Inspector General for Tax Administration (TIGTA), Office of Audit.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)). Currently TIGTA is soliciting comments concerning Confirmation Letter 001 (Levy).

DATES: Written comments should be received by June 12, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Roger K. Layman, Treasury Inspector General for Tax Administration, Room 6109, 1111 Constitution Avenue, NW, Washington, DC. 20224, Fax (202) 622–5089, Internet *Roger.Layman@tigta.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Roger K. Layman, (202) 622–5969, Treasury Inspector General for Tax Administration, Room 6109, 1111 Constitution Avenue, NW, Washington DC. 20224, Fax (202) 622–5089, Internet *Roger.Layman@tigta.treas.gov.*

SUPPLEMENTARY INFORMATION:

Title: Confirmation Letter 001 (Levy).

OMB Number: 1591–0001.

Abstract: Using a confirmation letter, TIGTA will request information from taxpayers to determine the accuracy of IRS records. Confirmation letters will be sent to taxpayers to verify that they were notified of levy action as required by law. Use of the confirmation letters satisfies General Accounting Office auditing standards for obtaining sufficient, competent, and relevant evidence to afford a reasonable basis for the auditors' judgements and conclusions.

Current Action: There are no changes being made to Confirmation Letter 001, Levy at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and businesses.

Estimated Number of Respondents: 120.

Estimated Time for Response: 15 minutes.

Estimated Total Annual Burden Hours: 30.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have a practical utility; (b) the accuracy of the agency's estimate of the burden of the collection

[1] TSBY states that it acquired the Owosso Trackage pursuant to a Real Estate Purchase Contract dated October 28, 1997, and that the acquisition was completed on January 5, 1998. TSBY further states that it has been operating the Owosso Trackage in conjunction with other TSBY lines radiating out of Owosso since 1982 and that it will continue to operate the Owosso Trackage.

[2] TSBY represents that it has been conducting only overhead operations on the Durand-Owosso Line pursuant to an Operating Agreement with the Michigan Department of Transportation dated September 19, 1985, as amended, but that its operation of the Durand-Owosso Line also dates to 1982. In 1995, TSBY attempted to obtain a modified certificate of public convenience and necessity pursuant to the provisions of 49 CFR 1150, Subpart C, to operate the Owosso Trackage and the Durand-Owosso Line. *See Tuscola and Saginaw Bay Railway Company, Inc., Modified Certificate,* Finance Docket No. 32743 (ICC served Oct. 12, 1995).

of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The following paragraphs apply to all of the collections of information covered by this notice.

The agency may not conduct or sponsor, and a person is not required to response to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law.

Generally, tax returns and tax return information are confidential as required by 26 U.S.C. 6103.

Dated: February 9, 2000.

Margaret E. Begg,

Director, Office of Management and Policy, Treasury Inspector General for Tax Administration, Office of Audit.

[FR Doc. 00–9027 Filed 4–11–00; 8:45 am]

BILLING CODE 4810–25–U

DEPARTMENT OF THE TREASURY

Treasury Inspector General for Tax Administration

Proposed Collection: Confirmation Letter 002 (Lien)

AGENCY: Treasury Inspector General for Tax Administration (TIGTA), Office of Audit.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c) (2) (A)). Currently TIGTA is soliciting comments concerning Confirmation Letter 002 (Lien).

DATES: Written comments should be received by June 12, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Roger K. Layman, Treasury Inspector General for Tax Administration, Room 6109, 1111 Constitution Avenue, NW, Washington DC. 20224, Fax (202) 622–5089, Internet *Roger.Layman@tigta.treas.gov*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Roger K. Layman, (202) 622–5969, Treasury Inspector General for Tax Administration, Room 6109, 1111 Constitution Avenue, NW, Washington DC. 20224, Fax (202) 622–5089, Internet *Roger.Layman@tigta.treas.gov*.

SUPPLEMENTARY INFORMATION:

Title: Confirmation Letter 002 (Lien).

OMB Number: 1591–0002.

Abstract: Using a confirmation letter, TIGTA will request information from taxpayers to determine the accuracy of IRS records. Confirmation letters will be sent to taxpayers to verify that they were notified of lien action as required by law. Use of the confirmation letters satisfies General Accounting Office auditing standards for obtaining sufficient, competent, and relevant evidence to afford a reasonable basis for the auditors' judgements and conclusions.

Current Action: There are no changes being made to Confirmation Letter 002, Lien at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and businesses.

Estimated Number of Respondents: 120.

Estimated Time for Response: 15 minutes.

Estimated Total Annual Burden Hours: 30.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have a practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The following paragraphs apply to all of the collections of information covered by this notice.

The agency may not conduct or sponsor, and a person is not required to response to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law.

Generally, tax returns and tax return information are confidential as required by 26 U.S.C. 6103.

Dated: February 9, 2000.

Margaret E. Begg,

Director, Office of Management and Policy, Treasury Inspector General for Tax Administration, Office of Audit.

[FR Doc. 00–9028 Filed 4–11–00; 8:45 am]

BILLING CODE 4810–25–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 7018 and 7018–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 7018, Employer's Order Blank for Forms, and Form 7018–A, Employer's Order Blank for 2000 Forms.

DATES: Written comments should be received on or before June 12, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 7018, Employer's Order Blank for Forms, and Form 7018-A, Employer's Order Blank for 2000 Forms.

OMB Number: 1545–1059.

Form Number: Forms 7018 and 7018–A.

Abstract: Forms 7018 and 7018–A allow taxpayers who must file information returns a systematic way to order information tax forms materials.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 1,668,000.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 83,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 5, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–9005 Filed 4–11–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8811

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8811, Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations.

DATES: Written comments should be received on or before June 12, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations.

OMB Number: 1545–1099.

Form Number: 8811.

Abstract: Current regulations require real estate mortgage investment conduits (REMICs) to provide Forms 1099 to true holders of interests in these investment vehicles. Because of the complex computations required at each level and the potential number of nominees, the ultimate investor may not receive a Form 1099 and other information necessary to prepare their tax return in a timely fashion. Form 8811 collects information for publishing by the IRS so that brokers can contact REMICs to request the financial information and timely issue Forms 1099 to holders.

Current Actions: There are no changes being made to Form 8811 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 1,000.

Estimated Time Per Response: 5 hr., 7 min.

Estimated Total Annual Burden Hours: 5,110.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 3, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–9006 Filed 4–11–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5754

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5754, Statement by Person(s) Receiving Gambling Winnings.

DATES: Written comments should be received on or before June 12, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Statement by Person(s) Receiving Gambling Winnings.

OMB Number: 1545–0239.

Form Number: 5754.

Abstract: Section 3402(q)(6) of the Internal Revenue Code requires that a statement be given to the payer of certain gambling winnings by the person receiving the winnings when that person is not the winner or is one of a group of winners. It enables the payer to prepare Form W–2G, Certain Gambling Winnings, for each winner to show the winnings taxable to each and the amount withheld. IRS uses the information on Form W–2G to ensure that recipients are properly reporting their income.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, and not-for-profit institutions.

Estimated Number of Responses: 306,000.

Estimated Time Per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 61,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 5, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–9007 Filed 4–11–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–63–88; IA–140–86; REG–209785–95]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing regulations, EE–63–88 (Final and temporary regulations) Taxation of Fringe Benefits and Exclusions From Gross Income for Certain Fringe Benefits; *IA–140–86* (Temporary) Fringe Benefits; Listed Property; and REG–209785–95 (Final) Substantiation of Business Expenses (§§ 1.61–2, 1.132–5, and 1.274–5).

DATES: Written comments should be received on or before June 12, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title: EE–63–88* (Final and temporary regulations) Taxation of Fringe Benefits and Exclusions From Gross Income for Certain Fringe Benefits; *IA–140–86* (Temporary) Fringe Benefits; Listed Property; and *REG–209785–95* (Final) Substantiation of Business Expenses.

OMB Number: 1545–0771.

Regulation Project Number: EE–63–88; IA–140–86; and REG-209785–95.

Abstract: EE–63–88—This regulation provides guidance on the tax treatment of taxable and nontaxable fringe benefits and general and specific rules for the valuation of taxable fringe benefits in accordance with Code sections 61 and 132. The regulation also provides guidance on exclusions from gross income for certain fringe benefits. *IA–140–86*—This regulation provides guidance relating to the requirement that any deduction or credit with respect to business travel, entertainment, and gift expenses be substantiated with adequate records in accordance with Code section 274(d). The regulation also provides guidance on the taxation of fringe benefits and clarifies the types of records that are generally necessary to substantiate any deduction or credit for listed property. *REG–209785–95*—This regulation provides that taxpayers who deduct, or reimburse employees for, business expenses for travel, entertainment, gifts, or listed property are required to maintain certain records, including receipts, for expenses of $75 or more.

Current Actions: There are no changes to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for profits institutions, farms and Federal, state, local or tribal governments.

Estimated Number of Respondents: 28,582,150.

Estimated Time Per Respondent: 1 hr., 20 min.

Estimated Total Annual Burden Hours: 37,922,688.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 4, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–9008 Filed 4–11–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–34–94]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, FI–34–94(TD 8653), Hedging Transactions by Members of a Consolidated Group (§§ 1.1221–2(d)(2)(iv), 1.1221–2(e)(5), and 1.1221–2(g)(5)(ii)).

DATES: Written comments should be received on or before June 12, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Hedging Transactions by Members of a Consolidated Group.

OMB Number: 1545–1480.

Regulation Project Number: FI–34–94.

Abstract: This regulation deals with the character and timing of gain or loss from certain hedging transactions entered into by members of a consolidated group of corporations. The regulation applies when one member of the group hedges its own risk, hedges the risk of another member, or enters into a risk-shifting transaction with another member.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 17,100.

Estimated Time Per Respondent: 4 hours, 27 minutes.

Estimated Total Annual Burden Hours: 76,050.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 5, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–9009 Filed 4–11–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0045]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 12, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0045."

SUPPLEMENTARY INFORMATION:

Title: VA Request for Determination of Reasonable Value (Real Estate), VA Form 26–1805.

OMB Control Number: 2900–0045.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–1805 is used to collect data necessary for VA compliance with the requirements of Title 38, U.S.C., 3710 (b)(4), (5), and (6). These requirements prohibit the VA guaranty or making of any loan unless the suitability of the security property for dwelling purposes is determined, the loan amount does not exceed the reasonable value, and if the loan is for purposes of alteration, repair, or improvements, the work substantially improves the basic livability of the property. The data supplied by persons and firms completing VA Form 26–1805 is used by VA personnel to identify and locate properties for appraisal and to make assignments to appraisers. VA is required to notify potential veteran-purchasers of such properties of the VA-established reasonable value. VA will also use VA Form 26–1843, Certificate of Reasonable Value, (included in the VA Form 1805 Package) as a notice to requesters of the reasonable (appraised) value or an authorized lender will issue a notice of value in connection with the Lender Appraisal Processing Program.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 23, 1999, on pages 72143 and 72144.

Affected Public: Individuals or households.

Estimated Annual Burden: 60,000 hours.

Estimated Average Burden Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 300,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0045" in any correspondence.

Dated: March 17, 2000.

By direction of the Secretary:

Sandra S. McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 00–9115 Filed 4–11–00; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 65, No. 71
Wednesday, April 12, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1615 and 1616

Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X; Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14

Correction

In rule document 00–5531 beginning on page 12924, in the issue of Friday, March 10, 2000, make the following correction:

§1615.32 [Corrected]

On page 12927, in the third column, in §1615.32(a)(1), in the first line, "124–1986" should read "124–1996 ".

[FR Doc. C0–5531 Filed 4–11–00; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

48 CFR Part 241

[DFARS Case 99–D309]

Defense Federal Acquisition Regulation Supplement; Authority Relating to Utility Privatization

Correction

In rule document 00–766 beginning on page 2058, in the issue of Thursday, January 13, 2000, make the following corrections:

241.1032 [Corrected]

1. On page 2059, in the first column, in section 241.103, the section twist should be removed from the section heading.

2. On the same page, in the same column, in section 241.103, in the first line, "office " should read "officer".

[FR Doc. C0–766 Filed 4–11–00; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2030–031 and 11832–000]

Portland General Electric Company and the Confederated Tribes of the Warm Springs Reservation of Oregon; Notice of Meeting

Correction

In notice document 00–7024 beginning on page 15323 in the issue of Wednesday, March 22, 2000, the docket numbers are corrected to read as set forth above.

[FR Doc. C0–7024 Filed 4–11–00; 8:45 am]
BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Correction

In notice document 00–7515 beginning on page 16234, in the issue of Monday, March 27, 2000, make the following correction:

On page 16235, in the first column, above the name, add "Dated: March 22, 2000".

[FR Doc. C0–7515 Filed 4–11–00; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ANM–13]

RIN 2120–AA66

Modification of Multiple Federal Airways in the Vicinity of Bellingham, WA

Correction

In rule document 00–2771, beginning on page 8271, in the issue of Friday, February 18, 2000, make the following correction:

§71.1 [Corrected]

On page 8272, in the second column, in the first line, "**V–1495 [Revised]**" should read "**V–495 [Revised]** ".

[FR Doc. C0–2771 Filed X–XX–00; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1510–AA81

Federal Government Participation in the Automated Clearing House

Correction

In rule document 00–8636 beginning on page 18866, in the issue of Friday, April 7, 2000, make the following corrections:

1. On page 18866, in the first column, under the **DATES:** heading, in the first line and the sixth line, "May 8, 2000" should read "April 7, 2000".

[FR Doc. C0–8636 Filed X–XX–00; 8:45 am]
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Vol. 65, No. 71

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H.R. 5/P.L. 106–182

Senior Citizens' Freedom to Work Act of 2000 (Apr. 7, 2000; 114 Stat. 198)

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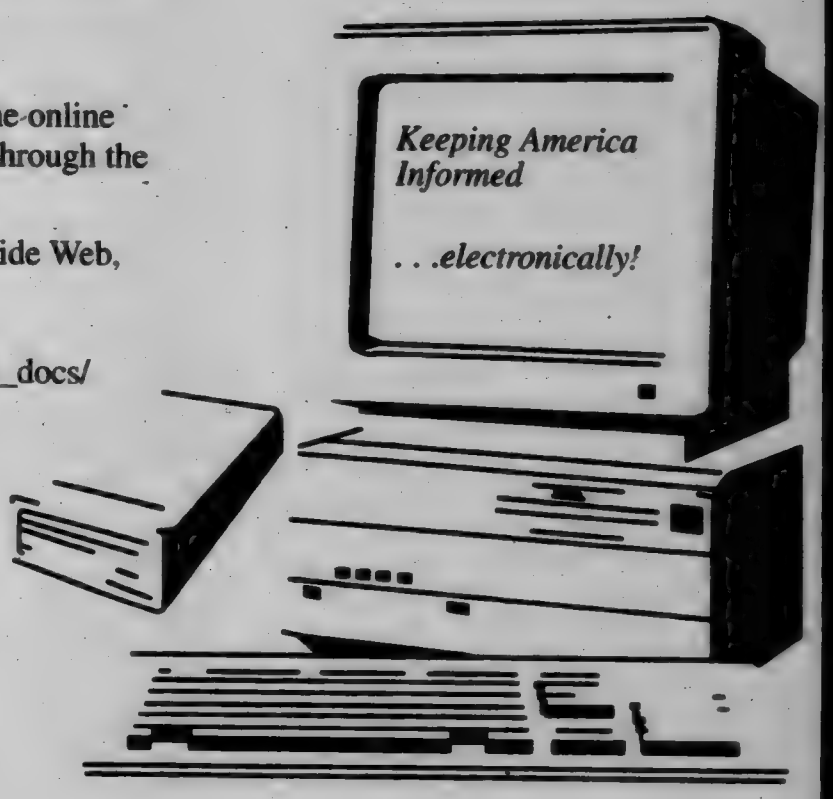

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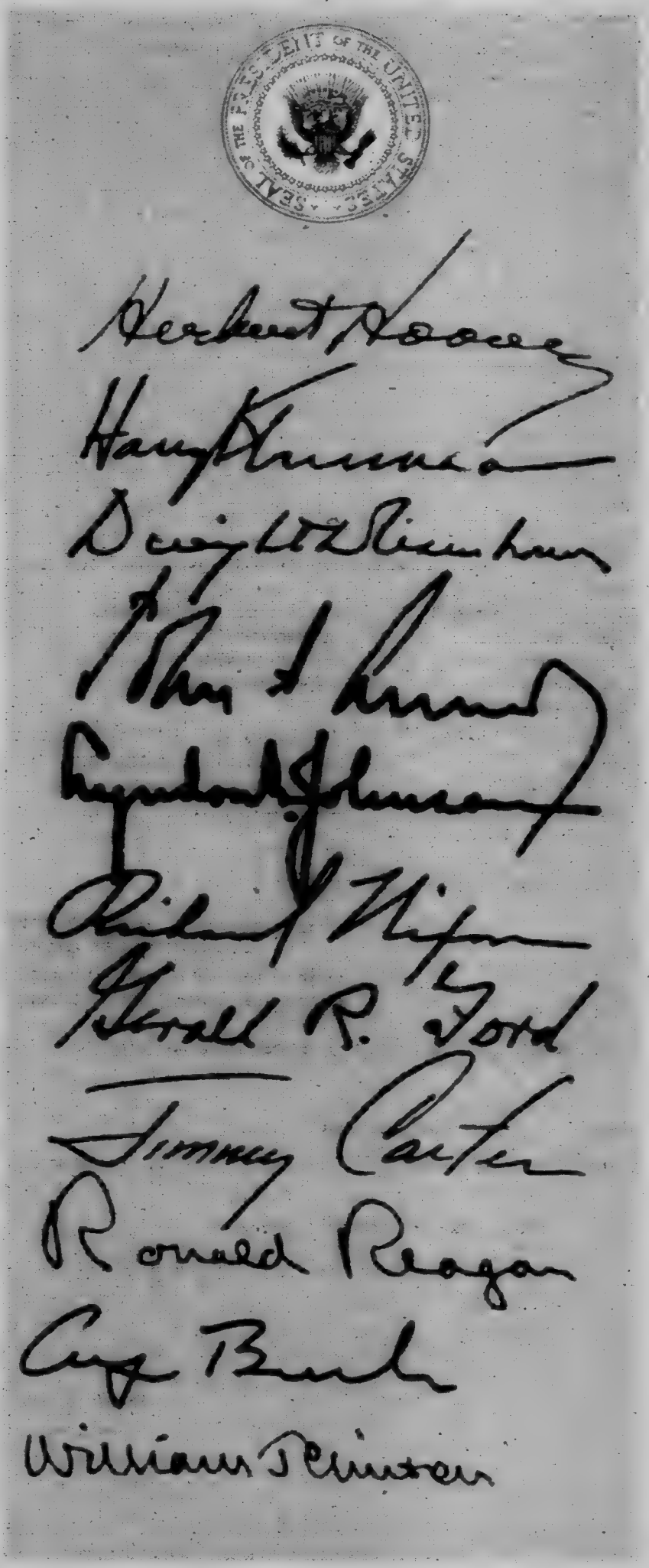

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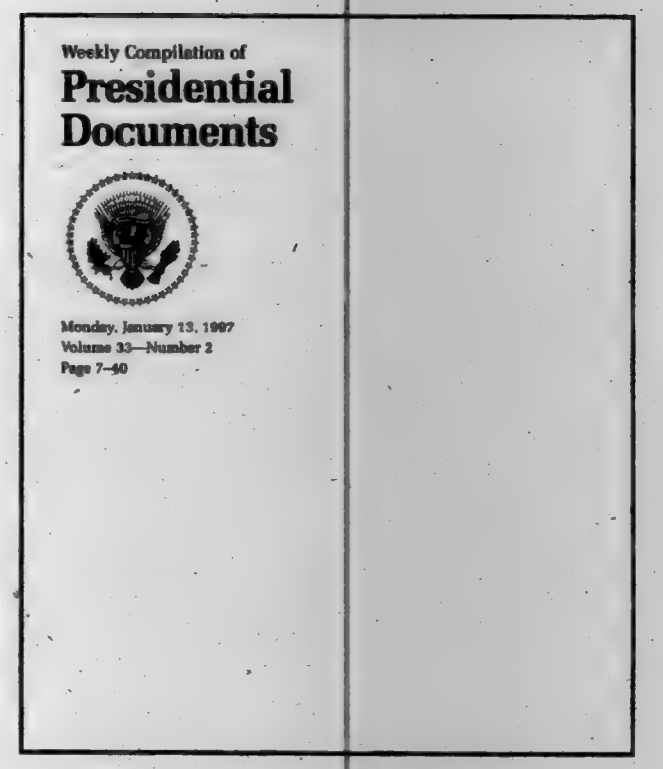

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WASHINGTON, DC

WHEN: April 18, 2000, at 9:00 a.m.

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Office of the Federal Register
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Presidential Documents

Title 3—

The President

Proclamation 7288 of April 8, 2000

Pan American Day and Pan American Week, 2000

By the President of the United States of America

A Proclamation

This year on Pan American Day and during Pan American Week, we celebrate the springtime of a new century in which the fundamental ideals of democracy and human rights are blossoming across our hemisphere. We stand at the threshold of a new era of economic development and prosperity with a common determination to meet the challenges and seize the opportunities that face the Americas.

Building on the agreements forged at the last two Summits of the Americas in Miami and Santiago, we are witnessing unprecedented cooperation within our hemisphere. Efforts such as the negotiations on a Free Trade Area of the Americas, now progressing toward a concrete agreement in 2005, exemplify our commitment to building a self-sustaining and widely shared prosperity. We continue to work creatively through the Organization of American States to encourage constitutional solutions to political crises such as those that occurred in Paraguay and Ecuador. And we have witnessed elections in our region that were models of civic participation and a testament to the strength and vibrancy of democratic government in the Western Hemisphere. Such achievements illustrate that the well-being of our neighbors is fundamental to our own security and prosperity. We look forward to the Third Summit of the Americas in Quebec City, where the democratically elected leaders of 34 nations from North, Central, and South America will gather to review our progress, identify new challenges, and further enhance our cooperation.

Even with our significant progress, however, challenges remain. The 34 free and democratically elected nations of this hemisphere must work together to ensure that Cuba, the only country that has not embraced our common vision, becomes a member of our community of democracies. By doing so, we can ensure that all the people in our hemisphere share in the blessings of freedom and in the promise of the global economy, living and working and raising their families in dignity and with hope for the future.

NOW, THEREFORE I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Friday, April 14, 2000, as Pan American Day and April 9 through April 15, 2000 as Pan American Week. I urge the Governors of the 50 States, the Governor of the Commonwealth of Puerto Rico, and the officials of other areas under the flag of the United States to honor these observances with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of April, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 00–9330
Filed 4–12–00; 8:45 am]
Billing code 3195–01–P

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Presidential Documents

Proclamation 7289 of April 8, 2000

National Former Prisoner of War Recognition Day, 2000

By the President of the United States of America

A Proclamation

As we stand at the dawn of a new century, we reflect with pride on all that our Nation has accomplished in the 224 years since we first declared our independence. Today we enjoy unprecedented peace and prosperity, and, as it has for generations, America shines as a beacon of democracy, freedom, and opportunity for peoples around the world.

Yet the blessings we rejoice in today were won at great cost. Millions of young Americans who stepped forward in times of crisis or conflict to defend our Nation and uphold our values around the world sacrificed their freedom and lost their lives. The century just past will forever be known as the American century, not only because of our economic strength, military might, and technological prowess, but also because of the character, determination, and indomitable spirit our people demonstrated time and again.

That character and spirit have never been more evident than when Americans have been held captive as prisoners of war. Suffering hunger, fear, isolation, and uncertainty, stripped of their freedom and often subjected to physical and psychological torture, American POWs nonetheless continued to serve our Nation with honor, dignity, and remarkable courage. For many, the long, agonizing days stretched into years, and the loss of freedom and the cruel separation from family, home, and friends left scars that the passage of time can never erase.

We owe a profound debt of gratitude to these heroes who stood face to face with the forces of tyranny and oppression, true to our country and to the spirit of freedom even in captivity. We owe a debt as well to their families, whose faith and fortitude have been an unceasing source of strength to our Nation in many of our darkest hours. As we observe this special day for the first time in this new century, let us remember and honor the sacrifices of America's prisoners of war and their families; and let us keep faith with them by remaining resolute in defending liberty and securing a just and peaceful world for the generations to come.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 9, 2000, as National Former Prisoner of War Recognition Day. I call upon all Americans to join me in remembering former American prisoners of war who suffered the hardships of enemy captivity. I also call upon Federal, State, and local government officials and private organizations to observe this day with appropriate ceremonies, programs, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of April, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 00–9331
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Presidential Documents

Proclamation 7290 of April 10, 2000

National Crime Victims' Rights Week, 2000

By the President of the United States of America

A Proclamation

This week marks the 20th anniversary of National Crime Victims' Rights Week. Over the past two decades, we have made enormous progress in our efforts to build safer communities and to reshape our criminal justice system so that it better protects victims' rights and responds more compassionately to their needs.

In the 7 years since I first proclaimed National Crime Victims' Rights Week, my Administration has worked hard to achieve some of the most progressive criminal justice reforms in our Nation's history. Recognizing the urgent plea from millions of Americans to restore safety and security to their neighborhoods, in 1994 I signed into law the Violent Crime Control and Law Enforcement Act, which funds 100,000 additional police officers to fight crime and protect our citizens. In Federal court cases, this law also gives victims of violent crime and sexual abuse the right to speak out in court before sentencing, providing them the opportunity to describe the impact such victimization has had on their lives. To help protect our communities from gun violence, we enacted the Brady Handgun Violence Prevention Act, requiring background checks for potential handgun purchasers. Since its passage, more than 500,000 attempted gun purchases by felons, fugitives, and other prohibited persons have been prevented, saving an untold number of lives. And we worked to pass the assault weapons ban to keep these deadly firearms off our streets.

We also fought to pass the Violence Against Women Act, which addresses the complex dynamics of gender-motivated violence and seeks to ensure justice for women who live in daily fear for their safety and often for their lives. By providing support services for victims of domestic violence and sexual assault and empowering prosecutors with new tools to target offenders, we have sent a clear message that our society will not tolerate violence against women.

Thanks to the concerted efforts of crime victims' advocates, many of whom are survivors themselves, government at all levels is focused on ensuring victims' rights. Today, all States have enacted laws safeguarding crime victims' rights in the criminal justice process, and 32 States have amended their constitutions accordingly.

Despite this progress, millions of Americans still fall prey to criminals each year. In the past year alone, gun violence alone has taken an enormous toll across our Nation. To address this, my Administration has proposed the 21st Century Policing Initiative to provide 50,000 more police officers for our streets, requested more funding for our Safe Schools/Healthy Students Initiative to reduce school and youth violence, and put forth the largest national gun enforcement initiative in our Nation's history. I continue to call on the Congress to strengthen our Nation's hate crime laws and to pass commonsense gun legislation to keep guns out of the wrong hands; and we should pass the Victims' Rights Amendment to the Constitution.

Criminal victimization is at its lowest level in 25 years, but we can do more. As we observe National Crime Victims' Rights Week, as we near the fifth anniversary of the tragic bombing in Oklahoma City and the first anniversary of the shooting at Columbine High School, let us vow to continue working together to prevent crime and violence. Let us also pledge to honor the needs and rights of victims whose lives have been forever altered by crime. And let us recognize the courage and determination of the thousands of men and women across our country who dedicate themselves daily to the protection of victims' rights.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 9 to April 15, 2000, as National Crime Victims' Rights Week. I urge all Americans to remember crime victims and their families by working to reduce violence, to assist those harmed by crime, and to make our communities and homes safer places in which to live and raise our families.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of April, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 00–0332
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Rules and Regulations

Federal Register
Vol. 65, No. 72
Thursday, April 13, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB–99–07]

RIN 0581–AB75

Tobacco Inspection; Subpart B—Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with minor formatting changes, the provisions of an interim final rule, the regulation governing the mandatory inspection of tobacco that added the term "purchaser" specifically to include in the regulatory text this segment of the industry from attempting to influence, impede, or discuss any matter related to grading while the tobacco inspectors are grading tobacco on the auction warehouse floor and removed the language allowing the producer to discuss the grading of their tobacco with the inspector at the time grading is being performed. This rule incorporates recommendations made by the Flue-Cured Tobacco Advisory Committee, the Five-State Flue-Cured Tobacco Committee, and industry representatives to clarify when it is allowable for someone to communicate with the grading personnel while they are performing their actual duties. The revisions better eliminate interference, distraction, and outside influence on the grading of tobacco.

EFFECTIVE DATE: May 15, 2000.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), Room 502 Annex Building, PO Box 96456, Washington, DC 20090–6456; or Fax: (202) 205–0235.

SUPPLEMENTARY INFORMATION: The Department published in the **Federal Register** on September 27, 1999 (64 FR 51887) an interim final rule amending the regulation at 7 CFR part 29, subpart B. The Department requested comments on the regulation. The comment period expired on November 26, 1999. AMS received one comment from a buying segment of the tobacco industry favoring the amendments.

This final rule revises the regulation governing the mandatory inspection of tobacco pursuant to the provisions of the Tobacco Inspection Act (49 Stat. 741, 7 U.S.C. 511 *et seq.*).

The Department received recommendations from the Flue-Cured Tobacco Advisory Committee, the Five-State Flue-Cured Tobacco Committee, and industry representatives that changes to the regulation in subpart B, § 29.81(a), Interference with inspectors, is necessary to better eliminate interference, distraction, and outside influence on the grading of tobacco.

The prior regulation specified that, no person, including the owner, producer, warehouseman, agent, or employee thereof shall attempt to influence, impede, or discuss any matter relating to grading while the tobacco inspectors are grading tobacco on the auction warehouse floor. The interim final rule does not allow any member of the industry, including tobacco purchasers, to discuss any matter pertaining to grading while the tobacco inspectors are grading tobacco on the auction warehouse floor. Also, the interim final rule action removed language allowing a producer to discuss the grading of their tobacco with the inspector at the time grading is performed. While producers are allowed to be present when their tobacco is being graded, they cannot discuss the grade or attempt to influence or intimidate the inspector during the performance of grading duties. The interim final rule does not preclude the producer from appealing the decision of the inspector after a grade has been assigned.

This action finalizes the provisions of the interim final rule, with minor formatting changes, that added the term "purchaser" specifically to include in the regulatory text that segment of the industry from attempting to influence, impede, or discuss any matter related to grading while tobacco inspectors are grading tobacco on the auction warehouse floor and that removed the language allowing the producer to discuss the grading of their tobacco with the inspector at the time grading is being performed.

This final rule has been determined to be "non significant" for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Additionally, in conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), full consideration has been given to the potential economic impact upon small business. All tobacco warehouses and producers fall within the confines of "small business" which are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less that $3,500,000. There are approximately 190 tobacco warehouses and approximately 30,000 producers and most warehouses and producers may be classified as small entities.

The Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities. This rule continues revisions that amended the regulation governing the mandatory inspection of tobacco that: (1) Added the term "purchaser" to specifically include in the regulatory text this segment of the industry from attempting to influence, impeding, or discussing any matter relating to grading while tobacco inspectors are grading tobacco on the auction floor and (2) removed the language allowing a producer from discussing grading of their tobacco with the inspector at the time grading is being performed. Specifying the term "purchaser" in the text of the regulation merely identifies a segment of the industry already

prohibited from these actions. Further, removal of language allowing producers to discuss with inspectors their tobacco will have minimal impact on producers since producers would not be precluded from appealing the decision of an inspector after a grade has been assigned.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

For the reasons set forth in the preamble, the interim final rule amending 7 CFR part 29 which was published at 64 FR 51887 on September 27, 1999, is adopted as a final rule with the following change:

PART 29—TOBACCO INSPECTION

Subpart B—Regulations

1. The authority citation for part 29, subpart B continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

2. In § 29.81, paragraph (a) is revised to read as follows:

§ 29.81 Interference with inspectors.

(a) No person, including the owner, producer, warehouseman, purchaser, agent, or employee thereof shall attempt, in any manner, to influence an inspector with respect to the grade designation of tobacco, or impede, in any manner, an inspector while the inspector is in the process of grading tobacco on the warehouse auction floor, or ask any question or discuss any matter pertaining to the grading of tobacco while the inspector is grading any tobacco on the warehouse auction floor. While inspectors are engaged in grading the day's sale, all requests for information concerning the grade designation on or requests to review the grade of any lot of tobacco shall be made only to the head grader or to the market supervisor grader.

* * * * *

Dated: April 5, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–9173 Filed 4–12–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AWA–1]

RIN 2120–AA66

Revision of the Legal Description of the Houston Class B Airspace Area; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the legal description of the Houston, TX, Class B Airspace Area. Specifically, this rule revises the description of the southern portion of the Houston Class B Airspace Area by eliminating references to the Hobby Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) as the point of origin. The new point of origin will be the current geographical location of the Hobby VOR/DME. The FAA is taking this action due to the planned relocation of the Hobby VOR/DME. This action does not change the actual dimensions, configuration, or operating requirements of the Houston Class B Airspace Area.

EFFECTIVE DATE: 0901 UTC, June 15, 2000.

FOR FURTHER INFORMATION CONTACT: Bil Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

Due to construction on the William P. Hobby Airport property occurring in close proximity to the Hobby VOR/DME, the FAA will relocate the VORTAC approximately 2,000 feet to the east of its current location. This relocation of the Hobby VOR/DME will effect the current legal description of the Houston Class B airspace area. Specifically, the description of the southern portion of the Houston Class B Airspace Area uses the Hobby VOR/DME as a reference. To assist general aviation in identifying the southern boundaries of the Houston Class B airspace area, the FAA will publish on the Houston Visual Flight Rules Terminal Area Chart geographical coordinates along with bearings/fix/distance information.

The Rule

This action amends the legal description of the Houston, TX, Class B Airspace Area. Specifically, this rule revises the description of the southern portion of the Houston Class B Airspace Area by eliminating references to the Hobby Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) as the point of origin. As a result the FAA is establishing the point of origin for the southern portion of the Houston Class B airspace area, from the current geographical location of the Hobby VOR/DME. This action does not change the actual dimensions, configuration, or operating requirements of the Houston Class B Airspace Area.

Since this action merely involves a change in the legal description of the Houston Class B airspace area, and does not involve a change in the dimensions or operating requirements of that airspace, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class B airspace area listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 3000 Subpart B—Class B Airspace

* * * * *

ASW TX B Houston, TX (Revised)

George Bush Intercontinental Airport (IAH) (Primary Airport)
(Lat. 29°58′50″ N., long. 95°20′23″ W.)
William P. Hobby Airport (HOU) (Secondary Airport)
(Lat. 29°38′44″ N., long. 95°16′44″ W.)
Ellington Field
(Lat. 29°36′27″ N., long. 95°09′32″ W.)
Humble VORTAC (IAH)
(Lat. 29°57′25″ N., long. 95°20′45″ W.)
Point of Origin
(Lat 29°39′01″ N., long. 95°16′45″ W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL bounded by a line beginning at the intersection of the Humble VORTAC 8-mile DME arc and the 090° radial; thence clockwise along the Humble VORTAC 8-mile DME arc to the Humble VORTAC 069° radial; thence east along the Humble VORTAC 069° radial to the 10-mile arc of the Humble VORTAC; thence clockwise along the 10-mile arc to the Humble VORTAC 090° radial; thence west to the point of beginning; and that airspace bounded by a line beginning at lat. 29°45′37″ N., long. 95°21′58″ W.; to lat. 29°45′46″ N., long. 95°11′47″ W.; thence clockwise along the 8-mile arc from the Point of Origin to intercept the 056° bearing from the Point of Origin; thence southwest along the 056° bearing to the 5.1-mile fix from the Point of Origin, thence direct to the Point of Origin 131° bearing/5.8-mile fix from the Point of Origin; thence southeast along the 131° bearing from the Point of Origin to intercept the 7-mile arc from the Point of Origin; thence clockwise on the 7-mile arc to the 156° bearing from the Point of Origin; thence north along the 156° bearing to the 6-mile fix from the Point of Origin; thence clockwise along the 6-mile arc to the 211° bearing from the Point of Origin; thence south along the 211° bearing from the Point of Origin to the 8-mile arc from the Point of Origin; thence clockwise to the point of beginning.

Area B. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of State Highway 59 (SH 59) and the 15-mile arc from the Point of Origin; thence counterclockwise along the 15-mile arc to State Road 6 (SR 6); thence southeast along SR 6 to the intersection of SR 6 and Farm Road 521 (FR 521); thence south along FR 521 to the intersection of FR 521 and the 15-mile arc from the Point of Origin; thence counterclockwise along the 15-mile arc to the 211° bearing from the Point of Origin; thence northeast along the 211° bearing to the 10-mile arc from the Point of Origin; thence east along the 10-mile arc to the 156° bearing from the Point of Origin; thence southeast along the 156° bearing to the 15-mile arc from the Point of Origin; thence counterclockwise on the 15-mile arc to the intersection of the 15-mile arc and the Humble VORTAC 15-mile arc; thence counterclockwise along the Humble VORTAC 15-mile arc to the intersection of the 15-mile arc and Westheimer Road lat. 29°44′07″ N., long. 95°28′47″ W.; thence southwest to and along SH 59 to the point of beginning, excluding Area A.

Area C. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of SH 59 and the Humble VORTAC 20-mile DME arc; thence clockwise along the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and Interstate 10 (I–10), west on I–10 to the 15-mile arc from the Point of Origin; thence counterclockwise along the 15-mile arc to the Humble VORTAC 15-mile DME arc; thence counterclockwise along the Humble VORTAC 15-mile DME arc to the intersection of the Humble VORTAC 15-mile DME arc and Westheimer Road; thence southwest to and along SH 59 to the point of beginning; and that airspace beginning at the intersection of the 15-mile arc and the 156° bearing from the Point of Origin; thence north along the 156° bearing to the 10-mile arc from the Point of Origin clockwise along the 10-mile arc to the 211° bearing from the Point of Origin; thence south along the 211° bearing to intersect the 15-mile arc from the Point of Origin to the point of beginning.

Area D. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of SH 59 and the Humble VORTAC 30-mile DME arc; thence clockwise along the Humble VORTAC 30-mile DME arc to the intersection of the Humble VORTAC 30-mile arc and the 20-mile arc from the Point of Origin; thence clockwise along the 20-mile arc to SH 59; thence southwest on SH 59 to the point of beginning, excluding Areas B, C, and E.

Area E. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of the 15-mile arc from the Point of Origin and SR 6; thence southeast along SR 6 to the intersection of SR 6 and FR 521; thence south along FR 521 to the intersection of FR 521 and the 15-mile arc from the Point of Origin; thence counterclockwise along the 15-mile arc from the Point of Origin to the point of the beginning.

* * * * *

Issued in Washington, DC, on April 6, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–9145 Filed 4–12–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–5]

Amendment of Class E Airspace; McMinnville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at McMinnville, TN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Columbia River Park Hospital, McMinnville, TN. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP. This action amends the Class E5 airspace for McMinnville, TN, to the east, in order to include the point in space approach serving Columbia River Park Hospital.

EFFECTIVE DATE: 0901 UTC, June 15, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On February 18, 2000, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E airspace at McMinnville, TN, (65 FR 8325). This action provides adequate Class E airspace for IFR operations at the Columbia River Park Hospital. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal wee received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR

part 71) amends Class E airspace at McMinnville, TN for the Columbia River Park Hospital.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO TN E5 McMinnville, TN [Revised]

McMinnville, Warren County Memorial Airport, TN
(Lat. 35°41′55″ N, long. 85°50′38″ W)
Warri NDB
(Lat. 35°45′09″ N, long. 85°45′51″ W)
Columbia River Park Hospital, McMinnville, TN
Point In Space Coordinates
(Lat. 35°42′06″ N, long. 85°43′45″ W)

That airspace extending upward from 700 feet or more above the surface within a 11-mile radius of Warrant County Memorial airport and within 2.5 miles each side of the 051° bearing from the Warri NDB, extending from the 11-miles radiu to 7 miles northeast of the NDB, and that airspace within a 6-mile radius of the point in space (Lat. 35°42′06″ N, long. 85°43′45″ W) serving Columbia River Park Hospital, McMinnville, TN,

* * * * *

Issued in College Park, Georgia, on March 31, 2000.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–9217 Filed 4–12–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–6]

Amendment of Class E Airspace; Dayton, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Dayton, TN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Bledsoe County Hospital, Pikeville, TN. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP. This action amends the Class E5 airspace for Dayton, TN, to the northwest, in order to include the point in space approach serving Bledsoe County Hospital.

EFFECTIVE DATE: 0901 UTC, June 15, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviatiion Administration, P.O. Box 20636, Atlanta, GA 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On February 18, 2000, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E airspace at Dayton, TN, (65 FR 8326). This action provides adequate Class E airspace for IFR operations at the Bledsoe County Hospital. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E airspace at Dayton, TN, for the Bledsoe County Hospital.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (14 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air).

Addoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points,

dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO TN E5 Dayton, TN [Revised]

Dayton, Mark Anton Airport, TN
(Lat. 35°29′10″ N, long. 84°55′52″ W)
Hardwick Field Airport
(Lat. 35°13′12″ N, long 84°49′57″ W)
(Bledsoe County Hospital, Pikeville, TN
Point in Space Coordinates
(Lat. 35°37′34″ N, long. 85°10′38″ W)

That airspace extending upward from 700 feet or more above the surface within a 12.5-mile radius of Mark Anton Airport, and within a 6.5-mile radius of Hardwick Field Airport, and that airspace within a 6-mile radius of the point in space (lat. 35°37′34″ N, long. 85°10′38″ W) serving Bledsoe County Hospital, Pikeville, TN; excluding that airspace within the Athens, TN, Class E airspace area.

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Issued in College Park, Georgia, on March 31, 2000.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–9218 Filed 4–12–00; 8:45 am]

BILLING CODE 4910–13–M

RAILROAD RETIREMENT BOARD

20 CFR Part 219

RIN 3220–AB43

Evidence Required for Payment

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (RRB) hereby amends its regulations to permit the use of noncertified copies and facsimile copies of records or documents needed to establish eligibility for benefits under the Railroad Retirement Act. These amendments will make it easier for individuals to apply for benefits under the Act.

DATES: Effective May 15, 2000.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Senior Attorney, (312) 751–4945, TTD (312) 751–4701.

SUPPLEMENTARY INFORMATION: In order to receive benefits under the Railroad Retirement Act an individual may be required to provide proof of age, marriage, divorce, or death. Section 219.6 of the Board's regulations generally required that where a claimant must provide a record or document to establish an eligibility requirement, the original or a certified copy of such document or record must be provided. This requirement proved burdensome for claimants. Many claimants wish to transmit their documentary evidence electronically by use of telefax devices. Consequently, the Board amends its regulations to permit the use of uncertified copies and facsimiles of certain official records when the official custodian of such records transmits the facsimile directly to an office of the Board and the source of the transmittal is clearly identified on the facsimile. In addition, the Board amends it regulations to permit Board employees to certify translations of foreign documents.

On November 26, 1999, the Board published this rule as a proposed rule (64 FR 66433), inviting comments on or before January 25, 2000. No comments were received.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 219

Pensions, Railroad employees, Railroad retirement.

For the reasons set out in the preamble, the Railroad Retirement Board amends chapter II of title 20 of the Code of Federal Regulations as follows:

PART 219—EVIDENCE REQUIRED FOR PAYMENT

1. The authority citation for part 219 continues to read as follows:

Authority: 45 U.S.C. 231f.

2. In § 219.6 the section heading and paragraphs (a) and (b) are revised, and a new paragraph (d) is added to read as follows:

§ 219.6 Records as evidence.

(a) *General.* If a claimant or an annuitant provides an original document or record as evidence to prove eligibility or continued entitlement to payments, where possible, a Board employee will make a photocopy or transcript of these original documents or records and return the original documents to the person who furnished them. A claimant may also submit certified copies of original records as described in paragraph (c) of this section. The Board may also accept uncertified copies as described in paragraph (d) of this section.

(b) *Foreign-language documents.* If the evidence submitted is a foreign-language document, the Board may require that the record be translated. An acceptable translation includes, but is not limited to, a translation certified by a United States consular official or employee of the Department of State authorized to certify evidence, or by an employee of the Board or the Social Security Administration.

* * * * *

(d) *Uncertified copies and facsimiles.* In lieu of certified paper copies of records or extracts from such official sources as listed in paragraph (c) of this section, the Board will accept facsimile copies of such records or extracts when the official custodian of such records transmits the facsimile directly to an office of the Board and the source of the transmittal is clearly identified on the facsimile.

Dated: March 24, 2000.

By Authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 00–9024 Filed 4–12–00; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority and organization by updating the addresses for headquarters and the field offices. This action is necessary to ensure the accuracy of the regulations.

DATES: This rule is effective April 13, 2000.

FOR FURTHER INFORMATION CONTACT: Rodolfo Guillen, Jr., Division of Management Programs (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4815.

SUPPLEMENTARY INFORMATION: The regulations are being amended in subpart C of part 5 (21 CFR part 5) to reflect the central organization of the agency and to provide current addresses for headquarters and field offices.

Notice and comment about the amendments are not necessary under the Administrative Procedure Act because this is a rule of agency organization (5 U.S.C. 553(b)).

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 15 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; 15 U.S.C. 1451–1461; 21 U.S.C. 41–50, 61–63, 141–149, 321–394, 467f, 679(b), 801–886, 1031–1309; 35 U.S.C. 156; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1; 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11921, 41 FR 24294, 3 CFR, 1977 Comp., p. 124–131; E.O. 12591, 52 FR 13414, 3 CFR, 1988 Comp., p. 220–223.

2. Section 5.200 is revised to read as follows:

§ 5.200 Headquarters.

The central organization of the Food and Drug Administration consists of the following:

Office of the Commissioner.[1]
Office of the Chief Counsel.
Office of Equal Opportunity.
Office of the Administrative Law Judge.
Office of the Senior Associate Commissioner.
Office of Executive Secretariat.
Office of Public Affairs.
Office of the Ombudsman.
Office of Orphan Products Development.
Office of Internal Affairs.
Office of Executive Operations.
Office of International and Constituent Relations.
Office of International Programs.
Office of Consumer Affairs.
Office of Women's Health.
Office of Special Health Issues.
Office of Policy, Planning, and Legislation.
Office of Policy.
Office of Planning.
Office of Legislation.
Office of Management and Systems.
Office of Human Resources and Management Services.
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Office of Facilities, Acquisitions, and Central Services.[2]
Center for Biologics Evaluation and Research.[3]
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Division of Viral Products.
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Division of Standards and Labeling Regulations.
Division of Nutrition Science Policy.
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Division of Product Policy.
Division of Petition Control.
Division of Health Effects Evaluation.
Division of Molecular Biological Research and Evaluation.
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Division of Virulence Assessment.
Division of Pesticides and Industrial Chemicals.
Division of Natural Products.
Division of Food Processing and Packaging.
Division of Plant Product Safety.
Division of Dairy and Egg Safety.

[1] Mailing address: 5600 Fishers Lane, Rockville, MD 20857.

[2] Mailing address: 5630 Fishers Lane, Rockville, MD 20852.

[3] Mailing address: 1401 Rockville Pike, Rockville, MD 20852–1448.

[4] Mailing address: 200 C St. SW., Washington DC 20204.

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Office of Special Research Skills.
Division of Toxicology Research.
Division of Microbiological Studies.
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Division of Enforcement and Programs.
Division of HACCP Programs.
Division of Cooperative Programs.
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Division of General Scientific Support.
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Division of Market Studies.
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Division of Neuropharmacological Drug Products.
Division of Oncology Drug Products.
Office of Drug Evaluation II.[1]
Division of Metabolic and Endocrine Drug Products.
Division of Pulmonary and Allergy Drug Products.
Division of Anesthetic, Critical Care, and Addiction Drug Products.
Office of Drug Evaluation III.[1]
Division of Gastrointestinal and Coagulation Drug Products.
Division of Medical Imaging and Radiopharmaceutical Drug Products.
Division of Reproductive and Urologic Drug Products.
Office of Drug Evaluation IV.
Division of Anti-Infective Drug Products.
Division of Anti-Viral Drug Products.
Division of Special Pathogen and Immunologic Drug Products. *Office of Drug Evaluation V.*
Division of Anti-Inflammatory, Analgesic, and Opthalmologic Drug Products.
Division of Dermatologic and Dental Drug Products.
Division of Over-the-Counter Drug Products.
Office of Biostatistics.[1]
Quantitative Methods Research Staff.
Division of Biometrics I.
Division of Biometrics II.
Division of Biometrics III.
Office of Post-Marketing Drug Risk Assessment.
Extramural Programs Staff.
Information Technology Staff.
Division of Drug Risk Evaluation I.
Division of Drug Risk Evaluation II.
Office of Pharmaceutical Science.[1]
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Pharmacometrics Staff.
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Division of Pharmaceutical Evaluation II.[1]
Division of Pharmaceutical Evaluation III.[1]
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Division of New Drug Chemistry II.[1]
Division of New Drug Chemistry III.[1]
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Regulatory Research and Analysis Staff.
Laboratory of Clinical Pharmacology.[7]
Division of Applied Pharmacology Research.[8]
Division of Testing and Applied Analytical Development.[9]
Division of Product Quality Research.[1]
Office of Regulatory Affairs.[1]
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Division of Management Operations.
Division of Personnel Operations.
Office of Enforcement.
Medical Products Quality Assurance Staff.
Division of Compliance Management and Operations.
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Office of Regional Operations.
Division of Federal-State Relations.
Division of Field Science.
Division of Emergency and Investigational Operations.
Division of Import Operations and Policy.
Office of Criminal Investigations.
Mid-Atlantic Area Office.[10]
Midwest Area Office.[11]
Northeast Area Office.[12]
Pacific Area Office.[13]
Southeast Area Office.[14]
Southwest Area Office.[15]
Center for Veterinary Medicine.[16]
Office of the Center Director.
Office of Management and Communications.
Administrative Staff.
Communications Staff.
Program Planning and Evaluation Staff.
Information Resources Management Staff.
Office of New Animal Drug Evaluation.
Division of Therapeutic Drugs for Food Animals.

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[5] Mailing address: 7500 Standish Pl., Rockville, MD 20855.

[6] Mailing address 7520 Standish Pl., Rockville, MD 20855.

[7] Mailing address: Four Research Ct., Rockville, MD 20850.

[8] Mailing address: 8306 Muirkirk Rd., Laurel, MD 20708.

[9] Mailing address: 1114 Market St., St. Louis, MO 63101.

[10] Mailing address: 900 U.S. Courthouse, Second Chestnut St., Philadelphia, PA 19106.

[11] Mailing address: 901 Warrenville Rd., suite 360, Lisle, IL 60532.

[12] Mailing address: 850 Third Ave., Brooklyn, NY 11232.

[13] Mailing address: 13301 Clay St., Oakland, CA 94512.

[14] Mailing address: 60 Eighth St. NE., Atlanta, GA 30309.

[15] Mailing address: 7920 Elmbrook Rd., Dallas, TX, 75247.

[16] Mailing address: 7500 Standish Pl., MPN–2, Rockville, MD 20855.

Division of Biometrics and Production Drugs.
Division of Therapeutic Drugs for Non-Food Animals.
Division of Human Food Safety.
Division of Manufacturing Technologies.
Office of Surveillance and Compliance.
Division of Surveillance.
Division of Animal Feeds.
Division of Compliance.
Division of Epidemiology.
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Administrative Staff.
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Division of Animal Research.
Division of Animal and Food Microbiology.
Center for Devices and Radiological Health.[17]
Office of the Center Director.
Equal Employment Opportunity Staff.
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Integrity Committee and Conference Management Staff.
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Office of Compliance.
Promotion and Advertising Policy Staff.
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Division of Enforcement I.
Division of Enforcement II.
Division of Enforcement III.
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Division of Reproductive, Abdominal, Ear, Nose, Throat, and Radiological Devices.
Division of General and Restorative Devices.
Division of Clinical Laboratory Devices.
Division of Ophthalmic Devices.
Division of Dental, Infection Control, and General Hospital Devices.
Office of Science and Technology.
Division of Mechanics and Materials Science.
Division of Life Sciences.
Division of Physical Sciences.
Division of Electronics and Computer Sciences.
Division of Management Information and Support Services.
Office of Health and Industry Programs.
Program Operations Staff.
Regulations Staff.
Staff College.
Division of Device User Programs and Systems Analysis.
Division of Small Manufacturers Assistance.
Division of Mammography Quality and Radiation Programs.
Division of Communication Media.
Office of Surveillance and Biometrics.
Issues Management Staff.
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Division of Postmarket Surveillance.
Division of Surveillance Systems.
National Center for Toxicological Research.[18]
Office of the Center Director.
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Division of Biometry and Risk Assessment.
Division of Microbiology.
Division of Chemistry.
Division of Neurotoxicology.
Division of Veterinary Services.
Division of Molecular Epidemiology.
Office of Management.
Office of Management Services.
Contracts and Procurement Staff.
Division of Facilities, Engineering, and Maintenance.
Division of Administrative Services.
Office of Planning, Finance and Information Technology.
Division of Planning.
Division of Financial Management.
Division of Information Technology.

3. Section 5.210 is revised to read as follows:

§ 5.210 FDA Public Information Offices.

(a) *Dockets Management Branch (HFA–305).* The Dockets Management Branch Public Room is located in rm. 1061, 5630 Fishers Lane, Rockville, MD 20852. Telephone: 301–827–6860.

(b) *Freedom of Information Staff (HFI–35).* The Freedom of Information Public Room is located in rm. 12A–30, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857. Telephone: 301–827–6567.

(c) *Press Relations Staff (HFI–40).* The Press Offices are located in rm. 15–05, Parklawn Bldg., 5600 Fisher Lane, Rockville, MD 20857. Telephone: 301–827–6242; and in rm. 3807, FB–8, 200 C St. SW., Washington, DC 20204. Telephone 202–205–4144.

4. Section 5.215 is revised to read as follows:

§ 5.215 Field structure.

NORTHEAST REGION

Regional Field Office: 850 Third Ave., Brooklyn, NY 11232.
Northeast Regional Laboratory: 850 Third Ave., Brooklyn, NY 11232–1593.
New York District Office: 850 Third Ave., Brooklyn, NY 11232–1593.
New England District Office: One Montvale Ave., Stoneham, MA 02180.
Winchester Engineering and Analytical Center: 109 Holton St., Winchester, MA 01890.

CENTRAL REGION

Regional Field Office: U.S. Customhouse, Second and Chestnut Sts., rm. 900, Philadelphia, PA 19106.
Philadelphia District Office: U.S. Customhouse, Second and Chestnut Sts., rm. 900, Philadelphia, PA 19106.
Baltimore District Office: 900 Madison Ave., Baltimore, MD 21201–2199.
Cincinnati District Office: 6751 Steger Dr., Cincinnati, OH 45237–3097.
Forensic Chemistry Center: 1141 Central Pkwy., Cincinnati, OH 45202–1097.
New Jersey District Office: Waterview Corporate Center, 10 Waterview Blvd., 3d Floor, Parsippany, NJ 07054.
Chicago District Office: 300 South Riverside Plaza, suite 550, South Chicago, IL 60606.
Detroit District Office: 1560 East Jefferson Ave., Detroit, MI 48207–3179.
Minneapolis District Office: 240 Hennepin Ave., Minneapolis, MN 55401–1912.

SOUTHEAST REGION

Regional Field Office: 60 Eighth St. NE., Atlanta, GA 30309.
Southeast Regional Laboratory: 60 Eighth St. NE., Atlanta, GA 30309.
Atlanta District Office: 60 Eighth St. NE., Atlanta, GA 30309.
Nashville District Office: 297 Plus Park Blvd., Nashville, TN 37217.
New Orleans District Office: 4298 Elysian Fields Ave., New Orleans, LA 70122.
Florida District Office: 555 Winderley, suite 200, Maitland, FL 32751.
San Juan District Office: 466 Fernandez Juncos Ave., San Juan, PR 00901–3223.

SOUTHWEST REGION

Regional Field Office: 7920 Elmwood Rd., suite 102, Dallas, TX 75247–4982.
Dallas District Office: 3310 Live Oak St., Dallas, TX 75204.
Denver District Office: Bldg. 20, Denver Federal Center, Sixth and Kipling Sts., P.O. Box 25087, Denver, CO 80225–0087.
Kansas City District Office: 11630 West 80th St., Lenexa, KS 66214–3338.

[17] Mailing address: 9200 Corporate Blvd., Rockville, MD 20850.

[18] Mailing address: 3900 NCTR Dr., Jefferson, AR 72079.

St. Louis Branch: 12 Sunnen Dr., suite 122, St. Louis, MO 63143–3800.

Arkansas Regional Laboratory: 3900 NCTR Rd., Bldg. 14–T, rm. 104, Jefferson, AR 72079–9502.

PACIFIC REGION

Regional Field Office: 1301 Clay St., suite 1180–N, Oakland, CA 94612–5217.

San Francisco District Office: 1431 Harbor Bay Pkwy., Alameda, CA 94502–7070.

Los Angeles District Office: 19900 MacArthur Blvd., suite 300, Irvine, CA 92715.

Seattle District Office: P.O. Box 3012, Bothell, WA 98021–3012.

Pacific Regional Laboratory, SW.: 1521 West Pico Blvd., Los Angeles, CA 90015–2488.

Pacific Regional Laboratory, NW.: 22201 23d Dr. SE., Bothell, WA 98021–4421.

Dated: April 5, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–9126 Filed 4–12–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 868, 884, and 890

[Docket No. 98N–0564]

Medical Devices; Effective Date of Requirement for Premarket Approval for Three Preamendment Class III Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to retain three class III preamendment devices in class III and to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the following devices: The lung water monitor, the powered vaginal muscle stimulator, and the stair-climbing wheelchair. The agency has summarized its findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the devices to meet the statute's approval requirements and the benefits to the public from the use of the devices.

DATES: This rule is effective April 13, 2000.

FOR FURTHER INFORMATION CONTACT: Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1184.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 18, 1998 (63 FR 44177), FDA published a proposed rule to require the filing under section 515(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(b)), of a PMA or a notice of completion of a PDP for three preamendment class III devices. In accordance with section 515(b)(A)(2) of the act, FDA included in the preamble to the proposal the agency's proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the devices to meet the premarket approval requirements of the act, and the benefits to the public from use of the devices. The proposed rule also provided an opportunity for interested persons to submit comments on the proposed rule and the agency's findings. Under section 515(b)(2)(B) of the act, FDA provided an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. If anyone wanted to submit a petition requesting a change in the classification of the three devices, they were required to submit it by September 2, 1998. The comment period closed November 16, 1998.

FDA received no comments on the proposed rule. FDA received one citizen petition requesting a change in the classification of the stair-climbing wheelchair from class III to class II. FDA reviewed the petition and determined that there was not sufficient information to establish special controls to reasonably assure the safety and effectiveness of the device. FDA informed the petitioner in a letter dated May 10, 1999, that if additional information was submitted under section 513(e) of the act (21 U.S.C. 360c(e)) within 30 days to support the reclassification of the device, FDA would review the information. FDA also stated that if the petitioner did not submit additional information within 30 days to show that sufficient information is available to establish special controls to reasonably assure the safety and effectiveness of the device, FDA would deem the reclassification petition withdrawn. FDA has not received any new information from the petitioner and has deemed the reclassification petition withdrawn.

II. Findings With Respect to Risks and Benefits

Under section 515(b)(3) of the act, FDA is adopting the findings it published in the proposed rule. As required by section 515(b) of the act, FDA published its findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring that these devices have an approved PMA or a declared completed PDP; and (2) the benefits to the public from the use of the devices.

These findings are based on the reports and recommendations of the advisory committees (the panels) for these devices, the Anesthesiology and Respiratory Devices Panel, the Obstetrical and Gynecological Devices Panel, and the Orthopedic and Rehabilitation Devices Panel for the classification of the devices along with any additional information that FDA discovered. Additional information can be found in the proposed and fina' rules classifying these devices published in the **Federal Register** of November 2, 1979 (44 FR 63292), and July 16, 1982 (47 FR 31130), for the lung water monitor; April 3, 1979 (44 FR 19894), and February 26, 1980 (45 FR 12682), for the powered vaginal muscle stimulator; and August 28, 1979 (44 FR 50458), and November 23, 1983 (48 FR 53032), for the stair-climbing wheelchair.

III. The Final Rule

Under section 515(b)(3) of the act, FDA is adopting the findings as published in the preamble to the proposed rule and issuing this final rule to require premarket approval of these generic types of devices for class III preamendment devices by revising parts 868, 884, and 890 (21 CFR parts 868, 884, and 890).

Under the final rule, a PMA or a notice of completion of a PDP is required to be filed on or before July 12, 2000, for any of these class III preamendment devices that were in commercial distribution before May 28, 1976, or that have been found by FDA to be substantially equivalent to such a device on or before July 12, 2000. An approved PMA or a declared completed PDP is required to be in effect for any such devices on or before 180 days after FDA files the application. Any other class III preamendment device subject to this rule that was not in commercial distribution before May 28, 1976, is required to have an approved PMA or a declared completed PDP in effect before it may be marketed.

If a PMA or a notice of completion of a PDP for any of these class III preamendment devices is not filed on or before the 90th day past the effective date of this regulation, that device will be deemed adulterated under section 501(f)(1)(A) of the act (21 U.S.C. 351(f)(1)(A)), and commercial distribution of the device will be required to cease immediately. The device may, however, be distributed for investigational use, if the requirements of the investigational device exemption (IDE) regulations (21 CFR part 812) are met.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

On August 14, 1996 (60 FR 41984), FDA issued an order under section 515(i) of the act requiring manufacturers of these three devices (among others) to submit information concerning the safety and effectiveness of the devices. Manufacturers were required to comply with this order, if they wished to market the device. FDA received no submissions in response to this order for these three devices. Although one manufacturer submitted a reclassification petition for the stair-climbing wheelchair in response to the proposed rule, the manufacturer did not respond to requests for additional information. FDA believes that the manufacturer is no longer interested in marketing this device because there is limited demand for it. Therefore, the agency certifies that the final rule will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VI. Paperwork Reduction Act of 1995

FDA concludes that this final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Parts 868, 884, and 890

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 868, 884, and 890 are amended as follows:

PART 868—ANESTHESIOLOGY DEVICES

1. The authority citation for 21 CFR part 868 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 868.2450 is amended by revising paragraph (c) to read as follows:

§ 868.2450 Lung water monitor.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP for a device is required to be filed with the Food and Drug Administration on or before July 12, 2000, for any lung water monitor that was in commercial distribution before May 28, 1976, or that has, on or before July 12, 2000, been found to be substantially equivalent to a lung water monitor that was in commercial distribution before May 28, 1976. Any other lung water monitor device shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

3. The authority citation for 21 CFR part 884 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

4. Section 884.5940 is amended by revising paragraph (c) to read as follows:

§ 884.5940 Powered vaginal muscle stimulator for therapeutic use.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or a notice of completion of a PDP for a device is required to be filed with the Food and Drug Administration on or before July 12, 2000, for any powered vaginal muscle stimulator for therapeutic use that was in commercial distribution before May 28, 1976, or that has, on or before July 12, 2000, been found to be substantially equivalent to a powered vaginal muscle stimulator that was in commercial distribution before May 28, 1976. Any other powered vaginal muscle stimulator for therapeutic use shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

PART 890—PHYSICAL MEDICINE DEVICES

5. The authority citation for 21 CFR part 890 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

6. Section 890.3890 is amended by revising paragraph (c) to read as follows:

§ 890.3890 Stair-climbing wheelchair.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required.* A PMA or notice of completion of a PDP for a device described in paragraph (b) of this section is required to be filed with the Food and Drug Administration on or before July 12, 2000, for any stair-climbing wheelchair that was in commercial distribution before May 28, 1976, or that has, on or before July 12, 2000, been found to be substantially equivalent to a stair-climbing wheelchair that was in commercial distribution before May 28, 1976. Any other stair-climbing wheelchair shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: April 3, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–9135 Filed 4–12–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. 86P–0087]

Medical Devices; Reclassification and Codification of the Stainless Steel Suture

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has issued an order in the form of a letter to Alto Development Corp. (the petitioner) reclassifying the 316L stainless steel suture for use in abdominal wound closure, intestinal anastomosis, hernia repair, and sternal closure from class III (premarket approval) to class II (special controls). The order is being codified in the Code of Federal Regulations (CFR). Although FDA reclassified the device in 1986, it inadvertently neglected to publish a notice of the reclassification in the **Federal Register** or codify the change in the CFR.

DATES: This rule is effective May 15, 2000.

FOR FURTHER INFORMATION CONTACT: Stephen P. Rhodes, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under the 1976 amendments, class II devices were defined as those devices for which there is insufficient information to show that general controls themselves will assure safety and effectiveness, but for which there is sufficient information to establish performance standards to provide such assurance. The SMDA broadened the definition of class II devices to mean those devices for which there is insufficient information to show that general controls themselves will assure safety and effectiveness, but for which there is sufficient information to establish special controls to provide such assurance, including performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines, recommendations, and any other appropriate actions the agency deems necessary (section 513(a)(1)(B) of the act).

The 1976 amendments broadened the definition of "device" in section 201(h) of the act (21 U.S.C. 321(h)) to include certain articles that were once regulated as drugs. Under the 1976 amendments, Congress classified all transitional devices, i.e., those devices previously regulated as new drugs, including stainless steel sutures, into class III.

On December 16, 1977, FDA published a notice in the **Federal Register** (42 FR 63472), that identified sutures as class III devices under the transitional provisions of the act for which premarket approval is required. Section 520(l)(2) of the act (21 U.S.C. 360j(l)(2)) provides that, in addition to the Secretary of Health and Human Services, the manufacturer or importer of a device classified into class III under the transitional provisions, may file a petition for reclassification of the device into class I or class II. The procedures for filing and review of petitions for reclassification of transitional devices are set forth in § 860.136 (21 CFR 860.136).

On February 21, 1986, FDA filed the petition submitted by the petitioner, requesting reclassification of the 316L stainless steel sutures from class III to class II. FDA consulted with the General and Plastic Surgery Devices Panel (the Panel) regarding reclassification of the devices. During an open panel meeting on March 25, 1986, the Panel recommended that FDA reclassify the 316L stainless steel sutures intended for use in abdominal wound closure, intestinal anastomosis, hernia repair, and sternal closure, from class III to class II. In addition, the Panel recommended that FDA assign a low priority for the development of a performance standard based on the long history of safe use of the device and the conformance by stainless steel manufacturers to existing voluntary standards.

After reviewing the data in the petition and presented before the Panel, FDA agreed with the Panels recommendation that the 316L stainless steel sutures, and substantially equivalent devices of this generic type, intended for use in abdominal wound closure, intestinal anastomosis, hernia repair, and sternal closure should be reclassified from class III to class II, and that the issuance of a performance standard for the device would be a low priority.

On July 30, 1986, FDA issued an order to the petitioner reclassifying the 316L stainless steel suture, and substantially equivalent devices for this generic type, from class III into class II. Inadvertently, FDA neglected to announce the reclassification order in the **Federal Register**.

Accordingly, as required by § 860.136(b)(6), FDA is announcing the reclassification of the generic 316L stainless steel suture from class III to class II. In addition, FDA is issuing this final rule to codify the reclassification of the device by adding new § 878.4495.

II. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory

options that would minimize any significant impact of a rule on small entities. Reclassification of the device from class III to class II has relieved all manufacturers of the device of the cost of complying with the premarket approval requirements in section 515 of the act (21 U.S.C. 360e). Because reclassification has reduced regulatory costs with respect to this device, no significant economic impact has been imposed on any small entities, and it may have permitted small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this final rule does not have a significant economic impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

List of Subjects in 21 CFR Part 878

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 878 is amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

1. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

2. Section 878.4495 is added to subpart E to read as follows:

§ 878.4495 Stainless steel suture.

(a) *Identification.* A stainless steel suture is a needled or unneedled nonabsorbable surgical suture composed of 316L stainless steel, in USP sizes 12–0 through 10, or a substantially equivalent stainless steel suture, intended for use in abdominal wound closure, intestinal anastomosis, hernia repair, and sternal closure.

(b) *Classification.* Class II (special controls).

Dated: March 29, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–9129 Filed 4–12–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–00–022]

RIN 2115–AE47

Drawbridge Operation Regulations; Wappoo Creek (ICW), Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: Notice is hereby given that the Commander, Seventh Coast Guard District has approved a temporary deviation from the regulations governing the operation of the Folly Road (SC Route 171) drawbridge across the Atlantic Intracoastal Waterway, mile 470.8, Charleston, Charleston County, South Carolina. This deviation allows the drawbridge owner or operator to open only a single leaf of the drawbridge, and requires one hour advance notification to accommodate a request for a full double-leaf opening. This temporary schedule allows the bridge owner to safely conduct necessary repairs to the drawbridge.

DATES: This deviation is effective from March 28, 2000 to May 16, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Brodie Rich, Project Manager, Seventh Coast Guard District, Bridge Section at (305) 536–5117.

SUPPLEMENTARY INFORMATION: The Folly Road drawbridge across the Atlantic Intracoastal Waterway at Charleston, has a vertical clearance of 33 feet above mean high water (MHW) and 38 feet above mean low water (MLW) measured at the fenders in the closed position. On February 27, 2000, Coastal Marine Construction, Incorporated, the contractor representing the drawbridge owner, requested a deviation from the current operating regulation in 33 CFR 117.5 which requires drawbridge to open promptly and fully when a request to open is given. This temporary deviation was requested to allow necessary repairs to the drawbridge in a critical time sensitive manner. The contractor has advised us that the drawbridge is likely to suffer failure of operation, which would increase the intensity and length of time in order to complete the necessary repairs.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.5 for the purpose of conducting repairs to the drawbridge. Under this deviation, the Folly Road (SC Route 171) Drawbridge need only open one leaf of the drawbridge unless one hour advance notification is provided by the vessel operator to the drawbridge tender which would allow a full double-leaf opening. The deviation is effective for a period of 50 days beginning on March 28, 2000 and ending on May 16, 2000.

Dated: March 21, 2000.

T.W. Allen,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 00–9220 Filed 4–12–00; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6566–9]

Finding of Failure To Submit a Required State Implementation Plan for Carbon Monoxide; Spokane, WA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Finding of failure to submit.

SUMMARY: EPA is taking final action in making a finding, under the Clean Air Act (CAA or Act), that Washington failed to make a carbon monoxide (CO) nonattainment area State Implementation Plan (SIP) submittal required for Spokane under the Act. Under certain provisions of the Act, states are required to submit SIPs providing for, among other things, reasonable further progress and attainment of the CO National Ambient Air Quality Standards (NAAQS) in areas classified as serious. The deadline for submittal of this plan for Spokane was October 13, 1999. This action triggers the 18-month time clock for mandatory application of sanctions and 2-year time clock for a Federal Implementation Plan (FIP) under the Act. This action is consistent with the CAA mechanism for assuring SIP submissions.

EFFECTIVE DATE: This action is effective as of April 13, 2000.

ADDRESSES: Written comments should be addressed to: Ms. Debra Suzuki, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Christi Lee, Office of Air Quality (OAQ), U.S.EPA, Region 10, Washington Operations Office, 300 Desmond Drive SE, Suite 102, Lacey, Washington, 98503, Telephone (360) 753–9079.

SUPPLEMENTARY INFORMATION:

I. Background

The CAA Amendments of 1990 were enacted on November 15, 1990. Under Section 107(d)(1)(c) of the amended CAA, each CO area designated nonattainment prior to enactment of the 1990 Amendments, such as the Spokane area, was designated nonattainment by operation of law upon enactment of the 1990 Amendments. Under section 186 (a) of the Act, each CO area designated nonattainment under section 107 (d) was also classified by operations of law as either "moderate" or "serious" depending on the severity of the area's air quality problem. CO areas with design values between 9.1 and 16.4 parts per million (ppm), such as the Spokane area, were classified as moderate. These nonattainment designations and classifications were codified in 40 CFR part 81. See 56 FR 56846 (November 6, 1991).

(1) The CO nonattainment area is the "Spokane urban area (as defined by the Washington Department of Transportation urban area maps)." 40 CFR 81.348.

States containing areas that were classified as moderate nonattainment by operation of law under section 107 (d) were required to submit SIPs designed to attain the CO NAAQS as expeditiously as practicable but no later than December 31,1995. An attainment plan meeting most of the requirements of the Act was submitted by Ecology to EPA as a revision to the State Implementation Plan (SIP) on January 22, 1993. Ecology submitted an additional SIP revision to EPA on April 30, 1996. EPA approved a portion of the attainment plan submitted (the 1990 base year emission inventory, the vehicle miles traveled (VMT) tracking and forecasting provision, the VMT and Oxygenated fuel contingency measures and the deletion of two unimplemented transportation control measures). EPA deferred action on that part of the SIP revision which consisted of the Spokane CO attainment demonstration and the emissions budget provision. See 62 FR 49442 (September 22, 1997).

(2) The moderate area SIP requirements are set forth in section 187 (a) of the Act and differ depending on whether the area's design value is below or above 12.7 ppm. The Spokane area has a design value above 12.7 ppm. 40 CFR 81.348.

Effective April 13, 1998, (63 FR 12007, March 12, 1998) the Spokane area was reclassified as a serious nonattainment area for not meeting the moderate area attainment date of December 31, 1995. EPA found that the standard was exceeded four times at one monitoring site in 1995. In 1996 the CO standard was exceeded once, at two different monitoring sites. Both 1997 and 1998 had no exceedance.

The State had 18 months or until October 13, 1999, to submit a new State Implementation Plan (SIP) demonstrating attainment of the CO NAAQS as expeditiously as practicable but no later than December 31, 2000, the CAA attainment date for serious areas. Notwithstanding significant efforts by the Washington State Department of Ecology, the Spokane County Air Pollution Control Authority and the Spokane Regional Transportation Authority to complete their CO SIP, the state has failed to meet the October 13, 1999 deadline for the required SIP submission. EPA is therefore compelled to find that the State of Washington has failed to make the required SIP submission for Spokane. The CAA established specific consequences if EPA finds that a State has failed to meet certain requirements of the CAA. Of particular relevance here is CAA section 179(a)(1), the mandatory sanctions provisions. Sections 179 (a) sets forth four findings that form the basis for applications of a sanction. The first finding, that a State has failed to submit a plan required under the CAA, is the finding relevant to this rulemaking.

If Washington has not made the required complete submittal by October 13, 2001, pursuant to CAA section 179 (a) and 40 CFR 52.31, the offset sanction identified in CAA section 179 (b) will be applied in the affected area. If the State has still not made a complete submission by April 13, 2002, then the highway funding sanction will apply in the affected area, in accordance with 40 CFR 52.31. In addition, CAA section 110 (c) provides that EPA must promulgate a Federal Implementation Plan (FIP).

(3) In a 1994 rulemaking, EPA established the Agency's selection of the sequence of these two sanctions: the offset sanction under section 179 (b) (2) shall apply at 18 months, followed 6 months later by the highway sanction under section 179 (b) (1) of the Act. EPA does not choose to deviate from this presumptive sequence in this instance. For more details on the timing and implementation of the sanctions, see 59 FR 39832 (August 4, 1994), promulgating 40 CFR 52.31, "Selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act."

The sanctions will not take effect if, before October 13, 2001, EPA finds that the State has made a complete submittal of a plan addressing the serious area CO requirements for Spokane. In addition, EPA will not promulgate a FIP if the State makes the required SIP submittal and EPA takes final action to approve the submittal before April 13, 2002, (section 110 (c) (1) of the Act). EPA encourages the responsible parties in Washington State to continue working together on the CO Plan which can eliminate the need for potential sanctions and FIP.

II. Final Action

A. Finding of Failure To Submit

Today, EPA is making a finding of failure to submit for the Spokane CO nonattainment area, due to failure of the State to submit a SIP revision addressing the serious area CO requirements of the CAA.

B. Effective Date Under the Administrative Procedures Act

EPA has issued this action as a rulemaking because the Agency has treated this type of action as rulemaking in the past. However, EPA believes that it would have the authority to issue this action in an informal adjudication, and is considering which administrative process'rulemaking or informal adjudication'is appropriate for future actions of this kind. Because EPA is issuing this action as a rulemaking, the Administrative Procedures Act (APA) applies. Today's action will be effective on April 13, 2000. Under the APA, 5 U.S.C. 553 (d) (3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if an agency has good cause to mandate an earlier effective date. Today's action concerns a SIP submission that is already overdue and the State is aware of applicable provisions of the CAA relating to overdue SIPs. In addition, today's action simply starts a "clock" that will not result in sanctions for 18 months, and that the State may "turn off" through the submission of a complete SIP submittal. These reasons support an effective date prior to 30 days after the date of publication.

C. Notice-and-Comment Under the Administrative Procedures Act

This document is a final agency action, but is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 533(b). EPA believes that because of the limited time provided to make findings of failure to submit regarding SIP submissions, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C.

553(d)(3). Notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit SIPs required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert Agency resources from the critical substantive review of submitted SIPs. See 58 FR 51270, 51272, note 17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

III. Administrative Requirements

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this notice, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the action in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of April 13, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective April 13, 2000.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 12, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations.

Dated: March 20, 2000.

Jane Moore,

Acting Regional Administrator, Region X.

[FR Doc. 00–7627 Filed 4–12–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL190–1a; FRL–6574–1]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Approval of a Site-Specific Sulfur Dioxide Plan Revision for CILCO Edwards Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On May 21, 1999, Illinois submitted a site-specific sulfur dioxide (SO_2) State Implementation Plan (SIP) revision request for the Central Illinois Light Company's Edwards Generating Station in Peoria County, Illinois. The requested revision provides for a temporary relaxation in the fuel quality limit for one of the facility's three boilers, but adds an overall daily sulfur dioxide emission cap for the three boilers. The State's submittal included dispersion modeling results which indicated that the revision will not cause violations of the SO_2 standards. EPA is approving this request.

DATES: This rule is effective on June 12, 2000, unless EPA receives relevant adverse written comments by May 15, 2000. If EPA receives adverse comment, it will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604.

Copies of the State submittal and other relevant documents used in support of this action are available at the following address for inspection during normal business hours: U.S. Environmental Protection Agency, Region 5, Air Programs Branch, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Mary Portanova, USEPA Region 5, (312) 353–5954.

SUPPLEMENTARY INFORMATION: The supplemental information is organized in the following order:

I. What action is being taken in this document?
II. What is the SIP?
III. Does approval of a variance create a permanent SIP revision?
IV. What has changed in the Illinois SO_2 SIP?
V. Why was this SIP revision requested?
VI. What are the National Ambient Air Quality Standards?
VII. What are the NAAQS for sulfur dioxide?
VIII. What are the requirements for SIP approval?
IX. Does this SIP revision request meet EPA's requirements?
X. What is EPA's final rulemaking action?
XI. Administrative Requirements.

I. What Action Is Being Taken in This Document?

EPA is approving a site-specific request to revise Illinois' SO_2 SIP for the Central Illinois Light Company's E. D. Edwards Generating Station (CILCO Edwards) in Bartonville, Peoria County, Illinois. The revision provides a new set of SO_2 emission limits for the plant's three boilers. These new limits were approved by the Illinois Pollution Control Board (IPCB) as a variance from State regulation 35 Illinois Administrative Code (IAC) 214.141 on April 15, 1999. CILCO signed a certification of acceptance and agreement to the variance on May 17, 1999, and Illinois submitted the variance to EPA as a SIP revision on May 21, 1999.

II. What Is the SIP?

The State Implementation Plan is a compilation of federally approved State air pollution regulations which are intended to ensure that the State attains and maintains the NAAQS. Revisions to the SIP must be submitted to EPA for approval. Once approved by EPA, the SIP regulations may be enforced by both the State and by EPA.

III. Does Approval of a Variance Create a Permanent SIP Revision?

Variances are temporary changes to a regulation. Variances to approved SIP limits must be submitted to EPA, approved, and incorporated into the SIP as SIP revisions in order to be federally enforceable. Without EPA approval, a variance to a SIP rule has no federal standing, and EPA could enforce against the facility for failing to comply with the original limits, even though the State had allowed the rule variance.

The April 15, 1999, CILCO variance expires on February 28, 2002, unless CILCO applies to Illinois for a permanent site-specific SIP revision by that date, in which case the variance will not terminate until July 31, 2003. It is important to note that because the variance is not a permanent rule change, EPA's approval of the variance as a SIP revision will only be in force until February 28, 2002. After that time, if CILCO does not apply to Illinois for a permanent SIP revision, the federally enforceable SO_2 emission limits for CILCO Edwards' Boiler 2 will revert to 35 IAC 214.141. If CILCO applies for a permanent SIP revision, and the IPCB allows CILCO Edwards' variance to continue unamended through July 31, 2003, then federal approval of the variance will continue until EPA approves alternate SO_2 limits for CILCO Edwards, or until July 31, 2003, whichever is earlier.

IV. What Has Changed in the Illinois SO_2 SIP?

CILCO Edwards operates three boilers, numbered 1, 2, and 3. Previously, the Illinois SO_2 SIP limited the emissions from Boilers 1 and 3 to 6.6 pounds sulfur dioxide per million British Thermal Units (lb/MMBTU), and limited Boiler 2's emissions to 1.8 lb/MMBTU. Illinois' May 21, 1999, submittal provides for the following rule changes:

1. The average SO_2 emissions from Boilers 1, 2, and 3, as a group, may not exceed 4.71 lb/MMBTU actual heat input.

2. The average SO_2 emissions from any one boiler may not exceed 6.6 lb/MMBTU actual heat input.

3. CILCO Edwards must determine compliance with these limits on a daily basis using the SO_2 methodology of the Phase II Acid Rain program set forth in 40 CFR part 75.

The plantwide SO_2 emissions limit for CILCO Edwards (35 IAC 214.561), which limits Boilers 1, 2, and 3, as a group, to 34,613 pounds SO_2 per hour (lb/hr) on a 24-hour average, is unchanged in the May 21, 1999, SIP revision request and remains in effect for CILCO Edwards. Compliance with the plantwide limit must also be determined on a daily basis using the Phase II Acid Rain methodology.

The variance also requires CILCO to make periodic reports to Illinois of the availability and cost of low-sulfur coal and Phase II Acid Rain allowances, and the feasibility of various strategies for complying with the Phase II Acid Rain program. CILCO must notify Illinois by January 31, 2002, if it intends to request a permanent change to its SO_2 emission limits.

V. Why Was This SIP Revision Requested?

A 1.8 lb/MMBTU emission limit on coal-fired boilers in the Peoria area (35 IAC 214.141) was adopted by the IPCB to help ensure that the Peoria major metropolitan area would attain and maintain the SO_2 NAAQS. This limit applies to Boiler 2 at CILCO Edwards, and Boiler 2 must use low-sulfur coal to comply with the limit. CILCO's coal supplier has notified CILCO that low-sulfur coal will not be available in 2000. No other Illinois coal can be used in Boiler 2 and still comply with the 1.8 lb/MMBTU emission limit. Therefore, CILCO must purchase low-sulfur coal from other States, at a much greater cost. An alternative to using low-sulfur coal in Boiler 2 would be to install a scrubber, which would remove SO_2 from the Boiler 2 stack emissions. However, this option is also very costly, and CILCO has stated that a scrubber could not be installed before 2000. Therefore, on December 17, 1998, CILCO filed a petition with the IPCB for a variance from 35 IAC 214.141. As a condition of the variance which the IPCB granted, CILCO must evaluate the feasibility of different strategies for complying with Phase II of the Acid Rain program, including the use of a scrubber, and provide a report of the evaluation to the Illinois Environmental Protection Agency.

VI. What Are the National Ambient Air Quality Standards?

The National Ambient Air Quality Standards (NAAQS) allow the American people to assess whether or not the air quality in their communities is healthful. The NAAQS also present state and local governments with the air quality levels they must meet to achieve clean air. Since the Clean Air Act's inception in 1970, EPA has set NAAQS for six common air pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. For these common air pollutants there are two types of pollution limits referred to as the primary and secondary standard. The primary standard is based on health effects; and the secondary standard is based on environmental effects such as damage to property, plants, and visibility. The Clean Air Act requires these standards be set at levels that protect public health and welfare with an adequate margin of safety.

VII. What Are the NAAQS for Sulfur Dioxide?

The NAAQS for sulfur dioxide are expressed in three forms which are referred to as the annual, 24-hour and 3-hour standards. The SO_2 NAAQS are 0.03 ppm, or 80 micrograms per cubic meter ($\mu g/m^3$), on an annual average, 0.14 ppm (365 $\mu g/m^3$) for a 24-hour averaging time, and 0.5 ppm (1300 $\mu g/m^3$) for a 3-hour averaging time.

VIII. What Are the Requirements for SIP Approval?

In order to approve a SIP revision, the EPA must determine that the revised rule meets the requirements of section 110 of the Clean Air Act and the provisions of 40 CFR part 51. EPA's criteria for SIP revision approval are contained in 40 CFR part 52, subpart A.

First, revised State rules must be properly adopted by the State, with adequate public notice and participation. The Illinois Environmental Protection Agency submitted documents in its May 21, 1999 submittal which verify that the April 15, 1999, rule variance for CILCO Edwards was properly adopted, with adequate public notice and participation.

In addition, States must provide dispersion modeling results that show that revised SO_2 rules will not cause or contribute to a violation of any of the three SO_2 NAAQS. EPA's guidance on air quality dispersion modeling is found in 40 CFR part 51, appendix W. CILCO provided air dispersion modeling data to demonstrate that facility operations under the new emission limits would not lead to a violation of the SO_2 NAAQS. The Illinois Environmental Protection Agency also provided supplemental modeling information.

The dispersion modeling information meets EPA's requirements.

Finally, the State must demonstrate that the emission limits contained in the revised rule are enforceable. CILCO Edwards uses a Continuous Emissions Monitoring system (CEM) to measure its SO_2 emissions. The rule variance requires CILCO Edwards to determine compliance with its SO_2 limits on a daily basis using the SO_2 methodology of the Phase II Acid Rain program set forth in 40 CFR part 75. These compliance methods are acceptable.

IX. Does This SIP Revision Request Meet EPA's Requirements?

EPA has determined that this SIP revision request meets the requirements for SIP approval, because it is a properly adopted State rule variance which is enforceable and protective of the SO_2 NAAQS. For additional information, see the Technical Support Document for this SIP revision request.

X. What Is EPA's Final Rulemaking Action?

EPA is approving the May 21, 1999 site-specific SO_2 SIP revision request for the Central Illinois Light Company's Edwards Generating Station in Peoria County, Illinois. Because the CILCO Edwards variance is not a permanent rule change, EPA's approval of the variance as a SIP revision will only be in force until the variance expires on February 28, 2002. After that time, if CILCO does not apply to Illinois for a permanent SIP revision, the federally enforceable SO_2 emission limits for CILCO Edwards' Boiler 2 will revert to 35 IAC 214.141. If CILCO applies for a permanent SIP revision, and the IPCB allows CILCO Edwards' variance to continue unamended through July 31, 2003, as stated in the variance, then federal approval of the variance will continue until EPA approves alternate SO_2 limits for CILCO Edwards, or until July 31, 2003, whichever is earlier. This action will be effective on June 12, 2000.

EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse written comments be filed. This action will be effective without further notice unless EPA receives relevant adverse written comment by May 15, 2000. Should the Agency receive such comments, it will publish a withdrawal informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, this action will be effective on June 12, 2000.

XI. Administrative Requirements

A. Executive Order 12866
B. Executive Order 13045
C. Executive Order 13084
D. Executive Order 13132
E. Regulatory Flexibility Act
F. Unfunded Mandates
G. Submission to Congress and the Comptroller General
H. National Technology Transfer and Advancement Act
I. Petitions for Judicial Review

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612 (Federalism) and Executive Order 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and

responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 12, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 28, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(155) to read as follows.

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(155) On May 21, 1999, the Illinois Environmental Protection Agency submitted a temporary, site-specific revision to the State Implementation Plan (SIP) for sulfur dioxide (SO_2) for the Central Illinois Light Company's E.D. Edwards Generating Station in Peoria County, Illinois (CILCO Edwards). The SIP revision took the form of an April 15, 1999, Opinion and Order of the Illinois Pollution Control Board (PCB 99–80, Variance-Air). In this Opinion and Order, the IPCB granted CILCO Edwards a variance from 35 Illinois Administrative Code 214.141, and provided for a relaxation in the fuel quality limit for one of the facility's three boilers, but added an overall fuel quality limit and retained an overall SO_2 emissions cap for the three CILCO Edwards boilers. The variance will expire on February 28, 2002, unless CILCO applies to Illinois for a permanent SIP revision.

(I) Incorporation by Reference

An April 15, 1999, Opinion and Order of the Illinois Pollution Control Board in PCB 99–80 (Variance-Air), granting a variance from 35 IAC 214.141 for Boiler No. 2 at the Central Illinois Light Company's E.D. Edwards Generating Station near Peoria, Illinois. The variance expires on February 28, 2002, unless CILCO applies to Illinois for a permanent SIP revision. If CILCO applies for a permanent SIP revision,

and the IPCB allows CILCO Edwards' variance to continue unamended through July 31, 2003, as stated in the Opinion and Order, then federal approval of the variance will continue until EPA approves alternate SO_2 limits for CILCO Edwards, or until July 31, 2003, whichever is earlier.

[FR Doc. 00–8952 Filed 4–12–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300991; FRL–6553–7]

RIN 2070–AB78

Fenhexamid; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for fenhexamid (*N*-2,3-dichloro-4-hydroxyphenyl)-1-methyl cyclohexanecarboxamide) in or on almond, nutmeat at 0.02 parts per million (ppm), almond, hull at 2.0 ppm, stone fruit, except plum (fresh prune) at 6.0 ppm, plum (fresh prune) at 0.5 ppm, and prune, dried at 1.0 ppm. The TM-402 Fungicide Task Force which is comprised of Tomen Agro, Inc. and Bayer Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective April 13, 2000. Objections and requests for hearings, identified by docket control number OPP–300991, must be received by EPA on or before June 12, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300991 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mary L. Waller, Product Manager 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW.,Washington, DC 20460; telephone number: (703) 308–9354; and e-mail address: waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**–Environmental Documents." You can also go directly to the**Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300991. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of February 25, 2000 (65 FR 10078) (FRL–6494–2), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of an amendment to pesticide petition (PP 7F4890) for tolerances, by the TM-402 Fungicide Task Force (Tomen Agro, Inc, 100 First Street, Suite 1610, San Francisco, CA 94105 and Bayer Corporation, 8400 Hawthorn Road, P.O. Box 4913, Kansas City, MO 64120–0013). This notice included a summary of the petition prepared by the TM-402 Fungicide Task Force. The registrant is Tomen Agro, Inc. There were no comments received in response to the notice of filing.

The amended petition requested that 40 CFR 180.553 be amended by establishing tolerances for the fungicide, fenhexamid in or on almond, nutmeat at 0.02 ppm, almond, hull at 2.0 ppm, stone fruit, except plum (fresh prune) at 6.0 ppm, plum (fresh prune) at 0.5 ppm, and prune, dried at 1.0 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory

requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of fenhexamid and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances in or almond, nutmeat at 0.02 ppm, almond, hull at 2.0 ppm, stone fruit, except plum (fresh prune) at 6.0 ppm, plum (fresh prune) at 0.5 ppm, and prune, dried at 1.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fenhexamid are discussed in this unit.

1. *Acute toxicity*— i. The acute oral LD_{50} and acute dermal LD_{50} for rats was > 5,000 milligrams/kilogram (mg/kg) for both sexes. The acute inhalation LC_{50} for rats was > 5.06 milligrams/liter (mg/L) for both sexes. Fenhexamid was not an eye or skin irritant and was not a dermal sensitizer.

ii. In an acute neurotoxicity study, rats were gavaged with a single oral dose of fenhexamid at dose levels of 0, 200, 630, or 2,000 mg/kg. The rats were observed for 14 days. Functional observational battery and motor activity testing were performed 7 days prior to dosing, approximately 20 minutes to 3 hours post-dosing, and on days 7 and 14. The no observed adverse effect level (NOAEL) in males was 630 mg/kg. The NOAEL in females was 2,000 mg/kg. The lowest observed adverse effect level (LOAEL) in males was 2,000 mg/kg based on a marginally decreased mean body temperature (the only treatment-related effect noted in the study). The LOAEL in females was not established.

2. *Subchronic toxicity*— i. In an inhalation toxicity range-finding study, 10 rats/sex/dose were exposed (head/nose only) to fenhexamid at concentrations of 0, 11.8, 97.7, or 1,092.6 mg/m^3 in air for 6 hours per day for 5 days. One-half of the rats were sacrificed 7 days after the first exposure and the other one-half were sacrificed 21 days after the first exposure. The NOAEL was 0.098 mg/L and the LOAEL was 1,092 mg/L based on the observations of macroscopic grey coloration of the lungs and marginally increased lung weights.

ii. In a 21-day dermal toxicity study, fenhexamid was applied to the shaved skin of 5 male and female rabbits at a dose level of 1,000 mg/kg/day for 17 days over a 3-week period. There were no compound related effects. The NOAEL was 1,000 mg/kg/day and the LOAEL was > 1,000 mg/kg/day for both systemic and local effects on the skin.

iii. In a 28-day oral toxicity range finding study, 10 rats/sex/dose were gavaged at dose levels of 0, 100, 300, or 1,000 mg/kg/day for 28 days. There were no compound-related effects in mortality, clinical signs, body weight, food consumption, hematology, clinical chemistry, organ weights, or gross and histologic pathology. The NOAEL was 1,000 mg/kg/day.

iv. In a 90-day oral toxicity study, 10 rats/sex/dose were fed fenhexamid at dose levels of 0, 2,500, 5,000, 10,000, or 20,000 ppm (0, 202, 415, 904, and 1,904 mg/kg/day for males and 0, 270, 549, 1,132, and 2,824 mg/kg/day for females). No treatment-related changes were seen in clinical signs, mortality, opthalmoscopic examinations, hematology, urinalyses, or gross pathology. The NOAEL was 5,000 ppm in males and 10,000 ppm in females. The LOAEL in males was 10,000 ppm based on decreased terminal body weights and body weight gains, increased food consumption, decreased food efficiency and increased Alanine amino-transferase (ALAT) levels. The LOAEL in females was 20,000 ppm based on increased food consumption, decreased food efficiency, decreased liver weights and liver histopathology (Kupffer cell proliferation and altered hepatocyte morphology).

v. In a 90-day oral toxicity study, 4 dogs/sex were fed fenhexamid at dose levels of 0, 1,000, 7,000, or 50,000 ppm (0, 33.9, 239.1, or 1,747.7 mg/kg/day for males and 0, 37, 261, or 1,866.2 mg/kg/day for females). The NOAEL in males and females was 1,000 ppm. The LOAEL in males and females was 7,000 ppm based on significant increases in Heinz bodies in males and females and increased absolute and relative liver weights in females.

vi. In a 90-day oral toxicity study, 10 mice/sex/dose were fed fenhexamid at dose levels of 0, 100, 1,000, or 10,000 ppm (0, 26.5, 266.5, or 3,283.5 mg/kg/day in males and 0, 51.6, 453.9, or 5,151.1 mg/kg/day in females) for 14 weeks. The NOAEL in males and females was 1,000 ppm. The LOAEL in males and females was 10,000 ppm based on the observation in both sexes of: Increased serum cholesterol, bilirubin and creatinine, decreased kidney weights, increased water consumption, increased food consumption (males), decreased food efficiency (males), renal cortical tubular basophilia (both sexes), renal protein casts and cellular detritus (males), and marginal alterations of liver function (increased serum cholesterol, bilirubin, decreased Aspartate amino-transferase (ASAT), ALAT, marginal increase in liver weights and reduced glycogen content of hepatocytes (males).

vii. In a 56-day oral toxicity study, 10 rats/sex/dose were fed fenhexamid at dose levels of 0, 1,000, 5,000, 10,000, 15,000, or 20,000 ppm (0, 57.5, 284.7, 575.7, 943.8, or 1,217.1 mg/kg/day for males and 0, 78, 407.1, 896.5, 1,492.5, or 1,896.7 mg/kg/day for females). At 20,000 ppm, rats had fenhexamid plasma levels below the level of detection. Urine samples showed measurable excretion of conjugated fenhexamid indicating intestinal absorption in the dose range examined. Males had a maximum excretion rate at 15,000 ppm indicating a saturation of intestinal absorption between 15,000 and 20,000 ppm. Urine excretion in females was somewhat lower than in males, at concentrations of 10,000 ppm and above. The highest value was determined at 20,000 ppm suggesting that saturation in intestinal absorption was not achieved with this dose level in females.

3. *Developmental toxicity*— i. In a developmental toxicity study, 30 rats/dose were gavaged at dose levels of 0 and 1,000 (1,044 determined analytically) mg/kg/day from days 6 through 15 of gestation. At 1,000 mg/kg/day, there were no treatment-related effects on maternal mortality, clinical signs, cesarean parameters or gross pathology. No treatment-related effects were noted in any embryo/fetal parameters. Under the conditions of the study, fenhexamid was not embryotoxic, fetotoxic or teratogenic at a dose of 1,044 mg/kg/day. The NOAEL for developmental and maternal toxicity was < 1,044 mg/kg/day. The LOAEL for maternal toxicity was 1,044 mg/kg/day based on the decreased body weight gain (-12% of controls) during gestation days 6-16 and a decrease in food consumption (10% of controls) during gestation days 6-11.

ii. In a developmental toxicity study, 16 rabbits were gavaged with fenhexamid at dose levels of 0, 100, 300, or 1,000 mg/kg/day from days 6 through 18 of gestation. No treatment-related effects were seen on mortality, general appearance or behavior. The NOAEL for maternal toxicity was 100 mg/kg/day. The LOAEL for maternal toxicity was 300 mg/kg/day based on observations at this dose and above of alterations of excretory products (discolored urine, small scybala), decreased body weight gain and feed consumption (mainly during the first week of the treatment period) and decreased placental weights. One abortion at 300 mg/kg/day and one abortion and two total litter resorptions at 1,000 mg/kg/day were not considered to be treatment-related because the incidences fell within the ranges of historical control data submitted with the study. Reduced and/or light feces were also noted at 1,000 mg/kg/day. Pale livers were noted in the 2 dams that aborted. The NOAEL for developmental toxicity was 300 mg/kg/day. The LOAEL for developmental toxicity was 1,000 mg/kg/day based on marginally decreased male fetal body weights and evidence of delayed ossification. Fenhexamid did not induce any treatment-related fetal malformations or deviations at any of the doses tested under the conditions of this study. All effects on intrauterine development were correlated with maternal toxicity and, therefore, no primary developmental effect was evident. Fenhexamid was not teratogenic up to and including 1,000 mg/kg/day.

4. *Reproductive toxicity.* In 2-generation reproduction study, 30 rats/sex/dose were fed fenhexamid at dose levels of 0, 100, 500, 5,000, or 20,000 ppm (0, 7.6, 38.2, 406, or 1,814 mg/kg/day for males and 0, 9.0, 44.8, 477, or 2,043 mg/kg/day for females determined for the 10-week premating period). There were no compound-related effects on mortality, clinical signs, behavior or reproductive parameters for adult animals. The NOAEL for reproductive toxicity was 20,000 ppm.

The neonatal NOAEL was 500 ppm and the neonatal LOAEL was 5,000 ppm based on significantly decreased pup body weights on lactation days 14 and 21 for the F_1 (6-11% < controls) and on lactation days 7, 14, and 21 for F_2 pups (9-11% < controls). At 20,000 ppm, significantly decreased pup body weights were observed on lactation days 7, 14, and 21 for F_1 pups (15-30% < controls) and for F_2 pups (11-19% < controls). Treatment-related decreased pup body weights were not observed at birth or on lactation day 4. An additional effect observed at 20,000 ppm was an increase in the number of pups among the post-weaning F_1 pups selected to be F_1 parents which died, that is, 0/66, 2/68, 0/68, 0/68, and 10/78 for the control, 100, 500, 5,000, and 20,000 ppm dose groups, respectively. This effect was attributed to the small size of the pups at weaning (30% < controls).

The parental NOAEL was 500 ppm and the parental LOAEL in males was 5,000 ppm based on increased creatinine levels in P-generation (but not F_1 generation) males at premating (20%, $p<0.05$) and at termination (20%, not significant); slightly increased alkaline phosphatase levels in P-generation and F_1-generation males at premating and at termination (20–34%, not significant); decreased absolute liver weight in P-generation and F_1-generation males (11-12%, $p<0.05$) and decreased liver/body weight ratios in P-generation and F_1-generation males (8-9%, $p<0.05$ for P-generation and not significant for F_1-generation); decreased absolute kidney weights in F_1-generation (but not P-generation) males (12%, $p<0.05$); and decreased kidney/body weight ratios in F_1-generation (but not P-generation) males (8%, $p>0.05$). The parental LOAEL in females was based on increased alkaline phosphatase levels in F_1-generation) (but not P-generation) females at premating (43%, $p<0.05$) and at termination (63%, $p<0.05$); and on very small increases in gamma glutamyl transferase (GGT) (not considered to be biologically relevant). Overall, treatment-related effects observed at 5,000 ppm in males and females were also observed at 20,000 ppm, but were slightly increased in severity. Toxicologically relevant additional toxicological effects observed at 20,000 ppm were decreased body weights and increased food consumption in males and increased urea nitrogen and creatinine levels, decreased kidney weights, decreased body weights and increased food consumption in females.

5. *Mutagenicity.* No mutagenicity was noted in the following assays: Reverse gene mutation, *S. typhimurium*, *E. coli*; forward gene mutation -Hypoxanthine guanine phophoribosyl transferase (HGPRT) locus; Chromosome aberration, Chinese hampster ovary (CHO) cells; unscheduled DNA synthesis, rat hepatocytes; and micronucleus assay in mice.

6. *Chronic toxicity*— i. In a 1-year chronic oral toxicity study, dogs were fed dose levels of 0, 500, 3,500, or 25,000 ppm (0, 17.4, 124.3, or 917.8 mg/kg/day for males and 0, 19.2, 132.7, or 947.1 mg/kg/day for females). The NOAEL in males and females was 500 ppm. The LOAEL was 3,500 ppm in males and females based on decreases in red blood cells (RBC), hemoglobin (Hb), and hematocrit (Hct) and on significant increases in Heinz bodies in both sexes, increased adrenal weight parameters in females, and the presence of intracytoplasmic vacuoles in the adrenal cortex of 3/4 females.

ii. In a combined chronic toxicity/carcinogenicity study, 50 rats/sex/dose were fed fenhexamid at dose levels of 0, 500, 5,000, or 20,000 ppm (0, 28, 292, or 1,280 mg/kg/day for males and 0, 40, 415, 2,067 mg/kg/day for females) for 24 months. The NOAEL in males and females was 500 ppm. The LOAEL for chronic toxicity in males and females was 5,000 ppm based on observations of decreased body weight gain (-6.8%) and food efficiency (-11.8%) in females, increased incidence of cecal mucosal hyperplasia in males, increased cellularity (hyperplasia) of the bone marrow in females and the presence of splenic extramedullary hematopoiesis in males. At 20,000 ppm, observations were increased food consumption, increased numbers of circulating reticulocytes, enlarged spleens observed macroscopically, increased splenic weights and thyroid colloid alterations (both sexes). Fenhexamid was non-oncogenic at doses up to and including 20,000 ppm in the diet. At doses tested, there were no treatment related increases in tumor incidence, tumor spectrum or latency when compared to controls.

7. *Carcinogenicity.* In a carcinogenicity study, 50 mice/sex/dose were fed fenhexamid at dose levels of 0, 800, 2,400, or 7,000 ppm (0, 247.4, 807.4, or 2,354.8 mg/kg/day for males and 0, 364.8, 1,054.5, or 3,178.2 mg/kg/day for females) for 2 years. The NOAEL for males was 800 ppm and the NOAEL for females was 2,400 ppm. The LOAEL for males was 2,400 ppm based on the observation of decreased kidney weights and decreases in sex-specific vacuolation of the proximal tubules in the kidneys in males. A marginal decrease in body weights (up to 8%) and body weight gain (17%) was observed in males at 7,000 ppm. The LOAEL for females was 7,000 ppm based on significantly increased water consumption, decreased kidney weights, and renal histopathology (increased incidence of basophilic cortical tubules). Fenhexamid was not oncogenic in mice at doses up to and including 7,000 ppm. There were no treatment related increases in tumor incidence, tumor spectrum or latency when compared to controls.

8. *Dermal absorption.* In a dermal absorption study, radiolabeled fenhexamid (50% formulation) was applied to the shaved skin of male rats at dose levels of 0.00138, 0.0147, or 0.148 mg/cm^2. A volume of 100 µL was applied to a skin area of approximately 12.5 cm^2 on each rat. Four rats/dose level were sacrificed at 0.5, 1, 2, 4, 10, 24, and 120 hours postdose. Mean total recovery of radioactivity ranged from 90.3% to 97.6% of the applied dose. The majority of radioactivity was recovered from the skin wash (69.9% to 96.1%). Radioactivity in the skin test site ranged from 0.44% to 10.2%; in the urine from "not detectable" to 3.34%; and in the feces from "not detectable" to 11.6% of the applied dose. Radioactivity in blood did not exceed 0.03% and in the carcass did not exceed 9.37%. Estimates of dermal absorption were based on the sum of radioactivity (as test material) in the skin test site, urine, feces, blood and carcass. The percentage dermal absorption decreased with increasing dose levels. The percentage dermal absorption at 10 hours postdose was 19.58%, 7.62%, and 2.63% and at 120 hours postdose was 21.0%, 6.91%, and 2.13% for the low, mid and high dose levels respectively.

9. *Metabolism.* In a metabolism study, rats were administered radiolabeled fenhexamid (a single oral low dose of 1 mg/kg, a single oral high dose of 100 mg/kg, or 15 repeated low doses of 1 mg/kg/day). Radiolabeled fenhexamid was rapidly absorbed from the gastrointestinal (GI) tract in all dose groups. After single and repeated administration of the low dose, the plasma concentration peaked within 5 to 10 minutes. After administration of the high dose, the maximum was detected 40 to 90 minutes postdosing. The absorption of the test compound was shown to be almost complete in a bile-cannulation experiment, as more than 97% of the administered dose was absorbed from the GI tract 48 hours after intra-duodenal administration. These results are indicative of a pronounced first pass effect and enterohepatic circulation. Tissue residues declined rapidly and after 48 hours the total radioactivity residue in the body excluding the GI tract, was < 0.3% of the administered dose in all dose groups. Liver and kidney were the organs with the highest concentrations of radioactivcity in all dose groups. Excretion was rapid and almost complete with feces as the major route of excretion. Approximately 62-81% of the recovered radioactivity was found in feces, and 15-36% in urine within 48 hours post-dosing. More than 90% of the recovered radioactivity was eliminated with bile in the bile cannulation experiment. Only 0.02% of the administered radioactivity was recovered in exhaled air. Radioactive residues in rat bodies (excluding GI tract) were significantly lower in females after a single high dose. There was significantly higher renal excretion for females in comparison with males after 15 repeated low doses. In both sexes renal excretion was significantly higher after a single low dose when compared with a single high dose. Metabolite characterization studies showed that the main component detected in excreta was the unchanged parent compound which accounted for 62–75% of the dose independent of the dosing regime and sex. Metabolite 1, the glucuronic acid conjugate of the parent compound, ranged from 4 to 23% of the dose. Metabolite fractions 2 and 3 accounted for up to 3 and 7% of the dose, respectively. The proposed major pathway for biotransformation is via conjugation of the aromatic hydroxyl group with glucuronic acid. Prior to fecal excretion, hydrolysis in the intestine converts the conjugate back to the parent compound giving rise to enterohepatic circulation. Identification of radioactive residues ranged from 88% to 99% and was independent of dose and sex.

B. Toxicological Endpoints

1. *Acute toxicity.* An acute toxicological endpoint was not identified resulting from a single oral exposure, and therefore, an acute Reference Dose (RfD) was not selected.

2. *Short- and intermediate-term toxicity.* A short- and intermediate-term dermal endpoint of 1,000 mg/kg/day from the 21-day dermal toxicity study in rabbits was selected for occupational exposure. No short- and intermediate-term endpoint was selected for non-occupational exposure as there are no residential uses of fenhexamid.

3.*Chronic toxicity.* EPA has established the RfD for fenhexamid at 0.17 mg/kg/day. This RfD is based on a 1-year feeding study in dogs with a NOAEL = 17 mg/kg/day. An additional 3x FQPA safety factor was added and applies to all population subgroups resulting in a chronic population adjusted dose (cPAD) of 0.057 mg/kg/day.

4. *Carcinogenicity.* Fenhexamid was classified as a "not likely" human carcinogen based on the lack of evidence of carcinogenicity in mice and rats and the lack of genotoxicity in a battery of mutagenicity studies.

C. Exposures and Risks

1. *Dietary*— i. *From food and feed uses.* Tolerances are currently established for fenhexamid at 40 CFR 180.553 for grapes at 4.0 ppm, strawberries at 3.0 ppm, and raisins at 6.0 ppm. Additional tolerances are being proposed as follows: almond, nutmeat at 0.02 ppm, almond, hull at 2.0 ppm, stone fruit, except plum (fresh prune) at 6.0 ppm, plum (fresh prune) at 0.5 ppm, and prune, dried at 1.0 ppm. Risk assessments were conducted by EPA to assess dietary exposures from fenhexamid as follows:

a. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No toxicological endpoint attributable to a single (acute) dietary exposure was identified.

b. *Chronic exposure and risk.* The chronic risk analysis used the cPAD of 0.057 mg/kg/day which applies to all population subgroups. The Dietary Exposure Evaluation Model (DEEM™) which is a exposure analysis system that estimates exposure to a pesticide chemical in food comprising the diets of the U.S. population, including population subgroups was used to conduct the chronic (food) risk analysis. DEEM™ contains food consumption data as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989-1992. The chronic food exposure was calculated assuming theoretical maximum residue contribution (TMRC) values, and 100% crop treated estimates. The percent of the cPAD utilized is as follows: 15.7 for non-nursing infants; 14.2 for all infants (<1 year); 10.7 for nursing infants; 9.9 for children (1-6 years); 5.7 for non-Hispanic/non-white/non-black; 5.0 for children (7 to 12 years); 4.6 for U.S. population (summer season); 3.7 for U.S. population (total) and 2.6 for females (13-50 years).

ii. *From drinking water.* In soil, fenhexamid is relatively immobile (K_{oc} = 446) and non-persistent ($t_{1/2}$ = ≥ 1 day). Fenhexamid is not expected to be a ground water contaminant, but has some potential to reach surface water on eroded soil particles. In surface water, fenhexamid would be expected to photodegrade rapidly ($t_{1/2}$ = ≥ 0.2 days).

No monitoring data are available to perform a quantitative drinking water assessment. The Agency estimated surface water exposure using the Generic Expected Environmental Concentration (GENEEC) model, a

screening level model for determining concentrations of pesticides in surface water, GENEEC uses the soil/water partition coefficient, hydrolysis half life, and the maximum label rate to estimate surface water concentration. GENEEC contains a number of conservative underlying assumptions. Therefore, the drinking water concentrations derived from GENEEC for surface water are likely to be overestimated. The modeling was conducted based on the environmental profile and the maximum seasonal application rate proposed for fenhexamid: 0.75 lb. active ingredient/acre x 4 applications/acre/year. The estimated environmental concentrations (EECs) derived from GENEEC are 17 µg/L (peak value) and 4.8 µg/L (56-day average).

The Agency used the Screening Concentration in Ground Water (SCI-GROW) model to estimate pesticide levels in ground water. The SCI-GROW model is based on actual monitoring data collected for a number of pesticides that serve as benchmarks to predict EECs in ground water. Using SCI-GROW, the EEC calculated for fenhexamid is 0.0007 µg/L (acute and chronic).

a. *Acute exposure and risk.* Drinking water levels of comparison (DWLOCs) for acute exposure were not calculated as there was no appropriate toxicological endpoint attributable to a single (acute) dietary exposure.

b. *Chronic exposure and risk.* Chronic (non-cancer) DWLOCs were calculated for the U.S. population and the population subgroups with the highest (chronic) food exposure. The DWLOCs are as follows: 480 µg/L for infants/children; 1,700 µg/L for females 13-50 yrs.); and 1,900 µg/L for the U.S. population and all other subgroups. The EEC (0.0007 µg/L from SCI-GROW, and 4.8 µg/L from GENEEC) for fenhexamid are well below the DWLOCs and therefore, are below the Agency's level of concern. Therefore, the Agency concludes with reasonable certainty that residues of fenhexamid in drinking water do not contribute significantly to the aggregate chronic human health risk.

2. *From non-dietary exposure.* Fenhexamid is not registered for use on residential non-food sites. Therefore, no non-occupational, non-dietary exposure and risk are expected.

3. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether fenhexamid has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, fenhexamid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fenhexamid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* Acute aggregate risk is the sum of exposures resulting from acute dietary food + acute drinking water. The Agency did not identify an appropriate toxicological endpoint attributable to a single (acute) dietary exposure.

2. *Chronic risk.* Using the TMRC, exposure assumptions described in this unit, EPA has concluded that aggregate exposure to fenhexamid from food will utilize 3.7% of the cPAD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants (< 1 year) discussed below. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to fenhexamid in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fenhexamid residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Although short- and intermediate-term endpoints were identified, there are no residential uses for fenhexamid.

4. *Aggregate cancer risk for U.S. population.* Fenhexamid was classified as "not likely" to be a human carcinogen.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fenhexamid residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of fenhexamid, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Prenatal and postnatal sensitivity.* Qualitatively, there is evidence of increased susceptibility in rat pups compared to adults, based on the relative severity of effects in the two-generation reproduction study in rats. The effects on pups were of concern because: significant pup body weight decreases were observed in both the F_1 and the F_2 generations; the pup body weight decreases in the F_2 generation were observed during early lactation (lactation day 7 through day 21) when the pups are exposed to the test material primarily through the mother's milk; the

pup body weight decreases in the F_1 generation were observed during late lactation (lactation days 14 through 21) when the pups are exposed to the test material through the mother's milk and through the feed; and, in the metabolism study on fenhexamid, glucuronidation of fenhexamid was clearly demonstrated to be the single major route of metabolism, detoxification and excretion of fenhexamid in adult male and female rats. The demonstrated poor glucuronidation capacity of rat pups between days 7 and 21 indicates a possibly increased sensitivity of pups and serves to support a concern for neonatal toxicity.

iii. *Conclusion.* There is a complete toxicity data base for fenhexamid and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Although there is qualitative evidence of increased susceptibility, the Agency decided that an additional safety factor of 3x would be appropriate based on the following reasons: The increased susceptibility demonstrated in the 2-generation reproduction study was only qualitative (not quantitative) evidence and was observed only in the presence of parental toxicity; the qualitative offspring effect was limited to decreased body weight and no other adverse effects (e.g., decreased pup survival, behavioral alterations, etc.) were observed; and there is no indication of increased susceptibility of rat or rabbit fetuses to *in utero* exposure in the prenatal developmental toxicity studies with fenhexamid.

2. *Acute risk.* An acute endpoint was not identified.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that the highest aggregate exposure to fenhexamid from food will utilize 15.7% of the cPAD for non nursing infants. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to fenhexamid in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

4. *Short- or intermediate-term risk.* There are no residential uses and thus these risks are not presented.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to fenhexamid residues.

IV. Other Considerations

A. Metabolism in Plants

The parent compound, fenhexamid, is the only compound of concern. Radiolabeled fenhexamid plant metabolism studies were conducted on grapes, tomatoes, and apples. The qualitative nature of fenhexamid residues in plants is adequately understood. The data indicate very little translocation of residues, i.e., residues of fenhexamid are non-systemic and are thus primarily surface residues.

B. Metabolism in Animals

Almond hulls which are a livestock feed item contain 90% dry matter and its contribution to the livestock diet is a maximum of 10% each for beef and dairy cattle. Data from a study investigating the metabolism of ^{14}C fenhexamid in a lactating goat indicated that the metabolism of fenhexamid in the goat is similar to that in the rat, and based on the experimentally determined feeding level of 133 ppm in the feed, the Agency calculates that the dosage was equivalent to 605x the maximum theoretical dietary burden of 0.22 ppm for beef and dairy cattle. The total radioactive residues (TRR) were 0.045–0.212 ppm in milk, 4.682 ppm in liver, 3.267 ppm in kidney, 0.035 ppm in muscle, and 0.085 ppm in fat.

The qualitative nature of the residue in ruminants is adequately understood. Based on the goat metabolism study, the Agency concludes that there is no reasonable expectation of finite residues in milk or ruminant tissues as a result of the currently proposed uses on almonds and stone fruits, and ruminant commodity tolerances are not required.

C. Analytical Enforcement Methodology

Adequate enforcement methodology (a high performance liquid chromotography method with electrochemical detection) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

D. Magnitude of Residues

A total of five almond field trials were conducted in California. The almond field trial data are adequate in number and geographical representation. The data indicate that residues of fenhexamid will not exceed the proposed tolerances of 0.02 ppm in/on almond nutmeats and 2.0 ppm in/on almond hulls following applications of the proposed 50% WDG formulation according to the maximum proposed use patterns. Samples of almond RACs were harvested 142–173 days following the last of four sequential applications of the 50% WDG formulation at 0.73–0.76 lb ai/acre/application (3.0 lbs active ingredient acre/season (ai/acre/season); 1x the proposed maximum seasonal application rate). Residues of fenhexamid were non-detectable (<0.02 ppm) in/on all treated almond nutmeat samples.

Field trial data were submitted for cherries (sweet and tart), peaches, and plums, which are the three representative commodities of the stone fruits crop group (40 CFR 180.41, Crop Group 12). Samples (U.S. field trials) were harvested 0-days following the last of four sequential foliar applications of the 50% WDG formulation at 0.73–0.78 lb ai/acre/application (3.0 lbs ai/acre/season; 1x the proposed maximum seasonal application rate). Residues of fenhexamid (uncorrected for method recovery and storage stability data) in/on treated samples ranged from 0.844–1.826 ppm for sweet cherries, 1.049–4.950 ppm for tart cherries, 0.327-2.131 ppm for peaches, and <0.05–0.366 ppm for plums. The residue data for stone fruits indicates that the maximum residues for tart cherries (4.950 ppm) and plums (0.366 ppm) differ by a factor of 13.5. On this basis, the Agency concludes that plums should be excluded from the proposed stone fruits crop group tolerance, and an individual tolerance is being established for residues of fenhexamid in/on plums (fresh prunes) at 0.5 ppm.

No processing study data have been submitted for dried prunes. Based on the concentration factor which has previously been shown to occur in the processing of fenhexamid-treated grapes to raisins, it is probable that concentration of fenhexamid residues will occur in the processing of plums (fresh prunes) to dried prunes. The Agency concludes that the appropriate tolerance level for residues of fenhexamid *per se* in/on dried prunes is 1.0 ppm. This is based upon the highest average field trial (HAFT) residue value (0.264 ppm) for plums (fresh prunes) multiplied by the TMCF (3.4x) for dried prunes =0.90 ppm, which is rounded up to 1.0 ppm.

E. International Residue Limits

The Codex Alimentarius Commission has not established maximum residue limits (MRLs) for residues of fenhexamid or any of its metabolites in/on plant or animal commodities.

Harmonization is thus not an issue for this action.

F. Rotational Crop Restrictions

The Agency concluded that a 30-day plantback interval is required for all crops without a fenhexamid tolerance.

V. Conclusion

Therefore, tolerances are established for residues of fenhexamid in or on almond, nutmeat at 0.02 ppm, almond, hull at 2.0 ppm, stone fruit, except plum (fresh prune) at 6.0 ppm, plum (fresh prune) at 0.5 ppm and prune, dried at 1.0 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300991 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 12, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300991, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income*

Populations (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 30, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.553 is amended by alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.553 Fenhexamid; tolerances for residues.

(a) * * *

Commodity	Parts per million
Almond, hull	2.0
Almond, nutmeat	0.02
* * * * *	
Plum (fresh prune)	0.5
Prune, dried	1.0
* * * * *	
Stone fruit, except plum (fresh prune)	6.0
* * * * *	

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[FR Doc. 00–9144 Filed 4–12–00; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF DEFENSE

48 CFR Parts 213, 225, 242, and 252

[DFARS Case 98–D028]

Defense Federal Acquisition Regulation Supplement; Foreign Acquisition

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Acting Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS). These amendments conform the DFARS to the Federal Acquisition Regulation (FAR) Amendments pertaining to foreign acquisition that were published in the **Federal Register** on December 27, 1999.

EFFECTIVE DATE: April 13, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0288; telefax (703) 602–0350. Please cite DFARS Case 98–D028.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS Part 225, Foreign Acquisition, and updates related references, for conformance with the FAR Part 25 rewrite that was published at 64 FR 72416 on December 27, 1999 (Federal Acquisition Circular 97–15, Item II). The rule reorganizes the existing DFARS text to align it with the revised FAR text. The rule makes no substantive change to DFARS policy pertaining to foreign acquisition. The following list summarizes the reorganization of the DFARS text:

Text previously located at	Relocated to
225.000–70	225.003
225.000–71	225.001
225.102	225.103
225.105	225.502
Table 25–1	225.504
225.107	225.170
225.108	225.104
225.109(a)	225.1101(1)
225.109(b)	225.171(a)
225.109(d)	225.1101(2)
225.109–70(a)	225.1101(3)
225.109–70(b)	225.171(b)
225.303	225.304
225.305–70	225.1103(1)
225.401	225.003
225.402(c)	225.403
225.403	225.401
225.403–70	225.401–70
225.405	225.408
225.408	225.11
225.602	225.901
225.603	225.902
225.604	225.903
225.605	FAR 25.1101(e)(2)
225.605–70	225.11
225.702	225.701
225.970	225.1070
225.971	225.1103(2)
225.972	225.1103(3)

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 98–D028.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 213, 225, 242, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 213, 225, 242, and 252 are amended as follows:

1. The authority citation for 48 CFR parts 213, 225, 242, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

2. Section 213.302–2 is amended in paragraph (d) introductory text by revising the first sentence to read as follows:

213.302–5 Clauses.

* * * * *

(d) When using the clause at FAR 52.213–4, delete the reference to the clause at FAR 52.225–1, buy American Act-Balance of Payments Program-Supplies. * * *

* * * * *

PART 225—FOREIGN ACQUISITION

225.000–70 and 225.000–71 [Removed]

3. Sections 225.000–70 and 225.00–71 are removed.

4. Sections 225.001 and 225.003 are added to read as follows:

225.001 General.

To apply the policies and procedures of this part, analyze and evaluate offers of foreign end products generally as follows:

(1) *Statutory or policy restrictions.*

(i) Determine whether the product is restricted by—

(A) Defense authorization or appropriations acts (see subpart 225.70); or

(B) DoD policy (see subpart 225.71 and FAR 6.302–3).

(ii) Where an exception to or waiver of a restriction would result in award of a foreign end product, apply the policies and procedures of the Buy American Act or the Balance of Payments Program, and, if applicable the trade agreements.

(2) *Memoranda of understanding or other international agreements.*

(i) Determine whether the offered product is the product of one of the countries (qualifying country), listed in 225.872–1.

(ii) If the product is the product of a qualifying country, evaluate the offer under subpart 225.5 and 225.872–4.

(3) *Trade agreements.*

(i) Determine whether the product is covered by the Trade Agreements Act or the North American Free Trade Agreement Implementation Act (see subpart 225.4).

(ii) If the product is an eligible product under subpart 225.4,evaluate the offer under subpart 225.5.

(iii) If the product is not an eligible product, a qualifying country end product, or a U.S. made end product, purchase of the foreign end product may be prohibited (see FAR 25.403(c) and 225.403(c).

(4) *Contractors controlled by terrorist nations.*

(i) Determine whether the contractor is controlled by a terrorist nation.

(ii) If the contractor is controlled by a terrorist nation, comply with 209.104–1(g).

(5) *Buy American Act and Balance of Payments Program.* See the evaluation procedures in subpart 225.5.

225.003 Definitions.

As used in this part—

(1) "Caribbean Basin country end product" includes petroleum or any product derived from petroleum.

(2) "Defense equipment" means any equipment, item of supply, component, or end product purchased by the DoD.

(3) "Domestic concern" means a concern incorporated in the United States or an unincorporated concern having its principal place of business in the United States.

(4) "Domestic end product" has the meaning given in the clauses at 252.225–7001, Buy American Act and Balance of Payments Program; 252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program; and 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, instead of the meaning in FAR 25.003.

(5) "Eligible product" means, instead of the definition at FAR 25.003, a designated, NAFTA, or Caribbean Basin country end product in the categories listed in 225.401–70.

(6) "Foreign concern" means any concern other than a domestic concern.

(7) "Nondesignated country end product" means any end product which is not a U.S. made end product or a designated country end product.

(8) "Nonqualifying country" means a country other than the United States or a qualifying country.

(9) "Nonqualifying country end product" means an end product which is neither a domestic nor qualifying country end product.

(10) "Nonqualifying country offer" means an offer of a nonqualifying country end products, including the price of transportation to destination.

(11) "Qualifying country' is a term used to describe certain countries with memoranda of understanding or international agreements with the United States. These countries are listed in 225.872–1.

(12) "Qualifying country component" and "qualifying country end product" are defined in the clauses at 252.225–7001, Buy American Act and Balance of Payments Program; 252.225–7007. Buy Americn Act—Trade Agreements—Balance of Payments Program; and 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program. "Qualifying country end product" is also defined in the clause at 252.225–7021, Trade Agreements.

(13) "Qualifying country offer" means an offer of a qualifying country end product, including the price of transportation to destination.

(14) "Source" when restricted by such words as foreign, domestic, qualifying country, etc., refers to the actual manufacturer or producer of the end product or component.

5. Subpart 225.1 is revised to read as follows:

Subpart 225.1—Buy American Act—Supplies

Sec.

225.103 Exceptions.
225.104 Nonavailable articles.
225.170 Acquisition from or through other Government agencies.
225.171 Solicitations.

225.103 Exceptions.

(a)(1)(A) Specific public interest exceptions for DoD for certain countries are in 225.872.

(B) The Under Secretary of Defense (Acquisition, Technology, and Logistics) has determined that, for procurements subject to the Trade Agreements Act, it

is inconsistent with the public interest to apply the Buy American Act to information technology products in Federal Supply Group 70 or 74 that are substantially transformed in the United States.

(ii)(A) Normally, use the evaluation procedures in subpart 225.5, but consider recommending a public interest exception where the purposes of the Buy American Act are not served, or in order to meet a need set forth in 10 U.S.C. 2533. For example, a public interest exception may be appropriate—

(1) If accepting the low domestic offer will involve substantial foreign expenditures, or accepting the low foreign offer will involve substantial domestic expenditures;

(2) To ensure access to advanced state-of-the-art commercial technology; or

(3) To maintain the same source of supply for spare and replacement parts (also see paragraph (b)(iii)(B) of this section)—

(i) For an end item that qualifies as an American good; or

(ii) In order not to impair intergration of the military and commerical industrial base.

(B) A determination whether to grant a public interest exception shall be made after consideration of the factors in 10 U.S.C. 2533—

(1) At a level above the contracting officer for acquisitions valued at less than $100,000;

(2) By the head of the contracting activity for acquisitions valued at $100,000 or more but less than $1,000,000; or

(3) By the agency head for acquisitions valued at $1,000,000 or more.

(b)(i) A determination that an article, material, or supply is not reasonably available is required where no domestic offer is received or when domestic offers are insufficient to meet the requirement and award is to be made on a nonqualifying country end product.

(ii) Except as provided in FAR 25.103(b)(2)(i), the determination must be approved—

(A) At a level above the contracting officer, if the acquisition is estimated not to exceed $25,000;

(B) By the chief of the contracting officer if the acquisition is estimated not to exceed $250,000;

(C) By the head of the contracting activity (HCA) or immediate deputy if the acquisition is estimated not to exceed $2 million; or

(D) By the head of the agency, or designee at a level no lower than an HCA, if the acquisition is estimated to exceed $2 million.

(iii) A determination as to whether an article, material, or supply is reasonably available is not required for—

(A) End products or components listed in 225.104(a)(iii) or FAR 25.104(a);

(B) Acquisitions for spare/replacement parts when the acquisition is restricted to the original manufacturer or supplier; or

(C) Acquisition of foreign drugs by the Defense Supply Center, Philadelphia, when the Chief of the Technical Operations Division, Directorate of Medical Materiel, determines that only the requested foreign drug will fulfill the requirements.

(iv) Under coordinated acquisition (see Subpart 208.70), the determination is the responsibility of the requiring department when the requiring department specifies acquisition of a foreign end product.

(c) The cost of a domestic end product is unreasonable if it is not the low evaluated offer when evaluated under Subpart 225.5.

225.104 Nonavailable articles.

(a)(i) DoD has determined that the articles, materials, and supplies listed in FAR 25.104(a) and in paragraph (a)(iii) of this section, when purchased as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. Regard these items or components as being of domestic origin when incorporated in—

(A) An end product or construction material manufactured in the United States; or

(B) A qualifying country end product or construction material. (For construction material, see FAR Subpart 25.2.)

(ii) Scrap is domestic in origin if generated in, collected in, and prepared for processing in the United States.

(iii)(A) Aluminum clad steel wire.

(B) Sperm oil.

225.170 Acquisition from or through other Government agencies.

Contracting activities must apply the evaluation procedures in subpart 225.5 when using Federal supply schedules.

225.171 Solicitations.

(a) For oral solicitations, inform prospective vendors that only domestic and qualifying country end products are acceptable, except nonqualifying country end products are acceptable if—

(1) The items are excepted either on a blanket or an individual basis; or

(2) The price of the nonqualifying country end product is the low offer under the evaluation procedures in subpart 225.5.

(b) When only domestic end products are acceptable, the solicitation must make a statement to that effect.

6. Section 225.202 is revised to read as follows:

225.202 Exceptions.

(a)(2) A nonavailability determination is not required for construction materials listed in FAR 25.104(a) or in 225.104(a)(iii). For other materials, a nonavailability determination must be approved at the levels specified in 225.103(b)(ii). Use the estimated value of the construction materials to determine the approval level.

7. Subpart 225.3 is revised to read as follows:

Subpart 225.3—Balance of Payments Program

Sec.
225.302 Policy.
225.304 Procedures.

225.302 Policy.

(1) DoD implements the Balance of Payments Program using evaluation factors similar to those which implement the Buy American Act. The Balance of Payments Program restrictions—

(i) Apply to acquisitions for foreign military sales;

(ii) Do not apply to services, except services which primarily involve the acquisition of supplies;

(iii) Do not apply to qualifying country end products;

(iv) Do not apply to articles, materials, or supplies produced or manufactured in Panama when purchased by and for the use of U.S. forces in Panama; and

(v) For acquisitions subject to the Trade Agreements Act, do not apply to information technology products in Federal Supply Group 70 or 74 that are substantially transformed in the United States.

(2)(i) Before solicitation, the determinations required by FAR 25.303(b) may be made by the following individuals or their immediate deputies:

ARMY

Deputy Chief of Staff for Research, Development and Acquisition, Headquarters, U.S. Army Material Command
Commander in Chief, U.S. Army Europe and DCSLOG, U.S. Army, Europe
Commander Eighth U.S. Army and Chief of Staff, Eighth U.S. Army
Commander, Corps of Engineers Command
Commander, U.S. Army, Japan
Commander, U.S. Army Medical Research and Development Command
Commander, U.S. Army Forces Command

Commander, U.S. Army, South

NAVY

Commander-in-Chief, U.S. Naval Forces, Europe
Commander, U.S. Naval Forces, Japan
Commander, U.S. Naval Forces, Philippines
Commander-in-Chief, U.S. Atlantic Fleet
Commander-in-Chief, U.S. Pacific Fleet
Commander, Military Sealift Command
Commandant, U.S. Marine Corps
Commander, Naval Facilities Engineering Command
Commanding General, III Marine Amphibious Force

AIR FORCE

Commander, U.S. Air Forces in Europe
Commander, Pacific Air Forces
Commander, Air Mobility Command
Commander, Air Force Materiel Command
Commander, Air Combat Command
Commander, Air Force Space Command

ADVANCED RESEARCH PROJECTS AGENCY

Director, Contracts Management Office

DEFENSE INFORMATION SYSTEMS AGENCY

Director

DEFENSE LOGISTICS AGENCY

Executive Director, Procurement

NATIONAL IMAGERY AND MAPPING AGENCY

Deputy Director for Acquisition, Installations, and Logistics

DEPARTMENT OF DEFENSE EDUCATION ACTIVITY

Director

(ii) The authority to make the determinations referred to in paragraph (2)(i) of this section may be redelegated below the levels specified in that paragraph for acquisitions estimated at 500,000 or less in foreign cost.

(3)(i) This authority is not intended for use in making repetitive supply acquisitions or acquisitions of total annual supply requirements of items available in the United States but not available within the time required.

(ii) DoD has determined that requirements for the items on the lists at FAR 25.104(a) and at 225.104(a)(iii) can only be filled by a foreign end product.

(4) DoD has determined the following items can only be acquired or performed in the country concerned:

(i) Maintenance and repair of, and acquisition of spare parts for, foreign-manufactured vehicles, equipment, machinery, and systems; provided, in the case of spare parts, the acquisition is restricted to the original manufacturer or its supplier in accordance with DoD standardization policy (see DoD Directive 4120.3, Defense Standardization and Specification Program).

(ii) Industrial gases.

(iii) Brand drugs specified by the Defense Medical Materiel Board.

(iv) Bulk construction materials: sand, gravel, and other soil materials, stone, concrete masonry units, and fired brick.

(v) Overhaul and repair of vessels, aircraft, and vehicles which—

(A) Are home-ported/stationed/deployed overseas; and

(B) Cannot practically return to the United States or to U.S. operated repair facilities.

(vi) Ready-mixed asphalt and portland cement concrete, provided that foreign cost is estimated at not more than $100,000.

(5)(i) Purchase of materials, equipment, and supplies for construction overseas shall generally be the responsibility of the contractor performing the work; but where necessary to comply with foreign law, to avoid taxation, or to obtain other advantages, consider direct purchase. Consider savings that may be obtained by exemptions from import and other taxes and, to the extent economical, take advantage of tax exemptions available under existing agreements.

(ii) When purchase of materials is the responsibility of the construction contractor, the evaluation differential is determined through the estimating process and applied before solicitation.

225.304 Procedures.

(a) *Solicitation of offers.* When soliciting orally, advise vendors that only domestic and qualifying country end products are acceptable unless an exception applies or the price of a domestic end product is unreasonable.

(b) *Evaluation of offers.*

(i) Use the evaluation procedures in subpart 225.5 instead of the evaluation procedures in FAR subpart 25.5. Treatment of duty may differ when delivery is overseas.

(A) Duty may not be applicable to nonqualifying country offers.

(B) The U.S. Government cannot guarantee the exemption of duty for components or end products imported into foreign countries.

(C) Foreign governments may impose duties, and offers including such duties must be evaluated as offered.

(ii) Where the evaluation procedures in Subpart 225.5 result in the award of nonqualifying country end product, the acquisition of domestic end products is unreasonable or inconsistent with public interests. If no domestic end product offers are received, the determination in FAR 25.303(b)(1) is not required.

8. Subpart 225.4 is revised to read as follows:

Subpart 225.4—Trade Agreements

Sec.
225.401 Exceptions.
225.401–70 Products subject to trade agreement acts.
225.402 General.
225.403 Trade Agreements Act.
225.408 Procedures.

225.401 Exceptions.

(b)(i) If a department or agency considers an individual acquisition of a product to be indispensable for national security or national defense purposes and appropriate for exclusion from the provisions of FAR subpart 25.4, it may submit a request with supporting rationale to the Director of Defense Procurement (USD (AT&L) DP).

(ii) The following national security/national defense exceptions do not require approval by USD (AT&L) DP:

(A) Where purchase from foreign sources is restricted by the DoD annual appropriations or authorization acts (see subpart 225.70) or by the establishment of required sources of supplies and services under FAR part 8.

(B) Where competition from foreign sources is restricted under the authority of FAR 6.302–3(a)(2)(i). Provide USD (AT&L) DP a copy of the justification for restricting competition (see FAR 6.303–1(d)).

(C) Where competition from foreign sources is restricted under subpart 225.71.

225.401–70 Products subject to trade agreement acts.

Foreign end products subject to the Trade Agreements Act and NAFTA are those in the following Federal supply groups (FSG). If a product is not in one of the listed groups, the Trade Agreements Act and NAFTA do not apply. The definition of Caribbean Basin country end products in FAR 25.003 excludes those end products that are not eligible for duty-free treatment under 19 U.S.C. 2703(b). However, 225.003 expands the definition of Caribbean Basin country end products to include petroleum and any product derived from petroleum. The list of products has been annotated to indicate those products that are eligible for designated and NAFTA countries, but are not presently eligible for Caribbean Basin countries.

FSG	Category/description
22	Railway equipment
23	Motor vehicles, trailers, and cycles (except 2350 and buses under 2310)
24	Tractors
25	Vehicular equipment components
26	Tires and tubes

FSG	Category/description
29	Engine accessories
30	Mechanical power transmission equipment
32	Woodworking machinery and equipment
34	Metalworking machinery
35	Service and trade equipment
36	Special industry machinery (except 3690)
37	Agricultural machinery and equipment
38	Construction, mining, excavating, and highway maintenance equipment
39	Materials handling equipment
40	Rope, cable, chain and fittings
41	Refrigeration and air conditioning equipment
42	Fire fighting, rescue and safety equipment
43	Pumps and compressors
44	Furnace, steam plant and drying equipment (except 4470)
45	Plumbing, heating, and sanitation equipment
46	Water purification and sewage treatment equipment
47	Piping, tubing, hose, and fitting
48	Valves
49	Maintenance and repair shop equipment (except 4920–4927, 4931–4935, 4960)
53	Hardware and abrasives
54	Prefabricated structures and scaffolding
55	Lumber, millwork, plywood, and veneer
56	Construction and building materials
61	Electric wire, and power and distribution equipment
62	Lighting fixtures and lamps
63	Alarm and signal systems
65	Medical, dental, and veterinary equipment and supplies
66	Instruments and laboratory equipment (except aircraft clocks under 6645)—See FAR 25.003 exclusion of certain watches and watch parts for certain Caribbean Basin countries
67	Photographic equipment
68	Chemicals and chemical products
69	Training aids and devices
70	General purpose ADPE, software, supplies, and support equipment
71	Furniture
72	Household and commercial furnishings and appliances
73	Food preparation and serving equipment
74	Office machines, visible record equipment and ADP equipment
75	Office supplies and devices
76	Books, maps, and other publications
77	Musical instruments, phonographs, and home type radios
78	Recreational and athletic equipment
79	Cleaning equipment and supplies
80	Brushes, paints, sealers, and adhesives
81	Containers, packaging and packing supplies (except 8140)
84	Luggage (only 8460)—See FAR 25.003 for exclusion of luggage for Caribbean Basin countries
85	Toiletries
87	Agricultural supplies
88	Live animals
91	Fuels, oils, and waxes
93	Nonmetallic fabricated materials
94	Nonmetallic crude materials
96	Ores, minerals, and their primary products
99	Miscellaneous

225.402 General.

(1) To estimate the value of the acquisition, use the total estimated value of end products subject to trade agreement acts (see 225.401–70).

(2) See subpart 225.5 for evaluation of eligible products and U.S. made end products, except when acquiring information technology end products in Federal Supply Group 70 or 74 that are subject to the Trade Agreements Act.

225.403 Trade Agreements Act.

(c)(i) Except as provided in paragraphs (c)(ii) and (iii) of this section, do not purchase nondesignated country end products subject to the Trade Agreements Act unless they are NAFTA, Caribbean Basin, or qualifying country end products (see 225.872–1).

(ii) The prohibition in paragraph (c)(i) of this section does not apply when the contracting officer determines that offers of U.S. made, qualifying country, or eligible products from responsive, responsible offerors are either—

(A) Not received; or

(B) Insufficient to fill the Government's requirements.

In these cases, accept all responsive, responsible offers of U.S. made, qualifying country, and eligible products before accepting any other offers.

(iii) National interest waivers under section 302(b)(2) of the Trade Agreements Act are approved on a case-by-case basis. Except as delegated in paragraphs (c)(iii)(A) and (B) of this section, a request for a national interest waiver shall include supporting rationale and be submitted under department/agency procedures to the Director of Defense Procurement.

(A) The head of the contracting activity may approve a national interest waiver for a purchase by an overseas purchasing activity of products critical to the support of U.S. forces stationed abroad. The waiver must be supported by a written statement from the requiring activity stating that the requirement is critical for the support of U.S. forces stationed abroad.

(B) The Commander, Defense Energy Support Center, may approve national interest waivers for purchases of fuel for use by U.S. forces overseas.

225.408 Procedures.

(a)(4) The requirements of FAR 25.408(a)(4) do not apply to offshore acquisitions or to Defense Energy Support Center post, camp, or station overseas requirements.

9. Subpart 225.5 is added to read as follows:

Subpart 225.5—Evaluating Foreign Offers—Supply Contracts

Sec.

225.502 Application.
225.504 Evaluation examples.

225.502 Application.

Use the following procedures instead of those in FAR 25.502. These procedures do not apply to acquisitions of information technology end products in Federal Supply Group 70 or 74 that are subject to the Trade Agreements Act.

(1) Treat offers of eligible end products under acquisitions subject to the Trade Agreements Act or NAFTA as if they were qualifying country offers. As used in this section, the term "nonqualifying country offer" may also apply to an offer that is not an eligible offer under a trade agreement (see 225.504(4)).

(2) Except as provided in paragraph (3) of this section, evaluate offers by adding a 50 percent factor to the price (including duty) of each nonqualifying country offer (see 225.504 (1)).

(i) Nonqualifying country offers include duty in the offered price. When applying the factor, evaluate based on the inclusion of duty, whether or not duty is to be exempted. If award is made on the nonqualifying country offer and duty is to be exempted through inclusion of the clause at FAR 52.225–8, Duty-Free Entry, award at the offered price minus the amount of duty identified in the provision at 252.225–7003, Information for Duty-Free Entry Evaluation (see 225.504(1)(ii)).

(ii) When a nonqualifying country offer includes more than one line item, apply the 50 percent factor—

(A) On an item-by-item basis; or

(B) On a group of items, if the solicitation specifically provides for award on a group basis.

(3) When application of the factor would not result in the award of a domestic end product, *i.e.*, when no domestic offers are received (see 225.504(3)) or when a qualifying country offer is lower than the domestic offer (see 225.504(2)), evaluate nonqualifying country offers without the 50 percent factor.

(i) If duty is to be exempted through inclusion of the clause at FAR 52.225–8, Duty-Free Entry, evaluate the

nonqualifying country offer exclusive of duty by reducing the offered price by the amount of duty identified in the clause at 252.225–7003, Information for Duty-Free Entry Evaluation (see 225.504(2)(ii) and (3)(ii)). If award is made on the nonqualifying country offer, award at the offered price minus duty.

(ii) If duty is not to be exempted, evaluate the nonqualifying country offer inclusive of duty (see 225.504(2)(i) and (3)(i)).

(4) If these evaluation procedures result in a tie between a nonqualifying country offer and a domestic offer, make award on the domestic offer.

(5)(i) There are two tests that must be met to determine whether a manufactured item is a domestic end product—

(A) The end product must have been manufactured in the United States; and

(B) The cost of its U.S. and qualifying country components must exceed 50 percent of the cost of all of its components. This test is applied to end products only, and not to individual components.

(ii) Because of the component test, the definition of "domestic end production" is more restrictive than the definition for—

(A) "U.S. made end product" under trade agreements;

(B) "Domestically produced or manufactured products" under small business set-asides or small business reservations; and

(C) Products of small businesses under FAR Part 19.

(iii) If an offer is for a "U.S. made end product," "domestically produced end product," or the product of a small business, but is not a "domestic end product" as defined in the clause at 252.225–7001, Buy American Act and Balance of Payments Program, treat the offer as a nonqualifying country offer (see 225.504(4)).

255.504 Evaluation examples.

(1) Example 1.

(i) Alternate I: Duty Not Exempted for Nonqualifying Country Offers:

Nonqualifying Country Offer (including $100 duty)	$6,000
Domestic Offer	8,900
Qualifying Country Offer	9,100

Award on Domestic Offer. The 50% evaluation factor is added to the nonqualifying country offer, inclusive of duty, yielding an evaluated price of $9,000.

(ii) Alternate II: Duty Exempted:

Nonqualifying Country Offer (including $,1000 duty	$600,000
Domestic Offer	910,000
Qualifying Country Offer	920,000

Award on Nonqualifying Country Offer. The addition of the evaluation factor yields an evaluated price of $900,000. Since duty is being exempted for nonqualifying country offers, the duty is subtracted from the offered price, which is awarded at $599,000.

(2) Example 2.

(i) Alternate I: Duty Not Exempted for Nonqualifying Country Offers:

Nonqualifying Country Offer (including $100 duty	$6,000
Domestic Offer	8,500
Qualifying Country Offer	7,800

Award on Nonqualifying Country Offer. Since the qualifying country offer is lower than the domestic offer, the nonqualifying country offer is evaluated without the factor. Since duty is not being exempted for nonqualifying country offers, the offer is evaluated and award is made at the price inclusive of duty ($6,000).

(ii) Alternate II: Duty Exempted:

Nonqualifying Country Offer (including $1,000 duty	$880,500
Domestic Offer	950,000
Qualifying Country Offer	880,000

Award on Nonqualifying Country Offer. Again, the qualifying country offer is lower than the domestic offer. The nonqualifying country offer is, therefore, evaluated without the factor. Since duty is being exempted for nonqualifying country offers, the duty identified by the offeror is subtracted from the offered price, which is evaluated and awarded at $879,500.

(3) Example 3.

(i) Alternate I: Duty Not Exempted for Nonqualifying Country Offers:

Nonqualifying Country Offer (including $150 duty	$9,600
Qualifying Country Offer	9,500

Award on Qualifying Country Offer. Since no domestic offers are received, the nonqualifying country offer is evaluated without the evaluation factor. Since duty is not being exempted and would be paid by the Government, the nonqualifying country offer is evaluated inclusive of duty.

(ii) Alternate II: Duty Exempted:

Nonqualifying Country Offer (including $1,000 duty	$880,500
Qualifying Country Offer	880,000

Award on Nonqualifying Country Offer. Since no domestic offers are received, the nonqualifying country offer is evaluated without the evaluation factor. Since duty is being exempted, duty is subtracted from the nonqualifying country offer, which is evaluated and awarded at $879,500.

(4) Example 4.

(i) Alternate I:

Offer of U.S. Made End Product which is not a Domestic Offer	$800,000
Domestic Offer	820,000
Eligible Product	830,000

Award on Domestic End Product. U.S. made end products which are not also domestic end products are evaluated the same as nonqualifying country end products. Adding the 50% evaluation factor yields an evaluated price of $1,200,000.

(ii) Alternate II:

Offer of U.S. Made End Product which is not a Domestic Offer	$800,000
Eligible Product	820,000
Domestic Offer	830,000

Award on U.S. Made End Product. Adding the 50% evaluation factor to the U.S. made end product would not result in the award of a domestic end product since the eligible product, which is evaluated the same as a qualifying country offer, is lower. All offers are evaluated without the factor.

Subpart 225.6—[Removed]

10. Subpart 225.6 is removed.

11. The heading of Subpart 225.7 is revised to read as follows:

Subpart 225.7—Prohibited Sources

225.702 [Redesignated as 225.701]

12. Section 225.702 is redesignated as section 225.701.

13. The heading of Subpart 225.8 is revised to read as follows:

Subpart 225.8—Other International Agreements and Coordination

14. The heading of section 225.801 is revised to read as follows:

225.801 General.

15. Subpart 225.9 is revised to read as follows:

Subpart 225.9—Customs and Duties

Sec.
225.901 Policy.
225.902 Procedures.
225.903 Exempted supplies

225.901 Policy.

(1) Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States authorizes duty-free importation of defense supplies.

(2) 19 U.S.C. 1309 authorizes duty-free importation of certain supplies (not including equipment) for vessels or aircraft operated by the United States (see FAR 25.903(b)).

(3) Unless the supplies are entitled to duty-free treatment under a special category in the Harmonized Tariff Schedule of the United States (*e.g.*, the Caribbean Basin Economic Recovery Act or NAFTA), or unless the supplies already have entered into the customs territory of the United States and duty already has been paid, DoD will issue duty-free entry certificates for—

(i) Qualifying country supplies (end products and components) on all defense contracts;

(ii) Eligible products (end products but not components) on defense contracts subject to the Trade Agreement Act or NAFTA; and

(iii) Other foreign supplies, if there is reasonable assurance that the administrative and other costs of processing and controlling the certificates will not exceed the amount of duty that would be paid.

225.902 Procedures.

(1) *General.*

(i) *Preaward.*

(A) Unless duty was paid prior to submission of the offer, an offer of domestic end products with no nonqualifying country components, an offer of qualifying country end products, or an offer of eligible products under the Trade Agreements Act or NAFTA, should not include duty.

(B) Offers of U.S. made end products with nonqualifying country components, and offers that are neither qualifying country offers nor offers of eligible products under a trade agreement, should contain applicable duty.

(c) Exclude from the evaluation of domestic end products, or information technology end products in Federal Supply Group 70 or 74 in acquisitions subject to the Trade Agreements Act, any duty for nonqualifying country components listed in the provision at 252.225–7003, Information for Duty-Free Entry Evaluation, for which duty-free entry will be granted.

(D) Except for acquisitions of information technology end products in Federal Supply Group 70 or 74 subject to the Trade Agreements Act, apply the evaluation procedures for the Buy American Act in accordance with 225.502.

(ii) *Award.* Exclude duty from the contract price for supplies (end products or components) that are to be accorded duty-free entry. If duty-free entry is granted to the successful offeror in accordance with the clause at FAR 52.225–8, Duty-Free Entry, and the clause at 252.225–7003, Information for Duty-Free Entry Evaluation, request that the offeror provide the list of foreign supplies that are subject to such duty-free entry, and list such supplies in the contract clause at 252.225–7008, Supplies to be Accorded Duty-Free Entry.

(iii) *Postaward.*

(A) Issue duty-free entry certificates for all qualifying country supplies in accordance with the policy at 225.901(3)(i) and the clause at 252.225–7009, Duty-Free Entry—Qualifying Country Supplies (End Products and Components); for all eligible products subject to trade agreements in accordance with the policy at 225.901(3)(ii) and the clause at 252.225–7037, Duty-Free Entry—Eligible End Products; and for other foreign supplies in accordance with the policy at 225.901(3)(iii) on contracts containing the clause at FAR 52.225–8, Duty-Free Entry; or (following to the extent practicable the procedures required by the clause at FAR 52.225–8, Duty-Free Entry, and the clause at 252.225–7010, Duty-Free Entry—Additional Provisions) on other contracts—

(1) That fall within one of the following categories:

(i) Direct purchases of foreign supplies under a DoD prime contract, whether title passes at point of origin or at destination in the United States, provided the contract states that the final price is exclusive of duty.

(ii) Purchases of foreign supplies by a domestic prime contractor under a cost-reimbursement type contract or by a cost-reimbursement type subcontractor (where no fixed-price prime or fixed-price subcontract intervenes between the purchaser and the Government), whether title passes at point of origin or at destination in the United States. If a fixed-price prime or fixed-price subcontract intervenes, follow the criteria stated in paragraph (a)(iii)(A)*(1)(iii)* of this section.

(iii) Purchases of foreign supplies by a fixed-price domestic prime contractor, a fixed-price subcontractor, or a cost-type subcontractor where a fixed-price prime contract or fixed-price subcontract intervenes, provided the fixed-price prime contract and, where applicable, fixed-price subcontract prices are, or are amended to be, exclusive of duty;

(2) For which the supplies so purchased will be delivered to the Government or incorporated in Government-owned property or in an end product to be furnished to the Government, and for which duty will be paid if such supplies or any portion are used for other than the performance of the Government contract or disposed of other than for the benefit of the Government in accordance with the contract terms; and

(3) For which such acquisition abroad is authorized by the terms of the contract or subcontract or by the contracting officer.

(B) Under a fixed-price contract, negotiate an equitable reduction in the contract price if duty-free entry is granted for any nonqualifying country component not listed in the Schedule as duty-free, even if contract award was based on furnishing a domestic component or a qualifying country component.

(2) *Formal entry and release.*

(i) The administrative contracting officer must—

(A) Ensure that prime contractors are aware of and understand any Duty-Free Entry clause requirements. Contractors should understand that failure by them or their subcontractors to include the data required by the clause will result in treatment of the shipment as without benefit of free entry under Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States.

(B) Upon receipt of the required notice of purchase of foreign supplies from the contractor or any tier subcontractor—

(1) Verify the duty-free entitlement of goods entering under the contract; and

(2) Review the prime contract to ensure that performance of the contract requires the foreign supplies (quantity and price) identified in the notice.

(C) Upon receipt of notification from the contractor that it is placing a foreign purchase that was not identified at the time of contract award—

(1) Determine whether a reduction in the contract price is required under the clause at FAR 52.225–8, Duty-Free Entry;

(2) If so, make an equitable adjustment in the contract price, unless the procuring contracting officer waives this adjustment;

(3) Determine the price of the foreign supplies exclusive of duty, and advise

the contractor that that amount will be the maximum dollar value of supplies for which duty-free entry certificates will be issued.

(D) Within 20 days after receiving the notification of purchase of foreign supplies, forward the following information in the format indicated to the Commander, DCMC New York, ATTN: Customs Team, DCMDE–GNIC, 207 New York Avenue, Staten Island, NY 10305–5013:

We have received a contractor notification of the purchase of foreign supplies. I have verified that foreign supplies are required for the performance of the contract. If required, the prime contract price has been or will be adjusted.
Prime Contractor Name and Address:
Prime Contractor CAGE Code:
Prime Contract Number plus Delivery Order Number, if applicable:
Total Dollar Value of the Prime Contract or Delivery Order:
Expiration Date of the Prime Contract or Delivery Order:
Foreign Supplier Name and Address:
Number of Subcontract/Purchase Order for Foreign Supplies:
Total Dollar Value of the Subcontract for Foreign Supplies:
Expiration Date of the Subcontract for Foreign Supplies:
CAO Activity Address Number:
ACO Name and Telephone Number:
ACO Code:
Signature:
Title:

(E) If a contract modification results in a change to any data verifying duty-free entitlement previously furnished, forward a revised notification including the changed data to DCMC New York.

(ii) The responsibility for issuing duty-free entry certificates for foreign supplies purchased under a DoD contract or subcontract rests with the Customs Team, DCMDE–GNIC, DCMC New York. Upon receipt of import documentation for incoming shipments from the contractor, its agent, or the U.S. Customs Service, DCMC New York will verify the duty-free entitlement and execute the duty-free entry certificate.

(iii) Upon arrival of foreign supplies at ports of entry, the consignee, generally the contractor or its agent (import broker) for shipments to other than a military installation, will file U.S. Customs Form 7501, 7501A, or 7506, with the District Director of Customs.

(3) *Immediate entry and release.* Importations made in the name of a DoD military facility or being shipped directly to a military facility are entitled to release under the immediate delivery procedure.

(i) A DoD immediate delivery application has been approved and is on file at Customs Headquarters.

(ii) The application is for an indefinite period and is good for all Customs districts, areas, and ports.

225.903 Exempted supplies.

(b)(i) The term "supplies"—

(A) Includes articles known as "stores," such as food, medicines, and toiletries, as well as all consumable articles necessary and appropriate for the propulsion, operation, and maintenance of the vessel or aircraft, such as fuel, oil, gasoline, grease, paint, cleansing compounds, solvents, wiping rags, and polishes.

(B) Does not include portable articles necessary and appropriate for the navigation, operation, or maintenance of vessel or aircraft and for the comfort and safety of the persons on board, such as rope, bolts and nuts, bedding, china and cutlery, which are included in the term "equipment."

(ii) The duty-free certificate shall be printed, stamped, or typed on the face of Customs Form 7501, or attached, and shall be executed by a duly designated officer or civilian official of the appropriate department or agency in the following form:

(Date) _____

I certify that the acquisition of this material constituted a purchase of supplies by the United States for vessels or aircraft operated by the United States, and is admissible free of duty pursuant to 19 U.S.C. 1309.

(Name) _____
(Title) _____
(Organization _____

16. Subpart 225.10 is added to read as follows:

Subpart 225.10—Additional Foreign Acquisition Regulations

Sec.
225.1070 Clause deviations in overseas contracts.

225.1070 Clause deviations in overseas contracts.

See 201.403(2) for approval authority for clause deviations in overseas contracts with governments of North Atlantic Treaty Organization (NATO) countries or other allies or with United Nations or NATO organizations.

17. Subpart 225.11 is added to read as follows:

Subpart 225.11—Solicitation Provisions and Contract Clauses

Sec.
225.1101 Acquisition of supplies.
225.1103 Other provisions and clauses.

225.1101 Acquisition of supplies.

(1) Use the provision at 252.225–7000, Buy American Act—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–2, Buy American Act—Balance of Payments Program Certificate. Use the provision in any solicitation that includes the clause at 252.225–7001, Buy American Act and Balance of Payments Program.

(2) Use the clause at 252.225–7001, Buy American Act and Balance of Payments Program, instead of the clause at FAR 52.225–1, Buy American Act—Balance of Payments Program—Supplies, in solicitations and contracts for supplies or services that require the furnishing of supplies.

(i) Do not use the clause if an exception to the Buy American Act or Balance of Payments Program is known to apply or if using the clause at 252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program; 252.225–7021, Trade Agreements; or 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.

(ii) The clause need not be used if nonqualifying country end products are ineligible for award, including—

(A) End products restricted to domestic or domestic and qualifying country sources under appropriations and authorization act restrictions (see subpart 225.70);

(B) End products restricted to domestic or domestic and Canadian sources (see subpart 225.71); and

(C) End products restricted under the authority of FAR 6.302–3.

(iii) The clause may be used if the contracting officer anticipates a waiver of the restriction in paragraph (2)(ii)(A) or (B) of this section.

(3) Use the clause at 252.225–7002, Qualifying Country Sources as Subcontractors, in solicitations and contracts that include one of the following clauses:

(i) 252.225–7001, Buy American Act and Balance of Payments Program.

(ii) 252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program.

(iii) 252.225–7021, Trade Agreements.

(iv) 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payment Program.

(4) Use the provision at 252.225–7003, Information for Duty-Free Entry Evaluation, in solicitations that include the clause at FAR 52.225–8, Duty-Free Entry. Use the provision with its Alternate I when the clause at 252.225–7021, Trade Agreements, is used.

(5) Use the provision at 252.225–7006, Buy American Act—Trade Agreements—Balance of Payments Program Certificate, instead of the

provision at FAR 52.225–6, Trade Agreements Certificate, in all solicitations that include the clause at 252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program.

(6) Except as provided in paragraph (11) of this section, use the clause at 252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program, instead of the clause at FAR 52.225–5, Trade Agreements. The clause need not be used where purchase from foreign sources is restricted (see 225.401(b)(ii)). The clause may be used where the contracting officer anticipates a waiver of the restriction.

(7) Use the clause at 252.225–7008, Supplies to be Accorded Duty-Free Entry, in solicitations and contracts that provide for duty-free entry and that include the clause at FAR 52.225–8, Duty-Free Entry.

(8) Use the clause at 252.225–7009, Duty-Free Entry—Qualifying Country Supplies (End Products and Components), in solicitations and contracts for supplies and in solicitations and contracts for supplies for exclusive use outside the United States.

(9) Use the clause at 252.225–7010, Duty-Free Entry—Additional Provisions, in solicitations and contracts that include the clause at FAR 52.225–8, Duty-Free Entry.

(10) Use the provision at 252.225–7020, Trade Agreements Certificate, in all solicitations that include the clause at 252.225–7021, Trade Agreements.

(11) Use the clause at 252.225–7021, Trade Agreements, instead of the clause at FAR 52.225–5, Trade Agreements, when acquiring information technology products in Federal Supply Group 70 or 74.

(12) Use the provision at 252.225–7035, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–4, Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program Certificate, in all solicitations that include the clause at 252.225–7036, Buy American Act-North American Free Trade Agreement Implementation Act—Balance of Payments Program.

(i) Use the basic provision when the basic clause at 252.225–7036 is used.

(ii) Use the provision with its Alternate I when the clause at 252.225–7036 is used with its Alternate I.

(13) Use the clause at 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, instead of the clause at FAR 52.225–3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act—Balance of Payments Program. The clause need not be used where purchase from foreign sources is restricted (see 225.401 (b)(ii)). The clause may be used where the contracting officer anticipates a waiver of the restriction.

(i)(A) Use the clause in all solicitations and contracts for the items listed at 225.401–70, when the estimated value is $53,150 or more and the Trade Agreements Act does not apply. Include the clause in solicitations for multiple line items if any line item is subject to NAFTA.

(B) Use the clause with its Alternate I when the estimated value is between $25,000 and $53,150.

(ii) Application of the procedures in 225.402 and the acquisition of noneligible and eligible products under the same solicitation may result in the application of the North American Free Trade Agreement Implementation Act to only some of the items solicited. In such case, indicate in the Schedule those items covered by the Act.

(14) Use the clause at 252.225–7037, Duty-Free Entry—Eligible End Products, in solicitations and contracts for supplies and services when the clause at 252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program; 252.225–7021, Trade Agreements; or 252.225–7036, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program, is used.

225.1103 Other provisions and clauses.

(1) In order to allow accurate reporting, by cognizant accounting and disbursing officers, of foreign and domestic expenditures, use the clause at 252.225–7005, Identification of Expenditures in the United States, in all negotiated contracts over $25,000 where—

(i) For supply contracts, the contract requires end products manufactured or produced in the United States; and

(A) The contractor is a foreign concern; or

(B) The contractor is a domestic concern and the Government will take title outside the United States.

(ii) For contracts for construction, repair, and maintenance of real property, or services to be performed outside the United States—

(A) The contractor is a domestic concern; or

(B) The contractor is a foreign concern and the contract requires acquisition of materials, equipment, or services from U.S. sources.

(2) Use the clause at 252.225–7041, Correspondence in English, in solicitations and contracts when contract performance will be wholly or in part in a foreign country.

(3) Use the clause at 252.225–7042, Authorization to Perform, in solicitations and contracts when contract performance will be wholly or in part in a foreign country.

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

18. Section 242.302 is amended by revising paragraph (a)(19) to read as follows:

242.302 Contract administration functions.

(a) * * *

(19) Also negotiate and issue contract modifications reducing contract prices in connection with the provisions of paragraph (c) of the clause at FAR 52.225–8, Duty-Free Entry.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7000 [Amended]

19. Section 252.225–7000 is amended in the introductory text by removing "225.109(a)" and adding in its place "225.1101(1)".

225.225–7001 [Amended]

20. Section 252.225–7001 is amended in the introductory text by removing "225.109(d)" and adding in its place "225.1101(2)".

252.225–7002 [Amended]

21. Section 252.225–7002 is amended in the introductory text by removing "225.109–70(a)" and adding in its place "225.1101(3)".

252.225–7003 [Amended]

22. Section 252.225–7003 is amended in the introductory text by removing "225.605–70(d)" and adding in its place "225.1101(4)"; and in Alternate I introductory text by removing "225.605–70(d)" and adding in its place "225.1101(4)".

252.225–7005 [Amended]

23. Section 252.225–7005 is amended in the introductory text by removing "225.305–70" and adding in its place "225.1103(1)".

252.225–7006 [Amended]

24. Section 252.225–7006 is amended in the introductory text by removing

"225.408(a)(i)" and adding in its place "225.1101(5)".

252.225–7007 [Amended]

25. Section 252.225–7007 is amended in the introductory text by removing "225.408(a)(ii)" and adding in its place "225.1101(6)".

252.225–7008 [Amended]

26. Section 252.225–7008 is amended in the introductory text by removing "225.605–70(e)" and adding in its place "225.1101(7)".

252.225–7009 [Amended]

27. Section 252.225–7009 is amended in the introductory text by removing "225.605–70(a)" and adding in its place "225.1101(8)".

252.225–7010 [Amended]

28. Section 252.225–7010 is amended in the introductory text by removing "225.605–70(c)" and adding in its place "225.1101(9)".

252.225–7020 [Amended]

29. Section 252.225–7020 is amended in the introductory text by removing "225.408(a)(iii)" and adding in its place "225.1101(10)".

252.225–7021 [Amended]

30. Section 252.225–7021 is amended in the introductory text by removing "225.408(a)(iv)" and adding in its place "225.1101(11)".

252.225–7035 [Amended]

31. Section 252.225–7035 is amended in the introductory text by removing "225.408(a)(v)" and adding in its place "225.1101(12)"; and in Alternate I by removing "225.408(a)(v)(B)(*2*)" and adding in its place "225.1101(12)(ii)".

252.225–7036 [Amended]

32. Section 252.225–7036 is amended in the introductory text by removing "225.408(a)(vi)" and adding in its place "225.1101(13)"; and in Alternate I introductory text by removing "225.408(a)(vi)(B)(*2*)" and adding in its place "225.1101(13)(i)(B)".

252.225–7037 [Amended]

33. Section 252.225–7037 is amended in the introductory text by removing "225.605–70(b)" and adding in its place "225.1101(14)".

252.225–7041 [Amended]

34. Section 252.225–7041 is amended in the introductory text by removing "225.971" and adding in its place "225.1103(2)".

252.225–7042 [Amended]

35. Section 252.225–7042 is amended in the introductory text by removing "225.97" and adding in its place "225.1103(3)".

[FR Doc. 00–9087 Filed 4–12–00; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 226

[DFARS Case 99–D300]

Defense Federal Acquisition Regulation Supplement; Utilization of Indian Organizations and Indian-Owned Economic Enterprises

AGENCY: Department of Defense (DoD).

ACTION: Final rule

SUMMARY: The Acting Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise procedures pertaining to the Indian Incentive Program. The Program provides for incentive payments to Government contractors that use Indian organizations and Indian-owned economic enterprises as subcontractors. This rule reflects new statutory provisions that permit small business concerns to participate in the Indian Incentive Program.

EFFECTIVE DATE: April 13, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, Defense Acquisition Regulations Council, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0262; telefax (703) 602–0350. Please cite DFARS Case 99–D300.

SUPPLEMENTARY INFORMATION:

A. Background

The rule revises DFARS Subpart 226.1 to update procedures pertaining to the Indian Incentive Program. Section 504 of the Indian Financing Act of 1974 (25 U.S.C. 1544) established the Indian Incentive Program, which provides for payment of incentives to Government contractors that use Indian organizations and Indian-owned economic enterprises as subcontractors. Prior to fiscal year 1999, annual appropriations acts restricted DoD payments under the Program to those contractors that submitted small business subcontracting plans pursuant to 15 U.S.C. 637(d) or Section 854 of Public Law 101–89 (15 U.S.C. 637 note). Since small business concerns are not required to submit subcontracting plans, small businesses were excluded from participation in the Indian Incentive Program under DoD contracts. Section 8024 of the DoD Appropriations Act for Fiscal Year 1999 (Public Law 105–262) and Section 8024 of the DoD Appropriations Act for Fiscal Year 2000 (Public Law 106–79) eliminated the requirements for a DoD contractor to submit a subcontracting plan before it may participate in the Indian Incentive Program.

DoD implements the Indian Incentive Program through use of the clause at Federal Acquisition Regulation (FAR) 52.226–1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises. The FAR and DFARS previously prescribed use of the clause in only those DoD contracts that contain subcontracting plan requirements. On October 26, 1999, a proposed FAR rule was published at 64 FR 57964 to remove the FAR requirements for DoD use of the clause; these DFARS amendments replace the FAR requirements.

DoD published a proposed rule at 64 FR 63003 on November 18, 1999. Thirty-six sources submitted comments on the proposed rule. DoD considered all comments in the development of the final rule. The final rule differs from the proposed rule in that it lowers the dollar threshold for us of the clause at FAR 52.226–1, to provide increased opportunity or small business concerns to participate in the Indian Incentive Program.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD expects this final rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* A final regulatory flexibility analysis has been prepared and its summarized as follows:

The legal basis for the rule is Section 504 of the Indian Financing Act of 1974 (25 U.S.C. 1544); Section 8024 of the DoD Appropriations Act for Fiscal Year 1999 (Public Law 105–262); and Section 8024 of the DoD Appropriations Act for Fiscal Year 2000 (Public Law 106–79). This rule will apply to all DoD contractors that have the clause at FAR 52.226–1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises, incorporated into their contracts. The proposed rule required use of the clause at FAR 52.226–1 in construction contracts valued at $1,000,000 or more, and in other than construction contracts valued

at $500,000 or more, except those awarded using FAR Part 12 (Commercial Item) procedures. As a result of public comments received, and to provide increased opportunity for small business concerns to participate in the Indian Incentive Program, the final rule lowers the dollars threshold for use of the clause to the simplified acquisition threshold ($100,000), for all contracts except those awarded using FAR Part 12 procedures. The rule does not impose any new reporting, recordkeeping, or other compliance requirements, and does not duplicate, overlap, or conflict with any other Federal rules. The rule is expected to have a beneficial effect on small business concerns, because small businesses are now eligible to receive incentive payments for the use of Indian organizations and Indian-owned economic enterprises as subcontractors.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impors any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 226

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 226 is amended as follows:

1. The authority citation for 48 CFR part 226 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 226—OTHER SOCIOECONOMIC PROGRAMS

2. Sections 226.103 and 226.104 are revised to read as follows:

226.103 Procedures.

(f) The contracting officer must submit a request for funding of the Indian incentive to the Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD (AT&L) SADBU, 1777 North Kent Street, Suite 9100, Arlington, VA 22209. Upon receipt of funding from OUSD (AT&L) SADBU, the contracting officer must issue a contract modification to add the Indian incentive funding for payment of the contractor's request for adjustment as described at FAR 52.226–1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises.

226.104 Contract Clause.

Use the following prescription instead of the prescription at FAR 26.104(a):

(a) Use the clause at FAR 52.226–1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises, in solicitations and contracts that—

(1) Do not use FAR part 12 procedures; and

(2) Are for supplies or services expected to exceed the simplified acquisition threshold.

[FR Doc. 00–9084 Filed 4–12–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 235

[DFARS Case 99–D302]

Defense Federal Acquisition Regulation Supplement; Manufacturing Technology Program

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Acting Director of Defense Procurement is adopting as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 216 of the National Defense Authorization Act for Fiscal Year 2000. Section 216 amends statutory provisions pertaining to cost-sharing requirements for contracts under the Manufacturing Technology Program.

EFFECTIVE DATE: April 13, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Susan L. Schneider, Defense Acquisition Regulations Council, PDUSD(AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; telefax (703) 602–0350. Please cite DFARS Case 99–D302.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 65 FR 2057 on January 13, 2000. The rule revised DFARS 235.006–70 to implement Section 216 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65). Section 216 amended 10 U.S.C. 2525 to eliminate the mandatory cost-sharing requirements for contracts under the Manufacturing Technology Program, and to require that cost sharing be included as a factor in competitive procedures for evaluating proposals under manufacturing technology projects. DoD received no public comments on the interim rule by the date specified for receipt of comments. The interim rule is converted to a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because DoD awards approximately only 20 new contracts under the Manufacturing Technology Program each year.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 235

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR Part 235, which was published at 65 FR 2057 on January 13, 2000, is adopted as a final rule without change.

[FR Doc. 00–9085 Filed 4–12–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 2000–D006]

Defense Federal Acquisition Regulation Supplement; Caribbean Basin Countries

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Acting Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the determination of the United States Trade Representative (USTR) to renew the treatment of Caribbean Basin Country end products a eligible products under the Trade Agreements Act, except for end products from the Dominican Republic and Honduras.

EFFECTIVE DATE: April 13, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0288; telefax (703) 602–0350. Please cite DFARS Case 2000–D006.

SUPPLEMENTARY INFORMATION:

A. Background

The USTR published a notice of 65 FR 9038 on February 23, 2000, to renew the treatment of Caribbean Basin Country end products as eligible products under the Trade Agreements Act, except for end products from the Dominican Republic and Honduras. The clauses at DFARS 252.225–7007, Buy American Act—Trade Agreements—Balance of Payments Program, and 252.225–7021, Trade Agreements, list the Caribbean Basin countries whose products are eligible products under the Trade Agreements Act. This final rule amends the clauses to remove the Dominican Republic and Honduras from the list, in accordance with the USTR determination.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2000–D006.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 252 is amended as follows:

1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7007 [Amended]

2. Section 252.225–7007 is amended by revising the clause date to read "(APR 2000)" and in paragraph (a)(1) by removing "Dominican Republic" and "Honduras".

252.225–7021 [Amended]

3. Section 252.225–7021 is amended by revising the clause date to read "(APR 2000)" and in paragraph (a)(1) by removing "Dominican Republic" and "Honduras".

[FR Doc. 00–9006 Filed 4–12–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 033100D]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Retention limit adjustment.

SUMMARY: NMFS extends the expiration date of the current daily retention limit for the Angling category fishery for Atlantic bluefin tuna (BFT), which published on December 16, 1999. The current daily retention limit per vessel in all areas of one large school or small medium BFT (measuring 47 to less than 73 inches, 119 to less than 185 cm, curved fork length) is extended from May 31, 2000, through June 22, 2000. In addition, NMFS is making subsequent adjustments to the daily retention limit, as noted in the **DATES** section of this document. This action is being taken to provide increased fishing opportunities in all areas without risking overharvest of this category.

DATES: The expiration date of the current daily retention limit in all areas of one large school or small medium BFT (published on December 16, 1999, at 64 FR 70198) is extended from May 31, 2000, through June 22, 2000.

Effective June 23 through July 30, 2000, the daily retention limit in all areas is adjusted to two school BFT and one large school or small medium BFT.

Effective July 31, 2000, the daily retention limit in all areas is adjusted to one large school or small medium BFT until May 31, 2001.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, (978) 281–9146.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635.

Implementing regulations for the Atlantic tuna fisheries at § 635.23 allow for adjustments to the daily retention limits in order to provide for maximum utilization of the quota over the longest possible period of time. NMFS may increase or reduce the per angler retention limit for any size class BFT or may change the per angler limit to a per boat limit or the per boat limit to a per angler limit.

NMFS is responsible for implementing a recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT) to limit the catch of school BFT to no more than 8 percent by weight of the total domestic landings quota over each 4–consecutive-year period. NMFS is implementing this ICCAT recommendation through annual and inseason adjustments to the school BFT retention limits, as necessary, and through the establishment of a school BFT reserve (64 FR 29090, May 28, 1999; 64 FR 29806, June 3, 1999). The recent ICCAT recommendation allows NMFS more flexibility to make interannual adjustments for overharvests and underharvests, provided that the 8–percent landings limit is met over the applicable 4–consecutive-year period. This approach provides NMFS with the flexibility to enhance fishing opportunities and the collection of information on a broad range of BFT size classes and responds to requests from the recreational fishing community for more advance notice of retention limit adjustments and greater certainty in planning for the fishing season.

In the last few years, NMFS has received comment from mid-Atlantic fishermen that the implementation of an increased daily retention limit over a date-certain period is preferable to a longer season with a lower daily retention limit as it facilitates the scheduling of fishing trips, particularly charter trips. In 1999, NMFS increased the daily retention limit to two school BFT and one large school or small medium BFT per vessel for the periods

June 25 through July 25 and September 1 through October 6. Comments from Angling category participants regarding the 1999 fishing season have been positive, and NMFS intends to provide advanced notice regarding daily retention limits again for the 2000 fishing year. Since October 6, 1999, NMFS has maintained the daily retention limit at one large school or small medium BFT per vessel. Because the current daily retention limit is valid only through the end of the 1999 fishing year, i.e., May 31, 2000 (64 FR 70198, December 16, 1999), NMFS must announce a daily retention limit adjustment effective June 1, 2000, even though NMFS does not intend to increase the retention limit from the current limit until late June 2000.

Therefore, beginning June 1, 2000, NMFS adjusts the BFT Angling category daily retention limit for all areas to one large school or small medium BFT per vessel, effectively maintaining the current retention limit through June 22, 2000. Effective June 23 through July 30, 2000, NMFS adjusts the daily retention limit for all areas to two school BFT and one large school or small medium BFT per vessel. After July 30, 2000, the daily retention limit for all areas will be one large school or small medium BFT per vessel. NMFS intends to adjust the daily retention limit again during late summer and early fall season when BFT have moved further north to the waters off Rhode Island, New York, and northern New Jersey, provided that BFT Angling category quota remains available.

NMFS selected the daily retention limit and the duration of the daily retention limit adjustment after examining past catch and effort rates. NMFS will continue to monitor the Angling category fishery closely through the Automated Landings Reporting System, the state harvest tagging programs in North Carolina and Maryland, and the Large Pelagic Survey. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that an interim closure or an additional retention limit adjustment is necessary to enhance scientific data collection from, and fishing opportunities in, all geographic areas. Additionally, NMFS may determine that an allocation from the school BFT reserve is warranted to further fishery management objectives.

Closures or subsequent adjustments to the daily retention limit, if any, will be announced through publication in the **Federal Register**. In addition, anglers may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9305 for updates on quota monitoring and retention limit adjustments. Anglers aboard Charter/Headboat category vessels, when engaged in recreational fishing for school, large school, and small medium BFT, are subject to the same rules as anglers aboard Angling category vessels. All BFT landed under the Angling category quota must be reported within 24 hours of landing to the NMFS Automated Landings Reporting System via phone: (888) 872–8862; or the Internet (www.nmfspermits.com); or, if landed in the states of North Carolina or Maryland, to a reporting station prior to offloading. Information about these state harvest tagging programs, including reporting station locations, can be obtained in North Carolina by calling (800) 338–7804, and in Maryland by calling (410) 213–1531.

In addition, anglers aboard permitted vessels may continue to tag and release BFT of all sizes under a tag-and-release program, provided the angler tags all BFT so caught, regardless of whether previously tagged, with conventional tags issued or approved by NMFS, returns such fish to the sea immediately after tagging with a minimum of injury, and reports the tagging, and, if the BFT was previously tagged, the information on the previous tag (50 CFR 635.26).

Classification

This action is taken under 50 CFR 635.23(b)(3). This action is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: April 6, 2000.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–9123 Filed 4–12–00; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 72
Thursday, April 13, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1605

Correction of Administrative Errors

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule with request for comment.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) proposes to amend its regulations on Correction of Administrative Errors to change the period of time for submission of claims for the correction of errors in a participant's Thrift Savings Plan (TSP) account. As presently written, certain sections of the regulations impose conflicting duties upon participants to file claims for correction of errors in their TSP accounts within one year of receipt of notice of an error, and also upon employing agencies or the Board to correct an error without regard to when the error is discovered. The amended regulation resolves this conflict by specifying when errors must be corrected by the employing agency, the Board, or the TSP record keeper, as the case may be, and when they may be corrected in the sound discretion of these parties.

In addition, the amended regulation provides that lost earnings in back pay cases involving separations from service will be calculated based upon the G Fund rates of return, as the regulation presently provides, or as otherwise ordered by the court or other tribunal with jurisdiction over the back pay case.

DATES: Comments must be received on or before May 15, 2000.

ADDRESSES: Comments may be sent to Elizabeth S. Woodruff, General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Merritt A. Willing on (202) 942–1666 or Patrick J. Forrest on (202) 942–1659, FAX (202) 942–1676.

SUPPLEMENTARY INFORMATION: The Board administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514, codified, as amended, largely at 5 U.S.C. 8351 and 8401–8479. The TSP is a tax-deferred retirement savings plan for Federal employees, similar to a cash or deferred arrangement established under section 401(k) of the Internal Revenue Code. Sums in a TSP participant's account are held in trust for that participant.

On December 27, 1996, and May 1, 1998, the Board published final rules in the **Federal Register** concerning the correction of administrative errors (61 FR 67472 and 63 FR 24380). These rules were codified at 5 CFR part 1605. The final rules explain how employing agencies, the TSP record keeper, and the Board identify and correct administrative errors in TSP contributions or account balances. The proposed rule amends these rules.

The Board proposes to change the method of calculation of lost earnings for makeup contributions from certain back pay awards involving separations from service. Currently, § 1605.4(a)(3) describes a process for determining lost earnings based upon the rates of return for the G Fund. The rule does not take into account the circumstances of individual cases that are brought before and considered by the court or other tribunal with jurisdiction over the back pay case. Thus, the amendment provides that the TSP will use the G Fund rate, unless otherwise ordered by the court or other tribunal with jurisdiction over the case.

Section 1605.6 describes procedures for participants filing claims against employing agencies. Section 1605.8 describes a similar process for claims against the Board or TSP record keeper. Currently, paragraph (b) of § 1605.6 provides that, if an agency has not voluntarily corrected an administrative error, a participant must file a claim for correction within one year of receipt of the earliest of several forms of notice of the error. At the same time, the regulation requires agencies to "promptly correct" errors "upon discovery." Thus, a conflict exists between a participant's obligation to file a timely claim for correction and an agency's obligation to correct administrative errors "upon discovery," which may occur after the participant's right to file a claim has expired. A similar conflict exists in § 1605.8(c) with respect to claims for correction of Board or TSP record keeper errors. Although it has been the Board's experience that errors are almost always corrected upon discovery, the Board recognizes that this conflict should be eliminated to the extent possible.

The amended regulation imposes different obligations on employing agencies, the Board, and the TSP record keeper to correct errors depending upon the length of time that has passed between the error and its discovery. Certain types of errors must be corrected if they are discovered within six months. For agencies, these errors concern the amount and timely remittance of contributions. For the Board and TSP record keeper, these errors concern elections to withdraw a TSP account and the distribution of death benefits. If such errors are discovered more than six months after their occurrence, the agency, Board, or TSP record keeper may exercise its sound discretion in deciding whether to correct them. (It is assumed that none of the foregoing errors are first discovered by a participant.)

For such errors that are discovered by participants, the amendment permits them to file claims against their employing agencies, the Board, or the TSP record keeper without limitation as to time. If the claim is filed within six months of the error, the error must be corrected; otherwise, the agency, Board, or record keeper may use its sound discretion in deciding whether to do so. (Although a participant is not limited as to time in filing a claim for this type of error, the agency, Board, or record keeper, in deciding the claim, may consider the length of time that has passed since the participant first knew, or should have known, of the error.)

For any other type of error (except a retirement system misclassification error, discussed below), the agency, Board, or TSP record keeper, as the case may be, must correct the error if it is discovered within 30 days of the issuance of the most recent TSP participant statement or transaction confirmation that reflects the error; if it is discovered after that time, they may use their sound discretion in deciding whether to do so. (Participant statements will be issued in May and

September during 2000; thereafter, participant statements will be issued in January, April, July, and October of every year.)

For such errors discovered by participants, claims must be filed with the participant's employing agency, the Board, or the TSP record keeper within 30 days of the participant's receiving notice of the error in the TSP participant statement or transaction confirmation. For timely filed claims, the errors must be corrected. For untimely filed claims, however, the agency, Board or TSP record keeper may use its sound discretion in deciding whether to do so. While participants are therefore required to be diligent in discovering errors in their accounts, the Board considers this to be reasonable, particularly in the daily transaction environment forthcoming on October 1, 2000.

There is one type of error for which participants will not be able to receive correction after October 1, 2000, if they have not filed a timely claim. As amended, §§ 1605.6 and 1605.8 provide that no contribution allocation errors occurring before October 1, 2000, may be corrected if the participant does not bring the error to the attention of his or her agency (or the Board or the TSP record keeper, as the case may be) within the relevant 30-day period. The Board will implement a new record keeping system on October 1, 2000, and, inasmuch as pre-conversion contribution allocation errors will be extremely difficult to correct, the Board must insist on compliance with the 30-day limit.

Errors arising from retirement system misclassification must be corrected no matter when they are discovered, whether by an agency or a participant.

Finally, current § 1605.8(b) is amended by deleting that portion which describes internal processes between the Board and TSP record keeper and by clarifying the effect of a participant's failure to request Board review of a decision of the TSP record keeper in a timely manner.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees of the Federal Government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, and 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

List of Subjects in 5 CFR Part 1605

Claims, Employment benefit plans, Government employees, Pensions, Retirement.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set out in the preamble, 5 CFR Part 1605 is proposed to be amended as set forth below:

PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

1. The authority citation for part 1605 continues to read as follows:

Authority: 5 U.S.C. 8351 and 8474.

§ 1605.4 [Amended]

2. Section 1605.4 is amended by adding after the word "account" at the end of paragraph (a)(3) the words "unless otherwise ordered by the court or other tribunal with jurisdiction over the participant's back pay case".

3. Section 1605.6 is revised to read as follows:

§ 1605.6 Procedures for claims against employing agencies; time limitations.

(a) *Agency's discovery of error.* (1) Upon discovery of an error made within the past six months involving the correct or timely remittance of contributions to the TSP (other than a retirement system misclassification error, described in paragraph (c) of this section), an employing agency must promptly correct the error on its own initiative. If the error was made more than six months before its discovery, the agency may exercise sound discretion in deciding whether to correct it, but, in any event, the agency must act promptly in doing so.

(2) For any other type of error (other than a retirement system misclassification error, described in paragraph (c) of this section), an employing agency must promptly correct the error on its own initiative if it is discovered before 30 days after the issuance of the most recent TSP participant statement that reflected (or would reflect) the error. If it is discovered after that time, the employing agency may exercise sound discretion in deciding whether to correct the error, but, in any event, must act promptly in doing so; provided, however, that no contribution allocation error which occurred before October 1, 2000, may be corrected if it is not the subject of a timely claim.

(b) *Participant's discovery of error.* (1) If an agency fails to discover an error of which a participant has knowledge involving the correct or timely remittance of contributions to the TSP, the participant may file a claim for correction thereof with his or her employing agency without limitation of time. The agency must promptly correct any such error for which the participant filed a claim within six months of its occurrence; the correction of any such error for which the participant filed a claim after that time is in the agency's sound discretion.

(2) For any other type of error of which a participant has knowledge (other than a retirement system misclassification error, described in paragraph (c) of this section), the participant may file a claim for correction thereof with his or her employing agency no later than 30 days after the participant receives a TSP participant statement reflecting the error. The agency must promptly correct such errors.

(3) If a participant fails to file a claim for correction of an error described in paragraph (b)(2) of this section in a timely manner, the agency may, in its sound discretion, correct any such error that is brought to its attention; provided, however, that no contribution allocation error which occurred before October 1, 2000, may be corrected if it is not the subject of a timely claim.

(c) *Retirement system misclassification error.* Errors arising from retirement system misclassification must be corrected no matter when they are discovered, whether by an agency or a participant.

(d) *Agency procedures.* Each employing agency must establish procedures for participants to submit claims for correction under this subpart. Each employing agency's procedures must include the following:

(1) The employing agency must provide the participant with a decision on any claim within 30 days of its receipt, unless the employing agency provides the participant with good cause for requiring a longer period to decide the claim. A decision to deny a claim in whole or in part must be in writing and must include the reasons for the denial, citations to any applicable

statutes, regulations, or procedures, a description of any additional material that would enable the participant to perfect the claim, and a statement of the steps necessary to appeal the denial.

(2) The employing agency must permit a participant at least 30 days to appeal the employing agency's denial of all or any part of a claim for correction under this subpart. The appeal must be in writing and addressed to the agency official designated in the initial decision or in procedures promulgated by the agency. The participant may include with his or her appeal any documentation or comments that the participant deems relevant to the claim.

(3) The employing agency must issue a written decision on a timely appeal within 30 days of receipt of the appeal, unless the employing agency provides the participant with good cause for requiring a longer period to decide the appeal. The employing agency decision must include the reasons for the decision, as well as citations to any applicable statutes, regulations, or procedures.

(4) If the agency decision on the appeal is not issued in a timely manner, or if the appeal is denied in whole or in part, the participant will be deemed to have exhausted his or her administrative remedies and will be eligible to file suit against the employing agency under 5 U.S.C. 8477. There is no administrative appeal to the Board of a final agency decision.

4. Section 1605.8 is revised to read as follows:

§ 1605.8 Claims for correction of Board or TSP record keeper errors; time limitations.

(a) *Filing claims.* Claims for correction of Board or TSP record keeper errors under this subpart may be submitted initially either to the TSP record keeper or the Board. The claim must be in writing and may be from the affected participant or beneficiary.

(b) *Board's or TSP record keeper's discovery of error.* (1) Upon discovery of an error made within the past six months involving the withdrawal of an account, the change of a withdrawal election, or the distribution of a death benefit, the Board or TSP record keeper must promptly correct the error on its own initiative. If the error was made more than six months before its discovery, the Board or TSP record keeper may exercise sound discretion in deciding whether to correct the error, but, in any event, must act promptly in doing so.

(2) For any other type of error, the Board or TSP record keeper must promptly correct the error if it is discovered before 30 days after the issuance of the earlier of the most recent TSP participant statement or transaction confirmation that reflected (or would reflect) the error. If it is discovered after that time, the Board or TSP record keeper may use its sound discretion in deciding whether to correct it, but, in any event, must act promptly in doing so; provided, however, that no contribution allocation error which occurred before October 1, 2000, may be corrected if it is not the subject of a timely claim.

(c) *Participant's or beneficiary's discovery of error.* (1) If the Board or TSP record keeper fails to discover an error of which a participant or beneficiary has knowledge involving the withdrawal of an account, the change of a withdrawal election, or the distribution of a death benefit, the participant or beneficiary may file a claim for correction thereof with the Board or TSP record keeper without limitation of time. The Board or TSP record keeper must promptly correct any such error for which the participant or beneficiary filed a claim within six months of its occurrence; the correction of any such error for which the participant or beneficiary filed a claim after that time is in the sound discretion of the Board or TSP record keeper.

(2) For any other type of error of which a participant or beneficiary has knowledge, he or she may file a claim for correction thereof with the Board or TSP record keeper no later than 30 days after receipt of the earlier of a TSP participant statement or transaction confirmation reflecting the error. The Board or TSP record keeper must promptly correct such errors.

(3) If a participant or beneficiary fails to file a claim for correction of an error described in paragraph (c)(2) of this section in a timely manner, the Board or TSP record keeper may nevertheless, in its sound discretion, correct any such error that is brought to its attention; provided, however, that no contribution allocation error which occurred before October 1, 2000, may be corrected if it is not the subject of a timely claim.

(d) *Processing claims.* (1) If the initial claim is submitted to the TSP record keeper, the TSP record keeper may either respond directly to the claimant, or may forward the claim to the Board for response. If the TSP record keeper responds to a claim, and all or any part of the claim is denied, the claimant may request review by the Board within 90 days of the date of the record keeper's response.

(2) If the Board denies all or any part of a claim (whether upon review of a TSP record keeper denial or upon an initial review by the Board), the claimant will be deemed to have exhausted his or her administrative remedy and may file suit under 5 U.S.C. 8477. If the claimant does not submit a request to the Board for review of a claim denial by the TSP record keeper within the 90 days permitted under paragraph (d)(1) of this section, the claimant shall be deemed to have accepted the TSP record keeper's decision.

[FR Doc. 00–9088 Filed 4–12–00; 8:45 am]
BILLING CODE 6760–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL190–1b; FRL–6574–2]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Approval of a Site-Specific Sulfur Dioxide Plan; Revision for CILCO Edwards Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a May 21, 1999, site-specific sulfur dioxide (SO_2) SIP revision request for the Central Illinois Light Company's Edwards Generating Station in Peoria County, Illinois. Illinois' requested SIP revision provides for a temporary relaxation in the fuel quality limit for one of the facility's three boilers, but adds an overall daily sulfur dioxide emission cap for the three boilers. The SIP revision request included dispersion modeling results which indicated that the revision will not cause violations of the SO_2 standards. In the final rules section of this **Federal Register**, the EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless the Agency receives relevant adverse written comment on this action. Should the Agency receive such comment, it will publish a final rule informing the public that the direct final rule will not take effect and such public comment received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity

will be taken on this proposed rule. EPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received on or before May 15, 2000.

ADDRESSES: All comments should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604.

Copies of the State submittal and other relevant documents used in support of this action are available at the following address for inspection during normal business hours: U.S. Environmental Protection Agency, Region 5, Air Programs Branch, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Mary Portanova, EPA Region 5, Air and Radiation Division (AR–18J), 77 West Jackson Boulevard, Chicago, IL 60604, (312) 353–5954.

SUPPLEMENTARY INFORMATION: For further information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: March 28, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–8953 Filed 4–12–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–83–200009; FRL–6578–4]

Approval and Promulgation of Implementation Plans; Florida: Approval of Revisions to the Florida State Implementation Plan; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of the comment period.

SUMMARY: EPA is extending the comment period for a proposed rule published March 17, 2000 (65 FR 14506). On March 17, 2000, EPA proposed an approval of revisions to the Florida State Implementation Plan concerning revisions to the ozone air quality maintenance plans for the Jacksonville (Duval County) and Southeast Florida (Broward, Dade, and Palm Beach Counties) areas to remove the emission reduction credits attributable to the Motor Vehicle Inspection Program from the future year emission projections contained in those plans. In response to requests from the American Lung Association of Florida, Inc., Environmental Defense, and David B. Rivkin, Jr. as counsel for Environmental Systems Products, Inc., EPA is extending the comment period for 30 days.

DATES: The comment period is extended until May 17, 2000.

ADDRESSES: Comments should be submitted to: Joey Levasseur at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Joey Levasseur at 404/562–9035 (E-mail: *levasseur.joey@epa.gov).*

Dated: April 7, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–9235 Filed 4–12–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Part 204

[DFARS Case 2000–D002]

Defense Federal Acquisition Regulation Supplement; Closeout of Foreign Military Sales Contract Line Items

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Acting Director of Defense Procurement is proposing to amend Defense Federal Acquisition Regulation Supplement (DFARS) policy pertaining to closeout of contract files. The amendments would expedite the closeout of Foreign Military Sales (FMS) contract line items, under contracts that contain both FMS and non-FMS items, by permitting closeout of the FMS line items as soon as the closeout requirements for those line items are satisfied.

DATES: Comments on the proposed rule should be submitted in writing to the address specified below on or before June 12, 2000, to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulation Council, Attn: Ms. Melissa Rider, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted via the Internet should be addressed to: dfars@acq.osd.mil.

Please cite DFARS Case 2000–D002 in all correspondence related to this proposed rule. E-mail correspondence should cite DFARS Case 2000–D002 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, (703) 602–4245.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends the contract closeout policy at DFARS 204.804 to specify that, if a contract includes FMS contract line items and non-FMS contract line items, the FMS line items should be closeout as soon as the closeout requirements for those line items are satisfied. This change is proposed as part of a DoD initiative to improve the FMS process.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only affects the timing of the administrative matter of closing out contract line items. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2000–D002.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 204

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 204 is proposed to be amended as follows:

1. The authority citation for 48 CFR part 204 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

2. Section 204.804 is amended by revising the introductory text to read as follows:

204.804 Closeout of contract files.

Normally, the closeout date for contract files is the date in Block 9d on the DD Form 1594, Contract Completion Statement, or in columns 59–65 on the PK9. However, if the contract includes Foreign Military Sales (FMS) contact line items and non-FMS contract line items, the FMS contract line items should be closed out as soon as the closeout requirements for those line items are satisfied in accordance with FAR 4.804. If the contracting office must do a major closeout action that will take longer than 3 months after the date shown in Block 9d of the DD Form 1594, or in columns 59–65 of the PK9–

* * * * *

[FR Doc. 00–9083 Filed 4–12–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 204 and 252

[DFARS Case 99–D015]

Defense Federal Acquisition Regulation Supplement; Disclosure of Information

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule; withdrawal.

SUMMARY: DoD is withdrawing the proposed rule published at 64 FR 56724 on October 21, 1999. The rule proposed amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) pertaining to contractor release of sensitive, unclassified contract information. DoD is planning to revise DoD Regulation 5200.1–R, Information Security Program, including the policy pertaining to sensitive infroamtion. DoD will reexamine the need for DFARs amendments on this subject when the revision of DOD Regulation 5200.1–R is complete.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, Defense Acquisition Regulations Council, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–4245; telefax (703) 602–0350. Please cite DFARS Case 99–D015.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 00–9082 Filed 4–12–00; 8:45 am]

BILLING CODE 5000–04–M

Notices

Federal Register
Vol. 65, No. 72
Thursday, April 13, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the subject Agencies' intention to request an extension for a currently approved information collection in support of the program for 7 CFR, part 1951, subpart F, "Analyzing Credit Needs and Graduation of Borrowers."

DATES: Comments on this notice must be received by June 12, 2000, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Phillip Elder, Senior Loan Officer, USDA, FSA, Farm Loan Programs, Loan Servicing Division, 1400 Independence Ave. SW., Washington, DC 20250–0523, telephone (202) 690–4012. Electronic mail: phillip__elder@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR, Part 1951, Subpart F, "Analyzing Credit Needs and Graduation of Borrowers.

OMB Number: 0575–0093.

Expiration Date of Approval: June 30, 2000.

Type of Request: Extension of a currently approved information collection.

Abstract: Section 333 of the Consolidated Farm and Rural Development Act (Con Act) (7 U.S.C. 1983) and § 502 of the Housing Act of 1949 (42 U.S.C. 1472) require the Agencies to "graduate" their direct loan borrowers to other credit when they are able to do so. Graduation is required because Government loans are not meant to be extended beyond a borrower's need for subsidized rates or government credit. The borrower must refinance their direct Government loan when other credit becomes available at reasonable rates and terms. If other credit is not available the Agency will continue to review the borrower for possible graduation at periodic intervals. Also, § 333A(f) of the Con Act (7 U.S.C. 1983a (f)) requires the Agency to provide a financial prospectus to lenders who may be interested in providing credit to Farm Service Agency direct farm loan borrowers with an FSA guarantee. The information collected to carry out these statutory mandates is financial data such as amount of income, farm operating expenses, asset values, and liabilities. This information collection is submitted by the Agencies' borrowers to Agency offices and is used in the Agencies' efforts to graduate direct borrowers to private credit.

Estimate of Burden: Public reporting for this collection of information is estimated to average 3 hours per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated Number of Respondents: 17,031.

Estimated Number of Responses per Respondent: 1.47.

Estimated Number of Responses: 25,047.

Estimated Total Annual Burden on Respondents: 75,361 hours.

Copies of this information collection can be obtained from Barbara Williams, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0045.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the subject Agencies, including whether the information will have practical utility; (b) the accuracy of the Agencies' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Barbara Williams, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: April 3, 2000.

Jill Long Thompson,

Undersecretary for Rural Development.

August Schumacher, Jr.,

Undersecretary for Farm And Foreign Agricultural Services.

[FR Doc. 00–9174 Filed 4–12–00; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Forest Service

Correction; Information Collection; FS–1800–3, Youth Conservation Corps Employment

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice corrects the estimate of burden for the second part of the request for reinstatement of the information collection, Youth Conservation Corps Employment. FS–1800–3 Youth Conservation Corps (YCC) Medical History, was the second part of this information collection, which was published in the **Federal Register** on February 10, 2000 (65 FR 6579), with a request for comment deadline of April 10, 2000. After further discussion with the Department of Interior, National Park Service, and Fish and Wildlife Service, the Forest Service determined that the number of respondents who will have to complete the Medical History form will be less than the number stated in the published notice. Only youths who will be hired will be required to complete FS–1800–

3. Youths who apply for a position with the Youth Conservation Corps, but who will not be hired will not have to complete this Medical History form.

FOR FURTHER INFORMATION CONTACT: Ransom Hughes, Youth Conservation Corps, Senior, Youth and Volunteer Programs, at (703) 605–4854.

Description of Information Collection

Title: FS–1800–3 Youth Conservation Corps (YCC) Medical History.

OMB Number: 0596–0084.

Expiration Date of Approval: October 31, 1997.

Estimate of Annual Burden: 14 minutes.

Type of Respondents: Youth 15 to 18 years of age.

Estimated Annual Number of Respondents: 2,000 (corrected from 18,000).

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 140 hours (corrected from 4,200 hours).

Dated: April 5, 2000.

Clyde Thompson,

Deputy Chief for Business Operations.

[FR Doc. 00–9209 Filed 4–12–00; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Utah Northern Goshawk Project

AGENCY: Forest Service, USDA.

ACTION: Notice of Decision on the Utah Northern Goshawk Project Environmental Assessment.

SUMMARY: In the November 9, 1999, **Federal Register** (Vol. 64, No. 216, pages 61062–61063), notice was given by the Intermountain Region of the Forest Service that the Environmental Assessment for the Utah Northern Goshawk project was available for review and comment for 60 days.

On March 14, 2000, Regional Forester Jack A. Blackwell made his decision to implement Alternative F as the management direction to maintain and restore habitat for the northern goshawk on the National Forests in Utah. This decision amends the goals, objectives, standards, guidelines and monitoring requirements established in the current land and resource management plans (forest plans) for the Ashley, Dixie, Fishlake, Manti-LaSal, Uinta, and Wasatch-Cache National Forests. The amendments will be in effect until the forest plans are revised.

The decision may be appealed in accordance with the provisions of 36 CFR 217, as identified in the Decision Notice. The appeal period ends on May 22, 2000. Copies of the Decision Notice are available for calling 801/615–5897 or from the Utah Northern Goshawk Project's website at: www.fs.fed.us/r4/goshawk.

FOR FURTHER INFORMATION CONTACT: Questions about the Decision Notice should be directed to Peter W. Karp, Uinta National Forest Supervisor and Team Leader for the Utah Northern Goshawk Project, USDA Forest Service, PO Box 1428, Provo, UT 84601. Phone: 801/342–5100.

Dated: April 3, 2000.

Jack G. Troyer,

Deputy Regional Forester, Intermountain Region.

[FR Doc. 00–9245 Filed 4–12–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

[Docket No. 000327082–0082–01]

RIN 0605–XX07

Privacy Act of 1974; System of Records

AGENCY: Department of Commerce.

ACTION: Notice of amendment of Privacy Act System of Records: Commerce/Patent and Trademark System 1; Commerce—Patent and Trademark System 2; Commerce/Patent and Trademark System 5.

SUMMARY: The Department of Commerce is amending the systems of records listed under Commerce—Patent and Trademark Systems 1: Attorneys and Agents Registered to Practice before the Patent and Trademark Office; Commerce-Patent and Trademark Systems 2: Complaints, Investigations and Disciplinary Proceedings Relating to Registered Patent Attorneys and Agents; and Commerce-Patent and Trademark Systems 5: Non-Registered Persons Rendering Assistance to Patent Applicants. This action has been taken to update the Privacy Act notice and to amend the routine use. We invite public comment on the proposed routine use in this publication.

DATES: *Effective Date:* The amendments will become effective as proposed without further notice on May 15, 2000 unless comments dictate otherwise.

Comment Date: To be considered, written comments must be submitted on or before May 15, 2000.

ADDRESSES: Comments may be sent via United States Mail delivery to Raymond Chen, Office of the Solicitor, United States Patent and Trademark Office, Box 8, Washington, DC 20231; via facsimile at 703–305–9373. All comments received will be available for public inspection at the Public Search Facilities, Crystal Plaza 3, 2021 South Clark Place, Arlington, VA 22202.

For further information contact: Raymond Chen, Office of the Solicitor, Box 8, Washington, DC 20231, or by phone at 703–305–9035.

SUPPLEMENTARY INFORMATION: Pursuant to an executive branch initiative to update the Privacy Act systems of records, the Department of Commerce amends three Privacy Act systems maintained by the U.S. Patent and Trademark Office (PTO) to describe the current practices of the PTO.

In addition to amending the notice of routine uses, other changes are being made to update the notice, including amendments to categories of individuals covered by the system, categories of records in the system, location of records, authority for maintenance of the system, policy and practices for storing records, and the title and business address of the agency official responsible for the records. A more detailed explanation of the changes follows for each system.

The below-referenced Prefatory Statement of General Routine uses is found at 46 FR 63501–63502 (December 31, 1981).

The Department of Commerce finds no probable or potential effect of the proposal on the privacy of individuals. To minimize the risk of unauthorized access to the system of records, the PTO has located paper records in lockable file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access. Electronic files are stored in secured premises with access limited to those whose official duties require access.

Attorneys and Agents Registered To Practice Before the Patent and Trademark Office (PAT–TM–1)

The system location disclosure is updated to reflect correct addresses and to reflect that records in this system may be contained in the Office of Enrollment and Discipline (OED), the Office of the Solicitor, and/or the Commissioner's Office. This amendment to the system location reflects current practice and does not constitute a new collection of records. Changes in the PTO enrollment and disciplinary rules, part 10 of 37 CFR, instituted in 1985, moved the functions of enrollment and discipline from the Office of the Solicitor to OED, a separate office. Moreover, under current enrollment and disciplinary rules, persons covered by this system

may petition OED decisions to the Commissioner of Patents and Trademarks. Additionally, the Solicitor provides legal advice and guidance on enrollment matters to both the OED and the Commissioner. Thus, records from this system may also be stored in the Commissioner's Office or in the Office of the Solicitor.

The category of records in the system is amended to include records pertaining to investigations of an applicant's suitability or eligibility for registration to practice before the PTO. This amendment to the categories of records in the system reflects current practice as authorized by 35 U.S.C. 31 and does not constitute a new collection of records.

The routine uses of records is amended to clarify the current notice. This amendment to the routine uses of records in the system reflects current practice and does not constitute a new collection of records or any new routine disclosure. The public roster notice in the current system is further defined to indicate that a registered practitioner's name, address, law firm or company affiliation, telephone number, and registration number will be published periodically. Currently, the PTO publishes this roster on its worldwide web site. The current notice is further amended to clarify that the PTO will release current status information (*e.g.*, registered, not registered, suspended, etc.) upon inquiry from the public, state bars, courts, or other government agencies. The amendment also notices that the PTO may disclose information to solicit additional information regarding an applicant's suitability and eligibility to practice before the PTO, and that petitions for reinstatement by a suspended or excluded practitioner will be open to the public, pursuant to 37 CFR 10.160(e).

The storage notice is amended to reflect storage on microfilm and machine readable storage media. The safeguards notice is amended to reflect current practice. This amendment to the storage and safeguarding of records in the system reflects current practice and does not constitute a new collection of records, new storage means, or new safeguarding means. The system manager and notification procedure are amended to update correct addresses for those positions. The record source category is amended to reflect current practice of obtaining information from individuals.

Further, the notice for Privacy Act system "Attorneys and Agents Registered to Practice before the Patent and Trademark Office" (PAT–TM–1) has also been amended to add a notice regarding the PTO's intention to exempt that system of records from certain provisions of the Privacy Act as provided for in 5 U.S.C. 552a(k)(2). Some of the records in this system result from investigations compiled for law enforcement purposes. Namely, the records contain information regarding, *inter alia*, the moral and ethical fitness of an applicant to practice before the PTO. This information is relevant (a) to pending disciplinary investigations and proceedings in the PTO (b) to state bar violations, or (c) to violations of state and/or federal criminal and/or civil laws. The rulemaking process is concurrently amending 15 CFR 4b.14(b)(2) to add PAT–TM–1 to the systems of records which are exempt from certain provision of the Privacy Act under 5 U.S.C. 552a(k)(2).

The reasons set forth at 15 CFR 4b.14(b)(2) for exempting certain systems of records from certain provisions of the Privacy Act are also reasons for exempting PAT–TM–1 under 5 USC 552a(k)(2). The reasons for asserting the exemption are to prevent subjects of investigation from frustrating the investigatory process, to ensure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources and law enforcement personnel. See 15 CFR 4b.14(b)(2).

Complaints, Investigations and Disciplinary Proceedings Relating to Registered Patent Attorneys and Agents (PAT–TM–2)

The system location disclosure is updated to reflect correct addresses and to reflect that records in this system may be contained in the Office of Enrollment and Discipline (OED), the Office of the Solicitor, and/or the Commissioner's Office. This amendment to the system location reflects current practice and does not constitute a new collection of records. Changes in the PTO enrollment and disciplinary rules, part 10 of 37 CFR, instituted in 1985, moved the functions of enrollment and discipline from the Office of the Solicitor to OED, a separate office. Under 37 CFR 10.140(b), the Commissioner designates certain associate solicitors to serve as legal counsel for the Director of OED. Thus, records from this system may also be maintained in the Office of the Solicitor. Moreover, under current enrollment and disciplinary rules, persons covered by this system may petition OED decisions to the Commissioner of Patents and Trademarks. Additionally, the Solicitor provides legal advice to the Commissioner on disciplinary matters. Thus, records from this system may be stored in the Commissioner's Office or in the Office of the Solicitor.

The categories of individuals covered by the system is amended to reflect current practice under PTO rules to include attorneys practicing trademark matters before the PTO and any other attorney appearing before the PTO.

The routine uses of records is amended to clarify the current notice. This amendment to the routine uses of records in the system reflects current practice and does not constitute a new collection of records or any new routine disclosure. Under 37 CFR 10.135(b), a notice of institution of a disciplinary complaint and case against an attorney or agent may be publicly disclosed. Additionally, upon a final order reprimanding, suspending, or excluding an attorney or agent, the records in this system may be publicly disclosed.

The storage notice is amended to reflect storage on microfilm and machine readable storage media. The safeguards notice is amended to reflect current practice. This amendment to the storage and safeguarding of records in the system reflects current practice and does not constitute a new collection of records or new storage means or new safeguarding means. The system manager and notification procedure are amended to update correct addresses for those positions. The record source category is amended to reflect the current practice of obtaining information from individuals.

Further, the notice for Privacy Act system Complaints, Investigations and Disciplinary Proceedings Relating to Registered Patent Attorneys and Agents (PAT–TM–2) has also been amended to add a notice regarding the agency's intention to exempt that system of records from certain provisions of the Privacy Act as provided for in 5 U.S.C. 552a(k)(2). All or substantially all of the records in PAT–TM–2 comprise investigatory material compiled for law enforcement purposes. Namely, the records are used to aid the agency in enforcing its statutes and regulations regarding the conduct of patent attorneys and agents admitted to practice before the PTO. The rulemaking process is concurrently amending 15 CFR 4b.14(b)(2) to add PAT–TM–2 to the systems of records which are exempt from certain provision of the Privacy Act under 5 U.S.C. 552a(k)(2).

The reasons set forth at 15 CFR 4b.14(b)(2) for exempting certain systems of records from certain

provisions of the Privacy Act are also reasons for exempting PAT–TM–2 under 5 U.S.C. 552a(k)(2). The reasons for asserting the exemption are to prevent subjects of investigation from frustrating the investigatory process, to ensure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information, and to avoid endangering these sources and law enforcement personnel. See 15 CFR 4b.14(b)(2).

Non-Registered Persons Rendering Assistance to Patent Rendering Assistance (PAT–TM–5)

The system location disclosure is updated to reflect correct addresses and to reflect that records in this system may be contained in the Office of Enrollment and Discipline (OED) and the Office of the Solicitor. This amendment to the system location reflects current practice and does not constitute a new collection of records. Changes in the PTO enrollment and disciplinary rules, part 10 of 37 CFR, instituted in 1985, moved the functions of enrollment and discipline from the Office of the Solicitor to OED, a separate office. Under 37 CFR 10.140(b), the Commissioner appoints certain associate solicitors to serve as legal counsel for the Director of OED. Thus, records from this system may also be maintained in the Office of the Solicitor.

The storage notice is amended to reflect storage on microfilm and machine readable storage media. The safeguards notice is amended to reflect current practice. This amendment to the storage and safeguarding of records in the system reflects current practice and does not constitute a new collection of records or new storage means or new safeguarding means. The system manager and notification procedure are amended to update correct addresses for those positions.

Classification

This notice is not subject to the notice and comment requirements of the Administrative Procedure Act. 5 U.S.C. 553(a)(2).

This notice is exempt review under Executive Order 12866.

Accordingly, Privacy Act systems notices for Attorneys and Agents Registered to Practice before the Patent and Trademark Office (PAT–TM–1), Complaints, Investigations and Disciplinary Proceedings Relating to Registered Patent Attorneys and Agents (PAT–TM–2), and Non-Registered Persons Rendering Assistance to Patent Rendering Assistance (PAT–TM–5) originally published at 40 FR 32970 (August 5, 1975) are amended as follows:

COMMERCE/PAT–TM–1

SYSTEM NAME:

Attorneys and Agents Registered to Practice Before the Office—COMMERCE/PAT–TM–1.

SYSTEM LOCATION:

Office of Enrollment and Discipline, U.S. Patent and Trademark Office, 2221 South Clark Street, Arlington, Virginia 22202; Office of the Commissioner, 2121 Crystal Dr., Arlington, VA 22202; Office of the Solicitor, 2121 Crystal Drive, Arlington, VA 22202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Attorneys and agents who are, or have been, registered to practice before the Patent and Trademark Office ("PTO") in patent cases, and applicants and former applicants for such registration to practice.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical information, personal and professional qualifications, character and fitness report, investigations of an applicant's suitability or eligibility for registration to practice before the PTO, undertakings of former patent examiners, current address, and status information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

35 U.S.C. 1, 6, and 31.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine uses Nos. 1–5 and 8–13. A public roster including an address of record, law firm or company affiliation, telephone number, and registration number of the registered individuals is published and disseminated; registration status is disseminated upon inquiry; and information may be published or otherwise disclosed to solicit information regarding an applicant's suitability and eligibility for registration to practice before the PTO.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, microfilm, and machine readable storage media.

RETRIEVABILITY:

Filed alphabetically by name or registration number.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access. Electronic files are stored in secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records retention and disposal is in accordance with the unit's Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Enrollment and Discipline, Box OED, U.S. Patent and Trademark Office, Washington, DC 20231.

NOTIFICATION PROCEDURE:

Information may be obtained from Director, Office of Enrollment and Discipline, Box OED, U.S. Patent and Trademark Office, Washington, DC 20231. Requester should provide name, address, date of application, and record sought, pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR part 4b.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Same address as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and for appealing initial determinations by the individual concerned appear in 15 CFR part 4b.

RECORD SOURCE CATEGORIES:

Subject individual, references, and individuals furnishing information.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(2), all investigatory materials in the record which meet the criteria in 5 U.S.C. 552a(k)(2) are exempted from the notice, access, and contest requirements (under 5 U.S.C. 552a(c)(3), (d), (e) (1), (e)(4)(G), (H), and (I), and (f)) of the agency regulations because of the necessity to exempt this information and material in order to accomplish the law enforcement function of the agency, to prevent subjects of investigations from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of sources, to maintain access to sources of

information, and to avoid endangering these sources and law enforcement personnel.

COMMERCE/PAT–TM–2

SYSTEM NAME:

Complaints, Investigations and Disciplinary Proceedings Relating to Registered Patent Attorneys and Agents—COMMERCE/PAT–TM–2.

SYSTEM LOCATION:

Office of Enrollment and Discipline, U.S. Patent and Trademark Office, 2221 South Clark Street, Arlington, Virginia 22202; Office of the Commissioner, 2121 Crystal Drive, Arlington, VA 22202; Office of the Solicitor, 2121 Crystal Drive, Arlington, VA 22202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Attorneys and agents registered to practice before the Patent and Trademark Office (PTO) in patent cases, attorneys practicing before the PTO in trademark cases, attorneys appearing before the PTO, and excluded or suspended attorneys and agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complaints and information obtained during investigations and quasi-judicial disciplinary proceedings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

35 U.S.C. 1, 6, and 32.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Prefatory Statement of General Routine Uses Nos. 1–5, 8–10, and 13. Dissemination of information concerning the complaint, investigation, or disciplinary proceeding may be made to the complainant and to persons who can reasonably be expected to provide information needed in connection with the complaint, investigation, or disciplinary proceeding. Notice of filing of a disciplinary complaint may be publicly disclosed. Upon a final order reprimanding, suspending, or excluding an attorney or agent, the records in this system may be publicly disclosed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, microfilm, and machine readable storage media.

RETRIEVABILITY:

Filed alphabetically by name or registration number.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access. Electronic files are stored in secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records retention and disposal is in accordance with the unit's Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Enrollment and Discipline, Box OED, U.S. Patent and Trademark Office, Washington, DC 20231.

NOTIFICATION PROCEDURE:

Information may be obtained from Director, Office of Enrollment and Discipline, Box OED, U.S. Patent and Trademark Office, Washington, DC 20231. Requester should provide name, address, date of application, and record sought, pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR part 4b.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Same address as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and for appealing initial determinations by the individual concerned appear in 15 CFR part 4b.

RECORD SOURCE CATEGORIES:

Subject individuals, clients of same, registered attorneys and agents, witnesses in disciplinary proceedings, court opinions, and individuals furnishing information.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(2), all investigatory materials in the record which meet the criteria in 5 U.S.C. 552a(k)(2) are exempted from the notice, access, and contest requirements (under 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f)) of the agency regulations because of the necessity to exempt this information and material in order to accomplish the law enforcement function of the agency, to prevent subjects of investigations from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of sources, to maintain access to sources of information, and to avoid endangering these sources and law enforcement personnel.

COMMERCE/PAT–TM–5

SYSTEM NAME:

Non-Registered Persons Rendering Assistance to Patent Applicants—COMMERCE/PAT–TM–5.

SYSTEM LOCATION:

Office of Enrollment and Discipline, U.S. Patent and Trademark Office, 2221 South Clark Street, Arlington, Virginia 22202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons other than registered attorneys or agents who have offered or rendered, for payment, various services to inventors, patent applicants, and patentees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Declarations of assistance received and other reports or complaints, including names and addresses, of persons rendering services, and information obtained and used for investigatory and law enforcement purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

35 U.S.C. 1, 6, and 33; 5 U.S.C. 301; 28 U.S.C. 533–535; 44 U.S.C. 3101; and E.O. 10450.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Providing notice to patent applicants regarding whether or not the persons from whom assistance was received are registered to practice before the Office. Used for investigative purposes. Also, see Prefatory Statement of General Routine Uses Nos. 1–5, 8–10, and 13.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, microfilm, and machine readable storage media.

RETRIEVABILITY:

Filed alphabetically by name.

SAFEGUARDS:

Records are located in lockable metal file cabinets or in metal file cabinets in secured rooms or secured premises with access limited to those whose official duties require access. Electronic files are stored in secured premises with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

Records retention and disposal is in accordance with the unit's Records Control Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Enrollment and Discipline, Box OED, U.S. Patent and Trademark Office, Washington, DC 20231.

NOTIFICATION PROCEDURE:

Director, Office of Enrollment and Discipline, Box OED, U.S. Patent and Trademark Office, Washington, DC 20231. Requester should provide name, address, date of application, and record sought, pursuant to the inquiry provisions of the Department's rules in 15 CFR part 4b.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Same address as stated in the notification section above.

CONTESTING RECORD PROCEDURES:

The Department's rules for access, for contesting contents, and for appealing initial determinations by the individual concerned appear in 15 CFR part 4b.

RECORD SOURCE CATEGORIES:

Patent applicants who have received and paid for services by the individuals on whom the records are maintained.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(2), all investigatory materials in the record which meet the criteria in 5 U.S.C. 552a(k)(2) are exempted from the notice, access, and contest requirements (under 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f)) of the agency regulations because of the necessity to exempt this information and material in order to accomplish the law enforcement function of the agency, to prevent subjects of investigations from frustrating the investigatory process, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of sources, to maintain access to sources of information, and to avoid endangering these sources and law enforcement personnel.

Dated: March 29, 2000.

Brenda Dolan,

Departmental Freedom of Information Act and Privacy Act Officer.

[FR Doc. 00–8862 Filed 4–12–00; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–803]

Cut-to-Length Carbon Steel Plate From Romania; Time Limits

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the 1998–1999 administrative review of the antidumping duty order on cut-to-length carbon steel plate from Romania. This review covers two exporters of the subject merchandise to the United States, Metalexportimport, S.A. and Windmill International Romania Branch (Windmill), and one manufacturer of the subject merchandise, C. S. Sidex, S.A. The period of review is August 1, 1998 through July 31, 1999.

EFFECTIVE DATE: April 13, 2000.

FOR FURTHER INFORMATION CONTACT: Fred Baker at (202) 482–2924 or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The Department initiated this administrative review on October 1, 1999 (64 FR 53318) and November 4, 1999 (64 FR 60161). Under section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. Because of the complexity and difficulty presented with surrogate country selection and factor valuation in this case, the Department is extending the time limit for completion of the preliminary results until August 30, 2000. See Memorandum from Richard Weible to Joseph Spetrini, on file in room B–099 of the main Commerce building. The deadline for the final results of this review will continue to be 120 days after the publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act and section 351.213(h)(2) of the Department's regulations.

Dated: April 27, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary Enforcement Group III.

[FR Doc. 00–9239 Filed 4–12–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–810, A–580–843]

Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Expandable Polystyrene Resins From Indonesia and the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 13, 2000.

FOR FURTHER INFORMATION CONTACT: Valerie Ellis or David Layton, Office 5, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2336, or (202) 482–0371, respectively.

Postponement of Preliminary Determination

The Department of Commerce (the Department) is postponing the preliminary determinations in the antidumping duty investigations of certain expandable polystyrene resins from Indonesia and the Republic of Korea. The deadline for issuing the preliminary determinations in these investigations is now June 20, 2000.

On December 13, 1999, the Department initiated antidumping investigations of certain expandable polystyrene resins from Indonesia and the Republic of Korea. *See Initiation of Antidumping Duty Investigations: Certain Expandable Polystyrene Resins from Indonesia and the Republic of Korea*, 64 FR 71112 (December 20, 1999). The notice stated that the Department would issue its preliminary determinations no later than 140 days after the date of initiation (*i.e.*, May 1, 2000).

Pursuant to 19 CFR 351.205(e), on March 29, 2000, the petitioners filed a request that the Department postpone the preliminary determinations in these investigations. The petitioners' request for postponement was timely, and the Department finds no compelling reason to deny the request. Therefore, in accordance with section 733(c)(1) of the Tariff Act of 1930, as amended (the Act), the Department is postponing the

deadline for issuing these preliminary determinations until June 20, 2000.

This extension is in accordance with section 733(c) of the Act and 19 CFR 351.205(b)(2).

Dated: April 5, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–9241 Filed 4–12–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–855]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is conducting an antidumping duty investigation of non-frozen apple juice concentrate from the People's Republic of China. We determine that sales have been made at less than fair value. The estimated dumping margins are shown in the Continuation of Suspension of Liquidation section of this notice.

EFFECTIVE DATE: April 13, 2000.

FOR FURTHER INFORMATION CONTACT: Craig Matney, Sally Hastings, or Annika O'Hara, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1778, 482–3464, or 482–3798, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

Case History

Since the preliminary determination (*see* 64 FR 65675 (November 23, 1999) ("*Preliminary Determination*")), the following events have occurred:

On November 24, 1999, we received an allegation from the respondents in this investigation regarding certain clerical errors in the preliminary determination. On December 27, 1999, we published in the **Federal Register** a notice of our amended preliminary determination, postponement of the final determination, and extension of provisional measures (64 FR 72316).

On January 10, 2000, one of the respondents, Shaanxi Machinery & Equipment Import & Export Corporation ("SAAME"), notified the Department of its withdrawal from the investigation.

In January and February 2000, we conducted verification of the questionnaire responses submitted by the following respondents: Yantai North Andre Juice Co., Ltd. ("North Andre"); Shaanxi Haisheng Fresh Fruit Juice Co., Ltd. ("Haisheng"); Sanmenxia Lakeside Fruit Juice Co., Ltd. ("Lakeside"); Shandong Zhonglu Juice Group Co., Ltd. ("Zhonglu"); Yantai Oriental Juice Co., Ltd. ("Oriental"); and Qingdao Nannan Foods Co., Ltd. ("Nannan"). We issued the verification reports during February and March 2000.

Pursuant to the Department's request, supplemental information regarding surrogate values was submitted on February 25 and 28, 2000, respectively, by the respondents and by Coloma Frozen Foods, Inc., Green Valley Packers, Knouse Foods Cooperative, Inc., Mason County Fruit Packers Co-op, Inc., and Tree Top Inc. (hereinafter collectively referred to as "the petitioners").

The petitioners and the respondents filed case and rebuttal briefs, respectively, on March 9 and 14, 2000. At the request of the respondents, the Department held a public hearing on March 17, 2000.

Scope of the Investigation

For purposes of this investigation, the product covered by the scope is all non-frozen concentrated apple juice with a Brix scale of 40 or greater, whether or not containing added sugar or other sweetening matter, and whether or not fortified with vitamins or minerals. Excluded from the scope of this investigation are: frozen concentrated apple juice; non-frozen concentrated apple juice that has been fermented; and non-frozen concentrated apple juice to which spirits have been added. The merchandise subject to this investigation is classified in the HTSUS at subheadings 2009.70.00.20 and 2106.90.52. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of this investigation ("POI") is October 1, 1998, through March 31, 1999.

Nonmarket Economy Country and Market-Oriented Industry Status

The Department has treated the People's Republic of China ("PRC") as a nonmarket economy ("NME") country in all past antidumping investigations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998) ("*Mushrooms*"). Under section 771(18)(C) of the Act, this NME designation remains in effect until it is revoked by the Department.

The respondents in this investigation have not requested a revocation of the PRC's NME status and no further information has been provided that would lead to such a revocation. Therefore, we have continued to treat the PRC as an NME in this investigation.

Furthermore, no interested party has requested that the NFAJC industry in the PRC be treated as a market-oriented industry and no further information has been provided that would lead to such a determination. Therefore, we have not treated the NFAJC industry in the PRC as a market-oriented industry in this investigation.

Separate Rates

All responding companies have requested separate, company-specific antidumping duty rates. (Because it has withdrawn from participation in the investigation, SAAME is no longer considered a "responding company." *See* "Use of Facts Available" section, below.) In our *Preliminary Determination*, we preliminarily found that all responding companies had met the criteria for the application of separate antidumping duty rates. *See* 64 FR at 65677–78. At verification, we found no discrepancies with the information provided in the questionnaire responses of responding companies. We have not received any other information since the *Preliminary Determination* which would warrant reconsideration of our separate rates determinations with respect to these companies. We, therefore, determine that the responding companies in this investigation should be assigned individual dumping margins.

Antidumping Duty Rate for Those Producers/Exporters That Responded Only to the Separate Rates Questionnaire

For those producers/exporters that responded to our separate rates

questionnaire (*i.e.*, Xianyang Fuan Juice Co., Ltd. ("Fuan"); Xian Asia Qin Fruit Co., Ltd. ("Asia Fruit"); Changsha Industrial Products & Minerals Import & Export Corporation ("Changsha"); and Shandong Foodstuffs Imports & Export Corporation ("Shandong Foodstuffs")), but did not respond to the full antidumping questionnaire because they were not selected to respond or because they did not submit a voluntary response, we have calculated a weighted-average margin based on the rates calculated for the fully-examined responding companies, except that we did not include rates which were zero (*i.e.*, North Andre), based entirely on facts available (*i.e.*, the PRC-wide rate), or for voluntary respondents (*i.e.*, Zhonglu and Lakeside). *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026 (April 30, 1996) ("*Bicycles from the PRC*").

PRC-Wide Rate

As stated in the preliminary determination, information on the record of this investigation indicates that there are numerous producers/exporters of the subject merchandise in the PRC in addition to the companies participating in this investigation. U.S. import statistics show that the responding companies did not account for all imports of NFAJC into the United States from the PRC. Given this discrepancy, it appears that not all PRC exporters of NFAJC responded to our questionnaire. Accordingly, we are applying a single antidumping deposit rate ("the PRC-wide rate") to all NFAJC exporters in the PRC except those specifically identified in the "Continuation of Suspension of Liquidation" section of this notice.

Use of Facts Available

As explained in the preliminary determination, the PRC-wide antidumping rate is based on adverse facts available, in accordance with section 776 of the Act. Section 776(a)(2) of the Act provides that "if an interested party or any other person—(A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title." Use of facts available is warranted in this case because the producers/exporters other than those under investigation and the four cooperative exporters who were not selected as respondents, have failed to respond to the Department's questionnaire. While SAAME initially cooperated with the Department in submitting questionnaire responses, it did not permit verification of its information and withdrew from the investigation. Therefore, in accordance with section 776(a)(2)(D) of the Act, we find that use of facts available is warranted with respect to SAAME.

Section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The producers/exporters that decided not to respond in any form to the Department's questionnaire and SAAME, which withdrew from the investigation, failed to act to the best of their ability in this investigation. Further, absent a verifiable response from these firms, we must presume government control of these PRC companies. Thus, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted and has assigned them a common, PRC-wide rate based on adverse inferences.

In accordance with our standard practice, as adverse facts available, we are assigning to the PRC-wide entity (i.e., those companies not receiving a separate rate), which did not cooperate in the investigation, the higher of: (1) The highest margin stated in the notice of initiation; or (2) the highest margin calculated for any respondent in this investigation (see, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Japan*, 63 FR 40434 (July 29, 1998)). In this case, the adverse facts available margin is 51.74 percent, the margin from the petition, which is higher than the margin calculated for any respondent in this investigation.

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316 (1994) (SAA), states that "corroborate" means to determine that the information used has probative value. *See* SAA at 870.

The petitioners' methodology for calculating export price ("EP") and normal value ("NV") is discussed in the *Notice of Initiation*. To corroborate the petitioners" EP calculations, we compared the prices in the petition for the product to the prices submitted by respondents for the same product in similar volumes. To corroborate the petitioners' NV calculations, we compared the petitioners' factor consumption and factor values for the product to the data reported by the respondents for the most significant factors (*i.e.*, apples; labor; electricity; packing materials; factory overhead; selling, general, and administrative expenses; and profit) to the values selected for the final determination, as discussed below. Our analysis showed that, in general, the petitioners' data was reasonably close to the data submitted by the respondents and to the surrogate values chosen by the Department. *See* April 6, 2000 memorandum to the file ("Corroboration Memo"). Based on our analysis, we find that the figures and calculations set forth in the petition have probative value.

Fair Value Comparisons

To determine whether sales of NFAJC from the PRC to the United States were made at less than fair value, we compared the EP or CEP, as appropriate, to the NV. Our calculations followed the methodologies described in the *Preliminary Determination*, except as noted below and in the company-specific calculation memoranda dated April 6, 2000, which are on file in the Central Records Unit, Room B–099 of the main Department building.

Export Price and Constructed Export Price

For the price to the United States, we used EP or CEP as defined in section 772 of the Act, as appropriate. We calculated EP and CEP based on the same methodology as in the *Preliminary Determination*, with the following exception:

We did not use any reported market economy international freight rates where such freight was provided by a non-market economy freight forwarder. Instead, we used the surrogate value for international freight developed using Federal Maritime Commission data. *See* "Issues and Decision Memorandum" ("Decision Memorandum") from Richard W. Moreland, Deputy Assistant Secretary, Import Administration to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated April 6, 2000, Comment 3.

Normal Value

1. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) Are at a level of economic development comparable to that of the NME, and (2) are significant producers of comparable merchandise. Regarding the first criterion, the Department has determined that India, Pakistan, Sri Lanka, Egypt, Indonesia, and the Philippines are countries comparable to the PRC in terms of overall economic development (*see* memorandum from Jeff May, Director, Office of Policy, to Susan Kuhbach, Senior Director, AD/CVD Enforcement, Office 1, September 15, 1999) ("Surrogate Memorandum")).

In the *Preliminary Determination*, we solicited further comments on this issue from the parties. We received such comments on February 25 and 28, 2000, and in the case and rebuttal briefs filed on March 9 and 14, 2000. For purposes of the final determination, we have continued to rely on India as our primary surrogate country in this investigation. *See* Decision Memorandum, Comment 1. When Indian values were not available or were determined to be aberrational, we used Indonesian or U.S. values.

2. Factors of Production and Surrogate Values

In our calculation of NV, we have used the same factors of production and the same surrogate values as in the *Preliminary Determination*, with the following exceptions:

To value rail freight we used a surrogate value based on Northern India Railways data. *See*

Decision Memorandum, Comment 5. To value aseptic bags for those respondents that did not purchase them from a market economy supplier, we used the average price paid by those respondents who did. *See* Decision Memorandum, Comment 6.

Critical Circumstances

On November 3, 1999, the Department issued its preliminary determination that critical circumstances exist with respect to SAAME (which has since withdrawn from this investigation), Lakeside, Haisheng, North Andre, Nannan, those non-selected respondents who requested separate rates (Fuan, Asia Fruit, Changsha, and Shandong Foodstuffs), and those entities subject to the PRC-wide rate. We also preliminarily determined that critical circumstances do not exist with respect to Oriental and Zhonglu. *See Preliminary Determination of Critical Circumstances: Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China*, 64 FR 61835 (November 15, 1999). Our decision was based on the analysis of shipment data submitted by the respondents and available import statistics, as well as evidence of importer knowledge of dumping and the likelihood of resultant material injury. As discussed in the preliminary critical circumstances determination, the Department normally considers margins of 25 percent for EP sales and 15 percent for CEP sales and a preliminary International Trade Commission ("ITC") determination of material injury sufficient to impute knowledge of dumping and the likelihood of resultant material injury.

Because the final calculated margins for North Andre, Haisheng, Zhonglu, and Oriental are below 15 percent, the Department's threshold for imputing knowledge of dumping is not met as to these companies. Thus, we do not find critical circumstances with respect to these companies. Furthermore, the weighted-average margin we calculated for the non-selected respondents (Fuan, Asia Fruit, Changsha, and Shandong Foodstuffs) is less than the 25 percent threshold for imputing knowledge with respect to EP sales, but greater than the 15 percent threshold for imputing knowledge with respect to CEP sales. Because the record as to these respondents does not indicate whether their sales were EP or CEP sales, we considered whether the 15 percent or 25 percent threshold was applicable with respect to those companies whose rates were used to calculate the weighted-average margin for the non-selected group (*i.e.*, Haisheng, Oriental, and Nannan). Given that the 25-percent threshold was appropriate for two of these three companies, we applied this threshold for the non-selected respondents and thus we did not impute knowledge of dumping to the non-selected respondent group. Accordingly, we also do not find critical circumstances for the companies in this group.

Because the final margins for Lakeside, Nannan and the companies in the PRC-wide entity (including SAAME) continue to be above the threshold for imputing knowledge of dumping, and because, as detailed in the preliminary determination, there is record evidence sufficient to impute knowledge of injury and to support a finding of massive imports over a relatively short period of time, we continue to find that critical circumstances exist with respect to these companies. *See* Decision Memorandum, Comment 10.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by respondents.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the April 6, 2000, Decision Memorandum which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B–099 of the Department. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

Continuation of Suspension of Liquidation

In accordance with section 735(c) of the Act, we are directing the U.S. Customs Service ("Customs") to continue to suspend liquidation of all imports of the subject merchandise from the PRC, except for merchandise both produced and exported by North Andre, which has a zero margin, that are entered, or withdrawn from warehouse, for consumption on or after November 23, 1999, the date of publication of the *Preliminary Determination* in the **Federal Register**. In addition, for Lakeside, Nannan, and companies subject to the PRC-wide rate (including SAAME), we are directing Customs to continue to suspend liquidation of any unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after August 25, 1999, the date 90 days prior to the date of publication of the *Preliminary Determination* in the **Federal Register**, in accordance with our critical circumstances finding. Consistent with our negative final critical circumstances determination for Haisheng, Fuan, Asia Fruit, Changsha, and Shandong Foodstuffs (all of which were subject to a preliminary critical

circumstances finding), we will instruct Customs to liquidate without regard to antidumping duties and refund all bonds and cash deposits posted on subject merchandise exported by these companies that was entered, or withdrawn from warehouse, for consumption prior to November 23, 1999, the date of publication of the *Preliminary Determination* in the **Federal Register**.

Customs shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as appropriate, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage	Critical circumstances
Yantai North Andre Juice Co., Ltd	0.00	No.
Shaanxi Haisheng Fresh Fruit Juice Co., Ltd	12.90	No.
Sanmenxia Lakeside Fruit Juice Co., Ltd	28.54	Yes.
Shandong Zhonglu Co., Ltd./Rushan Shangjin-Zhonglu Foodstuff Co., Ltd./Shandong Luling Fruit Juice Co./Rushan Dongjin Foodstuffs.	9.40	No.
Yantai Oriental Juice Co., Ltd	9.96	No.
Qingdao Nannan Foods Co., Ltd	26.43	Yes.
Xian Asia Qin Fruit Co., Ltd	15.36	No.
Xian Yang Fuan Juice Co., Ltd	15.36	No.
Changsha Industrial Products & Minerals Import and Export Co., Ltd	15.36	No.
Shandong Foodstuffs Import and Export Corporation	15.36	No.
PRC-wide rate	51.74	Yes.

The PRC-wide rate applies to all entries of the subject merchandise except for entries from exporters that are identified individually above, and to any entries exported by, but Not produced by, North Andre.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: April 6, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix

List of Comments in the Issues and Decision Memorandum

Comment 1: Choice of primary surrogate country
Comment 2: Valuation of apples
Comment 3: Valuation of ocean freight
Comment 4: Valuation of steam coal
Comment 5: Valuation of rail freight
Comment 6: Valuation of aseptic bags
Comment 7: Valuation of apple essence
Comment 8: Valuation of SG&A, factory overhead, and profit
Comment 9: Alleged wrongful initiation of investigation
Comment 10: Critical circumstances
Comment 11: Expansion of scope
Comment 12: Customs instructions
Comment 13: Zhonglu deposit rate

[FR Doc. 00–9240 Filed 4–12–00; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–827, A–475–828, A–557–809, A–565–801]

Notice of Postponement of Preliminary Antidumping Duty Determinations: Stainless Steel Butt-Weld Pipe Fittings From Germany, Italy, Malaysia and the Philippines

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 13, 2000.

FOR FURTHER INFORMATION CONTACT: For Germany: Carrie Blozy or Rick Johnson at (202) 482–0165 and (202) 482–3818, respectively; for Italy, Helen Kramer or Linda Ludwig at (202) 482–0405 and (202) 482–3833, respectively; for Malaysia, Becky Hagen or Rick Johnson at (202) 482–3362 and (202) 482–3818, respectively; for the Philippines, Fred Baker or Robert James at (202) 482–2924 and (202) 482–0649, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230

Postponement of Preliminary Determinations

The Department of Commerce (the Department) is postponing the preliminary determinations in the antidumping duty investigations of stainless steel butt-weld pipe fittings from Germany, Italy, Malaysia and the Philippines. The deadline for issuing the preliminary determinations in these investigations is now July 26, 2000.

On January 18, 2000, the Department initiated antidumping investigations of stainless steel butt-weld pipe fittings from Germany, Italy, Malaysia and the Philippines. See Initiation of Antidumping Duty Investigation: Stainless Steel Butt-Weld Pipe Fittings from Germany, Italy, Malaysia and the Philippines, 65 FR 4595, (January 31, 2000). The notice stated that the Department would issue its preliminary determinations no later than140 days after the date of initiation (*i.e.*, June 6, 2000).

The Department has now concluded, consistent with section 733(c)(1)(B) of the Act, that these cases are extraordinarily complicated, and that additional time is necessary to issue the preliminary determinations due to the complexity of certain issues raised in these cases, including the complexity of the transactions to be investigated and adjustments to be considered and the novelty of the issues presented. See Memorandum from Richard Weible and Edward Yang to Joseph A. Spetrini dated April 7, 2000. Therefore, in light of the fact that parties to this proceeding have been cooperating, pursuant to section 733(c)(1) of the Act, the Department is postponing the deadline

for issuing these determinations 50 days (*i.e.*, until July 26, 2000).

This extension is in accordance with section 733(c) of the Act and 19 CFR 351.205(b)(2).

Dated: April 7, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–9238 Filed 4–12–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

[I.D. 040700L2]

Submission For OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Socioeconomic Monitoring Program for the Florida Keys National Marine Sanctuary.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: New collection.

Burden Hours: 725.

Number of Respondents: 788.

Avg Hours Per Response: 20 minutes to 10 hours depending on requirement.

Needs and Uses: The Management Plan for the Florida Keys National Marine Sanctuary (FKNMS) established 18 Sanctuary Preservation Areas (SPAs) and one Ecological Reserve (ER) that are "no take" zones. In creating these special zones, socioeconomic impact analyses, as well as other analyses, were done as required under the National Environmental Policy Act (NEPA). However, many of the benefits and costs identified in these analyses are speculative in nature and therefore an uncertainty about benefits and costs. In response to public concerns about the socioeconomic impacts of many of the FKNMS management plan and especially the "no take" zones, a socioeconomic element was included in the ecological monitoring program. The information collected will help monitor the financial performance of the commercial fishing operations that were displaced from the "no take" zones to test the hypotheses that there are short term losses and/or long term gains to commercial fishermen and monitor the use, perceptions of users as to quality of the SPAs and ERs, and changes in market and economic values associated with SPA and ER uses to test that user conflicts were resolved and/or that there would be both short term and long term gains to non-consumptive users and net gains to the local economy.

Affected Public: Individuals or households and businesses or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *LEngelme@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: April 4, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–9121 Filed 4–12–00; 8:45 am]

BILLING CODE 3510–08–F

DEPARTMENT OF COMMERCE

[I.D. 040700LE]

Submission For OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: South Florida Artificial and Natural Reefs–Economic Valuation Study.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: New collection.

Burden Hours: 2,733.

Number of Respondents: 9,600.

Average Hours Per Response: 4 minutes to 1 hour depending on requirement.

Needs and Uses: The Florida Keys National Marine Sanctuary, along with the State of Florida, manage coastal and ocean resources. This study involves artificial and natural reefs off the coasts of southeast Florida. NOAA, the four south Florida counties (Broward, Miami-Dade, Monroe and Palm Beach) and the State of Florida have formed a partnership and are funding a study to estimate the market economic impact (e.g., sales/output, income and employment) and non-market economic value (consumer's surplus) of both artificial and natural reefs in south Florida. The State of Florida has an artificial reef program in which each coastal county can participate. Each county can apply for state funds to place artificial reefs off the coasts of their county and private groups wanting to sink artificial reefs can also participate. The counties and the State of Florida are under increasing pressure to add new artificial reefs and economic justification is required.

Affected Public: Individuals or households and businesses or other for-profit organizations.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *lengelme@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: April 5, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–9122 Filed 4–12–00; 8:45 am]

BILLING CODE 3510–08–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.040300B]

Marine Mammals; File No. 526–1523–00

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Allied Whale, College of the Atlantic, 105 Eden Street, Bar Harbor, ME 04609 (Principal Investigator: Sean K. Todd, Ph.D.), has applied in due form for a permit to take humpback whale

(*Megapteray novaeangliaey*), finback whale (*Balaenopteray physalusy*), and minke whale (*Galaenopteray acutorostratay*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before May 15, 2000.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930, (978/281–9250).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *ety seqy.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *ety seqy.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant proposes to continue and extend photo-identification and biopsy sampling program of large whales. The following table outlines the animals to be taken and types of take requested annually primarily in the Gulf of Maine and occasionally from the New York Bight to the U.S./Canada border.

Species	# Photo-ID	#Animals Biopsy Sampled	#Takes per animal	#Incidental harassment of target species	#Biopsy samples Import/ Canada
Humpback whale	200	50	5	300	50
Finback whale	200	50	5	400	50
Minke whale	50	15	5	75	50

Non-Target Species	# Non-Target Animals Incidentally harassed
Harbor porpoise Atlantic white-sided dolphin Harbor seal Gray seal	Unlimited

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *ety seqy.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 4, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–9124 Filed 4–12–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040300D]

Marine Mammals; File No. 522–1569

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Randall S. Wells, Ph.D., Sarasota Dolphin Research Program, c/o Mote Marine Laboratory, 1600 Ken Thompson Parkway, Sarasota, Florida 34236, has applied in due form for a permit to take bottlenose dolphins (*Tursiops truncatus*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before May 15, 2000.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (727/570–5312).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy

submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant seeks authorization to harass up to 120 bottlenose dolphins (*Tursiops truncatus*) annually during the conduct of capture, examination, sampling, marking, and release activities. The research will take place over a five year period in the shallow coastal waters of central west Florida. Individual animals may be recaptured and released up to three times annually.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 5, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–9229 Filed 4–12–00; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Implementation of an Import Sublimit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Belarus

April 7, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs implementing a sublimit.

EFFECTIVE DATE: April 14, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Pursuant to the Memorandum of Understanding (MOU) between the Governments of the United States and Belarus, dated February 17, 2000, a notice published in the **Federal Register** on March 22, 2000 (65 FR 15315) established a new limit for Category 622 of 11,500,000 square meters, effective for the period January 1, 2000 through December 31, 2000. This notice cancelled and superseded the limit set forth in **Federal Register** notice 64 FR 71982, published on December 22, 1999.

In addition, both governments agreed to establish a sublimit of 1,000,000 square meters for the entry for consumption and withdrawal from warehouse for consumption of glass fiber fabric in Category 622–L weighing 185 grams or less per square meter. This directive implements the Category 622–L sublimit for the period that began on January 1, 2000 and extends through December 31, 2000.

This sublimit may be revised if Belarus becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Belarus.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999).

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 7, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel the directive issued to you on March 16, 2000. That directive concerns imports of certain man-made fiber textile products in Category 622, produced or manufactured in Belarus and exported during the twelve-month period which began on January 1, 2000 and extends through December 30, 2000.

Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, effective on April 14, 2000, you are directed to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of glass fiber fabric products in Category 622–L, produced or manufactured in Belarus and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000, in excess of 1,000,000 square meters [1].

Textile products in Category 622–L which have been exported to the United States prior to January 1, 2000 shall not be subject to the sublimit established in this directive.

This sublimit may be revised if Belarus becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Belarus.

Import charges to the sublimit will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.00–9179 Filed 4–12–00; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Ocean Research Advisory Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Ocean Research Advisory Panel (ORAP) will meet to discuss National Oceanographic Partnership Program (NOPP) activities. All sessions of the meeting will remain open to the public.

DATES: The meeting will be held on Wednesday, 26 April, 2000 from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at The Brookings Institution, Somers Room, 1775 Massachusetts Avenue, NW, Washington, DC.

[1] Category 622–L (within Category 622): only HTS numbers 7019.51.9010, 7019.52.4010, 7019.52.9010, 7019.59.4010, and 7019.59.9010. The sublimit has not been adjusted to account for any imports exported after December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Steven E. Ramberg, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5660, telephone (703) 696–4358.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The purpose of this meeting is to discuss current and future activities of the National Oceanographic Partnership Program.

Dated: April 5, 2000

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–9223 Filed 4–12–00; 8:45 am]

BILLING CODE 3810–FF–U

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Uniformed Services University of the Health Sciences.

TIME AND DATE: 8:30 a.m. to 4 p.m., May 19, 2000.

PLACE: Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

8:30 a.m. Meeting—Board of Regents

(1) Approval of Minutes—February 8, 2000

(2) Faculty Matters

(3) Departmental Reports

(4) Financial Report

(5) Report—President, USUHS

(6) Report—Dean, School of Medicine

(7) Report—Dean, Graduate School of Nursing

(8) Comments—Chairman, Board of Regents

(9) New Business

CONTACT PERSON FOR MORE INFORMATION: Mr. Bobby D. Anderson, Executive Secretary, Board of Regents, (301) 295–3116.

Dated: April 11, 2000.

Linda Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–9380 Filed 4–11–00; 3:45 pm]

BILLING CODE 5001–10–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 15, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 7, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: 2000–01 Teacher Follow-up Survey.

Frequency: Clearance is being sought for year 2000 only.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 8,300.
Burden Hours: 4,616.

Abstract: This survey of 8,300 public and private elementary and secondary school teachers is the fourth in a series. It is a follow-up to the 1999–2000 Schools and Staffing Survey (SASS) and collects data on public school and private school teachers characteristics and attitudes, as well as the factors affecting their decisions to stay in, or leave, the teaching profession.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (202) 708–9346 (fax). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–9175 Filed 4–12–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 15, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th

Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 7, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Supplemental Study of the Technology Literacy Challenge Fund (TLCF).

Frequency: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 636.

Burden Hours: 970.

Abstract: This study will collect and analyze information about the implementation and outcomes of the Technology Literacy Challenge Fund at the state and local levels. Drawing upon sources such as the annual state TLCF performance reports, local technology plans, and survey work, this study will produce a national representative picture of TLCF's contributions to the availability and use of technology in schools and provide information on targeting, flexibility and other key aspects of the program.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie_Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–9176 Filed 4–12–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–206–005]

Atlanta Gas Light Company; Notice of Technical Conference

April 7, 2000.

Take notice that a technical conference will be held on Wednesday, May 10, 2000, at 10 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

All interested parties and staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 00–9162 Filed 4–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–141–000]

Northwest Pipeline Corporation; Notice of Application

April 7, 2000.

Take notice that on March 28, 2000, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP00–141–000 an application pursuant to Sections 7(c) and 7(b) of the Natural Gas Act for permission and approval for Northwest to construct and operate relocated replacement pipeline segments and to abandon the replaced pipeline segments, near the White River in King County, Washington to preserve the integrity of Northwest's mainline while the river migrates, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Northwest proposes to replace approximately 1,900 feet of both its 26-inch mainline and its 30-inch mainline loop on either side of the White River by installing new 26-inch and 30-inch pipelines at a lower depth and offset from its existing right-of-way and then abandoning the replaced pipeline segments by removal. Northwest also proposes to remove a previously retired 665-foot segment of 26-inch pipeline crossing the White River.

Northwest states that due to potential issues with threatened species in the White River, Northwest is seeking case-specific approvals herein rather than pursuing this pipeline replacement project under its existing blanket certificate authority.

Northwest declares that the total estimated cost for the proposed project is approximately $5,604,000, comprised of approximately $3,871,000 for the installation of replacement pipeline and approximately $1,733,000 for removal of replaced pipeline and appurtenances. Since this project is designed to maintain safety and reliability of Northwest's transmission system for the benefit of existing customers. Northwest requests all project costs should be permitted rolled-in treatment in Northwest's next rate case, as dictated by FERC's Policy Statement issued September 15, 1999, in Docket No. PL99–3–000.

Any questions regarding the application should be directed to Gary Kotter, Manager, Certificates, at (801) 584–7117 (voice) and (801) 584–7764 (fax), Northwest Pipeline Corporation, P.O. Box 58900, Salt Lake City, Utah 84158.

Any person desiring to be heard or to make any protest with reference to said Application should on or before April 28, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 18 CFR 385.214) and the Regulations under the

Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this Application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–9169 Filed 4–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1988–007; Haas-Kings River Project]

Pacific Gas and Electric Company; Notice of Telephone Conference

April 7, 2000.

On Tuesday, April 18, 2000, the Federal Energy Regulatory Commission (Commission) staff will conduct a telephone conference with representatives of the U.S. Fish and Wildlife Service, the Forest Service, and Pacific Gas and Electric Company to discuss the Biological Assessment for the Haas-Kings River Project, FERC Docket No. 1988–007. The Commission staff will initiate the telephone conference. The telephone conference will begin at 1 p.m. Eastern Daylight Time (10 a.m. Pacific Daylight Time).

The telephone conference will be conducted according to the procedures used at Commission meetings. Meeting minutes will be taken, which will be distributed to interested parties and placed in the Commission's public files for the proceeding.

For further information, please contact Patti Leppert-Slack at the Commission, (202) 219–2767.

David P. Boergers,

Secretary.

[FR Doc. 00–9163 Filed 4–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP00–143–000, et al.]

Transcontinental Gas Pipe Line Corporation; Notice of Applications

April 7, 2000.

Take notice that on March 29, 2000, transcontinental Gas Pipe Line Corporation (Applicant), One Williams Center, Suite 4100, Tulsa, Oklahoma, 74172, through its agent, Williams Energy Marketing & Trading Company [1](Williams), tendered for filing, applications for certificates of public convenience and necessity pursuant to Section 7(b) of the Natural Gas Act (NGA) to abandon certain firm sales agreements under Applicant's Rate Schedule FS between Applicant and various customers pursuant to a Settlement Agreement approved by the Commission in Docket No. CP88–391, et al. on June 19, 1991, as amended by order issued December 17, 1991,[2] all as more fully set forth in the application, which is on file and open to public inspection. The application may be viewed on the web at *www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance).

Applicant asserts that no abandonment of any facility is proposed. Applicant proposes to abandon nineteen service agreements under its Rate Schedule FS. The information is the table below summarizes each individual abandonment application:

Docket No.	Customer name	Date of agreement to proposed abandonment of current service	Proposed effective date of abandonment
CP00–143–000	Peco Energy Company	November 11, 1998	March 31, 2001.
CP00–144–000	City of Lexington, North Carolina	March 29, 1999	March 31, 2001.
CP00–145–000	City of Shelby, North Carolina	March 26, 1999	March 31, 2001.
CP00–146–000	Brooklyn Union Gas Company	March 31, 1999	March 31, 2001.
CP00–147–000	Town of Blacksburg South Carolina	March 31, 1999	March 31, 2001.
CP00–148–000	City of Kings Mountain, North Carolina	March 29, 1999	March 31, 2001.
CP00–149–000	KeySpan Energy Trading Services	March 31, 1999	March 31, 2001.
CP00–150–000	City of Union, South Carolina	March 29, 1999	March 31, 2001.
CP00–151–000	Public Service Electric and Gas Company.	March 1, 1999	March 31, 2001.
CP00–152–000	Elizabethtown Gas Company	July 21, 1999	July 31, 2001.
CP00–153–000	City of Alexander City, Alabama	March 30, 1999	March 31, 2001.
CP00–154–000	City of Laurens, South Carolina	March 29, 1999	March 31, 2001.
CP00–155–000	Piedmont Natural Gas Company	January 6, 1999	March 31, 2001.
CP00–156–000	Delmarva Power & Light Company	March 25, 1999	March 31, 2001.
CP00–157–000	North Carolina Gas Service	March 11, 1999	March 31, 2001.
CP00–158–000	South Jersey Gas Company	February 10, 1999	March 31, 2001.
CP00–159–000	Consolidated Edison Company of New York.	March 24, 1999	March 31, 2001.
CP00–160–000	Columbia Gas of Virginia	February 3, 1999	March 31, 2001.
CP00–161–000	City of Greer, South Carolina	March 18, 1999	March 31, 2001.

[1] Formerly Williams Energy Services Company.

[2] See orders at 55 FERC ¶61,466 (1991) and 57 FERC ¶ 61,345 (1991).

Any person desiring to be heard or to protest these filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, by or before April 28, 2000, in accordance with Sections 385.214 and 385.211 of the Commission's rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public reference Room.

David P. Boergers,

Secretary.

[FR Doc. 00–9170 Filed 4–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–94–000, et al.]

Northwest Generation Company, et al. Electric Rate and Corporate Regulation Filings

April 5, 2000.

Take notice that the following filings have been made with the Commission:

1. Northeast Generation Company

[Docket No. EG00–94–000]

Take notice that on April 3, 2000, Northeast Generation Company, P.O. Box 270, Hartford, Connecticut, 06141, filed with the Federal Energy Regulatory Commission an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. The amendment provides additional information concerning the uses of lands and waters at the unlicenced hydroelectric projects that are the subject of the application.

Comment date: April 18, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. North American Power Brokers, Inc.

[Docket No. ER96–1156–006]

Take notice that on March 24, 2000, North American Power Brokers, Inc. filed quarterly reports for information only.

3. PEC Energy Marketing, Inc; DePere Energy Marketing, Inc; SkyGen Energy Marketing LLC; DePere Energy LLC

[Docket No. ER97–1431–010; Docket No. ER97–1432–010; Docket No. ER99–972–003; Docket No. ER97–4586–003]

Take notice that on March 28, 2000, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

4. Total Gas & Electric, Inc. Agway Energy Services, Inc. Metro Energy Group, LLC

[Docket No. ER97–4202–010; Docket No. ER97–4186–009 Docket No. ER99–801–003]

Take notice that on March 30, 2000, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

5. Ameren Services Company

[Docket No. ER00–1381–001]

Take notice that on March 30, 2000, Ameren Services Company (ASC) tendered for filing an executed Network Integration Transmission Service Agreement and an executed Network Operating Agreement, between ASC and Citizens Electric Corporation. ASC asserts that the purpose of the agreements is to permit ASC to provide service over its transmission and distribution facilities to Citizens Electric Corporation pursuant to the Ameren Open Access Tariff. The executed agreements supersede an unexecuted Network Service Agreement and an unexecuted Network Operating Agreement previously filed on January 31.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Sierra Pacific Power Company

[Docket No. ER00–2003–000]

Take notice that on March 30, 2000, Sierra Pacific Power Company (Sierra Pacific) tendered for filing pursuant to Section 205 of the Federal Power Act and Section 2.2 of the Settlement Agreement (the Agreement) filed on October 12, 1999, in Docket No. ER99–2339–000, a transmission loss study that indicates a change in the factor used to calculate transmission service losses under its joint open-access transmission tariff, FERC Original Volume No. 1, filed in Docket No. ER99–34–000. Sierra Pacific also submitted a similar amendment to its joint open-access transmission tariff filed on March 3, 2000, in Docket No. ER00–1801–000, in anticipation of the pending merger among Sierra Pacific, Nevada Power Company, and Portland General Electric Company.

Copies of this filing have been served upon those persons on the Commission's official service list compiled in Docket No. ER00–2339–000 and in Docket No. ER00-1801–000.

Sierra Pacific requests that its filing be made effective in Docket No. ER99–34–000 as of November 1, 1999 and in Docket No. ER00–1801–000 as of the effective date of that joint tariff.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Nevada Power Company

[Docket No. ER00–2004–000]

Take notice that on March 30, 2000, Nevada Power Company (Nevada Power) tendered for filing pursuant to Section 205 of the Federal Power Act and Section 2.2 of the Settlement Agreement (the Agreement) filed on February 8, 2000, in Docket No. ER99–3110–000, a transmission loss study that indicates a change in the factor used to calculate transmission service losses under its joint open-access transmission tariff, FERC Original Volume No. 1, filed in Docket No. ER99–34–000. Nevada Power also submitted a similar amendment to its joint open-access transmission tariff filed on March 3, 2000, in Docket No. ER00–1801–000, in anticipation of the pending merger among Nevada Power, Sierra Pacific Power Company, and Portland General Electric Company.

Copies of this filing have been served upon those person on the Commission's official service list compiled in Docket No. ER00–3110–000 and in Docket No. ER00-1801–000.

Nevada Power requests that its filing be made effective in Docket No. ER99–34-000 as of March 1, 2000 and in Docket No. ER00–1801–000 as of the effective date of that joint tariff.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Central Maine Power Company

[Docket No. ER00–2006–000]

Take notice that on March 30, 2000, Central Maine Power Company (CMP), tendered for filing as an initial rate schedule pursuant to Section 35.12 of the Federal Energy Regulatory Commission's regulations (18 CFR 35.12): (i) an unexecuted Interconnection Agreement, dated as of March 1, 2000 (the IA); (ii) an executed service agreement for Firm Local Point-to-Point Transmission Service, dated as of March 3, 2000 (the TSA); (iii) an executed service agreement for Local Network Transmission Service, dated as of March 1, 2000 (the LNSA); and (iv)

an unexecuted Local Network Operating Agreement (the LNOA), dated as of March 1, 2000. The IA provides for interconnection service to S.D. Warren, Inc. (S.D. Warren) at the rates, terms, charges, and conditions set forth therein. The TSA provides for Firm Point-to-Point Transmission Service. The LNSA provides for Local Network Transmission Service. The LNOA provides for net inputs to the Facility for Station Service and any other load.

CMP is requesting that (a) the IA become effective March 1, 2000; (b) the TSA become effective March 3, 2000; (c) the LNSA become effective March 1, 2000; and (d) the LNOA become effective March 1, 2000.

Copies of this filing have been served upon the Maine Public Utilities Commission and S.D. Warren.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. State Line Energy, L.L.C.

[Docket No. ER00–2007–000]

On March 30, 2000, State Line Energy, L.L.C. (State Line), tendered for filing a short-term service agreement for sales under State Line's Market Rate Tariff, which was accepted for filing in Document No. ER96–2869–000:

1. Amendment No. 1 to Power Purchase Agreement between Commonwealth Edison Company and State Line Energy, L.L.C.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Commonwealth Edison Company

[Docket No. ER00–2008–000]

Take notice that on March 30, 2000, Commonwealth Edison Company (ComEd) tendered for filing an executed Service Agreement for Network Integration Transmission Service (Service Agreement) between ComEd and Commonwealth Edison Company in its Wholesale Merchant Function (WMD). This agreement will govern ComEds provision of network service to serve the City of Dowagiac (ADowagiac) under the terms of ComEd's Open Access Transmission Tariff (OATT)

ComEd requests an effective date of March 1, 2000, and accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served on WMD and Dowagiac.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Bangor Hydro-Electric Company

[Docket No. ER00–2009–000]

Take notice that on March 30, 2000, Bangor Hydro-Electric Company tendered for filing an executed service agreement for firm point-to-point transmission service with Morgan Stanley Capital Group Inc.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Bangor Hydro-Electric Company

[Docket No. ER00–2010–000]

Take notice that on March 30, 2000, Bangor Hydro-Electric Company tendered for filing an executed service agreement for firm point-to-point transmission service with PPL EnergyPlus Co.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Bangor Hydro-Electric Company

[Docket No. ER00–2011–000]

Take notice that on March 30, 2000, Bangor Hydro-Electric Company tendered for filing an executed service agreement for non-firm point-to-point transmission service with Morgan Stanley Capital Group Inc.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Bangor Hydro-Electric Company

[Docket No. ER00–2012–000]

Take notice that on March 30, 2000, Bangor Hydro-Electric Company tendered for filing an executed service agreement for non-firm point-to-point transmission service with PPL EnergyPlus Co.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. American Electric Power Service Corporation

[Docket No. ER00–2013–000]

Take notice that on March 30, 2000, the American Electric Power Service Corporation (AEPSC), tendered for filing an executed Non-Firm Point-to-Point Transmission Service Agreement for Statoil Energy Services, Inc. That agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) which has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after March 1, 2000.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. PPL Electric Utilities Corporation

[Docket No. ER00–2014–000]

Notice is hereby given that effective May 29, 2000, Rate Schedule FERC No. 156 effective on June 1, 1990 and filed with the Federal Energy Regulatory Commission by PPL Electric Utilities Corporation, formerly known as PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon FirstEnergy Corp.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. New England Power Pool

[Docket No. ER00–2016–000]

Take notice that on March 30, 2000 PG&E Generating, USGen New England, Inc., PG&E Energy Trading-Power L.P., FPL Energy, LLC, Sithe New England Holdings, LLC, Southern Energy New England, LLC, Wisvest-Connecticut, LLC, Duke Energy North America, LLC, Dighton Power Associates L.P., Tiverton Power Associates L.P., Rumford Associates L.P., Great Bay Power Corporation, NRG Power Marketing, Inc., Somerset Power, LLC, Middletown Power, LLC, Norwalk Harbor Power, LLC, Devon Power, LLC, Montville Power, LLC, Connecticut Jet Power, LLC, and Indeck-Pepperell Power Associates, Inc. (the Supporting Generators) submitted for filing, pursuant to Section 206 of the Federal Power Act, a proposal for a comprehensive congestion management system (CMS) and multi-settlement system (MSS).

The Supporting Generators state that copies of the filing have been served upon all entities listed in the above captioned docket, the Participants in the New England Power Pool, non-Participant transmission customers, and the New England State Governors and Regulatory Commissions.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Illinois Power Company

[Docket No. ER00–2021–000]

Take notice that on March 30, 2000, Illinois Power Company notified the Federal Energy Regulatory Commission (Commission) that, as of February 25, 2000, El Paso Merchant Energy, L.P. (EPME), as successor to Sonat Power Marketing L.P. (Sonat), provided to Illinois Power, notice of termination of the transmission service agreements which were filed with the Commission in Docket No. ER96–955–000, and pursuant to which Sonat and EPME took firm and non-firm transmission service under Illinois Power's open access transmission tariff.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Central Maine Power Company

[Docket No. ER00–2022–000]

Take notice that on March 30, 2000, Central Maine Power Company (CMP), tendered for filing Executed Service Agreements for Local Network Transmission Service and Local Network Operating Agreements. CMP states that these transactions are contemplated as part of the State of Maine's restructuring of the electric utility industry.

CMP requests that the Commission allow these Agreements to be deemed effective on March 1, 2000 in order to coincide with the commencement of retail access in the State of Maine.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Central Maine Power Company

[Docket No. ER00–2023–000]

Take notice that on March 30, 2000, Central Maine Power Company (CMP), tendered for filing Executed Service Agreements for Local Network Transmission Service and Unexecuted Local Network Operating Agreements. CMP states that these transactions are contemplated as part of the State of Maine's restructuring of the electric utility industry.

CMP requests that the Commission allow these Agreements to be deemed effective on March 1, 2000 in order to coincide with the commencement of retail access in the State of Maine. .

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. PPL Electric Utilities Corporation

[Docket No. ER00–2024–000]

Notice is hereby given that effective May 31, 1992, Rate Schedule FERC No. 99 effective on May 22, 1990 and filed with the Federal Energy Regulatory Commission by PPL Electric Utilities Corporation, formerly known as PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon Atlantic City Electric Company.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. PPL Electric Utilities Corporation

[Docket No. ER00–2025–000]

Notice is hereby given that effective May 31, 1995, Rate Schedule FERC No. 100 effective on June 1, 1990 and filed with the Federal Energy Regulatory Commission by PPL Electric Utilities Corporation, formerly known as PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon Jersey Central Power & Light Company.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. PPL Electric Utilities Corporation

[Docket No. ER00–2026–000]

Notice is hereby given that effective March 20, 1998, Rate Schedule FERC No. 85 effective on October 1, 1991 and filed with the Federal Energy Regulatory Commission by PPL Electric Utilities Corporation, formerly known as PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon Atlantic City Electric Company.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. PPL Electric Utilities Corporation

[Docket No. ER00–2027–000]

Take notice that on March 30, 2000, PPL Electric Utilities Corporation filed a Notice that effective December 31, 1999, Rate Schedule FERC No. 84 effective on April 17, 1985 and filed with the Federal Energy Regulatory Commission by PPL Electric Utilities Corporation, formerly known as PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon Jersey Central Power & Light Company.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. PPL Electric Utilities Corporation

[Docket No. ER00–2028–000]

Notice is hereby given that effective May 29, 2000, Rate Schedule FERC No. 105 effective on June 10, 1991 and filed with the Federal Energy Regulatory Commission by PPL Electric Utilities Corporation, formerly known as PP&L, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon Baltimore Gas & Electric Company.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. APS Energy Services Company, Inc.

[Docket No. ER00–2029–000]

Take notice that on March 30, 2000, APS Energy Services Company, Inc. (APSES), tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP), indicating that APSES had completed all the steps for pool membership. APSES requests that the Commission amend the WSPP Agreement to include it as a member.

APSES requests an effective date of March 31, 2000 for the proposed amendment. Accordingly, APSES requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Niagara Mohawk Power Corporation

[Docket No. ER00–2037–000]

Take notice that on March 30, 2000, Niagara Mohawk Power Corporation (NMPC) tendered for filing with the Federal Energy Regulatory Commission an executed form Service Agreement between NMPC and the State University of New York at Buffalo (Purchaser). The Service Agreement specifies that the Purchaser has signed and agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and having an effective date of March 13, 1993, allows NMPC and the Purchaser to enter into separately scheduled transactions under which NMPC will sell to the Purchaser capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence from the Purchaser.

NMPC is requesting an effective date of November 1, 1999 for the agreement.

NMPC has served copies of the filing upon the New York State Public Service Commission and the companies included in a Service List enclosed with the filing.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Niagara Mohawk Power Corporation

[Docket No. ER00–2038–000]

Take notice that on March 30, 2000, Niagara Mohawk Power Corporation (NMPC) tendered for filing with the Federal Energy Regulatory Commission an executed form Service Agreement between NMPC and Amherst Utility Cooperative (Purchaser). The Service Agreement specifies that the Purchaser has signed and agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April

15, 1994, and having an effective date of March 13, 1993, allows NMPC and the Purchaser to enter into separately scheduled transactions under which NMPC will sell to the Purchaser capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence from the Purchaser.

NMPC is requesting an effective date of November 1, 1999 for the agreement.

NMPC has served copies of the filing upon the New York State Public Service Commission and the companies included in a Service List enclosed with the filing.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. Illinois Power Company

[Docket No. ER00–2039–000]

Take notice that, on March 30, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62521, tendered for filing an unexecuted Service Agreement for Network Integration Transmission Service and an unexecuted Network Operating Agreement under which Tri-County Electric Cooperative, Inc. will take transmission service pursuant to Illinois Power's open access transmission tariff (OATT). The agreements are based on forms of agreements in Illinois Power's OATT.

Illinois Power has requested an effective date of March 1, 2000.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. Illinois Power Company

[Docket No. ER00–2040–000]

Take notice that, on March 30, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62521, tendered for filing firm and non-firm transmission service agreements under which Allegheny Energy Supply Company, LLC, will take transmission service pursuant to Illinois Power's open access transmission tariff. The agreements are based on the forms of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of March 24, 2000.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. Illinois Power Company

[Docket No. ER00–2041–000]

Take notice that on March 30, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62521, tendered for filing a non-firm transmission service agreement under which The Energy Authority, Inc. will take transmission service pursuant to Illinois Power's open access transmission tariff. The agreement is based on a form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of March 24, 2000.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. Illinois Power Company

[Docket No. ER00–2042–000]

Take notice that, on March 30, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62521, tendered for filing an unexecuted Service Agreement for Network Integration Transmission Service and an unexecuted Network Operating Agreement under which Clinton County Electric Cooperative, Inc. will take transmission service pursuant to Illinois Power's open access transmission tariff (OATT). The agreements are based on forms of agreements in Illinois Power's OATT.

Illinois Power has requested an effective date of March 1, 2000.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

33. Southern California Edison Company

[Docket No. ER00–2043–000]

Take notice that on March 30, 2000, Southern California Edison Company (SCE) tendered for filing Amendment No. 6 to the Power Contract between SCE and the State Of California Department Of Water Resources. Amendment No. 6 amends the calculation of SCE's return obligation to reflect divestiture of its Oil and Gas generating stations.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

34. Black River Power LLC

[Docket No. ER00–2044–000]

Take notice that on March 30, 2000, Black River Power LLC (Black River) tendered for filing a Power Purchase and Sale Agreement with Niagara Mohawk Energy Marketing, Inc. (Niagara) under Black River's market-based sales tariff.

Black River requests that the agreement be made effective on March 1, 2000.

A copy of the filing has been served on Niagara.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

35. Virginia Electric and Power Company

[Docket No. ER00–2045–000]

Take notice that on March 30, 2000, Virginia Electric and Power Company (Virginia Power) tendered for filing a Termination Notice of the Service Agreement between Virginia Electric and Power Company and Illinova Power Marketing, Inc. (IPMI), formerly Illinois Power Company, dated March 3, 1997 and approved by the FERC in a letter order on May 22, 1997 under Docket No. ER97–2394–000.

Virginia Power respectfully requests an effective date of the termination of April 30, 2000, as requested by Dynegy Power Marketing, Inc. (DYPM), successor to IPMI.

Copies of the filing were served upon Dynegy Power Marketing, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

36. PECO Energy Company

[Docket No. ER00–2048–000]

Take notice that on March 29, 2000, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, a Service Agreement dated March 28, 2000 with Allegheny Energy Supply Company, LLC (AESC) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of March 28, 2000, for the Agreement.

PECO states that copies of this filing have been supplied to Allegheny Energy Supply Company, LLC and to the Pennsylvania Public Utility Commission.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

37. Central Maine Power Company

[Docket No. ER00–2062–000]

Take notice that on March 30, 2000, Central Maine Power Company (CMP) submitted "Unexecuted Service Agreements for Local Network Transmission Service" and "Unexecuted Local Network Operating Agreements". CMP states that these transactions are contemplated as part of the State of Maine's restructuring of the electric utility industry.

CMP requests that the Commission allow these Agreements to be deemed effective on March 1, 2000 in order to coincide with the commencement of retail access in the State of Maine. .

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–9161 Filed 4–12–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2853–058]

Montana Department of Natural Resources and Conservation; Notice of Availability of Environmental Assessment

April 7, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Energy Projects has reviewed the application requesting the Commission's approval of an application to amend the license for the Broadwater Project for the construction of a structural wall in the project reservoir. The wall would extend from the upstream face of the project dam 150 feet into the reservoir. The wall constructed of rock riprap would separate an irrigation canal intake at the project dam from the hydraulic influences of the turbine intake and would alleviate the clogging of the irrigation canal intake with debris during spring runoff. The Broadwater Project is located on the Missouri River in Broadwater County, Montana.

An Environmental Assessment (EA) has been prepared by staff for the proposed action. In the EA, Commission staff does not identify any significant impacts that would result from the Commission's approval of the construction of the proposed wall in the project reservoir. Thus, staff concludes that approval of the proposed amendment of license would not constitute a major federal action significantly affecting the quality of the human environment.

The EA has been attached to and made a part of an Order Amending License, issued March 28, 2000, for the Broadwater Project (FERC No. 2853–058). Copies of the EA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. The EA also may be viewed on the Web at *www.ferc.fed.us/online/rims.htm*. Call (202) 208–2222 for assistance.

David P. Boergers,

Secretary.

[FR Doc. 00–9168 Filed 4–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protects

April 7, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Application Type*: Non-Project Use of Project Lands and Waters.

b. *Project No*: P–1494–205.

c. *Dated Filed*: March 20, 2000.

d. *Applicant*: Grand River Dam Authority.

e. *Name of Project*: Pensacola Project.

f. *Location*: The Pensacola Project is located on the Grand (Neoscho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma. This project does not utilize Federal or Tribal lands.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Bob Sullivan, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256–5545.

i. *FERC Contact*: Shannon Dunn at *shannon.dunn@ferc.fed.us*, or telephone (202) 208–0853.

j. *Deadline for filing comments, motions, or protests*: May 8, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (P–1494–205) on any comments, motions, or protests filed.

k. *Description of Project:* Grand River Dam Authority, licensee for the Pensacola Project, requests approval to grant permission to Grand Marine L.L.C., to dredge approximately 43,013 cubic yards of material to construct a new access canal 1,258 feet-long (50′ wide) and a boat basin (150′ x 150′). The canal and boat basin would be adjacent to Echo Bay in the Grand Lake O' the Cherokees. The canal would provide boat access to marine service work and in-water boat sales display along State Highway 125 north of Martin's Landing. No property conveyance is proposed.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS" "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of

the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file commented within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–9164 Filed 4–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments

April 7, 2000.

Take notice that the Commission intends to hold scoping meetings for the following hydroelectric application which has been filed with the Commission:

a. *Type of Application:* New Major License.

b. *Project No.:* P–2056–016.

c. *Date filed:* December 21, 1998.

d. *Applicant:* Northern States Power Company.

e. *Name of Project:* St. Anthony Falls Project.

f. *Location:* On the Mississippi River, near Minneapolis and St. Paul, Hennepin County, Minnesota.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mark H. Holmberg, P.E., Northern States Power Company, 414 Nicollet Mall, Minneapolis, MN 55401, (612) 330–6568.

i. *FERC Contact:* Any questions on this notice should be addressed to Monte TerHaar, E-mail address monte.terhaar@ferc.fed.us, or telephone (202) 219–2768.

j. *Deadline for filing scoping comments:* 30 days after date of scoping meeting. All documents (original and eight copies) should be filed with: June 9, 2000.

All documents should be filed with David P. Boergers, Secretary Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Please include the project number (P–2056–016) on any comments, motions or protests filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time..

l. *Description of Project:* The Project consists of the following existing facilities located across from the U.S. Army Corps of Engineers Upper Saint Anthony Lock: (1) Horseshoe Dam, 1 1,952-foot-long concrete, timber, and rock structure topped with 1.6-foot-high wooden flashboards; (2) the main spillway, a concrete, timber and rock structure 425 feet wide and 150 feet-long; (3) a 840-foot-long roll dam; (4) a 358-acre reservoir with a normal pool water surface elevation of 799.2 feet NGVD, and a total storage capacity of 967 acre-feet; (5) a concrete and masonry powerhouse, 133 feet long by 92 feet wide; (6) 5 turbines with a total installed capacity of 12,400 kilowatts, and a maximum hydraulic capacity of 4,025 cfs, producing an average of 79,518 megawatthours annually; and (7) four 115-kilovolt primary transmission lines; and other appurtenances..

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rimns.htm or call 202–208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above..

n. *Scoping Process:* The Commission intends to prepare an Environmental Assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

The Commission will hold scoping meetings, one in the daytime and one in the evening, to help us identify the scope of issues to be addressed in the E.A.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Daytime Meeting: Tuesday, May 9, 2000 at 1 p.m.

Evening Meeting: Tuesday, May 9, 2000 at 7:30 p.m.

Location: Auditorium—St. Anthony Falls Laboratory, Third Ave. SE & Mississippi River, Minneapolis, MN 55414, Phone: 612–647–4010.

To help focus discussions, we will distribute a Scoping Document (SD1) outlining the subject areas to be addressed in the EA to the parties on the Commission's mailing list. Copies of the SD1 also will be available at the scoping meetings.

Site Visit

The applicant and Commission staff will conduct a project site visit on Tuesday, May 9, 2000 starting at 3:00 p.m. We will meet at the parking lot near the project powerhouse which is adjacent to the laboratory. Those who wish to attend the site visit should contact Lloyd Everhart of NSP at 715–839–2692 on or before May 5, 2000.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resource at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project. Individuals presenting statements at the meeting will be asked to sign in before the meeting starts and to clearly identify themselves for the record.

Individuals, organizations, and agencies, with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying this issue to be addressed in the EA.

David P. Boergers,

Secretary.

[FR Doc. 00–9165 Filed 4–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request To Surrender License and Soliciting Comments, Motions To Intervene, and Protests

April 7, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Surrender of License.

b. *Project No:* 11214–008.

c. *Date Filed:* March 27, 2000.

d. *Applicant:* Southwestern Electric Cooperative, Inc.

e. *Name of Project:* Carlyle Hydroelectric Project.

f. *Location:* At the U.S. Army Corps of Engineers' Carlyle Dam on the Kaskaskia River near the City of Carlyle, in Clinton County, Illinois. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicants' Contacts:* Kerry Sloan, Southwestern Electric Cooperative, Inc., South Elm Street & Route 40, Greenville, IL 62246, (618) 664–1025 and Michael Postar, Robert Weinberg, Tanja M. Shonkwiler, and Sean M. Neal, Duncan, Weinberg, Genzer & Pembroke, P.C., 1615 M Street, NW, Suite 800, Washington, DC 20036–3203, (202) 467–6370.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671, or e-mail address: *lynn.miles@ferc.fed.us.*

j. *Deadline for filing comments and or motions:* May 17, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426.

Please include the project number (11214–008) on any comments or motions filed.

k. *Description of Request:* The licensee requests to surrender the Carlyle Hydroelectric Project because it no longer wishes to proceed with constructing and maintaining the project as proposed in the original license. The licensee also states that construction and maintenance of the project would no longer be economically feasible.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comments date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representative.

David P. Boergers,

Secretary.

[FR Doc. 00–9166 Filed 4–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Declaration of Intention and Soliciting Comments Motions To Intervene, and Protests

April 7, 2000.

Take notice that the following application has been filed with the Commission and is available for public inspection.

a. *Application Type:* Declaration of Intention.

b. *Docket No.:* D100–3–000.

c. *Date Filed:* March 24, 2000.

d. *Applicant:* Kootznoowoo, Incorporated.

e. *Name of Project:* Angoon Hydroelectric Project.

f. *Location:* On Thayer Creek, Juneau Borough, near Angoon, Alaska. (T. 49 S., R. 67 E., secs. 26 and 35; T. 50 S., R. 67 E., secs. 2, 11, 12, 13, 14, 25, 26, and 36; T, 50 S., R. 68 E., secs. 30 and 31, Copper River Base and Meridian). The project would utilize federal lands (Admiralty Island National Monument and Kootznoowoo Wilderness).

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Mr. Carlton Smith, Chief Executive Officer, Kootznoowoo, Incorporated, 8585 Old Dairy Road, suite 201, Juneau, Alaska 99801, telephone (907) 790–2992, FAX (907) 790–2005, E-Mail http://www.kootznoowoo.com.

i. *FERC Contact:* Any questions on this notice should be addressed to Diane M. Murray at (202) 219–2682, or E-mail address: diane.murray@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* May 12, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Please include the docket number (D100–3–000) on any comments or motions filed.

k. *Description of Project:* The proposed project would consist of: (1) a 20-foot-high diversion dam; (2) a 6,350-foot-long penstock; (3) a powerhouse with two generating units, with a total generating capacity of 1,000 kW; (4) a 5.8-mile overland with a 0.9-mile underwater transmission line; and (5) appurtenant facilities. The proposed project would supply electric power to the City of Angoon. Angoon is electrically isolated from any other system..

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who filed a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–9167 Filed 4–12–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

April 7, 2000.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Exempt:		
1. CP00–17–000 and CP00–19–00	2/4/00	Edwin M. Eudaly.
3. CP00–6–000	3/23/00	Ken Huntington.
3. CP00–6–000	3/22/00	Ken Huntington.
4. CO00–6–000	3/22/00	Ken Huntington.
5. CP00–14–000	3/25/00	Nadine Foley.
6. Project Nos. 2318–002, 2047–004, 2482–014 and 2554–003	3/24/00	David A. Stilwell.
7. CP00–14–000, CP00–15–000 and CP00–16–000	3/29/00	Todd Mattson.
8. CP00–14–000, CP00–15–000 and CP00–16–000	3/27/00	Mark Cline.

9. CP00–40–000	3/31/00	Lauren O'Donnell.
10. CP99–392–000	4/3/00	John Wisniewski.
Prohibited:		
1. CP97–315–000, *et al.*	3/31/00	Ed Gilliard.
2. Project No. 9974–040	4/5/00	Phyllis Gerth.
3. Project No. 9974–040	4/5/00	Dean Reichert.
4. Project No. 9974–040	4/5/00	Patricia & Bert Hesse.
5. Project No. 9974–040	4/5/00	Kenneth J. Robillard and Brenda H. Robillard.
6. Project No. 9974–040	4/5/00	Earl J. Weihert.

David P. Boergers,

Secretary.

[FR Doc. 00–9171 Filed 4–12–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6576–8]

Slotted Guidepoles at Certain Petroleum and Organic Liquid Storage Vessels

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of storage tank emission reduction partnership program.

SUMMARY: The United States Environmental Protection Agency ("EPA") is today announcing an opportunity for the regulated community to participate in the Storage Tank Emission Reduction Partnership Program described in this notice.

DATES: Companies electing to participate in this program must submit a notice of intent by June 12, 2000, and an executed partnership agreement by December 11, 2000.

ADDRESSES: Both the notice of intent and executed partnership agreement should be sent to: Storage Tank Emission Reduction Partnership Program, Air Enforcement Division (Mail Code 2242A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. James K. Jackson, Air Enforcement Division (2242A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW Washington, DC 20460, telephone (202) 564–2002.

SUPPLEMENTARY INFORMATION: Slotted guidepoles are hollow poles with holes or "slots" that perforate the length of the pole and that are typically a foot-long and 1—2 inches wide. Where the pole passes through a floating roof, there is an opening in the roof and a gap between the pole and the roof. These holes, slots and gaps have exactly the same emissions effect as any other roof opening: they constitute a pathway for evaporative product losses and volatile organic compound (VOC) emissions. VOCs include a wide variety of hydrocarbons, some of which are hazardous air pollutants (*e.g.*, benzene, toluene, xylene and ethyl benzene). Depending on the size, location and contents of a tank, uncontrolled emissions from the use of slotted guidepoles can exceed 25,000 pounds per year. Simple and inexpensive solutions exist to minimize these emissions and reduce evaporative losses.

A substantial but undetermined number of NSPS Subpart Ka/Kb tanks have slotted guidepoles. They may be found at any facility that stores substantial quantities of volatile organic liquids, including petroleum products (*e.g.*, refineries, gasoline distribution terminals, chemical plants and other facilities). EPA previously determined and recently reaffirmed that uncontrolled slotted guidepoles do not comply with the "no visible gap" requirement in NSPS Subparts Ka and Kb. See 65 FR 2336 (January 14, 2000). In the interests of promoting fast, efficient and widespread emission reductions from slotted guidepoles, EPA is today offering to enter into agreements with those companies that have installed or will install controls to reduce their slotted guidepole emissions at NSPS Subpart Ka/Kb tanks.

EPA solicited public comment on a proposed program that had been developed in cooperation with the American Petroleum Institute. 65 FR 2391 (January 14, 2000). EPA discussed its proposal with State and Territorial Air Pollution Program Administrators/ Association of Local Air Pollution Control Officials (STAPPA/ALAPCO) and received twelve comments (*e.g.*, companies, trade associations and equipment vendors), all of which supported establishing a program. The more salient features of the Storage Tank Emission Reduction Partnership Program announced today are summarized below:

- Each company intending to participate must notify EPA of its intent to participate within 60 days and there identify each facility it intends to include under this program, using its unique EPA Identification Number.
- Participating companies must assess all of their NSPS Subpart Ka/Kb external floating roof tanks with slotted guidepoles and are encouraged to assess all of their NSPS Subpart Ka/Kb internal floating roof tanks with slotted guidepoles. *See* discussion *infra*.
- Acceptable slotted guidepole controls under this program are identified. See Appendix I. Use of such controls does not affect other regulatory obligations that may exist under state or federal law (*e.g.*, to sample tank contents for compliance with other regulatory programs).
- EPA is not requiring that penalties be paid as a condition of program participation, but if a participating company fails to implement its agreed-to controls in a timely manner, stipulated penalties would be imposed.
- The terms and conditions for program participation are specified in the participation agreement that each participant must execute. See Appendix II and Appendix III.
- Each participating company must submit an executed participation agreement, including a complete Annex A, within 240 days. Annex A must provide a facility listing (using its EPA identification Number) that identifies its NSPS Subpart Ka/Kb external floating roof tanks with slotted guidepoles and those of its NSPS Subpart Ka/Kb internal floating roof tanks that it intends to include under this program. Annex A must also specify the controls that were or will be installed, as well as predict the emission reductions that will be achieved after these controls are installed.

Today's final program incorporates certain technical changes that had been recommended by commenters, but it is essentially the same as the program that had been earlier proposed. The major points raised during the comment period are summarized and discussed below.

Clarification of Facility Coverage: Some commenters expressed uncertainty as to whether participation could be on facility-by-facility or operating division-by-operating division

basis. Program participation may be on any basis so long as all NSPS Subpart Ka and Kb storage vessels with slotted guidepoles at each identified facility are included. Accordingly and to be effective, both the notice of intent to participate and Annex A to the participation agreement must separately identify each of the facilities covered by name, address and EPA Identification Number.

Additional Acceptable Control Options: Several Commenters suggested that two additional options be identified as acceptable for purposes of this program (*i.e.*, replacing slotted guidepoles with solid guidepoles and installing flexible covers over the entire slotted guidepole). Based upon the information provided, EPA believes these alternatives eliminate visible gaps and can reduce emissions to a level comparable to that achievable with a pole float system. Both alternatives are now included in Appendix I.

Although other control options may be suggested, interested parties should be aware that any such suggestion will require that showings be made, see APPENDIX–2, and that it be reviewed and approved by EPA before it can be relied upon by a participating company. To expedite EPA consideration, a complete copy of any request for an additional acceptable control option under APPENDIX I should also be sent to Sally Shaver, Director, Emission Standards Division, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

Inclusion of Internal Floating Roof Tanks: Several Commenters questioned the environmental need for installing controls on slotted guidepoles at NSPS Subpart Ka/Kb internal floating roof tanks. EPA indicated in its notice of a proposed program that the views of the Office of Air Quality Planning and Standards ("OAQPS") had been solicited on whether to exempt these fittings from otherwise applicable requirements. EPA has concluded that such an exemption would require notice and comment rulemaking, *cf.* 65 FR 2336 (January 14, 2000). Accordingly and for purposes of this program, participating companies are encouraged (but not required) to identify NSPS Subpart Ka/Kb internal floating roof tanks. If included, participants may elect to utilize a combination of deck fitting controls as the identified acceptable control, as permitted under APPENDIX–2.

Newly Acquired Tanks: Some comments suggested that participating companies be permitted to include newly acquired tanks under this program (*e.g.*, tanks acquired after executing and entering into a partnership agreement). EPA notes that such may be possible by a consensual amendment to the partnership agreement's Annex A. Factors that will then be considered by EPA include when the tank(s) were acquired, where they are located, whether controls on the newly acquired tank(s) had been installed and, if not, when they will be installed.

Facilities with Controls Already Installed: It was suggested during the comment period that the program include simplified procedures for those facilities that previously installed identified, acceptable controls. EPA agrees. Simplified procedures are available for a facility that installed controls identified in Appendix I prior January 14, 2000 on all its NSPS Subpart Ka/Kb external floating roof tanks with slotted guidepoles. To participate, a company must submit a notice of intent to participate within 60 days and a Certification and Agreement (as specified in Appendix III) within 240 days. Upon receipt, EPA will either sign and return the Certification and Agreement or identify deficiencies which must be corrected. If corrected within 30 days, EPA will then sign and return the corrected Certification and Agreement.

EPA believes that the above-described program is an inexpensive, efficient, cost-effective way to achieve immediate environmental improvements. EPA is encouraging companies and facilities to go beyond the terms of this agreement and to reduce emissions further by installing tank fitting controls whenever and wherever possible. For example, EPA urges companies to instal controls identified in Appendix I at non-NSPS Subpart Ka/Kb storage vessels, as well as at NSPS Subpart Ka/Kb tanks that are not under this program because they are not currently subject to equipment design requirements based on the materials stored and their vapor pressure(s). In addition to obvious environmental benefits and depending on individual circumstances, such may reduce reportable emissions and fees and create emission offsets/credits.

This notice does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, 64 FR 43255 (August 10, 1999). Thus, the requirements of section 6 of the Executive Order do not apply to this notice.

Dated: April 4, 2000.

Eric V. Schaeffer,

Director, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance.

Appendix I

Acceptable Controls for Slotted Guidepoles Under the Storage Tank Emissions Reduction Partnership Program

1. *Pole Float System:* Each opening through the deck of the floating roof for a slotted guidepole shall be equipped with a deck cover, a pole wiper and a pole float. The deck cover shall also be equipped with a gasket between the cover and deck. The wiper or seal of the pole float shall be at or above the height of the pole wiper.

2. *Alternate Control Technologies and Combinations:* The following will inform EPA's determination of whether an alternate control technology is acceptable for use under the Storage Tank Emissions Reduction Partnership Program. An alternate control technology must be shown to have an emission factor less than or equal to the emission factor for the above-identified control system. Tests to determine emission factors for an alternate control technology shall accurately simulate conditions representative of the conditions under which the technology will/would operate (*e.g.*, wind, temperature and barometric pressure). Such tests may utilize the methods listed in American Petroleum Institute (API) Manual of Petroleum Measurement Standards, Chapter 19, Section 3, Part A (Wind Tunnel test Method for the Measurement of Deck-Fitting Loss Factors for External Floating-Roof Tanks) or Part E (Weight Loss Test Method for the Measurement of Deck-Fitting Loss Factors for Internal Floating-Roof Tanks). A combination of technologies and devices to control emissions from slotted guidepoles and deck fittings may be acceptable under the Storage Tank Emissions Reduction Partnership Program if such alternate emits no more than the above-identified control system plus the same combination of deck fittings (equipped as required under NSPS Subpart Kb), as determined using AP–42. The emissions from an alternate combination of control technologies and devices shall be determined using AP–42 and/or as specified above.

3. *Pole Sleeve System:* Each opening through the deck of the floating roof for a slotted guidepole shall be equipped with a deck cover, a pole wiper and a pole sleeve. The deck cover shall be equipped with a gasket between the cover and the deck. The sleeve extends into the stored liquid.

4. *Internal Sleeve Emission Control System:* An internal guidepole sleeve that eliminates the hydrocarbon vapor emission pathway from inside the tank through the guidepole slots to the outside air; a guidepole cover at the top of the guidepole; and a well cover positioned at the top of the guidepole well that seals any openings between the well cover and the guidepole (*e.g.*, pole wiper), any openings between the well cover and any other objects that pass through the well cover, and any other openings in the top of the guidepole well.

5. *Solid Guidepole System:* A solid guidepole; a guidepole cover at the top of the guidepole; and a well cover positioned at the top of the guidepole well that seals any openings between the well cover and the guidepole (*e.g.*, pole wiper), any openings between the well cover and any other objects that pass through the well cover, and any other openings in the top of the guidepole well.

6. *Flexible Enclosure System:* A flexible device that complete encloses the slotted guidepole and eliminates the hydrocarbon vapor emission pathway from inside the tank through the guidepole slots to the outside air; a guidepole cover at the top of the guidepole; and a well cover positioned at the top of the guidepole well that seals any openings between the well cover and the guidepole (*e.g.*, pole wiper), any openings between the well cover and any other objects that pass through the well cover, and any other openings in the top of the guidepole well.

7. *Covers on External Floating Roof Tanks:* The external floating roof tank shall be (or have been) modified by installing a fixed roof mounted on the tank above its external floating roof. Each opening through the deck for a slotted guidepole shall have its lower edge below the surface of the stored liquid.

8. *Removal of Tank from Service and Surrender of Permits:* Remove the tank from service storing liquids subject to NSPS.Ka or Kb controls, surrender any and all operating permits for that tank to the appropriate state/local regulatory authority and represent to such authority that it will not be used to store petroleum liquids, as defined in 40 CFR 60.111a(b) that have a maximum true vapor pressure in the range defined in 40 CFR 60.112a(a), or volatile organic liquids, as defined in 40 CFR 60.111b(k), that have a maximum true vapor pressure in the range defined in 40 CFR 60.112b(a).

Definitions

Deck cover means a device which covers an opening in a floating roof deck. Some deck covers move horizontally relative to the deck (*i.e.*, a sliding cover).

Pole float means a float located inside a guidepole that floats on the surface of the stored liquid. The rim of the float has a wiper or seal that extends to the inner surface of the pole.

Pole sleeve means a device which extends from either the cover or the rim of an opening in a floating roof deck to the outer surface of a pole that passes through the opening. The sleeve extends into the stored liquid.

Pole wiper means a seal that extends from either the cover or the rim of an opening in a floating roof deck to the outer surface of a pole that passes through the opening.

Slotted guidepole means a guidepole or gaugepole that has slots or holes through the wall of the pole. The slots or holes allow the stored liquid to flow into the pole at liquid levels above the lowest operating level.

Solid guidepole means a guidepole or gaugepole that does not have slots or holes through the wall of the pole at or above the level of the floating roof when it is at its lowest operating level.

Appendix II

Storage Tank Emission Reduction Partnership Agreement

The United States Environmental Protection Agency ("EPA") and _____ ("Participating Company"), the parties herein, desire to enter into and be bound by the terms of this Storage Tank Emission Reduction Partnership Agreement ("Partnership Agreement" or "Agreement").

Whereas Participating Company recognizes that reducing emissions from tanks and other storage vessels with slotted guidepoles [1] can improve air quality while reducing evaporative product losses.

Whereas Participating Company is committed to environmental improvement and the cost-effective reduction of emissions.

Whereas EPA recognizes the value of cooperative emission reduction programs with industry.

Whereas Participating Company desires to participate in the Storage Tank Emission Reduction Partnership Program announced by EPA at [Insert FR page citation and (April 13, 2000)] (hereinafter referred to as "Program notice").

Now, Therefore, in consideration of the above and the mutual undertakings of each to the other, EPA and Participating Company agree as follows:

Applicability

1. The provisions of this Partnership Agreement shall apply to and be binding upon EPA and upon Participating Company, its officers, directors, agents, servants, employees, successors and assigns. Participating Company shall give notice of this Agreement to any successor in interest prior to the transfer of any ownership interest in any tank identified in Annex A.

Representations

2(a). Participating Company represents that:

a. It notified EPA of its intent to participate in the Storage Tank Emission Reduction Partnership Program within 60 days of the Program notice.

b. It assessed and evaluated all of its NSPS Subpart Ka and Kb affected facilities [2] that are subject to equipment design requirements [3] and that have slotted guidepoles [4] (hereinafter referred to as "Tanks") at each facility/location identified in Annex A.

c. It is submitting this executed Partnership Agreement to EPA within 240 days of the Program notice.

d. Annex A (attached hereto and incorporated by reference herein) is a true, accurate and complete identification of:

i. each Tank;

ii. the date(s) by which controls were or will be installed at each Tank, provided that if controls were installed before January 14, 2000, the year of installation may be used; and

iii. predicted emission reductions at each Tank that will instal controls hereunder.

e. The controls identified in Annex A were either specified in APPENDIX I to the Program notice (Acceptable Controls for Tanks with Slotted Guidepoles Under the Storage Tank Emission Reduction Partnership Program), attached hereto and incorporated by reference herein, or expressly determined by EPA to be acceptable for purposes of the Storage Tank Emission Reduction Partnership Program under Appendix I–2.

f. The predicted emission reductions reflected in Annex A were calculated and derived through the proper use of either EPA's TANKS software (version 3.1 or later) or an alternative methodology expressly determined to be acceptable for this purpose by EPA.

g. The undersigned is a duly authorized representative of Participating Company, with full powers to make these representations, enter into this Agreement and bind Participating Company to the terms hereof.

(b). The undersigned EPA representative is authorized to enter into this Agreement and bind EPA to the terms hereof.

Participating Company Undertakings

3. Participating Company shall install slotted guidepole controls on Tanks identified in Annex A as expeditiously as possible (*e.g.*, when the Tank is next taken out of service) but not later than:

a. Twenty-six (26) months after issuance of the Program notice; or

b. One hundred and twenty months (120) of the Program notice if a Tank must be taken out of service in order to instal such controls, provided Annex A describes why such Tank(s) must be taken out of service and either identifies the date(s) by which appropriate interim controls will be installed (*i.e.*, a self-aligning float equipped with at least one wiper seal gasket that is maintained at or above the height of the pole wiper) or describes why such Tank(s) must be taken out of service in order to instal interim controls.

4. Participating Company shall properly operate and maintain all slotted guidepole controls required under Paragraph 3 in the manner specified in Attachment 1 and shall include such controls and this requirement

[1] A guidepole (also referred to as a gaugepole, gauge pipe or stilling well) is a vertically oriented pipe or tube that is affixed to a tank and that passes through its floating roof. Slotted guidepoles are guidepoles with slots or holes that allow stored liquids to flow into the pole, thereby enabling representative samples to be collected from within the slotted guidepole.

[2] NSPS Subpart Ka affected facilities are petroleum liquid storage vessels with a capacity of greater than 40,000 gallons that were constructed, reconstructed or modified after May 18, 1978, 40 CFR 60.110a; NSPS Subpart Kb affected facilities are volatile organic liquid storage vessels with a capacity of greater than 40 cubic meters that were constructed, reconstructed or modified after July 23, 1984, 40 CFR 60.110b.

[3] The equipment design requirements for floating roof tanks apply only to certain NSPS Subpart Ka and Kb affected facilities. See 40 CFR 60.112a and 60.112b.

[4] A slotted guidepole is a guidepole (or gaugepole) that has slots or holes through the wall of the pole. The slots or holes allow the stored liquid to flow into the pole at liquid levels above the lowest operating level.

in federally enforceable permits issued by appropriate permitting authorities.

5. Participating Company shall not seek or obtain emission reduction credits for emission reductions that result from installing slotted guidepole controls under Paragraph 3 or from the work required under Paragraph 4 of this section, nor shall it use such reductions to offset or net against other emission increases in any permitting or enforcement action required by or taken pursuant to state or federal law.

6. Participating Company agrees and by entering into this Agreement consents to EPA's issuance of an order under and as specified in Paragraph 9.

EPA Undertakings

7. Compliance with the requirements set forth herein, including Paragraphs 3–6, shall be deemed and will, therefore, constitute full settlement and satisfaction by EPA of those violations of the Standards of Performance for New Sources, Subparts Ka and Kb, that could be or could have been alleged in civil actions or proceedings brought by EPA or the United States concerning Participating Company's use of slotted guidepoles at Tanks identified in Annex A.

8. Within sixty (60) days of its receipt of this Partnership Agreement, EPA will promptly review and either sign and return a fully executed copy of that Agreement to Participating Company or identify deficiencies in Annex A. If deficiencies identified by EPA are not corrected and a revised Annex A is not submitted within thirty (30) days of Participating Company's receipt of such identification by EPA, Participating Company's opportunity to participate under the Storage Tank Emission Reduction Partnership Program shall then cease and all its rights, expectations, obligations and undertakings (if any) under that program and this Agreement shall terminate and be deemed a nullity.

9. If and after EPA executes this Agreement as specified in Paragraph 8, it will issue an order to Participating Company in the form provided at Attachment 2.

Publicity

10. Participating Company may publicize that it is partnering with EPA under the Storage Tank Emission Reduction Partnership Program.

11. Upon request, EPA will recognize and acknowledge Participating Company's participation under this Partnership Program and/or industry's leadership and assistance in identifying controls for slotted guidepoles.

Access and Inspection

12. Without prior notice, any authorized representative of EPA (including a designated contractor), upon presentation of credentials where Tanks are located, may enter such location(s) at reasonable times to determine compliance with the requirements, terms and conditions of this Agreement. To make such a determination, EPA's authorized representative(s) shall have full and complete access to inspect, photograph, or videotape any Tank and to copy such records related to Participating Company's undertakings under this Agreement that EPA's representative(s) may deem necessary, provided such is consistent with EPA's authority under applicable laws, permits and regulations. Access under this Paragraph is subject to the normal health and safety requirements in effect at such locations. This Paragraph is in addition to, and not in limitation of, EPA's authority to investigate, inspect or enter premises pursuant to applicable laws, permits and regulations.

Force Majeure

13. If any event occurs that causes or may cause a delay in Participating Company's compliance with Paragraphs 3 or 4 of this Agreement, Participating Company shall notify EPA within thirty (30) days after Participating Company becomes aware of such event. This notice shall reasonably describe the anticipated length of the delay, the reason(s) for the delay, measures Participating Company has taken and will take to prevent or minimize the delay, and the timetable by which these measures have been or will be implemented. Increased costs or expenses associated with the implementation of this Agreement shall not be the sole or primary basis for a change in its terms or an extension of time. Participating Company shall adopt reasonable measures to avoid or minimize any such delay.

14. If the parties agree that the delay or anticipated delay in compliance with Paragraph 3 of this Agreement has been or will be caused by circumstances beyond the reasonable control of Participating Company and its contractors as under Paragraph 20, the time for performance hereunder shall be extended for a period no longer than the length of the delay caused by such circumstances. The parties shall also then seek to agree on the period of such extension as under Paragraph 20, but if they cannot so agree, the determination by EPA shall control unless Participating Company invokes the formal Dispute Resolution provisions of Paragraph 21.

15. If EPA determines that such delay, anticipated delay or any identified portion thereof was caused by circumstances within the reasonable control of Participating Company and its contractors, Participating Company shall be in breach of this Agreement and subject to stipulated noncompliance penalties as set forth in Paragraph 16 unless Participating Company invokes the Dispute Resolution provisions of this Agreement (Paragraphs 20–21).

Stipulated Noncompliance Penalties

16. If Participating Company fails to comply with the requirements of Paragraphs 3 (including Annex A), 4 or 5, it shall pay up to $1,000 per day for the first thirty (30) days of noncompliance and up to $2,500 per day for each day of noncompliance thereafter until compliance is demonstrated. Stipulated penalties are to be determined for each Tank, provided that stipulated penalties for all noncompliance occurring on the same day shall not exceed $10,000 per facility at which such noncompliance exists or occurs and $25,000 per participating company. Payment of stipulated penalties shall be by cashier's check, certified check or wire transfer, payable to "Treasurer, United States of America" and delivered to EPA.

17(a). If any noncompliance with Paragraphs 3, 4 or 5 is discovered by Participating Company, it shall so notify EPA and provide a written statement describing such noncompliance by the last day of the month following the month in which such noncompliance was identified by Participating Company.

(b). If any noncompliance with Paragraphs 3, 4 or 5 is discovered by EPA, it shall so notify Participating Company and there describe such noncompliance.

18. After an opportunity to informally resolve issues under Paragraph 20, EPA will demand payment of such stipulated penalties as it determines are appropriate under the circumstance and permitted under Paragraph 16. Stipulated penalties shall be paid by the last day of the month following the month in which such demand is made unless Participating Company invokes the formal Dispute Resolution provisions of Paragraph 21.

19. For any noncompliance that is or could be subject to stipulated noncompliance penalties hereunder, EPA expressly reserves the right to seek any other relief to which it may be entitled under law, including but not limited to specific performance of this Agreement, injunctive relief under the Act and such other relief as may be available under any federal statute or the common law.

Dispute Resolution

20. *Informal.* If Participating Company disputes any determination made by EPA pursuant to Paragraphs 14–15 (Force Majeure), Paragraph 18 (Stipulated Noncompliance Penalties), Paragraphs 32–33 (Termination) or Appendix I (Alternate Control Technologies) but only if such alternate was requested by Participating Company, it shall send a written notice to EPA outlining the nature of the dispute/disagreement and requesting informal negotiations to resolve the dispute. Such period of informal negotiations shall not extend beyond thirty (30) days from the date when the notice was received unless the parties expressly agree otherwise in writing.

21. *Formal.* If informal negotiations are unsuccessful, either party may request and both parties shall then attempt to reach agreement on a process and procedure for resolving the dispute by formal means using a neutral third party. Such process and procedures may include, but need not be limited to, mediation, nonbinding arbitration and binding arbitration (but only if and to the extent binding arbitration is then authorized and expressly permitted by EPA policy and the Administrative Dispute Resolution Act of 1996). If an agreement on process and procedure is not reached within sixty (60) days from the date notice was received under Paragraph 20 or as otherwise provided in this Agreement, either party may then assert whatever rights they may have hereunder in an appropriate federal court.

Notification

22. All notices, records and submissions required under this Agreement shall be maintained where each Tank is located or where such Tank's records are normally maintained, provided they can be made

available by facsimile (or otherwise) upon request during an inspection under Paragraph 12.

23. All notices, submissions and certifications required of Participating Company under this Agreement shall be in writing and postmarked or hand delivered to: U.S. Environmental Protection Agency, Storage Tank Emission Reduction Partnership Program, Air Enforcement Division—Station Source Enforcement Branch, Mail Code 2242A, Washington, DC 20460.

All notices required of EPA and all EPA determinations under this Agreement shall be in writing and postmarked or hand delivered to:

_____
_____
_____

24. Upon completion of its obligations and undertakings under this Agreement, Participating Company shall provide a written certification of its compliance with this Agreement to EPA, including a description of the work performed under Paragraph 3, the date such work was completed and an identification of such permit(s) that were or will be issued under Paragraph 4. Such certification shall be signed by a responsible official and contain the following language:

I certify under penalty of law that the information contained in and accompanying this document (if applicable) is true, accurate, and complete to the best of my knowledge, information and belief after reasonable inquiry.

For purposes of this Paragraph, a "responsible official" means the president, secretary, treasurer, or a vice-president of Participating Company, its senior management representative(s) where such Tanks are located, or any person who performs similar policy or decision-making functions for Participating Company.

Miscellaneous Provisions

25. Participating Company agrees to accept service from EPA by mail with respect to all matters relating to or arising under this Agreement at the address listed below (if different from Paragraph 23):

_____
_____
_____
_____

EPA agrees to accept service from Participating by mail with respect to all matters relating to or arising under this Agreement at the address listed below (if different from Paragraph 23):

_____
_____
_____
_____

26. Annex A of this Participation Agreement may be modified only if EPA and Participating Company agree and consent to such modification in writing.

27. This Agreement does not modify or affect in any way Participating Company's responsibility to achieve and maintain compliance with all other applicable federal, state and local laws, regulations and permits.

28. Each party shall bear its own costs, attorney's fees and disbursements in this matter.

29. This document, including its attached Annex A, Appendix I and Attachments 1 and 2, encompasses the entire agreement of the parties with respect to the subject matter hereof and totally supersedes all prior agreements and understandings, whether oral or in writing.

Termination

30. When Participating Company has complied with Paragraph 3, is in compliance with Paragraph 4 and has certified compliance under Paragraph 24, Participating Company may notify EPA of its intent to terminate this Agreement. EPA may object to such termination only on the grounds that Participating Company has not complied with this Agreement.

31. If EPA does not object to Participating Company's notice of intent to terminate, this Agreement will terminate ninety (90) days after the date of EPA's receipt of such notice of intent to terminate. Notwithstanding such termination of this Participation Agreement, the obligations of Paragraphs 3, 4, 5 and 7 shall continue indefinitely.

32. If EPA objects to Participating Company's notice of intent to terminate, it must do so in writing within sixty (60) days of its receipt of such notice. If EPA objects to Participating Company's notice of intent to terminate, Participating Company may invoke the Dispute Resolution provisions of this Agreement (Paragraphs 20–21). In resolving any dispute regarding termination of this Agreement, Participating Company shall have the burden of proving that it is, was and has been in compliance with this Agreement.

33. If EPA determines that Participating Company is in material breach of this Agreement (*e.g.*, evinces a pattern and practice of noncompliance with its terms and conditions), it shall give notice of such breach and may give notice of its intent to terminate this Agreement. If Participating Company objects to EPA's determination and/or notice of intent to terminate, Participating Company may invoke the Dispute Resolution provisions of this Agreement (Paragraphs 20–21). If then terminated, Participating Company's opportunity to participate under the Storage Tank Emission Reduction Partnership Program shall then cease and all its rights, expectations, obligations and undertakings (if any) under that program and this Agreement shall terminate and be deemed a nullity.

Reservation of Rights

34. By entering into the Agreement, EPA understands that Participating Company neither agrees nor concedes that its use of slotted guidepoles without the controls specified in Appendix I violate or violated any Clean Air Act requirement. Similarly, Participating Company understands that EPA neither agrees nor concedes that Participating Company's prior use of slotted guidepoles without such controls was acceptable or excused in any way or on any basis whatsoever. With respect to any tank(s) other than a Tank identified in Annex A, each party reserves all rights they may have to contest or otherwise litigate any issue arising out of any use of slotted guidepoles.

Effective Date

35. This Participation Agreement shall be effective when signed by both Participating Company and EPA.

By _____
[Participating Company]
Date: _____
By: _____
U.S. Environmental protection agency.
Date: _____

Attachment 1

Operating and Maintenance Requirements for Slotted Guidepole Controls Under the Storage Tank Emissions Reduction Partnership Program

The sliding cover shall be in place over the slotted-guidepole opening through the floating roof at all times except when the sliding cover must be removed for access. If the control technology used includes a guidepole float, the float shall be floating within the guidepole at all times except when it must be removed for access to the stored liquid or when the tank is empty.

Visually inspect the deck fitting for the slotted guidepole at least once every 10 years and each time the vessel is emptied and degassed. If the slotted guidepole deck fitting or control devices have defects, or if a gap of more than 0.32 centimeters (1/8 inch) exists between any gasket required for control of the slotted guidepole deck fitting and any surface that it is intended to seal, such items shall be repaired before filling or refilling the storage vessel with regulated material.

Tanks taken out of hydrocarbon service, for any reason, do not have to have any controls in place during the time they are out of service.

Attachment 2

Form Compliance Order

United States Environmental Protection Agency

In the Matter of: [Participating Company] Respondent.

Storage Tank Emission Reduction Partnership Program, Agreement No. ____

Findings and Order

Pursuant to Section 113(a)(3) of the Clean Air Act ("CAA"), consistent with the Storage Tank Emission Reduction Partnership Agreement identified above and entered into between the United States Environmental Protection Agency ("EPA") and Respondent, and based upon available information, EPA hereby makes and issues the following Findings and Order:

Findings

1. Respondent is a Participating Company under above-identified Storage Tank Emission Reduction Partnership Agreement.

2. EPA promulgated New Source Performance Standards ("NSPS") for Petroleum Liquid Storage Vessels and for Volatile Organic Liquid Storage Vessels, appearing in 40 CFR Part 60, Subparts Ka and Kb.

3. Respondent owns or operates certain "affected facilities" under NSPS Subpart Ka and/or Kb that have or had floating roofs with slotted guidepoles, as identified in Annex A.

Order

4. Respondent shall install, maintain and operate properly those controls specified in Annex A by the date(s) there indicated and shall include or seek to include such controls and this requirement in federally enforceable permits issued by appropriate permitting authorities.

5. Respondent shall not seek or obtain emission reduction credits for emission reductions that result from its compliance with this order, nor shall it use such reductions to offset or net against other emission increases in any permitting or enforcement action required by or taken pursuant to state or federal law.

6. Pursuant to Section 113(a) of the CAA, failure to comply with this Order may lead to a civil action to obtain compliance or an action for civil or criminal penalties.

Issued this _____ day of _____, 2000.

U.S. Environmental Protection Agency.

Appendix III

Storage Tank Emission Reduction Partnership Certification and Agreement

CERTIFICATION

_____ ("Participating Company"), by _____, a responsible corporate official of Participating Company, certifies that:

1. Participating Company notified the United States Environmental Protection Agency ("EPA") of its intent to participate in the Storage Tank Emission Reduction Partnership Program within 60 days of the Program notice announced at [insert FR page citation (April 13, 2000)].

2. Participating Company assessed and evaluated all of its NSPS Subpart Ka and Kb affected facilities [1] that are subject to equipment design requirements [2] and that have slotted guidepoles [3] (hereinafter referred to as "Tanks") at each facility/location identified in Annex A.

3. Annex A (attached hereto and incorporated by reference herein) is a true, accurate and complete identification of:

i. each Tank; and

ii. the year in which controls were installed at each Tank; and

4. The controls identified in Annex A were either specified in APPENDIX I to the Program notice (Acceptable Controls for Tanks with Slotted Guidepoles Under the Storage Tank Emission Reduction Partnership Program), attached hereto and incorporated by reference herein, or expressly determined by EPA to be acceptable for purposes of the Storage Tank Emission Reduction Partnership Program under APPENDIX I–2.

I certify under penalty of law that the foregoing and the attached, including Annex A, is true, accurate, and complete to the best of my knowledge, information and belief after reasonable inquiry.

_____

[NAME]

[TITLE]

Agreement

The United States Environmental Protection Agency ("EPA") and _____ ("Participating Company"), the parties herein, desire to enter into and be bound by the terms of this Storage Tank Emission Reduction Partnership Agreement ("Partnership Agreement" or "Agreement").

Whereas Participating Company recognizes that reducing emissions from tanks and other storage vessels with slotted guidepoles [1] can improve air quality while reducing evaporative product losses.

Whereas Participating Company is committed to environmental improvement and the cost-effective reduction of emissions.

Whereas EPA recognizes the value of cooperative emission reduction programs with industry.

Whereas Participating Company desires to participate in the Storage Tank Emission Reduction Partnership Program announced by EPA at 65 FR [insert 1st page number of FR this notice appears in] (April 13, 2000) (hereinafter referred to as "Program notice").

Whereas Participating Company certified that it had complied with the requirements of the Storage Tank Emission Reduction Partnership Program.

Now, therefore, in consideration of the above and the mutual undertakings of each to the other, EPA and Participating Company agree as follows:

Applicability

1. The provisions of this Partnership Agreement shall apply to and be binding upon EPA and upon Participating Company, its officers, directors, agents, servants, employees, successors and assigns. Participating Company shall give notice of this Agreement to any successor in interest prior to the transfer of any ownership interest in any tank identified in Annex A.

Representations

2(a). Participating Company represents that:

a. Participating Company's Certification was made by a "responsible official" (*i.e.*, the president, secretary, treasurer, or a vice-president of Participating Company; Participating Company's senior management representative(s) where such Tanks are located, or any other person who performs similar policy or decision-making functions for Participating Company.

b. The undersigned is a duly authorized representative of Participating Company, with full powers to make these representations, enter into this Agreement and bind Participating Company to the terms hereof.

(b). The undersigned EPA representative is authorized to enter into this Agreement and bind EPA to the terms hereof.

Participating Company Undertakings

3. Participating Company shall properly operate and maintain all slotted guidepole controls identified on Annex A in the manner specified in Attachment 1 and shall include such controls and this requirement in federally enforceable permits issued by appropriate permitting authorities.

4. Participating Company shall not seek or obtain emission reduction credits for emission reductions that result from installing slotted guidepole controls or from the work required under Paragraph 3 of this section, nor shall it use such reductions to offset or net against other emission increases in any permitting or enforcement action required by or taken pursuant to state or federal law.

EPA Undertakings

5. Compliance with the requirements set forth herein shall be deemed and will, therefore, constitute full settlement and satisfaction by EPA of those violations of the Standards of Performance for New Sources, Subparts Ka and Kb, that could be or could have been alleged in civil actions or proceedings brought by EPA or the United States concerning Participating Company's use of slotted guidepoles at Tanks identified in Annex A.

6. Within sixty (60) days of its receipt of this Partnership Agreement, EPA will promptly review and either sign and return a fully executed copy of that Agreement to Participating Company or identify deficiencies in Annex A. If deficiencies identified by EPA are not corrected and a revised Annex A submitted within thirty (30) days of Participating Company's receipt of such identification by EPA, Participating Company's opportunity to participate under the Storage Tank Emission Reduction Partnership Program shall then cease and all its rights, expectations, obligations and undertakings (if any) under that program and this Agreement shall terminate and be deemed a nullity.

Miscellaneous Provisions

7. Participating Company agrees to accept service from EPA by mail with respect to all matters relating to or arising under this Agreement at the address listed below:

_____

_____

_____

_____

[1] NSPS Subpart Ka affected facilities are petroleum liquid storage vessels with a capacity of greater than 40,000 gallons that were constructed, reconstructed or modified after May 18, 1978, 40 CFR 60.110a; NSPS Subpart Kb affected facilities are volatile organic liquid storage vessels with a capacity of greater than 40 cubic meters that were constructed, reconstructed or modified after July 23, 1984, 40 CFR 60.110b.

[2] The equipment design requirements for floating roof tanks apply only to certain NSPS Subpart Ka and Kb affected facilities. See 40 CFR 60.112a and 60.112b.

[3] A slotted guidepole is a guidepole (or gaugepole) that has slots or holes through the wall of the pole. The slots or holes allow the stored liquid to flow into the pole at liquid levels above the lowest operating level.

[1] A guidepole (also referred to as a gaugepole, gauge pipe or stilling well) is a vertically oriented pipe or tube that is affixed to a tank and that passes through its floating roof. Slotted guidepoles are guidepoles with slots or holes that allow stored liquids to flow into the pole, thereby enabling representative samples to be collected from within the slotted guidepole.

8. Annex A of this Participation Agreement may be modified only if EPA and Participating Company agree and consent to such modification in writing.

9. This Agreement does not modify or affect in any way Participating Company's responsibility to achieve and maintain compliance with all other applicable federal, state and local laws, regulations and permits.

10. Each party shall bear its own costs, attorney's fees and disbursements in this matter.

11. This document, including its Annex A, encompasses the entire agreement of the parties with respect to the subject matter hereof and totally supersedes all prior agreements and understandings, whether oral or in writing.

Reservation of Rights

12. By entering into the Agreement, EPA understands that Participating Company neither agrees nor concedes that its use of slotted guidepoles without the controls specified in Appendix I violate or violated any Clean Air Act requirement. Similarly, Participating Company understands that EPA neither agrees nor concedes that Participating Company's prior use of slotted guidepoles without such controls was acceptable or excused in any way or on any basis whatsoever. With respect to any tank(s) other than a Tank identified in Annex A, each party reserves all rights they may have to contest or otherwise litigate any issue arising out of any use of slotted guidepoles.

Effective Date

13. This Participation Agreement shall be effective when signed by both Participating Company and EPA.

By:_____
[Participating Company]
Date:_____
By:_____
U.S. Environmental Protection Agency
Date:_____

Attachment 1

Operating and Maintenance Requirements for Slotted Guidepole Controls Under the Storage Tank Emissions Reduction Partnership Program

The sliding cover shall be in place over the slotted-guidepole opening through the floating roof at all times except when the sliding cover must be removed for access. If the control technology used includes a guidepole float, the float shall be floating within the guidepole at all times except when it must be removed for access to the stored liquid or when the tank is empty.

Visually inspect the deck fitting for the slotted guidepole at least once every 10 years and each time the vessel is emptied and degassed. If the slotted guidepole deck fitting or control devices have defects, or if a gap of more than 0.32 centimeters (1/8 inch) exists between any gasket required for control of the slotted guidepole deck fitting and any surface that it is intended to seal, such items shall be repaired before filling or refilling the storage vessel with regulated material.

Tanks taken out of hydrocarbon service, for any reason, do not have to have any controls in place during the time they are out of service.

[FR Doc. 00–9091 Filed 4–12–00; 8:45 am]

BILLING CODE 6560–60–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6578–7]

Lyman Dyeing and Finishing Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a settlement for the partial reimbursement of past response costs with Springs Industries, Inc. pursuant to section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h)(1) concerning the Lyman Dyeing and Finishing Superfund Site (Site) located in Lyman, Spartanburg County, South Carolina. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4, (WMD–CPSB), 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887. Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: March 29, 2000.

Franklin E. Hill,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 00–9237 Filed 4–12–00; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 00–734]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On April 7, 2000, the Commission released a public notice announcing the April 25 and 26, 2000, meeting and agenda of the North American Numbering Council (NANC). For reasons described below, a portion of the meeting will be closed to the public on Wednesday, February 23, from 8:30 a.m. until 11 a.m. The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes at (202) 418–2320 or jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 12th Street, S.W., Suite 6A320, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: April 7, 2000.

The North American Numbering Council (NANC) has scheduled a meeting to be held Tuesday, April 25, 2000, from 8:30 a.m. until 5:00 p.m., and on Wednesday, April 26, from 8:30 a.m. until 12 noon. The meeting will be held at the Federal Communications Commission, Portals II, 445 Twelfth Street, SW, Room TW–C305, Washington, DC.

SUPPLEMENTARY INFORMATION: This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Proposed Agenda—Tuesday, April 25, 2000

1. Approval of March 21–22, 2000 meeting minutes.

2. Review FCC Numbering Resource Optimization Report and Order and Further Notice of Proposed Rulemaking, CC Docket 99–200, released March 31, 2000.

A. NANC action items: Uniform definitions for secondary categories of number usage within 120 days (paragraphs 14 and 36). Work with NANP administration to develop reporting form within 15 days

(paragraph 52); data entry mechanisms within 45 days (paragraph 53); criteria to determine inconsistent submissions (paragraph 54), and cost estimates within 30 days (paragraph 56). Revisions to Pooling Administrator Requirements to specific technical requirements within 90 days (paragraph 155). Further study of individual telephone number pooling (ITN) and unassigned number porting (paragraph 231.

B. Rejected NANC recommendations. Two 90-day reservation periods (paragraph 24); reconsider fees for reserved numbers (paragraph 25), and revise INC guidelines to reflect 6-month inventories (paragraph 189).

C. Further Notice of Proposed Rulemaking items: Utilization threshold (paragraph 248); CMRS participation in number pooling (paragraph 25), and revise INC guidelines to reflect 6-month inventories (paragraph 189).

D. Issues not addressed: Audits; rate center consolidation; 10 digit dialing, and technology specific overlays.

3. North American Number Plan Administration (NANPA) Report.

4. Assumptions Issue Management Group (IMG) tutorial on NANP Expansion and the Uniform Dialing Plan.

5. Limited Liability Corporations (LLCs) and Number Portability Administration Centers (NPAC) activity update. Midwest LLC merger, and status of NeuStar negotiations.

6. North American Numbering Plan Administration (NANPA) Oversight Working Group Report.

7. Numbering Resource Optimization (NRO) Working Group Report.

8. Local Number Portability Administration (LNPA) Working Group Report. Updates on wireless wireline integration; Problem Identification Management (PIM); NPAC/SMC release status, and Slow Horse.

9. Cost Recovery Working Group Report.

Wednesday, April 26, 2000

10. Steering Group Report.

11. Industry Numbering Committee Report.

12. Number Pooling IMG Report. Inventories in jeopardy discussion.

13. North American Numbering Plan Administration Billing and Collection Agent (NBANC) Report.

14. Public Participation (5 minutes each, if any).

15. Other Business.

16. Action Items and Decisions Reached.

Federal Communications Commission.

Diane Griffin Harmon,

Deputy Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 00–9833 Filed 4–12–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 27, 2000.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Henry E. Blake Family; Caroline H. Blake; James H. Blake; Jean B. Blake; Violet H. Howell; William D. Blake (both individually and as trustee for the Blake William Henry Trust); Catherine L. Morris and Stephen D. Morris (both individually and in their capacity as trustees for the Ellen Elizabeth Morris Trust, the Jane Holloway Morris Trust, the Lee Edward Morris Trust, and the Justin Henry Morris Trust); Catherine M. Ryland (both individually and in her capacity as trustee for the Isabelle Burnum Ryland Trust and the Catherine G. Ryland Trust); Caroline B. Faris (in her capacity as trustee for the Stephen Hardtner Faris Trust and the Philip Lyman Faris Trust); and John Ryland; to retain voting shares of First National Bancshares of Louisiana, Alexandria, Louisiana, and thereby indirectly acquire voting shares of Security First National Bank, Alexandria, Louisiana.

Board of Governors of the Federal Reserve System, April 7, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–9143 Filed 4–12–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 8, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. United Financial Holdings Corporation, Lisle, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of United Community Bank of Lisle, Lisle, Illinois (in organization).

Board of Governors of the Federal Reserve System, April 7, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–9141 Filed 4–12–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 27, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. The Industrial Bank of Japan, Limited, Tokyo, Japan; to acquire Nomura IBJ Global Investment Advisors, Inc., New York, New York, and thereby to engage in domestic investment advisory activities through Nomura IBJ Global Investment Advisors, Inc., a joint venture with Nomura Securities Co., Ltd, Tokyo, Japan, pursuant to Section 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, April 7, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–9142 Filed 4–12–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Advisory Committee on Online Access and Security

AGENCY: Federal Trade Commission.

ACTION: Notice of meeting on April 28, 2000.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. sec. 10(a)(2), and 16 CFR 16.9(a), notice is hereby given that the Federal Trade Commission Advisory Committee on Online Access and Security will hold a meeting on Friday, April 28, 2000, from 8:00 a.m. to 4:00 p.m. in Room 432, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The meeting is open to the public and will include a period for public comment. The purpose of the Advisory Committee is to provide advice and recommendations to the Commission regarding implementation of certain fair information practices by domestic commercial Web sites—specifically, providing online consumers reasonable access to personal information collected from and about them, and maintaining adequate security for that information. Interested parties may submit comments concerning any matter to be considered at the meeting by following the procedures described below.

DATES: The Advisory Committee will meet on Friday, April 28, 2000, from 8 a.m. to 4 p.m.

ADDRESSES: The meeting will take place in Room 432, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Allison I. Brown, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Mail Stop 4429, Washington, DC 20580, telephone (202) 326–3079, email aibrown@ftc.gov; or Ellen R. Finn, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Mail Stop 4429, Washington, DC 20580, telephone (202) 326–3296, email efinn@ftc.gov.

Authority: 15 U.S.C. 41 *et seq.*; 5 U.S.C. App. secs. 1–15; 16 C.F.R. Part 16.

The fourth meeting of the Federal Trade Commission Advisory Committee on Online Access and Security will be held on Friday, April 28, 2000, in Room 432, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC from 8 a.m. to 4 p.m.

The Advisory Committee will continue to consider the costs and benefits, to both consumers and businesses, of implementing the fair information practices of access and security with respect to personal information collected for and about consumers online. The Advisory Committee will also continue consideration of the parameters of reasonable access to personal information and adequate security and will present options for implementation of these information practices in a report to the Commission.

The tentative agenda for the fourth meeting is as follows:

1. Administrative matters.
2. Discussion of draft report submitted by subgroups on issues relating to "reasonable access".
3. Discussion of draft report submitted by subgroup on issues relating to "adequate security".
4. Public Comment.
5. Discussion of tasks and assignments.

The meeting is open to the public.

Submission of Documents:

Interested parties who wish to submit comments on the meeting agenda or questions for consideration by the Advisory Committee should send an original and two copies in advance of the meeting to the Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, NW, Washington, DC 20580. All comments and questions should be captioned—Advisory Committee on Online Access and Security " Comment, P004807." To enable prompt review and public access, paper submissions should be accompanied by a version on diskette in ASCII, WordPerfect (please specify version) or Microsoft Word (please specify version) format. Diskettes should be labeled with the name of the submitter, the Advisory Committee caption, and the name and version of the word processing program used to create the document.

Alternatively, comments or questions may be submitted to the following email address: advisorycommittee@ftc.gov; if submitted by email, only one copy of the comment or question is required. The email should contain the name of the submitter, the Advisory Committee caption, and, if a document is attached, the name and version of the word processing program used to create the document.

Comments to the Advisory Committee will be accepted through 5 p.m. Eastern time on April 28, 2000. To ensure that comments are processed properly, individuals submitting comments should be sure to use the above addresses. All comments will be posted on the Advisory Committee's Web page at www.ftc.gov/acoas as soon as

reasonably possible, and likely within 5 business days of receipt. Individuals submitting comments should check the Advisory Committee's Web page to confirm receipt of the comment.

By direction of the Commission.

Donald S. Clark,

Secretary of the Commission.

[FR Doc. 00–9265 Filed 4–12–00; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary; Office of Minority Health

Notice of a Cooperative Agreement With the ASPIRA Association, Inc.

AGENCY: Office of the Secretary, Office of Minority Health, HHS.

ACTION: Notice of a cooperative agreement with the ASPIRA Association, Inc.

The Office of Minority Health (OMH), Office of Public Health and Science, announces its intent to continue support of the umbrella cooperative agreement with the ASPIRA Association, Inc. (ASPIRA). This cooperative agreement will continue the broad programmatic framework in which specific projects can be supported by various governmental agencies during the project period.

The purpose of this cooperative agreement is to assist the national association in expanding and enhancing its activities relevant to education, health promotion, disease prevention, and family and youth violence prevention, with the ultimate goal of improving the health status of minorities and disadvantaged people.

The OMH will provide technical assistance and oversight as necessary for the implementation, conduct, and assessment of the project activities. On an as-needed basis, OMH will assist in arranging consultation from other government agencies and non-government agencies.

Authority: This cooperative agreement is authorized under Section 1707(e)(1) of the Public Health Service Act, as amended.

Background: Assistance will continue to be provided to ASPIRA. During the last three years, ASPIRA has successfully demonstrated the ability to work with health agencies on mutual education, service, and research endeavors. The ASPIRA is uniquely qualified to continue to accomplish the purposes of this cooperative agreement because it has the following combination of factors:

- It has developed, expanded, and managed an infrastructure to coordinate and implement various educational programs within local communities and organizations that deal extensively with Hispanic issues. These programs provide a foundation upon which to develop, promote, and manage education and health-related programs aimed at preventing and reducing unnecessary morbidity and mortality among Hispanic populations.
- It has established itself and its members as a national association with professionals who serve as leaders and experts in planning, developing, implementing, and promoting educational and policy campaigns (locally and nationally) aimed at reducing adverse health behaviors and improving the Hispanic community's overall educational and social well being.
- It has assessed and evaluated data, through its Institute for Policy Research and its National Health Careers Program, on the current education, violence, and health-related findings relevant to Hispanics and other populations for dissemination to its associate members, collaborators, funders, and the general public.
- It has developed a national association whose members consist of professionals with excellent performance records and established linkages to the Hispanic population at the national and local level.
- It has developed an information management system to track programmatic outcomes and evaluate best practices for future dissemination.
- It has an inventory of critical knowledge, skills, and abilities related to serving Hispanic clients on a range of health and social problems.

This cooperative agreement will be continued for an additional 5-year project period with 12-month budget periods. Depending upon the types of projects and availability of funds, it is anticipated that this cooperative agreement will receive approximately $100,000 per year. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this cooperative agreement, contact Ms. Cynthia Amis, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852 or telephone (301) 594–0769.

OMB Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number for this cooperative agreement is 93.004.

Dated: March 30, 2000.

Nathan Stinson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 00–9147 Filed 4–12–00; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Minority Health; Availability of Funds for Technical Assistance and Capacity Development Demonstration Grant Program for HIV/AIDS-Related Services in Highly Impacted Minority Communities

AGENCY: Office of the Secretary, Office of Minority Health, HHS.

ACTION: Notice of availability of funds and requests for applications for Technical Assistance and Capacity Development Demonstration Grant Program for HIV/AIDS-Related Services in Highly Impacted Minority Communities.

Authority: This program is authorized under section 1707(e)(1) of the Public Health Service Act, as amended by Public Law 105–392.

Purpose

The purpose of the Technical Assistance and Capacity Development Demonstration Grant Program for HIV/AIDS-Related Services in Highly Impacted Minority Communities is to stimulate and foster the development of effective and durable service delivery capacity for HIV prevention and treatment among organizations closely interfaced with the minority populations highly impacted by HIV/AIDS. The grantee will identify minority community-based organizations (CBOs) and small, non-federally funded minority CBOs that are well linked with minority populations highly affected by HIV/AIDS, and which have recognized needs and/or gaps in their capacity to provide HIV/AIDS-related prevention and care services. The goals are to:

- Provide administrative and programmatic technical assistance to enable those organizations to enhance their delivery of necessary services; and
- Assist those CBOs, through an ongoing mentoring relationship, in the development of their capacity as fiscally viable and programmatically effective

organizations thereby allowing them to successfully compete for federal and other resources.

This program is intended to demonstrate the impact of technical assistance and capacity development on improving HIV prevention and care among organizations within a circumscribed area in which many minority individuals are in need of HIV/AIDS prevention and/or treatment services. To the extent that selected services such as substance abuse treatment and public health are available within the circumscribed area, linkages with these services will be fostered as part of the technical assistance. The program intends to address HIV/AIDS issues within the context of related socio-economic factors and contribute to overall community empowerment by strengthening indigenous leadership and organizations.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010, a PHS-led national activity to eliminate health disparities and increase quality and years of healthy life. This announcement relates to 4 of the 28 focus areas established by Healthy People 2010: (1) Substance abuse; (2) educational and community-based programs; (3) HIV; and (4) sexually transmitted diseases. Potential applicants may access Healthy People 2010 documents online at *http://www.health.gov/healthypeople/*. A CD-ROM containing the Healthy People objectives for 2010 may be obtained by calling 1–800–367–4725.

Background

The Office of Minority Health's (OMH) mission is to improve the health of racial and ethnic minority populations through the development of health policies and programs that will help to address the health disparities and gaps. Consistent with its mission, the role of OMH is to serve as the focal point within the Department for service demonstrations, coalition and partnership building, and related efforts to address the health needs of racial and ethnic minorities. In keeping with this mission, OMH launched the Technical Assistance and Capacity Development Demonstration Grant Program for HIV/AIDS-Related Services in Highly Impacted Minority Communities in fiscal year (FY) 1999 to assist in addressing the HIV/AIDS issues facing minority communities in 15 eligible metropolitan statistical areas. This program is based on the hypothesis that providing technical assistance and capacity development to organizations closely linked with the minority populations highly impacted by the disease, will improve their capacity to better serve minority populations with HIV/AIDS prevention and treatment. It is anticipated that this approach will strengthen existing minority CBOs and inexperienced organizations in addressing this health issue by developing and expanding their technical skills and infrastructure capacity. In FY 2000, additional funds are being made available to increase the number of organizations participating in the program. Applicants are encouraged to establish linkages with other federally funded programs supporting HIV/AIDS prevention and care to maximize these efforts.

Disproportionate Effect of HIV/AIDS on Minorities

Statistics indicate that although advances have been made in the treatment of HIV/AIDS, this epidemic continues as a significant threat to the public health of the United States (U.S.). Despite showing a decline in the past two years, it remains a disproportionate threat to minorities. While African-Americans and Hispanics respectively represent approximately 13% and 10% of the U.S. population, approximately 36% of the more than 640,000 reported total AIDS cases are African-American and 18% are Hispanic.

In 1997, more African-Americans were reported with AIDS than any other racial/ethnic group. Of the total AIDS cases reported that year, 45% (27,075) were reported among African-Americans, 33% (20,197) were reported among whites, and 21% (12,466) were reported among Hispanics. Among women and children with AIDS, African-Americans have been especially affected, representing 60% of all women reported with AIDS in 1997 and 62% of reported pediatric AIDS cases in 1997. During 1997, the rate of new AIDS cases per 100,000 population in the U.S. was 83.7 among African-Americans, 37.7 among Hispanics, 10.4 among whites, 10.4 among American Indians/Alaska Natives, and 4.5 among Asians/Pacific Islanders.

Data from a recent Centers for Disease Control and Prevention study (Trends in the HIV and AIDS Epidemic, 1998) comparing HIV and AIDS diagnoses in 25 states with integrated reporting systems provide a clearer picture of recent shifts in the epidemic. The study indicates that many of the new HIV diagnoses are occurring among African-Americans, women, and people infected heterosexually, with an increase also observed among Hispanics. During the period from January 1994 through June 1997, African-Americans represented 45% of all AIDS diagnoses, but 57% of all HIV diagnoses. Among young people (ages 13 to 24) diagnosed with HIV, 63% were among African-Americans and 5% were among Hispanics. Although some of the states with large Hispanic populations did not have integrated HIV/AIDS reporting and could not be included in this study, HIV diagnoses among Hispanics increased 10% between 1995 and 1996.

Eligible Applicants

The following public and private, nonprofit entities are eligible to apply for this grant: (a) A community coalition consisting of at least three discrete organizations with either a minority CBO or state/local health department as the lead organization; (b) a minority CBO; or (c) a state/local health department. (See definitions of Community Coalition and Minority Community-Based Organization found in this announcement.) The applicant must provide the necessary administrative infrastructure to receive and appropriately manage the federal funds. The coalition may also incorporate other partners such as a hospital, a minority health management group, an AIDS Service Organization, or other CBOs with strong links to the target population.

Fifteen Metropolitan Statistical Areas (MSAs) were identified in FY 1999 as having the highest incidence of AIDS cases reported for 1996 and 1997. According to the Centers for Disease Control and Prevention's HIV/AIDS Surveillance Report for 1999, these same 15 MSAs continue to be identified as having the highest cumulative total of AIDS cases reported for the four years, 1996–1999. Last year, funds were available to support 4 of the 15 MSAs through this program: Chicago, IL; Miami, FL; New York, NY; and San Juan, PR. For FY 2000, the program will focus on the remaining 11 MSAs in order to maximize limited resources available this fiscal year.

Eligible applicants must be located in one of the remaining 11 MSAs. Specifically, the 11 MSAs are:

- Atlanta, GA
- Baltimore, MD
- Boston, MA
- Dallas, TX
- Ft. Lauderdale, FL
- Houston, TX
- Los Angeles, CA
- Newark, NJ
- Philadelphia, PA
- San Francisco, CA
- Washington, DC

National organizations, universities and institutions of higher education are

not eligible to apply, although they may be members of the coalition. Local affiliates of national organizations which meet the definition of a minority community-based organization, however, are eligible.

Project Requirements

The applicant must propose to conduct a model program within the eligible metropolitan statistical area which is designed to carry out the following functions:

(1) Identify the existing capacity for delivering HIV-related services (both HIV prevention and treatment) to minority populations and compare this with available HIV/AIDS surveillance data. The use of geographic information systems and related techniques should be given due consideration as one of the tools to address this area;

(2) Identify high risk minority communities where there are recognized gaps in services for minority populations with HIV/AIDS;

(3) Increase the capacity of existing minority CBOs including small, non-federally funded minority CBOs which are well interfaced with the populations to be served to deliver HIV/AIDS prevention and care by:

(a) Providing administrative technical assistance to improve the fiscal and organizational capacity appropriate to their programmatic responsibilities, which may require a mentoring relationship over time; and

(b) Identifying programmatic technical assistance from the Department of Health and Human Services' Operating Divisions and linking appropriate CBOs with these resources.

(4) Utilizing consultants, as needed, to provide specific technical assistance beyond the expertise of core staff (*e.g.*, peer-peer technical assistance capability); and

(5) Working with newly identified CBOs to develop strong linkages with other providers of services to complete a continuum of prevention and treatment services, including substance abuse treatment and mental health services for minority HIV/AIDS populations.

Availability of Funds

Approximately $2.0 million is expected to be available for award in FY 2000. It is projected that awards of up to $1.0 million total costs (direct and indirect) for a 12-month period will be made to two competing applicants.

Use of Grant Funds

Budgets of up to $1.0 million total costs (direct and indirect) per year may be requested to cover costs of: Personnel, consultants, supplies, equipment, and grant related travel. Funds may not be used for medical treatment, construction, building alterations, or renovations. All budget requests must be fully justified in terms of the proposed objectives and activities and include a computational explanation of how costs were determined.

Period of Support

The start date for the Technical Assistance and Capacity Development Demonstration Grant Program for HIV/AIDS-Related Services in Highly Impacted Minority Communities, is September 30, 2000. Support may be requested for a total project period not to exceed 3 years. Noncompeting continuation awards of up to $1.0 million will be made subject to satisfactory performance and availability of funds.

Deadline

To receive consideration, grant applications must be received by the Office of Minority Health (OMH) Grants Management Office by June 12, 2000. Applications will be considered as meeting the deadline if they are: (1) Received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. Applications which do not meet the deadline will be considered late and will be returned to the applicant unread.

Addresses/Contacts

Applications must be prepared using Form PHS 5161–1 (Revised May 1996 and approved by OMB under control Number 0937–0189). Application kits and technical assistance on budget and business aspects of the application may be obtained from Ms. Carolyn A. Williams, Grants Management Officer, Division of Management Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852, telephone (301) 594–0758. Completed applications are to be submitted to the same address.

Questions regarding programmatic information and/or requests for technical assistance in the preparation of grant applications should be directed to Ms. Cynthia H. Amis, Director, Division of Program Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852, telephone (301) 594–0769.

Technical assistance is also available through the OMH Regional Minority Health Consultants (RMHCs). A listing of the RMHCs and how they may be contacted will be provided in the grant application kit. Additionally, applicants can contact the OMH Resource Center (OMH-RC) at 1–800–444–6472 for health information.

Criteria for Evaluating Applications

Review of Application

Applications will be screened upon receipt. Those that are judged to be incomplete, non-responsive to the announcement or nonconforming will be returned without comment. Each applicant may submit no more than one proposal under this announcement. If an organization submits more than one proposal, all will be deemed ineligible and returned without comment. Accepted applications will be reviewed for technical merit in accordance with PHS policies. Applications will be evaluated by an Objective Review Panel chosen for their expertise in minority health, experience relevant to this technical assistance and capacity development program, and their understanding and knowledge of the health problems confronting racial and ethnic minorities in the United States. Applicants are advised to pay close attention to the specific program guidelines and general instructions provided in the application kit.

Application Review Criteria

The technical review of applications will consider the following generic factors.

Factor 1: Background (15%)

Adequacy of demonstrated knowledge of the HIV/AIDS epidemic at the local level. Established level of cultural competence and sensitivity to the issues of minority populations impacted by HIV/AIDS in the service area. Expertise and understanding of HIV/AIDS prevention and treatment service delivery systems especially as related to HIV/AIDS care among minority populations. Demonstrated need for technical assistance and capacity development among the proposed target service organizations. History of long term relationship with the targeted minority community and evidence of support of local agencies and/or organizations.

Extent to which the applicant demonstrates access to targeted

organizations, is well-positioned and accepted within the communities to be served, and able to interface with community leadership and existing provider systems in the area. Demonstration of objective outcomes of past efforts/activities with the target population.

Factor 2: Objectives (15%)

Relative merit of the objectives of the demonstration project, their relevance to the program purpose and stated problem, and their attainability in the stated time frames.

Factor 3: Methodology (35%)

Appropriateness of proposed approach including any established organizational linkages for providing administrative and programmatic technical assistance related to HIV/AIDS and assisting with the capacity development of identified CBOs. Appropriateness of specific activities for providing administrative and programmatic technical assistance related to HIV/AIDS and capacity development. Logic and sequencing of the planned approaches in relation to the provision of HIV/AIDS technical assistance and capacity development. Appropriateness of defined roles and resources.

Factor 4: Evaluation (20%)

Thoroughness, feasibility, and appropriateness of the evaluation design, data collection, and analysis procedures. For example, number of new CBOs identified, number of new CBOs submitting applications for grants and number of grants awarded, number of CBOs requesting technical assistance and the percentage receiving it, and identification of outcome variables for quality of service. Clarity of the intent and plans to document the activities and their outcomes to establish a model. The potential for replication of the project for similar target populations and communities including the assessment of the utility of the different tools used to implement the program.

Factor 5: Management Plan (15%)

Applicant demonstrates an ability to mobilize a strong administrative technical assistance capacity with onsite knowledge of organizational management skills, diversification of fiscal base, and organizational development. Applicant organization's capability to manage and evaluate the project as determined by: The qualifications of proposed staff or requirements for "to be hired" staff; proposed staff level of effort; and management experience of the applicant.

Award Criteria

Funding decisions will be determined by the Deputy Assistant Secretary for Minority Health of the Office of Minority Health and the Director of the Office of HIV/AIDS Policy and will take under consideration: Recommendations/ratings of the review panel and geographic and racial/ethnic distribution. Consideration will also be given to projects proposed to be implemented in Empowerment Zones and Enterprise Communities in the 11 eligible metropolitan statistical areas.

Definitions

For purposes of this grant announcement, the following definitions are provided:

Community-Based Organization—Public and private, nonprofit organizations which are representative of communities or significant segments of communities, and which address health and human services.

Community Coalition—At least three (3) discrete organizations and institutions in a community which collaborate on specific community concerns, and seeks resolution of those concerns through a formalized relationship documented by written memoranda of understanding/ agreement signed by individuals with the authority to represent the organizations (e.g., president, chief executive officer, executive director).

Minority Community-Based Organization—Public and private nonprofit community-based minority organization or a local affiliate of a national minority organization that has: a governing board composed of 51 percent or more racial/ethnic minority members, a significant number of minorities employed in key program positions, and an established record of service to a racial/ethnic minority community.

Minority Populations—American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, and Native Hawaiian or Other Pacific Islander. (Revision to the Standards for the Classification of Federal Data on Race and Ethnicity, **Federal Register**, Vol. 62, No. 210, pg. 58782, October 30, 1997.)

Reporting and Other Requirements

General Reporting Requirements

A successful applicant under this notice will submit: (1) Progress reports; (2) an annual Financial Status Report; and (3) a final progress report and Financial Status Report in the format established by the Office of Minority Health, in accordance with provisions of the general regulations which apply under CFR 74.50—74.52.

Provision of Smoke-Free Workplace and Non-Use of Tobacco Products by Recipients of PHS Grants

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

Public Health System Reporting Requirements

This program is subject to Public Health Systems Reporting Requirements. Under these requirements, a community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted: (a) A copy of the face page of the application (SF 424), and (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) A description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the Office of Minority Health.

State Reviews

This program is subject to the requirements of Executive Order 12372 which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit to be made available under this notice will contain a listing of States which have chosen to set up

a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline established by the Office of Minority Health's Grants Management Officer.

The Office of Minority Health does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See "Intergovernmental Review of Federal Programs" Executive Order 12372 and 45 CFR Part 100 for a description of the review process and requirements).

OMB Catalog of Federal Domestic Assistance

The OMB Catalog of Federal Domestic Assistance number for this program is 93.006.

Dated: March 31, 2000.

Nathan Stinson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 00–9149 Filed 3–12–00; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Community/Tribal Subcommittee and the Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry: Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following subcommittee and committee meetings.

Name: Community/Tribal Subcommittee(CTS).

Times and Dates: 8:30 a.m.–4 p.m., May 2, 2000; 8:30 a.m.–3 p.m., May 3, 2000.

Place: Holiday Inn Select, 130 Clairmont Avenue, Decatur, Georgia 30030.

Status: Open to the public, limited by the available space.

The meeting room accommodates approximately 60 people.

Purpose: This subcommittee will bring to the Board advice, citizen input, and recommendations on community and tribal programs, practices, and policies of the Agency.

Matters To Be Discussed: Agenda items include an update on Action Items from previous meetings; discussion of criteria for CTS and Special Consultants' participation in non-ATSDR activities; CTS Special Consultant will update on attendance to Environmental Protection Agency's National Environmental Justice Advisory Committee Meeting; discussion on Federal Facilities activities with DOD and DOE Liaisons; update on ATSDR Five-Year Research Agenda; CTS update on cultural sensitivity training; and, an update on the Office of Tribal Affairs activities.

Name: Board of Scientific Counselors, ATSDR.

Times and Dates: 8:30 a.m.–5 p.m., May 4, 2000. 8:30 a.m.–1 p.m., May 5, 2000.

Place: Holiday Inn Select, 130 Clairmont Avenue, Decatur, Georgia 30030.

Status: Open to the public, limited by the available space.

The meeting room accommodates approximately 60 people.

Purpose: The Board of Scientific Counselors, ATSDR, advises the Secretary; the Assistant Secretary for Health; and the Administrator, ATSDR, on ATSDR programs to ensure scientific quality, timeliness, utility, and dissemination of results. Specifically, the Board advises on the adequacy of science in ATSDR-supported research, emerging problems that require scientific investigations, accuracy and currency of the science in ATSDR reports, and program areas to emphasize or de-emphasize. In addition, the Board recommends research programs and conference support for which the Agency awards grants to universities, colleges, research institutions, hospitals, and other public and private organizations.

Matters To Be Discussed: Agenda items will include an update on the development of the ATSDR Research Agenda; discussion on issues of implementation, integration of programs, and funding mechanisms for research agendas by CDC, EPA, and NIOSH; discussion of collection and storage of biological materials; discussion of voluntary research, the Great Lakes research program, and the AMPHS program; an overview of cultural sensitivity training on American Indian issues; an update by the Community and Tribal Subcommittee; and discussion of activities related to Libby, Montana.

Written comments are welcomed and should be received by the contact person listed below prior to the opening of the meeting.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Robert Spengler, Sc.D., Executive Secretary, BSC, ATSDR, M/S E–28, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0708.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 5, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–9188 Filed 4–12–00; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACF/ACYF/CB FY 2000–01]

Announcement of the Availability of Financial Assistance and Request for Applications To Support Adoption Opportunities Demonstration Projects, Child Abuse and Neglect Discretionary Activities, Child Welfare Training Projects, and Abandoned Infants Assistance Awards

AGENCY: Children's Bureau, Administration on Children, Youth and Families, ACF, DHHS.

ACTION: Notice.

Statutory Authority Covering Programs in This Announcement With Catalog of Federal Domestic Assistance (CFDA) Numbers

Adoption Opportunities: Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, as amended, (42 U.S.C. 5111) CFDA: 93.652.

Child Welfare Training: Section 426 of title IV–B, Subpart 1, of the Social Security Act, as amended, (42 U.S.C. 626) CFDA: 93.648.

Promoting Safe and Stable Families: Section 430 of title IV–B, Subpart 2, of the Social Security Act, as amended, (42 U.S.C. 629) CFDA: 93.556.

Child Abuse and Neglect: Section 104 of the Child Abuse Prevention and Treatment Act, as amended (42 U.S.C. 5101 *et seq.*) CFDA: 93.670.

Abandoned Infants: Section 101 of the Abandoned Infants Assistance Act, as amended (42 U.S.C. 670 note) CFDA: 93.551.

SUMMARY: The Children's Bureau (CB) within the Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF) announces the availability of fiscal year (FY) 2000 funds for competing new Aodption Opportunities Program, Child Abuse and Neglect Discretionary Activities, Child Welfare Training Projects, and Abandoned Infants Assistance projects. Funds from the Adoption Opportunities

Program are designed to provide support for demonstration projects that facilitate the elimination of barriers to adoption and provide permanent loving homes for children who would benefit from adoption, particularly children with special needs. Discretionary funds from the Promoting Safe and Stable Families Program support research, training and technical assistance and evaluation efforts to preserve families. Funds from the Child Abuse Prevention and Treatment Act support knowledge-building research and service demonstration projects designed to assist and enhance national, State and community efforts to prevent, assess, identify and treat child abuse and neglect. Funds from section 101 of the Abandoned Infants Assistance Act, as amended, (42 U.S.C. 670 note) are to establish a program of comprehensive service demonstration projects to prevent the abandonment in hospitals of infants and young children, particularly those exposed to a dangerous drug and those with the human immunodeficiency virus or who have been perinatally exposed to the virus. The Child Welfare Training Program funds support discretionary awards to public or other non-profit institutions of higher learning for special projects for training personnel for work in the field of child welfare, including traineeships with such stipends and allowances as may be permitted by the Department of health and Human Services (DHHS).

DATES: The closing date for receipt of applications is 4:30 P.M. EDT June 12, 2000.

Note: Applications should be submitted to the ACYF Operations Center at: 1815 N. Fort Myer Drive, Suite 300, Arlington, Virginia 22209. However, prior to preparing and submitting an application, in order to satisfactorily compete under this announcement it will be necessary for potential applicants to read the full announcement which is available through the addresses listed below.

ADDRESSES: Applications, including all necessary forms can be downloaded from the Children's Bureau web site at *www.acf.dhhs.gov/programs/cb*. Hard copies of the application may be obtained by writing or calling the Operations Center (see phone number and address below) or sending an email to *cb@lcgnet.com*.

FOR FURTHER INFORMATION CONTACT: ACYF Operations Center at: 1815 N. Fort Myer Drive, Suite 300, Arlington, Virginia 22209 or 1–800–351–2293.

SUPPLEMENTARY INFORMATION:

Priority Areas

2000A. Adoption Opportunities

2000A.1 Implementation of Collaborative Planning To Increase Inter-Jurisdictional Adoptions

Eligible Applicants: Eligibility is limited to the five grantees currently funded under Fiscal Year (FY) 1999 priority 99A.4 (Program Announcement No. ACF/ACYF/CB–99–05): the Central Council of Tlingit and Haida Tribes of Alaska, Juneau, AK; the Colorado Department of Human Services, Denver, CO; the Independent Adoption Center, Pleasant Hill, CA; the South Carolina Department of Social Services, Columbia, SC and the Texas Department of Protective and Regulatory Services, Austin, TX.

Project Duration: The projects will be awarded for a project period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $250,000 per budget year.

Matching Requirements: The applicant must provide at least 10 percent of the total approved cost of the project. The total approved cost is the sum of the ACF share and non-Federal share. Therefore, a project requesting $250,000 of Federal funds must include a match of at least $27,778 (10 percent of the total project cost of $277,778). Cash or in-kind contributions may meet the non-Federal share, although applicants are encouraged to meet their match through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects to be Funded: It is anticipated that 5 projects will be funded.

2000A.2 Operation of a National Adoption Information Exchange System

Eligible Applicants: Any national, State, or local government entity, public or private non-profit agency, organization or university with demonstrated expertise in adoption and the ability to maintain a National Adoption Information Exchange System.

Project Duration: The operation of a National Adoption Information Exchange system will be awarded for a project period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability to funds, satisfactory progress on the part to the grantee, the status of the Internet-based photo listing system, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $500,000 per budget year.

Matching or Cost Sharing Requirement: The grantee must provide at least 10 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $500,000 per budget period must include a match of at least $55,556 per budget period. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

Anticipated Number of Projects to be Funded: It is anticipated that 1 project will be funded.

2000A.3 Innovations Increasing Adoptive Placements of Hispanic/Latino Children

Eligible Applicants: States, local government entities, public or private non-profit licensed child welfare or adoption agencies and adoption exchanges.

Project Duration: The projects will be awarded for a project period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $250,000 per 12-month budget period.

Matching or Cost Sharing Requirement: Grantees must provide at least 10 percent of the total cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. Therefore, a project requesting $250,000 in Federal funds (based on an award of $250,000 per budget period) must include a match of at least $27,778 (10 percent of the total project cost). The non-Federal share may be cash or in-kind contributions, although applicants are

encouraged to meet their match requirements through cash contributions.

Anticipated Number of Projects to be Funded: It is anticipated that up to ten projects will be funded.

2000A.4 Leadership Development: Parent Support Groups

Eligible Applicants: Private non-profit organizations or universities (including university affiliated programs) with expertise in child welfare and the ability to create and establish a network of parent support groups for (1) foster parents (2) adoptive parents of children with developmental disabilities and/or special needs, and/or (3) relatives caring for kin in foster care. The Children's Bureau anticipates making three awards, one to focus on each target group. That is, one to develop a network for foster parents; one to develop a network for adoptive parents of children with developmental disabilities and/or special needs; and one to develop a network for relatives caring for kin in foster care, pending successful review. Eligible applicants must have the ability to (1) provide (or broker the provision of) training and technical assistance for parent groups and (2) to solicit, review, and fund a limited number of mini-grants directly to parent groups.

Project Duration: The projects will be awarded for a project period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.]

Federal Share of Project Costs: The maximum Federal share of the project is $300,000 per budget year per grantee.

Matching or Cost Sharing Requirement: The grantee must provide at least 10 percent of the total cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. A project requesting $300,000 per budget period must include a match of at least $33,333 per budget period. The non-Federal share may be in cash or in-kind contributions, although applicants are encouraged to meet their match requirement through cash contributions.

Anticipated Number of Projects to be Funded: It is anticipated that three projects will be funded—one for each target population ((1) foster parents, or (2) adoptive parents of children with developmental disabilities and/or special needs, or (3) relatives caring for kin in foster care).

2000A.5 Innovations To Increase Permanency Options for Children Using Kinship Care

Eligible Applicants: Eligibility is limited to States, local social services agencies and federally recognized Indian Tribes and Indian Tribal Organizations. The Children's Bureau encourages partnerships with private non-profit agencies, universities, and foundations.

Project Duration: The projects will be awarded for a project period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $300,000 per budget year.

Matching or Cost Sharing Requirement: The grantee must provide at least 10 percent of the total cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. A project requesting $300,000 per budget period must include a match of at least $33,000 per budget period. The non-Federal share may be in cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

Anticipated Number of Project to be Funded: It is anticipated that 5 projects will be funded.

2000A.6 Knowledge Development for Concurrent Planning

Eligible Applicants: State or local governments alone or in collaboration with Federally recognized tribes and tribal organizations or with private non-profit licensed child placement or adoption agencies with expertise in permanency planning.

Project Duration: The projects will be awarded for a project period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Cost: The maximum Federal share of the project is $300,000 per budget year.

Matching or Cost Sharing Requirement: The grantee must provide at least 10 percent of the total approved cost of the project. The total approved cost is the sum of the ACYF share and non-Federal share. A project requesting $300,000 per budget period must include a match of at least $33,333 per budget period. The non-Federal share may be in cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

Anticipated Number of Projects to be Funded: It is anticipated that five projects will be funded.

2000A.7 Collaborations Between Child Welfare Agencies and Court Systems to Facilitate Timely Adoptions

Eligible Applicants: State and local government or nonprofit organizations engaged in adoption services or child welfare activities, courts, and federally recognized Indian Tribes and Indian Tribal Organizations. Current grantees receiving funds from the Children's Bureau for collaborative efforts for this purpose are not eligible.

Project Duration: The projects will be awarded for a project period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $200,000 per budget year.

Matching or Cost Sharing Requirement: The grantee must provide at least 10 percent of the total cost of the project. The total approved cost is the sum of the ACF share and the non-Federal share. Therefore, a project requesting $200,000 in Federal funds (based on an award of $200,000 per budget period) must include a match of at least $22,222 (10 percent of the total project cost). The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

Anticipated Number of Projects to be Funded: It is anticipated that up to 10 projects will be funded.

2000A.8 Innovative Approaches To Expediting Permanence and Implementing ASFA

Eligible Applicants: States and local government entities, public or private non-profit licensed child welfare or adoption agencies, local social services agencies and Federally recognized Indian Tribes and Indian Tribal Organizations. The Children's Bureau encourages partnerships with private

non-profit agencies, universities, and foundations, if appropriate.

Project Duration: The projects will be awarded for a period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $300,000 per budget year.

Matching or Cost Sharing Requirement: The grantee must provide at least 10 percent of the total cost of the project. The total approved cost is the sum of the ACYF share and non-Federal share. A project requesting $300,000 per budget period must include a match of at least $33,333 per budget period. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

Anticipated Number of Projects to be Funded: It is anticipated that up to ten projects will be funded.

2000B: Child Abuse and Neglect Discretionary Activities

2000B.1 Consortium for Longitudinal Studies of Child Maltreatment Projects (LONGSCAN)

Eligible Applicants: Eligibility is limited to current grantee and subgrantee members of the Consortium for Longitudinal Studies: The University of North Carolina, Chapel Hill; San Diego State University Foundation, San Diego; the Juvenile Protective Association, Chicago; the Department of Social and Health Services, Olympia, Washington; and the University of Maryland at Baltimore.

Project Duration: The projects will be awarded for a project period of 60 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of each of the five Satellite Sites is not to exceed $250,000 per 12-month budget period. The maximum Federal share of the coordinating center is not to exceed $500,000 per 12-month budget period.

Matching Requirements: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that one Coordinating Center and five Satellite Sites will be funded up to the maximum funding level.

2000B.2 National Data Archive for Child Abuse and Neglect

Eligible Applicants: Public or private nonprofit agencies, organizations, and institutions of higher learning.

Project Duration: The projects will be awarded for a project period of 60 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $500,000 per 12-month budget period.

Matching Requirements: There is no matching requirement

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded.

2000B.3 University-Based Doctoral Candidates in Human Services, Medical, or Law Student and Faculty Fellowships for Investigator-Initiated Research in Child Abuse and Neglect

Eligible Applicants: Institutions of higher learning, including law schools and medical schools, teaching hospitals on behalf of qualified doctoral candidates in human service disciplines, law students, medical students, residents (medical, surgical, pediatric, or others), house officers (medical), or fellows (medical) enrolled in the institution and faculty employed by the institution. To be eligible to administer such a grant, the institution must be fully accredited by one of the regional institutional accrediting commissions recognized by the U.S. Secretary of Education and the Council on Post-Secretary Accreditation, or, as appropriate, the Association for American Law Schools or the American Bar Association; the Accreditation Council for Graduate Medical Education, American Association of Medical Colleges, or the Liaison Committee for Medical Education, as applicable. While an individual is considered to be the beneficiary of the grant support, awards will be made only to eligible institutions on behalf of their qualified candidates.

Project Duration: The length of the projects may not exceed 17 months.

Federal Share of the Project costs: The maximum Federal share of the project is not to exceed $100,000 per university or institution, at $18,750 per student with a maximum of four student-candidates and $25,000 for the faculty candidate.

Matching Requirement: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that up to five sites will be funded.

2000B.4 Pilot Test Sites for a Child Abuse and Neglect Research Data Collection Instrument

Eligible Applicants: Public or private nonprofit agencies, organizations, and institutions of higher learning, alone or in partnerships. If partnerships are created, one agency must be identified as the applicant organization and will have legal responsibility for the grant.

Project Duration: The length of the project must not exceed 17 months.

Federal Share of Project Costs: The maximum Federal share of each site is $50,000.

Matching Requirements: There is no matching requirement.

Anticipated Number of Projects to be Funded: It is anticipated that up to five sites will be funded.

2000B.5 National Network of Mutual Support/Self-Help Programs in Partnership With Communities

Eligible Applicants: Public or private nonprofit agencies or organizations who have the capacity to operate a national organization as well as assist in the creation of local support groups.

Project Duration: The projects will be awarded for a project period of 48 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $500,000 per budget year.

Matching or Cost Sharing Requirement: The grantee must provide at least 10% of the total cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. A project requesting $500,000 per budget period must include a match of at least $55,555 per budget period. The non-federal share may be in cash or in-kind contributions, although applicants are encouraged to meet their match requirement through cash contributions.

Anticipated Number of Projects to be Funded: It is anticipated that one project will be funded.

2000C: Child Welfare Training Discretionary Grants

2000C.1 Training of Child Welfare Practitioners To Work Effectively With Youth Transitioning Out of Foster Care Through the Federal Independent Living Program

Eligible Applicants: Public or non-profit institutions of higher education with accredited social work education programs, or other accredited bachelor or graduate level programs leading to a degree relevant to work in child welfare.

Project Duration: The projects will be awarded for a project period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $200,000 per budget year.

Matching or Cost Sharing Requirement: The grantee must provide at least 25 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $200,000 per budget period must include a match of at least $66,667 per budget period. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Because this is a training grant, indirect costs for these projects shall not exceed 8 percent. Funds from this grant cannot be used to match title IV–E training funds.

Anticipated Number of Projects to be Funded: It is anticipated that approximately ten projects will be funded.

2000C.2 Training for Managers and Supervisors To Enhance Their Capability To Understand and To Implement the Adoption and Safe Families Act of 1997

Eligible Applicants: Public or non-profit institutions of higher education with accredited social work education programs, or other accredited bachelor or graduate level programs leading to a degree relevant to work in child welfare.

Project Duration: The length of the project may not exceed 36 months. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share of the project is $200,000.

Matching or Cost Sharing Requirement: The grantee must provide at least 25 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $200,000 per budget period must include a match of at least $66,667 per budget period. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Because this is a training grant, indirect costs for these projects shall not exceed 8 percent. Funds from this grant cannot be used to match the title IV–E training funds. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

Anticipated Number of Projects to be Funded: It is anticipated that up to ten projects will be funded.

2000C.3 Training of Child Welfare Agency Supervisors

Eligible Applicants: Public or non-profit institutions of higher education with accredited social work education programs, or other accredited bachelor or graduate level programs leading to a degree relevant to work in child welfare.

Project Duration: The projects will be awarded for a project period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share is not to exceed $200,000 per 12-month budget period.

Matching or Cost Sharing Requirement: The grantee must provide at least 25 percent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $200,000 per budget period must include a match of at least $66,667 per budget period. The non-Federal share may be case or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Because this is a training grant, indirect costs for their projects shall not exceed 8 percent. Funds from this grant cannot be used to match title IV–E training funds. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowable of unmatched Federal funds.

Anticipated Number of Projects to be Funded: It is anticipated that a total of approximately five projects will be funded.

2000C.4 Professional Education for Current and Prospective Public Child Welfare

Practitioners Leading to Bachelor of Social Work (BSW) Degrees

Eligible Applicants: Public or non-profit institutions of higher education with accredited social work education programs.

Project Duration: The projects will be awarded for a project period of 36 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: The maximum Federal share is not to exceed $75,000 for the 12-month budget period. A traineeship must not exceed $7,500 per student per budget year. A minimum of three-fourths of the total project funds must be used for traineeships. The subsequent year funding of the project will depend on the availability of funds.

Matching or Cost Sharing Requirement: No matching funds are required for the portion of the budget which pays for traineeships. However, grantees must provide at least 25 percent of the total cost of grant activities other than traineeships. The total approved cost of these activities is the sum of the ACYF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through a cash contribution. Therefore, a project requesting $18,750 in Federal funds for non-traineeship activities over the 12 month time span of the budget (based on $56,250 traineeship activities per budget period) must include a match of

at least $6,250 (25 percent of the total cost for their activities). Because this is a training grant, indirect costs for these projects shall not exceed 8 percent. Funds from this grant cannot be used to match title IV–E training funds.

Anticipated Number of Projects to be Funded: It is anticipated that approximately ten projects will be funded.

2000D: Abandoned Infants Program Service Demonstration Projects

2000D.1 Previous Service Demonstration Projects

Eligible Applicants: Comprehensive service demonstration projects initially funded in FY 1996. Current grantees applying under this priority area should be advised that this is a competitive funding process and that applications approved for funding will be given a new grant number. Existing award activities cannot overlap with the new grant's project period and funds from the currently existing grants cannot be expended for new grant activities.

Project Duration: The projects will be awarded for a project period of 48 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share Of Project Costs: Grant amounts will vary and range up to $450,000 per budget year for each of the four years.

Matching Requirement: The grantee must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the federal share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting a total of $1,800,000 in Federal funds for all four project years (based on an award of $450,000 per budget year), must include a match of at least $200,000 (10 percent of total approved project costs, *i.e.*, $50,000 per budget period).

Anticipated Number of Projects to be Funded: It is anticipated that three to six projects will be funded under this priority area.

2000D.2 New Start Comprehensive Service Demonstration Projects

Eligible Applicants: Any State, local public or nonprofit agency or organization including accredited colleges and universities. Applicants who can apply under this priority area include: (1) Applicants in jurisdictions in which there currently does not exist a program funded under the Abandonment Infants Assistance Program (call the National Abandoned Infants Assistance Resource Center at 510–643–8390 for a list of current programs); (2) applicants who have previously received funding under the Abandoned Infants Assistance Program but are not currently grantees; and (3) applicants that are currently funded by the Abandoned Infants Assistance Program but are establishing a program in a separate locality serving a different target population, e.g., an agency establishing a program in a different city or establishing a second program in a city with a population over 1,000,000.

Project Duration: The projects will be awarded for a project period of 48 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: Grant amounts will vary and range up to $450,000 per budget year for each of the four years.

Matching Requirement: The grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting a total of $1,800,000 in Federal funds for all four project years (based on an award of $450,000 per budget year), must include a match of at least $200,000 (10 percent of total approved project costs, *i.e.*, $50,000 per budget period).

Anticipated Number Of Projects to be Funded: It is anticipated that three to six projects will be funded.

2000D.3 Family Support Services for Grandparents and Other Relatives Providing Care for Children and Substance Abusing and HIV-Positive Women

Eligible Applicants: Public agencies and private, non-profit organizations and institutions of higher education are eligible to apply.

Project Duration: The projects will be awarded for a period of 48 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: Grants amounts will not exceed $100,000 per budget year for each of the four years. The dollar amount requested must be fully justified and documented.

Matching Requirement: Grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the federal share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting a total of $400,000 in Federal funds for all four project years (based on an award of $100,000 per budget year), must include a match of at least $44,444 (10 percent of total approved project costs, *i.e.*, $11,111 per budget period).

Anticipated Number of Projects to be Funded: It is anticipated that three projects will be funded.

2000D.4 Recreational Services for Children Affected by HIV/AIDS

Eligible Applicants: Public agencies and private, non-profit organizations and institutions of higher education are eligible to apply.

Project Duration: The projects will be awarded for a project period of 48 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part to the grantee, and a determination that continued funding would be in the best interest of the government.

Federal Share of Project Costs: Grant amounts will vary from $50,000 to $100,000 per budget year for each of the four years. The dollar amount requested must be fully justified and documented.

Matching Requirement: Grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the federal share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their matching requirements through cash contributions. Therefore, a project requesting a total of $400,000 in

Federal funds for all four project years (based on an award of $100,000 per budget year), must include a match of at least $44,444 (10 percent of total approved project costs, *i.e.*, $11,111 per budget period).

Anticipated Number of Projects to be Funded: It is anticipated that two to three projects will be funded.

Evaluation Criteria

Reviewers will consider the following factors when scoring applications. However, in order to adequately prepare their applications, applicants must refer to the full program announcement for the specific evaluation criteria for each priority area. The points awarded for each criterion vary, depending on the specific priority area.

Criterion 1: Objectives and Need for Assistance

Applications will be judged on the extent to which they clearly specify the purposes and/or strategies of the proposed project and their relationship to legislative authority and child welfare outcomes, as appropriate; the quality of their statement regarding the need for the project; and evidence that the applicant understands current issues and recent developments in the field that may have relevance to the implementation of the project. Applicants must refer to the specific evaluation criteria for each priority area contained in the full Program Announcement in order to adequately prepare their applications. The points awarded for this criterion vary, depending on the specific priority area.

Criterion 2: Results or Benefits Expected

Applications will be judged on the extent to which they define both interim and final results and benefits that they will seek to achieve through implementation of their proposed projects, how these results/benefits will contribute to the overall improvement of the field, and, where appropriate, the innovative aspects of the proposed project. Applicants are encouraged to define clear, objective measures by which their results/benefits will be determined. Applicants must refer to the specific evaluation criteria for each priority area contained in the full Program Announcement in order to adequately prepare their applications. The points awarded for this criterion vary, depending on the specific priority area.

Criterion 3: Approach

Applicants will be judged on the clarity, feasibility, and thoroughness of their description of the approach that they intend to use in implementing proppsed projects. The approach sections will be expected to include, as appropriate, information on barriers to implementation and proposed solutions to those barriers; necessary collaborations with other organizations and agencies and their respective roles; evaluation plans; reporting requirements; and staffing plans. Applicants must refer to the specific evaluation criteria for each priority area contained in the full Program Announcement in order to adequately prepare their applications. The points awarded for this criterion vary, depending on the specific priority area.

Criterion 4: Organization Profile

Applicants will be judged on the experience and demonstrated competence of staff who are proposed to implement the project and, as appropriate, the experience of the organization in implementing related projects. Applicants must refer to the specific evaluation criteria for each priority area contained in the full Program Announcement in order to adequately prepare their applications. The points awarded for this criterion vary, depending on the specific priority area.

Criterion 5: Budget and Budget Justification

Applicants will be judged on the adequacy, reasonableness, and completeness of their budget requests to support their proposed projects, including their management plans to control and account for expenditure of project funds. Applicants must refer to the specific evaluation criteria for each priority area contained in the full Program Announcement in order to adequately prepare their applications. The points awarded for this criterion vary, depending on the specific priority area.

Required Notification of the Single Point of Contact

Most portions of this program are covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under the Order, States may design their own process for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, and American Samoa have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-three jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Applicants to the Adoption Opportunities program are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the accommodate or explain rule. A list of the Single Points of Contact for each State and Territory can be found on the web site *http://www.dhhs.gov/progorg/grantsnet/laws-reg/spoq0695.htm*.

Dated: April 7, 2000.

Patricia Montoya

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 00–9150 Filed 4–12–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1224]

Agency Information Collection Activities: Proposed Collection; Comment Request; Guidance for Industry: Submitting and Reviewing Complete Responses to Clinical Holds

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information contained in a guidance for industry entitled "Submitting and Reviewing Complete Responses to Clinical Holds." The guidance describes how to submit a complete response if an investigational new drug (IND) application is placed on clinical hold by FDA.

DATES: Submit written comments on the collection of information by June 12, 2000.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry: "Submitting and Reviewing Complete Responses to Clinical Holds"

On November 21, 1997, the President signed into law the Food and Drug Administration Modernization Act (the Modernization Act) (Public Law 105–115). Section 117 of the Modernization Act provides that a written request to FDA from the applicant of an investigation that a clinical hold be removed shall receive a decision in writing, specifying the reasons for that decision, within 30 days after receipt of such request. A clinical hold is an order issued by FDA to the applicant to delay a proposed clinical investigation or to suspend an ongoing investigation for a drug or biologic. An applicant may respond to a clinical hold.

Under section 505(i)(3)(C) of the Federal Food, Drug, and Cosmetic Act, any written request to FDA from the sponsor of an investigation that a clinical hold be removed must receive a decision, in writing and specifying the reasons, within 30 days after receipt of the request. The request must include sufficient information to support the removal of the clinical hold.

In the **Federal Register** of May 14, 1998 (63 FR 26809), FDA published a notice of availability of a guidance that described how applicants should submit responses to clinical holds so that they may be identified as complete responses and the agency can track the time to respond. FDA is now issuing a revised guidance.

The revised guidance states that FDA will respond in writing within 30-calendar days of receipt of a sponsor's request to release a clinical hold and a complete response to the issue(s) that led to the clinical hold. An applicant's complete response to an IND clinical hold is a response in which all clinical hold issues identified in the clinical hold letter have been addressed.

The guidance requests that applicants type in large, bold letters at the top of the cover letter of the complete response "Clinical Hold Complete Response" to expedite review of the response. The guidance also requests that applicants submit the complete response letter in triplicate to the IND, and that they fax a copy of the cover letter to FDA's contact listed in the clinical hold letter who is responsible for the IND. The guidance requests more than an original and two copies of the cover letter in order to ensure that the submission is received and handled in a timely manner.

Based on data concerning the number of complete responses to clinical holds received by the Center for Drug Evaluation and Research (CDER) from July 1, 1998, to June 30, 1999, CDER estimates that approximately 48 responses are submitted annually from approximately 43 applicants, and that it takes approximately 284 hours to prepare and submit to CDER each response.

Based on data concerning the number of complete responses to clinical holds received by the Center for Biologics Evaluation and Research (CBER) in fiscal year 1999, CBER estimates that approximately 134 responses are submitted annually from approximately 110 applicants, and that it takes approximately 284 hours to prepare and submit to CBER each response.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

Complete Responses to Clinical Holds	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
CDER	43	1	48	284	13,632
CBER	110	1	134	284	38,056
Total					51,688

[1] There are no capital cost or operating and maintenance costs associated with this collection of information.

Dated: April 7, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–9128 Filed 4–12–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1226]

Agency Information Collection Activities; Proposed Collection; Comment Request; Investigational Device Exemptions, Reports, and Records

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements for investigational device exemptions (IDE's).

DATES: Submit written comments on the collection of information by June 12, 2000.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Investigational Device Exemptions, Reports, and Records—21 CFR Part 812 (OMB Control No. 0910–0078)—Extension

Section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) establishes the statutory authority to collect information regarding investigational devices, and establishes rules under which new medical devices may be tested using human subjects in a clinical setting. The FDA Modernization Act of 1997 added section 520(g)(6) to the act and permitted changes to be made to either the investigational device or to the clinical protocol without FDA approval of an IDE supplement.

An IDE allows a device, which would otherwise be subject to provisions of the act, such as premarket notification or premarket approval, to be used in investigations involving human subjects in which the safety and effectiveness of the device is being studied. The purpose of part 812 (21 CFR part 812) is to encourage, to the extent consistent with the protection of public health and safety and with ethical standards, the discovery and development of useful devices intended for human use. The IDE regulation is designed to encourage the development of useful medical devices, and allow investigators the maximum freedom possible, without jeopardizing the health and safety of the public or violating ethical standards.

To do this, the regulation provides for different levels of regulatory control depending on the level of potential risk the investigational device presents to human subjects. Investigations of significant risk devices, ones that present a potential for serious harm to the rights, safety, or welfare of human subjects, are subject to the full requirements of the IDE regulation. Nonsignificant risk device investigations, ones that do not present a potential for serious harm, are subject to the reduced burden of the abbreviated requirements.

The regulation also includes provisions for treatment IDE's. The purpose of these provisions is to facilitate the availability, as early in the device development process as possible, of promising new devices to patients with life-threatening or serious conditions for which no comparable or satisfactory alternative therapy is available.

Section 812.10 allows the sponsor of the IDE to request a waiver to all of the requirements of part 812. This information is needed for FDA to determine if waiver of the requirements of part 812 will impact the public's health and safety.

Sections 812.20, 812.25, and 812.27, consist of the information necessary to file an IDE application with FDA. The submission of an IDE application to FDA is required only for significant risk device investigations. Section 812.20 lists the data requirements for the original IDE application; § 812.25 lists the contents of the investigational plan; and § 812.27 lists the data relating to previous investigations or testing. The information in this original IDE application is evaluated by the Center for Devices and Radiological Health to determine whether the proposed investigation will reasonably protect the public health and safety, and for FDA to make a determination to approve the IDE.

Once FDA approves an IDE application, a sponsor must submit certain requests and reports. Under § 812.35, a sponsor who wishes to make a change in the investigation which affects the scientific soundness of the study or the rights, safety, or welfare of the subjects is required to submit a request for the change to FDA. Under § 812.150, a sponsor is required to submit reports to FDA. These requests and reports are submitted to FDA as supplemental applications. This information is needed for FDA to ensure

protection of human subjects and to allow review of the study's progress.

Section 812.36(c) identifies the information necessary to file a treatment IDE application. FDA uses this information to determine if wider distribution of the device is in the interests of the public health. Section 812.36(f) identifies the reports required to allow FDA to monitor the size and scope of the treatment IDE, to assess the sponsor's due diligence in obtaining marketing clearance of the device and to ensure the integrity of the controlled clinical trials.

Section 812.140 lists the recordkeeping requirements for investigators and sponsors. FDA requires this information for tracking and oversight purposes. Investigators are required to maintain records, including correspondence and reports concerning the study; records of receipt, use, or disposition of devices; records of each subject's case history and exposure to the device; informed consent documentation; study protocol and documentation of any deviation from the protocol. Sponsors are required to maintain records, including correspondence and reports concerning the study; records of shipment and disposition; signed investigator agreements; adverse device effects information; and, for a nonsignificant risk device study, an explanation of the nonsignificant risk determination, records on device name and intended use, study objectives, investigator information, institutional review board (IRB) information, and a statement on the extent that good manufacturing practices will be followed.

The most likely respondents to this information collection will primarily be medical device manufacturers, investigators, hospitals, health maintenance organizations, and businesses.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
812.10	1	1	1	1	1
812.20, 812.25, and 812.27	600	0.5	300	80	24,000
812.35 and 812.150 (Significant)	600	7	4,200	6	25,200
812.150 (Nonsignificant)	600	0.017	10	6	60
812.36(c)	6	1	6	120	720
812.36(f)	6	2	12	20	240
Total					50,221

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
812.140	600	0.5	300	10	3,000
Original Supplemental	600	7	4,200	1	4,200
Nonsignificant	600	1	600	6	3,600
Total					10,800

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

I. Reporting

Section 812.10 estimates are based on the fact that FDA has received very few, if any, waiver requests in the past, and estimates that very few will be submitted in the future. Therefore, FDA estimates a minimal burden to account for waiver requests.

Sections 812.20, 812.25, and 812.27 estimates are based on the average of IDE's submitted from fiscal years 1995 through 1999. FDA estimates the annual reporting burden for one IDE original application to be approximately 80 hours, and the annual reporting burden for one IDE supplement to be approximately 6 hours.

Sections 812.35 and 812.150 estimates are based on the average of IDE supplements submitted from fiscal years 1995 through 1999 for significant risk device studies. FDA estimates the annual reporting burden for one IDE supplement to be approximately 6 hours.

The reporting burden for nonsignificant risk device studies (§ 812.150) is negligible. Nonsignificant risk device studies are not reported to FDA unless a problem is reported such as an unanticipated adverse device reaction, failure to obtain informed consent, withdrawal of IRB approval, or a recall of a device. In the past, an average of 10 incidences or less annually have been reported to FDA.

Section 812.36(c) and (f) estimates are based on FDA's experience with the treatment use of drugs and knowledge of the types of devices that may meet the treatment use criteria. FDA estimates that an average of six treatment use applications will be submitted each year. FDA estimates that it will take approximately 120 hours to prepare a treatment IDE and the total annual burden for preparing applications will be 720 hours. FDA also estimates that it will take approximately 20 hours to prepare a semiannual report, resulting in a total annual burden of 240 hours for annual reports.

II. Recordkeeping

Section 812.40 estimates are based on conversations with manufacturers, industry trade association groups, and businesses over the last 3 years. For significant risk device investigations, FDA has estimated that the recordkeeping burden for preparing an original IDE submission averages 10 hours for each original IDE submission. Similarly, through the same conversations mentioned above, FDA has estimated recordkeeping for each supplement requires 1 hour. The recordkeeping burden for nonsignificant risk device investigations is difficult to estimate because nonsignificant risk device investigations are not required to

be submitted to FDA. The IDE staff estimates that the number of recordkeepers for nonsignificant risk device investigations is equal to the number for active significant risk device investigations. The recordkeeping burden, however, is reduced for nonsignificant risk device studies. It is estimated that 600 recordkeepers will spend 6 hours each in maintaining these records.

Dated: April 7, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–9131 Filed 4–12–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–4329]

Agency Information Collection Activities; Announcement of OMB Approval; Filing Objections and Requests for a Hearing on a Regulation or Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Filing Objections and Requests for a Hearing on a Regulation or Order" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 29, 2000 (65 FR 10811), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0184. The approval expires on March 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: April 7, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–9127 Filed 4–12–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0595]

Agency Information Collection Activities; Announcement of OMB Approval; Reporting and Recordkeeping Requirements for Manufacturers, Importers, User Facilities, and Distributors of Medical Devices Under FDAMA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Reporting and Recordkeeping Requirements for Manufacturers, Importers, User Facilities, and Distributors of Medical Devices Under FDAMA" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the**Federal Register** of January 26, 2000 (65 FR 4249), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0437. The approval expires on March 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: April 7, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–0130 Filed 4–12–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–4069]

Agency Information Collection Activities; Announcement of OMB Approval; Notice of Participation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Notice of Participation" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 29, 1999 (64 FR 73056), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0191. The approval expires on March 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: April 7, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–9133 Filed 4–12–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–4068]

Agency Information Collection Activities; Announcement of OMB Approval; Advisory Opinions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing

that a collection of information entitled "Advisory Opinions" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 29, 1999 (64 FR 73056), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0193. The approval expires on March 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: April 7, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–9134 Filed 4–12–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–0002]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Application for Exemption From Federal Preemption of State and Local Medical Device Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by May 15, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Application for Exemption From Federal Preemption of State and Local Medical Device Requirements—21 CFR Part 808 (OMB Control No. 0910–0129)—Extension

Section 521(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360k(a)) provides that no State or local government may establish, or continue in effect, any requirement with respect to a medical device that is different from, or in addition to, any Federal requirement applicable to the device under the act. Under section 521(b) of the act, following receipt of a written application from the State or local government involved, FDA may exempt from preemption a requirement that is more stringent than the Federal requirement, or that is necessitated by compelling local conditions and compliance with the requirement that would not cause the device to be in violation of any portion of any requirement under the act. Exemptions are granted by regulation issued after notice and opportunity for an oral hearing.

The regulations in 21 CFR 808.20 require a State or local government that is seeking an exemption from preemption to submit an application to FDA. The application must include a copy of the State or local requirement, as well as information about its interpretation and application, and a statement as to why the applicant believes that the requirement qualifies for exemption from preemption under the act. FDA will use the information in the application to determine whether the requirement meets the criteria for exemption in the act and whether granting an exemption would be in the interest of the public health.

In addition, 21 CFR 808.25 provides that an interested person may request a hearing on an application by submitting a letter to FDA following the publication by FDA of a proposed response to the application.

In the **Federal Register** of January 18, 2000 (65 FR 2631), the agency requested comments on the proposed collections of information. No significant comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
808.20	3	1	3	100	300
808.25	3	1	3	10	30
Total					330

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based its estimates of the number of submissions expected in the future contained in table 1 of this document on the number of submissions submitted in the last 3 years and on the number of inquiries received indicating that applications would be submitted in the next year. FDA based its estimates of the time required to prepare submissions on discussions with those who have prepared submissions in the last 3 years.

Dated: April 7, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–9132 Filed 4–12–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Transition Career Development Award (K22).

Date: April 26, 2000.

Time: 2 pm to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Fitzpatrick Manhattan Hotel, 687 Lexington Avenue, New York, NY 10022.

Contact Person: Mary Bell, Scientific Review Administrator, Grants Review Branch, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, Rockville, MD 20892, 301/496–7978.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.396, Cancer Research Manpower; 93.399, Cancer Control, National institutes of Health, HHS)

Dated: April 5, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–9185 Filed 4–12–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Environmental Health Sciences: Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Environmental Health Sciences Council, Agenda Available: http://www.niehs.nih.gov/dert/c-agenda.htm.

Date: May 15–16, 2000.

Open: May 15, 2000, 8:30 am to 5 pm.

Agenda: Director's Report and discussion of program policies and issues.

Place: Building 31C, Conference Room 6, National Institutes of Health, 3100 Center Drive, Bethesda, MD 20892.

Closed: May 16, 2000, 8:30 am to 2 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Building 31C, Conference Room 6, National Institutes of Health, 3100 Center Drive, Bethesda, MD 20892.

Contact Person: Anne P. Sassaman, Director, Division of Extramual Research and Training, Executive Secretary, National Institutes of Environmental, Health Sciences, NIH/PHS, P.O. Box 12233, Research Triangle Park, NC 27709, 919/541–7723.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response of Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93–142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances-Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: April 5, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–9184 Filed 4–12–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel I in May 2000.

A summary of the meetings and a roster of the members may be obtained from: Ms. Coral Sweeney, Review Specialist, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meetings will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, these meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c) (6) and 5 U.S.C. App. 2, sec. 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: May 1–4, 2000.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: May 1–4, 2000, 8:30 a.m.–5 p.m./ adjournment.

Panel: Community Action Grants, PA 000–003.

Contact: Michael Koscinski, Room 17–89, Parklawn Building, Telephone: 301–443–6094 and FAX: 301–443–3437.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: April 3, 2000.

Coral Sweeney,

Review Specialist, Substance Abuse and Mental Health Services Administration.

[FR Doc. 00–9208 Filed 4–12–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4590–N–01]

Notice of Public Forums and Establishment of HUD Task Force on Predatory Lending Practices

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: HUD announces that its Assistant Secretary for Housing-FHA Commissioner and its General Counsel will co-chair public fact-finding forums on the subject of predatory lending practices during the months of April and May 2000, in the cities of Chicago, Los Angeles, New York and Baltimore. HUD is conducting these forums to gather as much information as possible to propose substantive protections to address abusive lending practices. Toward this objective, HUD also announces the establishment of a Task Force on predatory lending practices. HUD's Task Force includes representatives of consumer, civil rights, community and industry organizations as well as local officials. HUD will solicit the individual views of these members to draw upon their experience, efforts and successes at addressing abusive lending practices at the state and local level throughout the Nation.

DATES: The specific dates and times of HUD's forums as well the issues to be addressed will be announced on HUD's web site at http://www.hud.gov and through HUD's Office of Public Affairs.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning this Notice you may contact Allen Fishbein at (202) 708–3600, or via facsimile at (202) 708–2842, or in writing at the Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9110, Washington, DC 20410.

For legal questions, you may contact Kenneth A. Markison, Assistant General Counsel for GSE/RESPA, or Teresa L. Baker, Attorney for RESPA, Room 9262, Department of Housing and Urban Development, Washington, DC 20410; telephone (202) 708–3137 (these are not toll free numbers). Hearing or speech impaired individuals may access these numbers via TTY by calling the toll free General Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. HUD's Views on Predatory Lending Practices

Predatory lending abuses inflate real estate settlement costs, involve high interest rates, result in debts that families cannot afford to repay, strip equity and, in the worst cases, result in default and the loss of homeownership. Evidence from around the country continues to indicate that many of those engaged in predatory lending practices target low income minority communities for their activities, and may be treating minority and elderly borrowers less favorably than others based on their race, age, color or national origin.

Simultaneous with this review, HUD, through its proposed rule on new housing goal levels for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Government Sponsored Enterprises, or GSEs), issued March 9, 2000 (65 FR 12632), will determine what controls should be established to avoid counting high cost loans with predatory features towards the GSE Housing goals. Additionally, while HUD has addressed related problems in HUD's Federal Housing Administration (FHA) program, including appraisal issues, HUD must make certain that FHA program beneficiaries are protected from predatory abuses.

II. Background

In July, 1998, HUD and the Board of Governors of the Federal Reserve System (Board) delivered a Joint Report to Congress Recommending Reform of the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA). HUD and the Board recommended a number of legislative proposals to remedy predatory lending abuses.

HUD has legal authority under several laws that can, at least in part, address a number of these abuses.

RESPA requires that consumers be provided with greater and more timely information on the nature and costs of the settlement process including the costs of obtaining a mortgage loan. RESPA also protects consumers from unnecessarily high settlement charges caused by kickbacks, referral fees and unearned fees involved in real estate settlement services. (12 U.S.C. 2601, *et seq.*)

The Fair Housing Act prohibits discrimination on the basis of race, color, religion, sex, familial status, national origin, or handicap in residential real-estate related transactions, which are defined to include the making or purchasing of mortgage loans. (42 U.S.C. 3605.)

The Federal Housing Enterprises Financial Safety and Soundness Act requires the Secretary to establish goals for the GSEs' purchase of mortgages for low- and moderate income families, properties in central cities, rural and other underserved areas and special affordable housing. The Act also requires the Secretary to prohibit discrimination in the GSEs' mortgage purchases. (12 U.S.C. 4501 *et seq.*)

The National Housing Act established the Federal Housing Administration program, a key component of the Department, to provide mortgage insurance to facilitate homeownership. (12 U.S.C. 1701 *et seq.*)

III. HUD's Actions To Address Predatory Lending Practices

The Task Force

The Secretary of HUD has appointed a Task Force on Predatory Lending, which will be chaired by the Assistant Secretary for Housing, who is also the FHA Commissioner, and HUD's General Counsel. HUD's Task Force includes representatives of consumer, civil rights, community and industry organizations as well as local officials. The members of the Task Force will:

(1) Provide individual views on predatory lending practices and help develop a list of experts and other knowledgeable persons who may participate and share their knowledge of, and experience in, the subject of predatory lending practices at the planned public forums;

(2) Help HUD consider and understand the views presented at the forums by giving individual members' reactions to the testimony presented; and

(3) Provide individual perspectives on proposals that might be made as a result of the forums.

By including a wide-range of experts and advocates on the Task Force, HUD will draw upon the good work that has already been done on this problem at the state and local level in various parts of the Nation.

The Public Forums

HUD's Assistant Secretary for Housing/FHA Commissioner and the General Counsel will also co-chair at least four public forums during April and May, 2000, to gather information and views on this problem. HUD has planned public forums for the cities of Chicago, Los Angeles, New York and Baltimore. At one or more of these forums, HUD will address a range of issues including:

- The dimensions of the problem;
- Distinguishing predatory lending practices from beneficial subprime lending;

- The adverse effects of predatory lending practices on minority and elderly borrowers;
- Possible improvements under existing federal laws and proposals for new protections;
- The role of state laws in stemming abusive lending;
- Predatory lending, the secondary market and the securities industry—from Main Street to Wall Street;
- The role of enforcement in stemming predatory lending practices under federal laws, such as the Fair Housing Act and RESPA;
- Counseling and consumer education; and
- Positive and negative effects of technology on predatory abuses.

The agendas for each forum will be established in advance and made available by HUD through its web site (http://www.hud.gov) and through HUD's Office of Public Affairs. Following these forums, HUD will propose protections to address abusive lending practices.

Dated: April 10, 2000.

Gail W. Laster,

General Counsel.

[FR Doc. 00–9284 Filed 4–11–00; 8:46 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

PRT–025112

Applicant: Dana M. Biasatti, Dallas, TX

The applicant requests a permit to import samples obtained from salvaged Leatherback (*Dermochelys coriacea*), Green (*Chelonia mydas*) and Olive Ridley (*Lepidochelys olivacea*) marine turtles for the purpose of in enhancement of the species through scientific research.

PRT–024610

Applicant: Michael J. Flannery, Soldotna, AK

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–024500

Applicant: James D. McChesney, Cooperstown, NY

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–024498

Applicant: Roland Garrett, Yorktown, VA

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species

PRT–024740

Applicant: Robert D. Adams, Hazel, SD

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purposes of enhancement of the survival of the species.

PRT–649126

Applicant: National Institutes of Health, Frederick, MD,

The applicant requests a permit to renew their current permit which authorizes import and/or interstate commerce to obtain biological samples taken from endangered and threatened mammals. They request the re-authorization specifically include the import and/or interstate commerce of DNA samples taken from endangered and threatened mammals for the purpose of scientific research.

PRT–024460

Applicant: Riverbanks Zoological Park & Botanical Garden, Columbia, SC

The applicant requests a permit to import one captive-born female black-footed cat (Felis nigripes) from the Johannesburg Zoo, Johannesburg, South Africa, for the purpose of enhancing the survival of the species through propagation.

PRT–024461

Applicant: Riverbanks Zoological Park & Botanical Garden, Columbia, SC

The applicant requests a permit to import one captive-born male black-footed cat (*Felis nigripes*) from the Pretoria Zoo, Pretoria, South Africa, for the purpose of enhancing the survival of the species through propagation.

PRT–701458

Applicant: Carl and Kevin Beck, Pahrump, NV

The applicant requests a permit to re-export and re-import captive-born Bengal tigers (*Panthera tigris tigris*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three-year period.

PRT–024712

Applicant: Wildlife Conservation Society, Bronx, NY

The applicant requests a permit to import up to 100 Kihansi spray toads (*Nectophrynoides asperginis*) from the Kihansi River Gorge area of Tanzania for the purpose of propagation for the enhancement of the survival of the species.

PRT–024861

Applicant: Center for Environmental Research and Conservation, Columbia University, New York, NY

The applicant requests a permit to import blood, hair and tissue samples from wild, captive held and/or captive born Asian elephant (Elaphus maximus) for the purpose of enhancement of the species through scientific research.

PRT–023848

Applicant: Toledo Zoological Gardens, Toledo, OH

The applicant requests a permit to import two male and one female captive-born Cheetah (*Acinonyx jabatus*) from the Hoedspruit Research and Breeding Centre, Waterjkiif Ridge, South Africa for the purpose of enhancement of the species through captive propagation.

PRT–023849

Applicant: Minnesota Zoological Garden, Apple Valley, MN

The applicant requests a permit to import one male captive-born Amur leopard (*Panthera pardus orientalis*) from Jungle Cat World, Ontario, Canada for the purpose of enhancement of the species through captive propagation.

PRT–024092

Applicant: Black Pine, Inc. Albion, IN

The applicant requests a permit to export 0.2 captive born tigers (*Panthera tigris*) to Dream World's Tiger Island, Coomera, Queensland, Australia, for the purpose of enhancement of the species through captive propagation.

PRT–799726

Applicant: Duke University Primate Center, Durham, NC

The applicant requests a permit to import tissue samples from captive white-fronted lemurs (Lemur fulvus albifrons) at Parc Ivoloina, Madagascar for scientific research.

PRT–025015

Applicant: Jack W. Nicklas, North Palm Beach, FL

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Marine Mammal

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–024046

Applicant: Craig W. Scott, Corinth, TX

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT–024496

Applicant: Chris Walgreen, Chicago, IL

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT–024621

Applicant: Alfred G. Hoover, Bloomfield Hills, MI

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–024741

Applicant: Michael T. Warn, Aurora, OR

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT–024962

Applicant: Richard A. Belotti, Monroe Township, NJ

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Written data, comments or requests for copies of these complete applications or requests for a public hearing on these applications should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281. These requests must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: April 7, 2000.

Kristen Nelson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–9138 Filed 4–12–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected under the Wild Bird Conservation Act of 1992. This notice is provided under Section 112, paragraph 4, of the Wild Bird Conservation Act of 1992, and Title 50, of the Code of Federal Regulations, Section 15.26(c).

Applicant: Jeanette Rilling, Kintnersville, PA. The applicant wishes to establish a cooperative breeding program for the Red-crested cardinal (*Paroaria coronata*) and the Yellow-billed cardinal (*Paroaria capitata*). The applicant wishes to be an active participant in this program with four other private individuals and two zoological organizations. The American Federation of Aviculture Inc. has assumed the responsibility for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of these documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2095); FAX: (703/358–2298).

Dated: April 10, 2000.

Mark Phillips,

Acting Chief, Branch of Operation, Office of Management Authority.

[FR Doc. 00–9231 Filed 4–12–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On, January 6, 2000 a notice was published in the **Federal Register**, Vol. 65, No.4, Page 787, that an application had been filed with the Fish and

Wildlife Service by Toledo Zoological Gardens, Toledo, OH, for a permit (PRT–014704) to import one captive born polar bear (*Ursus maritimus*) for the purpose of public display.

Notice is hereby given that on March 16, 2000, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Dated: April 7, 2000.

Kristen Nelson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–9139 Filed 4–12–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–630–0500–PF–24–1A; OMB Approval Number 1004–0109]

Extension of Currently Approved Information Collection; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposed renewal for information collection OMB approval number 1004–0109 has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On January 24, 2000, BLM published a notice in the **Federal Register** (65 FR 3731) requesting comments on this information collection. The comment period ended on March 24, 2000. BLM received no comments from the public in response to that notice. Copies of the information collection and related forms may be obtained by contacting the BLM information clearance officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration, you comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0109), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the Bureau Information Clearance Officer (WO–630), 1849 C Street, NW, Mail Stop 401LS, Washington, DC 20240.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection information is necessary for the proper functioning of BLM, including whether the information will have practical utility;
2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Statement of Federal Land Payments (43 CFR 1881). OMB approval number 1004–0109.

Abstract: The BLM is proposing to renew the approval of an information collection for 43 CFR 1881. This allows BLM to collect information that is statutorily required to compute payments due units of general local government under the PILT Act. The Act requires the governor of each State to furnish a statement as to the amounts paid to units of general local government under 11 receipt sharing statutes in the prior fiscal year.

Bureau Form Number: None.

Frequency: Annually.

Description of Respondents: Respondents are State governments.

Estimated completion time: 20 hours.

Annual Responses: 50.

Annual Burden Hours: 1,000.

Information Clearance Officer: Carole Smith, (202) 452–0367.

Dated: March 27, 2000.

Carole Smith,

Bureau of Land Management, Information Clearance Officer.

[FR Doc. 00–9177 Filed 4–12–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK990–2000–5101–NH–FL07–262F]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted a proposed information collection to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The proposed information collection is the Trans-Alaska Pipeline System Survey of the Employee Concerns Program. On November 17, 1999, BLM published a notice in the **Federal Register** requesting comments on the proposed information collection (64 FR 62684). The comment period closed on January 18, 2000. We received no public comments as a result of that notice.

You can obtain copies of the proposed information collection and explanatory material by contacting BLM's Clearance Officer at the telephone number listed below. OMB must complete its review within 60 days, but may complete it after 30 days. For a maximum consideration, your comments and suggestions on the requirements should be made within 30 days directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, (1004–NEW), 725 17th Street, N.W., Washington, DC 20503.

Nature of Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of BLM, including whether the information will have practical utility;
2. The accuracy of BLM's estimate of the burden associated with collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, and other forms of information technology.

Title: Trans-Alaska Pipeline System Survey of the Employee Concerns Program.

OMB Approval Number: 1004–(NEW).

Abstract: Testimony at Congressional hearings in 1992 and 1994 indicted that Alyeska, the contractor what operates the Trans-Alaska Pipeline system (TAPS), maintains a repressive, retaliatory atmosphere to discourage workers from raising concerns about operation of the pipeline. Congress requested that Alyeska take steps to change the culture of the pipeline work environment and asked the Joint Pipeline Office (JPO) to monitor and report on progress. JPO will use this survey to gather opinions form Alyeska and other contractors' employees and supervisors about how well the Employee concerns Program (ECP) is working. JPO will use the results to measure, compare, and report on employee satisfaction with the ECP as a way to assess whether repressive culture is changing.

Frequency: Annually.
Description of respondents: Employees of Alyeska Pipeline Service Company and contractors.
Estimated completion time: 15 minutes for each survey.
Annual responses: 1,100.
Estimated burden hours: 550 per year.
Bureau Clearance Officer: Carole Smith, 202/452–0367.

Dated: April 7, 2000.

Carole J. Smith,

Bureau Information Clearance Officer.

[FR Doc. 00–9178 Filed 4–12–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–046–1610–00]

Notice of Availability of Environmental Assessment (EA)/Finding of No Significant Impact (FONSI) for a Proposed Plan Amendment to the Vermilion Management Framework Plan (MFP)

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Bureau of Land Management (BLM), Utah, Kanab Field Office has completed an EA/FONSI for a proposed plan amendment to the Vermilion MFP, updating management of the Coral Pink Sand Dunes, Moquith Mountain, and surrounding area. The proposed plan amendment would: (1) Implement the Conservation Agreement and Strategy for the Coral Pink Sand Dunes Tiger Beetle; (2) implement updated scientific information for management of the threatened Welsh's milkweed; (3) implement off-highway vehicle (OHV) management in the area; (4) implement other recreation activities as directed by the Moquith Mountain WSA Management Guidance and Schedule; (5) provide guidance for development of additional recreation related facilities; (6) improve public safety; and (7) coordinate management of the area with the State of Utah, Coral Pink Sand Dunes State Park. The Coral Pink Sand Dunes and Moquith Mountain area is located in Kane County, Utah and consists of approximately 21,000 acres.

DATES: The 30 day protest period for the proposed plan amendment will commence with the publication of this notice. Protests must be received on or before May 15, 2000.

ADDRESSES: Protests must be addressed to the Director (W–210), Bureau of Land Management, Attn: Brenda Williams, 1849 C Street, NW, Washington, DC 20240 within 30 days after the date of publication of this Notice of Availability.

FOR FURTHER INFORMATION CONTACT: Verlin Smith, Field Manager, Bureau of Land Management, Kanab Field Office, at 318 North, First East, Kanab, Utah 84741 (telephone: 435–644–2672 ext. 2646) or Ronald Bolander, Bureau of Land Management, Utah State Office, 324 South State Street, PO Box 45155, Salt Lake City, Utah 84145–0155 (telephone: 801–539–4065). Copies of the proposed plan amendment/EA/FONSI are available for review at the BLM Kanab Field Office and BLM Utah State Office. In addition, copies are available for review at the State of Utah, Department of Natural Resources, 1594 West North Temple, Salt Lake City, Utah, 84114, contact person Jamie Dalton (telephone: 801–538–7311), and at the State of Utah, Department of Natural Resources, Division of Parks and Recreation, Southwest Region Office, 585 North Main, Cedar City, Utah 84721–1079 contact person Gordon W. Topham (telephone: 435–586–4497), or on the Internet at http://www.blm.gov/utah/.

SUPPLEMENTARY INFORMATION: This action is announced pursuant to section 202(a) of the Federal Land Policy Management Act (1976) and 43 CFR part 1610. This proposed amendment is subject to protests by any party who has participated in the planning process. Protests must be specific and contain the following information:

—The name, mailing address, phone number, and interest of the person filing the protest.

—A statement of the issue(s) being protested.

—A statement of the part(s) of the proposed amendment being protested and citing pages, paragraphs, maps, etc., of the proposed plan amendment.

—A copy of all documents addressing the issue(s) submitted by the protestor during the planning process or a reference to the date when the protester discussed the issue(s) for the record.

—A concise statement as to why the protester believes the proposed decision of the BLM State Director is incorrect.

Robert Bennett,

Acting State Director, Utah.

[FR Doc. 00–9189 Filed 4–12–00; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–00–1020–24]

Sierra Front/Northwestern Great Basin Resource Advisory Council; Notice of Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting location and time for the Sierra Front/Northwestern Great Basin Resource Advisory Council (Nevada).

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Sierra Front/Northwestern Great Basin Resource Advisory Council (Nevada) will be held as indicated below. Topics for discussion will include issues related to the BLM geothermal resource leasing program in Nevada; a review of the BLM Nevada program for emergency fire rehabilitation; the BLM Great Basin Restoration Initiative; BLM management actions in support of recovery efforts for the Sage Grouse; BLM NV wild horse and burro gather strategy for FY2000 and beyond; collaborative BLM/Carson City management plan for the Silver Saddle Ranch; and other topics the council may raise. No field trip is planned as part of this two day meeting.

All meetings are open to the public. The public may present written and/or comments to the council. The public comment period for the council meeting will be at 4 p.m. on Monday, May 1st. The agenda will be available on the internet by April 12, 2000, at *www.nv.blm.gov/rac;* hard copies can also be mailed or sent via FAX. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, or who desire a hard copy of the agenda, should contact Mark Struble, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701, telephone (775) 885–6107 no later than April 19, 2000.

DATES & TIMES: The council will meet on Monday, May 1, 2000, from 10 a.m. to 5 p.m. and Tuesday, May 2, 2000, from 8 a.m. to 3:30 p.m., in the Main Conference Room of the BLM Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701. Public comment on individual topics will be received at the discretion of the Council Chairperson, as meeting moderator, with a general public comment period on Monday, May 1, 2000, at 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Struble, Public Affairs Officer, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701. Telephone (775) 885–6107.

Date: April 3, 2000.

John O. Singlaub,

Manager, Carson City Field Office.

[FR Doc. 00–9225 Filed 4–12–00; 8:45 am]

BILLING CODE 4310–HC–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–952–09–1420–00]

Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004, Arizona; Notice of Filing of Plats of Survey

April 4, 2000.

1. The plats of survey of the following described land were officially filed in the Arizona State Office, Phoenix, Arizona on the dates indicated:

A plat, in two sheets, representing the dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines, and the subdivision of sections 28 and 29, Township 18 North, Range 9 East, of the Gila and Salt River Meridian, Arizona, accepted February 3, 2000 and officially filed February 16, 2000.

This plat was prepared at the request of the United States Forest Service.

A plat representing the corrective survey of a portion of the Hopi and Navajo Partition line in unsurveyed Township 31 North, Range 12 East, of the Gila and Salt River Meridian, Arizona, accepted March 30, 2000 and officially filed April 7, 2000.

This plat was prepared at the request of the Bureau of Indian Affairs, Phoenix Area Office.

A plat, in ten sheets, representing the survey of the legal descriptive boundary of the Table Top Wilderness Area in Townships 7 and 8 South, Ranges 1, 2, and 3 East, of the Gila and Salt River Meridian, Arizona, accepted March 1, 2000 and officially filed March 16, 2000.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office.

A plat representing the dependent resurvey of portions of the west boundary and subdivisional lines, the subdivision of section 19, and a metes-and-bounds survey in section 19, Township 18 South, Range 14 East, of the Gila and Salt River Meridian, Arizona, accepted February 16, 2000 and officially filed February 25, 2000.

This plat was prepared at the request of the Bureau of Land Management, Arizona State Office.

These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

2. All inquires relation to these lands should be sent to the Arizona State Office, Bureau of Land Management, 222 N. Central Avenue, P.O. Box 1552, Phoenix, Arizona 85001–1552.

Kenny D. Ravnikar,

Chief Cadastral Surveyor of Arizona.

[FR Doc. 00–9226 Filed 4–12–00; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–956–09–1420–00]

Colorado: Filing of Plats of Survey

March 30, 2000.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 am., March 30, 2000. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The supplemental plat creating new lot 12 in the NW¼ section 32, T. 6 S., R. 77 W., Sixth Principal Meridian, Colorado, Group 1258, was accepted January 21, 2000.

The supplemental plat creating new lots 28 thru 34 in T. 1 N., R. 96 W., Sixth Principal Meridian, Colorado, was accepted February 22, 2000.

The plat representing the subdivision of a portion of section 26 and a metes-and-bounds survey of a portion of the west right-of-way of Colorado State Highway No. 9 in section 26, T. 4 S., R. 78 W., Sixth Principal Meridian, Colorado, Group 1258, was accepted March 23, 2000.

The plat representing a metes-and-bounds survey in the southwest quarter of section 36, T. 5 S., R. 78 W., Sixth Principal Meridian, Colorado, Group 1258, was accepted March 23, 2000.

The plat representing a metes-and-bounds survey of a portion of the east right-of-way of Summit County Road No. 5, in the northwest quarter of section 36, T. 6 S., R. 78 W., Sixth Principal Meridian, Colorado, Group 1258, was accepted March 23, 2000.

The plat representing the dependent resurvey of a portion of H.E.S. No. 305, and a metes-and-bounds survey of Tracts 38 and 39, and an informative traverse along the center line of a dirt road in partially surveyed T. 11 S., R. 84 W., Sixth Principal Meridian, Colorado, Group 1262, was accepted February 22, 2000.

The plat representing the entire record of the dependent resurvey of a portion of the subdivisional lines and metes-and-bounds surveys in section 9., T. 46 N., R. 10 W., New Mexico Principal Meridian, Colorado, Group 1264, was accepted February 1, 2000.

These surveys were requested by the Forest Service for administrative purposes.

The remonumentation of certain corners in T. 11 S., R. 72 W. and T. 4 S., R. 74 W., Sixth Principal Meridian, Colorado, Group 750, was accepted March 22, 2000.

This remonumentation was requested by the Federal Highway Administration.

The supplemental plat creating new lot 3 from a portion of the canceled claim Last Chance of the Terrible Mine Lode in the NW¼ of section 20, T. 21 S., R. 70 W., Sixth Principal Meridian, Colorado, was accepted January 10, 2000.

The supplemental plat creating new lots 16, 17, 18, and 19 from previous lots 6 and 11 in section 5., T. 13 S., R. 90 W., Sixth Principal Meridian, Colorado, was accepted January 31, 2000.

The supplemental plat correcting the lot numbers in sections 12 and 13, T. 51 N., R. 5 E., and sections 7 and 18, T. 51 N., R. 6 E., New Mexico Principal Meridian, Colorado, Group 1022, was accepted February 22, 2000.

The plat (in three sheets) representing the dependent resurvey of a portion of the east boundary, portions of the subdivisional lines and certain mineral claims, the subdivision of sections 9 and 10, and the metes-and-bounds survey of Tract 37, T. 49 N., R. 9 E., New Mexico Principal Meridian, Colorado, Group 994, was accepted December 22, 1999.

The plat representing the dependent resurvey of certain mineral claims in T. 15 S., R. 70 W., Sixth Principal Meridian, Colorado, Group 1202, was accepted December 14, 1999.

The plat representing the dependent resurvey of a portion of the west boundary and portions of the subdivisional lines and a metes-and-bounds survey in section 7, T. 49 N., R. 8 W., New Mexico Principal Meridian, Colorado, Group 1234, was accepted February 23, 2000.

The plat representing the dependent resurvey of a portion of the subdivisional lines and a metes-and-bounds survey in section 12, T. 49 N.,

R. 9 W., New Mexico Principal Meridian, Colorado, Group 1234, was accepted February 23, 2000.

These surveys were requested by the Bureau of Land Management for administrative purposes.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 00–9224 Filed 4–12–00; 8:45 am]

BILLING CODE 4310–JB–U

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Supplemental Environmental Impact Statement for Yosemite Valley Plan, Yosemite National Park, Madera, Mono, Tuolumne, and Mariposa Counties, California; Notice of Availability

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), and the Council on Environmental Quality regulations (40 CFR Part 1500–1508), the National Park Service, Department of the Interior, has prepared a Draft Supplemental Environmental Impact Statement identifying and evaluating five alternatives for a Yosemite Valley Plan within Yosemite National Park, California. Potential impacts, and appropriate mitigations, are assessed for each alternative. When approved, the plan will guide management actions during the next 15–20 years.

Proposal

The proposed Yosemite Valley Plan (Alternative 2—Preferred) would restore approximately 180 acres to natural conditions. It would consolidate parking for day visitors at Yosemite Village, where a new Valley Visitor Center would be located, and in parking areas outside Yosemite Valley. There would be fewer campsites and lodging units than there are now. This alternative would result in a major reduction in vehicle travel in the eastern portion of Yosemite Valley during summer months. The area of the former Upper and Lower River Campgrounds would be restored to a mosaic of meadow, riparian, and oak woodland communities, roads would be removed from Ahwahnee and Stoneman Meadows, and parking would be removed from Curry Orchard. Southside Drive would be converted to two-way traffic from El Capitan crossover to Curry Village, and Northside Drive would be converted to a multi-use (bicycle and pedestrian) paved trail from El Capitan crossover to Yosemite Lodge.

Alternatives

Alternative 1 maintains the status quo in Yosemite Valley, as described in Chapter 3, Affected Environment. It provides a baseline from which to compare other alternatives, to evaluate the magnitude of proposed changes, and to measure the environmental effects of those changes. This no-action concept follows the guidance of the Council on Environmental Quality, which describes the no-action alternative as no change from the current management direction or level of management intensity.

Alternative 3 would restore approximately 200 acres to natural conditions. It would consolidate parking for day visitors in the Taft Toe area in mid Yosemite Valley. A new Valley Visitor Center would also be constructed there. There would be fewer campsites and lodging units than there are now. The area of the former Upper and Lower River Campgrounds and the Camp 6 parking area near Yosemite Village would be restored to riparian habitat, roads would be removed from Ahwahnee and Stoneman Meadows, and parking and the historic fruit trees would be removed from Curry Orchard. Northside Drive would be converted to a trail for pedestrians and bicyclists, without the immediate presence of motor vehicles, from Yosemite Lodge to El Capitan Bridge. Southside Drive would be converted to two-way traffic from Taft Toe to Curry Village.

Alternative 4 would restore approximately 190 acres to natural conditions. It would consolidate parking for day visitors in the Taft Toe area in mid Yosemite Valley and in three parking areas outside the Valley. A new Valley Visitor Center would also be constructed at Taft Toe. There would be fewer campsites and lodging units than there are now. The area of former Upper and Lower River Campgrounds and the Camp 6 parking area near Yosemite Village would be restored to riparian communities; roads would be removed from Ahwahnee and Stoneman Meadows; and parking would be removed from Curry Orchard. Northside Drive would be converted to a multi-use paved trail for hikers and bicyclists, without the immediate presence of motor vehicles, from Yosemite Lodge to El Capitan crossover. Southside Drive would be converted to two-way traffic from Taft Toe to Curry Village.

Alternative 5 would restore approximately 120 acres to natural conditions. It would designate parking for day visitors at Yosemite Village and Curry Village, and in parking areas outside of Yosemite Valley. There would be more campsites and fewer lodging units than there are now. Traffic circulation would remain the same as at present; however, one lane of Northside and Southside Drives would be converted to multi-use paved trails. There would be minimal new development in mid and west Yosemite Valley, other than a traffic check station.

Planning Background

The draft Yosemite Valley Plan/SEIS was prepared pursuant to the National Environmental Policy Act. A Scoping Notice was published in the **Federal Register** on December 16, 1998. Lists of general issues already raised during the previous planning processes were provided to the public. Scoping comments were to be received by January 15, 1999, however based on requests from the public; the scoping comment period was extended through February 1, 1999.

During this comment period, the NPS facilitated over 100 discussions and briefings to park staff, congressional delegations, elected officials, public service organizations, educational institutions, and other interested members of the public. Nearly 600 letters concerning the Draft YVP SEIS planning process were received. The major issues raised during this period are summarized in Chapter 1, Purpose of and Need for the Action.

Public Meetings

In order to facilitate public review and comment on the draft Yosemite Valley Plan/SEIS, the Superintendent has scheduled public meetings in the following California cities: San Francisco—May 22; Sacramento—May 23; Merced—May 24; Oakland—May 25; Yosemite—May 30; Oakhurst—May 31; Mariposa—June 1; Sonora—June 2; Costa Mesa—June 5; Los Angeles—June 6; San Diego—June 7; Mammoth—June 9; Fresno—June 15; San Jose—June 17. The following times are for all venues except San Jose. An open house will be conducted from 4 p.m. to 9:30 p.m and a public hearing will be held simultaneously from 6:30 p.m to 9 p.m. A brief presentation from 6 p.m. to 6:30 p.m. will precede the public hearing. The San Jose open house will be from 11:00 a.m. to 4:30 p.m., the presentation will be from 1:30 p.m. to 2 p.m. and the public hearing will be from 2 p.m. until 4:30 p.m.

Participants are encouraged to review the document prior to attending a meeting. Detailed information on location and times for each of the public meetings will be published in local and regional newspapers several weeks in advance, broadcast via radio and television stations, and listed on the

park's Webpage. Yosemite National Park management and planning officials will attend all sessions to present the draft Yosemite Valley Plan/SEIS, to receive oral and written comments, and to answer questions.

Comments

The draft Yosemite Valley Plan/SEIS will be sent directly to the park's general mailing list. Copies will be available at park headquarters in Yosemite Valley, the Warehouse Building in El Portal, and at local and regional libraries (*i.e.*, San Francisco and Los Angeles). Also, the complete document will be posted on the Yosemite National Park Webpage (http://www.nps.gov/yose/planning). Written comments must be received (or transmitted by e-mail) on or before July 7, 2000. All comments should be addressed to the Superintendent, Attn: Yosemite Valley Plan, P.O. Box 577, Yosemite National Park, California 95389 (or e-mailed to: Yose_Planning@nps.gov).

All comments received will be available for public review in the park's research library. If individuals submitting comments request that their name and/or address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses, and, anonymous comments may not be considered.

Decision Process

Depending upon the degree of public interest and response from other agencies and organizations, at this time it is anticipated that the Final Yosemite Valley Plan/SEIS will be completed during October 2000; availability of the document will be duly noticed in the **Federal Register**. Subsequently, notice of an approved Record of Decision would be published in the **Federal Register** not sooner than thirty (30) days after the final document is distributed. This is expected to occur by the end of December 2000. The official responsible for the decision is the Regional Director, Pacific West Region, National Park Service; the official responsible for implementation is the Superintendent, Yosemite National Park.

Dated: April 5, 2000.

John J. Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 00–8998 Filed 4–12–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Meeting of the Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, WA

AGENCY: Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: As required by the Federal Advisory Committee Act, notice is hereby given that the Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, Washington, established by the Secretary of the Interior, will hold a public meeting. The purpose of the Conservation Advisory Group is to provide technical advice and counsel to the Secretary and the State on the structure, implementation, and oversight of the Yakima River Basin Water Conservation Program.

DATES: Tuesday, April 25, 2000, 9 a.m.–4 p.m.

ADDRESSES: Bureau of Reclamation Office, 1917 Marsh Road, Yakima, Washington.

FOR FURTHER INFORMATION CONTACT: James Esget, Manager, Yakima River Basin Water Enhancement Project, P.O. Box 1749, Yakima, Washington 98907, (509) 575–5848, extension 267.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to review water marketing opportunities in the Yakima River Basin and develop recommendations.

Dated: April 6, 2000.

James A. Esget,

Program Manager.

[FR Doc. 00–9190 Filed 4–12–00; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act and the Clean Air Act

In accordance with Departmental policy and 28 CFR 50.7, the Department of Justice gives notice that a proposed consent decree in the case captioned *United States* v. *Alcoa Inc.*, Civil Action No. EV0049C–Y/H (S.D. Ind.), was lodged with the United States District Court for the Southern District of Indiana on March 13, 2000. The proposed consent decree addresses violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the Clean Air Act, 42 U.S.C. 7401 *et seq.*, by Alcoa Inc. ("Alcoa") at its primary reduction and secondary aluminum production plant in Newburgh, Warrick County, Indiana, and would resolve the violations alleged in the complaint in the case through the date of lodging of the consent decree.

The proposed consent decree would, among other things, require Alcoa to pay the United States a $2.4 million civil penalty (plus interest on that amount accruing from the date of lodging), implement specified Clean Water Act and Clean Air Act compliance measures, and perform a Supplemental Environmental Project estimated by Alcoa to cost $5.4 million.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Alcoa Inc.*, Civil Action No. EV0049C–Y/H (S.D. Ind.), and DOJ Reference No. 90–5–2–1–2222.

The proposed consent decree may be examined at: (1) the Office of the United States Attorney for the Southern District of Indiana, 46 East Ohio Street—5th Floor, Indianapolis, Indiana 46204; and (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604 (contact Jeffery Trevino (312–886–6729)). A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. In requesting copies, please refer to the referenced case and DOJ Reference Number, and enclose a check for $10.75 (43 pages at 25 cents per page reproduction costs), made payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–9156 Filed 4–12–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on March 24, 2000, a proposed consent decree in *United States* v. *Azrael et al.*, Action No. WN–89–2898 (D. Md.) was lodged with the United States District Court for the District of Maryland.

In this action, the United States is recovering past and future response costs, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.* in connection with the Kane and Lombard Superfund Site ("Site"), located in Baltimore, Maryland.

The consent decree that was lodged would resolve the United States' claims against J.W. Parker & Sons ("Parker"). Parker will pay to the United States $82,200, over two years, including interest, and $54,800, over two years, including interest, to the State of Maryland to resolve claims against it.

The consent decree includes covenants not to sue by the United States under Section 107 of CERCLA.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044, and should refer to *United States* v. *Azrael,* D.J. Ref. 90–11–2–299.

The proposed consent decree may be examined at the Office of the United States Attorney, 101 W. Lombard St., Baltimore, Maryland 21201 and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $13.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Walker B. Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–9154 Filed 4–12–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 31, 2000, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), in a civil action styled *United States* v. *Boomsnub,* Civil Action No. 97–5719–FDB (W.D. Wash.), the United States lodged with the United States District Court for the Western District of Washington a Consent Decree with defendants the Boomsnub Corporation, Edward Takitch and the Estate of Jason Niblett resolving the United States' claims in this action.

The Consent Decree requires the defendants to pay $2,064,874.88 incurred by the United States on behalf of EPA in response to releases of hazardous substances at the Boomsnub Superfund Site in Vancouver, Washington. The Consent Decree also requires the defendants to liquidate certain properties and pay the proceeds to the Superfund.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Boomsnub,* DOJ Ref. #90–11–2–1018a.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 1010 Fifth Avenue, Seattle, WA 98104. A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, U.S. Department of Justice, Environment and Natural Resources Division, Environmental Enforcement Section, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy please refer to the referenced case and enclose a check in the amount of $8.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–9158 Filed 4–12–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on April 5, 2000, two proposed consent decrees in *United States* v. *Greenwood Chemical Company,* Civ. Action No. 97–0147 (W.D. Va.), were lodged with the United States District Court for the Western District of Virginia.

In this action, the United States is recovering past and future response costs, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.* in connection with the Greenwood Chemical Company Superfund ("Site"), located in Albemarle County, Virginia.

The consent decrees that were lodged would resolve the United States' claims against two of the four defendants. The first defendant, Albert Cereghino, will pay $90,000 to the United States and $10,000 to the Commonwealth of Virginia to resolve claims against it. The second defendant, Greenwood Chemical Company, will pay $1,000 to the United States and also will agree that the United States' lien on the Site shall remain in effect after the settlement.

The consent decrees include covenants not to sue by the United States under sections 106 and 107 of CERCLA, and under section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044, and should refer to *United States* v. *Greenwood Chemical Company* , D.J. Ref. 90–11–679. Comments may request an opportunity for a public hearing in the affected area, in accordance with Section 7003(d) of RCRA.

The proposed consent decrees may be examined at the Office of the United States Attorney, Thomas B. Mason Building, 105 Franklin Rd., SW, Suite One, Roanoke, VA 24011 and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. A copy of the consent decrees may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of

$13.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–9160 Filed 4–12–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy and 28 C.F.R. 50.7, the Department of Justice gives notice that on April 3, 2000, a proposed Stipulation and Agreed Order Concerning Settlement was lodged with the United States District Court for the Eastern District of Michigan in the case captioned *United States* v. *Libra Industries, Inc. of Michigan*, Case No. 99–73771 (E.D. Mich.). The proposed Stipulation and Agreed Order addresses alleged violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.*, by Libra Industries, Inc. of Michigan ("Libra") at its institutional dry cleaning facility in Jackson, Michigan, and would provide for dismissal of the claims asserted in the Complaint in the case on terms specified in the Stipulation and Agreed Order. The proposed Stipulation and Agreed Order would require Libra to pay the United States a $4,000 civil penalty.

The Department of Justice will receive, for a period of thirty (30) days from the date of the publication, comments relating to the proposed Stipulation and Agreed Order. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Libra Industries, Inc. of Michigan*, Case No. 99–73771 (E.D. Mich), and DOJ Reference No. 90–5–2–1–06355.

The proposed Stipulation and Agreed Order may be examined at: (1) the Office of the United States Attorney for the Eastern District of Michigan, 231 W. Lafayette Street, Detroit, MI 48226; and (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604 (contact Larry Johnson (312–886–6609)). A copy of the proposed Stipulation and Agreed Order may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. In requesting copies, please refer to the referenced case and DOJ Reference Number, and enclose a check for $1.50 (6 pages at 25 cents per page reproduction costs), made payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–9157 Filed 4–12–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on March 14, 2000, a complaint and proposed Consent Decree ("Decree") in *United States* v. *the Lockheed Martin Corporation* (D. CO.), Civil Action No. 00–S–562, was lodged with the United States District Court for the District of Colorado.

The United States filed this action under Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607 and 9613, and RCRA, 42 U.S.C. 6901 *et seq.* In the complaint, the United States Air Force ("USAF") seeks, among other things, contribution from Lockheed Martin Corporation ("LMC") for costs incurred and to be incurred by the USAF for response actions at the PJKS National Priorities List site in Jefferson County, Colorado ("Site").

The proposed consent decree resolves the USAF's CERCLA Sections 107 and 113 claims against LMC and the contribution claims LMC could bring against the USAF under Section 113(f)(1) of CERCLA, 42 U.S.C. 9613(f)(1). The proposed decree provides for a cash payment of $3.5 million over 10 years from LMC to the USAF and clean up services from LMC, specified under separate agreement with the USAF, that could ultimately reduce total clean up costs to the USAF by as much as $35.25 million.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to, *United States* v. *the Lockheed Martin Corporation* (D. CO.), and D.J. Ref. #90–11–3–925/1.

The Decree may be examined at the office of the U.S. Attorneys Office for the District of Colorado, 1961 Stout Street, Suite 1200, Denver, CO 80294. A copy of the Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $15.75 for the Decree or (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–9155 Filed 4–12–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Consistent with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Robert Odabashian, et al.* was lodged with the United States District Court for the Western District of Tennessee on March 31, 2000 (95–2361 G/Bre). On November 5, 1995, the United States filed a First Amended Complaint pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, against five defendants. The First Amended Complaint alleges that the defendants are liable under section 107 of CERCLA for costs incurred by the United States Environmental Protection Agency during a cleanup of the Pulvair Corporation Superfund Site in Millington, Tennessee. Subsequently, defendants filed various third-party complaints seeking contribution from various third-party defendants. The proposed Consent Decree settles the liability of three original defendants and twelve third-party defendants. Under the Consent Decree, the Settlors agree to reimburse the United States in the amount of $1,932,500.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044; and refer to *United States* v. *Robert Odabashian, et al.*, DOJ Ref. #90–11–3–1474.

The proposed settlement agreement may be examined at the Office of the United States Attorney, Suite 410, 200

Jefferson Avenue, Memphis, TN 38103, and at the office of the Environmental Protection Agency, Region, 4, 61 Forsyth Street, SW., Atlanta, GA 30303. A copy of the proposed Consent Decree may be obtained in person or by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy please refer to the referenced case and enclose a check in the amount of $12.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–9153 Filed 4–12–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

In accordance with Departmental policy, 28 U.S.C. 50.7, notice is hereby given that on March 22, 2000, a proposed Consent Decree in *United States* v. *S.B. Foot Tanning Company*, ("Foot") Civil Action No. *2–99CV–325–J*, was lodged with the United States District Court for the Northern District of Texas.

In this action the United States sought injunctive relief and civil penalties for alleged violations of the Clean Water Act ("CWA") and the discharge prohibitions of the applicable pretreatment standards established pursuant to section 307(b) of the CWA, 33 U.S.C. 1317(b), namely part 425, subpart F, Leather Tanning and Finishing Point Source Category, pretreatment standards at 40 CFR 425.65, at Foot's Cactus, Texas facility. The Consent Decree provides for Foot's payment of a civil penalty to the United States in the amount of $510,439.60, requires injunctive relief to bring Foot into compliance with the Clean Water Act, and requires Foot to implement and complete two Supplemental Environmental Projects ("SEPs") costing in the aggregate $864,000 in capital costs and $12,500 in annual operations and maintenance costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *S.B. Foot Tanning Company*, DOJ Ref. #90–5–1–1–4497.

The Consent Decree may be examined at the office of the United States Attorney, Northern District of Texas, 500 South Taylor, Suite 300, Lobby Box 238, Amarillo, Texas 79101–2442; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box &7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy please refer to the referenced case and enclose a check in the amount of $8.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–9151 Filed 4–12–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree in Clean Air Act Action

In accordance with the Department Policy, 28 CFR 50.7, notice is hereby given that a Modified Consent Decree in *United States* v. *Sun Company, Inc., and Atlantic Refining and Marketing Corp.*, Civil Action No. 94–CV–3246, was lodged with the United States District Court for the Eastern District of Pennsylvania on March 30, 2000. This Consent Decree resolves the United States' claims against defendants Sun Company, Inc. (now known as "Sunoco, Inc.") and Atlantic Refining & Marketing Corp. for alleged violations of a Consent Decree entered by the court in 1994, resolving alleged violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.*, occurring at defendants' South Philadelphia refinery. The Modified Consent Decree requires the defendants to pay a stipulated penalty of $460,000 and to comply with the terms of the Modified Consent Decree.

The Department of Justice will accept written comments on the proposed Modified Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *United States* v. *Sun Company, Inc., and Atlantic Refining and Marketing Corp.*, DOJ #90–5–2–1–1744A.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Philadelphia, PA, 12th Floor, 19106 and at EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed Consent Decree may be obtained by mail from the United States Department of Justice, Consent Decree Library, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044. When requesting a copy of the proposed Consent Decree, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the "Consent Decree Library" in the amount of $8.75, and please reference to *United States* v. *Sun Company, Inc., and Atlantic Refining and Marketing Corp.*, DOJ #90–5–2–1–1744A.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environmental and Natural Resources Division, Department of Justice.

[FR Doc. 00–9152 Filed 4–12–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive, Environmental Response, Compensation and Liability Act ("CERCLA")

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on March 24, 2000 a proposed consent decree in Civil Action No. 00–T–363–N was lodged with the United States District Court for the Middle District of Alabama, Northern Division.

In this action the United states sought injunctive relief and recovery of future response costs under sections 106(a) and 107 of CERCLA, 42 U.S.C. 9606(a) and 9607, with respect to the TH Agriculture & Nutrition Superfund Site in Montgomery, Alabama ("the Site").

Under a proposed consent Decree, TH Agriculture & Nutrition, L.L.C, the present owner and operator of the Site, Astro Packaging Inc., the present owner and former operator, Elf-Atochem North America Inc., and Industrial Chemicals Inc., former owner and operators of the Site, have agreed to perform the remedy chosen by EPA to clean up the Site, pay the government's future response costs in settlement of the government's claims under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

The Department of Justice will receive, for a period for thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the

Environment and Natural Resources Division, Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *TH Agriculture & Nutrition, L.L.C Elf Atochem North America Inc., Industrial Chemicals Inc., and Astro Packaging, Inc.* (M.D. AL), DOJ # 90–1–3–1426/1.

The proposed consent decree may be examined at the Office of the United States Attorney, Montgomery, Alabama, the Region 4 Office of the Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303, and at the Consent Decree Library, Post Office Box 7611, Washington, DC 20044–7611. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, Post Office Box 7611, Washington, DC 20044–7611. In requesting a copy please refer to the referenced case and enclose a check in the amount of 25 cents per page for reproduction costs, payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–9159 Filed 4–12–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Energy Fuels Coal, Inc.

[Docket No. M–2000–020–C]

Energy Fuels Coal, Inc., P.O. Box 459, 1190 County Rd 92, Florence, Colorado 91226 has filed a petition to modify the application of 30 CFR 75.1909(1) (nonpermissible diesel-powered equipment; design and performance requirements) to its Southfield Mine (I.D. No. 05–03455) located in Fremont County, Colorado. The petitioner proposes to use a diesel engine to power its genset. The petitioner proposes to use the diesel-powered genset to move equipment from section to section, and to power a roof bolter used in roof rehabilitation in remote areas of the mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

2. Sugar Camp Coal, LLC

[Docket No. M–2000–021–C]

Sugar Camp Coal, LLC, 1055 Barrett Cemetery Road, Equality, Illinois 62934 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Willow Lake Mine (I.D. No. 11–03054) located in Saline County, Illinois. The petitioner requests a modification of the standard to allow air coursed through belt haulage entries to be used to ventilate active working places. The petitioner proposes to install a low-level carbon monoxide detection system in the supply road with branches extended to the belt line at certain locations as an early warning fire detection system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

3. Black Beauty Coal Company

[Docket No. M–2000–022–C]

Black Beauty Coal Company, P.O. Box 176, Wheatland, Indiana 47597 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its Air Quality Mine (I.D. No. 12–02010) located in Knox County, Indiana. The petitioner proposes to limit the minimum speed of the grader to less than 10 mph, provide training for the grader operators on lowering the moldboard for additional stopping capability in emergency situations, and on recognizing the appropriate speeds to use on different roadway conditions and slopes, instead of installing front wheel brakes on its "Getman" six-wheeled grader. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

4. Crystal Fuels Company

[Docket No. M–2000–023–C]

Crystal Fuels Company, P.O. Box 722, Matewan, West Virginia 25678 has filed a petition to modify the application of 30 CFR 75.1103 (automatic fire warning devices) to its No. 1 Mine (I.D. No. 46–03408) located in Mingo County, West Virginia. The petitioner proposes to install a low-level carbon monoxide detection system in all belt entries as an early warning fire detection system instead of using a monitoring systems that identify each belt flight. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

5. Webster County Coal, LLC

[Docket No. M–2000–024–C]

Webster County Coal, LLC, 2668 Street, Rt. 120 E., Providence, Kentucky 42450 has filed a petition to modify the application of 30 CFR 75.333 (ventilation controls) to its Dotiki Mine (I.D. No. 15–02132) located in Webster County, Kentucky. The petitioner requests a modification of the standard to permit a temporary stopping in the return stopping line, outby the section tailpiece, for a short period of time prior to the section moving from entries to rooms instead of using a permanent type stopping. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard and that application of the existing standard will result in a diminution of safety to the miners.

6. West Ridge Resources, Inc.

[Docket No. M–2000–025–C]

West Ridge Resources, Inc., P.O. Box 902, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its West Ridge Mine (I.D. No. 42–02233) located in Carbon County, Utah. The petitioner proposes to install devices such as gear lock-outs on its diesel grader to limit the speed to a maximum of 10 miles per hour when the grader is operating in an underground coal mine or on the surface of an underground coal mine, and provide training to every miner who operates the grader on the proper techniques for lowering the blade to restrict the speed and to stop the grader, on the proper gear selection for grading, and on the proper speed for grading. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

7. Andalex Resources, Inc.

[Docket No. M–2000–026–C]

Andalex Resources, Inc., P.O. Box 902, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its Aberdeen Mine (I.D. No. 42–02028) and its Pinnacle Mine (I.D. No. 42–01474), both located in Carbon County, Utah. The petitioner proposes to install devices such as gear lock-outs on its diesel grader in order to limit the speed to a maximum of 10 miles per hour when the grader is operating in an underground or on the surface of an underground coal mine, and provide

training to every miner who operates the grader on the proper techniques for lowering the blade to restrict the speed and to stop the grader, on the proper gear selection for grading, and on the proper speed for grading. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to "comments@msha.gov," or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 15, 2000. Copies of these petitions are available for inspection at that address.

Dated: March 28, 2000.

Carol J. Jones,

Director, Office of Standards Regulations, and Variances.

[FR Doc. 00–9023 Filed 4–12–00; 8:45 am]

BILLING CODE 4510–43–U

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Operations and Regulations Committee of the Board of Directors

ACTION: The Operations and Regulations Committee meeting scheduled for 2:30 p.m. on April 14, 2000 has been CANCELED.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, at (202) 336–8800.

Dated: April 11, 2000.

Victor M. Fortuno,

Vice President for Legal Affairs.

[FR Doc. 00–9335 Filed 4–11–00; 12:51 pm]

BILLING CODE 7050–01–P

NATIONAL COMMUNICATIONS SYSTEM

National Security Telecommunications Advisory Committee

AGENCY: National Communications System (NCS).

ACTION: Notice of meeting.

SUMMARY: A meeting of the President's National Security Telecommunications Advisory Committee will be held on Tuesday, May 16, 2000, from 9 a.m. to 11:30 a.m. The Business Session will be held at the Broadmoor Hotel, Colorado Springs, Colorado.

The agenda is as follows:

—Call to Order
—Opening Remarks
—Information Assurance in the 21st Century Briefing
—Perspectives on Importance of Operational Information Sharing to the Success of PDD–63 Implementation Briefing
—Evolution of U.S. Space Command's Role in Information Operations Briefing
—National Communications System Manager's Report
—Industry Executive Subcommittee Report
—Adjournment

Due to the potential requirement to discuss classified information in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense.

FOR FURTHER INFORMATION CONTACT: Telephone (703) 607–6209 or write the Manager, National Communications System, 701 South Court House Road, Arlington, VA 22204–2198.

Frank McClelland,

Technology and Programs Division (N2).

[FR Doc. 00–9210 Filed 4–12–00; 8:45 am]

BILLING CODE 5001–08–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Public Law 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by May 13, 2000. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1030.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctic and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

1. Applicant

Permit Application No. 2001–007.

Rudof S. Scheltema, Biology Department, MS34, Woods Hole Oceanographic Institution, Woods Hole, Massachusetts 02543.

Activity for Which Permit Is Requested

Introduce non-indigenous species into Antarctica.

The applicant proposes use *Thalassiosera pseudonana, Isochryois galbana,* and *Dunaliella tertiolecta* cultures of unicellular algae in rearing zooplankton organisms. Indigenous zooplankton will be collected in antarctic waters and reared in the laboratory onboard ship, using the above named unicellular algae as food. The study will deal with the history of antarctic organisms, in particular with the larvae of benthic organisms. The larval life history is especially important in understanding the demography of bottom organisms. At the completion of the study, the algal cultures will be disposed of by heat sterilization.

Location

Onboard R/V LAURENCE M. GOULD research vessel in the region of the South Shetland Islands.

Dates

May 15, 2000 to June 15, 2000.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 00–9183 Filed 4–12–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Computational Infrastructure and Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Computational Infrastructure & Research (1185)

Date and Time: April 19, 2000—8:30 a.m.–5 p.m.

Place: Rm. 1150, NSF, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed

Contact Person: Dr. Stephen Elbert, Program Director, Partnerships for Advanced Computational Infrastructure Program, Directorate for Computer and Information Science and Engineering, Room 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1963.

Purpose of Meeting: To provide recommendations and advice concerning TeraScale Proposals submitted to NSF for funding.

Agenda: To review and evaluate TeraScale Proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. If discussions are open to the public, these matters that are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: April 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–9199 Filed 4–12–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Sciences (1754).

Date/Time: June 14–916, 2000; 8 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 310, 320, 330, 360, 365 and 370, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Joann Roskoski, Division of Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1480.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support

Agenda: To review and evaluate Biocomplexity: Special Competition proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–9201 Filed 4–12–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemical and Transport Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemical and Transport Systems (1190).

Date and Time: May 24, 2000, 8 a.m. to 4:30 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 110, Arlington, VA 22230

Type of Meeting: Closed.

Contact Person: Dr. Geoffrey Prentice, Program Director, Kinetics, Catalysis & Molecular Processes, Division of Chemical and Transport Systems (CTS), Room 525, (703) 306–1371.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review progress on the FY 1999 XYZ on a Chip Grants and to discuss emerging areas in the field.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: April 10, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–9203 Filed 4–12–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date and Time: May 8, 2000 and May 9, 2000, 8 a.m. to 5 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 530 and 580, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Dr. Joy Paushcke, Program Director, National Earthquake Engineering Simulation Program, Room 545, (703) 306–1361.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY'00 National Earthquake Engineering Simulation Review Panel proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: April 10, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–9205 Filed 4–12–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Developmental Mechanisms; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Advisory Panel for Developmental Mechanisms (1141)

Date/Time: April 26–28, 2000, 8:30 a.m.—5 p.m.

Place: NSF, Room 360, 4201 Wilson Blvd., Arlington, VA

Type of Meeting: Part-open

Contact Persons: Dr. Judity Plesset and Dr. Susan Singer, Program Directors, Developmental Mechanism, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1417

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: April 28th, 2000; 9 a.m. to 10 a.m.—discussion on research trends, opportunities and assessment procedures in Integrative Biology and Neuroscience with Dr. Mary Clutter, Assistant Director, Directorate for Biological Sciences.

Closed Session: April 26th, 2000, 8:30 a.m. to 6 p.m.; April 27th, 2000, 8:30 a.m. to 6 p.m.; April 28th, 2000, 8:30 a.m. to 9 a.m. and 10 a.m. to 5 p.m. To review and evaluate the Ecological & Evolutionary Physiology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 10, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–9204 Filed 4–12–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Earth Sciences Proposal Review Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Earth Sciences Proposal Review Panel (1569).

Date/Time: May 3–5, 2000, 8:00 a.m. to 6:00 p.m.

Place: IRIS Data Management Center, Seattle Washington.

Type of Meeting: Closed.

Contact Person: Dr. Daniel F. Weill, Program Director, Instrumentation & Facilities Program, Division of Earth Sciences, Room 785, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230; Telephone: (703) 306–1558.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Instrumentation & Facilities proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 6, 2000.

Karen J. York,

Committee Manager Officer.

[FR Doc. 00–9197 Filed 4–12–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications Systems (1196).

Dates: April 21, 2000; 8:30 a.m.–5 p.m.

Place: Room 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Open.

Contact Person: Dr. Marija Ilic, Program Director, Control, Networks, and Computational Intelligence (CNCI), 4201 Wilson Boulevard, Room 675, Arlington, Virginia 22230, Phone 703–306–1339.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning research and education agenda for Electric Power Systems.

Agenda: Identify key research and education areas of critical relevance for electric power industry.

Dated: April 6, 2000.

Karen J. York,

Committee Manager Officer.

[FR Doc. 00–9195 Filed 4–12–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications systems (1196)

Dates: April 27–28, 2000; 8:30 a.m.–5 p.m.

Place: Room 730, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Paul Werbos, Program Director, Control, Networks, and Computational Intelligence (CNCI), 4201 Wilson Boulevard, Room 675, Arlington, Virginia 22230, Phone 703–306–1339.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Review and evaluate **Regular Research** proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C.552b(c),(4) and (6) of the Government in the Sunshine Act.

Dated: April 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–9194 Filed 4–12–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended) the National Science Foundation announces the following meeting.

Name: Advisory Committee for Engineering (#1170)

Date/Time: May 9, 2000; 1 p.m.–5 p.m.;, May 10, 2000; 8:30 a.m.–5 p.m.

Place: Room 1235 (National Science Board Meeting Room), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Open

Contact Person: Dr. Elbert L. Marsh, Deputy Assistant Director for Engineering, National Science Foundation, Suite 505, 4201 Wilson Boulevard, Arlington, VA 22230; Telephone: (703) 306–1301; email: emarsh@nsf.gov. For easier building access, individuals planning to attend should contact Maxine Byrd at 703–306–1300 or at *mbyrd@nsf.gov* so that your name can be added to the building access list.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to Engineering programs and activities.

Agenda: The principal focus of the forthcoming meeting will be on strategic issues, both for the Directorate and the Foundation as a whole.

Dated: April 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–9192 Filed 4–12–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Engineering Education and Centers; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis panel in Engineering Education and Centers (173)
Date and Time: May 15 & 16, 2000, 8:30 AM–5:30 PM
Place: National Science Foundation, Room 310, 4201 Wilson Blvd, Arlington, VA
Type of Meeting: Closed
Contact persons: Dr. Ernest T. Smerdon, Senior Education Associate, Engineering, Education and Centers Division, National Science Foundation, Room 585, 4201 Wilson Blvd., Arlington, VA 22230. (703) 306–1380
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate proposals submitted to the Action Agenda Program as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c), (4) and (6) of the Government in the Sunshine Act.

Dated; April 6, 2000.
Karen J. York,
Committee Management Officer.
[FR Doc. 00–9200 Filed 4–12–00; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Geosciences (1755)
Dates: May 1, 2000; 8:30 a.m.—5:30 p.m. May 2, 2000; 8:00 a.m.—3:30 p.m.
Place: Room 1235, National Science Foundation, 44201 Wilson Boulevard, Arlington, VA
Type of Meeting: Open
Contact Person: Dr. Thomas Spence, Directorate for Geosciences, National Science Foundation, Suite 705, 4201 Wilson Boulevard, Arlington, Virginia 22230, Phone 704–306–1502
Minutes: May be obtained from the contact person listed above.
Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for research, education, and human resources development in the geosciences.
Agenda:
Environmental Initiative Information Technology Research Initiative
GPRA Update
GEO Education, Human Resources and Diversity
GEO 2000 and future issues.

Note: A detailed agenda will be posted on the NSF web page approximately one week prior to the meeting on http://www.geo.nsf.gov/adgeo/advcomm/start.htm

Dated: April 6, 2000.
Karen J. York,
Committee Management Officer.
[FR Doc. 00–9198 Filed 4–12–00; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel for Geosciences (1756)
Date/Time: May 2, 2000; 8:30 a.m. to 5:30 p.m.
Place: Room 770, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230
Type of Meeting: Closed
Contact Person: Ms. Robin Reichlin, Program Director, Geophysics Program, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA 22230, (703) 306–1556.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate cooperative studies of the earth's deep interior proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 6, 2000.
Karen J. York,
Committee Management Officer.
[FR Doc. 00–9196 Filed 4–12–00; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Committee of Visitors for the Division of Human Resource Developments Program of Gender Equity (PGE) in SMET and Program for Persons with Disabilities (PPD)
Date and Time: Wednesday, May 3rd, 2000, 8:30 am—5:30 pm, Room 830 (Open); Thursday, May 4th, 2000, 8:30 am–1 pm, Room 830 (Open); Thursday, May 4th, 2000, 1 pm–3:30 pm (Closed); Thursday, May 4th, 2000, 3:30 pm–5:30 pm (Open).
Place: 4201 Wilson Boulevard, Rooms 830, Arlington, VA 22230.
Type of Meeting: Part Open (see agenda, below)
Contact Person: Drs. Lawrence Scadden, Margrete S. Klein and Ruta Sevo, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1637.
Purpose of Meeting: To carryout a Committee of Visitors (COV), review of the PGE and PPD programs over the past three fiscal years, including program evaluation, examination of decisions on proposals, reviewer comments, and to access other privileged information.
Agenda: Wednesday, May 3rd, 2000, 8:30am–5:30pm, Room 830 (Open) Thursday, May 4th, 2000, 8:30 am–1 pm, Room 830 (Open) Thursday, May 4th, 2000, 1 pm–3:30 pm, Closed review of privileged documents Thursday, May 4th, 2000, 3:30 pm–5:30 pm, Open discussions on the impact of projects funded and an evaluation of the programs. Session is open to meet requirements of Government Performance and Results Act (GPRA).
Reason for Closing: During the closed session, the COV will be reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. Such deliberation are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 10, 2000.
Karen J. York,
Committee Management Officer.
[FR Doc. 00–9202 Filed 4–12–00; 8:45 am]
BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Systematic and Population Biology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following

meetings of the Advisory Panel for Systematic and Population Biology (1753):

Date/Time: April 12–14, 2000; 8 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Rooms 380 and 390, Arlington, VA 22230.

Contact Person: Dr. Elizabeth Lyons, Division of Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1481.

Agenda: To review and evaluate Population Biology proposals as part of the selection process for awards.

Date/Time: April 26–28, 2000; 8:30 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 375, Arlington, VA 22230.

Contact Person: Dr. Mary McKitrick, Division of Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1481.

Agenda: To review and evaluate Systematic Biology proposals as part of the selection process for awards.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Type of Meetings: Closed.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 6, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–9193 Filed 4–12–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of April 10, 17, 24, May 1, 8, and 15, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of April 10

There are no meetings scheduled for the Week of April 10.

Week of April 17—Tentative

There are no meetings scheduled for the Week of April 17.

Week of April 24—Tentative

There are no meetings scheduled for the Week of April 24.

Week of May 1—Tentative

Tuesday, May 2

9:30 a.m.
Briefing on Oconee License Renewal (Public Meeting) (Contact: Dave Lange, 301–415–1730)

Wednesday, May 3

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)
9:30 a.m.
Briefing on Efforts Regarding Release of Solid Material (Public Meeting) (Contact: Frank Cardile, 301–415–6185)

Week of May 8—Tentative

Monday, May 8

10:00 a.m.
Briefing on Lessons Learned from the Nuclear Criticality Accident at Tokaimura and the Implications on the NRC's Program (Public Meeting) (Contact: Bill Troskoski, 301–415–8076)

Tuesday, May 9

8:55 a.m.
Affirmation Session (Public Meeting) (If needed)
9:00 a.m.
Meeting with Stakeholders on Efforts Regarding Release of Solid Material (Public Meeting) (Contact: Frank Cardile, 301–415–6185)

Week of May 15—Tentative

Tuesday, May 16

9:25 a.m.
Affirmation Session (Public Meeting) (If needed)

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

ADDITIONAL INFORMATION: By a vote of 5–0 on April 6, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Briefing by the Executive Branch (Closed-Ex. 1)" be held on April 6, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: April 7, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–9291 Filed 4–11–00; 10:36 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Management of Federal Information Resources

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Proposed revision of OMB Circular No. A–130.

SUMMARY: The Office of Management and Budget is revising Circular No. A–130, "Management of Federal Information Resources," to implement provisions of the Clinger-Cohen Act (also known as "Information Technology Management Reform Act of 1996") and for other purposes. This notice proposes revisions to the sections of the Circular concerning information systems and information technology management to follow more closely provisions of the Clinger-Cohen Act and OMB Circular A–11, which involve the acquisition, use, and disposal of information technology as a capital asset by the Federal government to improve the productivity, efficiency, and effectiveness of Federal programs. It also makes minor technical revisions throughout the Circular (for example, changing "senior official" to "Chief Information Officer"). It proposes a new Appendix II to address "Information Technology Architectures," incorporates OMB guidance regarding computer security into Appendix III, and revises Appendix IV to reflect these changes.

This notice also proposes revisions to the sections of the Circular concerning information management policy to follow more closely the provisions of the current OMB guidance entitled "Implementation of the Government Paperwork Elimination Act."

DATES: If you wish to comment on the proposed revisions to Circular No. A–

130 please submit your comments no later than Friday, May 19, 2000. Each Department and agency should submit a single coordinated set of comments.

ADDRESSES: We welcome electronic comments and will include them as part of the official record. Please send comments electronically to: A–130@omb.eop.gov. You may address hardcopy comments to: Information Policy and Technology Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236 New Executive Office Building, Washington, DC 20503.

Electronic Availability: This document is available on the Internet at the OMB web site, http://www.whitehouse.gov/omb/fedreg/index.html and at the CIO Council home page at http://cio.gov. You can also obtain a copy of OMB Circular No. A–11, including the supplement to Part 3, "The Programming Guide," at the OMB web site and the CIO Council web site, or by calling the Budget Review and Concepts Division at OMB at 202–395–3172.

FOR FURTHER INFORMATION CONTACT: Tony Frater, Information Policy and Technology Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503. Telephone: (202) 395–3785.

SUPPLEMENTARY INFORMATION:

Background

The Clinger-Cohen Act (also known as "Information Technology Management Reform Act of 1996") (Public Law 104–106, Division E, codified at 40 U.S.C. Chapter 25) grants to the Director of the Office of Management and Budget (OMB) various authorities for overseeing the acquisition, use, and disposal of information technology by the Federal government, so as to improve the productivity, efficiency, and effectiveness of Federal programs. It supplements the information resources management (IRM) policies contained in the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35) by establishing a comprehensive approach to improving the acquisition and management of agency information systems through work process redesign, and by linking planning and investment strategies to the budget process.

The Clinger-Cohen Act establishes clear accountability for IRM activities by creating agency Chief Information Officers (CIOs) with the authority and management responsibility necessary to advise agency heads. Among other responsibilities, CIOs oversee the design, development, and implementation of information systems. CIOs also monitor and evaluate system performance and advise agency heads to modify or terminate those systems. The Clinger-Cohen Act also directs agencies to work together towards the common goal of using information technology to improve the productivity, effectiveness, and efficiency of Federal programs and to promote an interoperable, secure, and shared government wide information resources infrastructure.

To provide agencies with additional guidance on implementing the Clinger-Cohen Act, OMB proposes to revise Circular No. A–130, "Management of Federal Information Resources" (61 FR 6428 February 20, 1996), which contains the policy framework for the management of Federal information resources. OMB has issued previous guidance regarding the Clinger-Cohen Act implementation, including; OMB Memoranda M–96–20, "Implementation of the Information Technology Management Reform Act of 1996;" M–97–02, "Funding Information Systems Investments;" M–97–09, "Interagency Support for Information Technology;" M–97–15, "Local Telecommunications Services Policy;" M–97–16, "Information Technology Architectures". Upon issuance of final revisions to the Circular, OMB will rescind those Memoranda. Future revisions to A–130 will incorporate other related OMB guidance, including issuances on computer security and agency use of electronic transactions.

Since the last revision of this Circular, Congress passed, and the President signed into law, the Electronic Freedom of Information Act Amendments (Public Law 104–231). Among other changes, the E–FOIA Amendments added a new subsection (g) to the FOIA, which reinforces the preexisting requirement in the Paperwork Reduction Act for agencies to maintain an inventory of their major information systems and an information locator service. The E–FOIA Amendments also require agencies to maintain a handbook that explains how persons may obtain public information from the agency pursuant to the FOIA and the PRA. Additional text has been added to this provision in Section 9 to reflect the enactment of the E–FOIA Amendments. Also, Appendix IV has been amended to incorporate the guidance that OMB issued to agencies in April 1998 on implementing the E–FOIA's handbook requirement (OMB Memorandum M–98–09). When this guidance is incorporated into the Circular, OMB will rescind the 1998 Memorandum.

In addition, in late 1997, a lawsuit was filed against several agencies *(Public Citizen* v. *Raines)* alleging that they had not complied with the requirements in the PRA and FOIA for agencies to inventory their information systems. During the course of the litigation, which is ongoing, the argument was advanced by the plaintiff that Congress in the 1995 revisions to the PRA required agencies to maintain an inventory of all of their information systems, rather than only their major information systems. OMB responded by expressing its view that, in revising the PRA in 1995, Congress did not require agencies to inventory all of their information systems. Instead, consistent with the PRA as originally enacted in 1980 and amended in 1986, Congress in 1995 continued to require an agency to inventory its "major" information systems. This legislative intent is reflected in Section 3511(a) of the 1995 PRA (which requires an inventory of an agency's major information systems) and also in Section 3506(b)(4), which cross-references that requirement in Section 3511. A continuing PRA focus on the agency's "major" information systems is also consistent with the later-enacted 1996 E–FOIA Amendments, in which Congress required agencies to make available to the public their inventories of major information systems.

Finally, in terms of the agency's activities in managing its information resources, which is the overall subject of Section 3506(b), OMB believes that an agency needs to focus its management attention on its "major" information systems, and for this reason an inventory that includes those major systems (but not all systems) makes the most sense for improving agency management. Therefore, in addition to reflecting the passage of the E–FOIA Amendments, the proposed revisions to Section 9 also make clearer the agencies' obligations under the PRA and FOIA in this area. These revisions reiterate the pre-existing requirement in Section 9 for each agency to maintain an inventory of its major information systems (these systems may be electronic or paper—the Circular's definition of "major information systems" is format neutral). The revisions also clarify that each agency, under Section 3506(b)(4) of the PRA, needs to maintain as well an inventory of its other "information resources" (such as personnel and funding) at the level of detail that the agency's managers believe is most appropriate for them to use in their management of the agency's information resources.

What Sections of Circular No. A–130 Are Proposed for Revision?

Section 3. Authorities. This section is amended to cite, and to incorporate changes necessitated by the Clinger-Cohen Act, the Government Performance and Results Act (GPRA), and Executive Order 13011.

Section 5. Background. A discussion of the basic principles and goals of the Clinger-Cohen Act is added.

Section 6. Definitions. The terms "Chief Information Officers Council" and "Information Technology Resources Board" are introduced to reflect the interagency support structures established by Executive Order 13011. The term "executive agency" is introduced to reflect the definition found in the Clinger-Cohen Act. The term "information technology" is amended to reflect definitional changes made by the Clinger-Cohen Act, and is supplemented by the limiting term "national security system" to clearly identify those systems to which the Circular applies. The term "capital planning and investment control process" is introduced to assist agencies in the reporting requirements of the Clinger-Cohen Act.

Section 7. Basic Considerations and Assumptions. The existing basic considerations and assumptions are supplemented with a modified subsection (i) and new subsection (r) to reflect the relevant goals and purposes of the Clinger-Cohen Act and Executive Order 13011.

Section 8a. Information Management Policy. Sections 8a(3) is proposed to be revised to reflect the Government Paperwork Elimination Act (Public Law 105–277, Title XVII), which was enacted in October 1998. OMB issued proposed guidance to implement the GPEA on March 5, 1999 (64 FR 10896), and is preparing the final guidance, to be issued shortly.

Section 8b. Information Systems and Information Technology Management. This section is substantially revised to implement the policies of the Clinger-Cohen Act and the principles of Executive Order 13011. Sections 8b(1), 8b(2), 8b(3) have been merged to better integrate requirements under Clinger-Cohen Act, the Government Performance and Results Act (Public Law 103–62), and revisions to OMB Circular A–11.

New section 8b(1) is revised to provide guidance on both strategic and operational IRM planning by integrating the agency's information resources management plans, strategic plans, performance plans, financial management plans, and budget processes, as discussed in OMB Circular A–11, Sec 210.8. This new section outlines three components: selection, control, and evaluation. It is also stresses the need to redesign work processes before making significant investments in automation, and the need to evaluate commercial off-the-shelf "COTS" software as part of the capital planning process. Additionally, this section contains revisions that incorporate requirements for IT accessibility by persons with disabilities that had previously resided in the Federal Information Resource Management Regulations (FIRMR, 41 CFR 201).

Section 8b(2), previously 8b(4), is assigned a new heading "What is an ITA." This section is modified, and includes relevant concepts from the previous section. Section 8b(3), previously 8b(5), is modified to promote the structuring of major information systems into modules that will reduce risk, promote flexibility and interoperability, increase accountability, and better match mission needs with current technology and market conditions.

Section 9. Assignment of Responsibilities.

Subsection 9a, All Federal Agencies, is changed to reflect the new Chief Information Officer (CIO) position created by the Clinger-Cohen Act, and reflects developments since the Circular was last revised in February 1996.. A new subsection 9a(3) is inserted to reflect CIO responsibilities. Old subsections 9a(3)–(8) are renumbered to become 9a(4)–(9). Existing Section 9a(5)—which would be renumbered as Section 9a(7)—is proposed to be revised to make clearer the agencies' obligations under the Paperwork Reduction Act and the Freedom of Information Act (as discussed above). A new Subsection 9a(10) is added to ensure cross agency cooperation. 9a(11) is added to encourage agencies to permit other agencies to place orders for information technology against its contracts to the extent practicable. Subsections 9a(3), (12), (13), (14), and (15) are added to describe the CIO's responsibilities under the Clinger-Cohen Act.

Subsection 9b, Department of State, is revised to reflect responsibilities described in the Clinger-Cohen Act and Executive Order 13011. These include liaison, consultation, and negotiation with foreign governments and intergovernmental organizations on matters related to information resources management as well as the State Department's advisory role in developing U.S. positions and policies on international information policy and technology issues affecting the Federal government.

Subsection 9c(1), Department of Commerce, is supplemented to reflect that agencies and the Chief Information Officers Council will make recommendations, as appropriate, to the Secretary of Commerce regarding standards development.

Subsection 9e, General Services Administration (GSA), is changed to reflect that with the enactment of the Clinger-Cohen Act, GSA will no longer perform policy and oversight functions. GSA will continue to provide services, training, and assistance as requested by the agencies and OMB.

Subsection 9h, Office of Management and Budget, is changed to reflect that OMB will provide guidance to the Boards established by Executive Order 13011, and may from time to time designate executive agents for government-wide procurement of information technology.

Accordingly, Circular No. A–130 (61 FR 6428, February 20, 1996) is proposed to be amended as set forth below.

John T. Spotila,

Administrator, Office of Information and Regulatory Affairs.

Proposed Amendments to OMB Circular No. A–130

1. Section 3, "Authorities," is revised to read as follows:

3. **Authorities:** This Circular is issued pursuant to the Paperwork Reduction Act (PRA) of 1980, as amended by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35); the Clinger-Cohen Act (also known as "Information Technology Management Reform Act of 1996") (Public Law 104–106, Division E); the Privacy Act, as amended (5 U.S.C. 552a); the Chief Financial Officers Act (31 U.S.C. 3512 *et seq.*); the Federal Property and Administrative Services Act, as amended (40 U.S.C. 487); the Computer Security Act (Public Law 100–235); the Budget and Accounting Act, as amended (31 U.S.C. Chapter 11); Executive Order 12046 of March 27, 1978; Executive Order 12472 of April 3, 1984; and Executive Order 13011 of July 17, 1996.

2. Section 5, "Background," is amended by adding the following new paragraph:

The Clinger-Cohen Act supplements the information resources management policies contained in the PRA by establishing a comprehensive approach for executive agencies to improve the acquisition and management of their information resources, through:

(1) Focusing information resource planning to support the agency's strategic missions;

(2) Implementing a capital planning and investment control process that links to budget formulation and execution; and

(3) Rethinking and restructuring the way agencies do their work before investing in information systems.

3. Section 6, "Definitions," is amended by making the following revisions: definitions are added for "capital planning and investment control process," "Chief Information Officers Council," "executive agency," "Information Technology Resources Board," and "national security system". The definition for "information technology" is revised, and the remaining definitions are redesignated accordingly. The new and revised definitions are as follows:

c. The term "capital planning and investment control process " means a management process for ongoing identification, selection, control, and evaluation of investments in information resources. The process is linked to budget formulation and execution, and is focused on agency missions and achieving specific program outcomes.

d. The term "Chief Information Officers Council" (CIO Council) means the Council established in Section 3 of Executive Order 13011.

f. The term "executive agency" has the meaning defined in section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

t. The term "information technology" means any equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by an executive agency. For purposes of the preceding sentence, equipment is used by an executive agency if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency which (i) requires the use of such equipment, or (ii) requires the use, to a significant extent, of such equipment in the performance of a service or the furnishing of a product. The term "information technology" includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources. The term "information technology" does not include any equipment that is acquired by a Federal contractor incidental to a Federal contract.

u. The term "Information Technology Resources Board" (Resources Board) means the board established by Section 5 of Executive Order 13011.

w. The term "national security system" means any telecommunications or information system operated by the United States Government, the function, operation, or use of which (1) involves intelligence activities; (2) involves cryptologic activities related to national security; (3) involves command and control of military forces; (4) involves equipment that is an integral part of a weapon or weapons system; or (5) is critical to the direct fulfillment of military or intelligence missions, but excluding any system that is to be administrative and business applications (including payroll, finance, logistics, and personnel management applications). The policies and procedures established in this Circular shall apply to national security systems in a manner consistent with the applicability and related limitations regarding such systems set out in Section 5141 of the Clinger-Cohen Act (Pub. L. 104–106). Applicability of Clinger-Cohen Act to national security systems shall include budget document preparation requirements set forth in OMB Circular A–11. The resultant budget document may be classified in accordance with the provisions of Executive Order 12958.

4. Section 7, "Basic Considerations and Assumptions," is amended by revising Sections 7i and by adding 7r to read as follows:

i. Strategic planning improves the operation of government programs. The agency strategic plan will shape the redesign of work processes and guide the development and maintenance of a capital planning and investment control process. This management approach promotes the appropriate application of Federal information resources.

r. The development and operation of interagency and interoperable shared information resources to support the performance of government missions should be supported by the Chief Information Officers Council and the Information Technology Resources Board.

5. Section 8, "policy," is amended by revising Section 8a(3) to read as follows:

3. Electronic Information Collection. Executive agencies under Sections 1703 and 1705 the Government Paperwork Elimination Act (GPEA), Public Law 105–277, Title XVII, are required to provide, by October 21, 2003, the (1) option of the electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper; and (2) use and acceptance of electronic signatures, when practicable. Agencies will follow the provisions in OMB guidance, Implementation of the Government Paperwork Elimination Act.

6. Section 8, "Policy," is amended by revising Section 8b(1) to read as follows:

b. How Should Agencies Manage Information Systems and Information Technology?

(1) Capital Planning and Investment Control. Agencies must establish and maintain a capital planning and investment control process that links mission needs, information, and information technology in an effective and efficient manner. The process should guide both strategic and operational IRM planning by integrating the agency's information resources management plans, strategic plans prepared pursuant to the Government Performance and Results Act of 1993 (5 U.S.C. 306), performance plans prepared pursuant to Government Performance and Results Act of 1993 (31 U.S.C. 1115), financial management plans prepared pursuant to the Chief Financial Officer Act of 1990 (31 U.S.C. 902a5), and the agency's budget formulation and execution processes. The capital planning and investment control process includes all stages of capital programming, including planning, budgeting, and procurement.

As outlined below in section (B), the capital planning and investment control process has three components: selection, control, and evaluation. The process should be iterative, with inputs coming from the agency strategic plan and the outputs feeding into the budget and investment control processes. The goal is to link resources to results. For further guidance on Capital Planning refer to OMB Circular A–11.

(A) What components are expected in the Information Resources Management Plan? As a product of the capital planning and investment control process, agencies must develop and maintain the agency Information Resource Management Plan (IRM) (also known as the IT Capital Plan), as required by 44 U.S.C. 3506(b)(2). The IRM Plan will include both Strategic and Operational IRM Plans. Specifically, the IRM Plan must include:

(i) A component derived from the agency strategic plan as required by the Government Performance and Results Act. Specifically, an analysis detailing the information resource investment particulars contained within the agency Strategic Plan. These particulars should focus on the strategic implementation of IT to achieve the overall missions and goals of the agency and describe the linkage between the investment and the agency's missions, as required by OMB Circular A–11;

(ii) A component derived from the agency annual performance plan as required by the Government Performance and Results Act. Specifically, an analysis describing the information resource investment particulars contained within the agency annual Performance Plan. These particulars should describe the quantifiable performance measures used in evaluating the implementation of specific IT initiatives and should provide metrics to assess progress towards achieving performance goals;

(iii) A component derived from the agency annual program performance report as required by the Government Performance and Results Act. Specifically, an accountability report comparing actual performance to expected performance as expressed in the annual goals established in the agency Performance Plans. Progress should be detailed in OMB Circular A–11 Exhibit 300B submissions as part of the annual budget process; and

(iv) A component derived from the agency security plan as required by the Computer Security Act. Specifically, the summary plan included in the agency's five-year plan as required by 44 U.S.C. 3505 and Appendix III of this Circular.

(B) What must an agency do as part of the selection component of the capital planning process?

(i) Evaluate each investment in information resources to determine whether the investment will support core mission functions that must be performed by the Federal government;

(ii) Ensure that improvements to existing information systems or the development of

new information systems are initiated because no alternative private sector or governmental source can efficiently support the function;

(iii) Support work processes that have been simplified or otherwise redesigned to reduce costs, improve effectiveness, and make maximum use of commercial, off-the-shelf technology;

(iv) Reduce risk by avoiding or isolating custom designed components, using components that can be fully tested or prototyped prior to production, and ensuring involvement and support of users;

(v) Demonstrate a projected return on the investment that is clearly equal to or better than alternative uses of available public resources. The return may include improved mission performance in accordance with GPRA measures, reduced cost, increased quality, speed, or flexibility; and increased customer and employee satisfaction. The return should be adjusted for such risk factors as the project's technical complexity, the agency's management capacity, the likelihood of cost overruns, and the consequences of under- or non-performance. Return on investment should, where appropriate, be demonstrated by actual returns observed through pilot projects and prototypes;

(vi) Prepare and update a benefit-cost analysis (BCA) for each information system throughout its life cycle. A BCA will provide a level of detail proportionate to the size of the investment; rely on systematic measures of mission performance; and be consistent with the methodology described in OMB Circular No. A–94, "Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs";

(vii) Prepare and maintain a portfolio of major information systems that monitors investments and prevents redundancy of existing or shared systems. The portfolio should provide information demonstrating the impact of alternative IT investment strategies and funding levels, identify opportunities for sharing resources, and consider the agency's inventory of information resources;

(viii) Ensure consistency with Federal, agency, and bureau information architectures;

(ix) Ensure that improvements to existing information systems and the development of planned information systems do not unnecessarily duplicate information systems within the same agency, from other agencies, or from the private sector;

(x) Ensure that the selected system or process maximizes the usefulness of information, minimizes the burden on the public, and preserves the appropriate integrity, availability, and confidentiality of information throughout its life cycle. This portion shall specifically address the planning and budgeting for the information collection burden imposed on the public as defined by 5 CFR part 1320;

(xi) Establish oversight mechanisms, consistent with Appendix III of this Circular, to systematically evaluate and ensure the continuing security and availability of systems and their data;

(xii) Ensure that Federal information system requirements do not unnecessarily restrict the prerogatives of state, local and tribal governments;

(xiii) Ensure that the selected system or process facilitates accessibility pursuant to the Rehabilitation Act of 1973, as amended (Public Law 105–220, 29 U.S.C.794d).

(C) What must an agency do as part of the control component of the capital planning process?

(i) Institute performance measures and management processes that monitor actual performance compared to expected results. Agencies must use a performance based management system that provides timely information regarding the progress of an information technology investment. The system must also measure progress towards milestones in an independently verifiable basis, in terms of cost, capability of the investment to meet specified requirements, timeliness, and quality;

(ii) Establish oversight mechanisms that require periodic review of information systems to determine how mission requirements might have changed, and whether the information system continues to fulfill ongoing and anticipated mission requirements. These mechanisms must also require information regarding the future levels of maintenance necessary to ensure the information system meets mission requirements cost effectively;

(iii) Ensure that major information systems proceed in a timely fashion towards agreed-upon milestones in an information system life cycle. Information systems must also continue to deliver intended benefits to the agency and customers, meet user requirements, and identify and offer security protections;

(iv) Prepare and update a strategy that identifies and mitigates risks associated with each information system.

(v) Ensure that financial management systems conform to the requirements of OMB Circular No. A–127, "Financial Management Systems."

(D) What must an agency do as part of the evaluation component of the capital planning process?

(i) Conduct post-implementation reviews of information systems and information resource management processes to validate estimated benefits and costs, and document effective management practices for broader use;

(ii) Evaluate systems to ensure positive return on investment and decide whether continuation, modification, or termination of the systems is necessary to meet agency mission requirements.

(iii) Document lessons learned from the post-implementation reviews. Redesign oversight mechanisms and performance levels to incorporate acquired knowledge.

(2) What is an ITA? Consistent with Appendix II of this Circular, agencies will create an Information Technology Architectures (ITA). This framework should document linkages between mission needs, information content, and information technology capabilities. An ITA should also guide both strategic and operational IRM planning. It should be supported by a complete inventory of the agency information resources, including personnel, equipment, and funds devoted to information resources management and information technology, at a level of detail appropriate to support the ITA. It should also address steps necessary to create an open systems environment. Agencies will implement the following principles:

(a) Develop information systems that facilitate interoperability, application portability, and scalability of computerized applications across networks of heterogeneous hardware, software, and communications platforms;

(b) Meet information technology needs through cost effective intra-agency and interagency sharing, before acquiring new information technology resources; and

(c) Establish a level of security for all information systems that is commensurate to the risk and magnitude of the harm resulting from the loss, misuse, unauthorized access to, or modification of the information stored or flowing through these systems.

(1) How Should Agencies Acquire Information Technology?

Agencies will:

(a) Make use of adequate competition, allocate risk between government and contractor, and maximize return on investment when acquiring information technology;

(b) Structure major information systems into useful segments with a narrow scope and brief duration. This will reduce risk, promote flexibility and interoperability, increase accountability, and better match mission need with current technology and market conditions;

(c) Acquire off-the-shelf software from commercial sources, unless the cost effectiveness of developing custom software is clear and has been documented through pilot projects or prototypes; and

(d) Ensure accessibility of acquired information technology pursuant to the Rehabilitation Act of 1973, as amended (Pub. Law 105–220, 29 U.S.C.794d).

7. Section 9, "Assignment of Responsibilities," is amended by making the following revisions to Section 9a, "All Federal Agencies": delete subparagraphs (9)–(10), renumber subparagraphs (3)–(8) to become subparagraphs (5)–(10), insert new subparagraphs (3)–(4), revise new subparagraph (7), and insert (11)–(15) to read:

(3) Appoint a Chief Information Officer, as required by 44 U.S.C. 3506(a), who must report directly to the agency head to carry out the responsibilities of the agencies listed in Executive Order 13011. The head of the agency will consult with the Director of OMB prior to appointing a Chief Information Officer, and will advise the Director on matters regarding the authority, responsibilities, and organizational resources of the Chief Information Officer. For purposes of this paragraph, military departments and the Office of the Secretary of Defense may each appoint one official. The Chief Information Officer shall, among other things:

(a) Be an active participant during all agency strategic management activities,

including the development, implementation, and maintenance of agency strategic and operational plans;

(b) Be an active participant throughout the annual agency budget process in establishing investment priorities for agency information resources;

(c) Advise the agency head on information resource implications of strategic planning decisions;

(d) Monitor and evaluate the performance of information resource investments through a capital planning and investment control process, and advise the agency head on whether to continue, modify, or terminate a program or project;

(e) Advise the agency head on budgetary implications of information resource decisions; and

(f) Advise the agency head on the design, development, and implementation of information resources.

(4) Direct the Chief Information Officer, appointed pursuant to 44 U.S.C. 3506(a), to monitor agency compliance with the policies, procedures, and guidance in this Circular. Acting as an ombudsman, the Chief Information Officer will consider alleged instances of agency failure to comply with section 8(a) of this Circular, and recommend or take appropriate corrective action. The Chief Information Officer will report instances of alleged failure and their resolution annually to the Director of OMB, by February 1st of each year.

(7) Maintain the following, as required by the Paperwork Reduction Act (44 U.S.C. 3506(b)(4) and 3511) and the Freedom of Information Act (5 U.S.C. 552(g)): an inventory of the agency's major information systems, holdings, and dissemination products; an agency information locator service; a description of the agency's major information and record locator systems; an inventory of the agency's other information resources, such as personnel and funding (at the level of detail that the agency determines is most appropriate for its use in managing the agency's information resources); and a handbook for persons to obtain public information from the agency pursuant to these Acts.

(11) Ensure that the agency;

(a) cooperates with other agencies in the use of information technology to improve the productivity, effectiveness, and efficiency of Federal programs;

(b) promotes a coordinated, interoperable, secure, and shared government wide infrastructure that is provided and supported by a diversity of private sector suppliers; and

(c) develops a well-trained corps of information resource professionals.

(12) Use the guidance provided in OMB Circular A–11, "Planning, Budgeting, and Acquisition of Fixed Assets," to promote effective and efficient capital planning within the organization;

(13) Ensure that the agency provides budget data pertaining to information resources to OMB, consistent with the requirements of OMB Circular A–11,

(14) Permit, to the extent practicable, the use of one agency's contract by another agency or the award of multi-agency contracts, provided the action is within the scope of the contract and consistent with OMB guidance; and

(15) As designated by the Director of OMB, act as executive agent for the government-wide acquisition of information technology.

8. Section 9, "Assignment of Responsibilities," is further amended by revising Section 9b, "Department of State," to read as follows:

b. Department of State. The Secretary of State will:

(1) Advise the Director of OMB on the development of United States positions and policies on international information policy and technology issues affecting Federal government activities and the development of international information technology standards; and

(2) Be responsible for liaison, consultation, and negotiation with foreign governments and intergovernmental organizations on all matters related to information resources management, including federal information technology. The Secretary will also ensure, in consultation with the Secretary of Commerce, that the United States is represented in the development of international standards and recommendations affecting information technology. These responsibilities may also require the Secretary to consult, as appropriate, with affected domestic agencies, organizations, and other members of the public.

9. Section 9, "Assignment of Responsibilities" is further amended by making the following revision to Section 9c, "Department of Commerce": Subparagraph (1) is revised to read as follows:

(1) Develop and issue Federal Information Processing Standards and guidelines necessary to ensure the efficient and effective acquisition, management, security, and use of information technology while taking into consideration the recommendations of the agencies and the Chief Information Officers Council;

10. Section 9, "Assignment of Responsibilities," is further amended by making the following revisions to Section 9e, "General Services Administration": subparagraphs (1) through (5) are deleted, subparagraph (6) is renumbered as subparagraph (7); and the following new subparagraphs are added after the introductory text:

(1) Continue to manage the FTS2001 program and coordinate the follow-up to that program, on behalf of and with the advice of agencies;

(2) Develop, maintain, and disseminate for the use of the Federal community (as requested by OMB or the agencies) recommended methods and strategies for the development and acquisition of information technology;

(3) Conduct and manage outreach programs in cooperation with agency managers;

(4) Be a liaison on information resources management (including Federal information technology) with State and local governments. GSA will also be a liaison with non-governmental international organizations, subject to prior consultation with the Secretary of State to ensure consistency with the overall United States foreign policy objectives;

(5) Support the activities of the Secretary of State for liaison, consultation, and negotiation with intergovernmental organizations on information resource management matters;

(6) Provide support and assistance to the CIO Council and the Information Technology Resources Board.

11. Section 9, "Assignment of Responsibilities," is amended by making the following revisions to Section 9h, "Office of Management and Budget": Subparagraph (10) is deleted, subparagraphs (11) and (12) are renumbered as subparagraphs (10) and (11), and the following new subparagraphs are added at the end:

(12) Evaluate agency information resources management practices and programs and, as part of the budget process, analyze, track, and evaluate the risks and results of major capital investments in information systems;

(13) Notify an agency if OMB believes that a major information system project requires outside assistance;

(14) Provide guidance on the implementation of the Clinger-Cohen Act and on the management of information resources to the executive agencies, to the CIO Council, and to the Information Technology Resources Board; and

(15) Designate one or more heads of executive agencies as executive agent for government-wide acquisitions of information technology.

Proposed Appendix II to OMB Circular No. A–130—Information Technology Architecture

This Appendix defines the minimum criteria for an agency Information Technology Architecture (ITA). Many agencies have already developed frameworks and methodologies guiding the development, implementation, and maintenance of an ITA. Therefore this guidance is intended to ensure that as agencies complete or update their ITA, critical information is included.

An IT architecture in compliance with the Clinger-Cohen Act and OMB guidance will contain an Enterprise Architecture and a Technical Reference Model and Standards Profile.

What Is an Enterprise Architecture?

An Enterprise Architecture is the explicit description of the current and desired relationships among business and management processes and information technology. It describes the "target" environment which the agency wishes to create and maintain by managing its IT portfolio. The Enterprise Architecture must also provide a strategy that will enable the agency to transition from its current to its target environment. Within the Enterprise Architecture it is important that agencies identify and document: (1) the business processes, (2) the information flow and

relationships, (3) applications, (4) data descriptions, and (5) technology infrastructure, as follows:

1. Business Processes—Agencies must identify the work performed to support its mission, vision and performance goals. Agencies must also document change agents, such as legislation or new technologies, that will drive changes in the Enterprise Architecture.

2. Information Flow and Relationships—Agencies must analyze the information utilized by the agency in its business processes, identifying the information used and the movement of the information. These information flows indicate where the information is needed and how the information is shared to support mission functions.

3. Applications—Agencies must identify, define, and organize the activities that capture, manipulate, and manage the business information to support business processes. It also describes the logical dependencies and relationships among business activities.

4. Data Descriptions and Relationships—Agencies must identify how data is created, maintained, accessed, and used. At a high level, agencies define the data and describe the relationships among data elements used in the agency's information systems.

5. Technology Infrastructure—Agencies must describe and identify the functional characteristics, capabilities, and interconnections of the hardware, software, and telecommunications.

What Are the Technical Reference Model and Standards Profile?

Technical Reference Model (TRM)—A TRM identifies and describes the information services (such as database, communications, intranet, etc.) used throughout the agency.

Standards—Agencies should define the set of IT standards that support the services articulated in the TRM. Agencies are expected to adopt standards necessary to support the entire Enterprise Architecture, and must be enforced consistently throughout the agency.

Proposed Revisions to Appendix IV to OMB Circular No. A–130—Analysis of Key Sections

Revise Section 8a(5) to include:

As described in Section 11 of the "Electronic Freedom of Information Act Amendments of 1996" (Public Law 104–231), an agency must place its index and description of major information and record locator systems in its reference material or guide. We expect that this index and description would include an agency's Government Information Locator Service (GILS) presence as well as any other major information and record locator systems the agency has identified.

In addition, each agency should prepare a handbook that describes in one place the various ways by which a person can obtain public information from the agency, as well as the types and categories of information available. In preparing the handbook, each agency should review the dissemination policies contained in this Circular. The handbook should be in plain English and user-friendly. Where applicable, it should indicate that the public is encouraged to access information electronically via the agency's home page or to search in its reading room, and that the public may also submit a request to the agency under the Freedom of Information Act. "Types and categories" of available information will vary from agency to agency, and agencies should describe their information resources in whatever manner seems most appropriate.

Although the law does not require that the handbook be available on-line, OMB encourages agencies to do so as a matter of policy. The handbook should include the following elements:

1. The location of reading rooms within the agency and within its major field offices, as well as a brief description of the types and categories of information available.

2. The location of the agency's World Wide Web home page.

3. A reference to the agency's FOIA regulations and how to get a copy.

4. A reference to the agency's FOIA annual report and how to get a copy.

5. The location of the agency's GILS page.

6. A brief description of the types and categories of information generally available from the agency.

In addition, if there is an on-line version, it should have electronic links to these elements wherever they exist.

Section 8b(1)

What is the capital planning and investment control process?

The capital planning and investment control process is a systematic approach to managing the risks and returns of IT investments. The process has three phases: select, control and evaluate. The process covers all stages of capital programming, including planning, budgeting and procurement. For additional information describing capital planning, please consult Circular A–11.

Where can I get more information about return on investment (ROI)?

Agencies that would like to learn more about compiling and demonstrating projected return on investments (ROI) are encouraged to consult the Federal CIO Council document "ROI and the Value Puzzle". This document may be obtained at the CIO Council's web page (http://cio.gov).

How should agencies incorporate security into management of information resources?

Effective security is an essential element of all information systems. A process assuring adequate security must be integrated into the agency's management of information resources. This process should be a component of the both capital planning process and the information technology architecture. A system's security requirements must be supported by the agency ITA in order for it to be considered during the select phase of the capital planning process. Agencies will use the control and evaluate phases of capital planning to ensure these security requirements are met throughout the system's life cycle. For more information on computer security please read Appendix III of this Circular.

How will agencies use the information collected during the capital planning process?

As a quick guide, this table summarizes the information trail and describes how certain types of information will be utilized throughout the capital planning process.

Required information	Components of the capital planning process		
	Select (planned)	Control (actual)	Evaluate (variance)
Justification and descriptive information.	Provided as part of the pre-screening process and documents the business case justification for the investment.	Reviewed and reported systematically to ensure business needs are being met.	Reported annually as part of the Capital Asset Plan and Justification (Exhibit 300B).

Required information	Components of the capital planning process		
	Select (planned)	Control (actual)	Evaluate (variance)
Summary of spending by project stages, cost, schedule, and performance goals.	Provided as part of the initial planning and budgeting process using a work break-down process. The summary reflects a life cycle project management approach for all stages of the investment, and is structured using a performance based management process (such as earned value management).	Reviewed systematically to ensure that costs and scheduled goals are on target.	Reported annually as part of the Capital Asset Plan and Justification (Exhibit 300B).
Program management and contracting information.	Provided as part of the planning phase and includes information such as type of contract, and acquisition planning information.	Reviewed systematically to ensure that contract and acquisition goals are on target.	Reported annually as part of the Capital Asset Plan and Justification (Exhibit 300B).
Financial Basis for the project	Details financial analysis such as benefits-cost analysis (BCA), return on investment and other financial analysis performed to justify the investment.	Reviewed and updated systematically to capture the latest information on ROI and benefits and to track financial performance.	Reported annually as part of the Capital Asset Plan and Justification (Exhibit 300B).
Performance measures and goals ..	Provided prior to the selection of the project and establishes the baseline for performance measures and goals whereby the investment will be monitored.	Monitored and reported systematically for performance goals and the progress of meeting the business goals and needs of an agency.	Reported annually as part of the Capital Asset Plan and Justification (Exhibit 300B).
Costs and schedule goals	Provided as part of the initial planning and budgeting process using a work break-down process. The goals reflect a life-cycle project management approach for all stages of the investment and is structured using an earned value management process.	Updated systematically to ensure that the investment is earning at the planned rate.	Reported annually as part of the Capital Asset Plan and Justification (Exhibit 300B).
Risks	Risk assessments are performed and mitigation plans are provided as part of the initial planning phase. Assessments must address technology, security, strategic issues, and IT architecture. Risks Assessments may also address the risk of not continuing a project.	Reviewed and updated systematically to gauge effectiveness of the mitigation plans and to identify any new risks that may arise.	Reported annually as part of the Capital Asset Plan and Justification (Exhibit 300B).
Benefits associated with the investment.	Benefits can be either financial or non-financial and may also be cost avoidance. The expected benefits are captured as part of the initial planning phase of an investment.	Updated systematically to further strengthen the business case for the investment or its continuance and to ensure that the benefits are realized.	Reported annually as part of the Capital Asset Plan and Justification (Exhibit 300B).

Section 8b(2)

What Is an ITA?

An Information Technology Architecture (ITA) should guide the agency's management of information resources for agency-wide information and information technology needs consistent with Appendix II of this Circular. The ITA will help the agency cope with technology and business change by serving as a reference for updates to existing and new information systems. The ITA will also assure interoperability of business processes, data, applications and technology as agencies integrate proposed information systems projects with one another and with existing legacy systems. The agency's strategic IRM plan should describe the parameters (e.g., technical standards) of such an ITA. The ITA must also drive operational planning and describe how the agency intends to use information and information technology.

Where Can I Get More Information Describing the ITA?

Agencies that require additional information on developing or maintaining an ITA are encouraged to consult the Federal CIO Council document entitled "The Federal Enterprise Architecture (FEA) Framework" which is available on the CIO Council's web site (http://cio.gov).

What Is an Open Systems Environment?

An open system should be based on an architecture with published or documented interface specifications that have been adopted by a standards settings body.

Ultimately, Who Determines the Acceptable Level of Security for a System?

Each agency program official must understand the risk to systems under their control and determine the acceptable level of risk, ensure adequate security is maintained to support and assist the programs under their control, ensure that security controls comport with program needs and appropriately accommodate operational necessities. In addition, program officials should work in conjunction with Chief Information Officers and other appropriate agency officials so that security measures support agency information architectures.

Section 8b(3)

What Should agencies Consider Before Acquiring a COTS Solution?

COTS products can provide agencies a cost effective and efficient solution. However, often COTS products require customization for seamless use. Therefore agencies must still thoroughly examine the impact of a COTS product selection. A lessons-learned guide describing the risks of COTS products has been published by the Information Technology Resources Board (ITRB). The guide, entitled "Assessing the Risks of Commercial-Off-The-Shelf (COTS) Applications," is available on the ITRB web site (http://itrb.gov).

Section 9a(3). Chief Information Officer (CIO)

To Whom Does the CIO Report?

Each agency must appoint a Chief Information Officer, as required by 44 U.S.C. 3506(a), who will report directly to the agency's head to carry out the responsibilities of the agency under the PRA.

What Are the CIO's Responsibilities in Regards to Financial Management Systems?

The head of the agency is responsible for defining the operating relationship between the CIO and CFO functions and ensuring coordination in the implementation of the Clinger-Cohen Act, the PRA, the Chief Financial Officers Act, and the Government Performance and Results Act. The Clinger-Cohen Act encourages the CIO and CFO to work together under the direction of the agency head to ensure that the agency's information systems provide reliable, consistent, and timely program performance information.

What Is the CIO's Role in the Capital Planning Process?

The CIO will ensure that a capital planning process is established and rigorously used to define and validate all information resource investments. Through this process, the CIO shall monitor and evaluate the performance of the information technology portfolio of the agency and advise the agency head whether to continue, modify, or terminate a program or project. The CIO will have accountability and authority over continuation or termination of information resource investments.

Additionally, the CIO will establish a board composed of senior level managers who will have the responsibility of making key business recommendations on information resource investments, and who will be continuously involved. Many agencies will institute a second board, composed of program or project level managers, with more detailed business and information resource knowledge. They will be able to provide technical support to the senior level board in proposing, evaluating, and recommending information resource investments.

What Is the CIO's Role in the Annual Budget Process?

The CIO will be an active participant during all agency annual budget processes and strategic planning activities, including the development, implementation, and maintenance of agency strategic plans. The CIO's role is to provide leadership and a strategic vision for using information technology to transform the agency. CIO's must also ensure that all information resource investments deliver a substantial mission benefit to the agency and/or a substantial ROI to the taxpayer.

Additionally, the CIO will ensure coordination of information resource planning processes and documentation with the agency's strategic, performance and budget process.

Section 9a(4)

Why Is the CIO Considered an Ombudsman?

The CIO designated by the head of each agency under 44 U.S.C. 3506(a) is charged with carrying out the responsibilities of the agency under the PRA. Agency CIOs are responsible for ensuring that their agency practices are in compliance with OMB policies. It is envisioned that the CIO will work as an ombudsman to investigate alleged instances of agency failures to adhere to the policies set forth in the Circular and to recommend or take corrective action as appropriate. Agency heads should continue to use existing mechanisms to ensure compliance with laws and policies.

[FR Doc. 00–9077 Filed 4–12–00; 8:45 am]

BILLING CODE 5110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24379, 812–11968]

Boston 1784 Funds et al., Notice of Application

April 6, 2000.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of an application for an order under section 17(b) of the Investment Company Act of 1940 ("Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain series of The Galaxy Fund ("Galaxy") to acquire all of the assets and liabilities of all of the series of Boston 1784 Funds ("1784")(the"Reorganization"). Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

APPLICANTS: 1784, Galaxy, Fleet National Bank and Fleet Investment Advisors Inc.

FILING DATES: The application was filed on February 9, 2000. Applicants agree to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 1, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. 1784, 2 Oliver Street, Boston, MA 02109; Fleet National Bank, 100 Federal Street, Boston, MA 02110; Galaxy, 4400

Computer Drive, Westborough, MA 01581–5108; and Fleet Investment Advisors Inc., 75 State Street, Boston MA 02109.

FOR FURTHER INFORMATION CONTACT: Paula L. Kashtan, Senior Counsel, at (202) 942–0615, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. 1784, a Massachusetts business trust, is registered under the Act as an open-end management investment company and is comprised of seventeen series (the "Acquired Fund").

2. Galaxy, a Massachusetts business trust, is registered under the Act as an open-end management investment company. Galaxy currently offers 29 series, ten of which will participate in the Reorganization (the "Operating Acquiring Funds"). Galaxy also is organizing seven new shell series, each of which will participate in the Reorganization (the "Shell Acquiring Funds," and together with the Operating Acquiring Funds, the "Acquiring Funds").[1] The Acquiring Funds and the Acquired Funds are collectively referred to as the "Fund." Applicants state that the investment objectives, policies and restrictions of each Acquired Fund and its corresponding Acquiring Fund are substantially similar.

3. Fleet National Bank, formerly BankBoston, N.A ("Fleet National"), serves as investment adviser to the Acquired Funds and is exempt from registration pursuant to section 202(a)(11)(A) of the Investment Advisers Act of 1940 ("Advisers Act"). Fleet Investment Advisers Inc. ("Fleet") is registered under the Advisers Act, and is the investment adviser for the Operating Acquiring Funds and will be the investment adviser for the Shell Acquiring Funds. Fleet National and Fleet and wholly owned subsidiaries of Fleet Boston Corporation.

4. Currently, Fleet National, Fleet and certain of their affiliates that are under common control (the "Fleet Boston Group") hold of record, in their names or in the names of their nominees, in excess of 5% (and with respect to certain of the Funds more than 25%) of the outstanding voting securities of certain of the Funds. All of these securities are held for the benefit of others in a trust, agency, custodial, or other fiduciary or representative capacity, except that certain companies of the Fleet Boston Group may, at times, own economic interests in certain money market Funds for their own account.

5. On January 25, 2000 and February 4, 2000, respectively, the boards of trustees of Glaxy (the "Board of Galaxy") and 1784 ("Board of 1784"), including all of their disinterested trustees ("Disinterested Trustees"), unanimously approved a plan of Reorganization pursuant to which substantially all of the assets and liabilities of each of the Acquired Funds will be transferred to the corresponding Acquiring Fund in exchange for shares of designated classes of the corresponding Acquiring Fund (the "Plan of Reorganization").[2] The number of Acquiring Fund shares to be issued to shareholders of the Acquired Fund will be determined by dividing the aggregate net assets of each Acquired Fund by the net asset value per share of the corresponding Acquiring Fund class, each computed immediately prior to the effective time of the Reorganization ("Effective Time"). The Acquiring Fund shares will be distributed *pro rata* to the shareholders of record in the applicable Acquired Fund, determined as of the Effective Time. This distribution will be accomplished by issuing the Acquiring Fund shares to open accounts on the share records of the Acquiring Funds in the names of the Acquired Fund shareholders of record. Simultaneously, all issued and outstanding shares of the Acquired Funds will be canceled on the books of the Acquired funds. Each of the acquired Funds thereafter will be dissolved. The Reorganization is expected to occur on or around May 12, 2000. The Plan of Reorganization may be terminated by mutual written consent of the Board of Glaxy and the Board of 1784 any time prior to the Effective Time.

6. The Acquiring Funds and the Acquired Funds consist of: (a) Five money market Funds (the "Money Market Funds"); and (b) twelve non-money market Funds (the "Non-Money Market Funds"). Each Acquired Fund offers one class of shares. Three classes of shares of the Acquiring Funds (BKB, Trust and shares) will be issued in the Reorganization.[3]

7. As a result of the Reorganization, shareholders of the 1784 Florida Tax-Exempt Income Fund, 1784 Tax-Free Money Market Fund, and 1784 Institutional U.S. Treasury Money Market Fund will receive shares of the corresponding Acquiring Fund, each of which offers a single class of shares ("Shares"). Shareholders of the remaining Acquired Funds will receive either BKB shares or Trust shares of the corresponding Acquiring Fund. Shareholders who purchased shares of the remaining Acquired Funds through an investment management, trust, custody, or other agency relationship with Fleet National ("Institutional Shareholders") will receive Trust shares of the corresponding Acquiring Fund. All other shareholders of the remaining Acquired Funds ("Retail Shareholders") will receive BKB shares of the corresponding Acquiring Fund. BKB shares will convert to Retail A shares of the respective Acquiring Fund on the first anniversary of the Reorganization, provided that the Board of Galaxy determines that such conversion is in the best interests of the BKB shareholders. Applicants state that the rights and obligations of the shares of the Acquired Funds are substantially similar to those of the corresponding classes of shares of the Acquiring Funds issued in the Reorganization.

8. Shares of the Acquired Funds are offered at net asset value with no front-end sales load or contingent deferred

[1] A registration statement for the Shell Acquiring Funds was filed with the SEC on February 23, 2000, and it is anticipated that it will be declared effective on or about May 8, 2000.

[2] The Acquired Funds and their corresponding Acquiring Funds are: (1) 1784 Tax-Free Money Market Fund and Galaxy Tax-Exempt Fund; (2) 1784 U.S. Treasury Money Market Fund and Galaxy U.S. Treasury Fund; (3) 1784 Institutional U.S. Treasury Money Market Fund and Galaxy Institutional Treasury Money Market Fund (shell); (4) 1784 Prime Money Market Fund and Galaxy Money Market Fund; (5) 1784 Institutional Prime Money Market Fund and Galaxy Institutional Money Market Fund (shell); (6) 1784 Short-Term Income Fund and Galaxy Short-Term Bond Fund; (7) 1784 Income Fund and Galaxy High Quality Bond Fund; (8) 1784 U.S. Government Medium-Term Income Fund and Galaxy Intermediate Government Income Fund; (9) 1784 Tax-Exempt Medium-Term Income Fund and Galaxy Intermediate Tax-Exempt Bond Fund (shell); (10) 1784 Connecticut Tax-Exempt Income Fund and Galaxy Connecticut Intermediate Municipal Bond Fund (shell); (11) 1784 Florida Tax-Exempt Income Fund and Galaxy Florida Municipal Bond Fund (shell); (12) 1784 Massachusetts Tax-Exempt Income Fund and Galaxy Massachusetts Intermediate Municipal Bond Fund (shell); (13) 1784 Rhode Island Tax-Exempt Income Fund and Galaxy Rhode Island Municipal Bond Fund; (14) 1784 Asset Allocation Fund and Galaxy Asset Association Fund; (15) 1784 Growth and Income Fund and Galaxy Growth and Income Fund; (16) 1784 Growth Fund and Galaxy Growth Fund II (shell); and (17) 1784 International Equity Fund and Galaxy International Equity Fund.

[3] Certain of the Acquiring Funds are authorized to issue four additional classes of shares (Retail A, Retail B, Prime A, and Prime B) not involved in the Reorganization.

sales charge ("CDSC"). Trust shares, BKB shares and Shares of the Acquiring Funds are offered at net asset value with no front-end sales load or CDSC. The Non-Money Market Funds of the Acquired Funds are subject to a .25% rule 12b–1 fee. Since 1784's inception, however, no fees have been paid under the rule 12b–1 plan. Two of the Money Market Funds of the Acquired Funds (the 1784 U.S. Treasury Money Market Fund and the 1784 Prime Money Market Fund) are subject to an annual service fee of .10% of average daily net assets. Trust shares, BKB shares and Shares of the Acquiring Funds are not subject to distribution fees under a rule 12b–1 plan. BKB shares and Retail A shares are subject to a maximum .50% shareholder servicing fee.[4] The BKB service fee will be waived, fully or partially, so that no Acquired Fund shareholder will realize an increase in expenses as a result of such fees for as long as they hold BKB shares. No sales load or CDSC will be imposed with respect to the shares of the Acquiring Funds to be issued in the Reorganization. In addition, no sales load will be imposed on conversion of BKB shares to Retail A shares, and no CDSC will be imposed on redemptions of Retail A shares by former Acquired Fund shareholders.

9. The Boards of 1784 and Galaxy, including all of their Disinterested Trustees, found that participation in the Reorganization is in the best interest of each Fund and that the interests of existing shareholders in the Funds will not be diluted as a result of the Reorganization. In approving the Reorganization, the Board of 1784 and the Board of Galaxy considered, among other things: (a) The capabilities, practices, and resources of Fleet and other service providers to the Acquiring Funds; (b) the investment advisory and other fees projected to be paid by the Acquiring Funds, and the projected expense ratios of the Acquiring Funds as compared with those of the Acquiring Funds; (c) the investment objectives, strategies, and limitations of the Acquiring Funds and their compatibility with those of the Acquiring Funds; (d) the shareholder services offered by the Acquiring Funds; (e) the terms and conditions of the Plan of Reorganization; (f) the expected cost savings for certain of the Acquiring Funds; (g) the anticipated tax-Free status of the Reorganization; and (h) the number of investment portfolio options that would be available to shareholders after the Reorganization. In addition, the Board of 1784 considered that the Acquiring Funds' shareholders would benefit from the distribution and shareholder servicing plans of the Acquiring Funds. Further, the Board of 1784 considered that, as a result of the Reorganization, Acquired Fund shareholders should benefit from improved economies of scale and will have access to a larger and more diverse family of mutual funds. Fleet will assume all expenses incurred by the Funds in connection with the Reorganization.

10. The Reorganization is subject to a number of conditions precedent, as set forth in the Plan of Reorganization, including that: (a) a registration statement under the Securities Act of 1933 for the Acquiring Funds will have become effective; (b) the shareholders of the Acquiring Funds, including a majority of the Institutional Shareholders and a majority of the Retail Shareholders, will have approved the Plan of Reorganization independently;[5] (c) each Acquiring Fund will have declared a dividend or dividends to distribute substantially all of its investment company taxable income and net capital gain, if any, to its shareholders; (d) applicants will have received exemptive relief from the SEC with respect to the issues in the application; and (e) the applicants will have received an opinion of counsel concerning the federal income tax aspects of the Reorganization. Applicants agree not to make any material changes to the Reorganization Plan without prior SEC approval.

11. A registration statement on Form N–14 was filed with the SEC on February 7, 2000, and became effective on March 8, 2000. Applicants mailed prospectus/proxy statements to shareholders of the Acquiring Funds on or about March 15, 2000. A special meeting of the Acquired Fund shareholders will be held on or about April 28, 2000.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person, and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Funds may be deemed affiliated persons and thus the Reorganization may be prohibited by section 17(a).

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants believe that they may not rely on rule 17a–8 in connection with the Reorganization because the Funds may be deemed to be affiliated for reasons other than those set forth in the rule. By virtue of the direct or indirect ownership by the Fleet Boston Group of more than 5% (and in some cases, more than 25%) of the outstanding voting securities of certain of the Funds, each Acquired Fund may be deemed an affiliated person of an affiliated person of the corresponding Acquiring Fund. In addition, because of this ownership, certain of the Funds may be deemed to be under common control, and thus affiliated persons under section 2(a)(3)(C) of the Act.

4. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to permit applicants to consummate the Reorganization. Applicants submit that the Reorganization satisfies the standards of section 17(b) of the Act. Applicants state that the Boards of Galaxy and 1784, including all of their Disinterested Trustees, found that participation in the Reorganization is in the best interests of each of the Funds, and that the interests of the existing shareholders will not be diluted as a result of the Reorganization.

[4] The Acquiring Funds approved a shareholder services plan with respect to Trust shares, although no agreement has been entered into under the plan

[5] An Acquired Fund will not be reorganized unless both the Institutional Shareholders and Retail Shareholders separately as a class approve the Reorganization.

Applicants also note that the exchange of the Acquired Funds' assets for shares in the Acquiring Funds will be based on the Funds' relative net asset values.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–9180 Filed 4–12–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (BriteSmile Inc., Common Stock, Par Value $.001 per Share) File No. 1–11064

April 6, 2000.

BriteSmile, Inc. ("Company"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw the security described above ("Security") from listing and registration on the American Stock Exchange LLC ("Amex").

The Security has been listed and registered on the Amex pursuant to Section 12(b) of the Act.[3] The Company now desires to have its Security trade on the Nasdaq Stock Market, Inc. ("Nasdaq"). Accordingly, the Company has filed a Registration Statement on Form 8–A with the Commission pursuant to Section 12(g) of the Act,[4] and the Company has stated that the Security is scheduled to begin trading on the Nasdaq National Market, and simultaneously be suspended from trading on the Amex, at the opening of business on April 7, 2000. In conjunction with the transfer of trading from the Amex to the Nasdaq, the Company is seeking to withdraw its Security from listing and registration on the Amex in order to avoid both the costs of maintaining dual listings and the potential fragmentation of the market for its Security.

The Company has stated that it has complied with the Rule of the Amex governing the withdrawal of its Security from listing and registration on the Amex and that the Amex, in turn has indicated that it will not oppose such withdrawal.

The Company's application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon the Security's designation for quotation and trading on the Nasdaq National Market. By reason of Section 12(g) of the Act[5] and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports with the Commission required by Section 13 of the Act.[6]

Any interested person may, on or before April 27, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–9182 Filed 4–12–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24380; File No. 812–11848]

ING Variable Insurance Trust, et al., Notice of Application

April 6, 2000.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order of exemption under section 6(c) of the Investment Company Act of 1940 ("1940 Act") for exemptions from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit shares of any current or future series of ING Variable Insurance Trust ("Fund") designed to fund insurance products and shares of any other investment company or series thereof now or in the future registered under the 1940 Act that is designed to fund insurance products and for which ING Mutual Funds Management Co. LLC ("Adviser"), or any of its affiliates, may serve as investment adviser, administrator, manager, principal underwriter or sponsor (the Fund, together with such other investment companies are referred to, collectively, as the "Funds"), to be sold to and held by: (1) Variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies; (2) qualified pension and retirement plans; (3) any investment adviser to a Fund and affiliates thereof; and (4) general accounts of any insurance company whose separate account holds, or will hold, shares of a Fund.

Applicants: ING Variable Insurance Trust, ING Mutual Funds Management Co. LLC (collectively, "Applicants") and certain life insurance companies and variable annuity and life insurance separate accounts.

Filing Date: The application was filed on November 5, 1999, and amended and restated on March 29, 2000.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on May 1, 2000, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of your interest, the reason for the request, and the issues you contest. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549–0609. ING Variable Insurance Trust and ING Mutual Funds Management Co. LLC, 1475 Dunwoody Drive, West Chester, PA 19380.

FOR FURTHER INFORMATION CONTACT: Ronald A. Holinsky, Attorney or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants's Representations

1. The Fund, an open-end management investment company

[1] 15 U.S.C 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).
[5] *Id.*
[6] 15 U.S.C. 78m.
[7] 17 CFR 200.30–2(a)(1).

organized as a Delaware business trust, currently consists of eight separate series, each with its own investment objective and policies. Additional series may be established in the future.

2. ING Funds Distributor, Inc., a registered broker-dealer and member of the National Association of Securities Dealers, Inc., serves as the principal underwriter of the Fund.

3. ING Mutual Funds Management Co. LLC serves as the investment manager of the Funds. ING has retained certain affiliates that act as sub-advisers to the Funds. ING and each of the sub-advisers are indirect wholly-owned subsidiaries of ING Group N.V.

4. The Fund intends to offer shares of its existing and future series to: (a) Separate accounts of insurance companies in order to fund variable annuity contracts and variable life insurance contracts of affiliated and unaffiliated insurance companies, (b) qualified pension and retirement plans, (c) the Adviser of the Fund (or a series thereof) and its affiliates, and (d) general accounts of participating insurance companies. Insurance companies whose separate account(s) owns shares of the Fund are referred to herein as Participating Insurance Companies". It is anticipated tlfat Participating Insurance Companies will rely on Rules 6e–2 or 6e–3(T) under the 1940 Act, although some may rely on individual exemptive orders as well, in connection with variable life insurance contracts. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts is commonly referred to, and is referred to herein, as "mixed funding." The use of a common management investment company as the underlying investment medium for separate accounts of unaffiliated insurance companies is referred to herein as "shared funding."

5. Each Participating Insurance company will have the legal obligation of satisfying all requirements applicable to it under the federal securities laws in connection with any variable contract issued by such company.

6. Fund shares may be offered directly to plans described in Treasury Regulation § 1.817–(f)(3)(iii) ("Plans").

7. The Plans may choose the Fund as the sole investment under the Plan or as one of the several investments. Plan participants may or may not be given the right to select the Fund, depending on the Plan itself. Fund shares sold to Plans will be held by the trustees of such Plans as required by Section 403(a) of the Employee Retirement Income Security Act ("ERISA").

8. Fund shares may also be offered to general accounts whose separate account holds, or will hold, shares of the Fund and to certain related corporations of such life insurance company, pursuant to Treasury Regulation § 1.817–5(3)(i).

9. Fund shares may also be offered to the Adviser and its affiliates, pursuant to Treasury Regulation § 1.817–(f)(3)(ii).

10. Applicants state that the Treasury Department Regulations permit such sales as long as the return on shares held by an insurance company general account or the Adviser and its affiliates is computed in the same manner as for shares held by a separate account, and the general account or the Adviser and its affiliates does not intend to sell shares of the Fund held by it to the public. An additional restriction is imposed by the Regulations on sales to the Adviser and its affiliates, who may hold shares only in connection with the creation or management of the Fund. Applicants anticipate that sales in reliance on these provisions of the Regulations generally will be made to the Adviser and its affiliates and generally for the purpose of providing necessary capital required by Section 14(a) of the 1940 Act.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act granting exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) thereof and Rules 6e–2(b)(15) 6e–3(T)(b)(15) thereunder, to the extent necessary to: (a) Permit "mixed" and "shared" funding as defined below; and (b) allow shares of the Fund to be sold to Plans, Advisers and general accounts as summarized herein.

2. Section 6(c) authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities, or transactions, from the provisions of the 1940 Act, or the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust (the "Trust Account"), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–2(b)(15) are available only where the management investment company underlying the Trust Account offers its shares "exclusively to variable life insurance separate accounts of the life insurer or any affiliated life insurance company * * *."

4. The relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or a flexible premium variable life insurance separate account of the same company or of any affiliated company. Therefore, Rule 6e–2(b)(15) precludes mixed and shared funding.

5. Moreover, because the relief granted by Rule 6e–2(b)(15) is available only where shares are offered exclusively to separate accounts, additional exemptive relief may be necessary if the shares of the Funds are also to be sold to Plans, general accounts or Advisers.

6. In connection with the funding of flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–3(T)(b)(15) are available only where the underlying fund offers its shares "exclusively to separate accounts of the life insurer, or any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both, or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company, or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account * * *." Thus, while Rule 6e–3(T)(b)(15) permits mixed funding with respect to a flexible premium variable life insurance separate account, it does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts of unaffiliated life insurance companies. Moreover, because the relief under Rule 6e–3(T) is available only where shares are offered exclusively to separate accounts, or to life insurers in connection with the operation of a separate account, additional exemptive relief may be necessary if the shares of the Funds are also to be sold to Plans, Advisers or general accounts.

7. Applicants state that the current tax law permits the Fund to increase its asset base through the sale of shares to Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the "Code"), imposes certain diversification standards on the underlying assets of the variable contracts. The Code provides that such contracts shall not be treated as an annuity contract or life insurance contract for any period during which the investments are not adequately diversified in accordance with regulations prescribed by the Treasury Department. Treasury regulations provide that, to meet the diversification requirements, all of the beneficial interests in an investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do contain certain exceptions to this requirement, however, one of which permits shares of an investment company to be held by the trustee of a Plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable contracts (Treas. Reg. § 1.817–5(f)(3)(iii)).

8. Applicants also state that the current tax law permits the Funds to sell shares to Advisers and general accounts subject to certain conditions (Treas. Reg. § 1.817–5(f)(3)(i) and (ii)).

9. Applicants state that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of these Treasury regulations which made it possible for shares of a Fund to be held by the trustee of a Plan, an Adviser, or general account without adversely affecting the ability of shares of the Fund to also be held by the separate accounts of insurance companies in connection with their variable life insurance contracts. Thus, Applicants assert that the sale of shares of a Fund to separate accounts through which variable life insurance contracts are issued and Plans, the Adviser or general accounts could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15), given the then-current tax law.

10. Applicants assert that if the Fund were to sell shares only to Plans, Advisers and general accounts, or to separate accounts funding variable annuity contracts, no exemptive relief would be necessary. Applicants state that none of the relief provided under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to Plans, Advisers or general accounts, or to a registered investment company's ability to sell its shares to such purchasers. Exemptive relief is requested in the application only because some of the separate accounts that will invest in the Funds may themselves be investment companies that rely on Rules 6e–2 and 6e–3(T) and need to have the relief continue in place.

11. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to act as investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii), and 6e–3(T)(b)(15)(i) and (ii) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management investment company.

12. Applicants state that the relief provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) are participating in the management or administration of the fund. Applicants state that the partial relief from Section 9(a) provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants assert that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies in that organization. Applicants assert that it also is unnecessary to apply the restrictions of Section 9(a) to the many individuals in various unaffiliated insurance companies (or affiliated companies of participating insurance companies) that may utilize the Funds as a funding medium for variable contracts.

13. Applicants further state that there is no regulatory purpose in extending the monitoring requirements to embrace a full application of Section 9(a)'s eligibility restrictions because of mixed or shared funding.

14. Applicants submit that Sections 13(a), 15(a) and 15(b) of the 1940 Act require "pass through" voting with respect to management investment company shares held by a separate account to permit the insurance company to disregard the voting instructions of its contracts holders in certain limited circumstances. For example, Applicants state that subparagraph (b)(15)(iii)(B) of Rules 6e–2 and 6e–3(T) under the 1940 Act provide that the insurance company may disregard contract owners' voting instructions if the contract owners initiate any changes in the investment company's investment policies, principal underwriter or investment adviser, provided that disregarding such voting instructions is reasonable and complies with the other provisions of Rules 6e–2 and 6e–3(T).

15. Applicants state that Rule 6e–2 recognizes that a variable life insurance contract has important elements unique to insurance contracts and is subject to extensive state regulation of insurance. Applicants assert that in adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority to disapprove or require changes in investment policies, investment advisers, or principal underwriters. Applicants also maintain that the Commission has expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. Applicants state that the Commission deemed such exemptions necessary to assure the solvency of the life insurer and the performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer. Applicants further state that in this respect, flexible premium variable life insurance contracts are identical to schedule premium variable life insurance contracts, and that therefore corresponding provisions of Rule 6e–3(T) were adopted in recognition of the same considerations as the Commission applied in adopting Rule 6e–2.

16. Applicants further represent that the sale of Fund shares to Plans, Advisers, or general accounts should not affect the relief requested. Shares of the Funds sold to Plans would be held by the trustees of such Plans as mandated by Section 403(a) of ERISA. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) when the Plan expressly provides that the

trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, the Plan trustees have exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. In any event, there is no pass-through voting to the participants in such Plans. Similarly, Advisers and general accounts are not subject to any pass-through voting requirements. Accordingly, Applicants assert that, unlike the case with the insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Plans, Advisers or general accounts.

17. Applicants note that Section 817(h) of the Code in effect requires that the investments made by variable annuity and variable life insurance separate accounts be "adequately diversified." Applicants state that if a separate account is organized as a unit investment trust that invests in a single fund or series, the separate account will not be diversified. In this situation, however, Applicants state that Section 817(h) provides, in effect, that the diversification test will be applied at the underlying fund level rather than the separate account level, but only if "all of the beneficial interests" in the underlying fund "are held by one or more insurance companies (or affiliated companies) in their general account or in segregated asset accounts * * *." Applicants state that Treasury Regulation 1.817–5, which established diversification requirements for such funds, specifically permits, among other things, investment company managers, insurance company general accounts, "qualified pension or retirement plans" and separate accounts to share the same underlying investment company. Therefore, Applicants have concluded that neither the Code, the Treasury regulations nor the revenue rulings thereunder present any inherent conflicts of interest if Advisers, general accounts, Plans, variable annuity separate accounts and variable life separate accounts all invest in the same management investment company.

18. Applicants state that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Plans, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the separate account or the Plan cannot net purchase payments to make the distributions, the separate account or the Plan will redeem shares of the Funds at their net asset value. The Plan will then make distributions in accordance with the terms of the Plan and the insurance company will make distributions in accordance with the terms of the variable contract.

19. Applicants state that there are no conflicts of interest between the contract owners of the separate accounts and the participants under the Plans with respect to the state insurance commissioners' veto powers over investment objectives. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem their separate accounts out of one Fund and invest in another. To accomplish such redemptions and transfers, complex and time consuming transactions must be undertaken. Conversely, trustees of Plans can make the decision quickly and implement redemption of shares from a Fund and reinvest the moneys in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants represent that even should the interests of contract owners and the interests of Plans conflict, the conflicts can be almost immediately resolved because the trustees of the Plans can, independently, redeem shares out of the Funds.

20. Applicants submit that shared funding by unaffiliated insurance companies does not present any conflict of interest issues that do not already exist where a single insurance company is licensed to do business in several or all states. Applicants note that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. Applicants state that if a particular state insurance regulator's decision conflicts with a majority of other insurance regulators, the affected insurer may be required to withdraw its separate account's investment in a Fund. Applicants submit that the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

21. Applicants further submit that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions discussed below are designed to safeguard against, and provide procedures for resolving, any adverse effects that these differences may produce.

22. Applicants also argue that affiliation does not eliminate the potential, if any exists, for divergent judgment as to when an insurance company can disregard contract owners' voting instructions. Potential disagreement is limited by the requirements that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations. However, if a particular insurance company's decision to disregard voting instructions represents a minority position or would preclude a majority vote, the insurance company may be required, at a Fund's election, to withdraw its separate account's investment in that fund. No charge or penalty will be imposed as a result of such a withdrawal.

23. Applicants submit that there is no reason why the investment policies of a Fund, or a series thereof, would or should be materially different from what they would or should be if such Fund or series funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Applicants state that each type of insurance product is designed as a long-term investment program, and Applicants represent that each Fund, or series thereof, will be managed to attempt to achieve its investment objective, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product.

24. Applicants argue that the ability of the Funds to sell their respective shares directly to Plans, Advisers, and general accounts does not create a "senior security" as such term is defined under Section 18(g) of the 1940 Act, with respect to any contract owner as opposed to a participant under a Plan, an Adviser, or an insurer. Regardless of the rights and benefits of participants under the Plans or contract owners, the Plans, Advisers, general accounts and the separate accounts have rights only with respect to their respective shares of the Funds. They only can redeem such shares at their net asset value. No shareholder of any of the Funds has any preference over any other shareholder

with respect to distribution of assets or payment of dividends.

25. Applicants assert that with respect to voting rights, it is possible to provide an equitable means of giving such voting rights to contract owners and to Plans, Advisers, and general accounts. The transfer agent will inform each Participating Insurance Company of its share ownership in each separate account, as well as inform the trustees of Plans, Advisers and insurers of their holdings. The Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T).

26. Applicants assert that permitting a Fund to sell its shares to its Adviser(s) or to the general account of a Participating Insurance Company in compliance with Treasury Regulation § 1.817–5 will enhance Fund management without raising significant concerns regarding material irreconcilable conflicts. Applicants state that unlike the circumstances of many investment companies that serve as underlying investment media for variable insurance products, the Fund may be deemed to lack an insurance company "promoter" for purposes of Rule 14a–2 under the 1940 Act. Applicants state that they anticipate that many other Funds may lack an insurance company promoter. Accordingly, Applicants state that such Funds will be subject to the requirements of Section 14(a) of the 1940 Act, which generally requires that an investment company have a net worth of $100,000 upon making a public offering of its shares.

27. Applicants assert that given the condition of Treas. Reg. § 1.817–5(f)(3) and the "harmony of interest" between a Fund and its Adviser or a Participating Insurance Company, little incentive for overreaching exists. Applicants also argue that such investments should not implicate the concerns discussed above regarding the creation of material irreconcilable conflicts. Instead, Applicants represent that permitting investment by Advisers or general accounts will permit the orderly and efficient creation and operation of Funds, or series thereof, and reduce the expense and uncertainty of using outside parties at the early stages of Fund operations.

28. Applicants state that various factors have limited the number of insurance companies that offer variable contracts. These factors include the cost of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments) and the lack of name recognition by the public of certain insurers as investment experts. In particular, a number of smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Applicants state that use of the Funds as a common investment medium for variable contracts and Plans would help alleviate these concerns for smaller life insurance companies because participating insurance companies and Plans will benefit not only from the investment and administrative expertise of ING and its affiliates but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Funds available for mixed and shared funding and permitting the purchase of fund shares by Plans may encourage more life insurance companies to offer variable contracts. Applicants submit that this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges.

29. Applicants assert that mixed and shared funding also should benefit variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Furthermore, granting the requested relief should result in an increased amount of assets available for investment by the Funds. Applicants assert that this also may benefit variable contract owners by promoting economies of scale, by permitting increased safety through greater diversification, or by making the addition of new portfolios more feasible.

30. Applicants believe that mixed and shared funding and sales of Fund shares to Plans, Advisers, and general accounts will have no adverse federal income tax consequences.

Applicants' Conditions

Applicants consent to the following conditions if the application is granted:

1. A majority of the Board of Trustees or Board of Directors ("Board") of the Fund shall consist of persons who are not "interested persons" of the Fund, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board, (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by rule, or by order upon application.

2. The Fund's Board will monitor the Fund for the existence of any material irreconcilable conflict among the interests of the contract owners of all separate accounts investing in the Fund and of Plan participants investing in the Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Fund or series are being managed; (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners; (f) a decision by an insurer to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Plan to disregard voting instructions of Plan participants.

3. In the event that a Plan shareholder should become an owner of 10% or more of the assets of a Fund selling its shares in reliance on the requested exemptive relief, such Plan shareholder will execute a fund participation agreement providing for the conditions of this Application (to the extent applicable) with such Fund. A Plan shareholder will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of a Fund.

4. Participating Insurance Companies (on their own behalf as well as by virtue of any investment of general account assets in a Fund), the Adviser and its affiliates, and any Plan that executes a fund participation agreement (collectively "Participants") will report any potential or existing conflicts to the Board. Participants will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual

obligation of all insurers investing in a Fund under their agreements governing participation in the Fund, as well as a contractual obligation of any Plan that executes such a participation agreement, and such agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contract owners or, as appropriate, Plan participants.

5. If it is determined by a majority of the Board, or a majority of its disinterested trustees or directors, that a material irreconcilable conflict exists, the relevant Participating Insurance Companies and Plans, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors), shall take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. Such steps could include: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any series thereof and reinvesting such assets in a different investment medium which may include another series of the Fund; (b) submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity or life insurance contract owners, or variable contract owners of one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the election of the Fund, to withdraw its separate account's investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal.

If a material irreconcilable conflict arises because of a Plan's decision to disregard Plan participant voting instructions, if applicable, and that decisions represents a minority position or would preclude a majority vote, the Plan may be required, at the election of the Fund, to withdraw its investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal.

The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and Plans that have executed participation agreements under their agreements governing participation in the Fund. These responsibilities will be carried out with a view only to the interests of the contract owners and Plan participants, as appropriate.

6. For the purposes of Condition 5, a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict. In no event will the Fund be required to establish a new funding medium for any variable contract. No Participating Insurance Company or Plan shall be required by Condition 5 to establish a new funding medium for any variable contract if a majority of contract owners materially and adversely affected by the material irreconcilable conflict vote to decline such offer.

7. Participants will be informed promptly in writing of a Board's determination of the existence of a material irreconcilable conflict and its implications.

8. Participating Insurance Companies will provide pass-through voting privileges to all variable contract owners whose contracts are funded through a registered separate account so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners. Accordingly, Participating Insurance Companies will vote shares of the Fund or series thereof held in their registered separate accounts in a manner consistent with timely voting instructions received from contract owners.

In addition each Participating Insurance Company will vote shares of the Fund, or series thereof, held in its registered separate accounts for which it has not received timely voting instructions as well as shares it owns, in the same proportion as those shares for which it has received voting instructions. Participating Insurance Companies will be responsible for assuring that each of their registered separate accounts participating in a Fund calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other registered separate accounts investing in a Fund shall be a contractual obligation of all Participating Insurance Companies under the agreements governing their participation in the Fund. Each Plan will vote as required by applicable law and governing Plan documents.

9. The Fund will notify all Participating Insurance Companies and Plans that prospectus or plan document disclosure regarding potential risks of mixed and shared funding may be appropriate. The Fund shall disclose in its prospectus that: (a) Its shares are offered to insurance company separate accounts which fund both annuity and life insurance contracts, (b) differences in tax treatment or other considerations may cause, the interest of various contract owners participating in the Fund to conflict, and (c) the Board will monitor for any material conflicts and determine what action, if any, should be taken.

10. All reports of potential or existing conflicts of interest received by the Board, and all Board action with regard to: (a) Determining the existence of a conflict; (b) notifying Participants of a conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

11. If and to the extent Rule 6e–2 and Rule 6e–3(T) are amended, or Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Fund and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

12. The Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (for these purposes, the persons having a voting interest in the shares of the Fund). In particular, the Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Fund is not one of the trusts described in Section 16(c) of the 1940 Act) as well as with Section 16(a) and, if and when applicable, Section 16(b) of the 1940 Act. Further, the Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

13. As long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners, the Advisory and insurance company general account will vote its shares in the same proportion as all contract owners having voting rights with respect to the Fund; provided, however, that the Adviser or insurance company general account shall vote its shares in such other manner as may be required by the Commission or its staff.

14. No less than annually, the Participants shall submit to the Board of a Fund such reports, materials or data as the Board may reasonably request so that such Board may carry out fully the obligations imposed upon it by the conditions contained in this Application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Insurance Companies and Plans to provide these reports, materials and data upon reasonable request of a Board shall be a contractual obligation of all Participating Insurance Companies and any Plan that has executed a participation agreement under the agreements governing their participation in the Fund.

15. Any shares of a Fund purchased by the Adviser or its affiliates will be automatically redeemed if and when the Adviser's investment advisory agreement terminates, to the extent required by applicable Treasury regulations. Neither the Adviser nor its affiliates will sell such shares of the Fund to the public.

16. A Participating Insurance Company, or any affiliate, will maintain at its home office, available to the Commission: (a) A list of its officers, directors and employees who participate directly in the management or administration of the Funds or any variable annuity or variable life insurance separate account, organized as a unit investment trust, that invests in the Funds and/or (b) a list of its agents who, as registered representatives, offer and sell the variable annuity and variable life contracts funded through such a separate account. These individuals will continue to be subject to the automatic disqualification provisions of Section 9(a).

Conclusion

For the reasons and upon the facts summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–9181 Filed 4–12–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24383, 812–11614]

Endeavor Series Trust, et al.; Notice of Application

April 10, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for exemption from sections 12(d)(1)(A) and (B) of the Act, under section 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF THE APPLICATION: Applicants request an order that would permit certain registered open-end management investment companies to invest uninvested cash and cash collateral in affiliated money market funds in excess of the limits in sections 12(d)(1)(A) and (B) of the Act.

APPLICANTS: Endeavors Series Trust (the "Trust"), all existing and future series of the Trust, PFL Endeavor Target Account, AUSA Endeavor Target Account (together with the PFL Endeavor Target Account, the "Accounts"), all existing and future subaccounts (and portfolios thereof) of the Accounts, and any other registered open-end management investment company and its series that are currently or in the future advised by Endeavor Management Co. (the "Adviser") or any entity controlling, controlled by, or under common control with the Adviser (collectively, the "Funds"), and the Adviser.

FILING DATES: The application was filed on May 21, 1999, and amended on November 5, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 28, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants: Trust and Adviser, 2101 East Coast Highway, Suite 300, Corona del Mar, California 92625; Accounts, 4333 Edgewood Road, N.E., Cedar Rapids, Iowa 52499–0001.

FOR FURTHER INFORMATION CONTACT: Sara Crovitz, Senior Counsel, at (202) 942–0667, or Michael W. Mundt, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Trust is organized as a Massachusetts business trust and is an open-end management investment company registered under the Act. The shares of the Trust are sold exclusively to insurance company separate accounts that fund variable annuity and variable life contracts. The Trust currently consists of fourteen series, one of which is a money market fund subject to rule 2a–7 under the Act (together with any future Funds that are money market funds, the "Money Market Funds;" all other Funds that are not money market funds are collectively referred to as the "Non-Money Market Funds"). [1] The PFL Endeavor Target Account and AUSA Endeavor Target Account are managed separate accounts established by PFL Life Insurance Company and AUSA Life Insurance Company, respectively, and are each divided into two non-money

[1] All existing investment companies that currently intend to rely on the order have been named as applicants, and any other existing or future registered open-end management investment companies that subsequently rely on the order will comply with the terms and conditions in the application.

market subaccounts with multiple portfolios. The Accounts are open-end management investment companies registered under the Act. The Adviser serves as investment manager to each Fund and is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). The Advisers selects other affiliated and unaffiliated investment advisers registered under the Advisers Act ("Subadvisers") to manage the portfolio for each Fund.

2. Applicants state that each Non-Money Market Funds has, or may be expected to have, uninvested cash ("Uninvested Cash") held by its custodian. Uninvested Cash may result from a variety of sources, including dividends or interest received from portfolio securities, unsettled securities transactions, strategic reserves, matured investments, proceeds fro liquidation of investment securities, and new investor capital. The Non-Money Market Funds also may participate in a securities lending program that may be developed in the future under which a Non-Money Market Fund may lend its portfolio securities to registered broker-dealers or other institutional investors ("Securities Lending Program"). Before a Fund participates in a Securities Lending Program, it will select a securities lending agent that is not affiliated with the Adviser, Subadvisers, or any of their affiliates. Any loans would be continuously secured by collateral equal at all times to at least the market value of the securities loaned. Collateral for these loans could include cash ("Cash Collateral," and together with Uninvested Cash, "Cash Balances").

3. Applicants request an order to permit a Non-Money Market Fund to use its Cash Balances to purchase and redeem shares of a Money Market Fund, and the Money Market Fund to sell shares to and redeem shares as requested by the Non-Money Market Fund. Applicants believe that the ability to invest Cash Balances in Money Market Funds will benefit the Non-Money Market Funds by providing higher rates of return, ready liquidity, and increased diversification.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if the securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or, together with the securities of other acquired investment companies, more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any persons or transactions from any provision of section 12(d)(1) if the exemption is consistent with the public 12(d)(1)(J) to permit the Non-Money Market Funds to invest Cash Balances in the Money Market Funds in excess of the limitations in sections 12(d)(1)(A) and (B).

3. Applicants submit that the proposed transactions do not implicate the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that each of the Money Market Funds will be managed specifically to maintain a highly liquid portfolio and will not be susceptible to undue control due to the threat of large scale redemptions. Applicants also submit that there will be no layering of fees because no sales load, redemption fee or assets based distribution fee will be charged in connection with the purchase and sale of shares of the Money Market Funds. To the extent that both a Money Market Funds and Non-Money Market Fund charge a service fee as defined in rule 2830 of the conduct rules of the National Association of Securities Dealers ("NASD Conduct Rules"), the Money Market Fund will waive its service fee with respect to shares purchased by a Non-Money Market Fund or the Adviser will waive its advisory fee for each Non-Money Market Fund in an amount that offsets the amount of the fee incurred by the Non-Money Market Fund. Before approving any advisory contract for a Non-Money Market Fund, the board of trustees or board of managers of a Fund ("Board"), including a majority of the trustees or managers who are not "interested persons" as defined in section 2(a)(19) of the Act ("Independent Board Members"), will consider to what extent, if any, the advisory fees charged to the Non-Money Market Fund should be reduced to account for the reduced services provided to the Non-Money Market Fund by the Adviser and Subadviser as a result of Uninvested Cash being invested in the Money Market Fund. No Money Fund will acquire shares of any other investment company in excess of the limits in section 12(d)(1)(A) of the Act.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, or an affiliated person of the affiliated person, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any person directly or indirectly controlled by, or under common control with the investment company. Applicants state that because the Funds share a common investment manager and have substantially identical Boards, each Fund may be deemed to be under common control and affiliated persons of one another. As a result, section 17(a) would prohibit the sale of the shares of a Money Market Fund to a Non-Money Market Fund and the redemption of the shares by the Non-Money Market Funds.

5. Section 17(b) of the Act provides that the Commission may exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purpose of the Act. Section 6(c) of the Act permits the Commission to exempt persons or transactions from any provision of the Act if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that the request for relief satisfies the standards of sections 17(b) and 6(c). Applicants state that the proposed transactions are reasonable and fair and would not involve overreaching because shares of the Money Market Fund will be purchased and redeemed by the Non-Money Market Funds at net asset value. Applicants also note that Non-Money Market Funds will retain their ability to invest their Cash Balances directly in money market instruments in accordance with their investment objectives and policies. Applicants state that each Money Market Fund may discontinue selling its shares to any of the Non-Money Market Funds if the Board of the Money Market Fund determines that the sale would adversely affect the Money Market Fund's portfolio management and operations.

7. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of an investment company, acting as principal, from

participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants state that the Funds, by participating in the proposed transactions, and the Adviser and Subadvisers, by managing the proposed transactions, could be deemed to be participating in a joint arrangement within the meaning of section 17(d) and rule 17d–1.

8. In considering whether to permit a joint transaction under rule 17d–1, the Commission considers whether the investment company's participation in joint enterprise is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants submit that the Funds will participate in the proposed transactions on the same basis and will be indistinguishable from any other shareholder and that the transactions will be consistent with the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The shares of the Money Market Funds sold to and redeemed as requested by the Non-Money Market Funds will not be subject to a sales load, redemption fee or distribution fee under a plan adopted in accordance with rule 12b–1 under the Act. To the extent that both a Money Market Fund and a Non-Money Market Fund may charge a service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules), the Money Market Fund will waive its service fee with respect to shares purchased by a Non-Money Market Fund or the Adviser will waive its advisory fee for each Non-Money Market Fund in an amount that offsets the amount of the service fee incurred by the Non-Money Market Fund.

2. Before the next meeting of the Board of a Non-Money Market Fund is held for the purpose of voting on an advisory contract under section 15 of the Act, the Adviser and Subadviser will provide the Board with specific information regarding the approximate costs to the Adviser and Subadviser of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Non-Money Market Fund that can be expected to be invested in the Money Market Funds. Before approving any advisory contract for a Non-Money Market Fund, the Board, including a majority of the Independent Board Members, shall consider to what extent, if any, the advisory fees charged to the Non-Money Market Fund by the Adviser and the Subadviser should be reduced to account for the reduced services provided to the Non-Money Market Fund by the Adviser and the Subadviser as a result of Uninvested Cash being invested in the Money Market Funds. The Non-Money Market Fund's minute books will record fully the Board's considerations in approving the advisory contract, including the considerations relating to fees referred to above.

3. Each Non-Money Market Fund will invest Uninvested Cash in, and hold shares of, the Money Market Funds only to the extent that the Non-Money Market Fund's aggregate investment of Uninvested Cash in the Money Market Funds does not exceed 25 percent of the Non-Money Market Fund's total assets. For purposes of this limitation, each Money Market Fund or series thereof will be treated as a separate investment company.

4. Investment of Cash Balances in shares of the Money Market Funds will be in accordance with each Non-Money Market Fund's respective investment restrictions, if any, and will be consistent with each Non-Money Market Fund's policies as set forth in its prospectus and statement of additional information.

5. The Non-Money Market Funds, the Money Market Funds, and any future Fund that may rely on the order will be advised by the Adviser or a person controlling, controlled by, or under common control with the Adviser.

6. No Money Market Fund will acquire securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

7. Before a Fund may participate in the Securities Lending Program, a majority of its Board, including a majority of the Independent Board Members, will approve the Fund's participation in the Securities Lending Program. The Board also will evaluate the securities lending arrangement and its results no less frequently than annually and determine that any investment of Cash Collateral in the Money Market Funds in the best interest of the shareholders of the Fund.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–9252 Filed 4–12–00; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 6.500 (6½) percent for the April–June quarter of FY 2000.

Arnold S. Rosenthal,

Acting Deputy Associate Administrator for Financial Assistance.

[FR Doc. 00–9125 Filed 4–12–00; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–7222]

Collection of Information Under Review by Office of Management and Budget (OMB); OMB Control Numbers 2115–0017, 2115–0611, 2115–0573, and 2115–0630

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to request the approval of OMB for the renewal of four Information Collection Requests (ICRs). These ICRs comprise: (1) Regattas and Marine Parades; (2) Boat Owner's Report, Possible Safety Defect; (3) Labeling Requirements in 33 CFR Parts 181 and 183; and (4) International Safety Management Code Audit Reports. Before submitting the ICRs to OMB, the Coast Guard is asking for comments on the collections described below.

DATES: Comments must reach the Coast Guard on or before June 12, 2000.

ADDRESSES: You may mail comments to the Docket Management System (DMS) [USCG–2000–7222], U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for these requests. Comments will become part of this docket and will be available for

inspection or copying in room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

Copies of the complete ICRs are available through this docket on the Internet at http://dms.dot.gov and also from Commandant (G–SII–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Walker, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9330, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document [USCG–2000–7222] and the specific ICR to which each comment applies, and give the reason(s) for each comment. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Information Collection Requests

1. *Title:* Regattas and Marine Parades.
OMB Control Number: 2115–0017.
Summary: 46 U.S.C. 1233 authorizes the Coast Guard to issue rules to promote the safety of life on navigable waters during regattas or marine parades. 33 CFR 100.17 and 100.18 promulgate the rules for providing notice of, and additional information for permitting, regattas and marine parades (marine events) to the Coast Guard.
Need: The Coast Guard needs to determine whether a marine event may present a substantial threat to the safety of human life on navigable waters and determine which measures are necessary to ensure the safety of life during the events. Sponsors must notify the Coast Guard of the event and provide additional information, as required. This is an efficient means for the Coast Guard to learn of the events and to address environmental impacts.
Respondents: Sponsors of marine events.
Frequency: On occasion.
Burden: The estimated burden is 1,540 hours annually.

2. *Title:* Boat Owner's Report, Possible Safety Defect.
OMB Control Number: 2115–0611.
Summary: Owners of recreational boats or engines who believe their product contains a defect or fails to comply with safety standards can call the Coast Guard Infoline, which will send them a copy of the "Boat Owner's Report", or they can file the report on-line at the website for the Office of Boating Safety.
Need: 46 U.S.C. 4310(f) gives the Coast Guard the authority to require manufacturers of recreational boats and associated equipment to notify owners and to replace or repair products that are defective or fail to comply with safety standards.
Respondents: Owners of recreational boats.
Frequency: One time.
Burden: The estimated burden is 80 hours annually.

3. *Title:* Labeling Requirements in 33 CFR Parts 181 and 183.
OMB Control Number: 2115–0573.
Summary: The collection of information requires manufacturers or importers of recreational boats to apply for serial numbers from the Coast Guard and to display various labels on these boats.
Need: Under 33 CFR, Parts 181 and 183, manufacturers or importers of recreational boats must obtain, from the Coast Guard, a manufacturer's identification code for each boat and must display various labels on these boats that provide safety information to the boating public.
Respondents: Manufacturers and importers of recreational boats.
Frequency: One time.
Burden: The estimated burden 382,798 hours annually.

4. *Title:* International Safety Management Code Audit Reports.
OMB Control Number: 2115–0630.
Summary: The Coast Guard uses this information collection to determine the compliance status of U.S. vessels, subject to SOLAS 74, engaged in international trade. Organizations recognized by the Coast Guard conduct ongoing audits of vessels' and companies' safety-management systems.
Need: 46 U.S.C. 3203 authorizes the Coast Guard to prescribe rules regarding safety-management systems. 33 CFR Part 96 contains the rules for the safe operation of vessels and of safety-management systems.
Respondents: Owners and operators of vessels, and organizations authorized to issue ISM Code certificates for the United States.
Frequency: On occasion.
Burden: The estimated burden is 3,650 hours annually.

Dated: March 29, 2000.

Daniel F. Sheehan,
Director of Information and Technology.

[FR Doc. 00–9250 Filed 4–12–00; 8:45 am]
BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–7206]

Voluntary Guidelines on Recreational Activities To Control the Spread of Zebra Mussels and Other Aquatic Nuisance Species

AGENCY: Coast Guard, DOT.

ACTION: Notice; Request for comments.

SUMMARY: The Coast Guard seeks comments on voluntary guidelines for persons engaged in water-related recreational activities (e.g., boating and fishing). The Coast Guard must issue voluntary guidelines based on the recommendations prepared by the Aquatic Nuisance Species Task Force to help control the spread of the zebra mussel and other aquatic nuisance species. We request your comments on these voluntary guidelines.

DATES: Comments and related material must reach the Docket Management Facility on or before June 12, 2000.

ADDRESSES: To make sure your comments and related material are not entered in the docket more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG–2000–7206), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington,

DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice or associated guidelines, call Lieutenant Karen Weaver, Project Manager, Office of Operating and Environmental Standards (G–MSO), Coast Guard, telephone, 202–267–2079. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

How May I Comment on the Voluntary Guidelines?

You may submit comments and related material on the voluntary guidelines to the Docket Management Facility as indicated previously in the **ADDRESSES** section of this notice. If you submit written comments please include—

- Your name and address;
- The docket number for this notice (USCG–2000–7206);
- The specific section of this notice to which each comment applies; and
- The reason for each comment.

You may mail, deliver, fax, or electronically submit your comments and attachments to the Docket Management Facility, using an address or fax number listed in the **ADDRESSES** section of this notice. Please do not submit the same comment or attachment more than once. If you mail or deliver your comments, they must be on 8½-by-11-inch paper, and the quality of the copy should be clear enough for copying and scanning. If you mail your comments and would like to know if the Docket Management Facility received them, please enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments and material received during the comment period.

Why Is the Coast Guard Issuing Voluntary Guidelines?

To comply with the National Invasive Species Act of 1996 (NISA), we are issuing voluntary guidelines for recreational activities to control the spread of zebra mussels and other Aquatic Nuisance Species (ANS). We are providing this opportunity for public comment on the voluntary guidelines. After considering the comments we will issue a final version of the voluntary guidelines. These guidelines will be explained in pamphlets, videos, and other types of outreach media.

The voluntary guidelines in this notice are based on the ones drafted and recommended by the Recreational Activities Committee of the Aquatic Nuisance Species Task Force (the Committee). The guidelines developed by the Committee are available in the docket and may be accessed on the Internet at *http://dms.dot.gov.*

What are Aquatic Nuisance Species (ANS)?

ANS are organisms introduced into non-native habitats and are often freed from the natural predators, parasites, pathogens, and competitors that have kept them in check. Once established, these organisms can displace native species; they can impede municipal, industrial, and private water-intake systems; and they can degrade aquatic ecosystems.

The introduction of most ANS is the work of humans. In some cases this is intentional, but in many it is accidental. In addition to overland transport of boats, which has long been identified as a key dispersal pathway, there are many others. The other human activities that can disperse ANS include angling, scuba diving, and waterfowl hunting.

Establishing these voluntary guidelines will help to promote good habits that will control the spread of ANS. Surveys have shown that participants in recreational activities will take necessary precautions if they know what to do. Conversely, they will not take precautions unless they know what to do.

What Is the Purpose of the Voluntary Guidelines?

The voluntary guidelines will give the public clear, concise information on how to avoid the transport of ANS. These voluntary guidelines provide specific procedures that individuals engaged in the corresponding recreational activity can follow so they will not accidentally transport ANS.

What Activities Do the Voluntary Guidelines Address and What Are the Recommended Procedures?

These voluntary guidelines address the following water-related recreational activities: Scuba diving; waterfowl hunting; harvesting of bait by recreational anglers; angling; boating; operating seaplanes; and operating personal watercraft. These voluntary guidelines are intended to assist natural-resource managers and others involved in educating individuals who participate in these recreational activities about the problems associated with the spread of ANS in the United States.

Voluntary Guidelines for Recreational Activities To Control the Spread of Zebra Mussels and Other Aquatic Nuisance Species

Generic Guidelines

Some guidelines are appropriate for any recreational activity associated with water. The generic preventive guidelines listed below apply to most recreational activities occurring in marine and inland waters. In addition to these guidelines, States and provinces may include specific laws and guidelines for their areas.

Always do the following:

- Always inspect equipment (in the broadest sense, *e.g.*, boats, planes, trailers, decoy anchors, SCUBA gear, and lures) for visible plants and animals before transporting.
- Always remove visible plants and animals from equipment (expel plants, animals, and water from internal parts).
- Always drain water from equipment before transporting.
- Always clean equipment that has been in infested waters before placing it in other waters (see the "Pathway-specific guidelines" section for specific methods).
- Always report questionable species to your resource agency for identification. Information is available from many sources about identification of ANS; however, specimens are needed to confirm sightings. Many jurisdictions have different rules regarding possession and transport. Always ask your local natural resources management agency for instructions.

Never do the following:

- Never transport plants, animals, mud, or water from lakes, rivers, wetlands, and coastal waters.
- Never release animals or plants (*e.g.*, aquarium species, bait, pets, hunting dogs, or water garden plants) into the wild unless you release them into the same waterbody or location where the species came from.

Pathway-Specific Guidelines

These guidelines cover recreational activities that are potential pathways for transferring ANS. Individuals engaged in these activities should follow these guidelines to help prevent the spread of ANS. You should note that States and provinces may add to these voluntary guidelines their own related laws and guidelines, if any, regarding transport or possession of ANS.

(a) Scuba Diving

You can unintentionally transport ANS, such as the zebra mussel, spiny water flea, and Eurasian water milfoil, from one body of water to another on

your scuba-diving gear. You should take precautions to reduce the risk of spreading these unwanted species, especially when diving in different waters on the same or consecutive days.

Many scuba divers believe that zebra mussels have benefited the sport by improving visibility in the waters they inhabit. They soon learn, however, that geological formations and shipwrecks that once attracted them are encrusted with layers of zebra mussels, which obscure these objects. The harm to the environment, the fisheries, and industrial, municipal, and private water intakes, therefore, far outweigh any benefit.

Any objects removed from the water have the potential of introducing ANS to new waters. By adhering to the guidelines that follow, you can help prevent the spread of ANS when you scuba dive, and you can help protect the environment from the harmful impacts of these species.

Guidelines

- Inspect your equipment.
- Remove any plants, mud, or animals that are visible before leaving all waters.
- Drain water from buoyancy compensator (bc), regulator, tank boot, and any other equipment that may hold water before leaving all waters.
- ANS can survive for a period of time on wet scuba gear or in water. Therefore, do at least one of the following:

(1) Dry your suit and all equipment completely before diving in different waters, and rinse the inside of your bc with hot or salted water as described in items (2) and (3), which immediately follow.

(2) Submerge and wash your suit and equipment, and rinse the inside of your bc with hot water (at least 40° (C or 104° (F).

(3) Submerge and wash your suit and equipment in a tub or tote containing salted water (½cup of salt dissolved in one gallon of water); rinse the inside of your bc with the salted solution; and rinse your equipment with clean water.

(b) Waterfowl Hunting

Nonindigenous ANS such as the zebra mussel, purple loosestrife, and Eurasian water milfoil can damage habitat for fish, waterfowl, and other wildlife. Waterfowl hunters should be aware that it is possible to inadvertently spread ANS from one lake or wetland via boats, motors, trailers, and decoys. Waterfowlers should assume that any fragments of aquatic plants could be potentially harmful and should not be transported from one wetland, lake, river, or coastal area to another. In addition, zebra mussels and their microscopic larvae can attach to aquatic plants. If fragments of these plants are transported, they can inadvertently transport zebra mussels to other waters. By following the guidelines on recreational activities, you can help prevent the spread of ANS via waterfowl hunting.

Guidelines

Before the hunting season—

- Switch to elliptical, bulb-shaped, or strap anchors on decoys, which avoid collecting submerged and floating aquatic plants; or
- If boats are moored in waters infested with zebra mussels, use the following tips to remove or kill zebra mussels or other aquatic animals and plants that might be in or on your boat:

(1) Remove any visible zebra mussels from the boat and wash and rinse the boat with hot water; or

(2) Spray the boat with high-pressure water; or

(3) Dry all parts of the boat for at least 5 days before placing it into another waterbody.

After hunting—

- Inspect waders or hip boots; remove aquatic plants; and, where possible, rinse mud from them before leaving the waters;
- Remove aquatic plants, animals, and mud that are attached to decoy lines or anchors; and
- Drain the water from boats before transporting to other waters.

Between hunting trips—

- Inspect equipment for any aquatic plants, animals, and mud not removed after hunting; remove and dispose of them on land away from the waters; and
- Follow the guidelines for boaters in paragraph (e).

(c) Recreational Anglers' Harvest of Live Bait (Non-Commercial Harvest)

The guidelines that follow apply to the non-commercial harvesting of live bait by recreational anglers. Also, the RAC is developing guidelines for commercial bait.

Nonindigenous species can lodge in nets and other equipment used to harvest baitfish and can be unintentionally transported into noninfested waters. Some species can survive up to 2 weeks out of water and remain viable when dislodged into another waterbody. Non-target ANS species like ruffe and round goby, as well as fragments of aquatic nuisance plants, such as hydrilla or Eurasian water milfoil, can be harvested along with target baitfish species. If such species are transferred to noninfested waters, they can have harmful effects on native fish populations. To help prevent the transfer of these species, you should conduct the procedures that follow during or after the harvest of live bait for personal use.

Guidelines

- Inspect harvested live bait for non-target species, and remove them where harvested.
- Always dispose of unwanted live bait on land (away from contact with waters) before leaving the waters. Never release live bait into a waterbody or move aquatic plants or animals from one waterbody into a different waterbody.
- Remove all aquatic plants from boats, trailers, nets, or other equipment while on shore before leaving the waterbody access.
- Before reusing nets, roll out, hand clean, and dry them.
- Drain water from boats and equipment (bilge pump, tubs, live wells, etc.) before leaving any waterbody access.
- Never use water from infested waters to transport live bait to other waters. In many States and provinces, live bait harvested from designated infested waters is illegal. Check with your local State natural resource agency before you collect live bait.
- In areas where harvest of bait from infested waters is legal, avoid using the same equipment in infested and noninfested waters. Some aquatic nuisance species once removed from infested waters can survive up to two weeks in a moist environment. By drying surfaces where they can be lodged or attached, you can substantially reduce the risk of transporting them in boats and equipment.
- Rinse all equipment, including boats and trailers, with tap water and dry them for as long as possible, but for at least 5 days before re-use, especially in other waters. Before re-use, you should roll out nets, hand clean them, and dry them for a minimum of 10 days, or freeze them for 2 days.
- The following applies to disinfection, specific to zebra mussels, of equipment that is difficult to treat with drying and washing methods (use these methods away from the waterbody):

(1) As an added equipment treatment, a dip of 100 percent vinegar for 20 minutes can kill small zebra mussels and may be effective against other ANS.

(2) Treatment with other chemicals such as a 1-percent solution of table salt for 24 hours can be as effective as a dip of vinegar.

The recipes provided in the following table are for a 1-percent solution of table salt (sodium chloride) treatment in water.[1]

Gallons of 2ater	Cups of salt*
5	⅔
10	1¼
25	3
50	6¼
100	12⅔

*Based on 312 g per cup.

(d) Angling

The introduction of ANS can cause significant changes in freshwater and marine ecosystems. Populations of prey and game fish can be significantly harmed by the presence of species such as the sea lamprey, Asian swamp eel, Chinese carp, and zebra mussel. Some aquatic nuisance plants (*e.g.*, hydrilla, Eurasian water milfoil, and water hyacinth) may limit the viable fishing area of inland waters. You can help prevent the transfer of ANS by following the guidelines in this section whenever you engage in angling.

Guidelines

- Dispose of unwanted live bait on land before leaving the waterbody. Never release live bait into a waterbody or move aquatic plants or animals from one waterbody to another.
- Wash and dry your boat, tackle, downriggers, float tube, waders, and other equipment to remove or kill harmful species that were not visible at the boat launch.
- Inspect all fish caught using seines, dipnets, or other types of netting; remove and properly discard all non-target species.

(e) Boating

ANS, such as the zebra mussel, spiny water flea, and Eurasian water milfoil, can be unintentionally transported through water-related recreation activities because some ANS can survive many days out of water. If you are a water recreationalist (*e.g.*, boater, angler, water-skier, canoeist, or kayaker), there are some important actions you can take to prevent the transport of ANS from one waterbody to another.

Guidelines

- Before leaving all waters, inspect your boat (sailboats check centerboard and bilgeboard wells, and keel boats check the rudder-post area), trailer (check axles, runners, lights, and rollers), and other boating equipment (check anchors, water-skis, or other tow lines), and remove any plants, animals, or mud that are visible (see diagram 1).
- Drain water from the motor, livewell, bilge, and transom wells while on land and before leaving all waters.
- Wash and dry your boat, tackle, downriggers, trailer, and other boating equipment to kill harmful species that were not visible at the boat launch. You can do this on your way home or once you arrive home.
- Before you transport to other waters, do one of the following:

(1) Rinse your boat and boating equipment with hot (greater than 40 °C or 104 °F) tap water.

(2) Spray your boat and trailer with high-pressure water.

(3) Dry your boat and equipment for at least 5 days.

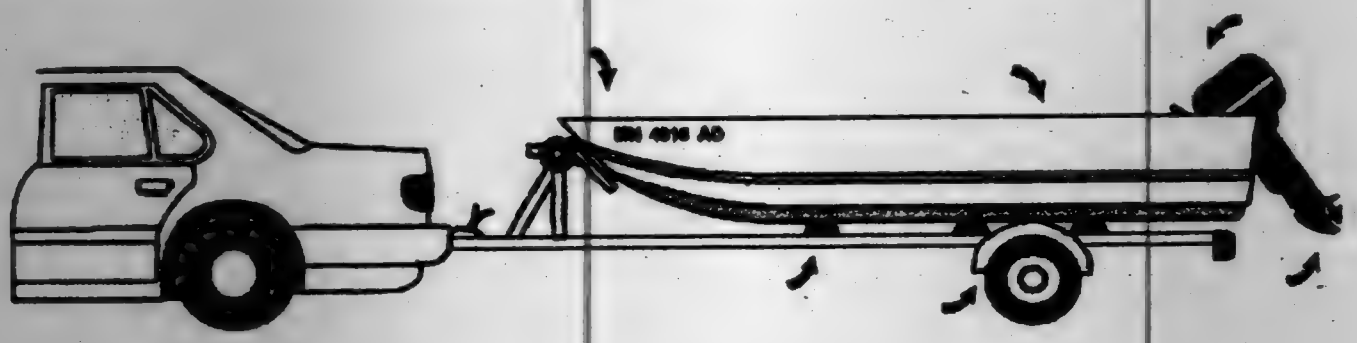

Diagram (1)

For your information, the U.S. Fish and Wildlife Service, in conjunction with Canadian officials and other partners, are implementing the 100th Meridian Initiative, which focuses on preventing the westward spread of zebra mussels and other ANS by boat inspections and by dissemination of posters, brochures, and other information about ANS. There are many other State and Federal initiatives focusing on controlling the spread of ANS. Consult your local Fish and Wildlife Service facility or other appropriate State or Federal natural resource management agency for additional information.

(f) Seaplanes

Many ANS, such as the zebra mussel and Eurasian water milfoil, can be unintentionally transported from one waterbody to another on the floats of seaplanes. Therefore, it is important to clean the aircraft to remove ANS before traveling, rather than after landing at new locations. In addition, it is important for you to incorporate the procedures listed here into the operation of your seaplane. However, plane safety is the first priority when considering and following these guidelines.

Guidelines

Before entering the aircraft—

- Inspect and remove aquatic plants from the floats, wires or cables, and water rudders;
- Pump floats, which may contain infested water; and
- If moored in waters infested by zebra mussels for extended periods, check the transom, chine, bottom, wheel wells, and step area of floats (see diagram 2). If zebra mussels are present on the floats, you can use (any) one of the following methods to remove or kill them:

(1) Wash the floats with hot water.

(2) Spray the floats with high-pressure water.

(3) Dry all parts of the floats for at least 5 days.

Before takeoff—

[1] Adapted from "Fisheries Scientist's Pocket Reference" booklet by Iowa Chapter of the American Fisheries Society, 1991, by Doug Jensen, University of Minnesota Sea Grant Program.

• Avoid taxiing through heavy surface growths of aquatic plants before takeoff;

• Raise and lower water rudders several times to clear off plants. This will also minimize cable stretch and improve the effectiveness of the rudders for steering.

After takeoff—

• Raise and lower water rudders several times to free fragments of aquatic plants while over the waters you are leaving or while over land; and

• If aquatic plants remain visible on floats or water rudders, return to the lake and remove the plants.

Storage or mooring—

• Remove aircraft from the water, as is often done at seaplane bases, and allow all parts of the floats to dry. A few days of hot, summer temperatures will kill adult zebra mussels (longer drying times of up to 10 days are required to kill adult mussels during cool, humid weather); and

• Aircraft moored for extended periods in zebra-mussel-infested waters may have zebra mussels attached to the floats and should be cleaned regularly. In remote locations, where zebra mussels are present, but where there are no provisions for drying, spraying, or treating the floats with hot water, the best option available for preventing the spread of the mussels is to hand-clean the submerged portions of floats with a scrub brush and to physically remove adult mussels. (Aircraft moored for extended periods in zebra-mussel-infested waters may have zebra mussels attached to the floats and should be cleaned regularly.)

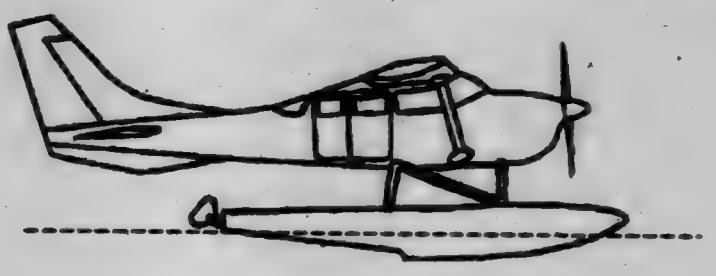

Diagram (2)

(g) Personal Watercraft

Personal watercraft that have jet-drive systems require some extra precautions to avoid ANS. A pump pulls water in through an opening under the craft, and the impeller (an internal propeller) forces water out, moving the craft forward. ANS can easily get lodged in the jet-drive system and get transported if the watercraft is taken from one waterbody to another. A small piece of Eurasian water milfoil, or other ANS, caught in the impellers can infest a new lake or river. Zebra mussels can survive in excess water in the jet drive and spread to other waters. By applying the following guidelines, you can help prevent the transfer of ANS via your personal watercraft.

Guidelines:

In the water—

• Avoid running the engine through aquatic plants near the boat access; and

• Push or winch the watercraft up on the trailer without running the engine.

On the trailer—

• After you pull the watercraft from the water, start the engine for 5 to 10 seconds to blow out any excess water and vegetation. (The dark, damp, enclosed area of the impeller provides an ideal environment for aquatic nuisance plants to survive.); and

• After the engine stops, pull plants out of the steering nozzle. Inspect your trailer and any other sporting equipment for fragments of aquatic plants, and remove them before you leave the access area.

After trailering and before re-use—

• Wash and dry your watercraft and equipment to kill or remove harmful species that you did not see at the boat launch. You can do this on your way home or once you arrive home. Choose one of the following methods of disinfection before transporting to another waterbody:

(1) Rinse your watercraft and other equipment with hot (greater than 40 °C or 104 °F) tap water.

(2) Spray your watercraft and trailer with high-pressure water.

(3) Dry your watercraft and equipment for at least 5 days.

Dated: April 7, 2000.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 00–9248 Filed 4–12–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–7201]

Commercial Fishing Industry Vessel Advisory Committee (CFIVAC); Vacancies

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Commercial Fishing Industry Vessel Advisory Committee (CFIVAC). CFIVAC advises the Coast Guard on safety in the commercial fishing industry.

DATES: Application forms should reach us on or before June 1, 2000.

ADDRESSES: You may request an application form by writing to Commandant (G–MOC–3), U.S. Coast Guard, Room 1116, 2100 Second Street SW., Washington, DC 20593–0001, by calling 202–267–2978; or by faxing 202–267–0506. Send your application in written form to the above street address. This notice is available on the internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jennifer Williams, Assistant Executive Director of CFIVAC, or Ensign Chris O'Neal, telephone (202) 267–2008, fax (202) 267–0506.

SUPPLEMENTARY INFORMATION: The Commercial Fishing Industry Vessel Advisory Committee (CFIVAC) is a Federal advisory committee under 5 U.S.C. App. 2. It advises the Assistant Commandant for Marine Safety and Environmental Protection, on the safe operation of U.S.-flag commercial fishing vessels. This advice assists us in formulating regulations and programs designed to improve safety on commercial fishing vessels.

CFIVAC meets at least once a year in different seaport cities nationwide. Special meetings may also be called. Subcommittee meetings are held to consider specific problems as required.

We will consider applications for six positions that expire or become vacant in October 2000 in the following categories: (a) Commercial Fishing Industry (four positions); (b) General Public (one position); (c) Surveyor/ Naval Architect (one position). To be eligible, you should have experience in the operation of commercial fishing vessels, maritime safety, safety education, or marine surveying/naval architecture. Each member serves for a term of 3 years. A few members may serve consecutive terms. All members serve at their own expense and receive no salary, however members will be reimbursed for travel expenses.

In support of the U.S. Department of Transportation's policy on ethnic and gender diversity, we encourage qualified women and members of minority groups to apply.

If you are selected as a member who represents the general public, we will require you to complete a Confidential Financial Disclosure Report (OGE Form 450). We may not release the report or the information in it to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: April 3, 2000.

Rear Admiral Robert C. North,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–9249 Filed 4–12–00; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–1999–4379]

Delegation of Authority

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of delegation of authority.

SUMMARY: The FAA is giving notice of a specific delegation of authority from the FAA Administrator to the Associate Chief Counsel/Director, Office of Dispute Resolution for Acquisition (hereinafter the "ODRA Director"), to supplement and expand the authority conveyed under Title 14 CFR part 17 and the Administrator's delegation of July 29, 1998, in order to permit the ODRA Director to issue final FAA Agency orders on behalf of the Administrator in certain bid protests and contract disputes filed with the FAA Office of Dispute Resolution for Acquisition. The delegation was set forth in a memorandum signed by the Administrator dated March 27, 2000. The FAA is publishing the text of the delegation, so that it is available to interested parties.

FOR FURTHER INFORMATION CONTACT: Marie A. Collins, Staff Attorney and Dispute Officer for the Office of Dispute Resolution for Acquisition (ACG–70), Federal Aviation Administration, 400 Seventh Street, SW, Room 8332, Washington, DC 20590; telephone (202) 366–6400; facsimile (202) 366–7400.

SUPPLEMENTARY INFORMATION: Under the Department of Transportation and Related Agencies Appropriations Act of 1996, Public Law 104–50, 109 Stat. 436 (1995) ("Appropriations Act"), Congress directed the FAA to develop an acquisition system that addresses the mission and unique needs of the Agency and at a minimum, provides for more timely and cost-effective acquisition of equipment and materials. In the Appropriations Act, Congress expressly directed the FAA to create the new acquisition system without reference to existing procurement statutes and regulations. The result was the development of the FAA's Acquisition Management System (AMS) and the establishment of the Office of Dispute Resolution for Acquisition (ODRA), which is independent of the FAA's procurement offices and counsel. The ODRA serves as the forum for administrative resolution and adjudication of bid protests and contract disputes arising from AMS acquisitions and contracts. The ODRA's mandate is to resolve such bid protests and contract disputes in a timely and efficient manner, while emphasizing the use of alternative dispute resolution techniques to the maximum extent practicable. A final procedural rule that took effect on June 28, 1999 for ODRA bid protests and contract disputes was published in the **Federal Register** on June 18, 1999 (64 FR 34926). Technical corrections to the rule were published in the **Federal Register** on August 31, 1999 (64 FR 47361).

The full text of the March 27, 2000 delegation from the Administrator to the ODRA Director provides the ODRA Director with additional authority to act on behalf of the Administrator with respect to ODRA bid protests and contract disputes as follows: In order to render more efficient the FAA acquisition dispute resolution process, pursuant to 49 U.S.C. 106(f)(2), 49 U.S.C. 46101, *et seq.*, Public Law 104–50 and 14 CFR Part 17, I hereby delegate to the Associate Chief Counsel/Director, Office of Dispute Resolution for Acquisition (ODRA) authority to execute and issue on behalf of the Administrator, orders and final decisions for the FAA in all matters within the ODRA's jurisdiction, provided that such matters involve either: (1) A bid protest concerning an acquisition having a value or potential value of not more than one million dollars ($1,000,000.00); or (2) a contract dispute involving a total amount in dispute, exclusive of interest, legal fees or costs, of not more than one million dollars ($1,000,000.00). The Associate Chief Counsel/ODRA Director further is authorized to execute and issue orders and final decisions on behalf of the Administrator for any applications made pursuant to the Equal Access to Justice Act for matters within the ODRA's jurisdiction.

The foregoing authority may not be re-delegated.

This delegation supplements and expands the authority previously delegated by me on July 29, 1998. This delegation does not preclude the Associate Chief Counsel/Director of the ODRA from requesting, in any matter before the ODRA, that the order setting forth the final decision of the FAA be executed by the Administrator.

Issued in Washington, DC, on March 27, 2000.

James Whitlow,

Acting Chief Counsel.

[FR Doc. 00–9146 Filed 4–12–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement Number ANM–99–2]

Guidance for FAA Review of Certification Plans To Address Human Factors for Certification of Transport Airplane Flight Decks

AGENCY: Federal Aviation Administration, DOT.

ACTION: Disposition of comments on notice of policy statement.

SUMMARY: In this document, the FAA addresses public comments that were submitted in response to a previously published general statement of policy that is applicable to the type certification process of transport category airplanes. The policy provides guidance to FAA Certification Teams that will enable them to conduct an effective review of an applicant's Human Factors Certification Plan or the human factors components of a general Certification Plan, when one is submitted as part of a type certification (TC), supplemental type certification (STC), or amended type certificate (ATC) project. This notice is to advise the public of the FAA's response to the comments that were submitted.

FOR FURTHER INFORMATION CONTACT: Sharon Hecht, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airplane & Flight Crew Interface Branch, ANM–111, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2398; facsimile (425) 227–1100; e-mail: sharon.hecht@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

On October 6, 1999, the FAA published in the **Federal Register** (64 FR 54399) a general statement of policy comprising guidance to FAA personnel for reviewing certain certification plans for transport category airplanes. Specifically, the policy statement provided internal guidance to FAA Certification Teams that will enable them to conduct an effective review of an applicant's Human Factors Certification Plan (or the human factors components of a general Certification Plan), when one is submitted at the beginning of a type certification (TC), supplemental type certification (STC), or amended type certificate (ATC) project. The guidance described the sections of a typical Human Factors Certification Plan and the information that would be appropriate for inclusion in each section. The purpose of a Human Factors Certification Plan is to facilitate the establishment early on of an effective working relationship and agreement between the FAA and the applicant about the means by which human factors issues will be addressed during a certification project.

Although the policy was intended for internal use by FAA Certification Teams, the FAA published it in the **Federal Register** to notify the public about it, and invited comments from the public on the policy. The FAA has given due consideration to the comments received, and this notice provides the FAA's disposition of those comments.

Disposition of Comments

The FAA received comments on the policy statement submitted by six commenters, representing aviation industry groups and manufacturers.

Two commenters support the intent of the policy.

Several of the commenters suggest certain editorial changes (*i.e.*, word choices, formatting, and additional references) to improve the clarity and readability of the policy. The FAA may consider these suggested changes if the policy statement is updated and republished in the future.

The remainder of the comments generally fall within three specific subject areas. These are addressed below.

1. Status and Effect of the General Statement of Policy

Many of the comments concerned the nature of policy statements overall and the policy process in particular. The commenters question the "effect" of the policy, and whether the policy is "proposed" or "final." One commenter is not clear if the policy statement "has reached the stage of being official FAA policy." One commenter refers to the policy as "interim," while another considers it to be "proposed."

Another commenter is concerned that the policy, while not creating any new rules, implies new requirements or practices. This commenter notes that the policy statement contained several examples where the discussion moved into methods and processes for compliance that would be "more appropriate as guidance material." This commenter also is concerned about updating the policy statement's appendices on a continuing basis (as was indicated in the notice). The commenter contends that the practice of updating material of this kind without prior public review "appears to be outside the current practices of generation of advisory and rulemaking material."

As evidenced from these comments, the FAA acknowledges that there clearly is some confusion regarding the effect, intent, and meaning of published general statements of policy. In an effort to clarify this issue, the FAA offers the following explanation:

In a commitment to bring more transparency to government, Federal agencies have begun to publish in the **Federal Register** general statements of policy concerning internal processes and procedures. By doing this, agencies are providing the public with access to information that previously would have been released only as internal agency memos and directives.

A general statement of policy may be issued for different purposes, including:

- To advise the public of the manner in which the agency will exercise a discretionary power in subsequent adjudications or through rulemaking; or
- To provide guidance to agency officials in exercising their discretionary powers (and, at the same time, notify the public of this guidance).

A general statement of policy may be issued to different audiences: Often policy statements address agency personnel, and sometimes they address the public.

A general statement of policy is "non-binding." This means that it does not constitute a new regulation and the agency cannot apply or rely upon it as law. Because they are non-binding, general statements of policy preserve the flexibility of the affected agency personnel and their opportunity to make individualized determinations.

When a general statement of policy only announces what the agency has established as a policy, and/or merely provides guidance to agency officials in exercising their discretionary powers, a public notice-and-comment procedure is not required under the Administrative Procedure Act. Unless the issuing agency specifically states that the policy is "proposed" and requests comments from the public to help in developing the final policy, a general statement of policy may be considered effective when it is published in the **Federal Register** (and it may have been in effect within the agency even before publication).

In the case of the general statement of policy that is the subject of this notice, the FAA issued it as internal guidance to FAA Certification Teams. As indicated in the published policy statement, this guidance was necessary because increasing numbers of applicants have asked for assistance from the FAA in developing Human Factors Certification Plans. Given this trend, the Transport Airplane Directorate developed this guidance to assist FAA Certification Team members in working with applicants who are attempting to develop Human Factors Certification Plans, as well as in reviewing these plans after they have been submitted. The guidance provided is based on current regulations and practices; it does not add any new requirements.

Although the policy was directed toward FAA personnel, the FAA considered that it also would be of use to applicants: If applicants were to develop a Certification Plan, they could use the information in the policy statement as a basis for communicating their approach to addressing the human factors aspects of their project.

Although this policy is new, and may change as issues, technology, and regulations evolve, the FAA considers it to be currently in effect. FAA personnel have the discretion of applying the policy's guidelines, or not applying them when inappropriate.

2. The Current Need for the Policy

Some commenters state that the policy is premature and should not be issued at this time for use in type certification programs. These commenters state that there is no current official requirement for a Human Factors Certification Plan, and the policy will only lead to confusion for applicants, aircraft manufacturers, and regulatory authorities. Several commenters suggest that the policy will require significant interpretation by the FAA Certification Teams and personnel at FAA Aircraft Certification Offices (ACO). These commenters also state that human factors issues in flight deck design are complex and there are other on-going efforts (discussed below) in place that will better address them on an international scale. These commenters suggest that the FAA reconsider the need for this policy at this time.

The FAA does not concur with these commenters' suggestion that the policy is not needed. The FAA has placed great emphasis not only on the importance of human factors in design and certification, but on the need to define and understand how to apply human factors practices to our existing processes. The intent of the published general statement of policy was to address that need.

While it is true that there is no regulatory requirement for a "Human Factors Certification Plan" (or for a certification plan of any kind, for that matter), already many applicants for certification projects have developed such plans to communicate their approach to the identification and resolution of human factors issues. This type of plan is proving to be an effective means by which to establish an early and formal written agreement between the applicant and FAA on the certification basis, the methods of compliance, and the schedules for completing the certification project. This approach has helped FAA Certification Teams address issues early in the certification process, thereby decreasing the applicant's certification risk in cost or schedule.

As stated previously, the number of applicants asking for assistance from the FAA in developing and/or reviewing Human Factors Certification Plans has increased in recent years. In light of this, the FAA has seen a clear need to provide guidance at this time to FAA Certification personnel to assist them in helping these applicants develop plans, as well as in reviewing the plans that are submitted. The FAA considers that this formal internal policy is necessary to ensure standardization of internal procedures and consistent application of human factors in the certification process.

Accordingly, the FAA regards the guidance as necessary, and does not consider it premature.

3. The Task of the Human Factors Harmonization Working Group

Several of the commenters express concern that the development of guidance, such as that provided in the policy statement, should have been left to the Human Factors Harmonization Working Group (HFHWG). That Working Group was established (64 FR 39553, July 22, 1999) under the aegis of the FAA-sponsored Aviation Rulemaking Advisory Committee (ARAC), and its members represent human factors experts from the aviation community and government authorities. The FAA tasked ARAC to provide advice and recommendations as to the need for regulations and/or advisory material to address flight crew error and flight crew performance considerations in the flight deck certification process. Subsequently, ARAC asked the HFHWG to address this task.

One commenter states that by issuing the policy statement, the FAA appears "to be attempting to bypass the purpose of the HFHWG or to potentially compromise that Group's efforts." Several of the commenters state that the FAA should not issue the policy as official policy/guidance until the HFHWG activities are complete. One commenter states that existing regulations, advisory material, and manufacturers' human factors certification policies adequately cover the interim period pending completion of the HFHWG's activities. These commenters assert there should not be separate FAA and HFHWG activity on human factors issues, since it will likely lead to controversies, inconsistent application of guidance/policy, and dilution of the work of the HFHWG.

For several reasons, the FAA does not concur with the commenters' assertions that the HFHWG is the appropriate entity for issuing guidance such as that contained in the policy statement.

First, the described policy relates to an internal FAA process. Such processes are developed independent of ARAC activities, and the role of ARAC groups does not include defining how the FAA operates internally.

Second, the HFHWG was tasked with activities that are different from and beyond the guidance provided by the policy statement. The HFHWG is to review relevant existing regulations and advisory material, and make recommendations about what regulatory standards and/or advisory material should be updated or developed to consistently address (1) design-related flight crew performance vulnerabilities, and (2) prevention and management of flight crew error. In contrast, the policy statement describes methods for considering applicants' proposals for compliance with existing requirements. The possible products of the HFHWG activity may or may not include the information and material that is provided in the policy statement. It is doubtful that the HFHWG will be focusing much attention on the substance of the guidance contained in the policy statement.

Third, the activities of the HFHWG are not scheduled to be completed until approximately July 2002. As discussed previously, the FAA saw a need for issuing the guidance as soon as practicable to serve as an aid to FAA personnel in new certification projects.

For these reasons, the FAA does not agree that the issuance of the policy statement in any way circumvents the on-going work of the HFHWG. In the long term, both the policy statement and the product(s) of the HFHWG will serve as important initial steps in facilitating the institutionalization of formal procedures that systematically incorporate human factors considerations into all aspects of airplane design and certification.

Conclusion

After due consideration of the public comments submitted, the FAA finds no reason to amend or otherwise modify the general statement of policy as previously published.

Issued in Renton, Washington, on April 6, 2000.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–9214 Filed 4–12–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Randolph County, NC

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Randolph County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Roy C. Shelton, Operations Engineer, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601. Telephone: (919) 856–4350.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS) addressing proposed improvements to the existing United States Route (US) 64 corridor in the area of the City of Asheboro in Randolph County. As part of this action, the NCDOT also proposes to improve the access to the North Carolina Zoological Park (NC Zoo). The proposed improvements would involve the construction of a four-lane, median-divided, controlled-access highway on new location south of existing US 64 from around SR 1326 (Stutts Road) west of Asheboro to around SR 2713 (Trogdon Hill Road) east of Asheboro. A controlled-access facility on new location also is proposed west of NC 159 to improve access to the NC Zoo.

The purposes of the proposed action include: (1) Improving traffic flow and levels of service on the section of US 64 in the project study area; (2) Relieving congestion on US 64 in the City of Asheboro, thereby improving safety and reducing the number of accidents; (3) Improving access to the NC Zoological Park; and (4) Improving high-speed regional travel along the US 64 intrastate corridor.

Alternatives under consideration include: (1) No-Build Alternative; (2) Transportation Systems Management (TSM) Measures; (3) Mass Transit Alternative; (4) Improving the existing facility; and (5) Constructing a facility on new location south of existing US 64.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies. Public information meetings, meetings with local officials, and a public hearing will be held. Information on the time and place of the public information meetings, and public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Issued on: April 4, 2000.

Roy C. Shelton,

Operations Engineer, Federal Highway Administration, Raleigh, North Carolina.

[FR Doc. 00–9227 Filed 4–12–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Union and Mecklenburg Counties, North Carolina

AGENCY: Federal Highway Administration.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Union and Mecklenburg Counties, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Roy C. Shelton, Operations Engineer, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601. Telephone: (919) 856–4350.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS) addressing proposed improvements to the US 74 corridor between US 601, in Union County and I–485, in Mecklenburg County. The proposed action would involve the construction of a multi-lane divided, controlled access highway connecting US 601 to I–485. The proposed facility is the final link of the US 74 Intrastate Corridor identified for improvement and would extend freeway travel from eastern Union County, through Mecklenburg and Gaston Counties, to eastern Cleveland County. The proposed facility would address existing and anticipated future traffic congestion in the area as well as improve driver safety through increased capacity and control of access. The proposed action is consistent with the thoroughfare plans approved by the Monroe and Mecklenburg-Union Metropolitan Planning Organizations.

Alternatives under consideration include: (1) No-Build; (2) Transportation Systems Management (TSM); (3) Mass Transit; (4) Improve Existing US 74; and (5) Construction of a facility on new location.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies. Public information meetings, meetings with local officials, and a public hearing will be held. Information on the time and place of the public information meetings, and public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding the intergovernmental consultation on Federal programs and activities apply to this program).

Dated: April 4, 2000.

Roy C. Shelton,

Operations Engineer, Federal Highway Administration, Raleigh, North Carolina.

[FR Doc. 00–9228 Filed 4–12–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Agency Information Collection; Activity Under OMB Review; Passenger Origin Destination Survey Report

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of

Transportation Statistics (BTS) invites the general public, industry and other Federal Agencies to comment on the continuing need for and usefulness of BTS collecting a sample of airline passenger itineraries with dollar value of the passenger ticket from large scheduled airlines. Comments are requested concerning whether (a) the collections is still needed by DOT; (b) BTS accurately estimated the reporting burden; (c) there are other ways to enhance the quality, utility and clarity of the information collected; and (d) there are ways to minimize reporting burden, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted by June 12, 2000.

ADDRESSES: Comments should be directed to: Office of Airline Information, K–25, Room 4125, Bureau of Transportation Statistics, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

COMMENTS: Comments should identify the OMB #2139–0001 and submit a duplicate copy to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB # 2139–0001. The postcard will be date/time stamped and returned to the commenter.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, K–25, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4387.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2139–0001

Title: Passenger Origin Destination Survey Report.

Type of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers.

Number of Respondents: 37.

Estimated Time Per Response: 240 hours.

Total Annual Burden: 35,520 hours.

Needs and Uses: Survey data are used in monitoring the airline industry, negotiating international agreements, selecting new international routes and selecting U.S. air carriers to operate international routes.

Issued in Washington, DC, on April 17, 2000.

Donald W. Bright,

Acting Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 00–9213 Filed 4–12–00; 8:45 am]

BILLING CODE 4910–62–U

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Reports, Forms and Recordkeeping Requirements, Agency Information Collection Activity Under OMB Review

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request, ICR abstracted below has been forwarded to the Office of Management and Budget, OMB for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 5, 2000, 65 FR 553–554.

DATES: Comments must be submitted on or before May 15, 2000.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, (202) 366–4387, DOT, Office of Airline Information, Room 4125, K–25, 400 Seventh Street, NW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Bureau of Transportation Statistics, BTS

Title: Report of Financial and Operating Statistics for Small Aircraft Operators—Form 298–C.

Type of Request: Extension of a currently approved Collection.

OMB Control Number: 2138–0009.

Form(s): BTS Form 298-C.

Affected Public: Small certificated and commuter air carriers.

Abstract: Small certificated and commuter air carriers submit BTS Form 298–C, which provides basic financial, traffic, and operating data. DOT uses the data in safety surveillance, essential air service determinations, airport improvement, air traffic control, setting the Alaska mail rate, etc.

Estimated Annual Burden Hours: 4,720.

ADDRESS: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention BTS Desk Officer.

Comments are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on April 7, 2000.

Donald W. Bright,

Acting Director, Office of Airline Information, Bureau of Transportation Statistics.

[FR Doc. 00–9212 Filed 3–12–00; 8:45 am]

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Federal Register

Thursday,
April 13, 2000

Part II

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Implementation Plans; Arizona—Maricopa County PM–10 Nonattainment Area; Serious Area Plan for Attainment of the Annual PM–10 Standard; Proposed Rule

Interim Final Determination That State Has Corrected the Plan Deficiency and Stay of Sanctions; Phoenix PM–10 Nonattainment Area, Arizona; Interim Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ092–002; FRL–6575–3]

Approval and Promulgation of Implementation Plans; Arizona—Maricopa County PM–10 Nonattainment Area; Serious Area Plan for Attainment of the Annual PM–10 Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve provisions of the Revised MAG 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County (Phoenix) Nonattainment Area, February 2000, and the control measures on which it relies, that address the annual PM–10 national ambient air quality standard. We also propose to grant Arizona's request to extend the Clean Air Act deadline for attaining the annual PM–10 standard in the Phoenix area from 2001 to 2006. Finally, we propose to approve two particulate matter rules adopted by the Maricopa County Environmental Services Department and Maricopa County's Residential Woodburning Restrictions Ordinance.

DATES: Comments on this proposal must be received in writing by June 12, 2000. Comments should be addressed to the contact listed below.

ADDRESSES: Comments may be mailed to: Frances Wicher, Office of Air Planning (AIR–2), EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

A copy of docket No. AZ–MA–00–001, containing the technical support document (TSD) and other material relevant to EPA's proposed action, is available for public inspection at EPA's Region 9 office during normal business hours.

A copy of the docket is also available for inspection at: Arizona Department of Environmental Quality, Library, 3033 N. Central Avenue, Phoenix, Arizona 85012, (602) 207–2217. Maricopa Association of Governments, 302 North 1st Street, Phoenix, Arizona 85003, (602) 254–6300.

Electronic Availability

This document and the Technical Support Document (TSD) are also available as electronic files on EPA's Region 9 Web Page at http://www.epa.gov/region09/air.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1238, email: wicher.frances@epa.gov.

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Summary of Today's Proposals

We are proposing to approve the serious area air quality plan for attainment of the annual PM–10 standard in the Phoenix, Arizona, metropolitan area.[1] Our proposed actions are based on our initial determination that this plan complies with the Clean Air Act's requirements for attainment of the annual PM–10 standard in serious PM–10 nonattainment areas.

Specifically, we propose to approve the following elements of the plan as they apply to the annual PM–10 standard:

- the base year emissions inventory of PM–10 sources,
- the demonstration that the plan provides for implementation of reasonably available control measures (RACM) and best available control measures (BACM),
- the demonstration that attainment of the PM–10 annual standard by the Clean Air Act deadline of December 31, 2001 is impracticable,
- the demonstration that attainment of the PM–10 annual standard will occur by the most expeditious alternative date practicable, in this case, December 31, 2006,

[1] There are two separate national ambient air quality standards (NAAQS) for PM–10, an annual standard of 50 μg/m^3 and a 24-hour standard of 150 μg/m^3.

• the demonstration that the plan provides for reasonable further progress and quantitative milestones,

• the demonstration that the plan includes to our satisfaction the most stringent measures found in the implementation plan of another state or are achieved in practice in another state, and can feasibly be implemented in the area.

• the demonstration that major sources of PM–10 precursors such as nitrogen oxides and sulfur dioxide do not contribute significantly to violations of the annual PM–10 standard, and

• the transportation conformity budget.

We are also proposing to grant Arizona's request to extend the attainment date for the annual PM–10 standard from December 31, 2001 to December 31, 2006.

Finally, we are proposing to approve Maricopa County's fugitive dust rules, Rules 310 and 301.01, and its residential woodburning restriction ordinance.

This preamble describes our proposed actions on the Phoenix area plan and provides a summary of our evaluation of the plan. Our detailed evaluation of the plan can be found in the technical support document ("EPA TSD") that accompanies this proposal. A copy of the EPA TSD can be downloaded from our website or obtained by calling or writing the contact person listed above.

Summary of the MAG Plan

We are evaluating and proposing action on the Revised Maricopa Association of Governments 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County Nonattainment Area, February 2000 ("MAG plan"). This plan was developed by the Maricopa Association of Governments (MAG), the lead air quality planning agency in Maricopa County, with the assistance of the Maricopa County Environmental Services Department (MCESD), the Arizona Department of Environmental Quality (ADEQ), and the cities and towns in the Maricopa County nonattainment area. ADEQ submitted the final plan as a revision to the Arizona State Implementation Plan (SIP) on February 16, 2000.

We are also evaluating and proposing action on the December 11, 1997 submittal of Serious Area Committed Particulate Control Measures for PM–10 for the Maricopa County Nonattainment Area and Support Technical Analysis, MAG, December 1997. This submittal contains additional control measures that are relied on in the MAG plan. We consider the measures in this submittal to be part of the MAG plan and have evaluated them as such.

Finally, we are also evaluating and proposing to act on the most recent revisions to MCESD's Rule 310, Fugitive Dust Sources (adopted February 16, 2000) and Rule 310.01, Fugitive Dust from Open Areas, Vacant Lots, Unpaved Parking Lots, and Unpaved Roadways (adopted February 16, 2000). We are also proposing to approve the revised Maricopa County Residential Woodburning Restrictions Ordinance (adopted November 17, 1999).

As submitted, the revised MAG plan consists of the main plan document, four volumes of technical appendices, and four volumes of commitments from various agencies to implement PM–10 controls. The plan contains a 1994 regional PM–10 emissions inventory and uses the urban airshed model/limited chemistry version (UAM/LC) to model air quality in 1995 as a base year and in 2006 as the attainment year. The plan includes a BACM analysis and a demonstration that attainment by 2001 is impracticable. It also includes the State's request for a five year extension of the attainment date, a demonstration that the plan provides for the most stringent measures found in other areas' plans or used in practice, and a demonstration of attainment by December 31, 2006. The plan shows that the principal sources contributing to PM–10 exceedances in the Phoenix area are fugitive dust sources, such as construction sites, vacant lots, paved and unpaved roads, and various other dust sources. The principal controls relied on for attainment are controls on these fugitive dust sources.

The MAG plan addresses both the annual and 24-hour PM–10 standards. We are not at this time proposing any actions regarding the plan's compliance with the statutory requirements relating to the 24-hour standard. As we explain in more detail later, the annual PM–10 standard is a separate air quality standard from the 24-hour one; therefore, we can and must separately evaluate a plan's compliance with the statutory requirements for each standard. We do not need to do these reviews concurrently.

The MAG plan also contains contingency measures as required by CAA section 172(c)(9). We are not proposing action on these contingency measures at this time. Contingency measures are a distinct provision of the Clean Air Act that we may act on separately from the attainment requirements.

PM–10 Air Quality in the Phoenix Metropolitan Area

A. The Maricopa Nonattainment Area and its PM–10 Air Quality

The Maricopa County (Phoenix) PM–10 nonattainment area is located in the eastern portion of Maricopa County and encompasses the cities of Phoenix, Mesa, Scottsdale, Tempe, Chandler, Glendale as well as 17 other jurisdictions and considerable unincorporated County lands.[2] 40 CFR 81.303. The area is home to almost 3 million people.

The area violates both the annual and 24-hour PM–10 standards. In 1990, the area was designated nonattainment for PM–10 and classified as moderate. In 1996, because of continuing violations of both PM–10 standards, the area was reclassified to serious. 61 FR 21372 (May 10, 1996).

As noted before, the principal contributors to elevated PM–10 levels in the Phoenix area are fugitive dust sources such as construction sites, unpaved roads, vacant lots and paved road dust. Also contributing to the PM–10 problem, but to a much lesser degree than fugitive dust, are internal and external combustion sources including directly-emitted PM–10 from automobiles, trucks, construction equipment, bus, residential woodburning and industrial, commercial, and residential use of natural gas and fuel oil. See MAG plan, 3–5.

B. PM–10 Air Quality Planning in the Phoenix Metropolitan Area

The MAG plan is the latest in a series of air quality plans addressing the PM–10 problem in Phoenix. These previous plans are:

• *1991 MAG Moderate Area Plan.* Arizona submitted this plan in 1991 and revisions to it in 1993 and 1994. The 1991 plan contained a demonstration that attainment was impracticable by the CAA's deadline for moderate areas, December 31, 1994. We initially approved this plan in 1995 (60 FR 18010 (April 10, 1995)); however, the 9th Circuit Court of Appeals vacated our approval in 1996, finding among other things that the plan did not address the 24-hour PM–10 standard. *Ober* v. *EPA*, 84 F.3d 304 (9th Cir. 1996). In 1998, we disapproved the 1991 plan's reasonably available control measure (RACM) demonstration for the annual standard because the plan failed to provide for the implementation of RACM on

[2] The Maricopa nonattainment area also includes the town of Apache Junction in Pinal County. Apache Junction is covered by a separate air quality plan and will be addressed in a later action.

number of significant sources of PM–10, including unpaved roads. The failure to provide for the implementation of RACM also meant that the plan could no longer conclusively demonstrate the impracticability of attainment of the annual standard by December 31, 1994, so we also disapproved the impracticability demonstration. 63 FR 15919, 15925 (April 1, 1998).

• *Microscale Plan.* Arizona submitted this plan in 1997 as a response to the 9th Circuit's findings in *Ober.* The plan addressed the CAA's serious area PM–10 requirements for attaining the 24-hour standard around four representative air quality monitors (that is, at four localized or "microscale" sites) in the Phoenix area. It found that 24-hour exceedances in the Phoenix area are mainly caused by fugitive dust from construction, agriculture, unpaved roads and parking lots, and disturbed vacant land. We approved the plan in part but also disapproved it in part because it did not provide for the implementation of RACM or BACM on agricultural sources, unpaved roads, unpaved parking lots, and disturbed vacant lots and did not demonstrate attainment at two of the four sites. 62 FR 41856 (August 4, 1997).

• *1998 Moderate Area Federal Implementation Plan* (FIP). We promulgated this plan on August 3, 1998. It provided for the implementation of RACM on the significant sources—unpaved roads, unpaved parking lots, disturbed vacant lots, and agricultural sources—left unaddressed by the 1991 MAG moderate area plan and the Microscale plan.[3] The FIP demonstrated that the implementation of RACM was insufficient for attainment of the 24-hour and annual standards by Phoenix area's attainment deadline of December 31, 2001.[4] 63 FR 41326 (August 3, 1998).

A more detailed history of PM–10 planning in the Phoenix area can be found in the EPA TSD.

[3] The FIP's requirements for unpaved roads, unpaved parking lots and disturbed vacant lots are codified at 40 CFR 52.128. We withdrew the FIP's agricultural requirements, formerly codified at 40 CFR 52.127, when we approved similar State requirement in 1999. 64 FR 34726 (June 29, 1999).

[4] At the time we promulgated the FIP in 1998, the moderate PM–10 area deadline of December 31, 1994 had passed and we had reclassified the Phoenix area to serious. As a result the only statutory attainment deadline then applicable to the Phoenix area, and thus the deadline applicable to our moderate area FIP, was the serious area deadline, i.e., as expeditiously as practicable but not later than December 31, 2001. See 63 FR 15919, 15926.

C. Clean Air Act Sanctions on the Phoenix Area

Our 1998 disapprovals of parts of the 1991 MAG moderate area plan started sanction clocks under CAA section 179(a). Under section 179(a), once we disapprove a SIP provision because it fails to meet a CAA requirement, a State has 18 months to correct the deficiency that resulted in the disapproval before the first of two sanctions goes into place. If the state still has not corrected the deficiency within 24 months of the disapproval, the second sanction goes into place.

The two CAA sanctions are a limitation on certain highway approvals and funding and an increase in the offset ratio to 2 to 1 for any major new stationary source or major modification. See CAA section 179(b). Our sanctions regulations provide that the first sanction to be imposed is the offset ratio unless we have established at the time of the disapproval that the highway sanction will be first. 40 CFR 52.31(d).

On August 3, 1998, we published our disapprovals of the RACM and attainment demonstrations for the annual standard in the 1991 MAG moderate area plan. 63 FR 41326. When these disapprovals became effective 30 days later on September 2, 1998, the sanction clocks started. The first of these sanction clocks expired on March 2, 2000 and the 2:1 offset sanction is now in place in the Phoenix area. The second sanction clock for the highway funding limitations is set to expire on September 2, 2000.

Under section 179(a) and our sanctions regulations at 40 CFR 52.31(d)(1), we must approve a SIP revision that corrects the deficiencies to permanently end the sanctions clocks and lift any imposed sanctions. However, we may temporarily stay the clocks and any imposed sanctions if we propose to approve a SIP revision that corrects the deficiencies and have issued an interim final determination that the State has corrected the deficiencies. 40 CFR 52.31(d)(2)(i).

In a rule being published concurrently with this proposal, we are issuing an interim final determination that, based our proposed findings here, Arizona has more than likely corrected the deficiencies that resulted in our August 1998 disapprovals.

The Clean Air Act's Planning Requirements for Serious PM–10 Areas and EPA's Guidance on Meeting these Requirements

The Phoenix area is a PM–10 nonattainment area that has been reclassified to serious because it failed to attain by the moderate area attainment date of December 31, 1994. Such an area must submit, within 18 months of the reclassification, revisions to its implementation plan that address the CAA requirements for serious PM–10 nonattainment areas. CAA section 189(b)(2). These requirements are:

(a) assurances that best available control measures (BACM) for the control of PM–10 shall be implemented no later than 4 years after the area is reclassified (CAA section 189(b)(1)(B));[5]

(b) assurances that best available control technology (BACT) on major stationary sources of PM–10 precursors shall be implemented no later than 4 years after the area is reclassified except where EPA has determined that such sources do not contribute significantly to exceedances of the PM–10 standards (CAA section 189(e));

(c) a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 2001, or, where the State is seeking an extension of the attainment date under section 188(e), a demonstration that attainment by December 31, 2001 is impracticable (CAA sections 188(c)(2) and 189(b)(1)(A));

(d) quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by the applicable attainment date (CAA sections 172(c)(2) and 189(c)); and

(e) a comprehensive, accurate, current inventory of actual emissions from all sources of PM–10. (CAA sections 172(c)(3)).

Serious area PM–10 plans must also meet the general requirements applicable to all SIPs including reasonable notice and public hearing under section 110(l), necessary assurances that the implementing agencies have adequate personnel, funding and authority under section 110(a)(2)(E)(i) and 40 CFR 51.280; and the description of enforcement methods as required by 40 CFR 51.111.

Except for the requirements for the implementation of RACM and BACM and for extension requests, we will discuss our policies for each of these requirements when we discuss our evaluation of that section of the MAG plan later in this preamble.

[5] When a moderate area is reclassified to serious, the requirement to implement RACM in section 189(a)(1)(C) remains and is augmented by the requirement to implement BACM. Thus, a serious area PM–10 plan must, in addition to BACM, provide for the implementation of RACM as expeditiously as practicable to the extent that the RACM requirement has not been satisfied in the area's moderate area plan.

We have issued a General Preamble, 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992), and Addendum to the General Preamble ("Addendum"), 59 FR 41998 (August 16, 1994), describing our preliminary views on how we intend to review SIPs submitted to meet the Clean Air Act's requirements for PM–10 plans. We have also issued other guidance documents related to PM–10 plans or provisions of these plans. These other guidance documents will be cited as appropriate.

A. Implementation of Best Available Control Measures

Under section 189(b)(2), serious area PM–10 plans must provide assurances that BACM will be implemented in the area no later than four years after the area is reclassified as serious. For Phoenix, the BACM implementation deadline is June 10, 2000.

The Act does not define what constitutes BACM. We consider BACM to be a particular level of control, in this case the best, on a source or source category. More specifically, we have defined BACM to be, among other things, the maximum degree of emission reductions achievable from a source or source category which is determined on a case-by-case basis, considering energy, economic and environmental impacts. Addendum at 42010. We also consider BACM as going beyond existing RACM-level controls, such as expanding the use of RACM controls (e.g., paving more miles of unpaved roads). Addendum at 42013. Additionally, we believe that BACM should emphasize prevention rather than remediation (e.g., preventing track out at construction sites rather than simply requiring clean up of tracked-out dirt). Addendum at 42013.

A serious area plan must provide for the implementation of BACM on each significant (*i.e.*, non-de minimis) source category. Addendum at 42011. In guidance, we have established a presumption that a "significant" source category is one that contributes 1 $\mu g/m^3$ or more of PM–10 to a location of an annual standard violation. Addendum at 42011. However, whether the threshold should be lower than this in any particular area depends upon the specific facts of that area's nonattainment problem. Specifically, in areas that are demonstrating attainment by December 31, 2001, it depends on whether requiring the application of BACM on source categories below a proposed de minimis level would meaningfully expedite attainment. In areas that are claiming the impracticability of attainment by December 31, 2001, it depends upon whether requiring the application of BACM on source categories below a proposed de minimis level would make the difference between attainment and nonattainment by the serious area deadline of December 31, 2001.[6]

We have outlined in our guidance a multi-step process for identifying BACM. Addendum at 42010–42014. The steps are:

1. develop a detailed emission inventory of PM–10 sources and source categories,
2. model to evaluate the impact on PM–10 concentrations over the standards of the various sources and source categories to determine which are significant,
3. identify potential BACM for significant source categories including their technological feasibility, costs, and energy and environmental impacts if needed to determine BACM, and
4. provide for the implementation of the BACM or provide a reasoned justification for rejecting any potential BACM.

B. Implementation of Reasonably Available Control Measures

When a moderate area is reclassified to serious, the requirement to implement RACM in section 189(a)(1)(C) remains. Thus, a serious area PM–10 plan must also provide for the implementation of RACM as expeditiously as practicable to the extent that the RACM requirement has not been satisfied in the area's moderate area plan.

However, we do not normally conduct a separate evaluation to determine if a serious area plan's measures also meet the RACM requirements as interpreted by us in the General Preamble at 13540. This is because in our serious area guidance (Addendum at 42010), we interpret the BACM requirement, as generally subsuming the RACM requirement (i.e. if we determine that the measures are indeed the "best available," we have necessarily concluded that they are "reasonably available"). Therefore, a separate analysis to determine if the measures represent a RACM level of control is not necessary. Consequently, our proposed approval of the MAG plan's provisions relating to the implementation of BACM is also a proposed finding that the plan provides for the implementation of RACM.

C. Extension of the Attainment Date Beyond 2001

Section 188(e) of the Act allows us to extend the attainment date for a serious area for up to five years beyond 2001 if attainment by 2001 is impracticable. However, before we may grant an extension of the attainment date, the State must first:

1. apply to us for an extension of the PM–10 attainment date beyond 2001,
2. demonstrate that attainment by 2001 is impracticable,
3. have complied with all requirements and commitments applying to the area in its implementation plan,
4. demonstrate to our satisfaction that its serious area plan includes the most stringent measures that are included in the implementation plan of any state and/or are achieved in practice in any state and are feasible for the area, and
5. submit a demonstration of attainment by the most expeditious alternative date practicable.

In determining whether to grant an extension and the appropriate length of the attainment date extension, we may consider:

1. the nature and extent of the nonattainment problem,
2. the types and number of sources or other emitting activities in the area (including the influence of uncontrollable natural sources and international transport),
3. the population exposed to concentrations in excess of the standard,
4. the presence and concentration of potentially toxic substances in the mix of particulate emissions in the area, and
5. the technological and economic feasibility of various control measures.

We may grant only one extension for an area and that extension cannot be for more than 5 years after 2001; that is, the extended attainment date can be no later than December 31, 2006. CAA section 188(e).

To date, we have not issued any policy or regulation interpreting the attainment date extension requirements for urban areas like Phoenix. Therefore, before reviewing Arizona's request for an extension, we will first discuss how we propose to interpret section 188(e).

The following is our preliminary interpretation of the section 188(e) requirements and we request comment on it. We emphasize that this is our preliminary view and it is subject to modification as we gain more experience reviewing on extension requests from other areas.

[6] This principle is best illustrated by an example: In Area A, attainment of the annual standard by December 31, 2001 requires that total PM–10 emissions in the area be reduced to 200 tons per day (tpd). After application of BACM to all source categories above the proposed de minimis level, total emissions in the area are reduced to 220 tpd. BACM on the proposed de minimis source categories would reduce total emissions a further 5 tons to 215 tpd. Since application of BACM to the proposed de minimis source categories still leaves emissions above the attainment level of 200 tpd, the proposed de minimis level is appropriate.

We have listed above the five requirements a State must meet before we can consider granting an attainment date extension. We discuss each requirement in order:

1. Apply for an Attainment Date Extension

The State must apply in writing to EPA for an extension of the attainment deadline. The request should accompany the SIP submittal containing the most expeditious alternative attainment demonstration. The public must be provided reasonable notice and a public hearing on the request before it is submitted.

Extension requests are not SIP submittals per se and are therefore not subject to the requirements of the Clean Air Act and our regulations for public notice and hearing on SIP revisions. However, because they can greatly affect the content and ultimate approvability of a serious area PM–10 plan, we believe a state must give the public an opportunity, consistent with the requirements for SIP revisions, to comment on an extension request prior to submitting it to us.

2. Demonstrate That Attainment by 2001 is Impracticable

In order to demonstrate impracticability, the plan must show that the implementation of BACM (as determined by our guidance) on significant source categories will not bring the area into attainment by December 31, 2001. BACM is the required level of control for serious areas that must be in place before the 2001 attainment date; therefore, we believe that it is reasonable to interpret the Act to require that a state provide for at least the implementation of BACM on significant source categories before it can claim impracticability of attainment by 2001. This interpretation parallels our interpretation of the impracticability option for moderate PM–10 nonattainment areas in section 189(a)(1)(B). In moderate areas, RACM was required before a moderate area plan could show impracticability of attainment by 1994, the moderate area attainment deadline. General Preamble at 13544.

The statutory provision for demonstrating impracticability requires that the demonstration be based on air quality modeling. See section 189(b)(1)(A).

3. Complied With all Requirements and Commitments in its Implementation Plan

We interpret this criterion to mean that the State has implemented the control measures in the SIP revisions it has submitted to us to address the CAA requirements in sections 172 and 189 for PM–10 nonattainment areas.

We read this provision not to require the area to have a fully approved SIP that meets the CAA's requirements for moderate areas. We base this reading on the plain language of section 188(e) which requires the state to comply with all requirements and commitments pertaining to that area in the implementation plan but does not require that the state comply with all requirements pertaining to the area in the Act. For the same reason we also read this provision not to bar an extension if all or part of an area's moderate area plan is disapproved or has been promulgated as a FIP.

4. Demonstrate the Inclusion of the Most Stringent Measures

The fourth extension criterion requires the State to "demonstrate to the satisfaction of the Administrator that the plan for the area includes the most stringent measures that are included in the implementation plan of any State, or are achieved in practice in any State, and can feasiblely be implemented in the area." CAA section 188(e).

The requirement for most stringent measures (MSM) is similar to the requirement for BACM. We define BACM to be, among other things, the maximum degree of emission reduction achievable from a source or source category which is determined on a case by case basis considering energy, economic and environmental impacts. Addendum at 42010. The Act establishes the deadline for implementing BACM as four years after an area's reclassification to serious. CAA section 189(b)(1)(A).

We proposed to define a "most stringent measure" in a similar manner: the maximum degree of emission reduction that has been required or achieved from a source or source category in other SIPs or in practice in other states and can feasiblely be implemented in the area. The Act does not specify an implementation deadline for MSM. Because the clear intent of section 188(e) is to minimize the length of any attainment date extension, we propose that the implementation of MSM should be as expeditiously as practicable.

Given this similarity between the BACM implementation and MSM requirements, we believe that determining MSM should follow a process similar to determining BACM, but with one additional step, to compare the potentially most stringent measure against the measures already adopted in the area:

1. develop a detailed emission inventory of PM–10 sources and source categories,

2. model to evaluate the impact on PM–10 concentrations over the standards of the various source categories to determine which are significant for the purposes of adopting MSM,

3. identify the potentially most stringent measures in other implementation plans or used in practice in other States for each significant source category and, for each measure, determine their technological and economic feasibility for the area,

4. compare the potentially most stringent measures for each significant source category against the measures, if any, already adopted for that source category, and

5. provide for the adoption and expeditious implementation of any MSM that is more stringent than existing measures or, in lieu of adoption, provide a reasoned justification for rejecting the potential MSM, *i.e.*, why such measures cannot be feasiblely implemented in the area.

The level of control resulting from a most stringent measure depends on how well other areas have chosen to control their sources. If a source category has not been well controlled in other areas then MSM may in fact result in a rather low level of control. This contrasts with BACM which is determined independently of what other areas have done and depends only on what is the best level of control feasible for an area.

Because BACM is the best level of control feasible for an area, it would be easy for the MSM requirement to result in no more controls and no more emission reductions in an area than result from the implementation of BACM. Given the strategy in the nonattainment provisions of the Act to offset longer attainment time frames with more stringent control requirements, we need to interpret the MSM provision to assure that it results in additional controls beyond the set of measures adopted as BACM. The primary ways to do this are (1) to require that more sources and source categories be subject to MSM analysis than to BACM analysis, that is, by lowering the threshold for what is considered a de minimis source category and (2) to require reanalysis of any measures garnered from other areas that were rejected during the BACM analysis because they could not be implemented by the BACM-implementation deadline to see if they

are now feasible for the area given the longer attainment date.

De Minimis Thresholds. What constitutes a de minimis source category for BACM is dependent upon the specific facts of the nonattainment problem under consideration. In particular, it depends upon whether requiring the application of BACM for such sources would make the difference between attainment and nonattainment by the serious area deadline. We propose to use a similar approach for judging what constitutes a de minimis source category for MSM but instead of the attainment/nonattainment test, we propose to use a test of whether MSM controls on the de minimis sources would result in more expeditious attainment.

We would not review an MSM analysis in a plan if the plan did not demonstrate expeditious attainment since one prerequisite for granting an extension is that the plan demonstrate attainment. Therefore, any de minimis standard for MSM that relied on the difference between attainment and nonattainment would be meaningless because no additional controls are needed for attainment beyond those already in the plan. Our responsibility under section 188(e), however, is to grant the shortest practicable extension of the attainment date by assuring the plan provides for attainment as expeditiously as practicable. Thus, one means of determining an appropriate de minimis level is to determine if applying MSM to the proposed de minimis source categories would meaningfully expedite attainment. If it did, then the de minimis level is too high, and if it did not, then the de minimis level is appropriate.[7]

Technological Feasibility. In the MSM analysis, a state must evaluate the application of controls from elsewhere to sources in its own area. In many cases, these sources are already subject to local control measures. In these situations, part of determining if a control is technologically feasible is determining if the new control can be integrated with the existing controls without reducing or delaying the emission reductions from the existing control. If it cannot, then we would not, in general, consider the measure to be technologically feasible for the area.

Economic Feasibility. Because cost is rarely used to justify rejection of a measure in the MAG plan, we will not attempt to establish a general guide for evaluating when a measure is economically infeasible but instead will address the issue on a case-by-case basis as needed.

We propose to use the following approach in evaluating the selection of the most stringent among multiple measures, *i.e.*, evaluating the determination of when one is more stringent than another:

1. The determination will be made on a source category basis. When only a single measure is applicable to a source category then we will compare the measures directly. However, in many cases multiple measures apply to a single source category (*e.g.*, unpaved roads which in the MAG plan are controlled both by Rule 310.01 and through City and County commitments). In these cases, we will evaluate the impact of the overall control strategy on emissions in the source category against the impact of the overall control strategy on the source category in other areas and will not compare individual measures within the source category.

2. We will review all the elements of a rule that apply to a specific type of source as an inseparable measure. A rule's applicability and emission limitations (as they apply to a single type of source) together define its stringency. They are not separable elements that can be compared in isolation to another rule.

3. Because stringency is based on an emissions level, we will not use a measure's implementation mechanisms (*e.g.*, rule versus commitment), funding level, compliance schedule, resources available for enforcement, or other similar items as criteria for judging relative stringency. (We do consider these items when judging whether the plan provides for *implementation* of MSM.)

Finally, we address how we view the "to the satisfaction of the Administrator" qualifier on the requirement that the State demonstrate that its plan includes the most stringent measures. The presence and wording of this qualifier indicate that Congress granted us considerable discretion in determining whether a plan in fact includes MSM. Under the terms of section 188(e), we believe that we can still accept an MSM demonstration even if it falls short of having every MSM possible. To intuit the limits of this discretion, we again look to the overall intent of section 188(e), that we grant as short an extension as practicable. In concrete terms, this means that when judging the overall adequacy of the MSM demonstration, we will give more weight to a failure to include MSM for source categories that contribute the most to the PM–10 problem in Phoenix and to the failure to include measures that could provide for more expeditious attainment and less weight to a failure to include MSM for source categories that contribute little to the PM–10 problem and/or would not expedite attainment.

5. Demonstrate Attainment by the Most Expeditious Alternative Date Practicable

Section 189(b)(1)(A) requires that a serious area plan demonstrate attainment, using air quality modeling, by the most expeditious date practicable after December 31, 2001. This demonstration is the final criterion that must be met before we may grant an extension request.

Our determination of whether the plan provides for attainment by the most expeditious date practicable will depend on whether the plan provides for implementation of BACM by the BACM implementation deadline and MSM as expeditiously as practicable.

Please see section 4 of the EPA TSD for an additional discussion of our proposed interpretation of the extension requirements.

D. Separating Our Rulemaking Actions on the Annual and 24-hour Standards

As we discussed above, there are two PM–10 NAAQS, an annual standard of 50 $\mu g/m^3$ and a 24-hour standard of 150 $\mu g/m^3$. In this proposed action, we are evaluating the MAG plan only for its compliance with the Clean Air Act's requirements for attaining the annual PM–10 standard. We are not, at this time, evaluating the plan for its compliance with the Act's requirements for the 24-hour PM–10 standard. Under section 110(k)(2), we have until February 25, 2001—one year after the completeness finding—to act on the balance of the plan that was submitted on February 16, 2000.

The two PM–10 standards are independent and must be addressed independently by states in their SIPs. This independence was highlighted by the Ninth Circuit Court of Appeals in *Ober* v. *EPA*, 84 F.3d 304 (9th Cir. 1996). In *Ober*, the Court was reviewing our approval of the MAG moderate area plan:

> The general provisions of the Clean Air Act repeatedly emphasize that implementation plans must provide for attainment of the NAAQS as expeditiously as practicable. For PM–10, the EPA promulgated two separate NAAQS-the annual standard and the 24-hour standard-which differ in the following

[7] In extension areas, the applicable control requirement after the December 31, 2001 attainment date is the MSM and expeditious attainment requirements of section 188(e). Thus, for measures implemented after December 31, 2001, a state need only show that the measure meets at minimum the MSM level of control and, combined with all other measures, is sufficient for expeditious attainment. A state has no obligation to show that the measure meets a BACM-level of control.

respects. First, the 24-hour standard offers protection against dangerous short-term exposures to high PM–10 levels, a protection that is distinct from the protection against chronic degradation in lung function provided by the annual standard. Second, the sources of PM–10 violation differ for the annual and the 24-hour: violations of the 24-hour standard are generally caused by localized sources such as construction projects, whereas violations of the annual standard tend to be caused by more diverse, dispersed sources. Third, control measures differ in effectiveness for the 24-hour standard and the annual standard.

These differences emphasize the importance of viewing PM–10's two NAAQS individually and of requiring independent treatment of them in an implementation plan. . . . . Such independent treatment furthers the Clean Air Act's goals of protecting health and achieve clean air.

Ober at 309 (emphasis added).

If a state must treat each PM–10 NAAQS independently in the implementation plan, then we also must treat each PM–10 NAAQS independently when reviewing the plan's compliance with the Clean Air Act. Therefore, it is necessary for us to review the MAG plan's compliance against the CAA requirements as they apply to the annual standard and again review them against the CAA requirements as they apply to the 24-hour standard. There is no mandate that we conduct these reviews concurrently even if Arizona submitted a single document to meet the requirements for both standards since, effectively, we must treat it as if it contained two separate plans.

We have chosen not to act at this time on the 24-hour provisions of the revised MAG plan because the State is still working on quantifying emission reductions from the best management practice measures (BMPs) intended to reduce fugitive dust from agricultural sources. Attainment of the 24-hour standard in the Phoenix area, unlike the annual standard, depends in part on emission reductions from these BMPs. Once Arizona quantifies the reductions, it will revise the 24-hour attainment demonstrations and resubmit them to us. We expect these changes later this year. We do not believe it is an efficient use of our resources to act now on the 24-hour provisions currently in the MAG plan knowing that they will be substantially revised prior to our statutory deadline to act on them.

Discussion of the MAG Plan's Compliance with the Clean Air Act's Requirements

The following sections present a condensed discussion of our evaluation of the MAG plan's compliance with the applicable CAA requirements for attainment of the annual PM–10 standard. Our complete evaluation is found in the EPA TSD for this proposal. We urge anyone wishing to comment on this proposal to first review the TSD before preparing comments. A copy of the TSD can be downloaded from our website or obtained by calling or writing the contact person listed above.

A. Completeness of the SIP Submittals

The first step we take after receiving a SIP submittal is to determine if it is complete. CAA section 110(k)(1)(B) requires that we review all SIPs and SIP revisions for completeness within 60 days of receipt of the submittal. The completeness review allows us to quickly determine if a state has submitted a SIP revision, including all needed supporting material, on which we can take action. We make completeness determinations using criteria we have established in 40 CFR part 51, appendix V.

We found ADEQ's February 16, 2000 submittal (received on February 23, 2000) of the final revised MAG serious area PM–10 plan complete. We notified the State of our completeness determination on February 25, 2000. See Letter, David P. Howekamp, EPA, to Jacqueline Schafer, ADEQ.

If we do not make a completeness determination, a submittal becomes complete by default 6 months after we receive it. See 100(k)(1)(B). We did not review the 1997 submittal of control measures for completeness and it became complete by default on June 15, 1998.

We found Arizona's submittals containing MCESD's Rule 310 and 310.01 and the revised Maricopa County residential woodburning ordinance complete on March 31, 2000.

B. Adequacy of the Transportation Conformity Budgets

Section 176(c) of the Clean Air Act requires that federally funded or approved transportation plans, programs, and projects in nonattainment areas "conform" to the area's air quality implementation plans. Conformity ensures that federal transportation actions do not worsen an area's air quality or interfere with its meeting the air quality standards. We have issued a conformity rule that establishes the criteria and procedures for determining whether or not transportation plans, programs, and project conform. See 40 CFR part 93, subpart A.

One of the primary tests for conformity is to show transportation plans and improvement programs will not cause motor vehicle emissions higher than the levels needed to make progress toward and meet the air quality standards. The motor vehicle emissions levels needed to make progress toward and meet the air quality standards are set in an area's attainment and/or reasonable further progress (RFP) plans and are known as the "emissions budget for motor vehicles." Emissions budgets are established for specific years and specific pollutants. See 40 CFR 93.118(a).

Before an emissions budget in a submitted SIP revision may be used in a conformity determination, we must first determine that it is adequate. The criteria by which we determine adequacy of submitted emission budgets are outlined in our conformity rule in 40 CFR 93.118(e)(4).

The MAG plan establishes a mobile source emissions budget of 59.7 mtpd. This regional budget is applicable for both the annual and 24-hour PM–10 standards. The on-road mobile portion of the budget, which includes emissions from reentrained road dust, vehicle exhaust, and travel on unpaved roads, is 58.6 mtpd. The road construction portion of the budget is 1.1 mtpd. MAG plan, p. 8–13.

On March 30, 2000, we have found adequate for transportation conformity purposes this motor vehicle emission budget. As a result of our adequacy finding, MAG and the Federal Highway Administration are required to use this budget in future conformity analyses.

C. Emission Inventory

CAA section 172(c)(3) requires all nonattainment area plans to contain a comprehensive, accurate, and current inventory. Our policies require that the inventory be fully documented.

The MAG plan describes annual and average annual day emissions for 1994 from point, area, nonroad, on-road, and nonanthropogenic sources in the Maricopa County portion of the 2,880 square mile nonattainment area. The inventory includes emissions of PM–10, PM–2.5, ammonia (NH_3), nitrogen oxides (NO_X), and sulfur oxides (SO_X).

The inventory shows that the dominant sources of emissions in the Phoenix area are paved road dust (39.1 percent), unpaved roads, (21.6 percent) and construction-related fugitive dust (20.1 percent). Much lower but still important contributors are directly-emitted PM–10 from non-road engines (7.0 percent) and on-road motor vehicles (3.3 percent), all stationary area sources, *e.g.*, woodburning (6.1 percent) and stationary point sources (2.7 percent). MAG plan, Table 3–1.

Generally the inventories are very well documented with the

documentation exceeding our guidance requirements.

Current: The base year, 1994, is a reasonably current year, considering the length of time needed to develop an inventory, perform the modeling, develop and adopt control measures, and hold public hearings on such a large and technically-complex plan like the MAG plan.

Comprehensive: The MAG plan inventories are fairly complete, considering a few emission factors are unknown for some of the smaller sources of PM–10. The inventories did not include emissions of volatile organic compounds (VOC) which is a precursor of secondary PM–10 because the plan found there is a negligible impact on ambient measurements of PM–10 from VOC aerosol. We concur with this finding and that VOC sources need not be inventoried for the PM–10 plan.

Accurate: In developing the inventory, MAG and MCESD closely followed our guidance relative to the use of emission factors, activity estimates, and growth and control factors, and the other source specific emission estimation methodologies (continuous emission monitoring, annual stack tests, and mass balance methods). Source specific methods were used to the maximum extent possible as they are inherently more accurate than emission factors. The relative accuracy of each estimate underwent the prescribed quality assurance procedures to eliminate all possible errors. The inventory is thus as accurate as inventories can be.

Because we find that the inventory is current, comprehensive, and accurate, we propose to approve it under CAA section 172(c)(3).

D. Adequate Monitoring Network

CAA section 110(a)(2)(B)(i) requires States to establish and operate air monitoring networks to compile data on ambient air quality for all criteria pollutants. Our regulations in 40 CFR part 58 establishes specific regulatory requirements for operating air quality surveillance networks to measure ambient concentrations of PM–10, including measurement method requirements, network design, quality assurance procedures, and in the case of large urban areas, the minimum number of monitoring sites designated as National Air Monitoring Stations (NAMS).

The MAG plan does not specifically address the adequacy of the PM–10 monitoring network in the Phoenix area. There is no requirement that it does. We are reviewing the adequacy of the monitoring network here because the plan relies on ambient data to characterize the extent and severity of the PM–10 problem in the Phoenix area and we need to assure that the monitoring network is adequate for this purpose.

In 1995, the base year for the air quality modeling, there were 18 monitoring sites collecting data in the Phoenix area, all of which were operated in accordance with our regulations. Most of these PM–10 monitoring sites were neighborhood scale sites with an objective of assessing population exposure. Given the widespread nature of the emission sources in the Phoenix area, we believe this focus was appropriate and that the network was adequate to characterize the extent and severity of the PM–10 problem in 1995.

E. Contribution to PM–10 Exceedances of Major Sources of PM–10 Precursors

Under CAA section 189(e), a state must apply the control requirements applicable to major stationary sources of PM–10 to major stationary sources of PM–10 precursors, unless we determine such sources do not contribute significantly to PM–10 levels in excess of the NAAQS in the area. For the serious area plan, a "major source" is one that emits or has the potential to emit over 70 English tons per year (tpy) of sulfur oxides (SOx), nitrogen oxides (NOx), or ammonium.

PM–10 precursors react in the atmosphere to form "secondary" particulate, secondary because it is not directly emitted from the source. The MAG plan does not provide specific information on the impact of major precursor sources on Phoenix PM–10 levels; however, it does provide sufficient information on the contribution of total secondary particulates to PM–10 levels and the emissions from major precursor sources to estimate the impact.

All major stationary sources of PM–10 precursors are estimated to contribute just 0.24 $\mu g/m_3$ to the annual levels of PM–10. See EPA TSD section, "BACT for Major Stationary Sources of PM–10 Precursors." This contribution is less than 0.5 percent of the annual PM–10 levels over the standard in the Phoenix area and less than 0.5 percent of the annual standard of 50 $\mu g/m^3$.

We believe that this small contribution is insignificant for the Phoenix area. PM–10 levels above the annual standard in Phoenix are almost exclusively caused by a few large source categories of fugitive dust, and it is BACM-level controls on these sources that are the key to expeditious attainment of the annual standard in the Phoenix area and not controls on small contributors such as major sources of PM–10 precursors.

We, therefore, propose to determine that major sources of PM–10 precursors do not contribute significantly to PM–10 levels in excess of the PM–10 NAAQS in the Phoenix area. As a result, Arizona is not required to apply BACT to major sources of PM–10 precursors in the Phoenix area.

F. Implementation of Reasonably Available and Best Available Control Measures

CAA section 189(b)(1)(B) requires that a serious area PM–10 plan provide for the implementation of BACM within four years of reclassification to serious. For Phoenix, this deadline is June 10, 2000. BACM must be applied to each significant area-wide source category. Addendum at 42011. As discussed above, we have established a four-step process for evaluating BACM in serious area PM–10 plans.

1. Determination of Significant Sources

The first step in the BACM analysis is to develop a detailed emission inventory of PM–10 sources and source categories that can be used in modeling to determine their impact on ambient air quality. Addendum at 42012.

The MAG plan uses three modeling studies of PM–10 sources in the Phoenix area to identify significant source categories. One of these studies evaluated significant sources using chemical mass balance (CMB) modeling performed on monitoring samples collected at 6 sites in 1989–1990. The two other studies evaluated significant sources using dispersion modeling of sources around 6 monitoring sites using data from 1992 through 1995.[8]

From these evaluations, the MAG plan identified 8 significant source categories and 12 insignificant source categories. MAG plan, p. 9–6.

The final list of significant source categories did not distinguish between those categories that are significant for the 24-hour standard and those significant for the annual standard; although previous studies have shown that some source categories are significant only for one or the other standard. Because the MAG plan did not distinguish significant source categories between the two standards, we will treat each of the listed significant source

[8] These studies are "The 1989–90 Phoenix PM–10 Study," Desert Research Institute, April 1991; "Particulate Control Measure Feasibility Study," Sierra Research, January 1997; and "Plan for Attainment of the 24-hour PM–10 Standard, Maricopa County PM–10 Nonattainment Area," ADEQ, May 1997.

categories as significant for the annual standard.

For the annual standard, the MAG plan demonstrates that its selection of significant source categories is appropriate by showing that control on the de minimis source categories would not make the difference between attainment and nonattainment of the annual standard by 2001. According to the plan, total emissions in the area need to be reduced to 130 mtpd to attain the annual standard by 2001. After application of BACM, total emissions are reduced to 152 mtpd. MAG plan, p. 9–11. The 12 de minimis sources categories contribute in total 10.3 mtpd. MAG plan, Table 9–a. Totally eliminating these source categories would reduce total regional emissions to 142 mtpd, still 12 mtpd above the regional emissions level needed for attainment. MAG plan, pp. 9–10 through 9–12.

The 8 significant source categories are:

1. Paved road travel.
2. Unpaved road travel (includes unpaved parking lots).
3. Industrial paved road travel (paved and unpaved).
4. Construction site preparation (includes disturbed vacant lots that are not undergoing construction).
5. Agricultural tilling (includes all agricultural sources).
6. Residential wood combustion.
7. On-road and non-road motor vehicle exhaust.
8. Secondary ammonium nitrate.

MAG Plan, Table 9–1.

The 12 de minimis source categories are:

1. Stationary point sources.
2. Fuel combustion (excluding residential wood combustion).
3. Waste/open burning.
4. Agricultural harvesting.
5. Cattle feedlots.
6. Structural/vehicle fires.
7. Charbroiling/frying meat.
8. Marine vessel exhaust.
9. Airport ground support exhaust.
10. Railroad locomotive exhaust.
11. Windblown from fluvial channels.
12. Wild fires.

MAG plan, Table 9–a. The plan notes that several de minimis source categories are already subject to control or will be controlled in the future. MAG plan, p. 9–12.

We propose to find that the MAG plan has not excluded any source categories that should be considered significant from its list of significant source categories. The plan presents acceptable modeling to evaluate the impact of various PM–10 sources and source categories on PM–10 levels and to derive a comprehensive and conservative list of significant source categories.

Our proposal here does not mean that we believe all the source categories identified as significant in the MAG plan needed to be considered significant for the purpose of evaluating BACM. We believe that the MAG plan is conservative in its selection of significant source categories, that is, it may have included more source categories in its significant source list than are strictly needed. Thus our use of negative wording in our proposed finding: no significant source categories were excluded as opposed to only the significant categories were included. In our 1998 FIP, we derived a narrower list of significant sources based on more recent modeling than was used to develop the list in the MAG plan. See 63 FR 15920, 15932 (Table 2 and text).

2. Identification of Potential BACM

In preparing the list of candidate BACM, MAG reviewed our guidance documents on BACM, other EPA documents on PM–10 control, as well as PM–10 plans from other serious PM–10 areas in the West. It also evaluated controls proposed during public comment. MAG plan, pp. 9–24 through 9–29.

The MAG plan appropriately screened the list of candidate BACM to eliminate measures that did not apply to significant source categories in the area, were technologically infeasible for the area because they would not reduce PM–10 emissions, or duplicated other measures on the list. The MAG plan also provides cost effectiveness estimates for each of the candidate BACM. MAG plan, pp. 9–30 through 9–39.

We propose to find that the MAG plan identified and evaluated potential BACM for the Maricopa area consistent with our guidance. As we will discuss below in our evaluations of the implementation of BACM for each significant source category, we do not believe that the MAG plan left out any candidate BACM. We note that additional evaluation of control measures was done as part of the most stringent measure analysis. MAG plan, pp 10–25 & 10–26. Overall, the MAG plan presents one of the most comprehensive lists of potential BACM ever produced.

3. Implementation of RACM and BACM and Inclusion of MSM for Each Significant Source Category

In the following sections, we review the results of the MAG plan's BACM analysis. To present these results, we have grouped the emission generating activities that comprise the MAG plan's significant categories slightly differently from the plan, *e.g.*, we have addressed separately construction activities and disturbed vacant lands which are both included in the MAG plan's significant category of construction site preparation.[9] We have done this to make our evaluations of the plan's provisions for the implementation of BACM and inclusion of MSM clearer and thus, we believe, more understandable. However, despite the method of presentation, we have addressed the MAG plan's provisions for implementing RACM and BACM for each of the plan's significant source categories.

Also, because of the substantial overlap in the source categories and controls evaluated for BACM and those evaluated for MSM, we present our evaluation of the MAG plan's provisions for including MSM alongside our evaluation of the provisions for implementing RACM and BACM for each significant source category.

Finally, controls on a number of significant source categories are found in MCESD's fugitive dust rules, Rule 310 and Rule 310.01. MCESD has made extensive commitments to improve compliance and enforcement of these rules to assure that they achieve the emission reductions necessary for expeditious attainment. These commitments are an important component of our finding that the MAG plan provides for implementation of RACM and BACM and inclusion of MSM. We discuss them at the end of this section.

a. Technology controls for on-road motor vehicle exhaust. This category includes tailpipe and tire wear emissions of primary PM–10 from on-road motor vehicles. On-road motor vehicles include both gasoline and diesel-powered passenger cars, light, medium, and heavy duty trucks, buses, and motorcycles.[10]

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[9] MAG plan uses this grouping despite the fact that disturbed vacant lands include lands that are disturbed for reasons other than construction activity.

[10] We will treat gasoline-and diesel-powered vehicles together here to preserve to the extent practicable the significant source groupings in the MAG plan; however, we believe they are in fact distinct categories. Almost 95 percent of diesel PM–10 emissions come from heavy-duty diesel trucks while 75 percent of gasoline PM–10 comes from the family car, that is, light duty cars and trucks (which include sports utility vehicles). See Table ORM–1 in the EPA TSD section "Implementation of BACM and Inclusion of MSM for On-Road Motor Exhaust (Technology Standards)." There is almost no overlap in the controls for the family car and those for heavy duty diesel trucks, key evidence that they are in fact distinct source categories. See Table ORM-4 in the EPA TSD.

The suggested technology-based measures for controlling emissions from on-road motor vehicle exhaust fall into one of five categories: new emission standards, inspection and maintenance programs, fuels, programs to encourage alternative fueled vehicle usage, and programs to accelerate fleet turnover. In total, the MAG plan considers 22 technology-based control measures. See MAG plan, Table 5–2. We believe this list is complete and propose to find that the MAG plan evaluates a comprehensive set of potential technology-based controls for on-road motor vehicle exhaust emissions including the potentially most stringent measures from other states.

For gasoline vehicles, Arizona has implemented one of the nation's best and most comprehensive enhanced I/M programs including expanding the program to areas surrounding Phoenix; has adopted its own Clean Burning Gasoline program which mandates the use of either Phase II federal reformulated gasoline or California reformulated gasoline; offers generous tax credits and deductions for conversion of vehicles to alternative fuels; and mandates federal, state, county, and municipal governments to convert their fleets to alternative fuels. MAG plan, pp. 7–2 through 7–24.

Arizona has instituted a heavy duty diesel I/M program, will require pre-1988 HDDV registered in the Phoenix nonattainment area to meet 1988 federal emission standards starting in 2004, has established a voluntary vehicle repair and retrofit program to encourage retrofitting and overhaul of heavy duty diesel engines to reduce emissions, and has limited diesel sulfur content to 500 parts per million (ppm). MAG plan, Chapter 7.

The California Air Resources Board's diesel fuel standards (CARB diesel) is one of the few identified motor vehicle controls not adopted by the State. The plan identifies this measure as a potential MSM. MAG plan, Table 10–7. The MAG plan claims that the measure is unreasonable on a cost basis. MAG plan, p. 9–46. We make no judgement on this claim given the great uncertainty regarding the potential cost of implementing CARB diesel in the Phoenix area. We do note that the State has already adopted half of the CARB diesel standards, the 500 ppm sulfur limit.[11]

Under our proposed policy for MSM in extension requests, we believe that we can find that the MAG plan provides for the inclusion of MSM to our satisfaction absent the adoption and implementation of CARB diesel because, based on information in the MAG plan, the on-road engine category's contribution to nonattainment in the Phoenix area is relatively low compared to other PM–10 dust sources and implementation of CARB diesel would not advance the attainment date.

According to the MAG plan, the on-road motor vehicle category contributes just 1.3 percent of the pre-control inventory in 2006, compared to construction dust at 43.8 percent, paved road dust at 20.4 percent, unpaved road dust at 13.1 percent, and windblown dust at 8.7 percent. MAG plan, Table 8–3. Adoption of CARB diesel would generate a total reduction of 0.8 mtpd in 2006. MAG plan, p. 10–37. It takes a 4 mtpd reduction to advance the annual standard attainment date one year (the minimum needed because it is an annual standard), so reductions from implementation of this measure are insufficient to advance the attainment date. See section on RFP and Quantitative Milestones.

As noted before, Arizona has in place one of the nation's most comprehensive programs to address on-road motor vehicle emissions. With the additional measures in the MAG plan (including a more stringent diesel I/M program and measures both encouraging and requiring diesel fleet turnover) the overall mobile source program is strengthened and goes beyond the existing program. Both strengthening and expanding existing programs are key criteria for demonstrating the implementation of BACM. See Addendum at 42013. Where the MAG plan has rejected potential BACM, it provides a reasoned and acceptable justification for the rejection.

The MAG plan identified just a few measures from other areas as being more stringent than existing programs. These measures have either been adopted or we have concluded that the measures need not be included to assure the inclusion of MSM.

All the adopted BACM and MSM are already implemented, except for one. The requirement that pre-1988 heavy duty diesel vehicles registered in the nonattainment area meet 1988 federal emission standards will not be implemented until January 1, 2004 in order to provide sufficient lead time for modification or replacement of the non-complying heavy-duty diesel vehicles.

We, therefore, propose to find that the combination of on-road motor vehicle technology controls and TCMs (described in the next section) in the MAG plan provides for the implementation of RACM and BACM and the inclusion of MSM for on-road motor vehicle exhaust.

b. Transportation control measures (TCMs) for on-road motor vehicle exhaust and paved road dust. TCMs can reduce PM–10 emissions in both the on-road motor vehicle exhaust and paved road dust source categories by reducing vehicle miles traveled (VMT) and vehicle trips. They can also reduce vehicle exhaust emissions through relieving congestion. Our serious area PM–10 guidance requires that plans identifying on-road motor vehicles as a significant sources must also evaluate the TCMs listed in section 108(f) of the CAA. Addendum at 42013.

In our review, we have primarily assessed the MAG plan's provisions for implementing RACM and BACM and including MSM through TCMs based on the measures' effectiveness in controlling directly-emitted PM–10 from vehicle exhaust. We have not assessed the plan based on the TCMs' potential benefit in controlling PM–10 precursors such as NO_X and SO_X because (1) from available ambient measurements, neither nitrates nor sulfates are important to overall PM–10 concentrations in the Phoenix area (See EPA TSD section, "BACT for Major Stationary Sources of PM–10 Precursors" which shows that total secondary particulates accounted for less than 4 $\mu g/m^3$ in 1995) and (2) Arizona has already targeted mobile source NO_X and SO_X through an aggressive set of mobile source controls which we believe cover the implementation of RACM and BACM and inclusion of MSM requirements for tailpipe NO_X and SO_X. See discussion immediately above on technology controls for on-road motor exhaust.

In total, the MAG plan identifies 19 TCMs for consideration including the CAA section 108(f) measures. The plan does not identify any potentially more stringent TCMs from other areas. See EPA TSD section "Implementation of BACM and MSM for On-Road Motor Vehicle Exhaust and Paved Road Dust (TCMs)." We believe that this list is complete and propose to find that the MAG plan evaluates a comprehensive set of potential TCMs for on-road motor vehicle exhaust emissions and the potentially most stringent measures from other States.

Arizona has a long history of adopting and then enhancing programs to reduce emissions from on-road motor vehicles by reducing vehicle miles traveled,

[11] The other CARB diesel standard is a limit on the aromatic hydrocarbon content of no more than 10 percent by volume. CARB, Fact Sheet on California Diesel Fuel, March 1997.

vehicle trips, and/or congestion.[12] The area has an employer trip reduction ordinance which applies to employers of 50 or more, a public outreach program to encourage people to reduce driving, programs to improve bicycling and pedestrian travel, and an extensive program to synchronize traffic lights. In most instances, these programs were adopted and implemented as part of carbon monoxide and ozone control programs, but they also reduce PM–10.

With the additional measures in the MAG plan (including additional traffic light synchronization, transit improvements, and bicycle and pedestrian facility improvements), the overall TCM program is strengthened and goes beyond the existing program. See EPA TSD, Table TCM–3 in section "Implementation of BACM and MSM for On-Road Motor Vehicle Exhaust and Paved Road Dust (TCMs)." Both strengthening and expanding existing programs are key criteria for demonstrating the implementation of BACM. See Addendum at 42013. Where the MAG plan has rejected potential BACM, it provides a reasoned justification for the rejection.

All the adopted TCM BACM are already implemented or have on-going implementation schedules because they are part of a on-going capital improvement program (*e.g.*, signal synchronization).

We propose to find that the combination of on-road motor vehicle technology controls (described in the previous section) and TCMs in the MAG plan provides for the implementation of RACM and BACM and inclusion of MSM for on-road motor vehicle exhaust. We also propose to find that the combination of TCMs and paved road dust measures (described in the paved road section later in this preamble) provides for the implementation of RACM and BACM and the inclusion of MSM for paved road dust.

c. Nonroad engines. The non-road engine category covers a diverse collection of engines, equipment and vehicles fueled by gasoline, diesel, electric, natural gas, and other alternative fuels, including outdoor power equipment, recreational equipment, farm equipment, construction equipment, lawn and garden equipment, and marine vessels.

The suggested measures for controlling emissions from nonroad engines fall into one of four categories: new emission standards, programs to accelerate fleet turnover, programs affecting usage, or fuels. In total, the MAG plan evaluates 8 measures in addition to clean fuels measures for reducing PM–10 emissions from nonroad engines. We believe that this list is complete and propose to find that the MAG plan evaluates a comprehensive set of potential measures for nonroad engines including the potentially most stringent measures from other States.

We have adopted national emission standards for a broad range of nonroad engines. These standards apply to nonroad engines sold in Arizona and are the base, RACM-level, program for controlling emissions from nonroad engines. The CAA preempts all states, except for California, from setting independent nonroad emission standards. CAA section 209(e). Other states, however, may adopt regulations identical to California's regulations, provided they notify us and give appropriate lead time, 2 years, for implementation. Section 209(e)(2)(B).

Arizona has committed to adopt California's non-road standards that are more stringent than the federal standards. MAG plan, p. 7–42. In addition, the State has established and is currently running a voluntary retirement program for gasoline powered lawn and garden equipment which is run by Maricopa County and a program to encourage the use of temporary electrical power rather than portable generators at construction sites. See MAG plan, pp. 7–41 and 7–43.

With the addition of these measures, the overall nonroad engine program is strengthened and goes beyond the existing federal program. See EPA TSD section "Implementation of BACM and Inclusion of MSM for Nonroad Engines." Both strengthening and expanding existing programs are key criteria for demonstrating the implementation of BACM. See Addendum at 42013. Where the MAG plan has rejected potential BACM, it provides a reasoned justification for the rejection.

The MAG plan identifies CARB diesel as a potential MSM for non-road engines but does not adopt it. MAG plan, Table 10–7. Under our proposed policy for MSM in extension requests, we believe that we can find that the MAG plan provides for the inclusion of MSM to our satisfaction absent the adoption of CARB diesel because, based on information in the MAG plan, the non-road engine category's contribution to nonattainment in the Phoenix area is relatively low compared to other PM–10 dust sources and implementation of CARB diesel would not advance the attainment date.

The nonroad motor vehicle category contributes 4.8 percent of the pre-control inventory in 2006, compared to construction dust at 43.8 percent, paved road dust at 20.4 percent, unpaved road dust at 13.1 percent, and windblown dust at 8.7 percent. MAG plan, Table 8–3. Adoption of CARB diesel would generate a total reduction of 0.8 mtpd in 2006. MAG plan, p. 10–37. It takes a 4 mtpd reduction to advance the annual standard attainment date one year (the minimum needed because it is an annual standard), so reductions from implementation of this measure are insufficient to advance the attainment date. See section on RFP and Quantitative Milestones.

We, therefore, propose to find that MAG plan provides for the implementation of RACM and BACM and inclusion of MSM for on-road motor vehicle exhaust.

d. Paved road dust. Paved road dust is the largest source of PM–10 in the Maricopa area. It is fugitive dust that is deposited on a paved roadway and then is re-entrained into the air by the action of tires grinding on the roadway. Dust is deposited on the roadway from being blown onto the road from disturbed areas; tracked onto the road from unpaved shoulders, unpaved roads, or other unpaved access points; stirred up from unpaved shoulders by wind currents created from traffic movement; spilled onto the road by haul trucks; and carried onto the road by water runoff or erosion.

The suggested measures for controlling emissions from paved road dust fall into one of three categories: reductions in vehicle trips (VT) and vehicle miles traveled (VMT), preventing deposition of material onto a roadway and cleaning material off the roadway. We have already discussed measures for reducing VT and VMT in the section on TCMs above.

The MAG plan lists several potential BACM for paved road dust. It also lists a number of potentially MSM from other areas. We believe these lists are complete and propose to find that the MAG plan evaluates a comprehensive set of potential controls for paved road dust including the potentially MSM from other States.

Prior to the MAG plan, the cities and towns in the Phoenix area and Maricopa County implemented a number of measures addressing paved road dust. See MAG plan, Table 10–5. With the additional measures in the MAG plan (described below), the overall control program to reduce paved road dust is both strengthened and expanded beyond the existing program. See EPA TSD section "Implementation of BACM

[12] These plans include the MAG moderate and serious area carbon monoxide plans and MAG moderate area ozone plan.

and Inclusion of MSM for Paved Road Dust." Both strengthening and expanding existing programs are key criteria for demonstrating the implementation of BACM. See Addendum at 42013.

For the potential MSM, the MAG plan shows that these measures are either adopted or are not in fact more stringent than existing Phoenix area programs.

With the exception of the MSM for PM–10-efficient street sweepers described below, all the adopted BACM for paved roads are already implemented or have on-going implementation schedules because they are part of a on-going capital improvement program (*e.g.*, curbing). For the reasons discussed below, we propose to find that the MAG plan provides for the implementation of the PM-10 efficient street sweeper measures as expeditiously as practicable, consistent with our proposed MSM policy.

We, therefore, propose to find that the MAG plan provides for the implementation of RACM and BACM and for the inclusion of MSM for paved road dust.

Preventing deposition of material onto a roadway. Measures aimed at preventing track out on a paved road include treating unpaved access points, preventing track out from construction/industrial sites, treating shoulders on paved roads, controlling emissions during material transport (*e.g.*, truck covers, freeboard requirements), and preventing erosion onto paved roads.

The MAG plan includes each of these measures:

Unpaved access points: In the MAG moderate area plan, local jurisdictions focused on requiring new connections to public paved streets to be paved. MAG plan, p. 9–74. In the serious area plan, the focus has shifted to addressing existing unpaved access points in addition to preventing new unpaved access points while maintaining the previous programs. Most public entities committed to stabilize unpaved access points when a connecting road is built, improved or reconstructed. See, for example, Glendale Commitment, "Reduce Particulate Emissions from Unpaved Shoulders and Unpaved Access Points on Paved Roads." Some cities have made explicit commitments for stabilizing existing access points without this prerequisite, such as Gilbert and Mesa. We also anticipate that routine city/town/County road paving and stabilization projects will result in controlling a number of existing unpaved access points. These projects combined with increased enforcement of track-out restrictions and additional PM–10 efficient street sweeping efforts should reduce paved road emissions attributable to unpaved access points.

The only potential MSM that the MAG plan identifies for unpaved access points are track out control requirements for construction sites. See MAG plan, Table 10–7. We discuss these measures in the next section.

Track out. Rule 310, sections 308.2(c) and 308.3 address dirt track out from construction/industrial sites: All work sites that are five acres or larger and all work sites where 100 cubic yards of bulk materials are hauled on-site or off-site each day must control and prevent track out by installing a track out control device. All work sites must also clean up spillage or track out immediately when it extends a cumulative distance of 50 linear feet or more; where track out extends less than 50 feet, it must be cleaned up at the end of the work day.

The MAG plan identifies, as a potentially more stringent measure for track out, South Coast (Los Angeles area) Air Quality Management District's Rule 403. MAG plan, Table 10–7. The plan concludes that the two rules are reasonably similar in several respects, and where differences exist, the relative impacts on control roughly balance against each other. MSM Study, p. C–4.[13] We agree. Both rules emphasize prevention and rapid removal of track out. See EPA TSD section "Implementation of BACM and Inclusion of MSM for Paved Roads Dust," Note 2.

Unpaved Road Shoulders. As with unpaved access points, the MAG plan demonstrates a shift to dealing with existing unpaved shoulders from only preventing new ones. MAG plan, Table 9–11. Maricopa County has committed to treat 100 miles of shoulders along existing paved arterial and collector roadways with high volume truck traffic by 2003, in addition to its annual capital improvement projects for paving or treating unpaved shoulders. Maricopa County commitment, 1999 revised measure 5. Other jurisdictions have also made commitments to treat shoulders.

A.R.S. 9–500.04(3) and 49–474.01(4), adopted by the State legislature in 1998, require the cities, towns and County of Maricopa to develop and implement plans to stabilize targeted unpaved roads and alleys and to stabilize unpaved shoulders on targeted arterials beginning January 1, 2000. Although this legislation does not specify how many shoulder miles to be controlled, we believe that the local jurisdictions' efforts to meet this new legislation will result in the control of unpaved shoulders where it is most needed.

Material Transport. Requirements for the control of PM–10 emissions during material transport are found in Rule 310, sections 308.1 and 308.2. When hauling material off-site onto paved public roadways, sources are required to: (1) load trucks such that the freeboard is not less than three inches; (2) prevent spillage; (3) cover trucks with a tarp or suitable enclosure; and (4) clean or cover the interior cargo compartment before leaving a site with an empty truck.

The MAG plan identifies requirements for bulk material transport in Imperial County Regulation VIII as a potential MSM. MAG plan, Table 10–7. The plan concludes that MCESD's rule is equally stringent. We agree because Rule 310's requirements for bulk material transport/hauling are essentially the same as Imperial County's requirements.

Cleaning material off the roadway. Measures for cleaning material off roadway are track out, erosion, and spill removal requirements and road sweeping.

The MAG plan includes each of these measures:

Material spillage, erosion, or accumulation. Rule 310, section 308.2 and 308.3 address rapid clean up of track out from construction/industrial sites. Rule 310.01, section 306 requires property owners/operators to remediate erosion-caused deposits of bulk materials onto paved surfaces. Erosion-caused deposits are to be removed within 24 hours of their identification or prior to resumption of traffic on the pavement.

The MAG plan identifies South Coast's Rule 1186 and Mojave Desert's Rule 403 as potential MSMs for material spillage, erosion, and accumulation onto roadways. MAG plan, Table 10–7. In both cases, the plan concludes that MCESD's rules are more stringent. We agree. MCESD's rules require the clean up of more incidences of spillage, etc. than does South Coast's rule. See EPA TSD, "Implementation of BACM and Inclusion of MSM for Paved Roads," Note 5.

Street sweeping. Most cities/towns and the County have on-going street sweeping programs with variable sweeping frequencies. With some exceptions, public entities implementing this measure have not explicitly committed to increase their existing sweeping frequencies. Phoenix,

[13] The "MSM Study" is the "Most Stringent PM–10 Control Measure Analysis," Sierra Research, May 13, 1998 found in Appendix C, Exhibit 4 of the MAG plan.

for example, approved a program in 1996 to increase the frequency of residential street sweeping to match the uncontained trash pick-up schedule. Phoenix commitment, measure 97-DC–5. However, sweeping frequency is appropriately evaluated in combination with other paved road measures, because the emission-reducing potential of increased sweeping frequency is closely associated with other factors. These factors include whether the sweepers currently in use are PM–10 efficient (such that the act of sweeping does not cause increased emissions) and whether the public entity has identified roads that tend to experience higher silt loadings where more frequent sweeping is likely to make an appreciable difference in PM–10 emissions. Because sweeping frequency is among the criteria included in MAG's PM–10 efficient street sweeper solicitation (see below), we believe this measure is largely incorporated into MAG's new program.

The MAG plan identifies as a MSM the PM–10 efficient street sweeping provisions in South Coast Rule 1186. MAG plan, Table 10–7. However, the plan's analysis pre-dates MAG's commitment for the purchase and distribution of PM–10 efficient street sweepers and is no longer current.

The MAG plan includes commitments by MAG, cities, towns and the County for the purchase and use of PM–10 efficient street sweepers. This commitment involves the allocation of $3.8 million in Congestion Mitigation Air Quality (CMAQ) funds for the FY 2000–2004 Transportation Improvement Program (TIP) to purchase PM–10 certified street sweepers for the local jurisdictions to use. MAG has recommended an additional $1.9 million CMAQ funds be allocated to purchase PM–10 certified street sweepers in the FY 2001–2005 TIP. See MAG commitment, "PM–10 Efficient Street Sweepers."

The funds allocated by MAG for this program should be sufficient to replace approximately two-thirds of the 72 existing city/town/County street sweepers.[14] Each fiscal year in which CMAQ funds are allocated for street sweepers, MAG will solicit requests for funding from cities, towns and the County in the PM–10 nonattainment area. Funding requests must identify by facility type (*i.e.* freeway, arterial/collector, local) the number of centerline miles to be swept with the PM–10 certified units, expected frequency of sweeping, and average daily traffic (if available). MAG will use this information to estimate the emissions reduction associated with each sweeper request and rank the requests in priority order of effectiveness for consideration in the allocation of CMAQ funds. See MAG commitment, "PM–10 Efficient Street Sweepers."

In evaluating this program, we considered not only the number of PM–10 efficient street sweepers to be purchased and distributed, but whether the program incorporates use factors that influence emissions reductions. The greatest emissions reduction benefit for this mitigative measure will be achieved if the sweepers are used on a frequent basis on roads with high silt loadings or significant visible accumulations. Each public entity has a monetary incentive to compete for the PM–10 efficient street sweepers, as the program is funded by MAG with a low cost share (5.7 percent) requirement. Also, the new street sweepers will either replace existing city-owned street sweeping equipment or contracted out services, or be added to existing street sweeper equipment/services. MAG's selection process includes PM–10 emissions reduction potential, based on the types of roads each jurisdiction is targeting for sweeping and how frequently they will be swept. This data will assist MAG in distributing the street sweepers to local jurisdictions in a way that maximizes the regional air quality benefits of the program. Plus, when the cities/towns/County are awarded PM–10 efficient street sweepers, their submittals will incorporate use factors that maximize emission reductions from this measure.

We believe that implementation of the PM–10 efficient street sweeper program is as expeditious as practicable. The funding necessary to purchase this equipment is available only over the course of several fiscal years and the purchase of the PM–10 efficient street sweepers can only proceed at the rate these funds become available.

South Coast's Rule 1186 requires any government or government agency which contracts to acquire street sweeping equipment or services for routine street sweeping on public roads that it owns and/or maintains, where the contract date or purchase or lease date is January 1, 2000 or later, to acquire or use only certified street sweeping equipment. The rule establishes street sweeper testing and certification procedures. Unlike Maricopa's strategy, Rule 1186 requires that PM–10 efficient street sweepers be used whenever street sweeping is contracted out as of January 2000, and it requires public agencies to replace their existing street sweeping equipment with PM–10 efficient equipment by attrition.

MAG's PM–10 efficient street sweeper program is being funded over the next 4 to 5 fiscal years, which may result in a greater number of street sweepers distributed in a shorter time frame than could be expected using South Coast's natural attrition approach. While it is possible that some cities/towns in Maricopa may continue to contract out for street sweeping services where PM–10 efficient sweepers may not be used, most do not contract for street sweeping. Furthermore, due to the fact that public entities will be competing for PM–10 efficient street sweepers funded by CMAQ dollars with only a low cost share requirement, we believe that the already limited reliance on contracted out services in Maricopa County will lessen as new PM–10 efficient equipment becomes available and that contractors will switch to PM–10 efficient equipment to meet new demand. In addition, MAG's program ensures that the cities/town/County develop plans for how the street sweepers will be used to maximize their emissions reduction potential. We, therefore, believe that overall the Maricopa program is equivalent to South Coast's Rule 1186.

e. Unpaved parking lots. This category includes emissions from re-entrained road dust from vehicle traffic in unpaved parking lots and windblown dust entrained from the disturbed surface of unpaved parking lots.

There are two principle ways to control emissions from unpaved parking lots: prohibit unpaved parking lots or treat the lot. MAG plan identified both: a prohibition on unpaved haul roads and parking or staging areas and surface treatment to reduce dust from unpaved driveways and parking lots. MAG plan, Table 5–2. The MAG plan identified one potentially more stringent measure from South Coast which controls fugitive dust from parking areas on construction sites. MSM Study, p. C–9 and 10. It did not identify any potential MSM for non-construction site unpaved parking lots. We believe this list is complete and propose to find that the MAG plan evaluates a comprehensive set of potential BACM and MSM for unpaved parking lots.

Most local jurisdictions in Maricopa County identified ordinances that require paving of new parking lots. In addition, MCESD Rule 310.01 requires owners/operators of an unpaved parking lot larger than 5,000 square feet to pave, apply dust suppressants, or apply gravel, according to the applicable rule

[14] Some street sweepers may be additions to, as opposed to replacements of, existing equipment.

standards/test methods. Section 303. Applicable standards include a 20 percent opacity standard, and an 8 percent silt content standard and/or a 0.33 oz/square foot silt loading standard. Section 303.2. MCESD Rule 310 applies the same stabilization requirements to parking lots on permitted facilities. Rule 310, section 302.1. Finally, many cities/towns have treated their own parking lots or required treatment of private lots below MCESD's thresholds.

In determining whether the MAG plan provides for the implementation of BACM for unpaved parking lots, we are also specifically considering whether the plan provides for the implementation of RACM for these sources.[15] In our FIP, we promulgated a RACM fugitive dust rule applicable to unpaved parking lots in the Phoenix PM–10 nonattainment area and thus it provides a starting point for determining whether the MAG plan measures for unpaved parking lots meet RACM. It is not necessary for the MAG plan measures to be identical to the FIP rule in order to meet the CAA's RACM requirement, but only that they provide for the implementation of RACM.[16] However, if the submitted measures for a particular source are identical to the FIP rule, we can determine without further analysis that the MAG plan has provided for RACM for that source.

MCESD requirements for unpaved parking lots found in Rule 310.01, section 303 are the same in terms of source coverage and applicable standards/test methods for unpaved parking lots as the FIP rule, with the only difference being that Rule 310.01 applies county-wide while the FIP rule applies strictly to sources located in the PM–10 nonattainment area. Rule 310.01 requirements are effective upon adoption and were adopted on February 2000, such that the timeframe for controls is equivalent to the FIP rule and is also as expeditious as practicable. In light of the fact that Rule 310.01 requirements are the same as the FIP rule requirements and MCESD's commitments to improve compliance and enforcement of Rule 310.01, we propose that the MAG plan provides for the implementation of RACM. Given additional MAG plan city/town commitments that collectively increase the stringency of control on unpaved parking lots, we propose that the MAG plan also provides for the implementation of BACM.

South Coast Rule 403 requires sources to apply dust suppressants to stabilize at least 80 percent of unstabilized surface area. Sources must comply with a 0 percent opacity property line limit. The MAG plan deems the respective requirements roughly equivalent to Rule 310. We believe that the addition of a silt loading/content standard for unpaved parking lots for sources covered under Rule 310 increases the rule's stringency to be at least equivalent to that of South Coast Rule 403. We, therefore, propose to find that the MAG plan correctly concluded that there are no more stringent measures in other State plans or used in practice elsewhere that are applicable to the Phoenix area.

f. Disturbed vacant lands. This category includes windblown fugitive dust emissions from disturbed surfaces of vacant lands. On vacant land, fugitive dust emissions are caused by virtually any activity which disturbs an otherwise naturally stable parcel of land, including earth-moving activities, material dumping, weed abatement, and vehicle traffic. 63 FR 15919, 15937 (April 1, 1998).

The MAG plan includes three suggested measures for controlling fugitive dust from vacant disturbed lands. The plan also identified controls on weed abatement operations and off-road racing as potential most stringent measures. We believe this list is complete and propose to find that the MAG plan evaluates a comprehensive set of potential BACM and MSM for disturbed vacant lands.

The MAG plan includes two MCESD rules that address BACM for vacant lots. Rule 310 requirements apply to vacant lots located at permitted facilities (including construction sites) and Rule 310.01 requirements apply to nonpermitted sources.[17] Rule 310 and Rule 310.01 requirements apply to both publicly and privately owned lots. Rule 310, section 302.3 and Rule 310.01, section 301 and 302.

In determining whether the MAG plan provides for the implementation of BACM for disturbed vacant land, we are also specifically considering whether the Plan provides for the implementation of RACM for these sources. See Footnote 15. In our FIP, we promulgated a RACM fugitive dust rule applicable to disturbed vacant land in the Phoenix PM–10 nonattainment area and thus it provides a starting point for determining whether the MAG plan measures for disturbed vacant lands meet RACM. It is not necessary for the MAG plan measures to be identical to the FIP rule in order to meet the CAA's RACM requirement, but only that they provide for implementation of RACM. See footnote 16. However, if the submitted measures for a particular source are identical to the FIP rule, we can determine without further analysis that the MAG plan has provided for RACM for that source.

Rule 310.01 requirements for vacant lots and open areas are virtually identical to the Phoenix FIP rule's requirements for these sources. Rule 310.01, however, is more broadly applicable. It covers vacant lots and open areas located anywhere in Maricopa County, in contrast to the Phoenix FIP rule, which only applies to lots in the Maricopa County portion of PM–10 nonattainment area (located in the eastern third of the County). Rule 310.01, sections 301 and 302. Unlike the FIP rule, Rule 310.01 also applies to partially developed residential, industrial, institutional, governmental, or commercial lots in Maricopa County, and any tract of land in the Maricopa County portion of the nonattainment area adjoining agricultural property. Rule 310.01, section 211.

Rule 310 requirements for vacant lots and open areas on permitted sources are more stringent than those in Rule 310.01, in that Rule 310 requires stabilization of all inactive disturbed surface areas on permitted facilities, regardless of their size. Rule 310, section 302.3. Rule 310 also contains requirements for weed abatement that closely resembles the Phoenix FIP rule's weed abatement requirements, except

[15] While a serious area PM–10 plan must provide for both the implementation of RACM and BACM, in determining whether such a plan provides for BACM implementation, we do not normally conduct a separate evaluation to determine if the measures also meet the RACM requirements of the CAA as interpreted by EPA in its General Preamble. See 57 FR 13540. This is because in our serious area guidance (Addendum at 42010), we interpret the BACM requirement, as generally subsuming the RACM requirement (i.e. if we determine that the measures are indeed the "best available," we have necessarily concluded that they are "reasonably available"). See Addendum at 42012–42014. Therefore, a separate analysis to determine if the measures also represent a RACM level of control is not necessary. However, in this particular case, we are proposing to withdraw the FIP rule in conjunction with our proposed approval of the MAG plan. In order to do this, we must determine under CAA section 110(l), that, among other things, withdrawing the FIP rule does not interfere with the RACM requirements in the CAA.

[16] The State may submit one or more control measures that collectively achieve a RACM level of control for a particular source, regardless of whether they apply the same strategy as our FIP rule. Furthermore, EPA's guidance indicates that a RACM evaluation includes considering "the impact of the reasonableness of the measures on the municipal or other governmental entity that must bear the responsibility for their implementation." General Preamble at 13541.

[17] Permitted sources include any facility permitted by MCESD and are not limited solely to those facilities with earthmoving permits. Rule 310, section 102.

that Rule 310's threshold for coverage is more stringent.[18]

Vacant lots and open areas subject to Rule 310 and Rule 310.01 are required to meet the same surface stabilization standards/test methods as required in the Phoenix FIP rule.

In addition to requirements in Rule 310 and Rule 310.01, the MAG plan contains commitments made by several cities and towns to address vacant disturbed lots. For example, seven jurisdictions require or will require stabilization of disturbed vacant lots after 15 days of inactivity (as compared to Rule 310.01's 60-day compliance period); two (2) prohibit dumping of materials on vacant land; and two (2) will stabilize all city-owned vacant lots.

Because Rules 310 and 310.01 requirements are at least as stringent as the FIP rule requirements and MCESD has committed to improve compliance and enforcement of these rules, we propose that the MAG plan provides for the implementation of RACM on disturbed vacant land. Because these rules increase the number of lots subject to control thus collectively increasing the stringency of control on vacant disturbed lands, we propose that the MAG plan also provides for the implementation of BACM.

For its MSM comparison, the MAG plan identifies measures in Clark County (Las Vegas, Nevada) Rule 41 and South Coast Rule 403. See MSM Study, pp. C–11 and C–16,17. The plan concludes that neither measure is more stringent than the Maricopa measures because Rule 310 and 310.01 contain similar, equally, or more stringent requirements. We agree that the MCESD's rules are equally or more stringent.

We, therefore, propose to find that the MAG plan correctly concluded that there are no more stringent measures in other State plans or used in practice elsewhere that are applicable to the Phoenix area.

g. Unpaved roads. This category includes re-entrained dust from vehicle travel on unpaved roads. There are three classes of unpaved roads in the Maricopa nonattainment area: public roads, private roads that are publicly maintained (also referred to as minimally-maintained or courtesy grade), and private roads that are privately maintained.

[18] Rule 310 requires any earthmoving operation that disturbs 0.1 acre or more to have a dust control plan, including weed abatement by discing or blading, whereas the Phoenix FIP rule weed abatement requirements only apply to disturbances equal to or greater than 0.5 acres. Rule 310, section 303.

The MAG plan includes three suggested measures for controlling fugitive dust from unpaved roads: Surface treatment to reduce dust from unpaved roads and alleys, traffic reduction/speed control plans for unpaved roads; and prohibition of unpaved haul roads. MAG plan, Table 5–2. The MAG plan did not identify any other State's measures that are more stringent than the ones already in the plan. We believe this list is complete and propose to find that the MAG plan evaluates a comprehensive set of potential BACM and MSM for unpaved roads.

In determining whether the MAG plan provides for the implementation of BACM for unpaved roads, we are also considering whether the Plan provides for the implementation of RACM for these sources. See Footnote 15. In our FIP, we promulgated a RACM fugitive dust rule applicable to unpaved roads in the Phoenix PM–10 nonattainment area and thus it provides a starting point for determining whether the MAG plan measures for unpaved roads meet RACM. It is not necessary for the MAG plan measures to be identical to the FIP rule in order to meet the CAA's RACM requirement, but only that they provide for implementation of RACM. See footnote 16. However, if the submitted measures for a particular source are identical to the FIP rule, we can determine without further analysis that the MAG plan has provided for RACM for that source.

As discussed below, we propose to find that the MAG plan provides for the implementation of RACM and BACM and the inclusion of MSM for unpaved roads.

Surface treatment to reduce dust from unpaved roads and alleys. The principle control for public unpaved roads and alleys is Rule 310.01, section 304, which requires all publicly-owned unpaved roads and alleys with 250 vehicles per day or more to be stabilized by June 10, 2000 and those with 150 vehicles per day or more to be stabilized by June 10, 2004.

Several cities have commitments that go beyond the requirements of Rule 310.01 for publicly-owned unpaved roads. For example, the City of Phoenix committed to, and recently accomplished, paving all 80 miles of its publicly-owned unpaved roads regardless of the level of vehicle travel. Phoenix Commitment, Measure 98–DC–7. Other cities, such as Tempe and Gilbert, have very few remaining miles of public unpaved roads/alleys. See Tempe Commitments, Measure 98–DC–7 and Gilbert Commitments, Measure 98–DC–7.

For private roads, Rule 310, section 308.6, requires that easements, rights-of-way, and access roads for utilities (electricity, natural gas, oil, water, and gas transmission) that receive 150 or more VPD must be paved, chemically stabilized, or graveled in compliance with the rule's standards.

Private unpaved roads are scattered throughout Maricopa County, within both County and city jurisdictions. A survey performed for us of unpaved roads in Maricopa County determined that the great majority of identified unpaved road mileage consists of privately-owned roads that receive minimal maintenance by the Maricopa County Department of Transportation (MCDOT).[19]

MAG and MCDOT have committed to pave County minimal maintenance roads within the nonattainment area that currently exceed 150 ADT and meet criteria to become public highways, using $22 million from Congestion Management/Air Quality and MCDOT funds.[20] MAG Commitment; Maricopa County Commitment, 1999 Revised Measure 17. This program will pave an estimated 60 miles of unpaved roadways in fiscal years 2001–2003 which is approximately 20 percent of the privately-owned, publicly-maintained County-jurisdiction roads and 40 percent of vehicle miles traveled on these roads. Maricopa County has also committed to continue to evaluate other roads for funding when traffic levels increase above 150 vehicle trips per day. Maricopa County Commitment, 1999 Revised Measure 17. We interpret this commitment to apply to any private roads within County jurisdiction, whether they currently receive minimal maintenance or not.

As the County evaluates roads for paving, it may make exceptions to its commitment to pave roads with vehicle trips that exceed 150 ADT. The County's evaluation process takes into account whether a road meets the proper criteria to become a public highway and whether estimated costs of paving are excessive (greater than $500,000 per mile).[21] When MCDOT identifies a road that meets these criteria (i.e. the road can be declared a public highway and

[19] Pacific Environmental Services, "Survey for Fugitive Dust Emission Sources," April 15, 1999.

[20] Congestion Management/Air Quality (CMAQ) funds are federal transportation funds awarded to certain nonattainment areas for congestion management or air quality-transportation projects such as paving unpaved roads.

[21] A private road begins to bear other than local traffic through extensions of other nearby public roads or the construction of an indirect source that attracts external drivers using the road as a short cut. See Maricopa County Commitments, 1999 Revised Measure 17.

costs are not excessive), it will recommend that the Board of Supervisors open and declare the road a public highway.

Because BACM implementation properly takes costs into account, we believe that MCDOT's criteria for selecting private roads to pave are suitable in the context of a strategy to implement BACM and will result in control of the great majority of high traffic unpaved roads. Although available information on private roads in city jurisdictions is limited, our existing information suggests that a typical privately owned unpaved road has low ADT.[22] As a result, we believe that the vast majority of private unpaved roads do not need to be controlled in order for us to determine that the MAG plan provides for the implementation of BACM for unpaved roads for the annual standard.

Traffic reduction/speed control plans for unpaved roads. Some jurisdictions committed to evaluate this measure. Two jurisdictions committed to posting 15 mph speed limit signs on private and public unpaved roads and access ways; one jurisdiction has posted 15 mph speed limits in all alleys. See MAG plan, Table 10–9. Also, under Rule 310, owners/operators of unpaved haul roads and utility roads who comply with the rule by limiting vehicle trips to 20 per day, must also limit vehicle speeds to 15 mph. While speed limit controls are only being implemented to a limited extent, we believe the plan measures to pave or otherwise stabilize unpaved roads in the Phoenix PM–10 nonattainment area establish the critical commitments for the implementation of RACM and BACM. This is because road stabilization ensures emission reductions whereas speed limits may or may not be observed.

Prohibition of unpaved haul roads. Rule 310 requires that unpaved haul roads meet both a 20 percent opacity standard and a silt content or silt loading standard. Rule 310, section 302.2. We propose to find that this requirement is sufficient for the implementation of BACM for these roads. We believe requiring compliance with both of these standards ensures that the BACM applied will have a stabilizing effect.

Evaluation of unpaved road measures in other areas found none that are more stringent than the measures for unpaved roads in the MAG plan. MAG plan, Table 10–7. We agree and propose to find that there are no other more stringent measures for unpaved roads than are already included in the MAG plan.

Please see the TSD section "Implementation of BACM and Inclusion of MSM for Unpaved Roads" for a more detailed discussion of our proposed findings.

h. Construction sites and activities. Sources of fugitive dust emissions at construction site sources include land clearing, earthmoving, excavating, construction, demolition, material handling, bulk material storage and/or transporting operations, material track out or spillage onto paved roads (which we have addressed in the paved road section), and vehicle use and movement on site (e.g., the operation of any equipment on unpaved surfaces, unpaved roads and unpaved parking areas). Windblown emissions from disturbed areas on construction sites are also a source of PM–10. Construction operations, which are mostly various forms of earthmoving, represent some 90 percent of the emissions in this source category.

The suggested measures in the MAG plan are actually various means of improving compliance with controls as opposed to new controls for construction sites. The controls for construction sites are found in MCESD's fugitive dust rule, Rule 310, revised on February 16, 2000.

Rule 310's requirements, effective on February 16, 2000, apply to any source required to obtain a permit under Maricopa County rules, which includes earthmoving operations of 0.10 acre or more and sources subject to Title V permits,[23] Non-Title V permits, or General Permits. In addition to rule requirements for fugitive dust sources located at any permitted source, Rule 310 requires that a Dust Control Plan (DCP) be submitted for any earthmoving operations of 0.10 acre or more, and that the DCP be approved prior to commencing any dust generating operation. The rule's definition of a dust generating operation includes any activity capable of generating fugitive dust including land clearing, earthmoving, weed abatement by discing or blading, excavating, construction, demolition, material handling, storage and/or transporting operations, vehicle use and movement, the operation of any outdoor equipment or unpaved parking lots. For other permitted sources, Rule 310 requires that a Dust Control Plan (DCP) be submitted and approved prior to commencing any routine dust generating activity, defined as any dust generating operation which occurs more than 4 times per year or lasts 30 cumulative days or more per year.[24]

Specific Rule 310 requirements include:

- a 20 percent opacity requirement for any dust generating operation
- wind event control measures
- implementation of control measures before, after and while conducting any dust generating operation, including weekends, after work hours and holidays
- required control measures and standards for:
  - unpaved parking lots
  - unpaved haul/access roads
  - disturbed open areas and vacant lots
  - bulk material hauling
  - bulk material spillage, carry-out, erosion and track out
  - open storage piles
  - weed abatement by blading or discing a requirement in dust control plans for at least one primary and one contingency control measure for all fugitive dust sources; the contingency measure is to be immediately implemented if the primary control measure proves ineffective

In order to comply with the rule's 20 percent opacity standard and dust control plan requirements for implementing primary and/or contingency control measures for earthmoving activities,[25] sources need to apply one or more controls, which in most cases includes applying water or another dust suppressant before and during operations. Inactive disturbed surfaces must be stabilized to meet at least one of the rule's stabilization standards (*e.g.* visible crusting, 10 percent rock cover, etc.). Unpaved roads and unpaved parking lots must also be stabilized to meet both a 20 percent opacity standard and a silt content/loading standard.[26] Test methods associated with stabilization and

[22] Among the over 100 segments of unpaved privately-owned and maintained roads that were identified in the PES survey, the contractor estimated, using aerial photographs, that only 6 of these have ADTs that exceed 150. Tube counts, which are more accurate than other methods to estimate ADT, were not conducted on these roads.

[23] Title V permits are operating permits required by Title V of the Clean Air Act for major stationary sources and certain other stationary sources.

[24] This is in addition to the requirement to submit a DCP for any earthmoving operation that disturbs 0.10 acre or more even if the operation is subject to Title V or other permitting requirements.

[25] Earthmoving operations include cutting and filling, grading, leveling, excavating, trenching, loading or unloading of bulk materials, demolishing, blasting, drilling, adding to or removing bulk materials from open storage piles, back filling, soil mulching, landfill operations, or weed abatement by discing or blading.

[26] Unpaved roads must meet a 6 percent silt content standard or, alternatively, a 0.33 oz/ft^2 silt loading standard, while unpaved parking lots must meet an 8 percent silt content standard or, alternatively, a 0.33 oz/ft^2 silt loading standard.

opacity standards are contained in Appendix C, which was submitted with Rule 310.

The February 2000 revisions to Rule 310 that have increased the rule's stringency include the addition of specific work practice standards, the addition of stabilization standards and test methods for unpaved surfaces, and modifications to the opacity test method (adding an alternative opacity test method for unpaved roads and unpaved parking lots and modifying the opacity test method for other sources). We believe that the new and/or revised standards/test methods provide for a greater degree of control than under the previous SIP-approved version of Rule 310.

In addition to these Rule 310 revisions, MCESD has made three enforceable commitments to further strengthen requirements for construction sites that must be met by July 2001. These commitments, which all are part of Revised Measure 6 in Maricopa County's commitments, are to:

1. Research and develop a standard(s) and test method(s) for earthmoving sources, considering our field research, that are enforceable and meet BACM requirements on stringency and source coverage.

Currently, activities on construction sites must meet an opacity standard of 20 percent. If research on the standards and test methods find problems with the existing opacity standard's enforceability, feasibility, or stringency for some or all earthmoving operations, MCESD will revise the rule to modify the existing opacity test method to address the problems as warranted or adopt a new standard(s) and test method(s) to deal with any problems that cannot be addressed by modifying the opacity test method;

2. Research, develop and incorporate additional requirements for dust suppression practices/equipment for construction activities into dust control plans and/or Rule 310;

3. Revise the sample daily recordkeeping logs for new and renewed Rule 310 permits to be consistent with rule revisions and to provide sufficient detail documenting the implementation of dust control measures required by Rule 310 and the dust control plan. Distribute sample log sheets with issued permits and conduct outreach to sources.

The first enforceable commitment addresses our concern that the existing opacity standard and test method for earthmoving operations may not always be sufficient to control construction site dust to BACM levels. MCESD has already revised the opacity test method to deal partially with this concern (see Rule 310, Appendix C), but we believe that additional standards/test methods are needed to fully assure that sources are effectively controlled. We have already sponsored a field study to address this issue and are considering additional field work in Summer, 2000. We believe that additional time is needed for Maricopa County to investigate options in coordination with us, and then revise the rule. Therefore, a commitment is the appropriate method of addressing this issue.

The second enforceable commitment addresses our concern that dust control plans (DCPs) lack specific criteria for dust suppressant application. For example, a source engaged in grading or cut-and-fill earthmoving for a multi-acre project may choose to comply with Rule 310 by applying water. However, neither the rule nor DCPs establishes minimum criteria for the number of water trucks/water application systems and water truck capacity for any given size construction site or a ratio of earthmoving equipment to water trucks. The rule also does not contain a pre-wetting requirement, although research may show this to be necessary to successfully control dust on certain soil types.

Establishing criteria for dust control is complicated by variations in soils, meteorological conditions, equipment size/use, project phase, and level of activity. All these factors can impact the amount of water (or other controls) needed to control fugitive dust on a particular site on a particular day, making it difficult to establish criteria that apply to all sites at all times. This explains why more time is needed for MCESD to develop criteria to address a multitude of circumstances.

The third enforceable commitment addresses our concern that while Rule 310 currently contains an acceptable recordkeeping requirement, a more specific recordkeeping requirement would help improve compliance. Currently neither the rule nor DCPs specify what information should be included in a daily log. MCESD has committed to revising and distributing to permitted sources daily recordkeeping log sheets to provide sufficient detail documenting the implementation of dust control measures.

Based on our evaluation of revised Rule 310 and the additional commitments made by MCESD, we propose to find that the rule and commitments together include a comprehensive set of BACM level controls for construction sites. The rule is comprehensive in scope in that each dust source is subject to a set of requirements under Rule 310 (*e.g.* storage piles, dirt trackout, haul truck loads, disturbed areas, earthmoving operations). In addition, the Rule 310 requirements are sufficiently stringent to provide for the implementation of RACM and BACM, with the exception of certain aspects of the rule that are addressed in the commitments made by MCESD. Thus, between the submitted rule requirements and commitments, we propose to find that the MAG Plan meets the CAA's RACM and BACM requirements for construction sites.

The MAG plan identifies potentially more stringent construction site fugitive dust measures either in or under consideration for inclusion in others SIP. See MSM Study, Table 1–2 and Table 3–1.

Most of the potential MSMs are provisions in South Coast fugitive dust rule, Rule 403. The MAG plan indicates that each of the South Coast and MCESD's rules are more stringent than the other in certain respects. MAG plan, p. 10–35. The MAG plan acknowledges that Rule 403 contains more stringent control measure requirements than those imposed by Rule 310. For example, Rule 403 requires that water be applied to soil not more than 15 minutes prior to moving the soil and requires open storage piles to be watered twice per hour or covered. However, the MAG plan indicates that Rule 310's 20 percent opacity limit is generally more restrictive than Rule 403's property line standard because a 20 percent opacity fugitive dust plume typically disperses to zero visibility within 50 feet downwind of a source. MSM Study, p. C–12. The MAG plan concludes that, on balance, Rule 310 is equally stringent compared to Rule 403's construction site requirements. We agree with this conclusion with the caveat that we believe Rule 310 and/or dust control plans require additional control measures for dust suppression. This caveat is addressed in the MAG plan's commitment to research, develop and incorporate additional requirements for dust suppression practices/equipment for construction activities into dust control plans and/or Rule 310.

The MAG plan does not discuss any construction site measures from other areas as potentially more stringent measures. Based on our work with the Las Vegas area, we have identified requirements in Clark County Health District permits that are potentially more stringent than Maricopa County's

measures.[27] These requirements include stand tanks on projects that are 10 acres or more in size, an additional, separate water truck when using a trencher or when screening, a separate water truck or pull during landscaping, maintaining all stockpiles in a moist condition, *etc.*

We propose to find that Rule 310's existing provisions and Maricopa County's second enforceable commitment to research, develop and incorporate additional requirements for dust suppression practices/equipment into Rule 310 and/or DCPs are consistent with Clark County's requirements.

We have also identified a requirement in Imperial County Regulation VIII that is potentially more stringent than Maricopa County's measures. Imperial County Regulation VIII requires that water be applied 15 minutes prior to handling or transferring bulk material, chemical/physical stabilization, or sheltering/enclosure of the operation and transfer line. We propose to find that Maricopa County's second enforceable commitment to research, develop and incorporate additional requirements for dust suppression practices/equipment into Rule 310 and/or DCPs is consistent with Imperial County's requirements.

For these reasons, we propose to find that the MAG plan provides for the inclusion of the MSM applicable to the Phoenix area for construction sites and activities.

i. Agricultural sources. The agriculture source category covers all dust generating activities and sources on farms and ranches in the Maricopa nonattainment area. These activities and sources include land planning, tilling, harvesting, fallow fields, prepared fields, field aprons, and unpaved roads.

Maricopa County is rapidly urbanizing with agricultural land being converted into other uses at a rate of approximately 6,000 acres per year. Cathy Arthur, MAG, December, 1997. Despite the conversion of agricultural lands to other uses, agricultural sources are expected to continue to contribute to PM–10 emissions for the foreseeable future, especially in relation to the PM–10 24-hour standard.

The MAG plan identifies a number of potential BACM for agricultural sources. MAG plan, pp. 5–66 thru 5–72 and pp. 6–12 through 6–13.

In 1998, Arizona passed legislation establishing an Agricultural Best Management Practices (BMP) committee for the purpose of adopting by rule by June 10, 2000, an agricultural general permit specifying BMPs for regulated agricultural activities to reduce PM–10 emissions in the Maricopa PM–10 nonattainment area. The Committee also is required to adopt and implement an education program by June 10, 2000, and affected agricultural sources are required to implement at least one BMP by December 31, 2001. A.R.S. 49–457.A–H, M. On June 29, 1999, we approved this legislation as a SIP revision meeting the requirement for the implementation of RACM in 189(a)(1)(C) and at the same time withdrew our commitment to adopt RACM controls for agricultural that we included in the 1998 PM–10 FIP. 64 FR 34726.

The MAG plan relies on the State's commitment in A.R.S. 49–457 to adopt and implement BMPs to meet the requirement to provide for the implementation of BACM for agricultural sources. MAG plan, p. 7–156 and Letter from ADEQ to EPA, September, 1998, submitting the commitment as a SIP revision. The plan also relies on the statutory commitment to meet the MSM requirement in CAA section 188(e). MAG plan, p.10–25.

Arizona's statutory BMP commitment is similar to the commitment we made in our 1998 PM–10 FIP. 63 FR 41326 (August 3, 1998). As part of the RACM demonstration in the FIP, we promulgated a commitment, codified at 40 CFR 52.127, to ensure that RACM for agricultural sources will be expeditiously adopted and implemented. For agricultural sources, the State is using a similar strategy to address the RACM, BACM and MSM requirements.

We propose to find that the State's commitment to adopt and implement agricultural BMPs adequately addresses requirement to implement BACM and include MSM. The potential BACM explicitly identified in the MAG plan will be considered during the BMP development process.

We have, beginning with the proposed rulemaking for our 1998 PM–10 FIP and culminating in Ninth Circuit litigation on both the FIP and our SIP approval, explained at length our reasoning that a commitment to implement PM–10 controls beginning in June-2000 for agricultural fields and aprons in the Phoenix PM–10 nonattainment area rather than the immediate implementation of fully-developed regulations for those sources meets the RACM requirement in CAA section 189(a)(1)C). See 63 FR 15920, 15935–15936 (April 1, 1998); 63 FR 41332–41334; 63 FR 71817. See also Brief for Respondents in *Ober* v. *Browner*, No. 98–71158, at 43–59 (9th Cir., filed Oct. 2, 1998) (petition for review challenging EPA's FIP commitment to adopt and implement RACM for agricultural sources), and Brief for Respondents in *Ober* v. *Browner*, No. 99–71107, at 16–40 (9th Cir., filed Aug. 26, 1999) (petition for review challenging EPA's approval of the State's commitment to adopt and implement agricultural BMPs as meeting the RACM requirement of the CAA).

In the context of this proposed action, our reasoning in short is that a legally binding commitment—embodied in the State statute establishing a committee that is required to adopt a general permit specifying BMPs and identifying specific deadlines for their implementation—meets the statutory requirement in CAA section 189(b)(1)(C) since it is a "provision to assure that best available control measures" are implemented by a fixed deadline. While in preparing the FIP, we reviewed measures adopted by the South Coast for the control of PM–10 emissions from agricultural sources, we concluded that agricultural sources in the United States vary by factors such as regional climate, soil type, growing season, crop type, water availability, and relation to urban centers, therefore, each PM–10 agricultural strategy is uniquely based on local circumstances. As a result, we could not, without further analysis, conclude that the South Coast controls should be immediately implemented in the Maricopa area.

Furthermore, we determined that the goal of attaining the PM–10 standards in Maricopa County with respect to agricultural sources would be best served by engaging all interested stakeholders in a joint comprehensive process on the appropriate mix of agricultural controls to implement in Maricopa County. We stated our belief that this process, despite the additional time needed to work through it, will ultimately result in the best and most cost-effective controls on agricultural sources in the County.

While A.R.S. 49–457 does not use the term "best available control measure," its definition of BMPs is consistent with the criteria in EPA's guidance. "Best management practices" are defined in A.R.S. 49–457.N.3 as "techniques verified by scientific research, that on a case by case basis are practical, economically feasible and effective in reducing PM–10 particulate emissions from a regulated agricultural activity." The broad definition of BMPs in the Arizona statute authorizes the BMP committee to adopt measures that will comply with our definition of BACM.

[27] These requirements are not in Clark County's fugitive dust rule, but rather are required practices in dust control permits.

Moreover, as noted above, the statute provides for BMP implementation that begins with an education program by June 10, 2000 and culminates in full implementation of the BMPs by December 31, 2001.[28]

Similarly, we have concluded that the definition of BMPs in the Arizona statute is broad enough to authorize the BMP committee to adopt measures that meet the level of control in the requirement to include MSM in CAA section 188(e) as we propose to interpret it in this proposed action. In reviewing measures in other SIPs and/or that have been adopted elsewhere, MAG determined that cessation of high wind tilling and soil erosion control plans were the most stringent measures available that had potential application for agricultural sources in Maricopa County. MAG plan p. 10–47. These measures are included in South Coast Rule 403 which requires PM–10 controls for all fugitive dust sources, including agricultural sources. In December 1998, South Coast adopted a set of conservation practices for agricultural sources to use to reduce fugitive dust. These practices were developed in consultation with affected stakeholder groups. See Guide to Agricultural PM–10 Dust Control Practices. The BMP task force will consider these measures during the development of the BMPs. MAG plan p. 10–47. After the BMPs and supporting technical documents are submitted to EPA, we will review them to determine if their level of control is as stringent as the South Coast rule or adequately justifies why such level would not be feasible in the Maricopa area.

As discussed elsewhere in this TSD, we propose to interpret section 188(e) to require implementation of MSM as expeditiously as practicable. For the reasons stated above, in our FIP, and in our approval of the State legislation as meeting the RACM requirements of the CAA, we conclude that the implementation schedule in the State statute meets that test. Finally, we conclude that the commitment in the State legislation meets the requirement that "the plan *include*[s] the most stringent measures * * *." Emphasis added.

j. Residential wood combustion. The residential wood combustion (RWC) category includes emissions from the burning of solid fuel in residential fireplaces and woodstoves as well as barbecues and firepits.

Measures to control PM–10 from residential woodburning include public education program, woodburning curtailment programs, retrofit requirements and restrictions or bans on the installation of woodburning stoves and/or fireplace. In total the MAG plan list 11 potential BACM and 10 potential MSM. MAG plan Tables 5–2 and 1–7. We believe this list is complete and propose to find that the MAG plan evaluates a comprehensive set of residential woodburning measures.

MCESD Rule 318, Approval of Residential Woodburning Devices, establishes standards for the approval of residential woodburning devices that can be used during restricted-burn periods. Maricopa County's Residential Woodburning Restriction Ordinance provides that restricted-burn periods are declared by the Control Officer when the Control Officer determines that air pollution levels could exceed the CO standard and/or the PM standard (150 $\mu g/m^3$). We approved Rule 318 and an earlier version of the ordinance (revised April 21, 1999) as providing for the implementation of RACM. See 64 FR 60678 (November 8, 1999).

MCESD revised the ordinance on November 17, 1999 to allow the Control Officer to declare restricted-burn periods when the particulate matter pollution levels could exceed the "particulate matter no-burn standard" of 120 $\mu g/m^3$. In addition, A.R.S. section 9–500.16 and A.R.S. section 11–875 (1998) require cities and the County to adopt by December 31, 1998, an ordinance that prohibits the installation or construction of a fireplace or wood stove unless it is a fireplace with a permanently installed gas or electric log insert, a fireplace or wood stove that meets EPA's Phase II wood stove requirements, or a fireplace with a wood stove insert that meets EPA's Phase II stove requirements. Most jurisdictions have adopted or have committed to or indicated that State law requires them to adopt the required ordinance. See MAG Plan, pp. 7–55 to 7–64.

With these additional controls, the overall residential woodburning restriction program is strengthened and goes beyond the existing RACM-level program. Both strengthening and expanding existing programs are key criteria for demonstrating the implementation of BACM. See Addendum at 42013. Where the MAG plan has rejected potential BACM, it provides a reasoned justification for the rejection.

The MAG plan identified a number of potential MSM for residential wood combustion. Except for the adoption of a lower threshold for calling no burn episodes, the plan does not provide for the adoption of any of these measures but provides reasoned and acceptable justifications for their rejection. Therefore, we propose to find that the MAG plan provides for the inclusion of MSM.

k. Secondary ammonium nitrate. Secondary ammonium nitrate is formed by a chemical reaction in the atmosphere between oxides of nitrogen (NO_X) and ammonia (NH_3). Ninety percent of NO_X comes from motor vehicle exhaust (both on and off road) and 99.9 percent of NH_3 comes from animal wastes. See MAG plan, Table 3–1.

Two potential BACM were identified for ammonia nitrate control: Reduce emissions of ammonia and nitrates from agricultural operations and require animal waste management plans for farms/ranches with more than 50 animals. The first measure involves tilling in of manure used as fertilizer within 48 hours of application. MAG plan, Table 6–1, measure 97–AG–3. The second measure would focus on reducing ammonia emissions from livestock waste during the winter months when conditions are most conducive to ammonium nitrate formation. MAG plan, Appendix B, Exhibit 5, p. 5–70. For MSM, no measures were found that required animal waste management plans for farms or ranches and no other measures were identified. See MAG plan, Table 10–7. A large number of measures that could reduce NO_x emissions were identified and have been evaluated for on-road motor vehicles and nonroad engines. We believe these list of measures is complete and propose to find that the MAG plan evaluates a comprehensive set of potential controls for ammonium nitrate.

Data from earlier studies indicate that ammonia emissions would need to be reduced by 80 percent to have an appreciable impact on ambient concentrations of ammonium nitrate. MAG plan, Appendix B, Exhibit 5, p. C–1. Essentially all ammonia emissions in the inventory are from livestock and not from the application of manure to agricultural fields. As result, controls on the application of manure are very unlikely to have any impact on PM–10 levels the Phoenix area and therefore are not technologically feasible.[29] The estimated reduction in ammonia from

[28] Of course, once adopted and submitted to EPA as a SIP revision, the individual BMPs will have to be evaluated to determine if they comply in their specifics with the BACM requirement. Here we need only determine that the Arizona statute provides sufficient authority to assure that BACM will be implemented by June 10, 2000.

[29] We consider a measure technologically feasible for an area only if it has the potential to reduce emissions in manner that reduces ambient concentrations in the area.

implementing waste management plans is 30 percent, far short of the 80 percent needed to show impact on PM–10 levels (MAG plan, Appendix B, Exhibit 5, p. 5–72), so we also believe that this measure is currently not technologically feasible.

Other than the on-road vehicle and nonroad engine categories, we do not believe that there are any other sources of NO_x that should be called significant in terms of contributing to ammonium nitrate levels.

Because the MAG plan includes an extensive number of measures for controlling NO_x sources and no measure are identified for the control of ammonia as technologically feasible, we propose to find that the MAG plan provides for the implementation of RACM and BACM and for the inclusion of MSM for secondary ammonium nitrates.

l. MCESD's commitments to improve compliance and enforcement of its fugitive dust rules. MCESD has committed to expanding and improving the compliance and enforcement program for its fugitive dust rules. These commitments are found in Maricopa County, 1999 Revised Measure 6, adopted December 15, 1999. A narrative description of the commitments and other program changes are found in Appendix IV, Exhibit 3 to the MAG plan's modeling TSD. MCESD has also committed to continuing to improve Rule 310 and Rule 310.01. These commitments are described in section F.3.g. "Construction Sites and Activities."

These improvements include increased public outreach and education, increased funding and staffing, increased inspection frequency, revised enforcement policies, and commitments to program evaluations and improvements. They address many of the program areas that are key to improving compliance and we believe form a solid program for increasing the effectiveness of the County's fugitive dust program.

Staffing. By the end of January, 2000, the inspection staff will increase to eight inspectors, 1 supervisor, 1 aide and 2 enforcement officers. By April, 2000, the County Attorney's office will hire an attorney to expedite civil litigation and to assist with prosecuting Class One Misdemeanor cases. A coordinator will be added to the Small Business Environmental Assistance Program to assist smaller builders and construction companies and to help develop and implement education programs. In total, resources devoted to the fugitive dust program will be 15 positions, a 25 percent increase over previous levels. This level of staffing is in contrast to the less than 1 staff position devoted to the program in 1996.

After reaching the committed staffing level, MCESD will review the program in March 2000 to evaluate its effectiveness and the potential need to add more staff.

Organization. A new enforcement section has been created under the direct supervision of the MCESD Director/Air Pollution Control Officer (APCO). This position streamlines enforcement by reducing senior management review and approval of enforcement actions and allows enforcement officers to submit directly to the APCO's desk all enforcement actions requiring APCO approval.

In addition, inspectors will be located in two new regional offices to provide quicker response times to dust-related complaints and allow more time in the field.

Funding. Revenue for fugitive dust program is estimated at $1.12 million from annual earth moving permit fees, a $772,000 increase over the previous level that is due to the permit fee increases adopted in 1998.

Inspection program. MCESD will develop by April, 2000 inspection priorities for vacant lots and unpaved parking lots that consider lot size and number of sources, with larger lots being inspected first and smaller lots in succeeding years. A number of cities have municipal programs to address these sources; therefore, the Department will initially direct its inspections to cities lacking such programs. It will also track the city plans that are required by State statute to stabilize target unpaved roads, alleys and unpaved shoulders.

MCESD has also increased inspection rates and improved procedures for permitted sources such as construction sites including:

- Proactively inspecting sites larger than 10 acres, 3 to 6 times per year and inspect smaller sites once within 30 days of project start date.
- Scheduling weekend inspections randomly once per month.
- Providing a shortened complaint response time with a goal of 8 hours for high priority complaints and maintaining the current goal of 24 hours for others.
- Revising standard operating procedures and checklists for fugitive dust inspections to be consistent with the revised rules.
- Revising inspection standard operating procedures to have inspectors check for records and inspect fugitive dust sources at permitted stationary sources.

Enforcement program. By April 2000, MCESD will revise it fugitive dust enforcement policy to

- include guidelines for initiating various enforcement actions
- include guidelines for reinspecting define timely and appropriate action by laying out guidelines for which type of violation is appropriate for specific enforcement actions and for the time frames for escalating enforcement actions when appropriate
- identify priority violations
- include guidelines for when to seek penalties reflecting the economic benefit of noncompliance, if feasible
- include guidelines for seeking and determining higher penalties for repeat violators
- guidelines for inspectors to handle predetermined citation categories form observation to justice court Enforcement action options include issuing an Order of Abatement, filing a Misdemeanor Complaint in Justice court, or asking the County Attorney to seek a civil penalty in Superior Court.

Inspectors will handle certain predetermined citation category violations and will be responsible for case development from observance of a violation to filing of the actual citation in the justice court. Having the inspectors handle routine cases will enable the enforcement officers to work on resolving cases involving more serious and complicated violations.

Public outreach/education. Public outreach and education consists of staff training, educating the regulated parties, developing good working relationships with other involved parties such as the cities, and making the program more understandable. Increased education of both inspectors and the regulated industry increases compliance.

Among the public outreach and education efforts will be:

- Inspector training on case development.
- Inspector training on revised test methods.
- City staff training on preparing inspection reports and notices of violation.
- On-going training at the local community college.
- Making information available on MCESD website.
- Distribution of information through city building departments and other sources.

Program evaluation and tracking. MCESD will track the number of inspections, number and type of enforcement actions, amount of penalties assessed, and amount of penalties collected. It will also conduct mid-year reviews of the program in

September, 2000 and again in March 2001 to evaluate progress and future needs.

G. Attainment Date Extension

1. Apply for an Extension

We interpret this requirement to mean that the State must apply in writing for an extension and that the extension request must accompany the SIP submittal containing the demonstration that the area will attain by the most expeditious alternative date practicable. The public must be provided reasonable notice and a public hearing on the request before it is submitted.

MAG, as the lead air quality planning agency for the Phoenix metropolitan area, formally requested an extension of the PM–10 nonattainment deadline to December 31, 2006 based on documentation in Chapter 10 of the MAG plan and Appendix C, Exhibit 5 of the MAG plan. MAG plan, p. 10–2. This extension request is an integral part of the MAG plan and was subject to public hearing along with the rest of the plan.

2. Demonstrate the Impracticability of Attainment by December 31, 2001

In order to demonstrate impracticability, the plan must show that the implementation of BACM (as determined by our guidance) on significant sources categories will not bring the area into attainment by December 31, 2001.

To demonstrate the impracticability of attainment by 2001, the MAG plan derived from the air quality modeling a change in PM–10 concentrations per change in emissions using the modeled concentration for the year 2006 and observed concentration for the year 1995 at Greenwood monitor and the overall change in emissions between the two years. MAG plan, p. 8–10. Using this information, the plan estimates that the annual concentration in 2001 will be 52.21 $\mu g/m^3$ after implementation of BACM. Because the projected 2001 annual concentration is still above the 50 $\mu g/m^3$ annual NAAQS, the MAG plan concluded that it was impracticable to attain by 2001.[30] MAG plan, p. 8–10.

Based on our analysis of control measures in the MAG plan as described in the preceding sections, we propose to find that the MAG plan provides for implementation of BACM as required by CAA section 189(b)(1)(C). Based on the modeling analysis in the plan, we also propose to find that the MAG plan also demonstrates that attainment by 2001 is impracticable with the implementation of BACM.

3. Complied With Commitments and Requirements in the SIP

We interpret this criterion to mean that the State has implemented the control measures in prior SIP revisions it has submitted to address the CAA requirements in sections 172 and 189 for PM–10 nonattainment areas. It does not include measures being approved in this action.

The two SIP revisions that Arizona has submitted to address PM–10 are the 1991 MAG moderate area plan and the 1997 microscale plan.

The 1991 MAG plan includes a broad range of measures to address PM–10 including controls for constructions sites, paved road, unpaved roads, unpaved parking areas, vacant lots, and woodburning. The plan also included reasonably available control technology for stationary sources and a wide range of transportation control measures. The implementation of the measures in this plan are described in the MAG plan at pp. 10–10 to 10–25. The principal controls in this plan were Rule 310 and the County woodburning ordinances. The plan also contained a large number of commitments from the local jurisdictions to various measures. Most of the measures represented "business as usual" actions by the jurisdictions to do infrastructure (*e.g.*, road) improvements, to implement existing building codes or take actions already underway for the carbon monoxide plan. MAG plan, pp. 10–13 through 10–24.

The 1997 Microscale plan focused on fugitive dust sources such as construction sites, vacant lots, unpaved roads, unpaved parking lots, and agriculture. The principal controls in this plan were improvements to the implementation of Rule 310 and coordination with the cities to improve fugitive dust control. Implementation of the measures in the Microscale plan are discussed in Maricopa County commitments, 1998 Revised Measure 6.

From available information in the MAG plan, we believe that the commitments and requirements in these plans have been met. We, therefore, propose to find that the State has complied with the requirements and commitments in its implementation plan.

4. Include the Most Stringent Measures

The MAG plan excluded no source categories of directly-emitted PM–10 from its MSM analysis instead simply started its evaluation of MSM by identifying candidate measures for any source category of PM–10 present in the Phoenix area. MAG plan, p. 10–25. To identify candidate MSM, MAG's contractor Sierra Research interviewed people knowledgeable about PM–10 controls, reviewed the documents used to develop the candidate list of BACM and obtained copies of current air quality control measures from most other States including both SIP and non-SIP measures. MSM Study, p. 1–2.

After a comprehensive list of candidate MSM was developed, each measure was screened against the corresponding Maricopa measure to identify those with more restrictive emission limitations, more extensive list of affected sources, fewer exemptions, and/or one or more substantive regulatory provisions not found in the Maricopa measure. The remaining MSM were grouped by source category and were either included in the plan or a reasoned justification for rejecting the measure was provided. MSM study, Table 3–1 and MAG plan, p. 10–46.

We propose to find that the MAG plan demonstrate to our satisfaction that it includes the most stringent measures that are included in the implementation plan of any State, or are achieved in practice in any State, and can be feasibly be implemented in the Phoenix area.

We have discussed identification and adoption of MSM and the rejection of any MSM for each category deemed significant for BACM earlier in this preamble. The MAG plan identifies three MSMs for categories considered de minimis in the BACM analysis. These categories are cattle feed lots, incinerators, and charbroilers.

Cattle feed lots: MCESD Rule 310.01 requires that owners/operators of commercial feedlots and/or livestock areas apply dust suppressants, apply gravel, or install shrubs and/or trees within 50 to 100 feet of animal pens. The MAG plan identifies South Coast Rule 1186 requirements for livestock operations as a potentially more stringent requirements than Rule 310.01. However, the two rules control different sources at commercial feedlots/livestock areas. South Coast Rule 1186 requires controlling unpaved roads and hay grinding at dairy and horse farms but does not address fugitive dust emissions from disturbed open areas. MCESD Rule 310.01 controls fugitive dust emissions from disturbed open areas at dairies and cattle lots, but not unpaved roads and hay grinding.

In the Maricopa County PM–10 nonattainment area, there is only one cattle feedlot and less than half the

[30] In addition the MAG plan shows that implementation of controls on the de minimis source categories would not produce enough emission reductions to show attainment in 2001. MAG plan, p. 9–11.

number of dairies compared to those subject to South Coast Rule 1186. Similar to South Coast, unpaved roads at dairies are low travel (10 to 20 ADT) and represent a very small source of emissions in the Phoenix area and controls on them would not advance the attainment date. We, therefore, believe we can find that the MAG plan provides for the implementation of MSM to our satisfaction without Rule 1186 provisions for unpaved roads at cattle feed lots. In Maricopa County, hay grinding activities occur primarily at feed mills (as opposed to dairies) which are permitted sources and thus already subject to control requirements.

Incinerators: The MAG plan identifies Clark County's Rule 26 as having a more stringent opacity limit than MCESD's Rule 313. Clark County limits opacity from existing incinerators to 5 percent while Maricopa's limit is 20 percent. MAG plan, Table 10–7. Incinerators are a very small source in the Phoenix nonattainment area. In 1994 there were 32 incinerators that together emitted 2.56 metric tons per *year* (7.1 kg per day). 1994 Regional PM–10 Inventory, p. 4–17. Because incinerators are so small a source and controls on them would not advance the attainment date, we propose to find that the MAG plan provide for the inclusion of MSM to our satisfaction without including Clark County's opacity limit for incinerators.

Charbroiling: Emissions from charbroiling and frying meat are estimated to 0.6 mtpd or 227 mtpy. 1994 Regional PM–10 Inventory, p. 4–25. This is 0.4 percent of the daily directly-emitted PM–10 inventory in 1994 and 0.4 percent of the annual inventory in 1994. MCESD has committed to develop a new rule to require existing and new chain-driven and underfired charbroilers, typically found in restaurants specializing in grilled meat products, to be equipped with emission control equipment. South Coast is developing a new rule to deal with underfired charbroilers and MCESD will wait until South Coast completes its rulemaking to adopt this measure. MCESD is projecting adoption of its rule in Spring, 2001. Maricopa County commitments, Revised Measure 23. We propose to find that implementation of this rule is expeditious. Waiting on South Coast to complete its rulemaking, which will establish control requirements for underfired charbroilers, is appropriate given that the South Coast rule when adopted will set the standard for control on these types of charbroilers.

5. Demonstrate Expeditious Attainment

For the reasons discussed below, we propose to find that the MAG plan demonstrates attainment by the earliest date practicable after December 31, 2001 as required by section 189(b)(1)(A)(ii) of the CAA. We also propose to find that the attainment demonstration relies on control measures that either are approved or are being proposed for approval and meet our SIP enforceability criteria; that the emissions estimates assigned these measures in the attainment demonstration are reasonable; and the measures are being implemented on a schedule that is as expeditious as practicable and will result in attainment by the earliest practicable date. See discussion below.

a. Air quality modeling. A modeled attainment demonstration for the PM–10 annual standard should first estimate the temporal and spatial distribution of PM–10 and PM–10 precursor emissions that result from the adopted control measures by the attainment date. It should then simulate the ambient air concentration of these emissions in an air quality model and show that all locations within the nonattainment area have annual average PM–10 concentrations below the level of the annual PM–10 standard of 50 μg/m3. See "Guidelines on Air Quality Models," 40 CFR part 51 appendix W, section 7.2.2. and "PM–10 SIP Development Guideline," EPA–450/2–86–001, June 1987.

To provide context for our evaluation of the air quality modeling in the MAG plan, we will first briefly describe the steps in developing a modeled attainment demonstration and how the MAG plan performed each step.

Step 1. A modeling base case is developed to replicate PM–10 concentrations for specific recent days by simulating the emissions and meteorology that occurred for those days, by hour and by location throughout the area being modeled (that is, the model domain). For some input parameters, alternative plausible values are tried in a diagnostic process to ensure that the model is performing in a physically reasonable way. PM–10 concentrations from the model output are compared to monitored values to evaluate the performance of the model.

The base case for the MAG plan consisted of the application of the urban airshed model with the limited chemistry module (UAM/LC) to each of 65 days during 1995. The results from modeling each of these days are then averaged together to get the modeled annual PM–10 concentration. 1995 was used as the base year because an intensive inventory and monitoring study was performed during it; the 65 days coincided with the available PM–10 24-hour average monitoring data, which are collected once every 6 days. During 1995 the peak monitored annual PM–10 concentration was 60.01 $\mu g/m^3$ at the Greenwood monitor while the model predicted a peak concentration of 75.91 $\mu g/m_3$ at a location away from the Greenwood monitor. MAG TSD, Chapter III.[31]

Step 2. After the base case model is developed, emissions are projected into the future. Projections are based on particular facilities's expansion plans, business and socioeconomic projections, and projections of the effect of changing technology and of the control measures that are already in place. The model simulation is repeated with these future emissions but with the same meteorological inputs as before. This simulation shows how a day meteorologically conducive to high PM–10 concentrations will look in the future if no new controls are implemented. The resulting modeled concentrations can be used to derive an estimate of the additional emission reductions needed to attain the air quality standard.

For the MAG plan, emissions are projected to 2006 (which MAG found to be the earliest practicable attainment year). Before additional controls, the 2006 future peak PM–10 annual average was simulated to be 86.72 $\mu g/m^3$. Because this was above the NAAQS of 50 $\mu g/m^3$, the modeling showed that additional control measures were needed. MAG plan, p. 8–6.

Step 3. The effect of control measures on ambient concentrations are simulated by changing the model emission inputs for future years to reflect higher implementation rates or larger emission reductions from additional controls. Additional measures are tried if PM–10 concentrations are still above the standards.

Attainment is demonstrated when sufficient emission reductions are in place so that modeled concentrations in every grid square are below the standard.

MAG showed that with additional controls, the peak annual PM–10 concentration in 2006 is 49.70 $\mu g/m^3$, which is below the annual PM–10 NAAQS of 50 49.70 $\mu g/m^3$, thus

[31] The MAG TSD is the "Revised Technical Support Document for Regional PM–10 Modeling in Support of the Revised MAG 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County Nonattainment Area," MAG, February 2000 found in Appendix A, Exhibit 7 of the MAG plan.

demonstrating attainment. MAG plan, p. 8–12.

In evaluating the air quality modeling in the MAG plan, we reviewed the choice of models; the selection of episodes to model, the selection of the modeling domain and grid resolution, the methods of preparing wind, temperature, and mixing height fields data; the selected initial and boundary conditions values; the modeling emission inventories; the procedures for and results of quality assurance, diagnostic testing and sensitivity testing; and selected modeling performance goals and model results vis a vis these goals. We have found them all generally acceptable. See our detailed evaluation in EPA TSD section "Demonstrate Attainment by the Most Expeditious Alternative Date Practicable after December 31, 2001."

The modeling performed for the MAG plan is as sophisticated as any that has been performed for a PM–10 SIP. While there are several problems associated with the model's performance for secondary particulates and several other shortcomings of the modeling and its documentation, the dominance of the contribution of primary particulates from fugitive dust to PM–10 concentrations in the Phoenix area obviates these concerns. At worst the MAG plan's modeling is akin to modified rollback, an approach that is acceptable under EPA modeling guidance for PM–10. We therefore propose to approve the modeling for the annual NAAQS because it provides a credible demonstration that the credited control measures will provide for attainment of the annual standard by 2006.

b. Control measures relied on for attainment. For demonstrating attainment, the MAG plan relies on reductions in directly-emitted PM–10 from 12 measures. MAG plan, Table 8–2. We have listed each measure; the rule, commitment or state statute through which it is implemented, and its emission reductions in Table 1–1.

TABLE 1–1.—CONTROL MEASURES RELIED ON IN THE ATTAINMENT DEMONSTRATION

Measure	Implementation mechanism	Emission reduction (mtpd)
Strengthening and Better Enforcement of Fugitive Dust Rules (Construction sites).	Rule 310 and Maricopa County Commitments, 1999 Revised Measure 6.	60.6
Unpaved roads and alleys	Rules 310 and 310.01, Maricopa County Commitments, 199 Revised Measures 6 & 17, City/Town Commitments for Unpaved Roads and Alleys.	12.2
Unpaved parking lots	Rules 310 and 310.01 and Maricopa County Commitments, 1999 Revised Measure.	3.7
Vacant disturbed lots	Rules 310 and 310.01 and Maricopa County Commitments, 1999 Revised Measure 6.	1.8
01PM–10 efficient street sweepers (MAG)	MAG Commitment, "PM–10 Efficient Street Sweepers" City/Town/County Commitments for Street Sweeping.	1.1
Curbing, paving, or stabilizing shoulders on paved roads	City/Town/County Commitments for Stabilizing Shoulders	1
Curbing paving or stabilizing unpaved access points	City/Town/County Commitments for Stabilizing Unpaved Access Points.	0.4
PM–10 episode thresholds	Maricopa County Residential Woodburning Restriction Ordinance.	0.07
Restaurant charbroiler controls (Maricopa County commitment)	Maricopa County Commitment, 1999 Revised Measure 23	0.07
Cleaner Burning Gasoline	ADEQ Regulations (already SIP approved)	0.03
Pre-1988 Heavy-Duty Diesel Vehicle Standards	A.R.S. 49–542 F.7.	0.02
Coordinate traffic signals	City/Town/County Commitments for synchronizing traffic lights.	0.01

We have evaluated each of these measure to ensure that it meets our SIP enforceability criteria. These criteria ensure that the measure's compliance requirements'applicability, performance standards, compliance schedule, and monitoring methods—are clear.

We have also evaluated the emission reductions credited to each measure to ensure they are reasonable. In particular, we looked at the reduction estimates for Rules 310 and 310.01.

The MAG plan assumes an incremental increase in rule effectiveness for these rules from 66 percent in 1998 to 80 percent in 2006. MAG TSD, Appendix IV, Exhibit 1, Committed Measure 1. Rule effectiveness (RE) accounts for emission reductions lost because of noncompliance, control equipment downtime, failure to apply adequate controls, or failure to use control equipment properly. One hundred percent rule effectiveness is the ability of a regulatory program to achieve all the emission reductions that could be achieved by full compliance with the applicable regulations at all sources at all times.

We have established policies on applying rule effectiveness factors for both base year and projected year inventories of volatile organic compounds (VOC), a precursor to ozone. See General Preamble at 13503 and "Rule Effectiveness Guidance: Integration of Inventory, Compliance, and Assessment Applications." USEPA, OAQPS, EPA–452/R–94–001, January 1994, (RE Guidance). In general, we encourage states to derive local category-specific RE factors. If there are no such local RE factors, we require the use of an 80 percent effectiveness default value in VOC inventories. General Preamble at 13503.

We have not established any explicit guidance for applying RE to particulate matter sources. We know, however, that PM sources like VOC sources are not in full compliance with applicable rules at all times; therefore, some RE factor needs to be applied. For this rulemaking, we have applied the existing Agency RE guidance for VOC sources to emission reduction estimates for Rule 310 and Rule 310.01.

The items that influence compliance with a rule and thus the appropriate RE factor are the clarity of the rule, its compliance requirements and the complexity of the controls required by the rule; the source's actions; and the implementing agency's actions. See RE Guidance, pp. Table 1–1 and Appendix C.

Under our guidance, a state is allowed and required to use a 80 percent RE factor absent evidence to the contrary. General Preamble at 13503. In this case,

the evidence that we have is that compliance for Rule 310 was below this level as of early 1998. MAG, with concurrence of MCESD, assumed a 30 percent compliance rate for the Rule 310 in the 1995 base year modeling. Inspections by MCESD in early 1998 indicated that the compliance rate with the rule was 66 percent. MAG TSD, Appendix II, Exhibit 6, "Documentation on Assumption of Rule 310 Control Efficiency and Compliance Rate."

Over the last few years, MCESD has made substantial changes to its fugitive dust control program, many designed to improve compliance. MCESD has also committed to a number of additional changes which we have described earlier. We believe that an 80 percent rule effectiveness in 2006 is appropriate given these changes and MCESD's commitments to improve compliance with Rules 310 and 310.01. These improvements cover rule and test method revisions, increased public outreach and education, increased funding and staffing, increased inspection frequency, revised enforcement policies, and commitments to program evaluations and improvements. They address many of the program areas that are key to improving compliance.

In our TSD (in the section "Extension Request-Demonstrate Attainment by the Most Expeditious Alternative Date Practicable after December 31, 2001"), we have compared the MCESD's fugitive dust program in 1996 to the program that will be in place by 2006 based on MCESD's commitments in the MAG plan and its actions to date. This comparison clearly shows the scope of improvements to the MCESD's fugitive dust program and supports our proposed finding that an 80 percent RE in 2006 for Rule 310 and Rule 310.01 is appropriate.[32]

Finally, we have looked at the implementation schedule for each measure to assure that the MAG plan provides for expeditious implementation. Except for paving of some unpaved roads, adoption of the charbroiler rule, heavy duty diesel standards, and the purchase and deployment of the PM–10 efficient street sweepers, all the measures relied on in the attainment demonstration are currently in effect.

However, attainment of the PM–10 annual standard in the Phoenix area depends on a high level of compliance with MCESD's fugitive dust rules. The MAG plan assumes this level increases from 66 percent in 1998 to 80 percent in 2006. MAG TSD, Appendix IV, Exhibit 1, Committed Measure 1. This level of compliance depends in turn on education of the regulated community and increased enforcement modifying source behavior. Both of these take time to effect, therefore, we believe that it is reasonable to allow a period of time to achieve a high level of compliance with these rules. We thus believe that the emission reductions are being achieved as expeditiously as practicable.

6. Other Factors That EPA may Consider

CAA section 188(e) list five additional factors that we may consider in deciding whether to grant an extension and the length of that extension.

The MAG plan provides information addressing each of the factors in Chapter 10 of the plan. We have already proposed to determine that the MAG plan provides for the implementation of RACM and BACM, includes the MSM, and attainment of the annual PM–10 standard by the earliest practicable date of December 31, 2006. In the next section, we will also propose to find that the plan provides for reasonable further progress. Nothing in the additional information presented on the five factors suggest that granting an extension of the attainment date for the Phoenix area to 2006 is inappropriate.

a. Nature and extent of nonattainment. Over the past 5 years, violations of the annual standard have occurred routinely at three sites (MAG plan, Table 10–11):

1. Greenwood, an urban site heavily impacted by transportation sources,
2. Chandler, an urban fringe site heavily impacted by fugitive dust sources such as construction and agriculture, and
3. Salt River, a site heavily impacted by industrial sources.

Areas similar to the first two sites can be found throughout the Phoenix nonattainment area, so we would expect that there are similarly elevated PM–10 levels throughout the Phoenix area; therefore, controls need to be uniformly implemented throughout the nonattainment area, a task that generally requires longer to achieve than implementing controls in few localized areas.

b. Types and numbers of sources or other emitting activities. Primary contributors to elevated PM–10 levels are fugitive dust sources including paved road dust, unpaved roads, construction activities, disturbed vacant lands, unpaved parking lots, and agricultural sources. MAG plan, p. 10–51. These sources are ubiquitous in the nonattainment area and collectively number in the thousands. (For example, MCESD issued 2500 construction permits in 1999; we mailed 50,000 letters to owners of vacant lots in the nonattainment area; there are 12,000 miles of roadway in the nonattainment area.)

c. Population exposure to concentrations above the standard. The MAG plan estimates population exposure to elevated levels of PM–10 (both annual and 24-hr) to be from 78,000 to 163,000 (1995 figure), p. 10–13. This population exposure is calculated using estimates of disturbed land versus population in subareas of the nonattainment area. According to this calculation, 84 percent of Maricopa's population lives in areas where 10 percent or less of the land is open. MAG plan, Table 10–13. This exposure number does not seem to include populations exposed to dust from paved and unpaved roads and therefore may underestimate overall population exposure. However, the plan does provide for implementation of RACM, BACM, and MSM on disturbed land (including construction) and paved and unpaved roads with much of the emission reductions being achieved in the first few years, all these factors will reduce population exposure as quickly as practicable.

d. Presence and concentration of potentially toxic substances in the particulate. The primary source of airborne cancer risk in the Maricopa area is internal combustion engine exhaust from both on- and non-road engines. This risk is from all pollutants emitted from these sources (gaseous and particulate). MAG plan, p. 10–61. The MAG plan concludes that the cancer risk in the Phoenix area is comparable to that in California cities, p. 10–61. The MAG plan and other Arizona programs (*e.g.*, cleaner burning gasoline, national emission standards for non-road engines) target emissions from on- and non-road engines.

Almost all of the PM–10 emission reductions in the out years of the MAG plan (2003 and later) are and need to be from fugitive dust sources in order to show attainment of the annual PM–10 standard and not fron on- and non-road engines; therefore, extending the attainment date does not affect the degree of public exposure to the major source of toxic risk because shortening the extension would not accelerate controls on the major source of toxic risk, on- and nonroad engines.

e. Technological and economic feasibility of controls. Fugitive dust sources dominate the emission inventory in the Maricopa

[32] The cities and towns in Maricopa County are also increasing their efforts to address fugitive dust sources, such as unpaved parking lots and disturbed vacant lots. These efforts also support an overall 80 percent rule effectiveness.

nonattainment area. Controls for these sources are well known (paving, wetting surfaces, etc.) and have been adopted; however, the number of sources and nature of sources make education and outreach necessary to assure full compliance with those controls. In addition, costs for paving roads, purchasing street sweepers, and other capital improvements necessary to reduce PM–10 emissions are high and necessary funds are only available over a number of years. These factors generally support a longer time frame for attainment.

7. Conclusion on Extension Request

Based on our review of the MAG plan and our proposed determination that it meets the requirements necessary for granting an extension of the attainment date under CAA section 188(e), we are proposing to grant a five-year extension of the serious attainment date for the Phoenix PM–10 serious nonattainment area from December 31, 2001 to December 31, 2006.

H. Reasonable Further Progress (RFP) and Quantitative Milestones

We propose to find that the MAG plan provides for RFP and meets the quantitative milestone requirements of the Act.

1. Reasonable Further Progress

The MAG plan provides for annual progress so that emissions levels in each year from 1995 to 2006 that are at or below the level needed to maintain linear progress toward attainment. It demonstrates that regional PM–10 emission levels will drop from 191 mtpd in 1995 to 130 mtpd in 2006 with two-thirds of the reduction occurring before 2001. MAG plan, Figure 8–4. Total regional emissions decrease annually at a rate of approximately 6.5 mtpd per year from 1995 through 2001 and 4.4 mtpd per year from 2002 to 2006. The assumptions that underlie the RFP demonstration regarding control measures' implementation and effectiveness are reasonable.

The plan does not provide emission reduction information for each year between the base modeling year of 1995 and the attainment year of 2006. We do not believe that this level of detail is necessary or meaningful. The principal control measures in the plan (such as improving compliance with the fugitive dust rules, progressive paving of unpaved roads, and annual replacement of part of the street sweeper fleet with PM–10 efficient units) produce year to year incremental increases in emission reductions sufficient to meet the statutory requirement for RFP. See MAG plan, Figure 8–4 and EPA TSD, Figure RFP–1. Therefore, we propose to find that the MAG plan provides for "such annual incremental reductions in emissions of the relevant air pollutant as are required by this part [part D of title I] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date" as required by section 172(c)(2) of the Act.

2. Quantitative Milestones

Our guidance provides for a quantitative milestone for the year 2000. Addendum at 42016. Based on the statutory requirement for milestones every three years, the years 2003 and 2006 are the next two milestones for areas with an attainment date extension under section 188(e). The MAG plan provides milestones for 2003 and 2006 but substitutes 2001 for 2000. We believe this minor deviation from our guidance is appropriate and acceptable for the following reasons.

First, we set the milestone schedule in our serious PM–10 area guidance assuming the area involved was one of the initial moderate areas and its moderate area plan demonstrates attainment by December 31, 1994. General Preamble at 13539 and Addendum at 42016. Although the Phoenix area was one of the initial moderate nonattainment areas, its moderate area plan did not demonstrate attainment.[33] As a result, our guidance on the appropriate milestone years is not strictly applicable to the MAG serious area plan.

We also believe that the statutory purpose for including milestones in PM–10 plans is best served in the Phoenix area by having the milestone year be 2001 rather than 2000. Under the Act, states are to submit a demonstration 90 days after a milestone date that the state has implemented all measures in its approved plan and has met the milestone. See CAA section 189(c)(2). If a state fails to submit a report or we determine that the area has not met a milestone, then the state must submit a plan revision that assures that the next milestone will be met. See CAA section 189(c)(3).

It is clear from the statutory requirements, that the milestone requirement functions as a mid-course evaluation of the PM–10 plan and an opportunity to make corrections to the plan to assure that there is no delay in attainment due to failures to implement or achieve needed reductions. As such, the milestones should be keyed, to the extent possible, to major implementation deadlines in a manner that allows for a realistic and comprehensive look at the effectiveness of the implemented measures.

The BACM implementation deadline for Phoenix is June 10, 2000. A December 31, 2000 milestone allows for the evaluation of only a half-year of implementation, which is little time to see if implementation is going to achieve the expected emission reductions. Setting the milestone one year later on December 31, 2001 as the MAG plan does, provides for a full year of implementation allowing for a more realistic assessment of the effectiveness of BACM yet still leaving ample time to make any corrections needed to assure timely attainment. Therefore, we believe that strict adherence to the 2000 milestone date in our guidance would be less beneficial to attainment in the Phoenix area than setting the date at 2001.

The next milestone in the MAG plan after the 2001 one is in 2003. MAG plan, Figure 8–4. This second milestone is only 2 years after the first, instead of 3 years arguably required by the Act. However, we believe that the 3-year milestone increment in CAA section 189(c) is the maximum allowable time between milestones and nothing in the section prohibits states from setting milestones dates that are closer together.

The assumptions regarding control measures' implementation and effectiveness that underlie the quantitative milestones are reasonable and consistent with the RFP demonstration.

For these reasons, we propose to find that the MAG plan meets the quantitative milestone requirement in CAA section 189(c)(1).

I. General SIP Requirements

Section 110(a)(2)(E)(i) of the Clean Air Act requires that implementation plan provide necessary assurances that the State (or the general purpose local government) will have adequate personnel, funding and authority under State law. Requirements for legal authority are further defined in 40 CFR part 51, subpart L (section 51.230–232) and for resources in 40 CFR 51.280.

States and responsible local agencies must demonstrate that they have the legal authority to adopt and enforce provisions of the SIP and to obtain information necessary to determine

[33] The moderate area plan submitted by the State in 1991 and revised in 1993 and 1994 demonstrated the impracticability of attainment by December 31, 1994. While we have subsequently disapproved this impracticability demonstration because the plan did not include BACM, we confirmed that attainment was impracticable in our 1998 FIP. 63 FR 41340.

compliance. SIPs must also describe the resources that are available or will be available to the State and local agencies to carry out the plan, both at the time of submittal and during the 5-year period following submittal.

We propose to find that the implementing agencies for the MAG plan have adequate resources for implementing their respective commitments. We also propose to find that the MAG plan adequately describes the resources that are available or will be available to the State and local agencies to carry out the Plan, both now and over the next 5 years. See discussion of the individual commitments and control measures in the TSD.

All agencies and jurisdictions appear to have adequate authority under Arizona state law to implement their respected commitments and, where applicable, to obtain information necessary to determine compliance. We, therefore, propose to find that these agencies/jurisdictions have demonstrated that they have adequate legal authority to implement the MAG plan.

Section 110(a)(2)(C) requires SIPs to include a program to provide for the enforcement of SIP measures. The implementing regulation for this section is found at 40 CFR 51.111(a) and requires control strategies to include a description of enforcement methods including (1) procedures for monitoring compliance with each of the selected control measures, (2) procedures for handling violations, and (3) the designation of the agency responsible for enforcement.

The principle control measures in the plan are MCESD's Rules 310 and 310.01. Procedures for monitoring compliance (*i.e.*, the inspection strategy) with these rules are described in Maricopa County's commitments. See Maricopa County commitment, 1999 Revised Measure 6.

Based on the review of MCESD's enforcement procedures, we propose to find that the MAG plan adequately provides for the enforcement of the principle measures relied on for attainment and that the plan includes an adequate description of enforcement methods as required by our regulations.

Section 110(a)(2)(E)(iii) requires SIPs to include necessary assurances that where a State has relied on a local or regional government, agency or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of the such plan provision.

We have previously found that Arizona law includes the necessary assurances that where a State has relied on a local or regional government, agency or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of the such plan provision. 60 FR 18010, 18019 (April 10, 1995).

Proposed Actions on Maricopa County Rules

A. Rule 310

Rule 310 establishes requirements for fugitive dust sources on facilities that have or are required to have air quality permits from MCESD. These facilities include construction sites, stationary sources, and any other facility or operation that is required to have a permit under MCESD rules. The rule requires earthmoving activities that disturb 0.10 acre or more to apply for and get approval of a Dust Control Plan (DCP) and requires other permitted sources to obtain a DCP prior to commencing any routine dust generating activity. We have described many of the Rule's specific requirements earlier in this preamble.

The current SIP approved version of Rule 310 is the version adopted on September 9, 1994. We approved this version of Rule 310 into the SIP on August 4, 1997 as part of the Microscale plan. 62 FR 41856

MCESD adopted a revised version of Rule 310 and Appendix C to MCESD rules on February 16, 2000 and Arizona submitted both as a revision to the Arizona SIP on March 2, 2000. Appendix C contains the test methods relied on in Rule 310.

The revised Rule 310 is considerably different from the current SIP-approved version. The greatest change has been to split the old rule into two new rules: the revised Rule 310 that addresses permitted facilities and a new Rule 310.01 that addresses nonpermitted sources. We evaluate Rule 310.01 in the next section. MCESD also revised Rule 310 to strengthen it compared to the current SIP-approved version. These rule improvements include:

- Improved enforceability of control measures and dust control permits (DCPs),
- Improvements to existing test methods (in Appendix C),
- New performance standards and test methods,
- Clearer definitions,
- More specific work practice requirements

MCESD has also committed to continue to strengthen and improve Rule 310 through research on test methods, dust control methods, and revised recordkeeping requirements. See discussion in section F.3.g., "Construction Sites and Activities."

We believe that the revised Rule 310 is a considerable improvement over the SIP-approved version and, combined with MCESD commitments to continue to improve the Rule and to improve enforcement and compliance with it, provides for implementation of RACM and BACM and the inclusion of the MSM on the sources subject to it. We, therefore, propose to approve Rule 310 and Appendix C as adopted on February 16, 2000 and submitted on March 2, 2000, into the Arizona SIP.

We have described in more detail the improvements and other revisions to Rule 310 in section 6 of our TSD.

B. Rule 310.01

Rule 310.01 establishes requirements for fugitive dust emitted from nonpermitted sources, including unpaved public roads, unpaved parking lots, open areas and vacant lots, erosion-caused deposits of bulk materials onto paved surfaces, and commercial feedlots and/or commercial livestock areas.

The provision of Rule 310.01 are currently in the SIP as sections of former Rule 310. We approved this version of Rule 310 into the SIP on August 4, 1997 as part of the microscale plan. 62 FR 41856.

MCESD adopted Rule 310.01 on February 16, 2000 and Arizona submitted it as a revision to the Arizona SIP on March 2, 2000. As with Rule 310, Rule 310.01 relies on the test methods in Appendix C.

Rule 310.01's provisions are strengthened compared to the similar provisions in the SIP. These rule improvements and other rule changes include:

- The revised rule requires that unpaved roads and unpaved parking lots comply with both: (1) a 20 percent opacity standard; and (2) a silt content or a silt loading standard.
- A new opacity test method has been added to Appendix C to determine compliance with the rule's 20 percent opacity standard for unpaved haul/access roads and unpaved parking lots which is better tailored to these sources.
- Test methods for determining compliance with the new silt content/loading standards has been added to Appendix C.
- Owners/operators of disturbed vacant lots and open areas must maintain a visible crust or meet at least one other applicable stabilization standard, according to new test methods included in the rule and Appendix C.

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• Specific control measures for commercial feedlots and/or commercial livestock areas have been added, including: application of dust suppressants or gravel, or installation of shrubs and/or trees within 50 to 100 feet of animal pens.

• The revised rule specifies that unpaved roads with vehicular traffic of 250 or more must be stabilized by June 10, 2000 and unpaved roads with vehicular traffic of 150 or more must be stabilized by June 10, 2004.

• The revised rule specifies that requirements to prevent vehicle trespassing (section 301) apply to vacant lots and open areas that are 0.10 acre or larger and have a cumulative of 500 square feet or more that are driven over and/or used by motor vehicles and/or off-road vehicles.

• The revised rule specifies that requirements to stabilize disturbed vacant lots and open areas (section 302) apply to lots/areas with 0.5 acre or more of disturbed surface.

We believe that Rule 310.01 is a considerable improvement over the SIP-approved version and, combined with MCESD's commitments to continue to improve the Rule and enforcement and compliance with it and the commitments by the County and local jurisdictions to address unpaved roads, unpaved parking lots, and vacant lots, provides for implementation of RACM and BACM and the inclusion of the MSM on the sources subject to it. We, therefore, propose to approve Rule 310.01 as adopted on February 16, 2000 and submitted on March 2, 2000, into the Arizona SIP.

We have described in more detail the strengthenings and other revisions to Rule 310.01 in section 6 of our TSD.

C. Residential Woodburning Restriction Ordinance

Combined with MCESD Rule 318 "Approval of Residential Woodburning Devices" (adopted April 21, 1999; approved November 8, 1999 (64 FR 60678)), Maricopa County's Residential Woodburning Restriction Ordinance implements a mandatory woodburning curtailment program. The curtailment program restricts the types of woodburning devices that can be used during periods of high PM–10 concentrations. The ordinance allows the Control Officer to declare restricted-burn periods when the particulate matter pollution levels could exceed the "particulate matter no-burn standard."

The SIP-approved ordinance provides that restricted-burn periods are declared by the Control Officer when the Control Officer determines that air pollution levels could exceed the 24-hour PM standard at 150 $\mu g/m^3$. The revised ordinance allows the Control Officer to declare restricted-burn periods when the particulate matter pollution levels could exceed the "particulate matter no-burn standard" of 120 $\mu g/m^3$. The lower of the particulate matter no burn standard to 120 $\mu g/m^3$ is the only change made to the ordinance as it is currently approved in the SIP.

Because approving this revision will strengthen the SIP and when combined with the MAG plan's other provision for residential woodburning will provide for the implementation of BACM and the inclusion of the MSM, we are proposing to approve it into the SIP. See section F.3.j, "Residential Wood Combustion."

D. CAA Section 110(l) Finding

CAA section 110(l) prohibits us from approving a revision to the applicable implementation plan if that revision would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the Act. We interpret section 110(l) to mean that we cannot approve a plan revision if that revision would mean that the plan would no longer provide for attainment or RFP as these are required by the CAA for that plan or if the revision would mean that the plan would no longer meet another requirement of the Act that applies to the plan. For a further discussion of this interpretation, see 61 FR 51599, 51608 (October 3, 1996).

We are proposing to revise the Arizona SIP to incorporate the revised Rule 310, Rule 310.01 and the Maricopa County Residential Woodburning Ordinance in replacement of the previous version of Rule 310 approved in August, 1997 and of the ordinance approved in November, 1999. In addition to the effect on attainment and RFP, the "other applicable requirement of the Act" that we must be concerned with for this proposal is the Act's requirements for implementation of RACM and BACM and the inclusion of the MSM.

We are proposing to approve the expeditious attainment and RFP demonstrations in the MAG plan. These demonstrations are in part dependent on approval of the revised Rule 310, Rule 310.01, and the woodburning ordinance.

We are also proposing to find that the MAG plan provides for the implementation of RACM and BACM and the inclusion of the MSM for construction sites, unpaved roads, unpaved parking lots, and disturbed vacant lands. Again, these findings are in large part dependent on approval of the revised Rule 310 and Rule 310.01. We, therefore, propose to find that approval of the revised Rule 310 and Rule 310.01 will not interfere with plan's compliance with the Clean Air Act's requirements for attainment, RFP, implementation of RACM and BACM, and inclusion of the MSM as they apply to construction sites, unpaved roads, unpaved parking lots, and disturbed vacant lands.

Finally, we are proposing to find that the MAG plan provides for the implementation of BACM and for the inclusion of MSM for residential woodburning. These proposed findings are made in part based on the revised ordinance. Therefore, we propose to find that our approving the ordinance will not interfere with the plan's compliance with the Act's requirements for the implementation of BACM and the inclusion of MSM as they apply to residential woodburning.

We have previously found that the Arizona SIP provided for the implementation of RACM for residential woodburning. 64 FR 60678 (November 8, 1999). The State has now strengthened its residential woodburning program, in part with the revised ordinance; therefore, we propose that approval of the revised ordinance will not interfere with the Arizona SIP's compliance with the requirement for the implementation of RACM as it applies to residential woodburning.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This proposed action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

For the same reason, this proposed rule also does not significantly or uniquely affect the communities of tribal governments, as specified by

Executive Order 13084 (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, our role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), we have no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for us, when reviewing a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

We have complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 3, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 00–8833 Filed 4–12–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ092–002; FRL–6575–2]

Interim Final Determination that State has Corrected the Plan Deficiency and Stay of Sanctions; Phoenix PM–10 Nonattainment Area, Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: Elsewhere in today's **Federal Register**, EPA is proposing to approve under the Clean Air Act (CAA) provisions of the *Revised MAG 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County (Phoenix, Arizona) Nonattainment Area* (MAG plan), February 2000, and control measures on which it relies, that address the annual particulate matter (PM–10) national ambient air quality standard. Based on this proposed approval, we are making an interim final determination that the State of Arizona has corrected the deficiencies in the PM–10 state implementation plan for the Phoenix area for which a sanctions clock began on September 2, 1998. This action will stay the imposition of the offset sanction and defer the imposition of the highway sanction. Although this action is effective upon publication, we will take comment and will publish a final rule taking into consideration any comments received on this interim final determination.

DATES: This interim final determination is effective April 13, 2000.

Comments must be received by June 12, 2000.

ADDRESSES: Written comments must be submitted to Frances Wicher at the Region 9 office listed below.

A copy of docket No. AZ–MA–00–001, containing material relevant to this action and our proposed approval of the MAG plan, is available for public inspection at EPA's Region 9 office during normal business hours.

A copy of the docket is also available for inspection at:

Arizona Department of Environmental Quality, Library, 3033 N. Central Avenue, Phoenix, Arizona 85012, (602) 207–2217.

Maricopa Association of Governments, 302 North 1st Street, Phoenix, Arizona 85003, (602) 254–6300.

Electronic Availability

This document, our proposed approval of the MAG plan and the Technical Support Document (TSD) for the approval, are also available as an electronic file on EPA's Region 9 Web Page at http://www.epa.gov/region09/air.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Office of Air Planning, AIR–2, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1248, Email: wicher.frances@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 3, 1998, we disapproved the provisions for implementing reasonably available control measure (RACM) for the annual standard in the 1991 MAG Moderate Area PM–10 Plan because the plan failed to implement RACM for a number of significant sources of PM–10. We also disapproved the attainment demonstration because the failure to implement RACM meant the plan no longer conclusively demonstrated that attainment of the PM–10 standard by the end of 1994, the moderate area attainment date, was impracticable. 63 FR 41326.

Our 1998 disapprovals started sanction clocks under CAA section 179(a). Under section 179(a), once we disapprove a state plan provision because it fails to meet a CAA requirement, a State has 18 months to correct the deficiency that resulted in the disapproval before the first of two sanctions goes into place.[1] If the state still has not corrected the deficiency with 24 months, the second sanction goes into place. The offset sanction was imposed in the Phoenix nonattainment area on March 2, 2000. It will be followed by the imposition of a second sanction, highway funding and approval limitations, on September 2, 2000 if we do not defer or stop the sanction clock.

On February 16, 2000, Arizona submitted the revised MAG serious area PM–10 plan, *Revised MAG 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County (Phoenix, Arizona) Nonattainment Area*, February 2000. In the Proposed Rule section of today's **Federal Register**, we are proposing to approve the plan's provisions for the implementation of RACM and the attainment demonstration as they pertain to the annual standard.[2]

Based on our proposed approval of the annual standard provisions in the MAG plan elsewhere in today's **Federal Register**, we believe that it is more likely than not that Arizona has corrected the original deficiencies that prompted our disapprovals. Therefore, we are taking this interim final rulemaking action finding that the State has corrected the deficiencies. However, we are also providing the public with a opportunity to comment on this interim final action. If, based on the comments on this action and the comments on our proposed approval of the State's submittal, we determine that the State's submittal does not comply with the CAA's requirements for RACM and attainment and this interim final action was inappropriate, we will propose to disapprove the State's submittal and will take interim final action finding that the State has not corrected the original disapproval deficiency. Upon a final disapproval of the State's submittal, we would finalize the interim final finding, finding that the State has not corrected the deficiency.

This action does not stop the sanctions clock that started for this area on September 2, 1998, the effective date of our disapproval. However, this action will stay the imposition of the offset sanction and will defer the imposition of the highway sanction. See 40 CFR 51.31(d)(2)(i). If we take final action approving the MAG plan's implementation of RACM and attainment demonstration provisions for the annual standard, such action will stop the sanctions clock and will lift any imposed, stayed or deferred sanctions. However, if at any time we determine that the State, in fact, did not correct the deficiencies, as appropriate, we either will withdraw this interim final determination or take final action finding that the State has not corrected the deficiencies. Such action will retrigger the sanctions consequences as described in the sanctions rule. 40 CFR 52.31.

II. EPA Action

We are taking interim final action finding that the State has corrected the deficiencies that started the sanctions clock. Based on this action, imposition of the offset sanction will be stayed and

[1] The two CAA sanctions are a limitation on certain highway approvals and funding and an increase in the offset ratio to 2 to 1 for any major new stationary source or major modification. See CAA section 179(b). Our sanction regulations provide that the first sanction to be imposed is the offset ratio unless we have established at the time of the disapproval that the highway sanction will be first. 40 CFR 52.31(d).

[2] As a serious PM–10 nonattainment area, the plan must now provide for both the implementation of RACM and best available control measures (BACM) under CAA section 189(a)(1)(C) and (b)(1)(B). While we also proposed to approve the BACM provisions of the MAG serious area plan, that determination is not relevant to the sanction issue addressed here.

imposition of the highway sanction will be deferred until we take final action fully approving the MAG plan's implementation of RACM and attainment demonstration provisions for the annual standard or finally disapproving these provisions.

Because we have preliminarily determined that Arizona has an approvable plan, relief from sanctions should be provided as quickly as possible. Therefore, we are invoking the good cause exception to the 30-day notice requirement of the Administrative Procedure Act because the purpose of this notice is to relieve a restriction. *See* 5 U.S.C. 553(d)(1).

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely stays and defers federal sanctions. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule only stays an imposed sanction and defers the imposition of another, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely stays a sanction and defers another one, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not contain technical standards, thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of April 13, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 3, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 00–8832 Filed 4–12–00; 8:45 am]

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Federal Register

Thursday,
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Part III

Department of Justice

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the District of Columbia Code; Interim Rule and Proposed Rule

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DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the District of Columbia Code

AGENCY: United States Parole Commission, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The U.S. Parole Commission is amending the Interim Rules that went into effect on August 5, 1998 for parole-eligible D.C. Code prisoners under the National Capital Revitalization and Self-Government Improvement Act of 1997. The interim rules, which are republished in their entirety in this publication, include a number of amendments intended both to improve clarity and to provide more explicit policies with regard to the setting of release dates and departures from the guidelines.

DATES: *Effective Date:* May 15, 2000.

Comment Date: Comments must be received by June 30, 2000.

ADDRESSES: Send comments to office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: Under Section 11231 of the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33, the U.S. Parole Commission assumed the paroling jurisdiction of the Board of Parole of the District of Columbia on August 5, 1998. Interim rules, with a request for public comment, were published at 63 FR 39172 (July 21, 1998), and have been amended twice since that date at 63 FR 57060 (Oct. 26, 1998) and at 64 FR 5611 (Feb. 4, 1999).

In the light of the Commission's experience under these interim rules, the rules are now being republished to include a variety of amendments ranging from minor drafting improvements to some more significant issues of policy and procedure.

The more significant issues include: (a) A provision requiring the concurrence of two Commissioner votes on all final decisions, with three Commissioner votes required if an examiner panel decision is rejected; (b) a provision allowing the Commission to establish a presumptive parole date for any prisoner whose total point score under the guidelines at § 2.80 will permit a grant of parole at the next rehearing (assuming continued positive programming); (c) a provision requiring that departures from the guidelines be consistent with the result indicated by the guidelines for other prisoners with equivalent risk levels; (d) a provision requiring that the factors justifying an upward departure be fully accounted for in the initial continuance whenever possible; and (e) a provision allowing the Commission, upon rescinding a parole grant based upon the prisoner's misconduct, to sanction the misconduct by reference to the guidelines at § 2.36 if the misconduct is not sufficiently serious to warrant increasing the prisoner's total point score by one full point under § 2.80.

The new presumptive date provision described above is intended to increase the ability of prisoners and prison officials to accomplish the goals of the release planning process well in advance of the actual release of the prisoner. Timely release planning is currently a serious issue for prison administrators. The setting of a presumptive release date will not deprive the prisoner of the rehearing that would normally be conducted, except in instances where the Commission decides to reopen the case and grant the prisoner an earlier date of parole on the record. Setting a presumptive parole date up to nine months from the scheduled rehearing date will be consistent with the outcome otherwise expected by the prisoner, *i.e.*, a rehearing followed by the granting of a parole effective date 6 to 9 months from the date the rehearing was held. For cases in which parole is denied through an upward departure, the decisionmaking policies described above should be regarded as essential principles governing the application of any modern parole guideline system.

Finally, the Commission decided not to amend its rules to change the existing requirement that a parole effective date, once granted, shall not be retarded more than 120 days for release planning purposes without a hearing. The Commission has experienced frequent requests from prison officials for the retarding of parole dates based upon significant delays in moving parole grantees to pre-release halfway houses. The Commission is working with prison officials in both District of Columbia and federal facilities to expedite the halfway house placement and release planning process, and will retain the 120-day limit. If release planning delays have continued beyond the 120-day limit, the Commission will either grant parole or place the inmate on the next docket for a special reconsideration hearing. A special reconsideration hearing will be scheduled whenever it appears that the risk level presented by the inmate is such that halfway house placement (or other missing component of the release planning process) will be essential for the parole of the prisoner to meet the basic statutory criteria at D.C. Code 24–204. For prisoners who are already in halfway houses at the 120 day point, the Commission will order an appropriate retardation of the release date on the assumption that such prisoners will not wish to be returned to a prison facility for a special reconsideration rehearing.

Implementation

The regulations set forth below will be applied to all prisoners serving parole-eligible felony sentences under the District of Columbia Code, except that the guidelines in § 2.80 will be applied only to prisoners for whom the initial parole hearing is conducted on or after August 5, 1998. Any provision in these regulations that refers to the jurisdiction of the Parole Commission over District of Columbia Code parolees is intended to refer to the exercise of the authority that will be transferred to the U.S. Parole Commission on August 5, 2000.

Regulatory Assessment Requirements

The U.S. Parole Commission has determined that these amended interim rules do not constitute a significant rule within the meaning of Executive Order 12866. The amended interim rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and is deemed by the Commission to be a rule of agency practice that does not substantially affect the rights or obligations of non-agency parties pursuant to Section 804(3)(C) of the Congressional Review Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Amended Rules

Accordingly, the U.S. Parole Commission is adopting the following amendment to 28 CFR Part 2.

PART 2—[AMENDED]

1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Subpart C is revised to read as follows:

Subpart C—District of Columbia Code Prisoners and Parolees

Sec.

2.70 Authority and functions of the U.S. Parole Commission with respect to District of Columbia Code offenders.
2.71 Application for parole.
2.72 Hearing procedure.
2.73 Parole suitability criteria.
2.74 Decision of the Commission.
2.75 Reconsideration proceedings.
2.76 Reduction in minimum sentence.
2.77 Medical parole.
2.78 Geriatric parole.
2.79 Good time forfeiture.
2.80 Guidelines for D.C. Code offenders.
2.81 Reparole decisions.
2.82 Effective date of parole.
2.83 Release planning.
2.84 Release to other jurisdictions.
2.85 Conditions of release.
2.86 Release on parole; rescission for misconduct.
2.87 Mandatory release.
2.88 Confidentiality of parole records.
2.89 Miscellaneous provisions.
2.90 Prior orders of the Board of Parole.

Subpart C—District of Columbia Code: Prisoners and Parolees

§ 2.70 Authority and functions of the U.S. Parole Commission with respect to District of Columbia Code offenders.

(a) The U.S. Parole Commission shall exercise authority over District of Columbia Code offenders pursuant to Section 11231 of the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33, 111 Stat. 712, and D.C. Code 24–209. The rules in this Subpart shall govern the operation of the U.S. Parole Commission with respect to D.C. Code offenders and are the pertinent parole rules of the District of Columbia as amended and supplemented pursuant to section 11231(a)(1) of the Act.

(b) The Commission shall have sole authority to grant parole, and to establish the conditions of release, for all District of Columbia Code prisoners who are serving sentences for felony offenses, and who are eligible for parole by statute, including offenders who have been returned to prison upon the revocation of parole or mandatory release. (D.C. Code 24–208). The above authority shall include youth offenders who are committed to prison for treatment and rehabilitation based on felony convictions under the D.C. Code. (D.C. Code 24–804(a).)

(c) The Commission shall have authority to recommend to the Superior Court of the District of Columbia a reduction in the minimum sentence of a District of Columbia Code prisoner, if the Commission deems such recommendation to be appropriate. (D.C. Code 24–201(c).)

(d) The Commission shall have authority to grant parole to a prisoner who is found to be geriatric, permanently incapacitated, or terminally ill, notwithstanding the minimum term imposed by the sentencing court. (D.C. Code 24–263 through 267.)

(e) The Commission shall have authority over all District of Columbia Code felony offenders who have been released to parole or mandatory release supervision, including the authority to return such offenders to prison upon an order of revocation. (D.C. Code 24–206.)

§ 2.71 Application for parole.

(a) A prisoner (including a committed youth offender) desiring to apply for parole shall execute an application form as prescribed by the Commission. Such forms shall be available at each institution and shall be provided to a prisoner who is eligible for parole consideration. The Commission may then conduct an initial hearing or grant an effective date of parole on the record. A prisoner who receives an initial hearing need not apply for subsequent hearings.

(b) To the extent practicable, the initial hearing for an eligible adult prisoner who has applied for parole shall be held at least 180 days prior to such prisoner's date of eligibility for parole. The initial hearing for a committed youth offender shall be scheduled during the first 120 days after admission to the institution that is responsible for developing his rehabilitative program.

(c) A prisoner may knowingly and intelligently waive any parole consideration on a form provided for that purpose. A prisoner who declines either to apply for or waive parole consideration shall be deemed to have waived parole consideration.

(d) A prisoner who waives parole consideration may later apply for parole and be heard during the next visit of the Commission to the institution at which the prisoner is confined, provided that the prisoner has applied for parole at least 60 days prior to the first day of the month in which such visit of the Commission occurs. In no event, however, shall such prisoner be heard at an earlier date than that set forth in paragraph (b) of this section.

§ 2.72 Hearing procedure.

(a) Each eligible prisoner for whom an initial hearing has been ordered shall appear in person before an examiner of the Commission. The examiner shall review with the prisoner the guidelines at § 2.80, and shall discuss with the prisoner such information as the examiner deems relevant, including the prisoner's offense behavior, criminal history, institutional record, health status, release plans, and community support. If the examiner determines that the available file material is not adequate for this purpose the examiner may order the hearing to be postponed to the next docket so that the missing information can be requested.

(b) Parole hearings may be held in District of Columbia facilities (including District of Columbia contract facilities) and federal facilities (including federal contract facilities).

(c) A prisoner appearing for a parole hearing in a federal facility may have a representative pursuant to § 2.13(b). A prisoner appearing for a parole hearing in a facility other than a federal facility shall not be accompanied by counsel or any other person (except a staff member of the facility) except in such facilities as the Commission may designate as suitable for the appearance of representatives.

(d) Prehearing disclosure of file material will be available to prisoners and their representatives only in the case of prisoners confined in federal facilities, and pursuant to § 2.55.

(e) A victim of a crime, or a representative of the immediate family of a victim if the victim has died, shall have the right:

(1) To be present at the parole hearings of each offender who committed the crime, and

(2) To testify and/or offer a written or recorded statement as to whether or not parole should be granted, including information and reasons in support of such statement. A written statement may be submitted at the hearing or provided separately. The prisoner may be excluded from the hearing room during the appearance of a victim or representative who gives testimony. In lieu of appearing at a parole hearing, a victim or representative may request permission to appear before an examiner (or other staff member), who shall record and summarize the victim's or representative's testimony. Whenever new and significant information is provided under this rule, the hearing examiner will summarize the information at the parole hearing and will give the prisoner an opportunity to respond. Such summary shall be consistent with a reasonable request for

confidentiality by the victim or representative.

(f) Attorneys, family members, relatives, friends of the prisoner, or other interested persons desiring to submit information pertinent to any prisoner may do so at any time, but such information must be received by the Commission at least 30 days prior to a scheduled hearing in order to be considered at that hearing. Such persons may also request permission to appear at the offices of the Commission to speak to a Commission staff member, provided such request is received at least 30 days prior to the scheduled hearing. The purpose of this office visit will be to supplement the Commission's record with pertinent factual information concerning the prisoner, which shall be placed in the record for consideration at the hearing. An office visit at a time other than set forth in this paragraph may be authorized only if the Commission finds good cause based upon a written request setting forth the nature of the information to be discussed. See § 2.22.

(g) A full and complete recording of every parole hearing shall be retained by the Commission. Upon a request pursuant to § 2.56, the Commission shall make available to any eligible prisoner such record as the Commission has retained of the hearing.

(h) Because parole decisions must be reached through a record-based hearing and voting process, no contacts shall be permitted between any person attempting to influence the Commission's decision-making process, and the examiners and Commissioners of the Commission, except as provided in this subpart.

§ 2.73 Parole suitability criteria.

(a) In accordance with D.C. Code 24–204(a), the Commission shall be authorized to release a prisoner on parole in its discretion after the prisoner has served the minimum term of the sentence imposed, if the following criteria are met:

(1) The prisoner has substantially observed the rules of the institution;

(2) There is a reasonable probability that the prisoner will live and remain at liberty without violating the law; and

(3) In the opinion of the Commission, the prisoner's release is not incompatible with the welfare of society.

(b) It is the policy of the Commission with respect to District of Columbia Code offenders that the minimum term imposed by the sentencing court presumptively satisfies the need for punishment in respect to the crime of which the prisoner has been convicted, and that the responsibility of the Commission is to account for the degree and the seriousness of the risk that the release of the prisoner would entail. This responsibility is carried out by reference to the Salient Factor Score and the Point Assignment Table at § 2.80. However, there may be exceptional cases in which the gravity of the offense is sufficient to warrant an upward departure from § 2.80 and denial of parole.

§ 2.74 Decision of the Commission.

(a) Following each initial or subsequent hearing, the Commission shall render a decision granting or denying parole, and shall provide the prisoner with a notice of action that includes an explanation of the reasons for the decision. The decision shall ordinarily be issued within 21 days of the hearing, excluding weekends and holidays.

(b) Whenever a decision is rendered within the applicable guideline established in this subpart, it will be deemed a sufficient explanation of the Commission's decision for the notice of action to set forth how the guideline was calculated. If the decision is a departure from the guidelines, the notice of action shall include the reasons for such departure.

(c) Relevant issues of fact shall be resolved by the Commission in accordance with § 2.19(c). All final parole decisions (granting, denying, or revoking parole) shall be based on the concurrence of two Commissioner votes, except that three Commissioner votes shall be required if the decision differs from the decision recommended by the examiner panel by more than six months. All other decisions may be based on a single Commissioner vote, except as expressly provided in these rules.

§ 2.75 Reconsideration proceedings.

(a) If the Commission denies parole, it shall establish an appropriate reconsideration date in accordance with the provisions of § 2.80. The prisoner shall be given a rehearing during the month specified by the Commission, or on the docket of hearings immediately preceding that month if no docket of hearings is scheduled for the month specified. If the prisoner's mandatory release date will occur before the reconsideration date deemed appropriate by the Commission pursuant to § 2.80, the Commission may order that the prisoner be released by the expiration of his sentence less good time ("continue to expiration").

(b) The first reconsideration date shall be calculated from the prisoner's eligibility date, except that in the case of a youth offender or any prisoner who has waived the initial hearing, the first reconsideration date shall be calculated from the date the initial hearing is held. In all cases, any subsequent reconsideration date shall be calculated from the date of the last hearing. In the case of a waiver or substantial delay in holding the initial hearing, the Commission may conduct *nunc pro tunc* a combined initial hearing and such rehearings as would otherwise have been held during the delay.

(c) Notwithstanding the provisions of paragraph (a), the Commission shall not set a reconsideration date in excess of five years from the date of the prisoner's last hearing, nor shall the Commission continue a prisoner to the expiration of his or her sentence if more than five years remains from the date of the last hearing until the prisoner's scheduled mandatory release. The scheduling of a reconsideration date does not imply that parole will be granted at such hearing.

(d) Prior to the parole reconsideration date, the Commission shall review the prisoner's record, including an institutional progress report which shall be submitted 60 days prior to the hearing. Based on its review of the record, the Commission may grant an effective date of parole without conducting the scheduled in-person hearing.

(e) Notwithstanding a previously established reconsideration date, the Commission may also reopen any case for a special reconsideration hearing, as provided in § 2.28, upon the receipt of new and significant information concerning the prisoner.

§ 2.76 Reduction in minimum sentence.

(a) A prisoner who has served three (3) or more years of the minimum term of his or her sentence may request the Commission to file an application with the sentencing court for a reduction in the minimum term pursuant to D.C. Code 24–201c. The prisoner's request to the Commission shall be in writing and shall state the reasons that the prisoner believes such request should be granted. The Commission shall require the submission of a progress report before approving such a request.

(b) Approval of a prisoner's request under this section shall require the concurrence of a majority of the Commissioners holding office.

(c) Pursuant to D.C. Code 24–201c, the Commission may file an application to the sentencing court for a reduction of a prisoner's minimum term if the Commission finds that:

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(1) The prisoner has completed three years of the minimum term imposed by the court;

(2) The prisoner has shown, by report of the responsible prison authorities, an outstanding response to the rehabilitative program(s) of the institution;

(3) The prisoner has fully observed the rules of each institution in which the prisoner has been confined;

(4) The prisoner appears to be an acceptable risk for parole based on both the prisoner's pre-and post-incarceration record; and

(5) Service of the minimum term imposed by the court does not appear necessary to achieve appropriate punishment and deterrence.

(d) If the Commission approves a prisoner's request under this section, an application for a reduction in the prisoner's minimum term shall be forwarded to the U.S. Attorney for the District of Columbia for filing with the sentencing court. If the U.S. Attorney objects to the Commission's recommendation, the U.S. Attorney shall provide the government's objections in writing for consideration by the Commission. If, after consideration of the material submitted, the Commission declines to reconsider its previous decision, the U.S. Attorney shall file the application with the sentencing court.

(e) If a prisoner's request under this section is denied by the Commission, there shall be a waiting period of two (2) years before the Commission will again consider the prisoner's request, absent exceptional circumstances.

§ 2.77 Medical parole.

(a) Upon receipt of a report from the institution in which the prisoner is confined that the prisoner is terminally ill, or is permanently and irreversibly incapacitated by a physical or medical condition that is not terminal, the Commission shall determine whether or not to release the prisoner on medical parole. Release on medical parole may be ordered by the Commission at any time, whether or not the prisoner has completed his or her minimum sentence. Consideration for medical parole shall be in addition to any other parole for which a prisoner may be eligible.

(b) A prisoner may be granted a medical parole on the basis of terminal illness if:

(1) The institution's medical staff has provided the Commission with a reasonable medical judgment that the prisoner is within six months of death due to an incurable illness or disease; and

(2) The Commission finds that:

(i) The prisoner will not be a danger to himself or others; and

(ii) Release on parole will not be incompatible with the welfare of society.

(c) A prisoner may be granted a medical parole on the basis of permanent and irreversible incapacitation only if the Commission finds that:

(1) The prisoner will not be a danger to himself or others because his condition renders him incapable of continued criminal activity; and

(2) Release on parole will not be incompatible with the welfare of society.

(d) The seriousness of the prisoner's crime shall be considered in determining whether or not a medical parole should be granted prior to completion of the prisoner's minimum sentence.

(e) A prisoner, or the prisoner's representative, may apply for a medical parole by submitting an application to the institution case management staff, who shall forward the application accompanied by a medical report and any recommendations within 15 days. The Commission shall render a decision within 15 days of receiving the application and report.

(f) A prisoner, the prisoner's representative, or the institution may request the Commission to reconsider its decision on the basis of changed circumstances.

(g) Notwithstanding any other provision of this section—

(1) A prisoner who has been convicted of first degree murder or who has been sentenced for a crime committed while armed under D.C. Code 22–2903, 22–3202, or 22–3204(b), shall not be eligible for medical parole (D.C. Code 24–267); and

(2) A prisoner shall not be eligible for medical parole on the basis of a physical or medical condition that existed at the time the prisoner was sentenced (D.C. Code 24–262).

§ 2.78 Geriatric parole.

(a) Upon receipt of a report from the institution in which the prisoner is confined that a prisoner who is at least 65 years of age has a chronic infirmity, illness, or disease related to aging, the Commission shall determine whether or not to release the prisoner on geriatric parole. Release on geriatric parole may be ordered by the Commission at any time, whether or not the prisoner has completed his or her minimum sentence. Consideration for geriatric parole shall be in addition to any other parole for which a prisoner may be eligible.

(b) A prisoner may be granted a geriatric parole if the Commission finds that:

(1) There is a low risk that the prisoner will commit new crimes; and

(2) The prisoner's release would not be incompatible with the welfare of society.

(c) The seriousness of the prisoner's crime, and the age at which it was committed, shall be considered in determining whether or not a geriatric parole should be granted prior to completion of the prisoner's minimum sentence.

(d) A prisoner, or a prisoner's representative, may apply for a geriatric parole by submitting an application to the institution case management staff, who shall forward the application accompanied by a medical report and any recommendations within 30 days. The Commission shall render a decision within 30 days of receiving the application and report.

(e) In determining whether or not to grant a geriatric parole, the Commission shall consider the following factors (D.C. Code 24–265(c)(1)–(7)):

(1) Age of the prisoner;

(2) Severity of illness, disease, or infirmities;

(3) Comprehensive health evaluation;

(4) Institutional behavior;

(5) Level of risk for violence;

(6) Criminal history; and

(7) Alternatives to maintaining geriatric long-term prisoners in traditional prison settings.

(f) A prisoner, the prisoner's representative, or the institution, may request the Commission to reconsider its decision on the basis of changed circumstances.

(g) Notwithstanding any other provision of this section—

(1) A prisoner who has been convicted of first degree murder or who has been sentenced for a crime committed while armed under D.C. Code 22–2903, 22–3202, or 22–3204(b), shall not be eligible for geriatric parole (D.C. Code 24–267); and

(2) A prisoner shall not be eligible for geriatric parole on the basis of a physical or medical condition that existed at the time the prisoner was sentenced (D.C. Code 24–262).

§ 2.79 Good time forfeiture.

Although a forfeiture of good time will not bar a prisoner from receiving a parole hearing, D.C. Code 24–204 permits the Commission to parole only those prisoners who have substantially observed the rules of the institution. Consequently, the Commission will

consider a grant of parole for a prisoner with forfeited good time only after a thorough review of the circumstances underlying the disciplinary infraction(s). The Commission must be satisfied that the prisoner has served a period of imprisonment sufficient to outweigh the seriousness of the prisoner's misconduct.

§ 2.80 Guidelines for D.C. Code offenders.

(a) *Introduction.* In determining whether an eligible prisoner should be paroled, the Commission shall apply the guidelines set forth in this section. The guidelines assign numerical values to the pre- and post-incarceration factors described in the Point Assignment Table set forth in paragraph (f) of this section. Decisions outside the guidelines may be made, where warranted, pursuant to paragraph (m) of this section.

(b) *Salient factor score and criminal record.* The prisoner's Salient Factor Score shall be determined by reference to the Salient Factor Scoring Manual in § 2.20. The Salient Factor Score is used to assist the Commission in assessing the probability that an offender will live and remain at liberty without violating the law. The prisoner's record of criminal conduct (including the nature and circumstances of the current offense) shall be used to assist the Commission in determining the probable seriousness of the recidivism that is predicted by the Salient Factor Score.

(c) *Disciplinary infractions.* The Commission shall assess whether the prisoner has been found guilty of committing disciplinary infractions while under confinement for the current offense. The Commission shall refer to the offense classification tables of the D.C. Department of Corrections or the Bureau of Prisons, as applicable, in determining whether the prisoner's disciplinary record should be counted on the point score. A single Class I or Code 100 offense, or two or more Class II or Code 200 offenses, shall be counted as negative institutional behavior at an initial hearing or any rehearing. A persistent record of lesser offenses may also be counted as negative institutional behavior at an initial hearing or a rehearing. At initial hearings, an infraction free period of at least three years preceding the date of the hearing may be considered by the Commission as sufficient to exclude from consideration a previous record of Class I (or Code 100) or Class II (or Code 200) offenses, provided that such offenses would result in not more than one point added to the prisoner's score.

(d) *Program achievement.* The Commission shall assess whether the prisoner has demonstrated ordinary or superior achievement in the area of prison programs, industries, or work assignments while under confinement for the current offense. Where prison programs and work assignments are limited or unavailable, the Commission may exercise discretion based on the prisoner's record of behavior. Points may be deducted for program achievement regardless of whether points have been added for negative institutional behavior during the same period.

(e) *Implementation.* These guidelines shall be applied to all prisoners who are given initial parole hearings on or after August 5, 1998. For prisoners whose initial hearings were held prior to August 5, 1998, the Commission shall render its decisions by reference to the guidelines applied by the D.C. Board of Parole. However, when a decision outside such guidelines has been made by the Board, or is ordered by the Commission, the Commission may determine the appropriateness and extent of the departure by comparison with the guidelines in this section. The Commission may also correct any error in the calculation of the D.C. Board's guidelines.

(f) *Point Assignment Table.* Add the applicable points from Categories I–III to determine the base point score. Then add or subtract the points from Categories IV and V to determine the total point score.

POINT ASSIGNMENT TABLE

	Salient Factor Score
Category I: Risk of Recidivism	
10–8 (Very Good Risk):	+0
7–6 (Good Risk)	+1
5–4 (Fair Risk)	+2
3–0 (Poor Risk)	+3
Category II: Current or Prior Violence (Type of Risk)	
Note: Use the highest applicable subcategory. If no subcategory is applicable, score = 0.	
A. Violence in current offense, and any felony violence in two or more prior offenses	+4
B. Violence in current offense, and any felony violence in one prior offense	+3
C. Violence in current offense	+2
D. No violence in current offense and any felony violence in two or more prior offenses	+2
E. Possession of firearm in current offense if current offense is not scored as a crime of violence	+2
F. No violence in current offense and any felony violence in one prior offense	+1
Category III: Death of Victim or High Level Violence	
Note: Use highest applicable subcategory. If no subcategory is applicable, score = 0. A current offense that involved high level violence must be scored under both Category II (A, B, or C) and under Category III.	
A. Current offense was high level or other violence with death of victim resulting	+3
B. Current offense involved attempted murder, conspiracy to murder, solicitation to murder, or any willful violence in which the victim survived despite death having been the most probable result at the time the offense was committed	+2
C. Current offense involved high level violence (other than the behaviors described above)	+1
Base Point Score (Total of Categories I–III)	
Category IV: Negative Institutional Behavior	
Note: Use the highest applicable subcategory. If no subcategory is applicable, score = 0.	
A. Aggravated negative institutional behavior involving:	
(1) Assault upon a correctional staff member, with bodily harm inflicted or threatened,	
(2) Possession of a deadly weapon,	
(3) Setting a fire so as to risk human life,	

POINT ASSIGNMENT TABLE—Continued

	Salient Factor Score
(4) Introduction of drugs for purposes of distribution, or (5) Participating in a violent demonstration or riot	+2
B. Ordinary negative institutional behavior	+1
Category V: Program Achievement	
Note: Use the highest applicable subcategory. If no subcategory is applicable, score = 0.	
A. No program achievement	0
B. Ordinary program achievement	−1
C. Superior program achievement	−2
Total Point Score (Total of Categories I–V)	

(g) *Definitions and instructions for application of point assignment table.*

(1) *Salient factor score* means the salient factor score set forth at § 2.20.

(2) *High level violence* in Category III means any of the following offenses—

(i) Murder;

(ii) Voluntary manslaughter;

(iii) Arson of a building in which a person other than the offender was present or likely to be present at the time of the offense;

(iv) Forcible rape or forcible sodomy (first degree sexual abuse);

(v) Kidnapping, hostage taking, or any armed abduction of a victim during a carjacking or other offense;

(vi) Burglary of a residence while armed with any weapon if a victim was in the residence during the offense;

(vii) Obstruction of justice through violence or threats of violence;

(viii) Any offense involving sexual abuse of a person less than sixteen years of age;

(ix) Mayhem, malicious disfigurement, or any offense defined as other violence in paragraph (g)(4) of this section that results in *serious bodily injury* as defined in paragraph (g)(3) of this section;

(x) Any offense defined as *other violence* in paragraph (g)(4) of this section which the offender intentionally discharged a firearm;

(3) *Serious bodily injury* means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(4) *Other violence* means any of the following felony offenses that does not qualify as *high level violence*—

(i) Robbery;

(ii) Residential burglary;

(iii) Felony assault;

(iv) Felony offenses involving a threat, or risk, of bodily harm;

(v) Felony offenses involving sexual abuse or sexual contact.

(5) Attempts, conspiracies, and solicitations shall be scored by reference to the substantive offense that was the object of the attempt, conspiracy, or solicitation; except that Category IIIA shall apply only if death actually resulted.

(6) *Current offense* means any criminal behavior that is either:

(i) Reflected in the offense of conviction, or

(ii) Is not reflected in the offense of conviction but is found by the Commission to be related to the offense of conviction (i.e., part of the same course of conduct as the offense of conviction). In probation violation cases, the current offense includes both the original offense and the violation offense, except that the original offense shall be scored as a prior conviction (with a prior commitment) rather than as part of the current offense, if the prisoner served more than six months in prison for the original offense before commencement of probation.

(7) Category IIE applies whenever a firearm is possessed by the offender during, or used by the offender to commit, any offense that is not scored under Category II(A–D). Category IIE also applies when the current offense is felony unlawful possession of a firearm and there is no other current offense. Possession for purposes of Category IIE includes constructive possession.

(8) Category IIIA applies if the death of a victim is:

(i) Caused by the offender, or

(ii) Caused by an accomplice and the killing was planned or approved by the offender in furtherance of a joint criminal venture.

(9) In some cases, negative institutional behavior that involves violence will result in a higher score if scored as an additional current offense under Categories II and/or III, than if scored under Category IVA. In such cases, the prisoner's point score is recalculated to reflect the conduct as an additional current offense under Categories II and/or III, rather than as a disciplinary infraction under Category IVA. For example, the attempted murder of another inmate will result in a higher score when treated as an additional current offense under Categories II and III, if the offense of conviction was scored under Category IIC only as *violence in current offense*. If negative institutional behavior is treated as an additional current offense, points may nonetheless be assessed under Category IVA or B for other disciplinary infractions.

(10) *Superior program achievement* means program achievement that is beyond the level that the prisoner might ordinarily be expected to accomplish.

(h) *Guidelines for decisions at initial hearing—adult offenders.* In considering whether to parole an adult offender at an initial hearing, the Commission shall determine the offender's total point score and then consult the following guidelines for the appropriate action:

Total points	Guideline recommendation
(1) if points =0	Parole at initial hearing with low level of supervision indicated.
(2) if points =1	Parole at initial hearing with high level of supervision indicated.
(3) if points =2	Parole at initial hearing with highest level of supervision indicated.
(4) if points =3+	Deny parole at initial hearing and schedule rehearing in accordance with § 2.75(c) and the time ranges set forth in paragraph (j) of this section.

(i) *Guidelines for decisions at initial hearing—youth offenders.* In considering whether to parole a youth offender at an initial hearing, the Commission shall determine the youth offender's total point score and then consult the following guidelines for the appropriate action:

Total points	Guideline recommendation
(1) If points = 0	Parole at initial hearing with conditions established to address treatment needs;
(2) If points = 1+	Deny parole at initial hearing and schedule a rehearing based on estimated time to achieve program objectives or by reference to the time ranges in paragraph (j) of this section, whichever is less.

(j) *Guidelines for time to rehearing adult offenders.* (1) If parole is denied or rescinded, the time to the subsequent hearing for an adult offender shall be determined by the following guidelines:

Base point score (categories I through III)	Months to rehearing
0–4	12–18
5	18–24
6	18–24
7	18–24
8	18–24
9	22–28
10	26–32

(2) The time to a rehearing shall be determined by the prisoner's base point score, and not by the total point score at the current hearing, which indicates only whether parole should be granted or denied. Exception: In the case of institutional misconduct deemed insufficiently serious to warrant the addition of one or more points for negative institutional behavior, the Commission may nonetheless deny or rescind parole and render a decision based on the guideline ranges at § 2.36.

(3) At any initial hearing or rehearing, if the prisoner's total point score is 4 or less, the Commission may order both a rehearing date and a presumptive parole date that is not more than 9 months from the rehearing date. Such presumptive date may be converted to a parole effective date following the rehearing, or the case may be reopened based on new favorable information and a parole effective date granted on the record.

(k) *Guidelines for decisions at subsequent hearing—adult offenders.* In determining whether to parole an adult offender at a rehearing or rescission hearing, the Commission shall take the total point score from the initial hearing or last rehearing, as the case may be, and adjust that score according to the institutional record of the candidate since the last hearing. The following guidelines are applicable:

Total points	Guideline recommendation
If points = 0–3	Parole with highest level of supervision indicated.
If points = 4+	Deny parole at rehearing and schedule a further rehearing in accordance with § 2.75(c) and the time ranges set forth in paragraph (j) of this section.

(l) *Guidelines for decisions at subsequent hearing—youth offenders.* (1) In determining whether to parole a youth offender appearing at a rehearing or rescission hearing, the Commission shall take the total point score from the initial hearing or last rehearing, as the case may be, and adjust that score according to the institutional record of the candidate since the last hearing. The following guidelines are applicable:

Total points	Guideline recommendation
If points = 0–3	Parole with highest level of supervision indicated.
If points = 4+	Deny parole and schedule a rehearing based on estimated time to achieve program objectives or by reference to the time ranges in paragraph (j) of this section, whichever is less.

(2) Prison officials may in any case recommend an earlier rehearing date than ordered by the Commission if the Commission's program objectives have been met.

(m) *Decisions outside the guidelines—all offenders.* (1) The Commission may, in unusual circumstances, waive the Salient Factor Score and the pre- and post-incarceration factors set forth in this section to grant or deny parole to a parole candidate notwithstanding the guidelines, or to schedule a reconsideration hearing at a time different from that indicated in paragraph (j) of this section. Unusual circumstances are case-specific factors that are not fully taken into account in the guidelines, and that are relevant to the grant or denial of parole. In such cases, the Commission shall specify in the Notice of Action the specific factors that it relied on in departing from the applicable guideline or guideline range.

(2) If the prisoner is deemed to be a poorer or more serious risk than the guidelines indicate, the Commission shall determine what Base Point Score would more appropriately fit the prisoner's case, and shall render its initial and rehearing decisions as if the prisoner had that higher Base Point Score. If possible, the factors justifying

such a departure shall be fully accounted for in the initial continuance, so that the guidelines can be followed at subsequent hearings. In some cases, however, an extreme level of risk presented by the prisoner may make it inappropriate for the Commission to contemplate a parole at any hearing without a significant change in the prisoner's circumstances.

(3) Factors that may warrant a decision above the guidelines include, but are not limited to, the following:

(i) *Poorer parole risk than indicated by salient factor score.* The offender is a poorer parole risk than indicated by the salient factor score because of—

(A) Unusually persistent failure under supervision (pretrial release, probation, or parole);

(B) Unusually persistent history of criminally related substance (drug or alcohol) abuse and resistance to treatment efforts; or

(C) Unusually extensive prior record (sufficient to make the offender a poorer risk than the "poor" prognosis category).

(ii) *More serious parole risk.* The offender is a more serious parole risk than indicated by the total point score because of—

(A) Prior record of violence more extensive or serious than that taken into account in the guidelines;

(B) Current offense demonstrates extraordinary criminal sophistication, criminal professionalism in the employment of violence or threats of violence, or leadership role in instigating others to commit a serious offense;

(C) Unusual cruelty to the victim (beyond that accounted for by scoring the offense as high level violence), or predation upon extremely vulnerable victim;

(D) Unusual propensity to inflict unprovoked and potentially homicidal violence, as demonstrated by the circumstances of the current offense; or

(E) Additional serious offense(s) committed after (or while on bond or fugitive status from) current offense that show unusual capacity for sustained, repeated violent criminal activity.

(4) Factors that may warrant a decision below the guidelines include, but are not limited to, the following:

(i) *Better parole risk than indicated by salient factor score.* The offender is a better parole risk than indicated by the salient factor score because of (applicable only to offenders who are not already in the very good risk category)—

(A) A prior criminal record resulting exclusively from minor offenses;

(B) A substantial crime-free period in the community for which credit is not already given on the Salient Factor Score;

(C) A change in the availability of community resources leading to a better parole prognosis;

(ii) Other factors:

(A) Unusually lengthy period of incarceration on the minimum sentence (in relation to the seriousness of the offense and prior record) that warrants an initial parole determination as if the offender were being considered at a rehearing;

(B) Substantial period in custody on other sentence(s) sufficient to warrant a finding in paragraph (m)(4) of this section; or

(C) Clearly exceptional program achievement.

§ 2.81 Reparole decisions.

Each decision to grant or deny reparole shall be made by reference to the Commission's reparole guidelines at § 2.21, which shall include the establishment of a presumptive or effective release date pursuant to § 2.12(b) and interim hearings pursuant to § 2.14. However, if the prisoner is eligible for parole on a new D.C. Code felony sentence that has been aggregated with the prisoner's parole violation term, or is a youth offender serving the remainder of a Youth Rehabilitation Act sentence following revocation of parole, the applicable guideline at § 2.80 (adult or youth) shall be applied. Reparole hearings shall be conducted according to the procedures set forth in § 2.72.

§ 2.82 Effective date of parole.

(a) A parole release date may be granted up to nine months from the date of the hearing in order to permit placement in a halfway house or to allow for release planning. Otherwise, a grant of parole shall ordinarily be effective not more than six months from the date of the hearing.

(b) Except in the case of a medical or geriatric parole, a parole that is granted prior to the completion of the prisoner's minimum term shall not become effective until the prisoner becomes eligible for release on parole.

§ 2.83 Release planning.

(a) All grants of parole shall be conditioned on the development of a suitable release plan and the approval of that plan by the Commission. A parole certificate shall not be issued until a release plan has been approved by the Commission. In the case of mandatory release, the Commission shall review each prisoner's release plan to determine whether the imposition of any special conditions should be ordered to promote the prisoner's rehabilitation and protect the public safety.

(b) If a parole date has been granted, but the prisoner has not submitted a proposed release plan, the appropriate correctional or supervision staff shall assist the prisoner in formulating a release plan for investigation.

(c) After investigation by a Community Supervision Officer, the proposed release plan shall be submitted to the Commission 30 days prior to the prisoner's parole or mandatory release date.

(d) A Commissioner may retard a parole date for purposes of release planning for up to 120 days without a hearing. If efforts to formulate an acceptable release plan prove futile by the expiration of such period, or if the Offender Supervision staff reports that there are insufficient resources to provide effective supervision for the individual in question, the Commission shall be promptly notified in a detailed report. If the Commission does not order the prisoner to be paroled, the Commission shall suspend the grant of parole and conduct a reconsideration hearing on the next available docket. Following such reconsideration hearing, the Commission may deny parole if it finds that the release of the prisoner without a suitable plan would fail to meet the criteria set forth in § 2.73. However, if the prisoner subsequently presents an acceptable release plan, the Commission may reopen the case and issue a new grant of parole.

(e) The following shall be considered in the formulation of a suitable release plan:

(1) Evidence that the parolee will have an acceptable residence;

(2) Evidence that the parolee will be legitimately employed as soon as released; provided, that in special circumstances, the requirement for immediate employment upon release may be waived by the Commission;

(3) Evidence that the necessary aftercare will be available for parolees who are ill, or who have any other demonstrable problems for which special care is necessary, such as hospital facilities or other domiciliary care; and

(4) Evidence of availability of, and acceptance in, a community program in those cases where parole has been granted conditioned upon acceptance or participation in a specific community program.

§ 2.84 Release to other jurisdictions.

The Commission, in its discretion, may parole any individual from a

facility of the District of Columbia, to live and remain in a jurisdiction other than the District of Columbia.

§ 2.85 Conditions of release.

(a) The following conditions are attached to every grant of parole and are deemed necessary to provide adequate supervision and to protect the public welfare. They are printed on the certificate issued to each parolee and mandatory releasee:

(1) The parolee shall go directly to the district named in the certificate (unless released to the custody of other authorities). Within three days after his release, he shall report to the Community Supervision Officer whose name appears on the certificate. If in any emergency the parolee is unable to get in touch with his supervision office, he shall communicate with the U.S. Parole Commission, Chevy Chase, Maryland 20815–7286.

(2) If the parolee is released to the custody of other authorities, and after release from the physical custody of such authorities, he is unable to report to the Community Supervision Officer to whom he is assigned within three days, he shall report instead to the nearest U.S. Probation Officer.

(3) The parolee shall not leave the limits fixed by his certificate of parole without written permission from his Community Supervision Officer.

(4) The parolee shall notify his Community Supervision Officer within two days of any change in his place of residence.

(5) The parolee shall make a complete and truthful written report (on a form provided for that purpose) to his Community Supervision Officer between the first and third day of each month. He shall also report to his Community Supervision Officer at other times as the officer directs, providing complete and truthful information.

(6) The parolee shall not violate any law, nor shall he associate with persons engaged in criminal activity. The parolee shall report within two days to his Community Supervision Officer (or supervision office) if he is arrested or questioned by a law-enforcement officer.

(7) The parolee shall not enter into any agreement to act as an informer or special agent for any law-enforcement agency without authorization from the Commission.

(8) The parolee shall work regularly unless excused by his Community Supervision Officer, and support his legal dependents, if any, to the best of his ability. He shall report within two days to his Community Supervision Officer any changes in employment or employment status.

(9) The parolee shall not drink alcoholic beverages to excess. He shall not purchase, possess, use, or administer controlled substances (marijuana or narcotic or other habit-forming drugs) unless prescribed or advised for the parolee by a physician. The parolee shall not frequent places where such drugs are illegally sold, dispensed, used, or given away.

(10) The parolee shall not associate with persons who have a criminal record without the permission of his Community Supervision Officer.

(11) The parole shall not posses a firearm or other dangerous weapon.

(12) The parolee shall permit visits by his Community Supervision Officer to his residence and to his place of business or occupation. He shall permit confiscation by his Community Supervision Officer of any materials which the officer believes may constitute contraband in the parolee's possession and which he observes in plain view in the parolee's residence, place of business or occupation, vehicle(s), or on his person. The Commission may also, when a reasonable basis for so doing is presented, modify the conditions of parole to require the parolee to permit the Community Supervision Officer to conduct searches and seizures of concealed contraband on the parolee's person, and in any building, vehicle, or other area under the parolee's control, at such times as the officer shall decide.

(13) The parolee shall make a diligent effort to satisfy any fine, restitution order, court costs or assessment, and/or court ordered child support or alimony payment that has been, or may be, imposed, and shall provide such financial information as may be requested by his Community Supervision Officer that is relevant to the payment of the obligation. If unable to pay the obligation in one sum, the parolee will cooperate with his Community Supervision Officer in establishing an installment payment schedule.

(14) The parolee shall submit to a drug test whenever ordered by his Community Supervision Officer.

(b) The Commission or a member thereof may at any time modify or add to the conditions of release. The parolee shall receive notice of the proposed modification and unless waived shall have ten days following receipt of such notice to express his views thereon. Following such ten day period, the Commission shall have 21 days, exclusive of holidays, to order such modification of or addition to the conditions of release. The ten-day notice requirement shall not apply to a modification of the conditions of parole in the following circumstances:

(1) Following a revocation hearing;

(2) Upon a finding that immediate modification of the conditions of parole is required to prevent harm to the parolee or to the public; or

(3) In response to a request by the parolee for a modification of the conditions of parole.

(c) The Commission may, as a condition of parole, require a parolee to reside in a community corrections center, or participate in the program of a residential treatment center, or both, for all or part of the period of parole.

(d) The Commission may require that a parolee remain at his place of residence during nonworking hours and, if the Commission so directs, to have compliance with this condition monitored by telephone or electronic signaling devices. A condition under this paragraph may be imposed only as an alternative to incarceration.

(e) A prisoner who, having been granted a parole date, subsequently refuses to sign the parole certificate, or any other consent form necessary to fulfill the conditions of parole, shall be deemed to have withdrawn the application for parole as of the date of his refusal to sign. To be considered for parole again, the prisoner must reapply for parole.

(f) With respect to prisoners who are required to be released to supervision through good time reductions (mandatory release), the conditions of parole set forth in this rule, and any other special conditions ordered by the Commission, shall be in full force and effect upon the established release date regardless of any refusal by the prisoner to sign his certificate.

(g) Any parolee who absconds from supervision has effectively prevented his sentence from expiring. Therefore, the parolee remains bound by the conditions of his release and violations committed at any time prior to execution of a warrant issued by the Commission, whether before or after the original expiration date, may be charged as a basis for revocation. In such a case, the warrant may be supplemented at any time.

(h) The Commission may require a parolee, when there is evidence of prior or current alcohol dependence or abuse, to participate in an alcohol aftercare treatment program. In such a case, the Commission will require that the parolee abstain from the use of alcohol and/or all other intoxicants during and after the course of treatment.

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(i) The Commission may require a parolee, where there is evidence of prior or current drug dependence or abuse, to participate in a drug treatment program, which shall include at least two periodic tests to determine whether parolee has reverted to the use of drugs (including alcohol). In such a case, the Commission will require that the parolee abstain from the use of alcohol and/or all other intoxicants during and after the course of treatment. In the event such condition is imposed prior to an eligible prisoner's release from prison, any grant of parole or reparole shall be contingent upon the prisoner passing all pre-release drug tests administered by prison officials.

(j) Parolees are expected by the Commission to understand the conditions of parole according to their plain meaning, and to seek the guidance of their Community Supervision Officers before engaging in any conduct that may constitute a violation thereof. Community Supervision Officers may issue instructions to parolees to refrain from particular conduct that would violate parole, or to take specific steps to avoid or correct a violation of parole, as well as such other directives as may be authorized by the conditions imposed by the Commission.

§ 2.86 Release on parole; rescission for misconduct.

(a) When a parole effective date has been set, actual release on parole on that date shall be conditioned upon the individual maintaining a good conduct record in the institution or prerelease program to which the prisoner has been assigned.

(b) The Commission may reconsider any grant of parole prior to the prisoner's actual release on parole, and may advance or retard a parole effective date or rescind and a parole date previously granted based upon the receipt of any new and significant information concerning the prisoner, including disciplinary infractions. The Commission may retard a parole date for disciplinary infractions (*e.g.*, to permit the use of graduated sanctions) for up to 120 days without a hearing, in addition to any retardation ordered under 2.83(d). If a parole effective date is rescinded for disciplinary infractions, an appropriate sanction shall be determined either by adding the appropriate points for negative institutional behavior to the prisoner's total point score, or by reference to § 2.36 if the misconduct is not sufficiently serious to warrant a continuance under § 2.80(j). A total point score of 0–2 shall be adjusted to a total point score of 3 prior to adding points for negative institutional behavior pursuant to the Point Assignment Table at § 2.80(f).

(c) After a prisoner has been granted a parole effective date, the institution shall notify the Commission of any serious disciplinary infractions committed by the prisoner prior to the date of actual release. In such case, the prisoner shall not be released until the institution has been advised that no change has been made in the Commission's order granting parole.

(d) A grant of parole becomes operative upon the authorized delivery of a certificate of parole to the prisoner, and the signing of that certificate by the prisoner, who thereafter becomes a parolee.

§ 2.87 Mandatory release.

(a) When a prisoner has been denied parole at the initial hearing and all subsequent considerations, or parole consideration is expressly precluded by statute, the prisoner shall be released at the expiration of his or her imposed sentence less the time deducted for any good time allowances provided by statute.

(b) Any prisoner having served his or her term or terms less deduction for good time shall, upon release, be deemed to be released on parole until the expiration of the maximum term or terms for which he or she was sentenced, except that if the offense of conviction was committed before April 11, 1987, such expiration date shall be less one hundred eighty (180) days. Every provision of this subpart relating to an individual on parole shall be deemed to include individuals on mandatory release.

§ 2.88 Confidentiality of parole records.

(a) Consistent with the Privacy Act of 1974 (5 U.S.C. 552(b)), the contents of parole records shall be confidential and shall not be disclosed outside the Commission except as provided in paragraphs (b) and (c) of this section.

(b) Information that is subject to release to the general public without the consent of the prisoner shall be limited to the information specified in § 2.37(c).

(c) Information other than as described in paragraph (b) of this section may be disclosed without the consent of the prisoner only pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552(b)). See § 2.56.

§ 2.89 Miscellaneous provisions.

Except to the extent otherwise provided by law, the following sections in Subpart A of this part are also applicable to District of Columbia Code offenders:

Sec.
2.5 (Sentence aggregation)
2.7 (Committed fines and restitution orders)
2.8 (Mental competency procedures)
2.10 (Date service of sentence commences)
2.16 (Parole of prisoner in State, local, or territorial institution)
2.19 (Information considered)
2.22 (Communication with Commission)
2.23 (Delegation to hearing examiners)
2.30 (False information or new criminal conduct; Discovery after release)
2.32 (Parole to local or immigration detainers)
2.56 (Disclosure of Parole Commission file)
2.63 (Rewarding assistance in the prosecution of other offenders: criteria and guidelines)
2.66 (Aggregated U.S. and D.C. Code sentences)

§ 2.90 Prior orders of the Board of Parole.

Any prior order entered by the Board of Parole of the District of Columbia shall be accorded the status of an order of the Parole Commission unless duly reconsidered and changed by the Commission at a regularly scheduled hearing. It shall not constitute grounds for reopening a case that the prisoner is subject to an order of the Board of Parole that fails to conform to a provision of this part.

Dated: April 5, 2000.

Michael J. Gaines,

Chairman, U.S. Parole Commission.

[FR Doc. 00–9050 Filed 4–12–00; 8:45 am]
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DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the District of Columbia Code

AGENCY: United States Parole Commission, Justice.

ACTION: Proposed rule.

SUMMARY: The U.S. Parole Commission is proposing to incorporate into the Code of Federal Regulations, in amended and supplemented form, the regulations of the District of Columbia that govern the authority that will be assumed by the U.S. Parole Commission on August 5, 2000, with respect to felony offenders on parole. The authority of the District of Columbia Board of Parole to oversee the supervision and to revoke the paroles of felony offenders will be transferred to the U.S. Parole Commission under the National Capital Revitalization and Self-Government Improvement Act of 1997, which permits the Commission to amend and supplement the District's regulations pursuant to federal rulemaking procedures.

DATES: Comments must be received by June 30, 2000.

ADDRESSES: Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: Under Section 11231 of the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105–33, the U.S. Parole Commission will be given, effective August 5, 2000, the authority presently exercised by the Board of Parole of the District of Columbia with respect to felony offenders on parole, including the jurisdiction to revoke parole and to modify the conditions of parole. See D.C. Code 24–1231(a)(2).

After an extensive review of the relevant regulations of the Board of Parole of the District of Columbia concerning the supervision of parolees, the release of parolees from active supervision, and the procedures governing the exercise of the authority to revoke parole, the Commission has decided to republish these regulations, with appropriate amendments, in the Code of Federal Regulations. These regulations, when adopted, would be added to the regulations for District of Columbia offenders that were originally published at 63 FR 39172 (July 21, 1998) (as amended).

Overall, the proposed regulations would maintain the present functions and authority of the Board of Parole of the District of Columbia, with certain amendments to conform to federal policy and practice. For both Federal and D.C. Code parolees, parole revocation procedures ultimately derive from the same source: *Morrissey* v. *Brewer*, 408 U.S. 471 (1972). *Morrissey* also describes the basic goals of parole supervision in a way that remains valid today for both the U.S. Code and D.C. Code parole systems. The amended regulations are intended exclusively to improve the ways in which the District of Columbia parole system is carried out, consistently with the approach taken in the *Morrissey* decision.

These improvements include a requirement for preliminary interviews as described in *Morrissey*, and an arrangement with the D.C. Public Defender Service whereby attorney representation would be obtained directly following the preliminary interview. This would be in contrast to the current D.C. Board of Parole rule that prohibits Board members and staff from assisting arrested parolees who wish to obtain the services of counsel. See 28 D.C.M.R. 219.9.

Although the procedures for release from active supervision would remain the same, the Commission proposes to supplement those procedures with explicit guidelines derived from the federal standards at 28 CFR 2.43 governing the early termination of parole for U.S. Code offenders. These guidelines are intended to ensure that the length of time a parolee spends under parole supervision is proportionate to the level of risk to the public safety suggested by the parolee's criminal offense and prior record, as measured by the Salient Factor Score and Base Point Score at 28 CFR 2.80.

The Commission also proposes to codify a procedure whereby an executed warrant may be withdrawn within 72 hours of execution in order to release the arrested parolee to another jurisdiction's warrant. (The Commission is not always aware, when it issues a warrant, that the parolee is also sought by other authorities.) In *Saylor* v. *U.S. Board of Parole*, 345 F.2d 100, 103 (D.C. Cir. 1965), the court endorsed such a procedure, stating that "* * * upon arresting a federal parolee as a parole violator, the federal authorities should have some reasonable time and latitude in deciding whether to return him to the federal institution to serve the balance of his term or to surrender him to the local authorities for state prosecution." In the Commission's view, a 72-hour period is a reasonable time for a decision to yield jurisdiction to local prosecuting authorities.

Finally, in all cases in which parolees are arrested on Commission warrants, it is the Commission's intent that their revocation hearings be held at the D.C. jail whenever feasible. For those parole violators who have been convicted and sentenced to new prison terms in other institutions, the Commission proposes to follow existing federal policy with regard to the holding of dispositional revocation hearings prior to the completion of the intervening sentence, and revocation hearings following release from the intervening sentence. See 28 CFR 2.47. In all respects, the proposed rules have been drafted to conform to District of Columbia law regarding the parole revocation process. See D.C. Code 24–205 and 24–206.

Proposed Implementation

The Commission proposes that the regulations set forth below be made effective as interim rules on August 5, 2000, with a further period for public comment. The Commission proposes to reevaluate the rules in the light of both public comment and operational experience before adopting final rules.

Regulatory Assessment Requirements

The U.S. Parole Commission has determined that this proposed rule would not be a significant rule within the meaning of Executive Order 12866. The proposed rule would not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and is deemed by the Commission to be a rule of agency practice that will not substantially affect the rights or obligations of non-agency parties pursuant to Section 804(3)(C) of the Congressional Review Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Proposed Rules

Accordingly, the U.S. Parole Commission proposes the following amendment to 28 CFR Part 2.

PART 2—[AMENDED]

1. The authority citation for part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. By adding §§ 2.91 through 2.105 to Subpart C to read as follows:

* * * * *

Subpart C—District of Columbia Code Prisoners and Parolees

Sec.

2.91 Supervision responsibility.
2.92 Jurisdiction of the Commission.
2.93 Travel approval.
2.94 Supervision reports to Commission.
2.95 Release from active supervision.
2.96 Order of release.
2.97 Withdrawal of order of release.
2.98 Summons to appear or warrant for retaking of parolee.
2.99 Execution of warrant and service of summons.
2.100 Warrant placed as detainer and dispositional review.
2.101 Revocation: Preliminary interview.
2.102 Place of revocation hearing.
2.103 Revocation hearing procedure.
2.104 Issuance of subpoena for appearance of witnesses or production of documents.
2.105 Revocation decisions.

Subpart C—District of Columbia Code Prisoners and Parolees

* * * * *

§ 2.91 Supervision responsibility.

(a) Pursuant to D.C. Code 24–1233(c), the District of Columbia Court Services and Offender Supervision Agency (CSOSA) shall provide supervision, through qualified Community Supervision Officers, for all D.C. Code parolees and mandatory releasees under the jurisdiction of the Commission who are released to the D.C. metropolitan area. Individuals under the jurisdiction of the Commission who are released to districts outside the D.C. metropolitan area, or who are serving mixed U.S. and D.C. Code sentences, shall be supervised by a U.S. Probation Officer pursuant to 18 U.S.C. 3655.

(b) A parolee or mandatory releasee may be transferred to a new district of supervision with the permission of the supervision offices of both the transferring and receiving district, provided such transfer is not contrary to instructions from the Commission.

§ 2.92 Jurisdiction of the Commission.

(a) Pursuant to D.C. Code 24–431(a), the jurisdiction of the Commission over a parolee shall expire on the date of expiration of the maximum term or terms for which he was sentenced, subject to the provisions of this subpart relating to warrant issuance, time in absconder status, and the forfeiture of credit for time on parole in the case of revocation.

(b) The parole of any parolee shall run concurrently with the period of parole, probation, or supervised release under any other Federal, State, or local sentence.

(c) Upon the expiration of the parolee's maximum term as specified in the release certificate, the Community Supervision Officer shall issue a certificate of discharge to such parolee and to such other agencies as may be appropriate.

(d) A termination of parole pursuant to an order of revocation shall not affect the Commission's jurisdiction to grant and enforce any further periods of parole, up to the expiration of the offender's maximum term.

§ 2.93 Travel approval.

(a) The Community Supervision Officer may approve travel outside the district of supervision without approval of the Commission in the following situations:

(1) Vacation trips not to exceed thirty days.

(2) Trips, not to exceed thirty days, to investigate reasonably certain employment possibilities.

(3) Recurring travel across a district boundary, not to exceed fifty miles outside the district, for purpose of employment, shopping, or recreation.

(b) Specific advance approval by the Commission is required for all foreign travel, employment requiring recurring travel more than fifty miles outside the district, and vacation travel outside the district of supervision exceeding thirty days. A request for such permission shall be in writing and must demonstrate a substantial need for such travel.

(c) A special condition imposed by the Commission prohibiting certain travel shall apply instead of any general rules relating to travel as set forth in paragraph (a) of this section.

(d) The district of supervision for a parolee under the supervision of the D.C. Community Supervision Office of CSOSA shall be the D.C. Metropolitan area (as defined in the certificate of parole) for all purposes of residence, employment, or travel permission under this section.

§ 2.94 Supervision reports to Commission.

An initial supervision report to confirm the satisfactory initial progress of the parolee shall be submitted to the Commission 90 days after the parolee's release from prison, by the officer responsible for the parolee's supervision. A regular supervision report shall be submitted to the Commission by the officer responsible for the supervision of the parolee after the completion of 12 months of continuous community supervision and annually thereafter. The supervision officer shall submit such additional reports and information concerning both the parolee, and the enforcement of the conditions of the parolee's supervision, as the Commission may direct. All reports shall be submitted according to the format established by the Commission.

§ 2.95 Release from active supervision.

(a) The Commission, in its discretion, may release a parolee or mandatory releasee from further supervision prior to the expiration of the maximum term or terms for which he or she was sentenced.

(b) Two years after release on supervision, and at least annually thereafter, the Commission shall review the status of each parolee to determine the need for continued supervision. In calculating such two-year period there shall not be included any period of release on parole prior to the most recent release, nor any period served in confinement on any other sentence. A review shall also be conducted whenever release from supervision is specially recommended by the Community Supervision Officer.

(c) In determining whether to grant release from supervision, the Commission shall apply the following guidelines, provided that case-specific factors do not indicate a need for continued supervision:

(1) For a parolee originally classified in the very good risk category and whose current offense did not involve violence, release from supervision may be ordered after two continuous years of incident-free parole in the community;

(2) For a parolee originally classified in the very good risk category and whose current offense involved violence other than high level violence, release from supervision may be ordered after three continuous years of incident-free parole in the community;

(3) For a parolee originally classified in the very good risk category and whose current offense involved high level violence (without death of victim resulting), release from supervision may be ordered after four continuous years of incident-free parole in the community;

(4) For a parolee originally classified in other than the very good risk category, whose current offense did not involve violence, and whose prior record includes not more than one episode of felony violence, release from supervision may be ordered after three

continuous years of incident-free parole in the community;

(5) For a parolee originally classified in other than the very good risk category, and whose current offense involved violence other than high level violence, or whose prior record includes two or more episodes of felony violence, release from supervision may be ordered after four continuous years of incident-free parole in the community;

(6) For a parolee who was originally classified in other than the very good risk category and whose current offense or prior record involved high level violence (without death of victim resulting), release from supervision may be ordered after five continuous years of incident-free parole in the community;

(7) For any parolee whose current offense or prior record involved high level violence with death of victim resulting, release from supervision may be ordered only upon a case-specific finding that, by reason of age, infirmity, or other compelling factors, the parolee is unlikely to be a threat to the public safety.

(d) Decisions to release from supervision prior to completion of the periods specified in this section may be made where it appears that the parolee is a better risk than indicated by the salient factor score (if originally classified in other than the very good risk category), or a less serious risk than indicated by a violent current offense or prior record (if any). However, release from supervision prior to the completion of two years of incident-free supervision will not be granted in any case unless case-specific factors clearly indicate that continued supervision would be counterproductive.

(e) Cases with pending criminal charge(s) shall not be released from supervision until the disposition of such charge(s) is known. The term "incident-free" parole shall include both any reported violations, and any arrest or law enforcement investigation that raises a reasonable doubt as to whether the parolee has been able to refrain from law violations while on parole.

§ 2.96 Order of release.

(a) When the Commission approves a recommendation for release from active supervision, a written order of release from supervision shall be issued and a copy thereof shall be delivered to the releasee.

(b) Each order of release shall state that the conditions of the releasee's parole are waived, except that it shall remain a condition that the releasee shall not violate any law or engage in any conduct which might bring discredit to the parole system, under penalty of possible withdrawal of the order of release or revocation of parole.

(c) An order of release from supervision shall not release the parolee from the custody of the Attorney General or from the jurisdiction of the Commission before the expiration of the term or terms being served.

§ 2.97 Withdrawal of order of release.

If, after an order of release from supervision has been issued by the Commission, and prior to the expiration date of the sentence(s) being served, the parolee commits any new criminal offense or engages in any conduct which might bring discredit to the parole system, the Commission may, in its discretion, do any of the following:

(a) Issue a warrant for the parolee's return to custody as a violator;

(b) Withdraw the order of release from supervision and return the parolee to active supervision; or

(c) Impose any special conditions to the order of release from supervision.

§ 2.98 Summons to appear or warrant for retaking of parolee.

(a) If a parolee is alleged to have violated the conditions of his release, and satisfactory evidence thereof is presented, the Commission or a member thereof may:

(1)(i) Issue a summons requiring the offender to appear for a preliminary interview or local revocation hearing; or

(ii) Issue a warrant for the apprehension and return of the offender to custody.

(2) A summons or warrant in paragraph (a)(1) of this section may be issued or withdrawn only by the Commission, or a member thereof.

(b) Any summons or warrant under this section shall be issued as soon as practicable after the alleged violation is reported to the Commission, except when delay is deemed necessary. Issuance of a summons or warrant may be withheld until the frequency or seriousness of violations, in the opinion of the Commission, requires such issuance. In the case of any parolee who is charged with a criminal offense and who is awaiting disposition of such charge, issuance of a summons or warrant may be temporarily withheld, a warrant may be issued by the Commission and held in abeyance, a warrant may be issued by the Commission and a detainer lodged with the custodial authority, or a warrant may be issued for the retaking of the parolee.

(c) A summons or warrant may be issued only within the prisoner's maximum term or terms, except that in the case of a prisoner who has been mandatorily released from a sentence imposed for an offense committed before April 11, 1987, such summons or warrant may be issued only within the maximum term or terms less one hundred eighty days. A summons or warrant shall be considered issued when signed and either—

(1) Placed in the mail; or

(2) Sent by electronic transmission to the appropriate law enforcement authority.

(d) The issuance of a warrant under this section operates to bar the expiration of the parolee's sentence. Such warrant maintains the Commission's jurisdiction to retake the parolee either before or after the normal expiration date of the sentence and to reach a final decision as to the revocation of parole and the forfeiture of time pursuant to D.C. Code 24–206(a).

(e) A summons or warrant issued pursuant to this section shall be accompanied by a warrant application stating the charges against the parolee, the applicable procedural rights under the Commission's regulations, and the possible actions which may be taken by the Commission. A summons shall specify the time and place the parolee shall appear. Failure to appear in response to a summons shall be grounds for issuance of a warrant.

§ 2.99 Execution of warrant and service of summons.

(a) Any officer of any Federal or District of Columbia correctional institution, or any Federal or District of Columbia officer authorized to serve criminal process, to whom a warrant is delivered shall execute such warrant by taking the parolee and returning him to the custody of the Attorney General.

(b) Upon the arrest of the parolee, the officer executing the warrant shall deliver to him a copy of the warrant application stating the charges against the parolee, the applicable procedural rights under the Commission's regulations, and the possible actions which may be taken by the Commission.

(c) If execution of the warrant is delayed pending disposition of local charges, for further investigation, or for some other purpose, the parolee is to be continued under supervision by the Community Supervision Officer until the normal expiration of the sentence, or until the warrant is executed, whichever first occurs. Monthly supervision reports are to be submitted, and the parolee must continue to abide by all the conditions of release.

(d) If any other warrant for the arrest of the parolee has been executed or is outstanding at the time the Commission's warrant is executed, the

arresting officer may, within 72 hours of executing the warrant, release the parolee to such warrant and lodge the Commission's warrant as a detainer, voiding the execution thereof, if such action is consistent with the instructions of the Commission. In other cases, a parolee may be released from an executed but unwithdrawn warrant whenever the Commission finds such action necessary to serve the ends of justice.

(e) A summons to appear at a preliminary interview or revocation hearing shall be served upon the parolee in person by delivering to the parolee a copy of the summons and the application therefor. Service shall be made by any Federal or District of Columbia officer authorized to serve criminal process within the United States, and certification of such service shall be returned to the Commission.

(f) Official notification of the issuance of a Commission warrant shall authorize any law enforcement officer within the United States to hold the parolee in custody until the warrant can be executed in accordance with paragraph (a) of this section.

§ 2.100 Warrant placed as detainer and dispositional review.

(a) When a parolee is in the custody of other law enforcement authorities, or is serving a new sentence of imprisonment, a parole violation warrant may be lodged against him as a detainer.

(b) If the parolee is serving a new sentence of imprisonment and is eligible for parole under the Commission's jurisdiction, a dispositional revocation hearing shall be scheduled as soon as the parolee has applied for an initial hearing on the new sentence, or as soon as practicable if the parolee is serving a new sentence of one year or less. In such cases, the warrant shall not be executed except upon final order of the Commission. In any other cases, the detainer shall be reviewed on the record pursuant to paragraph (c) of this section.

(c) If the parolee is serving a new sentence of imprisonment that does not include eligibility for parole under the Commission's jurisdiction, the Commission shall review the detainer upon the request of the parolee. Following such review, the Commission may:

(1) Withdraw the detainer and order reinstatement of the parolee to supervision upon release from custody, or close the case if the expiration date has passed.

(2) Order a dispositional revocation hearing to be conducted by a hearing examiner or an official designated by the Commission at the institution in which the parolee is confined. In such case, the warrant shall not be executed except upon final order of the Commission.

(3) Let the detainer stand until the new sentence is completed. After the release of the parolee, and the consequent execution of the Commission's warrant, an institutional revocation hearing shall be conducted when the parolee is returned to federal custody.

(d) Dispositional revocation hearings pursuant to this section shall be conducted in accordance with the provisions governing institutional revocation hearings, except that a hearing conducted at a state or local facility may be conducted by a hearing examiner, hearing examiner panel, or other official designated by the Commission. Following a revocation hearing conducted pursuant to this section, the Commission may take any action specified in § 2.105.

(1) The date the violation term commences is the date the Commission's warrant is executed. It shall be the policy of the Commission that the parolee's violation term (*i.e.*, the unexpired term that remained to be served at the time the parolee was released on parole) shall start to run only upon his release from the confinement portion of the sentence for the new offense, or the date of reparole granted pursuant to this subpart, whichever comes first.

(2) A parole violator whose parole is revoked shall be given recognition for all time in confinement for any new offense that is considered by the Commission as a basis for revocation for the limited purpose of satisfying the time ranges in the reparole guidelines at § 2.81. The computation of the prisoner's sentence, and forfeiture of all time on parole pursuant to D.C. Code 24–206(a), is not affected by such guideline credit.

§ 2.101 Revocation: Preliminary interview.

(a) *Interviewing officer.* A parolee who is retaken on a warrant issued by the Commission shall promptly be offered a preliminary interview by a Community Supervision Officer (or other official designated by the Commission). The purpose of the preliminary interview is to enable the Commission to determine if there is probable cause to believe that the parolee has violated his parole as charged, and if so, whether a local or institutional revocation hearing should be conducted. Any Community Supervision Officer or U.S. Probation Officer in the district where the prisoner is confined may conduct the preliminary interview, provided he or she is not the officer who recommended that the warrant be issued.

(b) *Notice and opportunity to postpone interview.* At the beginning of the preliminary interview, the interviewing officer shall ascertain that the warrant application has been given to the parolee as required by § 2.99(b). The interviewing officer shall advise the parolee that he may have the preliminary interview postponed in order to obtain an attorney (and/or witnesses and evidence on his behalf), and that he may apply for counsel to be assigned by the D.C. Public Defender Service or otherwise obtained. In addition, the parolee may request the Commission to obtain the presence of adverse witnesses (*i.e.*, persons who have given information upon which revocation may be based). Such adverse witnesses may be requested to attend the postponed preliminary interview if the parolee meets the requirements for a local revocation hearing under § 2.102(a). The parolee shall be given advance notice of the time and place of a postponed preliminary interview.

(c) *Review of the charges.* At the preliminary interview, the interviewing officer shall review the violation charges with the parolee and shall apprise the parolee of the evidence that has been presented to the Commission. The interviewing officer shall ascertain whether the parolee admits or denies each charge listed on the warrant application, as well as the parolee's explanation of the facts giving rise to each charge. The officer shall also receive the statements of any witnesses and documentary evidence on behalf of the parolee.

(d) At the conclusion of the preliminary interview, the interviewing officer shall inform the parolee of his recommended decision as to whether there is probable cause to believe that the parolee has violated the conditions of his release, and shall submit to the Commission a digest of the interview together with a recommended decision.

(1) If the interviewing officer's recommended decision is that there is no probable cause to believe that the parolee has violated the conditions of his release, a Commissioner shall review such recommended decision and notify the parolee of his final decision concerning probable cause as expeditiously as possible. A decision to release the parolee shall be implemented without delay.

(2) If the interviewing officer's recommended decision is that there is probable cause to believe that the parolee has violated a condition (or

conditions) of his release, the Commissioner shall notify the parolee of the final decision concerning probable cause within 21 days of the date of the preliminary interview.

(3) *Release notwithstanding probable cause.* If the Commission finds probable cause to believe that the parolee has violated the conditions of his release, reinstatement to supervision or release pending further proceedings may be ordered in the Commission's discretion if it determines that:

(i) Continuation of revocation proceedings is not warranted despite the violations found; or

(ii) Incarceration pending further revocation proceedings is not warranted by the alleged frequency or seriousness of such violation or violations, and the parolee is neither likely to fail to appear for further proceedings, nor constitutes a danger to himself or others.

(e) *Conviction as probable cause.* Conviction of any Federal, District of Columbia, State, or local crime committed subsequent to release by a parolee shall constitute probable cause for the purposes of this section, and no preliminary interview shall be conducted unless ordered by a Commissioner to consider additional violation charges (including, but not limited to, unadjudicated criminal offenses) that may be determinative of the Commission's decision regarding revocation and/or reparole.

(f) *Local revocation hearing.* A postponed preliminary interview may be conducted as a local revocation hearing by an examiner or other officer designated by a Commissioner provided that the parolee has been advised that the postponed preliminary interview will constitute his final revocation hearing. It shall be the Commission's policy to conduct a combined preliminary interview and local revocation hearing whenever adverse witnesses are required to appear and give testimony with respect to contested charges.

§ 2.102 Place of revocation hearing.

(a) If the parolee requests a local revocation hearing, he shall be given a revocation hearing reasonably near the place of the alleged violation(s) or arrest, with a full opportunity to contest the charges against him, if the following conditions are met:

(1) The parolee has not been convicted of a crime committed while under supervision;

(2) The parolee denies all charges against him; and

(3) The parolee shall also be given a local revocation hearing if he admits (or has been convicted of) one or more charged violations, but denies at least one unadjudicated charge that may be determinative of the Commission's decision regarding revocation and/or reparole, and requests the presence of one or more adverse witnesses regarding that contested charge. If the appearance of such witness at the hearing is precluded by the Commission for good cause, a local revocation hearing shall not be ordered.

(b) If there are two or more charged violations, the hearing may be conducted near the place of the violation chiefly relied upon by the Commission as a basis for the issuance of the warrant or summons.

(c) A parolee who voluntarily waives his right to a local revocation hearing, or who admits all the charged violations of the conditions of his release, or who is retaken following release from a sentence of imprisonment for a new crime, shall be given an institutional revocation hearing upon his return or recommitment to an institution. An institutional revocation hearing may also be conducted in the District of Columbia jail or prison facility in which the parolee is being held. However, a Commissioner may, on his own motion, designate any case for a local revocation hearing. The difference in procedures between a "local revocation hearing" and an "institutional revocation hearing" is set forth in § 2.103.

(d) A parolee retaken on a warrant issued by the Commission shall be retained in custody until final action relative to revocation of his release, unless otherwise ordered by the Commission under § 2.101(e)(2). A parolee who has been given a revocation hearing pursuant to the issuance of a summons shall remain on supervision pending the decision of the Commission, unless the Commission has provided otherwise.

(e) A local revocation hearing shall be scheduled to be held within sixty days of the probable cause determination. Institutional revocation hearings shall be scheduled to be held within ninety days of the date of the execution of the violator warrant upon which the parolee was retaken. However, if a parolee requests and receives any postponement, or consents to a postponement, or by his actions otherwise precludes the prompt conduct of such proceedings, the above-stated time limits may be extended. A local revocation hearing may be conducted by an examiner, hearing examiner panel, or other official designated by the Commission.

§ 2.103 Revocation hearing procedure.

(a) The purpose of the revocation hearing shall be to determine whether the parolee has violated the conditions of his release and, if so, whether his parole or mandatory release should be revoked or reinstated.

(b) At a local revocation hearing, the alleged violator may present both witnesses and documentary evidence in his behalf. At an institutional revocation hearing, the alleged violator may only present documentary evidence in his behalf, including statements taken from witnesses. At any hearing, the presiding hearing officer or examiner may limit or exclude any irrelevant or repetitious statement or documentary evidence.

(c) At a local revocation hearing, the Commission may, on the request of the alleged violator or on its own motion, require the attendance of adverse witnesses who have given statements upon which revocation may be based. The adverse witnesses who are present shall be made available for questioning and cross-examination in the presence of the alleged violator. A finding of good cause for the non-attendance of an adverse witness may be based on a significant possibility of harm to the witness, the witness not being reasonably available, and/or the availability of documentary evidence that is an adequate substitute for live testimony. Neither adverse nor favorable witnesses will be requested to appear at institutional revocation hearings.

(d) All evidence upon which the finding of violation may be based shall be disclosed to the alleged violator at or before the revocation hearing. The hearing officer or examiner panel may disclose documentary evidence by permitting the alleged violator to examine the document during the hearing, or where appropriate, by reading or summarizing the document in the presence of the alleged violator.

(e) An alleged violator may be represented by an attorney at either a local or an institutional revocation hearing. In lieu of an attorney, an alleged violator may be represented at any revocation hearing by a person of his choice. However, the role of such non-attorney representative shall be limited to offering a statement on the alleged violator's behalf. Only licensed attorneys shall be permitted to question witnesses, make objections, and otherwise provide legal representation for parolees.

§ 2.104 Issuance of subpoena for appearance of witnesses or production of documents.

(a)(1) If any person who has given information upon which revocation may

be based refuses, upon request by the Commission, to appear at a preliminary interview or local revocation hearing, the Commission may issue a subpoena for the appearance of such witness. Such subpoena may also be issued at the discretion of a Commissioner in the event such adverse witness is judged unlikely to appear as requested.

(2) In addition, a Commissioner may, upon a showing by the parolee that a witness whose testimony is necessary to the proper disposition of his case will not appear voluntarily at a local revocation hearing or provide an adequate written statement of his testimony, issue a subpoena for the appearance of such witness at the revocation hearing.

(3) Such subpoenas may also be issued at the discretion of a Commissioner if deemed necessary for the orderly processing of the case.

(b) A subpoena issued pursuant to paragraph (a) of this section may require the production of documents as well as, or in lieu of, a personal appearance. The subpoena shall specify the time and the place at which the person named therein is commanded to appear, and shall specify any documents required to be produced.

(c) A subpoena may be served by any Federal or District of Columbia officer authorized to serve criminal process. The subpoena may be served at any place within the judicial district in which the place specified in the subpoena is located, or any place where the witness may be found. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such a person.

(d) If a person refuses to obey such subpoena, the Commission may petition a court of the United States for the judicial district on which the parole proceeding is being conducted, or in which such person may be found, to require such person to appear, testify, or produce evidence. If the court issues an order requiring such person to appear before the Commission, failure to obey such an order is punishable as contempt. 18 U.S.C. 4214 (1976).

§ 2.105 Revocation decisions.

(a) Whenever a parolee is summoned or retaken by the Commission, and the Commission finds by a preponderance of the evidence that the parolee has violated one or more conditions of parole, the Commission may take any of the following actions:

(1) Restore the parolee to supervision, including where appropriate:

(i) Reprimand the parolee;

(ii) Modify the parolee's conditions of release; or

(iii) Refer the parolee to a residential community treatment center for all or part of the remainder of his original sentence; or

(2) Revoke parole.

(b) If parole is revoked pursuant to this section, the Commission shall also determine, on the basis of the revocation hearing, whether immediate reparole is warranted or whether parole should be terminated pursuant to D.C. Code 206(a), and the parolee returned to prison. If the parolee is returned to prison, the Commission shall also determine a presumptive release date pursuant to § 2.81.

(c) Decisions under this section shall be made upon the concurrence of two Commissioner votes, except that a decision to override an examiner panel recommendation shall require the concurrence of three Commissioner votes.

(d) Pursuant to D.C. Code 24–206(a), a parolee whose parole is revoked by the Commission shall receive no credit toward his sentence for time spent on parole (including any time the parolee may have spent in confinement on other sentences prior to the execution of the Commission's warrant).

(e) Notwithstanding paragraphs (a) through (d) of this section, prisoners committed under the Federal Youth Corrections Act shall not be subject to forfeiture of time on parole, but shall serve uninterrupted sentences from the date of conviction except as provided in § 2.10(b) and (c). This exception from D.C. Code 24–206(a) does not apply to prisoners serving sentences under the D.C. Youth Rehabilitation Act, to which D.C. Code 24–206(a) is fully applicable.

(f) In determining whether to revoke parole for non-compliance with a condition requiring payment of a fine, restitution, court costs or assessment, and/or court ordered child support or alimony payment, the Commission shall consider the parolee's employment status, earning ability, financial resources, and any other special circumstances that may have a bearing on the matter. Revocation shall not be ordered unless the parolee is found to be deliberately evading or refusing compliance.

Dated: April 5, 2000.

Michael J. Gaines,

Chairman, U.S. Parole Commission.

[FR Doc. 00–9051 Filed 4–12–00; 8:45 am]

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Part IV

General Services Administration

41 CFR Parts 101–44 and 102–37
Donation of Surplus Personal Property; Proposed Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–44 and 102–37

[FPMR Amendment H–]

RIN 3090–AH20

Donation of Surplus Personal Property

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration is revising the Federal Property Management Regulations (FPMR) by moving coverage on donation of surplus personal property into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

DATES: Send your written comments by June 12, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Send written comments to: Ms. Sharon A. Kiser, Regulatory Secretariat (MVRS), Federal Acquisition Policy Division, General Services Administration, 1800 F Street, NW., Washington, DC 20405.

Send comments by e-mail to: RIN.3090–AH20@gsa.gov.

FOR FURTHER INFORMATION CONTACT: Martha Caswell, Director, Personal Property Management Policy Division (MTP), 202–501–3846.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule updates, streamlines, and clarifies FPMR part 101–44 and moves the part into the Federal Management Regulation (FMR). The proposed rule is written in a plain language question and answer format. In this format, a question and its answer combine to establish a rule. This means the employee and the agency must follow the language contained in both the question and its answer.

Proposed updates include:

1. The use of the same dollar thresholds for reporting overages and shortages of property, in addition to a shortened report period.

2. The removal of the 2-year limit for reimbursing State surplus property agencies from the sale of undistributed property.

3. The change of definition of "museum."

4. The reinstatement of a requirement that donee eligibility files be updated at 3-year intervals.

5. The approval of all Red Cross donations by GSA.

6. The shift in responsibility from GSA to the Federal Aviation Administration to issue screening credentials for public airports.

B. Executive Order 12866

GSA has determined that this proposed rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

A regulatory flexibility analysis is not required under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because there is no requirement that this proposed rule be published in the **Federal Register** for notice and comment.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget (OMB).

E. Small Business Regulatory Enforcement Fairness Act

This proposed rule is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 101–44 and 102–37

Government property management, Homeless, Reporting and recordkeeping requirements, Surplus Government property.

For the reasons set forth in the preamble, GSA proposes to amend 41 CFR chapters 101 and 102 as follows:

CHAPTER 101—[AMENDED]

1. Part 101–44 is revised to read as follows:

PART 101–44—DONATION OF SURPLUS PERSONAL PROPERTY

Authority: 40 U.S.C. 486(c); Sec. 205(c), 63 Stat. 390.

§ 101–44.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102–1 through 102–220).

For information on donation of surplus personal property previously contained in this part, see FMR part 37 (41 CFR part 102–37).

CHAPTER 102—[AMENDED]

2. Part 102–37 is added to subchapter B to read as follows:

PART 102–37—DONATION OF SURPLUS PERSONAL PROPERTY

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Sec.
102–37.5 What does this part cover?
102–37.10 What is the primary governing authority for this part?
102–37.15 Who must comply with the provisions of this part?
102–37.20 How do we request a deviation from these requirements and who can approve it?

Definitions

102–37.25 What definitions apply to this part?

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102–37.30 When does property become surplus?
102–37.35 Who handles the donation of property?
102–37.40 What type of property is available for donation?
102–37.45 Are exchange/sale items eligible for donation?
102–37.50 How long is property available for donation purposes?
102–37.55 Is there a special form to request or transfer property?
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102–37.75 What are GSA's responsibilities in the donation of property?
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102–37.85 What factors will GSA consider in allocating property among the States?
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102–37.115 What are some of the donations that don't require GSA's approval?
102–37.120 May we withdraw property for Federal use once it enters the donation cycle?
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Subpart D—State Agency for Surplus Property

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Service and Handling Charges

102–37.310 May we accept personal checks in payment of service charges?
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102–37.320 What is a cooperative agreement?
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102–37.340 What actions must we take to report damaged or missing property in our custody?
102–37.345 What measures must we take to ensure that property is used for the purpose(s) for which donated?
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Subpart E—Donations to Public Agencies and Eligible Nonprofit Organizations

102–37.410 To whom do "we", "you", and their variants refer?

Eligibility

102–37.415 Who determines if we are eligible to receive property?
102–37.420 What basic criteria must we meet to qualify for eligibility?
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102–37.430 What certifications must we make before acquiring property?
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102–37.450 Do we need special authorization to screen property for our program(s)?
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102–37.465 May we receive reimbursement for our donation expenses when we return property?

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102–37.470 To whom do "we", "you", and their variants refer?
102–37.475 What is the authority for public airport donations?
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Subpart G—Donations to the American National Red Cross

102–37.490 To whom do "we", "you", and their variants refer?
102–37.495 What is the authority for donations to the American National Red Cross?
102–37.500 What type of property may we receive?
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Subpart H—Donations to Public Bodies in Lieu of Abandonment/Destruction

102–37.515 To whom do "we", "you", and their variants refer?
102–37.520 What is a public body?
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102–37.530 Is there a special form for processing donations?
102–37.535 Who pays for costs associated with the donation?

Authority: 40 U.S.C. 486(c); Sec. 205(c), 63 Stat. 390.

Subpart A—General Provisions

§ 102–37.5 What does this part cover?

This part covers the donation of surplus personal property located within a State, including foreign excess personal property returned for handling as surplus personal property.

§ 102–37.10 What is the primary governing authority for this part?

Subsection 203(j)(1) of the Federal Property and Administrative Services Act of 1949, as amended (the Property Act), gives the General Services Administration (GSA) discretionary authority to prescribe the necessary regulations for, and to execute the surplus personal property donation program.

§ 102–37.15 Who must comply with the provisions of this part?

All executive agencies, State agencies for surplus property (SASPs), and donees must comply with this part.

§ 102–37.20 How do we request a deviation from these requirements and who can approve it?

See §§ 102–2.60 through 102–2.110 of this chapter to request a deviation from the requirements of this part.

Definitions

§ 102–37.25 What definitions apply to this part?

The following definitions apply to this part:

Accredited means approval by a recognized accrediting board or association on a regional, State, or national level, such as a State board of education or health; the American Hospital Association; a regional or national accrediting association for universities, colleges, or secondary schools; or another recognized accrediting association.

Approved means recognition and approval by the State department of education, State department of health, or other appropriate authority where no recognized accrediting board, association, or other authority exists for the purpose of making an accreditation. For an educational institution or an educational program, approval must relate to academic or instructional standards established by the appropriate authority. For a public health institution or program, approval must relate to the medical requirements and standards for the professional and technical services of the institution established by the appropriate authority.

Cannibalization means to remove serviceable parts from one item of equipment in order to install them on another item of equipment.

Child care center means a public or nonprofit facility where educational, social, health, and nutritional services are provided to children through age 14, or as prescribed by State law, and that is approved or licensed by the State or other appropriate authority as a child day care center or child care center.

Clinic means an approved public or nonprofit facility organized and operated for the primary purpose of providing outpatient public health services and includes customary related services such as laboratories and treatment rooms.

College means an approved or accredited public or nonprofit institution of higher learning offering organized study courses and credits leading to a baccalaureate or higher degree.

Conservation means a program or programs carried out or promoted by a public agency for public purposes involving directly or indirectly the protection, maintenance, development, and restoration of the natural resources of a given political area. These resources include but are not limited to the air, land, forests, water, rivers, streams, lakes and ponds, minerals, and animals, fish and other wildlife.

Donation screening period means a period of time following the surplus release date during which surplus personal property may be determined to be usable and necessary for donation purposes.

Donee means:

(1) A service educational activity.

(2) A State, political subdivision thereof, or tax-supported organization therein acting on behalf of a public airport.

(3) A public agency using surplus personal property in carrying out or promoting one or more public purposes.

(4) An eligible nonprofit tax-exempt educational or public health institution or organization.

(5) A public or nonprofit program for older individuals.

Drug abuse or alcohol treatment center means a clinic or medical institution that provides for the diagnosis, treatment, or rehabilitation of alcoholics or drug addicts. These centers must have on their staffs, or available on a regular visiting basis, qualified professionals in the fields of medicine, psychology, psychiatry, or rehabilitation.

Economic development means a program(s) carried out or promoted by a public agency for public purposes to improve the opportunities of a given political area for the establishment or expansion of industrial, commercial, or agricultural plants or facilities and which otherwise assist in the creation of long-term employment opportunities in the area or primarily benefit the unemployed or those with low incomes.

Education means a program(s) to develop and promote the training, general knowledge, or academic, technical, and vocational skills and cultural attainments of individuals in a community or given political area. Public educational programs may include public school systems and supporting facilities such as centralized administrative or service facilities.

Educational institution means an approved, accredited, or licensed public or nonprofit institution, facility, organization conducting educational programs or research for educational purposes, such as a child care center, school, college, university, school for the mentally disabled, school for the physically disabled, or an educational radio or television station.

Educational radio station means a radio station licensed by the Federal Communications Commission and operated exclusively for noncommercial educational purposes and which is public or nonprofit and tax exempt under section 501 of the Internal Revenue Code (26 U.S.C. 501).

Educational television station means a television station licensed by the Federal Communications Commission which operates exclusively for noncommercial educational purposes and which is public or nonprofit and tax exempt under section 501 of the Internal Revenue Code.

Foreign excess personal property means any excess personal property located outside a State.

GSA means the General Services Administration, acting by and through the Administrator of General Services or an official to whom functions under this part have been delegated by the Administrator of General Services.

Health center means an approved public or nonprofit facility that provides public health services, including related facilities such as diagnostic and laboratory facilities and clinics.

Holding agency means the executive agency having accountability for, and generally possession of, property.

Homeless individual means:

(1) An individual who lacks a fixed, regular, and adequate nighttime residence, or who has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(2) For purposes of this part, the term *homeless individual* does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

Hospital means an approved or accredited public or nonprofit institution providing public health services primarily for inpatient medical or surgical care of the sick and injured and includes related facilities such as laboratories, outpatient departments, training facilities, and staff offices.

Library means a public or nonprofit facility providing library services free to all residents of a community, district, State, or region.

Licensed means recognition and approval by the appropriate State or local authority approving institutions or programs in specialized areas. Licensing generally relates to established minimum public standards of safety, sanitation, staffing, and equipment as they relate to the construction, maintenance, and operation of a health or educational facility, rather than to the academic, instructional, or medical standards for these institutions.

Medical institution means an approved, accredited, or licensed public or nonprofit institution, facility, or organization whose primary function is the furnishing of public health and medical services to the public or promoting public health through the conduct of research, experiments, training, or demonstrations related to cause, prevention, and methods of diagnosis and treatment of diseases and injuries. The term includes, but is not limited to, hospitals, clinics, alcohol and drug abuse treatment centers, public health or treatment centers, research and health centers, geriatric centers, laboratories, medical schools, dental schools, nursing schools, and similar institutions. The term does not include institutions primarily engaged in domiciliary care, although a separate medical facility within such a domiciliary institution may qualify as a *medical institution*.

Museum means a public or private nonprofit institution that is organized on a permanent basis for essentially educational or aesthetic purposes and which, using a professional staff, owns or uses tangible objects, either animate or inanimate; cares for these objects; and exhibits them to the public on a regular basis (at least 1000 hours a year). As used in this part, the term *museum* includes, but is not limited to, the following institutions if they satisfy all other provisions of this definition: Aquariums and zoological parks; botanical gardens and arboretums; nature centers; museums relating to art, history (including historic buildings), natural history, science, and technology; and planetariums. For the purposes of this definition, an institution uses a professional staff if it employs at least one fulltime staff member or the equivalent, whether paid or unpaid, primarily engaged in the acquisition, care, or public exhibition of objects owned or used by the institution. This definition of *museum* does not include any institution that exhibits objects to the public if the display or use of the objects is only incidental to the primary function of the institution.

Nonappropriated fund property means property acquired by religious or morale, welfare or recreational activities, post exchanges, ship stores, military officer or enlisted clubs, veterans' canteens, and similar activities with funds generated by Government employees and their dependents for operation of these activities. Such property is not Federal property.

Nonprofit means an entity not operated for profit that has been held by the Internal Revenue Service to be exempt from taxation under section 501 of the Internal Revenue Code.

Parks and recreation means a program(s) carried out or promoted by a public agency for public purposes that involve directly or indirectly the acquisition, development, improvement, maintenance, and protection of park and recreational facilities for the residents of a given political area.

Program for older individuals means any State or local government agency or any nonprofit tax-exempt activity that receives funds appropriated for programs for older individuals under the Older Americans Act of 1965, as amended, under title IV or title XX of the Social Security Act (42 U.S.C. 601 *et seq.*), or under titles VIII and X of the Economic Opportunity Act of 1964 (42 U.S.C. 2991 *et seq.*) and the Community Services Block Grant Act (42 U.S.C. 9901 *et seq.*).

Property Act means the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended (codified as amended in scattered sections of 40 U.S.C. and 41 U.S.C.), the law that centralized Federal property management and disposal functions under the GSA.

Provider of assistance to homeless individuals means a public agency or a nonprofit, tax-exempt institution or organization that operates a program which provides assistance such as food, shelter, or other services to homeless individuals.

Provider of assistance to impoverished families and individuals means a public or private, nonprofit tax-exempt organization whose primary function is to provide money, goods, or services to families or individuals whose annual incomes are below the poverty line (as defined in section 673 of the Community Services Block Grant Act) (42 U.S.C. 9902). Providers include food banks, self-help housing groups, and organizations providing services such as the following: Health care; medical transportation; scholarships and tuition assistance; tutoring and literacy instruction; job training and placement; employment counseling; child care assistance; meals or other nutritional support; clothing distribution; home construction or repairs; utility or rental assistance; and legal counsel.

Public agency means any State; political subdivision thereof, including any unit of local government or economic development district; any department, agency, or instrumentality thereof, including instrumentalities created by compact or other agreement between States or political subdivisions; multijurisdictional substate districts established by or pursuant to State law; or any Indian tribe, band, group, pueblo, or community located on a State reservation.

Public health means a program(s) to promote, maintain, and conserve the public's health by providing health services to individuals and/or by conducting research, investigations, examinations, training, and demonstrations. Public health services may include but are not limited to the control of communicable diseases, immunization, maternal and child health programs, sanitary engineering, sewage treatment and disposal, sanitation inspection and supervision, water purification and distribution, air pollution control, garbage and trash disposal, and the control and elimination of disease-carrying animals and insects.

Public health institution means an approved, accredited, or licensed public or nonprofit institution, facility, or organization conducting a public health program(s) such as a hospital, clinic, health center, or medical institution, including research for such programs, the services of which are available to the public.

Public purpose means a program(s) carried out by a public agency that is legally authorized in accordance with

the laws of the State or political subdivision thereof and for which public funds may be expended. Public purposes include but are not limited to programs such as conservation, economic development, education, parks and recreation, public health, and public safety.

Public safety means a program(s) carried out or promoted by a public agency for public purposes involving, directly or indirectly, the protection, safety, law enforcement activities, and criminal justice system of a given political area. Public safety programs may include, but are not limited to those carried out by:

(1) Public police departments.
(2) Sheriffs' offices.
(3) The courts.
(4) Penal and correctional institutions (including juvenile facilities).
(5) State and local civil defense organizations.
(6) Fire departments and rescue squads (including volunteer fire departments and rescue squads supported in whole or in part with public funds).

School (except schools for the mentally or physically disabled) means a public or nonprofit approved or accredited organizational entity devoted primarily to approved academic, vocational, or professional study and instruction, that operates primarily for educational purposes on a full-time basis for a minimum school year and employs a full-time staff of qualified instructors.

School for the mentally or physically disabled means a facility or institution operated primarily to provide specialized instruction to students of limited mental or physical capacity. It must be public or nonprofit and must operate on a full-time basis for the equivalent of a minimum school year prescribed for public school instruction for the mentally or physically disabled, have a staff of qualified instructors, and demonstrate that the facility meets the health and safety standards of the State or local government.

Service educational activity (SEA) means any educational activity designated by the Secretary of Defense as being of special interest to the armed forces; *e.g.*, maritime academies or military, naval, Air Force, or Coast Guard preparatory schools.

State means one of the 50 States, the District of Columbia, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

State Agency for Surplus Property (SASP) means the agency designated under State law to receive Federal surplus personal property for distribution to eligible donees within the State as provided for in subsection 203(j) of the Property Act.

Surplus personal property (property) means any excess personal property not required for the needs and the discharge of the responsibilities of all Federal agencies, as determined by the Administrator of General Services.

Surplus release date means the date on which Federal utilization screening of excess personal property has been completed, and the property is available for donation.

University means a public or nonprofit approved or accredited institution for instruction and study in the higher branches of learning and empowered to confer degrees in special departments or colleges.

The Donation Process

§ 102–37.30 When does property become surplus?

Excess personal property becomes surplus at the close of business on the surplus release date. This is the point at which the excess screening period has been completed without transfer to a Federal agency or other eligible recipient.

§ 102–37.35 Who handles the donation of property?

(a) The General Services Administration has overall responsibility for executing the Government's property donation program and transfers most property to State agencies for surplus property (SASP), who in turn, distribute it to eligible donees in their States. The General Services Administration also returns to the American National Red Cross, by donation, such property as was originally derived from or through it.

(b) The Federal Aviation Administration (FAA), acting under delegation from the Department of Transportation, administers the program under which specified property is donated to States and tax-supported organizations for public airport use under 49 U.S.C. 47151. At FAA's request, GSA transfers specified property directly to specific public airport applicants.

(c) Donations to public bodies are made by holding agencies in accordance with subpart H of this part.

§ 102–37.40 What type of property is available for donation?

All property (including property in working capital funds established under 10 U.S.C. 2208 or in similar funds) is available for donation to eligible recipients, except for the following categories:

(a) Surplus agricultural commodities, food, and cotton or woolen goods determined from time to time by the Secretary of Agriculture to be commodities requiring special handling to assist him in carrying out his responsibilities with respect to price support or stabilization.
(b) Property in trust funds.
(c) Nonappropriated fund property.
(d) Naval vessels of the following categories: Battleships, cruisers, aircraft carriers, destroyers, and submarines.
(e) Surplus vessels of 1500 gross tons or more which the Maritime Administration determines to be merchant vessels or capable of conversion to merchant use.
(f) Records of the Federal Government.
(g) Property that requires reimbursement upon transfer (such as abandoned or other unclaimed property that is found on premises owned or leased by the Government).
(h) Controlled substances.
(i) Items as may be specified from time to time by the Administrator of General Services.

§ 102–37.45 Are exchange/sale items eligible for donation?

No, exchange/sale items are not eligible for donation (see part 101–46 of this title).

§ 102–37.50 How long is property available for donation purposes?

Unless otherwise agreed to by the holding agency and GSA, authorized screeners have:

(a) Twenty-one calendar days following the surplus release date to screen property for donation purposes; and

(b) Ten calendar days to screen foreign excess personal property that is not required for further Federal use.

§ 102–37.55 Is there a special form to request or transfer property?

Yes, requests from SASPs and public airports must be submitted on a Standard Form (SF) 123, Transfer Order Surplus Personal Property. Alternatively, submission of such information in electronic format must be as specified and approved by GSA. GSA may require additional information to support and justify a donation request.

§ 102–37.60 Who pays for transportation and the costs incurred in packing, loading, or preparing the property for shipment?

Direct costs that the holding agency incurs in packing, loading, or preparing the property for shipment must be borne

by the transferee (SASP or public airport receiving the property). Where such costs are incurred, they must be reimbursed promptly by the transferee upon appropriate billing, unless the holding agency waives the amount involved as being uneconomical or impractical to collect. Payment of all transportation costs must also be borne by the transferee.

§ 102–37.65 What is the timeframe for removing property that has been approved for donation?

The transferee or its agent must remove property within 15 calendar days from the date of notification of availability, unless otherwise coordinated with the holding agency. If the transferee decides prior to pickup or shipment that it cannot use the property, it must notify the GSA regional office that approved the donation request.

§ 102–37.70 How should overages and shortages in shipments be handled?

(a) If you are a SASP or public airport and you receive more or less property than approved on the SF 123, and the total acquisition cost of the line items involved is less than $500, annotate your receiving and inventory records to document the discrepancy. If the total acquisition cost is $500 or more, you must submit a shortage report, or a SF 123 in the case of an overage, to the GSA approving office and include the following information:

(1) Name and address of the holding agency.

(2) All pertinent GSA and holding agency control numbers, in addition to the SASP or public airport transfer order number.

(3) A description of each line item of property, the condition code, the quantity and unit of issue, and the unit and total acquisition cost.

(b) Submit the SF 123 or shortage report to GSA, with a copy to the holding agency, within 30 calendar days of the date of transfer.

Subpart B–GSA

§ 102–37.75 What are GSA's responsibilities in the donation of property?

GSA is responsible for supervising and directing the disposal of surplus personal property. In addition to issuing regulatory guidance for the donation of property, GSA:

(a) Determines when property is surplus to the needs of the Government.

(b) Allocates and transfers property on a fair and equitable basis to SASPs for further distribution to eligible donees.

(c) Supervises the care and handling of property while it is in the custody of a SASP.

(d) Approves all transfers of property to public airports.

(e) Returns, by donation, property derived from or through the American National Red Cross.

(f) Approves, after consultation with the holding agency, foreign excess personal property to be returned to the United States for donation purposes.

(g) Coordinates and controls the level of donee screening activity at Federal installations.

(h) Imposes appropriate conditions on the donation of property having characteristics that require special handling or use limitations.

(i) Keeps track of and reports to Congress on Federal donation programs.

§ 102–37.80 What happens when GSA receives multiple requests for the same property?

When requests for specific items of property are received from both a public airport and a SASP, GSA will exercise its discretion in determining where the property will provide the greatest public benefit. In case of two or more requests from SASPs, GSA will use the allocating criteria in § 102–37.85.

§ 102–37.85 What factors will GSA consider in allocating property among the States?

GSA allocates property among the SASPs on a fair and equitable basis using the following factors (listed in order of importance):

(a) Extraordinary needs caused by disasters or emergency situations.

(b) Requests from the Department of Defense (DOD) for DOD-generated property to be allocated through a SASP for donation to a specific SEA.

(c) Need and usability of property, as reflected by requests from SASPs.

Note to § 102–37.85(c): Requests for property to be used as functional items will be given preference over cannibalization requests. GSA will give special consideration to requests transmitted through the SASPs by eligible donees for specific items of property.

(d) States in greatest need of the type of property to be allocated where the need is evidenced by a letter of justification.

(e) The quantity of property of the type under consideration which was previously allocated to or is potentially available to a SASP from a more advantageous source.

(f) Performance of a SASP in effecting prompt distribution of property to eligible donees.

(g) Equitable distribution based on the existing condition and the original acquisition cost of the property.

(h) Performance of a SASP in effecting timely pickup or removal of property approved for transfer.

(i) Equitable distribution based on the ratio of population and per capita income of each State.

§ 102–37.90 What report is GSA required to compile concerning the donation program?

Biennially, GSA must transmit to Congress and the Comptroller General of the United States a report containing:

(a) A full and independent evaluation of the operation of programs for the donation of Federal property;

(b) Statistical information on the amount of property approved for transfer to the SASPs and donated to eligible non-Federal organizations during each succeeding biennial period (and the amount of excess personal property transferred to Federal agencies and provided to grantees and non-Federal organizations); and

(c) Any necessary or desirable recommendations of GSA.

Subpart C—Holding Agency

§ 102–37.95 To whom do "we", "you", and their variants refer?

Use of pronouns "we", "you", and their variants throughout this subpart refers to the executive agency that has accountability and custody of the surplus personal property.

§ 102–37.100 What are our responsibilities in the donation of property?

Your responsibilities in the donation of property are:

(a) Cooperating with all entities authorized to participate in the donation program and their authorized representatives in locating, screening, and inspecting property for donation. Upon reasonable request, you must make available to these agencies and their representatives information regarding the quantity, description, condition, and location of donable property in your inventory.

(b) Setting aside property upon notification that there is a potential donation requirement, and holding it from further disposal pending processing of the transfer document approved by GSA.

(c) Notifying and subsequently releasing property to the transferee (or the transferee's designated agent) upon receipt of a GSA-approved SF 123.

(d) Notifying the approving GSA regional office if the property is not removed within 15 calendar days after the transferee is notified of its availability. GSA will advise you of further disposal instructions.

(e) Performing and bearing the cost of care and handling of property pending its disposal, except as provided in § 102–37.105.

§ 102–37.105 May we get reimbursement for our costs?

You may recover from the transferee (SASP or public airport) direct costs you incurred incident to a donation, such as packing, handling, crating, and transportation expenses. No overhead or administrative costs are to be included in the billing.

§ 102–37.110 May we donate property directly to eligible non-Federal recipients without going through GSA?

No, you may not donate property directly to eligible non-Federal recipients unless you have statutory authority to do so. All such donations must be included on your annual report to GSA under § 101–43.4701(c) of this title.

§ 102–37.115 What are some of the donations that don't require GSA's approval?

The following donations do not require GSA's approval:

(a) Donations of condemned, obsolete, or other specified material under 10 U.S.C. 2572, 10 U.S.C. 7308, 10 U.S.C. 7541, 10 U.S.C. 7545, and 14 U.S.C. 641a. However, such property must first undergo excess Federal and surplus donation screening as required in this part and part 101–43 of this title.

(b) Donations to public bodies under subpart H of this part.

(c) Donations to small disadvantaged businesses under 13 CFR Part 124.

(d) Donation of law enforcement canines under 40 U.S.C. 484(r).

§ 102–37.120 May we withdraw property for Federal use once it enters the donation cycle?

Yes, with the prior approval of GSA, you may withdraw property that has been set aside or approved for donation, but not yet removed. You may withdraw property to meet emergency or critical requirements without prior approval of GSA, but you must notify GSA immediately of such actions. GSA will notify the SASP of any withdrawals of property that has been approved for donation.

§ 102–37.125 May we recover property that has been picked up by a SASP?

Yes, you may request, through GSA, property that is in the possession of a SASP. However, you will be responsible for reimbursing the SASP the costs of care and handling, including transportation costs, the SASP incurred in initially acquiring the property.

Subpart D—State Agency for Surplus Property

§ 102–37.130 To whom do "we", "you", and their variants refer?

Use of pronouns "we", "you", and their variants throughout this subpart refers to the SASP.

§ 102–37.135 What are our responsibilities in the donation of property?

Your responsibilities in the donation of property are to:

(a) Determine the eligibility of entities seeking to obtain Federal property as a:

(1) Public agency.

(2) Nonprofit educational or public health institution or organization.

(3) Program for older individuals.

(b) Distribute property fairly, equitably, and promptly to eligible donees in your State based on their relative needs and resources, and ability to use the property, and as provided in your State plan of operation.

(c) Enforce compliance with the terms and conditions imposed on donated property.

§ 102–37.140 How do we become eligible to distribute property to donees?

In order to receive transfers of donable property, you must:

(a) Have a GSA-approved State plan of operation; and

(b) Provide the certifications and agreements as set forth in §§ 102–37.145 and 102–37.150.

Certifications and Agreements

§ 102–37.145 What certifications must we make before acquiring property for distribution?

Before acquiring property for distribution, you must certify that:

(a) You are the agency of the State designated under State law that has legal authority under subsection 203(j) of the Property Act and GSA regulations, to receive property for distribution within the State to eligible donees as defined in this part.

(b) No person with supervisory or managerial duties in your State's donation program is debarred, suspended, ineligible, or voluntarily excluded from participating in the donation program.

(c) The property is usable and needed by:

(1) A public agency for one or more public purposes.

(2) An eligible nonprofit organization or institution which is exempt from taxation under section 501 of the Internal Revenue Code, for the purpose of education or public health (including research for any such purpose) within the State.

(3) An eligible nonprofit, tax-exempt activity for programs for older individuals.

(d) When property is picked up by or shipped to your SASP, you have adequate and available funds, facilities, and personnel to provide accountability, warehousing, proper maintenance, and distribution of the property.

(e) When property is distributed by your SASP to a donee, or when delivery is made directly from a holding agency to a donee pursuant to a State distribution document, you have determined that the donee acquiring the property is eligible within the meaning of the Property Act and GSA regulations, and that the property is usable and needed by the donee.

§ 102–37.150 What other requirements must we fulfill before acquiring property for distribution?

With respect to property picked up by or shipped to your SASP, you must agree to the following:

(a) You are granted the right to possession only. You will make prompt statewide distribution of such property, on a fair and equitable basis, to donees eligible to acquire property under section 203(j) of the Property Act and GSA regulations. You will distribute property only after such eligible donees have properly executed the appropriate certifications and agreements established by your SASP and/or GSA.

(b) Title to the property remains in the United States Government although you have taken possession of it. Conditional title to the property will pass to the eligible donee when the donee executes the required certifications and agreements and takes possession of the property.

(c) You will:

(1) Promptly pay the cost of care, handling, and shipping incident to taking possession of the property.

(2) During the time that title remains in the United States Government, be responsible as a bailee for the property from the time it is released to you or to the transportation agent you have designated.

(3) In the event of any loss of or damage to any or all of the property during transportation or storage at a place other than a place under your control, take the necessary action to obtain restitution (fair market value) for the Government. In the event of loss or damage due to negligence or willful misconduct on your part, repair, replace, or pay to the GSA the fair market value of any such property, or take such other action as the GSA may direct.

(d) You may retain property for use in performing your donation program functions only when authorized by GSA in accordance with the provisions of a cooperative agreement entered into with GSA.

(e) When acting under an interstate cooperative distribution agreement (see § 102–37.320) as an agent and authorized representative of an adjacent State with which you share a common boundary, you will:

(1) Make the certifications and agreements required in § 102–37.145 and this section on behalf of the adjacent SASP.

(2) Require the donee to execute the distribution documents of the State in which the donee is located.

(3) Forward copies of the distribution documents to the corresponding SASP.

(f) You will not discriminate on the basis of race, color, national origin, sex, age, or handicap in the distribution of the property, and will comply with GSA regulations on nondiscrimination as set forth in part 101–6, subpart 101–6.2, and part 101–8 of this title.

§ 102–37.155 Must we make a drug-free workplace certification?

If you have a cooperative agreement with GSA that allows you to retain Federal property for SASP use, you must certify that you will provide a drug-free workplace as a condition for receiving such property. Drug-free workplace certification requirements are found at part 105–68, subpart 105–68.6, of this title.

§ 102–37.160 Must we make a certification regarding lobbying?

You are subject to the anti-lobbying certification and disclosure requirements in part 105–69 of this title when all of the following conditions apply:

(a) You have entered into a cooperative agreement with GSA that provides for your SASP to retain donable Federal property for use in performing donation functions or any other cooperative agreement.

(b) The cooperative agreement was executed after December 23, 1989.

(c) The fair market value of the property requested under the cooperative agreement is more than $100,000.

State Plan of Operation

§ 102–37.165 What is a State plan of operation?

A State plan of operation is a document developed under State law and approved by GSA in which the State sets forth a plan for the management and administration of the SASP in the donation of property.

§ 102–37.170 Who is responsible for developing and submitting the plan?

The State legislature must develop the plan. The chief executive officer of the State must certify and submit the plan to GSA for acceptance and certify that you are authorized to acquire and distribute property to eligible donees in the State, to enter into cooperative agreements, and to undertake other actions and provide other assurances as are required by subsection 203(j)(4) of the Property Act and set forth in the plan. Send the plan to:

General Services Administration
Office of Transportation and Property Management (FB)
Washington, DC 20406

§ 102–37.175 When does a State plan take effect?

The plan takes effect on the date GSA notifies the chief executive officer of the State that the plan conforms to the provisions of subsection 203(j)(4) of the Property Act and the requirements of this part and that allocation and transfer of donable surplus property to the State will begin.

§ 102–37.180 Must GSA approve amendments or modifications to the plan?

Yes, GSA must approve amendments or modifications to the plan.

§ 102–37.185 Do plans or amendments require public notice?

No plan of operation, and no major amendment to the plan, may be filed with GSA until 60 calendar days after general notice of the proposed plan or amendment has been published and interested persons have been given at least 30 calendar days to submit comments.

§ 102–37.190 What happens if we don't operate in accordance with our plan?

If you don't operate in accordance with your plan, GSA may withhold allocation and transfer of surplus property until the nonconformance is corrected.

§ 102–37.195 What must a State include in the plan of operation?

You must ensure the plan conforms to the provisions of subsection 203(j)(4) of the Property Act and includes the following information and assurances. (You may include in the plan other provisions not inconsistent with the purposes of the Property Act and the requirements of this part.):

STATE PLAN REQUIREMENTS

Regarding—	The plan must—
(a) Designation of a SASP.	(1) Name the State agency that will be responsible for administering the plan. (2) Describe the responsibilities vested in the agency which must include the authorities to acquire, warehouse and distribute property to eligible donees, carry out other requirements of the State plan, and provide details concerning the organization of the agency, including supervision, staffing, structure, and physical facilities. (3) Indicate the organizational status of the agency within the State governmental structure and the title of the State official who directly supervises the State agent.
(b) Operational authority.	(1) Include copies of existing State statutes and/or executive orders relative to the operational authority of the SASP. Where express statutory authority does not exist or is ambiguous, or where authority exists by virtue of executive order, the plan must include also the opinion of the State's Attorney General regarding the existence of such authority.

STATE PLAN REQUIREMENTS—Continued

Regarding—	The plan must—
(c) Inventory control and accounting systems.	(1) Require the SASP to use a management control and accounting system that effectively governs the utilization, inventory control, accountability, and disposal of property. (2) Provide a detailed explanation of the inventory control and accounting system that the SASP will use. (3) Provide that property retained by the SASP to perform its functions be maintained on separate records from those of donable property.
(d) Return of donated property.	(1) Require the SASP to provide for the return of donated property from the donee, at the donee's expense, if the property is still usable as determined by the SASP, and: (i) The donee has not placed the property into use for the purpose for which it was donated within 1 year of donation; or (ii) The donee ceases to use the property within 1 year after placing it in use. (2) Specify that return of property can be accomplished by: (i) Physical return to the SASP facility, if required by the SASP. (ii) Retransfer directly to another donee, SASP, or Federal agency, as required by the SASP. (iii) Disposal (by sale or other means) as directed by the SASP. (3) Set forth procedures to accomplish property returns to the SASP, retransfers to other organizations, or disposition by sale, abandonment, or destruction.
(e) Financing and service charges.	(1) Set forth the means and methods for financing the SASP. When the State authorizes the SASP to assess and collect service charges from participating donees to cover direct and reasonable indirect costs of its activities, the method of establishing the charges must be set forth in the plan. (2) Affirm that service charges, if assessed, are fair and equitable and based on services performed (or paid for) by the SASP, such as screening, packing, crating, removal, and transportation. When the SASP provides minimal services in connection with the acquisition of property, except for document processing and other administrative actions, the State plan must provide for minimal charges to be assessed in such cases and include the bases of computation. (3) Provide that property made available to nonprofit providers of assistance to homeless individuals be distributed at a nominal cost for care and handling of the property. (4) Set forth how funds accumulated from service charges, or from other sources such as sales or compliance proceeds are to be used for the operation of the SASP and the benefit of participating donees. (5) Affirm, if service charge funds are to be deposited or invested, that such deposits or investments are permitted by State law and set forth the types of depositories and/or investments contemplated. (6) Cite State authority to use service charges to acquire or improve SASP facilities and set forth disposition to be made of any financial assets realized upon the sale or other disposal of the facilities. (7) Indicate if the SASP intends to maintain a working capital reserve. If one is to be maintained, the plan should provide the provisions and limitations for it. (8) State if refunds of service charges are to be made to donees when there is an excess in the SASP's working capital reserve and provide details of how such refunds are to be made, such as a reduction in service charges or a cash refund, prorated in an equitable manner.
(f) Terms and conditions on donable property.	(1) Require the SASP to impose terms, conditions, reservations, and restrictions on the donee for any item of donated property with a unit acquisition cost of $5,000 or more and any passenger motor vehicle. The specific terms, conditions, reservations, and restrictions that the SASP requires must be set forth in the plan.

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STATE PLAN REQUIREMENTS—Continued

Regarding—	The plan must—
	(2) Provide that the SASP may impose reasonable terms, conditions, reservations, and restrictions on the use of other donated property. If the SASP elects to impose additional terms, conditions, reservations, and restrictions, it should list them in the plan. If the SASP wishes to provide for amending, modifying, or releasing any terms, conditions, reservations, or restrictions it has elected to impose, it must state in the plan the standards it will use to grant such amendments, modifications or releases. (3) Provide that the SASP will impose on the donation of property, regardless of unit acquisition cost, such conditions involving special handling or use limitations as GSA may determine necessary because of the characteristics of the property.
(g) Nonutilized or undistributed property.	(1) The plan must provide that, subject to GSA approval, property in the possession of the SASP which donees in the State cannot use will be disposed of by: (i) Transfer to another SASP or Federal agency. (ii) Sale. (iii) Abandonment or destruction. (iv) Other arrangements.
(h) Fair and equitable distribution.	(1) Provide that the SASP will make fair and equitable distribution of property to eligible donees in the State based on their relative needs and resources and ability to use the property. (2) Set forth the policies and detailed procedures for effecting a prompt, fair, and equitable distribution. (3) Require that the SASP, insofar as practicable, select property requested by eligible donees and, if requested by the donee, arrange for shipment of the property directly to the donee.
(i) Eligibility.	(1) Set forth procedures for the SASP to determine the eligibility of applicants for the donation of surplus personal property. (2) Provide for donee eligibility records to include at a minimum: (i) Legal name and address of the donee. (ii) Status of the donee as a public agency or as an eligible nonprofit, tax-exempt activity. (iii) Details on the scope of the donee's program. (iv) Proof of tax exemption under section 501 of the Internal Revenue Code if the donee is nonprofit. (v) Proof that the donee is approved, accredited, or licensed if it is a requirement for operation of the donee's program(s); or certification of funding if the donee is a nonprofit activity that conducts programs for older individuals. (vi) Financial resources. (vii) Written designation of a representative(s) to act for the donee in acquiring property from the SASP signed by the chief administrative officer or by resolution of the donee's governing body. (viii) Nondiscrimination assurance. (ix) Types of property needed.
(j) Compliance and utilization.	(1) Provide that the SASP conduct utilization reviews for donee compliance with the terms, conditions, reservations, and restrictions imposed by GSA and the SASP on property having a unit acquisition cost of $5,000 or more and any passenger motor vehicle. (2) Provide for the reviews to include a survey of donee compliance with any special handling conditions or use limitations imposed on items of property by GSA. (3) Set forth the proposed frequency of such reviews and provide adequate assurances that the SASP will take effective action to correct noncompliance or otherwise enforce such terms, conditions, reservations, and restrictions.

STATE PLAN REQUIREMENTS—Continued

Regarding—	The plan must—
	(4) Require the SASP to prepare reports on utilization reviews and compliance actions and provide assurance that the SASP will initiate appropriate investigations of alleged fraud in the acquisition of donated property or misuse of such property.
(k) Consultation with advisory bodies and public and private groups..	(1) Provide for consultation with advisory bodies and public and private groups which can assist the SASP in determining the relative needs and resources of donees, the proposed utilization of donable property by eligible donees, and how distribution of donable property can be effected to fill existing needs of donees. (2) Provide details of how the SASP will accomplish such consultation.
(l) Audit.	(1) Provide for periodic internal audits of the operations and financial affairs of the SASP. (2) Provide for compliance with the external audit requirements of Office of Management and Budget Circular No. A–133, "Audits of States, Local Governments, and Non-Profit Organizations"(available at www.whitehouse.gov/OMB), and make provisions for the SASP to furnish GSA with: (i) Two copies of any audit report made pursuant to the Circular, or with two copies of those sections that pertain to the Federal donation program. (ii) An outline of all corrective actions and scheduled completion dates for the actions. (3) Provide for cooperation in GSA or Comptroller General conducted audits.
(m) Cooperative agreements.	If the SASP wishes to enter into, renew, or revise cooperative agreements with GSA or other Federal agencies: (1) Affirm the SASP's intentions to enter into cooperative agreements. (2) Cite the authority for entering into such agreements.
(n) Liquidation.	Provide for the SASP to submit a liquidation plan prior to termination of the SASP activities if the State decides to dissolve the SASP.
(o) Forms.	Include copies of distribution documents used by the SASP.
(p) Records.	Affirm that all official records of the SASP will be retained for a minimum of 3 years, except that: (1) Records involving property subject to restrictions for more than 2 years must be kept 1 year beyond the specified period of restriction. (2) Records involving property with perpetual restriction must be retained in perpetuity. (3) Records involving property in noncompliance status must be retained for at least 1 year after the noncompliance case is closed.

§ 102–37.200 What steps must we take if the State decides to dissolve our SASP?

If the State decides to dissolve your SASP, submit a liquidation plan that includes:

(a) Reasons for the liquidation;

(b) A schedule for liquidating the agency and the estimated date of termination;

(c) Method of disposing of property on hand under the requirements of this part;

(d) Method of disposing of the agency's physical and financial assets;

(e) Retention of all available records of the SASP for a 2-year period following liquidation; and

(f) Designation of another governmental entity to serve as the agency's successor in function until continuing obligations on property donated prior to the closing of the agency are fulfilled.

Screening and Requesting Property

§ 102–37.205 Do we need special authorization to screen property?

Yes, you must have a valid screener-identification card (GSA Form 2946, Screener's Identification) prior to screening and freezing property at holding agencies. However, you and donee representatives do not need a screener-ID card to inspect, evaluate, or remove specific property approved for donation.

§ 102–37.210 How do we obtain screener-ID cards for ourselves or donation?

To obtain screening authorization you must:

(a) Submit a written request to the GSA regional office serving the area in which the intended screener is located. The request must state the name and address of your SASP or the donee the prospective screener represents, and certify that the applicant is qualified to screen as an authorized representative of the cited organization. A list of the Federal installations the screener will be authorized to visit must accompany

each request. The list of Federal installations should be limited to those within the applicable State, except where there are particular reasons why a screener should regularly visit installations outside the State.

(b) Accompany each request for authorization with a completed GSA Form 2946 that contains an affixed passport-style photograph of the prospective screener. Copies of the form are available from the GSA regional office servicing your State.

§ 102–37.215 May we request property that is in the sales cycle?

Yes, you may request property that is in the sales cycle if the property involved was not previously made available for donation or the property is needed to fill an emergency or critical requirement. You must submit such requests to GSA for consideration and coordination with the holding agency so that such action is not harmful to the overall outcome of the sale. Such requests may only be granted prior to sales award.

§ 102–37.220 May we request property specifically for cannibalization?

Yes; however, you must provide justification and include the following statement on the SF 123: "Item(s)_____requested for cannibalization." Your request for cannibalization will be approved only when it is clear that disassembly of the item for use of its component parts will provide greater potential benefit than use of the item in its existing form.

Eligibility of Donees

§ 102–37.225 Who may acquire property through a SASP?

You may distribute property to the following classes of donees:

(a) Public agencies.

(b) Nonprofit educational or public health institutions or organizations, such as:

(1) Medical institutions.

(2) Hospitals.

(3) Clinics.

(4) Health centers.

(5) Drug abuse or alcohol treatment centers.

(6) Providers of assistance to homeless individuals.

(7) Providers of assistance to impoverished families and individuals.

(8) Schools.

(9) Colleges.

(10) Universities.

(11) Schools for the mentally disabled.

(12) Schools for the physically disabled.

(13) Child care centers.

(14) Radio and television stations licensed by the Federal Communications Commission as educational radio or educational television stations.

(15) Museums attended by the public.

(16) Libraries, serving free all residents of a community, district, State or region.

(c) Public or nonprofit programs for older individuals.

(d) Service educational activities.

§ 102–37.230 Who determines if an activity is eligible to receive donated property?

(a) *Public agencies and nonprofit tax-exempt activities.* You determine if an applicant is eligible to receive property as a public agency, a nonprofit educational or public health institution, or a program for older individuals under the requirements of this part. You may request GSA assistance or guidance in making such determinations.

(b) *Service educational activities (SEAs).* The Department of Defense (DOD) sets eligibility requirements for SEAs and makes eligibility determinations.

§ 102–37.235 Must we maintain eligibility records on SEAs?

Yes, you must maintain eligibility records on SEA's, but maintain them separately from your other eligibility files and make sure they include:

(a) Documentation verifying that the activity has been designated as eligible by DOD to receive surplus DOD property.

(b) A statement designating one or more donee representative(s) to act for the SEA in acquiring property.

(c) A listing of the types of property needed or authorized for use in the SEA's program.

§ 102–37.240 How often must we update donee eligibility records?

You must update donee eligibility records as needed, but no less than every 3 years, to ensure that all documentation supporting the donee's eligibility is current and accurate. Annually you must update files for programs whose eligibility depend on annual appropriations, annual licensing, or annual certification.

§ 102–37.245 What must we do if a donee fails to maintain its eligibility status?

If a donee fails to maintain its eligibility status, you must terminate distribution of property to the activity, recover any usable property still under Federal restriction, and take any other required compliance actions.

§ 102–37.250 May we grant eligibility to applicants who would otherwise qualify as eligible donees, but whose approval, accreditation, or licensing is pending?

You may grant conditional eligibility to those applicants whose programs are required to be approved, accredited, or licensed, but who are unable to obtain accreditation, approval, or licensing because they are newly organized or because the facilities in which their activities are to be housed are not yet constructed. If the construction of an applicant's facility or physical plant has not been completed, and after evaluating the progress and potential of the applicant, you may at your discretion make available property that can be immediately utilized at this point in the applicant's program. You may accept letters from public authorities, either local or State, that you deem competent (such as a board of health or a board of education) stating that the applicant otherwise meets the standards prescribed for approved, accredited or licensed institutions and organizations. Under no circumstances can the SASP grant conditional eligibility prior to receiving evidence of nonprofit status.

§ 102–37.255 Are we eligible to acquire property as a public agency donee?

No, you are not eligible to acquire property as a public agency donee, but you can retain surplus personal property for use in operating the donation program if you have a cooperative agreement with GSA that allows you to do so. You must obtain prior GSA approval before using any donable property in your operation of the SASP. Make your needs known by submitting a listing of needed property to the appropriate GSA regional office for approval. GSA will review the list to ensure that it is of the type and quantity of property that is reasonably needed and useful in performing your SASP operations. Unless GSA disapproves the retention of the property within 30 calendar days of receipt of the listing, title to the property will vest in your SASP. You must maintain separate records for the property.

§ 102–37.260 What should we do if an applicant seeks an appeal of a negative determination of eligibility?

You should forward complete documentation on all appeal requests, including your comments and recommendations, to the applicable GSA regional office for review and coordination with GSA headquarters.

Distributing Property

§ 102–37.265 Are there special requirements for distributing property to SEAs?

Yes, only DOD-generated property may be donated to SEAs. Property generated by Federal civil agencies are not eligible for donation to SEAs, unless the SEAs also qualify under § 102–37.225(b) to receive donations of property. When donating DOD property to eligible SEAs, you must observe any restrictions the sponsoring Military Services may have imposed on the types of property the SEAs may receive.

§ 102–37.270 May we distribute property to eligible donees of another State?

Yes, you may distribute property to eligible donees of another State, if you and the other SASP determine that such an arrangement will be of mutual benefit to you and the donees concerned. Where such determinations are made, an interstate distribution cooperative agreement as prescribed in § 102–37.320 must be prepared and submitted to the appropriate GSA regional office for approval. When acting under an interstate distribution cooperative agreement, you must:

(a) Require the donee recipient to execute the distribution documents of its home SASP.

(b) Forward copies of executed distribution documents to the donee's home SASP.

Terms and Conditions

§ 102–37.275 What terms and conditions must we impose on the donee?

You must impose the terms and conditions on the donee required in your State plan of operation.

§ 102–37.280 May we waive any of the terms and conditions of donation?

You may alter or grant releases from State-imposed restrictions, provided your State plan of operation sets forth the standards by which such actions will be taken. You may not grant releases from, or amendments or corrections to:

(a) The statutory requirement that usable property be returned by the donee to the SASP if the property has not been placed in use for the purposes for which it was donated within one year of donation or ceases to be used by the donee for those purposes within one year of being placed in use, except that:

(1) You may grant authority to the donee to cannibalize property items subject to this requirement when you determine that such action will result in increased utilization of the property and that the proposed action meets the standards prescribed in your plan of operation with respect to amendments, modifications, or releases of the terms and conditions imposed on donated property; or

(2) You may, with the written concurrence of GSA, grant donees:

(i) A time extension to place property into use if the delay in putting the property into use was beyond the control and without the fault or negligence of the donee; or

(ii) Authority to trade in one donated item for one like item having similar use potential.

(b) The terms, conditions, reservations, and restrictions the Property Act requires you to impose on the use of passenger motor vehicles and any item of property having a unit acquisition cost of $5,000 or more.

(c) Any special handling condition or use limitation imposed by GSA, except with the prior written approval of GSA.

§ 102–37.285 Do restrictions remain on property that has been authorized for cannibalization?

Property authorized for cannibalization must remain under the period of restriction imposed by the transfer/distribution document pending completion of the proposed cannibalization. Components resulting from the cannibalization, which have a unit acquisition cost of $5,000 or more, must remain under the restrictions imposed by the transfer/distribution document. Components with a unit acquisition cost of less than $5,000 may be released upon cannibalization from the additional restrictions imposed by the State. However, these components must continue to be used or be otherwise disposed of in accordance with this part.

§ 102–37.290 May a donee exchange donated property during the period of restriction?

Yes, a donee may exchange donated property during the period of restriction with the approval of GSA. The donee must have used the donated item for its acquired purpose for a minimum of 6 months prior to being considered for exchange, and it must be demonstrated that the exchange will result in increased utilization value to the donee. As a condition of approval of the exchange, the item being exchanged cannot be in a noncompliance status. The item acquired by the donee must be:

(a) Made subject to the period of restriction remaining on the item exchanged.

(b) Of equal or greater value than the item exchanged.

§ 102–37.295 On what categories of property has GSA imposed special handling conditions or use limitations?

GSA has imposed special handling or processing requirements on the property categorized in this section. GSA may, on a case-by-case basis, prescribe additional restrictions for handling or using these items or prescribe special processing requirements on items in addition to those listed in this section.

(a) *Aircraft and vessels.* The requirements of this section apply to the donation of any fixed-or rotary-wing aircraft and donable vessels that are 50 feet or more in length, having a unit acquisition cost of $5,000 or more, regardless of the purpose for which donated. Such aircraft or vessels may be donated to public agencies and eligible nonprofit activities provided the aircraft or vessel is not classified for reasons of national security and any lethal characteristics are removed. The following table provides locations of other policies and procedures governing aircraft and vessels:

For—	See—
(1) Policies and procedures governing the donation of aircraft parts.	Part 101–37, subpart 101–37.6, of this title.
(2) Documentation needed by GSA to process requests for aircraft or vessels.	§ 102–37.300.
(3) Special terms, conditions, and restrictions imposed on aircraft and vessels.	§ 102–37.305.
(4) Guidelines on preparing plans of utilization for aircraft or vessels.	§ 102–37.460.

(b) *Tax-free alcohol or specially denatured alcohol.* (1) When tax-free or specially denatured alcohol is requested for donation, the donee must have a special permit issued by the Assistant Regional Commissioner of the appropriate regional office, Bureau of Alcohol, Tobacco, and Firearms (BATF), Department of the Treasury, to acquire the property. You must include the BATF use-permit number on the SF 123.

(2) You may not store tax-free or specially denatured alcohol in your facilities. You must make arrangements for this property to be shipped or transported directly from the holding agency to the designated donee.

(c) *M–151 vehicles.* M–151 vehicles have been identified as a hazard to the safety of public highway users, and eligible donees may not acquire these vehicles without mutilation. Mutilation must result in the unitized body of the vehicle being cut, crushed, or mangled in such a manner as to completely preclude rebuilding into a usable unitized body. When acquiring M–151 components and parts, the donee recipient must certify on the distribution document that the components and parts will not be reassembled as a vehicle for highway use.

(d) *Hazardous materials, firearms, and property with unsafe or dangerous characteristics.* For hazardous materials, firearms, and property with unsafe or dangerous characteristics, see part 101–42 of this title.

(e) *Franked and penalty envelopes and official letterheads.* Franked and penalty envelopes and official letterheads may not be donated without the SASP or donee certifying that all Federal Government markings will be obliterated before use.

§ 102–37.300 What documentation must we provide to acquire an aircraft or vessel?

The following documentation must be submitted to GSA, along with the SF 123, when you request an aircraft or vessel covered by § 102–37.295:

(a) A letter of intent, signed and dated by the authorized representative of the proposed donee setting forth a detailed plan of utilization for the property. (See § 102.37.460.)

(b) A letter, signed and dated by you, confirming and certifying the applicant's eligibility and containing an evaluation of the applicant's ability to use the aircraft or vessel for the purpose stated in its letter of intent and any other supplemental information concerning the needs of the donee which supports making the allocation;

(c) Your distribution document, signed and dated by the authorized donee representative; and

(d) A conditional transfer document, signed by you and the intended donee, and containing the special terms, conditions, and restrictions prescribed by GSA. The conditional transfer document may include additional terms, conditions, and restrictions imposed by you on the use of the aircraft or vessel that are consistent with any Federal requirements or your plan of operation. However, none of the Federal terms, conditions, and restrictions outlined in the executed conditional transfer document, including the requirement for an additional 48-month period of approved use, may be modified, amended, waived, released, or abrogated by you without the prior written approval of GSA.

§ 102–37.305 What are the special terms, conditions, and restrictions regarding aircraft and vessels?

(a) The aircraft or vessel must be placed in use for the purpose for which acquired no later than 12 months after acquisition and used for the same purpose for a 12-month period thereafter. There shall be an additional 48-month period of restriction which will expire after the aircraft or vessel has been used for the purpose for which acquired, except that the period of restriction for combat-configured aircraft (aircraft having no commercial flight application based upon their military design characteristics) runs in perpetuity.

(b) The donee of an aircraft must apply to the Federal Aviation Administration (FAA) for registration of an aircraft intended for flight use within 30 calendar days of receipt of the aircraft. The donee of a vessel must, within 30 calendar days of receipt of the vessel, apply for documentation of the vessel under applicable Federal, State, and local laws and must record each document with the U.S. Coast Guard at the port of documentation. The donee's application for registration or documentation must include a fully executed copy of the conditional transfer document and a copy of its letter of intent. The donee must provide you and GSA with a copy of the FAA registration (and a copy of its FAA Standard Airworthiness Certificate if the aircraft is to be flown as a civil aircraft) and all the required documentation.

(c) The aircraft or vessel must be used solely in accordance with the executed conditional transfer document and the plan of utilization set forth in the donee's letter of intent, unless the donee has amended the letter, and it has been approved in writing by you and GSA and a copy of the amendment recorded with FAA or the U.S. Coast Guard, as applicable.

(d) In the event any of the terms, conditions, and restrictions imposed by the conditional transfer document are breached, title and right to the possession of the aircraft or vessel will, at the option of GSA, revert to the United States Government. The donee, at the option of GSA, will be liable to the Government for the proceeds from any unauthorized disposal or for the fair market value or fair rental value of the aircraft or vessel at the time of any unauthorized transaction or use, as determined by GSA.

(e) If, during the period of restriction, the aircraft or vessel is no longer suitable, usable, or further needed by the donee for the purpose for which the donee acquires it, the donee must promptly notify you and request disposal instructions. You may not issue disposal instructions, except with the prior written concurrence of GSA.

(f) Combat-configured aircraft, as designated by DOD, may not be donated for flight purposes.

(g) For all aircraft donated for nonflight use, the donee must, within 30 calendar days of receipt of the aircraft, remove and turn over to you the manufacturer's data plate and the aircraft historical records (except the records of the major components/life limited parts; *e.g.*, engines, transmissions, rotor blades, etc., necessary to substantiate their reuse). You must send the records and data plate to GSA for forwarding to the FAA.

Service and Handling Charges

§ 102–37.310 May we accept personal checks in payment of service charges?

No, you may accept payments only in the form of warrants, checks, or other official instruments drawn or issued by, and in the name of, the respective donee institution. If eligible donees have their operational expenses paid by a parent institution or organization, you may accept checks issued by such parent institutions in payment of the charges.

§ 102–37.315 Are there restrictions on how we may use service charge funds or other monies derived from donated Federal property?

Except as provided in § 102–37.360, you must use funds collected from service charges, or from other sources such as proceeds from sale of undistributed property or funds collected from compliance cases, solely for the operation of the SASP and the benefit of participating donees. Funds

may be deposited, invested, or used in accordance with State law to:

(a) Cover direct and indirect costs of your operation.

(b) Purchase necessary equipment for the SASP.

(c) Maintain a reasonable working capital reserve.

(d) Rehabilitate donable surplus property, including the purchase of replacement parts.

(e) Make refunds of service charges in excess of your working capital reserve to your participating donees.

(f) Acquire or improve office or distribution center facilities.

(g) Pay for the costs of internal and external audits.

Cooperative Agreements

§ 102–37.320 What is a cooperative agreement?

A cooperative agreement is an agreement you enter into with GSA or a Federal agency designated by GSA or another SASP for the use of property, facilities, personnel, or services to carry out the functions of the donation program. For example:

(a) You and GSA may cooperate under the terms of an agreement for the provision or use of property, facilities, personnel, or services to facilitate the allocation, transfer, and distribution of donable surplus property. After such an agreement is executed, GSA may assist you by:

(1) Helping you to enter into agreements with other designated Federal agencies for the use of property, facilities, personnel, or services as are necessary and useful in aiding you to carry out the functions of the donation program.

(2) Furnishing available office space and related support such as office furniture and information technology equipment to assist you in screening and processing property for donation.

(3) Permitting you to retain items of property transferred to you for distribution that are needed by you in performing your donation functions.

(b) With GSA's concurrence and where authorized by State law, you may enter into an interstate distribution cooperative agreement to act as an agent and authorized representative of an adjacent State with which you share a common boundary. Agreements may be considered when donees, because of their geographic proximity to the property distribution centers of the adjoining State, could be more efficiently and economically serviced by surplus property facilities in the adjacent State. You and the other SASP must agree to the payment or reimbursement of service charges by the donee and you also must agree to the requirements of § 102–37.150(e).

(c) You may enter into a cooperative agreement with GSA to conduct sales of nondonated or undistributed property for and on behalf of GSA.

§ 102–37.325 Is there a fee for services and other support supplied under a cooperative agreement?

Payment or reimbursement under a cooperative agreement will be a matter for resolution between you and the Federal agency. GSA will provide assistance, to the extent possible, without reimbursement. However, any extraordinary costs incurred in providing assistance will be on a reimbursable basis.

§ 102–37.330 When may we terminate cooperative agreements?

You may terminate a cooperative agreement with GSA upon a 60-calendar day written notice. For other authorized agreements, you or the other party may terminate the agreement as mutually agreed. You must promptly notify GSA when such other agreements are terminated.

Reports

§ 102–37.335 What reports must we provide to GSA?

(a) *Quarterly report on donations.* Submit a GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property, in duplicate, to the appropriate GSA regional office by the 25th day of the month following the quarter being reported. (Office of Management and Budget Control Number 3090–0112 has been assigned to this form.) Forms and instructions for completing the form are available from your servicing GSA office.

(b) *Additional reports.* Make such reports as GSA may require to carry out its discretionary authority to transfer surplus personal property for donation and to report to the Congress on the status and progress of the donation program.

Compliance and Audits

§ 102–37.340 What actions must we take to report damaged or missing property in our custody?

You must immediately notify GSA and appropriate law officials of any damage to or loss of property in your custody due to theft, vandalism, or other unusual circumstances. You must inform GSA of any other type of damage to or loss of property in your custody.

§ 102–37.345 What measures must we take to ensure that property is used for the purpose(s) for which donated?

You must make utilization surveys and reviews, as provided in your plan of operation, to ensure that donees are using donated property during the period of restriction for the purposes for which it was acquired, including any special handling conditions or use limitations imposed by GSA or you. You must fully document your efforts and report all instances of noncompliance to GSA.

§ 102–37.350 What actions must we take if a review or other information indicates noncompliance with donation terms and conditions?

(a) Promptly investigate any suspected failure to comply with the conditions of donated property.

(b) Notify GSA immediately where there is evidence or allegations of fraud, nonuse, misuse, or unauthorized disposal of donated property.

(c) Temporarily defer any further donations of property where noncompliance allegations have been made and the donee is to be investigated, until such time as the investigation has been completed and a determination made that the allegations are either unfounded, or the allegations are substantiated, and the donee is proposed for suspension or debarment.

(d) Take action to correct the noncompliance or otherwise enforce the conditions imposed on use of the property if a donee is found to be in noncompliance. Such action may involve:

(1) Ensuring the property is used by the present donee for the purpose for which it was donated.

(2) Recovering the property from the donee for:

(i) Redistribution to another donee within the State;

(ii) Transfer through GSA to another SASP; or

(iii) Transfer through GSA to a Federal agency.

(3) Recovering fair market value or the proceeds of disposal in cases of unauthorized disposal or destruction.

(4) Recovering fair rental value for the time property was used in an unauthorized manner.

(5) Disposing of by public sale property no longer suitable, usable, or necessary for donation.

§ 102–37.355 Must we coordinate with GSA on compliance actions?

In enforcing compliance with the terms and conditions imposed on donated property, you must coordinate with GSA before undertaking the sale of, or making demand for payment of the

fair market value or fair rental value of donated property that:

(a) Is subject to any special handling condition or use limitation imposed by GSA; or

(b) Has not been placed into use by the donee, for the purposes for which it was donated, within one year of donation, or where the donee ceased using the property for authorized purposes during the one-year period after being placed in use.

§ 102–37.360 How must we handle funds derived from compliance actions?

You must handle funds derived from compliance actions as follows:

(a) *Federal restrictions.* You must promptly remit to GSA any funds derived from the enforcement of compliance involving a violation of any Federal restriction, for deposit in the Treasury of the United States. You must also submit any supporting documentation indicating the source of the funds and essential background information.

(b) *State restrictions.* You may retain any funds derived from a compliance action involving violation of any State-imposed restriction and use such funds as provided in your State plan of operation.

§ 102–37.365 Does coverage under the Single Audit Act exempt us from other reviews of our program?

No, although you are covered under the Single Audit Act (31 U.S.C. 7501–7507), from time to time the General Accounting Office (GAO), GSA, or other authorized Federal activities may audit or review the operations of a SASP. GSA will notify the chief executive officer of the State of the reasons for a GSA audit. You must make available financial records and all other records of the SASP for inspection by representatives of GSA, GAO, or other authorized Federal activities.

Disposing of Undistributed Property

§ 102–37.370 When must we offer property to other SASPs?

When you determine that property in your possession is usable, but not needed by eligible donees within your State, you must offer the property for transfer to other SASPs. You may arrange for representatives of other SASPs to visit your distribution facilities to inspect and select unneeded property. GSA encourages prompt transfer of property between the States, and will assist you, upon request, in making known to other SASPs undistributed property that is available for transfer.

§ 102–37.375 Must GSA approve a transfer between SASPs?

Yes, the requesting SASP must submit a SF 123, Transfer Order Surplus Personal Property, to the GSA regional office in which the releasing SASP is located. GSA then has 30 calendar days to approve or disapprove the request.

§ 102–37.380 May we recover our costs if property is transferred to another SASP?

You and the receiving SASP must mutually agree on the reimbursement of costs incurred by you in acquiring the property from the Federal government. If there is no agreement, GSA will determine appropriate reimbursement.

§ 102–37.385 When should we report undistributed property to GSA?

You should report at any time property in your possession that is not needed by you or another SASP to the GSA regional office for disposal instructions. You are encouraged, however, to promptly report any property that has been in your custody longer than a year, unless a predictable requirement exists for that property. When reporting property to GSA, provide:

(a) The best possible description of each line item of property, its current condition code, quantity, unit and total acquisition cost, State serial number, demilitarization code, and any special handling conditions;

(b) The date you received each line item of property listed; and

(c) Certification of reimbursement requested under § § 102–37.400 and 102–37.405.

§ 102–37.390 May we sell undistributed property?

Yes, you may sell undistributed property, provided you have a cooperative agreement with GSA to sell undistributed Federal property, and GSA approves your request to conduct a sale. Your request to sell property should include the proposed sale date, a listing of the property, location of the sale, method of sale, and proposed advertising to be used. If a request is approved, the GSA regional sales office will provide the necessary forms and instructions for you to use in conducting the sale.

§ 102–37.395 Under what conditions may we abandon or destroy property?

(a) You may abandon or destroy undistributed property when you determine that the property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale. The determination must be based on a finding made in writing by an authorized official of your agency and sent to the appropriate GSA regional office for approval. You must include in the written finding:

(1) The basis for the abandonment or destruction;

(2) A detailed description of the property, its condition, and total acquisition cost;

(3) The proposed method of destruction (burning, burying, etc.) or the abandonment location;

(4) A statement confirming that the proposed abandonment or destruction will not be detrimental or dangerous to public health or safety and will not infringe on the rights of other persons;

(5) The signature of the SASP director requesting approval for the abandonment or destruction; and

(6) The title, telephone number, and signature of the SASP reviewing authority if a line item of the property to be disposed of at any one location at any one time has a known or estimated acquisition cost of more than $1,000.

(b) GSA will notify you within 30 calendar days whether you may proceed with the abandonment or destruction. GSA will provide alternate disposition instructions if your request for abandonment or destruction is disapproved.

§ 102–37.400 May we get reimbursement if property is recovered for Federal use?

(a) You may be reimbursed for the costs you incurred in acquiring the property, including packing, handling, and transportation costs, at the time the property is transferred to the Federal activity, except as noted in paragraph (b) of this section. GSA will secure agreement of the Federal agency to pay these charges prior to the release of the property, and annotate the amount of reimbursement on the transfer document.

(b) When the Federal Emergency Management Agency requests property for a presidentially declared emergency or major disaster, you are entitled to reimbursement of documented expenses originally incurred in the screening, transporting, and receipt of the property. You should coordinate and make arrangements for reimbursement with the State official in charge of disaster relief.

§ 102–37.405 What costs may we recover if undistributed property is sold?

When undistributed property is disposed of by public sale, GSA may authorize reimbursement for care and handling expenses you incurred in acquiring the property from within or outside a State. You must certify the costs incurred and support them with

documentation if requested by GSA. You will not be reimbursed for costs subsequent to the receipt of property, including unloading, moving, repairing, preserving, or storage. You will not be reimbursed for costs of transporting property to a location outside a SASP distribution facility for the purpose of a sale, unless GSA specifically requires transportation. Reimbursement may not exceed 50 percent of total sales proceeds and is limited to:

(a) Direct costs you initially paid to the Federal holding agency, including but not limited to packing, preparation for shipment, and loading; and

(b) Transportation costs you incurred, but were not reimbursed by a donee, for initially moving the property from the Federal holding agency to your distribution facility or other point of receipt.

Subpart E—Donations to Public Agencies and Eligible Nonprofit Organizations

§ 102–37.410 To whom do "we", "you", and their variants refer?

Use of pronouns "we", "you", and their variants throughout this subpart refers to the donee.

Eligibility

§ 102–37.415 Who determines if we are eligible to receive property?

If you are a public agency or a nonprofit tax-exempt activity, the SASP within your State determines if you are eligible as a public agency, nonprofit educational or public health institution, or a program for older individuals. If you offer courses of instruction devoted to the military arts and sciences, the Department of Defense will determine your eligibility to acquire property through the SASP as a service educational activity (SEA).

§ 102–37.420 What basic criteria must we meet to qualify for eligibility?

To qualify for eligibility:

(a) Your organization must conform to the definition of one of the categories of eligible entities listed in § 102–37.225 (see § 102–37.25 for definitions).

(b) You must be approved, accredited, or licensed if it is a requirement for operation of your program.

(c) You must be a public agency or nonprofit and tax-exempt under section 501 of the Internal Revenue Code.

(d) You must not be debarred, suspended, or excluded from any Federal procurement or nonprocurement program.

(e) Your program must operate or be conducted in compliance with applicable Federal nondiscrimination statutes.

§ 102–37.425 What if there is no specific authority that can approve or accredit our program as required for qualification?

In considering your eligibility, a SASP may accept letters from public authorities, either local or State, which it deems competent (such as a board of health or a board of education) stating that your organization meets the standards prescribed for approved or accredited institutions and organizations. Other documentation the SASP may accept as evidence of your approval include the following:

(a) In the case of educational activities, a SASP may deem letters from three accredited or State-approved institutions that students from your institution have been and are being accepted as sufficient evidence of your eligibility for the donation program. Or the SASP may consider you approved if you furnish evidence showing you meet the academic or instructional standards prescribed for public schools in the State; i.e., your organizational entity or program is devoted primarily to approved academic, vocational (including technical or occupational), or professional study and instruction, which operates primarily for educational purposes on a full-time basis for a minimum school year as prescribed by the State and employs a full-time staff of qualified instructors.

(b) In the case of public health institutions or organizations, a SASP may accept licensing as evidence of approval, provided the licensing authority prescribes the medical requirements and standards for the professional and technical services of your institution.

(c) The awarding of research grants to your institution or organization by a recognized authority such as the National Institutes of Health, the National Institute of Education, or by similar national advisory council or organization may also constitute approval of your institution or program, provided all other criteria are met.

Terms and Conditions

§ 102–37.430 What certifications must we make before acquiring property?

Before you acquire property, you must certify that:

(a) You are a public agency or a nonprofit organization meeting the requirements of the Property Act and/or regulations of GSA.

(b) You are acquiring the property for your own use and will use the property for authorized purposes.

(c) You are not acquiring the property for any other use or purpose, for use outside the State, or for sale.

(d) Funds are available to pay all costs and charges incident to the donation.

(e) You will comply with the nondiscrimination regulations issued under title VI of the Civil Rights Act of 1964 (52 U.S.C. 2000d–2000d–4), section 606 of title VI of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 476), as amended, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1688), as amended, and section 303 of the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107).

(f) You are not currently debarred, suspended, declared ineligible, or voluntarily excluded from receiving the property.

§ 102–37.435 What agreements must we make before acquiring property?

You must agree to the following conditions when acquiring property:

(a) The property is acquired on an "as is, where is" basis, without warranty of any kind, and you will hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to the donation of the property, its use, or final disposition.

(b) You will return to the SASP, at your expense, any donated property that is not placed in use for the purposes for which it was donated within one year of donation, or which ceases to be used for such purposes within one year of being placed in use.

(c) You will comply with the terms, conditions, reservations, and restrictions, imposed by your SASP on the use of any item of property having a unit acquisition cost of $5,000 or more and any passenger motor vehicle. (If you are an SEA, this requirement does not apply to you.)

(d) You agree that upon execution of the SASP distribution document you have conditional title only to the property during the applicable period of restriction. Full title to the property will vest in you only after you have met all of the requirements of this part.

(e) You will comply with the terms, conditions, reservations, or restrictions imposed on any other donated item by the SASP. (Not applicable to SEAs.)

(f) You will comply with conditions imposed by GSA, if any, requiring special handling or use limitations on donated property.

(g) You will use the property for an authorized purpose during the period of restriction (see § 101–37.440).

(h) You will obtain permission from the SASP before selling, trading, leasing,

loaning, bailing, cannibalizing, encumbering or otherwise disposing of property during the period of restriction, or removing it permanently for use outside the State.

(i) You will report to the SASP on the use, condition, and location of donated property, and on other pertinent matters as the SASP may require from time to time.

(j) If an insured loss of the property occurs during the period of restriction, GSA or the SASP (depending on which agency has imposed the restriction) will be entitled to reimbursement out of the insurance proceeds of an amount equal to the unamortized portion of the fair market value of the damaged or destroyed item.

§ 102–37.440 May we use donated property for any purpose?

You may use donated property only for the following purposes:

(a) *Public purposes.* A public agency that acquires property through a SASP must use such property to carry out or to promote for the residents of a given political area one or more public purposes.

(b) *Educational and public health purposes.* A nonprofit educational or public health institution or organization must use property for purposes of education or public health, including research for any such purpose. While this does not preclude the use of donated property for a related or subsidiary purpose incident to the institution's overall program, the property must be used essentially for the primary educational or public health function for which the activity receives donable property and not for a nonrelated or commercial purpose.

(c) *Programs for older individuals.* Public and nonprofit programs for older individuals must use donated property to provide services that are necessary for the general welfare of older individuals, such as social services, transportation services, nutrition services, legal services, and multipurpose senior centers.

§ 102–37.445 May we acquire property for exchange?

No, you may not acquire property for exchange.

Screening and Requesting Property

§ 102–37.450 Do we need special authorization to screen property for our program(s)?

Yes, you must have a valid screener-identification card (GSA Form 2946) before screening and freezing property at holding agencies. However, you do not need a screener-ID card to inspect, evaluate, or remove specific property already set aside or approved for donation.

§ 102–37.455 How do we obtain a screener-ID card?

To obtain screening authorization, you must ask your SASP to submit a written request to the GSA regional office serving the area in which you are located.

§ 102–37.460 What type of information must we provide when requesting an aircraft or vessel?

Requests for donation of aircraft and vessels must be supported with a letter of intent, signed and dated by your authorized representative, that sets forth a detailed plan of utilization for the property. The letter of intent must provide the following information:

(a) A description of the aircraft or vessel requested. If an aircraft, the description must include the type, model or size, and the serial number, if known. If a vessel, it must include the type, name, class, size, displacement, length, beam, draft, lift capacity, and the hull or registry number, if known;

(b) A detailed description of your program and the number and types of aircraft or vessels you currently own;

(c) A detailed description of how the aircraft or vessel will be used, its purpose, how often and for how long. If an aircraft is requested for flight purposes, you must specify a source of pilot(s) and where the aircraft will be housed. If an aircraft is requested for cannibalization, you must provide details of the cannibalization process (time to complete the cannibalization process, how recovered parts are to be used, method of accounting for usable parts, etc.) If a vessel is requested for waterway purposes, you must specify a source of pilot(s) and where the vessel will be docked. If a vessel is requested for permanent docking on water or land, you must provide details of the process, including the time to complete the process; and

(d) Any supplemental information (such as geographical area and population served, number of students enrolled in educational programs, etc.) supporting your need for the aircraft or vessel.

Returns and Reimbursements

§ 102–37.465 May we receive reimbursement for our donation expenses when we return property?

When you return unneeded property that is still under a period of restriction, and you have not breached any of the conditions or limitations, you may be reimbursed for the initial cost you incurred for repairs required to make the property usable if the property is transferred to a Federal agency or sold for the benefit and account of the U.S. Government. Your SASP must recommend for GSA approval the amount of reimbursement which you are requesting, taking into consideration the benefit you have received from the use of the property and making appropriate deductions for that use. In the case of sale, your reimbursement for any item of property may not exceed the proceeds of the sale of the item.

Subpart F—Donations to Public Airports

§ 102–37.470 To whom do "we", "you", and their variants refer?

Use of pronouns "we", "you", and their variants throughout this subpart refers to the Federal Aviation Administration (FAA).

§ 102–37.475 What is the authority for public airport donations?

The authority for public airport donations is 49 U.S.C. 47151.

§ 102–37.480 What are our responsibilities in the donation of property?

Your responsibilities in the donation of property are as follows:

(a) Determining the property requirements of any State, political subdivision of a State, or tax-supported organization for public airport use (as defined in 49 U.S.C. 47102).

(b) Setting eligibility requirements for public airports and making determinations of eligibility.

(c) Certifying on the transfer document that property requested for donation is desirable or reasonably necessary to fulfill the immediate or foreseeable future requirements for developing, improving, operating, or maintaining a public airport, or needed for developing sources of revenue from non-aviation businesses at a public airport.

(d) Determining and enforcing compliance with the terms and conditions under which surplus personal property is transferred for public airport use.

(e) Authorizing public airports to visit holding agencies for the purpose of screening and selecting property for transfer. This responsibility includes:

(1) Issuing a screening pass or letter of authorization to only those persons who are qualified to screen.

(2) Maintaining a current record of screeners operating under your authority and making such records available to GSA upon request.

(3) Recovering any expired or invalid authorizations.

§ 102–37.485 What information must we provide to GSA?

So that GSA has information on which to base its discretionary authority to approve the donation of surplus personal property, you must:

(a) Provide copies of internal instructions that outline the scope of your oversight program for enforcing compliance with the terms and conditions of transfer.

(b) Report any compliance actions involving donations to public airports.

Subpart G—Donations to the American National Red Cross

§ 102–37.490 To whom do "we", "you", and their variants refer?

Use of pronouns "we", "you", and their variants throughout this subpart refers to the Red Cross National Headquarters.

§ 102–37.495 What is the authority for donations to the American National Red Cross?

Subsection 203(l) of the Property Act authorizes donations, for charitable purposes, to the American National Red Cross.

§ 102–37.500 What type of property may we receive?

You may receive surplus gamma globulin, dried plasma, albumin, antihemophilic globulin, fibrin foam, surgical dressings, or other products or materials you processed, produced, or donated to a Federal agency.

§ 102–37.505 What steps must we take to acquire property?

Upon receipt of information from GSA regarding the availability of property for donation, you have 21 calendar days to inspect the property or request it without inspection. Include pickup, shipping or delivery instructions in your request.

§ 102–37.510 What happens to property we don't request?

Property you decline to request will be offered to SASPs for distribution to eligible donees. If the property is transferred, GSA will require the SASP to ensure that all Red Cross labels or other Red Cross identifications are obliterated or removed from the property before it is used.

Subpart H—Donations to Public Bodies in Lieu of Abandonment/Destruction

§ 102–37.515 To whom do "we", "you", and their variants refer?

Use of pronouns "we", "you", and their variants throughout this subpart refers to the holding agency.

§ 102–37.520 What is a public body?

A public body is any department, agency, special purpose district, or other instrumentality of a State or local government; any Indian tribe; or any agency of the Federal Government.

§ 102–37.525 What type of property is donable under this subpart?

Only property you have assigned for abandonment or destruction (see guidelines in part 101–45, subpart 101–45.9, of this title) may be donated under this subpart. You may not donate property that requires destruction for health, safety, or security reasons. You must comply with all applicable laws and regulations and any special disposal requirements in part 101–42 of this title when disposing of hazardous materials and other dangerous property.

§ 102–37.530 Is there a special form for processing donations?

No, in processing donations you may use any document that meets your agency's needs for maintaining an audit trail of the transaction.

§ 102–37.535 Who pays for costs associated with the donation?

The recipient public body is responsible for paying the disposal costs incident to the donation, such as packing, preparation for shipment, demilitarization (the act of destroying the military offensive or defensive advantage inherent in certain types of property), loading, and transportation to its site.

Dated: March 24, 2000.

G. Martin Wagner,

Associate Administrator for Governmentwide Policy.

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Part V

Department of Education

Life Skills for State and Local Prisoners Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.255A]

Life Skills for State and Local Prisoners Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this competition.

Purpose of Program: The Life Skills for State and Local Prisoners Program provides financial assistance for establishing and operating programs designed to reduce recidivism through the development and improvement of life skills necessary for reintegration of adult prisoners into society.

Eligible Applicants: The following entities are eligible for an award under this program:

(a) State or local correctional agencies.

(b) State or local correctional education agencies.

Deadline for Transmittal of Applications: May 30, 2000.

Deadline for Intergovernmental Review: July 31, 2000.

Available Funds: $4,750,000 for the first 12 months. Funding for the second and third 12 months is subject to availability of funds and to a grantee meeting the requirements of 34 CFR 75.253.

Estimated Range of Awards: $315,000—$475,000 (funding for first 12 months).

Estimated Average Size of Awards: $395,000.

Estimated Number of Awards: 10–15.

Note: The Department is not bound by any estimates in this notice.

Project period: Up to 36 months (3 twelve-month grant cycles).

Page Limit: The application narrative is where you, the applicant, address the selection criteria reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 75 pages (including appendices) or 2,000 characters per page for the page limit specified, using the following standards:

- A page is 8.5 inches x 11 inches, on one side only, with 1-inch margins at the top, bottom, and both sides. For an electronic submission, a page equals 2,000 characters; and the Department of Education will convert any charts, tables, figures, and graphs from a page equivalency to a character count.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page and character count limits do not apply to the Application for Federal Education Assistance Form (ED 424); the Budget Information—Non-Construction Programs Form (ED 524), including the itemized budget; the other application forms; the assurances and certifications; or the table of contents, the text of the selection criteria within the narrative, the resumes, or the letters of support.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, 99, and the regulations for this program in 34 CFR Part 490.

Definitions

Applicants are encouraged to take particular note of the following definitions that are contained in 34 CFR 490.4:

"Life skills" includes self-development, communication skills, job and financial skills development, education, interpersonal and family relationship development, and stress and anger management.

"Local correctional agency" means any agency of local government that provides corrections services to incarcerated adults.

"Local correctional education agency" means any agency of local government, other than a local correctional agency, that provides educational services to incarcerated adults.

"State correctional agency" means any agency of State government that provides corrections services to incarcerated adults.

"State correctional education agency" means any agency of State government, other than a State correctional agency, that provides educational services to incarcerated adults.

Invitational Priorities

Under 34 CFR 75.105(c)(1), the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets these invitational priorities does not receive competitive or absolute preference over other applications.

Invitational Priority #1

Applications that demonstrate ways in which eligible entities and the private sector can effectively work together to assist students who are criminal offenders under the supervision of the justice system to attain the life skills they need to make a successful transition from correctional education programs to productive employment, including—

(a) Work experience or apprenticeship programs;

(b) Transitional worksite job training for students that is related to their occupational goals and closely linked to classroom and laboratory instruction provided by an eligible entity;

(c) Placement services in occupations that the students are preparing to enter;

(d) Where practical, projects that include activities that will benefit the public, such as the rehabilitation of public schools or housing in inner cities or economically depressed rural areas; or

(e) Employment-based learning programs.

Invitational Priority #2

Applications received from eligible entities, that establish or operate a life skills program for incarcerated adults within an Empowerment Zone, including a Supplemental Empowerment Zone (EZ), or an Enterprise Community (EC) designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture. The Department seeks to encourage eligible applicants within EZ/EC communities to apply for grants in this competition. A list of EZ/EC communities is included in this notice.

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

The program regulations in 34 CFR 490.20(b) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes the reserved 15 points as follows:

Program Factors (34 CFR 490.21(a)). An additional ten points are added to

this criterion for a possible total of 25 points.

Evaluation Plan (34 CFR 490.21(d)). An additional five points are added to this criterion for a possible total of 20 points.

(a) *Program factors* (25 points). The Secretary reviews the application to determine the quality of the proposed project, including the extent to which the application includes—

(1) A clear description of the services to be offered; and

(2) Life skills education designed to prepare adult offenders to reintegrate successfully into communities, schools, and the workplace.

(b) *Educational significance* (15 points). The Secretary reviews each application to determine the extent to which the applicant proposes—

(1) Project objectives that contribute to the improvement of life skills;

(2) To use unique and innovative techniques to produce benefits that address life skills problems and needs that are of national significance; and

(3) To demonstrate how well those national needs will be met by the project.

(c) *Plan of operation* (15 points). The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the project includes specific intended outcomes that—

(i) Will accomplish the purposes of the program;

(ii) Are attainable within the project period, given the project's budget and other resources;

(iii) Are susceptible to evaluation;

(iv) Are objective and measurable; and

(v) For a multi-year project, include specific objectives to be met, during each budget period, that can be used to determine the progress of the project toward meeting its intended outcomes;

(3) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective and intended outcome during the period of Federal funding; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(d) *Evaluation plan* (20 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate to the project;

(2) Will determine how successful the project is in meeting its intended outcomes, including an assessment of the effectiveness of the project in improving life skills of prisoners. To the extent feasible, the assessment must include a one-year post-release review, during the grant period, to measure the success of the project with respect to those prisoners who received services and were released. The assessment must involve comparison of the project to other existing education and training programs or no treatment for individuals, as appropriate. To assess program effectiveness, consideration may be given to implementing a random assignment evaluation design.

(3) Provide for an assessment of the efficiency of the program's replication efforts, including dissemination activities and technical assistance provided to other projects;

(4) Include formative evaluation activities to help assess program management and improve program operations; and

(5) To the extent possible, are objective and produce data that are quantifiable.

(e) *Demonstration and dissemination* (10 points). The Secretary reviews each application to determine the efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan;

(2) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel* (5 points).

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to the objectives and planned outcomes of the project, of the project director;

(ii) The qualifications, in relation to the objectives and planned outcomes of the project, of each of the other key personnel to be used in the project, including any third-party evaluator;

(iii) The time that each person referred to in paragraphs (f)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications under paragraphs (f)(1)(i) and (ii) of this section, the Secretary considers experience and training in project management and in fields related to the objectives and planned outcomes of the project.

(g) *Budget and cost effectiveness* (5 points). The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire project equipment and facilities.

(h) *Adequacy of resources and commitment* (5 points).

(1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) Facilities that the applicant plans to use are adequate; and

(ii) Equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the applicant's commitment to the project, including the extent to which—

(i) Non-Federal resources are adequate to provide project services and activities, especially resources of the public and private sectors; and

(ii) The applicant has the capacity to continue, expand, and build upon the project when Federal assistance ends.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact (SPOC), see the list included in this notice, or you may view the latest SPOC list on the OMB Web site at the following address:

http://www.whitehouse.gov/omb/grants.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department. Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.255A, U.S. Department of Education, 400 Maryland Avenue, SW., Room 7E200, Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Eastern time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for Transmittal of Applications

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

The U.S. Department of Education is conducting a limited pilot project of electronic submission of discretionary grant applications for selected programs. The Life Skills for State and Local Prisoners Program (CFDA 84.255A) is one of the programs included in the pilot project. If you are an applicant under the Life Skills for State and Local Prisoners Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in the e-GAPS pilot project. By participating you will have an opportunity to have input into the overall design and approach of e-GAPS. At the conclusion of the pilot project, we will evaluate its success and solicit suggestions for improvements.

If you participate as a grant applicant in an e-GAPS pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED Form No. 524), and all necessary assurances and certifications. We may request that you give us original signatures on forms at a later date.

You may access the electronic grant application for the Life Skills for State and Local Prisoners Program at:

http://e-grants.ed.gov

We have included additional information about the e-GAPS pilot project (see Parity Guidelines between Paper and Electronic Applications) in this notice.

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements:

(A) *If You Send Your Application by Mail:*

You must mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.255A, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(B) *If You Deliver Your Application by Hand:*

You or your courier must hand deliver the original and two copies of the application by 4:30 P.M. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.255A, Room 3633, Regional Office Building 3, 7th and D Streets, SW., Washington, DC.

The Application Control Center accepts application deliveries daily between 8 a.m. and 4:30 P.M. (Washington, DC time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

(C) *If You Submit Your Application Electronically:*

You must submit your grant application through the Internet using the software provided on the e-Grants Web site (*http://e-grants.ed.gov*) by 4:30 p.m. (Washington, DC time) on the deadline date.

The regular hours of operation of the e-Grants Web site are 6:00 a.m. till 12:00 midnight (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays. Please note that on Wednesdays the Web site is closed for maintenance at 7:00 p.m. (Washington, DC time).

Notes:

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or deliver it by hand or by a courier service, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application

receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) You must indicate on the envelope and—if not provided by the Department—in Item 3 of the Application for Federal Education Assistance (ED 424; revised January 12, 1999) the CFDA number—and suffix letter—of the competition under which you are submitting your application.

(4) If you submit your application through the Internet via the e-Grants Web site, you will receive an automatic acknowledgment when we receive your application.

Application Instructions and Form

To apply for an award under this program competition, your application must be organized in the following order and include the following five parts:

Part I: Application for Federal Assistance (ED Form 424 (Rev. 4–88)).

Part II: Budget Information.

Part III: Budget Narrative.

Part IV: Program Narrative.

Part V: Assurances and Certifications:

a. Assurances—Non-Construction Programs (Standard Form 424B).

b. Certification regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and Instructions.

c. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and Instructions.

(Note:)

ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

d. Disclosure of Lobbying Activities (Standard Form LLL–A) (if applicable) and Instructions, and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

e. An assurance that the applicant will report annually to the Secretary on the participation rate, cost, and effectiveness of the program and any other aspect of the program on which the Secretary may request information. (20 U.S.C. 1211–2(e)(2))

This notice contains all forms and instructions, including a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act (GEPA), various assurances, certifications, and required documentation, and additional information.

All applicants submitting hard copy applications must submit ONE original signed application, including ink signatures on all forms and assurances and ONE copy of the application. Please mark each application as original or copy.

No grant may be awarded unless a completed application form has been received.

Instructions for Part III—Budget Narrative

The budget narrative should explain, justify, and, if needed, clarify your budget summary. For each line item (personnel, fringe benefits, travel, etc.) in your budget, explain why it is there and how you computed the costs.

Instructions for Part IV—Program Narrative

The program narrative will comprise the largest portion of your application. This part is where you spell out the who, what, when, where, why, and how of your proposed project.

Although you will not have a form to fill out for your narrative, there is a format. This format is the selection criteria. Because your application will be reviewed and rated by a review panel on the basis of the selection criteria, your narrative should follow the order and format of the criteria.

Before preparing your application, you should carefully read the legislation and regulations of the program, eligibility requirements, information on any priority set by the Secretary, and the selection criteria for this competition.

Your program narrative should be clear, concise, and to the point. Begin the narrative with a one page abstract or summary of your proposed project. Then describe the project in detail, addressing each selection criterion in order.

You may include supporting documentation as appendices. Be sure that this material is concise and pertinent to this program competition.

You are advised that—

(a) The Department considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels. (34 CFR 75.217)

(b) The technical review panel evaluates each application solely on the basis of the established technical review criteria. Letters of support contained in the application will strengthen the application only if they contain commitments that pertain to the established technical review criteria, such as commitment of resources.

For Further Information Contact: Jennifer Arnold, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 4529 Mary E. Switzer Building, Washington, D.C. 20202–7142, Telephone (202) 205–5621.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this notice in an alternate format (*e.g.* Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in this notice.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's Website (at http://www.ed.gov/). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office, toll free, at 1–888–293–6498 or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C. 1211–2.

Dated: April 6, 2000.

Robert D. Muller,

Acting Deputy Assistant Secretary for Vocational and Adult Education.

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and

the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 90 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden to the U.S. Department of Education, Information Management Team, Washington, D.C. 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project, OMB 1830–0013, Washington, D.C. 20503. (Information collection approved under OMB control number 1830–0013. Expiration date: 3/31/2001)

Parity Guidelines Between Paper and Electronic Applications

The Department of Education is conducting a limited pilot project that allows applicants to use an Internet-based electronic system for submitting applications under selected discretionary grant programs. This competition is among those that have an electronic submission option available to all applicants. The system, called e-GAPS (Electronic Grant Application Package System), allows an applicant to submit a grant application to the Department (us) electronically, using a current version of the applicant's Internet browser. To see e-GAPS visit the following address:

http://e-grants.ed.gov

Because we want to ensure parity and a similar look between applications transmitted electronically and applications submitted in conventional paper form, e-GAPS has an impact on all applicants under this competition.

E-GAPS is a data-driven system; that is, e-GAPS users will be entering data on-line while completing their applications. This will be more interactive than just e-mailing a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will go into a database and ultimately will be accessible in electronic form to our reviewers.

However, this pilot project is only the first step in the Department's eventual transition to electronic applications for grants. The pilot project is designed to enable us to evaluate the experience of gathering application data on-line. We will assess the on-line review process separately; so, during this pilot project, we will ultimately review in hard copy all information that we receive.

To help ensure parity and a similar look between electronic and paper copies of grant applications, we are asking each applicant that submits a paper application to adhere voluntarily to the following guidelines:

- Use consistent font throughout your document, with no formatting of any kind (that is, no bolding, underlining, italics, or colored text).
- If you are preparing your application on a conventional typewriter, make sure that the pitch (characters per inch) of the font is consistent throughout your document, and do not use formatting of any kind (for example, underlining or italics).
- For the narrative component, your application should consist of the number and text of each selection criterion followed by the narrative. The text of the selection criterion, if included, does not count against any page or character count limitation. You should append charts, tables, graphs, and graphics of any kind after you have completed the text of the relevant section. We suggest that you begin these items on a separate sheet of paper and refer to them within the text.

Example:

1. Please describe your project management plan.

Our project plan is composed of three major components: start-up, fulfillment, and closure. The flow of these components into the stated outcomes for this project is described below and presented in figure 3–1.

- Create all illustrations (including charts, tables, graphs, and pictures) in grayscale only.
- Place a page number at the bottom right of each page beginning with *1*; and number your pages consecutively throughout your document.

At the top right of each page, place the name of the applicant, the applicant's DUNS number (if available), and the CFDA number of the competition.

Additional Information

What Should I Know About ED Grants?

What Should I Know About ED Grants? provides a non-technical summary of the Department of Education's discretionary grants process and the laws and regulations that govern it. An electronic copy of What Should I Know About ED Grants? is available at: *http://www.ed.gov/pubs/KnowAbtGrants/.*

To obtain a hard copy of *What Should I Know About ED Grants?*, please contact the Office of Correctional Education at: (202) 205–5621.

DUNS Number Instructions

D-U-N-S No.: Please provide the applicant's D-U-N-S Number. You can obtain your D-U-N-S Number at no charge by calling 1–800–333–0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com/dbis/aboutdb/intlduns.htm.

The D-U-N-S Number is a unique nine-digit number that does not convey any information about the recipient. A built in check digit helps assure the accuracy of the D-U-N-S Number. The ninth digit of each number is the check digit, which is mathematically related to the other digits. It lets computer systems determine if a D-U-N-S Number has been entered correctly.

Dun & Bradstreet, a global information services provider, has assigned D-U-N-S numbers to over 43 million companies worldwide.

Grant Application Receipt Acknowledgment

If you fail to receive the notification of application receipt within fifteen (15) days after the closing date, call: U.S. Department of Education, Coordination and Control Branch, (202) 708–9495.

Grant And Contract Funding Information

The Department of Education provides information about grant and contract opportunities through the internet: ED Internet Home Page, http://www.ed.gov/.

Important Notice to Prospective Participants in U.S. Department of Education Contract and Grant Programs

GRANTS

Applicants for grants from the U.S. Department of Education (ED) have to compete for limited funds. Deadlines assure all applicants that they will be treated fairly and equally, without last minute haste.

For these reasons, ED must set strict deadlines for grant applications. Prospective applicants can avoid disappointment if they understand that:

Failure to meet a deadline will mean that an applicant will be rejected without any consideration whatever.

The rules, including the deadline, for applying for each grant are published, individually, in the **Federal Register**. A one-year subscription to the Register may be obtained by sending $340.00 to: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402–9371. (Send

check or money order only, no cash or stamps.)

The instructions in the **Federal Register** must be followed exactly. Do not accept any other advice you may receive. No ED employee is authorized to extend any deadline published in the Register. Questions regarding submission of applications may be addressed to: U.S. Department of Education, Application Control Center, Washington, D.C. 20202–4725.

CONTRACTS

Competitive procurement actions undertaken by the ED are governed by the Federal Procurement Regulation and implementing ED Procurement Regulation.

Generally, prospective competitive procurement actions are synopsized in the Commerce Business Daily (CBD). Prospective offerors are therein advised of the nature of the procurement and where to apply for copies of the Request for Proposals (RFP).

Offerors are advised to be guided solely by the contents of the CBD synopsis and the instructions contained in the RFP. Questions regarding the submission of offers should be addressed to the Contracts Specialist identified on the face page of the RFP.

Offers are judged in competition with others, and failure to conform with any substantive requirements of the RFP will result in rejection of the offer without any consideration whatever.

Do not accept any advice you receive that is contrary to instructions contained in either the CBD synopsis or the RFP. No ED employee is authorized to consider a proposal which is non-responsive to the RFP.

A subscription to the CBD is available for $208.00 per year via second class mailing or $261.00 per year via first class mailing. Information included in the Federal Acquisition Regulation is contained in Title 48, Code of Federal Regulations, Chapter 1 ($49.00). The foregoing publication may be obtained by sending your check or money order only, no cash or stamps, to: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402–9371.

In an effort to be certain this important information is widely disseminated, this notice is being included in all ED mail to the public. You may therefore, receive more than one notice. If you do, we apologize for any annoyance it may cause you.

ED Form 5348, 8/92, Replaces ED Form 5348, 6/86 which is obsolete.

GUIDANCE FOR PREPARING REQUIRED BREAKDOWN OF BUDGET CATEGORIES

Personnel

For each staff member, please provide position, FTE, annual salary, and amount he or she will be paid for time devoted to grant. As explained in general information section, applicant must provide documentation of all other internal and external time commitments for each staff member.

Fringe Benefits

Please indicate the rate used to calculate fringe benefits for each staff person. Applicant must include a signed statement that rates are standard for that institution.

Travel

Please describe, for all staff travel, purpose, type of travel, who will be traveling, the number of days. Be as detailed as possible, including information as to costs for airfare (or mileage), lodging, food, and other expenses. Please also include all registration fees here.

Equipment

Equipment is defined in the Education Department General Administrative Regulations (EDGAR) as tangible, nonexpendable personal property including exempt property charged directly to the grant award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. Applicants should also include in this category any materials required to run such equipment (peripherals, software, installation costs, etc.)

Supplies

These should be broken down by type, with a clear distinction made between those used for administrative purposes and those that will be used for instruction of students (indicate how many students will benefit). Must be tangible, thus services like printing should not be included here.

Contractual

If an outside entity has been procured through a competitive bid procedure to perform tasks, include here. Please indicate whether done by open bid or sole source justification. If service provider not selected competitively, include in "Other" category.

Other

Please include here all other costs (advertising, evaluation fees, printing, etc.). Applicant should indicate purpose of expenditure and how cost was calculated.

Indirect

These are costs involved in upkeep (utilities, employee services, etc.) that cannot be attributed to a specific objective. In order for an applicant to claim an indirect rate they must have a negotiated agreement with a Federal agency.

BILLING CODE 4000-01-U

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education

Form Approved OMB No. 1875-0106 Exp. 06/30/2001

Applicant Information

1. Name and Address

Legal Name: _____ Organizational Unit: _____

Address: _____

_____ City _____ State _____ County _____ ZIP Code + 4 _____

2. Applicant's D-U-N-S Number _____

3. Applicant's T-I-N _____

4. Catalog of Federal Domestic Assistance #: 8 4 2 5 5 A → Title: Life Skills for State and Local Prisoners Program

5. Project Director: _____

Address: _____

_____ City _____ State _____ ZIP Code + 4 _____

Tel. #: ( ) _____ Fax #: ( ) _____

E-Mail Address: _____

6. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)

7. Type of Applicant *(Enter appropriate letter in the box.)* ☐

A State
B County
C Municipal
D Township
E Interstate
F Intermunicipal
G Special District
H Independent School District
I Public College or University
J Private, Non-Profit College or University
K Indian Tribe
L Individual
M Private, Profit-Making Organization
N Other *(Specify)* _____

8. Novice Applicant ☐ Yes ☐ No

Application Information

9. Type of Submission:

—PreApplication	*—Application*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?

☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/_____

☐ No *(If "No," check appropriate box below.)*
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

11. Proposed Project Dates: Start Date: ___/___/_____ End Date: ___/___/_____

12. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No

a. If "Yes," Exemption(s) #: _____ *OR* b. Assurance of Compliance #: _____

c. IRB approval date: _____ ☐ Full IRB or ☐ Expedited Review

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( ) _____ Fax #: ( ) _____

d. E-Mail Address:

e. Signature of Authorized Representative — Date: ___/___/_____

REV. 11/12/99

ED 424

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" or "No". If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check **"No." The remaining parts of item 12 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.**

    If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106.** The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

VOL 65 ISS 72 AP 13 2000 UMI

PROTECTION OF HUMAN SUBJECTS IN RESEARCH
(Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 12 on the application "Yes" and designated exemptions in 12a, **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 12 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of *exemptions* are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. *If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.* [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

U.S. DEPARTMENT OF EDUCATION BUDGET INFORMATION NON-CONSTRUCTION PROGRAMS	OMB Control Number: 1890-0004 Expiration Date: 02/28/2003
Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

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Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

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Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

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CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

_____

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

Approved by OMB
0348-0046

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	**3. Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:** **Congressional District**, *if known*:	
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $	
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES
(as of January 13, 1999)

EMPOWERMENT ZONES

California: Los Angeles, Oakland, Santa Ana, Riverside County*
Connecticut: New Haven+
Florida: Miami+
Georgia: Atlanta, Cordele*+
Illinois: Chicago, East St. Louis+, Ullin*
Indiana: Gary, East Chicago
Kentucky: Kentucky Highlands* (Clinton, Jackson, and Wayne Counties)
Maryland: Baltimore
Massachusetts: Boston+
Michigan: Detroit
Minnesota: Minneapolis+
Mississippi: Mid-Delta* (Bolivar, Holmes, Humphreys, LeFlore, Sunflower, Washington Counties)
Missouri/Kansas: Kansas City, Kansas City
Missouri: St. Louis+
New Jersey: Cumberland County
New York: Harlem, Bronx
North Dakota: Lake Agassiz*
Ohio: Cleveland, Cincinnati, Columbus+
Ohio/West Virginia: Ironton/Huntington+
Pennsylvania/New Jersey: Philadephia/ Camden
South Carolina: Columbia/Sumter
South Dakota: Oglala Sioux Reservation in Pine Ridge*
Tennessee: Knoxville
Texas: Houston, El Paso+, Rio GrandeValley* (Cameron, Hidalgo, Starr, and Willacy Counties)
Virginia: Norfolk+/Portsmouth

ENTERPRISE COMMUNITIES

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Alabama: Chambers County* Greene County*, Sumter County*
Alaska: Juneau*
Arizona: Arizona Border* (Cochise, Santa Cruz and Yuma Counties), Phoenix, Window Rock*
Arkansas: East Central* (Cross, Lee, Monroe, and St. Francis Counties), Mississippi County*, Pulaski County
California: Imperial County*, Los Angeles, Huntington Park, San Diego, San Francisco, Bayview, Hunter's Point, Watsonville*, Orange Cove*
Colorado: Denver
Connecticut: Bridgeport, New Haven
Delaware: Wilmington
District of Columbia: Washington
Florida: Jackson County*, Miami, Dade County, Tampa, Immokalee*
Georgia: Albany, Central Savannah River*(Burke, Hancock, Jefferson, McDuffie, Tallafero, and Warren Counties), Crisp County*, Dooley County*
Hawaii: Kaunakakai*
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Oklahoma: Choctaw, McCurtain Counties*, Oklahoma City, Ada*
Oregon: Josephine County*, Portland
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Tennessee: Fayette, Haywood Counties*, Memphis, Nashville, Rutledge*
Tennessee/Kentucky: Scott, McCreary Counties*
Texas: Dallas, El Paso, San Antonio, Waco, Uvalde*
Utah: Ogden
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Virginia: Accomack (Northampton County)*, Norfolk
Washington: Lower Yakima County*, Seattle, Tacoma, Collie*
West Virginia: Charleston*, Huntington, McDowell County*, West Central Appalachia* (Braxton, Clay, Fayette, Nicholas, and Roane)
Wisconsin: Milwaukee, Keshena*

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* Denotes rural designee
+Also an Enterprise Community, Round One
For further information consult the following Internet site: http://www.ezec.gov

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State Single Points of Contact (SPOCs)

In accordance with Executive Order 12372, Intergovernmental Review of Federal Programs, this listing represents the designated SPOCs. Because participation is voluntary, some States and Territories no longer participate in the process. These include: Alabama, Alaska, American Samoa, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a SPOC.

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Changes to this list can be made only after OMB is notified by a State's officially designated representative. E-mail messages can be sent to grants@omb.eop.gov. If you prefer, you may send correspondence to the following postal address: Attn: Grants Management, Office of Management and Budget, New Executive Office Building, Suite 6025, 725 17th Street, NW, Washington, DC 20503.

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April 13, 2000

Part VI

Department of Health and Human Services

Office of Public Health and Science

Announcement of Availability of Grants for Adolescent Family Life Demonstration Projects; Notice

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science

Announcement of Availability of Grants for Adolescent Family Life Demonstration Projects

AGENCY: Office of Adolescent Pregnancy Programs, Office of Population Affairs, OPHS, HHS.

ACTION: Notice.

SUMMARY: The Office of Adolescent Pregnancy Programs (OAPP) requests applications for care demonstration grants under the Adolescent Family Life (AFL) Demonstration Projects Program. These Title XX grants are for community-based and community-supported demonstration projects to establish comprehensive and integrated approaches to the delivery of care services to pregnant adolescents, adolescent parents, their children, their extended family members, and their male partners.

Funds will be available for approximately 15–20 care demonstration projects, which may be located in any State, the District of Columbia, and United States territories, commonwealths and possessions.

DATES: The closing date for this grant announcement is May 30, 2000. Applications will be considered as meeting the deadline if they are postmarked on or before the closing date. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. All hand delivered applications must be received between the hours of 8:30 am and 5:00 pm on or before the above closing date. Applicants which do not meet the deadline will be considered late applications and will be returned to the applicant. *Applications will not be accepted by fax or e-mail. The submission deadline will not be extended.*

ADDRESSES: Application kits consisting of the appropriate forms, a copy of the Title XX legislation, and guidance on the preparation of the application may be downloaded from the following INTERNET address: *www.dhhs.gov/progorg/opa*. If you do not have access to the INTERNET, you may obtain a kit from the Grants Management Office, Office of Populations Affairs, 4350 East-West Highway, Suite 200, Bethesda, MD 20814. Written requests for application kits may be faxed to (301) 594–5981. *All completed applications must be submitted to the Grants Management Office at the above mailing address. In preparing the application, it is important to follow ALL instructions contained in the application kit.*

FOR FURTHER INFORMATION CONTACT: The OAPP Program Office at (301) 594–4004. Staff is available to answer questions and provide limited technical assistance in the preparation of grant applications.

SUPPLEMENTARY INFORMATION: Title XX of the Public Health Service Act, 42 U.S.C. 300z. *et seq.*, authorizes the Secretary of Health and Human Services to award grants for demonstration projects to provide services to pregnant and nonpregnant adolescents, adolescent, parents and their families. (Catalog of Federal Domestic Assistance Number 93.995) Title XX authorizes grants for three types of demonstration projects: (1) Projects which provide "care services" only (*i.e.*, services for the provision of care to pregnant adolescents, adolescent parents and their families); (2) projects which provide "prevention services" only (*i.e.*, services to prevent adolescent sexual relations); and (3) projects which provide a combination of care and prevention services.

Under this program announcement, OAPP intends to make available approximately $4 million to support an estimated 15–20 new care demonstration projects. The awards for care projects will range from $250,000 to $350,000.

Grants may be approved for project periods of up to five years. Grants are funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon the availability of funds, satisfactory progress of the project, and adequate stewardship for Federal funds. A grant award may not exceed 70 percent of the total costs of the project for the first and second years, 60 percent of the total costs for the third year, 50 percent for the fourth year and 40 percent for the fifth year. The non-Federal share of the project costs may be provided in cash expenditures or fairly evaluated in-kind contributions, including facilities, equipment and services.

Applications are encouraged from experienced organizations which are currently operating programs and which have the capability of expanding and enhancing these services to serve significant numbers of adolescents according to the guidelines specified in this announcement.

The specific services which may be funded under Title XX are listed below under the heading entitled **CARE SERVICES.**

The following application requirements contain information collections subject to OMB approval under Paperwork Reduction Act of 1995 (Pub. L. 104–13). These information collections have been approved by OMB under control number 0937–0198.

Eligible Applicants

Any public or private nonprofit organization or agency is eligible to apply for a grant. Grants are awarded only to those organizations or agencies which are determined to demonstrate the capability of providing the proposed services and meet the statutory requirements.

Youth Development Approach

Socio-economic factors such as poverty, substandard housing, violence within a community, racial disparities, and gender inequality all contribute to early sexual activity and pregnancy. An adolescent's ability to plan for their future is hampered not only by their family's inability to meet basic needs, but also by the societal disparities that create unequal access to enrichment programs, job opportunities, support groups and mental health care, etc.

Adolescent health experts, public health officials, sociologists, and the medical community have long agreed that to effectively prevent secondary adolescent pregnancy among youth, Federal, state and local level programs must include multiple and complementary approaches to teen pregnancy prevention.

A more holistic approach to preventing secondary teen pregnancies is often termed "youth development." It has been documented that successful youth development projects are those where adolescents themselves are an integral part of the design, implementation, and evaluation phases over the life of the project. Adolescents need to see hope for a future, acquire the skills necessary to turn hopes into reality, and be provided with an array of opportunities to get them to that reality.

The OAPP encourages applicants to take a youth development approach that works to address the societal disparities that contribute to repeat adolescent pregnancy and poor health outcomes for young mothers, their children, fathers and extended families. In addition, the OAPP encourages applicants to provide opportunities for improving the adolescents' senses of self through cultural understanding, sports and recreation,visual and performing arts, and other activities that build an adolescent's sense of self-worth and self-efficacy. All services provided by

AFL grantees, however, including all activities that are part of a youth development approach, must be within the scope of the Title XX care services listed below.

Care Services

Under this announcement, funds are available for local care demonstrations only. The project site must be identified in the application rather than selected after the grant is awarded.

Under the statute the purpose of care programs is to establish innovative, comprehensive, and integrated approaches to the delivery of care services for pregnant adolescents and adolescent parents under 19 years of age at program entry, with primary emphasis on unmarried adolescents who are 17 years old or younger and for their families. This includes young fathers and their families.

The OAPP encourages the submission of care applications which propose to do the following: (1) Add care services to supplement existing adolescent health services in school, hospital or other community settings, (2) provide care services to minority or other disadvantaged populations, (3) continue services to clients after the delivery of the baby to enable them to acquire good parenting skills and to ensure that their children are developing normally physically, intellectually and emotionally, (4) stress self-sufficiency skills, such as school completion (in mainstream or alternative schools and GED programs) and/or job training preparation and placement, (5) involve males and promote male responsibility, and (6) provide STD and HIV prevention counseling. Applicants should base their approaches upon an assessment of existing programs and, where appropriate, upon efforts to establish better coordination, integration and linkages among such existing programs.

Applicants for care projects are required to provide, either directly or by referral, the following 10 core services:

(1) Pregnancy testing and maternity counseling:

(2) Adoption counseling and referral services which present adoption as an option for pregnant adolescents, including referral to licensed adoption agencies in the

(3) Primary and preventive health services, including prenatal and postnatal care;

(4) Nutrition information and counseling;

(5) Referral for screening and treatment of STDs, including HIV/AIDS;

(6) Referral to appropriate pediatric care;

(7) Educational services relating to family life and problems associated with adolescent premarital sexual relations including:

(a) Information about adoption;

(b) Education on the responsibilities of sexuality and parenting;

(c) The development of material to support the role of partents as the providers of sex education; and

(d) Assistance to parents, schools, youth agencies and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;

(8) Appropriate education and vocational services;

(9) Mental health services and referral to mental health services and to other appropriate physical health services; and

(10) Counseling and referral for family services.

Note: Funds provided under Title XX may not be used for the provision of family planning services other than counseling and referral services unless appropriate family planning services are not otherwise available in the community. In accordance with section, 2006(a)(17) of the Title XX (42 U.S.C. 300z-5(a)917)), applicants must make maximum use of services 2006(a)(17) of Title XX (42 U.S.C. 300z-5(a)(17)), applicants must make maximum use of services available under the Title X Family Planning Program in providing this required core service.

In addition to the 10 required core services listed above, applicants for care projects may provide any of the following supplemental services:

(1) Referral to licensed residential care of maternity home services;

(2) Child care sufficient to enable the adolescent parent to continue education or to enter into employment;

(3) Consumer education;

(4) Counseling for the immediate and extended family members of the eligible person;

(5) Transportation; and

(6) Outreach services to families of adolescents to discourage sexual relations among unemancipated minors.

Evaluation

Section 2006(b)(1) of Title XX requires each grantee to expend at least one percent but not more than five percent of the Federal funds received under Title XX on evaluation of the project. Waivers above the five percent limit on evaluation may be granted in cases where a more rigorous or comprehensive evaluation effort is proposed (*see* sec. 2006(b)(1)). As this is a demonstration program, all applications are required to have an evaluation component of high quality consistent with the scope of the proposed project and the funding

Section 2006(b)(2) of Title XX requires that the evaluations be conducted by an organization or entity independent of the grantee providing services. To assist in conducting the evaluations, each grantee shall develop a working relationship with a college or university located in the grantee's state which will assist in providing monitoring and evaluation of the proposed program. The OAPP strongly recommends extensive collaboration between the applicant organization and the proposed evaluator in the development of the program goals and objectives of the intervention, identification of the variables to be measured, a clear and organized timetable for initiation of the intervention, baseline measurement, and ongoing evaluation data collection and analysis strategies. Additionally, it is also important to establish this collaborative relationship between the applicant organization and the proposed evaluator early to ensure that the project's proposed goals and objectives and the evaluation are in full alignment with each other. The proposed evaluator should be included in program planning meetings to ensure that there is uniformity in the intended outcomes of the program.

Application Requirements

Applications must be submitted on the forms supplied (PHS 516 1-1, Revised 6/99) complete in the manner prescribed in the application kits provided by the OAPP. Incomplete applications will be returned to the applicant. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Applicants must be familiar with Title XX in its entirety to ensure that they have complied with all applicable requirements. A copy of the legislation is included in the application kit.

Additional Requirements

Applicants for grants must also meet *both* of the following requirements (each year):

(1) *Requirements for Review of an Application by the Governor.* Section 2006(e) of Title XX requires that each applicant shall provide the Governor of the State in which the applicant is located a copy of each application submitted to QAPP for a grant for a demonstration project for services under this Title. The Governor has 60 days from the receipt date in which to provide comments to the applicant.

An applicant may comply with this requirement by submitting a copy of the application to the Governor of the State in which the applicant is located at the same time the application is submitted to OAPP.

To inform the Governor's office of the reason for the submission, a copy of this notice should be attached to the application.

(2) *Requirements for Review of an Application Pursuant to Executive Order 12372 (SPOC) Requirements).* Applicants under this announcement are subject to the review requirements of E.O. 12372, "Intergovernmental Review of Federal Programs," as implemented by 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services and Activities." E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. As soon as possible, the applicant (other than Federally-recognized Indian tribal governments) should contact the State Single Point of Contact (SPOC) for each state in the area to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those states not represented on the listing, further inquiries should be made by the applicant regarding submission to the relevant SPOC. The SPOC's comment(s) should be forwarded to the Grants Management Office, Office of Population Affairs, 4350 East-West Highway, Suite 200, Bethesda, MD 20814. The SPOC has 60 days from the closing date of this announcement to submit any comments.

Application Consideration and Assessment

Applications which are judged to be late, incomplete or which do not conform to the requirements of this program announcement will not be accepted for review. Applicants will be so notified, and the application will be returned. All other applications will be reviewed by a multi-disciplinary panel of independent reviewers and assessed according to the following criteria:

(1) The capacity of the proposed applicant organization to provide rapid and effective use of resources needed to conduct the project, collect data and evaluate it. This includes personnel, time and facilities. (30 points)

(2) The applicant's rationale for use of the proposed approach and its worth for testing and/or replication based upon its previous demonstration, review of the literature and/or evaluation findings. (20 points)

(3) The applicant's presentation of an appropriate project design, consistent with the requirements of Title XX, including a clear statement of goals and objectives, reasonable methods for achieving the objectives, a reasonable workplan and timetable and a clear statement of results or benefits expected. (30 points)

(4) The applicant's presentation of a detailed evaluation plan, indicating an understanding of program evaluation methods and reflecting a practical, technically sound approach to assessing the project's achievement of program objectives. (20 points)

Final grant award decisions will be made by the Deputy Assistant Secretary for Population Affairs In making these decisions, the Deputy Assistant Secretary for Population Affairs will take into account the extent to which grants recommended for approval will provide an appropriate geographic distribution of resources, the priorities in sec. 2005(a), and the other factors in sec. 2005, including consideration of:

(1) The applicant's capacity to administer funds responsibly;

(2) The incidence of adolescent pregnancy and the availability of services in the geographic area to be served;

(3) The population to be served;

(4) Youth and community commitment to and involvement in planning and implementation of the demonstration project;

(5) The organizational model(s) for delivery of service;

(6) The usefulness for policymakers and service providers of the proposed project and its potential for complementing existing adolescent health models;

(7) The reasonableness of the estimated cost to the government considering the anticipated results.

OAPP does not release information about individual applications during the review process until final funding decisions have been made. When these decisions have been made, applicants will be notified by letter of the outcome of their applications. The official document notifying an applicant that an application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purpose of the grant, the terms and conditions of the grant award, and the amount of funding to be contributed by the grantee to project costs.

Dated: April 7, 2000.

Denese O. Shervington,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 00–9148 Filed 4–12–00; 8:45 am]

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Federal Register

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Rules and Regulations

Federal Register
Vol. 65, No. 73
Friday, April 14, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Adjustment of Appendices to the Dairy Tariff-Rate Import Quota Licensing Regulation for the 2000 Tariff-Rate Quota Year

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document sets forth the revised appendices to the Dairy Tariff-Rate Import Quota Licensing Regulation for the 2000 quota year reflecting the cumulative annual transfers from Appendix 1 to Appendix 2 for certain dairy product import licenses permanently surrendered by licensees or revoked by the Licensing Authority.

EFFECTIVE DATE: April 14, 2000.

FOR FURTHER INFORMATION CONTACT: Richard P. Warsack, Dairy Import Quota Manager, Import Policies and Programs Division, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue, S.W., Washington, D.C. 20250–1021 or telephone at (202) 720–9439.

SUPPLEMENTARY INFORMATION: The Foreign Agricultural Service (FAS), under a delegation of authority from the Secretary of Agriculture, administers the Dairy Tariff-Rate Import Quota Licensing Regulation codified at 7 CFR 6.20–6.37 that provides for the issuance of licenses to import certain dairy articles under tariff-rate quotas (TRQs) as set forth in the Harmonized Tariff Schedule of the United States. These dairy articles may only be entered into the United States at the low-tier tariff by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The Import Programs Group, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, issues these licenses and in conjunction with the U.S. Customs Service monitors their use.

The regulation at 7 CFR 6.34(a) states: "Whenever a historical license (Appendix 1) is not issued to an applicant pursuant to the provisions of § 6.23, is permanently surrendered or is revoked by the Licensing Authority, the amount of such license will be transferred to Appendix 2." Section 6.34(b) provides that the cumulative annual transfers will be published in the **Federal Register**. Accordingly, this document sets forth the revised Appendices for the 2000 tariff-rate quota year.

List of Subjects in 7 CFR Part 6

Agricultural commodities, Cheese, Dairy products, Imports, Reporting and recordkeeping requirements.

Issued at Washington, D.C., the 10th day of April, 2000.

Richard P. Warsack,

Licensing Authority.

Accordingly, 7 CFR Part 6 is amended as follows:

PART 6—IMPORT QUOTAS AND FEES

1. The authority citation for Part 6, Subpart—Dairy Tariff-Rate Import Quota Licensing continues to read as follows:

Authority: Additional U.S. Notes 6, 7, 8, 12, 14, 16–23 and 25 to Chapter 4 and General Note 15 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), Pub. L. 97–258, 96 Stat. 1051, as amended (31 U.S.C. 9701), and secs. 103 and 404, Pub. L. 103–465, 108 Stat. 4819 (19 U.S.C. 3513 and 3601).

2. Appendices 1, 2 and 3 to Subpart—Dairy Tariff-Rate Import Quota Licensing are revised to read as follows:

BILLING CODE 3410–10–P

Appendices 1, 2 and 3 to Subpart--Dairy Tariff-Rate Import Quota Licensing

Articles Subject to: Appendix 1, Historical Licenses; Appendix 2, Nonhistorical Licenses; and Appendix 3, Designated Importer Licenses for Quota Year 2000

Article by Additional U.S. Note Number and Country of Origin NON-CHEESE ARTICLES	Appendix 1	Appendix 2	Appendix 3	
			Tokyo Round	Uruguay Round
Butter (Note 6)	5,649,278	1,327,722		
EU-15	81,153	15,008		
New Zealand	124,709	25,884		
Other Countries	63,105	10,830		
Any Country	5,380,311	1,276,000		
Dried Skim Milk (Note 7)	600,076	4,660,924		
Australia	600,076			
Canada		219,565		
Any Country		4,441,359		
Dried Whole Milk (Note 8)	3,175	3,318,125		
New Zealand	3,175			
Any Country		3,318,125		
Dried Buttermilk/Whey (Note 12)	224,981			
Canada	161,161			
New Zealand	63,820			
Butter Substitutes containing over 45 percent of butterfat and/or butter oil (Note 14)		6,080,500		
Any Country		6,080,500		
TOTAL: NON-CHEESE ARTICLES	6,477,510	15,387,271		

Article by Additional U.S. Note Number and Country of Origin CHEESE ARTICLES	Appendix 1	Appendix 2	Appendix 3	
			Tokyo Round	Uruguay Round
Cheese and substitutes for cheese (except cheese not containing cow's milk and soft ripened cow's milk cheese, cheese (except cottage cheese) containing 0.5 percent or less by weight of butterfat and articles within the scope of other import quotas provided for in this subchapter) (Note 16)	24,011,213	7,459,518	9,661,128	7,496,000
Argentina	7,690		92,310	
Australia	535,628	5,542	758,830	1,750,000
Canada	1,031,946	109,054		
Costa Rica				1,550,000
Czech Republic				200,000
EU-15	15,749,737	6,582,695	1,132,568	2,346,000
Of which Portugal is:	127,536	1,773	223,691	
Israel	79,696		593,304	
Iceland	294,000		29,000	
New Zealand	4,534,333	281,139	6,506,528	
Norway	124,982	25,018		
Poland	917,497	18,727		300,000
Slovak Republic				600,000
Switzerland	605,069	66,343	548,588	500,000
Uruguay				250,000
Other Countries	130,635	71,000		
Any Country		300,000		
Blue-mold cheese (except Stilton produced in the United Kingdom) and cheese and substitutes for cheese containing, or processed from, Blue-mold cheese (Note 17)	2,321,553	159,447		430,000
Argentina	2,000			
EU-15	2,319,553	159,447		300,000
Chile				80,000
Czech Republic				50,000
Other Countries	1			

Article by Additional U.S. Note Number and Country of Origin CHEESE ARTICLES	Appendix 1	Appendix 2	Appendix 3	
			Tokyo Round	Uruguay Round
Cheddar Cheese, and cheese and substitutes for cheese containing, or processed from, Cheddar cheese (Note 18)	3,682,923	600,933	519,033	7,620,000
Australia	942,397	42,102	215,501	1,250,000
Chile				220,000
Czech Republic				50,000
EU-15	61,932	201,068		1,000,000
New Zealand	2,552,720	243,748	303,532	5,100,000
Other Countries	125,874	14,015		
Any Country		100,000		
American-type cheese, including Colby, washed curd and granular cheese (but not including Cheddar) and cheese and substitutes for cheese containing or processed from such American-type cheese (Note 19)	2,874,357	291,196	357,003	
Australia	839,370	41,628	119,002	
EU-15	190,758	163,242		
New Zealand	1,680,364	81,635	238,001	
Other Countries	163,865	4,691		
Edam and Gouda cheese, and cheese and substitutes for cheese containing, or processed from, Edam and Gouda cheese (Note 20)	5,303,350	303,052		1,210,000
Argentina	119,003	5,997		110,000
Czech Republic				100,000
EU-15	5,044,628	244,372		1,000,000
Norway	114,318	52,682		
Other Countries	25,401	1		
Italian-type cheeses, made from cow's milk, (Romano made from cow's milk, Reggiano, Parmesan, Provolone, Provoletti, Sbrinz, and Goya-not in original loaves) and cheese and substitutes for cheese containing, or processed from, such Italian-type cheeses, whether or not in original loaves (Note 21)	6,545,306	975,241	795,517	5,165,000
Argentina	3,976,531	148,952	367,517	1,890,000
EU-15	2,555,775	826,225		700,000
Poland				1,325,000
Romania				500,000
Uruguay			428,000	750,000
Other Countries	13,000	64		

Article by Additional U.S. Note Number and Country of Origin CHEESE ARTICLES	Appendix 1	Appendix 2	Appendix 3	
			Tokyo Round	Uruguay Round
Swiss or Emmenthaler cheese other than with eye formation, Gruyere-process cheese and cheese and substitutes for cheese containing, or processed from, such cheeses (Note 22)	5,807,334	843,980	823,519	380,000
EU-15	4,398,632	753,362	393,006	380,000
Switzerland	1,333,942	85,545	430,513	
Other Countries	74,760	5,073		
Cheese and substitutes for cheese, containing 0.5 percent or less by weight of butterfat (except articles within the scope of other tariff-rate quotas provided for in this subchapter), and margarine cheese (Note 23)	3,858,505	566,403	1,050,000	
EU-15	3,689,429	560,571		
Israel			50,000	
New Zealand			1,000,000	
Poland	169,075	5,832		
Other Countries	1			
Swiss or Emmenthaler cheese with eye formation (Note 25)	18,327,694	3,969,637	9,557,945	2,620,000
Argentina	9,115		70,885	
Australia	209,698		290,302	
Canada			70,000	
Czech Republic				400,000
Hungary				800,000
EU-15	13,321,467	3,155,361	4,003,172	1,220,000
Iceland	149,999		150,001	
Israel	27,000			
Norway	3,206,405	448,905	3,227,690	
Switzerland	1,318,735	365,370	1,745,895	200,000
Other Countries	85,275	1		
TOTAL: CHEESE ARTICLES	72,732,235	15,169,407	22,764,145	24,921,000

[FR Doc. 00–9347 Filed 4–13–00; 8:45 am]
BILLING CODE 3410–10–C

DEPARTMENT OF JUSTICE

8 CFR Part 3

28 CFR Part 0

[EOIR No. 126F; AG Order No. 2297–2000]

RIN 1125–AA26

Executive Office for Immigration Review; Board of Immigration Appeals; 21 Board Members

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations relating to the organization of the Executive Office for Immigration Review by adding to the Board of Immigration Appeals (Board) an additional Vice Chairman position and two Board Member positions, thereby expanding the Board to 21 permanent members. This rule also eliminates the position of Chief Attorney Examiner. These amendments are necessary to maintain an effective, efficient system of appellate adjudication in light of the Board's increasing caseload.

EFFECTIVE DATE: This final rule is effective April 14, 2000.

FOR FURTHER INFORMATION CONTACT: Charles Adkins-Blanch, Acting General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, VA 22041; telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION: This final rule expands the Board to 21 permanent members by adding one Vice Chairman position and two Board Member positions. This rule also eliminates the position of Chief Attorney Examiner in the organizational hierarchy of the Board. These changes are necessary to maintain an effective, efficient system of appellate adjudication in light of the Board's increasing caseload. This rule amends 8 CFR part 3 and 28 CFR part 0 to reflect these changes in the Board's organization.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is not necessary because this rule relates to agency procedure and practice.

Regulatory Flexibility Act

The Attorney General, in accordance with 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f). Accordingly, this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988: Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Charles Adkins-Blanch, Acting General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, VA 22041; telephone (703) 305–0470.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Aliens, Immigration, Legal services, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

28 CFR Part 0

Authority delegations, (Government agencies), Government employees, Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, Whistleblowing.

Accordingly, for the reasons set forth in the preamble, part 3 of chapter I of title 8 of the Code of Federal Regulations and part 0 of chapter I of title 28 of the Code of Federal Regulations are amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for 8 CFR part 3 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103; 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

Subpart A—Board of Immigration Appeals

2. In § 3.1:

a. Amend paragraph (a)(1) by revising the second sentence.

b. Amend paragraph (a)(1) by removing the words "or the Chief Attorney Examiner" in the eleventh sentence.

c. Amend paragraph (a)(2) by revising the third sentence.

d. Amend paragraph (a)(2) by removing the last two sentences.

e. Amend paragraph (a)(4)(ii) by removing the words "Vice Chairman" and adding in their place the words "one of the Vice Chairmen" in the third sentence.

f. Amend paragraph (a)(4)(ii) by removing the words "Vice Chairman are both" and adding in their place the words "Vice Chairman are all" in the fourth and fifth sentences.

g. Amend paragraph (a)(4)(ii) by removing the words "the Vice Chairman" and adding in their place the words "one of the Vice Chairmen" in the sixth sentence.

The revisions read as follows:

§ 3.1 General authorities.

(a)(1) * * * The Board shall consist of a Chairman, two Vice Chairmen, and eighteen other members. * * *

(2) * * * The Chairman shall be assisted in the performance of his duties by two Vice Chairmen.

* * * * *

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

3. The authority citation for 28 CFR part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519

Subpart U—Executive Office for Immigration Review

4. Amend § 0.116 by revising the first sentence to read as follows:

§ 0.116 Board of Immigration Appeals.

The Board of Immigration Appeals shall consist of a Chairman, two Vice Chairmen, and eighteen other members. * * *

Dated: March 31, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–8653 Filed 4–13–00; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245

[INS No. 1825–97]

RIN 1115–AE25

Adjustment of Status for Certain Polish and Hungarian Parolees

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule adopts, with changes, the interim rule the Immigration and Naturalization Service (Service) published in the **Federal Register** on May 23, 1997. The interim rule provided for the adjustment to lawful permanent resident status of certain alien parolees from Poland or Hungary who were paroled into the United States between November 1, 1989, and December 31, 1991, and established terms that enabled these individuals to apply for permanent resident status. This final rule responds to a comment the Service received by adding a list of the eligibility requirements for adjustment under this provision.

DATES: This final rule is effective May 15, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Program Analyst, Immigration and Naturalization Service, Adjudications Division, 425 I Street, NW, Room 3214, Washington, DC 20536, telephone (202) 514–3228.

SUPPLEMENTARY INFORMATION:

Background

What Authority Provides for Adjustment of Status for Nationals From Poland or Hungary?

Section 646 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, dated September 30, 1996, provides for the adjustment to lawful permanent resident status for certain nationals of Poland or Hungary who, after having been denied refugee status, were inspected and granted parole in the United States during the period beginning on November 1, 1989, and ending on December 31, 1991.

How Did the Service Implement the Provisions of Section 646 of the IIRIRA?

On May 23, 1997, the Service published an interim rule in the **Federal Register** at 62 FR 28314, which added § 245.12, to establish the procedures by which eligible aliens may obtain the benefits of section 646(b) of the IIRIRA. The public was given a 60-day period to comment on the interim rule.

What Comments did the Service Receive?

The Service received one written comment on the interim rule. The commenter noted the eligibility requirements for benefits, under section 646 of Public Law 104–208, were not stated in the Immigration and Nationality Act (Act). The commenter felt it was necessary to state the eligibility requirements for benefits in this rule for prospective applicants.

The Service agrees with the commenter that eligibility requirements for benefits, under section 646 of Public Law 104–208, are not stated in the Act. Accordingly, the Service has incorporated these statutory requirements into § 245.12(a)(3) and (4) of the final rule.

What Other Changes to the Final Rule did the Service Make?

The Service is also amending § 245.12 to reflect changes made by section 308 of the IIRIRA. Section 308 redesignated serveral sections of the Act, including section 232 of the Act regarding medical examinations. An applicant's medical examination must comply with § 232.1 and § 245.5 to meet the eligibility requirements for adjustment of status. Accordingly, the Service is amending § 245.12(a) by adding a reference to § 232.1. Section 245.12(a) in the interim rule made reference to collecting information on Form I–643, Health and Human Services Statistical Data, as a part of the filing process. However, the reference to Form I–643 has been removed because it does not properly apply to applicants under section 646 of the IIRIRA, but rather to refugees.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because this rule affects individuals who are adjusting status to permanent resident.

Unfunded Mandates Reform Act of 1995

This rule will not result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an anual effect on the economy of $100 million or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order (E.O., 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget (OMB) has waived its review under section 6(a)(3)(A).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and

responsibilities among the various levels of government. Therefore, in accordance with section 6 of E.O. 13132, the Immigration and Naturalization Service has determined that this rule does not have sufficient federalism implcations to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in section 3(a) and 3(b)(2) of E.O. 12988.

Paperwork Reduction Act

This final rule does not impose any new reporting or recordkeeping requirements. The information collection requirements contained in this rule have previously been approved for use by the OMB under provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5, Display of control numbers.

List of Subjects in 8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR part 245 which was published at 62 FR 28314 on May 23, 1997, is adopted as a final rule with the following changes:

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

1. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681; 8 CFR part 2.

2. Section 245.12 is revised to read as follows:

§ 245.12 What are the procedures for certain Polish and Hungarian parolees who are adjusting status to that of permanent resident under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996?

(a) *How do I apply for adjustment of status under this section?* (1) Each person applying for adjustment of status, under section 646(b) of Public Law 104–208, must file a completed Form I–485, Application to Register Permanent Residence or Adjust Status, with the correct filing fee, with the Service director having jurisdiction over the applicant's place of residence.

(2) The application must include Form G–325A, Biographic Information and the results of the medical examination made according to § 232.1 of this chapter and § 245.5.

(3) The application must include evidence to show the applicant was a national of Poland or Hungary who, after being denied refugee status, was inspected and granted parole into the United States between November 1, 1989, and December 31, 1991.

(4) The applicant must have been physically present in the United States for at least 1 year before filing a Form I–485.

(5) After receiving the Form I–485, the adjudicating Service office will notify each applicant who is 14 years old or older of the time and location for the required fingerprinting.

(b) *How is my application for adjustment of status affected if I leave the United States while my application is still pending?* The departure from the United States by an applicant for adjustment of status must be considered an abandonment of the application, as provided in § 245.2(a)(4)(ii), unless the applicant was previously granted advance parole for such absence, and was reinspected on returning to the United States.

(c) *Which grounds for inadmissibility do not apply or can be waived?* The provisions of section 212(a) (4), (5), and (7)(A) of the Act will not apply to adjustment of status under § 245.12. In addition, the director may waive any other ground of inadmissibility except section 212(a)(2)(C) or 212(a)(3)(A), (B), (C), or (E) of the Act, for humanitarian purposes, to ensure family unity, or when it is otherwise in the public interest.

(d) *If my application for adjustment of status is approved under § 245.12, what date will be recorded as my admission to permanent residence?* On approval of the application for adjustment of status, the date of the applicant's admission to permanent resident status will be the date of the applicant's inspection and parole, as described in paragraph (a) of this section.

Dated: March 28, 2000.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 00–9320 Filed 4–13–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–07–AD; Amendment 39–11685; AD 2000–07–29]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A300, A310, and A300–600 series airplanes, that currently requires a one-time operational test of the fire shut-off valves (FSOV) to determine if the FSOV's are functioning correctly, and replacement of failed parts with new or serviceable parts. This amendment requires repetitive performance of the operational test. This amendment also limits the applicability to airplanes installed with certain FSOV's. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct failure of the FSOV's to close, which could result in failure of the engine fire shut-off system, and consequent inability to extinguish an engine fire.

DATES: Effective May 19, 2000.

The incorporation by reference of certain publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of September 4, 1998 (63 FR 40811, July 31, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–16–09, amendment 39–10685 (63 FR 40811, July 31, 1998), which is applicable to certain Airbus Model A300, A310, and A300–600 series airplanes, was published in the Federal Register on February 10, 2000 (65 FR 6563). The action proposed to continue to require a one-time operational test of the fire shut-off valves (FSOV) to determine if the FSOV's are functioning correctly, and replacement of failed parts with new or serviceable parts. The action also proposed to require repetitive performance of the operational test. In addition, the action also proposed to limit the applicability to airplanes installed with certain FSOV's.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter states no objection to the proposed rule. Another commenter states that it has no comment to the proposed rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 103 airplanes of U.S. registry that will be affected by this AD.

The operational test that is currently required by AD 98–16–09, and retained in this AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required test on U.S. operators is estimated to be $60 per airplane, per test cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10685 (63 FR 40811, July 31, 1998), and by adding a new airworthiness directive (AD), amendment 39–11685, to read as follows:

2000–07–29 Airbus Industrie: Amendment 39–11685. Docket 99–NM–07–AD. Supersedes AD 98–16–09, Amendment 39–10685.

Applicability: Model A300, A310, and A300–600 series airplanes; on which any fire shut-off valve (FSOV) having part number (P/N) B38LC50XX (where XX is 05, 06, 07, 08, 09, or 10) is installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct failure of the FSOV's to close, which could result in failure of the engine fire shut-off system, and consequent inability to extinguish an engine fire, accomplish the following:

Repetitive Operational Tests

(a) Within 600 flight hours after the effective date of this AD, perform an operational test of the 4 FSOV's on the airplane, in accordance with Airbus All Operator Telex (AOT) 29–22, dated November 24, 1997. If any FSOV fails the test, prior to further flight, replace the FSOV with a new or serviceable FSOV, in accordance with the AOT. Repeat the operational test thereafter at intervals not to exceed 600 flight hours.

Spares

(b) As of the effective date of this AD, no person shall install an FSOV, part number (P/N) B38LC50XX (where XX is 05, 06, 07, 08, 09, or 10), on any airplane, unless a successful operational test has been performed in accordance with the requirements of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Airbus All Operator Telex (AOT) 29–22, dated November 24, 1997. This incorporation by reference was approved previously by the Director of the Federal as of September 4, 1998 (63 FR 40811, July 31, 1998). Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be

inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 98–356–259(B), dated September 9, 1998.

(f) This amendment becomes effective on May 19, 2000.

Issued in Renton, Washington, on April 7, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–9246 Filed 4–13–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–82–AD; Amendment 39–11680; AD 2000–07–25]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Model G–IV Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Gulfstream Model G–IV series airplanes. This action requires modification of the power feeder cable assemblies of the left and right engine alternators. This amendment is prompted by an incident of an in-flight engine fire on a Model G–IV series airplane due to chafing of the power feeder cable assembly of an engine alternator. The actions specified in this AD are intended to prevent interference and chafing between the alternator power feeder cables and adjacent structure, which could result in an electrical short circuit and consequent fire ignition source in the engine compartment.

DATES: Effective May 1, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 1, 2000.

Comments for inclusion in the Rules Docket must be received on or before June 13, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–82–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–9980. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Neil Berryman, Aerospace Engineer; ACE–118A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6098; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: The FAA has received a report indicating that an in-flight engine fire occurred on a Gulfstream Model G–IV series airplane. Inspection revealed that the fire was contained within the engine nacelle. Further investigation indicated the ignition source of the fire to be an alternator power feeder cable chafing against the Approach Idle Solenoid fuel line. Such chafing, if not corrected, could result in an electrical short circuit that could spark and ignite a fire in the engine compartment.

Explanation of Relevant Service Information

The FAA has reviewed and approved Gulfstream IV Customer Bulletin No. 112, dated February 15, 2000, and Gulfstream IV Aircraft Service Change No. 410, dated February 11, 2000. The customer bulletin references the aircraft service change, which describes procedures for modification of the power feeder cable assemblies of the left and right engine alternators. Modification procedures include replacing the cables, rerouting the cables to ensure adequate clearance between the cables and adjacent structure, and ensuring that the cables are properly connected to the terminals and that torque values are within specified limits. Procedures also include installing additional brackets and clamps to secure the cables and eliminate slack in the cables.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Gulfstream Model G–IV series airplanes of the same type design, this AD is being issued to prevent interference and chafing between the alternator feeder cables and adjacent structure, which could result in an electrical short circuit and consequent fire ignition source in the engine compartment. This AD requires modifying the power feeder cable assemblies of the left and right engine alternators. The actions are required to be accomplished in accordance with the service information described previously.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments

submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–82–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–07–25 Gulfstream Aerospace Corporation: Amendment 39–11680. Docket 2000–NM–82–AD.

Applicability: Model G–IV series airplanes, serial numbers 1000 through 1404 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent interference and chafing between the alternator power feeder cables and adjacent structure, which could result in an electrical short circuit and consequent fire ignition source in the engine compartment, accomplish the following:

Modification

(a) Within 150 total flight hours after the effective date of this AD, accomplish paragraphs (a)(1) or (a)(2) of this AD, as applicable, in accordance with Gulfstream IV Customer Bulletin No. 112, dated February 15, 2000, and Gulfstream IV Aircraft Service Change No. 410, dated February 11, 2000.

(1) For airplanes having serial numbers 1000 through 1384 inclusive: Accomplish paragraphs (a)(1)(i) and (a)(1)(ii) of this AD for the left and right engines, in accordance with Paragraphs B. and C. of the Modification Instructions of the aircraft service change.

(i) Replace the alternator power feeder cables with new cables, and reroute the cables.

(ii) Install additional brackets and clamps.

Note 2: On some airplanes, some of the actions described in the aircraft service change were accomplished prior to the effective date of this AD. On these airplanes, these actions are not required to be repeated, as allowed by the phrase, "unless accomplished previously." However, any action described in the aircraft service change that has not been accomplished on these airplanes must be accomplished in accordance with this paragraph.

(2) For airplanes having serial numbers 1385 through 1404 inclusive: Accomplish paragraphs (a)(2)(i) and (a)(2)(ii) on the right engine in accordance with paragraph D. of the Modification Instructions of the aircraft service change.

(i) Install a bracket and spacer.

(ii) Reroute the alternator power feeder cables.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Gulfstream IV Customer Bulletin No. 112, dated February 15, 2000; and Gulfstream IV Aircraft Service Change No. 410, dated February 11, 2000, as applicable. (NOTE: The issue date of Gulfstream IV Aircraft Service Change No. 410 is indicated only on the cover page of the document; no other page of this document is dated.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–9980. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 1, 2000.

Issued in Renton, Washington, on April 5, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8991 Filed 4–13–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–369–AD; Amendment 39–11679; AD 2000–07–24]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes, that requires installation of new, improved bonding jumpers on the horizontal stabilizer. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to ensure adequate electrical bonding between the horizontal and vertical stabilizers. Inadequate electrical bonding, in the event of a lightning strike, could cause electrical arcing, and result in damage to the hydraulic lines and consequent failure of the hydraulic systems.

DATES: Effective May 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes was published in the **Federal Register** on February 4, 2000 (65 FR 5456). That action proposed to require installation of new, improved bonding jumpers on the horizontal stabilizer.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter states that it has partially completed the requirements, and plans to accomplish the remainder of the requirements of the AD.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 129 Fokker Model F.28 Mark 0070 and 0100 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $69 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $24,381, or $189 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–07–24 Fokker Services B.V.: Amendment 39–11679. Docket 99–NM–369–AD.

Applicability: All Model F.28 Mark 0070 and 0100 airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure adequate electrical bonding between the horizontal and vertical stabilizers, accomplish the following:

(a) Within 18 months after the effective date of this AD, accomplish the actions required by paragraphs (a)(1) and (a)(2) of this AD, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–23–032, dated September 22, 1999.

(1) On the left-hand side of the horizontal stabilizer, replace the existing bonding jumper on the horizontal stabilizer torsion box with a new, improved bonding jumper.

(2) On the right-hand side of the horizontal stabilizer, install a new, improved bonding jumper.

Note 2: Fokker Service Bulletin SBF100–23–032, dated September 22, 1999, references Fokker 70/100 Aircraft Maintenance Manual (AMM), Chapter 20–13–05, as an additional source of service information to accomplish the installation of the new bonding jumpers.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Fokker Service Bulletin SBF100–23–032, dated September 22, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive 1999–128(A), dated October 29, 1999.

(e) This amendment becomes effective on May 19, 2000.

Issued in Renton, Washington, on April 5, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8990 Filed 4–13–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–321–AD; Amendment 39–11678; AD 2000–07–23]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–100 series airplanes, that requires changing the power supply for the thunderstorm lights from the left secondary bus to the left essential bus. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent a failure of the thunderstorm lights in the cockpit after loss of all generated electrical power. This condition could result in the cockpit instruments not being visible to the flight crew during certain emergency procedures, and consequent reduced controllability of the airplane.

DATES: Effective May 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Luciano Castracane, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7535; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–100 series airplanes was published in the **Federal Register** on January 14, 2000 (65 FR 2362). That action proposed to require changing the power supply for the thunderstorm lights from the left secondary bus to the left essential bus.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 9 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $306 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $4,374, or $486 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has

been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–07–23 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–11678. Docket 99–NM–321–AD.

Applicability: Model DHC–8–100 series airplanes, serial numbers 003 through 020 inclusive; certificated in any category; except those on which Modification 8/0198 has been installed.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a failure of the thunderstorm lights in the cockpit after loss of all generated electrical power, which could result in the cockpit instruments not being visible to the flight crew during certain emergency procedures, and consequent reduced controllability of the airplane, accomplish the following:

Modification

(a) Within 6 months after the effective date of this AD, accomplish Bombardier Modification 8/0198 (including changing the power supply for the thunderstorm lights from the left secondary bus to the left essential bus) in accordance with Bombardier Service Bulletin S.B. 8–24–69, Revision 'A', dated June 11, 1999.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The modification shall be done in accordance with Bombardier Service Bulletin S.B. 8–24–69, Revision "A", dated June 11, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–99–21, dated July 22, 1999.

(e) This amendment becomes effective on May 19, 2000.

Issued in Renton, Washington, on April 5, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8089 Filed 4–13–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–82–AD; Amendment 39–11612; AD 2000–05–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus A300–600 and A310 series airplanes, that requires repetitive high frequency eddy current (HFEC) inspections to detect cracking of the inner flange of fuselage frame FR73A, between beams 5 and 7, and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct fatigue cracking of the inner flange of fuselage frame FR73A, which could result in reduced structural integrity of the fuselage.

DATES: Effective May 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus A300–600 and A31 series airplanes was published in the **Federal Register** on January 5, 2000 (65 FR 397). That action

proposed to require repetitive high frequency eddy current (HFEC) inspections to detect cracking of the inner flange of fuselage frame FR73A, between beams 5 and 7, and corrective actions, if necessary.

Comment Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

Request To Revise Applicability

The commenter, the manufacturer, requests that the applicability of the proposed AD be revised. The commenter states that the applicability should reflect the fact that inspections required by the proposed AD are necessary only on airplanes on which Airbus Modification 06925 has been installed during production. Because the retrofit solution has better stress margins compared to those of the production solution, airplanes with the retrofit solution are not subject to the unsafe condition. The commenter also states that Model A300F4–600 (freighter) series airplanes should not be included in the applicability of the AD because no aft passenger/crew doors and no frames FR73A (which are the subject areas of the inspections) exist on these airplanes. The commenter suggests that such an exclusion in the AD can best be addressed by excluding airplanes on which Airbus Modification 08907 has been accomplished, since Modification 08907 removes the reinforcements installed by Modification 06925.

The FAA concurs with the request to limit the applicability of the AD by including only those airplanes on which Airbus Modification 06925 has been installed in production, and by excluding airplanes on which Airbus Modification 08907 has been accomplished. The FAA has determined that the revised applicability will more accurately reflect those airplanes subject to the unsafe condition that is identified and addressed by the AD. The applicability of the final rule has been revised accordingly.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This is considered to be interim action. The inspection reports that are required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the cracking, and eventually to develop final action to fully address the unsafe condition. Once final action has been identified, the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 198 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $11,880, or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–05–03 Airbus Industrie: Amendment 39–11612. Docket 99–NM–82–AD.

Applicability: Model A300–600 and A310 series airplanes, certificated in any category, on which Airbus Modification 06925 has been accomplished in production; except airplanes on which Airbus Modification 08907 has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the inner flange of fuselage frame FR73A, which could result in reduced structural integrity of the fuselage, accomplish the following:

HFEC Inspection

(a) Prior to the accumulation of 18,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later: Perform a high frequency eddy current (HFEC) inspection to detect cracking of the inner flange (left and right sides) of the rear fuselage frame FR73A, between beams 5 and 7, in accordance with Airbus Service Bulletin A310–53–2107, Revision 01 (for Model A310 series airplanes), or A300–53–6116, Revision 01 (for Model A300–600 series airplanes); both dated July 2, 1999; as applicable.

(1) If no crack is detected, repeat the HFEC inspection thereafter at intervals not to exceed 5,000 flight cycles.

(2) For any crack that is less than or equal to 0.20 inch (5.0 millimeters) in length: Prior to further flight, accomplish either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Rework the frame in accordance with the applicable service bulletin. Within 3,000 flight cycles after accomplishing the rework, replace the fuselage frame FR73A between

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beams 5 and 7 with a new frame section in accordance with the applicable service bulletin. Or

(ii) Replace the fuselage frame FR73A between beams 5 and 7 with a new frame section, in accordance with the applicable service bulletin.

(3) For any crack greater than 0.20 inch (5.0 millimeters) in length: Prior to further flight, accomplish either paragraph (a)(3)(i) or (a)(3)(ii) of this AD.

(i) Repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). Or

(ii) Replace the fuselage frame FR73A between beams 5 and 7 with a new section, in accordance with the applicable service bulletin.

(b) Within 18,000 flight cycles after any replacement accomplished in accordance with paragraph (a)(2)(i), (a)(2)(ii), or (a)(3)(ii) of this AD: Repeat the inspection specified by paragraph (a) of this AD. Thereafter, repeat the inspection at intervals not to exceed 5,000 flight cycles.

(c) Submit a report of inspection findings (both positive and negative) of any inspection required by this AD to Airbus Industrie, Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, the age of the airplane since entry into service, and the number of landings and flight hours on the airplane. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection required by paragraph (a) of this AD is accomplished after the effective date of this AD: Submit the report within 10 days after performing the inspection.

(2) For airplanes on which the inspection required by paragraph (a) of this AD has been accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided by paragraph (a)(3)(i) of this AD, the actions shall be done in accordance with Airbus Service Bulletin A310–53–2107, Revision 01, dated July 2, 1999, or Airbus Service Bulletin A300–53–6116, Revision 01, dated July 2, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 1999–013–276(B), dated January 13, 1999.

(g) This amendment becomes effective on May 19, 2000.

Issued in Renton, Washington, on April 5, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8988 Filed 4–13–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–78–AD; Amendment 39–11676; AD 2000–07–22]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300–600 series airplanes, that requires repetitive inspections to detect cracking of the doubler angle and discrepancies of the fasteners that connect the doubler angle and the bottom panel of the center wing box, and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct fatigue cracking in the doubler angle and discrepancies of the fasteners that connect the doubler angle and the bottom panel of the center wing box. Such cracking and discrepancies could result in reduced structural integrity of the airplane.

DATES: Effective May 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300–600 series airplanes was published in the **Federal Register** on May 19, 1998 (63 FR 27516). That action proposed to require repetitive inspections to detect cracking of the doubler angle and discrepancies of the fasteners that connect the doubler angle and the bottom panel of the center wing box, and corrective actions, if necessary.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

No Objection to the Proposal

One commenter, an operator, states that it does not own or operate the equipment affected by the proposed AD, and as such, has no comments to offer.

Requests To Allow Continued Flight of an Airplane With Known Cracks

Three commenters, the manufacturer and two operators, request that the FAA revise the proposed AD to allow continued flight with a crack under 30 millimeters in length, provided that

repetitive inspections are accomplished. These commenters state that analysis has shown that the structure can sustain ultimate load with the pickup angle completely cracked. Two of the commenters point out that the doubler angle is not a principal structural element (PSE). These commenters suggest that the FAA follow the continued flight criteria and angle replacement procedures described in Airbus Service Bulletin A300–53–6110, dated April 8, 1997 (which was referenced in the proposed AD as the appropriate source of service information for accomplishment of the inspection, repair, and installation of new fasteners). One of these commenters, an operator, states that such an allowance would enable scheduling of repairs in a manner that will minimize operational impact; without such an allowance, immediate field repairs would cost $15 million in out-of-service and maintenance costs.

The FAA concurs with the commenters' request to allow, under certain conditions, continued flight of airplanes with known cracks. Based on the substantiating data supplied by the commenters, and based on the circumstances of unusual need described above, the FAA has reconsidered its position regarding continued flight with known cracks for the affected airplanes. The FAA finds that allowing the affected airplanes to continue to fly with cracks that are within the limits specified in Airbus Service Bulletin A300–53–6110 is acceptable, provided that applicable corrective actions (*e.g.*, crack stopping of hole, rotating probe inspection, repetitive detailed visual inspections, eventual modification of doubler angle) are accomplished as specified in Figure 1, Sheet 1, of that service bulletin. The FAA has revised paragraph (c) of the final rule to reflect this finding.

Request for an Alternative Method of Compliance

One commenter suggests that, as an alternative to the modification required by paragraph (c) of the proposed AD, operators be allowed to replace the existing part with a pre-modification 11045 doubler angle part with the same part number. The commenter states that, unlike the modification, such a replacement would be more expedient because it would not require jacking of the airplane. The commenter also states that, if the subject replacement is accomplished, the inspection program specified in Airbus Service Bulletin A300–53–6110 would still be required.

The FAA does not concur. The FAA acknowledges that the doubler angle could be replaced by a pre-modified 11045 part if combined with the inspection program specified in Airbus Service Bulletin A300–53–6110. However, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has not definitively approved such a replacement scheme. Paragraph (f) of the final rule contains a provision for requesting approval of an alternative method of compliance on a case-by-case basis. No change to the final rule is necessary in this regard.

Changes Made to the Proposed AD

Since issuance of the proposed AD, Airbus Service Bulletin A300–53–6110, Revision 01, dated December 10, 1998, has been issued. This revision of the service bulletin is essentially equivalent to the original issue, dated April 8, 1997. The FAA has revised paragraphs (a), (b), and (c) of the AD to require accomplishment of the actions in those paragraphs in accordance with Revision 01 of the service bulletin. However, for operators that may have accomplished required actions prior to the effective date of this AD in accordance with the original issue of the service bulletin, "NOTE 2" has been added to the final rule to give credit for such accomplishment.

Operators should note that a fatigue rating has been added to Airbus Service Bulletin A300–53–6110, Revision 01, that is intended to allow operators to calculate an adjustable compliance threshold for accomplishment of the inspections described in the service bulletin. However, the FAA has determined that utilization of such "adjustment for range" calculations may present difficulties in determining if the applicable actions have been accomplished within the appropriate compliance time. While such adjustable compliance times are utilized as part of the Maintenance Review Board program, they do not fit practically into the AD tracking process for operators or for Principal Maintenance Inspectors attempting to ascertain compliance with AD's. Based on reviews of the "adjustment for range" calculations with the FAA Aircraft Evaluation Group, and in further consultation with the manufacturer, the FAA has determined that fixed compliance times should continue to be specified for accomplishment of the actions required by this AD. However, operators may request an extension of the compliance times of this AD in accordance with the "adjustment for range" formula, under the provisions of paragraph (f) of the final rule.

Because paragraph (c) of the final rule (which provides relief for corrective actions required in the event that cracking within certain limits is found) references paragraph (e), the FAA has revised paragraph (e) to address any case where a discrepancy is found during any inspection required by this AD and the service bulletin specifies to contact Airbus for appropriate action. In such a case, paragraph (e) requires that operators accomplish repairs prior to further flight in accordance with an FAA-approved method. The FAA also has determined that, in light of the type of actions that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, repair methods approved by either the FAA or the DGAC (or its delegated agent) would be acceptable for compliance with this AD. Accordingly, this provision is added to paragraph (e) of the final rule.

Additionally, the FAA has added "NOTE 3" to the final rule to clarify the definition of a detailed visual inspection.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 54 Model A300–600 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $6,480, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–07–22 Airbus Industrie: Amendment 39–11676. Docket 98–NM–78–AD.

Applicability: Model A300–600 series airplanes, on which Airbus Modification 11044 or Airbus Modification 11045 (reference Airbus Service Bulletin A300–53–6063, dated December 12, 1996) has not been accomplished, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the doubler angle and discrepancies of the fasteners that connect the doubler angle and the bottom panel of the center wing box, which could result in reduced structural integrity of the airplane, accomplish the following:

Inspections

(a) Perform a detailed visual inspection to detect cracking of the doubler angle, and a detailed external visual inspection to detect discrepancies of the fasteners that connect the doubler angle and the bottom panel of the center wing box, on the left and right sides of the airplane, in accordance with Airbus Service Bulletin A300–53–6110, Revision 01, dated December 10, 1998, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. Thereafter, repeat the inspections of the doubler angle and fasteners at intervals not to exceed 2,400 flight cycles.

(1) For airplanes on which a detailed visual inspection has been performed within the last 2,400 flight cycles prior to the effective date of this AD, in accordance with Structural Significant Item (SSI) 57–10–19 of the Airbus A300–600 Maintenance Review Board (MRB) Document: Inspect within 2,400 flight cycles after the most recent SSI inspection.

(2) For airplanes on which a detailed visual inspection has not been performed within the last 2,400 flight cycles prior to the effective date of this AD, in accordance with Structural Significant Item (SSI) 57–10–19 of the Airbus A300–600 Maintenance Review Board (MRB) Document: Inspect at the time specified in paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii), as applicable.

(i) For airplanes that have accumulated 6,600 or more total flight cycles as of the effective date of this AD: Inspect within 750 flight cycles after the effective date of this AD.

(ii) For airplanes that have accumulated more than 3,100 total flight cycles, but less than 6,600 total flight cycles as of the effective date of this AD: Inspect within 1,500 flight cycles after the effective date of this AD.

(iii) For airplanes that have accumulated 3,100 total flight cycles or less as of the effective date of this AD: Inspect prior to the accumulation of 4,600 total flight cycles.

Note 2: Accomplishment of inspections or corrective actions prior to the effective date of this AD, in accordance with Airbus Service Bulletin A300–53–6110, dated April 8, 1997, is acceptable for initial compliance with the applicable paragraph of this AD.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Actions

(b) If any discrepancy is found in a fastener that connects the doubler angle and the bottom panel of the center wing box during any detailed external visual inspection performed in accordance with paragraph (a) of this AD: Prior to further flight, remove the discrepant fastener, and perform a rotating probe inspection to detect discrepancies of the fastener holes, in accordance with Airbus Service Bulletin A300–53–6110, Revision 01, dated December 10, 1998.

(1) If no discrepancy is found in any fastener hole, prior to further flight, install a new fastener, in accordance with the service bulletin. Thereafter, repeat the inspections required by paragraph (a) of this AD at intervals not to exceed 2,400 flight cycles.

(2) If any discrepancy is found in any fastener hole, prior to further flight, except as provided by paragraph (e) of this AD, repair in accordance with the service bulletin, and accomplish the actions required by paragraph (c) of this AD.

(c) If any crack is found in the doubler angle during any detailed visual inspection performed in accordance with paragraph (a) of this AD, accomplish paragraph (c)(1) or (c)(2), as applicable, at the time specified in that paragraph.

(1) If the cracking is within the limits specified in Figure 1, Sheet 1, of Airbus Service Bulletin A300–53–6110, Revision 01, dated December 10, 1998: Except as required by paragraph (e) of the AD, accomplish the applicable corrective actions (e.g., crack stopping of hole, rotating probe inspection, repetitive detailed visual inspections, eventual modification of doubler angle) specified in Figure 1, Sheet 1; at the times and in accordance with the procedures specified in the service bulletin.

(2) If the cracking is outside the limits specified in Figure 1, Sheet 1 [i.e., 1.181 inches (30 millimeters) or more in length]: Prior to further flight, modify the doubler angle in accordance with Airbus Service Bulletin A300–53–6063, dated December 12, 1996. Accomplishment of the modification constitutes terminating action for the repetitive inspection requirements of this AD.

Optional Terminating Modification

(d) Accomplishment of the modification in accordance with Airbus Service Bulletin A300–53–6063, dated December 12, 1996, constitutes terminating action for the repetitive inspection requirements of this AD.

Approved Repairs

(e) If any discrepancy is found during any inspection required by this AD, and the service bulletin specifies to contact Airbus for appropriate action: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated

agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation By Reference

(h) Except as required by paragraph (e) of this AD, the actions shall be done in accordance with Airbus Service Bulletin A300–53–6110, Revision 01, dated December 10, 1998, or Airbus Service Bulletin A300–53–6063, dated December 12, 1996; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French airworthiness directive 97–383–240(B), dated December 17, 1997.

(i) This amendment becomes effective on May 19, 2000.

Issued in Renton, Washington, on April 5, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8987 Filed 4–13–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–47–AD; Amendment 39–11688; AD 2000–08–02]

RIN 2120–AA64

Airworthiness Directives; Agusta Model A109A, A109AII, and A109C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Agusta Model A109A, A109AII, and A109C helicopters. This action requires inspecting the main transmission to determine if certain Gleason crowns are installed and replacing any unairworthy Gleason crown with an airworthy Gleason crown. This amendment is prompted by the discovery of a cracked Gleason crown during an unscheduled transmission inspection prompted by abnormal noises coming from the transmission during main rotor deceleration. The actions specified in this AD are intended to prevent failure of the main transmission, loss of rotor drive, and subsequent loss of control of the helicopter.

DATES: Effective May 1, 2000.

Comments for inclusion in the Rules Docket must be received on or before June 13, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–47–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Registro Aeronautico Italiano (RAI), the airworthiness authority for Italy, notified the FAA that an unsafe condition may exist on Agusta Model A109A, A109AII, and A109C helicopters. The RAI reported that abnormal noises coming from the transmission during main rotor deceleration led to a transmission inspection and the discovery of a cracked Gleason crown.

Agusta has issued Bollettino Technico No. 109–109, dated June 3, 1999 (BT), which specifies inspection of the Gleason crown, part number (P/N) 109–0403–07, of the main transmission assembly, P/N 109–0400–02–5 or 109–0400–03–105. The RAI classified this BT as mandatory and issued AD 99–267, dated June 10, 1999, to ensure the continued airworthiness of these helicopters in Italy. Although the RAI permits operators to monitor the main transmissions for abnormal noises and conduct periodic airworthiness inspections until 900 hours or more time-in-service have been accrued, the FAA does not concur that "noises" are a reliable indicator of impending failure.

These helicopter models are manufactured in Italy and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the RAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other helicopters of these same type designs registered in the United States, this AD is being issued to prevent failure of the main transmission, loss of rotor drive, and subsequent loss of control of the helicopter. This AD requires inspecting the main transmission to determine if certain Gleason crowns are installed and replacing them with airworthy Gleason crowns before further flight. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Therefore, inspecting the main transmission to determine if certain Gleason crowns are installed and replacing these certain Gleason crowns with an airworthy Gleason crown is required before further flight and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for public comment hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 8 helicopters will be affected by this AD, that it will take approximately 14 work hours to

inspect and replace the Gleason crown, and that the average labor rate is $60 per work hour. Required parts will cost approximately $7500 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $66,720.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–47–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has also determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 2000–08–02 Agusta: Amendment 39–11688. Docket No. 99–SW–47–AD.

Applicability: Model A109A, A109AII, and A109C helicopters, Serial Number (S/N) 7630, 7633, 7654, 7667, 7671, 7672, 7676, or 7677 with main transmission, part number (P/N) 109–0400–02–5 or 109–0400–03–105, with Gleason crown, P/N 109–0403–07, installed, certified in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main transmission, loss of rotor drive, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, determine if a transmission with a S/N specified in Table 1 is installed.

TABLE 1

Transmission P/N	Transmission S/N	Gleason Crown S/N
109–0400–02–5	171	A0488
109–0400–02–5	326	A0490
109–0400–03–105	026	A0571
109–0400–03–105	028	A0572
109–0400–03–105	025	A0578
109–0400–03–105	029	A0584
109–0400–03–105	036	A0614
109–0400–03–105	037	A0618
109–0400–03–105	041	A0630
109–0400–03–105	A2–1274	A2–0645
109–0400–03–105	A2–1356	B15919

(b) If the installed Gleason crown, P/N 109–0403–07, S/N is listed in Table 1, before further flight, replace it with an airworthy Gleason crown, P/N 109–0403–07–103, S/N B58264 or subsequent, except S/N B58271.

(1) After installing the replacement Gleason crown, mark the nomenclature "S.M. 109254" on the "Modification Incorporated" area of the additional nameplate, P/N MS27253–2. Update the main transmission "Assembly Historical Record" or equivalent record, with the P/N and S/N of the Gleason crown installed.

(2) If not previously bonded to the transmission, bond the additional nameplate, P/N MS27253–2, with adhesive EA934NA below the main transmission nameplate.

Note 2: Agusta Bollettino Technico 109–109, dated June 3, 1999, pertains to the subject of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on May 1, 2000.

Note 4: The subject of this AD is addressed in Registro Aeronautico Italiano (Italy) AD 99–267, dated June 10, 1999.

Issued in Fort Worth, Texas, on April 7, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–9359 Filed 4–13–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 62

[Public Notice 3284]

Fees for Exchange Visitor Program Designation Services

AGENCY: Bureau of Educational and Cultural Affairs, State.

ACTION: Final rule.

SUMMARY: By interim final rule published September 27, 1999 (64 FR 51894), the United States Department of State ["Department"] adopted fees sufficient for it to recover the full cost of its administrative processing of certain requests for Exchange Visitor Program Designation services. The Department is hereby adopting as final the September 27, 1999 interim final rule, with modifications. The Department administers the Exchange Visitor Program pursuant to the Fulbright-Hays Act of 1961. The Departments of Commerce, Justice, and State, the Judiciary, and Related Agency Appropriations Act of 1998 authorizes the Department to collect fees related to its provision of Exchange Visitor Program services.

DATES: *Effective Date:* The interim rule published on September 27, 1999 (64 FR 51894) is adopted as final and is effective on April 14, 2000. The addition in this rule of § 62.90 is effective on April 14, 2000. The specified fee will be assessed for all requests for an extension, change of category, reinstatement, or program designation as well as for non-routine requests for the Form IAP–66 post-marked after April 14, 2000.

FOR FURTHER INFORMATION CONTACT: Sally J. Lawrence (Chief), Exchange Visitor Program Designation Staff. (202)401–9810.

SUPPLEMENTARY INFORMATION: On September 27, 1999, the United States Information Agency ["USIA"] issued an interim final rule on the adoption of fees for all requests for an extension, change of category, reinstatement, or program designation as well as for non-routine requests for the Form IAP–66. This rule was to be effective on January 1, 2000. The September 27 interim final rule on fees was amended by a final rule dated October 7, 1999 (64 FR 54538), and also by an interim final rule dated January 5, 2000 (65 FR 352). Those amendments were needed because of the consolidation of USIA into the Department of State and the time needed to establish an administrative process for the Department's collection of the fees. The Department now has had sufficient time to institute the requisite collection, recording and accounting system.

Accordingly, the Department hereby adopts as a final rule the September 27, 1999 interim final rule at 64 FR 51894, with administrative modifications as indicated above. This rule has no effect on the user fee that is currently being charged for applications for waiver of the two-year home-country residence requirement of 212(e) of the Immigration and Nationality Act, as set forth in 22 CFR 22.1 item 72.

Regulatory Flexibility Act

Because this rule involves a foreign affairs function of the United States Government, the Department is not required to prepare and make available for public comment an initial regulatory flexibility analysis.

Executive Order 13132

This rule will not have substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12866

This rule is exempt from review under Executive Order 12866, but has been reviewed internally by the Department to ensure consistency with the purposes thereof.

Small Business Regulatory Enforcement Fairness Act

The Department has determined that this rule is not a major rule, as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996.

Unfunded Mandates Reform Act of 1995

No actions are necessary under the provisions of the unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

This rule does not create any new paperwork requirements.

List of Subjects in 22 CFR Part 62

Cultural Exchange Programs.

In consideration of the foregoing, the Department of State amends Chapter I, Subchapter G of Title 22, Code of Federal Regulations, as follows:

PART 62—EXCHANGE VISITOR PROGRAM

1. The authority citation for 22 CFR Part 62 is revised to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431–1442, 2451–2460; Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105–277, 112 Stat. 2681 et seq.; Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168.

Subpart H—Fees

2. Section 62.90 is added to 22 CFR Part 62 to read as follows:

§ 62.90 Fees.

(a) *Remittances.* Fees prescribed within the framework of 31 U.S.C. 9701 shall be submitted as directed by the Department and shall be in the amount prescribed by law or regulation. Remittances must be drawn on a bank or other institution located in the United States and be payable in United States currency and shall be made payable to the "Department of State." A charge of $25.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn. If an applicant is residing outside the United States at the time of application, remittance may be made by a bank international money order or a foreign draft drawn on an institution in the United States, and payable to the Department of State in United States currency.

(b) *Amounts of fees.* The following fees are prescribed:

(1) Request for program extension—$198.

(2) Request for change of program category—$198.

(3) Request for reinstatement—$198.

(4) Request for program designation—$799.

(5) Request for non-routine handling of an IAP–66 Form Request—$43.

Dated: April 7, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–9232 Filed 4–13–00; 8:45 am]

BILLING CODE 4710–08–U

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits

Payable in Terminated Single-employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in May 2000. Interest assumptions are also published on the PBGC's web site (http://www.pbgc.gov).

EFFECTIVE DATE: May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

On March 17, 2000, the PBGC published in the **Federal Register** (at 65 FR 14752 and 14753) two final rules changing how the interest rates are to be used and where they are to be set forth in the PBGC's regulations. These two final rules are effective May 1, 2000, which is also the effective date of this amendment to the interest rate tables.

As of May 1, 2000, three sets of interest rate assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022). (For a more detailed explanation of the lump-sum interest rates for private-sector payments, see 65 FR 14753.)

Accordingly, this amendment (1) Adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during May 2000, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during May 2000, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during May 2000.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 7.00 percent for the first 25 years following the valuation date and 6.25 percent thereafter. These interest assumptions represent a decrease (from those in effect for April 2000) of 0.10 percent for the first 25 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 5.25 percent for the period during which a benefit is in pay status, 4.50 percent during the seven-year period directly preceding the benefit's placement in pay status, and 4.00 percent during any other years preceding the benefit's placement in pay status. These interest assumptions are unchanged from those in effect for April 2000.

For private-sector payments, the interest rate assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during May 2000, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044, as amended by the final rules effective May 1, 2000, published March 17, 2000 (at 65 FR 14752 and 14753), are further amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 79, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* * *								
79	5–1–00	6–1–00	5.25	4.50	4.00	4.00	7	8

3. In appendix C to part 4022, Rate Set 79, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* *	*		*	*	*		*	
79	5–1–00	6–1–00	5.25	4.50	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used To Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * * *		*		*		*
May 2000	.0700	1–25	.0625	>25	N/A	N/A

Issued in Washington, DC, on this 10th day of April 2000.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 00–9292 Filed 4–13–00; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR PART 110

[CGD11–99–009]

RIN 2115–AA98

Anchorage Regulation; San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the regulations for the special anchorage area in Richardson Bay, adjacent to San Francisco Bay, California by modifying the explanatory note accompanying the designation of the special anchorage. This explanatory information is provided at the request of local authorities and is intended to facilitate safe navigation by calling mariners' attention to local regulations governing the anchorage area.

EFFECTIVE DATE: This final rule is effective on May 15, 2000.

ADDRESSES: Documents as indicated in this preamble are available for inspection and copying at Coast Guard Marine Safety Office, San Francisco Bay, Building 14, Coast Guard Island, Alameda, CA 94501. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Andrew Cheney, Marine Safety Office San Francisco Bay, telephone (510) 437–2770.

SUPPLEMENTARY INFORMATION:

Regulatory History

On January 11, 2000 the Coast Guard published a Notice of Proposed Rulemaking (NPRM) for this regulation in the **Federal Register** (65 FR 1581). The comment period ended on March 13, 2000. The Coast Guard received one comment on the proposal, which is addressed below. A public hearing was not requested and no hearing was held.

The Coast Guard is revising the "Note" accompanying the special anchorage regulations, 33 CFR 110.126a, for San Francisco Bay. This rule will amend the explanatory information provided regarding local authority and requirements.

A special anchorage is an area where vessels less than 20 meters in length are not required to make sound signals while anchored or display anchor lights as would otherwise be required under the Navigation Rules. Richardson Bay was designated a special anchorage area in 1969, and the regulations were amended in 1980. The special anchorage designation is marked on the chart of the area and referenced in the Coast Pilot for the convenience of mariners. Local authorities also exercise jurisdiction over this water area and have enacted ordinances further regulating vessel activity. These local authorities have encountered confusion on the part of mariners about the applicable requirements and the concurrent exercise of authority by both federal and local entities. The Richardson Bay Regional Agency asked the Coast Guard to update the explanatory note accompanying the Federal anchorage regulations regarding the existence of local authority and ordinances. The Coast Guard believes that providing accurate and current information regarding applicable authority and requirements would be in the best interest of safe and efficient navigation. This amendment to the regulation does not alter the special anchorage area designation or change the dimensions of the anchorage area.

Discussion of Comments

One comment was received in favor of the amendment to the anchorage regulations. The commenter felt that the change to the explanatory note would help clarify jurisdiction over the waters of Richardson Bay, and that it would provide direction to the public regarding appropriate use of the

anchorage area. The Coast Guard has not made any changes to the proposed rule. The sole commenter did not request a public hearing, and none was scheduled or held.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). Due to the mainly administrative nature of this change, the Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of Department of Transportation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" may include small businesses and not-for-profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000. For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule is not expected to have a significant economic impact on any substantial number of entities, regardless of their size.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rule making process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Andrew Cheney at the address contained in the paragraph entitled **FOR FURTHER INFORMATION CONTACT**.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132 and has determined that this rulemaking does not have sufficient federalism implications under that order.

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that under Chapter 2.B.2. of Commandant Instruction M16475.1C, Figure 2–1, paragraph (34)(f), it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected.

No state, local, or tribal government entities will be affected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in section 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Regulation

In consideration of the foregoing, the Coast Guard amends Subpart A of Part 110, Title 33, Code of Federal Regulations as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46; and 33 CFR 1.05–1(g).

§ 110.126 [Amended]

2. The "Note" following Section 110.126a, is revised to read as follows:

* * * * *

Note: Mariners anchoring in the special anchorage area should consult applicable ordinances of the Richardson Bay Regional Agency and the County of Marin. These ordinances establish requirements on matters including the anchoring of vessels, placement of moorings, and use of anchored and moored vessels within the special anchorage area. Information on these local agency requirements may be obtained from the Richardson Bay Harbor Administrator.

Dated: March 20, 2000.

C.D. Wurster,

Captain, U.S. Coast Guard, Acting Commander, Eleventh Coast Guard District.

[FR Doc. 00–9219 Filed 4–13–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[DE040–1023a; FRL–6577–7]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Delaware; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the hospital/medical/infectious waste incinerator (HMIWI) 111(d)/129 plan (the "plan") submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) on September 17, 1998. The plan was submitted to fulfill requirements of the Clean Air Act (CAA). The Delaware plan establishes emission limitations and other requirements for existing HMIWIs, and provides for the implementation and enforcement of those limitations and requirements.

DATES: This final rule is effective June 13, 2000 unless by May 15, 2000 adverse or critical comments are received. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: Air Protection Division, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania; and the Department of Natural Resources and Environmental Control's offices at 715 Grantham Lane, New Castle; and 89 Kings Highway, Dover, Delaware.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at topsale.jim@epa.gov.

SUPPLEMENTARY INFORMATION: This document is divided into Sections I through V and answers the questions posed below.

I. General Provisions

What is EPA approving?
What is a State 111(d)/129 plan?
What pollutant(s) will this action control?
What are the expected environmental and public health benefits from controlling HMIWI emissions?

II. Federal Requirements the Delaware 111(d)/129 Plan Must Meet for Approval

What general requirements must the DNREC meet to receive approval of the Delaware HMIWI 111(d)/129 plan?
What does the Delaware State plan contain?
Does the Delaware 11(d)/129 plan meet all EPA requirements for approval?

III. Requirements Affected HMIWI Owners/Operators Must Meet

How do I determine if my HMIWI is a designated facility subject to the Delaware 111(d)/129 plan?
What general requirements must I meet under the approved EPA 111(d)/129 plan?
What emissions limits must I meet, and in what time frame?
Are there any operational requirements for my HMIWI and emissions control system?
What are the testing, monitoring, recordkeeping, and reporting requirements for my HMIWI?
Is there a requirement for obtaining a Title V permit?

IV. Final EPA Action

V. Administrative Requirements

I. General Provisions

Q. What is EPA approving?

A. EPA is approving the Delaware 111(d)/129 plan for the control of air pollutant emissions from HMIWIs. On September 17, 1998, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted the plan to EPA for approval. EPA is publishing this action without prior proposal because we view this as a noncontroversial action and anticipate no adverse comments.

Q. What is a State 111(d)/129 plan?

A. Section 111(d) of the Clean Air Act (CAA) requires that "designated" pollutants, controlled under standards of performance for new stationary sources by section 111(b) of the CAA, must also be controlled at existing sources in the same source category to a level stipulated in an emission guidelines (EG) document. Section 129 of the CAA specifically addresses solid waste combustion and emissions controls based on what is commonly referred to as maximum achievable control technology (MACT). Section 129 requires EPA to promulgate a MACT based EG document and then requires states to develop 111(d)/129 plans that implement the EG requirements. The EG for HMIWI at 40 CFR part 60, subpart Ce, establish the MACT requirements under the authority of sections 111(d) and 129. These requirements must be incorporated into a state 111(d)/129 plan that is "at least as protective" as the EG, and that becomes Federally enforceable upon approval by EPA.

The procedures for adoption and submittal of State 111(d)/129 plans are codified in 40 CFR part 60, subpart B. Additional information on the submittal of State plans is provided in the EPA document, "Hospital/Medical/Infectious Waste Incinerator Emission Guidelines: Summary of the Requirements for section 111(d)/129 State Plans" (EPA–456/R–97–007, November, 1997).

Q. What pollutant(s) will this action control?

A. The promulgated September 15, 1997 EPA EG, subpart Ce, are applicable to existing HMIWIs (i.e., the designated facilities) that emit organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury, particulate matter), opacity, and acid gases (hydrogen chloride, sulphur dioxide, and nitrogen oxides). This action establishes emission limitations for each of these pollutants.

Q. What are the expected environmental and public health benefits from controlling HMIWI emissions?

A. HMIWI emissions can have adverse effects on both public health and the environment. Dioxin, lead, and mercury can bioaccumulate in the environment. Exposure to dioxins/furans has been linked to reproductive and developmental effects, changes in hormone level, and chloracne. Respiratory and other effects are associated with exposure to particulate matter, sulfur dioxide, cadmium, hydrogen chloride, and mercury. Health effects associated with exposure to cadmium, and lead included probable carcinogenic effects. Acid gases contribute to the acid rain that lowers the pH of surface waters and watersheds, harms forests, and damages buildings.

II. Federal Requirements the Delaware 111(d)/129 Plan Must Meet for Approval

Q. What general requirements must the DNREC meet to receive approval of the Delaware 111(d)/129 plan?

A. The plan must meet the requirements of both 40 CFR part 60, subparts B, and Ce. Subpart B specifies detailed procedures for the adoption and submittal of State plans for designated pollutants and facilities. The EG, subpart Ce, and the related new source performance (NSPS), subpart Ec, contain the requirements for the control of designated pollutants, as listed above, in accordance with sections 111(d) and 129 of the CAA. In general, the applicable provisions of Subpart Ec relate to compliance, emissions testing and monitoring; and recordkeeping and reporting. More specifically, the Delaware plan must meet the requirements of (1) 40 CFR part 60, subpart Ce, sections 60.30e through 60.39c, and the related subpart Ec provisions; and (2) 40 CFR part 60, subpart B, sections 60.23 through 26.

Q. What does the Delaware State plan contain?

A. Consistent with the requirements of subparts B, Ce and Ec, the Delaware Plan contains the following elements:

1. A demonstration of the State's legal authority to implement the section 111(d)/129 State HMIWI Plan;
2. Identification of the State's enforceable mechanism, Regulation No. 20, section 29;
3. Source and emission inventories, as required;
4. Emission limitation requirements that are at least as protective as those in subpart Ce;
5. A source compliance schedule;
6. Source testing, monitoring, recordkeeping, and reporting requirements;
7. HMIWI operator training and qualification requirements;

8. Requirements for development of a Waste Management Plan;
9. Records of the public hearing on the State plan;
10. Provision for State submittal to EPA of annual reports on progress in plan enforcement; and
11. A Title V permit application due date.

On August 15, 1998, the DNREC adopted an HMIWI regulation (Regulation 20, section 29) that became effective on September 11, 1998. The regulation applies to existing HMIWIs and incorporates by reference (IBR), with certain exceptions, the related and applicable subpart Ec, requirements.

Q. Does the Delaware 111(d)/129 plan meet all EPA requirements for approval?

A. Yes. The DNREC has submitted a 111(d)/129 plan that conforms to all EPA subpart B and Ce requirements cited above. Each of the above listed plan elements is approvable. Details regarding the approvability of the plan elements are included in the technical support document (TSD) associated with this action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

III. Requirements Affected HMIWI Owners/Operators Must Meet

Q. How do I determine if my HMIWI is a designated facility subject to the Delaware 111(d)/129 plan?

A. If construction commenced on your HMIWI on or before June 20, 1996, and no modification commenced after March 16, 1998, your HMIWI may be the subject plan. The plan contains no lower applicability threshold based on incinerator capacity. However, there are designated facility exemptions. Those exemptions include incinerators that burn only pathological, low level radioactive, and/or chemotherapeutic waste; co-fired combustors; incinerators permitted under section 3005 of the Solid Waste Disposal Act; municipal waste combustors (MWC) subject to EPA's municipal waste combustor rule; pyrolysis units; and cement kilns. Details regarding applicability and exemptions provisions are stipulated in Regulation 20, section 29, and section 60.50c.

Q. What general requirements must I meet under the approved EPA 111(d)/129 plan?

A. In general, the Delaware HMIWI regulation establishes the following requirements:

1. Emission limitations for particulate matter (PM), opacity, carbon monoxide (CO), dioxins/furans (CDD/CDF), hydrogen chloride (HCl), sulfur dioxide (SO_2), nitrogen oxides (NO_X), lead (Pb), cadmium (Cd), and mercury (Hg).
2. Compliance and performance testing.
3. Operating parameter monitoring.
4. Operator training and qualification.
5. Development of a waste management plan.
6. Source testing, recordkeeping and reporting.
7. A Title V permit.

A full and comprehensive statement of the above requirements is in Delaware Regulation 20, section 29.

Q. What emissions limits must I meet, and in what time frame?

A. You must install an emissions controls system capable of meeting the maximum achievable control technology (MACT) emission limitations for the pollutants identified above. The pollutant emission limitations are stipulated in Regulation 20, section 29, and section 60.52c(a), Table 2. Also, the DNREC regulation at section 60.52c(b) establishes a 10 percent opacity limit. Compliance is required on or before September 11, 1999 for all designated facilities. With adequate justification, you may petition the DNREC for a compliance schedule extension. Petitions must include documentation of your analyses undertaken to support the need for an extension, and your evaluation of the option to transport the waste offsite to a commercial medical waste treatment and disposal facility on a temporary or permanent basis. Also, your extension request must include increments of progress that are no less stringent than those specified in the plan. In any case, your HMIWI must meet the emission limitation(s) as expeditiously as practicable, but no later than September 11, 2001.

Q. Are there any operational requirements for my HMIWI and emissions control system?

A. Yes, there are operational requirements. In summary, the operational requirements relate to: (1) The HMIWI and air pollution control devices (APCD) operating within certain established operating parameter limits, determined during the initial performance test; (2) the use of a trained and qualified HMIWI operator; and (3) the completion of an annual update of operation and maintenance information, and its review by the HMIWI operators.

Failure to operate the HMIWI or APCD within the established operating parameter limits constitutes an emissions violation for the controlled air pollutant. However, as an HMIWI owner/operator, you are provided an opportunity to establish revised operating limits, and demonstrate that your facility is meeting the required emission limitations, providing a repeat performance test is conducted in a timely manner. A fully trained and qualified operator must be available at your facility during the operation of the HMIWI, or the operator must be readily available to the facility within one hour. In order to be classified as a qualified operator, you must complete an appropriate HMIWI operator training course that meets the criteria stipulated in the plan's regulation. Also, as a HMIWI owner/operator, you are required to develop and update annually site-specific information regarding your facilities' operations. Each of your HMIWI operators is required on an annual basis to review the updated operational information. Details regarding operational requirements are stipulated in Regulation 20, section 29, and sections 60.56c(d)through (j) and 60.53c.

Q. What are the testing, monitoring, recordkeeping, and reporting requirements for my HMIWI?

A. Testing, monitoring, recordkeeping, and reporting requirements are summarized below:

You are required to conduct an initial performance test to determine compliance with the emission limitations for PM, opacity, CO, CDD/CDF, HCl, Pb, Cd, and Hg. As noted above, operating parameter limits are monitored and established during the initial performance test. Monitored HMIWI operating parameters include, for example, waste charge rate, secondary chamber and bypass stack temperatures. APCD operating parameters include, for example, CDD/CDF and Hg sorbent (e.g., carbon) flow rate, hydrogen chloride sorbent (e.g., lime) flow rate, PM control device inlet temperature, pressure drop across the control system, and liquid flow rate, including pH. After the initial performance test, compliance testing is then required annually to determine compliance with the emission limitations for PM, CO, and HCl. If all three performance tests over a 3-year period indicate compliance with the emission limit for a pollutant (PM, CO, or HCl), you may forgo a performance test for that pollutant for the subsequent 2 years.

Recordkeeping and reporting are required to document the results of the initial and annual performance tests, continuous monitoring of site-specific operating parameters, compliance with the operator training and qualification requirements, and development of the waste management plan. Records must be maintained for at least five years. Details regarding all testing, monitoring, recordkeeping, and reporting requirements are stipulated in

Regulation 20, section 29, and sections 60.56c, 60.57c, and 60.58c.

Q. Is there a requirement for obtaining a Title V permit?

A. Yes, affected facilities are required to operate under a Title V permit no later than September 15, 2000. This is required under Regulation 20, section 29, and section 60.50c(l).

IV. Final EPA Action

EPA is approving Delaware's 111(d)/129 plan for controlling HMIWI emissions. This 111(d)129 plan approval does not include, those provisions, such as siting and fugitive emission requirements, that relate solely to facilities subject to the NSPS, subpart Ec. EPA action on the requested NSPS, subpart Ec, delegation to the DNREC will be taken under a separate action from this 111(d)/129 plan approval.

Based upon the rationale discussed above and in further detail in the TSD associated with this action, EPA is approving the Delaware 111(d)/129 plan for the control of HMIWI emissions from affected facilities. As provided by 40 CFR 60.28(c), any revisions to the Delaware section 111(d) plan or associated regulations will not be considered part of the applicable plan until submitted by the DNREC in accordance with 40 CFR 60.28 (a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the 111(d)/129 plan should relevant adverse or critical comments be filed. This rule will be effective June 13, 2000 without further notice unless the Agency receives relevant adverse comments by May 15, 2000. If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Only parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 13, 2000 and no further action will be taken on the proposed rule.

V. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 13, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 3, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

40 CFR Part 62, is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart I—Delaware

2. A new center heading, and §§ 62.1975, 62.1976, and 62.1977 are added to subpart I to read as follows:

Emissions From Existing Hospital/ Medical/Infectious Waste Incinerators (HMIWI)—Section 111(d)/129 Plan

§ 62.1975 Identification of plan.

Section 111(d)/129 plan for HMIWI and the associated Delaware Department of Natural Resources, Division of Air and Waste Management, Regulation No. 20, section 29, as submitted on September 17, 1998.

§ 62.1976 Identification of sources.

The plan applies to all Delaware existing HMIWI for which construction was commenced on or before June 20, 1996.

§ 62.1977 Effective date.

The effective date of the plan for hospital/medical/infectious waste incinerators is June 13, 2000.

[FR Doc. 00–9233 Filed 4–13–00; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7730]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Donna M. Dannels, Branch Chief, Policy, Assessment and Outreach Division, Mitigation Directorate, 500 C Street SW., room 411, Washington, DC 20472, (202) 646–3098.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Associate Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Associate Director finds that the delayed effective dates would be contrary to the public interest. The Associate Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program:			
Minnesota: Hill City, city of, Aitkin County	270002	January 21, 2000	November 8, 1974.
Indiana: Westport, town of, Decatur County	180517	January 24, 2000.	
Iowa: Ventura, City of, Cerro Gordo County	190674	.....do	November 5, 1976.
Illinois: Carrollton, city of, Greene County	170250	February 3, 2000	March 5, 1976.
Illinois: Montgomery, county of, unincorporated areas	170992	.....do	January 9, 1981.
Maine: Fayette, town of, Kennebec County	230237	.....do	November 29, 1974.
Indiana: Waynetown, town of, Montgomery County	180175	February 9, 2000	April 9, 1976.

State/location	Community No.	Effective date of eligibility	Current effective map date
Texas: Tolar, city of, Hood County	480868	February 15, 2000	July 18, 1975.
North Carolina: Conetoe, town of, Edgcombe County	370089	.....do	January 9, 1974.
North Carolina: Newton Grove, town of, Sampson County.	370524	.....do	
Kansas: Protection, city of, Comanche County	200550	February 24, 2000	July 2, 1976.
North Carolina: Pittsboro, town of, Chatham County	370420	.....do	October 20, 1978.
New Eligibles—Regular Program:			
Iowa: Cumming, city of, Warren County	190946	January 24, 2000	November 20, 1998.
North Carolina: Angier, town of, Harnett County	370522	February 3, 2000	April 16, 1990.
Washington: Beaux Arts Village, town of King County	530242	February 4, 2000	May 16, 1995.
North Carolina: Gamewell, town of, Caldwell County	370451	February 15, 2000	August 16, 1988.
Reinstatements:			
Pennsylvania Elverson, borough of, Chester County	422287	February 13,—Emer February 25, 1983—Reg. November 20, 1996—Susp. January 19, 2000—Rein.	November 20, 1996.
Virginia: Boykins, town of, Southampton County	510151	May 20, 1982—Emer April 1, 1982—Reg. April 1, 1982—Susp. January 31, 2000—Rein.	April 1, 1982.
Suspensions:			
Illinois: Hamilton, county of, unincorporated areas	170910	July 29, 1975—Emer February 1, 1990—Reg. January 17, 2000—Susp.	February 1, 1990—Reg.
Regular Program Conversions			
Region I:			
Massachusetts: Millbury, town of, Worchester County	250318	January 7, 2000—Suspension withdrawn.	January 7, 2000.
Region III:			
Pennsylvania:			
Clarks Summit, borough of, Lackawanna County	420527	.....do	Do.
Kutztown, borough of, Berks County	420136	.....do	Do.
Maxatawny, township of, Berks County	421381	.....do	Do.
Region IV:			
Tennessee: Decatur County, unincorporated areas	470041	.....do	Do.
Region III:			
Virginia: Halifax, town of, Halifax County	510301	January 19, 2000—Suspension withdrawn.	January 19, 2000.
Region VI:			
Oklahoma:			
Calumet, town of, Canadian County	400268	.....do	Do.
Canadian County, unincorporated areas	400485	.....do	Do.
El Reno, city of, Canadian County	405377	.....do	Do.
Mustang, city of, Canadian County	400409	.....do	Do.
Piedmont, city of, Canadian County	400027	.....do	Do.
Yukon, city of, Canadian County	400028	.....do	Do.
Texas:			
Austin, city of, Travis County	480624	.....do	Do.
San Leanna, village of, Travis County	481305	.....do	Do.
Travis County, unincorporated areas	481026	.....do	Do.
Region VII:			
Iowa:			
Adel, city of, Dallas County	190103	.....do	Do.
Dallas County, unincorporated areas	190860	.....do	Do.
DeSoto, city of, Dallas County	190359	.....do	Do.
Granger, city of, Dallas County	190104	.....do	Do.
Perry, city of, Dallas County	190105	.....do	Do.
Redfield, city of, Dallas County	190361	.....do	Do.
Missouri:			
Bull Creek, village of, Taney County	290916	.....do	Do.
Clark County, unincorporated areas	290792	.....do	Do.
Hollister, city of, Taney County	290437	.....do	Do.
Region VIII:			
North Dakota:			
Burlington, city of, Ward County	380141	.....do	Do.
Burlington, township of, Ward County	380650	.....do	Do.
Carpio, city of, Ward County	380142	.....do	Do.
Donnybrook, city of, Ward County	380143	.....do	Do.
Lebanon, township of, McHenry County	380309	.....do	Do.
McHenry County, unincorporated areas	380307	.....do	Do.
McKinney, township of, Renville County	380311	.....do	Do.
Minot, city of, Ward County	385367	.....do	Do.
Newport, township of, McHenry County	380308	.....do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date
Sawyer, city of, Ward County	380145	.....do	Do.
Velva, city of, McHenry County	380051	.....do	Do.
Velva, township of, McHenry County	380310	.....do	Do.
Villard, township of, McHenry County	380317	.....do	Do.
Willow Creek, township of, McHenry County	380337	.....do	Do.
Ward County, unincorporated areas	385370	.....do	Do.
Region IX:			
California:			
Napa, city of, Napa County	060207	.....do	Do.
Region X:			
Oregon:			
Aumsville, city of, Marion County	410155	.....do	Do.
Aurora, city of, Marion County	410156	.....do	Do.
Detroit, city of, Marion County	140157	.....do	Do.
Gates, city of, Marion County	410159	.....do	Do.
Gervais, city of, Marion County	410160	.....do	Do.
Hubbard, city of, Marion County	410161	.....do	Do.
Idanha, city of, Marion County	410162	.....do	Do.
Jefferson, city of, Marion County	410163	.....do	Do.
Keizer, city of, Marion County	410288	.....do	Do.
Marion County, unincorporated areas	410154	.....do	Do.
Mt. Angel, city of, Marion County	410165	.....do	Do.
Salem, city of, Marion County	410167	.....do	Do.
Scotts Mills, city of, Marion County	410168	.....do	Do.
Silverton, city of, Marion County	410169	.....do	Do.
St. Paul, city of, Marion County	410166	.....do	Do.
Stayton, city of, Marion County	410170	.....do	Do.
Turner, city of, Marion County	410171	.....do	Do.
Woodburn, city of, Marion County	410172	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn; NSFHA—Non Special Flood Hazard Area.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: March 27, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–9343 Filed 4–13–00; 8:45 am]

BILLING CODE 6718–05–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 000328086–0086–01; I.D. 012800H]

RIN 0648–AN56

Atlantic Highly Migratory Species; Bluefin Tuna Landings Reporting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; determination of state jurisdiction.

SUMMARY: NMFS has determined that the State of Maryland has implemented regulations for reporting Atlantic bluefin tuna (BFT) landings in the recreational fishery that are mandatory, at least as restrictive as the Federal reporting requirements, and effectively enforced. Under Maryland law, participants in the recreational fishery who land BFT must report via the Maryland BFT landing card program. Therefore, recreational anglers who land BFT in the State of Maryland are exempt from the requirement to report BFT landings through NMFS' automated landings reporting system. All other Federal regulations applicable to Atlantic tunas continue to apply within the boundary of the State of Maryland. The intent of this action is to eliminate a Federal requirement that duplicates State regulations.

DATES: Effective April 13, 2000 through May 31, 2001.

ADDRESSES: Requests for copies of the final rule and information on Atlantic tunas landings reporting should be directed to Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282. Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirement contained in this rule to Rebecca Lent and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Maria Uitterhoeve, 301–713–2347; Pat Scida, 978–281–9208.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic Tunas Convention Act (ATCA), codified at 16 U.S.C. 971 *et seq.*, provides for U.S. participation in the conduct of scientific research programs and regulation of fishing operations by the International Commission for the Conservation of Atlantic Tunas (ICCAT). Section 971g(d)(2)(B) provides that Federal regulations promulgated to implement ICCAT recommendations shall apply within the boundary of any state bordering on any convention area if the Secretary of Commerce determines that any such state has laws or regulations that are less restrictive than the Federal regulations or, if not less restrictive, are not effectively enforced.

Regulations implemented under the authority of ATCA governing the harvest of Atlantic highly migratory species by persons and vessels subject to U.S. jurisdiction appear at 50 CFR part 635. Specifically, regulations limiting the harvest of BFT and requiring reporting of BFT landings implement ICCAT recommendations regarding country catch quotas and catch reporting. In the case of the U.S.

recreational fishery for young (pre-spawning) BFT, ICCAT has recommended that landings of fish 27 to 47 inches (69 to 119 cm) curved fork length be limited to 8 percent of the U.S. quota. BFT of this size are the target of a popular summertime recreational fishery off the mid-Atlantic and southern New England coasts, and the potential for harvest far exceeds the available quota. Consequently, NMFS must restrict catch of BFT through annual quotas and trip limits and must monitor landings in real-time.

Automated Landings Reporting System

NMFS has set up an automated landings reporting system (ALRS), and regulations at 50 CFR 635.5(c) require that anglers who land BFT call a toll-free number (1–888–872–8862) to report the number and size of fish. NMFS also conducts dockside and telephone surveys of permitted anglers to estimate fishing effort and collect more detailed scientific information on catch and landings. Recognizing that the states also have an interest in collecting information on the economically important fisheries for Atlantic highly migratory species, NMFS has cooperated with the states to minimize duplication of effort and reduce the reporting burden while ensuring that BFT landings information is collected as quickly as possible. In the event that NMFS determines a state reporting system to be equally effective as the ALRS, NMFS will notify participating anglers that compliance with the state system satisfies the reporting requirement of 50 CFR 635.5(c).

Maryland BFT Landing Tag Program

State regulations promulgated under section 4–2A–03 of the Annotated Code of Maryland regarding landing of BFT in Maryland are found at the Code of Maryland Regulations 08.02.05.23. Such regulations allow BFT to be landed in the State of Maryland only if consistent with the applicable fishing seasons, size limits, and retention limits specified in the Code of Federal Regulations at 50 CFR part 635. The regulation also requires that BFT landed in Maryland be landed in whole form and have a landing tag affixed before removal of the fish from the vessel. If the BFT is on board a vessel on a trailer, a landing tag must be affixed before such vessel is removed from the water. A landing tag may be obtained only from officially designated reporting stations and only after the angler completes a landing reporting card for each BFT.

The catch reporting and landing tag regulations of Maryland are enforced by the Maryland Natural Resources Police. Violations of the Maryland BFT landings reporting regulations are subject to a fine. Anglers may obtain further information on the Maryland BFT landing tag program and on the locations of reporting stations from Al Wesche of the Maryland Department of Natural Resources at (410) 213–1531.

Determination of State Jurisdiction

Under Maryland regulations, recreational fishermen must report all BFT landings through the Maryland BFT landing tag program. NMFS has determined that the State of Maryland has implemented regulations for reporting BFT landings that are at least as restrictive as the Federal reporting requirements and are effectively enforced. Therefore, participants in the recreational fishery who land BFT in the State of Maryland are exempt from calling in their landings through the NMFS ALRS. This exemption applies only to ALRS reporting; all other Federal regulations for BFT (e.g., seasons, quotas, retention limits, permit requirements, survey participation) continue to apply within the boundary of the State of Maryland. Information on applicable Federal regulations may be obtained by calling (888) 872–8862 or (978) 281–9305, or through the Internet at: www.nmfspermits.com. Because ATCA requires NMFS to undertake a continuing review of state regulations with respect to the applicability of Federal regulations, this determination is effective only for the 2000 fishing year, which ends May 31, 2001.

Classification

This action is taken under the authority of 16 U.S.C. 971g(d)(2)(B) and is consistent with regulations at 50 CFR 635.5(c).

This final rule has been determined to be not significant for purposes of E.O. 12866.

This rule eliminates for participants in the BFT recreational fishery in Maryland a collection of information requirement subject to the Paperwork Reduction Act and approved by OMB under control number 0648–0328, namely a telephone report of a BFT landing. The burden eliminated is estimated at 5 minutes per telephone report, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The Assistant Administrator for Fisheries, NOAA, has determined that under 5 U.S.C. 553(b)(B) there is good cause to waive the requirement for prior notice and opportunity for public comment because delaying the final rule to provide for such procedures would be contrary to the public interest in that it would subject fishermen landing BFT in Maryland to duplicative Federal and state regulations. This determination of state jurisdiction relieves a restriction by exempting anglers landing BFT in Maryland from the Federal requirement to report BFT landings since they are now subject to an effective State reporting requirement that fulfills the same purpose. Under 5 U.S.C. 553(d)(1), because this action relieves a restriction, it is not subject to a 30-day delay in effective date.

Because prior notice and opportunity for public comment is not required for this action by 5 U.S.C. 553 or by any other law, under 5 U.S.C. 603 it is not subject to the analytical requirements of the Regulatory Flexibility Act. Accordingly, no regulatory flexibility analysis was prepared.

Dated: April 7, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–9352 Filed 4–13–00; 8:45 am]

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VOL 65 ISS 73 AP 14 2000 UMI

Proposed Rules

Federal Register
Vol. 65, No. 73
Friday, April 14, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135

[Docket No. AO–14–A69, et al.; DA–00–03]

Milk in the Northeast and Other Marketing Areas; Notice of Hearing on Class III and Class IV Milk Pricing Formulas

7 CFR Part		Marketing area	AO Nos.
1001		Northeast	AO–14–A69.
1005		Appalachian	AO–388–A11.
1006		Florida	AO–356–A34.
1007		Southeast	AO–366–A40.
1030		Upper Midwest	AO–361–A34.
1032		Central	AO–313–A43.
1033		Mideast	AO–166–A67.
1124		Pacific Northwest	AO–368–A27.
1126		Southwest	AO–231–A65.
1131		Arizona-Las Vegas	AO–271–A35.
1135		Western	AO–380–A17.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; Notice of public hearing on proposed rulemaking.

SUMMARY: A public hearing is being held in response to a mandate from Congress via the Consolidated Appropriations Act, 2000, which requires the Secretary of Agriculture to conduct a formal rulemaking proceeding to reconsider the Class III and Class IV milk pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The legislation requiring the hearing describes the proceeding as an emergency. Any changes to the formulas resulting from the required proceeding are to be implemented on January 1, 2001.

DATES: The hearing will convene at 8 a.m. on May 8, 2000.

ADDRESSES: The hearing will be held at the Embassy Suites Hotel, 1900 Diagonal Rd., Alexandria, Virginia 22314, (703–684–5900).

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Programs, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357, e-mail address Connie.Brenner@usda.gov.

Persons requiring a sign language interpreter or other special accommodations should contact David Walker at (703) 549–097003; email dwalker@fedmilk1.com before the hearing begins.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Embassy Suites Hotel, 1900 Diagonal Rd., Alexandria, Virginia 22314, beginning at 8 a.m., on Monday, May 8, 2000, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Northeast and other marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to re-consideration of the Class III and Class IV milk pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The mandate from Congress via the Consolidated Appropriations Act, 2000 (Pub. L. 106–113, 115 Stat. 1501), requires the Secretary of Agriculture to conduct a formal

rulemaking proceeding to reconsider the Class III and Class IV milk pricing formulas included in the final rule for the consolidation and reform of Federal milk orders and to implement any changes on January 1, 2001.

To ensure a comprehensive consideration of these pricing formulas, the Department invited all interested persons to submit proposals. As detailed below, 32 proposals (and any appropriate modifications thereof) will be heard. A number of other proposals were rejected in that they lacked authority, were beyond the purpose of the hearing, or were otherwise inappropriate. The proposals received are available for public inspection at USDA/AMS/Dairy Programs, Room 2968, South Building, 14th and Independence Ave., SW., Washington, DC 20250.

The legislation requiring the hearing describes the proceeding as an emergency. It should be noted that an emergency rulemaking proceeding omits a recommended decision with the opportunity to file comments thereon. Evidence will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to the proposal.

Initial Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) has considered the economic impact of the proposed amendment on small entities and has prepared this initial regulatory flexibility analysis. The RFA provides that when preparing such analysis an agency shall address: the reasons, objectives, and legal basis for the anticipated proposed rule; the kind and number of small entities which would be affected; the projected recordkeeping, reporting, and other requirements; and federal rules which may duplicate, overlap, or conflict with the proposed rule. Finally, any significant alternatives to the proposal should be addressed. This initial regulatory flexibility analysis considers these points and the impact of this proposed regulation on small entities. The legal basis for this action is discussed in the preceding section.

This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

USDA has identified as small businesses approximately 66,327 of the 71,716 dairy producers (farmers) that have their milk pooled under a Federal order. Thus, small businesses represent approximately 92.5 percent of the dairy farmers in the United States. On the processing side, there are approximately 1,200 plants associated with Federal orders, and of these plants, approximately 720 qualify as "small businesses," representing about 60 percent of the total.

During January 2000, there were approximately 240 fully regulated handlers (of which 186 were small businesses), 43 partially regulated handlers (of which 28 were small businesses), and 71 producer-handlers of which all were considered small businesses for the purpose of this initial regulatory flexibility analysis, submitting reports under the Federal milk marketing order program. This volume of milk pooled under Federal orders represents 72 percent of all milk marketed in the U.S. and 74 percent of the milk of bottling quality (Grade A) sold in the country. Forty-four distributing plants were exempt from Federal order regulation on the basis of their small volume of distribution.

Producer deliveries of milk used in Class I products (mainly fluid milk products) totaled 3.965 billion pounds in January 2000—38.8 percent of total Federal order producer deliveries. More than 200 million Americans reside in Federal order marketing areas—approximately 77 percent of the total U.S. population.

In order to accomplish the goal of imposing no additional regulatory burdens on the industry, a review of the current reporting requirements was completed pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). In light of this review, it was determined that these proposed amendments would have little or no impact on reporting, recordkeeping, or other compliance requirements because these would remain identical to the current Federal order program. No new forms have been proposed, and no additional reporting would be necessary.

This notice does not require additional information collection that requires clearance by the OMB beyond the currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than industry average.

No other burdens are expected to fall upon the dairy industry as a result of overlapping Federal rules. This proposed rulemaking does not duplicate, overlap or conflict with any existing Federal rules.

To ensure that small businesses are not unduly or disproportionately burdened based on these proposed amendments, consideration was given to mitigating negative impacts. Possible changes to the Class III and Class IV price formulas should not have any special impact on small handler entities. All handlers manufacturing dairy products from milk classified as Class III or Class IV would remain subject to the same minimum prices regardless of the size of their operations. Such handlers would also be subject to the same minimum prices to be paid to producers. These features of minimum pricing should not raise barriers to the ability of small handlers to compete in the marketplace. It is similarly expected that small producers would not experience any particular disadvantage to larger producers as a result of any of the proposed amendments.

Interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

Preliminary Analysis

In order to assist the industry in considering the effects of various types of proposals, the Department conducted a preliminary analysis. While the proposals seek to amend the product pricing formulas used to price milk

regulated under Federal milk marketing orders and classified as either Class III or Class IV milk, these product price formulas also would affect the prices of regulated milk classified as Class I and Class II. Of those proposals submitted, six were selected for preliminary quantitative analysis. Selection of a proposal for analysis should not be considered to be a judgement on the merit of a proposal. Proposals were selected either as reflective of a significant number of proposals received or to capture the possible range of impacts of the proposals submitted. For a number of reasons, including lack of authority, lack of detail presented by the proponent, and lack of data, all proposed amendments could not be analyzed.

Scope of Analysis. The scope of the proposed amendments were segmented into four categories for analysis. The categories were: (A) Butter and Butterfat Prices and Factors; (B) Cheese and Protein Prices and Factors; (C) Whey Powder and Other Solids Prices and Factors; and (D) Nonfat Dry Milk and Nonfat Solids Prices and Factors.

A. Butter and Butterfat Prices and Factors

The first proposal selected for analysis would subtract six cents from the National Agricultural Statistic Service (NASS) Grade AA butter price prior to inputting it into the Class IV and Class III formulas for purposes of establishing Class II, Class III, and Class IV butterfat prices, as well as the advanced Class I butterfat price.

The second proposal selected for analysis would substitute the make allowance determined by a study performed by the Rural Business-Cooperative Service (RB-CS) for the current butter make allowance. As a proxy for a study result expected to be presented at the hearing, the butter make allowance result of the most recent RB-CS study available was used in the analysis.

B. Cheese and Protein Prices and Factors

One proposal was selected for preliminary analysis. The selected proposal would reduce the make allowance per pound of cheese from the current level of $0.1702 to $0.142. The proposed make allowance of $0.142 is the level determined by the most recent RB-CS study available of costs of manufacturing cheddar cheese before the addition of marketing costs or return on investment.

C. Whey Powder and Other Solids Prices and Factors

One proposal was selected for preliminary analysis. The selected proposal would increase the make allowance for dry whey from $0.137 per pound to $0.171 per pound.

D. Nonfat Dry Milk and Nonfat Solids Prices and Factors

The first proposal selected for preliminary analysis would replace the current make allowance for nonfat dry milk of $0.137 per pound with a make allowance of $0.1563 per pound.

The second proposal selected for analysis would replace the current make allowance, $0.137, with the make allowance determined by an RB-CS study expected to be made available at the hearing. The most recent RB-CS study available of the cost of manufacturing nonfat dry milk placed the cost at $0.126 per pound before the addition of a marketing cost or a return on investment.

Scope of Analysis. Impacts were measured as changes from the model baseline as adapted from the USDA dairy baseline. That baseline—a national annual projection of the supply-demand-price situation for milk and dairy products—was the basis for the model projection. Both the USDA baseline and the model baseline assume: (1) The price support program would end on December 31, 2000; (2) the Dairy Export Incentive Program would continue to be utilized; and (3) the Federal Milk Marketing Order Program would continue unchanged.

It was necessary to make some simplifying assumptions in order to provide some preliminary analysis prior to the hearing. It is anticipated that the proponents of the various proposals will provide some analysis as to their expectations of the adoption of their proposals. At this point in time, AMS has made no judgement of the impacts of any proposal on orderly marketing of milk, including the willingness or ability of manufacturers to accept regulated milk for manufacturing, or of the long term existence of sufficient capacity to clear the market of milk surplus to the fluid market. The Federal order share of U.S. milk marketings is about 67 percent. About 60 percent of all milk manufactured is marketed under Federal order regulation. Given the prominence of Federal order marketings in the U.S. milk manufacturing industry, prices paid for manufactured milk under Federal orders cannot get too far out of alignment with the value of milk for manufacturing in the rest of the United States. Similarly, the fluid prices in non-Federal order markets are largely reflective of Federal order minimum Class I prices. Therefore, U.S. milk marketings are estimated as a function of the U.S. all-milk price, and the Federal order share is estimated as a function of the Federal order all-milk price relative to the U.S. all-milk price.

Cooperatives manufacture about 40 percent of the cheese and about 70 percent of the butter and nonfat dry milk manufactured nationally, and sell such dairy products in wholesale and retail markets in competition with other manufacturers. In estimating the change in the all-milk price and in cash receipts from milk marketings, it is assumed that these proposals will have a lesser effect on farm prices and receipts of member milk processed and marketed by cooperatives than on prices and receipts of milk manufactured by proprietary processors. A baseline assumption is that a cooperative passes through to its members the best price and best return on investment that it can. A higher minimum Federal order price could result in cooperatives paying higher monthly prices for milk, but would result in lower returns on investments paid at the end of the year. Total cash receipts for member milk marketings processed by the cooperative would be changed only by changes in wholesale product prices. The proposals under consideration are expected to have a minimal secondary impact on the wholesale prices for butter, cheese or nonfat dry milk. Therefore, total revenues from the sale of these products by manufacturers will be virtually unchanged.

In addition to altering the sharing of manufacturing proceeds between manufacturing plants and producers, these proposals have an impact on Class I and Class II prices. Class II prices move in concert with changes in Class IV. The effects on the Class I price depend upon how proposals affect the Class III price relative to the Class IV price since Class I prices are based on the higher of the Class III or IV prices.

We have assumed that plants would pay a higher or lower minimum price and that plant pooling decisions would be unchanged from the baseline. Changes in pay prices and cash receipts to cooperative members for raw milk marketed by cooperatives or to non-members for milk marketed to proprietary handlers would be fully reflected by changes in the Federal order blend price, given changes in Federal minimum class prices and uses. Changes in pay prices and cash receipts to cooperative members for milk manufactured by cooperatives are

additionally influenced by the changes in market prices for manufactured milk resulting from changes in manufactured product prices. For the 40 percent of the Class III milk and 70 percent of the Class IV milk manufactured by cooperatives, it is assumed that differences between the model generated average price for manufactured milk and the average of the Class II, Class III, and Class IV prices would be passed on to producer-members in the form of higher or lower pay prices. In the case of proprietary plants, it is assumed that the differences would be absorbed by the plants. However, in the case of a loss, proprietary manufacturing plants could de-pool milk to equalize their margins with cooperative plant margins. We hope proponents will shed some light on this issue.

Retail prices of fluid milk and Class II soft manufactured products are assumed to respond penny for penny to changes in the milk cost of these products. Wholesale and retail margins are assumed unchanged from baseline for all proposals analyzed. Demands for products in these classes are functions of price, per capita consumption and population. Wholesale prices for cheese, butter and nonfat dry milk reflect supply and demand for these products. The milk supply for manufacturing these hard products is the result of milk marketings minus the volumes demanded for Class I and Class II products. The remaining volume is allocated to Class III and Class IV according to returns to manufacturing in each class. Demands for products in these classes are functions of price, per capita consumption and population.

Summary Preliminary Results

The results of the proposed amendments to the Class III and Class IV formulas are summarized using six-year, 2001–2005, average changes from the model baseline. Averages tend to mask year-to-year changes in the variables. These results in the Federal order system are in the context of the larger U.S. market. In particular, the Federal order price formulas use national manufactured dairy product prices. In addition, the advanced Class I price mover is driven by the higher of the Class III or Class IV prices; both of which are used over the period, and do switch depending on the scenario. The preliminary results are summarized in Table 1.

Changes in Class III and Class IV minimum pricing formulas have secondary effects beyond the initial price change because of the impacts on Class I and Class II prices and uses. If Class III or Class IV minimum prices are reduced, minimum Class I or II prices are also reduced. These lower prices result in increased use of milk in Class I or II, reducing the volume of milk available for Class III and Class IV uses. In turn, the prices for cheese, butter, and nonfat dry milk increase. The market prices for milk in manufactured uses increase with manufactured product price increases. The opposite can be the case with a proposal that increases either the minimum Class III or Class IV price. Thus, the market does tend to offset large changes over time and move the results towards the baseline.

Butter and Butterfat Prices and Factors

The butter pricing scenarios are similar in effect and direction, differing only in magnitude in the butterfat price equation (BF price=(NASS butter price—0.114)/0.82). Using February 2000 prices and holding them constant, increases in the make allowance from $0.114 to $0.133 per pound reduces the Class IV price by $0.08 per hundredweight. Subtracting 6 cents from the NASS butter price before use in the formula yields a $0.26 reduction in the Class IV price.

For the 2001–2006 period, subtracting 6 cents from the butter price has about double the effect on marketings and cash receipts of raising the make allowance by 1.9 cents. The butterfat price and minimum Class IV and Class II prices fall in turn. The Class III price is increased slightly with the inverse effect on the butterfat price in the cheese protein price calculation. The increase in Class II use in response to the price decline reduces milk allocated to Class III and Class IV. This results in slight wholesale price increases for cheese, butter, and nonfat dry milk.

Producers. Changing the make allowance from $0.114 to $0.133 results in a decline of $0.002 per hundredweight in the Federal order blend for the 2001–2006 period. The average all-milk price for producers in Federal orders declines by only $0.001, reflecting the slightly higher prices for cheese, butter, and nonfat dry milk. Marketings decrease by 39.8 million pounds and cash receipts decrease by $7.0 million from baseline receipts of $16,116.8 million.

Deducting 6 cents from the NASS butter price decreases the 6-year Federal order blend by $0.006 per hundredweight and decreases the average all-milk price for Federal order producers by only $0.003, reflecting the higher cheese, butter, and nonfat dry milk prices. Cash receipts decrease by $14.0 million.

Milk Manufacturers and Processors. Soft product manufacturers benefit from the lower minimum Class II prices, driven by a lower average Class IV price. Federal order manufacturing receipts decline by $8.7 million with the $0.133 make allowance, and $24.6 million with the 6-cent deduction in the butter price. The decrease in total Federal order marketings and an increase in Class II use results in less milk moving to Class III and IV in the Federal order marketing areas. Thus, the reduction in the volume of milk used in Class III and Class IV results in increases in the wholesale prices for cheese, butter, and nonfat dry milk. In the case of Class IV, handlers benefit as well from lower Class IV prices. Cheese manufacturers face an increased Class III price.

Consumers. The fluid milk price increases by $0.004 with the $0.133 increase in make allowance, and is increased by $0.027 per hundredweight with the 6-cent reduction in the NASS butter price. The larger change converts to 0.3 cents per gallon. Thus, the retail price increase would be expected to be no greater than one cent per gallon.

Cheese Make Allowance Reduction

Reducing the cheese make allowance from $0.1702 to $0.142 affects the Class III price through the protein price. The Class III formula is: Protein Price=((Cheese price—0.1702)×1.405)+((((Cheese price—0.1702) ×1.582)—Butterfat price)×1.28). Using February 2000 prices, reducing the make allowance results in a $0.29 per hundredweight increase in the Class III price.

For the 2001–2006 analytical period, the Class III price increases by an average of $0.21 per hundredweight, and Class II and IV prices drop by $0.09. The Class III price increase results in an increase in the Class I price of $0.19 per hundredweight. Consumers respond to the Class I price increase by reducing fluid consumption and Class I use declines. The reduction in Class I use is diverted to Class III and Class IV use. Consumers require lower prices for cheese, butter, and nonfat dry milk to clear the product markets of higher volumes. While the blend price increases, the increase in the all-milk price for Federal order producers is somewhat smaller because the lower product prices drive manufactured milk values below Federal order prices, and this is reflected in cooperative producer pay prices.

Producers. Reducing the cheese make allowance from $0.1702 to $0.142 results in a $0.15 increase in Federal order blend prices. The average all-milk price for Federal order producers,

however, increases by $0.09 per hundredweight, reflecting the lower cheese, butter, and nonfat dry milk prices. Marketings increase by about 627.9 million pounds, on average, and cash receipts increase by $198.2 million from baseline average receipts of $16,116.8 million.

Milk Manufacturers and Processors. Soft product manufacturers benefit from the lower minimum Class II prices, driven by a lower average Class IV price. Federal order manufacturing receipts increase by $123.5 million, with increases in the use of Class III and Class IV milk, and a Class III price increase.

Consumers. The fluid milk price increase of $0.19 per hundredweight, on average, converts to 1.6 cents per gallon. Thus average retail fluid price increases would be expected to be no greater than 2 cents per gallon for the 2001–2006 period.

Whey Make Allowance Reduction

Increasing the whey make allowance from $ 0.137 to $0.171 affects the Class III price through the other solids price formula: Other Solids Price = (Dry whey price—0.137)/0.968. Using February 2000 prices, increasing the make allowance results in a $0.20 per hundredweight reduction in the Class III price.

For the 2001–2006 analytical period, the Class III price decreases by an average of $0.17 per hundredweight and the Class I price drops by $0.07. Consumers respond to the Class I price decline by increasing fluid consumption and Class I use increases, resulting in reduced milk in Class III and Class IV use. The reduced volumes on the product markets result in higher prices for cheese, butter, and nonfat dry milk. While the blend price decreases, the decrease in the all-milk price received by Federal order producers is somewhat smaller because of the higher product prices.

Producers. Increasing the whey make allowance from $ 0.137 to $0.171 results in an average $0.09 decrease in Federal order blend prices. The average all-milk price for producers in Federal orders, however, declines by an average of only $0.06 per hundredweight, reflecting the higher cheese, butter, and nonfat dry milk prices. Marketings decline by an average of about 329.0 million pounds and cash receipts decrease by an average $113.1 million from baseline receipts of $16,116.8 million.

Milk Manufacturers and Processors. Soft product manufacturers face a slightly higher minimum Class II price, driven by a slightly higher average Class IV price. Federal order manufacturing receipts decrease by an average of $86.3 million, with a decrease in Class III and Class IV uses and a Class III price decrease. Wholesale prices for cheese, butter, and nonfat dry milk increase with reduced volumes of product.

Consumers. The average fluid milk price decrease of $0.07 per hundredweight converts to 0.6 cents per gallon. Thus retail fluid prices would be expected to be about 1 cent per gallon lower for 2001–2006.

Nonfat Dry Milk Make Allowance Changes

Two nonfat solids price (NFS price=(NASS NDM price—0.137)/1.02) proposals were analyzed, in which the make allowance was increased by 1.9 cents to $0.156 per pound in one case, and decreased by 1.1 cents to $0.126 per pound in the other. Using February 2000 prices, increasing the nonfat dry milk make allowance to $0.156 decreases the minimum Class IV price by $0.16 per hundredweight. Decreasing the make allowance to $0.126 results in an increase of $0.09 per hundredweight in the Class IV price.

For the 2001–2006 analytical period, increasing the make allowance in the nonfat solids price decreases the Class IV price and therefore the Class II price. With less milk available to make cheese, the Class III price increases sightly due to an increase in the cheese price.

On the other hand, a decrease in the make allowance would increase the Class II and Class IV minimum prices during 2001–2006. This increase in Class IV price leads the Class IV price to be the Class I price mover during several of the years during the period of the analysis. With less milk going to Class I and Class II due to higher prices, the Class III price decreases slightly due to more milk available for cheese, resulting in slightly lower wholesale prices for cheese, butter, and nonfat dry milk.

Producers. The average all-milk price for producers in Federal orders would decrease by $0.007 per hundredweight during the analytical period with the make allowance increased to $0.156 per pound. Marketings decrease by 102.0 million pounds, on average, and cash receipts decrease by an average of $22.7 million from baseline receipts of $16,116.8 million.

The average all-milk price increases by $0.007 per cwt. with the make allowance reduced to $0.126 per pound, which leads to an annual average increase in milk marketings of 78.9 million pounds in the Federal order system. Total cash receipts increase by an average of $19.2 million over the six-year period.

Milk Manufacturers and Processors. With the nonfat dry milk make allowance at $0.156, Class II price declines, on average, by $0.14 per hundredweight from the baseline, benefitting soft product manufacturers with increased consumption of Class II dairy products. The decrease in total marketings and the increase in Class II volume is sufficient to reduce Class III and Class IV volumes and cause a slight increase in the wholesale prices for cheese, butter, and nonfat dry milk. The value of milk for manufacturing in the Federal orders decrease by $23.5 million, on average, over the 2001–2006 period.

When decreasing the nonfat dry milk make allowance to $0.126, Class I prices increase by $0.02 per hundredweight, Class II prices increase by $0.07 per hundredweight, and about 16 million pounds moves into Class III and IV use. Coupled with the increase in marketings of 79 million pounds, the total volume of milk available for manufacturing would increase by about 87 million pounds annually. The value of milk used to manufacture dairy products increases by an annual average of $12.1 million.

Consumers. The increase in the fluid milk price with an increase in the make allowance to $0.156 is less than a half cent per hundredweight. Reducing the make allowance proposals for the nonfat solids price to $0.126 would increase the fluid milk price $0.02 per hundredweight, which translates into a retail price increase of less than a cent for a gallon of milk. Consumers would spend $0.8 million more on fluid milk products under the $0.156 make allowance, and $7.1 million more under the $0.126 make allowance. Consumption of fluid milk products would decrease slightly under both proposals. The consumption of manufactured products would decrease on average by 101.5 million pounds under the make allowance of $0.156 and increase on average by 94.7 million pounds under the make allowance of $0.126.

Interested parties are invited to present evidence or testimony at the hearing concerning the economic impact of any of the proposals on producers, handlers, or the national economy.

TABLE 1.—SUMMARY OF IMPACTS OF CLASS III/IV PRICING PROPOSAL ON ALL FEDERAL ORDERS, SIX-YEAR AVERAGE, 2001–2006

Change in	Units	Baseline	Butter make allowance of $0.133 per pound	NASS butter price minus $0.06	Cheese make allowance of $0.142 per pound	Whey make allowance of $0.171 per pound	NDM make allowance of $0.156 per pound	NDM make allowance of $0.126 per pound
Federal order minimum prices:								
Class I price	$/cwt	15.25	0.004	0.027	0.193	−0.069	0.002	0.018
Class II price	$/cwt	13.14	−0.072	−0.232	−0.092	0.033	−0.142	0.071
Class III price	$/cwt	12.57	0.017	0.046	0.211	−0.170	0.021	−0.018
Class IV price	$/cwt	12.44	−0.072	−0.232	−0.092	0.033	−0.142	0.071
Blend price	$/cwt	13.70	−0.002	−0.006	0.145	−0.093	−0.012	0.010
All-milk price, F.O. producers [1].	$/cwt	14.07	−0.001	−0.003	0.094	−0.058	−0.007	0.007
U.S. Product prices:								
Cheese price	$/lb	1.4148	0.0009	0.0022	−0.0079	0.0031	0.0021	−0.001
Butter price	$/lb	1.3095	0.0017	0.0042	−0.0170	0.0059	0.0040	−0.0041
NDM price	$/lb	0.9992	0.0003	0.0007	−0.0022	0.0009	0.0006	−0.0005
Whey price	$/lb	0.1850	0.0000	0.0001	−0.0006	0.0001	0.0001	−0.0002
Federal order class use:								
Class I use	mil. lbs	45,545.4	−1.5	−11.5	−83.4	30.4	−0.4	−8.0
Class II use	mil. lbs	13,499.6	12.4	47.1	95.6	−46.4	22.1	−7.8
Class III use	mil. lbs	50,229.8	−4.8	−11.7	40.7	−15.9	−11.0	9.6
Class IV use	mil. lbs	5,096.2	−45.9	−101.1	574.9	−297.2	−112.6	85.1
Total marketings	mil. lbs	114,371.1	−39.8	−77.3	627.9	−329.0	−102.0	78.9
Federal order cash receipts:								
Total	mil. dol	16,116.8	−7.0	−14.0	198.2	−113.1	−22.7	19.2
Fluid	mil. dol	7,314.1	1.6	10.6	74.7	−26.8	0.8	7.1
Manufacturing	mil. dol	8,802.8	−8.7	−24.6	123.5	−86.3	−23.5	12.1

[1] Reflects Federal order minimum prices and over order premiums.

Civil Rights Impact Statement

A public hearing is being held in response to a mandate from Congress via the Consolidated Appropriations Act, 2000, that requires the Secretary of Agriculture to conduct a formal rulemaking proceeding to reconsider the Class III and Class IV milk pricing formulas included in the final rule for the consolidation and reform of Federal milk orders. The consolidated orders were implemented on January 1, 2000.

Pursuant to Departmental Regulation (DR) 4300–4, a comprehensive Civil Rights Impact Analysis (CRIA) was conducted and published with the final decision on Federal milk order consolidation and reform. That CRIA included descriptions of (1) The purpose of performing a CRIA; (2) the civil rights policy of the U.S. Department of Agriculture; and (3) basics of the Federal milk marketing order program to provide background information. Also included in that CRIA was a detailed presentation of the characteristics of the dairy producer and general populations located within the former and current marketing areas.

The conclusion of that analysis disclosed no potential for affecting dairy farmers in protected groups differently than the general population of dairy farmers. All producers, regardless of race, national origin, or disability, who choose to deliver milk to handler regulated under a Federal order will receive the minimum blend price. It also was concluded that "one of the reasons for success of the Federal milk order program is that all producers benefit through assistance in developing steady, dependable markets, reducing price instability and unnecessary price fluctuations, and assurances of a minimum price for their milk. With this assurance, producers are more willing to make the significant cost investments in milk cows and equipment needed to produce high-quality milk. Federal orders provide the same assurance for all producers, without regard to sex, race, origin, or disability. The value of all milk delivered to handlers competing for sales within a defined marketing area is divided equally among all producers delivering milk to those handlers."

The issue of the hearing being announced is an issue that was addressed as part of Federal milk order consolidation and reform. Establishing a representative make allowance in the formulas that price milk used in Class III and Class IV dairy products is an issue that affects the obligations of handlers of those products to the Federal milk order pool, and similarly the pool obligations of Class I and Class II handlers. However, the process of dividing the pool among all producers delivering milk to those regulated handlers is not affected. Therefore, USDA sees no potential for affecting dairy farmers in protected groups differently that the general population of dairy farmers.

Decisions on proposals to amend Federal milk marketing orders must be based on testimony and evidence presented on the record of the proceeding. Thus, testimony concerning any possible civil rights impact of the proposals being considered should be presented at the hearing.

Copies of the Civil Rights Impact Analysis can be obtained from AMS Dairy Programs at (202) 720–4392; any Milk Market Administrator office; or via the Internet at: www.ams.usda.gov/dairy/.

Executive Order 12988, Civil Justice Reform

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Request for Public Input

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with 6 copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1001 Through 1135

Milk marketing orders.

PARTS 1001 THROUGH 1135—[AMENDED]

The authority citation for 7 CFR Parts 1001 through 1135 continues to read as follows:

Authority: 7 U.S.C. 601–674, 7253, Pub. L. 106–113, 115 Stat. 1501.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Western States Dairy Producers Trade Association, Dairy Producers of New Mexico, Texas Association of Dairymen, Milk Producers Council, California Dairy Campaign, Western United Dairymen, Idaho Dairymen's Association, Utah Dairymen's Association, Continental Dairy Products, Inc., Elite Milk Producers, Inc., Select Milk Producers, Inc.; and National Farmers Organization:

Proposal No. 1: In § 1000.50, amend the introductory text and paragraph (q) by changing the source of product prices in the pricing formulas from the National Agricultural Statistical Service (NASS) to the Chicago Mercantile Exchange (CME), as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

Class prices per hundredweight of milk containing 3.5 percent butterfat, component prices, and advanced pricing factors shall be as follows: The prices and pricing factors described in paragraphs (a), (b), (c), (e), (f), and (q) of this section shall be based on a simple average of the most recent 2 weekly prices announced by the Chicago Mercantile Exchange (CME) before the 24th day of the month. These prices shall be announced on or before the 23rd day of the month and shall apply to milk received during the following month. The prices described in paragraphs (g) through (p) of this section shall be based on a simple average for the preceding month of weekly prices announced by CME on or before the 5th day of the month and shall apply to milk received during the preceding month. The price described in paragraph (d) of this section shall be derived from the Class II skim milk price announced on or before the 23rd day of the month preceding the month to which it applies and the butterfat price announced on or before the 5th day of the month following the month to which it applies.

* * * * *

(q) Advanced pricing factors. For the purpose of computing the Class I skim milk price, the Class II skim milk price, the Class II nonfat solids price, and the Class I butterfat price for the following month, the following pricing factors shall be computed using the 2 most recent CME average weekly prices announced before the 24th day of the month:

(1) An advanced Class III skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(i) Following the procedure set forth in paragraphs (n) and (o) of this section, but using the 2 most recent CME average weekly prices announced before the 24th day of the month, compute a protein price and an other solids price;

* * * * *

(2) * * *

(i) Following the procedure set forth in paragraph (m) of this section, but using the 2 most recent CME average weekly prices announced before the 24th day of the month, compute a nonfat solids price; and

(ii) Multiply the nonfat solids price computed in paragraph (q)(2)(i) of this section by 9.

(3) An advanced butterfat price per pound, rounded to the nearest one-hundredth cent, shall be calculated by computing the 2 most recent CME average AA Butter prices announced before the 24th day of the month, subtracting 11.4 cents from this average, and dividing the result by 0.82.

Proposed by Pam Festge:

Proposal No. 2: Remove the marketing allowance from the manufacturing allowance factor in all product price formulas.

Butter/Butterfat Price Proposals

Proposed by Suiza Foods Corporation, Milk Industry Foundation (MIF), International Ice Cream Association (IICA), and Wells' Dairy, Inc.:

Proposal No. 3: (To affect Class II, III and IV butterfat prices). Reduce the NASS AA Butter survey price used in the butterfat price computation by 6 cents (the Wells' Dairy proposal does not specify an amount) before computing the butterfat price, as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(l) Butterfat price. The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS AA Butter survey price reported by the Department for the month, minus 6 cents, less 11.4 cents, with the result divided by 0.82.

* * * * *

Proposed by MIF, IICA, and Wells' Dairy, Inc.:

Proposal No. 4: (Reduce the butterfat price for Class I). Reduce the NASS AA Butter survey price used in the advanced butterfat price computation by 6 cents (the Wells' Dairy proposal does not specify an amount) before computing the advanced butterfat price, as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(q) * * *

(3) An advanced butterfat price per pound, rounded to the nearest one-hundredth cent, shall be calculated by computing a weighted average of the 2 most recent U.S. average NASS AA Butter survey prices announced before the 24th day of the month minus 6 cents, less 11.4 cents, and dividing the result by 0.82.

* * * * *

Proposed by Schreiber Foods, Inc.:

Proposal No. 5: Reduce butterfat prices by reducing the CME butter price by 9 cents before computing the butterfat price, as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(l) Butterfat price. The butterfat price per pound, rounded to the nearest one-

hundredth cent, shall be the simple average for the preceding month of weekly prices announced by CME less 9 cents, minus 11.4 cents, with the result divided by 0.82.

* * * * *

Proposed by National Milk Producers Federation (NMPF):

Proposal No. 6: Substitute a make allowance using the plant cost data in the Rural Business-Cooperative Service (RB–CS) survey report to be issued in March 2000, plus a marketing cost allowance of $.0015, for the make allowance in the current rule, as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(l) Butterfat price. The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS AA Butter survey price reported by the Department for the month less the RB–CS survey report manufacturing cost for butter plus $.0015 cents, with the result divided by 0.82.

* * * * *

Proposed by South East Dairy Farmers Association (SE Dairy Farmers):

Proposal No. 7: Substitute a make allowance using the plant cost data in the Rural Business-Cooperative Service (RB–CS) survey report to be issued in March 2000 for the make allowance in the current rule, as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(1) Butterfat price. The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS AA Butter survey price reported by the Department for the month less the RB–CS survey report manufacturing cost for butter, with the result divided by 0.82.

* * * * *

Proposed by NMPF, South East Dairy Farmers Association (SE Dairy Farmers), Land O'Lakes, Inc., and Dairy Farmers of America, Inc. (DFA):

Proposal No. 8: Incorporate a Class IV butterfat price in the pricing structure by subtracting 6 cents from the butterfat price, inserting a new paragraph (l) and renumbering the current paragraphs § 1000.50.(l) through (q) as paragraphs § 1000.50.(m) through (r), as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(l) Class IV butterfat price. The Class IV butterfat price per pound shall be the butterfat price pursuant to paragraph (m) of this section less $.06.

* * * * *

Cheese/Protein Price Proposals

Proposed by Deer River Bulk Milk Cooperative, Jefferson Bulk Milk Cooperative, Lowville Producers Dairy Cooperative, and Henry L. Parr (Headspring Farm):

Proposal No. 9: To return the Class III (protein) make allowance to its previous (proposed rule) level, as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(n) Protein price. * * *

(2) Subtract 12.7 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.405;

(3) Add to the amount computed pursuant to paragraph (n)(2) of this section an amount computed as follows:

(i) Subtract 12.7 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.582;

* * * * *

Proposed by Western States Dairy Producers Trade Association, Dairy Producers of New Mexico, Texas Association of Dairymen, Milk Producers Council, California Dairy Campaign, Western United Dairymen, Idaho Dairymen's Association, Utah Dairymen's Association, Continental Dairy Products, Inc., Elite Milk Producers, Inc., Select Milk Producers, Inc.:

Proposal No. 10: To modify the protein price by using the CME 40-lb. block cheddar cheese price, reduce the manufacturing allowance from .1702 to .142, and change the 1.582 factor in the butterfat portion of the protein price formula to 1.61, as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(n) Protein price. The protein price per pound, rounded to the nearest one-hundredth cent, shall be computed as follows:

(1) Compute the simple average CME price for 40-lb. block cheese reported for the month;

(2) Subtract 14.2 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.405;

(3) Add to the amount computed pursuant to paragraph (n)(2) of this section an amount computed as follows:

(i) Subtract 14.2 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.61;

* * * * *

Proposed by National Farmers Organization:

Proposal No. 11: Change the 1.582 factor in the butterfat portion of the protein price formula to 1.60, as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(n) * * *

(3) * * *

(i) Subtract 17.02 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.60;

* * * * *

Proposed by the National Cheese Institute:

Proposal No. 12: Include price data for cheddar cheese in 640-pound blocks in addition to 40-pound blocks and 500-pound barrels, and to use adjustors for the 640-pound block and 500-pound barrel prices based on actual industry data on the difference in manufacturing costs between cheddar cheese packaged in blocks and barrels, as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(n) Protein price. The protein price per pound, rounded to the nearest one-hundredth cent, shall be computed as follows:

(1) Compute a weighted average of the amounts described in paragraphs (n)(1)(i) through (iii) of this section:

(i) The U.S. average NASS survey price for 40-lb. block cheese reported by the Department for the month;

(ii) The U.S. average NASS survey price for 500-pound barrel cheddar cheese (39 percent moisture) reported by the Department for the month plus the difference between the 40-lb. block price and the 500-pound barrel price; and

(iii) The U.S. average NASS survey price for 640-pound block cheddar cheese reported by the Department for the month plus the difference between the 40-lb. block price and the 640-pound block price;

* * * * *

Proposed by National Farmers Organization, Cyrus S. Cochran, James R. Davis, Peter L. Hardin, Tom Landis, and Sean W. Nolan:

Proposal No. 13: Adjust 40-pound block cheese prices for moisture, as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(n) Protein price. The protein price per pound, rounded to the nearest one-hundredth cent, shall be computed as follows:

(1) Compute a weighted average of the amounts described in paragraphs (n)(1)(i) through (iii) of this section:

(i) The U.S. average NASS survey price for 40-lb. block cheese (39 percent moisture) reported by the Department for the month;

* * * * *

Proposed by National Milk Producers Federation:

Proposal No. 14: In the protein price formula, substitute a make allowance using the plant cost data in the Rural Business-Cooperative Service (RB–CS) survey report to be issued in March 2000, plus a marketing cost allowance of $.0015, for the make allowance in the current rule, and to amend the 1.582 factor in the butterfat portion of the protein price formula to 1.60, as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(n) Protein price. * * *

(2) Subtract the sum of the RB–CS survey report manufacturing cost for cheddar cheese plus $.0015 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.405;

(3) Add to the amount computed pursuant to paragraph (n)(2) of this section an amount computed as follows:

(i) Subtract the sum of the RB–CS survey report manufacturing cost for cheddar cheese plus $.0015 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.60;

* * * * *

Proposed by Dairy Farmers of America, Inc.:

Proposal No. 15: Reduce the manufacturing allowance used in the protein price formula from .1702 to .1508, (and support the amendment of the 1.582 factor in the butterfat portion of the protein price formula to 1.60), as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(n) Protein price. * * *

(2) Subtract 15.08 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.405;

(3) Add to the amount computed pursuant to paragraph (n)(2) of this section an amount computed as follows:

(i) Subtract 15.08 from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.60;

* * * * *

Proposed by the American Farm Bureau Federation and SE Dairy Farmers:

Proposal No. 16: Replace the current $.1702 manufacturing allowance for cheddar cheese with the RB–CS survey cost, reviewed annually. In addition, the American Farm Bureau Federation proposed that if California plants are not adequately represented in the survey, published California costs of manufacture be weighted with the RB–CS cost.

Proposed by Michigan Milk Producers Association:

Proposal No. 17: Simplify the Class III protein price formula, as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(n) Protein price.

(2) Subtract 17.02 cents and the quantity obtained by multiplying the butterfat price by .3732 from the price computed pursuant to paragraph (n)(1) of this section and divide the result by .2915;

* * * * *

Proposed by Cyrus S. Cochran, James R. Davis, Peter L. Hardin, Tom Landis, and Sean W. Nolan:

Proposal No. 18: Include as a component of the Class III price a value for butterfat in whey cream.

Whey Powder/Other Solids

Proposed by Western States Dairy Producers Trade Association, Dairy Producers of New Mexico, Texas Association of Dairymen, Milk Producers Council, California Dairy Campaign, Western United Dairymen, Idaho Dairymen's Association, Utah Dairymen's Association, Continental Dairy Products, Inc., Elite Milk Producers, Inc., and Select Milk Producers, Inc.:

Proposal No. 19: Change the source of the dry whey price used to calculate the other solids price from the NASS survey to the CME average dry whey price, as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(o) Other solids price. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the average CME dry whey price for the month minus 13.7 cents, with the result divided by 0.968.

* * * * *

Proposed by the National Cheese Institute:

Proposal No. 20: Replace the $.137 manufacturing allowance for whey powder with an actual industry cost of manufacturing this product; i.e., $.171, as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(o) Other solids price. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS dry whey survey price reported by the Department for the month minus (the actual industry cost of manufacturing whey powder), with the result divided by 0.968.

* * * * *

Proposed by National Milk Producers Federation:

Proposal No. 21: Substitute a dry whey make allowance using the plant cost data in the Rural Business-Cooperative Service (RB–CS) survey report to be issued in March 2000, plus a marketing cost allowance of $.0015, for the make allowance in the current rule, as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(o) Other solids price. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS dry whey survey price reported by the Department for the month, minus the sum of the RB–CS survey report manufacturing cost for dry whey plus $.0015 cents, with the result divided by 0.968.

* * * * *

Proposed by SE Dairy Farmers:

Proposal No. 22: Substitute a dry whey make allowance using the plant cost data in the Rural Business-Cooperative Service (RB–CS) survey report to be issued in March 2000 for the make allowance in the current rule, as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(o) Other solids price. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS dry whey survey price reported by the Department for the month, minus the sum of the RB–CS survey report manufacturing cost for dry whey with the result divided by 0.968.

* * * * *

Nonfat Dry Milk/ Nonfat Solids

Proposed by National Milk Producers Federation:

Proposal No. 23: Replace the nonfat dry milk make allowance in the current

rule with one using the plant cost data in the Rural Business-Cooperative Service (RB–CS) survey report to be issued in March 2000, plus a marketing cost allowance of $.0015, as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(m) Nonfat solids price. The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the Department for the month, minus the sum of the RB–CS survey report manufacturing cost for nonfat dry milk plus $.0015 cents, with the result divided by 1.02.

* * * * *

Proposed by SE Dairy Farmers:

Proposal No. 24: Replace the nonfat dry milk make allowance in the current rule with one using the plant cost data in the Rural Business-Cooperative Service (RB–CS) survey report to be issued in March 2000, as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(m) Nonfat solids price. The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the Department for the month, minus the sum of the RB–CS survey report manufacturing cost for nonfat dry milk, with the result divided by 1.02.

* * * * *

Proposed by Associated Milk Producers, Inc.:

Proposal No. 25: Increase the current nonfat dry milk make allowance of 13.7 cents to 15.63 cents, as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(m) Nonfat solids price. The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the Department for the month less 15.63 cents, with the result divided by 1.02.

* * * * *

Proposed by Western States Dairy Producers Trade Association, Dairy Producers of New Mexico, Texas Association of Dairymen, Milk Producers Council, California Dairy Campaign, Western United Dairymen, Idaho Dairymen's Association, Utah Dairymen's Association, Continental Dairy Products, Inc., Elite Milk Producers, Inc., and Select Milk Producers, Inc.:

Proposal No. 26: Multiply the CME nonfat dry milk price minus the manufacturing allowance by 1.02 instead of dividing by 1.02, as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(m) Nonfat solids price. The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the average CME nonfat dry milk price extra grade for the month less 13.7 cents, with the result multiplied by 1.02.

* * * * *

Proposed by National Farmers Organization:

Proposal No. 27: Divide the CME nonfat dry milk price minus the manufacturing allowance by .99 instead of by 1.02, as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(m) Nonfat solids price. The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the average CME nonfat dry milk price extra grade for the month less 13.7 cents, with the result divided by .99.

* * * * *

Proposed by Cyrus S. Cochran, James R. Davis, Peter L. Hardin, Tom Landis, and Sean W. Nolan:

Proposal No. 28: Divide the nonfat dry milk price minus the manufacturing allowance by .975 instead of by 1.02, as follows:

§ 1000.50 Class prices, component prices, and advanced pricing factors.

* * * * *

(m) Nonfat solids price. The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the Department for the month less 13.7 cents, with the result divided by .975.

* * * * *

Incorporate Cost of Production Factor In Class III and IV Prices

Proposed by Cyrus S. Cochran, James R. Davis, Peter L. Hardin, Tom Landis, Kenneth Mahalko, National Farmers Union, Sean W. Nolan:

Proposal No. 29: Incorporate cost of production into Class III and Class IV formulas.

Class I Price

Proposed by Family Dairies, USA, and Midwest Dairy Coalition:

Proposal No. 30: Assure that any increases resulting from changes to the Class III and Class IV price formulas not be allowed to result in increases in Class I prices

Class II Skim and Butterfat Prices

Proposed by Galloway Company and Hershey Foods:

Proposal No. 31: Although the Class II price formula is not at issue in this proceeding, proponents expressed concern about the effect that any changes made to the Class IV formula that would increase the Class IV skim milk and butterfat prices would have on the Class II prices. They want to assure that any such increases would result in a corresponding reduction in the Class II differential. Galloway and Hershey urged that the current relationship between Class II prices and the prices for manufactured dairy products that are alternative ingredients in Class II products not be changed.

Proposed by Dairy Programs, Agricultural Marketing Service:

Proposal No. 32: Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Class III and Producer Butterfat Prices

Proposals to change the Class IV butterfat price that would not also result in changes to the Class III butterfat price raise the issue of whether the butterfat price for milk used in Class III should be based directly on the value of butterfat in cheese instead of the value of butterfat in butter. One of the primary considerations for incorporating some of the value of butterfat in cheese into the protein price was to maintain a single butterfat price for milk used in manufactured products. Changing the protein price calculation to reflect only the value of protein in cheese, with a separate Class III butterfat price calculation is an issue that should be considered at the same time as the proposals to reduce the Class IV butterfat price. Data and testimony concerning yield factors specific to butterfat in cheese would be appropriate additions to the hearing record.

In addition, the possibility of having four different butterfat prices raises the issue of whether the component pricing orders, like the four orders that price and pool only skim and butterfat, should pool butterfat values for payment to producers instead of passing through the Class III butterfat price. Testimony on this issue also would be appropriate.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of each of the aforesaid marketing areas, or from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, D.C. 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisionmaking process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture, Office of the Administrator, Agricultural Marketing Service, Office of the General Counsel, Dairy Programs, Agricultural Marketing Service (Washington office) and the Offices of all Market Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: April 6, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–9172 Filed 4–13–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–78–AD]

Airworthiness Directives; Eurocopter France Model AS 332C, L, L1, and L2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Eurocopter France Model AS 332C, L, L1, and L2 helicopters, that currently requires conducting a filter clogging warning test, and, if necessary, replacing a jammed valve with an airworthy valve. This action would require the same corrective actions as the existing AD and would add another fuel filter part number to the applicability. This proposal is prompted by jammed fuel filter by-pass valves. The actions specified by the proposed AD are intended to prevent engine power loss due to fuel starvation, an engine flameout, and a subsequent forced landing.

DATES: Comments must be received on or before June 13, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–78–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov. Comments may be inspected at the Office of the Regional Counsel between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed AD may be obtained from American Eurocopter Corporation, Technical Support, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone 800–232–0323, fax 972–641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Regulations Group, Southwest Region, 2601 Meacham Blvd, Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–78–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–78–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On June 8, 1999, the FAA issued AD 99–13–02, Amendment 39–11195 (64 FR 32399, June 17, 1999), applicable to Eurocopter France Model AS 332C, L, L1, and L2 helicopters. AD 99–13–02 requires, within 25 hours time-in-service (TIS) and any subsequent time that the fuel filter clogged caution lights illuminate, conducting a filter clogging warning test, and, if necessary, replacing a jammed valve with an airworthy valve. That action was prompted by reports of jammed fuel filter by-pass valves discovered during routine maintenance. That condition, if not corrected, could result in engine power loss due to fuel starvation, an engine flameout, and a subsequent forced landing.

Since the issuance of that AD, the Direction Generale De L'Aviation Civile (DGAC) has issued revised AD's that add another fuel filter to the previous applicability list. The revised DGAC AD's apply to helicopters with the following fuel filters installed:

Vendor Part No.	Eurocopter France Part No.
–4020P25	(704A44620031)
–4020P25–1	(704A44620034)
–4020P25–2	(704A44620035)
–4020P25–3	(704A44620036)
–4020P25–11	(704A44620037)

The DGAC, the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter France Model AS 332C, C1, L, L1, and L2 helicopters. The DGAC advises that jammed valves could result in power loss due to fuel starvation, which could cause one or both engines to flameout. The DGAC issued AD's 1998–318–071(A)R2 and 1998–319–012(A)R2, both dated July 28, 1999, applicable to Eurocopter France Model AS 332C, C1, L, L1, and L2 helicopters. (Model AS 332C1 does not have a United States type certificate.)

The FAA has reviewed Eurocopter France Service Telex 00087 (Service

Bulletin No. 01.00.56 R1) dated June 17, 1999, which describes procedures for verifying that the valve will correctly open and close in each engine fuel filter and conducting a filter clogging warning test on helicopters with certain fuel filters installed.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS 332C, L, L1, and L2 helicopters of the same type designs, the proposed AD would supersede AD 99–13–02. In addition to the requirements in AD 99–13–02, the proposed AD would add a fuel filter, P/N 704A44620037, to the applicability. The actions are required to be accomplished in accordance with the service telex described previously.

The FAA estimates that one helicopter of U.S. registry would be affected by the proposed AD, that it would take approximately 3 work hours to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $180, assuming no valve would need to be replaced.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11195 (64 FR 32399, June 17, 1999) and by adding a new airworthiness directive (AD) to read as follows:

Eurocopter France: Docket No. 99–SW–78–AD. Supersedes AD 99–13–02, Amendment 39–11195, Docket No. 99–SW–17–AD.

Applicability: Eurocopter France Model AS 332C, L, L1, and L2 helicopters, with any of the following part-numbered fuel filters installed, certificated in any category:

Vendor Part No.	Eurocopter France Part No.
–4020P25	(704A44620031)
–4020P25–1	(704A44620034)
–4020P25–2	(704A44620035)
–4020P25–3	(704A44620036)
–4020P25–11	(704A44620037)

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent power loss due to fuel starvation, an engine flameout, and a subsequent forced landing, accomplish the following:

(a) Within 25 hours time-in-service (TIS) and after any subsequent flight during which either fuel filter clogged caution light illuminates:

(1) Verify that the fuel filter by-pass valve (valve) is correctly closed in each engine fuel filter in accordance with paragraph CC.1), Eurocopter France Service Telex 00087 (Service Bulletin No. 01.00.56 R1), dated June 17, 1999 (SB).

(2) After replacing both filter cartridges with airworthy filter cartridges, each helicopter may be operated on a one-time direct flight to a location where the requirements of paragraph (a) of this AD must be accomplished before further flight:

(3) Conduct a "filter" clogging warning test (test) in accordance with paragraphs CC.2), CC.2)A) and CC.2)B) of the SB.

(4) If a jammed valve (open or closed) is detected during the test, clean the valve in accordance with paragraph CC.2)B) of the SB or replace the valve with an airworthy valve. Repeat the requirements of paragraph (a)(3) of this AD.

(5) When the test result is satisfactory, repeat the requirements of paragraph (a)(1) of this AD.

(b) Within 25 hours TIS, insert a copy of this AD into the Rotorcraft Flight Manual (RFM) or make the following pen and ink addition to the RFM Emergency Procedure for fuel filter clogged caution light illumination: "If both fuel filter clogged caution lights illuminate, land as soon as practicable."

(c) If both filter clogged caution lights illuminate, after landing, either:

(1) Accomplish the requirements of paragraph (a) of this AD before further flight, or,

(2) Replace both filter cartridges with airworthy filter cartridges and conduct a one-time direct flight to a location where the requirements of paragraph (a) of this AD must be accomplished before further flight.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Regulations Group.

(e) Special flight permits will not be issued.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD's 1998–318–071(A)R2 and 1998–319–012(A)R2, both dated July 28, 1999.

Issued in Fort Worth, Texas, on April 7, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–9360 Filed 4–13–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–351–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that currently requires revising the FAA-approved Airplane Flight Manual (AFM) to increase monitoring of the flight path of the airplane to detect certain software anomalies of the flight management guidance system, and take appropriate corrective actions. This proposed AD would add a requirement to either modify the existing on-board replaceable modules of the flight management guidance computers (FMGC) to incorporate software changes, or replace the FMGC's with new, improved FMGC's; which would terminate the requirements for the AFM revision. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent erroneous navigational calculations, which could result in an increased risk of collision with terrain or other airplanes.

DATES: Comments must be received by May 15, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–351–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–351–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–351–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On October 9, 1997, the FAA issued AD 97–21–10, amendment 39–10163 (62 FR 53939, October 17, 1997), applicable to certain Airbus Model A319, A320, and A321 series airplanes, to require revising the FAA-approved Airplane Flight Manual to increase monitoring of the flight path of the airplane to detect certain software anomalies of the flight management guidance system (FMGS), and take appropriate corrective actions. That action was prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to ensure that the flightcrew detects and corrects an unintended flight path if certain software anomalies of the FMGS occur, which could result in an increased risk of collision with terrain or other airplanes.

Actions Since Issuance of Previous Rule

In the preamble to AD 97–21–10, the FAA specified that the actions required by that AD were considered "interim action" until final action was identified, at which time further rulemaking action would be considered. Since the issuance of that AD, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, advises that a new standard of the flight management guidance computer (FMGC) includes software changes that improve navigational guidance calculations. The FAA now has determined that further rulemaking action is indeed necessary to require either the modification of all existing on-board replaceable modules of the FMGC's to incorporate software changes, or replacement of all existing FMGC's with new, improved FMGC's, in order to address the unsafe condition and ensure the continued safe operation of those airplanes. This proposed AD follows from that determination and allows opportunity for public comment.

Explanation of Relevant Service Information

Airbus has issued the following service bulletins:

- A320–22–1063, Revision 01, dated October 8, 1999.
- A320–22–1064, dated September 15, 1998.
- A320–22–1065, dated October 28, 1998.
- A320–22–1067, Revision 01, dated July 7, 1999.
- A320–22–1068, dated December 9, 1998.
- A320–22–1069, dated February 1, 1999.

These service bulletins describe procedures for either the modification of all existing on-board replaceable modules of the FMGC's to incorporate software changes, or the replacement of all existing FMGC's with new, improved FMGC's. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 1999–411–140(B), dated October 20, 1999, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this

type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 97–21–10 to continue to require a revision to the Airplane Flight Manual (AFM) to increase monitoring of the flight path of the airplane to detect certain software anomalies of the flight management guidance system, and take appropriate corrective actions. This proposed AD would add a requirement to either modify all existing on-board replaceable modules of the FMGC's to incorporate software changes, or replace all existing FMGC's with new, improved FMGC's; which would terminate the requirements for the AFM revision. The actions would be required to be accomplished in accordance with the service bulletins described previously, as applicable.

This proposed AD also would limit the applicability of the existing AD to airplanes on which a certain modification has been installed or service bulletin has been accomplished, and excludes airplanes on which another modification has been installed or service bulletin has been accomplished.

Other Relevant Rulemaking

The FAA previously has issued AD 98–19–08, amendment 39–10750 (63 FR 50503, September 22, 1998), applicable to certain Airbus Model A321 series airplanes. AD 98–19–08 requires revising the AFM to prohibit automatic landings and Category III operations on runways with a magnetic orientation of 170 degrees through 190 degrees inclusive. That amendment provides optional terminating action for the AFM revision.

The modification or replacement action that would be required by this proposed AD constitutes terminating action for the AFM requirements of AD 98–19–08.

Cost Impact

There are approximately 200 Airbus Model A319, A320, and A321 series airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 97–21–10 and retained in this AD take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no charge to the operators. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $60 per airplane.

The new actions that are proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $12,000, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10163 (62 FR 53939, October 17, 1997), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 99–NM–351–AD. Supersedes AD 97–21–10, Amendment 39–10163.

Applicability: Model A319, A320, and A321 series airplanes; certificated in any category; on which any of the Airbus modifications has been installed or any of the Airbus service bulletins has been accomplished, as listed in the following table; except those airplanes on which Airbus Modification 26716, 26799, 26968, or 27831 has been installed; or except those airplanes on which Airbus Service Bulletin A320–22–1063, A320–22–1064, A320–22–1065, A320–22–1067, A320–22–1068, or A320–22–1069 has been accomplished:

Affected model(s)	Airbus modification installed
A319 and A321	25469 (reference Airbus Service Bulletin A320–22–1054).
A319, A320, and A321	26093.
A320	24065 (reference Airbus Service Bulletin A320–22–1040) or 24067 (reference Airbus Service Bulletin A320–22–1039).
A320	25314 (reference Airbus Service Bulletin A320–22–1051) or 25315 (reference Airbus Service Bulletin A320–22–1050).
A320 and A321	24064 (reference Airbus Service Bulletin A320–22–1034) or 24066 (reference Airbus Service Bulletin A320–22–1029).
A320 and A321	25199 (reference Airbus Service Bulletin A320–22–1045) or 25200 (reference Airbus Service Bulletin A320–22–1046).
A320 and A321	25240 (reference Airbus Service Bulletin A320–22–1033) or 25274 (reference Airbus Service Bulletin A320–22–1056).
A319, A320, and A321	26243.

Affected model(s)	Airbus modification installed
A319 and A320	26717.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent erroneous navigational calculations, which could result in an increased risk of collision with terrain or other airplanes, accomplish the following:

Restatement of Requirements of AD 97–21–10

(a) Within 10 days after November 3, 1997 (the effective date of AD 97–21–10, amendment 39–10163), revise the Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) by inserting a copy of Model A319/320/321 Flight Manual Temporary Revision 4.03.00/02, dated May 28, 1997, into the AFM.

Note 2: When the temporary revision specified in paragraph (a) of this AD has been incorporated into the general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revisions is identical to that specified in Model A319/320/321 Flight Manual Temporary Revision 4.03.00/02.

New Requirements of This AD

(b) Within 18 months after the effective date of this AD, accomplish either paragraph (b)(1) or (b)(2) of this AD, in accordance with Airbus Service Bulletin A320–22–1063, Revision 01, dated October 8, 1999; A320–22–1064, dated September 15, 1998; A320–22–1065, dated October 28, 1998; A320–22–1067, Revision 01, dated July 7, 1999; A320–22–1068, dated December 9, 1998; or A320–22–1069, dated February 1, 1999; as applicable. Following accomplishment of either paragraph (b)(1) or (b)(2) of this AD, the AFM revision required by paragraph (a) of this AD may be removed from the AFM.

(1) Modify all existing on-board replaceable modules of the flight management guidance computers (FMGC) to incorporate software changes in accordance with the Accomplishment Instructions of the applicable service bulletin.

(2) Replace all existing FMGC's with new, improved FMGC's in accordance with the Accomplishment Instructions of the applicable service bulletin.

(c) Accomplishment of either the modification or replacement action required by paragraph (b) of this AD constitutes terminating action for the AFM requirements of paragraph (a) of AD 98–19–08, amendment 39–10750. Following accomplishment of either of those actions, remove the FAA-approved AFM revision required by that AD (Airbus A319/320/321 Airplane Flight Manual Temporary Revision 9.99.99/44, Issue 2, dated March 3, 1998).

Spares

(d) As of the effective date of this AD, no person shall install any FMGC part number B546BAM0205, B546CAM0101, B546BCM0204, B398BAM0207, B398AAM0410, B546CCM0101, B546CCM0102, B546CCM0103, or B398BCM0107; unless it has been modified in accordance with this AD.

Alternative Methods of Compliance

(e)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 97–21–10, amendment 39–10163, are approved as alternative methods of compliance with paragraph (a) of this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directive 1999–411–140(B), dated October 20, 1999.

Issued in Renton, Washington, on April 10, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–9361 Filed 4–13–00; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 423

Request for Comments Concerning Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission") is requesting public comments on a proposed exemption to its Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods ("the Care Labeling Rule" or "the Rule"). The proposed exemption would permit the Esprit de Corp company to distribute three specific styles of apron camisoles without attaching permanent care labels to the garments, as otherwise required by the Care Labeling Rule. Esprit de Corp petitioned the Commission for the exemption, and submitted samples of the camisoles for consideration. If the petition is granted, care instructions for the camisoles still must be given on a hang tag, or on the package, or in some other conspicuous place, so that consumers will be able to see the care information before buying the product. All interested persons are hereby given notice of the opportunity to submit written data, views and arguments concerning this proposal.

DATES: Written comments will be accepted until May 15, 2000.

ADDRESSES: Comments should be directed to: Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Comments about this exemption to the Care Labeling Rule

should be identified as "petition for exemption, 16 CFR part 423—Comment."

FOR FURTHER INFORMATION CONTACT: Constance M. Vecellio, Attorney, Federal Trade Commission, Washington, DC 20580, (202) 326–2966.

SUPPLEMENTARY INFORMATION: The Rule was promulgated by the Commission on December 16, 1971, 36 FR 23883 (1971), and amended on May 20, 1983, 48 FR 22733 (1983). The Rule makes it an unfair or deceptive act or practice for manufacturers and importers of textile wearing apparel and certain piece goods to sell these items without attaching care labels stating "what regular care is needed for the ordinary use of the product." (16 CFR 423.6(a) and (b)) The Rule defines a care label as a "permanent label or tag * * * that is attached or affixed in such a manner that it will not become separated from the product * * *" (16 CFR 423.1(a))

Section 423.8(b) of the Rule states that manufacturers or importers can ask for an exemption from the requirement of attaching a permanent care label for any textile wearing apparel product or product line if the label would harm the appearance or usefulness of the product. Section 423.8(c) of the Rule states that if an item is exempt from care labeling under subparagraph (b) of section 423.8, the consumers still must be given the required care information for the product, but the care information can be provided on a hang tag, on the package, or in some other conspicuous place, so that consumers will be able to see the care information before buying the product. The petitioner claims that the appearance and usefulness of the camisoles would be damaged by attaching permanent care labels.

List of Subjects in 16 CFR Part 423

Care labeling of textile wearing apparel and certain piece goods; Trade Practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–9266 Filed 4–13–00; 8:45 am]

BILLING CODE 6750–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[DE040–1023b; FRL–6577–8]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Delaware; Control of Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the hospital/medical/infectious waste incinerator (HMIWI) 111(d)/129 plan submitted by the State of Delaware, Department of Natural Resources and Environmental Control, Division of Air and Waste Management. The plan establishes emission limitations for existing HMIWIs, and provides for the implementation and enforcement of those limitations. In the final rules section of the **Federal Register**, EPA is approving the plan. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be received in writing by May 15, 2000.

ADDRESSES: Comments may be mailed to Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at topsale.jim@epa.gov.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule, with the same title, which is located in the rules section of the **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 3, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–9234 Filed 4–13–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–6579–5]

RIN 2060–AG85

Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Idaho National Engineering and Environmental Laboratory Proposed for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of, and soliciting public comments for 30 days on, Department of Energy (DOE) documents on waste characterization programs applicable to certain transuranic (TRU) radioactive waste at the Idaho National Engineering and Environmental Laboratory (INEEL) proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents are: "Quality Assurance Project Plan for the Transuranic Waste Characterization Program (PLN–190), Revision 4 (March 2000)," "INEEL TRU Waste Characterization, Transportation, and Certification Quality Program Plan (PLN–182), Revision 4 (March 2000)," and "Program Plan for Certification of INEEL Contact-Handled Stored Transuranic Waste (PLN–579), Revision 0 (March 2000)." The documents are available for review in the public dockets listed in **ADDRESSES**. The EPA will use these documents to evaluate waste characterization systems and processes applicable to waste streams containing debris waste at INEEL, as requested by DOE. In accordance with EPA's WIPP Compliance Criteria at 40 CFR 194.8, EPA will conduct an inspection of waste characterization systems and processes at INEEL on April 24–27, 2000 to verify that the proposed systems and processes at INEEL can characterize transuranic debris waste properly, consistent with the Compliance Criteria. This notice of the inspection and comment period accords with 40 CFR 194.8.

DATES: The EPA is requesting public comment on these documents. Comments must be received by EPA's official Air Docket on or before May 15, 2000.

ADDRESSES: Comments should be submitted to: Docket No. A–98–49, Air Docket, Room M–1500 (LE–131), U.S.

Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460.

The DOE documents "Quality Assurance Project Plan for the Transuranic Waste Characterization Program (PLN–190), Revision 4 (March 2000)," "INEEL TRU Waste Characterization, Transportation, and Certification Quality Program Plan (PLN–182), Revision 4 (March 2000)," and "Program Plan for Certification of INEEL Contact-Handled Stored Transuranic Waste (PLN–579), Revision 0 (March 2000)," are available for review in the official EPA Air Docket in Washington, D.C., Docket No. A–98–49, Category II-A–2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday–Thursday, 10am–9pm, Friday–Saturday, 10am–6pm, and Sunday, 1pm–5pm; in Albuquerque at the Government Publications Department, General Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday–Friday, 9am–5pm.

Copies of items in the docket may be requested by writing to Docket A–98–49 at the address provided above, or by calling (202) 260–7548. As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Scott Monroe, Office of Radiation and Indoor Air, (202) 564–9310, or call EPA's 24-hour, toll-free WIPP Information Line, 1–800–331–WIPP, or visit our website at http://www.epa.gov/radiation/wipp/announce.html.

SUPPLEMENTARY INFORMATION: The DOE is developing the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Pub. L. 102–579), as amended (Pub. L. 104–201), TRU waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Most TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and organic and inorganic sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision states that the WIPP will comply with the EPA's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C.

The final WIPP certification decision includes a condition that prohibits shipment of TRU waste for disposal at WIPP from any site other than Los Alamos National Laboratory (LANL) until EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.24(c)(4) (condition 3 of appendix A to 40 CFR part 194). The EPA's approval process for waste generator sites is described in § 194.8. As part of EPA's decision making process, DOE is required to submit to EPA appropriate documentation of waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to WIPP. In accordance with § 194.8, EPA will place such documentation in the official Air Docket in Washington, D.C., and in informational dockets in the State of New Mexico, for public review and comment.

EPA inspected certain waste characterization processes at INEEL on July 28–30, 1998. DOE is proposing to apply those same processes that EPA inspected and approved (A–98–49 Items II–A–4–1 & 2) to new groups of waste streams. Specifically, the EPA approval (A–98–49 Items II-A–4–1 & 2) limits the applicability of the INEEL waste characterization processes and systems to graphite-bearing debris wastes. In the action described today, INEEL is seeking to have that approval expanded to include all debris wastes. EPA will conduct an inspection of INEEL to verify that these additional waste streams can be characterized in compliance with 40 CFR 194.24.

The INEEL documents submitted to EPA are: "Quality Assurance Project Plan for the Transuranic Waste Characterization Program (PLN–190), Revision 4 (March 2000)," "INEEL TRU Waste Characterization, Transportation, and Certification Quality Program Plan (PLN–182), Revision 4 (March 2000)," and "Program Plan for Certification of INEEL Contact-Handled Stored Transuranic Waste (PLN–579), Revision 0 (March 2000)." The "Quality Assurance Project Plan for the Transuranic Waste Characterization Program (PLN–190), Revision 4 (March 2000)" and the "INEEL TRU Waste Characterization, Transportation, and Certification Quality Program Plan (PLN–182), Revision 4 (March 2000)" set forth the quality assurance program applied to TRU waste characterization at INEEL. The "Program Plan for Certification of INEEL Contact-Handled Stored Transuranic Waste (PLN–579), Revision 0 (March 2000)" sets forth the waste characterization procedures for TRU wastes at INEEL. After EPA reviews these documents, EPA will conduct an inspection of INEEL to determine whether the requirements set forth in these documents are being adequately implemented in accordance with Condition 3 of the EPA's WIPP certification decision (appendix A to 40 CFR part 194). In accordance with § 194.8 of the WIPP compliance criteria, EPA is providing the public 30 days to comment on the documents placed in EPA's docket relevant to the site approval process. Because the inspection will occur during the comment period, EPA will respond to relevant comments received prior to, during, and after the inspection.

If EPA determines that the provisions in the documents are adequately implemented, EPA will notify the DOE by letter and place the letter in the official Air Docket in Washington, DC, and in the informational docket locations in New Mexico. A positive approval letter will allow DOE to ship additional TRU waste from INEEL. The EPA will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on the EPA's radioactive waste disposal standards (40 CFR part 191), the compliance criteria (40 CFR part 194), and the EPA's certification decision is filed in the official EPA Air Docket, Dockets No. R–89–01, A–92–56, and A–93–02, respectively, and is available for review in Washington, DC, and at the three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket after the October 1992 enactment of the WIPP LWA.

Dated: April 10, 2000.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 00–9378 Filed 4–13–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 401

[USCG–1999–6098]

RIN 2115–AF91

Great Lakes Pilotage Rates

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to update the rates that pilots receive for their services on the Great Lakes. We are required by regulations to review these rates annually. Based on our review, we propose to minimally change the rates for the 2000 season to prevent a large rate change in future years.

DATES: Comments and related material must reach the Docket Management Facility on or before May 15, 2000.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–1999–6098), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, call LCDR Don Darcy, Project Manager, Office of Standards Evaluation and Development Division, Commandant (G-MSR–1), U.S. Coast Guard, at 202–267–1200, by facsimile 202–267–4547, or by email at ddarcy@comdt.uscg.mil. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–1999–6098), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

(a) Regulatory History

On May 9, 1996, the Department of Transportation published a final rule in the **Federal Register** (61 FR 21081). The rule explained the methodology used to set the rates for pilots working in the Great Lakes.

On December 14, 1998, the Coast Guard published a notice of annual review findings in the **Federal Register** (63 FR 68697). The Notice announced the results of the 1998 Rate Review and requested comments.

(b) Purpose of This Rulemaking

The Coast Guard is required by 46 CFR 404.1 (b) to conduct an annual review of rates for pilots working in the Great Lakes. We reviewed these rates by using the methodology found in 46 CFR, part 404, Appendix A, Step 2.A. As explained in Step 2.A, the compensation target for pilots providing service on designated waters of the Great Lakes is equal to the approximate average annual compensation for masters on U.S Great Lakes vessels. To calculate the compensation target for pilots, multiply the average annual compensation earned by first mates on U.S. Great Lakes vessels times 150%. The target compensation for pilots providing service on undesignated waters of the Great Lakes is equal to the approximate average annual compensation for first mates on U.S. Great Lakes vessels. We reviewed these pilotage rates and determined that they should be adjusted to meet pilot target compensation. Therefore, in accordance with 46 U.S.C. 9303(f), and based on the 1999 rate review, we are proposing to update the pilotage rates to meet these targets. We would like your comments on these updated rates.

What Is the Coast Guard Proposing in This Rulemaking?

We propose to change the rates for pilots in 46 CFR 401.405, 401.407, and 401.410 as follows:

If you are a pilot working in . . .	Your rate will . . .
Area 1	increase 3%
Area 2	decrease 4%
Area 4	decrease 2%
Area 5	decrease 6%
Area 6	no change
Area 7	increase 9%
Area 8	decrease 5%

We also propose to decrease the rates in 46 CFR 401.420 and 401.428 by 1% because the average change in rates for all districts is 1%.

The yearly rate update is designed to minimize fluctuations in pilot compensation and avoid large changes in pilotage rates.

This rulemaking follows the methodology detailed in 46 CFR Part 404, including the step-by-step ratemaking calculations contained in Appendix A to Part 404. We summarized these calculations in the following tables and explained them in more detail afterwards.

TABLE A.—DISTRICT 1

Methodology	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District 1
Step 1, Projection of operating expenses	$287,152	$244,612	$531,764
Step 2, Projection of target pilot compensation	$1,088,262	$414,576	$1,502,838
Step 3, Projection of revenue	$1,333,991	$687,207	$2,021,198
Step 4, Calculation of investment base	$0	$0	$0
Step 5, Determination of target return on investment	6.69%	6.69%	6.69%
Step 6, Adjustment determination	$1,359,198	$645,374	$2,004,572
Step 7, Adjustment of pilotage rates	1.03	.96	1.01

TABLE B.—DISTRICT 2

Methodology	Area 4 Lake Erie	Area 5 South East Shoal to Port Huron Michigan	Total District 2
Step 1, Projection of operating expenses	$609,164	$518,917	$1,128,081
Step 2, Projection of target pilot compensation	$518,220	$1,243,728	$1,761,948
Step 3, Projection of revenue	$1,156,057	$1,886,198	$3,042,255
Step 4, Calculation of investment base	$45,397	$71,006	$116,403
Step 5, Determination of target return on investment	6.69%	6.69%	6.69%
Step 6, Adjustment determination	$1,134,321	$1,773,496	$2,907,817
Step 7, Adjustment of pilotage rates	.98	.94	.96

TABLE C.—DISTRICT 3

Methodology	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District 3
Step 1, Projection of operating expenses	$648,500	$128,476	$446,608	$1,223,584
Step 2, Projection of target pilot compensation	$1,140,084	$621,864	$829,152	$2,591,100
Step 3, Projection of revenue	$1,797,967	$688,583	$1,338,912	$3,825,462
Step 4, Calculation of investment base	$11,997	$4,595	$8,934	$25,526
Step 5, Determination of target return on investment	6.69%	6.69%	6.69%	6.69%
Step 6, Adjustment determination	$1,789,386	$750,648	$1,276,358	$3,816,392
Step 7, Adjustment of pilotage rate	1.00	1.09	.95	.99

Here is a detailed explanation of our step-by-step calculations.

Step 1.A: Submission of Financial Information

Our first step is to gather financial data from each of the three Great Lakes pilot associations (the Associations). Each of the Associations must obtain an audit by an independent Certified Public Accountant (CPA) and submit these audits to the Director of the Great Lakes Pilotage (the Director), in accordance with 46 CFR 403.300.

Step 1.B: Determination of Recognizable Expenses

Each year, the Director determines which Association expenses will be recognized for ratemaking purposes. The Director may hire an independent CPA firm to review the expenses reported by the Association using the guidelines contained in 46 CFR 404.05. However, for 1999 this was not possible due to the transfer of the Office of the Director, Great Lakes Pilotage from the St. Lawrence Seaway Development Corporation to the United States Coast Guard, and the fact that the position of Economist on the Director's staff was vacant for the last half of 1998. To determine the reasonable and necessary expenses for the purpose of the 1999 Rate Review, we used the Director's 1997 independent audit of the Associations. In the following paragraphs, we discuss some of the details of the audit and afterward, we have provided you with a table containing the expenses that the Director recognized and approved.

We calculate target pilot compensation each year based on the previous year's compensation earned by first mates on U.S. Great Lakes vessels. That figure is added to the total expenses to determine the revenue needed for ratemaking purposes. District 2 reported pilot compensation of $246,649 as training expenses and District 3 reported applicant pilot salaries and benefits of $274,509 as an expense. Because the figures represent pilot compensation, they cannot be considered expenses for ratemaking purposes. The Director subtracted these expenses from the expense bases of Districts 1 and 2.

To support safety and ongoing learning, each Pilot's Association agreed to develop a Continuing Education Plan for registered pilots to keep them aware of safety issues and refresh their skills. Each Association submitted a plan that the Director approved, with minor modifications. The Director will continue to monitor these plans to ensure they have been implemented, are effective and are applied to each District's continuing education account. The Director reserves the right to modify each plan as necessary.

In order to encourage safety and compensate each District for its training

expenses, the Director has added the following figures to the expense bases of each District:

District 1: $30,000.
District 2: $40,000.
District 3: $50,000.

These figures include $2000 for each District for their "Train the Trainer" courses which prepare pilots to more effectively contribute to the training process.

The following table displays the results of the audits and the Director's adjustments.

RECOGNIZABLE EXPENSES

	District 1	District 2	District 3
Total reported expenses	$343,699	$1,522,063	$1,191,109
Proposed adjustments (independent CPA firm)	70,939	(225,569)	151,619
Director's adjustments	(32,894)	(246,649)	(274,509)
	45,000	(45,602)	(56,203)
	30,000	(21,151)	40,000
	40,000		50,000
Total recognized expenses	$456,744	$1,023,092	$1,062,016

In June 1999, we forwarded the Director's 1997 independent CPA firm audit report to the Associations for comment. The following is a summary of the CPA firm's major findings and proposed adjustments, along with the Director's corresponding adjustments.

Summary of Major Findings and Proposed Adjustments

We divided the adjustments we made to the reported expenses into five categories: (1) Equalization Between districts, (2) reimbursed expenses, (3) expenses not necessary for pilotage services, (4) expenses related to lobbying, and (5) expenses not conforming to IRS guidelines.

(1) Equalization between Associations

The Coast Guard must ensure that each association's expenses are analyzed fairly and consistently with the other associations because each one is organized differently. The District 1 and 3 Associations are organized as partnerships whereas the District 2 Association is organized as a corporation. Because of this difference, the District 2 Association pays for Social Security taxes, Medicare taxes, insurance and travel expenses out of corporate funds while in the District 1 and 3 Associations these expenses are paid directly by the pilots themselves. Since these taxes, insurance and travel expenses are legitimate business expenses that should be recognized for ratemaking purposes, funds for these expenses have been added to the expense base of Districts 1 and 3.

District 2 spends a great deal more than the other Districts on many categories of expenses. For instance, pilot boat expenses in District 2 average $176 per trip, while expenses in the other two Districts average approximately $97 per trip. Erie Leasing, a wholly owned subsidiary of District 2 pilot's association that leases equipment back to District 2, reported a net income from operations of $70,506 in 1997, while District 3 has no affiliated company and the District 1 affiliated company showed a net income of $4520 for 1997.

In the 1998 rate review, the Director stated that 1998 was the last year in which District 2 would be allowed to incur unreasonably high expenses. To bring pilot boat charges in line with Districts 1 and 3, the Director is reducing District 2's expense base by an additional $45,602. This deduction is intended to offset Erie Leasing's net income of $70,506 from operations. This, in effect, reduces Erie Leasing's net income to $24,904, which represents a 6.69% return on Erie Leasing's property and equipment of $372,270.

(2) Reimbursed Expenses

The independent CPA firm found that multiple parties reimburse some expenses for each association and recommended that these expenses should not be included in the expense base for each district. Examples of these expenses include reimbursement from one pilot association to another for shared pilot boats and dispatch, reimbursement from ships for tugboat use, and reimbursement from Canadian pilotage operations for shared administrative expenses. Although these are legitimate business expenses, they are paid by other districts or parties, not by basic pilotage rates, and should not be included in the calculation of pilotage rates for the district being reimbursed. The Director agrees with the independent CPA firm's recommendation to deduct reimbursed expenses from the expense bases of District's 2 and 3. These expenses include those for Canadian pilotage operations and shared administrative expenses.

(3) Expenses Not Necessary for Pilotage Services

Expenses that are not necessary for the provision of pilotage services are disallowed for ratemaking purposes. This is explained in 46 CFR 404.5 (a)(1), which contains some of the Great Lakes Pilotage Ratemaking regulations. This section states: "Each expense included in the rate base is evaluated to determine if it is necessary for the provision of pilotage service" and "expense items that the Director determines are not reasonable and necessary for the provision of pilotage service will not be recognized for ratemaking purposes." The independent CPA firm determined that the largest portion of expenses that fits in this category came from the legal challenge by two Associations. They challenged the transfer of Great Lakes Pilotage oversight functions from the Commandant of the Coast Guard to the Administrator of the Saint Lawrence Seaway Development Corporation (SLSDC). This transfer did not affect the substantive rules regarding pilotage services. These litigation costs are distinguishable from expenses that are directly related to the provision of those services, such as the cost of transportation to and from vessels or the pilot's labor, from which the rate-paying public derives a direct benefit. The latter are costs that affect service to the public, while the former are not. We allowed some legal expenses directly related to the provision of pilotage service, such as the expense of defending a law suit by an applicant pilot discharged from the training program for cause, which directly affects the quality of service provided the public. While it is reasonable to expect the public to share the burden of the direct costs of services provided, it is not reasonable to pass on the costs of litigation over an issue that has no

discernable effect on the actual provision of pilotage services. Therefore, we are disallowing these legal costs for the purposes of this ratemaking ($19,900 in District 1, $36,869 in District 3).

Furthermore, the Director believes that a major portion of the remaining legal costs, even after disallowance for the above, are still excessive. In 1997, District 1 reported $34,138 in legal expenses, District 2: $21,151, and District 3: $56,203. The Director intends to recognize only those legal expenses that are reasonable, necessary and directly related to the provision of pilotage services (*i.e.*, they directly result from a legal action). In 1997, District 1 incurred $34,138 in legal expenses; $1,244 of which was directly related to litigation. Therefore, in the absence of any documentation to justify these legal expenses, the Director, for ratemaking purposes, is disallowing $32,894 in legal expenses for District 1. Furthermore, because there were no legal expenses related to litigation in Districts 2 and 3, the Director is disallowing $21,151 for District 2 and $56,203 for District 3.

In addition to the costs associated with legal expenses, the independent CPA firm also recommended additional deductions from District 2's expenses in the amount of $4800 for overpayment of rent, $947 for business promotion, $400 in donations, and $1,988 for uniforms. None of these charges are necessary for the provision of pilotage services. The Director agrees with the independent CPA firm's findings and these expenses have been deducted from the rate base.

(4) Expenses Related to Lobbying

The independent CPA firm recommended that we deduct $1,392 from District 1, $3,428 from District 2, and $12,495 from District 3 for lobbying expenses including dues, legal charges, employee payrolls, and travel.

(5) Expenses Not Conforming to IRS Guidelines

The independent CPA firm recommended that we deduct $2,484 from District 2's expense base for overpayment of a subsistence allowance that does not conform to IRS guidelines. The Director agrees with these findings and we deducted these expenses from the rate base.

During the 1999 navigational season, the Director initiated a change to District 1's Working Rules, in order to reduce pilot fatigue. This change increased the pilot's minimum time between assignments from eleven hours to thirteen hours and approved the use of a car service between home and pilot change points. During 1999, the cost of the car service was applied as a surcharge on the pilot's uniform source form. To incorporate this expense in District 1's expense base, the Director has approved an additional $45,000.

Step 1.C: Adjustment for Inflation or Deflation

To adjust expenses for inflation, we increased the total recognized expenses for each association by 2.1%. The 2.1% inflation figure is based on the change in the Consumer Price Index (CPI) from January 1998 to April 1999.

Step 1.D: Projection of Operating Expenses

Once all adjustments are made to the recognized operating expenses, the Director projects these expenses for each pilotage area. The Director considers foreseeable circumstances that could affect the accuracy of the projection and, as best as possible, determines the "projection of operating expenses."

For this rulemaking, we adjusted association expenses by multiplying the pilotage hour projection for each district (described in step 2.B., below) by the aggregate percentage of Association expenses that change in relation to a change in pilotage hours. Analysis indicates about 57% of Association expenses are affected by a change in pilotage hours. For instance, in District 1, pilotage hours are projected to decrease 5% (see step 2.B. below) which is multiplied by 57% to project that District 1's operating expenses should decrease 2.8% in response to the projected decrease in pilotage hours. Then, District-wide expenses were apportioned to each area according to the number of pilots in that area, as determined in step 2.B., below. For instance, District 1 is calculated to need seven pilots in Area 1 and four pilots in Area 2, therefore, Area 1 was assigned 64% of the expenses for the District and Area 2 was assigned 36% of the expenses for the District. The results of Step 1 for each district are displayed below.

DISTRICT 1

Methodology	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District 1
Projection of operating expenses	$287,152	$244,612	$531,764

DISTRICT 2

Methodology	Area 4 Lake Erie	Area 5 South East Shoal to Port Huron MI	Total District 2
Projection of operating expenses	$609,164	$518,917	1,128,081

DISTRICT 3

Methodology	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District 3
Projection of operating expenses	$648,500	$128,476	$446,608	$1,223,584

Step 2.A: Determination of Target Rate of Compensation

For pilots providing service in undesignated waters, the target rate of compensation is equal to the average yearly compensation earned by first mates on U.S. Great Lakes vessels. Effective August 1, 1999, the rate is $103,644, according to information from the American Maritime Officers Union and Great Lakes Ship Operating Companies. This rate covers wages and compensation which include work days, vacation pay, weekend pay, holiday pay, bonuses, clerical pay, medical benefits and pension contributions.

For pilots providing services in designated waters the target rate of compensation is 1.5 times the yearly rate of first mate compensation, which is calculated at $155,466. These figures represent a 12% increase in pilot's target compensation since pilotage rates were last set in 1997.

Step 2.B: Determination of Number of Pilots Needed

The number of pilots needed is determined by dividing the projected bridge hours for each area by the work hour targets for each area *i.e.*, 1000 hours in designated waters and 1800 hours in undesignated waters. Pilot bridge hours are projected based on the vessel traffic that these pilots are expected to serve. The Coast Guard used three sources to project vessel traffic and bridge hours. These sources included industry surveys, projections by the St. Lawrence Seaway Corporation and current bridge hour levels. The projection for 1999 is for a 5% reduction in Districts 1, 2, and 3. The following bullets list the projected equivalent pilot needs for 1999, by area:

- Area 1: 7 pilots.
- Area 2: 4 pilots.
- Area 4: 5 pilots.
- Area 5: 8 pilots.
- Area 6: 11 pilots.
- Area 7: 4 pilots.
- Area 8: 8 pilots.

(We use the term "equivalent" because the actual assignment of pilots to each area varies according to the needs of vessel traffic). Applying this methodology to the undesignated waters of District 3 results in a total of 19.2 pilots required for both Areas 6 and 8. Because District 3 utilizes contract pilots, a total of 19 pilots was utilized instead of 20 pilots to determine total pilot target compensation for the District. This certainly is not intended to penalize District 3 in any manner. Contract pilots enhance profitability while providing District 3 an added flexibility to comfortably handle sudden surges in traffic, while protecting pilot compensation targets in the event that projected traffic projections fall short of estimates.

Step 2.C. Projection of Target Pilot Compensation

Target pilot compensation is determined by multiplying the target compensation for each area by the number of pilots in each area. The results of Step 2 are summarized below.

DISTRICT 1

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District 1
Projection of target pilot compensation	$1,088,262	$414,576	$1,502,838

DISTRICT 2

	Area 4 Lake Erie	Area 5 South East Shoal to Port Huron, MI	Total District 2
Projection of target pilot compensation	$518,220	$1,243,728	$1,761,948

DISTRICT 3

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District 3
Projection of target pilot compensation	$1,140,084	$621,864	$829,152	$2,591,100

Step 3.A. Projection of Revenue

We projected Pilotage Revenue by multiplying the revenue by each Association in 1998 by the change in traffic projected for each Association. The result for each was divided among the pilotage areas based on the number of pilots in each area. The results of Step 3 for each district are summarized below.

DISTRICT 1

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District 1
Projection of revenue	$1,333,991	$687,207	$2,021,198

DISTRICT 2

	Area 4 Lake Erie	Area 5 South East Shoal to Port Huron, MI	Total District 2
Projection of revenue	$1,156,057	$1,886,198	$3,042,255

DISTRICT 3

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District 3
Projection of revenue	$1,797,967	$688,583 $1,338,912	$3,825,462	

Step 4. Calculation of Investment Base

The independent CPA firm hired by the Director calculated the Investment Base for each Association during the analysis. The results of those calculations are contained in the reports of the CPA firm, which have been forwarded to each of the Districts for comment. The Step 4 Investment Base as calculated for each district is displayed below.

DISTRICT 1

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District 1
Calculation of investment base	$0	$0	$0

DISTRICT 2

	Area 4 Lake Erie	Area 5 South East Shoal to Port Huron, MI	Total District 2
Calculation of investment base	$45,397	$71,006	$116,403

DISTRICT 3

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District 3
Calculation of investment base	$11,997	$4,595	$8,934	$25,526

Step 5. Determination of Target Rate of Return

The rate of return on investment (ROI) for 1999 was set at 6.69%. This is based on the preceding year's average annual rate of return of new issues of high-grade corporate securities (Moody's AAA rating, average return). The Step 5 determination of target return on investment is displayed below.

DISTRICT 1

	Area 1 St. Lawrence River (percent)	Area 2 Lake Ontario (percent)	Total District 1 (percent)
Determination of target return on investment	6.69	6.69	6.69

DISTRICT 2

	Area 4 Lake Erie (percent)	Area 5 South East Shoal to Port Huron, MI (percent)	Total District 2 (percent)
Determination of target return on investment	6.69	6.69	6.69

DISTRICT 3

	Area 6 Lakes Huron and Michigan (percent)	Area 7 St. Mary's River (percent)	Total District 3 (percent)
Determination of target return on investment	6.69	6.69	6.69

Step 6. Adjustment Determination

We made the adjustment determination using the numbers listed above and following the formula found in Step 6 of Appendix A to 46 CFR Part 404. The Step 6 results for each district are displayed below.

DISTRICT 1

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District 1 (percent)
Adjustment determination	$1,375,414	$659,187	$2,034,602

DISTRICT 2

	Area 4 Lake Erie	Area 5 South East Shoal to Port Huron MI	Total District 2
Adjustment determination	$1,134,321	$1,773,496	$2,907,81

DISTRICT 3

	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's, River	Area 8 Lake Superior	Total District 3
Adjustment determination	$1,789,386	$750,648	$1,276,358	$3,816,392

Step 7. Adjustment of Pilotage Rates

To determine the adjustments to pilotage rates in each area we multiplied the current pilotage rates in those areas by the rate multiplier. The rate multiplier is calculated by dividing the revenue needed (from step 6) by the revenue needed (from step 3) for each area. The Coast Guard proposes to amend the pilotage rates in 46–404.05–410 with the rates obtained by multiplying the current pilotage rates times the rate multiplier calculated for each pilotage area. The Step 7 Adjustments of Pilotage Rates for each district are displayed below.

DISTRICT 1

	Area 1 St. Lawrence River	Area 2 Lake Ontario	Total District 1
Adjustment of pilotage rates	1.03	.96	1.01

	DISTRICT 2		
	Area 4 Lake Erie	Area 5 South East Shoal to Port Huron MI.	Total District 2
Adjustment of pilotage rates	.98	.94	.96

	DISTRICT 3			
	Area 6 Lakes Huron and Michigan	Area 7 St. Mary's River	Area 8 Lake Superior	Total District 3
Adjustment of pilotage rate	1.00	1.09	.95	.99

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This proposed rule would make minimal adjustments to the pilotage rates for the Great Lakes 2000 shipping season. The Coast Guard used the ratemaking methodology found in 46 CFR part 404, Appendix A to identify adjustments necessary to achieve target pilot compensation by establishing these new rates for pilotage. This ratemaking methodology is designed to annually review pilotage rates in order to avoid fluctuations in pilot compensation thus avoiding large changes in pilotage rates. This notice of proposed rulemaking provides a step-by-step economic guide to show how the pilotage rates would be changed. The results of this rulemaking are in keeping with the Coast Guard's desire for a fair and efficient pilotage system.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the Great Lakes region, small entities potentially impacted by this proposed rulemaking include shippers, Great Lakes ports, carriers, and shipping agents. The proposed decreases in Great Lakes pilotage rates are not expected to significantly impact small businesses because this rulemaking actually reduces the financial burden on small entities and on the general public.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Tom Lawler, Chief Economist, Great Lakes Pilotage (G–MW–1), U.S. Coast Guard, at 202–267–6447, by facsimile 202–267–4700, or by email at tlawler@comdt.uscg.mil.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph 34(a), of the Commandants Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. The proposed rule is procedural in nature because it deals exclusively with adjusting pilotage rates for the Great Lakes. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 46 CFR Part 401

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR part 401 as follows:

PART 401—GREAT LAKES PILOTAGE REGULATIONS

1. The authority citation for part 401 continues to read as follows:

Authority: 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; 49 CFR 1.45, 1.46 (mmm), 46 CFR 401.105 also issued the authority of 44 U.S.C. 3507.

2. In § 401.405, revise tables (a) and (b) to read as follows:

§ 401.405 Basic rates and charges on the St. Lawrence River and Lake Ontario.

* * * * *

(a) Area 1 (Designated Waters):

Service	St. Lawrence River
Basic Pilotage	$8 Kilometer or $13 per mile.[1]
Each Lock Transited	$176[1]
Harbor Movage	$579[1]

[1] The minimum basic rate for assignment of a pilot in the St. Lawrence River is $381 and the maximum basic rate for a through trip is $1,676.

(b) Area 2 (Undesignated Waters):

Service	Lake Ontario
Six Hour Period	$282
Docking/Undocking	269

3. In § 401.407, revise tables (a) and (b) to read as follows:

§ 401.407 Basic rates and charges on Lake Erie and the navigable waters from Southeast Shoal to Port Huron, MI.

* * * * *

(a) Area 4 (Undesignated Waters):

Service	Lake Erie (East of Southeast Shoal)	Buffalo
Six Hour Period	$316	$316
Docking/Undocking	243	243
Any Point on the Niagara River below the Black Rock Lock	N/A	620

(b) Area 5 (Designated Waters):

Any point on/in	Southeast Shoal	Toledo or any point on Lake Erie west of Southeast Shoal	Detroit River	Detroit pilot boat	St. Clair River
Toledo or any port on Lake Erie west of South-East Shoal	$929	$548	$1,205	$929	N/A
Port Huron Change Point	[1] 1,617	[1] 1,873	1,215	945	$672
St. Clair River	[1] 1,617	N/A	1,215	1,215	548
Detroit or Windsor or the Detroit River	929	1,205	548	N/A	1,215
Detroit Pilot Boat	672	929	N/A	N/A	1,215

[1] When pilots are not changed at the Detroit Pilot Boat.

4. In § 401.410, revise tables (b) and (c) to read as follows:

§ 401.410 Basic rates and charges on Lake Huron, Michigan and Superior and the St Mary's River.

* * * * * * *

(b) Area 7 (Designated Waters):

Area	Detour	Gros Cap	Any Harbor
Gros Cap	$1,436	N/A	N/A
Algoma Steel Corporation Wharf at Sault Ste. Marie Ontario	1,436	541	N/A
Any point in Sault Ste. Marie, Ontario except the Algoma Steel Corporation Wharf	1,204	541	N/A
Sault Ste. Marie, Michigan	1,204	541	N/A
Harbor Movage	N/A	N/A	541

(c) Area 8 (Undesignated Waters):

Service	Lake Superior
Six Hour Period	$248
Docking/Undocking	237

§ 401.420 [Amended]

5. In § 401.420—

a. In paragraph (a), remove the number "$51" and add, in its place, the number "$50"; and remove the number "$807" and add, in its place, the number "$799".

b. In paragraph (b), remove the number "$51" and add, in its place, the number "$50"; and remove the number "$807" and add, in its place, the number "$799".

c. In paragraph (c) (1), remove the number "$305" and add, in its place, the number "$302"; in paragraph (c) (3), remove the number "$51" and add, in its place, the number "$50" and also in paragraph (c) (3), remove the number "$807", and add, in its place, the number "$799".

§ 401.428 [Amended]

6. In § 401.428, remove the number "$312" and add, in its place, the number "$309".

Dated: April 5, 2000.

R.C. North,

Rear Admiral, U.S. Coast GuardAssistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–9251 Filed 4–13–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: 12-Month Finding for an Amended Petition To List the Westslope Cutthroat Trout as Threatened Throughout Its Range

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the Fish and Wildlife Service, announce a 12-month finding for an amended petition to list the westslope cutthroat trout (*Oncorhynchus clarki lewisi*) as threatened throughout its range pursuant to the Endangered Species Act of 1973, as amended. After review of all available scientific and commercial information, we find that listing the westslope cutthroat trout is not warranted at this time.

DATES: The finding announced in this document was made on April 5, 2000.

ADDRESSES: Data, information, comments, or questions regarding this notice should be sent to the Chief, Branch of Native Fishes Management, U.S. Fish and Wildlife Service, Montana Fish and Wildlife Management Assistance Office, 4052 Bridger Canyon Road, Bozeman, Montana 59715. The complete administrative file for this finding is available for inspection during normal business hours, by appointment, at the above address. The status review document for westslope cutthroat trout (U.S. Fish and Wildlife Service 1999) may also be obtained at that address, or at our Internet web site at <www.r6.fws.gov/cutthroat>.

FOR FURTHER INFORMATION CONTACT: Lynn R. Kaeding, at the above address, telephone (406) 582–0717, or e-mail Lynn__Kaeding@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires that within 90 days of receipt, to the maximum extent practicable, we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the requested action may be warranted. If the petition contains substantial information, the Act requires that we initiate a status review of the species and publish a 12-month finding indicating whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate listing proposal by other pending proposals of higher priority. Such 12-month findings are to be published promptly in the **Federal Register**.

On June 6, 1997, we received a formal petition to list the westslope cutthroat trout (*Oncorhynchus clarki lewisi*) as threatened throughout its range and designate critical habitat for this subspecies pursuant to the Act. The petitioners are American Wildlands, Clearwater Biodiversity Project, Idaho Watersheds Project, Inc., Montana Environmental Information Center, the Pacific Rivers Council, Trout Unlimited's Madison-Gallatin Chapter, and Mr. Bud Lilly.

The westslope cutthroat trout (WCT) is 1 of 14 subspecies of cutthroat trout native to interior regions of western North America (Behnke 1992). Cutthroat trouts owe their common name to the distinctive red slash that occurs just below both sides of the lower jaw. Adult WCT, especially males during the spawning season, typically exhibit bright yellow, orange, and red colors. Characteristics of WCT that distinguish this fish from the other cutthroat subspecies include a pattern of irregularly shaped spots on the body that has few spots below the lateral line, except near the tail; a unique number of chromosomes; and other genetic and morphological traits that appear to reflect a distinct, evolutionary lineage (Behnke 1992).

The historic range of WCT is considered the most geographically widespread among the 14 subspecies of inland cutthroat trout (Behnke 1992). Although not known precisely, the historic distribution of WCT in streams and lakes can be summarized as follows: West of the Continental Divide, the subspecies is native to several major drainages of the Columbia River basin, including the upper Kootenai River drainage from its headwaters in British Columbia, through northwest Montana, and into northern Idaho; the Clark Fork River drainage of Montana and Idaho downstream to the falls on the Pend Oreille River near the Washington-British Columbia border; the Spokane River above Spokane Falls and into Idaho's Coeur d'Alene and St. Joe River drainages; and the Salmon and Clearwater River drainages of Idaho's Snake River basin. The historic distribution of WCT also includes disjunct areas draining the east slope of the Cascade Mountains in Washington (Methow River and Lake Chelan drainages), the John Day River drainage in northeastern Oregon, and the headwaters of the Kootenai River and several other small disjunct regions in British Columbia. East of the Continental Divide, the historic distribution of WCT includes the headwaters of the South Saskatchewan River drainage (United States and Canada); the entire Missouri River drainage upstream from Fort Benton, Montana, and extending into northwest Wyoming; and the headwaters of the Judith, Milk, and Marias Rivers, which join the Missouri River downstream from Fort Benton. Today, various WCT stocks remain in each of these major river basins in Montana, Idaho, Washington, Oregon, and Wyoming, but occur in scattered, disjunct populations in Canada.

On July 2, 1997, we notified the petitioners that our Final Listing Priority Guidance, published in the December 5, 1996, **Federal Register** (61 FR 64425), designated the processing of new listing petitions as being of lower priority than completion of emergency listings and processing of pending

proposed listings. A backlog of listing actions, as well as personnel and budget restrictions in Region 6 (Mountain-Prairie Region), which was assigned responsibility for the WCT petition, prevented our staff from working on a 90-day finding for the petition.

On January 25, 1998, the petitioners provided an amended petition to list the WCT as threatened throughout its range and designate critical habitat for the subspecies. The amended petition contained additional new information in support of the requested action. Because substantial new information was provided, we treated the amended petition as a new petition.

On June 10, 1998, we published a notice in the **Federal Register** (63 FR 31691) of a 90-day finding that the amended WCT petition provided substantial information indicating that the requested action may be warranted and immediately began a comprehensive status review of WCT (U.S. Fish and Wildlife Service 1999). In the notice, we asked for data, information, technical critiques, comments, or questions relevant to the amended petition. The comment period closed August 10, 1998; however, we reopened the comment period on August 17, 1998 (63 FR 43902), until October 13, 1998.

Petitioners' Assertions

The petitioners assert that remaining, genetically pure stocks of WCT occur almost exclusively in small, isolated streams in mountainous areas. In Montana, the region for which most data were provided, the petitioners indicate that stocks of genetically pure WCT occur in about 3.5 percent and 1.5 percent of their historic stream habitat in the Kootenai River and upper Missouri River drainages, respectively. The petition includes similar percentages for genetically pure WCT stocks in other drainages in Montana.

The petitioners assert that it is common for today's WCT stocks to have some degree of hybridization with introduced, nonnative trout. The petitioners further assert that stocks of WCT now occur in 11 percent of historic habitat in Idaho and 41 percent in Oregon, although data on genetic purity are not available for most of those stocks. The petitioners have little information on the status of native WCT stocks in Alberta, British Columbia, and Washington, although several stocks have been confirmed by recent studies. According to the petitioners, only about half of the few streams in Wyoming that were historic habitat for WCT now have stocks of this subspecies, but all of these stocks are considered hybridized to some degree with introduced, nonnative trout.

The petitioners assert that the WCT should be listed as threatened because the subspecies' present distribution and abundance are substantially reduced from historic conditions; remaining stocks are small and widely separated and continue to decline in abundance; and the threats to the survival of WCT are pervasive and ongoing. The petitioners allege that threats to WCT include habitat destruction from logging and associated road building; adverse effects on habitat resulting from livestock grazing, mining, urban development, agricultural practices, and the operation of dams; historic and ongoing stocking of nonnative fish species that compete with or prey upon WCT or jeopardize the subspecies' genetic integrity through hybridization; and excessive harvest by anglers.

The petitioners further assert that programs to protect and restore WCT are inadequate or nonexistent, and that stocks of this fish continue to be threatened by a wide variety of ongoing and proposed activities.

Status Review

A review team consisting of U.S. Fish and Wildlife Service biologists from Region 1 (headquartered in Portland, Oregon) and Region 6 (headquartered in Denver, Colorado) conducted the WCT status review. Team members were: Scott A. Deeds, Fish and Wildlife Biologist, Upper Columbia River Basin Field Office, Spokane, Washington; Lynn R. Kaeding, Team Leader and Chief, Branch of Native Fishes Management, Montana Fish and Wildlife Management Assistance Office, Bozeman, Montana; Dr. Samuel C. Lohr, Fishery Biologist, Snake River Basin Office, Boise, Idaho; and Douglas A. Young, Fish and Wildlife Biologist, Central Oregon Field Office, Bend, Oregon.

In response to our June 10 and August 17, 1998, **Federal Register** notices, we received 56 comments from State game and fish departments, the U.S. Forest Service, National Park Service, Tribal governments, and private corporations, as well as private citizens, organizations, and other entities containing information on WCT (U.S. Fish and Wildlife Service 1999). State game and fish departments provided information on the status, distribution, abundance, and genetics of the WCT in their respective States. We also reviewed information on WCT obtained from scientific journal articles, agency reports and file documents, and telephone interviews and written correspondence with natural resources managers familiar with WCT. In addition, we analyzed the extensive information on WCT provided by the Interior Columbia River Basin Ecosystem Management Project (1996). Detailed procedures and results of our comprehensive assessment of the available information are described in the WCT status review document (U.S. Fish and Wildlife Service 1999) and summarized in this notice.

Throughout the historic range of WCT, few of the remaining WCT stocks have been genetically classified on the basis of chromosome counts, biochemical characteristics, or molecular genetic information. Although application of such genetic techniques for characterizing fish stocks is becoming more common today, in most cases the taxonomic classification of extant WCT stocks has been based largely on the spotting patterns shown by the fish and the professional judgments and experiences of the fishery biologists who examined the fish in the field. Although WCT stocks with varying degrees of genetic purity are known to occur across the subspecies' range, there is currently little definitive information on the genetic characteristics of most WCT stocks (U.S. Fish and Wildlife Service 1999). Even in Montana, where an extensive database on the genetic characteristics of many WCT stocks exists, the precise genetic characteristics of most stocks are unknown. Consequently, we based the WCT status review on the professional judgments made by the State game and fish departments that the fish the departments classified as WCT actually represented the subspecies, even though the precise genetic characteristics of those stocks may not be known, or the stocks may consist of intercross progeny that were the product of some low or nondetectable level of interbreeding between WCT and another fish species. In addition, given the very small, disjunct populations in Canada, we evaluated WCT status on the basis of WCT stocks that currently occur within the historic range of the subspecies in the United States (*i.e.*, introduced and naturally occurring stocks in Canada and introduced stocks outside the historic range in the United States were not included in the evaluation).

Status Review Findings

The National Marine Fisheries Service and our agency have adopted criteria (61 FR 4722) for designation of Distinct Population Segments (DPSs) for vertebrate organisms, such as WCT, under the Act. To constitute a DPS, a stock or group of stocks must be: (1) Discrete (*i.e.*, spatially, ecologically, or

behaviorally separated from other stocks of the taxon); (2) significant (*e.g.*, ecologically unique for the taxon, extirpation would produce a significant gap in the taxon's range, the only surviving native stock of the taxon, or substantial genetic divergence occurs between the stock and other stocks of the taxon); and (3) the population segment's conservation status must meet the Act's standards for listing. We found no morphological, physiological, or ecological data for WCT that indicated unique adaptations of individual WCT stocks or assemblages of stocks anywhere within the historic range of the subspecies. Although the disjunct WCT stocks in Canada, Washington, and Oregon, for example, met the first criterion for DPS designation (discreteness), evidence in support of the second criterion (significance) appeared entirely speculative for those and other stocks across the range of the subspecies. Congress has made clear (61 FR 4722) that in the absence of compelling evidence of genetic, ecological, or other characteristics that indicate a unique significance of a stock or assemblage of stocks, DPSs should be used "sparingly" in the context of the Act. We found no compelling evidence in support of recognizing DPSs for WCT. Instead, a single WCT population was recognized for purposes of the status review (U.S. Fish and Wildlife Service 1999).

Information provided primarily by State game and fish departments in Montana, Idaho, Washington, and Oregon indicated WCT currently occur in about 4,275 tributaries or stream reaches that collectively encompass more than 23,000 linear miles (36,800 kilometers (km)) of stream habitat (U.S. Fish and Wildlife Service 1999). Those WCT stocks are distributed among 12 major drainages and 62 component watersheds in the Columbia, Missouri, and Saskatchewan River basins. In addition, WCT are known to occur naturally in 6 lakes in Idaho and Washington, totaling about 72,900 hectares (ha) (180,000 acres (ac)), and in at least 20 lakes in Glacier National Park, Montana, totaling 2,165 ha (5,347 ac). The distribution of WCT in any particular stream or stream reach was based on field sampling or the professional judgment of fisheries biologists familiar with that geographic region. Because sampling all stream reaches in a watershed is generally not feasible, especially in remote and mountainous regions, information concerning linear stream distances occupied by WCT that the departments supplied were often total lengths for an entire stream in which WCT were known or suspected to occupy some portion. Although WCT stocks that occupied large, mainstem rivers and lakes and their principal tributaries are reduced from their historic levels, the degree that those stocks are reduced cannot be determined precisely because definitive historic data are limited. Nonetheless, we find that viable, self-sustaining WCT stocks remain widely distributed throughout the historic range of the subspecies, most notably in headwater areas.

In the context of the Act, the term "threatened species" means any species (or subspecies or, for vertebrates, DPS) that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The term "endangered species" means any species that is in danger of extinction throughout all or a significant portion of its range. The Act does not indicate threshold levels of historic population size at which (as the population of a species declines) listing as either "threatened" or "endangered" becomes warranted. Instead, the principal considerations in the determination of whether or not a species warrants listing as a threatened or endangered species under the Act are the threats that currently confront the species and the likelihood that the species will persist in "the foreseeable future."

Evidence from the Missouri River basin indicates that a conspicuous decline in the WCT population occurred early in the twentieth century (U.S. Fish and Wildlife Service 1999). That decline was mainly attributed to rapid, abundant colonization of mainstem rivers and their major tributaries by one or more introduced, nonnative fish species (*e.g.*, brook trout (*Salvelinus fontinalis*), brown trout (*Salmo trutta*), and rainbow trout (*Oncorhynchus mykiss*)) that had adverse effects on WCT. Our analysis also showed that the rate of decline in the WCT population is markedly lower today than it was early in the twentieth century. The evidence from the Missouri River basin provided a model for the historic decline of WCT that is probably applicable to WCT in other regions of the subspecies' range.

We also have evidence that many of the headwater streams inhabited by extant WCT stocks throughout the subspecies' range are relatively secure from colonization by the nonnative fishes that are known to adversely affect WCT. Throughout the inland, western United States today, stocks of various subspecies of indigenous cutthroat trout often persist in high-elevation, high-velocity, headwater streams, where they appear to have a competitive advantage over nonnative fishes. Thus, the headwater streams inhabited by many extant WCT stocks may be relatively secure from colonization by nonnative fishes. In addition, because they occur in high-elevation areas, those headwater streams are relatively secure from the adverse effects of human activities.

Spatial separation of many extant WCT stocks precludes natural movement and interbreeding among some stocks, thereby potentially increasing the likelihood that those stocks will become extinct due to limited genetic variability. In addition, the probable small sizes of some WCT stocks and the short stream reaches that they might inhabit make those stocks more vulnerable to extirpation due to natural catastrophes such as floods, landslides, wild fires, and other stochastic environmental events. Remaining WCT stocks in the Lower Missouri River and part of the Columbia River (in Washington) drainages, for example, occupy stream reaches that average 2.9 and 3.4 miles (4.6 and 5.4 km) long, respectively (U.S. Fish and Wildlife Service 1999). Despite the probable small sizes of many extant WCT stocks that inhabit restricted, headwater stream reaches, however, we find no evidence of negative impacts of inbreeding within stocks. Similarly, although the probable small sizes of some of those WCT stocks and the short stream reaches that they inhabit make some stocks more vulnerable to extirpation due to stochastic environmental events, we find no evidence that the loss of WCT stocks that could result from such infrequent, natural catastrophes would threaten the continued existence of the subspecies as a whole (U.S. Fish and Wildlife Service 1999).

The status review revealed that most of the habitat for extant WCT stocks lies on lands administered by Federal agencies, particularly the U.S. Forest Service (U.S. Fish and Wildlife Service 1999). Moreover, most of the strongholds for WCT stocks occur within roadless or wilderness areas or national parks, all of which afford considerable protection to WCT. In addition, numerous existing Federal and State regulatory mechanisms, if properly administered and implemented, are working to protect WCT and their habitats throughout the range of the subspecies. For example, the States generally restrict the harvest of WCT, and in many regions only catch-and-release angling is allowed. However, some regions have regulatory mechanisms with primary goals that

could maintain habitat conditions at levels that are less than optimal for WCT.

We also are encouraged by ongoing State and local programs, most notably those in Montana, to protect and restore WCT within its historic range (U.S. Fish and Wildlife Service 1999). The U.S. Forest Service, State game and fish departments, and National Park Service reported more than 700 ongoing projects directed toward the protection and restoration of WCT and their habitats. In addition, on private lands in Montana's Columbia River basin, for example, Plum Creek Timber Company is working closely with us to develop a Native Fish Habitat Conservation Plan that includes provisions for the conservation of WCT on 1.5 million acres of Plum Creek property. Elsewhere in Montana, restoration activities under way as part of the Blackfoot Challenge, a cooperative endeavor between private landowners and public agencies to conserve and restore streams and riparian habitats in the Blackfoot River valley, include removal of fish-passage barriers, screening of irrigation diversions to prevent the loss of WCT to canals, and general improvement of instream fish habitat.

Finally, WCT also accrue some additional level of protection from the Act's section 7 consultation process in the numerous geographic areas where WCT distribution and habitat requirements overlap with the distributions of one or more fish species currently listed as threatened or endangered under the Act, specifically, bull trout (*Salvelinus confluentus*), steelhead (*Oncorhynchus mykiss*), and Pacific salmon species and their habitats on Federal lands in the Columbia River basin. Conservation efforts to protect these species, improve available habitat, and minimize adverse impacts on them would provide similar conservation benefits to WCT.

The Act identifies five factors of potential threats to a species: (1) The present or threatened destruction, modification, or curtailment of the species' habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; and (5) other natural or manmade factors affecting the species' continued existence. The overall WCT population has been reduced from historic levels, and extant stocks of this subspecies face threats from some of these factors in several areas of the historic range. However, we find that the magnitude and imminence of those threats are small. WCT have a widespread distribution, and there are numerous robust populations throughout its range.

On the basis of the best available information, which is detailed and analyzed in the status review document (U.S. Fish and Wildlife Service 1999) and summarized in this notice, we conclude that the WCT is not likely to become a threatened or endangered species within the foreseeable future. Therefore, listing of the WCT as a threatened or endangered species under the Act is not warranted at this time.

References Cited

Behnke, R.J. 1992. Native trout of western North America. American Fisheries Society Monograph 6.

Interior Columbia River Basin Ecosystem Management Project. 1996. Key salmonid current-status database (CRBFISH6). Available at ICBEMP web site <www.icbemp.gov>.

U.S. Fish and Wildlife Service. 1999. Status review for westslope cutthroat trout in the United States. Regions 1 and 6. Available at our web site <<www.r6.fws.gov/cutthroat>.

Authors: The primary author of this document is Lynn R. Kaeding (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: April 5, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–9259 Filed 4–13–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF45

Endangered and Threatened Wildlife and Plants; Notice of 6-Month Extension on the Proposed Rule To List the Southwestern Washington/Columbia River Coastal Cutthroat Trout in Washington and Oregon as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension of deadline.

SUMMARY: We, the U.S. Fish and Wildlife Service, extend for 6 months the time to make a final determination on the proposal to list the distinct vertebrate population segment of the coastal cutthroat trout (*Onocorhynchus clarki clarki*) in the Southwestern Washington/Columbia River area as a threatened species. Under the Endangered Species Act (ESA) of 1973, as amended, the deadline for the final action on the proposed rule to list this population segment in Washington and Oregon is extended from April 5, 2000, to October 5, 2000. The 6-month extension is necessary for us to obtain and review new information needed to resolve substantial scientific disagreement about the status of this population.

DATES: Comments may be submitted until May 15, 2000.

ADDRESSES: The complete file for this notice is available for inspection, by appointment, during normal business hours at the Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2600 SE 98th Ave., Suite 100, Portland, Oregon 97266.

FOR FURTHER INFORMATION CONTACT: Kemper McMaster, State Supervisor, at the above address (telephone 503/231–6179; facsimile 503/231–6195).

SUPPLEMENTARY INFORMATION:

Background

In January 1999, the National Marine Fisheries Service (NMFS) published a document titled "Status Review of Coastal Cutthroat Trout (*Oncorhynchus clarki clarki*) from Washington, Oregon, and California" (Johnson *et al.* 1999). The status review document determined that there were six Evolutionarily Significant Units (ESUs) of coastal cutthroat trout along the coast of Washington, Oregon, and California. Subsequent to the completion of the status review, NMFS and the Fish and Wildlife Service (FWS) (jointly, the Services) published a proposed rule on April 5, 1999, (64 FR 16397) to list one of the six cutthroat trout ESUs as threatened under the Endangered Species Act (ESA). The proposed ESU consisted of coastal cutthroat trout populations in southwestern Washington and the Columbia River, excluding the Willamette River above Willamette Falls. This proposed rule was issued jointly due to a question regarding which agency (FWS or NMFS) had regulatory jurisdiction over coastal cutthroat trout. The proposal also proposed, based on newly available information, to delist the Umpqua River coastal cutthroat trout ESU previously listed by NMFS as endangered.

Since the joint proposal was published, agency jurisdiction has been determined to be with FWS. On November 22, 1999, the Services jointly signed a letter announcing FWS regulatory jurisdiction over Coastal

cutthroat trout (USDI & USDC 1999). This document clarified that NMFS would retain responsibility to reach a final determination, subject to our concurrence, on the proposal to delist the Umpqua population, and we would assume all other regulatory ESA responsibilities for coastal cutthroat trout (USDI & USDC 1999). A notice will soon be published in the **Federal Register** announcing this change in regulatory jurisdiction.

Under the timeframe established for listing decisions by the ESA (section 4(3)(b)(6)(A)), a final determination on the proposal to list the Southwestern Washington/Columbia River ESU of the coastal cutthroat trout in Washington and Oregon would normally be due by April 5, 2000. However, when substantial scientific disagreement occurs regarding the sufficiency or accuracy of the available data, as in this case, the Act allows for a 6-month extension of a final listing determination for the purpose of soliciting additional data (section 4(3)(b)(6)(B)(i)). The 6-month extension announced in this notice is based on this provision.

Substantial Scientific Disagreement

Two groups (hatchery populations and above-barrier populations of coastal cutthroat trout) were not fully examined in the NMFS status review. The proposed rule (64 FR 16397) stated:

> In the proposed [Southwestern Washington/Columbia River] ESU, only naturally spawned cutthroat trout are proposed for listing. Prior to the final listing determination, we will examine the relationship between hatchery and naturally spawned populations of cutthroat trout, and populations of cutthroat trout above barriers to assess whether any of these populations warrant listing. This may result in the inclusion of specific hatchery populations or populations above barriers as part of the listed ESU in the final listing determination.

In the section on the framework for ESUs, the NMFS status review document (Johnson *et al.* 1999) discussed the issue of barriers to migration (p. 125). The NMFS Biological Review Team (BRT) questioned the role played by above-barrier populations in ESUs immediately downstream, and found this analysis to be a challenging problem. Evidence of the challenge includes the fact that "[t]he BRT was divided regarding whether populations above long-standing natural barriers (i.e., those that effectively preclude all migration for hundreds or thousands of years) should be included in ESUs." The BRT went on to discuss the reasons they might or might not choose to include populations above such barriers in ESUs, but failed to reach any resolution or pass on recommendations. The BRT also addressed the question of whether populations above barriers that permit some one-way migration should be included in an ESU downstream. A majority of BRT members felt that such populations should be included in the downstream ESU because these populations may "* * * contribute demographically and genetically to populations below them * * *", and "* * * may represent genetic resources shared by populations below these barriers (and potentially a significant component of diversity for an ESU)" (Johnson *et al.* 1999).

When the Services published the proposed rule, however, the question on whether to include above-barrier populations in downstream ESUs remained unresolved. Furthermore, the BRT unanimously decided that the guidance on including populations above one-way passable barriers into downstream ESUs should not be followed in the case of Willamette Falls, a barrier that allows some one-way (and possibly in rare instances, two-way) migration between the currently proposed Southwestern Washington/Lower Columbia River ESU and the upper Willamette ESU (for which the BRT made no status assessment). In fact, the BRT went so far as to conclude that the upper Willamette population deserved its own ESU status, based primarily on the fact that it "* * * encompasses a large area with considerable habitat complexity * * *" and that it "* * * supports several different populations * * *" of coastal cutthroat trout (Johnson *et al.* 1999). However, it is possible that, with additional analysis, the area identified by NMFS as the Upper Willamette ESU is actually part of the Southwestern Washington/Lower Columbia River ESU. Another issue that needs to be addressed is how the BRT handled other populations either above impassable barriers, or above barriers allowing one-way passage, and if any of these populations warrant recognition as distinct vertebrate population segments.

In addition, we are aware of additional information provided to the BRT by the Washington Department of Fish and Wildlife (WDFW) that indicates that some coastal Washington populations currently included within the Southwestern Washington/Lower Columbia River ESU should not be included. Although this information was presented to the BRT during the status review, it was not made available to the FWS until after the decision regarding regulatory jurisdiction over coastal cutthroat trout was resolved. The BRT has also recently alerted the FWS to a compilation of new genetic data that the BRT indicated "* * * are relevant to the identification of distinct population segments in the Lower Columbia River and southwestern Washington coast" (Waples, *in litt.* 2000). Therefore, with further review, the WDFW information, information concerning the role of above-barrier and hatchery populations of cutthroat trout, and the new genetic data may lead us to modify the boundaries of the ESU proposed for listing. Such modification may result in the need to repropose the distinct vertebrate population segment for listing, if we determine that the status of the segment warrants protection under the ESA.

Therefore, in consideration of all the above issues, we are providing notice that, according to section 4(b)(6)(B)(i) of the ESA, the 1-year timeframe allowed to make a final determination on a listing proposal will be extended an additional 6 months. The 6-month extension will enable us to evaluate new information regarding the status of above-barrier and hatchery populations, and allow the integration of this information into the final listing decision. With this 6-month extension, a final decision regarding the proposal to list the Southwestern Washington/Columbia River ESU of the coastal cutthroat trout (64 FR 16397) is due by October 5, 2000.

Comments Solicited

In order to resolve the substantial scientific disagreement, we are requesting comments from interested parties on the following three topics:

(1) The role of hatchery populations of coastal cutthroat trout within the Southwestern Washington/Columbia River ESU, and their importance to the conservation of this population;

(2) The role of above-barrier populations, including the area identified as the Upper Willamette ESU, within the Southwestern Washington/Columbia River ESU and their importance to the conservation of this ESU; and

(3) Genetic data or other information that may help resolve the identification of distinct population segments in the southwestern Washington coast, Lower Columbia River, and Upper Willamette River areas.

Literature Cited

Johnson, O.W., M.H. Ruckelshaus, W.S. Grant, F.W. Waknitz, A.M. Garrett, G.J. Bryant, K. Neely, and J.J. Hard. 1999. Status review of coastal cutthroat trout from Washington, Oregon, and California. U.S. Dept. Commer., NOAA Tech Memo. NMFS–NWFSC–37, 292 p.

USDI & USDC 1999. Letter from USFWS Director Jamie Rappaport Clark and NMFS Director Penelope D. Dalton to Anne Badgley, Regional Director, Region 1 USFWS and Will Stelle, Regional Administrator, Northwest Region NMFS, regarding Regulatory Jurisdiction over the Coastal Cutthroat Trout (*Oncorhynchus clarki clarki*). Dated November 22, 1999. 2 pages.

Waples, R.S. In Litt. Letter from Robin Waples of NMFS Northwest Fisheries Science Center to Anne Badgley, Regional Director, Region 1 USFWS regarding a request for assistance in completing Endangered Species Act status review for Coastal cutthroat trout. Dated February 22, 2000. 2 pages.

Author: The primary author of this document is Rollie White (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: April 6, 2000.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–9258 Filed 4–13–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018–AF93

Migratory Bird Permits; Determination That the State of Delaware Meets Federal Falconry Standards and Amended List of States Meeting Federal Falconry Standards

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We propose to add the State of Delaware to the list of States whose falconry laws meet or exceed Federal falconry standards. This action would enable residents of the State of Delaware to apply for a Federal/State falconry permit and to practice falconry in that State. We also propose to amend the list of States that participate in the cooperative Federal/State permit system by adding Delaware and Vermont. The State of Vermont has recently begun to participate in the cooperative program.

DATES: You may submit comments on or before May 15, 2000 at the location noted below under the heading **ADDRESSES.**

ADDRESSES: Comments must be submitted to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 634, Arlington, Virginia 22203. Copies of the environmental assessment (EA) and the State falconry rules for Delaware are available by writing to this same address. The public may inspect comments during normal business hours at this address.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, telephone 703/358–1714.

SUPPLEMENTARY INFORMATION:

Regulations in 50 CFR part 21 provide for review and approval of State falconry laws by the Fish and Wildlife Service. A list of States whose falconry laws are approved by the Service is found in 50 CFR 21.29(k). The practice of falconry is authorized in those States. As provided in 50 CFR 21.29 (a) and (c), the Director has reviewed certified copies of the falconry regulations adopted by the State of Delaware and has determined that they meet or exceed Federal falconry standards. Federal falconry standards contained in 50 CFR 21.29(d) through (i) include permit requirements, classes of permits, examination procedures, facilities and equipment standards, raptor marking, and raptor taking restrictions. Delaware regulations also meet or exceed all restrictions or conditions found in 50 CFR 21.29(j), which include requirements on the number, species, acquisition, and marking of raptors. Therefore, we are proposing that the State of Delaware be listed under § 21.29(k) as a State that meets Federal falconry standards. Inclusion of Delaware in this list would eliminate the current restriction that prohibits falconry within that State.

We are publishing the entire list of States that have met the Federal falconry standards, including the State of Delaware. We believe that publishing this list in its entirety will eliminate any confusion concerning which States have approval for falconry and further indicate which States participate in a cooperative Federal/State permit system program. We are adding asterisks to both Delaware and Vermont to identify them as participants in the cooperative permit program as explained below.

Why Is This Rulemaking Needed?

The need for the proposed changes to 50 CFR 21.29(k) arose from the expressed desire of the State of Delaware to institute a falconry program for the benefit of citizens interested in the sport of falconry and to participate in a cooperative Federal/State permit system. Accordingly, the State has promulgated regulations that meet or exceed Federal requirements protecting migratory birds. The proposed changes to 50 CFR 21.29(k) are necessary to allow, by inclusion within the listing of authorized falconry States, persons in the State of Delaware to practice falconry. We are also identifying the State of Vermont as a participant in a cooperative Federal/State permit system following that State's addition to the list of approved falconry States on September 7, 1999 (64 FR 48565).

NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)), and the Council on Environmental Quality's regulations for implementing NEPA (40 CFR parts 1500–1508), the Service prepared an Environmental Assessment (EA) in July 1988 to support establishment of simpler, less restrictive regulations governing the use of most raptors. This EA is available to the public at the location indicated under the **ADDRESSES** caption. Based on review and evaluation of the proposed rule to amend 50 CFR 21.29(k) by adding Delaware to the list of States whose falconry laws meet or exceed Federal falconry standards, and Delaware and Vermont as participants in the cooperative application program, we have determined that the issuance of the proposed rule is categorically excluded from NEPA documentation under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1.10.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1531, *et seq.*), provides that, "The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" [and] shall "insure that any action authorized, funded, or carried * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *" Our review pursuant to section 7 concluded that this action is not likely to adversely affect listed species. A copy of this determination is available by contacting us at the address indicated under the **ADDRESSES** caption.

Other Required Determinations

This rule was not subject to the Office of Management and Budget (OMB) review under Executive Order 12866. The Department of the Interior has

determined that this rule would not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act; it will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices, and will not adversely affect competition, employment, investment, productivity, or innovation. We estimate that 20 individuals would obtain falconry permits as a result of this rule, and many of the expenditures of those permittees would accrue to small businesses. The maximum number of birds allowed by a falconer is 3, so the maximum number of birds likely to be possessed is 60. Some birds would be taken from the wild, but others could be purchased. Using one of the more expensive birds, the northern goshawk, as an estimate, the cost to procure a single bird is less than $5,000, which, with an upper limit of 60 birds, translates into $300,000. Expenditures for building facilities would be less than $32,000 for 60 birds, and for care and feeding less than $60,000. These expenditures, totaling less than $400,000, represent an upper limit of potential economic impact from the addition of Delaware to the list of approved States.

This rule has no potential takings implications for private property as defined in Executive Order 12630. The only effect of this proposed rule on the constituent community would be to allow falconers in the State of Delaware to apply for falconry permits. We estimate that no more than 20 people would apply for falconry permits in Delaware. This rule does contain information collection requirements that are approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection is covered by an existing OMB approval for licenses/permit applications, number 1018–0022. For further details concerning the information collection approval, see 50 CFR 21.4.

We have determined, and certify pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The rule does not have significant Federalism effects pursuant to Executive Order 13132. We also have determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988 for civil justice reform, and that the rule does not unduly burden the judicial system.

Regarding Government-to-Government relationships with Tribes, this rulemaking would have no effect on federally recognized Tribes. There are no federally recognized Tribes in the State of Delaware. Furthermore, the revisions to the existing regulations are of a purely administrative nature affecting no Tribal trust resources.

Request for Comments

If you wish to comment, you may do so by any one of several methods. You may mail or hand-deliver comments to: Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 634, Arlington, Virginia 22203. You may also fax comments to this office at (703) 358–2016.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondents's identify, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons described in the preamble, we are proposing to amend part 21, subchapter B, chapter I of title 50 of the Code of Federal Regulations, as set forth below:

PART 21—MIGRATORY BIRD PERMITS

1. The authority citation for part 21 continues to read as follows:

Authority: Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)).

2. Amend § 21.29 by revising paragraph (k) as follows:

§ 21.29 Federal falconry standards.

* * * * *

(k) *States meeting Federal falconry standards.* We have determined that the following States meet or exceed the minimum Federal falconry standards established in this section for regulating the taking, possession, and transportation of raptors for the purpose of falconry. The States that are participants in a cooperative Federal/State permit system are designated by an asterisk (*).

*Alabama
*Alaska
*Arizona
*Arkansas
*California
*Colorado
*Delaware
*Florida
*Georgia
*Idaho
*Illinois
*Indiana
*Iowa
*Kansas
*Kentucky
*Louisiana
Maine
Maryland
Massachusetts
*Michigan
*Minnesota
*Mississippi
*Missouri
*Montana
*Nebraska
*Nevada
*New Hampshire
*New Jersey
New Mexico
New York
*North Carolina
*North Dakota
*Ohio
Oklahoma
*Oregon
Pennsylvania
Rhode Island
*South Carolina
*South Dakota
*Tennessee
Texas
*Utah
*Vermont
*Virginia
*Washington
West Virginia
*Wisconsin
*Wyoming

Dated: April 7, 2000.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–9280 Filed 4–13–00; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 65, No. 73
Friday, April 14, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 10, 2000.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Grain Inspection, Packers and Stockyard Administration

Title: Survey of Customers of the Official Grain Inspection and Weighing System.

OMB Control Number: 0580–NEW.

Summary of Collection: The United States Grain Standards Act, as amended (7 U.S.C. 71–87) (USGSA), and the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627) (AMA), authorize the Secretary of the United States Department of Agriculture to establish official inspection, grading, and weighing programs for grains and other agricultural commodities. Under the USGSA and AMS, Grain Inspection, Packers and Stockyard Administration (GIPSA's) FGIS offers inspecting, weighing, grading, quality assurance, and certification services for a user-fee, to facilitate the efficient marketing of grain, oilseeds, rice, lentils, dry peas, edible beans, and related agricultural commodities in the global marketplace. The goal of FGIS and the official inspection, grading, and weighing system is to provide timely, high-quality, accurate, consistent, and professional service that facilitates the orderly marketing of grain and related commodities. FGIS will collect information using a survey.

Need and Use of the Information: FGIS will collect information to determine where and to what extent services are satisfactory, and where and to what extent they can be improved. The information will be shared with other managers and program leaders who will be responsible for making any necessary improvements at the office/agency, program, and project level.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 1,874.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 313.

Rural Business-Cooperative Service

Title: Invitation for Applications of Interest to Sell Intermediary Relending Program (IRP) Loans Under and Expended Pilot.

OMB Control Number: 0570–0036.

Summary of Collection: The Rural Business-Cooperative Service (RBS) will competitively select and authorize several intermediaries to sell an aggregate amount of approximately $50 million of the existing IRP portfolios in Fiscal Year (FY) 2000 based on selected criteria. In order to evaluate the IRP applications from the intermediary and to competitively select intermediaries to participate in the sale, certain criteria must be established. This information is necessary to provide the threshold to select those intermediaries to participate in the expanded sale. Each intermediary will be asked to address the criteria in the application submitted.

Need and Use of the Information: RBS will collect the names, addresses, contact person, telephone, fax numbers, and e-mail address. The purpose of the information is to evaluate all applications received to determine eligibility of the intermediary to participate in the secondary market sale based on the criteria set forth. RBS will evaluate each intermediary application based on the published criteria.

Description of Respondents: Business or other for-profit.

Number of Respondents: 1,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 4,308.

Agricultural Marketing Service

Title: Specified Commodities Imported into the United States Exempt from Import Requirements, 7 CFR Part 944, 980, and 999.

OMB Control Number: 0581–0167.

Summary of Collection: Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674) requires that whenever the Secretary of Agriculture issues grade, size, quality, or maturity regulations under domestic marketing orders for certain commodities, the same or comparable regulations on imports of those commodities must be issued. Import regulations apply only during those periods when domestic marketing order regulations are in effect. No person may import products for processing or other exempt purposes unless the shipment is accompanied by an executed Importers Exempt Commodity Form (FV–6). The Agricultural Marketing Service (AMS) will collect information using forms FV–6 and FV–7.

Need and Use of the Information: AMS will collect information on the

following: the product and the variety being imported; the date and place of inspection; identifying marks or numbers on the containers; identifying numbers on the railroad car; truck, or other transportation vehicle transporting product to the receiver; the name, mailing address, phone number, and fax number of the importer; the place and date entry; the quantity imported; the name, mailing address, phone number, and fax number of the intended receiver; intended use of the exempt commodity; and the U.S. Customs Service entry number and harmonized tariff code number.

Description of Respondents: Not-for-profit institutions.

Number of Respondents: 1,920.

Frequency of Responses: Reporting: on occasion.

Total Burden Hours: 1,632.

Rural Utilities Service

Title: 7 CFR 1775, Technical Assistance Program.

OMB Control Number: 0572–0112.

Summary of Collection: Section 306 of the Consolidated Farm and Rural Development Act (CONACT), 7 U.S.C. 1926, authorizes Rural Utilities Service (RUS) to make loans and grants to public agencies, American Indian tribes, and nonprofit corporations. The loans and grants fund the development of drinking water, wastewater, and solid waste disposal facilities in rural areas with populations of up to 10,000 residents. Nonprofit organizations receive Technical Assistance and Training (TAT) and Solid Waste Management (SWM) grants to help small rural communities or areas identify and solve problems relating to community drinking water, wastewater, or solid waste disposal systems. The technical assistance is intended to improve the management and operation of the systems and reduce or eliminate pollution of water resources.

Need and Use of the Information: RUS will collect information to determine applicant eligibility, project feasibility, and the applicant's ability to meet the grant and regulatory requirements. RUS will review the information, evaluate it, and, if the applicant and project are eligible for further competition, invite the applicant to submit a formal application. Failure to collect proper information could result in improper determinations of eligibility, improper use of funds, or hindrances in making grants authorized by the TAT and SWM program.

Description of Respondents: Not-for-profit institutions.

Number of Respondents: 80.

Frequency of Responses: Reporting: On occasion; Quarterly;

Total Burden Hours: 4,168.

Rural Utilities Service

Title: 7 CFR 1744–C, Advance and Disbursement of Funds—Telecommunications.

OMB Control Number: 0572–0023.

Summary of Collection: Section 201 of the Rural Electrification Act (RE Act) of 1936 authorizes the Administrator of the Rural Utilities Service (RUS) to make loans for the purpose of providing telephone service to the widest practicable number of rural subscribers. RUS Form 481, "Financial Requirement Statement," must be submitted by the borrower to request loan advances. RUS Form 81 is prepared and submitted to RUS by a borrower in order to have approved loan funds advanced.

Need and Use of the Information: RUS will collect information about the description of the advance desired; backup documentation relating to transactions listed on the Form 481; and verification that the funds advanced are related directly to loan purposes. If the information were not collected RUS would not have any control over how loan funds are spent or a record of the balance to be advanced.

Description of Respondents: Business or other for-profit.

Number of Respondents: 645.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2,893.

Rural Utilities Service

Title: 7 CFR Part 1703–H, Deferments of RUS Loan Payments for Rural Development Projects.

OMB Control Number: 0572–0097.

Summary of Collection: Subsection (b) of section 12 of the Rural Electrification Act (RE Act) of 1936, as amended (7 U.S.C. 912), a Rural Utilities Service (RUS) electric or telephone borrower may defer the payment of principal and interest on any insured or direct loan made under the RE Act invest the deferred amounts in rural development projects. The Deferment program is used to encourage borrowers to invest in and promote rural development and rural job creation projects that are based on sound economic and financial analyses.

Need and Use of the Information: RUS will collect information to determine eligibility; specific purposes for which the deferment amount will be utilized; the term of the deferment the borrower will receive; the cost of the total project and degree of participation in the financing from other sources; verification that the purposes will not violate limitations established in 7 CFR 1703–H. If the information were not collected, RUS would be unable to determine eligibility for a project.

Description of Respondents: Not-for-profit; business or other for-profit.

Number of Respondents: 4.

Frequency of Responses: Recordkeeping; reporting: On occasion.

Total Burden Hours: 140.

Forest Service

Title: Forest Industries Data Collection System.

OMB Control Number: 0596–0010.

Summary of Collection: The Forest and Range Renewable Resources Planning Act of 1974 and the Forest and Rangeland Renewable Resources Research Act of 1978 requires the Forest Service (FS) to evaluate trends in the use of logs and wood chips, to forecast anticipated levels of logs and wood chips, and to analyze changes in the harvest of the resources. Forest product and other wood-using industries are important to state, regional, and national economies. In most southern states, the value of rounded timber products is ranked either first or second in relation to other major agricultural crop. The importance and value of the timber products industry is significant in other regions of the United States as well. The FS will collect information using questionnaires.

Need and Use of the Information: FS will collect information to monitor the types, species, volumes, sources, and prices of the timber products harvested throughout the Nation. The data will be used to develop specific economic development plans for new forest-related industry in a State and to assist existing industry in identifying raw material problems and opportunities. If the information were not collected, data would not be available for sub-state, state, regional, and national policy makers and program developers to make decisions related to the forestland on a scientific basis.

Description of Respondents: Business or other for-profit.

Number of Respondents: 2,909.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 2,369.

Animal & Plant Health Inspection Service

Title: Poultry Imports and Export.

OMB Control Number: 0579–0141.

Summary of Collection: Title 21 U.S.C. authorizes sections 111, 114, 114a, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g of 21 U.S.C. These authorities permit the Secretary to prevent, control and eliminate domestic diseases such as brucellosis, as well as

to take actions to prevent and to manage exotic diseases such as exotic Newcastle disease and other foreign diseases. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal & Plant Health Inspection Service (APHIS) ability to compete in exporting animals and animal products. A Final rule was published on July 19, 1999, that allow the importation of poultry carcasses from regions of the world where exotic Newcastle disease (END) exists, provided the carcasses did not originate in these regions, and provided the carcasses are processed and shipped according to APHIS requirements. APHIS will collect information using a certificate of origin, serial numbers, records that must be maintain for 2 years and a cooperative service agreement that must be signed.

Need and Use of the Information: APHIS will collect information to ensure that imported poultry carcasses pose a negligible risk of introducing END into the United States.

Description of Respondents: Business or other for-profit.

Number of Responses: 4.

Frequency of Responses: Recordkeeping; reporting; On occasion.

Total Burden Hours: 30.

William McAndrew,

Departmental Clearance Officer.

[FR Doc. 00–9346 Filed 4–13–00; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Genetics & IVF Institute, of Fairfax, Virginia, an exclusive license for all uses in the field of human sperm cell sorting to the invention disclosed in Patent No. 5,985,216 issued November 16, 1999, entitled "Flow Cytometry Nozzle for High Efficiency Cell Sorting." Notice of availability was published in the **Federal Register** on May 19, 1998.

DATES: Comments must be received on or before June 13, 2000.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 4–1158, 5601 Sunnyside Avenue, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Genetics & IVF Institute, has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 00–9271 Filed 4–13–00; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 00–009N]

Membership on the National Advisory Committee on Meat and Poultry Inspection; Nominations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture is soliciting nominations for membership on the National Advisory Committee on Meat and Poultry Inspection (NACMPI). The Committee provides advice and recommendations to the Secretary of Agriculture pertaining to the meat and poultry inspection programs. Nominations for membership are being sought from individuals representing producers, processors, marketers, exporters and importers of meat and poultry products; academia; State government officials; and consumers. This notice also informs members of the public as to how they may receive copies of the weekly FSIS Constituent Update, which provides information regarding FSIS polices, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other relevant information.

DATES: Nomination packages for membership must be postmarked no later than June 30, 2000.

ADDRESSES: Nominations should be sent to Ms. Margaret Glavin, Associate Administrator, Food Safety and Inspection Service, USDA, Room 331–E, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Micchelli, Evaluation and Analysis Division, Food Safety and Inspection Service, Room 3833, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700, 202–720–6269; Fax: 202–690–1030; E-mail: michael.micchelli@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Department of Agriculture is soliciting nominations for membership on the NACMPI. The Committee provides advice and recommendations to the Secretary of Agriculture pertaining to the meat and poultry inspection programs, pursuant to sections 7(c), 24, 205, 301(a)(3), and 301(c) of the Federal Meat Inspection Act, 21 U.S.C. 607(c), 624, 645, 661(a)(3), and 661(c), and sections 5(a)(3), 5(c), 8(b) and 11(e) of the Poultry Products Inspection Act, 21 U.S.C. 454(a)(3), 454(c), 457(b), and 460(e).

Appointments to the Committee will be made by the Secretary of Agriculture. Nominees will be considered without discrimination for any reason such as race, color, religion, sex, national origin, age, or marital status. Nominees will initially serve two-year terms. No member may serve on the NACMPI for more than three (3) consecutive terms. The duties of the Committee are solely advisory. Committee members will be reimbursed for official travel expenses only. It is anticipated that the Committee will meet at least annually.

The nomination package should include the following information:

1. A brief summary of no more than two (2) pages explaining the nominees suitability to serve on the NACMPI.
2. A resume' or curriculum vitae.

All nominees will be requested to complete Form AD–755, Advisory Committee Membership Background Information. This form will be mailed to all nominees upon receipt of their nomination. To ensure that recommendations of the NACMPI take into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and

persons with disabilities. USDA is actively soliciting nominations of qualified minorities, women, and persons with disabilities through outreach to minority-focused media outlets, the **Federal Register**, and other appropriate methods.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, farm, and consumer interest groups, allied health professionals and scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the FSIS Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on April 10, 2000.

Thomas J. Billy,

Administrator.

[FR Doc. 00–9272 Filed 4–12–00; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 00–008N]

National Advisory Committee on Meat and Poultry Inspection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The National Advisory Committee on Meat and Poultry Inspection (NACMPI) will hold a public meeting on May 16–17, 2000, to review and discuss four issues: (1) The requested changes to the Food Safety and Inspection Service's (FSIS) Hazard Analysis and Critical Control Point (HACCP) regulations—industry petition, (2) the extension of the USDA's meat and poultry inspection program to additional species (including the use of nitrates in non-amenable species), (3) E. coli O157:H7 developments, and (4) Listeria developments. The three subcommittees of the full Committee will also meet on May 16, 2000, to continue working on issues discussed during the full Committee session. All interested parties are welcome to attend the meeting and to submit written comments and suggestions concerning issues the Committee will review and discuss. This notice also informs members of the public as to how they may receive copies of the weekly FSIS Constituent Update, which provides information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other relevant information.

DATES: The full Committee will hold a public meeting on Tuesday and Wednesday, May 16–17, 2000, from 8:30 a.m. to 5:30 p.m. Sub-committees will hold public meetings on May 16, 2000, from 7:00 p.m. to 9:00 p.m.

ADDRESSES: All Committee meetings will take place at the Quality Hotel & Suites, Courthouse Plaza, 1200 North Courthouse Road, Arlington, VA 22201; telephone (703) 524–4000. The full committee will meet in the Jefferson Room. The Subcommittees will meet in the Kennedy, Roosevelt, and Lincoln Rooms. A meeting agenda is available on the FSIS Web Site at *http://www.fsis.usda.gov/OPPDE/nacmpi* which is a sub-web page of the FSIS Homepage at *http://www.fsis.usda.gov.* Send written comments, in triplicate, to FSIS Docket Clerk, U.S. Department of Agriculture, Docket #00–008N, Room 102 Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. Comments may also be sent by facsimile (202) 205–0381. The comments and the official transcript of the meeting, when they become available, will be kept in the Docket Clerk's office at the address provided above. All comments submitted in response to this notice will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Michael N. Micchelli at (202) 720–6269, FAX (202) 720–2345, or E-mail michael.micchelli@usda.gov. Persons requiring a sign language interpreter or other special accommodations should notify Mr. Micchelli by April 25, 2000, at the above numbers or e-mail. Information is also available on FSIS Web Site at *http://www.fsis.usda.gov/OPPDE/nacmpi.*

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1999, the Secretary of Agriculture renewed the charter for the NACMPI. The Committee provides advice and recommendations to the Secretary of Agriculture pertaining to Federal and State meat and poultry inspection programs pursuant to sections 7(c), 24, 205, 301(a)(3), and 301(c) of the Federal Meat Inspection Act and sections 5(a)(3), 5(c), 8(b), and 11(e) of the Poultry Products Inspection Act. The FSIS Administrator is the chairperson of the Committee. Membership of the Committee is drawn from representatives of consumer groups; producers, processors, and marketers from the meat and poultry industry; and State government officials. The current members of the NACMPI are: Magdi Abadir, Cuisine Solutions; Terry Burkhardt, Wisconsin Bureau of Meat Safety and Inspection; Dr. James Denton, University of Arkansas; Caroline Smith-DeWaal, Center for Science in the Public Interest; Nancy Donley, Safe Tables Our Priority; Carol Tucker Foreman, Food Policy Institute, Consumer Federation of America; Dr. Cheryl Hall, Zacky Farms, Inc.; Kathleen Hanigan, Farmland Foods; Dr. Lee C. Jan, Texas Department of Health; Alice Johnson, National Turkey Federation; Dr. Collette Schultz Kaster, Premium Standard Farms; Dr. Daniel E. LaFontaine, South Carolina Meat-Poultry Inspection Department; Michael Mamminga, Iowa Department of Agriculture; Dr. Dale Morse, New York Office of Public Health; Rosemary Mucklow, National Meat Association; Donna Richardson, Howard University Cancer Center; and Gary Weber, National Cattlemen's Beef Association.

The Committee has three subcommittees that deliberate on specific issues and make recommendations to the whole Committee. The Committee makes recommendations to the Secretary of Agriculture.

Members of the public will be required to register before entering the meeting.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS

Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/ stakeholders. The constituent fax list consists of industry, trade, farm, and consumer interest groups, allied health professionals and scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the FSIS Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on April 10, 2000.

Thomas J. Billy,

Administrator.

[FR Doc. 00–9273 Filed 4–13–00; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; Timber Purchasers' Costs and Sales Data

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intention to reinstate a previously approved information collection. The collected information will help the Forest Service facilitate the appraisal and sale of timber on National Forest System lands. Information will be collected from purchasers of this timber.

DATES: Comments must be received in writing on or before June 13, 2000.

ADDRESSES: All comments should be addressed to Rex Baumback, Forest Management, Mail Stop 1105, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090.

Comments also may be submitted via facsimile to (202) 205–1045 or by email to: rbaumback@fs.fed.us.

The public may inspect comments received in the Office of the Director, Forest Management Staff, Forest Service, USDA, Room 3NW, Yates Building, 201 14th Street, SW, Washington, D.C. Callers are urged to call ahead to facilitate entrance into the building.

FOR FURTHER INFORMATION CONTACT: Rex Baumback, Timber Sale Contract Administration Specialist, Forest Management, at (202) 205–0855.

SUPPLEMENTARY INFORMATION:

Background

The Multiple-Use Sustained Yield Act of 1960, the Forest Rangeland Renewable Resources Planning Act of 1974, and the National Forest Management Act of 1976 authorize the Forest Service to sell forest products and National Forest System timber.

Forest Service timber appraisers develop advertised timber sale prices using a transaction evidence method of appraisal. Transaction evidence appraisals begin with an average of past successful bids by timber purchasers for timber for which the stumpage rate has been adjusted for the timber sale and the market conditions at the time. The Forest Service transaction evidence appraisal system includes costs incurred by the timber purchaser to log the timber and get the logged timber to the lumber mill.

The Western Wood Products Association (WWPA) cooperates with the agency to evaluate the lumber and other products values, provided by the timber purchasers to the WWPA, which the Forest Service uses to develop average value information for transaction evidence appraisals. This average value information enables Forest Service appraisers to better estimate the fair market value of a particular sale of National Forest System timber and helps the appraisers develop the prices that are advertised in local newspapers for the timber sale. The timber will be sold at not less than the appraised value and not below a minimum stumpage rate established by the Chief.

Timber purchasers also provide information on product values. Product values are the values of products that result from the harvested timber, such as lumber chips, plywood, and pressed board. The value of these products may vary from one geographical location to another. In many areas, product values may be purchased from the Western Wood Products Association.

Description of Information Collection

The following describes the information collection to be reinstated:

Title: Timber Purchasers' Costs and Sales Data.

OMB Number: 0596–0017.

Expiration Date of Approval: September 30, 1998.

Type of Request: Reinstatement of an information collection previously approved by the Office of Management and Budget.

Abstract: Forest Service personnel will evaluate the collected information to facilitate the appraisal and sale of timber on National Forest System lands.

Forest Service timber appraisers will use a transaction evidence method of appraisal to update the selling values and advertised rates of National Forest System timber.

The Forest Service transaction evidence appraisal system includes costs incurred by the timber purchaser to log the timber and get the logged timber to the lumber mill. Timber purchasers will provide incurred cost information, upon written request from the Forest Service. The costs incurred by timber purchasers should include items similar to the following: (1) falling and bucking, (2) skidding and loading, and (3) hauling. The Forest Service will share this cost data with States and other Federal agencies for their use in developing appraisals of timber sales.

Forest Service personnel also will request product value information from timber sale purchasers. Timber purchasers will provide both the cost data and the product value information via surface mail or electronic mail, using their own report formats. Some timber sale purchasers, instead of sending the requested information to the agency, will provide on-site access to Forest Service personnel, so the information may be retrieved from the timber purchasers' files or electronic databases.

Data gathered in this information collection are not available from other sources.

Estimate of Annual Burden: 1 hour.

Type of Respondents: Purchasers of National Forest System timber.

Estimated Annual Number of Respondents: 20.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 20 hours.

Comment Is Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and

clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including names and addresses when provided, will become a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: April 7, 2000.

James R. Furnish,

Deputy Chief, National Forest System.

[FR Doc. 00–9290 Filed 4–13–00; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Windmill Timber Harvest in the Mill Creek Drainage, Gallatin National Forest, Park County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice, intent to prepare environmental impact statement.

SUMMARY: The Forest Service intents to prepare an environmental impact statement (EIS) to disclose the environmental effects of the Windmill timber harvest and associated activities in the Mill Creek drainage located in the Absaroka/Beartooth Mountain Range, Gallatin National Forest, Livingston Range District, Park County, Montana.

The proposed timber harvest of approximately 5 mmbf from an estimated 650 acres of timbered lands and associated actions including road construction, reconstruction and restoration, prescribed fire and reforestation are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25).

The Windmill Timber Sale is one of 12 project being proposed on the Gallatin National Forest to contribute time volume to assist in the acquisition of four sections of land as directed by the Gallatin Land Consolidation Act of 1998 (PL 105–267). In addition, harvest of this sale would: contribute toward providing a flow of wood products from National Forest lands, proposed road restoration of roads would maintain or improve watershed conditions, proposed prescribed fire would reduce the potential for catastrophic fires, and tree planting in regeneration units would address reforestation.

DATES: Written comments should be received by May 10, 2000.

ADDRESSES: Submit written comments on proposed activities or a request to be placed on the project mailing list to Terri Marceron, District Ranger, Livingston Ranger District, 5245 Highway 89 South, Livingston, Montana, 59047.

FOR FURTHER INFORMATION CONTACT: JT Stangl, Project Leader, Livingston Ranger District, Gallatin National Forest, Phone (406) 222–1892.

SUPPLEMENTARY INFORMATION: The project area consists of National Forest lands located in T6S, R9E, Sec. 10, 11, 14, 15, 19, 23, 24, 25 and 30; and T6S, R10E, Sec 32, 33, 34, and 35 and T7S, R10E Sec 2, 4, and 5, P.M. MT. The majority of activities would occur within the Counts, West Fork, Passage and Colley Creek areas in the Mill Creek drainage. Timber harvest is proposed on land that is designated as suitable for timber management by the Gallatin Forest Plan (USDA 1987). Timber harvest would occur outside of roadless area as designed using Region One protocol. New roads would be effectively closed to vehicle traffic after completion of post-sale activities. The EIS would also analyze the restoration of some existing roads, that are generally not open to motorized public use, to maintain or improve watershed conditions.

The USDA Forest Service, "Report to the Montana Congressional Delegation Proposed Gallatin Land Consolidation" (September 1997) and the Gallatin Forest Plan (USDA 1987) provides the overall guidance for management activities in the potentially affected area through its goals, objectives, standards and guidelines, and management area direction.

Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process will be used to: (1) Identify potential issues, (2) Identify issues to be analyzed in depth, (3) Eliminate insignificant issues or those which have been covered by a relevant precious environmental analysis, such as the Gallatin Forest Plan EIS, (4) Identify alternatives to the proposed action, (5) Identify potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects) and (6) Determine potential cooperating agencies and task assignments. Preliminary issues identified by Forest Service specialist include assessing if proposed activities would effect: threatened and endangered species, sensitive fish, wildlife and plant species, ungulate habitat, Neotropical migratory bird habitat, management indicator species habitat, fragmentation, vegetative structural diversity, soils, water quality, noxious weeds, fire management, visual quality, cultural resources, recreation use special uses, roadless areas, and public safety. This list will be verified, expanded, or modified based on public scoping for this proposal.

Public participation is an important part of the analysis, commencing with the initial scoping process (40 CFR 1501.7). In addition to scoping, the public may visit Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individual or organizations who may be interested in or affected by the proposed action. No public meetings are scheduled at this time.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in November of 2000. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register.** The comment period on the Draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register.** It is very important that those interested in management of the Mill Creek area participate at that time. The Final EIS is scheduled for completion by the end of March 2001.

The Forest Service believes, at the early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts in agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 30-

day scoping comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in developing issues and alternatives.

To assist the Forest Service in identifying and considering issues, comments should be a specific to this proposal as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulatory for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement. My address is Gallatin National Forest, P.O. 130, Federal Building, Bozeman, MT 59771.

Dated: May 3, 2000.

Richard Inman,

Acting Forest Supervisor.

[FR Doc. 00–9221 Filed 4–13–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

New Porter Bayou, Mississippi

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the New Porter Bayou Watershed, Bolivar and Sunflower Counties, Mississippi.

FOR FURTHER INFORMATION CONTACT: Homer L. Wilkes, State Conservationist, Natural Resources Conservation Service, 1321 Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone 601–965–5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Homer L. Wilkes, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The project concerns a plan for flood prevention and drainage. Alternatives under consideration to reach these objectives include systems for channel improvement.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Natural Resources Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Further information on the proposed action may be obtained from Homer L. Wilkes, State Conservationist, at the above address.

Dated: March 24, 2000.

Homer L. Wilkes,

State Conservationist, USDA–NRCS, Jackson, MS.

[FR Doc. 00–9364 Filed 4–13–00; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Availability of the "Natural Resources Conservation Service Conservation Programs Manual—Part 513: Resource Conservation and Development (RC&D) Program"

AGENCY: Natural Resources Conservation Service, Department of Agriculture.

ACTION: Notice and request for comments.

SUMMARY: The United States Department of Agriculture (USDA) seeks comments on the proposed revision of the "Natural Resources Conservation Service Conservation Programs Manual—Part 513: Resource Conservation and Development (RC&D) Program." USDA asks for comments from RC&D Council members and other individuals; tribal, State, and local governments and organizations involved in either natural resource conservation or community development groups. These comments will assist USDA in policy development and implementation of the RC&D program. This manual is intended for use by Natural Resources Conservation Service (NRCS) and other USDA staff members, RC&D Council members, and others that either will develop RC&D applications or participate in the RC&D program.

EFFECTIVE DATES: Comments will be received beginning April 14, 2000. The comment period will end on June 22, 2000. All comments post-marked by June 22, 2000, will be accepted.

ADDRESSES: Address all requests and comments to: Terry D'Addio, National RC&D Program Manager, Natural Resources Conservation Service, Room 6013, South Building, 14th & Independence Avenue, SW, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Terry D'Addio, Natural Resources Conservation Service, (202) 720–0557; fax: (202) 690–0639; e-mail: terry.daddio@usda.gov

SUPPLEMENTARY INFORMATION: The "Conservation Programs Manual: Part 513—RC&D Program" is a document intended for use by NRCS and other USDA staff members, RC&D Council members, and others that either will develop RC&D applications or participate in the RC&D program. The purpose of this document is to provide policy guidance for the RC&D program, not to establish regulatory requirements. The RC&D program was authorized to encourage and improve the capability of State and local units of government and local nonprofit organizations in rural areas to plan, develop, and implement programs for resource conservation and development. Through the establishment of RC&D areas, the program establishes or improves coordination systems in communities and builds community leadership skills to effectively use Federal, State, and local programs for the communities' benefit.

Current program objectives focus on improvements achieved through natural resources conservation and community development. Such activities lead to sustainable communities, prudent land use, and the sound management and conservation of natural resources.

Assistance is provided, as authorized by the Secretary of Agriculture, to designated RC&D areas through their organized RC&D Councils (comprised of local elected officials and civic leaders). RC&D Councils, in association with local, State, and Federal governments—and other non-profit organizations—initiate and lead the planning and implementation of their locally developed RC&D area plans. Councils also obtain assistance from other local, State, and Federal agencies; private organizations; and foundations.

USDA prohibits discrimination in its programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, discrimination

on the basis of political beliefs and marital or family status is also prohibited by statutes enforced by USDA. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audio tape, etc.) should contact the USDA's Target Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination to USDA, write to Director, Office of Civil Rights, Room 326–W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250–9410, or call (202) 720–5964 (voice and TDD). USDA is an equal opportunity provider and employer.

Signed at Washington, DC, on March 29, 2000.

Pearlie S. Reed,

Chief, Natural Resources Conservation Service.

[FR Doc. 00–9363 Filed 4–13–00; 8:45 am]

BILLING CODE 3410–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 15, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will result in authorizing small entities to furnish the commodity and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Handle, Jack, 5120–01–032–6042

NPA: Knox County ARC, Knoxville, Tennessee

Services

Distribution/Logistics Service

Defense Supply Center—Philadelphia, Philadelphia, Pennsylvania North Central Region

Lansing, Michigan

NPA: Peckham Vocational Industries, Inc., Lansing, Michigan

Medical Courier Services, Veterans Affairs Medical Center, 4100 West 3rd Street, Dayton, Ohio

NPA: The Clovernook Center, Opportunities for the Blind, Cincinnati, Ohio

Release of Information Copying Services for the following locations:

Veterans Affairs Medical Center, 421 North Main Street, Leeds, Massachusetts

Springfield Outpatient Clinic, 1550 Main Street, Springfield, Massachusetts

NPA: Massachusetts Commission for the Blind Ferguson Industries for the Blind, Cambridge, Massachusetts

Leon A. Wilson, Jr.,

Executive Director.

[FR Doc. 00–9358 Filed 4–13–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

"Proposed Deletion to Procurement List" Correction

In the document appearing on page 18281, FR document 00–8682, in the issue of April 7, 2000, in the third column, the listing for Enamel, Lacquer, NSN 8010–00–935–7085 should have been 8010–00–935–7075.

Leon A. Wilson, Jr.,

Executive Director.

[FR Doc. 00–9354 Filed 4–13–00; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Vermont Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Vermont Advisory Committee to the Commission will convene at 12 p.m. and adjourn at 4:30 p.m. on Wednesday, May 10, 2000, at the Blue Cross-Blue Shield of Vermont, Conference Room Number 1, One East Road, Berlin, Vermont 05601. The Committee will hold a planning meeting to discuss the status of legislative and community organization initiatives to combat harassment, plan future coordination with educational leaders, and develop its next project activity.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 4, 2000.
Lisa Kelly,
Special Assistant to the Staff Director.
[FR Doc. 00–9222 Filed 4–13–00; 8:45 am]
BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–815 & A–580–816]

Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products From Korea: Extension of Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.
ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the antidumping duty administrative reviews of Certain Cold-Rolled Carbon Steel Flat Products & Certain Corrosion-Resistant Carbon Steel Flat Products from Korea. These reviews cover the period August 1, 1998 through July 31, 1999.

EFFECTIVE DATE: April 14, 2000.
FOR FURTHER INFORMATION CONTACT: Marlene Hewitt or Jim Doyle, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC; telephone (202) 482–1385 or 482–0159, respectively.
SUPPLEMENTARY INFORMATION: Due to the complexity of issues involved in these cases, it is not practicable to complete these reviews within the original time limit. The Department is extending the time limit for completion of the preliminary results from May 2, 2000 until August 30, 2000, in accordance with Section 751(a)(3)(A) of the Tariff Act of 1930, as amended. See memorandum to Joseph A. Spetrini from Edward Yang regarding the extension of the case deadline. The time limit for the final results would remain at 120 days after the preliminary results are issued. This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. Sec. 1675 (a)(3)(A)).

Dated: April 7, 2000.
Joseph A. Spetrini,
Deputy Assistant Secretary, AD/CVD Enforcement Group III.
[FR Doc. 00–9373 Filed 4–13–00; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–815]

Gray Portland Cement and Clinker from Japan; Amended Final Results Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.
ACTION: Amended Final Results Pursuant to Court Decision.

SUMMARY: On April 29, 1998, the United States Court of International Trade ("CIT") affirmed the determination made by the Department of Commerce ("the Department") pursuant to a remand of the final results of the first antidumping duty administrative review of Gray Portland Cement and Clinker from Japan. *Ad Hoc Committee of Southern California Producers of Gray Portland Cement* v. *United States*, Slip Op. 98–57 (CIT, April 29, 1998). In the remand determination, the Department (1) included all freight-out and insurance expenses in the computation of total cost when calculating profit; (2) made no deduction to fair market value (FMV) for pre-sale movement expenses when making purchase price (PP) comparisons, and counted the expenses as indirect selling expenses when making exporter sales price (ESP) comparisons; (3) adjusted U.S. price by correcting the deduction for relevant freight expenses; and (4) corrected the per-unit service station expenses included in calculating cost of production (COP). As this decision is now final and conclusive, we are amending the final results.

EFFECTIVE DATE: April 14, 2000.
FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC. 20230; telephone: (202) 482–5253.
SUPPLEMENTARY INFORMATION:

Background

On September 20, 1993, the Department published the final results of the first administrative review of the antidumping duty order on Gray Portland Cement and Clinker from Japan (58 FR 48826). On October 18, 1993, the Department published its amended final results (58 FR 53705). The review covered one manufacturer/exporter, Onoda Cement Co., Ltd. ("Onoda"), of the subject merchandise for the period October 31, 1990 through April 30, 1992. The petitioner in this case, the Ad Hoc Committee of Southern California Producers of Gray Portland Cement, and Onoda subsequently appealed the Department's determination before the CIT on ten issues. The CIT issued a remand, at Commerce's request, with respect to four issues and affirmed all other issues. In particular, the Court remanded the case to the Department to (1) reconsider the treatment of freight-out and inland insurance expenses incurred for transportation of the subject merchandise to unrelated customers in the United States; (2) determine the extent to which pre-sale home market transportation costs should be deducted from FMV; (3) calculate the correct amount of freight expenses incurred for shipping to unrelated U.S. customers; and (4) re-open the record to obtain data and recalculate the per-unit amount of service station expenses to be included in calculating COP. *The Ad Hoc Committee of Southern California Producers of Gray Portland Cement* v. *United States*, 19 CIT 1398, 914 F. Supp. 525 (1995) ("*Ad Hoc I*").

The Department filed its redetermination on February 22, 1996. The Department, for purposes of the remand, (1) included all freight-out and insurance expenses in the computation of total cost when calculating profit; (2) made no deduction to FMV for pre-sale movement expenses when making PP comparisons, and counted the expenses as indirect selling expenses when making ESP comparisons; (3) did not reduce freight-out costs before deducting them from U.S. price; and (4) corrected the per-unit service station expenses included in calculating COP. On April 29, 1998, the CIT affirmed the Department's remand determination. *Ad Hoc Committee of Southern California Producers of Gray Portland Cement* v. *United States*, Slip Op. 98–57 (CIT, April 29, 1998). No parties have appealed this decision.

As a result of the remand determination, the final dumping margin for the period October 31, 1990 through April 30, 1992 is as follows:

Manufacturer	Margin (Percent)
Onoda Cement Co., Ltd	33.95

The Department will issue appraisement instructions directly to the U.S. Customs Service. The final remand determination of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final remand determination of this review, except as noted below.

Further, we note that the International Trade Commission (ITC), on remand from the CIT in *Mitsubishi Materials Corp.* v. *United States*, 820 F. Supp. 608 (CIT 1993), determined that imports of Gray Portland Cement and Clinker from Japan threaten material injury to the U.S. industry (ITC publication 2657, *aff'd*, 918 F. Supp 422, 1996). Therefore, the Department shall instruct the U.S. Customs Service to terminate suspension of liquidation and refund any cash deposit and release any bond or other security for all remaining unliquidated shipments of Gray Portland Cement and Clinker from Japan, including those produced by Onoda, entered or withdrawn from warehouse, for consumption prior to May 8, 1991, the date of publication of the ITC's original final determination in the **Federal Register**.

Dated: April 7, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–9375 Filed 4–13–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–506][A–201–504][A–583–508]

Continuation of Antidumping Duty Orders: Porcelain-on-Steel Cooking Ware From China, Mexico, and Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of antidumping duty orders: Porcelain-on-steel cooking ware from China, Mexico, and Taiwan.

SUMMARY: The Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty orders on porcelain-on-steel ("POS") cooking ware from China, Mexico, and Taiwan are likely to lead to continuation or recurrence of dumping.[1] On April 5, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty orders on POS cooking ware from China, Mexico, and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (65 FR 17902). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty orders on POS cooking ware from China, Mexico, and Taiwan.

EFFECTIVE DATE: May 14, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Carole A. Showers, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, D.C. 20230; telephone: (202) 482–5050 or (202) 482–3217, respectively.

SUPPLEMENTARY INFORMATION

Background

On February 1, 1999, the Department initiated, and the Commission instituted, sunset reviews (64 FR 4840 and 64 FR 4896, respectively) of the antidumping duty orders on POS cooking ware from China, Mexico, and Taiwan pursuant to section 751(c) of the Act. As a result of its reviews, the Department found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked (*see Final Results of Expedited Sunset Review: Porcelain-on-Steel Cooking Ware from the People's Republic of China*, 64 FR 50271 (September 16, 1999), *Final Results of Full Sunset Review: Porcelain-on-Steel Cooking Ware from Mexico*, 65 FR 281, (January 4, 2000), and *Final Results of Expedited Sunset Review: Porcelain-on-Steel Cooking Ware from Taiwan*, 64 FR 50487, (September 17, 1999)).

On April 5, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on POS cooking ware from China, Mexico, and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Porcelain-on Steel Cooking Ware from China, Mexico, and Taiwan*, 65 FR 17902 (April 5, 2000) and USITC Publication 3286, Investigation Nos. 731–TA–297–299 (Review), March 2000).

Scope

China—Imports covered by this order are shipments of POS cooking ware from China, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. The merchandise is currently classifiable under the Harmonized Tariff Schedule ("HTS") number 7323.94.00.

Mexico—Imports covered by this order are shipments of POS cooking ware from Mexico, which includes tea kettles, that do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. This merchandise is currently classifiable under HTS number 7323.94.00. Kitchenware currently entering under HTS number 7323.94.00.30 is not subject to the order.

Taiwan—Imports covered by this order are shipments of POS cooking ware from Taiwan. The product under this antidumping duty order does not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. Kitchenware and teakettles are not subject to this order. The merchandise is currently classifiable under the HTS number 7323.94.00.

The following are *Notices of Scope Rulings* with respect to Taiwan. On October 30, 1996, Cost Plus, Inc.'s 10 piece porcelain-on-steel fondue set was found to be within the scope of the order (*see Notice of Scope Rulings*, 62 FR 9176 (February 28, 1992)). On August 18, 1995, Blair Corporation's Blair cooking ware items #1101 (seven piece cookware set), #271911 (eight-quart stock pot), and #271921 (twelve-quart stock pot) were found to be outside the scope of the order (*see Notice of Scope Rulings*, 60 FR 36782 (July 18, 1995)). On September 3, 1992, in response to a request from Mr. Stove Ltd., stove top grills and drip pans were found to be outside the scope of the order (see Notice of Scope Rulings, 57 FR 57420 (December 4, 1992)). On September 25, 1992, in response to a request from Metrokane Inc., the "Pasta Time" pasta cooker was found to be within the scope of the order (*see Notice of Scope Rulings*, 57 FR 57420 (December 4, 1992)). On August 23, 1990, in response to a request from RSVP, BBQ grill baskets were found to be outside the scope of the order (*see Notice of Scope Rulings*, 55 FR 43020 (October 25, 1990)).

[1] *See Final Results of Expedited Sunset Review: Porcelain-on-Steel Cooking Ware From the People's Republic of China*, 64 FR 50271 (September 16, 1999), *Final Results of Full Sunset Review: Porcelain-on-Steel Cooking Ware From Mexico*, 65 FR 281 (January 4, 2000), and *Final Results of Expedited Sunset Review: Porcelain-on-Steel Cooking Ware From Taiwan*, 64 FR 50487 (September 17, 1999).

Determination

As a result of the determinations by the Department and the Commission that revocation of the antidumping duty orders on POS cooking ware from China, Mexico, and Taiwan would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on POS cooking ware from China, Mexico, and Taiwan. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to sections 751(c)(2) and 751 (c)(6)(A) of the Act, the Department intends to initiate the next five-year review of these orders not later than March 2005.

Dated: April 7, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–9374 Filed 4–13–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–815]

Sulfanilic Acid From the People's Republic of China: Notice of Extension of Time Limit for Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 14, 2000.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on sulfanilic acid from the People's Republic of China. The review covers the period August 1, 1998 through July 31, 1999.

FOR FURTHER INFORMATION CONTACT: Sean Carey or Robert James, AD/CVD Enforcement Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–3964 or (202) 482–0649, respectively.

Postponement of Preliminary Results of Review

On October 1, 1999, the Department published a notice of initiation of an administrative review of the antidumping duty order on sulfanilic acid from the People's Republic of China, covering the period August 1, 1998 through July 31, 1999 (64 FR 53318). The preliminary results are currently due no later than May 2, 2000.

Section 751(a)(3)(A) of the Tariff Act, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested. However, if it is not practicable to complete the preliminary results within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for a preliminary determination to a maximum of 365 days.

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the preliminary results to no later than August 30, 2000. *See* Memorandum from Richard O. Weible to Joseph A. Spetrini, dated April 3, 2000, which is on file in the Central Records Unit, Room B–099 of the main Commerce Building. This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: April 3, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary for Enforcement Group III.

[FR Doc. 00–9372 Filed 4–13–00; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041000D]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 103rd meeting in Honolulu, Hawaii. A public meeting will be held to discuss banning bottom longlining for pelagic management unit species in Federal waters around Hawaii as a preferred alternative under an amendment to the Fishery Management Plan for the Pelagics Fisheries of the Western Pacific Region (Pelagics FMP). In addition, the Council will consider the State of Hawaii's bill (H.B. 1947) to ban shark finning, in light of the Council's Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region. The Council will also consider banning spear fishing with SCUBA apparatus during the day and night as a preferred alternative under the Draft Environmental Impact Statement/ Fishery Management Plan for the Coral Reef Ecosystem FMP (DEIS/FMP).

DATES: The Council meeting will be held on May 1, 2000, at 11 p.m.

ADDRESSES: The meeting will be held at the Western Pacific Fishery Management Council office, at 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808-522-8220.

SUPPLEMENTARY INFORMATION: The agenda during the full Council meeting will include the items below. The order in which agenda items will be addressed may change.

1. Introductions
2. Approval of Agenda
3. Approval of the 102nd Meeting Minutes
4. Banning bottom longline fishing for pelagic management unit species in Federal waters around Hawaii as a preferred alternative under the Pelagics FMP
5. State of Hawaii bill on shark-finning
6. Banning spear fishing with SCUBA apparatus during day and night in the Western Pacific Region, as a preferred alternative under the Coral Reef Ecosystem DEIS/FMP
7. Issues relating to fisheries under Council jurisdiction in the Northwestern Hawaiian Islands
8. Approval of Elliot Lutali's membership of Pelagic Plan Team
9. Public comment
10. Council action
11. Other business

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of

the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522-8226 (fax), at least 5 days prior to the meeting date.

16 U.S.C. 1801 *et seq.*

Dated: April 11, 2000.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–9350 Filed 4–13–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041000A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application for a scientific research permit (1236) and an application to modify a permit (1190).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement:

NMFS has received a permit application from John A. Musick, Ph.D., of the College of William and Mary at Williamsburg, VA (JM-CWM)(1226) and NMFS has received an application for permit modifications from Dr. Charles Karnella, of NMFS' Pacific Islands Area Office (CK-PIAO)(1190).

DATES: Comments or requests for a public hearing on either the new application or modification request must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 pm eastern standard time on May 15, 2000.

ADDRESSES: Written comments on any of the new applications or modification requests should be sent to the Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301–713–0376. Comments will not be accepted if submitted via e-mail or the internet. The applications and related documents are available for review by appointment in the Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (ph. 301–713–1401).

FOR FURTHER INFORMATION CONTACT: Terri Jordan, Silver Spring, MD (ph: 301–713–1401, fax: 301–713–0376, e-mail: Terri.Jordan@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in this Notice

The following species are covered in this notice: endangered and threatened Green (*Chelonia mydas*) and olive ridley (*Lepidochelys olivacea*) sea turtles; endangered Hawksbill (*Eretmochelys imbricata*), Kemp's ridley (*Lepidochelys kempii*), and Leatherback (*Dermochelys coriacea*) sea turtles; and threatened Loggerhead sea turtle (*Caretta caretta*).

New Application Received

JM-CWM (1236) has requested a 5-year permit to take listed sea turtles in the coastal waters of Virginia, the Chesapeake Bay and in the US Virgin Islands (USVI). Research conducted in the Chesapeake Bay and coastal waters of Virginia will study inter-nesting movements of sea turtles in Virginia via satellite telemetry and to assess the effects of beach replenishment on turtle activities. Research conducted in the USVI will study habitat utilization of juvenile Hawksbill turtles at the Buck Island Reef National Monument off of St. Croix, USVI. Both studies will capture, handle, tag (PIT, flipper, satellite, radio and acoustic), collect biological samples (via humeral bone biopsy, blood samples and laparoscopy) and release loggerhead, green, Kemp's ridley, hawksbill and leatherback turtles.

Modification Request Received

CK-PIAO requests a modification to Permit 1190. Permit 1190 authorizes the take of up to 10 olive ridley turtles annually that have been captured incidentally by longline fishery vessels in the Hawaiian region. These activities will aid in monitoring the Hawaiian longline fishery, a term and condition of the November 3, 1998 biological opinion on that fishery. In addition, these research activities are described in the Pacific Sea Turtle Recovery Plans. The incidental take of these turtles is covered by the incidental take statement of the November 3, 1998 opinion. The purpose of the research is to document and evaluate the incidental take of pelagic turtles by the longline fishery, to help estimate the impact of the fishery on listed turtles as individuals and as populations, and to determine methods to reduce that impact. Research will evaluate how incidental captures affect sea turtle anatomy and physiology as a function of season, location of take, water temperature, species, size, time of day, and gear configuration. The results of the research will help NMFS to better meet the goals and objectives of the Pacific Sea Turtle Recovery Plans, the Hooking Mortality Workshop, and the requirements of Section 7 Biological Opinions developed for this fishery, and ultimately, to fulfill ESA responsibilities to protect, conserve, and recover listed species.

Incidentally-captured turtles will be examined, tagged, weighed, measured, resuscitated using approved techniques, have tissue samples taken, and be released. Some of these turtles will have transmitters attached. Dead turtles will be removed from the marine environment for research purposes, including necropsy and collection of life history data. Tissue samples may be used lab studies including the following: toxicology, histopathology, and genetic studies to identify nesting origins of incidentally taken turtles. The modification would increase the authorized annual take of olive ridleys from 10 to 15 annually due to greater coverage of the Hawaii longline fishery than originally anticipated in the original permit issued March 8, 1999.

Dated: April 10, 2000.

Craig Johnson,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–9351 Filed 4–13–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Army

Environmental Impact Statement for Follow-On Tests Including Design, Construction and Operation of One or More Pilot Test Facilities for Assembled Chemical Weapon Destruction Technologies at One or More Sites

AGENCY: Program Manager, Assembled Chemical Weapons Assessment, Department of Defense.

ACTION: Notice of intent.

SUMMARY: This announces the Army's intent to prepare an Environmental Impact Statement on the potential impacts of the design, construction and operation of one or more pilot test facilities for assembled chemical weapon destruction technologies at one or more chemical weapons stockpile sites, potentially simultaneously with any existing demilitarization programs and schedules at these sites. The size of the pilot tests and the location of the test facilities will be determined in this process.

DATES: Written comments must be received not later than May 30, 2000 in order to be considered in the Draft Environmental Impact Statement.

ADDRESSES: Written comments may be forwarded to the Program Manager Assembled Chemical Weapons Assessment, Public Affairs, Building E–5101, Room 219, 5183 Blackhawk Road, Aberdeen Proving Ground, MD 21010–5424.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Gallegos at 410–436–4345, by fax at 410–436–5297, or via email at ann.gallegos@sbccom.apgea.army.mil, or Program Manager Assembled Chemical Weapons Assessment, Public Affairs, Building E–5101, Room 212, 5183 Blackhawk Road, Aberdeen Proving Ground, MD 21010–5424.

SUPPLEMENTARY INFORMATION: This proposed action continues the process that began when Congress established the Assembled Chemical Weapons Assessment Program through passage of Public Law 104–208. The authorizing legislation instructed the Department of Defense to identify and demonstrate alternatives to baseline incineration for the destruction of assembled chemical weapons. Baseline incineration is the technology and process in place at the Johnston Atoll in the Pacific and at Deseret Chemical Depot in Utah. Assembled chemical weapons are munitions containing both chemical agents and explosives that are stored in the United States unitary chemical weapons stockpile. This includes rockets, projectiles, and mines. Unitary agents include chemical blister agents (*e.g.*, the mustard H, HD, and HT) and chemical nerve agents (*e.g.*,GB (Sarin) and VX).

With the National Defense Appropriations Act for Fiscal Year 1999, Congress directed the Program Manager, Assembled Chemical Weapons Assessment to plan for the pilot testing of alternatives technologies.

While all of the chemical stockpile sites were initially believed to be potential test sites, Edgewood Chemical Activity in Maryland, Newport Chemical Depot in Indiana, and Johnston Atoll in the Pacific Ocean have been eliminated from any consideration. Chemical stockpile sites at Edgewood and Newport will not be considered because no assembled chemical weapons are at those locations. Johnston Atoll will not be considered because all chemical weapons at the site will be destroyed before the National Environmental Policy Act analysis can be completed.

Sites at Anniston Chemical Activity in Alabama, Pine Bluff Chemical Activity in Arkansas, Pueblo Chemical Depot in Colorado, and Blue Grass Chemical Activity in Kentucky are being considered. Deseret Chemical Depot in Utah and Umatilla Chemical Depot in Oregon are not currently being considered because the current schedule for those plants indicates that the assembled chemical weapons will be destroyed prior to the time that a pilot facility would be ready to operate. If new information indicates that assembled chemical weapons in sufficient quantity will remain at these sites, then placement of the pilot facility at those sites will be analyzed.

Technologies under consideration include a variety of processes, such as, chemical neutralization, biological treatment, and supercritical water oxidation. The Program Manager, Assembled Chemical Weapons Assessment pilot tests will not halt or delay the operation or construction of any baseline incineration facility currently in progress. Transportation of assembled chemical weapons between stockpile sites is precluded by public law and will not be considered.

Alternatives that will be considered in the Environmental Impact Statement are: (a) No action, (b) pilot test of chemical neutralization followed by super critical water oxidation, and (c) pilot test of chemical neutralization followed by biological treatment.

There is a second Notice of Intent, entitled "Notice of Intent to Prepare an Environmental Impact Statement for the Design, Construction, and Operation of a Facility for the Destruction of Chemical Agent at Pueblo Chemical Depot, Colorado." The focus of this complementary Environmental Impact Statement will be specifically on what technology should be used for the destruction of the chemical weapons stockpile at Pueblo Chemical Depot. The focus of the Assembled Chemical Weapons Assessment Environmental Impact Statement is on whether or not pilot testing of any Assembled Chemical Weapons Assessment technology should be conducted, and if so where, but it will leave to the Pueblo Chemical Depot Environment Impact Statement the question whether a full-scale facility operated initially as a pilot facility should be constructed to destroy the stockpile at that location. The emphasis for the Assembled Chemical Weapons Assessment document is to consider Assembled Chemical Weapons Assessment technologies and the various stockpile sites that may be suitable for conducting pilot tests, considering such factors as existing facilities, resource requirements for each technology and the ability of the site to provide those resources, munitions configurations and availability at each site at the time actual testing would begin. At the conclusion of both these Environmental Impact Statements, the same officials will issue The Records of Decision.

During scoping meetings, the Program Manager, Assembled Chemical Weapons Assessment is seeking to identify significant issues related to the proposed action. The Program Manager, Assembled Chemical Weapons Assessment desires information on: (1) The potential chemical weapons stockpile sites and surrounding areas, (2) concerns regarding the testing and/or operation of multiple technologies at these sites, (3) issues regarding the scale of the pilot test facilities, and (4) specific concerns regarding any potential technologies. Individuals or organizations may participate in the scoping process by written comment or by attending public meetings to be held in Alabama, Arkansas, Colorado, Kentucky and the Washington, DC metropolitan area. The dates, times, and locations of these meetings will be

provided at least 15 days in advance by public notices in the news media serving the regions where the meeting will be located. The public meeting in Colorado will be held in conjunction with the public meeting on the site-specific Environmental Impact Statement.

Dated: April 10, 2000.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety, and Occupational Health) OASA (I&E).

[FR Doc. 00–9336 Filed 4–13–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Prepare an Environmental Impact Statement for the Design, Construction, and Operation of a Facility for the Destruction of Chemical Agent at Pueblo Chemical Depot, CO

AGENCY: Department of the Army, DOD.

ACTION: Notice of intent.

SUMMARY: This announces the Army's intent to prepare a site-specific Environmental Impact Statement on the potential impacts of the design, construction, and operation of a facility to destroy the mustard chemical agent and munitions stored at Pueblo Chemical Depot, Colorado. The proposed facility will be used to demilitarize the chemical agent and munitions currently stored at Pueblo Chemical Depot. The Environmental Impact Statement will examine potential environmental impacts of the following destruction facility alternatives:

a. A baseline incineration facility.

b. A full-scale facility to pilot test the single-story incineration process.

c. A full-scale facility to pilot test the alternative technology successfully demonstrated by the Assembled Chemical Weapons Assessment Program—neutralization followed by supercritical water oxidation.

d. A full-scale facility to pilot test the alternative technology successfully demonstrated by the Assembled Chemical Weapons Assessment Program—neutralization followed by biodegradation.

e. No action, an alternative which will continue the storage of the mustard agent and munitions at Pueblo Chemical Depot.

To fulfill the need for destruction of the chemical weapons stockpile at Pueblo Chemical Depot in time to meet the requirements of the Chemical Weapons Convention, a pilot test facility would have to be determined to be as safe as and as cost efficient as baseline incineration. It must also be capable of completing destruction of the Pueblo Chemical Depot stockpile by the later of the Chemical Weapons Convention destruction date or the date the Pueblo Chemical Depot stockpile would be destroyed if baseline incineration were used. This requirement is consistent with the requirement for certification contained in section 142 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Public Law 105–261.

DATES: Written comments must be received not later than May 30, 2000, in order to be considered in the Draft Environmental Impact Statement.

ADDRESSES: Written comments may be forwarded to the Program Manager for Chemical Demilitarization, Public Outreach and Information Office (ATTN: Mr. Gregory Mahall), Building E–4585, Aberdeen Proving Ground, MD 21010–4005.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Mahall at 410–436–1093, by fax at 410–436–8122, or by mail at gjamahall@sbccom-emh1.apgea.army.mil or by mail at the above listed address.

SUPPLEMENTARY INFORMATION: In compliance with the National Environmental Policy Act (40, FR parts 1500–1508), the Army will prepare an Environmental Impact Statement to assess the health and environmental impacts of the design, construction, and operation of a facility to destroy the mustard chemical agent and munitions stored at Pueblo Chemical Depot, Colorado. Public law and international treaty require the mustard chemical agent and munitions to be destroyed. This Environmental Impact Statement will analyze the impact of the various methods of destroying the Pueblo stockpile. This action is proposed in concert with an announcement to programmatically address the process for follow-on tests for assembled chemical weapons destruction technologies at one or more sites. These two separate and distinct analyses serve complementary but distinct purposes.

This site-specific Environmental Impact Statement continues the process that began when Congress established the Program for Chemical Demilitarization in Public Law 99–145 in 1985. This law requires the destruction of the chemical weapons stockpile by a deadline established by treaty. That date is April 2007. This requirement still exists, notwithstanding the establishment of the Assembled Chemical Weapons Assessment Program. The Chemical Demilitarization Program established by Public Law 99–145 published a Programmatic Environmental Impact Statement in January 1988. The Record of Decision states that the stockpile of chemical agents and munitions should be destroyed in a safe and environmentally acceptable manner by on-site incineration. Site-specific Environmental Impact Statements that tier off the Programmatic Environmental Impact Statement have been prepared for Johnston Atoll Chemical Agent Disposal System, Tooele Chemical Agent Disposal Facility, Anniston Chemical Agent Disposal Facility, Umatilla Chemical Agent Disposal Facility, and Pine Bluff Chemical Agent Disposal Facility.

The specific purpose of the current analysis is to determine the environmental impacts of the alternatives that could accomplish the destruction of the stockpile at Pueblo Chemical Depot by the required destruction date of April 2007, including the alternatives of using the technologies successfully demonstrated by the Assembled Chemical Weapons Assessment Program. In the course of the environmental impact analysis it will be determined whether construction of a full-scale plant operated initially as a pilot facility and utilizing any of the technologies successfully demonstrated in the Assembled Chemical Weapons Assessment Program is capable of destroying the stockpile at Pueblo Chemical Depot by the required destruction date (or as soon thereafter as could be achieved by constructing a destruction facility using the baseline incineration technology), and of doing so as safely as use of the baseline incineration technology. The Record of Decision, based on the 1988 Programmatic Environmental Impact Statement, does not limit or predetermine the results of this consideration, and it does not dictate the decision to be made in the Record of Decision following completion of the Environmental Impact Statement for this action at Pueblo Chemical Depot. The Army 1988 Programmatic Environmental Impact Statement will be used to cover Pueblo Chemical Depot actions in the event that an incineration technology is selected as the preferred alternative at the conclusion of the analysis of all the available alternatives.

The second document announcing the programmatic analysis for follow-on pilot testing of successful Assembled Chemical Weapons Assessment Program demonstration tests pursuant to the process established by Congress in

Public Laws 10–208 and 10–261 addresses a distinct but related purpose. That purpose is to determine which technologies can be pilot tested and if so, at which site or sites. That Environmental Impact Statement will be distinct from this site-specific Environmental Impact Statement in that its emphasis will be on the feasibility of pilot testing one or more of the demonstrated and approved Assembled Chemical Weapons Assessment Program technologies considering the unique characteristics of the alternative sites, to include Pueblo Chemical Depot. The Environmental Impact Statement will not consider the use of a full-scale facility operated initially as a pilot facility at Pueblo Chemical Depot; as discussed above, this alternative will be considered in the site specific Environmental Impact Statement for Pueblo Chemical Depot. At the conclusion of both of these Environmental Impact Statements, the same officials will issue the Records of Decision.

The Army will hold scoping meetings to aid in determining the significant issues related to the proposed action which will be addressed in the Environmental Impact Statement. The scoping process will incorporate public participation, including Federal, State of Colorado, and local agencies, as well as residents within the affected environment. The dates, times, and locations of scoping meetings will be announced in appropriate news media at least 15 days prior to these meetings.

Dated: April 10, 2000.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health) OASA (I&E).

[FR Doc. 00–9337 Filed 4–13–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Prepare a Programmatic Environmental Impact Statement for Development of Ford Island at Pearl Harbor, Hawaii

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy (DON) announces its intent to prepare a Programmatic Environmental Impact Statement (PEIS) for the development of Ford Island at Pearl Harbor, Hawaii in order to provide needed facilities and services and deliver overall benefits to the DON at the Pearl Harbor Naval Complex. This announcement also serves as notice that public scoping meetings will be held to solicit comments in accordance with NEPA, and request input as part of the Section 106 process of the National Historic Preservation Act (NHPA) of 1966, as implemented by the Advisory Council on Historic Preservation (ACHP) regulations (36 CFR part 800). The PEIS will also address the potential impacts of the sale or lease of DON property on Oahu, as authorized by 10 USC 2814 "Special authority for the development of Ford Island, Hawaii" and 10 U.S.C. 2871 *et seq.* "Alternate Authority for the Acquisition and Improvement of Military Housing."

DATES: Two public scoping meetings will be held to receive oral and written comments on the scope of the PEIS and public input relative to historic resources. The first meeting will be held on May 2, 2000, at 7 p.m. in the Washington Middle School, 1633 South King Street, Honolulu, Hawaii. The second meeting will be held on May 4, 2000, at 7 p.m. in the Makalapa Elementary School, 4435 Salt Lake Boulevard, Honolulu, Hawaii.

FOR FURTHER INFORMATION CONTACT: Mr. Stanley Uehara (Code PLN231), Pacific Division, Naval Facilities Engineering Command, 258 Makalapa Drive, STE 100, Pearl Harbor, Hawaii 96860–3134; telephone (808) 471–9338; fax (808) 474–5909; e-mail UeharaSY@efdpac.navfac.navy.mil.

SUPPLEMENTARY INFORMATION: The proposed action is to develop Ford Island to provide needed facilities and services and deliver overall benefits to the Department of the Navy (DON) at the Pearl Harbor Naval Complex. Ford Island is a central feature in the Pearl Harbor National Historic Landmark. The PEIS will also address the potential impacts of the sale or lease of Navy property on Oahu to fund the development on Ford Island, as authorized by 10 U.S.C. 2814 "Special authority for the development of Ford Island, Hawaii" (hereafter referred to as "Ford Island legislation") and 10 U.S.C. 2871 *et seq.* "Alternate Authority for the Acquisition and Improvement of Military Housing" (hereafter referred to as the Military Housing Privatization Initiative (MFPI) legislation). The Ford Island legislation allows DON to sell or lease properties in Hawaii and use the proceeds to develop Ford Island. The MHPI legislation allows DON to sell or lease properties and use the proceeds to invest in public-private ventures to provide military housing. Properties available for potential sale or lease include: DON property at the Waikele Branch of Naval Magazine Lualualei; the golf course, family housing, and related property at the former Naval Air Station Barbers Point; family housing and related property at Iroquois Point/Puuloa; property on Pearl Harbor mainside; and property on Ford Island. In addition to the Ford Island and MHPI legislation, other existing authorities could be used such as construction using traditional Military Construction or Non-appropriated Funds.

Due to the variety of actions envisioned for Ford Island, a PEIS is appropriate to provide an overview analysis of the affected environment and the potential cumulative impacts of reasonably foreseeable actions. Additional NEPA documentation may subsequently be required as specific projects are identified to meet the development objectives. The DON is considering adaptive reuse of existing structures on Ford Island and new construction to meet such facility requirements as: administrative and operational facilities, family and bachelor housing, transient lodging, support and commercial services, and infrastructure. Development could include filling some tidelands to construct a breakwater and/or marina. In addition to these requirements, approximately 75 acres on Ford Island could be made available for compatible commercial ventures. The purpose of developing Ford Island is to allow the DON to centralize operations for overall efficiency; to improve the quality of life for service members by improving work and leisure facilities and reducing commuting distances; and to reduce maintenance costs and congestion at mainside by replacing antiquated and obsolete facilities. Development of some portions of Ford Island is constrained by existing facilities, historic resources, and operational requirements.

Alternatives to be considered in the PEIS will be potential land development options comprising various levels of land-use for Ford Island that are consistent with the development objectives. The DON will solicit input from private sector developers through a Request for Expressions of Interest in order to obtain their expertise in developing land-use alternatives. Any reasonable alternatives to DON's land-use concept will be considered, as will comments received from federal and state agencies, non-governmental organizations and the public during the scoping process.

The PEIS will evaluate the environmental effects associated with alternatives developed through the Request for Expressions of Interest and during the scoping process. Issues to be addressed include, but are not limited to: cultural and historic resources and impacts on the adjacent USS *Missouri* and USS *Arizona* Memorial; biological resources and habitat as may be impacted by in-water construction; water resources and hydrology; soils and geology; public services and utilities; traffic and noise; public health and safety; hazardous materials and wastes; and environmental justice. The analysis will include an evaluation of the direct, indirect, short-term, and cumulative impacts. No decision to implement any alternative, including the No-Action Alternative, will be made until the NEPA process is complete.

The DON will conduct two public scoping meetings to identify potentially significant issues, and to notify interested and affected parties of the PEIS process. A brief presentation describing the proposed action, historic resources related to the Pearl Harbor National Historic Landmark, and the NEPA process will precede the public's opportunity to comment relating to the scope of the PEIS. The purposes and format of the meetings are provided to invite public input on historic resource issues as part of the Section 106 process of the National Historic Preservation Act, as well as public involvement requirements specified under NEPA. It is important that interested federal, state, and local agencies, organizations and individuals take this opportunity to identify environmental and other related concerns that they believe should be addressed during preparation of the PEIS.

To allow time for all views to be shared, speakers will be asked to limit their oral comments to three minutes. Agencies and the public are invited to provide written comments in addition to, or in lieu of, oral comments at the public meetings. Scoping comments should clearly describe specific issues or topics that the commentor believes the PEIS should address and those that the NHPA process should address. Written comments are to be filed with Mr. Stanley Uehara (Code PLN231), Pacific Division, Naval Facilities Engineering Command, 258 Makalapa Drive, STE 100, Pearl Harbor, Hawaii, and must be postmarked no later than May 15, 2000.

Dated: April 7, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–9369 Filed 4–13–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement for the Kentucky Pioneer Integrated Gasification Combined Cycle Demonstration Project, Trapp, KY and Notice of Floodplain Involvement

AGENCY: U.S. Department of Energy.

ACTION: Notice of Intent to prepare an Environmental Impact Statement and Notice of Floodplain Involvement.

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR parts 1500–1508), and the DOE NEPA regulations (10 CFR part 1021), to assess the potential environmental and human health impacts of a proposed project to design, construct, and operate a demonstration electric-power generating plant in Trapp, Clark County, Kentucky. The proposed Integrated Gasification Combined Cycle (IGCC) project, selected under the Clean Coal Technology Program, would be the first commercial-scale demonstration of the fixed bed British Gas Lurgi (BGL) gasification process in the United States. The proposed project would also demonstrate a high-temperature molten carbonate fuel cell and would involve the construction and operation of a nominal 400 MWe (megawatt-electric) IGCC power station. Feed to the BGL gasifiers would be solid fuel briquettes. The EIS will help DOE decide whether to provide 18 percent (approximately $78M) of the funding for the currently estimated $432 M proposed project.

The purpose of this Notice of Intent is to inform the public about the proposed action; announce the plans for a public scoping meeting; invite public participation in (and explain) the EIS scoping process; and solicit public comments for consideration in establishing the proposed scope and content of the EIS. The EIS will evaluate the proposed project and reasonable alternatives. Because the proposed project may affect floodplains, the EIS will include a floodplain assessment and a statement of findings in accordance with DOE regulations for compliance with floodplain environmental review requirements (10 CFR part 1022).

DATES: To ensure that all of the issues related to this proposal are addressed, DOE invites comments on the proposed scope and content of the EIS from all interested parties. Comments must be received by May 31, 2000, to ensure consideration. Later comments will be considered to the extent practicable. In addition to receiving comments in writing and by telephone, DOE will conduct a public scoping meeting in which agencies, organizations, and the general public are invited to present oral comments or suggestions with regard to the range of actions, alternatives, and impacts to be considered in the EIS. The scoping meeting will be held at Trapp Elementary School, Trapp, Kentucky on May 4, 2000, beginning at 7:00 p.m. (See Public Scoping Process). The public is invited to an informal session at this location beginning at 4:00 p.m. to learn more about the proposed action. Displays and other forms of information about the proposed agency action and location will be available, and DOE personnel will be present to answer questions.

ADDRESSES: Written comments on the proposed EIS scope and requests to participate in the public scoping meeting should be addressed to: Mr. Roy Spears, NEPA Document Manager for the Kentucky Pioneer IGCC Demonstration Project, National Energy Technology Laboratory, U.S. Department of Energy, 3610 Collins Ferry Road, Morgantown, WV 26507–0880. People who would like to otherwise participate in the public scoping process should contact Mr. Spears directly at: telephone 304–285–5460; toll free telephone 1–800–432–8330 (extension 5460); fax 304–285–4403; or e-mail rspears@netl.doe.gov.

FOR FURTHER INFORMATION CONTACT: To obtain additional information about this project or to receive a copy of the draft EIS for review when it is issued, contact Mr. Roy Spears at the address provided above. For general information on the DOE NEPA process, please contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0119; telephone 202–586–4600 or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background and Need for Agency Action

Under Public Law 102–154, the U.S. Congress provided authorization and funds to DOE for conducting cost-shared Clean Coal Technology Program projects for the design, construction, and operation of facilities that significantly advance the efficiency and environmental performance of coal-using technologies and are applicable to either new or existing facilities. The purpose of this proposed agency action, which is known as the Kentucky Pioneer IGCC Demonstration Project, is to establish the commercial viability of the fixed bed BGL gasification process in the United States and the operation of a high temperature molten carbonate fuel cell using coal derived gas. The IGCC plants have long been recognized as being environmentally superior to conventional coal-fired power plants while operating at significantly higher efficiencies. The proposed project would demonstrate the improved economic viability and process flexibility of the BGL technology and promote fuel cells as a viable commercial source of electricity. A slipstream of syngas would be routed to a fuel cell to produce additional electricity in this demonstration project.

Since the early 1970s, DOE and its predecessor agencies have pursued research and development programs that include long-term, high-risk activities that support the development of innovative concepts for a wide variety of coal technologies through the proof-of-concept stage. However, the availability of a technology at the proof-of-concept stage is not sufficient to ensure its continued development and subsequent commercialization. Before any technology can be considered seriously for commercialization, it must be demonstrated. The financial risk associated with technology demonstration is, in general, too high for the private sector to assume in the absence of strong incentives. The Clean Coal Technology Program is a congressionally authorized program designed to accelerate the development of innovative technologies to meet the Nation's near-term energy and environmental goals; to reduce technological risk to the business community to an acceptable level; and to provide private sector incentives required for continued activity in innovative research and development directed at providing solutions to long-range energy supply problems.

Proposed Action

The proposed action is for DOE to provide, through a cooperative agreement with Kentucky Pioneer Energy, L.L.C., financial assistance for the design, construction, and operation of the proposed project. The Kentucky Pioneer IGCC Demonstration Project would be designed for at least 20 years of commercial operation, beginning with a 2-year Clean Coal Technology demonstration, and would cost a total of approximately $432 M; DOE's share would be approximately $78 M (18%).

The proposed project includes the design, construction, and operation of a new 400 MWe IGCC power plant in rural Clark County, Kentucky. Kentucky Pioneer Energy, L.L.C. would use licensed gasification technology to fuel an electric generating facility. The facility would demonstrate the three following innovative technologies: (1) Gasification of fuel briquettes; (2) use of the syngas product as a clean fuel in combined cycle turbine generator sets; and (3) operation of a high temperature molten carbonate fuel cell on coal derived syngas. This project would be the first commercial scale application of the BGL gasification technology in the United States. This would also be the first commercial scale demonstration of a molten carbonate fuel cell operating on coal derived gas. Construction of the proposed plant would be expected to require approximately 30 months.

The project consists of the following components: Briquettes and raw material transportation, receipt, and storage; sulfur removal and recovery; a gasification plant; a combined cycle power unit; and a fuel cell. The IGCC facility would provide needed power capacity to the central and eastern Kentucky areas.

To supply the proposed plant and other potential customers with fuel briquettes, the parent company of the applicant, Global Energy, Inc., would construct a production facility at an off-site location. The briquettes would be made from high-sulfur coal (at least 50%) and refuse (municipal solid waste). The location of the briquette manufacturing facility remains to be determined. However, sources of low-cost high-sulfur coal, refuse availability and supporting infrastructure would be considered by Global in siting the facility. The EIS will consider potential environmental impacts from operation of a briquette facility.

The IGCC technology that Kentucky Pioneer Energy, L.L.C. would be demonstrating consists of the following four steps: (1) Generation of syngas by reacting fuel briquettes with steam and oxygen, creating a high-temperature, chemically reducing atmosphere; (2) removal of contaminants, including particulates and sulfur; (3) combustion of clean syngas in a turbine generator to produce electricity; and (4) recovery of residual heat in the hot exhaust gas from the gas turbine in a heat recovery steam generator and use of the steam to produce additional electricity in a steam turbine generator.

The proposed project site comprises approximately 300 acres located within a 3,120-acre tract, owned by East Kentucky Power Cooperative (EKPC) in Clark County, Kentucky. The tract is 34 kilometers (21 miles) southeast of the city of Lexington. The site can be reached by State Highway 89 and accessed through a gated perimeter fence and access road.

The 300-acre proposed project site was previously disturbed by preliminary construction activities when EKPC began construction of its first-phase power station in the mid-1980s. That project was canceled in the early 1990s when decreased demand for electric power made the project uneconomical. EKPC completed preliminary grading, primary foundations, fire protection piping and rail spur access infrastructure installation before the project was cancelled.

The Kentucky Pioneer IGCC Demonstration Project would be designed to minimize expected or potential adverse impacts to the environment. Advanced process technology, efficient pollution control technology, and effective pollution prevention measures, including extensive reuse of internal process water, would be employed to minimize impacts.

Alternatives

Section 102(2)(C) of NEPA requires that agencies discuss the reasonable alternatives to the proposed action in an EIS. The purpose for agency action determines the range of reasonable alternatives. The goals of the proposed agency action establish the limits of its reasonable alternatives. Congress established the Clean Coal Technology Program with a specific purpose: To demonstrate the commercial viability of technologies that use coal in more environmentally benign ways than conventional coal technologies. Congress also directed DOE to pursue the goals of the legislation by means of partial funding (cost sharing) of projects owned and controlled by non-Federal government sponsors. This statutory requirement places DOE in a much more limited role than if the Federal

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government were the owner and operator of the project. In the latter situation, DOE would be responsible for a comprehensive review of reasonable alternatives for siting the project. However, in dealing with an applicant, the scope of alternatives is necessarily more restricted because the agency must focus on alternative ways to accomplish its purpose that reflect both the application before it and the functions the agency plays in the decision process. It is appropriate in such cases for DOE to give substantial consideration to the applicant's needs in establishing a project's reasonable alternatives.

DOE developed an overall NEPA compliance strategy for the Clean Coal Technology Program that includes consideration of both programmatic and project-specific environmental impacts during and after the process of selecting a proposed project. As part of the NEPA strategy, the EIS for the Kentucky Pioneer IGCC Demonstration Project will tier from the Clean Coal Technology Programmatic Environmental Impact Statement (PEIS) that DOE issued in November 1989 (DOE/EIS–0146). Two alternatives were evaluated in the PEIS: (1) The no-action alternative, which assumed that the Clean Coal Technology Program was not continued and that power suppliers would continue to use conventional coal-fired technologies with flue gas desulfurization and nitrogen oxide controls to meet New Source Performance Standards; and (2) the proposed action, which assumed that Clean Coal Technology Program projects would be selected and funded, and that successfully demonstrated technologies would undergo widespread commercialization by the year 2010.

The range of reasonable options to be considered in the EIS for the proposed Kentucky Pioneer IGCC Demonstration Project is determined in accordance with the overall NEPA strategy. The EIS also will include an analysis of the no-action alternative, as required under NEPA. Under the no-action alternative, DOE would not provide partial funding for the design, construction, and operation of the project. In the absence of DOE funding, the Kentucky Pioneer IGCC Demonstration Project probably would not be constructed. If the proposed Kentucky Pioneer IGCC Demonstration Project were not built, EKPC may use alternative, less efficient sources for electric power to meet future demands of its customers. Alternatives to the proposed project could include purchasing power from other sources, adding generation capacity that does not rely on the IGCC technology, or using some other current technology. DOE will consider other reasonable alternatives that may be suggested during the public scoping period.

Because of DOE's limited role of providing cost-shared funding for the proposed Kentucky Pioneer IGCC Demonstration Project, and because of advantages associated with the proposed location, DOE does not plan to evaluate alternative sites for the proposed project. Site selection was governed primarily by benefits that EKPC could realize. EKPC preferred the proposed project site because the costs would be much higher and the environmental impacts would likely be greater for an undisturbed area.

Under the proposed action, project activities would include engineering and design, permitting, fabrication and construction, testing, and demonstration of the technology. DOE plans to complete the EIS and issue a Record of Decision within 15 months of publication of this Notice of Intent, assuming timely delivery of information from Kentucky Pioneer Energy, L.L.C. that DOE needs for preparing the EIS. Upon completion of the demonstration, the facility could continue commercial operation.

Preliminary Identification of Environmental Issues

The following issues have been tentatively identified for analysis in the EIS. This list, which was developed on the basis of analyses of similar projects and from agency concerns, and is presented to facilitate public comment on the scope of the EIS, is neither intended to be all-inclusive nor a predetermined set of potential impacts. Additions to or deletions from this list may occur as a result of the scoping process.

The issues include:

(1) Atmospheric resources: Potential air quality impacts resulting from emissions during construction and operation of the Kentucky Pioneer IGCC Demonstration Project and the briquette manufacturing plant;

(2) Water resources: Potential effects on surface and groundwater resources and withdrawal of water from the Kentucky River;

(3) Infrastructure and land use, including potential effects resulting from the manufacture, transportation, and storage of the briquettes required for the proposed project;

(4) Solid waste: Pollution prevention and waste management practices, including impacts caused by waste generation and treatment at the proposed project and briquette manufacturing plant;

(5) Noise: Potential impacts resulting from construction, transportation of materials, and plant operation for the proposed project and briquette manufacturing plant;

(6) Construction: Impacts associated with traffic patterns and construction related emissions;

(7) Floodplains: Impacts associated with extension of a water intake structure in the Kentucky River;

(8) Community impacts, including impacts from local traffic patterns, socioeconomic impacts on public services and infrastructure, and environmental justice (Executive Order 12898) with respect to the surrounding community;

(9) Cumulative effects that result from the incremental impacts of the proposed project when added to the other past, present, and reasonably foreseeable future actions; and,

(10) Visual impacts associated with plant structures.

Public Scoping Process

To ensure that all issues related to this proposal are addressed, DOE will conduct an open process to define the scope of the EIS. The public scoping period will run until May 31, 2000. Interested agencies, organizations, and the general public are encouraged to submit comments or suggestions concerning the content of the EIS, issues and impacts to be addressed in the EIS, and the alternatives that should be analyzed. Scoping comments should describe specific issues or topics that the EIS should address in order to assist DOE in identifying significant issues. Written, e-mailed, or faxed comments should be communicated by May 31, 2000 (see **ADDRESSES**).

DOE will conduct a public scoping meeting at Trapp Elementary School in Trapp, Kentucky on May 4, 2000, at 7 p.m. The address of Trapp Elementary School is 11400 Irvine Road, Highway 89 South, Winchester, Kentucky 40391. In addition, the public is invited to an informal session at this location beginning at 4 p.m. to learn more about the proposed action. Displays and other information about the proposed agency action and location will be available, and DOE personnel will be present to answer questions.

The formal scoping meeting will begin on May 4, 2000, at 7 p.m. DOE asks people who wish to speak at this public scoping meeting to contact Mr. Roy Spears, either by phone, fax, computer, or in writing (see **ADDRESSES** in this Notice). People who do not arrange in advance to speak may register at the meeting (preferably at the beginning of the meeting) and may

speak after previously scheduled speakers. Speakers who want more than five minutes should indicate the length of time desired in their request. Depending on the number of speakers, DOE may need to limit speakers to five minutes initially, and provide additional opportunities as time permits. Speakers may also provide written materials to supplement their presentations. Oral and written comments will be given equal consideration.

DOE will begin the meeting with an overview of the proposed Kentucky Pioneer IGCC Demonstration Project. The meeting will not be conducted as an evidentiary hearing, and speakers will not be cross-examined. However, speakers may be asked questions to help ensure that DOE fully understands their comments or suggestions. A presiding officer will establish the order of speakers and provide any additional procedures necessary to conduct the meeting.

Issued in Washington, DC, this 10th day of April, 2000.

David Michaels,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 00–9301 Filed 4–13–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Availability of Solicitation

AGENCY: Idaho Operations Office, Department of Energy.

ACTION: Notice of availability of solicitation—enhanced geothermal systems project development.

SUMMARY: The U.S. Department of Energy (DOE), Idaho Operations Office, is seeking applications for projects to verify the electrical power generating potential of enhanced geothermal systems (EGS). Concept definition studies will comprise Phase One of this solicitation. Up to ten financial assistance awards, valued at a maximum of $200,000 each, will be made for Phase One. The period of performance for Phase One is anticipated to be four months. Upon evaluation of the results from Phase One, the DOE will select the most promising projects for field validation. Validation will comprise Phase Two of the solicitation.

DATES: The deadline for receipt of applications is 3 p.m. MDT May 24, 2000.

ADDRESSES: Applications should be submitted to: Procurement Services Division, U. S. Department of Energy, Idaho Operations Office, Attention: Elizabeth Dahl [DE–PS07–00ID13913], 850 Energy Drive, MS 1221, Idaho Falls, Idaho 83401–1563.

FOR FURTHER INFORMATION CONTACT: Elizabeth Dahl, Contract Specialist, at dahlee@id.doe.gov.

SUPPLEMENTARY INFORMATION: The statutory authority for this program is the Geothermal Energy Research, Development and Demonstration Act of 1974 (Pub.L. 93–410). The issuance date of Solicitation No. DE–PS07–00ID13913 is on or about April 14, 2000. The solicitation is available in full text via the Internet at the following address: *http://www.id.doe.gov/doeid/psd/proc-div.html*. Technical and non-technical questions should be submitted in writing to Elizabeth Dahl by e-mail *dahlee@id.doe.gov*, or facsimile at 208–526–5548 no later than April 21, 2000.

Issued in Idaho Falls on April 7, 2000.

Michael L. Adams,

Acting Director, Procurement Services Division.

[FR Doc. 00–9300 Filed 4–13–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy, National Coal Council; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Coal Council. Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires notice of these meetings be announced in the **Federal Register**.

DATED: Wednesday, May 3, 2000, 9:00 am to 12 noon.

ADDRESS: Westin Fairfax Hotel, 2100 Massachusetts Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585. Phone: 202/586–3867.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: To provide advice, information, recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Tentative Agenda:

- Call to order E. Linn Draper, Jr., Chairman
- Remarks by Secretary of Energy, Bill Richardson (invited)
- Remarks by Ms. Kathy Karpen, Office of Surface Mining
- Remarks by Mr. John Neumann, Edison Electric Institute
- Administrative business
- Report by James K. Martin, Chairman of Council Study Working Group, on Progress of Council's Current Study on Carbon Sequestration
- Other business
- Adjournment

Public Participation

The meeting is open to the public. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Margie D. Biggerstaff at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10-minute rule.

Transcripts

The transcript will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on April 11, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–9367 Filed 4–13–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board's Task Force on the Department of Energy's Nonproliferation Programs in Russia. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation. The purpose of the meeting is to discuss the Task Force's review of the Department of Energy's nonproliferation programs in Russia.

NAME: Secretary of Energy Advisory Board—Task Force on the Department of Energy's Nonproliferation Programs in Russia.

DATES: Tuesday, April 25, 2000, 9 AM–4 PM, Eastern Daylight Time.

ADDRESSES: U.S. Department of Energy, Program Review Center (Room 8E–089), Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585. Note: Members of the public are requested to contact the Office of the Secretary of Energy Advisory Board at (202) 586–7092 in advance of the meeting (if possible), to expedite their entry to the Forrestal Building on the day of the meeting. Public participation is welcomed.

FOR FURTHER INFORMATION CONTACT: Betsy Mullins, Executive Director, or Richard Burrow, Deputy Director, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7092 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Task Force on the Department of Energy's Nonproliferation Programs in Russia is to provide independent external advice and recommendations to the Secretary of Energy Advisory Board on the policy priorities established by the Department of Energy to pursue nonproliferation and nuclear safety programs in the Russian Federation. Special emphasis will be placed on program areas that may not have been addressed in the past. The Task Force will focus on assessing the performance of DOE's programs in achieving national security and nonproliferation missions, as well as providing policy recommendations on how the Department can be most effective in supporting U.S. national security interests. The Task Force will investigate, but will not be limited to, the following programs: (1) Initiatives for Nonproliferation, (2) Nuclear Cities Initiative, (3) Material Protection Control and Accounting Program, (4) Second Line of Defense Program, (5) Highly Enriched Uranium (HEU) Purchase Agreement, (6) Plutonium Disposition Program, and (7) International Nuclear Safety Program.

Tentative Agenda

Tuesday, April 25, 2000

9 AM–9:15 AM Opening Remarks
9:15 AM–10 AM Briefing on DOE Moscow/DOE Presence in Russia
10 AM–10:45 AM Briefing on the Expanded Threat Reduction Initiative
10:45 AM–11 AM Break
11 AM–12 AM Briefing on Budget Issues
12 PM–1:15 PM Lunch
1:15 PM–3:45 PM Roundtable with NGO Representatives
3:45 PM–4 PM Adjourn

This tentative agenda is subject to change. The final agenda will be available at the meeting.

Public Participation

In keeping with procedures, members of the public are welcome to observe the business of the Task Force on the Department of Energy's Nonproliferation Programs in Russia and submit written comments or comment during the scheduled public comment period. The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its open meeting, the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign in at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. You may submit written comments to Betsy Mullins, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes

A copy of the minutes and a transcript of the open meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9 A.M. and 4 P.M., Monday through Friday except Federal holidays. Further information on the Secretary of Energy Advisory Board and its subcommittees may be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, DC, on April 11, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–9165 Filed 4–13–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: This notice announces a meeting of the Secretary of Energy Advisory Board's National Ignition Facility Laser System Task Force. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation.

Name: Secretary of Energy Advisory Board—National Ignition Facility Laser System Task Force.

DATES: Wednesday, April 26, 2000, 8:30 AM–3 PM.

ADDRESSES: Lawrence Livermore National Laboratory (LLNL), Conference Room A, Building 123, 7000 East Avenue, Livermore, California 94551–0808. Note: For their convenience, members of the public who plan to attend this open meeting are requested to contact Ms. Kathleen Moody of the LLNL Protocol Office in advance of the meeting in order to facilitate access to the meeting site. Ms. Moody may be reached at (925) 423–5948 or via e-mail at moody2@llnl.gov.

FOR FURTHER INFORMATION CONTACT: Betsy Mullins, Executive Director, or Richard Burrow, Deputy Director, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–7092 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the NIF Task Force is to provide independent external advice and recommendations to the Secretary of Energy Advisory Board on the options to complete the National Ignition Facility (NIF) Project; to recommend the best technical course of action; and to review and assess the risks of successfully completing the NIF Project. The NIF Task Force will focus on the engineering and management aspects of the proposed method for accomplishing the assembly and installation of the NIF laser system. The Task Force's review will cover the full scope of assembly and installation and the ability, within the proposed approach, to achieve the cleanliness requirements established for the operation of the laser. The review will also address: (1) The engineering viability of the proposed assembly and activation method; (2) the assembly and installation cleanliness protocols; (3) the management structure; and (4) the adequacy of the cost estimating methodology.

Tentative Agenda

The agenda for the April 26 meeting has not been finalized, however the topics to be addressed will include the following:

-Response to the Findings and Recommendations of the Interim Report of the National Ignition Facility Laser System Task Force, January 10, 2000—

A discussion of the Department of Energy's response to the key findings and recommendations of the Task Force's Interim Report.

-NIF Rebaseline Plan—A discussion of the key milestones, basis and current status of the NIF Rebaseline Plan, February 2000 (NIF–0038376–0B.3)

-Criteria, Guidelines and Options Used as the Basis for the NIF Total Project Cost Estimate—A discussion of the key criteria, assumptions, and guidance used in the development of the NIF Project Cost Estimate, Schedule and options.

Tentative Agenda 8

8:30–9 a.m.—Opening Remarks, Introductions & Objectives—Dr. John McTague, Task Force Chairman
9–10 a.m.—Briefing & Discussion: NIF Project Response to the Interim Report Findings and Recommendations
—DOE
—University of California
—Lawrence Livermore National Laboratory
10–10 a.m.—Briefing & Discussion: NIF Rebaseline Plan, Implementation and Status
10:20–10:35 a.m.—Break
10:35–12:30 p.m.—Briefing & Discussion: NIF Cost Estimation and Scheduling Systems for the NIF Rebaseline
12:30–1:30 p.m.—Lunch
1:30–2:30 p.m.—Briefing & Discussion: NIF Progress Since the December Meeting
—Overview
—Optics
—Construction & Beampath Infrastructure
2:30–3 p.m.—Public Comment Period
3 p.m.—Adjourn

This tentative agenda is subject to change. The final agenda will be available at the meeting.

Public Participation

In keeping with procedures, members of the public are welcome to observe the business of the NIF Task Force and submit written comments or comment during the scheduled public comment periods. The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Livermore, California, the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. You may submit written comments to Betsy Mullins, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes

A copy of the minutes and a transcript of the meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 A.M. and 4:00 P.M., Monday through Friday except Federal holidays. Further information on the Secretary of Energy Advisory Board and its subcommittees may be found at the Board's web site, located at http: //www.hr.doe.gov/seab.

Issued at Washington, D.C., on April 11, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–9366 Filed 4–13–00; 8: 45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–1030–000 and EL00–33–000; ER00–1463–000; ER00–1502–000, ER00–1259–000 and EL00–38–000; ER00–1517–000; and ER00–1598–000 (Not Consolidated)]

AmerGen Vermont, LLC; Orion Power MidWest, LLC; Bonnie Mine Energy, L.L.C. and Louisiana Generating LLC; San Joaquin Cogen Limited; Baltimore Gas and Electric Company, Calvert Cliffs, Inc., Constellation Generation, Inc. and Constellation Power Source, Inc.; Notice of Issuance of Order

April 10, 2000.

AmerGen Vermont, LLC, Orion Power MidWest, LLC, Bonnie Mine Energy, LLC and Louisiana Generating LLC, San Joaquin Cogen Limited, and Baltimore Gas and Electric Company, Calvert Cliffs, Inc., Constellation Generation, Inc. and Constellation Power Source, Inc. (hereafter, "the Applicants") filed with the Commission rate schedules in the above-captioned proceedings, respectively, under which the Applicants will engage in wholesale electric power and energy transactions at market-based rates, and for certain waivers and authorizations. In particular, certain of the Applicants may also have requested in their respective applications that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by the Applicants. On March 29, 2000, the Commission issued an order that accepted the rate schedules for sales of capacity and energy at market-based rates (Order), in the above-docketed proceedings.

The Commission's March 29, 2000 Order granted, for those Applicants that sought such approval, their request for blanket approval under Part 34, subject to the conditions found in Appendix B in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, if the Applicants have requested such authorization, the Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of the Applicants' issuances of securities or assumptions of liabilities.* * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 28, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. This issuance may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–9310 Filed 4–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–003]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

April 10, 2000.

Take notice that on April 3, 2000, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with a proposed effective date of April 1, 2000:

Seventh Revised Sheet No. 14
Original Sheet Nos. 14A through 14M
Sixth Revised Sheet No. 15

ANR is filing the attached tariff sheets to reflect the implementation of a restructured service portfolio for Wisconsin Public Service Corporation (WPSC) for service under Rate Schedules ETS, FTS–1, FSS, NNS and GF–1. Generally, WPSC's new contracts will be effective April 1, 2000 and terminate in 2009 or 2010. Under the restructured portfolio, WPSC's rate components may be adjusted as a result of surcharges placed in effect after November 5, 1999, and entitlements can be reduced or increased. ANR requests that the Commission grant ANR any waivers of the Commission's regulations which are necessary in order to make these tariff sheets effective as of April 1, 2000, and to the extent necessary, moves pursuant to 18 CFR 154.7(a)(9) for the tariff sheets to go into effect on said date. Additionally, ANR requests all such further relief as is appropriate.

ANR states that a copy of this filing is being mailed to the affected shipper and to each ANR's FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2 customers, and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc. fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 00–9319 Filed 4–13–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL98–77–000]

Edison Sault Electric Company v. Cloverland Electric Cooperative; Notice of Filing

April 10, 2000.

Take notice that on May 4, 1999, Edison Sault Electric Company submitted an Offer of Settlement that resolves all issues in the above-referenced docket pursuant to Rule 602 of the rules of practice and procedure of the Federal Energy Regulatory Commission (18 CFR 385.602).

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before April 21, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 00–9315 Filed 4–13–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1966–001]

Edison Sault Electric Company; Notice of Filing

April 10, 2000.

Take notice that on March 31, 2000, Edison Sault Electric Company (Edison Sault) filed a fully executed Amendment No. 1 to Supplemental Agreement No. 8 to the Contract for Electric Service between Edison Sault and Cloverland Electric Cooperative, Inc. (Cloverland) dated April 9, 1999.

Copies of the filing were served upon Cloverland.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before April 21, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.

[FR Doc. 00–9317 Filed 4–13–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1983–000]

Florida Power Corporation; Notice of Filing

April 10, 2000.

Take notice that on March 28, 2000, Florida Power Corporation (Florida Power) filed amendments to its all Requirements Service Agreement dated September 4, 1990 for all requirements service to the City of Mount Dora, Florida (Mount Dora). That agreement is on file with the Commission as FPC FERC Rate Schedule No. 127. Florida Power states that the filing qualifies as an abbreviated rate filing pursuant to Section 35.13(a)(2)(iii) of the Commission's regulations because the amendments to the agreement are rate schedule changes other than rate increases.

Florida Power requests that the filing become effective on April 1, 2000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal

Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before April 18, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–9318 Filed 4–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1519–000]

InPower Marketing Corporation; Notice of Issuance of Order

April 10, 2000.

InPower Marketing Corporation (InPower) filed with the Commission a rate schedule that would permit entities (Independent Power Producers, hereafter "IPPs") that own generation to meet their own on-site demands or for back-up purposes to sell power at market-based rates to InPower.[1] InPower's filing, on behalf of yet-to-be-identified IPPs, requested certain waivers and authorizations. In particular, InPower requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by eligible IPPs. On March 30, 2000, the Commission issued an Order Accepting For Filing Proposed Market-Based Rate Schedule And Granting Waivers (Order), in the above-docketed proceeding.

The Commission's March 30, 2000 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by eligible IPPs should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, eligible IPPs are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of IPPs compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of eligible IPPs' issuances of securities or assumptions of liabilities . * * .

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 1, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc. fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–9312 Filed 4–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–167–000]

Koch Gateway Pipeline Company; Notice of Application

April 10, 2000.

Take notice that on April 3, 2000, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77521–1478, pursuant to Section 7(b) of the Natural Gas Act and Section 157.18 of the Commission's Regulations filed in Docket No. CP00–167–000, an abbreviated application for an order permitting and approving the abandonment of individually certified transportation service agreements on file with the Commission as described herein.

These individually certified services are no longer required by Natural Gas Pipeline Company of America (Natural) and have been terminated by mutual agreement between Koch Gateway and Natural. Koch Gateway states this abandonment of service is in the public interest and will have no effect on any existing customer, all as more fully set forth in the abbreviated application which is on file with the Commission and open for public inspection. A contact person for this filing is Kyle Stephens, Director of Certificates, Koch Gateway Pipeline Company, P.O. Box 1478, Houston, Texas, 77251–1478.

Any persons desiring to participate in the hearing process or to make any protest with reference to said application should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedures (18 CFR 385.214, 385.211). All such petitions or protests should be filed on or before April 25, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants Applicants at the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no protest or petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedures herein provided for, unless otherwise advised, it will be

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[1] On October 12, 1999, in Docket No. ER99–3964–000, InPower was authorized to sell power under market-based rates (unpublished letter order issued by the Director of the Division of Rate Applications, Office of Electric Power Regulation).

unnecessary for Koch Gateway to appear or to be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–9307 Filed 4–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1781–000]

Marquette Energy, L.L.C.; Notice of Issuance of Order

April 10, 2000.

Marquette Energy, L.L.C. (Marquette Energy) submitted for filing a rate schedule under which Marquette Energy will engage in wholesale electric power and energy transactions as a marketer. Marquette Energy also requested waiver of various Commission regulations. In particular, Marquette Energy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Marquette Energy.

On March 29, 1999, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Marquette Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Marquette Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Marquette Energy's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 28, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–9311 Filed 4–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP93–5–039 and RP93–96–017]

Northwest Pipeline Corporation; Notice of Compliance Filing

April 10, 2000.

Take notice that on April 3, 2000, Northwest Pipeline Corporation (Northwest) tendered for filing a group of revised tariff sheets, workpapers and other materials applicable to the period from April 1, 1993 through October 31, 1994 during which Northwest's rates as established in Docket Nos. RP93–5 and RP93–96 were applicable.

Northwest states that the purpose of this filing is to comply with the Commission's February 11, 2000 Order Rejecting Compliance Filing in Docket Nos. RP93–5–034 and RP93–96–013. Northwest states that it has submitted (1) revised rates and surcharges based on the 6.08 percent long-term growth projection as established by settlement of the parties and the median return on equity, (2) its proposal regarding the effective data of the related surcharges, (3) detailed workpapers reflecting the calculation of its income tax adjustments and (4) revised tariff sheets that set forth the appropriate surcharges.

Northwest states that a copy of this filing has been served upon each person designated on the official service lists compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before April 17, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–9304 Filed 4–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP93–5–038 and RP93–96–016]

Northwest Pipeline Corporation; Notice of Preliminary Surcharge Report

April 10, 2000.

Take notice that on April 3, 2000, Northwest Pipeline Corporation (Northwest) filed a Preliminary Surcharge Report (PSR) in connection with the Commission's order issued on February 11, 2000, in its Docket Nos. RP93–5 and RP93–96 general rate proceeding. Northwest states that the PSR covers the period from April 1, 1993, through October 31, 1994. Northwest further states that it has asked the Commission to accept the PSR as illustrative of final surcharges in the above mentioned dockets. Northwest anticipates filing a final surcharge report 30 days after the final payment is due under the surcharge plan options described in Northwest's April 3, 2000 Compliance Filing.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before April 17, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not service to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://

www.ferc.fed.us/online./rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–9305 Filed 4–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1512–001]

Old Dominion Electric Cooperative; Notice of Filing

April 10, 2000.

Take notice that on March 29, 2000, Old Dominion Electric Cooperative (Applicant) filed Supplemental Information in Support of Application Submitting Service Agreement and Request for Waivers, supporting the previously-filed Service Agreement between the Applicant and Northern Virginia Electric Cooperative for a new service to a single customer at a single delivery point pursuant to the Applicant's previously granted authority to make sales at market-based rates.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before April 19, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–9316 Filed 4–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–375–010]

Wyoming Interstate Company, Ltd.; Notice of Filing of Refund Report

April 10, 2000.

Take notice that on April 4, 2000, Wyoming Interstate Company, Ltd. (WIC) tendered for filing a refund report in Docket No. RP97–365–009.

WIC states that the filing and refunds were made to comply with the Commission's Order of December 21, 1999. WIC also states the amounts were paid by WIC on February 4, 2000.

WIC further states that the refund report summarizes transportation refund amounts for the period December 1, 1997 through November 30, 1999 pursuant to Article VIII of WIC's Stipulation and Agreement as approved in the Commission's December 21, 1999 Order.

WIC states that copies of WIC's filing are being mailed to all holders of the tariff and to public bodies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before April 17, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–9309 Filed 4–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–65–000]

Connecticut Municipal Electric Energy Cooperative v. Connecticut Yankee Atomic Power Company and Connecticut Light and Power Company; Notice of Complaint

April 10, 2000.

Take notice that on April 7, 2000, the Connecticut Municipal Electric Energy Cooperative (CMEEC) filed a complaint against Connecticut Yankee Atomic Power Company (CY) and Connecticut Light & Power Company (CL&P). The complaint asserts that CY operated its nuclear generating plant imprudently before prematurely retiring it in December 1996, and that CY and CL&P have charged CMEEC through their formula rates approximately $2.2 million (from 1995 through 1998) for costs attributable to CY's imprudence or improper formula-rate collections of decommissioning costs. The Complaint requests that the Commission summarily find CY imprudent or, in the alternative, find that CMEEC has made a prima facie showing of imprudence and require CY to show affirmatively that it was prudent. The Complaint further requests that the Commission begin an investigation to identify the costs that CY and CL&P have improperly charged CMEEC through their formula rates and order them to refund such amounts.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before April 27, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet a http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers

to the complaint shall also be due on or before April 27, 2000.

David P. Boergers,
Secretary.
[FR Doc. 00–9314 Filed 4–13–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–64–000]

Rochester Gas and Electric Corporation, Complainant v. New York Independent System Operator, Respondent; Notice of Filing

April 10, 2000.

Take notice that on April 7, 2000, Rochester Gas and Electric Corporation submitted a Complaint pursuant to Section 206 of the Federal Power Act against the New York Independent System Operator (NYISO). The Complainant seeks to correct the NYISO tariff and market implementation flaws associated with Operating Reserves, to compel the NYISO to use Temporary Extraordinary Procedures and to consolidate this Complaint with the proceedings in Docket Nos. EL00–63–000, EL00–57–000 and ER00–1969–000.

Copies of the filing were served upon the NYISO and other interested parties.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before April 20, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before April 20, 2000.

David P. Boergers,
Secretary.
[FR Doc. 00–9313 Filed 4–13–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–40–003, et al.]

American Electric Power Company, et al.; Electric Rate and Corporate Regulation Filings

April 6, 2000.

Take notice that the following filings have been made with the Commission:

1. American Electric Power Company and Central and South West Corporation

[Docket Nos. EC98–40–003, and ER98–2770–003 and ER98–2786–004]

Take notice that on March 31, 2000, American Electric Power Company and Central and South West Corporation made their compliance filing as required under Ordering Paragraph (B) of the Commission's March 15, 2000 order in the referenced dockets.

Copies of the filing were served on all parties to the proceeding.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. American Electric Power Company and Central and South West Corporation

[Docket Nos. EC98–40–004, ER98–2770–004 and ER98–2786–005]

Take notice that on March 31, 2000, American Electric Power Company and Central and South West Corporation filed a description of the means by which they will implement the interim energy sales discussed at pages 27–28 of the Commission's March 15, 2000 order issued in the referenced dockets.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Delmarva Power & Light Company and Conectiv Delmarva Generation, Inc.

[Docket No. EC00–69–000]

Take notice that on March 31, 2000, Delmarva Power & Light Company (Delmarva) and Conectiv Delmarva Generation, Inc. (CDG) (collectively, the Applicants) submitted a joint application under Section 203 of the Federal Power Act and Part 33 of the Commission's Regulations to request authorization and approval for Delmarva to transfer to CDG certain jurisdictional transmission facilities related to the Keystone and Conemaugh generating plants, which will also be transferred to CDG. The Applicants' proposed closing date for the transfer is June 1, 2000. The Applicants request approval of the transfer during May 2000.

The Applicants state that copies of this joint application have been served upon Delmarva's wholesale requirements customers, the transmission dependent utilities with whom Delmarva has interconnection agreements, and the state regulatory commissions of Delaware, Maryland, Pennsylvania and Virginia and on the Pennsylvania-New Jersey-Maryland Interconnection, LLC.

Comment date: May 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Interstate Power Company and IES Utilities Inc.

[Docket No. EC00–70–000]

Take notice that on March 31, 2000, Interstate Power Company (IPC) and IES Utilities Inc. (IES) tendered for filing an Application for Authorization and Approval of Merger. Filing requirements were submitted pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's Rules and Regulations.

Under the terms of the Merger Agreement between IPC and IES, IPC will be merged into IES and the surviving corporation will be renamed upon the consummation of the merger. Both Applicants are wholly-owned subsidiaries of Alliant Energy Corporation. At the time of merger, all of the shares of common stock of IPC, wholly-owned by Alliant Energy, will be fully redeemed and retired.

The Applicants submit that the merger of IPC and IES would be consistent with the public interest as required by Section 203 of the Federal Power Act. Applicants therefore request that the Commission authorize the merger without the necessity of hearing.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Rio de Este Barge Power LLC

[Docket No. EG00–123–000]

Take notice that on March 31, 2000, Rio de Este Barge Power LLC filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). The applicant is a limited liability company organized under the laws of the State of Delaware that will be engaged directly and exclusively in owning and operating a barge-mounted generating facility that will be located initially on the East River in New York City

(Facility) and selling electric energy at wholesale.

Comment date: April 27, 2000, in accordance with Standard Paragraph E at the end of this notice. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Florida Power Corporation

[Docket No. ER00–1983–000]

Take notice that on March 28, 2000, Florida Power Corporation (Florida Power) filed amendments to its All Requirements Service Agreement dated September 4, 1990 for all requirements service to the City of Mount Dora, Florida (Mount Dora). That agreement is on file with the Commission as Florida Power FERC Rate Schedule No. 127. Florida Power states that the filing qualifies as an abbreviated rate filing pursuant to Section 35.129a0(2)(iii) of the Commission's regulations because the amendments to the agreement are rate schedule changes other than rate increases.

Florida Power requests the filing to become effective on April 1, 2000.

Comment date: April 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Pool

[Docket No. ER00–2060–000]

Take notice that on March 31, 2000, the New England Power Pool (NEPOOL) Participants Committee filed a request for termination of membership in NEPOOL, with an effective date of April 1, 2000, of Avista Energy, Inc. (Avista). Such termination is pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended (the NEPOOL Agreement), and previously signed by Avista. The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that termination of Avista with an effective date of April 1, 2000 would relieve Avista, at it's request, of the obligations and responsibilities of NEPOOL membership and would not change the NEPOOL Agreement in any manner, other than to remove Avista from membership in NEPOOL.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Central Maine Power Company

[Docket No. ER00–2063–000]

Take notice that on March 30, 2000, Central Maine Power Company (CMP) submitted "Unexecuted Service Agreements for Local Network Transmission Service" and "Unexecuted Local Network Operating Agreements". CMP states that these transactions are contemplated as part of the State of Maine's restructuring of the electric utility industry.

CMP requests that the Commission allow these Agreements to be deemed effective on March 1, 2000 in order to coincide with the commencement of retail access in the State of Maine. .

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Illinois Power Company

[Docket No. ER00–2066–000]

Take notice that, on March 31, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62521, tendered for filing a Service Agreement for Network Integration Transmission Service and a Network Operating Agreement under which Illinois Power Company—Power Purchase Option will take transmission service pursuant to Illinois Power's open access transmission tariff (OATT). The agreements are based on the forms of agreements in Illinois Power's OATT.

Illinois Power has requested an effective date of December 9, 1999.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Boston Edison Company

[Docket No. ER00–2067–000]

Take notice that on March 31, 2000, Boston Edison Company (BECo) tendered for filing an unexecuted Related Facilities Agreement between BECo and ANP Bellingham Energy Company (ANP). BECo states that the Related Facilities Agreement is being filed in unexecuted form at the request of ANP due to disagreement between the parties on cost responsibility for construction outage related costs.

BECo has requested an effective date upon the later to occur May 29, 2000.

BECo states that it has served a copy of the filing on ANP and the Massachusetts Department of Telecommunications and Energy.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Ameren Services Company

[Docket No. ER00–2068–000]

Take notice that on March 31, 2000, Ameren Services Company (Ameren) tendered for filing an unexecuted Network Integration Transmission Service Agreement and associated Network Operating Agreement, between Ameren and Wayne-White Counties Electric Cooperative, Inc. (Wayne-White). Ameren asserts that the purpose of the agreements is to permit Ameren to provide network service over its transmission and distribution facilities to Wayne-White under the Ameren Open Access Tariff.

Ameren seeks on effective date of March 1, 2000 and, accordingly, seeks waiver of the Commission's notice requirements.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Indeck-Rockford, L.L.C.

[Docket No. ER00–2069–000]

Take notice that on March 31, 2000, Indeck-Rockford, L.L.C. submitted for filing, pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's regulations, an application for authorization to make sales of electric energy and capacity at market-based rates, and for related waivers and blanket authorizations.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Rio de Este Barge Power LLC

[Docket No. ER00–2070–000]

Take notice that on March 31, 2000, Rio de Este Barge Power LLC (Seller), a limited liability corporation organized under the laws of the State of Delaware, petitioned the Commission for an order: (1) Accepting Seller's proposed Rate Schedule FERC No. 1 (Market-Based Rate Schedule); (2) granting waiver of certain requirements under Subparts B and C of Part 35 of the regulations, and (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates. Seller is an indirect subsidiary of Northern States Power Company that intends to own and operate a generating facility on a barge on the East River in New York City.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Lakefield Junction, L.P.

[Docket No. ER00–2071–000]

Take notice that on March 31, 2000, Lakefield Junction, L.P. (Seller), a limited partnership organized under the laws of the State of Delaware, petitioned the Commission for an order: (1) Accepting Seller's proposed Rate Schedule FERC No. 1 (Market-Based Rate Schedule); (2) granting waiver of certain requirements under Subparts B and C of Part 35 of the regulations, (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates, and (4) granting

expedited consideration. Seller is an affiliate of Northern States Power Company and Tenaska, Inc.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Wisconsin Public Service Corporation

[Docket No. ER00–2072–000]

Take notice that on March 31, 2000, Wisconsin Public Service Corporation (WPSC) tendered for filing an executed Service Agreement with Allegheny Energy Supply Company, LLC, providing for transmission service under FERC Electric Tariff, Volume No. 1.

WPSC requests that the agreement be made effective on March 24, 2000.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Wisconsin Public Service Corporation

[Docket No. ER00–2073–000]

Take notice that on March 31, 2000, Wisconsin Public Service Corporation (WPSC) tendered for filing an executed Service Agreement with Allegheny Energy Supply Company, LLC, providing for transmission service under FERC Electric Tariff, Volume No. 1.

WPSC requests that the agreement be made effective on March 24, 2000.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–9303 Filed 4–13–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2651–006, Indiana]

Indiana Michigan Power Company; Notice of Availability of Draft Environmental Assessment

April 10, 2000.

In accordance with the National Environmental Policy Act of 1969, and the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new license for the Elkhart Hydroelectric Project, and has prepared a Draft Environmental Assessment (Draft EA). The project is located on the St. Joseph River in the City of Elkhart, in Elkhart County, Indiana. No federal lands or facilities are occupied or used by the project. The Draft EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the Draft EA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, NE, Washington, DC 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. For further information, contact Nicholas Jayjack, Team Leader, at (202) 219–2825.

David P. Boergers,

Secretary.

[FR Doc. 00–9306 Filed 4–13–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–104–000]

Distrigas of Massachusetts Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Domac Vapor Recovery Project and Request for Comments on Environmental Issues

April 10, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of vapor recovery facilities proposed by Distrigas of Massachusetts Company (DOMAC) in Everett, Massachusetts.[1] These facilities would recover natural gas vapor vented to the atmosphere during liquefied natural gas (LNG) cargo transfer operations. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

DOMAC states that its existing vapor handling system adequately recovers the natural gas vapor that results from LNG storage. However, during cargo transfer, additional vapor is produced, causing approximately 18,000–23,000 thousand standard cubic feet (Mscf) of each LNG cargo to be vented to the atmosphere in order to maintain design pressure in the LNG tanks. DOMAC seeks to recover this additional vapor (approximately 830,000 Mscf per year) by installing vapor recovery facilities consisting of a turboexpander-driven compressor, a hot water pump and heat exchanger, and associated meters and interconnecting piping.

Construction of the proposed facilities would occur completely on DOMAC's existing 35-acre LNG plant site. The general location of the project facilities is shown on figure 1.[2]

[1] DOMAC's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The figures and appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the figures and appendices were sent to all those receiving this notice in the mail.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands
- vegetation and wildlife
- endangered and threatened species
- land use
- cultural resources
- air quality and noise
- public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by DOMAC. This preliminary list of issues may be changed based on your comments and our analysis.

- Noise quality may be affected by the addition of the turboexpander-driven compressor.
- Soils (possibly contaminated) may be affected by minor ground disturbance during construction. The proposed project area is part of a site that has been identified as a "notice site" pursuant to the Massachusetts Contingency Plan. The former site owner, Boston Gas Company, is currently conducting environmental investigations to determine the need for soil remediation.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA/EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Group 1.
- Reference Docket No. CP00–104–000.
- Mail your comments so that they will be received in Washington, DC on or before May 10, 2000.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 1). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, to select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–9308 Filed 4–13–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6253–2]

Environmental Impact Statements; Notice of Availability Responsible Agency

Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/ofa.

Weekly receipt of Environmental Impact Statements

Filed April 03, 2000 Through April 07, 2000

Pursuant to 40 CFR 1506.9.

EIS No. 000095, FINAL EIS, AFS, MT, Good Creek Resource Management Project, Implementation, Vegetation Treatments and Other Activities to Restore Watershed, Flathead National Forest, Tally Lake Ranger District, Flathead County, MT, Due: May 15, 2000, Contact: Bryan Donner (406) 863–5408.

EIS No. 000096, DRAFT EIS, AFS, ID, East Slate Project, Harvesting Timber, Implementation, Idaho Panhandle National Forests, St. Joe Ranger District, Shoshone County, ID, Due: May 30, 2000, Contact: Pete Ratcliffe (208) 245–6071.

EIS No. 000097, DRAFT EIS, IBW, El Paso—Las Cruces Regional Sustainable Water Project, To Secure Future Drinking Water Supplies, United States and New Mexico, Due: June 13, 2000, Contact: Douglas Echlin (915) 832–4741.

EIS No. 000098, DRAFT EIS, BIA, WA, Colville Indian Reservation Integrated Resource Management Plan, Implementation, Colville Indian Reservation, Okanogan and Ferry Counties, WA, Due: May 30, 2000, Contact: William Nicholson (509) 634–2316.

EIS No. 000099, FINAL EIS, BIA, AZ, NM, Programmatic EIS—Navajo Ten Year Forest Management Plan Alternatives, Implementation and Funding, AZ and NM, Due: May 15, 2000, Contact: Harold D. Russell (520) 729–7228.

EIS No. 000100, FINAL SUPPLEMENT, UAF, FL, CA, Evolved Expendable Launch Vehicle (EELV) Program, Development, Operation and Deployment, Proposed Launch Locations are Cape Canaveral Air Station (AS), Florida and Vandenberg Air Force Base (AFB), California, Federal Permits and Licenses, FL and CA, Due: May 15, 2000, Contact: Jonathan D. Farthing (210) 536–3668.

EIS No. 000101, DRAFT EIS, FAA, NC, Piedmont Triad International Airport, Construction and Operation, Runway 5L/23R and New Overnight Express Air Cargo Sorting and Distribution Facility, and Associated Developments, Funding, NPDES and COE Section 404 Permit, city of Greensboro, Guilford County, NC, Due: May 30, 2000, Contact: Donna M. Meyer (404) 305–7150.

EIS No. 000102, DRAFT SUPPLEMENT, COE, FL, Central and Southern Florida Project for Flood Control and Other Purposes, Everglades National Park Modified Water Deliveries, New Information concerning Flood Mitigation to the 8.5 Square Mile Area (SMA), Implementation, South Miami, Dade County, FL, Due: May 30, 2000, Contact: Elmar Kurzbach (904) 232–2325.

EIS No. 000103, DRAFT EIS, TVA, MS, Union County Multipurpose Reservoir/Other Water Supply Alternatives Project, To Provide an Adequate and Reliable Water Supply, COE Section 404 Permit and NPDES Permit, city of New Alban, Uniton County, MS, Due: May 30, 2000, Contact: Gary Hickman (865) 632–1791.

EIS No. 000104, FINAL EIS, FHW, NY, Stewart Airport Access Transportation Improvement Project, A New Interchange on I–84 at Drury Lane, Reconstruction of Drury Lane and a new East-West Connector Road from Drury Lane to Stewart International Airport, Funding, Towns of Montgomery, Newburgh and New Windsor, Orange County, NY, Due: May 15, 2000, Contact: Harold J. Brown (518) 431–4127.

EIS No. 000105, DRAFT EIS, NPS, CA, Yosemite Valley Plan, A Comprehensive Look of at Four Areas of Concern: Resource Preservation and Restoration, Visitor Enjoyment, Transportation, and Employee Housing, from Happy Isles to El Portal Road/Big Oak Flat Road, Merced River, several counties, CA, Due: July 14, 2000, Contact: Alan Schmierer (209) 372–0261.

EIS No. 000106, DRAFT EIS, NPS, Shenandoah Valley Battlefields National Historic District-Management Plan, Implementation, Augusta, Clarks, Frederick, Highland, Page, Rockingham, Shenandoah and Warren Counties, VA, Due: June 14, 2000, Contact: Jeffrey P. Reinbold (540) 740–4549.

EIS No. 000107, FINAL EIS, DOE, SC, Savannah River Site Spent Nuclear Fuel Management Plan, Implementation, Aiken County, SC, Due: May 15, 2000, Contact: Andrew R. Grainger (803) 725–1523.

Amended Notices

EIS No. 000033, DRAFT EIS, AFS, WA, Deadman Creek Ecosystem Management Projects, Implementation, Kettle Falls Ranger District, Colville National Forest, Ferry County, WA, Due: April 28, 2000, Contact: Wade Spang (509) 738–6111. Published FR on 2–11–2000: CEQ Comment Date has been extended from 03/30/2000 to 04/28/2000.

EIS No. 000040, DRAFT EIS, AFS, OR, Mt. Ashland Ski Area Expansion, Implementation, Ashland Ranger District, Rogue River National Forest and Scott River Ranger District, Klamath National Forest, Jackson County, OR, Due: May 04, 2000, Contact: Linda Duffy (541) 482–3333. Published FR on 2–18–2000: CEQ Comment Date has been extended from 04/03/2000 to 05/04/2000.

EIS No. 000087, DRAFT EIS, AFS, ID, Idaho Panhandle National Forests, Small Sales, Harvesting Dead and Damaged Timber, Coeur d'Alene River Range District, Kootenai and Shoshone Rehnborg (208) 664–2318. Published FR–4–07–00—Correction to Comment Period from 5–15–2000 to 5–22–2000.

EIS No. 000088, DRAFT EIS, AFS, PA, Duck and Sheriff Project Area (DSPA), Timber Management, Road Construction and Reconstruction, Trail Maintenance, Wildlife Habitat Improvement, and Recreation Management, Allegheny National Forest, Bradford Ranger District, Cherry Grove Township of Warren County, and Howe Township of Forest County, PA, Due: May 22, 2000, Contact: John Schultz (814) 362–4613. Published FR–04–07–00) Correction to Comment Period from 5–15–200 to 5–22–2000.

EIS No. 000089, DRAFT EIS, AFS, ID, Warm Springs Ridge Vegetation Management Project, Improve Forest Conditions, Boise National Forest, Cascade Resource Area, Boise County, ID, Due: May 22, 2000, Contact: Kathy Ramirez (208) 392–6681. Published FR—04–07–00 Correction to Comment Period from 05–15–2000 to 5–22–2000.

EIS No. 000090, FINAL EIS, FAA, MA, Provincetown Municipal Airport Safety and Operational Enhancement Project, Improvements (1) Firefighter Equipment Garage; (2) General Aviation Parking Apron Expansion; (3) Runaway Safety Areas, and (4) a Runaway Extension, COE Section 404 Permit, Cape Cod National Seashore, Barnstable County, MA, Due: May 08, 2000, Contact: Frank Smigelski (781) 238–7618. Published—FR 04–07–00—Correction to Comment Period from 5–01–2000 to 5–8–2000.

EIS No. 000092, FINAL EIS, FTA, CA, Vasona Corridor Light Rail Transit Project, Extension of existing Light Rail Transit (LRT), in portion of the Cities of San Jose, Campbell and Los Gatos, Santa Clara County, CA , Due: May 08, 2000, Contact: Jerome Wiggins (415) 744–3115. Published FR—04–07–00 Correction to Comment Period from 5–1–2000 to 5–8–2000.

EIS No. 000093, DRAFT EIS, AFS, ID, JJ (Jerry Johnson) Ecosystem Restoration Project, Implementation, Clearwater National Forest, Lochsa Ranger District (Powell), Idaho County, ID, Due: May 22, 2000, Contact: Ken Hotchkiss (208) 942–3113. Published FR—04–14–00—Correction to Comment Period from 5–15–2000 to 05–22–2000.

Dated: April 11, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–9370 Filed 4–13–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6253–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 27, 2000 through March 31, 2000 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

Summary of Rating Definitions Environmental Impact of the Action

LO—Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC—Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO—Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU—Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

Adequacy of the Impact Statement

Category 1—Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2—Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3—Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

Draft EISs

ERP No. D–BIA–K65223–CA Rating EC2, Cortina Integrated Solid Waste Management Project, Development and Operation, Approval of Land Lease Cortina Indian Rancheria of Wintin Indians, Colusa County, CA.

Summary: EPA expressed environmental concerns regarding water quality impacts and the lack of mitigation measures.

ERP No. D–BLM–L65338–OR Rating EC2, John Day River Management Plan, Implementation, John Day River Basin, Gilliam, Grant, Wheeler, Crook, Harney, Jefferson, Morrow, Sherman, Umatilla, Union and Wasco Counties, OR.

Summary: EPA expressed concern about the degraded environmental conditions in the wild and scenic corridor and the relatively minor adjustments being proposed for land management, which may not be sufficient to protect/enhance the resource values, or comply with state water quality standards. EPA requested that the plan include both implementation and effectiveness monitoring to measure progress in meeting goals/objectives, and to enable BLM and partners to make needed adjustments.

ERP No. D–DOE–L09814–ID Rating EC2, Idaho High-Level Waste and Facilities Disposition, Construction and Operation, Bannock, Bingham, Bonneville, Butte, Clark, Jefferson and Madison Counties, ID.

Summary: EPA expressed concerns about, and requested additional information on: (1) The effectiveness of the grout containing the low-level waste (LLW) in preventing contamination of the aquifer for 500 years, (2) the reclassification of waste stream products as LLW, (3) the existence of adequate facilities for handling LLW, (4) the feasibility of the Hanford alternative, and (5) the accuracy of the cost analysis.

No. D–SFW–L36100–WA Rating EC2, Tacoma Water Green River Water Supply Operations and Watershed Protection Habitat Conservation Plan, Implementation, Issuance of a Multiple Species Permit for Incidental Take, King County, WA.

Summary: EPA expressed environmental concerns regarding flow management, fish passage, and adaptive management. Additional information was requested on gravel enrichment, water conservation, cumulative effects, and the need to integrate the terms of the HCP with the TMDL for 303(d) listed waters.

ERP No. D–SFW–L65335–WA Rating EC2, Crown Pacific Project, Issuance of a Multiple Species Permit for Incidental Take, Hamilton Tree Farm, Habitat Conservation Plan, Whatcom and Skagit County, WA.

Summary: EPA had environmental concerns regarding the issuance of the Incidental Take Permit. EPA suggested that Crown Pacific should improve the

approach to riparian management; apply the mass wasting prescriptions on a limited area/trial basis; and establish quantitative, measurable performance targets for resource management objectives. In addition, EPA recommended that adaptive management commitments be incorporated into the HCP and/or that a shorter term for the ITP, with an option to renew, be considered.

Final EISs

ERP No. F–DOE–L09812–WA Hanford Remedial Action, Revised and New Alternatives, Comprehensive Land Use Plan, Hanford Site lies in the Pasco Basin of the Columbia Plateau, WA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–SFW–L64045–00 Grizzly Bear (Ursus arctos horribilus) Recovery Plan in the Bitterroot Ecosystem, Implementation, Endangered Species Act, Proposed Special Rule 10(j) Establishment of a Nonessential Experimental Population of Grizzly Bears in the Bitterroot Area, Rocky Mountain, Blaine, Camas, Boise, Clearwater, Custer, Elmore, Idaho, Lemhi, Shoshone.

Summary: No formal comment letter was sent to the preparing agency.

Dated: April 11, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–9371 Filed 4–13–00; 8:45 am]

BILLING CODE 6560–60–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6577–6]

Notice of Proposed Administrative Order on Consent Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), East Multnomah County Groundwater Contamination Site, Portland, OR

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given that the United States Environmental Protection Agency ("EPA"), the State of Oregon Department of Environmental Quality ("DEQ") and the City of Portland ("the City") have negotiated a proposed Administrative Order on Consent ("Consent Order") pursuant to section 122(g) of CERCLA, 42 U.S.C. 9622(g), as amended, and applicable Oregon state law, to be issued jointly by EPA and DEQ to the City, with respect to the East Multnomah County Groundwater Contamination Site in Oregon ("Site").

DATES: Comments must be provided on or before May 15, 2000.

ADDRESSES: Comments should be addressed to Alan Goodman, Project Manager, Oregon Operations Office, Environmental Protection Agency, 811 SW Sixth Avenue, 3rd Floor, Portland, Oregon, 97204, and refer to In the Matter of East Multnomah County Groundwater Contamination Site, Proposed Administrative Order on Consent for the City of Portland.

FOR FURTHER INFORMATION CONTACT: Alan Goodman, Project Manager, Oregon Operations Office, Environmental Protection Agency, 811 SW Sixth Avenue, 3rd Floor, Portland, Oregon, 97204, (503) 326–3685.

SUPPLEMENTARY INFORMATION: The City's primary emergency and seasonal water supply is the Columbia South Shore Well Field in East Multnomah County. The City's well field is downgradient from known sources of hazardous substance groundwater contamination that are part of the Site. The City owns property at each of the well sites, as well as other property and easements throughout the well field area. Based on certifications and disclosures by the City, EPA and DEQ have concluded that the City has not disposed of or arranged for the disposal of hazardous substances at the Site. EPA and DEQ have also concluded that, although City pumping in 1987 may have caused the movement of contamination, the City has not contributed to a release of hazardous substances at the Site resulting in the incurrence of response costs by the government or other authorized parties. EPA and DEQ have a Memorandum of Agreement to coordinate their activities to require parties responsible for the contamination to cleanup the Site.

The major provisions of the Consent Order require a cash payment from the City to DEQ, which is the lead Agency managing cleanup of the Site, to help defray past or future response costs at or in connection with the Site, including costs incurred in connection with negotiation and entry of this Consent Order, and a grant of access by the City to DEQ and EPA to the City property for all response activities to be taken at the Site; in exchange for legal protection for the City for cleanup liability at the Site in the form of a covenant not to sue from EPA and DEQ.

Copies of the proposed Consent Order may be examined at the Oregon Operations Office, 811 SW Sixth Avenue, 3rd Floor, Portland, Oregon, 97204. A Copy of the proposed Consent Order may be obtained by mail or in person from the Oregon Operations Office.

Authority: The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i).

Chuck Findley,

Acting Regional Administrator, Region 10.

[FR Doc. 00–9236 Filed 4–13–00; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

April 6, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 13, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0465.

Title: Section 74.985 Signal Booster Stations.

Form Number: None.

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 6,300.

Estimated time per response: 0.083 hours—8.25 hours (depending on requirements, this time is split between respondent, and legal consultant).

Total annual burden: 919 hours.

Total annual costs: $2,252,500.

Needs and Uses: Section 74.985(a) requires that MDS/ITFS booster stations obtain consent of affected cochannel licensees when the aggregate power flux density generated by a main station and all associated signal booster stations and all simultaneously operating cochannel response stations exceeds prescribed levels.

In addition to the information contained on FCC Form 331, Section 74.985(b) requires an applicant to submit any additional engineering data or showings, both in hard copy and on 3.5" computer diskettes in specified formats, and accompanying duplicates of the application forms, to the Commission's contractor for public service records duplication. By doing this, the engineering information will be available to all present and future affected parties.

Section 74.985(b) requires applicants for response station hubs/high power booster stations to serve a copy of the application and accompanying engineering materials on each potentially affected cochannel or adjacent channel party.

Section 74.985(d) requires that when an application for a high-power ITFS signal booster is granted, the licensee or conditional licensee maintain a copy of the application at the transmitter site or response station hub until such time as the Commission issues a license.

Section 74.985(e) requires that applicants for low-power MDS or ITFS signal booster stations must, within 48 hours after installation, submit to the Commission's contractor for public service records duplication duplicate hard copies of the FCC Form 331, and all engineering materials called for in Section 74.985(e) both in hard copy and on 3.5" computer diskettes.

Section 74.985(e)(iv) requires applicants for low power signal booster stations to serve a copy of the application and accompanying engineering materials on each potentially affected parties with protected services areas within an 8 kilometers radius.

Section 74.985(f) requires the conditional licensee of an ITFS response station hub/booster to file a letter informing the Commission of completion of construction of the hub/booster. The Commission has OMB approval for this requirement under the FCC Form 330–A (3060–0891).

The Commission and the public will use this information to ensure that MDS and ITFS applicants, conditional licensees and licensees have considered properly under the Commission's rules the potential for harmful interference from their facilities.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–9344 Filed 4–13–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

April 6, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 13, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW, Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–xxxx.

Title: Automated Maritime Telecommunications System (AMTS)—80.385 Frequencies for automated systems, 80.475 Scope of service of the AMTS, and 97.303 Frequency sharing requirements.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit, individuals.

Number of Respondents: 15.

Estimated Time Per Response: .3 hours.

Total Annual Burden: 3 hours.

Total Annual Cost: No annual cost burden on respondents from either capital or start-up costs.

Needs and Uses: The information collection contained in sections 80.385, 80.475 and 97.303 is necessary to require licensees of Automated Maritime Telecommunications System (AMTS) stations to notify TV stations and two organizations (the American Radio Relay League (ARRL), and Interactive Systems, Inc.) that maintain databases of AMTS locations for the benefit of amateur radio operators of the location of AMTS fill-in stations. Amateur radio operators use some of the same frequencies (219—220 MHz) as AMTS stations on a secondary, non-interference basis for digital message forwarding systems and are prohibited within 80 km of an AMTS station. Additionally, reporting requirements are necessary to require amateurs proposing to operate within 640 km of an AMTS station to notify the AMTS licensee as well as the ARRL, one of the organizations that maintain databases of AMTS locations.

OMB Approval Number: 3060–0481.
Title: Application for Renewal of Private Radio Station License.
Form Number: FCC 452R.
Type of Review: Extension of a currently approved collection.
Respondents: Individuals, State or Local Governments, Business or other For-Profit, Non-profit institutions.
Number of Respondents: 2,700.
Estimated Time Per Response: 10 minutes.
Total Annual Burden: 448 hours.
Needs and Uses: Aviation Ground and Marine Coast Radio Station licensees are required to apply for renewal of their radio station authorization every five years. This short form renewal application is generated by the Commission and sent to the licensee as a reminder approximately 90 days prior to license expiration.

The form is required by the Communications Act; International Treaties and FCC Rules—47 CFR 1.926, 80.19 and 87.21.

Estimated costs associated with this application are application and regulatory fees totaling $284,000.

OMB Approval Number: 3060–0746.
Title: Application for Electronic Renewal of Wireless Radio Services Authorization.
Form Number: FCC 900.
Type of Review: Extension of an existing collection.
Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.
Number of Respondents: 35,255.
Estimated Time Per Response: 10 minutes.
Total Annual Burden: 5,852 hours.
Needs and Uses: The "generic" renewal application may be used in lieu of FCC Forms 313R, 405A, 405B, 452R, and 574R, to file electronically for renewal of a Wireless Radio Service authorization. Concurrent with renewal, applicants may also request a change of licensee name (with no change to corporate structure, ownership or control), change of mailing address, change the name of their ship, add an official ship number, and notify the Commission of a change in the number of mobiles/pagers for a Land Mobile license.

This generic renewal form may not be filed manually. When filed, immediate confirmation that the renewal has been filed giving them continued operating authority to operate until the renewed license has been received.

Once the radio services are converted to the Universal Licensing System (currently being implemented), applicants may no longer use FCC Form 900 to renew. We anticipate that this collection will be obsolete by the end of calendar year 2000.

Estimated costs associated with this collection including application and regulatory fees are approximately $2,156,000.

OMB Approval Number: 3060–0104.
Title: Temporary Permit to Operate a Part 90 Radio Station.
Form Number: FCC 572.
Type of Review: Extension of a currently approved collection.
Respondents: Businesses or other for-profit; individuals or households; State or Local Governments; non-profit institutions.
Number of Recordkeepers: 2,000.
Estimated Time Per Response: 6 minutes (.10).
Total Annual Burden: 200 hours.
Needs and Uses: FCC Rules require that applicants complete FCC Form 572 if they wish to have immediate authorization to operate 2-way radio equipment already authorized in Part 90 radio services. This form is not submitted to the FCC but is retained in the applicant's possession while their application for licensing is being processed by the FCC.

This form is required by the Communications Act, International Treaties and FCC Rules 47 CFR 1.922, and 1.925, 90.119, 90.159, 90.437 and 90.657.

No cost burden associated with this collection.

OMB Approval Number: 3060–0049.
Title: Application for Restricted Radiotelephone Operator Permit.
Form Number: FCC 753.
Type of Review: Extension of a currently approved collection.
Respondents: Individuals.
Number of Respondents: 19,000.
Estimated Time Per Response: 20 minutes.
Total Annual Burden: 6,270 hours.
Needs and Uses: In accordance with the Communications Act, applicants must possess certain qualifications in order to qualify for a radio operator license. The data submitted on FCC Form 753 aids the Commission in determining whether the applicant possesses these qualifications. The form is required by FCC Rules 47 CFR parts 13 and 1.83. The data will be used to identify the individuals to whom the license is issued and to confirm that the individual possesses the required qualifications for the license.

Estimated costs for this collection which includes application fee is approximately $540,000.

OMB Approval Number: 3060–0025.
Title: Application for Restricted Radiotelephone Operator Permit—Limited Use.
Form Number: FCC 755.
Type of Review: Extension of a currently approved collection.
Respondents: Individuals.
Number of Respondents: 1,000.
Estimated Time Per Response: 20 minutes (.33).
Total Annual Burden: 330 hours.
Needs and Uses: In accordance with the Communications Act, applicants must possess certain qualifications in order to qualify for a radio operator license. The data will be used to identify the individuals to whom the license is issued and to confirm that the individual possesses the required qualifications for the license. Applicants using this form are not eligible for employment in the United States but need an operator permit because they hold an Aircraft Pilot Certificate which is valid in the U.S. and need to operate aircraft radio stations; or they hold an FCC radio station license and will use the permit for operation of that particular station.

Estimated costs associated with this collection which includes application fees is approximately $45,000.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 00–9345 Filed 4–13–00; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2000–N–3]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.
ACTION: Notice.

SUMMARY: The Federal Housing Finance Board (Finance Board) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2000–01 first quarter review cycle under the Finance Board's community support requirements regulation. This notice also prescribes the deadline by which Bank members selected for review must submit Community Support Statements to the Finance Board.

DATES: Bank members selected for the 2000–01 first quarter review cycle under the Finance Board's community support requirement regulation must submit completed Community Support Statements to the Finance Board on or before May 29, 2000.

ADDRESSES: Bank members selected for the 2000–01 first quarter review cycle under the Finance Board's community support requirements regulation must submit completed Community Support Statements to the Finance Board either by regular mail at the Office of Policy, Research and Analysis, Program Assistance Division, Federal Housing Finance Board, 1777-F Street, N.W., Washington, D.C. 20006, or by electronic mail at FITZGERALDE@FHFB.GOV.

FOR FURTHER INFORMATION CONTACT: Emma J. Fitzgerald, Program Analyst, Office of Policy, Research and Analysis, Program Assistance Division, by telephone at 202/408–2874, by electronic mail at FITZGERALDE@FHFB.GOV, or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. A telecommunications device for deaf persons (TDD) is available at 202/408–2579.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by the Finance Board must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.*, and record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to the requirements of section 10(g) of the Bank Act, the Finance Board has promulgated a community support requirement regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria the Finance Board must apply in evaluating a member's community support performance. *See* 12 CFR part 944. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 944.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 944.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 944.3(c).

Under the rule, the Finance Board selects approximately one-eighth of the members in each Bank district for community support review each calendar quarter. 12 CFR 944.2(a). The Finance Board will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to the Finance Board by the May 29, 2000 deadline prescribed in this notice. 12 CFR 944.2(b)(1)(ii) and (c). On or before April 28, 2000, each Bank will notify the members in its district that have been selected for the 2000–01 first quarter community support review cycle that they must complete and submit to the Finance Board by the deadline a Community Support Statement. 12 CFR 944.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form, which also is available on the Finance Board's web site: WWW.FHFB.GOV. Upon request, the member's Bank also will provide assistance in completing the Community Support Statement.

The Finance Board has selected the following members for the 2000–01 first quarter community support review cycle:

Federal Home Loan Bank of Boston—District 1

Name/City/State

The Canaan National Bank, Canaan, Connecticut
Advest Bank and Trust Company, Hartford, Connecticut
Litchfield Bancorp, Litchfield, Connecticut
The Milford Bank, Milford, Connecticut
New Milford Savings Bank, New Milford, Connecticut
Prime Bank, Orange, Connecticut
National Iron Bank, Salisbury, Connecticut
First National Bank of Suffield, Suffield, Connecticut
Savings Institute, Willimantic, Connecticut
Mechanics Savings Bank, Auburn, Maine
Pepperell Trust Company, Biddeford, Maine
Oxford Federal Credit Union, Oxford, Maine
Adams Co-operative Bank, Adams, Massachusetts
Beverly Co-op, Beverly, Massachusetts
Wainwright Bank and Trust Company, Boston, Massachusetts
Capital Crossing, Boston, Massachusetts
East Boston Savings Bank, Boston, Massachusetts
Brookline Cooperative Bank, Brookline, Massachusetts
Chelsea-Provident Co-operative Bank, Chelsea, Massachusetts
Massachusetts Co-operative Bank, Dorchester, Massachusetts
East Bridgewater Savings Bank, East Bridgewater, Massachusetts
Fall River Five Cents Savings Bank, Fall River, Massachusetts
Cape Cod Five Cents Savings Bank, Harwich Port, Massachusetts
Charter Bank, a Cooperative Bank, Hyannis, Massachusetts
Cape Cod Bank and Trust Company, Hyannis, Massachusetts
The First National Bank of Ipswich, Ipswich, Massachusetts
Marlborough Co-operative Bank, Marlborough, Massachusetts
Century Bank and Trust Company, Medford, Massachusetts
Needham Co-operative Bank, Needham, Massachusetts
Hoosac Bank, North Adams, Massachusetts
North Brookfield Savings Bank, North Brookfield, Massachusetts
Easton Cooperative Bank, North Easton, Massachusetts
Rockland Trust Company, Rockland, Massachusetts
Park West Bank and Trust Company, West Springfield, Massachusetts
UniBank for Savings, Whitinsville, Massachusetts
Williamstown Savings Bank, Williamstown, Massachusetts
First Massachusetts Bank, N.A., Worcester, Massachusetts
Community Guaranty Savings Bank, Plymouth, New Hampshire
Community Bank and Trust Company, Wolfeboro, New Hampshire
St. Mary's Bank, Manchester, New Hampshire
Coventry Credit Union, Coventry, Rhode Island
Domestic Bank, Cranston, Rhode Island
Bank Rhode Island, East Providence, Rhode Island
Home Loan and Investment Bank, FSB, Warwick, Rhode Island
Randolph National Bank, Randolph, Vermont
Citizens Savings Bank and Trust Company, St. Johnsbury, Vermont

Federal Home Loan Bank of New York—District 2

Name/City/State

United National Bank, Bridgewater, New Jersey
Morgan Stanley Dean Witter Trust FSB, Jersey City, New Jersey
Provident Savings Bank, Jersey City, New Jersey

Hudson United Bank, Mahwah, New Jersey
Atlantic Stewardship Bank, Midland Park, New Jersey
First Morris Bank, Morris Township, New Jersey
City National Bank of New Jersey, Newark, New Jersey
Bergen Commercial Bank, Paramus, New Jersey
Phillipsburg National Bank, Phillipsburg, New Jersey
Mon-Oc Federal Credit Union, Toms River, New Jersey
Yardville National Bank, Trenton, New Jersey
First Washington State Bank, Windsor, New Jersey
Bank of Gloucester County, Woodbury, New Jersey
The Canandaigua National Bank & Trust Co., Canandaigua, New York
Country Bank, Carmel, New York
Chemung Canal Trust Company, Elmira, New York
Queens County Savings Bank, Flushing, New York
National Bank of New York City, Flushing, New York
The Hudson River Bank & Trust Company, Hudson, New York
Long Island Commercial Bank, Islandia, New York
Rondout Savings Bank Kingston New York
First Niagara Bank, Lockport, New York
Citizens National Bank of Malone, Malone, New York
State Bank of Long Island, New Hyde Park, New York
Eastbank, N.A., New York, New York
PathFinder Bank, Oswego, New York
The Pavilion State Bank, Pavilion, New York
Rhinebeck Savings Bank, Rhinebeck, New York
Tioga State Bank, Spencer, New York
Tupper Lake National Bank, Tupper Lake, New York
The Warwick Savings Bank, Warwick, New York
Banco Santander Puerto Rico, San Juan, Puerto Rico

Federal Home Loan Bank of Pittsburgh—District 3

Name/City/State

County Bank, Rehoboth Beach, Delaware
Chelten Hills Savings Association, Abington, Pennsylvania
Kishacoquillas Valley National Bank, Belleville, Pennsylvania
Summit Bank, Bethlehem, Pennsylvania
County National Bank, Clearfield, Pennsylvania
Citizens Trust Company, Coudersport, Pennsylvania
Downington National Bank, Downington, Pennsylvania
Farmers National Bank of Emlenton, Emlenton, Pennsylvania
First American National Bank of Pennsylvania, Everett, Pennsylvania
Southwest National Bank of Pennsylvania, Greensburg, Pennsylvania
Harleysville Savings Bank, Harleysville, Pennsylvania
First National Bank of Herminie, Herminie, Pennsylvania
First National Bank of Pennsylvania, Hermitage, Pennsylvania
Hollidaysburg Trust Company, Hollidaysburg, Pennsylvania
Wayne Bank, Honesdale, Pennsylvania
The Honesdale National Bank, Honesdale, Pennsylvania
Penn Central National Bank, Huntingdon, Pennsylvania
Laurel Bank, Johnstown, Pennsylvania
United States National Bank in Johnstown, Johnstown, Pennsylvania
Lebanon Valley Farmers Bank, Lebanon, Pennsylvania
Luzerne National Bank, Luzerne, Pennsylvania
Marion Center National Bank, Marion Center, Pennsylvania
Second National Bank of Masontown, Masontown, Pennsylvania
Old Forge Bank, Old Forge, Pennsylvania
Rossini Savings Association, Philadelphia, Pennsylvania
Chestnut Street Building and Loan Assn., Philadelphia, Pennsylvania
Northwood Savings Association, Philadelphia, Pennsylvania
Cammar Building and Loan Association, Pittsburgh, Pennsylvania
First National Bank of Port Allegany, Port Allegany, Pennsylvania
Great Valley Bank, Reading, Pennsylvania
Community First Bank, N.A., Reynoldsville, Pennsylvania
Farmers Building and Savings Bank, Rochester, Pennsylvania
Hamlin Bank and Trust Company, Smethport, Pennsylvania
Eagle National Bank, Upper Darby, Pennsylvania
Bruceton Bank, Bruceton Mills, West Virginia
Mountain Valley Bank, N.A., Elkins, West Virginia
Calhoun County Bank, Inc., Grantsville, West Virginia
One Valley Bank of Huntington, Huntington, West Virginia
The Harrison County Bank, Lost Creek, West Virginia
One Valley Bank-East, N.A., Martinsburg, West Virginia
South Branch Valley National Bank, Moorefield, West Virginia
The Grant County Bank, Petersburg, West Virginia
Union Bank of Tyler County, Sistersville, West Virginia
First National Bank, St. Marys, West Virginia
The Terra Alta Bank, Terra Alta, West Virginia
Wheeling National Bank, Wheeling, West Virginia
Matewan National Bank, Williamson, West Virginia

Federal Home Loan Bank of Atlanta—District 4

Name/City/State

First National—America's Bank, Sylacauga, Alabama
Bank of Tuscaloosa, Tuscaloosa, Alabama
Citizens Bank of Winfield, Winfield, Alabama
The Adams National Bank, Washington, District of Columbia
Fleet Bank, F.S.B., Boca Raton, Florida
First National Bank of Manatee, Bradenton, Florida
American Bank, Bradenton, Florida
The Hernando County Bank, Brooksville, Florida
Drummond Community Bank, Chiefland, Florida
Crystal River Bank, Crystal River, Florida
First National Bank of Pasco, Dade City, Florida
BankFIRST, Eustis, Florida
Community Bank of Homestead, Homestead, Florida
First National Bank of Homestead, Homestead, Florida
Marine National Bank of Jacksonville, Inc., Jacksonville, Florida
First National Bank of the Florida Keys, Marathon, Florida
Marine Bank of the Florida Keys, Marathon, Florida
Fidelity Bank of Florida, Merritt Island, Florida
Coconut Grove Bank, Miami, Florida
Peoples National Bank of Commerce, Miami, Florida
The International Bank of Miami, N.A., Miami, Florida
Fifth Third Bank of Florida, Naples, Florida
Peoples National Bank of Niceville, Niceville, Florida
Security Bank, N.A., North Lauderdale, Florida
Independent National Bank, Ocala, Florida
Friendship Community Bank, Ocala, Florida
Enterprise National Bank of Palm Beach, Palm Beach Gardens, Florida
First State Bank, Sarasota, Florida
First National Bank of Florida, Seminole, Florida

Prosperity Bank of St. Augustine, St. Augustine, Florida
Republic Bank, St. Petersburg, Florida
United Bank and Trust Company, St. Petersburg, Florida
Guaranty National Bank, Tallahassee, Florida
Premier Bank, Tallahassee, Florida
Tri-County Bank, Trenton, Florida
First National Bank of Wauchula, Wauchula, Florida
Adel Banking, Company, Adel, Georgia
First National Bank of Alma, Alma, Georgia
Alma Exchange Bank and Trust, Alma, Georgia
Net.B@nk, Alpharetta, Georgia
Citizens Bank of Americus, Americus, Georgia
Athens First Bank and Trust Company, Athens, Georgia
Fidelity National Bank, Atlanta, Georgia
The Bankers Bank, Atlanta, Georgia
First Community Bank of Southwest Georgia, Bainbridge, Georgia
Cairo Banking Company, Cairo, Georgia
Georgia Bank and Trust, Calhoun, Georgia
Bank of Canton, Canton, Georgia
Community First Bank, Carrollton, Georgia
The Brown Bank, Cobbtown, Georgia
Community Bank and Trust—Jackson, Commerce, Georgia
First National Bank of Commerce, Commerce, Georgia
Cordele Banking Company, Cordele, Georgia
Community Bank and Trust-Habersham, Cornelia, Georgia
Hardwick Bank and Trust Company, Dalton, Georgia
Merchants and Farmers Bank, Donalsonville, Georgia
Bank of Dudley, Dudley, Georgia
Citizens Bank and Trust Company, Eastman, Georgia
Bank of Ellaville, Ellaville, Georgia
Fairburn Banking Company, Fairburn, Georgia
First Citizens Bank of Fayette County, Fayetteville, Georgia
First National Bank of Griffin, Griffin, Georgia
The Citizens Bank, Hogansville, Georgia
McIntosh State Bank, Jackson, Georgia
First National Bank and Trust Company, Louisville, Georgia
Bank of Madison, Madison, Georgia
Exchange Bank, Milledgeville, Georgia
Bank of Monticello, Monticello, Georgia
American Banking Company, Moultrie, Georgia
First Citizens Bank, Newnan, Georgia
Bank of Quitman, Quitman, Georgia
The Tattnall Bank, Reidsville, Georgia
Bryan Bank and Trust, Richmond Hill, Georgia
Northwest Georgia Bank, Ringgold, Georgia
Rossville Bank, Rossville, Georgia
West Central Georgia Bank, Thomaston, Georgia
First National Bank of Cherokee, Woodstock, Georgia
First National Bank of Maryland, Baltimore, Maryland
Midstate Federal Savings and Loan Association, Baltimore, Maryland
Carrollton Bank, Baltimore, Maryland
Rushmore Trust and Savings, F.S.B., Bethesda, Maryland
Glen Burnie Mutual Savings Bank, Glen Burnie, Maryland
Hebron Savings Bank, Hebron, Maryland
First Financial of Maryland Federal, Lutherville-Timonium, Maryland
Regal Savings Bank, F.S.B., Owings Mills, Maryland
Provident State Bank, Preston, Maryland
Queenstown Bank of Maryland, Queenstown, Maryland
Wilmington Trust FSB, Salisbury, Maryland
Blue Ridge Savings Bank, Inc., Asheville, North Carolina
The Morris Plan Industrial Bank, Burlington, North Carolina
Park Meridian Bank, Charlotte, North Carolina
Yadkin Valley Bank and Trust Company, Elkin, North Carolina
Fidelity Bank, Fuquay-Varina, North Carolina
Bank of Granite, Granite Falls, North Carolina
Peoples Bank, Newton, North Carolina
First National Bank of Reidsville, Reidsville, North Carolina
First Western, Spruce Pine, North Carolina
Wake Forest FS&LA, Wake Forest, North Carolina
First FS&LA of Charleston, Charleston, South Carolina
First Piedmont Federal Savings and Loan, Gaffney, South Carolina
American Federal Bank, FSB, Greenville, South Carolina
Horry County State Bank, Loris, South Carolina
Orangeburg National Bank, Orangeburg, South Carolina
Carolina Southern Bank, Spartanburg, South Carolina
AmSouth, Bristol, Virginia
The Bank of Franklin, Franklin, Virginia
Old Point National Bank of Phoebus, Hampton, Virginia
Chesapeake Bank, Kilmarnock, Virginia
Salem Bank and Trust, N.A., Salem, Virginia
Community Bank of Northern Virginia, Sterling, Virginia
Citizens and Farmers Bank, West Point, Virginia

Federal Home Loan Bank of Cincinnati—District 5

Name/City/State

Bank of Clinton County, Albany, Kentucky
Citizens Deposit Bank, Arlington, Kentucky
Classic Bank, Ashland, Kentucky
Peoples Bank of Madison County, Berea, Kentucky
Citizens Bank, Brodhead, Kentucky
Deposit Bank of Carlisle, Carlisle, Kentucky
Peoples State Bank, Chaplin, Kentucky
Tri-County National Bank, Corbin, Kentucky
Farmers National Bank, Danville, Kentucky
Dixon Bank, Dixon, Kentucky
First Citizens Bank, Elizabethtown, Kentucky
Farmers Bank and Capital Trust Company, Frankfort, Kentucky
Franklin Bank and Trust Company, Franklin, Kentucky
Georgetown Bank and Trust Company, Georgetown, Kentucky
First National Bank & Trust Company, Georgetown, Kentucky
Farmers Bank & Trust Company, Georgetown, Kentucky
Peoples Bank and Trust Company, Greensburg, Kentucky
The Peoples State Bank, Hodgenville, Kentucky
United Southern Bank, Hopkinsville, Kentucky
Kentucky Banking Centers, Inc., Horse Cave, Kentucky
Republic Bank and Trust Company, Louisville, Kentucky
The First National Bank of Mayfield, Mayfield, Kentucky
Jackson County Bank, McKee, Kentucky
Farmers Bank of Milton, Milton, Kentucky
Morehead National Bank, Morehead, Kentucky
Morganfield National Bank, Morganfield, Kentucky
Peoples Bank and Trust Company, Owenton, Kentucky
First National Bank of Paintsville, Paintsville, Kentucky
Citizens Bank, Sharpsburg, Kentucky
Springfield State Bank, Springfield, Kentucky
Powell County Bank, Stanton, Kentucky
First Kentucky Bank, Sturgis, Kentucky
Peoples Bank of Tompkinsville, Tompkinsville, Kentucky
Citizens Deposit Bank and Trust, Vanceburg, Kentucky
The Bank of Whitesburg, Whitesburg, Kentucky
Peoples Commercial Bank, Winchester, Kentucky
The Apple Creek Banking Company, Apple Creek, Ohio

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First National Bank, Bellevue, Ohio
Community First Bank and Trust, Celina, Ohio
Park View Federal Savings Bank, Cleveland, Ohio
The Clyde Savings Bank Company, Clyde. Ohio
The Cortland Savings and Banking Company, Cortland, Ohio
The Community Bank, Crooksville, Ohio
Dover-Phila Federal Credit Union, Dover, Ohio
First Federal Savings Bank of Dover, Dover, Ohio
First National Community Bank, East Liverpool, Ohio
Peoples Bank of Gambier, Gambier, Ohio
The Genoa Banking Company, Genoa, Ohio
The Glouster Community Bank, Glouster, Ohio
The Richland Trust Company, Mansfield, Ohio
The Metamora State Bank, Metamora, Ohio
Consumers National Bank, Minerva, Ohio
The Henry County Bank, Napoleon, Ohio
Home FS&LA of Niles, Niles, Ohio
Osgood State Bank, Osgood, Ohio
The Sabina Bank, Sabina, Ohio
Somerville National Bank, Somerville, Ohio
Champaign National Bank, and Trust Urbana, Ohio
First National Bank of Zanesville, Zanesville, Ohio
Bank of Cleveland, Cleveland, Tennessee
First Farmers and Merchants National Bank, Columbia, Tennessee
Citizens Tri-County Bank, Dunlap, Tennessee
Citizens Bank, Elizabethton, Tennessee
Erwin National Bank, Erwin, Tennessee
Andrew Johnson Bank, Greeneville, Tennessee
First Vantage Bank, Knoxville, Tennessee
City State Bank, Martin, Tennessee
Union Planters Bank of the Lakeway Area, Morristown, Tennessee
Bank of Nashville, Nashville, Tennessee
Capital Bank and Trust Company, Nashville, Tennessee
The Oakland Deposit Bank, Oakland, Tennessee
Farmers Bank, Parsons, Tennessee
First National Bank, Pulaski, Tennessee
First Claiborne Bank, Tazewell, Tennessee

Federal Home Loan Bank of Indianapolis—District 6

Name/City/State

Community State Bank, Avilla, Indiana
Bath State Bank, Bath, Indiana
First Bank of Berne, Berne, Indiana
Bippus State Bank, Bippus, Indiana
Monroe County Bank, Bloomington, Indiana
Farmers and Merchants Bank, Boswell, Indiana
Farmers State Bank, Brookston, Indiana
People's Trust Company, Brookville, Indiana
Irwin Union Bank and Trust Company, Columbus, Indiana
Fountain Trust Company, Covington, Indiana
DeMotte State Bank, DeMotte, Indiana
Peoples State Bank of Ellettsville, Ellettsville, Indiana
National City Bank of Evansville, Evansville, Indiana
Bank of Geneva, Geneva, Indiana
Mercantile National Bank of Indiana, Hammond, Indiana
Meridian Mutual Insurance Company, Indianapolis, Indiana
National City Bank of Indiana, Indianapolis, Indiana
Salin Bank and Trust Company, Indianapolis, Indiana
The National Bank of Indianapolis, Indianapolis, Indiana
Kentland Federal Savings and Loan Association, Kentland, Indiana
Farmers State Bank, Lanesville, Indiana
American State Bank, Lawrenceburg, Indiana
Peoples Trust Company, Linton, Indiana
Independence Bank (Marengo), New Albany, Indiana
Indiana Lawrence Bank, North Manchester, Indiana
First National Bank, Portland, Indiana
Morris Plan Company of Terre Haute, Inc., Terre Haute, Indiana
Lake City Bank, Warsaw, Indiana
Peoples Loan and Trust Bank, Winchester, Indiana
Alden State Bank, Alden, Michigan
Hospital and Health Services Credit Union, Ann Arbor, Michigan
Home Federal Savings Bank, Detroit, Michigan
First National Bank of Michigan, East Lansing, Michigan
The State Bank of Fenton, Fenton, Michigan
Dort Federal Credit Union, Flint, Michigan
First Bank, Upper Michigan, NA, Gladstone, Michigan
United Bank of Michigan, Grand Rapids, Michigan
MFC First National Bank, Houghton, Michigan
MFC First National Bank, Iron Mountain, Michigan
MFC First National Bank, Iron River, Michigan
Lansing Automakers, Lansing, Michigan
North Country Bank and Trust, Manistique, Michigan
Farmers State Bank of Munith, Munith, Michigan
Royal Oak Community Credit Union, Royal Oak, Michigan

Federal Home Loan Bank of Chicago—District 7

Name/City/State

Anchor State Bank, Anchor, Illinois
State Bank of Auburn, Chatham, Illinois
First State Bank of Beardstown, Beardstown, Illinois
Germantown Trust & Savings Bank, Breese, Illinois
First National Bank, Bridgeport, Illinois
The Bank of Carbondale, Carbondale, Illinois
First National Bank and Trust Company, Carbondale, Illinois
Central, Illinois Bank, Champaign, Illinois
Chapin Bank, Chapin, Illinois
Highland Community Bank, Chicago, Illinois
Uptown National Bank of Chicago, Chicago, Illinois
Home State Bank/NA, Crystal Lake, Illinois
Farmers State Bank of Danforth, Danforth, Illinois
PlainsBank of Illinois, N.A., Des Plaines, Illinois
Amcore Bank, N.A., Rock River Valley, Dixon, Illinois
Durand State Bank, Durand, Illinois
First Community Bank, Elgin, Illinois
Standard Bank and Trust Company, Evergreen Park, Illinois
First Eagle National Bank, Hanover Park, Illinois
Bank of Calhoun County, Hardin, Illinois
CIB Bank, Rantoul, Illinois
The State Bank of Jerseyville, Jerseyville, Illinois
First National Bank, Lacon, Illinois
Farmers Bank of Liberty, Liberty, Illinois
Success National Bank, Lincolnshire, Illinois
Banterra Bank, Marion, Illinois
Bank of Maroa, Maroa, Illinois
First Mid-Illinois Bank and Trust NA, Mattoon, Illinois
First State Bank, Mendota, Illinois
National State Bank of Metropolis, Metropolis, Illinois
Citizens State Bank of Milford, Milford, Illinois
Brown County State Bank, Mount Sterling, Illinois
State Bank of Orion, Orion, Illinois
Citizens National Bank, Paris, Illinois
South Side Trust and Savings Bank, Peoria, Illinois
Bank of Pontiac, Pontiac, Illinois
Princeville State Bank, Princeville, Illinois

Farmers National Bank of Prophetstown, Prophetstown, Illinois
Lakeland Community Bank, Round Lake Heights, Illinois
Marion County Savings Bank, Salem, Illinois
First Illinois National Bank, Savanna, Illinois
Bank of Springfield, Springfield, Illinois
First Community State Bank, Staunton, Illinois
First National Bank in Taylorville, Taylorville, Illinois
First National Bank of Waterloo, Waterloo, Illinois
Williamsville State Bank and Trust, Williamsville, Illinois
Hinsbrook Bank and Trust, Willowbrook, Illinois
Polk County Bank, Balsam Lake, Wisconsin
The Baraboo National Bank, Baraboo, Wisconsin
Union Bank of Blair, Blair, Wisconsin
Great Midwest Bank, S.S.B., Brookfield, Wisconsin
Bank North, Crivitz, Wisconsin
MidAmerica Bank, Dodgeville, Wisconsin
First National Bank of Eagle River, Eagle River, Wisconsin
F&M Bank East Troy, East Troy, Wisconsin
Royal Bank, Elroy, Wisconsin
State Bank of Florence, Florence, Wisconsin
Bank of Galesville, Galesville, Wisconsin
First National Bank of Hartford, Hartford, Wisconsin
MidAmerica Bank Hudson, Hudson, Wisconsin
River Bank, Stoddard, Wisconsin
Coulee State Bank, La Crosse, Wisconsin
Citizens State Bank of Loyal, Loyal, Wisconsin
Bank of Luxemburg, Luxemburg, Wisconsin
First Business Bank, Madison, Wisconsin
Associated Bank Lakeshore, N.A., Manitowoc, Wisconsin
Columbia Savings and Loan Association, Milwaukee, Wisconsin
Citizens Bank of Mukwonago, Mukwonago, Wisconsin
First State Bank, New London, Wisconsin
Bank of New Richmond, New Richmond, Wisconsin
First Bank of Oconomowoc, Oconomowoc, Wisconsin
Community Bank of Oconto County, Oconto Falls, Wisconsin
River Valley State Bank, Rothschild, Wisconsin
Bank of Somerset, Somerset, Wisconsin
Farmers and Merchants State Bank, Stanley, Wisconsin
Community Bank, Superior, Wisconsin
Bank of Verona, Verona, Wisconsin
Marathon Savings Bank, Wausau, Wisconsin

Federal Home Loan Bank of Des Moines—District 8

Name/City/State

Liberty Bank, FSB, Arnolds Park, Iowa
Citizens Bank and Trust Company, Belle Plaine, Iowa
City State Bank, Central City, Iowa
Midwest Heritage Bank, FSB, Chariton, Iowa
Iowa State Bank, Des Moines, Iowa
Peoples Savings Bank, Elma, Iowa
Lee County Bank and Trust, N.A., Fort Madison, Iowa
Grinnell State Bank, Grinnell, Iowa
Security State Bank, Independence, Iowa
Community First Bank, Keosauqua, Iowa
Pleasantville State Bank, Pleasantville, Iowa
Great River Bank and Trust, Princeton, Iowa
First Federal Savings Bank of Siouxland, Sioux City, Iowa
Northeast Security Bank, Sumner, Iowa
Farmers and Merchants Savings Bank, Waukon, Iowa
Earlham Savings Bank, West Des Moines, Iowa
Farmers Savings Bank, West Union, Iowa
First Trust and Savings Bank, Wheatland, Iowa
North American State Bank, Belgrade, Minnesota
Bremer Bank, N.A., Brainerd, Minnesota
Stearns Bank Canby, Canby, Minnesota
First National Bank of Chaska, Chaska, Minnesota
Bremer Bank, N.A., Detroit Lakes, Minnesota
Republic Bank, Inc., Duluth, Minnesota
F & M Bank—Cannon Valley, Dundas, Minnesota
Bremer Bank, N.A., International Falls, Minnesota
Security State Bank of Lewiston, Lewiston, Minnesota
Minnwest Bank Luverne, Luverne, Minnesota
Premier Bank, Maplewood, Minnesota
Security State Bank of Marine, Marine on St. Croix, Minnesota
Bremer Bank, N.A., Marshall, Minnesota
Franklin National Bank of Minneapolis, Minneapolis, Minnesota
L.B. Community Bank & Trust, Minneapolis, Minnesota
Northeast Bank of Minneapolis, Minneapolis, Minnesota
First Minnetonka City Bank, Minnetonka, Minnesota
Minnwest Bank Central, Montevideo, Minnesota
Farmers State Bank of New London, New London, Minnesota
Woodlands National Bank, Onamia, Minnesota
United Community Bank, Perham, Minnesota
Farmers and Merchants State Bank of Pierz, Pierz, Minnesota
Security State Bank of Pine Island, Pine Island, Minnesota
First National Bank and Trust, Pipestone, Minnesota
State Bank of Richmond, Richmond, Minnesota
Minnesota First Credit and Savings, Inc., Rochester, Minnesota
Royalton State Bank, Royalton, Minnesota
Capital Bank, Saint Paul, Minnesota
BEACONBANK, Shorewood, Minnesota
Southview Bank, South St. Paul, Minnesota
Bremer Bank, N.A., South St. Paul, Minnesota
Farmers & Merchants State Bank of Springfield, Springfield, Minnesota
Liberty Savings Bank fsb, St. Cloud, Minnesota
Highland Banks, St. Michael, Minnesota
First Integrity Bank, Staples, Minnesota
Central Bank, Stillwater, Minnesota
Northern State Bank of Thief River Falls, Thief River Falls, Minnesota
Community Bank Vernon Center, Vernon Center, Minnesota
Security State Bank of Wells, Wells, Minnesota
State Bank of Wheaton, Wheaton, Minnesota
Bremer Bank, N.A., Willmar, Minnesota
Town and County State Bank of Winona, Winona, Minnesota
Bank of Advance, Advance, Missouri
Carroll County Savings and Loan Association, Carrollton, Missouri
Enterprise Bank, Clayton, Missouri
Bank of Crocker, Crocker, Missouri
First Midwest Bank of Dexter, Dexter, Missouri
Farmers and Merchants Bank of Hale, Hale, Missouri
Farmers and Commercial Bank, Holden, Missouri
Midwest Independent Bank, Jefferson City, Missouri
Exchange National Bank, Jefferson City, Missouri
Union Bank, Kansas City, Missouri
Bank Midwest N.A., Kansas City, Missouri
Bannister Bank and Trust, Kansas City, Missouri
Country Club Bank, n.a., Kansas City, Missouri
First Community Bank of Johnson County, Knob Knoster, Missouri
Madison-Hunnewell Bank, Madison, Missouri
Martinsburg Bank and Trust, Mexico, Missouri

Central Bank of Lake of the Ozarks, Osage Beach, Missouri
First Midwest Bank of Poplar Bluff, Poplar Bluff, Missouri
First Community Bank, Missouri; Poplar Bluff, Missouri
Citizens Bank of Princeton, Princeton, Missouri
Bank of Rothville, Rothville, Missouri
Anheuser-Busch Employees' Credit Union, St. Louis, Missouri
Citizens National Bank of Greater St. Louis, St. Louis, Missouri
Jefferson Bank and Trust Company, St. Louis, Missouri
St. Louis Postal Credit Union, St. Louis, Missouri
First Community National Bank, Steelville, Missouri
American Sterling National Bank, Sugar Creek, Missouri
Bank of Sullivan, Sullivan, Missouri
Carter County State Bank, Van Buren, Missouri
West Plains Bank, West Plains, Missouri
Bank of Weston, Weston, Missouri
Bank Center First, Bismarck, North Dakota
Bank of North Dakota, Bismarck, North Dakota
CountryBank, USA, Cando, North Dakota
Security First Bank of Oliver County, Center, North Dakota
Citizens State Bank, Grafton-Petersburg Grafton, North Dakota
Bremer Bank, N.A., Minot, North Dakota
Security State Bank of North Dakota, New Salem, North Dakota
American State Bank & Trust Co. of Williston, Williston, North Dakota
Hand County State Bank, Miller, South Dakota
First National Bank, Pierre, South Dakota
Rushmore Bank & Trust, Rapid City, South Dakota
The First National Bank in Sioux Falls, Sioux Falls South Dakota
Marquette Bank South Dakota, N.A., Sioux Falls, South Dakota
Day County Bank, Webster, South Dakota

Federal Home Loan Bank of Dallas—District 9

Name/City/State

Union Bank of Benton, Benton, Arkansas
First National Bank, Berryville, Arkansas
First Community Bank, P.A., Conway, Arkansas
First National Bank of De Queen, De Queen, Arkansas
First National Bank, DeWitt, Arkansas
Bank of England, England, Arkansas
First National Bank, Glenwood, Arkansas
First National Bank of Green Forest, Green Forest, Arkansas
Helena National Bank, Helena, Arkansas
Bank of North Arkansas, Melbourne, Arkansas
Commercial Bank and Trust Company, Monticello, Arkansas
First National Bank and Trust Company, Mountain Home, Arkansas
Perry County State Bank, Perryville, Arkansas
Simmons First National Bank, Pine Bluff, Arkansas
Bank of Prescott, Prescott, Arkansas
Merchants and Planters Bank, Sparkman, Arkansas
First National Bank, Beinville Parrish, Arcadia, Louisiana
Louisiana Bank and Trust Company, Baton Rouge, Louisiana
Citizens National Bank of Bossier City, Bossier City, Louisiana
Parish National Bank, Covington, Louisiana
Catahoula—LaSalle Bank, Jonesville, Louisiana
Metro Bank, Kenner, Louisiana
Hibernia National Bank, New Orleans, Louisiana
Guaranty Bank and Trust Company, New Roads, Louisiana
Tensas State Bank, Newellton, Louisiana
Patterson State Bank, Patterson, Louisiana
Iberville Trust and Savings Bank, Plaquemine, Louisiana
Rayne State Bank and Trust Company, Rayne, Louisiana
Teche Bank and Trust Company, St. Martinville, Louisiana
Bank of Sunset and Trust Company, Sunset, Louisiana
Washington State Bank, Washington, Louisiana
Citizens Bank, Columbia, Mississippi
Bank of Kilmichael, Kilmichael, Mississippi
Peoples Bank, Mendenhall, Mississippi
Bank of Morton, Morton, Mississippi
Merchants and Planters Bank, Raymond, Mississippi
First National Bank of Wiggins, Wiggins, Mississippi
Valley National Bank, Espanola, New Mexico
Lea County State Bank, Hobbs, New Mexico
Bank of the Rio Grande, Las Cruces, New Mexico
White Sands Federal Credit Union, Las Cruces, New Mexico
Bank of the Southwest, Roswell, New Mexico
Bank of Texas, Austin, Texas
Austin County State Bank, Bellville, Texas
The First National Bank of Bryan, Bryan, Texas
First Bank and Trust, Childress, Texas
Founders National Bank, Dallas, Texas
Norwest Bank El Paso, N.A., El Paso, Texas
Southwest Bank of Fort Worth, Fort Worth, Texas
Hometown Bank, Galveston, Texas
Gruver State Bank, Gruver, Texas
The First State Bank, Hawkins, Texas
Northwest Bank, N.A., Houston, Texas
Hull State Bank, Hull, Texas
Industry State Bank, Industry, Texas
Fredonia State Bank, Nacogdoches, Texas
The First National Bank of Refugio, Refugio, Texas

Federal Home Loan Bank of Topeka—District 10

Name/City/State

Cheyenne Mountain Bank, Colorado Springs, Colorado
Bank of Cherry Creek, N.A., Denver, Colorado
FirstBank of Cherry Creek, Denver, Colorado
FirstBank of Denver, Denver, Colorado
Union Bank and Trust, Denver, Colorado
Mesa National Bank, Grand Junction, Colorado
FirstBank of Colorado, N.A., Lakewood, Colorado
FirstBank of South Jeffco, Littleton, Colorado
Peoples National Bank, Monument, Colorado
Labette County State Bank, Altamont, Kansas
Union State Bank, Arkansas City, Kansas
The Baxter State Bank, Baxter Springs, Kansas
Community Bank, Chapman, Kansas
First National Bank, Derby, Kansas
Pony Express Community Bank, Ellwood, Kansas
Citizens State Bank, Gridley, Kansas
Citizens State Bank and Trust Company, Hiawatha, Kansas
First National Bank of Hutchinson, Hutchinson, Kansas
Brotherhood Bank and Trust Company, Kansas City, Kansas
Gold Bank, Leawood, Kansas
Security National Bank, Manhattan, Kansas
Peoples Bank and Trust Company, McPherson, Kansas
First Neodesha Bank, Neodesha, Kansas
Hillcrest Bank, Olathe, Kansas
Grant County Bank, Ulysses, Kansas
Union State Bank, Uniontown, Kansas
Corner Bank, N.A., Winfield, Kansas
Battle Creek State Bank, Battle Creek, Nebraska
First National Bank, Beemer, Nebraska
Columbus Bank and Trust Company, Columbus, Nebraska

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Fremont National Bank and Trust Company, Fremont, Nebraska
Thayer County Bank, Hebron, Nebraska
First National Bank and Trust of Kearney, Kearney, Nebraska
Union Bank and Trust Company, Lincoln, Nebraska
McCook National Bank, McCook, Nebraska
Adams Bank and Trust, Ogallala, Nebraska
First Westroads Bank, Inc., Omaha, Nebraska
Omaha State Bank, Omaha, Nebraska
Metro Health Services Federal Credit Union, Omaha, Nebraska
Mutual First Federal Credit Union, Omaha, Nebraska
First National Bank in Ord, Ord, Nebraska
First National Bank, Schuyler, Nebraska
Pinnacle Bank, N.A., Shelby, Nebraska
Stanton National Bank, Stanton, Nebraska
Farmers and Merchants State Bank of Wayne, Wayne, Nebraska
American State Bank, Broken Bow, Oklahoma
Oklahoma National Bank of Duncan, Duncan, Oklahoma
The First National Bank in Durant, Durant, Oklahoma
First United Bank and Trust Company, Durant, Oklahoma
Central Nationall Bank & Trust Company of Enid, Enid, Oklahoma
Farmers and Merchants National Bank, Fairview, Oklahoma
Security First National Bank, Hugo, Oklahoma
Landmark Bank Company, N.A., Madill, Oklahoma
First Fidelity Bank, Oklahoma City, Oklahoma
Lincoln National Bank, Oklahoma City, Oklahoma
Southwestern Bank and Trust Company, Oklahoma City, Oklahoma
Pauls Valley National Bank, Pauls Valley, Oklahoma
Home National Bank, Ponca City, Oklahoma
Pioneer Bank and Trust, Ponca City, Oklahoma
First United Bank, Sapulpa, Oklahoma
First State Bank in Temple, Temple, Oklahoma
Citizens Bank of Tulsa, Tulsa, Oklahoma
First Farmers National Bank, Waurika, Oklahoma

Federal Home Loan Bank of San Francisco—District 11

Name/City/State

Johnson Bank, Phoenix, Arizona
Norwest Bank Arizona, N.A., Phoenix, Arizona
City National Bank, Beverly Hills, California
Gold Country National Bank, Brownsville, California
North State National Bank, Chico, California
North County Bank, Escondido, California
Imperial Capital Bank, Glendale, California
Foothill Independent Bank, Glendora, California
The Bank of Hemet, Hemet, California
First Fidelity Thrift and Loan Association, Irvine, California
Hewlett Packard Employees FCU, Palo Alto, California
Mid Valley Bank, Red Bluff, California
North Valley Bank, Redding, California
Mechanics Bank of Richmond, Richmond, California
Roseville First National Bank, Roseville, California
Trans Pacific National Bank, San Francisco, California
Bank of the West, San Francisco, California
Montecito Bank and Trust, Santa Barbara, California
Bank of America Community Development Bank, Walnut Creek, California
BYL Bank Group, Yorba Linda, California
Nevada State Bank, Las Vegas, Nevada
First Bank of Beverly Hills, FSB, Portland, Oregon

Federal Home Loan Bank of Seattle—District 12

Name/City/State

Bank of Hawaii, Honolulu, Hawaii
D.L. Evans Bank, Burley, Idaho
Citizens Bank and Trust Company, Big Timber, Montana
Bank of Bridger, Bridger, Montana
Citizens State Bank of Choteau, Choteau, Montana
State Bank and Trust Company, Dillon, Montana
First National Bank of Fairfield, Fairfield, Montana
Fairview Bank, Fairview, Montana
First Security Bank of Malta, Malta, Montana
First Citizens Bank of Polson, Polson, Montana
First State Bank of Thompson Falls, Thompson Falls, Montana
Ruby Valley National Bank, Twin Bridges, Montana
First National Bank of the Rockies, White Sulphur Spring, Montana
Whitefish Credit Union, Whitefish, Montana
O.S.U. Federal Credit Union, Corvallis, Oregon
The Merchants Bank, Gresham, Oregon
Community Bank, Joseph, Oregon
Valley of the Rogue Bank, Rogue River, Oregon
State Employees Credit Union, Salem, Oregon
Barnes Banking Company, Kaysville, Utah
Cache Valley Bank, Logan, Utah
Inter Bank, Duvall, Washington
Peoples Bank, Lynden, Washington
Pend Oreille Bank, Newport, Washington
Inland Northwest Bank, Spokane, Washington
Telco Community Credit Union, Tacoma, Washington
Clark County School Employees Credit Union, Vancouver, Washington
Towne Bank, Woodinville, Washington
Norwest Bank Wyoming, N.A., Casper, Wyoming
Shosone First Bank, Cody, Wyoming

To encourage the submission of public comments on the community support performance of Bank members, on or before April 28, 2000, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 2000–01 first quarter review cycle. 12 CFR 944.2(b)(2)(ii). In reviewing a member for community support compliance, the Finance Board will consider any public comments it has received concerning the member. 12 CFR 944.2(d). To ensure consideration by the Finance Board, comments concerning the community support performance of members selected for the 2000–01 first quarter review cycle must be delivered to the Finance Board on or before the May 29, 2000 deadline for submission of Community Support Statements.

Dated: April 7, 2000.

By the Federal Housing Finance Board.

William W. Ginsberg,

Managing Director.

[FR Doc. 00–9137 Filed 4–13–00; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 24, 2000.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Nacis Joseph Theriot, June Lefebvre Theriot, Nacis John Theriot, and Clara Bell Lefebvre, all from Cut Off, Louisiana; to acquire additional voting shares of Lafourche Bancshares, Inc., Larose, Louisiana, and thereby indirectly acquire additional voting shares of South Lafourche Bank & Trust Company, Larose, Louisiana.

Board of Governors of the Federal Reserve System, April 10, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–9270 Filed 4–13–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 10, 2000.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106–2204:

1. eOneBanc Corp., Manchester, New Hampshire; to become a bank holding company by acquiring 100 percent of the voting shares of First Alliance Bank and Trust, Manchester, New Hampshire.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Murphy-Payne Investments, Ltd., Tyler, Texas; to become a bank holding company by acquiring 47.55 percent of the voting shares of Carthage State Bancshares, Inc., Carthage, Texas; and thereby indirectly acquire First State Bank and Trust Co., Carthage, Texas.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Wells Fargo & Company, San Francisco, California; to acquire 100 percent of the voting shares of National Bancorp of Alaska, Anchorage, Alaska, and thereby acquire National Bank of Alaska, Anchorage, Alaska.

Board of Governors of the Federal Reserve System, April 10, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–9269 Filed 4–13–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans. No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—02/14/2000			
20001477	Group Laperriere & Verreault Inc	Harnischfeger Industries, Inc., Debtor-in-Possession.	Beloit Corporation.
20001534	Winstar Communications, Inc	WamINet, Inc	WamINet, Inc.
20001546	Nortel Networks Corporation	Promatory Communications, Inc	Promatory Communications, Inc.
20001583	Vivendi, S.A	Three V Capital Limited	Three V Health, Inc.
20001601	WESCO International, Inc	CC America, Inc	CC America, Inc.
20001604	Sanmina Corporation	Harris Corporation	Harris Corporation.
20001608	AT&T Corp	SounDelux Entertainment Group of Delaware, Inc.	SounDelux Entertainment Group of Delaware, Inc.
20001632	Aon Corporation	Gowin Holdings International Limited	Gowin Holdings International Limited.
20001641	Emerson Electric Company	Telefonaktiebolaget L M Ericsson	Automatic Systems Manufacturing Ltd. Ericsson Components AB.
20001648	Alberto-Culver Company	Corner J. Cottrell	Pro-Line Corporation.
20001658	Citigroup, Inc	State Street Corporation	State Street Corporation.
20001662	State Street Corporation	Citigroup, Inc	Citigroup, Inc.

Trans. No.	Acquiring	Acquired	Entities
20001669	Galileo International, Inc	The Trip.com, Inc	The Trip.com, Inc.
20001691	CNET, Inc	mySimon Inc	mySimon Inc.
20001696	UST Inc	Magoon Brothers, Limited	Guenoc Winery, Inc.
20001697	MJD Communications, Inc	Peoples Mutual Telephone Company	Peoples Mutual Telephone Company.
20001698	Tyco International Ltd	ITT Industries, Inc	GaAsTEK Division.
20001700	Thomas Everist	MDU Resources Group, Inc	MDU Resources Group, Inc.
20001701	MDU Resources Group, Inc	Thomas Everist	Connolly-Pacific Co.
20001704	RCN Corporation	21st Century Telecom Group, Inc	21st Century Telecom Group, Inc.
20001708	Flowers Industries, Inc	Dr. Bettina Behlsen and Mr. Huberus Bahlsen.	BDH, Inc.
20001709	HON Industries, Inc	Philip T. Mercer	American Fireplace Company, Health & Home, Inc.
20001714	ST Microelectronics N.V	8X8, Inc	8X8, Inc.
20001715	Conning Capital Partners V, L.P	Intek Information, Inc	Intek Information, Inc.
20001733	Grupo Carso, S.A. de C.V	CompUSA Inc	CompUSA Inc.
20001735	Norsk Hydro ASA	Gibbons, Goodwin, van Amerongen	Wells Aluminum Corporation.
20001739	HA–LO Industries, Inc	Starbelly.com, Inc	Starbelly.com, Inc.
20001740	Eric Lefkofsky	HA–LO Industries, Inc	HA–LO Industries, Inc.
20001741	Bradley Keywell	HA–LO Industries, Inc	HA–LO Industries, Inc.
20001746	theglobe.com, Inc	Yale & Christian Brozen	Chips & Bits, Inc., Strategy Plus, Inc.
20001750	Reckson Service Industries, Inc	Mitsubishi Estate Co., Ltd	Cushman & Wakefield, Inc.
20001751	Affiliated Computer Services, Inc	Birch & Davis Holdings, Inc	Birch & Davis Holdings, Inc.
20001754	David Litman	Barry Diller	HRN, Inc.
20001755	Robert Diener	Barry Diller	HRN, Inc.
20001756	Summit Bancorp	MSFG, Inc	MSFG, Inc.
20001757	Royster-Clark Group, Inc	Waterfield Holdings, Inc. (Debtor-in-possession).	Waterfield Holdings, Inc., (Debtor-in-possession).
20001758	Softbank Corp	DoveBid, Inc	DoveBid, Inc.
20001761	SBR, Inc	SMI Holdings, Inc	SMI Holdings, Inc.
20001765	TPG Partners III, L.P	Gemplus International S.A	Gemplus International S.A.
20001775	American Plumbing & Mechanical, Inc	Lloyd C. Smith	LDI Heating & Air Conditioning. LDI Mechanical. Lindy Dennis, Inc.
20001776	Wakenfern Food Corp	William Glazier	Glaizer Supermarkets, Inc.
20001781	Sidney B. DeBoer	Robert L. Rice	Bob Rice Ford, Inc.
20001783	Hummer Winblad Venture Partners IV, L.P.	Homes.com, Inc	Homes.com, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—02/15/2000

20001525	Ariba, Inc	Tradex Technologies, Inc	Tradex Technologies, Inc.
20001565	U.S. Foodservice	Daniel R. Pollack	Stock Yards Packing Co., Inc.
20001576	Sinclair Broadcast Group, Inc	Mr. Edwin L. Edwards	WPTT, Inc.
20001639	George G. Beasley	Howard & Susan Goldsmith	HHH Broadcasting, Inc. HMS Broadcasting, Inc. HMS Broadcasting, Inc. Panamedia Square Realty, Inc. SMH Broadcasting, Inc.
20001707	Barry Diller	Precision Response Corporation	Precision Response Corporation.
20001712	HON Industries, Inc	Ron F. Skoronski	Allied Fireside, Inc., Fireplace & Spa, Inc. Madison Fire Place, Inc., The Minocqua Fireplace Company.
20001725	Linsalata Capital Partners Fund III, L.P	George G. Thomas	Adorn, Inc. and BWT, Inc.
20001795	United Auto Group, Inc	James W. McKee, III	Huntersville Motors, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—02/16/2000

19991506	Lifespan Corporation	Care New England Health System	Care New England Health System.
20001621	The Dow Chemical Company	Flexible Products Company	Flexible Products Company.

TRANSACTIONS GRANTED EARLY TERMINATION—02/17/2000

20001799	Abbott Laboratories	Elan Corporation, plc	Elan Pharmaceuticals, Inc.
20001837	Allied Waste Industries, Inc.	Republic Services Inc	Green Valley Environmental Corp., AAA Disposal of Tenn., Inc. PSI Waste Systems, Inc. Republic Services Group of Pennsylvania Hauling, LLC. York Waste Disposal, Inc.
20001838	Republic Services Inc.	Allied Waste Industries, Inc	BFI Waste Systems of North America, Inc. Browning-Ferris Industries of Florida, Inc.

Trans. No.	Acquiring	Acquired	Entities
			Browning-Ferris Industries of Florida, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—02/18/2000			
20001515	Oglebay Norton Company	Michigan Limestone Operations Limited Partnership.	Michigan Limestone Operations Limited Partnership.
20001653	CRH plc	The Shelly Company	The Shelly Company.
TRANSACTIONS GRANTED EARLY TERMINATION—02/22/2000			
20001603	Fresenius Aktiengesellschaft	Morrell M. Avram, M.D	AFMSM, Inc.
20001649	GlobeSpan, Inc	PairGain Technologies, Inc	PairGain Technologies, Inc.
20001705	Wallace N. Hersom	Power-One, Inc	Power-One, Inc.
20001771	KKR 1996 Fund, L.P	DPL, Inc	DPL, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—02/23/2000			
20001496	Pharmacia & Upjohn, Inc	Novo Nordisk A/S	Novo Nordisk Pharmaceutical, Inc.
20001610	Harman International Industries, Incorporated.	Crown International, Inc	Crown International, Inc.
20001611	Banco Santander Central Hispano, S.A	Merrill Lynch & Co., Inc	Merrill Lynch, Pierce, Fenner & Smith Incorporated.
20001637	Teleflex Incorporated	John H. Golden	Medical Marketing Group, Inc.
20001646	Telstra Corporation Ltd	Extant, Inc	Extant, Inc.
20001655	Diagnostic Clinic Medical Group, Inc	Caremark RX, Inc	Caremark RX, Inc.
20001671	Kenneth R. Thomson	Sylvan Learning Systems, Inc	Prometric, Inc.
20001688	SBC Communications Inc	SBC Communications Inc	Texas/Illinois Cellular Limited Partnership.
20001737	Workflow Management, Inc	Robert A. Houston Trust	Office Electronics, Inc., Houston Real Estate, Inc.
20001743	Calpine Corporation	IDACORP, Inc	Hermiston Power Partnership.
20001744	Calpine Corporation	TransCanada Pipelines Limited	Hermiston Power Partnership.
20001747	Harald Quandt Beteiligungen GmbH & Co.	AGIV Aktiengesellschaft	Carl Schenck AG.
20001759	Schneider National, Inc. Voting Trust	Michael A. Regan	Tranzact Systems, Ltd.
20001772	RWE Aktiengesellschaft	MCN Energy Group Inc	MCNIC CSG Pipeline Company.
20001774	Newell Rubbermaid Inc	Alan S. Tweed	Shur-Line, Inc.
20001777	Schottenstein Stores Corporation	Filene's Basement Corporation (debtor-in-possession).	Filene's Basement Corporation (debtor-in-possession).
20001778	Liberate Technologies	Source Media, Inc	SourceSuite LLC.
20001779	Liberate Technologies	Insight Communications Company, Inc	SourceSuite LLC.
20001787	Greteg Imaging Holding AG	Sienna Imaging, Inc	Sienna Imaging, Inc.
20001788	Pequot Partners Fund, L.P	FutureLink Corp	FutureLink Corp.
20001790	Pequot International Fund, Inc	FutureLink Corp	FutureLink Corp.
20001792	General Motors Corporation	Pacific Union Real Estate Group, Ltd	Pacific Union Real Estate Group, Ltd.
20001794	David L. Epstein	Barry Diller	USA Networks, Inc.
20001800	Source Media, Inc	Liberate Technologies	Liberate Technologies.
20001801	Insight Communications Company, Inc	Liberate Technologies	Liberate Technologies.
20001802	ITOCHU Corporation	Robert A. Kolikof	Prudential Metal Supply Corp.
20001803	Jeffrey H. Smulyan	The Walt Disney Company	Los Angeles Magazine Holding Company, Inc.
20001807	Kenneth Adelman	Nokia Corporation	Nokia Corporation.
20001808	David Kashtan	Nokia Corporation	Nokia Corporation.
20001813	Amazon.com, Inc.	living.com Inc	living.com Inc.
20001816	Landmark Communications, Inc	Litton Industries, Inc	WSI Corporation.
20001819	Welsh, Carson, Anderson & Stowe VIII, L.P.	Bridge Information Systems, Inc	SAVVIS Communications Corporation.
20001820	Minnesota Mining and Manufacturing Company.	Polaroid Corporation	Polaroid Corporation.
20001824	North Castle Partners II, L.P	Saratoga Beverage Group, Inc	Saratoga Beverage Group, Inc.
20001825	HMTF Bridge Partners, L.P	Viatel, Inc	Viatel, Inc.
20001826	Science Applications International Corporation.	ODS Networks, Inc	ODS Networks, Inc.
20001827	Bracknell Corporation	Sunbelt Integrated Trade Services, Inc	Sunbelt Integrated Trade Services, Inc.
20001828	The Rank Group Plc	Pioneer Corporation	Pioneer Video Manufacturing, Inc.
20001832	Amer Group Ltd	Ray DeMarini	DeMarini Sports, Inc.
20001834	Crown Group, Inc	JELD-WEN, Inc.	West One Automotive Group, Inc.
20001835	Craig McCaw	Concentric Network Corporation	Concentric Network Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—02/24/00			
20001629	ValueClick, Inc	ValueClick, Inc	ValueClick, Inc.
20001630	DoubleClick, Inc	DoubleClick, Inc	DoubleClick, Inc.
20001679	Omaha World-Herald Company	Joe R. Seacrest Children Ireovocable Trust, Dec. 26, 1985.	Western Publishing Co.

Trans. No.	Acquiring	Acquired	Entities
20001734	Clariant AG	BTP plc	BTP plc.
20001766	Accel V L.P.	AlphaBlox Corporation	AlphaBlox Corporation.
20001789	Pequot Private Equity Fund II, L.P.	FutureLink Corp	FutureLink Corp.
20001793	Birdsong Corporation	ED & F Man Group plc	Farmers Fertilizer & Miller Company, Inc.
20001797	Madison Dearborn Capital Partners III, L.P.	Dr. Ashok K. Thareja	OrbLynx, Inc.
20001805	Warren A. Hood, Jr.	Bonar International S.A	Bonar Inc.
20001841	Elaso Energy Partners, L.P	El Paso Energy Corporation	El Paso Intrastate Alabama Pipeline.
20001845	BroadVision, Inc	Interleaf, Inc	Interleaf, Inc.
20001846	Code, Hennessy & Simmons IV, L.P.	PNC Bank Corp.	Cerex Advanced Fabrics, L.P.
20001848	Arch Chemicals, Inc.	Wacker-Chemie GmbH (a German company).	Wacker-Chemie GmbH (a German company).
20001849	Critical Path, Inc.	RemarQ Communities, Inc	RemarQ Communities, Inc.
20001850	Omnicom Group Inc.	Bernard Swain	Washington Speakers Bureau, Inc.
20001851	Omnicom Group Inc.	Harry Rhoads, Jr	Washington Speakers Bureau, Inc.
20001852	Paul G. Allen	Falcon/Capital Cable Partners, L.P	Falcon/Capital Cable Partners, L.P.
20001859	Vattern Industrier AB	CMI Industries, Inc	Chatham Borgstena, Inc. CMI Industries, Inc.
20001860	William P. Stiritz	Ogden Corporation	Ogden Fairmont Inc.
20001864	Thoma Cressey Fund VI, L.P.	Thomas J. Chisholm	Voice Integrators, Inc.
20001868	Colony Investors IV, L.P.	FirstWorld Communications, Inc	FirstWorld Communications, Inc.
20001876	TPG Partners III, L.P.	FirstWorld Communications, Inc	FirstWorld Communications, Inc.
20001877	T3 Partners, L.P.	FirstWorld Communications, Inc	FirstWorld Communications, Inc.
20001943	Footstar Inc.	Just For Feet, Inc., debtor-in-possession.	Just For Feet of Nevada, Inc., SNKR-Stadium Inc. Just For Feet of Texas, Inc., Just For Feet Specialty Stores. Sneaker Holdings Corp. Athletic Attic Marketing, Inc.
20001753	Parlex Corporation	Cookson Group plc	Polyflex Circuits, Inc.
20001762	Brian L. Roberts	TGC, Inc	TGC, Inc.
20001786	Trelleborg AB	Invensys plc	Invensys plc.

TRANSACTIONS GRANTED EARLY TERMINATION—02/28/2000

20001337	The DII Group, Inc.	Hewlett-Packard Company	Hewlett-Packard Company.
20001727	Aur Resources Inc.	Cambior Inc	Cambior Inc.
20001729	M. Francois Pinault	Charles M. Steiner	Adaryan Co. Branch Electric Supply Co., Inc. Branch Group, Inc.
20001732	Charterhouse Equity Partners III, L.P.	Gretchen Artig-Swomley	Soft Link, Inc.
20001764	ViaSat, Inc.	Scientific-Atlanta, Inc	Scientific-Atlantic, Inc.
20001811	Mohr, Davidow Ventures IV, L.P.	AlphaBlox Corporation	AlphaBlox Corporation.
20001815	Bruce R. Katz	Prospero Technologies Corporation	Prospero Technologies Corporation.
20001822	PECO Energy Company	Vitts Networks Group, Inc	Vitts Networks Group, Inc.
20001823	VTech Holdings Limited	AT&T Corp	AT&T Corp.
20001831	Newcourt Rail, L.L.C.	The Howard Gillman Foundation, Inc	St. Mary's Railroad Corporation.
20001836	Citigroup Inc.	Schroders plc	Schroder & Co. Inc.
20001862	Brian L. Roberts	Richard Treibick	Alexcom Limited Partnership.
20001870	Frontenac VII Limited Partnership	Robert Ben	System Technology Associates, Inc.
20001873	Delco Remy International, Inc.	M&M Knopf Auto Parts, Inc	M&M Knöpf Auto Parts, Inc.
20001875	Andrx Corporation	Valmed Pharmaceutical, Inc	Valmed Pharmaceutical, Inc.
20001878	AT&T Corp.	Cable Communications Cooperative of Palo Alto, Incorporated.	Cable Communications Cooperative of Palo Alto, Incröprated.
20001880	Hicks, Muse, Tate & Furst Equity Fund III, L.P.	Hicks, Muse, Tate & Furst Equity Fund II, L.P.	Wirekraft Industries, Inc.
20001881	Code, Hennessy & Simmons III, L.P.	Douglas D. Cline	Midland Delivery Service, Inc. Midland Holding Company.
20001882	RNG Group Inc.	Mr. Peter Frank	Patterson Street Gulf Service, Inc.
20001883	LHH Corporation	Manhattan Eye, Ear and Throat Hospital.	Ten Hoeve Bros., Inc. Manhattan Eye, Ear and Throat Hospital.
20001885	Bracknell Corporation	Inglett & Stubbs, Inc	Inglett & Stubbs, Inc.
20001886	Citadel Communications Corporation	Media/Communications Partners III, Limited Partnership.	Bloomington Broadcasting Holdings, Inc.
20001889	Adecco SA	Anthony J. Petullo, Jr	Olsten of Milwaukee, Inc.
20001890	Intel Corporation	Ambient Technologies, Inc	Ambient Technologies, Inc.
20001891	Michael J. Fitzpatrick	JDS Uniphase Corporation	JDS Uniphase Corporation.
20001895	UGI Corporation	All Star Gas Corporation	All Star Gas, Inc. of California. All Star Gas, Inc. of Idaho. All Star Gas, Inc. of Nevada. All Star Gas, Inc. of Oregon.

Trans. No.	Acquiring	Acquired	Entities
20001897	Centre Capital Investors III, L.P.	Paxar Corporation	All Star Gas, Inc. of Washington.
20001899	Sanjay Subhedar	JDS Uniphase Corporation	International Imaging Materials, Inc.
20001900	Ming Shih	JDS Uniphase Corporation	JDS Uniphase Corporation.
20001908	SDL, Inc.	Veritech Microwave, Inc	JDS Uniphase Corporation.
20001910	Molex Incorporated	Axsys Technologies, Inc	Veritech Mirowave, Inc.
20001940	Sybron International Corporation	SeraCare, Inc	Axsys Technologies, Inc.
20001985	CVC European Equity Partners II, L.P.	Ronald O. Perelman	SeraCare Technology, Inc.
			Femodyl Professionals Inc.
			Mafco Holdings, Inc.
			Roux Laboratories, Inc.
20001998	CVC European Equity Partners II, L.P.	Beauty Care Professional Products Participations SA.	Beauty Care Professionals Products Participations SA.
TRANSACTIONS GRANTED EARLY TERMINATION—02/29/2000			
20001914	Dycom Industries, Inc.	Daniel B. Fugal	Neils Fugal Sons Company.
TRANSACTIONS GRANTED EARLY TERMINATION—03/01/2000			
20000901	American Greeting Corporation	Egreetings Network, Inc	Egreetings Network, Inc..
20000903	American Greetings Corporation	Gibson Greetings, Inc	Gibson Greetings, Inc.
20001796	Ascot plc	Dr. Bob G. Gower	Specified Fuels & Chemicals, LLC.
20001915	Dycom Industries, Inc.	Guy L. Fugal	Neils Fugal Sons Company.
20001916	Daniel B. Fugal	Dycom Industries, Inc	Dycom Industries, Inc.
20001917	Guy L. Fugal	Dycom Industries, Inc	Dycom Industries, Inc.
20001986	Fabri-Steel Products Incorporated	Charles R. Russell, Jr	Progressive Stamping Co., Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—03/02/2000			
20001839	American General Corporation	Berkshire Fund IV, Limited Partnership	Cypress Tree Asset Management Corporation, Inc.
			Cypress Tree Funds Distributors, Inc.
20001937	The Washington Post Company	Eugene C. Pullam Trust	Central Newspapers, Inc.
20001974	Private Equity Investor, III, L.P	Nationwide Formalwear, Inc	Nationwide Formalwear, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—03/03/2000			
20001736	Monitor Clipper Equity Partners, L.P	Robert Kashan	Earth Color Group, Inc.
20001809	LMR Protector Limited	Alterra Healthcare Corporation	Alterra Healthcare Corporation.
20001810	Allied Waste Industries, Inc	Laurel Mountain Partners Investments II, LLC.	GEK, Inc.
20001812	CBS Corporation	Peter J. Calihan	Palm Beach Radio Broadcasting, Inc.
20001821	Consolidated Edison, Inc.	NorthEast Optic Network, Inc	NEON Communications, Inc.
20001887	Quanex Corporation	Lincolnshire Equity Fund, L.P	Imperial Products, Inc.
20001901	Internet Capital Group, Inc.	Universal Access, Inc	Universal Access, Inc.
20001902	Compagnie de Saint-Gobain	Meyer International PLC	Meyer International PLC.
20001912	Cardinal Health, Inc	Nestle S.A	Alcon (Puerto Rico) Inc.
20001918	GTCR Fund VII L.P	Synagro Technologies, Inc	Synagro Technologies, Inc.
20001923	Taiwan Aerospace Corporation	Sino-Aerospace Investment Corporation.	Sino Swearingen Aircraft Corporation.
20001924	Yao-Hwa Glass Company Ltd., Management Commission.	Sino-Aerospace Investment Corporation.	Sino Swearingen Aircraft Corporation.
20001930	Claudio Lucchese	The Siam Cement Public Co. Ltd	TileCera Distributing, Inc.
			TileCera, Inc.
20001931	Richard Treibick	USN Communications, Inc. (Debtor-in-Possession).	USN Communications, Inc. (Debtor-in-Possessing).
20001932	Paul G. Allen	Stamps.com Inc	Encryp Tix, Inc.
20001933	Symantec Corporation	L–3 Communications Holdings, Inc	L–3 Communications Network Security Systems, L.L.C.
20001939	Swedish Match AB	General Cigar Holdings, Inc	General Cigar Holdings, Inc.
20001948	Anthem Insurance Companies, Inc	Associated Hospital Service of Maine	Associated Hospital Service of Maine.
20001949	Fremont Partners, L.P	Edward J. Wroble	Software Architects Training Company.
			Software Architects, Inc.
20001950	Fremont Partners, L.P	Gene G. Petrie	Software Architects, Inc.
20001954	Paul G. Allen	The Times Mirror Company	The Sporting News.
20001960	American International Group, Inc	Perini Corporation	Perini Corporation.
20001963	Swiss Reinsurance Company	PennCorp Financial Group, Inc. debtor-in-possession.	Security Life and Trust Insurance Co./ Southwestern Life Co.
20001969	VIAG AG	Cott Corporation	BCB USA Corp.
20001970	Rhone Capital LLC	Testamentary Trust or Robert E. Richardson.	University Swaging, Inc.
20001972	Microsoft Corporation	T1MSN	T1MSN.
20001973	Telefonos de Mexico, S.A. de C.V.	T1MSN	T1MSN.
20001981	Mr. Lance Fors	PE Corporation	PE Corporation.
20001982	Wells Fargo & Company	Douglas Furniture of California, Inc	Douglas Furniture of California, Inc.
20001983	Smiths Industries plc	Douglas C. and Betty L. Sampson	Florida RF Labs, Inc.
20001984	Textron Inc.	Safeguard Scientifics, Inc	Safeguard Scientifics, Inc.

Trans. No.	Acquiring	Acquired	Entities
20001987	Rudiger Baeres	SightSound.com Incorporated	SightSound.com Incorporated.
20001989	Brockway Moran & Partners Fund, L.P.	Dal D. Rogers	High Tech West, Inc.
20001992	National Grape Cooperative Association, Inc.	General Electric Company	MEP II LLC.
20002001	White Mountains Insurance Group, Ltd.	Risk Capital Holdings, Inc	Risk Capital Reinsurance Company.
20002003	William H. Dunn	R.J. Griffith, Jr	R.J. Griffith & Company.
20002006	Landry's Seafood Restaurants, Inc	Rainforest Cafe, Inc	Rainforest Cafe, Inc.
20002013	HMTF Equity Fund IV (1999), L.P.	Rhythms NetConnections Inc	Rhythms NetConnections Inc.
20002014	HMTF Bridge Partners, L.P.	Rhythms NetConnections Inc	Rhythms NetConnections Inc.
20002016	Summit/DPC Partners, L.P.	Doane Pet Care Enterprises, Inc	Doane Pet Care Enterprises, Inc.
20002022	Jupiter Partners LLC	Central Vermont Public Service Corp	The HomeServiceStore.com.
TRANSACTIONS GRANTED EARLY TERMINATION—03/06/2000			
20001791	Solvay S.A	Allied Industrial Group, Inc	Chemtech Products, Inc.
20001964	ATI Technologies, Inc	ArtX, Inc	ArtX, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—03/07/2000			
20002039	EM.TV & Merchandising AG	The Jim Henson Company, Inc	The Jim Henson Company, Inc.
20002060	The Bank of New York Company, Inc	Bank of Montreal	Harris Bankcorp Inc. Harris Bankcorp Inc.
20002099	MBNA Corporation	Comerica Incorporated	Comerica Bank, Comerica Bank, National Association. Comerica Bank—California, Comerica Bank—Texas.
TRANSACTIONS GRANTED EARLY TERMINATION—03/08/2000			
20002083	The Lubrizol Corporation	RPM, Inc	Alox Corporation. Alox of Delaware, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—03/09/2000			
20001830	Reckson Service Industries, Inc.	HQ Global Workplaces, Inc	HQ Global Workplaces, Inc.
20001840	Motorola, Inc.	Communication Systems Technology, Inc.	Communication Systems Technology, Inc.
20001855	Ray C. Anderson	CMI Industries, Inc	CMI Industries, Inc.
20001856	CMGI, Inc.	divine interVentures, Inc	divine interVentures, Inc.
20001857	divine interVentures, Inc.	CMGI, Inc	CMGI, Inc.
20001903	Hoya Corporation	Mathias E. Schmidt-Wetekan	Optical Resources Group, Inc.
20001905	Holy Cross Health System Corporation	St. Mary Hospital of Livonia	St. Mary Hospital of Livonia.
20001906	Quanta Services, Inc.	Utilities Construction Co., Inc. of South Carolina.	Utilities Construction Co., Inc. of South Carolina.
20001911	Microsoft Corporation	Travelscape.com	Travelscape.com.
20001921	Holy Cross Health System Corporation	Mercy Health Services	Mercy Health Services.
20001922	GenRad, Inc.	Thermo Electron Corporation	Sierra Research and Technology, Inc.
20001925	Bracknell Corporation	Robert Allen and Vicki Sue Schmidt (husband and wife).	Schmidt Electric Company, Inc.
20001941	Hellman & Friedman Capital Partners IV L.P.	Kenneth R. Thomson	The Thomson Company, Inc.
20001947	Microsoft Corporation	VacationSpot.com, Inc	VacationSpot.com, Inc.
20001967	NACCO Industries, Inc.	Joseph G. Wheeler	Yale Carolinas, Inc.
20001971	Anthony Gartland	Sun Microstamping, Inc	Sun Microstamping, Inc.
20001976	Akamai Technologies, Inc.	InterVU Inc	InterVU Inc.
20001980	Dentsu Inc.	BDM, Inc. Voting Trust	BDM, Inc.
20001990	Brockway Moran & Partners Fund, L.P.	Tom D. Rogers	High Tech West, Inc.
20001994	Jack D. Hightower	Unocal Corporation	Pure Energy Resources, Inc.
20002021	HMTF Equity Fund IV (1999), L.P.	Metrocall, Inc	Metrocall, Inc.
20002023	Catholic Health East	SPHS Corporation	Saint Joseph of the Pines, Inc.
20002026	Daniel Green Company	John R. Riedman	Penobscot Shoe Company.
20002029	White Mountains Insurance Group, Ltd.	Humana Inc	PCA Property and Casualty Insurance Company.
20002030	North Castle Partners II, L.P.	Terrence J. Lemerond	Enzymatic Therapy, Inc.
20002055	ECI Telecom Ltd.	Hubbell Incorporated	Pulse Communications, Inc.
20002134	AT&T Corp.	GRC International, Inc	GRC International, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—03/10/2000			
20000748	Gannett Co., Inc.	Joseph Lewis Allbritton	Allbritton Jacksonville, Inc. WJXX Licensee Inc.
20001847	Finlay Enterprises, Inc	Jay B. Rudolph, Inc	Jay B. Rudolph, Inc.
20001927	Bain Capital Fund VI, L.P.	VDI Multimedia, Inc	VDI Multimedia, Inc.
20001928	Medical Manager Corporation	Medical Manager Corporation	The Health Information Network Connection.
20001934	Verior Inc	CIBER, Inc	Agilera.com, Inc.

Trans. No.	Acquiring	Acquired	Entities
20001935	Leap Wireless International, Inc	Anthony R. Chase	Chase Telecommunications Holdings, Inc.
20001938	Eugene C. Pulliam Trust	The Washington Post Company	BrassRing, Inc.
20001968	BCE Inc	United Payors & United Providers Inc	United Payors & United Providers Inc.
20001993	AT&T Corp	Metrocall, Inc	Metrocall, Inc.
20002004	Bitten og Mads Clausens Fond	Danfoss Murmann Holoding A/S	Danfoss Murmann Holding A/S.
20002009	Edward S. Rogers	Andre' Chagnon	Le Groupe Videotron Ltee.
20002020	HMTF Bridge Partners, L.P.	Metrocall, Inc	Metrocall, Inc.
20002024	BATM Advanced Communications, Limited.	World Access, Inc	Telco Systems, Inc.
20002031	VerticalNet, Inc	Peter LeSaffre	R. W. Electronics, Inc.
20002032	VerticalNet, Inc	Robert R. Benedict	R. W. Electronics, Inc.
20002033	Peter L. LeSaffre	VerticalNet, Inc	VerticalNet, Inc.
20002041	Cisco Systems, Inc	Growth Networks Inc	Growth Networks Inc.
20002046	Messer Industrie Gesellscaft mbH	Aventis S.A	MG Systems.
20002048	GS Capital Partners III, L.P.	ProMedCo Management Company	ProMedCo Management Company.
20002050	Benchmark Capital Partners, II, L.P.	Critical Path, Inc	Critical Path, Inc.
20002051	Benchmark Founders, Fund II, L.P.	Critical Path, Inc	Critical Path, Inc.
20002052	The Manitowoc Company, Inc	Multiplex Company, Inc	Multiplex Company, Inc.
20002058	Oliver Isaac	George M. Hofmeister	American Commercial Steel, Inc.
20002061	Zebra Technologies Corporation	Alfred J. Petteruti	Comtec Information Systems, Inc.
20002063	The Titan Corporation	Dr. William C. Lindsey	William C. Lindsey, Inc. (d/b/a LinCom Corporation).
20002064	Deutsche Post AG	Robert J. Mitzman	Q International Couier, Inc.
20002068	Clayton Dubilier & Rice Fund VI Limited Partnership.	Clayton, Dubilier & Rice Fund V Limited Partnership.	Kinko's and Kinkos.com.
20002069	America Online, Inc	Clayton, Dubilier & Rice Fund V Limited Partnership.	Kinko's and Kinkos.com.
20002073	Capital Z Financial Services Fund II, L.P.	Trading Edge, Inc	Trading Edge, Inc.
20002075	Union Planters Bank, National Association.	Whitney Equity Partners, L.P	Strategic Outsourcing, Inc.
20002077	H.J. Heinz Company	Junki Yoshida	Yoshida Food Products Co. L.P.
20002078	Autoliv, Inc	NSK Ltd.	NSK Safety Technology, Inc.
20002082	United Auto Group, Inc	Declaration of Trust of James G. Pilla	Motorcars East, Inc. Motocars Infiniti, Inc. Motorcars West, Inc.
20002088	AT&T Corp	Ascent Entertainment Group, Inc	Ascent Entertainment Group, Inc.
20002090	USANi, LLC	Styleclick.com, Inc	Styleclick.com, Inc.
20002092	Internet Capital Group, Inc	Onvia.com Inc	Onvia.com Inc.
20002093	Elisabeth Badinter	Fallon Group, Inc	Fallon Group, Inc.
20002094	SBC Communications Inc	Sterling Commerce, Inc	Sterling Commerce, Inc.
20002102	AT&T Corp	Dow Jones & Company, Inc	Dow Jones & Company, Inc.
20002103	Dow Jones & Company, Inc	AT&T Corp	●Home. DJC.
20002107	Internet Capital Group, Inc	eCredit.com.Inc	eCredit.com, Inc.
20002110	Peregrine Systems, Inc.	Telco Research Corporation Limited	Telco Research Corporation Limited.
20002111	Service Corporation International	Memorial Operations Company	Provident Servcies, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—03/13/2000

20001644	Eaton Corporation	Honeywell International, Inc	Grimes Aerospace Company.
20002125	Chesapeake Corporation	Green Printing Company, Inc. Employee Stock Ownership Plan.	Green Printing Company, Inc.
20002140	Billing Concepts Corp	Donald C. Licciardello	Princeton eCom Corporation.
20002142	Christopher E. Edgecomb	World Access, Inc	World Access, Inc.
20002146	Salah M. Hassanein	AT&T Corp	AT&T Corp.
20002151	AT&T Corp	Crown Media Holdings, Inc	Crown Media Holdings, Inc.
20002154	Red Robin International Inc., a Nevada Corporation.	The Snyder Group Company, a Delaware Corporation.	The Snyder Group Company, a Delaware Corporation.
20002157	Phone.com, Inc	Onebox.com, Inc	Onebox.com, Inc.
20002158	Young & Rubicam Inc	Robinson Lerer & Montgomery, LLC	Robinson Lerer & Montgomery, LLC.
20002162	Triumph Group, Inc	Roger W. Blanchard	ACR Industries, Inc.
20002165	Mackie Designs Inc	Evelyn Berger	Eastern Acoustic Works, Inc.
20002168	Rexall Sundown, Inc	David J. McCabe	Worldwide Sports Nutritional Supplements, Inc.
20002169	Stichting Administratiekantoor ABN AMRO Holding.	Bank One Corporation	American National Bank & Trust Company.
20002170	EnergyUnited Electric Membership Corporation.	All Star Gas Corporation	All Star Gas Corporation.
20002173	Chase Manhattan Corporation	Crown Media Holdings, Inc	Crown Media Holdings, Inc.
20002175	JDA Software Group, Inc	Pricer AB	Intactix International.
20002177	Warburg, Pincus Equity Partners, L.P.	Gerald W. Schwartz	insLogic.com Holding Corporation.
20002180	CMGI, Inc.	Tallan, Inc	Tallan, Inc.

Trans. No.	Acquiring	Acquired	Entities
20002181	Beacon Group Energy Investment Fund II, L.P.	Capstone Turbin Corporation	Capstone Turbine Corporation.
20002182	Vitro, S.A. de C.V.	SunSource, Inc	Harding Glass, Inc.
20002191	Thayer Equity Investors IV, L.P.	A.B. Holdings, LLC	EnterpriseWorks, LLC.
20002195	John Swire & Sons Limited	Coca-Cola Bottling Company of Ogden	Coca-Cola Bottling Company of Ogden.
20002197	Dan River Inc.	Nicholas Papaley	Import Specialists, Inc.
20002200	Alpha Industries, Inc.	Network Device, Inc	Network Device, Inc.
20002206	Ocean Group plc	Exel plc	Exel plc.
20002219	MBNA Corporation	Regions Financial Corporation	Regions Bank.
TRANSACTIONS GRANTED EARLY TERMINATION—03/14/2000			
20001894	Xantrex Technology, Inc.	OCM Principal Opportunities Fund, L.P.	Trace Holdings, LLC.
20001977	Shamrock Holdings, Inc.	Pacific Dunlop Limited	Pacific Dunlop Limited.
20002019	Daniel H. Rosenblum	ED & F Man Holdings Limited (Newco)	ED & F Man Holdings Limited (Newco).
20002028	Madison River Telephone Company, LLC.	Coastal Utilities, Inc	Coastal Utilities, Inc.
20002034	Aether System, Inc.	Metrocall, Inc	Metrocall, Inc.
20002035	Adelphia Communications Corporation	Anverse, Inc	Prestige Communications, Inc.
20002049	PSINet, Inc.	Metrocall, Inc	Metrocall, Inc.
20002054	Pacific Gateway Exchange, Inc.	Samuel Delug	NOS Communications, Inc. NOSVA Limited Partnership.
20002207	Iron Mountain Incorporated	Stephen M. Suddath	Data Storage Center, Inc. DSC of Florida, Inc. DSC of Massachusetts, Inc.
20002209	Staples, Inc.	BizBuyer.com, Inc.	BizBuyer.com, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—03/15/2000			
1992349	Alain de Krassny	Albright & Wilson plc	Albright & Wilson plc.
19992524	Rhone-Poulenc, S.A.	Alain De Krassny	Danube Chemcials Acquisition Corporation.
20001919	NatSteel Electronics, Ltd.	NEC Corporation	NEC America, Inc.
20001979	Leucadia National Corporation	Fidelity National Financial, Inc.	Fidelity National Financial, Inc.
20002017	TPG Partners III, L.P.	Mary Pat Link and John D. Strohm	Interlink Group, Incorporated.
20002018	T3 Partners, L.P.	Mary Pat Link and John D. Strohm	Interlink Group, Incorporated.
20002066	Paul G. Desmarais	Aetna Inc	Aetna Inc.
20002123	Thayer Equity Investors III, L.P.	ePlus inc	ePlus inc.
20002166	Charles W. Ergen	Michael Kelly	Kelly Broadcasting Systems, Inc.
20002190	Michael Kelly	Charles W. Ergen	Echostar Communications Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—03/16/2000			
20000874	Spectrum Equity Investors II, L.P.	Pathnet Telecommunications, Inc	Pathnet Telecommunications, Inc.
20000875	Spectrum Equity Investors, L.P.	Pathnet Telecommunications, Inc	Pathnet Telecommunications, Inc.
20000881	Colonial Telecommunictions, Inc.	Pathnet Telecommunications, Inc	Pathnet Telecommunications, Inc.
20000883	CSX Corporation	Pathnet, Inc	Pathnet Inc.
20001035	Burlington Northern Santa Fe Corporation.	Pathnet Telecommunications, Inc	Pathnet Telecommunications, Inc.
20001942	T3 Partners, L.P.	Gemplus International S.A	Gemplus International S.A.
20001944	Maximus, Inc.	David B. Crawford	Crawford Consulting, Inc.
20001945	John C. Malone	Cendant Corporation	Cendant Corporation.
20001959	IWO Holdings, Inc.	Sprint Corporation	Sprint Spectrum L.P., Sprint Spectrum Equipment Company, L.P. Sprint Spectrum Realty Company, L.P.
20002053	Pacific Gateway Exchange, Inc.	Robert A. Lichtenstein	NOS Communications, Inc. NOSVA Limited Partnership.
20002057	Terayon Communication Systems, Inc.	Tyco International Ltd	Tyco International Ltd.
20002059	Nalato AB	Shieldmate Robotics, Inc	Shieldmate Robotics, Inc.
20002080	Parksite, Inc.	Plunkett-Webster, Inc	Plunkett-Webster, Inc.
20002087	Gary L. Wilson	Bridgeport Holdings Inc	Bridgeport Holdings Inc.
20002128	Gilbert Global Equity Partners, L.P.	Amkor Technology, Inc	Amkor Technology, Inc.
20002129	Gilbert Global Equity Partners (Bermuda) L.P.	Amkor Technology, Inc	Amkor Technology, Inc.
20002130	AIG Global Emerging Markets Fund, L.L.C.	Amkor Technology, Inc	Amkor Technology, Inc.
20002131	AIG Asian Opportunity Fund, L.P.	Amkor Technolgoy, Inc	Amkor Technology, Inc.
20002137	Wingate Partners II, L.P.	RWE AG	REP Environmental Processes, Inc.
20002141	World Access, Inc.	Christopher E. Edgecomb	Christoper E. Edgecomb.
20002178	TDK Corporation	Headway Technologies, Inc	Headway Technologies, Inc.
20002193	Benjamin M. Rosen	Capstone Turbine Corporation	Capstone Turbine Corporation.

Trans. No.	Acquiring	Acquired	Entities
20002208	The United Company	Bebe Selig Burns	West End Lumber Company, Inc.
20002216	Roper Industries, Inc.	Goerdt K. Abel	AHC, Inc.
20002220	North Castle Partners II, L.P.	Chiquita Brands International, Inc	California Day-Fresh Foods, Inc.
20002242	Softbank Corp.	Electron Economy, Inc	Electron Economy Inc.
	TRANSACTIONS GRANTED EARLY TERMINATION—03/17/2000		
20001997	Unocal Corporation	General Motors Corporation	Energy Spectrum-Alberta Hub, Inc.
20002074	The Sherwin-Williams Company	General Polymers Corporation	General Polymers West, Inc.
20002079	Adsteam Marine Limited	Booth Creek Partners Limited IV, LLLP	Northland Holdings, Inc.
20002081	United Auto Group, Inc.	Lee G. Seidman	Motorcars East, Inc. Motorcars Infiniti, Inc. Motorcars West, Inc.
20002132	SCP Private Equity Partners II, L.P.	Amkor Technology, Inc	Amkor Technology, Inc.
20002135	SAFECO Corporation	Concur Technologies, Inc	Concur Technologies, Inc.
20002138	Walter-Sutton Media Partners, L.P.	Choice One Communications, Inc	Choice One Communications, Inc.
20002144	MSCP III 892 Investors, L.P.	Choice One Communications, Inc	Choice One Communications, Inc.
20002152	Voting Trust dated December 4, 1968 of v/s of Hallmark Cards.	Crown Media Holdings, Inc	Crown Media Holdings, Inc.
20002179	Quantum Industrial Holdings, Ltd.	CuraGen Corporation	CuraGen Corporation.
20002275	Prestige Brands International, Inc.	Procter & Gamble Company, (The)	The Procter & Gamble Manufacturing Company.
	TRANSACTIONS GRANTED EARLY TERMINATION—03/20/2000		
20001833	Global Employment Solutions, Inc.	TEAM America Corporation	TEAM America Corporation.
20002027	Computershare Limited	Bank of Montreal	Harris Bancorp, Inc., Harris Trust and Savings Bank. Harris Trust Company of California. Harris Trust Company of New York.
20002036	Adelphia Communications Corporation	Jonathan J. Oscher	Presitge Communications of NC, Inc.
20002095	Alta Subordinated Debt Partners III, L.P.	Marshall W. Pragon	Pegasus Communications Corporation.
20002096	Alta Communications VI, L.P.	Marshall W. Pagon	Pegasus Communications Corporation.
20002097	Spectrum Equity Investors, L.P.	Marshall W. Pagon	Pegasus Communications Corporation.
20002098	Spectrum Equity Investors II, L.P.	Marshall W. Pagon	Pegasus Communications Corporation.
20002139	Quad-C Partners V, L.P.	Skylark Company, Ltd	Red Robin International, Inc.
20002147	AT&T Corp.	Wine.com, Inc	Wine.com, Inc.
20002153	El Paso Energy Corporation	ONEOK, Inc	ONEOK Gas Processing, L.L.C.
20002174	Vivendi, S.A.	The Times Mirror Compnay	The StayWell Company.
20002185	Asbury Automotive Group, L.L.C.	M.F. Hutchinson	Hutchinson Automotive Group.
20002192	Fremont Investor, Inc.	DoveBid, Inc	DoveBid, Inc.
20002196	The William Communications Group, Inc.	SBC Communications Inc	Ameritech Communications, Inc.
20002199	TRW Inc.	Endgate Corporation	Endgate Corporation.
20002214	Reliant Energy, Incorporated	Vivendi S.A	Sithe Northeast Generating Company, Inc.
20002215	Everett R. Dobson Irrevocable Family Trust.	Lone Star Cellular, Inc	Lone Star Cellular, Inc.
20002218	Equity Residential Properties Trust	Globe Holding Co., Inc	Globe Holding Co., Inc.
20002222	Equifax Inc.	R.L. Polk & Co	R.L. Polk & Co.
20002223	Amerada Hess Corporation	Den norske stats oljeselskap a.s	Statoil Energy Services, Inc.
20002227	Clarica Life Insurance Company	Sun Life Assurance Co. of Canada	Sun Life of Canada Reinsurance (Barbados) Limited. Sun Life of Canada Reinsurance (U.S.) Holdings, Inc.
20002231	The Heritage Group	Pennzoil-Quaker State Company	Pennzoil-Quaker State Company.
20002233	Cenex Harvest States Cooperatives	Dakota Valley Mill, LLC	Dakota Valley Mill, LLC.
20002245	Advance Group, Inc.	TSG2 L.P	Sunburst Products, Inc.
20002247	Tweeter Home Entertainment Group, Inc.	Shelley Miller	United Audio Centers, Inc.
20002248	ESCO Electronics Corporation	William E. Curran, Sr	Lindgren,Inc Inc.
20002250	Ridley Corporation Limited	Contigroup Companies, Inc	Contigroup Companies Inc.
20002252	Ennis Business Forms, Inc.	Northstar Computer Forms, Inc	Northstar Computer Forms, Inc.
20002267	William U. Parfet	Monsanto Company	Monsanto Company.
20002268	Donald Parfet	Monsanto Company	Monsanto Company.
20002286	Canadian Occidental Petroleum, Ltd.	Occidental Petroleum Corporation	CXY Chemicals U.S.A.
	TRANSACTIONS GRANTED EARLY TERMINATION—03/21/2000		
20001631	i2 Technologies, Inc.	International Business Machines Corporation.	International Business Machine Corporation.
20001861	James E. Koons	Estate of James M. Kline	Kline Collision Repair Center, Inc. Kline Imports of Arlington, Inc. Kline Tysons Imports, Inc.

Trans. No.	Acquiring	Acquired	Entities
20002253	SPX Corporation	Fenner PLC	Fenner PLC.
20002255	SBS Technologies, Inc	SDL Communications, Inc	SDL Communications, Inc.
20002271	FPL Group, Inc	Enron Corporation	Lake Benton Power Partners II, LLC.
20002278	Henry J. Bertolon, Jr	Gateway, Inc	Gateway, Inc.
20002280	Wolters Kluwer nv	Harcourt General, Inc	Harcourt General, Inc.
20002293	Countrywide Credit Industries, Inc.	FirstPlus Financial Group, Inc	Western Interstate Bancorp.
20002296	United Auto Group, Inc.	Russell J. Dellen	Dellen Oldsmobile, Inc.
20002297	Campart S.p.A	Montedison S.p.A	Montedison S.p.A.
20002305	Everest Re Group, Ltd	The Prudential Insurance Company of America.	Gibraltar Casualty Company.
20002309	Brian L. Roberts	Netlab L.L.C	Online Retail Partners, Inc.
20002310	Bass PLC	Bristol Hotels & Resorts	Bristol Hotels & Resorts
20002317	Leggett & Platt, Incorporated	Gunter & Gloria Preuss (spouses)	Genesis Fixtures, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—03/22/2000

20002010	Unican Security Systems Ltd	Jimmy Hamilton	Mas-Hamilton Group, Inc.
20002113	EDO Corporation	AIL Technologies Inc	AIL Technologies Inc.
20002229	Gerald W. Schwartz	Dana Corporation	Echlin Inc.
20002236	Myllykoski Corporation	OCM Opportunities Fund, L.P.	FSC Corporation

TRANSACTIONS GRANTED EARLY TERMINATION—03/22/2000

20002056	Medical Manager Corporation	Blue Cross and Blue Shield of.	Blue Cross and Blue Shield of Massachusetts, Inc.
20002067	Mortgage.com, Inc	Openclose.com, Inc	Openclose.com, Inc., a Florida Corporation
20002104	Tyco International Ltd	The Morgan Crucible Company plc	Dulmison Inc.
20002109	BuildNet, Inc	NxTrend Technology, Inc	NxTrend Technology, Inc.
20002201	Lee Enterprises, Incorporated	Midwest Publishing Statutory Trust	Midwest Publishing Statutory Trust
20002202	Green Equity Investors II, L.P.	Midwest Publishing Statutory Trust	Adrian Access Shopper, Sturgis Journal, The Weekender (TMC) Adrian Daily Reporter, Adrian Medley (TMC) Sturgis Getaway Shopper, Coldwater Daily Reporter The Reporter Extra (TMC), Coldwater Shoppers Guide
20002257	Perot Systems Corporation	Mark G. Miller	Solutions Consulting, Inc.
20002258	Mark G. Miller	Perot Systems Corporation	Perot Systems Corportion.
20002260	Reed International P.L.C	Endeavor Information Seystems, Inc	Endeavor Information Systems, Inc.
20002261	Elsevier NV	Endeavor Information Systems, Inc	Endeavor Information Systems, Inc.
20002282	Harcourt General, Inc	Harcourt General, Inc	M.D. Consult, LLC.
20002298	FFT Partners I, L.P.	SICOR, Inc	SICOR, Inc
20002300	Marc Ladreit de Lacharriere	Duff & Phelps Credit Rating Co	Duff & Phelps Credit Rating Co.
20002312	FFT Partners I, L.P	Vectie Corporation	Vectie Corporation.
20002313	Vectis Corporation	Telesis Medical Management, Inc	Telesis Medical Management, Inc.
20002318	N.V. Bekaert S.A	United Solar Systems Corp	United Solar Systems Corp.
20002319	United Rentals, Inc	Robert Linekin	R.P.L. Equipment Co., Inc.
20002321	Mortimer B. Zuckerman	Embark.com, Inc	Embark.com, Inc
20002322	Embark.com, Inc.	Mortimer B. Zuckerman	U.S. News & World Report LP.
20002327	Andrew J. McKelvey	System One Services, Inc	System One Services, Inc.
20002330	Schlumberger Limited	CellNet Data Systems, Inc	CellNet Data Systems, Inc.
20002331	Rockwell International Corporation	Entek IRD International Corporation	Entek IRD International Corporation.
20002335	Clarian Health Partners, Inc.	Goshen Health Systems, Inc	Goshen Health Systems, Inc.
20002341	COMSYS Holding, Inc.	Marsh Newmark	Design Strategy Corporation. Network Integration Services, Inc.
20002343	Netcentives Inc. Post Communications, Inc Post Communications, Inc..		
20002344	DLJ Merchant Banking Partners II, L.P.	UbiquiTel Holdings, Inc	UbiquiTel Holdings, Inc.
20002345	MDS Inc. Phoenix International Life Sciences Inc.	Phoenix International Life Sciences Inc.	
20002352	Vincent A. Sheehy & Helen M. Sheehy	Richard E. Strauss Dick Strauss Ford, Inc.	
20002359	NetIQ Corp. Mission Critical Software Inc Mission Critical Software Inc.		
20002361	Tera Computer Company Silicon Graphics, Inc.	Silicon Graphics, Inc..	
20002421	Citigroup Inc	The Nikko Securities Co., Ltd	The Nikko Securities Co., Ltd.

TRANSACTIONS GRANTED EARLY TERMINATION—03/24/2000

20002136	The Toronto-Dominion Bank	Pathnet Telecommunications, Inc	Pathnet Telecommunications, Inc.
20002224	New Enterprise Associate VI, Limited Partnership.	Pathnet Telecommunications, Inc	Pathnet Telecommunications, Inc.

Trans. No.	Acquiring	Acquired	Entities
20002244	Triton Network Systems, Inc.	International Buisness Machines Corporation.	International Business Machines Corporation.
20002358	Marconi plc	Addison Fischer	Xcert International, Inc.
20002435	TPG Partners III, LP	Global Medical Products, Inc	Global Medical Products, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives. Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–9267 Filed 4–13–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 991 0218]

FMC Corporation, et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 8, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robert Tovsky, FTC/S–3105, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–2634.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 7, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") form FMC Corp. ("FMC"), Solutia Inc. ("Solutia"), and Astaris LLC ("Astaris"). The Consent Agreement is intended to resolve anticompetitive effects stemming from the proposed joint venture between FMC and Solutia to combine their respective phosphates and phosphorus derivatives businesses. The Consent Agreement includes a proposed Decision and Order (the "Order"), which would require FMC and Solutia to divest to Societe Chimique Prayon-Rupel ("Prayon") the portion of Solutia's phosphates business based in Augusta, Georgia, and to divest to Peak Investment, L.L.C. ("Peak") FMC's phosphorus pentasulfide business based in Lawrence, Kansas. The Consent Agreement also includes an Order to Maintain Assets which requires respondents to preserve the assets they are required to divest as viable, competitive, and ongoing operations until the divestitures are achieved.

The Order, if issued by the Commission, would settle charges that the proposed joint venture between FMC and Solutia may have substantially lessened competition in the United States markets for pure phosphoric acid and phosphorus pentasulfide. The Commission has reason to believe that the proposed joint venture would have violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The Commission's complaint, described below, relates the basis for this belief.

The proposed Order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the agreement and comments received and decide whether to withdraw its acceptance of the agreement or make the Order final.

According to the Commission's complaint, one relevant line of commerce in which to analyze the effects of the proposed joint venture between FMC and Solutia is pure phosphoric acid, and the relevant geographic market for this product is the United States. Pure phosphoric acid is used as an input into a wide variety of consumer and industrial products, ranging from cola beverages to cleaning compounds and metal treatments. The complaint describes FMC's and Solutia's production and sale of pure phosphoric acid, and further describes how each of the companies sells pure phosphoric acid directly to end-customers and uses it internally in the manufacture of different types of phosphate salts. According to the Commission's complaint, FMC and Solutia compete with each other in the manufacture and sale of pure phosphoric acid directly to end-customers, and in the manufacture and sale of phosphate salts.

The compliant alleges that the pure phosphoric acid market in the United States already is highly concentrated, and that the proposed joint venture would increase concentration in that market, as measured by the Herfindahl-Hirschman Index, by over 450 points, to a level over 2500. Furthermore, according to the complaint, new entry into this market is not likely.

The Commission's complaint further states that the market for pure phosphoric acid is conducive to coordination, that producers already

price independently of industry operating rates, and that producers target competitors' customers in retaliation against aggressive bidding as a means of deterring future competition. Furthermore, according to the complaint, prices for pure phosphoric acid are already the highest in the world. The complaint also describes how Solutia's agreement to purchase pure phosphoric acid from Emaphos, S.A. ("Emaphos"), a new producer of pure phosphoric acid in Morocco, makes Solutia the exclusive distributor in North America for Emaphos' pure phosphoric acid and restricts Emaphos from selling pure phosphoric acid to end-customers. According to the complaint, this provision of Solutia's agreement with Emaphos reduced the impact of potential competition from Emaphos in the United States market.

According to the Commission's complaint, another line of commerce in which to analyze the effects of the proposed joint venture is phosphorus pentasulfide. Phosphorus pentasulfide, which is typically sold in a solid, flake form to customers, is used primarily in the manufacture of chemical additives for engine lubricating oils, and also is used to a smaller extent in the manufacture of different types of insecticides. The complaint alleges that the only three companies that manufacture and sell phosphorus pentasulfide in the United States are Solutia, FMC and Rhodia, and Rhodia has announced that it is exiting the market. Therefore, the proposed joint venture would create a monopoly in this line of commerce. The complaint also states that the entry of new producers into this market is not likely. The complaint therefore alleges that the proposed joint venture would likely be able to exercise market power on a unilateral basis.

The proposed Order is designed to remedy the alleged anticompetitive effects of the joint venture in the United States markets for pure phosphoric acid and phosphorus pentasulfide, by requiring the divestiture to Prayon of Solutia's phosphates plant in Augusta, Georgia, and the divestiture to Peak of FMC's phosphorus pentasulfide plant in Lawrence, Kansas.

The Order would require respondents to divest the Augusta plant to Prayon within six months of the date that the Consent Agreement was accepted by the Commission. The Order would also require the respondents to provide Prayon with technology Solutia has used for manufacturing phosphates at the Augusta plant, and to divest other assets relating to the Augusta plant, including customer lists, contracts, and other intangible assets.

Prayon, based in Belgium, is one of the world's leading and lowest-cost producers of pure phosphoric acid. It operates two low-cost solvent-extraction plants to produce pure phosphoric acid in Belgium, and also is a partner in Emaphos, which operates a new low-cost solvent-extraction plant in Morocco. Prayon currently imports small volumes of pure phosphoric acid into the United States. With the acquisition of Solutia's Augusta plant, Prayon's presence in the United States would become much stronger, providing it with a base from which to expand its sales of pure phosphoric acid. Its competitive presence will also be enhanced by the Order's requirement that respondents revise the existing contract between Solutia and Emaphos so as to remove the restrictions that prevent Emaphos from selling pure phosphoric acid to end-customers. Emaphos' expansion in the United States through acquisition of the Augusta plant, and by virtue of the other provisions in the Order, will offset the loss of competition that would otherwise occur as a result of the joint venture.

The Order would also require respondents to divest FMC's phosphorus pentasulfide plant in Lawrence, Kansas to Peak within 30 days of the date that the joint venture is formed. The Order would require the respondents to provide Peak with technology FMC has used for manufacturing phosphorus pentasulfide at the Lawrence plant, and to divest other assets relating to the Lawrence plant, including customer lists, contracts, and other intangible assets. Because Peak will operate the phosphorus pentasulfide plant in Lawrence as part of a larger site that the joint venture will continue to own, and because Peak will rely on the joint venture for certain facilities and services, the proposed Order also contains several provisions designed to safeguard Peak's competitive position, in part by providing Peak with the opportunity to provide for itself the services and facilities it needs to operate the phosphorus pentasulfide plant. The proposed Order also contains a provision requiring the appointment of an interim trustee who would, for a period of two years, monitor the relationship at Lawrence to ensure that Peak has fair and full access to the services and facilities needed to operate the phosphorus pentasulfide plant.

If the Commission, at the time that it issues the Order, notifies respondents that it does not approve of the manner of either divestiture, or of either Prayon or Peak as purchasers of the Assets To Be Divested, the proposed Order provides that respondents would have five months to divest either the Augusta plant or the phosphorus pentasulfide business to a different acquirer. If respondents do not complete such divestiture in that period, a trustee would be appointed.

The Order to Maintain Assets that is also included in the Consent Agreement requires that respondents preserve the Assets To Be Divested as viable and competitive operations until they are transferred to the Commission-approved acquirers. It requires the respondents to maintain the viability and competitiveness of the Assets To Be Divested, and to conduct the businesses to be divested in the ordinary course of business. Furthermore, it includes an obligation on respondents to build and maintain inventories of products at the Augusta and Lawrence plants consistent with regular business practice. The Order to Maintain Assets also requires respondents to provide certain support to Prayon in advance of the divestiture of the Augusta plant, including agreements to toll produce phosphates at Augusta, to allow Prayon to maintain an engineer at the Augusta site, and to provide certain information to Prayon regarding the Augusta operations.

The Consent Agreement requires respondents to provide the Commission, within thirty (30) days of the date the Agreement is signed, with an initial report setting forth in detail the manner in which respondents will comply with the provisions relating to the divesture of assets. The proposed Order requires respondents to provide the Commission with a report of compliance with the Order within thirty (30) days following the date the Order becomes final and every thirty (30) days thereafter until they have complied with the divesture requirements of the Order,and also requires annual compliance reports for 10 years.

The purpose of this analysis is to facilitate public comment on the proposed Order. This analysis is not intended to constitute an official interpretation of the Consent Agreement or the proposed Order or in any way to modify the terms of the Consent Agreement or the proposed Order.

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Chairman Robert Pitofsky and Commissioners Sheila F. Anthony, Mozelle W. Thompson, Orson Swindle, and Thomas B. Leary

We believe that the divestitures and other relief mandated by the proposed

Commission order should restore the competition lost through the joint venture between FMC Corporation and Solutia Inc. Nevertheless, we recognize that both divestitures are somewhat out of the ordinary.

When remedying a Clayton Section 7 violation, the Commission usually orders a complete divestiture of one merging party's assets that produce the relevant product. In the pure phosphoric acid ("PPA") market, though, the Commission requires the divestiture to Prayon of a plant that manufactures phosphate salts but not PPA. And in the phosphorus pentasulfide market, the Commission orders the divestiture to Peak of what is essentially a "plant within a plant." Due to the novelty of the relief, the Commission will monitor closely the respondents' compliance with their obligations under the order and will ascertain whether the relief ordered in this case effectively restores competition in each of the markets.

[FR Doc. 00–9264 Filed 4–13–00; 8:45 am]
BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service; Notice of Intent To Prepare an Environmental Assessment/Environmental Impact Statement (EIS)

SUMMARY: The General Services Administration (GSA) hereby gives notice it intends to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS) pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, and the President's Council on Environmental Quality Regulations (40 CFR part 1500–1508), for the construction of a new Federal courthouse in Eugene/Springfield, Lane County, Oregon.

The EA/EIS will be prepared at the completion of, and based upon, a scoping report. The EA/EIS will evaluate the proposed project, any other reasonable alternatives identified through the scoping process, and the no-action alternative. Scoping will be accomplished through two public scoping meetings and direct mail correspondence to interested persons, agencies, parties, and organizations. The public scoping meetings will be held on May 2nd & 3rd, 2000. The scoping meeting on the 2nd will be at the Hilton Hotel, 66 East 6th Ave., Eugene, WA. The scoping meeting on the 3rd, will be held at the Springfield City Hall—Council Meeting Room, 225 5th Street, Springfield, OR. Both meetings will start at 6:30 p.m. with a open house at 6 p.m. GSA will publish a Public Notice of these meetings and all subsequent public meetings in the Eugene and Springfield newspapers approximately two weeks prior to each event. If an Environmental Assessment is prepared, it will be made available for public review. If significant impacts are not identified in the EA, GSA will issue a Finding of No Significant Impact (FONSI). If, upon completion of the EA, significant impacts to the environment are identified, GSA will then prepare an Environmental Impact Statement. Public meeting(s) will be held after the release of the Draft Environmental Impact Statement and GSA will respond to all relevant comments received during the 45 day public comment period through the Final Environmental Impact Statement. After a minimum 30-day period following publication of the Final Environmental Impact Statement, GSA will issue a Record of Decision that will identify the site selected.

SUPPLEMENTARY INFORMATION: GSA, assisted by Herrera Environmental Consultants, is anticipating the preparation of either the Environmental Assessment or Environmental Impact Statement on our proposal to acquire a site, and design and construct a new US Courthouse in Eugene/Springfield, Oregon. GSA will serve as the lead agency and scoping will be conducted consistent with NEPA regulations and guidelines. GSA invites interested individuals, organizations, federal, state and local agencies to participate in defining and identifying any significant impacts and issues to be studied in the EA/EIS, including social, economic, cultural, historic, or environmental concerns. Scoping will identify the significant issues to be analyzed in the environmental document and serve as a method for commenting on the alternatives.

Project Purpose, Historical Background, Description

The District Judges, Magistrates, and US Marshal are currently located in the existing US Courthouse in Eugene, Oregon. Bankruptcy and other court related Agencies are located in lease space in downtown Eugene. The existing Courthouse does not meet the requirements of the US Court's Design guide. The existing Courthouse/Federal building complex cannot be adapted to accommodate the required space and security needs of both the Court and Agency tenants.

Congress has authorized GSA to acquire a site for construction of the new US Courthouse. The approximate gross square feet planned for the project is 228,000 for all US District Court and Bankruptcy Court activities.

Alternatives

The EA/EIS will examine the short and long term impacts on the natural and built environment. The impact assessment will include, but not be limited to impacts such as cultural, historic, environmental, changes in land use, aesthetics, changes in traffic and parking patterns, economic impacts, and city planning and zoning.

The EA/EIS will also examine measures to mitigate significant unavoidable adverse impacts resulting from the proposed action. Concurrent with NEPA implementation, GSA will also implement its consultation responsibilities under Section 106 of the National Historic Preservation Act to identify potential impacts to existing historic or cultural resources.

The EA/EIS will consider a no action alternative. The no-action alternative (no-build) alternative would continue the occupancy in the existing courthouse and continue to lease Court space in Eugene.

The 5 alternative locations are:

Site 1: C Street, Mill Street, Main Street, and Willamette River, Springfield.

Site 2: 8th Ave, Mill Street, Railroad tracks, Eugene.

Site 3: Fronting on the north side of International Way, Tax lot 3500, Springfield.

Site 4: 4th Ave, Willamette River, Hilyard Street, Railroad tracks, High Street, Eugene.

Site 5: 8th Ave, Hilyard Street, Broadway, High Street, and Main Street, Eugene.

ADDRESSES: As part of the public scoping process, GSA solicits your written comments on the scope of alternatives and potential impacts at the following address: Michael D. Levine, Regional Environmental Program Officer, 10PCP, symbol), General Services Administration, 400 15th Street SW, Auburn, WA, 98001, or fax: 253–931–7263, or e-mail at Michael.Levine@GSA.GOV Written comments should be received no later than May X, 2000

FOR FURTHER INFORMATION CONTACT: John Meerscheidt at Herrera Environmental Consultants, 2200 Sixth Ave, Seattle, WA 98121 or call 206–441–9080, or Michael D. Levine, GSA, (206) 931–7263.

Mailing List

If you wish to be placed on the project mailing list to receive future or further information as the EIS process develops, contact Herrera at the address noted above.

Dated: April 6, 2000.

L. Jay Pearson,

Regional Administrator (10A).

[FR Doc. 00–9376 Filed 4–13–00; 8:45 am]

BILLING CODE 6820–23–M

GENERAL SERVICES ADMINISTRATION

Office of Communications; Cancellation of a Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The following Standard Form is cancelled because of low usage: SF 1012A, Travel Voucher (Memorandum).

DATES: Effective April 14, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581,

Dated: April 4, 2000.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 00–9377 Filed 4–14–00; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Privacy Act of 1974; New System of Records

AGENCY: National Institutes of Health, HHS.

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, the National Institutes of Health (NIH) is proposing to establish a new system of records, 09–25–0216, "Administration: NIH Electronic Directory, HHS/NIH."

DATES: NIH invites interested parties to submit comments concerning the proposed internal and routine uses on or before May 15, 2000. NIH has sent a report of a New System to the Congress and to the Office of Management and Budget (OMB) on April 3, 2000. This system of records will be effective May 24, 2000 unless NIH receives comments on the routine uses, which would result in a contrary determination.

ADDRESSES: Please submit comments to: NIH Privacy Act Officer, 6011 Executive Boulevard, Room 601, MSC 7669, Rockville, MD 20892, 301–496–2832. (This is not a toll free number.) Comments received will be available for inspection at this same address from 9 a.m. to 3 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: NIH Privacy Act Officer, 6011 Executive Boulevard, Room 601, MSC 7669, Rockville, MD 20892, 301–496–2832, (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The National Institutes of Health (NIH) proposes to establish a new system of records: 09–25–0216, "Administration: NIH Electronic Directory, HHS/NIH." The purpose of the NIH Electronic Directory system of records is to support e-government; allow effective controls over the creation, maintenance and use of records in the conduct of current business; provide for effective management of costs, operation and interconnectivity of NIH information systems; provide the required structure for network security; and provide an accurate source of directory information at the NIH.

This system of records will allow the NIH to reliably identify individuals and manage the federal resources and authorities assigned to them, *e.g.*, organizational telephone numbers, addresses, and security authorizations. A single 10-digit NIH unique identifier (UID) will be assigned to each individual to permit association of a single person with descriptive information and resources throughout their career. It will allow creation of accurate records for individuals in the NIH directory and ensure that duplicate data files are compared, corrected and combined for accuracy, thus eliminating redundancy and general errors in identification.

Data collected is used to build an NIH centralized source identification directory and provides for directory security, system authentication and authorization. This system supports NIH corporate business processes and electronic commerce. Other Privacy Act systems of records that utilize this system as a source or confirmation for identification information will show this system as a records source.

The records in this system will be maintained in a secure manner compatible with their content and use. NIH staff will be required to adhere to the provisions of the Privacy Act, HHS Privacy Act Regulations, and the requirements of the DHHS Automated Information Systems Security Program Handbook.

Records may be stored on electronic media and as hard-copy records. Manual and computerized records will be maintained in accordance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, and the Department's Automated Information System Security Program Handbook.

The following notice is written in the present, rather than future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system has become effective.

Dated: April 3, 2000.

Anthony L. Itteilag,

Deputy Director for Management, NIH.

SYSTEM NAME:

Administration: NIH Electronic Directory, HHS/NIH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Records are maintained in databases located within the NIH computer facilities and the files of NIH functional offices required to identify individuals in order to manage the federal resources and authorities assigned to them. A current list of sites, including the address of any Federal Records Center where records from this system may be stored, is available by writing the System Manager listed under Notification Procedures below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Users of NIH resources and services including but not limited to: current and past NIH employees, contractors, tenants of NIH facilities, participants in the NIH visiting programs, registered users of NIH computer facilities, grantees, reviewers, council members, collaborators, vendors, and parking permit holders. This system does not cover patients and visitors to the NIH Clinical Center.

CATEGORIES OF RECORDS IN SYSTEM:

This system is a source system that provides identification data to a variety of directory services at NIH that share comparable information and assign or relate dedicated federal resources to individuals. This system provides for a central directory that allows NIH to manage NIH corporate business processes and electronic commerce. The types of personal information in this directory are necessary to ensure the accurate identification of individuals.

doing business in or with the National Institutes of Health. The types of personal information included in this directory are: Name, alias names, date of birth, place of birth, Social Security Number, gender, home address, home phone number, home FAX number, personal pager number, personal mobile phone number, personal email address, emergency contacts, photograph, digitized written signature, digitized biometrics, and NIH-assigned unique identifier. Public data refers to non-sensitive information readily available to the general public (*e.g.*, name, building, room number, and work phone). Non-public data refers to sensitive/confidential information or data for which access is limited to appropriate staff with a valid need-to-know in the performance of their official job duties, or as outlined in the routine uses for disclosure (*e.g.*, SSN, gender, home address, date of birth, place of birth).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 302, 44 U.S.C. 3101 and 3102, Executive Order 9397.

PURPOSE:

The purpose is to establish a consolidated and centrally coordinated electronic directory to support e-government of administrative business processes; allow effective controls over the creation, maintenance and use of records in the conduct of current business; provide for effective management of costs, operation and interconnectivity of NIH information systems; provide the required structure for network security; and provide an accurate source of directory information at the NIH. Data collected is used to build an NIH centralized source identification directory and provides for directory security system authentication and authorization and supports NIH corporate business processes and electronic commerce. This system of records enables NIH to reliably identify individuals and those federal resources assigned to them. A NIH unique identifier (UID) will be assigned to each individual to permit identification of a single person with their descriptive information and resources throughout their career.

This system allows for the creation of accurate records for individuals in the NIH directory and ensures that duplicate data files are compared, corrected and combined for accuracy, thus eliminating redundancy. It is the central point of coordination for other automated systems that manage or track resources, particularly information security systems.

INTERNAL USE AND ACCESS TO PERSONAL INFORMATION:

Internal use and access to the personal information in this system will be limited to those with a valid need-to-know in the performance of their official duties. Typical internal uses of the system, including categories of users, uses of the data collected and the need for such use are as follows:

- Trans-NIH Human Resource Personnel, Administrative Officers, and administrative technicians, will access all public and non-public records for employees and/or NIH affiliates within their scope of responsibility to access/track staffing information such as personal/work contact information, physical location, and/or any other information to facilitate current NIH administrative business processes.
- Information Resources Management staff and Space and Facility Management personnel will have access to view public data (building location and work phone information) to coordinate access for, and the allocation of, telecommunication resources and building space/access.
- Supervisors, Administrative Officers and Administrative Technicians will have access to emergency contact information to enable them to contact someone in the event of an emergency.
- NIH central services staff, NIH police, and NIH management will access both public and non-public data to coordinate/track employee data required for other NIH business processes such as card key access, ID badges, parking permits, library resources, census information gathered for reporting requirements, employee development, training, campus security, and other administrative processes.
- NIH Security Officers, or other incident response personnel will have access to public/non-public data where NIH deems it necessary for official investigations or security incidents involving suspected intrusion, illegal activity, or unauthorized/unethical misuse of the system of records or data therein.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the records of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. Disclosure may be made to representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

3. Disclosure may be made to agency contractors, experts, consultants, or volunteers who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity. Recipients are required to maintain Privacy Act safeguards with respect to these records.

4. Disclosure may be made to respond to a Federal agency's request made in connection with the hiring or retention of an employee, the letting of a contract or issuance of a security clearance, grant, license, or other benefit by the requesting agency, but only to the extent that the information disclosed is relevant and necessary to the requesting agency's decision on the matter.

5. Disclosure may be made to the Department of Justice, or to a court or other adjudicative body, from this system of records when: (a) HHS, or any component thereof; or (b) any HHS officer or employee in his or her official capacity; or (c) any HHS officer or employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the officer or employee; or (d) the United States or any agency thereof where HHS determines that the proceeding is likely to affect HHS or any of its components, is a party to the proceeding or has any interest in the proceeding, and HHS determines that the records are relevant and necessary to the proceeding and would help in the effective representation of the governmental party.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN SYSTEM

STORAGE:

Records are maintained on electronic media such as computer tape and disk and/or hard-copy. Automated records are stored in controlled computer areas. Both manual and computerized records will be maintained in accordance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records", supplementary Chapter PHS hf: 45–13, and the Department's Automated Information System Security Program Handbook.

RETRIEVABILITY

Records are indexed and retrieved by: name, unique identifier, alias names, and social security number.

SAFEGUARDS:

1. *Authorized Users:* Non-public data on computer files is accessed by keyword known only to authorized users who are NIH employees or contractor staff who have a legitimate operational responsibility to access the data in the performance of their duties as determined by the System Manager. Staff are only granted access to those directories or fields for which they have operational responsibilities. User activity is recorded. Occurrences of non-routine user or operator activity are recorded. Public data is controlled by user-defined view via a web-based look-up table. View of public data is accessible and controlled via the NIH network.

2. *Physical Safeguards:* Physical access to the computer systems where records are stored is controlled through the use of door locks and alarms.

3. *Procedural and Technical Safeguards:* Access to the non-public data will be controlled through: password protection, user authentication, and system administration procedures for user access. User name and password authentication procedures are in place to protect non-public data from public view, and to prevent unauthorized personnel from accessing data. Logical access controls, based on job function, are in place to authorize and/or restrict the user activity and view of the data. Persons having access to data are restricted to a field-by-field confined user interface that permits a controlled, or narrow "view" of the data. Sensitive data transferred between NIH source databases is secured through encryption or similar manner. Digital certificates and automated user audit trail capabilities have been incorporated to ensure data integrity and to detect evidence of data tampering.

These practices are in compliance with standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records", supplementary Chapter PHS hf: 45–13, and the Department's Automated Information Systems Security Program Handbook.

RETENTION AND DISPOSAL:

Records may be retired to a Federal Records Center and subsequently disposed of in accordance with the NIH Records Control Schedule. The Records Control Schedule and disposal standard for these records may be obtained by writing to the System Manager at the address below.

SYSTEM MANAGER(S) AND ADDRESS:

NIH Privacy Act Officer, 6011 Executive Blvd., Suite 601, MSC 7669, Rockville, MD 20892.

NOTIFICATION PROCEDURES:

Write to the System Manager listed above. The requester must verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand-dollar fine. The request should include (a) Full name, and (b) address, and (c) year of records in question.

RECORD ACCESS PROCEDURES:

Write to the System Manager specified above to attain access to records and provide the same information as is required under the Notification Procedures. Requester should also reasonably specify the record content being sought. Individuals may also request an accounting of disclosure of their records, if any.

CONTESTING RECORDS PROCEDURES:

Address a petition for amendment to the System Manager. All requests must be in writing. The individual must identify himself/herself, specify the system of records from which the records are retrieved, the particular records to be corrected or amended, whether seeking an addition to or a deletion or substitution for the records, and the reason for requesting correction or amendment of the record.

RECORD SOURCE CATEGORIES:

NIH employees, contractors, and other persons who are using or performing services on behalf of the NIH, and the NIH human resource databases (*i.e.*, Human Resource Database (HRDB), Fellowship Payment System (FPS), J.E. Fogarty Database of Foreign Visiting Scientists (JEFIC), NIH Telecommunications Database (TELCOM), Parking and Identification Database (PAID), Email Directory and Forwarding Service (PH directory), and the Integrated Time and Attendance System (ITAS)).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 00–9186 Filed 4–13–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–24]

Notice of Submission of Proposed Information Collection to OMB; Evaluation of the Housing Opportunities for Persons With AIDS (HOPWA) Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 15, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how

frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Evaluation of the Housing Opportunities for Persons with AIDS (HOPWA) Program

OMB Approval Number: 2528–XXXX

Form Number: None.

Description of the Need for the Information and Its Proposed Use: The purpose is to evaluate the effectiveness of HUD's Housing Opportunities for Persons with AIDS (HOPWA) program. The information will be collected from government agencies receiving funds directly from HUD (acting as grantees), local governments and non-profits receiving funds from the grantees (acting as project sponsors) and low-income persons with HIV/AIDS who are assisted by the HOPWA program (acting as clients), non-profits receiving funds from the grantees (acting as project sponsors) and low-income persons with HIV/AIDS who are assisted by the HOPWA program (acting as clients).

Respondents: Business or other-for-profit, individuals or households, not-for-profit institutions, State, Local or Tribal Government.

Frequency of Submission: One-Time

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	×	Burden hours
Information Collection	650		1		.92		600

Total Estimated Burden Hours: 600

Status: New

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 7, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–9285 Filed 4–13–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–25]

Notice of Submission of Proposed Information Collection to OMB; Continuum of Care Homeless Assistance Application

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 15, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506–0112) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Continuum of Care Homeless Assistance Application.

OMB Approval Number: 2506–0112.

Form Numbers: HUD–40076–CoC, HUD–40076–2, HUD–40085–2.

Description of the Need for the Information and Its Proposed Use: Information is collected from potential grantees applying for grants under competitive homeless assistance programs.

Respondents: Not-for-profits, State, Local or Tribal Governments.

Frequency of Submission: Upon application for benefits.

Reporting Burden:

	Number of respondents	Frequency of responses	Total responses	Hours per response	Burden hours
Application	3,000	1	3,000	44	132,000
SHP/SRO tech	1,620	1	1,620	44	71,280
Total	3,000	2	4,620	44	203,280

Total Estimated Burden Hours: 203,280.

Status: Extension of currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 7, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–9286 Filed 4–13–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–26]

Notice of Submission Of Proposed Information Collection to OMB; Application for Indian Community Development Block Grant (ICDBG) Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 15, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0191) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Application for Indian Community Development Block Grant (ICDBG) Program.

OMB Approval Number: 2577–0191.

Form Numbers: HUD–4121, –4122, –4123, –4125, –4126.

Description of the Need for the Information and Its proposed use: HUD will announce funding availability for ICDBG Program in the **Federal Register**. Eligible applicants submit the information to HUD for review and grantee selection.

Respondents: State, Local, and Tribal Governments.

Frequency of Submission: One-time.

Reporting Burden	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
	320		1		40		12,800

Total Estimated Burden Hours: 12,800.

Status: Reinstatement of previously approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 7, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–9287 Filed 4–13–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–27]

Notice of Submission of Proposed Information Collection to OMB; Advance of Escrow Funds

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 15, 2000.

ADDRESSES: Interested pesons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0018) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD. gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will

be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Advance of Escrow Funds.

OMB Approval Number: 2502–0018.

Form Numbers: HUD–92464.

Description of the Need for the Information and Its Proposed Use: Building loan agreements executed between a mortgagor and mortgagee provide for the advancement of progress payments during construction. The information collected here facililtates such advances of escrow funds upon approval of the Commissioner and architect's and inspector's certification.

Respondents: Business or other for-profit entities and not-for-profit entities.

Frequency of Submission: On occasion.

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
	525		1		2		1,050

Total Estimated Burden Hours: 1,050.

Status: Reinstatement of previously approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 10, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–9288 Filed 4–13–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–15]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: April 14, 2000.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: April 6, 2000.

John D. Garrity,

Director, Office of Special Needs Assistance Program.

[FR Doc. 00–9040 Filed 4–13–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation and Wilderness Management Plan and Associated Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation and wilderness management plan and associated environmental impact statement.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) is preparing a Comprehensive Conservation and Wilderness Management Plan (CCP) and associated Environmental Impact Statement (EIS) for Cabeza Prieta National Wildlife Refuge (NWR), Pima and Yuma Counties, Arizona. Following the release of the second Draft CCP and associated Environmental Assessment (EA) and Finding of No Significant Impact (FONSI), in September 1998, the Regional Director determined that an EIS would be necessary due to the national significance of wilderness resources on the Cabeza Prieta NWR, and thus, the potential for significant impacts of proposed management actions on the resources. Therefore, the EA and FONSI associated with the draft CCP is hereby rescinded.

The Service is furnishing this notice in compliance with Service CCP policy and the National Environmental Policy Act (NEPA) and implementing regulations. This notice describes the proposed plan and possible alternatives, invites public participation in the scoping process for preparing the CCP and EIS, and identifies the Service official to whom questions and comments concerning the proposed action may be directed. Three open houses, for the purpose of public scoping, will be held from 4 pm to 8 pm on the following dates at the indicated locations.

1. Tuesday, June 6, 2000; Yuma, AZ at the Shilo Inn, 1550 S. Castle Dome.
2. Wednesday, June 7, 2000; Ajo, AZ at the Ajo Community Center at Bud Walker Park, 2090 E. 5th St.
3. Thursday, June 8, 2000; Tucson, AZ at the Holiday Inn Palo Verde, 4550 S. Palo Verde Rd.

The public is invited to drop by anytime from 4 pm to 7 pm to view materials, discuss issues and alternatives, and submit written and oral comments and questions. The purpose of this scoping is to verify if issues identified during the CCP/EA phase are still applicable, determine if there are any new major issues, and to receive comments on the range of proposed alternatives.

FOR FURTHER INFORMATION CONTACT: Don Tiller, Refuge Manager 520–387–6483 or Thea Ulen, Planner/CCP Project Manager 520–748–2090.

All comments received from individuals on Environmental Assessments and Environmental Impact Statements become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of

Information Act, the Council on Environmental Quality's NEPA regulations (40 CFR 1506.6(f)), and other Service and Departmental policy and procedures.

If you wish to comment, you may submit your comments by any one of several methods by May 15, 2000. You may mail comments to CCP Project Coordinator, 1611 N. 2nd St., Ajo, AZ 85321. You may also comment via the Internet to R2RW_CP@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include: "Attn: Cabeza Prieta CCP" and your name and return address in your Internet message. If you do not receive confirmation from the system that we have received your Internet message, contact us directly at Cabeza Prieta NWR , Don Tiller, 520–387–6483. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals, identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Planning Updates

A link to Planning Updates will be posted on the refuge website (www://southwest.fws.gov/refuges/arizona/cabeza.html) beginning mid-April, 2000, or mailed to those on the mailing list.

Address requests to be placed on the mailing list to: Planning Branch, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103. Be sure to indicate the Cabeza Prieta NWR list on your request.

SUPPLEMENTARY INFORMATION: The Service started the process of developing a Comprehensive Management Plan for Cabeza Prieta National Wildlife NWR in 1994 with three open houses and public meetings held in Yuma, Ajo, and Tucson. A focus group was assembled in February of 1995 to provide further assistance to the Service in developing possible alternatives. Day-long workshops open to the public were held in August of 1995 to refine detailed management suggestions. The Draft CCP and Environmental Assessment was released in August of 1997 and a second draft CCP and final EA was released in September of 1998. During preparation of the final CCP, the Service determined that substantial changes were needed to comply with legal responsibilities under the Wilderness Act of 1964 and Arizona Desert Wilderness Act of 1990. In January of 2000, the Regional Director determined to engage the development of an EIS for the CCP for Cabeza Prieta NWR because of the national significance of the refuge resources and wilderness.

Persons and organizations involved in the scoping process include: the U.S. Department of Interior, National Park Service and Bureau of Land Management; U.S. Department of Defense, Luke Air Force Base and Barry M. Goldwater Bombing Range (BMGR); Arizona Game and Fish Department (AGFD); leaders and members of the Tohono O'odham and Hia C-ed O'odham Nations; members of the Ajo Chamber of Commerce; members of the International Sonoran Desert Alliance; scientific experts from universities, members of national, state and local conservation organizations; neighboring landowners; and other interested citizens. Comments and concerns received during the EA phase of developing the CCP have been used to identify issues and alternatives.

Cabeza Prieta NWR was established by Executive Order in 1939 as the Cabeza Prieta Game Range "for the conservation and development of natural wildlife resources, and for the protection and improvement of public grazing lands and natural forage resources * * * provided, however that all the forage resources in excess of that required to maintain a balanced wildlife population within this range or preserve shall be available * * *" Its primary purpose was to assist in the recovery of desert bighorn sheep. The Range's grazing resources were jointly administered with the Bureau of Land Management. In 1975, the name was changed to Cabeza Prieta National Wildlife Refuge and the U.S. Fish and Wildlife Service was given sole jurisdiction. Grazing was determined to conflict with the refuge's primary purpose of wildlife conservation and was phased out in the 1970s. A majority of the refuge has been included in a military withdrawal for flight training since World War II. Over the years, refuge responsibilities have expanded through additional legislation directly affecting the refuge such as the Endangered Species Act of 1973 and the Arizona Desert Wilderness Act of 1990, and through regulations and laws that affect the National Wildlife Refuge System. Cabeza Prieta provides important habitat for the last remaining herd of Sonoran pronghorn antelope in the U.S. and is the largest refuge wilderness outside of Alaska.

Refuge Goals

The following four proposed refuge goals for management are consistent with the Refuge purpose, Ecoregion goals, the National Wildlife Refuge System (Refuge System) mission and goals, the National Wildlife Refuge System Improvement Act of 1997, Service policy, the Wilderness Act of 1964, and the Arizona Desert Wilderness Act of 1990. Following each goal is a list of guiding management principles as developed from the Service's vision document Fulfilling the Promise.

(1) Wildlife and Habitat: Protect, maintain, enhance, and restore the diversity and abundance of wildlife species and ecological communities of the Sonoran desert represented on the wilderness and non-wilderness land of the Cabeza Prieta NWR.

- Wildlife comes first.
- Healthy habitats are key to healthy wildlife populations.
- The refuge must balance its responsibility for trust species and biodiversity to meet Refuge System and ecosystem goals.
- Management should mimic, where possible, natural processes.
- Refuges need baseline data in order to evaluate management options and prioritize activities.

(2) Wilderness Management: Keep wildlife and plant resources wild, and their condition altered as little as possible by human influences, reduce the "imprint of man" on wilderness resources, and permit compatible wildlife-dependent recreation.

- Wilderness is a reservoir of biodiversity and natural evolutionary processes.
- The use of restraint is central to wilderness management-limiting mechanical use to that which is necessary to manage these areas as wilderness.
- Wilderness is a valued remnant of our American cultural heritage symbolizing national and natural values.
- Wilderness provides outstanding opportunities for solitude or primitive and unconfined type of recreation leading to feelings of renewal, inspiration, and awe.

(3) Visitor Services Management: provide visitors with compatible, high quality, enjoyable wildlife-dependent recreational experiences that result in a better appreciation, understanding, and protection of plant, animal, and wilderness resources.

- Compatible wildlife-dependent recreation and education are appropriate public uses.
- Visitors find national wildlife refuges welcoming, safe, and accessible with a variety of opportunities to enjoy and appreciate America's legacy of wildlife.
- The heritage and future of the System is intertwined with the will of concerned citizens.

(4) Cultural Resource Management: Protect, maintain, and plan for cultural and historic resources on the Cabeza Prieta NWR, in cooperation with the Tohono O'odham Nation, Hia C-ed O'odham leaders, Yuman and other Native American interests, and the State Historic Preservation Officer for the benefit of present and future generations.

Alternatives Being Considered

The following proposed alternatives are being considered including a no change from present management (no action) alternative. In the CCP and EIS, all alternatives will consider objectives and strategies to accomplish refuge goals, address issues identified in scoping, and the environmental effects will be discussed and compared.

I. No Change From Present Management (No Action)

The No Change or status quo alternative is a required element in CCP planning. Like many refuges, Cabeza Prieta NWR is operating without an approved management plan. Taking no action would imply that the Refuge Goal Statements would not be adopted. Refuge management would continue to be based on general purposes of the refuge, Service's policy, and goal statements identified in 1986 during a nationwide refuge Planning Needs Assessment.

No changes would be made to the biological program which includes aerial surveys and monitoring for bighorn sheep and pronghorn and maintaining water developments for both species. Radio telemetry studies for pronghorn would continue and requests for research from universities and other agencies would be granted if the Refuge Manager deems them worthy. Vehicular travel on administrative roads for research, law enforcement, and maintenance purposes would remain at the current level of approximately 700 miles per year. The bulk of those trips are to monitor and fill wildlife water developments (artificial waterholes, ponds, and guzzlers). Existing water developments would remain and would be repaired as necessary utilizing minimum tool. Biological monitoring would include studies already underway at the 1998 levels and in the same manner: 3 bird surveys, remote photo surveys of waterholes, and rainfall gauge monitoring. There would be no population or habitat goal for bighorn sheep and no new pronghorn projects would be started.

The abandoned administrative roads would not be rehabilitated and all 159 miles of administrative roads in existence would remain. Wilderness character would be diminished by remaining structures and considerable administrative traffic.

Public use activities would remain the same with a permit required for entry and 4WD required for all access roads which are limited to El Camino del Diablo, the Christmas Pass (Tacna Road), and Charlie Bell Road. The permit would be available only at refuge headquarters which would operate on weekdays only. Bighorn sheep hunting would continue in cooperation with AGFD with permit levels established according to tri-annual survey results.

Visitor services would be limited to existing exhibits and the visitor center would not be staffed weekends. Without the 30 acres adjacent to the Visitor Center, only a very short nature trail could be developed there. There would be limited opportunity for visitors without a 4WD vehicle to experience the refuge. Educational efforts would continue with area schools and programs presented by the Cabeza Prieta Natural History Association. Tours would be provided to the summit of Childs Mountain by special arrangement. Backpacking, hiking, horseback riding, camping and campfires would continue under restrictions currently in place.

There would be no change in procedures for cultural resource protection and no surveys begun unless the resource was in imminent danger. Law enforcement would be limited to a collateral duty for 3 staff who have other primary job responsibilities. Most infractions will go undetected and there would be rare coverage on weekends.

II. Wilderness Management Balanced With Active Non-Wilderness Management

The refuge will maintain its wilderness character while providing for management of healthy ecosystems. Needed management actions will undergo a more rigorous minimum tool assessment and contribute to the greater understanding of the ecosystem. The refuge will continue working towards understanding population dynamics for desert bighorn sheep and Sonoran pronghorn and contribute to their protection and recovery within their historic range. The Sonoran Pronghorn Recovery Plan will be updated to include the herd in Mexico. The refuge could participate in a limited forage enhancement project in non-wilderness if the pilot project off refuge lands is successful and contributes to recovery and an EA or EIS proves favorable. Regional planning would be accomplished through existing cooperative organizations with greater emphasis on ecosystem/biosphere coordination. More emphasis will be placed on monitoring key species and developing baseline biological data to help understand and manage a healthy system. Water management will be made more natural and the refuge will understand the impact of artificial waters in desert ecosystems. Water hauling will stop except in emergencies and the results will be monitored. Non-essential guzzlers will be removed and charcos (man-made ponds) will not be cleared. Well sited water developments will continue to be maintained using minimum tool during this time frame while the role of water developments is being evaluated. Vehicular use in wilderness will be reduced to minimum levels necessary to maintain wilderness character by using stock animals and remote sensors for monitoring, elimination of unnecessary facilities and water hauling, and stringent application of minimum tool analysis. Over 140 miles of abandoned roads will be eliminated and their trailheads rehabilitated and the administrative road system will be reduced by 47 miles.

Public access would continue to require permits but the refuge will work to simplify the system while still ensuring the ability to provide accurate information and obtain visitation data. Interpretive activities and opportunities will be increased with improved exhibits and signs and purchase or lease of 30 acres adjoining the Visitor Center and development of a nature trail there. The visitor center will be staffed weekends through the winter season. The refuge will explore the possibility of opening a tour loop in non-wilderness that will help reduce two-way traffic if there is not a significant impact to wildlife or cultural resources. The bighorn sheep hunt will remain a unique wilderness experience for hardy

individuals. Additional law enforcement will increase wilderness compliance and cultural resource protection. The refuge will work with border law enforcement agencies to aggressively deter illegal undocumented alien traffic currently damaging resources.

III. Increase Active Wildlife Management and Recreational Opportunities

Under this alternative, the refuge would maximize wildlife production through active management and increase public use opportunities. Water developments would continue to be viewed as essential elements in bighorn sheep and pronghorn management. While no new water developments would occur in wilderness, they could be developed in non-wilderness, and wilderness waters would not be permitted to go dry. Modifications to existing structures would reduce evaporation, improve storage capacity, and make them appear more natural. This alternative would call for increased use of remote sensing devices and reduce wilderness vehicular trips by using horses. The pronghorn charcos would be cleared of vegetation in hopes of attracting pronghorn use. Artificial water and forage proposals would be considered for non-wilderness and the refuge would participate with the Recovery Team to find ways of expanding pronghorn habitat and exchange among existing herds. Radio collaring and aerial surveys would be considered important tools used to assess the population and habitat needs for pronghorn. The refuge would remove all military training debris on an aggressive schedule and closely monitor crash site cleanup to minimize habitat impacts.

The refuge would increase its monitoring effort to obtain baseline data for key resources. This would more than likely result in several monitoring sites that would not be within summer walking distance without extraordinary effort. Invasive species would be controlled through the use of herbicides using minimum tool methods. All administrative roads would remain for essential research, management, and law enforcement, but those needs would be more broadly defined than in Alternative 2. The refuge would work within existing coordinating committees to develop regional plans for natural resource protection.

This alternative would impose permit levels immediately at designated campsites to reduce impacts. El Camino del Diablo would remain 4WD only, but Copper Canyon would be opened to provide a tour loop from Ajo. The refuge would work with the Ajo Chamber of Commerce to promote ecotourism for the area. The permit system would be simplified by using a self-issue permit at entry points. The bighorn sheep hunt would remain the same, but hunting would be open to small game and deer as well. The refuge would pursue acquisition or lease of the 30 acres adjacent to headquarters for a nature trail.

Backpacking, camping, and horseback riding would be permitted throughout the refuge with restrictions to ensure compatibility. Wood campfires and collecting dead and down wood would be permitted.

Cultural resources would receive increased protection with expansion of law enforcement coverage and increased messages in informational materials. The refuge would continue to work with Border Patrol and others to reduce impacts caused by illegal traffic and enforcement.

IV. Minimize Active Wildlife Management and Emphasize the Ecological Preserve

In this alternative, the refuge would provide maximum protection of resources with little active management in either wilderness or non-wilderness portions of the refuge. Public Use management would be closely regulated to prevent resource impacts. This philosophy believes the best protection can be provided by leaving things in their natural state allowing processes to occur. The goal for bighorn sheep population would be to achieve a level appropriate for the ecosystem without water developments. All tanks and guzzlers would be removed and maintenance would stop on runoff tanks and charcos. Concrete structures would be gradually removed, returning canyons and washes to their natural state. All studies and monitoring would have to be done without motorized access and would be approved only if they were critical to understanding refuge resources. The vegetation around charcos would be left as removal would cause more disturbance. Additional protection of dry riparian habitats would be provided by prohibiting travel by horseback or camping in washes. Pronghorn recovery efforts would be aimed at protecting and restoring additional historic habitat to the east of their current range, reducing military activities, and imposing seasonal public use closures during fawning season. Radio collaring and aerial tracking would be curtailed because of the stress they cause. Additional effort would be placed on lesser-long nosed bats by installing bat gates on the mine shaft to their roost sites to prevent human disturbances. The summit of Child's Mountain would be reclaimed for wildlife use and tours would not be permitted. The refuge would aggressively control exotic species, but limit their actions to the use of hand tools and non-chemical or mechanized means in wilderness. Regional ecosystem planning would best be accomplished by a single administering agency as suggested by the Sonoran Desert National Park proposal.

This alternative calls for eliminating the administrative roadway system which could only be used in emergency situations. Of particular concern are the Mohawk Valley Rd. and Welton Rd. All obsolete roads would be closed and the trailheads obliterated and revegetated. Remote sensors, helicopters, and horses would preclude the need for vehicle use in the wilderness and additional funding would be needed for this purpose. Border Patrol, Customs, and Drug Enforcement Agency (DEA) would be encouraged to conduct all their activities by air.

Permit levels would be established immediately and designated campsites established. Permits would be issued by the refuge only. All public roadways would require 4WD and access to Charlie Bell road would be closed seasonally. Bighorn sheep hunting would continue at reduced permit numbers and without horse or pack animals. There would be no expansion of hunting to other species. An additional alternative would recommend closing the refuge to all hunting. Educational efforts on and off refuge would be increased with the exception that guided tours to Child's Mountain would be discontinued.

Backpacking and camping would be permitted, but campsites would be designated and only gas stoves would be permitted (no charcoal or wood fires). Leave No Trace materials and an orientation video would be required viewing and reading before permits are issued. Horseback riding and pack animals would not be permitted.

In addition to cultural resource protection and education already proposed in alternative 2, this alternative would fund a refuge-wide inventory and survey for cultural sites.

This alternative recognizes the impacts being caused by illegal alien traffic, but places heavier emphasis on curtailing Border Law Enforcement actions restricting their access to administrative roads.

Issue Resolution and Environmental Review

A tentative list of primary issues to be included in the CCP/EIS evolved from the scoping and comments on the CCP and EA. There will be opportunity to comment on any unidentified issues during public scoping including open houses and written comments. The CCP and EIS will discuss the following issues by alternative and the potential environmental effects of each.

(1) Wildlife and Habitat Management Issues

(1.a) Bighorn Sheep Management

Despite 60 years of bighorn sheep management, the refuge does not have a clear goal of what it would see as habitat or population goals for desert bighorn sheep at Cabeza Prieta NWR and the role the refuge plays in the larger ecosystem. Management has followed traditional lines of water development to increase herd size, and in early years, to keep bighorn sheep on the refuge where it was given protection.

The issues with bighorn sheep management centers on vehicular use in the wilderness to maintain and monitor artificial water developments. The Wilderness Act prohibits vehicular use except to meet minimum requirements of managing for wilderness. In order to use vehicles the refuge must demonstrate that artificial water developments are essential to the purpose of the refuge or management of wilderness resources (which does include bighorn sheep).

In February 2000, the refuge invited several bighorn sheep experts to offer their professional opinions regarding sheep management and water developments in arid environments. The results will be used to help develop management objectives.

- What should be the population and habitat goals for bighorn sheep at Cabeza Prieta NWR, given legal restrictions wilderness designation imparts?
- What role do artificial water developments for desert bighorn sheep play in the desert ecosystem? What would be the effect of removing guzzlers and stopping water hauling?
- Are there other means of monitoring and maintaining water developments determined to be necessary (and in the interim) that would not require vehicular use?
- Could needed structures be more "natural" in appearance?

(1.b) Managing Healthy Ecosystems

One of the goals of the System is to manage for diversity of native flora and fauna and contribute to broader ecosystem goals. Many participants felt the refuge doesn't have enough information to manage as a system, others felt that a hands-off approach would best serve this area.

- What inventories need to be conducted to have an understanding of refuge resources (at what frequency and in what manner to comply with wilderness guidelines)?
- Should any current practices be altered to benefit a wider variety of native species at natural levels?
- Should the refuge engage in aggressive elimination of non-native plants and subsequently revegetate areas of the refuge?
- To what degree can the refuge protect unique and rare habitats used by neotropical migrant avian species?
- What research priorities could directly contribute to the refuge's purposes and goals?
- What role should the refuge play in promoting a wider understanding and cooperative management of the Sonoran Desert Ecosystem?

(1.c) Endangered Species Management

The refuge provides protection and habitat for several endangered species. The Sonoran pronghorn receive primary attention because the refuge is located in the heart of their range. Past management has included protection of habitat, removing grazing from the refuge, experimental waters, fencing parts of the boundary to prevent trespass cattle, and study of their movements and habitat use. Recently, additional experimental waters and forage plots have been proposed. These proposals and radio collaring are most controversial. Current refuge water developments targeted for this species appear to not be essential and are poorly located.

- What strategies should the refuge use to protect and assist in recovery of populations of endangered Sonoran pronghorn?
- What partnerships with Mexico could aid in the recovery of Sonoran pronghorn?
- Should we discontinue hauling water and remove guzzlers that are now used by other wildlife?
- Is radio collaring providing valuable information worth the risks of capture shock deaths?
- What other T&E species need strategies leading to protection and better understanding?

(2) Wilderness Management Issues

Cabeza Prieta is the largest refuge wilderness in the lower 48 states. Its national prominence has implications for other wilderness management plans. In Fulfilling the Promise, the Service calls for elevating the status of its wilderness areas and calls for "acknowledging wilderness as a unique resource, the management of which is a specialized discipline." The plan needs to exemplify the best the Service can do for wilderness.

(2.a) Management Activities

Refuge managers sometimes feel torn between perceived conflicting goals for wildlife and wilderness management. The Wilderness Act does not preclude essential wildlife management activities, but does place a heavier burden of proof of the essential character of activities, requires diligent application of the Minimum Tool Decision Process and its documentation, and calls for restraint in management.

- What management activities are appropriate for Wilderness?
- What rehabilitation projects are needed to restore wilderness resources or character?
- What can the refuge do to improve its Minimum Tool assessment?

(2.b) Administrative Trails Within Wilderness

The Wilderness Act of 1964 prohibits any permanent roads within wilderness and temporary roads may be used only for the minimum requirements for the administration of the area as wilderness and for emergencies involving human health and safety. The refuge and its permittees (AGFD, researchers, volunteers working on projects) drive over 700 miles per year in wilderness (1998) for management purposes. Border Patrol, U.S. Customs, and DEA have legitimate needs and were given special provisions to accomplish their missions in the Arizona Desert Wilderness Act of 1990.

- What roads can be eliminated and what degree of reclamation should occur?
- How can the refuge reduce wilderness driving mileage?

(2.c) Recreation

The Wilderness Act of 1964 provides for public recreation and education. Service policy recognizes sensitive areas may need to be protected from overuse, and allows for regulated use through permit or complete closure (6 RM 8.9A).

- What levels of visitation and methods of controlling use should be employed?
- What are the Limits of Acceptable Change for recreational use in the wilderness?
- What visitation impacts monitoring is needed to determine if unacceptable

changes are occurring and help ascertain needed educational remedies or permit levels?

(3) Wildlife Dependent Visitor Services Issues

The Refuge Improvement Act of 1997 identified hunting and fishing, wildlife observation and photography, and education and interpretation as priority uses on refuges when found to be compatible with refuge purposes.

The refuge is open to hunting, wildlife observation and photography, hiking, camping, environmental education, and interpretation. Its size, remoteness, wilderness character, and desert environment offer a unique experience for visitors. All visitors must obtain an entry permit, sign a release form for the military, and restrict vehicle travel to 4WD along two access corridors to the wilderness, and one non-wilderness road. The main travel corridor is along El Camino del Diablo, a state historic trail.

(3.a) Permitting and Access

Permits were established in 1975 at the request of the military to inform the public of hazards they may encounter on areas covered by the military withdrawal. They also serve to establish contact with visitors and ensure that visitors are aware of refuge and wilderness regulations, provide the refuge with visitation data, and inform visitors of hazards that might be encountered in a primitive desert environment. Some participants felt that the process is too complex with different permits required for BMGR and refuge lands, and because the refuge office is not open on weekends when most visitation occurs. Some participants felt there are too many visitors already and feel that any relaxation in the permit system would result in increased resource impacts and limit the refuge's ability to set use limits and track visitation. The refuge and BMGR have since initiated an integrated permit system that has also drawn criticism. Opponents feel that access is not limited enough and the refuge has lost its ability to provide information about the refuge and consideration for its natural resources. Proponents like the convenience of obtaining only one permit for the entire year and the increase in their availability.

- What permit system would facilitate visitor access, provide needed visitation data to the refuge, and educate and inform visitors as to refuge regulations and resources and methods to reduce their impacts?
- What other strategies could help reduce visitor impacts?

(3.b) Motorized Access and Vehicle Restrictions in Non-Wilderness

Visitors and local residents have expressed an interest in additional vehicular access to non-wilderness areas of the refuge which could enhance visitors enjoyment and local tourism.

- What type of access should be provided?
- Is there a non-wilderness route that does not require 4WD and would provide wildlife observation opportunities without negatively impacting bighorn sheep or pronghorn populations?

(3.c) Hunting

The refuge is currently open to desert bighorn sheep hunting for which the State issues 1–7 permits each year. In addition to the actual hunt, the permittees usually take several trips in advance of the season to scout the area with friends. Hunting was established as a priority public use for refuges by the Refuge Improvement Act. This means that when found to be compatible and appropriate for a refuge, it is one of the six activities to be given priority consideration. Some participants would like to see hunting opportunities expanded to deer and small game, and others would like to see all hunting eliminated. Vehicle access is limited to the public corridors. The use of horse/pack animals is permitted by Special Use Permit.

- What type of hunting experience and for which species should be offered at Cabeza Prieta NWR?

(3.d) Environmental Education and Interpretation

The refuge has a Visitor Center located within the town of Ajo, an orientation video program, modest exhibits, an Outdoor Recreation Planner and volunteers who conduct tours and staff the visitor center, cooperates in JUNTOS—a school educational program, and offers monthly natural history programs coordinated by the Cabeza Prieta Natural History Association during the winter season.

- What projects and activities should the refuge initiate to increase understanding and protection of Sonoran Desert resources and the role the Service plays in support of the ecosystem?

(3.e) Other Public Uses: Backpacking, Campfires, Camping, Horseback Riding, Rock Climbing

Other uses that are permitted because they are either related to participation in priority public uses or wilderness appreciation include hiking and backpacking (including camping), and commercial guided tours. The manner in which these activities are allowed was addressed in compatibility determinations completed System-wide in 1994. Horseback riding was found to be compatible with restrictions provided for in a special use permit. Rock climbing was determined to be incompatible but was to be addressed in the CCP to determine if restrictions could make the activities compatible.

- What recreational activities other than the priority uses should be permitted?
- What restrictions should be used (if any) to ensure compatibility and what educational efforts could minimize the impact of these activities?
- What impact monitoring efforts should be initiated?

(4) Cultural Resource Management Issues

- What actions need to be taken to better understand and protect cultural and historical resources on the Cabeza Prieta NWR?
- What Native American interests need to be identified and what cooperative efforts need to be considered and set in place prior to taking action?

(5) Border Law Enforcement and Military Use Issues

Border Patrol, Customs, and DEA were provided special provisions by the Arizona Desert Wilderness Act of 1990 to permit continued enforcement activities. Both the illegal traffickers and the agents performing their duty produce impacts. This CCP will address ways to minimize those impacts.

- To what degree are illegal drug trafficking and illegal immigration contributing to harmful impacts to habitat and wildlife?
- What cooperative efforts can be implemented to reduce Border Patrol and Customs Service impacts on refuge resources?
- What level of refuge law enforcement is needed?

The Refuge was not included in the recent military withdrawal, but language in the act does stipulate continued military use. The act extends the current agreement and provides for amendments to revise low-level training routes, establish new or enlarged buffer zones closed to public use, and to accommodate maintenance, upgrade, replacement, or installation of existing or new ground instrumentation that does not create increased impacts already permitted under the Arizona Desert Wilderness Act of 1990. (Note: since this legislation is newer than the

EA process, this issue has not yet been addressed by a management objective).

- What would be the effect of any decrease in flight-level restrictions?
- What buffer zones are needed to assure public safety for critical training?
- What changes to ground instrumentation are being proposed?

The Arizona Desert Wilderness Act of 1990 includes a special provision for continued military operations at Cabeza Prieta NWR. The potential impacts from military activities include the following: visual and noise disturbance, disturbance to wildlife behavior, aircraft collisions with wildlife, and impacts caused by live fire and military debris.

- How can the refuge reduce impacts caused by authorized military operations (tow dart and other debris removal, accident response protocol, entry without permit, expansion of low level flights)?

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, the National Wildlife Refuge System Improvement Act of 1997, and Service policies and procedures for compliance with those regulations. This notice is being furnished in accordance with Section 1501.7 of the National Environmental Policy Act, to obtain suggestions and information from other agencies, tribes, and the public on the scope of issues to be addressed in the plan and EIS. Comments and participation in this scoping process are solicited.

We estimate that the draft CCP/ Environmental Impact Statement will be available to the public in the winter of 2000.

Dated: April 3, 2000.

Geoffrey L. Haskett,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–9048 Filed 4–13–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Environmental Impact Statement; Notice of Availability

AGENCY: Fish and Wildlife Service.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that a draft environmental impact statement (Draft EIS) for the comprehensive conservation plan and boundary revision for the Stillwater National Wildlife Refuge (NWR) Complex located in Churchill and Washoe Counties, Nevada will be available for public review beginning April 14, 2000. Stillwater NWR Complex includes Stillwater NWR, Stillwater Wildlife Management Area (WMA), Fallon NWR, and Anaho Island NWR. Comments and suggestions are invited. All comments, including names and addresses will become part of the administrative record and may be released.

DATES: The comment period for this Draft EIS will extend from April 14, 2000 to June 12, 2000. Comments received will be considered during preparation of the Final Environmental Impact Statement. Open house meetings will be held on April 26 and 27, 2000 (see below for details on locations).

ADDRESSES: Comments should be addressed to: Kim Hanson, Refuge Manager, Stillwater National Wildlife Refuge, P.O. Box 1236, Fallon, Nevada 89407, (775) 423–5128. The open-house schedule is: April 26, 2000, from 3:00 to 7:30 p.m. at the Fallon Convention Center, 100 Campus Way, Fallon, Nevada and April 27, 2000, from 3:00 to 7:30 p.m. at the Department of the Interior Building, 1340 Financial Boulevard, Reno, Nevada.

Copies of the Draft EIS may be inspected at the following locations: U.S. Fish and Wildlife Service, Division of Planning, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Stillwater NWR Complex, 1000 Auction Road, Fallon, NV 89406; Churchill County Library, 553 South Main Street, Fallon, NV 89406; Carson City Library, 900 North Roop Street, Carson City, NV 89701; Downtown Reno Library, 301 S. Center Street, Reno, NV 89501. Individuals wishing to receive a copy of the Draft EIS or Summary for review should immediately contact the Stillwater NWR office (address and phone number provided above). The Summary document can be viewed on the Service's regional web site: www:r1/fws/gov/planning/plnhome.html/.

FOR FURTHER INFORMATION CONTACT: Kim Hanson, Stillwater NWR Complex (775–423–5128) or Don DeLong, CA/NV Refuge Planning Office (916–414–6500).

SUPPLEMENTARY INFORMATION: The Stillwater NWR Complex currently includes Stillwater NWR, Stillwater Wildlife Management Area (WMA), Fallon NWR, which are located in west-central Nevada, about six miles northeast of Fallon, Churchill County, and Anaho Island NWR, located about 30 miles northeast of Reno, Nevada, in Washoe County. Stillwater NWR is about 79,570 acres of Federal land, Stillwater WMA about 65,603 acres, and Fallon NWR about 17,848 acres, for a combined total of 163,021 acres of Federal land. Non-Federal inholdings within the approved boundaries are about 59,708 acres. Anaho Island NWR encompasses the entire island, which has fluctuated in size from 220 to 745 acres in recent history due to the fluctuating water levels of Pyramid Lake. In July 1997, it was an estimated 575 acres.

Anaho Island NWR was established in 1913 by Executive Order 1819 as a "* * * preserve and breeding ground for native birds." Public Law 101–618 (§ 210(b)(2)) more narrowly defined the purpose of Anaho Island NWR, stating that it was to be managed and administered "* * * for the benefit and protection of colonial-nesting species and other migratory birds." The Public Law also recognized that Anaho Island NWR is part of the Pyramid Lake Indian Reservation, but it is to be managed and administered by the Service as a component of the National Wildlife Refuge System (Refuge System).

Fallon NWR was established in 1931 by Executive Order 5606 "as a refuge and breeding ground for birds and other wild animals." It is located at the terminus of the Carson River and encompasses the delta wetlands of the river.

Stillwater WMA and Stillwater NWR were established through a 50-year agreement (Tripartite Agreement) signed in 1948 by the Truckee-Carson Irrigation District (TCID), Nevada State Board of Fish and Game Commissioners (Nevada Division of Wildlife), and the Service. Although the Tripartite Agreement expired on November 26, 1998, the Service continues to cooperatively manage the Stillwater WMA with the U.S. Bureau of Reclamation under most provisions of the Tripartite Agreement. Stillwater WMA, comprised mainly of U.S. Bureau of Reclamation withdrawn public lands, was established in 1948 for the purposes of conserving and managing wildlife and their habitat, and for public hunting. Stillwater NWR was established in 1949 as a wildlife sanctuary (closed to hunting) adjacent to the public hunting area.

In 1990, the approved boundary of Stillwater NWR was expanded, under subsection 206(b)(1) of the Truckee-Carson-Pyramid Lake Water Rights Settlement Act (Title II of Pub. L. 101–618), to encompass Stillwater Marsh, most of which was previously in the Stillwater WMA. In addition to the boundary expansion, Public Law 101–618 also outlined four purposes for which the Service must manage

Stillwater NWR: (1) maintaining and restoring natural biological diversity within the refuge; (2) providing for the conservation and management of fish and wildlife and their habitats within the refuge; (3) fulfilling international treaty obligations of the United States with respect to fish and wildlife; and (4) providing opportunities for scientific research, environmental education, and fish and wildlife-oriented recreation.

Each alternative in the Draft EIS consists of two main parts: (1) a boundary revision for Stillwater NWR, and (2) the framework of a comprehensive conservation plan, including refuge goals, objectives, and strategies for achieving the purposes for which each refuge was established and for contributing toward the mission of the Refuge System.

Boundary Revision

Public Law 101–618 authorized the Secretary of the Interior (Secretary) to recommend to Congress boundary revisions to Stillwater NWR that may be appropriate to carry out the purposes of the refuge and to facilitate the protection and enhancement of Lahontan Valley wetland habitat. The law authorized the Secretary to recommend the transfer of any Bureau of Reclamation withdrawn public lands within the existing wildlife use areas in the Lahontan Valley to the Service for addition to the Refuge System. Furthermore it authorized the identification of lands in the Lahontan Valley currently under the jurisdiction of the Service that no longer warrant continued status as units of the Refuge System.

Comprehensive Conservation Plan

A comprehensive conservation plan is required by the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd *et seq.*), as amended. The purpose of developing a comprehensive conservation plan for the Stillwater NWR Complex is to provide managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the Refuge System, consistent with sound principles of fish and wildlife conservation and legal mandates. In addition to outlining broad management direction on conserving wildlife and their habitat, the comprehensive conservation plan will highlight wildlife-dependent recreation opportunities available to the public, including opportunities for hunting, environmental education, and wildlife observation and photography.

Draft EIS Issues and Alternatives Being Considered

Six major issues were identified through scoping. They are (1) potential effects on populations of fish, wildlife, and plants, (2) potential effects on habitat and ecosystem functioning, (3) potential effects on recreational, educational, and interpretive opportunities, (4) potential effects on the local agriculture and socio-economy, and the Newlands irrigation project, (5) potential effects on cultural resources, and (6) potential effects on Naval Air Station-Fallon operations.

The Draft EIS identifies and provides an evaluation of four alternative boundaries for Stillwater NWR and management approaches for managing the Stillwater NWR Complex for the next 15 years. The four alternatives considered in detail in the Draft EIS are as follows. Alternative A (No Action Alternative) would retain the existing boundaries and entails baseline management as outlined in the 1987 Management Plan for Stillwater WMA and modified by the U.S. Fish and Wildlife Service's (Service's) water-rights acquisition program. Water rights acquired for refuge wetlands would continue to be delivered to the refuge according to the traditional agricultural seasonal-pattern of delivery in the irrigation district. Habitat management would emphasize breeding habitat for waterfowl and other waterbirds and would also provide for the needs of migrating and wintering waterfowl; livestock grazing and muskrat trapping would be managed commensurate with wildlife objectives on a large part of the area; and hunting remain the priority public use and would continue to be a coequal purpose with wildlife conservation.

Alternative B would result in the lands within Stillwater WMA reverting back to U.S. Bureau of Reclamation or public land status, thus reducing the amount of Federal land managed primarily for wildlife conservation in the Lahontan Valley. This alternative would focus on providing fall and winter habitat for waterfowl on Stillwater NWR (and would emphasize fall deliveries of acquired water rights), but would also provide habitat for breeding waterbirds. Livestock grazing and muskrat trapping would only be used as a habitat management tool. Opportunities for waterfowl hunting on Stillwater NWR would continue to be emphasized, although opportunities for wildlife viewing and environmental education would be expanded. Providing breeding habitat for waterbirds would be emphasized on Fallon NWR.

Under Alternative C (Service's Preferred Alternative), Stillwater NWR would be expanded to include most of Stillwater WMA and Fallon NWR and to include additional riparian and dune habitat, although the overall amount of Federal land managed for wildlife conservation in the Lahontan Valley would decline. This alternative would emphasize the approximation of natural biological diversity, including breeding habitat for waterbirds. The natural seasonal pattern of water inflow would be approximated, with adjustments to minimize nest flooding and to enhance fall and winter habitat for waterfowl. Livestock grazing would have limited application in the habitat management program, and muskrat trapping would primarily be undertaken to prevent damage to water-control structures. Waterfowl hunting would continue to be an integral part of the public use program under Alternative C, but environmental education and wildlife observation would receive considerably greater emphasis.

Alternative D would expand the boundary of Stillwater NWR to include all of Stillwater WMA and Fallon NWR and additional riparian and dune habitat. This alternative would focus on restoring natural hydrologic patterns and other ecological processes. Protection and restoration of riparian habitat would receive enhanced emphasis, and livestock grazing and muskrat trapping would not be used in the habitat management program and would be prohibited. Public use management would focus on providing opportunities for wildlife observation and environmental education, and hunting opportunities would diminish.

Maps of each alternative boundary and public use zones are provided in the Draft EIS and summary document. In all alternatives, Anaho Island NWR would be managed much as it has in the past, with a continued emphasis on protecting the nesting colony of American white pelicans and other colony-nesting birds that use the island.

Other governmental agencies, tribes, and members of the general public contributed to the planning and evaluation of the Draft EIS. The Notice of Intent to prepare an EIS was published in the **Federal Register** on March 14, 1997 (62 FR 12245) by the Department of the Interior. The Service has given presentations to county officials, conservation groups, other interested parties and the media, and informed the public through intermittent distribution of planning updates. Copies of the Draft EIS or a

Summary have been sent to all agencies and individuals who participated in the scoping process and to all others who have already requested copies.

Dated: April 6, 2000.

Elizabeth H. Stevens,

Acting CA/NV Operations Manager.

[FR Doc. 00–9047 Filed 4–13–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Migratory Bird Permits; Environmental Impact Statement on Double-Crested Cormorant Management

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) invites public participation in the scoping process for an Environmental Impact Statement (EIS) on the management of the double-crested cormorant in the United States. We are preparing this EIS under the authority of the National Environmental Policy Act and the Migratory Bird Treaty Act. The EIS will consider a range of management alternatives to address population expansion of the double-crested cormorant. This notice describes issues of concern and possible management alternatives; invites further public participation in the scoping process; identifies the locations, dates, and times of public scoping meetings; and identifies the Service official to whom comments may be directed.

DATES: Written comments regarding EIS scoping should be submitted by June 16, 2000, to the address below. Dates and times for the ten public scoping hearings are listed in the table under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Written comments on the proposed EIS and management plan can be sent by the following two methods:

(1) by mail to Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., Room 634, Arlington, VA 22203; or

(2) by email to *cormorant_eis@fws.gov.*

The public may inspect comments during normal business hours in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA. The scoping hearings will be held at the locations listed in the table under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Office of Migratory Bird Management, (703) 358–1714.

SUPPLEMENTARY INFORMATION: On November 8, 1999, we published a notice of intent (64 FR 60826) to prepare an EIS and accompanying national management plan to address impacts caused by population and range expansion of the double-crested cormorant in the contiguous United States. This action is in response to increasing reports of resource conflicts between humans and cormorants. In addition to encouraging public input, we are involving natural resource agencies with jurisdiction or expertise in this issue, including U.S. Department of Agriculture/Animal and Plant Health Inspection Service/Wildlife Services, a cooperating agency in the development of the EIS, and concerned State agencies, especially those of Michigan, Vermont, Minnesota, Texas, and New York, who will participate through the International Association of Fish and Wildlife Agencies.

Double-Crested Cormorant Populations

The double-crested cormorant (Phalacrocorax auritus), a species native to the 48 contiguous United States and Alaska, has been federally protected by the Migratory Bird Treaty Act since 1972. This protected status, in addition to decreased levels of organochlorine contaminants in the environment and increased food availability, has contributed to dramatic population increases of this large, fish-eating waterbird over the past two-and-a-half decades.

The size of the North American breeding population has been estimated at about 372,000 pairs, or 852 colonies (Tyson *et al.* 1997). Hatch (1995) estimated a total population of 1 million-2 million birds. The double-crested cormorant breeds widely throughout much of the coastal and interior portions of the United States. It has been found breeding in 46 of the 48 contiguous United States. However, it is not uniformly distributed across this broad area. Greater than 60 percent of the breeding birds belong to the Interior Population. This is the fastest growing of the six major North American breeding populations (Hatch 1995), which includes the Great Lakes basin and northern prairie States and provinces. From 1970–1991, in the American and Canadian Great Lakes region, the number of double-crested cormorant nests increased from 89 to 38,000, an average growth rate of 29 percent (Weseloh *et al.* 1995). The contiguous United States breeding population increased at an average rate of 6.1 percent per year from 1966–1994 (Sauer *et al.* 1996).

In many parts of the United States, increased cormorant populations have led to conflicts with humans and various natural resources. Such conflicts include concerns over impacts to local economies, human health, the aquacultural industry, vegetation, fish populations, and bird populations. Management actions that we presently permit include population monitoring and research; information and education efforts; harassment; fitting of exclusionary devices at aquacultural facilities; issuance of depredation permits to take cormorants, their nests, or their eggs; and a Depredation Order (63 FR 10560) for taking birds at aquacultural facilities in 13 States. The preparation of an EIS is necessary in order to analyze alternative management strategies in the development of a national cormorant management plan that will more effectively deal with conflicts.

Alternatives

As stated in the notice of intent, we will develop management alternatives to be considered in the EIS after the scoping process, based on the Service's mission and the comments received during scoping. As of March 3, 2000, we had received 205 written comments in response to our notice of intent. From those letters, the following management options were identified, in order of frequency:

1. Control/reduce cormorant populations.
2. Protect cormorants.
3. Initiate a hunting season on cormorants.
4. Remove cormorants from protection of Migratory Bird Treaty Act.
5. Oil cormorant eggs.
6. Use population objectives in cormorant management.
7. Do not develop a management plan as one is not needed.
8. Expand Depredation Order to other States.
9. Let States manage cormorants.
10. Change depredation permit policy.
11. Emphasize non-lethal control.
12. Give USDA/APHIS/Wildlife Services more authority.

We are soliciting your comments on these options and any other issues, options, and impacts to be addressed in the EIS.

Issue Resolution and Environmental Review

After completion of the scoping process for the EIS, we will prepare a discussion of the potential effects, by alternative, which will include, but will not be limited to, the following areas: (1) Double-crested cormorant populations;

(2) other bird populations; (3) native and sport fish populations; (4) vegetation; (5) aquacultural stock; and (6) socioeconomic factors.

We will conduct an environmental review of the management alternatives in accordance with the requirements of the National Environmental Policy Act, as appropriate. We are furnishing this notice in accordance with 40 CFR 1501.7 to obtain suggestions and information from other agencies, tribes, and the public on the scope of issues to be addressed in the EIS.

Public Scoping Meetings

Ten public scoping meetings will be held at the locations and times listed below:

Date	City	Location	Time
April 25, 2000	Washington, DC	Department of Interior Building Auditorium, 1849 C Street, NW.	10 am.
April 27, 2000	Portland, Oregon	Red Lion Hotel Coliseum, 1225 N. Thunderbird Way	7 pm.
May 9, 2000	Burlington, Vermont	Clarion Hotel and Convention Center, 1117 Williston Road.	7 pm.
May 10, 2000	Watertown, New York	Dulles State Office Building Auditorium, 317 Washington Street.	7 pm.
May 11, 2000	Syracuse, New York	Carousel Center Mall, Skydeck, Sixth Level, 9090 Carousel Center Drive.	7 pm.
May 15, 2000	Green Bay, Wisconsin	Ramada Inn, 2750 Ramada Way	7 pm.
May 16, 2000	Mackinaw City, Michigan	Mackinaw City Public Schools, Gymnasium, 609 West Central.	7 pm.
May 17, 2000	Hauppage, New York	Windham Watch Hotel, 1717 Vanderbilt Motor Parkway.	7 pm.
May 22, 2000	Jackson, Mississippi	Primos Northgate, Convention Hall B, 4330 N. State Street.	7 pm.
May 23, 2000	Athens, Texas	Texas Freshwater Fisheries Center, 5550 Farm Market Road 2495.	7 pm.

References Cited

A complete list of all references cited is available from the Office of Migratory Bird Management (see **ADDRESSES** section).

Authorship: The primary author of this notice is Shauna Hanisch, Office of Migratory Bird Management.

Dated: April 7, 2000.

Jamie Rappaport Clark,

Director, U.S. Fish & Wildlife Service.

[FR Doc. 00–9281 Filed 4–13–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Revised Fish and Wildlife Service National Environmental Policy Act Guidance; Fish and Wildlife Manual, Part 550, Chapter 1 and 2

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service or We) is issuing this notice to invite public comments on draft revised National Environmental Policy Act guidelines in the Service's Fish and Wildlife Manual, Part 550, Chapters 1 and 2. The revised draft guidelines can be obtained by accessing http://www.fws.gov/r9esnepa/draft550.htm, or by calling or writing the contacts listed in **ADDRESSES** below.

DATES: Written comments on the draft revised guidelines should be submitted on or before May 31, 2000, to the addresses below.

ADDRESSES: Written comments on the notice can be sent to Dr. Benjamin N. Tuggle, Chief, Division of Habitat Conservation, 1849 C Street, NW., 400 Arlington Square Building, Washington, DC 20240; or they can be electronically transmitted to don__peterson@fws.gov.

FOR FURTHER INFORMATION CONTACT: Don Peterson, Washington Office Environmental Coordinator, at (703) 358–2183, or don__peterson@fws.gov.

SUPPLEMENTARY INFORMATION: The draft revised NEPA guidance is procedural in nature and provides revised guidance for our personnel on the technical aspects of how to prepare environmental impact statements and environmental assessments for actions proposed by the Service. Part 550, Chapter 1, updates our organizational responsibilities for complying with NEPA. Part 550, Chapter 2, provides revised updated guidance on scoping, encourages greater participation in cooperative agency agreements, clarifies the differences in content and scope of EAs and EISs, clarifies and encourages the NEPA document adoption process, and promotes NEPA streamlining techniques. The notice of availability of the draft revised guidance is published in the **Federal Register** in accordance with 40 CFR 1507.3. The draft revised guidance does not address our requirements for when to prepare an EIS or EA, or when a categorical exclusion from NEPA documentation is applicable for a proposed Service action. That guidance remains unchanged and is found in the Department of the Interior Manual in 516 DM 6, Appendix 1.

When finalized, the guidance will be included with previous revisions made to our NEPA guidance on documenting and implementing decisions in Part 550, Chapter 3 (published in the Fish and Wildlife Service's Manual on March 29, 1996), and to our NEPA procedures in the Department of the Interior Manual in Part 516 DM Chapter 6, Appendix 1 (62 FR 2380, January 16, 1997) on when to prepare an EA or an EIS, and when a categorical exclusion from NEPA documentation applies. The draft revised guidance updates and supersedes Service NEPA guidance for internal compliance in Part 30 AM Chapter 2 and 3, dated September 23, 1983.

The draft revised guidance streamlines and simplifies the current guidance (published in 1983) by relocating cited regulations, procedures, guidance, executive orders, and other documents to the Service's NEPA Reference Handbook, and by making the guidance more readable and concise. The Service NEPA Reference Handbook can be accessed at http://www.fws.gov/r9esnepa.

Dated: March 27, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–9282 Filed 4–13–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request revising and extending the collection of information listed below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the USGS Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 60 days directly to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the USGS, including whether the information will have practical utility;

2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The utility, quality, and clarity of the information to be collected; and,

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Mine, Development, and Minerals Information Supplement.

Current OMB approval number: 1028–0060.

Abstract: Respondents supply the U.S. Geological Survey with domestic production, exploration, and mine development data on nonfuel mineral commodities. This information will be published as an Annual Report for use by Government agencies, industry, and the general public.

Bureau form number: 9–4000–A.

Frequency: Annual.

Description of respondents: Nonfuel Mineral Producers and Exploration Operations.

Annual Responses: 337.

Annual burden hours: 253.

Bureau clearance officer: John Cordyack, 703–648–7313.

Keith L. Harris,

Acting Chief Scientist, Minerals Information Team.

[FR Doc. 00–9277 Filed 4–13–00; 8:45 am]

BILLING CODE 4310–47–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Environmental Impact Statement (DEIS) for the Colville Indian Reservation Integrated Resource Management Plan, Colville Confederated Tribes, Colville Reservation, Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs intends to file a Draft Environmental Impact Statement (DEIS) for an Integrated Resource Management Plan (IRMP) for the Colville Indian Reservation, Washington, with the U.S. Environmental Protection Agency, and that the DEIS is now available for public review. Brief descriptions of the proposed action and alternatives follow as supplementary information. This notice also announces a public hearing to receive public comments on the DEIS.

DATES: Written comments must arrive by June 12, 2000. The public hearing on the DEIS will be held on April 27, 2000, starting at 7:00 p.m.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail or hand carry written comments to William Nicholson, Superintendent, Colville Agency, Bureau of Indian Affairs, P.O. Box 111, Nespelem, Washington 99155–0111. You may also comment via the Internet to nicholson_colville@yahoo.com. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (509) 634–2320.

Comments, including names and home addresses of respondents, will be available for public review at the above address during regular business hours, 7:30 a.m. to 4:00 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

The DEIS is available for review at the Colville Agency. To obtain a copy, you may contact John St. Pierre, Colville Confederated Tribes, P.O. Box 150, Nespelem, Washington 99155–0150, telephone (509) 634–2200. Copies of the DEIS have been sent to all agencies and individuals who participated in the scoping process, or who previously requested copies.

The public hearing will be held in the Conference Room at the Bureau of Indian Affairs, Colville Agency, Nespelem, Washington.

FOR FURTHER INFORMATION CONTACT: William Nicholson, (509) 634–2316.

SUPPLEMENTARY INFORMATION: The Bureau of Indian Affairs is proposing to approve an IRMP for the approximately 1,392,265 acre Colville Indian Reservation, for the period 2000–2014. This DEIS analyzes the impacts of the proposed action, four action alternatives, and no action. Under the no action alternative (Alternative 1), there would be no change in the existing management. About 1,071.2 million board feet (MMBF) of timber would be harvested across 157,989 acres, and the range management units and allotments on the reservation would continue under current management direction.

The proposed action (Alternative 2) would implement the IRMP developed by the Colville Confederated Tribes. About 953.1 MMBF of timber would be harvested across 156,989 acres and there would be a 15 percent general reduction in range use.

Alternative 3, the IRMP with additional watershed health and wildlife habitat emphasis, calls for the harvesting of about 818.7 MMBF of timber across 119,683 acres and the withdrawal of about 269,000 acres of range allotments.

Alternative 4, the IRMP with stand structural/stage correction emphasis, emphasizes intermediate harvesting to move the structural stage class of stands on the reservation towards the desired future conditions. About 751.9 MMBF of timber would be harvested across

157,573 acres. Allowable animal unit months (AUMs) would be doubled to 121,800.

Alternative 5, the IRMP with forest health emphasis, emphasizes regenerative harvesting to reduce the existing impacts of insects and disease.

Alternative 6, the IRMP with additional forest health, watershed health and wildlife habitat emphasis, places an additional emphasis on forest and watershed health along with fish and wildlife habitat. About 1,105.1 MMBF of timber would be harvested across 123,556 acres and allowable AUM's would be reduced by 50 percent.

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508), implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: April 11, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–9396 Filed 4–13–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Programmatic Environmental Impact Statement for the Proposed Navajo Ten-Year Forest Management Plan, Navajo Nation, Arizona/New Mexico

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) intends to file a Final Programmatic Environmental Impact Statement (FPEIS) for the proposed Navajo Nation Ten-Year Forest Management Plan with the U.S. Environmental Protection Agency, for public review and comment. The FPEIS, prepared by the BIA in cooperation with the Navajo Nation, describes alternate ways to promote the protection and sustained use of forest resources and to guide the development of multi-year implementation programs for the Navajo Nation Forestry Department. A description of the project location and of the environmental issues addressed in the FPEIS follow as supplementary information.

DATES: Comments must arrive by June 12, 2000.

ADDRESSES: If you wish to comment, you may submit written comments by any one of several methods. You may mail or hand carry comments to Harold D. Russell, Regional Forester, Bureau of Indian Affairs, Navajo Regional Office, P.O. Box 1060, Gallup, New Mexico 87305. You may also comment via the Internet to HaroldRussell@bia.gov. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (502) 729–7228.

Comments, including names and home addresses of respondents, will be available for public review at the above during regular business hours, 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

The FPEIS is available for review at two locations: (1) The Branch of Environmental Services, Navajo Area Office, Federal Building, 301 West Hill, Gallup, New Mexico; and (2) the Branch of Forestry, Bureau of Indian Affairs, 1 mile north on Route 12, Fort Defiance, Arizona. To obtain a copy of the FPEIS, please write to the Navajo Nation Forestry Department, P.O. Box 230, Fort Defiance, Arizona 86504, or call (520) 729–4007.

FOR FURTHER INFORMATION CONTACT: Harold D. Russell, (520) 729–7228.

SUPPLEMENTARY INFORMATION: The proposed action is to adopt a ten-year management plan for the Navajo Forest. The Navajo Forest lies in the Chuska Mountains and Defiance Plateau areas of the Navajo Nation, along the Arizona-New Mexico border. The area encompasses nearly 600,000 acres.

The FPEIS presents a preferred alternative, the no action alternative and three other action alternatives. Under the preferred alternative, approximately 79,500 acres out of 253,754 acres designated as commercial timberland would be harvested over the next ten years. Individual treatment areas would be limited to 100 acres or less, and harvesting would incorporate a combination of even-aged and uneven-aged management systems designed to promote more diversity in the vegetative structure. This alternative also designates 74,735 acres as Special Management Areas (SMAs), which would be excluded from commercial timberland in order to protect critical wildlife habitat and vital watershed areas, even where these SMAs are located within the most productive areas of the forest.

Timber protection activities under this alternative include fire prevention, prescribed burns, trespass control and insect and disease control. Other activities include monitoring and mitigation, in accordance with published plans, guidelines or handbooks referenced in the FPEIS.

The no action alternative continues current levels of production—approximately 88,000 acres over the next ten years, with even-aged management and without SMA's. The three other action alternatives include: (1) No timber harvesting and no SMA's; (2) even-aged management, with a lower rate of harvest—approximately 79,000 acres over the next ten years—than the no action alternative, and with SMA's; and (3) uneven-aged management, with approximately 84,400 acres to be harvested over the next ten years and without SMA's. All of the alternatives include timber protection plus monitoring and/or mitigation measures.

The FPEIS addresses the environmental issues identified during public scoping. These include timber resources, other forest resources, water resources, biological resources, air quality, cultural resources and socio-economics.

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508), implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: April 11, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–9397 Filed 4–13–00; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF DEFENSE

Department of the Navy

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Record of Decision for the Proposed Fallon Range Training Complex Requirements at Naval Air Station Fallon, Nevada

AGENCY: Department of the Navy, Department of Defense, Bureau of Land Management, Department of the Interior.

ACTION: Notice of Record of Decision.

SUMMARY: The Department of the Navy and the Bureau of Land Management, after carefully weighing the environmental and socioeconomic implications, public input, and technical considerations of the alternative studied, announce their combined decisions to implement the preferred alternative, Alternative II, identified in the co-authored Final Environmental Impact Statement for the Proposed Fallon Range Training Complex Requirements at Naval Air Station Fallon, Nevada. This action consists of improvements to the Fallon Range Training Complex to meet Chief of Naval Operations-mandated training requirements; improvements will occur on existing Navy-administered lands and on BLM-administered public lands.

FOR FURTHER INFORMATION CONTACT: Naval Strike and Air Warfare Center at Naval Air Station Fallon, Nevada, Attn: Mr. John Smith, EIS Team Member, 4755 Pasture Road, Fallon, Nevada 89496–5000, telephone (775) 426–2103/2101, fax (775) 426–2104, e-mail smithj@nsawc.navy.mil or Bureau of Land Management Carson City Field Office, Attn: Ms. Terri Knutson EIS Project Manager, 5665 Morgan Mill Road, Carson City, Nevada 89701, telephone (775) 885–6156, fax (775) 8885–6147, e-mail tknutson@nv.blm.gov.

SUPPLEMENTARY INFORMATION: The text of the entire Record of Decision is provided as follows:

The Department of the Navy (Navy) and Bureau of Land Management (BLM), pursuant to section 102 (c) of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. section 4331 *et seq.*) and the regulations of the Council on Environmental Quality (CEQ) that implement NEPA procedures (40 CFR parts 1500–1508), hereby announce their decision to implement changes necessary at the Fallon Range Training Complex to meet Chief of Naval Operations-mandated training requirements resulting from the real-world threat environment. These changes will allow Navy to update and consolidate Navy training on public and Navy-administered lands and update existing airspace parameters overlying these lands.

Changes include: Developing new fixed and mobile Electronic Warfare (EW) sites; developing new Tracking Instrumentation Subsystem (TIS) sites; developing additional targets at B–17 and B–19; laying fiber optic cable to B–16 and B–19; utilizing Navy-administered lands in Dixie Valley for close air support training; performing Hellfire missile and high altitude weapons delivery training at B–17 and B–20; and proposing changes to special use airspace.

Process

A Notice of Intent to prepare an Environmental Impact Statement (EIS) for the proposed Fallon Range Training Complex Requirements at the Naval Air Station Fallon, Nevada was published in the **Federal Register** on December 21, 1998. Four public scoping meetings were held on January 20, 21, 27, and 28, 1999, in Eureka, Austin, Fallon, and Reno, Nevada, respectively.

A Notice of Availability (NOA) for the Draft EIS was published in the **Federal Register** on August 13, 1999. Public Hearings were held on September 8, 9, 21, 22, and 23, 1999, in Eureka, Austin, Gabbs, Fallon, and Reno, Nevada, respectively. Comments were received from 71 agencies, organizations, and individuals during he 90-day public comment period on the Draft EIS. The Final EIS addressed all oral and written comments.

The NOA for the Final EIS was published in the **Federal Register** on February 4, 2000. Newspaper advertisements noting the availability of the Final EIS were published in local and regional newspapers. Navy and BLM received 4 comment letters during the 30-day public comment period. All comments received were considered when preparing this ROD.

This ROD documents Navy's and BLM's decisions based upon the analysis of the effects of the proposed action and alternatives in the EIS. The jointly prepared Navy/BLM EIS allowed BLM to ensure that Navy actions proposed on public lands meet the BLM mission of managing public lands for multiple use. This EIS satisfies NEPA requirements for Navy-administered lands and BLM issuance of rights-of-way for Navy actions on public lands.

Airspace changes require rulemaking in accordance with Federal Aviation Administration (FAA) Order 7400.2. Navy will submit a request to FAA for the airspace changes outlined in this ROD. The FAA will issue a separate ROD after its rulemaking process.

Background

This EIS was based on the Fallon Range Training Complex Requirements Document (Training Requirements Document) prepared by the Naval Strike and Air Warfare Center (NSAWC) at NAS Fallon, Nevada, in November 1998. The Training Requirements Document assessed and reported current and future training needs and operational requirements for NAS Fallon. The Training Requirements Document outlined changes necessary to both update and consolidate Navy training on public and Navy-administered lands and update existing airspace parameters overlying these lands. Alternatives were developed with input from federal, state, and local agencies, interested parties, Native American tribes, and an independent validation entity (Institute for Defense Analysis).

Proposed Action and Alternatives

The proposed action in this EIS included developing four 5.7-acre fixed EW sites on public lands in Edwards Creek Valley, Gabbs Valley, Smith Creek Valley, and Big Smoky Valley, three fixed EW sites on Navy-administered land in north Dixie Valley, at B–19, and at B–20, and up to 15 mobile sites on Navy-administered lands in the Dixie Valley; developing four 16-foot by 16-foot TIS sites on BLM-administered lands; developing live mortar ranges and helicopter ordnance and gunnery targets at B–17 and a rough terrain helicopter gunnery target at B–19; running fiber optic cable from NAS Fallon to the B–16 and B–19 training ranges; performing close air support training, including laser spotting, on Navy-administered lands in the Dixie Valley; performing Hellfire missile training and high altitude weapons delivery training at the B–17 and B–20 training ranges (new restricted area airspace will be needed above existing restricted area airspace to 35,000 feet above mean sea level (flight level (FL) 350) to accommodate high altitude weapons delivery training; and making adjustments to special use airspace to change the use times of the Reno MOA from 10 AM to 6 PM, Tuesday through Saturday, to 8 AM to 6 PM, Monday through Friday.

Alternative I included the same actions described for the proposed action except that the fixed EW sites on public lands will be reduced in size and the smaller fixed EW sites in the eastern

valleys will be supplemented with four or five mobile EW sites up to one-third acre per site in each valley for a total of 18 mobile sites.

Alternative II included the same actions described for the proposed action except that only two 5.7-acre fixed site will be developed on public lands in Edwards Creek Valley and Gabbs Valley, and no fixed EW sites will be developed in Smith Creek Valley and Big Smoky Valley. To compensate for the lack of fixed EW sites in these two valleys, fixed communication relay towers on one-tenth acre of land will be developed. Five mobile EW sites will be developed in each of the four valleys for a total of 20 mobile sites.

Alternative III included the same actions described for the proposed action except that no new fixed EW sites will be developed on public lands. To compensate for the lack of fixed EW sites in the four eastern valleys, one fixed communication hub on one-tenth acre of land will be developed in Smith Creek Valley, three combination fixed communication hubs/mobile EW sites will be developed in the other valleys (one site per valley), and 19 mobile EW sites will be developed (up to five sites per valley). Also under Alternative III, the Navy will request a lower ceiling (FL 300) for new restricted area airspace.

Under the No Action Alternative, no new EW sites, TIS sites, B–17 and B–19 target improvements, or fiber optic cable routes will be developed. Airspace changes, Hellfire missile training, and high altitude weapons delivery training (above 18,000 feet MSL) will not occur. Present training activities will continue under existing conditions.

Measures were incorporated into the Proposed Action and Alternatives to reduce the level of impact to the environment. These measures consist of operating procedures Navy routinely applies to similar activities on its lands and that are required by the BLM for actions taken on public lands. These standard operating procedures include: Conducting biological and cultural resource surveys prior to surface disturbance; reducing visual effects by painting, shielding, or netting structures; reducing effects to roads; complying with all federal, state, and local government rules, regulations, and guidelines governing hazardous material use, storage, and transport; conducting laser operations in a manner to avoid human and environmental hazards; implementing noxious weed control measures and reclamation of abandoned sites; and continuing to coordinate aircraft activities with the FAA.

The environmentally preferred alternative is generally one that avoids or minimizes environmental impacts or results in a net beneficial environmental effect. In this case, the No Action Alternative is the environmentally preferred alternative because it will not result in any additional ground disturbance or changes in visual resources, although it will not allow for the increased flight altitude and corresponding reduction in noise levels that will be achieved in some of the other alternatives. The environmentally preferred alternative was not selected because it will be substantially less effective in meeting tactical and training mission requirements as set out in the Training Requirements Document. Alternative III is also environmentally preferable to the selected alternative, and will be as, or more, effective in meeting tactical and training requirements. Alternative III was not selected because communication technology is not yet sufficiently advanced or readily available to allow Navy to implement an all-mobile alternative at this time. Navy does not have the mobile EW equipment necessary to implement an all-mobile alternative, and developing and procuring the equipment necessary for the all-mobile alternative will be cost prohibitive. Navy will continue to monitor advances in communications technology and will consider whether to propose an all-mobile alternative in the future. If an all-mobile alternative becomes practical, Navy and BLM will determine, what, if any, additional environmental analysis is required before implementing such a proposal.

Based upon our review of the analysis of alternatives and public comments receiving during the NEPA process, Navy and BLM have selected Alternative II (the identified preferred alternative) with some modification to the two fixed EW sites on BLM-administered lands. Alternative II included two fixed 5.7-acre EW sites on public lands in Edwards Creek and Gabbs Valleys. The size of these two sites will be reduced to 3.0 acres each to decrease the area of surface disturbance on public lands. One fixed communications relay tower site in each of the Big Smoky and Smith Creek Valleys, and five mobile EW sites in each of the four valleys will be installed. Alternative II will also develop three fixed EW sites on Navy-administered land in North Dixie Valley, at B–19, and at B–20, up to 15 mobile EW sites on Navy administered lands in the Dixie Valley, four TIS sites on BLM-administered lands, live mortar ranges and helicopter ordnance and gunnery targets at B–17, and a rough terrain helicopter gunnery target at B–19. Other actions included in Alternative II that will be implemented are: Running fiber optic cable from NAS Fallon to the B–16 and B–19 training ranges, performing close air support training, including laser spotting on Navy-administered lands in the Dixie Valley, performing Hellfire missile training and high altitude weapons delivery training at B–17 and B–20 training ranges, developing new vertical restricted airspace up to 35,000 feet MSL above existing restricted airspace in order to accommodate high altitude weapons delivery training, and making adjustments to special use airspace to change the use times of the Reno MOA from 10:00 AM to 6:00 PM, Tuesday through Saturday, to 8:00 AM to 6:00 PM, Monday through Friday. Alternative II addresses concerns voiced during the public review period on the greater sensitivity of Smith Creek Valley and Big Smoky Valley as well as meets Navy's training requirements.

Environmental Impacts

In the EIS, Navy and BLM analyzed direct, indirect, and cumulative effects to land use, airspace use, biological resources, geology, soils, and mineral resources, water resources, cultural resources, Native American religious concerns, visual resources, environmental justice and socioeconomic, recreation, grazing and wild horse and burro management, air quality, noise, public safety, and hazardous materials. There were no significant environmental impacts associated with the selected alternative; however, Navy and BLM will implement the standard operating procedures described both above and in the EIS, to reduce even further the impacts of the actions being taken. With the adoption of these standard operating procedures, Navy and BLM have exercised all practicable means to avoid or minimize harm from the alternative selected. Nevertheless, Navy and BLM will meet annually to review implementation of the selected alternative.

Response to Comments Received Regarding the Final Environmental Impact Statement

Navy and BLM received 4 comment letters on the Final EIS: one from a state agency, one from a special interest group, and two from individuals. The comments from the state agency and the special interest group were previously addressed in the Final EIS. One individual's comments were outside of

the scope of this EIS and require no further response. The other individual's comments misinterpreted the information presented in the EIS regarding the proposed change in the airspace ceiling. As discussed in Section 4.2 of the Final EIS, the proposed new airspace ceiling will be created on top of existing restricted airspace that overlies Navy's bombing ranges. This proposed change will *not* be applied throughout the FRTC MOA.

Conclusions

In formulating combined decisions on implementing changes to update and consolidate training at the Fallon Range Training Complex, including changes on existing Navy-administered lands and on public lands administered by the BLM, Navy and BLM have considered the environmental and socioeconomic effects of the proposed action and alternatives and public input received on the Draft and final EISs.

After careful deliberation, we have determined that the preferred alternative, with reduced EW site size, provides the best combination of effectively meeting the training requirements of NAS Fallon, responding to the public concerns, and minimizing environmental effects.

Therefore, the Department of the Navy and the Bureau of Land Management have decided to implement the actions identified in the preferred alternative, as modified. Actions requiring FAA approval will be proposed for FAA rulemaking and will only be implemented if approved.

Although this EIS has been jointly prepared and has resulted in combined decisions, each agency's decision has been made pursuant to its individual responsibilities and authorities and each agency shall be responsible for its implementation.

BLM Appeals Process

If a party other than the Navy is aggrieved by the approval of this EIS, the decision regarding use of public lands may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, part 4 and Form 1842–1. If an appeal is made, a notice of appeal must be filed at the Bureau of Land Management, Nevada State Office, 850 Harvard Way, PO Box 12000, Reno, Nevada 89520–0006 within 30 days after the date this decision has been issued. The appellant has the burden of showing that the decision being appealed is in error. A statement of reasons and any arguments the appellant wishes to present to justify reversal or modification of this decision should be filed at the same time as the appeal.

If the appellant wishes to file a petition (request), pursuant to 43 CFR 4.21, for a stay (suspension) of the effectiveness of this decision during the time that the appeal is being reviewed by the Board, the petition for a stay must accompany the notice of appeal. A petition for a stay is required to show sufficient justification based on the standards for obtaining a stay. Copies of the notice of appeal and petition for a stay must also be submitted to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If the appellant requests a stay, the appellant has the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) The relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted and (4) whether the public interest favors granting the stay.

Dated: April 10, 2000.

Elsie Munsell,

Deputy Assistant Secretary of the Navy (Environment and Safety).

Dated: April 4, 2000

John Singlaub,

Manager, Carson City Field Office.

[FR Doc. 00–9368 Filed 4–13–00; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–110–1060–DC]

Capture of Wild Horses From the West Douglas Herd Area, CO

AGENCY: White River Field Office, Bureau of Land Management, Department of the Interior.

ACTION: Notice of public hearing and notice of intent to gather horses from the West Douglas Herd Area.

SUMMARY: The Bureau of Land Management, White River Field Office has scheduled the capture of wild horses from the West Douglas Herd Area. This removal is scheduled to start during the late summer of 2000 and continue until complete. A public hearing regarding the capture of wild horses from the West Douglas Herd Area, South of Rangely, Colorado will be held at the White River Field Office, Bureau of Land Management.

DATE AND ADDRESSES: Hearing will be held in Meeker, Colorado at the White River Field Office, 73544 HWY 64, on May 15, 2000 at 7:00 pm.

FOR FURTHER INFORMATION CONTACT: Robert Fowler; White River Field Office; 73544 HWY 64, Meeker, Colorado, 81641; Telephone (970) 878–3601.

James Cagney,

Associate White River Field Manager.

[FR Doc. 00–6867 Filed 4–14–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–00–0777–30]

Northeastern Great Basin Resource Advisory Council Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council's meeting location and time.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), Council meetings will be held as indicated below. The agenda for the May 5, 2000 meeting includes: approval of minutes of the previous meeting, mining, wild horses, sage grouse, Great Basin Restoration Initiative, Land Health Standards, Off-Highway Vehicle Strategy Plan, Field Manager reports, identification of additional issues to be resolved and determination of the subject matter for future meetings.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. The public comment period for the Council meeting is listed below.

Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

DATES, TIMES, PLACE: The time and location of the meeting is as follows:

Northeastern Great Basin Resource Advisory Council, Ely Field Office, 702 North Industrial Way, Nevada, 89301; May 5 starting at 9 a.m.; public comments will be at 11 a.m. and 3 p.m.; tentative adjournment at 5 p.m.

FOR FURTHER INFORMATION CONTACT: Curtis G. Tucker, Special Projects Coordinator, Ely Field Office, 702 North Industrial Way, HC 33 Box 33500, Ely, NV 89301–9408, telephone 775–289–1841.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues, associated with the management of the public lands.

Helen Hankins,

Field Office Manager, Elko Field Office.

[FR Doc. 00–9278 Filed 4–13–00; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

National Park Service

Management Pplan/Special Resource Study/Environmental Impact Statement, Shenandoah Valley Battlefields National Historic District, VA

AGENCIES: Shenandoah Valley Battlefields National Historic District Commission and National Park Service; Department of the Interior.

ACTION: Notice of availability and public review.

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Shenandoah Valley Battlefields National Historic District Commission and the National Park Service announce the availability of a Draft Management Plan/Special Resource Study/Environmental Impact Statement (Plan/SRS/EIS) for the Shenandoah Valley Battlefields National Historic District. The document will be available for public review and comment beginning April 14, 2000 for 60 days. Public comments will be incorporated into the Final Plan/SRS/EIS.

Public meetings to review, comment, and refine the draft Plan/SRS/EIS will be held April 25, 2000 in Frederick County; April 27, 2000 in Shenandoah County; May 3, 2000 in Rockingham County; and Thursday May 4, 2000 in Highland County. Public notices of these meetings will also be announced via a newsletter to prior respondents/participants and local media. Comments from these meetings will also be incorporated into the Final Plan/SRS/EIS. A 30-day no-action period will follow the Environmental Protection Agency's notice of availability of the Final Plan/SRS/EIS. After the no-action period, a Record of Decision will be sought from the Northeast Regional Director, National Park Service, and the Chairman, Shenandoah Valley Battlefields National Historic District Commission.

For further information, meeting time and locations, or to review a copy of the Draft Plan/SRS/EIS, contact: Shenandoah Valley Battlefields NHD Commission, P.O. Box 897, 8895 Collins Drive, New Market, VA 22844, (888) 689–4545.

Dated: March 31, 2000.

Carrington Williams,

Chairman, Shenandoah Valley Battlefields National Historic District Commission.

Dated: April 2, 2000.

Marie Rust,

Northeast Regional Director, National Park Service Director.

[FR Doc. 00–9294 Filed 4–13–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Department of Sociology, Gerontology, and Anthropology, Miami University, Oxford, OH

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Department of Sociology, Gerontology, and Anthropology, Miami University, Oxford, OH which meet the definition of "sacred object" under Section 2 of the Act.

The six cultural items consist of a record stick, Handsome Lake Revelation stick, condolence cane, a pair of dance garters, and a Delaware False Face mask.

In 1972, these six cultural items were purchased from Iroqrafts, on the Six Nations Reserve, Ontario, Canada by the Miami University Anthropology Museum.

Based on the original sales tags, these cultural items have been identified as Cayuga. During consultation, representatives of the Cayuga Nation of New York have indicated these six items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.

Based on the above-mentioned information, officials of the Department of Sociology, Gerontology, and Anthropology, Miami University have determined that, pursuant to 43 CFR 10.2 (d)(3), these six cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Department of Sociology, Gerontology, and Anthropology, Miami University have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Cayuga Nation of New York.

This notice has been sent to officials of the Cayuga Nation of New York and the Seneca Cayuga Indian Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Mrs. Judith D. Spielbauer, Instructor, Department of Sociology, Gerontology, and Anthropology, Miami University, Oxford, OH 45056; telephone: (513) 529–1551, fax: (513) 529–8525 before May 15, 2000. Repatriation of these objects to the Cayuga Nation of New York may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: April 7, 2000.

G. Mark Schoepfle,

Acting Departmental Consulting Archeologist, Archeology and Ethnography Program.

[FR Doc. 00–9295 Filed 4–13–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains From the Norton Sound Region, AK in the Possession of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from the Norton Sound Region,

AK in the possession of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA.

A detailed assessment of the human remains was made by University of Pennsylvania Museum professional staff in consultation with representatives of the Native Village of Unalakleet, the Native Village of Shaktoolik, the Native Village of St. Michael, the Stebbins Community Association, and the Bering Straits Native Foundation.

In 1969, human remains representing one individual were recovered from a site east of Kouwegok Slough near Unalakleet, AK during excavations conducted under the auspices of the University of Pennsylvania by archeologist Bruce Lutz. No known individual was identified. No associated funerary objects are present.

Based on excavation records and accession information provided by the collector, this individual has been identified as Native American from the Post-Norton period (after 1000 A.D.). No further information exists for this individual.

Based on the above mentioned information, officials of the University of Pennsylvania Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the University of Pennsylvania Museum have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Native Village of Unalakleet.

This notice has been sent to officials of the Native Village of Unalakleet, the Native Village of Shaktoolik, the Native Village of St. Michael, the Stebbins Community Association, and the Bering Straits Native Foundation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Jeremy Sabloff, the Williams Director, University of Pennsylvania Museum of Archaeology and Anthropology, 33rd and Spruce Streets, Philadelphia, PA 19104-6324; telephone: (215) 898-4051, fax (215) 898-0657, before May 15, 2000. Repatriation of the human remains to the Native Village of Unalakleet may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: April 7, 2000.

G. Mark Schaepfle,

Acting Departmental Consulting Archeologist, Archeology and Ethnography Program.

[FR Doc. 00-9296 Filed 4-13-00; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collections of information for 30 CFR 795, Permanent Regulatory Program—Small Operator Assistance Program (SOAP), and two technical training program course effectiveness evaluation forms. These collection requests have been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection requests describe the nature of the information collections and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by May 15, 2000, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of either information collection request, explanatory information and related forms, contact John A. Trelease at (202) 208-2783, or electronically to jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1820.8(d)). OSM has submitted two requests to OMB to renew its approval of the collections of information contained in: 30 CFR 795, Permanent Regulatory Program—Small Operator Assistance Program (SOAP); and two technical training program course effectiveness evaluation forms. OSM is requesting a 3-year term of approval for each information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The OMB control numbers for these collections of information are 1029-0061 for Part 795, and 1029-0110 for the technical training effectiveness evaluation forms.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on December 22, 1999 (64 FR 71830). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: 30 CFR Part 795—Permanent Regulatory Program—Small Operator Assistance Program.

OMB Control Number: 1029-0061.

Summary: This information collection requirement is needed to provide assistance to qualified small mine operators under section 507(c) of Public Law 95-87. The information requested will provide the regulatory authority with data to determine the eligibility of the applicant and the capability and expertise of laboratories to perform required tasks.

Bureau Form Number: FS-6.

Frequency of Collection: Once per application.

Description of Respondents: Small operators, laboratories, and State regulatory authorities.

Total Annual Responses: 160.

Total Annual Burden Hours: 10,635 hours.

Title: Technical Training Program Course Effectiveness Evaluation.

OMB Control Number: 1029-0110.

Summary: Executive Order 12862 requires agencies to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. The information supplied by this evaluation will determine customer satisfaction with OSM's training program and identify needs of respondents.

Bureau Form Number: None.

Frequency of Collection: On Occasion.

Description of Respondents: State regulatory authority and Tribal employees and their supervisors.

Total Annual Responses: 315.

Total Annual Burden Hours: 53 hours.

Send comments on the need for the collections of information for the performance of the functions of the

agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collections; and ways to minimize the information collection burdens on respondents, such as use of automated means of collections of the information, to the following addresses. Please refer to OMB control number 1029–0061 for Part 795, and 1029–0110 for the technical training effectiveness evaluation forms.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210—SIB, Washington, DC 20240, or electronically to jtreleas@osmre.gov.

Dated: April 11, 2000.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 00–9362 Filed 4–13–00; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed extension collection of the following: (1) Notice of Termination, Suspension, Reduction or Increase in Payment Benefits (CM–908); and (2) Economic Survey Schedule (WH–1). Copies of the proposed information collection requests can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 13, 2000.

ADDRESSES: Ms. Patricia A. Forkel, U. S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451.

SUPPLEMENTARY INFORMATION:

Notice of Termination, Suspension, Reduction, or Increase in Benefit Payments

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Mine Safety and Health Act of 1977. Under the Act, responsible coal mine operators or their representatives must provide benefit payments to eligible coal miners and dependents of coal miners who have contracted pneumoconiosis. Responsible operators who pay benefits are required to report any changes in the benefit amount, and the reasons for the change, to the Department of Labor.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to ensure that Division of Coal Mine Workers' Compensation regulations are followed and that the new benefit amount is accurate and timely.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Notice of Termination, Suspension, Reduction or Increase in Benefit Payments.

OMB Number: 1215–0064.

Agency Number: CM–908.

Affected Public: Businesses or other for-profit.

Total Respondents: 325.

Frequency: On occasion.

Total Responses: 9,000.

Average Time per Response: 12 minutes.

Estimated Total Burden Hours: 1,800.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $3.

Economic Survey Schedule

I. Background

Sections 5, 6(a)(3) and 8 of the Fair Labor Standards Act (FLSA), administered by the Wage and Hour Division, provide that covered, nonexempt employees in American Samoa may be paid a minimum wage rate established by a special industry committee. The committee is to recommend to the Secretary of Labor the highest minimum wage rate (not to exceed the rate required under section 6(a)(1) of the FLSA) that it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry and will not give any industry in American Samoa a competitive advantage over any other industry in the United States outside of American Samoa. The Secretary of Labor must submit to the industry committee economic data to enable the committee to recommend the industry wage rates. The Economic Survey Schedule (WH–1) is a voluntary use form completed by employers in American Samoa to disclose certain economic data concerning their establishment.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to gather information necessary to prepare the required economic report to be used by the committee to set industry wage rates in American Samoa.

Type of Review: Extension.
Agency: Employment Standards Administration.
Title: Economic Survey Schedule.
OMB Number: 1215–0028.
Agency Number: WH–1.
Affected Public: Business or other for-profit; State, Local or Tribal Government.
Total Respondents: 50.
Frequency: Biennially.
Total Responses: 50.
Average Time per Response: 45 minutes.
Estimated Total Burden Hours: 38.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 7, 2000.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 00–9339 Filed 4–13–00; 8:45 am]
BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1 appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interest parties that the Department of Labor is withdrawing, from the date of this notice, the following General wage Determinations:

OH000005—See OH000004
OH000006—See OH000004
OH000009—See OH000004
OH000021—See OH000004
OH000022—See OH000004

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effected unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

New General Wage Determination Decision

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" are listed by Volume and States:

Volume III

North Carolina:
NC000055 (Apr. 14, 2000)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

Pennsylvania:
PA000004 (Feb. 11, 2000)
PA000032 (Feb. 11, 2000)
PA000033 (Feb. 11, 2000)
PA000038 (Feb. 11, 2000)
PA000042 (Feb. 11, 2000)
PA000065 (Feb. 11, 2000)

Volume III

North Carolina:
NC000004 (Feb. 11, 2000)

Volume IV

Illinois:
IL000001 (Feb. 11, 2000)
IL000002 (Feb. 11, 2000)
IL000007 (Feb. 11, 2000)
IL000016 (Feb. 11, 2000)
IL000017 (Feb. 11, 2000)
IL000018 (Feb. 11, 2000)
IL000029 (Feb. 11, 2000)
IL000030 (Feb. 11, 2000)
IL000035 (Feb. 11, 2000)
IL000042 (Feb. 11, 2000)
IL000043 (Feb. 11, 2000)
IL000049 (Feb. 11, 2000)
IL000052 (Feb. 11, 2000)
IL000054 (Feb. 11, 2000)
IL000057 (Feb. 11, 2000)
IL000061 (Feb. 11, 2000)
IL000069 (Feb. 11, 2000)
Ohio:
OH000002 (Feb. 11, 2000)
OH000004 (Feb. 11, 2000)
OH000013 (Feb. 11, 2000)
OH000029 (Feb. 11, 2000)

Volume V

Iowa:
IA000024 (Feb. 11, 2000)
IA000076 (Feb. 11, 2000)
Kansas:
KS000008 (Feb. 11, 2000)
KS000009 (Feb. 11, 2000)
KS000012 (Feb. 11, 2000)
KS000016 (Feb. 11, 2000)
KS000022 (Feb. 11, 2000)
KS000025 (Feb. 11, 2000)
KS000029 (Feb. 11, 2000)
KS000069 (Feb. 11, 2000)
KS000070 (Feb. 11, 2000)

Volume VI

Alaska:
AK000001 (Feb. 11, 2000)
AK000002 (Feb. 11, 2000)
AK000003 (Feb. 11, 2000)
AK000006 (Feb. 11, 2000)
Colorado:
CO000001 (Feb. 11, 2000)
CO000005 (Feb. 11, 2000)
Washington:
WA000002 (Feb. 11, 2000)
Wyoming:
WY000005 (Feb. 11, 2000)
WY000006 (Feb. 11, 2000)
WY000007 (Feb. 11, 2000)

Volume VII

California:
CA000001 (Feb. 11, 2000)
CA000002 (Feb. 11, 2000)
CA000009 (Feb. 11, 2000)
CA000028 (Feb. 11, 2000)
CA000030 (Feb. 11, 2000)
CA000031 (Feb. 11, 2000)
CA000032 (Feb. 11, 2000)
CA000033 (Feb. 11, 2000)
CA000035 (Feb. 11, 2000)
CA000036 (Feb. 11, 2000)
CA000037 (Feb. 11, 2000)
CA000038 (Feb. 11, 2000)
CA000039 (Feb. 11, 2000)
CA000040 (Feb. 11, 2000)
CA000041 (Feb. 11, 2000)
Nevada:
NV000003 (Feb. 11, 2000)
NV000009 (Feb. 11, 2000)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC This 6 Day of April 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–9056 Filed 4–13–00; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on Benefit Continuity After a Business Transaction; Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Tuesday, May 9, 2000, of the Advisory Council on Employee Welfare and Pension Benefit Plans newly-established Working Group on Benefit Continuity After a Business Transaction.

The session will take place in Room N–5437 A–D, U.S. Department of Labor Building, Second and Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon, if for working group members to set its agenda for 1999 and begin taking testimony on the subject. Names as chair to head the group is Rebecca Miller from Rochester, Minn., Partner with McGladrey & Pullen LLP, and vice chair is Janie Greenwood Harris, from St. Loius, Mo., Trust Counsel for the FIRSTAR Corporation, Inc.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before April 30, 2000, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by April 30, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before April 30.

Signed at Washington, DC this 7th day of April 2000.

Leslie Kramerich,

Acting Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 00–9340 Filed 4–13–00; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on Long Term Care: Issues and Solutions; Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained on section 512 of the Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held on Monday, May 8 2000, of the Advisory Council on Employee Welfare and Pension Benefit Plans newly-established working group to study long Term Care: Issues and Solutions.

The purpose of the open meeting, which will run from 1 p.m. to approximately 4 p.m. in Room N–5437 A–D, U.S. Department of Labor Building, Second and Constitution Avenue NW., Washington, DC 20210, is for working group members to set their agenda for 2000 and to begin taking testimony on the topic. Named to chair the committee is Michael Stapley of Salt Lake City, Utah, President and CEO of Desert Mutual Benefit Association and vice chair is Patrick McTeague of Topsham, Maine, Partner, of McTeague, Higbee, MacAdam, Case, Watson and Cohen.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before April 30, 1999, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organization wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but and extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by April 30, at the address indicated in this notice.

Organizations or individuals also may submit statements for the record without testifying. Twenty (20) copies of such statement should be set to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before April 30.

Signed at Washington, DC this 7th day of April 200.

Leslie Kramerich,

Acting Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 00–9341 Filed 4–13–00; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on the Benefit Implications of Phased Retirement; Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group recently established by the Advisory Council on Employee Welfare and Pension Benefit Plans to study the Benefit Implications of Phased Retirement will hold an open public meeting on Monday, May 8, 2000, in Room N–5437 A–D, U.S. Department of Labor Building, Second and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon, is for Working Group members to organize the agenda for the 2000 working group and to begin taking testimony on the topic. Named as the chair is Carl Camden from Troy, Mich., Executive Vice President of Field Operations, Sales and Marketing, Kelly Services, Inc., and vice chair is Richard Tani from Mt. Prospect, Ill., retired from William M. Mercer.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before April 30, 2000, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by April 30, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying, Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before April 30.

Signed at Washington, DC this 7th day of April, 2000.

Leslie Kramerich,

Acting Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 00–9342 Filed 4–13–00; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–036)]

Agency Information Collection: Submission for OMB Review, Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received on or before May 14, 2000.

ADDRESSES: All comments should be addressed to Mr. Paul A. Boellner Code Q, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports: None.

Title: NASA Safety Reporting System.

OMB Number: 2700–0063.

Type of Review: Extension.

Need and Uses: NASA employees and contractors can voluntarily and confidentially report to an independent agent, any safety concerns or hazards pertaining to any NASA program or project, which have not been resolved through the normal process.

Affected Public: Federal government.

Estimated Number of Respondents: 75.

Responses Per Respondent: 1.

Estimated Annual Responses: 75.

Estimated Hours Per Request: ¼ hr.

Estimated Annual Burden Hours: 19 hrs.

Frequency of Report: As needed.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 00–9263 Filed 4–13–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–033]

NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Aerospace Medicine and Occupational Health Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, Aerospace Medicine and Occupational Health Advisory Subcommittee.

DATES: Wednesday, May 3, 2000, 8 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration Headquarters, 300 E Street, SW, MIC–5A, Room 5H46, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Sam L. Pool, Code SA, Lyndon B. Johnson Space Center, National Aeronautics and Space Administration, Houston, TX 77058, 281–483–7109.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Chairman's Perspective
—Status of Findings and Recommendations
—Space Medicine Overview and Budget Status
—Current Issues in Space Medicine Issues
—Multilateral Medical Operations Panel Report
—Multilateral Space Medicine Board Report
—Physician Comparability
—Neurolab Update
—OLMSA Policy on Astronaut Health Care & Biomedical Research
—Pillars of Biology & Augmentation Update
—Progress, Instutute of Medicine Review
—Occupational Health Update
—Preparation and Review of Committee Findings and Recommendations

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: April 10, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–9260 Filed 4–13–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 00–034]

NASA Advisory Council (NAC), Aero-Space Technology Advisory Committee (ASTAC); Airframe Systems Subcommittee; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aero-Space Technology Advisory Committee, Airframe Systems Subcommittee.

DATES: Thursday, May 4, 2000, 8 a.m. to 5:30 p.m. and Friday, May 5, 2000, 8 a.m. to 12 Noon.

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, Building 1219, Room 225, Hampton, VA 23681–0001.

FOR FURTHER INFORMATION CONTACT: Dr. Darrel Tenney, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23681, 757/864–6033.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Discussions on Strategic Directions in New Code R & Impacts to Aerospace Vehicle Systems Technology Program
—Breakthrough Technologies—Scope and Direction
—Transportation System Architecture

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: April 10, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–9261 Filed 4–14–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AREONAUTICS AND SPACE ADMINISTRATION

[Notice (00–035)]

NASA Advisory Council (NAC), Earth Systems Science and Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Earth Systems Science and Applications Advisory Committee.

DATES: Monday, May 8, 2000, 9:00 a.m. to 5:45 p.m.; and Tuesday, May 9, 2000, 8 a.m. to 4:15 p.m.

ADDRESSES: Endicott House, 80 Haven Street, Dedham, MA 02026.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Schiffer, Code YS, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1876.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

May 8

—Assessment of the State-of-the-Enterprise
—Budget Discussion
—Status Reports re: ESSAAC Subcommittees and ad hoc Panels
—Technology
—Data & Information Systems
—Future Goals & GPRA Metrics
—Applications Program Overview
—Overview of the ESE Science Implementation Plan
—New Overview Section
—Research Solicitation Strategy
—Open Discussion
—Adjourn

May 9

—Summary of First Day
—Technology Strategy and Roadmap
—Strategic Planning Status Overview—ESE Vision
—ESSAAC Discussion
—Debriefing/Closing Remarks
—Summary of Actions, Future Schedule

—Adjourn

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: April 10, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–9262 Filed 4–13–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules for Electronic Copies Previously Covered by General Records Schedule 20; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal.

This request for comments pertains solely to schedules for electronic copies of records created using word processing and electronic mail where the recordkeeping copies are already scheduled. (Electronic copies are records created using word processing or electronic mail software that remain in storage on the computer system after the recordkeeping copies are produced.)

These records were previously approved for disposal under General Records Schedule 20, Items 13 and 14. The agencies identified in this notice have submitted schedules pursuant to NARA Bulletin 99–04 to obtain separate disposition authority for the electronic copies associated with program records and administrative records not covered by the General Records Schedules. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a). To facilitate review of these schedules, their availability for comment is announced in **Federal Register** notices separate from those used for other records disposition schedules.

DATES: Requests for copies must be received in writing on or before May 30, 2000. On request, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums concerning a proposed schedule. These, too, may be requested. Requesters will be given 30 days to submit comments.

Some schedules submitted in accordance with NARA Bulletin 99–04 group records by program, function, or organizational element. These schedules do not include descriptions at the file series level, but, instead, provide citations to previously approved schedules or agency records disposition manuals (see Supplementary Information section of this notice). To facilitate review of such disposition requests, previously approved schedules or manuals that are cited may be requested in addition to schedules for the electronic copies. NARA will provide the first 100 pages at no cost. NARA may charge $.20 per page for additional copies. These materials also may be examined at no cost at the National Archives at College Park (8601 Adelphi Road, College Park, MD).

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports and/or copies of previously approved schedules or manuals should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301)713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Routine administrative records common to most agencies are approved for disposal in the General Records Schedules (GRS), which are disposition schedules issued by NARA that apply Government-wide.

On March 25, 1999, the Archivist issued NARA Bulletin 99–04, which told agencies what they must do to schedule electronic copies associated with previously scheduled program records and certain administrative records that were previously scheduled under GRS 20, Items 13 and 14. On December 27, 1999, the Archivist issued NARA Bulletin 2000–02, which suspended Bulletin 99–04 pending NARA's completion in FY 2001 of an overall review of scheduling and appraisal. On completion of this review, which will address all records, including electronic copies, NARA will determine whether Bulletin 99–04 should be revised or replaced with an alternative scheduling procedure. However, NARA will accept and process schedules for electronic copies prepared in accordance with Bulletin 99–04 that are submitted after December 27, 1999, as well as schedules that were submitted prior to this date.

Schedules submitted in accordance with NARA Bulletin 99–04 only cover the electronic copies associated with previously scheduled series. Agencies that wish to schedule hitherto unscheduled series must submit separate SF 115s that cover both recordkeeping copies and electronic copies used to create them.

In developing SF 115s for the electronic copies of scheduled records, agencies may use either of two scheduling models. They may add an appropriate disposition for the electronic copies formerly covered by GRS 20, Items 13 and 14, to every item in their manuals or records schedules where the recordkeeping copy has been created with a word processing or electronic mail application. This approach is described as Model 1 in Bulletin 99–04. Alternatively, agencies

may group records by program, function, or organizational component and propose disposition instructions for the electronic copies associated with each grouping. This approach is described as Model 2 in the Bulletin. Schedules that follow Model 2 do not describe records at the series level.

For each schedule covered by this notice the following information is provided: name of the Federal agency and any subdivisions requesting disposition authority; the organizational unit(s) accumulating the records or a statement that the schedule has agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency; the control number assigned to each schedule; the total number of schedule items; the number of temporary items (the record series proposed for destruction); a brief description of the temporary electronic copies; and citations to previously approved SF 115s or printed disposition manuals that scheduled the recordkeeping copies associated with the electronic copies covered by the pending schedule. If a cited manual or schedule is available from the Government Printing Office or has been posted to a publicly available Web site, this too is noted.

Further information about the disposition process is available on request.

Schedules Pending

1. Social Security Administration, Agency-wide (N9–47–00–28, 7 items, 7 temporary items). Electronic copies of records created using electronic mail and word processing that relate to communications. Included are electronic copies of such documents as published issuances and related production and control files, records relating to audiovisual products, graphics reference files, and talent files. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Record keeping copies of these files are included in Disposition Job Nos. NC174–176, NC–47–75–9, NC–47–75–24, NC1–47–76–12, NC1–47–76–14, and NC1–47–81–5.

2. Occupational Safety and Health Review Commission, Office of the Executive Director (N9–455–00–1, 14 items, 14 temporary items). Electronic copies of records created using electronic mail and word processing that are accumulated by the agency's Public Information Office. Included are electronic copies of such documents as subject files, speeches and articles, activity reports, congressional testimony, publications, and administrative studies. This schedule follows Model 1 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Job No. N1–455–87–1.

3. United States International Trade Commission, Agency-wide (N9–81–00–1, 14 items, 14 temporary items). Electronic copies of records created using electronic mail and word processing. Included are electronic copies of such documents as publications, press releases, minutes of meetings, litigation case files, informal investigation files, congressional correspondence, directives, budget estimates, and files pertaining to commodities. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Job Nos. NC1–81–78–1, N1–81–89–1, and N1–81–97–1.

Dated: April 7, 2000.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 00–9299 Filed 4–13–00; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority; Sequoyah Nuclear Plant, Units 1 and 2, Environmental Assessment and Finding of No Significant Impact

Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10, Code of Federal Regulations (10 CFR), Section 50.44, 10 CFR 50.46, and 10 CFR Part 50, Appendix K, for Facility Operating Licenses Nos. DPR–77 and DPR–79, issued to the Tennessee Valley Authority (TVA) for operation of the Sequoyah Nuclear Plant (SQN) Units 1 and 2, located in Hamilton County, Tennessee.

Environmental Assessment

Identification of the Proposed Action

The proposed action is in accordance with TVA's application for exemptions dated February 11, 2000.

The proposed action is to exempt TVA from requirements to base its analyses of hydrogen generation, energy release and cladding oxidation, during design basis accidents, on the assumption that either zircaloy or ZIRLO is used as the fuel rod cladding material. The design of a new fuel planned for use at SQN utilizes M5 alloy as the fuel rod clad, spacer grid, fuel assembly guide, instrument tube and fuel rod end plug material.

The Need for the Proposed Action

The proposed exemption is needed because the regulations indicate that light-water reactors contain fuel of uranium oxide pellets enclosed in zircaloy or ZIRLO cladding. The licensee proposes to use a new fuel having "M5" cladding instead of zircaloy or ZIRLO. Exemptions are, therefore, required in order to use the new fuel.

One specific regulation that references use of zircaloy and ZIRLO as fuel cladding material is 10 CFR 50.46, which defines the analytical requirements related to the performance of Emergency Core Cooling Systems (ECCS). TVA has provided information that indicates that the effectiveness of ECCS will not be affected by the use of M5 material, and that the ECCS acceptance criteria specified in the regulations for use with zircaloy and ZIRLO are also applicable to M5. Because the underlying purpose of 10 CFR 50.46 is achieved through the use of M5, special circumstances are present under 10 CFR 50.12(a)(2)(ii) for granting an exemption to 10 CFR 50.46.

The other regulations that relate to use of zircaloy and ZIRLO are 10 CFR 50.44 and 10 CFR 50, Appendix K, which ensure that cladding oxidation and hydrogen generation are limited during a loss-of-coolant accident and conservatively accounted for in analytical models. TVA has provided information indicating that the "Baker-Just equation," referenced in these regulations for use with zircaloy and ZIRLO, are also conservative for use with M5. Because the underlying purpose of 10 CFR 50.44 and 10 CFR 50, Appendix K, is achieved through the use of M5, special circumstances are present under 10 CFR 50.12(a)(2)(ii) for granting an exemption to these regulations.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that with regard to radiological impacts to the general public, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be

released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no action" alternative). Denial of the exemption would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement dated February 13, 1974, for SQN Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, the NRC staff consulted with an official of the State of Tennessee, Ms. Joelle Key, on March 29, 2000, regarding the environmental impact of the proposed action. Ms. Key had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the licensee's letter dated February 11, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. Publically available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room) and from the Agencywide Documents Access and Management System.

Dated at Rockville, Maryland, this 10th day of April 2000.

For The Nuclear Regulatory Commission.

Ronald W. Hernan,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00-9298 Filed 4-13-00; 8:45 am]

BILLING CODE 7590-01-P

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's web site (http://www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in April 2000. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in May 2000. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the second quarter (April through June) of 2000.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024. (For TTY/TDD users, call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the "applicable percentage" (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in April 2000 is 5.14 percent (*i.e.*, 85 percent of the 6.05 percent yield figure for March 2000).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between May 1999 and April 2000.

For premium payment years beginning in:	The assumed interest rate is:
May 1999	4.72
June 1999	4.94
July 1999	5.13
August 1999	5.08
September 1999	5.16
October 1999	5.16
November 1999	5.32
December 1999	5.23
January 2000	5.40
February 2000	5.64
March 2000	5.30
April 2000	5.14

Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the second quarter (April through June) of

2000, as announced by the IRS, is 9 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From—	Through—	Interest rate (percent)
10/1/92	6/30/94	7
7/1/94	9/30/94	8
10/1/94	3/31/95	9
4/1/95	6/30/95	10
7/1/95	3/31/96	9
4/1/96	6/30/96	8
7/1/96	3/31/98	9
4/1/98	12/31/98	8
1/1/99	3/31/99	7
4/1/99	3/31/00	8
4/1/00	6/30/00	9

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates"). The rate for the second quarter (April through June) of 2000 (*i.e.*, the rate reported for March 15, 2000) is 8.75 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From	Through	Interest Rate (percent)
10/1/92	6/30/94	6.00
7/1/94	9/30/94	7.25
10/1/94	12/31/94	7.75
1/1/95	3/31/95	8.50
4/1/95	9/30/95	9.00
10/1/95	3/31/96	8.75
4/1/96	6/30/97	8.25
7/1/97	12/31/98	8.50
1/1/99	9/30/99	7.75
10/1/99	12/31/99	8.25
1/1/00	3/31/00	8.50
4/1/00	6/30/00	8.75

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in May 2000 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 10th day of April 2000.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 00–9293 Filed 4–13–00; 8:45 am]

BILLING CODE 7708–01–P

POSTAL SERVICE

Postage Evidencing Product Submission Procedures

AGENCY: Postal Service.

ACTION: Notice of proposed procedure; response to comments; extension of time for comments.

SUMMARY: "Postage Evidencing Product Submission Procedures," as published in the **Federal Register** on August 17, 1999, was a notification of proposed product submission procedures for all postage evidencing products, including those in the Information Based Indicia Program (IBIP). In response to the solicitation of public comments, two submissions were received. These comments were considered in making the changes incorporated in this revised version, as noted in the discussion of comments, below. In addition to these changes, this version includes new policy on the relationship between the Postal Service and the Provider regarding intellectual property issues.

The USPS, in a cooperative effort with Product Providers and other interested parties, is allowing 30 days for submission of any additional comments to ensure all issues are considered prior to publication of the final rule.

DATES: Comments must be received on or before May 15, 2000.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Postage Technology Management, Room 8430, 475 L'Enfant Plaza SW, Washington DC 20260–2444. Copies of all written comments will be available at the above address for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Nicholas S. Stankosky, (202) 268–5311.

SUPPLEMENTARY INFORMATION: With the expansion of postage application methods and technologies, it is essential that product submission procedures for all postage evidencing products be clearly stated and defined. The Postal Service evaluation process can be effective and efficient if these procedures are followed explicitly by all suppliers. In this way, secure and convenient technology will be made available to the mailing public with minimal delay and with the complete assurance that all Postal Service technical, quality, and security requirements have been met. These procedures apply to all proposed postage evidencing products and systems, whether the Provider is new or is currently authorized by the Postal Service.

Title 39, Code of Federal Regulations (CFR) Section 501.9, Security Testing, states, "the Postal Service reserves the right to require or conduct additional examination and testing at any time, without cause, of any meter submitted to the Postal Service for approval or approved by the Postal Service for manufacture and distribution." For products meeting the performance criteria for postage evidencing under the Information Based Indicia Program (IBIP), including PC Postage products, the equivalent section is 39 CFR Section 502.10, Security Testing, published as a proposed rule in the **Federal Register**, September 2, 1998. When the Postal Service elects to retest a previously approved product, the Provider will be required to resubmit the product for evaluation according to part or all of the proposed procedures. Full or partial compliance with the procedures will be determined by the Postal Service prior to resubmission by the Provider. The proposed submission procedures will be referenced in 39 CFR parts 501 and 502 but will be published as a separate document titled "Postage Technology Management, Postage Evidencing Product Submission Procedures."

Discussion of Comments

A. Scope of Review

1. One commenter expressed concern that the scope of Postal Service review of any postage evidencing device should be limited to the boundaries of the logical security device and to the infrastructures and interfaces through which the Postal Service verifies that payment for postage has been received.

The Postal Service does not accept the commenter's view that the review of any postage evidencing device should be limited to the boundaries of the logical security device and to the infrastructures and interfaces through which the Postal Service verifies that payment for postage has been received. The Postal Service is concerned with other potentially security-related aspects of postage evidencing systems beyond those associated with the logical security device and postage payment, such as communications and other administrative functions. The Postal Service must also verify that all aspects of the postage evidencing system submitted for evaluation work together as specified. No revision of the procedures was made as a result of this comment.

2. One commenter had a concern with providing any copies of product software to the Postal Service, as well as with the number of copies required and the stated intent of the Postal Service to keep copies of the software.

The Postal Service agrees in part with the commenter. The requirement was changed so that the Postal Service will require only one copy of the software code, as opposed to the five copies previously requested.

However, the Postal Service does not agree with the commenter that software should be provided only to the National Institute of Standards and Technology (NIST) laboratory, and not to the Postal Service. A copy of the source code is required by the Postal Service because the Postal Service tests many other aspects of the product beyond the security and other features tested by the NIST laboratories. Should the Postal Service have any question about the completeness of a NIST laboratory report, it may require the source code for comparison purposes. Also, for audit and control purposes there is a need for the Postal Service to have on file a full copy of the source code of the most current version of the software for all approved products. This requirement remains unchanged.

3. One commenter had a concern about the procedures to be applied to product modifications and suggested these rules should exempt from the approval process any modification to an approved product when the modification does not affect the boundaries of the security device or its operation.

The Postal Service does not accept the commenter's view that only certain changes to an approved product should be submitted for evaluation. The Postal Service wants to see all changes to an approved product in order to verify that the proposed modification does not affect the boundaries of the security device or its operation, or otherwise affect security. Each proposed change is evaluated to determine the level of testing required to assess the impact of the change under consideration. No revision of the procedures was made as a result of this comment.

4. One commenter was concerned that the procedures seem to allow the Postal Service to change a test plan that has been submitted by the Provider and approved by the Postal Service during the test process, for any reason or for no reason at all. The commenter also stated that retesting should occur if, but only if, there is a known and proven defect within the security boundaries or a known, proven, and commercially viable technology has been developed that would permit breach of the security device under examination.

The Postal Service does not accept the commenter's views on limiting possible changes to an approved test plan. Postal Service findings during the test and evaluation process can result in the need for additional testing, product retesting, or even resubmission of the product.

Similarly, the Postal Service does not accept the commenter's views on putting limitations on the Postal Service's retesting of an approved product. In accordance with current regulations for metering products (CFR Section 501.9, Security Testing) and proposed regulations for IBI products (502.10, Security Testing, as published in the **Federal Register** September 2, 1998), the Postal Service can require retesting at any time. The text of the regulations states that the Postal Service reserves the right to require or conduct additional examination and testing at any time, without cause, of any meter/IBI system submitted to the Postal Service for approval or previously approved by the Postal Service for manufacture and distribution. No revision of the procedures or the regulations was made as a result of this comment.

B. Communication and Postal Service Response

1. One commenter requested that the Postal Service establish target dates for its responses at each stage of the product submission and approval process and to commit to responding to Providers' submissions within a reasonable and prompt time frame, with standardized time frames and methodologies for communication.

The Postal Service understands the commenter's concern and does in fact strive to complete each stage of the product review, test, and evaluation process in a timely manner. However, it is difficult if not impossible for the Postal Service to commit to a set timetable for response, given resource constraints, the unpredictability of product submissions, and the dependence on outside agents. The Product Providers can help the Postal Service to respond in a timely manner by ensuring that product submissions are complete and meet all requirements specified in the product submission procedures. No revision of the procedures was made as a result of this comment.

2. One commenter asked that a formal communication process be established between the Provider and third party laboratories or consultants retained by the Postal Service in order to discuss significant findings impacting the security assessment of the product submission and communicate significant findings in a timely manner.

The Postal Service does not agree with this request. In order to evaluate postage evidencing products, the Postal Service secures the services of various third parties. These third parties are Postal Service resources paid by the Postal Service to complete tasking at Postal Service direction and to provide reports directly to the Postal Service only. We do not wish to have the efforts of these third parties and the costs of their services diverted by the need to communicate with anyone outside the Postal Service. Any communication between the Provider and these third party resources shall be accomplished through discussions with the Manager, Postage Technology Management. No revision of the procedures was made as a result of this comment.

3. One commenter asked that the Postal Service communicate interim test results and bring to the immediate attention of the Provider any circumstance where there is the potential for test failure.

The Postal Service does not agree with this request. Before submission of a product for Postal Service test and evaluation, the Provider should ensure that the product meets all performance criteria and specifications. A product that is not ready for testing and has functional problems delays the Postal Service evaluation of the product. The Postal Service does not have the resources to act as a test laboratory for the Provider, nor is it an appropriate role for the Postal Service. The Submission Procedures were amended to allow for the Postal Service to charge the Provider for the costs associated with additional testing by the Postal Service that is required as the result of

an incomplete or inadequate initial product submission.

C. Requirements for FIPS 140 Certification

1. One commenter asked for clarification of the Postal Service policy and position on recognition of FIPS 140 certification for both the Postal Security Device (PSD) and the actual application running on the PSD.

The Postal Service requires only that the PSD itself receive the NIST FIPS 140 certification. The FIPS certification of the PSD is independent of the application. Additional (non-FIPS) functions required of the PSD are specified in the USPS Benchmark Test requirements. These functions will be tested in addition to FIPS–140 functions by a NIST-certified laboratory. The Postal Service has revised the product submission procedures in response to this comment.

D. Requirements for Use of AMS CD–ROM

1. One commenter questioned the requirement to use and integrate the USPS Address Matching System (AMS) CD–ROM with some IBI systems, claiming that this program does not support all the functionality required, such as coding of addresses to the delivery point and validation of exact input addresses.

The Postage Evidencing Product Submission Procedures that are the subject of this **Federal Register** notice require the Provider to meet Postal Service performance criteria for specific postage evidencing products, as applicable. Any comments on the details of the performance criteria for individual products should be addressed separately to the Manager, Postage Technology Management.

1. Product Submission Procedures

In submitting any postage-evidencing product for Postal Service evaluation, the proposed Provider must provide detailed documentation and comply with requirements in the following areas:

(1) Letter of Intent.
(2) Nondisclosure Agreements.
(3) Concept of Operations (CONOPS).
(4) Software and Documentation Requirements.
(5) Provider Infrastructure Plan.
(6) USPS Address Matching System (AMS) CD–ROM Integration.
(7) Product Submission/Testing.
(8) Provider Infrastructure Testing.
(9) Field Test (Beta) Approval (Limited Distribution).
(10) Provider/Product Approval (Full Distribution).

The Provider shall indicate the specific requirement(s) addressed by each document submitted in compliance with these Postage Evidencing Product Submission Procedures. The Postal Service requests that the documentation include a matrix showing where each specific requirement is addressed. Documentation shall be in English and formatted for standard letter-size (8.5″ × 11″) paper, except for engineering drawings, which shall be folded to the required size. Where appropriate, documentation shall be marked as "Confidential." The steps in the Postage Evidencing Product Submission Procedures must be completed in sequential order, except as detailed below.

1.1. Letter of Intent

The Provider must submit a Letter of Intent to the Manager, Postage Technology Management, United States Postal Service, 475 L'Enfant Plaza SW, Room 8430, Washington, DC 20260–2444.

A. The Letter of Intent must include:
(1) Date of correspondence.
(2) Name and address of all parties involved in the proposal. In addition to the Provider, the parties listed shall include those responsible for assembly, distribution, management of the product/device, hardware/firmware/software development, testing, and other organizations involved (or expected to be involved) with the product, including suppliers of significant product components. In these procedures, the term "product" is used when referring generically to processes and so forth. However, the term "product" includes "product/device."
(3) Name and phone number of official point of contact for each company identified.
(4) Provider's business qualifications (*i.e.*, proof of financial viability, certifications and representations, proof of ability to be responsive and responsible).
(5) Product/device concept narrative.
(6) Provider infrastructure concept narrative.
(7) Narrative that identifies the internal resources knowledgeable of current Postal Service policies, procedures, performance criteria, and technical specifications to be used to develop security, audit, and control features of the proposed product.
(8) The target Postal Service market segment the proposed product is envisioned to serve.

B. The Provider must submit with the Letter of Intent a proposed product development plan of actions and milestones (POA&M) with a start date coinciding with the date of the Letter of Intent. Reasonable progress must be shown against these stated milestones.

C. The Manager, Postage Technology Management, will acknowledge in writing the receipt of the Provider's Letter of Intent and will designate a Postal Service point-of-contact. Upon receipt of this acknowledgment, the Provider may continue with the sequential requirements of the product submission process.

1.2. Nondisclosure Agreements

These agreements are intended to ensure confidentiality and fairness in business. The Postal Service is not obligated to provide product submission status to any parties not identified in the Letter of Intent. After obtaining signed nondisclosure agreements, the Provider may continue with the sequential requirements of the product submission process.

1.3. Concept of Operations

A. The Provider must submit a Concept of Operations (CONOPS) that discusses at a moderate level of detail the features and usage conditions for the proposed product. The Provider should submit 10 serialized printed copies and one electronic copy on a PC-formatted 3.5″ floppy disk. Additionally, the Provider must submit a detailed process model supporting each CONOPS section.

B. At a minimum, the CONOPS should cover the following areas:
(1) System Overview.
(a) Concept overview/business model.
(b) Concept of production/maintenance administration.
(c) For Information Based Indicia (IBI) systems, including PC Postage products, the system design overview, including:
(i) Postal Security Device (PSD) implementation (stand-alone, LAN, WAN, hybrid).
(ii) Features.
(iii) Components, including the digital signature algorithm.
(d) Product life cycle overview.
(e) Adherence to industry standards, such as Federal Information Processing Standard (FIPS) 140–1, as required by the Postal Service.
(2) System Design Details (for proposed IBI systems, including PC Postage products).
(a) PSD features and functions.
(b) Host system features and functions.
(c) Other components required for system use including, but not limited to, the proposed indicia design and label stock.

(3) Product Life Cycle.
(a) Manufacturer.
(b) Postal Service certification of product/device.
(c) Production.
(d) Distribution.
(e) Product/device licensing and registration.
(f) Initialization.
(g) Product authorization and installation.
(h) Postage Value Download (PVD) process.
(i) Product and support system audits.
(j) Inspections.
(k) Product withdrawal/replacement.
(i) Overall process.
(ii) Product failure/malfunction procedures.
(l) Scrapped product process.
(4) Finance Overview.
(a) Customer account management.
(i) Payment methods.
(ii) Statement of account.
(iii) Refund.
(b) Individual product finance account management.
(i) Postage Value Download (PVD).
(ii) Refund.
(c) Daily account reconciliation.
(i) Provider reconciliation.
(ii) Postal Service detailed transaction reporting.
(d) Periodic summaries.
(i) Monthly reconciliation.
(ii) Other reporting, as required by the Postal Service.
(5) Interfaces.
(a) Communications and message interfaces with Postal Service infrastructure, including but not limited to:
(i) PVDs.
(ii) Refunds.
(iii) Inspections.
(iv) Product audits.
(v) Lost or stolen product procedures.
(b) Communications and message interfaces with applicable Postal Service financial functions, including but not limited to:
(i) Postage settings, including those done remotely.
(ii) Daily account reconciliation.
(iii) Refunds.
(c) Communication and message interfaces with Customer Infrastructure, including but not limited to:
(i) Cryptographic key management.
(ii) Product audits (device and host system).
(iii) Inspections.
(d) Message error detection and handling.
(6) Technical Support and Customer Service.
(a) User training and support.
(b) Software Configuration Management (CM) and update procedures.
(c) Hardware/firmware CM and update procedures.
(7) Other.
(a) Change control procedures.
(b) Postal rate change procedures.
(c) Address Management System ZIP+4 CD–ROM updates, if applicable.
(d) Physical security.
(e) Personnel/site security.

C. Supplementary requirements, CONOPS:

(1) The CONOPS must be accompanied by substantiated market analysis supporting the target Postal Service market segment that the proposed product is envisioned to serve, as identified in the Letter of Intent.

(2) The CONOPS must include a list and a detailed explanation of any proposed deviations from Postal Service performance criteria or specifications. Any proposed deviation to audit and control functions required by current Postal Service policy, procedure, performance criteria, or specification must be accompanied by an independent assessment by a nationally recognized, independent, certified public accounting firm attesting to the proposed auditing method. The report of this information is to be signed by an officer of the accounting firm.

D. Postal Service response:

(1) The Postal Service will respond in a timely manner.

(2) For each submission, the Postal Service will appoint a Product Review Control Officer. All communications between the Provider and the Postal Service are to be coordinated through the Product Review Control Officer.

(3) The Postal Service will acknowledge, in writing, receipt of the CONOPS and perform an initial review. The Postal Service will provide the Provider with a written summary of the CONOPS review. In the written review, the Postal Service will provide authorization to continue with the product submission process, or a listing of CONOPS requirements that are not met.

(4) If, in the sole opinion of the Postal Service, it is determined that significant CONOPS deficiencies do exist, the Postal Service, at the discretion of the Manager, Postage Technology Management, may return the CONOPS to the Provider without further review. It will then be incumbent on the Provider to resubmit a corrected CONOPS.

(5) The Provider may continue with the product submission process upon receipt of authorization from the Postal Service to proceed.

1.4. Software and Documentation Requirements

A. The Provider must submit to the Postal Service one copy of executable code and one copy of source code for all software included in the product.

B. The Provider must submit a detailed design document of the product. For IBI products, this shall include the proposed IBIP indicia design, which must be approved by the Manager, Postage Technology Management.

C. Additionally, depending on the product, the Postal Service requires design documentation that includes, but is not limited to, the following:
(1) Operations manuals for product usage.
(2) Interface description documents for all proposed communications interfaces.
(3) Maintenance manuals.
(4) Schematics.
(5) Product initialization procedures.
(6) Finite state machine models/diagrams.
(7) Block diagrams.
(8) Security features descriptions.
(9) Cryptographic operations descriptions. Detailed references for much of this documentation are listed in FIPS 140–1, Appendix A. The Postal Service will determine the number of copies needed of the aforementioned documentation based on the CONOPS review. The Postal Service will notify the Provider of the required number of copies. The required number of copies are to be uniquely numbered for control purposes.

D. The Provider must submit a comprehensive test plan that will validate that the product meets all Postal Service requirements and, where appropriate, the requirements of FIPS 140–1. With respect to the Provider's Internet server, the test plan shall indicate how the Provider will test to ensure the physical security of the Provider's server and administrative site and the firewall, and to ensure the security of the processes for remote administrative access and configuration control. With respect to the process for initializing customer accounts, the test plan shall describe the tests for ensuring secure distribution or transmission of software and cryptographic keys. The test plan must list the parameters to be tested, test equipment, procedures, test sample sizes, and test data formats. Also, the plan must include detailed descriptions, specifications, design drawings, schematic diagrams, and explanations of the purposes for all special test equipment and nonstandard or noncommercial instrumentation.

Finally, this test plan must include a proposed schedule of major test milestones.

E. The Provider must submit a benchmark assessment plan. The Manager, Postage Technology Management will provide reference standards, performance criteria, specifications, and so forth to be used as a basis for the Provider to produce this plan.

F. Postal Service response:

(1) The Postal Service will provide its response in a timely manner.

(2) The Postal Service will acknowledge, in writing, receipt of the Provider's design and test plans and will perform an initial review. The Postal Service will furnish the Provider with a written summary of the design plan and test plan reviews. In the written review, the Postal Service will provide authorization to continue with the product submission process, or will provide a listing of design plan requirements or test plan requirements that are not met, and perhaps other deficiencies.

(3) If, in the sole opinion of the Postal Service, it is determined that significant design plan or test plan deficiencies do exist, the Postal Service, at the discretion of the Manager, Postage Technology Management, may return the plans to the Provider without further review. It will then be incumbent on the Provider to resubmit revised plans that address the identified deficiencies.

(4) The Provider may continue with the product submission process upon receipt of authorization from the Postal Service to proceed.

1.5. Provider Infrastructure Plan

A. The Provider Infrastructure Plan may be submitted concurrently with the design and test plans described in 1.5, Software and Documentation Requirements. At this point in the product submission process, the Postal Service will provide additional performance criteria and specifications for the IBIP public key infrastructure, if required for the product/device, for use as a basis for the applicable elements of the Provider's Infrastructure Plan.

B. The Provider must submit a Provider Infrastructure Plan that describes how the processes and procedures described in the CONOPS will be met or enforced. This includes, but is not limited to, a detailed description of all Provider-related and Postal Service-related operations, computer systems, and interfaces with both customers and the Postal Service that the Provider shall use in manufacturing, producing, distributing, customer support, product/device life cycle, inventory control, print readability quality assurance, and reporting.

C. Postal Service response:

(1) The Postal Service will respond in a timely manner.

(2) The Postal Service will acknowledge in writing the receipt of the Provider's Infrastructure Plan and will perform an initial review. The Postal Service will provide the Provider with a written summary of the Infrastructure Plan review. In the written review, the Postal Service will provide authorization to continue with the product submission process, or a listing of the Infrastructure Plan requirements that are not met, and perhaps other deficiencies.

(3) If, in the sole opinion of the Postal Service, it is determined that significant Provider Infrastructure Plan deficiencies do exist, the Postal Service, at the discretion of the Manager, Postage Technology Management, may return the Infrastructure Plan to the Provider without further review. It will then be incumbent on the Provider to resubmit a revised Infrastructure Plan to address the identified deficiencies.

(4) The Provider may continue with the product submission process upon receipt of authorization from the Postal Service to proceed.

1.6. USPS Address Matching System (AMS) CD–ROM Integration

A. The USPS AMS CD–ROM is a required component of IBIP open systems. For such systems, the Provider shall initiate and fully comply with a license agreement with the USPS National Customer Support Center (NCSC). This signed agreement shall describe responsibilities of the AMS CD–ROM supply chain process, including roles of the Provider. The only functionality of the AMS CD–ROM available through an IBIP system shall be address matching and ZIP+4 coding of input addresses.

B. The Provider shall submit a detailed description of how the USPS AMS CD–ROM will be integrated in the product, including a description of the process by which an address is ZIP+4 coded, including all possible optional and required parameters. The Provider can submit this information concurrent with submission of the Software and Documentation Requirements and/or Provider Infrastructure Plan described above.

C. Any CONOPS or products proposed for which the Provider requests a variance to the AMS CD–ROM requirements must be approved by the Manager, Postage Technology Management prior to proceeding with the next step in the submission process.

1.7. Product Submission/Testing

A. The product/device Provider must be prepared to submit up to five complete production systems of each product/device for which Postal Service evaluation is requested. The required number of submitted systems will be determined by the Postal Service. The Provider must provide any equipment and consumables required to use the submitted product/device in the manner contemplated by the CONOPS.

Thorough Provider testing prior to submission of the product to the Postal Service will avoid unnecessary delays in the review and evaluation process. If, in the opinion of the Postal Service, it is determined that significant product deficiencies exist, the Postal Service, at the discretion of the Manager, Postage Technology Management, may return the product to the Provider without further review. The Provider may resubmit a corrected product.

The Postal Service reserves the right to charge the Provider for the costs associated with any additional testing by the Postal Service that is required as the result of an incomplete or inadequate initial product submission.

B. If the product contains a cryptographic module, the Provider must submit the cryptographic module to a laboratory accredited under the National Voluntary Laboratory Accreditation Program (NVLAP) for FIPS 140–1 certification, or equivalent, as authorized by the Postal Service. The Postal Service requires only that the PSD itself receive the NIST FIPS 140–1 certification. The FIPS certification of the PSD is independent of the application.

Upon completion of the FIPS 140–1 certification, or equivalent, the Postal Service requires the following to be forwarded directly from the accredited laboratory to the Manager, Postage Technology Management for review:

(1) A copy of all information given to the laboratory by the Provider, including a summary of all information transmitted orally.

(2) A copy of all instructions from the Provider with respect to what is or is not to be tested for.

(3) A copy of the letter of recommendation for the product as submitted by the laboratory to the National Institute of Standards and Technology (NIST) of the United States of America.

(4) Copies of all proprietary and nonproprietary reports and recommendations generated during the test process.

(5) A copy of the certificate, if any, issued by NIST for the product.

(6) Written full disclosure identifying any contribution of the NVLAP laboratory to the design, development, or ongoing maintenance of the cryptographic module or the product/device.

C. For products with a cryptographic module, non-FIPS functions required of the module are specified in the USPS Benchmark Test requirements. A NIST-certified laboratory will test these functions in addition to testing the FIPS 140–1 functions.

D. If the cryptographic module is submitted to an accredited test laboratory to meet the requirements of paragraph B or C of this section, the laboratory must meet all the requirements specified by NIST in the Implementation Guidance for FIPS PUB 140–1 and the Cryptographic Module Validation Program; NIST document 150–17, Cryptographic Module Testing; and other documents issued by NIST to govern the conduct of accredited laboratories.

E. All cryptographic modules submitted to an accredited laboratory for testing under paragraph B or C of this section shall be retained by the laboratory for 3 years from date of product approval by the Postal Service.

F. The Provider may submit the product to the Postal Service for test and evaluation prior to completion of any required FIPS 140–1 testing, provided a letter is submitted from the NVLAP laboratory to the Postal Service indicating:

(1) That the cryptographic module included in the product is being tested under FIPS 140–1 for the required security levels, in accordance with the current, relevant performance criteria.

(2) That the cryptographic module has a reasonable chance of meeting the FIPS 140–1/USPS security levels.

(3) The timeline for FIPS 140–1 test completion.

G. The Postal Service reserves the right to require or conduct additional examination and testing at any time, without cause, of any product submitted to the Postal Service for approval or approved by the Postal Service for manufacture and distribution.

H. Upon satisfactory completion of the Postal Service testing and NVLAP laboratory testing (where required), the Postal Service will provide authorization to continue the product submission process. The Provider may continue with the product submission process upon receipt of authorization from the Postal Service to proceed.

I. The Provider shall obtain, maintain, and comply with the certification requirements as established by the USPS in the Coding Accuracy Support System (CASS) program. The Provider shall obtain, maintain, and comply with CASS certification requirements prior to product offering.

1.8. Product Infrastructure Testing

A. Prior to approval for distribution of any product/device, the Provider must achieve test and approval of all reporting requirements, including, but not limited to, Postal Service/customer licensing support, product status activity reporting, total product population inventory, irregularity reporting, lost and stolen reporting, financial transaction reporting, account reconciliation, digital certificate acquisition, product initialization, cryptographic key changes, rate table changes, print quality assurance, device authorization, device audit, product audit, and remote inspections.

B. Testing of these activities and functions includes computer-based testing of all interfaces with the Postal Service, including but not limited to the following:

(1) Product manufacture and life cycle (including leased, unleased, new product/device stock, installation, withdrawal, replacement, key management, lost, stolen, and irregularity reporting).

(2) Product distribution and initialization (including product authorization, product initialization, customer authorization, and product maintenance).

(3) Licensing (including license application, license update, and license revocation).

(4) Finance (including cash management, individual product financial accounting, refund management, daily summary reports, daily transaction reporting, and monthly summary reports).

(5) Audits and inspections, including site audits.

C. The Provider must complete a "Product-Provider Infrastructure-Financial Institution-USPS Infrastructure" (Alpha) test involving all entities in the proposed architecture. At a minimum this includes the proposed product, Provider Infrastructure, financial institution, and Postal Service Infrastructure systems and interfaces. Alpha testing is intended to demonstrate the proposed product utility and its functionality and compatibility with other systems. Alpha testing may be conducted in a laboratory environment.

D. Provider Infrastructure Testing (Alpha) test note: The Postal Service reserves the right to require or conduct additional examination and testing at any time, without cause, of any Provider Infrastructure system supporting a postage evidencing product/device approved by the Postal Service for manufacture and distribution. Initial Provider Infrastructure testing and (Alpha) testing schedules will be supported at the convenience of the Postal Service.

E. Demonstrable evidence of successful completion for each test is required prior to proceeding.

F. The Provider may continue with the product submission process upon receipt of authorization from the Postal Service to proceed.

1.9. Field Test (Beta) Approval (Limited Distribution)

A. The Provider will submit a proposed Field (Beta) Test Plan identifying test parameters, product quantities, geographic location, test participants, test duration, test milestones, and product recall plan. The Beta Test Plan will be in accordance with the Beta Test Strategy in effect for the given product type. The Postal Service will supply the appropriate Beta Test Strategy to the Provider upon request.

The purpose of the Beta test is to demonstrate the proposed product's utility, security, audit and control, functionality, and compatibility with other systems, including mail entry, acceptance, and processing, in a real-world environment. The Beta test will employ available communications and will interface with current operational systems to conduct all product functions. The Manager, Postage Technology Management will determine acceptance of Provider-proposed Beta Test Plans based on, but not limited to, assessed risk of the product, product impact on Postal Service operations, and requirements for Postal Service resources. Proposed candidates for Beta test participation must be approved by the Postal Service. Beta test approval consideration will be based in whole or in part on the location, mail volume, mail characteristics, and mail origination and destination patterns.

B. The Provider has a duty to report security weaknesses to the Postal Service to ensure that each product/device model and every product/device in service protects the Postal Service against loss of revenue at all times. Beta participants must agree to a nondisclosure confidentiality agreement when reporting product security, audit, and control issues, deficiencies, or failures to the Provider and the Postal Service. A grant of Field Test Approval (FTA) does not constitute an irrevocable

determination that the Postal Service is satisfied with the revenue-protection capabilities of the product/device. After approval is granted to manufacture and distribute a product/device, no change affecting the basic features or safeguards of a product/device may be made except as authorized or ordered by the Postal Service in writing from the Manager, Postage Technology Management.

C. The Provider may continue with the product submission process upon receipt of authorization from the Postal Service to proceed.

1.10. Provider/Product Approval (Full Distribution)

A. Upon receipt of the final certificate of evaluation from the national laboratory, where required, and after obtaining positive results of internal testing of the product/device, successful completion of Provider infrastructure testing, Alpha testing, demonstration of limited distribution activities (Beta testing), and audits of Provider site security, the Postal Service will administratively review the submitted product, the Provider infrastructure, and the Provider qualification requirements for final approval of full distribution. In preparation for the administrative review, the Provider shall update any product submission documentation submitted in compliance with the requirements of the Postage Evidencing Product Submission Procedure that is no longer accurate with respect to the product in review.

Note: Required qualifications for Providers of IBI systems can be found in draft 39 CFR part 502, Manufacture, Distribution, and Use of Postal Security Devices and Information-Based Indicia, as published in the **Federal Register** on September 2, 1998. Copies are available by contacting USPS, Postage Technology Management, 475 L'Enfant Plaza SW, Room 8430, Washington DC 20260–2444. Copies of CFR part 501 pertaining to manufacturer qualifications regarding postage meters are available also at the above address.

B. The Postal Service may require, at any time, that models/versions of approved products, and the design and user manuals and specifications applicable to such products, and any revisions thereof, be deposited with the Postal Service.

2. Change Control Procedure

2.1. Overview

A. After approval is granted to manufacture and distribute a product/device, no change affecting the basic features or safeguards of a product/device may be made except as authorized or ordered by the Postal Service in writing from the Manager, Postage Technology Management. The submission of a change proposal and the subsequent test and acceptance of a product change are designed to ensure not only that the changed product meets all requirements and performance criteria but also that the stated changes made to a product do not introduce any unintended, unidentified, unexpected, or undesirable changes to the form, fit, function, or security of the product.

B. Once a postage evidencing product/device has received final approval from the Postal Service, the Provider is required to submit any change(s) to that product for Postal Service approval. Changes covered by this process include, but are not limited to, the following:

(1) Changes to the form, fit, function, or security of the product/device.

(2) Changes resulting from new Postal Service regulations, such as an updated postal rate table.

(3) Changes to the software or firmware.

(4) Changes to the PSD, for products using such a device.

(5) Changes to the physical configuration of the product.

(6) Changes to the indicia design or to consumables, such as labels, that can be used with the product.

(7) Changes to product documentation or packaging.

(8) Changes to product distribution methods.

(9) Changes to third party providers of significant product components.

C. For an IBI product, the changed product shall be in compliance with the IBI performance criteria and all other Postal Service regulations in effect at the time the change is implemented. All changes to previously approved products must be approved by the Postal Service before implementation. The Postal Service must also approve the timetable and procedures for implementing changes.

D. Providers are encouraged to consolidate multiple changes in a single change proposal to enable the Postal Service to expedite review of the changes.

E. The Provider shall fully document all changes, in accordance with the requirements described in the following sections.

2.2. Provider Responsibilities

A. The Provider shall be responsible for notifying the Postal Service of any proposed changes made as described in section 2.1. The Provider shall be responsible for having a Postal Service-approved process for configuration management of the versions of each approved product. The Provider's process shall ensure that no changes can be made without proper tracing of design changes, records of authorization, and notification to the Postal Service. The Provider is responsible for submitting a change proposal in accordance with the requirements of this procedure and for achieving Postal Service approval before implementing any change.

B. Detailed Provider Actions

(1) Letter of Intent to Change. The first step in the submission of a change proposal is to submit a Letter of Intent to Change, similar to the Letter of Intent described under Product Submission Procedures, above. The Letter of Intent to Change shall be submitted to the Manager, Postage Technology Management, United States Postal Service, 475 L'Enfant Plaza SW, Room 8430, Washington DC 20260–2444. The letter must include:

(a) Date of correspondence.

(b) Name and address of all parties involved in the change proposal, including those responsible for assembly, distribution, management of the product/device, hardware/firmware/software development or testing, and other organizations involved (or expected to be involved) with the changed product.

(c) Name and phone number of official point of contact for each party identified above.

(d) Change concept narrative. A description of the proposed change, identifying any changes to the form, fit, function, or security of the product.

(e) Discussion of the reasons for the change.

(f) Discussion of the implications of the change for product security, product identification, and Provider procedures such as distribution, operations, or financial transactions, as well as any cost impact and impact on product customers. The document shall also discuss the impact of the change on Postal procedures such as mail entry, mail acceptance, and mail processing, as well as the impact on the interfaces between the Provider and the Postal Service and/or customers.

(g) An outline of the actions the Provider will take in support of the change proposal, including a listing of the documentation the Provider will submit in support of the change and the testing that will be performed to ensure the changes meet Postal Service requirements.

(h) The timetable for submission, test, acceptance, and implementation of the proposed change.

(i) The procedure for implementation of the proposed change.

(2) Additional documentation. Once the Letter of Intent to Change is submitted, the Provider shall review the following documents and submit any changes needed to ensure they are still current. Additional documentation may be required at the discretion of the Postal Service.

(a) Nondisclosure Agreements.

(b) Concept of Operations.

(c) Software and Documentation.

(d) Provider Infrastructure Plan.

(e) USPS Address Matching System (AMS) CD–ROM Integration, if required for the product.

(3) Testing. The Provider will test the product changes as described in the Postage Evidencing Product Submission Procedures to the extent required by the proposed change, in accordance with Postal Service direction. The Provider shall document the tests performed on product changes and shall submit this documentation along with verification of successful completion of the testing.

2.3. Postal Service Responsibilities

A. The Postal Service will execute its responsibilities in a timely manner.

B. The Postal Service will review the Letter of Intent to Change and accept or reject each component of the Provider's proposed approach for product change, documentation submittal, and testing, and schedule for release.

C. The Postal Service will complete testing of the changes as required to ensure the changes meet Postal Service performance criteria, and provide written comments to the Provider. Approval of the change will be granted in writing by the Manager, Postage Technology Management.

D. The Postal Service reserves the right to determine if a proposed change is extensive enough to constitute a new product, rather than a change to a previously approved product. If such a determination is made, the Provider shall comply with all requirements of the Postage Evidencing Product Submission Procedures, including field testing.

3. Intellectual Property and License Policy

Product Service Providers who choose to produce a postage evidencing product or service must comply with USPS Intellectual Property (IP) Requirements as a condition for receiving and maintaining regulatory approval. If a Product Service Provider is unable or unwilling to meet the IP Requirements, it should not offer the product or service. Product Service Providers do not have authorization or consent from the USPS under 28 U.S.C. 1498(a) or otherwise to make or use any patented invention.

The USPS reserves the right and authority to discontinue a Product Service Provider's authorization to distribute a postage evidencing device or service if the USPS or a court determines that the manufacture of the device or service, the use of the device or service by mailers, or the validation of the indicia produced by the device or service requires use of patented inventions for which the Product Service Provider has not procured appropriate licenses. This requirement applies to all aspects of the Product Service Provider's product or service, including those required or specified under applicable performance criteria.

4. Request for Comment

It is emphasized that the proposed procedures for initial product submission and changes to already approved products are being published for comments and are subject to final definition.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rule making by 39 U.S.C. 410 (a), the Postal Service invites public comments on the proposed procedures.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–9268 Filed 4–13–00; 8:45 am]

BILLING CODE 7710–12–P

PRESIDIO TRUST

Presidio Theatre Building 99, The Presidio of San Francisco, California; Notice of Intent To Prepare an Environmental Assessment

AGENCY: The Presidio Trust.

ACTION: Notice of intent to prepare an Environmental Assessment (EA) for the rehabilitation and expansion of the Presidio Theatre (Building 99) within The Presidio of San Francisco, San Francisco, California (Presidio).

SUMMARY: The Presidio Trust has received a proposal from one of its tenants, the San Francisco Film Centre, for rehabilitation and expansion of the Presidio Theatre within the Presidio. Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–90 as amended), The Presidio Trust will prepare an EA for rehabilitating the existing 15,140-square-foot Presidio Theater and adding 45,000 square feet of new construction for theater uses, a restaurant, retail museum and library store (proposed action). The EA will include brief discussions of the need for the proposal, alternatives including "no action" and reuse of existing buildings to minimize new construction, the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted. Based on a preliminary review of the proposed action, issues and impact topics to be analyzed include the following: Traffic and transportation systems; cultural resources (effect on national historic landmark district and archeological resources); hydrology and water quality; visual resources and scenic viewing; fire protection; air quality; and noise.

PUBLIC COMMENT: The Presidio Trust will hold a public scoping workshop to solicit comment regarding the range of alternatives and the specific impacts to be evaluated in the EA on May 10, 2000, from 6:00 to 9:00 p.m., at the Log Cabin (Presidio Building #1299) in the Presidio. Comments concerning the scope of this project must be received by May 24, 2000. The Presidio Trust will provide other informal information updates and notices concerning this project through postings on its website at www.presidiotrust.gov or through its monthly publication, the Presidio Post. The Presidio Trust will announce the release of the EA by notice in the **Federal Register** and the Presidio Post, and through a direct mailing to the affected public. The Presidio Trust also anticipates that the GGNRA Advisory Commission will include this project proposal on the agenda of one of its upcoming public meetings, which will be publicly announced when the meeting date is established.

ADDRESSES: Written comments concerning this notice must be sent to John Pelka, NEPA Compliance Coordinator, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Fax: 415–561–5315. E-mail: jpelka@presidiotrust.gov.

FOR FURTHER INFORMATION CONTACT: John Pelka, NEPA Compliance Coordinator, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Telephone: 415–561–5300.

Dated: April 7, 2000.

Karen Cook,

General Counsel.

[FR Doc. 00–9191 Filed 4–13–00; 8:45 am]

BILLING CODE 4310–4R–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24387; File No. 812–11910]

The Penn Mutual Life Insurance Company, et al.; Notice of Application

April 11, 2000.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940, as amended (the "1940 Act") approving certain substitutions of securities, and pursuant to Section 17(b) of the 1940 Act exempting related transactions from Section 17(a) of the 1940 Act.

Summary of Application: Applicants request an order approving the substitutions of shares of four new investment portfolios ("New Funds") of Penn Series Funds, Inc. ("Penn Series") for shares of certain unaffiliated registered management investment companies ("Replaced Funds") currently serving as investment options for certain variable annuity contracts and variable life insurance policies, and to permit certain in-kind redemptions of portfolio securities in connection with the substitutes ("Substitutions").

Applicants: The Penn Mutual Life Insurance Company ("Penn Mutual Life"), The Penn Annuity and Insurance Company ("PIA"), Penn Mutual Variable Annuity Account III ("Variable Annuity Account III"), Penn Mutual Variable Life Account I ("Variable Life Account I"), PIA Variable Annuity Account I ("Variable Annuity Account I," and together with Variable Annuity Account III and Variable Life Account I, "the Separate Accounts"), and Independence Capital Management, Inc. ("ICMI") (collectively, "Applicants").

Filing Date: The application was filed on December 23, 1999, and amended and restated on April 10, 2000.

Hearing or Notification Of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 1, 2000, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants: Franklin L. Best, Esq., Managing Corporate Director, The Penn Mutual Life Insurance Company, 600 Dresher Road, Horsham, PA 19044. Copies to C. Ronald Rubley, Esq., 1701 Market Street, Philadelphia, PA 19103 and Edward J. Meehan, Jr., Esq., 1701 Market Street, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: Paul G. Cellupica, Senior Counsel, or Keith E. Carpenter, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (202–942–8090).

Applicants' Representations

1. Penn Mutual Life is a mutual life insurance company organized under the laws of Pennsylvania in 1847. It provides life insurance, annuity, and investment products. PIA, a wholly owned subsidiary of Penn Mutual Life, is a Delaware stock insurance company established in 1994.

2. Variable Annuity Account I, sponsored by PIA, is registered under the 1940 Act as a unit investment trust. Variable Annuity Account I serves as a funding vehicle for variable annuity contracts issued by PIA. Variable Annuity Account III, sponsored by Penn Mutual Life, is a unit investment trust registered under the 1940 Act. Variable Annuity Account III serves as a funding vehicle for variable annuity contracts issued by Penn Mutual Life. Variable Life Account I, sponsored by Penn Mutual Life, is a unit investment trust registered under the 1940 Act. Variable Life Account III serves as a funding vehicle for variable life insurance contracts issued by Penn Mutual Life.

3. Variable Annuity Account I and Variable Annuity Account III serves as the funding vehicle for variable annuity contracts ("VA Contracts") issued by Penn Mutual Life and PIA. Variable Life Account I serves as the funding vehicle for variable universal life contracts ("VUL Contracts") issued by Penn Mutual Life. Each of the VA Contracts and VUL Contracts funded by the Separate Accounts (collectively, "Variable Products") is registered with the Commission under the Securities Act of 1933, as amended, and is offered exclusively by means of a prospectus which describes the applicable terms and conditions of each such contract. The Separate Accounts are each divided into subaccounts (each a "Subaccount") and each Subaccount invests exclusively in shares of funds of registered management investment companies ("Existing Funds") currently available to the holders of the contracts ("Contractholders".

4. The Existing funds consists of 18 separate investment options, which contain certain investment portfolios issued by Penn Series, Neuberger Berman Advisers Management Trust ("Neuberger & Berman Portfolios"), Variable Insurance Products Fund and Variable Insurance Products Fund II ("Fidelity Portfolios"), American Century Variable Portfolios Inc. ("American Century Portfolio") and Morgan Stanley Dean Witter Universal Funds, Inc. ("Morgan Stanley Portfolio"). Each of the Existing Funds is registered as a management investment company under the 1940 Act. Not all of the Existing Funds are involved in the Substitutions. The application contemplates that the American Century Portfolio, two of the three Neuberger & Berman Portfolios and one of the four Fidelity Portfolios will be replaced by substantially similar funds.

5. Penn Series is registered under the 1940 Act as an open-end investment management series. Currently, Penn Series has nine investment portfolios ("Current Penn Funds"). Shares of the Current Penn Funds are offered only to Penn Mutual Life and PIA (Penn Mutual Life and PIA hereinafter referred to collectively as "Penn Mutual") for the Variable Products.

6. ICMI, a wholly owned subsidiary of Penn Mutual Life, is a registered investment adviser under the Investment Advisers Act of 1940. ICMI provides investment management services to each of the Current Penn Funds.

7. Penn Series is organizing four New Funds. Each of the New Funds will have the same or substantially the same investment objectives and policies of one of the Replaced Funds involved in the Substitutions. Overall investment management services will be provided to each of the newly organized New Funds by ICMI pursuant to an investment advisory agreement between ICMI and Penn Series ("ICMI Advisory Agreement"). Under the ICMI Advisory Agreement, ICMI will be responsible for the management of the business and affairs of each of the New Funds, subject to the supervision of the Board of Directors of Penn Series. ICMI will also

be authorized to exercise full investment discretion and make all determinations with respect to the investment of the assets of the respective New Funds, but may, at its own cost and expense, retain sub-advisers ("Sub-Advisers") to provide day-to-day portfolio management to each of the New Funds. For its services under the ICMI Advisory Agreement, ICMI will receive a fee from each of the New Funds. ICMI, in turn, will pay the fees and expenses of any Sub-Adivser retained by ICMI or any of the New Funds. It is currently anticipated that ICMI will employ Sub-Advisers for three of the New Funds and directly manage the assets of the fourth New Fund.

8. Penn Series and ICMI have applied for exemptive relief from Section 15(a) of the 1940 Act ("Manager of Managers Order"). The Manager of Managers Order would permit ICMI, as the investment adviser for the existing series of Penn Series to replace any Sub-Adviser or to employ a new Sub-Adviser, without submitting such actions for the approval of shareholders of the affected series. Following the Substitutions, Applicants anticipate that each of the New Funds will be entitled to rely on the Manager of Managers Order. As a condition to the application, however, Applicants state that they will take no action in reliance on the Manager of Managers Order with respect to any one of the New Funds unless and until the operation of that Fund in the manner contemplated by the Manager of Managers Order is approved, following the Substitutions, by the holders of a majority of the outstanding shares of that Fund within the meaning of the 1940 Act.

9. The purpose of the Substitutions is to provide Contractholders with improved investment options through enhanced investment performance and reduced expense ratios of investment options available under the Variable Products. The Substitutions are the first step in establishing a manager of managers structure that will provide Applicants with increased ability to affect the administration and management of the investment options offered through Variable Products. As the investment manager of each of the New Funds, ICMI will be in a position to oversee the operations of the New Funds, including the performance and portfolio management. Applicants represent that the manager of managers structure will give Applicants the means to more directly monitor the overall manner in which investment options available through the Variable Products are managed and administered.

10. Applicants seek relief for four Substitutions. The following table summarizes the proposed Substitutions. The investment objectives of Contractholders with interests in any Subaccount of the Separate Account ("Affected Contractholder") will not be materially affected by the Substitutions.

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		Replaced Fund			New Fund		
	Total Net Assets	Actual Advisory Fees	Contractual Advisory Fee	Actual Expense Ratio	Estimated Advisory Fees	Contractual Advisory Fee	Estimated Expense Ratio
Substitution No. 1	$ 56,263,781	0.51%	0.55% of the first $250 million of average net assets, 0.525% of the next $250 million, 0.50% of the next $250 million, 0.475% of the next $250 million, 0.45% of the next $500 million and 0.425% of average daily net assets in excess of $1.5 billion.	0.87%	0.55%	0.55% of the first $250 million of average net assets, 0.525% of the next $250 million, 0.50% of the next $250 million, 0.475% of the next $250 million, 0.45% of the next $500 million and 0.425% of average daily net assets in excess of $1.5 billion.	0.86%
Substitution No. 2	$ 12,834,717	0.25%	0.25% of the first $500 million, 0.225% of the next $500 million, 0.20% of the next $500 million, 0.175% of the next $500 million and 0.15% of average daily net assets in excess of $2 billion	0.76%	0.30%	0.30%	0.56%
Substitution No. 3	$190,005,728	0.24%[1]	0.24%	0.28%[2]	0.07%[1]	0.07%	0.25%[2]
Substitution No. 4	$ 35,611,383	1.00%	1.00% of the first $500 million, 0.95% of the next $500 million and 0.90% over $1 billion	1.00%	0.70%	0.70%	1.00%

[1] Advisory Fees are before any expense waiver reductions.
[2] Expense Ratio includes fee waivers of 0.06.

11. Applicants represent that the investment objectives of each New Fund will be the same as, or substantially similar to, the investment objectives of the corresponding fund that the New Fund will replace. The investment strategies and policies of the Penn Series Limited Maturity Bond Fund and the Penn Series Index 500 Fund will be substantially the same or substantially similar to the investment strategies and policies of the Neuberger Berman Limited Maturity Bond Portfolio and the Fidelity Investments' Index 500 Portfolio. The investment strategies and policies of the Penn Series Mid Cap Value Fund and the Penn Series Mid Cap Growth Fund may differ from the investment strategies and policies of Neuberger Berman Partners Fund and the American Century Capital Appreciation Portfolio respectively. However, the investment strategies and policies of these New Funds will be sufficiently similar to their corresponding Replaced Funds so that the Affected Contractholders may continue to seek to achieve their investment objectives in the substituted funds.

12. In Substitution No. 1, ICMI will serve as investment adviser and Neuberger Berman Investment Management Inc. ("Neuberger Berman") will continue day-to-day portfolio management as Sub-Adviser to the New Fund. In Substitutions Nos. 2, 3, and 4, the New Fund will, following the substitutions, be advised by investment advisory organizations different from the organizations that currently manage the Replaced Funds. In Substitution No. 2, ICMI will serve as the investment adviser and investment manager of the New Fund. Applicants believe that given the below average investment performance for the Neuberger Berman Limited Maturity Bond Portfolio, ICMI will achieve improved investment results for Contractholders. In Substitution No. 3, ICMI will serve as the investment adviser and Wells Capital Management Inc. will serve as Sub-Adviser to the Penn Series Index 500 Fund. As in the case of the Fidelity Investment's Index 500 Portfolio, investments of Penn Series Index 500 Fund are expected to approximate the relative composition of the securities in the S&P 500. In Substitution No. 4, the day-to-day decisions for Penn Series Mid Cap Growth Fund will be the responsibility of Turner Investment Partners, Inc. ("TIP") as Sub-Adviser. Applicants believe that TIP is in a position to achieve improved investment results for Contractholders who currently have contract values allocated to the corresponding Replaced Fund.

13. Immediately following the Substitutions, the expense ratios of the

New Funds will not exceed the expense ratios of the Replaced Funds. The following table shows the total assets in each of the Replaced Funds at December 31, 1999 that are attributable to the Variable Products, as well as other non-registered insurance products, and compares the advisory fees and the expense ratios of the Replaced Funds for the six months ended December 31, 1999, with the pro forma advisory fees and expense ratios of the New Funds for the same periods. (Pro forma expense ratios of the New Funds are based on assets in the Replaced Funds attributable to the Variable Products and other non-registered insurance products, and estimates of expenses associated with those assets had they been invested in the New Funds during the periods).

	New Fund			Replaced Fund		
No.	Name	Investment Objective	Investment Manager	Name	Investment Objective	Investment Manager
1.	Penn Series Mid Cap Value Fund	Capital growth by investing in common stocks of medium capitalization companies.	Neuberger Berman Management Inc.*	Neuberger Berman Partners Portfolio	Capital growth by investing in common stocks of medium-to-large capitalization established companies.	Neuberger Berman Management Inc.
2.	Penn Series Limited Maturity Bond Fund	Highest current income consistent with low risk to principal and liquidity; secondarily, total return by investing in short to intermediate term debt securities, primarily investment grade.	ICMI	Neuberger Berman Limited Maturity Bond Portfolio	Highest current income consistent with low risk to principal and liquidity; secondarily, total return by investing in short to intermediate term debt securities, primarily investment grade.	Neuberger Berman Management Inc.
3.	Penn Series Index 500 Fund	Total return which corresponds to that of the Standard & Poor's Composite Index of 500 stocks.	Wells Capital Management, Inc.*	Fidelity Investments' Index 500 Portfolio	Total return which corresponds to that of the Standard & Poor's Composite Index of 500 stocks.	Fidelity Management and Research Corporation**
4.	Penn Series Mid Cap Growth Fund	Capital growth by investing primarily in common stocks of mid capitalization growth companies.	Turner Investment Partners, Inc.*	American Century Capital Appreciation Portfolio	Capital growth by investing primarily in common stocks with better than average prospects for appreciation.	American Century Investment Management, Inc.

* Sub-Adviser to ICMI.

** Sub-advised by Bankers Trust Company.

14. Applicants expect to effect the Substitutions on or about May 1, 2000 in coordination with the distribution of annual prospectuses to Contractholders. As of the effective date of the Substitutions ("Effective Date"), shares of the Replaced Funds held by each of the Subaccounts of Applicant Separate Accounts will be presented to the Replaced Funds for redemption. The proceeds of such redemptions, which may be effected through cash or "in-kind" transactions, will then be used to purchase the appropriate number of shares of the corresponding New Funds. The Substitutions will take place at relative net asset values, with no change in the contract value of any Affected Contractholder, and all redemptions of shares of the Replaced Funds and purchases of shares of the corresponding New Funds will be effected in accordance with Rule 22c–1 under the 1940 Act.

15. Penn Mutual will bear the costs of the Substitutions, including any legal and/or accounting fees relating to them. Affected Contractholders will not incur any additional fees or charges as a result of the Substitutions; no current fees or charges applicable under any of the Variable Products will be increased as a result of the Substitutions; the rights of

Affected Contractholder under any of the Variable Products, and the obligations of Penn Mutual under the Variable Products will not diminish in any way.

16. Applicants state that as soon as practicable after filing the Application, a supplement to each of the prospectuses relating to the Variable Products will be filed with the Commission. These supplements ("Product Supplements") will reflect all material information relating to the Substitutions and the New Funds, including the identity of the Replaced Funds, a description of the New Funds and their respective investment objectives and policies, the Sub-Adviser for each of the New Funds, fees and expenses associated with the New Funds, and the impact that the Substitution will have on fees and expenses.

17. Following the date on which the notice of the Application is published in the **Federal Register**, but before the Effective Date, Penn Mutual will send to Affected Contractholders a notice ("Pre-Substitution Notice"), which will include the Product Supplements. The Pre-Substitution Notice will inform Affected Contractholders of: (a) The Effective Date of the Substitutions; (b) the right of each Affected Contractholder, under the VUL and VA Contracts, to transfer contract values among the various Subaccounts; and (c) the fact that any such transfer that involves a transfer from any of the Replaced Funds will not be subject to any administrative charge and will not count as one of the "free transfers" to which Affected Contractholders may otherwise be entitled.

18. Within five days after the Effective Date, Affected Contractholders will be sent written confirmation ("Confirmation Notice") of the substitution transactions. The Confirmation Notice will: (a) Confirm that the Substitutions were carried out; (b) reiterate that each Affected Contractholder may make one transfer of all of the contract value or cash value under their Variable Products that is invested in any one of the Subaccounts that were affected by the Substitutions to any other Subaccount available under their Variable Products without such transfer being subject to any administrative charge, or being counted as one of the "free transfers" (or one of the limited number of transfers) to which Affected Contractholders may be entitled under their Variable Products; and (c) state that Penn Mutual will not exercise any rights reserved by it under the Variable Products to impose additional restrictions on transfers until at least 30 days after the Effective Date. The Confirmation Notice will be accompanied by a then-current prospectus for the relevant Variable Product, reflecting the inclusion of the New Funds, as well as an amended prospectus for the New Funds.

19. The in-kind redemption proceeds will consist of the same securities that are currently held by the Replaced Funds. Redemptions in-kind will be done in a manner consistent with the investment objectives, policies and diversification requirements of the respective New Funds. Further, Applicants represent that the in-kind redemptions for each of the New Funds will be reviewed by the Sub-Adviser responsible for making day-to-day investment decisions for that Portfolio to assure that the investment objective, investment policies and diversification requirements set forth in the registration statement relating to the relevant New Fund are satisfied. In addition, the in-kind asset transfers will be valued in the manner that is consistent with the valuation procedures of both the Replaced Fund and the relevant New Fund. Applications state that any inconsistencies in valuation procedures between the Replaced Fund and the relevant New Fund will be reconciled so that the redeeming and purchasing values are the same. In addition, and consistent with Rule 17a–7 under the 1940 Act, no brokerage commissions, fees or other remuneration will be paid in connection with the in-kind transactions.

20. The Variable Products expressly reserve to Penn Mutual the right, subject to compliance with applicable law, to substitute shares of one open-end investment company for shares of another open-end investment company held by a Separate Account.

Applicant's Legal Analysis

1. Section 26(b) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves such substitution. Section 26(b) further provides that the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. Applicants request an order pursuant to Section 26(b) of the 1940 Act approving the substitutions and related transactions. Applicants assert that the purposes, terms, and conditions of the Substitutions are consistent with the protection of investors and the purposes fairly intended by the 1940 Act. Applicants further assert that the Substitutions will not result in the type of forced redemption that Section 26(b) was designed to guard against.

3. Applicants maintain that the substitutions do not represent the type of transaction that Section 26(b) was designed to prevent for the following reasons: (a) the Substitutions are designed to give Penn Mutual more control over investment products it offers to the investing and insurance purchasing public; (b) Contractholders involved in Substitution Nos. 1, 3 and 4 will have the benefit of ICMI's oversight of the Sub-Advisers; and (c) the procedures that Applicants will follow in the Substitutions will give Affected Contractholders ample notice of the Substitutions and any potential impact. Affected Contractholders will have the opportunity to transfer their investments from one of the Replaced Funds in anticipation of the Substitutions, or from the New Funds following the Substitution. In either case, Applicants represent that no administrative fee or transfer charge will be assessed. In light of the fact that only four of the 18 investment options currently available to Affected Contractholders will be involved in the Substitutions, Applicants believe that this ability to "opt out" of any Substitution affords each Affected Contractholder an effective choice of investments.

4. Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or any affiliate of such affiliated person, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any affiliated person from purchasing any security or other property from such registered investment company.

5. Applicants request an order pursuant to Section 17(b) of the 1940 Act exempting the in-kind redemptions and purchases from the provisions of Section 17(a). Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting a proposed transaction from Section 17(a) if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed

transaction is consistent with the general purposes of the 1940 Act.

6. Applicants represent that, if effected in accordance with the procedures described in the Application and summarized herein, the Substitutions are consistent with the general purposes of the 1940 Act and do not present any of the conditions or abuses that the 1940 Act was designed to prevent. Applicants state that the consideration to be paid by each New Fund, and received by each of the Replaced Funds, will be fair and reasonable and will not involve overreaching because the Substitutions will not result in the dilution of the interests of any Affected Contractholders and will not effect any change in economic interest, contract value or the dollar value of any Variable Products held by an Affected Contractholder. The in-kind redemptions and purchases will be done at values consistent with the policies of both the Replaced Funds and the New Funds and will satisfy the procedural safeguards of Rule 17a–7. Both ICMI and the Sub-Adviser of a New Fund will review all the asset transfers to assure that the assets meet the objectives of a New Fund and that they are valued under the appropriate valuation procedures of the Replaced Fund and such New Fund. The in-kind redemption proceeds will consist of the same securities that are currently held by the Replaced Funds. Applicants represent that the transactions are consistent with the policies of each investment company involved and the general purposes of the 1940 Act, and comply with the requirements of Section 17(b).

7. Applicants state that the facts and circumstances in the application are sufficient to assure that the Substitutions will be carried out in a manner that is consistent with Sections 17(b) and 26(b) of the 1940 Act and that the terms and conditions to which Applicants will be subject hereby are consistent with orders the Commission has issued in the past under similar circumstances.

Applicants' Terms

The significant terms of the substitutions described in the application include:

1. The New Funds have objectives and policies that are substantially the same or substantially similar to the objectives and policies of the Replaced Funds so that the objectives of the Affected Contractholders can continue to be met.

2. The expense ratios of the New Funds will, immediately following the Substitution, not exceed the expense ratios of the Replaced Funds. In the event that the expense ratio of a New Fund exceeds that of its corresponding Replaced Fund, Penn Mutual will waive its fees and/or reimburse expenses such that its expense ratio does not exceed that of its corresponding Replaced Fund's expense ratio. Penn Mutual will continue any such fee waivers and/or reimbursements, as necessary, until April 30, 2001, except that in the case of Substitution No. 2 (of the Penn Series Limited Maturity Bond Fund for the Neuberger Berman Limited Maturity Bond Portfolio), Penn Mutual will continue any such fee waiver and/or expense reimbursements, as necessary, until April 30, 2003.

3. Affected Contractholders may, under the terms of the Variable Products, transfer assets from any Subaccount of Applicant Separate Accounts to any other Subaccount available under the Variable Product. Any such transfer that involves a transfer from any of the Replaced Funds, from the date of the notice that the Replaced Funds will be substituted through a date at least 30 days following the Effective Date, will not be subject to any administrative charge, and will not count as one of any "free transfers" to which Affected Contractholder may otherwise be entitled. Affected Contractholders may also withdraw amounts under any contract held, or terminate their interest in any such contract, in accordance with the terms and conditions of any such contract, including but not limited to payment of any applicable surrender charge.

4. The Substitutions will be effected at the net asset value of the respective shares in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder, without the imposition of any transfer or similar charge by Applicants.

5. The Substitutions will take place at relative net asset value without change in the amount or value of any Variable Products held by Affected Contractholders. Affected Contractholders will not incur any fees or charges as a result of the Substitutions, nor will their rights or the obligations of Penn Mutual under such Variable Products be altered in any way. All expenses incurred in connection with the Substitutions, including legal, accounting and other fees and expenses, will be borne by Applicants, other than Separate Accounts.

6. Redemptions in kind will be handled in a manner consistent with the investment objectives, policies and diversification requirements of the New Fund. Consistent with Rule 17a–7(d) under the 1940 Act, no brokerage commissions, fees (except customary transfer fees) or other remuneration will be paid by the Replaced Funds or New Funds or Affected Contractholders in connection with the in-kind transactions. In addition, the in-kind asset transfers will be valued in the manner that is consistent with the valuation procedures of both the Replaced Fund and the relevant New Funds.

7. The Substitutions will not be counted as transfers in determining any limit on the total number of transfers that Affected Contractholders are permitted to make under the Variable Products.

8. The Substitutions will not alter in any way the annuity, life insurance, or other benefits afforded under the Variable Products held by any Affected Contractholders.

9. Each of the New Funds may rely upon a Commission order expected to be issued to certain affiliates of Penn Series. Applicants will take no action in reliance on the Manager of Managers Order with respect to any one of the New Funds unless and until the operation of that portfolio in the manner contemplated by the Manager of Managers Order is approved by the holders of a majority of the outstanding shares of that portfolio within the meaning of the 1940 Act by vote obtained following the Substitution.

Applicants' Conditions

Applicants state that they will not complete the Substitutions and related transactions described in this Application (other than the mailing of the Pre-Substitution Notices) unless all of the following conditions are met:

1. The Commission shall have issued an order (a) approving the Substitutions under Section 26(b) of the 1940 Act, and (b) exempting the in-kind redemptions from the provisions of Section 17(a) of the 1940 Act as necessary to carry out the transactions described in this Application.

2. Each Affected Contractholder will have been sent a Pre-Substitution Notice, which will include the Prospectus Supplements and will inform Affected Contractholders of: (a) The Effective Date of the Substitutions; (b) the right of each Affected Contractholder, under the Variable Products, to transfer contract values among the various Subaccounts; and (c) the fact that any such transfer that involves a transfer from any of the Replaced Funds will not be subject to any administrative charge and will not count as one of any "free transfers" to

which Affected Contractholders may otherwise be entitled.

3. Each Affected Contractholder will receive, within five days following the Effective Date of Substitutions, written notice ("Confirmation Notice"). The Confirmation Notice will: (a) Confirm that the Substitutions were carried out; (b) reiterate that each Affected Contractholder may make one transfer to all of the contract value or cash value under their Variable Product that is invested in any one of the Subaccounts that were affected by the Substitutions to any other Subaccount available under their Variable Product without such transfer being subject to any administrative charge, or being counted as one of any "free transfers" (or one of the limited number of transfers) to which Affected Contractholders may be entitled under their Variable Product; and (c) state that Penn Mutual will not exercise any rights reserved by it under the Variable Products to impose additional restrictions on transfers until at least 30 days after the Effective Date. The Confirmation Notice will be accompanied by a then-current prospectus for the relevant Variable Product, reflecting the inclusion of the New Funds, as well as an amended prospectus for the New Funds.

4. Penn Mutual shall have satisfied itself, that: (a) The Variable Products allow the substitution of investments in the manner contemplated by the Substitutions and related transactions described herein; (b) the transactions can be consummated as described in this Application under the applicable insurance laws; and (c) that any regulatory requirements in each jurisdiction where the Variable Products are qualified for sale, have been complied with to the extent necessary to complete the transactions.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the substitutions and related transactions involving in-kind transactions should be granted.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–9398 Filed 4–12–00; 10:11 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27162]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

April 7, 2000.

Notice is hereby given that the following filings(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 2, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After May 2, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Unitil Corporation (70–8050)

Unitil Corporation ("Unitil"), 6 Liberty Lane West, Hampton, New Hampshire 03842–1720, a registered holding company, has filed a post-effective amendment under sections 6(a) and 7 of the Act to a declaration previously filed under the Act.

By orders dated November 16, 1992 and February 7, 1997 (NCAR Nos. 25677 and 26663) ("Orders"), Unitil has authorized, among other things, to issue and sell up to 253,654 shares ("DRIP Shares") of its no par value common stock ("Common Stock) under its dividend reinvestment and stock purchase plan ("DRIP Plan"). As of February 1, 2000, 15,030 of the authorized DRIP Shares remained unsold. The Orders also authorized Unitil to issue and sell up to 229,636 shares ("401(k) Shares" and, together with DRIP Shares, "Authorized Shares")[1] of Common Stock under its tax-deferred savings and investment plan ("401(k) Plan"). As of February 1, 2000, 44,393 of the authorized 401(k) Shares were unsold.

In addition to the Authorized Shares, Unitil now proposes to issue and sell up to 200,000 shares of its Common Stock under its DRIP Plan and up to 150,000 shares under its 401(k) Plan. Shares available for issuance under each of these plans may come from authorized but unissued Common Stock or from Common Stock purchased by Unitil on the open market.

Unitil Corporation (70–9633)

Unitil Corporation ("Unitil"), a registered holding company under the Act, and its subsidiary companies, Concord Electric Company, Exeter & Hampton Electric Company, Fitchburg Gas and Electric Light Company ("Fitchburg"), Unitil Power Corp., Unitil Realty Corp., Unitil Resources, Inc. and Unitil Service Corp. ("Unitil Service") (collectively, "Subsidiaries" and, together with Unitil, "Applicants"), all at 6 Liberty Lane West, Hampton, New Hampshire 03842, have filed an application-declaration under sections 6(b), 9(a), 10 and 12(b) of the Act and rules 43 and 45 under the Act.

By order dated June 30, 1997 (HCAR No. 26737), Applicants were authorized to make unsecured short-term borrowings and to operate a system money pool ("Money Pool") through June 30, 2000. The Applicants now request authority to make additional short-term borrowings and extend the operation of the Money Pool through June 30, 2003 ("Authorization Period").

Specifically, Unitil requests authority to incur short-term borrowings from banks in an aggregate amount that will not exceed $25 million outstanding. In addition, Fitchburg requests authority to incur short-term borrowings from third parties and the other Applicants, and Unitil and the other Subsidiaries request authority to lend funds to Fitchburg under the Money Pool.[2] Borrowings by Fitchburg under the Money Pool and its short-term borrowings from banks would not exceed $20 million at any one time outstanding.

Unitil's existing[3] and proposed borrowing arrangements will provide for borrowings at (1) "base" or "prime"

[1] The number of Authorized Shares was adjusted to reflect a two-for-one stock split that occurred on December 11, 1992.

[2] Applicants claim that borrowings by the Subsidiaries other than Fitchburg are exempt from Commission review under rule 52 under the Act.

[3] As of February 17, 2000, Unitil had three unsecured lines of credit totaling $23 million.

rates publicly announced by a bank as the rate charged on loans to its most creditworthy business firms; or (2) "money market" rates (market-based rates that are generally lower than base or prime rates, made available by banks on an offering or "when available" basis). In addition, borrowings may be based on the daily federal funds rate. Borrowings under the credit arrangements will mature not more than nine months from the date of issue.

Unitil expects to use the proceeds from the requested borrowings for: (1) loans or advances to subsidiaries through the money pool; (2) payment of outstanding indebtedness; (3) short-term cash needs that may arise due to payment timing differences; and (4) other general corporate purposes.

Any of the proposed short-term borrowings by Fitchburg from commercial banks will be under terms and conditions substantially similar to those of the borrowing arrangements between Unitil and its commercial bank lenders, described above. Fitchburg will use the proceeds from these borrowings to meet working capital requirements, provide interim financing for construction expenditures, and to meet debt and preferred stock sinking fund requirements.

The Applicants participate in the Unitil system money pool in accordance with a pooling agreement ("Pooling Agreement"). Under the Pooling Agreement, Unitil and the Subsidiaries invest their surplus funds, and the Subsidiaries borrow funds, from the money pool. Unitil Service administers the money pool on an "at cost" basis. The purpose of the Money Pool is to provide the Subsidiaries with internal and external funds and to invest surplus funds of Unitil and the Subsidiaries in short-term money market instruments. The Applicants state that the Money Pool provides the Subsidiaries with lower short-term borrowing costs due to elimination of banking fees; a mechanism to earn a higher return on interest from surplus funds that are loaned to other Subsidiaries; and decreased reliance on external funding sources.

Cinergy Corp., et al. (70–9577)

Cinergy Corp., a registered holding company ("Cinergy"), and its direct wholly owned nonutility subsidiaries Cinergy Global Resources, Inc. and Cinergy Investments, Inc., all located at 139 East Fourth Street, Cincinnati, Ohio 45202, have filed an application-declaration ("Application") with the Commission under sections 6(a), 7, 9(a), 10, 12, 32 and 33 of the Act and rules 45, 53 and 54 under the Act.

Background

Cinergy's Public Utility Subsidiaries

Through its six domestic retail public utility companies—PSI Energy, Inc., an Indiana electric utility ("PSI"), the Cincinnati Gas & Electric Company, an Ohio electric and gas utility ("CG&E"), the Union Light, Heat and Power Company, a Kentucky electric and gas utility ("Union Power"), Lawrenceburg Gas Company, an Indiana gas utility ("Lawrenceburg"), the West Harrison Gas and Electric Company, an Indiana electric utility ("West Harrison") and Miami Power Corporation, an electric utility ("Miami Power")[4]—Cinergy provides retail electric service in north central, central and southern Indiana and retail electric and gas service in the southwestern portion of Ohio and adjacent areas of Indiana and Kentucky.[5]

CG&E produces, transmits, distributes and sells electricity and sells and transports natural gas in the southwestern portion of Ohio, serving an estimated population of 1.6 million people in 10 of the state's 88 counties, including the cities of Cincinnati and Middletown.[6] At and for the twelve months ended December 31, 1999, CG&E had total consolidated assets of approximately $4.9 billion and operating revenues of approximately $2.6 billion.

PSI produces, transmits, distributes and sells electricity in north central, central and southern Indiana, serving as estimated population of 2.2 million people located in 69 of the state's 92 counties including the cities of Bloomington, Columbus, Kokomo, Lafayette, New Albany and Terre Haute. At and for the twelve months ended December 31, 1999, PSI had total consolidated assets of approximately $3.8 billion and operating revenues of approximately $2.1 billion.

[4] The Application states that Miami Power is an electric utility company solely by virtue of its ownership of certain transmission assets.

[5] CG&E and PSI are direct, wholly owned subsidiaries of Cinergy. Union Power, Lawrenceburg, West Harrison and Miami Power are direct, wholly owned subsidiaries of CG&E and indirect, wholly owned subsidiaries of Cinergy.

[6] Union Power transmits, distributes and sells electricity and sells and transports natural gas in northern Kentucky, serving an estimated population of 328,000 people in a 500 square mile area encompassing six counties, including the cities of Newport and Covington. Lawrenceburg sells and transports natural gas to approximately 20,000 people in a 60 square mile area in southeastern Indiana. West Harrison sells electricity over a three square mile area with a population of approximately 1,000 in West Harrison, Indiana, and bordering rural areas. Miami Power owns a 138 kilovolt transmission line running from the Miami Fort Power Station in Ohio to a point near Madison, Indiana.

Cinergy's Existing Financing Authority

By order dated March 23, 1998 (Holding Co. Act Release No. 26848) ("100% Order"), the Commission amended certain prior orders issued to Cinergy and authorized Cinergy to use the proceeds of certain financing transactions to invest in exempt wholesale generators ("EWGs") and foreign utility companies ("FUCOs" and, together with EWGs "EWG/FUCO Projects"), provided that Cinergy's aggregate investment in EWG/FUCO Projects does not exceed 100% of Cinergy's consolidated retained earnings ("100% Limit"), subject to certain conditions.[7]

At December 31, 1999, Cinergy's aggregate investment in EWG/FUCO Projects was approximately $580 million and its consolidated retained earnings were approximately $1,023 million, leaving available investment capacity under the 100% Order of approximately $443 million at that date.

Under the following Commission orders, Cinergy is authorized to issue common stock, debt securities and to provide for general corporate purposes including, among other things, investing in EWG/FUCO Projects up to the 100% Limit:

Short-Term Debt; $2 Billion Debt Limit; Common Stock. By order dated January 20, 1998 (Holding Co. Act Release No. 26819) ("January 1998 Order"), as subsequently modified by order dated March 1, 1999 (Holding Co. Act Release No. 26984) ("March 1999 Order"), the Commission authorized Cinergy to issue and sell, from time to time through December 31, 2002: (a) short-term notes and commercial paper and an aggregate principal amount not to exceed, together with the principal amount of long-term debentures referred to below, $2 billion at any time outstanding, and (b) up to 30,867,385 shares of Cinergy common stock.

Long-Term Debentures. By order dated August 21, 1998 (Holding Co. Act Release No. 26909) ("August 1998 Order"), the Commission authorized Cinergy to issue and sell, from time to time through December 31, 2002, unsecured debentures with maturities of two of 15 years in an aggregate principal amount at any time outstanding not to exceed $400 million, subject to the $2 billion debt cap described above.

Guarantees; $1 Billion Limit. The March 1999 Order (a) consolidated authority granted to Cinergy under prior orders to issue guarantees of obligations of system companies, and (b) imposed

[7] The terms "aggregate investment" and "consolidated retained earnings" are defined in rule 53(a)(1) under the Act.

any overall cap of $1 billion (separate from the $2 billion debt cap described above) on the amount of Cinergy guarantees issued and outstanding from time to time through December 31, 2003. Among other things, the March 1999 Order also expanded Cinergy's existing authority to create intermediate subsidiaries to hold interests in nonutility businesses, including EWG/FUCO Projects.[8]

Proposed Financing Authority

Cinergy asserts its investment capacity remaining under existing Commission orders is not sufficient to enable Cinergy to grow its business and adapt to industry-wide restructuring. Cinergy therefore requests greater authority to invest in EWG/FUCO Projects and general revisions to outstanding Commission orders granting Cinergy authority to issue debt and equity securities, issue guarantees, and engage in other financing transactions. Cinergy's proposed increased financing authority, discussed in more detail below ("Proposed Financing Transactions"), is intended to enable Cinergy to respond quickly and efficiently to its financing needs and available conditions in capital markets.

Proposed Limits on Investments in EWG/FUCO Projects and Restructuring Subsidiaries. Over a five-year period beginning with issuance of the requested order from the Commission ("Authorization Period"), Cinergy proposes to apply proceeds from the proposed financing transactions described below to make additional investments in EWG/FUCO Projects, subject to the following limitations:

EWG/FUCO Projects Limit. Cinergy's aggregate investment in EWG/FUCO Projects would not exceed the sum of (a) an amount equal to 100% of Cinergy's consolidated retained earnings, plus (b) $2 billion (together, "EWG/FUCO Projects Limit"), excluding any investments subject to the Restructuring Limit (defined below).[9]

Restructuring Limit. With respect to solely to the transfer of CG&E's and PSI's generating assets to one or more EWG affiliates ("Restructuring Subsidiaries"), Cinergy's aggregate investment in Restructuring Subsidiaries would not exceed the net book value of the generating assets at the time of transfer ("Restructuring Limit"). The net book value of CG&E's and PSI's generating assets at December 31, 1999 was approximately $2.9 billion.[10]

Effect Upon Existing Financing Authority. Cinergy proposes to replace the January 1998 Order and the August 1998 Order, each in its entirety, and to supersede the March 1999 Order solely to the extent of the guarantee authority granted in that order, with new financing authority, the terms of which are described below. As with the existing authority, the new authority would be used for general corporate purposes, including to fund investments in EWG/FUCO Projects.

Aggregate Financing Limit; Guarantee Limit. Subject to the terms and conditions described below, from time to time through the Authorization Period, Cinergy proposes (a) to increase its total capitalization (excluding retained earnings and accumulated other comprehensive income[11]) by $7 billion through issuance and/or sale of any combination of debt or equity securities, whether directly or through one or more special purpose subsidiaries ("Aggregate Financing Limit"), and (b) to increase the level of its guarantees outstanding at any time to an aggregate of $2 billion ("Guarantee Limit"), all without further authorization from the Commission. At December 31, 1999, Cinergy's total capitalization (excluding retained earnings and accumulated other comprehensive loss) totaled approximately $2 billion, and Cinergy's subsidiaries and affiliates had debt or other obligations outstanding totaling approximately $515 million supported by Cinergy guarantees.

General Terms and Conditions Applicable to Proposed Financing Authority. The Proposed Financing Transactions are subject to the following terms and conditions:

Debt Securities

Short-Term Notes. From time to time over the Authorization Period, subject to the Aggregate Financing Limit and the other conditions specified below, Cinergy proposes to make short-term borrowings from banks or other financial institutions. These borrowings would be evidenced by (a) "transactional" promissory notes to mature not more than one year after the date of the related borrowing, or (b) "grid" promissory notes evidencing all outstanding borrowings from the respective lender, to be dated as of the date of the first borrowing evidenced by the notes, with each borrowing maturing not more than one year after that date. Any note may or may not be prepayable, in whole or in part, with or without a premium in the event of prepayment.

Commercial Paper. From time to time over the Authorization Period, subject to the Aggregate Financing Limit and the other conditions specified below, Cinergy also proposes to issue and sell commercial paper through one or more dealers or agents or directly to a limited number of purchasers if the resulting cost of money is equal to or less than that available from commercial paper placed through dealers or agents. Cinergy proposes to issue and sell the commercial paper at market rates with varying maturities not to exceed 270 days. The commercial paper would be in the form of book entry unsecured promissory notes with varying denominations of not less than $25,000 each. In commercial paper sales effected on a discount basis, no commission or fee would be payable; however, the purchasing dealer would re-offer the commercial paper at a rate less than the rate to Cinergy. The discount rate to dealers would not exceed the maximum annual discount rate prevailing at the date of issuance for commercial paper of comparable quality and the same maturity. The purchasing dealer would re-offer the commercial paper in a manner that would not constitute a "public offering" under the Securities Act of 1933, as amended ("Securities Act").

Long-Term Notes. From time to time over the Authorization Period, subject to the Aggregate Financing Limit and the other conditions specified below, Cinergy also proposes to issue and sell

[8] The March 1999 Order also modified the January 1998 Order by removing Cinergy guarantees from the $2 billion debt cap and, instead, making the guarantees subject to the $1 billion cap.

[9] As noted above, based on Cinergy's aggregate investment and consolidated retained earnings of approximately $580 million and $1,023 million, respectively, at December 31, 1999, Cinergy had approximately $443 million of additional investment authority in EWG/FUCO Projects remaining under the 100% Order at that date. Assuming Cinergy's utilization of all the investment authority under the 100% Order and its utilization of all of the additional $2 billion of investment authority requested for EWG/FUCO Projects, these investments would represent approximately 296% of Cinergy's consolidated retained earnings at December 31, 1999.

[10] Together CG&E and PSI own all of or partial interests in 17 primarily coal-fired, electric generating stations located in Ohio, Indiana and Kentucky, having a total installed capacity allocable to these ownership interests of approximately 11,200 megawatts and a current net book value of approximately $2.9 billion ($1.75 billion of which represents CG&E's share).

[11] Under Statement of Financial Accounting Standards No. 130, Reporting Comprehensive Income, "accumulated other comprehensive income" includes all components of common stock equity that are not included as net income or the result of shareholder transactions (*e.g.*, stock issuances or dividends). At December 31, 1999, components of Cinergy's accumulated other comprehensive income consisted of foreign currency translations, minimum pension liability adjustments and unrealized gains and losses on grantor and rabbi trusts.

long-term debt securities ("Notes") in one or more series

Notes of any series may be either senior or subordinated obligations of Cinergy. If issued on a secured basis, Notes would be secured solely by common stock, or other assets or properties, of one or more of Cinergy's nonutility subsidiaries (other than any nonutility subsidiary of CG&E or PSI). Notes of any series (a) would have maturities greater than one year, (b) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount, (c) may be entitled to mandatory or optional sinking fund provisions, and (d) may be convertible or exchangeable into common stock of Cinergy. Interest accruing on Notes of any series may be fixed or floating or "multi-modal." [12] Notes would be issued under one or more indentures to be entered into between Cinergy and one or more financial institutions acting as trustee, supplemental indentures may be executed for separate offerings of one or more series of Notes.

Notes may be issued in private or public transactions. With respect to private issuances, Notes of any series may be issued and sold directly to one or more purchasers in privately negotiated transactions or to one or more investment banking or underwriting firms or other entities who would resell the Notes without registration under the Securities Act in reliance upon one or more applicable exemptions from registration. From time to time Cinergy may also issue and sell Notes of one or more series to the public either (a) through underwriters selected by negotiation or competitive bidding, or (b) through selling agents acting either as agent or as principal for resale to the public either directly or through dealers.

The maturity dates, interest rates, redemption and sinking fund provisions, if any, with respect to the Notes of a particular series, as well as any associated placement, underwriting, structuring or selling agent fees, commissions and discounts, if any, would be established by negotiation or competitive bidding and reflected in the applicable indenture or supplement and purchase agreement or underwriting agreement.

Certain Conditions Applicable to Debt Securities. Cinergy represents that the interest rate on any series of debt security with a maturity of one year or less would not exceed the greater of (a) 300 basis points over the comparable term London interbank offered rate, or (b) a rate that is consistent with similar securities of comparable credit quality and maturities issues by other companies.

Cinergy also represents that the interest rate on any series of debt security with a maturity greater than one year would not exceed the greater of (a) 300 basis points over the comparable term U.S. Treasury securities or other market accepted benchmark securities, or (b) a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies.

Cinergy further represents that, solely with respect to investments in EWG/FUCO projects under the EWG/FUCO Projects Limit, Cinergy would not issue any additional debt securities to finance these investments if upon original issuance Cinergy's senior debt obligations are not rated investment grade by at least two of the major ratings agencies (*i.e.*, Standard & Poor's Corporation ("S&P"), Fitch Investor Service ("Fitch"), Duff & Phelps Credit Rating Co. ("D&P") and Moody's Investor Service ("Moody's")).

Interest Rate Risk Management. In connection with the issuance and sale of the short- and long-term debt securities described above, Cinergy proposes to manage interest rate risk through the use of various interest rate management instruments commonly used in today's capital markets, such as interest rate swaps, caps, collars, floors, options, forwards, futures and similar products designed to manage interest rate risks.

Cinergy would enter into agreements covering these derivative transactions with highly rated financial institutions (*i.e.*, whose senior secured debt, at the date of execution of the agreement with Cinergy, is rated at least "A–" by S&P, Fitch or D&P or "A3" by Moody's). The derivative transactions would be for fixed periods and in no case would the notional principal amount exceed the principal amount of the underlying debt security. Cinergy would not engage in "leveraged" or "speculative" derivative transactions.

Fees, commissions and annual margins in connection with any interest rate management agreements would be no more than 100 basis points above the principal or notional amount of the related debt securities or interest rate management agreement. In addition, with respect to options such as caps and collars, Cinergy may pay an option fee which, on a net basis (*i.e.*, when netted against any other option fee payable with respect to the same security), would not exceed 10% of the principal amount of the debt covered by the option.

Equity Securities

Common Stock; Stock Purchase Contracts; Stock Purchase Units. At December 31, 1999, Cinergy had 600 million shares of common stock authorized for issuance, 158,923,399 shares of which were issued and outstanding. Cinergy states that it has issued 771,258 shares of common stock under the January 1998 Order.

From time to time over the Authorization Period, subject to the Aggregate Financing Limit and the other conditions specified below, Cinergy proposes to issue and sell additional shares of its common stock (a) through solicitations of proposals from underwriters or dealers, (b) through negotiated transactions with underwriters or dealers, (c) directly to a limited number of purchasers or to a single purchaser, and/or (d) through agents. The price applicable to additional shares sold in any of these transactions would be based on several factors, including the current market price of the common stock and prevailing capital market conditions.

Cinergy also proposes to issue and sell from time to time stock purchase contracts ("Stock Purchase Contracts"), including contracts obligating holders to purchase from Cinergy, and/or Cinergy to sell to the holders, a specified number of shares or aggregate offering price of Cinergy common stock at a future date. The consideration per share of common stock may be fixed at the time the Stock Purchase Contracts are issued or may be determined by reference to a specific formula. The Stock Purchase Contracts may be issued separately or as part of units ("Stock Purchase Units") consisting of a Stock Purchase Contract and debt and/or preferred securities of Cinergy and/or debt obligations of nonaffiliates, including U.S. Treasury securities, securing holders' obligations to purchase the common stock of Cinergy under the Stock Purchase Contracts. The Stock Purchase Contracts may require holders to secure their obligations.

Further, Cinergy requests authorization to issue common stock as consideration, in whole or part, for acquisitions by Cinergy or any nonutility subsidiary of securities of businesses, the acquisition of which (a) is exempt under the Act or the rules under the Act, or (b) has been authorized by effective Commission order issued to Cinergy or any of

[12] According to the Application, a "multi-modal" interest rate provides for periodic resetting of the interest rate, which alternates between fixed and floating interest rates for each reset period, with all accrued and unpaid interest together with interest becoming due and payable at the end of each reset period.

Cinergy's nonutility subsidiaries, subject in either case to applicable limitations on total investments in any of these businesses. The shares of Cinergy common stock issued in any of these transactions would be valued at market value based on the closing price on the day before closing of the sale, on average high and low prices for a period prior to the closing of the sale, or on some other method negotiated by the parties.

Cinergy represents that, except in the case of the transactions covered by the Restructuring Limit, common equity would comprise at least 30% of Cinergy's consolidated capitalization (based upon the financial statements included in Cinergy's most recent quarterly report on Form 10–Q or annual report on Form 10–K filed with the Commission under the Securities Exchange Act of 1934, as amended).

Preferred Securities. From time to time over the Authorization Period, subject to the Aggregate Financing Limit and the other conditions specified below, Cinergy also proposes to issue and sell preferred securities in one or more series. Preferred securities of any series (a) would have a specified par or stated value or liquidation value per security, (b) would carry a right to periodic cash dividends and/or other distributions, subject, among other things, to funds being legally available for that purpose, (c) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the par or stated or liquidation value, (d) may be convertible or exchangeable into common stock of Cinergy, and (e) may bear additional rights, including voting, preemptive or other rights, and other terms and conditions, contained in the applicable certificate of designation, purchase agreement and/or similar instruments governing the issuance and sale of that series of preferred securities.

Preferred securities may be issued in private or public transactions. With respect to private transaction, preferred securities of any series may be issued and sold directly to one or more purchasers in privately negotiated transactions or to one or more investment banking or underwriting firms or other entities who would resell the preferred securities without registration under the Securities Act in reliance upon one or more applicable exemptions from registration. From time to time Cinergy may also issue and sell preferred securities of one or more series to the public either (a) through underwriters selected by negotiation or competitive bidding, or (b) through selling agents acting either as agent or as principal for resale to the public either directly or through dealers.

The liquidation preference, dividend or distribution rates, redemption provisions, voting rights, conversion or exchange rights, and other terms and conditions of a particular series of preferred securities, as sell as any associated placement, underwriting, structuring or selling agent fees, commissions and discounts, if any, would be established by negotiation or competitive bidding and reflected in the applicable certificate of designation, purchase agreement or underwriting agreement, and other relevant instruments.

Cinergy represents that the distribution rate on any series of preferred security would not exceed the greater of (a) 400 basis points over the comparable term U.S. Treasury securities or other market accepted benchmark securities, or (b) a rate that is consistent with similar securities of comparable credit quality and structure issued by other companies.

Cinergy represents that the underwriting fees, commissions or similar remuneration paid in connection with the issue, sale or distribution of any authorized securities (excluding interest rate risk management instruments, as to which separate provisions governing fees and expenses are proposed below) would not exceed 700 basis points of the principal or face amount of the securities issued or gross proceeds of the financing.

Financing Conduits

Cinergy requests approval to form one or more subsidiaries for the sole purpose of issuing and selling any of the proposed securities, lending, paying dividends or otherwise transferring the proceeds to Cinergy or any entity designated by Cinergy, and engaging in incidental transactions, subject to the Aggregate Financing Limit and other terms and conditions described below.

The proposed subsidiaries would comprise one or more financing subsidiaries (each, a "Financing Subsidiary") and one or more special purpose entities (each, a "Special Purpose Entity," and, together with Financing Subsidiaries, "Financing Conduits"). In either case the subsidiaries' businesses would be limited to issuing and selling securities on behalf of Cinergy, the subsidiaries would have no substantial physical assets or properties. Any securities issued by the Financing Conduits would be fully guaranteed, directly or indirectly, by Cinergy.

Cinergy would acquire all of the outstanding shares of common stock or other equity interests of the Financing Subsidiary for an amount not less than the minimum required by applicable law. The business of the Financing Subsidiary would be limited to effecting financing transactions with third parties for the benefit to Cinergy and its subsidiaries. As an alternative to Cinergy directly issuing debt or equity securities, or through a Special Purpose Entity, Cinergy may determine to use a Financing Subsidiary as the nominal issuer of the particular debt or equity security. In that circumstances, Cinergy would provide a full guarantee or other credit support with respect to the securities issued by the Financing Subsidiary, the proceeds of which would be lent, paid by dividend or otherwise transferred to Cinergy or an entity designated by Cinergy. Cinergy explains that the primary reason for the use of a Financing Subsidiary would be to segregate financing for the different businesses conducted by Cinergy, distinguishing between securities issued by Cinergy to finance its investments in nonutility businesses from those issued to finance its investments in its core utility businesses. A separate Financing Subsidiary may be used by Cinergy with respect to different types of nonutility businesses.

Cinergy would use Special Purpose Subsidiaries in connection with certain financing structures for issuing debt or equity securities, in order to achieve a lower cost of capital, or incrementally greater financial flexibility or other benefits, than would otherwise be the case.

Guarantees

Cinergy also proposes to supersede its existing guarantee authority, limited to $1 billion under the March 1999 Order, with greater authority intended to accommodate growth in its business.

Specifically, from time to time through the Authorization Period, Cinergy requests authority to guarantee, obtain letters of credit and otherwise provide credit support (each, a "Guarantee") in respect of the debt or other securities or obligations of any or all of Cinergy's subsidiary or associate companies (including any formed or acquired at any time over the Authorization Period), and otherwise to further the business of Cinergy, provided that the total amount of Guarantees at any time outstanding does not exceed the Guarantee Limit, and provided further, that (a) any Guarantees of EWG/FUCO Projects would also be subject to the EWG/FUCO Projects Limit or Restructuring Limit, as applicable, and (b) any Guarantees of energy-related companies within the

meaning of rule 58 under the Act ("Rule 58 Companies") would also be subject to the aggregate investment limitation of rule 58.[13] The terms and conditions of any Guarantees would be established at arm's length based upon market conditions.

In the event that Cinergy issues any authorized debt or equity securities by means of any Financing Conduits, Cinergy would provide a full Guarantee in respect of the payment and other obligations of the Financing Conduit under the securities issued by it. As any securities nominally issued by a Financing Conduit are, in substance, securities issued by Cinergy itself, any securities issued by a Financing Conduit would count dollar-for-dollar against the Aggregate Financing Limit, but not against the Guarantee Limit.

Use of Proceeds

Cinergy proposed to issue the authorized debt and equity securities for general corporate purposes, including: (a) payments, redemptions, acquisitions and refinancing of outstanding securities issued by Cinergy; (b) acquisitions of and investments in EWG/FUCO Projects, provided that Cinergy's aggregate investment in these projects does not exceed the EWG/FUCO Projects Limit or Restructuring Limit, as applicable; (c) acquisitions of, and investments in, Rule 58 Companies, provided that Cinergy's aggregate investments in these companies does not exceed the aggregate investment limitation of rule 58; (d) loans to, and investments in, other system companies, including through the Cinergy system money pool[14]; and (e) other lawful corporate purposes.

As previously described, in the event Cinergy utilizes Financing Conduits to issue authorized securities, these entities would apply the proceeds of securities nominally issued by them to make loans, dividends or other transfers to Cinergy or an entity designated by Cinergy, which would then be applied for any of the purposes listed above.

Intrasystem Transfer of Generating Assets

Cinergy states that, as a result of state restructuring of the electric utility industry, it intends to transfer all or a substantial portion of the generating assets owned by CG&E and, eventually, PSI, to one or more newly formed Restructuring Subsidiaries and subject to the Restructuring Limit. Cinergy has requested authority over the Authorization Period to make investments in these Restructuring Subsidiaries in an amount not to exceed the net book value of the generation assets transferred by CG&E and PSI to these affiliates. Cinergy states that the net book value at December 31, 1999 of these assets was approximately $2.9 billion.

CG&E and PSI own significant electric generating facilities. The generating assets are either wholly owned by CG&E or PSI or jointly owned with other utilities, and are located in Ohio and Indiana, with the exception of one plant in Kentucky owned by CG&E. The installed capacity and net book value of the generation assets allocable to CG&E's and PSI's ownership interests are 11,221 megawatts and $2.892 billion, respectively, at December 31, 1999, with 5,245 megawatts of installed capacity having a net book value of $1.755 billion allocable to CG&E, and 5,976 megawatts of installed capacity having a net book value of $1.137 billion allocable to PSI. None of Cinergy's other utility subsidiaries own any electric generating facilities.

Comprehensive electric restructuring legislation was passed in Ohio in July 1999.[15] As discussed in the Application, under the new law, all retail customers in Ohio can choose their electric supplier commencing January 1, 2001.

The legislation deregulates electric generation and supply, with electric transmission and distribution continuing as regulated utility functions. According to Cinergy, although it does not require restructuring or divestiture of generating assets, the new Ohio legislation encourages that result in order to foster generation supplier diversity and curb potential market power of incumbent utilities. As an incumbent Ohio electric utility, CG&E is required to separate its existing functions pertaining to competitive retail sale of generation service from those pertaining to transmission and distribution service, and to transfer the generation services into a separate legal entity. The legislation requires that utilities devise incentives to induce 20% of their electric loads by customer class to switch providers by halfway through a "market development period," but in no event later than December 31, 2003.

Other provisions of the law include: (a) A 5% reduction in the generation component of rates for every residential customer beginning January 1, 2001, (b) the establishment of a "market development period" (*i.e.*, the transition period to full competition) beginning January 1, 2001 and ending no later than December 31, 2005; (c) a "freeze" of utility rates for non-switching customers through the market development period: (d) an opportunity for incumbent utilities to recover transition costs approved by the Public Utilities Commission of Ohio ("PUCO") over the market development period; (e) an opportunity for incumbent utilities to recover regulatory assets through December 31, 2010, if approved by the PUCO; (f) a requirement that incumbent utilities transfer either ownership or control of their transmission assets to an independent transmission entity before December 31, 2003; (g) a requirement that incumbent utilities provide retail electric service to native load customers who decline to switch to different suppliers or who desire to return to service from the incumbent utility; and (h) a requirement that incumbent utilities file a proposed transition plan by December 31, 1999.

As required by the legislation, CG&E filed its proposed transition plan with the PUCO on December 28, 1999. The transition plan is comprised of eight component plans—a rate unbundling plan, corporate separation plan, operational support plan, employee assistance plan, consumer education plan, application for receipt of transition revenues, independent transmission plan and shopping incentive plan. The PUCO is required to issue its order on the transition plan of all incumbent utilities no later than October 31, 2000.

In its transition plan, CG&E has proposed to meet its corporate separation obligations in part by legally separating the generation from the transmission and distribution businesses, transferring all of its generating assets to one or more affiliated EWGs. The generation assets would be moved as soon as practicable after PUCO approval. The asset transfer is contingent on various other factors, including receipt from the Ohio, Indiana and Kentucky utility regulatory commissions of the findings required under section 32(c) of the Act.[16] Concurrent with the transfer of the generation assets CG&E would enter into a power purchase agreement with the

[13] Rule 58(a)(1) limits the aggregate investment by a registered holding company in rule 58 subsidiaries to the greater of $50 million, or 15% of the consolidated capitalization of the registered holding company.

[14] *See* Holding Co. Act Release Nos. 26362 (Aug. 25, 1995) and 26723 (May 30, 1997).

[15] Ohio Rev. Code Ann. § 4928.01 *et seq.* (1999).

[16] Subject to certain conditions, section 32(c) provides that, in order for an existing rate-based facility to be deemed an "eligible facility," the state commission responsible for ratemaking "must make a specific determination that allowing such facility to be an eligible facility (1) will benefit consumers, (2) is in the public interest, and (3) does not violate State law." *See* 15 U.S.C. 79z–5a(c).

EWG approved by the Federal Energy Regulatory Commission. The power purchase agreement would grant CG&E a first call on all power produced by the EWG at embedded cost through the end of the market development period, ensuring CG&E sufficient power to meet its electric supply obligations to customers who do not switch or who return. Cinergy states that it has no current intention of establishing an affiliate of CG&E to market competitive generation services to retail customers in Ohio, as permitted by the new legislation.

As part of its proposed transition plan, CG&E filed a request to recover transition costs comprised of generation-related regulatory assets in the total amount of $364 million (excluding carrying charges) and above-market generation costs in the total amount of $563 million (excluding carrying charges), in each case beginning January 1, 2001. The total carrying costs, for which CG&E has also requested recovery, are estimated at $311 million.

Although comprehensive electric industry restructuring legislation has not yet been enacted in Indiana, Cinergy expects that this legislation will be enacted before expiration of the Authorization Period. Moreover, Cinergy asserts that existing statutory provisions in the Indiana Code for "alternative" regulation of utilities provide a basis for Cinergy to seek approval from the Indiana Utility Regulatory Commission to transfer PSI's generating facilities to Restructuring Subsidiaries prior to the adoption of state-wide restructuring.

Cinergy maintains in the Application that it needs the flexibility to reposition the generation assets now held by CG&E and PSI to maximize the value of those assets in a competitive environment. Cinergy states that, like a number of other utilities in states undergoing restructuring, it is seeking to achieve asset flexibility and optimization by transferring the assets to Restructuring Subsidiaries, where they can be used for electric sales back to the affiliated transmission and distribution utility or marketed for sale to off-system buyers, either with respect to all or some of the particular assets. According to the Application, Cinergy's current intention is to convert all or a substantial number of CG&E's and PSI's power plants to EWG status, since Cinergy believes that corporate disaggregation will eventually be required for the entire portfolio of generating properties, not merely CG&E's plants. Therefore, Cinergy has requested a separate investment ceiling—the Restructuring Limit—with a view to restructuring both CG&E's and PSI's generating assets. Cinergy further states that, although it likely would not make permanent recourse investments equal to the full amount of the book value of the transferred assets, Cinergy could be required to make investments of that magnitude, on a short-term basis, if "bridge" financing becomes necessary. Cinergy asserts that the overriding purpose of the Restructuring Limit is to afford it sufficient financial flexibility under the Act to pursue a variety of alternatives in an uncertain and changing regulatory environment.

Cinergy states that the generating assets would be transferred in one or more transactions, as soon as practicable after receipt of necessary regulatory approvals and satisfaction of other conditions. Cinergy has engaged Donaldson, Lufkin & Jenrette ("DLJ") to provide financial advice in connection with these transactions.

Cinergy proposes two basic transaction structures by which CG&E and PSI (each, a "Generating Utility") would transfer their generating assets to the Restructuring Subsidiaries. Under the "Sale Scenario," the Generating Utility sells generating assets, for case and/or promissory notes or other consideration, directly to one or more newly created subsidiaries of Cinergy ("Genco"), held either directly by Cinergy or indirectly by one or more newly created, special purpose intermediate holding companies directly held by Cinergy ("Genco Holdco"). Under the "Spin-Off Scenario," the Generating Utility contributes its generating assets to Genco for shares of stock or other equity securities of Genco. The Generating Utility then distributes its investment in Genco to Cinergy by dividend or otherwise, and Cinergy then contributes the stock or other equity to Genco Holdco. Genco may transfer its generating assets into one or more special purpose subsidiaries; for example, Cinergy may establish a separate subsidiary for each power plant.

Under both scenarios, the assets would likely be transferred at net book value. The decision to use a particular transaction structure would depend, among other factors, on whether the transaction can be structured on a tax-deferred basis and other transaction costs. Under either scenario, Genco would have an initial capitalization equal to the value of the transferred generating assets, approximately $2.9 billion (assuming transfer of all the generating assets at book value at December 31, 1999). Cinergy is considering both potential structures discussed above, as well as variations of each.

Cinergy asserts that, regardless of which particular structure is used, there should be no material increase in Cinergy's consolidated debt as a result of the restructuring. Any incremental debt at the Cinergy or EWG level would be largely offset by reduced debt at the Generating Utility level. This is because Cinergy currently owns the assets, and would merely transfer direct title of these assets from the utility to the nonutility side of Cinergy's business. Cinergy states that it and DLJ believe that the asset transfers and associated financings should not themselves have any material adverse impact on the credit ratings of Cinergy, CG&E or PSI; rather, according to Cinergy, any potential impact is a consequence of state deregulation generally and Cinergy's resulting loss of monopoly supplier status.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–9276 Filed 4–13–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24381; 812–12056]

Pacific Asset Management LLC, et al. Notice of Application

April 7, 2000.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(f)(1)(A) of the Act.

SUMMARY OF APPLICATION: The order would exempt the applicants from section 15(f)(1)(A) of the Investment Company Act of 1940 (the "Act") in connection with the proposed change in control of PIMCO Advisors L.P. ("PIMCO Advisors"). Without the requested exemption, certain investment companies advised by PIMCO Advisors or one of its subsidiary investment advisers. Oppenheimer Capital; OpCap Advisors, Parametric Portfolio Associates, and NFJ Investment Group (collectively, the "PIMCO Investment Advisers" and together with PIMCO Advisors, the "Advisers"), would have to reconstitute their respective boards of directors

("Boards") to meet the 75 percent non-interested director requirement of section 15(f)(1)(A) of the Act in order for the Advisers to rely upon the safe harbor provisions of section 15(f).

APPLICANTS: Pacific Asset Management LLC ("Pacific Asset Management"), PIMCO Advisors, PIMCO Advisors Holdings L.P. ("PAH"), PIMCO Holding LLC ("Holding LLC"), PIMCO Partners G.P. ("Partners G.P."), and PIMCO Partners LLC ("Partners LLC") (collectively, the "PIMCO Group"); The Emerging Markets Income Fund Inc. ("Emerging Markets"), The Emerging Markets Income fund II Inc. "Emerging Markets II"), The Emerging Markets Floating Rate Fund Inc. ("Emerging Floating Rate"), Global Partners Income Fund Inc. ("Global Partners"), Municipal Partners Fund Inc. ("Municipal Partners"), Municipal Partners Fund II Inc. ("Municipal Partners II"), the Enterprise Group of Fund, Inc. ("Enterprise Fund"), Enterprise Accumulation Trust ("Enterprise Trust"), Penn Series Funds, Inc. ("Penn Fund"). The Preferred Group of Mutual Funds ("Preferred Group"), and Consulting Group Capital Markets Funds ("CGCM") (each an "Applicant Company" and, collectively the "Applicant Companies").

FILING DATE: The application was filed on April 3, 2000.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 2, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549–0609. Applicants: The PIMCO Group, 800 Newport Center Drive, Suite 600, Newport Beach, California 92660; Emerging Markets, Emerging Markets II, Emerging Floating Rate, Global Partners, Municipal Partners, and Municipal Partners II, 7 World Trade Center, New York, New York 10048; Enterprise Fund and Enterprise Trust, Atlanta Financial Center, 3343 Peachtree Road, Suite 450, Atlanta, Georgia 30326; Penn Fund, 600 Dresher Road, Horsham, Pennsylvania 19044; Preferred Group, 411 Hamilton Boulevard, Suite 1200, Peoria, Illinois 61602; and CGCM, 222 Delaware Avenue, Wilmington, Delaware 19801.

FOR FURTHER INFORMATION CONTACT: J. Amanda Machen, Senior Counsel (202) 942–7120, or Nadya B. Roytblat, Assistant Director, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (tel. 202–9423–8090)

Applicants' Representatives

1. PIMCO Advisors, a limited partnership, is an investment adviser registered under the Investment Advisers Act of 1940 (the "Advisers Act"). PAH, a publicly traded master limited partnership, and Partners G.P. are the general partners of PIMCO Advisors. Oppenheimer Capital is an indirect subsidiary of PIMCO Advisors. Parametric Portfolio Associates is a partnership of PIMCO Advisors and Parametric Management Inc. OpCap Advisors is a majority-owned subsidiary of Oppenheimer Capital. NFJ is a partnership of PIMCO Advisors and NFJ Management Inc. Each of the PIMCO Investment Advisers is registered as an investment adviser under the Advisers Act.

2. Each Applicant Company is registered under the Act as either an open-end or closed-end management investment company. The Advisers serve as either investment adviser, investment manager, or subadviser to one or more of the Applicant Companies and to LSA Variable Series Trust, registered under the Act as an open-end management investment company ("LSA Variable" and, together with Applicant Companies, the "Companies" [1]

3. Allianz of America, Inc. ("Allianz") is a holding company that owns several insurance and financial service companies and is, in turn, a subsidiary of Allianz AG. On October 31, 1999, PIMCO Advisors, its general partners, PAH and Partners G.P., certain of their affiliates, and Allianz entered into an Implementation and Merger Agreement (the "Merger Agreement") under which Allianz agreed to acquire majority ownership of PIMCO Advisors ("Transaction"). Following consummation of the Transaction, Allianz will hold approximately 69% of the outstanding partnership interests in PIMCO Advisors and will become the sole general partner of PIMCO Advisors. Applicants expect that the Transaction will be consummated in May 2000.

4. Consummation of the Transaction will result in a change of control of each of the Advisers within the meaning of section 2(a)(9) of the Act and, consequently, will result in an assignment of the current advisory or subadvisory contract between each of the Advisers and each respective Company (or its investment adviser, in the case of subadvisory contracts) within the meaning of section 2(a)(4) of the Act. As required by section 15(a)(4) of the Act, each contract will automatically terminate in accordance with the terms of the contract. In connection with the Transaction, the PIMCO Group has determined to seek to comply with the "safe harbor" provisions of section 15(f) of the Act. Applicants state that, absent exemptive relief, following consummation of the Transaction, more than 25 percent of the Board of each Company would be "interested persons" for purposes of section 15(f)(1)(A) of the Act.

Applicants' Legal Analysis

1. Section 15(f) of the Act is a safe harbor that permits an investment adviser to a registered investment company (or an affiliated person of the investment adviser) to realize a profit on the sale of its business if certain conditions are met. One of these conditions is set forth in section 15(f)(1)(A). This condition provide that, for a period of three years after the sale, at least 75 percent of the board of directors of the investment company may not be "interested persons" with respect to either the predecessor or successor adviser of the investment company. Section 2(a)(19)(B) defines an "interested person" of an investment adviser to include, among others, any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of the broker or dealer. Rule 2a19–1 provides an exemption from the definition of interested person for directors who are registered as

[1] PIMCO Advisors serves as investment adviser to Emerging Markets, Municipal Advantage, and one portfolio of CGCM, and as investment manager to Emerging Markets II, Emerging Floating Rate, Global Partners, Municipal Partners, and Municipal Partners II. OpCap Advisors serves as fund manager to one portfolio of Enterprise Fund and one portfolio of Enterprise Trust. Parametric serves as subadviser to one portfolio of CGCM. OpCap Advisors serves as subadviser to two portfolios of Penn Fund and as subadviser to one portfolio of LSA Variable. Oppenheimer Capital serves as subadviser to one portfolio of Preferred Group. Applicants state that, in each case, each of the Advisers is acting as an investment adviser within the meaning of section 29(a)(20) of the Act under a contract subject to section 15 of the Act.

brokers or dealers, or who are affiliated persons of registered brokers or dealers, provided certain conditions are met.[2]

2. Upon consummation of the Transaction, each Board will consist of a majority of directors who are not interested persons of any Adviser within the meaning of section 2(a)(19)(B) ("Independent Directors"). However, each Board also will consist of two or more directors who may be considered interested persons of one of the Advisers ("Interested Directors"), for a total of twenty-seven Interested Directors in the twelve investment company complexes involved. Twenty-five of the Interested Directors may be considered interested persons of one of the Advisers within the meaning of section 2(a)(19)(B)(v) by virtue of their relationship to a registered broker-dealer. Applicants state that the exemption provided by rule 2a19–1 will not be available with respect to these Interested Directors because the broker-dealers with which they are affiliated act as distributors for the Companies in questions or may engaged in transactions with other members of a Company's complex. The remaining two director positions will be filled by two individuals who are officers or directors of PIMCO Advisers and thus, each of these directors will be an interested person of one or more of the Advisers. With exception of these two directors, none of the members of the Companies' Boards will be affiliated persons within the meaning of section 2(a)(3) of the Act of any party to the Transaction.

3. Without the requested exemption, each Company would have to reconstitute its Board to meet the 75 person non-interested director requirement of section 15(f)(1)(A). Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act, or any rule regulation under the Act, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants request an exemption under section 6(c) from section 15(f)(1)(A). Applicants submit that the addition of directors to achieve the 75 percent disinterested director ratio required by section 15(f)(1)(A) of the Act would make the Boards unduly large and unwieldy, make decisional and operational matters cumbersome, unnecessarily increase the ongoing expenses of the Companies, and would cause the Companies to incur additional expenses in connection with the selection and election of the additional directors. In addition, applicants state that shrinking the Boards by eliminating previously existing Interested Director positions would deny the Companies the valued services and insights these directors bring to their respective Boards.

5. Applicants state that although directors who are affiliated persons of broker-dealers may be viewed as interested persons of the Advisers, these directors and the broker-dealers with which they are affiliated are not affiliated persons of any party to the Transaction. Applicants assert that the requested exemption is consistent with the protection of investors. Applicants state that the Companies will continue to treat the Interested Directors as interested persons of the Companies and the Advisers for all purposes other than section 15(f)(1)(A) of the Act for so long as the directors are "interested persons" as defined in section 2(a)(19) of the Act and are not exempted from that definition by any applicable rules or order of the SEC.

6. Applicants also submit that the requested exemption is consistent with the purposes fairly intended by the policies and provisions of the Act. Applicants assert that the legislative history of section 15(f) indicates that Congress intended the SEC to deal flexibly with situations where the imposition of the 75 percent requirement might pose an unnecessary obstacle or burden on an investment company. Applicants also state that section 15(f)(1)(A) was designed primarily to address the types of biases and conflicts of interest that might exist where an investment company's board of directors is influenced by a substantial number of interested directors to approve a transaction because the interested directors have an economic interest in the adviser. Applicants state that these circumstances do not exist in the present case.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

If, within three years of the completion of the Transaction, it becomes necessary to replace any director of a Company, that director will be replaced by a director who is not an "interested person" of any Adviser within the meaning of section 2(a)(19)(B) of the Act, unless at least 75% of the directors at that time, after giving effect to the order granted pursuant to the application, are not interested persons of any Adviser for purposes of section 15(f) of the Act. For any Company for which an Adviser serves solely as a subadviser, this condition will not: (a) Preclude replacement with or addition of a director who is an interested person of any Adviser solely by reason of being an affiliated person of a broker or dealer, provided that such broker or dealer is not an affiliated person of any Adviser, or (b) require replacement of a Director if a change in the director's circumstances causes him to become an interested person of an Adviser solely by reason of becoming an affiliated person of a broker or dealer, provided that such broker or dealer is not an affiliated person of any Adviser.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–9274 Filed 4–13–00; 8:45 am]

BILLING CODE 8010–01–M

[2] The rule generally provides that the exemption is available only if: (a) The broker or dealer does not execute any portfolio transactions for, engage in principal transactions with, or distribute shares for, the investment company complex, as defined in the rule, (b) the investment company's board determines that the investment company will not be adversely affected if the broker or dealer does not effect the portfolio or principal transactions or distribute shares of the investment company, and (c) no more than a minority of the investment company's directors are registered brokers or dealers or affiliated persons thereof.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24382; 812–11770]

Mercury QA Strategy Fund, Inc., et al.; Notice of Application

April 7, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") for an exemption from section 12(d)(1)(G)(i)(II) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit funds relying on section 12(d)(1)(G) of the Act to invest in certain securities and financial instruments.

APPLICANTS: Mercury QA Strategy Series, Inc. ("Company"), Quantitative Master Series Trust ("Master Trust"), Mercury QA Equity Series, Inc. ("Equity Series Fund"), Fund Asset Management, L.P. ("FAM").

FILING DATES: The application was filed on September 8, 1999. Applicants have agreed to file an amendment, the

substance of which is included in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 2, 2000, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, 800 Scudders Mill Road, Plainsboro, NJ 08536.

FOR FURTHER INFORMATION CONTACT: Michael W. Mundt, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Company is organized as a Maryland corporation and registered under the Act as an open-end management investment company. The Company currently offers three series: Mercury QA Strategy Growth and Income Fund, Mercury QA Strategy Long-Term Growth Fund, and Mercury QA Strategy All-Equity Fund (each a "Strategy Fund"). Mercury Asset Management US "MAM") will be the investment adviser to each Strategy Fund and is a division of FAM, an investment adviser registered under the Investment Advisers Act of 1940. The Master Trust, a Delaware business trust registered under the Act as an open-end management investment company, consists of eight operating series advised by FAM, including the Master Aggregate Bond Index Series ("Master Bond Series"). The Equity Series Fund is an open-end management investment company organized as a Maryland corporation and registered under the Act. The Equity Series Fund currently consists of six series (each an "Equity Series") that will be advised by MAM. The Strategy Funds will initially invest primarily in the Master Bond Series and the Equity Series.

2. Applicants seek relief so that the Strategy Funds also may invest, consistent with their investment objectives, policies, and restrictions, in other securities of any kind permissible under the Act, including, without limitation, any security within the meaning of the Act (excluding investments in shares of investment companies other than those made in reliance on section 12(d)(1)(G)), reverse repurchase agreements, financial futures and options on currencies (collectively, "Other Securities"). Applicants request that the relief apply to any existing or future open-end management investment company or its series advised by FAM or other entities controlled by, in control of, or under common control with FAM (together with the Strategy Funds, the "Upper Tier Funds") that invests in a registered open-end management investment company or its series advised by FAM or other entities controlled by, in control of, or under common control with FAM and part of the same "group of investment companies" (as defined in section 12(d)(1)(G) of the Act) as the investing Upper Tier Fund (together with the Master Bond Series and Equity Series, the "Underlying Funds").[1]

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and the acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Securities Exchange Act of 1934 or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trust in reliance on section 12(d)(1)(F) or (G).

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicants request an order under section 12(d)(1)(J) exempting them from section 12(d)(1)(G)(i)(II). Applicants assert that permitting Upper Tier Funds to invest in Underlying Funds and Other Securities as proposed would not raise any of the concerns that the requirements of section 12(d)(1)(G) were designed to address.

Applicant's Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Before approving any advisory contract under section 15 of the Act, the board of directors of the Company (on behalf of each Strategy Fund) or of another Upper Tier Fund, including a majority of the directors who are not "interested persons" as defined in section 2(a)(19) of the Act, will find that advisory fees, if any, charge under the contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract. This finding, and the basis upon which it was made, will be recorded fully in the minute books of the Company (on behalf of each Strategy Fund) or other Upper Tier Fund.

2. Applicants will comply with all provisions of section 12(d)(1)(G), except for section 12(d)(1)(G)(i)(II) to the extent that it restricts each Strategy Fund or other Upper Tier Fund from investing in Other Securities as described in the application.

[1] All existing entities that currently intend to rely on the order are named as applicants. Any registered open-end management investment company that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–9275 Filed 4–13–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42652; File No. SR–Amex–00–17]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the American Stock Exchange LLC Relating to Auto-Match

April 7, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 6, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Amex.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to enhance the Amex Order Display Book ("AODP") to automatically match and execute limit orders on the specialist's book that represent the displayed best bid or offer in select option classes. The text of the proposed rule change is available at the Amex and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Amex originally submitted the proposal on April 5, 2000, and requested that the proposal become immediately effective pursuant to Rule 19b–4(f)(5) under the Act. On April 6, 2000, the Amex submitted a letter from Scott Van Hatten, Legal Counsel, Derivative Securities, Amex, to Elizabeth King, Associate Director, Division of Market Regulation, Commission, amending the proposal ("Amendment No. 1"). In Amendment No. 1, the Amex requested that the Commission consider and review the proposal under Rule 19b–4(f)(6). Because this proposal was filed pursuant to Section 19(b)(3)(A) of the Act, it must be complete at the time it is filed. Therefore, the date of the amendment is deemed the date of the filing of the proposal.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to enhance the AODB to automatically match and execute limit orders on the specialist's book that represent the displayed best bid or offer in select option classes. These limit orders will be automatically matched with incoming Auto-Ex eligible market or marketable limit orders and then automatically executed at the limit order's displayed best bid or offer. This will provide for a faster, more efficient execution of market and marketable limit orders, as well as more efficient handling of limit orders on the specialist's book. The AODB enhancement initially will be used in selected less-active option classes.

The AODP is an electronic specialist's book that provides for the handling of options orders and the executing and reporting of options transactions. The AODB handles both market and limit orders routed to the specialist through the Amex Order File ("AOF"). Limit orders that better the current displayed bid or offer become the Amex's displayed best bid or offer and market orders to buy or sell are executed at these prices. When a limit order represents the displayed best bid or offer, market and marketable limit orders sent through AOF to Auto-Ex for execution at the displayed bid or offer by-pass Auto-Ex and are sent directly to the AODB for handling and execution by the specialist with the limit order as contra-party to the trade. The Auto-Ex system is bypassed in these situations to prevent the specialist and any registered options traders signed on Auto-Ex from trading ahead of customer limit orders on the specialist's book in violation of Amex Rule 950.

The Exchange now proposes to enhance the AODB so that market and marketable limit orders that have bypassed Auto-Ex for handling by the specialist will instead be automatically matched with the customer limit order representing the best bid or offer displayed on the AODB and automatically executed in the AODB. This enhancement initially will be used only in selected less-active option classes. Once experience is gained using this feature and the further enhancements discussed below are implemented, the staff, in consultation with the membership, will review the program and determine whether to expand it to other option classes.

It should also be note that orders eligible for Auto-Ex execution are limited in size.[4] Therefore, if the limit order on the AODB is greater in size than the Auto-Ex eligible order, the limit order will be partially executed for the size of the Auto-Ex order and the remainder will be displayed on the AODB until it is canceled, replaced by a more competitive bid or offer, or completely executed. If the limit order on the AODB is smaller in size than the Auto-Ex eligible order, the limit order will be executed in full and the remaining contracts from the Auto-Ex order will be bought or sold by the specialist. For example, a limit order to buy 10 contracts represents the best bid in an option class whose Auto-Ex eligible size is 20 contracts and a market order of 20 contracts to sell is routed to the AODB. Under the proposal, 10 contracts will be matched and executed against the limit order and the remaining 10 contracts will be executed by the specialist. A further enhancement to AODB, expected by the end of the third quarter of 2000, will allow the excess portion of the Auto-Ex eligible order to be allocated to the specialist and any registered options traders participating in the crowd for that option class. Until this further enchancement is put in place, the automatic execution feature for AODB will only be used in those option classes that have no trading crowd and no participating registered options traders.

This will provide for a faster, more efficient execution of market and marketable limit orders as well as more efficient handing of limit orders on the specialist's book. More importantly, it will also assure that limit orders on the specialist's book retain priority, where appropriate, over other interest on the

[4] The current size parameters for Auto-Ex eligible order are 50, 20 and 10 contracts. Of the approximately 1256 options classes currently traded on Amex: 206 or 16.4% allow orders for 50 contracts to be automatically executed at the best bid or offer; 941 or 74.9% of option classes allow orders for 20 contracts, and 109 or 8.7% of option classes allow orders for 10 contracts.

Exchange. Thus, the proposed rule change will benefit customers using the Auto-Ex system, as well as those customers whose orders are on the AODB.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[5] of the Act, in general, and furthers the objectives of Section 6(b)(5)[6] of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8] Although Rule 19b–4(f)(6) requires that an Exchange submit a notice of its intent to file at least five business days prior to the filing date, the Commission waived this requirement at the Amex's request.

The Commission also notes that under Rule 19b–4(f)(6)(iii), the proposal does not become operative for 30 days after date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Amex requested a waiver of this 30 day period to permit the immediate integration of the proposed systems change into the Exchange's trading systems. Amex believes that this systems change will provide faster and more efficient executions to market and marketable limit orders, and promote more efficient handling of limit orders on the specialist's book. Amex also believes that the proposed change will assure that limit orders on the specialist's book retain priority, where appropriate, over other interest on the Exchange. For the reasons discussed above, the Commission finds that the waiver of the 30 day period is consistent with the protection of investors and the public interest.[9]

At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–00–17 and should be submitted by May 5, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 00–9325 Filed 4–13–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42653; File No. SR–CHX–99–20]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Minimum Net Capital and Excess Net Capital Requirements for Members

April 7, 2000.

I. Introduction

On September 24, 1999, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4[2] thereunder, a proposed rule change. In its proposal, CHX seeks to modify its minimum net capital and excess net capital requirements for members who are specialists or who carry the accounts of specialist. The proposed rule change was published for comment in the **Federal Register** on December 22, 1999.[3] The Commission received no comments on the filing. This order approves the proposal.

II. Description of the Proposal

The Exchange proposes to amend Article XI, Rule 3 of the Exchange's rules to modify the minimum net capital and excess net capital requirements applicable to members who are specialists or who carry accounts of specialists. CHX is amending its rules because it and the Midwest Clearing Corporation ("MCC") have determined to discontinue the sponsored account program on June 30, 2000, after which time the MCC will be dissolved and the Exchange will no longer guarantee the MCC's obligations to qualified clearing agencies.[4]

Currently, the rules of the Exchange and the MCC permit floor members for

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[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] The Commission notes that this proposal is similar to a Chicago Board Options Exchange, Inc. proposal that the Commission approved in 1999. *See* Release No. 34–41995 (October 8, 1999), 64 FR 56547 (October 20, 1999) (File No. SR–CBOE–99–29).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42239 (December 15, 1999), 64 FR 71835.

[4] "Qualified clearing agencies" is a defined term in the Midwest Clearing Corporation ("MCC") Rules. *See* MCC Rules, Art. XI, Rule 1.

the Exchange to establish "sponsored accounts" pursuant to which the MCC provides sponsored participants with access to clearance, settlement and delivery via a qualified clearing agency such as the National Securities Clearing Corporation ("NSCC"). The Exchange in turn provides a guaranty to the NSCC (and through the NSCC to The Depository Trust Company ("DTC")) from time to time to guarantee the obligations of the MCC with respect to liabilities that could be generated in sponsored accounts. [5] As stated above, the Exchange and the MCC have decided to discontinue the sponsored account program on June 30, 2000.

Because of this change, all current sponsored participants will have to become direct participants in qualified clearing agencies such as NSCC and DTC. The Exchange therefore proposes to amend Article XI, Rule 3 to incorporate the minimum net capital and excess net capital requirements currently required for direct participation in NSCC, subject to the amended phase-in periods set forth in Interpretation and Policy .01 to the amended rule. The Exchange anticipates that the proposed phase-in periods will ameliorate any financial burden that might otherwise be placed on members who are specialists or who carry accounts of specialists.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act.[6] In particular, the Commission finds the proposal is consistent with Section 6(b)(5)[7] of the Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.

The Commission believes that the proposal is consistent with the Act and rules thereunder because the CHX is amending its rules to require net capital and excess net capital levels that are consistent with its current business plan, in light of CHX and MCC's decision to discontinue the sponsored account program. Because of this change in business plans, sponsored participants now need to become direct participants in clearing agencies such as NSCC and DTC. The proposed rule change allows for this change by making certain the CHX's net capital requirements for specialists and members who carry the accounts of specialists are consistent with those of NSCC. Further, CHX has given these members advance notice of the change and has provided for a reasonable phase-in period to prepare these members for the change.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CHX–99–20) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–9327 Filed 4–13–00; 8:45 am]

BILLING CODE 8010–01–M

[5] *See* CHX Rules, Art. XXI, Rule 14.

[6] In reviewing the proposal, pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42658; File No. SR–MSRB–00–03]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval to Proposed Rule Change Relating to Underwriting and Transaction Assessments Imposed by the Municipal Securities Rulemaking Board Pursuant to Rule A–13

April 10, 2000.

I. Introduction

On February 7, 2000, the Municipal Securities Rulemkaing Board ("MSRB" or "Board"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder, [2] submitted to the Securities and Exchange Commission ("Commission") a proposed rule change revising Rule A–13, Underwriting and Transaction Assessments for Brokers, Dealers and Municipal Securities Dealers. The proposed rule change was published for comment in the **Federal Register** on March 10, 2000.[3] No comments were received on the proposal. This order aproves the proposal.

II. Description of the Proposal

A. Current Fee Structure

Rule A–13(c) currently provides for a fee levied by the MSRB based on the total par value of a dealer's inter-dealer sales in municipal securities.[4] Dealers report these transactions by submitting transaction information to the automated comparison system operated by the National Securities Clearing Corporation. The inter-dealer transaction fee assessment has been set at $.005 per $1,000 par value of sales since it was instituted in 1996.

The MSRB levies three other types of fees that generally apply to dealers. Rule A–12 requires each dealer to pay a $100 initial fee when it enters the municipal securities business. Rule A–14 requires each dealer that conducts municipal securities business during the year to pay an annual fee of $200. Rule A–13 requires each dealer to pay an assessment on underwriting activity based on the par value of the dealer's purchases from the issuer of primary offerings of municipal securities.

B. Proposed Fee Structure

The MSRB is proposing to expand the transaction-based fee to take into account the dealer's sales to customers in addition to sales to dealers. The MSRB proposes to use a rate of $.005 per $1,000 par value to calculate assessments for both inter-dealer and customer transactions. The MSRB would exclude from the calculation of both inter-dealer and customer transaction-based fees certain transactions in very short-term instruments (*i.e.*, securities that have a final stated maturity of nine months or less and securities that may be put to the issuer at least as frequently as every nine months).[5] Transactions on these instruments are not excluded from the inter-dealer transaction-based fee, but would be excluded from that fee under the MSRB's proposal.

Under the proposed rule change, the MSRB would assess transaction fees on a monthly basis, based on transactions that dealers report to the MSRB's Transaction Reporting System, which supports market surveillance and price transparency functions for the municipal securities market. Dealer sales to customers (not purchases by the dealer from customers) would be used as the measure of transaction activity to avoid double counting when a dealer buys and sells a block of securities in the customer market.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 42492 (March 2, 2000), 65 FR 48 (March 10, 2000).

[4] The total par value of sales transactions will be referred to hereafter as "transaction activity."

[5] The excluded categories of short-term issues are referred to hereafter as "municipal commercial paper," "short-term notes," and "variable rate demand obligations."

[6] Similarly, the current inter-dealer transaction fee is assessed to the dealer on the "sell side" of each trade.

The proposed is intended to increase revenue to the MSRB to cover budgetary expenditures. The MSRB contends that it is facing a projected shortfall in revenue caused by declining underwriting assessments and increases in projected expenses. According to the MSRB, during the past five years, increased regulatory activities and expanded operation of the Municipal Securities Information Library ("MSIL") system have increased its expenses from $6,716,681 in FY 1994 to $9,849,701 in FY 1999. The MSRB reported that much of the expenses during this time resulted from development and operation of its Transaction Reporting System.[7] In addition, according to the MSRB, its long-range plans call for increased involvement in activities to improve disclosure, which may entail substantial modification or enhancement of the Board's computer systems, thus requiring increased revenue.

III. Discussion

The Commission must approve a proposed MSRB rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that govern the MSRB.[8] The Commission finds that the proposal meets the above standard. In particular, the Commission finds that the proposed rule is consistent with the requirements of Section 15B(b)(2)(J) of the Act,[9] which requires, in pertinent part, that the MSRB's rules shall "provide that each municipal securities broker and each municipal securities dealer shall pay to the Board such reasonable fees and charges as may be necessary or appropriate to defray the costs and expenses of operating and administering the Board."

The Commission believes that the proposal will help to provide sufficient revenues to fund Board operations and to allocate fees among brokers, dealer, and municipal securities dealers in a manner that more accurately reflects each dealer's participation in the municipal securities market. The Commission believes that the MSRB's fees should be based, to the extent possible, on a comprehensive measurement of participation in the municipal market. The Commission further believes that it is appropriate for the MSRB to change the scope of the rules governing fees based on changes in dealer participation in the market. The Commission also believes that the increased revenue will help to ensure that the MSRB continues to provide increased disclosure in the municipal securities market.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to the MSRB and, in particular, Sections 15B(b)(2)(J).[10]

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act[11] that the proposed rule change (SR–MSRB–00–03) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–9326 Filed 4–13–00; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9H05]

State of Washington

King County and the contiguous counties of Chelan, Kittitas, Pierce, Snohomish, and Yakima in the State of Washington constitute an economic injury disaster area as a result of the civil disturbance in the City of Seattle during the World Trade Organization Conference from November 29 to December 4, 1999. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance for this disaster until the close of business on January 8, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: April 7, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–9329 Filed 4–13–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Small Business Investment Company Computation of Alternative Maximum Annual Cost of Money to Small Businesses

13 CFR 107.855 limits the maximum annual Cost of Money (as defined in 13 CFR 107.50) that may be imposed upon a Small Business in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "Debenture Rate", which is defined in 13 CFR 107.50 as the interest rate, as published from time to time in the **Federal Register** by SBA, for ten year debentures issued by Licensees and funded through public sales of certificates bearing SBA's guarantee.

Accordingly, Licensees are hereby notified that effective the date of publication of this Notice, and until further notice, the Debenture Rate, plus the 1 percent annual fee which is added to this Rate to determine a base rate for computation of maximum Cost of Money, is 8.64 percent per annum.

13 CFR 107.855 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to Section 308(i) of the Small Business Investment Act of 1958, as amended, regarding that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

Dated: April 7, 2000.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 00–9328 Filed 4–13–00; 8:45 am]

BILLING CODE 8025–01–U

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[7] The MRSB reported that MSIL expenditures during the past five fiscal year totaled $16.5 million, more than half of which is for its Transaction Reporting System development and operations. The MSRB has enhanced the Transaction Reporting System to disseminate more information in the transparency reports and to increase the information provided in a surveillance database to support enforcement of Board rules. Annual subscriptions to the transparency reports are available for a fee of $15,000, which the MSRB stated has resulted in revenue that less than offsets the marginal cost of production. In January 2000, the MSRB began making available detailed transaction reports and determined that, in order to foster the broadest possible dissemination of price information, the new reports will be made available free of charge. *See* Exchange Act Release No. 41916 (Sept. 27, 1999) 64 FR 53759 (Oct. 4, 1999).

[8] 15 U.S.C. 78s(b). The Commission's statutory role is limited to evaluating rules as proposed against the statutory standards. *See* S. Rep. No. 75, 94th Cong., 1st Sess., at 13 (1975).

[9] 15 U.S.C. 78o–4(b)(2)(J).

[10] In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority: Correction

AGENCY: Social Security Administration.
ACTION: Correction notice.

SUMMARY: This notice corrects the notice: Social Security Administration—Statement of Organization, Functions and Delegations of Authority, published in the **Federal Register** on February 29, 2000 (65 FR 10846).

SUPPLEMENTARY INFORMATION: In the notice document 00–4755, which appeared on pages 10846 and 10847 in the issue of Tuesday, February 29, 2000, we show an incorrect SAC for the Office of Legislative Relations in the Office of the Deputy Commissioner, Legislation and Congressional Affairs (ODCLCA). This correction notice corrects that mistake. Make the correction as follows:

On page 10846, in the third column, item E, change the SAC in parentheses from TBH to TBK.

On page 10847, in the first column, item E change the SAC in parentheses from TBH to TBK.

Dated: April 7, 2000.

Lewis H. Kaiser,

Director, Center for Classification and Organization Management.

[FR Doc. 00–9324 Filed 4–13–00; 8:45 am]

BILLING CODE 4191–02–U

SOCIAL SECURITY ADMINISTRATION

Rescission of Social Security Acquiescence Rulings 93-3(6), 93-4(2) and 93-5(11)

AGENCY: Social Security Administration.
ACTION: Notice of rescission of Social Security Acquiescence Rulings 93-3(6)—*Akers* v.*Secretary of Health and Human Services*, 966 F.2d 205 (6th Cir. 1992); 93-4(2)—*Condon and Brodner* v.*Bowen*, 853 F.2d 66 (2d Cir. 1988); 93-5(11)—*Shoemaker* v.*Bowen*, 853 F.2 858 (11th Cir. 1988)

SUMMARY: In accordance with 20 CFR 404.985(e), 416.1485(e) and 402.35(b)(2), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Rulings 93-3(6), 93-4(2) and 93-5(11).

EFFECTIVE DATE: April 14, 2000.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard; Baltimore, MD 21235, (410) 965-1695.

SUPPLEMENTARY INFORMATION: A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act or regulations when the Government has decided not to seek further review of the case or is unsuccessful on further review.

As provided by 20 CFR 404.985(e)(3) and 416.1485(e)(3), a Social Security Acquiescence Ruling may be rescinded as obsolete if a Federal law is enacted that removes the basis for the holding in a decision of a circuit court that was the subject of an Acquiescence Ruling.

On July 29, 1993, we issued Acquiescence Rulings 93-3(6), 93-4(2) and 93-5(11) to reflect the holdings in *Akers* v.*Secretary of Health and Human Services*, 966 F.2d 205 (6th Cir. 1992),*Condon and Brodner* v.*Bowen*, 853 F.2d 66 (2d Cir. 1988), and*Shoemaker* v.*Bowen*, 853 F.2d 858 (11th Cir. 1988), that continued benefits and "interim benefits" paid to claimants pursuant to section 2(e) of the Social Security Disability Benefits Reform Act of 1984 or section 223(g) of the Social Security Act (the Act) are "past-due benefits" for purposes of awarding attorney fees under section 206(b)(1) of the Act.

On August 15, 1994, the Social Security Independence and Program Improvements Act of 1994 [1] was enacted which specifically provided in its technical and clerical amendments in title III, section 321(f)(3)(B) that the term "past-due benefits" excludes benefits continued under section 223(g) or (h) of the Act. The effective date of this amendment was 180 days later.

Because the change in law did not adopt the *Akers, Condon and Brodner,* and *Shoemaker* courts' holdings and specifically excluded continued benefits from the definition of "past-due benefits," we are rescinding Acquiescence Rulings 93-3(6), 93-4(2) and 93-5(11).

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security - Disability Insurance; 96.002 Social Security - Retirement Insurance; 96.004 Social Security - Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income.)

[1] Under the Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103-296, effective March 31, 1995, SSA became an independent Agency in the Executive Branch of the United States Government and was provided ultimate responsibility for administering the Social Security and Supplemental Security Income programs under titles II and XVI of the Act. Prior to March 31, 1995, the Secretary of Health and Human Services had such responsibility.

Dated: March 17, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

[FR Doc. 00–9323 Filed 4–13–00; 8:45 am]

BILLING CODE 4191-02-F

DEPARTMENT OF STATE

[Public Notice 3285]

Bureau of Nonproliferation; Determination Under the Arms Export Control Act

AGENCY: Department of State.
ACTION: Notice.

Pursuant to Section 654(c) of the Foreign Assistance Act of 1961, as amended, notice is hereby given that the Secretary of State has made a determination pursuant to Section 73 of the Arms Export Control Act and has concluded that publication of the determination would be harmful to the national security of the United States.

Dated: April 7, 2000.

Robert J. Einhorn,

Assistant Secretary of State for Nonproliferatiion, Department of State.

[FR Doc. 00–9348 Filed 4–13–00; 8:45 am]

BILLING CODE 4710–25–U

DEPARTMENT OF STATE

[Public Notice 3286]

Bureau of Nonproliferation, Imposition of Missile Proliferation Sanctions Against Entities in North Korea and Iran

AGENCY: Department of State.
ACTION: Notice.

SUMMARY: The United States Government has determined that entities in North Korea and Iran have engaged in missile technology proliferation activities that require imposition of sanctions pursuant to the Arms Export Control Act, as amended, and the Export Administration Act of 1979, as amended (as carried out under Executive Order 12924 of August 19, 1994).

EFFECTIVE DATE: April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Vann H. Van Diepen, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Nonproliferation, Department of State (202–647–1142).

SUPPLEMENTARY INFORMATION: Pursuant to section 73(a)(1) of the Arms Export Control Act (22 U.S.C. 2797b(a)(1)), section 11B(b)(1) of the Export

Administration Act of 1979 (50 U.S.C. app. 2401b(b)(1)), as carried out under Executive Order 12924 of August 19, 1994 (hereinafter cited as the "Export Administration Act of 1979"), and Executive Order 12851 of June 11, 1993, the United States Government determined on April 6, 2000, that the following foreign persons have engaged in missile technology proliferation activities that require the imposition of the sanctions described in sections 73(a)(2)(B) and (C) of the Arms Export Control Act (22 U.S.C. 2797b(a)(2)(B) and (C)) and sections 11B(b)(1)(B)(ii) and (iii) of the Export Administration Act of 1979 (50 U.S.C. app. 2410b(b)(1)(B)(ii) and (iii)) on these entities:

1. Changgwang Sinyong Corporation (North Korea) and its sub-units, successors, and affiliated companies;
2. The Ministry of Defense and Armed Forces Logistics (MODAFL) (Iran) and its sub-units and successors;
3. Aerospace Industries Organization (AIO) (Iran) and its sub-units and successors;
4. Shahid Hemmat Industrial Group (SHIG) (Iran) and its sub-units and successors; and
5. SANAM Industrial Group (Iran) and its sub-units and successors.

Accordingly, the following sanctions are being imposed on these entities:

(A) New individual licenses for exports to the entities described above of items controlled pursuant to the Export Administration Act of 1979 will be denied for two years;

(B) New licenses for export to the entities described above of items controlled pursuant to the Arms Export Control Act will be denied for two years;

(C) No new United States Government contracts involving the entities described above will be entered into for two years; and

(D) No products produced by the entities described above will be imported into the United States for two years.

With respect to items controlled pursuant to the Export Administration Act of 1979, the export sanction only applies to exports made pursuant to individual export licenses.

Additionally, because North Korea is a country with a non-market economy that is not a former member of the Warsaw Pact (as referenced in the definition of "person" in section 74(8)(B) of the Arms Export Control Act (22 U.S.C. 2797c(8)(B)), the following sanctions shall be applied to all activities of the North Korean government relating to the development or production of missile equipment or technology and to all activities of the North Korean government affecting the development or production of electronics, space systems or equipment, and military aircraft:

(A) New licenses for export to the government activities described above of items controlled pursuant to the Arms Export Control Act will be denied for two years;

(B) No new U.S. Government contracts involving the government activities described above will be entered into for two years; and

(C) No products produced by the government activities described above will be imported into the United States for two years.

These measures shall be implemented by the responsible agencies as provided in Executive Order 12851 of June 11, 1993.

Dated: April 7, 2000.

Robert J. Einhorn,

Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 00–9349 Filed 4–13–00; 8:45 am]
BILLING CODE 4710–25–U

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of a Proposed Wetland Banking Memorandum of Agreement in the Commonwealth of Pennsylvania

COORDINATING AGENCIES: Federal Highway Administration, Pennsylvania Division (federal); U.S. Army Corps of Engineers Baltimore, Philadelphia, and Pittsburgh Districts (federal); U. S. Environmental Protection Agency, Region III (federal); U.S. Fish and Wildlife Service (federal); U.S. Department of Agriculture, Natural Resource Conservation Service (federal); Pennsylvania Department of Transportation (state); Pennsylvania Department of Environmental Protection (state); Pennsylvania Game Commission (state); Pennsylvania Fish and Boat Commission (state).

ACTION: Notice.

SUMMARY: The purpose of this proposed wetland banking agreement is to establish a wetland banking system to provide effective advanced compensatory mitigation for unavoidable, minimized impacts to wetlands of the United States and the Commonwealth of Pennsylvania resulting from transportation construction or maintenance activities. The document will serve as an umbrella banking instrument for developing site specific subordinate instruments.

COMMENTS: Comments must bear postmarks dated no later than May 15, 2000.

ADDRESSES: Address comments to either the Pennsylvania Department of Transportation, Bureau of Environmental Quality, 555 Walnut Street— 7th Floor, Harrisburg, Pennsylvania 17101–1900 (Attn: Ms. Susan McDonald) or the Baltimore District Corps of Engineers, Regulatory Branch, P.O. 1715, Baltimore, Maryland 21203–1715 (Attn: Mr. Paul Wettlaufer) or Federal Highway Administration, Pennsylvania Division, 228 Walnut Street, Room 536, Harrisburg, Pennsylvania 17101–1720 (Attn: Mr. Daniel W. Johnson).

FOR FURTHER INFORMATION CONTACT: Susan McDonald, Acting Division Chief, Pennsylvania Department of Transportation, Bureau of Environmental Quality, Environmental Analysis Division (717–772–3083).

SUPPLEMENTARY INFORMATION:

Draft Memorandum of Agreement between Commonwealth of Pennsylvania, Department of Transportation (PennDOT) and Commonwealth of Pennsylvania, Department of Environmental Protection (DEP) and Commonwealth of Pennsylvania, Fish and Boat Commission (PAFBC) and Commonwealth of Pennsylvania, Game Commission (PGC) and U.S. Army Corps of Engineers, North Atlantic Division and U.S. Army Corps of Engineers, Ohio Division and U.S. Environmental Protection Agency, Region III (EPA) and U.S. Fish and Wildlife Service, Pennsylvania Field Office (USFWS) and Natural Resource Conservation Service, Pennsylvania State Office (NRCS) and Federal Highway Administration, Pennsylvania Division (FHWA)

For the purposes of **Establishing a Statewide Umbrella Wetland Banking Instrument**

This Memorandum is entered into this _____ day of _____, 2000, between the above listed parties.

Whereas, Sections 501 and 502 of the Administrative Code of 1929, as amended, 71 P.S. §§ 181–182 require the Commonwealth Departments and agencies to cooperate with one another and coordinate their work; and,

Whereas, Section 2002(a)(7) of the Pennsylvania Administrative Code of

1929, as amended, 71 P.S. § 512(a)(7), requires The Pennsylvania Department of Transportation to cooperate with appropriate Federal agencies in the coordination of plans and policies in the development of transportation facilities; and,

Whereas, The Pennsylvania Department of Transportation, in pursuit of its mission to provide an improved transportation system for the citizens of the Commonwealth of Pennsylvania, is required to consider the impacts of its projects on wetlands pursuant to the National Environmental Policy Act of 1969 42 U.S.C. 4321 *et seq.* and the Clean Water Act of 1977, 33 U.S.C. 1251 *et seq.*, as amended; and,

Whereas, the federal government has set forth guidance for the Establishment, Use and Operation of Mitigation Banks at 60 FR 58605, 1995.

Now, therefore, these parties set forth the following as terms and conditions of this agreement:

I. Introduction

A. Purpose

The purpose of this wetland banking agreement (Agreement) is to establish a wetland banking system to provide effective compensatory mitigation for unavoidable, minimized impacts to wetlands of the United States and the Commonwealth resulting from transportation construction or maintenance activities. This document serves as an umbrella banking instrument for developing site specific subordinate instruments. Site specific development plans will be appended to this banking instrument as they are developed. Wetland compensatory mitigation is appropriate only after it has been demonstrated to the satisfaction of the permitting agencies that there is no practicable alternative to construction in a wetland and that all practicable measures to avoid and minimize impacts to wetlands have been incorporated into the project.

(1) When minimized project impacts total one acre or less, wetland bank debiting is appropriate when it has been demonstrated to the satisfaction of the permitting agencies that:

(a) On-site mitigation is not practicable or

(b) Compensation through wetland bank debiting is of greater environmental benefit than on-site mitigation.

(2) When minimized project impacts total over one acre, wetland bank debiting is appropriate compensatory mitigation when it has been demonstrated to the satisfaction of the permitting agencies that:

(a) On-site mitigation is not practicable, and

(b) Other off-site mitigation is not practicable, or

(c) Compensation through wetland bank debiting is of greater environmental benefit than either on-site mitigation or other off-site mitigation.

B. Goal

The goal of the wetland banking system put forth in this Agreement is to provide an efficient and effective means to replace wetland functions and values in advance of their loss or alteration by the authorized construction or maintenance of transportation facilities. Wetland banks should be designed to ensure the maintenance, restoration, and, when feasible, improvement of the physical, chemical, and biological integrity of wetlands.

C. Authority

This agreement is established in consideration of the following federal and state laws, regulations, policies, and guidance:

Federal:

- Clean Water Act (33 USC 1251 *et seq.*)
- Rivers and Harbors Act of 1899 (33 U.S.C. 403)
- National Environmental Policy Act (42 U.S.C. 4321 *et seq.*)
- Executive Order 11990—Protection of Wetlands
- Regulatory Programs of the Corps of Engineers (33 CFR Parts 320 through 330)
- Section 404 (b)(1) Guidelines for the Specification of Disposal Sites for Dredged or Fill Material (40 CFR Part 320)
- Memorandum of Agreement between the EPA and the Department of the Army Concerning the Determination of Mitigation under the Clean Water Act, Section 404(b)(1) Guidelines, February 6, 1990
- Department of Transportation Order 5660.1A—Preservation of the Nation's Wetlands
- Mitigation of Environmental Impacts to Privately Owned Wetlands (23 CFR 777)
- Fish and Wildlife Coordination Act (16 U.S.C. 661)
- U.S. Fish and Wildlife Service Mitigation Policy (46 FR 7644, 1981)
- Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*)
- Magnuson Fisheries Conservation and Management Act (16 U.S.C. 1801 *et seq.*)
- National Marine Fisheries Habitat Conservation Policy (48 FR 53142, 1983)
- Transportation Equity Act for the 21st Century (codification pending)
- Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*)
- Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks (60 FR 58605, 1995)

State:

- Constitution of the Commonwealth of Pennsylvania, Section 27, Article 1
- Pennsylvania Act 120 of 1970
- Dam Safety and Encroachments Act (32 P.S. §§ 693.5 *et seq.*)
- Pennsylvania Clean Streams Law (35 P.S. §§ 691.5 *et seq.*)
- 25 Pa. Code Chapter 82—Conservation of Pennsylvania Native Wild Plants
- 25 Pa. Code Chapter 93—Water Quality Standards
- 25 Pa. Code Chapter 105—Dam Safety and Waterway Management
- Pa. Title 30—The Fish and Boat Code
- Pa. Title 34—The Game and Wildlife Code
- Pennsylvania State Water Plan

D. Benefits

The advantages of mitigation banking include, but are not limited to:

Compensatory mitigation efforts are in place and functioning prior to impacts, thereby reducing the temporal loss of functions and ensuring successful replacement.

Mitigation banks can be monitored and maintained with greater ease than numerous small mitigation sites.

Mitigation banking can improve agency coordination in mitigation planning.

Mitigation banking can reduce permit preparation and evaluation time for qualifying projects.

Mitigation banks may be more resilient to natural environmental cycles and may provide increased ecological benefit in comparison to numerous small mitigation sites of equal area.

Mitigation banking can result in decreased cost and increased application of sound wetland science in design and construction.

E. Definitions

Permitting Agencies—Any federal or state agency empowered by regulation to authorize the particular use of a mitigation bank as compensation for a permitted activity. As it pertains to this agreement the permitting agencies are specifically the U.S. Army Corps of Engineers (Philadelphia, Baltimore, and Pittsburgh Districts) and the Pennsylvania Department of Environmental Protection.

Bank Sponsor—An organization within the Pennsylvania Department of

Transportation (such as an Engineering District) assigned the responsibility for the establishment and operation of a mitigation bank in a given service area.

Consensus—A process by which a group synthesizes its concerns and ideas to form a common collaborative agreement acceptable to all members. While the primary goal of consensus is to reach an agreement on an issue by all parties, unanimity may not always be possible.

Creation—The establishment of a wetland where one did not formerly exist.

Credit—A unit of measure representing the accrual or attainment of wetland functions at a mitigation bank.

Debit—A unit of measure representing the loss of wetland functions at an impact or project site.

Development Plan—A site specific plan prepared for each mitigation bank site which details the particulars of bank establishment and operation.

Enhancement—Activities conducted in existing wetlands that increase one or more wetland functions.

Environmental Clearance Documentation—Documentation prepared with the purpose of compliance with the National Environmental Policy Act and/or Pennsylvania Act 120 of 1970. Such documentation is reviewed and approved by the Federal Highway Administration and/or the Pennsylvania Department of Transportation.

In-kind replacement—Compensation that provides essentially the same set of interrelated wetland functions as those lost at the impacted wetlands. This is typically established through classification of wetland type.

Mitigation Bank—A site where wetlands have been restored, created, enhanced, or, in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to wetlands.

Mitigation Bank Criteria—Site specific parameters under which a bank is operated. These parameters form site specific portions of this wetland banking instrument and will be appended hereto as sites are developed. These criteria include the approved Development Plan, monitoring reports, transaction reports, mitigation bank site accounting, and other such documentation as may affect banking operations.

Mitigation Banking Review Team (MBRT)—A group consisting of one representative from each of the following agencies (which are signatory to this agreement) that oversees the establishment, use and operation of banks established under this agreement:

The appropriate U.S. Army Corps of Engineers District (co-chair)
Philadelphia District (Phil. Corps)
Baltimore District (Balt. Corps)
Pittsburgh District (Pbgh. Corps)
U.S. Environmental Protection Agency (EPA)
Natural Resource Conservation Service (NRCS)
U.S. Fish and Wildlife Service (USFWS)
Federal Highway Administration (FHWA)
The Pennsylvania Department of Environmental Protection (DEP) (co-chair)
Pennsylvania Fish & Boat Commission (PAFBC)
Pennsylvania Game Commission (PGC)
Pennsylvania Department of Transportation, Bureau of Environmental Quality (BEQ)

On-site replacement—Wetland creation, restoration, enhancement or preservation to compensate for impacts within the same watershed (defined by United States Geological Survey's twelve-digit Hydrologic Unit Code) as such impacts occur.

Out-of-kind replacement—Compensation which is not in-kind replacement.

Participant—An entity obtaining credits from a wetland bank to compensate for authorized impacts resulting from that entity's activities. Specifically in this agreement, approved Participants are limited to the Pennsylvania Department of Transportation and the Pennsylvania Turnpike Commission. Other state agencies, county or municipal governments, transit authorities, ports, airports and others may be deemed appropriate participants by decision of both the Bank Sponsor and the Permitting Agencies on a case by case basis when such entities impact wetlands directly as a result of delivering transportation infrastructure or services.

Practicable—Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Preservation—The protection of ecologically important wetlands in perpetuity through the implementation of appropriate legal and physical mechanisms. Preservation will only be considered appropriate compensatory mitigation in exceptional circumstances.

Restoration—Re-establishment of previously existing wetland characteristics and functions at a site where they have ceased to exist.

Service Area—A set geographic region, based on watershed and ecoregion concepts, wherein a bank can reasonably be expected to provide appropriate compensation for impacted wetlands within which a mitigation bank's debits and credits can be exchanged. Specifically, within this agreement these areas are based on Pennsylvania State Water Plan subwatersheds that have been correlated to approximate ecosystem boundaries. See also the Map of Service Areas, Appendix A.

Wetland Functions—Natural processes of wetlands that include but are not limited to:

Supporting the food chain,
Meeting the general habitat needs of nesting, spawning, rearing and resting sites for aquatic and terrestrial species,
Providing areas for the study of the environment,
Providing environmental sanctuary or refuge,
Maintaining natural drainage characteristics including sedimentation patterns, salinity distribution, flushing characteristics, and natural water filtration,
Shielding other areas from wave action, erosion, or storm damage,
Serving as a storage area for storm and flood waters,
Providing groundwater discharge that supports minimum baseflows,
Serving as a recharge area where surface water and groundwater are directly interconnected,
Preventing or reducing pollution impacts (*e.g.* toxicant retention, nutrient transformation),
Providing recreation

Wetland Type—The characterization and categorization of a wetland according to an accepted classification system (*i.e.* Cowardin, HGM or other system as deemed appropriate).

Wetlands—Those areas that are inundated or saturated by surface or groundwater at frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

II. Duties and Responsibilities of Signatories and Participants

A. Duties and Responsibilities of the Bank Sponsor

The bank sponsor will:

1. Establish the mitigation bank in accordance with Article III below.

2. Operate the mitigation bank in accordance with Articles IV and V below.

B. Duties and Responsibilities of the MBRT

The MBRT oversees bank development and crediting. All decisions made by the MBRT with respect to mitigation bank establishment and operation, as outlined in this agreement, shall be reached by consensus except as provided for in Article II Section D.1. below. In exercising this authority, the MBRT will:

1. Field view each potential mitigation banking site and recommend development of such sites as are appropriate and practicable.

2. Review, provide comments, and as appropriate, approve bank development plans.

3. Establish available credits for mitigation banks in accordance with Section IV.A.6. below.

4. Advise the Sponsor and Permitting Agencies on maintenance and remediation activities.

C. Duties and Responsibilities of the Mitigation Banking Participant

The Mitigation Bank Participant is responsible to the Permitting Agencies and must:

1. Comply with applicable regulatory processes.

2. Demonstrate that use of the bank is practicable and appropriate.

3. Arrange and document the exchange of credits with the Sponsor to the satisfaction of the Permitting Agencies.

4. Participants with known project programs are strongly encouraged to annually consult with the Permitting Agencies by providing a list of projects that the participant anticipates may qualify for use of a mitigation bank.

D. Duties and Responsibilities of Permitting Agencies

1. As permitting agencies for wetlands, these agencies will co-chair the MBRT. These co-chair agencies will have the final determination on any banking issue with respect to their particular regulatory programs in the event that the MBRT cannot reach consensus.

2. As permitting agencies for wetlands the Permitting Agencies have sole authority over the transfer of credits, notwithstanding any other decision-making requirements bearing upon them by law or regulation. As such they will:

a. Determine if and when the transfer of credits from a bank is appropriate and practicable for compensatory mitigation.

b. Ensure that in the interest of achieving functional replacement, in-kind compensation of aquatic resource impacts should generally be required. Out-of-kind compensation may be acceptable if it is determined to be practicable and environmentally preferable to in-kind compensation (*e.g.* of greater ecological value to a particular region).

c. Establish, on a case by case basis, the number of bank credits necessary for appropriate compensatory mitigation, within a framework that includes areal extent, landscape position, and ecological function.

d. Ensure that a Participant has effected a proper exchange of credits.

e. Ensure compliance with the Mitigation Banking Criteria.

3. Approve transfers of legal interests in closed wetland banks as appropriate.

III. Procedures for Establishing a Wetland Mitigation Bank

The Bank Sponsor will take the following steps in developing a mitigation bank. The development effort should occur in conjunction with an appropriate public and agency coordination process that is initiated early and is continuous in nature.

A. Identify sites within a service area with the potential for the development of a mitigation bank. Location of anticipated transportation program projects should be considered in locating such sites. When a watershed assessment has been conducted for a service area or a portion thereof, the sponsor should also give consideration to the recommendations therein.

B. Schedule and conduct a field view to assist the MBRT in their review and approval of a site for mitigation bank development. The field view should include dissemination and discussion of appropriate background material concerning the potential bank site. Appropriate background material may include such data as a project location map, aerial photography, soil survey data, site soil data, preliminary site hydrology and rudimentary concepts of potential compensatory mitigation options for the site.

C. Prepare a draft Development Plan. The plan will contain, at a minimum, the following information:

1. The geographic location of the mitigation bank site.

2. Identification of the applicable service area and anticipated need for wetland banking.

3. Description of existing site conditions including:

a. A wetland delineation and jurisdictional determination where appropriate
b. Cultural Resource Issue Identification
c. Threatened and Endangered Species Issue Identification
d. Soils data
e. Hydrologic data
f. Natural communities
g. Land Use and Land Cover

4. Draft Environmental Clearance Documentation.

5. Conceptual Mitigation Design including proposed future conditions.

6. Proposed method of securing legal interest.

D. Conduct an appropriate public involvement effort that, at a minimum, consists of a public notice publication.

E. Submit the Draft Development Plan and the results of the public involvement effort to the MBRT for review and approval.

F. Gain approval of Environmental Clearance Documentation for mitigation bank development from FHWA and PennDOT Central Office.

G. Secure legal interest in the site sufficient to protect the site in perpetuity. Such legal interest may be either in the form of fee-simple interest or a permanent conservation easement.

H. Conduct final site design as necessary.

I. Prepare and submit to the MBRT for review and approval the final Development Plan. In addition to including all data in the draft Development Plan it should include:

1. Project goals and objectives including anticipated benefits to the service area,
2. Plans, specifications and estimates for construction including excavation, grading, hydrologic alteration, soil and planting issues as appropriate,
3. Proposed maintenance program,
4. Proposed monitoring protocol,
5. Anticipated final credit accrual,
6. Any site specific accounting procedures,
7. A closure plan, and
8. Any refinements to the data presented in the draft Development Plan

J. Obtain all needed contracts and permits.

K. Ensure that an individual technically competent in the construction of compensatory mitigation sites is present during construction.

L. Construct the site.

M. Submit as-built plans including vegetative plantings to the MBRT.

IV. Procedures for the Administrative Operation of a Mitigation Bank

A. Establishment of Credits and Timing of Withdrawals

1. Establishment of credits at a wetland bank will be based on the use of an appropriate functional assessment methodology as adopted in the Development Plan. If an appropriate functional assessment methodology is

impracticable to employ, acreage may be used as a surrogate for measuring function for the determination of credits.

2. When using a functional assessment methodology to establish credits, credits will be based on the net functional increase over baseline conditions and the area over which such increase has occurred at the time of debiting.

3. When using acreage and classification as the basis for establishing credits, credits resulting from wetland restoration or creation will be established at a rate of one credit per acre per type. Credits from wetland enhancement or preservation will be accrued at a rate based on acreage and type established by the MBRT in advance of construction and specific to the bank's development plan and compensatory mitigation techniques used.

4. Upon completion of construction and submission of the as-built plans to the MBRT as required in Section III. M., ten percent of the anticipated final credits of the bank will be immediately available for transfer.

5. Periodically following construction, upon request of the Sponsor or a permitting agency, the MBRT will review the monitoring data and establish the new total of credits available for transfer. This crediting process will be based on the site's demonstrated progress toward the project goals as established in the development plan. This process will be continued until the bank site is closed. Final credit accrual may exceed the amount anticipated in the original development plan when a site exceeds the project goals as established in that development plan.

6. So long as site conditions are maintained in accordance with the project goals as established in the development plan, credits remain valid. There is no date of expiration beyond which accrued credits are discounted due to lack of debiting.

B. Transferring Credits and Accounting Procedures

1. The Sponsor may transfer credits to any participant specifically defined in this agreement for the purposes of the participant's permit compliance.

2. The Sponsor will determine the conditions of credit transfer to the participant. The Sponsor retains the right to deny the transfer of credits to any potential participant outside of the Pennsylvania Department of Transportation.

3. The Sponsor will provide documentation of the transfer of credits to a participant.

4. The Sponsor will enter the details of credit transfer (participant, number and type of credits transferred, date, and remaining bank credit balance) into the accounting record.

5. When PennDOT is the participant, it will provide mitigation for impacts less than 0.05 acres at a 1:1 ratio through the transfer of bank credits when the impact occurs in the service area of a bank having available credits.

6. Except as provided for in IV.B.5, ratios for the bank debiting to provide compensatory mitigation will be determined during the permit review process.

7. The Sponsor will submit to the MBRT a yearly summary of all credit transfers from banks operational in that year.

V. Procedures for the Physical Operation of a Mitigation Bank

A. Monitoring

The Sponsor will monitor the mitigation bank in accordance with the protocol established in the Development Plan and provide a yearly report of such monitoring to the MBRT. Such monitoring and reporting will continue until bank closure.

B. Maintenance

The Sponsor will maintain the site until bank closure to promote the attainment of project goals in accordance with the Development Plan. Following bank closure, the Sponsor will maintain the mitigation bank as directed by the Permitting Agencies.

C. Remediation

Once credits are transferred from a bank, the Sponsor is responsible for preserving the performance of project goals and objectives that caused such credits to accrue. The Sponsor shall take all appropriate and practicable measures to ensure this preservation. These measures may include remediation at the bank; wetland restoration, creation, enhancement or preservation at a new location; or other efforts as directed by the permitting agencies.

D. Closure

The bank will be considered closed after the longer period of the following: (a) the monitoring program set forth in the Development Plan is complete, or, (b) when the Sponsor requests and the MBRT approves closure. Following closure, and as provided for by regulation, the Sponsor continues to hold the responsibility to maintain the site as a wetland in perpetuity, except as provided for in Section V. E. below. Routine maintenance and monitoring will not be required after closure. However, as appropriate and practicable, the Permitting Agencies may direct the performance of specific maintenance or remediation efforts.

E. Transfer of Legal Interest

Upon bank closure, the Sponsor may propose, and the MBRT may approve, the transfer of legal interest in the site to any public or private entity so long as the site will continue to be protected in perpetuity. The proposal for transfer of interest must specifically stipulate which responsibilities of sponsorship are to be transferred to the entity as well as document the entity's awareness and willingness to accept such responsibilities.

VI. Ratification, Modification, and Termination of This Agreement

Nothing in this agreement is intended to diminish, modify, or otherwise affect the statutory or regulatory authorities of signatory agencies.

The previously existing mitigation banking interagency agreement between PennDOT Engineering District 9–0, the Baltimore Corps District, the Pittsburgh Corps District, the DEP Southwest Regional Office, and the DEP Southcentral Regional Office and the previously existing mitigation banking interagency agreement between PennDOT Engineering District 3–0, the Baltimore Corps District, and the DEP Northcentral Regional Office, are hereby integrated into and superceded by this agreement. All existing plans, permits, negotiations and approvals made under these agreements specific to District 9–0 banks sites in Fulton, Huntingdon, and Cambria County sites and District 3–0 bank site at the former Hoffman Farm in Tioga County are validated under this agreement.

This agreement will take effect one (1) day after the date of the last signature. Periodic review of this agreement by signatory agencies will occur every five (5) years following ratification unless waived. This agreement may be modified with the approval of all signatories. Modifications of this agreement may be proposed by one or more signatories. The originator(s) of the modification shall circulate such draft modification(s) to all signatories for a sixty (60) day period of review. Approval of the modification(s) will be indicated by written acceptance. A signatory may terminate participation in

this agreement upon a ninety (90) day written notice to all other signatories.

David C. Lawton,

Assistant Division Administrator, Federal Highway Administration, Pennsylvania Division.

Paul Wettlaufer,

Transportation Program Manager, Regulatory Branch, U.S. Army Corps of Engineers, Baltimore District.

[FR Doc. 00–9279 Filed 4–13–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–7006]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of petitions and intent to grant applications for exemption; request for comments.

SUMMARY: This notice announces the FMCSA's preliminary determination to grant the applications of 61 individuals for an exemption from the vision requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). Granting the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before May 15, 2000.

ADDRESSES: Your written, signed comments must refer to the docket number at the top of this document, and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987; for information about legal issues related to this notice, Ms. Judith Rutledge, Office of the Chief Counsel, (202) 366–2519, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the office of the **Federal Register**'s home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Background

On October 9, 1999, the Secretary of Transportation transferred the motor carrier safety functions performed by the Federal Highway Administration (FHWA) to the Office of Motor Carrier Safety, a new office created in the DOT. This transfer was performed pursuant to section 338 of the Fiscal Year 2000 Department of Transportation and Related Agencies Appropriations Act (Pub. L. 106–69, 113 Stat. 986, at 1022, October 9, 1999, as amended by Pub. L. 106–73, 113 Stat 1046). The Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159, 113 Stat. 1748), transferred the functions to the FMCSA, a new administration within the DOT, effective January 1, 2000.

Sixty-one individuals have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a renewable 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." Accordingly, the FMCSA has evaluated each of the 61 exemption requests on its merits, as required by 49 U.S.C. 31315 and 31136(e), and preliminarily determined that exempting these 30 applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to, or greater than, the level that would be achieved without the exemption.

Qualifications of Applicants

1. John W. Arnold

Mr. Arnold, 47, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in the right eye and 20/80 in the left eye. Mr. Arnold was examined in 1999 and his optometrist stated that, "I see no visual reason why John Arnold could not sufficiently operate a commercial vehicle."

Mr. Arnold has 22 years of experience driving tractor-trailer combinations, and drives 50,000 miles annually. He holds a Kentucky Class AC License and has had no accidents or convictions of moving violations in a CMV for the past three years.

2. James H. Bailey

Mr. Bailey, 60, has had a chorioretinal scar in the macular area of his left eye since childhood. His best corrected visual acuity is 20/25 in his right eye and 20/400 in his left eye. In a 1999 examination, his optometrist stated, "In my medical opinion Mr. Bailey has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Bailey has driven straight trucks for 7 years and a total of 175,000 miles. He holds a Louisiana Class B commercial driver's license (CDL). His official driving record for the last 3 years shows no accidents or convictions of moving violations in a CMV.

3. Victor F. Brast, Jr.

Mr. Brast, 37, has been blind in his left eye since 1989 due to trauma. His visual acuity in the right eye is 20/20. Mr. Brast was examined in 1999, and his optometrist stated, "Mr. Brast has more than sufficient vision for operating a commercial vehicle."

Mr. Brast has driven straight trucks and tractor-trailer combination vehicles for 16 years each, averaging more than 60,000 miles per year. He holds a Texas CDL and has no accident or convictions of moving violations in a CMV on his driving record for the last 3 years.

4. James P. Brooks

Mr. Brooks, 32, suffered an injury to his right eye in 1981. His best corrected visual acuity is 20/20 in the left eye and hand motions at 1 foot in the right eye. In a 1999 examination, his ophthalmologist stated, "In my opinion, he has sufficient vision to perform driving tasks required to operate a commercial vehicle."

Mr. Brooks has driven straight trucks for 3 years and a total of 66,000 miles. He holds an Illinois Class B CDL. His official driving record shows no

accidents or convictions of moving violations in a CMV for the last 3 years.

5. Robert W. Brown

Mr. Brown is 42 years old, and suffers from amblyopia and exotropia caused by a childhood injury in the left eye. His best corrected visual acuities are 20/20 in the right eye and 20/50 with eccentric viewing in the left eye. An optometrist examined Mr. Brown in 1999 and determined that he "has sufficient vision to operate a commercial vehicle."

Mr. Brown has driven tractor-trailer combinations for 12½ years and straight trucks for 2 years for a total of well over 1 million miles. He holds a Pennsylvania CDL and has had no accidents or convictions of moving violations in a CMV for the past three years.

6. Benny J. Burke

Mr. Burke, 45, has amblyopia in his right eye. His best corrected visual acuity is 20/800 in his right eye and 20/20 in his left eye. His optometrist has examined him in 1999 and stated that he has "sufficient vision to operate a commercial vehicle."

Mr. Burke has driven tractor-trailer combination vehicles for 25 years and over 1.2 million miles. He holds a CDL from Alabama and has no accidents or convictions of moving violations in a CMV on his driving record for the past three years.

7. Derric D. Burrell

Mr. Burrell, 33, has amblyopia in his right eye. His best corrected visual acuity is 20/20 in his left eye and 20/400 in his right eye. In a 1999 examination, his optometrist stated, "Mr. Burrell has sufficient vision to drive and operate a Commercial Vehicle."

Mr. Burrell has driven tractor-trailer combination vehicles for 4 years and over 200,000 miles. He has also driven straight trucks for 2 months. He holds an Alabama CDL, and his official driving record shows two convictions for non-moving violations in a CMV during the last 3 years. The citations were for "Operating w/o Equipment as Required by Law" and "Failure to Obey Motor Carrier Rules/Regulations." His record shows no accidents in a CMV during the last 3 years.

8. Anthony J. Cesternino

Mr. Cesternino, 53, has a prosthetic left eye as the result of a childhood accident. His best corrected visual acuity in his right eye is 20/20. In a 1999 examination, his optometrist stated, "In my opinion, A.J. Cesternino is visually capable of driving a commercial motor vehicle."

Mr. Cesternino has driven tractor-trailer combination vehicles for over 22 years and a total of 2.9 million miles. He has driven straight trucks for over 1 year and a total of more than 40,000 miles. He holds a Virginia Class A CDL. His official driving record shows no accident involvement in a CMV and one conviction of a moving violation in a CMV in the last 3 years. The citation was for "Disobey Traffic Signal."

9. Ronald W. Coe, Sr.

Mr. Coe, 53, has amblyopia in the left eye. His corrected vision in the right eye is 20/20 and 20/400 in the left eye. An optometrist examined him in 1999 and stated that, "It is my opinion that Mr. Coe has sufficient vision to perform the driving tasks required to operate a commercial vehicle, and has been doing that for many years."

Mr. Coe has 9½ years of experience driving straight trucks and six months driving tractor-trailers. He has driven a total of 500,000 miles. Mr. Coe holds a New York CDL and has had no accidents and one non-moving violation in a CMV for the past three years. He received a citation for "No/Improper Trip Permit."

10. Richard A. Corey

Mr. Corey, 47, has hyperopia with congenital amblyopia in the left eye. His best corrected visual acuity is 20/20 in the right eye and 20/200 in the left eye. Mr. Corey was examined in 1999 and his optometrist stated, "Mr. Corey has sufficient vision the [sic] perform driving tasks for a commercial vehicle."

Mr. Corey has 15 years of experience driving tractor-trailer combination vehicles for over 1.7 million miles. He holds a Washington CDL and his driving record for the last 3 years contains no convictions of moving violations or accidents in a CMV.

11. James A. Creed

Mr. Creed, 38, has had a corneal scar on his left eye since childhood. His best corrected vision is 20/15 in his right eye and 20/100 in his left eye. In a 1999 examination, his optometrist stated that "decreased vision of left eye due to old injury is stable and does not present any problem for the safe operation of a commercial vehicle."

Mr. Creed has driven straight trucks for 9 years, averaging 28,000 miles per year and tractor-trailer combinations for 12 years, averaging 8,000 miles per year. He holds a Virginia CDL and has no accidents or convictions of moving violations in a CMV for the past three years.

12. William G. Croy

Mr. Croy, 31, has a macular scar in the left eye with corrected vision of 20/200. His corrected vision in the right eye is 20/20. An optometrist examined him in 1999 and stated, "In my medical opinion his vision is sufficient to handle commercial driving as the peripheral vision is excellent and only the central fine detailed vision is affected in the left eye."

Mr. Croy has driven straight trucks for 8 years and approximately 250,000 miles. He holds a Wyoming CDL and has had no accidents or convictions of moving violations in a CMV for the past three years.

13. Craig E. Dorrance

Mr. Dorrance, 45, has reduced vision in his left eye due to trauma 20 years ago. In a 1999 examination, his visual acuity was correctable to 20/20 in the right eye and less than 20/400 in the left eye. His optometrist stated that he "has sufficient vision to operate [a] commercial vehicle."

Mr. Dorrance has operated straight trucks for 20 years and tractor-trailer combinations for 25 years, averaging 50,000 miles per year in each. He holds a Montana CDL and has no accident or convictions of moving violations in a CMV on his driving record for the last 3 years.

14. Willie P. Estep

Mr. Estep, 46, has amblyopia in his right eye. His best corrected visual acuity is 20/15 in his left eye and 20/400 in the right eye. In a 1999 examination his ophthalmologist stated, "It is my opinion that you have no visual limitations in performing your occupation as operator af [sic] a commercial vehicle."

Mr. Estep has driven tractor-trailer combination vehicles for 15 years and a total of over 1.8 million miles. He holds an Ohio CDL, and his official driving record shows one conviction for a non-moving "miscellaneous" violation during the last 3 years.

15. Duane H. Eyre

Mr. Eyre, 63, sustained an injury to his right eye in 1976. His best corrected vision is 20/20 in his left eye and 20/400 in his right eye. In a 1999 examination, his optometrist stated, "I would consider Mr. Duane H. Eyre to have sufficient vision and visual skills to perform the driving tasks to operate a commercial truck."

Mr. Eyre has driven straight trucks and tractor-trailer combination vehicles for 43 years, totalling 43,000 miles of driving in straight trucks and 6 million miles in tractor-trailer combination

vehicles. He has also driven buses for 2 years with total mileage of 50,000 miles. He holds a Montana Class A CDL. His official driving record shows no accidents in a CMV in the last 3 years. He was convicted of one violation during that period for "Not Licensed to Drive Type of Vehicle Being Operated."

16. James W. Frion

Mr. Frion, 36, has amblyopia in his right eye. His best corrected visual acuity 20/200 in his right eye and 20/20 in his left eye. In a 1999 examination, his optometrist stated, "In my opinion, Mr. Frion has sufficient vision to operate a commercial vehicle."

Mr. Frion has operated buses for 8 years for a total of 40,000 miles. He holds a Pennsylvania Class B CDL, and his official driving record shows no accidents or convictions of moving violations in a CMV over the last 3 years.

17. Lee Gallmeyer

Mr. Gallmeyer, 62, has amblyopia in his right eye. He was examined in 1999 and his optometrist found visual acuity corrected to 20/60-in the right eye and 20/20 in the left eye. His optometrist stated, "I believe that despite this problem [amblyopia] that Mr. Gallmeyer has sufficient vision to adequately perform his driving tasks and operate a commercial vehicle."

Mr. Gallmeyer has driven tractor-trailer combination vehicles for 4.5 years and straight trucks for 2 years for a total of over 600,000 miles. He holds an Iowa CDL and has 1 non-moving violation and no accidents in a CMV for the last 3 years.

18. Shawn B. Gaston

Mr. Gaston, 50, has amblyopia in his right eye. His best corrected visual acuities are 20/20 in the left eye and 20/400 in the right eye. In a 1999 examination his optometrist said, "Mr. Gaston has been driving commercial vehicles for many years. It is my opinion that he has sufficient vision to continue performing such driving tasks."

Mr. Gaston has been driving straight trucks for 31 years and a total of over 3 million miles and tractor-trailer combination vehicles for 10 years and a total of 500,000 miles. Mr. Gaston holds a Pennsylvania Class AM CDL. His official driving record shows no accident or convictions of moving violations in a CMV in the last 3 years.

19. James F. Gereau

Mr. Gereau, 45, has nonprogressive chorioretinal damage and scar formation in the location of the macula of the left eye as the result of an accident he had 15 years ago. His uncorrected vision in the right eye is 20/20. He was examined in 1999 and his optometrist stated, "In my opinion, based on past performance, and on the information obtained by vision examination, Mr. Gereau is capable of performing safely, the tasks required to operate a commercial motor vehicle in interstate commerce."

Mr. Gereau has 24 years of experience driving tractor-trailers, and drives approximately 90,000 miles annually. He holds a Wisconsin CDL and has had no accidents or convictions of moving violations in a CMV for the past three years.

20. Rodney M. Gingrich

Mr. Gingrich, 74 has reduced vision on his left eye due to macular degeneration. His corrected vision in the right eye is 20/25 and 20/300 in the left eye. An ophthalmologist examined him in 1999 and stated to him that "you have, in my opinion, sufficient vision to operate a commercial vehicle."

Mr. Gingrich has 50 years of experience driving straight trucks with over 1 million miles driven and 3 years of experience driving tractor-trailer combinations with 30,000 miles driven. He holds a Minnesota CDL and has had no accidents or convictions of moving violations in a CMV for the past three years.

21. Esteban Gerardo Gonzalez

Mr. Gonzalez, 46, has amblyopia in his left eye. His best corrected visual acuity is 20/15 in his right eye and 20/100 in his left eye. In a 1999 examination, his optometrist stated that, "By Texas DPS standards, he has a permanent eye condition that affects his visual acuity but doesn't disqualify him from legally driving. Therefore, I feel that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Gonzalez has driven tractor-trailer combination vehicles for 21 years and over 2 million miles and straight trucks for 5 years and 175,000 miles. He holds a Texas CDL, and his official driving record shows no accidents or convictions of moving violations in a CMV for the past 3 years.

22. Harlan Lee Gunter

Mr. Gunter, 39, has worn a prosthesis in his left eye since June 1995 due to injury. The visual acuity of his right eye is 20/20 without correction. In a 1999 examination, his optometrist said, "My medical opinion is that Mr. Gunter is able to operate a commercial vehicle because his right eye is completely normal."

Mr. Gunter has driven both straight trucks and tractor-trailer combination vehicles for 20 years. He has driven straight trucks a total of 1 million miles and tractor-trailer combination vehicles a total of over 1.4 million miles. He holds a Virginia Class A CDL. His official driving record shows no convictions of moving violations and involvement in one accident in a CMV in the last 3 years. Mr. Gunter was not charged with a violation in the accident.

23. Thanh Van Ha

Mr. Thanh Van Ha is a 36-year old man who has amblyopia. His corrected visual acuity is 20/15 in the right eye, and 20/200 in the left eye. An ophthalmologist examined him in 1999 and found him to have "sufficient vision to perform all the driving tasks required to drive and operate commercial vehicles."

Mr. Ha has a Class C California Driver's license. He has operated straight trucks for 10 years, driving approximately 20,400 miles annually. His official State driving record shows no accidents or citations in a CMV for the past 3 years.

24. James O. Hancock

Mr. Hancock, 61, has a prosthetic right eye due to a 1959 injury. He has 20/20 vision in his left eye. In a 1999 examination, his optometrist stated that he "is very capable of driving a commercial vehicle."

Mr. Hancock has 45 years of experience driving straight trucks, averaging 25,000 miles annually. He holds an Indiana CDL. His official State driving record reveals no accidents or citations in a CMV for the past 3 years.

25. Paul A. Harrison

Mr. Harrison, 50, is blind in the left eye as the result of an accident he had in 1994. His corrected vision in the right eye is 20/20. An optometrist examined him in 1999 and stated that, "In my opinion, Mr. Harrison has good vision in his right eye that would allow him to operate a commercial vehicle safely."

Mr. Harrison has driven straight trucks for 28 years and over 700,000 miles. He holds a Florida CDL and has had no accidents or convictions of moving violations in a CMV for the past three years.

26. Joseph H. Heidkamp, Jr.

Joseph Heidkamp, 41, has amblyopia secondary to optic nerve atrophy in his right eye. His best corrected vision is 20/25+ in the left eye and 20/200 in the right eye. According to a 1999 examination, Mr. Heidkamp's optometrist stated, "It is our

determination that Mr. Heidkamp has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Heidkamp has driven straight trucks for 21 years and a total of over 1.4 million miles, and tractor-trailer combination vehicles for 2 years and a total of 70,000 miles. He holds a Pennsylvania Class A CDL. His official driving record shows no accidents or convictions of moving violations in a CMV during the last 3 years.

27. Thomas J. Holtmann

Mr. Holtmann, 57, has amblyopia of the left eye. His corrected vision in the right eye is 20/20 and 20/80 in the left eye. An optometrist has examined him in 1999 and stated, "It is my professional opinion that Tom Holtmann has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Holtmann has 38 years of experience driving tractor-trailers and straight trucks, and drives approximately 100,000 miles annually He holds an Illinois CDL and has had no accidents or convictions of moving violations in a CMV for the past three years.

28. Larry D. Johnson

Mr. Johnson, 38, has amblyopia in the left eye. His best corrected visual acuity is 20/20 in his right eye and 20/300 in his left eye. He was examined in December 1998, and his optometrist stated that, "Mr. Johnson has sufficient vision to perform the driving task required to operate a commercial vehicle, provided that he has his eyes examined every two years to assess his visual competency."

Mr. Johnson has driven tractor-trailer combination vehicles for 8 years. He drives 70,000 miles annually. He holds an Illinois CDL. For the past three years he has had no accidents or convictions of moving violations in a CMV.

29. Gary Killian

Mr. Killian, 51, has amblyopia in the right eye. The left eye is correctable to 20/20. His optometrist examined him in 1999 and determined, "[h]is commercial driving record is superb and he should be allowed to continue."

Mr. Killian has driven tractor-trailers for 25 years, and averages 135,000 miles of driving annually. He has a North Carolina CDL and has a driving record free of convictions of moving violations or accidents for the last three years in a CMV.

30. Marvin L. Kiser, Jr.

Mr. Kiser, 60, has a macular scar in his right eye. His best corrected visual acuity is 20/200 in his right eye and 20/20 in his left eye. In a 1999 examination, his ophthalmologist stated, "However, I do feel that he has sufficient vision to operate a commercial vehicle."

Mr. Kiser has operated tractor-trailer combination vehicles for 37 years and over 1.9 million miles. He holds a North Carolina CDL, and his official driving record shows no accidents or convictions of moving violations in a CMV for the last 3 years.

31. David R. Lambert

Mr. David Lambert, 59, has been blind from birth in his right eye. His best corrected visual acuity is 20/400 in the right eye and 20/25 in the left eye. Mr. Lambert was examined in 1999, and his optometrist stated, "Given his good driving record and his likely improved vision in his left eye, I feel he has sufficient vision to operate a commercial vehicle."

Mr. Lambert holds a CDL from New Hampshire, has 23 years of experience driving straight trucks, and drives 10,000 miles annually. His driving record has been clear of accidents and convictions of moving violations for the past three years in a CMV.

32. James R. Lanier

Mr. Lanier is 55 years old and has amblyopia in the right eye. His visual acuity is light perception in his right eye and 20/20-in the left eye. As the result of a 1999 examination, his ophthalmologist stated that,'Mr. Lanier was found to have sufficient vision to perform his driving tasks as required to operate a commercial vehicle."

Mr. Lanier has 19 years of experience driving tractor-trailer combinations and has driven over 900,000 miles. He holds a North Carolina CDL and has had no accidents or convictions of moving violations in a CMV for the past three years.

33. Donald Eugene Lee

Mr. Donald Lee, 35, is blind in his left eye as the result of an accident 20 years ago. The visual acuity in his right eye is 20/20+. In a 1999 examination, Mr. Lee's optometrist stated, "In my opinion Mr. Lee's visual abilities are excellent and do not impair his ability to safely operate a commercial motor vehicle."

Mr. Lee has 10 years of experience driving straight trucks for a total of 250,000 miles and 3 years of experience driving tractor-trailer combination vehicles for a total of 300,000 miles. Mr. Lee holds a Virginia CDL, and his official driving record shows no accidents or convictions of moving violations in a CMV during the last 3 years.

34. James Stanley Lewis

Mr. Lewis, 42, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in the right eye and 20/200 in the left eye. In a 1999 examination, his optometrist stated, "Mr. Lewis has a very healthy pair of eyes. I believe that he is and will be very able visually to perform the driving tasks required to operate a commercial vehicle."

Mr. Lewis has driven straight trucks for 18 years for a total of over 1.1 million miles and tractor-trailer combination vehicles for 7 ½ years for a total of over 75,000 miles. He holds an Alabama CDL, and his official driving record shows no accident and one conviction of a non-moving violation ("Expired/No Registration/Title") in a CMV during the last 3 years.

35. Thomas J. Long

Mr. Long, 30, has amblyopia in the left eye. His visual acuity is 20/400 in the left eye and 20/20 in the right eye. Mr. Long was examined in 1999 and his optometrist cited his successful 9 years of driving commercial vehicles and stated, "As a result of my ophthalmic examination, I see no reason Mr. Long would not be able to maintain his current driving record in operating a commercial vehicle."

Mr. Long has 10 years of experience operating straight trucks, driving approximately 60,000 miles annually. He holds a Maryland CDL and has had no accidents or convictions of moving violations in a CMV for the past three years.

36. Newton Heston Mahoney

Mr. Mahoney, 51, has reduced vision in his left eye due to trauma in 1969. His best corrected visual acuity is 20/20+ in the right eye and 20/800 in the left eye. As the result of a 1999 examination, his optometrist certified that Mr. Mahoney has sufficient vision to perform the tasks required to operate a commercial motor vehicle.

Mr. Mahoney has driven straight trucks and tractor-trailer combination vehicles for 30 years, averaging 95,000 miles annually. He holds a Maryland CDL and has no accidents and one speeding violation in a CMV during the last 3 years.

37. Ronald L. Martsching

Mr. Martsching is a 32 year old man with a history of amblyopia in the right eye. A 1999 examination revealed that his visual acuity is 20/20 in the left eye and 20/400 in the right eye. The

optometrist stated the "Mr. Martsching has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Martsching has 4 years of experience driving straight trucks over 100,000 miles. He holds an Iowa Class D license with an endorsement allowing operation of vehicles weighing between 16,001 and 26,000 pounds. For the past three years he has had no accidents or convictions of moving violations in a CMV.

38. Robert Evans McClure, Jr.

Mr. McClure, 24, has had decreased vision in his left eye since 1993 when he developed chorioretinitis. A 1999 medical report indicates that his best corrected visual acuity in his right eye is 20/20 and hand motion in his left eye. His ophthalmologist states, "It is my belief that Mr. McClure does have sufficient vision to perform the driving task required to operate a commercial vehicle when he wears lenses over his right eye."

Robert McClure holds an Alabama class DM operator's license. He has driven straight trucks for 4 years and 40,000 miles. His driving record for the past 3 years reflects no convictions of moving traffic violations and no accidents in a CMV.

39. Duane D. Mims

Mr. Mims, 27, has only light perception in his right eye due to an accident 16 years ago. His visual acuity in his left eye is 20/20. In a December 1998 examination, his optometrist stated, "Under Alabama and Federal law he has sufficient vision to operate a commercial vehicle."

Mr. Mims has driven straight trucks for 7 years and over 70,000 miles and tractor-trailer combination vehicles for 3 years and 300,000 miles. He holds an Alabama CDL, and his official driving record shows no accidents or convictions of moving violations in a CMV for the last 3 years.

40. James A. Mohr

Mr. Mohr is 53 years old and has had a prosthetic left eye for over 40 years. His best corrected vision in the right eye is 20/20. In a December 1998 examination, his optometrist stated that, "Jim Mohr has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Mohr has 16 years' experience of driving tractor-trailer trucks and drives 50,000 miles annually . He has a Montana CDL, and his driving record shows no accidents or convictions of moving violations in a CMV for the past three years.

41. William A. Moore

Mr. Moore, 62, has amblyopia in his right eye. His best corrected visual acuity is 20/20 in his left eye and 20/400 in his right eye. In a 1998 examination, his optometrist stated, "I feel that Mr. Moore can operate a Comerical [sic] vehicle with his current eye condition."

Mr. Moore has driven tractor-trailer combination vehicles for 30 years and a total of 2.4 million miles. He holds a Nevada Class A CDL. His driving record for the last 3 years shows no accidents or convictions of moving violations in a CMV.

42. Leonard James Morton

Mr. Morton is 53 years old, and has amblyopia in the left eye. His best corrected visual acuity is 20/200 in the left eye and 20/20 in the right eye. In a 1999 examination, his optometrist stated, "In my medical opinion, Mr. Morton has sufficient vision to perform the driving tasks required to operated [sic] a commercial vehicle."

Mr. Morton has 33 years of experience driving tractor-trailer combination vehicles for approximately 1 million miles. He holds a Wisconsin CDL and has had no accidents or convictions of moving violations in a CMV for the past three years.

43. Timothy W. Noble

Mr. Noble, 32, has amblyopia in his right eye. His best corrected visual acuity is 20/50 in his right eye and 20/20 in his left eye. In a 1999 examination, his ophthalmologist stated, "Mr. Noble has good visual acuity and gross binocular function and should well be able to operate a commercial vehicles as he has done in the past since there has been no change in his ocular condition since he was a child and he has operated a commercial vehicle in the past without any difficulty."

Mr. Noble has operated tractor-trailer combination vehicles for over 3.5 years and a total of over 230,000 miles. He holds a Kentucky Class DA license. In the last 3 years, he was convicted of one moving violation (speeding) in a CMV and was involved in one accident in a CMV. According to the accident report the other driver involved in the accident attempted to change lanes in front of Mr. Noble in slowed traffic and caused him to strike the left side of the first vehicle. Neither driver was charged with a violation in the accident.

44. Kevin J. O'Donnell

Mr. O'Donnell, 28, has reduced visual acuity in his right eye due to a 1992 injury. His visual acuity is light perception in his right eye and 20/16 in his left eye. Mr. O'Donnell was examined in 1999 and his ophthalmologist stated, "His visual condition is stable. He can operate a commercial vehicle."

Mr. O'Donnell has operated straight trucks for 6 years and over 120,000 miles. He holds an Illinois CDL and has no accident or convictions of moving violations in a CMV over the last 3 years.

45. Gary L. Reveal

Mr. Reveal, 53, has had optic nerve damage in his right eye since birth. His best corrected visual acuity is 20/15 in the left eye and no light perception in his right eye. In a 1999 examination, his optometrist stated, "He does have sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Reveal has driven straight trucks for 34 years and over 1 million miles. He has driven tractor-trailer combination vehicles for 15 years and 300,000 miles. He holds an Ohio Class A CDL. His official driving record shows no convictions of moving violations in a CMV during the last 3 years. He was involved in one accident in a CMV. No moving violations were issued to him in the case.

46. John W. Robbins, Jr.

Mr. Robbins is 37 years old, and has amblyopia in the right eye. His best corrected visual acuity is 20/200 in the right eye and 20/20 in the left eye. He was examined in 1999 and his optometrist stated that, "Mr. Robbins[']vision is sufficient to perform the driving tasks required to operate a commercial vehicle."

Mr. Robbins has 18 years of experience driving straight trucks over 450,000 miles and 13 years of experience driving tractor-trailer combinations over 400,000 miles. He holds a Mississippi CDL and has had no accidents or convictions of moving violations in a CMV for the past three years.

47. Doyle R. Roundtree

Mr. Roundtree, 66, has amblyopia in his left eye. The vision in his right eye is 20/20, uncorrected. In a 1999 examination, his optometrist stated that "he is able to function very well at operating a commercial vehicle."

Mr. Roundtree has 37 years of experience driving tractor-trailer combinations, driving approximately 100,000 miles annually. He holds an Ohio CDL and his 3-year driving record shows no accidents. He was issued a speeding citation in a commercial vehicle during his 3-year driving period.

48. Charles L. Schnell

Mr. Schnell, 50, has anopthalmos of his right eye which is due to multiple failed surgeries as a child. His best corrected visual acuity is 20/20 in his left eye. He wears a prosthesis in his right eye. In a 1999 examination, his ophthalmologist stated, "In my opinion, Mr. Schnell's current visual acuity is sufficient to enable him to perform the driving tasks required in operating a commercial vehicle."

Mr. Schnell has 8 years of experience operating tractor-trailer combination vehicles for a total of 720,000 miles. He holds a Florida CDL, and his official driving record shows no accidents or convictions of moving violations in a CMV for the last 3 years.

49. David L. Slack

Mr. Slack, 47, has a traumatic corneal laceration and cataract in his left eye. His best corrected visual acuity is 20/20+ in the right eye and 20/200 in his left eye. In a 1999 examination, his ophthalmologist stated, "It is my opinion that the patient has significant vision and visual fields to perform the driving tests required to operate a commercial vehicle."

Mr. Slack has driven tractor-trailer combination vehicles for 21 years and a total of over 2.8 million miles. He holds a Texas Class A CDL. His official driving record shows no accident in a CMV in the last 3 years and one conviction of a non-moving violation for "Exceed/ Violate Weight Limits of Vehicle/ Truck."

50. Everett J. Smeltzer

Mr. Smeltzer, 46, has amblyopia in his left eye. His best corrected visual acuities are 20/20 in his right eye and 20/200 in his left eye. In a 1999 examination his optometrist stated, "In my opinion, his vision is sufficient for driving a commercial vehicle."

Mr. Smeltzer has driven straight trucks for over 29 years and a total of 870,000 miles. He has driven tractor-trailer combination vehicles for 22 years with mileage totaling over 1.5 million miles. He holds a Montana CDL and his official driving record shows no accidents or convictions of moving violations in a CMV during the last 3 years.

51. Philip Smiddy

Mr. Smiddy, 33, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in his right eye and 20/110 in his left eye. His doctor states that "Mr. Philip Smiddy has sufficient vision to perform the driving tasks necessary to operate a commercial vehicle."

Mr. Smiddy has driven straight trucks for 8 years and 40,000 miles and tractor-trailer combinations for 13 years and nearly 600,000 miles. He holds an Ohio CDL. His driving record shows no traffic accidents or convictions of moving violations in a CMV for the past 3 years.

52. James C. Smith

Mr. Smith, 53, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in his right eye and 20/100 in his left eye. In a 1999 examination, his optometrist stated, "I see no reason Mr. Smith would not be visually capable of operating a commercial vehicle."

Mr. Smith has driven straight trucks for 33 years and a total of 330,000 miles and tractor-trailer combination vehicles for 15 years and a total of 900,000 miles. Mr. Smith holds a Kentucky Class DA Operator/CDL license. His official driving record shows no accidents or convictions of moving violations in a CMV for the past 3 years.

53. Terry L. Smith

Mr. Smith, 53, has amblyopia in his right eye. His best visual acuity is 20/20 in his left eye and 20/300 in his right eye, corrected or uncorrected. He was examined in 1999, and his optometrist stated that, "Mr. Smith should have no problem performing commercial driving tasks."

Mr. Smith has driven straight trucks and tractor-trailer combinations for 21 years and well over 1 million miles. He holds a CDL from Montana and has no accidents or convictions of moving violations on his driving record for the past three years in a CMV.

54. James N. Spencer

Mr. Spencer, 69, has a central macular scar in his right eye. A 1999 examination revealed best corrected vision to be 20/100 in the right eye and 20/20 in the left eye. His ophthalmologist stated that, his successful 13-year career as a commercial driver "clearly proves that you have sufficient vision to continue to perform your driving tasks."

Mr. Spencer has driven straight trucks for 48 years and 3.6 million miles and tractor-trailer combinations for 18 years and over 3.3 million miles. He holds a California CDL and has no accidents or convictions of moving violations in a CMV on his driving record for the past 3 years.

55. Teresa Mary Steeves

Ms. Steeves, 58, suffered a retinal infection from measles as a child which left her with light perception vision in her left eye. The best visual acuity in her right eye is 20/30. In a 1999 examination, her optometrist stated, "Patient should be able to operate a commercial vehicle."

Ms. Steeves has driven tractor-trailer combination vehicles for 8 years and a total of over 800,000 miles. She holds a Florida Class A CDL. Her official driving record shows no accidents or convictions of moving violations in a CMV during the last 3 years.

56. Roger R. Strehlow

Mr. Strehlow, 55, has amblyopia in his left eye. His best corrected visual acuity in his right eye is 20/15+2 and finger counting at 1 foot in his left eye. In a 1999 examination, his optometrist stated, "Visually, he should be able to safely drive both commercial and private vehicles with the following two restrictions: 1. Wear corrective lenses; 2. Left hand outside mirror."

Mr. Strehlow has driven straight trucks for 15 years and a total of 375,000 miles and tractor-trailer combination vehicles for 23 years and a total of over 1.3 million miles. He holds a Wisconsin Class ABCD CDL. His official driving record for the last 3 years shows no accidents or convictions of moving violations in a CMV.

57. Timothy W. Strickland

Mr. Strickland, 38, has amblyopia in his right eye. His best corrected visual acuity is 20/15 in his left eye and 20/200 in his right eye. In a 1999 examination, his optometrist stated, "In my opinion, Mr. Strickland could safely operate a commercial vehicle."

Mr. Strickland has operated tractor-trailer combination vehicles for 13 years and a total of 1.3 million miles. He holds a North Carolina Class A CDL. His official driving record shows no accidents or convictions of moving violations in a CMV for the last 3 years.

58. John T. Thomas

Mr. Thomas, 57, has had a macular scar in his left eye since childhood. His best corrected visual acuity is 20/20 in his right eye and 20/200 in his left eye. He was examined in 1999, and his optometrist stated that, "I feel that Mr. Thomas has the vision necessary to permit him to operate a commercial vehicle."

Mr. Thomas has 30 years of experience operating tractor-trailer combinations and has driven over 3 million miles. He holds a North Carolina CDL, and has no accidents or convictions of moving violations in a CMV on his driving record for the past three years.

59. Darel E. Thompson

Mr. Thompson, 60, sustained an injury to his left eye in 1974 which left his visual acuity poor. His best corrected acuity is 20/400 in his left eye and 20/20 in his right eye. In a 1999 examination, his ophthalmologist stated, "In my opinion he has sufficient vision to perform a driving test required to operate a commercial vehicle, and has been doing so presumably uneventfully for the past 25 years."

Mr. Thompson has driven both straight trucks and tractor-trailer combination vehicles for 42 years, for a total of over 2.5 million miles. He holds a Washington Class A CDL. His official driving record shows no accidents or convictions of moving violations in a CMV for the last 3 years.

60. Mr. Ralph A. Thompson

Mr. Ralph Thompson, 56, has amblyopia in his right eye. His visual acuity is 20/20 in his left eye and 20/400 in his right eye. An optometrist examined him in 1999 and certified he "has sufficient vision to perform the tasks needed to operate a commercial vehicle without restrictions."

Mr. Thompson has driven tractor-trailer combination vehicles for 40 years and over 2.4 million miles. He holds a Kentucky Class DA License. His driving record shows no accidents or convictions of moving violations in a CMV during the last 3 years.

61. Kevin Wayne Windham

Mr. Windham, 36, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in his right eye and 20/200 in his left eye. In a 1999 examination, his optometrist certified that in his medical opinion, Mr. Windham has sufficient vision to perform the driving tasks required to operate a commercial vehicle.

Mr. Windham has 12 years of experience driving tractor-trailer combination vehicles for a total of 540,000 miles. He holds a Texas CDL, and his official driving record shows no accident or convictions of moving violations in a CMV for the last 3 years.

Basis for Preliminary Determination To Grant Exemptions

Independent studies support the principle that past driving performance is a reliable indicator of future safety. The studies are filed in FHWA Docket No. FHWA–97–2625 and discussed at 63 FR 1524, 1525 (January 9, 1998). We believe we can properly apply the principle to monocular drivers because data from the vision waiver program clearly demonstrate the driving performance of monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, March 26, 1996.) That monocular drivers in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, with qualifications similar to those required by the waiver program, can also adapt to their vision deficiency and operate safely.

The 61 applicants have qualifications similar to those possessed by drivers in the waiver program. Their experiences and safe driving records while operating CMVs demonstrate that they have adapted their driving skills to accommodate their vision deficiency. Since past driving records are reliable precursors of the future, there is no reason to expect these individuals to drive less safely after receiving their exemptions. Indeed, there is every reason to expect at least the same level of safety, if not a greater level, because the applicants can have their exemptions revoked if they compile an unsafe driving record.

For these reasons, the FMCSA believes exempting the individuals from 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to, or greater than, the level that would be achieved without the exemption as long as vision in their better eye continues to meet the standard specified in 49 CFR 391.41(b)(10). As a condition of the exemption, therefore, the FMCSA proposes to impose requirements on the individuals similar to the grandfathering provisions in 49 CFR 391.64(b) applied to drivers who participated in the agency's former vision waiver program.

These requirements are: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that vision in the better eye meets the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to his or her employer for retention in its driver qualification file or keep a copy in his or her driver qualification file if he or she becomes self-employed. The driver must also have a copy of the certification when driving so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with 49 U.S.C. 31315 and 31136(e), the proposed exemption for each person will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA is requesting public comment from all interested persons on the exemption petitions and the matters discussed in this notice. All comments received before the close of business on the closing date indicated above will be considered and will be available for examination in the docket room at the above address. Comments received after the closing date will be filed in the docket and will be considered to the extent practicable, but the FMCSA may issue exemptions from the vision requirement to the 61 applicants and publish in the **Federal Register** a notice of final determination at any time after the close of the comment period. In addition to late comments, the FMCSA will also continue to file in the docket relevant information which becomes available after the closing date. Interested persons should continue to examine the docket for new material.

Authority: 49 U.S.C. 322, 31136 and 31315; 49 CFR 1.73.

Issued on: April 6, 2000.

Julie Anna Cirillo,

Acting Deputy Administrator, Federal Motor Carrier Safety Administration.

[FR Doc. 00–9254 Filed 4–13–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. 99–6480 (Formerly OMCS Docket No. 99–6480)]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The FMCSA announces its decision to exempt 34 individuals from the vision requirement in 49 CFR 391.41(b)(10).

DATES: April 14, 2000.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987; for information about legal issues related to this notice, Ms. Judith Rutledge, Office of the Chief Counsel, (202) 366–2519, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

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Background

On January 1, 2000, the FMCSA was created to assume responsibilities relevant to motor carrier safety (See The Motor Carrier Safety Improvement Act of 1999, Public Law 106–159, 113 Stat. 1748 (December 9, 1999)). This explains the docket transfer.

Thirty-four individuals petitioned the FHWA for an exemption of the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of commercial motor vehicles (CMVs) in interstate commerce. The FMCSA is now responsible for processing the vision exemption applications of the 34 drivers. They are Rodney D. Blaschke, Thomas B. Blish, Ronnie Freamon Bowman, James C. Bryce, Thomas L. Corey, James D. Davis, Glenn Gee, Lloyd E. Hall, Byron Dale Hardie, Robert N. Heaton, Edward E. Hooker, James M. Irwin, Laurent G. Jacques, Alfred G. Jeffus, Oskia Johnson, Michael W. Jones, Don R. Kennedy, Dennis E. Krone, James F. Laverdure, Christopher P. Lefler, David R. Linzy, Richard Joseph Madler, Earl E. Martin, David P. McCabe, Richard John McKenzie, Jr., Kenneth R. Piechnik, Tommy L. Ray, Jr., William A. Reyes, Carl A. Sigg, Sammy D. Steinsultz, Edward J. Sullivan, John C. Vantaggi, Winston Eugene White, and Turgut T. Yilmaz. Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a renewable 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." Accordingly, the FMCSA evaluated the petitions on their merits and made a preliminary determination that the waivers should be granted. On December 6, 1999, the agency published notice of its preliminary determination and requested comments from the public (64 FR 68195). The comment period closed on January 5, 2000. Two comments were received, and their contents were carefully considered by the FMCSA in reaching the final decision to grant the petitions.

Vision and Driving Experience of the Applicants

The vision requirement in 49 CFR 391.41(b)(10) provides:

> A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

Since 1992, the FHWA has undertaken studies to determine if this vision standard should be amended. The final report from our medical panel recommends changing the field of vision standard from 70° to 120°, while leaving the visual acuity standard unchanged. (See Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., "Visual Requirements and Commercial Drivers," October 16, 1998, filed in the docket). The panel's conclusion supports the FMCSA's (and previously the FHWA's) view that the present standard is reasonable and necessary as a general standard to ensure highway safety. The FMCSA also recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 34 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, retinal detachment, macular scar, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. Over half of the applicants were either born with their vision impairments or have had them since childhood. The other individuals who sustained their vision conditions as adults have had them for periods ranging from 5 to 43 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye and, in a doctor's opinion, can perform all the tasks necessary to operate a CMV. The doctors' opinions are supported by the applicants' possession of a valid commercial driver's license (CDL). Before issuing a CDL, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate the CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State. The Federal interstate qualification standards, however, require more.

While possessing a valid CDL, these 34 drivers have been authorized to drive a CMV in intrastate commerce even though their vision disqualifies them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 5 to 49 years. In the past 3 years, the 34 drivers had nine convictions for traffic violations among them. Two drivers were involved in accidents in their CMVs, but there were no injuries and neither of the CMV drivers received a citation. The drivers were convicted of seven moving traffic violations, six of them were for speeding and one was for "Traffic Control Device."

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in a December 6, 1999, notice (64 FR 68195). Since the docket comments did not focus on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here. Our summary analysis of the applicants as a group, however, is supported by the information published at 64 FR 68195.

Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the

exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting these drivers to drive in interstate commerce as opposed to restricting them to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, the FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. Recent driving performance is especially important in evaluating future safety according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of accidents and traffic violations. Copies of the studies have been added to the docket.

We believe we can properly apply the principle to monocular drivers because data from the vision waiver program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, 13345, March 26, 1996). That experienced monocular drivers with good driving records in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, meeting the same qualifying conditions to those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that accident rates for the same individual exposed to certain risks for two different time periods vary only slightly. (See Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting accident proneness from accident history coupled with other factors. These factors, such as age, sex, geographic location, mileage driven and conviction history, are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future accidents. (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall accident predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 34 applicants, we note that cumulatively the applicants have had only two accidents and seven traffic violation in the last 3 years. Neither of the accidents resulted in bodily injury or issuance of a citation against the applicant. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, the FMCSA concludes their ability to drive safely can be projected into the future.

We believe applicants' intrastate driving experience provides an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exist on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances are more compact than on highways. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 5 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he or she has been performing in intrastate commerce. Consequently, the FMCSA finds that exempting applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the agency will grant the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e).

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the FMCSA will impose requirements on the 34 individuals consistent with the grandfathering provisions applied to drivers who participated in the agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in its driver qualification file, or keep a copy in his/her driver qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving so it may be presented to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

The FMCSA received two comments in this proceeding. Each comment was considered and is discussed below.

A letter was received from Mr. Oskia D. Johnson, one of the applicants under consideration. In his letter, Mr. Johnson asked that his application for a vision exemption be considered, citing his driving safety record.

In another comment, Advocates for Highway and Auto Safety (AHAS) expresses continued opposition to the FMCSA's policy to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs), including the driver qualification standards. Specifically, the AHAS: (1) Asks that the Office of Motor Carrier Research take no new action on exemption requests until an Administrator has been appointed and confirmed for the newly established Federal Motor Carrier Safety Administration; (2) asks the agency to clarify the consistency of the exemption application information, (3) objects to the agency's reliance on conclusions drawn from the vision waiver program, (4) suggests that the criteria used by the FHWA (now the FMCSA) for considering exemptions is flawed, (5) raises procedural objections to this proceeding, (6) claims the agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31315 and 31136(e)), and finally, (7) suggests that a recent Supreme Court

decision affects the legal validity of vision exemptions.

On the first issue regarding the appointment and confirmation of an Administrator for the Federal Motor Carrier Safety Administration, an Acting Deputy Administrator has been appointed and delegated functions required for the operation of the new agency. The other issues raised by the AHAS were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), and 65 FR 159 (January 3, 2000). We see no benefit in addressing these points again and refer interested parties to those earlier discussions for reasons why the points were rejected.

Notwithstanding the FMCSA's ongoing review of the vision standard, as evidenced by the medical panel's report dated October 16, 1998, and filed in this docket, the FMCSA must comply with *Rauenhorst* v. *United States Department of Transportation, Federal Highway Administration*, 95 F.3d 715 (8th Cir. 1996), and grant individual exemptions under standards that are consistent with public safety. Meeting those standards, the 34 veteran drivers in this case have demonstrated to our satisfaction that they can continue to operate a CMV with their current vision safely in interstate commerce because they have demonstrated their ability in intrastate commerce. Accordingly, they qualify for an exemption under 49 U.S.C. 31315 and 31136(e).

Conclusion

After considering the comments to the docket and based upon its evaluation of the 34 waiver applications in accordance with *Rauenhorst* v. *United States Department of Transportation, Federal Highway Administration, supra*, the FMCSA exempts Rodney D. Blaschke, Thomas B. Blish, Ronnie Freamon Bowman, James C. Bryce, Thomas L. Corey, James D. Davis, Glenn Gee, Lloyd E. Hall, Byron Dale Hardie, Robert N. Heaton, Edward E. Hooker, James M. Irwin, Laurent G. Jacques, Alfred G. Jeffus, Oskia Johnson, Michael W. Jones, Don R. Kennedy, Dennis E. Krone, James F. Laverdure, Christopher P. Lefler, David R. Linzy, Richard Joseph Madler, Earl E. Martin, David P. McCabe, Richard John McKenzie, Jr., Kenneth R. Piechnik, Tommy L. Ray, Jr., William A. Reyes, Carl A. Sigg, Sammy D. Steinsultz, Edward J. Sullivan, John C. Vantaggi, Winston Eugene White, and Turgut T. Yilmaz from the vision requirement in 49 CFR 391.41(b)(10), subject to the following conditions: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in its driver qualification file, or keep a copy in his/her driver qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

Authority: 49 U.S.C. 322, 31315 and 31136; 49 CFR 1.73.

Issued on: April 6, 2000.

Julie Anna Cirillo,

Acting Deputy Administrator, Federal Motor Carrier Safety Administration.

[FR Doc. 00–9255 Filed 4–13–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. 2000–6938]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of petition and intent to grant application for exemption; request for comments.

SUMMARY: This notice announces the FMCSA's preliminary determination to grant the application of Todd E. Kautzman for an exemption from the vision requirements in the Federal Motor Carrier Safety Regulations (FMCSR). Granting the exemption will enable Mr. Kautzman to qualify as a driver of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before May 15, 2000.

ADDRESSES: Your written, signed comments must refer to the docket number at the top of this document, and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemption in this notice, Ms. Sandra Zywokarte, Office of Motor Carrier Research and Standards, (202) 366–2987; for information about the legal issues related to this notice, Ms. Judith Rutledge, Office of the Chief Counsel, (202) 366–2519, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

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Background and Procedural History

Mr. Kautzman originally applied for a waiver of the vision standard in 1995 when the Federal Highway Administration (FHWA) performed motor carrier safety functions within the Department of Transportation. On

January 1, 2000, the Federal Motor Carrier Safety Administration (FMCSA) was created and assumed responsibility for performing the motor carrier safety functions involved in this case. (*See* Motor Carrier Safety Improvement Act of 1999, Public Law 106–159, 113 Stat. 1748). Accordingly, the FMCSA is now the appropriate agency to consider Mr. Kautzman's exemption request.

Mr. Kautzman's application for an exemption has a lengthy history that is intertwined with the development and demise of the vision waiver study program conducted by the Office of Motor Carriers within the Federal Highway Administration. The history of that program forms the backdrop for our discussion and evaluation of his exemption application.

In 1992, the FHWA began a review of the vision standard in response to several waiver applications and congressional committee reports requesting such review. See 57 FR 6793, February 28, 1992. A commissioned study by the Ketron Corporation noted that adequate vision in both eyes is critical to driving and recommended that the current rule requiring binocular visual acuity of 20/40 in each eye not be changed. Id. at 6794–95. The study suggested that efforts be made to generate better empirical statistics for vision-impaired drivers.

In March 1992, a plan to obtain empirical data was implemented. The FHWA established a vision waiver study program in which experienced vision-impaired drivers would be granted temporary waivers for a period of up to three years. Their driving records during that period would be evaluated to determine if they could safely operate a CMV and if the vision standard could be changed. See 57 FR 10295, March 25, 1992. Under the program, waivers were available to drivers with good driving records for at least three years and with vision in one eye meeting the Federal standard of at least 20/40 (Snellen). 57 FR 31458, 31460, July 16, 1992. We stressed from the beginning of the program that "[a]ll drivers eligible for a waiver have proven experience and have demonstrated their ability to safely operate a CMV for a number of years." Id., at 31459.

The conservative screening criteria applied to drivers in the program was not enough to overcome a challenge to the program's legality. In August 1994, the D.C. Circuit invalidated the vision waiver program "because the agency lacked the data necessary to support its determination that the vision waiver program 'is consistent with the safe operation of commercial motor vehicles.'" *Advocates for Highway and Auto Safety* v. *FHWA*, 28 F.3d 1288 (D.C. Cir. 1994) (quoting 49 U.S.C. App. 2505(f) (1988)). The court held that any waiver of Federal safety regulations must be supported by empirical data showing that the waiver is consistent with the safe operation of commercial motor vehicles. Because the agency had acknowledged the lack of empirical data to establish a link between vision disorders and commercial motor vehicle safety, the court held that it was improper for the agency to conclude that granting the temporary waivers was consistent with the safe operation of commercial motor vehicles. *Id.*

In reaching this conclusion, the court rejected the agency's finding that the temporary waiver program was consistent with safety because it limited waivers to only those drivers with proven experience and good driving records. *Id.* at 1293. These factors, the court held, "beg the question whether those sight-impaired drivers will be able to operate their CMVs with the same degree of safety as those who meet the agency's current vision standards." *Id.* The court therefore vacated the agency's rule creating the program and remanded to the agency for further rulemaking proceedings.

In response to the remand, the FHWA proposed to revalidate the waiver study program. 59 FR 50887, October 6, 1994. The agency explained the underlying basis for the original vision waiver program, noting that a requirement that participating drivers "have a three-year safe driving record with their vision impairment" was based upon studies "indicating that past experience can be used to predict future performance * * *." *Id.* at 50888. It also "relied upon opinions from the medical community that individuals with vision impairments are often able to compensate for that impairment over a period of time." *Ibid.* The agency chose three years to provide "added assurance that drivers would have sufficient time to develop compensatory behavior" and because it was the longest period of time for which driver histories were available. *Ibid.* Based on these principles and additional studies, the FHWA again determined "that three years of safe driving experience with the vision deficiency not only allowed for sufficient adjustment by drivers to the condition, but also provided the longest period of experience for which records were uniformly available from which to predict future performance." *Id.* at 50889.

We then determined that sufficient evidence existed to show that continued waiver for the group of drivers currently remaining in the program would be consistent with safety. *Id.* at 50891. We based this finding upon studies showing that past accident-free performance tends to indicate safe performance in the future, as well as interim results showing that the remaining drivers in the program had accident rates lower than the general driving population. *Id.* at 50890. The agency also recognized that elimination of the waiver study program would mean that drivers with known safety records would be replaced by less-experienced drivers with unproven safety records. *Ibid.* In addition, the agency noted that by March 1996, "approximately 93 percent of the drivers presently participating in the study will have completed at least three years driving in the study program." *Id.* at 50891.

The Advocates for Highway and Auto Safety (AHAS) filed an emergency motion the same day the notice was published in the **Federal Register** asking the court to enforce its decision invalidating the program. On October 21, 1994, the court issued its mandate restating that the rule authorizing the vision waiver program was vacated, and remanded the case to the FHWA. Three days later, the court denied the AHAS motion, presumably finding that the agency had complied with the remand. The FHWA thereafter published a notice of final determination, announcing its decision to continue the waiver program through March 1996 for those drivers in the program. 59 FR 59386, November 17, 1994.

At this point—when the program was limited to existing participants as a consequence of the AHAS decision and the final determination—Mr. Kautzman first applied for a vision waiver. His May 1995 application was denied by the FHWA on September 5, 1995, on the basis that the program was closed to new participants. Mr. Kautzman appealed the agency's denial to the United States Court of Appeals for the Eighth Circuit, the same court before which a similar appeal by David R. Rauenhorst was pending. As the cases involved the same issue, the court approved an agreement between the FHWA and Mr. Kautzman to hold his case in abeyance until Mr. Rauenhorst's case was decided and then apply the Rauenhorst decision to Mr. Kautzman's case.

While the cases progressed, the vision waiver study program expired by its own terms on March 31, 1996. The FHWA issued "grandfather" rights to the drivers remaining in the program so they could continue to drive a CMV in interstate commerce. (49 CFR 391.64). This decision was based on their continuous and sustained safe

performance which showed that this particular group of monocular drivers could operate without compromising safety. 61 FR 13338, 13345, March 26, 1996. We emphasized in our decision that the drivers were experienced from the beginning, had been heavily monitored, and that the poorest performers had been eliminated. *Ibid.*

Shortly after the FHWA issued permanent waivers to the drivers in the waiver study program, the Eighth Circuit issued its decision in *Rauenhorst* v. *United States Department of Transportation, Federal Highway Administration,* 95 F.3d 715 (8th Cir. 1996). Mr. Rauenhorst was a monocular truck driver who would have met the criteria for admission to the waiver group, but who did not apply. See *id.* at 717–718. He later applied for an individual waiver and sought review of the agency's denial. The court held that the FHWA erred in failing to consider Mr. Rauenhorst's application for a waiver and directed the agency to grant "separate, individually tailored waivers" grounded on "specific tests or standards." *Id.* at 723.

After Rauenhorst, the FHWA began granting individual waivers for monocular drivers who met the same criteria as the drivers who participated in the waiver study program. For instance, we granted Mr. Rauenhorst a waiver, finding "that he has adapted his driving techniques to accommodate the limited vision in his right eye." 63 FR 1524, 1525, January 9, 1998. His application reflected over 21 years of experience driving with his vision deficiency and an accident-free record. *Ibid.* Similarly, we granted waivers to another 12 applicants who met the waiver study program criteria and thus demonstrated that they had adapted their driving skills to accommodate their vision deficiency. 63 FR 54519, October 9, 1998.

To conform with the Rauenhorst ruling, the FHWA agreed to individually evaluate Mr. Kautzman's application on its merits. The FHWA requested specific information and documentation from Mr. Kautzman about his driving experience and physical condition in correspondence exchanged between February 1997 and March 1998. Mr. Kautzman's responses were inconsistent. According to one statement, he stopped driving in April 1995. According to another, he stopped driving in October 1996. Both dates created a significant gap between the time he stopped driving and July 28, 1997, when he provided information about his driving experience following the Rauenhorst decision. Because of the gap, the FHWA concluded that Mr. Kautzman failed to present evidence of 3 years' recent driving experience, a requirement in the vision waiver program. In addition, the agency could not determine exactly how much driving experience Mr. Kautzman had due to his contradictory statements. Thus, the FHWA denied his application on November 13, 1998.

Mr. Kautzman appealed the agency's decision (*Todd E. Kautzman and Richard Carlson* v. *United States Department of Transportation, Federal Highway Administration, and the United States of America,* No. 99–1070 (8th Cir. docketed Jan. 7, 1999)). The FHWA and Mr. Kautzman agreed to settle the case by remanding his application to the agency for reconsideration without regard to driving gaps arising during litigation. As part of the settlement, Mr. Kautzman provided the FHWA with an affidavit of his driving experience to resolve the discrepancies in his previous submissions. Using that information, we have evaluated his application as of the original filing date, May 22, 1995, without regard to gaps in experience after April 12, 1995, as required by the litigation settlement agreement. In accordance with 49 U.S.C. 31315 and 31136(e), we have preliminarily determined that exempting Mr. Kautzman from the vision requirement is likely to achieve a level of safety equal to, or great than, the level that would be achieved without the exemption.

Mr. Kautzman's Experience and Vision Condition

Mr. Kautzman has held a license to drive a commercial motor vehicle since 1986. His current CDL was issued by the State of North Dakota and expires on April 12, 2002. According to medical statements, Mr. Kautzman suffered a traumatic injury to his left eye at age one when a rubber-band projectile hit the central part of the cornea, destroying the central vision. Left eye vision measures 20/400 corrected or uncorrected. Right eye vision measures 20/15 corrected. According to his doctor, Mr. Kautzman's vision condition is stable and does not interfere with his ability to drive a CMV.

Mr. Kautzman began his driving career as a self-employed, part-time driver. From January 1989 until August 1, 1992, he transported agricultural products two Saturdays per month, driving about 5 hours each day. He became a full-time, self-employed driver on August 1, 1992, and worked 78 hours a week transporting grain, fertilizer, and feed in interstate commerce until April 12, 1995.

Mr. Kautzman stopped driving on April 12, 1995, when he found he was not qualified in interstate commerce, and took immediate steps to seek a waiver from the vision standard. No consideration was given to his application at that time because the vision waiver program had ceased to operate. As the FMCSA is responsible for delaying consideration of his application until now, our agreement to settle the most recent lawsuit and the interest of equity constrain us to consider his application without regard to his lack of driving since April 1995.

Analysis of Mr. Kautzman's Qualifications

Visual capacity in Mr. Kautzman's left eye measures 20/400 (Snellen) with or without correction. The standard applicable to drivers of commercial motor vehicles in interstate commerce requires vision in each eye to measure at least 20/40 Snellen, corrected or uncorrected (49 CFR 391.41(b)(10)). As his vision does not meet the regulation's standard, Mr. Kautzman cannot qualify to drive in interstate commerce unless he is exempted from its applicability.

Mr. Kautzman holds a valid CDL today, just as he did in 1995. The vision condition of his left eye has long been stable, and his right eye meets the vision standard. Moreover, his doctor does not believe the vision deficiency affects Mr. Kautzman's ability to perform the tasks involved in driving a CMV safely. Other than the vision deficiency in his left eye, Mr. Kautzman meets all other physical qualification standards in 49 CFR part 391. Furthermore, his driving record from 1992 to the present reflects none of the disqualifying conditions specified in the vision waiver criteria.

In the three years prior to April 12, 1995, Mr. Kautzman had considerable experience driving a CMV. Until August 1, 1992, he spent three years driving a CMV casually, 10 hours a month, transporting agricultural products. From August 1, 1992, through April 12, 1995, he drove a tractor-trailer combination transporting feed and grain, regularly 78 hours a week. If he averaged a modest 40 miles per hour, Mr. Kautzman would have compiled over 300,000 accident-free, incident-free, violation-free miles in both inter- and intrastate commerce. If any applicant presented such a three-year record to the agency today, undoubtedly an exemption would be approved under the criteria we have been employing.

The only evidence we have of Mr. Kautzman's safety record since 1995 is that which he compiled in a private automobile (non-CMV). It shows that he had two speeding convictions, one in

1997 and one in 1998. The agreement settling Mr. Kautzman's lawsuit does not preclude the agency's consideration of such safety events. Neither conviction, however, would have been disqualifying, even if the violation had been committed in a CMV, and there is no cause to conclude that either conviction related to Mr. Kautzman's visual deficiency.

Basis for Preliminary Determination To Grant Exemption

Independent studies support the principle that past driving performance is a reliable indicator of future safety. The studies are filed in FHWA Docket No. FHWA–97–2625 and discussed at 63 FR 1524, 1525 (January 9, 1998). We believe we can properly apply the principle to monocular drivers because data from the vision waiver program clearly demonstrate the driving performance of monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, March 26, 1996.) That monocular drivers in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, with qualifications similar to those required by the waiver program, can also adapt to their vision deficiency and operate safely.

In evaluating applications, it is the policy of the agency to screen out submissions which do not meet the criteria for consideration in terms of minimum visual capacity, duration and recency of CMV driving experience, and driving record. Thereafter, each application is individually considered on its merits. To be sure, in Mr. Kautzman's case, his experience and safe driving record in a CMV are not as recent as would normally pass the initial screening. The unique circumstances of this case justify special consideration due to the protracted litigation. In Mr. Kautzman's case, therefore, the FMCSA is dispensing with the screening stage, and has considered his case on the merits. Mr. Kautzman has qualifications similar to those possessed by drivers in the waiver program. His actual driving of CMVs was unusually intense over a 32-month period in all periods of the day and night, and under varying highway conditions. His experience and safe driving record operating CMVs demonstrate that he had adapted his driving skills to accommodate his vision deficiency. For these reason, and under the conditions set forth below, the FMCSA believes exempting this applicant from 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to or greater than the level that would be achieved without the exemption as long as vision in his better eye continues to meet the standard specified in 49 CFR 391.41(b)(10). As a condition of the exemption, therefore, the FMCSA proposes to impose requirements on Mr. Kautzman similar to the grandfathering provisions in 49 CFR 391.64(b) applied to drivers who participated in the agency's former vision waiver program.

These requirements are the following: (1) That he be physically examined every year (a) by an ophthalmologist or optometrist who attests that vision in his better eye meets the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests he is otherwise physically qualified under 49 CFR 391.41; (2) that he provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that he provide a copy of the annual medical certification to his employer for retention in its driver qualification file or keep a copy in his driver qualification file if he is self-employed. He must also have a copy of the certification when driving to present to a duly authorized Federal, State, or local enforcement official.

In accordance with revised 49 U.S.C. 31315 and 31136(e), the proposed exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) Mr. Kautzman fails to comply with the terms and conditions of the exemption; (2) the exemption results in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e). If the exemption is effective at the end of the 2-year period, Mr. Kautzman may apply to the FMCSA for a renewal under procedures in effect at that time.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA is requesting public comment from all interested parties on the exemption petition and the matters discussed in this notice. All comments received before the close of business on the closing date indicated above will be considered and will be available for examination in the docket room at the above address. Comments received after the closing date will be filed in the docket and will be considered to the extent practicable, but the FMCSA may issue an exemption to Mr. Kautzman and publish in the **Federal Register** a notice of final determination at any time after the close of the comment period. In addition to late comments, the FMCSA will also continue to file in the docket relevant information which becomes available after the closing date. Interested persons should continue to examine the docket for new material.

A copy of this notice will be mailed to compliance and enforcement personnel in the State of North Dakota, in accordance with 49 U.S.C. 31315(b)(7) and 31136(e), and we welcome comments from State officials.

Authority: 49 U.S.C. 322, 31315 and 31136; 49 CFR 1.73.

Issued on: April 6, 2000.

Julie Anna Cirillo,

Acting Deputy Administrator.

[FR Doc. 00–9256 Filed 4–13–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2000–7224]

Information Collection Available for Public Comments and Recommendations

AGENCY: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD) intentions to request approval for three years of a new information collection titled "Intermodal Access Impediments to U.S. Ports and Marine Terminals Survey."

DATES: Comments should be submitted on or before June 13, 2000.

FOR FURTHER INFORMATION CONTACT: Evie Chitwood, Office of Intermodal Development, 400 Seventh Street, SW, Room 7209, Washington, DC 20590, telephone number—202–366–5127. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Intermodal Access Impediments to U.S. Ports and Marine Terminals Survey.

Type of Request: Approval of a new information collection.

OMB Control Number: 2133–NEW.

Form Number: MA.

Expiration Date of Approval: Three years from the date of approval.

Summary of Collection of Information: The "Intermodal Access Impediments to U.S. Ports and Marine Terminals Survey," was designed to be a questionnaire of critical infrastructure impediments that impact the Nation's

ports and marine terminals. The collection of information will provide key highway, truck, rail, and waterside access data and will highlight the access impediments that affect the flow of cargo through U.S. ports and terminals.

Need and Use of the Information: The collection of information is necessary for MARAD officials to identify and assess the physical infrastructure impediments that impact the major ports and marine terminals. The annual data received will be used to statistically demonstrate the change in access impediments to the Nation's ports and terminals.

Description of Respondents: U.S. Ports and Terminals (including the top 50 U.S. deepwater ports, the top 25 container ports and the 14 strategic ports as well as the major shallow draft ports).

Annual Responses: 162 responses.

Annual Burden: 162 hours.

Comments: Signed written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit*. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., edt. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

By Order of the Maritime Administrator.

Dated: April 10, 2000.

Joel C. Richard,

Secretary.

[FR Doc. 00–9253 Filed 4–13–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Federal Motor Carrier Safety Administration

[Docket No. RSPA–00–7021 (PDA–23(RF))]

Application by Med/Waste, Inc. and Sanford Motors, Inc. for a Preemption Determination as to Morrisville, PA, Requirements for Transportation of "Dangerous Waste"

AGENCY: Research and Special Programs Administration (RSPA) and Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Public Notice and Invitation to Comment.

SUMMARY: Interested parties are invited to submit comments on an application by Med/Waste, Inc. and Sanford Motors, Inc. for an administrative determination whether Federal hazardous materials transportation law preempts requirements of the Borough of Morrisville, Pennsylvania, concerning the transportation of "dangerous waste" (including infections, chemotherapeutic, or hazardous wastes) within the Borough of Morrisville.

DATES: Comments received on or before May 30, 2000, and rebuttal comments received on or before July 13, 2000, will be considered before an administrative ruling is issued jointly by RSPA's Associate Administrator for Hazardous Materials Safety and FMCSA's Administrator. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and all comments received may be reviewed in the Dockets Office, U.S. Department of Transportation, Room PL–1401, 400 Seventh Street, SW, Washington, DC 20590–0001. The application and all comments are also available on-line through the home page of DOT's Docket Management System, at "http://dms.dot.gov."

Comments must refer to Docket No. RSPA–00–7021 and may be submitted to the docket either in writing or electronically. Send three copies of each written comment to the Dockets Office at the above address. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. To submit comments electronically, log onto the Docket Management System website at http://dms.dot.gov, and click on "Help & Information" to obtain instructions.

A copy of each comment must also be sent to (1) Med/Waste's Vice President for Legal Affairs, Ross M. Johnston, Esq., Med/Waste, Inc., 6175 N.W. 153rd Street, Suite 324, Miami Lakes, FL 33014, and (2) the solicitor to the Borough of Morrisville, Stephen L. Needles, Esq., Stuckert and Yates, Two North State Street, P.O. Box 70, Newtown, PA 18940. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: "I certify that copies of this comment have been sent to Mr. Johnston and Mr. Needles at the addresses specified in the **Federal Register**.")

A list and subject matter index of hazardous materials preemption cases, including all inconsistency rulings and preemption determinations issued, are available through the home page of RSPA's Office of the Chief Counsel, at "http://rspa-atty.dot.gov." A paper copy of this list and index will be provided at no cost upon request to Mr. Hilder, at the address and telephone number set forth in **FOR FURTHER INFORMATION CONTACT** below.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration (Tel. No. 202–366–4400), or Joseph Solomey, Office of the Chief Counsel, Federal Highway Administration (Tel. No. 202–366–1374), U.S. Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Application for a Preemption Determination

Med/Waste, Inc. and its subsidiary, Sanford Motors, Inc. (collectively "Med/Waste") have applied for a determination that Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, preempts requirements contained in Ordinance No. 902 of the Borough of Morrisville, Pennsylvania, applicable to the transportation of "dangerous waste" (including infectious, chemotherapeutic, and hazardous wastes as defined in Ordinance No. 902) in and through the Borough of Morrisville. In a later letter to RSPA's Office of the Chief Counsel, Med/Waste provided the name of the Borough Manager of the Borough of Morrisville and a copy of a newspaper article that relates to the adoption of Ordinance No. 902. Through its solicitor, the Borough of Morrisville responded to Med/Waste's application in a March 1, 2000 letter.

The test of Med/Waste's application and a list of the exhibits to the application are set forth in Appendix A to this notice. A paper copy of the exhibits to Med/Waste's application (which have been placed in the public docket) will be provided at no cost upon request to Mr. Hilder, at the address and telephone number set forth in **FOR FURTHER INFORMATION CONTACT** above. The Borough of Morrisville's March 1, 2000 letter is Appendix B to this notice.

In the application, Med/Waste challenges:

(1) The definitions of "infectious waste," "hospital waste," and "dangerous waste" in Section 01 of Ordinance No. 902 and the use of the term "dangerous waste" throughout the ordinance. In Section 01, "dangerous waste" is defined to mean "infectious wastes, chemotherapeutic wastes, or hazardous wastes, or any combination thereof." Section 07 of Ordinance No. 902 provides that "For purposes of this Ordinance, all Hospital Waste shall be presumed to be DANGEROUS WASTE." Med/Waste asserts that the terms "infectious waste," "hospital waste," and "dangerous waste" conflict with the designations, descriptions and classifications of hazardous materials in the HMR.

(2) The designation of Pennsylvania Route 1 (between the Delaware River Toll Bridge and the boundary line with the Township of Falls) as the only street in the Borough of Morrisville that may be used by trucks transporting dangerous waste. Med/Waste contends that this limitation does not comply with the requirements in 49 U.S.C. 5112 and 31114, and that this restriction cuts off its access to its facility that holds a permit from the Pennsylvania Department of Environmental Protection to transport infectious and chemotherapeutic wastes that are not "hazardous wastes" under Pennsylvania regulations. Med/Waste also states that the routing limitation may be a constructive taking of its property without just compensation in violation of the Fifth Amendment to the U.S. Constitution.

(3) The requirement in Section 05(a) of Ordinance No. 902 that each truck transporting dangerous waste:

> shall carry and have available for inspection the manifest required for transportation of such waste under the Resource Conservation and Recovery Act, or federal or state regulations implementing that Act.

Med/Waste states that the ordinance requires the preparation of a hazardous waste manifest for shipments of regulated medical waste, in conflict with the HMR. Med/Waste asserts that "Regulated medical waste as defined by the HMR is not a hazardous waste as defined in 40 CFR part 262."

In its responding letter, the Borough of Morrisville argues that, under *City of Philadelphia* v. *New Jersey*, 437 U.S. 617 (1978), and *Ensco, Inc.* v. *Dumas*, 807 F.2d 743 (8th cir. 1986),

> states and local municipalities are permitted to establish waste management standards more stringent than those imposed by federal law and that only local regulations which totally prohibit storage, transportation or treatment should be preempted.

The Borough of Morrisville contends that the "elements of the definitions" of "Infectious Waste," "Hospital Waste," and "Dangerous Waste" are substantively the same as the definitions in 49 CFR 173.134(a)(4). It acknowledges that the Borough's requirement for drivers to carry a written manifest when hauling dangerous wastes "may be different from the federal regulation," but states that this difference "does not render the applicant's ability to comply with 40 CFR 261.3 impossible, nor does it impede the objectives of the federal law."

In its letter, the Borough of Morrisville also states that its ordinance does not restrict Med/Waste's ability to use Route 1 within the Borough. It refers to the authority of a State to designate highway routes for the transportation of hazardous materials, under 49 U.S.C. 5112, and asserts that "In Pennsylvania, this right is further delegated to counties and municipalities by Section 304 of the Municipal Waste, Planning, Recycling and Waste Reduction Act, 53 Pa.C.S.A § 4000.304."

II. Federal Preemption

Section 5125 of Title 49 U.S.C. contains several preemption provisions that are relevant to Med/Waste's application. Subsection (a) provides that—in the absence of a waiver of preemption by DOT under section 5125(e) or specific authority in another Federal law—a requirement of a State, political subdivision of a State, or Indian tribe is preempted if:

> (1) complying with a requirement of the State, political subdivision or tribe and a requirement of this chapter or a regulation issued under this chapter is not possible; or
>
> (2) the requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to the accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

These two paragraphs set forth the "dual compliance" and "obstacle" criteria which RSPA had applied in issuing inconsistency rulings prior to 1990, under the original preemption provision in the Hazardous Materials Transportation Act (HMTA). Public Law 93–633 section 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz*, 312 U.S. 52 1941; *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.*, 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects, that is not "substantively the same as" a provision of Federal hazardous material transportation law or a regulation prescribed under that law or DOT grants a waiver or preemption:

> (A) the designation, description, and classification of hazardous material.
>
> (B) the packing, repacking, handling, labeling, marketing, and placarding of hazardous material.
>
> (C) the preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.
>
> (D) the written notification, recording, and reporting of the unintentional release in transportation of hazardous material.
>
> (E) the design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

To be "substantively the same," the non-Federal requirement must "conform[] in every significant respect to the Federal requirement. Editorial and other similar de minimis changes are permitted." 49 CFR 107.202(d). Subsection (c)(1) of 49 U.S.C. 5125 provides that, beginning two years after DOT prescribes regulations on standards to be applied by States and Indian tribes in establishing requirements on highway routing of hazardous materials,

> a State or Indian tribe may establish, maintain, or enforce a highway routing designation over which hazardous material may or may not be transported by motor vehicles, or a limitation or requirement related to highway routing, only if the designation, limitation, or requirement complies with section 5112(b).[1]

These preemption provisions in 49 U.S.C. 5125 carry out Congress's view that a single body of uniform Federal regulations promotes safety in the transportation of hazardous materials. In considering the HMTA, the Senate

[1] DOT's standards and procedures for State and Indian tribe requirements for highway routing of non-radioactive hazardous materials are issued under 49 U.S.C. 5112(b) and contained in 49 CFR Part 397, subpart C.

Commerce Committee "endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When it amended the HMTA in 1990, Congress specifically found that:

(3) many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials in necessary and desirable,

(5) in order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Public Law 101–615 Section 2, 104 Stat. 3244. A Federal Court of Appeals has found that uniformity was the "linchpin" in the design of the HMTA, including the 1990 amendments that expanded the original preemption provisions. *Colorado Pub. Util. Comm'n* v. *Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991). (In 1994, Congress revised, codified and enacted the HMTA "without substantive change," at 49 U.S.C. Chapter 51. Public. Law. 103–272, 108 Stat. 745.)

III. Preemption Determinations

Under 49 U.S.C. 5125(d)(1), any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted. The Secretary of Transportation has delegated authority to make determinations of preemption that concern highway routing to FMCSA and those concerning all other hazardous materials transportation issues to RSPA. 49 CFR 1.53(b) and 1.73(d)(2) (as added October 9, 1999, 64 FR 56720, 56721 [Oct. 19, 1999], and revised January 1, 2000, 65 FR 220, 221 [Jan. 4, 2000]). Because Med/Waste's application concerns both highway routing issues and non-highway routing issues, FMCSA's Administrator will address highway routing issues, and RSPA's Associate Administrator for Hazardous Materials Safety will address non-highway routing issues. 49 CFR 107.209(a), 397.211(a).

Section 5125(d)(1) requires that notice of an application for a preemption determination must be published in the **Federal Register**. Following the receipt and consideration of written comments, FMCSA and RSPA will publish their determination in the **Federal Register**. *See* 49 CFR 107.209(d), 397.211(d). A short period of time is allowed for filing of petitions for reconsideration. 49 CFR 107.211, 397.223. Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law. A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon*, above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), FMCSA and RSPA are guided by the principles and policies set forth in Executive Order No. 13132, entitled "Federalism" (64 FR 43255 (August 4, 1999). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence that Congress intended to preempt State law, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which FMCSA and RSPA have implemented through their regulations.

IV. Public Comments

All comments should be limited to the issue whether 49 U.S.C. 5125 preempts the Borough of Morrisville's requirements challenged by Med/Waste. Comments should specifically address the preemption criteria detailed in Part II, above, and set forth in detail the manner in which the Borough of Morrisville's requirements in Ordinance No. 902 were adopted and are applied and enforced, including but not limited to:

(1) whether the term "dangerous waste" in Ordinance No. 902 includes materials that are not defined as an "infectious substance" under the HMR, 49 CFR 173.134(a);

(2) how the materials defined as "regulated medical waste" in the HMR, 49 CFR 173.134, are categorized or classified under Ordinance No. 902;

(3) whether the term "hazardous waste" in Ordinance No. 902 includes materials that are not defined as a "hazardous waste" in the HMR, 49 CFR 171.8;

(4) whether Ordinance No. 902 requires a hazardous waste manifest to be prepared for, and accompany, a shipment of an "infectious substance" or a "regulated medical waste," as those two terms are defined in the HMR, 49 CFR 173.134(a);

(5) the application of Pennsylvania's Municipal Waste Planning and Recycling and Waste Reduction Act, 53 P.S. 4000.101 *et seq.*, and solid Waste Management Act, 35 P.S. 6018.101 *et seq.*, and the regulations issued under those statutes to the transportation of an "infectious substance" or a "regulated medical waste," as those two terms are defined in the HMR [2];

(6) the extent to which adoption of the routing limitation in Section 02 of Ordinance No. 902 was in compliance with the Federal standards set forth in 49 CFR 397.71(b), including but not limited to the standards concerning:

(a) Notice to the public, 49 CFR 397.71(b)(2);

(b) Notice to officials responsible for highway routing in New Jersey or in political subdivisions adjacent to the Borough of Morrisville, 49 CFR 397.71(b)(3);

(c) Reasonable access for motor vehicles transporting hazardous materials to terminals; points of unloading, unloading, pickup and delivery; and facilities for food, fuel, repairs, rest, and safe havens, 49 CFR 397.71(b)(7);

(d) The State's actions to ensure that its political subdivisions comply with 49 CFR Part 397, subpart C, 49 CFR 397.71(b)(8);

(e) Population density, type of highway, type and quantity of hazardous material, emergency response capabilities, consultation with affected persons, exposure and other risk factors, terrain considerations, continuity of routes, alternative routes, effects on commerce, delays in transportation, climatic conditions, and congestion and accident history, 397.71(b)(9); and

(7) whether the State of Pennsylvania has provided information of the routing limitation in Section 02 of Ordinance No. 902 to DOT, as specified in 49 CFR 397.73(b). Persons intending to

[2] Please provide a copy of any State regulation referred to in a comment on Med/Waste's application.

comment should review the standards and procedures governing consideration of applications for preemption determinations, set forth at 49 CFR 107.201–107.211, and 397.201–397.211.

Issued in Washington, DC on April 10, 2000.

Julie Anna Cirillo,

Acting Deputy Administrator, Federal Motor Carrier Safety Administration.

Robert A. McGuire,

Acting Associate Administrator for Hazardous Materials Safety, Research and Special Programs, Administration.

Appendix A

December 30, 1999.

Hazardous Materials Preemption Docket,
Associate Administrator for Hazardous Materials Safety, Research and Special Administration. U.S. Department of Transportation, Washington, DC.

Preemption Application

Dear Sir/Madam; Pursuant to 49 USC § 5125(d) 1999 and the Department of Transportation regulations 49 CFR § 107.203 *et seq.*, Med/Waste, Inc., a publicly traded Delaware corporation together with its subsidiary Sanford Motors., Inc., a Pennsylvania corporation (hereafter referred to as "SMI") make application to the Associate Administrator to determine that the provisions of the Borough of Morrisville's Ordinance No. 902, enacted September 20, 1999, are preempted by the Hazardous Material Regulations, 49 CFR § 171–173 1999, as hereinafter set forth.

The full text of the Morrisville ordinance No. 902 is attached as Exhibit "A". Specific provisions of the Morrisville Ordinance No. 902 and the preemptive Hazardous Material Regulations counterpart are identified below:

1. Section 01: Definitions.

(c) **Infectious Waste.** "Infectious Waste" is waste that contains or may contain any disease-producing microorganism or material. Infectious wastes include but are not limited to the following:

(i) Those wastes that are generated by hospitalized patients who are isolated in separate rooms in order to protect others from their severe and communicable diseases.

(ii) All cultures and stocks of etiologic agents.

(iii) All waste blood and blood products.

(iv) Tissues, organs, body parts, blood and body fluids that are removed during surgery and autopsy, and other wastes generated by surgery or autopsy of septic cases or patients with infectious diseases.

(v) Wastes that were in contact with pathogens in any type of laboratory work, including collection containers, culture dishes,

(vi) slides, plates and assemblies for diagnostic tests; and devices used to transfer, inoculate and mix cultures.

(vii) Sharps, including hypodermic needles, suture needles, disposable razors, syringes, Pasteur pipettes, broken glass and scalpel blades.

(viii) Wastes that were in contact with the blood of patients undergoing hemodialysis at hospitals or independent treatment centers.

(ix) Carcasses and body parts of all animals, which were exposed to zoonotic pathogens.

(x) Animal bedding and other wastes that were in contact with diseased or laboratory research animals or their excretions, secretions, carcasses or body parts.

(xi) Waste biologicals (e.g., vaccines) produced by pharmaceutical companies for human or veterinary use.

* * * * *

(e) **Storage.** "Storage" means the holding of DANGEROUS WASTE for a temporary period, at the end of which the DANGEROUS WASTE is treated, disposed of, moved, or stored elsewhere.

(f) **Dangerous Waste.** "DANGEROUS WASTE" means infectious wastes, or chemotherapeutic wastes, or hazardous wastes, or any combination thereof.

(g) **Hospital Waste.** "Hospital waste" means waste of any sort generated by nursing homes, hospitals, clinics for the treatment of disease, or like institutions or business. The term shall also include paper products, bedding, towels, containers, or cleaning implements that have been exposed to infectious, chemotherapeutic, pathological wastes, solid

The definitions of the ordinance are in conflict with and therefore preempted by the corresponding definition in the Hazardous Material Regulations that designate, describe and classify hazardous materials as follows:

"Infectious Waste" and "Hospital Waste" and Dangerous Waste" are in conflict with 49 CFR §§ 173.134(a)(4) and 173.197, describing Regulated Medical Waste. The definitions of the Ordinance also use the word "Dangerous" in conflict with HMR's use of the word at 49 CFR §§ 171.14(b); 172.548 and 173.124(c).

Section 02 of the Ordinance reads as follows:

Section 02: Routes

Because the streets and roads of the Borough of Morrisville are generally narrow, winding, and in places congested, and not generally designed to accommodate heavy or constant truck traffic, the Borough Council may from time to time designate certain routes and/or particular streets for use by motor vehicle trucks hauling DANGEROUS WASTE. The following streets are the only streets in the Borough in Morrisville designated at this time for transportation by truck of DANGEROUS WASTE:

PA Route 1 (between the Delaware River Toll Bridge and the boundary line with the Township of Falls)

No such motor vehicle truck shall exceed the load limit for any such routes or road.

This section of the Ordinance conflicts with the definition and use of the word "Dangerous" by HMR and restricts the route in such a manner as to make it impossible for SMI to enter or exit from its permitted transportation facility located at 1307 south Pennsylvania Avenue, Morrisville, PA 19067, without violating the Routing section of the Ordinance (see SMI Pennsylvania permit attached as Exhibit "B"). SMI has operated a permitted facility at the same address in Morrisville for over five years. The Ordinance does not comply with 49 USC § 5112 and violates the Surface Transportation Act of 1982, 49 USC § 31114, which guarantees trucks and trailers "reasonable access" between the national network of roads and "terminals". There is also an argument that the Ordinance, as written, would be a constructive taking of SMI's property without just compensation in violation of the Fifth Amendment.

Section 03 and 04 read as follows:

Section 03: Speed Limits

Trucks carrying DANGEROUS WASTE within the Borough of Morrisville are hereby limited to the designated speed limit on Route 1, and the posted speed limit on any other state or Borough road within the Borough of Morrisville that may eventually be approved for use by such trucks bearing DANGEROUS WASTE.

Section 04: Conditions of Operations

All Trucks carrying DANGEROUS WASTE in the Borough of Morrisville shall operate with their headlights on at all times.

Sections 03 and 04 are in conflict with HMR in the use of the word "Dangerous" as noted above.

Section 05 of the Ordinance reads as follows:

SECTION 05: Miscellaneous Requirements

(a) Each truck hauling DANGEROUS WASTE shall carry and have available for inspection the manifest required for transportation of such waste under the Resource Conservation and Recovery Act, or federal or state regulations implementing that Act. Such manifest shall be presented upon request of any Morrisville Borough police officer.

(b) Each truck hauling DANGEROUS WASTE shall be subject to a safety inspection at any time.

(c) Each driver of any such truck shall immediately report any accident or collision involving his truck to the Borough of Morrisville police.

(d) No drive of a motor vehicle truck hauling DANGEROUS WASTE in the Borough of Morrisville shall be permitted to enter the Borough of Morrisville with such truck unless such drive, or the owner of consignor of such DANGEROUS WASTE, shall first have deposited with the Borough Secretary in indemnity bond with limits of not less that $50,000,000 per occurrence. Such bond shall be conditioned to pay all or part of such sum as damages or restitution to the Borough of Morrisville unless the responsible part shall reimburse any person, firm, partnership, trust or corporation, including the Borough itself, for any damages to person, property or natural resources resulting from the hauling of such DANGEROUS WASTE, or accidents or spills incident thereto, in the Borough of Morrisville.

(e) Any truck or vehicle carrying DANGEROUS WASTE shall comply with all DEP and state regulations and laws pertaining thereto.

The Provisions of Section 05 of the Ordinance are in conflict with HMR's use of

the word "Dangerous" as noted above. In addition, the requirement in subsection (a) for haulers of "Dangerous Waste" to carry and have a manifest as required under the Resource Conservation and Recovery Act is in conflict with HMR's requirement to carry manifests as require by EPA's regulation (see 49 CFR 172.205(a)). Regulated medical waste as defined by the HMR is not a hazardous waste as defined in 40 CFR part 262. Therefore the Ordinance requires the preparation, execution and use of shipping documents in conflict with the HMR Requirements.

Sections 06 and 07 of the Ordinance read as follows:

Section 06: Storage Prohibition

Except as provided for by DEP regulations, the storage of DANGEROUS WASTE IN ONE PLACE FOR OVER 24 HOURS WITHIN THE borough of Morrisville is entirely prohibited. Storage in separate places within the Borough for a cumulative total of 48 hours or more is also prohibited.

Section 07: Presumption

For purposes of this Ordinance, all Hospital Waste will be presumed to be DANGEROUS WASTE.

Sections 06 and 07 are in conflict with HMR's use of the word Dangerous as noted above.

Section 08 of the Ordinance reads as follows:

Section 08: Penalties

Any person who operates a motor vehicle truck in violation of any of the provisions of this Ordinance shall, upon conviction, be fined not less than $100 nor more than $500 and may, in addition or alternatively, be sentenced to jail for a period or term not exceeding 90 days. Such sentences may not be suspended.

The penalties provision of this Ordinance is meaningless, due to the fact that the definitions and requirements of the Ordinance are preempted by operation of 49 U.S.C. § 5125 and the authorized regulations, 49 CFR §§ 171–173.

It is respectfully requested that the Provisions of Ordinance No. 902 of the Borough of Morrisville be preempted pursuant to 49 U.S.C. § 5125 and 49 CFR § 201–213 because the provisions are: (1) in conflict with the designations, description and classification of hazardous materials as stated in the Hazardous Materials Regulations; (2) in conflict with the preparation, execution and use of shipping papers as stated in the Hazardous Materials Regulations; and (3) compliance with the routing requirement of the Ordinance is impossible for the SMI permitted facility located within Morrisville.

Moreover, the enforcement of the Morrisville Ordinance with its redefined hazardous material classification scheme, additional requirement for shipping papers and impossible requirements would create an obstacle to the accomplishment and execution of the Hazardous Materials Transportation Uniform Safety Act and Hazardous Materials Regulations; *Chlorine Institute* v. *California Highway Patrol*, 29 F. 3d 495, 498 (9th Cir. 1994).

Please address all correspondence regarding this application to the undersigned attorney.

Certification: I certify that a copy of this application has been mailed this 30th day of December to Borough Manager, Borough of Morrisville, 35 Union Street, Morrisville, PA 19067, with instructions that the Borough of Morrisville may submit comments regarding this application to the Associate Administrator.

Sincerely,

Med/Waste, Inc. and its Subsidiary Sanford Motors, Inc.

Ross M. Johnston,

Vice President for Legal Affairs.

cc: Craig Sanford, Sanford Motors, Inc.
Gary Lightman.

List of Exhibits

A. Borough of Morrisville, PA, Ordinance No. 902, enacted September 20, 1999.

B. Pennsylvania Department of Environmental Protection letter to Sanford Motors, Inc., dated September 29, 1999, and enclosed Infectious & Chemotheraputic Waste Transporter License.

Appendix B

March 1, 2000

Hazardous Materials Preemption Docket,
Associate Administrator for Hazardous Materials Safety, Research and Special Administration, U.S. Department of Transportation, Washington, DC.

Re: Preemption Application of Med/Waste, Inc. dated December 30, 1999

Dear Sir or Madam: I am the solicitor to the Borough of Morrisville, Bucks County, Pennsylvania whose "Dangerous Waste Ordinance" is being challenged in the above-captioned application. By this letter, I would like to set forth Morrisville Borough's position in asking that the preemption application be dismissed. I apologize for the delay in responding, but I did not receive a copy of Med/Waste's letter/application to you until on or after January 27, 2000.

Initially, I would like to point out that the U.S. Supreme Court has established a two-part test to determine if a federal law impliedly preempts a local government regulation: (1) Is compliance with both federal and local law impossible? and (2) Does the local law impede congressional objectives? See *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151, 158 (1978).

A federal statute may also expressly preempt a local ordinance where the act on its face, and by its explicit language, supersedes any inconsistent local regulation.

The U.S. Supreme Court has also held that federal environmental statutes set minimum standards that must be met by a state or local government while permitting the local governments to enact more stringent regulations. In *City of Philadelphia* v. *New Jersey*, 437 U.S. 617 (1978), the Court stated that Congress intended the Resource Conservation and Recovery Act of 1976 (RCRA) to allow state, regional and local authorities to control the collection and disposal of solid waste as one of their primary functions. The Court further found that the RCRA contained "no clear and manifest purpose of Congress to preempt the entire field of interstate waste management." *Id.* at 620. Furthermore, in *Ensco, Inc. vs. Dumas*, 807 F.2d 743 (8th Cir., 1986), the federal court held that states and local municipalities are permitted to establish waste management standards more stringent than those imposed by federal law and that only local regulations which totally prohibit storage, transportation or treatment should be preempted.

The applicant in the instant case complains that the elements of the definitions of the terms "Infectious Waste", "Hospital Waste" and "Dangerous Waste" in the Morrisville ordinance are substantially different from those contained in 49 CFR §§ 173.134(a)(4) and 173.197. A closer look reveals that this is simply not true. (Also, it must be pointed out that 49 CFR § 173.197 deals exclusively with waste packaging and contains no definitions).

Morrisville ordinance	49 CFR 173.134(a)(4)
1. "any disease producing micro-organism or material".	1. "a viable micro-organism, or its toxin, that causes or may cause disease in humans or animals"
2. "generated by hospitalized patients [with] severe and communicable diseases".	2. "an infectious substance * * * generated in the diagnosis, treatment or immunization of human beings or animals"
3. "[a]ll cultures and stocks of etiologic agents".	3. "infectious substances and etiologic agents"
4. "[a]ll waste blood and blood products" "[t]issues, organs, body parts, blood and body fluids".	4. "execreta, secreta, blood, blood components, tissue, and tissue fluids"
5. "wastes that were in contact with pathogens in any type of laboratory work".	5. "waste or reusable material * * * that contains an infectious substance"
6. "waste biologicals (*e.g.*, vaccines)".	6. "biological products"

The applicant's contention that Morrisville borough's use of the word "Dangerous" conflicts with 49 CFR § 173.124(c) is similarly misguided. The federal regulation cited deals with "dangerous when wet material" (emphasis added) and is inapposite to the Morrisville Borough ordinance.

Applicant also claims that the Morrisville ordinance should be preempted because it requires drivers to carry written manifests when hauling "Dangerous Wastes" (as defined in the ordinance) while federal law only requires manifests if the cargo is "Hazardous Waste" (as defined in 40 CFR § 261.3). While the Morrisville ordinance may be different from the federal regulation, it certainly does not render the applicant's ability to comply with 40 CFR § 261.3 impossible, nor does it impede the objectives of the federal law.

Finally, the applicant argues that the route restrictions contained in the Morrisville ordinance are violative of 49 U.S.C. § 31114,prohibiting interference with access to the interstate highway system. I can say, with all assuredness, that no interstate highways traverse the Borough of Morrisville. However, the availability of U.S. Route 1 to the applicant has not been restricted. 49 U.S.C. § 5112, cited by the applicant, appears to give the states the right to designate specific highway routes over which hazardous material may and may not be transported by motor vehicle. In Pennsylvania, this right is further delegated to counties and municipalities by section 304 of the Municipal Waste, Planning, Recycling and Waste Reduction Act, 53 Pa. C.S.A. § 4000.304.

The Morrisville ordinance provides standards for the transportation of hazardous waste within the borough which are different, though no less stringent than federal regulations. 49 U.S.C.S. § 5101 states that the purpose of the chapter is "to provide adequate protection against the risks to life and property inherent in the transportation of hazardous material in commerce by improving the regulation and enforcement authority of the Secretary of Transportation." Morrisville Ordinance No. 902 espouses the same concern for the "health, safety and general welfare of its residents." The ordinance in question breaks no new legislative ground regarding the transportation of hazardous waste but only serve to clarify and specify areas already addressed by federal law. Therefore, the two-part preemption test is not satisfied.

49 U.S.C.S. § 5125 clearly states the criteria by which a local hazardous waste ordinance will be evaluated for the purpose of determining whether it is preempted. Section 5125(a) states that a "requirement of a [local government] is preempted if complying with the requirement of the * * * political subdivision * * * and a requirement of this chapter * * * is not possible." Nothing in the Morrisville ordinance prevents any hauler of dangerous waste to comply with any of the provisions of the federal statutes or any of the rules that have been promulgated in furtherance of environmental legislation. Section 5125(b) states that no local ordinance may be substantively different from federal regulations. The definitions espoused by the Morrisville ordinance and the federal statutes address essentially the same types of materials.

Sincerely,

Stephen L. Needles,

Stuckert and Yates.

cc: Ross M. Johnston,
Gary P. Lightman,
George Mount, Manager

[FR Doc. 00–9257 Filed 4–13–00; 8:45 am]

BILLING CODE 4910–00–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 145X)]

Union Pacific Railroad Company—Abandonment Exemption—in Stanislaus County, CA

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon a 5.62-mile line of railroad over the Tidewater Subdivision from milepost 26.43 near McHenry to milepost 32.05 in Modesto, in Stanislaus County, CA.[1] The line traverses United States Postal Service Zip Codes 95350 through 95356.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line;[2] (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.— Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 16, 2000, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 24, 2000. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 4, 2000, with: Surface Transportation Board, Office of the Secretary; Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: James P. Gatlin, General Attorney, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

UP has filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by April 19, 2000. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental; historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by UP's filing of a notice of consummation

[1] UP states that it had authority to abandon the line between mileposts 27 and 30 pursuant to a joint relocation project with the Southern Pacific Transportation Company that was the subject of a notice of exemption in *Union Pacific Railroad Company and Southern Pacific Transportation Company—Joint Relocation Project Exemption*, Finance Docket No. 32086 (ICC served June 30, 1992), but that the abandonment authority was never exercised.

The City of Modesto (City) filed a request for issuance of a notice of interim trail use (NITU) for a portion of the right-of-way between milepost +26.43 and milepost +30.63 pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d). The Board will address the City's trail use request and any others that may be filed in a subsequent decision.

[2] UP states that in connection with track construction in downtown Modesto, it plans to temporarily detour some overhead traffic over the line for approximately one week beginning on or about April 14, 2000. UP states that the detour is necessary to maintain access to the Modesto & Empire Traction line between Modesto and Empire, CA.

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

by April 14, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: April 7, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–9242 Filed 4–13–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB–33 (Sub–No. 70)]

Union Pacific Railroad Company—Abandonment—Wallace Branch, ID

AGENCY: Surface Transportation Board.

ACTION: Notice of availability of final supplemental environmental assessment.

SUMMARY: The Surface Transportation Board's (Board's) Section of Environmental Analysis (SEA) has prepared a Final Supplemental Environmental Assessment (Final Supplemental EA) to complete the environmental review process under the National Environmental Policy Act (NEPA) for this rail abandonment proceeding.

FOR FURTHER INFORMATION CONTACT: Dana White, (202) 565–1552 (TDD for the hearing impaired 1–800–877–8339). To obtain a copy of the Final Supplemental EA, contact Da-To-Da Office Solutions, 1925 K Street, NW., Washington, DC 20006, phone (202) 466–5530 or visit the Board's website at "WWW.STB.DOT.GOV".

SUPPLEMENTARY INFORMATION: This Final Supplemental EA addresses the Union Pacific Railroad Company's (UP's) filings with the Board on June 18, 1999 and October 19, 1999, of environmental information required to complete the environmental review process in this rail abandonment proceeding in accordance with the Court's decision in *State of Idaho* v. *ICC*, 35 F.3d 585 (D.C. Cir. 1994). UP now seeks final approval to salvage (*i.e.*, remove the tracks, ties, and roadbed) the rail lines known as the Wallace-Mullan Branches (Wallace Branch) in Benewah, Kootenai and Shoshone Counties, Idaho outside of the Bunker Hill Superfund Site (BHSS).[1]

To meet its obligations under NEPA, SEA completed an independent review of the material submitted by UP and on January 7, 2000 issued a Draft Supplemental EA for public review and comment. The Draft Supplemental EA addressed environmental information and evaluated (1) Whether the six environmental conditions previously imposed by the Interstate Commerce Commission (ICC)[2] were met and (2) whether the environmental concerns regarding salvage activity raised during the course of the environmental review process had now been appropriately addressed and resolved. The document also contained SEA's preliminary recommendations for mitigating the potential environmental impacts from salvage activity that have been identified.

SEA received nine comments on the Draft Supplemental EA, including generally favorable comments urging that the Board grant UP final salvage authority submitted by EPA, the State of Idaho, the Coeur d'Alene Tribe, through whose reservation the line passes, and UP. The Final Supplemental EA presents the agency and public comments that SEA received on the Draft Supplemental EA and SEA's response to those comments. It summarizes the environmental review that has taken place in this case and recommends final environmental mitigation measures for the Board to impose if it decides to approve salvage of the line. The Final Supplemental EA fully adopts and incorporates the analysis and conclusions in the Draft Supplemental EA, subject to certain factual and technical changes made as a result of the comments, and a modified historic preservation condition.

In the Final Supplemental EA, SEA concludes that the material provided by UP was sufficient to satisfy five of the six environmental conditions imposed by the ICC to ensure that, prior to salvage of the line, the potential significance of environmental effects related to the proposed track salvage will have been properly evaluated.[3] Furthermore, SEA concludes, based on the available information and the input of other agencies and government entities with specialized expertise, that if UP complies with the mitigation in the Engineering Evaluation/Cost Analysis and the Track Salvage Work Plan that were issued and approved by EPA, and the Biological Assessment prepared by UP and approved by the U.S. Fish and Wildlife Service, and if the additional mitigation SEA has recommended is imposed and implemented by UP, UP's proposal to salvage the Wallace Branch would not have significant adverse environmental impacts. Therefore, the preparation of an environmental impact statement is not warranted.

The Board will consider the entire environmental record, the Draft Supplemental EA, the Final Supplemental EA, and all public comments before issuing a decision either granting or denying UP final authority to salvage the portion of the Wallace Branch outside of the BHSS. In that decision, if UP's proposal is approved, the Board will impose any environmental conditions it deems appropriate.

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 00–9243 Filed 4–13–00; 8:45 am]

BILLING CODE 4915–00–P

[1] The 71.5-mile line extends from milepost 16.5 near Plummer, to milepost 90.4, near Wallace, and then to milepost 7.6, near Mullan, in Benewah, Kootenai, and Shoshone Counties, Idaho. The line traverses the U.S. Postal Service zip codes 83851, 83861, 83833, 83810, 83839, 83837, 83846, and 83846. The Wallace Branch no longer has stations because rail service has already been discontinued. The 7.9-mile section of right-of-way within the BHSS was addressed in the BHSS Record of Decision (EPA 1992) and is not part of the salvage proposal before the Board. Section 121(e)(1), of the Comprehensive Environmental Response, Compensation and Liability (CERCLA), 42 U.S.C. 9261(e)(1), relieves UP of the requirement to obtain Board approval to remove track within the BHSS if it is done in connection with remediation actions carried out in compliance with CERCLA. Pursuant to Section 121(e) of CERCLA, UP removed track within the BHSS in connection with remediation actions carried out in compliance with CERCLA. UP has not, by undertaking such remediation, or by any other action, abandoned any portion of the Wallace Branch including the portion within the BHSS.

[2] The ICC Termination Act of 1995 (ICCTA), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the ICC and established the Board to assume some regulatory functions involving rail transportation matters that the ICC had administered, including the functions involving the abandonment of rail service at issue here. The ICC's six environmental conditions required consultation and possible permitting and review by appropriate agencies with specialized expertise prior to any salvage activity on this line.

[3] The only condition that has not yet been satisfied is the ICC's Environmental Condition No. 6, involving historic preservation. SEA recommends that the Board impose a modified historic preservation condition on any decision approving salvage to ensure completion of the historic review process.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 4, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the

Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES:

Written comments should be received on or before May 15, 2000, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: New.

Form Number: None.

Type of Review: New collection.

Title: Wage and Investment Taxpayer Prefiling and Filing Burden Study.

Description: This study is designed to collect the amount of time and money Wage & Investment taxpayers incur as a result of the Federal income tax law and regulations. This new method will be a valuable tool in the IRS's ongoing effort to improve customer service, as well as for policy makers to understand the full effect of tax law changes. In particular, it will help the IRS understand the burdens placed on its customers by the Federal tax system—its laws, its administration, and changes to those factors.

Respondents: Individuals or households.

Estimated Number of Respondents: 8,300.

Estimated Burden Hours Per Respondent: 20 minutes (for completed interviews).

Frequency of Response: Other (One-Time).

Estimated Total Reporting Burden: 2,230 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; phone: (202) 395–7860.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 00–9338 Filed 4–13–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Customs Service

Quarterly IRS Interest Rates Used In Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of Customs duties. For the quarter beginning April 1, 2000, the interest rates for overpayments will be 8 percent for corporations and 9 percent for non-corporations, and the interest rate for underpayments will be 9 percent. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: April 1, 2000.

FOR FURTHER INFORMATION CONTACT: Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 298–1200, extension 1349.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations. The interest rate applicable to underpayments is not so bifurcated.

The interest rates are based on the short-term Federal rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2000–16 (*see*, 2000–12 IRB 780 dated March 20, 2000), the IRS determined the rates of interest for the third quarter of fiscal year (FY) 2000 (the period of April 1—June 30, 2000). The interest rate paid to the Treasury for underpayments will be the short-term Federal rate (6%) plus three percentage points (3%) for a total of nine percent (9%). For corporate overpayments, the rate is the Federal short-term rate (6%) plus two percentage points (2%) for a total of eight percent (8%). For overpayments made by non-corporations, the rate is the Federal short-term rate (6%) plus three percentage points (3%) for a total of nine percent (9%). These interest rates are subject to change for the fourth quarter of FY–2000 (the period of July 1–September 30, 2000).

For the convenience of the importing public and Customs personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

Beginning date	Ending date	Under-payments (percent)	Over-pay-ments (percent)	Corporate Overpay-ments (Eff. 1–1–99) (percent)
Prior to—				
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate Overpayments (Eff. 1–1–99) (percent)
010186	063086	10	10	.....
070186	123186	9	9	.....
010187	093087	9	8	.....
100187	123187	10	9	.....
010188	033188	11	10	.....
040188	093088	10	9	.....
100188	033189	11	10	.....
040189	093089	12	11	.....
100189	033191	11	10	.....
040191	123191	10	9	.....
010192	033192	9	8	.....
040192	093092	8	7	.....
100192	063094	7	6	.....
070194	093094	8	7	.....
100194	033195	9	8	.....
040195	063095	10	9	.....
070195	033196	9	8	.....
040196	063096	8	7	.....
070196	033198	9	8	.....
040198	123198	8	7	.....
010199	033199	7	7	6
040199	033100	8	8	7
040100	063000	9	9	8

Dated: April 10, 2000.

Raymond W. Kelly,

Commissioner of Customs.

[FR Doc. 00–9322 Filed 4–13–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Customs Contact for Y2K Failures

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Under the Y2K Act, each executive agency of the United States that has the authority to impose civil penalties on small business concerns is required to establish a point of contact to act as a liaison between the agency and small business concerns regarding problems experienced by small business concerns resulting from the transition of computer programs, devices, and systems from the year 1999 to the year 2000. Small business concerns may contact the agency, through the agency point of contact, with regard to Y2K transition problems and compliance with Federal rules or regulations. This document announces the contact person established by Customs for that purpose.

FOR FURTHER INFORMATION CONTACT: Eula Walden, Deputy Trade Ombudsman, (202) 927–1440.

SUPPLEMENTARY INFORMATION:

Background

On July 20, 1999, the Y2K Act (Pub. L. 106–37; 113 Stat. 185) (the Act) was signed into law. Section 18 of the Act, codified at 15 U.S.C. 6617, provides that each executive agency of the United States that has the authority to impose civil penalties on small business concerns is required to establish a point of contact to act as liaison between the agency and those small business concerns. Small business concerns may contact the agency liaison with respect to problems arising out of Y2K failures and compliance with Federal rules or regulations. (*See* 15 U.S.C. 6617(b).)

Generally, problems arising out of Y2K failures are problems experienced by small business concerns that result from the failure of any computer program, device, system (including any computer system, computer microchip, or integrated circuit embedded in another device), software, firmware, or other set or collection of processing instructions caused by the transition from the year 1999 to the year 2000. (*See* 15 U.S.C. 6602(2).) Under the Act, a small business concern facing a penalty for a first-time violation of a Federal rule or regulation caused by a Y2K failure may obtain a waiver of that penalty upon meeting certain requirements, one of which is to report the first-time violation to the appropriate agency within 5 business days of its discovery by the small business concern. (*See* 15 U.S.C. 6617(d).)

This document, in accordance with 15 U.S.C. 6617(b)(2), announces the identity of the Customs point of contact who will serve as liaison between the agency and small business concerns. Small business concerns may contact Mr. Joseph M. Rees, Trade Ombudsman for the United States Customs Service, for purposes of addressing problems arising from Y2K failures and compliance with Federal rules or regulations. The telephone number for Mr. Rees is 202/927–1440.

Dated: April 10, 2000.

Joseph M. Rees,

Trade Ombudsman, Office of the Trade Ombudsman.

[FR Doc. 00–9321 Filed 4–13–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Committee for Electronic Tax Administration

AGENCY: Internal Revenue Service (IRS).

ACTION: Request for nominations.

SUMMARY: The Electronic Tax Administration Advisory Committee (ETAAC), was established to provide continued input into the development and implementation of the Internal Revenue Service' (IRS') strategy for electronic tax administration. The ETAAC provides an organized public forum for discussion of electronic tax

administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members convey the public's perception of IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs, and procedures, and suggest improvements. This document seeks nominations of individuals to be considered for selection as Committee members.

The Assistant Commissioner (Electronic Tax Administration) will assure that the size and organizational representation of the ETAAC obtains balanced membership and includes representatives from various groups including: (1) Tax practitioners and preparers, (2) transmitters of electronic returns, (3) tax software developers, (4) large and small businesses, (5) employers and payroll service providers, (6) individual taxpayers, (7) financial industry (payers, payment options and best practices), (8) system integrators (technology providers), (9) academic (marketing, sales or technical perspectives), (10) trusts and estates, (11) tax exempt organizations, and (12) state and local governments. We are soliciting nominations from professional and public interest groups, IRS officials, the Department of Treasury, and Congress. Members will be limited to serving one two-year term on the ETAAC to ensure that new perspectives and ideas are generated by the members. All travel expenses within government guidelines will be reimbursed.

DATES: Written nominations must be received on or before May 15, 2000.

Addresses: Nominations should be sent to Robin Marusin, OP:ETA, Room 7331 IR, 1111 Constitution Ave., NW, Washington, DC 20224. Application forms can be obtained from Robin Marusin, who can be reached on (202) 622–8184.

FOR FURTHER INFORMATION CONTACT: Robin Marusin, 202–622–8184.

SUPPLEMENTARY INFORMATION: The ETAAC will provide continued input into the development and implementation of the IRS' strategy for electronic tax administration. The ETAAC members will convey the public's observations about current or proposed policies, programs, and procedures, and suggest improvements.

This activity is based on the authority to administer the Internal Revenue laws conferred upon the Secretary of the Treasury by section 7802 of the Internal Revenue Code and delegated to the Commissioner of the Internal Revenue.

The ETAAC will research, analyze, consider, and make recommendations on a wide range of electronic tax administrations issues and will provide input into the development and implementation of the strategic plan for electronic tax administration.

Nominations should describe and document the proposed member's qualifications for membership to the Committee. Equal opportunity practices will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership will include, to the extent practicable, individuals, with demonstrated ability to represent minorities, women, and persons with disabilities.

Robert E. Barr,

Assistant Commissioner, Electronic Tax Administration.

[FR Doc. 00–9379 Filed 4–11–00; 4:06 pm]

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April 14, 2000

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 930
Coastal Zone Management Act Federal Consistency Regulations; Proposed Rule

VOL 65 ISS 73 AP 14 2000 UMI

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 930

[Docket No. 990723202–9202–01]

RIN 0648–AM88

Coastal Zone Management Act Federal Consistency Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is proposing to revise the federal consistency regulations under the Coastal Zone Management Act of 1972 (CZMA). The Coastal Zone Act Reauthorization Amendments of 1990, enacted November 5, 1990, as well as the Coastal Zone Protection Act of 1996, enacted June 3, 1996, amended and reauthorized the CZMA. Among the amendments were revisions to the federal consistency requirement contained in section 307 of the CZMA. Current federal consistency regulations were promulgated in 1979 and are in need of revision after 18 years of implementation. The purpose of this proposed rule is to make these revisions and to codify the 1990 and 1996 statutory changes to section 307.

DATES: Comments on the proposed rule are invited and will be considered if submitted on or before May 30, 2000.

ADDRESSES: All comments concerning these proposed regulations should be mailed to: Joseph A. Uravitch, Chief, Coastal Programs Division, Office of Ocean and Coastal Resource Management (N/ORM3), 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: David W. Kaiser, Federal Consistency Coordinator, Office of Ocean and Coastal Resource Management (N/ORM3), 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910. Telephone: 301–713–3098, extension 144.

SUPPLEMENTARY INFORMATION:

I. Authority

This proposed rule is issued under the authority of the CZMA, 16 USC 1451 *et seq.*

II. Background

The CZMA was enacted to develop a national coastal management program that comprehensively manages and balances competing uses of and impacts to any coastal use or resource. The national coastal management program is implemented by individual state coastal management programs in partnership with the Federal Government. The CZMA federal consistency requirement, 16 USC 1456, requires that Federal agency activities be consistent to the maximum extent practicable with the enforceable policies of a state's coastal management program. The federal consistency requirement also requires that indirect federal activities (i.e., non-federal activities requiring federal permits, licenses or financial assistance activities) be fully consistent with a state's federally approved coastal management program. The federal consistency requirement is an important mechanism to address coastal effects, to ensure adequate federal consideration of state coastal management programs, and to avoid conflicts between states and Federal agencies by fostering early consultation and coordination.

Congress strongly re-emphasized the importance of consistency in the CZMA amendments of 1990 and specifically endorsed long-standing requirements of the CZMA consistency regulations. Thus, in making proposed regulatory changes NOAA has been careful to adhere to statutory requirements and has given deference to the long-standing consistency provisions that are consistent with new statutory requirements. The implementation of consistency by the states and federal agencies and guidance by NOAA, especially in the past few years, for the most part has been based on reasonableness, objectivity, collaboration and cooperation. The strength of revised regulations and state-federal interaction needs to further these goals and be solidly grounded in the statute and long-standing usage. With that in mind, aside from the proposed revisions required by the changes to the CZMA, it is not NOAA's intent to fundamentally change or "weaken" the consistency requirement. NOAA's intent is to clarify certain sections, provide additional guidance where needed, and provide states and federal agencies with greater flexibility for federal-state coordination and cooperation. Hopefully, the spirit of objective, collaborative, open and amicable interaction with the coastal states, federal agencies and NOAA will continue.

III. Coastal Zone Act Reauthorization Amendments of 1990

This proposed rule codifies changes made to section 307 of the CZMA in 1990. The Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) (Pub. L. 101–508) amended the CZMA to clarify that the federal consistency requirement applies when any federal activity, regardless of location, affects any land or water use or natural resource of the coastal zone. This new "effects" language was added by the CZARA to replace previous language that referred to activities "directly affecting the coastal zone," establishing:

> a generally applicable rule of law that any federal agency activity (regardless of its location) is subject to [the consistency requirement] if it will affect any natural resources, land uses, or water uses in the coastal zone. No federal agency activities are categorically exempt from this requirement.

H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. 968–975, 970 (hereinafter Conference Report). The focus of the Federal agency's evaluation should be on coastal effects, not on the nature of the activity. The Conference Report provides further clarification on the scope of the effects test:

> The question of whether a specific federal agency activity may affect any natural resource, land use, or water use in the coastal zone is determined by the federal agency. The conferees intend this determination to include effects in the coastal zone which the federal agency may reasonably anticipate as a result of its action, including cumulative and secondary effects. Therefore, the term "affecting" is to be construed broadly, including direct effects which are caused by the activity and occur at the same time and place, and indirect effects which may be caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Id. at 970–71. These changes reflect an unambiguous Congressional intent that all Federal agency activities meeting the "effects" test are subject to the CZMA consistency requirement; that there are no exceptions or exclusions from the requirement as a matter of law; and that the "uniform threshold standard" requires a factual determination, based on the effects of such activities on the coastal zone, to be applied on a case-by-case basis. *Id.* at 970–71; 136 Cong. Rec. H 8076 (Sep. 26, 1990).

Other changes made to the CZMA by the CZARA include the addition of section 307(c)(1)(B) which, under certain circumstances, authorizes the President to exempt a specific Federal agency activity if the President determines that the activity is in the paramount interest of the United States.

This section does not require implementing regulations. The CZARA also makes clear the requirement that Federal agency activities and federal license or permit and federal assistance activities must be consistent with the enforceable policies of state coastal management programs. Finally, the CZARA made technical and conforming changes to the other existing federal consistency requirements of CZMA sections 307(c)(3) (A) and (B), and 307(d) for the purpose of conforming these existing sections with changes made to section 307(c)(1).

IV. CZARA and *Secretary of the Interior* v. *California*, 464 U.S. 312 (1984)

In 1984, the Supreme Court held that outer continental shelf (OCS) oil and gas lease sales by the Department of the Interior's Minerals Management Service were not activities subject to the CZMA consistency requirement as the lease sales did not directly affect the coastal zone. *Secretary of the Interior* v. *California*, 464 U.S. 312 (1984). In amending the CZMA federal consistency section in 1990, Congress overturned the effect of the decision in *Secretary of the Interior* and made it clear that OCS oil and gas lease sales are subject to the consistency requirement. Conference Report at 970. Congress also intended this change to clarify that other federal activities (in or outside the coastal zone) in addition to OCS oil and gas lease sales are subject to the federal consistency requirement. The remainder of the consistency discussion in the Conference Report makes this clear as does similar discussion in the Congressional Record, 136 Cong. Rec. H8068 (Sep. 26, 1990) [hereinafter Congressional Record] (incorporated into the Conference Report, *see* Conference Report at 975).

Changes to the consistency section clarify that any federal activity is subject to the consistency requirement (regardless of location) if coastal effects are reasonably foreseeable, and that there are no categorical exemptions. Conference Report at 970. The discussion in the Conference Report on whether to list other federal activities that are subject to the consistency requirement, e.g., activities under the Ocean Dumping Act, further clarifies that no federal activities are categorically exempt and that the determination of whether consistency applies is a case-by-case analysis based on reasonably foreseeable effects on any coastal use or resource. *See* Conference Report at 971.

The Congressional Record sheds further light on the intent and the scope of Congress' rejection of *Secretary of the Interior*. Congress not only rejected *Secretary of the Interior*, but eliminated the "'shadow effect" of the Court's decision (i.e., its potentially erosive effect on the application of the federal consistency requirements to other federal agency activities) * * * and also to dispel any doubt as to the applicability of this requirement to all federal agency activities that meet the standard [i.e., the effects test] for review." Congressional Record at H8076.

Thus, the application of the consistency requirement is not dependent on the type of activity or what form the activity takes (*e.g.*, rulemaking, regulation, physical alteration, plan). Consistency applies whenever a federal activity initiates a series of events where coastal effects are reasonably foreseeable. *See* H.R. Rep. No. 1012, 96th Cong., 2d Sess. at 4382. The CZMA, the Conference Report, and NOAA regulations are specifically written to cover a wide range of federal functions. The only test for whether a Federal agency function is a federal activity subject to the consistency requirement is an effects test. Whether a particular federal action affects the coastal zone is a factual determination.

V. Coastal Zone Protection Act of 1996

On June 3, 1996, the President signed into law the Coastal Zone Protection Act of 1996 (CZPA), Pub. L. No. 104–150. Section 8 of the CZPA addresses the Secretarial override process whereby the Secretary of Commerce may override a state's consistency objection to a federal permit, license or funded project. Specifically, CZPA section 8 provides that the Secretary shall publish a notice in the **Federal Register** indicating when the decision record in a consistency appeal has closed. No later than 90 days after the date of publication of this notice, the Secretary shall issue a final decision or publish another notice in the **Federal Register** detailing why the decision cannot be issued within the 90-day period. In the latter case, the Secretary shall issue a decision no later than 45 days after the date of the publication of the notice. This proposed rule makes conforming changes in the Secretarial override regulations contained in subpart H of part 930.

VI. Purpose of This Proposed Rulemaking

The purpose of this proposed rule is to codify the 1990 and 1996 statutory changes to section 307 of the CZMA, and to update the federal consistency regulations after 18 years of implementation by NOAA, states and Federal agencies. This proposed rule is also the result of a two year informal effort by NOAA to work with Federal agencies, state coastal management programs and other interested parties to identify issues and obtain comments on draft proposed revisions to the regulations. Thus, this proposed rule has already undergone substantial review by Federal agencies, states and other interested parties.

VII. Section-by-Section Discussion of Proposed Changes

Throughout part 930 NOAA proposes to make a number of minor revisions, as well as a number of revisions that will implement the CZARA and the CZPA. The minor revisions include changes that will update the regulations and make them easier to use. The following is a section-specific discussion of some of these proposed changes, as well as proposed changes that will implement the CZARA and the CZPA. Because of the number of changes to the consistency regulations, the federal consistency regulations are being issued in this **Federal Register** notice in its entirety.

The following terms are defined for the purpose of this preamble:

The term "management program" means the objectives, policies and other requirements of a state coastal management program that has been federally approved by NOAA, pursuant to CZMA section 306.

The "State agency" is the designated federal consistency agency for a particular state management program.

The term "consistency determination" means the determination provided by a Federal agency to a State agency for a federal activity under CZMA section 307(c)(1) that the Federal agency determines will have reasonably foreseeable effects on any land or water use or natural resource of a state's coastal zone (such effects are also referred to as "coastal effects" or "effects on any coastal use or resource").

The term "negative determination" means the determination provided by a Federal agency to a State agency for a federal activity under CZMA section 307(c)(1) that the Federal agency determines will not have reasonably foreseeable coastal effects.

The term "consistency certification" means the certification provided by an applicant for a federal approval under CZMA section (c)(3) or a state agency's or local government's certification under CZMA section 307(d).

The term "concurrence" means a State agency's approval of a consistency determination, negative determination, or consistency certification.

The term "objection" means a State agency's disagreement/disapproval of a consistency determination, negative determination, or consistency certification.

The term "enforceable policy" means a policy that is legally binding under state law and is part of a state's management program.

The term "maximum extent practicable" means that Federal agencies must conduct their activities under CZMA section 307(c)(1) in a manner that is fully consistent with the enforceable policies of a state's management program, unless prohibited from full consistency by the requirements of federal law applicable to the activity.

Subpart A—General Information

Minor changes are proposed to clarify that the obligations imposed by the regulations are for states as well as for Federal agencies and other parties, and to clarify that the purpose of the regulations is to address both the need to ensure consistency of federal actions affecting any coastal use or resource with approved coastal management programs and the importance of federal programs. Changes are proposed to encourage states and Federal agencies to coordinate as early as possible, and to allow states and Federal agencies to mutually agree to consistency procedures different from those contained in the regulations (providing that public participation requirements are still met and that all relevant state coastal management program enforceable policies are considered). Proposed minor editorial changes are not individually identified in the section-by-section analysis.

Sections 930.1(h) and (i) are proposed to be removed. *See* below under sections 930.132–134, and subpart I.

Section 930.2 would codify the requirement for public participation for all types of consistency reviews which was added by CZARA, 16 U.S.C. 1455(d)(14) (CZMA § 306(d)(14)).

Section 930.3 was formerly located at section 930.145.

Section 930.4 would clarify the use by State agencies of conditional concurrences. The Act's consistency requirements impose a definite time by which a Federal agency or an applicant for a federal approval or financial assistance (and the approving Federal agency) know if the State agency has concurred with a proposed activity, and whether the federal approval or funding may be issued. Conditions of concurrence should not replace state objections and the identification of alternatives for activities that the State agency finds are inconsistent with its management program. Since conditional concurrences could seriously weaken the state leverage granted by the CZMA consistency requirement, the proposed rules would only allow conditional concurrences pursuant to the following criteria: (1) Conditions must be based on specific enforceable policies, (2) the applicant must amend its federal application, and (3) the Federal agency approves the application as amended with the state conditions. If all of these requirements are not met, then the conditional concurrence is an objection.

Section 930.5 would be added to clarify that the mediation and negotiation sections of the regulations do not preclude other state enforcement actions where the state has jurisdiction or believes it is necessary to take enforcement or judicial action.

Section 930.6 would move the non-definitional parts of § 930.11(o) (formerly § 930.18) to a section describing the responsibilities of the State agency. Section 930.6(a) would acknowledge that a state may have two separate coastal management programs (for distinct regions) and thus, two separate federal consistency agencies. Currently, California has two programs (the California Coastal Commission and the San Francisco Bay Conservation and Development Commission).

Section 930.6(b) would be revised to simplify consistency terminology. At present, different terms are used to describe state responses for Federal agency activities ("agreement or disagreement") and federal license or permit activities ("objection or concurrence"). As proposed, a state would either object to or concur with a consistency determination or a consistency certification.

Section 930.6(c) would be added to clarify the role of the single State agency for coordinating federal actions and the State agency's responsibility to apply all relevant enforceable policies when conducting consistency reviews. The requirement that a single State agency ensure that all relevant enforceable policies are considered under state federal consistency reviews is derived from CZMA section 307 and various sections of NOAA's regulations. The CZMA requires compliance with all relevant enforceable policies of a "management program" and not a subset thereof. *See, e.g.*, CZMA §§ 307(c)(3)(A), 304(12). A major criterion for coastal management program approval is a determination that state agencies responsible for implementing the coastal management program do so in conformance with the policies of the management program. 15 CFR 923.40(b). *See* also 15 CFR 923.41(b)(2). Networked state coastal management programs must also demonstrate that coastal management program authorities implement the full range of policies. 15 CFR 923.43(c). The federal consistency regulations mirror the requirement for the application of enforceable policies in a comprehensive manner.

Subpart B—General Definitions

The definitions have been re-designated to reduce the total number of regulation sections. There is now just a section 930.10 for the index and a section 930.11(a) through (o) for the definitions contained in subpart B.

Section 930.11(d) would be amended to clarify that associated facilities are indispensable parts of the proposed federal action. A variant of the proposed addition was previously a comment to the 1979 regulations. 44 FR 37145. This addition ensures that the State agency would have sufficient information to fulfill its coastal planning and management responsibilities, and the proponent of the federal action would not be faced with the situation where there has been receipt of State agency approval regarding one element of the project with later objection to an associated facility which was not earlier reviewed with the remainder of the proposal.

Sections 930.11(b) and (g) would define "any coastal use or resource" and "effect on any coastal use or resource," respectively. These proposed terms are not intended to alter the statutory requirement which refers to any land or water use or natural resource of the coastal zone. These terms are merely a simpler description of the statutory requirement. The definition for coastal uses and resources is derived primarily from CZMA Section 304 (coastal resources of national significance are defined in CZMA Section 304(2)). Not all coastal uses or resources can be added. The list is not exclusive, but is meant to highlight the more common uses or resources. The term "minerals" has been added to include both surface and subsurface mineral resources. Aesthetics and scenic qualities are not natural resources, but are enjoyment or use of natural resources. These concepts have been added to the definition of coastal use. Land has been added to natural resource. A sentence has also been added to include coastal uses and resources detailed in a state's management program. Resource creation or restoration projects has been added as a coastal use. This will include tidal and nontidal restoration and creation projects. Air and invertebrates have

been added as natural resources. Since historic and cultural resources are important coastal resources under the CZMA (*see* sections 302(e), 303(2) and 303(2)(F)), the protection of historic and cultural resources of the coastal zone is included in the examples of coastal uses. Coastal effects are to be construed broadly and include reasonably foreseeable and cumulative and secondary effects. *See* Conference Report at 970–71. Whether consistency applies is not dependent on the type of federal activity, but on reasonably foreseeable coastal effects. For example, a planning document or regulation prepared by a Federal agency would be subject to the federal consistency requirement if coastal effects from those activities are reasonably foreseeable.

Again, the application of consistency is not limited by the geographic location of a federal action; consistency applies if there are reasonably foreseeable coastal effects resulting from the activity. A federal action occurring outside the coastal zone may cause effects felt within the coastal zone (regardless as to the location of the affected coastal use or resource). For example, a state's fishing or whale watching industry (which are coastal uses) could be affected by federal actions occurring outside the coastal zone. Thus, the effect on a resource or use while that resource or use is outside of the coastal zone could result in effects felt within the coastal zone. However, it is possible that a federal action could temporarily affect a coastal resource while that resource is outside of the coastal zone, *e.g.*, temporary harassment of a marine mammal, such that resource impacts are not felt within the coastal zone. As stated above, the coastal effects test is a fact-specific inquiry. NOAA is not further defining "reasonably foreseeable." Congress envisioned that federal-state coordination through consistency would be interactive. Thus, the application of consistency, the varied state coastal management programs, the analysis of effects, and the case-by-case nature of federal consistency precludes fast and hard definitions of effects and what is reasonably foreseeable.

Section 930.11(h) would be added to define enforceable policy by reference to CZMA § 304(6a), and to clarify that an enforceable policy must be sufficiently comprehensive and specific to control coastal uses while not necessarily inflexibly committing the state to a particular path. *See American Petroleum Institute* v. *Knecht,* 456 F. Supp. 889, 919 (C.D. Cal. 1978), *aff'd,* 609 F.2d 1306 (9th Cir. 1979); 15 CFR 923.40(a); Conference Report at 972.

Subpart C—Consistency for Federal Agency Activities

Throughout the proposed regulations the phrase "directly affecting the coastal zone" has been changed to read "affecting any coastal use or resource." This codifies changes made to the CZMA by CZARA and includes reasonably foreseeable effects on any land or water use or natural resource of the coastal zone.

In section 930.30 NOAA proposes to delete "conducted or supported" to conform this section with changes made by CZARA. In addition the title of subpart C and throughout subpart C, the term "Federal activity" is changed to "Federal agency activity" to avoid confusion with federal activities under subparts D, E, and F. The phrase Federal agency activity is taken directly from the CZMA.

NOAA proposes to amend section 930.31(a) to further describe the scope of the federal consistency effects test by clarifying the term "functions." This language is derived from the CZMA's legislative history.

Section 930.31(d) would be added to clarify that CZMA section 307(c)(1) is a residual category. Federal actions that do not fall into subparts D, E, or F are Federal agency activities. CZMA section 307(c)(1)(A); *see* 44 FR 37146.

Section 930.31(e) would address the hybrid nature of general permit programs developed by Federal agencies. This occurs when a Federal agency proposes to replace the need for an applicant to obtain an individual permit with a general set of requirements which, if met by the applicant, would allow the applicant to proceed with the activity without a case-by-case approval by the Federal agency. Two examples are the Corps' Nation-wide Permit (NWP) program under the Clean Water Act section 404 and the Environmental Protection Agency's (EPA's) general National Pollutant Discharge Elimination System (NPDES) permits for discharges from OCS oil and gas facilities. The development of the general permit program is best thought of as a Federal agency activity. Even though a general permit will authorize license or permit activities, the development of the federal requirements is an action by a Federal agency, not an applicant. Moreover, there is not a discreet federal or license permit activity to review and there is not an applicant. Neither the statute nor the regulations contemplated the hybrid nature of general permits. CZMA section 307(c)(1)(A) does provide that a Federal agency is subject to section 307(c)(1) unless it is subject to paragraph (2) or (3) (license or permit activities). However, this does not resolve the matter since § 307(c)(3) does not imply or anticipate a situation where a Federal agency is an applicant for its own approval and for general permits, the Federal agency is not actually undertaking the license or permit activity covered by the general permit. Federal agencies may of course choose to subject their general permit programs to CZMA section 307(c)(3)(A).

NOAA proposes amending section 930.32 to clarify the consistent to the maximum extent practicable standard. NOAA proposes to divide section 930.32(a) into 3 subsections. Subsections (1) and (2) are the existing regulations and subsection (3) is new. Minor changes are proposed for § 930.32(a)(1) and the last sentence in (a)(1) is moved to the end of (a)(2). These changes are made for clarity and brevity; there are no substantive changes in subsections (a) (1) and (2). The term "discretion" as included in the existing regulations and retained in the revised regulations means that the more discretion a Federal agency has under its legal requirements, the more the Federal agency must be consistent with the state's enforceable policies. In subsection (a)(2), NOAA proposes to delete the term "supplemental" since the CZMA requires that a state's enforceable policies are requirements, not supplemental requirements. Also, supplemental is somewhat redundant with the rest of the sentence.

Section 930.32(a)(3) would clarify the effect of federal appropriations law on the consistent to the maximum extent practicable standard. A general lack of funding cannot be a reason to conduct a federal activity that is not consistent with state management program enforceable policies. In order for federal law to prohibit Federal agencies from being consistent there must be specific limitations in federal acts. Problems arise if Federal agencies were to use dollar amounts specified in appropriations acts as part of the consistent to the maximum extent practicable equation. These problems are: (1) The CZMA Presidential exemption includes the only express exemption due to lack of appropriations; (2) appropriations acts often provide little guidance as to how funds are to be used; and (3) state enforceable policies are substantive requirements to be adhered to. State coastal management program enforceable policies are, in most cases, in place long before the planning of many federal projects and in advance of budgeting for annual appropriations. A Federal agency cannot avoid any state

requirement that it finds burdensome simply by not funding the required action. Advance planning and early coordination can help alleviate these concerns. If Federal agencies know what the state's enforceable policies are then costs can be factored into an agency's planning. Also, just as Federal agencies cannot avoid other federal and state law requirements (e.g., under the Clean Water or Air Acts, NEPA) due to funding constraints, they cannot avoid state enforceable policies. State enforceable policies are developed pursuant to the CZMA, approved by the federal government, and applicable to Federal agencies through the CZMA federal consistency requirement.

Section 930.32(b) would be revised to clarify that in unforeseen cases, such as an emergency, the Federal agency must still adhere to the consistency requirements, to the extent that exigent circumstances allow. For example, a Federal agency, responding to an emergency, must still provide a consistency determination to the State agency, if time allows. If the time frame for responding to an emergency is too short for a consistency determination, the Federal agency should coordinate with the State agency to the extent possible. To avoid uncertainty in these instances, the Federal agency and State agency may mutually agree to emergency response planning prior to an actual emergency, or develop expedited procedures or a general review for reasonably foreseeable emergency situations and activities. The phrase "exigent circumstances" is used for emergency actions since many agencies respond to emergencies, but they may not be mandated by law to respond within a certain time frame. Thus, their rapid response is determined by the emergency, not their discretionary authority.

Section 930.32(c) would address national security activities that are "classified." The 1990 changes to the CZMA make it clear that all federal activities are subject to the consistency requirement. Thus, a classified activity that will affect coastal uses or resources is subject to the consistency requirement unless exempted by the President under CZMA section 307(c)(1)(B)). However, under the consistent to the maximum extent practicable standard, the Federal agency need only provide project information that it is legally permitted to release. Despite the fact that a Federal agency may not be able to disclose certain project information, the Federal agency must still conduct the classified activity consistent to the maximum extent practicable with the state management program. Concerned state management programs may want to consider developing general consistency agreements with relevant Federal agencies for classified activities. The definition of "classified" is adopted from the Freedom of Information Act. Classified information should protect from disclosure national security information concerning the national defense or foreign policy, provided that it has been properly classified in accordance with the substantive and procedural requirements of an executive order. As of October 14, 1995, the executive order in effect is E.O. 12,958, 3 CFR 333, reprinted in 50 U.S.C. 435 note (1994). Generally, it is preferable, however, not to identify the particular executive order in the regulations, because it may be supplanted by a new order under a new administration and courts have held that agencies should always apply the executive order in effect at the time the classified determination is made—i.e., an agency does not have to go back through all of its old secrets and reclassify them pursuant to the latest executive order.

Section 930.33(a)(1) would clarify that effects on any coastal use or resource are not limited to environmental effects and that a review of relevant state coastal management program enforceable policies is necessary to determine whether the activity will affect any coastal use or resource.

Section 930.33(a)(2) would clarify when federal consistency does not apply to a Federal agency activity. If there are no effects on any coastal use or resource and a negative determination is not required, then the Federal agency need not provide anything to the state.

Section 930.33(a)(3) would provide a process whereby State agencies and Federal agencies can more efficiently address "de minimis" activities. *De minimis* activities cannot be unilaterally excluded from the federal consistency requirement. As the court noted in *Envtl. Defense Fund* v. *Envtl. Protection Agency*, 82 F.3d 451 (D.C. Cir. 1996), *modified* by 92 F.3d 1209 (D.C. Cir. 1996), "[t]he ability to create a de minimis exemption is not an ability to depart from the statute, but rather a tool to be used in implementing the legislative design. * * * Of course, * * * a de minimis exemption cannot stand if it is contrary to the express terms of the statute." The express terms of the CZMA are that consistency applies to "each" federal activity "affecting" "any" coastal use or resource. Neither the CZMA nor the Conference Report specifically authorize a unilateral de minimis exception. Further, Congress amended the CZMA in 1990 to specifically guard against Federal agencies exempting their activities. Thus, any attempt to address de minimis activities must be done cautiously. Also, many states are concerned with the cumulative effect of seemingly de minimis activities. NOAA believes, however, that the CZMA allows states and Federal agencies to mutually agree to address de minimis activities in a flexible manner. The proposed revisions do not provide detailed definitions of de minimis activities. Rather, NOAA proposes some general guidelines and then leaves it to the Federal agency and states to agree as to what is de minimis. NOAA is not requiring a State agency to provide for public participation for agreements between a State agency and a Federal agency regarding de minimis activities. An agreement between a State agency and a Federal agency to exclude de minimis activities is not a consistency determination. (If a State agency and Federal agency agree to address de minimis activities through a general determination public participation would be required.) Individual states may of course provide for public participation.

Section 930.33(a)(4) would allow State agencies and federal agencies to mutually agree to exclude environmentally beneficial activities from further State agency review.

Section 930.33(c)(2) would be removed. Outer continental shelf (OCS) oil and gas lease sales are Federal agency activities and are subject to the CZMA consistency requirement. *See* Sections III and IV of this proposed rule. Likewise, pre-lease sale activities are also subject to the consistency requirement if coastal effects are reasonably foreseeable. *See* 44 FR 37154 (comment to § 930.71); Letter from Leon Ulman, Deputy Assistant Attorney General, Office of Legal Counsel, U.S. Dept. of Justice, to C.L. Haslam, General Counsel, U.S. Dept. of Commerce and Leo M. Krulitz, Solicitor, U.S. Dept. of the Interior (Apr. 20, 1979).

Section 930.33(d) would further clarify the CZMA federal consistency "effects test." Early federal-state coordination is emphasized to reduce conflict, build public support, provide a smooth and expeditious federal consistency review, and to help Federal agencies avoid costly last minute changes to projects in order to comply with state coastal management program enforceable policies. The earlier the coordination, the less likely it is that conflict will arise. Early coordination also enables a Federal agency to address coastal management concerns while the

agency still has the discretion to alter the activity and before substantial resources have been expended.

Section 930.34 would be removed and its contents moved to new section 930.34 and to section 930.36 on consistency determinations.

Section 930.34(a)(2) would encourage Federal agencies and State agencies to use existing procedures to coordinate consistency reviews. However, for permit requirements in state coastal management programs that are not required of Federal agencies by federal law other than the CZMA, the Federal agency may submit the necessary information in any manner it chooses so long as the requirements of this subpart are satisfied. NOAA has encouraged the practice of state coastal management programs using state permitting procedures as an administrative convenience to process Federal agency consistency determinations under sections 307(c)(1) and (2). This results in efficient state consistency reviews by taking advantage of existing review procedures otherwise applicable to permitting actions. This new section is based on a comment in the original 1979 regulations, 44 FR 37147.

Section 930.34(b) would be moved to section 930.36(b) and amended to clarify that the Federal agency must provide a consistency determination to the state while the Federal agency still has the ability to alter the activity to address state coastal management policies.

Sections 930.34(b)(2) and (c) would be deleted, with parts of these sections moved to new section 930.34(c). These sections are confusing and are not needed, since the listing provision for Federal agency activities is a recommendation and not a requirement and Federal agencies must provide a consistency determination to applicable states for activities with coastal effects regardless as to whether the state has listed the activity.

Section 930.34(d) would encourage Federal agencies to seek assistance from the State agency in its determination of effects and consistency. At a minimum, State agencies must be able to provide Federal agencies with the applicable enforceable policies. Identifying a state's enforceable policies can be difficult. Also, providing the Federal agency with the applicable policies will help focus the Federal agency's efforts on the state's coastal management concerns.

Section 930.35 would apply to negative determinations and clarify existing requirements for negative determinations. Section 930.35(d)(3) is proposed to be deleted since the subsection is not used very often, the meaning is not clear, it is redundant with subsection (a)(1), and may discourage Federal agencies from taking a hard look at borderline cases.

Section 930.35(b) would clarify the information requirements for a negative determination. A negative determination, by definition, is a finding of no effects. Thus, the information provided for a negative determination may not be as substantial as that provided for a consistency determination.

Section 930.35(c) would clarify that if a state disagrees with a Federal agency's negative determination, it must do so within 60 days or its concurrence is presumed. Public notice under CZMA § 306(d)(14) is not required for State agency review of negative determinations since negative determinations are not consistency determinations as contemplated by the Act. This section also clarifies that, if a Federal agency were to agree that coastal effects are reasonably foreseeable and that its negative determination was not correct, then the State agency and Federal agency may agree to an alternative schedule to promote administrative efficiency.

Section 930.36 would be moved to section 930.35(d). Section 930.36 would incorporate existing sections 930.37 and 930.34(b) and elaborate on consistency determinations for proposed activities.

Section 930.36(c) would be amended to clarify the use of general consistency determinations. Federal agencies may provide State agencies with general consistency determinations for repetitive activities in the same manner that they provide single consistency determinations. A general consistency determination is still only allowed in a limited number of cases where the activities are repetitive and do not affect any coastal use or resource when performed separately. NOAA has added greater flexibility for State agencies and Federal agencies to mutually agree to use general determinations for other non-repetitive or other repetitive activities. The primary purpose of a general determination is for repetitive activities. Allowing a Federal agency to unilaterally provide a general determination for non-repetitive activities that have cumulative effects would be inconsistent with the 1990 CZMA changes. A general consistency determination may be used for de minimis activities only when the Federal agency and State agency have mutually agreed to do so. The terms "periodic" and "substantially similar in nature" are proposed to be deleted as the concept of "repetitive" includes these terms.

Section 930.36(e) would describe a method to efficiently address consistency requirements for a federal activity that is national or regional in scope. For example, a federal activity, such as a rulemaking or planning activity, may apply to more than one coastal state where coastal effects are reasonably foreseeable. Providing each state with a separate consistency determination may be difficult, inefficient and not cost effective, even with early coordination. The proposed regulation provides states and Federal agencies with the means to effectively coordinate, ensure adequate consideration of state coastal management programs, and provide an efficient, cost effective and timely method for meeting the consistency requirement.

Section 930.37(c) would be moved to 930.36(d) and amended to clarify that phased consistency determinations refers to development projects and activities. Section 930.37 would clarify coordination of consistency with the use of NEPA documents to address consistency requirements. Federal agencies are not required to address consistency requirements in NEPA documents, but may use NEPA documents, at the Federal agency's discretion, as an efficient and effective mechanism to address the consistency requirements. The use of NEPA documents for consistency purposes does not, however, mean that a NEPA document necessarily satisfies all consistency requirements. The Federal agency must still comply with the applicable sections in 15 C.F.R. part 930, subpart C. Section 930.37 would provide flexibility for states and Federal agencies to agree to different NEPA/consistency review procedures. Coordination between states and federal agencies on federal consistency requirements should occur at an early stage, usually at the draft environmental impact statement (EIS) stage, and before the Federal agency reaches a significant point in its decision making and while the Federal agency still has discretion to modify the activity. A final EIS is a significant point in an agency's decision making and further modifications are much harder to do and require more resources. It is more efficient and in keeping with the intent of consistency for states and federal agencies to coordinate at the draft EIS stage. Arrangements should be made to do supplemental consistency reviews in case the project substantially changes in the final EIS or Record of Decision.

Section 930.39(a) would be amended to clarify that the Federal agency's evaluation of the management program

is included in the consistency determination. The last sentence in subsection (a) is derived from the last sentence of former § 930.34(a).

Section 930.39(b) is proposed to be amended to conform to CZARA. Federal agencies are responsible for evaluating the consistency of nonassociated facilities or any other indirect effects if the effects are reasonably foreseeable. The last clause would be deleted since it is inconsistent with CZARA and the effects test and is covered under the proposed new definition of effects.

The last sentence of section 930.39(c) would be deleted since it is redundant with the rest of section 930.39(c).

Section 930.39(d) would be amended to clarify that if a Federal agency applies its more restrictive standards, it must, under the consistent to the maximum extent practicable standard, notify the State agency that it is proceeding with the activity even though the more restrictive federal standard may not be consistent with the state standard.

Section 930.39(e) would clarify the relationship between state permit requirements and the federal consistency requirements. Federal agencies must obtain state permits (including state coastal management program permits) when required by Federal law (other than the CZMA). For example, the Clean Water Act (CWA) requires Federal agencies to obtain state permits and certifications that regulate and control dredging and water pollution within the navigable waters of the state. *See* 33 U.S.C. 1323, 1341, 1344(t); *Friends of the Earth* v. *United States Navy*, 841 F.2d 927 (9th Cir. 1988). However, in some instances, there may be an issue as to the scope of a state or local permit that a Federal agency is required to obtain by another federal law. To insure that such a requirement is "not enlarged beyond what the language [of the federal law] requires," *United States Department of Energy* v. *Ohio*, 112 S. Ct. 1627 (1992), and to minimize conflicts in situations where the scope of the state permit requirement is an issue, the U.S. Department of Justice should be consulted. When a Federal agency is not required to obtain a state permit, the Federal agency must, pursuant to the CZMA, still be consistent to the maximum extent practicable with state enforceable policies, including the standards that underlie a state's permit program.

Section 930.40 would be amended to simplify the reference to § 930.39, by deleting subsections (b) and (c) and adding a reference to section 930.39 at the end of § 930.40.

Section 930.41(a) and (b) would be amended to simplify terms used in these regulations, extend the time for State agency review of consistency determinations from 45 to 60 days, and clarify that State agency objections must be postmarked by the last day of the 60 day review period (or last day of an extended period). Presently, a state response to a Federal agency's consistency determination is either an agreement or disagreement, and a State agency's response to an applicant's consistency certification for a federal license or permit activity is either a concurrence or an objection. The difference is largely semantic and confusing. Thus, all state responses to any consistency determination or certification are now either a concurrence or an objection. The intent of the change regarding the State agency's response is to clarify when the federal agency may presume concurrence. Postmarking the State agency's response by the end of the review period is reasonable, provides the State agency with the full 60 days to review the activity and still brings finality to the state's response.

The time period for a state's response to a consistency determination would be increased from 45 days to 60 days to allow states to provide adequate public participation as required by CZMA section 306(d)(14)(added in 1990 by CZARA). Federal agencies must provide consistency determinations to coastal states at least 90 days prior to federal action. 16 U.S.C. 1456(c)(1)(C). Currently, NOAA regulations require states to respond within 45 days of receiving the determination. 15 CFR 930.41(a). If a state needs more time, a Federal agency must allow one 15 day extension. 15 CFR 930.41(b). These regulatory requirements were promulgated prior to the addition of CZMA section 306(d)(14). OCRM's Final Guidance implementing CZMA section 306(d)(14) did not change these requirements. 59 FR 30339. It will be difficult for many states to meet the public participation requirement under state law and still respond within 45 days. The likely result of this new requirement is that for most reviews of consistency determinations, states will need at least one 15 day extension, resulting in at least a 60-day review. Thus, in order for states to develop meaningful public participation procedures, and to provide greater predictability for Federal agencies as to when a state's consistency review will be completed, NOAA proposes to provide states with a 60-day review period (extension provision remain the same). This should alleviate the inconsistency between current regulations and the CZMA section 306(d)(14) requirement. The total time allowed before a federal action may commence (90 days) would not change.

Section 930.41(c) would be amended to clarify that the 90 day perjod begins when the State agency receives the determination and that federal agency action cannot commence prior to the end of the 90-day period unless the state concurs or the Federal agency and the state agree to a shorter period.

Section 930.41(d) would be added to clarify that states cannot unilaterally place time limits on concurrences. States must decide if they can concur with a consistency determination absent an agreement on time limits. Otherwise a state has the option of objecting for lack of information, if appropriate, or relying on § 930.45(b) (previously § 930.45(b)). There are several reasons why time limits are not acceptable. The CZMA requires a Federal agency to provide a consistency determination 90 days before final Federal agency approval. CZMA section 307(c)(2). The CZMA does not allow states to re-review the same activity. State consistency decisions and objections also must be based on the enforceable policies of a state's management program. A time limit on a state's concurrence would be based on the possibility that the activity or the state's program would change and not on enforceable policies, as required by the CZMA. Further, State agencies and Federal agencies may agree to a time limit for a state's concurrence, including concurrences for de minimis activities and general determinations. The CZMA does, however, require Federal agencies to carry out each activity in a manner that is consistent to the maximum extent practicable with a state's enforceable policies. Thus, if a project substantially changes between the time that the state reviews the activity and when the activity begins, the Federal agency must provide a new or supplemental consistency determination since the state would not have had the opportunity to review the "new" activity. This is precisely what the proposed § 930.46 is for. Section 930.46 only applies to previously reviewed activities that have not yet begun and the coastal effects are substantially different then as originally reviewed by the State agency.

Section 930.41(e) would clarify that a State agency may not assess the federal agency with a fee for the state's review of the Federal agency's consistency determination, unless such a fee is required under federal law applicable to that agency. The CZMA does not require

Federal agencies to pay processing fees. NOAA cannot require such fees by regulation. Thus, states cannot hold up their consistency reviews or object based on a failure by a Federal agency to pay a fee.

Section 930.42 would be moved to section 930.43. New section 930.42 would detail the public participation requirement for Federal agency activities. Public participation for a state's review of a Federal agency's consistency determination is required by CZMA section 306(d)(14). *See* NOAA's final guidance on this requirement, 59 FR 30339. The statutory section requires that "[t]he management program provide for public participation in permitting processes, consistency determinations, and other similar decisions." Proposed section 930.42 is sufficiently broad to give states flexibility in developing public participation procedures that meet the intent of section 306(d)(14). NOAA proposes to review each state's procedures during regularly scheduled evaluations of state coastal management programs under CZMA section 312 for compliance with the public participation requirement under section 306(d)(14), and will recommend procedural changes if necessary to meet proposed § 930.42. The purpose of the requirement is to provide the public with an opportunity to comment to the coastal management program on the program's review of a federal activity for consistency with the enforceable policies of a coastal management program, in addition to commenting on the activity itself. Thus, a Federal agency cannot be required to publish or pay for the notice.

Section 930.42(a) would be re-designated as 930.43(a) and amended to clarify that state objections must be based on the enforceable policies of an approved state coastal management program and that the objection letter must describe and cite the enforceable policies, and must state how the federal activity is inconsistent with the enforceable policy. This section also clarifies that the identification of alternatives by the state is optional, but that State agencies should describe alternatives, if they exist.

Section 930.43(d) would clarify that, in the event of a state objection, the remainder of the 90-day period should be used to resolve differences and that federal agencies should postpone agency action after the 90 day period, if differences have not been resolved. It also clarifies that, notwithstanding unresolved issues, after the 90 days a Federal agency may only proceed with the activity over a state's objection if the Federal agency clearly describes, in writing, the federal legal requirements that prohibit the Federal agency from full consistency.

Section 930.46 would address the situation where a proposed activity previously reviewed, but not yet begun, will have coastal effects substantially different than originally described. If a proposed project has substantially changed, and the state has not reviewed the changes, then it is a new project, and a new consistency determination is required. Since the consistency test depends on whether coastal effects are reasonably foreseeable, and not on the nature of the activity, substantial new coastal effects would also trigger the consistency requirement. Thus, where an activity has not started, substantial new effects have been discovered, and the state has not had the opportunity to review the activity for consistency in light of these effects, section 930.46 would require a supplemental consistency determination. This is an affirmative duty on the part of Federal agencies. States may seek compliance either through negotiation, mediation or litigation. This proposed section is similar to NEPA requirements for supplemental statements. *See* 40 CFR § 1502.9(c)(1). NOAA expects that this section will be little used, but where it is used will eliminate confusion as to the consistency process and conform the regulations to the changes made by CZARA.

A similar section is repeated at the end of subparts D and F. See proposed sections 930.66 and 930.101.

Subpart D—Consistency for Federal License or Permit Activities

Sections 930.50 and 930.51(a) would be amended to be consistent with the statutory language referring to "required" federal license or permit activities. A required federal approval means that the activity could not be performed without the approval or permission of the Federal agency. The approval does not have to be mandated by federal law, it only has to be a requirement to perform the activity.

Section 930.51(a) would clarify that a federal lease to a non-federal applicant, e.g., to use federal land for a private or commercial purpose, is a form of authorization or permission under the definition of federal license or permit, with the exception of lease sales issued under the Outer Continental Shelf Lands Act, which are Federal agency activities under 15 CFR part 930, subpart C.

Section 930.51(b)(2) would be amended to clarify that "management program amendments" as used in this section means any program change, i.e., amendment or routine program change, approved by OCRM under 15 CFR part 923, subpart H.

Section 930.51(c) would clarify that a major amendment is not a minor change to a previously reviewed activity, but a change that affects any coastal use or resource substantially different than effects previously reviewed by the State agency.

Section 930.51(d) would clarify that a "renewal" includes subsequent re-approvals, issuances or extensions. Administrative extensions that are required must be treated like any other renewal or major amendment. Otherwise, some activities that should obtain a renewal continue to operate for years under administrative extensions. These activities may have coastal effects that have not been reviewed by state coastal management programs and which need to be consistent with a state's enforceable policies. These activities are, in a sense new activities. Renewals cannot be used to negate the consistency requirement.

Section 930.51(e) would describe some parameters for how the determination of major amendments, renewals and substantially different in section 930.51 shall be made. Whether the effects from a renewal or major amendment are substantially different is a case-by-case factual determination that requires the input from all parties. However, a State agency's views should be accorded deference to ensure that the State agency has the opportunity to review coastal effects substantially different than previously reviewed.

Section 930.51(f) would clarify the consistency ramifications when an applicant withdraws its application for a federal approval or if the approving Federal agency stays the application review process. If the applicant withdraws its application, then the consistency process stops (since there is no longer a federal application to trigger consistency). If the applicant re-applies, then a new consistency review is required. Likewise, if the Federal agency stays its proceeding, then the consistency review process will be stayed for the same amount of time. This will avoid confusion as to what the consistency review period is in these cases.

Section 930.52 would be amended to add to the definition of "applicant" applicants for a United States required approval from other nations, and applicants filing a consistency certification under the proposed general permit consistency process under § 930.31(e). Regarding other nations, the CZMA requires any applicant for a

required federal license or permit to certify consistency with state management programs. There may be instances where a foreign company or individual must obtain a United States approval.

Section 930.53(a) would be removed. Most state programs have either been developed or are in the process of doing so. Thus, this section is no longer necessary. Also, federal involvement in the identification of federal activities is addressed in the program development regulations. *See* 15 CFR § 923.53.

Section 930.53(b) would be moved to 930.53(a).

Sections 930.53(a)(1) and (2) would be added to clarify the review of listed federal license or permit activities occurring outside of the coastal zone. The geographic location requirement is a means of notifying applicants and Federal agencies of activities with reasonably foreseeable coastal effects and are, therefore, subject to consistency review. The most effective way for a state to review listed activities outside the coastal zone is to describe the geographic location of a state's review. States are strongly encouraged to modify their programs to include a description of the geographic location for listed activities occurring outside the coastal zone to be reviewed for consistency. This section also codifies existing administrative policy that treats listed activities outside the coastal zone (for which a state has not described a geographic location), and listed activities outside a geographically described location, as unlisted activities under this subpart. The state's coastal zone boundary is, in a sense, one geographic location description. Thus, Federal lands located within the boundaries of a state's coastal zone are sufficiently described for federal license or permit activities occurring on those federal lands.

Sections 930.53(c), (d) and (e) would be moved to 930.53(b), (c) and (d), respectively. The addition of proposed sections 930.53(c)(1) and (2) clarify the procedures for consultation with Federal agencies and approval by the Director.

Section 930.54(a)(1) would be amended to clarify where State agencies should look to monitor unlisted activities. Specifically, draft NEPA documents and **Federal Register** notices are key documents State agencies should review. This section also clarifies that State agency notice should be sent to the applicant, the Federal agency, and the Director of OCRM. The term "immediately" has been deleted as there is already specified a 30 day time period in which to respond.

Section 930.54(b) would be amended to clarify that the State agency's notification must also include a request for OCRM approval and the State agency's analysis supporting its claim that coastal effects are reasonably foreseeable.

Section 930.54(c) would be amended to clarify that the Director's decision deadline may be extended by the Director for complex issues or to address the needs of one or more of the parties. This would codify existing practice which has been useful in resolving issues often leading to the State agency's withdrawal of its request.

Section 930.54(f) would provide applicants and State agencies with the flexibility to agree to forego the unlisted activity procedure, have the applicant subject itself to consistency, and to expedite the consistency process. This would help to resolve any coastal management issues informally and to avoid delays due to disagreement over whether the application should be subject to State agency consistency review.

Section 930.56(b) would be moved to § 930.58(a)(2). This would consolidate all material on necessary data and information in one section. The proposed last sentence of § 930.56 as State agencies need to be able to identify their enforceable policies and have an obligation to identify the applicable policies to Federal agencies and applicants. Also, since many state coastal management programs now contain substantial numbers of enforceable policies, it is more efficient and effective if states can identify the applicable policies to the applicants, rather than the applicant having to pick and choose from all the state policies.

Section 930.58 would be modified to clarify information requirements and to consolidate language from other sections. Subsection 930.58(a)(1) (formerly § 930.56(b)) would clarify that the necessary data and information which applicants must provide to the State agency may include state permits or permit applications.

Sections 930.60(a)(1), (2) and (3) would clarify when the consistency time clock may begin; the consequences of an incomplete certification; and State agency notice requirements to the applicant and the Federal agency. Where the applicant has submitted an incomplete certification and the state begins the consistency time clock, the State agency cannot later stop the time clock unless the applicant agrees. Section 930.60(a)(2) would require State agencies to notify the applicant and the Federal agency of the date when necessary certification or information deficiencies have been corrected, and the State agency's review has begun. Subsection (a)(3) would allow states and applicants to mutually agree to alter the review time period.

Section 930.62 would be deleted and part of it moved to section 930.61(a). The following section numbers in this subpart would be renumbered.

Section 930.63(a) (to be redesignated as section 930.62(a)) would be amended to clarify that a State agency's objection must be postmarked by the end of the six month review period.

Section 930.62(d) would be moved from § 930.64(c).

Section 930.64(b) (to be redesignated as section 930.63(b)) would be amended to clarify that State agency objections must be based on enforceable policies. Sections 930.63(b) and (d) would be revised to clarify that alternatives identification is an option for the state and to provide requirements on alternative descriptions if a State agency chooses to identify alternatives. These changes recognize the fact that, even if an applicant proposes to adopt a State agency's alternative, the Federal agency cannot approve the project due to the State agency's objection. Thus, if an applicant wants the federal approval the applicant must consult with the State agency and the State agency must remove its objection, unless an applicant appeals to the Secretary and prevails.

Section 930.64(e) (to be redesignated as section 930.63(e)) would be amended to clarify the notification of availability of the Secretarial override process. Since a concurrence with conditions may also become an objection, a conditional concurrence must also include similar appeal language.

Section 930.66 (to be redesignated as § 930.65) would be amended to provide states with a more meaningful opportunity to address instances where the State agency claims that an activity once found consistent or not affecting any coastal use or resource, is not being conducted as originally proposed and which will cause effects on a coastal use or resource substantially different than originally proposed. Previously, states could only request that the Federal agency take remedial action. If a Federal agency does not take remedial action the State agency can request that the Director find that the effects of the activity have substantially changed and require the applicant to submit an amended or new consistency certification and supporting information, or comply with the originally approved certification. This change mirrors the existing remedial action section of subpart E (*see* § 930.86)

and, like section 930.86, is not expected to be used frequently. However, the procedure exists, if necessary, to ensure that federal license or permit activities continue to be conducted consistent with a state's management program.

Section 930.66 would contain a supplemental coordination for proposed activities provision. *See* discussion of section 930.46.

Subpart E—Consistency for Outer Continental Shelf (OCS) Exploration, Development and Production Activities

Section 930.75(b) would be deleted as redundant with the proposed changes to § 930.76(b) and with § 930.58.

Section 930.77 would be deleted since this information is redundant with § 930.58, which is referenced in § 930.76(b). The rest of the sections in this subpart are renumbered accordingly (with additional minor changes, mostly conforming with changes made in subpart D).

Section 930.79(a) would be amended to clarify that if, after State agency concurrence, the activity, or effects from the activity, which the State agency reviewed, has substantially changed, then a new consistency certification shall be included in the person's application for the federal license or permit. This is consistent with the statutory requirement that all federal actions affecting any coastal use or resource are subject to the consistency requirement. If the activity or effects have changed, then the state did not have the opportunity to review the activity.

Sections 930.83(b)–(e) (currently § 930.84(b)–(e)) would be deleted since they are unnecessary and are replaced by the new reference in revised § 930.83.

Subpart F—Consistency for Federal Assistance to State and Local Governments

Section 930.94 would be amended to clarify that all federal assistance activities that affect any coastal use or resource are subject to the consistency requirement. While the intergovernmental review process is the preferred method for notifying the State agency and for State agency review, the intergovernmental review process may not provide notification for all federal assistance activities subject to the consistency requirement. Proposed §§ 930.94(b) and 930.95 provide methods to ensure adequate notification and review, by specifying a listed and unlisted procedure.

Section 930.94(c) would be added to conform to the statutory requirement that the applicant agency provide an evaluation of consistency. *See* CZMA section 307(d).

Sections 930.96(c)–(e) would be deleted since the reference to § 930.63 in § 930.63(b) eliminates the need for these subsections.

The unlisted activity procedure in section 930.98 follows the unlisted activity procedures found at § 930.54, except that Director approval is not required, because the State agency, through its monitoring and review of federal assistance activities, determines if coastal effects are reasonably foreseeable.

Section 930.100 would be amended to provide states with more meaningful opportunity to address remedial action for previously reviewed activities. See discussion of § 930.65.

Section 930.101 would contain a supplemental coordination for proposed activities provision. *See* discussion of section 930.46.

Subpart G—Secretarial Mediation

Only minor changes were made to subpart G. Subpart G provides a process for Federal agencies and coastal states to request that the Secretary of Commerce mediate serious disputes regarding the federal consistency requirements. Subpart G also provides for informal negotiation by OCRM. Both Secretarial mediation and informal negotiations require the participation of both agencies and are non-binding.

Subpart H—Secretarial Review Related to the Objectives or Purposes of the Act and National Security Interests

Pursuant to section 307 of the Act, no federal agency may issue a license or permit for an activity until an affected coastal state has concurred that the activity will be conducted in a manner consistent with the state's management program unless the Secretary, on his own initiative or on appeal by the applicant, finds that the activity is consistent with the objectives of the Act or is other wise necessary in the interest of national security. Subpart H sets forth the procedures applicable to such appeals and the requirements for such findings by the Secretary.

The Secretary's review is an independent assessment of the activity (the Secretary's review of the State agency's decision is limited to ensuring that the state's objection to an applicant's consistency certification was based on enforceable policies that are incorporated into the state's management program and that other consistency process requirements were met). If the Secretary overrides a State agency's objection, then the Federal agency may permit or fund the activity.

Changes were made to § 930.121(a) and (b) to ensure that the Secretary overrides a state's objection only where there is a national interest in the activity and that interest outweighs the adverse coastal effects of the activity. These changes will allow the Secretary to address issues of national concern and not minor local land use decisions that have only a de minimis connection to coastal uses and the national interest defined in the CZMA's objectives.

In addition, changes were made to § 930.121(d) to clarify the determination by the Secretary of the availability of alternatives. Currently, under the other elements of § 930.121, the Secretary may consider many factors when determining whether an appellant has met a particular element. Regarding the element on alternatives, there is confusion as to when alternatives may be raised, the consequences of a State agency not providing alternatives or when it issues its objection, and the level of specificity that the State agency needs to provide to satisfy the element on appeal. The changes to § 930.121(d) reflect the independent basis of the Secretary's decision by not restricting the scope of the Secretary's review. These changes will ensure that the Secretary's findings regarding alternatives will not be restricted, but will be informed and based on the Secretary's independent administrative record for each case. In this way, both the state and appellant will be able to provide to the Secretary information on whether an alternative is reasonable and described with sufficient specificity that might not have been available when the state issued its objection.

Section 930.125 is revised to make it consistent with the 1990 amendments to the CZMA. The changes include the requirement that an appellant pay a filing fee to the Secretary.

Section 930.126 would codify and explain the statutory requirement for the Secretary to collect fees from appellants to recover the costs of administering and processing appeals. These fees are in addition to the filing fees. *See* 16 USC 1456(i).

Section 930.127 would clarify when an appellant must submit supporting data and information. This requirement is necessary so that the Secretary can meet new time limits placed on the Secretary by the 1996 amendments to the CZMA.

Section 930.132 would be amended to clarify the procedures applicable to reviews initiated by the secretary on his/her own initiative. Section 930.132(b) is superseded by section 8 of the Coastal Zone Protection Act of 1996, Public Law 104–150. Section 8 created

a new section 319 of the CZMA concerning the timing of appeals.

Sections 930.133 and 134 would be replaced with a cross reference in § 930.134(b) to the provisions in subpart H for processing and administering appeals.

Subpart I—Assistant Administrator Reporting and Review

Existing subpart I would be removed. This subpart has never been used, and there are other existing CZMA mechanisms for reporting and review: oversight and monitoring under CZMA section 306, evaluations under CZMA section 312, appeals under CZMA section 307, and unlisted activity review approvals.

In addition, section 930.145 would be revised and moved to section 930.3.

Proposed Subpart I—Consistency of Federal Activities Having Interstate Coastal Effects

The CZARA clarified that the federal consistency trigger is coastal effects, regardless as to the geographic location of the federal activity. *See* 16 U.S.C. 1456; H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess., 970–972. Thus, federal consistency applies to all relevant federal actions, even when they occur outside the state's coastal zone and in another state. For example, State A may review a federal permit application for an activity occurring wholly within State B if State A has a federally approved coastal management program and the activity will have coastal effects. An example of this type of activity is the placement of a sewage outfall pipe in State B's waters that results in impacts to shellfish harvesting waters in State A.

In 1994, the Secretary of Commerce found, in the Lake Gaston decision, that federal consistency applied to a federal activity occurring in one state and having coastal effects in another state (hereinafter referred to as "interstate consistency"). This decision was based on a 1989 NOAA General Counsel opinion, the plain language of the CZMA and the Conference Report. *See also* 136 Cong. Rec. H8077 (Sep. 26, 1990).

Interstate consistency does not expand a coastal state's jurisdiction or affect the sovereignty of other states. Federal consistency applies only to federal actions, not state actions. If State A determines that an activity in State B would affect its coastal resources, but no federal permit or other federal action is required to undertake the activity, State A does not have any authority under the CZMA to review that activity. The CZMA also, even when there is a federal connection, does not give coastal states the authority to review the application of the laws, regulations, or policies of any other state. The CZMA only allows a state coastal management program to review the federal approval of an activity. NOAA proposes to add a new subpart I to provide clearer guidance as to how interstate consistency should be applied.

NOAA believes that regulations are needed so that the application of interstate consistency is carried out in a predictable, reasonable, and efficient manner. NOAA is specifically addressing interstate consistency to encourage neighboring states to cooperate in dealing with common resource management issues, and to provide states, permitting agencies, and the public with a more predictable application of the consistency requirement to these activities. Interstate resource management issues are best resolved on a cooperative, proactive basis.

VIII. Miscellaneous Rulemaking Requirements

Executive Order 12372: Intergovernmental Review

This program is subject to Executive Order 12372.

Executive Order 13132: Federalism Assessment

NOAA has concluded that this regulatory action is consistent with federalism principles, criteria, and requirements stated in Executive Order 13132. The proposed changes in the federal consistency regulations are intended to facilitate Federal agency coordination with coastal states, and ensure that federal actions affecting any coastal use or resource are consistent with the enforceable policies of approved state coastal management programs. The Coastal Zone Management Act (CZMA) and these revised implementing regulations promote the principles of federalism articulated in Executive Order 13132 by granting the states a qualified right to review certain federal activities that affect the land and water uses or natural resources of state coastal zones. Section 307 of the CZMA and these implementing regulations effectively transfer power from federal agencies to state agencies whenever federal agencies propose activities or applicants for required federal license or permit propose to undertake activities affecting state coastal resources. Through the CZMA, federal agencies are required to carry out their activities in a manner that is consistent to the maximum extent practicable with federally approved state programs and licensees and permitees to be fully consistent with the state programs. The CZMA and these implementing regulations, rather than preempting a State provide a mechanism for it to object to federal activities that are not consistent with the State's management program. A state objection prevents the issuance of the federal permit or license, unless the Secretary of Commerce overrides the objection. Because the CZMA and these regulations promote the principles of federalism and enhance state authorities, no federalism assessment need be prepared.

Executive Order 12866: Regulatory Planning and Review

This regulatory action is not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant impact on a substantial number of small entities. This proposed rule will only make minor changes to existing law, under both the CZMA and the existing regulations. The existing regulations do not have a significant impact on a substantial number of small entities and, thus, codifying in the regulations the requirements of the CZMA, as amended in 1990, and other minor changes, will not result in any additional economic impact on affected entities. The proposed rule: (1) Addresses coastal management programs of coastal states and territories, (2) removes outdated or unnecessary provisions for federal consistency purposes, (3) revises the remaining provisions to improve federal-state coordination of actions affecting the coastal zone, and (4) do not impose any significant new requirements on states, federal agencies, businesses, or the public. The basic substantive requirements in the existing regulations and the proposed rule would remain in effect whether or not the proposed rule is adopted. Accordingly, an initial Regulatory Flexibility Analysis was not prepared.

The term "small entity" includes small businesses, small organizations, and small governmental jurisdictions. The federal consistency regulations, and the proposed rule, primarily affect states and federal agencies. Federal consistency also applies to private land owners proposing certain activities

affecting the coastal zone that require federal approvals. State and federal agencies and private landowners are not small entities under the Regulatory Flexibility Act (RFA). Federal consistency does apply to some small businesses, small organizations and small governmental jurisdictions proposing activities that affect the coastal zone. (NOAA's National Marine Fisheries Service defines a small jurisdiction under the RFA as any government of a district with a population of less than 50,000.) However, these numbers are insignificant when compared to the number of small businesses and governmental jurisdictions in coastal states. The Federal consistency appeal process affects very few entities of any kind. Since the CZMA was enacted in 1972, only 39 consistency appeals have been filed with the Secretary of Commerce. Of those 39 consistency appeals, only 5 appeals have involved small entities. In 27 years of implementation, only five small entities have been affected by these regulations governing consistency appeals to the Secretary of Commerce.

In addition, the number of small entities affected by the consistency provisions of the CZMA generally, are insignificant when compared to the total number of small businesses and governmental jurisdictions in the 33 coastal states with approved coastal management programs. For example, in the State of North Carolina, for the period January 1, 1998, to December 31, 1998, the state reviewed 26 applications for federal licenses or permits under 15 CFR part 930, subpart D (the existing regulations), for activities that did not require a state permit. Of these 26 applications, no small entities were subject to the state's CZMA federal consistency review authority and the existing regulations. During the same period the state also reviewed 90 applications by state agencies and local governments for federal financial assistance. Of these 90 applications, 28 small entities were subject to the state's CZMA federal consistency review authority and the existing regulations. The State did not object to any of these financial assistance applications. Moreover, all of these financial assistance activities involved allowing federal funds to improve local infrastructure. North Carolina is a representative state in the use and application of the federal consistency requirement and the existing regulations. This is evidenced by the fact that all State coastal management programs concur with 95–97 percent of all federal license or permit activities, and over 99 percent of all applicable small organization and governmental jurisdiction federal assistance activities.

Thus, the existing regulations do not, and the proposed rule will not, have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). Many of these are existing requirements and are being submitted to OMB for approval. This Notice also refers to federally approved coastal management plans which have previously been approved by OMB under 0648–0119. Public reporting burden for the collection of information related to this proposed rule is estimated to average as follows: (A) State objection and concurrence to consistency certifications or determinations approximately 18,800 hours; (B) State requests to review unlisted activities approximately 12 hours; (C) public notice requirements approximately 1300 hours; (D) remedial action and supplemental review approximately 12 hours; (E) listing notices approximately 1 hour; (F) mediation requests approximately 6 hours; and (G) appeals to the Secretary of Commerce approximately 200 hours.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of the information, including through the use of automated collection techniques or other forms of information technology. Send comments on any of these or any other aspects of the collection of information to David Kaiser, Federal Consistency Coordinator at the **ADDRESSES** above, and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

National Environmental Policy Act

NOAA has concluded that this regulatory action does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

List of Subjects in 15 CFR Part 930

Administrative practice and procedure, Coastal zone, Reporting and recordkeeping requirements.

Dated: April 6, 2000.

Ted Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

For the reasons set out in the preamble, NOAA proposes to revise 15 CFR part 930 to read as follows:

PART 930—FEDERAL CONSISTENCY WITH APPROVED COASTAL MANAGEMENT PROGRAMS

Subpart A—General Information

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930.1 Overall objectives.
930.2 Public participation.
930.3 Review of the implementation of the federal consistency requirement.
930.4 Conditional concurrences.
930.5 State enforcement actions.
930.6 State agency responsbility.

Subpart B—General Definitions

930.10 Index to definitions for terms defined in part 930.
930.11 Definitions.

Subpart C—Consistency for Federal Agency Activities 930.30 Objectives.

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930.34 Federal and State agency coordination.
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930.37 Consistency determinations and National Environmental Policy Act (NEPA) requirements.
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Subpart D—Consistency for Activities Requiring a Federal License or Permit

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Subpart E—Consistency for Outer Continental Shelf (OCS) Exploration, Development and Production Activities

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930.82 Amended OCS plans.
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930.84 Continuing State agency objections.
930.85 Failure to comply substantially with an approved OCS plan.

Subpart F—Consistency for Federal Assistance to State and Local Governments

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Subpart G—Secretarial Mediation

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Subpart H—Secretarial Review Related to the Objectives or Purposes of the Act and National Security Interests

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Subpart I—Consistency of Federal Activities Having Interstate Coastal Effects

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930.157 Mediation and informal negotiations.

Authority: 16 U.S.C. 141 *et seq.*

Subpart A—General Information

§ 930.1 Overall objectives.

The objectives of this part are:

(a) To describe the obligations of all parties who are required to comply with the federal consistency requirement of the Coastal Zone Management Act;

(b) To implement the federal consistency requirement in a manner which strikes a balance between the need to ensure consistency for federal actions affecting any coastal use or resource with the enforceable policies of approved management programs and the importance of federal activities;

(c) To provide flexible procedures which foster intergovernmental cooperation and minimize duplicative effort and unnecessary delay, while making certain that the objectives of the federal consistency requirement of the Act are satisfied. Federal agencies, State agencies, and applicants should coordinate as early as possible in developing a proposed federal action, and may mutually agree to intergovernmental coordination efforts to meet the requirements of these regulations (provided that public participation requirements are met and applicable state management program enforceable policies are considered).

(d) To interpret significant terms in the Act and this part;

(e) To provide procedures to make certain that all Federal agency and State agency consistency decisions are directly related to the enforceable policies of approved coastal management programs;

(f) To provide procedures which the Secretary, in cooperation with the Executive Office of the President, may use to mediate serious disagreements which arise between Federal and State agencies during the administration of approved coastal management programs; and

(g) To provide procedures which permit the Secretary to review federal license or permit activities, or federal assistance activities, to determine whether they are consistent with the objectives or purposes of the Act, or are necessary in the interest of national security.

§ 930.2 Public participation.

State management programs shall provide an opportunity for public participation in the State agency's review of a Federal agency's consistency determination or an applicant's or person's consistency certification.

§ 930.3 Review of the implementation of the federal consistency requirement.

As part of the responsibility to conduct a continuing review of approved management programs, the Director of the Office of Ocean and Coastal Resource Management (Director) shall review the performance of each state's implementation of the federal consistency requirement. The Director shall evaluate instances where a State agency is believed to have either failed to object to inconsistent federal actions, or improperly objected to consistent federal actions. This evaluation shall be incorporated within the Director's general efforts to ascertain instances where a state has not adhered to its approved management program and such lack of adherence is not justified.

§ 930.4 Conditional concurrences.

(a) Federal agencies, applicants, persons and applicant agencies should

cooperate with State agencies to develop conditions that, if agreed to during the State agency's consistency review period and included in a Federal agency's final decision under subpart C or in a Federal agency's approval under subparts D, E, F or I of this part, would allow the State agency to concur with the federal action. If a State agency issues a conditional concurrence:

(1) The State agency shall include in its concurrence letter the conditions which must be satisfied, an explanation of why the conditions are necessary to ensure consistency with specific enforceable policies of the management program, and an identification of the specific enforceable policies. The State agency's concurrence letter shall also inform the parties that if the requirements of paragraphs (a)(1) through (3) of this section are not met, then all parties shall treat the State agency's conditional concurrence letter as an objection pursuant to the applicable subpart and notify, pursuant to § 930.63(e), applicants, persons and applicant agencies of the opportunity to appeal the State agency's objection to the Secretary of Commerce within 30 days after receipt of the State agency's conditional concurrence/objection or 30 days after receiving notice from the Federal agency that the application will not be approved as amended by the State agency's conditions;

(2) The Federal agency (for subpart C), applicant (for subparts D and I), person (for subpart E) or applicant agency (for subpart F) shall modify the applicable plan, project proposal, or application to the Federal agency pursuant to the State agency's conditions. The Federal agency, applicant, person or applicant agency shall immediately notify the State agency if the State agency's conditions are not acceptable; and

(3) The Federal agency (for subparts D, E, F and I) shall approve the amended application (with the State agency's conditions). The Federal agency shall immediately notify the State agency and applicant or applicant agency if the Federal agency will not approve the application as amended by the State agency's conditions. Federal agencies shall enforce, to the extent allowed by law, the state conditions contained in the federal permit or license as approved with the state's conditions.

(b) If the requirements of paragraphs (a)(1) through (3) of this section are not met, then all parties shall treat the State agency's conditional concurrence as an objection pursuant to the applicable subpart.

§ 930.5 State enforcement action.

The regulations in this part are not intended in any way to alter or limit other legal remedies, including judicial review or state enforcement, otherwise available. State agencies and Federal agencies should first use the various remedial action and mediation sections of this part to resolve their differences or to enforce State agency concurrences or objections.

§ 930.6 State agency responsibility.

(a) This section describes the responsibilities of the "State agency" described in § 930.11(o). A designated State agency is required to uniformly and comprehensively apply the enforceable policies of the state's management program, efficiently coordinate all state coastal management requirements, and to provide a single point of contact for Federal agencies and the public to discuss consistency issues. Any appointment by the State agency of the state's consistency responsibilities to a designee agency must be described in the state's management program. In the absence of such description, all consistency determinations, consistency certifications and federal assistance proposals shall be sent to and reviewed by the State agency. A state may have two State agencies designated pursuant to section 306(d)(6) of the Act where the state has two geographically separate federally-approved coastal management programs.

(b) The State agency is responsible for commenting on and concurring with or objecting to Federal agency consistency determinations and negative determinations (*see* subpart C of this part), consistency certifications for federal licenses, permits, and Outer Continental Shelf plans (*see* subparts D, E and *I* of this part), and reviewing the consistency of federal assistance activities proposed by applicant agencies (*see* subpart F of this part). The State agency shall be responsible for securing necessary review and comment from other state, regional, or local government agencies. Thereafter, only the State agency is authorized to comment officially on or concur with or object to a federal consistency determination or negative determination, a consistency certification, or determine the consistency of a proposed federal assistance activity.

(c) If described in a state's management program, the issuance or denial of relevant state permits can constitute the State agency's consistency concurrence or objection if the State agency ensures that the state permitting agencies or the State agency review individual projects to ensure consistency with all applicable state management program policies. The State agency shall monitor such permits issued by another state agency.

Subpart B—General Definitions

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§ 930.11 Definitions.

(a) *Act.* The term "Act" means the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451–1464).

(b) *Any coastal use or resource.* The phrase "any coastal use or resource" means any land or water use or natural resource of the coastal zone. Land and water uses, or coastal uses, are defined in sections 304(10) and (18) of the Act, respectively, and include, but are not limited to, public access, recreation, fishing, historic or cultural preservation, development, hazards management, marinas and floodplain management, scenic and aesthetic enjoyment, and resource creation or restoration projects. Natural resources include biological or physical resources that are found within a state's coastal zone on a regular or cyclical basis. Biological and physical resources include, but are not limited to,

air, tidal and nontidal wetlands, ocean waters, estuaries, rivers, streams, lakes, aquifers, submerged aquatic vegetation, land, plants, trees, minerals, fish, shellfish, invertebrates, amphibians, birds, mammals, reptiles, and coastal resources of national significance. Coastal uses and resources also includes uses and resources appropriately described in a state's management program.

(c) *Assistant Administrator.* The term "Assistant Administrator" means the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA.

(d) *Associated facilities.* The term "associated facilities" means all proposed facilities which are specifically designed, located, constructed, operated, adapted, or otherwise used, in full or in major part, to meet the needs of a federal action (e.g., activity, development project, license, permit, or assistance), and without which the federal action, as proposed, could not be conducted. The proponent of a federal action shall consider whether the federal action and its associated facilities affect any coastal use or resource and, if so, whether these interrelated activities satisfy the requirements of the applicable subpart (subparts C, D, E, F or I of this part).

(e) *Coastal Zone.* The term "coastal zone" has the same definition as provided in section 304(1) of the Act.

(f) *Director.* The term "Director" means the Director of the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service, NOAA.

(g) *Effect on any coastal use or resource (coastal effect).* The term "effect on any coastal use or resource" means any reasonably foreseeable effect on any coastal use or resource resulting from a federal action. (The term "federal action" includes all types of activities subject to the federal consistency requirement under subparts C, D, E, F and I of this part.) Effects are not just environmental effects, but include effects on coastal uses. Effects include both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects are effects resulting from the incremental impact of the federal action when added to other past, present, and reasonably foreseeable actions, regardless of what person(s) undertake(s) such actions.

(h) *Enforceable policy.* "The term 'enforceable policy' means State policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources in the coastal zone," 16 U.S.C. 1453(6a), and which are incorporated in a state's management program as approved by OCRM either as part of program approval or as a program change under 15 CFR part 923, subpart H. An enforceable policy shall contain standards of sufficient specificity to guide public and private uses. Enforceable policies need not establish detailed criteria such that a proponent of an activity could determine the consistency of an activity without interaction with the State agency. State agencies may identify management measures which are based on enforceable policies, and, if implemented, would allow the activity to be conducted consistent with the enforceable policies of the program. A State agency, however, must base its objection on enforceable policies.

(i) *Executive Office of the President.* The term "Executive Office of the President" means the office, council, board, or other entity within the Executive Office of the President which shall participate with the Secretary in seeking to mediate serious disagreements which may arise between a Federal agency and a coastal state.

(j) *Federal agency.* The term "Federal agency" means any department, agency, board, commission, council, independent office or similar entity within the executive branch of the federal government, or any wholly owned federal government corporation.

(k) *Management program.* The term "management program" has the same definition as provided in section 304(12) of the Act, except that for the purposes of this part the term is limited to those management programs adopted by a coastal state in accordance with the provisions of section 306 of the Act, and approved by the Assistant Administrator.

(l) *OCRM.* The term "OCRM" means the Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration ("NOAA"), U.S. Department of Commerce.

(m) *Secretary.* The term "Secretary" means the Secretary of Commerce and/or designee.

(n) *Section.* The term "Section" means a section of the Coastal Zone Management Act of 1972, as amended.

(o) State agency. The term "State agency" means the agency of the state government designated pursuant to section 306(d)(6) of the Act to receive and administer grants for an approved management program, or a single designee State agency appointed by the 306(d)(6) State agency.

Subpart C—Consistency for Federal Agency Activities

§ 930.30 Objectives.

The provisions of this subpart are intended to assure that all Federal agency activities including development projects affecting any coastal use or resource will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of approved state management programs. The provisions of subpart I of this part are intended to supplement the provisions of this subpart for Federal agency activities having interstate coastal effects.

§ 930.31 Federal agency activity.

(a) The term "Federal agency activity" means any functions performed by or on behalf of a Federal agency in the exercise of its statutory responsibilities. This encompasses a wide range of Federal agency activities which initiate an event or series of events where coastal effects are reasonably foreseeable, *e.g.*, rulemaking, planning, physical alteration, exclusion of uses. The term "Federal agency activity" does not include the issuance of a federal license or permit to an applicant or person (see subparts D and E of this part) or the granting of federal assistance to an applicant agency (see subpart F of this part).

(b) The term federal "development project" means a Federal agency activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and the acquisition, use, or disposal of any coastal use or resource.

(c) The Federal agency activity category is a residual category for federal actions that are not covered under subparts D, E, or F of this part.

(d) A general permit program proposed by a Federal agency is subject to this subpart, unless a Federal agency chooses to subject its general permit program to consistency review under subpart D of this part. When proposing a general permit program, a Federal agency shall provide a consistency determination to the relevant state management programs and request that the State agency(ies) provide the Federal agency with conditions that would permit the State agency to concur with

the Federal agency's consistency determination. State concurrence should remove the need for the State agency to review future case-by-case uses of the general permit. Federal agencies shall, to the maximum extent practicable, incorporate the state conditions into the general permit. If the state conditions are not incorporated into the general permit or a State agency objects to the general permit, then the Federal agency shall notify potential users of the general permit that the general permit is not authorized for that state. Accordingly, the applicants in those states shall provide the State agency with a consistency certification under subpart D of this part.

§ 930.32 Consistent to the maximum extent practicable.

(a)(1) The term "consistent to the maximum extent practicable" means fully consistent with the enforceable policies of management programs unless full consistency is prohibited by existing law applicable to the Federal agency.

(2) Section 307(e) of the Act does not relieve Federal agencies of the consistency requirements under the Act. The Act was intended to cause substantive changes in Federal agency decisionmaking within the context of the discretionary powers residing within such agencies. Accordingly, whenever legally permissible, Federal agencies shall consider the enforceable policies of state management programs as requirements to be adhered to in addition to existing Federal agency statutory mandates. If a Federal agency asserts that full consistency with the management program is prohibited, it shall clearly describe, in writing, to the State agency the statutory provisions, legislative history, or other legal authority which limits the Federal agency's discretion to be consistent with the enforceable policies of the management program.

(3) For the purpose of determining consistent to the maximum extent practicable under paragraphs (a) (1) and (2) of this section, federal legal authority includes Federal appropriation Acts if the appropriation Act includes language that specifically prohibits full consistency with specific enforceable policies of state management programs. Federal agencies shall not use a general claim of a lack of funding or insufficient appropriated funds or failure to include the cost of being fully consistent in Federal budget and planning processes as a basis for being consistent to the maximum extent practicable with an enforceable policy of a state's management program. The only circumstance where a Federal agency may rely on a lack of funding as a limitation on being fully consistent with an enforceable policy is the Presidential exemption described in section 307(c)(1)(B) of the Act (16 USC 1456(c)(1)(B)). In cases where the cost of being consistent with the enforceable policies of a state's management program was not included in the Federal agency's budget and planning processes, the Federal agency should determine the amount of funds needed and seek additional discretionary federal funds. Federal agencies should include the cost of being fully consistent with the enforceable policies of state management programs in their budget and planning processes, to the same extent that a Federal agency would plan for the cost of complying with other federal requirements.

(b) A Federal agency may deviate from full consistency with an approved management program when such deviation is justified because of some unforeseen circumstances, *e.g.*, an emergency, arising after the approval of the management program which present the Federal agency with a substantial obstacle that prevents complete adherence to the approved program. Such deviation shall be the minimum necessary to address the exigent circumstances. Federal agencies shall carry out their activities consistent to the maximum extent practicable with the enforceable policies of a state's management program, to the extent that the exigent circumstances allow. Federal agencies shall consult with State agencies to the extent that an unforeseen circumstance allows and shall attempt to seek State agency concurrence within the time allowed. This invariably involves a case-by-case evaluation conducted by the Federal agency. Once the exigent circumstances have passed Federal agencies shall ensure that their activities are consistent to the maximum extent practicable with the enforceable policies of state management programs.

(c) A classified activity that affects any coastal use or resource is not exempt from the requirements of this subpart, unless the activity is exempted by the President under section 307(c)(1)(B) of the Act. Under the consistent to the maximum extent practicable standard, the Federal agency shall provide to the State agency a description of the project and coastal effects that it is legally permitted to release or does not otherwise breach the classified nature of the activity. Even when a Federal agency may not be able to disclose project information, the Federal agency shall conduct the classified activity consistent to the maximum extent practicable with the enforceable policies of state management programs. The term classified means to protect from disclosure national security information concerning the national defense or foreign policy, provided that it has been properly classified in accordance with the substantive and procedural requirements of an executive order.

§ 930.33 Identifying Federal agency activities affecting any coastal use or resource.

(a) Federal agencies shall determine which of their activities affect any coastal use or resource of states with approved management programs.

(1) Effects are determined by looking at reasonably foreseeable direct and indirect effects on any coastal use or resource. An action which has minimal environmental effects may still have effects on a coastal use (*e.g.*, effects on public access and recreational opportunities, protection of historic property) or a coastal resource. Therefore, Federal agencies shall, in making a determination of effects, review relevant state coastal management program policies as part of determining effects on any coastal use or resource.

(2) If the Federal agency determines that there are no effects on any coastal use or resource, and a negative determination under § 930.35 is not required, then the Federal agency is not required to coordinate with State agencies under section 307 of the Act.

(3) De minimis Federal agency activities. Federal agencies are encouraged to review their activities, other than development projects within the coastal zone, to identify de minimis activities, and request State agency concurrence that these de minimis activities should not be subject to further State agency review. De minimis activities shall only be excluded from State agency review if a Federal agency and State agency have mutually agreed. The State agency is not required to provide for public participation under section 306(d)(14) of the Act for the Federal agency's de minimis activity request. If the State agency objects to the Federal agency's de minimis finding then the Federal agency must provide the State agency with either a negative determination or a consistency determination pursuant to this subpart. De minimis activities are activities that have coastal effects that are trifling in nature and a Federal agency and State agency have mutually agreed that the activity is de minimis. OCRM is

available to facilitate a Federal agency's proposal.

(4) Environmentally beneficial activities. The State agency and Federal agencies may mutually agree to exclude environmentally beneficial Federal agency activities (either on a case-by-case basis or for a category of activities) from further State agency review.

(5) General consistency determinations, phased consistency determinations, and national or regional consistency determinations under § 930.36 are also available to facilitate federal-state coordination.

(b) Federal agencies shall consider all development projects within the coastal zone to be activities affecting any coastal use or resource. All other types of activities within the coastal zone are subject to Federal agency review to determine whether they affect any coastal use or resource.

(c) Federal agency activities and development projects outside of the coastal zone are subject to Federal agency review to determine whether they affect any coastal use or resource.

(d) Federal agencies shall construe broadly the effects test to provide State agencies with a consistency determination under § 930.34 and not a negative determination under § 930.35 or other determinations of no effects. Early coordination and cooperation between a Federal agency and the State agency can enable the parties to focus their efforts on particular Federal agency activities of concern to the State agency.

§ 930.34 Federal and State agency coordination.

(a)(1) Federal agencies shall provide State agencies with consistency determinations for all Federal agency activities affecting any coastal use or resource. To facilitate State agency review, Federal agencies should coordinate with the State agency prior to providing the determination.

(2) *Use of existing procedures.* Federal agencies are encouraged to coordinate and consult with State agencies through use of existing procedures in order to avoid waste, duplication of effort, and to reduce Federal and State agency administrative burdens. Where necessary, these existing procedures should be modified to facilitate coordination and consultation under the Act.

(b) *Listed activities.* State agencies should list in their management programs Federal agency activities which, in the opinion of the State agency, will have reasonably foreseeable coastal effects and therefore, may require a Federal agency consistency determination. Listed Federal agency activities shall be described in terms of the specific type of activity involved (*e.g.*, federal reclamation projects). In the event the State agency chooses to describe Federal agency activities with reasonably foreseeable coastal effects outside of the coastal zone it shall also describe the geographic location of such activities (*e.g.*, reclamation projects in coastal floodplains).

(c) *Unlisted activities.* State agencies should monitor unlisted Federal agency activities (*e.g.*, by use of intergovernmental review process established pursuant to E.O. 12372, review of NEPA documents, **Federal Register**) and should notify Federal agencies of unlisted Federal agency activities which Federal agencies have not subjected to a consistency review but which, in the opinion of the State agency, will have reasonably foreseeable coastal effects and therefore, may require a Federal agency consistency determination. The provisions in paragraphs (b) and (c) of this section are recommended rather than mandatory procedures for facilitating federal-state coordination of Federal agency activities which affect any coastal use or resource. State agency notification to the Federal agency is neither a substitute for nor does it eliminate Federal agency responsibility to comply with the consistency requirement, and to provide State agencies with consistency determinations for all development projects in the coastal zone and for all other Federal agency activities which the Federal agency finds affect any coastal use or resource, regardless as to whether the State agency has listed the activity or notified the Federal agency through case-by-case monitoring.

(d) *State guidance and assistance to Federal agencies.* As a preliminary matter, a decision that a Federal agency activity affects any coastal use or resource should lead to early consultation with the State agency (*i.e.*, before the required 90-day period). Federal agencies should obtain the views and assistance of the State agency regarding the means for determining that the proposed activity will be conducted in a manner consistent to the maximum extent practicable with the enforceable policies of a state's management program. As part of its assistance efforts, the State agency shall make available for public inspection copies of the management program document. Upon request by the Federal agency, the State agency shall identify any enforceable policies applicable to the proposed activity based upon the information provided to the State agency at the time of the request.

§ 930.35 Negative determinations for proposed activities.

(a) If a Federal agency determines that there will not be coastal effects, then the Federal agency shall provide the relevant State agencies with a negative determination for a Federal agency activity:

(1) Identified by a State agency on its list or through case-by-case monitoring of unlisted activities; or

(2) Which is the same as or is similar to activities for which consistency determinations have been prepared in the past.

(b) *Content of a negative determination.* A negative determination may be submitted to State agencies in any written form so long as it contains a brief description of the activity, the activity's location and the basis for the Federal agency's determination that the activity will not affect any coastal use or resource. In determining effects Federal agencies shall follow § 930.33(a)(1), including an evaluation of the relevant enforceable policies of a state's management program and include the evaluation in the negative determination. The level of detail in the Federal agency's analysis may vary depending on the scope and complexity of the activity and issues raised by the State agency, but shall be sufficient for the State agency to evaluate whether coastal effects are reasonably foreseeable.

(c) A negative determination under paragraph (a) of this section shall be provided to the State agency at least 90 days before final approval of the activity, unless both the Federal agency and the State agency agree to an alternative notification schedule. If a State agency fails to respond to a Federal agency's negative determination within 60 days, State agency concurrence with the negative determination shall be presumed. State agency concurrence shall not be presumed in cases where the State agency, within the 60-day period, requests an extension of time to review the matter. Federal agencies shall approve one request for an extension period of 15 days or less. If a State agency objects to a negative determination, asserting that coastal effects are reasonably foreseeable, the Federal agency shall consider submitting a consistency determination to the State agency or otherwise attempt to resolve any disagreement within the remainder of the 90-day period. If a Federal agency, in response to a State agency's objection to a negative determination, agrees that coastal effects are reasonably foreseeable, the State agency and Federal agency should

attempt to agree to complete the consistency review within the 90-day period for the negative determination or consider an alternative schedule pursuant to § 930.36(b)(1). Federal agencies should postpone final Federal agency action, beyond the 90-day period, until a disagreement has been resolved. State agencies are not required to provide public notice of the receipt of a negative determination or the resolution of an objection to a negative determination, unless a Federal agency submits a consistency determination pursuant to § 930.34 and a new 90-day review period is started.

(d) In the event of a serious disagreement between a Federal agency and a State agency regarding a determination related to whether a proposed activity affects any coastal use or resource, either party may seek the Secretarial mediation or OCRM informal negotiation services provided for in subpart G of this part.

§ 930.36 Consistency determinations for proposed activities.

(a) Federal agencies shall review their proposed Federal agency activities which affect any coastal use or resource in order to develop consistency determinations which indicate whether such activities will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of approved state management programs. Federal agencies should consult with State agencies at an early stage in the development of the proposed activity in order to assess whether such activities will be consistent to the maximum extent practicable with the enforceable policies of such programs.

(b) *Timing of consistency determinations.* (1) Federal agencies shall provide State agencies with a consistency determination at the earliest practicable time in the planning or reassessment of the activity. A consistency determination should be prepared following development of sufficient information to determine reasonably the consistency of the activity with the state's management program, but before the Federal agency reaches a significant point of decisionmaking in its review process, i.e., while the Federal agency has the ability to modify the activity. The consistency determination shall be provided to State agencies at least 90 days before final approval of the Federal agency activity unless both the Federal agency and the State agency agree to an alternative notification schedule.

(2) Federal and State agencies may mutually agree upon procedures for extending the notification requirement beyond 90 days for activities requiring a substantial review period, and for shortening the notification period for activities requiring a less extensive review period, provided that public participation requirements are met.

(c) *General consistency determinations.* In cases where Federal agencies will be performing repeated activity other than a development project (*e.g.*, ongoing maintenance, waste disposal) which cumulatively has an effect upon any coastal use or resource, the Federal agency may develop a general consistency determination, thereby avoiding the necessity of issuing separate consistency determinations for each incremental action controlled by the major activity. A Federal agency may provide a State agency with a general consistency determination only in situations where the incremental actions are repetitive and do not affect any coastal use or resource when performed separately. A Federal agency and State agency may mutually agree on a general consistency determination for de minimis activities (*see* § 930.33(a)(3)) or any other repetitive activity or category of activity(ies). If a Federal agency issues a general consistency determination, it must thereafter periodically consult with the State agency to discuss the manner in which the incremental actions are being undertaken.

(d) *Phased consistency determinations.* In cases where the Federal agency has sufficient information to determine the consistency of a proposed development project or other activity from planning to completion, the Federal agency shall provide the State agency with one consistency determination for the entire activity or development project. In cases where major federal decisions related to a proposed development project or other activity will be made in phases based upon developing information that was not available at the time of the original consistency determination, with each subsequent phase subject to Federal agency discretion to implement alternative decisions based upon such information (*e.g.*, planning, siting, and design decisions), a consistency determination will be required for each major decision. In cases of phased decisionmaking, Federal agencies shall ensure that the development project or other activity continues to be consistent to the maximum extent practicable with the state's management program.

(e) *National or regional consistency determinations.* (1) A Federal agency may provide states with consistency determinations for Federal agency activities that are national or regional in scope (*e.g.*; rulemaking, national plans), and that affect any coastal use or resource of more than one state. Many states share common coastal management issues and have similar enforceable policies, *e.g.*, protection of a particular coastal resource. The Federal agency's national or regional consistency determination should, at a minimum, address the common denominator of these policies, i.e., the common coastal effects and management issues, and thereby address different states' policies with one discussion and determination. If a Federal agency decides not to use this section, it must issue consistency determinations to each coastal state pursuant to § 930.39.

(2) Federal agencies shall be consistent to the maximum extent practicable with the enforceable policies of each state's management program. Thus, the Federal agency's national or regional consistency determination shall contain, if necessary, sections that would apply to individual states to address coastal effects and enforceable policies unique to particular states. Early coordination with coastal states will enable the Federal agency to identify particular coastal management concerns and policies. In addition, the Federal agency could address the concerns of each affected state by providing for state conditions for the proposed activity. Further, the consistency determination could identify the coordination efforts and describe how the Federal agency responded to State agency concerns.

§ 930.37 Consistency determinations and National Environmental Policy Act (NEPA) requirements.

A Federal agency may use its NEPA documents as a vehicle for its consistency determination or negative determination under this subpart. However, a Federal agency's federal consistency obligations under the Act are independent of those required under NEPA and are not necessarily fulfilled by the submission of a NEPA document. If a Federal agency includes its consistency determination or negative determination in a NEPA document, the Federal agency shall ensure that the NEPA document includes the information and adheres to the timeframes required by this subpart. Federal agencies and State agencies should mutually agree on how to best coordinate the requirements of NEPA and the Act.

§ 930.38 Consistency determinations for activities initiated prior to management program approval.

(a) A consistency determination is required for ongoing Federal agency activities other than development projects initiated prior to management program approval, which are governed by statutory authority under which the Federal agency retains discretion to reassess and modify the activity. In these cases the consistency determination must be made by the Federal agency at the earliest practicable time following management program approval, and the State agency must be provided with a consistency determination no later than 120 days after management program approval for ongoing activities which the State agency lists or identifies through monitoring as subject to consistency with the management program.

(b) A consistency determination is required for major, phased federal development project decisions described in § 930.36(d) which are made following management program approval and are related to development projects initiated prior to program approval. In making these new decisions, Federal agencies shall consider effects on any coastal use or resource not fully evaluated at the outset of the project. This provision shall not apply to phased federal decisions which were specifically described, considered and approved prior to management program approval (*e.g.*, in a final environmental impact statement issued pursuant to NEPA).

§ 930.39 Content of a consistency determination.

(a) The consistency determination shall include a brief statement indicating whether the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the management program. The statement must be based upon an evaluation of the relevant enforceable policies of the management program. A description of this evaluation shall be included in the consistency determination. The consistency determination shall also include a detailed description of the activity, its associated facilities, and their coastal effects, and comprehensive data and information sufficient to support the Federal agency's consistency statement. The amount of detail in the evaluation of the enforceable policies, activity description and supporting information shall be commensurate with the expected coastal effects of the activity. The Federal agency may submit the necessary information in any manner it chooses so long as the requirements of this subpart are satisfied.

(b) Federal agencies shall be guided by the following in making their consistency determinations. The activity, its effects on any coastal use or resource, associated facilities (*e.g.*, proposed siting and construction of access road, connecting pipeline, support buildings), and the effects of the associated facilities (*e.g.*, erosion, wetlands, beach access impacts), must all be consistent to the maximum extent practicable with the enforceable policies of the management program.

(c) In making their consistency determinations, Federal agencies shall ensure that their activities are consistent to the maximum extent practicable with the enforceable policies of the management program. However, Federal agencies should give adequate consideration to management program provisions which are in the nature of recommendations.

(d) When Federal agency standards are more restrictive than standards or requirements contained in the state's management program, the Federal agency may continue to apply its stricter standards. In such cases the Federal agency shall inform the State agency in the consistency determination of the statutory, regulatory or other basis for the application of the stricter standards.

(e) *State permit requirements.* Federal law, other than the CZMA, may require a Federal agency to obtain a state permit. Even when Federal agencies are not required to obtain state permits, Federal agencies shall still be consistent to the maximum extent practicable with the enforceable policies that are contained in such state permit programs that are part of a state's management program.

§ 930.40 Multiple Federal agency participation.

Whenever more than one Federal agency is involved in a Federal agency activity or its associated facilities affecting any coastal use or resource, or is involved in a group of Federal agency activities related to each other because of their geographic proximity, the Federal agencies may prepare one consistency determination for all the federal activities involved. In such cases, Federal agencies should consider joint preparation or lead agency development of the consistency determination. In either case, the consistency determination shall be transmitted to the State agency at least 90 days before final decisions are taken by any of the participating agencies and shall comply with the requirements of § 930.39.

§ 930.41 State agency response.

(a) A State agency shall inform the Federal agency of its concurrence with or objection to the Federal agency's consistency determination at the earliest practicable time, after providing for public participation in the State agency's review of the consistency determination. The Federal agency may presume State agency concurrence if the State agency's response is not postmarked within 60 days from receipt of the Federal agency's consistency determination and supporting information. The 60-day review period begins when the State agency receives the consistency determination and supporting information required by § 930.39(a). If the information required by § 930.39(a) is not included with the determination, the State agency shall immediately notify the Federal agency that the 60-day review period has not begun, what information required by § 930.39(a) is missing, and that the 60-day review period will begin when the missing information is received by the State agency.

(b) State agency concurrence shall not be presumed in cases where the State agency, within the 60-day period, requests an extension of time to review the matter. Federal agencies shall approve one request for an extension period of 15 days or less. In considering whether a longer or additional extension period is appropriate, the Federal agency should consider the magnitude and complexity of the information contained in the consistency determination.

(c) Final Federal agency action shall not be taken sooner than 90 days from the receipt by the State agency of the consistency determination unless the state concurs or concurrence is presumed, pursuant to paragraphs (a) and (b) of this section, with the activity, or unless both the Federal agency and the State agency agree to an alternative period.

(d) *Time limits on concurrences.* A State agency cannot unilaterally place a time limit on its concurrence. If a State agency believes that a time limit is necessary, states and Federal agencies may agree to a time limit. If there is no agreement, later phases of the activity that will have effects not evaluated at the time of the original consistency determination will require either a new consistency determination or a phased review under § 930.36(c) of this subpart.

(e) *State processing fees.* The Act does not require Federal agencies to pay state processing fees. State agencies shall not

assess a Federal agency with a fee to process the Federal agency's consistency determination unless payment of such fees is required by other federal law or otherwise agreed to by the Federal agency and allowed by the Comptroller General of the United States. In no case may a State agency stay the consistency timeclock or base its objection on the failure of a Federal agency to pay a fee.

§ 930.42 Public participation.

(a) State coastal management programs shall provide for public participation in the State agency's review of consistency determinations. Public participation, at a minimum, shall consist of public notice in the area(s) of the coastal zone likely to be affected by the activity, as determined by the State agency.

(b) *Timing of public notice.* States shall provide timely public notice after the consistency determination has been received by the State agency, except in cases where earlier public notice on the consistency determination by the Federal agency or the State agency meets the requirements of this section. A public comment period shall be provided by the state sufficient to give the public an opportunity to develop and provide comments on whether the project is consistent with management program enforceable policies and still allow the State agency to issue its concurrence or objection within the 60 day state response period.

(c) *Content of public notice.* The public notice shall:

(1) Specify that the proposed activity is subject to review for consistency with the enforceable policies of the state coastal management program;

(2) Provide sufficient information to serve as a basis for comment;

(3) Specify a source for additional information; and

(4) Specify a contact for submitting comments to the State agency.

(d) Procedural options that may be used by the State agency for issuance of public notice include, but are not limited to, public notice through an official state gazette, a local newspaper serving areas of coastal zone likely to be affected by the activity, individual state mailings, and public notice through a state coastal management newsletter. States shall not require that the Federal agency provide public notice.

§ 930.43 State agency objection.

(a) In the event the State agency objects to the Federal agency's consistency determination, the State agency shall accompany its response to the Federal agency with its reasons for the objection and supporting information. The State agency response must describe:

(1) How the proposed activity will be inconsistent with specific enforceable policies of the management program; and

(2) The specific enforceable policies (including citations);

(3) The State agency should also describe alternative measures (if they exist) which, if adopted by the Federal agency, would allow the activity to proceed in a manner consistent to the maximum extent practicable with the enforceable policies of the management program. Failure to describe alternatives does not affect the validity of the State agency's objection.

(b) If the State agency's objection is based upon a finding that the Federal agency has failed to supply sufficient information the State agency's response must describe the nature of the information requested and the necessity of having such information to determine the consistency of the Federal agency activity with the enforceable policies of the management program.

(c) State agencies shall send to the Director a copy of objections to Federal agency consistency determinations.

(d) In the event of an objection, Federal and State agencies should use the remaining portion of the 90-day notice period (*see* § 930.36(b)) to attempt to resolve their differences. If resolution has not been reached at the end of the 90-day period Federal agencies should use the dispute resolution mechanisms of this part and postpone final federal action until the problems have been resolved. At the end of the 90-day period the Federal agency shall not proceed with the activity over a State agency's objection unless consistency with the enforceable policies of the management program cannot be achieved under the "consistent to the maximum extent practicable" standard described in § 930.32, and the Federal agency clearly describes, in writing, to the State agency the legal impediments to full consistency (*see* § 930.32(a)). In cases where the Federal agency asserts that it is fully consistent with the enforceable policies of the management program, but the State agency asserts that the Federal agency is not fully consistent, the Federal agency shall be consistent to the maximum extent practicable with the State agency's interpretation, pursuant to §§ 930.11(h) and 930.32. If a Federal agency decides to proceed with a Federal agency activity that is consistent to the maximum extent practicable, but is objected to by a State agency or follow an alternative suggested by the State agency, the Federal agency shall notify the State agency of its decision to proceed before the project commences.

§ 930.44 Availability of mediation for disputes concerning proposed activities.

In the event of a serious disagreement between a Federal agency and a State agency regarding the consistency of a proposed federal activity affecting any coastal use or resource, either party may request the Secretarial mediation or OCRM informal negotiation services provided for in subpart G of this part.

§ 930.45 Availability of mediation for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor federally approved activities in order to make certain that such activities continue to be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the state's management program.

(b) The State agency may request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a Federal agency activity, including those activities where the State agency's concurrence was presumed, which was:

(1) Previously determined to be consistent to the maximum extent practicable with the state's management program, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent to the maximum extent practicable with the enforceable policies of the state's management program; or

(2) Previously determined not to be a Federal agency activity affecting any coastal use or resource, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, the activity affects any coastal use or resource and is not consistent to the maximum extent practicable with the enforceable policies of the state's management program. The State agency's request shall include supporting information and a proposal for recommended remedial action.

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that a serious disagreement exists, either party may request the Secretarial mediation or OCRM informal negotiation services provided for in subpart G of this part.

§ 930.46 Supplemental coordination for proposed activities.

(a) For proposed Federal agency activities that were previously determined by the State agency to be consistent with the state's management program, but which have not yet begun, Federal agencies shall further coordinate with the State agency and prepare a supplemental consistency determination if the proposed activity will affect any coastal use or resource substantially differently than originally described. Substantially different coastal effects are reasonably foreseeable if:

(1) The Federal agency makes substantial changes in the proposed activity that are relevant to state coastal management enforceable policies; or

(2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource.

(b) The State agency may notify the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the Federal agency to implement the proposed activity consistent with the enforceable policies of the state's management program. State agency notification under this paragraph (b) does not remove the requirement under paragraph (a) of this section for Federal agencies to notify State agencies.

Subpart D—Consistency for Activities Requiring a Federal License or Permit

§ 930.50 Objectives.

The provisions of this subpart are intended to assure that any required federal license or permit activity affecting any coastal use or resource is conducted in a manner consistent with approved management programs. The provisions of subpart I of this part are intended to supplement the provisions of this subpart for federal license or permit activities having interstate coastal effects.

§ 930.51 Federal license or permit.

(a) The term "federal license or permit" means any required authorization, certification, approval, lease, or other form of permission which any Federal agency is empowered to issue to an applicant. The term "lease," means a lease issued by a Federal agency to a non-federal entity that authorizes or approves the use of federal property for a non-federal activity and where no other federal license, permit, authorization or other form of approval, is required. The term lease does not include lease sales conducted by a Federal agency (*e.g.*, outer continental shelf (OCS) oil and gas lease sales conducted by the Minerals Management Service or oil and gas lease sales conducted by the Bureau of Land Management). Lease sales conducted by a Federal agency are Federal agency activities under subpart C of this part if coastal effects are reasonably foreseeable (subpart E of this part addresses activities described in detail in OCS plans).

(b) The term also includes the following types of renewals and major amendments which affect any coastal use or resource:

(1) Renewals and major amendments of federal license or permit activities not previously reviewed by the State agency;

(2) Renewals and major amendments of federal license or permit activities previously reviewed by the State agency which are filed after and are subject to management program changes not in existence at the time of original State agency review; and

(3) Renewals and major amendments of federal license or permit activities previously reviewed by the State agency which will cause coastal zone an effect on any coastal use or resource substantially different than those originally reviewed by the State agency.

(c) The term "major amendment" of a federal license or permit activity means any subsequent federal approval that the applicant is required to obtain for modification to the previously reviewed and approved activity and where the activity permitted by issuance of the subsequent approval will affect any coastal use or resource in a way that is substantially different than the description or understanding of effects at the time of the original activity.

(d) The term "renewals" of a federal license or permit activity means any subsequent re-issuance, re-approval or extension of an existing license or permit that the applicant is required to obtain for an activity described under paragraph (b) of this section.

(e) The determination of substantially different coastal effects under paragraphs (b)(3) and (c) of this section is made on a case-by-case basis by the State agency, Federal agency and applicant. The opinion of the State agency shall be accorded deference and the terms "major amendment," "renewals" and "substantially different" shall be construed broadly to ensure that the State agency has the opportunity to review activities and coastal effects not previously reviewed.

(f) This subpart applies to active applications. If an applicant withdraws its application to the Federal agency, then the consistency process is terminated. If the applicant reapplies to the Federal agency, then a new consistency review process will start. If a Federal agency stops or stays the Federal license or permit application process, then the consistency review period will be stopped or stayed for the same amount of time as for the Federal application process.

§ 930.52 Applicant.

The term "applicant" means any individual, public or private corporation, partnership, association, or other entity organized or existing under the laws of any nation, state, or any state, regional, or local government, who, following management program approval, either files an application for a required individual federal license or permit, or who files a consistency certification for a required general federal license or permit under § 930.31(e) to conduct an activity affecting any coastal use or resource. The term "applicant" does not include Federal agencies applying for federal licenses or permits. Federal agency activities requiring federal licenses or permits are subject to subpart C of this part.

§ 930.53 Listed federal license or permit activities.

(a) State agencies shall develop a list of federal license or permit activities which affect any coastal use or resource, including reasonably foreseeable effects, and which the State agency wishes to review for consistency with the management program. The list shall be included as part of the management program, and the federal license or permit activities shall be described in terms of the specific licenses or permits involved (*e.g.*, Corps of Engineers 404 permits, Coast Guard bridge permits). In the event the State agency chooses to review federal license or permit activities, with reasonably foreseeable coastal effects, outside of the coastal zone, it must generally describe the geographic location of such activities.

(1) The geographic location description should encompass areas outside of the coastal zone where coastal effects from federal license or permit activities are reasonably foreseeable. The State agency should exclude geographic areas outside of the

coastal zone where coastal effects are not reasonably foreseeable. Listed activities may have different geographic location descriptions, depending on the nature of the activity and its coastal effects. For example, the geographic location for activities affecting water resources or uses could be described by shared water bodies, river basins, boundaries defined under the state's coastal nonpoint pollution control program, or other ecologically identifiable areas. Federal lands located within the boundaries of a state's coastal zone are automatically included within the geographic location description; State agencies do not have to describe these areas. State agencies do have to describe the geographic location of listed activities occurring on federal lands located beyond the boundaries of a state's coastal zone.

(2) For listed activities occurring outside of the coastal zone for which a state has not generally described the geographic location of review, states must follow the conditions for review of unlisted activities under § 930.54 of this subpart.

(b) *General concurrences for minor activities.* To avoid repeated review of minor federal license or permit activities which, while individually inconsequential, cumulatively affect any coastal use or resource, the State agency, after developing conditions allowing concurrence for such activities, may issue a general public notice (*see* § 930.61) and general concurrence allowing similar minor work in the same geographic area to proceed without prior State agency review. In such cases, the State agency must set forth in the management program license and permit list the minor federal license or permit activities and the relevant conditions which are covered by the general concurrence. Minor federal license or permit activities which satisfy the conditions of the general concurrence are not subject to the consistency certification requirement of this subpart. Except in cases where the State agency indicates otherwise, copies of federal license or permit applications for activities subject to a general concurrence must be sent by the applicant to the State agency to allow the State agency to monitor adherence to the conditions required by such concurrence. Confidential and proprietary material within such applications may be deleted.

(c) The license and permit list may be amended by the State agency following consultation with the affected Federal agency and approval by the Director pursuant to the program change requirements found at 15 CFR part 923, subpart H.

(1) Consultation with the affected Federal agency means, at least 60 days prior to submitting a program change request to OCRM, a State agency shall notify in writing the relevant regional or field Federal agency staff and the head of the affected Federal agency, and request comments on the listing change. The notification should describe the proposed change and identify the regional Federal agency staff the state has contacted for consultation.

(2) A state must include in its program change request to OCRM a description of any comments received from the affected Federal agency.

(d) No federal license or permit described on an approved list shall be issued by a Federal agency until the requirements of this subpart have been satisfied. Federal agencies shall inform applicants for listed licenses or permits of the requirements of this subpart.

§ 930.54 Unlisted federal license or permit activities.

(a)(1) With the assistance of Federal agencies, State agencies should monitor unlisted federal license or permit activities (e.g., by use of intergovernmental review process established pursuant to E.O. 12372, review of NEPA documents, **Federal Register** notices). State agencies shall notify Federal agencies, applicants, and the Director of unlisted activities affecting any coastal use or resource which require State agency review within 30 days from notice of the license or permit application, otherwise the State agency waives its right to review the unlisted activity. The waiver does not apply in cases where the State agency does not receive notice of the federal license or permit application.

(2) Federal agencies or applicants should provide written notice of unlisted activities to the State agency. Notice to the State agency may be constructive if notice is published in an official federal public notification document or through an official state clearinghouse (*i.e.*, the **Federal Register**, draft or final NEPA EISs that are submitted to the State agency, or a state's intergovernmental review process). The notice, whether actual or constructive, shall contain sufficient information for the State agency to learn of the activity, determine the activity's geographic location, and determine whether coastal effects are reasonably foreseeable.

(b) The State agency's notification shall also request the Director's approval to review the unlisted activity and shall contain an analysis that supports the State agency's assertion that coastal effects are reasonably foreseeable. Following State agency notification to the Federal agency, applicant and the Director, the Federal agency shall not issue the license or permit until the requirements of this subpart have been satisfied, unless the Director disapproves the State agency's request to review the activity.

(c) The Federal agency and the applicant have 15 days from receipt of the State agency notice to provide comments to the Director regarding the State agency's request to review the activity. The sole basis for the Director's approval or disapproval of the State agency's request will relate to whether the proposed activity's coastal effects are reasonably foreseeable. The Director shall issue a decision, with supporting comments, to the State agency, Federal agency and applicant within 30 days from receipt of the State agency notice. The Director may extend the decision deadline beyond 30 days due to the complexity of the issues or to address the needs of the State agency, the Federal agency, or the applicant. The Director shall notify the relevant parties of the expected length of an extension.

(d) If the Director disapproves the State agency's request, the Federal agency may approve the license or permit application and the applicant need not comply with the requirements of this subpart. If the Director approves the State agency's request, the Federal agency and applicant must comply with the consistency certification procedures of this subpart.

(e) Following an approval by the Director, the applicant shall amend the federal application by including a consistency certification and shall provide the State agency with a copy of the certification along with necessary data and information (*see* §§ 930.58, 930.62 and 930.63). For the purposes of this section, concurrence by the State agency shall be conclusively presumed in the absence of a State agency objection within six months from the original Federal agency notice to the State agency (*see* paragraph (a) of this section) or within three months from receipt of the applicant's consistency certification and necessary data and information, whichever period terminates last.

(f) The unlisted activity procedures in this section are provided to ensure that State agencies are afforded an opportunity to review federal license or permit activities with reasonably foreseeable coastal effects. Prior to bringing the issue before the Director, the concerned parties should discuss coastal effects and consistency. The

applicant can avoid delay by simply seeking the State agency's expeditious concurrence rather than waiting for the Director's decision. If an applicant, of its own accord or after negotiations with the State agency, provides a consistency certification and necessary data and information to the State agency, the review shall be deemed to have received the Director's approval, and all of the provisions of this subpart shall apply and the State agency need not request the Director's approval. If an applicant for an unlisted activity has not subjected itself to the consistency process within the 30 day notification period contained in paragraph (a) of this section, the State agency must adhere to the unlisted activity review requirements of this section to preserve its right to review the activity.

§ 930.56 Availability of mediation for license or permit disputes.

In the event of a serious disagreement between a Federal and State agency regarding whether a listed or unlisted federal license or permit activity is subject to the federal consistency requirement, either party may request the informal negotiation or Secretarial mediation services provided for in subpart G of this part; notice shall be provided to the applicant. The existence of a serious disagreement will not relieve the Federal agency from the responsibility for withholding approval of a license or permit application for an activity on an approved management program list (*see* § 930.53) or individually approved by the Director (*see* § 930.54) pending satisfaction of the requirements of this subpart. Similarly, the existence of a serious disagreement will not prevent the Federal agency from approving a license or permit activity which has not received Director approval.

§ 930.56 State agency guidance and assistance to applicants.

As a preliminary matter, any applicant for a federal license or permit selected for review by a State agency should obtain the views and assistance of the State agency regarding the means for ensuring that the proposed activity will be conducted in a manner consistent with the state's management program. As part of its assistance efforts, the State agency shall make available for public inspection copies of the management program document. Upon request by the applicant, the State agency shall identify any enforceable policies applicable to the proposed activity, based upon the information submitted to the State agency.

§ 930.57 Consistency certifications.

(a) Following appropriate coordination and cooperation with the State agency, all applicants for required federal licenses or permits subject to State agency review shall provide in the application to the federal licensing or permitting agency a certification that the proposed activity complies with and will be conducted in a manner consistent with the state's approved management program. At the same time, the applicant shall furnish to the State agency a copy of the certification and necessary data and information.

(b) The applicant's consistency certification shall be in the following form: "The proposed activity complies with the enforceable policies of (name of state) approved coastal management program and will be conducted in a manner consistent with such program."

§ 930.58 Necessary data and information.

(a) The applicant shall furnish the State agency with necessary data and information along with the consistency certification. Such information and data shall include the following:

(1) A detailed description of the proposed activity, its associated facilities, the coastal effects, and comprehensive data and information sufficient to support the applicant's consistency certification. Maps, diagrams, technical data and other relevant material shall be submitted when a written description alone will not adequately describe the proposal (a copy of the federal application and all supporting material provided to the Federal agency should also be submitted to the State agency);

(2) Information specifically identified in the state's management program as required necessary data and information for an applicant's consistency certification. The management program as originally approved or amended (pursuant to 15 CFR part 923, subpart H) may describe data and information necessary to assess the consistency of federal license or permit activities. Necessary data and information may include state or local government permits or permit applications which are required for the proposed activity. Required data and information may not include confidential and proprietary material; and

(3) An evaluation that includes a set of findings relating the coastal effects of the proposal and its associated facilities to the relevant enforceable policies of the management program. Applicants shall be consistent with the enforceable policies of the management program. Applicants shall demonstrate adequate consideration of policies which are in the nature of recommendations. Applicants need not make findings with respect to coastal effects for which the management program does not contain enforceable or recommended policies.

(b) At the request of the applicant, interested parties who have access to information and data required by this section may provide the State agency with all or part of the material required. Furthermore, upon request by the applicant, the State agency shall provide assistance for developing the assessment and findings required by this section.

(c) When satisfied that adequate protection against public disclosure exists, applicants should provide the State agency with confidential and proprietary information which the State agency maintains is necessary to make a reasoned decision on the consistency of the proposal. State agency requests for such information must be related to the necessity of having such information to assess adequately the coastal effects of the proposal.

§ 930.59 Multiple permit review.

(a) Applicants shall, to the extent practicable, consolidate related federal license or permit activities affecting any coastal use or resource for State agency review. State agencies shall, to the extent practicable, provide applicants with a "one-stop" multiple permit review for consolidated permits to minimize duplication of effort and to avoid unnecessary delays.

(b) A State agency objection to one or more of the license or permit activities submitted for consolidated review shall not prevent the applicant from receiving Federal agency approval for those license or permit activities found to be consistent with the management program.

§ 930.60 Commencement of State agency review.

(a) Except as provided in § 930.54(e) and paragraph (a)(1) of this section, State agency review of an applicant's consistency certification begins at the time the State agency receives a copy of the consistency certification, and the information and data required pursuant to § 930.58.

(1) If an applicant fails to submit a consistency certification in accordance with § 930.57, or fails to submit necessary data and information required pursuant to § 930.58, the State agency shall, within 30 days of receipt of the incomplete information, notify the applicant and the Federal agency of the certification or information deficiencies, and that:

(i) The State agency's review has not yet begun, and that its review will

commence once the necessary certification or information deficiencies have been corrected; or

(ii) The State agency's review has begun, and that the certification or information deficiencies must be cured by the applicant during the state's review period.

(2) Under paragraph (a)(1) of this section, State agencies shall notify the applicant and the Federal agency, within 30 days of receipt of the completed certification and information, of the date when necessary certification or information deficiencies have been corrected, and that the State agency's consistency review commenced on the date that the complete certification and necessary data and information were received by the State agency.

(3) State agencies and applicants (and persons under subpart E of this part) may mutually agree to stay the consistency timeclock or extend the six-month review period. Such an agreement shall be in writing and shall be provided to the Federal agency. A Federal agency shall not presume State agency concurrence with an activity where such an agreement exists or where a State agency's review period, under paragraph (a)(1)(i) of this section, has not begun.

(b) A State agency request for information or data in addition to that required by § 930.58 shall not extend the date of commencement of State agency review.

§ 930.61 Public participation.

(a) Following receipt of the material described in § 930.60 the State agency shall ensure timely public notice of the proposed activity. Public notice shall be provided in the area(s) of the coastal zone likely to be affected by the proposed activity, as determined by the State agency. At the discretion of the State agency, public participation may include one or more public hearings. State agencies should restrict the period of public notice, receipt of comments, hearing proceedings and final decision-making to the minimum time necessary to inform the public, obtain sufficient comment, and develop a reasonable decision on the matter.

(b) *Content of public notice.* The public notice shall:

(1) Specify that the proposed activity is subject to review for consistency under the policies of the state management program;

(2) Provide sufficient information to serve as a basis for comment;

(3) Specify a source for additional information; and

(4) Specify a contact for submitting comments to the state coastal management program.

(c) Procedural options that may be used by the State agency for issuance of public notice include, but are not limited to, public notice through an official state gazette, a local newspaper serving areas of the coastal zone likely to be affected by the activity, individual state mailings, and public notice through a state coastal management newsletter. The State agency may require the applicant to provide the public notice. State agencies shall not require that the Federal agency provide public notice. The State agency may rely upon the public notice provided by the Federal agency reviewing the application for the federal license or permit (*e.g.*, notice of availability of NEPA documents) if such notice satisfies the minimum requirements set forth in paragraphs (a) and (b) of this section.

(d) Federal and State agencies are encouraged to issue joint public notices, and hold joint public hearings, whenever possible to minimize duplication of effort and to avoid unnecessary delays.

§ 930.62 State agency concurrence with a consistency certification.

(a) At the earliest practicable time, the State agency shall notify the Federal agency and the applicant whether the State agency concurs with or objects to a consistency certification. The State agency may issue a general concurrence for minor activities (see § 930.53(b)). Concurrence by the State agency shall be conclusively presumed if the State agency's response is not postmarked within six months following commencement of State agency review.

(b) If the State agency has not issued a decision within three months following commencement of State agency review, it shall notify the applicant and the Federal agency of the status of the matter and the basis for further delay.

(c) If the State agency issues a concurrence or is conclusively presumed to concur with the applicant's consistency certification, the Federal agency may approve the federal license or permit application. Notwithstanding State agency concurrence with a consistency certification, the federal permitting agency may deny approval of the federal license or permit application. Federal agencies should not delay processing applications pending receipt of a State agency's concurrence. In the event a Federal agency determines that an application will not be approved, it shall immediately notify the applicant and the State agency.

(d) During the period when the State agency is reviewing the consistency certification, the applicant and the State agency should attempt, if necessary, to agree upon conditions, which, if met by the applicant, would permit State agency concurrence. The parties shall also consult with the Federal agency responsible for approving the federal license or permit to ensure that proposed conditions satisfy federal as well as state management program requirements (see also § 930.4).

§ 930.63 State agency objection to a consistency certification.

(a) If the State agency objects to the applicant's consistency certification within six months following commencement of review, it shall notify the applicant, Federal agency and Director of the objection. A State agency may assert alternative bases for its objection, as described in paragraphs (b) and (c) of this section.

(b) State agency objections that are based on sufficient information to evaluate the applicant's consistency certification shall describe how the proposed activity is inconsistent with specific enforceable policies of the management program. The objection may describe alternative measures (if they exist) which, if adopted by the applicant, may permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the management program.

(c) A State agency objection may be based upon a determination that the applicant has failed, following a written State agency request, to supply the information required pursuant to § 930.58 or other information necessary for the State agency to determine consistency. If the State agency objects on the grounds of insufficient information, the objection shall describe the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the management program. The objection may describe alternative measures (if they exist) which, if adopted by the applicant, may permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the management program.

(d) *Alternatives.* If a State agency proposes an alternative(s) in its objection letter, the alternative(s) shall be described with sufficient specificity to allow the applicant to determine whether to, in consultation with the State agency: adopt an alternative; abandon the project; or file an appeal

under subpart H. Application of the specificity requirement demands a case specific approach. More complicated activities or alternatives generally need more information than less-complicated activities or alternatives. *See* § 930.121(d) for further details regarding alternatives for appeals under subpart H of this part.

(e) A State agency objection shall include a statement to the following effect:

> Pursuant to 15 CFR part 930, subpart H, and within 30 days from receipt of this letter, you may request that the Secretary of Commerce override this objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the [Name of state] coastal management program and the federal permitting or licensing agency. The Secretary may collect fees from you for administering and processing your request.

§ 930.64 Federal permitting agency responsibility.

Following receipt of a State agency objection to a consistency certification, the Federal agency shall not issue the federal license or permit except as provided in subpart H of this part.

§ 930.65 Remedial action for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor federal license or permit activities in order to make certain that such activities continue to conform to both federal and state requirements.

(b) The State agency shall notify the relevant Federal agency representative for the area involved of any federal license or permit activity which the State agency claims was:

(1) Previously determined to be consistent with the state's management program, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent with the state's management program; or

(2) Previously determined not to be an activity affecting any coastal use or resource, but which the State agency later maintains is being conducted or is having coastal effects substantially different than originally described and, as a result, the activity affects any coastal use or resource in a manner inconsistent with the state's management program.

(c) The State agency notification shall include:

(1) A description of the activity involved and the alleged lack of compliance with the state's management program;

(2) Supporting information; and

(3) A request for appropriate remedial action. A copy of the request shall be sent to the applicant and the Director. Remedial actions shall be linked to coastal effects substantially different than originally described.

(d) If, after 30 days following a request for remedial action, the State agency still maintains that the applicant is failing to comply substantially with the state's management program, the governor or State agency may file a written objection with the Director. If the Director finds that the applicant is conducting an activity that is substantially different from the approved activity, the applicant shall submit an amended or new consistency certification and supporting information to the Federal agency and to the State agency, or comply with the originally approved certification.

(e) An applicant shall be found to be conducting an activity substantially different from the approved activity if the State agency claims and the Director finds that the activity affects any coastal use or resource substantially different than originally described by the applicant and, as a result, the activity is no longer being conducted in a manner consistent with the state's management program. The Director may make a finding that an applicant is conducting an activity substantially different from the approved activity only after providing 15 days for the applicant and the Federal agency to review the State agency's objection and to submit comments for the Director's consideration.

§ 930.66 Supplemental coordination for proposed activities.

(a) For federal license or permit proposed activities that were previously determined by the State agency to be consistent with the state's management program, but which have not yet begun, applicants shall further coordinate with the State agency and prepare a supplemental consistency certification if the proposed activity will affect any coastal use or resource substantially different than originally described. Substantially different coastal effects are reasonably foreseeable if:

(1) The applicant makes substantial changes in the proposed activity that are relevant to state coastal management enforceable policies; or (2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource.

(b) The State agency may notify the applicant, the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the applicant to implement the proposed activity consistent with the state's management program. State agency notification under paragraph (b) of this section does not remove the requirement under paragraph (a) of this section for applicants to notify State agencies.

Subpart E—Consistency for Outer Continental Shelf (OCS) Exploration, Development and Production Activities

§ 930.70 Objectives.

The provisions of this subpart are intended to assure that all federal license or permit activities described in detail in OCS plans and which affect any coastal use or resource are conducted in a manner consistent with approved state coastal management programs.

§ 930.71 Federal license or permit activity described in detail.

The term "federal license or permit activity described in detail" means any activity requiring a federal license or permit, as defined in § 930.51, which the Secretary of the Interior determines must be described in detail within an OCS plan.

§ 930.72 Person.

The term "person" means any individual, corporation, partnership, association, or other entity organized or existing under the laws of any state; the federal government; any state, regional, or local government; or any entity of such federal, state, regional or local government, who submits to the Secretary of the Interior, or designee following management program approval, an OCS plan which describes in detail federal license or permit activities.

§ 930.73 OCS plan.

(a) The term "OCS plan" means any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*), and the regulations under that Act, which is submitted to the

Secretary of the Interior or designee following management program approval and which describes in detail federal license or permit activities.

(b) The requirements of this subpart do not apply to federal license or permit applications filed after management program approval for activities described in detail in OCS plans approved by the Secretary of the Interior or designee prior to management program approval.

§ 930.74 OCS activities subject to State agency review.

Except for states which do not anticipate coastal effects resulting from OCS activities, management program lists required pursuant to § 930.53 shall include a reference to OCS plans which describe in detail federal license or permit activities affecting any coastal use or resource.

§ 930.75 State agency assistance to persons.

As a preliminary matter, any person intending to submit to the Secretary of the Interior and OCS plan which describes in detail federal license or permit activities affecting any coastal use or resource should obtain the views and assistance of the State agency regarding the means for ensuring that such activities will be conducted in a manner consistent with the state's management program. As part of its assistance efforts, the State agency shall make available for inspection copies of the management program document. Upon request by such persons, the State agency shall identify any enforceable policies applicable to the proposed activities, based upon the information submitted to the State agency.

§ 930.76 Submission of an OCS plan, necessary data and information and consistency certification.

Any person submitting any OCS plan to the Secretary of the Interior or designee shall:

(a) Identify all activities described in detail in the plan which require a federal license or permit and which will have reasonably foreseeable coastal effects;

(b) Submit necessary data and information pursuant to § 930.58;

(c) When satisfied that the proposed activities meet the federal consistency requirements of this subpart, provide the Secretary of the Interior or designee with a consistency certification and necessary data and information. The Secretary of the Interior or designee shall furnish the State agency with a copy of the OCS plan (excluding proprietary information), necessary data and information and consistency certification.

(d) The person's consistency certification shall be in the following form:

> The proposed activities described in detail in this plan comply with (name of state(s)) approved coastal management program(s) and will be conducted in a manner consistent with such program(s).

§ 930.77 Commencement of State agency review and public notice.

(a)(1) Except as provided in § 930.60(a), State agency review of the person's consistency certification begins at the time the State agency receives a copy of the OCS plan, consistency certification, and required necessary data and information. A State agency request for information and data in addition to that required by § 930.76 shall not extend the date of commencement of State agency review.

(2) To assess consistency, the State agency shall use the information submitted pursuant to the Department of the Interior's OCS operating regulations (*see* 30 CFR 250.33 and 250.34) and OCS information program (*see* 30 CFR part 252) regulations and necessary data and information (*see* 15 CFR 930.58).

(b) Following receipt of the material described in paragraph (a) of this section, the State agency shall ensure timely public notice of the proposed activities in accordance with § 930.61.

§ 930.78 State agency concurrence or objection.

(a) At the earliest practicable time, the State agency shall notify in writing the person, the Secretary of the Interior or designee and the Director of its concurrence with or objection to the consistency certification. State agencies should restrict the period of public notice, receipt of comments, hearing proceedings and final decision-making to the minimum time necessary to inform the public, obtain sufficient comment, and develop a reasonable decision on the matter. If the State agency has not issued a decision within three months following commencement of State agency review, it shall notify the person, the Secretary of the Interior or designee and the Director of the status of review and the basis for further delay in issuing a final decision. Notice shall be in written form and postmarked no later than three months following the commencement of the State agency's review. Concurrence by the State agency shall be conclusively presumed if the notification required by this subparagraph is not provided.

(b) Concurrence by the State agency shall be conclusively presumed if the State agency's response to the consistency certification is not postmarked within six months following commencement of State agency review.

(c) If the State agency objects to one or more of the federal license or permit activities described in detail in the OCS plan, it must provide a separate discussion for each objection in accordance with § 930.63.

§ 930.79 Effect of State agency concurrence.

(a) If the State agency issues a concurrence or is conclusively presumed to concur with the person's consistency certification, the person will not be required to submit additional consistency certifications and supporting information for State agency review at the time federal applications are actually filed for the federal licenses or permits to which such concurrence applies, unless the activities, or effects from the activities on any coastal use or resource, have substantially changed. If the person's request for a federal license or permit proposes activities which have substantially changed from the activities described in detail in the OCS plan, the person shall submit an amended plan. The amended plan shall be submitted to the Secretary of the Interior or designee along with a consistency certification and necessary data and information pursuant to § 930.58. The determination of whether an activity or the coastal effects of an activity have substantially changed is made on a case-by-case basis by the State agency, MMS and the person. The opinion of the State agency shall be accorded deference and "substantially changed" shall be construed broadly to ensure that the State agency has the opportunity to review substantially different coastal effects not previously reviewed.

(b) Unless the State agency indicates otherwise, copies of federal license or permit applications for activities described in detail in an OCS plan which has received State agency concurrence shall be sent by the person to the State agency to allow the State agency to monitor the activities. Confidential and proprietary material within such applications may be deleted.

§ 930.80 Federal permitting agency responsibility.

Following receipt of a State agency objection to a consistency certification related to federal license or permit activities described in detail in an OCS plan, the Federal agency shall not issue

any of such licenses or permits except as provided in subpart H of this part.

§ 930.81 Multiple permit review.

(a) A person submitting a consistency certification for federal license or permit activities described in detail in an OCS plan is strongly encouraged to work with other Federal agencies in an effort to include, for consolidated State agency review, consistency certifications and supporting data and information applicable to OCS-related federal license or permit activities affecting any coastal use or resource which are not required to be described in detail in OCS plans but which are subject to State agency consistency review (*e.g.*, Corps of Engineer permits for the placement of structures on the OCS and for dredging and the transportation of dredged material, Environmental Protection Agency air and water quality permits for offshore operations and onshore support and processing facilities). In the event the person does not consolidate such OCS-related permit activities with the State agency's review of the OCS plan, such activities will remain subject to individual State agency review under the requirements of subpart D of this part.

(b) A State agency objection to one or more of the OCS-related federal license or permit activities submitted for consolidated review shall not prevent the person from receiving Federal agency approval:

(1) For those OCS-related license or permit activities found by the State agency to be consistent with the management program; and

(2) For the license or permit activities described in detail in the OCS plan provided the State agency concurs with the consistency certification for such plan. Similarly, a State agency objection to the consistency certification for an OCS plan shall not prevent the person from receiving Federal agency approval for those OCS-related license or permit activities determined by the State agency to be consistent with the management program.

§ 930.82 Amended OCS plans.

If the State agency objects to the person's OCS plan consistency certification, and/or if, pursuant to subpart H of this part, the Secretary does not determine that each of the objected to federal license or permit activities described in detail in such plan is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, and if the person still intends to conduct the activities described in the OCS plan, the person shall submit an amended plan to the Secretary of the Interior or designee and to the State agency along with a consistency certification and data and information necessary to support the amended consistency certification. The data and information shall specifically describe modifications made to the original OCS plan, and the manner in which such modifications will ensure that all of the proposed federal license or permit activities described in detail in the amended plan will be conducted in a manner consistent with the state's management program.

§ 930.83 Review of amended OCS plans; public notice.

After receipt of a copy of the amended OCS plan, consistency certification, and necessary data and information, State agency review shall begin. The requirements of §§ 930.77, 930.78, and 930.79, apply to the review of amended OCS plans, except that the applicable time period for purposes of concurrence by conclusive presumption shall be three months instead of six months.

§ 930.84 Continuing State agency objections.

If the State agency objects to the consistency certification for an amended OCS plan, the prohibition in § 930.80 against Federal agency approval of licenses or permits for activities described in detail in such a plan applies, further Secretarial review pursuant to subpart H of this part may take place, and the development of an additional amended OCS plan and consistency certification may be required pursuant to §§ 930.82 through 930.83.

§ 930.85 Failure to comply substantially with an approved OCS plan.

(a) The Department of the Interior and State agencies shall cooperate in their efforts to monitor federally licensed or permitted activities described in detail OCS plans to make certain that such activities continue to conform to both federal and state requirements.

(b) If a State agency claims that a person is failing substantially to comply with an approved OCS plan subject to the requirements of this subpart, and such failure allegedly involves the conduct of activities affecting any coastal use or resource in a manner that is not consistent with the approved management program, the State agency shall transmit its claim to the Minerals Management Service region involved. Such claim shall include a description of the specific activity involved and the alleged lack of compliance with the OCS plan, and a request for appropriate remedial action. A copy of the claim shall be sent to the person and the Director.

(c) If, after 30 days following a request for remedial action, the State agency still maintains that the person is failing to comply substantially with the OCS plan, the governor or State agency may file a written objection with the Director. If the Director finds that the person is failing to comply substantially with the OCS plan, the person shall submit an amended or new OCS plan along with a consistency certification and supporting information to the Secretary of the Interior or designee and to the State agency. Following such a finding by the Director the person shall comply with the originally approved OCS plan, or with interim orders issued jointly by the Director and the Minerals Management Service, pending approval of the amended or new OCS plan. Sections 930.82 through 930.84 shall apply to further State agency review of the consistency certification for the amended or new plan.

(d) A person shall be found to have failed substantially to comply with an approved OCS plan if the State agency claims and the Director finds that one or more of the activities described in detail in the OCS plan which affects any coastal use or resource are being conducted or are having an effect on any coastal use or resource substantially different than originally described by the person in the plan or accompanying information and, as a result, the activities are no longer being conducted in a manner consistent with the state's management program. The Director may make a finding that a person has failed substantially to comply with an approved OCS plan only after providing a reasonable opportunity for the person and the Secretary of the Interior to review the State agency's objection and to submit comments for the Director's consideration.

Subpart F—Consistency for Federal Assistance to State and Local Governments

§ 930.90 Objectives.

The provisions of this subpart are intended to assure that federal assistance to applicant agencies for activities affecting any coastal use or resource is granted only when such activities are consistent with approved coastal managements programs. The provisions of subpart I of this part are intended to supplement the provisions of this subpart for federal assistance activities having interstate coastal effects.

§ 930.91 Federal assistance.

The term "federal assistance" means assistance provided under a federal program to an applicant agency through grant or contractual arrangements, loans, subsidies, guarantees, insurance, or other form of financial aid.

§ 930.92 Applicant agency.

The term "applicant agency" means any unit of state or local government, or any related public entity such as a special purpose district, which, following management program approval, submits an application for federal assistance.

§ 930.93 Intergovernmental review process.

The term "intergovernmental review process" describes the procedures established by states pursuant to E.O. 12372, "Intergovernmental Review of Federal Programs," and implementing regulations of the review of federal financial assistance to applicant agencies.

§ 930.94 State review process for consistency.

(a) States with approved coastal management programs should review applications from applicant agencies for federal assistance in accordance with E.O. 12372 and implementing regulations.

(b) The applicant agency shall submit an application for federal assistance to the State agency for consistency review, through the intergovernmental review process or by direct submission to the State agency, for any proposed federal assistance activity that:

(1) Is listed in the management program and occurring within the coastal zone (*see* § 930.95(a)) or within a described geographic area outside of the coastal zone (*see* § 930.95(b)), or

(2) Will have reasonably foreseeable effects on any coastal use or resource.

(c) *Applicant agency evaluation.* The applicant agency shall provide to the State agency, in addition to the federal application, a brief evaluation on the relationship of the proposed activity and any reasonably foreseeable coastal effects to the enforceable policies of the state management program.

§ 930.95 Guidance provided by the State agency.

(a) State agencies should include within the management program a listing of specific types of federal assistance programs subject to a consistency review. Such a listing, and any amendments, will require prior State agency consultation with affected Federal agencies and approval by the Director as a program change.

(b) In the event the State agency chooses to review applications for federal assistance activities outside of the coastal zone but with reasonably foreseeable coastal effects, the State agency shall develop a federal assistance provision within the management program generally describing the geographic area (*e.g.*, coastal floodplains) within which federal assistance activities will be subject to review. This provision, and any refinements, will require prior State agency consultation with affected Federal agencies and approval by the Director as a program change. Listed activities may have different geographic location descriptions, depending on the nature of the activity and its effects on any coastal use or resource. For example, the geographic location for activities affecting water resources or uses could be described by shared water bodies, river basins, boundaries defined under the coastal nonpoint pollution control program, or other ecologically identifiable areas.

(c) The State agency shall provide copies of any federal assistance list or geographic provision, and any refinements, to Federal agencies and units of applicant agencies empowered to undertake federally assisted activities within the coastal zone or described geographic area.

(d) For review of unlisted federal assistance activities, the State agency shall follow the same procedures as it would follow for review of listed federal assistance activities outside of the coastal zone or the described geographic area (*see* § 930.98.)

§ 930.96 Consistency review.

(a)(1) If the State agency does not object to the proposed activity, the Federal agency may grant the federal assistance to the applicant agency. Notwithstanding State agency consistency approval for the proposed project, the Federal agency may deny assistance to the applicant agency. Federal agencies should not delay processing applications pending receipt of a State agency approval or objection. In the event a Federal agency determines that an application will not be approved, it shall immediately notify the applicant agency and the State agency.

(2) During the period when the State agency is reviewing the activity, the applicant agency and the State agency should attempt, if necessary, to agree upon conditions which, if met by the applicant agency, would permit State agency approval. The parties shall also consult with the Federal agency responsible for providing the federal assistance to ensure that proposed conditions satisfy federal requirements as well as state management program requirements.

(b) If the State agency objects to the proposed project, the State agency shall notify the applicant agency, Federal agency and the Director of the objection pursuant to § 930.63.

§ 930.97 Federal assisting agency responsibility.

Following receipt of a State agency objection, the Federal agency shall not approve assistance for the activity except as provided in subpart H of this part

§ 930.98 Federally assisted activities outside of the coastal zone or the described geographic area.

(a) State agencies should monitor proposed federal assistance activities outside of the coastal zone or the described geographic area (e.g., by use of the intergovernmental review process, review of NEPA documents **Federal Register**) and shall immediately notify applicant agencies, Federal agencies, and any other agency or office which may be identified by the state in its intergovernmental review process pursuant to E.O. 12372 of proposed activities which will have reasonably foreseeable coastal effects and which the State agency is reviewing for consistency with the management program. Notification shall also be sent by the State agency to the Director. The Director, in his/her discretion, may review the State agency's decision to review the activity. The Director may disapprove the State agency's decision to review the activity only if the Director finds that the activity will not affect any coastal use or resource. The Director shall be guided by the provisions in § 930.54(c). For purposes of this subpart, State agencies must inform the parties of objections within the time period permitted under the intergovernmental review process, otherwise the State agency waives its right to object to the proposed activity.

(b) If within the permitted time period the State agency notifies the Federal agency of its objection to a proposed Federal assistance activity, the Federal agency shall not provide assistance to the applicant agency except as provided in subpart H of this part.

§ 930.99 Availability of mediation for federal assistance disputes.

In the event of a serious disagreement between a Federal agency and the State agency regarding whether a federal assistance activity is subject to the consistency requirement either party may request the informal negotiation or

Secretarial mediation services provided for in subpart G of this part. The existence of a serious disagreement will not relieve the Federal agency from the responsibility for withholding federal assistance for the activity pending satisfaction of the requirements of this subpart, except in cases where the Director has disapproved a State agency decision to review an activity.

§ 930.100 Remedial action for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor federal assistance activities in order to make certain that such activities continue to conform to both federal and state requirements.

(b) The State agency shall notify the relevant Federal agency representative for the area involved of any federal assistance activity which the State agency claims was:

(1) Previously determined to be consistent with the state's management program, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent with the state management program, or

(2) Previously determined not to be a project affecting any coastal use or resource, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result the project affects a coastal use or resource in a manner inconsistent with the state's management program.

(c) The State agency notification shall include:

(1) A description of the activity involved and the alleged lack of compliance with the state's management program;

(2) Supporting information; and

(3) A request for appropriate remedial action. A copy of the request shall be sent to the applicant agency and the Director.

(d) If, after 30 days following a request for remedial action, the State agency still maintains that the applicant agency is failing to comply substantially with the state's management program, the State agency may file a written objection with the Director. If the Director finds that the applicant agency is conducting an activity that is substantially different from the approved activity, the State agency may reinitiate its review of the activity, or the applicant agency may conduct the activity as it was originally approved.

(e) An applicant agency shall be found to be conducting an activity substantially different from the approved activity if the State agency claims and the Director finds that the activity affects any coastal use or resource substantially different than originally determined by the State agency and, as a result, the activity is no longer being conducted in a manner consistent with the state's management program. The Director may make a finding that an applicant agency is conducting an activity substantially different from the approved activity only after providing a reasonable opportunity for the applicant agency and the Federal agency to review the State agency's objection and to submit comments for the Director's consideration.

§ 930.101 Supplemental coordination for proposed activities.

(a) For federal assistance activities that were previously determined by the State agency to be consistent with the state's management program, but which have not yet begun, the applicant agency shall further coordinate with the State agency if the proposed activity will affect any coastal use or resource substantially different than originally described. Substantially different coastal effects are reasonably foreseeable if:

(1) The applicant agency makes substantial changes in the proposed activity that are relevant to state management program enforceable policies; or

(2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource.

(b) The State agency may notify the applicant agency, the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the applicant agency to implement the proposed activity consistent with the state's management program. State agency notification under paragraph (b) of this section does not remove the requirement under paragraph (a) of this section for applicant agencies to notify State agencies.

Subpart G—Secretarial Mediation

§ 930.110 Objectives.

The purpose of this subpart is to describe negotiation and mediation procedures which Federal and State agencies may use to attempt to resolve serious disagreements which arise during the administration of approved management programs.

§ 930.111 Informal negotiations.

The availability of mediation does not preclude use by the parties of alternative means for resolving their disagreement. In the event a serious disagreement arises, the parties are strongly encouraged to make every effort to resolve the disagreement informally. OCRM shall be available to assist the parties in these efforts.

§ 930.112 Request for mediation.

(a) The Secretary or other head of a Federal agency, or the Governor or the State agency may notify the Secretary in writing of the existence of a serious disagreement, and may request that the Secretary seek to mediate the disagreement. A copy of the written request must be sent to the agency with which the requesting agency disagrees, to the Assistant Administrator, and to the Director.

(b) Within 15 days following receipt of a request for mediation the disagreeing agency shall transmit a written response to the Secretary, and to the agency requesting mediation, indicating whether it wishes to participate in the mediation process. If the disagreeing agency declines the offer to enter into mediation efforts, it must indicate the basis for its refusal in its response. Upon receipt of a refusal to participate in mediation efforts, the Secretary shall seek to persuade the disagreeing agency to reconsider its decision and enter into mediation efforts. If the disagreeing agencies do not all agree to participate, the Secretary will cease efforts to provide mediation assistance.

§ 930.113 Public hearings.

(a) If the parties agree to the mediation process, the Secretary shall appoint a hearing officer who may, if necessary, schedule a hearing in the local area concerned. The hearing officer shall give the parties at least 30 days notice of the time and place set for the hearing and shall provide timely public notice of the hearing.

(b) At the time public notice is provided, the Federal and State agencies shall provide the public with convenient access to public data and information related to the serious disagreement.

(c) Hearings shall be informal and shall be conducted by the hearing officer with the objective of securing in a timely fashion information related to the disagreement. The Federal and State agencies, as well as other interested parties, may offer information at the hearing subject to the hearing officer's supervision as to the extent and manner of presentation. A party may also provide the hearing officer with written comments. Hearings will be recorded and the hearing officer shall provide transcripts and copies of written information offered at the hearing to the Federal and State agency parties. The public may inspect and copy the transcripts and written information provided to these agencies.

§ 930.114 Secretarial mediation efforts.

(a) If a hearing is held, the hearing officer shall transmit the hearing record to the Secretary. Upon receipt of the hearing record, the Secretary shall schedule a mediation conference to be attended by representatives from the Office of the Secretary, the disagreeing Federal and State agencies, and any other interested parties whose participation is deemed necessary by the Secretary. The Secretary shall provide the parties at least 10 days notice of the time and place set for the mediation conference.

(b) Secretarial mediation efforts shall last only so long as the Federal and State agencies agree to participate. The Secretary shall confer with the Executive Office of the President, as necessary, during the mediation process.

§ 930.115 Termination of mediation.

Mediation shall terminate:

(a) At any time the Federal and State agencies agree to a resolution of the serious disagreement,

(b) If one of the agencies withdraws from mediation,

(c) In the event the agencies fail to reach a resolution of the disagreement within 15 days following Secretarial conference efforts, and the agencies do not agree to extend mediation beyond that period, or

(d) For other good cause.

§ 930.116 Judicial review.

The availability of the mediation services provided in this subpart is not intended expressly or implicitly to limit the parties' use of alternate forums to resolve disputes. Specifically, judicial review where otherwise available by law may be sought by any party to a serious disagreement without first having exhausted the mediation process provided for in this subpart.

Subpart H—Appeal to the Secretary for Review Related to the Objectives or Purposes of the Act and National Security Interests

§ 930.120 Objectives.

This subpart sets forth the procedures by which the Secretary may find that a federal license or permit activity, including those described in detail in an OCS plan, or a federal assistance activity, which a State agency has found to be inconsistent with the enforceable policies of the state's a management program, may be federally approved because the activity is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security.

§ 930.121 Consistent with the objectives or purposes of the Act.

A federal license or permit activity, or a federal assistance activity, is "consistent with the objectives or purposes of the Act" if it satisfies each of the following four requirements:

(a) The activity furthers, in more than a de minimis way, one or more of the competing national objectives or purposes contained in section 302 or section 303 of the Act,

(b) When performed separately or when its cumulative effects are considered, the national interest furthered by the activity outweighs the activity's adverse coastal effects,

(c) The activity will not violate any requirements of the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended, and

(d) There is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the enforceable policies of the state's management program. When determining whether a reasonable alternative is available, the Secretary may consider but is not limited to considering, previous appeal decisions, alternatives described in objection letters and alternatives and other new information described during the appeal.

§ 930.122 Necessary in the interest of national security.

A federal license or permit activity, or a federal assistance activity, is "necessary in the interest of national security" if a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed. Secretarial review of national security issues shall be aided by information submitted by the Department of Defense or other interested Federal agencies. The views of such agencies, while not binding, shall be given considerable weight by the Secretary: The Secretary will seek information to determine whether the objected-to activity directly supports national defense or other essential national security objectives.

§ 930.123 Appellant and Federal agency.

(a) The "appellant" is the applicant, person or applicant agency submitting an appeal to the Secretary pursuant to this subpart.

(b) For the purposes of this subpart, the "Federal agency" is the agency whose proposed issuance of a license or permit or grant of assistance is the subject of the appeal to the Secretary.

§ 930.124 Computation of time.

(a) The day that any period of time allowed or prescribed by these rules begins, shall not be included in the computation of the designated period of time. The last day of the time period computed shall be included unless it is a Saturday, Sunday or a legal holiday in which case the period runs until the next day which is not one of the aforementioned days.

(b) Whenever a party is required to act within a prescribed time period after receipt of a document or notice and the notice or document is provided to the party by mail, 3 days shall be added to the prescribed period of time.

§ 930.125 Notice of appeal to the Secretary.

(a) To obtain Secretarial review of a State agency objection, the appellant shall file a notice of appeal with the Secretary within 30 days of receipt of a State agency objection.

(b) The appellant's notice of appeal shall be accompanied by payment of an application fee or a request for a waiver of such fees. An appeal involving a project with a value of $1 million dollars or more shall be considered a major appeal and the application fee is $500.00. The application fee for all other projects is $200.00. Upon review of the notice of appeal, the Secretary may determine that a project valued at less than $1 million is likely to involve significant administrative costs to the agency and assess the $500.00 application fee which shall be due upon receipt of notice thereof.

(c) The appellant shall send a copy of the notice of appeal to the objecting State agency and the Assistant General Counsel for Ocean Services (GCOS), 1305 East West Highway, Room 6111 SSMC 4, Silver Spring, Maryland 20910.

(d) No extension of time will be permitted for the filing of a notice of appeal.

(e) The Secretary may waive the application fee and processing fee if the appellant demonstrates that such fees impose an economic hardship. The request for a waiver and demonstration of economic hardship shall accompany the notice of appeal. If the Secretary denies a request for a waiver and the appellant wishes to continue with the appeal, the appellant shall submit to the Secretary the fees within 20 days of receipt of the Secretary's denial. If the fee is not received on the 20th day, then the Secretary shall dismiss the appeal.

§ 930.126 Consistency appeal processing fees.

The Secretary shall collect as a processing fee such other fees from the appellant as are necessary to recover the full costs of administering and processing such appeals under section 307(c) of the Act. All processing fees shall be assessed and collected no later than 60 days after publication of the **Federal Register** Notice closing the decision record. Failure to submit processing fees shall be grounds for extending the time for issuance of a decision pursuant to section 319(a)(2) (16 U.S.C. 1465(a)(2)) and 930.131 of this subpart.

§ 930.127 Briefs and supporting data and information.

(a) The Secretary shall establish a schedule of dates and times for submission of the briefs, supporting data and information by the appellant and the State agency. The schedule shall include a time for the submission of a response and any relevant supporting information from the State agency.

(b) Both the appellant and State agency shall file copies of their briefs, supporting materials and all requests and communications with the Secretary, with each other, and the Assistant General Counsel for Ocean Services (GCOS), NOAA, 1305 East West Highway, Room 6111 SSMC4, Silver Spring, Maryland 20910.

(c) The Secretary may approve a request for an extension of time for submission of briefs and supporting information so long as the request is filed within the time period prescribed in the briefing schedule established under paragraph (a) of this section. A copy of the request for an extension of time shall be sent to the Assistant General Counsel for Ocean Services.

§ 930.128 Public notice and comment period.

(a) The Secretary shall provide timely public notice of the appeal after the receipt of the notice of appeal, and payment of appropriate application fees. At a minimum, public notice shall be provided in the **Federal Register** and the immediate area of the coastal zone which is likely to be affected by the proposed activity.

(b) The Secretary shall provide an opportunity for public comment on the appeal. The public shall be afforded no less than 30 days to comment on the appeal. Notice of the public comment period shall take the same form as Notice required in paragraph (a) of this section.

(c) The Secretary shall afford interested federal agencies, including the Federal agency whose proposed action is the subject of the appeal, with an opportunity to comment on the appeal. The Secretary shall afford notice to the federal agencies of the time for filing their comments.

(d) Requests for extensions of time to provide comments may be made pursuant to § 930.127(c).

§ 930.129 Dismissal, remand, and stay of appeals.

(a) The Secretary may dismiss an appeal for good cause. Good cause shall include, but is not limited to:

(1) Failure of the appellant to submit a notice of appeal within the required 30-day period.

(2) Failure of the appellant to submit the supporting information within the required period or approved extension period;

(3) Failure of the appellant to pay a required fee;

(4) The Federal agency denies the federal license, permit or assistance application;

(5) Failure of the appellant to base the appeal on grounds that the proposed activity either is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security.

(6) Failure of the State agency to properly lodge its consistency objection in compliance with section 307 of the Act and the regulations contained in subparts D, E, F, or I of this part. The Secretary shall make this determination as a threshold matter if raised by the appellant, and after providing an opportunity to the State agency to respond to the appellant's allegations.

(b) The Secretary may stay his review and remand an appeal to the State agency for reconsideration of the project's consistency with the enforceable policies of the state's management program if significant new information relevant to the State's objection, that was not provided to the State agency as part of its review, is submitted to the Secretary by the appellant, the public or a federal agency.

(c) The Secretary may stay the processing of an appeal on her own initiative or upon request of an appellant or State agency for the following purposes:

(1) To allow additional information to be developed relevant to compliance with the Clean Air Act, as amended, and/or the Federal Water Pollution Control Act, as amended,

(2) To allow mediation or settlement negotiations to occur between the applicant and State agency,

(3) To allow for remand pursuant to paragraph (b) of this section;

(4) A stay shall not be granted for more than one year.

§ 930.130 Public hearings.

The Secretary may hold a public hearing in response to a request or on his own initiative. If a hearing is held by the Secretary it shall be guided by the procedures described within § 930.113.

§ 930.131 Closure of the decision record and issuance of decision.

(a)(1)At such time as the Secretary shall deem appropriate, but no sooner than 30 days after the close of the public comment period, the Secretary shall publish in the **Federal Register** a notice stating that the decision record is closed and that no further information, briefs or comments will be considered in deciding the appeal.

(2) Where a state agency objection is based in whole or in part on a lack of information, the Secretary shall limit the record on appeal to information previously submitted to the State agency and relevant comments thereon, except as provided for in § 930.129(b) and (c).

(b) No later than 90 days after the closure of the decision record the Secretary shall issue a decision or publish a notice in the **Federal Register** explaining why a decision cannot be issued at that time. The Secretary shall issue a decision within 45 days of the publication of such notice.

(c) The decision of the Secretary shall constitute final agency action for the purposes of the Administrative Procedure Act.

(d) The appellant bears the burden of submitting evidence in support of its appeal and the burden of persuasion. In reviewing an appeal, the Secretary shall find that a proposed federal license or permit activity, or a federal assistance activity, is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, when the information submitted supports this conclusion.

(e)(1) If the Secretary finds that the proposed activity is consistent with the

objectives or purposes of the Act, or is necessary in the interest of national security, the Federal agency may approve the activity.

(2) If the Secretary does not make either of these findings, the Federal agency shall not approve the activity.

§ 930.132 Review initiated by the Secretary.

(a) The Secretary may, on her own initiative, choose to consider whether a federal license or permit activity, or a federal assistance activity, is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security. Secretarial review shall only be initiated after the completion of State agency review pursuant to the relevant subpart. The Secretary's decision to review the activity may result from an independent concern regarding the activity or a request from interested parties. If the Secretary decides to initiate review, notification shall be sent to the applicant, person or applicant agency, and to the Federal and State agencies. The notice shall include a statement describing the reasons for the review.

(b) With the exception of application and processing fees, all other provisions under this subpart governing the processing and administering of appeals will apply to Secretarial reviews initiated under this section.

Subpart I—Consistency of Federal Activities Having Interstate Coastal Effects

§ 930.150 Objectives.

(a) A federal activity may affect coastal uses or resources of a state other than the state in which the activity will occur. Effective coastal management is fostered by ensuring that activities having such reasonably foreseeable interstate coastal effects are conducted consistent with the enforceable policies of the coastal management program of each affected state.

(b) The application of the federal consistency requirement to activities having interstate coastal effects is addressed by this subpart in order to encourage cooperation among states in dealing with activities having interstate coastal effects, and to provide states, local governments, Federal agencies, and the public with a predictable framework for evaluating the consistency of these federal activities under the Act.

§ 930.151 Interstate coastal effect.

The term "interstate coastal effect" means any reasonably foreseeable effect resulting from a federal action occurring in one state of the United States on any coastal use or resource of another state that has a federally approved management program. Effects are not just environmental effects, but include effects on coastal uses. Effects include both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects are effects resulting from the incremental impact of the federal action when added to other past, present, and reasonably foreseeable actions, regardless of what person(s) undertake(s) such actions. The term "affects" means have an effect on. Effects on any coastal use or resource may also be referred to as "coastal effects."

§ 930.152 Application.

(a) This subpart applies to federal actions having interstate coastal effects, and supplements the relevant requirements contained in 15 CFR part 930, subparts C (Consistency for Federal Agency Activities), D (Consistency for Activities Requiring a Federal License or Permit), E (Consistency for OCS Exploration, Development and Production Activities) and F (Consistency for Federal Assistance to State and Local Governments). Except as otherwise provided by this subpart, the requirements of other relevant subparts of part 930 apply to activities having interstate coastal effects.

(b) Federal consistency is a requirement on federal actions affecting any coastal use or resource of a state with a federally-approved coastal management program, regardless of the activities' locations (including states without a federally approved coastal management program). The federal consistency requirement does not alter a coastal state's jurisdiction. The federal consistency requirement does not give states the authority to review the application of laws, regulations, or policies of any other state. Rather, the Act allows a state coastal management program to review federal actions and may preclude federal action as a result of a state objection, even if the objecting state is not the state in which the activity will occur. Such objections to interstate activities under subparts D, E and F may be overridden by the Secretary pursuant to subpart H of this part.

§ 930.153 Coordination between states in developing coastal management policies.

Coastal states are encouraged to give high priority to:

(a) Coordinating state coastal management planning, policies, and programs with respect to contiguous areas of such states;

(b) Studying, planning, and implementing unified coastal management policies with respect to such areas; and

(c) Establishing an effective mechanism, and adopting a federal-state consultation procedure, for the identification, examination, and cooperative resolution of mutual problems with respect to activities having interstate coastal effects.

§ 930.154 Listing activities subject to routine interstate consistency review.

(a) *Geographic location of listed activities.* Each coastal state intending to conduct a consistency review of federal activities occurring in another state shall:

(1) List those Federal agency activities, federal license or permit activities, and federal assistance activities that the state intends to routinely review for consistency; and

(2) Generally describe the geographic location for each type of listed activity.

(b) In establishing the geographic location of interstate consistency review, each state must notify and consult with the state in which the listed activity will occur, as well as with relevant Federal agencies.

(c) *Demonstrate effects.* In describing the geographic location for interstate consistency reviews, the State agency shall provide information to the Director that coastal effects from listed activities occurring within the geographic area are reasonably foreseeable. Listed activities may have different geographic location descriptions, depending on the nature of the activity and its effects on any coastal use or resource. For example, the geographic location for activities affecting water resources or uses could be described by shared water bodies, river basins, boundaries under the state's coastal nonpoint pollution control program, or other ecologically identifiable areas.

(d) *Director approval.* Coastal states shall submit their lists and geographic location descriptions developed under this section to the Director for approval as a routine program change under subpart H of 15 CFR part 923. Each state submitting this program change shall include evidence of consultation with states in which the activity will occur, evidence of consultation with relevant Federal agencies, and any agreements with other states and Federal agencies regarding coordination of activities.

(e) *State failure to list interstate activities.* A coastal state that fails to list

federal activities subject to interstate review, or to describe the geographic location for these activities, under paragraphs (a) through (d) of this section, may not exercise its right to review activities occurring in other states, until the state meets the listing requirements. The listing of activities subject to interstate consistency review, and the description of the geographic location for those listed activities, should ensure that coastal states have the opportunity to review relevant activities occurring in other states. States may amend their lists and geographic location descriptions pursuant to the requirements of this subpart and subpart H of 15 CFR part 923. States which have complied with paragraphs (a) through (d) of this section may also use the procedure at § 930.54 to review unlisted activities. States will have a transition period of 18 months from the date this rule takes effect. In that time a state may review an interstate activity pursuant to § 930.54 of this part. After the transition period states must comply with this subpart in order to review interstate activities.

§ 930.155 Federal and State agency coordination.

(a) *Identifying activities subject to the consistency requirement.* The provisions of this subpart are neither a substitute for nor eliminate the statutory requirement of federal consistency with the enforceable policies of state management programs for all activities affecting any coastal use or resource. Federal agencies shall submit consistency determinations to relevant State agencies for activities having coastal effects, regardless of location, and regardless of whether the activity is listed.

(b) *Notifying affected states.* Federal agencies, applicants or applicant agencies proposing activities listed for interstate consistency review, or determined by the Federal agency, applicant or applicant agency to have an effect on any coastal use or resource, shall notify each affected coastal state of the proposed activity. State agencies may also notify Federal agencies and applicants of listed and unlisted activities subject to State agency review and the requirements of this subpart.

(c) *Federal and State agency coordination.* Following notification of the proposed activity, the Federal agency or applicant or applicant agency shall coordinate with all affected states with approved coastal management programs in evaluating the consistency of the activity with the enforceable policies of each such program.

(d) *Notice of intent to review.* Within 30 days from receipt of the consistency determination or certification and necessary data and information, or within 30 days from receipt of notice of a listed federal assistance activity, each state intending to review an activity occurring in another state must notify the applicant or applicant agency (if any), the Federal agency, the state in which the activity will occur (either the state's coastal management program, or if the state does not have a coastal management program, the Governor's office), and the Director, of its intent to review the activity for consistency. The state's notice to the parties must be postmarked by the 30th day after receipt of the consistency determination or certification. If a state fails, within the 30 days, to notify the applicant or applicant agency (if any), the Federal agency, the state in which the activity will occur, and the Director, of its intent to review the activity, then the state waives its right to review the activity for consistency. The waiver does not apply where the state intending to review the activity does not receive notice of the activity.

§ 930.156 Content of a consistency determination or certification and State agency response.

(a) In addition to the applicable requirements for consistency determinations and certifications contained in subparts C, D and E of this part, the determination or certification shall include a statement that the Federal agency or applicant has coordinated with affected states with approved management programs in developing the proposed activity.

(b) The Federal agency or applicant is encouraged to prepare one determination or certification that will satisfy the requirements of all affected states with approved management programs.

(c) State agency responses shall follow the applicable requirements contained in subparts C, D, E and F of this part.

§ 930.157 Mediation and informal negotiations.

The relevant provisions contained in subpart G of this part are available for resolution of disputes between affected states, relevant Federal agencies, and applicants or applicant agencies. The parties to the dispute are also encouraged to use alternative means for resolving their disagreement. OCRM shall be available to assist the parties in these efforts.

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Part III

Environmental Protection Agency

40 CFR Part 9 et al.

Revisions to the Interim Enhanced Surface Water Treatment Rule (IESWTR), the Stage 1 Disinfectants and Disinfection Byproducts (Stage 1 DBPR), and Revisions to State Primacy Requirements To Implement the Safe Drinking Water Act (SDWA) Amendments; Final Rule and Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 141, and 142

[FRL–6575–9]

RIN 2040–AD43

Revisions to the Interim Enhanced Surface Water Treatment Rule (IESWTR), the Stage 1 Disinfectants and Disinfection Byproducts Rule (Stage 1 DBPR), and Revisions to State Primacy Requirements To Implement the Safe Drinking Water Act (SDWA) Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This direct final action will make minor revisions to the Interim Enhanced Surface Water Treatment Rule (IESWTR) and the Stage 1 Disinfectants and Disinfection Byproducts Rule (Stage 1 DBPR) which were published December 16, 1998 and the Revisions to State Primacy Requirements to Implement Safe Drinking Water Act (SDWA) Amendments (Primacy Rule) published April 28, 1998. This Direct Final Rule revises the compliance dates for the IESWTR and the Stage 1 DBPR by shifting them back approximately two weeks from the middle of the month to the beginning of the following month. This change will shift the monitoring periods to coincide with calendar quarters which will facilitate the implementation of both rules. This action will also extend the use of new analytical methods included in these rules to compliance monitoring for long standing drinking water regulations for total trihalomethanes. The revisions also include several changes to the regulatory language for clarification. In addition, this document corrects typographical errors, replaces inadvertently deleted text, and clarifies some of the new regulatory provisions found in the published rules. Lastly, this document contains corrections to the Primacy Rule. These regulations relate to the requirements and procedures for States to obtain primary enforcement authority (primacy) for the Public Water System Supervision (PWSS) program under the Safe Drinking Water Act as amended by the 1996 Amendments.

DATES: This regulation is effective on June 13, 2000 without further notice unless EPA receives adverse comment by May 15, 2000. If EPA receives such comment, EPA will withdraw this direct final rule before its effective date by publishing a timely withdrawal in the **Federal Register** informing the public the rule will not take effect. For judicial review purposes, this final rule is promulgated as of 1:00 p.m. EST on April 28, 2000 as provided in 40 CFR 23.7.

ADDRESSES: Send written comments to the Comment Clerk, docket number W–99–11, Water Docket (MC 4101), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The record for this rule has been established under docket number W–99–11. The record is available for inspection 9 a.m. to 4 p.m. Monday through Friday, excluding legal holidays at the Water Docket, East Tower Basement, US EPA, 401 M Street, SW, Washington DC. The rule making records for the original IESWTR and the Stage 1 DBPR are also available for inspection at the Water Docket. For access to docket materials, please call 202–260–3027 to schedule an appointment. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street, SW, East Tower Basement, Washington, DC 20460. Comments may be submitted electronically to *ow-docket@epamail.epa.gov*. No facsimiles (faxes) will be accepted.

FOR FURTHER INFORMATION CONTACT: Jennifer Melch, Implementation and Assistance Division, Office of Ground Water and Drinking Water (MC–4606), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260–7035. Information may also be obtained from the EPA Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426–4791. The Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 a.m. to 5:30 p.m. EST.

SUPPLEMENTARY INFORMATION:

Regulated Entities

The entities regulated by the IESWTR and Stage 1 DBPR, and thus by these revisions to those rules, are public water systems. These include community and noncommunity water systems. States are subject to the primacy rule requirements as revised.

Regulated categories and entities include the following:

Category	Examples of potentially regulated entities	SIC
State, Tribal, and Territorial Governments..	States, Territories, and Tribes that analyze water samples on behalf of public water systems required to conduct such analysis; States, Territories, and Tribes that operate public water systems required to monitor under the IESWTR or Stage 1 DBPR.	9511
Industry	Private operators of public water systems required to monitor under the IESWTR or Stage 1 DBPR	9511
Municipalities	Municipal operators of public water systems required to monitor under the IESWTR or Stage 1 DBPR.	9511

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in §§ 141.2, 141.70, 141.130, 141.170, 142.2, 142.3, and 142.10 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section or the Regional contacts that follow.

Regional Contacts

I. Katie Leo, Water Supply Section 1 Congress Street, Suite 1100–CMU, Boston, MA 02114, (617) 918–1623

II. Michael Lowy, Water Supply Section, 290 Broadway 24th Floor, New York, NY 10007–1866, (212) 637–3830

III. Jason Gambatese, Drinking Water Section (3WM41), 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–5759

IV. David Parker, Water Supply Section, 345 Courtland Street, Atlanta, GA 30365, (404) 562–9460

V. Miguel A. Del Toral, Safe Drinking Water Branch, 77 W. Jackson Blvd. (WD–15J), Chicago, IL 60604, (312) 886–5253

VI. Blake L. Atkins, Drinking Water Section, 1445 Ross Avenue, Dallas, TX 75202, (214) 665–2297

VII. Ralph Flournoy, Drinking Water/Ground Water Management Branch,

901 N. 5th St., Kansas City, KS 66101, (913) 551–7374
VIII. Bob Clement, Municipal Systems Unit (8P–W–MS), 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6653
IX. Bruce Macler, Water Supply Section, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1884
X. Wendy Marshall, Drinking Water Unit, 1200 Sixth Avenue (OW–136), Seattle, WA 98101, (206) 553–1890

Abbreviations

CWS: Community water system
DBPR: Disinfectant and Disinfection Byproducts Rule
EPA: Environmental Protection Agency
GWUDI: Ground water under the direct influence of surface water
HAA5: Haloacetic Acids (monochloroacetic, dichloroacetic, trichloroacetic, monobromoacetic and dibromoacetic acids)
ICR: Information Collection Request
IESWTR: Interim Enhanced Surface Water Treatment Rule
MCL: Maximum contaminant level
MCLG: Maximum contaminant level goal
MRDL: Maximum residual disinfectant level
MRDLG: Maximum residual disinfectant level goal
NPDWR: National Primary Drinking Water Regulation
NTNCWS: Non-transient, non-community water system
OMB: Office of Management and Budget
PWS: Public water system
RFA: Regulatory Flexibility Analysis
SDWA: Safe Drinking Water Act
TNCWS: Transient, non-community water system
TOC: Total organic carbon
TTHM: Total Trihalomethanes (chloroform, bromodichloromethane, dibromochloromethane, and bromoform)
UMRA: Unfunded Mandates Reform Act

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I. Background

On December 16, 1998, EPA published the final Interim Enhanced Surface Water Treatment Rule (IESWTR; 63 FR 69478) and Stage 1 Disinfectants and Disinfection Byproducts Rule (Stage 1 DBPR; 63 FR 69390). On April 28, 1998, EPA published the Revisions to State Primacy Requirements to Implement the SDWA Amendments (63 FR 23362).

IESWTR: The IESWTR was designed to improve control of microbial pathogens, including specifically the protozoan Cryptosporidium, in drinking water and to address risk trade-offs with disinfection byproducts. The IESWTR builds upon the treatment technique requirements of the Surface Water Treatment Rule. Key provisions established in the final IESWTR include: a Maximum Contaminant Level Goal (MCLG) of zero for Cryptosporidium; 2-log Cryptosporidium removal requirements for systems that filter; strengthened combined filter effluent turbidity performance standards and individual filter turbidity monitoring provisions; disinfection benchmark provisions to assure continued levels of microbial protection while facilities take the necessary steps to comply with new disinfection byproduct standards; inclusion of Cryptosporidium in the definition of ground water under the direct influence of surface water (GWUDI) and in the watershed control requirements for unfiltered public water systems; requirements for covers on new finished water reservoirs; and sanitary surveys for all surface water and GWUDI systems regardless of size.

The IESWTR applies to public water systems that use surface water or GWUDI and serve 10,000 or more people, except that the rule requires primacy States to conduct sanitary surveys for all surface water and GWUDI systems regardless of size.

EPA believes that implementation of the IESWTR will significantly reduce the level of Cryptosporidium in finished drinking water supplies through improvements in filtration and reduce the likelihood of the occurrence of cryptosporidiosis outbreaks by providing an increased margin of safety against such outbreaks for some systems. In addition, the filtration provisions of the rule are expected to increase the level of protection from exposure to other pathogens (*i.e.*, Giardia or other waterborne bacterial or viral pathogens).

Stage 1 DBPR: The Stage 1 DBPR was designed to reduce the levels of disinfectants and disinfection byproducts in drinking water supplies. The DBPR established maximum residual disinfectant level goals (MRDLGs) for chlorine, chloramines, and chlorine dioxide; maximum contaminant level goals (MCLGs) for four trihalomethanes (chloroform, bromodichloromethane, dibromochloromethane, and bromoform), two haloacetic acids (dichloroacetic acid and trichloroacetic acid), bromate, and chlorite; and National Primary Drinking Water Regulations (NPDWRs) for three disinfectants (chlorine, chloramines, and chlorine dioxide), two groups of organic disinfection byproducts (total trihalomethanes (TTHM)—a sum of chloroform, bromodichloromethane, dibromochloromethane, and bromoform; and haloacetic acids (HAA5)—the sum of dichloroacetic acid, trichloroacetic acid, monochloroacetic acid and mono- and dibromoacetic acids), and two inorganic disinfection byproducts (chlorite and bromate). The NPDWRs consist of maximum residual disinfectant levels (MRDLs) for these disinfectants and maximum contaminant levels (MCLs) or treatment techniques for their byproducts. The NPDWRs also include monitoring, reporting, and public notification requirements for these compounds.

The Stage 1 DBPR applies to public water systems that are community water systems (CWSs) and nontransient noncommunity water systems (NTNCWSs) that treat their water with a chemical disinfectant for either primary or residual treatment and to CWSs and NTNCWSs that purchase water and provide water that contains a chemical disinfectant. In addition, certain requirements for chlorine dioxide apply to transient noncommunity water systems (TNCWSs).

The Stage 1 DBPR provides public health protection for households that were not previously covered by drinking water rules for disinfection byproducts. In addition, the rule, for the first time, provides public health protection from exposure to haloacetic acids, chlorite (a major chlorine dioxide byproduct) and bromate (a major ozone byproduct).

Primacy Rule: This rule codified new statutory requirements under the 1996 Amendments to the Safe Drinking Water Act (SDWA) involving changes to the

process and requirements for States to obtain or retain primary enforcement authority for the Public Water System Supervision program under § 1413 of the SDWA and to the definition of a "public water system" under § 1401 of the SDWA.

II. Today's Action

A. IESWTR and Stage 1 DBPR

This document revises the IESWTR and Stage 1 DBPR to move compliance dates to facilitate implementation, correct typographical errors identified in these rules, replace text inadvertently deleted, delete incorrect text, and clarify certain provisions in the final rules. The revisions include the following modifications:

Shifting Compliance Date of Rules: This action will revise the compliance dates of both rules by extending them approximately two weeks. This shift will facilitate the implementation of the IESWTR and the Stage 1 DBPR as the monitoring periods for both rules will coincide with calendar quarters and consequently with the monitoring periods for other contaminants.

New Analytical Methods Use: This action modifies § 141.30 to extend the use of new analytical methods included in the DBPR § 141.131(b) for compliance monitoring for long standing drinking water regulations for total trihalomethanes.

Regulated Entities Compliance with Stage 1 DBPR: Today's rule makes language clarifications in § 141.130(a) to the criteria that determines which systems must meet the new MCLs and MRDLs under the DBPR. The original language specified that systems which "add a chemical disinfectant to the water in any part of the drinking water treatment process" are subject to the rule. Today, EPA is correcting that language to also include systems that "provide water that contains a chemical disinfectant." By setting the original criteria, EPA inadvertently excluded consecutive systems, or those that purchase water, from the requirement to monitor for and meet the MCLs and MRDLs of the DBPR, although such systems were included in regulatory impact analyses and costed as part of the original rule.

TTHM and HAA5 Monitoring and Compliance Provisions: The regulatory language addressing TTHM and HAA5 monitoring and compliance determinations has been slightly revised to clarify the intention of the regulatory requirements in § 141.132(b)(1). The first clarification adds language that was inadvertently left out in the final rule. This clarification specifies the criteria under which surface water systems serving <500 people and ground water systems serving <10,000 people on increased monitoring may return to routine monitoring. Systems on increased monitoring may return to routine monitoring if their TTHM annual average is 0.040 mg/L or less and their HAA5 annual average is 0.030mg/L or less. These values are the same criteria that systems on routine quarterly monitoring must meet in order to be eligible for reduced monitoring. This change is also reflected in the table in § 141.132(b)(1) where the reference to "paragraph c" in the third and fifth entries is replaced by "paragraph (b)(1)(iv)."

The second revision clarifies the requirements for ground water systems serving <10,000 people that after annual sampling show that they have met the requirements for reduced monitoring (one sample per plant every 3 years). In the situation where that sample collected during reduced monitoring exceeds the MCL, there is a concern that the existing language is ambiguous and could be interpreted to require such a system to return to routine monitoring (one sample per plant per year) before being triggered to quarterly monitoring. EPA's intention was to assure that these systems would perform quarterly monitoring immediately following a result that exceeds the MCL. Therefore, EPA has clarified the language to specify the intent of the requirement which is to have such systems immediately triggered to quarterly monitoring, which is consistent with the requirements for the other system categories.

The final clarification for § 141.133(b)(1) is on compliance determination for TTHM and HAA5. The intention of the requirement was that systems monitoring less frequently than quarterly, and that measure TTHM or HAA5 above the MCL, would not be in violation of the MCL until they conduct four consecutive quarters of monitoring under the increased monitoring requirements. (The exceptions to this are when the results of fewer than four quarters will cause the running annual average to exceed the MCL, or if the system fails to collect the four samples over four consecutive quarters, in which case the MCL is calculated based on available data for that monitoring period). This intent is clarified by deleting the last two sentences of § 141.133(b)(1)(i), revising paragraphs (b)(1)(ii) and (iii), and adding new paragraph (b)(1)(iv).

Chlorite Provisions: Today's rule also revises two provisions addressing chlorite. First, EPA is correcting the general requirements for transient non-community water systems (TNCWS) in § 141.130 which incorrectly states that TNCWS must comply with chlorite requirements. This correction is accomplished by deletion of the chlorite reference in that section. Second, EPA is clarifying the monitoring provisions in § 141.131(b) for daily chlorite samples which require the analysis to be performed by a certified lab. Because systems are capable of analyzing by amperometric titration the daily chlorite samples taken at the entrance to the distribution system, language has been added to allow public water systems to be approved for such monitoring to reduce the financial and operational burden on the systems.

Disinfection Byproduct Precursors Provisions: This rule also clarifies the public notification requirements related to compliance with DBP precursors under § 141.133 and provides revised language regarding the Step 2 TOC removal requirements under § 141.135 in order to eliminate ambiguous text. This revision clarifies that the submitted bench or pilot-scale tests must be used to determine the alternate enhanced coagulation level. In the table in § 141.135(b)(2), minor revisions correct "≤60–120" to read ">60–120" in the heading of the second column and add percentage signs—%—to all values while deleting the word "percent" from the three column headings.

System Reporting and Recordkeeping: This revision adds system reporting requirements which were inadvertently omitted from § 141.175 of the IESWTR. Today's rule requires that when a direct or conventional filtration system exceeds the maximum turbidity limit of 1 NTU, the system must inform the State no later than the end of the next business day. Similarly, when a system using alternative filtration technologies exceeds the maximum turbidity level set by the State, the system must inform the State no later than the end of the next business day.

Today's rule also adds clarifying text to the § 141.134 reporting tables. These changes will facilitate a system's reporting requirements for the disinfectant byproducts, disinfectants, and disinfectant byproduct precursors and enhanced coagulation or enhanced softening.

In the section (b) table, all entries in the "You must report" column are revised to add the citation of the MCL and replace the word "exceeded" with "violated." In the second entry, under the second reporting requirement, the phrase "last quarter" is replaced with "last monitoring period," and in the fourth entry, the language in all four

reporting requirements is revised. In the section (c) table, all entries in the "You must report" column are revised to add the citation of the MRDL and replace the word "exceeded" with "violated." In the section (d) table, the first entry is revised by delete the phrase "prior to continuous disinfection" from the first reporting requirement.

Filtration Provisions: Revisions to § 141.174 add language to clarify that if there is a failure in the continuous turbidity monitoring equipment and the system is conducting grab sampling, the system must repair the equipment within five working days or it is in violation.

EPA believes that the limited changes to the rules outlined above will only minimally alter the estimates of benefits and costs which are associated with the IESWTR and Stage 1 DBPR. Burden associated with the system reporting requirements in § 141.175(c) are covered in an existing ICR (OMB No. 2040–0090) and the estimates are not expected to change.

B. Primacy Rule

The final primacy regulations subject to these corrections increase the time for a State to adopt new or revised Federal regulations from 18 months to two years. Inadvertently, this time increase was not reflected in § 142.12(d)(2) of the final regulations. This rule corrects that error.

In addition, this rule updates the interim primacy provision. Interim primacy gives States full responsibility for implementation and enforcement during the time that EPA reviews the primacy revision application, provided that States have full primacy for all prior National Primary Drinking Water Regulations. When extensions to the time frame for submission of primacy revision applications are granted, States must agree to conditions for rule implementation. These conditions are lifted when a State receives primacy. EPA believes that under the SDWA amendments, these conditions should also be lifted when a State receives interim primacy. Inadvertently, this intent was not reflected in the **Federal Register** of Tuesday, April 28, 1998 (63 FR 23362). Today's change to § 142.12(b)(3)(i) clarifies that the conditions that go with an extension are not necessary after a State receives interim primacy.

III. Administrative Requirements

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule makes minor revisions and corrections to three SDWA regulations. EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

For the same reason, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of section 203 of UMRA.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, information collection, reporting and record keeping requirements must be submitted to the Office of Management and Budget (OMB) for approval. Information Collection Request (ICR) documents for the original IESWTR, Stage 1DBPR and Primacy Rule were prepared by EPA and approved by OMB (OMB No.'s 2040–0205, 2040–0204, and 2040–0915 respectively) and copies may be obtained from Sandy Farmer by mail at

OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by email at: farmer.sandy@epamail.epa.gov, or by calling: (202) 260–2740.

The system reporting requirements contained in § 141.175(c) are covered by the general PWSS program ICR (OMB No. 2040–0090). This ICR calculates the burden associated with reporting turbidity exceedences under § 141.75(a)(5). Although § 141.175(c) alters for large systems the level at which turbidity exceedences are reported, data indicate that such systems already have high compliance rates with the new levels and there would be no significant increase in violations and burden associated with this new level. The Part 9 table is amended in this rule to reflect OMB approval of these reporting requirements.

E. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice-and-comment rulemaking requirement under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small government jurisdictions. This rule makes only minor revisions, corrections, and clarifications to promulgated regulations that will facilitate the implementation of those regulations. This rule does not impose additional burden on any regulated small entity since impacts were included in the original rule analysis. The additional reporting requirements contained in today's rule apply only to systems that serve 10,000 or more people. Thus, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 Section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action extends the applicability of analytical methods established under the Stage 1 DBPR in the December 16, 1998 **Federal Register**. In developing the Stage 1 DBPR, EPA's process for selecting analytical test methods was consistent with section 12(d) of the NTTAA. EPA performed literature searches to identify analytical methods from industry, academia and voluntary consensus standards, and provided an opportunity for comment. For a more detailed discussion, refer to page 69457 of the Stage 1 DBPR (63 FR 69390, Dec. 16, 1998). Neither the IESWTR nor the Primacy Rule involve standards subject to this Act.

G. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898—"Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (February 11, 1994) focuses Federal attention on the environmental and human health conditions of minority populations and low-income populations with the goal of achieving environmental protection for all communities. Today's changes to the IESWTR, Stage 1 DBPR, and Primacy Rule will not diminish the health protection to minority and low-income populations.

H. Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule makes only minor revisions, corrections and clarifications to three SDWA rules that were promulgated in 1998. The result of these revisions, corrections and clarifications will be to facilitate the implementation of these regulations at the State and local levels of government. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

I. Executive Order 13084—Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule makes minor revisions, corrections and clarifications to

promulgated regulations. It does not significantly or uniquely affect the communities of Indian tribal governments, nor does it impose substantial direct compliance costs on them. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

J. Administrative Procedure Act

EPA is publishing this rule without prior proposal because it views these changes as noncontroversial amendments and anticipates no adverse comment. The changes simply facilitate implementation of existing rules and correct minor typographical errors, and inadvertently deleted text. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal for Revisions to the IESWTR, Stage 1 DBPR and Primacy Rule if adverse comments are filed. This rule will be effective on June 13, 2000 without further notice unless EPA receives adverse comment by May 15, 2000. If EPA receives adverse comment, it will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804 (2). This rule will be effective June 13, 2000.

List of Subjects in 40 CFR Parts 9, 141, and 142

Analytical methods, Drinking water, Environmental protection, Intergovernmental relations, Public utilities, Reporting and recordkeeping requirements, Reservoirs, Utilities, Water supply, Watersheds.

Dated: April 4, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735; 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by removing the entry "141.174–141.175" and by adding in numerical order under the indicated heading new entries to read as follows:

§ 9.1 OMB Approvals Under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
National Primary Drinking Water Regulations	
* * * * *	
141.174(a)–(b)	2040–0205
141.175	2040–0205
141.175(a)–(b)	2040–0205
141.175(c)	2040–0090

* * * * *

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

3. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

§ 141.12 [Amended]

4. Section 141.12 is amended by revising "December 16, 2001" to read "December 31, 2001" and by revising the two occurrences of "December 16, 2003" to read "December 31, 2003".

§ 141.30 [Amended]

5. Amend § 141.30 by:

a. Revising the first sentence of paragraph (e); and

b. In paragraph (h), revising "December 16, 2001" to read "December 31, 2001", and revise the two occurrences of "December 16, 2003" to read "December 31, 2003".

The revision reads as follows:

§ 141.30 Total trihalomethanes sampling, analytical and other requirements.

* * * * *

(e) Sampling and analyses made pursuant to this section shall be conducted by one of the total trihalomethanes methods as directed in § 141.24(e), and the Technical Notes on Drinking Water Methods, EPA–600/R–94–173, October 1994, which is available from NTIS, PB–104766, or in § 141.131(b). * * *

* * * * *

§ 141.64 [Amended]

6. Amend § 141.64 by:

a. In paragraph (b)(1), revising "December 16, 2001" to read "January 1, 2002" and revising "December 16, 2003" to read "January 1, 2004"; and

b. In paragraph (b)(2), revise "December 16, 2003" to read "December 31, 2003".

§ 141.65 [Amended]

7. In § 141.65(b)(1) and (b)(2), revise "December 16, 2001" to read "January 1, 2002" and revise "December 16, 2003" to read "January 1, 2004".

§ 141.71 [Amended]

8. Section 141.71(b)(6) is amended by revising the two occurrences of "December 17, 2001" to read "December 31, 2001".

§ 141.73 [Amended]

9. Amend § 141.73 by:

a. In paragraph (a)(3), revising "December 17, 2001" to read "January 1, 2002"; and

b. In paragraph (d), revising "December 17, 2001" to read "January 1, 2002".

§ 141.130 [Amended]

10. Amend § 141.130 by:

a. Revising paragraph (a)(1); and

b. In paragraphs (b)(1) and (b)(2), revising "December 16, 2001" to read "January 1, 2002" and revising "December 16, 2003" to read "January 1, 2004"; and in paragraph (b)(2), removing the phrase: "and chlorite" from the first and second sentences.

The revision reads as follows:

§ 141.130 General requirements.

(a) * * *

(1) The regulations in this subpart establish criteria under which

community water systems (CWS) and nontransient, noncommunity water systems (NTNCWS) which add a chemical disinfectant to the water in any part of the drinking water treatment process or which provide water that contains a chemical disinfectant, must modify their practices to meet MCLs and MRDLs in §§ 141.64 and 141.65, respectively, and must meet the treatment technique requirements for disinfection byproduct precursors in § 141.135.

* * * * *

§ 141.131 [Amended]

11. Amend § 141.131 by revising the first sentence of paragraph (b)(2) and adding paragraph (b)(3) to read:

§ 141.131 Analytical requirements.

* * * * *

(b) * * *

(1) * * *

(2) Analysis under this section for disinfection byproducts must be conducted by laboratories that have received certification by EPA or the State, except as specified under paragraph (b)(3) of this section. * * *

(3) A party approved by EPA or the State must measure daily chlorite samples at the entrance to the distribution system.

* * * * *

§ 141.132 [Amended]

12. Amend § 141.132 by:

a. In paragraph (a)(2), revising the reference "§ 142.16(f)(5)" to read "§ 142.16(h)(5)";

b. In paragraph (b)(1)(i), revising the third and fifth entries and the second footnote in the table;

c. Amend paragraph (b)(1)(iii) by revising the second sentence and adding a new third sentence, redesignating paragraph (b)(1)(iv) as (b)(1)(v), adding a new paragraph (b)(1)(iv); and

d. Revising the first sentence in paragraph (c)(1)(i).

The revisions read as follows:

§ 141.132 Monitoring requirements.

* * * * *

(b) * * *

(1) * * *

ROUTINE MONITORING FREQUENCY FOR TTHM AND HAA5

Type of system	Minimum monitoring frequency	Sample location in the distribution system
* * *	* * *	* * *
Subpart H system serving fewer than 500 persons.	One sample per year per treatment plant during month of warmest water temperature.	Locations representing maximum residence time.[1] If the sample (or average of annual samples, if more than one sample is taken) exceeds the MCL, the system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until the system meets reduced monitoring criteria in paragraph (b)(1)(iv) of this section.
* * *	* * *	* * *
System using only ground water not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons.	One sample per year per treatment plant[2] during month of warmest water temperature.	Locations representing maximum residence time.[1] If the sample (or average of annual samples, if more than one sample is taken) exceeds the MCL, the system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until the system meets reduced monitoring criteria in paragraph (b)(1)(iv) of this section for reduced monitoring.
* * *	* * *	* * *

[1] If a system elects to sample more frequently than the minimum required, at least 25 percent of all samples collected each quarter (including those taken in excess of the required frequency) must be taken at locations that represent the maximum residence time of the water in the distribution system. The remaining samples must be taken at locations representative of at least average residence time in the distribution system.

[2] Multiple wells drawing water from a single aquifer may be considered one treatment plant for determining the minimum number of samples required, with State approval in accordance with criteria developed under § 142.16(h)(5) of this chapter.

* * * * *

(iii) * * * Systems that do not meet these levels must resume monitoring at the frequency identified in paragraph (b)(1)(i) of this section (sample location column) in the quarter immediately following the quarter in which the system exceeds 0.060 mg/L or 0.045 mg/L for TTHMs or HAA5 respectively. For systems using only ground water not under the direct influence of surface water and serving fewer than 10,000 persons, if either the TTHMs annual average is >0.080 mg/L or the HAA5 annual average is >0.060 mg/L, the system must go to increased monitoring identified in paragraph (b)(1)(i) of this section (sample location column) in the quarter immediately following the quarter in which the system exceeds 0.080 mg/L or 0.060 mg/L for TTHMs or HAA5 respectively.

(iv) Systems on increased monitoring may return to routine monitoring if TTHM annual average is ≤0.040 mg/L and HAA5 annual average is ≤0.030 mg/L.

* * * * *

(c) * * *

(1) * * *

(i) *Routine monitoring.* Community and nontransient noncommunity water systems that use chlorine or chloramines must measure the residual disinfectant level in the distribution system when total coliforms are sampled, as specified in § 141.21. * * *

* * * * *

§ 141.133 [Amended]

13. Amend § 141.133 by:

a. In the first sentence of paragraph (a)(1), revising "system's" to read "system", and revising the first occurrence of "failure" to read "fails" and

b. Removing the last two sentences of paragraph (b)(1)(i), revising paragraphs (b)(1)(ii) and (iii), and adding new paragraph (b)(1)(iv);

c. Removing the phrase "of quarterly averages" in the second sentence of paragraph (c)(1)(i) and adding the phrase "in addition to reporting to the State pursuant to § 141.134" to the end of the second and third sentences in paragraph (c)(2)(i) and the second and third sentences of paragraph (c)(2)(ii); and

d. In paragraph (d), revising the reference "§ 141.135(b)" in the first

sentence to read "§ 141.135(c)" adding a sentence to the end of paragraph (d).

The revisions and additions read as follows:

§ 141.133 Compliance requirements.

* * * * *

(b) * * *

(1) * * *

(ii) For systems monitoring less frequently than quarterly, systems demonstrate MCL compliance if the average of samples taken that year under the provisions of § 141.132(b)(1) does not exceed the MCLs in § 141.64. If the average of these samples exceeds the MCL, the system must increase monitoring to once per quarter per treatment plant and such a system is not in violation of the MCL until it has completed one year of quarterly monitoring, unless the result of fewer than four quarters of monitoring will cause the running annual average to exceed the MCL, in which case the system is in violation at the end of that quarter. Systems required to increase monitoring frequency to quarterly monitoring must calculate compliance by including the sample which triggered the increased monitoring plus the following three quarters of monitoring.

(iii) If the running annual arithmetic average of quarterly averages covering any consecutive four-quarter period exceeds the MCL, the system is in violation of the MCL and must notify the public pursuant to § 141.32 in addition to reporting to the State pursuant to § 141.134.

(iv) If a PWS fails to complete four consecutive quarters of monitoring, compliance with the MCL for the last four-quarter compliance period must be based on an average of the available data.

* * * * *

(d) * * * For systems required to meet Step 1 TOC removals, if the value calculated under § 141.135(c)(1)(iv) is less than 1.00, the system is in violation of the treatment technique requirements and must notify the public pursuant to § 141.32, in addition to reporting to the State pursuant to § 141.134.

§ 141.134 [Amended]

14. Amend § 141.134 by:

a. In paragraph (b), revising the table.

b. In paragraph (c), revising the table; and

(c). In paragraph (d), revising the first entry.

The revisions read as follows:

§ 141.134 Reporting and recordkeeping requirements.

* * * * *

(b) * * *

If you are a. . .	You must report. . .[1]
(1) System monitoring for TTHMs and HAA5 under the requirements of § 141.132(b) on a quarterly or more frequent basis.	(i) The number of samples taken during the last quarter. (ii) The location, date, and result of each sample taken during the last quarter. (iii) The arithmetic average of all samples taken in the last quarter. (iv) The annual arithmetic average of the quarterly arithmetic averages of this section for the last four quarters. (v) Whether, based on § 141.133(b)(1), the MCL was violated.
(2) System monitoring for TTHMs and HAA5 under the requirements of § 141.132(b) less frequently than quarterly (but at least annually).	(i) The number of samples taken during the last year. (ii) The location, date, and result of each sample taken during the last monitoring period. (iii) The arithmetic average of all samples taken over the last year. (iv) Whether, based on § 141.133(b)(1), the MCL was violated.
(3) System monitoring for TTHMs and HAA5 under the requirements of § 141.132(b) less frequently than annually.	(i) The location, date, and result of the last sample taken. (ii) Whether, based on § 141.133(b)(1), the MCL was violated.
(4) System monitoring for chlorite under the requirements of § 141.132(b).	(i) The number of entry point samples taken each month for the last 3 months. (ii) The location, date, and result of each sample (both entry point and distribution system) taken during the last quarter. (iii) For each month in the reporting period, the arithmetic average of all samples taken in each three sample set taken in the distribution system. (iv) Whether, based on § 141.133(b)(3), the MCL was violated, in which month, and how many times it was violated each month.
(5) System monitoring for bromate under the requirements of § 141.132(b).	(i) The number of samples taken during the last quarter. (ii) The location, date, and result of each sample taken during the last quarter. (iii) The arithmetic average of the monthly arithmetic averages of all samples taken in the last year. (iv) Whether, based on § 141.133(b)(2), the MCL was violated.

[1] The State may choose to perform calculations and determine whether the MCL was exceed, in lieu of having the system report that information.

(c) * * *

If you are a. . .	You must report. . .[1]
System monitoring for chlorine or chloramines under the requirements of § 141.132(c).	(1) The number of samples taken during the last quarter. (2) The monthly arithmetic average of all samples taken in each month for the last 12 months. (3) The arithmetic average of all monthly averages for the last 12 months. (4) Whether, based on § 141.133(c)(1), the MRDL was violated.
System monitoring for chlorine dioxide under the requirements of § 141.132(c).	(1) The dates, results, and locations of samples taken during the last quarter. (2) Whether, based on § 141.133(c)(2), the MRDL was violated.

If you are a. . .	You must report. . .[1]
	(3) Whether the MRDL was exceed in any two consecutive daily samples and whether the resulting violation was acute or nonacute.

[1] The State may choose to perform calculations and determine whether the MRDL was exceeded, in lieu of having the system report that information.

(d) * * *

If you are a. . .	You must report. . .[1]
System monitoring monthly or quarterly for TOC under the requirements of § 141.132(d) and required to meet the enhanced coagulation or enhanced softening requirements in § 141.135(b)(2) or (3).	(1) The number of paired (source water and treated water) samples taken during the last quarter. (2) The location, date, and results of each paired sample and associated alkalinity taken during the last quarter. (3) For each month in the reporting period that paired samples were taken, the arithmetic average of the percent reduction of TOC for each paired sample and the required TOC percent removal. (4) Calculations for determining compliance with the TOC percent removal requirements, as provided in § 141.135(c)(1). (5) Whether the system is in compliance with the enhanced coagulation or enhanced softening percent removal requirements in § 141.135(b) for the last four quarters.

[1] The State may choose to perform calculations and determine whether the treatment technique was met, in lieu of having the system report that information.

§ 141.135 [Amended]

15. Amend § 141.135 by:

a. In paragraph (a)(2)(iii), revising "as required by" in the first sentence of to read "according to", and revising "June 16, 2005" to read "June 30, 2005";

b. In paragraph (b), removing the phrase "(as aluminum)" wherever it appears and revising paragraph (b)(4);

c. In paragraph (b)(2), revising the table entitled: "Step 1 Required Removal of TOC by Enhanced Coagulation and Enhanced Softening for Subpart H Systems Using Conventional Treatment," and;

d. In paragraph (c)(1), revising the first sentence.

The revisions read as follows:

§ 141.135 Treatment technique for control of disinfection byproduct (DBP) precursors.

* * * * *

(b) * * *

(1) * * *

(2) * * *

STEP 1 REQUIRED REMOVAL OF TOC BY ENHANCED COAGULATION AND ENHANCED SOFTENING FOR SUBPART H SYSTEMS USING CONVENTIONAL TREATMENT[1,2]

Source-water TOC, mg/L	Source-water alkalinity, mg/L as $CaCO_3$		
	0–60 (percent)	>60–120 (percent)	>120[3] (percent)
>2.0–4.0	35.0	25.0	15.0
>4.0–8.0	45.0	35.0	25.0
>8.0	50.0	40.0	30.0

[1] Systems meeting at least one of the conditions in paragraph (a)(2)(i)–(vi) of this section are not required to operate with enhanced coagulation.

[2] Softening system meeting one of the alternative compliance criteria in paragraph (a)(3) of this section are not required to operate with enhanced softening.

[3] System practicing softening must meet the TOC removal requirements in this column.

(3) * * *

(4) *Alternate minimum TOC removal (Step 2) requirements.* Applications made to the State by enhanced coagulation systems for approval of alternate minimum TOC removal (Step 2) requirements under paragraph (b)(3) of this section must include, as a minimum, results of bench- or pilot-scale testing conducted under paragraph (b)(4)(i) of this section. The submitted bench- or pilot-scale testing must be used to determine the alternate enhanced coagulation level.

(c) * * *

(1) Subpart H systems other than those identified in paragraph (a)(2) or (a)(3) of this section must comply with requirements contained in paragraphs (b)(2) or (b)(3) of this section. * * *

* * * * *

§ 141.170 [Amended]

16. Section 141.170(a) is amended by revising "December 17, 2001" to read "January 1, 2002".

§ 141.172 [Amended]

17. Amend § 141.172 by:

a. In paragraph (a)(2)(iii)(A), revising "March 16, 2000" to read "March 31, 2000";

b. In paragraph (a)(5)(i), revising "December 16, 1999" to read "December 31, 1999" wherever it appears;

c. In paragraph (a)(5)(iii), revising "March 16, 2000" to read "March 31, 2000";

d. In paragraph (b)(2) introductory text, revising "March 16, 2000" to read "April 1, 2000";

e. In paragraph (b)(3)(i), revising "March 16, 2000" to read "March 31, 2000"; and

f. In paragraph (b)(4)(ii), revising the last sentence.

The revisions read as follows:

§ 141.172 Disinfection profiling and benchmarking.

* * * * *

(b) * * *

(4) * * *

(ii) * * * The (CTcalc/$CT_{99.9}$) value of each segment and (Σ(CTcalc/$CT_{99.9}$)) must be calculated using the method in paragraph (b)(4)(i) of this section.

* * * * *

§ 141.173 [Amended]

18. In § 141.173, amend the introductory text by revising "December 17, 2001" to read "December 31, 2001".

§ 141.174 [Amended]

19. Section 141.174 is amended by revising paragraph (b) to read as follows:

§ 141.174 Filtration sampling requirements.

* * * * *

(b) If there is a failure in the continuous turbidity monitoring equipment, the system must conduct grab sampling every four hours in lieu of continuous monitoring until the turbidimeter is repaired and back on-line. A system has a maximum of five working days after failure to repair the equipment or it is in violation.

§ 141.175 [Amended]

20. Amend § 141.175 by revising the two occurrences of "December 17, 2001" to read "January 1, 2002" in the introductory text and adding paragraph (c) to read as follows:

§ 141.175 Reporting and recordkeeping requirements.

* * * * *

(c) *Additional reporting requirements.*

(1) If at any time the turbidity exceeds 1 NTU in representative samples of filtered water in a system using conventional filtration treatment or direct filtration, the system must inform the State as soon as possible, but no later than the end of the next business day.

(2) If at any time the turbidity in representative samples of filtered water exceed the maximum level set by the State under § 141.173(b) for filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration, the system must inform the State as soon as possible, but no later than the end of the next business day.

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

21. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

§ 142.12 [Amended]

22. In § 142.12, revise paragraph (b)(3)(i), and the last sentence of (d)(2), to read as follows:

§ 142.12 Revision of State programs.

* * * * *

(b) * * *

(3) * * *

(i) Informing public water systems of the new EPA (and upcoming State) requirements and that EPA will be overseeing implementation of the requirements until the State, if eligible for interim primacy, submits a complete and final primacy revision request to EPA, or in all other cases, until EPA approves the State program revision;

* * * * *

(d) * * *

(2) *Final request.* * * * Complete and final State requests for program revisions shall be submitted within two years of the promulgation of the new or revised EPA regulations, as specified in paragraph (b) of this section.

* * * * *

§ 142.15 [Amended]

23. In § 142.15, paragraph (c)(5), revise the reference "§ 141.16(b)(3)" to read "§ 142.16(b)(3)".

[FR Doc. 00–9089 Filed 4–13–00; 8:45 am]
BILLING CODE 6560–50–P

VOL 65 ISS 73 AP 14 2000 UMI

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 141 and 142

[FRL–6576–1]

RIN 2040–AD43

Revisions to the Interim Enhanced Surface Water Treatment Rule (IESWTR), the Stage 1 Disinfectants and Disinfection Byproducts Rule (Stage 1 DBPR) and Revisions to State Primacy Requirements To Implement the Safe Drinking Water Act (SDWA) Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing minor revisions to the Interim Enhanced Surface Water Treatment Rule (IESWTR) and the Stage 1 Disinfectant and Disinfection Byproducts Rule (Stage 1 DBPR) which were published December 16, 1998, and the Revisions to State Primacy Requirements to Implement the SDWA Amendments (Primacy Rule) published April 28, 1998. Today's proposed rule revises the compliance dates for the IESWTR and the Stage 1 DBPR. This change will shift the monitoring periods to coincide with calendar quarters which will facilitate the implementation of these rules. This proposed rule will also extend the use of new analytical methods included in the IESWTR and the Stage 1 DBPR to compliance monitoring for long standing drinking water regulations for total trihalomethanes. This proposed rule also includes several changes to the regulatory language for clarification. In the "Rules and Regulations" section of this **Federal Register**, EPA is also promulgating these changes as a direct final rule because we view this a noncontroversial revision and anticipate no adverse comments. We have explained our reasons in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by May 15, 2000.

ADDRESSES: Send written comments to the Comment Clerk, docket number W–99–11, Water Docket (MC 4101), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The record for this proposed rule is established under docket number W–99–11. The record is available for inspection from 9 a.m. to 4 p.m. Monday through Friday, excluding legal holidays at the Water Docket, East Tower Basement, US EPA, 401 M Street, SW, Washington DC. For access to docket materials, please call 202–260–3027 to schedule an appointment. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street SW, East Tower Basement, Washington, DC 20460. Comments may be submitted electronically to *ow-docket@epamail.epa.gov*. No facsimiles (faxes) will be accepted. See **SUPPLEMENTARY INFORMATION** section for further details about comment submission.

FOR FURTHER INFORMATION CONTACT: Jennifer Melch, Implementation and Assistance Division, Office of Ground Water and Drinking Water (MC–4606), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460, (202) 260–7035. Information may also be obtained from the EPA Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426–4791. The Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 a.m. to 5:30 p.m. EST.

SUPPLEMENTARY INFORMATION: This document concerns Revisions to the Interim Enhanced Surface Water Treatment Rule (IESWTR), the Stage 1 Disinfectants and Disinfection Byproducts Rule (DBPR), and the Primacy Rule. For further information, please see the information provided in the direct final action which is located in the "Rules and Regulations" section of this **Federal Register** publication. At times, EPA included text from current regulations to make the revisions to the tables easier to understand. These revisions are to §§ 141.132(b)(1)(i), 141.134(b)–(d), 141.135(b)(2), and are distinguished in the preamble to the direct final rule. EPA is not soliciting comment on any regulatory text that has not been revised and will not address any such comments.

Additional Information for Commenters

Please submit an original and three copies of your comments and enclosures (including references). Comments must be received or postmarked by May 15, 2000.

Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. Electronic comments must be submitted as a WP5/6/7/8 file or an ASCII File, avoiding the use of special characters and form and encryption. Electronic comments must be identified by the docket number W–99–11.

List of Subjects in 40 CFR Parts 141 and 142

Environmental protection, Analytical methods, Drinking water, Intergovernmental relations, Public utilities, Reporting and recordkeeping requirements, Reservoirs, Utilities, Water supply, Watersheds.

Dated: April 4, 2000.

Carol M. Browner,

Administrator.

[FR Doc. 00–9090 Filed 4–13–00; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Friday,
April 14, 2000

Part IV

Department of Education

Office of Educational Research and Improvement; Fund for the Improvement of Education—Comprehensive School Reform Capacity Building Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000; Notice

VOL 65 ISS 73 14 2000 AP UMI

DEPARTMENT OF EDUCATION

[CFDA No. 84.215C]

Office of Educational Research and Improvement; Fund for the Improvement of Education—Comprehensive School Reform Capacity Building Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of Program: The purpose of the Fund for the Improvement of Education (FIE) is to support nationally significant programs to improve the quality of education, assist all students to meet challenging State content standards, and contribute to the achievement of the National Education Goals. The purpose of this competition is to develop the long-term capacity of comprehensive school reform models to better serve schools as described in the Priorities section of this application notice.

Eligible Applicants: State and local educational agencies, institutions of higher education, and other public and private agencies, organizations, and institutions.

Applications Available: April 21, 2000.

Deadline for Transmittal of Applications: June 9, 2000.

Deadline for Intergovernmental Review: August 8, 2000.

Estimated Available Funds: $15,000,000.

Estimated Range of Awards: $500,000—$1,000,000.

Estimated Average Size of Awards: $750,000.

Maximum Award: We will reject any application that proposes a budget exceeding $1,000,000 in any budget period.

Estimated Number of Awards: 20.

Note: The Department is not bound by any estimates in this notice.

Budget Period: 12 months.

Project Period: Up to 36 months.

Page Limit: The application narrative is where you, the applicant, address the selection criteria reviewers will use to evaluate your application. You must limit the application narrative to the equivalent of no more than 25 double-spaced pages using the following standards:

- A page is 8.5″ x 11″, with printing on one side only.
- Double-space all text in the application narrative (no more than three lines in a vertical inch)..

We strongly encourage applicants to use a font that is 12-point or larger with one-inch margins.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support.

If the narrative section is more than the equivalent of the 25 double-spaced page limit, or if to meet the page limit, you use more than one side of the page or you use a larger page, our reviewers will not evaluate the portion of your application that goes beyond the equivalent of the specified page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) The regulations in 34 CFR part 299.

SUPPLEMENTARY INFORMATION: The purpose of the Fund for the Improvement of Education (FIE) is to support nationally significant programs to improve the quality of education, assist all students to meet challenging State content standards, and contribute to the achievement of the National Education Goals. The purpose of this competition is to develop the long-term capacity of comprehensive school reform models to better serve schools as described in the Priorities section of this notice.

The Conference Report for the Department's fiscal year 2000 appropriation directs the Secretary to make awards to providers of comprehensive school reform models. A comprehensive school reform model is one in which all systems within a school—organization, instruction, professional development and management—and all of the school's classrooms are actively engaged in and accountable for the implementation of a common, articulated strategy to improve teaching and learning for all students in the school.

The Secretary believes that the purpose of the Comprehensive School Reform program is to substantially improve student achievement. These programs are intended to stimulate school-wide change covering virtually all aspects of school operations, rather than a piecemeal, fragmented approach to reform. In order to enhance the long-term capacity of models to provide higher quality services to greater numbers of schools, the Secretary believes that the model developers must engage in a process of continuous improvement based on careful analysis of their work.

In shaping these priorities, the Secretary has consulted widely with the field and drawn on the Department's experiences over the past three years with the Comprehensive School Reform and Demonstration Program (CSRDP). Recent reports on comprehensive school reform indicate that issues surrounding the implementation of models are very important to their success with teachers and students. Such issues as the district's role in supporting schools undertaking comprehensive school reform, the role of school leadership, community support, teacher capacity and availability of time, the relationship of the model to the existing curriculum in the school, the relationship of the model to the State and local standards and performance measures, among others, have a significant impact on the successful implementation of models in multiple sites throughout the nation. Most models have not developed a systematic way of collecting and analyzing information on implementation of their approach in schools. The Secretary believes that developing such systems will greatly enhance the long-term capacity of models to improve their work and have a positive impact on schools.

To determine the capacity and needs of model developer organizations for funding under this competition, the Secretary requires that the applicants provide a thorough description of their evidence of effectiveness, particularly their student outcome data. He also requires that applicants demonstrate that their models are operating successfully in at least 15 schools to qualify as a national model, and that the model developers demonstrate that there is a significant unmet demand from schools and/or school districts for the model.

The Secretary has determined that the following activities are most likely to improve the long-term ability of models to provide high quality services to larger numbers of schools.

The Secretary believes that more attention needs to be given to activities that support the continuous improvement of models as they scale up and reach larger numbers of schools. Most comprehensive school reform models need to develop and implement data collection and feedback systems that track and provide timely feedback on such activities as: (a) the effectiveness of the professional development provided by the model; (b) the usefulness of materials and technical assistance provided by the model; (c) the model's effectiveness in schools with special populations; (d) the on-going support of staff for the model; and, (e) the model's success in achieving high fidelity implementation in multiple sites. The Secretary believes that providers of comprehensive school

reform models will benefit from developing and implementing data collection and feedback systems that track implementation in all schools adopting their approach. Further, these systems should include data to permit analysis of the role of the district in supporting implementation. Through these efforts the providers of comprehensive school reform models will increase their ability to serve more schools well. The Secretary believes that the assistance of a third-party evaluator will strengthen the effectiveness of some or all of the activities of this part of the priority.

There is research that suggests that the most effective way to increase student learning is to improve the curriculum and associated teaching strategies in the core subject areas and align them with state and local content standards and performance measures. The Secretary believes that the impact of some comprehensive school reform models would be improved by strengthening the teaching and learning that is a part of the model's design.

There is evidence that some comprehensive school reform models do not have the capacity to work effectively with the lowest performing schools. Yet, students in these schools are most often most at risk of failure. Therefore, the Secretary believes that some models would improve their capacity by developing materials and processes that specifically address the needs of the lowest performing schools which will allow them to expand their services into more of these schools.

There is evidence that some of the comprehensive school reform models do not address the concerns of special populations as successfully as they could. English language learners or children with disabilities or both often need specialized materials and support. Therefore, the Secretary believes developers should augment their models to better serve special populations of students.

The Secretary understands that developers of national comprehensive school reform models are finding that it is difficult to meet the demands of an increasing number of schools seeking assistance. Therefore, the Secretary asks the applicants to articulate their specific needs for increasing their capacity in order to scale-up their operation, and to describe the activities that will expand their ability to work more effectively with larger numbers of schools.

Finally, the Secretary believes that the projects funded under this program will benefit from collaboration with other projects, both to improve their individual efforts as well as to contribute to the overall knowledge on comprehensive school reform. Projects will be expected to collaborate with Department of Education staff and expert consultants in the design of a core set of data collection instruments and analytic measures. It is expected that these will be used to provide continuous feedback on the quality of implementation across the designs and provide the public with data about the effectiveness of the designs in improving student achievement. Projects are required to set aside a minimum of ten (10) percent of their budget for this purpose.

Priorities

Absolute Priority

The Secretary gives absolute preference to applications that meet the absolute priority in the next paragraph. The Secretary funds under this priority only applications that meet this absolute priority. (34 CFR 75.105(c)(3)).

Absolute Priority—Comprehensive School Reform Models

An applicant must propose a set of activities that are designed to improve the quality of the services provided by a comprehensive school reform model and increase the number of schools served by the model. To be considered for funding, the comprehensive school reform model developer must provide evidence of the model's effectiveness in improving student achievement in high-poverty schools, particularly by providing information on the impact on student achievement. The model must also be operating successfully in at least fifteen (15) schools to be considered for funding under this program and demonstrate that there is a demand from schools interested in adopting the model. The applicant must explain the analytic process and the subsequent results of that process that led to their proposed activities for improving the quality and quantity of services to schools.

(a) Each application must propose one or more of the following activities. We will not consider other activities for funding:

(1) Designing and using continuous improvement processes to track and provide timely feedback on the model's services to adopting schools. [Participation of a third-party evaluator strengthens this effort. See Competitive Priority 1.]

(2) Strengthening the curriculum and instruction provided by the model, particularly in reading and mathematics, and aligning it with state and local content standards and performance measures.

(3) Developing processes and materials to better support the lowest performing and most troubled schools.

(4) Developing processes and materials to enhance the model's ability to serve special population of students (*e.g.*, English language learners and students with disabilities.)

(5) Supporting other activities that the applicant demonstrates will allow them to serve a larger number of schools with high-quality services.

(b) In addition to the above menu of activities, the applicant must participate in the collaborative design and use of a core set of data collection instruments and analytic measures to carry out the formative and outcome evaluation activities. Department of Education staff will facilitate a process of bringing together project staff funded through this effort and expert consultants to collaborate on the design of the formative and outcome evaluation activities. Each project must set aside a minimum of 10 percent of its budget for this purpose.

Competitive Priorities

The Secretary will give competitive preference, as indicated under each priority, to applications that meet one or both of the following competitive priorities.

Competitive Priority 1

Priority will be given to projects that include a comprehensive formative evaluation plan, including a third-party evaluator.

Under 34 CFR 75.105(c)(2)(i) we award an additional five (5) points to an application, depending on how well the application meets the priority.

Competitive Priority 2

Priority will be given to projects that serve a school or schools located in rural or isolated areas.

Under 34 CFR 75.105(c)(2)(ii) we give preference to an application that meets the priority over an application of comparable merit that does not meet the priority.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. In accordance with the order,

this document is intended to provide early notification of the Department's specific plans and actions for this purpose.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department of Education to offer interested parties the opportunity to comment on proposed priorities that are not taken directly from statute. Ordinarily, this practice would have applied to the priorities in this notice. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, exempts rules that apply to the first grant competition under a new program or substantially revised program from this requirement. The Conference Report for the Department's FY 2000 appropriation directs the Secretary to make awards "to providers of comprehensive school models." This will be the first grant competition conducted under the authority of the Fund for Improvement of Education program, 20 U.S.C. 8001, that concerns comprehensive school reform. The Secretary, in accordance with section 437(d)(1) of GEPA, to ensure timely awards, has decided to forego public comment with respect to the priorities. The priorities will apply only to the FY 2000 grant competition.

For Applications Contact: Julie Coplin, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502J, Washington, DC 20202–5645 Telephone: (202) 219–2089; e-mail julie__coplin@ed.gov. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

For Further Information Contact: Cheryl Kane, U.S. Department of Education, 555 New Jersey Avenue, NW., room 604B Washington, DC 20202–5530. Telephone: (202) 208–2991; e-mail: cheryl__kane@ed.gov. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Alternative Formats

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Applications Contact.*

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the person listed under *For Applications Contact.* However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

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http://ocfo.ed.gov/fedreg.htm
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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Program Authority: 20 U.S.C. 8001.

Dated: April 10, 2000.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 00–9355 Filed 4–13–00; 8:45 am]

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VOL 65 ISS 73 AP 14 2000 UMI

Federal Register

Friday,
April 14, 2000

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 39
Airworthiness Directives; McDonnell Douglas Model MD–11; AD 2000–07–14, et al.; Final Rules

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–263–AD; Amendment 39–11668; AD 2000–07–14]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that requires a one-time detailed visual inspection of a certain passenger seat wire assembly to detect chafed or damaged wires; repair, if necessary; and installation of protective sleeving. This amendment is prompted by a report of arcing emanating from a certain passenger seat wire assembly. The actions specified by this AD are intended to prevent chafing of the passenger seat wire assembly against a bracket at the lower sidewall panel due to insufficient clearance between the bracket and seat wire assembly, which could result in arcing damage to the passenger seat wire assembly and consequent smoke and fire in the main cabin.

DATES: Effective May 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes was published in the **Federal Register** on February 1, 2000 (65 FR 4781). That action proposed to require a one-time detailed visual inspection of a certain passenger seat wire assembly to detect chafed or damaged wires; repair, if necessary; and installation of protective sleeving.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 128 airplanes of the affected design in the worldwide fleet. The FAA estimates that 32 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $3,840, or $120 per airplane.

It will take approximately 2 work hours per airplane to accomplish the required installation of protective sleeving, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the installation required by this AD on U.S. operators is estimated to be $3,840, or $120 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–07–14 McDonnell Douglas: Amendment 39–11668. Docket 99–NM–263–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A152, dated August 9, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an

alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the passenger seat wire assembly against a bracket at the lower sidewall panel due to insufficient clearance between the bracket and seat wire assembly, which could result in arcing damage to the passenger seat wire assembly and consequent smoke and fire in the main cabin, accomplish the following:

Inspection, Installation, and Repair, If Necessary

(a) Within 6 months after the effective date of this AD, perform a detailed visual inspection of the passenger seat wire assembly to detect chafed or damaged wires, and install protective sleeving, in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A152, dated August 9, 1999. If any chafed or damaged wire is found, prior to further flight, repair in accordance with the service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A152, dated August 9, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 19, 2000.

Issued in Renton, Washington, on April 4, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8810 Filed 4–13–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–264–AD; Amendment 39–11669; AD 2000–07–15]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that requires a one-time detailed visual inspection of the electrical connections to detect corrosion; repair, if necessary; and installation of new circuit breakers and associated wiring. This amendment is prompted by a report that the ratings of certain circuit breakers of a certain video entertainment system exceed the ratings of their associated electrical connector contacts. The actions specified by this AD are intended to prevent a disparity between the ratings of certain circuit breakers and their associated electrical connector contacts, which could damage the electrical connector contacts and cause possible arcing and heat damage to the electrical connector.

DATES: Effective May 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes was published in the **Federal Register** on February 1, 2000 (65 FR 4782). That action proposed to require a one-time detailed visual inspection of the electrical connections to detect corrosion; repair, if necessary; and installation of new circuit breakers and associated wiring.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 12 airplanes of the affected design in the worldwide fleet. The FAA estimates that 12 airplanes of U.S. registry will be affected by this AD.

It will take approximately 30 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. The manufacturer

has committed previously to its customers that it will bear the cost of replacement parts. As a result, the cost of those parts is not attributable to this AD. Based on this information the cost impact of the AD on U.S. operators is estimated to be $21,600, or $1,800 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that manufacturer warranty remedies are available for labor costs associated with accomplishing the actions required by this AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–07–15 McDonnell Douglas: Amendment 39–11669. Docket 99–NM–264–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Service Bulletin MD11–23–082, dated August 17, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a disparity between the ratings of certain circuit breakers and their associated electrical connector contacts, which could damage the electrical connector contacts and possible arcing and heat damage to the electrical connector, accomplish the following:

Inspection, Installation, and Repair, If Necessary

(a) Within 1 year after the effective date of this AD, perform a detailed visual inspection of certain electrical connections to detect corrosion, and install new circuit breakers and associated electrical wiring (including modification of a certain nameplate), in accordance with McDonnell Douglas Service Bulletin MD11–23–082, dated August 17, 1999. If any corrosion is detected, prior to further flight, repair in accordance with the service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with McDonnell Douglas Service Bulletin MD11–23–082, dated August 17, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 19, 2000.

Issued in Renton, Washington, on April 4, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8811 Filed 4–13–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–265–AD; Amendment 39–11670; AD 2000–07–16]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD),

applicable to certain McDonnell Douglas Model MD–11 and MD–11F series airplanes, that currently requires modification of the external power feeder cable clamping installation. This amendment also requires a detailed visual inspection of the external power feeder cables to detect chafed or damaged wires; and repair, if necessary. This amendment is prompted by reports of damage to the external power feeder cables located under the forward cargo compartment floor, which was caused by excessive cable length and/or maintenance personnel stepping on the cables. The actions specified by this AD are intended to prevent arcing from occurring under the forward cargo compartment floor as a result of damaged external power feeder cables, a situation that could lead to a fire at this location.

DATES: Effective May 19, 2000.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–24A078, Revision 01, dated June 16, 1999, as listed in the regulations, is approved by the Director of the Federal Register as of May 19, 2000.

The incorporation by reference of McDonnell Douglas Service Bulletin 24–78, dated May 10, 1994, as listed in the regulations, was approved previously by the Director of the Federal Register as of June 15, 1994 (59 FR 27972, May 31, 1994).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–11–06, amendment 39–8922 (59 FR 27972, May 31, 1994), which is applicable to certain McDonnell Douglas Model MD–11 and MD–11F series airplanes, was published in the **Federal Register** on February 1, 2000 (65 FR 4784). The action proposed to continue to require modification of the external power feeder cable clamping installation. The action also proposed to require a detailed visual inspection of the external power feeder cables to detect chafed or damaged wires; and repair, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 110 airplanes of the affected design in the worldwide fleet. The FAA estimates that 46 airplanes of U.S. registry will be affected by this AD.

The modification of the external power feeder cable clamping installation that is currently required by AD 94–11–06, and retained in this AD, takes approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $395 per airplane. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $26,450, or $575 per airplane.

The new actions that are required in this AD action will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $2,760, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or new requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8922 (59 FR 27972, May 31, 1994), and by adding a new airworthiness directive (AD), amendment 39–11670, to read as follows:

2000–07–16 McDonnell Douglas: Amendment 39–11670. Docket 99–NM–265–AD. Supersedes AD 94–11–06, Amendment 39–8922.

Applicability: Model MD–11 and MD–11F series airplanes, as listed in McDonnell Douglas Service Bulletin 24–78, dated May 10, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in

accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing from occurring under the forward cargo compartment floor as a result of damaged external power feeder cables, a situation that could lead to a fire at this location, accomplish the following:

Restatement of Requirements of AD 94–11–06, Amendment 39–8922 Modification

(a) Within 90 days after June 15, 1994 (the effective date of AD 94–11–06, amendment 39–8922), modify the external power feeder cable clamping installation in accordance with McDonnell Douglas Service Bulletin 24–78, dated May 10, 1994, or McDonnell Douglas Alert Service Bulletin MD11–24A078, Revision 01, dated June 16, 1999.

New Requirements of this AD

Inspection

(b) Within 1 year after the effective date of this AD, perform a detailed visual inspection of the external power cables between stations Y=635.000 and Y=655.000 to detect chafed or damaged wires, in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A078, Revision 01, dated June 16, 1999. If any chafed or damaged wire is found, prior to further flight, repair in accordance with the service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with McDonnell Douglas Service Bulletin 24–78, dated May 10, 1994, and McDonnell Douglas Alert Service Bulletin MD11–24A078, Revision 01, dated June 16, 1999.

(1) The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–24A078, Revision 01, dated June 16, 1999 is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas Service Bulletin 24–78, dated May 10, 1994 was approved previously by the Director of the Federal Register as of June 15, 1994 (59 FR 27972, May 31, 1994).

(3) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on May 19, 2000.

Issued in Renton, Washington, on April 4, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8812 Filed 4–13–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–266–AD; Amendment 39–11671; AD 2000–07–17]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that requires a general visual inspection to verify that the circuit breaker panel fully opens, follow-on inspections, and corrective actions, if necessary. This amendment is prompted by an incident of an operator not being able to fully open the observer's upper main circuit breaker panel due to a certain cable being too short. The actions specified by this AD are intended to ensure that the upper main circuit breaker panel opens fully. If the panel does not open fully, maintenance activities may be hindered and cause damage to the circuit breaker panel and wiring, which could result in electrical arcing and consequent smoke and fire in the flight compartment.

DATES: Effective May 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes was published in the **Federal Register** on February 1, 2000 (65 FR 4786). That action proposed to require a general visual inspection to verify that the circuit breaker panel fully opens, follow-on inspections, and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 161 airplanes of the affected design in the worldwide fleet. The FAA estimates that 66 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,960, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–07–17 McDonnell Douglas: Amendment 39–11671. Docket 99–NM–266–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A130, Revision 01, dated September 20, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the upper main circuit breaker panel opens fully, accomplish the following:

Inspection and a Follow-on Inspection

(a) Within 6 months after the effective date of this AD, perform a general visual inspection to verify that the circuit breaker panel fully opens in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A130, Revision 01, dated September 20, 1999.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If the circuit breaker panel fully opens, prior to further flight, perform a detailed visual inspection of the wires between circuit breakers B1–213 and B1–300 to terminal strip S3–602 to detect chafing damage, in accordance with the service bulletin.

(2) If the circuit breaker panel does not fully open, prior to further flight, perform a detailed visual inspection of the route path from circuit breakers B1–213 and B1–300 to terminal strip S3–602 to detect chafing damage and to determine if the wire can be adjusted or if the wire must be replaced, in accordance with the service bulletin.

Note 3: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Actions

(b) If any wire is found to need adjusting during the inspection required by paragraph (a)(2) of this AD, prior to further flight, adjust the wire in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A130, Revision 01, dated September 20, 1999.

(c) If any wire is found to need replacing during the inspection required by paragraph (a)(2) of this AD, prior to further flight, replace the wire with a new wire in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A130, Revision 01, dated September 20, 1999.

(d) If any chafing damage is found during the inspection required by paragraph (a)(1) or (a)(2) of this AD, prior to further flight, repair in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A130, Revision 01, dated September 20, 1999.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A130, Revision 01, dated September 20, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue,

SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on May 19, 2000.

Issued in Renton, Washington, on April 4, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8813 Filed 4–13–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–267–AD; Amendment 39–11672; AD 2000–07–18]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and MD–11F series airplanes, that requires a one-time detailed visual inspection of the generator power feeder wires to detect chafed or damage wires; repair, if necessary; and a modification of the generator power feeder wire installation. This amendment is prompted by reports of generator power feeder wire chafing on the closeout rib of the wing leading edge at a certain station due to insufficient clearance between the generator power feeder wires and the closeout rib. The actions specified by this AD are intended to prevent chafed and burnt generator power feeder wires, which could result in arcing damage to a certain closeout rib of the wing leading edge and fire damage to the wing structure, and consequent reduced structural integrity of the wing.

DATES: Effective May 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and MD–11F series airplanes was published in the **Federal Register** on February 1, 2000 (65 FR 4788). That action proposed to require a one-time detailed visual inspection of the generator power feeder wires to detect chafed or damage wires; repair, if necessary; and a modification of the generator power feeder wire installation.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 189 airplanes of the affected design in the worldwide fleet. The FAA estimates that 66 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,960, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–07–18 McDonnell Douglas: Amendment 39–11672. Docket 99–NM–267–AD.

Applicability: Model MD–11 and MD–11F series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–

24A172, dated September 8, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafed and burnt generator power feeder wires, which could result in arcing damage to a certain closeout rib of the wing leading edge and fire damage to the wing structure, and consequent reduced structural integrity of the wing, accomplish the following:

Inspection; Repair, If Necessary; and Modification

(a) Within 6 months after the effective date of this AD, perform a detailed visual inspection of the generator power feeder wires to detect chafed or damaged wires, and modify the generator power feeder wire installation in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A172, dated September 8, 1999. If any chafed or damaged wire is found, prior to further flight, repair in accordance with the service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A172, dated September 8, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 19, 2000.

Issued in Renton, Washington, on April 4, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8814 Filed 4–13–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–268–AD; Amendment 39–11673; AD 2000–07–19]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that requires a detailed visual inspection of the external power feeder cables in the forward cargo compartment between certain stations to detect chafing or damage; repair, if necessary; and installation of spiral wrap. This amendment is prompted by reports of failure of the external power feeder cable due to being chafed during maintenance. The actions specified by this AD are intended to prevent chafing and damage to external ground power feeder cables, which could result in electrical arcing and consequent structural damage and smoke and fire in the forward cargo compartment.

DATES: Effective May 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of May 19, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes was published in the **Federal Register** on February 1, 2000 (65 FR 4790). That action proposed to require a detailed visual inspection of the external power feeder cables in the forward cargo compartment between certain stations to detect chafing or damage; repair, if necessary; and installation of spiral wrap.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Explanation of Revised Alert Service Bulletin

Since issuance of the NPRM, the FAA has reviewed and approved Revision 02 of McDonnell Douglas Alert Service Bulletin MD11–24A008, dated March

27, 2000. The inspection and corrective action procedures in Revision 02 are identical that those specified in Revision 01 of the alert service bulletin, which was referenced in the proposed AD as the appropriate source of service information. Revision 02 of the alert service bulletin reverses the order of the groups of affected airplanes and removes one airplane from the effectivity listing.

As a result of the revised alert service bulletin, the FAA has revised the final rule to reference Revision 02 of the alert service bulletin as the appropriate source of service information for accomplishing the actions required by this AD and for determining the applicability of the AD. The FAA also has revised the final rule by including a new note that gives operators credit for accomplishing the actions required by this AD in accordance with Revision 01 of the alert service. In addition, the FAA has revised the Cost Impact section of the AD to reflect the appropriate cost information for the revised airplane groups.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 38 airplanes of the affected design in the worldwide fleet. The FAA estimates that 14 airplanes (11 airplanes identified as Group 1 and 3 airplanes identified as Group 2) of U.S. registry will be affected by this AD.

For Group 2 airplanes, the FAA estimates that it will take approximately 1 work hour per airplane to accomplish the required inspection, and approximately 2 work hours per airplane to accomplish the required installation of spiral wrap, and that the average labor rate is $60 per work hour. Required parts will cost approximately $140 per airplane. Based on these figures, the cost impact of the AD on U.S. operators of Group 2 airplanes is estimated to be $960, or $320 per airplane.

For Group 1 airplanes, the FAA estimates that it will take approximately 2 work hours per airplane to accomplish the required inspection, and approximately 3 work hours per airplane to accomplish the required installation of spiral wrap. Required parts will cost approximately $140 per airplane. Based on these figures, the cost impact of the AD on U.S. operators of Group 1 airplanes is estimated to be $4,840, or $440 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–07–19 McDonnell Douglas: Amendment 39–11673. Docket 99–NM–268–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A008, Revision 02, dated March 27, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing and damage to external ground power feeder cables, which could result in electrical arcing and consequent structural damage and smoke and fire in the forward cargo compartment, accomplish the following:

Inspection and Modification

(a) Within 12 months after the effective date of this AD, perform a detailed visual inspection of the external ground power feeder cables in the forward cargo compartment between stations Y=879.000 and Y=1019.000 left of centerline to detect chafing or damage, in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A008, Revision 02, March 27, 2000.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If any chafing or damage is detected, prior to further flight, repair and install spiral wrap, in accordance with the service bulletin.

(2) If no chafing or damage is detected, prior to further flight, install spiral wrap in accordance with the service bulletin.

Note 3: Inspections, repairs, and installations accomplished prior the effective date of this AD in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A008, Revision 01, dated December 2, 1999; are considered acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be

used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A008, Revision 02, dated March 27, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 19, 2000.

Issued in Renton, Washington, on April 4, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8815 Filed 4–13–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–269–AD; Amendment 39–11674; AD 2000–07–20]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that requires electrical resistance measurements of the ground studs of the No. 2 generator in the electrical power center of the center accessory compartment for proper electrical bonding and of the ground studs and circuit breaker terminations in the forward cargo compartment to detect looseness and for proper electrical bonding; and corrective actions, if necessary. This amendment is prompted by an incident of charred insulation blankets in the forward cargo compartment in the area of the external ground power receptacle and the galley external power circuit breakers, and another incident of a No. 2 "generator off" alert while the generator was still on line. The actions specified by this AD are intended to prevent arcing and overheating of terminals and consequent smoke and fire in the forward cargo compartment due to improper bonding of ground studs in the forward cargo compartment and in the electrical power center and due to improper installation of circuit breaker terminations.

DATES: Effective May 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes was published in the **Federal Register** on February 1, 2000 (65 FR 4792). That action proposed to require electrical resistance measurements of the ground studs of the No. 2 generator in the electrical power center of the center accessory compartment for proper electrical bonding and of the ground studs and circuit breaker terminations in the forward cargo compartment to detect looseness and for proper electrical bonding; and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 31 airplanes of the affected design in the worldwide fleet. The FAA estimates that 9 airplanes of U.S. registry will be affected by this AD. It will take approximately 2 work hours per airplane to accomplish the required measurements, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the measurements required by this AD on U.S. operators is estimated to be $1,080, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a

"significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–07–20 McDonnell Douglas: Amendment 39–11674. Docket 99–NM–269–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A040, Revision 01, dated October 11, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing and overheating of terminals and consequent smoke and fire in the forward cargo compartment due to improper bonding of ground studs in the forward cargo compartment and in the electrical power center (EPC) and due to improper installation of circuit breaker terminations, accomplish the following:

Resistance Check and Corrective Actions

(a) Within 12 months after the effective date of this AD, accomplish the actions specified in paragraphs (a)(1) and (a)(2) of this AD, in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A040, Reviston 01, dated October 11, 1999.

(1) Perform an electrical resistance measurement of the ground studs of the No. 2 generator in the electrical power center of the center accessory compartment for proper electrical bonding, in accordance with the service bulletin.

(i) If all ground studs are electrically bonded properly, prior to further flight, tighten applicable fasteners, if necessary, in accordance with the service bulletin.

(ii) If any ground stud is not electrically bonded properly, prior to further flight, electrically bond the ground stud in accordance with the service bulletin.

(2) Perform an electrical resistance measurement of the ground studs and circuit breaker terminations in the forward cargo compartment to detect looseness and for proper electrical bonding, in accordance with the service bulletin.

(i) If all ground studs are electrically bonded properly, prior to further flight, tighten applicable attaching parts in accordance with the service bulletin.

(ii) If any circuit breaker termination is found loose, tighten in accordance with the service bulletin.

(iii) If any ground stud is not electrically bonded properly, prior to further flight, electrically bond the ground stud in accordance with the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A040, Revision 01, dated October 11, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 19, 2000.

Issued in Renton, Washington, on April 4, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8816 Filed 4–13–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–270–AD; Amendment 39–11675; AD 2000–07–21]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that requires a general visual inspection of wiring behind the control panel of the auxiliary power unit (APU) located in the cockpit to detect chafing; repair if necessary; and modification of the wiring. This amendment is prompted by an incident of chafing of wire bundles of the control module of the APU. The actions specified by this AD are intended to prevent such chafing and resultant arcing due to insufficient clearance between the wire bundles and the airplane structure, which could result in smoke and fire in the flight deck.

DATES: Effective May 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855

Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes was published in the **Federal Register** on February 1, 2000 (65 FR 4793). That action proposed to require a general visual inspection of wiring behind the control panel of the auxiliary power unit (APU) located in the cockpit to detect chafing; repair if necessary; and modification of the wiring.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 164 airplanes of the affected design in the worldwide fleet. The FAA estimates that 61 airplanes of U.S. registry will be affected by this AD. It will take approximately 1 work hour per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $3,660, or $60 per airplane.

The FAA also estimates that it will take approximately 1 work hour per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. The cost of required parts will be nominal. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $3,660, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–07–21 McDonnell Douglas: Amendment 39–11675. Docket 99–NM–270–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A116, Revision 01, dated October 11, 1999; except for those airplanes on which the modification specified in McDonnell Douglas Service Bulletin MD11–24–116, dated May 14, 1997, has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent wire chafing of the control panel of the auxiliary power unit (APU) and resultant arcing due to insufficient clearance between the wire bundles and the airplane structure, which could result in smoke and fire in the flight deck, accomplish the following:

Inspection

(a) Within 12 months after the effective date of this AD, perform a general visual inspection of wiring behind the control panel of the APU to detect chafing, in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A116, Revision 01, dated October 11, 1999.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If no chafing is found, prior to further flight, accomplish the requirements of paragraph (b) of this AD.

(2) If any chafing is found, prior to further flight, repair in accordance with the service bulletin and accomplish the requirements of paragraph (b) of this AD.

Modification

(b) Modify the wiring behind the APU control panel (i.e., install sleeving and fiber

tying tape over wires) in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A116, Revision 01, dated October 11, 1999.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A116, Revision 01, dated October 11, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on May 19, 2000.

Issued in Renton, Washington, on April 4, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8817 Filed 4–13–00; 8:45 am]

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H.R. 5/P.L. 106–182

Senior Citizens' Freedom to Work Act of 2000 (Apr. 7, 2000; 114 Stat. 198)

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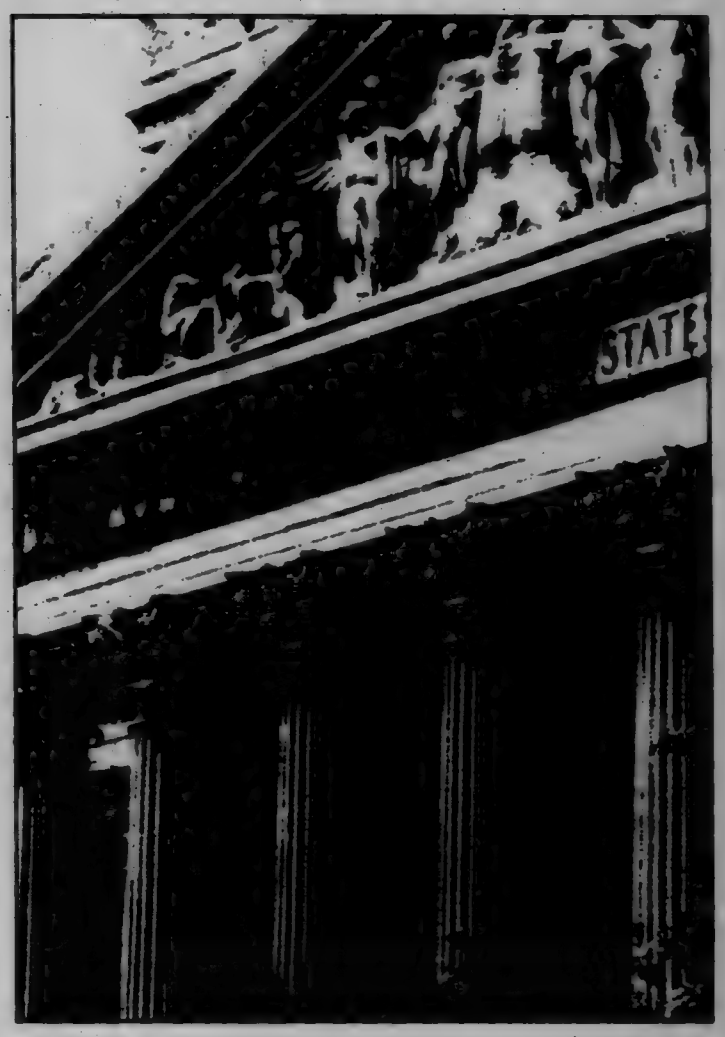

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106th Congress, 2nd Session, 2000

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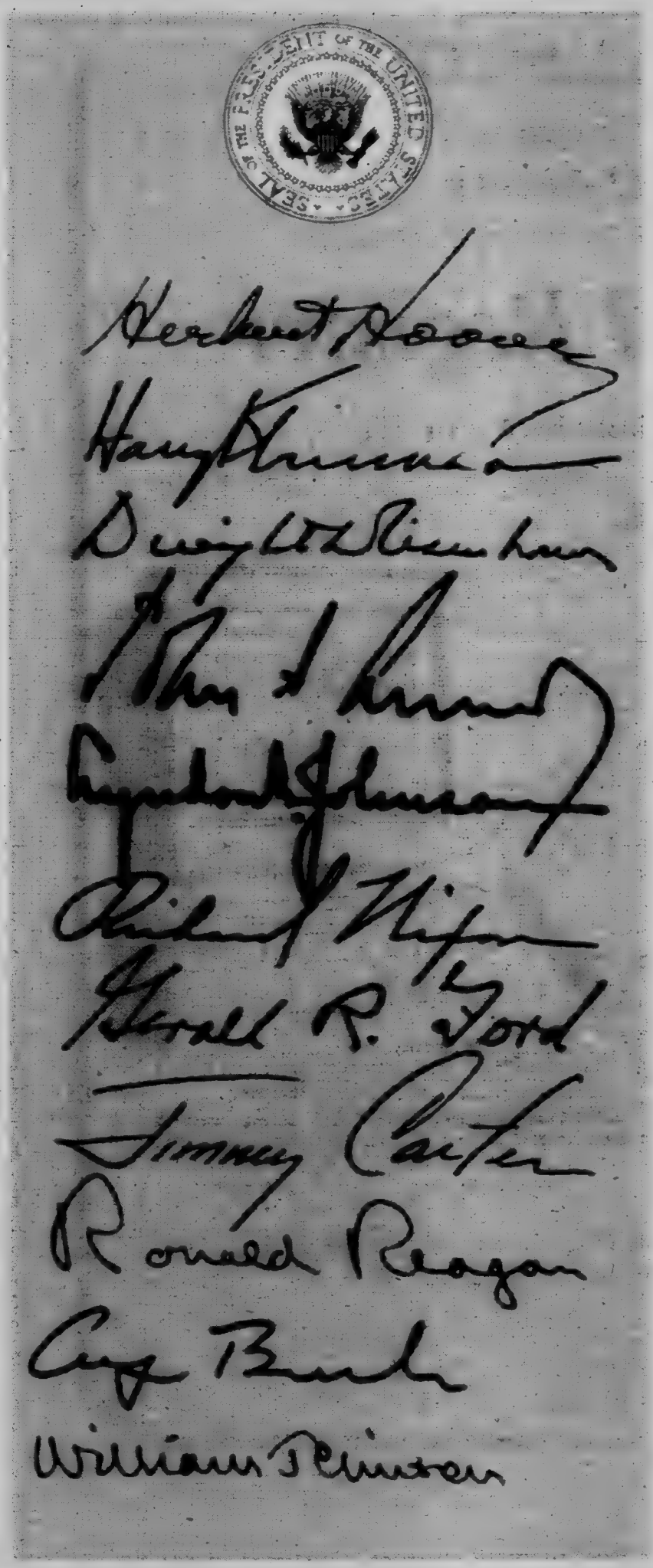

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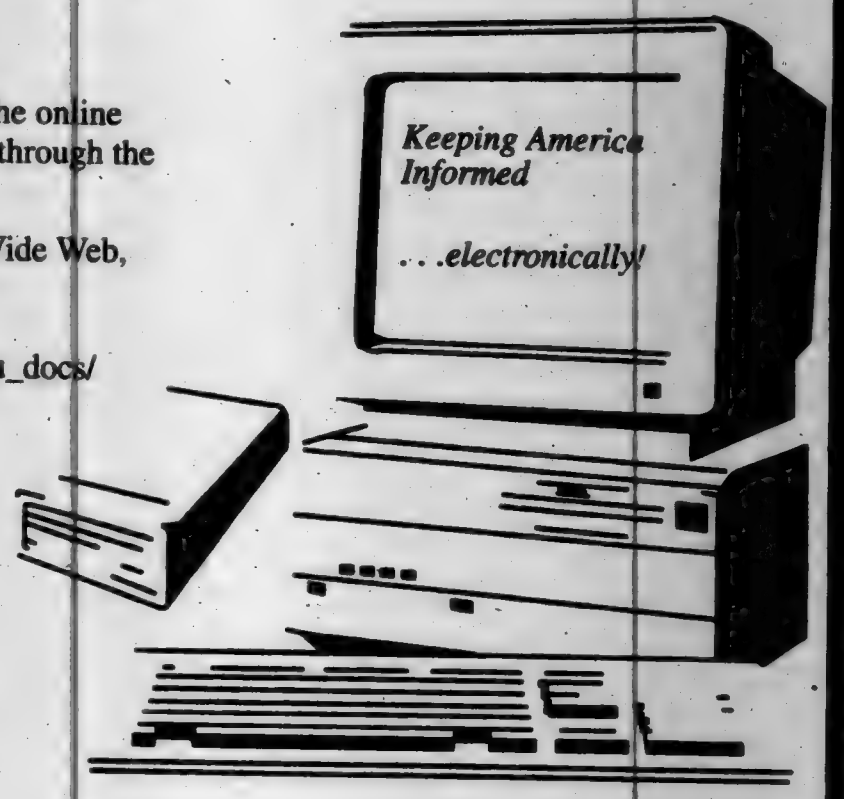

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 98–029–2]

Change in Disease Status of the Republic of South Africa Because of Foot-and-Mouth Disease and Rinderpest

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are declaring the Republic of South Africa, except the foot-and-mouth disease controlled area, which includes Kruger National Park, free of foot-and-mouth disease. We are also declaring all of the Republic of South Africa free of rinderpest. We are taking these actions because there have been no outbreaks of foot-and-mouth disease in the Republic of South Africa, except in the foot-and-mouth disease controlled area, since 1957, and there have been no outbreaks of rinderpest in the Republic of South Africa since 1903. These actions will relieve certain restrictions due to foot-and-mouth disease and rinderpest on the importation into the United States of certain live animals and animal products from all regions of the Republic of South Africa, except the foot-and-mouth disease controlled area. However, because we do not consider the Republic of South Africa to be free of hog cholera, African swine fever, and swine vesicular disease, the importation of live swine, and meat and other products from swine, into the United States from the Republic of South Africa will continue to be subject to certain restrictions.

EFFECTIVE DATE: May 2, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Glen I. Garris, Supervisory Staff Officer, Regionalization Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of specified animals and animal products into the United States to help prevent the introduction of various diseases, including foot-and-mouth disease (FMD) and rinderpest. FMD and rinderpest are highly contagious and destructive diseases of ruminants and swine.

Section 94.1(a) of the regulations provides that rinderpest or FMD exists in all regions of the world except those listed in § 94.1(a)(2) as free of both of those diseases and those listed in § 94.1(a)(3) as free of rinderpest. The regulations in § 94.1(b) prohibit, with certain exceptions, the importation into the United States of any ruminant or swine, or any fresh (chilled or frozen) meat of any ruminant or swine, that originates from a region where rinderpest or FMD exists, or that has entered a port in or otherwise transited a region where rinderpest or FMD exists. Also, the regulations in § 94.2 restrict the importation of fresh (chilled or frozen) products, other than meat, and milk and milk products of ruminants or swine that originate in or transit a region where rinderpest or FMD exists. Additionally, the importation of organs, glands, extracts, and secretions of ruminants or swine originating in a region where rinderpest or FMD exists is restricted under the regulations in § 94.3, and the importation of cured or cooked meat from a region where rinderpest or FMD exists is restricted under the regulations in § 94.4. Finally, the regulations in 9 CFR part 98 restrict the importation of ruminant and swine embryos and animal semen from a region where rinderpest or FMD exists.

The Government of the Republic of South Africa has requested that the U.S. Department of Agriculture (USDA) recognize the Republic of South Africa as free of rinderpest. It also has requested that USDA recognize the Republic of South Africa, except the FMD-controlled area, which includes Kruger National Park, as free of FMD.

On February 17, 1999, we published in the **Federal Register** (64 FR 7816–7822, Docket No. 98–029–1) a proposal to amend the regulations by declaring the Republic of South Africa, except the FMD-controlled area (which extends from the Republic of South Africa's border with Mozambique approximately 30 to 90 kilometers into the Republic of South Africa to include Kruger National Park and surveillance and control zones around the park, and elsewhere extends, from east to west, approximately 10 to 20 kilometers into the Republic of South Africa along its borders with Mozambique, Swaziland, Zimbabwe, Botswana, and the southeast part of the border with Namibia), free of FMD. We also proposed to declare all of the Republic of South Africa free of rinderpest. In addition, we proposed to add the proposed FMD-free area of the Republic of South Africa to the list of regions in § 94.11(a) that are declared free of rinderpest and FMD but are still subject to some restrictions on the importation of their meat and other animal products into the United States because they share land borders with or trade freely with regions that we do not recognize as being free of these diseases. We did not propose any changes to the restrictions we have on importations of swine and swine products from the Republic of South Africa because of hog cholera, African swine fever, and swine vesicular disease because we do not recognize the Republic of South Africa as being free of these diseases.

We solicited comments concerning our proposal for 60 days ending April 19, 1999. We received 17 comments by that date. They were from a State agricultural experiment station, a veterinary association, the Republic of South Africa, and private citizens. Three of the commenters supported the proposal as written. Twelve commenters supported the proposed rule, except with respect to the importation of animal semen and embryos from the Republic of South Africa. One commenter expressed concerns regarding various aspects of the docket, including how we proposed to regulate animal semen and embryos. One commenter expressed concerns about the effects that additional imports might have on the domestic Boer goat

industry. All of the issues raised by the commenters are discussed below.

Importation of Semen and Embryos

In the proposal, we stated that the importation of ruminant and swine embryos and semen from the Republic of South Africa would be restricted as provided in subparts B and C of 9 CFR part 98 due to the presence of other ruminant and swine diseases (meaning diseases other than rinderpest and FMD). Thirteen commenters stated that the proposed restrictions on the importation of animal embryos and semen from the Republic of South Africa into the United States were unnecessarily stringent. We agree. Our citation to subpart B of 9 CFR part 98 was incorrect; we should have cited subpart A. Subpart B pertains to the importation of ruminant and swine embryos from regions where rinderpest or FMD exists. Under this final rule, ruminant and swine embryos from the Republic of South Africa, except the FMD-controlled area, may be imported in accordance with subpart A of 9 CFR part 98, which, among other things, sets forth the requirements for the importation of ruminant and swine embryos from regions free of rinderpest and FMD. The requirements in subpart A are less stringent than those in subpart B. In addition, the importation of ruminant and swine semen into the United States from the Republic of South Africa, except the FMD-controlled area, would be allowed as provided in subpart C of 9 CFR part 98 for animal semen from regions where rinderpest and FMD do not exist. Both subparts A and C include provisions for ensuring that other diseases that may be present in the Republic of South Africa are not introduced into the United States.

Swine Diseases

We stated in our proposed rule that the importation of swine and swine products from the Republic of South Africa would continue to be restricted because of hog cholera, swine vesicular disease (SVD), and African swine fever (ASF). One commenter objected. He stated that the Republic of South Africa has been free of hog cholera since 1918, and that SVD has never been diagnosed in the Republic of South Africa. In addition, the commenter stated that the Republic of South Africa has an ASF-controlled area and that the last outbreak of ASF in the free area, in February 1996, was due to an illegal movement of pigs from the ASF-controlled area. The commenter maintained that information regarding hog cholera and SVD in the Republic of South Africa is supplied by the Office International des Epizooties (OIE), which is the international standard-setting body for animal health. The commenter stated that the World Trade Organization Agreement on Sanitary and Phytosanitary Measures (WTO–SPS Agreement) requires us to provide a scientific basis for deviations from international standards.

The WTO–SPS Agreement requires that measures be scientifically sound, guided by international standards, adapted to regional conditions, transparent, risk-assessment based, taken in recognition that equal levels of risk mitigation may be achieved by applying differing sanitary measures, and be applied in a manner that is not arbitrarily or unjustifiably discriminating. Nations acting in accordance with the principles of the WTO–SPS Agreement may impose sanitary or phytosanitary requirements necessary to protect human, animal, or plant life or health.

The regulations in §§ 94.8, 94.9(a), and 94.12(a) describe regions in which ASF, hog cholera, and SVD, respectively, are considered to exist, including the Republic of South Africa. If the Republic of South Africa wishes to export live swine or meat and other products of swine to the United States under less restrictive conditions than currently apply and submits the request to us in accordance with 9 CFR part 92, we will evaluate the request in accordance with that part.

One commenter stated that ASF is a swine disease and that ruminant meat, embryos, and semen cannot be restricted based on the presence of ASF in certain areas of the Republic of South Africa.

We are not restricting the importation of ruminant meat, embryos, or semen because of the presence of ASF in the Republic of South Africa. Under this final rule, the importation of ruminant meat will continue to be restricted under § 94.11 because of the potential for it to be commingled with meat imported into the Republic of South Africa from regions where rinderpest or FMD exists. (See additional discussion below under "Trade Practices.")

Ruminant embryos and semen may be imported in accordance with 9 CFR part 98, subparts A and C, respectively, and import conditions will not be affected by the presence or absence of ASF because that disease does not affect ruminants.

Trade Practices

We proposed to add the Republic of South Africa to the list of regions in § 94.11 that are free of rinderpest and FMD but are still subject to restrictions with respect to imports of meat and other animal products into the United States because of their trade practices with regions of higher risk for rinderpest and FMD.

One commenter objected to our listing the Republic of South Africa in § 94.11. The commenter stated that the Republic of South Africa was unaware of any international standard that allows a member country to restrict trade in products from free regions because of importation policies of those free regions. He stated that the Republic of South Africa's importation policies have been effective for over 40 years in preventing the introduction of FMD and rinderpest into the Republic of South Africa and that we should recognize those measures as equivalent in accordance with the WTO–SPS Agreement. The commenter further stated that the Republic of South Africa should be able to recognize other FMD- and rinderpest-free regions based on its own evaluation and should not have to discriminate against animals imported from regions recognized by the Republic of South Africa, but not by the United States, as free of FMD and rinderpest. The commenter also stated that, while the Republic of South Africa was willing to certify, as required by § 94.11, that slaughtered animals are from areas free of FMD and rinderpest, the Republic of South Africa objects to certifying that slaughtered animals were born and raised in the FMD-free area of the Republic of South Africa. The commenter specifically mentioned Namibia and Botswana as having FMD-free zones recognized by the OIE and said that the United States should recognize them as well. The commenter requested a copy of our risk assessment supporting our restrictions on ruminant and swine meat from the Republic of South Africa. The commenter also objected to the requirement in § 94.11 that certifications under that section must be made by a full-time salaried veterinary official of the national government.

The WTO–SPS Agreement obliges member countries to be transparent in developing SPS measures. The measures developed should be based on sound scientific principles, risk assessments, guided by relevant international standards, and applied without arbitrarily or unjustifiably discriminating. The principles of equivalence and adaptation to regional conditions should be encompassed within the measures. APHIS published its policy for applying these concepts to the importation of animals and animal products in the **Federal Register** on

October 28, 1997 (see 62 FR 56027–56033, Docket No. 94–106–8.) As noted in that document, regions classified as "free" of a certain disease can present different levels of risk. Currently, § 94.11 of the regulations addresses this risk, with respect to rinderpest and FMD, by imposing restrictions on the importation of meat from regions that are "free" of these diseases, but that present a higher disease risk due to importation practices of these regions or their geographical proximity to regions with a higher disease risk. Paragraph (a) of § 94.11 lists regions that are declared free of rinderpest and FMD but are subject to restrictions on the importation of their meat and animal products into the United States because they: (1) Supplement their national meat supply by importing fresh (chilled or frozen) meat of ruminants or swine from regions that are designated in § 94.1(a) as regions where rinderpest or FMD exists; or (2) have a common land border with regions where rinderpest or FMD exists; or (3) import ruminants or swine from regions where rinderpest or FMD exists under conditions less restrictive than would be acceptable for importation into the United States. As a result of these practices, the meat or other products produced in the free region may be commingled with the fresh (chilled or frozen) meat of animals from a region where rinderpest or FMD exists, resulting in an undue risk of introducing rinderpest or FMD into the United States if the free region is allowed to export meat to the United States without restriction.

Section 94.11 requires, among other things, that the meat or other products imported into the United States from a region listed in § 94.11(a) be accompanied by a certificate that states, in part, that the meat or other animal product covered by the certificate was derived from animals born and raised in a region listed in § 94.2(a) of the regulations as free of rinderpest and FMD and has never been in any region in which rinderpest or FMD existed. We believe this certification is necessary to ensure that the meat imported into the United States from the free region is from an animal that is free of the disease and that the meat has not been commingled with meat from a region where rinderpest or FMD exists.

Section 94.11 requires this certification to be made by a full-time salaried veterinary official of the agency in the national government that is responsible for the health of the animals within that region. Because of the seriousness of the diseases § 94.11 addresses, we believe it is appropriate for a full-time salaried veterinary official to provide the required certification.

The Republic of South Africa recognizes FMD-free areas of Botswana and Namibia and imports ruminants and swine and ruminant and swine meat and other products from those regions under conditions that are less restrictive than would be acceptable for importation into the United States. The United States does not recognize Botswana or Namibia as being free of rinderpest or FMD, nor do we recognize FMD-free regions within either country. Further, neither country has requested that we evaluate its disease status with respect to rinderpest or FMD. As explained in our 1997 policy statement, we will continue to apply existing import requirements to countries listed in our regulations as free or not free of certain diseases until we amend our regulations based on a request to reevaluate a country's disease status or to regionalize a country for a certain disease. The request must come from the country wishing a change in status. The request must be made by a representative of the national government of that country who has the authority to request such a change, and the request must be accompanied by specific information about the region to be considered, in accordance with 9 CFR part 92. We will consider a region's listing by OIE in our assessment, but this will not be our sole criterion.

Our policy does not interfere with the Republic of South Africa's right to trade with any region or to independently assess the disease status of a particular region based on its own criteria or regulations, just as the United States does.

Regulatory Flexibility Analysis

One commenter stated that there is interest in the importation of cattle and small stock embryos from the Republic of South Africa into the United States. The commenter further stated that the volume of trade in embryos between the Republic of South Africa and the United States may increase based on our acceptance of the Republic of South Africa's disease status and certification procedure.

The commenter did not identify the animals that he considered small stock, but we assume that small stock includes goats and sheep. We anticipate that there will be some imports of small stock semen and embryos from the Republic of South Africa to improve the genetics of some herds in the United States; however, we expect the amount to be relatively low because the population of goats and sheep within the United States is relatively small.

Other

One commenter who breeds Boer goats requested the establishment of another port of entry, in Houston, TX, for importation. However, the commenter did not specify whether the port of entry should be for the importation of goats or goat embryos and semen. One commenter recommended requiring importers and owners of flocks that receive Boer goats and Boer goat germ plasm from the Republic of South Africa to meet certain requirements regarding domestic animal health, food safety, and livestock trade. This commenter also suggested restricting the rate of importation of Boer goats and Boer goat germ plasm from the Republic of South Africa into the United States to protect U.S. meat goat farmers and the U.S. Boer goat market.

These comments are outside the scope of this rulemaking.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule removes certain restrictions on the importation into the United States of certain animals and animal products from the Republic of South Africa, except the FMD-controlled area. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be made effective 15 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule recognizes all of the Republic of South Africa as free of rinderpest and the Republic of South Africa, except the FMD-controlled area, as free of FMD. This action will relieve certain restrictions on the importation of animals and animal products into the United States from the Republic of South Africa. However, the importation of swine and pork and pork products will continue to be restricted because we do not consider the Republic of South Africa to be free of hog cholera, African swine fever, or swine vesicular disease.

The following analysis examines the economic effects of this rule on small entities as required by the Regulatory Flexibility Act.

The cattle industry in the Republic of South Africa is small relative to the cattle industry in the United States. In 1997, there were more than 101 million head of cattle in the United States, compared to more than 13 million in the Republic of South Africa. Of the 2 million head of cattle that were imported into the United States in 1996, more than 99 percent were from Canada and Mexico, and most of these were feeder and slaughter animals. Sheep and goat inventories in the United States are relatively small. In 1997, there were more than 7 million sheep and goats in the United States, compared to more than 35 million in the Republic of South Africa. Of the sheep that the United States imports, more than 99 percent are from Canada and Mexico ("World Trade Atlas," June 1997). In 1995, the United States imported 460 goats and sheep from the Republic of South Africa; however, since 1995, the United States has not imported any live goats and sheep from the Republic of South Africa. We do not believe that adoption of this rule will lead to a significant number of live ruminants being imported into the United States from the Republic of South Africa because of the cost of transporting the animals.

We also do not believe that adoption of this rule will result in a significant amount of ruminant meat (beef, veal, mutton, and goat meat) and meat products imported into the United States from the Republic of South Africa. The Republic of South Africa's production of ruminant meat in 1997 was 1,542 million pounds, compared to 26,089 million pounds of ruminant meat produced in the United States. In 1997, the Republic of South Africa imported 196 million pounds of ruminant meat and exported 44 million pounds of ruminant meat. The Republic of South Africa trades primarily with the European Union, the Middle East, Japan, Korea, Australia, New Zealand, and neighboring African countries. The United States obtains more than 85 percent of its imports of ruminant meat and meat products from Australia, Canada, and New Zealand. We anticipate that this rule's effect on domestic supplies of ruminant meat and meat products will be negligible because we believe that the Republic of South Africa is unlikely to redirect a significant portion of its ruminant meat production for export exclusively to the United States, given that restrictions will remain in place for imports into the United States.

The importation of dairy products from the Republic of South Africa into the United States should also be minimally affected by this rule. In 1998, U.S. exports and imports of dairy products were valued at more than $914 million and $1,465 million, respectively. In 1998, the United States exported more than $3.6 million worth of dairy products to the Republic of South Africa and imported more than $3.4 million worth of dairy products from the Republic of South Africa. We believe that it is highly unlikely that the United States will import a significant amount of dairy products from the Republic of South Africa because the United States is a net exporter of those products to the Republic of South Africa. Therefore, the effect on domestic dairy producers should be minimal.

The importation of ruminant embryos and semen from the Republic of South Africa into the United States should also be minimally affected by this rule. The United States is a net exporter of both bovine semen and cattle embryos. In 1996, the value of U.S. bovine semen and cattle embryo imports was $7.7 million and $701,000, respectively, while the value of U.S. exports of bovine semen and cattle embryos was $63.1 million and $12.6 million, respectively ("World Trade Atlas," June 1997). Due to the trade balance and the size differences between the cattle industries of the United States and the Republic of South Africa, the amount of bovine semen and cattle embryos imported will likely be minimal and have a minimal effect on small domestic cattle producers.

We believe that there will be a demand for the importation of Boer goat germ plasm from the Republic of South Africa to the United States. However, as previously stated, the goat industry within the United States is relatively small. As a result, we do not believe that the amount of germ plasm imported into the United States will be significant.

The entities most likely to be affected by this rule are those entities engaged in the production of live ruminants and ruminant meat and meat products. The Small Business Administration's (SBA's) definition of a small cattle farm is one whose total sales is less than $0.5 million annually. In 1997, 99.4 percent of cattle and calf farms in the United States would have been considered small entities.

The SBA's guidelines state that a small producer of products of swine or ruminants (part of Standard Industrial Classification (SIC) 2011 or 2013, meat packing plants) is one employing fewer than 500 workers. In 1997, 95 percent of the 1,393 meat packing establishments in SIC 2011 were considered small entities. These small establishments accounted for approximately 23.7 percent of the total value of shipments of the industry, or $54.5 billion. In 1997, 98.1 percent of the 1,297 establishments in SIC 2013 were considered small entities. These producers accounted for 78.3 percent of the total value of shipments of the industry, or $25 billion.

Although the majority of the domestic entities potentially affected by this rule are small, there should be only a minimal change in the level of imports that may compete with the production of these small entities, and thus there would be a minimal effect on any domestic producer of these products, whether small or large.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the importation of certain live animals and animal products from all regions of the Republic of South Africa, except the FMD-controlled area, will not present a significant risk of introducing or disseminating FMD or rinderpest disease agents into the United States and would not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA

(7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202)690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

§ 94.1 [Amended]

2. Section 94.1 is amended as follows:

a. In paragraph (a)(2), by adding the words "Republic of South Africa except the foot-and-mouth disease controlled area (which extends from the Republic of South Africa's border with Mozambique approximately 30 to 90 kilometers into the Republic of South Africa to include Kruger National Park and surveillance and control zones around the park, and elsewhere extends, from east to west, approximately 10 to 20 kilometers into the Republic of South Africa along its borders with Mozambique, Swaziland, Zimbabwe, Botswana, and the southeast part of the border with Namibia)," immediately after "Republic of Korea,".

b. In paragraph (a)(3), by adding the words "and the Republic of South Africa" immediately after "Greece".

c. In paragraph (b)(1), by removing the reference to "part 92" and adding in its place a reference to "part 93".

§ 94.11 [Amended]

3. In § 94.11, paragraph (a) is amended by adding, in the first sentence, the words "Republic of South Africa except the foot-and-mouth disease controlled area (which extends from the Republic of South Africa's border with Mozambique approximately 30 to 90 kilometers into the Republic of South Africa to include Kruger National Park and surveillance and control zones around the park, and elsewhere extends, from east to west, approximately 10 to 20 kilometers into the Republic of South Africa along its borders with Mozambique, Swaziland, Zimbabwe, Botswana, and the southeast part of the border with Namibia)," immediately after "Republic of Korea,".

Done in Washington, DC, this 11th day of April 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–9491 Filed 4–14–00; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 39

RIN 3150–AG14

Energy Compensation Sources for Well Logging and Other Regulatory Clarifications

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations governing licenses and radiation safety requirements for well logging. The final rule modifies NRC regulations dealing with: low activity energy compensation sources; tritium neutron generator target sources;specific abandonment procedures in the event of an immediate threat; changes to requirements for inadvertent intrusion on an abandoned source; the codification of an existing generic exemption; the removal of an obsolete date; and updating regulations to be consistent with the Commission's metrication policy. The amendments to NRC's regulations are necessary to improve, clarify, update, and reflect current practices in the well logging industry.

EFFECTIVE DATE: May 17, 2000.

FOR FURTHER INFORMATION CONTACT: Mark Haisfield, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6196, e-mail MFH@nrc.gov.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission is amending its regulations to acknowledge and accommodate the use of well logging technology that was not incorporated when the NRC issued the existing well logging regulations (March 17, 1987; 52 FR 8225). This technology allows licensees to lower a logging tool down a well at the same time that the hole for the well is being drilled instead of requiring drilling to stop, removing drilling pieces, and lowering a logging tool down the well. This technology is commonly referred to as "logging while drilling." This process uses a relatively small radioactive source within the logging tool in addition to the larger radioactive sources currently used in logging a well. The 1987 regulations were based on the use of the larger radioactive sources and include provisions that are unnecessary and potentially burdensome for the additional small sources. These changes will have no significant impact on public health and safety and the environment while reducing potential burdens to licensees. Licensees will no longer need to comply with unnecessary regulatory requirements for these small sources or to request licensing exemptions from the NRC for actions dealing with these small sources. Other changes are also being implemented to improve, clarify, and update NRC's well logging regulations to reduce confusion. These changes may also reduce the need for licensees to request exemptions from unnecessary requirements.

Introduction

Oil and gas come from accumulations in the pore spaces of reservoir rocks (usually sandstone, limestone, or dolomites) and are removed via a well. Because the amount of oil and gas in these pore spaces is dependent upon the rock's characteristics, the oil and gas industry often needs to determine the characteristics of underground formations to predict the commercial viability of a new or existing well. Licensed radioactive materials are used to obtain information on certain properties of an underground formation, such as type of rock, porosity, hydrocarbon content, and density.

These properties are important in the evaluation of oil and gas reservoirs.

One method to obtain information about oil and gas reservoirs is by using well logging tools. Licensed radioactive materials (sealed radioactive sources with associated radiation detectors) are contained in well logging tools. Americium-241 and cesium-137 are the radioactive materials most frequently used for this purpose. Traditionally, these tools are lowered into a well on a wireline. The depth of the well could range from several hundred feet to greater than 30,000 feet. Information collected by the detectors is sent to the surface through the wireline and plotted on a chart as the logging tool is slowly raised from the bottom of the well. Licensed radioactive materials are also used for similar purposes in coal and mineral exploration.

The licensing and radiation safety requirements for well logging are provided in 10 CFR Part 39. When the existing regulations for well logging were promulgated in 1987, the well logging process required drilling to stop while parts of the drilling pieces were removed before lowering a logging tool down a well. More recent technology, referred to as logging-while-drilling (LWD), allows well logging to be accomplished during drilling. This technology employs an additional low-activity radioactive source within the well logging tool known as an energy compensation source, or ECS. The ECS is used to calibrate the well logging tool while the well is being drilled.

LWD provides real time data during drilling operations and improves the evaluation of geologic formations while reducing drilling costs. The real-time information can aid in decision making because evaluating a formation can be planned as soon as the drill bit reaches a formation.

Background

Based on the changing technology in the well logging industry, the NRC developed a Rulemaking Plan to consider the need to update 10 CFR Part 39. On May 28, 1997, the NRC provided Agreement States a draft Rulemaking Plan for comment entitled, "Energy Compensation Sources for Well Logging and Clarifications—Changes to 10 CFR Part 39." The draft Rulemaking Plan was contained in SECY–97–111, also dated May 28, 1997. Comments were received from the States of Utah, Illinois, and Washington. These States generally supported the proposal and provided specific information and comments. Where appropriate, these comments were incorporated into the final Rulemaking Plan contained in SECY–98–105, dated May 12, 1998, and approved by the Commission in a Staff Requirements Memorandum dated June 25, 1998.

In the final Rulemaking Plan, the NRC proposed to modify the existing regulations in 10 CFR Part 39 to account for the use of ECSs. The changes would reduce regulatory burden on NRC and Agreement State licensees with no significant impact to public health and safety. In addition, there are other sections within 10 CFR Part 39 that should be changed to improve, clarify, and update the existing regulations. The final Rulemaking Plan provides the rationale used in the development of this proposed rule. The NRC published the proposed rule in the **Federal Register** on April 19, 1999 (64 FR 19089). The NRC received five comments on the proposed rule. These comments and responses are discussed in the "Comments on the Proposed Rule" section.

Regulatory Action

The NRC is making seven specific changes to improve, clarify, and update the requirements in 10 CFR Part 39.

1. The principal objective of this rulemaking is amending 10 CFR Part 39 to accommodate the radioactive ECSs that are used in some well logging applications. The ECS is a low activity source, typically less than 1.85 MBq (50 microcuries), compared to the normal 110 GBq to 740 GBq (3 to 20 curies) sources used in well logging. 10 CFR Part 39, originally promulgated in 1987, does not provide any specific provisions for these low activity sources. Many of the requirements in 10 CFR Part 39, when applied to an ECS, are not appropriate or necessary to protect public health and safety and the environment. Therefore, the NRC is changing the existing regulations.

Because the existing regulations do not allow for variations based on the activity of the source, licensees who use an ECS would need to meet all the requirements for larger sources. Examples of requirements which are overly burdensome for licensees using ECSs include those addressing well abandonment (§§ 39.15 and 39.77), leak testing (§ 39.35), design and performance criteria for sealed sources (§ 39.41), and monitoring of sources lodged in a well (§ 39.69). The NRC is requiring that only those sections dealing with leak testing (a revised § 39.35 specifically addresses ECSs), physical inventory (§ 39.37), and records of material use (§ 39.39) will apply to the use of an ECS.

Oil and gas wells use a surface casing to protect fresh water aquifers. However, if a surface casing is not used, the NRC would retain the well abandonment requirements. Requirements established in other parts of NRC regulations (e.g., 10 CFR Parts 20, 30, 40, and 70) still apply to the possession and use of licensed material and are adequate to protect public health and safety and the environment.

Therefore, the NRC is amending 10 CFR Part 39 to recognize the use of an ECS in well logging and to provide requirements governing its use. These provisions include radioactivity limits on the ECS and leak testing requirements. The most significant change will exclude an ECS from the costly procedures for well abandonment in the event only an ECS is lost within the well. The requirements for well abandonment, in addition to specific reporting and approval requirements, require the source to be immobilized and sealed in place with a cement plug which must be protected from inadvertent intrusion, and the mounting of a permanent plaque at the surface of the well. In the Regulatory Analysis (RA) conducted for this rulemaking, a limited survey of ECS users indicated that about eight ECSs are abandoned per year. Although estimated abandonment costs varied significantly by survey respondent, the estimated savings to the industry to avoid eight abandonments per year is $5 million.

The NRC is establishing 3.7 MBq (100 microcuries) as the limit for an ECS. Existing ECSs typically use up to 1.85 MBq (50 microcuries) of americium-241 (cesium-137 sources are smaller). One licensee noted that they have calibration sources that use more than 100 microcuries. The 3.7 MBq (100 microcuries) limit will allow licensees flexibility in designing new sources of this kind while maintaining their radioactivity within an environmentally safe level. These ECS sources will not be required to meet the requirements in § 39.41. However, the ECS sources for use in well logging applications will be required to be registered pursuant to 10 CFR 32.210. 10 CFR 32.210 requires an evaluation using radiation safety criteria from accepted industry standards. Applicable standards for calibration sources may be found in American National Standard Institute (ANSI) standards (e.g., ANSI/HPS N43.6–1997).

ECSs are used for logging oil and gas wells, which use casings to protect fresh water aquifers. Hence, the only potential exposure hazard these sources would present is to workers, and worker exposure could only occur if an ECS were ruptured. If ruptured, workers could be exposed to the radionuclide through ingestion or by absorption

through the skin. However, if the source were ruptured, it would be contained within hundreds to thousands of cubic feet of drilling mud which also contains hazardous chemicals and is controlled and monitored to protect workers as part of drilling operations.

The Environmental Assessment (EA) conducted for this rulemaking demonstrates that there would be no significant impact to public health and safety or the environment resulting from this amendment. The EA evaluated a worst case scenario of a 3.7 MBq (100 microcuries) source ruptured by a drill bit and brought to the surface in the drilling mud. The most significant exposure from this scenario would be from ingestion of the drilling mud. The most dangerous radionuclide considered for this worst case scenario was curium-250. This radionuclide was used because the rule does not restrict the radionuclide used for ECS sources. Also, the scenario involved a source twice as large as most typical ECSs in use. For this worst case scenario, the estimated dose would be about 56 millirem, which is below the Federal annual dose limit to an individual member of the public of 0.1 rem (100 millirem) or 1 millisievert (see 10 CFR 20.1301). For a 3.7 MBq (100 microcuries) source of americium or cesium (the actual radionuclides used) the estimated dose would be less than 3 millirem and 1 millirem respectively. Therefore, the NRC believes that eliminating potential costly requirements for these sources, in the event that such sources become unretrievable, will not significantly impact public health and safety or the environment.

Section 39.35 specifies leak testing requirements for sealed sources. Because of the small amount of radioactive material in an ECS (by definition less than 3.7 MBq (100 microcuries)) less stringent leak testing requirements are being established for ECSs. Also, the ECS is contained within a logging tool that is designed to withstand significant stress and pressure. The ECS is mounted inside a steel pressure housing in the interior of the logging tool, thereby providing additional encapsulation to protect the ECS from operational impacts. The NRC believes that it is unnecessary and overly burdensome to require that drilling operations stop because an ECS has exceeded the existing 6-month time interval requirement to be leak tested. The Regulatory Analysis conducted for this rulemaking surveyed a sample of the drilling industry to determine a normal maintenance period at which time a licensee would take a logging tool out of service for routine maintenance or other servicing. The NRC believes this maintenance period would be an appropriate time to conduct any necessary leak testing on an ECS. Although the survey results varied, these tools generally receive some type of out-of-field servicing every 18 months.

Based on this information, and the NRC's belief that ECSs should normally only be leak tested during normal maintenance or when a logging tool is out of service for other repairs, the NRC is requiring that a leak test be performed at a minimum of every three years. This requirement should not be a burden for licensees if the logging tool is being properly maintained and, in fact, should provide licensees some flexibility. This is also consistent with an extended leak test frequency that has been established by license conditions for certain other sealed sources and devices.

Many ECSs are already exempt from all leak testing requirements. Section 39.35 exempts all beta or gamma emitting radioactive material with an activity of 3.7 MBq (100 microcuries) or less. Because cesium-137 is a beta/gamma emitter, all of these types of ECSs are already exempt from the existing leak testing requirements in § 39.35.

2. The NRC is revising existing 10 CFR Part 39 requirements for tritium neutron generator target sources. Tritium neutron generators help determine the porosity of the reservoir rock formation, which indicates the amount of liquid in the reservoir and the reservoir's permeability. Tritium neutron generator target sources are not used in logging while drilling tools. These sources are used in the more traditional well logging procedure where drilling is stopped and the tool is lowered downhole. Because tritium neutron generator target sources produce a significant neutron stream only when a voltage is applied, tritium neutron generator target sources are less hazardous than the typical americium or cesium sources currently being used in well logging applications.

For well logging applications, the NRC is requiring that tritium neutron generator target sources be subject to the requirements of 10 CFR Part 39 except for the sealed source design and performance criteria (§ 39.41), and the well abandonment procedures (§§ 39.15 and 39.77) when a surface casing is used to protect fresh water aquifers, a practice that is standard for oil and gas wells. The potential hazard of these sources when a surface casing is used does not warrant the existing requirements for well abandonment in the event that the source becomes lost. The design and performance criteria associated with sealed sources for well logging were not intended for tritium neutron generator target sources and the revised regulations will provide clarity.

The NRC is establishing 1,110 GBq (30 curies) of tritium as the limit for a tritium neutron generator target source. Existing tritium neutron generator target sources typically contain less than 740 GBq (20 curies) of tritium. The 1,110 GBq (30 curie) limit would allow licensees flexibility in designing new sources of this type while maintaining their radioactivity within an environmentally safe level.

When these sources are used for logging oil and gas wells, a surface casing is used to protect fresh water aquifers. The only exposure hazard these sources present are to workers if these sources were ruptured and the tritium was ingested. If a tritium source was ruptured, it would be contained within hundreds to thousands of cubic feet of drilling mud. As mentioned, this drilling mud contains hazardous chemicals and is controlled and monitored as part of drilling operations.

The EA conducted for this rulemaking demonstrates that there would be no significant impact to public health and safety or the environment resulting from this change. The EA evaluated the worst case scenario of a 1,110 GBq (30 curie) tritium source ruptured by a drill bit and brought to the surface in the drilling mud. The most significant exposure would be through ingestion of this drilling mud. For this worst case scenario, the estimated dose would be 14 millirem, which is well below the Federal annual dose limit to an individual member of the public of 100 millirem or 1 millisievert (see 10 CFR 20.1301). Therefore, the NRC believes that eliminating potential costly requirements for these sources, in the event that such sources become unretrievable, will not impact public health and safety or the environment.

3. Section 39.77 provides the requirements for notification and procedures for abandoning irretrievable well logging sources. This section specifies that the NRC must approve implementation of abandonment procedures before abandonment. In some circumstances, such as high well pressures that could lead to fires or explosions, the delay required to notify NRC could cause an immediate threat to public health and safety. The NRC is revising this section to allow licensees to use their judgement to abandon a well immediately, without prior NRC approval, if the licensee believes a delay could cause such a non-radiological

threat. This modification will allow licensees greater procedural latitude. In the rule, the language has been modified to require licensees, in the event of immediate abandonment, to notify the NRC and justify the need for an immediate abandonment after the fact.

4. Section 39.15 provides requirements for abandoning irretrievable sealed sources. The NRC is revising this section to provide performance-based criteria for inadvertent intrusion on the source. This modification will allow licensees greater procedural latitude while continuing to ensure source integrity. The existing requirements may be more restrictive than is necessary to protect an abandoned source, depending upon the individual well abandonment. For example, if a significant amount of drilling equipment is abandoned with the well, the equipment itself may be effective in preventing inadvertent intrusion on the source. However, the abandoned equipment would not meet the existing requirements of § 39.15. The existing paragraph (a)(5)(ii) of § 39.15 had prescriptive requirements for irretrievable well logging sources, specifying the use of a mechanical device to prevent inadvertent intrusion on the source, at a specific location within the abandoned well.

The NRC is requiring that licensees "prevent inadvertent intrusion on the source." This will require that the source be protected but allow licensees the flexibility to determine the best method. The revision will not affect the requirement in § 39.15(a)(5)(i) that a well logging source be immobilized with a cement plug, the requirement in § 39.15(a)(5)(iii) that a permanent identification plaque be mounted at the surface of the well, or the requirement in § 39.77 that the licensee must obtain NRC approval prior to implementing abandonment procedures (except as provided by the change in § 39.77 for immediate abandonment, as discussed in item 3).

5. Two revisions are being made to § 39.41, "Design and performance criteria for sealed sources." The first will incorporate within NRC regulations an existing generic exemption for sealed sources that were manufactured before 1989 and met older standards. The second will add an optional acceptable standard by referencing oil-well logging requirements in ANSI/HPS N43.6–1997. The existing requirements will also remain as an option within this section.

The NRC issued a generic exemption from the existing design and performance criteria for sealed sources in 1989. This exemption allows the use of older sealed sources which were not tested against the existing criteria, but which were tested in accordance with an earlier standard used for well logging sources. This exemption is currently in practice, but was not included in the existing 10 CFR Part 39. The NRC is modifying the regulations to include this existing generic exemption within 10 CFR Part 39.

Sealed sources that were manufactured before July 14, 1989, may use design and performance criteria from the United States of America Standards Institute (USASI) N5.10-1968, "Classification of Sealed Radioactive Sources" or the criteria in § 39.41. The use of the USASI standard is based on an NRC Notice of Generic Exemption published on July 25, 1989 (54 FR 30883). Existing NRC regulations had not incorporated the USASI N5.10–1968 requirements for older sealed sources. The primary difference between the USASI standard and the existing requirements is that the existing requirements includes a vibration test that is consistent with current national standards. The USASI standard considered a vibration test and concluded that, to pass the other requirements, the source would be so rugged there was no reason to include a vibration test.

The exemption allowing the use of the USASI standard was intended to avoid a situation in which well logging licensees might be unnecessarily forced out of business and have to dispose of their sources. This situation could arise because the original source manufacturers tested against the USASI standard, but did not retest these sources against the standards that became effective in 1989. The NRC determined that those sealed source models meeting the USASI standard would not adversely affect public health and safety. These sources had been used for years in operational situations and had demonstrated through actual use that vibration from drilling operations had not caused failure. The survey of licensees conducted for the RA and EA for this rulemaking confirmed that these older sources have not presented a problem during actual use. Therefore, the NRC is codifying within this section the existing practice to use, as an option, the USASI standards for sealed sources that were manufactured before July 14, 1989. Because many of these older sealed sources contain radioactive material with half-lives that allow their continued use (*i.e.*, americium-241 and cesium-137 have half-lives of 458 and 30 years respectively), this modification to the existing regulations is appropriate.

However, a vibration test has been included in ANSI standards since 1977, and by NRC regulations which were promulgated in 1987. Based on survey information done for this rulemaking, it is estimated that the cost to test a source to see if it meets the vibration requirement in § 39.41 is $2,400. Only the prototype for each design requires testing. The number of prototype designs each year is small. The only survey respondent on this topic indicated that they produce, at most, one new prototype per year and they did not indicate that vibration testing is burdensome. The NRC believes that the cost for vibration testing is not overly burdensome and is consistent with (1) ANSI N542–1977, "Sealed Radioactive Sources, Classification," published by the National Bureau of Standards [(NBS) currently the National Institute of Standards and Technology] in the 1978 NBS Handbook 126 and (2) ANSI/HPS N43.6–1997, "Sealed Radioactive Sources—Classification" approved in November 1997. ANSI/HPS N43.6–1997 is the revised update to ANSI N542–1977. The NRC has decided to retain the requirements for vibration testing.

The second revision to this section is to meet Public Law 104–113, "National Technology and Transfer Act of 1995" and Office of Management and Budget Circular A–119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities." This law encourages agencies to use "voluntary consensus standards" (*i.e.*, standards developed by a voluntary consensus body and made available to all interested parties). The existing NRC requirements are based on the older ANSI N542–1977 standard, and allow licensees flexibility in determining how to conduct testing and ensuring integrity of the source. The NRC is adding an optional method of meeting the design requirements by referencing the newer, current ANSI standard (ANSI/HPS N43.6–1997) within 10 CFR Part 39. Although the existing NRC requirements and ANSI/HPS N43.6–1997 are quite similar, the NRC does not want to eliminate the ability to meet the existing NRC regulatory requirements—that could result in a problem similar to that experienced in 1989. That is, existing approved sealed sources might not have been tested or evaluated exactly as specified in ANSI/HPS N43.6–1997, which could result in well logging licensees having to dispose of acceptable sealed sources. This action does not constitute the establishment of a standard that contains generally applicable requirements. There were no

public comments regarding NRC's approach in the use of these standards.

6. For clarity and to avoid confusion, the NRC is updating § 39.49 because it contains a date that has passed and is no longer appropriate. This section is being amended to remove the obsolete date.

7. The NRC is updating §§ 39.15, 39.35, and 39.41 to conform with the agency's metrication policy published on June 19, 1996 (61 FR 31169), by stating parameter values in dual units with International System of Units (SI) first and with English units in brackets.

Comments on the Proposed Rule

This section presents a summary of the principal comments received on the proposed rule, the NRC's response to the comments, and changes made to the final rule as a result of these comments. It includes a section-by-section description of the proposed changes, comments received, NRC's response, and any changes to the final rule. General comments are included after the specific section comments.

The NRC received five comment letters. Two were from Agreement States and three were from industry. All five commenters supported this rule and four provided specific comments to clarify or improve the proposed rule. Copies of these letters are available for public inspection and copying for a fee at the Commission's Public Document Room, located at 2120 L Street, NW (Lower Level), Washington, DC.

Section 39.2, Definitions, would be amended by adding definitions for an energy compensation source (ECS) and a tritium neutron generator target source.

Comment: No comments.

Paragraph 39.15(a)(5)(ii) would be amended to allow a more performance-based approach to prevent inadvertent intrusion on an abandoned source.

Comment: One commenter indicated that State regulatory agencies having jurisdiction over drilling and well operations may have well abandonment procedures that are more restrictive than those proposed by the NRC.

Response: The commenter indicates that because the State agencies that control drilling and well operations may require more restrictive abandonment procedures, the State radiation control agency may have no choice but to also impose similar procedures. The NRC's intent is to make the rule more performance-based and would hope that States would do likewise, if allowed; however, the requirements in § 39.77(c) are Compatibility Category C which allows States to impose more restrictive requirements as long as NRC's essential objectives are met.

Paragraphs 39.35(b), (d), (e)(4), (e)(5), and 39.41(d)(1)(v) (previously 39.41(a)(3)(v)) would be amended to meet the NRC's metrification policy.

Comment: No comments.

Paragraph 39.35(c)(1) and (c)(2) would allow a 3 year leak testing interval for ECSs.

Comment: No comments.

Section 39.41 would be amended to describe the applicable requirements for a sealed source.

Comments: Three commenters provided comments regarding requirements for sealed sources. One commenter requested that an NRC memorandum dated November 1, 1991, be specifically referenced in our regulations because our changes to § 39.41 do not cover all the sources listed in this memorandum. This memorandum lists sources that have been given a generic exemption from the requirements in § 39.41.

Two commenters requested that the new § 39.41(f) be clarified because this section implies that all ECS's are to be registered pursuant to § 32.210. They believe that this is incorrect because this would imply that isotopes considered exempt quantities under § 30.18(a) would be required to be registered pursuant to § 32.210. Also, one commenter believes that based on an NRC position statement, registration is not required in all cases.

Response: The NRC memorandum dated November 1, 1991, does not need to be specifically referenced in the regulations because the changes to § 39.41 supersede the memorandum, and cover all the sources listed in this memorandum. However, NUREG–1556, Vol. 3, "Consolidated Guidance About Materials Licenses—Applications for Sealed Source and Device Evaluation and Registration" and Vol. 14, "Consolidated Guidance About Materials Licenses—Program-Specific Guidance About Well Logging, Tracer, and Field Flood Study License" each include an appendix which provides a list of the sources that fall within the generic exemption.

The NRC staff does intend to require that all ECS's be registered pursuant to § 32.210 or applicable Agreement State regulations. It is expected that ECS's will at least meet appropriate ANSI criteria for calibration sources that can only be assured if the sources are registered by the NRC or an Agreement State. This criteria will be applied regardless of source activity. Although it is true that there is NRC guidance (NUREG–1556, Vol. 3, "Consolidated Guidance About Materials Licenses—Applications for Sealed Source and Device Evaluation and Registration") which indicates that sources with activities below certain limits do not need to be registered, that guidance will not be applied to ECS's. The NRC staff notes that the guidance also indicates that it is applied on a case-by-case basis in individual licensing situations and that the licensee may be expected to have authorization to possess and use unsealed material in similar quantities. This situation would not apply in this setting.

Section 39.41(f) does not need to be clarified concerning sources obtained per § 30.18(a). The NRC staff believes the commenter may have misinterpreted the regulations regarding exempt quantities. Pursuant to § 30.18, a person possessing very small quantities of radioactive material may be exempt from licensing under limited circumstances. The NRC staff believes, in general, that these limited circumstances would not apply to ECS sources used in a well logging tool, and therefore they would not be exempt. However, if a company does receive a source that NRC has authorized for distribution to persons exempt from licensing, the company could use that source, without modification, in a well logging tool. In this situation, the sources would not need to meet § 39.41 criteria. Note that § 30.18(c) does not allow the incorporation of exempt sources into devices for commercial distribution. Therefore, companies who incorporate these sources into their logging tools, would not be allowed to commercially distribute such tools.

Section 39.49 would be amended to remove an obsolete date.

Comment: No comments.

Section 39.53 would be added to provide requirements for ECSs.

Comments: Two commenters had comments on this section. One believes that there are additional requirements within 10 CFR Part 39 that should apply to ECSs. Specifically, § 39.43 (Inspection, maintenance, and opening of a source or source holder), § 39.61 (Training), § 39.63 (Operating and emergency procedures), and § 39.71 (Security).

The other commenter noted that this section limits ECSs to 100 microcuries based on the belief that there are no ECSs exceeding 50 microcuries. They have specifically licensed ECSs meeting the requirements of 10 CFR Part 39 which contain 200 microcuries of Am-241. Therefore, they request a reassessment of the environmental impact based on 200 microcuries of Am-241 to allow 200 microcuries to be the maximum activity within an ECS.

Response: The NRC staff does not agree that there is a need to impose additional 10 CFR Part 39 requirements for possession of these small sources, due to the low risk, and discussed these concerns with the commenter who, after further consideration, agreed. However, when authorizing ECS's, the NRC does intend to provide guidance for license conditions that would prohibit opening the source. This will be done in NUREG–1556, Vol. 14, "Consolidated Guidance About Materials Licenses—Program-Specific Guidance About Well Logging, Tracer, and Field Flood Study License."

The NRC staff does not agree with the commenter suggestion to increase the ECS limit to 200 microcuries. The Environmental Assessment did not support a 200 microcurie limit for all isotopes. Although the risk varies with individual isotopes, the NRC staff believes that a single limit should be applied to allow efficient implementation. The 100 microcurie limit is consistent with the long standing maximum limit NRC has established for exempting beta/gamma sources from leak testing requirements, which reflects the lower risk associated with lower activity sources of 100 microcuries or less.

Section 39.55 would be added to provide requirements for tritium neutron generator target sources.

Comments: Two commenters had comments on this section. One commenter noted that neutron generator target sources require above-ground testing for operability and calibration. When energized, these devices can produce radiation levels that may constitute "High Radiation Areas." The commenter believes that the revised regulations should allow testing and operation provided arrangements are made via facility design or engineered safety equipment to reduce the radiation levels and ensure adequate written safety procedures have been developed and are in use by trained personnel.

The other commenter noted that these devices typically contain less radioactive material (tritium) than is used in commercially available "glow in the dark" emergency exit signs. The commenter noted that based on the construction of neutron generators, any exposure from a damaged neutron generator would be small compared to an exit sign, and therefore, believes that the proposed rule is appropriate for these devices.

Response: The NRC agrees with the first commenter's concept. Tritium sources are and will remain subject to § 39.63—Operating and emergency procedures. The NRC also agrees with the points made by this commenter.

Section 39.77(c)(1)(i), (ii), and (d)(9) would be amended to allow an option to immediately abandon a well without prior NRC approval when the licensee believes there is an immediate threat to public health and safety. For this type of immediate abandonment, the licensee is required to justify to NRC in writing why it was necessary.

Comment: One commenter requests clarification how a licensed party will make the decision to abandon these sources (i.e., RSO or authorized user) and what criteria will be used to determine if there is an immediate public health concern from explosions of other hazards. The commenter requests that if these items are not included in the regulations, the NRC identify how they are to be resolved.

Response: The purpose of this proposed change was to allow licensees flexibility in the use of their best judgement when there is the possibility of an immediate threat to public health and safety. To add specific requirements as to who makes the on-the-spot decision and what specific criteria they are to use would negate some of the flexibility that the NRC was seeking to add. For example, what should the licensee do if the specified person was not on-site or the situation was not foreseen in established criteria? The NRC expects that this provision will be rarely used. However, if used, the licensee is required to justify why the immediate abandonment was necessary. If, after implementation, the NRC believes that this provision is being misused or used inappropriately, the NRC will consider modifying this section at a later time.

General Comments

Comment: A State commenter noted that not all of their comments on the draft Rulemaking Plan were addressed in the proposed rule.

Response: The NRC responded to the comments that the States made on the draft Rulemaking Plan in the final Rulemaking Plan. Although these comments and responses were not repeated in the **Federal Register** notice, they were incorporated, where appropriate, in the proposed rule.

Comment: A commenter would like the rule to include requirements for tool design and loading of all sources. The commenter noted that during a recent investigation of loading procedures, they found that a few States and at least one NRC region are not consistently evaluating the design of tools or their loading procedures during the licensing process. If this is the case, the commenter does not believe that NRC can assume that the well logging tool will afford significant protection for any source much less the ECS sources. The commenter noted that the proposed regulation states that part of the reason for many of the exemptions for the ECS sources is the additional protection provided by the logging tool.

Response: Historically, the NRC has not regulated source holders or the well logging devices in which the source holders or sources are placed. The sealed sources themselves must meet 10 CFR Part 39 requirements that are essentially equivalent to ANSI criteria for use in well logging and does not take into account any protection provided by the tool or source holder. NRC also notes that there has been no history of problems with the source-tool combinations.

Comment: A commenter noted that it was approached in 1993 by a well logging licensee to implement rule changes regarding ECSs used in logging while drilling (LWD) operations. The commenter noted that this was the only licensee in the State using ECSs and that they preferred to handle this technology through license conditions. As of June 1999, only one of Texas's licensees has requested changes to allow for LWD technology. The commenter asks whether the NRC has assessed how many well logging licensees are currently using LWD technology.

Response: The NRC conducted a limited survey of nine licensees (the NRC staff did not feel it was necessary to conduct a larger survey that would have required OMB approval) in the preparation of the proposed rule. Of these nine, six use ECSs and one is planning to use an ECS in the future. Based on this response, plus the fact that four of these licensees use neutron generator target sources, the NRC believes that proposing generic requirements is appropriate.

Comment: A commenter supports the proposed changes and noted that these changes offer the well logging industry simplified rules without decreasing public safety. The commenter also noted the significant differences in design between the stand-alone sources used in logging tools, and the permanent aspect of ECSs and neutron generator target sources that are built into logging tools. The commenter noted that because the ECSs and neutron generator target sources are protected from the well conditions and have much smaller inherent risks, the current requirements in 10 CFR Part 39 are too restrictive.

Response: The NRC agrees with the points made by this commenter.

Comment: A commenter noted that the Supplementary Information and Introduction sections of the proposed rule implied that only LWD tools utilize ECSs. The commenter noted that this is not the case and that ECSs have been in use for many years within many standard wireline logging tools.

Response: The NRC will clarify this information in the preamble by changing the implication that ECS's are only used in logging while drilling tools. This will not impact the regulatory text to the final rule.

Final rule: As noted above, the preamble will be clarified. There are no changes being made to the regulatory text of the final rule.

Specific Changes in Regulatory Text

The following section is provided to assist the reader in understanding the specific changes made to each section or paragraph in 10 CFR Part 39. For clarity of content in reading a section, much of that particular section may be repeated, although only a minor change would be made. Using this section should allow the reader to effectively review the specific changes without reviewing existing material that has been included for content, but has not been significantly changed.

Section 39.2: This is being revised to add two new definitions for ECS and tritium neutron generator target source.

Paragraph 39.15(a)(5)(ii): This is being revised to allow a more performance-based approach to prevent inadvertent intrusion on an abandoned source.

Paragraph 39.15(a)(5)(iii): This is being revised to meet the NRC's metrification policy.

Paragraph 39.35(b): This is being revised to meet the NRC's metrification policy.

Paragraph 39.35(c)(1): This essentially repeats the existing paragraph on leak testing frequency, but notes that ECSs are not included in this paragraph.

Paragraph 39.35(c)(2): This is a new paragraph allowing a 3 year leak testing interval for ECSs.

Paragraph 39.35(d): This is being revised to meet the NRC's metrification policy.

Paragraph 39.35(e)(1): This is an editorial change to indicate that hydrogen-3 and tritium are the same.

Paragraphs 39.35(e)(4) and (5): This is being revised to meet the NRC's metrification policy.

Section 39.41 has been significantly revised as described below:

Paragraph 39.41(a): This is a new paragraph describing the applicable requirements for a sealed source which includes requirements from the existing § 39.41(a)(1) and (2).

Paragraph 39.41(b): This is a new paragraph to allow pre-1989 sources to meet USASI standards.

Paragraph 39.41(c): This is a new paragraph providing for the use of current ANSI standards.

Paragraph 39.41(d): This replaces the existing § 39.41(a)(3).

Paragraph 39.41(d)(1)(v): This is being revised to meet the NRC's metrification policy (the existing § 39.41(a)(3)(v)).

Paragraph 39.41(e): This replaces the existing § 39.41(b) and is edited to be consistent with the above changes.

Paragraph 39.41(f): This is a new paragraph clarifying that this section does not apply to ECSs.

Section 39.49: This is being revised to eliminate an obsolete date.

Section 39.53: This is a new section providing requirements for ECSs.

Section 39.55: This is a new section providing requirements for tritium neutron generator target sources.

Paragraphs 39.77(c)(1)(i) and (ii): This is being revised to allow an option to immediately abandoning a well without receiving prior NRC approval when the licensee believes there is an immediate threat to public health and safety.

Paragraph 39.77(d)(9): This is a new paragraph requiring the licensee to justify in writing why it was necessary to immediately abandon a well without prior NRC approval.

Criminal Penalties

For the purposes of Section 223 of the Atomic Energy Act (AEA), the Commission is issuing the final rule under one or more of sections 161b, 161i, or 161o of the AEA. Willful violations of the rule will be subject to criminal enforcement.

Compatibility of Agreement State Regulations

The compatibility of the provisions in 10 CFR Part 39 have been determined in accordance with the NRC's "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517)." The definitions for an "Energy compensation source" and a "Tritium neutron generator target source" are assigned Compatibility Category B. Agreement States will need to adopt essentially identical definitions. Since the sources are routinely transported across jurisdictional boundaries for use, this level of compatibility is needed to assure uniform regulation. The new § 39.53, *Energy compensation source*, and § 39.55, *Tritium neutron generator target source*, are assigned Compatibility Category C. Agreement States are not required to adopt identical rules, however, they must adopt rules that address the essential safety objectives of, and are no less stringent than, the NRC sections. The NRC is not changing the compatibility of those sections of 10 CFR Part 39 that are being modified. The existing Compatibility Categories. for the modified sections are: Section 39.41, Compatibility Category B; and §§ 39.15, 39.35, 39.49, 39.77(c) and (d), Compatibility Category C.

Specific information about the NRC's Compatibility Policy and the levels of compatibility assigned to the existing rule may be found at the OSP Procedures area of the Office of State Program's Web site, http://www.hsrd.ornl.gov/nrc/home.html. [View Procedures SA–200 and SA–201]

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule will not be a major Federal action significantly affecting the quality of the human environment, and therefore, an environmental impact statement is not required. The rule will modify NRC regulations dealing with: (1) Low activity energy compensation sources; (2) tritium neutron generator target sources; (3) specific abandonment procedures in the event of an immediate threat; (4) changes to requirements for inadvertent intrusion on an abandoned source; (5) the codification of an existing generic exemption; (6) the removal of an obsolete date; and (7) updating 10 CFR Part 39 to be consistent with the Commission's metrication policy. The environmental assessment evaluated the maximum annual public health risk to members of the public as a result of these changes and determined that there is no significant environmental impact as a result of the changes.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from Mark Haisfield, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6196.

Paperwork Reduction Act Statement

This final rule increases the burden on licensees to justify in writing the immediate threat to public health and safety that resulted in the implementation of abandonment procedures prior to NRC approval. The burden to include the justification in the existing report required in 10 CFR 39.77(d) is estimated to increase from 4 hours to 4.25 hours per impacted report. Because the burden for this information collection requirement is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the OMB, approval number 3150–0130.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The Commission has prepared a final regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Mark Haisfield, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6196.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact upon a substantial number of small entities. All of the amendments are to 10 CFR Part 39 and are intended to either reduce regulatory burdens from unnecessary requirements or to clarify and update regulations to reduce confusion. Therefore, any economic impact to a small entity using 10 CFR Part 39 should be either neutral or positive.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, and therefore, a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 39

Byproduct material, Criminal penalties, Nuclear material, Oil and gas exploration—well logging, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Part 39.

PART 39—LICENSES AND RADIATION SAFETY REQUIREMENTS FOR WELL LOGGING

1. The authority citation for Part 39 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 69, 81, 82, 161, 182, 183, 186, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

2. Section 39.2 is amended by adding definitions, in their proper alphabetic order, of the terms *energy compensation source* and *tritium neutron generator target source* to read as follows:

§ 39.2 Definitions.

Energy compensation source (ECS) means a small sealed source, with an activity not exceeding 3.7 MBq [100 microcuries], used within a logging tool, or other tool components, to provide a reference standard to maintain the tool's calibration when in use.

* * * * *

Tritium neutron generator target source means a tritium source used within a neutron generator tube to produce neutrons for use in well logging applications.

* * * * *

3. Section 39.15 is amended by revising paragraph (a)(5)(ii) and the introductory text of paragraph (a)(5)(iii) to read as follows:

§ 39.15 Agreement with well owner or operator.

(a) * * *

(5) * * *

(ii) A means to prevent inadvertent intrusion on the source, unless the source is not accessible to any subsequent drilling operations; and

(iii) A permanent identification plaque, constructed of long lasting material such as stainless steel, brass, bronze, or monel, must be mounted at the surface of the well, unless the mounting of the plaque is not practical. The size of the plaque must be at least 17 cm [7 inches] square and 3 mm [⅛-inch] thick. The plaque must contain—

* * * * *

4. Section 39.35 is amended by revising paragraphs (b), (c), (d)(1), (e)(1), (e)(4) and (e)(5) to read as follows:

§ 39.35 Leak testing of sealed sources.

* * * * *

(b) *Method of testing.* The wipe of a sealed source must be performed using a leak test kit or method approved by the Commission or an Agreement State. The wipe sample must be taken from the nearest accessible point to the sealed source where contamination might accumulate. The wipe sample must be analyzed for radioactive contamination. The analysis must be capable of detecting the presence of 185 Bq [0.005 microcuries] of radioactive material on the test sample and must be performed by a person approved by the Commission or an Agreement State to perform the analysis.

(c) *Test frequency.* (1) Each sealed source (except an energy compensation source (ECS)) must be tested at intervals not to exceed 6 months. In the absence of a certificate from a transferor that a test has been made within the 6 months before the transfer, the sealed source may not be used until tested.

(2) Each ECS that is not exempt from testing in accordance with paragraph (e) of this section must be tested at intervals not to exceed 3 years. In the absence of a certificate from a transferor that a test has been made within the 3 years before the transfer, the ECS may not be used until tested.

(d) *Removal of leaking source from service.* (1) If the test conducted pursuant to paragraphs (a) and (b) of this section reveals the presence of 185 Bq [0.005 microcuries] or more of removable radioactive material, the licensee shall remove the sealed source from service immediately and have it decontaminated, repaired, or disposed of by an NRC or Agreement State licensee that is authorized to perform these functions. The licensee shall check the equipment associated with the leaking source for radioactive contamination and, if contaminated,

have it decontaminated or disposed of by an NRC or Agreement State licensee that is authorized to perform these functions.

* * * * *

(e) * * *

(1) Hydrogen-3 (tritium) sources;

* * * * *

(4) Sources of beta- or gamma-emitting radioactive material with an activity of 3.7 MBq [100 microcuries] or less; and

(5) Sources of alpha- or neutron-emitting radioactive material with an activity of 0.37 MBq [10 microcuries] or less.

5. Section 39.41 is revised to read as follows:

§ 39.41 Design and performance criteria for sources.

(a) A licensee may use a sealed source for use in well logging applications if —

(1) The sealed source is doubly encapsulated;

(2) The sealed source contains licensed material whose chemical and physical forms are as insoluble and nondispersible as practical; and

(3) Meets the requirements of paragraph (b), (c), or (d) of this section.

(b) For a sealed source manufactured on or before July 14, 1989, a licensee may use the sealed source, for use in well logging applications if it meets the requirements of USASI N5.10–1968, "Classification of Sealed Radioactive Sources," or the requirements in paragraph (c) or (d) of this section.

(c) For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source, for use in well logging applications if it meets the oil-well logging requirements of ANSI/HPS N43.6–1997, "Sealed Radioactive Sources—Classification."

(d) For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source, for use in well logging applications, if—

(1) The sealed source's prototype has been tested and found to maintain its integrity after each of the following tests:

(i) *Temperature.* The test source must be held at −40° C for 20 minutes, 600° C for 1 hour, and then be subject to a thermal shock test with a temperature drop from 600° C to 20° C within 15 seconds.

(ii) *Impact test.* A 5 kg steel hammer, 2.5 cm in diameter, must be dropped from a height of 1 m onto the test source.

(iii) *Vibration test.* The test source must be subject to a vibration from 25 Hz to 500 Hz at 5 g amplitude for 30 minutes.

(iv) *Puncture test.* A 1 gram hammer and pin, 0.3 cm pin diameter, must be dropped from a height of 1 m onto the test source.

(v) *Pressure test.* The test source must be subject to an external pressure of 1.695×10^7 pascals [24,600 pounds per square inch absolute].

(e) The requirements in paragraphs (a), (b), (c), and (d) of this section do not apply to sealed sources that contain licensed material in gaseous form.

(f) The requirements in paragraphs (a), (b), (c), and (d) of this section do not apply to energy compensation sources (ECS). ECSs must be registered with the Commission under § 32.210 of this chapter or with an Agreement State.

6. Section 39.49 is revised to read as follows:

§ 39.49 Uranium sinker bars.

The licensee may use a uranium sinker bar in well logging applications only if it is legibly impressed with the words "CAUTION—RADIOACTIVE–DEPLETED URANIUM" and "NOTIFY CIVIL AUTHORITIES (or COMPANY NAME) IF FOUND."

7. Section 39.53 is added to read as follows:

§ 39.53 Energy compensation source.

The licensee may use an energy compensation source (ECS) which is contained within a logging tool, or other tool components, only if the ECS contains quantities of licensed material not exceeding 3.7 MBq [100 microcuries].

(a) For well logging applications with a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of §§ 39.35, 39.37 and 39.39.

(b) For well logging applications without a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of §§ 39.15, 39.35, 39.37, 39.39, 39.51, and 39.77.

8. Section 39.55 is added to read as follows:

§ 39.55 Tritium neutron generator target source.

(a) Use of a tritium neutron generator target source, containing quantities not exceeding 1,110 MBq [30 curies] and in a well with a surface casing to protect fresh water aquifers, is subject to the requirements of this part except §§ 39.15, 39.41, and 39.77.

(b) Use of a tritium neutron generator target source, containing quantities exceeding 1,110 MBq [30 curies] or in a well without a surface casing to protect fresh water aquifers, is subject to the requirements of this part except § 39.41.

9. Section 39.77 is amended by revising paragraph (c)(1), redesignating paragraphs (d)(9) and (d)(10) as paragraphs (d)(10) and (d)(11), and adding a new paragraph (d)(9) to read as follows:

§ 39.77 Notification of incidents and lost sources; abandonment procedures for irretrievable sources.

* * * * *

(c) * * *

(1) Notify the appropriate NRC Regional Office by telephone of the circumstances that resulted in the inability to retrieve the source and—

(i) Obtain NRC approval to implement abandonment procedures; or

(ii) That the licensee implemented abandonment before receiving NRC approval because the licensee believed there was an immediate threat to public health and safety; and

* * * * *

(d) * * *

(9) The immediate threat to public health and safety justification for implementing abandonment if prior NRC approval was not obtained in accordance with paragraph (c)(1)(ii) of this section;

* * * * *

Dated at Rockville, Maryland, this 3rd day of April, 2000.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 00–9468 Filed 4–14–00; 8:45 am]

BILLING CODE 7590-01-P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 910

[No. 2000–19]

RIN 3069–AB02

Amendments to the Freedom of Information Act Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its Freedom of Information Act (FOIA) regulation to reflect an agency reorganization. Responsibility for administering the Finance Board's FOIA program has been transferred from the Executive Secretariat to the Office of General Counsel and the Deputy General Counsel of the Administrative Law Division has replaced the Secretary to the Board of Directors as the Finance Board's FOIA officer.

EFFECTIVE DATE: The final rule will become effective on April 17, 2000.

FOR FURTHER INFORMATION CONTACT: Janice A. Kaye, Attorney-Advisor, Office of General Counsel, by telephone at 202/408–2505, by electronic mail at kayej@fhfb.gov, or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

As a result of an agency reorganization, responsibility for administering the Finance Board's FOIA program was transferred from the Executive Secretariat to the Office of General Counsel effective March 20, 2000. As part of the transfer of responsibility, the Deputy General Counsel of the Administrative Law Division has replaced the Secretary to the Board of Directors as the Finance Board's FOIA officer. The FOIA officer is authorized to make all initial denial determinations under the Finance Board's FOIA regulation. The Finance Board is amending its FOIA regulation to conform to the reassignment of responsibility and authority. More specifically, the Finance Board is replacing the term "Secretary to the Board" and the term "Finance Board" with the term "FOIA Officer" where appropriate.

Notice and Public Participation

Because it is in the public interest to conform the Finance Board's FOIA regulation to the agency reorganization that already has taken effect, the Finance Board for good cause finds that the notice and publication requirements of the Administrative Procedures Act are unnecessary. *See* 5 U.S.C. 553(b)(3)(B). Accordingly, the Finance Board is promulgating these technical, procedural changes as a final rule.

Effective Date

For the reasons stated in part III above, the Finance Board for good cause finds that the final rule should become effective on April 17, 2000. *See* 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

The Finance Board is adopting the amendments to part 910 in the form of a final rule and not as a proposed rule. Therefore, the provisions of the Regulatory Flexibility Act do not apply. *See* 5 U.S.C. 601(2), 603(a).

Paperwork Reduction Act

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects in Part 910

Confidential business information, Federal home loan banks, Freedom of information.

For the reasons stated in the preamble, the Finance Board hereby amends 12 CFR part 910 as follows:

PART 910—FREEDOM OF INFORMATION ACT REGULATION

1. The authority citation for part 910 continues to read as follows:

Authority: 5 U.S.C. 552; 52 FR 10012 (Mar. 27, 1987).

2. In part 910, remove the term "Secretary to the Board" everywhere it appears and add in its place the term "FOIA Officer."

3. In § 910.1, remove the definition of the term "Secretary to the Board" and add a definition of the term "FOIA Officer" to read as follows:

§ 910.1 Definitions.

* * * * *

FOIA Officer means the Finance Board employee who is authorized to make determinations as provided in this part. The mailing address for the FOIA Officer is Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

* * * * *

4. Revise § 910.3(b) to read as follows:

§ 910.3 Requests for records.

* * * * *

(b) *Incomplete requests.* If a request does not meet all of the requirements of paragraph (a) of this section, the FOIA Officer may advise the requester that additional information is needed. If the requester submits a corrected request, the FOIA Officer shall treat the corrected request as a new request.

5. Amend § 910.4 by revising paragraph (c)(3), the first sentence of paragraph (d)(1), and paragraph (e) to read as follows:

§ 910.4 Finance Board response to requests for records.

* * * * *

(c) * * *

(3) The opportunity for the requester to either limit the scope of the request so that the FOIA Officer may process it in accordance with paragraph (a) of this section, or arrange an alternative time frame for processing the request or a modified request.

(d) *Expedited processing.* (1) The FOIA Officer shall process a request for records as soon as practicable if it is determined that expedited processing is appropriate or the requester demonstrates a compelling need. * * *

* * * * *

(e) *Providing responsive records.* The FOIA Officer shall provide one copy of a record to a requester in any form or format requested if the record is readily reproducible by the Finance Board in that form or format by regular U.S. mail to the address indicated in the request unless other arrangements are made, such as taking delivery of the document at the Finance Board. At the option of the requester and upon the requester's agreement to pay fees in accordance with § 910.9, the FOIA Officer shall provide copies by facsimile transmission or other express delivery methods.

6. Revise § 910.7 to read as follows:

§ 910.7 Records of financial regulatory agencies held by the Finance Board.

The Finance Board shall not disclose an examination, operating, or condition report, or other record prepared by, on behalf of, or for the use of a financial regulatory agency. Upon a receipt of a request for such records, the FOIA Officer shall promptly refer the request to the appropriate agency and notify the requester of the referral.

7. Amend § 910.8 by revising paragraph (a)(1) to read as follows:

§ 910.8 Appeals.

(a) *Procedure.* (1) If the FOIA Officer has denied a request in whole or in part, the requester may appeal the denial by submitting a written application to the FOIA Officer stating the grounds for the appeal within 30 working days of the date of the determination under § 910.4.

* * * * *

8. Amend § 910.9 by revising paragraph (c), paragraph (d) introductory text, paragraph (d)(3)(ii) introductory text, paragraph (e), paragraphs (f)(3) through (f)(5), and paragraph (g) introductory text to read as follows:

§ 910.9 Fees.

* * * * *

(c) *Interest.* The Finance Board may assess interest at the rate prescribed in 31 U.S.C. 3717 on any unpaid fees beginning 31 days after the earlier of the date of the determination under § 910.4 or the date a fee statement is mailed to a requester. Interest shall accrue from such date.

(d) *Exceptions.* Notwithstanding paragraphs (a) or (b) of this section, the FOIA Officer may determine not to assess a fee or to reduce a fee if:

(3) * * *

(ii) In determining whether disclosure of a record is in the public interest, the FOIA Officer shall consider whether the record:

* * * * *

(e) *Aggregating requests.* If the FOIA Officer reasonably believes that a requester or a group of requesters acting in concert is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the FOIA Officer may aggregate such requests and assess fees in accordance with this section.

(f) *Collecting fees.* * * *

(3) Prior to disclosing any record, the FOIA Officer may require a requester to agree in writing to pay actual fees and interest incurred in accordance with this section if the estimated fee will likely exceed $25 but not $250.

(4) The FOIA Officer may require a requester to pay an estimated fee in advance if:

(i) It is determined that the fee will likely exceed $250; or

(ii) The requester has previously failed to pay a fee assessed under this section within 30 days of the earlier of the date of the determination under § 910.4 or the date a fee statement was mailed to a requester.

(5) The Finance Board shall promptly refund to a requester any estimated advance fee paid under paragraph (f)(4) of this section that exceeds the actual fee. The FOIA Officer shall assess the requester for the amount by which the actual fee exceeds the estimated advance fee payment.

(g) *Fee schedule.* The FOIA Officer shall assess fees in accordance with the following schedule:

* * * * *

Dated: April 6, 2000.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 00–9454 Filed 4–14–00; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–252–AD; Amendment 39–11677; AD 99–13–08 R1]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to all Lockheed Model L–1011–385 series airplanes, that currently requires inspections to detect cracking and other discrepancies of certain web-to-cap fasteners of the rear spar between inner wing station (IWS) 310 and IWS 343, and of the web area around those fasteners; various follow-on actions; and modification of the web-to-cap fastener holes of the rear spar between IWS 299 and IWS 343, which, when accomplished, defers the initiation of the inspections for a certain period of time. The actions specified by that AD are intended to prevent fatigue cracking in the web of the rear spar of the wing, which could result in failure of the rear spar of the wing and consequent fuel spillage. This amendment, for certain airplanes, extends the compliance time for the modification of the web-to-cap fastener holes, and eliminates references to modification of the outboard spar.

DATES: Effective May 22, 2000.

The incorporation by reference of Lockheed Service Bulletin 093–57–218, dated April 11, 1996, was approved previously by the Director of the Federal Register as of June 27, 1996 (61 FR 29642, June 12, 1996).

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of July 28, 1999 (64 FR 33386, June 23, 1999).

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising AD 99–13–08, amendment 39–11202 (64 FR 33386, June 23, 1999), which is applicable to all Lockheed Model L–1011–385 series airplanes, was published in the **Federal Register** on November 8, 1999 (64 FR 60750). The action proposed to continue to require inspections to detect cracking and other discrepancies of certain web-to-cap fasteners of the rear spar between inner wing station (IWS) 310 and IWS 343, and of the web area around those fasteners; and various follow-on actions. The action also proposed, for certain airplanes, to extend the compliance time for the modification of the web-to-cap fastener holes, and eliminate references to modification of the outboard spar.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 235 Lockheed Model L–1011–385 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry will be affected by this AD. The requirements of this AD will not add any new additional economic burden on affected operators. Also, because the existing AD states the cost impact only for the required modification and not for the acceptable alternatives that were provided for certain airplanes, no change to the cost impact information is necessary. The current costs associated with this amendment are reiterated in their entirety (as follows) for the convenience of affected operators:

The inspections that are currently required by AD 99–13–08 take approximately 13 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $91,260, or $780 per airplane, per inspection cycle.

The modification that is currently required by AD 99–13–08 takes approximately 100 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based

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on these figures, the cost impact of the currently required modification on U.S. operators is estimated to be $702,000, or $6,000 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11202 (64 FR 33386, June 23, 1999), and by adding a new airworthiness directive (AD), amendment 39–11677, to read as follows:

99–13–08 R1 Lockheed: Amendment 39–11677. Docket 99–NM–252–AD. Revises AD 99–13–08, Amendment 39–11202.

Applicability: All Model Model L–1011–385 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in the web of the rear spar of the wing, which could result in failure of the rear spar of the wing and consequent fuel spillage, accomplish the following:

Restatement of Actions Required by AD 99–13–08, Amendment 39–11202

Inspections

(a) Perform a visual inspection to detect signs of cracking and other discrepancies (*i.e.*, corrosion, fastener looseness, nicks, scratches, or other surface damage) of the web-to-cap fasteners of the rear spar between inner wing station (IWS) 310 and IWS 343, as specified in Figure 2 of Lockheed Service Bulletin 093–57–218, dated April 11, 1996, or Revision 1, dated September 9, 1996; and of the web area around those fasteners; in accordance with Part I of the Accomplishment Instructions of that service bulletin. Perform the inspection at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

(1) Except as provided by paragraph (a)(2) of this AD: Perform the initial inspection prior to the accumulation of the number of landings specified as the "inspection threshold" in Table I of Lockheed Service Bulletin 093–57–218, dated April 11, 1996, or Revision 1, dated September 9, 1996, or within 10 days after June 27, 1996 (the effective date of AD 96–12–24, amendment 39–9667), whichever occurs later.

(2) For airplanes on which the wing rear spar was modified prior to June 27, 1996, in accordance with one of the Lockheed service bulletins listed in paragraph (a)(2)(ii) of this AD, accomplish the inspection as follows:

(i) Perform the initial inspection prior to the accumulation of the number of landings specified as the "inspection threshold" in Table I of Lockheed Service Bulletin 093–57–218, dated April 11, 1996, or Revision 1, dated September 9, 1996, calculated from the time the wing rear spar was modified (rather than from the date of manufacture of the airplane), or within 10 days after June 27, 1996, whichever occurs later.

(ii) This paragraph applies to airplanes on which the wing rear spar has been modified in accordance with one of the following service bulletins:

(A) Lockheed Service Bulletin 093–57–184, Revision 6, dated October 28, 1991, or Revision 7, dated December 6, 1994; or

(B) Lockheed Service Bulletin 093–57–196, Revision 5, dated October 28, 1991, or Revision 6, dated December 6, 1994; or

(C) Lockheed Service Bulletin 093–57–203, Revision 3, dated October 28, 1991, or Revision 4, dated March 27, 1995; or

(D) Lockheed Service Bulletin 093–57–215, dated April 11, 1996.

Repetitive Inspections

(b) If no sign of cracking or other discrepancy is found during the inspection required by paragraph (a) of this AD, repeat that inspection thereafter at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093–57–218, dated April 11, 1996, or Revision 1, dated September 9, 1996.

Corrective Actions

(c) If any sign of cracking is found during an inspection required by paragraph (a) or (b) of this AD, prior to further flight, perform either eddy current surface scan inspections, or bolt hole eddy current inspections, as appropriate, to confirm cracking, in accordance with Lockheed Service Bulletin 093–57–218, dated April 11, 1996, or Revision 1, dated September 9, 1996.

(1) If no cracking is confirmed, repeat the inspection specified in paragraph (a) of this AD at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of the service bulletin.

(2) If any cracking is confirmed, prior to further flight, repair it in accordance with the service bulletin.

Modification

(d) Except as provided by paragraph (e) or (f) of this AD, as applicable: Prior to the accumulation of the number of landings specified as the threshold in Table 1 of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996; or within 12 months after July 28, 1999 (the effective date of AD 99–13–08, amendment 39–11202); whichever occurs later; modify the web-to-cap fastener holes of the rear spar between IWS 299 and IWS 343 in accordance with Part II of the Accomplishment Instructions of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996. Within 5,000 landings following accomplishment of the modification, perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996.

(e) For Model L–1011–385–3 series airplanes: Accomplishment of the modification specified in paragraph (e)(1) or (e)(2) of this AD, within 12 months after July 28, 1999, constitutes an acceptable alternative to the modification specified in paragraph (d) of this AD.

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(1) Modify the upper and lower caps of the rear spar between IWS 228 and IWS 346 in accordance with Part I of the Accomplishment Instructions of Lockheed Service Bulletin 093–57–203, Revision 3, dated October 28, 1991; or Revision 4, dated March 27, 1995. Within 5,000 landings following accomplishment of the modification, perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996. Or

(2) Modify the left and right wing rear spars in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–215, dated April 11, 1996. Within the thresholds specified in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996 (calculated from the date of installation of Lockheed Service Bulletin 093–57–215, dated April 11, 1996), perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996.

Note 2: Accomplishment of the modification of the upper and lower caps of the rear spar between IWS 228 and IWS 346, in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–203, dated July 25, 1988, Revision 1, dated August 11, 1989, or Revision 2, dated January 25, 1991, is considered acceptable for compliance with the modification specified in paragraph (e)(1) of this amendment.

(f) For Model L–1011–385–1 series airplanes: Accomplishment of the modification specified in paragraph (f)(1) or (f)(2) of this AD, within 12 months after July 28, 1999, constitutes an acceptable alternative to the modification specified in paragraph (d) of this AD.

(1) Modify the inboard rear spars in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–184, Revision 6, dated October 28, 1991; or Revision 7, dated December 6, 1994. Within the thresholds specified in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996 (calculated from the date of installation of Lockheed Service Bulletin 093–57–184, Revision 6, dated October 28, 1991, or Revision 7, dated December 6, 1994), perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996. Or

(2) Modify the inboard rear spars in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–196, Revision 5, dated October 28, 1991; or Revision 6, dated December 6, 1994. Within the thresholds specified in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996 (calculated from the date of installation of Lockheed Service Bulletin 093–57–196, Revision 5, dated October 28, 1991, or Revision 6, dated December 6, 1994), perform the visual inspection required by paragraph (a) of this AD. Thereafter, repeat that inspection at intervals not to exceed the number of landings specified as the "repeat visual inspection interval" in Table I of Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996.

Note 3: Accomplishment of the modification of the inboard rear spars, in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–184, Revision 2, dated October 12, 1988; Revision 3, dated August 11, 1989; Revision 4, dated May 16, 1990; or Revision 5, dated May 23, 1990, is considered acceptable for compliance with the modification specified in paragraph (f)(1) of this amendment.

Note 4: Accomplishment of the modification of the inboard rear spars, in accordance with the Accomplishment Instructions of Lockheed Service Bulletin 093–57–196, Revision 1, dated October 25, 1988; Revision 2, dated July 31, 1989; Revision 3, dated March 7, 1990; or Revision 4, dated July 1, 1991, is considered acceptable for compliance with the modification specified in paragraph (f)(2) of this amendment.

(g) If any condition (*i.e.*, number of discrepant fasteners per stiffener bay, or cracking) is identified during the accomplishment of the modification specified in Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996, and that condition exceeds the limits specified in paragraph B.(3) of Part II of the Accomplishment Instructions of the service bulletin, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

Alternative Method of Compliance

(h)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 96–12–24, amendment 39–9667, or AD 99–13–08, amendment 39–11202, are approved as alternative methods of compliance with paragraph (d) of this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(j) Except as provided by paragraph (g) of this AD, the actions shall be done in accordance with the following service bulletins, as applicable: Lockheed Service Bulletin 093–57–184, Revision 6, dated October 28, 1991; or Lockheed Service Bulletin 093–57–184, Revision 7, dated December 6, 1994; Lockheed Service Bulletin 093–57–196, Revision 5, dated October 28, 1991; or Lockheed Service Bulletin 093–57–196, Revision 6, dated December 6, 1994; Lockheed Service Bulletin 093–57–203, Revision 3, dated October 28, 1991; or Lockheed Service Bulletin 093–57–203, Revision 4, dated March 27, 1995; Lockheed Service Bulletin 093–57–215, dated April 11, 1996; and Lockheed Service Bulletin 093–57–218, dated April 11, 1996; or Lockheed Service Bulletin 093–57–218, Revision 1, dated September 9, 1996.

(1) The incorporation by reference of Lockheed Service Bulletin 093–57–218, dated April 11, 1996, was approved previously by the Director of the Federal Register as of June 27, 1996 (61 FR 29642, June 12, 1996).

(2) The incorporation by reference of the remainder of the service bulletins listed above, was approved previously by the Director of the Federal Register as of July 28, 1999 (64 FR 33386, June 23, 1999).

(3) Copies may be obtained from Lockheed Martin Aircraft & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on May 22, 2000.

Issued in Renton, Washington, on April 5, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8992 Filed 4–14–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–60]

Modification of Class E Airspace; Watertown, SD, and Britton, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Watertown, SD, and Britton, SD. A review of the controlled airspace within the States of North Dakota and

South Dakota conducted after the cancellation of a portion of Federal Airway 220 (V–220), Airspace Docket No. 98–AGL–49, published September 7, 1999, indicated several small portions of Class G uncontrolled airspace being created between Wahpeton, ND, and Brookings, SD. Controlled airspace extending upward from 1200 feet above ground level (AGL) is needed to allow the FAA to provide safe and efficient air traffic control services for aircraft executing enroute and terminal instrument procedures into and out of numerous airports in that area. These small portions of uncontrolled airspace cause confusion for the both pilots and controllers and do not allow for consistent application of instrument flight rules in a critical area servicing these airports. This action eliminates these Class G portions of airspace between Wahpeton, ND, and Brookings, SD, by revising the Class E airspace for Watertown, SD. This revision causes a minor change to the airspace exclusions in the legal description for the Class E airspace for Britton, SD.

EFFECTIVE DATE: 0901 UTC, June 15, 2000.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, February 2, 2000, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Watertown, SD, and Britton, SD (65 FR 4910). The proposal was to modify controlled airspace extending upward from 1200 feet above the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Watertown, SD, and Britton, SD, to accommodate aircraft executing instrument flight procedures into and out of numerous airports in southeastern North Dakota, northeastern South Dakota, and western Minnesota. Several small portions of uncontrolled airspace between Wahpeton, ND, and Brookings, SD, created as a result of the cancellation of a portion of Federal Airway 220 (V–220), Airspace Docket No. 98–AGL–49, published September 7, 1999 (64 FR 48527), are eliminated. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL SD E5 Watertown, SD [Revised]

Watertown Municipal Airport, SD
(Lat. 44°54′51″ N., long. 097°09′17″ W.)
Watertown VORTAC
(Lat. 44°58′17″ N., long. 097°08′30″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Watertown Municipal Airport and within 4.0 miles each side of the Watertown VORTAC 006° radial extending from the 6.8-mile radius to 10.6 miles north of the airport, and within 1.9 miles each side of the south localizer course extending from the 6.8-mile radius to 11.7 miles south of the airport, and that airspace extending upward from 1,200 feet above the surface within an area bounded on the north by lat. 46°30′00″ N., on the east by the Minnesota/North Dakota and Minnesota/South Dakota borders, on the south by lat. 44°30′00″ N, and on the west by long. 097°00′00″ W, excluding that airspace within the Fargo, ND, 1,200 foot Class E airspace area and all Federal airways.

* * * * *

AGL SD E5 Britton, SD [Revised]

Britton Municipal Airport, SD
(Lat. 45°48′55″ N., long. 097°44′35″ W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Britton Municipal Airport, and that airspace extending upward from 1,200 feet above the surface bounded on the west by long. 98°30′00″ W, on the north by lat. 46°30′00″ N, on the east by long. 97°00′00″ W, and on the south by lat. 44°30′00″ N, excluding the Fargo, ND, Huron, SD, and Aberdeen, SD, 1,200 foot Class E airspace areas and all Federal airways.

* * * * *

Issued in Des Plaines, Illinois on March 27, 2000.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 00–9404 Filed 4–14–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–59]

Modification of Class E Airspace; Coldwater, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Coldwater, MI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 06 has been developed for Branch County Memorial Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of the existing controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, June 15, 2000.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, February 2, 2000, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Coldwater, MI (65 FR 4909). The proposal was to modify controlled airspace extending upward from 700 feet above the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Coldwater, MI, to accommodate aircraft executing the proposed GPS Rwy 06 SIAP for Branch County Memorial Airport by modifying the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Coldwater, MI [Revised]
Coldwater, Branch County Memorial Airport, Mi
(Lat. 41°56′00″ N., long. 85°03′09″ W.)

That airspace extending upward from 700 feet above the surface within an 8.1-mile radius of Branch County Memorial Airport.

* * * * *

Issued in Des Plaines, Illinois on March 27, 2000.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 00–9405 Filed 4–14–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–58]

Modification of Class E Airspace; Saginaw, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule

SUMMARY: This action modifies Class E airspace at Saginaw, MI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 27 has been developed for Saginaw County H.W. Browne Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increase the radius of the existing controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, June 15, 2000.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, February 2, 2000, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Saginaw, MI (65 FR 4911). The proposal was to modify controlled airspace extending upward from 700 feet above the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Saginaw,

MI, to accommodate aircraft executing the proposed GPS Rwy 27 SIAP for Saginaw County H.W. Browne Airport by modifying the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Saginaw, MI [Revised]
MBS International Airport, MI
(Lat. 43°31'58" N., long. 84°04'47" W.)
Saginaw County H. W. Browne Airport, MI
(Lat. 43°26'00" N., long. 83°51'45" W.)
Bay City, James Clements Municipal Airport, MI
(Lat. 43°32'49" N., long. 83°53'44" W.)
Midland, Jack Barstow Airport, MI
(Lat. 43°39'46" N., long. 84°15'41" W.)
Saint Mary's Hospital, MI
Point in Space Coordinates
(Lat. 43°24'54" N., long. 83°56'27" W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of MBS International Airport, within a 6.5-mile radius of Saginaw County H. W. Browne Airport, within a 6.4-mile radius of James Clements Municipal Airport, within a 6.3-mile radius of Jack Barstow Airport, and within a 6.0-mile radius of the Point in Space serving Saint Mary's Hospital.

* * * * *

Issued in Des Plaines, Illinois on March 27, 2000.

David B. Johnson,
Acting Manager, Air Traffic Division.

[FR Doc. 00–9406 Filed 4–14–00; 8:45 am]
BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Final rule revision.

SUMMARY: The Federal Trade Commission ("Commission") revises Table 1 in section 305.9 of the Commission's Appliance Labeling Rule ("the Rule"), to incorporate the latest figures for average unit energy costs as published by the Department of Energy ("DOE") in the **Federal Register** on February 7, 2000. Table l sets for the representative average unit energy costs for five residential energy sources, which the Commission revises periodically on the basis of updated information provided by DOE.

DATES: The revisions to § 305.9(a) are effective April 17, 2000. The mandatory dates for using these revised DOE cost figures in connection with the Appliance Labeling Rule are detailed in the **SUPPLEMENTARY INFORMATION** Section, below.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202–326–3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Federal Trade Commission issued a final rule in response to a directive in section 324 of the Energy Policy and Conservation Act ("EPCA"), 42 U.S.C. 6201.[1] The Rule requires the disclosure of energy efficiency, consumption, or cost information on labels and in retail sales catalogs for eight categories of appliances, and mandates that the energy costs, consumption, or efficiency ratings be based on standardized test procedures developed by DOE. The cost information obtained by following the test procedures is derived by using the representative average unit energy costs provided by DOE. Table 1 in § 305.9(a) of the Rule sets forth the representative average unit energy costs to be used for all cost-related requirements of the Rule. As stated in § 305.9(b), the Table is to be revised periodically on the basis of updated information provided by DOE.

On February 7, 2000, DOE published the most recent figures for representative average unit energy costs (65 FR 5860). These energy cost figures are for manufacturers to use, in accordance with the guidelines that appear below, to calculate the required secondary annual operating cost figures at the bottom of required Energy Guides for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, and room air conditioners. The energy cost figures also are for manufacturers of furnaces, boilers, central air conditioners, and heat pumps to use, also in accordance with the below guidelines, to calculate annual operating cost for required fact sheets. And, the cost figures are for use, in accordance with the guidelines, in approved industry directories listing these products.

The DOE cost figures are not necessary for making data submissions to the Commission. The required energy use information that manufacturers of refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, and water heaters must submit under § 305.8 of the Rule is no longer operating cost; it is now energy consumption (kiloWatt-hour use per year for electricity, therms per year for natural gas, or gallons per year for propane and oil).

Accordingly, Table 1 is revised to reflect these latest cost figures, as set forth below. The current and future obligations of manufacturers with

[1] 44 FR 66466. Since its promulgation, the rule has been amended five times to include new product categories—central air conditioners (52 FR 46888, Dec. 10, 1987), fluorescent lamp ballasts (54 FR 1182, Jan. 12, 1989), certain plumbing products (58 FR 54955, Oct. 25, 1993), certain lamp products (59 FR 25176, May 13, 1994), and pool heaters and certain residential water heater types (59 FR 49556, Sept. 28, 1994). Obligations under the rule concerning fluorescent lamp ballasts, lighting products, plumbing products and pool heaters are not affected by the cost figures in this notice.

respect to the use of DOE's cost figures are as follows:

For Labeling of Refrigerators, Refrigerator-Freezers, Freezers, Clothes Washers, Dishwashers, Water Heaters, and Room Air Conditioners[2]

Manufacturers of refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, water heaters, and room air conditioners must use the National Average Representative Unit Costs published today on labels for their products only after the Commission publishes new ranges of comparability for those products that are based on today's cost figures. In the meantime, they must continue to use past DOE cost figures as follows:

Storage-Type Water Heaters

Manufacturers of storage-type water heaters must continue to use the 1994 DOE cost figures (8.41 cents per kilo Watt-hour for electricity, 60.4 cents per therm for natural gas, $1.05¢ per gallon for No. 2 heating oil, and 98.3 cents per gallon for propane) in determining the operating cost disclosures on the labels on their products. This is because the 1994 DOE cost figures were in effect when the 1994 ranges of comparability for storage-type water heaters were published, and those 1994 ranges are still in effect for those products.[3] Manufacturers of storage-type water heaters must continue to use the 1994 cost figures to calculate the estimated annual operating cost figures on their labels until the Commission publishes new ranges of comparability for storage-type water heaters. In the notice announcing the new ranges, the Commission also will announce that operating cost disclosures must be based on the DOE cost figure for electricity in effect at that time.

Heat Pump Water Heaters and Room Air Conditions

Manufacturers of heat pump water heaters and room air conditioners must continue to derive the operating cost disclosures on labels by using the 1995 National Average Representative Unit Costs for electricity (8.67 cents per kilo Watt-hour) that were published by DOE on January 5, 1995 (60 FR 1773), and by the Commission on February 17, 1995 (60 FR 9296), and that were in effect when the current (1995) ranges of comparability for these products were published.[4] Manufacturers of heat pump water heaters and room air conditioners must continue to use the 1995 DOE cost figures to calculate the operating cost disclosure disclosed on labels until the Commission publishes new ranges of comparability for heat pump water heaters or room air conditioners based on future annual submissions of data. In the notice announcing the new ranges, the Commission also will announce that operating cost disclosures must be based on the DOE cost figure for electricity in effect at that time.

Standard-Size Dishwashers

Manufacturers of standard-size dishwashers must continue to base the required secondary operating cost disclosures on labels on the 1997 National Average Representative Unit Costs for electricity (8.31 cents per kilo Watt-hour) and natural gas (61.2 cents per therm) that were published by DOE on November 18, 1996 (61 FR 58679), and by the Commission on February 5, 1997 (62 FR 5316), and that were in effect when the 1997 ranges of comparability for these products were published.[5] In the notice announcing the new ranges, the Commission also will announce that operating cost disclosures must be based on the DOE cost figure for electricity in effect at that time.

Compact-Size Dishwashers, Clothes Washers, and Gas-Fired Instantaneous Water Heaters

Manufacturers of compact-size dishwashers, clothes washers, and gas-fired instantaneous water heaters must continue to base the required secondary operating cost disclosures on labels on the 1999 National Average Representative Unit Costs for electricity (8.22 cents per kilo Watt-hour), natural gas (68.8 cents per therm), and propane (77 cents per therm) that were published by DOE on January 5, 1999 (64 FR 487), and by the Commission on February 17, 1999 (64 FR 7783), and that were in effect when the 1999 ranges of comparability for these products were published.[6] In the notice announcing the new ranges, the Commission also will announce that operating cost disclosures must be based on the DOE cost figure for electricity in effect at that time.

Refrigerators, Refrigerator-Freezers, and Freezers

Manufacturers of refrigerators, refrigerator-freezers, and freezers must continue to derive the operating cost disclosures on labels by using the 1998 National Average Representative Unit Costs (8.42 cents per kilo Watt-hour for electricity, 61.9 cents per therm for natural gas, 95 cents per gallon for No. 2 heating oil, and 95 cents per gallon for propane) that were published by DOE on December 8, 1997 (62 FR 64574), and by the Commission on December 29, 1997 (62 FR 67560), and that were in effect when the current (1998) ranges of comparability for these products were published.[7] In the notice announcing the new ranges, the Commission also will announce that operating cost disclosures must be based on the DOE cost figure for electricity in effect at that time.

For Operating Cost Information Relating to Central Air Conditioners and Heat Pumps Disclosed on Fact Sheets and in Industry Directories

In the 2000 notice announcing whether there will be new ranges of comparability for central air conditioners and heat pumps, the Commission also will announce that operating cost disclosures for these products on fact sheets and in industry

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[2] Sections 305.11(a)(5)(i)(H)(2) and (3) of the Rule (16 CFR 305.11(a)(5)(i)(H)(2) and (3)) require that labels for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, water heaters, and room air conditioners contain a secondary energy usage disclosure in terms of an estimated annual operating cost (labels for clothes washers and dishwashers will show two such secondary disclosures—one based on operation with water heated by natural gas, and one on operation with water heated by electricity). The labels also must disclose, below this secondary estimated annual operating cost, the fact that the estimated annual operating cost is based on the appropriate DOE energy cost figure, and must identify the year in which the cost figure was published.

[3] The 1994 DOE cost figures were published by DOE on December 29, 1993 (58 FR 68901), and by the Commission on February 8, 1994 (59 FR 5699). The current (1994) ranges of comparability for storage-type water heaters were published on September 23, 1994 (59 FR 48796). On August 21, 1995 (60 FR 43367), on September 16, 1996 (61 FR 48620), on August 25, 1997 (62 FR 44890), again on August 28, 1998 (63 FR 45941), and again on December 20, 1999 (64 FR 71019), the Commission announced that the 1994 ranges for storage-type water heaters would continue to remain in effect.

[4] The current (1995) ranges of comparability for heat pump water heaters were published on August 21, 1995 (60 FR 43367). The current (1995) ranges for room air conditioners were published on November 13, 1995 (60 FR 56945). On September 16, 1996 (61 FR 48620), again on August 25, 1997 (62 FR 44890), again on August 28, 1998 (63 FR 45941), and again on December 20, 1999 (64 FR 71019), the Commission announced that the 1995 ranges for heat pump water heaters and room air conditioners would continue to remain in effect.

[5] The current ranges for standard-size dishwashers were published on August 25, 1997 (62 FR 44890). On August 28, 1998 (63 FR 45941), and again on December 20, 1999 (64 FR 71019), the Commission announced that the 1997 ranges for standard-size dishwashers would continue to remain in effect.

[6] The current ranges of comparability for clothes washers were published on June 17, 1999 (64 FR 32403). The current ranges for compact-size dishwashers and gas-fired instantaneous water heaters were published on December 20, 1999 (64 FR 71019).

[7] The current (1998) ranges for refrigerators, refrigerator-freezers, and freezers were published on December 2, 1998 (63 FR 66428).

directories must be based on the 2000 DOE cost figure for electricity beginning on the effective date of that notice.

For Operating Cost Representations Respecting Covered Products in Catalogs

Operating cost representations in catalogs that are drafted and printed while the 2000 cost figures are in effect must be derived using the 2000 energy costs beginning July 17, 2000.

For Operating Cost Representations Respecting Products Covered by EPCA but not by the Commission's Rule

Manufacturers of products covered by section 323(c) of EPCA, 42 U.S.C. 6293(c), but not by the Appliance Labeling Rule (clothes dryers, television sets, kitchen ranges and ovens, and space heaters) must use the 2000 DOE energy costs in all operating cost representations beginning July 17, 2000.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603–604) are not applicable to this proceeding because the amendments do not impose any new obligations on entities regulated by the Appliance Labeling Rule. Thus, the amendments will not have a "significant economic impact on a substantial number of small entities" (5 U.S.C. 605). The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

PART 305—[AMENDED]

Accordingly, 16 CFR Part 305 is amended as follows:

1. The authority citation for Part 305 continues to read:

Authority: 42 U.S.C. 6294.

2. Section 305.9(a) is revised to read as follows:

§ 305.9 Representative average unit energy costs.

(a) Table 1 to this paragraph contains the representative unit energy costs to be utilized for all requirements of this part.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES (2000)

Type of energy	In commonly used terms	As required by DOE test procedure	Dollars per million Btu [1]
Electricity	8.03¢/kWh [2,3]	$0.0803/kWh	$23.53
Natural Gas	68.8¢/therm [4] or $7.07/MCF [5,6]	$0.00000688/Btu	6.88
No. 2 heating oil	$1.09/gallon [7]	$0.00000786/Btu	7.86
Propane	$.92/gallon [8]	$0.00001007/Btu	10.07
Kerosene	$1.14/gallon [9]	$0.00000844/Btu	8.44

[1] Btu stands for British thermal unit.
[2] kWh stands for kiloWatt hour.
[3] 1 kWh=3,412 Btu.
[4] 1 therm=100,000 Btu. Natural gas prices include taxes.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, I cubic foot of natural gas has an energy equivalence of 1,027 Btu.
[7] For the purposes of this table, 1 gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For the purposes of this table, 1 gallon of liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, 1 gallon of kerosene has an energy equivalence of 135,000 Btu.

* * * * *

Donald S. Clark,
Secretary.

[FR Doc. 00–9527 Filed 4–14–00; 8:45 am]
BILLING CODE 6750–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 330 and 385

[Docket No. RM99–5–000; Order No. 639]

Regulations Under the Outer Continental Shelf Lands Act Governing the Movement of Natural Gas on Facilities on the Outer Continental Shelf; Final Rule

Issued April 10, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing regulations under the Outer Continental Shelf Lands Act (OCSLA) [1] to ensure that natural gas is transported on an open and nondiscriminatory basis through pipeline facilities located on the Outer Continental Shelf (OCS). The regulations require OCS gas transportation service providers to make available information regarding their affiliations and the conditions under which service is rendered. This information will assist the Commission and interested persons in determining whether OCS gas transportation services conform with the open access and nondiscrimination mandates of the OCSLA. The final rule, by rendering offshore transactions transparent, should provide a sound basis for implementing the uniformly applicable open access and nondiscrimination mandates of the OCSLA, thus resulting in greater efficiencies in this marketplace.

EFFECTIVE DATE: The rule is effective May 17, 2000.

FOR FURTHER INFORMATION CONTACT: Marc Poole, Office of Pipeline Regulation, 888 First Street, NE., Washington, DC 20426, (202) 208–0482; Gordon Wagner, Office of the General Counsel, 888 First Street, NE. Washington, DC. 20426 (202) 219–0122

SUPPLEMENTARY INFORMATION:

Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing regulations under the Outer Continental Shelf Lands Act (OCSLA) [1a] to ensure that natural gas is transported on an open and nondiscriminatory basis

[1] 43 U.S.C. 1301–1356.

[1a] 43 U.S.C. 1301–1356.

through pipeline facilities located on the Outer Continental Shelf (OCS).[2] The regulations require OCS gas transportation service providers to make available information regarding their affiliations and the conditions under which service is rendered. This information will assist the Commission and interested persons in determining whether OCS gas transportation services conform with the open access and nondiscrimination mandates of the OCSLA and will enable shippers who believe they are subject to anticompetitive practices to bring their concerns to the Commission. The final rule, by rendering offshore transactions transparent, should provide a sound basis for implementing the uniformly applicable open access and nondiscrimination mandates of the OCSLA, thus resulting in greater efficiencies in this marketplace. The regulations adopted by this final rule do not eliminate or modify any existing regulations or Commission policies relating to the regulation of offshore facilities pursuant to the Commission's authority under the Natural Gas Act (NGA).[3]

II. Background

On June 30, 1999, the Commission issued a Notice of Proposed Rulemaking (NOPR),[4] in which we proposed requiring all entities that move natural gas on or across the OCS to submit certain information regarding their affiliations, rates, and conditions of service. We explained that a uniform regulatory reporting regime would permit the Commission and interested persons to ensure adherence to the OCSLA's nondiscrimination and open access mandates.

After review of the comments[5] and further consideration, we believe implementing new OCSLA reporting requirements, similar to certain existing NGA reporting requirements, will realize the aims stated in the NOPR of eliminating distortions in the offshore marketplace and encouraging continued investment in the development of OCS resources.

III. Discussion

A. Rationale for the Rule

As discussed in the NOPR, offshore natural gas, predominately gas located in the Gulf of Mexico, has come to play an increasingly important role as a secure domestic source of clean-burning fuel supplies. We observed that the greater level of OCS activity in recent years had prompted a greater interest in the importance of the Commission's responsibility under the OCSLA to ensure a competitive market for gas pipeline services on the OCS, along with closer attention to the applicability of our NGA regulation to activities offshore. This attention has focused concern on the impact that the multiple, independent, and partially overlapping regulatory regimes at play offshore have on the competitive market.

In the NOPR, we noted that although all OCS gas service providers are subject to the OCSLA, only a subset thereof are also subject to the NGA, presenting potential competitive inequities that could be mitigated if all offshore facilities were subject to more uniform regulatory requirements. Currently, offshore service providers subject to the NGA, by virtue of compliance with our NGA regulations, are likely to be operating in full accord with the OCSLA; however, we have no assurance that offshore providers out of our NGA oversight also adhere to the OCSLA's open access and nondiscrimination mandates. Under the OCSLA reporting requirements promulgated by this rule, offshore service providers will report information similar to that now reported under the NGA, thereby bringing a similar transactional transparency to virtually all activities that take place on the OCS. This should moderate the distortion now present due to separate sets of OCS service providers being subject to separate regulatory regimes and promote policy goals of both the OCSLA and NGA. Making information regarding conditions of service available to OCS shippers will enable them to make informed and improved transportation arrangements; will enable OCS service providers to make better investment decisions; and will allow shippers, competitors, and the Commission to monitor the OCS for instances of discrimination and the exercise of market power. These benefits are unavailable without the transactional transparency provided by the OCSLA reporting requirements put in place by this rule. Making information publicly available that has heretofore been largely inaccessible should enhance competitive options for offshore producers and onshore purchasers of natural gas, promote a more efficient marketplace, and encourage the continued exploration and development of offshore resources.

1. Comments

Independent Petroleum Association of America (IPAA),[6] Natural Gas Supply Association (NGSA),[7] and OCS Producers[8] agree with the Commission's view that while the policy objectives of the OCSLA and NGA are different, they are complementary, and not mutually exclusive. NGSA stresses that the NGA, unlike the OCSLA, allows the Commission to undertake cost-based ratemaking to ensure that transportation rates remain just and reasonable. Thus, IPAA, NGSA and OCS Producers urge the Commission to continue to exercise dual regulatory authority over facilities subject to both statutes.[9]

Commenters note that since enactment of the OCSLA in 1953, the Commission has only infrequently invoked its OCSLA authority to address issues concerning gas or oil activities

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[2] The OCS is defined as "all submerged lands lying seaward and outside of the area of lands beneath navigable waters * * * and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control." 43 U.S.C. 1331(a). *See also* 43 U.S.C. 1301(a)(1), defining "lands beneath navigable waters" as "all lands within the boundaries of each of the respective States."

[3] 15 U.S.C. 717

[4] Regulations under the Outer Continental Shelf Lands Act Governing the Movement of Natural Gas on Facilities on the Outer Continental Shelf, Notice of Proposed Rulemaking, 64 FR 37718 (July 13, 1999), FERC Stats. & Regs. ¶ 32,542 (1999).

[5] A list of commenters appears in the appendix to this order.

[6] IPAA is composed, generally, of smaller producers and shippers.

[7] NGSA is composed of integrated and independent gas producers and marketers.

[8] OCS Producers is composed of the following large and mid-sized offshore producers: Amerada Hess Corporation; Amoco Energy Trading Corporation; Chevron U.S.A. Inc.; Conoco Inc.; Marathon Oil Company; Mobil Exploration and Producing U.S., Inc.; OXY USA Inc.; Phillips Petroleum Company; Shell Offshore Inc.; Texaco Exploration and Production Inc.; and Union Pacific Resources Company.

[9] NGSA also argues that conditions be placed on abandonments of offshore NGA-jurisdictional facilities and services to preclude "a fly-up in the cost of transporting OCS supplies that could cause the premature abandonment of OCS projects in mid-production cycle." NGSA's August 27, 1999 Comments at 4–5. In a similar vein, OCS Producers request clarification that the Commission will not change its traditional exercise of NGA jurisdiction offshore. On the other hand, El Paso Energy Corporation (El Paso) argues that all offshore facilities should be deemed gathering, and thereby exempt from the NGA, an outcome that would eliminate the dual burden of complying with the OCSLA and NGA. Issues relating to the regulatory status of particular offshore facilities under the NGA are beyond the scope of this rulemaking proceeding. Here, we restrict our considerations to how to best carry out our regulatory mandate under the OCSLA. Such issues continue to be addressed by the Commission on a case-specific basis; *see e.g.*, the decisions in Sea Robin Pipeline Company (Sea Robin), 71 FERC ¶ 61,351 (1995), *reh'g denied*, 75 FERC ¶ 61,332 (1996), *vacated and remanded*, Sea Robin v. FERC, 127 F.3d 365 (5th Cir. 1997), *order on remand*, 87 FERC ¶ 61,304 (1999), *reh'g pending*. Accordingly, while we do discuss whether certain OCS facilities are subject to the OCSLA, we do not reach the question of the jurisdictional status of any offshore facilities under the NGA.

offshore.[10] To date, to regulate offshore activity, the Commission has relied almost exclusively on its NGA jurisdiction over gas and its Interstate Commerce Act (ICA)[11] jurisdiction over oil. However, these statutes cover significantly less than the full range of offshore facilities and services. The NGA excludes natural gas facilities engaged primarily in production or gathering (roughly half of all the Gulf of Mexico offshore facilities, generally smaller lines).[12] The ICA does not apply to oil pipelines transporting oil solely on or across the OCS.[13] In contrast, offshore, the OCSLA's coverage is inclusive.[14]

Generally, interstate gas pipeline companies and their affiliated gatherers assume the absence of a history of vigorous enforcement under the OCSLA demonstrates that the Commission's practice of relying on the NGA has been satisfactory in ensuring adherence to regulatory practices and goals. In view of this, Brooklyn Union Gas Company (Brooklyn Union), El Paso, Duke Energy Field Services, Inc. (Duke), Dynergy Midstream Services, Limited Partnership (Dynergy), Interstate Natural Gas Association of America (INGAA), Leviathan Gas Pipeline Partners, LP (Leviathan), Tejas Offshore Pipeline, LLC (Tejas), and Williams Companies, Inc. (Williams) conclude the NOPR's proposal to employ the OCSLA as a means to monitor offshore gas service providers is unnecessary. OCS Producers agree and expect the proposed rule to inhibit offshore gas development.

El Paso and Williams contend the proposed rule does not address the competitive disadvantages faced by offshore NGA-jurisdictional pipelines in that NGA pipelines are subject to more stringent regulation than NGA-exempt facilities (*e.g.*, NGA pipelines require prior Commission authorization to construct, modify, or abandon facilities or services) and are thus unable to compete effectively with OCS NGA-exempt service providers.

Duke and OCS Producers maintain that absent evidence of need for the proposed rule, promulgation as a final rule would constitute legal error[17] and assert that any benefits of the rule would be outweighed by the burdens it would impose. Leviathan contends it would be arbitrary and capricious for the Commission to enact OCSLA regulations without consulting with the Department of Energy, providing for a full hearing on the proposed regulations, and taking into account the conservation and prevention of waste of OCS resources.[18] Commenters stress that continued reliance on the NGA, in conjunction with the Commission's recently revised complaint procedures,[19] should be adequate to ensure open and nondiscriminatory access to OCS facilities.

Instead of acting under the OCSLA, El Paso suggests the Commission modify its NGA regulations and policies relating to offshore facilities to make them less burdensome and more market responsive. In particular, El Paso would have the Commission issue blanket certificate authorization for natural gas companies to construct and abandon facilities offshore and permit NGA-jurisdictional companies to negotiate terms and conditions of service and charge market rates for transportation on the OCS.

2. Commission Response

In two Notices of Inquiry issued in previous proceedings initiated in 1995[20] and 1998,[21] we sought comments on whether we might declare all offshore facilities NGA-exempt gathering facilities and exercise jurisdiction exclusively under the OCSLA. That option was not put forth in our NOPR in this proceeding. Rather, the 1999 NOPR asked whether requiring all OCS gas service providers to report information about their operations would be an effective means to enforce our regulatory mandates under the OCSLA, NGA, and Natural Gas Policy Act (NGPA).[22] However, the comments in response to the NOPR include a repetition of arguments presented in response to the prior Notices of Inquiry, urging the Commission to either declare all offshore facilities gathering or reaffirm that offshore transmission facilities are properly functionalized. We do not reach the merits of such arguments in this rulemaking. Those comments contemplate revisions to the primary function test used to determine NGA jurisdiction over offshore facilities.[23] Here, our concern is limited

[10] Since 1992, the Commission has exercised jurisdiction under the OCSLA in one oil case, Bonito Pipe Line Company (Bonito), 61 FERC ¶ (1992), *aff'd sub nom., Shell Oil Company* v. *FERC* (Shell Oil), 47 F.3d 1186 (D.C. Cir. 1995). In a current gas proceeding, Murphy Exploration & Production Company, 81 FERC ¶ 61,148 (1997), the Commission has invoked its OCSLA authority in response to a complaint alleging discriminatory rate treatment; final action in that proceeding is pending.

[11] Jurisdiction over the transportation of oil in interstate commerce by pipeline was transferred from the Interstate Commerce Commission to the Commission on October 1, 1977. *See* Department of Energy Organization Act, Pub. L. 95–91, section 402(b), 91 Stat. 565, 584 (1977), *codified at* 42 U.S.C. 7172(b) (1988) (repealed 1994), *recodified as amended at* 49 U.S.C. 60502.

[12] NGA section (1)(b) states the Act "shall not apply to * * * the facilities used for * * * the production or gathering of natural gas."

[13] *See* Bonito, 61 FERC ¶ 61,050 at 61,221 (1992), *aff'd sub nom.* Shell Oil, 47 F.3d 1186 (D.C. Cir. 1995) and Oxy Pipeline, Inc. (Oxy), 61 FERC ¶ 61,051 (1992). In the Bonito and Oxy cases, the Commission affirmed the OCSLA nondiscrimination provisions apply to OCS oil lines.

[14] *See* note 2. Read broadly, the OCSLA reaches across state waters to shore, since the statute's authorization extends to onshore facilities used to support OCS gas or oil production, with production including the transfer of gas or oil to shore. *See* 43 U.S.C. 1331(l) and (m), defining, respectively, development and production. OCSLA section 1331(m) and (q) define OCS "production" to include the "transfer of minerals to shore," with gas included within the term "minerals." In Order No. 509-A, we interpreted the scope of the OCSLA's "on or across" the OCS N to include "the seaward movement of gas from either an onshore location or an offshore location to any point on the OCS. 54 FR 8301 (Feb. 28, 1989), FERC Stats. & Regs. ¶ 30,848 at 31,341 (1989). As defined by the OCSLA, the OCS does not include either lands covered by tidal waters up to three miles from the coast of a state or lands covered by nontidal waters within the boundaries of a state. 43 U.S.C. 1331(a).

[17] *Citing* 5 U.S.C. 557 and 706(E) at 17, n. 24.

[18] Leviathan cites 43 U.S.C. 1334(e), which states, "oil or gas pipelines shall transport or purchase without discrimination, oil or natural gas produced from submerged lands or outer Continental Shelf lands in the vicinity of the pipelines in such proportionate amounts as the Federal Energy Regulatory Commission, in consultation with the Secretary of Energy, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste."

[19] 18 CFR 385.206. The Commission's procedures for responding to allegations of improper action or inaction were revised and expanded by a recent final rule, Complaint Procedures, Order No. 602, 64 FR 17087 (Apr. 8, 1999), FERC Stat. & Regs. ¶ 31,071 (1999), 86 FERC ¶ 61,324 (1999), *order on reh'g and clarification*, Order No. 602–A, 64 FR 43600 Aug. 11, 1999), FERC Stats. & Regs. ¶ 31,076 (1999), 88 FERC ¶ 61,114 (1999), *order on reh'g*, Order No. 602-B, 64 FR 53595 (Oct. 8, 1999) FERC Stats. & Regs. ¶ 32,545 (1999), 88 FERC ¶ 61,249 (1999).

[20] The 1995 Notice of Inquiry (NOI) led to a 1996 Policy Statement that established a presumption that facilities located in deep water of 200 meters or more were engaged in production or gathering. Gas Pipeline Facilities and Services on the Outer Continental Shelf—Issues Related to the Commission's Jurisdiction Under the Natural Gas Act and the Outer Continental Shelf Lands Act, 74 FERC ¶ 61,222 (1996), *reh'g dismissed*, 75 FERC ¶ 61,291 (1996).

[21] Alternative Methods for Regulating Natural Gas Pipeline Facilities and Services on the Outer Continental Shelf, 83 FERC ¶ 61,235 (1998).

[22] 15 U.S.C. 3301–3432. Section 311 of the NGPA addresses transportation by or on behalf of intrastate pipelines and local distribution companies, which in practice restricts the section's coverage to state waters. The OCSLA covers all non-state waters and the NGA covers all waters.

[23] The "primary function" test was articulated in Farmland Industries, Inc. (Farmland), 23 FERC ¶ 61,063 (1983), which took into consideration the following factors as relevant: (1) the length and diameter of the pipeline, (2) the extension of the facility beyond the central point in the field, (3) the pipelines' geographic configuration, (4) the location of compressors and processing plants, (5) the location of wells along all or part of the facility, and (6) the operating pressure of the line. The primary function test has been found by the Commission to

to the question of how best to harmonize our separate statutory responsibilities.

In the NOPR, we proposed that NGA-jurisdictional pipeline companies transporting gas across the OCS comply with both NGA and OCSLA reporting requirements. We stated our expectation that for NGA-jurisdictional companies, the additional OCSLA report would impose only a modest additional burden, because under existing NGA regulations, gas companies already submit the bulk of the information specified in the new OCSLA regulations. Indeed, in light of revisions to our NGA reporting requirements,[24] enacted subsequent to the OCSLA NOPR, we believe that the information that NGA-regulated companies are required to provide will prove sufficient to monitor conformity with the OCSLA's open access and nondiscrimination mandates. We anticipate that the submission of the information required under the NGA, will provide a data base adequate to ensure effective enforcement of the OCSLA's provisions. Therefore, we will revise the proposed OCSLA reporting exemptions, adding a new § 330.3(a)(4), to specify that facilities and services of OCS gas service providers that are regulated by the Commission under the NGA need not submit an OCSLA report.[25] However, if an NGA-regulated company's system includes OCS facilities that are not subject to the NGA, *e.g.*, gathering and production lines, the company must submit an OCSLA report covering its non-NGA facilities.

El Paso and Williams are concerned that offshore, NGA-jurisdictional pipelines are disadvantaged in competing against NGA-exempt lines, and assert it is more burdensome to operate under NGA jurisdiction than under the OCSLA. The existing difference between NGA and OCSLA regulation should be diminished by this rule's new reporting requirements. NGA-exempt OCS operators, for the first time, will have to present their affiliations, rates and conditions of service for public scrutiny, similar to NGA jurisdictional pipelines. In any event, Congress has explicitly charged the Commission with curbing the exercise of monopoly power in the natural gas industry and has established separate statutes to do so.

Commenters argue the lack of past reliance on the OCSLA demonstrates there is little, if any, need for the new reporting regulations. Although periodically referenced as an enforcement option, in practice we have had few occasions to employ our authority under the OCSLA. Thus, we recognize that based solely on past practice, there may appear to be little call for further exercise of our OCSLA authority. However, as the Producer Coalition observes, "the argument that reporting requirements are not needed because there have been only a handful of OCSLA complaint misses the point" which is that "shippers do not know whether they are victims of discrimination or not. There simply is not enough information available to make an evaluation. Without transactional information, it is very difficult for a shipper to assemble a complaint."[26] Though OCSLA enforcement actions may have largely lain dormant because shippers and potential shippers lack information necessary to know whether they may be subject to discrimination, or because offshore NGA-exempt facilities were far less extensive and important than they have become within the last decade, we expect this rule to gather information adequate to enable effective oversight and enforcement of the provisions of the OCSLA.[27]

Further, we may have placed undue reliance solely on the NGA to deter discriminatory practices offshore. Thus, we are acting now in part in response to the ruling in *Sea Robin*, in which the court directed the Commission to reconsider the manner in which it applied its primary function test to Sea Robin's predominately offshore system. Informed by the court's discussion, in our order on remand we found that a significant portion of Sea Robin's system was engaged in NGA-exempt gathering.[28] Given that Sea Robin's entire system had been regulated under the NGA since its inception 30 years ago, and that some of the facilities found to be gathering include large lines, it is conceivable that this decision may result in additional existing offshore NGA transmission facilities being reclassified as gathering.[29] Although reclassified facilities will no longer be subject to NGA reporting requirements, and shippers using such facilities will no longer enjoy the formal protections against the exercise of market power afforded by the NGA, such facilities can be expected to be subject to the OCSLA reporting requirements introduced with this rule, and as a result, shippers formerly dependent on the transparency of the NGA will have an alternative and newfound assurance that they will

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be applicable to both onshore and offshore facilities, as modified as applied to offshore facilities in Amerada Hess Corporation, 52 FERC ¶ 61,268 (1990). The criteria set out in Farmland were not intended to be all inclusive. The Commission has also considered nonphysical criteria such as the intended purpose, location, and operation of the facility, the general business activity of the owner of the facility, and whether the jurisdictional determination is consistent with the objectives of the NGA and the NGPA.

[24] Regulation of Short-Term Natural Gas Transportation Services, Order No. 637, 65 FR 10156 (Feb. 25, 2000), FERC Stats. & Regs ¶ 31,091 (2000), 90 FERC ¶ 61,109 (2000) (Final Rule). This recent rule is intended, in part, to improve reporting requirements to provide more transparent pricing information and to permit more effective monitoring for the exercise of market power and undue discrimination—a goal shared in common with our efforts here with respect to the OCSLA. Specifically, Order No. 637 requires that, for firm service under part 284, pipelines post on their web site contemporaneously with the execution of the contract: The names of the parties to the contract; an identification number for each shipper; the contract number for the shipper receiving service and for the releasing shipper; the rate charged under each contract and the maximum rate, if applicable; the duration of the contract; the receipt and delivery points and zones or segments covered by the contract, as well as the common transaction point codes; the contract quantity, or volumetric quantity under a volumetric release and special details pertaining to a pipeline transportation contract (such as requirements for volume commitments to obtain discounts under a discounted transportation contract); and any affiliate relationship between the pipeline and the shipper or between the releasing and replacement shipper. For interruptible transportation, pipelines must post on their web site daily: The name of the shipper; a shipper identification number, the rate charged and maximum rate, if applicable; the receipt and delivery points and zones or segments over which the shipper is entitled to nominate gas, as well as the common transaction point codes; the quantity of gas the shipper is entitled to nominate; special details pertaining to a pipeline transportation contract; and any affiliate relationship between the shipper and the pipeline. *See* 18 CFR § 284.13(b).

[25] We treat the OCSLA, NGA, and NGPA as independent grants of statutory authority that "must be applied reciprocally in furtherance of their individual regulatory purposes." Continental Oil Company v. FPC, 370 F.2d 57, 66–67 (5th Cir. 1966). Thus, to the extent it appears the information submitted under the NGA is insufficient to enable enforcement of the OCSLA, we would be inclined to revisit the OCSLA reporting exemption for NGA compliant companies.

[26] Produce Coalition's Discussion Points for Meeting on OCS Pipeline Reporting Requirements at 1 (Nov. 5, 1999).

[27] In Order No. 491, Interpretative Rule, 43 FERC ¶ 61,006 at 61,030 (1988), we observed that "there has been little need by potential shippers to invoke the statutory, nondiscriminatory access provisions of the OCSLA" in part because "pipelines were usually the purchasers of offshore reserves and thus were the primary shippers of gas. Since pipelines could usually secure transportation for their gas supplies, open access was seldom an issue." The order contains a brief historical overview of offshore operations and explains the need to issue an Interpretative Rule addressing the OCSLA's open access provisions in view of changes brought about following the voluntary open access provisions instituted by Order No. 436.

[28] 87 FERC ¶ 61,384 (1999), *reh'g pending*.

[29] We have observed that if Sea Robin, as "one of the largest transporters of natural gas produced on the OCS * * * is found to be a gathering system, then it is likely that other [NGA-jurisdictional] pipelines on the OCS would also be found to have that status." 71 FERC ¶ 61,351 at 62,404.

receive service on a transparent open access and nondiscriminatory basis.

In view of this potential for facilities' reclassification, and the importance of the OCS as a source of domestic gas, we find it prudent to prepare to provide protections for shippers under the OCSLA, and absent information regarding affiliations, rates, and conditions of service applicable to OCS transactions, neither the Commission nor others can gauge whether NGA-exempt OCS service providers are operating on an open and nondiscriminatory basis. Without such information at hand, practices prohibited by the OCSLA might only come to light when a prospective shipper was denied service and objected to the denial by filing a complaint with the Commission. We conclude that information regarding the business practices of NGA-exempt OCS gas service providers is necessary for the Commission to fulfill its responsibilities under the OCSLA. Given this need, we cannot agree with Duke's and OCS Producers' contention that there is no rationale for imposing a reporting requirement on OCS service providers. We believe our reasoning and the record support the need for new regulations to establish a means to ensure OCS service providers abide by the provisions of the OCSLA.

We are unpersuaded by Duke's and OCS Producers' assertion that the benefits to be derived by providing for public disclosure of OCS terms and conditions of service will not outweigh the burden of supplying such information. We have discussed our rationale for imposing the new requirements above. As discussed below, we seek to moderate the impact of these requirements by providing exemptions to OCS service providers that appear to have little to gain by engaging in discriminatory practices. We anticipate those OCS service providers that are subject to the reporting requirement should be able to produce the required documentation without extensive in-house auditing, analysis, or accounting. We expect the prospect of reporting will invigorate efforts to comply with OCSLA requirements. In addition, the OCS data base that this rule will establish will assist potential complainants to identify issues and articulate allegations. Recent revisions to our complaint procedures, designed to permit the Commission to process complaints in a more timely manner,[30] ask complainants to present an initial submission containing specific information. Without benefit of the OCS data base, potential complainants face a greater burden in obtaining the specific information necessary to present a complaint.

In the NOPR, we estimated that record keeping and reporting will require 16 hours per respondent per year and an annual expense of $800.[31] As discussed below, service providers expressed the apprehension that frequent changes in their affiliations or operations could cause actual costs to run much higher. In response, we have restricted the number of possible reporting updates to four per year, and in recalculating the burden, we assume every reporting entity will file every quarter. Although this doubles the data collection burden estimated in the NOPR, it still imposes a very modest cost on those service providers that are required to file.

Leviathan's assertion that we are establishing OCSLA reporting requirements without providing interested parties the opportunity for a full hearing is inconsistent with the actions taken in this rulemaking proceeding. In accordance with section 553 of the Administrative Procedure Act (APA),[32] a general notice of this proposed rulemaking was published in the **Federal Register**.[33] That notice described the proposed changes to our regulations and invited interested persons to comment on the NOPR. We have considered the comments received, and respond to them in describing the basis and purpose of the new regulations. Provisions for an evidentiary, adversary, or adjudicatory hearing are inapplicable to a rulemaking proceeding.[34] While the Commission may exercise its discretion to hold such hearings, or to institute a conference, or to seek additional information in some other manner, we see no need to do so in this case. All interested parties have had adequate opportunity to be heard in this rulemaking proceeding, as they did in the earlier related 1995 and 1998 NOI proceedings. We find the written record in this proceeding provides a sufficient basis for us to reach final determinations.

Leviathan questions whether this rulemaking has satisfied the OCSLA requirement that as a condition on every OCS right of way "oil or natural gas pipelines shall transport or purchase without discrimination, oil or natural gas produced from submerged lands or outer Continental Shelf lands in the vicinity of the pipelines in such proportionate amounts as the Federal Energy Regulatory Commission, in consultation with the Secretary of Energy, may, after a full hearing with due notice thereof to the interested parties, determine to be reasonable, taking into account, among other things, conservation and the prevention of waste."[35] As we reach no decision in this rule regarding amounts of gas or oil transported or purchased, we do not believe this hearing and consultation requirement is triggered.[36] Further, we note that the Secretary of Energy provided comments in response to our 1998 NOI and expressed the concern that we take no action that might interfere with the development of resources offshore.[37] We have taken the concerns of the Secretary into account, both in the preparation of the NOPR and in formulating the regulations put in place by this rule. As discussed herein, we do not believe instituting a reporting regime will inhibit the expeditious development of OCS resources.

Several OCS service providers suggest that requiring a public report of their business practices will stifle their ability to individually tailor service agreements and will inhibit innovations in operations and organization, thereby discouraging offshore development. We do not expect this result because, as discussed below, we see no bar to a service provider offering different shippers different terms—provided the variation in the terms of service either reflect differences in costs incurred to provide service or reflect differences among the shippers served. Thus, we do not expect the new reporting requirements will impose constraints on OCS service providers that could inhibit the development of, or transactions across, the OCS. Rather, we expect the

[30] *See* note 19.

[31] 64 FR 37718 at 37724. We change the figures in this final rule to reflect a reduction in the number of service providers expected to file OCSLA, due to the exemption for NGA-regulated gas companies, and an increase in estimated annual hours and expense, due to doubling (from two to four) the number of responses expected to be filed per year.

[32] 5 U.S.C. 551–559.

[33] 64 FR 37718 (July 13, 1999).

[34] *See Natural Resources Defense Council, Inc.* v. *U.S. Environmental Protection Agency*, 859 F.2d 156 (D.C. Cir. 1991) and *Willapoint Oysters, Inc.* v. *Ewing*, 174 F.2d 676 (9th. Cir. 1949), *cert. denied*, 338 U.S. 860 (1949).

[35] 43 U.S.C. 1334(e).

[36] While requiring reporting and filing reports does not impact gas flows, imposition of a remedy might—for example, prescribing that a pipeline accept gas on a pro-rata basis to effect open access—and would thereby trigger the need for consultation.

[37] In response to the 1998 NOI in Docket No. RM98–8–000, the Secretary of Energy submitted a letter dated February 11, 1999, encouraging evenhanded treatment and the removal of "artificial regulatory barriers which might impede private sector investment, the development of advanced technologies, and the development of competitive transportation markets in the Gulf of Mexico." *See* note 21.

disclosure of affiliations, rates, and conditions of service will encourage continued offshore investment by ensuring shippers that offshore services are rendered on a transparent and equitable basis.

El Paso suggests that offshore the Commission apply the NGA with a lighter hand by issuing blanket construction and abandonment authorization and allowing offshore gas transporters to charge market rates and set their own conditions of service. We find insufficient evidence to conclude that this approach could assure fulfillment of our statutory obligations. The NGA directs that rates be just and reasonable, an outcome ensured by our prior approval of cost-based rates for transportation services covered by the NGA. Letting a market that may not be sufficiently competitive determine rates could not ensure this same result.

B. Technical Conference

1. Requests To Hold a Technical Conference

Tejas and OCS Producers propose a technical conference to: Address the need for and scope and aim of the rule; air the opinions of engineers and corporate executives regarding the desirability of the new regulations; provide the Commission with the opportunity to become more familiar with NGA-exempt offshore operations; and examine and compare the anticipated benefits and burdens of the rule.

2. Commission Response

We have considered the issues of the scope of our jurisdiction offshore and the need to alter how we exercise our regulatory authority offshore in the NOPR in this proceeding. Our consideration was informed by views presented in the prior 1995 and 1998 NOI proceedings, the OCS policy statement of 1998, and in individual pipeline decisions, most recently in *Sea Robin*. Given these several opportunities for interested parties to express views concerning the existing and proposed regulatory regime offshore, we do not believe there is a need for yet another forum for further comments. The rationale for the new OCSLA reporting requirements, along with anticipated benefits and burdens, are discussed in the NOPR and this final rule. We think our understanding of offshore operations is adequate to the task of determining what information is necessary to identify whether discriminatory practices are occurring on OCS facilities. Accordingly, we deny the requests to institute a technical conference.

C. Exemptions

1. Comments

Generally, OCS pipelines providing service for others—*i.e.*, pipelines subject to the new reporting requirements—advocated abolishing the proposed filing exemptions for feeder lines, single-shipper lines, and owner-shipper lines.

The Minerals Management Service (MMS) of the Department of the Interior observes that as a royalty owner in every OCS lease, if it elects to take federal gas royalties in kind (rather than in cash), it becomes a shipper on every offshore line it might use to bring gas from the leasehold to shore. MMS implies its potential shipper status should negate the single-shipper and owner-shipper exemptions. OCS Producers opposes this approach.

Tejas asks whether a pipeline can come within or fall outside of the reporting exemption depending on changes in its ownership interests or shippers. Tejas also asks whether a pipeline exempt from reporting would lose that exemption if it accepted gas volumes from a third party on an interruptible basis. Tejas requests the Commission clarify that the owner-shipper pipeline exemption applies where the same parties hold different proportionate ownership interests in gas production and in the pipeline facilities used to transport that gas.

Coastal Field Services Company (Coastal) contends the Commission's existing complaint procedure is sufficient to ensure open and nondiscriminatory access on NGA-exempt OCS service providers; therefore, OCSLA reporting should not apply to these providers. Coastal requests the proposed § 330.3(a)(1)'s single-shipper reporting exemption be extended to apply where a gas service provider transports for a gas producer and for one or more of that producer's working interest owners under the same rates and conditions of service, *i.e.*, that the Commission consider all working interest owners in a particular producing field as a single entity for the purpose of the reporting exemption. Coastal also suggests that where one or more joint working interest owners are affiliated with an OCS service provider, the Commission treat transportation on that service provider's facilities as being for a single entity, and thereby exempt.

El Paso argues the reporting exemptions will result in an uneven competitive playing field and urges the proposed exemptions for feeder lines, single-shipper lines, and owner-shipper lines be eliminated to ensure all OCS facilities receive equal treatment.

The Producer Coalition maintains that gas operations in deep water merit closer scrutiny because such projects tend to be larger than shallow water efforts, and thus present a greater barrier to entry to potential competitors. The Producer Coalition presumes that proposed § 330.3(a)(3) will exempt all deep water "gathering or feeder lines," and based on this presumption, requests the Commission limit the scope of deep water exemptions to single-shipper or owner-shipper lines.

The Producer Coalition asks the Commission to clarify that for the purposes of proposed § 330.1(b), a "facility located on the OCS" be read to include the portion of the same facility that traverses state waters until the first point of interconnection with an onshore line.

The Producer Coalition urges the Commission to clarify that production platforms will be excluded from the definition of an offshore facility in proposed § 330.1(b). NGSA would extend this exclusion to production-related lines, services, facilities, and agreements. OCS Producers want a reporting exclusion that explicitly includes all activities involving gas extraction and collection, separation and treatment, and preparation for transportation.

As proposed, § 330.3(a)(2) provides a reporting exemption for a gas service provider "that serves exclusively shippers with ownership interests in both the pipeline operated by the Gas Service Provider and the gas produced from the field connected to the pipeline." The Producer Coalition requests the reference to "the field" not be interpreted to confine the exclusion to a single gas producing field and urges that the Commission expand this exemption to include owner-shippers that hold interests in and gather gas from multiple fields.

The reporting exemptions of proposed § 330.3(a)(1) for a single-shipper service provider and § 330.3(a)(2) for an owner-shipper service provider hold until a second shipper or a non-owner shipper is served or "the Commission determines that the Gas Service Provider's denial of a request for service is unjustified, and the shipper denied service contests the denial." OCS Producers ask the Commission to clarify the basis upon which it may find a denial of service is justified. OCS Producers note the NOPR suggests the Commission would uphold a denial of service if a pipeline lacks available capacity, or if providing the requested

service would result in shutting in producing wells, or if the gas received is of an unacceptable quality. OCS Producers contend that denying service based on gas quality would be contrary to the result reached in *Shell Oil*.[38] OCS Producers also question whether the Commission might compel access by means of pro-rationing or the mandatory expansion of facilities.

OCS Producers ask if OCS service providers seeking a reporting exemption must file for such an exemption or if the Commission intends to issue blanket exemptions. If the former, OCS Producers seek assurance no filing fee will be charged; if the latter, OCS Producers request no penalty apply if the service provider is later found to be non-exempt.

Williams would eliminate the mandatory OCSLA reporting and instead have the Commission act case-by-case, requesting information from an OCS service provider only after an existing or prospective shipper seeks assurance that service is in accordance with the OCSLA's open and nondiscriminatory access requirements. Williams would require an OCS service provider to supply, in confidence, no more information than is necessary to show its practices conform with OCSLA principles.

2. Commission Response

a. Reporting Exemptions for Certain Companies. In the NOPR, we questioned whether we should contemplate any exemptions to the proposed OCSLA reporting requirements in view of the fact that we do not now have data sufficient to assemble an overview of NGA-exempt OCS transactions. After consideration of the comments, we are persuaded that it is appropriate to exempt service providers that are least able or inclined to discriminate. In the NOPR we proposed exemptions for service providers that confine their operations to moving their own gas or that of a single shipper. We adopt these exemptions, and in addition provide an exemption for NGA-regulated OCS service providers, because as noted above, we are persuaded these service providers, by conforming to our regulatory requirements under the NGA, present transactional and market information adequate to the task of identifying practices prohibited under the OCSLA. Rather than have such entities refile largely redundant information, we add § 330.3(a)(4) to the new regulations to exempt from reporting gas service providers that are regulated by the Commission under the NGA. We do not believe any essential regulatory purpose would be promoted by having the exempt entities file OCSLA reports. If we are presented with evidence that exempt entities are abusing the reporting exemption or are indeed discriminating, we may restrict or revoke the exemptions.

Because we have not established a data base describing NGA-exempt OCS entities' facilities and services, existing and prospective OCS shippers have no means to consider or compare offers, denials, or terms of service. Therefore, we believe it would be impractical to adopt Williams' suggestion that we forego OCSLA reporting and instead only seek information from OCS service providers in response to a specific shipper's request. Under this approach, shippers and the Commission would still be faced with the same gap in information that now exists. We feel a more efficient method to encourage proper practices is to make transactional information publicly available, then use that information as a foundation to identify and correct any discrimination or access problems.

b. Reporting Exemptions for Certain Facilities. The OCSLA, unlike the NGA, applies to the full range of gas exploration, development, production, gathering, and transportation.[39] However, section 1334(f)(2) of the OCSLA does provide the Commission the option to exempt any "pipeline or class of pipelines which feeds into a facility where oil and gas are first collected or a facility where oil and gas are first separated, dehydrated, or otherwise processed" from the requirement that OCS transportation adhere to the competitive principles of open and nondiscriminatory access. Such "feeder line" facilities are typically owned and operated by the same entity that holds the right to produce gas from a particular field; we do not expect issues of access or discrimination to arise where the same entity owns or leases both the mineral rights and the facilities necessary to draw gas from its own reservoirs. Therefore, § 330.3(a)(3) of the new regulations exempts lines that feed into a facility where gas is first collected, separated, dehydrated, or otherwise processed from our OCSLA reporting requirements. In addition, § 330.0(a)(1) and (2) exempt OCS service providers that serve only a single entity or its own owners. The same rationale holds as for a producer operating feeder lines on its own behalf: where a service provider carries gas only for itself or for a single customer, there is no call to compare conditions of service among multiple shippers.

The Producer Coalition argues that due to the large expense and size of deep water facilities, we should permit only the single-shipper and owner-shipper reporting exemptions, but not allow such facilities to come under the feeder-line exemption. We acknowledge that deep water projects can be orders of magnitude more costly than shallow water systems, thereby magnifying adverse impacts of anticompetitive actions. We also acknowledge that the changing technical and geographic nature of offshore exploration and production has resulted in increased drilling in deep water. Nevertheless, at this time, we find no cause to revoke the feeder-line exemption to enhance our scrutiny of deep water activities. However, we may reconsider this position if we are presented with evidence that our regulatory oversight is inadequate to ensure that deep water services conform with the OCSLA's open and nondiscriminatory access requirements.

OCS Producers and the Producer Coalition request we broaden the § 330.3(a)(2) "feeder line" exemption to include platforms and production-related facilities and services. The statutory language of the OCSLA indicates feeder lines are upstream of a point where gas is first collected, separated, dehydrated, or processed. This point, as a general proposition, will be on a production platform. But this will not always be the case; consequently, rather than adopt a bright line, but over-broad, definition, we believe that identifying a point where gas is first collected, separated, dehydrated, or processed and partitioning upstream from downstream facilities, is best done after examining the facts and circumstances of each specific case. While we expect exempt upstream feeder line facilities will generally be found within production fields, we cannot make a generic determination that all platforms and production-related facilities are, in accordance with OCSLA section 1334(f)(2), situated upstream of a point where gas is first collected, separated, dehydrated, or processed. Therefore, we will deny the requests for a blanket

[38] 47 F.3d 1186 (D.C. Cir. 1995).

[39] Section 1(b) of the NGA states: "The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

extension of the § 330.3(a)(2) feeder line exemption.

MMS urges that we conform our § 330.3(a)(2) feeder line exemption to MMS' definition of gathering facilities.[40] We believe it would be premature to limit our discretion under OCSLA section 1334(f)(2) by tethering it to the MMS definition.[41] Our preference, as noted above, is to consider purported feeder line facilities on a case-by-case basis to determine the point at which gas is first collected, separated, dehydrated, or otherwise processed.

The federal government is a royalty interest owner in every OCS lease, and pursuant to the OCSLA, provides MMS the option of collecting its royalty share in kind or in value.[42] Almost all royalty payments are currently rendered in value, *i.e.*, in cash. However, MMS notes it is undertaking a pilot program whereby royalties due the United States can be paid in kind in gas.[43] MMS "requests that a final regulation specifically apply the reporting requirement whenever the Federal government's royalty gas could be moved along with only one other producer's gas."[44] Were MMS to alter its current practice to take royalties in kind as gas, and ship such gas from its source of production to shore, because royalty payments apply to all OCS leaseholds, MMS could become a second shipper on every line used to move gas associated with federal royalties. This would effectively end the reporting exemptions, since MMS could be added as a shipper to pipelines that would otherwise be dedicated exclusively to single-shipper or owner-shipper transportation.

As discussed, we believe those OCS service providers that we propose to exempt have little apparent motive to deny access or discriminate. Thus, we hesitate to compel these service providers to report under § 330.2. However, in the event MMS moves beyond its present royalty-in-kind pilot program and begins to collect a significant portion of royalty payments as gas volumes, we may be inclined to revisit the applicability of the reporting exemptions. We note that as is, under its own authority, MMS can compel OCS service providers to disclose information relevant to MMS. Therefore, for now, we find it appropriate to retain the reporting exemptions.

If requested, we will consider whether a particular OCS service provider qualifies for a certain reporting exemption, but do not plan to initiate a blanket evaluation of every OCS entity. An entity requesting the Commission evaluate its status will be subject to the declaratory order fee.[45] Given the limited nature of the reporting exemptions, we expect OCSLA reports to be filed for the bulk of the OCS facilities that are located between production platforms and shore.[46] Like the production/gathering and Hinshaw exemptions of NGA sections 1(b) and (c), respectively, we expect service providers to exercise good faith in determinations as to whether their facilities and operations qualify for an OCSLA reporting exemption. The Commission, or any other person, may challenge a non-reporting service provider's exemption. An entity found to have erroneously presumed itself exempt can cure its error by filing in accordance with the reporting requirements established herein.

OCS Producers seek assurance we will not penalize a service provider for not reporting if that service provider has not reported because it believes it qualifies for a reporting exemption. As noted, service providers are to make a good faith effort to evaluate whether their facilities and operations come under one of the exemptions. If a service provider elects not to report and is able to present a reasonable case for its claim to a reporting exemption, that we nevertheless disagree with, we would not expect recompense beyond compelling the service provider to commence and continue timely filing of OCSLA reports. However, if we find a knowing and willful effort to evade or violate the reporting provisions, we may seek penalties as provided under OCSLA sections 1134 and 1350.

In the NOPR, we proposed granting OCS service providers newly subject to these provisions 60 days to prepare and submit an initial OCSLA report. Comments have convinced us to extend this to 90 days to alleviate constraints that might otherwise be placed on service providers, particularly those not previously reporting under the NGA, in organizing the presentation of a first filing. Proposed § 330.3(c) specified that after an initial filing, a service provider subject to reporting must submit a description of a change in affiliates, customers, rates, or terms and conditions of service within 15 days thereof. As discussed below, we will modify this and limit filings to, at most, four per year. This puts initial and updated filings on a similar timetable. Eliminating the proposed 15-day deadline should significantly reduce the reporting burden.

We clarify that if an OCS gas service provider becomes subject to reporting for the first time, it must file an initial OCSLA report within 90 days of the event that triggers the § 330.2(a) and (b) reporting requirements. It is possible a service provider may qualify for a reporting exemption, act to invalidate its exemption, then act again to requalify for an exemption (*e.g.*, a service provider may carry gas for a single customer, accept interruptible volumes from a second shipper for a limited period of time, then return to exclusively serve a sole shipper).[47] A service provider subject to reporting, that subsequently becomes exempt, then later loses its exemption, will again be required to submit an OCSLA report, and to do so within 90 days of the date that its exempt status ended.

Coastal proposes the single-shipper exemption be extended so as to treat a gas producer made up of multiple working interest owners as a single shipper where transportation is provided to the gas producer and its working interest affiliates under identical rates and conditions of service. We find no fault with the end result that Coastal posits: Multiple shippers served the same. However, without a public declaration of rates and conditions of service, there is no way to verify that the rates and terms under which the gas producer receives service are in fact identical to the rates and terms under

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[40] MMS regulations state: "Gathering means the movement of lease production to a central accumulation and/or treatment point on the lease, unit or communitized area, or to a central accumulation or treatment point off the lease, unit or communitized area as approved by BLM or MMS OCS operations personnel for onshore and OCS leases respectively." 30 CFR 206.151.

[41] MMS has considered, but has not enacted, revisions to its definition of gathering. *See, e.g.*, MMS' Amendments to Gas Valuation Regulations for Federal Leases NOPR, 60 FR 56007 (Nov. 6, 1995) and its Notice Withdrawing Proposed Rulemaking and Requesting Comments on Supplemental Information, 62 FR 19536 (Apr. 22, 1997).

[42] MMS acts under OCSLA section 1353(a)(1), which, with minor exceptions, provides for all royalties or net profit shares, or both, accruing to the United States under any oil and gas lease to be paid in oil or gas.

[43] See Federal Oil and Gas Royalty-in-Kind Pilot Programs, Notice of Intent, 64 FR 37809 (July 13, 1999), stating MMS' intent to employ several pilot programs to take the government's royalty share of production in kind from federal oil and gas leases.

[44] MMS' Comments at 2–3 (August 27, 1999).

[45] *See* 19 CFR 381.302.

[46] At this point, we are not prepared to impose a fee for Commission services associated with processing OCSLA reports. Annual charges, assessed in accordance with the provisions of § 154.402 and part 382 of the Commission's regulations, apply to NGA-regulated gas pipelines, not to pipelines subject exclusively to the OCSLA.

[47] We clarify that once a service provider becomes subject to the reporting requirements, even if remains so only momentarily, an OCSLA report must be filed within 90 days of the event interrupting the exemption.

which each of the various working interest owners receive service.

By way of contrast, where a service provider carries gas for one shipper, *i.e.*, one entity holds title to all gas moving in one pipe, there is no opportunity to serve other shippers under different and potentially discriminatory terms. This would be the case whether the one entity holding title to the gas is a single producer or is a single entity composed of multiple parties that together agree to obtain service under a contract between the single entity and the service provider.[48] Under such conditions, the § 330.3(a)(1) exemption applies, whereas under the Coastal scenario, it does not; hence we find reporting necessary to verify that multiple shippers all receive the same rates and terms of service.

Coastal also proposes a reporting exemption for a service provider that carries gas that is produced on behalf of multiple working interest owners when one (or more) of the working-interest owners is affiliated with the service provider. Coastal maintains these circumstances are the equivalent of service for a single shipper. We disagree. Where there are multiple shippers, and particularly where some are affiliated with the service provider and some are not, a service provider may find it advantageous to serve different shippers under different and potentially discriminatory terms. We expect disclosure will discourage unequal treatment; thus, we find it prudent not to expand the reporting exemptions.

We clarify that new § 330.3(a)(2), which exempts an OCS service provider shipping only its own gas, will apply as long as the same parties hold all ownership interests in both the gas produced and the pipeline moving the gas. Recognizing the operational reality that gas shipments do not always track exact working interest owners' percentages, this exemption will hold where the parties' ownership shares are disproportionate to the gas volumes flowing in the owner-shipper line.

Tejas asks if an exempt OCS service provider could offer interruptible-only transportation to various parties and remain exempt. We believe the reporting exemption should turn on the identity of the service provider and its shippers, not the type of service provided. Regardless of whether a service provider moves gas on a firm or interruptible basis, where there are multiple shippers, the potential for differential, discriminatory treatment is present.

The Producer Coalition requests that the § 330.1(b) definition of gas service provider as, "any entity that operates a facility located on the OCS that is used to move natural gas on or across the OCS," be expanded to include not only facilities on the OCS, but facilities that reach from the OCS and across state waters to the first point of interconnection with an onshore line. At this time, we do not find it necessary to apply the OCSLA in such an expansive manner, as we anticipate our joint OCSLA–NGA jurisdiction will enable us to ensure open and nondiscriminatory transportation between the OCS and the first onshore interconnection point.[49] Further, states can act to regulate activities within their waters. In view of this, we will not adopt Producer Coalition's proposal.

The Producer Coalition points out that proposed § 330.3(a)(2)'s exemption for a service provider transporting only its own gas refers to "the gas produced from the field connected to the pipeline." The Producer Coalition, noting that gas can be gathered into a single line from more than a single producing field, asks that "field" be made plural. We recognize there may be circumstances where gas from a single field is carried to a pipeline by means of a lateral line that crosses the territory of an adjacent field, or where a pipeline's owners all hold working interests in more than one field along the route of a single line. We believe § 330.3(a)(2) should capture such situations, and will modify the language accordingly. However, this applies only where the working interest owners of the producing field(s) flow their gas through a single pipe, and only where all the gas in that one line is from the producing field(s) of the working-interest owners. The principle remains the same, service providers serving themselves are not expected to deny access to or discriminate against themselves.

OCS Producers request we elaborate upon the criteria to be used to decide when a service provider would be justified in refusing a request for service and ask whether the Commission intends to make use of pro-rationing or mandatory expansion as remedies. In the NOPR, we stated a denial of service may be upheld "if the receipt of additional volumes could cause gas from producing wells to be shut in contrary to the OCSLA section 5(e) admonishment concerning conservation or the prevention of waste, or, if the content of the proposed gas stream would be incompatible with the characteristics of gas volumes currently flowing."[50] Until faced with specific facts and circumstances, we are not prepared to speculate what, if any, additional reasons for denial we might find acceptable. Pro-rationing, provided it can be implemented without adversely impacting ongoing development and production, remains an option. Mandatory expansion of throughput capacity, as described in section 1334(f)(B) of the OCSLA, also remains an option. However, given that the statute states that our authority to compel expansions does *not* apply to facilities in the Gulf of Mexico or Santa Barbara Channel, we do not foresee this issue arising with any frequency.

D. Reporting Requirements

1. Comments

Numerous commenters express concern with the extent of the reporting burden that the proposed rule would impose. INGAA, El Paso, Leviathan, and Williams assert that even if all OCSLA-required information is already on file with the Commission pursuant to NGA-required submissions, the task of refiling under the OCSLA to cross-reference such information could be avoided if the proposed rule were to explicitly deem that NGA compliance fulfills the OCSLA reporting requirement. Enron Interstate Pipelines (Enron) urges an OCSLA reporting exemption be added under § 330.3 for NGA-jurisdictional pipelines.

Williams contends it is impractical to itemize a rate per particular gas pathway due to the complexity of existing

[48] Provided that a single entity signs a transportation agreement with a gas service provider and that that party holds title to the gas shipped, the single-shipper reporting exemption will apply. The nature of the business interest of the single entity signing the gas transportation contract is immaterial to the applicability of this exemption.

[49] *See* Murphy, 81 FERC ¶ 61,148 at 61,670–71. *See also* Order No. 509, 53 FR 50925 (Dec. 19, 1988), FERC Stats. & Regs. ¶ 30,842 at 31,274 (1988), stating: "[T]he Commission believes the condition of nondiscriminatory access established in Order Nos. 436 and 500 satisfies, in large measure, the open-access requirement in section 5(f)(1)(A) of the OCSLA. However, unlike onshore pipelines, OCS pipelines cannot voluntarily choose to not participate in the open-access program."

[50] 64 FR 37718 at 37722. OCS Producers contends denying service based on gas quality would conflict with the result in Shell Oil. We disagree. We rejected an OCS oil pipeline's contention that accepting a request to transport sour crude, oil with a high sulfur content, would degrade the sweet, low sulfur, oil stream carried by the pipeline. Our rejection was based on our finding that capacity was available, the pipeline was accepting sour crude from other shippers, and the additional requested volumes would not materially affect the quality of the pipeline's oil stream. This finding does not conflict with our statement that a pipeline may legitimately reject a request to accept new gas when the new volumes would be incompatible with the characteristics of the gas flowing in the line.

arrangements and routes to shore, stating "the prices and terms for transporting each of two shippers' gas streams through the same pipeline from the same point of receipt to the same point of delivery can and will differ as the result of the myriad facts and circumstances which exist over time both upstream and downstream of that pipeline." [51]

OCS producers and gatherers, not now subject to the NGA, state that any OCSLA filing requirement would be a new and unwelcome responsibility. OCS Producers emphasize that even after the effort of making an initial filing, the reporting burden would continue as conditions change, triggering revised filings. Duke, Dynergy, OCS Producers, and Tejas believe the proposed reporting requirement would compel the disclosure of sensitive or proprietary information. Tejas suggests the Commission permit the filing of redacted contracts in order to protect shipper confidentiality.

Duke and Leviathan state that mandatory disclosure of customer contracts will undercut OCS gatherers' efforts to tailor services to meet individual shipper's needs. Leviathan and Tejas predict that gas service providers, to avoid charges of discrimination, will offer all customers a standardized, rigid set of contract terms. OCS Producers foresee a reordering of ownership interests in order to come within the reporting exemption.

Duke believes the proposed reporting exemption for owner-shipper pipelines would afford such lines a competitive advantage over non-exempt pipelines and induce pipelines to structure ownership so as to come within the reporting exemption. Tejas and Williams anticipate single-shipper or owner-shipper lines will be inclined to avoid serving other parties to maintain their exempt status. They also anticipate—based on the Commission's suggestion that it may sustain a fully subscribed pipeline's refusal to serve additional customers in the interests of conservation and prevention of waste—that construction of larger multi-shipper lines will diminish in favor of smaller proprietary lines, since the latter, if full, may be able to refuse to serve third parties yet retain a reporting exemption.

Duke claims the proposed reporting requirements conflict with provisions of the ICA prohibiting the release of contract information.[52]

Tejas and Williams ask why the reporting requirements are limited to OCS gas service providers and do not apply with equal force to OCS oil service providers.

Coastal views the proposed OCSLA filing as equivalent to an NGA tariff filing and suggests the Commission reject the rule, or alternatively, limit reporting to require that each gas service provider file a map of its system,[53] the name of a contact person, and an affirmation by an authorized officer that the company will not engage in discriminatory practices.

Leviathan expects its own reporting burden alone will exceed the Commission's estimate for the all reporting entities,[54] and anticipates OCS service providers will spend hundreds of thousands of hours and millions of dollars in contract renegotiation and litigation costs. Tejas predict its reporting burden will be 200 hours for an initial report and 1,000 hours annually for updates, on top of which it expects to bear the additional burden of defending itself against charges of discrimination. El Paso cites as an example its affiliate Tennessee Gas Pipeline Company, which during a recent 12-month period, incurred 3,077 reportable events, which could have compelled it to submit near daily updates to keep current information on file.

El Paso proposes that OCSLA filings, consistent with NGA filings, should not require updating where nonmaterial changes are made to filed contracts. Further, El Paso sees no need for an OCS gas service provider to identity affiliates that are not shippers on the OCS. OCS Producers would restrict this further and only require identifying affiliates that ship on a reporting party's pipeline.

Tejas asks for clarification regarding which event will trigger the reporting requirement: An offer to serve or a shipper's acceptance thereof? Williams notes that some existing non-NGA rate structures include escalator or adjustor clauses and seeks clarification that, as long as the formula for determining the current rate is on file, refiling will not be required each time a new rate takes effect.

The Producer Coalition is concerned that describing affiliations, rates, and certain terms is insufficient to provide a full and accurate view of OCS transactions, because such a report may omit material conditions of service such as: Agreements regarding the construction of facilities; dedication of gas supples, daily volumes; gas quality standards; priorities for scheduling services; imbalance provisions; and billing and payment arrangements. The Producer Coalition would eliminate the option to report rates and a limited description of the conditions of service and instead require a report that includes full contracts and all incidental and related letter agreements or amendments, to be updated each time a new contract is executed or an existing contract is modified, expires, or is canceled.

The Producer Coalition requests that gas service providers file in a form that alphabetically indexes (1) shippers by name, with the primary and secondary receipt points associated with each contract and the rate applicable to each pair of points and (2) receipt points by OCS block, with a cross-reference to the contracts and rates associated with each such point.

MMS proposes that all OCS gas service providers that do not submit contracts instead file a complete description of costs.[55] MMS would remove the § 330.3 reporting exemption, noting that it is a royalty owner in every OCS lease, and given that it may accept gas volumes as royalty payments, it is a potential shipper from every OCS lease. MMS observes that adopting its proposal would permit OCS lessees and affiliated providers to maintain a single set of books for their OCS transportation costs for all federal regulatory purposes.

OCS Producers opposes MMS' proposal, arguing it would be burdensome and require the disclosure of confidential producer data. Accordingly, OCS Producers urge that participation in MMS in-kind royalty payments should not be treated as shipping for a third party, so as not to undo the single-shipper and owner-shipper reporting exemptions.

Tejas asks how, mechanically, OCSLA filings will be made. OCS Producers ask whether reporting is to be submitted system-wide or line-by-line. OCS Producers also ask which party is responsible for filing when there are

[51] Williams' Comments at 11 (August 27, 1999).

[52] 49 U.S.C. app. section 15(13) (1988) prohibits a common carrier from disclosing certain information.

[53] The Producer Coalition requests the Commission specify that submitted maps be legible and understandable. We so state our presumption. We will also require that where a service providers' system undergoes significant changes, an updated map is to be submitted.

[54] In the NOPR, the Commission estimates 70 parties will file twice per year, each party requiring 8 hours to prepare each submission, resulting in an annual total of 1,120 hours to prepare filings at an estimated cost of $56,000. In response to comments, we double these estimated totals, as discussed below.

[55] See MMS regulations at 30 CFR 206.157(b).

multiple owners of an OCS pipeline or when the pipeline owner is not the pipeline operator.

2. Commission Response

The free flow of information regarding offshore gas activities is critical to the successful creation of a competitive and efficient marketplace. Access to relevant information is necessary for shippers to make informed decisions about capacity purchases and for the Commission and shippers to monitor transactions to determine if market power is being exercised in violation of the applicable statutes. The ready availability of information will become increasingly important, both for efficient trading and for the monitoring for the exercise of market power. We believe the information specified in §§ 330.2 and 330.3(b) and (c), as modified below, is the minimum necessary to provide a meaningful overview of OCS service providers' treatment of their different shippers. Thus, we reject requests that we require either more or less information from service providers.

Concerns relating to the overlap of information submitted under the NGA and OCSLA and the inconvenience of duplicative filings are resolved by the new § 330.3(a)(4) reporting exemption for OCS service providers currently regulated by the Commission under the NGA.

Several commenters contend the total reporting burden will exceed our estimate of 1,120 hours and $56,000 annually. In response, we will make the following changes, in order to simplify and diminish the effort required to comply with the new requirements. As proposed, § 330.2(a)(6) directs a service provider to list all its affiliates. Such affiliates, commenters note, may include companies engaged in activities unrelated to the natural gas industry. We acknowledge there are affiliates that play no part in OCS operations and agree there is no practical need to name such entities. OCS Producers and El Paso suggest restricting named affiliates to those that ship on a service provider's facilities; El Paso believes this more limited disclosure to be sufficient to identify anticompetitive practices. Such a restriction calls for a very narrow, or very charitable, interpretation of a service provider's self-interest. We can, for example, envision circumstances in which an OCS service provider might be inclined to act to the advantage of an upstream non-shipper producer affiliate or an onshore non-shipper processor affiliate. In view of this, we will qualify § 330.2(a)(6): only affiliates engaged in the exploration, development, production, processing, transportation, marketing, consumption, or sale of natural gas need be identified in the OCSLA report.[56]

Comments tend to identify ongoing compliance filings, rather than the initial OCSLA report, as a source of difficulty. In response, we will expand the time provided for filing an initial report and for filing updates and will limit the potential number of filings per year to a maximum of four. We will extend the time to submit an initial OCSLA report from the proposed 60 days until 90 days after the date a service provider becomes subject to § 330.2 or § 330.3(c) requirements. For the initial submission of OCSLA reports following issuance of this rule, OCS service providers' reports will be based on conditions on the first day of the first full calender quarter that begins after the effective date of this rule, with initial reports due on the first business day after the close of the quarter. This assures OCS service providers will have more than one full quarter in which to prepare their initial OCSLA reports.

We will also alter proposed § 330.3(c), which stated service providers are to file a description of certain changes in service within 15 days. We are persuaded that existing and prospective shippers will not be significantly disadvantaged by relaxing the 15-day schedule to have service providers update changes quarterly. Rather than try to keep a running record of OCS service providers' operations, we believe a periodic snapshot of OCS transactions will be adequate to expose potentially discriminatory practices to public view. Accordingly, OCS gas services providers will be required to submit a description of their operations as they stand on the first day of each calender quarter; this report will be due the first business day of the subsequent quarter; *e.g.*, the filing due April 1, the first day of the second quarter, will describe operations as they stood on January 1, the first day of the first quarter. Thus, a service provider will have 90 days to prepare its OCSLA report, which report will be limited to describing the service provider's status on one particular day. This approach should substantially reduce service providers' responsibilities from the reporting regime proposed in the NOPR. Regardless of the number of changes in affiliates, customers, rates, conditions of service, or facilities, a service provider will be required to file, at most, four OCSLA reports per year. If a service providers' operations are identical on the first and last days of any given quarter, the service provider need not submit an update the following quarter.

El Paso asks that service providers be permitted to make nonmaterial changes to filed contracts without triggering the obligation to report such changes. Because we are not prepared to parse material from nonmaterial contract terms, we will decline.[57] As a practical matter, because companies need only file OCSLA reports quarterly—or not at all, if there are no changed circumstances—we do not believe it will require any significant effort to maintain an up-to-date inventory of affiliates and current operating conditions with the Commission. El Paso's apprehension that submitting notice of non-material changes within 15 days thereof might require near continual filings should be put to rest by the change we adopt here. Further, we clarify that we see no need to report changes that do not disrupt the basic transparency we seek. Thus, where a contract contains provisions that provide for periodic adjustments to its terms, such as an escalator clause, and as long as current terms can be straightforwardly derived from the information on file, no update is required.

Williams maintains the complexity and rapidly changing conditions of offshore gas transactions make it impractical to specify shippers' rates and conditions of service between receipt and delivery points. This assertion challenges the premise of this rule, namely, that reporting can render a service provider's transactions transparent enough to allow interested persons to compare services among shippers. We believe the OCSLA report,

[56] As stated in the NOPR, we will use the definition of "affiliate" given in § 161.2(a) of our regulations as "another person which controls, is controlled by, or is under common control with, such person." As specified in § 161.2(b), "control" "includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of 10 percent of more creates a rebuttable presumption of control." Although these definitions appear under Part 161 of our regulations, "Standards of Conduct for Interstate Pipelines with Marketing Affiliates," for the purpose of OCSLA reporting, they include, but are not limited to, marketing affiliates.

[57] *See* Filing Requirements for Interstate Natural Gas Companies, Order No. 582, 60 FR 52960 (Sep. 28, 1995), FERC Stats. & Regs. ¶ 31,025 (1995) and Order No. 582-A, 61 FR 9613 (Mar. 11, 1996), 74 FERC ¶ 61,224 (1996). These orders explain that an NGA pipeline, after filing an unexecuted *pro forma* service agreement as part of its tariff, need not file individual service agreements unless they deviate materially from the *pro forma* agreement. We found that "materiality" is likely to vary with the circumstances of each case; therefore, we found it better to allow the term to remain less strictly defined in order that the particular facts of a given contract will determine whether the deviation is material and needs to be filed. We follow that rationale here.

while not requiring a service provider to report every aspect of its operations in real time, will nevertheless be adequate to serve as the basis for informed objections. The Producer Coalition proposes more detailed reporting, with service providers directed to file full contracts and specify all factors affecting service and rates. MMS would require a complete description of each service providers' transportation costs where contracts are unavailable. We are not persuaded an expansion of the filing requirements is necessary. The point of this rule is to establish a data base as a foundation for identifying discrimination. At present, there is no such record for OCS transactions. Reporting can cure this, provided the information supplied is sufficient to allow interested persons to identify instances of unequal treatment. We expect the § 330.2 reporting requirements, without being unduly intrusive, will be adequate to this task.

Commenters are concerned the new OCSLA requirements will expose sensitive aspects of their operations to public view. This may be so, and if so, is an abrupt shift for non-NGA OCS service providers, heretofore accustomed to operating in comparative privacy. However, without making OCS transactions transparent, it is not possible to determine whether shippers are subject to discrimination. We presume OCS service providers currently offer service on an equitable basis, and thereby presume disclosure will not intrude upon or disrupt present practices. Commenters are also concerned that reporting will disclose information that could compromise their competitiveness. Service providers that believe the information they submit should be withheld from public view can request privileged and confidential treatment for such information, pursuant to § 388.112 of our regulations,[58] stating the rationale for their request.

OCS pipelines stress the need to tailor individually the services they offer to meet customers' particular needs. This rule need not alter such efforts. Provided an individualized service genuinely reflects a specific customer's unique requirements, we would not expect any but the designated customer to have cause to sign up for such service. Several commenters worry that rather than try to adapt to shippers' needs, the required reporting will induce OCS service providers prophylactically to retreat to the rigidity of a one-size-fits-all service agreement. This rule does not compel uniformity. We will accept distinctions in customers' rates, conditions of service, and services rendered as long as sound reasons are put forth to warrant divergent treatment.

Duke, OCS Producers, Tejas, and Williams anticipate this rule will go beyond inducing OCS service providers to move to a standardized contract. They expect service providers to reorder their ownership interests to come within the reporting exemptions. They further suggest that owner-shippers, in order to retain their reporting exemption, will intentionally construct facilities no larger than needed to ship owner-produced gas, so as to be able to legitimately claim that capacity constraints preclude serving third parties.

We see little detriment to service providers modifying ownership interests to come within the § 330.3 reporting exemptions, although we doubt whether compliance with these reporting requirements would motivate such actions. As noted earlier, it is neither unknown nor unlawful for companies to organize their affairs so as to avoid one regulatory regime or to embrace another. Further, a reporting exemption in no way diminishes the exempt service provider's obligation to abide by the OCSLA's open access and nondiscrimination provisions. The presumption inherent in the reporting exemption is that an entity will not exploit itself. Where an exempt entity contravenes the OCSLA, we expect a principal of that entity (in all probability the person adversely impacted) will object. We dismiss speculation that exempt owner-shipper service providers might deliberately undersize new facilities so as to be able to turn away prospective third party customers. It seems unlikely that a facility owner would forego otherwise obtainable revenues merely to avoid the reporting requirements. Given that exempt and non-exempt service providers must ultimately abide by the same OCSLA nondiscrimination provisions, we do not expect opting out of reporting will confer a noticeable commercial advantage.

Duke indicates the ICA precludes disclosure of the information specified in the reporting requirements. We disagree. The ICA applies to the transportation of oil, not natural gas, and applies to common carriers, which oil pipelines are,[59] but gas pipelines are not.[60] Moreover, the Commission has determined that it lacks jurisdiction under the ICA to regulate oil pipelines located wholly on the OCS.[61] Thus, we do not believe it is appropriate to rely on the ICA as a model for gas regulation under the OCSLA.

Duke, Tejas, and Williams query why our regulations are directed exclusively at OCS gas service providers, and not OCS oil service providers as well, since the open and nondiscriminatory provisions of the OCSLA apply with equal force to both OCS gas and oil operations. Here we have elected to confine our considerations to gas matters, given that we have found rates for transportation on oil pipelines to be just and reasonable,[62] yet have made no such finding for rates for transportation on gas lines exempt from the NGA. Thus, to protect gas shippers using NGA-exempt OCS facilities from discriminatory, exorbitant charges, we look to the OCSLA.

In place of reporting, Coastal urges that we require only a map, the name of a company contact person, and an affirmation by an officer that the company will behave in accordance with the OCSLA. This is insufficient. Our experience, affirmed across the broad spectrum of federal, state, and local regulatory practice, is that, in general, a promise of propriety is not an adequate bulwark against sharp practices. We believe reporting, and the transparency it brings, will be a more reliable guarantor that appropriate practices and procedures are followed.

We clarify that the new regulatory requirements will not be triggered by either an OCS service provider's offer to a prospective shipper, a proposal to change the terms of an existing shipper's contract, or a shipper's request for new or modified service. We view offers, proposals, and requests as aspects of negotiating. Until an offer to serve or request for service is accepted,

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[58] 18 CFR 388.112.

[59] The ICS provides that oil pipelines function as common carriers. However, ICA jurisdiction does not extend to oil lines located wholly on the OCS. *See* note 13.

[60] In amending the OCSLA, Congressman Morris Udall proposed that OCS oil and gas pipelines be operated as common carriers in order to "require the OCS * * * pipelines accept, convey, transport, or purchase at reasonable rates and without discrimination." H.R. Rep. No. 95–590, 3 (1978), *reprinted in* 1978 U.S.C. C.A.N. 1528. This proposal was not incorporated into the amendments.

[61] Bonito, 61 FERC ¶ 61,050, *aff'd sub nom.*, Shell Oil, 47 F.3d 1186 (D.C. Cir. 1995) and Oxy, 61 FERC ¶ 61,051 (1992). Shell Oil contested the Commission's determination regarding ICA jurisdiction, but the court did not reach this issue in its review of the Commission's decision. 47 F.3d 1186, 1200.

[62] *See* Revision to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, 58 FR 58753 (Nov. 4, 1993), FERC Stats. & Regs. ¶ 30,985 (1993). Whether this presumption of just and reasonable oil rates applies to oil lines located wholly on the OCS has yet to be affirmed by judicial review.

i.e., until discussions result in an exchange of promises to perform or parties' commitment to an agreement, neither party is under any obligation, and the § 330.2 reporting requirements are not triggered.

Given the complexities of offshore operations, the array of entities offshore, and the fact that we have not heretofore collected the information described in §§ 330.2 and 330.3(b) and (c), we feel it premature to fix the filing format of an OCSLA report at this time. The new regulations, described below, will require the filing entity to identify itself and its affiliates, submit a map of its system, and itemize certain transactional information.

Submissions are to include a cover sheet titled "OCSLA Reporting Form," with the name of the OCS gas service provider, the date of the filing, and designating whether the filing is an initial or updated report. OCSLA Reports are to be filed in accordance with Rules 2001, 2003, 2004, and 2005 of our rules of practice and procedure.[63] Reports are to be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An original and 14 paper copies of the OCSLA Reporting Form must be submitted to the Commission. The filed OCSLA Reports will be available in the Commission's Public Reference Room and may be accessed remotely via Internet through the FERC Home Page (http://www.ferc.fed.us) using the Records and Information Management System (RIMS) link or the Energy Information Online icon.[64]

The party submitting the OCSLA report should be the party responsible for providing the service described. This may be either the owner or the operator of the facility. As with NGA submissions, where multiple parties are involved in the ownership and/or operation of an OCS facility, the parties will typically jointly authorize a single entity (composed of one or more of the owners or operators) to be formally responsible for the filing.[65] We leave to the OCS service provider's discretion whether to submit a single system-wide report or file separate facility-by-facility reports. Where facilities under the control of one entity can be straightforwardly segregated into several discrete subsystems, it may be more useful to submit an OCSLA report or reports that treat the separate subsystem individually.

Under § 330.2(a), OCS service providers are to specify the date of the filing; name and address of the gas service provider; name and address of a contact person; and the title, name, and address of the gas service provider's officers if a corporation or general partners if a partnership. In addition, the gas service provider must submit a description and map of its facilities, denoting the facilities' location, length, size, and the points at which service is rendered, with the boundaries of any rate zones or rate areas identified. The map is to be updated in the event of any major changes to the service provider's facilities. The gas service provider must identify all affiliates engaged in the exploration, development, production, processing, transportation, marketing, consumption, or sale of natural gas, providing the names and state of incorporation of all corporations, partnerships, business trusts, and similar organizations that directly or indirectly hold control over the service provider, and, the names and state of incorporation of all corporations, partnerships, business trusts, and similar organizations directly or indirectly controlled by the service provider.

In proposed § 330.2(b)(1) in the NOPR, we specified OCS service providers were to file copies of all current gas service contracts. We are persuaded by the comments that full disclosure of all terms of all contracts is not necessary to reach a workable degree of transactional transparency; thus, we will modify the requirement set forth in the NOPR to diminish the burden on reporting entities. Also, we expect information necessary to permit comparisons of shippers' rates and conditions of service can be most effectively accessed if summarized and presented in tabular form, rather than as a bundle of individual contracts. Accordingly, we will not require copies of actual contracts to be filed. Instead, pursuant to revised § 330.2(b), gas service providers must provide a table of shippers and services. This portion of the OCSLA report should contain headings that specify: each customer's full legal name and indicate whether the customer is an affiliate; the contract number under which each customer receives service; the nature of the service provided; the primary receipt point(s) and the primary delivery point(s); the rate between the points in cents, or dollars and cents, per thermal unit, including an explanation of how the rate is derived if it is composed of separate components (*e.g.*, a reservation charge and a usage charge). Clearly, important conditions of service include contract volumes, the effective and expiration date of the contract, dedication of gas supply, gas quality standards, scheduling priorities, imbalance agreements, billing and payment arrangements, and customer alternatives. Where these or other conditions are relevant to accurately evaluate whether similarly situated shippers receive nondiscriminatory treatment, we expect the service provider to supply all terms needed to permit a meaningful comparison among shippers served. Not to do so is to invite a Commission inquiry into apparent service disparities or allegations of inequitable treatment.

As noted in comments, certain OCS companies may not render service under formal contracts. Although we believe that comparing rates and conditions of service among customers can be done most effectively when information is presented in the manner described above, to accommodate OCS entities that are not in a position to submit reports based on existing contracts, we will retain the alternative reporting requirements proposed in the NOPR in § 330.2(b)(2), now redesignated as § 330.2(b)(9). This alternative report must provide information sufficient to derive rates charged (in cents, or dollars and cents, per thermal unit) and conditions applicable for service between two points. Nondiscrimination implies all customers would be offered service under the same terms. Any deviation from this practice calls for further explanation, as specified in § 330.2(b)(9)(iv).

E. Discrimination and Denial of Access

1. Comments

El Paso requests that the Commission state that the OCSLA's nondiscrimination provision is equivalent to the NGA's prohibition against undue discrimination, thereby placing all offshore service providers under a single standard. El Paso notes that the Commission has already done so, in part, by stating that compliance with Part 284 regulations regarding open-access under the NGA would fulfill the OCSLA's nondiscrimination requirements.[66]

[63] 18 CFR 385.2001, .2003, .2004, and .2005.

[64] In Docket No. PL98–1–000, Public Access to Information and Electronic Filing, we anticipate that, with limited exceptions, all filings by regulated entities will be made in electronic form. We expect OCSLA reports, at some future point, to be made electronically, and expect, after further experience, to provide a format for such filings.

[65] The party submitting the OCSLA report should retain the filed information in accordance with Part 225 of the Commission's regulations. 18 CFR part 225.

[66] *See* Order No. 509–A, stating Order No. 509 does not preclude OCS pipelines from selectively discounting Part 284 offshore transportation rates "for shippers that are not similarly situated." Leviathan reads Order Nos. 509 and 509–A as

El Paso, the Producer Coalition, and Tejas ask if selective discounting would be considered discriminatory under the OCSLA. El Paso maintains that provided there is a reasonable basis for differentiating among shippers, discounting is not unduly discriminatory under the NGA.[67] El Paso asserts that an OCSLA prohibition on discounting would preclude pipelines from lowering rates to meet competition. El Paso and Leviathan worry a strict interpretation of discrimination under the OCSLA could put an end to all FT–2 rates.[68]

Burlington Resources Oil & Gas Company (Burlington) requests clarification of the discrimination standard and advocates acceptance of differential rates if such rates reflect a difference in the cost to provide the similar services to different shippers.[69] However, where different rates are charged for similar services, Burlington proposes shifting the burden of proof to the gas service provider to demonstrate that in incurs unequal costs to supply similar services.

2. Commission Response

a. *Discrimination:* Several commenters cite the Commission's statement in Order No. 491 that it "interprets the language 'without discrimination' in section 5 of the OCSLA to be a higher standard than the NGA requirement to offer transportation 'without undue discrimination.'"[70] Although the statutes use different terminology, it is unnecessary here to determine whether or to what extent the standards for prohibited discrimination are different. As a practical matter, compliance with NGA regulations will satisfy the OCSLA standard. Operating under this presumption, as El Paso has articulated, has the advantage of measuring all offshore service providers by one standard and is not inconsistent with our previous interpretation of the separate statutes.

In Order No. 509, we issued all OCS NGA pipelines blanket transportation certificates to ensure they would operate on an open and nondiscriminatory basis.[71] We commented that "with respect to either the movement of OCS gas (on non-NGA facilities) (1) through state waters, or (2) through gathering or producer-owned facilities on the OCS, the Commission possesses ample ancillary authority under the OCSLA to ensure that the statutory requirements of the OCSLA are not thwarted."[72] By now exercising our authority under the OCSLA to require certain non-NGA OCS service providers to provide information regarding their operations, we have even greater assurance that the OCSLA's requirements will be observed. As a general proposition, we believe that practices permitted under the NGA conform with OCSLA standards. None of the examples raised in the comments and discussed below set forth instances of discrimination barred under the OCSLA but acceptable under the NGA. Therefore, although we will not bar bringing a claim that a particular action acceptable under the NGA violates the OCSLA, we will presume that adherence to the NGA's open access and nondiscrimination requirements will satisfy OCSLA mandates too.

As a general proposition, under the NGA and OCSLA, similarly situated shippers should not be charged different rates for the same service. Nevertheless, we accept that as a matter of fact a gas service provider, as a result of its own physical and operational characteristics, may not incur the same costs to provide the same service to each of its shippers. Where variations in shippers' rates and conditions of service reflect genuine cost-to-serve variations, different rates and conditions are not necessarily discriminatory. Thus, we view neither the NGA sections 4 and 5 bans on "undue preference," "unreasonable difference," and "unduly discriminatory" treatment, nor the OCSLA's ban on discrimination, as an absolute prohibition on different rates or conditions of service for different customers.

We deny Burlington's request that we shift the burden of proof from the party submitting a complaint to an OCS service provider when differential rates and conditions of service are identified. Notwithstanding our above observation that certain cost-based differentials could be acceptable under the OCSLA, unequal rates or conditions of service are inherently suspect. Given this, a complainant that alleges such inequities effectively obliges the service provider to explain and justify apparently discriminatory treatment. Consequently, where a service provider files an OCSLA report that contains different conditions of service or different services for similarly situated shippers, the service provider is advised to include in its report additional information. Such information might be found to justify differing rates or terms based on the service provider's cost of service or shippers' competitive characteristics or may elaborate on the nature of the conditions of service (*e.g.*, a lower rate for larger volumes). Without the benefit of such further information, we may well attribute differing rates for seemingly similarly shippers to discrimination on the part of the service provider.

In its comments, Burlington focused on rate discounts. We have previously considered the issue of discounting and determined that discounting disparities alone do not constitute unlawful discrimination under the NGA.[73] Burlington contends the OCSLA's nondiscrimination standard should preclude discounting based on differing characteristics of customers and should only be permitted where it can be demonstrated that discounting is required to lower operating costs or increase capacity. The United States Court of Appeals for the District of Columbia Circuit has not interpreted the OCSLA's nondiscrimination requirements as rigidly as Burlington. In *American Gas Association* v. *FERC*,[74] the court affirmed the Commission's holding that pipelines could refuse to transport a producer's gas absent take-or-pay credits without violating the OCSLA's ban on discrimination. In the course of its discussion, the court stated:

The producers argue that the plain meaning of "nondiscriminatory" precludes any restriction on producer access to OCS pipelines. But as we noted in AGD I,[75] statutory bans on discrimination by natural monopolies have always allowed the regulatory agencies discretion to permit differing categories, including, for example,

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affirmatively finding that selective discounting enhances competition and serves the public interest.

[67] *Citing* Order No. 509–A, finding that the discounting procedures of § 284.7 of the Commission's regulations were not inconsistent with the OCSLA.

[68] An FT–2 rate is offered to a shipper who agrees to transport all of a specific gas reserve, in exchange for which, the shipper is not held to a fixed daily quantity or reservation charge. *See, e.g.*, Garden Banks Gas Pipeline, LLC, 78 FERC ¶ 61,066 (1997) and Shell Gas Pipeline Company, 76 FERC ¶ 61,126 (1996).

[69] Burlington raised a similar issue in a rate proceeding in response to revised tariff sheets submitted by Sea Robin. In that proceeding, we determined this rulemaking would be the more appropriate forum to address general issues concerning the interpretation of the OCSLA's nondiscrimination standard with respect to discounting. Sea Robin, 88 FERC ¶ 61,120 at 61,314 (1999).

[70] 43 FERC ¶ 61,006 at 61,032.

[71] In Order No. 509, we observed that "the condition of nondiscriminatory access placed on the transportation program established in Order Nos. 436 and 500 satisfies, in large measure, the open-access requirement in section 5(f)(1)(A) of the OCSLA." 53 FR 50925 (Dec. 19, 1988), FERC Stats. & Regs. (Regulations Preambles) ¶ 30,842 at 31,274 (1988).

[72] *Id.* at 31,280.

[73] Cities of Bethany v. FERC, 727 F.2d 1131, 1139 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 917, 105 S.Ct. 293 (1984).

[74] 912 F.2d 1496, 1511–12 (D.C. Cir. 1990).

[75] *Citing* AGD I, 824 F.2d 981, 1011.

rate classifications based on customers' differing elasticities of demand.[76]

The portion of *AGD I* referred to above affirmed the Commission's original decision in Order No. 436 to allow open access pipelines to offer selective discounts. Accordingly, the court has not interpreted the OCSLA to prohibit OCS service providers from offering selective discounts similar to those authorized in Order No. 436. Thus, we reject Burlington's contention that customer-based discounting which could be permitted under the NGA should be prohibited under the OCSLA. Of course, as the court itself stated in *AGD I*, this does not mean that all selective discounts are nondiscriminatory.[77]

Commenters ask whether FT–2 rates could remain in effect under the OCSLA's nondiscrimination standard. We see no reason to preclude such rates. An FT–1 shipper agrees to transport an expressly stated quantity of gas for a fixed time, whereas an FT–2 shipper commits to transport all gas reserves from a certain site for its productive life. The latter commitment can offer a service provider greater flexibility in developing its facilities and greater assurance that its facilities' capacity will be filled over a longer term. In view of this, we are not prepared to find inherent and improper discrimination based solely on a service provider's offer to make separate rates available for separate types of firm transportation services. Typically, variable terms—such as volume incentive pricing or lower charges for customers willing to enter into longer commitments—are acceptable as long as the service provider offers the same price to all shippers willing to meet the same terms.

b. *Denial of Access.* Generally, a service provider may turn aside allegations of unlawful discrimination due to disparities in rates or conditions of service when it can convince the Commission that such terms are a function of differences in the costs it incurs to perform the same service for separate shippers or are attributable to differences in the competitive characteristics of the customers served. We note that an OCS service provider offering uniform rates and conditions of service is not immunized from charges of discrimination or a denial of access. For example, an OCS service provider may offer all customers identical terms of service, but may charge rates disproportionately higher than rates charged by regional competitors for comparable service. In such a case, particularly if the service provider's customers lack any transportation alternatives, we may find that high rates have the effect of denying access. Thus, rates that appear to conform with the OCSLA's nondiscrimination requirement may nonetheless be found to conflict with the OCSLA's open access requirement.

F. Enforcement

1. Comments

OCS Producers find it unreasonable for the Commission to require OCSLA reports while at the same time declaring it does not intend to "scrutinize each submission with the aim of identifying and challenging every aspect of a (gas service provider's) operations that could conceivably lead to an OCSLA-barred act."[78]

Tejas requests the Commission specify how enforcement will proceed.

2. Commission Response

OCS Producers' apprehension that the Commission will play only a passive role is unfounded; we do not expect to rely solely on voluntary compliance with the OCSLA requirements. We draw a distinction between the prior approval required under the NGA and the after-the-fact monitoring we will take on under the OCSLA. While we anticipate shippers, potential shippers, and competitors will actively follow the OCSLA reports and be able to bring examples of alleged discrimination to our attention, we expect to monitor the filings and act on our own initiative where we suspect discrimination. The transparency engendered by reporting should permit us to police practices presently obscured from view.

Information is the essential predicate to a complaint. Where before we presumed service providers operated on an open and nondiscriminatory basis, we will now have affirmative assurance that this is the case. We expect reporting will move us from a laissez faire to a light-handed regulatory regime. Ideally, complaints will be resolved based exclusively on information contained in a service provider's OCSLA report and supplied by the complainant.[79] However, we recognize that when a claim is raised, further investigation may nevertheless be required to resolve certain issues.

When a service provider's report meets minimum § 330.2 requirements, but in so doing presents the appearance of impropriety (*e.g.*, affiliates seemingly served on more favorable terms than nonaffiliates), it may behoove the service provider to include information that justifies any apparent disparate treatment. Otherwise, the Commission, on its own initiative or in response to a request, may require the service provider to give further detail and explanation regarding its transactions.

In addition to acting via the complaint process, allegations of OCSLA discrimination may be addressed and resolved via the Commission's Enforcement Hotline[80] and alternative dispute resolution processes.[81]

IV. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[82] However, the Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[83] The action taken here—the promulgation of a rule that is clarifying, corrective, or procedural, or that does not substantially change the effect of legislation or regulations being amended—qualifies for such an exclusion.[84] This rule is procedural in nature, it directs certain offshore gas service providers to make certain information publicly available. Therefore, no environmental analysis is necessary, and none has been done in

[76] 912 F.2d 1496,1512. *See also* Williston Basin Interstate Pipeline Company, 85 FERC ¶ 61,247 at 62,028–29 (1999), wherein we found discounting to meet competitive conditions, *i.e.*, customers' capability to switch fuel supplier or type, is not *per se* discriminatory, since "[o]ffering discounts sufficient to keep customers with elastic demands on the system will maximize throughput and revenue recovery from those customers, thereby benefitting all customers on the system."

[77] 824 F.2d 981, 1011–12. We may find discounting unacceptable if offered for reasons other than to meet competitive pressures, or if offered preferentially, *e.g.*, only to a service provider's affiliates. *See* our discussion of discounting under the NGA in Williston Basin Interstate Pipeline Company, 84 FERC ¶ 61,348 (1998), *reh'g denied*, 85 FERC ¶ 61,247 (1998); Southern Natural Gas, 67 FERC ¶ 61,155 (1994); and in the Policy Statement Providing Guidance with Respect to the Designing of Rates, 47 FERC ¶ 61,295 (1989).

[78] NOPR, 64 FR 37718 at 37723.

[79] This outcome would conform with aspirations we expressed in revising Rule 206 of our rules of practice and procedure to require a complainant satisfy a higher threshold in terms of the information presented in the interest of realizing an expedited resolution. *See* 18 CFR 385.206(b).

[80] 18 CFR part 1b. In the Commission's recent revision of its complaint procedures, it codified as § 385.218 simplified procedures for small controversies, which may prove an effective means to resolve certain OCS conflicts.

[81] 18 CFR 385.604–06.

[82] Order No. 486, Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987), codified at 18 CFR part 380.

[83] 18 CFR 380.4(a)(2)(ii).

[84] 18 CFR 380.4.

connection with the regulations promulgated by this rule.

V. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA)[85] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect.[86]

The Commission does not believe that this rule would have a significant economic impact on small entities. Commenters claim some of the entities that will be required to file for the first time pursuant to the new regulations may fall within the RFA's definition of small entity.[87] Although none of the comments name any such entities, we acknowledge that there may be businesses qualifying as small under the RFA definition that will be compelled to report information heretofore withheld from public view. However, generally, companies that transport gas for hire on the OCS do not qualify as small. OCS producers are more likely to qualify as small, but the exemptions of § 330.3 should effectively exclude producers from the new reporting requirements. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

VI. Information Collection Requirements

The following collection of information contained in this final rule (new Subchapter O) is being submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995.[88] The Commission will identify the information required as FERC–545 for OCSLA-jurisdictional gas service providers.

The regulations will impose new reporting requirements on non-NGA-regulated OCS gas service providers with multiple non-owner shippers, requiring them to make an initial submission of specific information—information which should be readily available in the ordinary course of business—and then make quarterly filings if there are changes to the initially submitted information. As long as the status of a gas service provider's affiliations, customers, rates, conditions of service, and facilities remain the same, there is no need to file again. The new rule will not apply to facilities located upstream of a point where gas is first collected, separated, dehydrated, or otherwise processed; thereby generally exempting OCS entities engaged exclusively in exploration and production.

Considering the complex nature of the offshore operating environment, we cannot state with assurance the exact number of entities likely to be subject to the new regulations. We estimate that, excluding entities engaged exclusively in exploration and production, there are less than 200 gas service providers total that transport gas on or across the OCS; approximately 30 of these are currently subject to our NGA jurisdiction. We expect the majority of the NGA-exempt OCS service providers will qualify for a reporting exemption pursuant to § 330.3(a)(1) or (2). This final rule modifies the exemptions proposed in the NOPR by adding § 330.3(a)(4), which exempts NGA-regulated service providers from the OCSLA reporting requirements. This additional exemption reduces the number of service providers that will be subject to the new filing requirements. In the NOPR, we estimated 70 service providers could be expected to file OCSLA reports under the new regulations. This number included the NGA-regulated entities that are now exempt. Consequently, we reduce the number of service providers we expect to file from 70 to 55.

In the NOPR, we anticipated that the OCS service providers subject to the new regulations would be required to update the information on file twice a year. The comments have convinced us that a significant portion of OCS service providers are likely to alter their affiliates, customers, rates, conditions of service, or facilities far more frequently. In response, we have eliminated the proposed § 330.3(c) requirement that service providers update their reports within 15 days of any change. Instead, we will require that filed reports, when necessary, be updated quarterly. For the purposes of estimating the reporting burden, we will assume all reporting entities will file every quarter. The estimated number of hours per response remains the same.

The burden estimates for complying with this rule are as follows:

Public Reporting Burden: Estimated Annual Burden.

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC–545	55	4	8	1,760

Total Annual Hours for Collection (Reporting + Record Keeping (if appropriate)) = *1,760*.

During the first year after the proposed rules become effective, most of the burden will consist of an initial, one-time compliance filing. In subsequent years, most of the burden will consist of OCSLA reports updating the initial filing.

Information Collection Costs: The Commission projects the average annualized cost per respondent to comply with the new OCSLA reporting requirement will be as follows:

Annualized Capital/ Startup Costs.	0
Annualized Costs (Operations & Maintenance).	$88,000 ($50 per hour)
Total Annualized Costs.	$88,000

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule.[89] Accordingly, pursuant to OMB regulations, the Commission is providing notice of this information collection to OMB.

Title: FERC–545, Gas Pipeline Rates: Rate Change (Non-Formal).

Action: Proposed Data Collection.

OMB Control No.: 1902–0154. The respondent shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

[85] 5 U.S.C. 601–612.

[86] 5 U.S.C. 605(b).

[87] 5 U.S.C. 601(3). Section 3 of the Small Business Act defines a "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operations. A business engaged in oil and gas extraction may be small if it has fewer than 500 employees, a business engaged in oil and gas field exploration services may be small if annual revenues are less than $5 million. *See* 13 CFR 121.201.

[88] 44 U.S.C. 3507(d).

[89] 5 CFR 1320.11.

Respondents: Business or other for-profit, including small businesses.

Frequency of Responses: Initial, one-time filing; updated if status changes.

Necessity of the Information: The final rule implements the Commission's authority under the OCSLA to assure open and nondiscriminatory access for gas moving on or across the OCS by collecting certain information concerning OCS gas service providers' affiliations, rates, terms and conditions of service, and facilities. Without this information, neither the Commission nor a prospective or existing shipper will be able to determine whether the existing or proposed conditions of service discriminate or deny access. Implementation of these data requirements will help the Commission carry out its responsibilities under the OCSLA and coincide with the current competitive regulatory environment which the Commission fostered under Order No. 636.

Internal Review: The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the OCSLA reporting requirements. The Commission's staff will use the data in the OCS gas service providers' filings to determine whether their operations are consistent with the nondiscriminatory, open access provisions of the OCSLA. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas industry.

VII. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.fed.us*) and on FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m., Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

From FERC's Home Page in the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and RIMS.

—CIPS provide access to texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the FERC Website during normal business hours from our Help line at (202) 208–2222 (E-mail to *WebMaster@ferc. fed.us.*) or the Public Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

VIII. Effective Date and Congressional Notification

The final rule will be effective May 17, 2000. The Small Business Regulatory Enforcement Act of 1966 requires agencies to report to Congress on the promulgation of final rules prior to their effective dates.[90] That reporting requirement applies to this final rule. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a major rule as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects

18 CFR Part 330

Natural gas, Pipelines, Reporting and record keeping requirements.

18 CFR Part 385

Administrative practice and procedure, Electric utilities, Penalties, Pipelines, Reporting and record keeping requirements.

By the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission amends Chapter I, Title 18, of the Code of Federal Regulations, as follows:

1. Subchapter O, consisting of Part 330, is added to read as follows:

[90] 5 U.S.C. 801.

SUBCHAPTER O—REGULATIONS UNDER THE OUTER CONTINENTAL SHELF LANDS ACT (OCSLA)

PART 330—CONDITIONS OF SERVICE REPORTING REQUIREMENTS

Sec.

330.1 Definitions.
330.2 Reporting requirements.
330.3 Applicability of reporting requirements.

Authority: 43 U.S.C. 1301–1356.

§ 330.1 Definitions.

Affiliate has the same meaning as found in § 161.2(a) of this chapter.

Control has the same meaning as found in § 161.2(b) of this chapter.

Gas Service Provider means any entity that operates a facility located on the OCS that is used to move natural gas on or across the OCS.

Outer Continental Shelf (OCS) has the same meaning as found in section 1331(a) of the Outer Continental Shelf Lands Act (OCSLA);

§ 330.2 Reporting requirements.

(a) Gas Service Providers must file with the Commission an OCSLA Reporting Form consisting of the:

(1) Date of the filing;

(2) Full legal name and address of the Gas Service Provider;

(3) Name and address of a contact person;

(4) The title, name, and address of the Gas Service Provider's officers if a corporation or general partners if a partnership;

(5) A description and map of the facilities operated by the Gas Service Provider, denoting the facilities' location, length, and size, the points at which service is rendered, with the boundaries of any rate zones or rate areas identified; and

(6) For all entities affiliated with the Gas Service Provider and engaged in the exploration, development, production, processing, transportation, marketing, consumption, or sale of natural gas: the names and state of incorporation of all corporations, partnerships, business trusts, and similar organizations that directly or indirectly hold control over the Gas Service Provider, and, the names and state of incorporation of all corporations, partnerships, business trusts, and similar organizations directly or indirectly controlled by the Gas Service Provider (where the Gas Service Provider holds control jointly with other interest holders, so state and name the other interest holders).

(b) Gas Service Providers must file with the Commission the conditions of service for each shipper served, consisting of:

(1) The full legal name of the shipper receiving service;

(2) A notation of shipper affiliation, if any;

(3) The contract number under which the shipper receives service;

(4) The type of service provided;

(5) Primary receipt point(s);

(6) Primary delivery point(s);

(7) Rates between each pair of points, and;

(8) Other conditions of service deemed relevant by the Gas Service Provider or, alternatively;

(9) A statement of the Gas Service Provider's rules, regulations, and conditions of service that includes:

(i) The rate between each pair of receipt and delivery points, if point-to-point rates are charged;

(ii) The rate per unit per mile, if mileage-based rates are charged;

(iii) Any other rate employed by the Gas Service Provider, with a detailed description of how such rate is derived, identifying customers and the rate charged to each customer;

(iv) Any adjustments made by the Gas Service Provider to the rates charged based on gas volumes shipped, the conditions of service, or other criteria, identifying customers and the rate adjustment applicable to each customer.

§ 330.3 Applicability of reporting requirements.

(a) The § 330.2(a) and (b) reporting requirements do not apply with respect to:

(1) A Gas Service Provider that serves exclusively a single entity (either itself or one other party), until such time as the Gas Service Provider agrees to serve a second shipper, or the Commission determines that the Gas Service Provider's denial of a request for service is unjustified, and the shipper denied service contests the denial;

(2) A Gas Service Provider that serves exclusively shippers with ownership interests in both the pipeline operated by the Gas Service Provider and the gas produced from a field or fields connected to a single pipeline, until such time as the Gas Service Provider offers to serve a non-owner shipper, or the Commission determines that the Gas Service Provider's denial of a request for service is unjustified, and the shipper denied service contests the denial;

(3) Services rendered over facilities that feed into a facility where natural gas is first collected, separated, dehydrated, or otherwise processed; and

(4) Gas Service Providers' facilities and services regulated by the Commission under the Natural Gas Act.

(b) A Gas Service Provider that makes no filing pursuant to § 330.3(a)(1) must comply with the specified reporting requirements within 90 days of agreeing to serve a new shipper or when required by the Commission.

(c) When a Gas Service Provider subject to these reporting requirements alters its affiliates, customers, rates, conditions of service, or facilities, within any calender quarter, it must then file with the Commission, on the first business day of the subsequent quarter, a revised § 330.2 report describing the status of its services and facilities as of the first day of the previous quarter.

PART 385—RULES OF PRACTICE AND PROCEDURE

2. Part 385 is amended as follows:

3. The authority citation for Part 385 is revised to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–8225r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

4. In § 385.2011, new paragraph (b)(6) is added to read as follows:

§ 385.2011 Procedures for filing on electronic media (Rule 2011).

* * * * *

(b) * * *

(6) Material submitted electronically pursuant to § 330.2 of this chapter.

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Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix

List of Commenters

Brooklyn Union Gas Company
Burlington Resources Oil & Gas Company
Coastal Field Services Company
Duke Energy Companies
Dynergy Midstream Services, Limited Partnership
El Paso Energy Corporation
Enron Interstate Pipelines
Leviathan Gas Pipeline Partners, L.P.
Independent Petroleum Association of America
Interstate Natural Gas Association of America
Natural Gas Supply Association
OCS Producers
Producer Coalition
United States Department of the Interior, Minerals Management Service
Williams Companies, Inc.
Tejas Offshore Pipeline, LLC

[FR Doc. 00–9447 Filed 4–14–00; 8:45 am]
BILLING CODE 6717–01–U

RAILROAD RETIREMENT BOARD

20 CFR Part 220

RIN 3220–AB42

Determining Disability

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends its disability regulations to discontinue the current policy of conducting continuing disability reviews (CDR's) for medical recovery of disability annuitants in medical improvement not expected (MINE) cases. The Board has found that these reviews have not been cost effective and impose an unnecessary burden on the annuitant.

EFFECTIVE DATE: This rule will be effective May 17, 2000.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Senior Attorney, (312) 751–4945, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: The Board conducts continuing disability reviews (CDRs) to determine whether or not a disability annuitant continues to meet the disability requirements contained in the Railroad Retirement Act and, in some cases, the Social Security Act. Payment of cash benefits based on disability ends if the medical or other evidence shows that the annuitant is no longer disabled under the standards set out in the Railroad Retirement Act or, for some benefits, the Social Security Act. Section 220.186 of the regulations of the Board provides when and how often the Board will conduct a CDR. This rulemaking would amend § 220.186(d) to discontinue the Board's current policy of conducting a CDR in cases where medical improvement is not expected (MINE). The current regulation requires a review no less frequently than once every 7 years but no more frequently than once every 5 years in MINE cases. The Board's CDR of MINE cases has not proved cost effective. For fiscal years 1995 through 1997 the Board conducted 552 MINE exams; however, in only 1 case did the evidence merit termination of the annuity. For fiscal years 1998 and 1999, 300 MINE reviews were conducted with no annuity terminations. Such results, in the Board's view, do not justify continuation of this program. Consequently, the Board proposes to cease routine continuing disability review in these cases. The cessation will be of routine reviews only. These cases

will still be reviewed for continuing eligibility: If the beneficiary returns to work and successfully completes a trial work period; if substantial earnings are posted to the beneficiary's earnings record; or if information is received either from the annuitant or a reliable source that the annuitant has recovered or returned to work, or that a review is otherwise warranted.

The Board published this rule as a proposed rule on November 18, 1999, and invited comments by January 18, 2000. No comments were received. The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action for purposes of Executive Order 12866. Therefore, no regulatory analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 220.186

Disability benefits, Railroad employees; Railroad retirement.

For the reasons set out in the preamble, the Railroad Retirement Board amends title 20, chapter II, part 220 of the Code of Federal Regulations as follows:

PART 220—DETERMINING DISABILITY

1. The authority citation for part 220 continues to read as follows:

Authority: 45 U.S.C. 231a; 45 U.S.C. 231f.

§ 220.186 When and how often the Board will conduct a continuing disability review. [Amended]

2. In § 220.186, paragraph (b)(2), remove the phrase "(medical improvement possible or medical improvement not expected)", and paragraph (d), remove the fourth sentence which reads: "If the annuitant's disability is considered permanent, the Board will review the annuitant's continuing eligibility for benefits no less frequently than once every 7 years but no more frequently than once every 5 years.", and add in its place "If no medical improvement is expected in the annuitant's impairment(s), the Board will not routinely review the annuitant's continuing eligibility."

Dated: April 6, 2000.

By Authority of the Board.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 00–9516 Filed 4–14–00; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF DEFENSE

National Reconnaissance Office

32 CFR Part 326

National Reconnaissance Office Privacy Act Program

AGENCY: National Reconnaissance Office, DOD

ACTION: Final rule.

SUMMARY: This rule establishes the National Reconnaissance Office Privacy Act Program. This rule establishes policies and procedures for implementing the NRO Privacy Program, and delegates authorities and assigns responsibilities for the administration of the NRO Privacy Program.

EFFECTIVE DATE: March 20, 2000.

ADDRESSES: National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Freimann at (703) 808–5029.

SUPPLEMENTARY INFORMATION: The proposed rule for the NRO Privacy Act Program was published on January 19, 2000, at 65 FR 2912. No comments were received, therefore, the rule is being adopted as a final rule.

Executive Order 12866, Regulatory Planning and Review

It has been determined that 32 CFR part 326 is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more; or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, Regulatory Flexibility Act (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96–511, Paperwork Reduction Act (44 U.S.C. Chapter 35)

It has been certified that this part does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 326

Privacy.

Accordingly, Title 32 of the CFR is amended in Chapter I, subchapter O, by adding part 326 to read as follows:

PART 326—NATIONAL RECONNAISSANCE OFFICE PRIVACY ACT PROGRAM

Sec.

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Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

§ 326.1 Purpose.

This part implements the basic policies and procedures outlined in the Privacy Act of 1974, as amended (5 U.S.C. 552a), and 32 CFR part 310; and establishes the National Reconnaissance Office Privacy Program (NRO) by setting policies and procedures for the collection and disclosure of information maintained in records on individuals, the handling of requests for amendment or correction of such records, appeal and review of NRO decisions on these matters, and the application of exemptions.

§ 326.2 Application.

Obligations under this part apply to all employees detailed, attached, or assigned to or authorized to act as agents of the National Reconnaissance Office. The provisions of this part shall be made applicable by contract or other legally binding action to government contractors whenever a contract is let for the operation of a system of records or a portion of a system of records.

§ 326.3 Definitions.

Access. The review or copying of a record or its parts contained in a system of records by a requester.

Agency. Any executive or military department, other establishment, or entity included in the definition of agency in 5 U.S.C. 522(f).

Control. Ownership or authority of the NRO pursuant to federal statute or privilege to regulate official or public access to records.

Disclosure. The authorized transfer of any personal information from a system of records by any means of communication (such as oral, written, electronic, mechanical, or actual review) to any person, private entity, or government agency other than the subject of the record, the subject's designated agent, or the subject's legal guardian.

He, him, and himself. Generically used in this part to refer to both males and females.

Individual or requester. A living citizen of the U.S. or an alien lawfully admitted to the U.S. for permanent residence and to whom a record might pertain. The legal guardian or legally authorized agent of an individual has the same rights as the individual and may act on his behalf. No rights are vested in the representative of a dead person or in persons acting in an entrepreneurial (for example, sole proprietorship or partnership) capacity under this part.

Interested party. Any official in the executive (including military), legislative, or judicial branches of government, U.S. or foreign, or U.S. Government contractor who, in the sole discretion of the NRO, has a subject matter or physical interest in the documents or information at issue.

Maintain. To collect, use, store, disclose, retain, or disseminate when used in connection with records.

Originator. The NRO employee or contractor who created the document at issue or his successor in office or any official who has been delegated release or declassification authority pursuant to law.

Personal information. Information about any individual that is intimate or private to the individual, as distinguished from 'corporate information' which is in the public domain and related solely to the individual's official functions or public life (i.e., employee's name, job title, work phone, grade/rank, job location).

Privacy Act Coordinator. The NRO Information and Access Release Center Chief who serves as the NRO manager of the information review and release program instituted under the Privacy Act.

Record. Any item, collection, or grouping of information about an individual that is maintained by the NRO, including, but not limited to, the individual's education, financial transactions, medical history, and criminal or employment history, and that contains the individual's name or identifying number (such as Social Security or employee number), symbol, or other identifying particular assigned to the individual, such as fingerprint, voice print, or photograph. Records include data about individuals which is stored in computers.

Responsive record. Documents or records that the NRO has determined to be within the scope of a Privacy Act request.

Routine use. The disclosure of a record outside the Department of Defense (DoD) for a use that is compatible with the purpose for which the information was collected and maintained by NRO. Routine use encompasses not only common or ordinary use, but also all the proper and necessary uses of the record even if such uses occur infrequently. All routine uses must be published in the **Federal Register**.

System managers. Officials who have overall responsibility for a Privacy Act system of records.

System notice. The official public notice published in the Federal Register of the existence and general content of the system of records.

System of records. A group of any records under the control of the NRO from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to that individual.

Working days. Days when the NRO is operating and specifically excludes Saturdays, Sundays, and legal public holidays.

§ 326.4 Policy.

(a) *Records about individuals—*

(1) *Collection.* The NRO will safeguard the privacy of individuals identified in its records. Information about an individual will, to the greatest extent practicable, be collected directly from the individual, and personal information will be protected from unintentional or unauthorized disclosure by treating it as marked 'For Official Use Only.' Access to personal information will be restricted to those employees whose official duties require it during the regular course of business.

(i) *Privacy Act Statement.* When an individual is requested to furnish personal information about himself for inclusion in a system of records, a Privacy Act Statement is required to enable him to make an informed decision whether to provide the information requested. A Privacy Act Statement may appear, in order of preference, at the top or bottom of a form, on the reverse side of a form, or attached to the form as a tear-off sheet.

(ii) *Social Security Numbers (SSNs).* It is unlawful for any governmental agency to deny an individual any right, benefit, or privilege provided by law because the individual refuses to provide his SSN. However, if a federal statute requires that the SSN be furnished or if the SSN is required to verify the identity of an individual in a system of records that was established and in use before January 1, 1975, this restriction does not apply. When collecting the SSN, a 'qualified' Privacy Act Statement must be provided even if the SSN will not be maintained in a system of records. The 'qualified' Privacy Act Statement shall inform the individual whether the disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

(2) *Maintenance.* The NRO will maintain in its records only such information about an individual which is accurate, relevant, timely, and necessary to accomplish a purpose which is required by statute or Executive Order. All records used by the NRO to make determinations about individuals will be maintained with such accuracy and completeness as is reasonably necessary to assure fairness to the individual.

(3) *Existence.* The applicability of the Privacy Act depends on the existence of an identifiable record. The procedures described in NRO regulations do not require that a record be created or that an individual be given access to records that are not retrieved by name or other individual identifier. Nor do these procedures entitle an individual to have access to any information compiled in reasonable anticipation of a civil action or proceeding. NRO will maintain only those systems of records that have been described through notices published in the **Federal Register**. A system of records from which records may be retrieved by a name or some other personal identifier must be under NRO control for consideration under this part.

(4) *Disposal.* The NRO will archive, dispose of, or destroy records containing personal data in a manner to prevent specific records from being readily

identified or inadvertently compromised.

(b) *Evaluation of records.* Statutory authority to establish and maintain a system of records does not grant unlimited authority to collect and maintain all information which may be useful or convenient. Directorates and offices maintaining records will evaluate each category of information in records systems for necessity and relevance prior to republication of all system notices in the **Federal Register** and during the design phase or change of a system of records. The following will be considered in the evaluation:

(1) Relationship of each item of information to the statutory purpose for which the system is maintained;

(2) Specific adverse consequences of not collecting each category of information; and

(3) Techniques for purging parts of the records.

(c) *Disclosure of records.* The NRO will provide the fullest access practicable by individuals to NRO records concerning them. Release of personal information to such individuals is not considered public release of information. Upon receipt of a written request, the NRO will release to individuals those records that are releasable and applicable to the individual making the request. Generally, information, other than that exempted by law and this part, will be provided to the individual. NRO personnel will comply with the Privacy Act of 1974, as amended, the DoD Privacy Act Program (32 CFR part 310), and the NRO Privacy Act Program. No NRO records shall be disclosed by any means of communication to any person or to any agency except pursuant to a written request by or the prior written consent of the individual to whom it pertains, unless disclosure of the record will be:

(1) To those employees of the NRO who have an official need for the record in the performance of their duties.

(2) Required to be disclosed to a member of the public under the Freedom of Information Act, as amended.

(3) For a routine use as defined in the Privacy Act.

(4) To the Census Bureau for the purpose of conducting a census or survey or related activity authorized by law.

(5) To a recipient who has provided the NRO with advance, adequate written assurance that the record will be used solely as statistical research and that the record is to be transferred in a form in which the individual is not identifiable.

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U. S. Government.

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the U.S. for a civil or criminal law enforcement activity if such activity is authorized by law and if the head of the agency or governmental entity has made a written request to the NRO specifying the particular portion of the record and the law enforcement activity for which the record is sought (blanket requests will not be accepted); a record may also be disclosed to a law enforcement agency at the initiative of the NRO pursuant to the blanket routine use for law enforcement when criminal conduct is indicated in the record.

(8) To a person showing compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is sent to the last known address of the individual to whom the record pertains (emergency medical information may be released by telephone).

(9) To Congress or any committee, joint committee, or subcommittee of Congress with respect to a matter under its jurisdiction. This provision does not authorize the disclosure of a record to members of Congress acting in their individual capacities or on behalf of their constituents making third party requests. However, such releases may be made pursuant to the blanket routine use for Congressional inquiries when a constituent has sought the assistance of his Congressman for the constituent's individual record(s).

(10) To the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office.

(11) Pursuant to an order of a court of competent jurisdiction. When the record is disclosed under compulsory legal process and when the issuance of that order or subpoena is made public by the court which issued it, the NRO will make reasonable efforts to notify the individual to whom the record pertains by mail at the most recent address contained in NRO records.

(12) To a consumer reporting agency in accordance with 31 U.S.C. 3711(f).

(d) *Allocation of resources.* NRO components shall exercise due diligence in their responsibilities under the Privacy Act and must devote a reasonable level of personnel to respond to requests on a 'first-in, first-out' basis. In allocating Privacy Act resources, the component shall consider its imposed business demands, the totality of resources available to it, the information review and release demands imposed by Congress and other governmental authorities, and the rights of the public under various disclosure laws. The PA Coordinator will establish priorities for cases consistent with established law to ensure that smaller as well as larger 'project' cases receive equitable attention.

(e) *Written permission for disclosure.* Disclosures made under circumstances not delineated in this part shall be made only if the written permission of the individual involved has been obtained. Written permission shall be recorded on or appended to the document transmitting the personal information to the other agency, in which case no separate accounting of the disclosure need be made. Written permission is required in each case; that is, once obtained, written permission for one case does not constitute blanket permission for other disclosures.

(f) *Coordination with other government agencies.* Records systems of the NRO may contain records originated by other agencies that may have claimed exemptions for them under the Privacy Act. Where appropriate, coordination will be effected with the originating agency. The NRO will comply with the instructions issued by another agency responsible for a system of records (e.g., Office of Personnel Management) in granting access to such records. Records containing information or interests of another government agency will not be released until coordination with the other agency involved. A request for information pertaining to the individual in an NRO record system received from another federal agency will be coordinated with the originating agency.

(g) *Accounting for disclosure.* Except for disclosures made under paragraphs (c)(1) and (c)(2) of this section, an accurate account of the disclosures shall be kept by the record holder in consultation with the Privacy Act Coordinator (PA Coordinator). There need not be a notation on a single document of every disclosure of a particular record. The record holder should be able to construct from its system of records the accounting information:

(1) When required by the individual to whom the record pertains, or

(2) When necessary to inform previous recipients of any amended records. The accounting shall be retained for at least five years or for the life of the record, whichever is longer, to be available for review by the subject of the record at his request except for

disclosures made under paragraph (c)(7) of this section.

(h) *Application of rules.* Any request for access, amendment, correction, etc., of personal record information in a system of records by an individual to whom such information pertains will be governed by the Privacy Act of 1974, as amended, DoD regulatory authority, and this part, exclusively. Any denial or exemption of all or part of a record from access, disclosure, amendment, correction, etc., will be processed under DoD regulatory authority and this part, unless court order or other competent authority directs otherwise.

(i) *First Amendment rights.* No NRO official or component may maintain any information pertaining to the exercise by an individual of his rights under the First Amendment without the permission of that individual unless such collection is specifically authorized by statute or pertains to an authorized law enforcement activity.

(j) *Non-system information on individuals.* The following information is not considered part of personal records systems reportable under this part and may be maintained by NRO for ready identification, contact, and property control purposes only, provided it is not maintained in a system of records. If at any time the information described in this paragraph is being maintained in a system of records, the information is subject to the Privacy Act.

(1) Identification information at doorways, building directories, desks, lockers, name tags, etc.

(2) Geographical or agency contact cards.

(3) Property receipts and control logs for building passes, credentials, vehicles, etc.

(4) Personal working notes of employees that are merely an extension of the author's memory, if maintained properly, do not come under the Privacy Act. Personal notes are not considered official NRO records if they meet the following requirements:

(i) Keeping or discarding notes must be at the sole discretion of the author. Any requirement by supervising authority, whether by oral or written directive, regulation, policy, or memo to maintain such notes, likely would cause the notes to become official agency records.

(ii) Such notes must be restricted to the author's personal use as memory aids, and only the author may have access to them. Passing them to a successor or showing them to other personnel (including supporting staff such as secretaries) would likely cause them to become agency records.

(5) Rosters. The NRO has no restriction against rosters that contain only corporate information such as name, work telephone number, and position. Good recordkeeping practices dictate that only rosters that are relevant and necessary to the NRO's operations may be maintained, and therefore convenience rosters, which by definition do not satisfy the test, may not be maintained.

§ 326.5 Responsibilities.

(a) The Director, NRO (DNRO):

(1) Supervises the execution of the Privacy Act and this part within the NRO.

(2) Appoints:

(i) The Chief, Information Access and Release Center as the NRO Privacy Act Coordinator.

(ii) The Director of Security, the Director of Policy, and the NRO General Counsel as the NRO Appeals Panel; and

(iii) The Chief of Staff as the Senior Official for Privacy Policy and the Privacy Act Appeal Authority.

(b) The Privacy Act Coordinator, NRO:

(1) Establishes, issues, and updates policy for the NRO Privacy Act Program, monitors compliance, and serves as the principal NRO point of contact on all Privacy Act matters.

(2) Receives, processes, and responds to all Privacy Act requests received by the NRO, including:

(i) Granting, granting in part, or denying an initial Privacy Act request for access or amendment to a record, and notifying a requester of such actions taken in regard to that request.

(ii) Granting a requester access to all or part of a record under dispute when, after a review, a decision is made in favor of a requester.

(iii) Directing the appropriate NRO component to amend a record and advising other record holders to amend a record when a decision is made in favor of a requester.

(iv) Notifying a requester, if a request is denied, of the reasons for denial and the procedures for appeal to the Privacy Act Appeal Authority.

(v) Notifying a requester of his right to file a concise statement of his reasons for disagreement with the NRO's refusal to amend a record.

(vi) Directing that a requester's statement of reasons for the request to amend, his concise statement of disagreement with the NRO's refusal to amend a record, and the NRO's letter of denial be included in the file containing the disputed record.

(vii) Referring all appeals to the Privacy Act Appeals Panel and Appeal Authority.

(viii) Notifying a requester of any required fees and delivering such collected fees to the Comptroller.

(ix) Obtaining supplemental information from the requester when required.

(3) Serves as the NRO point of contact with the Defense Privacy Office.

(4) Reviews NRO use of records, and at least 40 calendar days prior to establishing a new agency system of records, ensures that new or amended notices are prepared and published in the **Federal Register** consistent with the requirements of 32 CFR part 310;

(5) Coordinates with forms managers to ensure that a Privacy Act Statement is on all forms or in all other methods used to collect personal information for inclusion in any NRO records system;

(6) Prepares the NRO Privacy Act report for submission to the DoD Privacy Office and to other authorities, as required by 32 CFR part 310.

(7) Reviews all precedures, including forms, which require an individual to furnish information for conformity with the Privacy Act.

(8) Retains the accounting of disclosures for at least five years or for the life of the record, whichever is longer, to be available for review by the subject of the record at his request except for disclosures made under paragraph (c)(7) of § 326.4; and

(9) Develops and oversees Privacy Act Program training for NRO personnel.

(c) The Privacy Act Appeals Panel, NRO:

(1) Meets and reviews all denials appealed by means of the NRO internal appeals process; and

(2) Recommends a finding to the Privacy Act Appeal Authority by a majority vote of those present at the meeting and based on the written record and the panel's deliberations.

(d) The Privacy Act Appeal Authority, NRO:

(1) Determines all NRO Privacy Act appeals.

(2) Reports the determination to the PA Coordinator.

(3) Signs the final appeal letter to the requester.

(e) General Counsel, NRO:

(1) Ensures uniformity in NRO legal positions concerning the Privacy Act and reviews proposed responses to Privacy Act requests to ensure legal sufficiency, as appropriate.

(2) Consults with DoD General Counsel on final denials that may be inconsistent with other final decisions within DoD; raises new legal issues of potential significance to other government agencies.

(3) Provides advice and assistance to the DNRO, the PA Coordinator, and

component Directors, as required, in the discharge of their responsibilities pertaining to the Privacy Act.

(4) Advises on all legal matters concerning the Privacy Act, including legal decisions, rulings by the Department of Justice, and actions by DoD and other commissions on the Privacy Act.

(5) Approves all Privacy Act Statements prior to their reproduction and distribution.

(6) Acts as the NRO focal point for Privacy Act litigation with the Department of Justice.

(7) Provides a status report to the Defense Privacy Office, consistent with the requirements of 32 CFR part 310, whenever an individual brings suit under subsection (g) of the Privacy Act against NRO.

(f) Chief Information Officer (CIO), NRO:

(1) Ensures that NRO systems of records databases have procedures to protect the confidentiality of personal records maintained or processed by means of automatic data processing (ADP) systems and ensures that ADP systems contain appropriate safeguards for the privacy of personnel.

(2) Coordinates with the PA Coordinator before developing or modifying CIO-sponsored ADP supported files subject to the provisions of this part.

(g) Directorate and Office Managers, NRO:

(1) Ensure that records contained in their directorate or office systems of records are disclosed only to those NRO officials or employees who require the records for official purposes.

(2) Review their own directorate and office systems of records to ensure and certify that no systems of records other than those listed in the **Federal Register** System Notices are maintained; notify the CIO and the PA Coordinator promptly whenever there are changes to processing equipment, hardware, software, or database that may require an amended system notice.

(3) Maintain only such information about an individual as is relevant and necessary to accomplish a purpose which is required by statute or Executive Order and identify the specific provision of law or Executive Order which provides authority for the maintenance of information in each system of records.

(h) System Managers, NRO:

(1) Ensure that adequate safeguards have been established and are enforced to prevent the misuse, unauthorized disclosure, alteration, or destruction of personal information contained in system records.

(2) Ensure that all personnel who have access to the system of records, or are engaged in developing or supervising procedures for handling records, are aware of their responsibilities established by the NRO Privacy Act Program.

(3) Evaluate each system of records during the planning stage and at regular intervals. The following factors should be considered:

(i) Relationship of data to be collected and retained to the purposes for which the system is maintained (all information must be relevant and necessary to the purpose for which it is collected).

(ii) The specific impact on the purpose or mission if categories of information are not collected (all data fields must be necessary to accomplish a lawful purpose or mission).

(iii) Whether informational needs can be met without using personal identifiers.

(iv) The cost of maintaining and disposing of records within the systems of records and the length of time each item of information must be retained according to the NRO Records Control Schedule as approved by the National Archives and Records Administration.

(4) Review system alterations or amendments to evaluate for relevancy and necessity.

(i) Forms and Information Managers. All NRO individuals responsible for forms or methods used to collect personal information from individuals will:

(1) Ensure that Privacy Act Statements are on appropriate forms and that new forms have the required Privacy Act Statement.

(2) Determine, with General Counsel's concurrence, which forms require Privacy Act Statements and will prepare such statements.

(3) Assist the initiators in determining whether a form, format, questionnaire, or report requires a Privacy Act Statement. Privacy Act Statements must be complete, specific, written in plain English, and approved by the Office of General Counsel.

(j) Employees, NRO:

(1) Will be familiar with the provisions of this part regarding the maintenance of systems of records, authorized access, and authorized disclosure;

(2) Will collect, maintain, use, and/or disseminate records containing identifiable personal information only for lawful purposes; will keep the information current, complete, relevant, and accurate for its intended use; and will safeguard the records in a system and keep them the minimum time required;

(3) Will not disclose any personal information contained in any system of records, except as authorized by the Privacy Act and this part;

(4) Will maintain no system of records concerning individuals except those authorized, and will maintain no other information concerning individuals except as necessary for the conduct of business at the NRO;

(5) Will provide individuals a Privacy Act Statement when asking them to provide information about themselves. The Privacy Act Statement will include the authority under which the information is being requested, whether disclosure of the information is mandatory or voluntary, the purposes for which it is being requested, the uses to which it will be put, and the consequences of not providing the information;

(6) May not deny an individual any right or privilege provided by law because of that individual's failure to disclose his SSN unless such information is required by federal statute or disclosure was required by statute or regulations adopted prior to January 1, 1975. If disclosure of the SSN is not required, NRO directorates and offices are not precluded from requesting it from individuals; however, the Privacy Act Statement must make clear that the disclosure of the SSN is voluntary and, if the individual refuses to disclose it, must be prepared to identify him by alternate means.

(7) Will collect personal information directly from the subject whenever possible; employees may collect information from third parties when that information must be verified, opinions or evaluations are required, the subject cannot be contacted, or the subject requests it.

(8) Will keep paper and electronic records which contain personal information and are retrieved by name or personal identifier only in approved systems published in the Federal Register.

(9) Will amend and correct records when directed by the PA Coordinator.

(10) Will report to the PA Coordinator any disclosures of personal information from a system of records, or the maintenance of any system of records, not authorized by this part.

§ 326.6 Policies for processing requests for records.

(a) An individual's written request for access to records about himself which does not specify the Act under which the request is made will be processed under both the Freedom of Information

Act (FOIA) and the Privacy Act and the applicable regulations. Such requests will be processed under both Acts regardless of whether the requester cites one Act, both, or neither in the request in order to ensure the maximum possible disclosure to the requester. Individuals may not be denied access to a record pertaining to themselves merely because those records are exempt from disclosure under the FOIA.

(b) A Privacy Act request that neither specifies the system(s) of records to be searched nor identifies the substantive nature of the information sought will be processed by searching the systems of records categorized as Environmental Health, Safety and Fitness, FOIA/Privacy, General, and Security.

(c) A Privacy Act request that does not designate the system(s) of records to be searched but does identify the substantive nature of the information sought will be processed by searching those systems of records likely to have information similar to that sought by the requester.

(d) The NRO will not disclose any record to any person or government agency except by written request or prior written consent of the subject of the record unless the disclosure is required by law or is within the exceptions of the Privacy Act. If a requester authorizes another individual to obtain the requested records on his behalf, the requester shall provide a written, signed, notarized statement appointing that individual as his representative and certifying that the individual appointed may have access to the requester's records and that such access shall not constitute an invasion of his privacy nor a violation of his rights under the Privacy Act. In lieu of a notarized statement, the NRO will accept a declaration in accordance with 28 U.S.C. 1746.

(e) Upon receipt of a written request, the Privacy Act Coordinator (PA Coordinator) will release to the requester those records which are releasable and applicable to the individual making the request. Records about individuals include data stored electronically or in electronic media. Documentary material qualifies as a record if the record is maintained in a system of records.

(f) Initial availability, potential for release, and cost determination will usually be made within ten working days of the date on which a written request for any identifiable record is received by the NRO (and acknowledgement is sent to the individual). If additional time is needed due to unusual circumstances, a written notification of the delay will be forwarded to the requester within the ten working day period. This notification will briefly explain the circumstances for the delay and indicate the anticipated date for a substantive response.

(g) All requests will be handled in the order received on a 'first-in, first-out' basis. Requests will be considered for expedited processing only if the NRO determines that there is a genuine health, humanitarian, or due process reason involving possible deprivation of life or liberty which creates an exceptional and urgent need, that there is no alternative forum for the records sought, and that substantive records relevant to the stated needs may exist and be releasable.

(h) Records provided or originated by another agency or containing other agency information will not be released prior to coordination with the other agency involved.

(i) Requesting or obtaining access to records under false pretenses is a violation of the Privacy Act and is subject to criminal penalties.

§ 326.7 Procedures for collection.

(a) To the maximum extent practical, personal information about an individual will be obtained directly from that individual.

(b) Whenever an individual is asked to provide personal information, including Social Security Number (SSN) or a personal identifier, about himself, a Privacy Act Statement will be furnished that will advise him of the authority (whether by statute or by Executive Order) under which the information is requested, whether disclosure of the information is voluntary or mandatory, the purposes for which it is requested, the uses to which it will be put, and the consequences of not providing the information.

(c) When asking third parties to provide information about other individuals, NRO employees will advise them:

(1) Of the purpose of the request, and

(2) That their identities and the information they are furnishing may be released to the individual unless they expressly request confidentiality. All persons interviewed must be informed of their rights and offered confidentiality.

§ 326.8 Procedures for requesting access.

(a) *Request in writing.* An individual seeking notification of whether a system of records contains a record pertaining to him, or an individual seeking access to records pertaining to him which are available under the Privacy Act, shall address the request in writing to the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715. The request should contain at least the following information:

(1) *Identification.* Reasonable identification, including first name, middle name or initial, surname, any aliases or nicknames, Social Security Number, and return address of the individual concerned, accompanied by a signed notarized statement that such information is true under penalty of perjury and swearing to or affirming his identity. An unsworn declaration, under 28 U.S.C. 1746, also is acceptable. In the case of a request for records of a sensitive nature if the PA Coordinator determines that this information does not sufficiently identify the individual, the PA Coordinator may requests additional identification or clarification of information submitted by the individual.

(i) In addition, an alien lawfully admitted for permanent residence shall provide his Alien Registration Number and the date that status was acquired.

(ii) The parent or guardian of a minor or of a person judicially determined to be incompetent, or an attorney retained to represent an individual, in addition to establishing the identity of the minor or person represented as required in this part, shall provide evidence of his own identity as required in this part and evidence of such parentage, guardianship, or representation by submitting a certified copy of the minor's birth certificate, the court order establishing such guardianship, or the representation agreement which establishes the relationship.

(2) *Cost.* A statement of willingness to pay reproduction costs. Processing of requests and administrative appeals from individuals who owe outstanding fees will be held in abeyance until such fees are paid.

(3) *Record sought.* A description, to the best of his ability, of the nature of the record sought and the system in which it is thought to be included. In lieu of this, a requester may simply describe why and under what circumstances he believes that the NRO maintains responsive records; the NRO will undertake the appropriate searches.

(b) *Access on behalf of the individual.* If the requester wishes another person to obtain the records on his behalf, the requester will furnish a notarized statement or unsworn declaration appointing that person as his representative, authorizing him access to the record, and affirming that access will not constitute an invasion of the requester's privacy or a violation of his

rights under the Privacy Act. The NRO requires a written statement to authorize discussion of the individual's record in the presence of a third person.

§ 326.9 Procedures for disclosure of requested information.

(a) The PA Coordinator shall acknowledge receipt of the request in writing within ten working days.

(b) Upon receipt of a request, the PA Coordinator shall refer the request to those components most likely to possess responsive records. The components shall search all relevant record systems within their cognizance and shall:

(1) Determine whether a responsive record exists in a system of records.

(2) Determine whether access must be denied and on what legal basis. An individual may be denied access to his records under the Privacy Act only if an exemption has been properly claimed for all or part of the records or information requested; or if the information was compiled in reasonable anticipation of a civil action or proceeding.

(3) Approve the disclosure of records for which they are the originator.

(4) Forward to the PA Coordinator all records approved for release or necessary for coordination with or referral to another originator or interested party as well as notification of the specific determination for any denial.

(c) When all records have been collected, the PA Coordinator shall notify the individual of the determination and shall provide an exact copy of records deemed to be accessible if a copy has been requested.

(d) When an original record is illegible, incomplete, or partially exempt from release, the PA Coordinator shall explain in terms understood by the requester the portions of a record that are unclear.

(e) If access to requested records, or any portion thereof, is denied, the PA Coordinator shall inform the requester in writing of the specific reason(s) for denial, including the specific citation to appropriate sections of the Privacy Act or other statutes, this and other NRO regulations, or the Code of Federal Regulations authorizing denial; and the right to appeal this determination through the NRO appeal procedure within 60 calendar days. The denial shall include the date of denial, the name and title/position of the denial authority, and the address of the NRO Appeal Authority. Access may be refused when the records are exempt by the Privacy Act. Usually an individual will not be denied access to the entire record, but only to those portions to which the denial of access furthers the purpose for which an exemption was claimed.

§ 326.10 Procedures to appeal denial of access to requested record.

(a) Any individual whose request for access is denied may request a review of the initial decision within 60 calendar days of the date of the notification of denial of access by appealing within the NRO internal appeals process. If a requester elects to request NRO review, the request shall be sent in writing to the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715, briefly identifying the particular record which is the subject of the request and setting forth the reasons for the appeal. The request should enclose a copy of the denial correspondence. The following procedures apply to appeals within the NRO:

(1) The PA Coordinator, after acknowledging receipt of the appeal, shall promptly refer the appeal to the record-holding components, informing them of the date of receipt of the appeal and requesting that the component head or his designee review the appeal.

(2) The record-holding components shall review the initial denial of access to the requested records and shall inform the PA Coordinator of their review determination.

(3) The PA Coordinator shall consolidate the component responses, review the record, direct such additional inquiry or investigation as is deemed necessary to make a fair and equitable determination, and make a recommendation to the NRO Appeals Panel, which makes a recommendation to the Appeal Authority.

(4) The Appeal Authority shall notify the PA Coordinator of the result of the determination on the appeal, who shall notify the individual of the determination in writing.

(5) If the determination reverses the initial denial, the PA Coordinator shall provide a copy of the records requested. If the determination upholds the initial denial, the PA Coordinator shall inform the requester of his right to judicial review in U.S. District Court and shall include the exact reasons for denial with specific citations to the provisions of the Privacy Act, other statutes, NRO regulations, or the Code of Federal Regulations upon which the determination is based.

(b) The Appeal Authority shall act on the appeal or provide a notice of extension within 30 working days.

§ 326.11 Special procedures for disclosure of medical and psychological records.

When requested medical and psychological records are not exempt from disclosure, the PA Coordinator may determine which non-exempt medical or psychological records should not be sent directly to the requester because of possible harm or adverse impact to the requester or another person. In that event, the information may be disclosed to a physician named by the requester. The appointment of the physician will be in the same notarized form or declaration as described in § 326.8 and will certify that the physician is licensed to practice in the appropriate specialty (medicine, psychology, or psychiatry). Upon designation, verification of the physician's identity, and agreement by the physician to review the documents with the requester to explain the meaning of the documents and to offer counseling designed to mitigate any adverse reaction, the NRO will forward such records to the designated physician. If the requester refuses or fails to designate a physician, the record shall not be provided. Under such circumstances refusal of access is not considered a denial for Privacy Act reporting purposes. However, if the designated physician declines to furnish the records to the individual, the PA Coordinator will take action to ensure that the records are provided to the individual.

§ 326.12 Procedures to request amendment or correction of record.

(a) An individual may request amendment or correction of a record pertaining to him/her by addressing such request in writing, to the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715. Incomplete or inaccurate requests will not be rejected categorically; instead, the requester will be asked to clarify the request as needed. A request will not be rejected or require resubmission unless additional information is essential to process the request. Usually, amendments under this part are limited to correcting factual errors and not matters of official judgment, such as promotion ratings and job performance appraisals. The requester must adequately support his claim and must identify:

(1) The particular record he wishes to amend or correct, specifying the number of pages and documents, the titles of the documents, form numbers if any, dates on documents, and individuals who signed them. Any reasonable description of the documents is

acceptable. A clear and specific description of passages, pages, or documents to be amended will expedite processing the request.

(2) The desired amending language. The requester should specify the type of amendment, including complete removal of data, passages, or documents from record or correction of information to make it accurate, more timely, complete, or relevant.

(3) A justification for such amendment or correction to include any documentary evidence supporting the request.

(b) Individuals will be required to provide verification of identity as in § 326.8. to ensure that the requester is seeking to amend records pertaining to himself and not, inadvertently or intentionally, the records of another individual.

(c) Minor factual errors in an individual's personal record may be corrected routinely upon request without resort to the Privacy Act or the provisions of this part, if the requester and the record holder agree to that procedure and the requester receives a copy of the corrected record whenever possible. A written request is not required when individuals indicate amendments during routine annual review and updating of records programs conducted by the NRO for civilian personnel and the Services for military personnel. Requests for deletion, removal of records, and amendment of substantive factual information will be processed according to the Privacy Act and the provisions of this part.

(d) The PA Coordinator shall acknowledge receipt of the request in writing within ten working days. No separate acknowledgement of receipt is necessary if the request can be either approved or denied and the requester advised within the ten-day period. For written requests presented in person, written acknowledgement may be provided at the time the request is presented.

(e) The PA Coordinator shall refer such request to the record-holder components, shall advise those components of the date of receipt, and shall request that those components make a prompf determination on such request.

(f) The record-holder components shall promptly:

(1) Make any amendment or correction to any portion of the record which the individual believes is not accurate, relevant, timely, or complete and notify the PA Coordinator and all holders and recipients of such records and their amendments that the correction was made; or

(2) Set forth the reasons for the refusal, if they determine that the requested amendment or correction will not be made or if they decline to make the requested amendment but instead augment the official record, and so inform the PA Coordinator.

(g) The Privacy Act Coordinator shall:

(1) Inform the requester of the agency's determination to make the amendment or correction as requested and notify all prior recipients of the change to the disputed records for which an accounting had been required; or

(2) Inform the requester of the specific reasons and legal authorities for the agency's refusal and the procedures established for him to request a review of that refusal.

(h) The amendment procedure is not intended to replace other existing procedures such as those for registering grievances or appealing performance appraisal reports. In such cases the requester will be apprised of the appropriate procedures for such actions.

(i) This part does not permit the alteration of evidence presented to courts, boards, or other official proceedings.

§ 326.13 Procedures to appeal denial of amendment.

(a) Any individual whose request for amendment or correction is denied may request a review of the initial decision within 60 calendar days of the date of the notification of denial by appealing within the NRO internal appeals process. If a requester elects to request NRO review, the request shall be sent in writing to the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715, briefly identifying the particular record which is the subject of the request and setting forth the reasons for the appeal. The request should enclose a copy of the denial correspondence. The following procedures apply to appeals within the NRO:

(1) The PA Coordinator, after acknowledging receipt of the appeal, shall promptly refer the appeal to the record-holding components, informing them of the date of receipt of the appeal and requesting that the component head or his designee review the appeal.

(2) The record-holding components shall review the initial denial of access to the requested records and shall inform the PA Coordinator of their review determination.

(3) The PA Coordinator shall act as secretary of the Appeals Panel. He shall:

(i) Consolidate the component responses and reasons for the initial denial.

(ii) Provide all supporting materials both furnished to and by the requester and the record-holding component.

(iii) Review the record.

(iv) Direct such additional inquiry or investigation as is deemed necessary to make a fair and equitable determination.

(v) Prepare the record and schedule the appeal for the next meeting of the Appeals Panel. The Appeals Panel shall recommend a finding to the Appeal Authority by a majority vote of those present at the meeting based on the written record and the Panel's deliberations. No personal appearances shall be permitted without the express permission of the Panel.

(4) The Appeal Authority shall notify the PA Coordinator of the result of the determination on the appeal who shall notify the individual of the determination in writing.

(5) The Appeal Authority will notify the PA Coordinator if the determination is that the record should be amended. The PA Coordinator will promptly advise the requester and the office holding the record to amend the record and to notify all prior recipients of the records for which an accounting was required of the change.

(6) If the determination upholds the initial denial, in whole or in part, the PA Coordinator shall inform the requester:

(i) Of the denial and the reason.

(ii) Of his right to file in NRO records within 60 calendar days a concise statement of the reasons for disputing the information contained in the record. If the requester elects to file a statement of disagreement, the PA Coordinator will be responsible for clearly noting any portion of the record that is disputed and for appending into the file the requester's statement as well as a copy of the NRO's letter to the requester denying the disputed information, if appropriate. The requester's statement and the NRO denial letter will be made available to anyone to whom the record is subsequently disclosed, and prior recipients of the disputed record will be provided a copy of both to the extent that an accounting of disclosures is maintained.

(iii) Of his right to judicial review in U.S. District Court.

(7) The Appeal Authority shall act on the appeal or provide a notice of extension within 30 working days.

§ 326.14 Disclosure of records to person other than subject.

(a) Personal records contained in a Privacy Act system of records

maintained by NRO shall not be disclosed by any means to any person or agency outside the NRO except with the written consent of the individual subject of the record, unless as provided in this part.

(b) Except for disclosure made to members of the NRO in connection with their official duties and disclosures required by the Freedom of Information Act, an accounting will be kept of all disclosures of records maintained in NRO systems of records and of all disclosures of investigative information. Accounting entries will record the date, kind of information, purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made. Accounting records will be maintained for at least five years after the last disclosure or for the life of the record, whichever is longer. Subjects of NRO records will be given access to associated accounting records upon request except for disclosures made pursuant to § 326.4, or where an exemption has been properly claimed for the system of records.

§ 326.15 Fees.

Individuals requesting copies of their official personnel records are entitled to one free copy; a charge will be assessed for additional copies. There is a cost of $.15 per page. Fees will not be assessed if the cost is less than $30.00. Fees should be paid by check or postal money order payable to the Treasurer of the United States and forwarded to the Privacy Act Coordinator, NRO, at the time the copy of the record is delivered. In some instances, fees will be due in advance.

§ 326.16 Penalties.

Each request shall be treated as a certification by the requester that he is the individual named in the request. The Privacy Act provides criminal penalties for any person who knowingly and willfully requests or obtains any information concerning an individual under false pretenses.

§ 326.17 Exemptions.

(a) All systems of records maintained by the NRO shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12958 and which is required by the Executive Order to be withheld in the interest of national defense of foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may contain items of information that have been properly classified.

(b) No system of records within the NRO shall be considered exempt under subsection (j) or (k) of the Privacy Act until the exemption and the exemption rule for the system of records has been published as a final rule in the **Federal Register**.

(c) An individual is not entitled to have access to any information compiled in reasonable anticipation of a civil action or proceeding (5 U.S.C. 552a(d)(5)).

(d) Proposals to exempt a system of records will be forwarded to the Defense Privacy Office, consistent with the requirements of 32 CFR part 310, for review and action.

Dated: April 11, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–9417 Filed 4–14–00; 8:45 am]

BILLING CODE 5001–10–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–655; MM Docket No. 99–139; RM–9402, RM–9412]

Radio Broadcasting Services; Princeville, Kapaa, and Kalaheo, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of two separate petitioners, Vetter Communications Co., Inc. permittee of Station KAWT, Channel 255C1, Princeville, Hawaii, and B&GRS Partnership permittee of Station KAYI, Channel 260C1, Princeville, Hawaii reallots Channel 255C1 from Princeville to Kapaa, Hawaii, as the community's first local aural service and reallots Channel 260C1 from Princeville to Kalaheo, Hawaii. *See* 64 FR 24566 (May 7, 1999). Each channel can be allotted to its respective community in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, without the imposition of a site restriction. The reference coordinates for a Channel 255C1 allotment at Kapaa, Hawaii, are 22–04–42 North Latitude and 159–19–19 West Longitude. The reference coordinates for a Channel 260C1 allotment at Kalaheo, Hawaii, are 21–59–54 North Latitude and 159–25–35 West Longitude.

DATE: Effective May 8, 2000.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–139, adopted March 15, 2000, and released March 24, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by removing Princeville, Channels 255C1, and 260C1, and adding in alphabetical order, Kapaa, Channel 255C1, and Kalaheo, Channel 260C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–9381 Filed 4–14–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 209 and 230

[FRA Docket No. RSSL–99–1, Notice No. 4]

Inspection and Maintenance Standards for Steam Locomotives

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Public meetings on final rule.

SUMMARY: On November 17, 1999, FRA published the final rule on inspection and maintenance of steam locomotives (64 FR 62828). The Inspection and

Maintenance Standards for Steam Locomotives, title 49, Code of Federal Regulations (CFR) parts 209 and 230, which took effect on January 18, 2000, sets forth new inspection and implementation requirements. FRA will hold public meetings to explain the implementation schedule and general requirements for inspection and maintenance of steam locomotives under the rule. These meetings will also provide interested parties with the opportunity to discuss the rule and ask questions of the presenters. All parties interested in the new rule on inspection and maintenance of steam locomotives are invited to attend these meetings.

DATES: The meetings will be held on April 26, 2000, at 9 a.m.; May 17, 2000, at 9 a.m.; and June 28, 2000, at 9 am.

ADDRESSES: The meetings will be held on April 26, 2000, at the Steamtown National Historic Site, Lackwana & Cliff Street, Scranton, PA 18503; May 17, 2000 at the California State Railroad Museum, 111 I Street, Sacramento, CA 95814; and June 28, 2000 at the Clarion Hotel, 4813 Central Avenue, Hot Springs, AR 71913.

FOR FURTHER INFORMATION CONTACT: George Scerbo, Motive Power & Equipment Specialist, Office of Safety, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202–493–6249); or Paul F. Byrnes, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (202–493–6032).

Michael J. Logue,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 00–9402 Filed 4–14–00; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register
Vol. 65, No. 74
Monday, April 17, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV00–915–2 PR]

Avocados Grown in South Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Avocado Administrative Committee (Committee) for the 2000–2001 and subsequent fiscal periods from $0.16 per 55-pound bushel container or equivalent to $0.19 per 55-pound bushel container or equivalent of avocados handled. The Committee is responsible for local administration of the marketing order, which regulates the handling of avocados grown in South Florida. Authorization to assess avocado handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began April 1 and ends March 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by May 17, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (863) 299–4770, Fax: (863) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 121 and Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida avocado handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable avocados beginning on April 1, 2000, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2000–2001 and subsequent fiscal periods from $0.16 per 55-pound bushel container or equivalent to $0.19 per 55-pound bushel container or equivalent of avocados.

The Florida avocado marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Florida avocados. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1999–2000 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on March 8, 2000, and unanimously recommended 2000–2001 expenditures of $186,333 and an assessment rate of $0.19 per 55-pound bushel container or equivalent of avocados. In comparison, last year's budgeted expenditures were $164,335. The assessment rate of $0.19 is $0.03 higher than the rate currently in effect.

The Florida Lime and the Florida Avocado Administrative Committees share certain costs (staff, office space, and equipment) for economy and

efficiency (7 CFR part 911 and 915). Each Committee's share of these costs is based upon the amount of work performed and time devoted to administration. To reflect its increased share of the workload and resources, the Avocado Administrative Committee needs to fund a greater share of the costs. An increased budget for avocados is needed to accomplish this.

The major expenditures recommended by the Committee for the 2000–2001 year include $69,000 for salaries, $35,000 for national enforcement, $20,000 for research, $14,898 for employee benefits, and $13,782 for insurance and bonds. Budgeted expenses for these items in 1999–2000 were $46,000, $27,000, $39,500, $10,040, and $8,955, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida avocados. Commodity shipments for the year are estimated at 900,000 55-pound bushel containers, which should provide $171,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve (currently $174,431) would be kept within the maximum permitted by the order (approximately three fiscal periods' expenses, section 915.42(a)(2)).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2000–2001 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 141 avocado producers in the production area and approximately 49 avocado handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those having annual receipts less than $500,000,000.

The average grower price for fresh avocados during the 1998–99 season was $17.90 per 55-pound bushel box equivalent for all domestic shipments and the total shipments were 890,859 bushels. Approximately 10 percent of all handlers handled 90 percent of the Florida avocado shipments. Many avocado handlers ship other tropical fruit and vegetable products, which are not included in the Committee's data but would contribute further to handler receipts.

Using these prices, about 90 percent of avocado handlers could be considered small businesses under the SBA definition. The majority of Florida avocado producers also may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2000–2001 and subsequent fiscal periods from $0.16 per 55-pound bushel container or equivalent to $0.19 per 55-pound bushel container or equivalent of avocados. The Committee unanimously recommended 2000–2001 expenditures of $186,333 and an assessment rate of $0.19 per 55-pound bushel container or equivalent. The proposed assessment rate of $0.19 is $0.03 higher than the 1999–2000 rate. The quantity of assessable avocados for the 2000–2001 season is estimated at 900,000 55-pound bushel containers. Thus, the $0.19 rate should provide $171,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee?s authorized reserve, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2000–2001 fiscal year include $69,000 for salaries, $35,000 for national enforcement, $20,000 for research, $14,898 for employee benefits, and $13,782 for insurance and bonds. Budgeted expenses for these items in 1999–2000 were $46,000, $27,000, $39,500, $10,040, and $8,955, respectively.

The Florida Lime and the Florida Avocado Administrative Committees share certain costs (staff, office space, and equipment) for economy and efficiency (7 CFR part 911 and 915). Each Committee's share of these costs is based upon the amount of work performed and time devoted to administration. To reflect its increased share of the workload and resources, the Avocado Administrative Committee needs to fund a greater share of the costs. An increased budget for avocados is needed to accomplish this.

The Committee reviewed and unanimously recommended 2000–2001 expenditures of $186,333, which include increases in administrative and office salaries, and local and national enforcement. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Budget Subcommittee. Alternative expenditure levels were discussed. However, the Committee ultimately determined that the recommended expenditures were appropriate to reflect its increased share of the workload and resource demands. The assessment rate of $0.19 per 55-pound bushel container or equivalent of assessable avocados was then determined by dividing the total recommended budget by the quantity of assessable avocados, estimated at 900,000 55-pound bushel containers or equivalents for the 2000–2001 fiscal year. This is approximately $11,000 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal year indicates that the average grower price for the 2000–2001 season could be close to $17.90 per 55-pound bushel container or equivalent of avocados. Therefore, the estimated assessment revenue for the 2000–2001 fiscal year as a percentage of total grower revenue could be one percent.

This action would increase the assessment obligation imposed on

handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Florida avocado industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the March 8, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Florida avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2000–2001 fiscal period began on April 1, 2000, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable avocados handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is proposed to be amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 915.235 is revised to read as follows:

§ 915.235 Assessment rate.

On and after April 1, 2000, an assessment rate of $0.19 per 55-pound bushel container or equivalent is established for avocados grown in South Florida.

Dated: April 11, 2000.

James R. Frazier,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–9451 Filed 4–14–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 91 and 161

[Docket No. 99–053–1]

Origin Health Certificates for Livestock Exported From the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the animal export regulations to allow origin health certificates issued for animals intended for export from the United States to be valid for longer than 30 days in some cases, based on the requirements of the country of destination. Currently, origin health certificates for animals intended for export from the United States must certify that the animals were inspected within the 30 days prior to the movement for export. They must also contain information about any tests required to be conducted prior to export. Generally, the animals are inspected and tested (or samples are taken for testing) on the same day. However, some countries require or allow testing to be conducted more than 30 days prior to the date of export. This action would allow animals to be inspected for the origin health certificate as early as the required testing or sampling may be performed, in accordance with the requirements of the country of destination. We believe this can be allowed without increasing the risk of infected or exposed animals being exported, since all livestock leaving the United States by sea or air are inspected again by a U.S. Department of Agriculture veterinarian within 24 hours of export; and animals exported to Canada or Mexico by land are inspected by those nations prior to crossing the land border. This action would simplify the export process and reduce costs for exporters.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by June 16, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–053–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 99–053–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Najam Q. Faizi, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–5256.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States. Section 91.3 of the regulations provides, among other things, that all animals intended for exportation to a foreign country must be accompanied from the State of origin of the export movement to the port of embarkation or the border of the United States by an origin health certificate. The origin health certificate must certify that the animals were inspected within the 30

days prior to the date of the movement of the animals for export and that they were found to be healthy and free from evidence of communicable disease and exposure to communicable disease. The origin health certificate must be issued by an Animal and Plant Health Inspection Service (APHIS) representative or an accredited veterinarian and must be endorsed by an authorized APHIS veterinarian in the State of origin of the export movement. The origin health certificate must individually identify the animals in the shipment as to species, breed, sex, and age and, if applicable, must also show registration name and number, natural markings, and acquired markings. The origin health certificate must also include all test results, certifications, or other statements required by the country of destination.

Section 91.3(c) requires that all samples for tests required by the regulations be taken by an inspector or accredited veterinarian in the State of origin of the export movement. Further, § 91.3 requires that the samples be taken and tests made within the 30 days prior to the date of the export movement, with the following exceptions: The Administrator may permit sampling and testing more than 30 days prior to the date of export if required by the receiving country, and the tuberculin test may be conducted within the 90 days prior to the date of the movement of the animals for export.

The provision allowing sampling and tests more than 30 days prior to the date of export if required by the receiving country is intended to cover those cases where the country of destination either allows testing earlier than 30 days prior to the date of export, or requires earlier testing. For example, sometimes the country of destination wishes to test the animals again upon arrival. Since a certain interval of time must elapse between tests, the country requires pre-export testing to be conducted more than 30 days prior to the date of export.

When preparing animals for exportation, exporters normally request the accredited veterinarian or APHIS representative who takes samples for testing to inspect the animals and issue the origin health certificate at the same time. Exporters who have their animals inspected and obtain an origin health certificate more than 30 days prior to the date of export arrive at the port of embarkation or the border with an invalid origin health certificate. This is because, as explained earlier, § 91.3(a) requires the origin health certificate to certify that the animals were inspected within the 30 days prior to the date of export. Exporters must then obtain a second origin health certificate. The services of an APHIS representative or accredited veterinarian are required, there is a fee for the issuance of the origin health certificate, and the exporter is inconvenienced.

We are proposing to amend the regulations to allow animals to be inspected for the origin health certificate as early as the required sampling or testing may be performed, in accordance with the requirements of the country of destination. Although this change will mean that some animals will be inspected for export in the State of origin more than 30 days prior to export, all animals leaving the country are inspected an additional time. In accordance with § 91.15 of the regulations, all animals leaving the country by sea or air must be inspected by an APHIS veterinarian within 24 hours of embarkation at an export inspection facility at an authorized port. All animals offered for exportation into Mexico or Canada through a land border port are inspected at the border by Mexican or Canadian officials before being authorized entry into Mexico or Canada. Thus, there is another opportunity to inspect the animals for evidence of disease or exposure to disease before they are exported from the United States.

This action would simplify the export process and reduce costs for those exporters who now must secure a new origin health certificate at the port of embarkation or border because they were unaware of the current time limitations for the export certificates.

In conjunction with this proposed amendment, we also propose to amend § 91.3(c). As explained earlier in this document, § 91.3(c) now provides that the Administrator may permit sampling and testing more than 30 days prior to the date of export if required by the receiving country. This wording does not adequately cover cases where a receiving country allows (rather than requires) sampling or testing more than 30 days prior to the date of export. Therefore, we propose to change this language to provide that the Administrator may permit sampling and testing more than 30 days prior to the date of export when required or allowed by the country of destination.

We also propose to amend § 91.3(a) and (c) to replace the phrase "the date of the movement of the animals for export" with "the date of export." We currently use both phrases in § 91.3(a) and (c) in various places. It is not clear from "the date of the movement of the animals for export" whether we mean the date that animals move from their premises of origin to the port of embarkation or border, or the date the animals move from the port of embarkation or across the border. We mean the latter, and we believe using the term "date of export" consistently will help clarify that.

Further, we propose to amend 9 CFR part 161, "Requirements and Standards for Accredited Veterinarians and Suspension or Revocation of Such Accreditation." Currently, § 161.3(b) states that certificates, forms, records, and reports issued by an accredited veterinarian shall be valid for 30 days following the date of inspection of the animal identified on the document. We propose to amend § 161.3(b) to allow an origin health certificate to be valid for more than 30 days when the Administrator allows the animals to be inspected more than 30 days prior to the date of export in accordance with § 91.3.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The regulations currently require all animals intended for exportation from the United States to be accompanied from the State of origin to the port of embarkation or the border of the United States by an origin health certificate. The origin health certificate must be issued by an APHIS representative or an accredited veterinarian. It must certify that the animals were inspected within 30 days of being exported and were found to be healthy and free from evidence of communicable disease and exposure to communicable disease. The origin health certificate must also include all test results, certifications, or other statements required by the country of destination. If required by the country of destination, the Administrator may permit sampling and testing more than 30 days prior to the date of export.

We are proposing to amend part 91 to allow animals to be inspected for the origin health certificate as early as the sampling or testing may be performed. We also propose to amend part 161 to allow an origin health certificate to be valid for more than 30 days when animals are allowed to be inspected more than 30 days prior to the date of movement for export in accordance with § 91.3.

Costs

Currently, exporters who have their animals inspected and obtain an origin health certificate more than 30 days

prior to the date of export must obtain a new origin health certificate when the animals arrive at the port of embarkation or the border. On average, it costs $150 to have a veterinarian inspect animals for export and issue an origin health certificate. If this proposal is adopted, the original origin health certificate will still be valid when the animals arrive at the port of embarkation or the border, and the exporter will not incur the costs of obtaining an additional origin health certificate.

Live Animal Exports

United Nations trade data show that U.S. exports of live animals are worth more than half a billion dollars a year (see tables 1 and 2). On average, U.S. exports of live animals from 1993 through 1998 were distributed as follows: More than 40 percent went to Mexico and Canada, approximately 15.3 percent went to Japan, approximately 2 percent went to Brazil, 1.4 percent went to Turkey, 1.1 percent went to the Republic of Korea (Korea), and less than 1 percent went to Egypt or Taiwan. Of these countries, Brazil, Egypt, Japan, Korea, Taiwan, and Turkey provide for sampling and testing of live animals more than 30 days prior to exportation from the country of origin.

TABLE 1.—U.S. EXPORTS OF LIVE ANIMALS

[In $1,000]

Year	Mexico	Canada	Brazil	Egypt	Japan	Korea	Taiwan	Turkey	Rest of the world	Total
1993	$108,679	$127,058	$12,339	$1,337	$39,667	$4,777	$3,116	$2,339	$219,615	$518,927
1994	149,747	146,578	12,415	2,800	47,516	6,740	3,496	1,136	216,924	587,352
1995	31,409	124,974	14,179	2,196	110,646	8,856	2,791	7,689	216,502	519,242
1996	81,119	105,130	10,598	6,362	103,228	7,412	3,236	9,307	206,141	532,533
1997	207,854	104,699	13,358	2,261	108,049	7,975	2,237	2,042	235,364	683,839
1998	140,632	132,178	9,969	5,569	72,156	3,568	1,919	9,616	302,545	678,152

TABLE 2.—U.S. EXPORTS OF LIVE ANIMALS

[As a percent of total U.S. exports]

Year	Mexico	Canada	Mexico and Canada	Brazil	Egypt	Japan	Korea	Taiwan	Turkey	Brazil, Egypt, Japan, Korea, Taiwan, and Turkey
1993	21	25	45.4	2.4	0.3	7.6	0.9	0.6	0.5	12.3
1994	26	25	50.5	2.1	0.5	8.1	1.1	0.6	0.2	12.6
1995	6	24	30.1	2.7	0.4	21.3	1.7	0.5	1.5	28.2
1996	15.2	19.7	35.0	2.0	1.2	19.4	1.4	0.6	1.7	26.3
1997	30	15	45.7	2.0	0.3	15.8	1.2	0.3	0.3	19.9
1998	21	20	40.2	1.5	0.8	10.6	0.5	0.3	1.4	15.2

Kazakhstan, Turkmenistan, and Uzbekistan also provide for sampling and testing of live animals more than 30 days prior to exportation from the country of origin. These three Central Asian countries have imported relatively few live animals in the 6-years period from 1993 through 1998 and none from the United States. Table 3 shows the value of live animals imported into these three countries, based on United Nations data.

TABLE 3.—IMPORTS OF LIVE ANIMALS

[IN $1,000]

Year	Kazakhstan	Turkmenistan	Uzbekistan	All countries
1993	$600	$551	.....	$8,965,958
1994	29	.....	$400	9,556,484
1995	427	.....	200	10,020,452
1996	137	.....	200	9,925,704
1997	231	.....	200	8,991,483
1998	433	.....	200	8,991,071

This proposed rule would facilitate live animal exports from the United States to Brazil, Egypt, Japan, Kazakhstan, Korea, Taiwan, Turkey, Turkmenistan, Uzbekistan, and other countries that may allow or require animals to be tested, or samples to be taken for testing, more than 30 days prior to export from the United States. Approximately 19 percent of live animal exports from the United States went to these countries over the 6-year period from 1993 through 1998. We do not know how many of these shipments were made by small entities. However, all U.S. entities, including small entities, who export live animals to these countries would benefit from this proposal, albeit in a relatively small way, by not having to bear the costs of an additional origin health certificate, estimated at approximately $150 per shipment.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Lists of Subjects

9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 161

Reporting and recordkeeping requirements, Veterinarians.

Accordingly, we propose to amend 9 CFR parts 91 and 161 as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for part 91 continues to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 136, 136a, 612, 613, 614, and 618; 46 U.S.C. 466a and 466b; 49 U.S.C. 1509(d); 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 91.3, paragraph (a) and the second sentence in paragraph (c) would be revised to read as follows:

§ 91.3 General export requirements.

(a) All animals intended for exportation to a foreign country, except by land to Mexico or Canada, must be accompanied from the State of origin of the export movement to the port of embarkation by an origin health certificate. All animals intended for exportation by land to Mexico or Canada must be accompanied from the State of origin of the export movement to the border of the United States by an origin health certificate. The origin health certificate must certify that the animals were inspected within the 30 days prior to the date of export, except as follows: When the Administrator allows sampling or testing to be done more than 30 days prior to the date of export, in accordance with paragraph (c) of this section, then the animals also may be inspected within that same time period, and the origin health certificate will remain valid for that time period. The origin health certificate must certify that the animals were found upon inspection to be healthy and free from evidence of communicable disease and exposure to communicable disease. The origin health certificate must be endorsed by an authorized APHIS veterinarian in the State of origin and must include any test results added by the authorized APHIS veterinarian pursuant to § 161.3(k) of this chapter (any added test results must be initialed by the authorized veterinarian). The origin health certificate must individually identify the animals in the shipment as to species, breed, sex, and age and, if applicable, must also show registration name and number, tattoo markings, or other natural or acquired markings. The origin health certificate must include all test results, certifications, or other statements required by the country of destination.

* * * * *

(c) * * * The samples must be taken and tests must be made within the 30 days prior to the date of export, except that the Administrator may allow such sampling or testing to be conducted more than 30 days prior to the date of export if required or allowed by the receiving country, and the tuberculin test may be conducted within the 90 days prior to the date of export. * * *

* * * * *

PART 161—REQUIREMENTS AND STANDARDS FOR ACCREDITED VETERINARIANS AND SUSPENSION OR REVOCATION OF SUCH ACCREDITATION

3. The authority citation for part 161 continues to read as follows:

Authority: 15 U.S.C. 1828; 21 U.S.C. 105, 111–114, 114a, 114a–1, 115, 116, 120, 121, 125, 134b, 134f, 612, and 613; 7 CFR 2.22, 2.80, and 371.2(d).

4. In § 161.3, paragraph (b) would be revised to read as follows.

§ 161.3 Standards for accredited veterinarian duties.

* * * * *

(b) An accredited veterinarian shall not issue, or allow to be used, any certificate, form, record or report, until, and unless, it has been accurately and fully completed, clearly identifying the animals to which it applies, and showing the dates and results of any inspection, test, vaccination, or treatment the accredited veterinarian has conducted, except as provided in paragraph (c) of this section, and the dates of issuance and expiration of the document. Certificates, forms, records, and reports shall be valid for 30 days following the date of inspection of the animal identified on the document, except that origin health certificates may be valid for a longer period of time as provided in § 91.3(a) of this chapter. The accredited veterinarian must distribute copies of certificates, forms, records, and reports according to instructions issued to him or her by the Veterinarian-in-Charge.

* * * * *

Done in Washington, DC, this 11th day of April 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–9492 Filed 4–14–00; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Public Workshop on Risk-Informed Regulation—Option 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) will host a public workshop to provide an opportunity for discussion of the Nuclear Energy Institute's (NEI) guidance on special treatment requirements, advanced notice of proposed rulemaking, and possible alternative approaches to Option 2 in risk-informed regulations. The workshop is open to the public.

DATES: The workshop will be held on Thursday, April 27, 2000, from 9 a.m. to 5 p.m.

ADDRESSES: Ramada Inn Bethesda, Room Embassy III, 8400 Wisconsin Avenue, Bethesda, Maryland. The hotel's phone number is (301) 654–1000.

FOR FURTHER INFORMATION CONTACT: Egan Y. Wang, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–1076, email eyw@nrc.gov.

SUPPLEMENTARY INFORMATION: The discussion topics are tentative and

subject to change. Anyone interested in providing a presentation on these or other related topic(s), please contact Egan Wang at (301) 415–1076. This workshop will provide an opportunity to discuss topics related to Option 2 in risk-informed regulations.

Dated at Rockville, Maryland, this 11th day of March 2000.

For the Nuclear Regulatory Commission.

Cynthia A. Carpenter,

Chief, Generic Issues, Environmental, Financial and Rulemaking Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 00–9467 Filed 4–14–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 63

Public Meetings on Issues Associated with the Licensing Process for a Possible High-Level Waste Repository at Yucca Mountain, Nevada

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meetings in Las Vegas, Nevada and Pahrump, Nevada.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff will hold a series of public meetings on the high-level waste repository licensing process. The meetings are intended to foster a common understanding among the stakeholders on issues that would be associated with the licensing process, should the U.S. Department of Energy (DOE) submit a license application to the NRC for a possible geologic repository at Yucca Mountain, Nevada. All meetings will be facilitated by Francis X. Cameron, Special Counsel for Public Liaison, of the NRC Office of the General Counsel.

The first meeting in the series is an Information Workshop designed primarily for the professional staff of the affected interests. It is open to the public and will begin with an NRC overview of the licensing process, followed by NRC presentations on the role of information management and proceeding support, the role of the NRC technical staff in evaluating the DOE license application, and the NRC inspection process. Opportunities for questions and answers will be provided throughout the workshop. The time, date, and location of the Information Workshop is shown below.

The second meeting in the series is primarily to acquaint the public with the NRC's high-level waste licensing process. It will begin with an overview of the three topics addressed at the first meeting, followed by a question and answer period. In addition, members of the NRC staff will be available for informal discussion with members of the public. The time, date, and location of the Public Meeting is shown below. The NRC staff plans to hold a third meeting on the licensing process in Washington, DC later this year, and the time, date, and location of the meeting will be announced in the **Federal Register**.

TIME/DATE: The Information Workshop will be held on Thursday, May 4, 2000, from 8:00 a.m. to 12:00 noon (Pacific time).

PLACE: Clark County Government Center, Gold Room, 4th Floor, 500 South Grand Central Parkway, Las Vegas, Nevada 89155.

TIME/DATE: The Public Meeting will be held on Thursday, May 4, 2000, from 7:00 p.m. to 9:30 p.m (Pacific time).

PLACE: Mountain View Casino and Bowl, 1750 Pahrump Valley Boulevard, Pahrump, Nevada 89048.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Special Counsel for Public Liaison; Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington D.C. 20555–0001, or by telephone: (301) 415–1642 or e-mail: fxc@nrc.gov.

SUPPLEMENTARY INFORMATION: The NRC's proposed rule can be obtained from the NRC website (http://www.nrc.gov/NMSS/DWM/hlwreg.html), or by contacting Ms. Judy Goodwin at (301) 415–5870 or via e-mail at jcg@nrc.gov. Copies of the rule will also be available at the meetings.

Dated at Rockville, Maryland this 11th day of April, 2000.

For the Nuclear Regulatory Commission.

C. William Reamer,

Chief, High-Level Waste and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–9464 Filed 4–14–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–356–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120 series airplanes. This proposal would require revising the Airplane Flight Manual (AFM), and either installing hydraulic tube assemblies incorporating a check valve, or visually inspecting the check valve if already installed and corrective action, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent the landing gear doors from becoming blocked from opening during application of emergency procedures in the event of a loss of hydraulics.

DATES: Comments must be received by May 17, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–356–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Robert Capezutto, Aerospace Engineer, Systems and Flight Test Branch, ACE–

116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6071; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–356–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–356–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER EMB–120 series airplanes. The DAC advises that, in the event of the loss of the green hydraulic system pressure, if the present Airplane Flight Manual (AFM) "Free-Fall" operational procedure is not followed, there is a possibility that the landing gear doors may not open. Investigation revealed that blockage of the doors may occur due to the energizing of the landing gear door selector valve in the absence of hydraulic fluid. (The spool valve may not shift completely and may result in trapped fluid in the door's closure line.) This condition, if not corrected, could result in the landing gear doors becoming blocked from opening during application of emergency procedures in the event of a loss of hydraulics.

FAA's Determination

In light of this information, the FAA finds that certain cautionary statements should be included in the FAA-approved AFM to ensure that correct procedures are followed in the event of a loss of hydraulics. The FAA has determined that the procedures currently may not be defined adequately in the AFM for these airplanes.

Explanation of Relevant Service Information

Empresa Brasileira de Aeronautica S.A. (EMBRAER) has issued Service Bulletin 120–32–0077, Change 02, dated December 23, 1997, which describes procedures for installation of hydraulic tube assemblies incorporating a check valve. For airplanes already equipped with those check valves, the service bulletin describes procedures for a visual inspection to detect the check valve flow direction, and reorientation of the valve, if installed incorrectly. The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 97–05–03R2, dated March 16, 1998, in order to assure the continued airworthiness of these airplanes in Brazil. The installation of hydraulic tube assemblies incorporating a check valve is intended to modify the hydraulic system to make the landing gear "Free-Fall" system more tolerant to operational variations from AFM procedures. The Brazilian AD also mandates incorporation of an AFM revision of abnormal landing gear extension procedures.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require incorporation of a revision to the "Emergency Procedures" and "Abnormal Procedures" sections of the FAA-approved AFM. This revision includes cautionary statements to ensure that correct procedures are followed in the event of a loss of hydraulics. The AD would also require accomplishment of the actions specified in the service bulletin described previously.

Differences Between Proposed Rule and Brazilian Airworthiness Directive

The proposed AD differs from the parallel Brazilian airworthiness directive. This proposed AD would require the check valve installation within 2,000 flight hours after the effective date of the AD, whereas the original version of the Brazilian airworthiness directive mandated the installation within 400 hours after the effective date of that AD. The 2,000-flight-hour interval generally corresponds to a "C-check" maintenance period for the EMBRAER EMB–120. The FAA finds that a 2,000-flight-hour compliance time provides an adequate level of safety, and will allow operators to accomplish the installation at the next "C-check."

The Brazilian airworthiness directive mandates incorporation of a specific revision level for each of five different AFM's. Of these five, only AFM 120/794 is applicable to U.S.-registered airplanes. Thus, the proposed AD would mandate incorporation of Revision 45 to AFM 120/794.

Cost Impact

The FAA estimates that 213 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 1 work hour per airplane to incorporate the applicable AFM revision, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AFM revision proposed by this AD on U.S. operators is estimated to be $12,780, or $60 per airplane.

The FAA estimates that it would take approximately 1 work hour per airplane to perform the visual inspection of the check valve, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S.

operators is estimated to be $60 per airplane.

The FAA estimates that it would take approximately 2 work hours per airplane to install the hydraulic tube assemblies incorporating a check valve, and that the average labor rate is $60 per work hour. Required parts would cost approximately $2,021 per airplane. Based on these figures, the cost impact of the installation proposed by this AD on U.S. operators is estimated to be $2,141 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment.

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 99–NM–356–AD.

Applicability: Model EMB–120 series airplanes as listed in EMBRAER Service Bulletin 120–32–0077, Change 02, dated December 23, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the landing gear doors from becoming blocked from opening during application of emergency procedures in the event of a loss of hydraulics, accomplish the following:

(a) Within 10 flight hours after the effective date of this AD, revise the "Emergency Procedures" and "Abnormal Procedures" sections of the FAA-approved Airplane Flight Manual (AFM) by inserting into the AFM a copy of EMB–120 AFM 120/794, Revision 45, dated October 14, 1996.

(b) For airplanes on which the check valve has been installed in accordance with EMBRAER Service Bulletin 120–32–0077, dated February 7, 1997: Within 100 hours after the effective date of this AD, conduct a visual inspection to detect the check valve flow direction in accordance with Service Bulletin 120–32–0077, Change 02, dated December 23, 1997. If the check valve is installed incorrectly, prior to further flight, reinstall the check valve in the proper position in accordance with Change 02 of the service bulletin.

(c) For airplanes on which the check valve has not been installed in accordance with EMBRAER Service Bulletin 120–32–0077, dated February 7, 1997; or Change 01, dated September 29, 1997; or Change 02, dated December 23, 1997: Within 2,000 flight hours after the effective date of this AD, install hydraulic tube assemblies incorporating a check valve in accordance with Service Bulletin 120–32–0077, Change 01, dated September 29, 1997; or Change 02, dated December 23, 1997.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 97–05–03R2, dated March 16, 1998.

Issued in Renton, Washington, on April 11, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–9556 Filed 4–14–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–49–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–8 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration. This proposal would require a revision to the Airplane Flight Manual Supplement to ensure that the main deck cargo door is closed, latched, and locked; inspection of the door wire bundle to detect discrepancies and repair or replacement of discrepant parts. This proposal also would require, among other actions, modification of the hydraulic and indication systems of the main deck cargo door, and installation of a means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked. This proposal is prompted by the FAA's determination that certain main deck

cargo door systems do not provide an adequate level of safety, and that there is no means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked. The actions specified by the proposed AD are intended to prevent opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of flight control or severe structural damage.

DATES: Comments must be received by June 1, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–49–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael E. O'Neil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5320; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–49–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–49–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Supplemental Type Certificates (STC) SA1063SO and SA1377SO [originally issued to Aeronautical Engineers, Inc. (AEI)] specify a design for installation of a main deck cargo door, associated door cutout in the fuselage, door hydraulic and indication systems, and Class "E" cargo interior with a cargo barrier on McDonnell Douglas Model DC–8 series airplanes. STC SA1063SO installs the main deck cargo door and associated hydraulic and indication systems. STC SA1377SO installs the Class "E" interior with a cargo barrier, a cargo handling system, and a 9g crash barrier. The FAA has conducted a design review of Model DC–8 series airplanes modified in accordance with STC's SA1063SO and SA1377SO and has conducted discussions regarding the design with the STC holder. From the design review and these discussions, the FAA has identified several potential unsafe conditions. [Results of this design review are contained in "DC–8 Cargo Modification Review Team, Review of AEI Supplemental Type Certificates SA1063SO—Installation of a Cargo Door and SA1377SO—Installation of a Cargo Interior, Final Report, dated July 30, 1999," hereinafter referred to as "the Design Review Report," which is included in the Rules Docket for this NPRM.]

For airplanes modified in accordance with STC SA1063SO, this NPRM proposes corrective actions for those potential unsafe conditions that relate to the hydraulic and indication systems of the main deck cargo door and a means to prevent pressurization to an unsafe level if the main deck cargo door is not fully closed, latched, and locked. These conditions, if not corrected, could result in opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of flight control or severe structural damage.

Other Related Rulemaking

The FAA is considering further rulemaking to address the remaining potential unsafe conditions on Model DC–8 series airplanes modified in accordance with STC SA1063SO that relate to the main deck cargo door hinge and fuselage structure in the area modified by installation of a main deck cargo door. In addition, the FAA is considering further rulemaking to address the potential unsafe conditions on Model DC–8 series airplanes modified in accordance with STC SA1377SO that relate to the unreinforced main deck floor, 9g crash barrier, and fire/smoke detection system.

Main Deck Cargo Door Systems

In early 1989, two transport airplane accidents were attributed to cargo doors coming open during flight. The first accident involved a Boeing Model 747 series airplane in which the cargo door separated from the airplane, and damaged the fuselage structure, engines, and passenger cabin. The second accident involved a McDonnell Douglas DC–9 series airplane in which the cargo door opened but did not separate from its hinge. The open door disturbed the airflow over the empennage, which resulted in loss of flight control and consequent loss of the airplane. Although cargo doors have opened occasionally without mishap shortly after the airplane was in flight, these two accidents served to highlight the extreme potential dangers associated with the opening of a cargo door while the airplane is in flight.

As a result of these cargo door opening accidents, the Air Transport Association (ATA) of America formed a task force, including representatives of the FAA, to review the design, manufacture, maintenance, and operation of airplanes fitted with outward opening cargo doors, and to make recommendations to prevent inadvertent cargo door openings while the airplane is in flight. A design working group was tasked with reviewing 14 CFR part 25.783 [and its accompanying Advisory Circular (AC) 25.783–1, dated December 10, 1986] with the intent of clarifying its contents and recommending revisions to enhance future cargo door designs. This design group also was tasked with providing specific recommendations regarding design criteria to be applied to existing outward opening cargo doors to ensure that inadvertent openings would not occur in the current transport category fleet of airplanes.

The ATA task force made its recommendations in the "ATA Cargo Door Task Force Final Report," dated May 15, 1991 (hereinafter referred to as "the ATA Final Report"). On March 20, 1992, the FAA issued a memorandum to the managers of the Transport Airplane Directorate (TAD) and Los Angeles,

Seattle, and Atlanta Aircraft Certification Offices (hereinafter referred to as "the FAA Memorandum"), acknowledging ATA's recommendations and providing additional guidance for purposes of assessing the continuing airworthiness of existing designs of outward opening doors. The FAA Memorandum was not intended to upgrade the certification basis of the various airplanes, but rather to identify criteria to evaluate potential unsafe conditions identified on in-service airplanes. Appendix 1 of this AD contains the specific paragraphs from the FAA Memorandum that set forth the criteria to which the outward opening doors should be shown to comply.

Utilizing the applicable requirements of Civil Air Regulations (CAR) part 4b and the design criteria provided by the FAA Memorandum, the FAA has reviewed the original type design of major transport airplanes, including McDonnell Douglas Model DC–8 airplanes equipped with outward opening doors, for any design deficiency or service difficulty. Based on that review, the FAA identified unsafe conditions and issued, among others, the following AD's and NPRM:

- For certain McDonnell Douglas Model DC–9 series airplanes: AD 89–11–02, amendment 39–6216 (54 FR 21416, May 18, 1989);
- For all Boeing Model 747 series airplanes: AD 90–09–06, amendment 39–6581 (55 FR 15217, April 23, 1990);
- For certain McDonnell Douglas Model DC–8 series airplanes: AD 89–17–01 R1, amendment 39–6521 (55 FR 8446, March 8, 1990);
- For certain Boeing Model 747–100 and –200 series airplanes: AD 96–01–51, amendment 39–9492 (61 FR 1703, January 23, 1996);
- For certain Boeing Model 727–100 and –200 series airplanes: AD 96–16–08, amendment 39–9708 (61 FR 41733, August 12, 1996);
- For certain McDonnell Douglas Model DC–8 series airplanes: NPRM Rules Docket No. 99–NM–338–AD (64 FR 72689, December 22, 1999); and
- For certain McDonnell Douglas Model DC–8 series airplanes: NPRM Rules Docket No. 2000–NM–01–AD (65 FR 7796, February 16, 2000).

In late 1997, the FAA informed the STC holders and operators of Model DC–8 series airplanes that it was embarking on a review of Model DC–8 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration by STC. The FAA proposed at a subsequent industry sponsored meeting in early 1998, that DC–8 operators and STC holders work together to identify and address potential safety concerns. This suggestion to the affected industry resulted in the creation of the DC–8 Cargo Conversion Joint Task Force (JTF) (hereinafter referred to as "the JTF").

The current composition of the JTF includes holders of each of the six STC's that addresses the installation of a main deck cargo door in Model DC–8 series airplanes and operators and lessors of those modified airplanes. At the JTF's request, the FAA participates in its meetings to offer counsel and guidance with respect to the FAA's regulatory processes. The JTF is a clearinghouse for the gathering and sharing of information among the parties affected by the FAA review of STC cargo conversions of Model DC–8 series airplanes. The JTF also is a liaison between the FAA, operators, and STC holders.

The JTF has been working with the FAA to provide data relating to the number of STC modified Model DC–8 series airplanes and operators of those airplanes, and identified which airplanes are modified by each STC. It also was instrumental in polling the operators and providing maintenance schedules and locations to the FAA, which helped the FAA arrange visits to operators of airplanes modified by each of the STC's. These visits allowed the FAA to review both the available data supporting each STC and modified airplanes and to identify potential safety concerns with each of the STC modifications. Additionally, the JTF has coordinated funding of the industry review of the data supporting the STC's and ongoing efforts to resolve safety issues identified by the FAA.

Using the applicable requirements of CAR part 4b and the criteria specified in the FAA Memorandum as evaluation guides, the FAA, in collaboration with the JTF, conducted an engineering design review and inspection of an airplane modified in accordance with STC SA1063SO. The FAA identified a number of design features of the main deck cargo door systems of STC SA1063SO that are unsafe and do not meet the applicable requirements of CAR part 4b or the criteria specified in the FAA Memorandum. These systems include the door indication and hydraulic systems. The FAA design review team also determined that the design data of this STC did not include an adequate safety analysis of the main deck cargo door systems.

For airplanes modified in accordance with STC SA1063SO, the FAA considers the following five specific design deficiencies of the main deck cargo door systems to be unsafe:

1. Indication System

The main deck cargo door indication system for STC SA1063SO utilizes door warning lights at the door operator's control panel and the flight engineer's panel. The warning lights do not indicate either the door open or closed status, or latch or lock status. All three conditions (*i.e.*, door closed, latched, and locked) must be monitored directly so that the door indication system cannot display either "latched" before the door is closed or "locked" before the door is latched. If a sequencing error caused the door to latch and lock without being fully closed, the subject indication system, as currently designed, would not alert the door operator or the flight engineer of this condition. As a result, the airplane could be dispatched with the main deck cargo door unsecured, which could lead to the cargo door opening while the airplane is in flight.

The light on the flight engineer's panel is labeled "Cargo Door" and is displayed in red since it indicates an event that requires immediate pilot action. However, if the flight engineer is temporarily away from his station, a door unsafe warning indication could be missed by the pilots. In addition, the flight engineer could miss such an indication by not scanning the panel. As a result, the pilots and flight engineer could be unaware of or misinterpret an unsafe condition and could fail to respond in the correct manner. The warning lights have a "Press-to-Test" feature which is adequate to check the light bulb functionality, but is not adequate to check the cargo door closed, latched, and locked functions. Therefore, an indicator light that monitors all three conditions (*i.e.*, door closed, latched, and locked) must be located in front of and in plain view of both pilots since one of the pilot's stations is always occupied during flight operations.

During an FAA review of STC modified airplanes, instances of distress of the wire bundle between the fuselage and main deck cargo door and the associated attach hardware were noted. Therefore, a one-time general visual inspection of this area to detect crimped, frayed, or chafed wires is necessary to ensure the electrical continuity of the existing door indication system during the interim period.

2. Means to Visually Inspect the Locking Mechanism

The locking system of STC SA1063SO consists of a lock pin installed at one of the seven latches of the main deck cargo

door. The single view port of the main deck cargo door installed in accordance with STC SA1063SO monitors the position of the torque tube that actuates the door latches, but does not provide a means to ensure the position of the lock pin. Therefore, a means to visually inspect the door locking mechanism must be installed to ensure that the door is fully closed, latched, and locked.

As discussed in the ATA Final Report and the FAA Memorandum, there should be a means of directly inspecting each lock or, at a minimum, the locks at each end of the lock shaft of certain designs, such that a failure condition in the lock shaft would be detectable.

3. Means to Prevent Pressurization to an Unsafe Level

McDonnell Douglas Model DC–8 series airplanes modified in accordance with STC SA1063SO are not equipped with a means to prevent pressurization of the airplane to an unsafe level in the event that the main deck cargo door is not fully closed, latched, and locked. Therefore, such a means must be installed.

4. Powered Lock Systems

STC SA1063SO utilizes a nose gear squat switch to remove power (*i.e.*, electrical and hydraulic) from the door control master switch while the airplane is in flight. Latent failure of the squat switch together with other latent and/or single point failures could precipitate inadvertent door openings. Therefore, a means to remove power from the door controls must be installed to prevent inadvertent opening of the main deck cargo door in flight.

A systems safety analysis would normally evaluate and resolve the potential for these types of unsafe conditions. The need for a system safety analysis is identified in the ATA Final Report and the FAA Memorandum.

5. Lock Strength

Analysis of the existing latching and locking mechanism of the main deck cargo door indicates that in the event of a system jam, continued operation of the hydraulic cylinders could result in structural deformation of elements of the latching and locking mechanisms. Structural deformation of the locking mechanism could result in the single door latch equipped with a lock not being locked and consequent erroneous indication to the pilots that the latch is locked properly. Further, the FAA has determined that a lock on a single latch is inadequate to provide the level of safety envisioned by the applicable certification requirements. Therefore, the latching and locking systems for the main deck cargo door must be modified to prevent structural deformation, which could result in incorrect indication to the pilots that the door is not fully closed, latched, and locked.

Explanation of Requirements of Proposed Rule

Since unsafe conditions have been identified that are likely to exist or develop on other products of this same type design, the proposed AD would require, within 60 days after the effective date of this AD, a general visual inspection of the wire bundle of the main deck cargo door between the exit point of the cargo liner and the attachment point on the main deck cargo door to detect crimped, frayed, or chafed wires; a general visual inspection for damaged, loose, or missing hardware mounting components; and repair, if necessary. These actions would be required to be accomplished in accordance with FAA-approved maintenance procedures.

The proposed AD also would require, within 60 days after the effective date of the AD, a revision of the Limitations Section of the appropriate FAA-approved Airplane Flight Manual Supplement (AFMS) for STC SA1063SO by inserting therein procedures to ensure that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane; and installation of any associated placards. These actions would be required to be accomplished in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

The proposed AD also would require, within 18 months after the effective date of this AD, the following actions:

- Modification of the indication system of the main deck cargo door to indicate to the pilots whether the main deck cargo door is fully closed, latched, and locked;
- Modification of the mechanical and hydraulic systems of the main deck cargo door to eliminate detrimental deformation of the elements of the door latching and locking mechanisms;
- Installation of a means to visually inspect the locking mechanism of the main deck cargo door;
- Installation of a means to remove power to the door while the airplane is in flight; and
- Installation of a means to prevent pressurization to an unsafe level if the main deck cargo door is not fully closed, latched, and locked.

The modifications and installations would be required to be accomplished in accordance with a method approved by the Manager, Los Angeles ACO. Accomplishment of the modifications and installations would constitute terminating action for the inspections, AFMS revision, and associated placards described previously.

Cost Impact

There are approximately 15 Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 11 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the general visual inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the general visual inspections proposed by this AD on U.S. operators is estimated to be $660, or $60 per airplane, per inspection cycle.

It would take approximately 1 work hour per airplane to accomplish the AFMS revision and installation of associated placards, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFMS revision and installation of associated placards proposed by this AD on U.S. operators is estimated to be $660, or $60 per airplane.

The FAA estimates that it would take approximately 210 work hours per airplane to accomplish the modification required by paragraph (c) of the proposed AD, at an average labor rate of $60 per work hour. The FAA also estimates that required parts would cost approximately $45,000 per airplane. Based on these figures, the cost impact of this modification proposed by this AD on U.S. operators is estimated to be $633,600, or $57,600 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2000–NM–49–AD.

Applicability: Model DC–8 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration in accordance with Supplemental Type Certificate (STC) SA1063SO; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of flight control or severe structural damage, accomplish the following:

Actions Addressing the Main Deck Cargo Door

(a) Within 60 days after the effective date of this AD, accomplish a general visual inspection of the wire bundle of the main deck cargo door between the exit point of the cargo liner and the attachment point on the main deck cargo door to detect crimped, frayed, or chafed wires; and perform a general visual inspection for damaged, loose, or missing hardware mounting components. If any crimped, frayed, or chafed wire, or damaged, loose, or missing hardware mounting component is detected, prior to further flight, repair in accordance with FAA-approved maintenance procedures.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(b) Within 60 days after the effective date of this AD, revise the Limitations Section of the appropriate FAA-approved Airplane Flight Manual Supplement (AFMS) for STC SA1063SO by inserting therein procedures to ensure that the main deck cargo door is fully closed, latched, and locked prior to dispatch of the airplane, and install any associated placards. The AFMS revision procedures and installation of any associated placards shall be accomplished in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Actions Addressing the Main Deck Cargo Door System

(c) Within 18 months after the effective date of this AD, accomplish the actions specified in paragraphs (c)(1), (c)(2), (c)(3), (c)(4), and (c)(5) of this AD in accordance with a method approved by the Manager, Los Angeles ACO.

(1) Modify the indication system of the main deck cargo door to indicate to the pilots whether the main deck cargo door is fully closed, latched, and locked;

(2) Modify the mechanical and hydraulic systems of the main deck cargo door to eliminate detrimental deformation of elements of the door latching and locking mechanism;

(3) Install a means to visually inspect the locking mechanism of the main deck cargo door;

(4) Install a means to remove power to the door while the airplane is in flight;

(5) Install a means to prevent pressurization to an unsafe level if the main deck cargo door is not fully closed, latched, and locked.

(d) Compliance with paragraphs (c)(1), (c)(2), (c)(3), (c)(4), and (c)(5) of this AD constitutes terminating action for the requirements of paragraphs (a) and (b) of this AD, and the AFMS revision and placards may be removed.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Appendix 1

Excerpt from an FAA Memorandum to Director-Airworthiness and Technical Standards of ATA, dated March 20, 1992

"(1) *Indication System*:

(a) The indication system must monitor the closed, latched, and locked positions, directly.

(b) The indicator should be *amber* unless it concerns an outward opening door whose opening during takeoff could present an immediate hazard to the airplane. In that case the indicator must be *red* and located in plain view in front of the pilots. An aural warning is also advisable. A display on the master caution/warning system is also acceptable as an indicator. For the purpose of complying with this paragraph, an immediate hazard is defined as significant reduction in controllability, structural damage, or impact with other structures, engines, or controls.

(c) Loss of indication or a false indication of a closed, latched, and locked condition must be improbable.

(d) A warning indication must be provided at the door operators station that monitors the door latched and locked conditions directly, unless the operator has a visual indication that the door is fully closed and locked. For example, a vent door that monitors the door locks and can be seen from the operators station would meet this requirement.

(2) *Means to Visually Inspect the Locking Mechanism:*

There must be a visual means of directly inspecting the locks. Where all locks are tied to a common lock shaft, a means of inspecting the locks at each end may be sufficient to meet this requirement provided no failure condition in the lock shaft would go undetected when viewing the end locks. Viewing latches may be used as an alternate to viewing locks on some installations where there are other compensating features.

(3) *Means to Prevent Pressurization:*

All doors must have provisions to prevent initiation of pressurization of the airplane to an unsafe level, if the door is not fully closed, latched and locked.

(4) *Lock Strength:*

Locks must be designed to withstand the maximum output power of the actuators and maximum expected manual operating forces treated as a limit load. Under these conditions, the door must remain closed, latched and locked.

(5) *Power Availability:*

All power to the door must be removed in flight and it must not be possible for the flight crew to restore power to the door while in flight.

(6) *Powered Lock Systems:*

For doors that have powered lock systems, it must be shown by safety analysis that inadvertent opening of the door after it is fully closed, latched and locked, is extremely improbable."

Issued in Renton, Washington, on April 11, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AB53

Public Reporting by Operators of Certain Large Commodity Pools

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed regulations.

SUMMARY: In April of 1999, the President's Working Group on Financial Markets (comprised of the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Securities and Exchange Commission, and the Chairman of the Commodity Futures Trading Commission) (the "PWG") issued a report entitled "Hedge Funds, Leverage, and the Lessons of Long Term Capital Management: Report of The President's Working Group on Financial Markets" (the "PWG Report"). This report reviewed the events surrounding the near-collapse of Long Term Capital Portfolio, L.P.

The PWG Report contained eight recommendations. The first was that "more frequent and meaningful information on hedge funds should be made public" and the fourth was that "regulators should encourage improvements in the risk management systems of regulated entities." In furtherance of the first objective, the report specifically recommended that commodity pool operators ("CPOs") of large commodity pools should file quarterly reports, that these reports should "include more meaningful and comprehensive measures of market risk" such as "value at risk" and that these reports be published.

Consistent with this unanimous recommendation of the PWG, the Commission is proposing new Rule 4.27, which would require the CPOs of the largest commodity pools to provide to the Commission the specified aggregate financial and risk information on a quarterly basis. In order to provide context for the evaluation of this information, these CPOs would also be required to provide certain summary information about their risk management systems and practices.

DATES: Comments must be received on or before June 16, 2000.

ADDRESSES: Comments should be mailed to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155—21st Street, NW, Washington, DC 20581; transmitted by facsimile to (202) 418–5521; or transmitted electronically to (*secretary@cftc.gov*). Reference should be made to "Public Reporting by Operators of Certain Large Commodity Pools".

FOR FURTHER INFORMATION CONTACT: Robert B. Wasserman, Associate Director at *rwasserman@cftc.gov*, Tobey Kaczensky, Special Counsel at *tkaczensky@cftc.gov*, or James L. Carley, Attorney at *jcarley@cftc.gov*, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155—21st Street, NW., Washington, DC. 20581, Telephone (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Background

The events in 1998 involving highly leveraged hedge funds, particularly the near collapse of Long Term Capital Portfolio, L.P. ("LTCM"), raised concerns that problems at one such financial institution, under certain circumstances, could be transmitted to other financial institutions and pose material systemic risks to the financial system of the United States and to international financial systems. In the months following these events, the President's Working Group on Financial Markets (the "PWG") conducted a study of the events and their policy implications and, in April of 1999, issued "Hedge Funds, Leverage, and the Lessons of Long Term Capital Management: Report of The President's Working Group on Financial Markets" (the "PWG Report").[1]

The PWG Report stated that the "primary mechanism that regulates risk taking by firms in a market economy is the market discipline provided by creditors, counterparties (including financial contract counterparties), and investors."[2] The report observed, however, that "market discipline tends to be effective only when creditors have the incentives and the means to evaluate the riskiness of the firm."[3] The report concluded that investors and counterparties had "exercised minimal scrutiny of its risk management practices and [its] risk profile" and were "almost certainly not adequately aware" of the "nature of the exposures and risks [LTCM] had accumulated."[4] The report attributed this "insufficient monitoring" to "LTCM's practice of disclosing only minimal information" about itself that "did not reveal meaningful details about [its] risk profile."[5]

Thus, the members of the PWG unanimously recommended that "more frequent and meaningful information on hedge funds should be made public"[6] and that the public disclosures should include risk information. Specifically, the report recommended that: (i) registered CPOs operating large funds begin filing with the Commission quarterly, rather than annual, reports of financial information; (ii) in addition to traditional financial statements, these reports include more "meaningful and comprehensive measures of market risk (*e.g.*, value at risk or stress test results), without requiring the disclosure of proprietary information on strategies or positions;"[7] and (iii) these reports be published. Separately, the report recommended that "regulators should encourage improvements in the risk management systems of regulated entities."[8]

With respect to hedge funds that are not currently registered as CPOs, the PWG Report recommended that "a means for disclosure should be developed to ensure that similar financial information is provided to the public" but recognized that "Congress

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[1] As noted above, the President's Working Group on Financial Markets is comprised of the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Securities and Exchange Commission, and the Chairman of the Commodity Futures Trading Commission. A number of other federal agencies participated in the study, including the Council of Economic Advisers, the Federal Deposit Insurance Corporation, the National Economic Council, the Federal Reserve Bank of New York, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision.

[2] PWG Report at 25.

[3] Id.

[4] Id at 15.

[5] Id.

[6] Id at 31.

[7] PWG Report at 32–33.

[8] Id at 34.

would need to enact legislation that authorizes mechanisms for [such] disclosure."[9] On September 23, 1999, Representative Richard Baker of Louisiana introduced a bill which would require unregulated hedge funds to report certain financial and risk information to the Federal Reserve Board. As amended on March 16, 2000, and referred by the Subcommittee on Capital Markets to the full Committee on Banking and Financial Services, this legislation would require each such hedge fund or family of such hedge funds with total assets of $3 billion or net assets of $1 billion to report to the Board on a quarterly basis both "[m]eaningful and comprehensive financial information (such as a complete set of financial statements * * *)" and "[m]eaningful and comprehensive measures of risk (such as value-at-risk or stress test results)."[10]

In advocating the reporting of risk, as well as financial, information, the PWG report pointed out that financial leverage, particularly when measured by balance sheet leverage, does not by itself provide an adequate measure of risk because "for any given balance sheet leverage ratio, the fragility of a portfolio depends on the market, credit, and liquidity risks in the portfolio."[11] Financial information should be supplemented with a "statistical measure" such as "value-at-risk relative to net worth," which would "produce a more meaningful description of leverage in terms of risk."[12]

The PWG believes that improving the transparency of the risk profiles of hedge funds would help other market participants make more informed judgments about market integrity and the creditworthiness of borrowers and counterparties. Secretary of the Treasury Lawrence Summers recently noted that the public sector "can help to enhance the effectiveness of market discipline by creating an environment of greater transparency and disclosure. * * * [A]gencies should continue to apply the recommendations of the [PWG Report] that are designed to enhance the monitoring of leverage and risk, and to improve transparency, especially the steps to increase reporting by the largest hedge funds. * * *"[13]

Moreover, the PWG has not been the only group to recognize these advantages of greater public disclosure. The PWG's recommendations have met with the approval of international financial regulators. The International Organization of Securities Commissioners (IOSCO) released a report last November which stated that:

"The [hedge fund] information gap can, in principle, be addressed through greater public disclosure to permit market participants to assess [hedge fund] risks independently * * *. Market participants might use additional information * * * for a number of purposes, including making more informed decisions with respect to the pricing of transactions and the proper assessment of risks and returns inherent in investment and trading decisions."[14]

Similarly, the Financial Stability Forum, a group consisting of the U.S. Treasury and the Federal Reserve Bank of New York as well as the Basel Committee on Banking Supervision, IOSCO and financial regulators from the UK, France, Germany, Australia, Italy, and Hong Kong, released in March a report which stated that:

"The [FSF] Working Group firmly supports the objective of enhancing public disclosure by HLIs [highly leveraged institutions, or, hedge funds] and endorses U.S. efforts to achieve this through both regulation and legislation."[15]

The FSF Report went on to state that "[t]he Working Group agrees [with the PWG and IOSCO] that enhanced public disclosure by HLI's would be desirable."[16]

The regulations proposed today are intended to implement the PWG Report recommendations discussed above, and are consistent with the recommendations of the IOSCO Hedge Fund Report and the FSF Report. As described more fully below, they would require operators of the largest commodity pools to file, with respect to each pooled investment vehicle under their direct or indirect control, including vehicles which are not commodity pools, (1) an initial report that would provide summary descriptions of key aspects of their risk management practices, and (2) quarterly reports that would disclose both financial information and information about the exposure of the pool to market risk over the course of the quarter (but that would not reveal positions or trading strategies).

II. The Hedge Fund Reporting Regulation—Proposed Regulation 4.27

A. Persons Required To Report

1. Size and Leverage Thresholds

Proposed Section 4.27(b) would define a reporting person as a commodity pool operator that controls one or more pools where, at the end of a quarter, either (a) the controlled assets of such pool or pools total three billion dollars ($3,000,000,000) or greater or (b) the controlled net assets of such pool or pools total one billion dollars ($1,000,000,000) or greater. These thresholds are intended to limit the reporting requirement to the CPOs of funds whose activities potentially could have systemic risk effects. Any person which has met these thresholds at the end of any of the past three quarters is included as a reporting person in order to ensure a reasonable continuation of coverage of hedge funds which may be experiencing problems. Based on financial filings received pursuant to existing rules, the Commission believes that approximately twenty-five pool operators would be required to report under the proposed rule.

The Commission requests comment on whether these criteria for "reporting persons" are appropriate and whether other criteria should be applied.

2. The Effect of Current Exemptions

a. Pools Limited to Sophisticated Investors—Rules 4.7, 4.8 and 4.12(b)

Participation in many of the funds that would be subject to proposed Rule 4.27 is limited to large, sophisticated investors that are generally considered to need less protection than other customers. Pursuant to Rules 4.7, 4.8, and 4.12(b), these funds may be exempted from specified provisions of other Part 4 rules.[17] In contrast to other rules under Part 4, however, Rule 4.27 is not intended primarily as a means of customer protection. Rather, the regulation is intended to facilitate the exercise of market discipline by other market participants in their dealings with hedge funds that, because of their size, could potentially have systemic risk effects. The importance of facilitating market discipline, to the benefit of counterparties and the market at large, is independent of the sophistication of the investors in any particular pool. Accordingly, the proposed rule does not exempt funds from the provisions of Rule 4.27 on the grounds that participation in such funds

[9] *Id.* at 33.

[10] H.R. 2924, 106th Cong., 1st Sess. (2000).

[11] PWG Report at 24.

[12] *Id.*

[13] Remarks presented to the Futures Industry Association on March 17, 2000.

[14] "Hedge Funds and Other Highly Leveraged Institutions—Report of the Technical Committee of the International Organization of Securities Commissioners," November 1999 (hereinafter the "IOSCO Hedge Fund Report") at 24–25.

[15] "Report of the Working Group on Highly Leveraged Institutions" (hereinafter the "FSF Report") at 3.

[16] *Id.* at 31.

[17] Commission regulations referred to herein are found at 17 CFR Ch. 1 *et. seq.* (1999).

is limited to large, sophisticated investors.

b. Pools That Have Received Exemptions on a Case by Case Basis

Rule 4.12(a) permits the Commission to "exempt any person or any class or classes of persons from any provision of this Part 4 if it finds that the exemption is not contrary to the public interest." A number of persons have received such exemptions on the grounds that participants in their pools are not in need of customer protections provided by the Part 4 rules. Most of these persons manage funds that would fall below the size threshold of Rule 4.27. However, for the reasons stated above, no person that controls any pool or pools that satisfy the thresholds of Section 4.27(b) and that has obtained relief pursuant to Rule 4.12(a) prior to the effective date of these rules will be exempt from Rule 4.27 by virtue of such relief. No person that obtains relief pursuant to Rule 4.12(a) in accordance with a Commission order or an exemptive letter issued subsequent to the effective date of these rules will be exempt from Rule 4.27 unless such order or letter expressly exempts such person from Rule 4.27.

c. Entities Excluded From the Definition of Commodity Pool

Rule 4.5 excludes certain entities from the definition of commodity pool operator on the grounds that they are otherwise regulated.[18] These entities include investment companies, insurance companies, banks, trust companies, and fiduciaries and employers subject to ERISA.[19] Proposed Rule 4.27, by its terms, would only apply to commodity pool operators. Therefore, entities excluded from the definition of commodity pool operator pursuant to Rule 4.5 would not be required to file reports under proposed Rule 4.27.

B. Reporting Requirements

Each reporting person would file two types of reports: (i) An initial set of qualitative descriptions of its risk management practices and (ii) quarterly reports disclosing quantitative financial and risk exposure information. The initial descriptions would be filed concurrently with the first quarterly report; thereafter, revised responses that reflect material changes, if any, to the initial descriptions would be filed concurrently with subsequent quarterly reports. Each quarterly report would be filed not later than thirty days after the end of each quarter.

As noted above, the discipline exercised by other market participants can provide a critical means of controlling excessive leverage and, thus, constraining the added market, credit, and funding liquidity risks generated thereby. Public disclosure of the information collected under this rule should help other market participants to make more informed judgments and to more effectively exercise market discipline. This discipline is expected to both constrain excessive leverage of reporting persons and encourage reporting persons to adopt best practices in risk management as such evolve within the industry. Accordingly, the Commission is proposing to disclose publicly both the initial descriptions and the quarterly reports.[20] Section 4.27(f). The Commission intends to make this information available over the Internet within one business day after receipt. Thus, the Commission effectively would serve as a conduit for transmitting this information to the public.

Discussions of the quantitative financial and risk information proposed to be reported on a quarterly basis are presented in sections 1 and 2 below, respectively. The qualitative risk management information to be reported initially is discussed in section 3. Specific filing and attestation requirements are set forth in section 4, while definitional matters are discussed in section 5.

1. Quarterly Reporting of Financial Information Under Rule 4.27

Market discipline can only serve as an effective check upon excessive leverage if other market participants can obtain meaningful information about a reporting person's financial condition on a reasonably timely basis. The PWG Report observed that "[c]urrently, the scope and timeliness of information made available about the financial activities of hedge funds are limited."[21] As noted above, the first of its recommendations was that "[h]edge funds should be required to disclose additional, and more up-to-date, information to the public" and that CPOs should file "quarterly reports rather than annual reports."[22] Accordingly, consistent with the PWG Report's recommendations, Section 4.27(d)(1) of the proposed rule would require each reporting person to report on a quarterly basis certain key financial information for each pool under its control, including statements of income, financial condition, changes in financial position, and changes in net asset value.

2. Quarterly Reporting of Risk Exposure Information Under Rule 4.27

Leverage has been described within the hedge fund industry not as an independent source of risk but, rather, as "a factor that influences the rapidity with which changes in market risk, credit risk or liquidity risk factors" create losses.[23] It has been noted that "the market risk inherent in a [hedge fund], coupled with the constraints imposed by funding liquidity, make the amplifying effect of leverage of particular concern to [hedge fund managers]."[24] The PWG emphasized that leverage is not an adequate measure of risk because "for any given balance sheet leverage ratio, the fragility of a portfolio depends on the market, credit, and liquidity risks in the portfolio."[25]

Accordingly, the Commission believes that, in order to fairly portray the risk profile of reporting persons, the quarterly financial information discussed above should be supplemented with certain quantitative risk information. Currently, the most widely accepted methodology of calculating exposure to market risk is value-at-risk (also called "capital-at-risk"). Value-at-risk is calculated using statistical techniques, and represents the largest dollar loss[26] which is expected to be suffered over a given investment horizon or "holding period" (for example, one day or ten days) with a given degree of certainty or "confidence level" (for example, 95% or 99.6%).[27] Because it is expressed in dollars, value-at-risk for a particular entity can be compared over time and, in some circumstances, across multiple entities

[18] See 50 FR 15868 (April 23, 1985).

[19] The Employment Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001–1381 (1982), as amended by the Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No 96–364, 94 Stat. 1208 (1980).

[20] Section 8(a)(1) of the Commodity Exchange Act, 7 U.S.C. 12(a)(1), provides that "the Commission may not publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers." The disclosure called for by proposed Rule 4.27 is of aggregate information which would not require the disclosure of information covered by Section 8(a)(1).

[21] PWG Report at 32.

[22] *Id.*

[23] Caxton Corporation, Kingdon Capital Management, LLC, Moore Capital Management, Inc., Soros Fund Management, LLC, and Tudor Investment Corporation, "Sound Practices for Hedge Fund Managers," February 2000 at I–1 and I–2 (hereinafter the "Industry Sound Practices report").

[24] *Id.*

[25] PWG Report at 24.

[26] As used herein, the term "loss" means any adverse change in the value of a pool's portfolio, whether realized or unrealized. See *infra* at 20.

[27] Value-at-risk can, of course, be measured in any currency.

(for example, when all such entities compute value-at-risk using the same confidence level and holding period). Most importantly, value-at-risk incorporates correlations among positions in the portfolio without revealing the positions themselves; it does not compromise the confidentiality of a firm's trading strategies.

The methodology commonly understood as "value-at-risk" may, in the future, be replaced by some other method of measuring of market risk. Indeed, one or more reporting persons may already have developed such an alternative method. Accordingly, for purposes of proposed Rule 4.27 and in the discussion below, the term "VAR" shall mean any measure of exposure to market risk, including value-at-risk, that can be expressed in dollars and that represents the amount that a pool's losses during a stated period are expected not to exceed, with a stated degree of certainty.

VAR would complement traditional balance sheet measures of leverage by giving other market participants insight into the magnitude of the firm's exposure to losses. Under Section 4.27(d)(2)(i), each reporting person would be required to report for each pool under its control the highest, lowest, and ending VAR calculated during the reporting period at each confidence level and holding period for which VAR is normally calculated by the reporting person. However, as further discussed below, the proposed rule would not require disclosure of stress test results so as not to discourage reporting persons from conducting the most rigorous stress tests.[28] Some reporting persons may conduct stress testing by calculating VAR at extremely high confidence levels. Accordingly, no reporting person would be required to report VAR calculated at a confidence level in excess of 99.6%. (This is the confidence level corresponding to a VAR not expected to be exceeded more often than once in a year of 250 trading days).

A matrix of VAR results (*e.g.*, for 95%, 98%, and 99.6% confidence levels) would be more informative than a single result. Accordingly, the proposed rule requires disclosure of the highest, lowest, and ending VAR at each confidence level and holding period for which VAR is calculated by the reporting person. The Commission is aware, however, that this approach might be more burdensome than requiring, for example, results at the single highest confidence level for which VAR is calculated. The Commission invites comment on the best approach to take in this regard.

Under Section 4.27(d)(2)(ii), each reporting person would be required to report for each holding period for which it calculates VAR the frequency during the quarter with which losses for each pool under its control exceeded the corresponding VAR for such pool (at the highest confidence level calculated not exceeding 99.6%). Each reporting person would also be required to report the dollar magnitude of the greatest loss experienced by each pool during the quarter. The importance of examining the magnitude, as well as the frequency, of losses in excess of VAR is exemplified by the recommendation of one group of hedge fund managers that "[e]ven if the frequency of changes in value in excess of that generated by the market risk model is within the expected range, if the observed change in the value of the portfolio differs significantly from the change that would be expected, given the composition of the portfolio and the observed changes in the market factors, [the hedge fund manager] should reconcile the difference."[29]

Many hedge funds actively seek risk, and indeed serve the market by acting as "risk absorbers;" that is, "by standing ready to lose capital, [they] act as a buffer for other market participants in absorbing 'shocks.'"[30] The ratio of VAR to net asset value ("NAV") provides an indication of the ability of a firm to absorb the losses that it is likely to experience during normal market conditions. This type of ratio very usefully relates the separate concepts of leverage and risk to one another. The Industry Sound Practices report recommends that hedge fund managers track the leverage of their funds by "using 'risk-based leverage' measures reflecting the relationship between the riskiness of a * * * portfolio and the capacity * * * to absorb the impact of that risk." "VAR/Equity" is one of several such measures mentioned in the report.[31]

To be sure, the calculation of VAR is highly sensitive to the selection of the confidence level at which it is measured, and the holding period over which it is calculated. There is no widely accepted standard for either of these parameters. For example, a 95% one-day VAR for a particular firm may be a relatively low dollar value that is expected to be exceeded every month (95% covering 19 out of 20 trading days in a month). By contrast, a 99.6% one-day VAR for the same firm might be a significantly larger dollar value that is not expected to be exceeded more often than once a year (99.6% covering 249/250 trading days). Many firms use each of these confidence levels and still other firms use levels of 98%, 99%, and so forth.

The Commission has considered whether it would be advisable to ensure that reported VAR information would remain directly comparable across multiple firms. To do so, the Commission would have to mandate the confidence level and holding period for which firms would be required to calculate and report VAR. This would mean, however, that some firms might be compelled to begin calculating VAR information that they do not already prepare and that would be inconsistent with the information used internally to manage trading activities. The Basel Committee on Banking Supervision ("Basel") and IOSCO have recognized that the objectives of comparability across firms and consistency with internal risk management systems are not always compatible. They have emphasized the latter objective because "linking public disclosure to internal risk management processes helps ensure that disclosure keeps pace with innovations in risk measurement and management techniques."[32]

The Commission believes that it is more important to ensure consistency with internal practices and proposes to require reporting persons to report VAR only for confidence levels and holding periods for which VAR is routinely calculated for internal purposes. This approach would provide other market participants with information which is consistent with information the pool's management utilizes in managing risk internally, in addition to imposing a lighter regulatory burden upon reporting persons.

Nor is the Commission proposing to specify a particular method or model that a firm should use to calculate VAR. To do so could create significant burdens for reporting persons and, given the rapid pace of innovation in both financial engineering and risk management, would be of questionable utility. Rather, the Commission is following the "internal model" approach chosen by Basel and IOSCO.

The Commission does seek to encourage firms to use accurate, reliable VAR models, and would do so by mandating the disclosure of the firms'

[28] See discussion *infra* at 14–15.

[29] Industry Sound Practices report at 17.

[30] *Id.* at 3.

[31] *Id.* at 19–20

[32] Basel and IOSCO, "Recommendations for Public Disclosure of Trading and Derivatives Activities of Banks and Securities Firms," October 1999, at 6 (hereinafter the "Basel/IOSCO Disclosure Recommendations").

backtesting results. Backtesting is a process by which the losses implied by the VAR calculation are compared to the losses experienced.[33] The results of this comparison provide valuable information about the validity of a firm's VAR model.[34] The Commission believes that market discipline will be facilitated by disclosing this information, so that other market participants may reach their own conclusions as to the accuracy of the firm's VAR, and the reliability of the firm's risk management systems. For example, if a firm calculates VAR at a 95% confidence interval over a one-day holding period, the expected value for the number of trading days that the VAR figure will be exceeded over a quarter-year of approximately 60 trading days is three (60 trading days × 95% = 57; 60 − 57=3). If a firm's actual one-day losses exceeded its calculated 95% one-day VAR on ten separate occasions during a quarter, and no sufficient explanation is provided, other market participants might conclude that the VAR calculated by the firm is of questionable reliability, and might draw adverse inferences concerning the firm's risk management.

Even when validated by solid backtest results, however, VAR provides only part of the information necessary to fully evaluate a firm's exposure to market risk. VAR represents merely the loss that is not expected to be exceeded under "normal" market conditions; it provides no information whatsoever about the possible extent of losses under "abnormal" market conditions. Even if VAR accurately predicts the worst loss that would occur in 99.6% of the trading days over a year (250 × 99.6% = 249), it would not provide any information as to the magnitude of potential losses on the remaining 0.4% of the trading days (250 × 0.4% = 1). A reporting person can only explore the potential extent of such extraordinary losses by conducting stress tests.

Stress tests involve subjecting models of the firm's positions to various sets of extreme market conditions and measuring the losses that would result.[35] These conditions might include historical circumstances, such as the 1987 stock market drop or the 1998 Russian loan default, or hypothetical scenarios specifically designed to stress the firm's current positions. Consequently, the results of properly performed stress tests can show extraordinarily high hypothetical losses. For example, a firm with total assets of $3 billion, a net asset value of $500 million, and a 99.6% one-day VAR of $100 million (*e.g.* a VAR-to-NAV ratio of only 20% which many might consider quite adequate) could very likely, through rigorous stress tests, generate modeled losses well in excess of $500 million.

If reporting persons were compelled to publicly disclose their stress test results, they might be discouraged from performing the most rigorous stress tests that they could develop and might not learn of and address potential weaknesses in their portfolio strategies. Therefore, the proposed rule would not require reporting persons to report stress test results. Rather, reporting persons would be required simply to report whether stress tests have been performed during the quarter and, if so, whether the results of such tests are communicated to an appropriate level of management.

The reporting person would be permitted (but not required) to provide any other information with which it might wish to supplement the reported VAR information. This information would be posted publicly along with the required information.

3. Initial Reporting Concerning Risk Management Practices Under Rule 4.27

As discussed above, the Commission is not proposing to mandate use of specific parameters or methodologies for monitoring the risk exposures. This means, however, that for the quantitative information in the quarterly reports to be useful to other market participants, some additional information must be made available to enable the quarterly reports to be placed in context.

The Commission therefore proposes that each reporting person submit narrative descriptions of their practices in five areas set forth in Section 4.27(c)(2). These cover the reporting person's policies, procedures, and systems for supervising, monitoring, and reviewing market, credit, and funding liquidity risks generated by its financing, trading, and investment activities. Initially, each reporting person would be required to submit an entire set of responses. Thereafter, a revised set of responses would be required following any material change in those policies, procedures, or systems. Such updated responses would be due concurrently with the submission of the next quarterly report required under Section 4.27(d)(2).

The Commission has developed the topics described below based on a review of discussions of "best practices" from both governmental organizations[36] and private industry.[37] It is important to note that the Commission is not proposing to require reporting persons to use any of the tools that are the subjects of the inquiries. This is consistent with the caveats in the private industry reports, which emphasize that the best practices they discuss may not be appropriate for hedge funds of all sizes.[38] Rather, the Commission is simply proposing that reporting persons be required to disclose to the market information about its use of such tools, along with any additional information the reporting person might believe is necessary to put that disclosure in context. It would then be up to a reporting person's counterparties to determine whether or not the reporting person's risk management efforts are adequate, and the appropriate steps to take in light of that determination. Thus, these reports are expected to lead to improvements in risk management systems as market discipline encourages firms to adopt best practices as they evolve in the industry.

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[33] "By comparing actual changes in the value of the portfolio to the changes generated by the VAR calculation, the [hedge fund manager] can gain insight into whether the VAR model is accurately measuring a [hedge fund's] risk." Industry Sound Practices report at I–13.

[34] "[I]f the frequency of changes in value of the portfolio exceeds the frequency generated by the market risk model (a statistical expection based on the confidence level of the market risk model), such deviation should be scrutinized to determine its source." *Id.* at 16.

[35] Hedge fund managers are advised to "perform 'stress tests' to determine how potential changes in market conditions could impact the market risk of [their] portfolio[s]. * * * [and] also consider conducting 'scenario analyses' to benchmark the risk of the [the fund's] current portfolio against various scenarios of market behavior (historical or prospective) that are relevant to the [manager's] trading activities (*e.g.* the October 1987 stock market event, the Asian financial crisis * * *)." Industry Sound Practices report at 15–16.

[36] See generally PWG Report; Basel and IOSCO, "Trading and disclosures of Banks and Securities Firms—Results of the Survey of Public Disclosures in 1998 annual Reports," December 1999; the IOSCO Hedge Fund Report; the Basel/IOSCO Disclosure Recommendations; Basel, "Sound Practices for Banks' Interactions with Highly Leveraged Institutions," January 1999; Basel/IOSCO, "Framework for Supervisory Information about Derivatives and Trading Activities," September 1998; IOSCO, "Principles for the Supervision of Operators of Collective Investment Schemes," September 1997; and Basel, "Supervisory Framework for the Use of 'Backtesting' in Conjunction with the Internal Models Approach to Market Risk Capital Requirements," January 1996.

[37] See generally the Industry Sound Practices Report and the Counterparty Risk Management Policy Group (or "CRMPG," a group of major commercial and investment banks), "Improving Counterparty Risk Management Practices," June 1999 (hereinafter the "CRMPG Report").

[38] See, e.g., CRMPG Report at 2 and Industry Sound Practices report at 2.

Topic 1—Approach to Risk Management

The first topic is the reporting person's overall approach to risk management. A responsive disclosure would include a discussion of the extent to which the reporting person has established an independent risk monitoring function within its organization, the extent of that function's resources and the nature of its authority, the types of risk monitoring techniques the reporting person employs, and the ways in which senior management is involved in risk management.[39]

The Commission believes this information would be of particular value in helping other market participants to develop an understanding of the strength of the reporting person's commitment to sound risk management practices. For example, information about the degree to which senior management is involved in risk monitoring, the authority which the risk monitoring function may exercise over other functions such as the trading desk, and the financial and human resources dedicated to risk management efforts could assist other market participants in gauging how rigorously the firm balances its risk taking against potential returns.

Topics 2 (Market Risk in Normal Markets) & 3 (Market Risk in Abnormal Markets)

The second and third topics both relate to the reporting person's approach to measuring and managing its exposure to market risk. The second topic is the method used by the reporting person to measure market risk during normal market conditions, how it validates its models (for example, backtesting), and whether its practices are tested by external auditors. These inquiries are intended to give other market participants insight into the reliability of the quantitative market risk information conveyed quarterly by reporting persons. The knowledge that a reporting person is utilizing contemporary techniques to measure market risk, has addressed major problem areas with input data, and subjects its methodologies to backtesting and external audits might give other market participants greater confidence in these quarterly numbers.

The third topic is the reporting person's use of stress tests, its policies and practices for ensuring that meaningful and realistic scenarios are used in stress tests, and the extent of management involvement in the process of developing scenarios and evaluating results. This information is important in helping other market participants evaluate the extent to which the reporting person prepares for abnormal market conditions. Stress tests are an essential tool for exploring the potential extent of extraordinary losses under such market conditions. The value of stress testing depends on the development and use of scenarios that are meaningful to the unique market positions of the reporting person. Ensuring that scenarios are meaningful requires the involvement of experienced and seasoned traders and managers.

Topic 4 (Credit Risk)

The fourth topic is credit risk; that is, the likelihood that trading counterparties will be unwilling or unable to perform their obligations to a reporting person (also sometimes called "default risk"). Credit risk is currently the focus of widespread efforts to develop quantitative measurement techniques similar to those that have been developed to measure market risk. However, these techniques are not yet as well developed nor are they as generally accepted as are the market risk measurement techniques such as value-at-risk. Accordingly, the Commission does not propose to require any disclosure of quantitative credit risk information in the quarterly reports.

The Commission does believe that other market participants will benefit from insight into the extent to and means by which a reporting person monitors its credit risk exposures. Therefore, under the proposal, each reporting person would be required to provide information about the basic processes by which it evaluates the creditworthiness of potential counterparties, whether it employs any of various methodologies to quantify its credit risk exposures, whether it monitors the concentration of its exposures, and whether it uses credit risk mitigation tools such as netting agreements.

Topic 5 (Funding Liquidity Risk)

The fifth topic is funding liquidity risk; that is, the risk that due to its capital structure or to constraints upon its ability to access additional external capital a reporting person will be unable to fund its operations or to fulfill its trading obligations without resorting to the unplanned liquidation of positions.[40]

The Commission has concluded that requiring a reporting person to disclose detailed information on its access to additional capital might impinge upon sensitive relationships and has decided not to propose requiring the disclosure of quantitative information about funding liquidity risk in the quarterly reports. Each reporting person would, however, be required to provide a description of the processes by which it monitors its funding liquidity, determines an appropriate limit on financial leverage, and ensures its ability to access additional capital when necessary.

4. Filing and Attestation

Proposed Section 4.27(e) would provide for the filing of required reports by mail and concurrently by e-mail. The Commission believes that electronic filing would expedite processing and publication of the data filed, and that the large, sophisticated entities that would be required to report under this regulation are likely to have the facilities to file reports in this matter without undue burden. The Commission proposes to require attestation of all required filings in a manner consistent with Section 4.22(h).

5. Definitional Matters

Proposed Sections 4.27(a)(1) and (7) refer to the definitions of commodity pool operator and net asset value set forth in § 4.10 of Part 4.

Section 4.27(a)(2) would define control as the direct or indirect power to direct or cause the direction of the management and policies of the pool, whether through the ownership of any share, partnership interest or other investment in the pool, by contract or otherwise. This definition is modeled after that found in regulation 12b–2 under the Securities Exchange Act of 1934, 17 CFR 240.12b–2.

Section 4.27(a)(3) would define controlled assets as the aggregate of all assets in one or more pools under common control. (Investments by one such pool in another are excluded to avoid double counting). Section

[39] The risk monitoring function "should report directly to [s]enior [m]anagement and be staffed with persons having sufficient experience and knowledge to understand [the fund's] trading strategies and the nature and risk of its investments." In addition, "[c]omprehensive and centralized systems for position and global exposure reporting and risk analysis should function independently of risk selection/portfolio management personnel so that trading activities and operations may be effectively supervised and compliance with trading policies and risk limits can be controlled." Industry Sound Practices report at 10.

[40] Hedge fund managers "should evaluate the stability of sources of liquidity and plan for funding needs accordingly, including a contingency plan in periods of stress * * * [including] taking into account potential investor redemptions and contractual arrangements that affect [the hedge fund's] liquidity (e.g. notice periods for reduction of credit lines by counterparties)." Industry Sound Practices report at 18.

4.27(a)(4) would define controlled net asset value in a similar manner.

Section 4.27(a)(5) would define governing authority of a pool to mean the pool's Board of Directors, managing member, general partner, trustee or similar person with the legal authority and responsibility to manage the affairs of the pool, while section 4.27(a)(10) would define senior management of a reporting person as the managing committee, group of executives, or other body with the authority and responsibility to direct and oversee the trading activities of a pool controlled by the reporting person.

Section 4.27(a)(6) would define loss as any adverse change, realized or unrealized, in the value of a pool's portfolio, as measured for risk management purposes. This definition focuses on losses as actually measured by the reporting person. This calculation excludes additions, withdrawals, and redemptions of capital.

Section 4.27(a)(8) would define pool as any investment trust, syndicate or similar form of enterprise that is controlled by a commodity pool operator.

Section 4.27(a)(9) would define reporting period as each calendar quarter; however, if all pools controlled by the same person have a fiscal year other than the calendar year, and all such pools have the same fiscal year, it shall mean each such fiscal quarter. The latter restriction is intended to avoid confusion in cases where multiple pools controlled by the same person have different fiscal years.

Section 4.27(a)(11) would define VAR as the amount, stated in U.S. dollars, which a pool's losses during a stated period (the "holding period") are expected, with a stated degree of certainty (the "confidence level"), not to exceed. This includes the statistical measure, "value-at-risk," currently calculated by many market participants, as well as any similar measure of market risk that may be developed or used.

III. Related Matters

A. Paperwork Reduction Act

Rule 4.27 contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Commission has submitted a copy of this section to the Office of Management and Budget (OMB) for its review.

Collection of Information

Rules Relating to the Public Reporting by Operators of Certain Large Commodity Pools, OMB Control Number 3038–XXXX.

The burden associated with the proposed new rule is estimated to be 1,125 hours which will result from new reporting requirements for certain large commodity pool operators (CPOs).

The estimated burden of the proposed new rule with respect to ongoing quarterly reports required under Section 4.27(d) of each entity that qualifies under Section 4.27(b) was calculated for each year in which Rule 4.27 is effective as follows:

Estimated number of respondents: 25
Annual responses by each respondent: 4
Total annual responses: 100
Estimated average hours per response: 5
Annual reporting burden: 500 hours

The estimated burden of the proposed new rule with respect to the initial report required under Section 4.27(c) of each entity in the year in which such entity first qualifies under Section 4.27(b) was calculated for the first year in which Rule 4.27 is made effective as follows:

Estimated number of respondents: 25
Annual responses by each respondent: 1
Total annual responses: 25
Estimated average hours per response: 25
Annual reporting burden: 625 hours

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235 New Executive Office Building, Washington, DC 20503, Attention: Desk Officer for the Commodity Futures Trading Commission.

The Commission considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155—21st Street, NW, Washington, DC 20581, (202) 418–5160.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–611, requires that agencies, in proposing regulations, consider the impact of those regulations on small businesses. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its regulations on such entities in accordance with the RFA.[41] The Commission has previously determined that FCMs and CPOs are not small entities for the purpose of the RFA.[42] Moreover, the regulations that are the subject of the present rulemaking apply, by their terms, only to extraordinarily large entities. The Chairman, on behalf of the Commission hereby certifies, pursuant to 5 U.S.C. 605(b), that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission specifically requests comment on the impact these proposed regulations might have on small entities.

List of Subjects in 17 CFR Part 4

Advertising, Commodity futures, Commodity interest, Commodity pool operators, Consumer protection.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, section 1a(4), 4l, 4m, 4n, and 8a, 7 U.S.C. 1a(4), 6l, 6m, 6n, and 12a, the Commission hereby proposes to amend Chapter I of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for Part 4 continues to read as follows:

[41] 47 FR 18618–18621 (April 30, 1982).
[42] 47 FR 18619–18620 (April 30, 1982).

Authority: 7 U.S.C. 1a.2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a and 23.

2. A new § 4.27 is proposed to be added to subpart B to read as follows:

§ 4.27 Public reporting by operators of certain large commodity pools.

(a) General definitions. For the purposes of this section:

(1) *Commodity pool operator* or *CPO* has the same meaning as "commodity pool operator" defined in section 1a(4) of the Commodity Exchange Act;

(2) *Control* means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise;

(3) *Controlled assets* means the sum of all assets in all pools controlled by the same person, exclusive of any interest that any pool controlled by such person may have in any other pool controlled by such person;

(4) *Controlled net asset value* or *CNAV* means the sum of the net asset values for all pools controlled by the same person, exclusive of any interest that any pool controlled by such person may have in any other pool controlled by such person;

(5) *Governing authority* means a pool's Board of Directors, managing member, general partner, trustee or similar person with the legal authority and responsibility to manage the affairs of the pool;

(6) *Loss* means any adverse change, realized or unrealized, in the value of a pool's portfolio, as measured for risk management purposes. This calculation excludes any additions, withdrawals, or redemptions of capital;

(7) *Net asset value* or *NAV* has the same meaning as "net asset value" as defined in § 4.10(b);

(8) *Pool* means any investment trust, syndicate or similar form of enterprise that is controlled by a commodity pool operator;

(9) *Reporting period* means either:

(i) Each quarter ending March 31, June 30, September 30, or December 31, or

(ii) In the case of a reporting person controlling one or more pools of which each has the same fiscal year that is not the calendar year, each quarter of such fiscal year for such pool(s);

(10) *Senior management* means the managing committee, group of executives, or other body of a reporting person with the authority and responsibility to direct and oversee the trading activities of a pool controlled by such reporting person; and

(11) *VAR* means the amount, stated in U.S. dollars, which a pool's losses during a stated period (the "holding period") are expected, with a stated degree of certainty (the "confidence level"), not to exceed.

(b) Persons required to report. (1) A reporting person is any commodity pool operator that:

(i) Controls one or more pools where, as of the last business day of a reporting period,

(A) The controlled assets of such pool or pools are equal to or greater than three billion dollars ($3,000,000,000); or

(B) The controlled net asset value of such pool or pools is equal to or greater than one billion dollars ($1,000,000,000); or

(ii) That qualified as a reporting person pursuant to this paragraph (b)(1) as of the last business day of any of the prior three reporting periods.

(2) For purposes of calculations pursuant to this paragraph (b), all amounts shall be converted to U.S. dollars at the rate in effect on the date for which such report is made.

(c) Initial reporting. Each reporting person shall file with the Commission, not later than 30 days after the end of the first reporting period during which such reporting person satisfies the requirements of paragraph (b) of this section, a report with respect to each pool under its control and each such report shall contain the name and address of the reporting person, the name of the pool with respect to which the report is being filed, and the following information:

(1) A narrative description of the strategic approach taken toward the management of market, credit, and funding liquidity risk exposures, including:

(i) The process by which the pool's governing authority sets standards for appropriate risk taking,

(ii) The structure, autonomy, and authority of the risk monitoring function,

(iii) The types of tests and tools used to control risk taking in trading and investment activities, and

(iv) The extent and frequency of risk information routinely provided to the governing authority and senior management;

(2) A narrative description of the technique (such as value-at-risk) used to measure, monitor, and manage the exposure of the pool to market risk, including discussions of, as applicable:

(i) Methodology (for example, historic, parametric, Monte Carlo, or quasi Monte Carlo),

(ii) Confidence levels and holding periods,

(iii) The evaluation of correlations within and among markets,

(iv) How the position liquidity of portfolios is monitored,

(v) How non-normally distributed data is handled,

(vi) Whether historic data is weighted,

(vii) How models are backtested or otherwise validated, and

(viii) How often models are tested by an external auditor;

(3) A narrative description of the use of stress tests to determine the magnitude of potential losses in excess of VAR, including discussions of:

(i) The methodologies used (for example, historic events, hypothetical scenarios, or matrix analysis),

(ii) Stress factors examined,

(iii) The extent of senior management's involvement with the design and construction of stress tests,

(iv) The extent to which stress test results are communicated to the governing authority and to senior management, and

(v) The policies established with respect to actions that management should take in response to results deemed incompatible with its risk appetite;

(4) A narrative description of the measurement, monitoring, and management of the pool's exposure to credit risk, including:

(i) How the creditworthiness of individual counterparties is evaluated,

(ii) Whether value-at-risk-style techniques for quantifying credit risk are utilized,

(iii) How the concentration of exposures to particular counterparties and sectors is monitored, and

(iv) Whether netting agreements and other credit risk mitigation tools are employed; and

(5) A narrative description of the measurement, monitoring, and management of the pool's exposure to funding liquidity risk, including:

(i) The approach taken toward managing financial leverage,

(ii) How the level of liquid reserves is determined, and

(iii) The extent of the authority, if any, to:

(A) Restrict withdrawals of capital or other redemptions of interests in the pool or repayments of subordinated debt,

(B) Compel additional contributions of capital, and

(C) Access committed lines of credit.

(6) If any tests, analyses, or practices discussed in paragraphs (c)(1) through (5) of this section are not performed, the reporting person should so state separately with respect to each item.

(d) Quarterly reporting. Each reporting person shall file with the Commission, not later than 30 days after

the end of each reporting period, a report with respect to each pool under its control. Each such report shall contain the name and address of the reporting person, the name of the pool with respect to which the report is being filed, and the following information:

(1) Financial information:

(i) A statement of financial condition as of the end of the reporting period;

(ii) A statement of income or loss for the reporting period;

(iii) A statement of changes in financial position for the reporting period; and

(iv) A statement of changes in net asset value over the reporting period which shall be prepared in accordance with § 4.22(a)(2).

(2) Risk information:

(i) The highest, lowest, and last VAR for the pool during the reporting period at each confidence level and holding period for which it was calculated by the reporting person; provided that VAR calculated for confidence intervals in excess of 99.6% need not be reported;

(ii) (A) For each holding period for which the reporting person calculated VAR, the number of occasions, if any, on which losses exceeded the corresponding VAR calculated for that holding period at the greatest confidence interval, not in excess of 99.6%, for which VAR was calculated by the reporting person and

(B) The dollar amount of the greatest loss during the reporting period, whether or not it exceeded the corresponding VAR;

(iii) A brief discussion of whether, during the quarter, stress tests were performed with respect to the pool's positions and, if so, whether the results thereof were reported to senior management and the governing authority; and

(iv) Any additional information which the reporting person wishes to present to supplement the information in paragraph (d)(2) of this section.

(3) Changes in risk management practices: If, for any pool controlled by the reporting person, there is any material change to the information provided pursuant to paragraph (c) of this section, as modified by previous submissions pursuant to this paragraph (d)(3) concerning that pool, the reporting person shall submit a revised set of responses pursuant to paragraph (c) of this section.

(4) All financial information shall be reported in accordance with generally accepted accounting principles consistently applied.

(e) Filing requirements. Each report required to be filed with the Commission under this section shall:

(1) Be signed in accordance with the requirements of § 4.22(h); and

(2) Be sent via first-class mail, postage prepaid, to: Commodity Futures Trading Commission, Three Lafayette Centre, 1155—21st Street, NW., Washington, DC 20581, Attention: Managed Funds Branch, *and* by attachment to an e-mail message addressed and sent to *hfreport@cftc.gov* with electronic confirmation of delivery activated.

(3) Copies of reports shall be retained in accordance with § 1.31.

(f) Public records. Reports filed pursuant to this section shall be considered Public Records as defined in § 145.0 of this chapter.

* * * * *

Issued in Washington, DC, on April 11, 2000 by the Commission.

Jean A. Webb,

Secretary of the Commission,

Dissenting Remarks of Commissioner Barbara Pedersen Holum, Proposed Rule 4.27;Reporting by Operators of Certain Large Commodity Pools

In April 1999, the President's Working Group on Financial Markets issued a report entitled "Hedge Funds, Leverage, and the Lessons of Long-Term Capital Management" (the "PWG Report"). Among other things, the PWG Report recommended (i) that registered CPOs operating large funds begin filing with the Commission quarterly, (ii) that the reports include more comprehensive information on market risk, and (iii) that information in the reports be published.

These recommendations respond to events occurring twenty months ago. However, market developments since then call into question whether a specific prescriptive rule, such as proposed Rule 4.27, is the appropriate response at this time.

In my judgement, and in light of the recommendations of the CFTC staff task force report entitled "A New Regulatory Framework," the Commission should seek comment on whether the specific recommendations of the PWG Report remain current and, if so, how best to achieve them. For these reasons, I respectfully dissent from the Commission's issuance of proposed Rule 4.27.

Commissioner Barbara Pedersen Holum
Date: April 7, 2000.

Concurring Statement of Commissioner Erickson

I concur with the Commission's publication of the proposed rules that would require commodity pool operators (CPOs) of the largest commodity pools to file quarterly reports with the Commission. Given that the proposed rules are intended to respond to the events surrounding the near-collapse of Long-Term Capital Management (LTCM), comments from the public and especially from the industry will be instructive in the Commission's efforts to craft an approach that is indeed effective. In addition to comments limited to the proposed rule, I am interested in comments that will inform the Commission about how the industry has addressed the potential risks posed by certain highly leveraged institutions since the LTCM episode. Moreover, I encourage the submission of comments that provide input on the following issues:

1. The proposed rules envision a reporting system whereby the Commission is essentially a conduit for the public dissemination of quarterly reports without any further review by any federal financial regulator. Is publication alone sufficient?

2. It is not clear that reporting on a quarterly basis would have been sufficient to address the events precipitating the private rescue of LTCM. Assuming that reporting alone is an adequate response, would quarterly reporting be effective?

3. The April 1999 report of the President's Working Group on Financial Markets concluded that the "central public policy issue raised by the LTCM episode is how to constrain excessive leverage more effectively." One possible way to address leverage concerns would be to require CPOs to provide the Commission with a confidential early warning notification structured similar to the Commission's existing notification requirement with respect to net capital requirements for futures commission merchants. Such an approach may address publicly expressed concerns about the quantity and quality of the information available to federal financial regulators in the weeks preceding LTCM. What are the public policy implications of such an approach—either in addition to or in lieu of quarterly reports?

[FR Doc. 00–9463 Filed 4–14–00; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–116048–99]

RIN 1545–AX63

Stock Transfer Rules: Supplemental Rules; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to supplemental rules for stock transfers.

DATES: The public hearing originally scheduled for Thursday, April 20, 2000, at 10 a.m., is canceled.

FOR FURTHER INFORMATION CONTACT: Guy Traynor of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of

public hearing that appeared in the **Federal Register** on January 24, 2000, (65 FR 3629), announced that a public hearing was scheduled for April 20, 2000 at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The subject of the public hearing is proposed regulations under section 367(b), of the Internal Revenue Code. The deadline for requests to speak and outlines of oral comments expired on March 31, 2000.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of April 11, 2000, no one has requested to speak. Therefore, the public hearing scheduled for April 20, 2000, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 00–9409 Filed 4–14–00; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL196–1; MO–097–1097; FRL–6578–2]

Approval and Promulgation of Implementation Plans; Illinois and Missouri; Ozone

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the Illinois and Missouri 1-hour ozone attainment demonstration State Implementation Plans (SIPs) for the St. Louis moderate ozone nonattainment area. The attainment demonstration SIPs are addressed in Illinois Environmental Protection Agency (IEPA) submittals dated November 15, 1999 and February 10, 2000 and in Missouri Department of Natural Resources (MDNR) submittals dated November 10, 1999 and January 19, 2000. In the alternative, the EPA is proposing to disapprove the attainment demonstration if: Illinois and Missouri do not revise the attainment demonstration modeling and analyses to incorporate corrections to the 1996 base year emissions inventory and successfully demonstrate attainment of the 1-hour standard based on the revised modeling; Illinois or Missouri do not submit proposed regional Oxides of Nitrogen (NO_X) emission control regulations for Electric Generating Units (EGUs) by June 2000 and final adopted regional (NO_X) emission control regulations for EGUs by December 2000; or Missouri does not submit a proposed motor vehicle emissions budget by June 30, 2000. The EPA is proposing to: approve an exemption from (NO_X) emission control requirements for Reasonably Available Control Technology (RACT) for the Illinois portion of the St. Louis ozone nonattainment area; extend the ozone attainment date for the entire St. Louis ozone nonattainment area to November 15, 2003 while retaining the area's current classification as a moderate ozone nonattainment area; and approve the transportation conformity motor vehicle emissions budget submitted by Illinois for the Illinois portion of the St. Louis ozone nonattainment area. The final approvals of the extension of the ozone attainment date and the motor vehicle emissions budgets are contingent on the final approval of the ozone attainment demonstration. The final approval of the attainment demonstration is contingent on the final approval of the regional (NO_X) emission control regulations and on the submittal of adequate motor vehicle emissions budgets. The final approval of the (NO_X) RACT exemption for Illinois is contingent on the final approval of an attainment demonstration that does not rely on (NO_X) emission reductions resulting from (NO_X) RACT implementation in the Illinois portion of the St. Louis nonattainment area. The EPA is proposing to disapprove Illinois' request for exemption from (NO_X) requirements for New Source Review (NSR) and general conformity.

DATES: Written comments must be received on or before June 16, 2000.

ADDRESSES: Written comments should be sent to: Jay Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; or Wayne Leidwanger, Chief, Air Planning and Development Branch, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101.

Copies of the States' submittals and EPA's Technical Support Document (TSD) for this proposed rule, and other relevant materials are available for public inspection during normal business hours at the following addresses: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604 (please telephone Mark Palermo at (312) 886–6082 before visiting the Region 5 office); United States Environmental Protection Agency, Region 7, Air, Radiation, and Toxics Division, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 886-6057, E-Mail Address: doty.edward@epamail.epa.gov; or Aaron Worstell, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101, Telephone Number (913) 551–7707, E-Mail Address: worstell.aaron@epa.gov.

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I. Background

A. Basis for the States' Attainment Demonstration SIPs

What are the Relevant Clean Air Act Requirements?

The Clean Air Act (Act) requires the EPA to establish National Ambient Air Quality Standards (NAAQS) for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare. Clean Air Act

sections 108 and 109. In 1979, EPA promulgated the 1-hour ground-level ozone standard of 0.12 parts per million (ppm) (120 parts per billion (ppb)). 44 FR 8202 (February 8, 1979).

Ground-level ozone is not emitted directly by sources. Rather, Volatile Organic Compounds (VOC) and NO_X, emitted by a wide variety of sources, react in the presence of sunlight to form ground-level ozone. NO_X and VOC are referred to as precursors of ozone.

An area exceeds the 1-hour ozone standard each time an ambient air quality monitor records a 1-hour average ozone concentration above 0.124 ppm in any given day (only the highest 1-hour ozone concentration at the monitor during any 24 hour day is considered when determining the number of exceedance days at the monitor). An area violates the ozone standard if, over a consecutive 3-year period, more than 3 days of exceedances occur at any monitor in the area or in its immediate downwind environs.

The highest of the fourth-highest daily peak ozone concentrations over the 3 year period at any monitoring site in the area is called the ozone design value for the area. The Act, as amended in 1990, required EPA to designate as nonattainment any area that was violating the 1-hour ozone standard, generally based on air quality monitoring data from the 1987 through 1989 period. Clean Air Act section 107(d)(4); 56 FR 56694 (November 6, 1991). The Act further classified these areas, based on the areas' ozone design values, as marginal, moderate, serious, severe, or extreme. Marginal areas were suffering the least significant ozone nonattainment problems, while the areas classified as severe and extreme had the most significant ozone nonattainment problems.

The control requirements and date by which attainment is to be achieved vary with an area's classification. Marginal areas were subject to the fewest mandated control requirements and had the earliest attainment date, November 15, 1993. Severe and extreme areas are subject to more stringent planning requirements but are provided more time to attain the standard. Serious areas were required to attain the 1-hour standard by November 15, 1999, and severe areas are required to attain by November 15, 2005 or November 15, 2007, depending on the areas' ozone design values for 1987 through 1989. The St. Louis ozone nonattainment area was classified as moderate and its attainment date was November 15, 1996. The St. Louis ozone nonattainment area is defined (40 CFR 81.314 and 81.326) to contain Madison, Monroe, and St. Clair Counties in Illinois, and Franklin, Jefferson, St. Charles, and St. Louis Counties and St. Louis City in Missouri.

The requirements of the Act for ozone attainment demonstrations for moderate ozone nonattainment areas are determined by considering several sections of the Act. Section 172(c)(6) of the Act requires SIPs to include enforceable emission limitations, and such other control measures, means or techniques as well as schedules and timetables for compliance, as may be necessary to provide for attainment by the applicable attainment date. Section 172(c)(1) requires the implementation of all reasonably available control measures (including Reasonably Available Control Technology (RACT)) and requires the SIP to provide for attainment of the NAAQS. Section 182(b)(1)(A) requires the SIP to provide for specific annual reductions in emissions of VOC and NO_X as necessary to attain the ozone NAAQS by the applicable attainment date. Finally, section 182(j)(1)(B) requires the use of photochemical grid modeling or other methods judged to be at least as effective to demonstrate attainment of the ozone NAAQS in multi-state ozone nonattainment areas. As part of today's proposal, EPA is proposing action on the attainment demonstration SIP revisions submitted by Illinois and Missouri for the St. Louis multi-state ozone nonattainment area and its associated ozone modeling domain.

In general, an attainment demonstration SIP includes a modeling analysis showing how an area will achieve the standard by its attainment date and the emission control measures necessary to achieve attainment. The attainment demonstration SIPs must include motor vehicle emission budgets for transportation conformity purposes. Transportation conformity is a process for ensuring that States consider the effects of emissions associated with federally-funded transportation activities on attainment of the standard. Attainment demonstrations must include the estimates of motor vehicle VOC and NO_X emissions that are consistent with attainment, which then act as a budget or ceiling for the purposes of determining whether transportation plans, programs, and projects conform to the attainment SIP.

What Is the History and Time Frame for the State Attainment Demonstration SIP and How Is It Related to Regional NO_X Controls?

Notwithstanding significant efforts by the States, in 1995 EPA recognized that many States in the eastern half of the United States could not meet the November 1994 time frame for submitting an attainment demonstration SIP because emissions of NO_X and VOC in upwind States (and the ozone formed by these emissions) affected these nonattainment areas and the full impact of this effect had not yet been determined. This phenomenon is called ozone transport.

On March 2, 1995, Mary D. Nichols, EPA's then Assistant Administrator for Air and Radiation, issued a memorandum to EPA's Regional Administrators acknowledging the efforts made by the States but noting the remaining difficulties in making attainment demonstration SIP submittals. [1] Recognizing the problems created by ozone transport, the March 2, 1995 memorandum called for a collaborative process among the States in the eastern half of the Country to evaluate and address transport of ozone and its precursors. This memorandum led to the formation of the Ozone Transport Assessment Group (OTAG) [2] and provided for the States to submit the attainment demonstration SIPs based on the expected time frames for OTAG to complete its evaluation of ozone transport.

In June 1997, OTAG concluded and provided EPA with recommendations regarding ozone transport. The OTAG generally concluded that transport of ozone and the precursor NO_X is significant and should be reduced regionally to enable States in the eastern half of the Country to attain the ozone NAAQS.

Building upon the OTAG recommendations and technical analyses, in November 1997, EPA proposed action addressing the ozone transport problem. In its proposal, the EPA found that current SIPs in 22 States and the District of Columbia (23 jurisdictions) were insufficient to provide for attainment and maintenance of the 1-hour standard because they did not regulate NO_X emissions that significantly contribute to ozone transport. 62 FR 60318 (November 7, 1997). The EPA finalized that rule in September 1998, calling on the 23 jurisdictions, including Illinois and Missouri, to revise their SIPs to require NO_X emission reductions within each State to a level consistent with a NO_X emissions budget identified in the final rule. 63 FR 57356 (October 27, 1998).

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[1] Memorandum, "Ozone Attainment Demonstrations," issued March 2, 1995. A copy of the memorandum may be found on EPA's web site at: *http://www.epa.gov/ttn/oarpg/t1pgm.html*.

[2] Letter from Mary A. Gade, Director, State of Illinois Environmental Protection Agency to Environmental Council of States (ECOS) Members, dated April 13, 1995.

This final rule is commonly referred to as the NO_X SIP call.[3]

Although Illinois and Missouri do not rely on the full ozone impacts and regional NO_X emission reduction requirements of the NO_X SIP call in the ozone attainment demonstration SIPs reviewed here, they do rely, in part, on regional, statewide NO_X emission reductions for their own States and for States upwind of Illinois and Missouri. In developing the attainment demonstration, Illinois and Missouri originally anticipated the implementation of the NO_X SIP call. Because of a court-ordered stay of the submission deadline for SIPs in response to the NO_X SIP call, Illinois and Missouri reconsidered the role and magnitude of regional NO_X reductions. As noted below, the NO_X SIP call has substantially been upheld by the U.S. Court of Appeals for the District of Columbia; accordingly, Illinois and Missouri may expect even more upwind NO_X emission reductions than they addressed in developing the attainment demonstration.

What Is the Time Frame for Taking Action on the Attainment Demonstration SIPs?

The States submitted the attainment demonstration SIP revisions and supporting documentation between November 1999 and February 2000. The EPA believes that it is important to keep the process moving forward in evaluating these plans and, as appropriate, approving them. Thus, in today's **Federal Register**, EPA is proposing to approve the plans if the States make the additional submittals called for in this document. The EPA, however, proposes to disapprove the plans if the States do not submit all of the emission control regulations required to support the attainment of the 1-hour ozone standard as demonstrated in these SIPs, do not correct the ozone attainment demonstration modeling to incorporate changes recently made in the ozone precursor emissions inventory, or do not have adequate motor vehicle emission budgets to support transportation conformity determinations. The States are expected to submit the proposed rules by June 2000, along with any proposed revisions to the ozone attainment demonstration modeling. The States are expected to submit final adopted measures, and final revisions to the attainment demonstration, no later than December 2000. The EPA intends to act on the State NO_X regulations in separate rulemaking actions, and will not take final action to approve the attainment demonstration until it completes action on the rules.

The anticipated schedule for actions on the States' submittals has been set forth in a recent filing in the United States District Court for the District of Columbia. *Sierra Club* v. *Carol Browner* (D.C.D.C. No. 98–02733). The EPA intends to complete rulemaking on the attainment demonstration and attainment date extension for the St. Louis area when it completes action on the submittals from both Missouri and Illinois of the additional control measures necessary for the attainment demonstration. The following outlines the anticipated schedule for EPA action.

If, by June 30, 2000, either Illinois or Missouri does not submit proposed regulations for the emission control measures (local and regional) needed to achieve attainment of the 1-hour ozone standard as indicated by the attainment demonstration, and any proposed revisions to the attainment demonstration (to include any proposed revisions to the motor vehicle emissions budgets) determined to be necessary after remodeling the 1996 base year ozone levels to account for revised 1996 base year emissions, the EPA intends to take final action on the proposed reclassification of the St. Louis area[4] to serious ozone nonattainment no later than August 1, 2000. If either State does not submit final adopted emission control measures and any final revisions to the attainment demonstration (including any final revisions to the motor vehicle emissions budgets) by December 31, 2000, the EPA intends to take final action on the reclassification of the area to serious nonattainment for ozone no later than February 1, 2001. The EPA plans to send a notice of final rulemaking on the attainment demonstration and attainment date extension to the **Federal Register** no later than February 22, 2001.

Due to the circumstances in which the SIP submissions arose, the EPA is proposing two alternative courses of action: approval or disapproval in the alternative. The proposal for approval provides that the States must take additional actions to obtain final approval. Failure by the States to complete these additional actions will result in EPA's disapproval of the SIPs.

B. Components of a Modeled Attainment Demonstration

The EPA provides (*Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS*, EPA–454/B–95–007, June 1996) that States may rely on a modeled attainment demonstration supplemented with additional evidence to demonstrate attainment. To have a complete modeling demonstration submission, States should have submitted the required modeling analyses and identified any additional evidence that EPA should consider in evaluating whether the area will attain the standard. Additional required components are discussed below.

What EPA Guidelines Apply to the Attainment Demonstration Submittals?

The following documents contain EPA's guidelines affecting the content and review of ozone attainment demonstration submittals:

1. *Guideline for Regulatory Application of the Urban Airshed Model*, EPA–450/4–91–013, July 1991. Web site: *http://www.epa.gov/ttn/scram/* (file name: "UAMREG").

2. Memorandum, "The Ozone Attainment Test in State Implementation Plan (SIP) Modeling Demonstrations," from Joseph A. Tikvart, Office of Air Quality Planning and Standards, December 16, 1992.

3. *Guidance on Urban Airshed Model (UAM) Reporting Requirements for Attainment Demonstrations*, EPA–454/R–93–056, March 1994. Web site: *http://www.epa.gov/ttn/scram/* (file name: "UAMRPTRQ").

4. Memorandum, "Ozone Attainment Demonstrations," from Mary D. Nichols, Assistant Administrator for Air and Radiation, March 2, 1995. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html*.

5. *Guidance on the Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS*, EPA–454/B–95–007, June 1996. Web site: *http://www.epa.gov/ttn/scram/* (file name: "O3TEST").

6. Memorandum, "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM10 NAAQS," from Richard Wilson, Office of Air and Radiation, December 29, 1997. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html*.

7. Memorandum, "Extension of Attainment Dates for Downwind Transport Areas," from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, July 16, 1998.

[3] EPA is also requiring regional NO_X emission reductions under its authority in section 126 of the Act to assure that reductions occur in upwind areas which have been shown to impact attainment of the ozone standard in downwind areas.

[4] On March 18, 1999, 64 FR 13384, the EPA proposed to reclassify the St. Louis area to a serious ozone nonattainment area based on continued monitored violations of the 1-hour ozone standard. The EPA also issued a notice of the St. Louis area's potential eligibility for an attainment date extension.

8. Memorandum, "Guidance on Motor Vehicle Emissions Budgets in One-Hour Ozone Attainment Demonstrations," from Merrylin Zaw-Mon, Acting Director of the Regional and State Programs Division, November 3, 1999. Web site: *http://www.epa.gov/ttn/oarpg/t1pgm.html*.

9. Memorandum, "Guidance on the Reasonably Available Control Measures (RACM) Requirement and Attainment Demonstration Submissions for Ozone Nonattainment Areas," from John S. Seitz, Director of Office of Air Quality Planning and Standards, November 30, 1999.

10. Paper, "Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled," Office of Air Quality Planning and Standards, November 1999. Web site: *http://www.epa.gov/ttn/scram/* (file name: "ADDWOE1H").

What Are the Modeling Requirements for the Attainment Demonstration?

For purposes of demonstrating attainment, the Act requires States containing portions of a multi-state moderate ozone nonattainment area to use photochemical grid modeling or an analytical method judged by EPA to be as effective. The photochemical grid model is set up using meteorological conditions conducive to the formation of ozone in the nonattainment area and its modeling domain. Emissions for a base year are used to evaluate the model's ability to reproduce actual monitored air quality values. Following validation of the modeling system for a base year, emissions are projected to an attainment year to predict air quality changes in the attainment year due to the emission changes, which include growth up to and controls implemented by the attainment year. A modeling domain is chosen that encompasses the nonattainment area. Attainment is demonstrated when all predicted ozone concentrations inside the modeling domain are at or below the ozone standard or an acceptable upper limit above the standard permitted under certain conditions by EPA's guidance. When the predicted concentrations are above the standard or upper limit, EPA guidance allows for an optional weight-of-evidence determination which incorporates other analyses, such as air quality and emissions trends, to address uncertainty inherent in the application of photochemical grid models. This latter approach may be used under certain circumstances to support the demonstration of attainment.

The EPA guidance identifies the features of a modeling analysis that are essential to obtain credible results. First, the State must develop and implement a modeling protocol. The modeling protocol describes the methods and procedures to be used in conducting the modeling analyses and provides for policy oversight and technical review by individuals responsible for developing or assessing the attainment demonstration (State and local agencies, EPA, the regulated community, and public interest groups). Second, for purposes of developing the information to put into the model, the State must select air pollution days, *i.e.*, days in the past with high ozone concentrations exceeding the standard, that are representative of the ozone pollution problem for the nonattainment area. Third, the State needs to identify the appropriate dimensions of the area to be modeled, *i.e.*, the modeling domain size. The domain should be larger than the designated nonattainment area to reduce uncertainty in the boundary conditions and should include any large upwind sources just outside the nonattainment area. In general, the domain is considered the local area where control measures are most beneficial to bring the area into attainment. Alternatively, a much larger modeling domain may be established, addressing the impacts of both local and regional emission control measures on a number of ozone nonattainment areas. In both cases, the attainment determination is based on the review of ozone predictions within the local area where control measures are most beneficial to bring the area into attainment (referred to as the local modeling domain). Fourth, the State needs to determine the grid resolution. The horizontal and vertical resolutions in the model affect the dispersion and transport of emission plumes. Artificially large grid cells (too few vertical layers and horizontal grids) may dilute concentrations and may not properly consider impacts of complex terrain, complex meteorology, and land/water interfaces. Fifth, the State needs to generate meteorological and emissions data that describe atmospheric conditions and emissions inputs reflective of the selected high ozone days. Finally, the State needs to verify that the modeling system is properly simulating the chemistry and atmospheric conditions through diagnostic analyses and model performance tests (generally referred to as model validation). Once these steps are satisfactorily completed, the model is ready to be used to generate air quality estimates to support an attainment demonstration.

The modeled attainment test compares model predicted 1-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the ozone standard. A predicted peak ozone concentration above 0.124 ppm (124 ppb) indicates that the area is expected to exceed the standard in the attainment year. This type of test is often referred to as an exceedance test. The EPA's June 1996 guidance recommends that States use either of two exceedance tests for the 1-hour ozone standard: a deterministic test or a statistical test.

The deterministic test requires the State to compare predicted 1-hour daily maximum ozone concentrations for each modeled day[5] to the attainment level of 0.124 ppm. If none of the predictions exceed 0.124 ppm, the test is passed.

The statistical test takes into account the fact that the form of the 1-hour ozone standard allows exceedances. If, over a 3 year period, the area has an average of 1 or fewer ozone standard exceedances per year at any monitoring site, the area is not violating the standard. Thus, if the State models a severe day (considering meteorological conditions that are very conducive to high ozone levels and that should lead to fewer than 1 exceedance per year at any location in the nonattainment area and in the modeling domain over a 3 year period), the statistical test provides that a prediction above 0.124 ppm up to a certain upper limit may be consistent with attainment of the standard.

The acceptable upper limit above 0.124 ppm is determined by examining the size of exceedances at monitoring sites which meet or attain the 1-hour standard. For example, a monitoring site for which the 4 highest 1-hour average concentrations over a 3 year period are 0.136 ppm, 0.130 ppm, 0.128 ppm, and 0.122 ppm is attaining the standard. To identify an acceptable upper limit, the statistical likelihood of observing ozone air quality exceedances of the standard of various concentrations is equated to the severity of the modeled day. The upper limit generally represents the maximum ozone concentration level observed at a location that would be expected to occur no more than an average of once a year over a 3 year period. Therefore, if the maximum ozone concentration predicted by the model is below the acceptable upper limit, in this case 0.136 ppm, then EPA might conclude that the modeled attainment test is passed. Generally, exceedances well above 0.124 ppm are very unusual at monitoring sites

[5] The initial, "ramp-up" days for each episode are excluded from this determination.

meeting the standard. Thus, these upper limits are rarely significantly higher than the attainment level of 0.124 ppm.

What Are the Additional Analyses That May Be Considered When the Modeling Fails To Show Attainment?

When the modeling does not conclusively demonstrate that the area will attain, additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with modeling and its results. For example, there are uncertainties in some of the modeling inputs, such as the meteorological and emissions data bases for individual days and in the methodology used to assess the severity of an exceedance at individual sites. The EPA's guidance recognizes these limitations and provides a means for considering other evidence to help assess whether attainment of the standard is likely. The process by which this is done is called a weight-of-evidence determination.

Under a weight-of-evidence determination, the State can rely on and EPA will consider factors such as: model performance and results, episode selection, other modeled attainment tests, e.g., relative reduction factor analysis; other modeled outputs, e.g., changes in the predicted frequency and pervasiveness of exceedances and predicted changes in the design value; actual observed air quality trends; estimated emission trends; analyses of air quality monitored data; the responsiveness of the model predictions to further controls; and, whether there are additional control measures that are or will be approved into the SIP but were not included in the modeling analysis. This list is not an exhaustive list of factors that may be considered and these factors could vary from case to case. The EPA's guidance contains no limit on how close a modeled attainment test must be to passing to conclude that other evidence besides an attainment test is sufficiently compelling to suggest attainment. However, the further a modeled attainment test is from being passed, the more compelling the weight-of-evidence needs to be.

C. Framework for Proposing Action on the Attainment Demonstration SIP

Besides the Modeled Attainment Demonstration, What Other Issues Must Be Addressed in the Attainment Demonstration SIP?

In addition to the modeling analysis and weight-of-evidence determination demonstrating attainment, the EPA has identified the following key elements which must be present in order for EPA to approve the 1-hour attainment demonstration SIP.

1. Clean Air Act Measures and Other Measures Relied on in the Modeled Attainment Demonstration State Implementation Plan

To receive final approval of the attainment demonstration SIP, the State must have adopted the emission control measures required under the Act for the area's classification or must have established negative source declarations for the source categories for which the area has no major sources that are subject to Clean Air Act requirements for such sources. All required emission controls must be implemented prior to the beginning of the ozone season (April through October in the St. Louis area, 40 CFR part 58) in the area's attainment year to assure attainment of the ozone standard in the attainment year.

The attainment demonstration must incorporate the emission impacts of, and the SIP submittal must address the rule development for, any additional emission control measures needed to achieve attainment. The rules for these emission controls must also have been adopted before the EPA can finally approve the attainment demonstration. The emission controls for these sources must be implemented prior to the beginning of the ozone season in the attainment year.

For purposes of fully approving the State's SIP, the State must adopt and submit all VOC and NO_X control regulations for affected sources within the State and within the local modeling domain as reflected in the adopted emission control strategy and as reflected in the attainment demonstration.

Table 1 presents a summary of the Clean Air Act requirements that need to be met for a moderate ozone nonattainment area for the 1-hour ozone standard. These requirements are specified in sections 182(b) and 182(f) of the Act. Information on additional measures that Illinois and Missouri have adopted and relied on in their SIP submissions is not shown in this table, but is addressed later in this proposed rule.

Table 1—Clean Air Act Requirements For Moderate Nonattainment Areas

- New Source Review (NSR) regulations for VOC and NO_X, including an offset ratio of 1.15:1 and a major VOC and NO_X source size cutoff of 100 tons per year (TPY)
- Reasonably Available Control Technology (RACT) for VOC and NO_X
- 15 percent Rate-Of-Progress (ROP) plan for VOC through 1996
- 1990 baseline emissions inventory for VOC and NO_X
- Periodic emissions inventory and source emission statement regulations
- Vehicle inspection and maintenance (I/M) program

2. Motor Vehicle Emissions Budget

An attainment demonstration SIP must estimate the motor vehicle emissions that will be produced in the attainment year and must demonstrate that this emissions level, when considered with emissions from all other sources, is consistent with attainment. For transportation conformity purposes, the estimate of motor vehicle emissions in a control strategy SIP such as an attainment demonstration (converted to a typical ozone season week day level) is defined as the motor vehicle emissions budget. The motor vehicle emissions budget must meet certain adequacy criteria which are listed in the Transportation Conformity Rule (40 CFR 93.118) before the budget can be approved as part of the attainment demonstration SIP. When a motor vehicle emissions budget is found to be adequate, it is used to determine the conformity of the transportation plans and programs to the SIP, as required by section 176(c) of the Act. The motor vehicle emissions budget must meet adequacy criteria (40 CFR part 93) before the attainment demonstration SIP can be approved. An appropriately identified motor vehicle emissions budget is a necessary part of an attainment SIP.

D. Criteria for Attainment Date Extensions

What Is EPA's Policy With Regard to an Ozone Attainment Date Extension?

The EPA's policy regarding an extension of the ozone attainment date for the St. Louis area is fully addressed in a EPA's initial notice of proposed rulemaking dated March 18, 1999. 64 FR 13384. The March 18, 1999 document proposed to reclassify the St. Louis area to a serious ozone nonattainment area, but also provided notice of the area's potential eligibility for an attainment date extension based on a July 16, 1998 EPA guidance memorandum. In today's document, EPA proposes to approve the States' request for an attainment date extension under that policy. The specifics of the attainment date policy are repeated below for clarity.

On July 16, 1998, a guidance memorandum entitled "Extension of Attainment Dates for Downwind Transport Areas" was issued by the EPA. That memorandum included

EPA's interpretation of the Act regarding the extension of attainment dates for ozone nonattainment areas that have been classified as moderate or serious for the 1-hour ozone standard and which are downwind of areas that have interfered with their ability to demonstrate attainment of the ozone standard by dates prescribed in the Act. That memorandum stated that the EPA will consider extending the attainment date for an area or a State that:

(1) has been identified as a downwind area affected by transport from either an upwind area in the same State with a later attainment date or an upwind area in another State that significantly contributes to downwind ozone nonattainment;

(2) has submitted an approvable attainment demonstration with any necessary, adopted local measures and with an attainment date that shows it will attain the 1-hour standard no later than the date that the emission reductions are expected from upwind areas under the final NO_X SIP call (by 2003) and/or the statutory attainment date for upwind nonattainment areas, i.e., assuming the boundary conditions reflecting those upwind emission reductions;

(3) has adopted all applicable local measures required under the area's current ozone classification and any additional emission control measures demonstrated to be necessary to achieve attainment, assuming the emission reductions occur as required in the upwind areas; and

(4) has provided that it will implement all adopted measures as expeditiously as practicable, but no later than the date by which the upwind reductions needed for attainment will be achieved.

Once an area receives an extension of its attainment date based on ozone/precursor transport impacts, the area would no longer be subject to reclassification to a higher ozone nonattainment classification. If the St. Louis area is granted an attainment date extension, it would no longer be subject to a reclassification to serious nonattainment for ozone and no longer subject to the additional emission control requirements that would result from the reclassification to serious nonattainment.

Illinois and Missouri have requested an extension of the attainment date for the St. Louis nonattainment area in conjunction with the ozone attainment demonstration submittals. The ozone attainment demonstration considers 2003 as the revised ozone attainment year. The 2003 attainment year reflects the NO_X emission control deadline contained in the NO_X SIP call and the NO_X emission control deadline that EPA is considering to address section 126 petitions currently before it.

E. Criteria for NO_X Control Exemptions

What Are the Clean Air Act Requirements and EPA Policy With Regard to NO_X Emission Controls and Exemptions From the NO_X Emission Control Requirements?

The State of Illinois has petitioned for an exemption from excess NO_X emission reductions pursuant to section 182(f)(2) of the Act. The State is seeking an exemption from requirements for NO_X Reasonably Available Control Technology (NO_X RACT), New Source Review (NSR), and general conformity. The following discusses the Act requirements and EPA policy with regard to NO_X emission controls and emission control exemptions, particularly as such policy deals with the Illinois petition.

Section 182(f)(1) of the Act requires SIPs to include emission control provisions for major stationary sources of NO_X as required for major stationary sources of VOC. For moderate and above ozone nonattainment areas, this includes emission control requirements for NSR and RACT.

The portions of section 182(f)(1) relevant to St. Louis provide that the stationary source NO_X requirements shall not apply where either of the following tests are met:

(1) in any area, the net air quality benefits are greater without the NO_X reductions from the sources concerned; or

(2) in an ozone nonattainment area, additional NO_X reductions would not contribute to ozone attainment in the nonattainment area.

Section 182(f)(2) of the Act states that the application of the NO_X emission reduction requirements may be limited to the extent necessary to avoid excess reductions of NO_X.

The main tests for a NO_X emissions control exemption under EPA policy are discussed in a December 1993 EPA guidance, *Guideline for Determining the Applicability of Nitrogen Oxides Requirements under Section 182(f)*. This guidance was issued by the Office of Air Quality Planning and Standards of the EPA. This guidance notes that the EPA has determined, based on a review of the Act, that the excess reduction demonstration for a NO_X emissions control exemption, under either a "contribute to attainment" test or a "net ozone benefits" test, must be tied to an area's ozone attainment demonstration SIP. For the reasons described in Chapter 6 of the EPA guidance document, the excess reductions must be those NO_X emission reductions in excess of the NO_X emission reductions specified as being necessary for attainment in the attainment demonstration. The approval of the excess emissions reduction petition must be contingent on the final approval of the ozone attainment demonstration.

Details of the current EPA policy regarding NO_X emission control exemptions and transportation conformity is contained in a November 14, 1995 final rule (60 FR 44790) amending the transportation conformity requirements. The final transportation conformity rule requires consistency with NO_X motor vehicle emission budgets in control strategy SIPs regardless of whether a NO_X control exemption has been granted. Areas must establish NO_X emission budgets unless the State's modeled attainment demonstration shows that NO_X emissions can essentially grow without limit due to new federally funded activities or federal actions without threatening attainment of the ozone standard.

Approval of a NO_X emissions control exemption would provide a basis for eliminating the requirement to comply with the transportation conformity rule's build/no-build test and less-than-1990 test for NO_X. The current Illinois submittal, however, does not request an exemption from transportation conformity NO_X requirements. In addition, it should be noted that after an area receives approval to use a motor vehicle emissions budget for the purposes of conformity determinations, the use of a build/no-build test or a less-than-1990 emissions test is no longer pertinent. Therefore, an exemption from NO_X requirements for the build/no-build test and less-than-1990 emissions test is not necessary once an area's motor vehicle emissions budget is approved (or found adequate) for use in transportation conformity determinations. The EPA is proposing the approval of Illinois' motor vehicle emissions budget in this document.

The requirements for exemption from the NO_X control requirements of general conformity relevant to Illinois' request are found in section 182(f)(2) of the Act. Since section 182(f)(2) NO_X control exemptions are based on a demonstration of "excess emission reductions," a NO_X control exemption cannot be granted unless the State has made a clear showing through the ozone attainment demonstration that the emission reductions are indeed excess (that the attainment demonstration does not rely on such emission reductions)

or, where NO_X emission increases (due to new federally-funded activities or federal actions) are expected to result from source growth due to an activity for which the NO_X control exemption is sought, that NO_X emissions can essentially increase without limit and still not cause ozone standard violations. Note that activities that are subject to conformity generally involve emission increases rather than emission decreases. For transportation conformity determinations, consistency with the motor vehicle emissions budget is the means for ensuring that increases in such emissions do not threaten attainment of the ozone standard. In contrast to transportation conformity, however, general conformity determinations are not based on consistency with an explicitly identified emissions budget, since quite often the SIP does not create such budgets for the emissions-generating activities that are subject to general conformity. Consequently, a NO_X control exemption for general conformity cannot be granted under section 182(f)(2) of the Act unless the State has otherwise clearly demonstrated that NO_X emissions can essentially increase without limit and still provide for attainment of the ozone standard.

The situation for NSR, under section 182(f)(2) of the Act, is analogous. Unless the State has otherwise clearly demonstrated that NO_X emissions can essentially increase without limit due to new or modified major stationary sources, the NO_X control exemption for NSR cannot be approved. A policy memorandum, "Scope of Nitrogen Oxides (NO_X) Exemptions," dated January 12, 1995, and signed by G.T. Helms, Group Leader, Ozone/Carbon Monoxide Programs Branch, EPA, explains that, where EPA grants a NO_X exemption under the "excess reductions" provision, the exemption makes sense with respect to RACT but not necessarily with respect to NSR. The distinction would be that RACT emissions impacts are exclusively emission reductions, whereas NSR impacts often involve emission increases. It should be noted that NO_X new source requirements in ozone nonattainment areas would revert to Prevention of Significant Deterioration (PSD) requirements (PSD allows emission increases, but only at a controlled rate) if an area is granted an exemption from NSR NO_X requirements. Therefore, a NSR NO_X control exemption request, under section 182(f)(2), must be supported by a demonstration that NO_X emissions due to new or modified major stationary sources can essentially increase in an area without limit and not cause ozone standard violations.

II. Technical Review of the Submittals

A. Summary of the State Submittals

1. General Information

When Were the Ozone Attainment Demonstration State Implementation Plan Revisions Submitted to the Environmental Protection Agency?

Illinois and Missouri have made the following submittals, which in whole or in part concern the ozone attainment demonstration, a partial NO_X control exemption for the Illinois portion of the St. Louis ozone nonattainment area, and an extension of the attainment date for the St. Louis ozone nonattainment area:

(a) In a submission dated November 10, 1999, the Missouri Department of Natural Resources (MDNR) submitted an ozone attainment demonstration along with several additional proposed SIP revisions. The additional SIP revisions included:

i. Regulations and associated documentation for the control of VOC emissions from: aerospace manufacture and rework facilities; volatile organic liquid storage; wood furniture manufacturing operations; batch process operations; reactor processes and distillation operations processes in the synthetic organic chemical manufacturing industry; and existing major sources;

ii. Regulations and associated documentation for the control of NO_X emissions intended to meet NO_X RACT requirements of the Act in the Missouri portion of the St. Louis nonattainment area;

iii. A 15 percent rate-of-progress plan for the control of VOC emissions in the Missouri portion of the St. Louis area; and

iv. An improved vehicle inspection and maintenance program.

The review of these additional SIP revisions is the subject of separate technical support documents and rulemakings. See 65 FR 8094, 65 FR 8060, 65 FR 8092, 65 FR 8097, and 65 FR 8083, February 17, 2000. Only the ozone attainment demonstration portions of the submittal are considered here;

(b) On November 15, 1999, the IEPA submitted a letter outlining the ozone attainment strategy for the St. Louis area and the State's emission control commitments;

(c) On January 19, 2000, the MDNR submitted an additional supplement to the ozone attainment demonstration. This supplement reflects revised modeling which was performed at the recommendation of EPA to include future emission control measures in the St. Louis area, including Missouri's NO_X RACT program; emission control contingency measures implemented by both States, and additional VOC RACT controls implemented by Missouri. The revised analysis also incorporates other emission inventory corrections based on quality assurance activities conducted by both States; and

(d) On February 10, 2000, the IEPA submitted its adopted ozone attainment demonstration SIP. This SIP revision submittal includes a petition for an exemption from NO_X RACT, NO_X NSR, and general conformity NO_X requirements for the Illinois portion of the St. Louis ozone nonattainment area. This SIP revision also reflects the emission modifications and attainment demonstration revisions contained in MDNR's January 19, 2000 submittal.

When Were the Submittals Addressed in Public Hearings, and When Were the Submittals Formally Adopted by the States?

The MDNR held a public hearing on the attainment demonstration on October 28, 1999, and the Missouri Air Conservation Commission (MACC) adopted the attainment demonstration on November 8, 1999.

The IEPA held a public hearing on the attainment demonstration on November 15, 1999. A subsequent public hearing on the updated ozone attainment demonstration was not held. It must be noted, however, that the updated ozone attainment demonstration did not include additional emission controls in Illinois beyond those addressed in the November 15, 1999 public hearing.

What Modeling Approach Was Used in the Analyses?

Illinois and Missouri cooperatively conducted the modeling analyses and other analyses used to support the attainment demonstration. The modeling approach is documented in both Illinois' February 10, 2000 ozone attainment demonstration and in Missouri's November 10, 1999 ozone attainment demonstration submittal. Additional modeling analyses and weight-of-evidence analyses are addressed in Missouri's January 19, 2000 supplemental modeling submittal.

The heart of the modeling system and approach is the Urban Airshed Model—Version V (UAM–V), developed originally for application in the Lake Michigan area, but now applied in many other areas. This model was applied to a large grid system (referred to as Grid M) covering much of the upper

Midwest. Grid M was selected to cover many of the ozone precursor emission sources believed to affect the Lake Michigan area and the St. Louis area. Grid M was nested inside of a larger grid system covering the eastern half of the United States (the larger grid system includes areas referred to as the "coarse-grid states" in the OTAG process used to assess ozone transport in the eastern United States and the impacts of possible emission control measures to generally reduce interstate ozone and ozone precursor transport). The data derived from the larger OTAG grid provided air quality data for the perimeter of Grid M. It should be noted that for most of the attainment considerations, the States considered the peak ozone concentrations and model performance for a sub-portion of Grid M surrounding the St. Louis ozone nonattainment area (the local modeling domain). The conclusions discussed later in this document were based on data from this local modeling domain.

Besides being able to model ozone and other pollutants in nested horizontal grids, UAM–V can also model individual elevated source plumes within the modeling grid (plume-in-grid or PiG). Gaussian dispersion models are used to grow plumes until the plumes essentially fill grid cells. At these points, the numerical dispersion and advection components of UAM take over to address further downwind dispersion and advection.

The following input data systems and analyses were also used as part of the combined modeling system:

Emissions: UAM–V requires the input of an emissions inventory of gridded, hourly estimates of CO, NO_X, and speciated VOC emissions (speciated based on carbon bond types). The States provided regional and local emission inventories, which were processed through the Emissions Modeling System—1995 version (EMS–95) to prepare UAM–V emissions data input files.

The initial emissions inventory files were based on EPA's NO_X SIP call emissions inventory. Substantial revisions were made to the Missouri point source and mobile source inventories based on Missouri's comments on the NO_X SIP call emissions inventories (Missouri has also made a number of additional attainment year emission inventory changes as documented in the January 19, 2000 submittal, discussed above). The State submittals describe in detail the procedures used to develop, and then project, the base year emission inventories to the 1995/1996 period and to project emissions to account for growth and control through 2003.

An important deviation from the NO_X SIP call inventory was the treatment of biogenic emissions emanating from the Ozark Mountain portion of Missouri. Initial UAM–V modeling results had indicated that biogenic emissions, consisting primarily of isoprene from oak trees, were overestimated in the UAM–V model. This determination was based on a recent study of biogenic emissions and related VOC concentrations in this area, referred to as the Ozark Isoprene Experiment (OZIE). Based on initial results from the OZIE study, the Ozark biogenic emissions predicted from the BEIS2 model have been adjusted downward 50 percent. Although the investigation of the Ozark biogenics is not yet completed, and the source of the overestimation is not yet determined, this gross adjustment to the inventory is acceptable in this instance because there is a general consensus between the States and EPA that the UAM–V modeling system clearly overestimates isoprene in this area.

Meteorology: Meteorological inputs for the UAM–V modeling system were developed through prognostic meteorological modeling (use of a set of dynamic equations that describe atmospheric motion and the distribution and change of meteorological parameters) using the RAMS3a modeling system developed by Colorado State University. A limited four-dimensional data assimilation was performed for all days modeled. RAMS3a output data were re-mapped to the three-dimensional grid structure of UAM–V.

The IEPA and MDNR have noted that typically there are three types of meteorological regimes associated with high ozone concentrations in the St. Louis nonattainment area. The first type of episode occurs when a surface high pressure system is centered to the east of the St. Louis area along the Ohio and Tennessee Valleys. This situation brings southerly wind flow into the area. High ozone in this situation is also associated with high surface temperatures in the upper 80's and 90's degrees Fahrenheit (°F) range and with relatively low wind speeds of less than 10 miles per hour. Precipitation and cloud cover are minimal.

The second type of high ozone episode is due to stagnation conditions, when surface winds are calm or with wind speeds less than 5 miles per hour. The wind direction is variable. The temperatures are relatively high, in the upper 80's or lower 90's.

The third type of episode occurs with the approach of a frontal system from the north. The front is generally weak with little or no moisture and little or no cloud cover. Temperature inversions often form near the surface, trapping pollutants near the surface and limiting pollutant dispersion.

The following summarizes the meteorology of the two episodes modeled for the final attainment demonstration:

July 16–19, 1991: On July 16, a migratory high pressure system arrived in central Pennsylvania producing light southerly winds in the St. Louis area. Hot, dry weather persisted during this period, with temperatures reaching 90 °F in the St. Louis area. For the July 17 through July 19 period, winds in the St. Louis area became southwesterly. Wind speeds strengthened by July 19 as a cold front approached from the northwest.

July 10–14, 1995: On July 10, a high pressure system was centered over Missouri, resulting in light and variable winds across the St. Louis area. By July 11 and 12, the high pressure system migrated eastward to the Tennessee Valley. Winds in the St. Louis area were southerly and peak temperatures were in the mid to upper 90's °F range. On July 13 and 14, the conditions at the surface remained the same with the high pressure system centered near the East Coast and dominating the meteorology in the Eastern and Central United States. Temperatures continued to peak in the upper 90's with relatively light southerly winds.

The RAMS3a system was relatively effective in modeling these meteorological conditions.

Chemistry: Atmospheric chemistry within the modeling grid system was simulated using the Carbon Bond-Version IV model developed by the EPA.

Boundary and Initial Conditions: For a 1996 base case evaluation, initial and boundary conditions were derived from extraction of data from a larger, 36 kilometer resolution OTAG coarse grid over the grid cells marking the edges of the Grid M domain. For the 2003 simulations, various NO_X control levels were applied in the coarse grid runs to simulate the NO_X impacts expected in the various States. For States subject to EPA's NO_X SIP call NO_X emission budgets (including the eastern third of Missouri, but excluding the western two-thirds of Missouri), NO_X emission rates for Electric Generating Units (EGUs) were limited to 0.25 pounds per mmBTU in the modeling system's emissions data. For the western two-thirds of Missouri, an EGU NO_X emission rate of 0.35 pounds per

mmBTU was assumed.[6] Only Act-required NO_X control levels and Act-required VOC emission controls were considered for States not subject to EPA's NO_X SIP call (tightened EGU NO_X emission levels were not considered for these States).

What High Ozone Periods Were Modeled?

Three high ozone episodes, July 16–19, 1991, July 10–14, 1995, and June 27–29, 1996 were originally considered for the attainment demonstration. The 1996 episode was subsequently dropped due to unacceptable model performance.

In selecting the episodes to be modeled, the States followed the guidance provided by the EPA. The July 1991 ozone modeling guidance, *Guideline for Regulatory Application of the Urban Airshed Model*, recommends that episodes for modeling be selected to represent different meteorological regimes observed to correspond with ozone exceeding the standard. Both stagnation and transport conditions should be examined. A minimum of 3 primary episode days should be modeled. Primary episode days are those days for which ozone concentrations exceeding the standard were monitored in the area.

As noted in the discussion above, the high ozone episodes Illinois and Missouri selected and modeled have covered more than 3 primary episode days and have generally covered the types of meteorology observed along with high ozone in the St. Louis area.

What Procedures and Sources of Projection Data Were Used To Project the Emissions to Future Years?

To develop the attainment year (2003) EGU emissions, the States initially considered EPA's 2007 base case emissions developed for the NO_X SIP call. EPA developed these emissions using the Integrated Planning Model (IPM). The 2003 base case emissions were developed from this assuming a linear interpolation between the 1995/1996 base period emissions and EPA's 2007 base case emissions. A single growth factor was developed for each State to project the EGU emissions from the 1995/1996 base period to the 2003 base case levels. Subsequent emission control strategy tests altered the NO_X emission limits for these projected source emissions.

For point source, non-EGU emissions, the States projected the 1995/1996 base period emissions to 2003 using BEA projections of Gross State Product (GSP). State-specific growth factors were used for Illinois based on the use of the Emissions Growth Analysis System (EGAS), which replaced EPA-supplied growth factors.

The 1995 stationary area and non-road emission inventories were projected to 2003 using BEA projections of GSP. These projections include the impacts of all applicable Clean Air Act required controls. The projected non-road emissions were adjusted to account for certain federal emission control requirements expected to be implemented by 2003, including: the federal small engine standards, Phase II; federal marine engine standards (for diesel engines of greater than 50 horsepower); federal locomotive standards; and non-road diesel engine standards.

Projections of on-road emissions from 1995/1996 to 2003 were accomplished by projecting Vehicle Miles Traveled (VMT) derived from the Highway Performance Monitoring System (HPMS) and by considering the VMT growth estimates derived by the EPA from the OTAG process. Travel demand VMT estimates for 2003 were also obtained for the St. Louis nonattainment area from the East-West Gateway Coordinating Council. The Illinois VMT growth estimates reflect a growth rate of 2.0 percent per year, and the Missouri VMT estimates reflect a growth of 23.5 percent between 1996 and 2003 (approximately 3 percent per year). Future emission reductions for on-road emissions were assumed to occur by 2003, including emission reductions resulting from: national low emissions vehicle standards; implementation of improved vehicle inspection and maintenance in the St. Louis Metropolitan Statistical Area (MSA); and reformulated gasoline in the Missouri portion of the St. Louis MSA.

Biogenic emissions were assumed to remain unchanged between 1995 and 2003.

All projected emissions were processed through EMS–95 to provide the emission inventory files for use in UAM–V.

3. Modeling Results

How Did the States Validate the Photochemical Modeling Results?

The States conducted a number of statistical analyses to compare the modeling system's ozone predictions to observed peak ozone concentrations for the base period. Using the preliminary base period emissions and meteorological inputs, the States derived statistics covering: unpaired peak prediction accuracy; normalized bias of data pairs; and gross errors of data pairs for each of the modeled high ozone episode days. These results were compared to acceptable accuracy ranges specified by the EPA. With a few exceptions, the current modeling results for the July 1991 and July 1995 episodes are in agreement with EPA-specified criteria. The results of the June 1996 episode modeling, however, did not meet the EPA-specified criteria, and the episode was, therefore, dropped from further consideration.

Table 2 presents a summary of the model performance statistics for the St. Louis ozone nonattainment area. These data were taken from Table 6.1 of Illinois' February 10, 2000 submittal.

TABLE 2.—MODEL OZONE PERFORMANCE STATISTICS ST. LOUIS NONATTAINMENT AREA

	July 1991				July 1995				
	7/16	7/17	7/18	7/19	7/10	7/11	7/12	7/13	7/14
Observed (ppb)	108	140	114	107	125	136	129	154	139
Modeled Base Year (ppb)	117	135	135	110	83	137	130	131	125
Normalized Bias (percent)	−31.5	−9.7	−14.6	−2.5	−44.3	−8.9	−4.1	−16.3	−5.1
Gross Error (percent)	33.1	30.6	28.0	19.9	45.6	32.3	26.1	23.7	23.0
Unpaired Peak Accuracy (percent)	8.6	−3.4	18.6	2.9	−32.9	1.4	1.3	−14.6	−14.1

[6] In *Michigan* v. *EPA*, the U.S. Court of Appeals for the District of Columbia generally upheld the NO_X SIP call, but remanded EPA's determination to require NO_X reductions from the entire State of Missouri. The Court explained that EPA had not developed a sufficient record of evidence to support requiring emissions reductions from the entire State in light of modeling results that the OTAG interpreted as indicating that emissions from the western part of the State may not have a meaningful impact on downwind nonattainment areas. *Michigan* v. *EPA*, No. 98–1497 (D.C. Cir. March 3, 2000).

The model performance statistics can be compared to EPA's recommended (July 1991, *Guideline for Regulatory Application of the Urban Airshed Model*) acceptable model performance statistics:

Normalized Bias: ±5 to 15 percent
Gross Error: 30 to 35 percent
Unpaired Peak Accuracy: ±15 to 20 percent.

It can be seen that the modeling system does reasonably well and performs within acceptable performance ranges except for the leading days of the modeled episodes (the leading days are expected to exhibit poor model performance and are generally dropped from further consideration). The model does under predict some peak ozone levels, particularly on the highest ozone days of July 17, 1991 and July 13–14, 1995. The model over predicts ozone peaks on several other days, particularly on July 18, 1991. Nonetheless, the modeling system is judged to be performing adequately and in an acceptable manner to support emission control strategy considerations.

It should be noted that the above modeling statistics were derived using base year emissions that did not include the most recent emission revisions derived for 1996. The States updated the ozone modeling to incorporate the 2003 emission changes, but did not update the modeling to incorporate the emission changes for the 1996 base year. The modeling performance statistics were not determined to account for this emissions revision. As explained later in this document, the States must update the modeling to include emission changes in the 1996 base year inventory and reconfirm that the plan demonstrates attainment before the EPA can approve the attainment demonstration.

A number of other tests and considerations were also given to the overall model performance, The performance evaluation considered the following statistical and graphical information:

- Tabular summary of model initial and final base case performance statistics;
- Comparison of the modeling output to the conceptual model for each episode;
- Spatial plots of peak daily and hourly surface concentrations;
- Time series plots of hourly concentrations for the monitors with the highest ozone concentrations each day; and
- Scatter plots of peak observed and predicted ozone concentrations.

These tests and considerations point to acceptable performance of the modeling system for the base period.

The States also compared the modeling results to a conceptual model and found the modeling results to comply with this conceptual model.

What Were the Ozone Modeling Results for the Base Period and for the Future Attainment Period?

The ozone modeling system was run to simulate ozone concentrations on selected high ozone days in 1991 and 1995 using emissions for a base year (1996) and a future year (2003). The resulting St. Louis area ozone peaks for 1996 and 2003 are given in Table 3. Note that these modeled ozone peaks reflect the corrected 2003 emissions and modeling results as documented by Missouri in its January 19, 2000 submittal and by Illinois in its February 10, 2000 submittal. The 1996 base year modeled ozone concentrations do not reflect the corrected 1996 emissions. Therefore, the 1996 base year predictions in Table 3 must be reassessed following correction of the base year modeling to reflect the correction of the 1996 base year emissions.

TABLE 3.—PEAK OBSERVED AND MODELED OZONE CONCENTRATIONS (PPB) IN THE ST. LOUIS OZONE NONATTAINMENT AREA

Period Date	July 1991			July 1995			
	7/17	7/18	7/19	7/11	7/12	7/13	7/14
Peak Observed	140	114	107	136	129	154	139
1996 Base Modeled	135	135	110	137	130	131	125
2003 Post-Control Modeled	122	125	106	125	124	127	118

Do the Modeling Results Demonstrate Attainment of the Ozone Standard?

As noted in Table 3, application of the modeling system to the attainment year emissions through a deterministic approach does not demonstrate attainment of the 1–hour standard because 3 days are modeled to have potential exceedances of the standard. The application of the model in a deterministic approach, as reflected in this table, does not demonstrate attainment of the standard.

The States also considered the modeling results using a statistical approach. A statistical approach, as discussed in the June 1996 EPA guidance, *Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS*, permits some modeled exceedances, based on the severity (ozone conduciveness of a day's meteorology) of the modeled episode days. Because the guidance leads to the conclusion that none of the modeled days were severe (as noted later, the IEPA and the MDNR do believe that 3 of the days are severe based on daily ozone maxima exceeding the area's ozone design value), the States concluded that the statistical approach could not be applied in this case.

Because the modeling fails to explicitly demonstrate attainment of the standard, the States considered additional evidence coupled with the results from the deterministic approach.

What Weight-of-Evidence Analyses and Determinations Are Used To Support the Modeled Attainment Demonstration?

A weight-of-evidence determination includes a subjective assessment of the confidence one has in the modeled results. The more extensive and credible the corroborative information, the greater the influence it has in permitting deviations from the deterministic test's benchmark (modeled attainment at all receptor locations for all days modeled). As discussed in the June 1996 EPA guidance, *Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS*, the weight-of-evidence given to model results depends on the following factors: (1) Model performance; (2) confidence in the underlying data bases; (3) length of the projection period; and (4) how close the results come to demonstrating attainment for all receptor sites and times modeled (see Table S.1. of the June 1996 guidance for a complete list of factors affecting weight-of-evidence determinations and acceptance of model

results nearly passing the attainment tests).

The model performance and the severity of the modeled episodes are of particular note. Generally, the closer the modeled results come to meeting the deterministic test's benchmark, the less compelling other evidence supporting a deviation from the benchmark needs to be. Model results showing major improvement in predicted ozone levels can be used to support the acceptance of the attainment demonstration.

The more extreme the days selected for modeling (the more ozone conducive the meteorology considered), the greater the weight-of-evidence support that can be attributed to modeling results exceeding but nearly meeting the ozone standard. Daily ozone maxima exceeding an area's ozone design value is an acceptable surrogate for indicating that these days are extreme. July 17, 1991 and July 13–14, 1995 are high ozone days because the observed ozone levels on those days are greater than the area's ozone design value (4th highest daily maxima over 3 years). Demonstrating attainment on these extreme days implies greater ozone improvements than the model is predicting may be achieved. As noted above, the 2003 post-control modeling results are close to demonstrating attainment, but continue to show modeled exceedances on July 17, 1991, July 11, 1995, and July 13, 1995. Since the States believe that these days may be considered to be extreme ozone days, the States believe that some consideration should be given to weight-of-evidence determinations. The observed July 11, 1995 peak observed ozone concentration is at the level of the area's ozone design value, and, therefore, IEPA and MDNR believe that this day should also be considered to be an extreme day, supporting the consideration of weight-of-evidence determinations. The EPA agrees that July 17, 1991 and July 13, 1995 are extreme ozone days and that this should be considered when making the determination. The EPA, however, does not agree that July 11, 1995 is extreme, since a day with a with a peak ozone concentration at the area's design value is not considered to be extreme.

The States discussed, and the EPA considered, the following factors and data in aggregate in assessing whether the States have provided sufficient evidence to support the attainment demonstration despite the modeled exceedances of the ozone standard. EPA's decision was based on a composite of the information, not on a single element of the "weight-of-evidence."

Reduction of Predicted Exceedances: Modeling for the 1996 base case showed a total of 418 grid cell-hours that exceeded the 1-hour ozone standard during the 7 modeled days. For the 2003 post-control estimates, only 15 grid cell-hours of exceedances were modeled. This was determined to be a 97 percent improvement in ozone air quality relative to the 1-hour standard. The States note that this improvement exceeds the 80 percent improvement criteria contained in one of the benchmarks of EPA's recommended statistical attainment demonstration approach. This finding suggests that the attainment strategy will result in a significant improvement in ozone air quality.

Relative Reduction Factor Attainment Test: The States applied a relative reduction factor approach recommended by the EPA for addressing attainment of the 8-hour ozone standard. ("Use of Models and Other Analyses in Attainment Demonstrations for the 8-Hour Ozone NAAQS," Final Draft, Office of Air Quality Planning and Standards, EPA, April 1999.) In this approach, the relative changes in ozone design values for various monitoring sites are determined using the relative changes in ozone concentrations predicted by the modeling system in the vicinity of these monitoring sites. All predicted future design values for the attainment year must be less than 125 ppb to support the attainment demonstration.

The States based the relative reduction factor approach on the ozone design values at monitoring sites for the 1995–1997 period. The relative reduction factors (actually ozone adjustment factors of 1 minus the modeled fractional ozone changes due to emission changes) were determined from the 1996 and 2003 modeling results. Based on these analysis values, the results in Table 4 were obtained.

TABLE 4.—RELATIVE REDUCTION FACTOR RESULTS

Monitor locations		1-Hour design values 1995–1997	Ozone adjustment factor	Future design values (ppb)
State	County			
Illinois	Madison	128	0.91	116
	St. Clair	108	0.92	99
Missouri	Jefferson	125	0.98	122
	St. Charles	131	0.92	120
	St. Louis	119	0.98	116

The States believe that the relative reduction factor analysis demonstrates that attainment of the ozone standard is likely in 2003 because all of the resulting future design values as shown in Table 4 are below the ozone standard. However, this analysis reflects modeling results for 1996 based on emissions subsequently revised by the States. As noted above, the 1996 modeling was not revised to reflect the subsequent change in 1996 emissions, whereas the 2003 post-control modeling was revised to reflect emission changes. This discrepancy has led to biased modeling results. This analysis must be revisited once the 1996 base year modeling is corrected to reflect the corrected 1996 base year emissions.

EPA Additional Emission Reductions Calculation: At the request of the EPA, the States also applied an additional emission reductions calculation as described in the EPA guideline document, *Guidelines for Improving Weight-of-Evidence Through Identification of Additional Emission Reductions, Not Modeled*. This method also uses an ozone adjustment factor approach to project a monitored ozone design value to an attainment year level. This method is based on the use of an area-wide maximum design value and an ozone adjustment factor based on relative changes in modeled peak ozone concentrations within and downwind of the nonattainment area. If the projected design value is greater than or equal to 125 ppb, this method also leads to estimates of additional VOC and NO_X emission reductions needed beyond the selected/modeled control strategy to attain the ozone standard. If the projected design value is less than or

equal to 124 ppb, this result supports the attainment demonstration.

To obtain the base design value, the States averaged the area-wide design values for four 3-year periods, 1993–1995, 1994–1996, 1995–1997, and 1996–1998. This was done to account for the fact that the base period emissions cover both 1995 and 1996. The design value periods considered contained both of these years. The averaging of these design values also provides a more robust estimate of a base design value and addresses changes in meteorology. The base ozone design value was determined to be 133.5 ppb.

The ozone adjustment factor was determined by averaging the modeled area-wide peak ozone concentrations for the local modeling domain for 1996 and 2003 and taking the ratio of these averages, 2003 to 1996. An ozone adjustment factor of 0.932 was determined using this procedure.

The base ozone design value and the ozone adjustment factor lead (133.5 ppb multiplied by 0.932) to a future design value of 124.4 ppb. This result, while preliminary, shows that the control strategy is adequate to achieve the ozone standard. This determination, however, must be reassessed once the 1996 base year modeling is repeated to reflect the corrected 1996 base year emissions.

Trends Analyses: The MDNR and IEPA have determined or estimated the emission trends for the St. Louis nonattainment area for the years of 1990 through 2003 for both VOC and NO_X. The emission trends are plotted in Figures 7.1 and 7.2 of IEPA's February 10, 2000 attainment demonstration submittal. The trends exhibit a significant decrease in VOC and NO_X emissions within the St. Louis nonattainment area since 1990. Emissions of NO_X and VOC are expected to continue to decline through 2003 due to both State and federal emission control requirements. This includes the impacts of the States' 15 percent Rate-Of-Progress plans, implementation of VOC RACT in both States, implementation of NO_X RACT in Missouri, title IV (Clean Air Act) acid rain control requirements for EGUs, new vehicle I/M programs in both Illinois and Missouri, and reformulated gasoline use.

The States have considered air quality trends for 1977 through 1998. Significant downward trends in peak ozone levels have occurred since the early 1980s. The trend in peak ozone levels, however, have leveled off at above-standard levels in the last few years. Nonetheless, the States also note the improvement in air quality relative to the number of days per year considered to be meteorologically conducive to high ozone formation. The States compared the trend of the number of exceedance days per year to the number of conducive days per year for 1977 through 1998. The number of conducive days was determined by estimating the number of days with meteorology meeting the following parameters: (1) Maximum temperatures exceeding 85 degrees Fahrenheit; (2) wind speeds less than 10 miles per hour; (3) solar radiation exceeding 500 Langleys; (4) little or no precipitation; and (5) winds from the southeast to west. The number of exceedance days per year relative to the number of conducive days per year was found to decline significantly over the years. This downward trend is believed to be due to the implementation of emission controls.

The States have also considered the trend in background ozone concentrations for 1989 through 1998. Background ozone concentrations, reflecting ozone transport into the St. Louis area rather than local ozone impacts, have been found to trend upward over the most recent years (1992–1998), pointing to the need to control ozone transport. This ozone transport is believed, based on the ozone modeling, to play a significant role in the ozone standard exceedances in the St. Louis ozone nonattainment area.

Analyses of regional NO_X emissions from Illinois, Indiana, Kentucky, Missouri, Ohio, and Tennessee and outside of the St. Louis ozone nonattainment area shows an upward trend over the period of 1985 through 1997, with 1997 total NO_X emissions being 16 percent higher than in 1985. Illinois and Missouri note that the upward trend in upwind regional NO_X emissions corresponds to the trend in increased background ozone concentrations. This observation lends credence to the selected control strategy of controlling regional NO_X emissions.

The States' analyses of air quality and emission trends do provide some support for the States' attainment demonstration. Progress in air quality improvement through the current period (1997–1999) is demonstrated and future progress in air quality improvement is shown to be likely. In addition, these analyses lend support to a regional NO_X reduction as a reasonable approach to achieving attainment of the ozone standard. Nonetheless, the air quality and emission trends by themselves do not provide an adequate weight-of-evidence determination and do not demonstrate that the ozone standard will be attained by 2003. They simply demonstrate that the States have made progress towards attaining the standard and are expected to continue to make such progress.

EPA's NO_X SIP Call Modeling: The States note that the EPA recommends that States use the results of EPA's NO_X SIP call modeling as part of the weight-of-evidence for the ozone attainment demonstrations. Based on the NO_X SIP call modeling, the post-control St. Louis area maximum ozone design value is projected to be 124 ppb at the St. Charles County monitoring site in 2007 (subsequent modeling, incorporating additional emission improvements expected to result from Tier II vehicle emission standards and the use of low-sulfur gasoline, indicates even lower ozone levels in the St. Louis area in 2007). It should be noted, however, that the NO_X SIP call modeling considered NO_X emission controls that go beyond the level of NO_X controls contained in the States ozone attainment strategy. The NO_X SIP call modeling supports the direction of controls in the States' control strategy (emphasis on regional NO_x controls).

Since the NO_X SIP call will lead to lower ozone levels in the St. Louis area than the States' selected emission control strategy, EPA believes that this is additional evidence in support of the States' attainment demonstration. As noted above, the deterministic approach failed to unequivocally demonstrate attainment of the 1-hour standard. The modeling employed by the States assumed NO_X emission limits higher than those that were assumed in the development of the NO_X SIP call (regional NO_X control levels of 0.25 pounds/mmBTU for EGUs in the States' attainment demonstration versus 0.15 pounds/mmBTU for EGUs along with other regional NO_X controls in the NO_X SIP call). As a consequence, the NO_X SIP call will produce lower ozone transport levels than the control strategy submitted by the States. As noted above, in *Michigan* v. *EPA*, the U.S. Court of Appeals for the District of Columbia generally upheld the NO_X SIP call, but remanded EPA's determination to require NO_X emission reductions from the entire State of Missouri. *Michigan* v. *EPA*, No. 98–1497 (D.C. Cir. March 3, 2000). Since sensitivity analyses have shown that lower ozone interstate transport levels result in lower peak ozone levels in the St. Louis area, we expect the implementation of the NO_X SIP call to result in greater improvement in the ozone levels than predicted in the States' attainment demonstration modeling, which only assumed NO_X emission limits of 0.25 pounds per mmBTU for EGUs in upwind States.

This factor lends support to the States' attainment demonstration and supports the view that the combination of NO_X SIP call controls and the emission controls selected by the States should bring the St. Louis area into attainment of the 1-hour ozone standard.

4. Emission Control Strategies

What Emission Control Strategies Were Considered in the Attainment Demonstration?

Illinois' emission control strategy relies on the Clean Air Act emission control requirements through 2003, including the impacts of the State's 15 percent Rate-Of-Progress (ROP) plan for the Illinois portion of the St. Louis ozone nonattainment area, federal emission controls expected to be implemented by 2003, and a statewide NO_X emission limit of 0.25 pounds/mmBTU for EGUs of generating capacity greater than 25 MWe. The NO_X emission limit for EGUs only applies during the ozone season (May 1 through September 30). Illinois is in the process of developing state-wide NO_X emission control regulations to cover this NO_X limit. Further, it must be noted that Illinois has committed to tighten this NO_X limit even further if required to attain the ozone standard in the Lake Michigan area. Illinois is also assessing the impacts of regional NO_X controls on ozone transport into the Lake Michigan area, where Illinois must also attain the 1-hour standard. If modeling indicates that EGU NO_X emission limits must be tightened beyond 0.25 pounds/mmBTU to attain the ozone standard in Lake Michigan area, Illinois is committed to completing rule development to achieve the more stringent NO_X emission limits. If more stringent NO_X emission limits are adopted, this will further lower ozone levels in the St. Louis area. At minimum, the State will adopt an EGU NO_X emission limit of 0.25 pounds/mmBTU regardless of the modeling outcome for the Lake Michigan area.[7]

Missouri's emission control strategy also relies on the Clean Air Act emission control requirements through 2003, including impacts of the State's 15 percent ROP plan, and regional NO_X emission limits for EGUs. The NO_X emission limits are differentiated between two portions of the State, with a NO_X emission limit of 0.25 pounds/mmBTU in the eastern third of the State and a NO_X emission limit of 0.35 pounds/mmBTU in the western two-thirds of the State. The emission control strategy also considers the emission impacts of the following control measures: VOC emission reductions from implementation of RACT on various sources (see the discussion of the contents of Missouri's November 10, 1999 submittal above); NO_X RACT in the Missouri portion of the St. Louis ozone nonattainment area; and an improved vehicle I/M program.

The emissions control strategy also assumes that all other States in the "fine grid" area of the OTAG analysis (those States subject to NO_X emission budgets in EPA's NO_X SIP call) would also limit NO_X emissions from EGUs to 0.25 pounds/mmBTU. Again note that this differs from the EGU NO_X emission rate of 0.15 pounds/mmBTU considered for these sources in EPA's NO_X SIP call and considered by EPA to be acceptable for background ozone considerations. Illinois and Missouri believe that these States should be assumed to implement NO_X emission limits no tighter than those considered for Illinois and Missouri in the attainment demonstration and has reflected such thinking in the attainment demonstration. Nonetheless, implementation of the NO_X SIP call will further lower ozone levels in the St. Louis area, adding weight-of-evidence and a margin of safety to the States' attainment demonstration.

Have the States Adopted the Selected Emission Control Strategies and Have the States Adopted the Emission Control Regulations Needed To Implement the Emission Control Strategies?

The States have adopted the emission control strategies and all associated emission control regulations except the state-wide NO_X emission limits for EGUs. Both States are expected to complete development of proposed NO_X emission control regulations for the EGUs by mid-2000 and have final adopted rules no later than December 2000. Note that the EPA would not finally approve the attainment demonstration until after it has determined that the statewide NO_X control regulations are acceptable.

Missouri submitted additional emission control regulations needed to implement the control strategy with the November 10, 1999 submittal. These regulations include NO_X RACT, additional VOC RACT, and the regulations required to implement the State's 15 percent rate-of-progress plan. These regulations are undergoing separate review and have been proposed for approval as noted elsewhere in this document.

Illinois has completed all VOC emission control regulations and has submitted these regulations to the EPA. All of these VOC emission control regulations have been previously approved by the EPA.

Have the States Adopted all Emission Control Regulations Required by the Clean Air Act?

Illinois and Missouri have adopted all VOC emission control requirements required under the Clean Air Act for a moderate ozone nonattainment area. As noted above, some of these emission control regulations are currently under review by the EPA. The final approval of the ozone attainment demonstration is contingent on the final approval of these regulations.

As noted above, the States have yet to complete the regional, statewide NO_X emission control regulations needed to complete the ozone control strategy. Final approval of the attainment demonstration is contingent on the adoption of these rules. In the alternative, this proposed rulemaking proposes to disapprove the ozone attainment demonstration if the States fail to submit the proposed regional, statewide NO_X control regulations by June 2000 and final adopted regional, statewide NO_X control regulations by December 2000. The attainment demonstration will also not be finally approved if the EPA review of the regional NO_X emission control regulations, which will be the subject of a separate rulemaking, concludes that they are not approvable.

5. Transportation Conformity

Did the States Address Transportation Conformity in the Submittals and Did the States Adopt Motor Vehicle Emission Budgets?

Both Illinois and Missouri have submitted motor vehicle emissions budgets for the 2003 attainment year in their respective portions of the St. Louis ozone nonattainment area. These emission budgets must meet the adequacy criteria in the Transportation Conformity Rule before the budgets and the attainment demonstration are approved.

The IEPA has submitted an emissions budget of 28.70 tons per day for VOC and 40.64 tons per day for NO_X in the Illinois portion of the nonattainment area (the Metro-East area). This budget has been posted to the EPA web site for public comment and has been under adequacy review since its submittal to the EPA. The EPA review of this emissions budget has found that the budget meets all of the adequacy criteria in section 93.118 of the Transportation Conformity Rule. These criteria include: (1) The SIP was endorsed by the Governor (or his designee) and was

[7] Illinois will also need to adopt controls as necessary to respond to the NO_X SIP call.

subject to a State public hearing; (2) consultation among federal, State, and local agencies occurred; (3) the emissions budget is clearly identified and precisely quantified; (4) the motor vehicle emissions budget, when considered together with all other emissions, is consistent with attainment; and (5) the motor vehicle emissions budget is consistent with and clearly related to the emissions inventory and control strategy in the submitted attainment demonstration. The EPA is also required to consider comments submitted to the State at the public hearing. No comments were received by the State on the transportation conformity budgets. Also, no comments were received on the Illinois budget during the adequacy posting.

The EPA is proposing in this document to approve the transportation conformity budget submitted by Illinois. Comments on this proposed approval should be submitted to the docket as outlined in the comments section of this document.

The MDNR included an emissions budget in its November 10, 1999 submittal. An error in the emission estimates was subsequently detected during the interagency consultation process. The MDNR is revising the motor vehicle emissions budget, which will be addressed in subsequent EPA rulemaking. The new Missouri motor vehicle emissions budget will be posted on EPA's adequacy web site (go to *http://www.epa.gov/otaq/traq/* and click on "conformity," then click on "adequacy web pages") when it is received.

As noted elsewhere in this document, Missouri must submit a final motor vehicle emissions budget which the EPA can determine to be adequate for conformity assessments (Illinois has already met this requirement) to avoid disapproval of the attainment demonstration SIP. Consistent with the schedule for submission of revisions to the States' attainment demonstration, described previously in this document, Missouri must submit any proposed revisions to its motor vehicle emissions budget no later than June 30, 2000. Although these emissions budgets are undergoing separate adequacy review, it should be noted that the ozone attainment demonstration will not be given a final approval until the EPA has determined these emissions budgets to be adequate to support future transportation conformity reviews.

6. Petition for NO_x Control Exemption

The February 10, 2000, IEPA submittal contains a petition for an exemption from NO_x emission reduction requirements that are contained in section 182(f)(1) of the Act. The IEPA requests that this exemption apply to the RACT, NSR, and general conformity NO_x requirements for the Illinois portion of the St. Louis nonattainment area pursuant to section 182(f)(2) of the Act. This exemption is based on Illinois' assertion that it has demonstrated attainment of the ozone standard without the need to account for these NO_x emission controls. Therefore, Illinois contends that these NO_x emission controls must be considered to be "excess" and subject to an exemption under section 182(f)(2) of the Act.

Illinois believes that the ozone attainment demonstration provides the requisite technical support for this petition. The NO_x emission reductions in the attainment demonstration and control strategy in Illinois are limited to the NO_x emission reductions from EGUs or other Act-required emission controls not subject to this petition. Illinois contends (Missouri has not made a similar argument) that the ozone impacts in the St. Louis area resulting from NO_x emissions are dominated by the impacts of regional NO_x emissions from EGUs, and that controlling local NO_x emissions for other source categories would not significantly impact ozone levels. Illinois believes that it has shown in the ozone attainment demonstration modeling that application of the specific section 182(f) NO_x control requirements would not meaningfully contribute to attainment of the ozone standard. Review of the modeling documentation supplied to the EPA, however, does not show the specific impacts of NO_x RACT, NO_x NSR, or NO_x general conformity. The modeling documentation does imply that Illinois applied no specific emission reduction credits for these NO_x control measures.

It should be noted that Missouri has adopted NO_X RACT regulations for the St. Louis area and is not seeking an exemption from NO_X RACT, NO_X NSR, or NO_X general conformity requirements. The modeling used to support the attainment demonstration does consider the impacts of NO_X emission reductions resulting from NO_X RACT implementation in the Missouri portion of the St. Louis nonattainment area.

B. Environmental Protection Agency Review of the Submittals

1. Adequacy of the States' Demonstrations of Attainment

Did the States Adequately Document the Techniques and Data Used to Derive the Modeling Input Data and Modeling Results?

The submittals from the States thoroughly documented the techniques and data used to derive the modeling input data. The submittals adequately summarized the modeling outputs and the conclusions drawn from these model outputs. The submittals adequately documented the States' weight-of-evidence determinations and the bases for concluding that these determinations adequately support the attainment demonstration.

Did the Modeling Procedures and Input Data Used Comply With the Environmental Protection Agency Guidelines and Clean Air Act Requirements?

Yes. The modeling procedures and input meet the requirements of EPA's July 1991 and June 1996 ozone modeling guidelines.

Do the Weight-of-Evidence Determinations Support the Attainment Demonstration?

The weight-of-evidence determinations, when viewed in aggregate, show that the demonstration of attainment may be adequate for proposed approval. An issue, however, must be taken with several critical portions of the weight-of-evidence determinations, namely with the relative reduction factor results and the additional emission reductions calculation. As noted above, MDNR revised the emission inventories for 2003. Based on these emission inventory revisions, the modeling for 2003 was revised. Such a modeling revision, however, was not performed for 1996 despite that fact that the 1996 emissions should also be revised. This may have resulted in a modeling bias in the results of the 2003 ozone estimates relative to those of 1996 as modeled. This has led to errors in the estimation of relative reduction factors and, therefore, may potentially impact the predicted future ozone design value for the area.

Comparison of 2003 attainment demonstration emissions as submitted in Illinois' draft October 15, 1999 attainment demonstration with the 2003 attainment demonstration emissions as documented in the February 10, 2000 submittal shows that the nonattainment area VOC emissions have been

decreased by approximately 60 tons per day and that the nonattainment area NO_X emissions have been increased by approximately 6 tons per day. These emission changes incorporate both post-1996 emission reductions as well as changes in emission factors and calculation procedures. It is the changes in emission factors and calculation procedures that would also apply to the 1996 emissions. From the data provided, it is impossible to determine the magnitude of the emission changes that would have to be applied to the 1996 emissions. Again, this may potentially impact the predicted future design value, which is a key component of the weight-of-evidence argument. Accordingly, the States must revise the ozone modeling for 1996 using the updated 1996 emissions and must reassess the results for the relative reduction factor calculations and the additional reductions test.

It is inappropriate to conclude at this time that the demonstration of attainment has fallen short or that the selected emission control strategy is inadequate. The States are being given an opportunity to reassess the 1996 modeling results and the associated relative reduction predictions. It is not expected to take more than a few months for the States to perform this analysis. If the reassessment of modeling results causes the States to significantly modify the attainment strategy, the EPA will re-propose rulemaking on attainment demonstration SIP revisions, and will seek new public comments on the revised SIP revisions.

2. Adequacy of the Emission Control Strategies

Do the Emission Control Strategies Meet the Requirements of the Clean Air Act?

Given the data presented, the selected emission control strategy may be adequate to achieve attainment of the 1-hour ozone standard. However, due to the need to reassess the weight-of-evidence determination, the EPA reserves final judgement on the emissions control strategy until after it has had an opportunity to review the revised 1996 ozone modeling results and the revised weight-of-evidence determinations (the revised relative reduction factor estimates and the revised additional reductions test results).

Do Emission Control Shortfalls Exist With Regard To Probable Attainment of the Ozone Standard?

To determine whether there is a shortfall in emission controls, the need for revised 1996 base year modeling must first be addressed. Corrections to the 1996 base year emissions inventory will result in changes to the predicted daily maxima which are presented in Table 3. Again, the EPA can not fully approve the attainment demonstration or act on the attainment date extension request until these analyses have been completed and demonstrate attainment of the standard consistent with the Act and EPA policy.

Have the States Specified and Adopted Acceptable Motor Vehicle Transportation Conformity Budgets?

The States have submitted motor vehicle transportation conformity emission budgets. The budget submitted by the IEPA for Illinois portion of the St. Louis nonattainment area has been found to meet the adequacy criteria and is proposed for approval. The budget submitted by the MDNR needs to be revised and resubmitted. The attainment demonstration will not be approved until adequate motor vehicle emissions budgets are submitted and determined to be adequate. The EPA is proposing in the alternative to disapprove the attainment demonstration if Missouri does not submit the motor vehicle emissions budget in accordance with the schedule specified above.

3. Adequacy of the Requests for Extension of the Attainment Date

The policy for the extension of an ozone attainment date is discussed above. The States' compliance with these requirements is discussed here.

a. Identification of the Area as a Downwind Area Affected by Ozone Transport

The States have cited EPA's NO_X SIP call modeling and analyses documented in the OTAG process to demonstrate that the St. Louis ozone nonattainment area is affected by an upwind area in another State that significantly contributes to ozone nonattainment in St. Louis. Kentucky is the State outside of Illinois and Missouri that contributes to ozone concentrations in the St. Louis area. On December 17, 1999, EPA took final action on petitions from 8 northeastern States under section 126 of the Act. In its action, EPA granted those portions of the petitions for sources for which it made affirmative technical determinations with respect to the 1-hour ozone standard. These included sources in Kentucky that make significant contributions to ozone levels in the St. Louis area. In addition, Illinois and Missouri have noted the trend towards increasing transport of ozone into the area from upwind States.

The EPA proposes to find that the States' demonstration of ozone transport meets the criteria in EPA's attainment date extension policy.

b. Submittal of an Approvable Attainment Demonstration

EPA's review of the attainment demonstration shows that, with the required changes EPA has specified, it is likely to be approved. In addition, the States have adopted the emission control measures (RACT, I/M, and other 15 percent Rate-Of-Progress plan requirements) or are expected soon to adopt the necessary emission control measures (regional NO_X emission controls) needed to achieve attainment.

c. Adoption of all Applicable Local Measures Required Under the Area's Current Ozone Classification

Missouri has completed the adoption of all local measures required by the Act for the area's current classification. Illinois has adopted the necessary local measures, with the exception of NO_X RACT. If EPA approves Illinois' request for an exemption from the NO_X RACT requirements, as discussed elsewhere in this document, this element will have been met.

Both States must adopt and submit regional NO_X regulations to complete the requirements for the attainment SIP. Proposed regional NO_X regulations are expected to be developed by June 2000 and final regional NO_X regulations must be adopted and submitted by December 2000.

EPA concludes that the States are likely to meet this requirement. It is noted, however, that the final determination on this issue must wait until all necessary rules, and the NO_X RACT exemption request, have been approved by the EPA.

d. Implementation of all Adopted Measures by the Time Upwind Controls are Expected.

In anticipation of the implementation of upwind regional NO_X controls in 2003 (the NO_X SIP call requires implementation of NO_X controls by May 15, 2003), Illinois and Missouri selected this year as the new attainment period for the St. Louis area in keeping with EPA's attainment date extension policy. Both States have committed to fully implement the regional NO_X controls by 2003 (these NO_X emission controls must be implemented prior to the start of the ozone season in 2003) and are expected to have implemented the other control measures prior to that date. Therefore, the States have met or will meet this condition.

The EPA concludes that, at the present time, the States are likely to meet the conditions for an attainment date extension and are in the process of concluding efforts to meet these conditions. Final resolution of this issue, however, will not occur until the States have corrected the noted problem with the attainment demonstration and have adopted the required regional NO_X regulations.

EPA believes that it is likely that Illinois and Missouri will be able to meet the criteria for obtaining an attainment date extension under the conditions contained in EPA's July 16, 1998 attainment date extension policy. If this occurs, the attainment date for the St. Louis area is proposed to be extended to November 15, 2003. Even though the regional NO_X controls will be implemented by the start of the ozone season in 2003, this later attainment date recognizes that the States' attainment demonstration does consider other VOC and NO_X emission reductions that will continue to occur throughout the ozone season in 2003.

If the States do not correct the attainment demonstration, do not adopt approvable regional NO_X emission control regulations, or otherwise fail to meet the conditions of the attainment date extension policy, EPA will take final action on the proposed reclassification described in EPA's March 18, 1999 document (64 FR 13384). To the extent that comments received on the March 18, 1999 document, and comments received on EPA's March 25, 1999 document, "Extension of Attainment Dates for Downwind Transport Areas," 64 FR 14441, are applicable to this rulemaking, EPA will address and respond to these comments in its final rulemaking action.

4. Adequacy of the NO_X Control Exemption Request has Illinois Adequately Supported its Request for an Exemption From the Requirement for NO_X emission Control Regulations?

The IEPA has requested an exemption from additional NO_X RACT, NSR, and general conformity requirements under section 182(f) of the Clean Air Act based on its contention that the selected emissions control strategy leads to attainment of the ozone standard without these additional NO_X emission reductions or NO_X emission control measures in the Illinois portion of the nonattainment area. Review of the attainment demonstration against EPA's NO_X exemption policy discussed above shows that the request for a NO_X control exemption may be granted in part. NO_X RACT emission reductions in the Illinois portion of the nonattainment area are not needed for attainment of the 1-hour ozone standard, based on the current modeled ozone attainment demonstration. Illinois, however, will need to show that its request for a NO_X RACT exemption is still supportable after the States revise the 1996 base year modeling and show that the emissions control strategy selected still results in attainment without assuming NO_X RACT for Illinois sources. Since NO_X RACT clearly impacts NO_X emissions through NO_X emission reductions and the attainment demonstration, as it currently exists, does not rely on these types of NO_X emission reductions in the Illinois portion of the St. Louis nonattainment area, Illinois has demonstrated that a NO_X RACT exemption is justified under section 182(f)(2) of the Act. Although NO_X RACT would lead to NO_X emission reductions, possibly leading to further ozone reductions, Illinois has demonstrated that additional local NO_X emission reductions in the Illinos portion of the nonattainment area are not needed to demonstrate attainment of the ozone standard in the St. Louis area.

Section 182(f)(2) of the Act gives States the flexibility to limit application of the NO_X control requirements to the extent that any portion of these emission reductions are demonstrated to result in "excess reductions." In this case, the modeling of the adopted emission control strategy demonstrates that application of NO_X RACT in the Illinois portion of the nonattainment area would result in NO_X emission reductions in excess of those needed to attain the ozone standard. Therefore, these emission reductions are not required.

As noted above, the support for a NO_X control exemption pursuant to section 182(f)(2) of the Act must be based on a demonstration that NO_X emissions can essentially increase without limit without causing ozone standard violations. The State has failed to make such a demonstration. Therefore, EPA believes that a NO_X control exemption for NSR and general conformity pursuant to section 182(f)(2) (an "excess emissions reduction" argument) is not supported and proposes to disapprove the request relative to these Clean Air Act requirements.

III. Proposed Action

The EPA proposes to approve the Illinois and Missouri ozone attainment demonstrations for the St. Louis ozone nonattainment area. In the alternative, the EPA is proposing to disapprove the ozone attainment demonstrations if Illinois or Missouri do not revise the attainment demonstration modeling and associated weight-of-evidence analyses to incorporate corrections to the 1996 base year emissions inventory and confirm that attainment is demonstrated. These revisions must be submitted in proposed form by June 30, 2000 and in final form by December 31, 2000. In addition, EPA is proposing to disapprove the ozone attainment demonstrations if: (1) the States do not submit proposed regional, statewide NO_X emission control regulations for electric generating units by June 2000 or do not adopt and submit regional, statewide NO_X emission control regulations for electric generating units by December 2000; and (2) Missouri does not submit a proposed motor vehicle emissions budget for VOC and NO_X by June 30, 2000 and final revisions to the motor vehicle emissions budget by December 31, 2000. The Environmental Protection Agency proposes to: (1) approve an exemption from NO_X emission control requirements for NO_X RACT for the Illinois portion of the St. Louis ozone nonattainment area; (2) approve an extension of the ozone attainment date for the St. Louis ozone nonattainment area to November 15, 2003; and (3) approve the transportation conformity motor vehicle emissions budget submitted by Illinois for the Illinois portion of the St. Louis ozone nonattainment area. The EPA proposes to disapprove Illinois' requested exemption from NO_X emission control requirements for New Source Review and general conformity for the Illinois portion of the St. Louis ozone nonattainment area.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is

preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 30, 2000.

Gail C. Ginsberg,

Acting Regional Administrator, Region 5.

Dated: April 7, 2000.

Dennis Grams,

Regional Administrator, Region 7.

[FR Doc. 00–9393 Filed 4–14–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 217–0231; FRL–6579–2]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from adhesives. We are proposing action on a local rule that regulates this emission source under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments are due on or before May 17, 2000.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted rule and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rule at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg, Fresno, CA 93726.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1199.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule addressed by this proposal with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	4653	Adhesives	03/19/98	09/29/98

On January 26, 1999, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

There are no previous versions of Rule 4653 in the SIP, although the SJVUAPCD adopted earlier versions of this rule on March 17, 1994 and April 13, 1995, and CARB submitted them to us on May 24, 1994 and August 10, 1995, respectively. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals.

C. What is the Purpose of the Submitted Rule?

Rule 4653 limits the VOC emissions resulting from the application of adhesives and adhesive primers. The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The SJVUAPCD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 4653 must fulfill RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Document," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. The State of California Air Resources Board's "Determination of Reasonably Available Control Technology (RACT) and Best Available Retrofit Control Technology (BARCT) for Adhesives and Sealants," December 1998.

B. Does the Rule Meet the Evaluation Criteria?

This rule improves the SIP by establishing emission limits for adhesives, by specifying application methods and housekeeping practices, by designating appropriate solvents, and by requiring recordkeeping. This rule is largely consistent with the relevant policy and guidance regarding enforceability, RACT and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What Are the Rule Deficiencies?

These provisions conflict with sections 110 and 182 and part D of the Act and prevent full approval of the SIP revision.

1. Rule 4653 establishes VOC limits which do not meet RACT for specialty contact adhesives which are labeled exclusively for the bonding of single-ply roof material or immersible products, for adhesives used to bond porous materials, and for surface preparation solvents.

2. Under section 4.1.1, certain exempt operations are only required to maintain monthly records documenting the type

and quantity of adhesive products used. These operations, however, may potentially use noncompliant materials which necessitates that daily records be kept.

3. SJVUAPCD included an exemption in section 4.1.9 for contact adhesives subject to 16 CFR part 1302. EPA is unable to approve the inclusion of this exemption without further justification because compliant formulations of these products that perform adequately already exist in the market place.

D. EPA recommendations to further improve the rules.

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

E. Proposed action and public comment.

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted rule to improve the SIP. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3). If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves a subsequent SIP revision that corrects the rule deficiencies within 18 months. These sanctions would be imposed as described in 59 FR 39832 (August 4, 1994). A final disapproval would also trigger the federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rule has been adopted by the SJVUAPCD, and EPA's final limited disapproval would not prevent the local agency from enforcing it.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

III. Background Information

A. Why Was This Rule Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of this local agency VOC rule.

TABLE 2—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978.	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988.	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990.	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991.	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's proposed action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 30, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 00–9392 Filed 4–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 226–0235; FRL–6578–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Tehama County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and a simultaneous limited disapproval of revisions to the California State Implementation Plan (SIP) for the Tehama County Air Pollution Control District (TCAPCD). The revisions concern Rule 4.31—Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters, Rule 4.34—Stationary Piston Engines, and Rule 4.37—Determination of Reasonably Available Control Technology for the Control of Oxides of Nitrogen from Stationary Gas Turbines.

The intended effect of proposing limited approval and a simultaneous limited disapproval of the rules is to regulate emissions of NO_X in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on the proposed rules will incorporate the rules into the federally approved SIP. EPA has evaluated the rules and is proposing a limited approval and a simultaneous limited disapproval under provisions of the CAA regarding EPA action on SIP submittals and general rulemaking authority because these revisions do not fully meet the CAA provisions regarding unapprovable executive officer discretion.

DATES: Comments must be received on or before May 17, 2000.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102)
401 "M" Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 'L' Street, Sacramento, CA 95812

Tehama County APCD, P.O. Box 38 (1750 Walnut Street) Red Bluff, CA 96080

FOR FURTHER INFORMATION CONTACT: Ed Addison, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1160.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being proposed for limited approval and a simultaneous limited disapproval into the California SIP are Tehama County Air Pollution Control District (TCAPCD) Rule 4.31—Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters, Rule 4.34—Stationary Piston Engines, and Rule 4.37—Determination of Reasonably Available Control Technology for the Control of Oxides of Nitrogen from Stationary Gas Turbines. Rules 4.31, 4.34 and 4.37 were submitted by the State of California to EPA on May 13, 1999.

II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

On November 25, 1992, EPA published a proposed rule entitled, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement). The November 25, 1992, action should be referred to for further information on the NO_X requirements for SIPs.

This document addresses EPA's proposed action for Tehama County Air Pollution Control District (TCAPCD) Rule 4.31, adopted by the TCAPCD on March 14, 1995, Rule 4.34 on June 3, 1997, and Rule 4.37 on April 21, 1998. The State of California submitted Rules 4.31, 4.34 and 4.37 to EPA on May 13, 1999. Rules 4.31, 4.37 and 4.34 were found to be complete on May 26, 1999, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V.[1]

NO_X emissions contribute to the production of ground level ozone and smog. TCAPCD Rules 4.31, 4.34, and 4.37 specify NO_X emission standards and were originally adopted as part of TCAPCD's effort to maintain the National Ambient Air Quality Standard (NAAQS) for ozone, and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for the rules.

III. EPA Evaluation and Proposed Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the NO_X Supplement (57 FR 55620) and various other EPA policy guidance documents.[2]

For the purpose of assisting State and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble. In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), that identify alternative controls for all categories of stationary sources of NO_X. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X.

California Air Resources Board (CARB), developed a guidance document entitled Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Institutional, Industrial and Commercial Boilers, Steam Generators and Process Heaters, July 18, 1991. EPA has used CARB's guidance document in evaluating Rule 4.31. In addition, the CARB has developed a guidance document entitled, "Proposed Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Stationary Internal Combustion Engines," Dec. 3, 1997. EPA has used CARB's proposed Determination, dated Dec. 3, 1997, in evaluating Rule 4.34. CARB has developed a guidance document entitled Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology (BARCT) for Control of Oxides of Nitrogen from Stationary Gas Turbines, dated May 18, 1992. EPA has used CARB's guidance document in evaluating Rule 4.37. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_X rules meet Federal requirements and are fully enforceable and strengthen or maintain the SIP.

There are currently no versions of Rules 4.31, 4.34, and 4.37 in the SIP.

Submitted Rules 4.31, 4.34, and 4.37 include the following provisions:

- General provisions including applicability, exemptions, and definitions.
- Exhaust emissions standards for oxides of nitrogen (NO_X).
- Compliance and monitoring requirements including compliance schedule, reporting requirements, monitoring and recordkeeping, and test methods.

Rules submitted to EPA for approval as revisions to the SIP must be fully enforceable, must maintain or strengthen the SIP and must conform with EPA policy in order to be approved by EPA. When reviewing rules for SIP approvability, EPA evaluates enforceability elements such as test methods, recordkeeping, and compliance testing in addition to guidance regarding emission limits.

EPA has evaluated Tehama County Air Pollution Control District Rules 4.31, 4.34, and 4.37 for consistency with the CAA, EPA regulations, and EPA policy and has found that submitted Rules 4.31, 4.34, and 4.37 supercede TCAPCD Rule 4.14, and contain the following significant modifications from Rule 4.14, which are deficiencies, which must be corrected pursuant to the section 182(a)(2)(A) requirement of part D of the CAA.

Rule 4.31

- *Section C.4.: Exemptions:* contains unapprovable APCO discretion for units that are exempt from emission requirements due to lack of technical or economic feasibility. Paragraph C. 4. should be deleted.
- *Section F.1.: Compliance schedule:* Allows unapprovable APCO discretion as to schedule of periodic compliance determinations. The words "as specified by the APCO" should be removed and replaced with "once every 2 years, or after 8760 hours of operation, which ever is more frequent."

Rule 4.34

- *Section G.2:* Allows APCO discretion in approving the use of alternate portable analyzers.(Also, the note on bottom of page IV–6 of the Rule requires an asterisk.)

Rule 4.37

- *Section D.1.c.:* Allows APCO discretion as to approval of units that are exempt from RACT emission requirements due to lack of technical or economic feasibility. This section "c." should be removed.

A detailed discussion of these deficiencies can be found in the Technical Support Documents for Rules 4.31, 4.34, and 4.37, dated January 25, 2000, which are available from the U.S.

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[2] "Issues Relating to VOC regulation Cutpoints, Deficiencies, and Deviation, Clarification to Appendix D of November 24, 1987 **Federal Register** Document" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

EPA, Region IX office. Because of these deficiencies, EPA cannot grant approval of the rules under section 110(k)(3) and part D. In order to strengthen the SIP, EPA is proposing a limited approval and a simultaneous limited disapproval of TCAPCD's submitted Rules 4.31, 4.34, and 4.37 under sections 110(k)(3) and 301(a) of the CAA because they contain deficiencies which must be corrected in order to fully meet the requirements of sections 182(a)(2), 182(b)(2), 182(f), of part D of the CAA. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rules covered by this document have been adopted by the Tehama County Air Pollution Control District and are currently in effect in the Tehama County Air Pollution Control District. EPA's final disapproval action will not prevent the Tehama County Air Pollution Control District or EPA from enforcing the rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rules do not create a mandate on State, local or tribal governments. The rules do not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 does not apply to the rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. The rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rules does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to the rules.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The proposed rules will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA

to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rules.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 3, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 00–9395 Filed 4–14–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 226–0233; FRL–6578–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Tehama Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the California State Implementation Plan (SIP) for ozone. The revision concerns the control of oxides of nitrogen (NO_X) for the Tehama Air Pollution Control District (TCAPCD). The revision concerns TCAPCD Rule 4.14 for the control of oxides of nitrogen (NO_X) emissions from fuel burning equipment. The intended effect of proposing approval of this rule is to regulate emissions of NO_X in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate this rule into the Federally approved SIP. EPA has evaluated this rule and is proposing to approve it under provisions of the CAA regarding EPA actions on SIP submittals, SIPs for national primary and secondary ambient air quality standards (NAAQS), and plan requirements for nonattainment areas.

DATES: Comments must be received on or before May 17, 2000.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule and EPA's evaluation report of the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102) 401 "M" Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Tehama County APCD, P.O. Box 38 (1750 Walnut Street) Red Bluff, CA 96080.

FOR FURTHER INFORMATION CONTACT: Ed Addison, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1160.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being proposed for approval into the California SIP is Tehama Air Pollution Control District Rule 4.14, Fuel Burning Equipment. Rule 4.14 was submitted by the State of California to EPA on May 13, 1999.

II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.

On November 25, 1992, EPA published a proposed rule entitled, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement). The NO_X Supplement should be referred to for further information on the NO_X requirements.

This document addresses EPA's proposed action for Tehama Air Pollution Control District Rule 4.14, Fuel Burning Equipment, adopted by the TCAPCD on November 3, 1998. The State of California submitted Rule 4.14 to EPA May 13, 1999. Rule 4.14 was found to be complete on May 26, 1999, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V.[1]

NO_X emissions contribute to the production of ground level ozone and smog. TCAPCD Rule 4.14 specifies exhaust emission standards for NO_X, and was originally adopted as part of TCAPCD's effort to maintain the National Ambient Air Quality Standard (NAAQS) for ozone, and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for the rule.

III. EPA Evaluation and Proposed Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the NO_X Supplement (57 FR 55620) and various other EPA policy guidance documents.[2]

The California Air Resources Board (CARB) has developed a guidance document entitled, "California Clean Air Act Guidance, Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Institutional, Industrial and Commercial Boilers, Steam Generators and Process Heaters," July 18, 1991. EPA has used CARB's Determination, dated July 18, 1991, in evaluating Rule 4.14 for consistency with the CAA's requirements. In general, EPA uses the guidance documents cited above, as well as other relevant and applicable guidance documents, to ensure that submitted NO_X rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

There is currently a July 12, 1990, EPA approved (55 FR 28624) version of Tehama County Air Pollution Control District Rule 4.14, Fuel Burning Equipment, in the SIP. Submitted Rule 4.14 includes the following provisions:

- General provisions including applicability, exemptions, and definitions.

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[2] "Issues Relating to VOC regulation Cutpoints, Deficiencies, and Deviation, Clarification to Appendix D of November 24, 1987 **Federal Register** document" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

• Exhaust emissions standards for oxides of nitrogen (NO_X).

• Compliance and monitoring requirements including compliance schedule, reporting requirements, monitoring and record keeping, and test methods.

Rules submitted to EPA for approval as revisions to the SIP must be fully enforceable, must maintain or strengthen the SIP and must conform with EPA policy in order to be approved by EPA. When reviewing rules for SIP approvability, EPA evaluates enforceability elements such as test methods, record keeping, and compliance testing in addition to guidance regarding emission limits. The submitted version of Rule 4.14 strengthens the SIP through the addition of enforceable measures such as record keeping, test methods, definitions, and more stringent compliance testing. The submitted version of Rule 4.14 relaxes the SIP by exempting sources subject to Rules 4.31, 4.34 and 4.37. EPA is separately acting on these rules and believes that they generally adequately control the sources exempted from Rule 4.14. A more detailed discussion of the sources controlled and the controls required can be found in the Technical Support Document (TSD), dated January 25, 2000, which is available from the U.S. EPA, Region IX office.

EPA, in light of Rules 4.31, 4.34 and 4.37, has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations and EPA policy. Therefore, Tehama County Air Pollution Control District Rule 4.14 is being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a), section 182(b)(2), section 182(f) and the NO_x Supplement to the General Preamble.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base

its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 3, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 00–9394 Filed 4–14–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 60

RIN 0906–AA41

National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners: Medical Malpractice Payments Reporting Requirements

AGENCY: Health Resources and Services Administration, DHHS.

ACTION: Proposed rule; status.

SUMMARY: The Health Resources and Services Administration (HRSA) is announcing its intention to issue a second Notice of proposed Rulemaking (NPRM) on National Practitioner Data Bank (NPDB) Medical Malpractice payments Reporting Requirements following a period of data gathering and evaluation. This will involve a new 60-day public comment period for the revised proposal.

FOR FURTHER INFORMATION CONTACT: Thomas C. Croft, 301–443–2300.

SUPPLEMENTARY INFORMATION: Proposed rules regarding amending the medical malpractice payment reporting requirements for the NPDB were published on December 24, 1998 (63 FR 71255). More than 120 comments on the proposed rule were received. Given the large number of thoughtful comments and the high level of concern that was voiced about the potential impact of the proposal as published, HRSA believes it is imperative to gather additional data and conduct further analyses before proceeding. A new NPRM then will be published for public comment, with a goal of publishing the revised proposal by the end of 2000. The decision to publish another NPRM with its associated public comment period means that new final regulations likely will be implemented in 2001.

Authority: Secs. 401–432 of the Health Care Quality Improvement Act of 1986, Pub. L. 99–660, 100 Stat. 3784–3794, as amended by sec. 402 of Pub. L. 100–177, 101 Stat. 1007–1008 (42 U.S.C. 11101–11152).

Dated: October 19, 1999.

Claude Earl Fox,

Administrator, Health Resources and Services Administration.

Approved: December 3, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 00–9470 Filed 4–14–00; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 040600B]

South Atlantic Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Public hearings; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council), in cooperation with the Caribbean Fishery Management Council, will convene 17 public hearings regarding the draft Fishery Management Plan for the Dolphin and Wahoo Fishery of the Atlantic, Caribbean and Gulf of Mexico (draft FMP). The overall goal of the FMP is to provide a comprehensive management structure for dolphin and wahoo in the Atlantic, Gulf, and Caribbean exclusive economic zone (EEZ). The FMP will take a precautionary approach in conserving these fishery resources, achieving optimum yield (OY), and maintaining current allocations among user groups.

DATES: The Council will accept written comments on the draft FMP through July 7, 2000. The public hearings will be held in May and June of 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the public hearings.

ADDRESSES: Written comments should be sent to Bob Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699. Copies of the draft FMP are available from Kim Iverson, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: 843–571–4366. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: 843–571–4366; fax: 843–769–4520; email address: kim.iverson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Management Measures

The draft FMP provides for the following: Establishment of management units for dolphin and wahoo; proposed dealer, vessel and

operator permit requirements; reporting requirements; establishment of a maximum sustainable yield (MSY) and OY; definition of overfishing for dolphin and wahoo; and the establishment of a framework procedure for regulatory adjustments without requiring FMP amendments.

The following proposed management measures are under consideration for dolphin and wahoo in the Atlantic EEZ: (1) Prohibition of the sale of recreationally caught fish in the Atlantic EEZ; (2) a limit on the percent of dolphin harvested in the Atlantic EEZ by the recreational fishery and the commercial fishery, at 87 percent and 13 percent, respectively. (Note: Should either sector's catch exceed these percentages, the Council will review the data and evaluate the need for additional regulations which may be established through the FMP's framework procedures); (3) a recreational bag limit of 5 to 10 dolphins per person per day, excluding the captain and crew of for-hire boats in the Atlantic EEZ; (4) a commercial dolphin trip limit of 1,000 to 5,000 lb or an equivalent number of fish, with no transfer at sea allowed in the Atlantic EEZ; (5) no minimum size limit for dolphin in the Atlantic EEZ; (6) a commercial trip limit for wahoo of 500 lb or an equivalent number of fish, with no transfer at sea allowed in the Atlantic EEZ; (7) no minimum size limit for wahoo in the Atlantic EEZ; (8) a recreational bag limit of two wahoo per person per day for the recreational fishery, excluding the captain and crew of for-hire boats in the Atlantic EEZ; (9) specification of allowable gear for dolphin and wahoo in the Atlantic EEZ as surface longline and as hook-and-line gear including manual, electric, or hydraulic rod and reels, bandit gear, and spearfishing gear; (10) prohibition of the use of pelagic longline gear for dolphin and wahoo concurrent with time/area closures to the use of such gear for highly migratory pelagic species in the Atlantic EEZ; (11) establish a fishing year of January 1 to December 31 for the dolphin and wahoo fishery; (12) identification of essential fish habitat (EFH) for dolphin and wahoo in the Atlantic; and (13) identification of EFH—Habitat Areas of Particular Concern (HAPC) for dolphin and wahoo in the Atlantic.

Time and Location for Public Hearings

Public hearings for the draft FMP will be held at the following dates, times, and locations.

1. May 1, 2000, 7 p.m., Town & Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: 843–571–1000.

2. May 2, 2000, 7 p.m., Sea Turtle Inn, One Ocean Boulevard, Atlantic Beach, FL 32233; telephone: 904–249–7402

3. May 3, 2000, 7 p.m., Holiday Inn, 1300 N. Atlantic Ave., Cocoa Beach, FL 32931; telephone: 407–783–2271.

4. May 4, 2000, 7 p.m., Holiday Inn, 999 N. Atlantic Boulevard, Ft. Lauderdale Beach, FL 32931; telephone: 954–563–5961.

5. May 9, 2000, 7 p.m., Holiday Inn Kill Devil Hills, 1601 Virginia Dare Trail, Kill Devil Hills, NC 27948; telephone: 252–441–6333.

6. May 10, 2000, 7 p.m., Crystal Coast Civic Center, 3505 Arendell Street, Morehead City, NC 28557; telephone: 252–247–3883.

7. May 11, 2000, 7 p.m., Blockade Runner, 275 Waynick Boulevard, Wrightsville Beach, NC 28480; telephone: 910–256–2251.

8. May 15, 2000, 7 p.m., Hyatt Regency Savannah, 2 West Bay Street, Savannah, GA 31401; telephone: 912–238–1234.

9. May 17, 2000, 7 p.m., Embassy Suites Hotel and Casino, 8000 Tartak St., Isla Verde, Carolina, Puerto Rico; telephone: 787–791–0505.

10. May 18, 2000, 7 p.m., Holiday Inn St. Thomas, Veterans Drive, St. Thomas USVI; telephone: 800–524–7389.

11. May 19, 2000, 7 p.m., Caravelle Hotel, 448 Queen Cross St., St. Croix, USVI; telephone: 800–595–9505 or 340–773–0687.

12. June 8, 2000, 7 p.m., Hyatt Key West, 601 Front Street, Key West, FL 33040; telephone: 305–296–9900.

13. June 12, 2000, 7 p.m., Cheeca Lodge, Mile Marker 82, US Highway One, Islamorada, FL 33036; telephone: 305–664–4651.

14. June 26, 2000, 7 p.m., Princess Bayside, 4801 Coastal Highway, Ocean City, MD 21842; telephone: 410–723–2900.

15. June 27, 2000, 7 p.m., Holiday Inn, 290 Route 37 East, Toms River, NJ 08753; telephone: 732–244–4000.

16. June 28, 2000, 7 p.m., Holiday Inn, 3845 Veterans Memorial Highway, Ronkonkoma, NY 11779; telephone: 516–585–9500.

17. June 29, 2000, 7 p.m., The Radisson Hotel, 35 Governor Winthrop Boulevard, New London, CT 06320; telephone: 860–443–7000.

Copies of the draft FMP can be obtained from the Council (see **ADDRESSES**).

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by April 26, 2000.

Dated: April 11, 2000.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–9564 Filed 4–14–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 74
Monday, April 17, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington D.C. 20503. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0035.

Form Number: AID 1550–2.

Title: Private and Voluntary Organization Annual Return.

Type of Submission: Renewal.

Purpose: USAID is required to collect information regarding the financial support to private and voluntary organizations registered with the Agency. The information is used to determine the eligibility of PVOs to receive USAID funding.

Annual Reporting Burden:

Respondents: 442.

Total annual responses: 442.

Total annual hours requested: 1,320 hours.

Dated: April 6, 2000.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau of Management.

[FR Doc. 00–9422 Filed 4–14–00; 8:45 am]
BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Farm Service Agency

List of Warehouses and Availability of List of Cancellations and/or Terminations

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of publication.

SUMMARY: Notice is hereby given that the Farm Service Agency has published a list of warehouses licensed under the United States Warehouse Act (7 U.S.C. 241 *et seq.*) as of December 31, 1999, as required by section 26 of that Act (7 U.S.C. 266). A list of cancellations or terminations that occurred during calendar year 1999 is also available. Interested persons may obtain a copy of either list from the person listed below.

FOR FURTHER INFORMATION CONTACT: Judy Fry, Farm Service Agency, Warehouse and Inventory Division, U.S. Department of Agriculture, STOP 0553, 1400 Independence Avenue, SW., Washington, DC 20250–0553, telephone 202–720–3822, or e-mail requests may be sent: Judy__Fry@wdc.fsa.usda.gov.

Signed at Washington, D.C., on April 10, 2000.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 00–9450 Filed 4–14–00; 8:45 am]
BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—School Breakfast Program Pilot Project Evaluation—Pre-Implementation Survey

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Nutrition Service's intention to request Office of Management and Budget approval of the pre-implementation survey of the School Breakfast Program Pilot Project Evaluation.

DATES: Written comments on this notice must be received by June 16, 2000.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological , collection techniques or other forms of information technology. Comments may be sent to: Alberta C. Frost, Director, Office of Analysis, Nutrition and Evaluation, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection forms should be directed to Alberta C. Frost, (703) 305–2117.

SUPPLEMENTARY INFORMATION:

Title: The School Breakfast Program Pilot Project Evaluation—Pre-Implementation Survey

OMB Number: Not yet assigned.

Expiration Date: N/A

Type of Request: New collection of information.

Abstract: Section 109(b) of the William F. Goodling Child Nutrition Act of 1998 (Pub. L. 105–336) amended section 18(e) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769(e)) to authorize a pilot study that provides free school breakfasts to all students regardless of family income in up to six school districts. An evaluation would rigorously assess the effects of this universal school breakfast program on program participation and a broad range of student outcomes, including academic achievement, school attendance and tardiness, classroom behavior and attentiveness, and dietary status. The evaluation will include a comprehensive implementation analysis that documents how the universal-free

breakfast program was implemented, changes in program operations and administration, and its costs. The evaluation may include a pre-implementation survey of parents to identify students who would be most likely to become new participants under a universal-free breakfast program. Approximately 150 students would be sampled from rosters of enrolled students provided by each of the 144 participating schools. The students' parents/guardians would be surveyed in telephone interviews lasting about 10–15 minutes. The survey would obtain information on children's participation in the regular School Breakfast Program, the likelihood that the student would participate in the universal-free program, and attitudes about breakfast and the School Breakfast Program. The survey would also collect information on the household's socioeconomic characteristics and student characteristics. This request for OMB approval is only for the pre-implementation survey. A separate package will be submitted to OMB for the remainder of the data collection instruments to be used in this evaluation.

Estimate of Burden: Public reporting burden is estimated to range between 10 and 15 minutes for each household.

Respondents: Parents/guardians of sampled students will be asked to respond to a short telephone survey.

Estimated Number of Respondents: 150 households from each of 144 elementary schools totaling 21,600 households.

Estimated Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents: 5,400 hours.

Dated: April 11, 2000.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 00–9554 Filed 4–14–00; 8:45 am]

BILLING CODE 3410–30–U

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Minnesota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene at 12 p.m. and adjourn at 4 p.m. on Tuesday, May 9, 2000, at the Embassy Suites, 425 South Seventh Street, Minneapolis, Minnesota 54415. The purpose of the meeting is to review the Committee's report, "Civil Rights Issues Facing Minorities in Moorhead, Minnesota," and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Alan W. Weinblatt, 612–292–8770, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 7, 2000.

Lisa M. Kelly,

Special Assistant to the Staff Director, Regional Programs Coordination Unit.

[FR Doc. 00–9400 Filed 4–14–00; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–836]

Glycine From the People's Republic of China: Extension of Time Limit for Preliminary Results of the New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary results of a new shipper review of glycine from the People's Republic of China ("China"). This review covers one Chinese producer, Nantong Dongchang Chemical Industry Corp. ("Nantong"), for the period March 1, 1999 through August 31, 1999.

EFFECTIVE DATE: April 17, 2000.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak at (202) 482–5811; Office of AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA").

Postponement of Preliminary Results

The Department has determined that it is not practicable to issue its preliminary results of the administrative review within the original time limit of April 29, 2000. *See Decision Memorandum from Edward C. Yang, Office Director to Joseph A. Spetrini, Deputy Assistant Secretary, Enforcement Group III,* April 7, 2000. The Department is extending the time limit for completion of the preliminary results until June 28, 2000 in accordance with Section 751(a)(2)(B)(iv) of the Act.

The deadline for the final results of this review will continue to be 90 days after the signature date of the preliminary results.

Dated: April 7, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary for Enforcement Group III.

[FR Doc. 00–9560 Filed 4–14–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–844–802]

Agreement Suspending the Antidumping Investigation on Uranium From Uzbekistan

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Price Determination on Uranium from Uzbekistan.

SUMMARY: Pursuant to Sections IV.A(2) and IV.C.1 of the agreement suspending the antidumping investigation on uranium from Uzbekistan, as amended, (antidumping suspension agreement on uranium from Uzbekistan), the Department of Commerce (the Department) calculated a price for uranium of $10.05/pound of U_3O_8 for the relevant period, as appropriate. This price will be used, as appropriate, to implement to Sections IV.A(2) and IV.C.1 of the Uzbekistan agreement.

EFFECTIVE DATE: April 1, 2000.

FOR FURTHER INFORMATION CONTACT: James Doyle or Marlene Hewitt, Office of Antidumping/Countervailing Duty

Enforcement—Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–0159 or (202) 482–6412 respectively.

Price Calculation

Background

Sections IV.A(2) and IV.C.1 of the antidumping suspension agreement on uranium from Uzbekistan prescribe that the Department issue its determined market price on April 1, 2000, and use it to determine the quota applicable to the above referenced provisions of Uzbekistan's agreement during the period of October 1, 1999, to March 31, 2000. Consistent with the February 22, 1993 letter of interpretation, the Department provided interested parties with the applicable preliminary price determination on March 27, 2000. No interested party submitted comments.

Calculation Summary

Sections IV.A(2) and IV.C.1 of the agreement specify how the components of the market price are to be determined. In order to determine the spot market price, the Department utilized the monthly average of the Uranium Price Information System Spot Price Indicator (UPIS SPI) and the weekly average of the Uranium Exchange Spot Price (Ux Spot). In order to determine the long-term market price, the Department utilized a simple average of the UPIS U.S. Base Price for the months in the period as no useable contract information was submitted.

The Department's letters to market participants provided a contract summary sheet and directions requesting the submitter to report its best estimate of the future price of merchandise to be delivered in accordance with the contract delivery schedules (in U.S. dollars per pound U_3O_8 equivalent). As all reported information had already been reported to UPIS or was for spot contracts or was for out-of-period contracts or used inherently speculative market-pricing, none were useable for the Department's calculation.

Weighting

The Department used the average spot and long-term volumes of U.S. utility and domestic supplier purchases, as reported by the Energy Information Administration (EIA) to weight the spot and long-term components of the observed price. We have used the purchase data from the period 1995–1998. During this period, the spot market accounted for 76.61 percent of total purchases, and the long-term market for 23.39 percent.

As in previous determinations, the Department used the EIA's *Uranium Industry Annual* to determine the available average spot and long-term volumes of U.S. utility purchases. We have updated the data to reflect the period 1995 through 1998. The EIA has withheld certain business proprietary contract data from the public versions of the *Uranium Industry Annual 1995, Uranium Industry Annual 1996, Uranium Industry Annual 1997* and the *Uranium Industry Annual 1998*. The EIA, however, provided all business proprietary data to the Department and the Department has used it to update its weighting calculation.

Calculation Announcement

The Department determined, using the methodology and information described above, that the observed market price is $10.05. This reflects an average spot market price of $9.70, weighted at 76.61 percent, and an average long-term contract price of $11.23, weighted at 23.39 percent. This price will be used, as appropriate, to determine quota availability for purposes of Sections IV.A(2) and IV.A. of the antidumping suspension agreement on uranium from Uzbekistan.

Dated: April 10, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary AD/CVD Enforcement Group III.

[FR Doc. 00–9559 Filed 4–14–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000218045–0095–02]

RIN 0648–ZA80

Sea Grant Minority Serving Institutions Partnership Program: Request for Proposals for FY 2000; Correction

AGENCY: National Sea Grant College Program, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice; correction.

SUMMARY: The National Oceanic and Atmospheric Administration published a document in the **Federal Register** on March 14, 2000 announcing that applications were being accepted for the Sea Grant Minority Serving Institution Partnership Program, initiated by the National Sea Grant College Program. The document is being amended to make Minority Serving Institutions in the state of Alaska eligible to submit proposals.

FOR FURTHER INFORMATION CONTACT: Dr. Francis Schuler, Executive Director, National Sea Grant College Program, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910. Tel. (301) 713–2445 ext. 158; e-mail: *fritz.schuler@noaa.gov.*

SUPPLEMENTARY INFORMATION: In the March 14, 2000, **Federal Register** notice soliciting proposals for the Sea Grant Minority Serving Institutions Partnership Program, a drafting error in the eligibility section of notice occurred. NOAA is now amending this notice to reflect that Minority Serving Institutions in the state of Alaska are eligible to submit proposals to the Partnership Program.

Correction

In the **Federal Register** of March 14, 2000, in FR Doc. 00–6230, on page 13720, in the second column, correct Section III, paragraph (iv) to read as follows:

(iv) institutions of higher education located in U.S. insular areas and the state of Alaska that are on the "1999 United States Department of Education Accredited Post-Secondary Minority Institutions" are eligible to submit proposals.

Program Authority: 33 U.S.C. 1121–1131. Catalog of Federal Assistance Number: 11.417, Sea Grant Support.

Dated: April 10, 2000.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 00–9283 Filed 4–14–00; 8:45 am]

BILLING CODE 3510–KA–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040600E]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings of the Dolphin and Wahoo Advisory Panel (AP) and

Scientific and Statistical Committees (SSC).

DATES: The AP meeting is scheduled to begin at 8:30 a.m. on May 1, 2000 and will conclude by 3 p.m. The SSC meeting is scheduled to begin at 8:30 a.m. on May 3, 2000 and will conclude by 5 p.m.

ADDRESSES: Both meetings will be held at the Tampa Airport Hilton Hotel, 2225 Lois Avenue, Tampa, FL 33607; telephone: 813–877–6688.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Dolphin and Wahoo AP and SSCs will convene to review an "Exploratory Assessment of Dolphinfish, Coryphaena hippurus, based on U.S. Landings from the Atlantic Ocean and Gulf of Mexico" that was prepared by NMFS. The Dolphin and Wahoo AP will also review reports by the Mackerel Stock Assessment Panel (MSAP) and Socioeconomic Panel (SEP) regarding this assessment.

The Dolphin and Wahoo AP previously reviewed a draft of the Dolphin and Wahoo Fishery Management Plan (FMP) that was prepared by the South Atlantic, Gulf, and Caribbean Fishery Management Councils. Based on the review of these additional documents regarding dolphin, the Dolphin and Wahoo AP may make additional recommendations to the Council regarding the management of dolphin.

The SSC will review the same information and formulate their recommendations based on a scientific perspective.

Although other non-emergency issues not on the agendas may come before the AP/SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the AP/SSC will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling 813–228–2815.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by April 24, 2000.

Dated: April 7, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–9561 Filed 4–14–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040600D]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings of the Mackerel Advisory Panel (AP) and Scientific and Statistical Committees (SSC).

DATES: The AP meeting is scheduled to begin at 8:30 a.m. on May 2, 2000 and will conclude by 3 p.m. The SSC meeting is scheduled to begin at 8:30 a.m. on May 3, 2000 and will conclude by 5 p.m.

ADDRESSES: Both meetings will be held at the Tampa Airport Hilton Hotel, 2225 Lois Avenue, Tampa, FL 33607; telephone: 813–877–6688.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Mackerel AP and SSC will convene to review assessment information on mackerel stocks and provide recommendations to the Council on possible changes to Federal rules affecting mackerels.

The Mackerel AP and SSC will review the 2000 stock assessment analyses for Gulf group king mackerel, the Mackerel Stock Assessment Panel (MSAP) report, and the report of the Socioeconomic Panel (SEP) that includes economic and social information related to the range of acceptable biological catch (ABC) and other management considerations for Gulf group king mackerel. Based on this review, the Mackerel AP and SSC may recommend to the Council levels for total allowable catch (TAC), bag limits, size limits, commercial quotas, and other measures for these species for the 2000–2001 fishing season. The Mackerel AP and SSC will also review a reporting form that NMFS Southeast Fisheries Science Center will be using to collect information on finfish discarded from the commercial catch, and may provide comments to the Council on the form.

At the conclusion of the Mackerel SSC meeting, the Standing SSC members will review the NMFS' bycatch reduction device (BRD) testing protocol and may provide comments to the Council. Also, the Standing SSC will discuss NMFS' response to the SSC's previous question regarding historical red grouper landings.

Although other non-emergency issues not on the agendas may come before the AP/SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the AP/SSC will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Copies of the agenda can be obtained by calling 813–228–2815.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by April 24, 2000.

Dated: April 7, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–9562 Filed 4–14–00; 8:45 am]

BILLING CODE 3510–22–F

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040600C]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Oversight Committee and Groundfish Industry Advisory Panel in May, 2000. Recommendations from the committee and the advisors will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held May 1 and 2, 2000, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Colonial Hotel, One Audubon Road, Wakefield, MA 01880; telephone: (781) 245–9300.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee and Advisors will conduct a joint meeting to continue development of management options for Amendment 13 to the Northeast Multispecies Fishery Management Plan. If not completed at meetings held in April, the Committee and Advisors will continue their review of current overfishing definitions and control rules for the multispecies complex, examine the assumptions and policy decisions in those rules, and develop recommendations for the biological goals of the Amendment. The Committee and Advisors will also organize into subcommittees that will be tasked to develop specific management options for consideration by the full Committee. These tasks will be based on broad approaches to management selected by the Committee. The subcommittees may meet individually during the meeting to begin work on these management options. The discussions at the subcommittee level will be reported back to the Committee at this meeting or at future meetings.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: April 7, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–9565 Filed 4–14–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040700F]

South Atlantic Fishery Management Council; Public Scoping Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold nine public scoping meetings regarding the concept of using marine reserves as a fishery management tool.

DATES: The meetings will be held in April, May, and June. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the public hearings.

ADDRESSES: Copies of the Public Information Document (PID) for Marine Reserves are available by contacting Kerry O'Malley, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: 843–571–4366; email: kerry.omalley@noaa.gov. The PID will also be available at the meeting. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: 843–571–4366; fax: 843–769–4520; email: kim.iverson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Purpose of Meetings

The Council will hold scoping meetings to gather public comments regarding the concept of using marine reserves (nearshore or offshore, natural or man-made) as a fishery management tool, emphasizing the conservation of essential fish habitat and the species associated with the snapper-grouper complex. The Council has not yet decided whether to proceed with the development of marine reserves.

Time and Location for Public Meetings

Public scoping meetings will be held at the following dates, times, and locations.

1. April 26, 2000, 6:30 p.m., Marine Resources Center, SC Dept. of Natural Resources, 217 Ft. Johnson Road, Charleston, SC 29422; telephone: 843–762–5010.

2. May 9, 2000, 6 p.m., Sea Turtle Inn, One Ocean Boulevard, Atlantic Beach, FL 32233; telephone: 904–249–7402.

3. May 10, 2000, 6 p.m., Holiday Inn, 1300 N. Atlantic Avenue, Cocoa Beach, FL 32931; telephone: 407–783–2271.

4. May 11, 2000, 6 p.m., Ireland's Inn, 2220 N. Atlantic Blvd. Ft. Lauderdale, FL 33305; telephone: 954–565–6661.

5. May 16, 2000, 6 p.m., Classroom 205, McGee Building, Carteret Community College, 3505 Arendell Street, Morehead City, NC 28557; telephone: 252–247–3097.

6. May 17, 2000, 6 p.m., NCDMR Field Office, 127 Cardinal Drive Extension, Wilmington, NC 28405–3845; telephone: 910–395–3990.

7. May 25, 2000, 6 p.m., Murrell's Inlet Community Center, 4450 Murrell's Inlet Road, Murrell's Inlet, SC 29576; telephone: 843–651–7373.

8. May 31, 2000, 6 p.m., University of Georgia Marine Extension Service, 715 Bay Street, Brunswick, GA 31520; telephone: 912–264–7268.

9. June 1, 2000, 6 p.m., Hyatt Regency, 2 West Bay Street, Savannah, GA 31401; telephone: 912–238–1234.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by April 20, 2000.

Dated: April 11, 2000.

Bruce Morehaed,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–9563 Filed 4–14–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041200C]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The 103rd meeting of the Western Pacific Fishery Management Council (Council) will convene May 1, 2000, at 1 p.m.

ADDRESSES: The meeting will be held at the Western Pacific Fishery Management Council office, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The agenda during the full Council meeting will include the items below. The order in which agenda items are addressed may change.

1. Introductions;
2. Approval of Agenda;
3. Approval of 102nd Meeting Minutes;
4. Banning bottom longline fishing for pelagic management unit species in Federal waters around Hawaii as a preferred alternative under the Pelagics Fishery Management Plan (FMP);
5. Banning of spear fishing with SCUBA apparatus during day and night in the Western Pacific Region, as a preferred alternative under the Coral Reef Ecosystem FMP;
6. The Council may also wish to discuss issues relating to fisheries under Council jurisdiction in the Northwestern Hawaiian Islands;
7. Approval of Elliot Lutali's membership of Pelagic Plan Team;
8. Public comment;
9. Council action; and
10. Other business.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, Executive Director, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to meeting date.

Dated: April 12, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–9566 Filed 4–14–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary; Domestic Advisory Panel (DAP) on Early Intervention and Education for Infants, Toddlers, Preschool Children, and Children With Disabilities

AGENCY: Department of Defense Domestic Dependent Elementary and Secondary Schools (DDESS), DOE.

ACTION: Notice.

SUMMARY: Pursuant to Public Law 92–463, as amended (5 U.S. app. II), the Federal Advisory Committee Act, notice is hereby given that a meeting of the Domestic Advisory Panel (DAP) on Early Intervention and Education for Infants, Toddlers, Preschool Children, and Children with Disabilities is scheduled to be held from 8 a.m. to 3 p.m. on May 9–10, 2000. The meeting is open to the public and will be held at the Fort Benning Dependent Schools, Building 2670, 210 Custer Road, Fort Benning, Georgia 31905. The purpose of the meeting is to: (1) Review the response to the panel's recommendations from its December 1999 meeting; (2) review and comment on data and information provided by the Department of Defense Domestic Dependent Elementary and Secondary Schools; and (3) establish subcommittees as necessary. Persons desiring to attend the meeting or desiring to make oral presentations or submit written statements for consideration by the panel must contact Mr. David V. Burket at (703) 696–4354, extension 1455.

Dated: April 11, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 00–9416 Filed 4–14–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Advisory Group on Electron Devices, Department of Defense.

ACTION: Notice.

SUMMARY: Working Group C (Electro-Optics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, May 18, 2000.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imagining device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. § 10(d)(1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1994), and that accordingly, this meeting will be closed to the public.

Dated: April 11, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–9412 Filed 4–14–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense; Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Advisory Group on Electron Devices, Department of Defense.

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Friday, April 28, 2000.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Cox, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency (ARPA) and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended (5 U.S.C. App. § 10(d) (1994)), it has been determined that his Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: April 11, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–9413 Filed 4–14–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense; Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Advisory Group on Electron Devices, Department of Defense.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, May 24, 2000.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Eliot Cohen, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. § 10(d) (1994)) it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: April 11, 2000.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–9414 Filed 4–14–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense; Change In Meeting Date of the DOD Advisory Group on Electron Devices

AGENCY: Advisory Group on Electron Devices, Department of Defense.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a change to a closed session meeting.

DATES: The meeting will be held at 0900. Tuesday, April 25, 2000. This meeting replaces the meeting that was to be held on Thursday, March 16, 2000.

ADDRESSES: The meeting will be held Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with Section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. § 10(d)(1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1)(1994), and that accordingly, this meeting will be closed to the public.

Dated: April 11, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–9415 Filed 4–14–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Extension to the Public Comment Period From April 3, 2000 to April 24, 2000 for the Environmental Impact Statement for the Disposal and Reuse of MCAS El Toro

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to a request from the El Toro Reuse Planning Authority (ETRPA), the Deputy Assistant Secretary of the Navy (Installations and Environment), has decided to extend the public review comment period for the former Marine Corps Air Station (MCAS) El Toro Disposal and Reuse Environmental Impact Statement (EIS), from April 3, 2000 to April 24, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Montana, NEPA Project Manager, Commander, Southwest Division, BRAC Program Office, 1230 Columbia Street, Suite 1100, San Diego, CA 92101–8517, phone (619) 532–0942.

Dated: April 12, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–9528 Filed 4–14–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Analysis of Environmental Impacts Associated With the Conveyance of the Naval Ammunition Support Detachment, Vieques, Puerto Rico

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

Notice of intent to prepare analysis of the environmental impacts associated with the conveyance of the Navy property as contemplated by the President's Directive to the Secretary of Defense and the Director, Office of Management and Budget, dated January 31, 2000, entitled "Resolution Regarding Use of Range Facilities on Vieques, Puerto Rico;" and notice of scoping period.

SUMMARY: The Department of the Navy (Navy) will prepare an analysis of the environmental impacts associated with implementation of the President's Directive of January 31, 2000. The analysis will address conveyance of the property comprising the Naval Ammunition Support Detachment (NASD), Vieques, Puerto Rico, except approximately 100 acres of land on which the Relocatable Over-The-Horizon Radar (ROTHR) facility and Mount Pirata telecommunications site are located. It is anticipated that Navy will also retain such easements and other property interests as are necessary to support access to and continued operation of these two sites.

The environmental analysis will address endangered and threatened species, other natural resources, cultural resources, hazardous materials, and other issues brought forth through the scoping process. The environmental analysis will also address potential mitigation measures. The Department of the Interior will act as a cooperating agency in the preparation of the environmental analysis.

On February 25, 2000, Navy submitted legislation to the Congress proposing conveyance of the NASD property to the Commonwealth of Puerto Rico.

Federal, state, and local agencies, and individuals or organizations who may be interested in or affected by the conveyance of the property or the management of the conservation areas are invited to provide oral or written comments, in Spanish or English, accepted until May 17, 2000. Comments should be as specific as possible. Scoping comments may be sent to: Commander, U.S. Naval Forces South, Building 1685, U.S. Naval Station Roosevelt Roads, Puerto Rico 00742, FPO 8A34099–6004.

FOR FURTHER INFORMATION CONTACT: For additional information, write to the above address or call Mr. Jose Negron at (757) 865–4078.

SUPPLEMENTARY INFORMATION: The President directed the Navy to submit legislation authorizing the conveyance of the property comprising the NASD, Vieques, except approximately 100 acres of land on which the ROTHR facility and Mount Pirata Telecommunications site are located, to the Commonwealth of Puerto Rico.

Dated: April 12, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–9553 Filed 4–14–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Office of Science; Office of Science Financial Assistance Program Notice 00–14; Experimental Program To Stimulate Competitive Research (EPSCoR); Building EPSCoR-State/National Laboratory Partnerships

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting research grant applications.

SUMMARY: The Office of Basic Energy Sciences (BES) of the Office of Science (SC), U.S. Department of Energy (DOE), in keeping with its energy-related mission to assist in strengthening the Nation's scientific research enterprise through the support of basic science, engineering, and mathematics, announces its interest in receiving grant applications for collaborative partnerships between academic or industrial researchers from states eligible for the DOE/EPSCoR program and researchers at DOE's National Laboratories, facilities, and centers. The purpose of the DOE/EPSCoR program is to enhance the capability of designated states to conduct nationally-competitive energy-related research, and to develop science and engineering manpower in energy-related areas to meet current and future needs. The purpose of this program notice is to initiate and promote partnering and collaborative relationships that build beneficial energy-related research programs with strong participation by students, postdoctoral fellows and young faculty from EPSCoR states.

DATES: Potential applicants are required to submit a brief preapplication. All preapplications, referencing Program Notice 00–14, should be received by DOE by 4:30 P.M., E.D.T., October 3, 2000. A response to the preapplications encouraging or discouraging a formal application will be communicated to the applicant within approximately thirty days of receipt. The deadline for receipt of formal applications is 4:30 P.M., E.S.T., January 16, 2001, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2001.

ADDRESSES: All preapplications, referencing Program Notice 00–14, should be sent to Dr. Matesh N. Varma, Division of Materials Sciences and Engineering, SC–132, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

After receiving notification from DOE encouraging submission of a formal application, applicants may prepare formal applications and send them to:

U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 00–14. This above address must also be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Matesh N. Varma, DOE/EPSCoR Program Manager, Division of Materials Sciences and Engineering, SC–132, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, Telephone: (301) 903–3209, Facsimile: (301) 903–9513 or Internet E-mail address: matesh.varma@science.doe.gov.

SUPPLEMENTARY INFORMATION: To continue to enhance the competitiveness of states and territories identified for participation in the Experimental Program to Stimulate Competitive Research (EPSCoR), DOE encourages the formation of partnerships between academic and industrial researchers in EPSCoR states and the researchers at DOE's National Laboratories, facilities and centers in scientific areas supported by DOE's Office of Science. These collaborations should address areas of research of current interest to the Department. Undergraduate and graduate students, postdoctoral fellows and young faculty *must* be active members of the research team, and it is required that these investigators spend a summer or significant time during the academic-year at a National Laboratory, facility or center. Subcontracting arrangements with DOE National Laboratories will not be permitted. DOE eligible states and territories for the EPSCoR program are: Alaska, Alabama, Arkansas, Idaho, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, North Dakota, Oklahoma, South Carolina, South Dakota, Vermont, West Virginia, Wyoming, and the Commonwealth of Puerto Rico.

Program Funding

It is anticipated that approximately $3,000,000 will be available in FY 2001 for research that encourages and facilitates collaborative efforts between researchers from EPSCoR states and researchers at DOE's National Laboratories, facilities, and centers. Multiple-year funding of grant awards is expected subject to satisfactory progress of the research, the availability of funds, and evidence of substantial interactions between the EPSCoR researchers and the National Laboratory partner. Awards are expected to range up to a maximum of $150,000 annually with terms from one to three years. The number of awards and range of funding will depend on the number of applications received and selected for award. Cost sharing is strongly encouraged. All DOE/EPSCOR award funds will be provided to the recipient organization within the EPSCoR state for the purpose of supporting activities in the EPSCoR state and may include travel and lodging, faculty or student stipends, materials, services and equipment.

Applications

To minimize undue effort on the part of applicants and reviewers, interested parties are invited to submit preapplications. The preapplications will be reviewed relative to the scope and research needs of the Department of Energy. The brief preapplication must consist of (1) one to two pages of narrative describing the research objectives and methods of accomplishment, (2) a letter from the appropriate state EPSCoR coordinator endorsing the preapplication, and (3) a letter of intent from the DOE National Laboratory confirming collaboration on the project. The preapplications will be grouped according to programmatic areas of interest to the Office of Science and will be reviewed by DOE laboratory scientists to determine the priority of the proposed research. The preapplication will also be reviewed by the relevant programmatic research area program manager, to determine the priority of research and possible cofunding by that program office. Based on this review, DOE/EPSCoR management will recommend formal submission of applications to the Department. A telephone number, facsimile number, and e-mail address are required parts of the preapplication. Instructions regarding the contents of a preapplication and other preapplication guidelines can be found on the SC Grants and Contracts web site at: http://www.sc.doe.gov/production/grants/preapp.html.

In addition to the project description, all preapplications and formal applications must include the following information:

(1) Applications should explain the relevance of the proposed research to the agency's programmatic needs. On the cover page, applicants should specify the relevant DOE technical program office, and if known, the name of the program manager, and telephone number. DOE program descriptions and the contact person information may be accessed via the web at: http://www.doe.gov.

(2) Applications must demonstrate clear evidence of collaborative intent, including a delineation of each partner's role and contribution to the research effort as well as a "Letter-of-Intent" from the participating DOE National Laboratory, facility, or center.

(3) Applications must explain the individual value to both the EPSCoR and the National Laboratory partners. There should be clear objectives, not necessarily the same, for each partner.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria, listed in descending order of importance as codified at 10 CFR part 605.10(d).

1. Scientific and/or Technical Merit of the Project,
2. Appropriateness of the Proposed Method or Approach,
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs and priority. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Applications received by SC under its current competitive application mechanisms that meet the criteria outlined in this Notice may also be deemed appropriate for consideration under this announcement and may be funded under this program.

General information about the development and submission of preapplications, applications, eligibility, limitations, evaluation, and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605. Electronic access to the latest version of SC's Financial Assistance Guide is possible via the Internet at the following web site address: *http://www.sc.doe.gov/production/grants/grants.html.*

Additional information regarding format, preparation and specific requirements may be found at web site address: *http://www.sc.doe.gov/production/bes/EPSCoR/APPLI1.HTM.*

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington DC on April 4, 2000.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 00–9482 Filed 4–14–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Nuclear Energy Research Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Nuclear Energy Research Advisory Committee. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), requires that public notice of the meetings be announced in the **Federal Register**.

DATES: Tuesday, May 23, 2000, 10:30 am to 5:30 pm and Wednesday, May 24, 2000, 8 am to 12:30 pm.

ADDRESS: Hyatt Arlington at Washington Key Bridge, 1325 Wilson Boulevard, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Norton Haberman, Designated Federal Officer, Nuclear Energy Research Advisory Committee, U.S. Department of Energy, NE–1, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone Number 202.586.0136, E-mail: Norton.Haberman@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice to the Director of the Office of Nuclear Energy, Science and Technology (NE) of the Department of Energy on the many complex planning, scientific and technical issues that arise in the development and implementation of the Nuclear Energy research program.

Tentative Agenda

Tuesday, May 23, 2000

Welcome remarks
Status of Nuclear Energy's FY 2000 Budget
Report on Long-term Isotope Research and Production Plan
Long-term Planning for nuclear Energy Research Subcommittee Report
Nuclear Science and Technology Infrastructure Roadmap Subcommittee report

Wednesday, May 24, 2000

Report of other NERAC Subcommittees and panels
Public comment period.

Public Participation: The day and a half meeting is open to the public on a first-come, first-serve basis because of limited seating. Written statements may be filed with the committee before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Norton Haberman at the address or telephone listed above. Requests to make oral statements must be made and received five days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chair of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Reading Room. 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC on April 12, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–9483 Filed 4–14–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2261–014]

Constellation Power Source, Inc.; Notice of Filing

April 11, 2000.

Take notice that on March 31, 2000, Constellation Power Source, Inc. submitted for filing an updated market analysis as required by the Commission's condition granting it authorization to sell wholesale power at market-based rates.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before April 21, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–9481 Filed 4–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–168–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

April 11, 2000.

Take notice that on April 3, 2000, Koch Gateway Pipeline Company (Koch), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP00–168–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations (18 CFR 157.205 and 157.211) under the Natural Gas Act (NGA) for authorization to construct and operate delivery point facilities for service to Tyson Foods, Inc. (Tyson), an industrial end-user, in Hinds County, Mississippi, under Koch's blanket certificate issued in Docket No. CP82–430–000, pursuant to Section 7 of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www/ferc/fed.us/online/htm (call 202–208–222 for assistance).

Koch requests authorization to construct and operate delivery point facilities to serve Tyson's industrial plant. It is stated that Koch will use the facilities to transport up to 850 dekatherms per day on a firm basis pursuant to the terms of Koch's FTS rate schedule for delivery to Tyson. Koch estimates the cost of the facilities at under $50,000. It is asserted that Koch has sufficient capacity to render the proposed service without disadvantage to its other existing customers and that Koch's tariff does not prohibit the addition of delivery point facilities. It is stated that the proposed service will not have an impact on Koch's annual deliveries or peak day operations even though the proposed service is firm in nature. It is explained that Tyson is currently being served by Reliant

Energy-Entex, a local distribution company.

Any questions regarding the application may be directed to Kyle Stephens, Director of Certificates, at Koch Gateway Pipeline Company, P.O. Box 1478, Houston, Texas 77251–1478.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–9475 Filed 4–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–66–000]

Louisiana Public Service Commission and the Council of The City of New Orleans, Louisiana v. Entergy Corporation, Entergy Service, Inc, Entergy Louisiana, Inc., Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc. and Entergy Gulf States, Inc., Notice of Complaint

April 11, 2000.

Take Notice that on April 10, 2000, the Louisiana Public Service Commission and the Council of the City of New Orleans filed with the Federal Energy Regulatory Commission (Commission) a Compliant against Entergy Corporation, Entergy Services, Inc., Entergy Louisiana, Inc., Entergy Gulf States, Inc., Entergy Arkansas, Inc., Entergy Mississippi, Inc. and Entergy New Orleans, Inc. seeking amendments to the Entergy System Agreement.

Any person desiring to be heard or to protest this filing should file a motion to intervene nor protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 1, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to he complaint shall also be due on or before May 1, 2000.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–9472 Filed 4–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–92–001]

MidAmerican Energy Company; Notice of Filing

April 11, 2000.

Take notice that on March 31, 2000, MidAmerican Energy Company (Midamerican), 666 Grand Avenue, 2900 Ruan Center, Des Moines, Iowa 50309, tendered for filing amendments to Network Integration Transmission Service Agreements with the Municipal Electric Utility of Waverly, Iowa (Waverly); the City of Denver, Iowa (Denver); the City of Sergeant Bluff, Iowa (Sergeant Bluff); the City of Genesco, Illinois (Genesco); and MidAmerican, as wholesale merchant; and amendments to Firm Transmission Service Agreements with the City of Eldridge, Iowa (Eldridge); the Ames Municipal Electric System (Ames); Northwest Iowa Power Cooperative (NIPCO); and Alliant Energy Corporation (Alliant).

MidAmerican states that the amendments have been filed pursuant to Section II.B.1 of the Offer of Settlement approved by the Commission in Docket No. EL99–92–000 on March 17, 2000.

MidAmerican requests an effective date of January 1, 2000 for each of the amendments and a waiver of the Commission's notice requirement.

Copies of the filing were served on Waverly, Denver, Sergeant Bluff, Geneseo, Eldridge, Ames, NIPCO, Alliant, the Iowa Utilities Board, the Illinois Commerce Commission, the South Dakota Public Utilities Commission and all parties to Docket No. EL99–92–000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before April 21, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–9480 Filed 4–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–67–000]

Strategic Power Management, Inc., Complainant, v. New York Independent System Operator, Respondent; Notice of Filing

April 11, 2000.

Take notice that on April 10, 2000, Strategic Power Management, Inc. (SPM) filed against the New York Independent System Operator, a Complaint Requesting Fast Track Processing and Motion to Consolidate.

A copy of this filing was serviced upon all persons parties reasonably believed to have an interest herein or be affected thereby in accordance with 18 CFR 385.206(c).

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before April 21, 2000. Protests will be considered by the

Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before April 21, 2000.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–9473 Filed 4–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–165–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

April 11, 2000.

Take notice that on April 3, 2000, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP00–165–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Transco's Sundance Expansion Project (Sundance), located in Alabama, Georgia, Mississippi, and North Carolina, an incremental expansion of Transco's existing pipeline system which will provide 236,383 dekatherms per day (dts/d) of new firm transportation capacity to serve increased market demand in the Southeastern region of the United States by a proposed in-service date of May 1, 2002, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Transco states that an order to create the firm transportation capacity for the Sundance project, it proposes to construct and operate the following facilities on its mainline pipeline system:

1. 12.03 miles of 42-inch diameter pipeline loop from milepost (MP) 772.81 on Transco's mainline in Clarke County, Mississippi to MP 784.84 in Choctaw County, Alabama (the DeSoto loop).

2. 9.36 miles of 48-inch diameter pipeline loop from MP 851.46 on Transco's mainline in Dallas, County, Alabama to MP 860.82 in Perry County, Alabama (the Summerfield loop).

3. Piping modifications at Transco's existing Compressor Station No. 105, which is located in Coosa County, Alabama.

4. 8.97 miles of 42-inch diameter pipeline loop from MP 1247.03 on Transco's mainline in Cleveland County, North Carolina to MP 1256.00 in Gaston County, North Carolina (the Kings Mountain loop).

5. 7.67 miles of 42-inch diameter pipeline loop from MP 1287.11 on Transco's mainline to MP 1294.78 in Iredell County, North Carolina (the Mooresville loop).

6. The installation of one new 18,975 horsepower compressor unit, and the uprating of an existing 15,000 horsepower compressor unit, and an existing 16,500 horsepower compressor unit to 18,975 horsepower each at Transco's existing Compressor Station No. 115, which is located in Coweta County, Georgia. The proposed Sundance project will increase the total certificated compression at this station to 56,425 horsepower.

7. The installation of one new 15,000 horsepower compressor unit, and the uprating of an existing 4,000 horsepower compressor unit to 4,800 horsepower at Transco's existing Compressor Station No. 125, which is located in Walton County, Georgia. The proposed Sundance project will increase the total certificated compression at this station to 38,800 horsepower.

8. The installation of gas coolers at Transco's existing Compressor Station No. 150, which is located in Iredell County, North Carolina.

Transco declares that the total estimated cost for the proposed facilities will be $134.67 million.

Transco states that the construction and operation of the proposed facilities will not have a significant impact on human health or the environment. Transco asserts that the proposed facilities, for the most part, will be installed either within or immediately adjacent to existing pipeline or utility rights-of-way and Transco's existing compressor station yards. Transco certifies that the proposed facilities will be designed, constructed, operated, and maintained in accordance with all applicable safety standards and plans for maintenance and inspection.

Any questions regarding the application should be directed to Toi Anderson, at (713) 215–4540 and (1–888) 214–8475, Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251.

Transco states that it held an open season from April 16 through June 1, 1999, during which it received written expressions of interest from potential shippers desiring new firm transportation service to be made available as a result of the Sundance project. As a result of the open season, Transco declares that it executed precedent agreements with the following twelve shippers: Carolina Power & Light Company (75,000 dts/d); City of Buford, Georgia (2,588 dts/d); Clinton-Newberry Natural Gas Authority, South Carolina (2,000 dts/d); City of Commerce, Georgia (207 dts/d); City of Covington, Georgia (776 dts/d); City of Fort Hill, South Carolina (8,000 dts/d); City of Fountain Inn, South Carolina (3,500 dts/d); City of Greer, South Carolina (2,500 dts/d); City of Sugar Hill, Georgia (518 dts/d); City of Toccoa, Georgia (1,035 dts/d); City of Winder, Georgia (259 dts/d); and Southern Company Services, Inc. (140,000 dts/d). Transco states that 100% of the firm capacity to be created by the Sundance project is subscribed to by these twelve shippers.

Transco declares that the firm transportation service under the Sundance project will be provided under Rate Schedule FT of Transco's FERC Gas Tariff, Volume No. 1, and Transco's blanket certificate under Part 284(G) of the Commission's regulations. Transco states that the proposed cost-based recourse rate for the Sundance project is based on a straight fixed-variable rate design methodology and an increment cost of service.

Transco requests that the Commission issue a preliminary determination on the non-environmental aspects of this proposal by September 1, 2000, and a final order granting the authorizations by April 1, 2001.

Any person desiring to be heard or to make any protest with reference to said Application should on or before May 2, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rule of Practice and Procedure (18 CFR 385.211 or 18 CFR 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene

in accordance with the Commission's Rules.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules and Procedure, a hearing will be held without further notice before the Commission or its designee on this Application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission, on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing..

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–9474 Filed 4–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–62–000, et al.]

ISO New England Inc., et al.; Electric Rate and Corporate Regulation Filings

April 10, 2000.

Take notice that the following filings have been made with the Commission:

1. ISO New England Inc., New England Power Pool, Central Maine Power Company, Northeast Utilities Service Company, The United Illuminating Company, Unitil Power Corp. and Fitchburg, Gas and Electric Light Company, Vermont Electric Power Company, Inc., v. New England Power Pool and ISO New England Inc.

[Docket Nos. EL00–62–000, ER00–2052–000, ER00–2016–000, EL00–59–000, and ER00–2005–000]

Take notice that on March 31, 2000, as corrected on April 3, 2000, ISO New England Inc. filed in Docket Nos. EL00–62–000 and ER00–2052–000, pursuant to Section 206 proposed amendments to the New England Power Pool (NEPOOL) Open Access Transmission Tariff and the Restated NEPOOL Agreement to facilitate implementation of a Congestion Management System and Multi-Settlement System, and associated arrangements, for New England. Copies of said filing have been served upon the Secretary of the NEPOOL Participants Committee, as well as upon the utility regulatory agencies of the six New England States and the New England Conference of Public Utilities Commissioners.

Take notice that on March 30, 2000, in PG&E Generating, USGen New England, Inc., PG&E Energy Trading Power L.P., FPL Energy, LLC, Sithe New England Holdings, North American, LLC, Dighton Power Associates L.P., Tiverton Power Associates L.P., Rumford Associates L.P., Great Bay Power Corporation, NRG Power Marketing, Inc., Somerset Power, LLC, Middletown Power, LLC, Norwalk Harbor Power, LLC, Devon Power, LLC, Montville Power, LLC, Connecticut Jet Power, LLC, and Indeck-Pepperell Power Associates, Inc. (the Supporting Generators) submitted for filing in Docket No. ER00–2016–000, pursuant to Section 206 of the Federal Power Act, a proposal for a comprehensive congestion management system (CMS) and multi-settlement system (MSS). The Supporting Generators state that copies of the filing have been served upon all entities listed in Docket No. ER00–2016–000, the participants in the New England Power Pool, non-Participant transmission customers, and the New England State Governors and Regulatory Commissions.

Take notice that on March 31, 2000 Central Maine Power Company; Northeast Utilities Service Company; The United Illuminating Company; Unitil Power Corp. and Fitchburg Gas and Electric Light Company; and Vermont Electric Power Company, Inc. tendered for filing in docket Nos. EL00–59–000 and EL00–2005–000 pursuant to Sections 206 and 306 of the Federal Power Act a complaint against New England Power Pool and ISO New England Inc. The filing also was submitted as a rate change filing as permitted by Section 14.14 of the Restated NEPOOL Agreement and Section 205 of the Federal Power Act.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Northeast Utilities Service Company

[Docket Nos. ER95–1686–007, ER96–496–009, ER97–1359–000, OA97–300–000 and ER98–4604–000]

Take notice that on March 31, 2000, Northeast Utilities Service Company (NUSCO), tendered for filing an amendment to its refund report filed in the captioned dockets in compliance with the Commission's order in *Northeast Utilities Service Company*, 89 FERC ¶ 61,184 (1999).

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. PJM Interconnection, L.L.C.

[Docket No. ER98–3527–004]

Take notice that on April 3, 2000, the Market Monitoring Unit (MMU) of PJM Interconnection, L.L.C. (PJM), submitted the MMU's report on Enforcing Data Requests. The MMU states that the report is submitted pursuant to the Commission's "Order Approving Market Monitoring Plan as Modified" issued on March 10, 1999 in Docket No. ER98–3527–000. *PJM Interconnection, L.L.C.*, 86 FERC ¶ 61,247, at 61,891 (1999).

The MMU states that copies of this filing were served upon all PJM Members and each state electric utility regulatory commission in the PJM control area.

Comment date: April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. PJM Interconnection, L.L.C.

[Docket No. ER98–3527–005]

Take notice that on April 3, 2000, the Market Monitoring Unit (MMU) of PJM Interconnection, L.L.C. (PJM), submitted the MMU's report on Ancillary Services Markets. The MMU states that the report is submitted pursuant to the Commission's "Order Approving Market Monitoring Plan as Modified" issued on March 10, 1999 in Docket No. ER98–3527–000. *PJM Interconnection, L.L.C.*, 86 FERC ¶ 61,247, at 61,891 (1999).

The MMU states that copies of this report were served upon all PJM members and each electric utility regulatory commission in the PJM Control Area.

Comment date: April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Citizens Utilities Company

[Docket No. ER99–450–001]

Take notice that on March 31, 2000, Citizens Utilities Company filed a refund report in connection with the Line Loss Amendment to Settlement Agreement, which was filed in Docket No. ER99–450–000 on November 2, 1998 and accepted for filing by the Commission by letter order dated December 3, 1998.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. APS Energy Services

[Docket No. ER99–4122–003]

Take notice that on April 3, 2000, APS Energy Services filed a quarterly report for information only.

7. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–1908–001]

Take notice that on March 31, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Amendment No. 1 to Supplement No. 27 to the Market Rate Tariff to incorporate a Netting Agreement with El Paso Merchant Energy, L.P. into the tariff provisions.

Allegheny Energy Supply requests a waiver of notice requirements to make the Amendment effective as of March 23, 2000 or such other date as ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: May 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. WPS Resources Operating Companies

[Docket No. ER00–2049–000]

Take notice that on March 31, 2000, WPS Resources Operating Companies (WPS), tendered for filing modifications to the rates, terms and conditions of ancillary services under its open access transmission tariff. WPS also filed a schedule providing for Generation Delivery Imbalance Service.

Copies of the filing were served upon the public utility's jurisdictional customers, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Portland General Electric Company

[Docket No. ER00–2050–000]

Take notice that on March 31, 2000, Portland General Electric Company (PGE) tendered for filing PGE FERC Electric Tariff, Third Revised Volume No. 11 (Tariff), to revise its Market-Based Rates Tariff, Portland General Electric Company, FERC Electric Tariff, Original Volume No. 11.

PGE requests that the revised Tariff become effective on April 30, 2000.

A copy of this filing was served upon the Oregon Public Utility Commission.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. MidAmerican Energy Company

[Docket No. ER00–2051–000]

Take notice that on March 31, 2000, MidAmerican Energy Company (MidAmerican), tendered for filing, under Section 205 of the Federal Power Act, proposed amendments to its market-based rate Tariff that would incorporate language regarding the reassignment of transmission capacity.

MidAmerican states that copies of this filing have been served on purchasers under Tariff and the Iowa, Illinois and South Dakota public utility commissions.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. New England Power Pool

[Docket No. ER00–2053–000]

Take notice that on March 31, 2000, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by Texas Instruments Incorporated (TI). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of TI's signature page would permit NEPOOL to expand its membership to include TI. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make TI a member in NEPOOL.

The Participants Committee requests an effective date of April 1, 2000, for commencement of participation in NEPOOL by TI.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. New England Power Pool

[Docket No. ER00–2054–000]

Take notice that on March 31, 2000, the New England Power Pool (NEPOOL) Participants Committee filed a request for termination of membership in NEPOOL, with an effective date of April 1, 2000, of Statoil Energy Trading, Inc. (SETI). Such termination is pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended (the NEPOOL Agreement), and previously signed by SETI. The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that termination of SETI with an effective date of April 1, 2000 would relieve SETI, at it's request, of the obligations and responsibilities of NEPOOL membership and would not change the NEPOOL Agreement in any manner, other than to remove SETI from membership in NEPOOL.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. New England Power Pool

[Docket No. ER00–2055–000]

Take notice that on March 31, 2000, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by Calpine Power Services Company (Calpine). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of Calpine's signature page would permit NEPOOL to expand its membership to include Calpine. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Calpine a member in NEPOOL.

The Participants Committee requests an effective date of April 1, 2000, for commencement of participation in NEPOOL by Calpine.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Pool

[Docket No. ER00–2056–000]

Take notice that on March 31, 2000, the New England Power Pool (NEPOOL) Participants Committee tendered for filing, a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by Statoil Energy Services, Inc. (SESI). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of SESI's signature page would permit NEPOOL to expand its membership to include SESI. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make SESI a member in NEPOOL. The Participants Committee requests an effective date of April 1, 2000, for commencement of participation in NEPOOL by SESI.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. New England Power Pool

[Docket No. ER00–2057–000]

Take notice that on March 31, 2000, the New England Power Pool (NEPOOL) Participants Committee tendered for filing, a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by Conectiv Energy Supply, Inc. (CESI). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of CESI's signature page would permit NEPOOL to expand its membership to include CESI. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make CESI a member in NEPOOL.

The Participants Committee requests an effective date of April 1, 2000, for commencement of participation in NEPOOL by CESI.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. New England Power Pool

[Docket No. ER00–2058–000]

Take notice that on March 31, 2000, the New England Power Pool (NEPOOL) Participants Committee tendered for filing, a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by Quinnipiac Energy LLC (Quinnipiac). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of Quinnipiac's signature page would permit NEPOOL to expand its membership to include Quinnipiac. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Quinnipiac a member in NEPOOL. The Participants Committee requests an effective date of April 1, 2000, for commencement of participation in NEPOOL by Quinnipiac.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Elkem Metals Company

[Docket Nos. ER00–2074–000 and EC00–72–000]

Take notice that on March 31, 2000, Elkem Metals Company (Elkem), pursuant to sections 203 and 205 of the Federal Power Act, tendered for filing: (1) an application for market-based rates; (2) a request for various waivers (including a waiver of the 60-day prior notice requirements); and (3) a request for authorization to transfer several jurisdictional rate schedules and two transmission lines to Elkem's newly-created affiliate, Elkem Metals Company-Alloy, L.P. The two transmission lines are used to connect Elkem's generation facilities to the transmission grid of American Electric Power Service Corporation (AEP).

Comment date: May 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Conectiv Delmarva Generation, LLC, Conectiv Energy Supply, Inc.

[Docket No. ER00–2076–000]

Take notice that on March 31, 2000, Conectiv, on behalf of Conectiv Delmarva Generation, LLC (CDG) and Conectiv Energy Supply, Inc. (CESI), tendered for filing Service Agreement No. 2 for sales by CDG pursuant to its market-based rate tariff to its affiliate CESI and requested expanded market-based rate authority for CESI to sell power to its affiliate Delmarva Power & Light Company.

Conectiv requests an effective date for the filing of June 1, 2000.

Copies of the filing were served upon Delmarva's wholesale requirements customers, and the Maryland People's Counsel, Maryland Public Service Commission, Delaware Public Service Commission, New Jersey Board of Public Utilities and the Virginia State Corporation Commission.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. North American Electric Reliability Council

[Docket No. ER00–2077–000]

Take notice that on April 3, 2000, North American Electric Reliability Council (NERC) filed the description and procedures for a revised market redispatch pilot program to be in effect for the Eastern Interconnection during the period June 1, 2000 through December 31, 2000.

Comment date: April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. New England Power Company

[Docket No. ER00–2078–000]

Take notice that on April 3, 2000, New England Power Company (NEP) submitted for filing a service agreement between NEP and Southern Company Energy Marketing, L.P. for service under NEP's Wholesale Market Tariff, FERC Electric Tariff, Original Volume No. 10.

Copies of the filing were served upon Southern and the Department of Public Utilities of the Commonwealth of Massachusetts.

Comment date: April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. PJM Interconnection, L.L.C.

[Docket No. ER00–2079–000]

Take notice that on April 3, 2000, PJM Interconnection, L.L.C. (PJM), on behalf of the PJM Reliability Committee, filed amendments to Schedules 5.2, 7, and 11 of the Reliability Agreement Among Load Serving Entities in the PJM Control Area (RAA) to implement Active Load Management procedures and penalties, and to Schedule 14 of the RAA to apply penalties to parties to the RAA that do not follow PJM instructions to implement PJM Emergency procedures.

Copies of this filing were served upon all parties to the RAA and each state electric utility regulatory commission in the PJM control area.

PJM on behalf of the PJM Reliability Committee requests an effective date of June 3, 2000.

Comment date: April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Rumford Power Associates Limited Partnership

[Docket No. ER00–2080–000]

Take notice that on April 3, 2000, Rumford Power Associates Limited Partnership (Rumford) tendered for filing, under Section 205 of the Federal Power Act, a rate schedule under which Rumford will sell energy, capacity and ancillary services at market-based rates and will reassign transmission capacity.

Comment date: April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. NewYork State Electric & Gas Corporation

[Docket No. ER00–2081–000]

Take notice that on April 3, 2000, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Federal Energy Regulatory Commission's (FERC or Commission) Regulations, a request for modification of its borderline rate schedules.

NYSEG requests effective dates of February 15, or March 3, 2000, as appropriate to the various changes identified in the filing.

NYSEG has served copies of the filing on the parties affected.

Comment date: April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Western Resources, Inc.

[Docket No. ER00–2084–000]

Take notice that on April 3, 2000, Western Resources, Inc. tendered for filing a Master Power Purchase and Sale Agreement between Western Resources, Inc. and Wabash Valley Power Association, Inc; and a Master Power Purchase and Sale Agreement between Western Resources, Inc. and PG&E Energy Trading-Power, L.P. Western Resources states that the purpose of these agreements is to permit these customers to take service under Western Resources' Market Based Power Sales Tariff on file with the Commission.

This agreement is proposed to be effective April 3, 2000.

Copies of the filing were served upon Wabash Valley Power Association, Inc. PG&E Energy Trading-Power, L.P., and the Kansas Corporation Commission.

Comment date: April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Indianapolis Power & Light Company

[Docket No. ER00–2086–000]

Take notice that on April 3, 2000, Indianapolis Power & Light Company (IPL) filed an Interconnection, Operation and Maintenance Agreement Between DTE Georgetown, L.L.C., and Indianapolis Power & Light Company in the above-captioned docket.

IPL requests an effective date of April 4, 2000.

Comment date: April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company LLC

[Docket No. ER00–2087–000]

Take notice that on April 3, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply Company) filed Amendment No. 2 to Supplement No. 8 to complete the filing requirement for one (1) new Customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy requests a waiver of notice requirements to make service available as of November 22, 1999, to PECO Energy Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Potomac Electric Power Company

[Docket No. ER00–2088–000]

Take notice that on April 3, 2000, Potomac Electric Power Company (Pepco) tendered for filing a service agreement pursuant to Pepco FERC Electric Tariff, Original Volume No. 5, entered into between Pepco and Aquila Energy Marketing Corporation.

An effective date of March 10, 2000 is requested for this service agreement.

Comment date: April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Ohio Valley Electric Corporation, Indiana-Kentucky Electric Corporation

[Docket No. ER00–2089–000]

Take notice that on April 3, 2000, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC) tendered for filing a Service Agreement for Non-Firm Point-To-Point Transmission Service, dated March 15, 2000 (the Service Agreement) between British Columbia Power Exchange Corporation (Powerex) and OVEC. The Service Agreement provides for non-firm transmission service by OVEC to Powerex. In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Open Access Transmission Tariff.

OVEC proposes an effective date of March 15, 2000 and requests waiver of the Commission's notice requirement to allow the requested effective date.

Copies of this filing were served upon Powerex.

Comment date: April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. Carolina Power & Light Company

[Docket No. ER00–2090–000]

Take notice that on April 3, 2000, Carolina Power & Light Company (CP&L) tendered for filing a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with Conectiv Energy Supply, Inc.; and a Service Agreement for Non-Firm Point-to-Point Transmission Service with Conectiv Energy Supply, Inc. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of March 29, 2000 for each Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. Central Illinois Light Company

[Docket No. ER00–2091–000]

Take notice that on April 3, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and one service agreement with one new customer, Conectiv Energy Supply, Inc.

CILCO requested an effective date of March 31, 2000.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. Central Illinois Light Company

[Docket No. ER00–2092–000]

Take notice that on March 31, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, on April 3, 2000 tendered for filing with the Commission an Index of Customers under its Market Rate Power Sales Tariff and one service agreement with one new customer, Conectiv Energy Supply, Inc.

CILCO requested an effective date of March 31, 2000.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. Elkem Metals Company-Alloy L.P.

[Docket No. ER00–2093–000]

Take notice that on March 31, 2000, Elkem Metals Company-Alloy L.P. Elkem-Alloy, tendered for filing Rate Schedule FERC No. 1 and petitioned the Commission for authority to sell electricity at market-based rates and for the granting of waivers of certain Commission regulations.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

33. Central Maine Power Company

[Docket No. ER00–2094–000]

Take notice that on March 31, 2000, Central Maine Power Company (CMP), tendered for filing Unexecuted Service Agreements For Firm Local Point-to-

Point Transmission Service, Unexecuted Service Agreements For Local Network Transmission Service, and Unexecuted Local Network Operating Agreements. CMP states the instant filing are contemplated as part of the State of Maine's restructuring of the electric utility industry.

CMP requests the Commission allow these Agreements to be deemed effective on March 1, 2000 in order to coincide with the commencement of retail access in the State of Maine.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

34. New York State Electric & Gas Corporation

[Docket No. ER00–2095–000]

Take notice that on March 31, 2000, New York State Electric & Gas Corporation (NYSEG), tendered for filing Amended Transmission Service Agreements between NYSEG and Constellation Power Source, Inc. and Morgan Stanley Capital Group, Inc. (the Customers). These Amendments specify that the Customer has agreed to incorporate certain NY ISO provisions into these agreements.

NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customers.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

35. Bangor Hydro-Electric Company

[Docket No. ER00–2096–000]

Take notice that on March 31, 2000, Bangor Hydro-Electric Company (Bangor Hydro) filed an executed service agreement for retail non-firm point-to-point transmission service with Great Northern Paper, Inc.

Bangor Hydro requests that the agreement become effective on March 1, 2000.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

36. Bangor Hydro-Electric Company

[Docket No. ER00–2097–000]

Take notice that on March 31, 2000, Bangor Hydro-Electric Company (Bangor Hydro) filed an executed service agreement for firm point-to-point transmission service with Great Northern Paper, Inc.

Bangor Hydro requests that the agreement become effective on March 1, 2000.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

37. Public Service Company of New Mexico

[Docket No. ER00–2098–000]

Take notice that on March 31, 2000, Public Service Company of New Mexico (PNM), tendered for filing pursuant to section 35.15 of the Regulations to the Federal Energy Regulatory Commission, 18 CFR 35.15 1998, Notices of Cancellation of several old (and no longer used) bundled Economy Energy Agreements. The agreements are being canceled in compliance with the requirements contained in the Commission's Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996) which provide that economy energy transactions must be unbundled.

Pursuant to PNM's filing, the following agreements are to be canceled: Economy Energy Agreement between The City of Burbank, California and PNM, dated February 19, 1988; Economy Energy Agreement between The City of Colton, California and PNM, dated April 1, 1991; Economy Energy Agreement between Idaho Power Company and PNM, dated May 7, 1990; Economy Energy Agreement between The City of Riverside, California and PNM, dated May 17, 1982; Economy Energy Agreement between Pacific Gas & Electric Company and PNM, dated May 12, 1983; and the Economy Energy Agreement between Utah Associated Municipal Power Systems and PNM, dated March 1, 1991. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

38. Western Resources, Inc.

[Docket No. ER00–2099–000]

Take notice that on March 31, 2000, Western Resources, Inc. (WR), tendered for filing an Energy Service Agreement between WR and the City of St. John, Kansas. WR requests an effective date of June 15, 2001.

Notice of the filing has been served upon the City of St. John, Kansas and the Kansas Corporation Commission.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

39. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Company

[Docket No. ER00–2100–000]

Take notice that on March 31, 2000, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company (collectively, the CSW Operating Companies), tendered for filing an agreement providing for LG&E Energy Marketing, Inc. (LG&E Energy) to purchase energy under the CSW Operating Companies' market-based rate power sales tariff.

The CSW Operating Companies request an effective date of March 1, 2000 for the agreement with LG&E Energy and, accordingly, seek waiver of the Commission's notice requirements. The CSW Operating Companies state that a copy of the filing was served on LG&E Energy and the Public Utility Commission of Texas.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

40. South Carolina Electric & Gas Company

[Docket No. ER00–2101–000]

Take notice that on March 31, 2000, South Carolina Electric & Gas Company (SCE&G) submitted a service agreement establishing PG&E Energy Trading—Power, L.P. as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

Copies of this filing were served upon PG&E Energy Trading—Power, L.P. and the South Carolina Public Service Commission.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

41. Northwestern Wisconsin Electric Company

[Docket No. ER00–2102–000]

Take notice that on April 3, 2000, Northwestern Wisconsin Electric Company, tendered for filing proposed changes in its Transmission Use Charge, Rate Schedule FERC No. 2. The proposed changes would decrease revenues from jurisdictional sales by $3,068.62 based on the 12 month period ending April 30, 2000. Northwestern Wisconsin Electric Company is proposing this rate schedule change to more accurately reflect the actual cost of transmitting energy from one utility to another based on current cost data. The service agreement for which this rate is calculated calls for the Transmission Use Charge to be reviewed annually and revised on May 1, 2000.

Northwestern Wisconsin Electric Company requests this Rate Schedule Change become effective May 1, 2000.

Copies of this filing have been provided to the respective parties and to the Public Service Commission of Wisconsin.

Comment date: April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

42. Northern States Power Company (Minnesota Company), Northern States Power Company, (Wisconsin Company)

[Docket No. ER00–2103–000]

Take notice that on April 3, 2000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP) tendered for filing a Short-Term Market-Based Electric Service Agreement between NSP and Ontario Power Generation Inc. (Customer).

NSP requests that this Short-Term Market-Based Electric Service Agreement be made effective on March 9, 2000.

Comment date: April 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

43. Northern States Power Company, (Minnesota), Northern States Power Company, (Wisconsin)

[Docket No. ER00–2104–000]

Take notice that on April 4, 2000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP) tendered for filing a Non-Firm and a Short-Term Firm Point-to-Point Transmission Service Agreement between NSP and Williams Energy Marketing & Trading Company.

NSP requests that the Commission accept the Agreement effective March 15, 2000.

Comment date: April 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

44. Duquesne Light Company

[Docket No. ER00–2111–000]

Take notice that on March 31, 2000, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated March 29, 2000 with PG&E Energy Trading-Power, LP under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds PG&E Energy Trading-Power, LP as a customer under the Tariff.

DLC requests an effective date of March 29, 2000 for the Service Agreement.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

45. United American Energy Corp., PowerGasSmart.com, Inc.

[Docket Nos. ER00–2121–000 and ER00–2147–000]

Take notice that on April 3, 2000, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending March 31, 2000.

Comment date: May 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–9471 Filed 4–14–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–71–000, et al.]

Reliant Energy Northeast Generation, Inc., et al.; Electric Rate and Corporate Regulation Filings

April 7, 2000.

Take notice that the following filings have been made with the Commission:

1. Reliant Energy Northeast Generation, Inc.

[Docket No. EC00–71–000]

Take notice that on March 31, 2000, Reliant Energy Northeast Generation, Inc. (Applicant), an indirect, wholly-owned subsidiary of Reliant Energy, Inc., filed an application under Section 203 of the Federal Power Act for approval of a reorganization of certain public utility companies it expects to acquire and the subsequent sale and leaseback of certain jurisdictional transmission facilities associated with the Keystone, Conemaugh and Shawville Generating Facilities. The restructuring relates to the ownership of generating plants, associated transmission facilities and jurisdictional wholesale sale tariffs and agreements that the Applicant expects to acquire as part of its purchase of equity interests in Sithe Maryland Holdings LLC, Sithe Pennsylvania Holdings LLC and Sithe New Jersey Holdings LLC.

Comment date: May 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Nevada Power Company

[Docket No. ER00–2015–000]

Take notice that on March 31, 2000, Nevada Power Company (Nevada Power) tendered for filing pursuant to Section 205 of the Federal Power Act, twelve rate schedules applicable to sales from the six bundles of generation facilities that Nevada Power intends to divest. The twelve rate schedules consist of six amended Generation Aggregation Tariffs and six Transition Power Purchase Contracts that will apply to sales from the divested generation to Nevada Power so that Nevada Power may meet its provider of last resort, wholesale requirements, and ancillary services obligations.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Central Maine Power Company

[Docket No. ER00–2017–000]

Take notice that on March 31, 2000, Central Maine Power Company (CMP), tendered for filing as an initial rate schedule pursuant to Section 35.12 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.12, (i) unexecuted Interconnection Agreements, dated as of March 1, 2000 (the IAs); and (ii) unexecuted service agreement for Non-Firm Local Point-to-Point Transmission Service, dated as of March 1, 2000 (the TSAs), for the following customers:

(1) City of Lewiston;
(2) Foss Mill;
(3) Kennebec Water District;
(4) Forester Manufacturing Company;
(5) Marsh Stream;
(6) Marsh Power;
(7) Moosehead Energy Inc.;
(8) Stony Brook;
(9) Wright Brook; and
(10) Sparhawk Mill.

The IA is CMP's standard form IA for customers whose facilities have a nameplate rating of less than 2,500 kW, do not require construction to effectuate or maintain their interconnection, and, per the New England Independent System Operator, do not require remote terminal units. The IA provides for interconnection service to the customers' facilities at the rates, terms, charges, and conditions set forth therein. The TSA provides for Non-Firm Point-to-Point Transmission Service.

CMP is requesting that the IAs become effective March 1, 2000; and the TSAs become effective March 1, 2000.

Copies of this filing have been served upon the Maine Public Utilities Commission and copies of this filing (specific to the particular customer only) have been sent to the customers listed above.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Sierra Pacific Power Company

[Docket No. ER00–2018–000]

Take notice that on March 31, 2000, Sierra Pacific Power Company (Sierra) tendered for filing pursuant to Section 205 of the Federal Power Act, six rate schedules applicable to sales from the three bundles of generation facilities that Sierra intends to divest. The six rate schedules consist of three generally applicable Generation Tariffs and three Transition Power Purchase Contracts that will apply to sales from the divested generation to Sierra so that Sierra may meet its provider of last resort, wholesale requirements, and ancillary services obligations.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. California Independent System Operator Corporation

[Docket No. ER00–2019–000]

Take notice that on March 31, 2000, the California Independent System Operator Corporation (ISO) tendered for filing a proposed amendment (Amendment No. 27) to the ISO Tariff. Amendment No. 27 includes proposed Tariff revisions implementing a revised methodology for recovery of the transmission Access Charge.

Copies of the filing were served upon the Public Utilities Commission of the State of California, the California Energy Commission, and the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Agreements under the ISO Tariff.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Central Maine Power Company

[Docket No. ER00–2020–000]

Take notice that on March 31, 2000, Central Maine Power Company (CMP), tendered for filing as an initial rate schedule pursuant to Section 35.12 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.12, (i) an unexecuted Interconnection Agreements, dated as of March 1, 2000 (the IA); and (ii) an unexecuted service agreement for Non-Firm Local Point-to-Point Transmission Service, dated as of March 1, 2000 (the TSA), for International Paper Company.

The IA provides for interconnection service to the customers' facilities at the rates, terms, charges, and conditions set forth therein. The TSA provides for Non-Firm Point-to-Point Transmission Service.

CMP is requesting that the IA become effective March 1, 2000; and the TSA become effective March 1, 2000.

Copies of this filing have been served upon the Maine Public Utilities Commission and International Paper Company, c/o Anthony Buxton, its outside counsel.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Pool

[Docket No. ER00–2059–000]

Take notice that on March 31, 2000, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by Associated Industries of Massachusetts (AIM). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of AIM's signature page would permit NEPOOL to expand its membership to include AIM. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make AIM a member in NEPOOL.

The Participants Committee requests an effective date of April 1, 2000, for commencement of participation in NEPOOL by AIM.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Central Maine Power Company

[Docket No. ER00–2061–000]

Take notice that on March 31, 2000, Central Maine Power Company (CMP) tendered for filing "Unexecuted Service Agreements For Local Network Transmission Service" and "Unexecuted Local Network Operating Agreements". CMP states the instant filing is contemplated as part of the State of Maine's restructuring of the electric utility industry.

CMP requests the Commission allow these Agreements to be deemed effective on March 1, 2000 in order to coincide with the commencement of retail access in the State of Maine.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Illinois Power Company

[Docket No. ER00–2064–000]

Take notice that, on March 31, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62521, tendered for filing an unexecuted Service Agreement for Network Integration Transmission Service and an unexecuted Network Operating Agreement under which Illinois Municipal Electric Agency will take transmission service pursuant to Illinois Power's open access transmission tariff (OATT). The agreements are based on forms of agreements in Illinois Power's OATT.

Illinois Power has requested an effective date of March 1, 2000.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Boston Edison Company

[Docket No. ER00–2065–000]

Take notice that on March 31, 2000, Boston Edison Company (BECo) tendered for filing an amendment to its Open Access Transmission Tariff (Tariff), which modifies the billing and payment provisions of the Tariff to allow BECo to recover its transmission costs on a more timely basis.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Pacific Gas and Electric Company

[Docket No. ER00–2075–000]

Take notice that on March 31, 2000, Pacific Gas and Electric Company (PG&E) tendered for filing changes to rate schedules for electric transmission service to the following customers: Bay Area Rapid Transit District, California Department of Water Resources, Dynegy Power Services, Minnesota Methane, Modesto Irrigation District, Northern California Power Agency, Sacramento Municipal Utility District, the City and County of San Francisco, California, the City of Santa Clara, California (also known as Silicon Valley Power), the Transmission Agency of Northern California, Turlock Irrigation District and the Western Area Power Administration with services under Contract 2948A rate schedules A and B for the Sonoma County Water Agency, the Cities of Healdsburg, Lompoc and Ukiah and the Delta Pumping Plant. The changes include a change in the existing wholesale transmission rate

methodologies and a rate change to reflect the current cost of providing service to the foregoing customers.

Copies of this filing have been served upon the California Public Utilities Commission and the affected customers.

Comment date: April 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–9302 Filed 4–14–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

April 11, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 1005–006.

c. *Date Filed:* March 7, 2000.

d. *Applicants:* Public Service Company of Colorado (PSCo or transferor) and City of Boulder, Colorado (Boulder or transferee).

e. *Name of Project:* Boulder Canyon.

f. *Location:* On Middle Boulder Creek in Boulder County, Colorado in Roosevelt National Forest. The project does not utilize tribal lands.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* For transferor—William M. Dudley, Associate General Counsel, New Century Services, Inc., 1225 17th Street, Suite 600, Denver, CO 80202, (303) 294–2500.

For transferee—Karl F. Kumli, III, Special Counsel for the City of Boulder, Dietze and Davis, P.C., 2060 Broadway, Suite 400, Boulder, CO 80302–5203, (303) 447–1375.

i. *FERC Contact:* Any questions on this notice should be addressed to Tom Papsidero at (202) 219–2715, or e-mail address: thomas.papsidero@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* May 17, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 8888 First Street, NE, Washington, DC 20426.

Please include the project number (1005–006) on any comments or motions filed.

k. *Description of Transfer:* PSCo requests approval to transfer its license to Boulder. The transfer is sought pursuant to an Asset Purchase Agreement dated February 29, 2000. PSCo intends to retain various easement and fee interests associated with its electric transmission and distribution facilities within the project boundary. The applicants state that the transfer will facilitate the municipal water supply function of the project as Boulder is the primary beneficiary of the municipal water supply.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). Copies are also available for inspection and reproduction at the addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules and Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rule may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the project number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon such representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–9476 Filed 4–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

April 11, 2000.

Take notice that on the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2503–056.

c. *Date Filed:* January 20, 2000.

d. *Applicant:* Duke Energy Corporation.

e. *Name of Project:* Keowee-Toxiway Hydroelectric Project.

f. *Location:* On Lake Keowee at the Backwater Landing Subdivision, in Wagner Township, in Oconee County, South Carolina. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. E.M. Oakley, Duke Energy Corporation P.O. Box 1006 (EC12Y), Charlotte, NC 28201–1006 (704) 382–5778.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 219–3076.

j. *Deadline for filing comments and or motions:* May 17, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (2503–056) on any comments or motions filed.

k. *Description of Proposal:* Duke Energy Corporation proposes to lease to Special Properties of South Carolina, Inc., 1.86 acres of project land for the construction of 48 boat slips and a boat ramp with a loading dock. The boat slips would provide access to the reservoir for residents of the Backwater Landing Subdivision. No dredging is proposed.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comments date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTESTS", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–9477 Filed 4–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a Subsequent License

April 11, 2000.

a. *Type of Filing:* Notice of Intent to File An Application for a Subsequent License.

b. *Project No.:* 6514.

c. *Date Filed:* March 13, 2000.

d. *Submitted By:* City of Marshall, Michigan—current licensee.

e. *Name of Project:* City of Marshall Hydroelectric Project.

f. *Location:* On the Kalamazoo River near the City of Marshall, in Calhoun County, Michigan. The project does not utilize federal lands.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act.

h. *Licensee Contact:* Thomas Tarkiewicz, City of Marshall, 323 West Michigan Avenue, Marshall, MI 49068, (616) 781–5183.

i. *FERC Contact:* Tom Dean, thomas.dean@ferc.fed.us, (202) 219–2778

j. *Effective date of current license:* June 1, 1958.

k. *Expiration date of current license:* May 31, 2005.

l. *Description of the Project:* The project consists of the following existing facilities: (1) the 12-foot-high, 150-foot-long Perrin No. 1 Dam; (2) the 12-foot-high, 90-foot-long Perrin No. 2 Dam; (3) a 130-acre reservoir with a normal pool elevation of 899 feet msl; (4) a 70-foot-long canal-type forebay; (5) a powerhouse containing three generating units with a total installed capacity of 463 kW; and (6) other appurtenances.

m. Each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by May 31, 2003.

Linwood A. Watson, Jr,

Acting Secretary.

[FR Doc. 00–9478 Filed 4–14–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

April 11, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Original Minor License

b. *Project No.:* 11685–001.

c. *Dated filed:* September 10, 1999.

d. *Applicant:* The Stockport Mill Country Inn.

e. *Name of Project:* Stockport Mill Country Inn Water Power Project.

f. *Location:* On the Muskingum River Lock and Dam No. 6 near the town of Stockport, in Morgan County, Ohio. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r)

h. *Applicant Contact:* David Brown Kinlock, Soft Energy Associates, 414 South Wenzel Street, Louisville, KY 40204, (502) 589–0975.

i. *FERC Contact:* Tom Dean, *thomas.dean@ferc.fed.us.* (202) 219–2778.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on

each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application has been accepted for filing and is now ready for environmental analysis.

l. *Description of the Project:* The proposed project would consist of the following facilities: (1) The existing 20-foot-high, 482-foot-long Muskingum Lock and Dam No. 6 (including the navigational lock water retaining structure); (2) an existing 476-acre reservoir with a normal pool elevation of 640.1 feet msl; (3) an existing 20 foot by 24 foot forebay with a 19-foot-wide vertical trashrack; 94) an existing powerhouse in the basement of the mill containing two proposed generating units with a total installed capacity of 235 kW; and (50 other appurtenances. The lock and dam is owned by the Ohio Department of Natural Resources, Division of Parks and Recreation.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20246, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Ssecretary, Federal Energy Regulatory, Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–9479 Filed 4–14–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6579–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Oil and Hazardous Substances Pollution Contingency Plan, Subpart J

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB):

National Oil and Hazardous Substances Pollution Contingency Plan—Subpart J, EPA ICR 1664.04, OMB Control Number 2050–0141, expiration date—8/31/00. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 17, 2000.

ADDRESSES: Interested persons may obtain a copy of the ICR without charge by contacting U.S. Environmental Protection Agency, 5203G, 1200 Pennsylvania Avenue NW, Washington DC 20460. Materials relevant to this ICR may be inspected from 9 a.m. to 4 p.m., Monday through Friday, by visiting the Public Docket, located at 1235 Jefferson-Davis Highway (ground floor), Arlington, Virginia 22202. The docket number for this notice is SPSUBJ. The telephone number for the Public Docket is (703) 603–9232.

FOR FURTHER INFORMATION CONTACT: William "Nick" Nichols, (703) 603–9918, Facsimile Number (703) 603–9116, e-mail: nichols.nick@epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which manufacturer, sell, distribute and/or use oil spill dispersants, other chemicals, and other spill mitigating devices and substances that may be used in carrying out the NCP, as listed in 40 CFR 300.900 on land or waters of the United States.

Title: National Oil and Hazardous Substances Pollution Contingency Plan, Subpart J (NCP)

(OMB Control No. 2050–0141; EPA ICR No.1664.04), expiring 8/31/00.

Abstract: Subpart J of the NCP allows and regulates the use of chemical and biological oil spill cleanup and control agents. The information collected is supplied by the manufacturer of such products. This information and data are then analyzed by EPA to determine the appropriateness, and under which category, the product may be listed on the NCP Product Schedule. This product data is critical for EPA to obtain in order to assure that effectiveness and toxicity data for these products is available to the oil spill community in order to use them legally and effectively. Responses to the collection

of information are mandatory if EPA determines that the products specifications require its listing under subpart J (40 CFR 300.5a Definitions). However, manufacturers volunteer to have their product analyzed. The authority to review and use a product is 40 CFR 300.910. Confidentiality of data, ingredients, and other proprietary information for the products is maintained by EPA. Manufacturers may use any certified lab in the U.S. to test their products effectiveness and toxicity. The cost of such test range from $1,000 to $5,000 per test. The process to have a product listed takes at least 30 days, but no longer than 60 days, depending on the accuracy and completeness of the product information package provided to EPA by the manufacturer. Due to the technical and graphical data required to be listed, electronic submissions are not accepted.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: Estimated projected cost and hour burden for listing a product are between 14 and 40 hours at a cost ranging from under $4,000 to $10,000 depending on the what the lab charges the manufacture to test the product. EPA estimates that an average of 14 product applications are submitted each year at a cost of $83,000 ($6,000 average). Additional data requirements include changes to: manufacturer's address, name of product, distributers, product specifications, and any other changes to the product. Changes to the product's composition may require further testing and data submission to EPA. Otherwise the cost to supply this information to EPA is a one-time cost. EPA does not charge any fees to maintain records for a product nor are there any cost to update the product's file other than those mentioned above. There are no required capital, start up cost or fees required by EPA to have a product listed.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: April 5, 2000.

Stephen D. Luftig,

Director, Office of Emergency and Remedial Response.

[FR Doc. 00–9391 Filed 4–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6579–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request NSPS, Flexible Vinyl and Urethane Coating and Printing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS Subpart FFF, New Source Performance Standards for Flexible Vinyl and Urethane Coating and Printing, OMB Control Number 2060–0073 which expires on June 30, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 17, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E–Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No.1157.06. For technical questions about the ICR contact Ginger Gotliffe at (202) 564–7072.

SUPPLEMENTARY INFORMATION:

Title: NSPS Subpart FFF, New Source Performance Standards for Flexible Vinyl and Urethane Coating and Printing (OMB Control No. 2060–0073 ; EPA ICR No.1157.06) expiring 06/30/00. This is a request for extension of a currently approved collection.

Abstract: The New Source Performance Standards (NSPS) for Flexible Vinyl and Urethane Coating and Printing were promulgated on June 29, 1984 (49 FR 26892).The effective date was January 18, 1983.

These standards of performance for this category of new stationary sources of hazardous air pollutants are required by Section 111 of the Clean Air Act. Facilities may meet the standards by using materials with a low concentration of Volatile Organic compounds (VOCs), or by installing emission control devices. The information that is required to be submitted to the Agency or kept at the facility is needed to insure compliance with the regulation. These include initial one time notifications, performance tests plans and reports and records of maintenance and shutdown, startup, and malfunctions. For facilities that install CMS there are performance tests, and maintenance reports. Excess emissions reports are submitted semiannually. Responses to the collection of information are mandatory (NSPS 60 Subpart FFF).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 10/29/99 (64 FR 58396); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is

estimated to average 16 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: owners or operators of rotogravure lines: print/coat flexible vinyl/urethance products.

Estimated Number of Respondents: 10.

Frequency of Response: one time notifications, semiannual reports, and monthly recordkeeping.

Estimated Total Annual Hour Burden: 329.

Estimated Total Annualized Capital, O&M Cost Burden: $52,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No.1157.06 and OMB Control No.2060–0073 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management Budget, Attention: Desk Officer for EPA 725 17th Street, NW, Washington, DC 20503

Dated: April 4, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–9384 Filed 4–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6579–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, Standards of Performance for New Stationary Sources (NSPS) Lead-Acid Battery Manufacturing Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Standards of Performance for New Stationary Sources (NSPS) Lead-Acid Battery Manufacturing Plants, Part 60, Subpart KK; OMB No. 2060–0081; EPA No. 1072.06; expiration date is June 30, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 17, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No.1072.06. For technical questions about the ICR, please contact: Deborah Thomas at (202) 564–5041.

SUPPLEMENTARY INFORMATION:

Title: NSPS, Lead Acid Battery Manufacturing Plants, OMB Control No. 2060–0081; EPA ICR No.1072.06, expiration 6/30/00. This is a request for extension of a currently approved collection.

Abstract: NSPS for Lead Acid Battery Manufacturing Plants were developed to ensure that air emissions from these facilities do not cause ambient concentrations of lead particulate matter to exceed levels that may reasonably be anticipated to endanger public health and the environment. Owners or operators of lead acid battery manufacturing plants subject to NSPS must notify EPA of construction, reconstruction, modification, anticipated and actual startup dates, and results of performance tests. These facilities must also maintain records of performance test results, startups, shutdowns, and malfunctions. In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. This information enables the Agency to: (1) Identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard. Reporting and recordkeeping requirements on the part of the respondent are mandatory under section 114 of the Clean Air Act as amended and 40 CFR part 60. All reports are sent to the delegated State or Local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. All information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on October 29,1999 (64 FR 58398); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of Lead-Acid Battery Manufacturing Plants

Estimated Number of Respondents: 82.

Frequency of Response: 1/yr/respondent.

Estimated Total Annual Hour Burden: 123 hours.

Estimated Total Annualized Capital, O & M Cost Burden: $18,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1072.06 and OMB No. 2060–0081 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: April 14, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–9385 Filed 4–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6579–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; Significant New Alternatives Policy (SNAP) Program Final Rulemaking Under Title VI of the Clean Air Act Amendments of 1990

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Significant New Alternatives Policy (SNAP) Program Final Rulemaking under Title VI of the Clean Air Act Amendments of 1990, OMB Control No. 2060–0226, ICR No. 1596.05, expiration date 7/31/2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 17, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at *farmer.sandy@epamail.epa.gov*, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1596.05. For technical questions about the ICR, contact Ms. Kelly Davis at (202)564–2303, fax:(202)565–2096 or email: *davis.kelly@epa.gov*.

SUPPLEMENTARY INFORMATION:

Title: Significant New Alternatives Policy (SNAP) Program Final Rulemaking Under Title VI of the Clean Air Act Amendments of 1990 (OMB Control No. 2060–0226; EPA ICR No. 1596.05) expiring 7/31/00. This is a request for extension of a currently approved collection.

Abstract: Information collected under this rulemaking is necessary to implement the requirements of the Significant New Alternatives Policy (SNAP)program for evaluating and regulating substitutes for ozone-depleting chemicals being phased out under the stratospheric ozone protection provisions of the Clean Air Act (CAA). Under CAA section 612, EPA is authorized to identify and restrict the use of substitutes for class I and class II ozone-depleting substances where EPA determines other alternatives exist that reduce overall risk to human health and the environment. The SNAP program, based on information collected from the manufacturers, formulators, and/or sellers of such substitutes, identifies acceptable substitutes. Responses to the collection of information are mandatory under Section 612 for anyone who sells or, in certain cases, uses substitutes for an ozone-depleting substance after April 18, 1994, the effective date of the final rule. Under CAA section 114(c), emissions information may not be claimed as confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on January 26, 2000, at 65 FR 4243. No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection is estimated to average 30 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: manufacturers, importers, formulators and processors of substitutes for ozone-depleting substances.

Estimated Number of Respondents: 330.

Frequency of Response: Once.

Estimated Total Annual Burden: 10,363 hours.

Estimated Total Annualized Capital and Operating & Maintenance Cost Burden: $44,452.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No.1596.05 and OMB Control No. 2060–0226 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (2822), 1200 Pennsylvania Ave. NW, Washington, DC, 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: April 10, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–9387 Filed 4–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6579–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Standards for the Use or Disposal of Sewage Sludge

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces

that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: *Title:* Standards for the Use or Disposal of Sewage Sludge; EPA ICR Number 0229.13; OMB Control Number 2040–0004; expiration date September 30, 2001. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 17, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 0229.13. For technical questions about the ICR contact Dr. Alan B. Rubin; Telephone No. 202–260–7589.

SUPPLEMENTARY INFORMATION:

Title: Standards for the Use or Disposal of Sewage Sludge (OMB Control No. 2040–0004; EPA ICR No. 0229.13; expiring September 30, 2001). This is a revision of a currently approved collection.

Abstract: This ICR estimates the total burden hours for sewage sludge incinerator owners/operators (SSIOOs) to comply with self implementing requirements for sewage sludge incinerators under subpart E of 40 CFR part 503, Standards for the Use or Disposal of Sewage Sludge. On February 19, 1993, EPA published the final 40 CFR part 503 Rule at 58 FR 9248. For the most part, this rule was designed to be self-implementing with the exception of certain provisions of the sewage sludge incineration subpart E of the Rule. In order to make the entire part 503 Rule self-implementing, the Agency on August 4, 1999 at 64 FR 42551 published Phase 1 Amendments to Round 1 of part 503. Included in these amendments were requirements for SSIOOs to provide the permitting authority certain information as specified in the rule that would allow the permitting authority to determine whether SSIOOs are in compliance with the numerical standards section of subpart E of the part 503 Rule. The specific sections of the part 503 Rule that were amended to effect these requirements are sections 503.43(e)(2), 503.43(e)(3) (ii), and 503.43(e)(4). The requirement for SSIOOs to perform air dispersion modeling and run performance tests to comply with Subpart E numerical standards have always been in the base part 503 Rule and burden hours for these activities were included in the base part 503 Rule ICR. However, the base part 503 Rule required the permitting authority to specify to the SSIOOs the air dispersion model and model parameters to use as well as specify the protocol for running the incinerator performance test. The Phase 1 Amendments now require the SSIOOs to select this information from EPA-published guidance documents and to submit this information to the permitting authority. This ICR estimates the burden hours for this activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on December 14, 1999 (64 FR 69755). No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average five hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Sewage sludge incinerator owners/operators.

Estimated Number of Respondents: 30.

Frequency of Response: Once per five years.

Estimated Total Annual Hour Burden: 150 hours.

Estimated Total Annualized Cost Burden (non-labor): $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0229.13 and OMB Control No. 2040–0004 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: April 4, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–9388 Filed 4–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6576–5]

Notice of Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Contractor Science Applications International Corporation and its Subcontractors

AGENCY: Environmental Protection Agency.

ACTION: Notice, request for comment.

SUMMARY: The Environmental Protection Agency ("EPA") hereby complies with the requirements of 40 CFR 2.310(h) for authorization to disclose to the Science Applications International Corporation ("SAIC"), of San Francisco, California, and its subcontractors, Superfund confidential business information ("CBI") submitted to EPA Region 9.

DATES: Comments, pursuant to 40 CFR 2.310(h)(2), may be submitted by April 27, 2000.

ADDRESSES: Comments should be sent to: Environmental Protection Agency, Region 9, Katherine Meltzer (PMD–8), 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Katherine Meltzer, Policy & Management Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1609.

SUPPLEMENTARY INFORMATION:

Notice of Required Determinations, Contract Provisions and Opportunity To Comment

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") as amended, (commonly known as "Superfund") requires completion of enforcement activities at Superfund sites in concert with other site events. EPA has entered into a contract, No. 68–S9–00–10, with SAIC for Superfund enforcement support services. These services will be provided to EPA by SAIC and its subcontractors Cotton & Co. of Alexandria, VA; Indus Corporation of Vienna, VA; Jonas & Associates, Inc. of Walnut Creek, CA; Petroleum Properties of Dixon CA; KPMG LLP of San Francisco, CA; McDonald & Associates of Capay, CA; Orswell & Kasman of Pasadena, CA; Power Partners, Inc. of San Francisco, CA; and ReVision, Inc. of Denver, CO. EPA has determined that disclosure of CBI to SAIC employees, and its subcontractors' employees, is necessary in order that SAIC may carry out the work required by that contract with EPA. The information EPA intends to disclose includes submissions made by Potentially Responsible Parties to EPA in accordance with EPA's enforcement activities at Superfund sites. The information would be disclosed to the contractor and its subcontractor for any of the following reasons: to assist with document handling, inventory, and indexing; to assist with document review and analysis; to verify completeness; and to provide technical review of submittals. The contract complies with all requirements of 40 CFR 2.301(h)(2)(ii), incorporated by reference into 40 CFR 2.310(h)(2). EPA Region 9 will require that each SAIC employee and subcontractor employee sign a written agreement that he or she: (1) Will use the information only for the purpose of carrying out the work required by the contract, (2) shall refrain from disclosing the information to anyone other than EPA without prior written approval of each affected business or of an EPA legal office, and (3) shall return to EPA all copies of the information (and any abstracts or extracts therefrom) upon request from the EPA program office, whenever the information is no longer required by SAIC and its subcontractors for performance of the work required by the contract or upon completion of the contract or subcontract.

Dated: March 30, 2000.

Keith Takata,

Director, Superfund Division, EPA, Region 9.

[FR Doc. 00–9092 Filed 4–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6575–8]

Effluent Guidelines Task Force Open Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The Effluent Guidelines Task Force, an EPA advisory committee, will hold a meeting to discuss the Agency's Effluent Guidelines Program. The meeting is open to the public.

DATES: The meeting will be held on Wednesday, May 24, 2000 from 9 a.m. to 5 p.m., and Thursday, May 25, 2000 from 8:30 a.m. to 3 p.m.

ADDRESSES: The meeting will take place at the Hotel Washington, 515 15th Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Beverly Randolph, Office of Water (4303), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 260–5373; fax (202) 260–7185.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the Environmental Protection Agency gives notice of a meeting of the Effluent Guidelines Task Force (EGTF). The EGTF is a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), the external policy advisory board to the Administrator of EPA.

The EGTF was established in July of 1992 to advise EPA on the Effluent Guidelines Program, which develops regulations for dischargers of industrial wastewater pursuant to Title III of the Clean Water Act (33 U.S.C. 1251 *et seq.*). The Task Force consists of members appointed by EPA from industry, citizen groups, state and local government, the academic and scientific communities, and EPA regional offices. The Task Force was created to offer advice to the Administrator on the long-term strategy for the effluent guidelines program, and particularly to provide recommendations on a process for expediting the promulgation of effluent guidelines. The Task Force generally does not discuss specific effluent guideline regulations currently under development.

The meeting is open to the public, and limited seating for the public is available on a first-come, first-served basis. The public may submit written comments to the Task Force regarding improvements to the Effluent Guidelines Program. Comments should be sent to Beverly Randolph at the above address. Comments submitted by May 12, 2000 will be considered by the Task Force at or subsequent to the meeting.

Dated: April 4, 2000.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 00–9545 Filed 4–14–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6578–8]

Gulf of Mexico Program's Management Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Act, Public Law 92463, EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Management Committee (MC).

DATES: The MC meeting will be held on Wednesday, May 10, 2000 from 1:00 p.m. to 5:30 p.m. and on Thursday, May 11, 2000 from 8:00 a.m. to 1:00 p.m.

ADDRESSES: The meeting will be held at the Chateau Sonesta Hotel, 800 Iberville Street, New Orleans, Louisiana, (504) 586–0800.

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Building 1103, Room 202, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: Proposed agenda items will include: GMP Workplan Status-Key Milestones and Deliverables for FY 2000, Coordinated Out-year Federal Budget Development follow-up, Gulf of Mexico Regional Panel Workplan implementation discussion, Coastal America Regional Implementation Team joint projects discussion, review of State Coastal Zone Management Agency request for representation on GMP MC, Joint Gulf States Coastal Monitoring Program progress review, Mercury Contamination Report presentation, NOAA coastal programs overview and partnering opportunities discussion, and Communications Committee

Report. The meeting is open to the public.

Dated: April 6, 2000.

James D. Giattina,

Director, Gulf of Mexico Program Office.

[FR Doc. 00–9390 Filed 4–14–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6579–4]

National Drinking Water Advisory Council; Contaminant Candidate List and 6-Year Review of Existing Regulations Working Group; Notice of Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the Contaminant Candidate List (CCL) Regulatory Determination and 6-Year Review of Existing Regulation Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on May 2, 2000 from 1 pm until 5 pm ET (approximately), at 401 M Street SW., Washington, DC 20460, Conference Room 1209, East Tower. The meeting is open to the public to observe and statements will be taken from the public as time allows. Seating is limited.

This is the third and final meeting to address regulatory determination from the CCL. The purpose of the meeting is to continue discussions on the development of recommended protocols for regulatory determinations for CCL chemical and microbial contaminants, finalize the draft framework developed by the EPA at the first meeting, provide specific recommendations for analyzing and presenting the available scientific data, and recommend methods to identify and document the judgments made to arrive at a conclusion. For CCL regulatory determinations, the Working Group will develop protocols for both chemical and microbial contaminants that will be robust enough to apply to contaminants on the current and future CCLs. Due to the statutory deadlines mandated by the SDWA's 1996 Amendments, the Working Group will finalize the protocol for CCL regulatory determinations before beginning work on the protocol(s) for the 6-year review of existing NPDWRs.

The working group members have also been asked to draft proposed position papers for deliberation by the advisory council, and provide advice and recommendations to the full National Drinking Water Advisory Council.

FOR FURTHER INFORMATION CONTACT: April McLaughlin, Designated Federal Officer, Contaminant Candidate List and Regulatory Determination and 6-Year Review of Existing Regulations Working Group, U.S. EPA (4607), Office of Ground Water and Drinking Water, 401 M Street SW., Washington, DC 20460. The telephone number is 202–260–5524, fax 202–401–6135, and e-mail *mclaughlin.april@epa.gov.*

Dated: April 10, 2000.

Janet Pawlukiewicz,

Acting Designated Federal Officer National Drinking Water Advisory Council.

[FR Doc. 00–9386 Filed 4–14–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL 6567–4]

Proposed Administrative Agreement and Covenant Not to Sue Under Section 122(h) of CERCLA for the Lawton Property Superfund Site

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposal of Administrative Agreement and Covenant Not to Sue Under Section 122(h) of CERCLA with Hoskins for the Lawton Property Superfund Site.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. 9601 *et seq.*, notice is hereby given that a proposed Administrative Agreement and Covenant Not to Sue Under Section 122(h) of CERCLA ("Agreement"), 42 U.S.C. 9622(h), for the Lawton Property Superfund Site located in Detroit, Michigan, has been executed by the Settling Party, Hoskins Manufacturing Company, Inc. ("Hoskins"). The proposed Agreement would resolve certain potential claims of the United States under Section 107 of CERCLA, 42 U.S.C. 9607, against Hoskins. The proposed Agreement would require Hoskins to pay the EPA Hazardous Substance Superfund $27,000 for reimbursement of response costs. No further U.S. EPA response actions are contemplated at this time.

DATES: Comments on the proposed Agreement must be received by U.S. EPA on or before May 17, 2000.

ADDRESSES: A copy of the proposed Agreement is available for review at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Ms. Orelia E. Merchant at (312) 886–2241, prior to visiting the Region 5 office.

Comments on the proposed Agreement should be addressed to Orelia E. Merchant, Office of Regional Counsel, U.S. EPA, Region 5, 77 West Jackson Boulevard (Mail Code C–14J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Orelia E. Merchant at (312) 886–2241, of the U.S. EPA, Region 5 Office of Regional Counsel.

A 30-day period, commencing on the date of publication of this notice, is open for comments on the proposed Agreement pursuant to section 122(i) of CERCLA, 42 U.S.C. 9622(i). Comments should be sent to the address identified in this document.

Richard C. Karl,

Acting Director, Superfund Division, Region 5.

[FR Doc. 00–9539 Filed 4–14–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6580–1]

Proposed Settlement Under Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act; Organic Chemical, Inc. Kent County, MI

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment on proposed CERCLA 122(g)(4) agreement.

SUMMARY: In accordance with section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended ("CERCLA"), notification is hereby given for a proposed administrative agreement concerning the Organic Chemical, Inc. hazardous waste site at 3921 Chicago Drive, S.W. in Grandville, Kent County, Michigan (the "Site"). EPA proposes to enter into this agreement under the authority of section 122(g) of CERCLA. In addition to the review by the public pursuant to this document, the agreement has been approved by the United States Department of Justice. The proposed agreement resolves an EPA claim under

CERCLA against 89 *de minimis* parties (the "Settling Parties").

Under the proposed agreement, the Settling Parties will pay $199,998 into EPA's Hazardous Substances Superfund to resolve EPA's claims against them for response costs incurred by EPA at the Site. EPA incurred response costs investigating an imminent and substantial endangerment to human health and the environment posed by the presence of hazardous substances at the Site. EPA also incurred response costs overseeing clean-up activities conducted by potentially responsible parties at the site.

For thirty days following the date of publication of this notice, the Environmental Protection Agency will receive written comments relating to this proposed agreement. EPA will consider all comments received and may modify or withdraw its consent to this proposed agreement if comments disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper, or inadequate. The EPA's response to any comments received will be available for public inspection at the U.S. EPA record center, Room 714, 77 West Jackson Blvd, Chicago, Illinois, or upon request of Jerome Kujawa at the address below.

DATES: Comments on the proposed agreement must be received by EPA on or before May 17, 2000.

ADDRESSES: Comments should be addressed to the Jerome Kujawa, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, and should refer to: In the Matter of Organic Chemical, Grandville, MI, U.S. EPA Docket No. V–W–00–C–581.

FOR FURTHER INFORMATION CONTACT: Jerome Kujawa, U.S. Environmental Protection Agency, Office of Regional Counsel, C–14J, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, telephone number is (312) 886–6731.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Record Center Room 714, at the above address.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended 42, U.S.C. 9601–9675.

William E. Muno,
Director, Superfund Division, Region 5.

[FR Doc. 00–9540 Filed 4–14–00; 8:45 am]
BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6578–9]

Proposed Administrative Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act Regarding the U.S. Radium Superfund Site, Orange, NJ

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and request for public comment.

SUMMARY: The United States Environmental Protection Agency ("EPA") is proposing to enter into an administrative settlement to resolve certain claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA") Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. This settlement is intended to resolve Monique D'Onfrio's liability for certain response costs incurred by EPA at the U.S. Radium Superfund Site in Orange, New Jersey.

DATES: Comments must be provided on or before May 17, 2000.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007, and should refer to: In the Matter of the U.S. Radium Superfund Site: U.S. Radium Administrative Settlement, under section 122 (h) of CERCLA, U.S. EPA Index No. II–CERCLA–02–2000–2003.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007; Attention: Virginia A. Curry, Esq. (212) 637–3134, or curry.virginia@epa.gov.

SUPPLEMENTARY INFORMATION: In accordance with section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the U.S. Radium Superfund Site located in Orange, New Jersey. Section 122(h) of CERCLA authorizes EPA to settle certain claims for costs incurred by the United States when the settlement is in the public interest and has received the approval of the Attorney General. EPA permanently relocated Monique D'Onfrio, the owner of a property within the U.S. Radium Site, to facilitate the remediation of the Site. Monique D'Onfrio has agreed to sell the Site property after it has been cleared up and to give EPA the net sale proceeds in partial reimbursement of response costs incurred at the Site.

Dated: April 5, 2000.

Jeanne M. Fox,
Regional Administrator, Region 2.

[FR Doc. 00–9389 Filed 4–14–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[LBP–402404–KS–A; FRL–6551–7]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Kansas Authorization Application; Notice of Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that EPA has scheduled a public hearing to allow members of the public an opportunity to offer testimony concerning the State of Kansas' application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities.

DATES: The public hearing will be held on May 2, 2000, beginning at 10 a.m.

ADDRESSES: The public hearing will be held at the public library located at 625 Minnesota Ave., Kansas City, KS.

FOR FURTHER INFORMATION CONTACT: Mazzie Talley, Lead Coordinator, Radiation, Asbestos, Lead & Indoor Programs Branch, Air, RCRA & Toxics Division, Environmental Protection Agency, 901 North 5th St., Kansas City, KS 66101; telephone number: (913) 551–7518; e-mail address: talley.mazzie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to firms and individuals engaged in lead-based paint activities in the State of Kansas. Since other entities may also be interested, the Agency has

not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. Electronically. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. In person. The Agency has established an official record for this action under docket control number LBP–402404–KS–A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection from 8 a.m. to 5 p.m., Monday through Friday, excluding legal holidays. The docket is located at the regional office 901 North 5th St., Kansas City, KS.

III. Background

In the **Federal Register** of January 14, 2000 (65 FR 2396) (FRL– 6397–6), EPA published a notice of request for comments and opportunity for public hearing on the State of Kansas' application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This action is in response to a request EPA received from a member of the public to hold such a public hearing on the application.

IV. Procedures

In order to ensure that all participants are able to make presentations, EPA may place limits on the amount of time allocated to each commenter. Commenters are encouraged to bring written copies of their comments and submit them to EPA.

List of Subjects

Environmental protection, Hazardous substances, Lead.

Dated: April 5, 2000.

Dennis Grams,

Administrator, Region VII.

[FR Doc. 00–9546 Filed 4–14–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 1, 2000.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. *Richard Dean Goppert, as Trustee of the Revocable Inter Vivos Trust Agreement of Richard D. Goppert,* Kansas City, Missouri; to acquire voting shares of Kansas Agencies & Investments, Inc., Overland Park, Kansas, and thereby indirectly acquire voting shares of Garnett State Savings Bank, Garnett, Kansas.

Board of Governors of the Federal Reserve System, April 11, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–9453 Filed 4–14–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 11, 2000.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. *The Dai-Ichi Kangyo Bank, Limited,* Tokyo, Japan; to acquire CIT OnLine Bank, Salt Lake City, Utah, and thereby to engage de novo indirectly through the CIT Group, Inc., New York, New York, in the United States in industrial loan company activities, pursuant to section 225.28(b)(4) of Regulation Y.

Board of Governors of the Federal Reserve System, April 11, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–9452 Filed 4–14–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation; Notice of Grant Award with Southern Illinois University at Edwardsville

AGENCY: Office of the Secretary, Office of the Assistant Secretary, for Planning and Evaluation (ASPE).

The Office of the Assistant Secretary for Planning and Evaluation (ASPE) announces the award of a grant in the amount of $782,000 for the period of April 1, 2000 through March 31, 2001 to Southern Illinois University at Edwardsville in support of the SIUE Institute for Urban Research. This project was earmarked in the FY 2001 Policy Research Appropriation.

For more information contact Mrs. Adrienne D.B. Little, Grant Management Officer, Office of the Assistant Secretary for Planning and Evaluation, Room 405F, 200 Independence Avenue, SW, Washington, DC 20201.

Dated: April 3, 2000.

Margaret A. Hamburg,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 00–9418 Filed 4–14–00; 8:45 am]

BILLING CODE 4184–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary, Assistant Secretary for Planning and Evaluation

Notice Inviting Applications for Enhancements of Welfare Outcomes Research for Fiscal Year 2000

AGENCY: The Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services.

ACTION: Announcement of the availability of funds and request for applications from States and large counties that propose to enhance current research and monitoring efforts regarding key outcomes related to welfare reform.

SUMMARY: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) announces the availability of funds and invites States and large counties to propose enhancements to existing welfare outcome data collection efforts. ASPE anticipates that approximately four to six States or large counties will receive funding. ASPE is interested in funding only those applicants who propose enhancements that fill knowledge gaps that can not be filled by their existing data collection efforts. These knowledge gaps could pertain to populations who have had direct contact with the welfare system as well as other low-income populations that may be indirectly affected by welfare reform. Enhancements may focus on issues such as sample size, data collection period, content and depth of data, as well as validity and representativeness of data. Eligible applicants may include both States and counties that have previously received grants from ASPE to study welfare outcomes, as well as those who have not received funding from ASPE previously.

CLOSING DATE: The closing date for submitting abstracts under this announcement is June 1, 2000.

MAILING ADDRESS: Application instructions and forms should be requested from and submitted to: Adrienne Little, Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Room 405F, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201. Telephone: (202) 690–8794. Requests for forms and administrative questions will be accepted and responded to up to ten (10) working days prior to the closing date.

Copies of this program announcement and many of the required forms may also be obtained electronically at the ASPE World Wide Web Page: *http://aspe.hhs.gov,* under the title "Funding." You may fax your request to the attention of the Grants Officer at (202) 690–6518. Applications may not be faxed or submitted electronically.

The printed **Federal Register** notice is the only official program announcement. Although reasonable efforts are taken to assure that the files on the ASPE World Wide Web Page containing electronic copies of this program announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete.

FOR FURTHER INFORMATION CONTACT: Grant administrative questions should be directed to the Grants Officer at the address or phone number listed above. Technical/program questions should be directed to Kelleen Kaye, DHHS, ASPE, Room 404E, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, D.C. 20201. Telephone: (202) 401–6634. Questions may be faxed to (202) 690–6562 or e-mailed to *kkaye@osaspe.dhhs.gov*. Technical questions will be accepted and responded to up to ten (10) working days prior to the closing date.

SUPPLEMENTARY INFORMATION:

Part I

Legislative Authority

This announcement is authorized by Section 1110 of the Social Security Act (42 U.S.C. 1310) and awards will be made from funds appropriated under the Department of Health and Human Services Appropriations Act, 2000, by section 1000(a)(4) of the Consolidated Appropriations Act, 2000 (Public Law 106–113).

Eligible Applicants

For studies of populations having direct contact with the TANF system, ASPE will consider applications only from State agencies that administer TANF programs, and county agencies that administer TANF programs and have total populations greater than 500,000. Additionally, for studies of welfare related outcomes among the low-income population more generally, other State agencies may apply and are encouraged to coordinate and/or consult with the TANF administrative agencies in preparing their proposal and undertaking their research. Consortia of States and counties are also encouraged to apply, as long as their combined total populations exceed 500,000 and a single agency is identified as the lead to handle grant funds and sub-granting. Public or private nonprofit organizations, including universities and other institutions of higher education, may collaborate with States in submitting an application, but the principal grantee will be the State or county. Private for-profit organizations may also apply jointly with States, with the recognition that grant funds may not be paid as profit to any recipient of a grant or subgrant. Eligible applications must build on existing survey data collection or administrative data linking capacity around welfare related outcomes and must propose significant enhancements beyond current efforts. Eligible applicants may include both States and counties that have previously received grants from ASPE to study welfare outcomes, as well as those who have not received funding from ASPE previously.

The Code of Federal Regulations, Title 45, Part 92 defines a State as: "Any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include

any public and Indian housing agency under United States Housing Act of 1937."

Available Funds

Approximately $1,000,000 is available from ASPE, in funds appropriated for fiscal year 2000. ASPE anticipates providing approximately four to six awards of between $150,000 and $200,000 each. If additional funding becomes available in fiscal years 2000 or 2001, further projects may be funded. Applications for funding under this announcement should describe projects that can be completely carried out with one year of funding at the above anticipated level.

Use of Funds

No federal funds received as a result of this announcement can be used to purchase computer equipment and no funds may be paid to grantees or subgrantees as profit, *i.e.*, any amount in excess of allowable direct and indirect costs of the recipient (45 CFR 74.81). Our intent is to sponsor enhancements to data collection efforts, and grant funds awarded may not be used to pay for assistance programs or the provision of services.

Grantees must provide at least five percent of the total approved cost of the project. The total approved cost of the project is the sum of the Federal share and the non-Federal share. Thus, a project with a total budget of $200,000 must include a match of at least $10,000 and would imply a request for Federal funds of no more than $190,000. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

If a proposed project activity has approved funding support from other funding sources, the amount, duration, purpose, and source of the funds should be indicated in materials submitted under this announcement. If completion of the proposed project activity is contingent upon approval of funding from other sources, the relationship between the funds being sought elsewhere and from ASPE should be discussed in the budget information submitted as a part of the proposal. In both cases, the contribution that ASPE funds will make to the project should be clearly presented.

Background

Since January 1993, the number of people receiving federally funded assistance under Title IV–A of the Social Security Act has fallen from 14.1 million to just under 7 million recipients, a reduction of 51 percent. This decline has occurred in response to several factors, including the Administration's grants of Federal waivers to 43 States, the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104–193), and the strong economy. In response to the demand from the public and policymakers, many studies have been and are currently being carried out to study the circumstances of the large numbers of people who have left welfare or who applied and were formally or informally diverted from welfare.

In fiscal year 1998, ASPE awarded approximately $2.9 million in grants to state and county TANF agencies to study the outcomes of welfare reform for individuals and families who leave the TANF program and who apply for cash welfare but are never enrolled ("divertees"). Most of the 1998 grants focused on welfare leavers. In fiscal year 1999, ASPE awarded an additional $2.6 million in grants to state and county agencies to study welfare outcomes, including $1.8 million in grants for new projects (primarily focusing on welfare applicants and diversion) and $0.8 million in continuation grants for selected projects funded in 1998. All grants funded in 1998 and 1999 used a combination of administrative and survey data to monitor the economic and general well-being of families applying for, entering, or leaving the TANF program. Earlier grants to states and counties, provided in fiscal years 1996 and 1997, had focused on linking administrative databases in order to study program interactions. In addition, a number of states and localities have funded their own studies of welfare outcomes.

ASPE and the Administration for Children and Families, as well as individual States, have also funded a large number of welfare reform evaluations, including continuations of evaluations that began under waivers and use random assignment to address the effects of alternative welfare reform programs.

Through these various projects, State and local grantees have improved their ability to conduct research on welfare outcomes. Valuable information has been gained about the condition of many low-income families affected by welfare reform. For example, between 50 and 65 percent of single-parent adults leaving TANF were employed in industries covered by unemployment insurance immediately after leaving TANF, according to a review of interim reports from ASPE-funded studies. One year after exit, between 15 and 30 percent of TANF leavers were back on assistance, according to this same review of administrative data studies. Participation rates in Medicaid, food stamps and other government programs varied across the states, but were generally lower than expected. Survey data findings, from the ASPE-funded studies and other state and national projects, provide additional information on such topics as household income, barriers to employment, family and child well-being, and other outcomes that cannot be measured through administrative data alone. Additional information on ASPE funded welfare outcomes studies can be found on the ASPE website at aspe.hhs.gov/hsp/leavers99/index.htm

As findings from these studies emerge and form a valuable knowledge base around welfare outcomes, now is an appropriate time to identify the remaining gaps in knowledge and the enhancements in data collection that could help fill these gaps.

Part II. Purpose

ASPE is committed to using the research funds appropriated by Congress to help States and localities build on what they have learned thus far and enhance their ability to studying welfare outcomes.

The purpose of this announcement is to assist the efforts of States and large counties to implement enhancements to their existing data gathering efforts regarding welfare reform outcomes. These enhancements would help States and/or large counties fill important knowledge gaps regarding welfare outcomes that are difficult to address using their current data. This includes outcomes for families coming in direct contact with the welfare system, as well as the low income population that may be indirectly affected by welfare reform.

An applicant should clearly describe the research questions they propose to answer and their importance for understanding the effects of welfare reform, the existing data collection efforts on which the proposed research will build, their current difficulties in answering the question of interest, and how the enhancements they propose will help them overcome these difficulties. The focus is on expanding the richness and reliability of data available in welfare outcomes research, and proposals focusing primarily on secondary analysis of existing data will not be funded under this announcement.

Priority will be given to those applicants who propose enhancements to ongoing survey data collection efforts. However, applications proposing

enhancements to linked administrative data will be considered, provided they can demonstrate an existing capability to link across data systems and/or over time, and propose significant and innovative improvements beyond their current efforts.

Linking to additional program data or linking over a longer period of time would not be considered an improvement unless the additional information would add an important dimension not currently available in the existing linked data. Examples of such improvements include a) linking to nonprogrammatic administrative data systems, such as school records, whose primary focus would be broader than program participation and would help provide information on other household members; and b) linking administrative records over time in a way that allows the tracking of family characteristics and outcomes through multiple benefit situations, e.g. prior to welfare receipt, during receipt, and after exiting.

There is a great degree of variation in State programs, in the scope of State data collection efforts, the knowledge gaps identified, and the enhancements States propose to fill those gaps. Examples of possible knowledge gaps and several associated enhancements are highlighted below. These examples are illustrative. Applicants may focus on other knowledge gaps and enhancements. Enhancements may address issues such as sample size, data collection period, content and depth of data, as well as validity and representativeness of data.

- *How are former recipients who are neither employed nor receiving benefits faring?* These former recipients are likely to be more transient than other welfare leavers. Research around their outcomes could benefit from using methods to track them more effectively and from developing outcome measures that better capture their well-being when there are no visible means of income. Outcome measures that cover the entire household will be particularly important for this population, given that many may have moved in with other household members, doubling up or cohabiting.
- *What can we learn about the well-being and experiences of low-income families who choose not to participate in welfare?* In many cases, the influences of welfare reform reach beyond welfare recipients to the low-income population more generally. More information is needed about why many potentially eligible families choose not to participate, whether they have had any contact with the welfare system, and how they are faring. To better understand this population, efforts are needed that build on data sources covering more than welfare recipients.
- *Do survey nonrespondents tend to differ on important outcomes, and what do their characteristics imply for the representativeness of existing survey results on welfare outcomes?* Nonrespondents are comprised of those who decline to answer the survey, as well as those who could not be located. In some cases, those who could not be located can represent a unique population facing particularly difficult circumstances, and not including them in the sample can bias the findings on welfare outcomes. To find nonrespondents and better understand their outcomes and characteristics, it is often necessary to implement intensive location and follow-up procedures.
- *How do outcomes differ among various subgroups within the population being analyzed?* Our understanding of subgroup differences could benefit from analysis that not only contrasts by demographic characteristics (e.g. ethnic minorities, people with disabilities, families with children of differing ages, immigrants, rural vs. urban residents, substance abusers), but also by different types of cases (e.g. among leavers, an applicant could propose to contrast closures due to earnings, sanctions and time limits). Subgroup analysis would need data that identifies the characteristic of interest, and that contains a sufficient number of observations within each subgroup.
- *How do welfare related outcomes change over time?* To improve measures of longitudinal outcomes, more waves could be added to existing survey data to follow a current cohort over a longer period of time, or administrative data could be linked longitudinally to follow clients through multiple benefit situations.
- *Can improvements be made to measures that focus beyond the principal respondent and cover the household more broadly?* For example, measures of household income could be improved by including data that can be summed across individuals and across income sources to better approximate total household income. Measures of child outcomes could be improved by providing better measures of instability inside and outside the family and covering a more detailed set of outcomes, such as school outcomes, cognitive development, social behaviors/activities/problems, mental health, and the extent of resident and non-resident parent involvement. Monitoring changes in household composition could also be an important aspect of assessing welfare outcomes for the household.

Applicants are free to identify other knowledge gaps which they believe could be better addressed through enhancements to their existing data collection efforts. Regardless of the knowledge gap being addressed or the enhancement being implemented, an applicant proposing to improve research around welfare related outcomes should consider not only the richness, but also the representativeness and validity of the survey and/or linked administrative data they will use.

Part III. Grantee Responsibilities

1. No later than ten (10) months after the date of the award, the grantee shall plan to meet in Washington DC with Federal staff to present and discuss preliminary findings, their plan for the final report, and their efforts to produce and document a public use data file or other efforts to make the resulting data publically available.

2. After completing the analysis, the grantee shall prepare a final report describing the results of the study, including the procedures and methodology used to conduct the analysis, their findings as they relate to the research questions being proposed, and any barriers encountered in completing the project. A draft of this report shall be delivered to the Federal Project Officer no later than thirty (30) days before the completion of the project. After receiving comments on the draft report from the Federal Project Officer, the grantee shall deliver at least three (3) copies of a final report to the Grants Officer before the completion of the project. One of these copies must be unbound, suitable for photocopying; if only one is the original (has the original signature, is attached to a cover letter, etc.), it should not be this copy.

3. To encourage wider analysis, the grantee shall document and make available all data to the research community. ASPE prefers that this result in a public-use data file. In preparing the public-use data file, data shall be edited as appropriate to ensure confidentiality of individuals. The data file and documentation shall be delivered to the Federal Project Officer prior to completion of the project. If the applicant feels that provision of a public-use data file is impossible, the application should explain why and should fully articulate how the applicant will make the data available to qualified researchers and to ASPE by other means. In either case, the grantee shall the plan for data dissemination will be evaluated and scored during the evaluation of proposals.

4. To encourage dissemination of their findings, the grantee shall present their results at one national or regional research conference of their choosing during the year. The grantee shall submit and discuss with the Federal Project Officer any materials they plan to present two weeks prior to the conference.

Part IV. Application Preparation and Evaluation Criteria

This section contains information on the preparation of applications for submission under this announcement, the forms necessary for submission, and the evaluation criteria under which the applications will be reviewed. Potential grant applicants should read this section carefully in conjunction with the information provided above.

Application Preparation

The application must contain the required Federal forms, title page, table of contents, and sections listed below. The narrative shall not exceed 25 single spaced pages and all pages of the narrative should be numbered. Applications from States and counties that received funding from ASPE under the FY 1998 or 1999 welfare outcomes grants are not precluded from submitting proposals under this announcement, provided they are proposing meaningful enhancements to their current efforts data collection efforts. However, such proposals will be graded only on the Evaluation Criteria listed below and will receive no preferential treatment during the award process.

The narrative should include the following elements:

1. *Abstract:* A one page summary of the proposed project.

2. *Goals and objectives of the project:* An overview that briefly describes (1) the specific knowledge gaps to be investigated by the applicant and their importance to welfare reform; (2) how the proposed enhancements would fill these knowledge gaps in a way that could not be done using existing data. The narrative should describe how funding under this announcement will enhance, not substitute for, existing State or local efforts.

3. *Research Design:* Provide a description and justification of how the proposed research project will be implemented, including definition of study populations, use of existing data sources, data collection activities, methodologies and the type of results that are anticipated. This discussion should:

(a) Provide a concise description of any existing research efforts on which the proposed project will build. Lengthy documentation is unnecessary, but the discussion should provide enough detail to (1) Demonstrate an existing capacity regarding survey and/or linked administrative data collection efforts with respect to welfare outcomes or low income populations, including a description of the population and data period covered and any outcomes measures that are relevant to the proposal; and (2) describe, in terms of the richness, representativeness and/or validity of the data, why the current effort cannot fully answer the research questions posed above. The applicant should clearly identify how the study population is defined. To the extent they are focusing on recipients leaving TANF, applicants are strongly encouraged to use the "leaving cash assistance for two months or longer" definition, agreed to by the earlier ASPE-funded grantees.

(b) Describe in detail the data enhancement being proposed with respect to collection of welfare outcomes data, how it would build on the existing data collection efforts to answer the research questions proposed in the application, and how such enhancements to data collection would be implemented. The applicant should discuss the extent to which the enhancement will improve their existing data on welfare related outcomes, including any proposed changes in population, additional data sources, additional outcomes, and how the enhancements will improve data validity and/or representativeness. With respect to existing and proposed survey data, this should include a discussion of sample design, sample size, survey mode and response rates. With respect to existing and proposed linked administrative data, this should include a discussion of what data systems are linked, how the records were matched, what match rate was achieved and any internal validity checks. We encourage applicants to consider using probabilistic matching, which examines several variables and then factors in the probability that two records with different identifiers actually represent the same person.

(c) Identify the methodology the applicant will use to analyze the data and organize the final report. Complex data analysis is neither expected nor preferred. Simple tabular analysis, descriptive statistics and associated tests for statistical significance are appropriate. The description should include specific analyses and tabulations planned, how the results will be presented, and organization of the report. Final results should include a tabulation showing the characteristics of sample members who are not included in the analysis, either due to nonresponse in survey data or due to records that cannot be matched in administrative data, and should discuss any implications regarding the representativeness of their data.

(d) To the extent that the analysis uses data on individuals from multiple, separate sources, such as administrative databases from several State agencies, the proposal should discuss measures taken to maintain confidentiality. Grant applicants must ensure that the collected data will only be used for management and research purposes, and that all identifying information will be kept completely confidential, and should present the methods that will be used to ensure confidentiality of records and information once data are made publically available for research purposes.

4. *Experience, capacity, qualifications, and use of staff:* Briefly describe the grant applicant's organizational capabilities and experience in conducting pertinent research projects.

(a) The proposal should describe in detail the applicant's and/or key subcontractors' experience with issues regarding the collection and use of survey data and linking administrative data to the extent these are relevant to the proposal. If the grant applicant plans to contract for any of the work (*e.g.*, data-linking, survey design or administration), and the contractors have not been retained, the applicant should describe the process by which they will be selected.

(b) The applicant should identify the key staff who are expected to carry out the project, provide as an attachment a resume or curriculum vitae for each key staff member, and provide a discussion of how key staff will contribute to the success of the project, including the percentage of each staff member's time that will be devoted to the project and their relevant expertise.

(c) Finally, applicants should include, in an attachment, documentation showing authorized access to data proposed for the project and to computer hardware and software for storing and analyzing the data. As proof of access to data, it is preferred that applicants provide a signed interagency agreement with each of the relevant agencies/departments. Though not preferable, letters of support from the appropriate agencies are acceptable, provided that the letter clearly states that the proposing agency has the authorization to access and link all necessary data.

5. *Work plan:* A work plan should discuss the start and end dates of the project, a time line which indicates the sequence and timing of tasks necessary for the completion of the project, the responsibilities of each of the key staff, and any interaction with tasks of the existing research effort. In listing the sequence of tasks, the plan should provide sufficient detail to demonstrate the applicant has carefully thought through the necessary steps to complete the project. The plan should identify the total time commitments of key staff members in both absolute and percentage terms, including other projects and teaching or managerial responsibilities.

The work plan also should include plans for dissemination of the results of the study (*e.g.*, articles in journals, presentations to State legislatures or at conferences). As noted above, ASPE prefers that the data be edited as appropriate for confidentiality and issued as a public-use data file. The work plan should detail how resulting data and analysis will be made available to qualified researchers and to ASPE. If the grant applicant believes that provision of a public-use file would be impossible, the application should explain why and should fully articulate how the applicant will make the data available to qualified researchers and to ASPE.

6. *Budget:* Grant applicants must submit a request for federal funds using Standard Form 424A and include a detailed breakdown of all Federal line items. A narrative explanation of the budget should be included that states clearly how the funds associated with this announcement will be used and demonstrates that funds will be used for purposes that would not otherwise be incorporated within the project. The applicant should also discuss how these funds will fit into a total budget that combines funding from other sources, and how funds from other sources will be expended.

All applicants must budget for two trips. One trip should be budgeted for up to three staff members to travel to Washington, DC. At this meeting, grantees will have the opportunity to present their preliminary findings and discuss the format of their final report with Federal staff. A second trip should be budgeted for one staff member to travel to a national or regional research conference of their choosing to present their research findings.

Review Process and Funding Information

Applications will be screened initially for compliance with the timeliness and completeness requirements. Three (3) copies of each application are required. One of these copies must be in an unbound format, suitable for copying. If only one of the copies is the original (*i.e.*, carries the original signature and is accompanied by a cover letter) it should not be this copy. Applicants are encouraged to send an additional four (4) copies to ease processing, but the application will not be penalized if these extra copies are not included. The grant applicant's Standard Form 424 must be signed by a representative of the applicant who is authorized to act with full authority on behalf of the applicant.

A Federal review panel will review and score all applications submitted by the deadline date that meet the screening criteria (all information and documents as required by this announcement.) The panel will use the evaluation criteria listed below to score each application. The panel results will be the primary element used by the ASPE when making funding decisions. The Department reserves the option to discuss applications with other Federal or State staff, specialists, experts and the general public. Comments from these sources, along with those of the reviewers, will be kept from inappropriate disclosure. These comments, along with the goal of funding research on a variety of topics, may be considered in making an award decision.

As a result of this competition, approximately four to six grants of $150,000 to $200,000 each are expected to be made from funds appropriated for fiscal year 2000. Additional awards may be made depending on the policy relevance of proposals received and the available funding, including funds that may become available in fiscal years 2000 or 2001.

State Single Point of Contact (E.O. No. 12372)

DHHS has determined that this program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. 12372.

Deadline for Submission of Applications

The closing date for submission of applications under this announcement is June 1, 2000. Hand-delivered applications will be accepted Monday through Friday, excluding Federal holidays, during the working hours of 9 a.m. to 4:30 p.m. in the lobby of the Hubert H. Humphrey building, located at 200 Independence Avenue, SW in Washington, DC. When hand-delivering an application, call (202) 690–8794 from the lobby for pick up. A staff person will be available to receive applications.

An application will be considered as having met the deadline if it is either received at, or hand-delivered to, the mailing address on or before June 1, 2000, or postmarked before midnight three days prior to June 1, 2000 and received in time to be considered during the competitive review process.

When mailing applications, applicants are strongly advised to obtain a legibly dated receipt from the U.S. Postal Service or from a commercial carrier (such as UPS, Federal Express, etc.) as proof of mailing by the deadline. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline. If proof cannot be provided, the application will not be considered for funding. Private metered postmarks will not be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late applications and will not be considered or reviewed in the current competition. DHHS will send a letter to this effect to each late applicant.

DHHS reserves the right to extend the deadline for all proposals due to: (1) Natural disasters, such as floods, hurricanes, or earthquakes; (2) a widespread disruption of the mail; or, (3) if DHHS determines a deadline extension to be in the best interest of the Federal government. The Department will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

Length of Application

In no case shall an application for the ASPE grant (excluding the resumes, appendices and other appropriate attachments) be longer than twenty-five (25) single-spaced pages, with 12 point font and one inch margins on top, bottom, right and left. Applications should not be unduly elaborate, but should fully communicate the applicant's proposal to the reviewers.

Selection Process and Evaluation Criteria

Selection of successful applicants will be based on the technical and financial criteria described in this announcement. The point value following each criterion heading indicates the maximum numerical weight that each section will be given in the review process. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, grant

applicants should take care to ensure that all criteria are fully addressed in the applications. Grant applications will be reviewed as follows:

1. *Goals, Objectives, and Potential Usefulness of the Analyses* (25 points). The potential usefulness of the objectives and how the anticipated results of the proposed project will fill critical gaps in knowledge around welfare related outcomes that cannot be answered with existing data. Applications will be judged on the quality and policy relevance of the proposed research questions, appropriateness of study populations, and the usefulness of the analyses.

2. *Quality and Soundness of Research Design* (35 points). The appropriateness, soundness, and cost-effectiveness of the proposed research design, including data gathering techniques, selection of existing data sets, definition of study populations, statistical techniques and type of results that are anticipated. In particular, the applicant should address the following, as described under the section on Application Preparation.

(a) The applicant must describe the existing survey and/or linked administrative data effort around welfare outcomes or the low-income population on which the proposed enhancements will build, including a description of why the current effort cannot fully answer the research questions posed above.

(b) The applicant should describe in detail the data enhancement being proposed with respect to welfare outcomes research, how it would build on the existing data collection efforts to answer the research questions proposed in the application, and how such enhancements to data collection would be implemented. There is a preference for enhancements to survey data, but enhancements to linked administrative data that are significant and innovative will be considered.

(c) The applicant should also describe their proposed data analysis, including the proposed tabulations and table shells and the planned organization of the final report. Applicant should plan to include in their final results a tabulation showing the basic characteristics of sample members who were not included in the final analysis, including any available outcome measures, and should discuss any implications regarding the representativeness of their data.

(d) To the extent that the analysis uses data on individuals from multiple, separate sources, such as administrative databases from several State agencies, the reviewers will also evaluate whether the applicant has adequately discussed measures taken to maintain confidentiality.

3. *Qualifications of Personnel and Organizational Capability.* (20 points). The qualifications of the project personnel for conducting the proposed research as evidenced by professional training and experience, and the capacity of the organization to provide the infrastructure and support necessary for the project. This should include providing resumes or curriculum vitae for key staff members and demonstrating access to data, computer hardware to store the data and software to analyze the data, as described above under Application Preparation.

4. *Ability of the Work Plan and Budget to Successfully Achieve the Project's Objectives.* (20 points). Reviewers will examine (a) if the work plan and budget are reasonable and sufficient to ensure timely completion of the study; (b) whether the application demonstrates an adequate level of understanding regarding the practical problems of conducting such a project; (c) the use of any additional funding and the role that ASPE funds would play in the total project; (d) whether the applicant has shown how results will be disseminated and resulting data will be made available to ASPE and qualified researchers. The preparation and documentation of a public use data file, or other efforts to make the resulting data publically available should be accounted for in the project budget.

Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of the application, the Assistant Secretary will either (a) approve the application as a whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of disposition.* The Grant Officer will notify the applicants of the disposition of their applications. If approved, a signed notification of the award will be sent to the business office named in the ASPE checklist.

3. *The Assistant Secretary's Discretion.* Nothing in this announcement should be construed as to obligate the Assistant Secretary for Planning and Evaluation to make any awards whatsoever. Awards are contingent on the needs of the policy and research communities as identified by the Department at any point in time, and on the quality of the applications that are received.

The Catalog of Federal Domestic Assistance number is 93–239.

Components of a Complete Application

A complete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424);
2. Budget Information—Non-construction Programs (Standard Form 424A);
3. Assurances—Non-construction Programs (Standard From 424B);
4. Table of Contents;
5. Budget Justification for Section B Budget Categories;
6. Proof of Non-profit Status, if appropriate;
7. Copy of the applicant's Approved Indirect Cost Rate Agreement, if necessary;
8. Project Narrative Statement, organized in five sections, addressing the following topics (limited to twenty (25) single-spaced pages):
   (a) Abstract,
   (b) Goals, Objectives and Usefulness of the Project,
   (c) Research Design,
   (d) Background of the Personnel and Organizational Capabilities and
   (e) Work plan (timetable);
9. Any appendices or attachments;
10. Certification Regarding Drug-Free Workplace;
11. Certification Regarding Debarment, Suspension, or other Responsibility Matters;
12. Certification and, if necessary, Disclosure Regarding Lobbying;
13. Supplement to Section II—Key Personnel;
14. Application for Federal Assistance Checklist.

Dated: April 10, 2000.

Ann M. Segal,

Deputy Assistant Secretary for Planning and Evaluation for Policy Initiatives.

[FR Doc. 00–9419 Filed 4–14–00; 8:45 am]

BILLING CODE 4154–05–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Assistant Secretary for Planning and Evaluation; Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Planning and Evaluation all authorities under Section 2108(c) of Title XXI of the Social Security Act, titled "Federal Evaluation of State Children's Health Insurance Program," as amended hereafter. These authorities shall be implemented in consultation with the Health Care Financing Administration, the Health Resources and Services

Administration, and other relevant components within the Department.

These delegations shall be exercised under the Department's existing delegation of authority and policy on regulations. In addition, I hereby affirm and ratify any actions taken by you or your subordinates that involved the exercise of the authorities delegated herein prior to the effective date of this delegation.

This delegation is effective immediately.

Donna E. Shalala,

Secretary.

[FR Doc. 00–9420 Filed 4–14–00; 8:45 am]

BILLING CODE 4160–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00069]

Health Promotion and Disease Prevention Research Center Cooperative Agreement; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program to fund a Health Promotion and Disease Prevention Research Center (PRC) at the University of Kentucky. CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus area of Educational and Community-Based Programs. For the conference copy of "Healthy People 2010", visit the internet site *http://www.health.gov/healthypeople*. The purpose of the program is to support health promotion and disease prevention research that focuses on the major causes of death and disability and promote health practices that lead to more effective State and local programs.

Note: Background and CDC program objectives are provided in Attachment 1.

B. Eligible Applicants

Assistance will be provided only to the University of Kentucky, School of Medicine. No other applications are solicited.

C. Availability of Funds

Approximately $525,000 is available in FY 2000 to fund a Health Promotion and Disease Prevention Research Center in Kentucky. It is expected that the award will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Direct Assistance

You may request Federal personnel, equipment, or supplies as direct assistance, in lieu of a portion of financial assistance (see Application Content).

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities under 2. (CDC Activities).

1. Recipient Activities

a. Select a research theme that will serve as a focus for Prevention Research activities for Appalachia.

b. Develop the administrative structure and recruit staff to implement a Prevention Research Center plan.

c. Conduct and evaluate a demonstration project in health promotion and disease prevention or preventive health services, within a defined community or special population. The project must reflect the needs of the community within the applicant's jurisdiction and show evidence of having used an appropriate planning process in determining project selection. Consistent with the discussion in the Background and CDC Program Objectives (See Attachment 1), the project should specify how the research project will heighten public health practice and advance research translation.

d. Establish an advisory committee to provide input on the major program activities. Membership may include but is not limited to a variety of local health-care providers, health and education agency officials, community leaders and organizers, and representatives of local businesses, churches, voluntary organizations, and consumers.

e. Establish collaborative activities with appropriate organizations, individuals, and State and local health departments.

f. Conduct applied community-based training in research methods to foster community involvement and build community capacity for participatory research. If appropriate, this training may include a distance-learning-based format.

g. Establish the capacity to implement and evaluate multi disciplinary, professional training programs in prevention research.

h. Establish a plan to ensure translation of results to appropriate constituencies.

2. CDC Activities

a. Collaborate as appropriate with the recipient in all stages of the project.

b. Provide programmatic and technical assistance.

c. Participate in improving program performance through consultation based on information and activities of other projects.

d. Provide scientific collaboration with grantee as necessary to meet program goals and objectives.

e. At the request of the applicant, assist with developing the curriculum, training, or conducting other specific necessary activities.

E. Application Content

Application

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. The application will be evaluated on the criteria listed, so it is important to follow them in laying out the program plan. The narrative must not exceed 90 double-spaced pages, printed on one side, with one inch margins, and 12" font, excluding appendixes and PHS Form 398. Appendices must not exceed 25 pages and must be hard copy documents (*i.e.*, no audiovisual materials, posters, etc.).

1. Research Theme

Identify a research theme and describe activities designed to focus on the theme that will result in innovative approaches to prevention research. Clearly identify the need of the partner community in Appalachia, and describe the PRC's experience working with communities on the identified research theme. The applicant may wish to refer to products from the Task Force Community Preventive Services when considering their research theme. (For detailed information, visit the *Guide to Community Preventive Services* on the Web at *http://web.health.gov/communityguide*). Examples of research themes from current Research Prevention Centers include:

a. Bridging the Gap Between Public Health Science and Practice in Underserved Populations.
b. Promoting the Health of Multiethnic Communities of the Southwest.
c. Putting Health Promotion into Action Community Collaboration.
d. Reduction of Excess Morbidity and Mortality in the Harlem Community.
e. Promoting Healthy Behavior and Disease Prevention in Native American Populations.

2. Prevention Research Center Plan

Submit a plan for a prevention research center serving Appalachia with clear goals, objectives, and activities, to include:
a. A description of goals and objectives for the budget period that are consistent with the research theme. Objectives should be specific, measurable, attainable, realistic and time-phased (SMART MODEL for objectives).
b. A description of the scope, methods of operation, evaluation, and a timeline for implementation.
c. A description of the use of other federal funds that will impact on stated program objectives.
d. A description of any financial and in-kind contributions from nonfederal sources.
e. Documentation describing the composition, membership, rationale for membership, and objectives for a Community Advisory Committee. Documentation of how the Advisory Committee will facilitate collaboration with community organizations, State and local health or education departments.
f. A description of plans for conducting community-based applied training.
g. A description of capacity to provide prevention research training for professionals.
h. Documentation of commitment to minority and underserved populations, or other defined populations or communities.
i. A description of significant factors which may favorably or adversely impact on program performance.

3. Management and Staffing Plan

Provide a management plan that includes a description of all organizational units and functions in the PRC. The plan should reflect the ability of the PRC to carry out the chosen research theme. Describe how the applicant will integrate the PRC within the parent institution. The following areas should be considered in developing a management and staffing plan:
a. Describe the PRCs personnel infrastructure.
b. Describe how proposed staffing will support center activity. Current resumes must be included.
c. Describe how the proposed staff meet the goal of establishing multidisciplinary prevention research centers.
d. No less than two full-time positions (FTE's) must be allocated for the following functions: (Percentages of an FTE may be used for several positions.)
(1) Scientific oversight: Accountable for center research and development, design, methodology, project evaluation, and publications.
(2) Community Development: Community liaison, advisory committee, community training activities, and community dissemination.
(3) Program and Project Management: Oversight of center supported research and Institutional Review Board (IRB) protocols, coordination of center studies, mentorship of junior investigators, dissemination activities, and professional training in prevention research.
(4) Center Administration: Responsible for communication with CDC's Prevention Research Centers Program staff and Procurement and Grants Office. Responsibilities will include submission of fiscal reports, fiscal tracking and reports, personnel, and center procurement.

4. Research Project

Submit a description of a research project that is consistent with the CDC PRC Program objectives and selected PRC theme. The narrative for specific project should contain:
a. A description of the research project including goals, objectives, timeline, research questions and target population.
b. A description of the research methods including methods for participant recruitment, data collection, evaluation design, and data analysis.
c. A description of the extent of community and other research collaborations in the proposed project.
d. A description of project staff (number and types of positions).
e. A project budget.
f. A description of the plans to translate research findings into public health practice or policy.
g. Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects?

5. Evaluation Plan

Describe and plan a methodology to evaluate PRC program and activities with regard to program progress and process; fulfillment of outcome objectives; impact, and community involvement; the PRCs community-based objectives; and any other indicators, such as cost-benefit analyses. Specify staff responsible for the plan and their background and experience in evaluation research.

6. Budget Information

Provide a line-item budget and narrative justification for all requested costs that are consistent with the goals, objectives, and proposed research activities, to include:
a. Line-item breakdown and justification for all personnel, i.e., name, position title, annual salary, percentage of time and effort, and amount requested.
b. Line-item breakdown and justification for all contracts and consultants, to include:
(1) Name of contractor or consultant
(2) Period of performance
(3) Method of selection (e.g., competitive or sole source)
(4) Scope of work
(5) Method of accountability
(6) Itemized budget
c. Requests for direct assistance in the form of field assignees must also include the following:
(1) The number of assignees requested.
(2) A description of the position and proposed duties for each assignee.
(3) Justification for request.
(4) An organizational chart and the name of the intended supervisor.
(5) The availability of career-enhancing training, education, and research experience opportunities for the assignee(s).
(6) Assignee access to computer equipment for electronic communication between CDC headquarter's office and PRC.
d. A brief three-year budget projection should be submitted that clearly separates and distinguishes direct from indirect costs.

F. Submission and Deadline

Submit the original and five copies of the application PHS Form 398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available at the following Internet address: *www.cdc.gov/ . . . Forms*, or in the application kit. The application must be submitted on or before June 15, 2000. Submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: The application shall be considered as meeting the deadline above if it is either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date. (Applicant must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

G. Evaluation Criteria

An external peer review panel will review the application using the following criteria:

(1) PRC Theme; (2) Center Plan; (3) Management and Staffing Plan; (4) Research Project; and (5) Evaluation. The Budget and Human Subjects sections are reviewed but not scored. The review panel will score the application overall, based on a 1–5 scale (with increments of 0.1) with 1=highest (best) and 5–lowest. The reviewers' scores are then averaged and multiplied by 100 to attain a priority score for the application. The review panel will also compile a summary and recommendations including the strengths and weaknesses of the application.

1. PRC Theme

To what extent does the research theme meet health priorities and emerging public health needs of identified communities or special groups?

2. Center Plan

(a) To what extent does the plan have objectives that are clear, specific, measurable, attainable, realistic and time-phased?

(b) Does the plan make effective use of both PRC and community resources to advance the PRC theme?

(c) Is the plan consistent with the PRC purpose, and does it include a three-year timeline?

(d) Does the plan describe the composition of a Community Advisory Committee and rationale for its membership, relevance and feasibility of committee objectives and its role within the PRC?

(e) Is a plan included to establish collaborative activities with appropriate organizations, individuals, State, and local health departments?

(f) Is a plan included to conduct community-based training in research methods to foster community involvement and build community capacity for participatory research?

(g) Does the plan contain a description of the Center's capacity for providing professional, multidisciplinary prevention research training in the area of health promotion and disease prevention?

3. Management and Staffing Plan

To what extent does the applicant demonstrate the ability, capacity, organizational structure, and staffing to carry out the overall theme, objectives, and specific project plans?

4. Research Project

(a) Does the applicant demonstrate an understanding of the community contexts, current scientific literature, as well as other information sources relevant to the proposed project?

(b) Are the conceptual framework, design, methods, analyses, and translation plan adequately developed, well-integrated, scientifically strong, and appropriate to the aims of the project?

(c) Does the proposed approach allow for flexibility or change in research methods or focus as necessary?

(d) Does the applicant acknowledge potential problem areas and consider alternative tactics?

(e) Is there an appropriate work plan included?

(f) Does the project include plans to measure progress toward achieving the stated objectives?

(g) Does the applicant propose research translation approaches or methods for findings from the project?

(h) The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic and racial groups in the proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

5. Evaluation

To what extent are the plan and methodology proposed to evaluate the PRC program and activities with regard to program progress and process; fulfillment of outcome objectives; impact, and community involvement; the PRCs community-based objectives; and any other indicators, such as cost-benefit analyses feasible and of scientific merit?

6. Budget (Reviewed But Not Scored)

The extent to which the budget and justification are consistent with the program objectives and purpose.

7. Human Subjects (Reviewed But Not Scored)

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. progress reports (annual);
2. financial status report, not more than 90 days after the end of the budget period; and
3. final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 2 in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a), 317(k)(2) and 1706 [42 U. S. C. 241(a), 247b(k)(2) and 300 u–5] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.135.

J. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management/technical assistance may be obtained from: Robert

Hancock, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 3000, 2920 Brandywine Road, Atlanta, GA30341–4146 telephone (770) 488–2746, E-mail address: RNH2@cdc.gov

For program technical assistance, contact: Lynda Doll, Ph.D., Program Director, Prevention Research Centers Office, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Atlanta, GA 30341–3724, telephone 404–488–5395, E-mail address: LSD1@cdc.gov

Dated: April 11, 2000.

John L. Williams,

Director, Procurement and Grants Office.

[FR Doc. 00–9455 Filed 4–14–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: HRSA Competing Training Grant Application, Instructions and Relating Regulations (OMB No. 0915–0060)—Revision

The Health Resources and Services Administration uses the information in the application to determine the eligibility of applicants for awards, to calculate the amount of each award and to judge the relative merit of applications. The form is distributed electronically via the Internet. The budget is negotiated for all years of the project period based on this application and program-specific instructions that include greater standardization of content for the project summary and the detailed description of the project.

The Bureau of Health Professions is planning to remove from the Code of Federal Regulations the existing training grant regulations under 42 CFR parts 57 and 58. It is the intent of the Department to operate under new statute for compliance, implementation, and administration of the training grant programs under titles VII and VIII of the PHS Act. The existing regulations are fundamentally and extensively inconsistent with the new law which takes an interdisciplinary approach (and thus inhibits the achievement of the statute's objectives). Program specific guidance and information for preparing applications are now provided in the grant application materials (which makes them now self-contained).

The burden estimate is as follows:

Form	Number of respondents	Response per respondent	Total responses	Hours per response	Total burden hours
Progress Report	1,250	1	1,250	56.25	70,313

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 7, 2000.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–9401 Filed 4–14–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute (NCI) and the NIH Center for Information Technology (CIT): Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Development of Software Enhancement for Expanding the Medical Uses of the TELESYNERGY™ Medical Consultation Workstation

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute (NCI) and the Center for Information Technology (CIT) seek a Cooperative Research and Development Agreement (CRADA) Collaborator to provide programming and systems integration support to NCI for the further development and commercialization of the TELESYNERGY™ Medical Consultation WorkStation.

Over the past six years, the Center for Information Technology at the National Institutes of Health has developed TELESYNERGY™, a multimedia medical imaging and personal interaction infrastructure within an electronic imaging environment, to facilitate professional collaboration and education concerning cancer research protocols and clinical cancer care. TELESYNERGY™ has been designed to provide for the simultaneous high-resolution display of images from numerous medical modalities, in both real-time and store-and-forward modes, as well as for the simultaneous interaction of medical experts and other research professionals. One example of implementation of TELESYNERGY™ is underway within the Radiation Oncology Branch (ROB) in the National Cancer Institute. ROB's initial applications are in the areas of research participation in radiotherapy planning and treatment, and the related subsequent clinical and research interactions and collaborations as a result.

Potential areas of application for the TELESYNERGY™ platform include oncology, general medicine, family practice, and specialties such as OB/

GYN, cardiology, nuclear medicine, radiology, otolaryngology, ophthalmology, dermatology, urology, cytogenetics and pathology. Further development of this system will ultimately bring expanded participation in NCI clinical research and eventual improvement in clinical care to urban and rural health care systems both nationally and internationally.

DATES: Interested parties should notify the Technology Development and Commercialization Branch of the NCI in writing of their interest in filing a formal proposal no later than thirty (30) days from the date of this announcement. Potential CRADA Collaborators will then have an additional thirty (30) days to submit a formal proposal. CRADA proposals submitted thereafter may be considered if a suitable CRADA Collaborator has not been selected.

ADDRESSES: Inquiries and proposals regarding this opportunity should be addressed to Stephanie Amoroso, Ph.D., Technology Development Specialist (Tel. #301–496–0477, FAX #301–402–2117), Technology Development and Commercialization Branch, National Cancer Institute, 6120 Executive Blvd., Suite 450, Rockville, MD 20852.

SUPPLEMENTARY INFORMATION: A Cooperative Research and Development Agreement (CRADA) is the anticipated joint agreement to be entered into with NCI and the CIT pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of April 10, 1987 as amended by the National Technology Transfer Advancement Act of 1995. The NCI and CIT are looking for a collaborator to further develop and integrate systems for the TELESYNERGY™ program. The proposed term of the CRADA can be up to five (5) years.

The TELESYNERGY™ system functions by transporting audio and video data streams continuously through a 155 Mbits/sec ATM and/or ISDN line link connecting the NCI and national and international sites. Microphones and speakers allow bi-directional voice communication, and video capability is provided with S-Video cameras and monitors. As stated above, if ATM capability is not available or is too expensive at a remote site, a 1.5 Mbits/sec ISDN PRI telephone circuit can utilized for connectivity, with only very minimal degradation in audio and video quality.

Two high-resolution monochrome image display systems each function as an Electronic View Box (EVB) for the display of 14 x 17 inch format digitized "electronic films." Utilizing the EVBs, discussion, diagnosis, or organ and lesion contouring can be performed via a shared-cursor technique in consultation mode, which allows the oncologists to collaborate in identifying features. These identified regions-of-interest are transmitted simultaneously and in real-time as is audio during the TELESYNERGY™ consultation session.

A remote-controlled microscope capability allows biopsy specimens to be discussed and manipulated by a number if sites concurrently. In addition, a patient exam camera allows high-resolution viewing of patient exams, including identification of dermatological lesions, skin coloration, and other physical characteristics during a patient examination.

TELESYNERGY™ also included a mechanism to allow remote consultations and education between geographically distributed medical specialists of all types Pairing the TELESYNERGY™ system with the NCI's Net-Trials™ Clinical Trials Information System will allow Phase I and Phase II research trials to be conducted "beyond the NIH campus." Patient protocol data may then be directly entered into the NCI's Net-trials™™ research database from the offsite location.

NCI and the CIT are seeking a CRADA partner to collaborate with them in the further development, commercialization, education, installation and maintenance of the TELESYNERGY™ Medical Consultation WorkStation. The CRADA, with the intellectual assistance of NCI and CIT, would provide systems development and integration of TELESYNERGY™ for the applications mentioned above.

References

1. Kempner KM, Chow D, Choyke P, Cox JR Jr., Elson JE, Johnson CA, Okunieff P, Ostrow H, Pfeifer JC, and Martino RL: The development of an ATM-based Radiology Consultation WorkStation for radiotherapy treatment planning. Medical Imaging 1997 Conference Proceedings, Volume 3031, Paper 49, published by the Society of Photo-Optical Instrumentation Engineers, Inc., Bellingham, WA, 1997.

2. Govern FS, Coleman CN: Ethical Challenges in the Era of Healthcare Reform: A View from Academic Oncology. J. Oncol Management, Sept./Oct., 4:20–26, 1995.

3. Linggood R, Govern FS, Coleman CN, and et al: Report from the Field: A Blueprint for Linking Academic Oncology and the Community: The Harvard Joint Center for Radiation Therapy Outreach Program. J. Health Politics, Policy and Law, Vol. 23, No. 6, Dec. 1998.

Under the present proposal, the overall goal of the CRADA collaboration will involve the following:

1. To expand and enhance upon the current technology and its usage as developed by CIT and the NCI regarding the TELESYNERGY™ Medical Consultation WorkStation.

2. To provide programming support for the broad commercialization/dissemination and enhancement into other medical disciplines of the TELESYNERGY™ system.

3. To develop a distribution and service plan for the TELESYNERGY™ system.

Party Contributions

The role of the NCI/CIT in the CRADA may include, but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.

2. Providing the CRADA Collaborator with information and data relating to the current methods implemented for the applications of TELESYNERGY™.

3. Publishing research results.

4. Development additional potential clinical applications for the TELESYNERGY™ system.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project.

2. Providing programming support for writing novel software, and technical support for writing system manuals.

3. Providing technical and/or financial support to facilitate scientific goals and for further design of applications of the technology outlined in the agreement.

4. Publishing research results.

Selection criteria for choosing the CRADA Collaborator may include, but not limited to:

1. A demonstrated record of success in the development and dissemination of medical software.

2. A demonstrated background and expertise in ATM–ISDN based technology.

3. The ability to collaborate with NCI/CIT on further research and development of this technology. This ability will be demonstrated through experience and expertise in this or related areas of technology indicating the ability to contribute intellectually to ongoing research and development.

4. The demonstration of adequate resources to perform the research and development of this technology (*e.g.* facilities, personnel and expertise) and to accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.

5. The willingness to commit best effort and demonstrated resources to the research and development of this

technology, as outlined in the CRADA Collaborator's proposal.

6. The demonstration of expertise in the commercial development and production of products related to this area of technology.

7. The level of financial support the CRADA Collaborator will provide for CRADA-related Government activities.

8. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.

9. The agreement to be bound by the appropriate DHHS regulations relating to human subjects and to all PHS policies relating to the use and care of laboratory animals.

10. The willingness to accept the legal provisions and language of the CRADA with appropriate modifications pertaining to the software-based technology sought to be developed. These provisions govern the distribution of future patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization that is the employer of the inventor with (1) the grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or (2) the grant of an option to elect an exclusive or nonexclusive license to the CRADA Collaborator when the Government employee is the sole inventor.

Dated: April 6, 2000.

Kathleen Sybert,

Chief, Technology Development and Commercialization Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 00–9429 Filed 4–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting John Rembosek, Ph.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 270; fax: 301/402–0220; e-mail: jr312d@nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Methods and Compositions for Correlating CCR5 Expression With Essential Hypertension

Dr. Thomas O'Brien (NCI)
DHHS Reference Number E–257–99/0
filed October 14, 1999

Hypertension is a disease which afflicts as many as 1 in 5 persons in the United States and is the most common cause of visits to physicians. Once diagnosed with hypertension, treatment of the disease is lifelong. There is mounting evidence that lifestyle changes can prevent the usual rise in blood pressure with age, but for patients whose hypertension cannot be adequately treated by lifestyle changes, drug therapy must be instigated which can be difficult to control and have adverse side affects.

The present invention mutation in the CC-chemokine receptor 5 (CCR5) gene and an increased risk of developing hypertension. This technology will allow for the screening of individuals for the presence of the CCR5–D32/D32 genotype which correlates with an increased risk of developing hypertension and possibly prevent its occurrence through adequate antihypertensive therapy.

This technology may lead to a method of treating or preventing hypertension through the administration of: (1) an effective amount of a CCR5 expression enhancing agent; (2) CCR5 activity enhancing agent; (3) an effective amount of CCR5; or (4) an effective amount of a nucleic acid encoding CCR5. Also, this technology can be employed as a method of identifying an agent that could be used to treat or prevent hypertension through the above identified processes.

Cloning of the Human Nuclear Receptor Co-Repressor Gene

Johnson M. Liu, Jianxiang Wang (NHLBI)
DHHS Reference No. E–088—99/0 filed August 3, 1999

Alteration in the expression of human genes is critical to the development and progression of many diseases. These include, among others, cancer, inflammation, cardiovascular disease, hypercholesterolemia, high blood pressure, and diabetes. The Human Nuclear Receptor Co-Repressor (HuN-Cor) gene represents a technology that may be used to alter the transcription of genes. It provides a general mechanism by which many genes may be modulated throughout the entire range of being turned on to being completely turned off. The Hun-Cor gene is a ubiquitously expressed gene that codes for a protein that silences other genes. It does this by recruiting an enzyme complex that causes local folding of chromatin, not allowing other transcription factors to work. Hun-Cor represents a powerful research tool that can be used to study gene expression and characterization for many different genes. It may also be useful as a target for the isolation of pharmaceutical compounds that enhance or inhibit expression of genes.

Dated: April 7, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–9430 Filed 4–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Uri Reichman, at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7736 ext. 240; fax: 301/402–0220; e-mail: ur7A@nih.gov. A signed Confidential Disclosure Agreement will

be required to receive copies of the patent applications.

Imaging With Positron-Emitting Taxanes as a Guide to Antitumor Therapy

Jerry M. Collins, Raymond W. Klecker, Lawrence Anderson (FDA)
Serial No. 60/155,061 filed 21 Sep 1999

The present application discloses the use of positron-emitting compounds to label taxane type drugs. This invention also describes methods of synthesizing these taxane type compounds. Further, methods to guide treatment of solid tumors, with labeled taxanes, are also disclosed in the present application. Advantages of using this technology include: (1) Avoidance of exposing patients to toxic drugs that have no potential for benefit; (2) ability to rapidly determine whether a given tumor will be likely to respond to a particular drug; and (3) the ability to monitor the impact of various dosages, schedules, and modulators for delivery, *in situ*, at the actual tumor under treatment conditions.

Conjugate Vaccine for *Neisseria Meningitidis*

Xin-Xing Gu (NIDCD) and Chao-Ming Tsai (FDA)
Serial No. 60/148,021 filed 10 Aug 1999

The invention discloses a vaccine which comprises lipooligosaccharide (LOS) isolated from *N. meningitidis* and conjugated to a carrier protein. The invention also discloses a method of making the acellular vaccine. The method consists of two main steps. In the first step the lipooligosaccharide (LOS), chosen so it does not contain the lacto-N-neotetraose human antigen (LNnT), is detoxified by a novel procedure which uses hydrazine to remove the O-linked fatty acids. In the second step, the detoxified LOS (dLOS) is covalently conjugated to a carrier protein such as Tetanus Toxoid (TT). The dLOS produced in step 1 is 10,000 fold less toxic than the parent LOS. The conjugate vaccine exhibited a high level of immunogenicity as evidenced by the high titer of IgG antibody to native LOS, obtained in mice and rabbits. The rabbit antisera produced by the conjugate vaccine of one *N.meningitidis* strain (strain 7880, A,L10) exhibited bactericidal activity and cross reactivity with heterologous *N.meningitidis* strains. A conjugate vaccine made in this method may be multivalent, composed of dLOSs from different strains and/or immunotypes of *N. meningitidis* and will thus protect against all types of *N. meningitidis*, including type B.

A portion of this invention was disclosed in a poster by Tsai, Gu and Quakyi at the Fifth Conference of the International Endotoxin Society held in Santa Fe, New Mexico in September 12–15, 1998.

Dated: April 7, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–9444 Filed 4–14–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting John Peter Kim, at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 264; fax: 301/402–0220; e-mail: jk141n@nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

High Speed Parallel Nucleic Acid Sequencing

Thomas D. Schneider, Denise Rubens (NCI)
Serial No. 60/151,580 filed 30 Aug 1999

The present application describes a new method and apparatus for DNA sequencing called Two Dye Sequencing (TDS). This method employs engineered DNA polymerases which are labeled with a fluorophore such as Green Fluorescent Protein (GFP) and are combined with an annealed oligonucleotide primer in a chamber of a microscope field of view capable of detecting individual molecules. Four nucleotide triphosphates, each labeled on the base with a different fluorescent dye are introduced to the reaction. Light of a specific wavelength is used to excite the fluorophore on the polymerase, which in turn excites the neighboring fluorophore on the nucleotide by Fluorescense Resonance Energy Transfer (FRET). As nucleotides are added to the primer, their spectral emissions provide sequence information of the DNA molecule.

Hydrazide Inhibitors of HIV–1 Integrase

Yves Pommier, Nouri Neamati, Zhaiwai Lin, Terrence R. Burke, Jr. (NCI)
DHHS Reference Nos. E–037–99/0 filed 12 Mar 1999 and E–037–99/1 filed 10 Mar 2000

The human immunodeficiency virus (HIV) is the causative agent of acquired immunodeficiency syndrome (AIDS). Drug-resistance is a critical factor contributing to the gradual loss of clinical benefit to treatments for HIV infection. Accordingly, combination therapies have further evolved to address the mutating resistance of HIV. However, there has been great concern regarding the apparent growing resistance of HIV strains to current therapies.

It has been found that a certain class of compounds including salicylhydrazides and analogs and derivatives thereof are effective and selective anti-integrase inhibitors which are active in the presence of both Mn(+2) and Mg(+2) and which may be used in the treatment or prevention of infection by HIV and AIDS. The subject invention provides for such compounds and for methods of inhibiting HIV integrase.

Dated: April 5, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–9446 Filed 4–14–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

"Conference on Challenges in Health Disparity in the New Millennium: A Call to Action"

Notice is hereby given of the NIH Office of Research on Minority Health (ORMH) Conference on Challenges in Health Disparity in the New Millennium: A Call to Action, which will be held April 16–19, 2000, at the

Hyatt Regency Washington on Capitol Hill, 400 New Jersey Avenue, NW, Washington, D. C. 20001. The conference begins at 8:00 a.m. on April 17, 8:00 a.m. on April 18, and 8:30 a.m. on April 19.

The Office of Research on Minority Health (ORMH), Office of the Director, National Institutes of Health (NIH), is convening this conference. ORMH is a central leadership entity at the NIH for issues related to minority health research and research training. Reports of progress and accomplishments since the founding of ORMH in 1990 and developing a strategic plan for future actions for eliminating health research and research training disparities comprise the agenda of the conference.

Specific conference objectives include:

- Recommending a framework for the ORMH to address continuing disparity in health status of the US population and the international community through the Minority Health Strategic Plan;
- Highlighting the role of the ORMH to address disparity in health status through basic and clinical research and research training in biomedical and behavioral sciences; and
- Promoting partnerships with leaders in Congress, associations, academic institutions, industry, community-based organizations, and other Federal agencies to help eliminate health disparity.

The primary sponsor of this conference is ORMH. Advance information on the conference program and conference registration materials maybe obtained from Debra Rainey, LCLM, LLC, Inc., 1299 Lamberton Drive, Suite 205, Silver Spring, Maryland 20902 (telephone: 301–593–2800).

Dated: April 7, 2000.

Yvonne Maddox,

Acting Deputy Director, National Institutes of Health.

[FR Doc. 00–9445 Filed 4–14–00; 8:45 am]

BILLING CODE 4140–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Cancer Advisory Panel for Complementary and Alternative Medicine.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended because the premature disclosure of program documents—PAC and the discussions would likely to significantly frustrate implementation of recommendations.

Name of Committee: Cancer Advisory Panel for Complementary and Alternative Medicine.

Date: April 19, 2000.

Time: 2:30 PM to 5:00 PM.

Agenda: To review and evaluate the Gonzalez Regiment.

Place: National Institutes of Health, 9000 Rockville Pike, Bldg. 31, Room 5B5B, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard Nahin, PhD, Executive Secretary, Cancer Advisory Panel for Complementary, and Alternative Medicine, NCCAM, NIH, 9000 Rockville Pike, Building 31, Room 5B37, Bethesda, MD 20892, 301–594–2013.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Dated: April 6, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–9436 Filed 4–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 522b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Mentored Clinical Scientist Development Awards (K08).

Date: April 12, 2000.

Time: 2:30 PM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: 6701 Rockledge Drive, Room 7214, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: C. James Scheirer, PhD, Chief, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, Rockledge Center II, 6701 Rockledge Drive, Suite 7216, Bethesda, MD 20892–7924, 301–435–0266.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Disease Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 6, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–9434 Filed 4–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Fluorescent Indicator Dyes for Extracellular Ions (SBIR).

Date: May 4, 2000.

Time: 9:00 AM to 11:00 AM.

Agenda: To review and evaluate contract proposals.

Place: 6701 Rockledge Drive, Room 4212, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: David T. George, PhD, Review Branch, NIH, NHLBI, DEA, Rockledge II, 6701 Rockledge Drive, Suite 7188, Bethesda, MD 20892–7924, (301) 435–0280.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel SCOR in Transfusion Biology and Medicine.

Date: June 8, 2000.

Time: 7:30 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Deborah P. Beebe, PhD, Leader, Cardiology/Pulmonary Scientific Review Group, Rockledge Center II, 6701 Rockledge Drive, Suite 7178, Bethesda, MD 20892–7924, (301) 435–0270.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 7, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–9439 Filed 4–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Contract Review—NIH ES 00–24.

Date: May 24, 2000.

Time: 8:30 AM to 4:30 PM.

Agenda: To review and evaluate contract proposals.

Place: NIEHS-East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, NIEHS, PO Box 12233 EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: April 6, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–9432 Filed 4–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: April 14, 2000.

Time: 12:00 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alan L. Willard, Phd, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: May 24, 2000.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Town Center, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Katherine Woodbury, Phd, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 6, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–9433 Filed 4–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: May 5, 2000.

Time: 8:30 AM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Gaithersburg, The Washington Room, 2 Montgomery Village Avenue, Gaithersburg, MD 20879.

Contact Person: Vassil S. Georgiev, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC, 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 7, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–9437 Filed 4–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, 59–00, Review of R13.

Date: April 17, 2000.

Time: 1 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: 45 Natcher Bldg, Rm 5As.25u, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PHD, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, 00–39, Review of RO3s.

Date: May 2, 2000.

Time: 1 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, Md 20892, (Telephone Conference Call).

Contact Person: William J. Gartland, PHD, Scientific Review Administrator, Scientific Review Section, National Institute of Dental Research, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, 00–41, Review of F30, K23 and R03s.

Date: May 3, 2000.

Time: 2 PM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William J. Gartland, PHD, Scientific Review Administrator, Scientific Review Section, National Institute of Dental Research, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, 00–37, Review of P01s.

Date: June 5, 2000.

Time: 2 PM to 5 PM.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PHD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, 00–50, P01 Applicant Interview.

Date: June 11–12, 2000.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Philip Washko, PHD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, 00–58, Review of P01.

Date: June 14, 2000.

Time: 11 AM to 1 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PHD, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel, 00–45, Review/applicant interview, P01.

Date: June 18–19, 2000.

Time: 9 AM to 5 PM.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Yasaman Shirazi, PHD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93. 121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: April 7, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–9438 Filed 4–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK GRB–C (M2)P.

Date: April 24–25, 2000.

Time: 7:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Courtyard Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Dan E. Matsumoto, Phd, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building Room 6AS37B, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–7 (M3)P.

Date: May 1–3, 2000.

Time: 7:30 PM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: Arkansas Excelsior Hotel, #3 Statehouse Plaza, Little Rock, AR 72201.

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building Room 6AS25F, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

(Catalogue of Federal Domestic Assistance Programs Nos. 93.847, Diabetes,

Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 10, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–9442 Filed 4–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, VISA (03).

Date: April 17, 2000.

Time: 1 PM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Luigi Giacometti, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, VISB (03).

Date: April 24, 2000.

Time: 2 PM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Leonard Jakubczak, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, (301) 435–1247.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 25, 2000.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Hotel & Suites, 625 First Street, Alexandria, VA 22314.

Contact Person: H. Mac Stiles, DDS, PHD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7816, Bethesda, MD 20892, (301) 435–1785.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 25, 2000.

Time: 1 PM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anita Miller Sostek, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 6, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–9435 Filed 4–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, Apri1 14, 2000, 11:00 AM to April 14, 2000, 1:00 PM, Rockledge 2, Bethesda, MD 20892 which was published in the **Federal Register** on April 3, 2000, 65FR17518.

The meeting will be held on April 13, 2000, from 1:00 PM to 3:00 PM. The location remains the same. The meeting is closed to the public.

Dated: April 7, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–9440 Filed 4–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 14, 2000.

Time: 2:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Houston Baker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1175, bakerh@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 19, 2000.

Time: 2:30 PM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, (301) 435–8367.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 21, 2000.

Time: 2:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, bannerc@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 26, 2000.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 26, 2000.

Time: 1:00 to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 26, 2000.

Time: 2:00 to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed Husain, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892–7850, (301) 435–1224.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 26, 2000.

Time: 2:00 to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, politisa@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 27, 2000.

Time: 8 AM to 9 AM.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Residence Inn By Marriott, Pentagon City, 550 Army Navy Drive, Arlington, VA 22202.

Contact Person: Philip Perkins, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 27–28, 2000.

Time: 9 AM to 5 PM.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Residence Inn By Marriott, Pentagon City, 550 Army Navy Drive, Arlington, VA 22202.

Contact Person: Philip Perkins, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 27, 2000.

Time: 1 PM to 4 PM.

Agenda: To review and evaluate grant applications.

NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. Mac Stiles, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7816, Bethesda, MD 20892, 301–435–1785.

This notice is being published less than 15 days prior tot he meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 27, 2000.

Time: 1 PM to 2 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Clare Walker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

This notice is being published less than 15 days prior tot he meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 7, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–9441 Filed 4–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 64 FR 49018, September 9, 1999, and redesignated from Part NH as Part N at 60 FR 56606, November 9, 1995), is amended as set forth below to reflect the establishment of the Office of Bioengineering and Bioimaging in the Office of the Director, National Institutes of Health.

Section N–B, Organization and Functions, is amended as follows: (1) After the heading *Executive Office (NAR, formerly HNAR),* insert the following:

Office of Bioengineering and Bioimaging (NAC, formerly HNAC). (1) Increases biological knowledge and facilities development of novel methods, devices, and pharmaceuticals through the use of engineering, physical, and computational science principles and techniques; (2) coordinates and provides a focus for biomedical engineering, bioimaging, and bioinformatics issues among the institutes and centers at the NIH and with other Federal agencies; (3) conducts activities aimed at fostering new basic understandings and collaborations among the biological, medical, engineering, physical, and computational sciences; (4) coordinates trans-NIH bioengineering, bioimaging, and bioinformatics research programs; (5) develops transdisciplinary training and career development opportunities between the engineering/physical/computational science and biomedical communities; and (6) conducts symposia and technical meetings to facilitate communication and

dissemination of information among different technical disciplines.

Dated: April 5, 2000.

Ruth Kirschstein,

Acting Director, National Institutes of Health.

[FR Doc. 00–9431 Filed 4–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institute of Environmental Health Sciences, NIH; National Toxicology Program; Peer Review Meeting on Low-Dose Issues for Endocrine Disruptors; Scope of Information Considered for Review Broadened, Deadline for Receipt of Information Extended, and Date for Meeting Delayed

Summary

The National Toxicology Program (NTP) is organizing a Peer Review to evaluate whether chemicals can cause hormone-related effects at doses lower than those typically used in the standard toxicological dose-setting paradigm. The U.S. Environmental Protection Agency (EPA) Endocrine Disruptor Screening Program will use the results from this peer review to assist in determining how to identify and characterize potential low-dose effects that may arise during endocrine disruptor screening, testing, and hazard assessment.

On January 6, 2000 the NTP published a **Federal Register** notice [Volume 65, Number 4, pages 784–787] outlining plans for the Peer Review meeting and soliciting public input into the process. This notice broadens the request for research studies and data to be considered and extends previously announced deadlines for receipt for research information for use in this peer review.

Broader Request for Research Studies to be Considered for the Peer Review

On January 6, 2000, the NTP published a **Federal Register** notice [Volume 65, Number 4, pages 784–787] providing details about a Peer Review meeting to evaluate scientific data on the potential low-dose effects associated with exposure to endocrine disruptors. In that notice, the NTP solicited comments on the planned scope and process of the proposed peer review, nominations of studies for inclusion in this review, as well as nominations of individuals for the Peer Review panel. The notice also detailed the criteria for selection of studies for review.

The NTP Selection/Organizing Committee will review the nominated studies and designate them as either critical to resolution of the low-dose issue or background information. The January 6th notice stipulated that studies nominated for consideration in this peer review should have been published or accepted for publication by April 1, 2000. The NTP is now broadening the scope of studies to be considered for this peer review to include relevant data from unpublished studies. Submission of unpublished studies should include an abstract of the study describing the hypothesis being tested, experimental design [model system (cell line, species, strain, number per group, etc.), dosing regimen, duration of treatment and follow-up], endpoints evaluated, and results (if available).

If an unpublished study is nominated for consideration, the NTP will contact the principal investigator for an update of the study's status and to obtain additional information about the study. If selected by the NTP Selection/Organizing Committee, the studies will be distributed to the Peer Review panel for its review and evaluation. The NTP may need access to raw data for subsequent independent analysis by the Panel. As with published studies and studies accepted for publication but not yet published, all information given to the Peer Review Panel will simultaneously be made available to the public. Therefore, studies, which are unpublished by the date of their distribution to the Panel, will require approval from the author (and publisher if accepted for publication) in order to be included in the Peer Review. A list of the studies included in the Peer Review will be posted on the NTP web page (http://ntp-server.niehs.nih.gov) and available from NTP Liaison and Scientific Review Office (NIEHS/NTP, P.O. Box 12233, Research Triangle Park, NC 27709; t: 919–541–0530; f: 919–541–0295). **Federal Register** announcement. Planning for the Peer Review Meeting is ongoing and the date and location will be announced in the **Federal Register** in the near future.

Solicitation of Public Comment

Comments about the scope and process for the Peer Review are welcome. The deadline for submission of comments, identified by docket control number OPPTS–42208A, is extended from February 22, 2000 to May 22, 2000.

Guidelines for Submission of Public Comment

The EPA will manage the record-keeping aspects of the Peer Review as part of the Endocrine Disruptor Screening Program. General information about the U.S. EPA Endocrine Disruptor Screening Program is available from the Internet at http://www.epa.gov/scipoly/oscpendo/index.htm or by contacting Mr. James Kariya (contact information provided below).

The EPA has established an official record for this action under docket control number OPPTS–42208A. The official record consists of the document specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as confidential business information (CBI). The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Room B–607, Waterside Mall, 401 M. Street, SW, Washington, DC. The Center is open from noon to 4 PM., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

Comments can be submitted through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that the docket control number OPPTS–42208A is identified in the subject line on the first page of the comments.

1. *By mail:* Submit comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

2. *In person or by courier:* Deliver comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St. SW, Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically:* Submit comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail the computer disk to the Document Control Office (address identified above). The form must be identified by docket

control number OPTTS–42208A. Electronic comments may also be filed online at many Federal Depository Libraries.

Do not submit any information that you consider is CBI. If you believe that relevant information will be overlooked because of this restriction, please consult James P. Kariya, Office of Science Coordination and Policy (7203), Office of Prevention, Pesticides, and Toxic Substances, U.S. EPA, 1200 Pennsylvania Avenue NW, Washington, DC 20460; t: 202–260–2916; email: kariya.jim@epa.gov.

Dated: April 6, 2000.

Samuel H. Wilson,

Deputy Director, National Toxicology Program.

[FR Doc. 00–9443 Filed 4–14–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

ACTION: Notice of Availability.

SUMMARY: The Fish and Wildlife Service has published a Comprehensive Conservation Plan, Environmental Assessment, and a Finding of No Significant Impact for Florida Panther National Wildlife Refuge in Collier County, Florida. The plan describes how the Fish and Wildlife Service intends to manage the refuge for the next 15 years.

ADDRESSES: A copy of the above documents may be obtained by writing to the Fish and Wildlife Service, Attention: Jennifer Harris, 1875 Century Boulevard, Suite 420, Atlanta, Georgia 30345; or to Jim Krakowski, Refuge Manager, Florida Panther National Wildlife Refuge, 3860 Tollgate Boulevard, Suite 300, Naples, Florida 34114.

SUPPLEMENTARY INFORMATION: By implementing this comprehensive conservation plan, the refuge seeks to (1) provide a clear statement of the desired future conditions when refuge purposes and goals are accomplished; (2) provide refuge neighbors and visitors with a clear understanding of the reasons for management actions on and around the refuge; (3) ensure that management of other refuge reflects policies and goals of the National Wildlife Refuge System; (4) ensure that refuge management is consistent with federal, state, and county plans; (5) provide long-term continuity in refuge management; and (6) provide a basis for operation, maintenance, and capital improvement budget requests.

Dated: April 7, 2000.

Judy L. Jones,

Acting Regional Director.

[FR Doc. 00–9457 Filed 4–14–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10 (a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No. TE–023904

Applicant: USDI Bureau of Land Management, North Palm Springs, California

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys throughout its range for the purpose of enhancing its survival.

Permit No. TE–023895

Applicant: Paul W. Collins, Santa Ynez, California

The applicant requests a permit to take (capture and handle) the California tiger salamander (*Ambystoma californiense*) in conjunction with presence or absence surveys in Santa Barbara County, California for the purpose of enhancing its survival.

Permit No. TE–023892

Applicant: Lawrence Edward Hunt, Santa Barbara, California

The applicant requests a permit to take (capture and handle) the California tiger salamander (*Ambystoma californiense*) in conjunction with presence or absence surveys in Santa Barbara County, California for the purpose of enhancing its survival.

Permit No. TE–023886

Applicant: San Diego Natural History Museum, San Diego, California

The applicant requests a permit to take (capture, handle, and collect tissue samples) the arroyo southwestern toad (*Bufo californicus*) in conjunction with surveys, population monitoring, ecological research, and population augmentation throughout the species range for the purpose of enhancing its survival.

Permit No. TE–018909

Applicant: Kelly Michelle Rios, Brea, California

The permittee requests a permit amendment to take (survey by pursuit) the El Segundo blue butterfly (*Euphilotes battoides allyni*) in conjunction with presence or absence surveys throughout its range for the purpose of enhancing its survival.

Permit No. TE–817397

Applicant: John R. Storrer, Santa Barbara, California

The permittee requests a permit amendment to take (capture and handle) the California tiger salamander (*Ambystoma californiense*) in conjunction with presence or absence surveys in Santa Barbara County, California for the purpose of enhancing its survival.

Permit No. TE–009015

Applicant: Jason Lee Berkley, Whittier, California

The permittee requests a permit amendment to take (capture and handle) the arroyo southwestern toad (*Bufo microscaphus californicus*) in conjunction with presence or absence surveys throughout its range for the purpose of enhancing its survival.

Permit No. TE–815144

Applicant: Rosemary Ann Thompson, Santa Barbara, California

The permittee requests a permit amendment to take (capture and handle) the California tiger salamander (*Ambystoma californiense*) in conjunction with presence or absence surveys in Santa Barbara County, California for the purpose of enhancing its survival.

Permit No. TE–826513

Applicant: Galen Rathbun, Bakersfield, California

The permittee requests a permit amendment to take (radio-tag) the blunt-nosed leopard lizard (*Gambelia sila*) in Kern County, California in conjunction with ecological research for the purpose of enhancing its survival.

Permit No. TE–768251

Applicant: Biosearch Wildlife Surveys, Santa Cruz, California

The permittee requests a permit amendment to take (capture, mark) the Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*) in conjunction with population studies throughout the species range in California for the purpose of enhancing its survival.

Permit No. 022615

Applicant: Robert L. Calloway, Leonardtown, Maryland

The applicant requests a permit to purchase, in interstate commerce, two female and two male captive bred Hawaiian (=nene) geese (*Nesochen [=Branta] sandvicensis*) for the purpose of enhancing the species propagation and survival.

Permit No. TE–702631

Applicant: Assistant Regional Director-Ecological Services, Region 1, U.S. Fish and Wildlife Service, Portland, Oregon

The permittee requests a permit amendment to remove and reduce to possession specimens of the following plant species: *Cirsium loncholepis* (La Graciosa thistle), *Eriodictyon capitatum* (Lompoc yerba santa), *Hemizonia increscens ssp. villosa* (Gaviota tarplant), and *Lupinus nipomensis* (Nipomo Mesa lupine). Collection activities will be conducted throughout each species range in conjunction with recovery efforts for the purpose of enhancing their propagation and survival.

Permit No. TE–025182

Applicant: Ecosphere Environmental Services, Durango, Colorado

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax extimus traillii*) in conjunction with presence or absence surveys throughout the species range in California for the purpose of enhancing its survival.

Permit No. TE–025197

Applicant: Lockheed Martin Environmental Service, Las Vegas, Nevada

The applicant requests a permit to take (harass by survey, capture and handle, collect tissue samples, and collect voucher specimens) the desert pupfish (*Cyprinodon macularius*), Gila topminnow (*Poeciliopsis occidentalis*), Gila trout (*Oncorhynchus gilae*), and Humpback chub (*Gila cypha*) in conjunction with presence or absence surveys and scientific research throughout each species range for the purpose of enhancing their survival.

Permit No. TE–776608

Applicant: Monk and Associates, Walnut Creek, California

The permittee requests a permit amendment to take (capture and handle) the California tiger salamander (*Ambystoma californiense*) in conjunction with presence or absence surveys in Santa Barbara County, California for the purpose of enhancing its survival.

Permit No. TE–025204

Applicant: Linda Ann Vorobik, Lopez Island, Washington

The applicant requests a permit to remove and reduce to possession specimens of *Arabis macdonaldiana* in conjunction with genetic research and the collection of voucher specimens throughout the species range for the purpose of enhancing its survival.

Permit No. TE–685022

Applicant: Rudi Mattoni, University of California, Los Angeles, California

The permittee requests a permit amendment to take (survey by pursuit, harass, collect for captive propagation, handle, captive rear, and release) the Palos Verdes blue butterfly (*Glaucopsyche lygdamus palosverdesensis*) in conjunction with presence and absence surveys and scientific research throughout its range for the purpose of enhancing its survival.

Permit No. TE–025203

Applicant: David J. Griffin, Alpine, California

The applicant requests a permit to take (harass by survey, collect and sacrifice) the San Diego fairy shrimp (*Brachinecta sandiegonensis*) and the Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with surveys in Riverside and San Diego Counties, California for the purpose of enhancing their survival.

Permit No. TE–025202

Applicant: Janette Holtz, San Diego, California

The applicant requests a permit to take (harass by survey, collect and sacrifice) the San Diego fairy shrimp (*Brachinecta sandiegonensis*) and the Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with surveys and population monitoring in San Diego County, California for the purpose of enhancing their survival.

Permit No. TE–025201

Applicant: Bonnie Ripley, San Diego, California

The applicant requests a permit to take (harass by survey, collect and sacrifice) the San Diego fairy shrimp (*Brachinecta sandiegonensis*) and the Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with surveys and population monitoring in San Diego County, California for the purpose of enhancing their survival.

DATES: Written comments on these permit applications must be received on or before May 17, 2000.

ADDRESSES: Written data or comments should be submitted to the Chief—Endangered Species, Ecological Services, Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: April 6, 2000.

Thomas Dwyer,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 00–9458 Filed 4–15–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Revised Recovery Plan for the Oregon Silverspot Butterfly for Review and Comment

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of a draft revised recovery plan for the Oregon silverspot butterfly (*Speyeria zerene hippolyta*) for public review. This butterfly is distributed in six small areas along the Pacific coast from northern California to southern Washington. The Oregon silverspot butterfly depends upon coastal grasslands that contain the larval host plant (early blue violet), nectar sources, and adult courtship areas. This draft revised plan updates the original recovery plan that was completed in 1982.

DATES: We must receive your comments on the draft revised recovery plan on or

before June 16, 2000 for us to consider them in developing the final plan.

ADDRESSES: You may obtain a copy of the draft revised recovery plan by contacting the U.S. Fish and Wildlife Service, Oregon State Office, 2600 S.E. 98th Avenue, Suite 100, Portland, Oregon, 97266; phone (503) 231–6179. Send written comments or other materials on the plan to the State Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Rich Szlemp, Supervisory Fish and Wildlife Biologist, at the above address.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of our endangered species program. To help guide the recovery effort, we are working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary to conserve the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) requires that recovery plans be developed for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that during recovery plan development, we provide public notice and an opportunity for public review and comment. We will consider all information presented during a comment period before we approve a new or revised recovery plan. We and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Oregon silverspot butterfly, which was listed as threatened with critical habitat in 1980, is a small, darkly marked coastal subspecies of the Zerene fritillary butterfly. This subspecies occurs in six small pockets of remaining habitat at: Del Norte/Lake Earl in California; Clatsop Plains, Mt. Hebo, Cascade Head, and Rock Creek-Big Creek in Oregon; and Long Beach in Washington. The Long Beach population may be extirpated and the population on the Clatsop Plains is extremely low and at risk of extirpation. A recovery plan was completed in 1982. At the time of listing, the only known viable population occurred in the Rock Creek-Big Creek area. The original recovery plan included recovery actions for the Rock Creek-Big Creek area as well as the rediscovered population of butterflies at Mt. Hebo. Since that time, additional Oregon silverspot populations have been discovered or rediscovered at Cascade Head, Bray Point, Clatsop Plains, and Del Norte.

The open vegetation preferred by the butterfly has always had a patchy distribution that was maintained through wildfire, salt-laden winds, grazing, and controlled burning. Habitat has declined due to residential and commercial development, invasion of exotic plant species, overgrazing, and lack of fire. Current threats to Oregon silverspot butterflies include continued habitat alteration, continued invasion of non-native plants, off-road vehicle use, and vegetation change due to fire suppression.

The draft revised recovery plan calls for restoring and protecting habitat for the Oregon silverspot butterfly to establish or maintain viable populations in six habitat conservation areas. Because Oregon silverspot butterfly populations have been extirpated and existing ones are still declining, the revised recovery plan also calls for augmenting existing populations with captive-reared individuals and reintroducing butterflies in areas where they have been extirpated. When the revised plan is completed, it will guide all Federal and State agencies whose actions affect the conservation of the Oregon silverspot butterfly.

Public Comments Solicited

We solicit written comments on this draft revised recovery plan. We are particularly interested in receiving any recent information regarding the occurrence, distribution, or number of butterflies that is not included in the draft revised plan. We are also particularly interested in information pertaining to specific criteria to be considered when proposing to augment or reintroduce Oregon silverspot butterflies. We will consider all comments received by the date specified above before approving the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: April 11, 2000.

Thomas Dwyer,

Regional Director, U.S. Fish and Wildlife Service, Region 1.

[FR Doc. 00–9459 Filed 4–14–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposal To Register an Operation Breeding an Appendix-I Species in Captivity for Commercial Purposes according to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce that we intend to submit to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) a proposal to register Rapid Creek Ranch, a breeding facility for gyrfalcons (*Falco rusticolus*) owned and operated by Robert B. Berry, Sheridan, Wyoming, as a commercial breeding operation for an Appendix-I species. The registration of this facility will allow specimens to be designated as bred in captivity for commercial purposes and deemed to be specimens of species included in Appendix II, as provided for in Article VII, paragraph 4, of CITES. Public comments are solicited.

DATES: Comments will be accepted until May 17, 2000.

ADDRESSES: Please send correspondence concerning this notice to the Office of Scientific Authority, U.S. Fish and Wildlife Service, Mail stop ARLSQ 750, 4401 N. Fairfax Drive, Arlington, Virginia 22203 (fax, 703–358–2276; E-mail, *r9osa@fws.gov*). Copies of the full text of the registration proposal are available from the Office of Scientific Authority and will be mailed upon request. Comments and other information received are available for public inspection by appointment from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, Virginia, address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Gabel at the address given above (telephone: 703–358–1708).

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild

Fauna and Flora, TIAS 8249, hereinafter referred to as CITES, is an international treaty designed to regulate international trade in animal and plant species that are or may become threatened with extinction. Authority for implementing CITES has been delegated to the Secretary of Interior through the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*). Species are listed in Appendix I, II, or III of CITES, depending on the degree of threat and level of control needed. Species listed in Appendix I receive the highest level of protection and require both an import permit from the country of import and an export permit from the country of export, and imports may not be for primarily commercial purposes. However, Article VII, paragraph 4, of CITES provides that specimens of animal species included in Appendix I bred in captivity for commercial purposes shall be deemed to be specimens of species included in Appendix II. Appendix-II species require an export permit only (no import permit) and may be imported for commercial or non-commercial purposes.

Through resolutions adopted at meetings of the Conference of the Parties to CITES, the Parties have defined criteria for registering breeding operations with the CITES Secretariat, whereby specimens of Appendix-I species from those operations would qualify as bred in captivity for commercial purposes. Resolution Conf. 10.16 adopted at the Tenth Meeting of the Conference of the Parties to CITES requires that parental breeding stock at such operations must: (a) Be established in according to the provisions of CITES and relevant national laws and in a manner not detrimental to the survival of the species in the wild; (b) be maintained without introduction of specimens from the wild, except for occasional augmentation to prevent or alleviate deleterious inbreeding, and for other limited purposes; and (c) have produced offspring of second (F2) or subsequent generations (F3, F4, etc.) in a controlled environment, belong to a species included in a list (established by the CITES Standing Committee) of species commonly bred to the second or subsequent generations in captivity, or be managed in a manner that has been demonstrated to be capable of reliably producing second-generation offspring in a controlled environment. Resolution Conf. 8.15 provides guidelines for registering and monitoring operations breeding Appendix-I animal species for commercial purposes, and specifies the documentation required to establish that the operation meets the criteria of Resolution Conf. 10.16.

To register a captive-breeding operation, the Management Authority of the country in which the operation is located must approve the operation, in consultation with that country's Scientific Authority. The sponsoring Management Authority must then submit a proposal to register the operation to the CITES Secretariat, which will follow the process presented in Resolution Conf. 8.15.

After a review of relevant information, including breeding records and other documentation, we have prepared for submission to the CITES Secretariat the following proposal: the registration of Rapid Creek Ranch, owned and operated by Robert B. Berry, Sheridan, Wyoming, as a commercial captive-breeding operation for gyrfalcons (*Falco rusticolus*), an Appendix-I species. This is only the second commercial captive-breeding operation proposed for registration within the United States for any species, it is not the first operation registered with the CITES Secretariat for this species; 11 operations are already registered with the Secretariat for gyrfalcons, one of which is in the United States. The Rapid Creek Ranch operation was established in 1978 and first began breeding this species in 1980, with 150 gyrfalcons produced from 1982 to 1999. Over 75 percent of these offspring have been second-generation captive-bred offspring. We are satisfied that all breeding stock has been legally acquired and maintained under appropriate permits. Mr. Berry has provided detailed information on current holdings, husbandry practices, enclosures, production at his operation, and breeding strategies for genetic management of his flocks so as to minimize deleterious inbreeding.

Required Determination

In March 1998, we prepared an Environmental Assessment (EA) as required by the National Environmental Policy Act (NEPA) for this notice and concluded in a Finding of No Significant Impact (FONSI) based on a review and evaluation of the information contained within the EA that there would be no significant impact on the human environment as a result of the registration of operations breeding Appendix-I species in captivity for commercial purposes, and that the preparation of an environmental impact statement on this action is not required by Section 102(2) of NEPA or its implementing regulations. The EA and FONSI for this action are on file at our Office of Scientific Authority in Arlington, Virginia, and a copy may be obtained by contacting the individual identified under the section entitled, **FOR FURTHER INFORMATION.**

Author

This notice was prepared by Mr. Robert R. Gabel, Chief, Branch of Consultation and Monitoring, Office of Scientific Authority, U.S. Fish and Wildlife Service (703/358–1708).

Dated: April 10, 2000.

Kristen Nelson,

Acting Chief, Office of Management Authority.

[FR Doc. 00–9526 Filed 4–14–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for an Incidental Take Permit for the Construction of One Single Family Residence on 0.5 acres of the 7.6-acre Lot 20, Section 2 in the Circle D Country Acres Subdivision in Bastrop County, Texas.

SUMMARY: Paula Hanks and Jason Sims (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicants have been assigned permit number TE–024872–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston Toad (Bufo houstonensis). The proposed take would occur as a result of the construction and occupation of one single family residence on Lot 20, Section 2 of the Circle D Country Acres Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before May 17, 2000.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103.

Persons wishing to review the EA/HCP may obtain a copy by written or telephone request to Tannika Engelhard, U.S. Fish and Wildlife Service, Ecological Services Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057, extension 242). Documents will be available for public inspection by written request or by appointment only during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service Office, Austin, Texas. Data or comments concerning the application and EA/HCP should be submitted in writing to the Field Supervisor, U.S. Fish and Wildlife Service Office, Austin, Texas at the above address. Please refer to permit number TE–024872–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Tannika Engelhard at the above U.S.Fish and Wildlife Service Office, Austin, TX.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

Paula Hanks and Jason Sims plan to construct one single family residence on 0.5 acres of the 7.6-acre Lot 20, Section 2 in the Circle D Country Acres Subdivision, Bastrop County, Texas. This action will eliminate less than one acre of habitat and result in an unquantifiable amount of indirect impact. The applicants propose to compensate for this incidental take of the Houston Toad by providing $1,500.00 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Alternatives to this action were rejected because not developing the subject property with federally listed species present was not economically feasible and alteration of the project design would not alter the level of impacts.

Geoffrey L. Haskett,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–9356 Filed 4–14–00; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–1610–DG]

Notice of Intent To Revise the Nellis Air Force Range Resource Plan and Prepare a New Environmental Impact Statement

AGENCY: Department of the Interior, Bureau of Land Management in cooperation with the Department of Defense, Nellis Air Force Base and the United States Fish and Wildlife Service.

ACTION: Notice of Intent. The Bureau of Land Management is proposing to revise the existing Nellis Air Force Range Resource Plan based on specific direction within Public Law 106–65, section 3014. The BLM will include an amendment to the Tonopah Resource Management Plan which will prescribe management of the lands identified for return to public land management, all in one action.

SUMMARY: New issues have surfaced which require additional analysis to determine the best use of the existing resources. New issues include: (1) The Nellis Range is located in the serious non-attainment for PM 10 and Carbon Monoxide; (2) management of the Wild Horses on the range has caused much controversy over the past 10 years; (3) approximately 30,000 acres may be returned to public land management status provided it is hazardous materials free. The Bureau is interested in other issues the public will present as part of the record.

Due to an accelerated timeline set forth by Congress and the President, for completion of this revised Nellis Range Resource Plan, October 5, 2001, the BLM will ensure the process proceeds as quickly as possible.

COOPERATING AGENCY STATUS: This plan revision is being completed in full cooperation with the United States Fish and Wildlife Service and the Department of Defense. Based on other express interest by other State and Federal agencies as well as all three county's affected by this action, we anticipate additional interest in cooperating agency status. We will either wait until the Notice of Availability is sent to identify those additional cooperators or issue a separate **Federal Register** notice in the next 2 to 3 months.

DATES: Public scoping meeting are set for the week of May 1–5 as follows: Monday, May 1, 2000; 3–5pm at the Beatty Community Center, Beatty Nevada, 100 A Avenue South. Monday, May 1, 2000; 7–9pm at the Tonopah Convention Center, 301 Brougher Avenue, Tonopah, Nevada. Tuesday, May 2, 2000; 7–9pm at the Bob Ruud Community Center, 150 N. Highway 160, Pahrump, Nevada. Wednesday, May 3, 2000; 7–9pm, at the Amargosa Valley Community Center, 821 E. Farm Road, Amargosa, Nevada. Thursday, May 4, 2000; 7–9pm at the New Alamo High School Multi-purpose Room, 151 S. Main, Alamo Nevada. Friday, May 5, 2000; 7–9pm at the BLM Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas Nevada. Other meetings may be planned in the future if a need is expressed.

ADDRESSES: For further information contact Jeffrey G, Steinmetz, Las Vegas Field Office Environmental Protection Specialist and Team Lead for the BLM at Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada 89108, telephone (702)–647–5000.

FOR FURTHER INFORMATION CONTACT: Jeff Steinmetz, RMP Team Leader, at BLM's Las Vegas Field Office listed above or telephone (702) 647–5097.

Dated: April 5, 2000.

Mark T. Morse,

Field Manager.

[FR Doc. 00–9423 Filed 4–14–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–929–1220–PA–002E]

Notice of Proposed Supplementary Rule Concerning Minors in Possession of Alcoholic Beverages on Public Lands Administered by the Bureau of Land Management (BLM); Montana, North Dakota, and South Dakota

AGENCY: Bureau of Land Management, DOT.

ACTION: Notice.

SUMMARY: Underage drinking is a growing problem on the public lands. Such activity poses a significant health and safety hazard to both underage violators and other users of the public lands and can result in the destruction of natural resources and property.

Therefore, the State Director is prohibiting the possession, or providing, of an intoxicating substance by, or to, a person under 21 years of age upon the public lands in Montana, North Dakota, and South Dakota. This action will allow BLM law enforcement officers to restrict the supply and possession and/or consumption of alcoholic beverages

by minors, on BLM-administered public lands and recreation areas, in a manner consistent with Montana Code Annotated (MCA) 45–5–624, MCA 16–6–304, and MCA 16–6–305; ND Century Codes 5–01–01, 5–01–08, and 5–01–09; and SD Code 35–1–1, 35–9–1, 35–9–1.1, and 35–9–2. An intoxicating substance is defined in MCA 45–2–101 (31)(a).

This supplementary rule is issued under the authority of 43 CFR 8365.1–6.

Penalties

As prescribed under the Federal Land Policy and Management Act, 43 USC, Section 1733(a), and the Taylor Grazing Act, the violation is punishable by fines and/or imprisonment under 43 CFR 8360.0–7, with fines up to $1000 and/or 12 months in jail, or $500 as authorized under the Taylor Grazing Act (43 USC 315a).

DATES: To comply with the Administrative Procedures Act, if no significant opposition is received, this rule will go into effect May 17, 2000, and will remain in effect until rescinded or modified by the authorized officer.

FOR FURTHER INFORMATION CONTACT: Special Agent in Charge, Bureau of Land Management, Montana State Office, 5001 Southgate Drive, Billings, Montana 59101, (406) 896–5010.

Dated: March 23, 2000.

Larry E. Hamilton,

State Director.

[FR Doc. 00–9424 Filed 4–14–00; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0053).

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on a proposal to extend the currently approved collection of information discussed below on oil and gas drilling operations. We intend to submit this collection of information to the Office of Management and Budget (OMB) for approval. The Paperwork Reduction Act of 1995 (PRA) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Submit written comments by June 16, 2000.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart D, Oil and Gas Drilling Operations.

OMB Control Number: 1010–0053.

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, requires the Secretary of the Interior to preserve, protect, and develop oil and gas resources in the OCS; make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environment; ensure the public a fair and equitable return on the resources offshore; and preserve and maintain free enterprise competition. Section 1332(6) of the OCS Lands Act (43 U.S.C. 1332) requires that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health." This authority and responsibility are among those delegated to MMS. To carry out these responsibilities, MMS issues regulations governing oil and gas and sulphur operations in the OCS. This collection of information addresses 30 CFR 250, subpart D, Oil and Gas Drilling Operations.

The MMS uses the information to ascertain the condition of a drilling site to prevent hazards inherent in drilling operations. Among other things, MMS specifically uses the information to ensure: (a) The drilling unit is fit for the intended purpose; (b) the lessee will not encounter geologic conditions that present a hazard to operations; (c) equipment is maintained in a state of readiness and meets safety standards; (d) each drilling crew is properly trained and able to promptly perform well-control activities at any time during well operations; (e) compliance with safety standards; and (f) the proposed field drilling rules will provide for safe and proper field or reservoir development, resource evaluation, conservation, protection of correlative rights, safety, and environmental protection. We also review well records to ascertain whether drilling operations have encountered hydrocarbons or H_2S and to ensure that H_2S detection equipment, personnel protective equipment, and training of the crew are adequate for safe operations in zones known to contain H_2S and zones where the presence of H_2S is unknown.

Responses are mandatory. Proprietary information respondents submit is protected according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2) and 30 CFR 250.196. No items of a sensitive nature are collected.

Frequency: The frequency of reporting varies by section, but is mostly on occasion.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil, gas, and sulphur lessees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: The currently approved burden for this information collection is 107,698 hours (3,389 reporting and 103,859 recordkeeping hours). This averages approximately 830 hours per respondent.

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no non-hour cost burdens.

Comments: We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB. In calculating the burden, we assumed that respondents perform many of the requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

(1) We specifically solicit your comments on the following questions:

(a) Is the proposed collection of information necessary for us to properly perform our functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on respondents, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

(2) In addition, the PRA requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We need to know if you have costs associated with the collection of this information for either total capital and startup cost components or annual operation, maintenance, and purchase of service components. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744).

Dated: March 31, 2000.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 00–9425 Filed 4–14–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0067).

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on a proposal to extend the currently approved collection of information discussed below on oil and gas well-control operations. We intend to submit this collection of information to the Office of Management and Budget (OMB) for approval. The Paperwork Reduction Act of 1995 (PRA) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Submit written comments by June 16, 2000.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart E, Oil and Gas Well-Completion Operations

OMB Control Number: 1010–0067.

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, requires the Secretary of the Interior to preserve, protect, and develop oil and gas resources in the OCS; make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environment; ensure the public a fair and equitable return on resources offshore; and preserve and maintain free enterprise competition. Section 1332(6) of the OCS Lands Act (43 U.S.C. 1332) requires that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health." This authority and responsibility are among those delegated to MMS. To carry out these responsibilities, MMS issues regulations governing oil and gas and sulphur operations in the OCS. This collection of information addresses 30 CFR part 250, subpart E, Oil and Gas Well-Completion Operations.

The MMS district supervisors analyze and evaluate the information and data collected under subpart E to ensure that planned well-completion operations will protect personnel safety and natural resources. They use the analysis and evaluation results in the decision to approve, disapprove, or require modification to the proposed well-completion operations. Specifically, MMS uses the information to ensure: (a) compliance with personnel safety training requirements; (b) crown block safety device is operating and can be expected to function to avoid accidents; (c) proposed operation of the annular preventer is technically correct and provides adequate protection for personnel, property, and natural resources; (d) well-completion

operations are conducted on well casings that are structurally competent; and (e) sustained casing pressures are within acceptable limits.

Responses are mandatory. Proprietary information respondents submit is protected according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2) and 30 CFR 250.196. No items of a sensitive nature are collected.

Frequency: The frequency of reporting varies by section, but is mostly on occasion.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil, gas, and sulphur lessees.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: The currently approved burden for this information collection is 4,481 hours (338 reporting and 4,503 recordkeeping hours). This averages approximately 35 hours per respondent.

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no non-hour cost burdens.

Comments: We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB. In calculating the burden, we assumed that respondents perform many of the requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

(1) We specifically solicit your comments on the following questions:

(a) Is the proposed collection of information necessary for us to properly perform our functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on respondents, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

(2) In addition, the PRA requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We need to know if you have costs associated with the collection of this information for either total capital and startup cost components or annual operation, maintenance, and purchase of service components. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744).

Dated: March 31, 2000.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 00–9426 Filed 4–14–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement, DOI.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining (OSM) is announcing its intention to request approval for the collection of information for noncoal reclamation, 30 CFR part 875.

DATES: Comments on the proposed information collection must be received by June 16, 2000, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection activity that OSM will submit to OMB for extension. This collection is contained in 30 CFR part 855, Noncoal reclamation.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Noncoal reclamation, 30 CFR 875.

OMB Control Number: 1029–0103.

Summary: This Part establishes procedures and requirements for State and Indian tribes to conduct noncoal reclamation under abandoned mine land funding. The information is needed to assure compliance with the Surface Mining Control and Reclamation Act of 1977.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State governments and Indian Tribes.

Total Annual Responses: 7.

Total Annual Burden Hours: 340.

Dated: April 11, 2000.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 00–9462 Filed 4–14–00; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on March 14, 2000, a complaint and a proposed consent decree in *United States and the State of Colorado* v. *Beazer East, Inc. and Butala Construction Company,* Civil Action No. 00–D–561, were lodged with the United States District Court for the District of Colorado.

In this action the United States seeks recovery of approximately $631,000 in unreimbursed response costs incurred in relation to Operable Unit #2 of the Smeltertown Superfund Site, located near Salida, Colorado, under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act. The State of Colorado seeks recovery of response costs to be incurred at the Site. Under the proposed decree, the defendants implement a remedial action selected by the United States Environmental Protection Agency, which is designed to prevent the further migration of hazardous substances at Operable Unit #2, and will reimburse all of EPA's past costs, as well as all of EPA's and the State of Colorado's future response costs incurred at Operable Unit #2.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and State of Colorado,* v. *Beazer East, Inc. and Butala Construction Company,* D.J. Ref. 90–11–3–1522.

The proposed consent decree may be examined at the Office of the United States Attorney, 1961 Stout Street, 11th Floor, Drawer 3608, Denver, CO 80294 and at U.S. EPA Region VIII, 999 18th Street, Denver, Colorado 8020. A copy of the Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $20.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–9427 Filed 4–14410–15–M

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on March 14, 2000, a complaint and proposed Consent Decree ("Decree") in *United States* v. *the Lockheed Martin Corporation* (D. CO) Civil Action No. 00–562, was lodged with the United States District Court for the District of Colorado.

The United States filed this action under Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9607 and 9613, and RCRA, 42 U.S.C. §§ 6901 et seq. In the complaint, the United States Air Force ("USAF") seeks, among other things, contribution from Lockheed Martin Corporation ("LMC") for costs incurred and to be incurred by the USAF for response actions as the PJKS National Priorities List site in Jefferson County, Colorado ("Site").

The proposed consent decree resolves the USAF's CERCLA Sections 107 and 113 claims against LMC and the contribution claims LMC could bring against the USAF under Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1). The proposed decree provides for a cash payment of $3.5 million over 10 years from LMC to the USAF and clean up services from LMC, specified under separate agreement with the USAF, that could ultimately reduce total clean up costs to the USAF by as much as $35.25 million.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to, *United States* v. *The Lockheed Martin Corporation* (D. CO), and D.J. Ref. #90–11–3–925/1.

The Decree may be examined at the office of the U.S. Attorneys Office for the District of Colorado, 1961 Stout Street, Suite 1200, Denver, CO 80294. A copy of the Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044–7611. In requesting a copy, please enclose a check in the amount of $15.75 for the Decree or (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–9428 Filed 4–14–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 7, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be send to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), on or before May 17, 2000.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses

Agency: Employment standards Administration (ESA).

Title: Request for Earnings Information.

Type of Review: Extension.

OMB Number: 1215–0112.

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: 1,700.

Estimated Time Per Response: 15 minutes.

Total Burden Hours: 425.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Report gathers information regarding an employee's average weekly wage. This information is needed for determination of compensation benefits in accordance with Section 10 of the Longshore and Harbors Workers' Compensation Act.

Agency: Employment Standards Administration (ESA).

Title: The Remedial Education Provisions of the Fair Labor Standards Act.

Type of Review: Extension.

OMB Number: 1215–0175.

Frequency: On occasion.

Affected Public: Business or other for profit; Not-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 15,000.

Estimated Time Per Response: 10 minutes.

Total Burden Hours: 5,000.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: These recordkeeping requirements for employers utilizing the partial overtime for remedial education are necessary to insure employees are paid in compliance with the remedial education provisions of the Fair Labor Standards Act.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–9525 Filed 4–14–00; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,809]

Bayer Diagnostics, Oberlin, Ohio, Including Leased Workers of Adecco Employment Services, Inc., Elyria, Ohio, Aerotek, Cleveland, Ohio, Cleveland Business Consultant, Cleveland, Ohio, Compuware Corp., Detroit, Michigan, Exclusive Search Consultant, Euclid, Ohio, Reserves Network, Pasadena, California, Manpower Temporary Services, Elyria, Ohio, Kelly Services, Inc., Amherst Ohio, Keybase, Cleveland, Ohio, Lab Support, Independence, Ohio, Mac Temps, Independence, Ohio, Milko Tech, Inc., Solon, Ohio, Onsite Commercial Staffing, Seven Hills, Ohio, Rad-Com, Inc., Stow, Ohio and Tech Aid, Willoughby Hills, Ohio; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 16, 1999, applicable to workers of Bayer Diagnostics, Oberlin, Ohio. The notice was published in the **Federal Register** on January 14, 2000 (65 FR 2432).

At the request of the company, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that some employees of Bayer Diagnostics were leased from several temporary agencies to produce medical diagnostic instrumentation used in hospital labs at the Oberlin, Ohio facility. Worker separations occurred at these companies as a result of worker separations at Bayer Diagnostics, Oberlin, Ohio.

Based on these findings, the Department is amending the certification to include workers of Adecco Employment Services, Inc., Aerotek, Cleveland Business Consultant, Compuware Corp., Exclusive Search Consultant, Kelly Services, Keybase, Lab Support, Mac Temps, Manpower Temporary Services, Milko Tech, Inc., Onsite Commercial Staffing, Rad-Com, Inc., Reserves Network, and Tech Aid leased to Bayer Diagnostics, Oberlin, Ohio.

The intent to the Department's certification is to include all workers of Bayer Diagnostics, Oberlin, Ohio adversely affected by imports.

The amended notice applicable to TA–W–36,809 is hereby issued as follows:

"All workers of Bayer Diagnostics, Oberlin, Ohio and leased workers of Adecco Employment Services, Aerotek, Cleveland Business Consultant, Compuware Corp., Exclusive Search Consultant, Kelly Services, Inc., Keybase, Lab Support, Mac Temps, Manpower Temporary Services, Milko Tech, Inc., Onsite Commercial Staffing, Rad-Com, Inc., Reserves Network and Tech Aid engaged in employment related to the production of medical diagnostic instrumentation used in hospital labs for Bayer Diagnostics, Oberlin, Ohio who became totally or partially separated from employment on or after August 26, 1998 through December 16, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 6th day of April, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–9524 Filed 4–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,273]

Cumberland Apparel, Monticello, KY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on March 23, 2000, applicable to workers of Cumberland Apparel, Monticello, Kentucky. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce children's sleepwear. New findings show that there was a previous certification, TA–W–33,812, issued on September 22, 1997, for workers of Cumberland Apparel, Monticello, Kentucky who were engaged in employment related to the production of children's sleepwear. That certification expired September 22, 1999. To avoid an overlap in worker group coverage, the certification is being amended to change the impact date from January 10, 1999 to September 23, 1999, for workers of the subject firm.

The amended notice applicable to TA–W–37,273 is hereby issued as follows:

All workers of Cumberland Apparel, Monticello, Kentucky who became totally or partially separated from employment on or after September 23, 1999 through March 23, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 7th day of April, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–9519 Filed 4–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,455]

McCain Foods, Burley, ID; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 7, 2000, in response to a petition filed on the same date on behalf of workers at McCain Foods, Burley, Idaho.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C., this 4th day of April, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–9522 Filed 4–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,333]

S. Bent & Bros., Inc. Gardner, MA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 14, 2000, in response to a worker petition which was filed by IUE Local 154–136B FW, on behalf of workers at S. Bent & Bros., Inc., Gardner, Massachusetts.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 4th day of April, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–9523 Filed 4–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03730]

Timbergon, Redmond, Oregon; Notice of Termination of Investigation

Pursuant to Section 250 of the Trade Act of 1974, an investigation was initiated on February 17, 2000 on behalf of workers at Timbergon, Redmond, Oregon.

The petitioner requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 6th day of April 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–9520 Filed 4–14–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03750]

VDO North America, LCC, Cheshire, Connecticut; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on February 18, 2000 in response to a petition filed on behalf of workers at VDO North America, Cheshire, Connecticut.

In a letter dated March 29, 2000, the petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 6th day of April, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–9521 Filed 4–14–00; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL COMMUNICATIONS SYSTEM

Telecommunications Service Priority System Oversight Committee

AGENCY: National Communications System (NCS).

ACTION: Notice of Meeting.

A meeting of the Telecommunications Service Priority (TSP) System Oversight Committee will convene Tuesday, April 25, 2000 from 9:00 a.m. to 12:00 p.m. The meeting will be held at 701 South Court House Road, Arlington, VA in the NCC conference room on the 2nd floor.

—Opening/Administration Remarks
—Status of the TSP Program
—CLEC/Broadband Discussion

Anyone interested in attending or presenting additional information to the Committee, please contact Mr. Richard Moran, Manager, Office of Priority Telecommunications, (703) 607–4930.

Frank McClelland,

Federal Register Liaison Officer, National Communications System.

[FR Doc. 00–9511 Filed 4–14–00; 8:45 am]

BILLING CODE 3001–08–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for a Project Titled: U.S. Audiences/International Work

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to one (1) award of a Cooperative Agreement for a two year pilot project to devise, implement, document, and assess models for the translation of contemporary performance work from Asia, Africa, or Latin America that has a significant text-based element, and the development of educational strategies that will help audiences understand the cultural and social context from which the work emanates. The initiative will also require implementation of a process for dissemination of information about the models, and facilitation of the

touring of the identified works to small and mid-sized communities. Eligibility to apply is limited to tax exempt organizations. Endowment funding will be $200,000. A one-to-one match is required. Eligibility to apply for the Cooperative Agreement is limited to tax exempt organizations. Those interested in receiving the solicitation package should reference Program Solicitation PS 00–04 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored. It is anticipated that the Program Solicitation will also be posted on the Endowment's Web site at http://www.arts.gov.

DATES: Program Solicitation PS 00–04 is scheduled for release approximately May 2, 2000 with proposals due on May 31, 2000.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., NW, Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: William Hummel, Grants & Contracts Office, National Endowment for the Arts, Room 618, 1100 Pennsylvania, Ave., NW., Washington, D.C. 20506 (202–682–5482).

William I. Hummel,

Coordinator, Cooperative Agreements.

[FR Doc. 00–9512 Filed 4–14–00; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for the Continued Management and Administration of a Career Development Program for Stage Directors and Designers

AGENCY: National Endowment for the Arts.

ACTION: Notification of Availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of one (1) Cooperative Agreement for the continued management and administration of a Career Development Program for Stage Directors, and a Career Development Program for Stage Designers. These Programs enable emerging Stage Directors and Stage Designers to work in situations, including residency and/or mentoring activities, that will develop their artistic skills and enhance their contributions to America's nonprofit professional arts institutions and their audiences. The recipient of the Cooperative Agreement will be responsible for all aspects of the program including the solicitation of applications from Stage Directors and Stage Designers, convening of selection panels, administering twelve awards of $17, 500 each to the successful applicants, and the development and coordination of appropriate residencies or other appropriate placement situations for the Directors and Designers. Those interested in receiving the Solicitation package should reference Program Solicitation PS 00–03 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored. It is anticipated that the Program Solicitation will also be posted on the Endowment's Web site at http://www.arts.gov.

DATES: Program Solicitations PS 00–03 is scheduled for release approximately May 1, 2000 with proposals due by May 31, 2000.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., NW, Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: William Hummel, Grants & Contracts Office, National Endowment for the Arts, Room 618, 1100 Pennsylvania Ave., NW, Washington, D.C. 20506 (202–682–5482).

William I. Hummel,

Coordinator, Cooperative Agreements.

[FR Doc. 00–9513 Filed 4–14–00; 8:45 am]

BILLING CODE 7537–01–M

NORTHEAST DAIRY COMPACT COMMISSION

Notice of Meeting

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of meeting.

SUMMARY: The Compact Commission will hold its regular monthly meeting to consider matters relating to administration and enforcement of the price regulation, including the reports and recommendations of the Commission's standing Committees. The Commission will also hold its deliberative meeting to consider whether to implement a supply management program.

DATES: The meeting will begin at 10:30 a.m. on Wednesday, May 3, 2000.

ADDRESSES: The meeting will be held at The Centennial Inn, Armenia White Room, 96 Pleasant Street, Concord, New Hampshire (I–93 Exit 14).

FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, VT 05602. Telephone (802) 229–1941.

Authority: 7 U.S.C. 7256.

Dated: April 11, 2000.

Kenneth M. Becker,

Executive Director.

[FR Doc. 00–9461 Filed 4–14–00; 8:45 am]

BILLING CODE 1650–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–3453]

MOAB Mill Reclamation Trust

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of a request from Moab Mill Reclamation Trust to revise site-reclamation milestones in License No. SUA–917 for the Moab, Utah, facility and notice of opportunity for a hearing.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated March 31, 2000, a request from Moab Mill Reclamation Trust to amend License Condition (LC) 55 A and B of Source Material License SUA–917 for the Moab, Utah, facility. The license amendment request proposes to modify LC 55 A.(1) to change the completion date for placement of the windblown tailings on the pile to December 31, 2001; LC 55 A.(3) to change the completion date for placement of the final radon barrier on the pile to December 31, 2002; LC 55 B.(1) to change the completion date for placement of the erosion protection on the pile to June 30, 2003; and LC 55 B.(2) to change the completion date for ground-water corrective actions to July 31, 2008.

FOR FURTHER INFORMATION CONTACT: Myron Fliegel, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555. Telephone (301) 415–6629.

SUPPLEMENTARY INFORMATION: The portion of LC 55 with the proposed change would read as follows:

A. To ensure timely compliance with target completion dates established in the Memorandum of Understanding with the U.S. Environmental Protection Agency (56 FR 55432, October 25, 1991), the Licensee shall complete reclamation to control radon emissions

as expeditiously as practicable, considering technological feasibility, in accordance with the following schedule:

(1) Windblown tailings retrieval and placement on the pile—December 31, 2001.

(2) Placement of the interim cover—Complete.

(3) Placement of the final radon barrier designed and constructed to limit radon emissions to an average flux of no more than 20 pCi/m_2/s above background—December 31, 2002.

B. Reclamation, to ensure required longevity of the covered tailings and ground-water protection, shall be completed as expeditiously as is reasonably achievable, in accordance with the following target dates for completion:

(1) Placement of erosion protection as part of reclamation to comply with Criterion 6 of Appendix A of 10 CFR Part 40—June 30, 2003.

(2) Projected completion of ground-water corrective actions to meet performance objectives specified in the ground-water corrective action plan—July 31, 2008.

Moab Mill Reclamation Trust's request to amend LC 55 of Source Material License SUA-917, which describes the proposed changes to the license condition and the reason for the request, is being made available for public inspection at the NRC's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555.

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Moab Mill Reclamation Trust, c/o William B. Abington, PricewaterhouseCoopers LLP, 1201 Louisiana, Suite 2900, Houston, Texas 77002; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

In addition, members of the public may provide comments on the subject application within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to David L. Meyer, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555.

Dated at Rockville, Maryland, this 10th day of April 2000.

For the Nuclear Regulatory Commission.

Thomas H. Essig,

Chief, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–9466 Filed 4–14–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–08778]

Notice of Consideration of Amendment Request for Molycorp, Washington, PA, Site and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Source Materials License 1393 issued to Molycorp (the licensee), to approve an alternate schedule for submittal of Part II of the Decommissioning Plan for the Molycorp, Washington, PA, site.

The Molycorp, Washington, PA, site is being decommissioned in two parts, under two sets of decommissioning criteria. Part I, for which a Decommissioning Plan (DP) was submitted on June 30, 1999, pertains to remediation at the site in accordance with NRC's "Action Plan to Ensure Timely Cleanup of Site Decommissioning Management Sites" (Action Plan) (57 FR 13389). The current license amendment request which is the subject of this notice, pertains to Part II of the DP; the disposition of material exceeding levels in the Action Plan under the criteria of the 1997 Radiological Criteria for License Termination (10 CFR Part 20, Subpart E). The licensee has requested that the date of submittal be extended from April 16, 2000, to July 16, 2000. An NRC administrative review has been performed, as documented in a letter to Molycorp dated April 4, 2000.

If the NRC approves the alternate schedule, the approval will be documented in an amendment to NRC License SMB–1393. However, before approving the proposed amendment, NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations.

NRC hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules of practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to: Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m., and 4:15 p.m., Federal workdays; or

2. By mail, telegram, or facsimile addressed to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR § 2.1205(f), each request for a hearing must also be served, by delivering it personally, or by mail, to:

1. The applicant, Molycorp, Inc., 300 Caldwell Avenue, Washington, PA 15301, Attention: George Dawes, and,

2. The NRC staff, by delivery to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m., and 4:15 p.m., Federal workdays, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

In addition to meeting other applicable requirements of 10 CFR Part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and,

4. The circumstance establishing that the request for a hearing is timely in accordance with § 2.1205(d).

FOR FURTHER INFORMATION CONTACT: The application for the license amendment and supporting documentation are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. Any questions with respect to this action should be referred to Roy Person, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6701. Fax: (301) 415–5398.

Dated at Rockville, Maryland, this day of April 2000.

For the Nuclear Regulatory Commission.

Robert A. Nelson,

Acting Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–9465 Filed 4–14–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Experts' Meeting on Burnup Credit in Spent Fuel Shipping Casks

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission will hold a meeting to develop a Phenomena Identification and Ranking Table (PIRT) for allowing burnup credit in spent fuel shipping casks. PIRTs have been used at NRC since 1988, and they provide a structured way to obtain a technical understanding that is needed to address certain issues. About fifteen of the world's best technical experts are participating in this activity, and the experts represent a balance between industry, universities, foreign researchers, and regulatory organizations. The PIRT activity is addressing technical issues related to burnup credit in the criticality safety analyses of PWR spent fuel in transport casks.

DATE: May 16–18, 2000, 8:30 am–5:30 pm.

ADDRESSES: Atomic Safety and Licensing Board Panel Hearing Room (T3B45) of the Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, MD.

SUPPLEMENTARY INFORMATION: The meeting agenda will be posted on the NRC Web site at *www.nrc.gov/RES/meetings.html* by May 1, 2000. The meeting is open to the public. Attendees will need to obtain a visitor badge at the TWFN building lobby, but an escort is not required.

FOR FURTHER INFORMATION CONTACT: Dr. David Ebert, SMSAB, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research, Washington, D.C. 20555–0001, telephone (301) 415–6501; email dde@nrc.gov.

Dated at Rockville, Maryland, this 11th day of April 2000.

For the Nuclear Regulatory Commission.

Charles E. Rossi,

Director, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research.

[FR Doc. 00–9469 Filed 4–14–00; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) publishes periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Statement of Claimed Railroad Service and Earnings; OMB 3220–0025. To qualify for unemployment of sickness benefits payable under section 2 of the Railroad Unemployment Insurance Act (RUIA), a railroad employee must have certain qualifying earnings in the applicable base year. In addition, to qualify for *extended* or *accelerated* benefits under Section 2 of the RUIA, a railroad employee who has exhausted his or her rights to normal benefits must have at least 10 years of railroad service (under certain conditions, military service may be credited as months of railroad service). Accelerated benefits are unemployment or sickness benefits that are payable to a railroad employee before the regular July 1 beginning date of a benefit year if an employee has 10 or more years of service and is *not* qualified for benefits in the current benefit year.

During the RUIA claims review process, the RRB may determine that unemployment or sickness benefits cannot be awarded because RRB records show insufficient qualifying service and/or compensation. When this occurs, the RRB allows the claimant the opportunity to provide additional information if they believe that the RRB service and compensation records are incorrect.

Depending on the circumstances, the RRB provides the following form(s) to obtain information needed to determine if a claimant has sufficient service or

compensation to qualify for unemployment or sickness benefits.

Form No. and title	Annual responses	Estimated completion time (min)	Burden (hours)
UI–9—Applicant's Statement of Employment and Wages	800	10	133
UI–23—Claimant's Statement of Service for Railroad Unemployment Insurance Benefits	600	5	50
UI–44—Claim for Credit for Military Service (RUIA)	150	5	13
ID–4F—Letter Advising of Ineligibility for RUIA Benefits	25	5	2
ID–4U—Letter Advising of Service/Earnings Requirements for RUIA Benefits	150	5	13
ID–4X—Letter Advising of Service/Earnings Requirements for Sickness Benefits	100	5	8
ID–4Y—Letter Advising of Ineligibility for Sickness Benefits	25	5	2
ID–20–1—Letter Advising that Normal Unemployment Benefits Are About to be Exhausted	50	5	4
ID–20–2—Letter Advising that Normal Sickness Benefits Are about to be Exhausted	100	5	8
ID–20–4—Letter Advising that Normal Sickness Benefits Are About to be Exhausted/Non-Entitlement	5	5	1
Total	2,005		234

The renewal of this information collection will continue to RRB's initiative to consolidate information collections by major functional areas. The purpose of the initiative is to bring related collection instruments together in one collection, better manage the instruments, and prepare for the electronic collection of this information. (A collection instrument can be an individual form, electronic collection, interview, or any other method that collects specific information from the public.

As part of the OMB renewal process, the RRB proposes that this collection (OMB 3220–0025), Statements of Claimed Railroad Service and Earnings, be renamed RUTA Investigations and Continuing Entitlement. Upon approval by OMB, the RRB intends to merge the following OMB approved collections into this collection by the expected expiration date(s).

OMB Collection No. and Title	RRB Forms	Expected expiration date
3220–0049—Investigation of Claim for Possible Days of Employment or State Benefits Received.	ID–5T,ID–5R(SUP), ID–49R, UI–48	8/31/2000
3220–0057—Placement Service	ES–2, ES–20a, ES–20b, ES–21, ES–21c, UI–35, & Job Vacancies Report.	6/30/2001
3220–0079—Certification Regarding Rights to Unemployment Benefits.	UI–45	8/31/2002
3220–0164—Availability to Work	UI–38, UI–38s, ID–8k	5/31/2002
3220–0171—RUTA Claims Notification System	ID–4k	6/30/2002

Revisions to existing collection instruments and, occasionally, a new instrument related to this program function may be required during the three-year cycle of this information collection. The RRB currently estimates the completion time for Form ID–5I, Letter to Non-Railroad Employers on Employment and Earnings of a Claimant at 15 minutes, Form ID–5R(SUP), Report of Employees Paid RUIA Benefits for Every Day in Month Reported as Month of Creditable Service at 10 minutes, Form ID–49R, Letter to Railroad Employer for Payroll Information at 15 minutes, Form UI–48, Claimant's Statement Regarding Benefit Claim for Days of Employment at 12 minutes, Form ES–2, Supplemental Information for Central Register at .25 minutes, Form ES–20a, Notice of Employment Referral at .75 minutes, Form ES–20b, Notice of Employment Referral (Employer) at .5 minutes, ES–21, Referral to State Employment Service, at .68 minutes, Form ES–21c, Report of State Employment Service Office at 1.5 minutes, Form UI–35, Field Office Record of Claimant Interview at 7 to 10.5 minutes, the Railroad Job Vacancy Report at 10 minutes, Form UI–45, Claimant Statement, Voluntary Leaving of Work, at 15 minutes, Form UI–38, Claimant's Report of Efforts to Find Work at 11.5 minutes, Form UI–38s, School Attendance and Availability Questionnaire at 6 to 10 minutes, Form ID–8k, Letter to Union Representative at 5 minutes, and Form ID–4k, Prepayment Claims Verification Notice at 2 minutes.

After the last information collection is merged and other necessary adjustments are made, the resultant information collection is expected to total approximately 5,200 annual burden hours. A justification for each action described above (merge collection, revised collection instrument, new collection instrument) will be provided to OMB with a correction Change Worksheet (OMB Form 83–C) at the time the action occurs. With the next renewal of this collection, the RRB will update the information collection package to account for the consolidation and other interim adjustment.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 00–9514 Filed 4–14–00; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Request Under Review by Office of Management and Budget

Upon Written Request Copies Available From Securities and Exchange

Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 22d–1, SEC File No. 270–275, OMB Control No. 3235–0310

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted for extension of OMB approval Rule 22d–1 under the Investment Company Act of 1940 ("Investment Company Act").

Rule 22d–1 [17 CFR 270.22d–1] provides registered investment companies that issue redeemable securities ("funds") an exemption from section 22(d) of the Investment Company Act to the extent necessary to permit scheduled variations in or elimination of the sales load on fund securities for particular classes of investors or transactions, provided certain conditions are met. These conditions require that (1) the scheduled variation be applied uniformly to all offerees in the specified class; (2) existing shareholders and prospective investors be furnished adequate information concerning the scheduled variation, as prescribed in applicable registration statement form requirements; (3) the fund's prospectus and statement of additional information are revised to describe the new scheduled variation before any new sales load variation is made available to purchasers of fund shares; and (4) within one year of first making the scheduled variation available, existing shareholders are advised of any new sales load variation (items (2) through (4), collectively, "notice requirements"). The notice requirements of Rule 22d–1 are designed to ensure that all existing and prospective investors that may be eligible for a reduction or elimination of the sales load receive timely notice about it. The rule imposes an annual burden per fund of approximately 15 minutes, so that the total burden for the approximately 2,400 funds that might rely on the rule is estimated to be 600 hours.

The collection of information under Rule 22d–1 is mandatory. The information provided by Rule 22d–1 is not kept confidential. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 11, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–9484 Filed 4–14–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 6e–2, SEC File No. 207–177, OMB Control No. 3235–0177

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for approval of extension on the following rule:

Rule 6e–2 [17 CFR 270.6e–2] under the Investment Company Act of 1940 ("Act") is an exemptive rule which permits separate accounts, formed by life insurance companies, to fund certain variable life insurance products. The rule exempts such separate accounts from the registration requirements under the Act, among others, on condition that they comply with all but certain designated provisions of the Act and meet the other requirements of the rule. The rule sets forth several information collection requirements.

Rule 6e–2 provides a separate account with an exemption from the registration provisions of section 8 of the Act if the account files with the Commission Form N–6EI–1, a notification of claim of exemption.

The rule also exempts a separate account from a number of other series of the Act, provided that the separate account makes certain disclosure in its registration statements, reports to contractholders, proxy solicitations, and submissions to state regulatory authorities, as prescribed by the rule.

Paragraph (b)(9) of Rule 6e–2 provides an exemption from the requirements of section 17(f) of the Act and imposes a reporting burden and certain other conditions. Section 17(f) requires that every registered management company meet various custody requirements for its securities and similar investments. Paragraph (b)(9) applies only to management accounts that offer life insurance contracts subject to Rule 6e–2.

Since 1997, there have been no filings under paragraph (b)(9) of Rule 6e–2 by management accounts. Further, all variable life separate accounts that have filed post-effective amendments to their registration statements during this period have been structured as unit investment trusts and thus have not been subject to the requirements of paragraph (b)(9) of the rule. Therefore, since 1997, thee has been no cost or burden to the industry regarding the information collection requirements of paragraph (b)(9) of Rule 6e–2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless its displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 10, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–9485 Filed 4–14–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24386; 812–11936]

Van Wagoner Funds, Inc., et al.; Notice of Application

April 10, 2000.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of an application to amend an existing order under sections 6(c) and 17(d) of the Investment Company Act of 1940 (the "Act") and rule 17d–1 under the Act permitting certain joint transactions.

SUMMARY OF APPLICATION: Applicants seek to amend a prior order that permits existing and future series ("Portfolios") of the Van Wagoner Funds, Inc. (the "Company") and Van Wagoner Capital Management, Inc. ("Van Wagoner Capital Management") to co-invest in the same issuers of securities with each other and certain affiliates ("Prior Order").[1] The amended order ("Amended Order") would permit certain additional registered management investment companies advised by Van Wagoner Capital Management, or an entity controlling, controlled by or under common control with Van Wagoner Capital Management (collectively referred to as the "Adviser") (such companies, the "New Funds"), to rely on the Prior Order. The New Funds, together with the Portfolios, are referred to as "Funds."[2]

Applicants: The Company and the Adviser.

FILING DATES: The application was filed on January 18, 2000. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 5, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, DC 20549–0609. Applicants: 345 California Street, San Francisco, California 94104.

FOR FURTHER INFORMATION CONTACT: J. Amanda Machen, Senior Counsel, (202) 942–7120, or Nadya B. Roytblat, Assistant Director (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, N.W., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Company is registered under the Act as an open-end management investment company and currently offers seven Portfolios. Each Portfolio's investment objective is capital appreciation, and each Portfolio may invest up to 15% of its net assets in illiquid securities. Applicants state that substantially all of the illiquid securities held by the Portfolios are venture capital investments. The Adviser serves as investment adviser to each Portfolio and is registered under the Investment Advisers Act of 1940. A majority of the board of directors of the Company ("Board") are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Directors"). A New Fund may be either an open-end or closed-end management investment company registered under the Act.

2. The Adviser or its affiliates ("Adviser Affiliates") also may serve as investment adviser to other private accounts on a discretionary basis and as general partner and/or investment adviser to other investment vehicles that are exempt from the Act under section 3(c)(1) or 3(c)(7) of the Act. These private accounts and vehicles, along with any similar entity created, advised, sponsored or otherwise organized by the Adviser or Adviser Affiliates are referred to as "Company Affiliates." When acting as the general partner of a Company Affiliate, the Adviser or Adviser Affiliates may make a capital contribution in connection with the organization of the Company Affiliate and maintain an interest in the gains, losses, income, and expenses of the Company Affiliate. The Adviser or Adviser Affiliates also may be required to make a commitment to co-invest on a principal basis with a Company Affiliate in an amount up to 1% of the Company Affiliate's investment.

3. On September 14, 1999, the SEC issued the Prior Order to the applicants under section 6(c) and 17(d) of the Act and under rule 17d–1 under the Act permitting the applicants to co-invest in the same issuers of securities with each other and Company Affiliates. Applicants seek to amend the Prior Order to extend it to the New Funds. Applicants state that it may be beneficial for the Funds to be able to co-invest in certain venture capital investments with Company Affiliates. Applicants assert that co-investment in portfolio companies by the Funds and Company Affiliates would increase favorable investment opportunities for the Funds, consistent with the Funds' investment objectives, policies, and restrictions. Applicants state that these investment opportunities will not include investments in registered investment companies or entities relying on section 3(c)(1) or 3(c)(7) of the Act. Applicants also state that the co-investments will be treated as illiquid securities for purposes of the 15% limit on the open-end Funds' investment in illiquid securities.[3] Applicants also represent that the New Funds will comply with the conditions set forth below and will be bound by the terms and provisions of the Prior Order to the same extent as the applicants.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit any affiliated person of a registered investment company, or any affiliated person of an affiliated person, when acting as principal, from effecting any joint transaction in which the company participates unless the transaction is approved by the SEC. Rule 17d–1 under the Act provides that in passing upon applications under section 17(d), the SEC will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

2. Section 6(c) of the Act provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and

[1] Van Wagoner Funds, Inc., Investment Company act Release Nos. 23954 (Aug. 19, 1999 (notice) and 24012 (Sept. 14, 1999) (order).

[2] The Portfolios are the only funds that currently intend to rely on the Amended Order. Any Fund that relies on Amended Order in the future will comply with the terms and conditions of the application.

[3] Applicants note that if a portfolio company subsequently becomes a publicly traded company, its shares held by the Funds may no longer be illiquid securities.

consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an order under sections 6(c) and 17(d) of the Act and rule 17d–1 to permit the Funds to co-invest with other Funds, Company Affiliates, and the Adviser or Adviser Affiliates. Applicants state that the Adviser and Adviser Affiliates will co-invest with the Funds only if and to the extent required to do so by a Company Affiliate. Applicants state that the conditions to the requested order that will govern the co-investments will assure that the investments will be in the best interests of the participating Funds and consistent with the Funds' investment policies, and that the Funds will be participating in the co-investment on a basis that is no less advantageous than that of the other participants.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. (a) To the extent that a Fund is considering new investments, the Adviser will review investment opportunities on behalf of the other Funds and investments being considered on behalf of any Company Affiliate, and, when required by a Company Affiliate, the Adviser. The Adviser will determine whether an investment being considered on behalf of a Company Affiliate ("Company Affiliate Investment") meets a Fund's investment objectives, policies, and restrictions and is otherwise eligible for investment by any of the Funds.

(b) If the Adviser deems a Company Affiliate Investment eligible for one or more Funds (a "co-investment opportunity"), the Adviser will determine what it considers to be an appropriate amount that each eligible Fund should invest. When the aggregate amount recommended for any Fund and that to be bought by other Funds, a Company Affiliate and, when required by a Company Affiliate, the Adviser or Adviser Affiliate, exceeds the amount of the co-investment opportunity, the amount invested by such Fund shall be based on the ratio of the net assets available for investment of that Fund to the aggregate net assets available for investment by any other Fund and the Company Affiliate (including the interest of the Adviser or Adviser Affiliate, if applicable) seeking to make the investment.

(c) Following the making of the determinations referred to in(a) and (b), the Adviser will distribute written information concerning all co-investment opportunities to the Independent Directors. Such information will include the amount any other Fund, the Company Affiliate and, when required by a Company Affiliate, the Adviser or Adviser Affiliate, proposes to invest.

(d) Information regarding the Adviser's preliminary determinations will be reviewed by the Independent Directors. One or more Funds will co-invest with each other and/or with a Company Affiliate and, when required by a Company Affiliate, with the Adviser or Adviser Affiliate, only if a majority of the Independent Directors who have no direct or indirect financial interest in the transaction ("Required Majority") concludes prior to the acquisition of the investment that:

(i) the terms of the transaction, including the consideration to be paid, are reasonable and fair to the shareholders of applicable Funds and do not involve overreaching of the Funds or such shareholders on the part of any person concerned;

(ii) the transaction is consistent with the interests of the shareholders of the applicable Funds and is consistent with the Fund's investment objectives and policies as recited in its registration statement and reports filed under the Act, and its reports to shareholders;

(iii) the investment by the Company Affiliates and, when required by a Company Affiliate, the Adviser Affiliate, would not disadvantage a Fund, and that participation by such Fund or Funds would not be on a basis different from or less advantageous than that of the Company Affiliate and, when required by a Company Affiliate, the Adviser or Adviser Affiliate; and

(iv) the proposed investment by applicable Funds will not benefit the Adviser or any affiliated entity thereof, other than the Company Affiliate making the co-investment, provided, however that the Adviser (1) may continue to receive advisory and other fees from the Funds and the Company Affiliates and (2) may participate in any co-investment wherein the Adviser or Adviser Affiliate is required by a Company Affiliate to commit to co-invest in all direct investments with such entity in the amount of up to 1% of the investment of each such entity.

(e) Each of the Funds has the right to decline to participate in the co-investment opportunity or purchase less than its full allocation.

2. No Fund will make an investment for its portfolio if any Company Affiliate or the Adviser or Adviser Affiliate is an existing investor in such issuer, with the exception of a follow-on investment that complies with condition 5 below.

3. For any purchase of securities by one or more Funds in which a Company Affiliate and, when required by a Company Affiliate, the Adviser or Adviser Affiliate, is a joint participant, the terms, conditions, price, class of securities, settlement date, and registration rights shall be the same for each of the Funds and the Company Affiliate and the Adviser or Adviser Affiliate, if applicable, and the approval of such transactions, including the determination of the terms of the transactions by the Required Majority, will be made in the same time period.

4. If a Company Affiliate and/or the Adviser or Adviser Affiliate elects to sell, exchange, or otherwise dispose of an interest in a security that is also held by one or more Funds, the Adviser will notify the applicable Funds of the proposed disposition at the earliest practical time and the Company will be given the opportunity to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those available to the Company Affiliate and/or the Adviser or Adviser Affiliate. The Adviser will formulate a recommendation as to participation by such Funds in such a disposition, to the extent that the Required Majority determines that it is in the Fund's best interest. Each of the Funds, the Adviser or Adviser Affiliate and the Company Affiliate will bear its own expenses associated with any such disposition of the portfolio security.

5. If a Company Affiliate desires to make a "follow-on" investment (*i.e.*, additional investment in the same entity) in a portfolio company whose securities are held by any of the Funds or to exercise warrants or other rights to purchase securities of such an issuer, the Adviser will notify the Funds of the proposed transaction at the earliest practical time. The Adviser will formulate a recommendation as to the proposed participation by the applicable Fund in a follow-on investment and provide the recommendation to the Required Majority along with notice of the total amount of the follow-on investment. The Required Majority will make its own determination with respect to follow-on investments. To the extent that the amount of a follow-on investment opportunity is not based on the amount of the applicable Fund's, the Company Affiliate's, and, if applicable, the Adviser's or Adviser Affiliate's initial investments, the relative amount of investment by the Company Affiliate and, if applicable, the Adviser or Adviser Affiliate and the Company will be based on the ratio of the applicable Fund's remaining funds available for

investment to the aggregate of such Fund's and the Company Affiliate's (including the interest of the Adviser or Adviser Affiliate) remaining funds available for investment. The applicable Fund will participate in such investment to the extent that the Required Majority determines that it is in such Fund's best interest. The acquisition of follow-on investments as permitted by this condition will be subject to the other conditions set forth in the application.

6. The Required Majority will be provided quarterly for its review all information concerning co-investment transactions, including investments made by the Adviser, Adviser Affiliate and Company Affiliates in which a Fund declined to participate, so that the Required Majority may determine whether all investments made during the preceding quarter, including those investments in which the Fund declined to participate, comply with the conditions of the order. In addition, the Required Majority will consider at least annually the continued appropriateness of the standards established for co-investment by a Fund, including whether the use of the standards continues to be in the best interest of the Funds and its shareholders and does not involve overreaching on the part of any person concerned.

7. Other than as provided in condition 1(d)(iv), neither the Adviser nor any Adviser Affiliate nor any director of the Funds will participate in a co-investment with the Funds unless a separate exemptive order with respect to such co-investment is obtained.

8. None of the Adviser, Adviser Affiliates, Company Affiliates or the Funds will be involved in the sponsorship of any portfolio company.

9. None of the Adviser, Adviser Affiliates, Company Affiliates or the Funds will be involved in the structuring of any portfolio company or of any security issued by any portfolio company, except that the Adviser may take part in the negotiation of the terms (such as coupon, final maturity, average life, sinking funds, conversion price, registration, put rights and call protection) and appropriate restrictive covenants governing the securities purchased in a co-investment transaction.

10. Each of the Funds will maintain and preserve all records that are required by section 31 of the Act and any other provisions of the Act and the rules and regulations under the Act applicable to the Funds. The Funds also will maintain the records required by section 57(f)(3) of the Act as if each of the Funds were a business development company and the co-investments and any follow-on investments were approved under section 57(f).

11. None of the Adviser, Adviser Affiliates, Company Affiliates or the Funds will "make available significant managerial assistance," within the meaning of section 2(a)(47) of the Act, to any portfolio company whose securities were acquired pursuant to the requested order.

12. None of the Adviser, Adviser Affiliates, or Company Affiliates will receive any transaction fees (including, without limitation, monitoring, "topping," breakup, and termination fees) in connection with any investment made pursuant to the requested order.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–9449 Filed 4–14–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42661; File No. SR–BSE–00–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Rescinding Chapter II, Section 23, Dealings on Other Exchanges, or Publicly Outside the Exchange

April 10, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 9, 2000, the Boston Stock Exchange, Inc. ("Exchange" or "BSE") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The Exchange's proposed rule change raises issues similar to those raised by the New York Exchange's ("NYSE") proposal to repeal NYSE Rule 390, which rule generally prohibits NYSE members and their affiliates from effecting transactions in certain NYSE-listed securities away from a national securities exchange. The Commission recently issued the notice of filing for the NYSE's proposal ("NYSE Notice") and solicited comment on a number of important issues that have broad implications for the structure of the U.S. securities markets.[3] Specifically, the Commission requested comment on market fragmentation—the trading of orders in multiple locations without interaction among those orders—and on several options for addressing market fragmentation. To promote a comprehensive discussion of off-boarding trading restrictions and related market fragmentation issues, the Commission requests that persons interested in the Exchange's proposal refer to the NYSE Notice and submit comments that respond to the questions presented in the NYSE Notice.[4]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to rescind Chapter II, Section 23, "Dealings on Other Exchanges or Publicly Outside the Exchange," which will remove the Exchange's off-board trading restrictions. The text of the proposed rule change is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to rescind its restrictions on off-board trading under

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42450 (Feb. 23, 2000), 65 FR 10577 (Feb. 28, 2000) (File No. SR–NYSE–99–48). The Commission notes that similar proposals have been filed by the American Stock Exchange, Securities Exchange Act Release No. 42460 (February 25, 2000), 65 FR 11616 (March 3, 2000) (File No. SR–Amex+00–05); the Chicago Stock Exchange, Securities Exchange Act Release No. 42459 (Feb. 25, 2000), 65 FR 11619 (March 3, 2000) (File No. SR–CHX–99–28); the Philadelphia Stock Exchange, Securities Exchange Act Release No. 42458 (Feb. 25, 2000), 65 FR 11628 (March 3, 2000) (File No. SR–Phlx–00–12); and the Pacific Exchange, SR–PCX–00–11.

[4] The Commission notes that the NYSE Notice is available on the Commission's website at: <http://www.sec.gov/rules/sros/ny9948n.htm>.

Chapter II, Section 23, "Dealings on Other Exchanges or Publicly Outside the Exchange." Originally, Chapter II, Section 23 prohibited Exchange members from trading over-the-counter in certain securities. Off-board trading restrictions in general provided an additional incentive for members to purchase regional specialist units which promoted internalization of order flow and limited fragmentation.

However, the Commission narrowed the scope of exchange off-board trading restrictions by the adoption of Rules 19c–1 and 19c–3 under the Act.[5] Rule 19c–1 enabled Exchange members to execute agency trades with a market maker who is not an exchange member. Rule 19c–3 permits Exchange members to execute proprietary trades in securities listed after April 26, 1979. On a practical basis, the purchase of a regional specialist unit allowed a member firm to internalize its small retail order flow without violating an exchange's off-board principal trading restrictions.

The Exchange believes it is appropriate to rescind its restrictions on off-board trading at this time. Advances in the application of technology have resulted in the creation of new competitors to the regional exchanges, such as Alternative Trading Systems. As such, the Exchange recognizes the need for exchanges and their members to take part in the greater level of free market trading. The NYSE also filed to rescind NYSE Rule 390. In light of these developments (as well as the Commission's request that the Exchange review its restrictions on off-board trading), the Exchange now proposed to rescind Chapter II, Section 23.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[6] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.

[5] 17 CFR 240.19c–1 and 17 CFR 240.19c–3.

[6] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

A. By order approved such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. The Commission also invites interested persons to submit written data, views, and arguments on the market fragmentation issues presented in the NYSE Notice.[7] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office at the Exchange. All submissions should refer to File No. SR–BSE–00–02 and should be submitted by May 8, 2000. Comments responding to the Commission's request for comment on market fragmentation issues should refer to File No. SR–NYSE–99–48 and should be submitted by April 28, 2000.

[7] *See supra* notes 3 and 4.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–9486 Filed 4–14–00; 8:45 am]

BILLING CODE 8010–01–M

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42657; File No. SR–CSE–99–05]

Self-Regulatory Organizations; Order Approving the Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Cincinnati Stock Exchange Enabling Members To Trade Nasdaq/NM Securities

April 10, 2000.

I. Introduction

On December 10, 1999, the Cincinnati Stock Exchange ("CSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to enable its members to trade Nasdaq/NM securities.

The proposed rule change was published for comment in the **Federal Register** on January 27, 2000.[3] No comments were received on the proposal. On April 7, 2000, the Exchange submitted Amendment No. 1, making several technical changes to the proposed rule text.[4] This order approves the proposed rule change, as amended.

II. Description of the Proposal

The proposed rule change would amend the CSE Rules to permit members to trade Nasdaq/NM[5] securities traded on The Nasdaq Stock

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42352 (January 20, 2000), 65 FR 4455.

[4] *See* letter from Jeffrey T. Brown, Vice President Regulation and General Counsel, CSE, to Heather Traeger, Attorney, Division of Market Regulation, SEC, dated April 4, 2000 ("Amendment No. 1"). Because of the technical nature of this amendment, the Commission is not required to solicit comment on it.

[5] The Exchange amended the text of the proposed rule change to replace "NASDAQ" with "Nasdaq." *id.*

Market ("Nasdaq"), a wholly-owned subsidiary of the National Association of Securities Dealers ("NASD")[6] on an UTP basis.[7] The majority of the proposed rule change to Chapter XI, "Trading Rules," of the CSE rules relates to amendments to accommodate the trading of Nasdaq securities, however, certain changes are housekeeping in nature.

The proposed rule change would amend CSE Rule 11.1, "Hours of Trading" by converting the hours of trading on the Exchange from Cincinnati local time to Chicago local time and providing in subparagraphs (b) and (c) for the inclusion of Nasdaq securities in the determination of trading hours for dually or multiple-traded securities. The changes to CSE Rule 11.2, "Unit of Trading," would reflect the inclusion of Nasdaq securities in determining the appropriate unit of trading. Similarly, the proposed rule change would amend CSE Rule 11.4, "Trading Ex-Dividend, Etc.", and CSE Rule 11.5, "Orders to be Reduced and Increased on Ex-Date," to include Nasdaq securities in the exception language of the rules.

In CSE Rule 11.3, "Price Variations," the proposed rule change would amend the stated minimum variation to reflect the current primary market practice, *i.e.* 1/16 of $1.00 per share in stocks trading at or above $.50 per share and 1/32 of $1.00 per share in stocks trading below $.50 per share.[8] The changes would also include securities traded on Nasdaq in determining the appropriate variation. CSE Rule 11.7, "Cabinet Trading," would be amended to reflect that the CSE facilities are now located in Chicago, Illinois.

The proposed rule change would make a number of amendments to CSE Rule 11.9, "National Securities Trading System" ("System"). The amendments to subparagraph (a) would define the terms "Nasdaq/NM Security," "Nasdaq System," "Nasdaq System BBO" and include the term "national securities association" in the definition of "Approved Dealer." The changes to subparagraph (c) would add the term "Nasdaq System BBO" to the definition of marketable limit order, except Nasdaq/NM securities from the opening guarantee of 1099 shares, and implement a Nasdaq/NM opening guarantee up to 1099 shares at an opening price that is on or between the first unlocked/uncrossed Nasdaq System BBO. The changes to subparagraph (e) would add specialists or market makers who are members of other national securities associations to the entities that may submit bids or offers to the System. The changes to subparagraph (h) would ensure that the System displays the Nasdaq System BBO generated by Nasdaq System market makers[9] and permits Nasdaq System market makers telephonic, or other such access to the System as may be established between the Exchange and the Nasdaq System, and conversely, permit Designated Dealers to send orders from the Exchange via telephone, or by other such access as may be established between the Exchange and the Nasdaq System, to Nasdaq market makers.

Subparagraph (j) of CSE Rule 11.9 would be amended to include the Nasdaq System and the Nasdaq System BBO in the prohibition of executing a limit order only after a regular way transaction occurs in another market at a price equal or inferior to the limit price of the order. The amendments to subparagraph (n) would clarify that the public agency guarantee for 1099 shares at the opening price applies to securities other than Nasdaq/NM securities. However, the public agency guarantee applies to those market and marketable limit orders prices better than the first unlocked/uncrossed Nasdaq System BBO. In addition, the amendments would add the Nasdaq System BBO to the obligations to execute on the basis of the ITS BBO. Finally, the amendments to this subparagraph clarify that the execution guarantees and requirements of CSE Rule 12.6, Customer Priority, apply during the hours of trading on the Exchange (8:30 a.m. to 3:05 p.m. local Chicago time).

The proper rule change would also amend the "Interpretations and Policies" section of CSE Rule 11.9 Interpretation and Policies Section .01. "Market Order Requirement," and .02, "Limit Order Protection Requirement," would be amended to reflect that the obligations of the interpretation apply to securities other than Nasdaq/NM securities.

[6] In Amendment No. 1, the Exchange clarified that the proposed rule change permits Exchange members to trade securities traded on Nasdaq, not securities traded on a "national securities association." *Id.*

[7] This filing is made in conjunction with the Exchange joining the Unlisted Trading Privileges Plan ("UTP Plan") governing the collection, consolidation and dissemination of quotation and transaction information for Nasdaq/NM securities. *See* Securities Exchange Act Release No. 42269 (December 23, 1999), 65 FR 799 (January 6, 2000).

[8] The Exchange represents that these variations will be revisited in any proposed rule changes to accommodate decimal pricing.

[9] In Amendment No. 1, the Exchange clarified that the System does not generate but merely displays the Nasdaq System best bid or offer quotations generated and disseminated by the Nasdaq System. *See* Amendment No. 1, *supra* note 4.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b).[10] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[11] requirements in that the proposed standards to permit CSE members to trade NASDAQ/NM securities should promote just and equitable principles of trade and facilitate transactions in securities, thereby removing impediments to and prefecting the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.[12]

Furthermore, the proposed rule change is consistent with Section 12(f)(2) of the Act. Section 12(f)(2) granted the Commission explicit authority to approve UTP in OTC securities. Section 12(f)(2) requires the Commission, prior to approving UTP, to determine that the granting of UTP is consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission believes that the proposed rule change is consistent with these goals and thus, the Commission is approving the proposed rule change, subject to the CSE complying with the requirements of the UTP Plan.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–CSE–99–05), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–9489 Filed 4–14–00; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42654; File No. SR–Phlx–00–24]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Extending the Pilot Program To Impose Fees for Computer Equipment Services, Repairs or Replacements and Relocation of Computer Equipment

April 10, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 14, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 29, 2000, the Exchange filed Amendment No. 1 to the proposed rule change with the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to extend for a further three months its pilot program that requires all members on the options and equity trading floors to pay a fee for computer equipment services, repairs or replacements and a fee for member-requested relocation of computer equipment.[4] The Exchange proposes to extend the current pilot program, which expired on March 31, 2000, through June 30, 2000.[5]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx has requested an extension through June 30, 2000 of a pilot program that amends the Exchange's fee schedule in two ways. First, pursuant to the current pilot program, the Phlx's schedule of dues, fees and charges was amended to impose a fee on all members on the options and equity floors for computer equipment services, repairs or replacements on the trading floors. Specifically, Phlx charges $100 for every service calls plus $75 an hour, with a minimum of two hours charged per service calls.[6] The Exchange anticipates that the majority of computer services, repairs or replacements will continue to be completed within two hours. Members are not billed for computer equipment services, repairs or replacements when new or refurbished, equipment fails in the normal and customary manner of usage within 30 days of installation.

The Exchange represents that these charges are intended to defray the cost of servicing, repairing or replacing computer equipment on the options and equity floors, as well as to encourage care in using the computer equipment.[7] The Exchange represents that the bulk of calls that are routinely received by its Financial Automation Department are requests to repair, replace or otherwise service computer equipment at options or equity floor members' work stations.[8]

Second, the Exchange has amended its schedule of dues, fees, and charges to also impose a fee for member-requested relocation of a member's work station or any piece of their computer equipment on the options or equity trading floor. Under the current pilot program, the Exchange imposes a $100 service fee plus $75 per hour per person moving the equipment, with a minimum of two hours charged for each relocation request.[9] Members will continue to be billed on a monthly basis for computer equipment services, repairs or replacements and for member-requested relocations of computer equipment.

The Exchange represents that the post/equipment relocation fee will assist Phlx in defraying the costs associated with the moving of computer equipment. The relocations on the options and equity floors can be very time-consuming and costly since nearly all relocations take place after hours or on the weekends.

Under the current pilot program, Exchange staff and trading floor members complete a preprinted form prior to requesting repair or relocation service. A Notice to Members describing the equipment repair and relocation request procedures was sent to all floor members prior to the implementation of the current three-month pilot program that was in effect from January 1, 2000 through March 31, 2000. The procedures include instructions to members and Exchange staff as to where the service request forms are located, directions as to how to complete the form, and which department is required to forward the forms to the accounting department.

The Exchange proposes to extend the pilot program for an additional three months, through June 30, 2000. The Exchange asserts that an extension would allow it to fully review the fees and procedures that were implemented on January 1, 2000. The Exchange would have an opportunity to determine whether the fees for computer equipment services, repairs or replacements and member-requested relocation of computer equipment that are charged to members are appropriate and reflect the costs for these services that are incurred by the Exchange. An extension of the pilot program would further enable the Exchange to determine whether the fees relating to computer equipment services, repairs or replacements and member-requested relocation of computer equipment should be applied to similar situations to foreign currency options participants

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 to the proposed rule change made technical corrections to the Phlx's fee schedule. *See* letter from John Dayton, Assistant Secretary and Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 29, 2000 ("Amendment No. 1").

[4] A fee is not charged for new installation of computer equipment. Fees also are not charged to participants on the foreign currency options trading floor.

[5] The Commission first approved the pilot program on December 23, 1999. *See* Securities Exchange Act Release No. 42271 (December 23, 1999), 65 FR 154 (January 3, 2000) (File No. SR–Phlx–99–45).

[6] Some component of this amount may reflect Pennsylvania sales taxx.

[7] This proposed fee will apply to all such requests with no distinction between intentional abuse and normal wear and tear due to the difficulties associated with categorizing the types of repairs.

[8] Telephone conversation between John Dayton, Assistant Secretary and Counsel, Phlx, and Susie Cho, Attorney, Division, Commission, March 30, 2000.

[9] For example, if two individuals take two hours to relocate a work station, the member will be charged $100 for the service call, plus $300 for moving the equipment (*i.e.*, $75 × 4 (2 people × 2 hours)). Again, some component of this amount may reflect Pennsylvania sales tax.

on the foreign currency options trading floor. I would also give the Board of Governors the opportunity to decide whether this pilot program should be implemented on a permanent basis.

2. Statutory Basis

The Exchange believes that the proposed rule is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(4) [11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A(ii) of the Act [12] and Rule 19b–4(f)(2) thereunder [13] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.[14] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange.

All submissions should refer to File No. SR–Phlx–00–24 and should be submitted by May 8, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–9487 Filed 4–14–00; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42655; File No. SR–Phlx–00–25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Eliminating the Restriction on Exercise Prices for FLEX Equity Call Options to Those Prices That Apply to Standardized Equity Call Options

April 10, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 15, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to delete the provision in Exchange Rule 1079(a)(3) that limits exercise prices for FLEX equity call options to those that apply to standardized equity call options.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Phlx Rule 1079(a)(3) to eliminate the limitation of the exercise prices available for FLEX equity call options to those prices that are available for standardized equity call options. Under Phlx Rule 1079, FLEX call options allow certain terms to be customized, such as the underlying security, the type of option, the exercise price, the exercise style, and the expiration date. The Exchange, however, restricted the strike prices for FLEX equity call options to those prices that are available for standardized equity call options because of a concern that the flexible strike price feature could result in an available standardized equity call option that would not be classified as a "qualified" covered call under the Internal Revenue Code ("Code"). The Exchange represents that this would jeopardize the modest tax treatment enjoyed by writers of standardized equity call options.

Currently under Section 1092(c)(4)(B) of the Code, writers of such qualified covered short positions in equity call options receive advantageous tax treatment if the options are exchange-traded and not "deep-in-the-money." An option is "deep-in-the-money" if the strike price of the option is lower than the lowest qualified benchmark price for stock.[4] The Code defines this benchmark price as generally the highest strike price available for trading

[1] 15 U.S.C. 78s(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that the proposed rule change would also eliminate the requirement that FLEX equity call options follow the exercise price intervals set out for standardized options in Phlx Rule 1012.

[4] Section 1092(c)(4)(C) of the Code.

that is less than the current price of the underlying stock.[5]

The Exchange implemented Phlx Rule 1079(a)(3) to remove uncertainty concerning what constitutes a qualified covered call under Section 1092(c)(4) of the Code. If the exercise prices of FLEX equity call options were not subject to the same prices and intervals that apply to standardized equity call options, this could raise the question of whether the existence of a series of FLEX equity call options with a strike price of, for example, $58 when the price of the underlying stock is $59, would disqualify a standardized equity call option with a strike price of $55, which would otherwise be the lowest qualified benchmark price, *i.e.*, the highest strike price available for trading that is less than the price of the stock. The Exchange represents that it was concerned that the Internal Revenue Service ("IRS") may interpret the short covered standardized call equity option with a $55 strike price as deep-in-the-money and not grant it qualified covered call treatment under Section 1092(c)(4) of the Code.

On January 25, 2000, the IRS resolved this question by issuing a final rule which states that strike prices established by the equity options with flexible terms will not be taken into account when determining whether standardized equity call options are deep-in-the-money and therefore do not receive qualified covered call treatment.[6] Therefore, the Exchange now proposes to modify Phlx Rule 1079(a)(3)(B) to lift the restriction on exercise prices for FLEX equity call options. The Exchange represents that the effect of the IRS regulations and the Exchange's proposal is to permit certain taxpayers, particularly institutional and other large Exchange's proposal is to permit certain taxpayers, particularly institutional and other large investors, to engage in transactions in FLEX equity call options with a wider range of exercise prices (as was originally intended) without affecting the applicability of Section 1092 of the Code for qualified covered call options involving equity call options with standard terms.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[7] in general, and furthers the objectives of Section 6(b)(6)(5)[8] in particular, in that it is designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by eliminating the restriction on FLEX equity call options that has limited their usefulness as a risk management tool.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested that the Commission accelerate the operative date of the proposed rule change so that the Exchange may implement this proposal as quickly as possible and allow FLEX options to be used as they were originally intended.

The Commission finds that it is appropriate to designate the proposal to become operative upon filing, because the immediate implementation of the proposed rule change is consistent with the protection of investors and the public interest. Specifically, the Commission previously approved virtually identical proposals by three other exchanges.[9] The Commission notes that the proposed rule change concerns issues that have previously been the subject of a full comment period pursuant to Section 19(b) of the Act.[10] The Commission does not believe that the proposed rule change raises any new regulatory issues.[11]

The Commission also believes that immediate implementation of the proposed rule change is beneficial to investors. The Commission believes that the proposal allows sophisticated high net-worth investors to take full advantage of FLEX options. In part, FLEX options were created to allow these investors to manage their risks by having the ability to negotiate exercise prices, contact terms for exercise style (*i.e.*, American, European, or capped), and expiration dates. However, because of the adverse tax effect on qualified covered calls, the Exchange limited FLEX equity call options exercise prices to those prices available for standardized equity call options. Now that the tax issue has been clarified, the Exchange is removing this restriction. With the removal of this limitation, the Commission believes that sophisticated, high net-worth investors will better be able to take advantage of the risk-management mechanisms provided by FLEX equity call options.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interests, for the protection of investors or otherwise in furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions

[5] Section 1092(c)(4)(D) of the Code.

[6] *See* Department of Treasury, IRS REG–104641–97, 65 FR 3812 (January 25, 2000).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* Securities Exchange Act Release No. 42371 (January 31, 2000), 65 FR 5921 (February 7, 2000) (Order approving SR-CBOE-99–63); *see also* Securities Exchange Act Release No. 42389 (February 7, 2000), 65 FR 8224 (February 17, 2000) (Order approving SR–PCX–00–01 and SR–Amex–00–02).

[10] 15 U.S.C. 78s(b).

[11] The Commission notes that the discussion of the same restrictions on exercise price intervals and exercise prices for FLEX equity call options has been eliminated from the October 1996 Supplement to the Options Clearing Corporation options disclosure document. *See* Securities Exchange Act Release No. 42491 (March 2, 2000), 65 FR 13351 (March 13, 2000) (Order approving SR–ODD–00–01).

[12] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–00–25 and should be submitted by May 8, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–9488 Filed 4–14–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42659; Filed No. SR–PHlx–00–23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Modify the Frequency of Billing for the Controller Space Charge, Floor Facilities Fees, Shelf Space Fee on the Equity Options Floor, and Direct Wire Changes From a Quarterly to a Monthly Basis

April 10, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 9, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Exchange. On March 22, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.[3]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees and charges so that it will bill the controller space charge, floor facilities fees, shelf space fee on the equity options floor and direct wire charges on a monthly basis rather than the quarterly basis the Exchange currently uses. The amounts of the charges of fees will remain unchanged; only the frequency of billing for such fees or charges will change to a monthly basis. The Phlx proposes that the change in the frequency of billing for the fees or charges mentioned above become effective at the opening of business on April 1, 2000.

II. Self-Regulatory Organization's Statements of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Phlx's fee schedule to change the frequency that Exchange members, foreign currency option ("FCO") participants and member organizations and participant organizations are billed for the controller space charge, floor facilities fees, shelf space fee for the equity options floor and the direct wire charges. The Exchange proposes to bill these fees or charges on a monthly basis, instead of on a quarterly basis.[4]

The Exchange's Finance Committee is recommending that the fees or charges mentioned above be billed monthly instead of quarterly to enhance operational efficiency for the Exchange and its members and participants. The Exchange represents that the proposed rule change would permit the Exchange's Accounting Department to operate more effectively. The Exchange further represents that the proposed rule change would allow Exchange members and participants to more accurately gauge their monthly operating expenses, and to permit them to reduce their operational cash flow burdens that may result from the current quarterly payment schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section.6 of the Act[5] in general, and further the objectives of Section 6(b)(4)[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges amount its members and other persons using its facilities. Specifically, the Exchange believes that the proposed rule change is reasonable and equitable because only the frequency of billing for the fees or charges mentioned above will be changed, and not the amount billed.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a fee, due or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(2) thereunder.[8] The Exchange intends to implement the change to the frequency of billing for the fees or charges mentioned above at the opening of business on April 1, 2000. At any time within 60 days of filing of such proposed rule change, the Commission may summarily abrogate such rule

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[13] 17 CFR 200.30–3 (a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange provided an updated schedule of dues, fees and charges in Appendix A to the proposed rule change. *See* Letter from Murray L. Ross, Vice President and Secretary, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), SEC, Dated March 21, 2000.

[4] The Exchange will bill the controller space charge at a rate of $250.00 per month instead of the current rate of $750.00 per quarter. The Exchange will bill the floor facilities fees and the shelf space fee at a rate of $125.00 per month instead of the current rate of $375.00 per quarter. The Exchange will bill the direct wire charges at a rate of $20.00 per month instead of the current rate of $60.00 per quarter.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing including whether the proposed rule change is consistent with the Act.;[9] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–00–23 and should be submitted by May 8, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–9490 Filed 4–14–00; 8:45 am]

BILLING CODE 8010–01–M

OFFICE OF SPECIAL COUNSEL

Proposed Information Collection Activities; Request for Comment

AGENCY: Office of Special Counsel.

ACTION: Notice.

SUMMARY: The U.S. Office of Special Counsel (OSC), in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) and implementing regulations at 5 CFR Part 1320, plans to request approval from the Office of Management and Budget (OMB) for use of two previously approved information collections: (1) Form OSC–11, Complaint of Possible Prohibited Personnel Practice or Other Prohibited Activity; and (2) Form OSC–12, Disclosure of Information. The forms to be submitted to OMB contain some modifications to the existing forms, including the addition of information about OSC jurisdiction. These collections of information are described in OSC regulations at 5 CFR 1800.1 and 1800.2. The current OMB approval for these collections of information expires on August 31, 2000.

Current and former Federal employees, employee representatives, other Federal agencies, and the general public are invited to comment on these information collections. Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of OSC's functions, including whether the information will have practical utility; (b) the accuracy of OSC's estimate of the burden of the proposed collections of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments should be received on or before June 16, 2000.

ADDRESSES: Kathryn Stackhouse, Attorney, Planning and Advice Division, U.S. Office of Special Counsel, 1730 M Street, NW, Suite 300, Washington, DC 20036–4505.

FOR FURTHER INFORMATION CONTACT: Kathryn Stackhouse, Attorney, Planning and Advice Division, at the address shown above; by telephone at (202) 653–8971; or by facsimile at (202) 653–5151. The collections of information to be submitted to OMB will be available for review on OSC's Web site (at *www.osc.gov*) as of the date of this notice.

SUPPLEMENTARY INFORMATION: Comment is requested on the following two collections of information:

1. *Title of Collection:* Complaint of Possible Prohibited Personnel or Other Prohibited Activity (Agency Form Number: OSC–11; OMB Control Number 3255–0002).

Type of Information Collection: Approval of a previously approved collection of information that expires on August 31, 2000. The proposed information collection format includes changes as follows: (1) Style, format, and other minor revisions that do not appear to impose significant new burdens, such as requests for fax numbers, e-mail addresses, and details of certain allegations in a different format; (2) addition of explanatory information about OSC jurisdiction, elements required to prove some claims, and certain procedural rights; and (3) description of new and revised Privacy Act routine uses published after the prior OMB approval.

Affected public: Current and former Federal employees, applicants for Federal employment, and their representatives.

Respondent's Obligation: Voluntary.

Estimated Annual Number of Respondents: 1802.

Frequency: On occasion.

Estimated Average Burden Per Respondent: 1.25 hours. This estimated burden has changed from the previous estimate of one hour, due primarily to the addition of the explanatory information described above, under "Type of Information Collection."

Estimated Annual Burden: 2252.5 hours.

Abstract: This optional complaint form, or the format provided in 5 CFR 1800.1, is for use by current and former Federal employees and applicants for Federal employment to submit allegations of possible prohibited personnel practices or other prohibited activity for investigation and possible prosecution by OSC. In addition to a hard copy format, the form will be posted on OSC's Web site so that complainants can fill in the form online, and then print the completed form for signature and transmittal to OSC by mail or fax.

2. *Title of Collection:* Disclosure of Information (Agency Form Number: OSC–12; OMB Control Number 3255–0002).

Type of Information Collection: Approval of a previously approved collection of information that expires on August 31, 2000. The proposed information collection format includes changes as follows: (1) Style, format, and other minor revisions that do not appear to impose significant new burdens, such as requests for fax numbers, e-mail addresses, name of any legal or other representative, and classification of the type of disclosure; (2) addition of certification language before the signature of the submitter; (3) addition of explanatory information about OSC jurisdiction, processing criteria, and procedures; and (4) description of new and revised Privacy Act routine uses published after the prior OMB approval.

Affected public: Current and former Federal employees, applicants for Federal employment, and their representatives.

Respondent's Obligation: Voluntary.

Estimated Annual Number of Respondents: 388.

[9] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

Frequency: On occasion.
Estimated Average Burden Per Respondent: 1 hour.
Estimated Annual Burden: 388 hours.
Abstract: This optional whistleblower disclosure form, and the format provided in 5 CFR 1800.2, are for use by current and former Federal employees and applicants for Federal employment to disclose (for OSC review and possible referral to the agency involved) a violation of any law, rule, or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. In addition to a hard copy format, the form will be posted on OSC's Web site so that complainants can fill in the form online, and then print the completed form for signature and transmittal to OSC by mail or fax.

Erin M. McDonnell,
Associate Special Counsel for Planning and Advice.
[FR Doc. 00–9448 Filed 4–14–00; 8:45 am]
BILLING CODE 7405–01–U

DEPARTMENT OF STATE

[Public Notice 3289]

Office of Visa Services; 30-Day Notice of Proposed Information Collection; Application for A, G, or NATO Visa, Form DS–1648

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement of Form.
Originating Office: CA/VO.
Title of Information Collection: Application for A, G, or NATO Visas.
Frequency: Once.
Form Number: DS–1648.
Respondents: Foreign Applicants.
Estimated Number of Respondents: 20,000.
Average Hours Per Response: .5 hours.
Total Estimated Burden: 10,000 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Daria Darnell, 2401 E Street NW, Rm L–703, Tel: 202–663–1253, U.S. Department of State, Washington, DC 20520. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–5871.

Dated: March 22, 2000.
Nancy Sambaiew,
Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs.
[FR Doc. 00–9530 Filed 4–14–00; 8:45 am]
BILLING CODE 4710–06–U

DEPARTMENT OF STATE

[Public Notice 3288]

Office of Visa Services; 30-Day Notice of Proposed Information Collection; Supplemental Registration for Diversity Immigrant Visa Program, Form DSP–122

SUMMARY: The Department of State has submmitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement of Form.
Originating Office: CA/VO/F/P.
Title of Information Collection: Supplemental Registration for Diversity Immigrant Visa Program.
Frequency: Once per applicant.
Form Number: DSP–122.
Respondents: Foreign Applicants.
Estimated Number of Respondents: 90,000.
Average Hours Per Response: .5 hours.
Total Estimated Burden: 45,000 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Daria Darnell, 2401 E Street NW, Rm L–703, Tel: 202–663–1253, U.S. Department of State, Washington, DC 20520. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–5871.

Dated: March 27, 2000.
Nancy Sambaiew,
Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs.
[FR Doc. 00–9531 Filed 4–14–00; 8:45 am]
BILLING CODE 4710–06–U

DEPARTMENT OF STATE

[Public Notice 3290]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.
ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: March 7, 20, and 22, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (703 875–6644).

SUPPLEMENTARY INFORMATION: Section 36(e) of the Arms Export Control Act

mandates that notifications to the Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: April 11, 2000.

William J. Lowell,

Director, Office of Defense Trade Controls.

Speaker of the House of Representatives.

March 7, 2000.

Dear Mr. Speaker: Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the follow-on technical assistance agreements with Russia beyond those addressed in DTC 39–98, dated March 19, 1998 and DTC 98–99, dated August 5, 1999, providing for the marketing and sale of satellite launch services utilizing Proton rocket boosters and the performance of associated integration and launch services from Kazakhstan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 014–00.

The Honorable J. Dennis Hastert,

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

March 22, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the design, manufacture, launch and support of a mobile commercial communications satellite for Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 019–00.

The Honorable J. Dennis Hastert,

Speaker of the House of Representatives.

March 20, 2000.

Dear Mr. Speaker: Pursuant to section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of proposed Technical Assistance Agreements and Manufacturing License Agreements with Russia.

The transactions described in the attached certification involve the manufacture in Russia and the United States of RD–180 two-chamber rocket motors for use on Atlas launch vehicles, including the USAF Evolved Expendable Launch Vehicle.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 125–99.

[FR Doc. 00–9532 Filed 4–17–00; 8:45 am]

BILLING CODE 4710–25–U

DEPARTMENT OF STATE

[Public Notice 3287]

Culturally Significant Objects Imported for Exhibition Determinations: "The Impressionists at Argenteuil"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, I hereby determine that the objects to be included in the exhibition "The Impressionists at Argenteuil," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC from on or about May 28 to August 20, 2000. And the Wadsworth Atheneum Museum of Art, Hartford, CT, from on or about September 6 to December 3, 2000 is in the national interest. Public notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Jacqueline Caldwell, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6982). The address is U.S. Department of State, SA–44; 301—4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: April 3, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–9529 Filed 4–14–00; 8:45 am]

BILLING CODE 4710–08–U

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1518).

TIME AND DATE: 9 a.m. (CDT), April 19, 2000.

PLACE: Pontotoc Electric Power Association, Conference Room, 12 South Main Street, Pontotoc, Mississippi.

STATUS: Open.

Agenda

Approval of minutes of meeting held on March 29, 2000.

New Business

B—Purchase Award

B1. Contract with Merck-Medco Managed Care, L.L.C., for use of retail and mail pharmacy networks, claims/benefits management, and cost containment services.

C—Energy

C1. Contract with Holtec International, Inc., for design and construction of an independent spent fuel storage installation and dry cask storage system for Sequoyah Nuclear Plant.

C2. Supplement to Contract No. 99NNQ–251786–001 with Siemens Westinghouse to add rewinding the Browns Ferry Unit 2 main generator to the contract's scope.

C3. Contracts with Numanco, LLC; Canus Corporation; Westaff; and J. Givoo Consultants, Inc., for instrument mechanic services and with Numanco, LLC, for health physics personnel.

C4. Supplement to Contract No. 98P6D–195379 with General Electric Company for the manufacture and turnkey installation of eight 85–MW

simple cycle dual fuel combustion turbine generating units for the year 2002 peaking power.

E—Real Property Transactions

E1. Abandonment of flowage easement rights above the 820-foot contour affecting approximately 0.5 acre of land in Montgomery Cove Subdivision on Fort Loudoun Reservoir in Knox County, Tennessee (Tract No. FL–215F).

E2. Modification of certain deed conditions affecting approximately 7 acres of former TVA land (Tract No. XNR–56) on Norris Reservoir in Campbell County, Tennessee, in exchange for 8 acres of shore land on Norris Reservoir (Tract No. NR–5474), difference in value, and administrative and shoreline restoration costs associated with this modification.

For more information: Please call, TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000.

Dated: April 12, 2000.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 00–9642 Filed 4–13–00; 2:15 pm]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's DOT's intention to request an extension for a currently approved information collection.

DATES: Comments on this notice must be received by June 16, 2000.

ADDRESSES: Comments should be sent to the EAS and Domestic Analysis Division (X–53), Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0002.

FOR FURTHER INFORMATION CONTACT: Mr. Luther Dietrich or Mr. Dennis DeVany, Office of the Secretary, Office of Aviation Analysis, X–53, Department of Transportation, at the address above. Telephone: (202) 366–1046/1061.

SUPPLEMENTARY INFORMATION:

Title: Air Carrier's Claim for Subsidy and Air Carrier's Report of Departures Flown in Scheduled Service.

OMB Control Number: 2106–0044.

Expiration Date: September 30, 2000.

Type of Request: Extension for a currently approved information collection.

Abstract: In 14 CFR 271 of its Aviation Economic Regulations, the Department provided that subsidy to air carriers for providing essential air service will be paid to the carriers monthly, and that payments will vary according to the actual amount of service performed during the month. The reports of subsidized air carriers of essential air service performed on the Department's Forms 397, "Air Carrier's Report of Departures Flown in Schedule Service" (formerly "Air Carrier's Report of Revenue/Seat Miles Flown in Scheduled Service"), and 398, "Air Carrier's Claim for Subsidy," establish the fundamental basis for paying these air carriers on a timely basis. Typically, subsidized air carriers are small businesses and operate only aircraft of limited size over a limited geographical area. The collection permits subsidized air carriers to submit their monthly claims in a concise, orderly, easy-to-process form, without having to devise their own means of submitting support for these claims.

The collection involved here requests only information concerning the subsidy-eligible flights (which generally constitute only a small percentage of the carriers' total operations) of a small number of air carriers. The collection permits the Department to timely pay air carriers for providing essential air service to certain eligible communities that would not otherwise receive scheduled passenger air service.

Respondents: Small air carriers selected by the Department in docketed cases to provide subsidized essential air service.

Estimated Number of Respondents: 21.

Average Annual Burden per Respondent: 278 hours.

Estimated Total Burden on Respondents: 5,838 hours.

This information collection is available for inspection at the EAS and Domestic Analysis Division (X–53), Office of Aviation Analysis, DOT, at the address above. Copies of 14 CFR 271 can be obtained from Mr. Luther Dietrich at the address and telephone number shown above.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper functioning of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC, on April 11, 2000.

Randall D. Bennett,

Acting Director, Office of Aviation Analysis.

[FR Doc. 00–9552 Filed 4–14–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket OST–99–6150]

Application of Smokey Bay Air, Inc., for Certificate Authority

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of order to show cause (Order 2000–4–7).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Smokey Bay Air, Inc., fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail using no more than three aircraft with no more than nine passengers seats each.

DATES: Persons wishing to file objections should do so no later than April 27, 2000.

ADDRESSES: Objections and answers to objections should be filed in the Docket OST–99–6150 and addressed to the Department of Transportation Dockets, US Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2337.

Dated: April 10, 2000.

Robert S. Goldner,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 00–9403 Filed 4–14–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–7221]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115–0578, 2115–0592, 2115–0625, 2115–0563, 2115–0542, 2115–0135, 2115–0624, and 2115–0106

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to request the approval of OMB for the renewal of eight Information Collection Requests (ICRs). These ICRs comprise: (1) Small Passenger Vessels—Title 46 CFR Subchapters K and T; (2) Offshore Supply Vessels—46 CFR Subchapter L; (3) Customer Satisfaction Surveys; (4) Nondestructive Testing Proposal and Results for Pressure Vessel Cargo Tanks on Unmanned Barges; (5) Station Bills for Manned Outer Continental Shelf Facilities; (6) Display of Fire Control Plans for Vessels; (7) Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1995 Amendments; and (8) Plan Approval and Records for Foreign Vessels Carrying Oil in Bulk.

Before submitting the ICRs to OMB, the Coast Guard is asking for comments on the collections described below.

DATES: Comments must reach the Coast Guard on or before June 16, 2000.

ADDRESSES: You may mail comments to the Docket Management System (DMS) [USCG–2000–7221], U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for these requests. Comments will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

Copies of the complete ICRs are available through this docket on the Internet at http://dms.dot.gov and also from Commandant (G–SII–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Walker, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9330, for questions on the docket.

Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document [USCG–2000–7221] and the specific ICR to which each comment applies, and give the reason(s) for each comment. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Information Collection Requests

1. *Title:* Small Passenger Vessels—Title 46 CFR Subchapters K and T.

OMB Control Number: 2115–0578.

Summary: The reporting and recordkeeping requirements are necessary for the proper administration and enforcement of the program on small passenger vessels. The requirements affect small passenger vessels (under 100 gross tons) that carry more than 6 passengers.

Need: Under the authority of 46 U.S.C. 3305 and 3306, the Coast Guard prescribed requirements for the design, construction, alteration, repair, and operation of small passenger vessels to secure the safety of individuals and property on board. The Coast Guard uses the information in this collection to ensure compliance with the requirements.

Respondents: Owners and operators of small passenger vessels.

Frequency: On occasion.

Burden: The estimated burden is 436,173 hours annually.

2. *Title:* Offshore Supply Vessels—46 CFR Subchapter L.

OMB Control Number: 2115–0592.

Summary: 46 U.S.C. 3305 and 3306 authorize the Coast Guard to prescribe safety regulations. Title 46 CFR Subchapter L promulgates marine safety regulations for offshore supply vessels (OSV).

Need: The OSV requirements for posting and marking are necessary to provide instructions to those on board of actions to take in an emergency. The recordkeeping requirements verify compliance with regulations without CG presence to witness routine matters.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Burden: The estimated burden is 5,931 hours annually.

3. *Title:* Customer Satisfaction Surveys.

OMB Control Number: 2115–0625.

Summary: Executive Order 12862 authorizes the Coast Guard to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.

Need: Putting people first means ensuring that the Federal Government provides the highest-quality service possible to the American people. Executive Order 12862 requires that all executive departments and agencies providing significant services directly to the public shall seek to meet established standards of customer service and shall:

- Identify the customers who are, or should be, served by the agency; and
- Survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.

Respondents: Recreational boaters, commercial mariners, industry groups, State and local governments.

Frequency: On occasion.

Burden: The estimated burden is 4,712 hours annually.

4. *Title:* Nondestructive Testing Proposal and Results for Pressure Vessel Cargo Tanks on Unmanned Barges.

OMB Control Number: 2115–0563.

Summary: The Coast Guard uses the results of nondestructive testing to evaluate the suitability of older pressure-vessel type cargo tanks of unmanned barges to remain in service. Once every ten years it subjects such a tank, on an unmanned barge, 30 years old or older to nondestructive testing.

Need: Under 46 U.S.C. 3703, the Coast Guard is responsible for ensuring safe shipment of liquid dangerous cargoes and has promulgated rules for certain barges to ensure the meeting of safety standards.

Respondents: Owners of tank barges.

Frequency: Every 10 years.

Burden: The estimated burden is 84.5 hours annually.

5. *Title:* Station Bills for Manned Outer Continental Shelf Facilities.

OMB Control Number: 2115–0542.

Summary: 43 U.S.C. 1333(d) authorizes the Coast Guard to issue safety requirements for Outer Continental Shelf (OCS) activities. 33 CFR 146.130 promulgates the rules for Station Bills.

Need: Station Bills on manned OCS facilities are necessary to promote safety of life on these facilities. They are an efficient means for disseminating information to all persons on OCS facilities regarding their duties, duty stations, and signals used during emergencies and drills.

Respondents: Operators of OCS facilities.

Frequency: On occasion.

Burden: The estimated burden is 526 hours annually.

6. *Title:* Display of Fire Control Plans for Vessels.

OMB Control Number: 2115–0135.

Summary: This information collection is for the posting or display of specific plans on certain categories of commercial vessels. The availability of these plans aids firefighters and damage-control efforts in response to emergencies.

Need: Under 46 U.S.C. 3305 and 3306, the Coast Guard is responsible for ensuring the safety of inspected vessels and has promulgated rules to ensure the meeting of safety standards.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Burden: The estimated burden is 798 hours annually.

7. *Title:* Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1995 Amendments.

OMB Control Number: 2115–0624.

Summary: This information is necessary to ensure compliance with the international requirements of the STCW Convention, and to maintain an acceptable level of quality in activities associated with training and assessment of merchant mariners.

Need: 46 U. S. C. Chapter 71 authorizes the Coast Guard to issue rules on licensing merchant mariners. 46 CFR Subchapter B prescribes the regulations.

Respondents: Owners and operators of vessels, training institutions, and mariners.

Frequency: On occasion.

Burden: The estimated burden is 18,331 hrs annually.

8. *Title:* Plan Approval and Records for Foreign Vessels Carrying Oil in Bulk.

OMB Control Number: 2115–0106.

Summary: The Coast Guard reviews plans and records to determine whether foreign tank vessels comply with applicable standards of design and construction.

Need: 46 U.S.C. 3703 authorizes the Coast Guard to prescribe rules on tank vessels for preventing pollution. 33 CFR part 157, Subpart B, contain regulations governing design of tank vessels.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Burden: The estimated burden is 65 hours annually.

Dated: March 29, 2000.

Daniel F. Sheehan,

Director of Information and Technology.

[FR Doc. 00–9408 Filed 4–14–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Deadline for Submission of Application Under the Airport Improvement Program (AIP) for Fiscal Year 2000 for Sponsor Entitlement and Cargo Funds

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces June 1, 2000, as the deadline for each airport sponsor to have on file with the FAA an acceptable fiscal year 2000 grant application for funds apportioned to it under the AIP.

FOR FURTHER INFORMATION CONTACT: Mr. Stan Lou, Manager, Programming Branch, Airports Financial Assistance Division, Office of Airport Planning and Programming, APP–520, on (202) 267–8809.

SUPPLEMENTARY INFORMATION: Section 47105(f) of Title 49, United States Code, provides that the sponsor of each airport to which funds are apportioned shall notify the Secretary by such time and in a form as prescribed by the Secretary, of the sponsor's intent to apply for the funds apportioned to it (entitlements). Notifications of the sponsor's intent to apply during fiscal year 2000 for any of its available entitlement funds including those unused from prior years, shall be in the form of a project application submitted to the cognizant FAA Airports office no later than June 1, 2000.

This notice is promulgated to expedite and prioritize grants in the final quarter of the fiscal year. Absent an acceptable application by June 1, 2000, FAA will defer an airport's entitlement funds until the next fiscal year. Pursuant to the authority and limitations in section 47117(f). FAA will issue discretionary grants in an aggregate amount not to exceed the aggregate amount of deferred entitlement funds. Airport sponsors may request unused entitlements after September 30, 2000.

Issued in Washington, DC on April 11, 2000.

D. Cameron Bryan,

Acting Manager, Programming Branch.

[FR Doc. 00–9550 Filed 4–14–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 00–03–C–00–MCI To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Kansas City International Airport, Kansas City, Missouri

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Kansas City International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 17, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locust, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Russell C. Widmar, AAE, Director of Aviation, Kansas City International Airport, at the following address: 601 Brasilia Avenue, Kansas City, Missouri 64153.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Kansas City International Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mark Schenkelberg, FAA, Central Region, 901 Locust, Kansas City, MO 64106, (816) 329–2645. The application

may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Kansas City International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 31, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Kansas City International Airport, Kansas City, Missouri, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 29, 2000.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: August 1, 2009.

Proposed charge expiration date: May 1, 2013.

Total estimated use revenue: $89,911,790.

Total estimated impose revenue: $99,645,586.

Brief description of proposed project(s): Terminal. Equipment, Airfield Lighting Generator, Relocate Airfield Generator, Overlay Runway 1/19.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Kansas City International Airport.

Dated: Issued in Kansas City, Missouri on March 31, 2000.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 00–9551 Filed 4–14–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at Orlando International Airport (MCO), Orlando, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at MCO under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 17, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to C.W. Jennings, Executive Director of Greater Orlando Aviation Authority (GOAA) at the following address: Orlando International Airport, One Airport Boulevard, Orlando, Florida 32827–4399.

Air carriers and foreign air carriers may submit copies of written comments previously provided to GOAA under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Pablo G. Auffant, P.E., Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, (407) 812–6331, extension 30. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at MCO under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 7, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by GOAA was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 27, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–08–C–00–MCO.

Level of the proposed PFC: $3.00.

Proposed charge effective date: August 1, 2007.

Proposed charge expiration date: June 1, 2013.

Total estimated PFC revenue: $253,632,770.

Brief description of proposed project(s): South Terminal Complex Construction; Heintzelman Boulevard, Southern End Construction.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at GOAA.

Issued in Orlando, Florida on April 7, 2000.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 00–9407 Filed 4–14–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Allegheny County, Pennsylvania

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in the City of Pittsburgh and the Borough of Millvale in Allegheny County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT:

David W. Cough, P.E., Operations Group Leader, Federal Highway Administration, Pennsylvania Division Office, 228 Walnut Street, Room 536, Harrisburg, PA 17101–1720, Telephone: (717) 221–3411

OR

William Gibson, P.E., Project Manager, Pennsylvania Department of Transportation, District 11–0, 45 Thoms Run Road, Bridgeville, PA 15017, Telephone: (412) 429–4930.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PennDOT), will prepare an Environmental Impact Statement (EIS) to identify and evaluate alternatives for the reconstruction and widening of State Route 28 including improvements to the intersections of State Route 28 and the 31st Street

Bridge and State Route 28 and the 40th Street Bridge. The proposed action would extend from Heinz Street in the City of Pittsburgh, to the Millvale Interchange in the Borough of Millvale. The length of the project is 3.3 kilometers (2.0) miles. Included in the overall project will be the identification of a range of alternatives that meet the identified project need, and supporting environmental documentation and analysis to recommend a selected alternative for implementation. A complete public involvement program is part of the project.

Documentation of the need for the project was completed in 1997. This process identified the need for roadway improvements through the study area based on local and regional transportation demand, system linkage and continuity, geometric criteria, safety and local and regional planning.

Alternatives that will be considered include: No Build; Widen left on existing alignment to bring roadway to freeway standards; Widen right on existing alignment to bring roadway to freeway standards; Widening alternative that combines widening left and right to bring roadway to freeway standards; and Improvements resulting in non-standard freeway design features. A number of intersection and interchange alternatives at the 31st Street and 40th Street Bridges will be studied. These alternatives will be the basis for recommendation of alternatives to be carried forward for detailed environmental and engineering studies in the EIS.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies and to private organizations and citizens who express interest in this proposal. Public meetings will be held in the area throughout the study process. Public involvement and agency coordination will be maintained throughout the development of the EIS.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA or PennDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

James A. Cheatham,

FHWA Division Administrator, Harrisburg, PA.

[FR Doc. 00–9517 Filed 4–14–00; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Mason County, Washington

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA hereby gives notice that it intends to prepare an environmental impact statement (EIS) for a proposed highway project in Mason County, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Leonard, Transportation and Environmental Engineer, Federal Highway Administration, 711 Capitol Way, Suite 501, Olympia, WA 98501, Telephone: (360) 753–9408; or Mr. Jerry W. Hauth, Mason County Director of Public Works, Courthouse Bldg 1, 411 North 5th Street, PO Box 1850, Shelton, WA 98584, Telephone: (360) 427–9670.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.access.gpo.gov.nara.*

Background

The FHWA, in cooperation with the Washington State Department of Transportation and Mason County, will prepare an EIS to design, acquire land, and construct highway connector from SR 3 (south of Belfair, near the Location of the North Mason High School) to US 101 (north of Shelton). Access between the communities of Belfair and Shelton is currently provided by SR 3 and SR 106. Both of these are narrow two-lane farm-to-market routes that follow the shoreline on each side of the peninsula. All of the regional county roads feed into these two state highways. Congestion is already a concern during peak commuter hours and there are several high accident locations in the region. The high number of residential access points along all of SR 106 and section of SR 3 exacerbate the safety problem. In addition, both routes are subject to frequent landslides, and are constrained by steep topography, marine shorelines and limited right of way. Currently adopted traffic projections show that all of the major county road intersections on SR 3, and most of mainline SR 3 will fall below acceptable levels of service standards before the year 2020. Improvements to the corridor are considered necessary to provide for existing and projected traffic demand.

The EIS will include an evaluation of the no build alternative, as well as improvements to the existing highways and several practicable alignment alternatives for possible new connector routes.

The EIS will examine the short and long-term impacts on both the natural and physical environment. The impact assessment will include, but not limited to, impacts on wetlands, wildlife, and fisheries; social environment; changes in lands use; aesthetics; change in traffic; and economic impacts. The EIS will also examine measures to mitigate significant adverse impacts that may result from the proposed action.

Comments are being solicited from appropriate Federal, State, and local agencies, and from private organizations and citizens, who have interest in this proposal. Public information meetings will be held in the area as part of the scoping process to discuss public concerns and suggestions about the project. An agency scoping meeting will also be scheduled to discuss agency concerns. The draft EIS will be available to public and agency review prior to the public hearing which will be scheduled to receive comments. Public notice will be given of the time and place of all meeting and hearings.

Comments and/or suggestions from all interested parties are requested to ensure that the full range of all issues, and significant environmental and social issues in particular, are identified, reviewed and addressed. Comments and questions concerning this proposed action and/or its EIS should be directed to the FHWA or Mason County at the address listed above.

(Catalog of Federal domestic Assistant Programs Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on April 5, 2000.

James A. Leonard,

Transportation & Environmental Engineer, Olympia, WA.

[FR Doc. 00–9518 Filed 4–14–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirement (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on January 26, 2000 (65 FR 4297).

DATES: Comments must be submitted on or before May 17, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On January 26, 2000, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 65 FR 4297. FRA received no comments after issuing this notice. Accordingly, DOT announces that these information collection activities have been reevaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); see also 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); see also 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: Control of Alcohol and Drug Use in Railroad Operations

OMB Control Number: 2130–0526

Type of Request: Extension of a currently approved collection.

Affected Public: Railroads

Form(s): FRA F 6180.73; 6180.74; 6180.94A and 6180.94B

Abstract: The information collection requirements contained in pre-employment and "for cause" testing regulations are intended to ensure a sense of fairness and accuracy for railroads and their employees. The principal information " evidence of unauthorized alcohol and drug use "is used to prevent accidents by screening personnel who perform safety-sensitive service. FRA uses the information to measure the level of compliance with regulations governing the use of alcohol or controlled substances. Elimination of this problem is necessary to prevent accidents, injuries, and fatalities of the nature already experienced and further reduce the risk of a truly catastrophic accident. Finally, FRA analyzes the data provided in the Management Information System (MIS) annual report to monitor the effectiveness of a railroad's alcohol and drug testing program.

Annual Estimated Burden Hours: 129,366 hours

ADDRESSES: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW, Washington, DC, 20503; Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of FRA, including whether the information will have practical utility; the accuracy of FRA's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC.

Margaret B. Reid,

Acting Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 00–9547 Filed 4–14–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Annual Firearms Manufacturing and Exportation Report.

DATES: Written comments should be received on or before June 16, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and

Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Nancy Smith, Firearms Programs Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8310.

SUPPLEMENTARY INFORMATION:

Title: Annual Firearms Manufacturing and Exportation Report.

OMB Number: 1512–0030.

Form Number: ATF F 5300.11.

Abstract: ATF collects this data for the purposes of law enforcement, fitness qualification, congressional inquiries, disclosure to the public in compliance with a court order, furnishing information to other Federal agencies, compliance inspections, and insuring that the requirements of the National Firearms Act (26 U.S.C. 5801–5872) are met. The record retention requirement for this information collection is 98 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 1,500.

Estimated Time Per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 1,125.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–9494 Filed 4–14–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Alternate Methods or Procedures and Emergency Variations From Requirements For Exports of Liquors.

DATES: Written comments should be received on or before June 16, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marjorie Ruhf, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Title: Alternate Methods or Procedures and Emergency Variations From Requirements For Exports of Liquors.

OMB Number: 1512–0466.

Recordkeeping Requirement ID Number: ATF REC 5170/7.

Abstract: When an exporter seeks to use an alternate method or procedure or an emergency variation from regulatory requirements of 27 CFR Part 252, such exporter requests a variance by letter, following the procedure in 252.20. ATF uses the information to determine if the requested variance is allowed by statute and does not pose a jeopardy to the revenue. The applicant is informed of the approval or disapproval of the request. ATF also uses the information to analyze what changes should be made to existing regulations. Records must be maintained only while the applicant is using the authorization.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 200.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–9495 Filed 4–14–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the

Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Distilled Spirits Plants (DSP)—Transaction and Supporting Records.

DATES: Written comments should be received on or before June 16, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Steve Simon, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC (202) 927–8183.

SUPPLEMENTARY INFORMATION:

Title: Distilled Spirits Plant (DSP)—Transaction and Supporting Records.

OMB Number: 1512–0250.

Recordkeeping Requirement ID Number: ATF REC 5110/5.

Abstract: Transaction records provide the source data for accounts of distilled spirits in all DSP operations. They are used by ATF to verify those accounts and consequent tax liabilities. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 278.

Estimated Time Per Respondent: 22 hours.

Estimated Total Annual Burden Hours: 6,060.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–9496 Filed 4–14–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Report of Multiple Sale or Other Disposition of Pistols and Revolvers .

DATES: Written comments should be received on or before June 16, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Forest G. Webb Sr., Bureau of Alcohol, Tobacco and Firearms, National Tracing Center, 1–800–788–7133.

SUPPLEMENTARY INFORMATION:

Title: Report of Multiple Sale or Other Disposition of Pistols and Revolvers.

OMB Number: 1512–0006.

Form Number: ATF F 3310.4.

Abstract: This form is used by ATF to develop investigative leads and patterns of criminal activity. It identifies possible handgun traffickers in the illegal market. Its use along the border identifies possible international traffickers.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 8,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–9497 Filed 4–14–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the

Distilled Spirits Plants Warehousing Records and Reports.

DATES: Written comments should be received on or before June 16, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mary Wood, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Distilled Spirits Plants Warehousing Records.

OMB Number: 1512–0192.

Form Number: ATF F 5110.11.

Recordkeeping Requirement ID Number: ATF REC 5110/02.

Abstract: The information collected is used to account for proprietor's tax liability, adequacy of bond coverage and protection of the revenue. The information also provides data to analyze trends, audit operations, monitor industry activities and compliance to provide for efficient allocation of field personnel plus provide for economic analysis. The record retention period is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 230.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 5,520.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–9498 Filed 4–14–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Formula for Distilled Spirits Under the Federal Alcohol Administration Act (Supplemental).

DATES: Written comments should be received on or before June 16, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Roberta Sanders, Alcohol Labeling and Formulation Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8116.

SUPPLEMENTARY INFORMATION:

Title: Formula for Distilled Spirits Under the Federal Alcohol Administration Act (Supplemental).

OMB Number: 1512–0204.

Form Number: ATF F 5110.38.

Abstract: ATF F 5110.38 is used to determine the classification of distilled spirits for labeling and for consumer protection. The form describes the person filing, type of product to be made and restrictions to the label and/or manufacturing process. The form is used by ATF to ensure that a product is made and labeled properly and to audit distilled spirits operations. Records are kept indefinitely for this information collection.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 4,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–9499 Filed 4–14–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995,

Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Registration and Records of Vinegar Vaporizing Plants.

DATES: Written comments should be received on or before June 16, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mary Wood, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Registration and Records of Vinegar Vaporizing Plants.

OMB Number: 1512–0462.

Recordkeeping Requirement ID Number: ATF REC 5110/9.

Abstract: Data is necessary to identify persons producing and using distilled spirits in the manufacture of vinegar and to account for spirits so produced and used. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–9500 Filed 4–14–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Labeling of Sulfites in Alcoholic Beverages.

DATES: Written comments should be received on or before June 16, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Edward A. Reisman, Alcohol Labeling and Formulation Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8485.

SUPPLEMENTARY INFORMATION:

Title: Labeling of Sulfites in Alcoholic Beverages.

OMB Number: 1512–0469

Abstract: In accordance with our consumer protection responsibilities, as mandated by law, ATF requires label disclosure statements on all alcoholic beverage products released from U.S. bottling premises or customs custody that contain 10 parts per million or more of sulfites. Sulfiting agents have been shown to produce allergic-type responses in humans, particularly asthmatics, and the presence of these ingredients in alcohol beverages may have serious health implications for those who are intolerant of sulfites. Disclosure of sulfites on labels of alcohol beverages will minimize their exposure to these ingredients.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 4,787.

Estimated Time Per Respondent: 40 minutes.

Estimated Total Annual Burden Hours: 3,159.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000,

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–9501 Filed 4–14–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the

Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application For Transfer of Spirits and/or Denatured Spirits in Bond.

DATES: Written comments should be received on or before June 16, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Steve Simon, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Application For Transfer of Spirits and/or Denatured Spirits in Bond.

OMB Number: 1512–0191.

Form Number: ATF F 5100.16.

Abstract: ATF F 5100.16 is completed by distilled spirits plant proprietors who wish to receive spirits in bond from other distilled spirits plants. ATF uses the information to determine if the applicant has sufficient bond coverage for the additional tax liability assumed when spirits are transferred in bond. Records are kept as long as the approved application remains in effect.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 300.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 17, 2000.

William T. Earle,

Assistant Director (Management) CFO.

FR Doc. 00–9502 Filed 4–14–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Recordkeeping Requirements for Importers of Tobacco Products.

DATES: Written comments should be received on or before June 16, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Robert Ruhf, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Recordkeeping Requirements for Importers of Tobacco Products.

OMB Number: 1512–0555.

Abstract: Importers of tobacco products are required to maintain records of physical receipts and disposition of tobacco products to be able to prepare ATF F 5220.6, a importers monthly report. The records will be maintained to allow ATF officers to trace tobacco product transactions and determine that tax liabilities have been accurately determined and discharged by the importers. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,500.

Estimated Time Per Respondent: None (Recordkeeping requirements involve usual and customary business records).

Estimated Total Annual Burden Hours: 1.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–9503 Filed 4–14–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed

and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Distilled Spirits Plants, Excise Taxes.

DATES: Written comments should be received on or before June 16, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Daniel Hiland, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Distilled Spirits Plants, Excise Taxes.

OMB Number: 1512–0203.

Recordkeeping Requirement ID Number: ATF REC 5110/06.

Abstract: The collection of information is necessary to account for and verify taxable removals of distilled spirits. The data is used to audit tax payments. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 133.

Estimated Time Per Respondent: 26 hours.

Estimated Total Annual Burden Hours: 3,458.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–9504 Filed 4–14–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Distilled Spirits Plant (DSP) Denaturation Records and Reports.

DATES: Written comments should be received on or before June 16, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mary Wood, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Distilled Spirits Plant (DSP) Denatured Records and Reports.

OMB Number: 1512–0207.

Form Number: ATF F 5110.43.

Recordkeeping Requirement ID Number: ATF REC 5110/04.

Abstract: This information collection is necessary to account for and verify the denaturation of distilled spirits. It is used to audit plant operations, monitor the industry for the efficient allocation of personnel resources, and compile statistics for government economic planning. The record retention requirement for this information collection is 4 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 98.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,176.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–9505 Filed 4–14–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995,

Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Equipment and Structures.

DATES: Written comments should be received on or before June 16, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Richard Mascolo, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Equipment and Structures.

OMB Number: 1512–0460.

Recordkeeping Requirement ID Number: ATF REC 5110/12.

Abstract: Marks, signs, and calibrations are necessary on equipment and structures at a distilled spirits plant for the identification of major equipment and of the accurate determination of contents. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 281.

Estimated Time Per Respondent: 0.

Estimated Total Annual Burden Hours: 1.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–9506 Filed 4–14–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Certification of Tax Determine, Wine.

DATES: Written comments should be received on or before June 16, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Richard Mascolo, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Certification of Tax Determination, Wine.

OMB Number: 1512–0138.

Form Number: ATF F 5120.20 (2650).

Abstract: Refund of tax on wine that has been manufactured, produced, bottled or packaged in bulk containers in the U.S. and then exported. ATF F 5120.20 supports the exporter's claim for drawback, as the producing winery verifies that the wine being exported was in fact taxpaid.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 500.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–9507 Filed 4–14–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the User's Report of Denatured Spirits.

DATES: Written comments should be received on or before June 16, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Steve Simon, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: User's Report of Denatured Spirits.

OMB Number: 1512–0075.

Form Number: ATF F 5150.18.

Abstract: ATF F 5150.18 is submitted annually by holders of permits to use specially denatured spirits to summarize their manufacturing activities during the preceding year. The information is used by ATF to pinpoint unusual activities that could indicate a threat to the Federal revenue or possible dangers to the public. The record retention period for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2,765.

Estimated Time Per Respondent: 18 minutes.

Estimated Total Annual Burden Hours: 830.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–9509 Filed 4–14–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Formula and/or Process For Articles Made With Specially Denatured Spirits.

DATES: Written comments should be received on or before June 16, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Mary Wood, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Formula and/or Process For Articles Made With Specially Denatured Spirits.

OMB Number: 1512–0073.

Form Number: ATF 5150.19.

Abstract: ATF F 5150.19 is completed by persons who use specially denatured spirits in the manufacture of certain articles. ATF uses the information provided on the form to insure the manufacturing formulas and processes conform to the requirements of 26 U.S.C. 5273.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2,683.

Estimated Time Per Respondent: 54 minutes.

Estimated Total Annual Burden Hours: 2,415.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–9509 Filed 4–14–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Applications-Volatile Fruit-Flavor Concentrate Plants.

DATES: Written comments should be received on or before June 16, 2000 to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Richard Mascolo, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Applications-Volatile Fruit-Flavor Concentrate Plants.

OMB Number: 1512–0046.

Form Number: ATF F 27–G.

Recordkeeping Requirement ID Number: ATF REC 5520/2.

Abstract: Persons who wish to establish premises to manufacture volatile fruit-flavor concentrates are required to file an application so requesting. ATF uses the application information to identify persons responsible for such manufacture since these products contain ethyl alcohol and have potential for use as alcoholic beverages with consequent loss of revenue. The application constitutes registry of a still, a statutory requirement. The record retention requirement for this information collection is 98 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 10.

Estimated Time Per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 30.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 7, 2000.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 00–9510 Filed 4–14–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–27

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–27, Changes in Methods of Accounting.

DATES: Written comments should be received on or before June 16, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Changes in Methods of Accounting.

OMB Number: 1545–1541.

Revenue Procedure Number: Revenue Procedure 97–27.

Abstract: The information requested in Revenue Procedure 97–27 is required in order for the Commissioner to determine whether the taxpayer properly is requesting to change its method of accounting and the terms and conditions of that change.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, and farms.

Estimated Number of Respondents: 3,000.

Estimated Time Per Respondent: 3 hours, 13 minutes.

Estimated Total Annual Burden Hours: 9,633.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 6, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–9410 Filed 4–14–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Pacific-Northwest Citizen Advocacy Panel; Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Pacific-Northwest Citizen Advocacy Panel will be held in Bethel, Alaska.

DATES: The meeting will be held Friday April 28, 2000 and Saturday April 29, 2000.

FOR FURTHER INFORMATION CONTACT: Lori M. Dupuis at 1–888–912–1227 or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel will be held Friday April 28, 2000, 7:00 p.m. to 9:00 p.m. and Saturday April 29, 2000, 10:00 a.m. to 1:00 p.m. at the KVNA Building, 841 River Street, Bethel, Alaska.

The public is invited to make oral comments. Individual comments will be limited to 10 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write Lori M. Dupuis, CAP Office, 915 2nd Avenue, Room 442, Seattle, WA 98174. Due to limited conference space, notification of intent to attend the meeting must be made with Lori M. Dupuis. Ms. Dupuis can be reached at 1–888–912–1227 or 206–220–6096.

The Agenda will include the following: various IRS issue updates and reports by the CAP sub-groups.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 4, 2000.

Cathy VanHorn,

Director, Communication and Liaison, Taxpayer Advocate Service.

[FR Doc. 00–9411 Filed 4–14–00; 8:45 am]

BILLING CODE 4830–01–P

UMI VOL 65 ISS 74 AP 17 2000 UMI

Federal Register

Monday,
April 17, 2000

Part II

Securities and Exchange Commission

17 CFR Part 200 et al.
Electronic Filing by Investment Advisers; Proposed Amendments to Form ADV; Proposed Rule

VOL 65 ISS 74 AP 17 2000 UMI

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 275, and 279

[Release No. IA–1862; 34–42620; File No. S7–10–00]

RIN 3235–AD21

Electronic Filing by Investment Advisers; Proposed Amendments to Form ADV

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Commission and the state securities authorities are creating an electronic filing system for investment advisers. The system will permit investment advisers to satisfy their filing obligations with federal and state regulators with a single electronic filing made over the Internet. The system also will provide public access to information about investment advisers and persons who work for investment advisers. In connection with the development of the electronic filing system, we are proposing new rules under the Investment Advisers Act of 1940 and proposing to amend others. The new rules would require advisers to submit their filings electronically. Form ADV would be substantially updated and revised to accommodate electronic filing. Finally, we are proposing amendments that would require advisers to deliver to clients a narrative brochure written in plain English.

DATES: Comments must be received on or before June 13, 2000.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–10–00; this file number should be included on the subject line if e-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Lori H. Price, <pricel@sec.gov> or Jeffrey O. Himstreet, <himstreetj@sec.gov>, at (202) 942–0716, Task Force on Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on proposed amendments to rules 30–5 and 30–11 of the SEC's Organization and Program Management rules (17 CFR 200.30–5 and 200.30–11), new rule 203–3 and Form ADV–H; proposed amendments to rules 0–2, 0–7, 203–1, 203–2, 203A–1, 203A–2, 204–1, 204–2, and 204–3 (17 CFR 275.0–2, 275.0–7, 275.203–1, 275.203–2, 275.203A–1, 275.203A–2, 275.204–1, 275.204–2, and 275.204–3); and Form ADV, Form ADV–W, and Form 4–R (17 CFR 279.1, 279.2, and 279.4) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1) (the Advisers Act or the Act). The Commission also is proposing to withdraw rules 204–5 and 206(4)–4 (17 CFR 275.204–5 and 275.206(4)–4) and Forms 5–R, 6–R, 7–R, and ADV–Y2K (17 CFR 279.5, 279.6, 279.7, and 279.9) under the Advisers Act.

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Executive Summary

The Commission and the state securities authorities are creating an Internet-based system of electronic filing for investment advisers. The system, which we call the Investment Adviser Registration Depository (IARD), will permit investment advisers to satisfy filing obligations under state and federal laws by making a single electronic filing. Information contained in filings made through the IARD will be stored in a database that members of the public will be able to access free of charge through the Internet. The IARD, which is being built and will be operated for us by NASD Regulation, Inc. (NASDR), will give investors easy access to information about investment advisers.

Today we are proposing to amend our rules to require advisers to make filings with us through the IARD after the system begins to operate. In addition, we are proposing substantial amendments to our application, reporting, and disclosure requirements for investment advisers. Some of the amendments are designed to take advantage of electronic filing. Others reflect recent regulatory changes. And others are designed to improve the quality of information advisers must provide to their clients and prospective clients in their information statements (brochures).

I. Introduction

Since we implemented our EDGAR system in 1993, we have sought additional ways to take advantage of developments in information technology to provide investors with better access to market information.[1] More and more types of filings are made with us electronically each year.[2] As a

[1] Our EDGAR (Electronic Data Gathering, Analysis, and Retrieval) system electronically receives, processes and disseminates documents required to be filed with us under the Securities Act of 1933 (15 U.S.C. 77a to –mm), the Securities Exchange Act of 1934 (15 U.S.C. 78a to –mm) (Exchange Act), the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a to –79), the Trust Indenture Act of 1939 (15 U.S.C. 77sss to –bbbb), and the Investment Company Act of 1940 (15 U.S.C. 80a–1 to –64) (Investment Company Act).

[2] In 1995, we required new Form 24F–2 (used by registered investment companies for annual notices required by rule 24f–2 under the Investment Company Act) to be filed through EDGAR. *See* Registration Fees for Certain Investment Companies, Investment Company Act Release No. 21332 (Sept. 1, 1995) (60 FR 47041 (Sept. 11, 1995)). In 1995, we also permitted electronic filing of Forms 3, 4 and 5 and notices of securities transactions on Form 144, required under the Exchange Act, as well as notices concerning proxy communications for limited partnership roll-up transactions. *See* Adoption of Updated EDGAR Filer Manual and Technical Rule Amendments, Securities Act Release No. 7241 (Nov. 13, 1995) (60 FR 57682 (Nov. 17, 1995)). In 1998, we allowed new mutual fund "profiles" to be filed through EDGAR. *See* New Disclosure Option for Open-End Management Investment Companies, Investment Company Act Release No. 23065 (Mar. 13, 1998) (63 FR 13968 (Mar. 23, 1998)). In 1999, we required Form 13F (filed by institutional investment managers), which we previously allowed to be filed electronically on a voluntary basis, to be filed electronically. *See* Rulemaking for EDGAR System,

result, investors have timely access to the latest reports and filings made by public issuers. Last year, we required broker-dealers to begin to register with us electronically.[3] Today we are proposing a number of rules and rule amendments designed to bring electronic filing to investment advisers.

Approximately 8,000 investment advisers are registered with the Commission under the Advisers Act. We estimate that another 12,000 are registered with state securities authorities. These advisers currently make filings with us and the states on paper, much as they have since 1940, when the Advisers Act was enacted. Investment adviser filings do not appear on our EDGAR system and are not easily accessible or widely available from other sources. In 1996, Congress passed legislation giving us authority to modernize our registration system and requiring us to provide investors with easy access to information about advisers.[4]

NASDR currently is building the IARD for us and the state securities authorities.[5] The IARD will permit advisers to make filings with the Commission and the states through the Internet. The information advisers submit will be stored in a database, and investors will have access to it by visiting a web site. The IARD will not only improve public access to information about advisers, it will also ease regulatory burdens on advisers by permitting a single electronic filing to satisfy SEC and state filing requirements.[6] It also will help us better monitor advisers and administer the federal securities laws. The IARD is described in Section II.A. of this Release.

Most of the filings made with the IARD will be on Form ADV, the Uniform Application for Investment Adviser Registration. Advisers use Form ADV to apply for registration with us and with the state securities authorities, and must keep it current by filing periodic amendments as long as they are registered.[7] We are proposing to require that new advisers apply for registration electronically, and that advisers currently registered with us re-submit their Form ADV to us through the IARD. The proposed new filing rules are described in Section II.B. and the proposed transition rules are described in Section II.C. of this Release.

Form ADV currently has two parts. Part I asks for information about an adviser's business, the persons who own or control the adviser, and whether the adviser or certain of its personnel have been sanctioned for violating the securities or other laws. It provides us with information we need to decide whether to grant an application for registration or to revoke a registration, and to manage our regulatory and examination programs. Our proposed changes to Part I are discussed in Section II.D.1. of this Release.[8]

Part II, or a written brochure containing the same information, must be delivered to clients before they engage the adviser and then offered to them each year.[9] Part II provides clients with information about business practices, fees and conflicts of interest the adviser may have with its clients. We are proposing that all advisers provide clients with a narrative brochure containing disclosure about the advisory firm written in plain English, and update the brochure at least once a year to reflect changes. We also are proposing to require that the firm brochure be accompanied by a supplement containing important information about the advisory personnel with whom the client will be dealing. Proposed Part 2A sets forth the information about the advisory firm that an adviser must include in its brochure. Proposed Part 2B sets forth the information about advisory personnel that an adviser must include in brochure supplements. These proposed changes are described in Section II.D.2. of this Release.

II. Discussion

A. The Investment Adviser Registration Depository

The IARD is being built and will be operated by NASDR under contracts with the Commission and the North American Securities Administrators Association, Inc. (NASAA).[10] The IARD will be modeled on NASDR's Web Central Registration Depository (CRD), which is used by broker-dealers to make filings with us, state securities authorities, and NASDR.[11] NASDR will perform certain administrative tasks related to the filing and public disclosure systems described below. It will not, however, act as a self-regulatory organization for advisers.[12]

1. The Investment Adviser Filing System

The IARD will be an Internet-based system that advisers will access through

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Investment Company Act Release No. 23640 (Jan. 12, 1999) (64 FR 2843 (Jan. 19, 1999)). In 1999, we required Form N8–F (used to deregister a registered investment company), also previously filed electronically on a voluntary basis, to be filed electronically. *See* Deregistration of Certain Registered Investment Companies, Investment Company Act Release No. 23786 (Apr. 15, 1999) (64 FR 19469 (Apr. 21, 1999)). In 1999, we also required investment companies to file codes of ethics through EDGAR as an exhibit to their registration statements. *See* Personal Investment Activities of Investment Company Personnel, Investment Company Act Release No. 23958 (Aug. 20, 1999) (64 FR 46821 (Aug. 27, 1999)).

[3] *See* Broker-Dealer Registration and Reporting, Securities Exchange Act Release No. 41594 (July 2, 1999) (64 FR 37585 (July 12, 1999)) (amending Exchange Act rules 15b3–1, 15Ba2–2, and 15Ca2–1 (17 CFR 240.15b3–1, 240.15Ba2–2, and 240.15Ca2–1)).

[4] National Securities Market Improvement Act of 1996, Pub. L. No. 104–290, 110 Stat. 3416 (1996) (codified in scattered sections of the United States Code) (NSMIA). Section 303 of NSMIA added new section 203A(d) of the Advisers Act (15 U.S.C. 80b–3a(d)), which provides that "(t)he Commission may, by rule, require an investment adviser—(1) to file with the Commission any fee, application, report, or notice required by this title or by the rules issued under this title through any entity designated by the Commission for that purpose; and (2) to pay the reasonable costs associated with such filing." Section 306 of NSMIA provides that "(t)he Commission shall—(1) provide for the establishment and maintenance of a readily accessible telephonic or other electronic process to receive inquiries regarding disciplinary actions and proceedings involving investment advisers and persons associated with investment advisers; and (2) provide for prompt response to any inquiry described in paragraph (1)." Section 306 was not codified.

[5] NASDR is a wholly owned subsidiary of the National Association of Securities Dealers (NASD), a self-regulatory organization which supervises broker-dealers that conduct a public business in securities other than on an exchange of which the broker-dealer is a member.

[6] In general, this Release discusses our rules and the changes we are proposing that affect advisers registered with us. The state securities authorities are likely to make similar changes that affect advisers registered with the states.

State-registered advisers filing through the IARD can also satisfy Department of Labor (DOL) filing requirements. A state-registered adviser currently must file Form ADV with DOL to be an "investment manager" for purposes of the Employee Retirement Income Security Act (ERISA). 29 U.S.C. 1002(38)(B)(ii). DOL will treat an adviser as having satisfied this filing requirement when its Form ADV is available to DOL "from a centralized electronic * * * database." *See* Act of Nov. 10, 1997, Pub. L. No. 105–72, 111 Stat. 1457 (adding explanatory note "Availability of Documents Via Filing Depository" to 29 U.S.C. 1002).

[7] *See* rules 203–1 and 204–1.

[8] We are changing the numbering of the parts of Form ADV from Roman to Arabic numbers: Part I to Part 1, Part II to Part 2. References in this Release to Part I or Part II refer to current Form ADV; references to Part 1 or Part 2 refer to the proposed form. The paper version of Form ADV, as proposed to be amended, is included as Appendix A of this Release.

[9] *See* rule 204–3.

[10] NASAA represents the 50 U.S. state securities authorities responsible for the administration of state securities laws, also known as "blue sky laws." Currently, 49 states (all except Wyoming), the District of Columbia, Guam, and Puerto Rico have investment adviser statutes. *See* <http://www.nassa.org/search/memberslinks.html> (last visited Mar. 15, 2000).

[11] For a description of the CRD system, *see* Securities Exchange Act Release No. 41594, *supra* note 3.

[12] Only Congress can grant such authority. *See* The Maloney Act, Pub. L. 75–719, 52 Stat. 1070 (1938) (codified as amended at 15 U.S.C. 78*o*, authorizing the Commission to register national securities associations).

computers in their offices, without the need for specialized hardware or software. An adviser will be able to use the system to apply for registration, amend its registration, and withdraw from registration.[13] An SEC-registered adviser will also be able to electronically send "notice filings" to the states and pay state fees through the IARD.[14]

The IARD will contain a number of features designed to make it easy for persons to complete Form ADV, even if they are unfamiliar with the form. To use the system, an adviser will visit a designated web site, which it will be able to enter through our web site.[15] Persons visiting the web site to make a filing will indicate whether they wish to apply for registration, amend an existing registration, or withdraw from registration as an investment adviser. Persons wishing to register as an investment adviser will be presented with a blank Form ADV, which they would complete on-line. A partially completed form could be saved in draft form.[16] A "help" function will be available to answer questions,[17] and an on-line glossary will allow persons completing the form to review the definition of key terms used in the form.[18]

The IARD will present an adviser completing Part 1 of Form ADV with only those items relevant to its application. An adviser indicating that it is registering with us, for example, will not see items that apply only to advisers registering with the states.[19] The system also will prevent an adviser from submitting an incomplete form or from entering inconsistent information at different places on the form.[20] These features should help prevent the most common errors we see in applications for registration under the Advisers Act and speed the registration process.

We also have designed the system to provide efficiencies for firms registered with us as both an investment adviser on Form ADV through the IARD and a broker-dealer on Form BD[21] through the CRD. These advisers will be able to link their responses to common items to avoid entering the data twice.[22]

Unlike the check-the-box and multiple-choice format of proposed Part 1, proposed Part 2 of Form ADV would require the adviser to prepare a narrative brochure containing disclosure about the advisory firm.[23] NASDR will design the part of the system that will accept Part 2.[24] Once this part of the system is built, an adviser will be able to prepare its brochure on its own computer using its word processing software and transmit the file to the IARD.[25] We do not anticipate, however, that brochure supplements will be submitted to the IARD.

2. The Public Disclosure System

All current information submitted to the IARD by advisers will be available to members of the public through our web site without charge.[26] Interested persons will be able to search the database to retrieve information about advisory firms and persons associated with them.[27] Anyone with access to the Internet will be able to look up an adviser and review its Form ADV—including the disciplinary records of the adviser and persons associated with the adviser.[28]

3. System Implementation

We expect that the IARD will begin to receive filings later this year. We anticipate that the entire system will be "rolled out" in four separate releases:[29]

- First, SEC-registered advisers and applicants for SEC registration will begin using the system to file Part 1 with us and submit notice filings to state securities authorities.[30] We expect that most (if not all) state securities authorities will accept "notice filings" from SEC-registered advisers through the IARD at that time, and that many state securities authorities also will begin to require advisers registered with them to use the system. We understand, however, that some state securities authorities lack statutory authority to require advisers registered with them to file through the IARD and will postpone

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[13] Institutional investment managers will continue to make Form 13F filings on our EDGAR system. *See* Investment Company Act Release No. 23640, *supra* note 2. Form 13F filings are made by many firms other than investment advisers, and it would not be feasible to include these filings on the IARD.

[14] Many states require an SEC-registered adviser doing business in their state to provide them with copies of the adviser's SEC filings and to pay fees. *See* section 201(c) of the Uniform Securities Act (1999). These are usually referred to as "notice filings." *See* section 307(a) of NSMIA (states are permitted to require SEC-registered advisers to file with them documents advisers filed with the Commission "solely for notice purposes * * * and (pay) any required fee"). Section 307 was not codified.

[15] In order to use the system, an adviser first will complete a paper request for IARD filer access and submit it to NASDR. NASDR then will assign a user name and password, which persons authorized to file on behalf of the adviser would be required to use to submit filings to the IARD.

[16] An adviser will be able to save one draft of each form type for up to 60 days. While an adviser will be not able to download the draft form, it will be able to print either the entire draft form or selected pages.

[17] The "help" function will provide answers to frequently asked questions and guidance for completing the electronic Form ADV. Our staff will formulate answers to the frequently asked questions and update them from time to time.

[18] Defined terms appear in italic on the forms, both on the proposed paper forms and on the electronic forms in the IARD. The glossary is included in Appendix A of this Release.

[19] *See* discussion of additional requirements for state-registered advisers *infra* at Section II.D.1.b. of this Release.

[20] For example, if an adviser indicates that it has assets under management of less than $25 million, the system would preclude the adviser from indicating that it is eligible for SEC registration because it has assets under management of $25 million or more. *See* proposed Items 2.A(1) and 5.F(2)(c) of Part 1A of Form ADV.

[21] 17 CFR 249.501.

[22] *See* discussion of IARD functionality for the Disciplinary Reporting Pages (DRPs) and Schedules A and B, *infra* notes 85 and 101, respectively.

[23] *See* discussion of Part 2 *infra* at Section II.D.2. of this Release.

[24] *See* discussion of system implementation *infra* at Section II.A.3. of this Release.

[25] Using their word processing software, advisers may be required to convert the word processing file to a standard file format, such as HyperText Markup Language (HTML) or American Standard Code for Information Interchange (ASCII).

[26] The IARD data will be available for commercial use, for a fee, and the proceeds will be used to maintain and upgrade the IARD.

[27] Members of the public will be able to search the IARD for information about a specific individual once the system begins accepting investment adviser representative filings on Form U–4 (Uniform Application for Securities Industry Registration or Transfer) and Form U–5 (Uniform Termination Notice for Securities Industry Registration). *See* discussion of system implementation *infra* Section II.A.3. of this Release.

[28] Section 15A(h)(8)(i) of the Exchange Act (15 U.S.C. 78*o*-3(h)(3)(i)) requires a registered securities association to establish and maintain a toll-free telephone listing to receive inquiries regarding disciplinary actions involving its members and their associated persons, and to promptly respond to any of these inquiries in writing. NASDR currently makes certain information about broker-dealers and their agents available on its web site. Disciplinary information about broker-dealers and their agents is not available on NASDR's web site, although NASDR will make it available in written form upon request. NASDR has not made broker-dealer disciplinary information available on its web site because the Exchange Act provides NASDR with immunity from lawsuits challenging the accuracy of disciplinary information it provides in *written* form. NASDR has asked Congress to amend the Exchange Act to provide legal immunity for information made available on the Internet. *See* Ruth Simon and Aaron Lucchett, *Disciplinary Records of Stockbrokers Won't be on Web this Spring After All*, Wall St. J., Jan. 18, 1999, at B7. If immunity is granted, we hope that the CRD and the IARD can be linked so that a single search will provide information from both databases. This may be helpful to an investor who is unsure whether a person or firm is registered as a broker-dealer or an adviser. Until then, the IARD will warn investors that they should consider contacting NASDR for possible additional disciplinary information.

[29] We understand that some would prefer that all components of the system begin operating together at the earliest possible date. We share that preference. Implementing the system in stages, however, permits NASDR to reduce its programming costs, which would otherwise have to be offset by higher filing fees.

[30] Section II.C. of this Release discusses our proposed transition process for advisers registered with us.

full participation in the system until necessary legislation is enacted.[31]

- Second, NASDR will release the public disclosure system, which should begin operating a few months after the first filings are made on the system.[32]
- Third, NASDR will release the state investment adviser representative licensing system. We expect that it will begin operating a few months after the public disclosure system is released. It is likely that some states will not participate until their laws have been changed.
- Fourth, the IARD will begin to accept Part 2A of Form ADV.

4. Filing Fees

The Advisers Act permits the operator of the IARD to charge reasonable fees to cover system costs.[33] We will pay NASDR to build the system; filing fees will be used to pay for its operation and maintenance. NASDR will charge fees for initial applications and annual updating amendments.[34] These fees will be based on the amount of assets an adviser has under management and the number of states to which the adviser submits notice filings. We expect IARD annual filing fees to range from $200 for smaller advisers to $400 for the largest advisers.[35] We must approve any fee or fee change, and we will do so only if the proposed fees are reasonable and necessary to support proper operation of the IARD. The IARD also will collect registration, licensing and notice fees on behalf of state securities authorities.[36] All fee revenues will be segregated from NASDR's other assets and retained for the exclusive benefit of the IARD. The system will be audited annually by an independent public accountant, the results of which will be reported to us and NASAA. We will provide a copy of the report to interested persons.

Advisers using the system will be required to establish an account with NASDR and maintain funds in the account necessary to pay state fees as well as IARD filing fees.[37] The IARD will automatically calculate the amount of the fees due based on information provided by the adviser on its Form ADV, debit the adviser's account, and remit amounts due to the appropriate state securities authorities. The IARD will not accept a filing if insufficient funds are on account to pay fees due.

The one-stop filing and fee collection functions of the IARD should substantially reduce regulatory burdens on advisers. Larger advisers, which typically will impose more costs on the system by submitting notice filings and paying fees in multiple states, will benefit the most. We believe, therefore, that it is appropriate that larger advisers pay higher fees to support the system.

B. Proposed Amendments to SEC Rules

To implement the IARD, we are proposing new rules and amendments to rules that govern the process by which advisers apply for registration with us, amend their registrations, and withdraw from registration.[38] This section discusses the proposed rules and rule amendments.[39]

1. Applications for Registration on Form ADV

We propose to amend our rules under the Advisers Act to require all advisers applying for registration with us to file Form ADV through the IARD.[40] Each adviser currently registered with us would be required to re-submit its Form ADV to us using the IARD and the revised form.[41] We will publish a schedule of dates by which each adviser registered with us must re-submit its Form ADV through the IARD.[42] Paper filings would be accepted only if the adviser has obtained a continuing hardship exemption, as described below.[43]

2. Amendments to Form ADV

After an adviser has submitted an application for registration on Form ADV or re-submitted its Form ADV through the IARD, the adviser will have to make all amendments through the system.[44] Our rules would continue to require each adviser to update its Form ADV at least once a year, or more frequently depending upon the information in the form that becomes

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[31] We understand that these state securities authorities are able to accept broker-dealer filings exclusively through the CRD because NASDR mandates the use of the CRD in its capacity as the self-regulator of its members. NASDR has no similar authority over investment advisers. Anyone interested in a particular state's participation in the IARD should contact the state's securities authority or NASAA.

[32] During the period of time after advisers begin to submit filings to the system and before the public disclosure system is operational, these filings will continue to be available from our public reference room.

[33] Section 203A(d). *See supra* note 4 (section 203A(d) of the Advisers Act authorizes us to require advisers to pay the costs associated with electronic filing).

[34] NASDR does not plan to charge fees for other amendments to Form ADV or for filing Form ADV–W (17 CFR 279.2), the Notice of Withdrawal from Registration as Investment Adviser.

[35] As discussed in Section II.C. of this Release, *infra*, we will require advisers that are registered with us to re-submit their registration forms through the IARD. We expect that the IARD filing fees for these one-time submissions and for initial applications will be approximately twice the amount of the IARD annual filing fees. When the IARD accepts investment adviser representative filings on Form U–4 and Form U–5, *supra* note 27, NASDR will establish filing fees for these filings.

[36] We do not charge any registration fees for investment advisers. *See* Changes Selected Rules In Order To Eliminate Fees Previously Adopted by the Commission Pursuant to the Independent Offices Appropriations Act of 1952, Investment Advisers Act Release No. 1578 (Sept. 17, 1996) (61 FR 49957 (Sept. 24, 1996)) (eliminating $150 initial application fee).

[37] Advisers that are members of the NASD (because they also are broker-dealers) will be able to use their existing CRD accounts to pay IARD filing fees as well as state registration and notice fees. We currently are exploring with NASDR ways for advisers to transfer funds to NASDR for filing and state fees.

[38] Under the proposed rule amendments, advisers will file Forms ADV and ADV–W through the IARD system. We receive relatively few filings on Form ADV–E (17 CFR 279.8), and accountants that conduct surprise inspections of advisers would continue to file that form with us on paper. We expect to receive few filings on proposed Form ADV–NR, the execution form for non-resident general partners and managing agents of investment advisers (which would be substantially similar to Form 7–R), and we therefore propose to require paper filings of this new form. *See* discussion of proposed Form ADV–NR *infra* at section II.D.3. of this Release and proposed Form ADV–NR is included as Appendix D of this Release. Advisers also would file requests for hardship exemptions in paper format. *See* discussion of proposed hardship exemptions *infra* at section II.B.4. and proposed Form ADV–H *infra* at Appendix C. of this Release.

[39] In addition to the rule changes discussed in detail in this Release, we are proposing to withdraw rule 204–5 (Year 2000 Reports) and Form ADV–Y2K.

[40] Proposed rule 203–1(b). The Advisers Act provides that, within 45 days after a person files an application for registration with us, we must either grant registration under the Act or institute a proceeding to determine whether registration should be denied. Section 203(c)(2) (15 U.S.C. 80b–3(c)(2)). Under the proposed amendments, an application for registration under the Act that is filed with the IARD would be considered filed with us on the date that it is accepted by the IARD. Proposed rule 203–1(c). As discussed above, the IARD will only accept filings that are complete and for which filing fees have been paid. Proposed rule 203–1(d).

We explained in a 1997 release that an adviser and its affiliates could submit a single registration on Form ADV. *See* Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1633 (May 15, 1997) (62 FR 28112 (May 22, 1997)) at n.64. Our experience with advisers that have attempted such a registration has convinced us that Form ADV does not, and cannot be revised to, accommodate this registration, since each adviser may have different responses to the same items. Therefore each affiliated adviser would be required to file a separate Form ADV.

[41] Proposed rule 204–1(b).

[42] *See* discussion of transition process *infra* Section II.C. of this Release. Until the date on which an adviser must re-submit its Form ADV, that adviser will continue to make all required amendments on paper using the current (*i.e.*, not revised) Form ADV. When we adopted Uniform Form ADV in 1985, we required all advisers registered with us to re-submit the form. *See* Uniform Investment Adviser Registration Application Form, Investment Advisers Act Release No. 991 (Oct. 15, 1985) (50 FR 42903 (Oct. 23, 1985)).

[43] The proposed hardship exemptions are discussed *infra* in Section II.B.4. of this Release.

[44] Proposed rules 203–1(b) and 204–1(b).

stale.[45] To amend its Form ADV, an adviser would access its Form ADV through the IARD and simply type over the stale information.[46] The adviser would then electronically "sign"[47] the form and submit it to the IARD.[48] The IARD would replace the stale information with the new information submitted and record the date of the change.[49]

3. Withdrawal From Registration

Investment advisers generally withdraw from SEC registration as a result of ceasing operations or switching to state registration.[50] In either case, an adviser would file Form ADV–W with the IARD.[51] The IARD will pre-populate the Form ADV–W with information from the adviser's most recent Form ADV filing; the adviser would then complete Form ADV–W, electronically sign it, and submit it to the IARD. We propose to make investment adviser withdrawals effective upon filing, eliminating the current 60-day waiting period.[52] Eliminating the 60-day waiting period for investment adviser withdrawals would smooth the transition process for advisers switching to state registration.

An adviser withdrawing from SEC registration and switching to state registration currently has a grace period to allow time for the adviser to register with the states.[53] The preemptive provisions of the Advisers Act, however, preclude the states from regulating the adviser until it has withdrawn from SEC registration.[54] We propose to adopt a rule amendment that would suspend preemption of a state's laws when the adviser registers with that state.[55] Once registered with a state, an adviser would become subject to that state's adviser statute while also remaining subject to SEC regulation until it files Form ADV–W to withdraw from SEC registration.[56] Once the adviser has filed Form ADV–W with us, the adviser generally would be subject only to state regulation.

4. Hardship Exemptions

In proposing to require advisers to file electronically, we are assuming that advisers have computers and access to the Internet, and will be able to submit filings through the IARD.[57] We recognize, however, that there may be circumstances under which an adviser cannot make an electronic filing, and thus we are proposing two hardship exemptions that advisers could request by filing a short form with NASDR.[58]

An adviser that files electronically could request a temporary hardship exemption if unexpected difficulties prevent it from filing, such as a computer malfunction or electrical outage.[59] The exemption would be available upon filing and allow an adviser to delay the deadline for an electronic filing for seven business days.[60] *A continuing hardship exemption* would be available only to an adviser that is a "small business"[61] and can demonstrate that the electronic filing requirements would create an undue hardship (*e.g.*, the adviser does not have a computer and is unable to

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[45] For the rules governing updating of Part 1A, *see* proposed rule 204–1(a) and proposed General Instruction 3 to Form ADV. For the rules governing updating of Part 2, *see* proposed rule 204–3, proposed Instruction 8 to Part 2A, and proposed Instruction 7 to Part 2B.

[46] When an adviser makes its annual updating amendment, information it has previously submitted regarding the amount of its assets under management and other information relevant to its eligibility for SEC registration would not appear. As a result, an adviser would be forced to affirmatively restate its basis for continued eligibility. This approach is not substantively different than the current requirement to re-file Schedule I each year, even if none of the information has changed. *See* rule 204–1(a). As discussed below, we are proposing to bring the information requirements of Schedule I into Part 1A of the form as Item 2.A. and eliminate Schedule I. *See* discussion *infra*, Section II.D.1.a. of this Release.

[47] The process of executing Form ADV and filing it through the IARD system will be an "electronic signature," but not a "digital signature," which is an electronic sequence of bits encrypted by a "key" belonging only to the person "signing" the document. *See generally* Information Security Committee, Electronic Commerce Division, Science and Technology Section, American Bar Association, Digital Signature Guidelines § 1.11 (Aug. 1, 1996) (available at <http://www.abanet.org/scitech/ec/isc/dsgfree.html> (last visited Mar. 15, 2000)).

[48] *See* discussion of electronic signatures and the proposed execution pages of Form ADV *infra* at Section II.D.3. of this Release. An adviser that has been granted a continuing hardship exemption would amend its Form ADV by submitting Page 1, the appropriate execution page, and each page on which a change is made with the item number circled for which the response is changed. *See* discussion of proposed hardship exemptions at Section II.B.4. of this Release and proposed General Instruction 13 to Form ADV.

[49] All information replaced by the adviser will be retained on the IARD and will remain accessible, although not through the public disclosure system. The public disclosure system will provide access only to current information about each adviser, including disciplinary events occurring during the past ten years. *See* discussion of public disclosure system *supra* at Section II.A.2. of this Release.

[50] An adviser might "switch" from SEC to state registration because its assets under management have decreased to below $25 million and therefore it is no longer eligible for SEC registration. *See* section 203A(a) (15 U.S.C. 80b–3a).

[51] Proposed rule 203–2. The proposed amendments to Form ADV–W are discussed *infra* at Section II.E. of this Release and proposed Form ADV–W is included as Appendix B of this Release.

[52] When we adopted the 60-day waiting period of rule 203–2(b), our enforcement remedies were limited primarily to suspending or revoking an adviser's registration, and the waiting period was intended to give our staff the opportunity, in appropriate cases, to investigate or institute proceedings against the adviser before it withdrew its registration. *See* Adoption of Form ADV–W and Amendment of Rule 203–2 Under the Investment Advisers Act of 1940, Investment Advisers Act Release No. 213 (Nov. 13, 1967) (32 FR 16151 (Nov. 25, 1967)). This 60-day delay is no longer necessary, as we now have broader enforcement remedies that may be imposed on all advisers, registered or not. *See* sections 203(i) (fines), (j) (disgorgement), and (k) (cease and desist orders) (15 U.S.C. 80b–3(i), (j) and (k)). We also propose to amend our procedural rules to delete a provision allowing our staff to determine whether a withdrawal should become effective "sooner than the normal 60-day waiting period." *See* rule 30–11(b)(2)(ii) (17 CFR 200.30–11(b)(2)(ii)).

[53] Rule 203A–1(c) (90 days).

[54] Section 203A(b) of the Act (15 U.S.C. 80b–3a(b)) preempts state laws that would require the registration, qualification and licensing of investment advisers registered with the Commission. *See* Investment Advisers Act Release No. 1633, *supra* note 40 at II.H.1.

[55] *See* proposed rule 203A–1(b)(2)(ii). We also are proposing minor amendments to the rule for eligibility for SEC registration by redrafting the rule in plain English and revising it to reflect our interpretation that an adviser is "regulated or required to be regulated" if its principal office and place of business is in a state that has enacted an investment adviser statute. *See* Investment Advisers Act Release No. 1633 *supra* note 40 at II.E.1.

[56] An adviser no longer eligible for SEC registration may shorten the time it is subject to regulation by both the Commission and states by withdrawing from SEC registration promptly after registering with the appropriate states. We adopted a rule similar to the switching rule to assist the Ohio Securities Division in implementing a new investment adviser statute enacted in that state. *See* rule 203A–6 (17 CFR 275.203A–6) and Transition Rule for Ohio Investment Advisers, Investment Advisers Act Release No. 1794 (Mar. 25, 1999) (64 FR 15860 (Apr. 1, 1999)).

[57] A 1998 industry survey of registered investment advisers noted that all respondents use the Internet. According to the survey, advisers "new to the business or those with less than $100 million of assets under management are more active users of the online channel than are higher-net-worth (advisers)." *See* Phil Clark, Cerrulli Survey; Advisers Flock to Internet for Research and Fund Data, *Fund Marketing Alert*, July 6, 1998 at 1. In 1999, the Institute of Certified Financial Planners (ICFP) and Morningstar also conducted a survey of financial planners and found that 99% of those surveyed had Internet access. *See* ICFP/Morningstar, *Work/Computer Environment Among RIAs* (available in File No. S7–10–00). Those advisers that cannot submit electronic filings themselves can obtain the assistance of a filing service—a firm that provides assistance to advisers and broker-dealers in preparing and making regulatory filings. We expect to maintain a list of filing services that an adviser may retain to submit filings on the IARD system.

[58] All requests for a hardship exemption would be submitted on paper to NASDR on proposed Form ADV–H, which is included as Appendix C of this Release. The proposed hardship exemptions are similar to exemptions for issuers that make filings on our EDGAR system. *See* rules 201 and 202 of Regulation S–T (17 CFR 232.201 and 202).

[59] *See* proposed rule 203–3(a)(1).

[60] *See* proposed rule 203–3(a)(3). If the circumstances causing the temporary hardship persist, the adviser would have to make other arrangements to file electronically.

[61] An investment adviser generally is a small business if it (a) Manages assets of less than $25 million, (b) has total assets of $5 million or less, and (c) is not in a control relationship with another investment adviser that is not a small business. Rule 0–7 (17 CFR 275.0–7).

afford a filing service). If we grant a continuing hardship exemption, the adviser would file on paper with NASDR, which would then convert the filing to electronic format and charge the adviser an additional fee to cover conversion costs.[62] Since primarily larger advisers are registered with us, we expect that few would qualify for a continuing hardship exemption. We request comment on whether a continuing hardship exemption is necessary for SEC-registered advisers.

C. Proposed Transition to Electronic Filing

When we adopt these amendments, we will provide an effective date that will correspond to the commencement of operations of the IARD. After that date, all applicants for registration must file their Form ADV and any amendments electronically through the IARD. We expect to publish a schedule by which advisers registered with us on the effective date will re-submit their registration forms to us through the IARD. We are asking for volunteers to be among the first group of advisers to submit their registration to the IARD.[63] We encourage advisers that have used the CRD to volunteer. The experiences of this first group will alert us to any problems with the system and allow NASDR to make adjustments. We request comment on our proposed transition process. How soon after the adoption of the new rules and revised form can advisers be ready to submit their Form ADVs through the IARD?

As discussed above, a later release of the IARD will ultimately accept Part 2A of Form ADV.[64] We propose to require each adviser to file its brochure with us when it makes its first annual update after the IARD begins to accept Part 2A.[65] During the interim period, advisers will not be required to submit their brochures to us (either in electronic or paper form), but will, instead, be required to keep them and make them available to our staff.[66] At the request of NASAA, we have included a provision in our proposed rules that a brochure retained by the adviser would be considered "filed" with us.[67] As a result, until advisers submit Part 2A to the IARD, the state securities authorities could require SEC-registered advisers to file a copy of Part 2A (on paper) with them.[68]

D. Proposed Revisions to Form ADV

We are proposing substantial revisions to Form ADV.[69] We have redrafted many items in simpler, more direct language, and have included brief explanations (in the form) of why we need the requested information. We believe that these changes will make it easier for persons to complete the form. The items continue to be drafted broadly to apply to the different types of advisory organizations registered with us and the state securities authorities. We request comment generally on the organization of the form and the clarity of the language we have used.

1. Part 1

Part 1 of Form ADV asks for information about the adviser and persons associated with the adviser. We need this information to decide whether to grant an application for registration or revoke a registration, and to manage our regulatory and examination programs. Some of the changes we are proposing in Part 1 are necessary to accommodate electronic filing. Many are in response to developments since Uniform Form ADV was adopted in 1985.[70] The most significant regulatory development affecting investment advisers since 1985 occurred in 1996 when Congress passed NSMIA, dividing regulatory jurisdiction over investment advisers between the Commission and the states.[71] As a result, advisers are no longer required to register with both. Larger advisory firms (generally, those with at least $25 million of assets under management) register only with us, but often must send notice filings to the states and pay state fees.[72] Smaller advisers register with one or more states,[73] not with us, and most of our regulatory requirements do not apply to them.

The changes made by NSMIA have allowed us to substantially reorganize Part 1, which we propose to divide into two parts. All advisers would complete Part 1A, while only state-registered advisers would complete Part 1B.[74] This new organization would allow SEC-registered advisers (and persons applying for SEC registration) to avoid responding to items requiring information we do not need.

a. Part 1A

Part 1A would require an adviser to provide information describing itself and its business through a series of fill-in-the-blank, multiple-choice, and check-the-box questions. As proposed, Part 1A consists of 12 items that request information similar to that requested by current Form ADV.[75] We are proposing a number of changes, the most significant of which are discussed below.

i. *Identifying Information.* We propose to revise the identifying information we require about the adviser to reflect new information we need. For example, we

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[62] Although the adviser would submit Form ADV–H to NASDR, our staff, under authority delegated by us, would grant or deny all requests for a continuing hardship exemption. *See* proposed rule 30–5(e)(7) of our Organization and Program Management Rules (17 CFR 200.30–5(e)(7)).

[63] To volunteer, send an e-mail with the adviser's name, SEC 801 number, CRD number (if any), and the name, phone number, and e-mail address of a contact person to iard@sec.gov.

[64] As discussed in Section II.A.3. of this Release, only the firm brochure prepared in response to Part 2A will be submitted through the IARD. We are not proposing to require advisers to file their brochure supplements prepared in response to Part 2B.

[65] We will notify advisers when the IARD begins to accept Part 2A of Form ADV and anticipate providing a grace period before requiring any advisers to file Part 2A electronically. *See* proposed rules 203–1(b)(2) and 204–1(c). Advisers would be required, however, to prepare their brochure in accordance with Part 2 of Form ADV, and to deliver and offer to deliver these brochures in accordance with amended rule 204–3, no later than the date by which all advisers must have re-submitted their Part 1A to the IARD. In addition, advisers would have a 30-day transition period, beginning on the date by which all advisers must have re-submitted their Part 1A to the IARD, to provide their new brochures and brochure supplements to existing advisory clients. *See* discussion of Part 2 and rule 204–3, *infra* at Section II.D. of this Release.

[66] Proposed rule 203–1(b)(2).

[67] *Id.*

[68] *See* discussion of "notice filings" *supra* note 14 and accompanying text. As a result of statutory changes made by NSMIA, a state securities authority can only require an SEC-registered adviser to file with the state copies of documents the adviser filed with us. *See* section 307(a) of NSMIA. To accommodate the state securities authorities' request to receive a copy of a document that we do not require SEC-registered advisers to file with us, we are proposing to deem that the filing was made with us.

[69] The paper version of Form ADV would only be used by an adviser with a continuing hardship exemption from the requirement to file the form electronically. The electronic version of the form will elicit the same information but will have minor differences necessary to reflect and, in some cases take advantage of, an electronic environment. For example, the text of Item 2.B. on the paper form would require an adviser amending its Form ADV to circle the box next to the name of the state that is no longer marked and therefore should no longer receive the adviser's notice filings. On the electronic form, the adviser would be directed to "uncheck" the appropriate box.

[70] Investment Advisers Act Release No. 991, *supra* note 42.

[71] *See* section 203A of the Advisers Act (codifying Section 303 of NSMIA).

[72] *See* discussion of "notice filings" *supra* note 14.

[73] All advisers in Wyoming and the U.S. Virgin Islands (the only U.S. jurisdictions that do not have an investment adviser statute) and those whose principal office and place of business is in a foreign country register with us regardless of the amount of assets under management. *See* section 203A(a) of the Advisers Act.

[74] Part 1B is discussed in Section II.D.1.b. of this Release.

[75] Many of the items in Part 1A appear currently in Part I. Part 1A also includes several items that appear currently in Part II. *See* proposed Items 5.D., 5.E., 5.G., 6, 7, and 8. As proposed, Part 2 will not require advisers to enter data in discrete fields. *See* discussion of Part 2 of Form ADV *infra* Section II.D.2. of this Release.

would ask for the CRD number of the adviser (if it has one), any web site addresses of the adviser,[76] an e-mail address of a person we can contact about the form, and the fax number of the adviser.[77] The identifying information would be included in Item 1 of Part 1A of the form, and multiple or additional narrative responses to certain sub-items would be included on Schedule D.[78] Schedule I, which currently requires information relevant to whether the adviser should be registered with us or the state securities authorities, would be incorporated into the body of Form ADV in a new Item 2A.[79]

ii. *Educational and Business Background.* We propose to delete the requirements that an adviser report the educational and business background of its personnel.[80] Instead, advisers would be required to provide this information to clients in the adviser's brochure or brochure supplements.[81]

iii. *Disciplinary Disclosure.* We propose several amendments to the item requiring disclosure of disciplinary information about the adviser and certain of its advisory personnel.[82] Many of these amendments update the form, and reflect changes that we have made to Form BD over the years.[83] These changes will also permit advisers that are registered as broker-dealers to electronically copy and link disciplinary disclosure made in response to Form BD on NASDR's CRD system without re-typing the data into the IARD.[84] As proposed, each adviser—

- Would complete a Disciplinary Reporting Page (DRP) if it responds affirmatively to any of the disciplinary questions.[85] We are proposing three DRPs, one each for criminal, civil, and regulatory actions. The DRPs would elicit details regarding each disciplinary event in a structured format and replace current Schedules D and E.[86] The structured format, which we currently use in Form BD, is designed to yield better information than the free-text format of the current schedules.[87]
- Would only report disciplinary events occurring in the past ten years.[88] Currently, some questions limit reporting to events that occurred no more than ten years ago, but others have an unlimited reporting period.[89] Our authority to deny or revoke an adviser's registration for the most serious events—those involving criminal convictions—is limited to ten years following conviction,[90] a limitation recently reaffirmed by Congress.[91] Although we have authority to deny or revoke registration based upon lesser (civil or administrative) sanctions

[76] We visit web sites sponsored by advisers registered with us as part of our routine examinations.

[77] *See* proposed Items 1.E., 1.I., 1.J. and 1.F(4), respectively, of Part 1A of Form ADV. We are proposing to ask for the social security number and date of birth of control persons reported on Schedules A and B and persons for whom a Disciplinary Reporting Page is filed (discussed below) to permit the IARD to distinguish between persons who share the same name. To protect the privacy of these persons, the social security numbers will *not* be available on the public disclosure system. *See* Amendments to Forms and Schedules to Remove Voluntary Provision of Social Security Numbers, Securities Act Release No. 7424 (June 25, 1997) (62 FR 35338 (July 1, 1997)) (removing social security numbers from filings publicly available on EDGAR). Similarly, the public disclosure system will not report the home address of a sole proprietor (required by proposed Item 1.H.), unless the adviser's home address is also its principal office and place of business (required by proposed Item 1.F.).

[78] Proposed Schedule D would be the continuation schedule for Part 1A. Unlike current Schedule E, proposed Schedule D is structured and formatted based on the specific information to be entered on it.

[79] In addition, proposed Item 6.A. would ask whether the adviser is actively engaged in business as a bank. Recently-enacted legislation requires a bank, or a separately identifiable department or division of a bank, that advises a registered investment company to register with us as an investment adviser. *See* section 217 of the Gramm-Leach-Bliley Act, Pub. L. No. 106–102 (1999).

[80] Item 12 of Part I of Form ADV currently requires an adviser to provide this information to us for certain control individuals, and to a "jurisdiction" (*i.e.*, a state securities authority) for all individuals giving investment advice in that jurisdiction. *See* Investment Advisers Act Release No. 991, *supra* note 42 at n.5.

[81] *See* discussion of Part 2 *infra* at Section II.D.2. of this Release.

[82] Proposed Item 11 of Part 1A.

[83] We have substantively amended Form BD several times over the years. When we proposed amendments to Form BD in 1991, we noted that we were considering proposing similar amendments to Form ADV. *See* Amendments to Form BD, Securities Exchange Act Release No. 29643 (Sept. 3, 1991) (56 FR 44029 (Sept. 6, 1991)).

[84] There will remain, however, differences in the scope of disciplinary reporting between advisers and broker-dealers. Form ADV would continue to require advisers to disclose information about the disciplinary record of the adviser and its "advisory affiliates." The term "advisory affiliate" would continue to be defined to include persons who control or are controlled by the adviser. *See* Item 11 of Part I of Form ADV and proposed Item 11 of Part 1A. Form BD requires broker-dealers to disclose disciplinary information about the broker-dealer and its "control affiliates." While the term "control affiliate" is defined to include persons who control or are controlled by the broker-dealer, it also includes persons under common control with the broker-dealer. *See* Explanation of Terms, Form BD at page 2. This difference results from differences between the Advisers Act and the Exchange Act, under which broker-dealers are regulated. *Compare* Section 202(a)(17) of the Advisers Act (15 U.S.C. 80b–2(a)(17)) (defining "person associated with an investment adviser") and Section 3(a)(18) of the Exchange Act (15 U.S.C. 78c(a)(18)) (defining "person associated with broker").

Another difference between the two terms is that "advisory affiliate" includes all non-clerical employees while "control affiliate" includes only those employees who perform executive duties or have senior policy making authority. Since the disciplinary history of registered representatives of broker-dealers is submitted to NASDR on Form U–4, we previously concluded that it is only necessary for us to require broker-dealers to file on Form BD disciplinary information about broker-dealer employees in "control-type" positions. *See* Requests for Comments on Proposed Amendments to Broker-Dealer Successor Rules, Securities Exchange Act Release No. 21981 (Apr. 26, 1985) (50 FR 19196 (May 7, 1985)).

[85] In completing Form ADV's disciplinary questions on the IARD, an adviser that is registered as a broker-dealer will be presented with a list of all disciplinary events reported on Disciplinary Reporting Pages (DRPs) to its Form BD. The adviser will indicate which of its Form BD DRPs should be included on its Form ADV. These linked DRPs will be incorporated into the adviser's Form ADV. If the adviser subsequently amends its Form BD and modifies any information in a linked DRP, the IARD will alert the adviser that it must either accept the change for its Form ADV or reject the change and unlink the DRP from its Form BD. If the adviser unlinks a DRP, it must maintain separately the Form ADV DRP and the Form BD DRP.

[86] We first replaced Form BD's single DRP with six customized DRPs in 1996. *See* Form BD Amendments, Securities Exchange Act Release No. 37431 (July 12, 1996) (61 FR 37357 (July 18, 1996)). We recently amended Form BD's DRPs for electronic filing in 1999. *See* Securities Exchange Act Release No. 41594, *supra* note 3. The three Form BD DRPs that we are not proposing to include with Part 1A of Form ADV relate to disciplinary questions that we are not proposing to ask in Part 1A. The state securities authorities have included two of these questions (Items 2.C. and 2.D. of Part 1B) and a requirement for two corresponding DRPs (bond and judgment/lien) in proposed Part 1B. We recently amended Form BD's DRPs for electronic filing in 1999. *See* Securities Exchange Act Release No. 41594, *supra* note 3.

[87] Item 11 of Part I currently requires an adviser, for a "yes" answer to one of the disciplinary questions, to describe the action on Schedule E (if the action involved a partnership, corporation or other organization) or Schedule D (if the action involved an individual). Specifically, the adviser must provide the names of the individuals or organizations involved, the title and date of the action, the court or body taking the action, and a description of the action. The information advisers provide has been, in many cases, vague and imprecise. Use of the DRPs has elicited better information from broker-dealers.

[88] This ten-year limit would apply only to disciplinary information required by proposed Item 11 of Part 1A. *See* proposed Item 11 of Part 1A. Advisers may be required to include disciplinary events that occurred more than ten years ago in their brochure and brochure supplements. *See* discussion of Part 2A *infra* at Section II.D.2.a. of this Release. At the request of NASAA, state-registered advisers would continue to be required to report events more than ten years old in response to some questions. Each of the three DRPs we are proposing contain the following item: "This DRP should be removed from the ADV record because the event occurred more than ten years ago." Checking this item would result in the DRP being removed from the current information about the adviser. All such DRPs, however, would be retained in the IARD.

[89] The reporting periods for the current items generally reflect our authority to deny or revoke the registration of an adviser. *See* section 203(e) (15 U.S.C. 80b–3(e)).

[90] *See* section 203(e)(2) and (3) (15 U.S.C. 80b–3(e)(2) and (3)).

[91] *See* section 305 of NSMIA (expanding to all felonies our authority to take action against an adviser, while retaining the ten year time limitation) (codified in Section 203(e)(2) and (3) of the Advisers Act).

occurring more than ten years ago, we typically do not use that authority.[92] Over the years, however, we have received many complaints from advisers that are required to report minor disciplinary events occurring decades ago, but that have no other disciplinary events.[93]

• Would not report an unsatisfied judgment or lien; bankruptcy; or bond denial, payout, or revocation.[94] These disclosures generally are not relevant to our authority to grant or deny registration. An adviser also would not report a finding by a self-regulatory organization that the adviser violated a rule designated as "minor" under a plan approved by the Commission if the sanction imposed consists of a fine of $2,500 or less and the sanctioned person does not contest the fine.[95]

• Would be required to report actions of foreign courts and regulatory authorities,[96] and cease-and-desist orders issued by the Commission.[97]

Advisers also would be required to report felony criminal indictments and informations, and misdemeanor informations involving certain offenses,[98] as well as report military court convictions, misdemeanor perjury convictions, and conspiracy to commit certain offenses.[99]

• Could omit disciplinary information for advisory affiliates no longer associated with the adviser.[100]

iv. *Control Person Disclosure.* We are proposing revisions to the requirements for identifying persons who own or control the investment adviser. These changes, which are reflected in proposed Schedules A, B, and C, conform to the corresponding schedules of Form BD.[101] They should clarify and simplify the reporting of indirect interests in the adviser when, for example, the adviser is part of a large corporate structure. An adviser generally would no longer be required to report an indirect owner unless the indirect owner owned twenty-five percent of a direct owner.[102] Similarly, the instructions to these schedules clarify the requirements for imputing beneficial ownership of an adviser for reporting purposes.[103]

v. *Small Businesses.* We are proposing to add a new Item 12 that would request information we need to determine whether the adviser is a small business. We are required by the Regulatory Flexibility Act to consider the effects of our regulations on small businesses and need to know how many advisers registered with us are small businesses.[104] Generally, only those SEC-registered advisers with assets under management of less than $25 million would be required to respond to this item.[105]

b. Part 1B

Part 1B of Form ADV has been prepared by NASAA on behalf of the

[92] In response to amendments we proposed to Form BD in 1992, a commenter suggested that we limit all of Form BD's disciplinary questions to ten years. At that time, we noted that Form BD also is used by the state securities authorities and the self-regulatory organizations, which require the disclosure of disciplinary information dating beyond ten years. We therefore decided not to limit the disciplinary reporting obligation in Form BD. *See* Adoption of Form Amendments, Securities Exchange Act Release No. 30958 (July 27, 1992) (57 FR 34028 (July 31, 1992)) at n.13.

[93] These advisers have pointed out that had they committed a more serious infraction and been convicted by a court of a crime, Form ADV would not require any reporting.

[94] This information is currently required by Items 11.H., 11.I., 11.J., and 11.K. of Part I. These reporting requirements were originally included in the form to "accommodate the regulatory interests of the (states)." Investment Advisers Act Release No. 991, *supra* note 42 at II.C. We are proposing to amend Part 2 of the form to require advisers (and supervised persons) to disclose to their clients whether they have been the subject of a bankruptcy petition during the past ten years and whether the adviser is in a precarious financial condition. *See* proposed Items 18.B. and 18.C. of Part 2A, and proposed Item 7 of Part 2B.

[95] *See* Securities Exchange Act Release No. 30958 (making a similar change to Form BD), *supra* note 92.

[96] *See* proposed Items 11.A., 11.B., and 11.D. of Part 1A . The International Securities Enforcement Cooperation Act of 1990 (Pub. L. No. 101–550, 104 Stat. 2713 (Nov. 15, 1990) (codified in the Advisers Act at 15 U.S.C. 80b–2(a) and 80b–3)) gave us explicit authority to bar, suspend, or restrict the activities of advisers based on the findings of a foreign court or foreign securities authority. The Exchange Act was similarly amended (codified at 15 U.S.C. 78c(a) and 78o(b)), and Form BD contains substantively similar disclosure requirements. *See* Securities Exchange Act Release No. 30958, *supra* note 92 at n.11.

[97] *See* proposed Item 11.C(5) of Part 1A. The Securities Enforcement Remedies and Penny Stock Reform Act (Pub. L. No. 101–429, 104 Stat. 931 (Oct. 15, 1990) (codified in the Advisers Act at 15 U.S.C. 80b–3 and 80b–9)) (Remedies Act of 1990) gave us authority to seek civil monetary penalties in court proceedings and to impose monetary penalties and order disgorgement in administrative proceedings. The Remedies Act also provided us with both temporary and permanent cease-and-desist authority to prevent violations of the securities laws. The Exchange Act was similarly amended (codified at 15 U.S.C. 78u–2 and 78u–3), and Form BD contains substantively similar reporting requirements. *See* Securities Exchange Act Release No. 30958, *supra* note 92 at n.12.

[98] These additional reporting requirements result from our proposed definition of the term "proceeding," which we have incorporated from Form BD. *See* Broker-Dealer Registration and Reporting, Securities Exchange Act Release No. 31398 (Nov. 4, 1992) (57 FR 53261 (Nov. 9, 1992)). We also are proposing to incorporate from Form BD definitions of the following terms: "charged," "felony," "misdemeanor," "found," "enjoined," and "minor rule violation." *See* Securities Exchange Act Release No. 37431, *supra* note 86. *See* also Glossary of Terms included in Appendix A of this Release.

[99] These changes further conform Form ADV's disciplinary questions to those of Form BD. *See* Form BD Amendments, Securities Exchange Act Release No. 35224 (Jan. 12, 1995) (60 FR 4040 (Jan. 19, 1995)) (proposing), and Form BD Amendments, Securities Exchange Act Release No. 37431, *supra* note 86 (adopting). Similarly, proposed Item 4, asking whether the adviser is succeeding to the business of a registered investment adviser, would conform to Form BD Item 5. *See* Adoption of Revised Form BD and Revised Form BDW, Securities Exchange Act Release No. 20406 (Nov. 22, 1983) (48 FR 54436 (Dec. 2, 1983)).

[100] Form ADV currently provides no easy way for an adviser to indicate that a person for whom the adviser has submitted a Schedule D reporting a disciplinary event is no longer employed by the adviser. Each of the three DRPs we are proposing contains the following item: "This DRP should be removed from the ADV record because the advisory affiliate(s) is no longer associated with the adviser." Checking this item would result in the DRP being removed from the current information about the adviser and thus not available through the public disclosure system. All such DRPs, however, would be retained in the IARD and would be available to regulators.

[101] These schedules to Form BD were adopted in 1992. *See* Securities Exchange Act Release No. 30958, *supra* note 92. As part of its initial application for registration, an adviser would list its direct owners and executive officers on Schedule A, and if an adviser had indirect owners, these owners would be listed on Schedule B. An adviser with a continuing hardship exemption would use Schedule C to amend the information it filed on Schedules A and B. Advisers will not "complete" Schedule C when filing through the IARD; they will simply make changes on Schedules A and B.

Similar to the way the Form BD DRPs submitted by an adviser that also is broker-dealer can be linked to the adviser's Form ADV, the Schedules A and B for such an adviser would be linked. Because the definition of control is the same for Form BD and Form ADV, however, the information submitted in Schedules A and B by an adviser that is a registered broker-dealer must be the same. IARD therefore will require an adviser that is a registered broker-dealer, in completing its Form ADV on the IARD, to acknowledge and accept every change it makes to its Schedules A and B of Form BD.

[102] For purposes of Schedule B, the 25% ownership interest is determined based on the form of organization. For a corporation, ownership is based on whether the indirect owner owns 25% or more of a class of voting securities. For a partnership or limited liability company, ownership is based on whether the indirect owner has the right to receive upon dissolution, or has contributed, 25% or more of the partnership's or limited liability company's capital.

In proposing that advisers report only 25% owners of a direct owner, we have attempted to strike a balance between our need to know who controls an adviser and the burden on advisers to collect information about indirect owners. We recognize that it is often difficult for foreign-owned advisers, for example, to obtain ownership information about remote interests. *See* Securities Exchange Act Release No. 30958, *supra* note 92 at Section II.C.1 (describing difficulties for foreign-owned broker-dealers to obtain ownership information). An adviser, however, would be required by proposed Item 10 of Part 1A to identify an indirect owner who owns less than 25% of a direct owner but nonetheless can influence the management or policies of the adviser. *Cf.* Securities Exchange Act Release No. 30958, *supra* note 92 at Section II.C.1(b) (adopting similar reporting requirements for Form BD).

[103] *See* Securities Exchange Act Release No. 30958, *supra* note 92 at Section II.C.1(a).

[104] 5 U.S.C. 603.

[105] *See* discussion of rule 0–7, *supra* note 61 (definition of "small business" or "small entity" for purposes of the Advisers Act).

state securities authorities. It would require state-registered advisers to provide information about bonding, arbitration actions, other civil and regulatory actions, and whether sole proprietors have taken certain qualifying exams or attained various professional designations. Most of this information is currently required by the state securities authorities.

Only state-registered advisers will be required to complete Part 1B.[106] Completion of this part of the form, therefore, is not an SEC requirement, and Part 1B is not included in this Release as a proposed SEC rule. We will accept any comments and forward them to NASAA for consideration by the state securities authorities.[107]

2. Part 2

Currently, Part II of Form ADV contains the requirements for the disclosure statement that advisers must provide to prospective clients and offer to clients annually. The disclosure statement contains information about the adviser's fees, business practices, and conflicts of interest. Advisers are required to provide clients either a copy of Part II or a narrative brochure that contains at least the information required in Part II.[108] Most advisers provide clients with Part II, which asks a series of multiple-choice and fill-in-the-blank questions supplemented in some cases by narrative schedules.

Our experience over the 15 years since Uniform Form ADV was adopted has convinced us that we need a better approach to client disclosure. First, the format of Part II does not lend itself to meaningful, clear disclosure. In some cases, an adviser's response to a question may be accurate but paint an inaccurate picture of its practices. For example, an adviser may truthfully respond to current Item 4.C. by indicating it uses all of the strategies listed by the item, but a client may not appreciate that the adviser's principal strategy involves, for example, risky options trading. In other cases, clients must draw inferences from an adviser having checked a box. For example, if an adviser is paid through commissions on securities that it advises clients to purchase or sell, a checked box in current Item 1.C. will disclose this practice, but not the conflict of interest the adviser has as a result. Advisers can use Part II's narrative schedules to expand on a check-the-box answer, but the schedules are physically separate from the checked box and are often written in legalese or technical jargon.

Second, because the information in Part II concerns the advisory *firm*, clients may not receive information they want and need about the firm's employees with whom they have contact and on whom they rely for investment advice. In the case of smaller firms, the current disclosure requirements, which focus on the senior executives of the advisory firm, may be adequate.[109] But in a growing number of large advisory firms, clients may never meet the firm's senior executives, who may be located in a different city and may have only an indirect effect on the advice given to the client. We believe clients of these firms may be more interested in the background and qualifications of the individuals with whom they are dealing than in the background and qualifications of executive officers.

We propose to address these concerns (and others, described below) by extensively revising the format of advisers' disclosure requirements. Under the proposed rules, each adviser would be required to give clients a narrative brochure written in plain English.[110] Items in Part 2 would specify the disclosure required in the brochure, but advisers would be generally free to structure the disclosure and order the topics in a manner that best conveys the required information. Our model is Schedule H to Form ADV, which currently requires wrap fee program sponsors to give clients a narrative brochure describing the wrap program.[111] Our experience with the wrap fee brochure suggests that narrative firm brochures will provide advisers' clients with better, more understandable disclosure.

The new adviser brochures would be organized in two parts, a firm brochure and a brochure supplement for each individual who provides advisory services to clients on the adviser's behalf. As described in more detail below, advisers would be required to deliver a brochure to each client, and would be required to deliver an individual's supplement only to those clients to whom that individual will provide advisory services. Part 2A would contain the requirements for the firm brochure, and Part 2B for the brochure supplements.

a. Part 2A: The Firm Brochure

Each adviser registered with us would be required to deliver its brochure at the start of the advisory relationship,[112] and to offer to deliver the brochure annually.[113] Advisers would be required to use their new brochures and brochure supplements to meet these delivery requirements by the end of the first "roll out" phase of the IARD.[114] To allow advisers to make a smooth transition, we are proposing a further 30-day transition period to allow advisers to provide the new brochures and supplements to existing advisory clients.[115]

The proposed delivery requirements would be very similar to the current ones, with two differences of note.[116] First, we propose to clarify that an adviser acting as the general partner for a limited partnership must provide a brochure to each limited partner.[117]

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[106] State-registered advisers would be required by state rather than federal law to complete Part 1B. *See* proposed General Instruction 2 to Form ADV.

[107] We request that you clearly indicate in your comment letter which of your comments relate to Part 1B.

[108] Rule 204–3(a) (17 CFR 275.204–3(a)).

[109] Items 5 and 6 of current Part II.

[110] *See* proposed General Instructions 1 and 2 to Part 2 of Form ADV.

[111] Schedule H to Form ADV; rule 204–3(f)(1) (17 CFR 275.204–3(f)(1)).

[112] The adviser would be required to deliver the brochure before or at the time it enters into an advisory agreement with the client. Proposed amended rule 204–3(b)(1)(A) and Instruction 1 to Part 2A. Our proposed rule and the proposed instructions would clarify that the brochure must be delivered whether the advisory agreement is oral or in writing. For a discussion of proposed supplement delivery requirements, *see infra* text accompanying notes 212–215.

[113] Proposed amended rule 204–3(b)(1)(A) and Instruction 1 to Part 2A. Advisers would not be required to deliver or offer a brochure to a client that is a registered investment company or to a client who receives only impersonal advisory services costing less than $500 per year. These exceptions are contained in current rule 204–3(c)(2) (17 CFR 275.204–3(c)(2)), except that the dollar amount threshold would increase from $200 to $500 to reflect the effects of inflation since the rule was adopted in 1979. *See* Investment Adviser Requirements Concerning Disclosure, Recordkeeping, Applications for Registration and Annual Filings, Investment Advisers Act Release No. 664 (Jan. 30, 1979) (44 FR 7870 (Feb. 7, 1979)).

[114] *See* proposed rule 204–3(i)(1); *see also supra* text accompanying notes 29–31.

[115] *See* proposed rule 204–3(i)(2).

[116] Currently, rule 204–3 requires an adviser to deliver the brochure at least 48 hours before entering into the advisory agreement, *or* at the time of entering into the agreement if the client has the right to terminate the agreement without penalty within five business days thereafter. We are proposing to simply require that the adviser deliver the brochure before or at the time of entering into the agreement. It is our view that an advisory client has a right at any time to terminate the advisory relationship and receive a refund of any prepaid advisory fees that the adviser has not yet earned. *See* Jason Baker Tuttle, Sr., Initial Decision Release No. 13 (Jan. 8, 1990) (adviser failed to refund prepaid fees to clients); *see also* Monitored Assets Corp., Investment Advisers Act Release No. 1195 (Aug. 28, 1989) (advisers that refunded prepaid advisory fees only to certain clients violated anti-fraud provisions of the Act).

[117] Proposed Instruction 3 to Part 2A. We understand that some advisers have taken the position that the partnership is the "client" and thus the adviser need only deliver the brochure to the general partner, *i.e.*, itself. This position results, for all practical purposes, in the delivery of no brochure, and is inconsistent with the remedial

Second, we propose to require that updates to the brochure be delivered to clients whenever information in the brochure becomes materially inaccurate.[118] Currently, our rules require initial delivery of the brochure, but require no further brochure delivery unless the client accepts the adviser's annual offer.[119] The anti-fraud provisions of the Act require, however, an adviser to fully disclose information about all material conflicts, which require the adviser to correct previous disclosure about conflicts to clients.[120]

We believe it is incumbent upon an adviser, as a fiduciary, to keep its clients apprised of material changes in its operations, its fees, key advisory personnel, and other information provided in the advisory brochure. Mutual fund shareholders are not required to rely on information in stale prospectuses; we see no reason why advisory clients should rely on stale brochures. Therefore, we are proposing to require that an adviser provide clients with written brochure updates whenever information in the brochure becomes materially incorrect, and include these updates with brochures delivered to prospective clients.[121] These updates can take the form of either a reprinted brochure or a "sticker," a piece of paper identifying the stale information and providing the current information.[122] Advisers that deliver their brochure to clients electronically could also deliver stickers electronically.[123]

As proposed, advisers could use stickers to update a firm brochure in the same way that sponsors of wrap fee programs currently use stickers to update their narrative wrap fee program brochures.[124] Generally, an adviser could use a sticker for any amendment(s) so long as the brochure remains readable and clear. We would, however, require the adviser to revise (and reprint) its brochure each year as part of its annual updating amendment. Thus, the current brochure that the adviser offers clients annually would be a "clean" document that incorporates the text from all existing stickers. We request comment on this proposal. How many stickers would advisers expect to accumulate over one year? How many changes would those stickers effect, and how complex would they be? Would clients be confused if advisers were required to reprint their brochures only every two or three years, rather than every year?

The information required in a firm brochure would be specified by Part 2A of Form ADV.[125] Part 2A would consist of 19 separate items, each of which elicits required disclosure on a distinct topic.[126] We have drawn the items in Part 2A largely from current Part II, redrafting them as necessary to reflect the narrative format of the new brochure.[127] Some Part 2A items are new, or have been revised to reflect new concerns or developments in the investment adviser industry. Much of the information required in the proposed narrative brochure concerns an adviser's conflicts of interest with its clients, and is disclosure the adviser already must make to clients, as a fiduciary, under the anti-fraud provisions of the Advisers Act.[128] Thus, many of the proposed disclosure items will serve to give advisers guidance on fulfilling their statutory disclosure obligations to clients.

The items in proposed Part 2A will not, of course, cover every possible conflict. As a result, delivering a brochure (and supplements) prepared in accordance with Part 2 may not fully satisfy an adviser's disclosure obligations. We make this point clear in both the proposed Form and brochure

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purposes of the rule. The position is, we understand, based on provisions in rule 203(b)(3)–1(a)(2) (17 CFR 275.203(b)(3)–1(a)(2)), which permit an adviser to treat a partnership as a single client under certain conditions. However, that rule is limited by its terms to counting clients for determining eligibility for the "small adviser exception" to the registration requirements. See section 203(b)(3) (15 U.S.C. 80b–3(b)(3)) and Investment Advisers Act Release No. 1633, *supra* note 40 at section II.G. ("rule 203(b)(3)–1 * * * define(s) the term 'client' only for purposes of counting clients under section 203(b)(3) * * * (p)ersons that are grouped together for purposes of (this) section may be required to be treated as separate clients for other purposes under the Advisers Act * * *"). We note the application of the anti-fraud provisions of the Advisers Act to limited partners. *See Abrahamson* v. *Fleschner*, 568 F.2d 862 (2d Cir. 1977), *cert. denied*, 436 U.S. 913 (1978).

[118] *See* proposed rule 204–3(f).

[119] The annual offer, and delivery if the client accepts the offer, is required under current rules 204–3(c)(1) and (4).

[120] We have taken enforcement action against advisers under the anti-fraud provisions of the Advisers Act for failing to disclose new conflicts of interest. *See, e.g.*, Renaissance Capital Advisors, Inc., Investment Advisers Act Release No. 1688 (Dec. 22, 1997) (adviser failed to inform clients that it had begun paying for non-research expenses with soft dollar credits).

[121] As discussed below, advisers would be permitted to use a correction slip or "sticker" to update their brochure if they preferred not to revise the brochure itself. Advisers choosing to update using a sticker could deliver just the sticker to existing clients; advisers choosing to revise the brochure would be required to provide the revised brochure to existing clients in order to notify them of the updated information.

[122] *See* proposed Instruction 8 to Part 2A. The adviser's choice between reprinting the brochure and using a sticker would apply only to the brochure that the adviser distributes to clients and maintains in its files under our recordkeeping rules. Once the IARD accepts electronic filings of Part 2A, an adviser amending its brochure would be required to refile a revised brochure through the IARD, regardless of whether the adviser has chosen to give clients a sticker or a reprinted brochure. Thus, members of the public viewing the brochure on-line would have access to current information about the adviser.

[123] We have published interpretive guidelines for advisers' delivery of disclosure through electronic media. *See* Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information; Additional Examples Under the Securities Act of 1933, Securities Exchange Act of 1934, and Investment Company Act of 1940, Investment Advisers Act Release No. 1562 (May 9 1996) (61 FR 24644 (May 15, 1996)) (available at <www.sec.gov/rules/concept/33–7288.txt> (last visited Mar. 15, 2000)). Our proposed instructions to Part 2 remind advisers of this option, and provide this website address.

[124] *See* current Schedule H to Form ADV.

[125] Advisers would be permitted to include non-required information in their brochures, provided it does not obscure required information. For example, an adviser could elect to include in its brochure the annual privacy notice required under section 504 of the Gramm-Leach-Bliley Act. P.L. No. 106–102, 113 Stat. 1338 (1999). The Gramm-Leach-Bliley Act, which was signed into law last November, requires investment advisers (among other financial service providers) in certain circumstances to provide initial and annual privacy notices to individuals. The notices must state (i) the adviser's policies and practices regarding its disclosure of nonpublic personal information to other parties, and (ii) how individuals can "opt-out," that is, prevent the adviser from disclosing their information to nonaffiliated third parties. The Commission proposed rules implementing these privacy notice requirements on March 2, 2000. See Privacy of Consumer Financial Information (Regulation S–P), Investment Advisers Act Release No. 1856 (Mar. 2, 2000) [65 FR 12354 (Mar. 8, 2000)]. Advisers that use their brochure to transmit their annual privacy notice would, of course, need to deliver, not merely offer, the brochure each year.

[126] Proposed Part 2A has a main body and an appendix, Appendix 1. Appendix 1 contains the requirements for a specialized type of firm brochure—a wrap fee program brochure. As discussed below, Appendix 1 would require disclosure similar to that required by current Schedule H. In the main body of Part 2A, an additional item, Item 20, sets out additional disclosure that state securities authorities will require of advisers registered with them. Advisers registered only with us would be required to respond only to Items 1 through 19. Item 20 of Part 2A would be a state, rather than an SEC, requirement and therefore we are not requesting comment on it. We will, however, pass on to NASAA any comments we receive on Item 20.

[127] In addition, we propose to move other disclosure requirements from current Part II into new Part 2B, for the brochure supplement, and to delete some current Part II items we believe are no longer necessary. We have redrafted the instructions to Part 2 to make them easier to understand and to clarify advisers' obligations under the Advisers Act. The proposed instructions remind advisers that they are fiduciaries and have an obligation to make full and fair disclosure of all material conflicts with clients. The instructions require advisers to use plain English principles in drafting their brochures, provide guidance on preparing different brochures for different clients, explain the special rules for preparing wrap fee brochures, and explain how advisers without an operating history should respond to items. The instructions also explain the brochure rule's delivery requirements, explain brochure updating requirements, remind advisers that under certain conditions they can deliver the brochure electronically, and explain our filing requirements.

[128] Section 206 (15 U.S.C. 80b–6).

rule.[129] We request comment whether there are other common disclosures advisers make to clients that we should also include in the items of Part 2.

Item 1. Cover Page. The brochure cover page would be required to identify the advisory firm, its business address, and telephone number; the date of the brochure; and the name of a person who can be contacted for further information. The cover page would also include a statement that the brochure has not been approved by the Commission or any state securities authority. If the adviser holds itself out as being "registered," the cover page must also explain that registration does not imply that the adviser possesses a certain level of skill or training.[130] The cover page would also provide the address of a web site so that a client or prospective client can obtain additional information about the adviser through the IARD.

Item 2. Material Changes. The brochure would include a summary of material changes since its last annual update, to help clients identify new or revised information. The summary would appear on the cover page of the brochure or immediately thereafter, or could be included in a separate letter sent to clients accompanying the brochure.[131]

Item 3. Table of Contents. The new brochures would include a table of contents detailed enough to permit clients to locate topics easily.

Item 4. Advisory Business. Advisers would be required to include background information about the advisory firm, including how long it has been in business and the names of its principal owners. The brochure would also describe the firm's advisory business—the types of advisory services offered, whether the adviser tailors services to clients' individual needs, and whether clients may impose individual investment restrictions.[132]

We are not proposing to require all advisers to disclose the details of how they manage client assets. For many advisers, descriptions of how they formulate advice or manage client portfolios are likely to be either too generalized or too client-specific to be helpful. However, we propose to require an adviser that holds itself out as specializing in a particular service to explain its specialty in detail,[133] and to require an adviser that provides advice about only limited types of securities to explain its services and their limitations. In addition, advisers that manage assets would disclose the amount they manage with investment discretion, and the amount without. Wrap fee portfolio managers would explain any differences in their portfolio management for wrap fee and non-wrap clients, as well as identifying the wrap programs they participate in and disclosing that they receive part of the wrap fee.[134]

Item 5. Fees and Compensation. The brochure would describe how the adviser is paid for providing advisory services.[135] The adviser would be required to disclose its fee schedule, disclose whether fees are negotiable, discuss whether the firm bills clients or deducts fees directly from the clients' accounts, and explain how often the firm assesses fees. Advisers charging fees in advance would also be required to explain how they calculate and refund prepaid fees when a client contract terminates.[136]

Advisory clients may not appreciate that they will bear other costs in addition to advisory fees. Thus, in addition to information about advisory fees, we propose to require the brochure to describe the types and amounts (or ranges) of other costs, such as brokerage, custody fees, and fund expenses, that clients may pay in connection with advisory services.

In some cases, the type of compensation an adviser receives will involve a conflict of interest. An adviser that receives commissions or other payments for sales of securities to clients (transaction-based compensation) has a serious conflict of interest with its clients.[137] This practice gives the adviser and its personnel an incentive to base investment recommendations on the amount of compensation they will receive rather than on the client's best interests.[138] We propose to require advisers who receive transaction-based compensation (or whose personnel receive transaction-based compensation) to disclose this practice and the conflict of interest, and to describe the firm's control procedures for addressing the conflict.[139] Item 5 would also require these advisers to disclose that clients may purchase the same securities or investment products from other brokers.[140] Should proposed Item 5 also require an adviser to discuss its conflict of interest in charging performance or incentive fees, or should

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[129] *See* proposed General Instruction 3 to Part 2; proposed rule 204–3(g).

[130] We have observed that the emphasis on SEC registration, in some advisers' marketing materials, appears to suggest that registration either carries some official imprimatur or indicates that the adviser has attained a particular level of skill or ability. Section 208(a) of the Advisers Act (15 U.S.C. 80b–8(a)) makes such suggestions unlawful. *See, e.g.*, Money Machine, Investment Advisers Act Release No. 783 (Nov. 12, 1981) (adviser violated section 206(a) by representing or implying that the Commission had passed upon the adviser's abilities and qualifications); Advanced Analysis, Inc., Investment Advisers Act Release No. 397 (Jan. 18, 1974) (adviser violated section 208(a) by representing that the Commission had passed upon the adviser's qualifications and methods of security analysis).

[131] An adviser including the summary in a separate letter to clients would not be required to file the letter with us, but a proposed amendment to our recordkeeping rule would require the adviser to preserve a copy. *See* proposed rule 204(a)(14)(i).

[132] Proposed Item 4, together with proposed Item 7, incorporate requirements of current Item 3 of Part II. Proposed Item 4 also incorporates requirements of current Items 1.A. and 1.D. of Part II.

[133] In response to proposed Item 7, advisers offering specialized services would also be required to disclose any specific risks their specialty involves. *See* discussion of proposed Item 7, *infra*, text accompanying notes 143–144.

[134] Proposed Item 4.F. Item 4.F. would apply only to advisers that *manage portfolios* in wrap fee programs; these advisers would provide wrap fee clients with their regular firm brochure. Advisers that *sponsor* wrap fee programs would prepare a separate "wrap fee brochure" for their wrap fee clients in compliance with Part 2A Appendix 1. *See infra* text accompanying note 202.

[135] Proposed Item 5 incorporates requirements of current Items 1.C., 1.D., and 9.B. of Part II.

[136] Advisers must refund prepaid unearned advisory fees to clients when the advisory relationship terminates. *See, e.g.*, Jason Baker Tuttle, Sr., *supra* note 116.

[137] A congressional committee has characterized the practice of an adviser receiving transaction-based compensation as "(o)ne of the most serious and frequent conflicts of interest that advisers have with clients." H.R. Rep. No. 75, 103d Cong., 1st Sess. 19 (1993).

[138] Because of this conflict, advisers are required by the anti-fraud provisions of the Advisers Act to disclose their receipt of such compensation to clients. We have brought enforcement actions against advisers who failed to make such disclosures. *See* Carona & Hodges Management, Inc., and James G. Carona, Investment Advisers Act Release No. 1403 (Feb. 8, 1994) (adviser invested client assets in risky, developmental-stage companies without disclosing that the adviser received loan fees from those companies for doing so); Westmark Financial Services Corp., Investment Advisers Act Release No. 1117 (May 17, 1988) (adviser and principal failed to state that they would receive commissions on certain securities they recommended to clients); and John S. Lalonde, Investment Advisers Act Release No. 1103 (Jan. 25, 1988) (adviser failed to disclose commissions received on sales of limited partnership interests).

[139] As discussed below, advisers may engage in practices that must be disclosed under both proposed Item 5 and proposed Item 10.A., which would require disclosure when the adviser has a financial interest in securities that it recommends to clients, or under both proposed Item 5 and proposed Item 13, which would require disclosure when the adviser receives an economic benefit from a non-client. A brochure would not need to repeat information simply because the information is responsive to more than one item.

[140] *E.g.*, Westmark Financial Services Corp., Investment Advisers Act Release No. 1117 (May 16, 1988) (adviser failed to disclose that clients could purchase securities from other broker-dealer). In addition, an adviser that receives more than 50% of its revenue from commissions and other sales-based compensation would explain that commissions are the firm's primary (or, if applicable, exclusive) form of compensation, and an adviser that charges *both* advisory fees and commissions would disclose whether it reduces its fees to offset the commissions.

we continue to rely on anti-fraud provisions to require disclosure when this type of fee structure presents a material conflict? [141]

Item 6. Types of Clients. The brochure would describe the types of advisory clients the firm generally has. The adviser would also disclose its requirements, such as minimum account size, for opening or maintaining an account.[142]

Item 7. Methods of Analysis, Investment Strategies and Risk of Loss. Item 7 would require the brochure to describe the adviser's methods of analysis and investment strategies. As noted earlier, Item 4 of Part II currently asks for the adviser's methods of analysis, sources of information, and investment strategies through a series of check boxes. The current format necessarily covers a limited number of analytical methods and strategies. Moreover, clients may not appreciate the meaning of the methods listed, or may not understand the implications for how client accounts are actually managed using a particular method.[143] We believe that an adviser's narrative description will provide clients with more useful information.

We are also proposing that the brochure discuss the risks clients face in following the adviser's advice or permitting the adviser to manage assets. Advisers that offer a wide variety of advisory services could simply explain that investing in securities involves a risk of loss; we would not require these advisers to list the risks involved in each type of security or trading strategy. Advisers that use primarily a particular method of analysis, strategy, or type of security would be required to explain the specific risks involved,[144] with more detail if those risks are significant or unusual.

Item 8. Disciplinary Information. We propose to require an adviser's brochure to disclose information about the firm's disciplinary history. This disclosure would include descriptions of, among other events, any convictions for theft, fraud, bribery, perjury, forgery and violations of securities laws by the adviser or one of its executives. Disciplinary events such as these reflect on the integrity of the adviser and its management persons. Thus, disclosure of this information is material to clients.

Although we have long viewed the anti-fraud provisions of the Advisers Act as requiring advisers to disclose disciplinary information,[145] we have not required this disclosure to be included in Part II of Form ADV or the client brochure.[146] One of our anti-fraud rules, rule 206(4)–4, requires advisers to inform clients and prospective clients promptly about any "legal or disciplinary event that is material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients." [147] The rule provides a list of events that are presumed to be material if they occurred in the previous ten years.[148] The adviser may (but is not required to) make this disclosure in its brochure, and may make it orally.

Information about an adviser's illegal or unethical conduct is very important to a client who is deciding whether to engage or continue to engage the adviser. When assessing whether an adviser will fulfill its obligations to clients, an investor would likely give great weight to whether the adviser has met its fiduciary and other legal obligations in the past. Because of the importance of this information to clients, we are proposing to require it be in writing and included in the brochure along with other material information about the adviser.[149] A writing requirement will also permit us to better monitor compliance with this disclosure requirement.[150] We request comment on this proposal, specifically whether disciplinary information should appear in a separate written document accompanying the brochure, rather than the brochure itself, in order to highlight its importance to advisory clients. We also request comment whether there are other approaches to achieve these same disclosure and compliance objectives.

We have modeled proposed Item 8 on rule 206(4)–4, which we propose to rescind. Item 8 would require an adviser's brochure to disclose all material facts about any legal or disciplinary event material to evaluating the adviser's business or the integrity of its management. An adviser must *presume* that certain disciplinary events described in Item 8 are material if the event involved the adviser or a management person and occurred in the previous ten years.[151] The adviser may overcome (rebut) this presumption, in which case no disclosure is required. A note in Item 8 would explain four factors the adviser should consider when assessing whether the presumption can be rebutted.[152] We

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[141] *See* Exemption To Allow Investment Advisers To Charge Fees Based Upon a Share of Capital Gains Upon or Capital Appreciation of a Client's Account, Investment Advisers Act Release No. 1731 (July 15, 1998) (63 FR 39022 (July 21, 1998)).

[142] Proposed Item 8 incorporates requirements of current Items 2 and 10 of Part II.

[143] *See* current Item 4 of Part II. Proposed Item 7 also incorporates requirements of current Item 3 of Part II.

[144] Advisers whose primary strategy involves frequent trading would have to explain how the strategy may affect performance, due to higher transaction costs and taxes.

[145] *See, e.g.*, Jesse Rosenblum, Investment Advisers Act Release No. 913 (May 17, 1984) (adviser who failed to tell prospective clients about an injunction obtained against the adviser by state securities authority "omitted a material fact that was essential to an evaluation of his qualifications as an investment adviser * * * (and that) investors surely would have wanted to know (about the injunction) before entrusting their funds to (the adviser's) management").

[146] When we proposed Uniform Form ADV in 1985, we considered requiring advisers' brochures to contain substantially the same disciplinary information advisers must report to us, which includes disciplinary information not only about the adviser and its management persons but also about its advisory personnel. Uniform Investment Adviser Registration Application Form, Investment Advisers Act Release No. 967 (Apr. 24, 1985) (50 FR 18500 (May 1, 1985)). When we adopted Uniform Form ADV later in 1985, we excluded this requirement because of concerns that, in some cases, the information could be voluminous. Investment Advisers Act Release No. 991, *supra* note 42. Under the current proposal, as discussed above, the disciplinary information in the firm's brochure would be limited to information about the firm and its management persons and, as discussed below, would be similar to that currently presumed to be material under rule 206(4)–4. Disciplinary information about advisory personnel would be included in brochure supplements. *See* discussion of proposed Item 3 of Part 2B, *infra* Section II.D.2.b. of this Release.

[147] Rule 206(4)–4(a)(2) (17 CFR 275.206(4)–4(a)(2)).

[148] Rule 206(4)–4(b) (17 CFR 275.206(4)–4(b)).

[149] In addition, the IARD will permit a client or prospective client to view an adviser's reports of disciplinary events in response to proposed Item 11 of Part 1A of Form ADV. However, we would not rely on the IARD to inform clients and prospective clients of disciplinary events. We believe that advisers have an affirmative obligation under the Advisers Act to disclose material disciplinary events to clients and prospective clients, and that clients and prospective clients should not bear the burden of engaging in such a search (and updating it continuously). We also note that proposed Item 8 of Part 2A and current rule 206(4)–4 both require disclosure of all material disciplinary events, which is broader than proposed Item 11 of Part 1A would require.

[150] Under rule 206(4)–4, an adviser must disclose a disciplinary event to clients "promptly." As a result, including this information in the brochure (under current rules) may not satisfy rule 206(4)–4, because the brochure must only be delivered to clients at the beginning of the advisory relationship and offered annually thereafter. *See* note appended to rule 206(4)–4. Our proposed revisions to the updating requirement would resolve the differences in the delivery requirements. *See supra* Section II.D.2.a. of this Release.

[151] An adviser's "management persons" are anyone with the power to exercise, directly or indirectly, a controlling influence over the adviser's management or policies, or to determine the general investment advice given to the adviser's clients. *See* Glossary of Terms, definition of "management person."

[152] These factors are: (1) The proximity of the person involved in the disciplinary event to the advisory function; (2) the nature of the infraction that led to the disciplinary event; (3) the severity of the disciplinary sanction; and (4) the time elapsed since the date of the disciplinary event. These are the same factors advisers use to determine materiality under current rule 206(4)–4. *See* Financial and Disciplinary Information that

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propose to require advisers registered with us to keep a file memorandum if the adviser does not disclose an event described in Item 8. The memorandum will memorialize the adviser's determination, avoid later disagreements as to the basis for the determination, and better permit our staff to monitor compliance with this important disclosure requirement.[153]

We are proposing several revisions to the provisions in the list of disciplinary events that would move from rule 206(4)–4 into new Item 8. First, we would update some of the provisions to reflect changes in the law.[154] Second, we would make certain clarifying revisions to the listed events.[155] Finally, we would require an adviser subject to one of our administrative orders to provide clients and prospective clients with a copy of that order for a period of one year following the date of the order.[156]

Rule 206(4)–4 requires an adviser to disclose a civil action in which the adviser is found to have violated an investment-related statute.[157] Today, however, many disputes between securities firms and their customers are resolved through arbitration or other alternative dispute resolution, rather than civil lawsuits. As a result, there may now be more violations of investment-related statutes that are not presumed to be material under rule 206(4)–4 and therefore are not typically disclosed to clients. In Item 20 of Part 2A, state securities authorities have included a requirement that state-registered advisers disclose certain arbitration liability if the claim was in excess of $2,500. Should we include a similar requirement in Item 8? If so, should our requirement be limited to arbitration *awards* for $2,500 rather than *claims* for $2,500? Should the amount be higher? Since some arbitrators may not issue reports of their findings, how should we draft Item 8 to distinguish arbitrations involving matters that do not reflect upon the integrity of the adviser (such as some contract disputes), from those that do? Should we limit the requirement to arbitrations in which the arbitrator finds a violation of an investment-related statute? If we do, will advisers and their affiliates decline to agree to use arbitrators who make findings?

Item 9. Other Financial Industry Activities and Affiliations. We propose to require advisers to disclose information about their other financial industry activities and affiliations. These other activities and affiliations may create conflicts of interest between the advisory firm and its clients, and may impair the objectivity of the investment advice given.

Proposed Item 9 would require an adviser to disclose whether it (or any of its management persons) is registered or has applied to register as a broker or commodities professional. The brochure would also describe material arrangements the adviser (or any of its management persons) has with related financial industry participants. Advisers must currently provide similar disclosure under Item 8 of Part II. The brochure would also describe any material conflict of interest with advisory clients that the relationship or arrangement creates with clients, and the restrictions or other control procedures the adviser uses to address the conflict.[158] In addition, if the adviser selects or recommends other advisers for clients, proposed Item 9 would require disclosure of any compensation arrangements and other business relationships between the two advisory firms, as well as of the conflicts created.

Item 10. Participation or Interest in Client Transactions; Personal Trading. Item 10 would require the brochure to discuss the conflicts of interest the adviser faces when the advisory firm or a "related person" has a financial interest in, or trades in, securities they recommend to clients.[159] Advisers would be required to disclose any practices giving rise to these conflicts, the nature of the conflicts presented, and any procedures and controls the adviser uses to address the conflicts.[160]

Proposed Item 10 is designed to shed sunlight on two types of practices that can harm advisory clients. The first is

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Investment Advisers Must Disclose to Clients, Investment Advisers Act Release No. 1083 (Sept. 25, 1987) (52 FR 36915 (Oct. 2, 1987)).

[153] The memorandum would be required to explain the adviser's determination and to discuss the four factors set forth in Item 8. Proposed rule 204–2(a)(14)(ii). Proposed Item 3 of Part 2B requires a brochure supplement to contain disclosure of legal or disciplinary events involving the adviser's supervised persons. Proposed rule 204–2(a)(14)(ii) would require the same memorandum in the event the adviser does not disclose an event described in Item 3 of Part 2B.

[154] First, all felonies (not only those involving investment-related statutes) would be presumed material. Congress amended section 203 of the Advisers Act in 1996 to permit us to deny or revoke an adviser's registration, or bar, suspend or limit an adviser's activities, if the adviser has been convicted of *any* felony within the past ten years. Section 305 of NSMIA, *supra* note 91. Current Item 11.A. of Part I already requires advisers to report all felonies to us. Second, actions of foreign courts and financial regulatory authorities would be included. Congress's 1990 amendments to the Advisers Act permit us to deny or revoke an adviser's registration, or bar, suspend or limit an adviser's activities based on the findings of a foreign court or foreign securities authority. *See supra* note 96. Third, monetary penalties in administrative proceedings would be required to be disclosed. Congress gave us authority to impose monetary penalties in administrative proceedings in the Remedies Act of 1990. *See supra* note 97.

[155] These proposed changes clarify that: (a) A conviction for conspiracy to commit any felony or to commit any listed misdemeanor is a criminal conviction that must be disclosed; (b) a military court is a court of competent jurisdiction; and (c) an order enjoining the adviser or a management person from violating an investment-related statute, rule, or order must be disclosed. *See* proposed Item 8.A. We have also added explanatory text to the definition of "management person." *See* Glossary of Terms, definition of "management person."

[156] This requirement would apply if the date of the order is on or after the effective date of these revisions to Form ADV. As a condition of settlement in administrative proceedings against certain investment advisers, we have required the advisers to send copies of our orders to existing clients and, for one year, to prospective clients. *E.g.*, Capital Markets Research Co., Investment Advisers Act Release No. 1834 (Sept. 27, 1999); Boston Investment Counsel, Inc., Investment Advisers Act Release No. 1801 (June 10, 1999); Valicenti Advisory Services, Inc., Investment Advisers Act Release No. 1774 (Nov. 18, 1998); Renaissance Capital Advisors, Inc., Investment Advisers Act Release No. 1688 (Dec. 22, 1997); Account Management Corporation, Investment Advisers Act Release No. 1529 (Sept. 29, 1995). Because our orders include findings of the facts underlying the violations, requiring that a client receive a copy of that order provides us with greater assurance that the client will be accurately informed of the adviser's behavior. The Second Circuit recently affirmed our authority to impose this form of remedy. Valicenti Advisory Services, *Inc.* v. *SEC*, No. 99–4002, 1999 U.S. App. LEXIS 35879 (Nov. 30, 1999, amended Feb. 9, 2000) (*per curiam*).

[157] Rule 206(4)–4(b)(1)(ii) (17 CFR 275.206(4)–4(b)(1)(ii)).

[158] Brochure supplements would be required to contain similar disclosure, concerning the other business activities of the adviser's supervised persons. *See* proposed Item 4 of Part 2B and the discussion below at Section II.D.2.b. of this Release.

[159] This item incorporates many of the disclosure requirements of Item 9 of Part II. An adviser's related persons are: (1) the adviser's officers, partners, or directors (or any person performing similar functions); (2) all persons directly or indirectly controlling, controlled by, or under common control with the adviser; (3) all of the adviser's current employees; and (4) any person providing investment advice on the adviser's behalf.

[160] Many advisers have extensive procedures in place to monitor and control employees' personal securities trades and financial interests; these procedures may include pre-clearance, restricted lists, blackout periods, or periodic reporting. Section 204A (15 U.S.C. 80b–204a) of the Advisers Act requires most advisers to establish policies and procedures to prevent misuse of material, nonpublic information, and rules 204–2(a)(12) and (13) (17 CFR 275.204–2(a)(12) and (13)) require advisers to keep records of their securities transactions and those of their "adviser representatives." In addition, our rules under the Investment Company Act require advisory firms that advise registered investment companies to adopt a written "code of ethics" to address conflicts arising out of personal trading, and to file those codes with us. We recently revised those rules in order to provide greater protection against improper personal trading by persons who have access to information about mutual funds' purchases and sales of securities. Investment Company Release No. 23958 (adopting amendments to rule 17j–1 under the Investment Company Act (17 CFR 270.17j–1)), *supra note* 2.

when an advisory firm (or a related person) has a material financial interest in an issuer of securities it recommends to clients. For example, the adviser may recommend that clients invest in an investment company that the firm advises, or a partnership for which the firm is the general partner.[161] Similarly, the adviser may recommend that a client buy securities in a public offering underwritten by the adviser's affiliate. Or, an adviser with a material financial interest in a company may recommend that a client buy shares in that company's public offering, when the success of the offering could increase the value of the adviser's investment.[162] An adviser engaging in these practices has an incentive to base its advice on its own financial interests rather than the interests of clients, and the proposed item is designed to help a client understand the conflict. Item 10.A. would require full disclosure of these conflicts and provide guidance on the types of conflicts covered.[163] We request comment whether additional guidance would be useful to advisers.

The second practice involves personal trading abuses. Because of the information they have, advisers and their personnel can "front run" client trades or otherwise abuse their positions. For example, an adviser may be able to sell (or sell short) its own position in a security in advance of large client sell orders that could be expected to drive down the price of that security. Similarly, an adviser may acquire a position in a stock, advise clients to buy the same stock, and profit by the resulting increase in price.[164] These practices not only may affect the adviser's recommendations, but also can harm clients by affecting adversely the prices at which clients buy or sell securities.

Under proposed Item 10.B., an adviser would disclose whether it or a related person (*e.g.*, advisory personnel) invest—or are permitted to invest—in the same securities as their clients, or in related securities such as options or other derivatives.[165] Firms engaging in or permitting this practice would discuss the conflicts presented, and describe the firm's restrictions and/or internal procedures to address the conflicts. Item 10.C. would require a similar discussion, but focus on the specific conflicts an adviser has when it (or a related person) trades in the same securities at or about the same time as a client. In response to this item, an adviser might explain how its internal controls prevent the firm and its staff from buying or selling securities in advance of client transactions.

Item 11. Brokerage Practices. Item 11 would require the brochure to describe the adviser's policies and practices in selecting brokers for client transactions, and in determining the reasonableness of brokers' compensation. As we explain in more detail below, the item would require the adviser to disclose its policies and practices with respect to "soft dollars," *i.e.*, the receipt of benefits such as research for the allocation of client brokerage.

Soft Dollar Practices. Advisers often receive "soft dollar" benefits from using particular brokers for client trades.[166] Client brokerage, however, is an asset of the client—not of the adviser. When, in connection with client brokerage, an adviser receives products or services that it would otherwise have to produce itself (or pay for), the adviser's interest may conflict with those of its clients. For example, soft dollar arrangements may cause an adviser to violate its best execution obligation by directing client transactions to brokers who are not able to adequately execute the transactions, or may give the adviser incentive to trade client securities more often than it would absent the benefits the adviser receives. Because of these conflicts, we have required advisers to disclose their policies and practices on use of client brokerage to obtain soft dollar benefits.[167]

During 1997–98, our staff conducted a wide-ranging examination of advisers' soft dollar practices and disclosure. Our Office of Compliance Inspections and Examinations found widespread use of soft dollars by investment advisers that manage client portfolios.[168] The Office concluded that advisers' disclosure often failed to provide sufficient information for clients or potential clients to understand the adviser's soft dollar practices and the conflicts those practices present. In its report, the Office noted that most advisers' descriptions were simply boilerplate, and urged that we consider amending Form ADV to require better disclosure.[169] Today we are acting on those recommendations.[170]

Item 11 would require an adviser that receives research or other products or services in connection with client securities transactions (soft dollar benefits) to disclose the adviser's practices and discuss the conflicts of interest that result.[171] The brochure's description of soft dollar practices must be specific enough for clients to understand the types of products or services the adviser is acquiring and permit them to evaluate conflicts.[172] Disclosure must be more detailed for products or services not used in the adviser's investment decision-making process.

Item 11 would describe the types of conflicts the adviser must disclose when it accepts soft dollar benefits,[173] and

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[161] *See* Thomson McKinnon Asset Management, L.P., Investment Advisers Act Release No. 1243 (July 26, 1990) (adviser failed to disclose that it received advisory fees from a money market fund into which it "swept" clients' cash balances).

[162] *See, e.g.*, Chancellor Capital Management, Inc., Investment Advisers Act Release No. 1447 (Oct. 18, 1994) (adviser failed to disclose, when recommending publicly traded securities of an issuer to client, that adviser's related person owned non-publicly traded securities of the same issuer).

[163] We are proposing an exception, in Item 10.A., for advisers' investments in mutual funds that they recommend to clients. These investments typically do not raise conflicts because the securities are valued at their net asset value; however, an adviser would still be required to disclose the conflict created when it receives a *fee* from a fund it recommends to clients. *See* Example 3 of proposed Item 10.A. *See* Thomson McKinnon, *supra* note 161.

[164] *See* Roger Honour, Investment Advisers Act Release No. 1527 (Sept. 29, 1995).

[165] Some situations, such as when an adviser owns shares in a company it recommends to clients, may be covered by both proposed Items 10.A. and 10.B. Others, such as when an adviser sells its holdings of a security it purchases for clients, would come under 10.B, and potentially 10.C. A brochure would not need to repeat disclosure simply because it is responsive to more than one item.

[166] Section 28(e) of the Exchange Act (15 U.S.C. 78bb(e)) provides a limited "safe harbor" for advisers with discretionary authority in connection with their receipt of soft dollar benefits. *See* discussion of this safe harbor, *infra* note 176.

[167] Item 12 of current Part II.

[168] Inspection Report on the Soft Dollar Practices of Broker-Dealers, Investment Advisers and Mutual Funds (Sept. 22, 1998) (Soft Dollar Report).

[169] *Id.* at 3, 50–51.

[170] The Office also recommended further rulemaking in this area, which we may consider in the future. Among the suggestions detailed in the Soft Dollar Report were: (a) requiring advisers to provide clients with client-specific itemizations of soft dollar benefits the adviser received during the previous period, and (b) requiring advisers to maintain certain records of soft dollar benefits received and the adviser's allocation of so-called "mixed-use" items between research and non-research functions. *Id.* at 49–51.

[171] The soft dollar benefits covered include any research, products or services, whether created or developed by the broker-dealer itself or by a third party. *See* note to proposed Item 11.A.1. of Part 2A.

[172] In this regard, the proposed item would incorporate the standard for advisers we set out in our 1986 interpretive release on soft dollars. Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934 and Related Matters, Exchange Act Release No. 23170 (Apr. 23, 1986) (1986 Soft Dollar Release).

[173] An adviser accepting soft dollar benefits would have to explain that (a) the adviser benefits because it does not have to produce or pay for the research, other products, or services acquired with soft dollars, and (b) the adviser therefore has an incentive to select or recommend broker-dealers based on the adviser's interest in receiving these benefits, rather than on the client's interest in getting the best execution services at the lowest available rates.

require the adviser to disclose its procedures for directing client transactions to brokers in return for soft dollar benefits.[174] The item would require the adviser to explain whether it uses soft dollars to benefit all clients[175] or just those accounts whose brokerage "pays" for the benefits, and whether the adviser seeks to allocate the benefits to client accounts proportionately to the brokerage credits those accounts generate. The item would also require the adviser to explain whether it "pays up" for soft dollar benefits.[176]

Client Referrals. The brochure would also be required to discuss the adviser's practice in using client brokerage to reward brokers that refer clients.[177] This practice also presents advisers with serious conflicts of interest since they may have a bias towards referring brokers. The brochure would have to disclose this practice, the conflict it creates, and any procedures the adviser used to direct client brokerage to referring brokers during the last fiscal year, *i.e.*, the system of controls used by the adviser when allocating brokerage.

Transaction Costs. Clients engaging an adviser can benefit when the adviser negotiates lower commissions or "bunches" trades to obtain volume discounts on execution costs.[178] Item 11 would require the adviser to describe these practices. If the adviser does not bunch trades when it has the opportunity, the brochure would be required to explain that clients may pay higher brokerage costs. Similarly, if the adviser does not negotiate commissions, or limits the extent to which it negotiates them, the brochure would be required to explain that clients may pay higher brokerage costs as a result.[179]

Directed Brokerage. Clients sometimes instruct their adviser to send transactions through a specific broker. Clients may initiate this type of arrangement for a variety of reasons: the client may wish to favor a family member or friend, or the client may be using its own brokerage to pay for services the broker provides to the client.[180] But the arrangement may also be initiated by the adviser, who may benefit, for example, when brokerage is directed to its affiliated broker-dealer. In either case, clients directing (or agreeing to direct) brokerage need to understand the consequences of directing brokerage, including the possibility that their accounts will pay higher commissions and receive less favorable execution.[181]

If an adviser *permits* clients to direct brokerage, we would require the brochure to explain that the adviser may be unable to get best execution, and that directing brokerage may cost clients more money. If, however, the adviser *routinely requests or requires* clients to direct brokerage, the brochure would also be required to describe the adviser's policy or practice, to disclose that not all advisers require directed brokerage, and to discuss any broker-dealer relationship that creates a material conflict of interest.[182]

Commission Recapture.[183] An adviser that sends brokerage to a firm providing commission recapture would describe how recapture works, explain the benefits of recapture, and explain how a client could participate in recapture. We request comment on this disclosure requirement: which types of clients can generally participate in commission recapture programs, and how do clients currently learn that such programs are available?

Item 12. Review of Accounts. The brochure would disclose whether, and how often, the adviser reviews clients' accounts or financial plans, and would identify who conducts the review.[184] Advisers that review accounts, but not regularly, would explain what circumstances would trigger an account review.

Item 13. Payment for Client Referrals. The brochure would describe any payment, whether in cash or otherwise, that the adviser or a related person makes for client referrals. The brochure would also disclose whether the adviser receives any benefit, including sales awards or prizes, from a non-client for providing advisory services to clients.[185]

Item 14. Custody. Advisers that accept custody of client funds or securities would say so in their brochure and would describe any special reports they give to those clients.[186] Advisers that

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[174] *See* proposed Item 11.A.1.e. of Part 2A, which is substantively the same as current Item 12.B. of Part II.

[175] Using one client's brokerage to obtain research or other products that benefit another client's account is often called "cross-subsidization."

[176] "Paying up" refers to a manager causing a client account to pay more than the lowest available commission rate. Section 28(e) of the Securities Exchange Act of 1934 provides a safe harbor for managers who pay up to obtain research from brokers. Under section 28(e), someone who exercises investment discretion over a client account has not acted unlawfully or breached a fiduciary duty *solely* by causing the account to pay more than the lowest commission rate available, so long as that person determines in good faith that the commission amount is reasonable in relation to the value of the brokerage and research services provided. The 1986 Soft Dollar Release clarified the Commission's interpretation of section 28(e). Section 28(e), however, does not speak to an adviser's disclosure obligations—advisers must disclose their receipt of soft dollar benefits to clients whether the benefits fall inside or outside of the safe harbor. *See* 1986 Soft Dollar Release, *supra* note 172.

[177] Proposed Item 11.A.2. of Part 2A. *See* Fleet Investment Advisors, Inc., Investment Advisers Act Release No. 1821 (Sept. 9, 1999) (adviser failed to disclose to clients that it directed brokerage commissions in exchange for client referrals).

[178] Broker-dealers may, for example, offer better prices, including lower commission costs, and/or better execution for larger orders. Generally, our staff has not recommended enforcement action against advisers that aggregate trade orders on behalf of clients, so long as the adviser allocates the trades in a way that treats all clients fairly. *E.g.*, Pretzel & Stouffer, SEC No-Action Letter (Dec. 1, 1995); SMC Capital Inc., SEC No-Action Letter (Sept. 5, 1995). However, advisers violate the Advisers Act's anti-fraud provisions if they fail to disclose allocation policies that disadvantage a client. *See* Account Management Corporation, *supra* note 156 (adviser failed to disclose that it allocated shares in "hot" initial public offerings only to limited number of eligible client accounts); *cf.* Nicholas Applegate Capital Management, Investment Advisers Act Release No. 1741 (Aug. 12, 1998) (adviser failed to supervise senior trader who allocated profitable day trades to his own personal account rather than to client account).

[179] Proposed Item 11.B. *See* Mark Bailey & Co., Investment Advisers Act Release No. 1105 (Feb. 24, 1988) (adviser that failed to disclose that it did not negotiate commissions on directed trades, failed to disclose that the adviser would be in a better position to negotiate commissions in batched transactions for non-directed trades, and failed to inform clients that commissions might be lower on non-directed trades, violated anti-fraud provisions of Advisers Act).

[180] A client may also direct its transactions to a broker that agrees to make cash rebates to the client. As noted in the Soft Dollar Report, this directed brokerage practice is referred to as "commission recapture." Soft Dollar Report, *supra* note 168 at n.42. We are proposing a separate disclosure requirement, discussed below, relating to commission recapture.

[181] 1986 Soft Dollar Release, *supra* note 172 at n.44.

[182] Proposed Item 11.A.3.b. of Part 2A.

[183] As discussed *supra* at note 180, commission recapture involves directing brokerage in exchange for cash rebates made to the client.

[184] Proposed Item 12 of Part 2A incorporates requirements currently in Item 11 of Part II.

[185] Proposed Item 13 of Part 2A incorporates requirements in current Item 13 of Part II. Proposed Item 13 would require advisers to disclose economic benefits to the firm; as discussed below, proposed Item 5 of Part 2B would require advisers to disclose economic benefits to a supervised person. *See infra* Section II.D.2.b. of this Release.

[186] Item 14 would retain the same definition of "custody" as now in Form ADV. *See* Glossary of Terms to proposed Form ADV and Instruction 5 to current Form ADV. Advisers have custody if, for example, they hold client funds or securities or they have the ability to appropriate client assets such as having signatory power over a client's checking account. Advisers also may be deemed to have custody of client assets because a related person of the adviser has custody of those assets. Our staff has provided guidance on the factors to be considered in determining whether an adviser in this circumstance is deemed to have custody. *See* Crocker Investment Management Corp., SEC No-Action Letter (Apr. 14, 1978) (setting out a five-factor test). *See also* Investment Advisers Act Release No. 1000 (Dec. 3, 1985) (50 FR 49835 (Dec. 5, 1985)) at question II.E.5. (whether an adviser is deemed to have custody because it is affiliated with the custodian is a factual matter based on the actual relationship between the adviser and affiliate). Part II of Form ADV does not currently require advisers to tell clients whether they accept custody. We,

require custody of client assets would also explain that most advisers do not impose this requirement.[187] The brochure would also disclose that clients face greater risk than if an independent custodian held their assets.[188]

Item 15. Investment Discretion. Advisers with discretionary authority over client accounts would be required to disclose that fact in their brochure,[189] and any limitations clients may (or customarily do) place on this authority.[190]

Item 16. Proxy Voting Policies. Item 16 would require advisers to disclose their proxy voting practices. This would be a new disclosure requirement, which we propose to add so that clients will be fully informed about who is responsible for voting their proxies and how their interests in proxy voting decisions are protected.

We propose to require advisers to state whether they vote proxies for clients.[191] Advisers that vote client proxies would disclose their voting policies, practices, and procedures.[192] These advisers would also explain whether a client can direct the vote in a proxy solicitation, and whether clients can find out how the adviser voted their securities on a given issue.[193] Advisers that do not vote client proxies would explain how clients will receive proxies (for example, directly from a transfer agent or custodian or through the adviser), and whether the client can discuss particular proxy solicitations with the adviser.

Item 17. Investment Performance. Advisers that advertise or report their investment performance would be required to describe any standards they use to calculate (or present) performance. "Standards" may include industry standards, but would also include any proprietary standards used solely by the adviser.[194] The brochure would also discuss whether a third party reviews the adviser's performance information for accuracy or for compliance with presentation standards.[195]

Item 18. Financial Information. We are proposing to require the brochure to include certain financial information about the adviser when material to clients. An adviser that has custody of client assets or requires prepayment of fees exposes clients to the risk that the firm may become insolvent and unable to return the assets or refund unearned fees. We propose to continue requiring advisers to give clients an audited balance sheet showing the adviser's assets and liabilities at the end of its most recent fiscal year.[196] We propose to exclude from the balance sheet requirement advisers that have custody, but are banks, insurance companies, or broker-dealers registered with us.[197] These firms have capital and regulatory requirements that provide protections against these types of losses.

We are also proposing to require advisers with discretionary authority over client assets to disclose, in their brochures, any financial condition reasonably likely to impair the adviser's ability to meet contractual commitments to clients. These clients are exposed to the risk that their assets may not be properly managed for a period of time if the adviser becomes insolvent and ceases to do business. This disclosure is currently required by rule 206(4)-4, which, as discussed above, we propose to rescind.

Finally, we would require an adviser that has been the subject of a bankruptcy petition during the past ten years to disclose that fact to clients. Clients would likely find this information material to their decision whether to hire the adviser.[198] We request comment on other disclosures

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however, receive this information under current Item 13 of Part I.

[187] An adviser that "requires" clients to give it custody solely because it acts as general partner for a limited partnership, serves as trustee for client accounts, or deducts advisory fees directly from client accounts would not be required to provide this disclosure.

[188] An adviser would not be required to make this risk disclosure if it is a bank, an insurance company, or a broker-dealer that is excepted from rule 206(4)–2 (17 CFR 275.206(4)–2). Rule 206(4)–2 sets out requirements with regard to custody of advisory client assets and securities, and is intended to ensure that client funds and securities are maintained so that they are insulated from and not jeopardized by unlawful activities or financial reverses of the adviser. *See* Investment Advisers Act Release No. 122 (Nov. 3, 1961) (26 FR 10607 (Nov. 10, 1961)) (proposing rule 206(4)–2). As discussed *infra* at the text accompanying notes 196 to 197 (and discussing Item 18 of proposed Part 2A), banks, insurers, and registered broker-dealers have capital and regulatory requirements that provide protections against the same types of losses that rule 206(4)–2 was designed to prevent.

[189] Currently, Items 12.A. and 12.B. of Part II require information about the adviser's investment discretion and any limitations on it. We propose to continue requiring this information but to clarify, through our proposed definitions in Form ADV, that an adviser has "discretionary authority" if it is authorized to make purchase and sale decisions for client accounts. This definition of discretionary authority is derived from section 3(a)(35) of the Exchange Act (15 U.S.C. 78b(a)(35)). An adviser also has discretionary authority if it is authorized to select other advisers for the client.

[190] For example, clients may not understand that they may ask the adviser not to invest in securities of particular issuers.

[191] Without appropriate disclosure, some clients may incorrectly assume their adviser is voting their proxies.

[192] In some cases, advisers have conflicts of interest in voting proxies. For example, the adviser may manage money for a public issuer and may recommend that its other clients invest in the issuer's securities. The public issuer client may want the adviser to vote proxies in a manner that conflicts with the best interests of the adviser's other clients. Or, an adviser's affiliates may have a substantial business relationship with an issuer in which advisory clients invest, and those affiliates may pressure the adviser to vote in favor of the issuer's management. Many advisers already have policies designed to protect their clients' interest in these circumstances. Proposed Item 16 would require the brochure to disclose those policies.

[193] We understand that advisers to ERISA plans may be required to maintain voting records for individual proxy solicitations on the client's account, and to provide the plan fiduciary with those records. *See* Department of Labor Interpretive Bulletin 92–4 (July 21, 1994).

[194] Organizations such as the Association for Investment Management and Research (AIMR) have established guidelines for advisers to use in presenting performance information. Some advisers may be able to claim compliance with the AIMR Performance Presentation Standards™ (AIMR–PPS). AIMR–PPS specify minimum calculation requirements, although the standards themselves are primarily performance presentation standards rather than performance measurement standards. AIMR Performance Presentation Standards Handbook 1 (2nd ed., 1997).

[195] Proposed Item 17 incorporates requirements currently in Item 7(h) of Schedule H; under Schedule H, wrap fee sponsors must provide similar disclosure about review of portfolio managers' performance information and standards used to calculate that information.

[196] Currently Item 14 of Part II (through Schedule G) requires an audited balance sheet if the adviser has custody of client funds or securities, or requires prepayment of more than $500 in fees per client and six or more months in advance. We would increase the threshold amount from $500 to $1,200 to reflect the effects of inflation since we adopted Uniform Form ADV in 1985. We also propose to require this disclosure from advisers that *solicit* clients to prepay fees, which would include providing an economic incentive to prepay fees. Our staff has previously provided guidance consistent with this proposed requirement. *See* Sunbelt Farm Investment Report, SEC No-Action Letter (Mar. 16, 1985); *see also* Seger-Elvekrog, Inc., SEC No-Action Letter (Oct. 13, 1998) (adviser that allowed clients to prepay fees, at clients' initiative and contrary to adviser's usual billing practices, was not required to provide an audited balance sheet).

[197] Advisers also may be deemed to have custody of client assets when their affiliates have custody of those assets. *See* discussion of proposed Item 14, *supra* at notes 186 to 188 and accompanying text. We have excluded an adviser from the balance sheet requirement if the adviser is deemed to have custody but the affiliate having custody of client assets is itself a bank, insurance company or registered broker-dealer.

[198] Part II does not currently require advisers to disclose this information to clients. Current Item 11.K. of Part I requests similar information, but is not limited to bankruptcies occurring within ten years.

concerning bankruptcies. Should Item 18 require disclosure if the subject of a bankruptcy petition was a predecessor adviser? A management person? [199] Another firm under common control with the adviser?

Item 19. Index. The brochure filed with us would be required to include an index of the items required by Part 2A.[200] This index is intended to facilitate review by our staff for compliance with the requirements of Part 2A; the adviser would not need to provide it to clients.

Part 2A Appendix 1: The Wrap Fee Program Brochure. Advisers that sponsor wrap fee programs [201] would be required to prepare a separate, specialized firm brochure referred to as a "wrap fee program brochure" or "wrap brochure," and would be required to give the wrap brochure to clients of the wrap fee program, in lieu of the sponsor's standard advisory firm brochure.[202] The ten items in Part 2A Appendix 1 contain the proposed requirements for a wrap fee program brochure, which are substantially similar to those currently in Schedule H, with changes to incorporate many of the proposed revised requirements for other firm brochures.

b. Part 2B: The Brochure Supplement

As discussed above, we are proposing that adviser brochures be accompanied by brochure supplements providing information about the adviser's advisory personnel. We believe that clients want and need information about the individuals on whom they will rely for investment advice.

The current brochure requirements of Form ADV consist of a series of compromises on disclosure about advisory personnel that we believe can be improved on. We currently require brochures to include background information only on firm executives and members of the firm's "investment committee," [203] which does not include most advisory personnel of the growing number of larger advisory firms registered with us.[204] It is unclear to us whether the information provided about executives and investment committee members is useful to most clients of these firms. Moreover, brochures contain no information about the disciplinary backgrounds of advisory personnel—information that may be of key importance to a client who may be entrusting his investments to the care of the individual.[205] When we considered Uniform Form ADV in 1985, we recognized these shortcomings of the brochure, and proposed expanding the required background information on advisory personnel.[206] We decided not to do so after commenters objected that many advisers' brochures would become lengthy and less readable.[207]

Today we are proposing a different approach to resolving the same concerns that led to the 1985 proposals. We propose to require advisers to prepare separate supplements for advisory personnel—called "supervised persons." [208] Each supplement would contain background information about an individual or group.[209] Advisers would be required to give a client a supplement only for a supervised person who will provide advisory services to that client. Thus, a client would receive information about supervised persons who are specifically relevant to that client. The supplements should only be a page or so in length, and each supervised person could provide clients with his own supplement along with the firm's brochure as he would a resumé.[210] Supplements would not have to be filed with us, but would be kept by advisers for review by our examiners.[211] We are not proposing to require that advisers file supplements with us, in part because of the additional cost of building the IARD to accept supplements. The additional cost would have to be reflected in higher filing fees. The most important information in the supplements—the supervised person's disciplinary history—would be reported on the DRP Schedules in Part 1 of Form ADV and available through the IARD. Moreover, prospective clients could obtain supplements from advisers. On balance, we concluded that the additional costs of requiring advisers to file supplements with us exceeded the benefits. We request comment on this conclusion.

Under our proposed amendments to rule 204–3, an adviser must deliver a supplement for a supervised person to a client before or at the same time the supervised person begins to provide advisory services for the client.[212] The proposed rule would require delivery to a client only if it is expected that the supervised person will either (i)

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[199] Brochure supplements would be required to disclose whether a supervised person has been the subject of a bankruptcy petition. *See* proposed Item 7 of Part 2B. A client, however, would not necessarily receive a supplement for all management persons.

[200] This requirement is similar to the index Schedule H now requires.

[201] Under a wrap fee program, advisory clients pay a specified fee for investment advisory services and the execution of transactions. The advisory services may include portfolio management and/or advice concerning selection of other advisers, and the fee is not based directly upon transactions in the client's account.

[202] We adopted the requirement for a separate brochure for wrap fee clients in 1994, and we continue to believe that wrap fee program clients should receive a separate brochure containing only information relevant to wrap fee program clients. *See* Disclosure by Investment Advisers Regarding Wrap Fee Programs, Investment Advisers Act Release No. 1411 (Apr. 19, 1994) (59 FR 27659 (May 27, 1994)) (adopting rules to require wrap fee sponsors to give wrap fee clients separate brochures); Disclosure by Investment Advisers Regarding Wrap Fee Programs, Investment Advisers Act Release No. 1401 (Jan. 13, 1994) (59 FR 3033 (Jan. 20, 1994)) (proposing wrap fee brochure rules). Advisers whose entire advisory business is sponsoring wrap fee programs would prepare a wrap brochure but would not be required to prepare a standard advisory firm brochure. Wrap fee sponsors would, like other advisers, be required to provide brochure supplements to their wrap fee clients.

[203] Item 6 of Part II of Form ADV. If the firm has no investment committee, we require that background information be provided for each individual who determines general investment advice given to clients. If there are more than five of these persons, then information need only be provided for their supervisors. *Id.*

[204] In the case of a small firm consisting of an owner and a few employees, the current disclosure requirements may require disclosure of all the firm's advisory personnel. After the enactment of NSMIA in 1996, most of the smaller firms withdrew their registrations with us and are now regulated by state securities authorities.

[205] Brochures currently are not required to contain information about the adviser's disciplinary history either. *See* discussion *supra*, at section II.D.2.b. of this Release.

[206] Investment Advisers Act Release No. 967, *supra* note 146.

[207] Investment Advisers Act Release No. 991, *supra* note 42.

[208] Under our proposed rule 204–3 and proposed Glossary of Terms to Form ADV, a "supervised person" means any of the adviser's officers, partners or directors (or other persons occupying a similar status or performing similar functions) or employees, or any other person who provides investment advice on the adviser's behalf. This is substantially similar to the definition in section 202(a)(25) of the Advisers Act (15 U.S.C. 80b-2(a)(25)).

[209] A smaller advisory firm that chose to include information about all advisory personnel in its firm brochure would not need any supplements. *See* Instruction 5 to Part 2B. Advisers would be free to determine whether they wish to provide the background information on advisory personnel in supplements or as part of its firm brochure.

[210] Pursuant to our authority under section 204 of the Advisers Act, our proposed rule 204–3 would require the adviser to deliver the supplements as well as the firm's brochure. We recognize that in most cases, however, the adviser will have supervised persons deliver their supplements to clients and may have a supervised person deliver the brochure. In proposed rule 204–3(b)(1) and proposed Instruction 2 to Part 2B, we make it clear that the firm can delegate this responsibility to a supervised person.

[211] Our recordkeeping rules would require the adviser to preserve a copy of each supplement, including any revised supplements or stickers, and to make them available to SEC staff. *See* proposed rule 204–2(a)(14), General instruction 5 to Part 2, and Instruction 7 to Part 2B.

[212] Supplements will likely be given to the client along with the firm brochure, at the start of the advisory relationship. If a supervised person will not provide advisory services until later, however, the supplement for that individual can be delivered at that time.

regularly communicate investment advice to that client,[213] or (ii) formulate investment advice for that client, including exercising investment discretion over that client's assets.[214] Advisers would not have to deliver a supplement for a supervised person who has no client contact and formulates advice only as part of a team. This provision is designed to require information about persons who have substantial responsibility for the investment advice clients receive. The requirements for updating a brochure supplement and delivering the corrected information to clients would be essentially the same as for the firm's brochure.[215] We request comment on the scope of the delivery requirement. Are there better ways to provide clients with information about a firm's advisory personnel?

The contents of brochure supplements would be specified by Part 2B, which would consist of seven items. Where Part 2A would require disclosure about the advisory firm, Part 2B would require disclosure about certain supervised persons of the advisory firm. We request comment on the scope of proposed Part 2B. Will clients find this to be useful information? Is there other information about supervised persons that clients need and that we should require in brochure supplements?

Item 1. Cover Page. The supplement's cover page would include information identifying the supervised person and the advisory firm.

Item 2. Educational Background and Business Experience. The supplement would be required to describe the supervised person's formal education and business background for the past five years.[216] Professional designations have also become important to a client's understanding of the supervised person's qualifications in the investment adviser industry. We are therefore proposing that the supplement identify the supervised person's professional designations or attainments.

Item 3. Disciplinary Information. The supplement would be required to disclose the disciplinary history of the supervised person. We are proposing substantially the same disclosure requirements for the supervised person's disciplinary history as we are proposing for the firm's disciplinary history.[217] Item 3 would also require, again because of the importance of professional designations, that the supplement disclose any proceeding revoking or suspending a professional attainment, designation, or license of the supervised person.

In the case of a supplement for a single individual, a client receiving an updated supplement should be able to identify any new disciplinary disclosure easily. We request comment, however, on whether this information might be obscured in supplements prepared for groups of supervised persons. Should a supplement for a group be required to highlight any changes to disciplinary disclosure, or otherwise alert clients to the change? If so, should the alert appear on the cover page of the supplement, or should it accompany the disciplinary disclosure itself?

Item 4. Other Business Activities. We would require the supplement to describe any other business activities of the supervised person, particularly other capacities in which the supervised person participates in the financial markets.[218] A relationship between the business of the advisory firm and other business of the supervised person may create a material conflict of interest with the adviser's clients. If this occurs, the supplement would be required to describe the nature of the conflict and any procedures the adviser uses to address the conflict.

The supplement would also disclose whether the supervised person receives transaction-based compensation, including bonuses and non-cash compensation. As discussed earlier,[219] this practice creates an incentive for the individual to base investment recommendations on his own compensation rather than on clients' best interests. If the supervised person receives transaction-based compensation, we would require the supplement to explain this incentive.

Item 5. Additional Compensation. A supplement would be required to describe arrangements in which someone other than a client gives the supervised person an economic benefit (such as a sales award or other prize) for providing advisory services.[220]

Item 6. Investment Advice and Supervision. Not all supervised persons formulate the investment advice they give to their clients, so we propose to require the supplement to discuss who formulates that advice. If the supervised person does formulate advice for clients, the supplement would also explain how the firm monitors the advice provided.

We would also require the supplement to provide the client with the name, title and telephone number of the person responsible for supervising the advisory activities of the supervised person. This information would permit the client to contact other advisory personnel when necessary to address any problems in the advisory relationship.

Item 7. Financial Information. The supplement would be required to disclose whether the supervised person was the subject of a bankruptcy petition during the past ten years.

3. Execution Pages

Form ADV would be electronically "signed" by an authorized person of the adviser before the form could be submitted to the IARD. The authorized person would sign the form by typing his or her name and submitting the filing on behalf of the adviser.[221] Under the proposed amendments, an authorized person would sign one of three different execution pages, depending on whether the adviser is resident in the United States or another country and whether it is registered or registering with the Commission or the states.[222] As under current Form ADV,

[213] We have included the term "regularly" in the proposed rule, to prevent casual communications from causing a violation of the delivery requirement. We would intend the term to be interpreted in the context of the overall advisory relationship with the client. For example, a supervised person who provides a financial plan to a client would be regularly communicating advice to the client even if they meet only once or twice.

[214] Proposed rule 204–3(b)(1)(B). If a supervised person neither communicates investment advice regularly to any client nor formulates investment advice for any client, no supplement would be required for that supervised person. Instruction 1 to Part 2B of Form ADV.

[215] *See supra* text accompanying notes 112–123.

[216] Currently, Item 6 of Part II of Form ADV requires this information about the adviser's principal executive officers and about individuals who determine general investment advice on behalf of the adviser.

[217] *See* proposed Item 8 of Part 2A. As discussed earlier, *supra* note 153, proposed rule 204–2(a)(14)(ii) would require an adviser to keep a file memorandum if the adviser determines not to disclose an event of the type described in Item 3 of Part 2B.

[218] Item 4 of Part 2B would be similar to proposed Item 9 of Part 2A. The supplement would, however, also disclose information regarding any other business activities or occupation that the supervised person engages in for pay. Clients may have different expectations of an individual whose sole business is providing investment advice than of an individual for whom advisory services are a sideline. We are proposing this requirement so that clients can evaluate the importance of the advisory business to the supervised person. If another line of business provides the supervised person's primary source of income, the supplement would say so explicitly.

[219] *See* proposed Item 5 of Part 2A.

[220] The proposed item would specify that regular salary need not be disclosed. Bonuses based (in part or whole) on sales, client referrals or new accounts would trigger required disclosure, but other bonuses would not.

[221] *See supra* note 47 (noting that the electronic signature required by the IARD is not a digital signature).

[222] The IARD will select the proper execution page for an adviser depending upon identifying

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by signing the form, the authorized person would affirm that the information in the form is true and complete, and would appoint certain officials as agents for service of process in states where the adviser conducts business.[223] These appointments allow state securities authorities, private parties, and us to bring actions against the adviser by delivering necessary papers to any or all of the appointed agents.[224]

Non-resident advisers,[225] in addition to executing Form ADV, currently must submit a separate form appointing the Commission as their agent for service of process.[226] Non-resident advisers also submit a separate undertaking to provide required books and records to our staff.[227] We propose to incorporate both of these requirements into a Form ADV execution page that would be used by non-resident advisers, and thereby eliminate the additional filings non-resident advisers currently make.[228] In addition, non-resident general partners or managing agents of all SEC-registered advisers must appoint the Commission[229] as their agent for service of process on Form 7–R.[230] We propose to revise Form 7–R and rename it Form ADV–NR. The form would be filed with us in paper format.[231]

A separate execution page for state-registered advisers has been prepared by NASAA. It is similar to the one for SEC-registered advisers, but includes affirmations that would be required for state registration.[232]

E. Proposed Revisions to Form ADV–W

Form ADV–W was designed for an adviser to use to withdraw its registration after ceasing operations.[233] Today, SEC-registered advisers also use the form to switch to state registration,[234] and state-registered advisers use it to withdraw their registration with one or more states while remaining registered with others. We propose to amend Form ADV–W to reflect this expanded use.[235] As proposed, an adviser could file Form ADV–W to withdraw from some (partial withdrawal)[236] or all (full withdrawal) jurisdictions in which it is registered. An adviser ceasing operations would complete the entire form to file for full withdrawal.[237] An adviser filing for partial withdrawal would omit certain items, such as the location of its books and records, that we do not need from an adviser continuing in business as a state-registered adviser.[238] We request comment on these proposed revisions.

F. General Request for Comment

Any interested persons wishing to submit written comments on the proposed rule and forms, and the proposed rule and form amendments that are the subject of this Release, or to suggest additional changes or submit comments on other matters that might have an effect on the proposals described above, are requested to do so. Commenters suggesting alternative approaches are encouraged to submit proposed rule text.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, we also are requesting information regarding the potential impact of the proposed rule on the economy on an annual basis. Commenters should provide empirical data to support their views.

III. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits of its rules and has, in preparing this proposal, carefully balanced the two. As described in more detail below, electronic filing will impose some costs on advisers, particularly the filing fees that advisers will pay to the operator of the system. We believe that electronic filing will yield substantially greater benefits to advisers and investors. The new, improved disclosure requirements will also impose additional costs. These costs are chiefly transitional costs, as advisers prepare new brochures and brochure supplements for the first time. We believe that, over time, these costs will be more than justified by the ongoing benefits to clients who receive better, more useful disclosure.

A. Electronic Filing Requirements

The rules we are proposing will require advisers to make filings with us through the Investment Adviser Registration Depository (IARD). Although advisers will pay fees to

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information the adviser will have provided on the form. An adviser that chooses to register both with the Commission and one or more states would be required to complete two execution pages, one for SEC registration and one for state registration.

[223] Currently, an adviser appoints an official of each state in which the adviser is registered (or has a registration pending, or, within the past ten years, either withdrew before registration or was previously registered). *See* Item 7 and the Execution Section of Part I of Form ADV. As proposed, an adviser would appoint an official in the state where it maintains its principal office and place of business, and each state where it submits a notice filing (if SEC-registered) or is registered or registering (if state-registered).

[224] Each agent currently can receive service of process for "any action or proceeding." As proposed, the agent also could receive service for administrative and arbitration proceedings. By including arbitration proceedings in the form, we are not addressing whether advisers may require clients to resolve disputes under the Advisers Act through arbitration or other alternate dispute resolution forum. *Cf. Rodriguez de Quijas* v. *Shearson/American Express, Inc.*, 490 U.S. 477 (1989) (upholding the arbitrability of disputes arising under the Securities Act); *Shearson/American Express, Inc.* v. *McMahon*, 482 U.S. 220 (1987) (upholding the arbitrability of disputes arising under the Exchange Act).

[225] A non-resident adviser has its principal office and place of business in a location outside of the United States. Rule 0–2(d)(3) (17 CFR 0–2(d)(3)). Non-resident advisers generally register with the Commission and not the state securities authorities, because their principal office and place of business is not in a state that regulates advisers. *See* section 203A(a) and proposed Item 2.A(3) of Part 1A.

[226] Rule 0–2. Each non-resident adviser currently is required to appoint an agent for service of process on Form 4–R (for a sole proprietor) (17 CFR 279.4), Form 5–R (for a corporation) (17 CFR 279.5), or Form 6–R (for a partnership) (17 CFR 279.6).

[227] Rule 204–2(j)(3) (17 CFR 275.204–2(j)(3)) requires a non-resident adviser to provide this undertaking unless it agrees to keep a duplicate, "shadow" set of books and records in the United States.

[228] We are proposing to eliminate Forms 4–R, 5–R and 6–R, and to amend the corresponding rule to delete unnecessary text. *See* proposed amendment to rule 0–2.

[229] *See* proposed rule 0–2(a). This appointment does not change based on whether the adviser is located in the United States or in another country. A general partner or managing agent of an adviser is "non-resident" if he or she resides in a place not subject to the jurisdiction of the United States. Rule 0–2(d)(4) (17 CFR 0–2(d)(4)).

[230] This appointment is intended to make the Advisers Act as enforceable against a non-resident person as it is against a person resident in the United States. *See* Consent to Service of Process to Be Furnished by Non-Resident Investment Advisers and by Non-Resident Investment General Partners or Managing Agents of Investment Advisers, Investment Advisers Act Release No. 74 (June 30, 1954) (19 FR 4300 (July 14, 1954)).

[231] We propose to require partners and agents to file Form ADV-NR with us on paper due to the limited number of filings we expect. *See* discussion of forms that will be filed on paper, *supra* note 38. Non-resident general partners and agents would appoint the same agents (the Commission and various state officials) as a non-resident adviser.

[232] The state-registered adviser execution page is included in Appendix A of this Release. Completing this execution page would be a state, rather than an SEC, requirement, and therefore we are not requesting comment on it. We will, however, pass your comments on to NASAA.

[233] *See* Investment Advisers Act Release No. 213, *supra* note 52.

[234] *See* discussion on "switching" to state registration, *supra* notes 53 to 56 and accompanying text.

[235] Form ADV–W is attached to this Release as Appendix B of this Release.

[236] A state-registered adviser withdrawing from registration with some states, for example, would file a partial withdrawal, as would an adviser switching to SEC or to state registration.

[237] We would require advisers filing for withdrawal to affirm the accuracy and completeness of their Form ADV when filing Form ADV-W. Proposed Form ADV–W would, however, no longer require certain information that we no longer need.

[238] An SEC-registered adviser switching to state registration would complete part of Item 1 and electronically sign the form. *See* page 1 of proposed Form ADV–W at Appendix B of this Release. At the request of NASAA, state-registered advisers filing for partial withdrawal would complete additional items. *See id.* These additional requirements would be a state, rather than an SEC, requirement, and therefore we are not requesting comment on them.

submit certain filings through the system, the IARD will also provide substantial benefits to advisers, including eliminating many of the costs advisers currently incur in filing their Form ADV. Today, advisers must prepare registration materials on paper, copy them, and submit the paper copies to both the SEC and states. Many of these copies must be manually signed and notarized. Correcting a mistake requires the adviser to repeat this entire process. The IARD, in contrast, would permit an adviser to satisfy all of these filing obligations by submitting a single electronic filing prepared using a personal computer in its office.[239] Electronic signatures could be used, and mistakes could be corrected by simply typing over incorrect information and re-sending the electronic submission.[240] Today, advisers must determine the amount of filing fees due each state, prepare checks and mail them so that they are delivered in a timely manner.[241] Errors can result in penalties or cause disruptions in business. The IARD, in contrast, would eliminate these costs by automatically determining the amount of filing fees owed and debiting the adviser's account when those fees are due.[242] These benefits should more than justify the filing fees and other expenses for the typical adviser registered with the Commission.

In drafting the new form, we have sought additional ways to reduce costs. An adviser may save a partially completed form as a "draft" that the adviser can access and complete at a later time. Our proposed on-line glossary would allow an advisers' personnel to refer to explanations of key terms while completing Form ADV, and we would also provide an on-line "help" function, to answer frequently-asked questions and provide guidance on completing the form.[243] When an adviser prepares an amendment to its Form ADV, the IARD will pre-populate most of the items from the adviser's previous filings, reducing the adviser's time (and therefore expense) in completing the amendment. Further, we have designed the IARD so that advisers that also are registered as broker-dealers will complete Schedules to their Form ADV by "linking" to parallel responses in their Form BD already on file. Thus, these firms will recognize additional cost savings by avoiding entering certain data twice.[244]

We have taken into consideration that not all advisers may have access to the Internet. A continuing hardship exemption would be available to certain "small advisers" that are unable to file through the IARD without undue burden and expense (if, for example, the adviser does not have Internet access and is unable to afford a filing service).[245] The continuing hardship exemption is intended to minimize any burden imposed by the electronic filing requirements.

The IARD also has the potential to speed the registration process for investment adviser representatives of SEC-registered advisers. Registration of investment adviser representatives on the IARD will be a matter for state securities authorities; we do not register or license investment adviser representatives. Our experience with the CRD system, however, provides an analogy. Our understanding of how broker-dealer agent filings on the CRD system are processed suggests that electronic filings on the IARD for investment adviser representatives are likely to be more efficient and cost effective than the current system of paper filings.

Electronic filing also will produce substantial benefits for investors. First, and most important, the information on these filings will be available for investors to view, without cost, on a web site.[246] Investors will be able to determine, for example, whether a prospective adviser has reported disciplinary events, what types of fees it charges, and whether the types of advisory services it offers are designed to meet their needs. As a result, investors—potential clients—will be in a better position to make informed decisions.

The added "sunlight" the web disclosure will shine on advisers may have additional, secondary benefits. Information from advisers' filings will be available through a web site, and easy availability of information about advisers and advisory affiliates may, for example, discourage advisers from engaging in certain practices or hiring certain persons (such as those with disciplinary history or limited qualifications). Investors' access to information may also facilitate greater competition among advisers, which may in turn lower prices or encourage the development of different fee structures or different kinds of services that may benefit clients. These types of benefits are difficult to isolate or to quantify, but our experience is that they are real and are often the result of better disclosure.

Electronic filing will also give us better access to information about advisers to administer our regulatory programs. We expect this information will permit us to increase both the efficiency and effectiveness of our programs and thus increase investor protection. The IARD will permit us to better monitor advisers' failure to make required filings, identify advisers whose activities suggest a need for closer scrutiny, and manage our regulatory programs. The IARD will generate reports on the industry, its characteristics and trends. These reports will help us anticipate regulatory problems, allocate and reallocate our resources, and more fully evaluate and anticipate the implications of various regulatory actions we may consider taking.

B. Proposed Form ADV

We have divided proposed Form ADV into two parts, Part 1 and Part 2. For purposes of assessing costs and benefits, each part is discussed separately below.

1. Part 1

SEC-registered advisers would experience few additional costs in completing revised Part 1. We have re-drafted Part 1A in plain English, improved its organization, and added instructions to clarify some items. Proposed Part 1A would require no additional information that should not be readily available to an adviser. The revised Schedules would make it much simpler, in comparison to current Schedules A, B, and C, to provide information about control persons.[247]

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[239] *See* discussion of electronic filing requirements *supra* at Section II.A.1. of this Release.

[240] The IARD will also prevent advisers from making incomplete filings. Submitting an incomplete filing is a common error by new advisers applying for registration, and is one that can substantially delay the registration process and thus the business plans of applicants. *See* discussion of electronic filing requirements, *supra* Section II.A.1. of this Release.

[241] Postage expenses alone can cost an SEC-registered firm $750 per year. This estimate assumes an average overnight mail cost of $10 per mailing in each of 50 states and an average of 1.5 amendments filed per year ($10 × 50 × 1.5) = $750.

[242] The Commission does not charge any filing or other fees. *See supra* note 36 (discussing elimination of investment adviser registration fees charged by the Commission).

[243] *See* discussion of electronic filing requirements *supra* at Section II.A.1. of this Release.

[244] Approximately 900 SEC-registered advisers also are registered with us as broker-dealers.

[245] *See* discussion of proposed hardship exemptions *supra* at Section II.B.4. of this Release.

[246] Investment adviser information is publicly available from us, but until now we have been unable to provide this information to the public without charge. We currently charge $.24 per page for copies and, upon receipt of the required fee, mail the Form ADV to the requester.

[247] An adviser generally would no longer be required to report an indirect owner unless the

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While smaller advisers may find these benefits limited, larger advisers (particularly advisers that are part of a larger, more intricate corporate structure) should see cost savings from the proposed changes to the Schedules. The proposed new Disciplinary Reporting Pages (DRPs) would require substantially more detailed information about disciplinary events than is specified in the current form, but the new DRPs should serve mainly to clarify existing disclosure obligations, which are worded more generally.[248] Moreover, we would only require an adviser to report disciplinary events occurring in the past ten years,[249] and would remove information about the educational and business background of employees.[250] We expect that these changes will justify any additional costs associated with amendments to Part 1A.

2. Part 2

An analysis of the costs and benefits of Part 2 is more complex. Most advisers would be required to replace their current Part II with a narrative brochure in plain English, and to re-file this new brochure with us. In addition, the disclosure in the new brochure may be more complete, and in some cases more detailed, than Form ADV currently requires. Thus, drafting the new narrative brochure will likely entail additional expenses.

Most of the cost associated with preparing a brochure would be incurred in the initial preparation, specifically in drafting the narrative brochure. Advisers are already required to provide us and/or their clients with much of the information required in the new brochure,[251] so we do not expect advisers to have substantial expenses in gathering this information. In addition, since most of the costs of redrafting the new brochure will be incurred in the first year, we do not expect proposed Part 2A to result in any significant cost increase over time. The cost of preparing a narrative firm brochure is likely to vary substantially among advisers, in part because proposed Part 2A would give an adviser considerable flexibility in structuring its disclosure. Drafting a brochure to describe the adviser's business practices and disclose conflicts of interest need not be a long or an expensive process. Some advisory firms, however, may elect to use their brochure to market their services, as well as to make required disclosure. These firms will likely face significantly higher expenses, particularly if they bring in legal, design and marketing professionals. Other firms may choose to prepare multiple brochures, which would also require higher drafting costs.

Under the proposed rules, the brochure would have to be reprinted annually to incorporate all interim amendments. The cost of printing a narrative brochure, however, should not be substantially different from the current cost of printing Part II; the narrative brochure is not required to be professionally printed. Further, we have sought to make interim amendments inexpensive by permitting advisers to use "stickers" to correct a brochure. We also do not anticipate that the costs of distributing the proposed brochures (and stickers) would be significantly higher than the costs of distributing Part II or a brochure under existing delivery requirements. These costs currently vary among advisers, depending on how the adviser delivers the brochure and the number of advisory clients who receive it.[252] Because of this large number of variables—initial drafting costs, number and extent of corrections, mode of distribution, number of clients, and others—quantifying the overall costs to advisers of the proposed narrative brochure is not practicable.

Advisers also would incur some costs to prepare brochure supplements for supervised persons, but the supplements would provide important disclosure to advisory clients about relevant advisory personnel. Many supervised persons are already subject to state regulation as investment adviser representatives, and much of the information needed for the brochure supplement can be obtained from the adviser's current Form ADV and the representative's registration application.[253] The costs of preparing brochure supplements would also vary widely from one adviser to the next, depending on the number of supervised persons of the adviser, the extent of a supervised person's professional and educational background, and the amount of disciplinary information required to be disclosed. The aggregate cost to the investment adviser industry in preparing the proposed brochure supplements therefore is not readily quantifiable. The proposed amendments would, however, include several options to minimize advisers' costs in preparing and distributing the brochure supplements.[254]

C. Form ADV–W

Advisers would incur less cost in completing proposed Form ADV–W than in completing the current form. Under proposed amended Form ADV–W, the adviser would complete only those items needed to process the withdrawal.[255] Form ADV–W would also become effective immediately, rather than after a sixty-day "waiting period," thereby smoothing the transition period for advisers switching to state registration.

D. Request for Comment

We request comment on the effects of the proposed rule and form amendments on individual investment advisers and on the advisory profession as a whole, and request data to quantify the costs and value of the benefits associated with these proposed amendments. Specifically, we request comment on the cost savings for advisers (and their representatives) filing through the IARD. We also request data on advisers' current costs of complying with state notice filing and investment adviser representative registration requirements. We also request comment on the costs of completing and re-filing Part 1A of proposed Form ADV, and of preparing and delivering the firm brochure, wrap

indirect owner owned 25% of a direct owner. *See* discussion of proposed Schedules, *supra* Section II.D.1. of this Release. *See supra* note 102 (describing difficulties for foreign-owned broker-dealers to obtain ownership information).

[248] Moreover, most advisers do not have disciplinary events to report.

[249] *See* discussion of disciplinary disclosure requirements *supra* at Section II.D.1.a.ii. of this Release. We also are proposing to stop requiring advisers to report unsatisfied judgments or liens; bankruptcies; bond denials, payouts, or revocations; or any "minor" rule violations. *See* discussion of "minor" rule violations, *supra* Section II.D.1.a.ii. of this Release, and note 95 and accompanying text (discussing "minor" rule violations).

[250] For many supervised persons providing advisory services, this information would appear in the proposed brochure supplements. *See* discussion of proposed brochure supplements, *supra* at Section II.D.2.b. of this Release.

[251] *See* discussion of the firm brochure, *supra* Section II.D.2.a. of this Release.

[252] For example, if the adviser has arranged to deliver the firm brochure (and written brochure updates) to its advisory clients by electronic media, it would not incur costs to print and mail the brochure to its clients (or to offer it to them each year). *See* Investment Advisers Act Release No. 1562, *supra* note 123.

[253] Investment adviser representatives typically apply for state registration by filing Form U–4. *See supra* note 27.

[254] A small adviser, for example, could choose to include all required information for each supervised person in its firm brochure and thus not prepare any brochure supplements. Firms that have one or more groups of supervised persons providing advisory services could consolidate information about all members of a particular group into one brochure supplement. *See* discussion of Part 2B, *supra* Section II.D.2.b. of this Release. Advisers whose services did not trigger a delivery requirement (for example, advising registered investment companies or providing only impersonal investment advice) would not be required to prepare brochure supplements.

[255] *See* discussion of Form ADV–W, *supra* Section II.E. of this Release.

brochure, and brochure supplement(s). Commenters should provide analysis and empirical data to support their views on the costs and benefits associated with this proposal.

IV. Paperwork Reduction Act

The proposed rule and form amendments contain several "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995,[256] and the Commission has submitted the amendments to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collections of information are "Form ADV," "Schedule I to Form ADV," "Rule 206(4)–4," "Form ADV–W and Rule 203–2," "Rule 0–2 and Forms 4–R through 7–R," "Rule 204–2," and "Rule 204–3," all under the Advisers Act. We are proposing to amend Form ADV, Schedule I to Form ADV, Rule 206(4)–4, Form ADV–W and Rule 203–2, Rule 0–2 and Forms 4–R through 7–R, Rule 204–2, and Rule 204–3. These rules and forms contain currently approved collection of information numbers under OMB control numbers 3235–0049, 3235–0490, 3235–0345, 3235–0313, 3235–0240, 3235–0278, and 3235–0047, respectively. We also are proposing new rule 203–3 and new Form ADV–H, which both would contain a collection of information requirements. An agency may not sponsor, conduct, or require response to an information collection unless a currently valid OMB number is displayed.

Form ADV

Form ADV contains collection of information requirements. Rule 203–1 requires every person applying for investment adviser registration with the Commission to file Form ADV. Rule 204–1 requires each registered adviser to file amendments to Form ADV at least annually, and also would require advisers to begin submitting electronic filings through the IARD. This collection of information is found at 17 CFR 275.203–1, 275.204–1, and 279.1 and is mandatory. Responses are not kept confidential. The likely respondents to this information collection would be all advisers registered with us or applying for registration after advisers begin making filings through the IARD.

An increase in the number of respondents to the collection of information for Form ADV will increase the currently approved burden of the collection of information. The current burden for new registrants is approximately 6,848 hours,[257] and assumes approximately 760 new applicants per year and a weighted average of 9.01 hours per adviser. The current burden also applies to current registrants amending their Form ADV, is approximately 1.07 hours per amendment, and is based on approximately 7,300 advisers registered with us and filing 11,810 amendments annually. The current total burden for all advisers filing Form ADV is 19,448 hours.

Based, however, on the Commission's recent experience in processing investment adviser registration applications, the Commission now estimates that approximately 1,000 advisers each year are new applicants for SEC registration, increasing the total burden by 2,162 hours.[258] Also, approximately 8,100 advisers are registered with us, increasing the current burden of filing amendments to Form ADV by 1,541 hours.[259] The total increase in the collection of information for Form ADV resulting from an increase in the number of respondents is 3,703 hours.[260]

The collection of information for Form ADV would incorporate the burdens of rule 206(4)–4 and Schedule I into Form ADV. The collections of information for rule 206(4)–4 and Schedule I to Form ADV are discussed below.

The proposed amendments to Form ADV at first would increase the paperwork burden, as most advisers would have to redraft and disseminate a narrative brochure and brochure supplements. The paperwork burdens of preparing a narrative firm brochure is likely to vary substantially among advisers, in part because proposed Part 2A would give an adviser considerable flexibility in structuring its disclosure, and also because the amount of disclosure required would vary among advisers. Most of the new paperwork burden would be incurred in this initial preparation, specifically in drafting the narrative text. Once the adviser has redrafted its narrative brochure, proposed Parts 2A and 2B are not expected to result in any significant burden increase over time (except for changes to the brochure that are necessitated by changes in the adviser's business).[261] Part 1A is expected to impose a minimal paperwork burden, as none of the new items requests information that should not be readily available to the adviser. The efficiencies of filing through the IARD, over time, are expected to reduce the initial burdens associated with completing the revised Form ADV.

The burdens associated with using the revised form would be amortized over the estimated period that advisers would use their revised brochure. We adopted significant changes to Form ADV in 1985,[262] and required advisers to re-file their amended Form ADV, and to prepare and begin using a new brochure. At that time, advisers incurred paperwork burdens in the "start-up" costs of the revised Form ADV. Once advisers re-filed their Form ADV, advisers' paperwork burdens generally were limited to amending the form as needed. Advisers thus have used current Form ADV (and thus the current brochure) for approximately the past fifteen years (depending on exactly when they re-filed their Form ADV with us). The paperwork burdens of the revised form would be amortized over a similar fifteen-year period.[263]

The additional burdens that would be imposed by the revised form also would be reflected in the revised collection of information. During the first year that an adviser uses new Form ADV, the burden of completing the revised form for the first time would result in a new total collection of information burden of an estimated 22 hours per adviser, including preparation of brochure supplements. This total collection of information would total 22,000 hours for new registrants and 178,200 hours for currently registered advisers that re-file Form ADV through the IARD system, for a total of 200,200 hours.[264]

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[256] 44 U.S.C. 3501 to 3520.

[257] This current burden does not include the burden imposed by rule 206(4)–4 of 6,755 burden hours per year. Under the proposed amendments, the collection of information under this rule would be incorporated into Form ADV's collection of information requirements, and is reflected in the estimates below.

[258] (240 more advisers applying for registration x 9.01 hours) = 2,162.4 hours.

[259] ((800 more currently-registered advisers × 1.5 amendments) + (240 new applicants × 1 amendment)) × 1.07 hours = (1,200 + 240) × 1.07 = 1,440 × 1.07 = 1,540.8.

[260] 1,541 hours + 2,162 hours = 3,703 hours.

[261] The burden of amending Form ADV to reflect these changes in the brochure is expected to be similar to the current burden of reflecting these changes in the adviser's Part II of Form ADV.

[262] Since 1985, we have amended sections of Form ADV and added Schedules H and I, but not revised the form in its entirety.

[263] The Commission staff chose a fifteen-year amortization period to reflect the anticipated period of time that advisers would use the revised form. If the Commission adopts significant revisions to Form ADV within the next fifteen years, the actual collection of information burden may be higher than the estimates contained in this analysis and we would revise the Form ADV collection of information burden accordingly.

[264] (8,100 current registrants × 22) + (1,000 new applicants × 22) = 178,200 + 22,000 = 200,200 hours. The revised collection of information

Continued

Amortizing this total burden imposed by Form ADV over a fifteen-year period would result in an average burden increase of an estimated 13,346.67 hours per year,[265] or 1.47 hours per year for each new applicant and for each adviser currently registered with the Commission that would re-file through the IARD.[266]

In addition, during the first year the IARD is operational, advisers filing through the system would likely amend their Form ADV at least once.[267] Electronic filing, however, should yield significant benefits to advisers filing amendments, and is estimated to reduce the information collection burden of filing an amendment to Form ADV by approximately thirty percent. The collection of information burden for amendments therefore would be 0.75 hours per amendment.[268] Based on the Commission's experience in processing investment adviser amendments, new registrants are estimated to amend their Form ADV once in the first year they are registered, currently-registered newly-formed advisers relying on the exemption found at rule 203A–2(d)[269] are estimated to amend their Form ADV twice per year, currently-registered advisers relying on the multi-state exemption found at rule 203A–2(e)[270] are estimated to amend their Form ADV once per year, and other currently-registered advisers are estimated to amend their Form ADV, on average, 1.5 times per year. Advisers thus file an estimated total of 13,250[271] amendments per year for an estimated total paperwork burden of 9,938 hours per year.[272]

The total collection of information burden for advisers to file and complete the revised Form ADV therefore would be approximately 23,315 hours per year.[273] The total collection of information burden therefore would be 27,018 hours.[274]

Rule 206(4)–4; Schedule I to Form ADV

The collection of information requirements for both rule 206(4)–4 and Schedule I to Form ADV would be incorporated in the collection of information requirements for Form ADV, discussed above. The new burden estimate for Form ADV includes these collection of information burdens. Rule 206(4)–4 and Schedule I to Form ADV currently contain collection of information requirements. Rule 206(4)–4 requires advisers to disclose certain disciplinary and financial information to clients. Advisers file Schedule I to Form ADV to claim eligibility for SEC registration (if applying for SEC registration) or to reaffirm their eligibility for SEC registration (if currently registered). These collections of information are found at 17 CFR 275.206(4)–4 and 17 CFR 279.1, are mandatory, and responses are not kept confidential.

We are proposing to rescind rule 206(4)–4 and incorporate its substantive provisions into Part 2A of Form ADV. We also are proposing to incorporate the substantive requirements of Schedule I into Part 1A of Form ADV. The collection of information requirements for rule 206(4)–4 and Schedule I to Form ADV would be eliminated.

Form ADV–W and Rule 203–2

Form ADV–W and Rule 203–2 contain collection of information requirements. Rule 203–2 requires every person withdrawing from investment adviser registration with the Commission to file Form ADV–W. This collection of information is found at 17 CFR 275.203–2 and 17 CFR 279.2 and is mandatory. Responses are not kept confidential. The likely respondents to this information collection would be all advisers registered with the Commission once the transition period to electronic filing is complete.

A decrease in the number of advisers filing to withdraw from SEC registration will decrease the current burden. The currently approved collection of information is one hour. The Commission in the past received approximately 616 notices of withdrawal on Form ADV–W per year. The weighted average burden hours for completing Form ADV–W is one hour, and the total annual burden hours currently approved by OMB for this form are 616 hours. Based on the Commission's recent experience in processing investment adviser withdrawals, the Commission estimates that approximately 1,300 withdraw from SEC registration each year, decreasing the total burden by 684 hours.[275]

The Commission is proposing to amend rule 203–2 to (a) require advisers to file Form ADV–W through the IARD and (b) make investment adviser withdrawals effective upon filing (rather than after a sixty-day period, as provided in the current rule). The Commission also is proposing to amend Form ADV–W. The proposed form amendments would tailor the required items to the reason for the adviser's withdrawal. An adviser ceasing operations would complete the entire form to withdraw from all jurisdictions in which it is registered (full withdrawal), while an adviser withdrawing from some, but not all, of the jurisdictions in which it is registered would omit certain items that we do not need from an adviser continuing in business as a state-registered adviser.[276]

The proposed amendments to Form ADV–W are expected to reduce the collection of information burden for advisers filing for withdrawal. An adviser filing for partial withdrawal (e.g., the adviser is switching to state registration) would omit certain items, such as the location of its books and records that we do not need from an adviser continuing in business as a state-registered adviser; an adviser filing for full withdrawal (i.e., the adviser is ceasing operations) would complete the entire form. For purposes of this Paperwork Reduction Act analysis, the Commission staff estimates that approximately 50 percent of the advisers filing for withdrawal would file for full withdrawal and the remaining 50 percent would file for partial withdrawal. Compliance with the requirement to complete Form ADV–W would impose a total burden of approximately 0.75 hours (45 minutes) for an adviser filing for full withdrawal and approximately 0.25 hours (15 minutes) for an adviser filing for partial withdrawal. The weighted average total time for each applicant to complete revised Form ADV–W therefore is

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estimate includes the burdens of rule 206(4)–4 and Schedule I to Form ADV in addition to the other collection of information imposed by the proposed form.

[265] 200,200 hours/15 years = 13,346.67. An amortization period of less than fifteen years would yield a higher collection of information burden. For example, if the amortization period was ten years instead of fifteen years, the collection of information burden of re-filing Form ADV would be 20,020 burden hours, or 2.2 hours per adviser. (200,200 hours/10 years = 20,020 hours; 20,020 hours/9,100 advisers = 2.2 hours per adviser.)

[266] 13,346.67/9,100 advisers = 1.47 hours per adviser.

[267] *See* discussion of the collection of information burdens for amendments to Form ADV *infra* at notes 268 through 272 and accompanying text.

[268] 1.07 × .70 = .749 hours per amendment.

[269] 17 CFR 275.203A–2(d).

[270] 17 CFR 275.203A–2(e).

[271] (890 new registrants × 1 amendment) + (100 new-applicant newly-formed advisers × 2 amendments) + (10 new-applicant multi-state advisers × 1 amendment) + (8,100 other currently-registered advisers × 1.5 amendments) = 890 + 200 + 10 + 12,150 = 13,250 responses.

[272] 13,250 responses × 0.75 hours = 9,937.5 hours.

[273] 9,938 hours per year attributable to amendments + (1,000 new registrants each year × 1.47 hours (similarly amortized over a fifteen year period)) + (1.47 hours from the continued amortization from the first year the revised form is used × 8,100 advisers) = 9,938 hours + 1,470 hours + 11,907 hours = 23,315 hours.

[274] 23,315 hours due to rulemaking + 3,703 hours due to an increase in the number of advisers = 27,018 total burden hours.

[275] (684 more advisers × 1 hour) = 684 hours.

[276] *See* discussion of Form ADV–W, *supra* Section II.E. of this Release.

estimated to be 0.5 hours (30 minutes), for a total collection of information burden of 650 hours.[277]

Rule 0–2 and Forms 4–R Through 7–R

Rule 0–2 and Forms 4–R, 5–R, 6–R, and 7–R contain collection of information requirements. Rule 0–2 requires non-resident advisers to furnish us with a written irrevocable consent and power of attorney that designates the Commission as an agent for service of process, and that stipulates and agrees that any civil suit or action against such person may be commenced by service of process on the Commission. Rules 279.4, 279.5, 279.6 and 279.7 (17 CFR 279.4, 279.5, 279.6 and 279.7) designate Forms 4–R through 7–R as the irrevocable appointments of agent for service of process, pleadings and other papers to be filed.[278] It is necessary for us to obtain appropriate consent to permit the Commission and other parties to bring actions against non-resident advisers and non-resident partners or agents of investment advisers for violations of the federal securities laws. The likely respondents to this information collection would be each non-resident adviser, and each non-resident partner or agent of an SEC-registered adviser.

An increase in the number of non-resident advisers registered with the SEC will increase the current collection of information burden. Forms 4–R through 6–R are required by rule 0–2 to be filed by non-resident advisers, and Form 7–R is required by rule 0–2 to be filed by a non-resident general partner or managing agent of an SEC-registered adviser. The Commission in the past received approximately 300 filings pursuant to rule 0–2. The weighted average burden for Forms 4–R, 5–R, 6–R, and 7–R is one hour per form, and the total annual burden hours currently approved by OMB for these forms is 300 hours. Our records indicate that we receive approximately 475 filings per year from non-resident advisers, partners and agents, increasing the current burden to 475 hours.

The paperwork burdens of Forms 4–R through 6–R are incorporated into the collection of information requirements for Form ADV, discussed above. We are proposing to amend rule 0–2 and delete Forms 4–R, 5–R, 6–R and 7–R. The substance of Forms 4–R through 6–R would be contained in the execution page to Form ADV. The substance of Form 7–R would be contained in new Form AVD–NR. The Commission staff estimates that approximately 380 respondents would be subject to rule 0–2, with approximately 285 respondents being non-resident advisers that would execute Form ADV to comply with rule 0–2.

The remaining approximately 95 respondents are non-resident general partners or managing agents of SEC-registered investment advisers, and would be required to file Form AVD–NR with the Commission. A non-resident general partner or managing agent would be required to file Form AVD–NR only once. SEC staff estimates that the preparation and filing of Form AVD–NR would require approximately one hour of the non-resident general partner's or managing agent's time. The total estimated burden therefore would be 95 hours.

Rule 204–2

Section 204 of the Advisers Act provides that investment advisers required to register with the Commission must make and keep certain records for prescribed periods, and make and disseminate certain reports. Rule 204–2 sets forth the requirements for maintaining and preserving specified books and records. This collection of information is mandatory. The Commission staff uses this collection of information in its examination and oversight program, and the information generally is kept confidential.[279] The likely respondents to this collection of information requirement are all advisers registered with the Commission.

A reduction in the number of advisers registered with us will reduce the current burden. Currently, compliance with rule 204–2 requires approximately 195.29 hours each year per Commission-registered adviser, for a total of 1,601,378 burden hours. The current total burden is based on 8,200 potential respondents. Commission records indicate that there currently are approximately 8,100 potential respondents to the collection of information imposed by rule 204–2. As a result of a decrease in the number of advisers registered with the Commission, the total burden is decreased by 19,529.[280]

The proposed amendments to rule 204–2 would require registered investment advisers to prepare and preserve a memorandum describing any legal or disciplinary event listed in Item 8 of Part 2A or Item 3 of Part 2B of proposed Form ADV (and presumed to be material), if the event involved the adviser or any of its supervised persons and is not disclosed in the adviser's brochure or a brochure supplement. These books and records will be required to be maintained in the manner, and for the period of time, as other books and records are required to be maintained under rule 204–2(a). This collection of information would be found at 17 CFR 275.204–2.

Based on disciplinary items reported on Form ADV, approximately 1,120 advisers currently report disciplinary information. It is anticipated that most of these advisers would include all disciplinary information in their brochure, and approximately ten percent of these advisers, or 110 advisers, would conclude that the materiality presumption is overcome with respect to a legal or disciplinary event, would determine not to disclose that event, and therefore would be required to prepare and preserve a memorandum describing the event. Under the proposed amendments, each respondent would be required to retain the records on an ongoing basis. The proposed amendments to rule 204–2 are estimated to increase the burden by four hours, to 199.29, per Commission-registered adviser that would be required to prepare and preserve these additional records. The annual aggregate burden for all respondents to the recordkeeping requirements under rule 204–2 thus is estimated to be 1,582,293 total hours.[281] The weighted average burden per Commission-registered adviser would be 195.34 hours.[282]

Rule 204–3

Rule 204–3 contains a collection of information requirement. Rule 204–3, the "brochure rule," currently requires an investment adviser to deliver, or offer, to prospective clients a disclosure statement containing specified information as to the business practices and background of the adviser. The brochure assists the client in

[277] (650 advisers filing for full withdrawal × .75 hours) + (650 advisers filing for partial withdrawal × .25 hours) = 487.5 + 162.5 = 650 hours.

[278] The nature of the adviser's business structure will determine whether it files Form 4–R, 5–R, or 6–R: a non-resident adviser that is an individual or an unincorporated adviser must file Form 4–R; a non-resident adviser that is a corporation must file Form 5–R; a non-resident adviser that is a partnership must file 6–R. A non-resident general files form 7–R partner or a non-resident managing agent of an SEC-registered adviser.

[279] *See* section 210(b) of the Advisers Act (15 U.S.C. 80b–10(b)).

[280] (100 fewer advisers × 195.29 hours) = 19,529 hours.

[281] (1,601,382 current burden hours – 19,529 hours due to a decrease in number of advisers) + 440 hours increase from rulemaking=1,582,293 total hours.

[282] 1,582,293 total hours/8,100 advisers = 195.34 hours per adviser.

determining whether to retain, or continue employing, the adviser. Rule 204–3 also currently requires that an investment adviser deliver, or offer, its brochure on an annual basis to existing clients in order to provide them with current information about the adviser. Under Rule 204–3, the investment adviser must furnish the required information to clients and prospective clients by providing either a copy of Part II of Form ADV, the investment adviser registration form, or a written document containing at least the information required by Part II of Form ADV. This collection of information is found at 17 CFR 204–3 and is mandatory. Responses are not kept confidential. The likely respondents to this information collection are every investment adviser registered with the Commission.

A reduction in the number of respondents will reduce the current collection of information burden. The total annual burden currently approved by OMB for rule 204–3 is approximately 203,350 hours for the approximately 8,300 advisers registered with us when the collection of information was last extended. Our records indicate that approximately 8,100 advisers currently are registered with the Commission. The currently approved collection of information estimates that each adviser requires, on average, approximately 24.5 hours to provide its clients with the required information.[283] As a result of a decrease in the number of advisers registered with the Commission, the total burden is decreased by 4,900 hours.[284]

The proposed amendments to rule 204–3 would require SEC-registered advisers to deliver their brochure and appropriate brochure supplements at the start of the advisory relationship, and to offer to deliver the brochure and brochure supplements annually.[285] The proposed rule amendments also would require that advisers deliver updates to the brochure and brochure supplements to clients whenever information in the brochure becomes materially inaccurate.[286] The updates could take the form of a reprinted brochure or a "sticker" containing the updated information. Currently, our rules require initial delivery of the brochure, but require no further brochure delivery unless the client accepts the adviser's annual offer.[287] The rule proposal is necessary for an adviser to keep its clients apprised of material changes in its operations, its fees, key advisory personnel, and other information provided in the advisory brochure.

The proposed rule amendments include transition rules that would require each adviser to deliver their revised brochure and any brochure supplements to its current clients. We expect that advisers would send the new brochures and brochure supplements in a "bulk mailing." It is estimated that each adviser has, on average 49 clients and that an adviser requires no more than 0.25 hours to send a package consisting of the adviser's revised brochure and any required brochure supplements to each existing client. The total burden hours for advisers to distribute the revised brochure and any brochure supplements is therefore estimated to be 99,225 hours.[288] The Commission staff estimates that an advisory client engages an adviser for an average of seven years. Amortizing the burden of the initial distribution of the brochure and any brochure supplements over this seven-year period results in an annual collection of information burden of 14,175 hours.

After the initial distribution, an adviser would be required to distribute an update (either a "sticker" or a revised brochure or brochure supplement) approximately 2 times per year.[289] This estimate is based on our experience under rule 204–1 and 206(4)–4. It again is estimated that each adviser has an average of 49 clients, and after the adviser distributes a revised brochure and any brochure supplements to their clients, the adviser would require no more than one half hour each time it is required to provide each client with a brochure, a brochure supplement, or an update. This represents about 49 hours per year for each adviser registered with the Commission.[290] Thus, the annual hour burden to meet the requirements of rule 204–3, as proposed to be amended, would be approximately 396,900 hours,[291] not including the initial distribution of the revised brochure and any brochure supplements.

The total estimated collection of information burden imposed by rule 204–3, as proposed to be amended, is 411,075 hours per year.[292]

Rule 203–3 and Form ADV–H

We are proposing one new rule (proposed rule 203–3) and one new form (proposed Form ADV–H) that would contain a collection of information requirement. Rule 203–3 requires that advisers requesting either a temporary or continuing hardship exemption submit the request on Form ADV–H. An adviser requesting a temporary hardship would be required to file Form ADV–H, providing a brief explanation of the nature and extent of the temporary technical difficulties.[293] Form ADV–H would require an adviser requesting a continuing hardship exemption to indicate the reasons the adviser is unable to submit electronic filings without undue burden and expense.[294] A continuing hardship exemption would be available only to an adviser that is a small entity.[295]

Commission records indicate that approximately 1,500 advisers are small entities and therefore 1,500 potential respondents that could apply for a continuing hardship exemption, and approximately 8,100 potential respondents that could apply for a temporary hardship exemption.[296] Based on our experience with hardship filings made by investment companies through our EDGAR system, approximately 50 advisers would request a temporary hardship exemption and approximately 20 would apply for a continuing hardship exemption each year. Proposed Form ADV–H and rule 203–3 are estimated to create a collection of information burden of approximately 60 minutes per respondent, for a total of 70 hours.[297]

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to (i)

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[283] This estimate assumes that an adviser requires no more than one half hour to distribute its brochure to a client.

[284] (200 fewer advisers × 24.5 hours) = 4,900 hours.

[285] Proposed amended rule 204–3(b)(1)(A) and Instruction 1 to Part 2A.

[286] *See* proposed rule 204–3(f).

[287] The annual offer, and delivery if the client accepts the offer, is required under current rules 204–3(c)(1) and (4).

[288] (0.25 hours × 49 clients) × 8,100 advisers = 12.25 × 8,100 advisers = 99,225 hours.

[289] The proposed rule amendment providing the transition from paper filings to electronic filings would require each adviser to distribute a revised brochure (and any brochure supplements) to its existing clients within thirty days from the end of the transition period. *See* proposed rule 204–3(i).

[290] 49 clients × .5 hours × 2 distributions per year = 49 hours.

[291] 8,100 advisers × 49 hours = 396,900 hours.

[292] 14,175 hours + 396,900 hours = 411,075 hours.

[293] Similarly, issuers that submit electronic filings on EDGAR apply for a temporary hardship exemption on Form TH. 17 CFR 232.201. Form ADV–H is based on Form TH, which is filed by issuers relying on the temporary hardship exemption.

[294] *See* proposed Form ADV–H. The adviser applying for a continuing hardship exemption also would be required to indicate the reasons that the necessary hardware and software are unavailable, and propose a time period for which the exemption would be in effect.

[295] *See* supra note 61 for the definition of "small entity."

[296] A temporary hardship exemption would be available to advisers that submit electronic filings but are temporarily unable to do so. An adviser that receives a continuing hardship exemption could not apply for a temporary hardship exemption.

[297] (50 × 1)+(20 × 1) = 50+20 = 70 hours.

evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and also should send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0609 with reference to File No. S7–10–00. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

V. Summary of Initial Regulatory Flexibility Analysis

We have prepared an Initial Regulatory Flexibility Analysis (IRFA) in accordance with section 3(a) of the Regulatory Flexibility Act (RFA)[298] regarding the proposed amendments to Form ADV and other rules and forms under the Advisers Act.

A. Reasons for the Proposed Action

As discussed in more detail in the IRFA, and above, we are proposing the rule and form amendments: (i) to facilitate the development of a system of electronic filing by investment advisers; (ii) to develop a database of information about advisers that is easily accessible to investors; and (iii) to improve the quality of disclosure advisers provide to their clients.

B. Objectives

The IRFA explains that the rule proposal has three distinct, but related objectives. The first is to begin the process of creating a more efficient system of regulatory filing for investment advisers. The IARD will reduce regulatory costs for advisers by permitting them to satisfy both state and SEC filing requirements by making a single, electronic filing through the Internet. The IARD will also give us a more effective tool to administer the federal securities laws as they apply to advisers.

The second objective is to improve public access to information about advisers. Currently, adviser filings are generally not available from commercial sources, and not otherwise easily available to investors. In 1996, Congress directed us to pursue this objective by requiring that we establish "a readily accessible * * * electronic process to receive inquiries * * * involving investment advisers * * *."[299] The IARD will satisfy this directive by providing investors with direct access to information about advisers, at no cost, through the Internet. The third objective is to improve the quality of information investors receive from advisers about their fees, business practices and conflicts of interest. Advisers would be required to provide a narrative brochure that is written in plain English, and would be required to keep the brochure current.

To further these objectives, the proposals are designed to make full use of information technologies that are readily available to both large and small advisers. The IRFA explains that the proposed amendments also are designed to further our mandate under the federal securities laws to prevent fraud and require full disclosure of material information by participants in the securities markets.

C. Small Entities Subject to the Rules

In developing these proposals, we have considered their potential effect on small entities that may be affected, which is discussed in the IRFA. The proposals would not affect most advisers that are small entities[300] (small advisers) because they are registered with one or more state securities authorities and not with us. Congress amended the Advisers Act in 1996 so that small advisers are generally regulated by states regulators and not the Commission.[301] Those small advisers that remain registered with us are located in Wyoming (which does not have an advisers statute), or are eligible for an exemption that permits SEC registration. Of the approximately 20,000 advisers in the United States, 8,000 (40%) are registered with us. Of those 8,000, the IRFA estimates that only 1,500 (19%) qualify as small advisers. We have based this estimate on registration information advisers file with the Commission.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The IRFA states that the proposal would impose certain reporting and compliance requirements on small advisers, requiring them: (i) to file electronically through the IARD; (ii) to use amended Form ADV when applying for registration (or amending an existing registration); and (iii) to update and deliver certain information to clients (the "brochure" rule). These requirements are discussed more fully in the IRFA and Section II of this Release,[302] and the burdens on small advisers are discussed below.

1. Electronic Filing Requirements

The IRFA explains that electronic filing is likely to impose two types of burdens on small advisers—filing fees and the time and expense of familiarizing themselves with the system.

Filing Fees. The operator of the IARD will charge filing fees to all advisers, including small advisers.[303] Small advisers will pay substantially smaller fees than larger advisers. Use of this sliding scale is designed to minimize the burdens of electronic filing on small advisers while maintaining the economic viability of the IARD. It also recognized that larger advisers, which are more likely to have filing requirements in multiple states, will benefit more from the IARD than small advisers.

Other Burdens. The IRFA explains that use of the IARD will impose other burdens on small advisers that must establish an account with NASDR,

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[298] 5 U.S.C. 603(a).

[299] *See supra* note 4.

[300] For purposes of the Advisers Act and the RFA, an investment adviser generally is a small entity if (a) it manages assets of less than $25 million reported on its most recent Schedule I to Form ADV, (b) it does not have total assets of $5 million or more on the last day of the most recent fiscal year, and (c) it is not in a control relationship with another investment adviser that is not a small entity. Advisers Act rule 0–7.

[301] *See supra* note 4 (citing amendments to the Advisers Act that divide regulatory authority over investment advisers between the Commission and the states).

[302] Specifically, the electronic filing requirements are discussed *supra* at Section II.B. and C. of this Release; the proposed amendments to Form ADV are discussed *supra* at Section II.D. of this Release; and the proposed information delivery requirements are discussed at Section II.D.2. of this Release.

[303] The rules we are proposing today will not themselves impose or authorize NASDR to impose any filing fee on advisers using the IARD. Section 203A(d) authorizes us to designate an operator of the filing system, and we expect to designate NASDR. The proposal would require advisers to use the system. Nonetheless, we have included the amount of the filing fees we estimate that NASDR will charge as part of our IRFA.

devote time to familiarizing themselves with the IARD's filing rules, and perhaps obtain Internet access. We believe that these burdens are small and that advisers would incur most of the costs when they begin to use the IARD. Thereafter, use of the IARD should actually reduce regulatory burdens for all advisers, including small advisers.

Our information suggests that almost all investment advisers, including small advisers, currently have Internet access, and use the Internet for various purposes.[304] Nonetheless, our proposals would provide for a hardship exemption, available only to small advisers, which would permit them to continue to file on paper if using the IARD would impose an "unreasonable burden or expense."[305] The operator of the IARD would convert the paper filing to electronic format and charge the adviser an additional fee to cover conversion costs. In addition, the IARD will accommodate the use of commercial filing services, which we understand many small advisers currently use to make regulatory filings. We have included these alternative means of making filings to minimize the burdens the proposed electronic filing rules will have on small advisers.

Many small advisers today use filing services because they cannot hire professional compliance staff, and do not themselves have the knowledge, time, or expertise to understand the details of the various federal and state forms, deadlines, and fees. The IARD will have a number of features designed to make it easy for persons to complete Form ADV, even if they are unfamiliar with the form. We have written the new instructions in plain English and re-organized the form in a simpler manner. We have re-drafted questions that have presented interpretive difficulties for small advisers, and have added an on-line "help" function that will provide advisers with easy access to answers to questions frequently asked about the form. Advisers using the system will also have easy on-line access to the text of the Advisers Act and our rules. Together, these features should substantially benefit small advisers that do not have lawyers or other professional compliance personnel or staff.

The IRFA concludes that, although small advisers will experience some modest start-up costs and burdens in using the IARD, over time the system will actually reduce overall burdens. As advisers become more familiar with it, use of the system should substantially reduce administrative costs associated with making regulatory filings, and improve advisers' compliance with regulatory requirements, allowing them to reduce their dependence, in more routine matters, on lawyers, compliance firms and others who assist them in meeting their regulatory obligations.

2. Proposed Amendments to Form ADV

Part 1. The IRFA explains that the proposed amendments to Part 1A of Form ADV would have a minimal effect on small advisers. None of the new items requests information that should not be readily available to the advisers. For example, advisers would be asked for the e-mail address of a contact person (if she has one) and the address of any web site the adviser sponsors. Further, because small advisers tend to have simpler business arrangements, fewer control persons, and fewer employees, the burdens of completing Part 1A should be significantly less for small advisers than for larger advisers.

The IRFA acknowledges that small advisers whose control persons have disciplinary history would likely spend more resources in completing the necessary DRPs for reporting of disciplinary events. Based on information filed on current Form ADV, we estimate that only approximately fourteen percent of advisers would be required to report disciplinary information, and thus most small advisers would be unaffected by this proposed requirement.[306] Even fewer advisers would be required to report disciplinary events on the revised form—we have proposed to eliminate certain items and limit advisers' reporting obligations to those disciplinary events occurring in the past ten years.

Part 2. The IRFA explains that the proposed amendments to Part 2, because they require advisers to begin preparing and disseminating narrative brochures, will impose additional costs on advisers, including small advisers. The IRFA assumes that all small advisers currently distribute Part II of Form ADV and will have to completely redraft their brochures, although some information in Part II may be transferable to the new brochures.

The costs associated with preparing the new brochures will depend on the size of the adviser, the complexity of its operations, and the extent to which its operations present conflicts of interest with clients. Many of the new items imposing the most rigorous disclosure requirements may not apply to a small adviser because, for example, the adviser does not have soft dollar or directed brokerage arrangements, or does not have custody of client assets. To the extent that some of the new disclosure burdens do apply to small advisers, these advisers are already obligated to make the disclosures to clients under the Act's anti-fraud provisions (although not required to be in the brochure).

The IRFA explains that advisers would, for the first time, be required to prepare and disseminate brochure supplements for their supervised persons. To reduce the burdens on small advisers, we drafted the new supplement rules so that firms with few employees can include the information in their firm brochures and avoid preparing separate brochure supplements.[307]

3. Updating and Delivery Requirements

The IRFA explains that, in addition to proposing revisions to the brochure, we also propose to require advisers to update their brochure, deliver the updates to clients whenever the information becomes materially inaccurate, and offer a revised brochure annually.[308] These proposed requirements would impose some burdens on small advisers. To minimize these burdens, we would permit an adviser to deliver a "sticker" containing the updated information instead of requiring the adviser to reprint the entire brochure. In addition, advisers that deliver their brochures in electronic format also may deliver stickers and revised brochures in the same manner.[309] The IRFA states that small advisers are more likely to have fewer advisory clients than larger advisers, and thus the proposed updating and delivery requirements should impose lower variable costs on small advisers.

E. Significant Alternatives

The IRFA discusses the various alternatives that the Commission considered in connection with the proposed rule and form amendments that might minimize the effect on small advisers, including (a) establishing different compliance or reporting requirements or timetables that take into

[304] *See supra* note 57 (discussing advisers' use of the Internet).

[305] *See* Proposed Form ADV–H, *infra* Appendix C of this Release.

[306] The 14% estimate is based on responses to Item 11 of current Form ADV. Item 11 currently includes several items that have an unlimited reporting period and other items that are unnecessary for our registration program.

[307] *See* discussion of proposed part 2B, *supra* Section II.D.2.b. of this Release.

[308] *See* discussion of the proposed delivery and updating requirements, *supra* at Section II.D.2.a. of this Release.

[309] *See* Investment Advisers Act Release No. 1562, *supra* note 123.

account the resources available to small advisers; (b) clarifying, consolidating, or simplifying compliance and reporting requirements under the proposed rule and rule amendments for small advisers; (c) using performance rather than design standards; and (d) exempting small advisers from coverage of all or part of the proposed rule and rule amendments.

Regarding the first alternative, the Commission considered establishing different compliance or reporting requirements for small advisers. As explained more fully in the IRFA, establishing different compliance or reporting requirements would be inconsistent with our mandate to provide a system of public disclosure of investment adviser information. The IRFA states that a small-entity adviser, by the nature of its business, would likely spend fewer resources in completing the new Form ADV, and will pay lower filing fees than those paid by a larger adviser.

Regarding the second alternative, it does not appear that the proposed rule and form amendments can be formatted differently for small advisers and still achieve the stated objectives of the proposal. Nonetheless, the proposed amendments would clarify and simplify the form for all advisers, including small advisers. As discussed more fully in the IRFA, we are also proposing to add a new item to Form ADV to capture specific information about small advisers so we can better assess the number of small advisers registered with us and the burdens imposed by our rules.

Regarding the third alternative, the IRFA explains that the proposed rule and form amendments would permit advisers to use performance rather than design standards in some instances. For example, we do not specify the means by which an adviser would deliver its brochure to clients.[310] In other contexts, however, the use of performance rather than design standards would be inconsistent with our statutory mandate to protect investors, as advisers must provide certain registration information in a uniform and quantifiable manner so that it is useful to our regulatory and examination programs. Design standards, therefore, are necessary to achieve many objectives of the proposal.

Regarding the fourth alternative, the IRFA states that it would be inconsistent with the purposes of the Advisers Act to exempt small advisers from the proposed rule and form amendments. The information in the adviser's brochure is necessary for the client to evaluate the adviser's background, qualifications and services, and to apprise the client of potential conflicts of interest and of the adviser's financial condition. Clients of small advisers are entitled to the same disclosure required of larger advisers, and exempting small advisers from any of the proposed rule and form amendments would be inconsistent with a central purpose of the Advisers Act. We have incorporated several features intended to minimize the burden on small-entity investment advisers, such as the fact that any adviser with Internet access can file through the IARD, and that the system will have a "help" function to assist advisers. Smaller advisers can also apply for a continuing hardship exemption from the electronic filing requirements, as discussed above.

The IRFA states that, having considered the above alternatives in the context of the proposed rule and form amendments, and after taking into account the resources available to small advisers and the potential burden the proposal could place on investment advisers, the alternatives, except as noted above, would not accomplish the stated objectives of the proposal.

The Commission encourages the submission of comments on matters discussed in the IRFA. Comment specifically is requested on the number of small advisers that would be affected by the proposals and the burdens the proposals would impose on small advisers. Commenters are asked to describe the nature of any burden and provide empirical data supporting the extent of the impact. These comments will be placed in the same public comment file as comments on the proposals. A copy of the IFRA may be obtained by contacting Jeffrey O. Himstreet, Attorney, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549–0506.

VI. Statutory Authority

We are proposing new rule 203–3 under sections 203(c)(1) and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(c)(1) and 80b–11(a)).

We are proposing amendments to rules 30–5 and 30–11 of our Organization and Program Management rules under sections 4A and 4B of the Securities Exchange Act of 1934 (15 U.S.C. 78d–1 and 78d–2).

We are proposing amendments to rule 0–2 under section 19(a) of the Securities Act of 1933 (15 U.S.C. 77s(a)), section 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78w(a)), section 319(a) of the Trust Indenture Act of 1939 (15 U.S.C. 77sss(a)), section 38(a) of the Investment Company Act of 1940 (15 U.S.C. 78a–37(a)), and sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)).

We are proposing amendments to rule 0–7 under chapter 6 of title 5 of the United States Code (particularly section 601 of that chapter (5 U.S.C. 601)) and section 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–11(a)).

We are proposing amendments to rules 203–1 and 203–2 under sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)).

We are proposing amendments to rule 203A–1 under sections 203A(a)(1)(A), 203A(c), and section 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3a(a)(1)(A), 80b–3a(c), and 80b–11(a)).

We are proposing amendments to rule 203A–2 under section 203A(c) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3a(c)).

We are proposing amendments to rules 204–1 under sections 203(c)(1) and 204 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(c)(1) and 80b–4).

We are proposing amendments to rule 204–2 under sections 204 and 206(4) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4 and 80b–6(4)).

We are proposing amendments to rule 204–3 under sections 204, 206(4), and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4, 80b–6(4), and 80b–11(a)).

We are proposing new Form ADV–H under sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)).

We are proposing amendments to rule 279.1, Form ADV, under section 19(a) of the Securities Act of 1933 (15 U.S.C. 77s(a)), sections 23(a) and 28(e)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78w(a) and 78bb(e)(2)), section 319(a) of the Trust Indenture Act of 1939 (15 U.S.C. 77sss(a)), section 38(a) of the Investment Company Act of 1940 (15 U.S.C. 78a–37(a)), and sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)).

We are proposing amendments to rule 279.2, Form ADV–W, under sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)).

We are proposing to amend rule 279.4, Form 4–R, by replacing it with proposed Form ADV–NR under section

[310] *See* Investment Advisers Act Release No. 1562, *supra* note 123.

19(a) of the Securities Act of 1933 (15 U.S.C. 77s(a)), section 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78w(a)), section 319(a) of the Trust Indenture Act of 1939 (15 U.S.C. 77sss(a)), section 38(a) of the Investment Company Act of 1940 (15 U.S.C. 78a–37(a)), and sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)).

We are proposing to withdraw rule 204–5 under section 211(a) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–11(a)).

We are proposing to withdraw rule 206(4)–4 under section 206(4) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–6(4)).

We are proposing to remove and reserve rules 279.5, 279.6 and 279.7 and proposing to remove Forms 5–R, 6–R, and 7–R under section 19(a) of the Securities Act of 1933 (15 U.S.C. 77s(a)), section 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78w(a)), section 319(a) of the Trust Indenture Act of 1939 (15 U.S.C. 77sss(a)), section 38(a) of the Investment Company Act of 1940 (15 U.S.C. 78a–37(a)), and sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)).

We are proposing to remove and reserve rule 279.9 and proposing to remove Form ADV–Y2K under section 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–11(a)).

List of Subjects

17 CFR Part 200

Administrative practice and procedure; Authority delegations (Government agencies).

17 CFR Parts 275 and 279

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Form Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority section for Part 200 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. In § 200.30–5, the introductory text of paragraph (e) is revised and paragraph (e)(7) is added to read as follows:

§ 200.30–5 Delegation of authority to Director of Division of Investment Management.

* * * * *

(e) With respect to the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 to 80b–22):

* * * * *

(7) Pursuant to section 203A(d) of the Act (15 U.S.C. 80b–3a(d)), to set the terms of, and grant or deny as appropriate, continuing hardship exemptions under § 275.203–3 of this chapter.

3. Section 200.30–11 is amended by revising paragraph (b)(2) to read as follows:

§ 200.30–11 Delegation of authority to Associate Executive Director of the Office of Filings and Information Services.

* * * * *

(b) * * *

(2) Under section 203(h) of the Act (15 U.S.C. 80b–3(h)), to authorize the issuance of orders canceling registrations of investment advisers, or pending applications for registration, if such investment advisers or applicants for registration are no longer in existence or are not engaged in business as investment advisers.

* * * * *

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

4. The general authority citation for Part 275 is revised to read as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(F), 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

* * * * *

5. Section 275.0–2 is revised to read as follows:

§ 275.0–2 General procedures for serving non-residents.

(a) *General procedures for serving process, pleadings, or other papers on non-resident investment advisers, general partners and managing agents.* Under Forms ADV and ADV–NR (17 CFR 279.1 and 279.4), a person may serve process, pleadings, or other papers on a non-resident investment adviser, or on a non-resident general partner or non-resident managing agent of an investment adviser by serving any or all of its appointed agents:

(1) A person may serve a non-resident investment adviser, non-resident general partner, or non-resident managing agent by furnishing the Commission with one copy of the process, pleadings, or papers, for each named party, and one additional copy for the Commission's records.

(2) If process, pleadings, or other papers are served on the Commission as described in this section, the Secretary of the Commission (Secretary) will promptly forward a copy to each named party by registered or certified mail at that party's last address filed with the Commission.

(3) If the Secretary certifies that the Commission was served with process, pleadings, or other papers pursuant to paragraph (a)(1) of this section and forwarded these documents to a named party pursuant to paragraph (a)(2) of this section, this certification constitutes evidence of service upon that party.

(b) *Definitions.* For purposes of this section:

(1) *Managing agent* means any person, including a trustee, who directs or manages, or who participates in directing or managing, the affairs of any unincorporated organization or association other than a partnership.

(2) *Non-resident* means:

(i) An individual who resides in any place not subject to the jurisdiction of the United States;

(ii) A corporation that is incorporated in or that has its principal office and place of business in any place not subject to the jurisdiction of the United States; and

(iii) A partnership or other unincorporated organization or association that has its principal office and place of business in any place not subject to the jurisdiction of the United States.

(3) *Principal office and place of business* has the same meaning as in § 275.203A–3(c) of this chapter.

6. In § 275.0–7, the introductory text of paragraph (a) is republished and paragraphs (a)(1) and (b)(1) are revised to read as follows:

§ 275.0–7 Small entities under the Investment Advisers Act for purposes of the Regulatory Flexibility Act.

(a) For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 *et seq.*) and unless otherwise defined for purposes of a particular rulemaking proceeding, the term *small business* or *small organization* for purposes of the Investment Advisers Act of 1940 shall mean an investment adviser that:

(1) Has assets under management, as defined under Section 203A(a)(2) of the Act (15 U.S.C. 80b-3a(a)(2)) and reported on its annual updating amendment to Form ADV (17 CFR 279.1), of less than $25 million, or such

higher amount as the Commission may by rule deem appropriate under Section 203A(a)(1)(A) of the Act (15 U.S.C. 80b-3a(a)(1)(A));

* * * * *

(b) For purposes of this section:

(1) *Control* means the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise.

(i) A person is presumed to control a corporation if the person:

(A) Directly or indirectly has the right to vote 25 percent or more of a class of the corporation's voting securities; or

(B) Has the power to sell or direct the sale of 25 percent or more of a class of the corporation's voting securities.

(ii) A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership.

(iii) A person is presumed to control a limited liability company (LLC) if the person:

(A) Directly or indirectly has the right to vote 25 percent or more of a class of the interests of the LLC;

(B) Has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the LLC; or

(C) Is an elected manager of the LLC.

(iv) A person is presumed to control a trust if the person is a trustee or managing agent of the trust.

* * * * *

7. Section 275.203–1 is revised to read as follows:

§ 275.203–1 Application for investment adviser registration.

(a) *Form ADV.* To apply for registration with the Commission as an investment adviser, you must complete and file Form ADV (17 CFR 279.1) by following the instructions in the Form.

(b) *Electronic filing.*

(1) If you apply for registration on or after ___ _, 2000, you must file electronically with the Investment Adviser Registration Depository (IARD), unless you have received a hardship exemption under § 275.203–3.

Note to Paragraph (b): Information on how to file with the IARD is available on our website at <http://www.sec.gov/__.

(2) Until the IARD begins to accept Part 2A of Form ADV (the brochure), you are not required to submit Part 2A with the Commission. Instead, you must maintain a copy of each amended form of brochure you use and provide it to SEC staff upon request. The brochure you maintain is considered filed with the Commission. We will notify you when the IARD begins to accept Part 2A, and you will have a grace period before you are required to file Part 2A with the IARD.

(c) *When filed.* Each Form ADV is considered filed with the Commission upon acceptance by the IARD.

(d) *Filing fees.* You must pay NASD Regulation, Inc. (NASDR) (the operator of the IARD) a filing fee, the amount of which is provided in the instructions to Form ADV, no portion of which is refundable. Your completed application for registration will not be accepted by NASDR, and thus will not be considered filed with the Commission, until you have paid the filing fee.

8. Section 275.203–2 is revised to read as follows:

§ 275.203–2 Withdrawal from investment adviser registration.

(a) *Form ADV–W.* You must file Form ADV–W (17 CFR 279.2) to withdraw from investment adviser registration with the Commission (or to withdraw a pending registration application).

(b) *Electronic filing.* Once you have filed your Form ADV (17 CFR 279.1) (or any amendments to Form ADV) electronically with the Investment Adviser Registration Depository (IARD), any Form ADV–W you file must be filed with the IARD, unless you have received a hardship exemption under § 275.203–3.

(c) *Effective date—upon filing.* Each Form ADV–W filed under this section is effective upon acceptance by the IARD.

(d) *Filing fees.* You do not have to pay a fee to file Form ADV-W on the IARD.

(e) *Form ADV–W is a report.* Each Form ADV–W required to be filed under this section is a "report" within the meaning of sections 204 and 207 of the Act (15 U.S.C. 80b–4 and 80b–7).

9. Section 275.203–3 is added to read as follows:

§ 275.203–3 Hardship exemptions.

This section provides two "hardship exemptions" from the requirement to make Advisers Act filings electronically.

(a) *Temporary hardship exemption.*

(1) *Eligibility for exemption.* If you are registered with the Commission as an investment adviser and submit electronic filings on the Investment Adviser Registration Depository (IARD) system, but have unanticipated technical difficulties that prevent you from submitting a filing to the IARD system, you may request a temporary hardship exemption from the requirements of this chapter to file electronically.

(2) *Application procedures.* To request a temporary hardship exemption, you must:

(i) File Form ADV–H (17 CFR 279.3) in paper format with NASD Regulation, Inc. (NASDR) no later than one business day after the filing that is the subject of the ADV–H was due; and

(ii) Submit the filing that is the subject of the Form ADV–H in electronic format to NASDR no later than seven business days after the filing was due.

(3) *Effective date—upon filing.* The temporary hardship exemption will be granted when you file a completed Form ADV–H with NASDR.

(b) *Continuing hardship exemption.*

(1) *Eligibility for exemption.* If you are a "small business" (as described in paragraph (b)(5) of this section), you may apply for a continuing hardship exemption. The period of the exemption may be no longer than one year after the date on which you apply for the exemption.

(2) *Application procedures.* To apply for a continuing hardship exemption, you must file Form ADV–H with NASDR at least ten business days before a filing is due. The Commission will grant or deny your application within ten business days after filing Form ADV–H.

(3) *Effective date—upon approval.* You are not exempt from the electronic filing requirements until and unless the Commission approves your application. If the Commission approves your application, you may submit your filings to NASDR in paper format for the period of time for which the exemption is granted.

(4) *Criteria for exemption.* Your application will be granted only if you are able to demonstrate that the electronic filing requirements of this chapter are prohibitively burdensome or expensive.

(5) *Small business.* You are a "small business" for purposes of this section if you are required to answer Item 12 of Form ADV (17 CFR 279.1) and checked "no" to each question in Item 12 that you were required to answer.

Note to Paragraphs (a) and (b): NASDR will charge you an additional fee covering its cost to convert to electronic format a filing made in reliance on a continuing hardship exemption.

10. Section 275.203A–1 is revised to read as follows:

§ 275.203A–1 Eligibility for SEC registration; switching to or from SEC registration.

(a) *Eligibility for SEC registration.*

(1) *Threshold for SEC registration—$30 million of assets under management.* If the State where you maintain your principal office and place of business has enacted an investment

adviser statute, you are not required to register with the Commission, unless:

(i) You have assets under management of at least $30,000,000, as reported on your Form ADV (17 CFR 279.1); or

(ii) You are an investment adviser to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 to 80a–64).

(2) *Exemption for investment advisers having between $25 and $30 million of assets under management.* If the State where you maintain your principal office and place of business has enacted an investment adviser statute, you may register with the Commission if you have assets under management of at least $25,000,000 but less than $30,000,000, as reported on your Form ADV (17 CFR 279.1). This paragraph (a)(2) shall not apply if:

(i) You are an investment adviser to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 to 80a–64); or

(ii) You are eligible for an exemption described in § 275.203A–2 of this chapter.

Note to Paragraphs (a)(1) and (a)(2): Paragraphs (a)(1) and (a)(2) of this section together make SEC registration optional for certain investment advisers that have between $25 and $30 million of assets under management.

(b) *Switching to or from SEC registration.*

(1) *State-registered advisers—switching to SEC registration.* If you are registered with a State securities authority, you must apply for registration with the Commission within 90 days of filing an annual updating amendment to your Form ADV reporting that you have at least $30 million of assets under management.

(2) *SEC-registered advisers—switching to State registration.* If you are registered with the Commission and file an annual updating amendment to your Form ADV reporting that you no longer have $25 million of assets under management (or are not otherwise eligible for SEC registration), you must file Form ADV–W (17 CFR 279.2) to withdraw your SEC registration within 180 days of your fiscal year end (unless you then have at least $25 million of assets under management or are otherwise eligible for SEC registration). During this period while you are registered with both the Commission and one or more State securities authorities, the Investment Advisers Act of 1940 and applicable State law will apply to your advisory activities.

11. Section 275.203A–2 is amended as follows:

a. The introductory text is republished;

b. In paragraph (b)(3), the phrase "Schedule I" is revised to read "an annual updating amendment";

c. The introductory text to paragraph (d) is republished;

d. Paragraphs (d)(2) and (d)(3) are revised;

e. The introductory text to paragraph (e) is republished; and

f. Paragraphs (e)(2), (e)(3) and (e)(4) are revised to read as follows:

§ 275.203A–2 Exemptions from prohibition on SEC registration.

The prohibition of section 203A(a) of the Act (15 U.S.C. 80b–3a(a)) does not apply to:

* * * * *

(d) *Investment advisers expecting to be eligible for SEC registration within 120 Days.* An investment adviser that:

* * * * *

(2) Indicates on Schedule D of its Form ADV (17 CFR 279.1) that it will withdraw from registration with the Commission if, on the 120th day after the date the investment adviser's registration with the Commission becomes effective, the investment adviser would be prohibited by section 203A(a) of the Act (15 U.S.C. 80b-3a(a)) from registering with the Commission; and

(3) Notwithstanding § 275.203A–1(b)(2) of this chapter, files a completed Form ADV–W (17 CFR 279.2) withdrawing from registration with the Commission within 120 days after the date the investment adviser's registration with the Commission becomes effective.

(e) Multi-state investment advisers. An investment adviser that:

* * * * *

(2) Indicates on Schedule D of its Form ADV that the investment adviser has reviewed the applicable State and federal laws and has concluded that, in the case of an application for registration with the Commission, it is required by the laws of 30 or more States to register as an investment adviser with the State securities authorities in the respective States or, in the case of an amendment to Form ADV, it would be required by the laws of at least 25 States to register as an investment adviser with the State securities authorities in the respective States, within 90 days prior to the date of filing Form ADV;

(3) Undertakes on Schedule D of its Form ADV to withdraw from registration with the Commission if the adviser indicates on an annual updating amendment to Form ADV that the investment adviser would be required by the laws of fewer than 25 States to register as an investment adviser with the securities commissioners (or any agencies or officers performing like functions) in the respective States, and that the investment adviser would be prohibited by section 203A(a) of the Act (15 U.S.C. 80b–3a(a)) from registering with the Commission, by filing a completed Form ADV–W within 180 days of the adviser's fiscal year end (unless the adviser then has at least $25 million of assets under management or are otherwise eligible for SEC registration); and

(4) Maintains in an easily accessible place a record of the States in which the investment adviser has determined it would, but for the exemption, be required to register for a period of not less than five years from the filing of a Form ADV that includes a representation that is based on such record.

12. Section 275.204–1 is revised to read as follows:

§ 275.204–1 Amendments to application for registration.

(a) *When amendment is required.* You must amend your Form ADV (17 CFR 279.1):

(1) At least annually, within 90 days of the end of your fiscal year; and

(2) More frequently, if required by the instructions to Form ADV.

(b) *Electronic filing.*

(1) If you are an investment adviser registered with the Commission on_____ __, 2000, you must amend your Form ADV by electronically filing a completed Part 1A of Form ADV (as amended on ____ __, 2000) with the Investment Adviser Registration Depository (IARD) as follows:

(i) _____ must file no later than _____;

(ii) _____ must file no later than _____;

(iii) _____ must file no later than _____; and

(iv) _____ must file no later than _____.

Note to Paragraphs (a) and (b): Information on how to file with the IARD is available on our website at <http://www.sec.gov/____>.

(2) If you are an investment adviser with a pending registration application on_____ __, 2000, you must amend your Form ADV by electronically filing a completed Part 1A of Form ADV (as amended on _____ __, 2000) with the IARD by (date used in paragraph (b)(1)(iv)).

(3) If you have received a hardship exemption under § 275.203–3, you must file a completed Part 1A of Form ADV on paper with NASD Regulation, Inc. (NASDR) when you are required to

amend your Form ADV by the schedule in paragraph (b)(1) of this section.

(4) If you have filed Part 1A of Form ADV with the IARD under paragraphs (b)(1) or (b)(2) of this section, you must file all subsequent amendments to your Form ADV with the IARD.

(c) *Special rule for part 2.* When resubmitting Form ADV in accordance with paragraph (b) of this section, you are not required to submit Part 2A of Form ADV (the firm brochure). Until the IARD begins to accept Part 2A of Form ADV, you must maintain a copy of each amended form of your firm brochure you use and provide it to SEC staff upon request. The firm brochure you maintain is considered filed with the Commission. We will notify you when the IARD begins to accept Part 2A, and you will have a grace period before you are required to file Part 2A with the IARD. You are not required to file Part 2B of Form ADV (the brochure supplements) with the Commission.

Note to Paragraph (c): You are required by § 204–3(i) to begin using your new firm brochure and all required brochure supplements by (date used in paragraph (b)(1)(iv)), and to deliver your new firm brochure and all required brochure supplements to each of your current advisory clients by (30 days after the date in paragraph (b)(1)(iv)).

(d) *Filing fees.* You must pay NASDR (the operator of the IARD) an annual filing fee at the time you file your annual updating amendment, no portion of which is refundable. The filing fees are provided in the instructions to Form ADV. Your amended Form ADV will not be accepted by NASDR, and thus will not be considered filed with the Commission, until you have paid the filing fee.

(e) *Amendments to Form ADV are reports.* Each amendment required to be filed under this section is a "report" within the meaning of sections 204 and 207 of the Act (15 U.S.C. 80b–4 and 80b–7).

13. Section 275.204–2 is amended by revising paragraph (a)(14) to read as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

(a) * * *

(14)(i) A copy of each written statement, and each amendment or revision to the written statement, given or sent to any advisory client or prospective client as required by Rule 204–3 under the Act; any summary of material changes that is required by Part 2 of Form ADV but is not contained in the written statement; and a record of the dates that each written statement, each amendment or revision thereto, and each summary of material changes was given or offered to any client or to any prospective client who subsequently becomes a client.

(ii) A memorandum describing any legal or disciplinary event listed in Item 8 of Part 2A or Item 3 of Part 2B of Form ADV and presumed to be material, if the event involved the investment adviser or any of its supervised persons and is not disclosed in the written statements described in paragraph (a)(14)(i) of this section. The memorandum must explain the investment adviser's determination that the presumption of materiality is overcome, and must discuss the factors described in those items.

* * * * *

14. Section 275.204–3 is revised to read as follows:

§ 275.204–3 Delivery of firm brochures and brochure supplements.

(a) *General requirements.* If you are registered under the Act as an investment adviser, you must offer and deliver a firm brochure and one or more supplements to each client or prospective client as required by this section. The brochure and supplement(s) must contain all information required by Part 2 of Form ADV (17 CFR 279.1).

(b) *Offer and delivery requirements.* (1) You (or a supervised person acting on your behalf) must deliver to a client or prospective client:

(i) Your current brochure before or at the time you enter into a written or oral investment advisory contract with the client, and

(ii) A current brochure supplement for a supervised person before or at the time that supervised person begins to provide advisory services to the client. For purposes of this section, a supervised person will provide advisory services to a client if the supervised person will:

(A) Regularly communicate investment advice to that client, or

(B) Formulate investment advice for assets of that client, or make discretionary investment decisions for assets of that client.

(2) At least once a year, you must deliver or offer each advisory client a copy of your current brochure and any brochure supplements that you are required to deliver under paragraph (b)(1)(ii) of this section. Your offer must be in writing. If a client accepts your offer, you must send the current brochure and supplements to that client, without charge, within seven days after you are notified of the acceptance.

(c) *Exceptions to delivery requirement.* (1) You are not required to deliver a brochure or brochure supplement when you enter into an investment company contract.

(2) You are not required to deliver a brochure supplement when you enter into a contract for impersonal investment advice. Further, if you charge less than $500 per year under that contract, you are not required to deliver a brochure when you enter into the contract.

(d) *Delivery to limited partners.* If, as an adviser, you are the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then for purposes of this section you must treat each of the partnership's limited partners, the company's members, or the trust's beneficial owners as a client. For purposes of this section, a limited liability partnership or limited liability limited partnership is a "limited partnership."

(e) *Wrap fee program brochures.* (1) If you are a sponsor of a wrap fee program, then the brochure that paragraph (b)(1)(i) of this section requires you to deliver to a client or prospective client of the wrap fee program must be a wrap fee brochure containing all information required by Part 2A Appendix 1 of Form ADV. Any additional information in a wrap fee brochure must be limited to information applicable to wrap fee programs that you sponsor.

(2) You do not have to offer or deliver a wrap fee brochure if another sponsor of the wrap fee program offers or delivers, to the client or prospective client of the wrap fee program, a wrap fee program brochure containing all the information your wrap fee program brochure must contain.

Note to paragraph (e): A wrap fee brochure does not take the place of any brochure supplements that you are required to deliver under paragraph (b)(1)(ii) of this section.

(f) *Updates and amendments.* You must amend your brochure and any brochure supplement and deliver the amendments to clients promptly when information contained in the brochure or brochure supplement becomes materially inaccurate. The instructions to Part 2 of Form ADV contain updating instructions that you must follow.

(g) *Multiple brochures.* If you provide substantially different advisory services to different clients, you may provide them with different brochures, so long as each client receives all applicable information about services and fees. The brochure you deliver to an advisory client may omit any information required by Part 2A of Form ADV if the information does not apply to the advisory services or fees that you will

provide or charge, or that you propose to provide or charge, to that client.

(h) *Other disclosure obligations.* Delivering a brochure or supplement in compliance with this section does not relieve you of any other disclosure obligations you have to your advisory clients or prospective clients under any federal or State laws or regulations.

(i) *Transition rule.* (1) By (date used in rule 204–1(b)(1)(iv)), you must begin using your current brochure and all required brochure supplements to comply with this section.

(2) By (30 days after the date used in rule 204–1(b)(1)(iv)), you must deliver to each of your advisory clients your current brochure and all required brochure supplements.

(j) *Definitions.* For purposes of this section:

(1) *Contract for impersonal investment advice* means a contract for investment advisory services that does not purport to meet the objectives or needs of specific individuals or accounts.

(2) *Current brochure* and *current brochure supplement* mean the most recent revision of the brochure or brochure supplement, including all subsequent amendments (*i.e.*, stickers).

(3) *Investment company contract* means a contract with an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 to 80a–64) that meets the requirements of section 15(c) of that Act (15 U.S.C. 80a–15(c)).

(4) *Sponsor* of a wrap fee program means an investment adviser that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of, other investment advisers in the program.

(5) *Supervised person* means any of your officers, partners or directors (or other persons occupying a similar status or performing similar functions) or employees, or any other person who provides investment advice on your behalf.

(6) *Wrap fee program* means an advisory program under which a specified fee or fees not based directly upon transactions in a client's account is charged for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and the execution of client transactions.

§ 275.204–5 [Removed and Reserved]

15. Section 275.204–5 is removed and reserved.

§ 275.206(4)–4 [Removed and Reserved]

16. Section 275.206(4)–4 is removed and reserved.

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

17. The authority citation for Part 279 is revised to read as follows:

Authority: 15 U.S.C. 80b–1 to 80b–22.

18. Form ADV (referenced in § 279.1) is revised.

Note: The text of Form ADV does not and the amendments will not appear in the Code of Federal Regulations. Form ADV is attached as Appendix A.

19. Form ADV–W (referenced in § 279.2) is revised.

Note: The text of Form ADV–W does not and the amendments will not appear in the Code of Federal Regulations. Form ADV–W is attached as Appendix B.

20. Section 279.3 and Form ADV–H are added as follows.

Note: The text of Form ADV–H will not appear in the Code of Federal Regulations. Form ADV–H is attached as Appendix C.

§ 279.3 Form ADV–H, application for a temporary or continuing hardship exemption.

An investment adviser must file this form under § 275.203–3 of this chapter to request a temporary hardship exemption or apply for a continuing hardship exemption.

21. Form 4–R (referenced in § 279.4) is removed.

22. Section 279.4 is revised and Form ADV–NR is added as follows:

Note: Form ADV–NR will not appear in the Code of Federal Regulations. Form ADV–NR is attached as Appendix D.

§ 279.4 Form ADV–NR, appointment of agent for service of process by non-resident general partner and non-resident managing agent of an investment adviser.

Each non-resident general partner or managing agent of an investment adviser must file this form under § 275.0–2 of this chapter.

§ 279.5 [Removed and Reserved]

23. Section 279.5 and Form 5–R are removed and reserved.

Note: Form 5–R does not appear in the Code of Federal Regulations.

§ 279.6 [Removed and Reserved]

24. Section 279.6 and Form 6–R are removed and reserved.

Note: Form 6–R does not appear in the Code of Federal Regulations.

§ 279.7 [Removed and Reserved]

25. Section 279.7 and Form 7–R are removed and reserved.

Note: Form 7–R does not appear in the Code of Federal Regulations.

§ 279.9 [Removed and Reserved]

26. Section 279.9 and Form ADV–Y2K are removed and reserved.

Note: Form ADV–Y2K does not appear in the Code of Federal Regulations.

By the Commission.

Dated: April 5, 2000.

Margaret H. McFarland,

Deputy Secretary

(Note: Appendixes A, B, C, and D will not appear in the Code of Federal Registration)

Appendix A—Form ADV (Paper Version): Uniform Application for Investment Adviser Registration

Form ADV: General Instructions

Read these instructions carefully before filing Form ADV. Failure to follow these instructions, properly complete the form, and pay all required fees may result in your filing being returned to you. Electronic filers should follow the instructions available on-line, which are different.

In these instructions and in the form, "you" means the investment adviser (i.e., the advisory firm) applying for registration or amending its registration. If you are a "separately identifiable department or division" (SID) of a bank, "you" means the SID, rather than your bank, unless the instructions or the form provide otherwise. Terms that appear in *italics* are defined in the Glossary of Terms to Form ADV.

1. What is Form ADV used for?

Investment advisers use Form ADV to:

- Register with the Securities and Exchange Commission.
- Register with one or more *state securities authorities.*
- Amend those registrations.

Form ADV also contains the requirements for the *brochure* you must deliver to *clients* under SEC rule 204–3 and similar state rules.

2. How is Form ADV organized?

Form ADV contains four parts:

- Part 1A asks a number of questions about you, your business practices, the *persons* who own and *control* you, and the *persons* who provide investment advice on your behalf. All advisers registering with the SEC or any of the *state securities authorities* must complete Part 1A.

Part 1A also contains several schedules that supplement Part 1A. The items of Part 1A let you know which schedules you must complete.

- Schedule A asks for information about your direct owners and executive officers.
- Schedule B asks for information about your indirect owners.
- Schedule C is used by paper filers to update the information required by Schedules A and B (see Instruction 13).

• Schedule D asks for additional information for certain items in Part 1A.

• Disclosure Reporting Pages (or "DRPs") ask for details about disciplinary events involving you or *persons* affiliated with you. (These are considered schedules too.)

• Part 1B asks additional questions required by *state securities authorities*. Part 1B contains three DRPs. If you are applying for registration or are registered only with the SEC, you do not have to complete Part 1B. (If you are filing electronically and you do not have to complete Part 1B, you will not see Part 1B.)

• Part 2A contains the requirements for preparing the *brochure* that SEC rule 204–3 and similar state rules require you to deliver to your *clients*. The *brochure* provides information about your business practices, fees and any conflicts of interest you may have with your *clients*. If you *sponsor wrap fee programs*, you must create a separate *brochure* that discloses information about these programs. Appendix 1 to Part 2 contains the requirements for preparing a *wrap fee program brochure*. Instructions to Part 2A explain when a *brochure* must be delivered.

• Part 2B contains the requirements for preparing *brochure* supplements about your *supervised persons*. Instructions to Part 2B explain for which *supervised persons* you must prepare a supplement and to which *clients* you must deliver the supplement.

3. When am I required to update my Form ADV?

You must amend your Form ADV annually by filing an *annual updating amendment* within 90 days after the end of your fiscal year. When you submit your *annual updating* amendment, you must update your responses to all items.

In addition to your *annual updating amendment*, you must amend your Form ADV by filing additional amendments (other-than-annual amendments) *promptly* if:

• information you provided in response to Items 1, 3, 9, or 11 of Part 1A or Items 1, 2.A.–2.F., or 2.I. of Part 1B become inaccurate in any way;

• information you provided in response to Items 4, 7, 8, or 10 of Part 1A or Item 2.G. of Part 1B become *materially* inaccurate; or

• any information in Part 2 (your *brochure* or a *brochure* supplement) becomes *materially* inaccurate.

If you are submitting an other-than-annual amendment, you are not required to update your responses to Items 2, 5, 6, or 12 of Part 1A or Items 2.H. or 2.J. of Part 1B even if your responses to those items have become inaccurate. You must update your responses to all other items in Part 1 whenever you amend your Form ADV.

Failure to update your Form ADV, as required by this instruction, is a violation of SEC rule 204–1 and similar state rules and could lead to your registration being revoked.

4. Where do I sign my Form ADV application or amendment?

You must sign the appropriate Execution Page. There are three Execution Pages at the end of the form. Your initial application and all amendments to Form ADV must include at least one Execution Page.

• If you are applying for or amending your SEC registration, you must sign and submit either a:

• Domestic Investment Adviser Execution Page, if you (the advisory firm) are a resident of the United States; or

• *Non-Resident* Investment Adviser Execution Page, if you (the advisory firm) are not a resident of the United States.

• If you are applying for or amending your registration with a *state securities authority*, you must sign and submit the State-Registered Investment Adviser Execution Page.

5. Who must sign my Form ADV or amendment?

The individual who signs the form depends upon your form of organization:

• For a sole proprietorship, the sole proprietor.

• For a partnership, a general partner.

• For a corporation, an authorized principal officer.

• For a "separately identifiable department or division" (SID) of a bank, a principal officer of your bank who is directly engaged in the management, direction or supervision of your investment advisory activities.

• For all others, an authorized individual who participates in managing or directing your affairs.

The signature does not have to be notarized.

6. How do I file my Form ADV?

Until [completion date of transition to electronic filing in rule 204–1(b)(i)(D)], you must follow the instructions in [transition instructions that will be included with the adopting release for Form ADV] to determine how you should file. After [date in rule 204–1(b)(i)(D)], follow this Instruction 6.

Complete Form ADV electronically using the Investment Adviser Registration Depository (IARD) if:

• You are filing with the SEC (and submitting *notice filings* to any of the *state securities authorities*), or

• You are filing with a *state securities authority* that requires or permits advisers to submit Form ADV through the IARD.

Complete Form ADV (Paper Version) on paper if:

• You are filing with the SEC or a *state securities authority* that requires electronic filing, but you have been granted a continuing hardship exemption. Hardship exemptions are described in Instruction 12.

• You are filing with a *state securities authority* that permits (but does not require) electronic filing and you do not file electronically.

7. How do I get started filing electronically?

There are two things you must do to get started filing electronically:

• You must request a user I.D. code and password by completing and submitting Form ADV–ID to NASDR. You can get a copy of Form ADV–ID from any of the following web sites: <www.sec.gov>, <www.nasaa.org>, and <www.nasdr.com>. Form ADV–ID must be submitted on paper. Mail the form to [address] or fax it to [fax number].

• You must establish an IARD account with NASDR, from which the IARD will deduct filing fees and any *state* fees you are required to pay. If you have a *CRD* account with NASDR, you do not need to establish a separate IARD account. To establish an IARD account, [to be determined].

Once you receive your user I.D. and password and you have an account, you are ready to file electronically.

8. If I am applying for registration with the SEC, or amending my SEC registration, how do I make *notice filings* with the *state securities authorities*?

If you are applying for registration with the SEC or amending your SEC registration, the *state securities authorities* of states in which you are "doing business" may require you to provide them with copies of your SEC filings. We call these filings "*notice filings*." Your *notice filings* will be sent electronically to the *states* that you check on Item 2.B. of Part 1A. The *state securities authorities* to which you send *notice filings* may charge fees, which will be deducted from the account you establish with NASDR. To determine which *state securities authorities* require SEC-registered advisers to submit *notice filings* and to pay fees, consult the investment adviser law or the *state securities authority* for the particular state in which you are "doing business." See General Instruction 15.

If you are granted a continuing hardship exemption to file Form ADV on paper, NASDR will enter your filing into the IARD and your *notice filings* will be sent electronically to the *state securities authorities* that you check on Item 2.B. of Part 1A.

9. I am registered with a *state*. When must I switch to SEC registration?

If you report on your *annual updating amendment* that your assets under management have increased to $30 million or more, you must register with the SEC within 90 days after you file that *annual updating amendment*. If your assets under management increase to $25 million or more but not $30 million, you may, but are not required to, register with the SEC (assuming you are not otherwise required to register with the SEC). Once you register with the SEC, you are subject to SEC regulation, regardless of whether you remain registered with one or more *states*. Each of your *investment adviser representatives*, however, may be subject to registration in those states in which the representative has a place of business. See SEC rule 203A–1(b). For additional information, consult the investment adviser laws or the *state securities authority* for the particular state in which you are "doing business." See General Instruction 15.

10. I am registered with the SEC. When must I switch to registration with a *state securities authority*?

If you report on your *annual updating amendment* that you have assets under management of less than $25 million *and* you are not otherwise eligible to register with the SEC, you must withdraw from SEC

registration within 180 days after the end of your fiscal year by filing Form ADV–W. You should consult state law in the states that you are doing business to determine if you are required to register in these states. See General Instruction 15. Until you file your Form ADV–W with the SEC, you will remain subject to SEC regulation, and you also will be subject to regulation in any states where you register. See SEC rule 203A–1(b).

11. Are there filing fees?

Yes. These fees go to support and maintain the IARD. The IARD filing fees are in addition to any registration or other fee that may be required by state law. You must pay an IARD filing fee for your initial application and each *annual updating amendment*. There is no filing fee for an other-than-annual amendment or Form ADV–W. The IARD filing fee schedule is as follows:

[to be determined]

If you are submitting a paper filing under a continuing hardship exemption (see Instruction 12), you are required to pay an additional fee. The amount of the additional fee depends on the type of filing you are submitting. The hardship filing fee schedule is as follows:

[to be determined]

12. What if I am not able to file electronically?

If you cannot file electronically, you may be eligible for one of two types of hardship exemptions from the electronic filing requirements.

- A **temporary hardship exemption** is available if you file electronically, but you encounter unexpected difficulties that prevent you from making a timely filing with the IARD, such as a computer malfunction or electrical outage. This exemption does *not* permit you to file on paper; instead, it extends the deadline for an electronic filing for seven business days. See SEC rule 203–3(a).
- A **continuing hardship exemption** may be granted if you are a small business and you can demonstrate that filing electronically would impose an undue hardship. You are a small business, and may be eligible for a continuing hardship exemption, if you are required to answer Item 12 of Part 1A (because you have assets under management of less than $25 million) *and* you are able to respond "no" to each question in Item 12. See SEC rule 0–7.

If you have been granted a continuing hardship exemption, you must complete and file the paper version of Form ADV with NASDR. NASDR will enter your responses into the IARD. As discussed in General Instruction 11, NASDR will charge you a fee to reimburse it for the expense of data entry.

Before applying for a continuing hardship exemption, consider engaging a firm that assists investment advisers in making filings with the IARD. Check the SEC's web site to obtain a list of firms that provide these services.

13. I am eligible to file on paper. How do I make a paper filing?

When filing on paper, you must:

- Type all of your responses.
- Include your name (the same name you provide in response to Item 1.A. of Part 1A) and the date on every page.
- If you are amending your Form ADV:
- complete page 1 and circle the number of any item for which you are changing your response.
- include your SEC 801–number (if you have one) and your *CRD* number (if you have one) on every page.
- complete the amended item in full and circle the number of the item for which you are changing your response.
- to amend Schedule A or Schedule B, complete and submit Schedule C.

Where you submit your paper filing depends on why you are eligible to file on paper:

- If you are filing on paper because you have been granted a continuing hardship exemption, submit one manually signed Form ADV and one copy to: NASD Regulation, Inc., [address to be determined].

If you complete Form ADV on paper and submit it to NASDR but you do not have a continuing hardship exemption, the submission will be returned to you.

- If you are filing on paper because a *state* in which you are registered or applying for registration allows you to submit paper instead of electronic filings, submit one manually signed Form ADV and one copy to the appropriate *state securities authorities*.

14. Who is required to file Form ADV–NR?

Every *non-resident* general partner and *managing agent* of *all* SEC-registered advisers, whether or not the adviser is resident in the United States, must file Form ADV–NR in connection with the adviser's initial application. A general partner or *managing agent* of an SEC-registered adviser who becomes a *non-resident* after the adviser's initial application has been submitted must file Form ADV–NR within 30 days. Form ADV–NR must be filed on paper (it cannot be filed electronically).

Submit Form ADV–NR to the SEC at the following address: Securities and Exchange Commission, [address to be determined].

Failure to file Form ADV–NR promptly may delay SEC consideration of your initial application.

15. Where can I get additional information?

The SEC provides additional information about its rules and the Advisers Act on its website: <www.sec.gov>.

NASAA provides additional information about state investment adviser laws and state rules, and how to contact a *state securities authority*, on its website: <www.nassa.org>.

Federal Information Law and Requirements

Advisers Act Sections 203(c), 204, 206 and 211(a) authorize the SEC to collect the information required by Form ADV. The SEC uses the information for regulatory purposes, including deciding whether to grant registration. The SEC keeps files of the information submitted on this form and makes the information publicly available. The SEC may reject forms that do not include required information. By accepting a form, however, the SEC does not make a finding that it has been completed or submitted correctly. Intentional misstatements or omissions constitute federal criminal violations under 18 U.S.C. § 1001 and 15 U.S.C. § 80b–17.

SEC's Collection of Information

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The Advisers Act authorizes the SEC to collect the information on Form ADV from applicants. See 15 U.S.C. §§ 80b–3(c)(1) and 80b–4. Filing the form is mandatory.

The main purpose of this form is to enable the SEC to register investment advisers. Every applicant for registration with the SEC as an adviser must file the form. See 17 C.F.R. § 275.203–1. The form is filed annually by every adviser, no later than 90 days after the end of its fiscal year, to amend its registration. It also is filed promptly during the year to reflect material changes. See 17 C.F.R. § 275.204–1. The SEC maintains the information on the form and makes it publicly available through the IARD.

Anyone may send the SEC comments on the accuracy of the burden estimate on page 1 of the form, as well as suggestions for reducing the burden. The Office of Management and Budget has reviewed this collection of information under 44 U.S.C. § 3507.

The information contained in the form is part of a system of records subject to the Privacy Act of 1974, as amended. The SEC has published in the **Federal Register** the Privacy Act System of Records Notice for these records.

Form ADV (Paper Version); Unifrom Application for Investment Adviser Registration

Form ADV: Instructions for Part 1A

These instructions explain how to complete certain items in Part 1A of Form ADV.

1. Item 1: Identifying Information

If you are a "separately identifiable department or division" (SID) of a bank, answer Item 1.A. with the full legal name of your bank, and answer Item 1.B. with your own name (the name of the department or division) and all names under which you conduct your advisory business. In addition, your *principal office and place of business* in Item 1.F. should be the principal office at which you conduct your advisory business. In response to Item 1.I., the World Wide Web site addresses you list on Schedule D should be sites that provide information about your advisory business, rather than general information about your bank.

2. Item 2: SEC Registration

If you are registered or applying for registration with the SEC, you must indicate in Item 2.A. why you are eligible to register with the SEC by checking one or more boxes.

a. **Item 2.A(1): Adviser with Assets Under Management of $25 Million or More.** You may check box 1 *only* if your response to Item 5.F(2)(c) is $25 million or more. While you *may* register with the SEC if your assets under management are at least $25 million but less than $30 million, you *must* register

with the SEC if your assets under management are $30 million or more. Part 1A Instruction 5.b. explains how to calculate your assets under management.

If you are a state-registered adviser and you report on your *annual updating amendment* that your assets under management increased to $25 million or more, you *may* register with the SEC. If your assets under management increased to $30 million or more, you *must* register with the SEC within 90 days after you file that *annual updating amendment*. See SEC rule 203A–1(b) and Form ADV General Instruction 9.

b. **Item 2.A(4): Adviser to an Investment Company.** You may check box 4 *only* if you currently provide advisory services under an investment advisory contract to an investment company registered under the Investment Company Act of 1940 and the investment company is operational (*i.e.*, has assets and shareholders, other than just the organizing shareholders). See section 203A(a)(1)(B) of the Advisers Act. Advising investors about the merits of investing in mutual funds or recommending particular mutual funds does not make you eligible to check this box.

c. **Item 2.A(5): Nationally Recognized Statistical Rating Organization.** You may check box 5 *only* if you are designated as a nationally recognized statistical rating organization pursuant to an application filed under paragraph (c)(13)(i) of SEC rule 15c3–1 under the Securities Exchange Act of 1934. See SEC rule 203A–2(a). This designation generally is limited to rating agencies, such as Moody's and Standard & Poor's.

d. **Item 2.A(6): Pension Consultant.** You may check box 6 *only* if you are eligible for the pension consultant exemption from the prohibition on SEC registration.

- You are eligible for this exemption if you provided investment advice to employee benefit plans, governmental plans, or church plans with respect to assets having an aggregate value of $50 million or more during the 12-month period that ended within 90 days of filing this Form ADV. You are *not* eligible for this exemption if you only advise *clients* on allocating their investments within their pension plans. See SEC rule 203A–2(b).
- To calculate the value of assets for purposes of this exemption, aggregate the assets of the plans for which you provided advisory services at the end of the 12-month period. If you provided advisory services to other plans during the 12-month period, but your employment or contract terminated before the end of the 12-month period, you also may include the value of those assets.

e. **Item 2.A(7): Affiliated Adviser.** You may check box 7 *only* if you are eligible for the affiliated adviser exemption from the prohibition on SEC registration. See SEC rule 203A–2(c). You are eligible for this exemption if you *control*, are *controlled by*, or *are under common control with* an investment adviser that is registered with the SEC, *and* you have the same *principal office and place of business* as that other investment adviser. If you check box 7, you also must complete Section 2.A(7) of Schedule D.

f. **Item 2.A(8): Newly-Formed Adviser.** You may check box 8 *only* if you are eligible for the newly-formed-adviser exemption from the prohibition on SEC registration. See SEC rule 203A–2(d). You are eligible for this exemption if:

- Immediately before you file your application for registration with the SEC, you were not registered or required to be registered with the SEC or a *state securities authority; and*
- At the time of your formation, you have a reasonable expectation that within 120 days of registration you will be eligible for SEC registration.

If you check box 8, you also must complete Section 2.A(8) of Schedule D.

You must file an amendment to Part 1A of your Form ADV that updates your response to Item 2.A. within 120 days after the SEC declares your registration effective. You may not check box 8 on your amendment; since this exemption is available only if you are not registered, you may not "re-rely" on this exemption. If you indicate on that amendment (by checking box 11) that you are not eligible to register with the SEC, you also must at that same time file a Form ADV–W to withdraw your SEC registration.

g. **Item 2.A(9): Multi-State Adviser.** You may check box 9 *only* if you are eligible for the multi-state adviser exemption from the prohibition on SEC registration. See SEC rule 203A–2(e). You are eligible for this exemption if you are required to register as an investment adviser with the securities authorities of 30 or more *states*. If you check box 9, you must complete Section 2.A(9) of Schedule D. You must complete Section 2.A(9) of Schedule D in each *annual updating amendment* you submit.

If you check box 9, you also must:

- Create and maintain a list of the *states* in which, but for this exemption, you would be required to register;
- Update this list each time you submit an *annual updating amendment* in which you continue to represent that you are eligible for this exemption; and
- Maintain the list in an easily accessible place for a period of not less than five years from each date on which you indicate that you are eligible for the exemption.

If, at the time you file your *annual updating amendment*, you are required to register in less than 25 *states* and you are not otherwise eligible to register with the SEC, you must check box 11 in Item 2.A. You also must file a Form ADV–W to withdraw your SEC registration. See Part 1A Instruction 2.h.

h. **Item 2.A(11): Adviser No Longer Eligible to Remain Registered with the SEC.** You *must* check box 11 if:

- You are registered with the SEC;
- You are filing an *annual updating amendment* to Form ADV in which you indicate in response to Item 5.F(2)(c) that you have assets under management of less than $25 million; *and*
- You are not eligible to check any other box (other than box 11) in Item 2.A. (and are therefore no longer eligible to remain registered with the SEC).

You must withdraw from SEC registration within 180 days after the end of your fiscal year by filing Form ADV–W. Until you file your Form ADV–W, you will remain subject to SEC regulation, and you also will be subject to regulation in the *states* in which you register. See SEC rule 203A–1(b).

3. Item 3: Form of Organization

If you are a "separately identifiable department or division" (SID) of a bank, answer Item 3.A. by checking "other." In the space provided, specify that you are a "SID of" and indicate the form of organization of your bank. Answer Items 3.B. and 3.C. with information about your bank.

4. Item 4: Successions

a. **Succession of an SEC-Registered Adviser.** If you (1) have taken over the business of an investment adviser *or* (2) have changed your structure or legal status (*e.g.*, form of organization or state of incorporation), a new organization has been created, which has registration obligations under the Advisers Act. There are different ways to fulfill these obligations. You may rely on the registration provisions discussed in the General Instructions, or you may be able to rely on special registration provisions for "successors" to SEC-registered advisers, which may ease the transition to the successor adviser's registration.

To determine if you may rely on these provisions, review "Registration of Successors to Broker-Dealers and Investment Advisers," Investment Advisers Act Release No. 1357 (Dec. 28, 1992). If you have taken over an adviser, follow Part 1A Instruction 4.a(1), Succession by Application. If you have changed your structure or legal status, follow Part 1A Instruction 4.a(2), Succession by Amendment. If either (1) you are a "separately identifiable department or division" (SID) of a bank that is currently registered as an investment adviser, and you are taking over your bank's advisory business; or (2) you are a SID currently registered as an investment adviser, and your bank is taking over your advisory business, then follow Part 1A Instruction 4.a(1), Succession by Application.

(1) **Succession by Application.** If you are not registered with the SEC as an adviser, and you are acquiring or assuming substantially all of the assets and liabilities of the advisory business of an SEC-registered adviser, file a new application for registration on Form ADV. You will receive new registration numbers. You must file the new application within 30 days after the succession. On the application, make sure you check "yes" to Item 4 and complete Section 4 of Schedule D.

Until the SEC declares your new registration effective, you may rely on the registration of the adviser you are acquiring, but only if the adviser you are acquiring is no longer conducting advisory activities. Once your new registration is effective, a Form ADV–W must be filed with the SEC to withdraw the registration of the acquired adviser.

(2) **Succession by Amendment.** If you are a new investment adviser formed solely as a result of a change in form of organization, a reorganization, or a change in the composition of a partnership, and there has been no practical change in *control* or management, you may amend the registration of the registered investment adviser to reflect

these changes rather than file a new application. You will keep the same registration numbers, and you should not file a Form ADV–W. On your amendment, make sure you check "yes" to Item 4 and complete Section 4 of Schedule D. You must submit the amendment within 30 days after the change or reorganization.

b. **Succession of a State-Registered Adviser.** If you (1) have taken over the business of an investment adviser *or* (2) have changed your structure or legal status (*e.g.*, form of organization or state of incorporation), a new organization has been created, which has registration obligations under state investment adviser laws. There may be different ways to fulfill these obligations. You should contact each state in which you are registered to determine that state's requirements for successor registration. See Form ADV General Instruction 15.

5. Item 5: Information About Your Advisory Business

a. **Newly-Formed Advisers:** Several questions in Item 5 that ask about your advisory business assume that you have been operating your advisory business for some time. Your response to these questions should reflect your current advisory business (i.e., at the time you file your Form ADV), with the following exceptions:

- Base your response to Item 5.E. on the types of compensation you expect to accept;
- Base your response to Item 5.G. on the types of advisory services you expect to provide during the next year; and
- Skip Item 5.H.

b. **Item 5.F: Calculating Your Assets Under Management.** In determining the amount of your assets under management, include the securities portfolios for which you provide continuous and regular supervisory or management services as of the date of filing this Form ADV.

(1) **Securities Portfolios.** An account is a securities portfolio if at least 50% of the total value of the account consists of securities. For purposes of this 50% test, you may treat cash and cash equivalents (i.e., bank deposits, certificates of deposit, bankers acceptances, and similar bank instruments) as securities. You may include securities portfolios that are:

(a) Your family or proprietary accounts (unless you are a sole proprietor, in which case your personal assets must be excluded);

(b) Accounts for which you receive no compensation for your services; and

(c) Accounts of *clients* who are not U.S. residents.

(2) **Value of Portfolio.** Include the entire value of each securities portfolio for which you provide continuous and regular supervisory or management services. If you provide continuous and regular supervisory or management services for only a portion of a securities portfolio, include as assets under management only that portion of the securities portfolio for which you provide such services. Exclude, for example, the portion of an account:

(a) Under management by another *person; or*

(b) that consists of real estate or businesses whose operations you "manage" on behalf of a *client* but not as an investment.

Do not deduct securities purchased on margin.

(3) **Continuous and Regular Supervisory or Management Services.**

General Criteria. You provide continuous and regular supervisory or management services with respect to an account if:

(a) You have *discretionary authority* over and provide ongoing supervisory or management services with respect to the account; or

(b) You do not have *discretionary authority* over the account, but you have ongoing responsibility to select or make recommendations, based upon the needs of the *client*, as to specific securities or other investments the account may purchase or sell and, if such recommendations are accepted by the *client*, you are responsible for arranging or effecting the purchase or sale.

Factors. You should consider the following factors in evaluating whether you provide continuous and regular supervisory or management services to an account.

(a) **Terms of the advisory contract.** If you agree in an advisory contract to provide ongoing management services, this suggests that you provide these services for the account. Other provisions in the contract, or your actual management practices, however, may suggest otherwise.

(b) **Form of compensation.** If you are compensated based on the average value of the *client's* assets you manage over a specified period of time, that suggests that you provide continuous and regular supervisory or management services for the account. If you receive compensation in a manner similar to either of the following, that suggests you *do not* provide continuous and regular supervisory or management services for the account —

(i) You are compensated based upon the time spent with a *client* during a *client* visit; or

(ii) You are paid a retainer based on a percentage of assets covered by a financial plan.

(c) **Management practices.** The extent to which you actively manage assets or provide advice bears on whether the services you provide are continuous and regular supervisory or management services. The fact that you make infrequent trades (e.g., based on a "buy and hold" strategy) does not mean your services are not "continuous and regular."

Examples. You *may* provide continuous and regular supervisory or management services for an account if you:

(a) Have *discretionary authority* to allocate *client* assets among various mutual funds;

(b) Do not have discretionary authority, but provide the same allocation services, and satisfy the criteria set forth in Instruction 5.b(3);

(c) Allocate assets among other managers (a "manager of managers"), and you have *discretionary authority* to hire and fire managers and reallocate assets among them; or

(d) You are a broker-dealer, and treat the account as a brokerage account, but only if you have *discretionary authority* over the account.

You *do not* provide continuous and regular supervisory or management services for an account if you:

(a) Provide market timing recommendations (i.e., to buy or sell), but have no ongoing management responsibilities;

(b) Provide only *impersonal investment advice* (e.g., market newsletters);

(c) Make an initial asset allocation, without continuous and regular monitoring and reallocation; or

(d) Provide advice on an intermittent or periodic basis (such as upon client request, in response to a market event, or on a specific date (e.g., the account is reviewed and adjusted quarterly)).

(4) **Value of Assets Under Management.** Determine your assets under management based on the current market value of the assets as determined within 90 days prior to the date of filing this Form ADV. Determine market value using the same method you used to report account values to *clients* or to calculate fees for investment advisory services.

(5) **Example.** This is an example of the method of determining whether a client account may be included as assets under management.

A *client's* portfolio consists of the following:

$6,000,000	stocks and bonds
1,000,000	cash and cash equivalents
3,000,000	non-securities (collectibles, commodities, real estate, etc.)
10,000,000	Total Assets

First, is the account a securities portfolio? The account is a securities portfolio because securities as well as cash and cash equivalents (which you have chosen to include as securities) ($6,000,000 + $1,000,000 = $7,000,000) comprise at least 50% of the value of the account (here, 70%). (See Instruction 5.b(1)).

Second, does the account receive continuous and regular supervisory or management services? The entire account is managed on a *discretionary* basis and is provided ongoing supervisory and management services, and therefore receives continuous and regular supervisory or management services. (See Instruction 5.b(3)).

Third, what is the entire value of the account? The entire value of the account ($10,000,000) is included in the calculation of the adviser's total assets under management.

6. Item 10: *Control Persons*

If you are a "separately identifiable department or division" (SID) of a bank, identify on Schedule A your bank's executive officers who are directly engaged in managing, directing, or supervising your investment advisory activities, and list any other *persons* designated by your bank's board of directors as responsible for the day-to-day conduct of your investment advisory activities, including supervising employees performing investment advisory activities.

Form ADV (Paper Version): Uniform Application for Investment Adviser Registration

Form ADV: Instructions for Part 1B

These instructions explain how to complete certain items in Part 1B of Form ADV.

1. Item 2.B: Bond Information

Your *home state* may require you to maintain a bond. For example, a bond may be required if you have *custody* of or *discretionary authority* over your *client's* funds or securities. A bond also may be required if your *home state* requires you to maintain a minimum net worth and you do not have that net worth. For additional information concerning bond requirements, you should consult your *home state's* investment adviser laws or contact your *home state's* securities authority. See Form ADV General Instruction 15.

2. Item 2.H: Financial Planning Services

Item 2.H. asks about financial planning services you have provided to your *clients*. This question assumes that you have been providing financial planning services for some time. Your response to this question should reflect your current advisory business (i.e., at the time you file your Form ADV). If you are a newly-formed adviser, skip Item 2.H.

3. Item 2.I: *Custody*

Item 2.I. asks about practices that you engage in that may indicate whether you have *custody* of *client's* funds or securities. This question assumes that you have been operating your advisory business for some time. Your response to this question should reflect you current advisory business (i.e., at the time you file your Form ADV). If you are a newly-formed adviser, base your response to Item 2.I. on the way you expect to conduct your business during the next year.

Glossary of Terms

1. **Advisory Affiliate:** Your advisory affiliates are (1) all of your officers, partners, or directors (or any ***person*** performing similar functions); (2) all ***persons*** directly or indirectly ***controlling*** or ***controlled by*** you; (3) all of your current employees (other than clerical or administrative employees); and (4) any ***person*** who solicits on your behalf.

If you are a "separately identifiable department or division" (SID) of a bank, your ***advisory affiliates*** are: (1) all of your bank's employees who perform your investment advisory activities (other than clerical or administrative employees); (2) all persons designated by your bank's board of directors as responsible for the day-to-day conduct of your investment advisory activities (including supervising the employees who perform investment advisory activities); (3) all persons who directly or indirectly control your bank, and all persons whom you control in connection with your investment advisory activities; and (4) all other persons who directly manage any of your investment advisory activities (including directing, supervising or performing your advisory activities), all persons who directly or indirectly ***control*** those management functions, and all persons whom you control in connection with those management functions. *[Used in: Part 1A, Item 11] [Substantively the same as Part I, Item 11 of current Form ADV]*

2. **Annual Updating Amendment:** Within 90 days after your firm's fiscal year end, your firm must file an "annual updating amendment," which is an amendment to your firm's Form ADV that reaffirms the eligibility information contained in Item 2 of Part 1A and updates the responses to any other item for which the information is no longer accurate. *[Used in: General Instructions, Part 1A Instructions, Part 2A Instructions, Part 2B Instructions, Part 1A (introductory text)] [Derived from current rule 204–1, Schedule I to Form ADV]*

3. **Brochure:** A written disclosure statement that your firm is required to provide to ***clients*** and prospective ***clients***. *See* Advisers Act rule 204–3; Form ADV, Part 2A. *[Used in: General Instructions, Part 1A Instructions, Part 2A Instructions, Part 2B Instructions; Used throughout Parts 2A, 2A Appendix 1, Part 2B] [Derived from rule 204–3(a)]*

4. **Charged:** Being accused of a crime in a formal complaint, information, or indictment (or equivalent formal charge). *[Used in: Part 1A, Item 11; DRPs] [Same as the Instructions for Form BD, Item 4(3)]*

5. **Client:** Any of your firm's investment advisory clients. This term includes clients from which your firm receives no compensation, such as members of your family. If your firm also provides other services (*e.g.*, accounting services), this term does not include clients that are not investment advisory clients. *[Used throughout Form ADV and Form ADV–W] [Derived from Item 5 of the Instructions to current Form ADV]*

6. **Control:** Control means the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise.

- Each of your firm's officers, partners, or directors exercising executive responsibility (or ***persons*** having similar status or functions) are presumed to control your firm.
- A ***person*** is presumed to control a corporation if the ***person***: (i) directly or indirectly has the right to vote 25 percent or more of a class of the corporation's voting securities; or (ii) has the power to sell or direct the sale of 25 percent or more of a class of the corporation's voting securities.
- A ***person*** is presumed to control a partnership if the ***person*** has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership.
- A ***person*** is presumed to control a limited liability company ("LLC") if the ***person***: (i) directly or indirectly has the right to vote 25 percent or more of a class of the interests of the LLC; (ii) has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the LLC; or (iii) is an elected manager of the LLC.
- A ***person*** is presumed to control a trust if the ***person*** is a trustee or ***managing agent*** of the trust.

[Used in: General Instructions, Part 1A Instructions; Part 1A, Items 2A, 7, 10, 11, 12; Schedules A, B, C, D; Regulatory DRP] [Substantively the same as Advisers Act rule 0–7(b)(1), Item 5 of the Instructions to current Form ADV]

7. **Custody**: Your firm has custody if it directly or indirectly holds ***client*** funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them. Your firm has custody, for example, if it has a general power of attorney over a ***client's*** account or signatory power over a ***client's*** checking account. *See* Advisers Act rule 206(4)–2. *[Used in: Part 1A, Item 9; Part 1B Instructions; Part 2A, Items 14, 18] [Substantively the same as Item 5 of the Instructions to current Form ADV]*

8. **Discretionary Authority:** Your firm has discretionary authority if it has the authority to decide which securities to purchase and sell for the ***client***. Your firm also has discretionary authority if it has the authority to decide which investment advisers to retain on behalf of the ***client***. *[Used in: Part 1A, Item 8; Part 2A, Items 15, 18; Part 2B Instructions] [Derived from section 3(a)(35) of the Securities Exchange Act of 1934 ("Exchange Act") (definition of "investment discretion")]*

9. **Enjoined:** This term includes being subject to a mandatory injunction, prohibitory injunction, preliminary injunction, or a temporary restraining order. *[Used in: Part 1A, Item 11; DRPs] [Same as Item 4(3) of the Instructions to Form BD]*

10. **Felony:** For jurisdictions that do not differentiate between a felony and a ***misdemeanor***, a felony is an offense punishable by a sentence of at least one year imprisonment and/or a fine of at least $1,000. The term also includes a general court martial. *[Used in: Part 1A, Item 11; Part 2A, Item 8; Part 2B, Item 3; DRPs] [Same as Item 4(3) of the Instructions to Form BD]*

11. **Foreign Financial Regulatory Authority:** This term includes (1) a foreign securities authority; (2) another governmental body or foreign equivalent of a ***self-regulatory organization*** empowered by a foreign government to administer or enforce its laws relating to the regulation of investment-related activities; and (3) a foreign membership organization, a function of which is to regulate the participation of its members in the activities listed above. *[Used in: Part 1A, Items 1, 11; Part 2A, Item 8; Part 2B, Items 3 and 8; DRPs] [Substantively the same as Advisers Act section 202(a)(24)]*

12. **Found:** This term includes adverse final actions, including consent decrees in which the respondent has neither admitted nor denied the findings, but does not include agreements, deficiency letters, examination reports, memoranda of understanding, letters of caution, admonishments, and similar informal resolutions of matters. *[Used in: Part 1A, Item 11; Part 1B, Item 2; Part 2A, Items 8 and 20; Part 2B, Item 3] [Same as Item 4(3) of the Instructions to Form BD; Substantively the same as Advisers Act rule 206(4)–4(d)(2)]*

13. **Government Entity:** Any state or political subdivision of a state, including (i) any agency, authority, or instrumentality of the state or political subdivision; (ii) a plan or pool of assets controlled by the state or political subdivision or any agency, authority or instrumentality thereof; and (iii) any

officer, agent, or employee of the state or political subdivision or any agency, authority or instrumentality thereof, acting in their official capacity. *[Used in: Part 1A, Item 5D] [Same as proposed Advisers Act rule 206(4)–5(e)(3)]*

14. **High Net Worth Individual:** An individual with at least $750,000 managed by you, or whose net worth your firm reasonably believes exceeds $1,500,000, or who is a "qualified purchaser" as defined in section 2(a)(51)(A) of the Investment Company Act of 1940. The net worth of an individual may include assets held jointly with his or her spouse. *[Used in: Part 1A, Item 5D] [Substantively the same as Advisers Act rule 205–3(d)(1) (definition of "qualified client")]*

15. **Home State:** If your firm is registered with a state securities authority, your firm's "home state" is the state where it maintains its ***principal office and place of business***. *[Used in: Part 1B] [Substantively the same as Advisers Act rule 203A–3(c) (definition of "principal office and place of business")]*

16. **Impersonal Investment Advice:** Investment advisory services that do not purport to meet the objectives or needs of specific individuals or accounts. *[Used in: Part 2A, Instructions; Part 2B, Instructions] [Substantively the same as Advisers Act rule 203A–3(a)(3)(ii)]*

17. **Investment Adviser Representative:** Investment adviser representatives of SEC-registered advisers are subject to state registration in each state in which they have a ***place of business***. Any of your firm's ***supervised persons*** (except those that provide only ***impersonal investment advice***) is an investment adviser representative, if—

- the ***supervised person*** regularly solicits, meets with, or otherwise communicates with your firm's ***clients***,
- the ***supervised person*** has more than five ***clients*** who are natural persons and not ***high net worth individuals***, and
- more than ten percent of the ***supervised person's*** clients are natural persons and not ***high net worth individuals***.

Note: If your firm is registered with the state securities authorities and not the SEC, your firm may be subject to a different state definition of "investment adviser representative."

[Used in: Part 2, General Instructions; Part 2A, Item 13] [Substantively the same as Advisers Act rule 203A–3(a); the IARD "help" function will include examples from Advisers Act Release No. 1733] [1]

18. **Investment-Related:** Activities that pertain to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with an investment adviser, broker-dealer, municipal securities dealer, government securities broker or dealer, issuer, investment company, futures sponsor, bank, or savings association). *[Used in: Part 1A, Item 11; Part 2A, Items 8 and 20; Part 2B, Items 3 and 8; DRPs] [Same as Item 4(3) of the Instructions to Form BD; Substantively the same as Advisers Act rule 206(4)–4(d)(3) and Part I, Item 11 of current Form ADV]*

19. **Involved:** Engaging in any act or omission, aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act. *[Used in: Part 1A, Item 11; Part 2A, Items 8 and 20; Part 2B, Items 3 and 8] [Same as Item 4(3) of the Instructions to Form BD; Substantively the same as Advisers Act rule 206(4)–4(d)(4) and Part I, Item 11 of current Form ADV]*

20. **Management Persons:** Anyone with the power to exercise, directly or indirectly, a ***controlling*** influence over your firm's management or policies, or to determine the general investment advice given to the ***clients*** of your firm.

Generally, all of the following are management persons:

- Your firm's principal executive officers, such as your chief executive officer, chief financial officer, chief operations officer, chief legal officer, and chief compliance officer; your directors, general partners, or trustees; and other individuals with similar status or performing similar functions;
- The members of your firm's investment committee or group that determines general investment advice to be given to clients; and
- If your firm does not have an investment committee or group, the individuals who determine general investment advice provided to clients (if there are more than five people, you may limit your firm's response to their supervisors).

[Used in: Part 1B, Item 2; Part 2A, Items 8, 9, 20] [Derived from Advisers Act rule 206(4)–4(d)(1)]

21. **Managing Agent:** A managing agent of an investment adviser is any ***person***, including a trustee, who directs or manages (or who participates in directing or managing) the affairs of any unincorporated organization or association that is not a partnership. *[Used in: Form ADV–NR] [Substantively the same as Advisers Act rule 0–2(d)(2)]*

22. **Minor Rule Violation:** A violation of a ***self-regulatory organization*** rule that has been designated as "minor" pursuant to a plan approved by the SEC. A rule violation may be designated as "minor" under a plan if the sanction imposed consists of a fine of $2,500 or less, and if the sanctioned ***person*** does not contest the fine. (Check with the appropriate ***self-regulatory organization*** to determine if a particular rule violation has been designated as "minor" for these purposes.) *[Used in: Part 1A, Item 11] [Same as Item 4(3) of the Instructions to Form BD]*

23. **Misdemeanor:** For jurisdictions that do not differentiate between a ***felony*** and a misdemeanor, a misdemeanor is an offense punishable by a sentence of less than one year imprisonment and/or a fine of less than $1,000. The term also includes a special court martial. *[Used in: Part 1A, Item 11; DRPs; Part 2A, Item 8; Part 2B, Item 3] [Same as Item 4(3) of the Instructions to Form BD]*

24. **NASDR CRD or CRD:** The Web Central Registration Depository ("CRD") system operated by the National Association of Securities Dealers Regulation, Inc. ("NASDR") for the registration of broker-dealers and broker-dealer representatives. *[Used in: Part 1A, Item 1; Part 2A, Item 1; Part 2A Appendix 1, Item 1; Part 2B, Item 1; Form ADV–W, Item 1] [Derived from Exchange Act rule 15b1–1 (broker-dealer registration requirements) and rule 1140 of the Membership and Registration Rules of the NASD (electronic filing rules)]*

25. **Non-Resident:** (a) an individual who resides in any place not subject to the jurisdiction of the United States; (b) a corporation incorporated in and having its ***principal office and place of business*** in any place not subject to the jurisdiction of the United States; and (c) a partnership or other unincorporated organization or association that has its ***principal office and place of business*** in any place not subject to the jurisdiction of the United States. *[Used in: Execution Page(s); Form ADV–NR] [Substantively the same as Advisers Act rule 0–2(d)(3)]*

26. **Notice Filing:** SEC-registered advisers may have to provide state securities authorities with copies of documents that are filed with the SEC. These filings are referred to as "notice filings." *[Used in: Part 1A, Item 2; Part 2, General Instructions; Part 2A Appendix 1, Instructions; Execution Page(s); Form ADV–W] [Derived from Coordination Act section 307(a)]*

27. **Order:** A written directive issued pursuant to statutory authority and procedures, including an order of denial, exemption, suspension, or revocation. Unless included in an order, this term does not include special stipulations, undertakings, or agreements relating to payments, limitations on activity or other restrictions. *[Used in: Part 1A, Items 2 and 11; Part 2A, Item 8; Part 2B, Item 3; Schedule D; DRPs] [Same as Item 4(3) of the Instructions to Form BD]*

28. **Performance-Based Fee:** An investment advisory fee based on a share of capital gains on, or capital appreciation of, ***client*** assets. A fee that is based upon a percentage of assets that you manage is not a performance-based fee. *[Used in: Part 1A, Item 5; Part 2A, Item 20] [Derived from Advisers Act rule 205–3(a)]*

29. **Person:** A natural person (an individual) or a company. A company includes any partnership, corporation, trust, limited liability company ("LLC"), limited liability partnership ("LLP"), or other organization. *[Used throughout Form ADV and Form ADV–W] [Substantively the same as Advisers Act section 202(a)(16) (definition of "person"), section 202(a)(5) (definition of "company") and Item 5 of the Instructions to current Form ADV]*

30. **Principal Place of Business or Principal Office and Place of Business:** Your firm's executive office from which your firm's officers, partners, or managers direct, control, and coordinate the activities of your firm. *[Used in: Part 1A, Items 1 and 2; Schedule D; Form ADV–W, Item 1] [Substantively the same as Advisers Act rules 203A–3(c) and 222–1(b)]*

31. **Proceeding:** This term includes a formal administrative or civil action initiated by a governmental agency, ***self-regulatory organization*** or ***foreign financial regulatory authority;*** a ***felony*** criminal indictment or information (or equivalent formal charge); or a ***misdemeanor*** criminal information (or

[1] Exemption for Investment Advisers Operating in Multiple States; Revisions to Rules Implementing Amendments to the Investment Advisers Act of 1940; Investment Advisers with Principal Officers and Places of Business in Colorado or Iowa, Investment Advisers Act Release No. 1733 (July 17, 1998) [63 FR 39706 (July 24, 1998)].

equivalent formal charge). This term does not include other civil litigation, investigations, or arrests or similar charges effected in the absence of a formal criminal indictment or information (or equivalent formal charge). *[Used in: Part 1A, Item 11; DRPs; Part 2A, Items 8 and 20; Part 2B, Items 3 and 8] [Same as Item 4(3) of the Instructions to Form BD]*

32. **Related Person:** Any ***advisory affiliate*** and any ***person*** that is under common ***control*** with your firm. *[Used in: Part 1A, Items 7, 8, 9; Schedule D; Part 2A, Items 9, 10, 11, 13, 14; Form ADV-W, Item 3] [Substantively the same as Item 5 of the Instructions to current Form ADV]*

33. **Self-Regulatory Organization or SRO:** Any national securities or commodities exchange, registered securities association, or registered clearing agency. For example, the Chicago Board of Trade ("CBOT"), National Association of Securities Dealers, Inc. ("NASD") and New York Stock Exchange ("NYSE") are self-regulatory organizations. *[Used in: Part 1A, Item 11; DRPs; Part 1B, Item 2; Part 2A, Items 8 and 20; Part 2B, Items 3 and 6] [Substantively the same as Advisers Act rule 206(4)–4(d)(5) and Item 4(1) of the Instructions to Form BD]*

34. **Sponsor:** A sponsor of a ***wrap fee program*** sponsors, organizes, or administers the program or selects, or provides advice to ***clients*** regarding the selection of, other investment advisers in the program. *[Used in: Part 1A, Item 5; Schedule D; Part 2, General Instructions; Part 2A, Item 4; Part 2A Appendix 1, Instructions] [Derived from Advisers Act rule 204–3(f)(1)]*

35. **State Securities Authority:** The securities commission (or any agency or office performing like functions) of any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States. *[Used throughout Form ADV]; [Derived from Advisers Act section 202(a)(19) (definition of "State") and NSMIA section 307(a)]*

36. **Supervised Person:** Any of your officers, partners, directors (or other ***persons*** occupying a similar status or performing similar functions), or employees, or any other ***person*** who provides investment advice on your behalf and is subject to your supervision and control. *[Used in: Part 2A, Item 5; Part 2B] [Substantively the same as Advisers Act section 202(a)(25)]*

37. **Wrap Brochure:** The written disclosure statement that ***sponsors*** of ***wrap fee programs*** are required to provide to each of their ***wrap fee program clients.*** *[Used in: Part 2, Instructions; Part 2A, Appendix 1] [Derived from Advisers Act rule 204–3(f)]*

38. **Wrap Fee Program:** Any advisory program under which a specified fee or fees not based directly upon transactions in a ***client's*** account is charged for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and the execution of ***client*** transactions. *[Used in: Part 1, Item 5; Schedule D; Part 2, Instructions; Part 2A, Item 4; Part 2A Appendix 1; Part 2B, Instructions] [Substantively the same as Advisers Act rule 204–3(g)(4)]*

BILLING CODE 8010–01–P

FORM ADV (Paper Version)
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

PART 1A

WARNING: Complete this form truthfully. False statements or omissions may result in denial of your application, revocation of your registration, or criminal prosecution. You must keep this form updated by filing periodic amendments. See Form ADV General Instruction 3.

Check the box that indicates what you would like to do (check all that apply):

- ☐ Apply for registration as an investment adviser with the SEC.
- ☐ Apply for registration as an investment adviser with one or more states.
- ☐ Submit an *annual updating amendment* to your registration for your fiscal year ended _____.
- ☐ Submit an other-than-annual amendment to your registration.

Item 1 Identifying Information

Responses to this Item tell us who you are, where you are doing business, and how we can contact you.

A. Your full legal name (if you are a sole proprietor, your last, first, and middle names):

_____

B. Name under which you primarily conduct your advisory business, if different from Item 1.A.

_____

List on Section 1.B. of Schedule D any additional names under which you conduct your advisory business.

C. If this filing is reporting a change in your legal name (Item 1.A.) or primary business name (Item 1.B.), enter the new name and specify whether the name change is of ☐ your legal name or ☐ your primary business name:

_____

D. If you are registered with the SEC as an investment adviser, your SEC file number: 801-_____

E. If you have a number ("*CRD* Number") assigned by the *NASD's CRD* system or by the IARD system, your *CRD* number:

_____

If your firm does not have a CRD number, skip this Item 1.E. Do not provide the CRD number of one of your officers, employees, or affiliates.

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	Date _____	SEC 801-Number _____

F. *Principal Office and Place of Business*

(1) Address (do not use a P.O. Box):

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

List on Section 1.F. of Schedule D any office, other than your principal office and place of business, at which you conduct investment advisory business. If you are applying for registration, or are registered, with one or more states, you must list all of your offices in the state or states to which you are applying for registration or with whom you are registered. If you are applying for registration, or are registered only, with the SEC, list the largest five offices in terms of numbers of employees.

(2) Days of week that you normally conduct business at your *principal office and place of business*:

☐ Monday - Friday ☐ Other: _____

Normal business hours at this location: _____

(3) Telephone number at this location: _____
(area code) (telephone number)

(4) Facsimile number at this location: _____
(area code) (telephone number)

G. Mailing address, if different from your *principal office and place of business* address:

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

H. If you are a sole proprietor, state your full residence address, if different from your *principal office and place of business* address in Item 1.F.:

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

FORM ADV Part 1A Page 3 of 16	Your Name _____ Date _____	CRD Number _____ SEC 801-Number _____

I. Do you have a World Wide Web site address? Yes ☐ No ☐

If "yes," list all addresses on Section 1.I. of Schedule D. Do not provide individual electronic mail addresses in response to this Item.

J. Contact Employee:

_____
(name)

_____
(title)

_____ _____
(area code) (telephone number) (area code) (facsimile number)

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

_____
(electronic mail (e-mail) address, if contact employee has one)

The contact employee should be an employee whom you have authorized to receive information and respond to questions about this Form ADV.

K. Do you maintain some or all of the books and records you are required to keep under Section 204 of the Advisers Act, or similar state law, somewhere other than your *principal office and place of business*?
Yes ☐ No ☐

If "yes," complete Section 1.K. of Schedule D.

L. Are you registered with a *foreign financial regulatory authority*? Yes ☐ No ☐

Answer "no" if you are not registered with a foreign financial regulatory authority, even if you have an affiliate that is registered with a foreign financial regulatory authority. If "yes," complete Section 1.L. of Schedule D.

FORM ADV Part 1A Page 4 of 16	Your Name _____ Date _____	CRD Number _____ SEC 801-Number _____

Item 2 SEC Registration

Responses to this Item help us (and you) determine whether you are eligible to register with the SEC. Complete this Item 2 only if you are applying for SEC registration or submitting an *annual updating amendment* to your SEC registration.

A. To register (or remain registered) with the SEC, you must check at least one of the Items 2.A(1) through 2.A(10), below. If you are submitting an *annual updating amendment* to your SEC registration and you are no longer eligible to register with the SEC, check Item 2.A(11). You:

☐ (1) have *assets under management* of $25 million (in U.S. dollars) or more;

See Part 1A Instruction 2.a. to determine whether you should check this box.

☐ (2) have your *principal office and place of business* in the U.S. Virgin Islands or Wyoming;

☐ (3) have your *principal office and place of business* outside the United States;

☐ (4) are an investment adviser (or sub-adviser) to an investment company registered under the Investment Company Act of 1940;

See Part 1A Instruction 2.b. to determine whether you should check this box.

☐ (5) have been designated as a nationally recognized statistical rating organization;

See Part 1A Instruction 2.c. to determine whether you should check this box.

☐ (6) are a pension consultant that qualifies for the exemption in rule 203A-2(b);

See Part 1A Instruction 2.d. to determine whether you should check this box.

☐ (7) are relying on rule 203A-2(c) because you are an investment adviser that *controls*, is *controlled* by, or is under common *control* with, an investment adviser that is registered with the SEC, and your *principal office and place of business* is the same as the registered adviser;

See Part 1A Instruction 2.e. to determine whether you should check this box. If you check this box, complete Section 2.A(7) of Schedule D).

☐ (8) are a newly formed adviser relying on rule 203A-2(d) because you expect to be eligible for SEC registration within 120 days;

See Part 1A Instruction 2.f. to determine whether you should check this box. If you check this box, complete Section 2.A(8) of Schedule D.

FORM ADV Part 1A Page 5 of 16	Your Name _____ Date _____	CRD Number _____ SEC 801-Number _____

☐ (9) are a multi-state adviser relying on rule 203A-2(e);

See Part 1A Instruction 2.g. to determine whether you should check this box. If you check this box, complete Section 2.A(9) of Schedule D.

☐ (10) have received an SEC *order* exempting you from the prohibition against registration with the SEC;

If you check this box, complete Section 2.A(10) of Schedule D.

☐ (11) are no longer eligible to remain registered with the SEC.

See Part 1A Instruction 2.h. to determine whether you should check this box.

B. Under state laws, SEC-registered advisers may be required to provide to state securities authorities a copy of the Form ADV and any amendments they file with the SEC. These are called *notice filings*. If this is an initial application, check the box(es) next to the state(s) that you would like to receive notice of this and all subsequent filings you submit to the SEC. If this is an amendment to direct your *notice filings* to additional state(s), check and circle the box(es) next to the state(s) that you would like to receive notice of this and all subsequent filings you submit to the SEC. If this is an amendment to your registration to stop your *notice filings* from going to state(s) that currently receive them, circle the unchecked box(es) next to those state(s).

☐ AL	☐ CT	☐ HI	☐ KY	☐ MN	☐ NH	☐ OH	☐ SC	☐ VA
☐ AK	☐ DE	☐ ID	☐ LA	☐ MS	☐ NJ	☐ OK	☐ SD	☐ WA
☐ AZ	☐ DC	☐ IL	☐ ME	☐ MO	☐ NM	☐ OR	☐ TN	☐ WV
☐ AR	☐ FL	☐ IN	☐ MD	☐ MT	☐ NY	☐ PA	☐ TX	☐ WI
☐ CA	☐ GA	☐ IA	☐ MA	☐ NE	☐ NC	☐ PR	☐ UT	
☐ CO	☐ GU	☐ KS	☐ MI	☐ NV	☐ ND	☐ RI	☐ VT	

If you are amending your registration to stop your notice filings from going to a state that currently receives them and you do not want to pay that state's notice filing fee for the coming year, your amendment must filed before the end of the year (December 31).

Item 3 Form of Organization

A. How are you organized?

☐ Corporation ☐ Sole Proprietorship ☐ Limited Liability Partnership (LLP)
☐ Partnership ☐ Limited Liability Company (LLC)
☐ Other (specify): _____

If you are changing your response to this Item, see Part 1A Instruction 4.

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FORM ADV Part 1A Page 6 of 16	Your Name _____ CRD Number _____ Date _____ SEC 801-Number _____

B. On the last day of what month does your fiscal year end each year? _____

C. Under the laws of what state or country are you organized? _____

If you are a partnership, provide the name of the state or country under whose laws your partnership was formed. If you are a sole proprietor, provide the name of the state or country where you reside.

If you are changing your response to this Item, see Part 1A Instruction 4.

Item 4 Successions

Are you, at the time of this filing, succeeding to the business of a registered investment adviser?

☐ Yes ☐ No

If "yes," complete Section 4 of Schedule D.

If you have already reported this succession on a previous Form ADV filing; do not report the succession again. Instead, leave this Item blank. See Part 1A Instruction 4.

Item 5 Information About Your Advisory Business

Responses to this Item help us understand your business, assist us in preparing for on-site examinations, and provide us with data we use when making regulatory policy. Part 1A Instruction 5.a. provides additional guidance to newly-formed advisers for completing this Item 5.

Employees and Independent Contractors

A. Approximately how many employees and independent contractors do you have? Include full and part-time employees and independent contractors but do not include any clerical workers.

☐ 1-5 ☐ 6-10 ☐ 11 – 50 ☐ 51-250 ☐ 251-500 ☐ 501-1,000 ☐ More than 1,000
If more than 1,000, how many? _____ (round to the nearest 100)

B. Approximately how many of these employees and independent contractors:

(1) perform investment advisory functions (including research)?

☐ 0 ☐ 1-5 ☐ 6-10 ☐ 11 – 50 ☐ 51-250 ☐ 251-500 ☐ 501-1,000
☐ More than 1,000 If more than 1,000, how many? _____ (round to the nearest 100)

(2) are registered representatives of a broker-dealer?

☐ 0 ☐ 1-5 ☐ 6-10 ☐ 11 – 50 ☐ 51-250 ☐ 251-500 ☐ 501-1,000
☐ More than 1,000 If more than 1,000, how many? _____ (round to the nearest 100)

FORM ADV Part 1A Page 7 of 16	Your Name _____ CRD Number _____ Date _____ SEC 801-Number _____

(3) solicit advisory *clients*?

☐ 0 ☐ 1-5 ☐ 6-10 ☐ 11 – 50 ☐ 51-250 ☐ 251-500 ☐ 501-1,000
☐ More than 1,000 If more than 1,000, how many? _____ (round to the nearest 100)

If you are organized as a sole proprietorship, include yourself as an employee in your responses to Items 5.A. and 5.B. If an employee or independent contractor performs more than one function, you should count that individual in each of your responses to the questions in Item 5.B.

Clients

C. To approximately how many *clients* did you provide investment advisory services during your most-recently completed fiscal year?

☐ 0 ☐ 1-10 ☐ 11-25 ☐ 26-100 ☐ 101-250 ☐ 251 – 500
☐ More than 500 If more than 500, how many? _____ (round to the nearest 100)

D. What types of *clients* do you have? Indicate the approximate percentage that each type of *client* comprises of your total number of *clients*.

	Up to 10%	11-25%	26-50%	51-75%	More Than 75%
(1) Individuals (other than *high net worth individuals*)	☐	☐	☐	☐	☐
(2) *High net worth individuals*	☐	☐	☐	☐	☐
(3) Banking or thrift institutions	☐	☐	☐	☐	☐
(4) Investment companies (including mutual funds)	☐	☐	☐	☐	☐
(5) Pension and profit sharing plans (other than plan participants)	☐	☐	☐	☐	☐
(6) Other pooled investment vehicles (e.g., hedge funds)	☐	☐	☐	☐	☐
(7) Charitable organizations	☐	☐	☐	☐	☐
(8) Corporations or other businesses not listed above	☐	☐	☐	☐	☐
(9) State or municipal *government entities*	☐	☐	☐	☐	☐
(10) Other: _____	☐	☐	☐	☐	☐

The category "individuals" includes trusts, estates, 401(k) plans and IRAs of individuals and their family members, but does not include businesses organized as sole proprietorships.

Do not check Item 5.D(4) or Item 5.G(3) unless you provide advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940.

FORM ADV Part 1A Page 8 of 16	Your Name _____ Date _____	CRD Number _____ SEC 801-Number _____

Compensation Arrangements

E. You are compensated for your investment advisory services by (check all that apply):

- ☐ (1) A percentage of assets under your management
- ☐ (2) Hourly charges
- ☐ (3) Subscription fees (for a newsletter or periodical)
- ☐ (4) Fixed fees (other than subscription fees)
- ☐ (5) Commissions
- ☐ (6) *Performance-based fees*
- ☐ (7) Other (specify): _____

Assets Under Management

F. (1) Do you provide continuous and regular supervisory or management services to securities portfolios? ☐ Yes ☐ No

(2) If yes, what is the amount of your assets under management and total number of accounts?

		U.S. Dollar Amount		Total Number of Accounts
Discretionary:	(a)	$_____.00	(d)	_____
Non-Discretionary:	(b)	$_____.00	(e)	_____
Total:	(c)	$_____.00	(f)	_____

Part 1A Instruction 5.b. explains how to calculate your assets under management. You must follow these instructions carefully when completing this Item.

Advisory Activities

G. What type(s) of advisory services do you provide? Check all that apply.

- ☐ (1) Financial planning services
- ☐ (2) Portfolio management for individuals and/or small businesses
- ☐ (3) Portfolio management for investment companies
- ☐ (4) Portfolio management for businesses or institutional *clients* (other than investment companies)
- ☐ (5) Pension consulting services
- ☐ (6) Selection of other advisers
- ☐ (7) Publication of periodicals or newsletters
- ☐ (8) Security ratings or pricing services
- ☐ (9) Market timing services
- ☐ (10) Other (specify): _____

H. If you provide financial planning services, to how many *clients* did you provide these services during your last fiscal year?

☐ 0 ☐ 1-10 ☐ 11-25 ☐ 26-50 ☐ 51-100 ☐ 101-250 ☐ 251 - 500
☐ More than 500 If more than 500, how many? _____ (round to the nearest 100)

I. If you participate in a *wrap fee program*, do you (check all that apply):

☐ (1) *sponsor* the *wrap fee program*?
☐ (2) act as a portfolio manager for the *wrap fee program*?

If you are a portfolio manager for a wrap fee program, list the names of the programs and their sponsors in Section 5.I(2) of Schedule D.

If your involvement in a wrap fee program is limited to recommending wrap fee programs to your clients, or you advise a mutual fund that is offered through a wrap fee program, do not check either Item 5.I(1) or 5.I(2).

Item 6 Other Business Activities

In this Item, we request information about your other business activities.

A. You are actively engaged in business as a (check all that apply):

☐ (1) Broker-dealer
☐ (2) Registered representative of a broker-dealer
☐ (3) Futures commission merchant, commodity pool operator, or commodity trading advisor
☐ (4) Real estate broker, dealer, or agent
☐ (5) Insurance broker or agent
☐ (6) Bank (including a separately identifiable department or division of a bank)
☐ (7) Other financial product salesperson (specify): _____

B. (1) Are you actively engaged in any other business not listed in Item 6.A. (other than giving investment advice)? ☐ Yes ☐ No

(2) If yes, is this other business your primary business? ☐ Yes ☐ No
If "yes," describe this other business on Section 6.B. of Schedule D.

(3) Do you sell products or provide services other than investment advice to your advisory *clients*?
☐ Yes ☐ No

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FORM ADV Part 1A Page 10 of 16	Your Name _____ Date _____	CRD Number _____ SEC 801-Number _____

Item 7 Financial Industry Affiliations

In this Item, we request information about your financial industry affiliations and activities. This information identifies areas in which conflicts of interest may occur between you and your *clients*.

Item 7 requires you to provide information about you and your *related persons*. Your *related persons* are: (1) all of your current employees (other than clerical or administrative employees); (2) all of your officers, partners, or directors (or any *person* performing similar functions); (3) all *persons* directly or indirectly *controlling* you, *controlled* by you, or under common *control* with you; and (4) any other *person* providing investment advice on your behalf.

A. You have a *related person* that is a (check all that apply):

- ☐ (1) broker-dealer, municipal securities dealer, or government securities broker or dealer
- ☐ (2) investment company (including mutual funds)
- ☐ (3) other investment adviser (including financial planners)
- ☐ (4) futures commission merchant, commodity pool operator, or commodity trading advisor
- ☐ (5) banking or thrift institution
- ☐ (6) accountant or accounting firm
- ☐ (7) lawyer or law firm
- ☐ (8) insurance company or agency
- ☐ (9) pension consultant
- ☐ (10) real estate broker or dealer
- ☐ (11) sponsor or syndicator of limited partnerships

If you checked Item 7.A(3), list on Section 7.A. of Schedule D all investment advisers with whom you are affiliated.

B. Are you or any *related person* a general partner in a limited partnership? ☐ Yes ☐ No
If "yes," for each limited partnership, complete Section 7.B. of Schedule D.

Item 8 Participation or Interest in *Client* Transactions

In this Item, we request information about your participation and interest in your *clients'* transactions. Like Item 7, this information identifies areas in which conflicts of interest may occur between you and your *clients*.

Like Item 7, Item 8 requires you to provide information about you and your *related persons*.

FORM ADV Part 1A Page 11 of 16	Your Name _____	CRD Number _____
	Date _____	SEC 801-Number _____

Proprietary Interest in *Client* Transactions

A. Do you or any *related person*:	Yes	No
(1) buy securities for yourself from advisory *clients*, or sell securities you own to advisory *clients* (principal transactions)?	☐	☐
(2) buy or sell for yourself securities (other than shares of mutual funds) that you also recommend to advisory *clients*?	☐	☐
(3) recommend securities (or other investment products) to advisory *clients* in which you or any *related person* has some other proprietary (ownership) interest (other than those mentioned in Items 8.A(1) or (2))?	☐	☐

Sales Interest in *Client* Transactions

B. Do you or any *related person*:	Yes	No
(1) as a broker-dealer or registered representative of a broker-dealer, execute securities trades for brokerage customers in which advisory *client* securities are sold to or bought from the brokerage customer (agency cross transactions)?	☐	☐
(2) recommend purchase of securities to advisory *clients* for which you or any *related person* serves as underwriter, general or managing partner, or purchaser representative?	☐	☐
(3) recommend purchase or sale of securities to advisory *clients* for which you or any *related person* has any other sales interest (other than the receipt of sales commissions as a broker or registered representative of a broker-dealer)?	☐	☐

Investment or Brokerage Discretion

C. Do you or any *related person* have *discretionary authority* to determine the:	Yes	No
(1) securities to be bought or sold for a *client's* account?	☐	☐
(2) amount of securities to be bought or sold for a *client's* account?	☐	☐
(3) broker or dealer to be used for a purchase or sale of securities for a *client's* account?	☐	☐
(4) commission rates to be paid to a broker or dealer for a *client's* securities transactions?	☐	☐

FORM ADV Part 1A Page 12 of 16	Your Name _____ CRD Number _____ Date _____ SEC 801-Number _____

	Yes	No
D. Do you or any *related person* recommend brokers or dealers to *clients*?	☐	☐
E. Do you or any *related person* receive research or other products or services other than execution from a broker-dealer or a third party in connection with *client* securities transactions?	☐	☐
F. Do you or any *related person*, directly or indirectly, compensate any *person* for *client* referrals?	☐	☐

In responding to this Item 8.F., consider in your response all cash and non-cash compensation that you or a related person gave any person in exchange for client referrals, including any bonus that is based, at least in part, on the number or amount of client referrals.

Item 9 *Custody*

In this Item, we ask you whether you or a *related person* has *custody* of *client* assets.

	Yes	No
A. Do you have *custody* of any advisory *clients*':		
(1) cash or bank accounts?	☐	☐
(2) securities?	☐	☐
B. Do any of your *related persons* have *custody* of any of your advisory *clients*':		
(1) cash or bank accounts?	☐	☐
(2) securities?	☐	☐
C. If you answered "yes" to either Item 9.B(1) or 9.B(2), is that *related person* a broker-dealer registered under Section 15 of the Securities Exchange Act of 1934?	☐	☐

Item 10 *Control Persons*

In this Item, we ask you to identify every *person* that, directly or indirectly, *controls* you.

If you are submitting an initial application, you must complete Schedule A and Schedule B. Schedule A asks for information about your direct owners and executive officers. Schedule B asks for information about your indirect owners. If this is an amendment and you are updating information you reported on either Schedule A or Schedule B (or both) that you filed with your initial application, you must complete Schedule C.

Does any *person* not named in Item 1.A. or Schedules A, B, or C, directly or indirectly, *control* your management or policies? ☐ Yes ☐ No

If yes, complete Section 10 of Schedule D.

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FORM ADV Part 1A Page 13 of 16	Your Name _____ CRD Number _____ Date _____ SEC 801-Number _____

Item 11 Disciplinary Information

In this Item, we ask for information about your disciplinary history and the disciplinary history of all your *advisory affiliates*. We use this information to determine whether to grant your application for registration, to decide whether to revoke your registration or to place limitations on your activities as an investment adviser, and to identify potential problem areas to focus on during our on-site examinations. One disciplinary event may result in "yes" answers to more than one of the questions below.

Your *advisory affiliates* are: (1) all of your current employees (other than clerical or administrative employees); (2) all of your officers, partners, or directors (or any *person* performing similar functions); and (3) all *persons* directly or indirectly *controlling* you or *controlled* by you; and (4) any other *person* providing investment advice on your behalf. If you are a "separately identifiable department or division" (SID) of a bank, see the Glossary of Terms to determine who your *advisory affiliates* are.

You must complete the appropriate Disclosure Reporting Page ("DRP") for "yes" answers to the questions in this Item 11.

For "yes" answers to the following questions, complete a Criminal Action DRP:

	Yes	No
A. In the past ten years, have you or any *advisory affiliate*:		
(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any *felony*?	☐	☐
(2) been *charged* with any *felony*?	☐	☐
B. In the past ten years, have you or any *advisory affiliate*:		
(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to a *misdemeanor* involving: investments or an *investment-related* business, or any fraud, false statements, or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?	☐	☐
(2) been *charged* with a *misdemeanor* listed in Item 11.B(1)?	☐	☐

For "yes" answers to the following questions, complete a Regulatory Action DRP:

	Yes	No
C. Has the SEC or the Commodity Futures Trading Commission (CFTC) ever:		
(1) *found* you or any *advisory affiliate* to have made a false statement or omission?	☐	☐
(2) *found* you or any *advisory affiliate* to have been *involved* in a violation of SEC or CFTC regulations or statutes?	☐	☐
(3) *found* you or any *advisory affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐

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FORM ADV Part 1A Page 14 of 16	Your Name _____ CRD Number _____ Date _____ SEC 801-Number _____

	Yes	No
(4) entered an *order* against you or any *advisory affiliate* in connection with *investment-related* activity?	☐	☐
(5) imposed a civil money penalty on you or any *advisory affiliate*, or *ordered* you or any *advisory affiliate* to cease and desist from any activity?	☐	☐
D. Has any other federal regulatory agency, any state regulatory agency, or any *foreign financial regulatory authority*:		
(1) ever *found* you or any *advisory affiliate* to have made a false statement or omission, or been dishonest, unfair, or unethical?	☐	☐
(2) ever *found* you or any *advisory affiliate* to have been *involved* in a violation of *investment-related* regulations or statutes?	☐	☐
(3) ever *found* you or any *advisory affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐
(4) in the past ten years, entered an *order* against you or any *advisory affiliate* in connection with an *investment-related* activity?	☐	☐
(5) ever denied, suspended, or revoked your or any *advisory affiliate's* registration or license, or otherwise prevented you or any *advisory affiliate*, by *order*, from associating with an *investment-related* business or restricted your or any *advisory affiliate's* activity?	☐	☐
E. Has any *self-regulatory organization* or commodities exchange ever:		
(1) *found* you or any *advisory affiliate* to have made a false statement or omission?	☐	☐
(2) *found* you or any *advisory affiliate* to have been *involved* in a violation of its rules (other than a violation designated as a "*minor rule violation*" under a plan approved by the SEC)?	☐	☐
(3) *found* you or any *advisory affiliate* to have been the cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐
(4) disciplined you or any *advisory affiliate* by expelling or suspending you or the *advisory affiliate* from membership, barring or suspending you or the *advisory affiliate* from association with other members, or otherwise restricting your or the *advisory affiliate's* activities?	☐	☐

	Yes	No
F. Has an authorization to act as an attorney, accountant, or federal contractor granted to you or any *advisory affiliate* ever been revoked or suspended?	☐	☐
G. Are you or any *advisory affiliate* now the subject of any regulatory *proceeding* that could result in a "yes" answer to any part of Item 11.C., 11.D., or 11.E.?	☐	☐

For "yes" answers to the following questions, complete a Civil Judicial Action DRP:

	Yes	No
H. (1) Has any domestic or foreign court:		
(a) in the past ten years, *enjoined* you or any *advisory affiliate* in connection with any *investment-related* activity?	☐	☐
(b) ever *found* that you or any *advisory affiliate* were *involved* in a violation of *investment-related* statutes or regulations?	☐	☐
(c) ever dismissed, pursuant to a settlement agreement, an *investment-related* civil action brought against you or any *advisory affiliate* by a state or *foreign financial regulatory authority*?	☐	☐
(2) Are you or any *advisory affiliate* now the subject of any civil *proceeding* that could result in a "yes" answer to any part of Item 11.H(1)?	☐	☐

If you are registered or registering with the SEC, you may limit your disclosure of any event listed in Item 11 to ten years following the date of the event. If you are registered or registering with a state, you must respond to the questions as posed; you may, therefore, limit your disclosure to ten years following the date of an event only in responding to Items 11.A(1), 11.A(2), 11.B(1), 11.B(2), 11.D(4), and 11.H(1)(a). For purposes of calculating this ten-year period, the date of an event is the date the final order, judgment, or decree was entered, or the date any rights of appeal from preliminary orders, judgments, or decrees lapsed.

Item 12 Small Businesses

The SEC is required by the Regulatory Flexibility Act to consider the effect of its regulations on small entities. In order to do this, we need to determine whether you meet the definition of "small business" or "small organization" under rule 0-7.

Answer this Item 12 only if you are registered or registering with the SEC and you indicated in response to Item 5.F(2)(c) that you have assets under management of less than $25 million. You are not required to answer this Item 12 if you are filing for initial registration as a state adviser, amending a current state registration, or switching from SEC to state registration.

FORM ADV Part 1A Page 16 of 16	Your Name _____ CRD Number _____ Date _____ SEC 801-Number _____

For purposes of this Item 12 only:

- Total Assets refers to the total assets of a firm, rather than the assets managed on behalf of *clients*. In determining your or another *person's* total assets, you may use the total assets shown on a current balance sheet (but use total assets reported on a consolidated balance sheet with subsidiaries included, if that amount is larger).

- Control means the power to direct or cause the direction of the management or policies of a *person*, whether through ownership of securities, by contract, or otherwise. Any *person* that directly or indirectly has the right to vote 25 percent or more of the voting securities, or is entitled to 25 percent or more of the profits, of another *person* is presumed to control the other *person*.

	Yes	No
A. Did you have total assets of $5 million or more on the last day of your most recent fiscal year?	☐	☐

If "yes," you do not need to answer Items 12.B. and 12.C.

B. Do you:

(1) control another investment adviser that had assets under management of $25 million or more on the last day of its most recent fiscal year?	☐	☐
(2) control another *person* (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year?	☐	☐

C. Are you:

(1) controlled by or under common control with another investment adviser that had assets under management of $25 million or more on the last day of its most recent fiscal year?	☐	☐
(2) controlled by or under common control with another *person* (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year?	☐	☐

FORM ADV Schedule A	Your Name: _____	SEC File No.: _____
	Date: _____	*CRD* No.: _____

Direct Owners and Executive Officers

1. Complete Schedule A only if you are submitting an initial application. Schedule A asks for information about your direct owners and executive officers. Use Schedule C to amend this information.

2. List below the names of:

   (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer, director, and individuals with similar status or functions;

   (b) if you are organized as a corporation, each shareholder that is a direct owner of 5% or more of a class of your voting securities, unless you are a public reporting company (a company subject to Section 12 or 15(d) of the Exchange Act);

   Direct owners include any *person* that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of your voting securities. For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.

   (c) if you are organized as a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of your capital;

   (d) in the case of a trust that directly owns 5% or more of a class of your voting securities, or that has the right to receive upon dissolution, or has contributed, 5% or more of your capital, the trust and each trustee; and

   (e) if you are organized as a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 5% or more of your capital, and (ii) if managed by elected managers, all elected managers.

3. Do you have any indirect owners to be reported on Schedule B? ☐ Yes ☐ No

4. In the DE/FE/I column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "I" if the owner is an individual.

5. Complete the Title or Status column by entering board/management titles; status as partner, trustee, sole proprietor, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).

6. Ownership codes are:
   NA - less than 5%
   A - 5% but less than 10%
   B - 10% but less than 25%
   C - 25% but less than 50%
   D - 50% but less than 75%
   E - 75% or more

7. (a) In the *Control Person* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form ADV, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.
   (b) In the PR column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.
   (c) Complete each column.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Title or Status	Date Title or Status Acquired		Ownership Code	*Control Person*		*CRD* No. If None: S.S. No. and Date of Birth, IRS Tax No., or Employer ID No.
			MM	YYYY			PR	

FORM ADV
Schedule B

Your Name: _____ SEC File No.: _____

Date: _____ *CRD* No.: _____

Indirect Owners

1. Complete Schedule B only if you are submitting an initial application. Schedule B asks for information about your indirect owners; you must first complete Schedule A, which asks for information about your direct owners. Use Schedule C to amend this information.

2. With respect to each owner listed on Schedule A (except individual owners), list below:

   (a) in the case of an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25% or more of a class of a voting security of that corporation;

   For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.

   (b) in the case of an owner that is a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 25% or more of the partnership's capital;

   (c) in the case of an owner that is a trust, the trust and each trustee; and

   (d) in the case of an owner that is a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 25% or more of the LLC's capital, and (ii) if managed by elected managers, all elected managers.

3. Continue up the chain of ownership listing all 25% owners at each level. Once a public reporting company (a company subject to Sections 12 or 15(d) of the Exchange Act) is reached, no further ownership information need be given.

4. In the DE/FE/I column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "I" if the owner is an individual.

5. Complete the Status column by entering the owner's status as partner, trustee, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).

6. Ownership codes are: C - 25% but less than 50% D - 50% but less than 75% E - 75% or more F - Other (general partner, trustee, or elected manager)

7. (a) In the *Control Person* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form ADV, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.
   (b) In the PR column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.
   (c) Complete each column.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Entity in Which Interest is Owned	Status	Date Status Acquired		Ownership Code		*Control Person*	*CRD* No. If None: S.S. No. and Date of Birth, IRS Tax No. or Employer ID No.
				MM	YYYY		PR		

FORM ADV
Schedule C

Your Name: _____ SEC File No.: _____

Date: _____ *CRD* No.: _____

Amendments to Schedules A and B

1. Use Schedule C only to amend information requested on either Schedule A or Schedule B. Refer to Schedule A and Schedule B for specific instructions for completing this Schedule C. Complete each column.

2. In the Type of Amendment column, indicate "A" (addition), "D" (deletion), or "C" (change in information about the same *person*).

3. Ownership codes are: NA - less than 5%; A - 5% but less than 10%; B - 10% but less than 25%; C - 25% but less than 50%; D - 50% but less than 75%; E - 75% or more; G - Other (general partner, trustee, or elected member)

4. List below all changes to Schedule A (Direct Owners and Executive Officers):

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Type of Amend-ment	Title or Status	Date Title or Status Acquired MM	Date Title or Status Acquired YYYY	Owner-ship Code	*Control Person*	PR	*CRD* No. If None: S.S. No. and Date of Birth, IRS Tax No. or Employer ID No.

5. List below all changes to Schedule B (Indirect Owners):

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Type of Amend-ment	Entity in Which Interest is Owned	Status	Date Status Acquired MM	Date Status Acquired YYYY	Owner-ship Code	*Control Person*	PR	*CRD* No. If None: S.S. No. and Date of Birth, IRS Tax No., or Employer ID No.

FORM ADV
Schedule D
Page 1 of 4

Your Name: _____ SEC File No.: _____

Date: _____ *CRD* No.: _____

Certain items in Part 1A of Form ADV require additional information on Schedule D. Use this Schedule D Page 1 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

This is an ☐ INITIAL or ☐ AMENDED Schedule D Page 1.

SECTION 1.B. Other Business Names
Check here if you are completing this section: ☐

List your other business names and the jurisdictions in which you use them. If you have more than two, complete an additional Schedule D Page 1.
Name _____ Jurisdiction _____
Name _____ Jurisdiction _____

SECTION 1.F. Other Offices
Check here if you are completing this section: ☐

Complete the following information for each office, other than your *principal office and place of business*, at which you conduct investment advisory business. You must complete a separate Schedule D Page 1 for each location. If you are applying for registration, or are registered, only with the SEC, list only the largest five (in terms of numbers of employees).
Check only one box: ☐ Add ☐ Delete ☐ Amend

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

Telephone Number at this location: _____
(area code) (telephone number)
Facsimile Number at this location: _____
(area code) (telephone number)

SECTION 1.I. World Wide Web Site Addresses
Check here if you are completing this section: ☐

List your World Wide Web site addresses. If you have more than four, complete an additional Schedule D Page 1.
1. _____ 3. _____
2. _____ 4. _____

SECTION 1.K. Location of Books and Records
Check here if you are completing this section: ☐

Complete the following information for each location at which you keep your books and records, other than your *principal office and place of business*. You must complete a separate Schedule D Page 1 for each location.
Check only one box: ☐ Add ☐ Delete ☐ Amend
Name of entity where books and records are kept: _____

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

_____ _____
(area code) (telephone number) (area code) (facsimile number)

This is (check one):
☐ one of your branch offices or affiliates.
☐ a third-party unaffiliated recordkeeper.
☐ other.

Briefly describe the books and records kept at this location. _____
_____
_____

FORM ADV Schedule D **Page 2 of 4**	Your Name: _____ SEC File No.: _____ Date: _____ *CRD* No.: _____

Use this Schedule D Page 2 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

This is an ☐ INITIAL or ☐ AMENDED Schedule D Page 2.

SECTION 1.L. Registration with *Foreign Financial Regulatory Authorities*
Check here if you are completing this section: ☐

List the name, in English, of each *foreign financial regulatory authority* and country with which you are registered. You must complete a separate Schedule D Page 2 for each *foreign financial regulatory authority* with whom you are registered.

English Name of *Foreign Financial Regulatory Authority* _____
Name of Country _____

SECTION 2.A(7) Affiliated Adviser
Check here if you are completing this section: ☐

If you are relying on the exemption in rule 203A-2(c) from the prohibition on registration because you *control*, are *controlled* by, or are under common *control* with an investment adviser that is registered with the SEC and your *principal office and place of business* is the same as that of the registered adviser, provide the following information:

Name of Registered Investment Adviser _____
CRD Number of Registered Investment Adviser (if any) _____
SEC Number of Registered Investment Adviser 801-_____

SECTION 2.A(8) Newly Formed Adviser
Check here if you are completing this section: ☐

If you are relying on rule 203A-2(d), the newly formed adviser exemption from the prohibition on registration, you are required to make certain representations about your eligibility for SEC registration. By checking the appropriate boxes, you will be deemed to have made the required representations. You must make both of these representations:

☐ I am not registered or required to be registered with the SEC or a *state securities authority* and I have a reasonable expectation that I will be eligible to register with the SEC within 120 days after the date my registration with the SEC becomes effective.

☐ I undertake to withdraw from SEC registration if, on the 120th day after my registration with the SEC becomes effective, I would be prohibited by Section 203A(a) of the Advisers Act from registering with the SEC.

SECTION 2.A(9) Multi-State Adviser
Check here if you are completing this section: ☐

If you are relying on rule 203A-2(e), the multi-state adviser exemption from the prohibition on registration, you are required to make certain representations about your eligibility for SEC registration. By checking the appropriate boxes, you will be deemed to have made the required representations.

If you are applying for registration as an investment adviser with the SEC, you must make both of these representations:

☐ I have reviewed the applicable state and federal laws and have concluded that I am required by the laws of 30 or more states to register as an investment adviser with the securities authorities in those states.

☐ I undertake to withdraw from SEC registration if I file an amendment to this registration indicating that I would be required by the laws of fewer than 25 states to register as an investment adviser with the securities authorities of those states.

If you are submitting your *annual updating amendment*, you must make this representation:

☐ Within 90 days prior to the date of filing this amendment, I have reviewed the applicable state and federal laws and have concluded that I am required by the laws of at least 25 states to register as an investment adviser with the securities authorities in those states.

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Schedule D
Page 3 of 4

Your Name: _____ SEC File No.: _____

Date: _____ *CRD* No.: _____

Use this Schedule D Page 3 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

This is an ☐ INITIAL or ☐ AMENDED Schedule D Page 3.

SECTION 2.A(10) SEC Exemptive *Order*
Check here if you are completing this section: ☐

If you are relying upon an SEC *order* exempting you from the prohibition on registration, provide the following information:
Application Number: 803-_____ Date of *order*: _____ (mm/dd/yyyy)

SECTION 4 Successions
Check here if you are completing this section: ☐

Complete the following information if you are succeeding to the business of a currently-registered investment adviser. If you acquired more than one firm in the succession you are reporting on this Form ADV, you must complete a separate Schedule D Page 3 for each acquired firm. See Part 1A Instruction 4.

Date of Succession _____ (mm/dd/yyyy) Name of Acquired Firm _____
Acquired Firm's SEC File No. (if any) 801-_____ Acquired Firm's *CRD* Number (if any) _____

SECTION 5.I(2) *Wrap Fee Programs*
Check here if you are completing this section: ☐

If you are a portfolio manager for one or more *wrap fee programs*, list the name of each program and its *sponsor*. You must complete a separate Schedule D Page 3 for each *wrap fee program* for which you are a portfolio manager.

Name of *Wrap Fee Program* _____
Name of *Sponsor* _____

SECTION 6.B. Description of Primary Business
Check here if you are completing this section: ☐

Describe your primary business (not your investment advisory business): _____

SECTION 7.A. Affiliated Advisers
Check here if you are completing this section: ☐

Complete the following information for each adviser with whom you are affiliated. If you are affiliated with more than two advisers, complete an additional Schedule D Page 3.

Legal Name of Affiliated Adviser: _____
Primary Business Name of Affiliated Adviser: _____
Affiliated Adviser's SEC File Number (if any) 801-_____ Affiliated Adviser's *CRD* Number (if any): _____

Legal Name of Affiliated Adviser: _____
Primary Business Name of Affiliated Adviser: _____
Affiliated Adviser's SEC File Number (if any) 801-_____ Affiliated Adviser's *CRD* Number (if any): _____

FORM ADV
Schedule D
Page 4 of 4

Your Name: _____ SEC File No.: _____

Date: _____ *CRD* No.: _____

Use this Schedule D Page 4 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

This is an ☐ INITIAL or ☐ AMENDED Schedule D Page 4.

SECTION 7.B. Limited Partnership Participation
Check here if you are completing this section: ☐

You must complete a separate Schedule D Page 4 for each limited partnership in which you or a *related person* is a general partner.

Name of Limited Partnership: _____
Are your *clients* solicited to invest in the limited partnership? ☐ yes ☐ no
Approximately what percentage of your *clients* have invested in this limited partnership? _____%
Cost per unit of limited partnership interests sold in your last fiscal year: $_____
Total value of the limited partnership: $_____

SECTION 10 *Control Persons*
Check here if you are completing this section: ☐

You must complete a separate Schedule D Page 4 for each *control person* not named in Item 1.A. or Schedules A, B, or C that directly or indirectly *controls* your management or policies.

Firm or Organization Name _____

CRD Number (if any) _____ Effective Date _____ Termination Date _____
mm/dd/yyyy mm/dd/yyyy

Business Address:

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

Individual Name (if applicable) (Last, First, Middle) _____

CRD Number (if any) _____ Effective Date _____ Termination Date _____
mm/dd/yyyy mm/dd/yyyy

Business Address:

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

Briefly describe the nature of the *control*: _____

CRIMINAL DISCLOSURE REPORTING PAGE (ADV)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP ADV) is an ☐ INITIAL *OR* ☐ AMENDED response used to report details for affirmative responses to Items 11.A. or 11.B. of Form ADV.

Check item(s) being responded to: ☐ 11.A(1) ☐ 11.A(2) ☐ 11.B(1) ☐ 11.B(2)

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

Multiple counts of the same charge arising out of the same event(s) should be reported on the same DRP. Unrelated criminal actions, including separate cases arising out of the same event, must be reported on separate DRPs. Use this DRP to report all charges arising out of the same event. One event may result in more than one affirmative answer to the items listed above.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):
- ☐ You (the advisory firm)
- ☐ You and one or more of your *advisory affiliates*
- ☐ One or more of your *advisory affiliates*

If this DRP is being filed for an *advisory affiliate*, give the full name of the *advisory affiliate* below (for individuals, Last name, First name, Middle name).

If the *advisory affiliate* has a *CRD* number, provide that number. If not, indicate "non-registered" by checking the appropriate box.

Your Name	Your *CRD* Number

ADV DRP - *ADVISORY AFFILIATE*

CRD Number	This *advisory affiliate* is ☐ a firm ☐ an individual Registered: ☐ Yes ☐ No

Name (For individuals, Last, First, Middle)

☐ This DRP should be removed from the ADV record because the *advisory affiliate(s)* is no longer associated with the adviser.

☐ This DRP should be removed from the ADV record because the event or *proceeding* occurred more than ten years ago.

B. If the *advisory affiliate* is registered through the IARD system or *CRD* system, has the *advisory affiliate* submitted a DRP (with Form ADV, BD or U-4) to the IARD or *CRD* for the event? If the answer is "Yes," no other information on this DRP must be provided.
☐ Yes ☐ No

NOTE: The completion of this form does not relieve the *advisory affiliate* of its obligation to update its IARD or *CRD* records.

(continued)

CRIMINAL DISCLOSURE REPORTING PAGE (ADV)
(continuation)

PART II

1. If charge(s) were brought against an organization over which you or an *advisory affiliate* exercise(d) *control*: Enter organization name, whether or not the organization was an *investment-related* business and your or the *advisory affiliate's* position, title, or relationship.

2. Formal Charge(s) were brought in: (include name of Federal, Military, State or Foreign Court, Location of Court - City or County and State or Country, Docket/Case number).

3. Event Disclosure Detail (Use this for both organizational and individual charges.)

   A. Date First *Charged* (MM/DD/YYYY): ☐ Exact ☐ Explanation

   If not exact, provide explanation:

   B. Event Disclosure Detail (include Charge(s)/Charge Description(s), and for each charge provide: (1) number of counts, (2) *felony* or *misdemeanor*, (3) plea for each charge, and (4) product type if charge is *investment-related*).

   C. Did any of the Charge(s) within the Event involve a *felony*? ☐ Yes ☐ No

   D. Current status of the Event? ☐ Pending ☐ On Appeal ☐ Final

   E. Event Status Date (complete unless status is Pending) (MM/DD/YYYY):

   Exact Explanation

   If not exact, provide explanation:

4. Disposition Disclosure Detail: Include for each charge (a) Disposition Type (e.g., convicted, acquitted, dismissed, pretrial, etc.), (b) Date, (c) Sentence/Penalty, (d) Duration (if sentence-suspension, probation, etc.), (e) Start Date of Penalty, (f) Penalty/Fine Amount, and (g) Date Paid.

(continued)

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CRIMINAL DISCLOSURE REPORTING PAGE (ADV)
(continuation)

5. Provide a brief summary of circumstances leading to the charge(s) as well as the disposition. Include the relevant dates when the conduct which was the subject of the charge(s) occurred. (Your response must fit within the space provided.)

REGULATORY ACTION DISCLOSURE REPORTING PAGE (ADV)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP ADV) is an ☐ INITIAL *OR* ☐ AMENDED response used to report details for affirmative responses to items 11.C., 11.D., 11.E., 11.F. or 11.G. of Form ADV.

Check item(s) being responded to:
☐ 11.C(1) ☐ 11.C(2) ☐ 11.C(3) ☐ 11.C(4) ☐ 11.C(5)
☐ 11.D(1) ☐ 11.D(2) ☐ 11.D(3) ☐ 11.D(4) ☐ 11.D(5)
☐ 11.E(1) ☐ 11.E(2) ☐ 11.E(3) ☐ 11.E(4)
☐ 11.F. ☐ 11.G.

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to items 11.C., 11.D., 11.E., 11.F. or 11.G. Use only one DRP to report details related to the same event. If an event gives rise to actions by more than one regulator, provide details for each action on a separate DRP.

PART I

The *person(s)* or entity(ies) for whom this DRP is being filed is (are):
- ☐ You (the advisory firm)
- ☐ You and one or more of your *advisory affiliates*
- ☐ One or more of your *advisory affiliates*

If this DRP is being filed for an *advisory affiliate*, give the full name of the *advisory affiliate* below (for individuals, Last name, First name, Middle name).

If the *advisory affiliate* has a *CRD* number, provide that number. If not, indicate "non-registered" by checking the appropriate box.

Your Name	Your *CRD* Number

ADV DRP - *ADVISORY AFFILIATE*

CRD Number	This *advisory affiliate* is ☐ a firm ☐ an individual Registered: ☐ Yes ☐ No

Name (For individuals, Last, First, Middle)

☐ This DRP should be removed from the ADV record because the *advisory affiliate(s)* is no longer associated with the adviser.

☐ This DRP should be removed from the ADV record because the event or *proceeding* occurred more than ten years ago.

If you are registered or registering with a state, you may remove a DRP for an event you reported only in response to item 11.D(4), and only if that event occurred more than ten years ago. If you are registered or registering with the SEC, you may remove a DRP for any event listed in item 11 that occurred more than ten years ago.

C. If the *advisory affiliate* is registered through the IARD system or *CRD* system, has the *advisory affiliate* submitted a DRP (with Form ADV, BD or U-4) to the IARD or *CRD* for the event? If the answer is "Yes," no other information on this DRP must be provided.
☐ Yes ☐ No
NOTE: The completion of this form does not relieve the *advisory affiliate* of its obligation to update its IARD or *CRD* records.

(continued)

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REGULATORY ACTION DISCLOSURE REPORTING PAGE (ADV)
(continuation)

PART II

1. Regulatory Action initiated by:
☐ SEC ☐ Other Federal ☐ State ☐ *SRO* ☐ Foreign

(Full name of regulator, *foreign financial regulatory authority*, federal, state or *SRO*)

_____

2. Principal Sanction (check appropriate item):

☐ Civil and Administrative Penalty(ies)/Fine(s)	☐ Disgorgement	☐ Restitution
☐ Bar	☐ Expulsion	☐ Revocation
☐ Cease and Desist	☐ Injunction	☐ Suspension
☐ Censure	☐ Prohibition	☐ Undertaking
☐ Denial	☐ Reprimand	☐ Other _____

Other Sanctions:

_____
_____
_____

3. Date Initiated (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

4. Docket/Case Number:

5. *Advisory Affiliate* Employing Firm when activity occurred which led to the regulatory action (if applicable):

6. Principal Product Type (check appropriate item):

☐ Annuity(ies) - Fixed	☐ Derivative(s)	☐ Investment Contract(s)
☐ Annuity(ies) - Variable	☐ Direct Investment(s) - DPP & LP Interest(s)	☐ Money Market Fund(s)
☐ CD(s)	☐ Equity - OTC	☐ Mutual Fund(s)
☐ Commodity Option(s)	☐ Equity Listed (Common & Preferred Stock)	☐ No Product
☐ Debt - Asset Backed	☐ Futures - Commodity	☐ Options
☐ Debt - Corporate	☐ Futures - Financial	☐ Penny Stock(s)
☐ Debt - Government	☐ Index Option(s)	☐ Unit Investment Trust(s)
☐ Debt - Municipal	☐ Insurance	☐ Other _____

Other Product Types:

_____
_____

(continued)

REGULATORY ACTION DISCLOSURE REPORTING PAGE (ADV)
(continuation)

7. Describe the allegations related to this regulatory action (your response must fit within the space provided):

8. Current status? ☐ Pending ☐ On Appeal ☐ Final

9. If on appeal, regulatory action appealed to (SEC, *SRO*, Federal or State Court) and Date Appeal Filed:

If Final or On Appeal, complete all items below. For Pending Actions, complete item 13 only.

10. How was matter resolved (check appropriate item):

☐ Acceptance, Waiver & Consent (AWC) ☐ Decision & Order of Offer of Settlement ☐ Settled
☐ Consent ☐ Dismissed ☐ Stipulation and Consent
☐ Decision ☐ *Order* ☐ Vacated

11. Resolution Date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation:

12. Resolution Detail:

A. Were any of the following Sanctions Ordered (check all appropriate items)?

Monetary/Fine ☐ Revocation/Expulsion/Denial ☐ Disgorgement/Restitution

Amount: $ ☐ Censure ☐ Cease and Desist/Injunction ☐ Bar ☐ Suspension

B. Other Sanctions Ordered:

Sanction detail: If suspended, *enjoined* or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification by exam/retraining was a condition of the sanction, provide length of time given to requalify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against you or an *advisory affiliate*, date paid and if any portion of penalty was waived:

(continued)

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REGULATORY ACTION DISCLOSURE REPORTING PAGE (ADV)
(continuation)

13. Provide a brief summary of details related to the action status and (or) disposition and include relevant terms, conditions and dates (your response must fit within the space provided).

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (ADV)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP ADV) is an ☐ INITIAL *OR* ☐ AMENDED response used to report details for affirmative responses to Item 11.H. of Part 1A and Item 2.F. of Part 1B of Form ADV.

Check Part 1A item(s) being responded to: ☐ 11.H(1)(a) ☐ 11.H(1)(b) ☐ 11.H(1)(c) ☐ 11.H(2)
Check Part 1B item(s) being responded to: ☐ 2.F(1) ☐ 2.F(2) ☐ 2.F(3) ☐ 2.F(4) ☐ 2.F(5)

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Item 11.H. of Part 1A or Item 2.F. of Part 1B. Use only one DRP to report details related to the same event. Unrelated civil judicial actions must be reported on separate DRPs.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):
- ☐ You (the advisory firm)
- ☐ You and one or more of your *advisory affiliates*
- ☐ One or more of your *advisory affiliates*

If this DRP is being filed for an *advisory affiliate*, give the full name of the *advisory affiliate* below (for individuals, Last name, First name, Middle name).

If the *advisory affiliate* has a *CRD* number, provide that number. If not, indicate "non-registered" by checking the appropriate box.

Your Name	Your *CRD* Number

ADV DRP - *ADVISORY AFFILIATE*

CRD Number	This *advisory affiliate* is ☐ a firm ☐ an individual Registered: ☐ Yes ☐ No

Name (For individuals, Last, First, Middle)

☐ This DRP should be removed from the ADV record because the *advisory affiliate(s)* is no longer associated with the adviser.

☐ This DRP should be removed from the ADV record because the event or *proceeding* occurred more than ten years ago.

If you are registered or registering with a state, you may remove a DRP for an event you reported only in response to Item 11.H(1)(a), and only if that event occurred more than ten years ago. If you are registered or registering with the SEC, you may remove a DRP for any event listed in Item 11 that occurred more than ten years ago.

D. If the *advisory affiliate* is registered through the IARD system or *CRD* system, has the *advisory affiliate* submitted a DRP (with Form ADV, BD or U-4) to the IARD or *CRD* for the event? If the answer is "Yes," no other information on this DRP must be provided.
☐ Yes ☐ No

NOTE: The completion of this form does not relieve the *advisory affiliate* of its obligation to update its IARD or *CRD* records.

(continued)

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (ADV)
(continuation)

PART II

1. Court Action initiated by: (Name of regulator, *foreign financial regulatory authority, SRO*, commodities exchange, agency, firm, private plaintiff, etc.)

_____

2. Principal Relief Sought (check appropriate item):

☐ Cease and Desist ☐ Disgorgement ☐ Money Damages (Private/Civil Complaint) ☐ Restraining Order
☐ Civil Penalty(ies)/Fine(s) ☐ Injunction ☐ Restitution ☐ Other _____

Other Relief Sought:

_____
_____

3. Filing Date of Court Action (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

4. . Principal Product Type (check appropriate item):

☐ Annuity(ies) - Fixed
☐ Annuity(ies) - Variable
☐ CD(s)
☐ Commodity Option(s)
☐ Debt - Asset Backed
☐ Debt - Corporate
☐ Debt - Government
☐ Debt - Municipal
☐ Derivative(s)
☐ Direct Investment(s) - DPP & LP Interest(s)
☐ Equity - OTC
☐ Equity Listed (Common & Preferred Stock)
☐ Futures - Commodity
☐ Futures - Financial
☐ Index Option(s)
☐ Insurance
☐ Investment Contract(s)
☐ Money Market Fund(s)
☐ Mutual Fund(s)
☐ No Product
☐ Options
☐ Penny Stock(s)
☐ Unit Investment Trust(s)
☐ Other _____

Other Product Types:

_____

5. Formal Action was brought in (include name of Federal, State or Foreign Court, Location of Court - City or County and State or Country, Docket/Case Number):

_____

6. *Advisory Affiliate* Employing Firm when activity occurred which led to the civil judicial action (if applicable):

(continued)

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (ADV)
(continuation)

7. Describe the allegations related to this civil action (your response must fit within the space provided):

8. Current status? ☐ Pending ☐ On Appeal ☐ Final

9. If on appeal, action appealed to (provide name of court) and Date Appeal Filed (MM/DD/YYYY):

10. If pending, date notice/process was served (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation:

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 14 only.

11. How was matter resolved (check appropriate item):

☐ Consent ☐ Judgment Rendered ☐ Settled
☐ Dismissed ☐ Opinion ☐ Withdrawn ☐ Other

12. Resolution Date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation:

13. Resolution Detail:

A. Were any of the following Sanctions Ordered or Relief Granted (check appropriate items)?

Monetary/Fine ☐ Revocation/Expulsion/Denial ☐ Disgorgement/Restitution

Amount: $ ☐ Censure ☐ Cease and Desist/Injunction ☐ Bar ☐ Suspension

B. Other Sanctions:

(continued)

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (ADV)
(continuation)

C. Sanction detail: If suspended, *enjoined* or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification by exam/retraining was a condition of the sanction, provide length of time given to requalify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against you or an *advisory affiliate*, date paid and if any portion of penalty was waived:

14. Provide a brief summary of circumstances related to the action(s), allegation(s), disposition(s) and/or finding(s) disclosed above (your response must fit within the space provided).

FORM ADV (Paper Version)
UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

PART 1B

You must complete this Part 1B only if you are applying for registration, or are registered, as an investment adviser with any of the *state securities authorities*.

Item 1 State Registration

Complete this Item 1 if you are submitting an initial application for state registration or requesting additional state registration(s). Check the boxes next to the states to which you are submitting this application. If you are already registered with at least one state and are applying for registration with an additional state or states, check the boxes next to the states in which you are applying for registration. Do not check the boxes next to the states in which you are currently registered or where you have an application for registration pending.

☐ AL	☐ CT	☐ HI	☐ KY	☐ MN	☐ NH	☐ OH	☐ SC	☐ VA
☐ AK	☐ DE	☐ ID	☐ LA	☐ MS	☐ NJ	☐ OK	☐ SD	☐ WA
☐ AZ	☐ DC	☐ IL	☐ ME	☐ MO	☐ NM	☐ OR	☐ TN	☐ WV
☐ AR	☐ FL	☐ IN	☐ MD	☐ MT	☐ NY	☐ PA	☐ TX	☐ WI
☐ CA	☐ GA	☐ IA	☐ MA	☐ NE	☐ NC	☐ PR	☐ UT	
☐ CO	☐ GU	☐ KS	☐ MI	☐ NV	☐ ND	☐ RI	☐ VT	

Item 2 Additional Information

A. Person responsible for supervision and compliance:

_____
(name)

_____
(title)

_____ _____
(area code) (telephone number) (area code) (facsimile number)

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

_____
(electronic mail (e-mail) address, if the person has one)

B. Bond Information, if required by your *home state*.

(1) Name of Issuing Insurance Company:

_____

(2) Amount of Bond: $_____.00

(3) Bond Policy Number: _____

FORM ADV Part 1B Page 2 of 4	Your Name _____ *CRD* Number _____ Date _____ SEC 801-Number _____

	Yes	No
For "yes" answers to the following question, complete a Bond DRP:		
C. Has a bonding company ever denied, paid out on, or revoked a bond for you?	☐	☐
For "yes" answers to the following question, complete a Judgment/Lien DRP:		
D. Do you have any unsatisfied judgments or liens against you?	☐	☐
For "yes" answers to the following questions, complete an Arbitration DRP:		
E. Have you or any *advisory affiliate* been the subject of an arbitration claim alleging damages in excess of $2,500, involving any of the following:		
(1) any investment or an *investment-related* business or activity?	☐	☐
(2) fraud, false statement, or omission?	☐	☐
(3) theft, embezzlement, or other wrongful taking of property?	☐	☐
(4) bribery, forgery, counterfeiting, or extortion?	☐	☐
(5) dishonest, unfair, or unethical practices?	☐	☐
For "yes" answers to the following questions, complete a Civil Judicial Action DRP:		
F. Have you, any *advisory affiliate*, or any *management person* been *found* liable in a civil, *self-regulatory organization*, or administrative *proceeding* involving any of the following:		
(1) an investment or *investment-related* business or activity?	☐	☐
(2) fraud, false statement, or omission?	☐	☐
(3) theft, embezzlement, or other wrongful taking or property?	☐	☐
(4) bribery, forgery, counterfeiting, or extortion?	☐	☐
(5) dishonest, unfair, or unethical practices?	☐	☐

G. Other Business Activities

(1) You are actively engaged in business as a(n) (check all that apply):

- ☐ Attorney
- ☐ Certified public accountant
- ☐ Tax preparer

FORM ADV Part 1B Page 3 of 4	Your Name _____ *CRD* Number _____ Date _____ SEC 801-Number _____

(2) If you are actively engaged in any business other than those listed in Item 6.A. of Part 1A or Item 2.G(1) of Part 1B, describe the business and the approximate amount of time spent on that business:

_____

_____

_____

_____

_____

_____

_____

_____

H. If you provide financial planning services, the investments made based on those services at the end of your last fiscal year totaled:

	Securities Investments	Non-Securities Investments
Under $100,000	☐	☐
$100,001 to $500,000	☐	☐
$500,001 to $1,000,000	☐	☐
$1,000,001 to $2,500,000	☐	☐
$2,500,001 to $5,000,000	☐	☐
More than $5,000,000	☐	☐

If more than $5,000,000, how much? $ _____ (round to the nearest $1,000,000)

I. *Custody*

	Yes	No
(1) Do you withdraw advisory fees directly from your *clients'* accounts?	☐	☐
(2) Do you act as a general partner for any partnership or trustee for any trust in which your advisory *clients* are either partners of the partnership or beneficiaries of the trust?	☐	☐

FORM ADV Part 1B Page 4 of 4	Your Name _____ *CRD* Number _____ Date _____ SEC 801-Number _____

	Yes	No
(3) If you answered "yes" to Item 2.I(1) or 2.I(2), respond to the following:		
(a) Do you send a copy of your invoice to the custodian or trustee at the same time that you send a copy to the *client*?	☐	☐
(b) Do you send quarterly statements to your *clients* showing all disbursements for the custodian account, including the amount of the advisory fees?	☐	☐
(c) Do your *clients* provide written authorization permitting you to be paid directly for their accounts held by the custodian or trustee?	☐	☐
(d) If you are the general partner of a partnership, have you engaged an attorney or an independent certified public accountant to provide authority permitting the direct payment or the transfer of funds or securities from the partnership account?	☐	☐
(4) Do you require prepayment of fees of more than $500 per *client* or for more than six months in advance?	☐	☐

J. If you are organized as a sole proprietorship, please answer the following:

	Yes	No
(1) Have you passed the Series 65 examination or both the Series 66 and Series 7 examinations?	☐	☐
(2) (a) Do you have any investment advisory professional designations?	☐	☐

If "no," you do not need to answer Item 2.J(2)(b).

(b) I have earned and I am in good standing with the organization that issued the following credential:

☐ 1. Certified Financial Planner ("CFP")
☐ 2. Chartered Financial Analyst ("CFA")
☐ 3. Chartered Financial Consultant ("ChFC")
☐ 4. Chartered Investment Counselor ("CIC")
☐ 5. Personal Financial Specialist ("PFS")
☐ 6. None of the above

BOND DISCLOSURE REPORTING PAGE (ADV)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP ADV) is an ☐ INITIAL *OR* ☐ AMENDED response used to report details for affirmative responses to Item 2.C. of Part 1B of Form ADV.

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

Your Name	Your *CRD* Number

1. Firm Name: (Policy Holder)

2. Bonding Company Name:

3. Disposition Type: (check appropriate item)

☐ Denied ☐ Payout ☐ Revoked

4. Disposition Date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

5. If disposition resulted in Payout, list Payout Amount and Date Paid:

6. Summarize the details of circumstances leading to the necessity of bonding company action: (your response must fit within the space provided):

JUDGMENT / LIEN DISCLOSURE REPORTING PAGE (ADV)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP ADV) is an ☐ INITIAL *OR* ☐ AMENDED response used to report details for affirmative responses to Item 2.D. of Part 1B of Form ADV.

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

Your Name	Your *CRD* Number

1. Judgment/Lien Amount:

2. Judgment/Lien Holder:

3. Judgment/Lien Type: (check appropriate item)

☐ Civil ☐ Default ☐ Tax

4. Date Filed (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

5. Is Judgment/Lien outstanding? ☐ Yes ☐ No

If no, provide status date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

If no, how was matter resolved? (check appropriate item)

☐ Discharged ☐ Released ☐ Removed ☐ Satisfied

6. Court (Name of Federal, State or Foreign Court), Location of Court (City or County and State or Country) and Docket/Case Number:

7. Provide a brief summary of events leading to the action and any payment schedule details including current status (if applicable) (your response must fit within the space provided):

UMI

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ARBITRATION DISCLOSURE REPORTING PAGE (ADV)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP ADV) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to Item 2.E. of Part 1B of Form ADV.

Check Part 1B item(s) being responded to: ☐ 2.E(1) ☐ 2.E(2) ☐ 2.E(3) ☐ 2.E(4) ☐ 2.E(5)

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Item 2.E. Use only one DRP to report details related to the same event. Unrelated civil judicial actions must be reported on separate DRPs.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):
- ☐ You (the advisory firm)
- ☐ You and one or more of your *advisory affiliates*
- ☐ One or more of your *advisory affiliates*

If this DRP is being filed for an *advisory affiliate*, give the full name of the *advisory affiliate* below (for individuals, Last name, First name, Middle name).

If the *advisory affiliate* has a *CRD* number, provide that number. If not, indicate "non-registered" by checking the appropriate checkbox.

Your Name	Your *CRD* Number

ADV DRP - *ADVISORY AFFILIATE*

CRD Number	This *advisory affiliate* is ☐ a firm ☐ an individual Registered: ☐ Yes ☐ No

Name (For individuals, Last, First, Middle)

☐ This DRP should be removed from the ADV record because the *advisory affiliate(s)* is no longer associated with the adviser.

NOTE: The completion of this form does not relieve the *advisory affiliate* of its obligation to update its IARD or *CRD* records.

PART II

1. Arbitration/Reparation Claim initiated by: (Name of private plaintiff, firm, etc.)

_____

2. Principal Relief Sought (check appropriate item):

☐ Restraining Order ☐ Disgorgement ☐ Money Damages (Private/Civil Claim) ☐ Other _____
☐ Civil Penalty(ies)/Fine(s) ☐ Injunction ☐ Restitution

(continued)

ARBITRATION DISCLOSURE REPORTING PAGE (ADV)
(continuation)

Other Relief Sought:

3. Initiation Date of Arbitration/Reparation Claim (MM/DD/YYYY):
   ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

4. Principal Product Type (check appropriate item):

☐ Annuity(ies) - Fixed	☐ Derivative(s)	☐ Investment Contract(s)
☐ Annuity(ies) - Variable	☐ Direct Investment(s) - DPP & LP Interest(s)	☐ Money Market Fund(s)
☐ CD(s)	☐ Equity - OTC	☐ Mutual Fund(s)
☐ Commodity Option(s)	☐ Equity Listed (Common & Preferred Stock)	☐ No Product
☐ Debt - Asset Backed	☐ Futures - Commodity	☐ Options
☐ Debt - Corporate	☐ Futures - Financial	☐ Penny Stock(s)
☐ Debt - Government	☐ Index Option(s)	☐ Unit Investment Trust(s)
☐ Debt - Municipal	☐ Insurance	☐ Other _____

Other Product Types:

5. Arbitration/Reparation Claim was filed with (*NASD*, AAA, NYSE, CBOE, CFTC, etc.) and Docket/Case Number:

6. *Advisory Affiliate* Employing Firm when activity occurred which led to the arbitration/reparation (if applicable):

7. Describe the allegations related to this arbitration/reparation (your response must fit within the space provided):

8. Current status? ☐ Pending ☐ On Appeal ☐ Final

9. If on appeal, action appealed to (provide name of court) and Date Appeal Filed (MM/DD/YYYY):

(continued)

ARBITRATION DISCLOSURE REPORTING PAGE (ADV)
(continuation)

10. If pending, date notice/process was served (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 14 only.

11. How was matter resolved (check appropriate item):

☐ Consent ☐ Judgment Rendered ☐ Settled
☐ Dismissed ☐ Opinion ☐ Withdrawn ☐ Other _____

12. Resolution Date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

13. Resolution Detail:

A. Were any of the following Sanctions Ordered or Relief Granted (check appropriate items)?

☐ Monetary Award ☐ Settlement ☐ Disgorgement/Restitution
Amount: $ ☐ Injunction

B. Other Sanctions:

C. Sanction detail: If disposition resulted in a penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against you or an *advisory affiliate*, date paid and if any portion of penalty was waived:

14. Provide a brief summary of circumstances related to the action(s), allegation(s), disposition(s) and/or finding(s) disclosed above (your response must fit within the space provided).

BILLING CODE 8010-01-C

Form ADV (Paper Version): Uniform Application for Investment Adviser Registration

Part 2: Uniform Requirements for Investment Adviser *Brochure* and Supplements

General Instructions for Part 2 of Form ADV

Under SEC and similar state rules, you are required to deliver to *clients* and prospective *clients* a *brochure* disclosing material information about your firm and its business practices. You also may be required to deliver a *brochure* supplement disclosing material information about one or more of your *supervised persons*. Part 2 of Form ADV sets out the minimum required disclosures that your *brochure* (Part 2A for a firm *brochure*, or Appendix 1 for a *wrap fee program brochure*) and *brochure* supplements (Part 2B) must contain.

1. *Narrative Format.* Part 2 of Form ADV consists of a series of items that contain disclosure requirements for preparing your firm's *brochure* and any required supplements. The items require narrative responses. You do not have to provide the responses in the same order that the items appear, and you should not repeat the items themselves in the *brochure* or the supplements.

2. *Plain English.* The items in Part 2 of Form ADV are designed to promote effective communication between you and your *clients*. Write your *brochure* and supplements in plain English, taking into consideration your clients' level of financial sophistication. Your *brochure* should be concise and direct. In drafting your *brochure* and *brochure* supplements, you should: (a) use short sentences; (b) use definite, concrete, everyday words; (c) use active voice; (d) use tables or bullet lists for complex material, whenever possible; (e) avoid legal jargon or highly technical business terms unless you explain them or you believe your *clients* will understand them; and (f) avoid multiple negatives. Consider providing examples to illustrate a description of your practices or policies.

Note: The SEC's Office of Investor Education and Assistance has published *A Plain English Handbook*. You may find this handbook helpful in writing your *brochure* and supplements. You can get a copy of this handbook from the SEC's web site at www.sec.gov/news/handbook.htm, or by calling 1–800–SEC–0330.

3. *Full Disclosure of All Conflicts of Interest.* Under federal and state law, you are a fiduciary required to make full disclosure to your *clients* of all material facts regarding conflicts of interest between you and your *client*. You therefore may have to disclose to *clients* information not specifically required by Part 2 of Form ADV.

4. *Full and Truthful Disclosure.* All information in your *brochure* and *brochure* supplements must be true and complete. It is unlawful under federal and state law to make false statements or omit any material facts.

5. *Filing.* You must file your *brochure* with your regulators as part of your Form ADV. You will file your *brochure* with your Form ADV on the IARD system, starting when the IARD system is capable of accepting these filings. Until then:

- If you are registered or registering with the SEC, you will preserve a copy of your *brochure* and make it available, upon request, to SEC staff—your *brochure* will be deemed filed with the SEC. See SEC rules 203–1, 204–1, and 204–2(a)(14). If you submit *notice filings* to states, the *state securities authorities* require you to send them paper copies of your *brochure* until the IARD system is capable of accepting these filings. You are not required to file your *brochure* supplements, but record-keeping rules require you to preserve a copy of the supplements and make them available to SEC staff. See SEC rule 204–2(a)(14).
- If you are registered or registering with one or more of the *state securities authorities*, you will file with the securities authority for each state in which you are registered or registering a paper copy of your *brochure* and a paper copy of the *brochure* supplement for each *supervised person* and each *investment adviser representative* doing business in that state.

Instructions for Part 2A of Form ADV: Preparing Your Firm *Brochure*

1. *To whom must we offer or deliver a firm brochure, and when?* You must give a firm brochure to each client before or at the time you enter into an advisory agreement with that client. You must deliver the brochure even if your advisory agreement with the client is oral. See SEC rule 204–3(b)(1) and similar state rules.

You must deliver or offer each client a free update of the brochure each year. If a client accepts your offer, you must send the brochure to the client within seven days after you are notified. See SEC rule 204–3(b)(2) and similar state rules.

For SEC-registered advisers: You are not required to deliver, or offer, your *brochure* to either (1) *clients* who receive only impersonal investment advice from you and will pay you less than $500 per year or (2) clients that are SEC-registered investment companies (the *client* must be registered under the Investment Company Act of 1940, and the advisory contract must meet requirements of section 15(c) of that Act). See SEC rule 204–3(c).

Note: Even if you are not required to give a *brochure* to a *client*, you still have an affirmative obligation under the anti-fraud provisions of federal and state law to disclose to your *clients* all material facts regarding conflicts of interest between you and your *clients*, including all material disciplinary information.

2. *How should we offer and deliver our brochure and updates? Can we offer them orally? Electronically?* Your annual offer to your *clients* of an updated *brochure* must be in writing. You may offer and deliver your *brochure* using electronic media. The SEC has published interpretive guidelines on delivering documents electronically—you can find these at www.sec.gov/rules/concept/33–7288.txt.

3. *We advise limited partnerships, limited liability companies, and trusts. To whom must we offer or deliver our brochure?* It depends. If you are an SEC-registered adviser, you should determine whether the "registered investment company exception" in instruction 1 applies. If it does not apply, and you are the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then you must treat each limited partner, member, or beneficial owner as a *client* for purposes of delivering your *brochure* and *brochure* supplements. You should treat a limited liability partnership or limited liability limited partnership as a limited partnership. See SEC rule 204–3(d).

4. *We are an SEC-registered adviser and we have determined that we have no clients to whom we must offer or deliver a brochure. Must we prepare one?* No.

5. *We offer several advisory services. May we prepare multiple firm brochures?* Yes. If you offer substantially different types of advisory services, you may opt to prepare separate *brochures* so long as each *client* receives all applicable information about services and fees. Each *brochure* may omit information that does not apply to the advisory services and fees it describes. For example, your firm *brochure* that describes one advisory service can omit the fee schedule for a different advisory service that is not discussed in the *brochure*.

6. *We sponsor a wrap fee program. Is there a different brochure we need to offer and deliver to our wrap fee clients?* Yes. If you *sponsor* a *wrap fee program*, you must offer and deliver a *wrap fee program brochure* to your wrap fee *clients*. The disclosure requirements for preparing a *wrap fee program* brochure (also called a *wrap brochure*) appear in Part 2A Appendix 1 of Form ADV. If your entire advisory business is *sponsoring wrap fee programs*, you do not need to prepare a firm *brochure* separate from your *wrap brochure(s)*. See SEC rule 204–3(e).

7. *May we include information not required by an item in our brochure?* Yes. If you include information not required by an item, however, you may not include so much additional information that the required information is obscured.

8. *What if information in our brochure changes?* If any information in your *brochure* becomes materially inaccurate, you must promptly amend your *brochure* by either revising and re-distributing your *brochure* or preparing a sticker to accompany the old *brochure*, as described below.

(a) *Filing the brochure amendment with regulators.*

- If you are registered with the SEC, you must preserve a copy of the revised *brochure* or the sticker, and make the revised *brochure* (and all stickers) available to SEC staff—your *brochure* and stickers will be deemed filed with the SEC. State laws require you to file paper copies of all *brochure* amendments with the *state securities authorities* to which you make *notice filings*.
- If you are registered with the *state securities authorities*, you must file all *brochure* amendments with the *state securities authorities* with which you are registered.

(b) *Delivering the amendment to clients.* You must deliver the new information to your *clients* promptly after the date of the

amendment. To deliver the new information, you can either revise and reprint your *brochure* or prepare a sticker. Each sticker must explain which information became inaccurate and provide the updated information and the date of the sticker.

Use only your revised *brochure* (or accompany your *brochure* with the stickers) to satisfy your *brochure* delivery requirements (rule 204–3). In addition, you must promptly deliver the sticker (or revised *brochure*) to all existing *clients*. You may use a sticker for any *brochure* amendment (except an *annual updating amendment*), so long as the *brochure* remains readable and clear.

Note: We will notify you when the IARD begins to accept Part 2A, and you will have a grace period before you are required to file your firm*brochure* **with the IARD.**

9. *Must we revise our brochure every year?* Yes. When you file the *annual updating amendment* to your Form ADV, you must include a revised *brochure*. You must also reprint this revised *brochure*, incorporating all current stickers into the *brochure* text.

10. *We are a new firm. Do we need a brochure?* Yes. Respond to items in Part 2A of Form ADV based on the advisory services you propose to provide and the policies and practices you propose to adopt.

11. *We are a "separately identifiable department or division" (SID) of a bank. Must our brochure discuss our bank's general business practices?* No. Information you include in your firm *brochure* (or in *brochure* supplements) should be information about you, the SID, and your business practices, rather than general information about your bank.

Part 2A of Form ADV: Firm Brochure

Item 1 Cover Page

A. The cover page of your *brochure* must state your name, business address, telephone number, and the date of the *brochure*.

Note: If you primarily conduct advisory business under a name different from your full legal name, *and* you have disclosed your business name in Item 1.B. of Part 1A of Form ADV, then you may use your business name throughout your *brochure*.

B. Display the following statements prominently on your cover page:

This brochure provides information about the qualifications and business practices of [your name]. Please contact [name and/or title of contact *person*] if you have any questions about the contents of this brochure. The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission or by any State securities authority.

Additional information about [your name] is available on the Internet at [site name to be determined]. You can search this site by a unique identifying number, known as a CRD number. The CRD number for [your name] is [your *CRD* number].

C. If you refer to yourself as a "registered investment adviser" or describe yourself as being "registered," include a statement that registration does not imply a certain level of skill or training.

Item 2 Material Changes

If your *brochure* contains material changes from its last annual update, summarize those changes. Include the summary on, or immediately following, the cover page of the *brochure* or in a separate letter accompanying the *brochure*. The summary must state clearly that it discusses only material changes since the last annual update of your *brochure*, and it must provide the date of the last annual update of your *brochure*.

Note: You do not have to provide the summary to a *client* or prospective *client* who has not received a previous version of your *brochure*.

Item 3 Table of Contents

Provide a table of contents to your *brochure*.

Note: Your table of contents must be detailed enough so that your *clients* can locate topics easily.

Item 4 Advisory Business

A. Describe your advisory firm, including how long you have been in business. Identify your principal owner(s).

Note: (1) For purposes of this item, your principal owners include the *persons* you list as owning 25% or more of your firm on Schedule A of Form ADV (Ownership Codes C, D or E). (2) If you are a publicly held company without a 25% shareholder, simply disclose that you are publicly held. (3) If an individual or company owns 25% or more of your firm through subsidiaries, you must identify the individual or parent company and intermediate subsidiaries. If you are a state-registered adviser, you must identify all intermediate subsidiaries. If you are an SEC-registered adviser, you must identify intermediate subsidiaries that are publicly held, but not other intermediate subsidiaries.

B. Describe the types of advisory services you offer. If you hold yourself out as specializing in a particular type of advisory service, such as financial planning or market timing, explain in detail the nature of that service. Similarly, if you provide investment advice only with respect to limited types of securities, explain the type of investment advice you offer, and disclose that your advice is limited to those types of investments.

C. Explain whether and how you tailor your advisory services to the individual needs of *clients*. Explain whether *clients* may impose restrictions on investing in certain securities or types of securities.

D. If you manage *client* assets, disclose the amount of assets you manage on a *discretionary* basis and the amount of assets you manage on a non-*discretionary* basis. Disclose the date "as of" which you calculated the amounts.

Note: In calculating the amount of *client* assets you manage in response to this Item, you do not have to use the method for computing assets under management that you used to respond to Item 5.F. in Part 1A. The amount you disclose may be rounded to the nearest $100,000. Your "as of" date must not be more than three months before the date of your *brochure*. You do not need to amend your *brochure* between annual updates solely to update the amounts of *client* assets you manage.

E. If you issue periodicals or periodic reports about securities, list the names of the periodicals and briefly describe their subject matter.

Note: You do not need to list or describe a report on an individually named security.

F. If you participate in *wrap fee programs* by providing portfolio management services, (1) disclose the programs offered and the names of the *sponsors*, (2) describe any differences between how you manage wrap fee accounts and how you manage other accounts, and (3) explain that you receive a portion of the wrap fee.

Item 5 Fees and Compensation

A. Describe how you are compensated for your advisory services. Provide your fee schedule. Disclose whether the fees are negotiable.

B. Describe whether you deduct fees from *clients'* assets or bill *clients* for fees incurred. If *clients* may select either method, disclose this fact. Explain how often you bill *clients* or deduct your fees.

C. Describe any other types of fees or expenses *clients* may pay in connection with your advisory services, such as custodian fees or mutual fund expenses. Disclose the amount or range of these fees. Disclose that *clients* will incur brokerage and other transaction costs, and direct the reader to the section of your *brochure* discussing brokerage.

D. If your *clients* either may or must pay your fees in advance, disclose this fact. Explain how a *client* may obtain a refund of any pre-paid fee if the advisory contract is terminated before the end of the billing period. Explain how you will determine the amount of the refund.

E. If you or a *supervised person* accepts compensation for the sale of securities or other investment products, including distribution or service ("trail") fees from the sale of mutual funds, disclose this fact and respond to Items 5.E.1, 5.E.2., 5.E.3. and 5.E.4.

1. Explain that this practice presents a conflict of interest and gives you or the *supervised person* an incentive to recommend investment products based on the compensation received, rather than on the *client's* needs. Describe your internal procedures or controls for addressing conflicts that arise, including your procedures for disclosing conflicts to *clients*. If you recommend primarily mutual funds, disclose whether you will recommend "no-load" funds.

2. Explain that *clients* have the option to purchase investment products that you recommend through other brokers or agents that are not affiliated with you.

3. If more than 50% of your revenue from advisory *clients* results from commissions and other compensation for the sale of investment products you recommend to your *clients*, including trail fees from the sale of mutual funds, disclose that commissions provide your primary or, if applicable, your exclusive compensation.

4. If you charge advisory fees in addition to commissions, disclose whether you reduce

your advisory fees to offset the commissions you accept.

Note: If you receive commissions in connection with the purchase or sale of securities, you should carefully consider the applicability of the broker-dealer registration requirements of the Securities Exchange Act of 1934.

Item 6 Types of *Clients*

Describe the types of *clients* to whom you generally provide investment advice, such as individuals, trusts, investment companies, or pension plans. If you have any requirements to open or maintain an account, such as a minimum account size, disclose the requirements.

Item 7 Methods of Analysis, Investment Strategies and Risk of Loss

A. Describe the methods of analysis and investment strategies you use in formulating investment advice or managing assets. Explain that investing in securities involves risk of loss that *clients* should be prepared to bear.

B. If you primarily use a particular method of analysis or strategy, explain the specific risks involved. If the method of analysis or strategy involves significant or unusual risks, discuss these risks in detail. If your primary strategy involves frequent trading of securities, explain how frequent trading can affect investment performance, particularly through increased brokerage and other transaction costs and taxes.

C. If you recommend primarily a particular type of security, explain the specific risks involved. If the type of security involves significant or unusual risks, discuss these risks in detail.

D. Discuss your practices regarding cash balances in *client* accounts, including whether you invest cash balances for temporary purposes and, if so, how.

Item 8 Disciplinary Information

If there are legal or disciplinary events that are material to a *client's* or prospective *client's* evaluation of your advisory business and the integrity of your management, disclose all material facts regarding those events. This disclosure is required under anti-fraud provisions such as section 206 of the Investment Advisers Act of 1940.

If your advisory firm or a *management person* has been involved in an administrative *proceeding* before the SEC described in Item 8.B.2. below, then you must also *deliver* a copy of the SEC's *order* to your *clients* if the date of the *order* is on or after [effective date of new Form ADV]. You must deliver copies of the *order* as if it were a sticker to your *brochure* (that is, the order must accompany your *brochure* to prospective *clients*, and you must also deliver the *order* to existing *clients*), for one year following the date of the *order*.

Items 8.A., 8.B., and 8.C. list specific legal and disciplinary events that you must presume are material for this Item. If your advisory firm or a *management person* has been *involved* in one of these events, you must disclose it under this Item for ten years following the date of the event, unless (1) the event was resolved in your or the *management person's* favor, or was reversed, suspended or vacated, or (2) the event is not material (see Note below). For purposes of calculating this ten-year period, the "date" of an event is the date the final *order*, judgment, or decree was entered, or the date any rights of appeal from preliminary *orders*, judgments or decrees lapsed.

Items 8.A., 8.B., and 8.C. are not an exclusive list. If your advisory firm or a *management person* has been *involved* in a legal or disciplinary event that is *not* listed in Items 8.A., 8.B., or 8.C. but *is* material to a *client's* or prospective *client's* evaluation of your advisory business or the integrity of its management, you must disclose the event. Similarly, even if more than ten years have passed since the date of the event, you must disclose the event if it is so serious that it remains currently material to the *client's* or prospective *client's* evaluation.

A. A criminal or civil action in a domestic, foreign or military court of competent jurisdiction in which your firm or a *management person*.

1. was convicted of, or pled guilty or nolo contendere ("no contest") to (a) any *felony*; (b) a *misdemeanor* that *involved* investments or an *investment-related* business, fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, or extortion; or (c) a conspiracy to commit any of these offenses;

2. is the named subject of a pending criminal *proceeding* that involves an *investment-related* business, fraud, false statements or omissions, wrongful taking of property, bribery, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses;

3. was *found* to have been *involved* in a violation of an *investment-related* statute or regulation; or

4. was the subject of any *order*, judgment, or decree permanently or temporarily enjoining, or otherwise limiting, your firm or a *management person* from engaging in any *investment-related* activity, or from violating any *investment-related* statute, rule, or *order*.

B. An administrative *proceeding* before the SEC, any other federal regulatory agency, any state regulatory agency, or any *foreign financial regulatory authority* in which your firm or a *management person*.

1. was *found* to have caused an *investment-related* business to lose its authorization to do business; or

2. was *found* to have been *involved* in a violation of an *investment-related* statute or regulation and was the subject of an *order* by the agency or authority

(a) denying, suspending, or revoking the authorization of your firm or a *management person* to act in an *investment-related* business;

(b) barring or suspending your firm's or a *management person's* association with an *investment-related* business;

(c) otherwise significantly limiting your firm's or a *management person's investment-related* activities; or

(d) imposing a civil money penalty of more than $2,500 on your firm or a *management person*.

C. A *self-regulatory organization (SRO) proceeding* in which your firm or a *management person*.

1. was *found* to have caused an *investment-related* business to lose its authorization to do business; or

2. was *found* to have been *involved* in a violation of the SRO's rules and was the subject of an *order* by the SRO barring or suspending your firm or a *management person* from membership or from association with other members, or expelling your firm or a *management person* from membership; otherwise significantly limiting your firm's or a *management person's investment-related* activities; or fining your firm or a *management person* more than $2,500.

Note: Special circumstances may make an event immaterial (overcoming the materiality presumption). If an event is immaterial, you are not required to disclose it. Your determination, however, is not binding on any other *person*, including any regulator or court. When you review a legal or disciplinary event involving your firm or a *management person* for materiality, you should consider all of the following factors: (1) the proximity of the *person involved* in the disciplinary event to the advisory function; (2) the nature of the infraction that led to the disciplinary event; (3) the severity of the disciplinary sanction; and (4) the time elapsed since the date of the disciplinary event. If you determine that the materiality presumption is overcome, you may be required to keep a file memorandum of your determination. See SEC rule 204–2(a)(14)(ii).

Item 9 Other Financial Industry Activities and Affiliations

A. If you or any of your *management persons* are registered, or have an application pending to register, as a broker-dealer or a registered representative of a broker-dealer, disclose this fact.

B. If you or any of your *management persons* are registered, or have an application pending to register, as a futures commission merchant, commodity pool operator, or a commodity trading advisor, disclose this fact.

C. Describe any material relationship or arrangement that you or any of your *management persons* have with any *related person* listed below. Identify the *related person* and, if the relationship or arrangement creates a material conflict of interest with *clients*, describe the nature of the conflict and the restrictions or internal procedures you use when there is a conflict of interest, including any procedures for disclosing these conflicts to *clients*.

1. broker-dealer, municipal securities dealer, or government securities dealer or broker.
2. investment company (including a mutual fund, closed-end investment company, unit investment trust, private investment company or "hedge fund," and offshore fund).
3. other investment adviser or financial planner.
4. futures commission merchant, commodity pool operator, or commodity trading advisor.
5. banking or thrift institution.
6. accountant or accounting firm.
7. lawyer or law firm.
8. insurance company or agency.
9. pension consultant.

10. real estate broker or dealer.
11. sponsor or syndicator of limited partnerships.
12. securities exchange, securities association, or alternative trading system.

D. If you recommend or select other investment advisers for your *clients* and you receive compensation directly or indirectly from those advisers, or you have other business relationships with those advisers, describe these practices and discuss the conflicts of interest these practices create.

Item 10 Participation or Interest in *Client* Transactions and Personal Trading

A. If you or a *related person* recommends to *clients*, or buys or sells for *client* accounts, securities in which you or a *related person* has a material financial interest (excluding an interest as a shareholder of an SEC-registered, open-end investment company), describe your practice and discuss the conflicts of interest it presents. Describe your internal procedures or controls for addressing conflicts that arise, including your procedures for disclosing conflicts to *clients*. You do not need to repeat any information you provided in response to Item 5 of Part 2A.

Examples: (1) You or a *related person*, as principal, buys securities from (or sells securities to) your *clients*; (2) you or a *related person* acts as general partner in a partnership in which you solicit *client* investments; or (3) you or a *related person* acts as investment adviser to an investment company that you recommend to *clients*.

B. If you or a *related person* invests in the same securities (or related securities, e.g., warrants, options or futures) that you or a *related person* recommends to *clients*, discuss the conflicts of interest this presents and the restrictions or internal procedures you use when there is a conflict of interest in connection with personal trading, including your procedures for disclosing conflicts to *clients*.

C. If you or a *related person* recommends securities to *clients*, or buys or sells securities for *client* accounts, at or about the same time that you or a *related person* buys or sells the same securities for your own (or the *related person's* own) account, describe your practice and discuss the conflicts of interest it presents. Describe your internal procedures or controls for addressing conflicts that arise, including your procedures for disclosing conflicts to *clients*.

Note: If your firm has a code of ethics, some of the procedures you should discuss in response to Item 10 may be part of your code of ethics.

Item 11 Brokerage Practices

A. Describe your policies and practices in selecting or recommending broker-dealers for *client* transactions and determining the reasonableness of their compensation (e.g., commissions or spreads).

1. *Research and Other Soft Dollar Benefits.* If you receive research or other products or services other than execution (known as soft dollar benefits) from a broker-dealer or a third party in connection with *client* securities transactions, disclose your practices and discuss the conflicts of interest they create.

Note: Your disclosure and discussion must include all soft dollar benefits you receive, both proprietary (created or developed by the broker-dealer) and created or developed by a third party.

a. Explain that when you use *client* brokerage commissions to obtain research, products or services, you receive a benefit because you do not have to produce or pay for the research, products or services.

b. Disclose that you may have an incentive to select or recommend a broker-dealer based on your interest in receiving the research, products or services, rather than on your *clients'* interest in paying the lowest commission rate available.

c. If you may cause *clients* to pay commissions higher than those charged by other broker-dealers in return for soft dollar benefits (known as paying-up), disclose this fact.

d. Disclose whether you use soft dollar benefits to service all of your *clients'* accounts or only those that paid for the benefits. Disclose whether you seek to allocate soft dollar benefits to *client* accounts proportionately to the soft dollar credits the accounts generate.

e. Explain the procedures you used during your last fiscal year to direct *client* transactions to a particular broker-dealer in return for soft dollar benefits.

f. Describe the types of products and services you or any of your *related persons* acquired with *client* brokerage commissions within your last fiscal year.

Note: This description must be specific enough for your *clients* to understand the types of products or services you are acquiring and permit them to evaluate possible conflicts of interest. Your description must be more detailed for products or services that are not used in your investment decision-making process. Merely disclosing that you obtain various research reports and products is not specific enough.

2. *Brokerage for Client Referrals.* If you consider, in selecting or recommending broker-dealers, whether you or a *related person* receives *client* referrals from a broker-dealer or third party, disclose this practice and discuss the conflicts of interest it creates.

a. Disclose that you may have an incentive to select or recommend a broker-dealer based on your interest in receiving *client* referrals, rather than on your *clients'* interest in receiving the best execution services at the lowest rates available.

b. Explain any procedures you used during your last fiscal year to direct *client* transactions to a particular broker-dealer in return for *client* referrals.

3. *Directed Brokerage.*

a. If you routinely *request* or *require* that a *client* direct you to execute transactions through a specified broker-dealer, describe your practice or policy. Explain that not all advisers require their *clients* to direct brokerage. If you and the broker-dealer are affiliates or have another economic relationship that creates a material conflict of interest, describe the relationship and discuss the conflicts of interest it presents. If you must respond to this Item, you must *also* respond to Item 11.A.3.b. of Part 2A.

b. If you *permit* a *client* to direct brokerage, describe your practices. Explain that you may be unable to achieve best execution of *client* transactions. Explain that directing brokerage may cost *clients* more money. For example, in a directed brokerage account, the *client* may pay higher brokerage commissions because you may not be able to negotiate lower commissions or aggregate orders to reduce transaction costs.

4. *Commission Recapture.* If you direct any *client* transactions to a broker-dealer that provides commission recapture benefits to your *client* based on the trades you place, explain how commission recapture works, describe the benefits of commission recapture and explain how a *client* can elect to participate in commission recapture.

Note: "Commission recapture" means a program that permits a *client*, rather than the adviser, to receive benefits (including cash rebates, products, services, and expense payments or reimbursements) from broker-dealers in connection with that *client's* securities transactions.

B. Discuss whether and under what conditions you negotiate brokerage commissions on behalf of *clients*. If you do not negotiate commissions, or if you limit the extent to which you negotiate commissions, explain that this may result in *clients* paying higher brokerage costs than they might otherwise pay.

C. Discuss whether and under what conditions you aggregate the purchase or sale of securities for various *client* accounts in quantities sufficient to obtain reduced transaction costs (known as bunching). If you do not bunch orders when you have the opportunity to do so, explain your practice and describe the costs to *clients* of not bunching.

Item 12 Review of Accounts

A. Indicate whether you periodically review *client* accounts or financial plans. If you do, describe the frequency and nature of the review, and the titles of the employees who conduct the review.

B. If you review *client* accounts on other than a periodic basis, describe the factors that trigger a review.

C. Describe the content and indicate the frequency of regular reports you provide to *clients* regarding their accounts. State whether these reports are written.

Item 13 Payment for Client Referrals

A. If someone who is not a *client* provides an economic benefit to you for providing investment advice or other advisory services to your *clients*, describe the arrangement. For purposes of this Item, economic benefits include any sales awards or other prizes. You do not need to repeat any information you provided in response to Item 5 of Part 2A.

B. If you or a *related person* directly or indirectly compensates any *person* who is not your employee for *client* referrals, describe the arrangement and the compensation.

Note: If you compensate any *person* for *client* referrals, you should consider whether rules regarding solicitation arrangements and/or state rules requiring registration of *investment adviser representatives* apply.

Item 14 Custody

A. If you have *custody* of *client* funds or securities, disclose this fact. If you are not a bank, an insurance company, or a broker-dealer excepted from the requirements of rule 206(4)-2, disclose the additional risks that *clients* will face by having their assets in your *custody* instead of held by an independent custodian.

Note: You may be deemed to have *custody* of *client* funds or securities if a *related person* has *custody*. If so, your response to Item 14.A. should also identify the *related person* who has *custody*.

B. If you require *clients* to give you *custody* of their funds or securities, disclose that most advisers do not require this.

Note: You are not required to respond to Item 14.B. if you have *custody solely* because you (1) act as general partner for limited partnerships that you advise, (2) serve as trustee for your *client* accounts, or (3) deduct your advisory fees directly from your *clients'* accounts.

C. If you have *custody* over any *clients'* funds or securities, disclose what special reports, if any, you provide to those *clients*.

Item 15 Investment Discretion

If you accept *discretionary authority* to manage securities accounts on behalf of *clients*, disclose this fact and describe any limitations *clients* may (or customarily do) place on this authority. Describe the procedures you follow before you assume this authority (*e.g.*, execution of a power of attorney).

Item 16 Proxy Voting Policies

A. If you have, or will accept, authority to exercise voting power with respect to *client* securities, disclose the policies, practices, and procedures you use to determine how to vote proxies. Describe whether (and if so, how) your *clients* can direct your vote in a particular proxy solicitation, and what procedures you use when there is a conflict between your interest and those of your *clients*. Explain whether (and, if so, how) *clients* can find out how you voted with respect to their securities in a particular proxy solicitation.

B. If you do not vote proxies with respect to *client* securities, disclose this fact. Explain whether *clients* will receive their proxies directly from their custodian or a transfer agent or from you, and discuss whether (and if so, how) *clients* can contact you with questions about a particular proxy solicitation.

Item 17 Investment Performance

If you advertise or report the investment performance (such as the rate of return) of your managed accounts, securities recommendations, or model portfolios, describe any standards you use to calculate (or present) this performance, such as industry standards or standards used solely by you. Disclose whether any third party reviews this performance information to determine or verify its accuracy or its compliance with presentation standards; if so, name the *person* conducting the review and briefly describe the nature of the review.

Item 18 Financial Information

A. If you have *custody* of *client* funds or securities, or you require or solicit prepayment of more than $1,200 in fees per *client*, six months or more in advance, include a balance sheet for your most recent fiscal year.

1. The balance sheet must be prepared in accordance with generally accepted accounting principles, audited by an independent public accountant, and accompanied by a note stating the principles used to prepare it, the basis of securities included, and any other explanations required for clarity.

2. Show parenthetically the market or fair value of securities included at cost.

3. Qualifications and any accompanying independent accountant's report must conform to Article 2 of SEC Regulation S–X.

Note: If you are a sole proprietor, show investment advisory business assets and liabilities separate from other business and personal assets and liabilities. You may aggregate other business and personal assets unless advisory business liabilities exceed advisory business assets.

Note: If you are an SEC-registered adviser and you are a bank, an insurance company or a broker-dealer excepted from the requirements of SEC rule 206(4)–2, you do not need to provide a balance sheet.

Note: If you have not completed your first fiscal year, include a balance sheet dated not more than 90 days prior to the date of your *brochure*.

B. If you are an SEC-registered adviser and you have *discretionary authority* or *custody* of *client* funds or securities, or you require or solicit prepayment of more than $1,200 in fees per *client*, six months or more in advance, disclose all of your financial conditions that are reasonably likely to impair your ability to meet contractual commitments to *clients*. This disclosure is required under anti-fraud provisions such as section 206 of the Investment Advisers Act of 1940.

C. If you have been the subject of a bankruptcy petition at any time during the past ten years, disclose that fact.

Item 19 Index

The *brochure* you file with the SEC or *state securities authorities* must contain (or be accompanied by) an index of the items required by this Part 2A, indicating where in the *brochure* you address each item (*e.g.*, Item 18, page 3). The *brochure* you provide to your *clients* does not need to include this index.

If you are registering or registered with one or more *state securities authorities*, you must respond to the following additional Item.

Item 20 Requirements for State-Registered Advisers

A. Identify each of your principal executive officers and *management persons*, and describe their formal education and business background. If you have supplied this information elsewhere in your Form ADV, you do not need to repeat it in response to this Item.

B. Describe any business in which you are actively engaged (other than giving investment advice) and the approximate amount of time spent on that business. If you have supplied this information elsewhere in your Form ADV, you do not need to repeat it in response to this Item.

C. In addition to the description of your fees in response to Item 5 of Part 2A, if you or a *supervised person* are compensated for advisory services with *performance-based fees*, disclose this fact, and explain how this fee will be calculated. Disclose specifically that *performance-based compensation* may create an incentive for the adviser to recommend an investment that may carry a higher degree of risk to the *client*.

D. In addition to the events listed in Item 8 of Part 2A, if your advisory firm or a *management person* has been *involved* in one of the events listed below, disclose all material facts regarding the event.

1. an award or otherwise being *found* liable in an arbitration claim alleging damages in excess of $2,500, *involving* any of the following:

(a) an investment or an *investment-related* business or activity;

(b) fraud, false statement(s), or omissions;

(c) theft, embezzlement, or other wrongful taking of property;

(d) bribery, forgery, counterfeiting, or extortion; or

(e) dishonest, unfair, or unethical practices.

2. an award or otherwise being *found* liable in a civil, *self-regulatory* organization, or administrative *proceeding involving* any of the following:

(a) an investment or an *investment-related* business or activity;

(b) fraud, false statement(s), or omissions;

(c) theft, embezzlement, or other wrongful taking of property;

(d) bribery, forgery, counterfeiting, or extortion; or

(e) dishonest, unfair, or unethical practices.

E. In addition to any relationship or arrangement described in response to Item 9.C. of Part 2A, describe any relationship or arrangement that you or any of your *management persons* have with any issuer of securities that is not listed in Item 9.C. of Part 2A.

F. Include a sample copy of each of your advisory contracts that you are currently using or that you have used during your most recently completed fiscal year.

G. If you have *discretionary authority* or *custody* of *client* funds or securities, or you require or solicit prepayment of more than $500 in fees per *client*, six months or more in advance, disclose all of your financial conditions that are reasonably likely to impair your ability to meet contractual commitments to *clients*.

Instructions for Part 2A Appendix 1 of Form ADV: Preparing Your *Wrap Fee Program Brochure*

1. *Who must deliver a wrap fee program brochure, and when?* If you *sponsor* a *wrap fee program*, you must give a *wrap brochure* to each *client* of the *wrap fee program* before or at the time the *client* enters into a *wrap fee program* contract. A *wrap brochure* takes

the place of your advisory firm *brochure* required by Part 2A of Form ADV, but only for *clients* of *wrap fee programs* that you *sponsor*. You must deliver or offer each *wrap fee program client* a free update of the *wrap brochure* each year. If a *client* accepts this offer, you must send the *wrap brochure* to the *client* within seven days after you are notified. See SEC rule 204–3(b) and (e).

2. *How should we offer and deliver our wrap fee program brochure and annual updates? Can we offer them orally? Electronically?* Your annual offer to your *clients* of an updated *wrap fee program brochure* must be in writing. You may deliver and offer your *wrap fee program brochure* using electronic media. The SEC has published interpretive guidelines on delivering documents electronically—you can find these at www.sec.gov/rules/concept/33–7288.txt.

3. *Must we also deliver brochure supplements to wrap fee program clients?* Yes. A *wrap brochure* does *not* take the place of any supplements required by Part 2B of Form ADV.

4. *What if we sponsor more than one wrap fee program?* You may prepare a single *wrap brochure* describing all the *wrap fee programs* you *sponsor*, or you may prepare separate *wrap brochures* that describe one or more of your *wrap fee programs*. If you prepare separate *brochures*, each *brochure* must state that you *sponsor* other *wrap fee programs* and must explain how the *client* can obtain *brochures* for the other programs.

5. *Our wrap fee program has multiple sponsors. Must each sponsor create and deliver or offer a separate wrap brochure?* No. If another *sponsor* creates, and delivers to your *wrap fee program clients*, a *wrap brochure* that includes all information required in your *wrap brochure*, you do not have to create and deliver or offer a separate *wrap brochure*. See SEC rule 204–3(e)(2).

6. *We provide portfolio management services under a wrap fee program that we sponsor. Must we deliver both our wrap brochure and our firm brochure to our wrap fee program clients?* No, just the *wrap brochure*. If you or your employees provide portfolio management services under a *wrap fee program* that you also *sponsor*, your *wrap brochure* must describe the investments and investment strategies you (or your employees) will use as portfolio managers. This requirement appears in Item 6.B. of this Appendix.

7. *We provide other advisory services outside of our wrap fee programs. May we combine our wrap brochure into our firm brochure for clients receiving these other services?* No. Your *wrap brochure* must address only the *wrap fee programs* you *sponsor*. See SEC rule 204–3(e)(1).

8. *What if information in a wrap brochure changes?* If any information in your *brochure* becomes materially inaccurate, you must promptly amend the *wrap brochure* by either revising and re-distributing the *wrap brochure* or preparing a sticker to accompany the old *wrap brochure*, as described below.

(a) *Filing the wrap brochure amendment with regulators.*

• If you are registered with the SEC, you must preserve a copy of the revised *wrap brochure* or the sticker, and make the revised *wrap brochure* (and all stickers) available to SEC staff—your *wrap brochure* and stickers will be deemed filed with the SEC. State laws require you to file paper copies of all *wrap brochure* amendments with the *state securities authorities* to which you make *notice filings*.

• If you are registered with the *state securities authorities*, you must file all *wrap brochure* amendments with the *state securities authorities* with which you are registered.

(b) *Delivering the amendment to clients.* You must deliver the new information to your *clients*, promptly after the date of the amendment. To deliver the new information, you can either revise and reprint your *wrap brochure* or prepare a sticker. Each sticker must explain which information became inaccurate and provide the updated information and the date of the sticker.

Use only your revised *wrap brochure* (or accompany your *wrap brochure* with the stickers) to satisfy your *wrap brochure* delivery requirements (rule 204–3). In addition, you must promptly deliver the sticker (or revised *wrap brochure*) to all existing clients. You may use a sticker for any *wrap brochure* amendment (except an *annual updating amendment*), so long as the *wrap brochure* remains readable and clear.

Note: We will notify you when the IARD begins to accept Part 2A (including Appendix 1), and you will have a grace period before you are required to file *wrap fee program brochures* with the IARD.

9. *Must we revise our wrap brochure every year?* Yes. When you file the *annual updating amendment* to your Form ADV, you must include a revised *wrap brochure*. You must also reprint this revised *wrap brochure*, incorporating all current stickers into the *wrap brochure* text.

Part 2A Appendix 1 of Form ADV: *Wrap Fee Program Brochure*

Item 1 Cover Page

A. The cover page of your *wrap fee program* brochure must state your name, business address, telephone number, and the date of the *wrap brochure*.

Note: If you primarily conduct advisory business under a name different from your full legal name, *and* you have disclosed your business name in Item 1.B. of Part 1A of Form ADV, then you may use your business name throughout your *wrap brochure*.

B. Display the following statements prominently on your cover page:

This brochure provides information that you should consider before becoming a client of the [name of program or programs]. Please contact [name and/or title of contact *person*] if you have any questions about the contents of this brochure. The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission or by any State securities authority.

Additional information about [your name] is available on the Internet at [site name to be determined]. You can search this site by a unique identifying number, known as a CRD number. The CRD for [your name] is [your CRD number].

Item 2 Material Changes

If your *wrap brochure* contains material changes from its last annual update, summarize those changes. Include the summary on, or immediately following, the cover page of the *brochure* or in a separate letter accompanying the *brochure*. The summary must clearly state that it discusses only material changes since the last annual update of the *wrap brochure*, and must provide the date of the last annual update to the *wrap brochure*.

Note: You are not required to give the summary to a *client* or prospective *client* who has not received a previous version of your *wrap brochure*.

Item 3 Table of Contents

Provide a table of contents to your *wrap brochure*.

Note: Your table of contents must be detailed enough so that your *clients* can locate topics easily.

Item 4 Services, Fees and Compensation

A. Describe the services, including the types of portfolio management services, provided under each program. Indicate the wrap fee charged for each program or, if fees vary according to a schedule, provide your fee schedule. Indicate whether fees are negotiable and identify the portion of the total fee, or the range of fees, paid to portfolio managers.

B. Explain that the program may cost the *client* more or less than purchasing such services separately and describe the factors that bear upon the relative cost of the program, such as the cost of the services if provided separately and the trading activity in the *client's* account.

C. Describe any fees that the *client* may pay in addition to the wrap fee, and describe the circumstances under which *clients* may pay these fees, including, if applicable, mutual fund expenses and mark-ups, mark-downs, or spreads paid to market makers.

D. If the *person* recommending the *wrap fee program* to the *client* receives compensation as a result of the *client's* participation in the program, disclose this fact. Explain that the amount of this compensation may be more than what the *person* would receive if the *client* participated in your other programs or paid separately for investment advice, brokerage, and other services. Explain that the *person*, therefore, may have a financial incentive to recommend the *wrap fee program* over other programs or services.

Item 5 Account Requirements and Types of *Clients*

If a *wrap fee program* imposes any requirements to open or maintain an account, such as a minimum account size, disclose these requirements. If there is a minimum amount for assets placed with each portfolio manager as well as a minimum account size for participation in the *wrap fee program*, disclose and explain these requirements. To the extent applicable to your *wrap fee program clients*, describe the types of *clients* to whom you generally provide investment advice, such as individuals, trusts, investment companies, or pension plans.

Item 6 Portfolio Manager Selection and Evaluation

A. Describe how you select and review portfolio managers, your basis for recommending or selecting portfolio managers for particular *clients*, and your criteria for replacing or recommending the replacement of portfolio managers for the program and for particular *clients*.

1. Describe any standards you use to calculate portfolio manager performance, such as industry standards or standards used solely by you.

2. Indicate whether you review, or whether any third party reviews, performance information to determine or verify its accuracy or its compliance with presentation standards. If so, briefly describe the nature of the review and the name of any third party conducting the review.

3. If applicable, explain that neither you nor a third party reviews portfolio manager performance information, and/or that performance information may not be calculated on a uniform and consistent basis.

B. If you, or any of your employees covered under your investment adviser registration, acts as portfolio manager for a *wrap fee program* described in the *wrap brochure*, respond to Items 7.A. (Methods of Analysis, Investment Strategies and Risk of Loss) and 16 (Proxy Voting Policies) of Part 2A of Form ADV.

Item 7 *Client* Information Provided to Portfolio Managers

Describe the information about *clients* that you communicate to the *clients'* portfolio managers, and how often or under what circumstances you provide updated information.

Item 8 *Client* Contact with Portfolio Managers

Explain any restrictions placed on *clients'* ability to contact and consult with their portfolio managers.

Item 9 Additional Information

A. Respond to Item 8 (Disciplinary Information) and Item 9 (Other Financial Industry Activities and Affiliations) of Part 2A of Form ADV.

B. Respond to Items 10 (Participation or Interest in *Client* Transactions and Personal Trading), 12 (Review of Accounts), 13 (Payment for *Client* Referrals), and 18 (Financial Information) of Part 2A of Form ADV, as applicable to your wrap fee *clients*.

Item 10 Index

The *wrap brochure* you file with the SEC or *state securities authorities* must contain (or be accompanied by) an index of the items required by this Appendix, indicating where in the *wrap brochure* you address each item. The *wrap brochure* you provide to your *clients* does not need to include this index.

If you are registering or registered with one or more *state securities authorities*, you must respond to the following additional Item.

Item 11 Requirements for State-Registered Advisers

Respond to Items 20.D. and 20.F. of Part 2A of Form ADV.

Part 2B of Form ADV: Instructions for Preparing a *Brochure Supplement*

1. *For which supervised persons must we prepare a brochure supplement?* Generally, you must prepare a *brochure* supplement for each *supervised person* who will provide advisory services to *clients*. You should begin, however, by determining whether you are required to deliver or offer the *brochure* supplement for a particular *supervised person* to any *client*. If you have no *client* to whom you must deliver or offer the *brochure* supplement for a particular *supervised person*, then that supervised person does not need a supplement.

As a general rule:

- You must prepare a supplement for each *supervised person* who on a regular basis communicates investment advice to a *client*.
- You must also prepare a supplement for each *supervised person* who formulates advice for a *client* even if the *supervised person* has no *client* contact. However, you do not have to prepare a supplement for a *supervised person* who has no *client* contact and determines investment advice only as part of a committee.
- If your firm has *discretionary authority* over *client* assets, you must also prepare a supplement for each *supervised person* who makes *discretionary* investment decisions for *client* assets even if the *supervised person* has no *client* contact.

2. *To whom must we offer or deliver supplements, and when?* First, determine whether you are required to deliver a firm *brochure* (or *wrap fee program brochure*) to your *client;* if not, then you are not required to deliver any *brochure* supplements to that *client*, either. See SEC rule 204–3(c).

If you are required to deliver a firm *brochure* (or *wrap brochure*) to a *client*, however, then you must also give that *client* the *brochure* supplement for a *supervised person* before or at the time the *supervised person* begins to provide advisory services to that *client*. You must deliver or offer a free update of the supplement each year. If a *client* accepts this offer, you must send the supplement to the *client* within seven days after you are notified. See SEC rule 204–3(b).

A *supervised person* will provide advisory services to a *client* if he or she (a) will regularly communicate investment advice to that *client*, (b) will formulate investment advice for assets of that *client*, or (c) will make discretionary investment decisions for assets of that client. See SEC rule 204–3(b)(1)(B). You may have a *supervised person* deliver his or her own supplement on your behalf, but your firm remains responsible for seeing that the delivery is made.

3. *How should we offer and deliver supplements and updates? Can we offer them orally? Electronically?* Your annual offer to your *clients* of updated *supplements* must be in writing. You may deliver and offer *supplements using electronic media*. The SEC has published interpretive guidelines on delivering documents electronically—you can find these at www.sec.gov/rules/concept/33–7288.txt.

4. *Some of our clients receive only impersonal investment advice from us. Must we deliver or offer supplements to them?* No. You are not required to deliver a *brochure* supplement to *clients who receive only impersonal investment advice* from you. *See* SEC rule 204–3(c)(2).

5. *Must brochure supplements be separate documents?* No. If your firm *brochure* includes all the information required in a *brochure* supplement, you do not need a separate supplement. Smaller firms with just a few *supervised persons* may find it easier to include all supplement information in their firm *brochure*, while larger firms may prefer to use a firm *brochure* and separate supplements.

If your firm *brochure* includes some (but not all) supplement information about a *supervised person*, the supplement can refer the reader to the appropriate section(s) of your firm *brochure* instead of repeating the information.

You may prepare supplements for groups of *supervised persons*. A group supplement, or a firm *brochure* presenting supplement information about *supervised persons*, must present information in a separate section for each *supervised person*.

6. *May we include information not required by an item in our brochure?* Yes. If you include information not required by an item, however, you may not include so much additional information that the required information is obscured.

7. *What if information in a brochure supplement changes?* If any information in a *brochure* supplement becomes materially inaccurate, you must promptly amend the supplement by either revising and re-distributing the supplement or preparing a sticker to accompany the old supplement, as described below.

(a) *Filing the supplement amendment with regulators.*

- If you are registered with the SEC, you are not required to file the revised supplement or sticker. However, record-keeping rules require you to preserve a copy of the revised supplement or the sticker, and make the revised supplement (and all stickers) available to SEC staff.
- If you are registered with the *state securities authorities*, you must file all supplement amendments with the *state securities authorities* with which you are registered.

(b) *Delivering the amendment to clients.* You must deliver the new information to all *clients* for whom the *supervised person* provides advisory services, promptly after the date of the amendment. To deliver the new information, you can either revise and reprint the supplement or prepare a sticker. Each sticker must explain which information became inaccurate and provide the updated information and the date of the sticker.

Use only the revised supplement (or accompany the old supplement with the stickers) to satisfy your *brochure* and supplement delivery requirements (rule 204–3). In addition, you must promptly deliver the sticker (or revised supplement) to all existing *clients* for whom the *supervised person* provides advisory services. You may use a sticker for any *brochure* amendment (except an *annual updating amendment*), so long as the *brochure* remains readable and clear.

8. *Must we revise a supplement every year?* Yes. When you make your *annual updating*

amendment to your Form ADV, you must revise your *brochure* supplements and reprint them, incorporating all current stickers into the text.

Part 2B of Form ADV: *Brochure* Supplement

Item 1 Cover Page

A. Include the following on the cover page of the supplement.

1. The *supervised person's* name, business address and telephone number (if different from yours).

2. Your firm's name, business address and telephone number. If your firm *brochure* uses a business name for your firm, use the same business name for the firm in the supplement.

3. The date of the supplement.

B. Display the following statements prominently on the cover page of the supplement:

This supplement provides information about [name of *supervised person*] that supplements the [name of advisory firm] brochure. You should have received a copy of that brochure. Please contact [name and/or title of your contact *person*] if you did not receive [name of advisory firm]'s brochure or if you have any questions about the contents of this supplement.

Additional information about [name of *supervised person*] is available on the Internet at [site name to be determined]. You can search this site by a unique identifying number, known as a CRD number. The CRD number for [name of *supervised person*] is [*supervised person's CRD* number].

Item 2 Educational Background and Business Experience

Disclose the *supervised person's* name, age (or year of birth), formal education after high school, professional designations or attainments, and business background for the preceding five years. If the *supervised person* either has no formal education after high school *or* has no business background, disclose this fact.

Item 3 Disciplinary Information

If there are legal or disciplinary events material to a *client's* or prospective *client's* evaluation of the *supervised person's* integrity, disclose all material facts regarding those events. This disclosure is required under anti-fraud provisions such as section 206 of the Investment Advisers Act of 1940.

Items 3.A., 3.B., 3.C., and 3.D. below list specific legal and disciplinary events that you must presume are material for this Item. If the *supervised person* has been *involved* in one of these events, you must disclose it under this Item for ten years following the date of the event, unless (1) the event was resolved in the *supervised person's* favor, or was reversed, suspended or vacated, or (2) the event is not material (see Note below). For purposes of calculating this ten-year period, the "date" of an event is the date the final *order*, judgment, or decree was entered, or the date any rights of appeal from preliminary *orders*, judgments or decrees lapsed.

Items 3.A., 3.B., 3.C., and 3.D. are not an exclusive list. If the *supervised person* has been *involved* in a legal or disciplinary event that is *not* listed in Items 3.A., 3.B., 3.C., or 3.D. but *is* material to a *client's* or prospective *client's* evaluation of the *supervised person's* integrity, you must disclose the event.

A. A criminal or civil action in a domestic, foreign or military court of competent jurisdiction in which the *supervised person*.

1. was convicted of, or pled guilty or nolo contendere ("no contest") to (a) any *felony;* (b) a *misdemeanor* that *involved* investments or an *investment-related* business, fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, or extortion; or (c) a conspiracy to commit any of these offenses;

2. is the named subject of a pending criminal *proceeding* that involves an *investment-related* business, fraud, false statements or omissions, wrongful taking of property, bribery, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses;

3. was *found* to have been *involved* in a violation of an *investment-related* statute or regulation; or

4. was the subject of any *order*, judgment, or decree permanently or temporarily enjoining, or otherwise limiting, the *supervised person* from engaging in any *investment-related* activity, or from violating any *investment-related* statute, rule, or *order*.

B. An administrative *proceeding* before the SEC, any other federal regulatory agency, any state regulatory agency, or any *foreign financial regulatory authority* in which the *supervised person*.

1. was *found* to have caused an *investment-related* business to lose its authorization to do business; or

2. was *found* to have been *involved* in a violation of an *investment-related* statute or regulation and was the subject of an *order* by the agency or authority

(a) denying, suspending, or revoking the authorization of the *supervised person* to act in an *investment-related* business;

(b) barring or suspending the *supervised person's* association with an *investment-related* business;

(c) otherwise significantly limiting the *supervised person's investment-related* activities; or

(d) imposing a civil money penalty of more than $2,500 on the *supervised person*.

C. A *self-regulatory organization* (SRO) *proceeding* in which the *supervised person*

1. was *found* to have caused an *investment-related* business to lose its authorization to do business; or

2. was *found* to have been *involved* in a violation of the *SRO's* rules and was the subject of an *order* by the *SRO* barring or suspending the *supervised person* from membership or from association with other members, or expelling the *supervised person* from membership; otherwise significantly limiting the *supervised person's investment-related* activities; or fining the *supervised person* more than $2,500.

D. Any other *proceeding* revoking or suspending a professional attainment, designation, or license of the *supervised person*.

Note: Special circumstances may make an event immaterial (overcoming the materiality presumption). If an event is immaterial, you are not required to disclose it. Your determination, however, is not binding on any other *person*, including any regulator or court. When you review a legal or disciplinary event involving the *supervised person* for materiality, you should consider all of the following factors: (1) the proximity of the *supervised person* to the advisory function; (2) the nature of the infraction that led to the disciplinary event; (3) the severity of the disciplinary sanction; and (4) the time elapsed since the date of the disciplinary event. If you determine that the materiality presumption is overcome, you may be required to keep a file memorandum of your determination. See SEC rule 204–2(a)(14)(ii).

Item 4 Other Business Activities

A. If the *supervised person* is registered, or has an application pending to register, as a broker-dealer, registered representative of a broker-dealer, futures commission merchant, commodity pool operator, or commodity trading advisor, disclose this fact and describe the business relationship, if any, between the advisory business and the other business.

1. If a relationship between the advisory business and the *supervised person's* other financial industry activities creates a material conflict of interest with *clients*, describe the nature of the conflict and any restrictions or internal procedures that you use when there is a conflict of interest, including your procedures for disclosing conflicts to *clients*.

2. If the *supervised person* receives commissions, bonuses or other compensation based on the sale of securities or other investment products, including as a broker-dealer or registered representative, and including distribution or service ("trail") fees from the sale of mutual funds, disclose this fact. If this compensation is not cash, explain what type of compensation the *supervised person* receives. Explain that this practice gives the *supervised person* an incentive to recommend investment products based on the compensation received, rather than on the *client's* needs.

B. If the *supervised person* is actively engaged in any business or occupation for compensation not discussed in response to Item 4.A, above, disclose this fact and describe the nature of that business. If the other business activity or activities provide the primary source of the *supervised person's* income, also disclose this fact.

Item 5 Additional Compensation

If someone who is not a *client* provides an economic benefit to the *supervised person* for providing advisory services, describe the arrangement. For purposes of this Item, economic benefits include sales awards and other prizes, but do *not* include the *supervised person's* regular salary. Any bonus that is based, at least in part, on the number or amount of sales, *client* referrals, or new accounts should be considered an economic benefit, but other regular bonuses should not.

Item 6 Investment Advice and Supervision

Disclose the extent to which the *supervised person* or other *persons* or groups in your firm formulate the investment advice the *supervised person* gives to *clients*. If the

supervised person formulates this investment advice, explain how you supervise the *supervised person*, including how you monitor the advice the *supervised person* provides.

Provide the name, title and telephone number of the *person* responsible for supervising the *supervised person*'s advisory activities on behalf of your firm.

Item 7 Financial Information

If the *supervised person* has been the subject of a bankruptcy petition at any time during the past ten years, disclose that fact.

If you are registering or registered with one or more *state securities authorities*, you must respond to the following additional Item.

Item 8 Requirements for State-Registered Advisers

A. In addition to the events listed in Item 3 of Part 2B, if the *supervised person* has been *involved* in one of the events listed below, disclose all material facts regarding the event.

1. An award or otherwise being *found* liable in an arbitration claim alleging damages in excess of $2,500, *involving* any of the following:

(a) an investment or an *investment-related* business or activity;

(b) fraud, false statement(s), or omissions;

(c) theft, embezzlement, or other wrongful taking of property;

(d) bribery, forgery, counterfeiting, or extortion; or

(e) dishonest, unfair, or unethical practices.

2. An award or otherwise being *found* liable in a civil, *self-regulatory* organization, or administrative *proceeding involving* any of the following:

(a) an investment or an *investment-related* business or activity;

(b) fraud, false statement(s), or omissions;

(c) theft, embezzlement, or other wrongful taking of property;

(d) bribery, forgery, counterfeiting, or extortion; or

(e) dishonest, unfair, or unethical practices.

Form ADV (Paper Version): Uniform Application for Investment Adviser Registration

Domestic Investment Adviser Execution Page

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial application for SEC registration and all amendments to registration.

Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint the Secretary of State or other legally designated officer, of the state in which you maintain your *principal office and place of business* and any other state in which you are submitting a *notice filing*, as your agents to receive service, and agree that such persons may accept service on your behalf, of any notice, subpoena, summons, *order* instituting *proceedings*, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative *proceeding* or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding* or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of the state in which you maintain *your principal office and place of business* or of any state in which you are submitting a *notice filing*.

Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having *custody* or possession of these books and records to make them available to federal and state regulatory representatives.

Signature: _____
Printed Name: _____
Adviser *CRD* Number: _____
Date: _____
Title: _____

Form ADV (Paper Version): Uniform Application for Investment Adviser Registration

State-Registered Investment Adviser Execution Page

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial application for state registration and all amendments to registration.

1. Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint the legally designated officers and their successors, of the state in which you maintain *your principal office and place of business* and any other state in which you are applying for registration or amending your registration, as your agents to receive service, and agree that such persons may accept service on your behalf, of any notice, subpoena, summons, *order* instituting *proceedings*, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative *proceeding* or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding* or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of the state in which you maintain your *principal office and place of business* or of any state in which you are applying for registration, or amending your registration.

2. State-Registered Investment Adviser Affidavit

If you are subject to state regulation, by signing this Form ADV, you represent that, you are in compliance with the registration requirements of the state in which you maintain your *principal place of business* and are in compliance with the bonding, capital, and recordkeeping requirements of that state.

Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the *non-resident* investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having *custody* or possession of these books and records to make them available to federal and state regulatory representatives.

Signature: _____
Printed Name: Title: _____
Adviser *CRD* Number: _____
Date: _____
Title: _____

Form ADV (Paper Version): Uniform Application for Investment Adviser Registration

***Non-Resident* Investment Adviser Execution**

You must complete the following Execution Page to Form ADV. This execution page must be signed and attached to your initial application for SEC registration and all amendments to registration.

1. Appointment of Agent for Service of Process

By signing this Form ADV Execution Page, you, the undersigned adviser, irrevocably appoint each of the Secretary of the SEC, and the Secretary of State or other legally designated officer, of any other state in which you are submitting a *notice filing*, as your agents to receive service, and agree that such persons may accept service on your behalf, of any notice, subpoena, summons, *order* instituting *proceedings*, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative

proceeding or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, *proceeding* or arbitration (a) arises out of any activity in connection with your investment advisory business that is subject to the jurisdiction of the United States, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of any state in which you are submitting a *notice filing*.

2. Appointment and Consent: Effect on Partnerships

If you are organized as a partnership, this irrevocable power of attorney and consent to service of process will continue in effect if any partner withdraws from or is admitted to the partnership, provided that the admission or withdrawal does not create a new partnership. If the partnership dissolves, this irrevocable power of attorney and consent shall be in effect for any action brought against you or any of your former partners.

3. *Non-Resident* Investment Adviser Undertaking Regarding Books and Records

By signing this Form ADV, you also agree to provide, at your own expense, to the U.S. Securities and Exchange Commission at its principal office in Washington D.C., at any Regional or District Office of the Commission, or at any one of its offices in the United States, as specified by the Commission, correct, current, and complete copies of any or all records that you are required to maintain under Rule 204–2 under the Investment Advisers Act of 1940. This undertaking shall be binding upon you, your heirs, successors and assigns, and any person subject to your written irrevocable consents or powers of attorney or any of your general partners and *managing agents*.

Signature

I, the undersigned, sign this Form ADV on behalf of, and with the authority of, the *non-resident* investment adviser. The investment adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this ADV, including exhibits and any other information submitted, are true and correct, and that I am signing this Form ADV Execution Page as a free and voluntary act.

I certify that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any *person* having custody or possession of these books and records to make them available to federal and state regulatory representatives.

Signature: _____
Printed Name: _____
Adviser CRD Number: _____
Date: _____
Title: _____

Appendix B—Form ADV–W (Paper Version): Notice of Withdrawal From Registration as an Investment Adviser

Instructions for Form ADV–W

Note: Unless the context clearly indicates otherwise, all terms used in the Form have the same meaning as in the Investment Advisers Act of 1940 and in the General Rules and Regulations of the Commission thereunder (17 Code of Federal Regulations 275).

1. We would like to withdraw from registration as an investment adviser. What do we need to do?

You must determine whether you are filing for partial withdrawal or full withdrawal.

A *partial withdrawal* is when you are withdrawing from investment adviser registration with some, but not all, of the jurisdictions where you are registered (or have an application for registration pending). For example, you would file for partial withdrawal if you are switching from state registration to SEC registration (or vice versa). Similarly, you would file for partial withdrawal if you are a state-registered adviser and are withdrawing from some, but not all, of the states with which you are registered (or have an application for registration pending).

A *full withdrawal* is when you are withdrawing from all of the regulators with which you are registered (or have an application pending).

If you are filing for partial withdrawal and switching from SEC to state registration, you must complete the Status Section, Items 1A through 1D, and the Execution Section. You do not need to complete Items 1E through 8 of Form ADV–W.

If you are filing for partial withdrawal and switching from state to SEC registration, you must complete the entire Form ADV–W.

If you are registered only with the state securities authorities and withdrawing from some, but not all, of the states where you are registered, you must complete the entire Form ADV–W.

If you are filing for full withdrawal, you must complete the entire Form ADV–W.

2. We are going out of business. Does this change how we would answer particular questions on the Form ADV–W?

Yes. The purpose of Item 1D is so that we can contact you if the Form ADV–W is deficient or if we have questions. If you are going out of business, make sure you list in Item 1D an address and phone number at which we can reach the contact employee.

3. I am filing for partial withdrawal. How do I complete Item 2?

If you are ceasing advisory business in any of the jurisdictions from which you are withdrawing, check "yes." On the next line, provide the date on which you are ceasing advisory business in these jurisdictions (however, if you cease conducting advisory business on different dates in different jurisdictions, you must complete a separate Form ADV–W for each different date). The date you provide in this blank must be on or before the date you file Form ADV–W. Then, provide the reasons you are filing for withdrawal (regardless of whether you are filing for partial or complete withdrawal).

You are permitted to "post-date" the Form ADV–W to December 31 anytime between November 1 and December 31. You are permitted to enter a cease date of December 31 to avoid being charged state renewal fees in jurisdictions from which you are withdrawing (the IARD does not operate during the last week of each year and you are unable to make any filings during that time). However, you cannot enter any date other than December 31, and you can only enter a December 31 cease date after November 1.

4. I have completed Form ADV–W and filed it with the SEC. When will it become effective?

Your Form ADV–W will become effective when it is filed with the SEC. However, your Form ADV–W will not be deemed "filed" until the SEC receives it and determines that it is not deficient. The effective date of a Form ADV–W filed with the state securities authorities may be different.

5. How should I file my Form ADV–W?

You are required to file Form ADV–W electronically on the IARD.

In the event you are unable to submit an electronic filing, you must apply for a temporary or continuing hardship exemption pursuant to rule 203–3. If you can rely on a temporary or continuing hardship exemption, you must mail or fax two executed copies of the Form ADV–W to NASDR, at _____.

Whether you file on the IARD or are permitted to submit paper filings, you must preserve in your records a copy of the Form ADV–W that you file with the SEC.

6. What are the Schedules to Form ADV–W?

Form ADV–W contains two Schedules, Schedule W1 and W2. Your answers to Form ADV–W will determine whether you are required to complete either or both Schedules.

Schedule W1 is a "continuation page." If you have to list additional *persons* whom you have assigned advisory contracts (Item 5), or multiple *persons* or locations with respect to your books and records (Item 8), you must complete Schedule W1.

The names of individuals listed on Schedule W1 must be given in full.

Schedule W2 requires basic financial information relating to your investment advisory business. If you check "yes" to Items 3, 4, or 6, you are required to complete Schedule W2.

7. Questions about Item 8. The following examples are intended to assist you in completing Item 8 to Form ADV–W and Sections 8B and 8C of Schedule W1 in the event that multiple *persons* have or will have custody of your books and records, or in the event that your books and records are or will be kept at multiple locations.

a. After I withdraw from registration, two *persons* (*Persons* A and B) will have custody of my books and records, but my books and records will be kept at a single location. How should I complete the Form ADV–W and Schedule W1?

On Form ADV–W, you should check "yes" to Item 8.A.1., and "no" to Item 8.A.2. Leave Items 8B and 8C on Form ADV–W blank. You would complete two Schedules W1. The first would list *Person* A, and the location at

which your books and records will be kept. You would complete a second Schedule W1 that would list *Person* B, and would list (again) the location at which your books and records will be kept.

b. After I withdraw from registration, only one *person* will have custody of my books and records, but they will be kept at three locations (Locations X, Y and Z). How should I complete Form ADV–W and Schedule W1?

On Form ADV–W, you should check "no" to Item 8.A.1., and "yes" to Item 8.A.2. Leave Items 8B and 8C on Form ADV–W blank. You would complete three Schedules W1. The first would list the *person* that will have custody of your books and records, and Location X. The second Schedule W1 would list (again) the *person* that has or will have custody of your books and records, and Location Y. The third Schedule W1 would list (again) the *person* that has or will have custody of your books and records, and Location Z.

c. After I withdraw from registration, two people (*Persons* A and B) will have custody of my books and records, and my books and records will be kept at two locations (Locations Y and Z). Each *person* would have custody of the books and records that are kept at both locations. How should I complete Form ADV–W and Schedule W1?

On Form ADV–W, you should check "yes" to Item 8.A.1., and "yes" to Item 8.A.2. Leave Items 8B and 8C on Form ADV–W blank. You would complete four Schedules W1. The first would list *Person* A and Location Y. The second Schedule W1 would list (again) *Person* A, and would list Location Z. The third Schedule W1 would list *Person* B and Location Y, and the fourth Schedule W1 would list *Person* B and Location Z. On each Schedule W1, you should briefly describe the records that are kept at each location (*e.g.* business and trading records from 1996 through 1999).

8. Who should sign the Form ADV–W?

Copies of the Form ADV–W you file with the SEC must be executed by a *person* you have authorized to file the Form. If you are a sole proprietor, you must sign the Form; if you are a partnership, a general partner must sign the Form in the name of the partnership; if you are an unincorporated organization or association that is not a partnership, the managing agent (an authorized *person* who directs or manages or who participates in the directing or managing of its affairs) must sign the Form in the name of the organization or association; if you are a corporation, a principal officer duly authorized must sign the Form in the name of the corporation. If an officer of any entity is signing the Form, the officer's title must be given.

9. What if I need more space to provide additional information?

If you are filing electronically, add any additional information in the text box asking you to "describe the books and records kept at this location." If you are filing on paper, use the reverse side of Schedule W1 to provide any additional information.

10. What if I do not follow these instructions when completing the Form ADV–W?

If you do not prepare and execute the Form ADV–W as required by these instructions, SEC staff may return the form to you for correction. The SEC's acceptance of the Form, however, is not a finding that you have filed the Form ADV–W as required or that the information submitted is true, correct or complete.

SEC'S COLLECTION OF INFORMATION. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Section 203(h) of the Advisers Act authorizes the Commission to collect the information on this Form from applicants. *See* 15 U.S.C. §§ 80b–3(h). Filing of this Form is mandatory for an investment adviser to withdraw from registration. The principal purpose of this collection of information is to enable the Commission to verify that the activities of an investment adviser seeking to withdraw from registration do not require the investment adviser to be registered and to determine whether terms and conditions should be imposed upon a registrant's withdrawal. The Commission will maintain files of the information on Form ADV–W and will make the information publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on page one of Form ADV–W, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. § 3507. The applicable Privacy Act system of records is SEC–2, and the routine uses of the records are set forth at 40 Federal Register 39255 (Aug. 27, 1975) and 41 FR 5318 (Feb. 5, 1976).

BILLING CODE 8010–01–P

FORM ADV-W (Paper Version)
NOTICE OF WITHDRAWAL FROM REGISTRATION AS AN INVESTMENT ADVISER

Form ADV-W

You must complete this Form ADV-W to withdraw your investment adviser registration with the SEC or one or more state securities administrators. We use the term "you" to refer to the investment adviser withdrawing from registration, regardless of whether the adviser is a sole proprietor, a partnership, a corporation, or another form of organization.

WARNING: Complete this form truthfully. False statements or omissions may result in administrative, civil or criminal action against you.

Status

Check the box that indicates what you would like to do:

(i) ☐ Withdraw from registration in all of the jurisdictions with which you are registered (or have an application for registration pending) (a "full withdrawal").

(ii) ☐ Withdraw from registration in some, but not all, of the jurisdictions with which you are registered (or have an application for registration pending) (a "partial withdrawal").

If you are filing for full withdrawal, you must complete all items of this Form ADV-W. If you are filing for partial withdrawal, follow the instructions below for the type of partial withdrawal you are filing.

If you are filing for partial withdrawal, indicate the jurisdictions from which you are withdrawing your investment adviser registration (or application for registration):

(a) ☐ The SEC;

Check this box if you are withdrawing your SEC registration and switching to state registration, or if you are withdrawing your application for SEC registration. If you check this box (a), you must complete only this Status Section, Items 1A through 1D, and the Execution Section. Do not complete Item 1E and Items 2 through 8.

(b) ☐ The state(s) for which the box(es) below are checked:

☐ AL	☐ DC	☐ IA	☐ MN	☐ NM	☐ PR	☐ VA
☐ AK	☐ FL	☐ KS	☐ MS	☐ NY	☐ RI	☐ WA
☐ AZ	☐ GA	☐ KY	☐ MO	☐ NC	☐ SC	☐ WV
☐ AR	☐ GU	☐ LA	☐ MT	☐ ND	☐ SD	☐ WI
☐ CA	☐ HI	☐ ME	☐ NE	☐ OH	☐ TN	
☐ CO	☐ ID	☐ MD	☐ NV	☐ OK	☐ TX	
☐ CT	☐ IL	☐ MA	☐ NH	☐ OR	☐ UT	
☐ DE	☐ IN	☐ MI	☐ NJ	☐ PA	☐ VT	

If you check this box (b), you must complete all items of this Form ADV-W.

Item 1 Identifying Information

A. Your full legal name (if you are a sole proprietor, your last, first, and middle names):

_____

The name you enter here must be the same as the name you entered on your last amended Form ADV. Do not report a name change on this Form ADV-W.

B. Your SEC file number (if you are registered with the SEC as an investment adviser):
801-_____

C. Your *CRD* number (if you have a number ("*CRD* number") assigned by the *NASD's CRD* system):

_____

If you do not have a CRD number, skip this Item 1C. Do not provide the CRD number of one of your officers, employees, or affiliates.

D. Name and business address of contact employee:

_____
(name) (title)

_____
(number and street)

_____
(city) (state) (country) (zip+4/postal code)

_____
(area code) (telephone number)

_____
(electronic mail (e-mail) address, if contact employee has one)

The contact employee should be an employee (not outside counsel) who is authorized to receive information and respond to questions about this Form ADV-W.

E. *Principal Office and Place of Business:*

Address (do not use a P.O. Box):

_____
(number and street)

_____
(city) (state) (country) (zip+4/postal code)

_____
(area code) (telephone number)

Item 2 Status of Advisory Business

A. Have you ceased conducting advisory business in the jurisdictions from which you are withdrawing? Yes ☐ No ☐

If yes, provide the date you ceased conducting advisory business in the jurisdictions checked in the status section, above:

_____
MM / DD / YYYY

If you ceased conducting advisory business in these jurisdictions on different dates, you must submit a different Form ADV-W for each different date on which you ceased conducting advisory business.

B. Reasons for withdrawal: _____

_____

Item 3 Custody

Do you or a *related person* have *custody* of *client* assets? Yes ☐ No ☐

If yes, provide the following information:

A. Number of *clients* for whom you have *custody* of cash or securities: _____
B. Amount of *clients'* cash for which you have *custody*: $_____.00
C. Market value of *clients'* securities for which you have *custody*: $_____.00
D. Market value of assets other than cash or securities for which you have *custody*: $_____.00

Item 4 Money Owed to Clients

Have you (i) received any advisory fees for investment advisory services or publications that you have not rendered or delivered; or (ii) borrowed any money from *clients* that you have not repaid? Yes ☐ No ☐

Do not include in your response to this Item 4 any client funds for which you have custody and that you included in your response to Item 3.

If yes, provide the following information:

A. Amount of money owed to *clients* for prepaid fees or subscriptions: $_____.00
B. Amount of money owed to *clients* for borrowed funds: $_____.00

Item 5 Advisory Contracts

A. Have you assigned any of your investment advisory contracts to another person? Yes ☐ No ☐

If yes, provide the following information:

B. Did you obtain the consent of each *client* prior to the assignment of the *client's* contract? Yes ☐ No

Client consent can be obtained through an actual consent, or can be inferred through the use of a negative consent.

C. Name and business address of the person to whom the contracts were assigned:

_____
(name)

_____
(number and street)

_____
(city) (state) (country) (zip+4/postal code)

_____
(area code) (telephone number)

D. Have you assigned any of your advisory contracts to any other person? Yes ☐ No

List on Section 5C of Schedule W1 any additional persons to whom you have assigned any of your investment advisory contracts.

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Item 6 Judgments and Liens

Are there any unsatisfied judgments or liens against you? Yes ☐ No ☐

Item 7 Statement of Financial Condition

If you answered yes to Items 3, 4, or 6, you must complete Schedule W2, disclosing the nature and amount of your assets and liabilities and your net worth as of the last day of the month prior to the filing of this Form ADV-W.

Item 8 Books and Records

A. 1. Is there more than one person who has or will have custody or possession of any of your books and records?
Yes ☐ No

2. Is there more than one location at which your books and records are or will be kept?
Yes ☐ No

If you answered "no" to both of these questions, complete the following Items 8B and 8C. If you answer "yes" to either of these questions, leave the following Items 8B and 8C blank, and complete Schedule W1. You must complete a separate Schedule W1 for each person who has or will have custody of your books and records at each location. The instructions to Form ADV-W contain additional information to assist you in answering this Item 8 of Form ADV-W.

B. If you answered "no," to both questions in Item 8A of this Form ADV-W, provide the name and address of the person who has or will have custody or possession of your books and records.

_____
(name)

_____
(number and street)

_____
(city) (state) (country) (zip+4/postal code)

_____
(area code) (telephone number)

C. If you answered "no," to both questions in Item 8A of this Form ADV-W, provide the location at which your books and records are or will be kept.

_____
(number and street)

_____
(city) (state) (country) (zip+4/postal code)

NOTE: Section 204 of the Advisers Act, or similar state law, requires you to preserve your books and records after you have withdrawn from registration.

Execution

I, the undersigned, have signed this Form ADV-W on behalf of, and with the authority of, the adviser withdrawing its registration. The adviser and I both certify, under penalty of perjury under the laws of the United States of America, that the information and statements made in this Form ADV-W, including exhibits and any other information submitted, are true. I further certify that all information previously submitted on Form ADV is accurate and complete as of this date, and that the adviser's books and records will be preserved and available for inspection as required by law. Finally, I authorize any person having *custody* or possession of these books and records to make them available to authorized regulatory representatives.

Signature: _____ Date: _____

Printed Name: _____ Title: _____

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FORM ADV-W
Schedule W1
(Paper Version)

Your Name: _____ SEC File No.: _____

Date: _____ CRD No.: _____

Certain items in Form ADV-W may require additional information on this Schedule W1. Use this Schedule W1 to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

SECTION 5C Other Investment Advisory Contract Assignments

Check here if you are completing this section: ☐

Complete the following information for each *person* to whom you have assigned any advisory contract but who is not listed on Form ADV-W. You must complete a separate Schedule W1 for each *person* (other than the *person* listed in Item 5 of Form ADV-W) to whom you have assigned an advisory contract.

Name and business address of the *person* to whom advisory contracts were assigned:

_____
(name)

_____
(number and street)

_____
(city) (state) (country) (zip+4/postal code)

_____ _____
(area code) (telephone number)

SECTION 8B *Persons* With Custody or Possession of the Books and Records Kept at the Location Described in Section 8C of this Schedule W1 (below).

Check here if you are completing this section: ☐

Complete the following information for the *person* that has or will have custody or possession of the books and records kept at the location described in Section 8C of this Schedule. If you are required to complete Item 8B of this Schedule, you must complete a separate Schedule W1 for each *person* that has or will have custody of any of your books and records. If the *person* you list below has or will have custody of any of your books and records at any other location, you must complete separate Schedule(s) W1 listing this *person* and each other location of your books and records.

_____
(name)

_____
(number and street)

_____
(city) (state) (country) (zip+4/postal code)

_____ _____
(area code) (telephone number)

SECTION 8C Location of Books and Records of Which the *Person* Listed in Section 8B of this Schedule W1 Has Custody or Possession.

Check here if you are completing this section: ☐

Complete the following information for the location where the books and records of which the *person* listed in Section 8B of this Schedule has or will have custody or possession. If you are required to complete Item 8C of this Schedule, you must complete a separate Schedule W1 for each location at which your records are or will be kept. If any other *person* has or will have custody or possession of any of the books and records at the location described below, you must complete separate Schedule(s) W1 listing this location and each other *person* that has or will have custody of your books and records.

_____
(name)

_____
(number and street)

_____
(city) (state) (country) (zip+4/postal code)

_____ _____
(area code) (telephone number)

Briefly describe the books and records kept at this location. _____

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FORM ADV-W
Schedule W2
(Paper Version)

Your Name: _____ SEC File No.: _____

Date: _____ CRD No.: _____

If you answered "yes" to items 3, 4, or 6 of Form ADV-W, you are required to complete this Schedule W2. This balance sheet must be prepared in accordance with generally accepted accounting principles, but need not be audited.

ASSETS

Current Assets

Cash	
Securities at Market	
Non-Marketable Securities	
Other Current Assets	
Total Current Assets	$

Fixed Assets

Total Fixed Assets	$

TOTAL ASSETS	$

LIABILITIES & SHAREHOLDERS' EQUITY

Current Liabilities

Prepaid Advisory Fees	
Short-Term Loans from Clients	
Other Short-Term Loans	
Other Current Liabilities	
Total Current Liabilities	$

Fixed Liabilities

Long-Term Debt Owed to Clients	
Other Long-Term Debt	
Other Long-Term Liabilities	
Total Fixed Liabilities	$

Shareholders' Equity

Total Shareholders' Equity (or Deficit)	$

TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	$

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APPENDIX C

OMB APPROVAL
OMB Number: 3235-___
Expires: _____
Estimated average burden
hours per response 1.00

Form ADV-H
APPLICATION FOR A TEMPORARY OR CONTINUING HARDSHIP EXEMPTION

Item 1 Type of Exemption

You are (check one):

- ☐ Requesting a Temporary Hardship Exemption; or
- ☐ Applying for a Continuing Hardship Exemption

A. If you are requesting a temporary hardship exemption, this Form ADV-H is for your (check one)

- ☐ Initial SEC Application
- ☐ Annual Updating Amendment to SEC Registration
- ☐ Other-Than-Annual Amendment to SEC Registration

B. If you are applying for a continuing hardship exemption, this Form ADV-H is for all filings between the date you file this form and _____.
MM / DD / YYYY

Only an adviser that is a "small business" (as defined by SEC rule 0-7) is eligible for a continuing hardship exemption. To determine whether you are eligible for a continuing hardship exemption, review Item 12 of the Form ADV that you filed most recently with the SEC to answer the following questions:

Were you required to answer Item 12 of Form ADV? Yes ☐ No ☐

Did you check "yes" to any question on Item 12 of Form ADV? Yes ☐ No ☐

If you were not required to answer Item 12 or checked "yes" to any question on Item 12, you are not eligible for a continuing hardship exemption and must submit electronic filings to the IARD system.

Item 2 Identifying Information

SEC File number: 801 - _____ CRD Number (if you have one) _____

A. Your full legal name (if you are a sole proprietor, state your last, first, and middle names):

_____

B. *Principal Office and Place of Business*
Address (do not use a P.O. Box):

_____
(number and street)

_____
(city) (state) (country) (zip+4/postal code)

C. Name and telephone number of the individual filing this Form ADV-H:

_____
(name) (title) (area code) (telephone number)

Item 3 Information Relating to the Hardship

A. If you are filing to request a temporary hardship exemption, attach a separate page that:

1. Describes the nature and extent of the temporary technical difficulties when you attempt to submit the filing in electronic format.

2. Describes the extent to which you previously have submitted documents in electronic format with the same hardware and software that you are unable to use to submit this filing.

3. Describes the burden and expense of employing alternative means (*e.g.* public library, service provider) to submit the filing in electronic format in a timely manner.

4. Provides any other reasons why a temporary hardship exemption is warranted.

B. If you are applying for a continuing hardship exemption, your application will be granted or denied based on the following items. You should attach a separate page to this Form ADV-H that:

1. Explains the reason(s) that the necessary hardware and software are not available without unreasonable burden and expense.

2. Describes the burden and expense of employing alternative means (*e.g.* public library, service provider) to submit your filings in electronic format in a timely manner.

3. Justifies the time period requested in Item 1 of this Form ADV-H.

4. Provides any other reasons why a continuing hardship exemption is warranted.

Item 4 How to Submit Your Form ADV-H

Sign this Form ADV-H. You must preserve in your records a copy of the Form ADV-H that you file. If you are submitting this Form ADV-H to the NASDR by fax, the number is 301/590-____. If you are sending it by regular or express mail, send ___ copies to _____.

Item 5 Execution

I, the undersigned, have signed this Form ADV-H on behalf of, and with the authority of, the adviser requesting a temporary hardship exemption or applying for a continuing hardship exemption. The undersigned and the adviser represent that the information and statements made in this ADV-H, including any other information submitted, are true. The undersigned and the adviser further agree to waive any claim against the administrator of the IARD for errors made in good faith that may occur when converting to electronic format this Form ADV-H or any paper filing made in reliance of a continuing hardship exemption.

Signature: _____ Date: _____

Printed Name: _____ Title: _____

SEC'S COLLECTION OF INFORMATION. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Section 203(h) of the Advisers Act authorizes the Commission to collect the information on this Form from applicants. *See* 15 U.S.C. §§ 80b-3(h). Filing of this Form is mandatory for an investment adviser to withdraw from registration. The principal purpose of this collection of information is to enable the Commission to verify that the activities of an investment adviser seeking to withdraw from registration do not require the investment adviser to be registered and to determine whether terms and conditions should be imposed upon a registrant's withdrawal. The Commission will maintain files of the information on Form ADV-W and will make the information publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on page one of Form ADV-W, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. §3507. The applicable Privacy Act system of records is SEC-2, and the routine uses of the records are set forth at 40 Federal Register 39255 (Aug. 27, 1975) and 41 FR 5318 (Feb. 5, 1976).

Billing Code 8010-01-C

Appendix D—Form ADV–NR—(Paper Version); Appointment of Agent For Service of Process by Non-Resident General Partner and Non-Resident Managing Agent of an Investment Adviser

You must submit this Form ADV–NR if you are a *non-resident* general partner or a *non-resident managing agent* of any investment adviser (domestic or non-resident). Form ADV–NR must be signed and submitted in connection with the adviser's initial application. If the mailing address you list below changes, you must file an amended Form ADV–NR to provide the current address. If you become a *non-resident* general partner or a *non-resident managing agent* after the date the adviser files its initial application, you must file Form ADV–NR with the Commission within 30 days. If you serve as a general partner or *managing agent* for multiple advisers, you must submit a separate Form ADV–NR for each adviser.

1. Appointment of Agent for Service of Process

By signing this Form ADV–NR, you, the undersigned *non-resident general partner* or *non-resident managing agent*, irrevocably appoint each of the Secretary of the SEC, and the Secretary of State, or equivalent officer, of the state in which the adviser referred to in this form maintains its *principal office and place of business*, if applicable, and any other state in which the adviser is applying for registration, amending its registration, or submitting a *notice filing*, as your agents to receive service, and agree that such persons may accept service on your behalf, of any notice, subpoena, summons, order instituting proceedings, demand for arbitration, or other process or papers, and you further agree that such service may be made by registered or certified mail, in any federal or state action, administrative proceeding or arbitration brought against you in any place subject to the jurisdiction of the United States, if the action, proceeding or arbitration: (a) arises out of any activity in connection with the investment adviser's business that is subject to the jurisdiction of the United States, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these acts, or (ii) the laws of the state in which the adviser referred to in this Form maintains its principal office and place of business, if applicable, or of any state in which the adviser is applying for registration, amending its registration, or submitting a *notice filing*.

2. Appointment and Consent: Effect on Partnerships

If you are organized as a partnership, this irrevocable power of attorney and consent to service of process will continue in effect if any partner withdraws from or is admitted to the partnership, provided that the admission or withdrawal does not create a new partnership. If the partnership dissolves, this irrevocable power of attorney and consent shall be in effect for any action brought against you or any of your former partners.

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Signature

I, the undersigned *non-resident* general partner or *non-resident managing agent*, certify, under penalty of perjury under the laws of the United States of America, that the information contained in this Form ADV-NR is true and correct and that I am signing this Form ADV-NR as a free and voluntary act.

Signature of Partner or Agent:

_____ Date: _____

Printed Name: _____ Title: _____

Mailing Address of Partner or Agent (no P.O. Boxes):

_____

_____

_____

_____

_____

Signature of Investment Adviser:

_____ Date: _____

Printed Name: _____ Title: _____

Adviser CRD Number: _____

Adviser Name: _____

[FR Doc. 00–9036 Filed 4–14–00; 8:45 am]
BILLING CODE 8010–01–C

Federal Register

Monday,
April 17, 2000

Part III

Department of the Interior

National Park Service

36 CFR Part 51
Concession Contracts; Final Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 51

RIN 1024–AC72

Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule amends 36 CFR Part 51, the National Park Service (NPS) regulations concerning NPS concession contracts, to comply with the requirements of Title IV of the National Parks Omnibus Management Act of 1998 (the 1998 Act). The 1998 Act provides new legislative authorities, policies and procedures for the solicitation, award and administration of concession contracts by NPS. This rule was published as proposed for public comment in the **Federal Register** as a matter of policy on June 30, 1999. NPS provided a 60-day public comment period on the proposed rule. This was extended by 45 days upon public request. NPS has fully considered all public comments received and considers this final rule to be lawful, consistent with the policies of Congress as expressed in the 1998 Act, and as accommodating to the concerns of commenters as possible in light of the legal and administrative responsibilities of NPS under the 1998 Act and other applicable authorities.

EFFECTIVE DATE: May 17, 2000.

FOR FURTHER INFORMATION CONTACT: Wendelin Mann, Concession Program, National Park Service, 1849 C Street, NW, Washington, DC 20240 (202/565–1219).

SUPPLEMENTARY INFORMATION: The 1998 Act has established a new statutory framework for the solicitation, award and administration of NPS concession contracts. Concession contracts are the form of governmental authorization used to permit persons (concessioners) to provide accommodations, facilities, and services to visitors to areas of the national park system. These services include, for example, lodging, food, merchandising, transportation, outfitting and guiding, and similar activities.

NPS has been awarding and administering concession contracts for this purpose in various forms since 1916 under the terms of 16 USC 1 *et seq.*, the NPS "Organic Act." In 1965, Congress formally established by the Concession Policies Act of 1965, 16 USC 20 *et seq.* (the 1965 Act), a number of policies and procedures regarding concession contracts. NPS regulations contained in 36 CFR Part 51 implemented the 1965 law. On November 13, 1998, the Congress substantially revised these policies and procedures by passage of the 1998 Act. Many of the policies and procedures adopted by NPS in 36 CFR Part 51, as amended, and standard NPS concession contracts developed under the 1965 Act are reflected in the terms of the 1998 Act.

The Congress had two primary objectives in revising the 1965 Act: making the NPS concession management program more efficient and enhancing competition in NPS concession contracting.

The first objective is reflected in provisions of the 1998 Act that call, among other matters, for contracting to private businesses certain aspects of NPS concessions management and the establishment of an NPS Concessions Management Advisory Board to advise NPS on the conduct of its concessions management program. These provisions, although very important, will be implemented administratively by NPS rather than through program regulations.

The second objective, enhancement of competition in NPS concession contracting, is reflected in the 1998 Act in a number of ways. Primarily, however, the 1998 Act achieves greater competition in two ways.

First, to achieve greater competition, the 1998 Act repealed, except for smaller and outfitter and guide concession contracts, the "preference in renewal" provision of the 1965 Act. The 1965 Act's preference in renewal provision required NPS to give existing satisfactory concessioners a preference in the renewal of their concession contracts, if the contract was to be continued after its expiration. This preference required NPS to permit existing satisfactory concessioners to meet the better terms and conditions of the best competing proposal for the renewal of its concession contract. Because of this preference, NPS estimated in 1993 that since 1965 over 99.9% of the renewals of NPS concession contracts had been awarded to the existing concessioner. In fact, from 1965 to 1993, only seven NPS concession contracts out of approximately 1900 awarded were not awarded to the incumbent concessioner (where the incumbent sought the contract). True competition simply did not exist.

The legislative history of the 1998 Act states as follows in connection with the repea1 of the preference in renewal:

> Under the 1965 Act, all satisfactory concessioners are entitled to preference in renewal of their concession contracts or permits. However, in light of the current circumstances of units of the National Park System and in recognition of present business conditions, the Committee considers that generally there is now no need to continue to provide a preferential right of renewal to concessioners in order to obtain qualified operators. Accordingly, to foster appropriate competition in the award of National Park Service concession contracts, the preferential right of renewal provided as a statutory right to existing satisfactory concessioners is repealed by the S. 1693 [the bill that became the 1998 Act]. S. Rep. No. 105–202, at p.31 (1998).

The 1998 Act's other primary means to enhance competition in concession contracting was its reform of the 1965 Act's "possessory interest" concept. Under the 1965 Act, a concessioner that constructed real property improvements on park area lands under the terms of a concession contract obtained a compensable interest in the improvements in the form of a "possessory interest." The value of the possessory interest as of the date of the expiration or other termination of the concession contract was the "sound value" of the improvements to which the possessory interest related, but, not to exceed the "fair market value of the improvements," unless NPS and the concessioner agreed to an alternative value.

The Congress in considering S. 1693 noted that possessory interest under the 1965 Act was frequently criticized as "anti-competitive" because "the value of an existing concessioner's possessory interest was difficult to establish, thereby discouraging submittal of competitive offers for renewal of concession contracts." S. Rep. No. 105–202, at p. 35 (1998).

The 1998 Act reformed the possessory interest provisions of the 1965 Act through the leasehold surrender interest concept. Instead of obtaining a possessory interest in real property improvements as provided by the 1965 Act, the 1998 Act provides a "leasehold surrender interest" in "capital improvements" a concessioner constructs on park area lands "under the terms of a concession contract." The legislative history states as follows about the purposes of leasehold surrender interest:

> The Committee considers that the leasehold surrender interest described by this section will provide concessioners with adequate security for investments in capital improvements they make. This will assist in encouraging such investment in visitor facilities in the National Park System. However, the value of a leasehold surrender interest, i.e., the original construction cost, less depreciation as evidenced by physical

condition and prospective serviceability, plus what amounts to interest on the investment based on the Consumer Price Index, should accurately reflect the real value of the improvements and should not result in undue compensation to a concessioner upon expiration of a concession contract. Additionally, the value of the leasehold surrender interest will be relatively easy to estimate so that a prospective new concessioner and the Secretary [of the Interior] can accurately calculate the amount for purposes of competitive solicitation of concession contracts. *Id.*

This final rule has three major purposes. The first is to set forth procedures as to how concession contracts are to be solicited and awarded by NPS under the 1998 Act. With certain exceptions, the 1998 Act requires competitive award of concession contracts. In some circumstances, an existing satisfactory concessioner may have a right to match the terms of a better competing proposal for a new concession contract. In fact, although the preference in renewal was the most mentioned issue in the comments received, more than 75% of the some 630 current NPS concessioners will continue to benefit from a preference in the renewal of their concession contracts. This is because the 1998 Act extends a preference in renewal to concessioners with contracts that have gross receipts of less than $500,000 or are outfitter and guide concessioners (more than 75% of the total).

Second, unlike the existing 36 CFR Part 51, the final rule sets forth in detail the nature of the compensatory interest in capital improvements a concessioner may construct on park lands under the terms of a concession contract. This leasehold surrender interest is defined in general terms in the 1998 Act. This rule establishes appropriate specific terms and conditions for leasehold surrender interests under the authority of the 1998 Act. Clarity as to the scope of leasehold surrender interest is important to both NPS and concessioners. Accordingly, the leasehold surrender interest subpart of this rule is lengthy. However, concession contracts will be proportionately shorter as for the most part they will refer to this rule with respect to leasehold surrender interest terms and conditions.

Finally, the rule descibes a number of provisions that concession contracts will contain in implementation of the 1998 Act.

The final rule reflects NPS's interpretation of the various provisions of the 1998 Act to appropriately administer the Act's requirements and purposes that are suitable for regulatory implementation. Section 417 of the 1998 Act requires NPS to promulgate regulations "appropriate for its implementation."

A. Response to Public Comments

NPS responds to public comments as follows. The symbol "***" under a section heading indicates that no (non-duplicative) comments requiring a response expressly addressed the section.

Scope of Comments

NPS received 125 public comments on the proposed rule. Of these, the vast majority were from existing concessioners, attorneys representing existing concessioners, or existing concessioner organizations. Several organizations with members that are existing NPS concessioners commented on the proposed regulations. Most of these organizations are generally interested in "outfitter and guide" concession contracts. One organization, referred to in the discussion below as the "general concessioner organization," is an organization with more than 150 existing concessioner members (according to its comment). Several of the members of this organization submitted separate comments that endorsed the comments of the general concessioner organization. Where NPS states below that the general concessioner organization or other organizations made comments, this refers collectively to the comments of the organization and comments separately submitted in support of the organization's views.

Only a handful of "non-incumbent concessioner" individuals and groups commented on the proposed regulations. The vast majority of comments received were from existing concessioners or concessioner organizations. Nonetheless, NPS has taken into account in developing the final rule the interests of the general public and non-incumbent concessioners, *i.e.*, persons that may now seek to become concessioners under the more competitive terms of the 1998 Act. NPS has an obligation to consider these interests under the mandates of the 1998 Act and 16 U.S.C. 1 *et seq.*, the NPS Organic Act, which requires NPS to preserve the resources of the national park system and to provide for their enjoyment by visitors by such means as will leave them unimpaired for the enjoyment of future generations.

1. General Comments

Repeal of the 1965 Act's Preference in Renewal

The major concern of existing concessioners was the 1998 Act's repeal of the 1965 Act's preference in renewal. Some existing concessioners consider it unfair (and illegal) to deprive them of a preference in the renewal of their existing contracts or permits (1965 Act concession contracts). Many commenters criticized NPS in this regard, although the repeal of the preference in renewal was by statute. The basis for this criticism is the perception that NPS has discretion to determine that the 1998 Act's repeal of the 1965 Act's preference in renewal is not applicable to the renewal of 1965 Act concession contracts. This is not the case.

Section 415(a) of the 1998 Act expressly repealed the 1965 Act, including its Section 5 (16 U.S.C. 20d) which required NPS to give existing satisfactory concessioners a preference in renewal of their contracts. In addition, Section 403(7) of the 1998 Act states that, except as provided in the express circumstances set forth in the 1998 Act, NPS "shall not grant a concessioner a preferential right to renew a concession contract, or any form of preference to a concession contract."

NPS has fully reviewed the legal arguments made by existing concessioners and their attorneys. NPS considers, however, that nothing contained in these arguments provides it with a reasonable basis to conclude that the 1998 Act's repeal of the 1965 Act's preference in renewal is not applicable to NPS 1965 Act concession contracts or permits. NPS also points out that a contrary interpretation would be in direct conflict with the 1998 Act's purpose of enhancing competition in concession contracting.

In this connection, one commenter on the proposed regulations, a major existing concessioner (that looks forward to the opportunity to compete freely for additional NPS concession contracts) submitted an opinion of counsel along with its comments on the regulations. The opinion of counsel supports the views of NPS on this issue.

The NPS position is based on the express terms of the 1998 Act and the fact that standard 1965 Act concession contracts do not refer to a preference in renewal.

In this connection, Section 415(a) of the 1998 Act states that the Act is applicable to 1965 Act concession contracts, as follows:

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(a) Repeal.—Public Law 89–249 (commonly known as the National Park Service Concession Policy Act; 16 U.S.C. 20 *et seq.*) is repealed. The repeal of such Act shall not affect the validity of any concessions contract or permit entered into under such Act, but the provisions of this title shall apply to any such contract or permit except to the extent such provisions are inconsistent with the terms and conditions of any such contract or permit. References in this title to concessions contracts awarded under authority of such Act also apply to concessions permits awarded under such authority.

Accordingly, unless the provisions of the 1998 Act are "inconsistent with the terms and conditions" of a 1965 Act concession contract, the 1998 Act applies in full to 1965 Act concession contracts.

NPS points out that standard 1965 Act concession contracts make no reference to a preference in renewal. The reason for this is that the preference in renewal provision contained in the 1965 Act did not establish the preference in renewal as a contract right. Section 5 of the 1965 Act states as follows in pertinent part:

> The Secretary shall encourage continuity of operation and facilities and services by giving preference in the renewal of contracts or permits and in the negotiation of new contracts or permits to the concessioners who have performed their obligations under prior contracts or permits to the satisfaction of the Secretary.

This provision does not state that an existing satisfactory concessioner has a right to a preference in renewal of an existing concession contract as a contract right or otherwise. It also does not authorize NPS to grant such a contract right. Rather, it imposes a statutory obligation on NPS (acting for the Secretary of the Interior) to give preference in the renewal of concession contracts to existing satisfactory concessioners.

In contrast, other provisions of the 1965 Act state that they authorize NPS to grant contract rights. Section 3(a) of the 1965 Act states that the Secretary "may include in [concession] contracts * * * such terms and conditions as, in his judgment, are required to assure the concessioner of adequate protection against loss of investment * * * resulting from the discretionary acts, policies, or decisions of the Secretary occurring after the contract has become effective. * * *" (Emphasis added.)

In addition, Section 4 of the 1965 Act states that the Secretary "may grant to such concessioners a preferential right to provide such new or additional accommodations, facilities or services as the Secretary may consider necessary or desirable for the accommodation and convenience of the public." (Emphasis added.) Prior to 1979, standard NPS concession contracts contained an express provision that provided a preferential right to additional services.

The 1965 Act, accordingly, clearly distinguished among its provisions that were intended to authorize the establishment of contract rights and provisions that were intended to impose a statutory obligation on the Secretary without establishing a contract right. In furtherance of these authorities and this distinction, existing 1965 Act concession contracts contain a number of contractual provisions authorized by Section 3(a) and Section 4 of the 1965 Act, but make no reference to a preference in contract renewal.

In this connection, NPS notes that, although not required by law to do so, NPS published for public comment in both 1979 and 1992 revisions to its standard concession contract, and, published the final new standard concession contracts in the **Federal Register**. Neither of these standard concession contracts includes a term or condition regarding preference in renewal or even refers to a preference in renewal. Prior standard concession contracts, going back to the passage of the 1965 Act, also do not refer to a preference in renewal.

Accordingly, the 1998 Act's repeal of the 1965 Act's preference in renewal is not "inconsistent with the terms and conditions" of NPS standard concession contracts. Rather, the 1998 Act repeals a statutory requirement obliging the government to give concessioners a preference in renewal.

There is also the matter of congressional understanding of the application of Section 415(a) of the 1998 Act to the 1965 Act's preference in renewal. The legislative history of the 1998 Act set forth above (from both the Senate and House of Representatives) expressly describes the 1965 Act's preference in renewal as a "statutory right" and states that it is repealed by S. 1693. There is no suggestion in the 1998 Act's legislative history that the repeal does not apply to existing concession contracts.

In this connection, Congress must be presumed to know that the 1965 Act described the preference in renewal as a statutory obligation for the Secretary to perform and that 1965 Act concession contracts, formally published in the **Federal Register** in 1979 and 1993, do not provide or refer to a preference in renewal.

The fundamental argument of incumbent concessioners as to why they retain a preference in renewal of their existing contracts is that the contracts contain an implied term granting a preference in renewal. NPS has duly this position. NPS considers this position wrong for three basic reasons.

First, it is firmly established that a "promise" contained in a statute is not binding on the government (or analogous to a contractual promise), since it is presumed that laws are always susceptible to change by future legislatures. As the Supreme Court has put it, the presumption is that a "law is not intended to create private contractual vested rights, but merely declares a policy to be pursued until the legislature shall ordain otherwise." *National R.R. Passenger Corp.* v. *Atchinson Topeka and Santa Fe Ry. Co.*, 470 U.S. 451, 466 (1985) (quoting *Dodge* v. *Board of Education*, 302 U.S. 74, 79 (1937)).

> This well-established presumption is grounded in the elementary proposition that the principal function of the legislature is not to make contracts, but to make laws that establish the policy of the state. Policies, unlike contracts, are inherently subject to revision and repeal, and to construe laws as contracts when the obligation is not clearly and unequivocally expressed would be to limit drastically the essential powers of the legislative body. National RR Passenger Corp., 470 U.S. 451, 465 (internal citations omitted).

The Supreme Court has consistently rejected the argument that the statutory or regulatory regime existing at the time of contract formation is implicitly written into the contract by force of law. To the contrary, the Court has always insisted that, regardless of the state of the law at the time of the contract, the contract itself must affirmatively promise future regulatory treatment in order to create an enforceable obligation against the government to provide such future treatment. As stated in *Bowen* v. *Public Agencies Opposed to Social Sec. Entrapment*, 477 U.S. 41, 52–53 (1986), with respect to commercial contracts, absent an "unmistakable" contract provision, "contractual arrangements, including those to which a sovereign itself is a party, 'remain subject to subsequent legislation' by the sovereign." Id. at 52 (quoting *Merrion* v. *Jicarilla Apache Tribe*, 455 U.S. 130, 147 (1982)).

NPS also notes that the 1965 Act's preference in renewal imposed a statutory obligation on the Secretary to give existing concessioners a preference in renewal. Section 5, however, unlike Sections 3(a) and (4) of the 1965 Act, makes no mention of any authority to grant concessioners a preference in renewal as a contract right. Authority for a government official to turn a statutory obligation of the official into a contractual right must be provided by

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the legislative branch in clear and unmistakable terms. *Home Telegraph & Telephone Co.* v. *Los Angeles*, 211 U.S. 265, 277 (1908). Section 5 of the 1965 Act by no means meets this test.

Finally, even if these considerations are not controlling law, the argument that an implied provision of NPS concession contracts gives the concessioner a contractual right to a preference in renewal is inconsistent with the express terms of almost all current NPS concession contracts and permits with annual gross receipts in excess of $500,000. Almost all of such contracts expressly state (or state in analogous terms) that:

> This Contract [or permit] and the administration of it by the Secretary shall be subject to the laws of Congress governing the Area and rules, regulations and policies whether now in force or hereafter enacted or promulgated. (Emphasis added.)

Accordingly, almost all NPS concession contracts and permits with annual gross receipts in excess of $500,000 expressly state that they are subject to changes in law. The existing concessioners' implied contractual right argument, even if it were otherwise of legal merit, fails under these express terms of NPS concession contracts and permits.

NPS notes that the comments of the general concessioner organization point out that the version of Section 415 of S. 1693 (the bill that became the 1998 Act) that initially passed the Senate referred to "express" terms and conditions of 1965 Act concession contracts while the bill as reported out of the House of Representatives and ultimately enacted did not contain the word "express." The comments suggest that this means that Congress intended Section 415 of the 1998 Act to apply to implied, as well as express, terms of 1965 Act concession contracts.

NPS notes, however, that the legislative history of the 1998 Act provides no guidance as to the intentions of the Congress in deleting the word "express" from S. 1693. In fact, Senator Thomas, the principal author of S. 1693, in commenting on the competitive results of the bill after the unexplained deletion of the word "express," stated as follows:

> We have eliminated the preferential right of renewal so that there is competition for those services as they are renewed. Cong. Rec., S. 12540, Daily Ed., October 14, 1998. (Emphasis added.)

Clearly, Senator Thomas considered that S. 1693's repeal of the preference in renewal was of immediate and comprehensive effect.

NPS also notes Section 419 of the 1998 Act (described in the 1998 Act as a "savings provision"). Section 419 was included in S. 1693 at the same time the word "express" was deleted from Section 415. Section 419(a) "grandfathered" certain existing prospectuses for cruise ship concession permits for Glacier Bay National Park, requiring their award "under provisions of existing law." Section 419(b) then requires that:

> Notwithstanding any provision of this title, the Secretary, in awarding future Glacier Bay cruise ship concession permits for which a preferential right of renewal existed prior to the effective date of this title, shall provide for such cruise ship entries a preferential right of renewal, as described in subparagraphs (C) and (D) of section 403(7). (Emphasis added).

This "savings" provision clearly indicates that the 1965 Act's preference in renewal no longer existed as of the passage of the 1998 Act. Moreover, if 1965 Act concession contracts had an implied contractual right of preference in renewal, as argued by existing concessioners, there would have been no need for the Congress to include Section 419(b) in the 1998 Act, that is, to provide a further preference in renewal after the effective date of the 1998 Act for concession contracts that were to be awarded "under provisions of existing law." The general concessioner organization's argument as to the intention of Congress in deleting the word "express" from S. 1693 is contradicted by the terms of Section 419.

For these reasons, NPS concludes that it is not authorized under the 1998 Act to promulgate concession regulations that implement a preference in renewal except as expressly authorized by Sections 403(7) and (8) of the 1998 Act. However, the final rule, generally tracking a similar provision in the proposed rule, permits any existing concessioner holding a 1965 Act concession contract that makes express reference to a preference in renewal to request the Director to determine whether such express reference may result in a continuing preference in renewal by operation of law. This right of appeal is discussed further under Section 51.116.

Evaluation of Proposals

Another general concern of commenters was the method contained in the proposed regulations for evaluating concession contract proposals and selecting the best proposal. The commenters objected to the lack of a numerical evaluation method and to the fact that environmental considerations and the amount of franchise fee offered were "tie-breakers" in the evaluation system. The commenters argued that these provisions were in conflict with the intent of Congress that consideration of revenue to the United States is subordinate to protection of resources and providing quality visitor services.

NPS does not agree with these perceptions of the consequences of the proposed rule. NPS, however, in the final rule, has accommodated these concerns through several incremental changes, including incorporation of a numerical scoring system into the narrative evaluation methodology contemplated by the proposed rule and by changing the "tie-breaker" provision to track the terms of the 1998 Act. The modifications are discussed below in the section-by-section analysis.

Leasehold Surrender Interest

A further general concern was the terms and conditions of leasehold surrender interest. Commenters considered several of the provisions of the proposed regulations to be inconsistent with the 1998 Act and to give NPS too much authority to determine the scope of a concessioner's leasehold surrender interest. NPS, in the final rule, has made a number of incremental changes to the leasehold surrender interest provisions of the regulations to accommodate the commenters' concerns. These are also discussed in the section-by-section analysis. The general concessioner organization and others also made the point that it is not clear which provisions of the regulations regarding leasehold surrender interest will be incorporated as terms and conditions of concession contracts and not be subject to modification by amended regulations or changes in law. The new NPS standard concession contract will make this clear.

2. Section by Section Analysis of Public Comments and Description of Changes in the Final Rule

Subpart A—Authority and Purpose

Section 51.1 What Does This Part Cover?

(a) This subsection has been modified to more closely track the language of the 1998 Act with regard to the purpose of concession contracts and, in response to comments, to reference Section 415(c) of the 1998 Act which states that the 1998 Act does not supersede the requirements of 16 USC 3101 in regard to revenue producing visitor services in Alaska park areas.

(b) A number of comments mentioned commercial use authorizations as described by Section 418 of the 1998 Act and stated that the regulations should have encompassed them. However, the proposed regulations referenced the separate authority of NPS to issue commercial use authorizations. NPS is in the process of drafting regulations for commercial use authorizations and intends to publish proposed regulations for public comment as a matter of policy. These regulations will also address the scope of the statutory exemption granted non-profit organizations by Section 418 of the 1998 Act, an issue mentioned in several comments.

A comment also stated that the term "incidental visitor services" should be defined. NPS considers incidental visitor services to be supporting services that must be provided to program participants in order to conduct a related interpretive program.

An individual expressed concern that NPS should not allow non-profit organizations to compete with concessioners. However, some competition of this nature does exist and the 1998 Act does not preclude non-profit organizations from being concessioners. In fact, several existing NPS concessioners are non-profit organizations.

An individual commented on the sentence in this section that states that the Director may not authorize the conduct of visitor services by any means other than a concession contract except as may otherwise be authorized by law. The individual interprets this to mean that under this section visitor services may not be authorized under an historic lease entered into pursuant to Section 111 of the National Historic Preservation Act, as amended. The individual objects to this result. However, the sentence to which the individual objects reflects an express statutory requirement contained in Section 403 of the Act. NPS points out that many historic buildings in areas of the national park system are utilized for visitor service purposes by concessioners. NPS also notes that it is in the process of drafting regulations for the leasing of property under Section 802 of the 1998 Act. These regulations, which NPS intends, as a matter of policy, to publish for public comment, will address the scope of activities that may be authorized under NPS leases as opposed to concession contracts.

This subsection also has been modified to more closely track the language of the 1998 Act with respect to the fact that, unless otherwise authorized by law, concession contracts are to be utilized to authorize the provision of necessary and appropriate accommodations, facilities and services to park area visitors ("visitor services").

Section 51.2 What Is the Policy Underlying Concession Contracts?

A comment stated that the policies for permitting visitor services in park areas should require a "balanced and diverse mix" of prices for services. NPS supports the concept that visitor services should encompass a mix of services (*e.g.*, moderate and low cost accommodations in addition to more expensive facilities). However, Section 51.2 as written paraphrases the statutory policies on visitor services set forth in Section 402 of the Act. NPS considers that decisions as to the scope of services to be authorized under concession contracts should be developed on a case-by-case basis through planning under the general guidance of Section 402 of the Act.

Another comment stated that Section 51.2 should require consideration of the factors specific to the park area to be affected. NPS considers that this thought is implicit in Section 51.2, as the findings required by Section 402 of the Act necessarily must be made on a park-by-park basis.

An individual commented that removal of concession facilities from a park area might damage the park more than leaving the facility there. Again, NPS considers that determinations as to what are necessary and appropriate visitor services, including the possible removal of existing facilities, must be made on a case-by-case basis.

A comment stated that there is no clear definition of visitor services contained in the regulations. However, NPS considers that the visitor services definition (as modified) contained in Section 51.3 in the final rule provides a clear definition of visitor services. The comment also states that a United States Post Office should be considered as providing visitor services and therefore, apparently must be awarded a concession contract. NPS, however, does not consider Post Offices as concession operations within the meaning of the 1998 Act. Finally, the comment states that non-profit cooperating associations that provide visitor services should be subject to the requirements of Section 51.2. NPS notes that all visitor services provided in park areas under the authority of the 1998 Act are subject to the requirements of Section 51.2.

Subpart B—General Definitions

Section 51.3 How Are Terms Defined in This Part?

A number of comments were made concerning the definition of terms used in the regulations. Some of these comments, however, in fact were directed at underlying substantive issues, particularly the repeal of the 1965 Act's preference in renewal (discussed under General Comments) and the scope of a preference in renewal under the 1998 Act (discussed under Subpart E). The comments that specifically concerned the wording of the definitions *per se* are as follows.

The "1965 Act"

A comment stated that the words "as amended" should be added. However, the 1965 Act, although repealed by the 1998 Act, was never amended.

"Concession Contract (or Contract)"

The general concessioner organization requested clarification of this definition with respect to when a concession contract can be something other than a written agreement. NPS has deleted the phrase "unless otherwise indicated in this part" in response to this comment.

The general concessioner organization also asked NPS to clarify its position regarding circumstances where an existing concessioner may continue to operate after the expiration of a concession contract. Particularly, the comment requested NPS to make clear that (i) an incumbent concessioner is not required to continue to operate after the expiration of its contract; (ii) that if the concessioner does not choose to continue to operate, NPS must honor the obligations of the expired contract; (iii) that if the concessioner does continue to operate the continuation is to be on the same terms and conditions as the expired contract unless otherwise agreed by the parties; and (iv) the concessioner, if it continues to operate, "shall not be placed in any worse economic position upon the commencement of the new contract than the concessioner would have been had the new contract commenced upon the original expiration date of the prior contract."

NPS considers that the first three statements must be examined in the context of particular contracts and need no amplification in the regulations. The last point seems to suggest that a concessioner that continues to operate after the expiration or other termination of a concession contract may be harmed economically by this action. However, as a concessioner is not obliged to continue operations upon the expiration

or other termination of a concession contract (unless the terms of a concession contract otherwise provide), a concessioner's decision to continue operations would seem to obviate any concerns about possible "economic harm" resulting from the continued operations. In any event, NPS does not consider that changes to the definition of "concession contract (or contract)" are warranted on the basis of these comments. (NPS points out that it uses the phrase "expiration or other termination" of a concession contract in this paragraph as the 1965 Act utilizes this terminology. Under the 1965 Act, the "expiration" of a concession contract is considered a form of contract termination.)

Several comments also objected to the statement in this definition that concession contracts are not contracts within the meaning of 41 USC 601 *et seq.* (the Contract Disputes Act) and are not service or procurement contracts within the meaning of statutes, regulations, or policies that apply only to federal service contracts or other types of federal procurement actions.

NPS has fully considered these views and disagrees with their conclusions. The Contract Disputes Act, by its terms, applies to procurement contracts. A procurement contract is a contract under which the government bargains for, pays for, and receives goods or services. *YRT Services Corporation* v. *United States*, 28 Fed. Cl. 366, 392, n.23 (1993).

The court in YRT Services concluded that an NPS concession contract for lodging facilities "did not constitute a procurement" as NPS is not paying for the [concessioner's] services but is "collecting fees in exchange for granting a permit to operate a concession business." Id.

Several comments on this issue discussed a series of Interior Department Board of Contract Appeals (IBCA) decisions that held that NPS concession contracts are subject to the Contract Disputes Act as procurement contracts. However, several General Accounting Office decisions take a contrary view. NPS has reviewed the IBCA decisions and notes that all but one preceded the decision of the Court of Claims in YRT Services, and all concern 1965 Act concession contracts, not 1998 Act concession contracts. (This final rule, issued under the terms of the 1998 Act, supercedes these IBCA decisions.)

NPS points out that the 1998 Act, unlike the 1965 Act, contains an express statement as to the purposes of NPS concession contracts:

> In furtherance of the findings and policy stated in Section 402, and except as provided by this title or otherwise authorized by law, the Secretary shall utilize concession contracts to authorize a person, corporation or other entity to provide accommodations, facilities and services to visitors to units of the national park system. (Section 403 of the 1998 Act. Emphasis added.)

This statutory provision tracks the reasoning in YRT Services as to why 1965 Act concession contracts are not procurement contracts. The purpose of concession contracts is not to procure goods or services for the government. Furthermore, NPS notes that the existing 36 CFR Part 51, the NPS regulations that implemented the 1965 Act, expressly state that concession contracts "are not Federal procurement contracts or permits within the meaning of statutory or regulatory requirements applicable to Federal procurement actions." (36 CFR 51.1.) The Congress, in passing the 1998 Act, must be presumed to have been aware of this regulatory interpretation and the decision of the court in YRT Services. In fact, it appears that the inclusion of the sentence in Section 403 of the 1998 Act to the effect that concession contracts are contracts that "authorize a person to provide accommodations, facilities and services" to park area visitors is a direct confirmation of the position of the court in YRT Services and the NPS interpretation of the 1965 Act contained in the existing 36 CFR Part 51.1. NPS concession contracts do not procure services for the government; rather, they authorize third parties to provide services to park area visitors.

The NPS Organic Act, 16 USC 1 *et seq.*, also expressly recognizes this distinction. 16 USC 17b provides that the Secretary of the Interior is authorized to contract with persons that provide services or other accommodations to the public in national parks to furnish such services or accommodations to the Government without compliance with the 41 USC 5. 41 USC 5 is the title of the United States Code that establishes procurement contract requirements. Accordingly 16 USC 17b makes clear that if the government contracts with a concessioner to provide services and accommodations to the Government (that the concessioner is authorized to provide to the public), the contract is a procurement of services to the government otherwise subject to 41 USC 5. In addition, by implication, this authority also makes clear that a concessioner's authorization to provide goods and services to park visitors is not a procurement contract as the goods and services are not provided to the Government.

NPS, in reviewing this issue, did consider the fact that concession contracts in one sense could be argued to result in "services" to the government, *i.e.*, that concession contracts may require the concessioner to repair and maintain government property assigned to a concessioner under the terms of a concession contract. However, these services (repair and maintenance of government property) flow from the assignment (the equivalent of a lease of government property) of property to a concessioner for use in concession operations.

In this connection, the 1998 Act expressly exempts NPS concession contracts from the application of Section 321 of the Act of June 30, 1932 (40 USC 303b), "relating to the leasing of buildings and properties of the United States," thereby permitting NPS to accept the repair, maintenance and improvement of government property from a concessioner instead of collecting cash rent for the use of the property. The legislative history of the 1965 Act (and a related 1962 law) indicates that this provision was included in the 1965 Act (and a related 1962 law) in response to a Comptroller General Opinion that concession contracts are leases. Accordingly, to the extent that the repair and maintenance of assigned property may be considered as "services" to the government, these services are recognized by the 1998 Act as an authorized function of the assignment of government property under concession contracts, not as a procurement of services for the government.

For these reasons, NPS does not consider that NPS concession contracts are subject to the Contract Disputes Act or to other statutes that apply only to federal procurement contracts. Accordingly, it has left this statement in the final rule. NPS also points out that it does not consider the solicitation of NPS concession contracts to be subject to the Competition in Contracting Act ("CICA") as it applies to procurement contracts. YRT Services at p. 392. In any event, even if it were determined that NPS concession contracts are subject to CICA, the express provisions of the 1998 Act describing mandatory NPS concession contracting procedures make CICA inapplicable to NPS concession contract under its own terms. 41 USC 253(a)(1)(1988).

A comment asked whether the term "concession contract" refers to "concession permits" awarded under the 1965 Act. It does, as indicated in the definition of "concession contract."

A sentence has been added to this definition in the final rule to clarify that concession contracts must include terms and conditions as are required by law, this part, or are otherwise appropriate in furtherance of the purposes of this part and the 1998 Act.

"Concessioner"

The definition of concessioner has been modified in the final rule to track the terms of the 1998 Act.

A comment submitted by a municipality that holds a concession contract suggested that this definition be modified to make clear that municipalities may be concessioners. This is clear under the definition in the final rule. The municipality also offered to pay a higher than minimum franchise fee in consideration of not being required to compete for the award of concession contracts. NPS has not accepted this suggestion, as it is impermissible under the terms of the 1998 Act.

"Director"

The term "Director" has been modified in the final rule in response to comments that expressed concern that the "Director" would be the decision-maker on an appeal from a decision of the "Director." The term Director as used in the regulations applies to the Director personally and duly delegated subordinates of the Director. In circumstances where the rule calls for an appeal to the Director, the appeal must be to a higher authority than the initial deciding official.

"Franchise Fee"

Several comments requested that the term "and rights" be included in this definition after the word "privilege." NPS has not made this change as the definition of franchise fee contained in the final rule tracks the terms of the 1998 Act.

"Offeror"

The definition of the term "offeror" has been modified in order to make clear that an organization does not have to be formally in existence as of the time of submission of a proposal for a concession contract in order for the proposal to be considered by NPS.

"Possessory Interest"

A comment took issue with the sentence of this definition that states that possessory interest does not include any interest in personal property even though a prior concession contract may have provided a compensable interest in personal property described as "possessory interest." The comment makes the point that "this is true only to the extent that such property does not come within the definition of possessory interest" as set forth in the 1965 Act. NPS agrees with this latter statement and has modified the definition accordingly. The comment also suggests that the regulations address the circumstances of the disposition of personal property when a new concessioner is selected for award of an existing concession contract. NPS has done this in Section 51.68 of the final rule.

Other comments objected to the fact that NPS generally does not intend to include in new concession contracts provisions that require a new concessioner to purchase the personal property of a prior concessioner. NPS considers that such provisions in concession contracts are a barrier to competition as a new concessioner is required to buy equipment that it may not need and that may not be in good condition. NPS considers that the marketplace should control in this situation. A prior concessioner may sell its personal property to a new concessioner on a mutually agreeable basis. If agreement cannot be reached, the prior concessioner is free to sell its personal property on the open market. A commenter stated in this connection that the 1965 Act required that new concessioners purchase the personal property of prior concessioners. This was not the case.

"Preferred Offeror"

The general concessioner organization stated that the words "the Director has determined" should be stricken from this definition. The basis of the comment is that the existence of a concessioner's status as a preferred offeror is not always subject to the Director's discretion. However, NPS considers that the definition is accurate. The main body of the regulations describes the circumstances under which the Director may determine an existing concessioner to be a preferred offeror. A comment asked whether there ever may be more than one preferred offeror for a qualified concession contract. The answer is no as only one entity can be a concessioner under the terms of a concession contract as of its termination or expiration.

"Prior Concession Contract" and "Prior Concessioner"

Several comments suggested changes to these definitions. However, in consideration of these comments, NPS has determined that these definitions are not needed to understand the final rule. The definitions have been deleted in the final rule.

"Qualified Concession Contract"

NPS has included in the general definitions section of the final rule for the sake of clarity the definition of a "qualified concession contract" as set forth in the text of the regulation.

"Qualified Person"

One comment suggested adding the word "conserve" to the phrase "protect and preserve" as used in this definition. The request is based on the statement that the word "conserve" reflects language of the 1998 Act and also points out that hunting and fishing, authorized uses in certain park areas, are not considered by some to be consistent with the concept of "preservation." NPS has not made this change as this definition tracks the statutory description of a qualified person contained in Section 403(4)(B) of the 1998 Act. In any event, NPS considers that the statutory language was not intended to alter park area uses such as hunting and fishing where such uses are otherwise permissible.

The definition of "qualified person" in the final rule has been modified in accordance with the changes to the definition of the term "concessioner" and shortened without changing its meaning.

"Right of Preference"

NPS has modified the definition of "right of preference" to more closely track Section 403(7)(C) of the 1998 Act in response to comments concerning the right of preference as described in the proposed regulations.

A comment suggested deletion of the last sentence of this definition, stating that it suggests that NPS can "defeat" a right of preference by changing contract terms and conditions. NPS has not made the requested change. The questioned sentence only states that a right of preference does not give a preferred offeror the right to establish or negotiate the terms of a new concession contract. See the discussion under Section 51.33 with respect to the right of NPS to establish the terms and conditions of new concession contracts.

"Visitor Services"

A comment asked NPS to explain why this definition is limited to accommodations, facilities and services that are provided for a fee or charge as this limitation suggests that services provided free to guests are not permissible. This was not the intention of the definition and it has been clarified accordingly. The definition

also has been clarified to state that activities that are "necessary and appropriate" are to be determined by the Director under the guidance of Section 402 of the Act. The definition has been further modified to more closely track the terms of the 1998 Act and to clarify that NPS itself may provide "visitor services," *e.g.*, operate campgrounds for visitors, as indicated in this section in the proposed regulations.

Another comment suggested that the regulations should contain language that advises NPS managers as to how the courts have interpreted the term "necessary and appropriate" as used in this definition in litigation concerning the 1965 Act. NPS has not accepted this suggestion. Decisions as to what visitor services are "necessary and appropriate" for a particular area are necessarily made on a case-by-case basis by NPS with public participation in planning processes as appropriate. NPS takes into account relevant judicial decisions in its planning decisions. However, planning decisions are fact driven. Every park area is different with respect to resources and the types of visitors and visitor needs and desires.

"Responsive Proposal"

NPS has moved the definition of "responsive proposal" from Section 51.15 of the proposed regulations to the general definitions section of the final rule for the sake of clarity. It has also modified the definition of "responsive proposal" to make clear that the determination is made by the Director.

Subpart C—Solicitation, Selection and Award Procedures

Section 51.4 How Will the Director Invite the Public To Apply for the Award of a Concession Contract?

One comment suggested that the regulations should include procedures and guidelines regarding the contents and scope of a prospectus. NPS considers that the regulations, in accordance with the requirements of the 1998 Act, adequately describe the contents of prospectuses.

This section, in response to a comment from an attorney who argued that rights of an existing concessioner may be impacted by the issuance of a prospectus, has been modified by NPS to clarify that the determinations contained in prospectuses and/or in proposed concession contracts published with prospectuses do not become final NPS administrative decisions until such time as a concession contract is awarded in accordance with this part. NPS also notes that Section 51.47 in the final rule provides an appeal right for concessioners regarding preferred offeror status. Finally, the final rule precludes issuance of a prospectus for a new concession contract earlier than eighteen months prior to the expiration of an existing concession contract that the new contract is to replace, thereby assuring that an existing concessioner does not have to compete for a new contract in circumstances where assessment of the feasibility of the terms and conditions of the new contract would be unduly speculative.

Section 51.5 What Information Will the Prospectus Include?

The general concessioner organization requested that the words "and enhancement" be deleted from this section for the reasons discussed in the commenter's statements under sections 51.20 and 51.21. In those sections, the commenter generally objected to the use of environmental enhancement measures as a factor in the selection of concession contract proposals. For the reasons discussed by NPS under those sections, NPS does not agree with the position of the commenter. However, NPS has modified this section to delete references to environmental "enhancement."

The general concessioner organization objected to the use of the term "minimum" as to the capital investment required by an offeror as referred to in Subsection (a)(5) on the grounds that the 1998 Act does not contain this modifier and its use suggests that NPS is providing itself discretion, "contrary to the law," to accept proposals that offer a higher capital investment than the "minimum."

The comment is correct in stating that the 1998 Act does not contain the word "minimum." Rather, the Act states as follows in pertinent part: "any facilities, services, or capital investment required to be provided by the concessioner." NPS does not consider that this section of the Act, referring to capital investment required to be provided by the concessioner, may reasonably be interpreted as forbidding NPS from taking into account in the selection of proposals for a concession contract the relative amount of capital investment an offeror may be willing to provide. Moreover, the amount of capital an offeror is prepared to invest in the park is demonstrably an appropriate proposal selection concern. The level of concessioner investment in many cases may directly relate to the quality of the visitor facilities to be provided or measures to be taken with respect to the protection, conservation and preservation of the resources of the park area.

NPS has included the phrase "if any" in the final rule in response to a comment that stated that many NPS concession contracts do not require capital investment by the concessioner.

A comment suggested that the term "fixed" be included with respect to "minimum" franchise fees. NPS has not made this change. A franchise fee can be in the form of a fixed fee, a percentage of gross receipts, or other measures as may be described in a concession contract. The regulation does not need to amplify this further.

A comment suggested that the word "ensure" be changed to "assure" in Section 51.5(a)(4). NPS has not made this change as the word "ensure" comes from Section 403 of the 1998 Act.

A comment stated that subsection (e) should make clear that any subfactor set forth in a prospectus must be a subset of the principal selection factor to which it relates. NPS agrees with this comment but considers the regulation is clear in this regard.

A comment suggested that subsection (f) be clarified to acknowledge that some information provided to the Director by concessioners is not subject to public release as confidential. NPS has not accepted this suggestion for the reasons discussed under section 51.113. However, NPS has amended this subsection to fully track Section 403(3)(G) of the 1998 Act that requires NPS to include in concession contract prospectuses:

> Such other information related to the proposed concession operation as is provided to the Secretary pursuant to a concession contract or is otherwise available to the Secretary, as the Secretary determines is necessary to allow for the submission of competitive proposals.

In addition, NPS has moved to this subsection from Section 51.113 (which has been deleted in the final rule), certain information that NPS considers is necessary (where applicable) to allow for the submission of competitive proposals.

A comment suggested that the "estimate" of leasehold surrender interest value to be contained in a prospectus should be provided by the existing concessioner. NPS has not accepted this suggestion. It would be an obvious conflict of interest for an existing concessioner to estimate the value of its own leasehold surrender interest for competitive selection purposes.

A comment suggested that prospectuses should set forth all of the fees a concessioner may be required to pay, not just franchise fees. NPS

considers that this section, which refers to franchise fees and other forms of consideration to be paid to NPS under the new contract, meets the concerns of this comment.

NPS has modified this section in the final rule to make clear that concession contracts may contain terms, where appropriate, incorporating measurable performance standards as suggested in general terms by commenters.

Section 51.6 Will a Concession Contract be Developed for a Particular Potential Offeror?

A law firm suggested a change to this section. However, as the comment refers to the "last paragraph" of this section and the section only contains one sentence, it appears that the reference to Section 51.6 was in error. NPS was not able to identify the section to which the comment was intended to apply.

A comment suggested that this section be amended to make clear that it does not preclude consultation with an existing concessioner as to the proposed content of a prospectus. NPS has amended this section to indicate that consultations with an existing concessioner may occur but that the concessioner may not be provided any information as to the content of a proposed or issued prospectus that is not available to the general public.

A comment suggested that the phrase "as they relate to the visitor services to be provided" be added after "requirements of the Director" in this section. NPS has not made this change. The term "requirements" as used in this section is not limited to visitor services requirements.

Section 51.7 How Will Information Be Provided to a Potential Offeror After the Prospectus Is Issued?

A comment suggested that NPS should hold meetings with potential offerors as a means to ensure that information is equally shared. NPS, in fact, routinely does hold offeror information meetings after the issuance of concession contract prospectuses, particularly with respect to larger contracts. This practice will continue under the final rule, subject to applicable administrative guidelines.

Section 51.8 Where Will the Director Publish the Notice of Availability of the Prospectus?

A comment suggested that NPS should also provide notice "directly to the existing concessioner, both because such concessioner is a logical bidder and because a smooth bidding process requires the incumbent to be apprised of the timing and particulars of the offering."

NPS is unaware of any occasion where an existing concessioner was not aware of the issuance of a prospectus concerning the continuation of the concessioner's operations. NPS, therefore, does not see a need to make this change even if it was otherwise considered appropriate.

A comment suggested that the word "may" in this section be changed to "shall" in order to ensure even-handed solicitation practices. NPS has not made this change as the decision is discretionary.

A comment suggested that notice of the concession opportunity also be included in the **Federal Register**. NPS has not accepted this suggestion. Federal Register publication is expensive and may not significantly increase public awareness of the concession offering. The costs of publication outweigh the limited benefits of publication.

A comment suggested that NPS should maintain a list and notify persons who have expressed interest in concession opportunities. NPS does this now and intends to continue to do so as a matter of administrative practice.

Section 51.9 How Do I Get a Copy of the Prospectus?

A comment suggested that the word "may" in this section be changed to "shall." NPS has not accepted this suggestion as it generally intends to impose a fee for prospectuses only when it anticipates that a large number of requests for copies of a prospectus will be received.

Section 51.10 How Long Will I Have To Submit My Proposal?

A comment suggested that this section should contain guidance as to what constitutes circumstances that would make a shorter than normal response time appropriate. As circumstances may vary greatly, NPS has not made this change. However, in general, a shorter time period is appropriate for smaller concession contracts where potential offerors are likely to be local to the park area and familiar with the circumstances of the concession opportunity.

A comment also suggested that the sixty-day usual response time for submission of proposals be changed to ninety days. Another comment recommended one hundred and twenty days. NPS has not accepted these suggestions as it considers that sixty days is a reasonable response time for routine NPS concession contracting opportunities and does not wish to unduly expand the length of the concession contracting process. In addition, NPS may, under the terms of this section, increase the time if determined appropriate.

Section 51.11 May the Director Amend, Extend, or Terminate a Prospectus or Solicitation?

Several comments addressed this section. They criticize the fact that the Director's right to cancel a concession contract solicitation at any time prior to award of the contract contains no guidelines as to when such a cancellation may occur and that an explanation of a cancellation is not required. One suggested that a cancellation should be only "for cause." The comments also requested an "appeal right" in the event of a cancellation. In response to these comments, NPS has included in this section a sentence describing the circumstances under which a concession contract solicitation may be cancelled. NPS has not accepted the suggestion of an "appeal right." NPS does not consider that any person has an entitlement to the issuance of a concession contract solicitation and that, therefore, the cancellation of a solicitation in and of itself, a discretionary decision by NPS as indicated in the final rule, does not affect the rights of any person. (NPS has changed the term "termination" of a solicitation to "cancellation" in the final rule as "cancellation" is the usual terminology.)

Section 51.12 Do I Have Any Rights If the Director Amends, Extends or Terminates a Prospectus or Solicitation?

Several comments addressed this section. One suggested that an amendment to a concession contract solicitation should only be for "cause." This, of course, is the case. An amendment would be made by NPS only if circumstances called for an amendment. Another comment suggested that the phrase "except for any existing rights" be included at the beginning of this section. However, NPS does not consider that this section as written could be construed as affecting the existing legal rights of any person, as discussed under the previous section.

The final rule has combined Section 51.12 with Section 51.11 for the sake of clarity. Section 51.12 has been deleted in the final rule.

Section 51.13 (Section 51.12 in the final rule) Are There Any Other Procedures That I Must Follow or That Apply to the Solicitation or to the Selection of the Best Proposal?

Several comments expressed concern that NPS, by referencing a lottery system in this section, intended to generally select concessioners by lottery. This is not the case. The use of a lottery was intended to apply only in very limited circumstances. However, in light of other changes made in the regulations with respect to selection procedures (discussed in the next several paragraphs), NPS does not consider that mention of a lottery system is appropriate in the final rule. Reference to it has been deleted from the regulations.

A number of comments criticized NPS for not including in the proposed regulations "simplified procedures for small, individually-owned, concession contracts" as called for by Section 403(1) of the 1998 Act. This section of the proposed regulations, however, did incorporate such simplified procedures, stating that the Director will include simplified solicitation and/or information requirements in prospectuses for concession contracts that are likely to be awarded to a sole proprietorship. NPS notes that, because of the express statutory requirements of the 1998 Act prescribing concession contract solicitation procedures, it is not possible to establish in general a greatly simplified regulatory solicitation procedure for smaller concession contracts. NPS does not consider that Section 403(1) was intended to repeal by implication the numerous statutory requirements regarding the selection process set forth in the 1998 Act. Rather, NPS considers that the simplified procedures referred to in the 1998 Act relate to administrative practices utilized by NPS and any regulatory procedures NPS may adopt in furtherance of the 1998 Act. In any event, NPS considers that the basic elements of the 1998 Act with respect to solicitation procedures, *i.e.*, issuance of a prospectus, evaluation of proposals under specified criteria, and selection of the best proposal, necessarily have to be contained in any selection process, whether or not legally required. Accordingly, the greatest opportunity for simplified procedures is with respect to the information requirements of prospectuses.

NPS, in the development of prospectuses for smaller concession contracts, intends to limit as appropriate the information that needs to be submitted by offerors and the number of subfactors and related information requirements applicable to the principal selection factors. In this way, although the solicitation process will follow the statutory requirements for concession contracting, the paperwork burden will be significantly reduced for smaller concession opportunities.

In addition, NPS has provided for the possible elimination with respect to smaller concession contracts of the secondary selection factor (quality of environmental program) contained in Section 51.17(b)(1) of the final rule, thereby simplifying the selection procedures for smaller concession contracts. NPS has made corresponding changes to Section 51.12 in the final rule to make clear its intentions with respect to simplified procedures for smaller concession contracts.

A municipality that holds a concession contract suggested that the term sole proprietorship be amended to include local governments. NPS does not consider this lawful under the Act as the term "individually owned" clearly refers to a business, not a governmental unit.

Section 51.14 (Section 51.13 in the final rule) When Will the Director Determine If Proposals Are Responsive?

A comment suggested that a time limit be adopted as to when NPS must determine a proposal to be non-responsive. NPS has not accepted this suggestion in light of the varying complexity of concession contract proposals. This section has been changed in the final rule to make clear that a determination of responsiveness must be made prior to or as of the selection of the best proposal.

Section 51.15 (Deleted in the final rule) What Is A "Responsive Proposal?"

A comment suggested that the definition of a responsive proposal needs to be more clearly articulated. NPS has made a change to the definition (discussed under Section 51.3). The commenter's real concern, however, appears to be that the commenter considers that the requirement for submission of a responsive proposal deprives offerors of the ability to object to any of the terms of the solicitation or to submit a conditional proposal. The commenter objected to this as it wishes to have the right to disagree with the terms of the solicitation or the new concession contract, in other words, to disagree with the minimum requirements of the prospectus. NPS does not agree with this point of view. NPS determines the nature and scope of proposed new concession opportunities. They are not a matter of negotiation with prospective offerors. This is made clear by Section 403(3)(A) of the 1998 Act that states that a prospectus shall include the "minimum requirements" of the solicited contract. The 1998 Act also describes certain of these "minimum requirements" in Section 403(3).

However, NPS, in response to this comment, has added a sentence to Section 51.15 in the final rule that makes clear that offerors are permitted to suggest changes to the terms and conditions of a concession contract so long as they agree to be bound by the terms and conditions of the solicitation.

NPS has moved the definition of "responsive proposal" in the final rule to the general "definitions" section, Section 51.3, and deleted this section in the final rule.

Section 51.16 (Section 51.14 in the final rule) What Happens If No Responsive Proposals Are Submitted?

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Section 51.17 (Section 51.15 in the final rule) May I Clarify, Amend or Supplement my Responsive Proposal After It Is Submitted?

A comment suggested that this section be amended to delete the word "responsive." The word has been eliminated from the first sentence. NPS considers, in agreement with the comment, that the Director should have the discretion (but not the obligation) to allow an offeror to clarify a non-responsive proposal. NPS has added a sentence to this section explaining that "clarification" of a proposal refers to making clear any ambiguities that may have been contained in a proposal, not a right to substantively amend or supplement the terms of a proposal.

A comment suggested that permitting amendment of proposals after the submission date may lead to an auction of concession contracts. NPS has not changed the regulation in response to this comment as the overall terms of the regulations preclude an "auction" of concession contracts. However, in response to this comment, NPS has added a sentence to clarify that permitted amendments of proposals are limited to correcting aspects of proposals resulting from a general failure of offerors to understand requirements of the prospectus or to generally fail to submit required information. Amendments are not permitted for the purpose of allowing a particular offeror or offerors to correct proposal deficiencies that were not generally common to all proposals received.

Section 51.18 (Deleted in the final rule) How Will the Director Select an Offeror for Award of the Concession Contract?

As discussed in the response to "General Comments," a number of comments were received that criticized the evaluation and selection process that was contained in the proposed regulations. The comments generally focused on three concerns. The first was that the evaluation was not based on a numerical rating system. The second was that the "tie-breaker" concept was inappropriate and inconsistent with the intentions of the 1998 Act with respect to franchise fees. The third was that the proposed regulations gave environmental aspects of proposals undue weight in the selection process. NPS has modified the regulations to accommodate all of these concerns as discussed below.

In this connection, Section 51.18 has been deleted in the final rule. The method under which the Director will select the best proposal in response to a prospectus is contained in Section 51.16 in the final rule (as discussed further under Section 51.21).

A comment suggested that NPS should not permit members of evaluation panels to be NPS officials that are acquainted with the incumbent concessioner. NPS has not accepted this suggestion. NPS evaluation panels usually include officials from the applicable park area in order to ensure that the circumstances of the park area are understood in the evaluation process. The fact that an official may be acquainted with the existing concessioner is not considered inappropriate by NPS. The contract is awarded to the offeror that submits the best overall proposal.

Section 51.19 (Deleted in the final rule) How Will the Director Select the Best Proposal?

This section also has been deleted in the final rule. Section 51.16 of the final rule describes the method for selecting the best proposal.

Section 51.20 (Section 51.17 in the final rule) What Are the Five Principal Selection Factors?

Several comments objected to the fact that this section and other sections refer to five principal selection factors instead of four as mentioned in the 1998 Act.

The regulations encompass five principal selection factors because one of the statutory factors, Section 403(5)(i), is, in fact, a double factor. This selection factor in the 1998 Act refers to "the responsiveness of the proposal to the objectives of protecting, conserving, and preserving resources of the unit of the National Park System and of providing necessary and appropriate facilities and services to the public at reasonable rates." (Emphasis added). There are unmistakably two distinct factors here, resource preservation and appropriate visitor services. For the sake of clarity, the regulations separate them. To the extent that the commenters may consider that this clarification somehow results in a change to the relative weight of the selection factors, NPS notes that the 1998 Act gives NPS discretion to weight the principal selection factors. NPS could have achieved the same result as splitting selection factor (1) into two factors by doubling the weight given to principal selection factor one so that both of its distinct elements would be of equal weight to the other selection factors. NPS considers, however, that better clarity is achieved by separating principal selection factor (1) into two factors. NPS has changed this section to refer to selection factors in general to conform to changes made to the secondary factor section of the proposed rule in response to public comments.

This section has also been changed in the final rule to delete reference to environmental enhancement as an element of principal selection factor (1) as requested by several comments. As discussed below, the matter of the "environmental enhancement" content of proposals is an element of a secondary factor in the final rule, also as requested by several commenters. See Section 51.17(b)(1). NPS has also made a change to this secondary factor by permitting it to be excluded from prospectuses in certain circumstances. See the discussion under Section 51.13. It has also rephrased the term "environmental enhancement" programs for clarification purposes. NPS considers that a secondary selection factor that is concerned with the conservation of resources in general is appropriate. Park areas are not immune from general environmental impacts. Progressive environmental management practices such as energy conservation and recycling ultimately assist in the preservation of park resources as well as in general environmental enhancement.

This section has also been changed in the final rule to delete the word "quality" in selection factor two as suggested by a commenter as the word "quality" is not contained in the related statutory provision. NPS, however, does not consider that this change results in any change in the meaning of the selection factor.

NPS, in response to a comment, included the phrase "if any," after the term franchise fee in the text of principal selection factor (5) to reflect the fact that it is possible that a concession contract will not call for a franchise fee in special circumstances. NPS did not add the phrase "and/or other forms of financial consideration" to the last two sentences of this selection factor as requested by a commenter as this would be inconsistent with the statutory provision concerning franchise fees.

A comment requested that the word "facilities" be included in the selection factor concerning past experience. NPS has not made this change as the term used in the regulation, "visitor services," is defined in Section 51.3 as including "facilities."

NPS has modified Section 51.20(a)(5) (Section 51.17(a)(5) in the final rule) to delete its last two sentences as unnecessary in light of the terms of principal selection factor (5) (which repeat the statutory mandate of Section 403(5)(iv) of the 1998 Act regarding consideration of franchise fees in awarding concession contracts).

A comment suggested that the term "park area" is ambiguous as used in this section, i.e., that it is not clear whether it refers to areas outside of park boundaries. NPS has not made a change in response to this comment. The term is generally intended to apply to property within park boundaries.

A commenter suggested that an offeror should be rated on its commitment to further the goals of the park area and to operate in a manner that is supportive of the ideals of the park. NPS considers that these interests are implicit in the established selection criteria.

Finally, several comments requested changes in the wording of the principal selection factors to reflect particular interests such as historic preservation, environmental enhancement and the circumstances of particular park areas. NPS, however, has retained the terms used by the statute as appropriate for the general regulations. Particular prospectuses can address special concerns and the circumstances of the applicable park area through subfactors or secondary factors.

Section 51.21 (Section 51.16 in the final rule) How Will the Director Apply the Five Selection Factors and Select the Best Proposal?

This section has been modified by NPS to incorporate a numerical scoring system while retaining the basic approach of evaluating on the basis of narrative analysis. A numerical scoring system was recommended by a number of commenters (discussed under

"General Comments"). Under the numerical scoring system, the first four principal selection factors may score as high as five points each. The fifth principal selection factor, the franchise fee offered, may only receive up to four points, reflecting that, pursuant to the 1998 Act, revenue to the United States is subordinate to the objectives of protecting, conserving, and preserving resources of the park area and of providing necessary and appropriate visitor services to the public at reasonable rates. The secondary factor concerning "environmental enhancement" activities (rephrased for clarification in the final rule) may receive up to three points. Any additional secondary factors contained in a prospectus may not have an aggregate score of more than three total points.

One comment suggested that the basis of a numerical point score system should be 100 points. However, NPS considers that evaluation of proposals on the basis of such a large scale results in scores that are difficult to explain, e.g., why did this proposal get rated as 74 while this one received a score of 76? NPS believes that scoring proposals on a lower scale such as contained in the final rule, based on the required narrative explanation of the basis for the score, leads to more credible, objective evaluations. However, the point score system described in the final rule does permit an evaluation panel to award whole number or fractional points, e.g., 2 points, 2.5 points, etc., as appropriate in the circumstances of a particular evaluation. A comment suggested that the same member of an evaluation panel evaluate all proposals with respect to particular selection factors. NPS has not accepted this suggestion. To the contrary, it may be better to have several persons evaluate varying elements of a proposal.

Another comment suggested that the franchise fee offered not be considered in an evaluation of proposals unless two or more proposals were determined as substantially equal. This suggestion has not been accepted as contrary to the intentions of the 1998 Act.

Section 51.22 (Deleted in the final rule) When Will the Director Apply Secondary Factors?

This section has been deleted from the final regulations as unnecessary in light of the changes made to sections 51.20 and 51.21. However, the last sentence of this section has been included in Section 51.17(b)(2) in the final rule. In addition, NPS has included reference to minority and women-owned businesses in this section in the final rule consistent with NPS policy and in response to a suggestion to this effect from a commenter. In connection with this section, NPS recognizes that minority, women and Native American-owned businesses are severely under-represented in the concessioner community. To remedy this, NPS strongly encourages minority, women and Native American-owned businesses to apply for concession contracts. In order to encourage this, NPS will provide interested persons and firms maximum allowable information and assistance by:

(1) Making reasonable efforts to include on all source lists of potential concessioners, minority, women and Native American-owned firms that have expressed interest in becoming a concessioner;

(2) Seeking the advice and assistance of the Minority Business Development Agency in locating and counseling these firms, as well as providing public information on concession opportunities to these firms; and

(3) Providing advice and counseling to these firms on how to participate in concession contract opportunities.

Section 51.23 (Deleted in the final rule) How Will the Director Select the Best Proposal If Two or More Proposals Are Assessed as Substantially Equal after the Director Has Applied the Principal and Secondary Factors?

This section has been deleted from the final regulations in light of the changes made to Sections 51.20 and 51.21. Section 51.16(c) of the final rule describes how the Director will select the best proposal in the event that two or more proposals receive the same highest score after evaluation under Section 51.16(a) and (b).

NPS notes, as discussed in "General Comments," that a number of comments objected to the "tie-breaker" concept contained in this and other sections of the proposed regulations. A concern in this connection was that the tiebreaker concept might lead to franchise fee bidding. The tiebreaker concept has been deleted from the final rule, both with respect to environmental enhancement and franchise fee considerations. In the event that two or more proposals receive the same highest numerical score after evaluation by NPS, the final rule provides that the Director will select as the best proposal the proposal (among those with the same highest score) that the Director considers will, on an overall basis, best achieve the purposes of the 1998 Act. This change is consistent with Section 403(5) of the 1998 Act that calls for NPS to select the best proposal after considering the statutory principal selection factors and any secondary factors that may be included in a prospectus.

Section 51.24 (Section 51.18 in the final rule and retitled) What Happens If a Proposal Is Rated as "Unacceptable" Under Any of the First Four Principal Selection Factors or If the Offeror Is Not a Qualified Person?

A comment suggested that this section should expound upon or give examples as to when a proposal may be considered unacceptable.

NPS, in response to this and other criticisms, has modified this section in the final rule to delete its first sentence and to add to it the balance of the provisions of Section 403(4)(B) of the 1998 Act, i.e., that a proposal must be rejected if it is not responsive to the general objectives of resource protection and proper visitor service. The modified provision, in addition to inclusion of the responsive proposal requirement, contains only the requirements of Section 403(4)(B) of the 1998 Act. NPS does not consider that further amplification of this statutory provision is necessary.

Section 51.25 (Section 51.19 in the final rule) Must the Director Award the Concession Contract That Is Set Forth in the Prospectus?

A comment made the point that the 1998 Act does not permit material amendments to the terms and conditions of a concession contract as set forth in the prospectus. NPS has amended this section in the final rule to reflect this comment.

Section 51.26 (Section 51.20 in the final rule) Does This Part Limit the Authority of the Director?

Several comments expressed concern about this section, asserting that the Director should not have unconditioned authority to determine when to solicit or award a concession contract, to cancel a solicitation, or to terminate a concession contract in accordance with its terms. NPS, however, considers that the provision is a proper statement of its authority and responsibility for the administration of concession contracts under the terms of the 1998 Act. Section 404(10) of the 1998 Act states that "nothing in this title shall be construed as limiting the authority of the Secretary to determine whether to issue a concession contract or to establish its terms and conditions in furtherance of the policies expressed in this title."

Section 51.27 (Section 51.21 in the final rule.) When Must the Selected Offeror Execute the Concession Contract?

A comment suggested that the time frame for execution of the concession contract by the concessioner should be specified as thirty days in all cases. NPS does not agree with this, as, given the varying type and scope of concession contracts, it needs to retain flexibility as to the time for execution by the selected offeror.

A comment suggested that if the selected concessioner does not receive a concession contract from NPS within ninety days from the date of the selection of the best proposal, or within ten days of the commencement of the contract period, whichever is later, it should have the right to withdraw its proposal. NPS has not included the ninety-day suggestion in the final rule because there may be circumstances in which NPS would not be able to issue a final contract in the specified time.

Section 51.28 (Section 51.22 in the final rule and retitled.) After the Selected Offeror Executes the Concession Contract, When May the Director Execute the Concession Contract?

A comment asked whether the gross receipts referred to in this section are the gross receipts of the concessioner or the franchise fees received by NPS from concessioners. The gross receipts referred to in this section are the gross receipts of the concessioner.

A sentence has been added to this section in the final rule stating that the NPS may execute a concession contract that is not required to be submitted to the Congress at any time after selection of the best proposal and execution by the concessioner.

Subpart D—Non-Competitive Award of Concession Contracts

Section 51.29 (Section 51.23 in the final rule) May the Director Extend an Existing Concession Contract Without a Public Solicitation?

A comment stated that this section should not be used to delay competitive bidding for existing contracts that have already been extended. NPS notes, however, that it does not intend to unduly delay competitive solicitations of concession contract proposals for a concession contract and that the extension authority provided by this section is limited as to when it may be exercised, *i.e.*, that the extension is necessary to avoid interruption of visitor services. NPS, however, has added a sentence to this section making clear that extensions under the 1998 Act in excess of an aggregate of three years are not permissible. It has also added a sentence requiring that notice of an extension be must published in the **Federal Register** thirty days in advance of the award of the extension (except in emergency situations).

Another comment suggested that this section be amended to provide the public with an opportunity to comment on the proposed extension of any concession contract. NPS notes that the 1998 Act does not require public notice in these circumstances. Moreover, NPS considers that public comment is not appropriate in light of the limited term of extensions and the limited circumstances in which a concession contract may be extended non-competitively.

Section 51.30 (Section 51.24 in the final rule) May the Director Award a Temporary Concession Contract Without a Public Solicitation?

A comment made the same point discussed above regarding public notice of an intention to extend concession contracts. NPS has also accepted the suggestion of requiring public notice of an intention to award a temporary concession contract. A sentence to this effect has been included in the final rule.

NPS has also clarified this section to make clear that that temporary concession contracts cannot be extended and may be issued for only a three year term in the aggregate with no ability to issue further temporary contracts for the continuation of the related visitor services. In addition, this section has been clarified to make clear that temporary concession contracts may not be awarded to continue to authorize the continuation of visitor services provided under an extended concession contract.

However, Subsection (b) of this section in the final rule makes a special exception to this latter requirement. It permits the Director to award a temporary concession contract to continue the visitor services provided by an extended concession contract if the concession contract was in effect as of November 13, 1998, and had been extended by that date or was due to expire by its terms by December 31, 1998, and was subsequently extended. This special rule is needed because more than 280 NPS concession contracts in effect as of November 13, 1998, were already extended or were due to expire by December 31, 1998. Due to limited resources, it may not be possible for NPS to award new concession contracts to replace all of these extended contracts within the three year extension period permitted by the 1998 Act. The Director, however, may not award a temporary concession contract in these circumstances unless the Director personally determines that the award is necessary to avoid interruption of visitor services and that all reasonable alternatives to the award of the temporary contract have been considered and found infeasible. The section in the final rule also requires the Director to follow the notice procedures set forth in 51.29 in the final regulations before awarding a temporary concession contract in these circumstances

The general concessioner organization objected to the last sentence of this section that concerns the status of the holder of a temporary concession contract with respect to a preference in renewal. The comment stated that this section should be amended to state that if a "permanent" concessioner is extended on a temporary basis by a temporary concession contract that its right of preference, if any, will be recognized when the temporary contract expires. NPS concurs with this suggestion (except for its anomalous reference to a "permanent" concessioner) and has amended this section accordingly.

Section 51.31 (Section 51.25 in the final rule) Are There Any Circumstances in Which the Director May Award a Concession Contract Without Public Solicitation?

A comment stated that NPS should include a substantive discussion as to how it intends to interpret and administer this section. NPS notes in this connection that the language of the section tracks a related statutory provision, Section 403(11)(C) of the 1998 Act. Given that it is impossible to describe prospectively what "extraordinary circumstances" may exist under which "compelling and equitable considerations" require the award of a concession contract to a particular person in the public interest, thereby permitting the non-competitive award of a full term concession contract, NPS does not believe that further regulatory guidance is generally practicable. However, NPS notes that the legislative history of the related statutory provision makes clear that the occasions when NPS determines that compelling equitable circumstance warrant award of a concession contract to a particular party should be extremely rare. The legislative history further states that "indisputable equitable concerns are to be the determinant of such circumstances." S. Rep. No.105–202, at p. 33 (1998).

NPS has included this last sentence in the final rule. It has also made a change

to clarify that the required notice must identify the person to whom the contract is to be awarded. In addition, it has changed the notice period in the final rule to sixty days. Finally, the final rule requires that the Secretary of the Interior approve any such contract award in addition to the Director.

A local government that is a concessioner (along with numerous comments from individuals in support of the position of the local government) suggested that this section be amended to permit non-competitive awards of concession contracts to governmental entities. NPS does not consider this to be within its legal authority under the Act even if otherwise appropriate.

Another comment requested that this section be clarified to make clear what official initiates a determination to award a concession contract under this authority. Under current internal delegations, the initiating official generally would be the Superintendent of the park area in question. However, no amendment is needed in this regard, as the regulations make clear that the term "Director" applies to subordinates of the Director with appropriate delegated authority.

One commenter requested that a clear direction be given as to whom it should contact in order to obtain the award of a concession contract under this section. The comment implies that a person has a right to a non-competitive award of a concession contract. This is not the case. The award of a contract under this section is in the discretion of NPS under the limited circumstances described in this section.

Subpart E—Right of Preference

As discussed above, a number of comments were received concerning this subpart to the effect that it fails to recognize that existing concessioners have a contractual right to a preference in renewal under 1965 Act concession contracts. The following discussion of comments relates only to the substance of procedures relating to a right of preference under the 1998 Act, not as to whether existing satisfactory concessioners under 1965 Act concession contracts have a contractual right of preference in renewal (discussed under "General Comments").

NPS has added in the final rule for clarity a new section (Section 51.27) explaining what a right of preference is under the 1998 Act (in accordance with the definitions in Section 51.3). NPS has also split Subpart E of the proposed regulations into two subparts in the final rule, Subpart E concerning the operation of a right of preference and Subpart F describing how a concessioner obtains a right of preference. NPS has also rearranged the order of the sections as contained in the proposed regulations to conform to the content of the new subparts as contained in the final rule. These changes are editorial, not substantive.

Section 51.32 (Section 51.50 in the final rule and retitled) Does the Existence of a Preferred Offeror and a Possible Right of Preference Limit the Authority of the Director to Establish the Terms of a Concession Contract?

A comment stated that this section gives NPS unilateral authority to modify the terms of existing concession contracts. NPS considers this an obvious misreading of this section but has added the word "new" to this section to resolve any ambiguity in this connection.

Section 51.33 (Section 51.36 in the final rule) What Three Conditions Must Be Met Before the Director Determines That a Prior Concessioner is a Preferred Offeror?

Several comments expressed concerns about this section to the effect that it provides NPS the ability to deprive a concessioner of a right of preference by amending the facilities and services authorized by a new concession contract to materially differ from those authorized by the prior concession contract. Although this was not the intention of NPS, the concern has been addressed in the final rule.

To understand the issue, the relevant provisions of the 1998 Act must be examined. The 1998 Act states as follows in pertinent part about the right of preference:

> As used in this title, the term preferential right of renewal ["right of preference" as defined in the proposed regulations and final rule] means that the Secretary of the Interior, subject to a determination by the Secretary that the facilities or services authorized by a prior concession contract continue to be necessary and appropriate within the meaning of section 402, shall allow a concessioner qualifying for a preferential right of renewal the opportunity to match the terms and conditions of any competing proposal which the Secretary determines to be the best proposal for a proposed new concession contract which authorizes the continuation of the facilities and services provided by the concessioner under its prior contract. Section 403(7)(c) of the 1998 Act. (Emphasis added).

In addition, Section 403(10) of the 1998 Act states:

> (10) Nothing in this section shall be construed as limiting the authority of the Secretary of the Interior to determine whether to issue a concession contract or to establish its terms and conditions in furtherance of the policies expressed in this title.

Accordingly, a right of preference under the 1998 Act only exists if the new concession contract "continues" the facilities and services provided under a prior concession contract. In this connection, NPS clearly has the authority under Section 403(10) of the 1998 Act to establish the terms and conditions of new concession contracts in furtherance of the purposes of the 1998 Act, even if any changes made may mean that the facilities and services authorized under a prior concession contract are not continued under a new concession contract. The concern of the commenters is that NPS will abuse this authority in order to deprive incumbent concessioners of a right of preference.

The proposed regulations state in Section 51.33(a) that in order for an otherwise eligible prior concessioner to obtain a right of preference to a new concession contract, the new concession contract must provide only for the continuation of the visitor services authorized under the prior concession contract. In addition in this connection, the proposed regulations state that the visitor services to be continued under the new contract may be expanded or diminished in scope but may not materially differ in nature and type from those authorized under the prior concession contract. NPS considers that this section properly reflects the intentions of the 1998 Act and properly reflects the discretion vested in NPS under the 1998 Act in this connection.

However, in response to the comments of existing concessioners, NPS has deleted the word "only" from Section 51.33(a) in conformance with Section 403(7)(C) of the 1998 Act.

This change appears in Section 51.37 in the final rule. NPS, for editorial purposes, has moved the right of preference condition regarding continuation of visitor services in a new concession contract from this section to Section 51.37. This is because the nature of the new concession contract (*i.e.*, whether it "continues" the previous visitor services) is more logically an element of determining what contracts are qualified new concession contracts. Moving this requirement to Section 51.37 in the final rule did not alter its meaning with respect to the circumstances in which an existing concessioner is entitled to a right of preference.

As a conforming amendment, Section 51.36 in the final rule has been clarified to state affirmatively that to be a preferred offeror the applicable new concession contract must be a qualified

concession contract. NPS has also modified this section in the final rule to clarify that a qualified prior concession contract for purposes of this section refers only to whether the prior concession contract was an outfitter and guide concession contract in accordance with the terms of the 1998 Act, not to the level of its gross receipts. It is possible that a prior concession contract with annual gross receipts in excess of $500,000 may be estimated to have less than $500,000 in annual gross receipts under the new concession contract, thereby providing a right of preference to the holder of the prior contract if otherwise qualified.

The general concessioner organization requested that a 50% test be incorporated into the regulations, *i.e.*, that if the new contract authorized the continuation of no less than 50% of the facilities and services of the prior concession contract, that the right of preference would obtain. NPS does not consider this suggestion to be within its authority under the 1998 Act as the 1998 Act states that there must be a continuation of the facilities and services, not a continuation of half of the facilities and services. Even if this change were within its authority under the 1998 Act, however, NPS considers that it would be inappropriate in light of the policies of the 1998 Act regarding competitive award of concession contracts.

NPS considers that the changes made to Section 51.33(a) in the final rule duly accommodate the concerns of the commenters.

Section 51.34 (Section 51.37 in the final rule) How Will the Director Determine That a Concession Contract Is a Qualified Concession Contract?

One comment suggested that the $500,000 figure contained in this section be subject to upward adjustment based on inflation as measured by the Consumer Price Index. However, the 1998 Act states the $500,000 figure with no reference to inflation while elsewhere the Act specifies that inflation is to be taken into account in the calculation of certain figures. NPS considers that adding an inflation adjuster to the $500,000 figure is not authorized by the 1998 Act. If it were authorized, NPS considers that such a change would be inappropriate in light of the competitive award objectives of the 1998 Act.

Another comment stated that the term "first calendar year" as used in this section is ambiguous, *e.g.*, if a contract is awarded mid-year, one may construe the period for calculating the gross annual receipts to be less than one full year. The comment suggested that the term the "first twelve months" be used instead of the "first calendar year." NPS has made this change.

Two comments were concerned about the fact that the period for which the $500,000 figure will be determined is the first year of the new contract rather than the entirety of the term of the new contract. The 1998 Act provides no express guidance in this connection. NPS has considered this comment but continues to believe that, in light of the difficulty in accurately projecting future revenues, limiting the determination of gross receipts to the first year of the new contract is reasonable.

The comments also suggest that if a concession contract that is to be continued under a new concession contract had gross revenues in excess of $500,000 in its last year, that it automatically should be considered that the new concession contract will have revenues in excess of $500,000 in the first year of a new contract. NPS considers that, although the revenues of a prior contract must be taken into account in determining the projected revenues of the new contract, the 1998 Act clearly indicates that the $500,000 figure relates to the revenues of the new concession contract, not to the revenues of the prior concession contract.

Another comment suggested that the $500,000 figure is arbitrary. NPS notes that the figure was set by the 1998 Act. The same comment objected to the fact that NPS is to determine whether prospective concession contract will have gross receipts in excess of $500,000, suggesting that the decision should be based on submittals to NPS under the prior concession contract. Further, the comment suggested that an existing concessioner should be consulted by NPS and provided an appeal if the concessioner disagrees with the decision of NPS. NPS has not accepted these suggestions in general, although it notes that a concessioner has an appeal right under Section 51.47 in the final rule as to a determination, among other matters, that a new contract will have gross receipts in excess of $500,000. In addition, a major basis of determining the gross receipts of a new concession contract will be the annual financial reports submitted under the previous concession contract. NPS considers that the procedures set forth in the final rule are appropriate and that further procedures regarding the determination of the gross receipts of a new concession contract are unnecessary.

Section 51.35 (Section 51.38 in the final rule) How Will the Director Determine That a Concession Contract Is an "Outfitter and Guide" Concession Contract?

Several comments expressed a concern about this section. One asked why outfitters and guides have a preference in renewal. Outfitters and guides have a preference in renewal under Section 403(8) of the 1998 Act.

Other comments focused on the phrase "solely authorizes" in this section. The comments suggest in general that minor or incidental services additional to outfitter and guide services should be permitted by NPS without loss of a right of preference by an outfitter and guide concessioner. However, NPS notes that Section 403(8) of the1998 Act contains the "solely authorizes" phrase which is merely repeated in the regulations. NPS, accordingly, has not made the suggested changes. However, a further discussion of a related issue is contained under Section 51.37.

Section 51.36 (Section 51.39 in the final rule) What Are Some Examples of Outfitter and Guide Concession Contracts?

A comment suggested that these examples include educational activities conducted by non-profit organizations. NPS has not accepted this suggestion as the examples given are of activities that are applicable whether or not the concessioner is a profit or non-profit organization.

Other comments suggested that guided mountain biking, float trips and other activities be added to the list of examples of outfitter and guide concession contracts. NPS has not done this, as the listed activities are only examples and not meant to be exclusive. Inclusion or exclusion of an activity as an example does not necessarily indicate that a particular related concession contract will be determined to be an outfitter and guide contract.

Section 51.37 (Deleted in the final rule) What Facts and Circumstances Will the Director Take Into Account When Determining if a Concession Contract Is an Outfitter and Guide Concession Contract?

A number of comments criticized this section with respect to its third and fourth sentences. Rather than modify these two sentences, NPS has deleted this section in light of the description of outfitter and guide concession concession contracts contained elsewhere in this subpart.

A concern was also expressed that activities of an outfitter and guide

concessioner outside of a park area should not be relevant in determining whether the concession contract is an outfitter and guide concession contract. NPS notes, however, that the relevant test is not whether activities take place outside of park area boundaries but whether activities are authorized by a concession contract. In any event, this issue is academic in light of the deletion of this section in the final rule.

Section 51.38 (Section 51.40 in the final rule and retitled) What Are Some Circumstances That Will Indicate That Outfitter and Guide Operations Are Conducted in the Backcountry?

A commenter was concerned that ferry boat service to an island in an urban setting might be considered as a "backcountry activity" within the meaning of this section as the service occurs in an area "remote from roads." The comment requested clarification in the regulations in this respect. NPS does not consider that this section needs clarification as it is meant to be applied on a case-by-case basis.

Another comment suggested that this section be changed to state that if an activity met any one of the factors stated in this section that it should be considered as a backcountry activity. NPS has not accepted this suggestion. The determination of whether outfitter and guide operations are conducted in the backcountry of a park area must be made on a case-by-case basis. There are no precise definitions of backcountry. Accordingly, while the regulations provide some factors that generally indicate that outfitter and guide operations are conducted in the backcountry of a park area, none of these factors can be considered as individually determinative of the issue. This section also has been modified to make clear that the determination of "backcountry" is to be made on a park-by-park basis taking into account the particular geographical circumstances of the relevant park area and the general factors identified.

The same comment suggested that the phrase that operations occur "in areas remote from roads and developed areas" be changed to "in areas not readily accessible to the public." NPS did not accept this suggestion as it considers that the term backcountry as used in the 1998 Act relates to more remote areas of a park rather than areas "not generally accessible to the public."

The same comment also suggested that a sentence be added to this section to the effect that a concession contract's operations may be determined to be conducted in the backcountry even if none of the circumstances specified in this section were met. NPS considers that the section makes this clear, particularly as amended in the final rule.

A comment stated that the term "backcountry" might describe an experience rather than actual physical setting, suggesting that rock climbing in a front country location should be considered as a backcountry activity. NPS has not made this change as NPS considers that the 1998 Act's reference to backcountry relates to physical location, not the nature of an experience.

Another comment suggested three revisions to this section:

1. The phrase regarding search and rescue should be deleted on the basis that search and rescue could be necessary even in park areas next to a parking lot;

2. The section should state that the health and safety of park visitors is more readily ensured by the supervision of experienced outfitter and guide services, regardless of the proximity to developed areas of a park; and

3. The role of outfitters and guides in protecting park resources by supervising visitation and reducing impacts should be recognized by adding the statement "the operations assist in dispersing visitors away from signature resources, features and other areas of intense visitation."

NPS has not accepted these suggestions. With respect to the first, although it is true that in certain cases search and rescue many be necessary even in close proximity to a parking lot, this is not relevant to the meaning of backcountry in this part.

NPS considers the second two suggestions to be policy positions that are not relevant to the determination of what is backcountry within the meaning of the 1998 Act.

Section 51.39 (Section 51.41 in the final rule) If the Concession Contract Grants a Compensable Interest in Real Property Improvements, Will the Director Find That the Concession Contract Is an Outfitter and Guide Concession Contract?

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Section 51.40 (Section 51.42 in the final rule) Are There Exceptions to This Compensable Interest Prohibition?

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Section 51.41 (Section 51.43 in the final rule) Who Will Make the Determination That a Concession Contract Is an Outfitter and Guide Contract?

A comment objected to the fact that only the Director personally, or a Deputy or Associate Director, may make the determination as to what concession contracts are outfitter and guide concession contracts. The commenter suggests that these decisions should be made at the field level under appropriate guidance. NPS, however, has not accepted this change. Given the varied nature of each park area and the judgmental factors that must be considered in making these determinations, NPS considers that making them on a national level is necessary for the sake of consistency. The term "Director" has been deleted from this section in the final rule to make clear that the Director is able to consider appeals under this section.

Section 51.42 (Section 51.44 in the final rule) How Will the Director Determine If a Prior Concessioner Was Satisfactory for the Purposes of This Part?

A number of comments were received in response to this section. The majority of the comments, including several from existing concessioners, supported the general intention of this section to the effect that a track record of satisfactory operations by an incumbent concessioner is a necessary precondition to entitlement to a right of preference. This intention reflects the requirements of Sections 403(8)(B)(ii) and 403(8)(C)(i) of the 1998 Act which states that an incumbent concessioner, if otherwise qualified, is entitled to a right of preference only if "the Secretary of the Interior has determined that the concessioner has operated satisfactorily during the term of the contract (including any extensions thereof)." Several comments stated that NPS has no authority under the 1998 Act to condition a right of preference on satisfactory performance. This view is clearly in conflict with the terms of the 1998 Act.

A comment objected to the phrase "and other relevant facts and circumstances" in subsection (a) and "among other considerations" in subsection (b) as being too vague. NPS has deleted the second phrase in the final rule in response to this comment but has left the first phrase. This is because there may be occasions when NPS becomes aware of actions of a concessioner that may result in a determination of less than satisfactory performance that were not revealed in a annual evaluations.

The general concessioner organization objected to subsection (b) on the grounds that a concessioner can be found to be less than satisfactory for any two years of the term of the contract and therefore lose its potential right of preference without an opportunity to

recapture the opportunity. To the contrary, another concessioner organization stated that this provision is "reasonable and promotes diligence to achieve acceptable performance standards." Another concessioner organization stated that the provision is "fair and appropriate to both the goals of performance-based renewal and provision of quality services."

Several comments suggested that two years of less than satisfactory performance should not automatically mean that a concessioner is determined as not satisfactory for purposes of a right of preference, *i.e.*, that the concessioner should be given an opportunity to correct less than satisfactory performance. NPS has not made this change as less than satisfactory annual evaluations are not a surprise to concessioners. There is ample opportunity to correct deficiencies that may result in less than satisfactory performance.

NPS, however, in this section in the final rule, also has made clear that the determination of unsatisfactory operation that automatically results from two or more less than satisfactory annual evaluations is not to be applied retroactively. This does not necessarily mean that a concessioner that had less than satisfactory evaluations prior to the effective date of the final rule may not be determined to have operated unsatisfactorily over the term of its contract. Rather, it only means that such a result is not required.

One comment suggested that "unsatisfactory" performance be defined as an unsatisfactory rating that is not corrected and, that, during the term of the prior concession contract, the overall rating as satisfactory or unsatisfactory be determined by averaging each year's performance rating. NPS considers these suggestions inappropriate, as they would encourage marginal or unsatisfactory performance by concessioners.

For these reasons, NPS has not changed the two-year track record requirement of this section in the final rule.

However, a number of comments particularly objected to the requirement of subsection (b) to the effect that less than satisfactory performance in either of the last two years of the term of a concession contract results in the loss of a right of preference. The comments considered this unfair. NPS has deleted the final sentence of this section in the final regulations. It agrees that the two-year less than satisfactory performance requirement should be the same with respect to all years of a contract.

A comment from a concessioner organization stated that, "overall, the Park Service has done an admirable and dedicated job" with respect to its annual performance evaluations. However, the comment, and others, suggested that the regulations should provide guidance as to the standards to be applied in annual concessioner evaluations. NPS has not accepted this suggestion. It would not be practical to include in the regulations generic standards for annual evaluations beyond the statutory standard of satisfactory performance under the terms of the applicable concession contract. NPS does point out, however, that its annual evaluation program permits a concessioner that receives a less than satisfactory rating to appeal this determination to the applicable NPS Regional Director.

NPS also notes that it is the process of considering revisions to its existing evaluation program in light of the 1998 Act and in light of NPS's intention to implement further "performance-based" contracting with respect to concession contracts.

Section 51.43 (Section 51.45 in the final rule) Will a Prior Concessioner That Has Operated for Less Than the Entire Term of a Concession Contract Be Considered a Satisfactory Operator?

A number of comments objected to this section and several questioned its legal basis.

The legal basis for this section is found in Sections 403(8)(B)(ii) and 403(8)(C)(i) of the Act which require as a condition to a right of preference that the Secretary determine that "the concessioner has operated satisfactorily during the term of the contract (including any extensions thereof)." The intention of these sections is clear. A right of preference, which amounts to a statutory right to have greater rights to the award of a government contract than the general public, must be earned through satisfactory performance. If NPS adopted the position espoused by several of the commenters, a business could purchase a concession contract on the very last day of the term of a concession contract and thereby obtain the statutory right of preference with no demonstration whatsoever of satisfactory performance. NPS does not consider this to be the intention of the 1998 Act or sound public policy.

NPS, however, in response to these comments, has made changes to this section in the final rule. Particularly, instead of requiring that a new concessioner operate satisfactorily for two years under a contract with a term of ten years or less or four years under a contract with a term of more than ten years, NPS has reduced these "track record" periods to one year for concession contracts with a term of five years or less and two years for concession contracts with a term of more than five years. NPS notes that the final rule in this respect is less restrictive than the comparable rule contained in 36 CFR 51.5(a) in effect prior to this final rule.

NPS considers that these changes will alleviate concerns about the ability to sell concession contracts toward the end of a contract term (in accordance with Section 408 of the 1988 Act) while providing a sufficient demonstration of satisfactory performance upon which to base a determination of a right of preference.

One comment suggested that the "track record" period of satisfactory performance under this section should not apply to contract extensions. However, the sections of the 1998 Act quoted above clearly reference extensions in this connection. In addition, the existing 36 CFR 51.5 contains these same types of "track record" requirements regarding the granting of a preference in renewal to existing concessioners. Congress must be presumed to have been aware of these existing requirements while considering the legislation that became the 1998 Act.

The same comment suggested that this section be amended to state that the first day of operation for purposes of the section be changed from the date of approval of the assignment of the concession contract until the first day of actual operations by the new concessioner. NPS has not made this change as a new concessioner lawfully cannot begin to operate prior to the approval of a contract assignment by NPS and, once the assignment is approved, the new concessioner automatically is the lawful operator of the concessioner. The final rule has also been clarified by expressly stating that the two-year track record requirement applies to new concessioners that result from assignments, including assignments of controlling interests in concessioners, as defined in this part.

Section 51.44 (Section 51.46 in the final rule) May the Director Determine That a Prior Concessioner Has Not Operated Satisfactorily After a Prospectus Is Issued?

A comment suggested that NPS delete this section, and, if NPS determines that performance has substantially degenerated after a prospectus is issued, that NPS terminate the contract and bring in an operator on a temporary basis. NPS, however, considers that this

section is necessary for the reasons stated in the next several paragraphs, and, with respect to the latter suggestion, considers it impracticable in light of the time it takes to terminate a contract for unsatisfactory performance. Other comments repeated the position that any requirement regarding satisfactory performance in order to obtain a right of preference is unlawful. NPS disagrees for the reasons discussed in the previous several paragraphs.

The intention of this section is to permit a determination that a concessioner has not operated satisfactorily after the date a prospectus is issued and prior to the award of a contract. It was intended to apply to situations where, after a prospectus is issued, a second less than satisfactory annual evaluation is made that precludes a preference in renewal, or, previously unknown information becomes available which causes NPS to withdraw a previous determination of satisfactory performance. The provision is necessary to avoid a less than satisfactory concessioner from exercising a right of preference by virtue of fortuitous timing of performance evaluations or by lack of knowledge by NPS of relevant information.

However, NPS has changed this section in response to the comments received to make clear the limited circumstances in which it is meant to apply.

As part of this change, NPS has included a provision that permits a performance evaluation for right of preference purposes after issuance of a prospectus on the basis of a shortened operating year if necessary to make a last evaluation of satisfactory performance for right of preference purposes prior to the selection of the best proposal submitted in response to a prospectus.

Section 51.45 (Section 51.48 in the final rule) What Happens to a Right of Preference in Case of Termination of a Concession Contract for Unsatisfactory Performance or Other Breach?

One commenter provided combined comments directed to this section and Section 51.44 but it appears that the comments were in fact directed to Sections 51.42 and 51.43. They have been responded to under those sections.

A comment requested that the last sentence of this section be "conformed in accordance with our comments on Section 51.44." NPS reviewed those comments but considers that the last sentence of Section 51.45 is necessary to make clear that termination of a concession contract is normally a "last resort" remedy for NPS and that, therefore, the fact that NPS may not have terminated a concession contract for unsatisfactory performance does not limit the authority of NPS to determine that a concessioner nonetheless operated less than satisfactorily.

Section 51.46 (Section 51.49 in the final rule) May the Director Grant a Right of Preference Except in Accordance With This Part?

The last two sentences of this section have been deleted as unnecessary.

Section 51.47 (Section 51.29 in the final rule) How Will I Know If a Preferred Offeror Exists?

The final regulation contains a new section 51.28 that describes when NPS will determine that a preferred offeror exists.

Section 51.48 (Section 51.26 in the final rule) What Solicitation, Selection and Award Procedures Described in This Part Will Apply to the Solicitation?

One comment was directed to this section but it clearly pertained to Section 51.84, not 51.48.

Section 51.49 (Section 51.30 in the final rule) What Must a Preferred Offeror Do Before He or She May Exercise a Right of Preference?

The general concessioner organization took the position that an existing concessioner under a 1965 Act concession contract not only has a "continuing contractual right of preference" but also has a contractual right to exercise the right of preference even if the concessioner chooses not to submit a responsive proposal in response to a prospectus. The organization makes this argument despite the fact that Sections 403(8)(B)(iii) and 403(8)(C)(ii) of the 1998 Act expressly state that in order for an incumbent concessioner to exercise a right of preference it must have "submitted a responsive proposal for a proposed new concession contract which satisfies the minimum requirements established by the Secretary pursuant to paragraph (4)." The commenter does not explain the basis of its position, other than to say that the requirement for submission of a responsive proposal was not included in the 1965 Act.

NPS considers this position baseless for several reasons in addition to the fact that it is in direct contradiction of the express terms of the 1998 Act.

The first reason is that the responsive proposal requirement of the 1998 Act reflects the terms of 36 CFR part 51 in effect prior to the passage of the 1998 Act. 36 CFR part 51 required, prior to this amendment, the submission of a responsive proposal by an existing satisfactory concessioner in order to be given a preference in renewal by NPS under the 1965 Act. In fact, the 1998 Act codifies the prior 36 CFR Part 51 in this respect.

In 1995, an incumbent concessioner challenged the validity of the responsive proposal requirement of 36 CFR part 51 after refusing to meet the minimum investment requirements of a prospectus for a new concession contract. *Hotcaveg* v. *Kennedy*, 883 F. Supp. 428, (E.D. Mo. 1995), *aff'd*, 72 F. 3rd 133 (8th Cir. 1995). The district court in *Hotcaveg* held that the responsive proposal requirement was not a violation of the 1965 Act, stating that:

> Requiring concessioners to meet minimum standards to improve the quality of facilities in national parks is a reasonable interpretation of the role of the National Park Service. The Secretary is carrying out his duty mandated by statute. *Id.* at 429.

Congress must be presumed to have been aware of the NPS regulatory requirement regarding submission of responsive proposals when it was considering the 1998 Act and also aware of the fact that the 8th Circuit had upheld this requirement in 1995 as an appropriate implementation of the 1965 Act. NPS points out that the general concessioner organization filed an *amicus* brief in Hotcaveg on behalf of the plaintiff and also objected to, as unlawful, the responsive proposal requirement of 36 CFR part 51 at the time it was proposed by NPS.

Secondly, 1965 Act concession contracts, of course, make no reference to a contractual right to not be obliged to submit a responsive proposal as a condition to being given a preference in renewal. Accordingly, NPS has rejected the commenter's position that the responsive proposal requirements of the 1998 Act do not apply to 1965 Act contracts because of Section 415 of the 1998 Act.

Further, such an interpretation would clearly frustrate the 1998 Act's goal of enhancing competition in concession contracting. If existing concessioners with a preference in renewal are not required to submit responsive proposals, prospective competitors will rightly conclude that submission of a competing proposal is a waste of time as the incumbent concessioner has a "lock" on the award of the new contract, evidenced by the fact that the incumbent, unlike the competitor, is not even required to submit a responsive proposal in order to compete for the contract.

Section 51.50 (Section 51.31 in the final rule) What Happens If a Preferred Offeror Does Not Submit a Responsive Proposal?

A comment repeated the argument regarding submission of a responsive proposal. This issue is responded to under Section 51.49.

Section 51.51 (Section 51.32 in the final rule) What Is the Process If the Director Determines That the Best Responsive Proposal Was Not Submitted by a Preferred Offeror?

One comment suggested that this section should make clear that NPS must advise the preferred offeror as to the specific areas in which it must amend its proposal to meet the better terms and conditions of the best proposal. NPS considers that this requirement is implicit in this section. However, NPS has made the requested change.

Section 51.52 (Section 51.33 in the final rule) What If the Preferred Offeror Does Not Timely Amend Its Proposal To Meet the Terms and Conditions of the Best Proposal or Is Not a Qualified Person To Carry Out the Terms of the Amended Proposal?

A comment was directed to Section 51.51 but NPS considers based on its content that it was intended to be directed to Section 51.52. The comment suggests that it is unlawful for the NPS to require "requalification" of a preferred offeror if it exercises a right of preference by matching the terms and conditions of a better proposal. NPS disagrees with this as Section 403(4)(B) of the 1998 Act states:

> (B) The Secretary shall reject any proposal, regardless of the franchise fee offered, if the Secretary determines that the person, corporation or entity is not qualified, is not likely to provide satisfactory service, or that the proposal is not responsive to the objectives of protecting and preserving resources of the unit of the National Park System and of providing necessary and appropriate facilities and services to the public at reasonable rates.

NPS considers that this section of law requires that an award of a concession contract, whether or not through the exercise of a preference in renewal, must be to a qualified person within the meaning of the statute. Congress could not possibly have intended the right of preference to require award of a concession contract to an unqualified entity.

However, NPS has modified this section in the final rule to delete express reference to the qualified offeror requirement of the 1998 Act as it would at best rarely occur that an amended proposal from a preferred offeror would need to be rejected by NPS on the basis of the qualified offeror requirement of the 1998 Act.

Section 51.53 (Section 51.34 in the final rule) What Will the Director Do If a Selected Preferred Offeror Does Not Timely Execute the New Concession Contract?

A comment appears to have been made in reference to this section. It suggests that it is not proper to require a preferred offeror to execute a concession contract within the period specified by the Director. The comment suggests that the language of the contract may differ from the prospectus or the proposal (an event not permissible under the statute and the regulations). NPS disagrees and notes that the requirement is equally applicable to all selected offerors, whether or not a preferred offeror.

Section 51.54 (Section 51.35 in the final rule,) What Happens to a Possible Right of Preference If the Director Receives No Responsive Proposals?

The general concessioner organization agreed with the intentions of this section but suggested that the word "different" be substituted for "more favorable" as it may be difficult to establish whether it is more or less favorable than the prior prospectus. NPS has not made the requested change to this section. This is because the new prospectus would necessarily be different from the old prospectus, *e.g.*, at the least, the commencement date of the new contract would very likely change in a new prospectus because of the passage of time.

Section 51.55 (Section 51.47 in the final rule and retitled,) How Do I Appeal a Decision That a Prior Concessioner Is Not a Preferred Offeror?

Several comments stated that thirty days is not sufficient time to prepare an appeal. (One comment suggested a sixty-day period.) In response to these comments, NPS has provided in the final rule that NPS may extend this period upon request by the concessioner if NPS determines that the concessioner demonstrates good cause for an extension. NPS has also included a requirement in the final rule that an appeal must specify the grounds for the appeal. In addition, in response to comments encouraging competition in concession contracting, NPS has expanded the administrative appeal right contained in the proposed regulations to permit a person an administrative appeal with respect to a determination by the Director that a concessioner is a preferred offeror. NPS considers, in light of the anti-competitive consequences of preferred offeror status, that potential competitors should have a right of administrative appeal with respect to such determinations.

A comment suggested that the appeal should not be considered by the Director personally (or a Deputy or Associate Director) as called for by this section. The concern is that these individuals may be too busy to timely consider an appeal. However, NPS considers that these officials will be able to make timely appeal decisions. Moreover, the fact that an appeal must be considered by the highest levels of NPS is for the benefit of concessioners as it ensures national consistency on the important issue of right of preference.

Another comment suggested, without amplification, that the appeal process contained in this section is "illusory." NPS disagrees. The Director (or a Deputy or Associate Director) will be fully accountable for their appeal decisions.

The general concessioner organization submitted extensive comments on this section. NPS responds below. However, NPS first notes that the underlying premise of the comments is that it is illegal for NPS to require concessioners that, allegedly, have a contractual right of preference under 1965 Act concession contracts, to submit a responsive proposal in order to exercise this right. As a consequence of this argument, the commenter describes a number of hypothetical consequential inequities resulting from this section. The issue of whether a concessioner with a "contractual right of preference" has to submit a responsive proposal as required by the statute is addressed under Section 51.49. NPS responds here only to other aspects of the comment's criticisms of this section.

The general concessioner organization's first specific point is that NPS must make the internal decision as to whether the existing concessioner is a "preferred offeror" before issuing a prospectus. This is not the case. NPS notes that in most cases an existing concessioner will know that it is a satisfactory concessioner for purposes of a preference in renewal in advance of the issuance of a prospectus. However, NPS will not necessarily make final decisions affecting the existence of a preferred offeror regarding the terms of the new concession contract (i.e., will it have gross receipts of less than $500,000, will it be an outfitter and guide contract, will it continue the previous visitor services), prior to the issuance of the prospectus.

The comment goes on to argue that submitting a responsive proposal is a heavy burden that a concessioner should not have to bear prior to a decision as to whether it is a preferred offeror. This argument is posited on the notion that a concessioner with an asserted "contractual right of preference" is not legally required to submit a responsive proposal in response to a prospectus in order to exercise a right of preference. As discussed under Section 51.49, this is not the law. The statutory requirement to submit a responsive proposal is not a burden imposed by this section. It is imposed by the 1998 Act.

Several commenters suggested in effect that the regulations should make clear that a right of appeal is to be provided not only with respect to a concessioner's status as a preferred offeror but also with respect to whether a new concession contract is a qualified concession contract for purposes of a right of preference. NPS agrees with this suggestion and has clarified this section and other sections in the final rule to make clear that an appeal regarding whether a concessioner is a preferred offeror includes appeal as to whether a new concession contract is a qualified concession contract. NPS has made several other conforming amendments to sections of the final rule to reflect an appeal right for a determination that a new concession contract is not a qualified concession contract.

NPS notes, however, that although the final rule expressly provides an appeal from a determination that a new concession contract is not a qualified concession contract, this does not establish an appeal with respect to the content of prospectuses or the terms and conditions of new concession contracts. The content of prospectuses and the terms and conditions of new concession contracts, except to the extent mandated by this part or the 1998 Act, are determined in the discretion of NPS. (See Section 403(10) of the 1998 Act: "Nothing in this title shall be construed as limiting the authority of the Secretary to determine whether to issue a concession contract or to establish its terms and conditions in furtherance of the policies expressed in this title.")

In addition to these general comments, the general concessioner organization made a number of more specific arguments concerning this section, asserting for a variety of reasons that it is illegal. NPS responds to them as appropriate as follows.

In its first specific comment, the general concessioner organization misreads Section 51.32 of the proposed regulations to interpret it to mean that NPS may unilaterally modify the terms and conditions of existing concession contracts. Section 51.32, of course, does not give NPS the authority to do this. NPS has amended Section 51.32 in the final regulations to eliminate any ambiguity it may have contained in this regard.

The commenter states that although the NPS now attempts to justify these additional procedural burdens in order to ensure that a right of preference cannot "block policy," the commenter is "not aware of any significant bidding scenario in the history of the NPS concession program in which a right of preference was successfully used to promote such interference."

NPS notes that the quoted words do not appear in the proposed regulations or in their preamble.

The comments suggest that it is the intention of the proposed regulations that an appeal under this section is to be made to the initial decision-maker. This, of course, is not the case. The apparent confusion of the commenter is based on the fact that the regulations as a matter of form always refer to the "Director" as the responsible official. This is customary practice in NPS regulations and in many regulations of other federal agencies. In fact, it tracks the 1998 Act that always refers to the Secretary of the Interior as the responsible official even though, of course, the Secretary's responsibilities under the Act are delegated to subordinate officials. The proposed regulations were not intended to suggest that appeals from a deciding official would be directed to the deciding official. The proposed regulations state that the term "Director" means the Director of the National Park Service or an authorized representative of the Director, except where a particular official is specifically identified in this part.

The comments suggest that this section is illegal in violation of the Administrative Procedures Act on the premise that ajudicatory proceedings must be utilized in such an appeal. However, the Administrative Procedures Act does not require ajudicative procedures in the type of determination at issue in this section. The procedures provided meet all legal requirements..

The comments repeat the concern about an appeal to the deciding official and suggests that the appeal provided by this section fails to provide meaningful, timely relief. The basic argument is that it is improper for a solicitation to proceed while an appeal is ongoing. This argument, in turn, is premised on the notion that an incumbent concessioner with a "contractual right of preference" is not required to submit a responsive proposal (contrary to the express terms of the 1998 Act). The argument is that the existing concessioner in these circumstances, if the appeal is not determined prior to the release of a prospectus, will be required to take an action (submission of a responsive proposal), that it is not otherwise legally required to do. NPS has not made this change as the 1998 Act requires submission of a responsive proposal.

The comments assert that the fact that in this section the appellant only receives a "possible" right of preference if it wins an appeal does not "guarantee" that the concessioner will have a right of preference. But the term "possible" with respect to a right of preference only refers to the fact that a concessioner with a "possible" right of preference must submit a responsive proposal, as expressly required by the 1998 Act, in order to have an unconditional right of preference. However, to avoid confusion, NPS has deleted reference to a "possible" right of preference in the final rule except in circumstances where clarity requires use of the word.

The comments summarily allege that the appeal procedure contained in this section is illegal. NPS disagrees with this position. For the reasons discussed above, the administrative appeal provided by this section conforms with standard administrative practice, deprives no one of any constitutional rights, and is consistent with the purposes of the 1998 Act.

The last specific comment of the general concessioner organization under this section is a restatement of its prior arguments, particularly the argument that an incumbent concessioner with a "contractual right of preference" is not required to submit a responsive proposal to a concession contract prospectus in order to exercise the right of preference. The general concessioner organization's argument is baseless as discussed under Section 51.49.

Subpart F—Leasehold Surrender Interest (Subpart G in the final rule.)

Section 51.56 (Section 51.51 in the final rule.) What Special Terms Must I know To Understand This Part?

"Arbitration"

For the purposes of clarity, NPS has added a definition of "arbitration" and a description of arbitration procedures to this section in the final rule. This replaces the description of arbitration proceedings contained in Section 51.78 in the proposed regulations. See the

discussion under Section 51.78 as to how the final rule is changed with respect to arbitration procedures. Other references to arbitration in the final rule also refer to Section 51.51 of the final rule.

"Capital Improvement"

The general concessioner organization objected to this definition because it differed from the definition of "capital improvement" contained in the 1998 Act. The comment states that "NPS has no authority to use a different definition." This statement is incorrect. NPS, in drafting regulations to implement the 1998 Act, has clear authority to interpret the 1998 Act through appropriate definitions to set forth understandable and workable regulations consistent with the terms of the statute.

NPS, however, in order to accommodate the concerns of the organization in this connection, has amended this definition in the final regulations to track the 1998 Act's definition. This amendment does not result in a substantive change to the meaning of "capital improvement."

Several commenters suggested that this definition be clarified to make clear that it encompasses floating docks. NPS, because of the special circumstances of floating docks, has amended the definition of "fixtures" in this connection and has also added the term "barges" to the capital improvement definition to make clear that barges are not floating docks. Floating docks are considered to be non-removable equipment under this part for leasehold surrender interest purposes only. This change should not be construed as indicating that NPS necessarily considers that possessory interest may be obtained in floating docks.

"Construction Cost"

The general concessioner organization objected to the definition of "construction cost," stating that it does not cover all elements of construction cost. This comment is discussed below under "Eligible Direct and Indirect Costs."

The commenter also requested deletion of the reference to a concessioner's income tax returns with respect to construction cost. NPS has done this in the final rule. In addition, as suggested by the general concessioner organization, the final rule states that construction costs must be capitalized by the concessioner in accordance with Generally Accepted Accounting Principles (GAAP).

NPS did not remove the reference in this definition to "approval by the Director" as requested by a commenter. However, the approval process in the text of the final rule has been amended to reflect the commenter's concerns in this respect.

"Depreciation"

The general concessioner organization objected to the inclusion of certain terms in the definition of "depreciation" as contained in the proposed regulations, arguing that obsolescence should not be an element of depreciation with respect to leasehold surrender interest capital improvements. However, the common definition of depreciation as used in the appraisal industry states that it is the loss of value in property from "any cause" and further states, in regard to improvements, that depreciation encompasses both "deterioration and obsolescence." See the definition of "depreciation" in The Dictionary of Real Estate Appraisal, 3rd Edition (1993), published by the Appraisal Institute (hereinafter referred to as the "3rd Edition"). NPS does not consider that there are significant differences, if any, between the depreciation terms of the 1998 Act and the definition of depreciation contained in the 3rd Edition. In this connection, the commenter elsewhere refers to the Appraisal Institute as an appropriate source of definitions regarding leasehold surrender interest terms. In any event, NPS, in the final rule, has deleted the terms to which the commenter objected as unnecessary.

NPS notes that the House and Senate Committee Reports that accompanied S. 1693, in their general description of the bill, mention "wear and tear" depreciation but in their section-by-section analyses discuss depreciation in terms of deterioration and prospective serviceability. NPS considers that the reference to "wear and tear" depreciation was off-hand and not meant to modify the statutory description of depreciation.

Another commenter asked whether "depreciation" refers to depreciation for federal income tax purposes. It does not. It refers to the type of depreciation discussed above.

"Eligible Direct and Indirect Costs"

NPS was surprised that several comments objected to the scope of construction costs (direct and indirect) contained in the proposed regulations. This is because the proposed regulations, to the benefit of concessioners, utilized a significantly more expansive definition of "construction cost" than its usual meaning. Particularly, NPS included in the definition a number of indirect costs of a concessioner related to construction, e.g., architect's fees, environmental study costs, and on-site inspection expenses, even though the developer's costs related to construction are not generally considered to be "construction costs."

For example, *The Dictionary of Architecture & Construction*, Second Edition (1993), defines "construction cost" as:

> The cost of all the construction portions of a project, generally based upon the sum of the construction contract(s) and other direct construction costs; does not include the compensation paid to the architect and consultants, the cost of the land, right-of-way, or other costs which are defined in the contract documents as being the responsibility of the owner.

For another example, the 3rd Edition defines "construction cost" as:

> The cost to build, particularly an improvement; includes the direct costs of labor and materials plus the contractor's indirect costs. (Emphasis added.)

The comment from the general concessioner organization took the position that the definition of "construction cost" should be that which is utilized in Chapter 16 (page 346) of the Eleventh Edition of "*The Appraisal of Real Estate*" published by the Appraisal Institute (hereinafter referred to as the "11th Edition").

NPS has reviewed the elements of construction cost that are contained in the 11th Edition. However, NPS notes that the context of the term "construction cost" as used in Chapter 16 of the 11th Edition is for purposes of appraising the fair market value of real estate by the reproduction or replacement cost method. For this reason, several costs of the owner (such as marketing expenses and post-construction carrying costs) may be included as indirect costs for the purposes of a fair market value appraisal. The fact that "construction cost" has this broader meaning in Chapter 16 is apparent from the fact that the 3rd Edition, referenced above, the American Appraisal Institute's dictionary of appraisal terms, defines "construction cost" as the cost to build, including indirect costs of the contractor. No reference to the costs of the owner is made. The 3rd Edition is cited as a reference in the 11th Edition.

Accordingly, NPS does not consider that the 11th Edition's description of "construction cost" for fair market value purposes is reflective of the meaning of the term as used in the 1998 Act. The following provision of the legislative history of the 1998 Act makes clear that

a "fair market value" definition of construction cost was not intended by the Congress:

> The Committee considers that the leasehold surrender interest described by this section will provide concessioners with adequate security for investments in capital improvements they make. This will assist in encouraging such investments in visitor facilities in the National Park System. However, the value of a leasehold surrender interest, i.e., the original construction cost, less depreciation as evidenced by physical condition and prospective serviceability, plus what amounts to interest on the investment based on the Consumer Price Index, should accurately reflect the real value of the improvements and should not result in any undue compensation to a concessioner upon expiration of a concession contract. Additionally, the value of the leasehold surrender interest will be relatively easy to estimate so that a prospective new concessioner and the Secretary can accurately calculate the amount for purposes of competitive solicitation of concession contracts. S. Rep. No. 105–202, at p. 35 (1998).

NPS also notes that "fair market value" was an express element of the value of possessory interest under the 1965 Act. If Congress had intended the term construction cost to be construed in a fair market value context, it would have so stated consistent with the terms of the 1965 Act. NPS considers that the definition of construction cost and of the terms "eligible direct and indirect construction costs" as set forth in the proposed regulations are appropriate interpretations of the term "construction cost" as used in the 1998 Act.

However, in an effort to accommodate the reasonable concerns of the general concessioner organization, NPS in the final rule has included all the direct construction costs set forth in the 11th Edition. In addition, NPS has included in the final rule as many of the specific indirect costs mentioned in the 11th Edition as it considers reasonable in light of its understanding of the term "construction cost" as used in the 1998 Act.

NPS has not included in the final rule the following indirect costs mentioned in the 11th Edition: marketing expenses; sales commissions; leasing commissions; legal fees; title transfers; the cost of carrying the investment after completion of construction; and tenant improvements (tenant improvements may be eligible direct costs).

NPS also has not included as an indirect cost the cost of carrying the investment in land as mentioned in the 11th Edition, as a concessioner makes no investment in land.

NPS particularly would like to comment on a concessioner's administrative expenses related to construction. The 11th Edition mentions the "administrative expenses of the developer" as possible indirect costs for fair market value appraisal purposes. NPS has not included this very broad item of indirect costs in the final rule, but, consistent with the proposed rule, has included administrative expenses of the concessioner related to direct, on-site construction inspection. NPS notes that, unlike the administrative expenses of a "developer" as contemplated by the 11th Edition, a concessioner's administrative expenses flow from all of its business activities. In any event, NPS does not consider that additional administrative expenses of a concessioner are appropriate to include as eligible indirect construction costs for the reasons discussed in the preceding paragraphs.

The general concessioner organization also requested that "entrepreneurial profit" be treated as a construction cost. However, the 11th Edition describes "entrepreneurial profit" as the difference between the "cost of development" and the "value of the property" after completion." 11th Edition, p. 346. Accordingly, entrepreneurial profit is not a direct or indirect construction cost even as described by the 11th Edition for fair market value appraisal purposes.

NPS also has not accepted the commenter's suggestion that construction costs include "extra costs" associated with dealing with the NPS. The costs of the construction are what they are. Any "extra" construction costs that may exist (NPS does not agree that there are such "extra" costs) with respect to the fact that a concessioner's construction activities are subject to oversight by NPS are necessarily included within the actual construction cost.

The general concessioner organization questioned the portion of this definition that limits construction costs to "amounts no higher than those prevailing in the locality of the project." NPS considers this limitation necessary and has retained it in the final rule. This limitation is important in circumstances where construction work is performed directly by the concessioner, *i.e.*, force account work, or performed by an affiliate of a concessioner. In this connection, a comment suggested that construction costs should include the costs of the concessioner when the concessioner acts as a contractor, *e.g.*, constructs or installs a capital improvement with its own labor force. The definition of construction costs in the final rule makes this clear. NPS notes, however, that only actual expenses of the concessioner capitalized in accordance with Generally Accepted Accounting Principles are construction costs for leasehold surrender interest purposes.

Another commenter, in addition to making generally the same suggestions as discussed above, requested that the cost definitions be amended to make clear that a current concessioner is not required to pay for environmental studies that are to be used by NPS to develop a prospectus. NPS has not made any changes in this connection as it considers that the regulations cannot be read to require a concessioner to pay for environmental studies in these circumstances.

This commenter also suggested that costs of concessioner initiated studies that facilitate the work and enhance the environment should be eligible costs . NPS considers that the cost definitions in the final regulations achieve this objective to the extent consistent with the term "construction cost" as used in the 1998 Act.

"Fixtures and Non-Removable Equipment"

The general concessioner organization objected to the second sentence of this definition as being too restrictive as to the meaning of these terms. It also suggested an alternative test. NPS has adopted as appropriate the alternative test in the final regulations and has deleted the examples to avoid possible confusion. To avoid unnecessary discussion, NPS deleted the examples of fixtures and non-removable equipment as several commenters objected to one or more of them as being incorrect. Their deletion, however, should not be considered as indicating that NPS necessarily considers any of the examples to be incorrect.

"Ineligible Costs"

NPS has deleted this definition in the final rule as unnecessary. The deletion obviates concerns expressed about this definition.

"Leasehold Surrender Interest"

One commenter asked whether "related capital improvements" as used in this definition may refer to improvements a concessioner makes that are not related to its operations. The definition contained in the proposed regulations relates only to capital improvements built on park lands under the terms and conditions of a concession contract. If a concessioner makes capital improvements to park lands under some other form of authorization, no leasehold surrender interest would be obtained.

A comment (that attached a letter from a bank) suggested that banks will not lend money on the basis of a leasehold surrender interest under the limitations of the 1998 Act. NPS disagrees. The leasehold surrender interest concept will permit concessioners to obtain loans using leasehold surrender interest as collateral. NPS notes that the objections of the bank to leasehold surrender interest apply equally to possessory interest under the 1965 Act. Many lending institutions made loans to concessioners secured by possessory interest.

"Leasehold surrender interest value"

NPS has added to the definition of leasehold surrender interest value in the final rule reference to Section 405(a)(4) of the 1998 Act that permits a different valuation of leasehold surrender interest in certain circumstances effective nine years after the effective date of the 1998 Act. It has also clarified the proposed rule in the final rule to indicate that, in the event a concessioner ceases to utilize a related capital improvement under the terms of a concession contract prior to the termination or expiration of a contract (*e.g.*, where the Director takes a capital improvement out of service for resource protection purposes), the applicable depreciation and entitlement to payment of leasehold surrender interest value is established as of the date the concessioner ceases to utilize the related capital improvement.

"Major rehabilitation"

NPS has modified the definition of "major rehabilitation" in the final rule to adopt a 50% test rather than a 100% test as discussed under Section 51.75.

"Related Capital Improvement or Fixture"

* * * * *

"Structure"

A comment suggested that the term "structure" be amended to include landscaping and plantings that are installed as integral to the construction of a capital improvement. NPS has adopted this suggestion in the final rule to the extent that landscaping is an integral component of the construction of a structure. Landscaping includes necessary initial plantings but does not include "re-landscaping" (except as part of a major rehabilitation), landscape maintenance or subsequent plantings.

"Substantial Completion"

For the purpose of clarity, NPS has added a definition of "substantial completion" in the final rule. The definition tracks the definition of the term in the 3rd Edition. A commenter questioned the use of the term in the proposed regulations. The term is needed in order to establish the completion date of a capital improvement.

Section 51.57 (Renumbered as Section 51.52 in the final rule.) How Do I Obtain a Leasehold Surrender Interest?

The general concessioner organization objected to the second sentence of this section, stating that "NPS cannot qualify the right to leasehold surrender interest by contract, and to do so is inconsistent with the 1998 Act."

This position cannot be reconciled with the express language of Section 405 of the 1998 Act:

> (a) Leasehold Surrender Interests Under New Concession Contracts.—On or after the date of enactment of this title, a concessioner that constructs a capital improvement upon land owned by the United States within a unit of the National Park System pursuant to a concession contract shall have a leasehold surrender interest in such capital improvement subject to the following conditions. * * * (Emphasis added).

Under this authority, the terms and conditions of a concession contract may detail leasehold surrender interest requirements so long as the provisions are consistent with the 1998 Act. In this connection, Section 403(10) of the 1998 Act states that "Nothing in this title shall be construed as limiting the authority of the Secretary to determine whether to issue a concession contract or to establish its terms and conditions in furtherance of the policies expressed in this Title." (Emphasis added.) Further, Section 417 of the 1998 Act requires the Secretary to promulgate regulations appropriate for implementation of the 1998 Act. There is nothing in the 1998 Act that suggests that such regulations may not place appropriate conditions on leasehold surrender interest.

Section 51.58 (Deleted in the final rule) If a Concessioner Does Not Comply with the Requirements of This Part or the Terms and Conditions of a Concession Contract, What Happens?

The general concessioner organization objected to this section because "a concessioner is entitled to a leasehold surrender interest in all capital improvements it constructs on park lands." This statement, however, leaves out the phrase of the 1998 Act discussed under the previous section that grants a leasehold surrender interest for capital improvements that are constructed "pursuant to a concession contract." The commenter also argues that this section is vague in referring to the requirements of this part and the terms and conditions of the concession contract without further guidance. NPS does not consider that these regulations or its concession contracts are vague as to leasehold surrender interest requirements or otherwise. However, in consideration of comments in this connection, NPS has deleted this section in the final rule as unnecessary in light of the leasehold surrender interest terms of the 1998 Act, this part, and concession contract terms and conditions.

Another commenter suggested that this section improperly gives NPS the ability to deprive a concessioner of leasehold surrender interest by determining that the concessioner had failed to meet the requirements of its concession contract. NPS considers that the commenter misconstrued the meaning of this section. In any event, the section has been deleted in the final rule.

Section 51.59 (Section 51.53 in the final rule and retitled) Why May the Director Authorize the Construction or Installation of a Capital Improvement?

The general concessioner organization suggested in a comment on this section that the phrase "under the terms of a concession contract" be added after the first use of the word "concessioner" in this section. NPS has been made this change.

Section 51.60 (Section 51.54 in the final rule) What Must a Concessioner Do Before Beginning To Construct or Install Capital Improvements in Which The Concessioner Seeks a Leasehold Surrender Interest?

Several comments were received objecting to the ability of NPS to determine that construction costs are "unreasonable." In response to these comments, NPS has amended this section in the final rule to delete reference to disapproval of the construction of a capital improvement if NPS considers the costs unreasonable.

Another commenter suggested that approvals under this section should be delegable to the park area superintendent. See the changes to the definition of Director in Section 51.3.

Section 51.61 (Section 51.55 in the final rule) What Must a Concessioner Do After Substantial Completion of The Capital Improvement?

The general concessioner organization made several comments on this section.

The first sentence of its comment on this section appears to be incomplete. NPS thinks the comment meant to say

that, although construction invoices should be available and a certification by certified public accountant is appropriate, the invoices should not be submitted to NPS but only be made available to NPS for inspection for a period of three years after project completion. This suggestion, if NPS has accurately interpreted it, is not acceptable to NPS. Other commenters made similar suggestions. The existence of a leasehold surrender interest in effect places on the government a burden to pay a concessioner, or require a third party to pay a concessioner, the construction cost of a building perhaps twenty or more years after the building is completed. This obligation, in the view of NPS, requires submission to NPS of the information required by this section in order to properly fulfill NPS's administrative responsibilities for this financial obligation.

The comment also requested that the costs of obtaining the certified public accountant certification be a construction cost element for leasehold surrender interest purposes. NPS has not accepted this suggestion in light of the definition of "construction cost" set forth in Section 51.56.

NPS has modified this section in the final rule to clarify that the construction cost of a project incurred after substantial completion of a project are included as construction cost for leasehold surrender interest purposes.

Section 51.62 (Section 51.56 in the final rule) How Will the Director Determine the Construction Cost for Purposes of Leasehold Surrender Interest Value?

Several comments suggested in effect that this section provides NPS with undue latitude to define eligible construction costs for which a leasehold surrender interest will be obtained after construction is complete, thereby placing an undue risk on the concessioner. NPS has amended this section in the final rule to make clear that the review of constructions costs by NPS after project completion is limited to a determination that the construction costs claimed are eligible costs within the meaning of these regulations. NPS considers that this change will satisfy the concerns of the commenters in this connection. NPS feels strongly, however, that NPS review of submitted construction costs is an absolute requirement in light of the financial obligation leasehold surrender interest creates for the government or a successor concessioner.

A comment objected to the fact that this section imposes no time constraints on the Director with respect to approval of leasehold surrender interest construction costs. NPS has not changed this section in response to this comment as it is impossible to state a standard time period for the review of construction costs in light of the fact that some projects may be for as little as $10,000 and others in excess of $10 million. This is likewise true with respect to a time limit for appeals under Section 51.63.

Section 51.63 (Section 51.57 in the final rule and retitled) May the Concessioner Appeal the Director's Determination of Construction Cost?

Several comments objected to the appeal process provided by this section on the general grounds that it does not provide sufficient rights to the concessioner. NPS has changed this section in the final rule to make a dispute over construction cost subject to binding arbitration at the request of a concessioner.

Section 51.64 (Section 51.58 in the final rule) What Actions May or Must the Concessioner Take With Respect to a Leasehold Surrender Interest?

The general concessioner organization objected to subsection (c) of this section with respect to its statement that a concessioner may agree to an alternative value for leasehold surrender interest. While not necessarily agreeing with this comment, NPS has deleted the phrase regarding alternative values in the final rule. Other comments suggested that this section should state that NPS cannot require waiver of a leasehold surrender interest. NPS has not changed this section in this respect as it merely repeats an express term of the 1998 Act.

Section 51.65 (Section 51.59 in the final rule) Will Leasehold Surrender Interest Be Extinguished by Expiration or Termination of a Concession Contract or May It Be Taken for Public Use?

The general concessioner organization made a comment on this section that "only payment pursuant to the 1998 Act constitutes just compensation for any purpose." NPS considers that the payment terms of the final rule are consistent with the 1998 Act regarding leasehold surrender interest. The commenter also made an argument under this section as to when payment for leasehold surrender interest must be made. This argument is addressed under Section 51.67.

Section 51.66 (Section 51.60 in the final rule) How Will a New Concession Contract Awarded to a Prior Concessioner Treat a Leasehold Surrender Interest Obtained Under a Prior Concession Contract?

The general concessioner organization objected to this section on the same grounds as it objected to Section 51.65. NPS has modified this section (and Section 51.65) in the final regulations to delete as unnecessary the phrase "the new concession contract" and to replace it with "this part."

Section 51.67 (Section 51.61 in the final rule) How Is a Prior Concessioner That Is Not Awarded a New Concession Contract To Be Paid for a Leasehold Surrender Interest?

Several comments objected to this section with respect to the timing of payment for leasehold surrender interest, particularly to the fact that the section does not necessarily require payment for a concessioner's leasehold surrender interest immediately upon expiration or termination of the concession contract. Rather, the proposed section permits payment within one year of contract expiration or termination if a successor concessioner is to acquire the leasehold surrender interest and two years if the payment is to be made by NPS.

The comments of the general concessioner organization take the position that a concessioner has a right under the 1998 Act "to continue to operate the facilities under the terms of the concession contract until it is paid for its leasehold surrender interest, as required by the 1998 Act." This position suggests that a concessioner that is providing unsatisfactory service to the public, is not maintaining its buildings, or, that is engaged in environmentally damaging activity, among other possibilities, has a right, paramount to the preservation and protection of the park area and its visitors, to continue to operate until leasehold surrender interest payment is received.

This position is manifestly contrary to the purposes of the 1998 Act.

The position is also without legal merit. NPS points out that Section 405(a)(1) of the 1998 Act states that a concessioner has a leasehold surrender interest in capital improvements under a concession contract, "consisting solely of a right to compensation for the capital improvement to the extent of the value of the concessioner's leasehold surrender interest in the capital improvement." (Emphasis added.) This provision makes no mention of a right to continue operations until the date of

payment as asserted by the general concessioner organization. NPS considers that such a right, that would be in stark conflict with the purposes of the 1998 Act as discussed further, cannot be read by implication into the 1998 Act as argued by the general concessioner organization.

In addition, Section 405(a)(2)(C) of the 1998 Act states that a leasehold surrender interest "shall not be extinguished by the expiration or other termination of a concession contract," a provision that is in direct conflict with the view that leasehold surrender interest value must be paid on the date of contract expiration or termination. (Emphasis added.) Finally, Section 405(c) of the 1998 Act states that, upon expiration of or termination of a 1998 Act concession contract, a concessioner shall be "entitled" under the terms of a concession contract to receive from the United States or a successor concessioner the value of any leasehold surrender interest. This value is to be calculated as of the date of expiration or termination. However, the statute does not state that the value must be paid on the date of termination or expiration of the contract. The statute also states that the entitlement is "under the terms of the concession contract."

The regulations expressly establish in the concessioner, as of the date of contract expiration or termination, an unconditional entitlement under the terms of the concession contract to be paid its leasehold surrender interest value. The regulations also call for the leasehold surrender interest depreciation deduction to be calculated as of the date of contract expiration or termination (or, if applicable, as of a prior relinquishment date). These provisions appropriately implement the requirements of the 1998 Act.

The general concessioner organization apparently reads the 1998 Act to mean that there is an absolute entitlement to payment of the leasehold surrender interest value on the date of expiration or termination, and, if payment is not received on that date, an entitlement to continue operations until payment is received. NPS disagrees with this interpretation on the basis of the text of the statute as discussed above. Further, such an interpretation of the 1998 Act flies in the face of the overwhelming thrust of the 1998 Act that preservation of park area resources and protection of park area visitors is the paramount mandate with respect to visitor services in areas of the national park system.

It is the primary responsibility of NPS to preserve and protect areas of the national park system and their visitors under both the NPS Organic Act (16 USC 1 *et seq.*) and the 1998 Act. The 1998 Act and the Organic Act state that the "preservation and conservation of park resources and values require that such public accommodations facilities and services as have to be provided within [park areas] should be provided only under carefully controlled safeguards against unregulated and indiscriminate use." (Emphasis added.) Section 402(b)(2) of the 1998 Act also states that:

> (b) Policy.—It is the policy of the Congress that that the development of public accommodations, facilities and services in units of the National Park System shall be limited to those accommodations, facilities, and services that are necessary and appropriate for public use and enjoyment of the unit of the National Park System in which they are located and are consistent to the highest practicable degree with the preservation and conservation of the resources and values of the unit.

It is indisputable that there may be circumstances in which NPS must immediately terminate the operations of a concessioner in order to fulfill its statutory responsibilities to park areas and visitors. For example, an area of a park may be found to be endangered species habitat, requiring immediate cessation of human activity, or, the threat of natural disaster such as a threatened volcanic eruption may require that a concession operation be immediately terminated in the interest of public safety. In addition, there may be circumstances where NPS is forced to immediately close a concession operation because of environmental damage such as sewage leakage into a threatened cave system. Finally, there may be circumstances where the performance of a concessioner in breach of contract is so bad (e.g., life/health/safety violations) that the concession operations and the concession contract must be immediately terminated in the interest of public health or safety.

The amount of money due the existing concessioner under a concession contract for a leasehold surrender interest could exceed available funds appropriated to NPS in any given fiscal year. It would not always be possible for NPS to obtain a new concessioner or make immediately available appropriated funds in these circumstances in order to pay leasehold surrender interest as a pre-condition to termination of the concession contract. NPS must have the ability to terminate concession contracts in order to carry out its statutory responsibilities to park areas and visitors.

NPS, however, is aware of the business needs of concessioners to obtain timely payment for leasehold surrender interests. This is why NPS, through the proposed regulations, placed limitations on the time for payment, one year with respect to payment by a new concessioner (it takes approximately a year to prepare for, solicit and award a new concession contract) and two years for payment by the government (the two year period reflecting the federal budget cycle).

Several other comments submitted by concessioners expressed concern about the timing of payment under this section but also made a practical suggestion. These comments suggested that the section be amended to provide interest during any period in which payment was delayed after the expiration or termination of a concession contract. NPS considers these suggestions as appropriate and has included an interest provision in this section in the final rule. NPS considers that the payment of interest (in addition to the CPI adjustment that continues until the date of payment) is fair and will be more than sufficient to encourage lenders to make loans against leasehold surrender interest, a concern raised by other comments in this connection. NPS notes that one commenter suggested that the timing of payments for leasehold surrender interest could result in a $100 million effect on the economy. NPS believes this assertion to be unfounded, but, in any event, considers that the changes in the final rule eliminate any concerns in this respect.

In addition, in order to further accommodate the concerns of commenters, NPS has modified this section in the final rule to state that the date of payment for a leasehold surrender interest, except in extraordinary circumstances beyond the control of NPS, is to be the date of expiration or termination of the concession contract. In addition, NPS has modified the final rule to require payment within one year of the expiration or termination of a concession contract.

Section 51.68 (Section 51.63 in the final rule) When a New Concessioner Pays a Prior Concessioner for a Leasehold Surrender Interest, What Is the Leasehold Surrender Interest in the Related Capital Improvements for the Purposes of a New Concession Contract?

A new sentence has been added to this section in the final rule to expressly require a new concessioner to pay the previous concessioner for any leasehold surrender interest value that is due.

Section 51.69 (Renumbered as Section 51.62 in the final rule) What Is the Process To Determine the Leasehold Surrender Interest Value When a New Concessioner Is To Pay a Prior Concessioner for a Leasehold Surrender Interest?

Several comments objected to elements of this section. The primary concern was that the arbitration to determine the leasehold surrender interest value when a new concessioner is to pay a prior concessioner for leasehold surrender interest was to be undertaken by the new concessioner and the prior concessioner. The commenters recommend that the arbitration be between the prior concessioner and NPS. NPS has concurred in this view. This section has been amended accordingly in the final regulations.

Another comment objected to the fact that the arbitration is limited to establishing the depreciation deduction for purposes of leasehold surrender interest value and does not permit arbitration of the prior determination of construction cost required by this part. NPS has limited the arbitration issues in this manner because the final rule calls for arbitration of the construction cost after construction is completed. However, NPS, in response to this comment, has changed this section to include the calculation of the CPI as an additional subject of arbitration in the event of disagreement by the concessioner and NPS. This issue, as well as depreciation, will be current as of the time of the arbitration proceedings.

Comments also stated that the arbitration should take place in advance of the expiration of the prior concession contract. NPS generally concurs in this suggestion but notes that it may not always be possible to conclude an arbitration prior to the expiration of a concession contract, and, of course, it is unlikely that an arbitration could be concluded prior to a termination of a concession contract for default (which could be immediate in certain circumstances). NPS has changed this section in the final regulations to provide for arbitration in advance of contract expiration or termination where possible.

Several comments objected to this section with respect to the type of arbitration procedures it calls for. This issue is addressed under Section 51.78.

Section 51.70 (Section 51.64 in the final rule and retitled) May the Concessioner Gain Additional Leasehold Surrender Interest by Adding to a Structure in Which the Concessioner Has a Leasehold Surrender Interest?

The general concessioner organization objected to this section by referencing related objections to other sections. Those objections are discussed under the relevant sections.

NPS has modified this section in the final rule to include "major rehabilitations" within its scope. This permits deletion of Section 51.72 of the proposed regulations in the final rule.

Section 51.71 (Section 51.65 in the final rule) May the Concessioner Gain Additional Leasehold Surrender Interest by Replacing a Fixture in Which the Concessioner Has a Leasehold Surrender Interest?

The general concessioner organization objected to this section and stated that it is not supported by law on the grounds that when an existing fixture is replaced by the concessioner there can be no reduction of leasehold surrender interest based on the removal of the existing fixture.

The flaw in this argument is apparent. Suppose a concessioner at the beginning of a concession contract with a twenty year term installs a furnace at a cost of $1,000. In ten years, the concessioner replaces the furnace with a new furnace, costing $1,200. At the expiration of the contract, the concessioner is entitled under this section and the 1998 Act to be paid for the value of its leasehold surrender interest. However, the replaced furnace is gone. The 1998 Act does not contemplate that a new concessioner will pay a prior concessioner for a fixture that no longer exists. Under Section 405(a)(3) of the 1998 Act, the leasehold surrender interest value in a capital improvement is the initial construction cost of the capital improvement, in this case the cost of purchasing and installing the furnace, plus a CPI adjustment up to the time of payment for the leasehold surrender interest, less depreciation of the capital improvement as evidenced by its condition and prospective serviceability in comparison with a new unit of like kind. Under any real property appraisal practice, the depreciation of a furnace that was replaced ten years ago is 100%. There is no value to be paid.

NPS has drafted this section carefully in order to fairly deal with the complicated circumstances of fixtures and non-removable equipment under the leasehold surrender interest concept. Under this section in the proposed regulations, if a concessioner replaces a fixture with a new fixture of like kind, there is no adjustment to the leasehold surrender interest in the fixture. Under the proposed regulations, the new fixture replaces the old one and the concessioner's leasehold surrender interest continues unchanged. However, if the new fixture is a substantial upgrade from the replaced fixture, and if the construction cost of the new fixture exceeds the construction cost of the fixture to be replaced, the increase is added to the concessioner's leasehold surrender interest.

This has been changed in the final rule in order to accommodate to the extent reasonable the concerns of commenters. In the final rule, the entire construction cost of a new fixture is added to the leasehold surrender interest and the construction cost of the replaced fixture is subtracted.

Section 51.72 (Deleted in the final rule) Will a Concessioner That Undertakes a Major Rehabilitation of an Existing Structure in Which the Concessioner Has a Leasehold Surrender Interest Increase Its Leasehold Surrender Interest?

Several comments objected to this section on the general grounds that additional leasehold surrender interest should be obtained for any additional construction work undertaken by a concessioner. NPS disagrees. This issue is discussed under Section 51.75.

One comment requested additional guidance as to what constitutes a major rehabilitation. For example, the commenter asked, does adding an additional bathroom to a cabin constitute a major rehabilitation? A major rehabilitation is defined in Section 51.51 of the final rule. The construction of a second bathroom under this definition could be a major rehabilitation if its cost exceeds fifty percent of the pre-rehabilitation value of the cabin. NPS considers that the definition of "major rehabilitation" is clear. NPS, however, deleted as unnecessary in the final rule the second sentence in paragraph (2) of the definition of major rehabilitation.

This section has been deleted in the final rule as its content is included in Section 51.64 of the final rule.

Section 51.73 (Section 51.66 in the final rule) In What Circumstances Will the Director Authorize a Concessioner To Obtain a Leasehold Surrender Interest in an Existing Capital Improvement in Which no Leasehold Surrender Interest Exists?

Several comments objected to this section on the same general grounds, that all additional construction should obtain additional leasehold surrender interest. This issue is discussed under Section 51.75.

The general concessioner organization also objected to the last sentence of this section which stated that when an existing building in which a concessioner has no leasehold surrender interest undergoes a major rehabilitation, depreciation for the purposes of the leasehold surrender interest value will apply to the entire building. NPS has amended this sentence in response to the comment. It states in the final rule that depreciation will only apply to the elements of the major rehabilitation.

Finally, for the sake of clarity, this section has been rephrased and split into two subsections in the final rule without a change in its meaning except as noted in the prior paragraphs.

Section 51.74 (Deleted in the final rule) Will a Concessioner Receive New or Additional Leasehold Surrender Interest as a Result of a Rehabilitation That Does Not Qualify as a Major Rehabilitation?

Several comments objected to this section because "all capital improvements qualify for leasehold surrender interest." This issue is discussed under Section 51.75. Section 51.74 has been deleted in the final rule as redundant in light of Section 51.64 in the final rule.

Section 51.75 (Section 51.67 in the final rule) Is a Concessioner Required To Repair and Maintain Capital Improvements, and, If So, Will the Concessioner Obtain Leasehold Surrender Interest as a Result?

Several comments objected to this and other sections of the proposed regulations because, allegedly, "all capital improvements qualify for leasehold surrender interest." In this connection, the general concessioner organization equates the construction of capital improvements with "any repairs and maintenance" of a building that are "capitalized under GAAP."

In essence, the commenters seek leasehold surrender interest for the capitalized costs of repair and maintenance of an existing structure in addition to leasehold surrender interest resulting from the construction of the structure.

Before discussing the fact that this position is inconsistent with the terms of the 1998 Act, NPS points out the administrative nightmare for both NPS and concessioners that would result if the commenters' position was adopted by NPS. Under the commenters' position, for example, every time a concessioner might replace a section of damaged drywall, or, replace missing shingles on a roof, a new leasehold surrender interest, including a new CPI calculation, would be established. For larger concession operations (one current operation utilizes almost 800 buildings), the number of these additional leasehold surrender interests could well be in the tens of thousands over the term of a twenty year concession contract. NPS does not consider that such a result, even if otherwise lawful, would be in the best interests of concessioners, NPS, or efficient management of the NPS concessions program.

NPS also notes that the expenditures that a concessioner may make for repair and maintenance of existing structures are not lost to the concessioner. To the contrary, repair and maintenance expenditures will necessarily be reflected in a lower depreciation deduction when the final leasehold surrender interest value for the structure is calculated. The concessioner, accordingly, will be compensated for its expenditures for repair and maintenance of existing structures even though the 1998 Act does not permit recognition of leasehold surrender interest as a result of repair and maintenance.

In any event, the view that additional leasehold surrender interest results from expenditures for repair and maintenance of existing structures is inconsistent with the express terms of the 1998 Act. Section 405(a) of the 1998 Act provides a leasehold surrender interest when a concessioner "constructs" a capital improvement upon land owned by the United States within a unit of the National Park System pursuant to a concession contract. The statute makes no mention of leasehold surrender interest resulting from the repair and maintenance of an existing capital improvement. "Construction" means "the process or manner of building an improvement." 3rd Edition, page 73. "Repairs" are "current expenditures for general upkeep of a property's condition and efficiency." 3rd Edition, p. 303. "Maintenance" means "keeping a property in condition to perform its function." 3rd Edition, p. 217.

In addition, Section 405(a)(1) of the 1998 Act states that a concessioner shall have a leasehold surrender interest in "each capital improvement" it constructs. Section 405(e)(2) of the 1998 Act in turn defines "capital improvement" as "a structure, fixture, or non-removable equipment." In other words, the 1998 Act only provides a leasehold surrender interest in "structures, fixtures, and non-removable equipment" that a concessioner "constructs," *i.e.*, builds, under the terms of a concession contract. The law does not suggest that the repair or maintenance of an existing structure results in leasehold surrender interest.

NPS notes in this connection that Section 405(a)(5) of the 1998 Act states that when a concessioner that makes a "capital improvement" to an existing "capital improvement" in which the concessioner has a leasehold surrender interest, the cost of the additional capital improvement is to be added to the then current value of the concessioner's leasehold surrender interest. The proposed regulations and the final rule reflect this requirement by granting additional leasehold surrender interest for replacement of fixtures and non-removable property, additions to existing structures, and/or the major rehabilitation of existing structures. What the statute does not permit, however, is additional leasehold surrender interest for the repair and maintenance of existing structures (unless a repair and maintenance project is a major rehabilitation as defined in the final rule).

The position of the general concessioner organization, when reduced to its essentials, is that the 1998 Act, when stating that a leasehold surrender interest results from the "construction" of a "structure," means that every time a concessioner replaces a rotted beam or a damaged piece of drywall in a building, it has "constructed" a "structure" within the meaning of the 1998 Act. This position is not credible.

NPS considers, however, that providing leasehold surrender interest for the major rehabilitation of an existing structure is permissible under the terms of the 1998 Act as a major rehabilitation is defined in the final rule as a comprehensive rehabilitation of an existing structure the cost of which exceeds fifty percent of the pre-rehabilitation value of the structure. NPS, accordingly, considers that a major rehabilitation is tantamount to the construction of a new structure (or the addition of a new structure to an

existing structure) in which leasehold surrender interest may be obtained within the leasehold surrender interest limitations of the 1998 Act.

NPS notes that it changed the definition of major rehabilitation in the final rule. In the proposed regulations, the construction cost had to exceed one hundred percent of the pre-rehabilitation value of the structure. The final rule changes this to fifty percent of the pre-rehabilitation value. This change is intended to accommodate to the extent possible the concerns of commenters that seek leasehold surrender interest for repair and maintenance of structures, contrary to the terms of the 1998 Act. NPS considers that a rehabilitation of a structure where the cost exceeds fifty percent of the structure's pre-rehabilitation value is tantamount to construction of a new structure within the meaning of the 1998 Act and therefore eligible for leasehold surrender interest.

Likewise, the proposed regulations and final rule provide leasehold surrender interest for constructing an addition to an existing structure in which a concessioner has a leasehold surrender interest, *e.g.*, a new wing to an existing building or an extension of an existing sidewalk. An addition is treated as a new structure for leasehold surrender interest purposes.

The general concessioner organization suggested that this section be modified in effect to state that if a concession contract contains a repair and maintenance reserve provision that there would be no depreciation deduction for related leasehold surrender interest value. This suggestion is contrary to the 1998 Act's definition of the value of leasehold surrender interest (which requires a deduction for depreciation) and is not valid as a general business matter. The fact that a repair and maintenance reserve exists does not mean that a structure will not undergo deprecation. Even very well maintained buildings depreciate over time. However, NPS considers that the existence of a repair and maintenance reserve will lessen the depreciation deduction that will occur with respect to related leasehold surrender structures. The repair and maintenance reserve, accordingly, in addition to ensuring that concessioner facilities are well maintained, makes good business sense.

The general concessioner organization also stated that any repair and maintenance reserve should be at levels that are commercially reasonable. NPS agrees and considers that the solicitation process for new concession contracts will ensure that any repair and maintenance requirements of the new contract will be reasonable.

Finally, the general concessioner organization suggested that a repair and maintenance reserve provision contained in a concession contract should require that any balance in the reserve at the expiration of the contract should be retained by the incumbent concessioner. This matter will be addressed by NPS in the development of and consideration of public comments on its proposed standard concession contract.

This section has been changed in the final rule to delete references to the obligations of a concessioner to repair and maintain property. The references have been included in Section 51.81 in the final rule.

Subpart G—Possessory Interest (Subpart H in the final rule)

Section 51. 76 (Section 51.68 in the final rule). If a Concessioner Is Not Awarded a New Concession Contract, How Will a Concessioner That Has a Possessory Interest Receive Compensation for Its Possessory Interest?

* * * * *

Section 51.77 (Section 51.70 in the final rule) If a Concessioner Is Awarded a New Concession Contract, What Happens to the Concessioner's Possessory Interest?

Several comments objected to this section with respect to the fact that it contemplates NPS determining the value of the prior concessioner's possessory interest. However, NPS notes that the intention of the section was that the determination of the value by NPS is subject to the arbitration proceedings called for by Section 51.78 of the proposed regulations. NPS has changed the section in the final regulations to reflect that a determination of value of a prior concessioner's possessory interest is, in the first instance, to be accomplished by mutual agreement of the parties, and, if that fails, through arbitration proceedings.

The general concessioner organization objected to the element of this section that calls for the value of a prior concessioner's possessory interest to be determined on a unit by unit basis on the grounds that this may impact the overall value of an existing concessioner's possessory interest. NPS, in consideration of this comment, has changed this section in the final regulations to require allocation of possessory interest on a unit by unit basis if not determined initially on such basis. If negotiation of the allocation is not successful, it will be subject to arbitration. Allocation on a unit by unit basis is necessary in order to provide for depreciation determinations and possible relinquishment of leasehold surrender interest in particular structures.

Section 51.78 (Section 51.71 in the final rule) What Is The Process To Be Followed If There Is a Dispute Between the Prior Concessioner and the Director as to the Value of Possessory Interest?

Several comments objected to elements of this section on the grounds that the limitations it places on the arbitration proceedings are unfair and unlawful. NPS has changed this section in the final regulations. The thrust of the changes is to require binding arbitration under procedures that are to be determined by the arbitration panel. The arbitration panel will adopt procedures it deems appropriate in the circumstances of the dispute in order to treat each party equally and to give each party the opportunity to be heard and a fair opportunity to present its case. The arbitration panel will utilize adjudicative procedures such as cross-examination of witnesses if the arbitration panel determines that adjudicative procedures are necessary in the particular circumstances of the dispute. The arbitration panel may also adopt appropriate provisions regarding confidentiality of information provided by the parties to the panel or to each other in connection with the arbitration proceeding.

These changes are consistent with the commercial arbitration rules of the American Arbitration Association ("AAA") which permit arbitration panels flexibility to adopt appropriate arbitration procedures so long as each party is treated equally and each party has the opportunity to be heard and a fair opportunity to present its case.

NPS feels strongly that in most circumstances the establishment of the value of possessory interest or other related matters subject to arbitration under the regulations is best achieved with efficiency, economy, and fairness by informal proceedings rather that full-blown adjudicative procedures. NPS does not consider that it is in the best interests of concessioners, particularly smaller concessioners, or NPS, to have the arbitrated values of leasehold surrender or possessory interests influenced by the party with the more skillful attorneys rather than the party with the more persuasive appraisal. The final regulations, however, do not bind the arbitration panel in this matter. An arbitration panel may adopt whatever procedures it sees fit under the AAA

standard included in the regulations, including AAA or another arbitration organization's adjudicative procedures.

NPS also feels strongly that the members of the arbitration panel should be qualified appraisers to ensure a professional determination on the appraisal issue. The general concessioner organization agreed with this view. However, the final regulations have been changed in this connection to require that only the neutral arbiter be a qualified appraiser so that a party may select their party arbiter as they see fit. In addition, NPS has deleted the requirement of this section regarding judicial review of an arbitration proceeding. The scope of judicial review will be determined by applicable law.

Several comments suggested that it is unfair or unlawful for NPS to establish the terms of the arbitration without the agreement of the affected concessioner. The changes described above relieve those concerns as they provide that the arbitration panel will establish the procedures to be followed. In any event, the commenters are wrong in their presumption that the affected concessioner will not agree to the procedures. The procedures are only applicable under the terms of a concession contract a person may choose to enter into after the effective date of the final rule. They are not applicable to any existing concession contract.

NPS also points out that the procedures described above are consistent with the applicable standard provision of NPS concession contracts entered into over at least the last thirty years. The standard provision calls for a dispute over the value of possessory interest to be determined by a panel of three appraisers after giving both parties an opportunity to be heard. All existing concessioners with possessory interest contract provisions have agreed to this provision under the terms of their concession contracts.

Finally, several comments suggested that the proposed arbitration provisions are inconsistent with the terms of the Federal Arbitration Act, 9 U.S.C. 14 *et seq.*, and the Alternative Disputes Act, 5 U.S.C. 571 *et seq.* However, neither of these Acts by their terms is applicable to NPS concession contracts.

NPS, for the sake of clarity, has moved the description of arbitration proceedings to Section 51.51 of the final rule.

Section 51.79 (Section 51.72 in the final rule) If a New Concessioner is Awarded the Contract, What Is the Relationship Between Leasehold Surrender Interest and Possessory Interest?

Several comments suggested changing this section to eliminate reference to the possibility of the leasehold surrender interest being based on the actual payment to the prior concessioner by the new concessioner for the prior concessioner's possessory interest. NPS has made this suggested change in the final regulations.

Section 51.80 (Section 51.69 in the final rule) What Happens If There Is a Dispute Between the New Concessioner and a Prior Concessioner as to the Value of the Possessory Interest?

Several comments objected to the fact that this section requires a new concessioner to obtain NPS approval before agreeing to the value of possessory interest with a prior concessioner and to allow NPS to assist it in any procedures for resolution of the possessory interest value. The comments suggest that this interferes with the rights of the prior concessioner. NPS disagrees. The section imposes no obligations on the prior concessioner nor does it restrict its rights to receive payment for its possessory interest in accordance with the terms of its contract. Further, it certainly is within the rights of a new concessioner to agree that a third party has prior approval rights over a negotiated purchase price and/or to assist it in a dispute resolution process.

NPS notes that this provision is essential in order to ensure that the new concessioner negotiates or engages in dispute proceedings on an arm's length basis. Without the approval right of NPS or the right to assist in dispute proceedings, a new concessioner and a prior concessioner could collude to inflate the value of a possessory interest that NPS would indirectly be obliged to pay.

This is because the amount of money that a new concessioner has to pay for a prior concessioner's possessory interest directly affects the amount of money the new concessioner will be able to make available as a business matter under the terms of the new concession contract (for new improvements, new equipment, franchise fees, etc).

Several comments also suggested that a dispute about the amount of possessory interest compensation a concessioner is to obtain if it is not awarded a new concession contract should be resolved by the concessioner and NPS, not by the prior concessioner and the new concessioner. However, 1965 Act concession contracts call for dispute resolution between the new concessioner and the prior concessioner. NPS cannot change this provision without the agreement of the concessioner. NPS will consider resolving directly the value of a possessory interest with an existing concessioner at the request of the concessioner.

A new sentence has been added to this section in the final rule making clear that nothing in this part is to be construed as authorizing a new concessioner to refuse to pay a prior concessioner for possessory interest in accordance with the terms of a possessory interest concession contract.

Subpart H—Concession Contract Provisions (Subpart I in the final rule)

Section 51.81 (Section 51.73 in the final rule) What Is the Term or Length of a Concession Contract?

Several comments questioned the content of this section as changing the intent of Congress as expressed in Section 404 of the 1998 Act. In response, NPS has modified this section in the final rule to more closely reflect the terms of Section 404 and to make clear that it is NPS policy to establish the term of concession contracts to be as short as prudent in the circumstances of each concession contract. NPS considers that this policy is consistent with the purposes of the 1998 Act, particularly its purpose of enhancing competition in concession contracts. Long term concession contracts (where a need for a long term does not exist) equate to less competition.

A comment suggested that all outfitter and guide concession contracts should have a term of ten years on the basis of outside investments outfitter and guide concessioners may have to make. NPS has not accepted this suggestion. NPS will determine terms of outfitter and guide concession contracts on the same basis as other concession contracts, giving due consideration to the particular circumstances of each concession contract.

Section 51.82 (Section 51.74 in the final rule). When May a Concession Contract Be Terminated by the Director?

A comment requested clarification as to what termination procedures will be included in concession contracts. The standard NPS concession contract published for comment on September 3, 1999, contains the termination clause NPS proposes to use in standard concession contracts. The comment also

asked NPS to explain why the concessioner is not afforded a right of termination in the event of default by NPS. This is because a concessioner has legal rights to terminate a concession contract in accordance with general contract law in the event of a material breach by NPS.

Several comments objected to this section on the general grounds that it gives NPS too much authority to terminate concession contracts. NPS considers that having the ability to terminate a concession contract when necessary to achieve the purposes of the 1998 Act is necessary in order to properly carry out the purposes of the 1998 Act. NPS has changed this section in the final regulations to refer to the purposes of the 1998 Act rather than the purposes "of this part."

Another comment suggested changes to this section to require a right to cure in case of default or unsatisfactory annual evaluations. The standard concession contract published for public comment describes the right to cure provisions in its termination clause.

Section 51.83 (Section 51.75 in the final rule) May the Director Split or Combine Concession Contracts?

Several comments suggested that combining concession contracts should not be undertaken by NPS if the result would be the loss of a preference in renewal. NPS considers that the sentence to which the comments objected is appropriate. However, it has been deleted in the final rule as unnecessary.

One comment suggested that this section misstates Section 417 of the 1998 Act by imposing a blanket prohibition on segmenting concession contracts if the result would be a concession contract with gross receipts under $500,000. Another comment questioned why this segmentation rule was applicable to outfitter and guide concession contracts when Section 417 only addresses concession contracts with gross receipts under $500,000.

In response to these comments, NPS has amended this section to state that NPS will not segment concession contracts for the purpose of establishing a concession contract with gross receipts of less than $500,000.

Section 51.84 (Section 51.76 in the final rule) May the Director Include in a Concession Contract or Otherwise Grant a Concessioner a Preferential Right To Provide New or Additional Visitor Services?

A number of comments were received that addressed this section. Almost all misunderstood it. Accordingly, NPS has clarified it in the final regulations. However, the section did and does not do what the comments perceived. The section only precludes the inclusion of a contractual right in a contract that requires that any new or additional services be offered to the incumbent concessioner. This tracks the requirements of Section 403(9) of the Act. Several comments also asked for amplification of the term "new or additional services." NPS considers that further amplification is unnecessary in light of the clarifications made to this section in the final rule.

NPS also notes that several commenters understood this section to have application to a right of preference to a new contract. This is not the case. The section only concerns the addition of new services under the terms of an existing concession contract.

Several commenters understood this section to mean that a concession contract may not be amended to include additional services. This is not the case. NPS has added a sentence to this section in the final rule to permit by contract amendment minor additions to the visitor services authorized by a contract that are a reasonable extension of the existing services. This language tracks relevant legislative history. H.R. Rep. No.105–767 at p. 41(1998).

Section 51.85. (Section 51.77 in the final rule). Will a Concession Contract Provide a Concessioner an Exclusive Right to Provide Visitor Services?

Several comments objected to this section on the grounds that concession contracts are intended to grant exclusive rights to provide specified visitor services. This is not the case. NPS concession contracts authorize concessioners to provide specified visitor services but do not grant exclusive rights.

The general concessioner organization, although its comment indicated that it understood this section, objected to it on the grounds that it may be in the best interests of NPS to grant exclusive concession contracts. NPS does not consider this to be the case. An exclusive right establishes a monopoly situation that NPS considers contrary to the public interest.

Section 51.86 (Deleted in the final rule). Is There a Special Rule for Transportation Contracts?

This section has been deleted in the final rule as unnecessary in light of Section 412 of the 1998 Act.

Section 51.87 (Deleted in the final rule). Where Will the Director Deposit Franchise Fees and How Will the Director Use the Franchise Fees?

The general concessioner organization objected to the inclusion of "visitor support activities" as an authorized use for expenditure of franchise fees by NPS. It objected because this category is not specified in the 1998 Act, and, because "it could have a very broad meaning inconsistent with the intent of the 1998 Act." NPS disagrees with this view and notes that NPS may expend funds for needed visitor facilities in park areas from the franchise fee accounts established by the 1998 Act. This includes the construction of facilities (e.g., parking lots, access roads, and sewer systems) that directly support the operations of a concessioner. However, this section has been deleted in the final rule as unnecessary.

Section 51.88 (Section 51.78 in the final rule and retitled.) Will Franchise Fees be Subject to Renegotiation?

Several comments suggested that this section be clarified to make clear that either the concessioner or NPS may request an adjustment of the franchise fee. This change has been made in the final rule, and, consistent with this change, the final rule also clarifies that a determination as to the existence of extraordinary, unanticipated changes must be made mutually by the concessioner and NPS.

A commenter also objected to the last sentence of this section as it implies that a franchise fee adjustment is appropriate in all circumstances where an adjustment has been requested. This section has been clarified in the final regulations in accordance with these comments.

A comment suggested that the phrase "extraordinary, unanticipated changes" be defined in the final rule. NPS has not accepted this suggestion in light of the wide variety of circumstances that may trigger a request for an adjustment of a franchise fee under this section.

Another comment asked whether this section is applicable to 1965 Act concession contracts. It is not, as 1965 Act concession contracts have a different franchise fee adjustment clause under a differing provision of the 1965 Act.

NPS, in response to public comments, has also added a subsection (a) to this section to track the terms of Section 407(a) of the 1998 Act regarding franchise fees.

Section 51.89 (Section 51.79 in the final rule) May the Director Waive Payment of Franchise Fees or Other Payments?

Several comments objected to this section on the grounds NPS should have flexibility to waive franchisee fees.

NPS generally does not consider waiver of franchise fees appropriate, especially in light of Section 407 of the Act. However, it has added a phrase to this section in the final rule that permits a limited partial waiver of franchise fees if permissible under established administrative guidelines for the purpose of recognizing exceptional concessioners.

Section 51.90 (Section 51.80 in the final rule) How Will the Director Establish Franchise Fees for Multiple Outfitter and Guide Concession Contracts in the Same Park Area?

Several commenters objected to this section because it did not reflect their view that Section 411 of the 1998 Act exempts outfitter and guide concession contracts from competition under principal selection factor (5), the amount of the franchise fee offered in a concession contract proposal. However, Section 411 makes no mention of such an exemption. Rather, it states that where multiple outfitter and guide concession contracts are to be awarded in a particular park area concerning the same or similar services, NPS is to establish a comparable franchise fee for such contracts. NPS will do this on a park-by-park basis in the course of its development of franchise fees to be included in prospectuses for new concession contracts. This section was also criticized for failing to give sufficient guidance as to what services are the "same or comparable." This is a matter that is best determined on a case-by-case basis.

Section 51.91 (Section 51.81 in the final rule). May the Director Include "Special Account" Provisions in Concession Contracts?

The general concessioner organization, although not objecting to the concept of a repair and maintenance reserve as described in this section, repeated its objections directed to other sections to the effect that repair and maintenance of leasehold surrender interest capital improvements results in additional leasehold surrender interest. The commenter also reiterated its position that any expenditures from repair and maintenance reserves should be deducted from the depreciation element of leasehold surrender interest when valuing leasehold surrender interest. NPS disagrees for the reasons discussed under Section 51.75.

A comment objected to the concept of repair and maintenance reserves because they allegedly will become a means for direct fee bidding in the prospectus process. NPS does not agree with this view and notes that required maintenance and repair reserves are a standard practice in the commercial real estate industry.

A comment objected to the element of this section that requires the concessioner to repair and maintain all concessioner facilities assigned to it under the terms of the concession contract. The comment asked whether this includes infrastructure assigned to the concessioner and stated that basic infrastructure should be constructed and maintained by NPS. NPS notes that concessioners are assigned a variety of facilities for use in their operations, including, occasionally, basic infrastructure. This has been NPS practice for many years. NPS considers it appropriate that NPS concession contracts require a concessioner that utilizes government property in its business to maintain and repair the property.

A comment suggested that all "special accounts" be forbidden, e.g., "resource protection" funds, as they are a means for NPS to indirectly engage in franchise fee bidding. NPS has not accepted this suggestion. In circumstances where it is otherwise permissible under the 1998 Act or other law, a provision in a concession contract requiring the concessioner to make expenditures from its gross receipts for specified purposes is an appropriate means to carry out the purposes of the 1998 Act.

NPS has added to this section in the final rule the repair and maintenance obligations of concessioners set forth in Section 51.75 of the proposed regulations.

NPS has also added a sentence to this section in the final rule to make clear that repair and maintenance reserve provisions are not to be included in concession contracts in lieu of a franchise fee and funds from such reserves are to be expended only for the repair and maintenance of real property improvements assigned to the concessioner for use in the concessioner's operations.

Section 51.92 (Section 51.83 in the final rule.) Handicrafts [Reserved]

This section was reserved as NPS is in the process of developing regulatory guidelines for handicraft sales under Section 416 of the 1998 Act with the advice of the National Park Service Concessions Management Advisory Board established by Section 409 of the Act.

The general concessioner concessioner organization commented on this section, stating that it should have the right to comment on the proposed handicraft regulations prior to the finalization of the proposed general concession regulations. NPS has published these final regulations prior to the date of possible publication of proposed handicraft regulations. NPS did not consider it to be in the public interest to delay finalization of these general regulations as requested by the general concessioner organization. Numerous concessioners are currently operating under short term extensions of existing contracts. Any delay in the promulgation of the final general concession regulations would have a detrimental effect on not only park visitors but many concessioners as well.

Subpart I—Assignment or Encumbrance of Concession Contracts (Subpart J in the final rule)

Section 51.93 (Section 51.84 in the final rule) What Special Terms Do I Need To Know To Understand This Part?

The comments received did not directly address the proposed definitions contained in this section. Several comments expressed concerns about some of the definitions indirectly. These comments are addressed under the relevant sections of this subpart.

Section 51.94 (Section 51.85 in the final rule) What Assignments Require the Approval of the Director?

Comments stated that the 1998 Act does not allow approval of an encumbrance of a concessioner's revenue stream as contemplated by this section. NPS has deleted as unnecessary the reference to approval of revenue streams in the final rule. This section and other sections within this subpart have been amended accordingly. However, the treatment of revenue streams will necessarily be a consideration in the approval of encumbrances that must be approved in accordance with the requirements of this part under the final rule.

Several comments stated that the 1998 Act does not address approval of a controlling interest in a concession contract, requesting that reference to approval of controlling interests be deleted from this and other sections of the proposed regulations.

NPS has not made this requested change. Requiring approval of the assignment of controlling interests is essential in order to effectuate the purposes of the 1998 Act with respect

to its admonitions that only qualified persons are entitled to own NPS concessions.

In this connection, Section 408(a) of the 1998 Act states as follows:

> (a) APPROVAL OF THE SECRETARY.—No concessions contract or leasehold surrender interest may be transferred, assigned, sold or otherwise conveyed or pledged by a concessioner without prior written notification to, and approval by, the Secretary. (Emphasis added).

The "controlling interest" element of this section is generally directed to corporate concessioners. Basically, it recognizes that a concession contract may effectively be conveyed or pledged by a corporate concessioner ("otherwise conveyed or pledged" under the terms of Section 408(a)) without any legal transfer, assignment or sale of a concession contract *per se* held by a corporate concessioner.

If Section 408(a) of the 1998 Act were interpreted to forbid approvals of the transfer of a controlling interest in a corporation that holds a concession contract, only transfers of concession contracts that are held by individuals or partnerships would be subject to NPS approval. A corporate concessioner need only sell its stock to a new party (sale of a controlling interest) in order to effectuate a transfer of the concession contract. Congress did not intend such an anomalous result. Section 408(b) of the 1998 Act (set forth below) describes the statutory intentions for requiring the approval of the transfer of concession contracts by forbidding approval of a transfer by NPS if:

> (1) the individual, corporation or entity seeking to acquire a concession contract is not qualified or able to satisfy the terms and conditions of the concession contract;
>
> (2) such transfer or conveyance is not consistent with the objectives of protecting, conserving, and preserving the resources of the unit of the National Park System and of providing necessary and appropriate visitor services at reasonable rates and charges; or
>
> (3) the terms of such transfer or conveyance are likely, directly or indirectly, to reduce the concessioner's opportunity for a reasonable profit over the remaining term of the contract, adversely affect the quality of facilities and services provided by the concessioner, or result in a need for increased rates and charges to the public to maintain the quality of such facilities and services.

The position of the comments concerning transfer of controlling interests in concession contracts would nullify these congressional intentions. This is not a hypothetical concern. Many NPS concessioners are corporations that hold a concession contract as their exclusive business activity. In addition, almost all of the largest NPS concessioners are wholly owned subsidiaries of larger corporations. If NPS accepted the position of the commenters, NPS would have no right of approval of the transfer by sale of stock of the Yosemite, Yellowstone, Grand Canyon, Grand Teton, Glen Canyon, Glacier, and Mesa Verde National Park concession contracts, among others.

In any event, NPS considers that the phrase "or otherwise conveyed or pledged" directly encompasses the inclusion of controlling interests in this section. NPS also notes that the "controlling interest" concept was contained in 36 CFR Part 51 under the terms of the 1965 Act. Congress must be presumed to have been aware of this in considering the 1998 Act.

Another commenter made essentially the same argument with respect to inclusion in the regulations of a right to approve management contracts a concessioner might enter into. NPS considers it must have the ability to review management contracts for the reasons discussed with respect to controlling interests. Congress did not intend that the most qualified offeror be selected for award of a concession contract only to permit the selected qualified concessioner to turn over management to a third party with no right of NPS to determine that the third party is qualified. NPS considers that it has ample authority to require approval of arrangements under which a third party is to operate a concession under the 1998 Act and 16 USC 1 *et seq.*

NPS notes that Section 408(b) of the 1998 Act uses the word "and" instead of "or" between the second and third determinations that are required for approval of an assignment or encumberance. NPS has interpreted this in the regulations as "or" in light of the legislative history of this section and the fact that the word "and," perhaps, and anomalously, could be read as requiring NPS to approve transactions that are detrimental to the resources of the park area or to park area visitors. No commenters on the proposed regulations questioned this interpretation.

Section 51.95 (Section 51.86 in the final rule) What Encumbrances Require the Approval of the Director?

Several comments repeated under this section their similar objections directed to Section 51.94. The changes made to Section 51.94 have also been made to this section in the final regulations. In addition, NPS has deleted subsection (f) of this section in the final regulations in response to public comments.

Section 51.96 (Section 51.87 in the final rule) Does the Concessioner Have an Unconditional Right To Receive the Director's Approval for an Assignment or Encumbrance?

Several comments suggested that the preliminary language in this section be amended to more accurately reflect Section 408 of the 1998 Act, that approval of an assignment or encumbrance is to be granted by NPS unless NPS makes a determination that the approval conditions contained in Section 408 are not met. NPS has made this change in the final rule.

Several comments requested modification of the limitations on the purposes for which encumbrances may be approved. In this connection, Section 405(a)(2)(A) of the 1998 Act provides that a leasehold surrender interest:

> May be pledged as security for financing of a capital improvement or the acquisition of a concession contract when approved by the Secretary of the Interior pursuant to this section.

The limited purposes for which a leasehold surrender interest may be pledged were the primary basis of the encumbrance limitations contained in the proposed regulations. In response to comments, this section has been modified in the final regulations to broaden the purposes for which encumbrances may be made consistent with the purposes and requirements of the 1998 Act.

Section 51.97 (Renumbered as Section 51.88 in the final rule) What Happens If an Assignment or Encumbrance Is Completed Without the Approval of the Director?

NPS has deleted reference to concessioner revenues from this section in accordance with the discussion under Section 51.93.

Section 51.98 (Section 51.89 in the final rule) What Happens If There Is a Default on an Encumbrance Approved by the Director?

* * * * *

Section 51.99 (Section 51.90 in the final rule) How Does the Concessioner Get the Director's Approval Before Making an Assignment or Encumbrance?

Several comments suggested that this section's prior approval requirements insert NPS into a concessioner's business transactions before the transaction is completed. However, Section 408 of the 1998 Act requires written notification and approval before assignments and encumbrances are completed. The changes reducing the scope of transactions subject to NPS

approval under the final regulations will alleviate the concerns of the commenters.

Section 51.100 (Section 51.91 in the final rule) What Information Will the Director Require in the Application?

A number of commenters complained that the information requirements imposed by this section are too burdensome. NPS, in response to these comments, has reduced the information described in this section and has worded the section so as to require submission of information only to the extent requested by NPS as necessary in the circumstances of a particular transaction. NPS, in response to comments, has also modified the scope of the information requirements in a number of respects and has deleted subsection (c) in the final regulations. NPS considers that the remaining information requirements are necessary in order to assist in making the determinations required by Section 408 of the 1998 Act. A comment suggested that the word "reasonably" be included in this section to limit what information the Director may request. NPS has not made this change because under applicable law, NPS decisions made pursuant to this part must have an appropriate basis.

The general concessioner organization made a number of specific suggestions regarding the information requirements of this section. They are responded to as follows:

The commenter suggested that NPS should not be provided the actual transaction documents regarding an assignment or encumbrance but should rely on a narrative description of the transaction to be submitted by the concessioner. NPS considers that it must have access to the actual transaction documents in order to be able to make the determinations required by Section 408 of the 1998 Act.

The commenter requested that this section be limited to an opinion of counsel that only goes to the authority of the contracting party and the enforceability of the contract. NPS considers that the broader wording of this section is appropriate. If a proposed acquisition of a concession contract is unlawful, this impacts on the qualifications and ability of the acquiring party to satisfy the conditions of the concession contract within the meaning of Section 408.

The commenter suggested that the last clause of subsection (c) is duplicative. NPS has deleted it.

The commenter objected to the requirement of subsection (g) to the effect that a narrative description of the transaction is required. The commenter suggested that the narrative description of the financial aspects of the transaction as required by Subsection (c) should suffice for NPS purposes. NPS considers that aspects of a transaction beyond financial considerations are very relevant under the approval conditions of Section 408. This provision has not been changed in the final rule.

The commenter suggested changes and a clarification of subsection (h). This section has been clarified accordingly and the requirement for review by an independent accounting firm deleted as requested by the commenter.

The commenter objected to the allocations required by subsection (i). Subsection (i) has been edited in the final rule to delete a specific list of allocations. The general allocation information is needed in connection with the NPS responsibility to determine that the terms of the transaction will not reduce the concessioner's opportunity for a reasonable profit. It is usual practice when examining the financial implications of purchases of stock or assets to review the allocations of the purchase price among particular asset classes.

The commenter suggested several changes to the times included in subsection (j). NPS has generally made the commenter's requested changes in the final rule. The new times established are considered appropriate by NPS in the circumstances of NPS concession contracts.

The commenter requested deletion of subsection (k). It has been deleted in the final rule.

The commenter requested deletion of subsection (l). NPS has not deleted it. Given the variety of circumstances that may relate to assignment or encumbrance of NPS concession contracts, flexibility in requesting information must be retained.

Another commenter requested that the regulation make clear that the information submitted is confidential. NPS has not made a change to this section in this connection because the extent to which information submitted to NPS by a concessioner is available to the public is determined by the requirements of the Freedom of Information Act and related laws, including the 1998 Act.

Section 51.101 (Deleted in the final rule) May the Director Waive Any of These Documentation Requirements?

This section has been deleted in the final regulations in light of the changes made to Section 51.100.

Section 51.102 (Section 51.92 in the final rule) What Are Standard Proformas?

Several comments suggested that the standard proformas that are encouraged but not required to be submitted pursuant to this section do not conform to standard business practice because they call for loans to be amortized during the remaining term of the concession contract. NPS notes, however, that Section 408 of the 1998 Act states that an approval of assignments or encumbrances may not be granted if, among other matters, the transaction is "likely to reduce the concessioner's opportunity for profit over the remaining term of the contract."

NPS, nonetheless, in response to these comments, has made a change to this section in the final rule to the effect that a standard pro forma, if it does not call for amortization of a loan over the remaining term of the contract, must explain why this fact is not inconsistent with the considerations stated in Section 51.87(h) of the final rule.

Another commenter suggested that the responsibility of the NPS to approve transactions with respect to a concessioner's opportunity for profit should be limited to circumstances where NPS determines that a negative effect would result from an unprofitable operation. This interpretation, however, is in conflict with the plain language of the statute.

NPS has also changed this section in the final regulations by deleting subsection (d) in response to comments.

Section 51.103 (Deleted in the final rule) If the Concessioner Submits a Non-Standard Proforma, Is the Director More Likely To Disapprove the Transaction?

Because of the changes made to Section 51.92 in the final rule, this section has been deleted in the final rule.

Section 51.104 (Section 51.93 in the final rule) If the Transaction Includes More Than One Concession Contract, How Must Required Information Be Provided?

* * * * *

Section 51.105 (Deleted in the final rule) In What Circumstances Will the Director Not Approve an Assignment or Encumbrance?

Several comments misunderstood subsection (a) to mean that a concessioner may not obtain a bank loan without NPS approval of the bank as qualified to operate a concession. This is not the case. However, in case of foreclosure, a new operator selected by

the bank would have to be approved by NPS as qualified. The final rule makes this clear in Section 51.87(c).

A comment requested that time limits for approval of a transaction be imposed in this section. NPS does not consider this to be practical given the scope and variety of transactions that are subject to approval under the terms of the 1998 Act.

Another comment suggested that NPS should rely on banks with respect to the reasonable opportunity for a profit aspect of a transaction approval. In other words, the comment suggested that if a bank will make a loan for a concession transaction, NPS should automatically agree that it does not reduce the concessioner's opportunity to make a reasonable profit. NPS has not accepted this suggestion. In the first instance, adopting such a rule would be an abrogation of its responsibilities under the 1998 Act. Moreover, the fact that a bank may choose to make a loan relating to a concession transaction by no means ensures that the terms of the transaction will not reduce a new concessioner's opportunity to earn a reasonable profit over the remaining term of the concession contract. The general test for a bank loan is whether the lender will receive the principal and interest on its loan. In addition, a loan may be secured by unrelated assets (personal guarantees, stock pledges, etc.) that make the loan secure but do not necessarily indicate that the concessioner has not reduced its reasonable opportunity for a profit in committing to the transaction. NPS in reviewing transactions will take into account the fact that a bank loan is involved.

NPS has deleted this section in the final rule and moved its content to Section 51.87 in the final regulation for the sake of clarity.

Section 51.106 (Section 51.94 in the final rule) What Information Will the Director Consider When Deciding To Approve a Transaction?

This section has been modified in the final rule to clarify that NPS may consider information other than that submitted by the concessioner in determining whether to approve an assignment or encumbrance.

Section 51.107 (Section 51.95 in the final rule) Does the Director's Approval of an Assignment or Encumbrance Include Any Representations of Any Kind?

A sentence has been added to this section in the final rule to clarify that approval of an assignment or encumbrance does not alter the terms of the applicable concession contract unless expressly so stated by NPS in writing.

Section 51.108 (Section 51.96 in the final rule) May the Director Amend or Extend a Concession Contract for the Purpose of Facilitating a Transaction?

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Section 51.109 (Section 51.97 in the final rule) May the Director Open To Renegotiation or Modify the Terms of a Concession Contract as a Condition of the Approval of a Transaction?

* * * * *

Section 51.110 (Deleted in the final rule)—May the Director Charge a Fee for the Review of a Proposed Transaction?

NPS has deleted this section in response to comments.

Subpart J—Information and Access to Information (Subpart K in the final rule)

Section 51.111 (Section 51.98 in the final rule) What Records Must the Concessioner Keep and What Access Does the Director Have To Records?

Several comments objected to this section with respect to the fact that it applies to related records of parent or affiliated entities of a concessioner. In response, NPS has deleted the references except in circumstances where a concessioner parent or affiliate makes representations or commitments to NPS regarding its support or responsibilities to a concessioner. Access to records of the parent or affiliate in these limited circumstances is necessary in order for NPS to be able to reasonably rely on the representations or commitments.

Section 51.112 (Section 51.99 in the final rule) What Access To Concessioner Records Will the Comptroller General Have?

This section has been amended in accordance with the changes to Section 51.111.

Section 51.113 (Deleted in the final rule) What Information Will the Director Make Publicly Available About the Concessioner and the Concession Contract?

A number of comments raised confidentiality concerns about this section, arguing that it is in violation of the Freedom of Information Act. NPS has deleted this section in the final rule but moved certain of its information requirements to Section 51.5(f) in the final rule. The specific information requirements that are retained are those that were contained in 36 CFR Part 51 prior to this amendment. Other information listed in the proposed regulation has been deleted in the final rule in response to comments. Particularly, the reference to the existing concessioner's net profit has been deleted.

However, NPS considers that Section 403(3)(6) of the 1998 Act precludes NPS from exercising exemptions to the Freedom of Information Act with respect to release of information provided to NPS by a concessioner if NPS determines that the release of the information is necessary to allow for the submission of competitive proposals. NPS considers that the information requirements now contained in Section 51.5(f) in the final rule are necessary for this purpose. These specific information requirements (carried over from the existing 36 CFR Part 51) represent at least some of the information about the general scope of a business that a competitor needs in order to submit a competitive proposal.

Section 51.114 (Section 51.100 in the final rule) When Will the Director Make Proposals and Evaluation Documents Publicly Available?

This section has been edited by inserting the introductory phrase "in the interests of enhancing competition" to make clear its intentions. The purpose of this section is to avoid actions that may have anti-competitive results, *e.g.*, where, in the course of a contested selection of the best proposal submitted in response to a prospectus, a competitor seeks to obtain a copy of the best proposal that it may then utilize to enhance its proposal in the event a resolicitation of the contract opportunity is required. This is not only unfair to the offeror that submitted the best proposal in the first instance, but also inhibits legitimate competition in the award of concession contracts, contrary to the purposes of the 1998 Act.

One commenter, a municipality that holds a concession contract, suggested that all concession contract proposals be made public upon receipt as it is obliged to make its proposal public because of its status as a municipality. NPS has not accepted this suggestion for the reasons discussed above regarding the need to maintain the confidentiality of proposals.

Subpart K—The Effect of the 1998 Act's Repeal of the 1965 Act (Subpart L in the final rule)

Section 51.115 (Section 51.101 in the final rule) Did the 1998 Act Repeal the 1965 Act?

NPS has changed this section in the final rule to clarify that this part as well as the 1998 Act applies to 1965 Act concession contracts except to the extent that its provisions are inconsistent with particular terms and conditions of a 1965 Act concession contract.

Section 51.116 (Section 51.102 in the final rule) What Is the Effect of the 1998 Act's Repeal of the 1965 Act's Renewal Preference?

This section is discussed in the General Comments section. As stated, NPS considers that the 1998 Act's repeal of the 1965 Act, including its requirement in Section 5 that NPS give existing satisfactory concessioners preference in renewal of their contracts, applies to the holders of 1965 Act concession contracts. This section of the proposed regulations, however, permits a concessioner to appeal this decision to the Director if a 1965 Act concession contract expressly references a preference in renewal. In circumstances where a 1965 Act concession contract does not make express reference to a preference in renewal, it is the final administrative decision of NPS, based on the considerations discussed in the General Comments section, that the repeal of the 1965 Act's preference in renewal by the 1998 Act is applicable to holders of 1965 Act concession contracts.

This section has also been changed in the final rule to track the language of Section 415 so as to avoid any concern that NPS misinterpreted its meaning with respect to the phrase "inconsistent with the terms and conditions of any such contract or permit." Finally, in response to a comment discussed under Section 51.49 to the effect that a concessioner holding a 1965 Act concession contract not only has a continuing right to a right of preference in renewal, but, also, has a "right" to not submit a responsive proposal in response to a prospectus, a sentence has been added to the final rule to clarify that if an appeal is successful under this section, or if a court determines that a concessioner holding a 1965 Act concession contract does have a preference in renewal, that the otherwise applicable terms and conditions of this part regarding the exercise of a preference in renewal, including, without limit, the obligation to submit a responsive proposal, apply to any preference in renewal recognized with respect to holders of 1965 Act concession contracts. NPS considers that it has authority to adopt these requirements under the 1998 Act and, in addition, under 16 USC 1 *et seq.* (with particular reference to 16 USC 3).

By providing this appeal right, NPS does not seek to lead existing concessioners to believe that it is likely that they would qualify for an appeal under this section. To the best of the knowledge of NPS, no 1965 Act concession contract or permit with annual gross receipts of more than $500,000 references a preference in renewal. However, there may be exceptions in which case this section of the final rule will apply.

To avoid requiring concessioners to make administrative appeals that are likely to be unsuccessful, NPS has deleted the sentence in subsection (b) of this section in the proposed regulations that stated that a concessioner must make an appeal under this section in order to be considered as having exhausted administrative remedies with respect to denial of a renewal preference regarding 1965 Act concession contracts. In its place, a sentence has been added to the final rule making final the decision of NPS regarding the repeal of the 1965 Act's preference in renewal with respect to holders of 1965 Act concession contracts.

Section 51.117 (Deleted in the final rule) What Renewal Preference Exceptions Are Made for Glacier Bay Cruise Ships?

A comment asked why this section provides an exemption for Glacier Bay cruise ships and requested a similar exemption for other concessioners in "exceptional circumstances." The Glacier Bay exemption was established by Section 419 of the 1998 Act. NPS has no authority to grant similar exemptions from the requirements of the 1998 Act.

This section has been deleted in the final rule in light of Section 419 of the Act.

Subpart L—Information Collection [Subpart M in the final rule]

Section 51.118 (Section 51.104 in the final rule) Have Information Collection Procedures Been Followed?

* * * * *

3. Additional Comments and Changes

In addition to this discussion of changes made to the proposed regulations, NPS points out that it has added several clarifying sections to the final rule, including new Sections 51.27 and 51.28, to set forth definitions of terms used in the final rule. It has also added a severability clause in new Section 51.103 of the final rule.

NPS has also added a new Section 51.81 regarding concessioner rate approvals. The new section reiterates most of the rate approval requirements of Section 406 of the 1998 Act. Although NPS administers concessioner rate approvals under administrative guidelines, it has included the text of Section 406 in the final rule so that the final rule is self-explanatory with respect to the nature of rate approvals. NPS considers that its rate approval process requires significant administrative flexibility and therefore is best managed under administrative guidelines, not regulations.

The general concessioner organization suggested that NPS adopt new rate approval policies and procedures without waiting for the advice of the National Park Concessions Management Advisory Board as is contemplated by Section 406(c) of the 1998 Act. NPS has not accepted this suggestion. The recommendations of the Advisory Board are critical to the development of an effective rate approval program under the policies expressed in 1998 Act.

A commenter requested that NPS consider its views and republish the proposed regulations for further public comment. NPS notes that it has accommodated many of the concerns of the commenter through incremental changes in the final rule. However, NPS has determined not to reissue the proposed regulations for further public comment. There is an urgent need to recommence concession contracting actions that were necessarily halted in November of 1998 in order to promulgate contracting regulations under the new law. More than 280 of the 630 NPS concession contracts are operating under contract extensions as of January 1999. Both the concessioners and NPS are in need for the contracting process to resume so that new full term concession contracts may be awarded. Concessioners in general dislike operating on extended contracts with no certainty as to the future.

Particularly, concessioners are reluctant to make capital investments under extended concession contracts and have difficulty in retaining experienced employees in light of the uncertainties created by contract extensions. In addition, the public has an obvious need for concession operations to be stabilized under new full term concession contracts. NPS published the proposed regulations for comment as a matter of policy. The regulations are exempt from mandatory publication as proposed regulations

under 5 U.S.C. 553(b)(B) as regulations relating to government agency contracts and public property. Even if the regulations were required to be republished as proposed, it is considered that this would be impractical and contrary to the public interest in light of the backlog of contracting actions that face NPS.

NPS also considers that solicitation of further public comments is unnecessary and not in the public interest. NPS has fully considered the public comments received and has made incremental modifications to the proposed rule that reflect these comments. The final rule, in the view of NPS, is a logical outgrowth of the proposed regulations in consideration of public comments. Further opportunity for public comment would be detrimental to concessioners and visitors to park areas, and, would not, in the view of NPS, significantly alter the content of the final rule. A delay in the commencement of concession contracting under the 1998 Act may make it impossible for NPS to award a number of expiring concession contracts this year (in light of the length of time required to solicit and award concession contracts), thereby requiring further, otherwise unnecessary, contract extensions.

An environmental consulting firm suggested including in numerous places in the proposed regulations specific references to environmental protection matters. NPS has not done this as references in the regulations to "protection of resources," etc., include by implication the commenter's environmental concerns.

Several comments objected to the fact that the proposed regulations do not include provisions regarding the NPS Concessions Management Advisory Board established by Section 409 of the 1998 Act. However, there is no need for regulations governing this Board. Its activities are described by Section 409 and the Board's administrative charter.

A comment asked why the regulations make no reference to NPS 48, the NPS internal guidelines for concessions management. The regulations do not mention NPS 48 as there is no need for them to do so. Administrative guidelines are necessarily subordinate to the content of the regulations.

Several comments asked NPS to rule in the final regulations on the status of particular concessioners or classes of concessioners under varying provisions of the regulations. NPS has not done this. The final rule establishes the framework for concession contracting decisions. Particular decisions must be made as the need arises after finalization of the regulations.

A comment criticized the proposed regulations for not describing how NPS intends to carry out Section 410 of the 1998 Act. Section 410 requires NPS, to the maximum extent possible, to contract with private entities to assist NPS in the conduct of elements of the NPS concessions management program that are considered to be suitable for non-governmental performance. NPS has not made changes to the regulations in light of this comment. Decisions as to what elements of NPS concessions management should be contracted to third parties are administrative in nature.

Several comments criticized the fact that NPS published for public comment its proposed new standard concession contract after publishing the proposed regulations for public comment. The comments suggested that it is difficult to fully comprehend the proposed regulations in the absence of the proposed new standard concession contract. NPS does not agree with this view as the standard concession contract is subordinate to the terms and conditions of the regulations. NPS also notes that it is under no obligation to publish its standard concession contract for public comment. It does so as a matter of policy. In any event, the proposed new standard concession contract was published for public comment almost six weeks in advance of the deadline for submitting public comments on the proposed regulations. Commenters had ample time to review the documents together.

The general concessioner organization criticized the preamble to the proposed regulations with respect to the fact that it concludes that the proposed regulations do not have takings implications within the meaning of Executive Order No. 12630. NPS has reviewed the position of the general concessioner organization in consultation with the Office of the Solicitor. The NPS and the Office of the Solicitor are of the view that the final rule does not have any takings implications as discussed further below.

Several comments stated that the question and answer format of the regulations is confusing. NPS disagrees. It considers that the question and answer format provides an effective means for readers to locate a particular section of the regulations and to understand its relationship to the other sections.

In addition to the changes made to the proposed regulations in the final rule, NPS has made a number of editorial and conforming changes, including, without limit, changing the introductory questions at the beginning of each section to reflect changed content of the section.

Drafting Information

The primary officials that authored this rule are Wendelin M. Mann, Concession Program, National Park Service, and Pamela L. Barkin, Office of the Solicitor, Department of the Interior.

Compliance With Laws, Executive Orders and Departmental Policy

Regulatory Planning and Review (E.O. 12866)

This rule is a significant rule under Section 3(f)(4) of Executive Order 12866 and accordingly has been reviewed by the Office of Management and Budget.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more. In fact, NPS does not consider that the rule will have any measurable effect on the economy. The rule merely establishes the procedures for award of NPS concession contracts and the terms and conditions of NPS concession contracts. This rule will not result in increased costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions as the rule does not change the manner in which a concessioner's rates and charges to the public are established. Further, this rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. To the contrary, the rule enhances competition in the award of concession contracts. The primary effect of the proposed rule is to establish procedures for the solicitation, award and administration of National Park Service concession contracts required by the 1998 Act.

Regulatory Flexibility Act

The purpose of this rule is to describe procedures and terms for the solicitation, award and administration of NPS concession contracts in accordance with the 1998 Act. As such, it is not a rule that is required to be published as proposed for public comment by 5 U.S.C. 553 or other law. 5 U.S.C. 553 exempts from its application regulations that involve a "matter relating to agency management or personnel or to public property, loans, grants, benefits and contracts." The NPS regulations address NPS

concession contracts and public property (park areas). In addition, although Section 417 of the 1998 Act requires NPS to promulgate regulations for its implementation, it does not require that this be done through a general notice of proposed rulemaking. Accordingly, NPS does not consider that this regulation is subject to the Regulatory Flexibility Act as that Act, by its terms, only applies to rules and regulations that are required by 5 U.S.C. 553 or other laws to be promulgated after required publication of a general notice of proposed rulemaking.

On November 22, 1999, however, NPS published in the **Federal Register** a discussion of the proposed regulations that meet the spirit of the Regulatory Flexibility Act in the form of an initial regulatory flexibility analysis. The notice also asked for public comments on the suggestion of NPS that the Regulatory Flexibility Act may not apply to these regulations.

Only two comments were received in response to the notice, both from law firms representing incumbent concessioners. Both comments summarily concluded that the proposed regulations are subject to the Regulatory Flexibility Act. NPS does not agree with this view but considers the matter academic as NPS has fully complied with spirit of the Regulatory Flexibility Act in promulgating these regulations.

NPS also points out that the preamble to the proposed regulations states that it is likely that the number of NPS concession contracts and permits will decrease as a result of the proposed regulations. This statement was erroneously included in the preamble after it had been determined by NPS to be incorrect. The **Federal Register** notice regarding the initial regulatory flexibility analysis stated that this statement should be disregarded.

Upon consideration of public comments on its initial analysis, NPS has concluded that the proposed regulations and final rule, even if subject to the Regulatory Flexibility Act, will not have a significant impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act for the reasons discussed in the initial notice.

Nonetheless, NPS sets forth below the required elements of a final regulatory flexibility analysis in the spirit of the Regulatory Flexibility Act, as follows:

(1) A succinct statement of the need for, and objectives of the rule.

The final rule is needed to comply with Section 417 of the 1998 Act that requires promulgation of appropriate regulations for its implementation. The objectives of the rule are to provide appropriate procedures, terms and conditions for NPS concession contracting in furtherance of the purposes of the 1998 Act.

(2) A summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

As stated, only two comments were received in response to the initial regulatory flexibility analysis. The NPS response to the issues raised by the comments on the initial regulatory flexibility analysis (except for restated arguments regarding the preference in renewal issue) are as follows:

a. *Comment.* The environmental requirements of the proposed rule go beyond statutory requirements and impose duties that should be borne by the government.

NPS disagrees with this comment. The environmental requirements of the proposed rules, i.e., that concessioners should undertake activities in the conduct of their operations that enhance the environment (such as recycling and energy conservation) are clearly reasonable operating conditions that NPS may place on a concessioner under the terms of a concession contract. Further, NPS does not understand why the commenter suggests that these type of programs should be borne by the government. NPS considers that concessioners should be responsible for conserving energy in its operations and recycling trash. Finally, the suggestion that a small business (defined by SBA as a business grossing less than $5 million dollars) cannot afford to undertake progressive environmental management practices such as recycling and energy conservation is not supported by practical experience. Not only are such practices commonplace in the United States, many of them are cost effective. In any event, NPS has modified the environmental requirements in the final rule as discussed above.

b. *Comment.* The restrictions on assignments and sales take the proposed regulations well beyond the statute.

NPS does not consider that the proposed regulations regarding sales and transfers exceeded reasonable implementation of the requirements of Section 408 of the 1998 Act. Section 408 did not exempt small businesses from its application. The information requirements set forth in the proposed regulations are necessary for NPS to carry out its responsibilities under Section 408. In any event, in the final rule NPS has made the information requirements discretionary in the circumstances of particular transactions. The smaller the business, the less information NPS will generally need in order to approve a sale or transfer. In addition, the final rule has eliminated reference to approval of encumbrances of net revenue as mentioned by the commenter as particularly burdensome to small businesses.

c. *Comment.* The section of the proposed rule that states that a purchaser of a concession does not have to buy the related personal property of an existing concessioner could cause losses to the small business concessioner.

NPS notes that the 1998 Act makes no mention of a requirement that an existing concessioner is entitled to have a new concessioner purchase its personal property. It is the position of NPS that concession contracts should not require an existing concessioner to sell its personal property to a new concessioner or to require a new concessioner to purchase the personal property of a previous concessioner. Both businesses are treated equally. NPS fails to understand why a contract that permits the contractor to sell its personal property on the open market upon contract expiration is burdensome to the contractor or in any way contrary to usual business practices in the United States. In fact, requiring a new concessioner to purchase the personal property of a prior concessioner may well be considered burdensome to small businesses.

d. *Comment.* The requirement in the proposed regulations that the purchaser of a concession operation has a year to pay a prior concessioner for its leasehold surrender interest is burdensome to small businesses.

NPS has discussed the need for this provision in the section-by-section analysis. However, NPS also notes that the final rule is changed in this connection, requiring the payment of interest and only permitting payment after the expiration of a contract in extraordinary circumstances beyond the control of NPS. NPS considers that these changes address any valid concerns of the commenter.

e. *Comment.* One hundred and forty two small businesses constitute a significant number of small businesses within the meaning of the Regulatory Flexibility Act.

The commenter made this assertion without explanation. NPS does not consider that there is any valid basis upon which to conclude that 142 businesses out of all the hotel, restaurant, outfitter and guide,

sightseeing, etc. businesses in the United States are a "significant" number of small businesses within the meaning of the Regulatory Flexibility Act.

f. *Comment.* The lottery system and the lack of regulations regarding rates to the public unduly affect small businesses.

Reference to a lottery system has been eliminated in the final rule. In addition, a section on rate approvals has been added. In any event, NPS rate approvals are accomplished under administrative guidelines, not regulations.

(3) A description of and an estimate of the number of small entities to which the rule will apply.

NPS notes that the vast majority of NPS concessioners (approximately 600 out of 630) are "small businesses" under applicable Small Business Administration guidelines (gross receipts of less than $5 million) and has developed the proposed regulations and final rule to accommodate to the extent possible the concerns of concessioners and prospective concessioners, almost all of which are small businesses.

There are some 630 existing NPS concessioners. Of these, approximately 75% will be provided a preference in renewal because of the 1998 Act. In addition, there are an unquantifiable number of businesses which may in the future seek to obtain a concession contract and thereby benefit from the 1998 Act's repeal of the preference in renewal as they will have a greater chance of successfully competing for a concession contract. The types of businesses that are generally NPS concessioners are hotel, restaurant, transportation, marina, sightseeing, outfitting, souvenir sales, etc., *i.e.*, businesses that provide necessary and appropriate visitor services in areas of the national park system.

(4) A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirements and the type of professional skills necessary for preparation of the report or record.

All concessioners are subject to these requirements.

Sections 51.98 and 51.99 describe the records and recordkeeping requirements of the final rule. All concessioners are subject to these requirements under the 1998 Act and this part. The type of skills necessary include business, accounting, and, in limited circumstances, legal skills.

(5) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy and legal reasons for selecting the alternatives adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

The previous discussion under the section-by-section analysis provides this information in detail, including a discussion as to why suggestions from concessioners were not adopted by NPS in the final rule. In general terms, the requirements of the final rule are necessary in order for NPS to properly carry out its responsibilities under the 1998 Act. However, NPS notes that it has made a number of incremental changes in the final rule that ameliorate impacts on smaller entities. For example, it has made the environmental management program elements of the proposed regulations discretionary with respect to businesses grossing less than $100,000 and has provided for lower information requirements for smaller concession contract solicitations. In addition, a number of changes have been made in the final rule that ameliorate impacts on all concessioners, *e.g.*, arbitration of construction cost, payment of interest on leasehold surrender interest not paid for as of contract expiration, inclusion of additional administrative appeal rights, and more limited, non-mandatory information requirements for assignments and encumbrances of concession contracts.

Unfunded Mandates Reform Act

The National Park Service has determined (for the reasons discussed above) and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, State, tribal governments or private entities. A statement containing the information required by the Unfunded Mandates Reform Act is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12360, the rule does not have significant takings implications. The rule has no effect on private property. Existing concessioners are entitled to payment for any real property improvements they may have upon expiration or termination of existing concession contracts in accordance with their terms. Other persons are not affected by the terms of concession contracts issued under the authority of this part unless the person chooses to enter into a concession contract.

Federalism

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The rule imposes no direct requirements on any governmental entity other than the National Park Service.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The collections of information contained in this rule have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 *et. seq.* and assigned clearance numbers 1024–0125 (Submission of Offers in Response to Concession Prospectuses) and 1024–0126 (Sales of Concession Operations). Additional reporting and recordkeeping requirements were identified in subpart F regarding appeal of a preferred offeror determination, subpart G regarding leasehold surrender interest and in subpart K regarding recordkeeping that are not covered under OMB approvals. An emergency information collection request to cover these requirements has been prepared and submitted to OMB for approval. These additional information collection requirements will not be implemented until OMB approves the emergency request. NPS will publish a **Federal Register** notice when OMB has approved these requirements.

National Environmental Policy Act

This rule does not constitute a major federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act is not required. The rule will not increase public use of park areas, introduce noncompatible uses into park areas, conflict with adjacent land ownerships or land uses, or cause a nuisance to property owners or occupants adjacent to park areas. Accordingly, this rule is categorically excluded from the procedural requirements of the National Environmental Policy Act by 516 DM 6, App. 7.4A(10).

Clarity of This Rule

Executive Order 12866 requires federal agencies to write regulations that are easy to understand. Comment is invited on how to make this rule easier to understand, including answers to the following questions: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain undefined technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid in or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more but shorter sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could be done to make the rule easier to understand?

Please send a copy of any comments that concern how this rule could be made easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240.

NPS notes that comments stated that the rule contains technical language and should be shorter. However, the 1998 Act itself is replete with technical language that must be defined in the rule. NPS also considers that the requirements of the rule are stated as clearly as possible.

List of Subjects in 36 CFR Part 51

Concessions, Government contracts, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Part 51 is hereby revised to read as follows:

PART 51—CONCESSION CONTRACTS

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Sec.
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51.2 What is the policy underlying concessions contracts?

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Subpart C—Solicitation, Selection and Award Procedures

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Authority: The Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 *et seq.*, particularly, 16 U.S.C. 3 and Title IV of the National Parks Omnibus Management Act of 1998 (Pub. L. 105–391).

Subpart A—Authority and Purpose

§ 51.1 What does this part cover?

This part covers the solicitation, award, and administration of concession contracts. The Director solicits, awards and administers concession contracts on behalf of the Secretary under the authority of the Act of August 25, 1916, as amended and supplemented, 16 U.S.C. 1 *et seq.* and Title IV of the National Parks Omnibus Management Act of 1998 (Public Law 105–391). The purpose of concession contracts is to authorize persons (concessioners) to provide visitor services in park areas. All concession contracts are to be consistent with the requirements of this part. In accordance with section 403 of the 1998 Act, the Director will utilize concession contracts to authorize the provision of visitor services in park areas, except as may otherwise be authorized by law. For example, the Director may enter into commercial use authorizations under section 418 of the 1998 Act and may enter into agreements with non-profit organizations for the sale of interpretive materials and conduct of interpretive programs for a fee or charge in park areas. In addition, the Director may, as part of an interpretive program agreement otherwise authorized by law, authorize a non-profit organization to provide incidental visitor services that are necessary for the conduct of the interpretive program. Nothing in this part amends, supersedes, or otherwise affects any provision of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 *et seq.*) relating to revenue-producing visitor services.

§ 51.2 What is the policy underlying concessions contracts?

It is the policy of the Congress and the Secretary that visitor services in park areas may be provided only under carefully controlled safeguards against unregulated and indiscriminate use so that visitation will not unduly impair park values and resources. Development of visitor services in park areas will be limited to locations that are consistent to the highest practicable degree with

the preservation and conservation of the resources and values of the park area. It is also the policy of the Congress and the Secretary of the Interior that development of visitor services in park areas must be limited to those as are necessary and appropriate for public use and enjoyment of the park area in which they are located.

Subpart B—General Definitions

§ 51.3 How are terms defined in this part?

To understand this part, you must refer to these definitions, applicable in the singular or the plural, whenever these terms are used in this part:

The *1965 Act* means Public Law 89–249, commonly known as the National Park Service Concession Policies Act of 1965.

A *1965 Act concession contract* is a concession contract or permit entered into under the authority of the 1965 Act.

The *1998 Act* means Title IV of Public Law 105–391.

The *award* of a concession contract is the establishment of a legally binding concession contract. It occurs only when the Director and a selected offeror both fully execute a concession contract.

A concession contract (or contract) means a binding written agreement between the Director and a concessioner entered under the authority of this part or the 1965 Act that authorizes the concessioner to provide certain visitor services within a park area under specified terms and conditions. Concession contracts are not contracts within the meaning of 41 U.S.C. 601 *et seq.* (the Contract Disputes Act) and are not service or procurement contracts within the meaning of statutes, regulations or policies that apply only to federal service contracts or other types of federal procurement actions. Concession contracts will contain such terms and conditions as are required by this part or law and as are otherwise appropriate in furtherance of the purposes of this part and the 1998 Act.

A *concessioner* is an individual, corporation, or other legally recognized entity that duly holds a concession contract.

Director means the Director of the National Park Service (acting on behalf of the Secretary), or an authorized representative of the Director, except where a particular official is specifically identified in this part. In circumstances where this part calls for an appeal to the Director, the appeal shall be considered by an official of higher authority than the official that made the disputed decision.

A *franchise fee* is the consideration paid to the Director by a concessioner for the privileges granted by a concession contract.

Offeror means an individual, corporation, or other legally recognized entity, including an existing concessioner, that submits a proposal for a concession contract. If the entity that is to be the concessioner is not formally in existence as of the time of submission of a proposal, a proposal must demonstrate that the individuals or organizations that intend to establish the entity that will become the concessioner have the ability and are legally obliged to cause the entity to be a qualified person as defined in this part. In addition, if the entity that will be the concessioner is not established at the time of submission of a proposal, the proposal must contain assurances satisfactory to the Director that the entity that will be the concessioner will be a qualified person as of the date of the award of the contract and otherwise have the ability to carry out the commitments made in the proposal.

Possessory interest means an interest in real property improvements as defined by the 1965 Act obtained by a concessioner under a possessory interest concession contract. Possessory interest, for the purposes of this part, does not include any interest in property in which no possessory interest, as defined by the 1965 Act, exists.

A *possessory interest concession contract* means a 1965 Act concession contract that provides the concessioner a possessory interest.

A *preferred offeror* is a concessioner that the Director determines is eligible to exercise a right of preference to the award of a qualified concession contract in accordance with this part.

A *qualified concession contract* is a new concession contract that the Director determines to be a qualified concession contract for right of preference purposes.

A *qualified person* is an individual, corporation or other legally recognized entity that the Director determines has the experience and financial ability to satisfactorily carry out the terms of a concession contract. This experience and financial ability includes, but is not limited to, the ability to protect and preserve the resources of the park area and the ability to provide satisfactory visitor services at reasonable rates to the public.

A *responsive proposal* means a timely submitted proposal that is determined by the Director as agreeing to all of the minimum requirements of the proposed concession contract and prospectus and as having provided the information required by the prospectus.

A *right of preference* is the preferential right of renewal set forth in Section 403(7)(C) of the 1998 Act which requires the Director to allow a preferred offeror the opportunity to match the terms and conditions of a competing responsive proposal that the Director has determined to be the best proposal for a qualified concession contract. A right of preference does not provide any rights of any nature to establish or negotiate the terms and conditions of a concession contract to which a right of preference may apply.

Visitor services means accommodations, facilities and services determined by the Director as necessary and appropriate for public use and enjoyment of a park area provided to park area visitors for a fee or charge by a person other than the Director. The fee or charge paid by the visitor may be direct or indirect as part of the provision of comprehensive visitor services (e.g., when a lodging concessioner may provide free transportation services to guests). Visitor services may include, but are not limited to, lodging, campgrounds, food service, merchandising, tours, recreational activities, guiding, transportation, and equipment rental. Visitor services also include the sale of interpretive materials or the conduct of interpretive programs for a fee or charge to visitors.

Subpart C—Solicitation, Selection and Award Procedures

§ 51.4 How will the Director invite the general public to apply for the award of a concession contract?

(a) The Director must award all concession contracts, except as otherwise expressly provided in this part, through a public solicitation process. The public solicitation process begins with the issuance of a prospectus. The prospectus will invite the general public to submit proposals for the contract. The prospectus will describe the terms and conditions of the concession contract to be awarded and the procedures to be followed in the selection of the best proposal.

(b) Except as provided under § 51.47 (which calls for a final administrative decision on preferred offeror appeals prior to the selection of the best proposal) the terms, conditions and determinations of the prospectus and the terms and conditions of the proposed concession contract as described in the prospectus, including, without limitation, its minimum franchise fee, are not final until the concession contract is awarded. The Director will not issue a prospectus for a concession contract earlier than

eighteen months prior to the expiration of a related existing concession contract.

§ 51.5 What information will the prospectus include?

The prospectus must include the following information:

(a) The minimum requirements of the concession contract. The minimum requirements of the concession contract, include, but are not limited to the following:

(1) The minimum acceptable franchise fee or other forms of consideration to the Government;

(2) The minimum visitor services that the concessioner is to be authorized to provide;

(3) The minimum capital investment, if any, that the concessioner must make;

(4) The minimum measures that the concessioner must take to ensure the protection, conservation, and preservation of the resources of the park area; and

(5) Any other minimum requirements that the new contract may specify, including, as appropriate and without limitation, measurable performance standards;

(b) The terms and conditions of a current concession contract, if any, relating to the visitor services to be provided, including all fees and other forms of compensation provided to the Director under such contract;

(c) A description of facilities and services, if any, that the Director may provide to the concessioner under the terms of the concession contract, including, but not limited to, public access, utilities and buildings;

(d) An estimate of the amount of any compensation due a current concessioner from a new concessioner under the terms of an existing or prior concession contract;

(e) A statement identifying each principal selection factor for proposals, including subfactors, if any, and secondary factors, if any, and the weight and relative importance of the principal and any secondary factors in the selection decision;

(f) Such other information related to the proposed concession contract as is provided to the Director pursuant to a concession contract or is otherwise available to the Director, as the Director determines is necessary to allow for the submission of competitive proposals. Among other such necessary information a prospectus will contain (when applicable) are the gross receipts of the current concession contract broken out by department for the three most recent years; franchise fees charged under the current concession contract for the three most recent years; merchandise inventories of the current concessioner for the three most recent years; and the depreciable fixed assets and net depreciable fixed assets of the current concessioner; and

(g) Identification of a preferred offeror for a qualified concession contract, if any, and, if a preferred offeror exists, a description of a right of preference to the award of the concession contract.

§ 51.6 Will a concession contract be developed for a particular potential offeror?

The terms and conditions of a concession contract must represent the requirements of the Director in accordance with the purposes of this part and must not be developed to accommodate the capabilities or limitations of any potential offeror. The Director must not provide a current concessioner or other person any information as to the content of a proposed or issued prospectus that is not available to the general public.

§ 51.7 How will information be provided to a potential offeror after the prospectus is issued?

Material information directly related to the prospectus and the concession contract (except when otherwise publicly available) that the Director provides to any potential offeror prior to the submission of proposals must be made available to all persons who have requested a copy of the prospectus.

§ 51.8 Where will the Director publish the notice of availability of the prospectus?

The Director will publish notice of the availability of the prospectus at least once in the Commerce Business Daily or in a similar publication if the Commerce Business Daily ceases to be published. The Director may also publish notices, if determined appropriate by the Director, electronically or in local or national newspapers or trade magazines.

§ 51.9 How do I get a copy of the prospectus?

The Director will make the prospectus available upon request to all interested persons. The Director may charge a reasonable fee for a prospectus, not to exceed printing, binding and mailing costs.

§ 51.10 How long will I have to submit my proposal?

The Director will allow an appropriate period for submission of proposals that is not less than 60 days unless the Director determines that a shorter time is appropriate in the circumstances of a particular solicitation. Proposals that are not timely submitted will not be considered by the Director.

§ 51.11 May the Director amend, extend, or cancel a prospectus or solicitation?

The Director may amend a prospectus and/or extend the submission date prior to the proposal due date. The Director may cancel a solicitation at any time prior to award of the concession contract if the Director determines in his discretion that this action is appropriate in the public interest. No offeror or other person will obtain compensable or other legal rights as a result of an amended, extended, canceled or resolicited solicitation for a concession contract.

§ 51.12 Are there any other additional procedures that I must follow to apply for a concession contract?

The Director may specify in a prospectus additional solicitation and/or selection procedures consistent with the requirements of this part in the interest of enhancing competition. Such additional procedures may include, but are not limited to, issuance of a two-phased prospectus—a qualifications phase and a proposal phase. The Director will incorporate simplified administrative requirements and procedures in prospectuses for concession contracts that the Director considers are likely to be awarded to a sole proprietorship or are likely to have annual gross receipts of less than $100,000. Such simplified requirements and procedures may include, as appropriate and without limitation, a reduced application package, a shorter proposal submission period, and a reduction of proposal information requirements.

§ 51.13 When will the Director determine if proposals are responsive?

The Director will determine if proposals are responsive or non-responsive prior to or as of the date of selection of the best proposal.

§ 51.14 What happens if no responsive proposals are submitted?

If no responsive proposals are submitted, the Director may cancel the solicitation, or, after cancellation, establish new contract requirements and issue a new prospectus.

§ 51.15 May I clarify, amend or supplement my proposal after it is submitted?

(a) The Director may request from any offeror who has submitted a timely proposal a written clarification of its proposal. Clarification refers to making clear any ambiguities that may have been contained in a proposal but does not include amendment or supplementation of a proposal. An offeror may not amend or supplement a proposal after the submission date

unless requested by the Director to do so and the Director provides all offerors that submitted proposals a similar opportunity to amend or supplement their proposals. Permitted amendments must be limited to modifying particular aspects of proposals resulting from a general failure of offerors to understand particular requirements of a prospectus or a general failure of offerors to submit particular information required by a prospectus.

(b) A proposal may suggest changes to the terms and conditions of a proposed concession contract and still be considered as responsive so long as the suggested changes are not conditions to acceptance of the terms and conditions of the proposed concession contract. The fact that a proposal may suggest changes to the proposed concession contract does not mean that the Director may accept those changes without a resolicitation of the concession opportunity.

§ 51.16 How will the Director evaluate proposals and select the best one?

(a) The Director will apply the selection factors set forth in § 51.17 by assessing each timely proposal under each of the selection factors on the basis of a narrative explanation, discussing any subfactors when applicable. For each selection factor, the Director will assign a score that reflects the determined merits of the proposal under the applicable selection factor and in comparison to the other proposals received, if any. The first four principal selection factors will be scored from zero to five. The fifth selection factor will be scored from zero to four (with a score of one for agreeing to the minimum franchise fee contained in the prospectus). The secondary factor set forth in § 51.17(b)(1) will be scored from zero to three. Any additional secondary selection factors set forth in the prospectus will be scored as specified in the prospectus provided that the aggregate possible point score for all additional secondary selection factors may not exceed a total of three.

(b) The Director will then assign a cumulative point score to each proposal based on the assigned score for each selection factor.

(c) The responsive proposal with the highest cumulative point score will be selected by the Director as the best proposal. If two or more responsive proposals receive the same highest point score, the Director will select as the best proposal (from among the responsive proposals with the same highest point score), the responsive proposal that the Director determines on the basis of a narrative explanation will, on an overall basis, best achieve the purposes of this part. Consideration of revenue to the United States in this determination and in scoring proposals under principal selection factor five will be subordinate to the objectives of protecting, conserving, and preserving the resources of the park area and of providing necessary and appropriate visitor services to the public at reasonable rates.

§ 51.17 What are the selection factors?

(a) The five principal selection factors are:

(1) The responsiveness of the proposal to the objectives, as described in the prospectus, of protecting, conserving, and preserving resources of the park area;

(2) The responsiveness of the proposal to the objectives, as described in the prospectus, of providing necessary and appropriate visitor services at reasonable rates;

(3) The experience and related background of the offeror, including the past performance and expertise of the offeror in providing the same or similar visitor services as those to be provided under the concession contract;

(4) The financial capability of the offeror to carry out its proposal; and

(5) The amount of the proposed minimum franchise fee, if any, and/or other forms of financial consideration to the Director. However, consideration of revenue to the United States will be subordinate to the objectives of protecting, conserving, and preserving resources of the park area and of providing necessary and appropriate visitor services to the public at reasonable rates.

(b) The secondary selection factors are:

(1) The quality of the offeror's proposal to conduct its operations in a manner that furthers the protection, conservation and preservation of park area and other resources through environmental management programs and activities, including, without limitation, energy conservation, waste reduction, and recycling. A prospectus may exclude this secondary factor if the prospectus solicits proposals for a concession contract that is anticipated to have annual gross receipts of less than $100,000 and the activities that will be conducted under the contract are determined by the Director as likely to have only limited impacts on the resources of the park area; and

(2) Any other selection factors the Director may adopt in furtherance of the purposes of this part, including where appropriate and otherwise permitted by law, the extent to which a proposal calls for the employment of Indians (including Native Alaskans) and/or involvement of businesses owned by Indians, Indian tribes, Native Alaskans, or minority or women-owned businesses in operations under the proposed concession contract.

(c) A prospectus may include subfactors under each of the principal and secondary factors to describe specific elements of the selection factor.

§ 51.18 When must the Director reject a proposal?

The Director must reject any proposal received, regardless of the franchise fee offered, if the Director makes any of the following determinations: the offeror is not a qualified person as defined in this part; The offeror is not likely to provide satisfactory service; the proposal is not a responsive proposal as defined in this part; or, the proposal is not responsive to the objectives of protecting and preserving the resources of the park area and of providing necessary and appropriate services to the public at reasonable rates.

§ 51.19 Must the Director award the concession contract that is set forth in the prospectus?

Except for incorporating into the concession contract appropriate elements of the best proposal, the Director must not award a concession contract which materially amends or does not incorporate the terms and conditions of the concession contract as set forth in the prospectus.

§ 51.20 Does this part limit the authority of the Director?

Nothing in this part may be construed as limiting the authority of the Director at any time to determine whether to solicit or award a concession contract, to cancel a solicitation, or to terminate a concession contract in accordance with its terms.

§ 51.21 When must the selected offeror execute the concession contract?

The selected offeror must execute the concession contract promptly after selection of the best proposal and within the time established by the Director. If the selected offeror fails to execute the concession contract in this period, the Director may select another responsive proposal or may cancel the selection and resolicit the concession contract.

§ 51.22 When may the Director award the concession contract?

Before awarding a concession contract with anticipated annual gross receipts in excess of $5,000,000 or of more than 10 years in duration, or, pursuant to

§ 51.24(b), the Director must submit the concession contract to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The Director must not award any such concession contract until 60 days after the submission. Award of these contracts may not be made without the Director's written approval. The Director may not delegate this approval except to a Deputy Director or an Associate Director. The Director may award a concession contract that is not subject to these or other special award requirements at any time after selection of the best proposal and execution of the concession contract by the offeror.

Subpart D—Non-Competitive Award of Concession Contracts

§ 51.23 May the Director extend an existing concession contract without a public solicitation?

Notwithstanding the public solicitation requirements of this part, the Director may award non-competitively an extension or extensions of an existing concession contract to the current concessioner for additional terms not to exceed three years in the aggregate, *e.g.*, the Director may award one extension with a three year term, two consecutive extensions, one with a two year term and one with a one year term, or three consecutive extensions with a term of one year each. The Director may award such extensions only if the Director determines that the extension is necessary to avoid interruption of visitor services. Before determining to award such a contract extension, the Director must take all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services. Further, the Director must publish notice in the **Federal Register** of the proposed extension at least 30 days in advance of the award of the extension (except in emergency situations).

§ 51.24 May the Director award a temporary concession contract without a public solicitation?

(a) Notwithstanding the public solicitation requirements of this part, the Director may award non-competitively a temporary concession contract or contracts for consecutive terms not to exceed three years in the aggregate, *e.g.*, the Director may award one temporary contract with a three year term, two consecutive temporary contracts, one with a two year term and one with a one year term, or three consecutive temporary contracts with a term of one year each, to any qualified person for the conduct of particular visitor services in a park area if the Director determines that the award is necessary to avoid interruption of visitor services. Before determining to award a temporary concession contract, the Director must take all reasonable and appropriate steps to consider alternatives to avoid an interruption of visitor services. Further, the Director must publish notice in the **Federal Register** of the proposed temporary concession contract at least 30 days in advance of its award (except in emergency situations). A temporary concession contract may not be extended. A temporary concession contract may not be awarded to continue visitor services provided under an extended concession contract except as permitted by paragraph (b) of this section.

(b) Notwithstanding the last sentence of paragraph (a) of this section, the Director may award a temporary concession contract for consecutive terms not to exceed three years in the aggregate to authorize the continuing conduct of visitor services that were conducted under a concession contract that was in effect as of November 13, 1998, and that either had been extended as of that date or was due to expire by December 31, 1998, and was subsequently extended. The Director must personally approve the award of a temporary concession contract in these circumstances and may do so only if the Director determines that the award is necessary to avoid interruption of visitor services and that all reasonable alternatives to the award of the temporary concession contract have been considered and found infeasible. The Director must publish a notice of his intention to award a temporary concession contract to a specified person under this paragraph and the reasons for the proposed award in the **Federal Register** at least 60 days before the temporary concession contract is awarded. In addition, the Director must notify the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives of the proposed award of a temporary concession contract under this paragraph at least 60 days before the temporary concession contract is awarded. A temporary concession contract awarded under the authority of this paragraph will be considered as a contract extension for purposes of determining the existence of a preferred offeror under § 51.44.

(c) A concessioner holding a temporary concession contract will not be eligible for a right of preference to a qualified concession contract which replaces a temporary contract unless the concessioner holding the temporary concession contract was determined or was eligible to be determined a preferred offeror under the extended concession contract that was replaced by the temporary concession contract under paragraph (b) of this section.

§ 51.25 Are there any other circumstances in which the Director may award a concession contract without public solicitation?

Notwithstanding the public solicitation requirements of this part, the Director may award a concession contract non-competitively to any qualified person if the Director determines both that such an award is otherwise consistent with the requirements of this part and that extraordinary circumstances exist under which compelling and equitable considerations require the award of the concession contract to a particular qualified person in the public interest. Indisputable equitable considerations must be the determinant of such circumstances. The Director must publish a notice of his intention to award a concession contract to a specified person under these circumstances and the reasons for the proposed award in the **Federal Register** at least 60 days before the concession contract is awarded. In addition, the Director also must notify the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives at least 60 days before the contract is awarded. The Director must personally approve any such award and may only do so with the prior written approval of the Secretary.

Subpart E—Right of Preference to a New Concession Contract

§ 51.26 What solicitation, selection and award procedures apply when a preferred offeror exists?

The solicitation, selection and award procedures described in this part will apply to the solicitation, selection and award of contracts for which a preferred offeror exists, except as modified by this subpart, subpart F and other sections of this part related to preferred offerors and/or a right of preference.

§ 51.27 Who is a preferred offeror and what are a preferred offeror's rights to the award of a new concession contract?

(a) A preferred offeror is a concessioner that the Director has determined is eligible to exercise a right of preference to the award of a qualified new concession contract in accordance with this part.

(b) A right of preference is the right of a preferred offeror, if it submits a responsive proposal for a qualified concession contract, to match in accordance with the requirements of this part the terms and conditions of a competing proposal that the Director has determined to be the best responsive proposal.

§ 51.28 When will the Director determine whether a concessioner is a preferred offeror?

Subject to §§ 51.46 and 51.47, the Director will determine whether a concessioner is a preferred offeror in accordance with this part no later than the date of issuance of a prospectus for the applicable new concession contract.

§ 51.29 How will I know when a preferred offeror exists?

If the Director has determined that a preferred offeror exists for a qualified concession contract under this part, the Director will identify the preferred offeror in the applicable prospectus and describe the preferred offeror's right of preference.

§ 51.30 What must a preferred offeror do before it may exercise a right of preference?

A preferred offeror must submit a responsive proposal pursuant to the terms of an applicable prospectus for a qualified concession contract if the preferred offeror wishes to exercise a right of preference.

§ 51.31 What happens if a preferred offeror does not submit a responsive proposal?

If a preferred offeror fails to submit a responsive proposal, the offeror may not exercise a right of preference. The concession contract will be awarded to the offeror submitting the best responsive proposal.

§ 51.32 What is the process if the Director determines that the best responsive proposal was not submitted by a preferred offeror?

If the Director determines that a proposal other than the responsive proposal submitted by a preferred offeror is the best proposal submitted for a qualified concession contract, then the Director must advise the preferred offeror of the better terms and conditions of the best proposal and permit the preferred offeror to amend its proposal to match them. An amended proposal must match the better terms and conditions of the best proposal as determined by the Director. If the preferred offeror duly amends its proposal within the time period allowed by the Director, and the Director determines that the amended proposal matches the better terms and conditions of the best proposal, then the Director must select the preferred offeror for award of the contract upon the amended terms and conditions, subject to other applicable requirements of this part.

§ 51.33 What if a preferred offeror does not timely amend its proposal to meet the terms and conditions of the best proposal?

If a preferred offeror does not amend its proposal to meet the terms and conditions of the best proposal within the time period allowed by the Director, the Director will select for award of the contract the offeror that submitted the best responsive proposal.

§ 51.34 What will the Director do if a selected preferred offeror does not timely execute the new concession contract?

If a selected preferred offeror fails to execute the concession contract in the time period specified by the Director, the Director either will select for award of the concession contract the offeror that submitted the best responsive proposal, or will cancel the solicitation and may resolicit the concession contract but only without recognition of a preferred offeror or right of preference.

§ 51.35 What happens to a right of preference if the Director receives no responsive proposals?

If the Director receives no responsive proposals, including a responsive proposal from a preferred offeror, in response to a prospectus for a qualified concession contract for which a preferred offeror exists, the Director must cancel the solicitation and may resolicit the concession contract or take other appropriate action in accordance with this part. No right of preference will apply to a concession contract resolicited under this section unless the contract is resolicited upon terms and conditions materially more favorable to offerors than those contained in the original contract.

Subpart F—Determining a Preferred Offeror

§ 51.36 What conditions must be met before the Director determines that a concessioner is a preferred offeror?

A concessioner is a preferred offeror if the Director determines that the following conditions are met:

(a) The concessioner was a satisfactory concessioner during the term of its concession contract as determined under this part;

(b) The applicable new contract is a qualified concession contract as determined under this part; and

(c) If applicable, the concessioner's previous concession contract was an outfitter and guide concession contract as determined under this part.

§ 51.37 How will the Director determine that a new concession contract is a qualified concession contract?

A new concession contract is a qualified concession contract if the Director determines that:

(a) The new concession contract provides for the continuation of the visitor services authorized under a previous concession contract. The visitor services to be continued under the new contract may be expanded or diminished in scope but, for purposes of a qualified concession contract, may not materially differ in nature and type from those authorized under the previous concession contract; and either

(b) The new concession contract that is to replace the previous concession contract is estimated to result in, as determined by the Director, annual gross receipts of less than $500,000 in the first 12 months of its term; or

(c) The new concession contract is an outfitter and guide concession contract as described in this part.

§ 51.38 How will the Director determine that a concession contract is an outfitter and guide concession contract?

The Director will determine that a concession contract is an outfitter and guide concession contract if the Director determines that:

(a) The concession contract solely authorizes or requires (except for park area access purposes) the conduct of specialized outdoor recreation guide services in the backcountry of a park area; and

(b) The conduct of operations under the concession contract requires employment of specially trained and experienced guides to accompany park visitors who otherwise may not have the skills and equipment to engage in the activity and to provide a safe and enjoyable experience for these visitors.

§ 51.39 What are some examples of outfitter and guide concession contracts?

Outfitter and guide concession contracts may include, but are not limited to, concession contracts which solely authorize or require the guided conduct of river running, hunting (where otherwise lawful in a park area), fishing, horseback, camping, and mountaineering activities in the backcountry of a park area.

§ 51.40 What are some factors to be considered in determining that outfitter and guide operations are conducted in the backcountry?

Determinations as to whether outfitter and guide operations are conducted in the backcountry of a park area will be made on a park-by-park basis, taking into account the park area's particular

geographic circumstances. Factors that generally may indicate that outfitter and guide operations are conducted in the backcountry of a park area include, without limitation, the fact that:

(a) The operations occur in areas remote from roads and developed areas;

(b) The operations are conducted within a designated natural area of a park area;

(c) The operations occur in areas that are inaccessible by motorized vehicle;

(d) The operations occur in areas where search and rescue support is not readily available; and

(e) All or a substantial portion of the operations occur in designated or proposed wilderness areas.

§ 51.41 If the concession contract grants a compensable interest in real property improvements, will the Director find that the concession contract is an outfitter and guide concession contract?

The Director will find that a concession contract is not an outfitter and guide contract if the contract grants any compensable interest in real property improvements on lands owned by the United States within a park area.

§ 51.42 Are there exceptions to this compensable interest prohibition?

Two exceptions to this compensable interest prohibition exist:

(a) The prohibition will not apply to real property improvements lawfully constructed by a concessioner with the written approval of the Director in accordance with the express terms of a 1965 Act concession contract; and

(b) The prohibition will not apply to real property improvements constructed and owned in fee simple by a concessioner or owned in fee simple by a concessioner's predecessor before the land on which they were constructed was included within the boundaries of the applicable park area.

§ 51.43 Who will make the determination that a concession contract is an outfitter and guide contract?

Only a Deputy Director or an Associate Director will make the determination that a concession contract is or is not an outfitter and guide contract.

§ 51.44 How will the Director determine if a concessioner was satisfactory for purposes of a right of preference?

To be a satisfactory concessioner for the purposes of a right of preference, the Director must determine that the concessioner operated satisfactorily on an overall basis during the term of its applicable concession contract, including extensions of the contract. The Director will base this determination in consideration of annual evaluations made by the Director of the concessioner's performance under the terms of the applicable concession contract and other relevant facts and circumstances. The Director must determine that a concessioner did not operate satisfactorily on an overall basis during the term of a concession contract if the annual evaluations of the concessioner made subsequent to May 17, 2000 are less than satisfactory for any two or more years of operation under the concession contract.

§ 51.45 Will a concessioner that has operated for less than the entire term of a concession contract be considered a satisfactory operator?

The Director will determine that a concessioner has operated satisfactorily on an overall basis during the term of a concession contract only if the concessioner (including a new concessioner resulting from an assignment as described in this part, including, without limit, an assignment of a controlling interest in a concessioner as defined in this part) has or will have operated for more than two years under a concession contract with a term of more than five years or for one year under a concession contract with a term of five years or less. For purposes of this section, a new concessioner's first day of operation under an assigned concession contract (or as a new concessioner after approval of an assignment of a controlling interest in a concessioner) will be the day the Director approves the assignment pursuant to this part. If the Director determines that an assignment was compelled by circumstances beyond the control of the assigning concessioner, the Director may make an exception to the requirements of this section.

§ 51.46 May the Director determine that a concessioner has not operated satisfactorily after a prospectus is issued?

The Director may determine that a concessioner has not operated satisfactorily on an overall basis during the term of a current concession contract, and therefore is not a preferred offeror, after a prospectus for a new contract has been issued and prior to the selection of the best proposal submitted in response to a prospectus. In circumstances where the usual time of an annual evaluation of a concessioner's performance may not occur until after the selection of the best proposal submitted in response to a prospectus, the Director will make an annual performance evaluation based on a shortened operations period prior to the selection of the best proposal. Such shorter operations period, however, must encompass at least 6 months of operations from the previous annual performance evaluation. In the event the concessioner receives a second less than satisfactory annual evaluation (including, without limitation, one based on a shortened operations period) May 17, 2000, the prospectus must be amended to delete a right of preference or canceled and reissued without recognition of a right of preference to the new concession contract.

§ 51.47 How does a person appeal a decision of the Director that a concessioner is or is not a preferred offeror?

(a) Except as stated in paragraph (b) of this section, any person may appeal to the Director a determination that a concessioner is or is not a preferred offeror for the purposes of a right of preference in renewal, including, without limitation, whether the applicable new concession contract is or is not a qualified concession contract as described in this part. This appeal must specify the grounds for the appeal and be received by the Director in writing no later than 30 days after the date of the determination. If applicable, the Director may extend the submission date for an appeal under this section upon request by the concessioner if the Director determines that good cause for an extension exists.

(b) The appeal provided by this section will not apply to determinations that a concessioner is not a preferred offeror as a consequence of two or more less than satisfactory annual evaluations as described in this part as the concessioner is given an opportunity to appeal those evaluations after they are made in accordance with applicable administrative guidelines.

(c) The Director must consider an appeal under this section personally or must authorize a Deputy Director or Associate Director to consider the appeal. The deciding official must prepare a written decision on the appeal, taking into account the content of the appeal, other written information available, and the requirements of this part. The written decision on the appeal must be issued by the date of selection of the best proposal submitted in response to a prospectus. If the appeal results in a concessioner being determined a preferred offeror, then the concessioner will have a right of preference to the qualified concession contract as described in and subject to the conditions of this part, including, but not limited to, the obligation to submit a responsive proposal pursuant to the terms of the related prospectus. If the appeal results in a determination

that a concessioner is not a preferred offeror, no right of preference will apply to the award of the related concession contract and the award will be made in accordance with the requirements of this part.

(d) No person will be considered as having exhausted administrative remedies with respect to a determination by the Director that a concessioner is or is not a preferred offeror until the Director issues a written decision in response to an appeal submitted pursuant to this section, or, where applicable, pursuant to an appeal provided by the administrative guidelines described in paragraph (b) of this section. The decision of the Director is final agency action.

§ 51.48 What happens to a right of preference in the event of termination of a concession contract for unsatisfactory performance or other breach?

Nothing in this part will limit the right of the Director to terminate a concession contract pursuant to its terms at any time for less than satisfactory performance or otherwise. If a concession contract is terminated for less than satisfactory performance or other breach, the terminated concessioner, even if otherwise qualified, will not be eligible to be a preferred offeror. The fact that the Director may not have terminated a concession contract for less than satisfactory performance or other breach will not limit the authority of the Director to determine that a concessioner did not operate satisfactorily on an overall basis during the term of a concession contract.

§ 51.49 May the Director grant a right of preference except in accordance with this part?

The Director may not grant a concessioner or any other person a right of preference or any other form of entitlement of any nature to a new concession contract, except in accordance with this part or in accordance with 36 CFR part 13.

§ 51.50 Does the existence of a preferred offeror limit the authority of the Director to establish the terms of a concession contract?

The existence of a preferred offeror does not limit the authority of the Director to establish, in accordance with this part, the terms and conditions of a new concession contract, including, but not limited to, terms and conditions that modify the terms and conditions of a prior concession contract.

Subpart G—Leasehold Surrender Interest

§ 51.51 What special terms must I know to understand leasehold surrender interest?

To understand leasehold surrender interest, you must refer to these definitions, applicable in the singular or the plural, whenever these terms are used in this part:

Arbitration means binding arbitration conducted by an arbitration panel. All arbitration proceedings conducted under the authority of this subpart or subpart H of this part will utilize the following procedures unless otherwise agreed by the concessioner and the Director. One member of the arbitration panel will be selected by the concessioner, one member will be selected by the Director, and the third (neutral) member will be selected by the two party-appointed members. The neutral arbiter must be a licensed real estate appraiser. The expenses of the neutral arbiter and other associated common costs of the arbitration will be borne equally by the concessioner and the Director. The arbitration panel will adopt procedures that treat each party equally, give each party the opportunity to be heard, and give each party a fair opportunity to present its case. Adjudicative procedures are not encouraged but may be adopted by the panel if determined necessary in the circumstances of the dispute. Determinations must be made by a majority of the members of the panel and will be binding on the concessioner and the Director.

A capital improvement is a structure, fixture, or non-removable equipment provided by a concessioner pursuant to the terms of a concession contract and located on lands of the United States within a park area. A capital improvement does not include any interest in land. Additionally, a capital improvement does not include any interest in personal property of any kind including, but not limited to, vehicles, boats, barges, trailers, or other objects, regardless of size, unless an item of personal property becomes a fixture as defined in this part. Concession contracts may further describe, consistent with the limitations of this part and the 1998 Act, the nature and type of specific capital improvements in which a concessioner may obtain a leasehold surrender interest.

Construction cost of a capital improvement means the total of the incurred eligible direct and indirect costs necessary for constructing or installing the capital improvement that are capitalized by the concessioner in accordance with Generally Accepted Accounting Principals (GAAP). The term "construct" or "construction" as used in this part also means "install" or "installation" of fixtures where applicable.

Consumer Price Index means the national "Consumer Price Index—All Urban Consumers" published by the Department of Labor. If this index ceases to be published, the Director will designate another regularly published cost-of-living index approximating the national Consumer Price Index.

Depreciation means the loss of value in a capital improvement as evidenced by the condition and prospective serviceability of the capital improvement in comparison with a new unit of like kind.

Eligible direct costs means the sum of all incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project), that are necessary both for the construction of a capital improvement and are typically elements of a construction contract. Eligible direct costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): building permits; materials, products and equipment used in construction; labor used in construction; security during construction; contractor's shack and temporary fencing; material storage facilities; power line installation and utility costs during construction; performance bonds; and contractor's (and subcontractor's) profit and overhead (including job supervision, worker's compensation insurance and fire, liability, and unemployment insurance).

Eligible indirect costs means, except as provided in the last sentence of this definition, the sum of all other incurred capitalized costs (in amounts no higher than those prevailing in the locality of the project) necessary for the construction of a capital improvement. Eligible indirect costs may include, without limitation, the costs of (if capitalized in accordance with GAAP and in amounts no higher than those prevailing in the locality of the project): architectural and engineering fees for plans, plan checks; surveys to establish building lines and grades; environmental studies; if the project is financed, the points, fees or service charges and interest on construction loans; all risk insurance expenses and ad valorem taxes during construction. The actual capitalized administrative expenses (in amounts no higher than those prevailing in the locality of the project) of the concessioner for direct, on-site construction inspection are

eligible indirect costs. Other administrative expenses of the concessioner are not eligible indirect costs.

Fixtures and non-removable equipment are manufactured items of personal property of independent form and utility necessary for the basic functioning of a structure that are affixed to and considered to be part of the structure such that title is with the Director as real property once installed. Fixtures and non-removable equipment do not include building materials (e.g., wallboard, flooring, concrete, cinder blocks, steel beams, studs, window frames, windows, rafters, roofing, framing, siding, lumber, insulation, wallpaper, paint, etc.). Because of their special circumstances, floating docks (but not other types of floating property) constructed by a concessioner pursuant to the terms of a leasehold surrender interest concession contract are considered to be non-removable equipment for leasehold surrender interest purposes only. Except as otherwise indicated in this part, the term "fixture" as used in this part includes the term "non-removable equipment."

Leasehold surrender interest solely means a right to payment in accordance with this part for related capital improvements that a concessioner makes or provides within a park area on lands owned by the United States pursuant to this part and under the terms and conditions of an applicable concession contract. The existence of a leasehold surrender interest does not give the concessioner, or any other person, any right to conduct business in a park area, to utilize the related capital improvements, or to prevent the Director or another person from utilizing the related capital improvements. The existence of a leasehold surrender interest does not include any interest in the land on which the related capital improvements are located.

Leasehold surrender interest concession contract means a concession contract that provides for leasehold surrender interest in capital improvements.

Leasehold surrender interest value means the amount of compensation a concessioner is entitled to be paid for a leasehold surrender interest in capital improvements in accordance with this part. Unless otherwise provided by the terms of a leasehold surrender interest concession contract under the authority of section 405(a)(4) of the 1998 Act, leasehold surrender interest value in existing capital improvements is an amount equal to:

(1) The initial construction cost of the related capital improvement;

(2) Adjusted by (increased or decreased) the same percentage increase or decrease as the percentage increase or decrease in the Consumer Price Index from the date the Director approves the substantial completion of the construction of the related capital improvement to the date of payment of the leasehold surrender interest value;

(3) Less depreciation of the related capital improvement on the basis of its condition as of the date of termination or expiration of the applicable leasehold surrender interest concession contract, or, if applicable, the date on which a concessioner ceases to utilize a related capital improvement (*e.g.*, where the related capital improvement is taken out of service by the Director pursuant to the terms of a concession contract).

Major rehabilitation means a planned, comprehensive rehabilitation of an existing structure that:

(1) The Director approves in advance and determines is completed within 18 months from start of the rehabilitation work (unless a longer period of time is approved by the Director in special circumstances); and

(2) The construction cost of which exceeds fifty percent of the pre-rehabilitation value of the structure.

Pre-rehabilitation value of an existing structure means the replacement cost of the structure less depreciation.

Real property improvements means real property other than land, including, but not limited to, capital improvements.

Related capital improvement or *related fixture* means a capital improvement in which a concessioner has a leasehold surrender interest.

Replacement cost means the estimated cost to reconstruct, at current prices, an existing structure with utility equivalent to the existing structure, using modern materials and current standards, design and layout.

Structure means a building, dock, or similar edifice affixed to the land so as to be part of the real estate. A structure may include both constructed infrastructure (*e.g.*, water, power and sewer lines) and constructed site improvements (*e.g.*, paved roads, retaining walls, sidewalks, paved driveways, paved parking areas) that are permanently affixed to the land so as to be part of the real estate and that are in direct support of the use of a building, dock, or similar edifice. Landscaping that is integral to the construction of a structure is considered as part of a structure. Interior furnishings that are not fixtures are not part of a structure.

Substantial completion of a capital improvement means the condition of a capital improvement construction project when the project is substantially complete and ready for use and/or occupancy.

§ 51.52 How do I obtain a leasehold surrender interest?

Leasehold surrender interest concession contracts will contain appropriate leasehold surrender interest terms and conditions consistent with this part. A concessioner will obtain leasehold surrender interest in capital improvements constructed in accordance with this part and the leasehold surrender interest terms and conditions of an applicable leasehold surrender interest concession contract.

§ 51.53 When may the Director authorize the construction of a capital improvement?

The Director may only authorize or require a concessioner to construct capital improvements on park lands in accordance with this part and under the terms and conditions of a leasehold surrender interest concession contract for the conduct by the concessioner of visitor services, including, without limitation, the construction of capital improvements necessary for the conduct of visitor services.

§ 51.54 What must a concessioner do before beginning to construct a capital improvement?

Before beginning to construct any capital improvement, the concessioner must obtain written approval from the Director in accordance with the terms of its leasehold surrender interest concession contract. The request for approval must include appropriate plans and specifications for the capital improvement and any other information that the Director may specify. The request must also include an estimate of the total construction cost of the capital improvement. The estimate of the total construction cost must specify all elements of the cost in such detail as is necessary to permit the Director to determine that they are elements of construction cost as defined in this part. (The approval requirements of this and other sections of this part also apply to any change orders to a capital improvement project and to any additions to a structure or replacement of fixtures as described in this part.)

§ 51.55 What must a concessioner do after substantial completion of the capital improvement?

Upon substantial completion of the construction of a capital improvement in which the concessioner is to obtain a leasehold surrender interest, the

concessioner must provide the Director a detailed construction report. The construction report must be supported by actual invoices of the capital improvement's construction cost together with, if requested by the Director, a written certification from a certified public accountant. The construction report must document, and any requested certification by the certified public accountant must certify, that all components of the construction cost were incurred and capitalized by the concessioner in accordance with GAAP, and that all components are eligible direct or indirect construction costs as defined in this part. Invoices for additional construction costs of elements of the project that were not completed as of the date of substantial completion may subsequently be submitted to the Director for inclusion in the project's construction cost.

§ 51.56 How will the construction cost for purposes of leasehold surrender interest value be determined?

After receiving the detailed construction report (and certification, if requested), from the concessioner, the Director will review the report, certification and other information as appropriate to determine that the reported construction cost is consistent with the construction cost approved by the Director in advance of the construction and that all costs included in the construction cost are eligible direct or indirect costs as defined in this part. The construction cost determined by the Director will be the construction cost for purposes of the leasehold surrender interest value in the related capital improvement unless the Concessioner requests arbitration of the construction cost under § 51.57. The Director may at any time amend a construction cost determination (subject to arbitration under § 51.57) if the Director determines that it was based on false, misleading or incomplete information.

§ 51.57 How does a concessioner request arbitration of the construction cost of a capital improvement?

If a concessioner requests arbitration of the construction cost of a capital improvement determined by the Director, the request must be made in writing to the Director within 3 months of the date of the Director's determination of construction cost under § 51.56. If a timely request is not made, the Director's determination of construction cost under § 51.56 shall be the final determination of the construction cost. The arbitration procedures are described in § 51.51. The decision of the arbitration panel as to the construction cost of the capital improvement will be binding on the concessioner and the Director.

§ 51.58 What actions may or must the concessioner take with respect to a leasehold surrender interest?

The concessioner:

(a) May encumber a leasehold surrender interest in accordance with this part, but only for the purposes specified in this part;

(b) Where applicable, must transfer in accordance with this part its leasehold surrender interest in connection with any assignment, termination or expiration of the concession contract; and

(c) May relinquish or waive a leasehold surrender interest.

§ 51.59 Will a leasehold surrender interest be extinguished by expiration or termination of a leasehold surrender interest concession contract or may it be taken for public use?

A leasehold surrender interest may not be extinguished by the expiration or termination of a concession contract and a leasehold surrender interest may not be taken for public use except on payment of just compensation. Payment of leasehold surrender interest value pursuant to this part will constitute the payment of just compensation for leasehold surrender interest within the meaning of this part and for all other purposes.

§ 51.60 How will a new concession contract awarded to an existing concessioner treat a leasehold surrender interest obtained under a prior concession contract?

When a concessioner under a leasehold surrender interest concession contract is awarded a new concession contract by the Director, and the new concession contract continues a leasehold surrender interest in related capital improvements, then the concessioner's leasehold surrender interest value (established as of the date of expiration or termination of its prior concession contract) in the related capital improvements will be continued as the initial value (instead of initial construction cost) of the concessioner's leasehold surrender interest under the terms of the new concession contract. No compensation will be due the concessioner for its leasehold surrender interest or otherwise in these circumstances except as provided by this part.

§ 51.61 How is an existing concessioner who is not awarded a new concession contract paid for a leasehold surrender interest?

(a) When a concessioner is not awarded a new concession contract after expiration or termination of a leasehold surrender interest concession contract, or, the concessioner, prior to such termination or expiration, ceases to utilize under the terms of a concession contract capital improvements in which the concessioner has a leasehold surrender interest, the concessioner will be entitled to be paid its leasehold surrender interest value in the related capital improvements. The leasehold surrender interest will not be transferred until payment of the leasehold surrender interest value. The date for payment of the leasehold surrender interest value, except in special circumstances beyond the Director's control, will be the date of expiration or termination of the leasehold surrender interest contract, or the date the concessioner ceases to utilize related capital improvements under the terms of a concession contract. Depreciation of the related capital improvements will be established as of the date of expiration or termination of the concession contract, or, if applicable, the date the concessioner ceases to utilize the capital improvements under the terms of a concession contract.

(b) In the event that extraordinary circumstances beyond the control of the Director prevent the Director from making the leasehold surrender interest value payment as of the date of expiration or termination of the leasehold surrender interest concession contract, or, as of the date a concessioner ceases to utilize related capital improvements under the terms of a concession contract, the payment when made will include interest on the amount that was due on the date of expiration or termination of the concession contract or cessation of use for the period after the payment was due until payment is made (in addition to the inclusion of a continuing Consumer Price Index adjustment until the date payment is made). The rate of interest will be the applicable rate of interest established by law for overdue obligations of the United States. The payment for a leasehold surrender interest value will be made within one year after the expiration or termination of the concession contract or the cessation of use of related capital improvements under the terms of a concession contract.

§ 51.62 What is the process to determine the leasehold surrender interest value when the concessioner does not seek or is not awarded a new concession contract?

Leasehold surrender interest concession contracts must contain provisions under which the Director and the concessioner will seek to agree in advance of the expiration or other termination of the concession contract as to what the concessioner's leasehold surrender interest value will be on a unit-by-unit basis as of the date of expiration or termination of the concession contract. In the event that agreement cannot be reached, the provisions of the leasehold surrender interest concession contract must provide for arbitration as to the leasehold surrender interest values upon request of the Director or the concessioner. The arbitration procedures are described in Section 51.51. A prior decision as to the construction cost of capital improvements made by the Director or by an arbitration panel in accordance with this part are final and not subject to further arbitration.

§ 51.63 When a new concessioner pays a prior concessioner for a leasehold surrender interest, what is the leasehold surrender interest in the related capital improvements for purposes of a new concession contract?

A new leasehold surrender interest concession contract awarded to a new concessioner will require the new concessioner to pay the prior concessioner its leasehold surrender interest value in existing capital improvements as determined under § 51.62. The new concessioner upon payment will have a leasehold surrender interest in the related capital improvements on a unit-by-unit basis under the terms of the new leasehold surrender interest contract. Instead of initial construction cost, the initial value of such leasehold surrender interest will be the leasehold surrender interest value that the new concessioner was required to pay the prior concessioner.

§ 51.64 May the concessioner gain additional leasehold surrender interest by undertaking a major rehabilitation or adding to a structure in which the concessioner has a leasehold surrender interest?

A concessioner that, with the written approval of the Director, undertakes a major rehabilitation or adds a new structure (*e.g.*, a new wing to an existing building or an extension of an existing sidewalk) to an existing structure in which the concessioner has a leasehold surrender interest, will increase its leasehold surrender interest in the related structure, effective as of the date of substantial completion of the major rehabilitation or new structure, by the construction cost of the major rehabilitation or new structure. The Consumer Price Index adjustment for leasehold surrender interest value purposes will apply to the construction cost as of the date of substantial completion of the major rehabilitation or new structure. Approvals for major rehabilitations and additions to structures are subject to the same requirements and conditions applicable to new construction as described in this part.

§ 51.65 May the concessioner gain additional leasehold surrender interest by replacing a fixture in which the concessioner has a leasehold surrender interest?

A concessioner that replaces an existing fixture in which the concessioner has a leasehold surrender interest with a new fixture will increase its leasehold surrender interest by the amount of the construction cost of the replacement fixture less the construction cost of the replaced fixture.

§ 51.66 Under what conditions will a concessioner obtain a leasehold surrender interest in existing real property improvements in which no leasehold surrender interest exists?

(a) A concession contract may require the concessioner to replace fixtures in real property improvements in which there is no leasehold surrender interest (e.g., fixtures attached to an existing government facility assigned by the Director to the concessioner). A leasehold surrender interest will be obtained by the concessioner in such fixtures subject to the approval and determination of construction cost and other conditions contained in this part.

(b) A concession contract may require the concessioner to undertake a major rehabilitation of a structure in which there is no leasehold surrender interest (*e.g.*, a government-constructed facility assigned to the concessioner). Upon substantial completion of the major rehabilitation, the concessioner will obtain a leasehold surrender interest in the structure. The initial construction cost of this leasehold surrender interest will be the construction cost of the major rehabilitation. Depreciation for purposes of leasehold surrender interest value will apply only to the rehabilitated components of the related structure.

§ 51.67 Will a concessioner obtain leasehold surrender interest as a result of repair and maintenance of real property improvements?

A concessioner will not obtain initial or increased leasehold surrender interest as a result of repair and maintenance of real property improvements unless a repair and maintenance project is a major rehabilitation.

Subpart H—Possessory Interest

§ 51.68 If a concessioner under a 1965 Act concession contract is not awarded a new concession contract, how will a concessioner that has a possessory interest receive compensation for its possessory interest?

A concessioner that has possessory interest in real property improvements pursuant to the terms of a 1965 Act concession contract, will, if the prior concessioner does not seek or is not awarded a new concession contract upon expiration or other termination of its 1965 Act concession contract, be entitled to receive compensation for its possessory interest in the amount and manner described by the possessory interest concession contract. The concessioner shall also be entitled to receive all other compensation, including any compensation for property in which there is no possessory interest, to the extent and in the manner that the possessory interest contract may provide.

§ 51.69 What happens if there is a dispute between the new concessioner and a prior concessioner as to the value of the prior concessioner's possessory interest?

In case of a dispute between a new concessioner and a prior concessioner as to the value of the prior concessioner's possessory interest, the dispute will be resolved under the procedures contained in the possessory interest concession contract. A new concessioner will not agree on the value of a prior concessioner's possessory interest without the prior written approval of the Director unless the value is determined through the binding determination process required by the possessory interest concession contract. The Director's written approval is to ensure that the value is consistent with the terms and conditions of the possessory interest concession contract. If a new concessioner and a prior concessioner engage in a binding process to resolve a dispute as to the value of the prior concessioner's possessory interest, the new concessioner must allow the Director to assist the new concessioner in the dispute process to the extent requested

by the Director. Nothing in this section may be construed as limiting the rights of the prior concessioner to be paid for its possessory interest or other property by a new concessioner in accordance with the terms of its concession contract.

§ 51.70 If a concessioner under a 1965 Act concession contract is awarded a new concession contract, what happens to the concessioner's possessory interest?

In the event a concessioner under a 1965 Act concession contract is awarded a new concession contract replacing a possessory interest concession contract, the concessioner will obtain a leasehold surrender interest in its existing possessory interest real property improvements under the terms of the new concession contract. The concessioner will carry over as the initial value of such leasehold surrender interest (instead of initial construction cost) an amount equal to the value of its possessory interest in real property improvements as of the expiration or other termination of its possessory interest contract. This leasehold surrender interest will apply to the concessioner's possessory interest in real property improvements even if the real property improvements are not capital improvements as defined in this part. In the event that the concessioner had a possessory interest in only a portion of a structure, depreciation for purposes of leasehold surrender interest value under the new concession contract will apply only to the portion of the structure to which the possessory interest applied. The concessioner and the Director will seek to agree on an allocation of the leasehold surrender interest value on a unit by unit basis.

§ 51.71 What is the process to be followed if there is a dispute between the prior concessioner and the Director as to the value of possessory interest?

Unless other procedures are agreed to by the concessioner and the Director, in the event that a concessioner under a possessory interest concession contract is awarded a new concession contract and there is a dispute between the concessioner and the Director as to the value of such possessory interest, or, a dispute as to the allocation of an established overall possessory interest value on a unit by unit basis, the value and/or allocation will be established by arbitration in accordance with the terms and conditions of this part. The arbitration procedures are described in § 51.51.

§ 51.72 If a new concessioner is awarded the contract, what is the relationship between leasehold surrender interest and possessory interest?

If a new concessioner is awarded a leasehold surrender interest concession contract and is required to pay a prior concessioner for possessory interest in real property improvements, the new concessioner will have a leasehold surrender interest in the real property improvements under the terms of its new concession contract. The initial value of the leasehold surrender interest (instead of initial construction cost) will be the value of the possessory interest as of the expiration or other termination of the 1965 Act possessory interest concession contract. This leasehold surrender interest will apply even if the related possessory interest real property improvements are not capital improvements as defined in this part. In the event a new concessioner obtains a leasehold surrender interest in only a portion of a structure as a result of the acquisition of a possessory interest from a prior concessioner, depreciation for purposes of leasehold surrender interest value will apply only to the portion of the structure to which the possessory interest applied.

Subpart I—Concession Contract Provisions

§ 51.73 What is the term of a concession contract?

A concession contract will generally be awarded for a term of 10 years or less unless the Director determines that the contract terms and conditions, including the required construction of capital improvements, warrant a longer term. It is the policy of the Director under these requirements that the term of concession contracts should be as short as is prudent, taking into account the financial requirements of the concession contract, resource protection and visitor needs, and other factors the Director may deem appropriate. In no event will a concession contract have a term of more than 20 years (unless extended in accordance with this part).

§ 51.74 When may a concession contract be terminated by the Director?

Concession contracts will contain appropriate provisions for suspension of operations under a concession contract and for termination of a concession contract by the Director for default, including, without limitation, unsatisfactory performance, or termination when necessary to achieve the purposes of the 1998 Act. The purposes of the 1998 Act include, but are not limited to, protecting, conserving, and preserving park area resources and providing necessary and appropriate visitor services in park areas.

§ 51.75 May the Director segment or split concession contracts?

The Director may not segment or otherwise split visitor services authorized or required under a single concession contract into separate concession contracts if the purpose of such action is to establish a concession contract with anticipated annual gross receipts of less than $500,000.

§ 51.76 May the Director include in a concession contract or otherwise grant a concessioner a preferential right to provide new or additional visitor services?

The Director may not include a provision in a concession contract or otherwise grant a concessioner a preferential right to provide new or additional visitor services under the terms of a concession contract or otherwise. For the purpose of this section, a "preferential right to new or additional services" means a right of a concessioner to a preference (in the nature of a right of first refusal or otherwise) to provide new or additional visitor services in a park area beyond those already provided by the concessioner under the terms of a concession contract. A concession contract may be amended to authorize the concessioner to provide minor additional visitor services that are a reasonable extension of the existing services. A concessioner that is allocated park area entrance, user days or similar resource use allocations for the purposes of a concession contract will not obtain any contractual or other rights to continuation of a particular allocation level pursuant to the terms of a concession contract or otherwise. Such allocations will be made, withdrawn and/or adjusted by the Director from time to time in furtherance of the purposes of this part.

§ 51.77 Will a concession contract provide a concessioner an exclusive right to provide visitor services?

Concession contracts will not provide in any manner an exclusive right to provide all or certain types of visitor services in a park area. The Director may limit the number of concession contracts to be awarded for the conduct of visitor services in a particular park area in furtherance of the purposes described in this part.

§ 51.78 Will a concession contract require a franchise fee and will the franchise fee be subject to adjustment?

(a) Concession contracts will provide for payment to the government of a

franchise fee or other monetary consideration as determined by the Director upon consideration of the probable value to the concessioner of the privileges granted by the contract involved. This probable value will be based upon a reasonable opportunity for net profit in relation to capital invested and the obligations of the contract. Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving park areas and of providing necessary and appropriate visitor services at reasonable rates.

(b) The franchise fee contained in a concession contract with a term of 5 years or less may not be adjusted during the term of the contract. Concession contracts with a term of more than 5 years will contain a provision that provides for adjustment of the contract's established franchise fee at the request of the concessioner or the Director. An adjustment will occur if the concessioner and the Director mutually determine that extraordinary, unanticipated changes occurred after the effective date of the contract that have affected or will significantly affect the probable value of the privileges granted by the contract. The concession contract will provide for arbitration if the Director and a concessioner cannot agree upon an appropriate adjustment to the franchise fee that reflects the extraordinary, unanticipated changes determined by the concessioner and the Director.

§ 51.79 May the Director waive payment of a franchise fee or other payments?

The Director may not waive the concessioner's payment of a franchise fee or other payments or consideration required by a concession contract, except that a franchise fee may be waived in part by the Director pursuant to administrative guidelines that may allow for a partial franchise fee waiver in recognition of exceptional performance by a concessioner under the terms of a concession contract. A concessioner will have no right to require the partial waiver of a franchise fee under this authority or under any related administrative guidelines.

§ 51.80 How will the Director establish franchise fees for multiple outfitter and guide concession contracts in the same park area?

If the Director awards more than one outfitter and guide concession contract that authorizes or requires the concessioners to provide the same or similar visitor services at the same approximate location or utilizing the same resource within a single park area, the Director will establish franchise fees for those concession contracts that are comparable. In establishing these comparable franchise fees, the Director will take into account, as appropriate, variations in the nature and type of visitor services authorized by particular concession contracts, including, but not limited to, length of the visitor experience, type of equipment utilized, relative expense levels, and other relevant factors. The terms and conditions of an existing concession contract will not be subject to modification or open to renegotiation by the Director because of the award of a new concession contract at the same approximate location or utilizing the same resource.

§ 51.81 May the Director include "special account" provisions in concession contracts?

(a) The Director may not include in concession contracts "special account" provisions, that is, contract provisions which require or authorize a concessioner to undertake with a specified percentage of the concessioner's gross receipts the construction of real property improvements, including, without limitation, capital improvements on park lands. The construction of capital improvements will be undertaken only pursuant to the leasehold surrender interest provisions of this part and the applicable concession contract.

(b) Concession contracts may contain provisions that require the concessioner to set aside a percentage of its gross receipts or other funds in a repair and maintenance reserve to be used at the direction of the Director solely for maintenance and repair of real property improvements located in park areas and utilized by the concessioner in its operations. Repair and maintenance reserve funds may not be expended to construct real property improvements, including, without limitation, capital improvements. Repair and maintenance reserve provisions may not be included in concession contracts in lieu of a franchise fee, and funds from the reserves will be expended only for the repair and maintenance of real property improvements assigned to the concessioner by the Director for use in its operations.

(c) A concession contract must require the concessioner to maintain in good condition through a comprehensive repair and maintenance program all of the concessioner's personal property used in the performance of the concession contract and all real property improvements, including, without limitation, capital improvements, and, government personal property, assigned to the concessioner by a concession contract.

§ 51.82 Are a concessioner's rates required to be reasonable and subject to approval by the Director?

(a) Concession contracts will permit the concessioner to set reasonable and appropriate rates and charges for visitor services provided to the public, subject to approval by the Director.

(b) Unless otherwise provided in a concession contract, the reasonableness of a concessioner's rates and charges to the public will be determined primarily by comparison with those rates and charges for facilities and services of comparable character under similar conditions, with due consideration of the following factors and other factors deemed relevant by the Director: Length of season; peakloads; average percentage of occupancy; accessibility; availability and costs of labor and materials; and types of patronage. Such rates and charges may not exceed the market rates and charges for comparable facilities, goods, and services, after taking these factors into consideration.

§ 51.83 Handicrafts. [Reserved]

Subpart J—Assignment or Encumbrance of Concession Contracts

§ 51.84 What special terms must I know to understand this part?

To understand this subpart specifically and this part in general you must refer to these definitions, applicable in the singular or plural, whenever the terms are used in this part.

A *controlling interest in a concession contract* means an interest, beneficial or otherwise, that permits the exercise of managerial authority over a concessioner's performance under the terms of the concession contract and/or decisions regarding the rights and liabilities of the concessioner.

A *controlling interest in a concessioner* means, in the case of corporate concessioners, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the concessioner or related entities that permits the exercise of managerial authority over the actions and operations of the concessioner. A "controlling interest" in a concessioner also means, in the case of corporate concessioners, an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the concessioner or related entities to permit the election of a majority of the Board of Directors of the concessioner.

The term "controlling interest" in a concessioner, in the instance of a partnership, limited partnership, joint venture, other business organization or individual entrepreneurship, means ownership or beneficial ownership of the assets of the concessioner that permits the exercise of managerial authority over the actions and operations of the concessioner.

Rights to operate and/or manage under a concession contract means any arrangement where the concessioner employs or contracts with a third party to operate and/or manage the performance of a concession contract (or any portion thereof). This does not apply to arrangements with an individual employee.

Subconcessioner means a third party that, with the approval of the Director, has been granted by a concessioner rights to operate under a concession contract (or any portion thereof), whether in consideration of a percentage of revenues or otherwise.

§ 51.85 What assignments require the approval of the Director?

The concessioner may not assign, sell, convey, grant, contract for, or otherwise transfer (such transactions collectively referred to as "assignments" for purposes of this part), without the prior written approval of the Director, any of the following:

(a) Any concession contract;

(b) Any rights to operate under or manage the performance of a concession contract as a subconcessioner or otherwise;

(c) Any controlling interest in a concessioner or concession contract; or

(d) Any leasehold surrender interest or possessory interest obtained under a concession contract.

§ 51.86 What encumbrances require the approval of the Director?

The concessioner may not encumber, pledge, mortgage or otherwise provide as a security interest for any purpose (such transactions collectively referred to as "encumbrances" for purposes of this part), without the prior written approval of the Director, any of the following:

(a) Any concession contract;

(b) Any rights to operate under or manage performance under a concession contract as a subconcessioner or otherwise;

(c) Any controlling interest in a concessioner or concession contract; or

(d) Any leasehold surrender interest or possessory interest obtained under a concession contract.

§ 51.87 Does the concessioner have an unconditional right to receive the Director's approval of an assignment or encumbrance?

No, approvals of assignments or encumbrances are subject to the following determinations by the Director:

(a) That the purpose of a leasehold surrender interest or possessory interest encumbrance is either to finance the construction of capital improvements under the applicable concession contract in the applicable park area or to finance the purchase of the applicable concession contract. An encumbrance of a leasehold surrender interest or possessory interest may not be made for any other purpose, including, but not limited to, providing collateral for other debt of a concessioner, the parent of a concessioner, or an entity related to a concessioner;

(b) That the encumbrance does not purport to provide the creditor or assignee any rights beyond those provided by the applicable concession contract, including, but not limited to, any rights to conduct business in a park area except in strict accordance with the terms and conditions of the applicable concession contract;

(c) That the encumbrance does not purport to permit a creditor or assignee of a creditor, in the event of default or otherwise, to begin operations under the applicable concession contract or through a designated operator unless and until the Director determines that the proposed operator is a qualified person as defined in this part;

(d) That an assignment or encumbrance does not purport to assign or encumber assets that are not owned by the concessioner, including, without limitation, park area entrance, user day, or similar use allocations made by the Director;

(e) That the assignment is to a qualified person as defined in this part;

(f) That the assignment or encumbrance would not have an adverse impact on the protection, conservation or preservation of park resources;

(g) That the assignment or encumbrance would not have an adverse impact on the provision of necessary and appropriate facilities and services to visitors at reasonable rates and charges; and

(h) That the terms of the assignment or encumbrance are not likely, directly or indirectly, to reduce an existing or new concessioner's opportunity to earn a reasonable profit over the remaining term of the applicable concession contract, to affect adversely the quality of facilities and services provided by the concessioner, or result in a need for increased rates and charges to the public to maintain the quality of concession facilities and services.

§ 51.88 What happens if an assignment or encumbrance is completed without the approval of the Director?

Assignments or encumbrances completed without the prior written approval of the Director will be considered as null and void and a material breach of the applicable concession contract which may result in termination of the contract for cause. No person will obtain any valid or enforceable rights in a concessioner, in a concession contract, or to operate or manage under a concession contract as a subconcessioner or otherwise, or to leasehold surrender interest or possessory interest, if acquired in violation of the requirements in this subpart.

§ 51.89 What happens if there is a default on an encumbrance approved by the Director?

In the event of default on an encumbrance approved by the Director in accordance with this part, the creditor, or an assignee of the creditor, may succeed to the interests of the concessioner only to the extent provided by the approved encumbrance, this part and the terms and conditions of the applicable concession contract.

§ 51.90 How does the concessioner get the Director's approval before making an assignment or encumbrance?

Before completing any assignment or encumbrance which may be considered to be the type of transaction described in this part, including, but not limited to, the assignment or encumbrance of what may be a controlling interest in a concessioner or a concession contract, the concessioner must apply in writing for approval of the transaction by the Director.

§ 51.91 What information may the Director require in the application?

An application for the Director's approval of an assignment or encumbrance will include, to the extent required by the Director in the circumstances of the transaction, the following information in such detail as the Director may specify in order to make the determinations required by this subpart:

(a) All instruments proposed to implement the transaction;

(b) An opinion of counsel to the effect that the proposed transaction is lawful under all applicable federal and state laws;

(c) A narrative description of the proposed transaction;

(d) A statement as to the existence and nature of any litigation relating to the proposed transaction;

(e) A description of the management qualifications, financial background, and financing and operational plans of any proposed transferee;

(f) A detailed description of all financial aspects of the proposed transaction;

(g) Prospective financial statements (proformas);

(h) A schedule that allocates in detail the purchase price (or, in the case of a transaction other than an asset purchase, the valuation) of all assets assigned or encumbered. In addition, the applicant must provide a description of the basis for all allocations and ownership of all assets; and

(i) Such other information as the Director may require to make the determinations required by this subpart.

§ 51.92 What are standard proformas?

Concessioners are encouraged to submit standard prospective financial statements (proformas) pursuant to this part. A "standard proforma" is one that:

(a) Provides projections, including revenues and expenses that are consistent with the concessioner's past operating history unless the proforma is accompanied by a narrative that describes why differing expectations are achievable and realistic;

(b) Assumes that any loan related to an assignment or encumbrance will be paid in full by the expiration of the concession contract unless the proforma contains a narrative description as to why an extended loan period is consistent with an opportunity for reasonable profit over the remaining term of the concession contract. The narrative description must include, but is not limited to, identification of the loan's collateral after expiration of the concession contract; and

(c) Assumes amortization of any intangible assets assigned or encumbered as a result of the transaction over the remaining term of the concession contract unless the proforma contains a narrative description as to why such extended amortization period is consistent with an opportunity for reasonable profit over the remaining term of the concession contract.

§ 51.93 If the transaction includes more that one concession contract, how must required information be provided?

In circumstances of an assignment or encumbrance that includes more than one concession contract, the concessioner must provide the information described in this subpart on a contract by contract basis.

§ 51.94 What information will the Director consider when deciding to approve a transaction?

In deciding whether to approve an assignment or encumbrance, the Director will consider the proformas, all other information submitted by the concessioner, and other information available to the Director.

§ 51.95 Does the Director's approval of an assignment or encumbrance include any representations of any nature?

In approving an assignment or encumbrance, the Director has no duty to inform any person of any information the Director may have relating to the concession contract, the park area, or other matters relevant to the concession contract or the assignment or encumbrance. In addition, in approving an assignment or encumbrance, the Director makes no representations of any nature to any person about any matter, including, but not limited to, the value, allocation, or potential profitability of any concession contract or assets of a concessioner. No approval of an assignment or encumbrance may be construed as altering the terms and conditions of the applicable concession contract unless expressly so stated by the Director in writing.

§ 51.96 May the Director amend or extend a concession contract for the purpose of facilitating a transaction?

The Director may not amend or extend a concession contract for the purpose of facilitating an assignment or encumbrance. The Director may not make commitments regarding rates to the public, contract extensions, concession contract terms and conditions, or any other matter, for the purpose of facilitating an assignment or encumbrance.

§ 51.97 May the Director open to renegotiation or modify the terms of a concession contract as a condition to the approval of a transaction?

The Director may not open to renegotiation or modify the terms and conditions of a concession contract as a condition to the approval of an assignment or encumbrance. The exception is if the Director determines that renegotiation or modification is required to avoid an adverse impact on the protection, conservation or preservation of the resources of a park area or an adverse impact on the provision of necessary and appropriate visitor services at reasonable rates and charges.

Subpart K—Information and Access to Information

§ 51.98 What records must the concessioner keep and what access does the Director have to records?

A concessioner (and any subconcessioner) must keep any records that the Director may require for the term of the concession contract and for five calendar years after the termination or expiration of the concession contract to enable the Director to determine that all terms of the concession contract are or were faithfully performed. The Director and any duly authorized representative of the Director must, for the purpose of audit and examination, have access to all pertinent records, books, documents, and papers of the concessioner, subconcessioner and any parent or affiliate of the concessioner (but with respect to parents and affiliates, only to the extent necessary to confirm the validity and performance of any representations or commitments made to the Director by a parent or affiliate of the concessioner).

§ 51.99 What access to concessioner records will the Comptroller General have?

The Comptroller General or any duly authorized representative of the Comptroller General must, until the expiration of five calendar years after the close of the business year of each concessioner (or subconcessioner), have access to and the right to examine all pertinent books, papers, documents and records of the concessioner, subconcessioner and any parent or affiliate of the concessioner (but with respect to parents and affiliates only to the extent necessary to confirm the validity and performance of any representations or commitments made to the Director by the parent or affiliate of the concessioner).

§ 51.100 When will the Director make proposals and evaluation documents publicly available?

In the interest of enhancing competition for concession contracts, the Director will not make publicly available proposals submitted in response to a prospectus or documents generated by the Director in evaluating such proposals, until the date that the new concession contract solicited by the prospectus is awarded. At that time, the Director may or will make the proposals and documents publicly available in accordance with applicable law.

Subpart L—The Effect of the 1998 Act's Repeal of the 1965 Act

§ 51.101 Did the 1998 Act repeal the 1965 Act?

Section 415 of the 1998 Act repealed the 1965 Act and related laws as of November 13, 1998. This repeal did not affect the validity of any 1965 Act concession contract. The provisions of this part apply to all 1965 Act concession contracts except to the extent that such provisions are inconsistent with terms and conditions of a 1965 Act concession contract.

§ 51.102 What is the effect of the 1998 Act's repeal of the 1965 Act's preference in renewal?

(a) Section 5 of the 1965 Act required the Secretary to give existing satisfactory concessioners a preference in the renewal (termed a "renewal preference" in the rest of this section) of its concession contract or permit. Section 415 of the 1998 Act repealed this statutory renewal preference as of November 13, 1998. It is the final decision of the Director, subject to the right of appeal set forth in paragraph (b) of this section, that holders of 1965 Act concession contracts are not entitled to be given a renewal preference with respect to such contracts (although they may otherwise qualify for a right of preference regarding such contracts under Sections 403(7) and (8) of the 1998 Act as implemented in this part). However, if a concessioner holds an existing 1965 Act concession contract and the contract makes express reference to a renewal preference, the concessioner may appeal to the Director for recognition of a renewal preference.

(b) Such appeal must be in writing and be received by the Director no later than thirty days after the issuance of a prospectus for a concession contract under this part for which the concessioner asserts a renewal preference. The Director must make a decision on the appeal prior to the proposal submission date specified in the prospectus. Where applicable, the Director will give notice of this appeal to all potential offerors that requested a prospectus. The Director may delegate consideration of such appeals only to a Deputy or Associate Director. The deciding official must prepare a written decision on the appeal, taking into account the content of the appeal and other available information.

(c) If the appeal results in a determination by the Director that the 1965 Act concession contract in question makes express reference to a renewal preference under section 5 of the 1965 Act, the 1998 Act's repeal of section 5 of the 1965 Act was inconsistent with the terms and conditions of the concession contract, and that the holder of the concession contract in these circumstances is entitled to a renewal preference by operation of law, the Director will permit the concessioner to exercise a renewal preference for the contract subject to and in accordance with the otherwise applicable right of preference terms and conditions of this part, including, without limitation, the requirement for submission of a responsive proposal pursuant to the terms of an applicable prospectus. The Director, similarly, will permit any holder of a 1965 Act concession contract that a court of competent jurisdiction determines in a final order is entitled to a renewal preference, for any reason, to exercise a right of preference in accordance with the otherwise applicable requirements of this part, including, without limitation, the requirement for submission of a responsive proposal pursuant to the terms of an applicable prospectus.

§ 51.103 Severability.

A determination that any provision of this part is unlawful will not affect the validity of the remaining provisions.

Subpart M—Information Collection

§ 51.104 Have information collection procedures been followed?

(a) The Paperwork Reduction Act provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The information collection for submission of proposals in response to concession prospectuses contained in this part have been approved by the Office of Management and Budget as required by 44 U.S.C. 3501 *et seq.* and assigned clearance number 1024–0125, extended through May 30, 2000. An information collection for proposed transfers of concession operations is covered by OMB Approval No. 1024–0126 effective through August 31, 2002.

(b) The public reporting burden for the collection of information for the purpose of preparing a proposal in response to a contract solicitation is estimated to average 480 hours per proposal for large authorizations and 240 hours per proposal for small authorizations. The public reporting burden for the collection of information for the purpose of requesting approval of a sale or transfer of a concession operation is estimated to be 80 hours. Please send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Information Collection Officer, National Park Service, 1849 C Street, Washington, DC 20240; and to the Attention: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

(c) Additional reporting and recordkeeping requirements were identified in subpart F regarding appeal of a preferred offeror determination, subpart G regarding leasehold surrender interest and in subpart K regarding recordkeeping that are not covered under OMB approval. An emergency information collection request to cover these requirements has been prepared and submitted to OMB for approvals. These additional information collection requirements will not be implemented until OMB approves the emergency request. The Director will publish a **Federal Register** notice when OMB has approved these requirements.

Dated: April 10, 2000.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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Part IV

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 903

[Docket No. FR–4420–P–06]

RIN 2577–AB89

Rule To Deconcentrate Poverty and Promote Integration in Public Housing

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the regulatory text of the final rule on Public Housing Agency Plans, published October 21, 1999, to fully reflect the importance of deconcentration by income and affirmatively furthering fair housing in a PHA's admission policy, consistent with the directive to achieve "One America," and to provide further direction to PHAs on the implementation of deconcentration and affirmatively furthering fair housing.

HUD also proposes to make several clarifying language changes throughout the rule to make the PHA Plan regulation clearer for PHAs, their residents and members of the public. HUD sets out the entire rule for the convenience of the reader. In addition, one change would permit the Secretary to further simplify the PHA Plan submission for PHAs permitted to submit a streamlined Plan.

DATES: *Comments Due Date:* June 1, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Rod Solomon, Deputy Assistant Secretary, Office of Policy, Program and Legislative Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4116, Washington, DC 20410; telephone (202) 708–0713 (this is not a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Purpose of This Rule

HUD today is issuing this proposed rule for two purposes. The first is to assure that PHAs know what they must do to deconcentrate poverty in the public housing program. The second is to assure that PHAs know what they must do to affirmatively further fair housing, as it relates to admissions to public housing.

With the issuance of this revision of the PHA Plan rule, the Administration initiates a new chapter in the history of Federal policy on subsidized housing for low and moderate income people in America. Central to this new chapter is the dream of "One America," where families are not segregated by such factors as income and race.

Focusing specifically on the income mixing and fair housing obligations of local public housing agencies, this revised rule outlines a bold commitment to meeting the critical housing needs of struggling renters and their families and to expanding opportunity through housing assistance—the original and enduring dream of America's housing policy and, by extension, of the American experiment itself. This commitment is embodied in a set of high expectations for public housing agencies. The expectations aim to significantly reduce the persistently high levels of racial segregation and poverty concentration that have too long characterized public housing in many of our Nation's communities.

Over fifty years ago, the Housing Act of 1949 articulated a national commitment to a "decent home and suitable living environment for every American family." More than a commitment, it was a *dream*—namely, that housing and community development assistance generate real opportunity for individuals and families struggling up the ladder into our Nation's economic mainstream. This dream was also part of the 1937 enactment of the Nation's first public housing program: the law envisioned public housing as a platform of opportunity for families ranging in income and background to save money on rent and thereby make their way up the economic ladder.

Sadly, the reality of housing assistance, particularly when provided through subsidized housing developments, has often fallen short of the dream. And public housing has presented unique and significant challenges in this regard. Public housing is a form of subsidized housing development that is typically developed and managed by local public housing agencies (rather than private or nonprofit landlords), with funding from HUD.

For decades, many of the Nation's cities and towns sited public housing developments in predominantly low-income, minority neighborhoods. Discriminatory local political processes thus concentrated a large share of the locality's most affordable, subsidized rental units in geographic areas that tended to be—already—older, more dilapidated, higher in poverty, less politically powerful, and more poorly supported by public services than other areas. It was hardly the dream that our Nation's founding fathers, or the framers of Federal housing policy in the last century, envisioned. And the results of discrimination in the siting of public housing have been all too predictable: opportunity denied, racial and economic isolation perpetuated, and a mountain of civil rights litigation.

Unfortunately, the challenge is broader than where public housing developments have been sited. Over the years, compounding the frequent problem of discriminatory siting was a second local practice: discrimination in the lease-up processes that open particular public housing developments or provide Section 8 rental subsidies (vouchers) to households of particular racial and socioeconomic backgrounds. In some cases, relatively higher income families might have been directed to higher income, "better" buildings in better neighborhoods, or similar discrimination might have been practiced on the basis of racial or ethnic background. In others, local actions might not have been undertaken to counteract discriminatory siting over the years.

With the issuance of this revised rule, the Administration initiates another historic shift in the direction of housing policy and a significant strengthening of HUD's role as a promoter of opportunity and protector of civil rights. Fulfilling the aims and expectations outlined in the Quality Housing and Work Responsibility Act of 1998 (also known as the Public Housing Reform Act), this revised rule specifies what local public housing agencies must do, as part of the Public Housing Agency Plans they submit to HUD in order to receive funding, to deconcentrate poverty and affirmatively further fair housing in the public housing program and to affirmatively further fair housing in the Section 8 voucher program.

No longer will an agency, whether by intent or by default, be able to

concentrate relatively low-income families in some buildings and higher income families in other buildings. Under this revised rule, a local public housing agency will meet the first requirement—deconcentration–by bringing higher income tenants into relatively lower income buildings and lower income tenants into relatively higher income buildings. This will be accomplished by classifying buildings and prospective tenants according to their income levels and then making lease-up decisions, as outlined above, that gradually improve the income mix of each building under a public housing agency's management. In order to achieve deconcentration, an agency must skip particular families on its waiting list, as necessary. In addition, an agency may apply local admission preferences created to serve special, high-need groups: homeless persons, victims of domestic violence, and families with severe rent burden (greater than fifty percent of household income).

In addition, a public housing agency must meet the revised rule's second principal requirement by preparing and carrying out its Plan in ways that protect the civil rights of families served. First, each agency must carry out its Plan in conformity with Federal civil rights laws, including provisions of the Civil Rights Act of 1964 and the Fair Housing Act of 1968. Beyond the basic requirement of nondiscrimination, however, an agency should affirmatively further fair housing to reduce racial and national origin concentrations. As this revised rule indicates, HUD will take action to challenge civil rights certifications where it appears that a PHA Plan or its implementation does not reduce racial and ethnic concentrations and is perpetuating segregation or is, worse yet, creating new segregation. If HUD offers this challenge, the onus will be on the public housing agency to establish that it is providing the full range of housing opportunities to applicants and tenants or that it is implementing affirmative efforts. Affirmative efforts may include the marketing of geographic areas in which particular demographic groups typically do not reside, additional consultation and information for applicants, and provision of additional support services and amenities to a development.

Together, the deconcentration and fair housing expectations clarified in this historic revised rule represent a new contract between the Nation's housing and urban development agency and its communities, between HUD and those who provide vital housing assistance with HUD funds. The dream of One America, of opportunity for all across all the old divides, endures. And while much hard work lies ahead to meet the requirements of this revised rule and mount other important strategies that reduce social and economic isolation, this revised rule puts America's core rental housing assistance programs on a new path—the path of opportunity for hardworking families all across the land, regardless of income or background.

II. Scope of Comments

Although HUD is issuing the entire PHA Plan rule so that the reader can see the amended deconcentration and nondiscrimination provisions in the context of the entire PHA Plan rule, HUD is only seeking comment on the proposed changes (notably, the provisions of Subpart A), and will only address these comments at the final rule stage. In particular, the Department is interested in receiving comment on the principal approach presented in § 903.2 of the rule text, and on the alternative approach presented in Section III of this preamble.

III. Consideration of Approaches

When the Department decided on a specific approach to assure that poverty would be deconcentrated in public housing as a result of this rule, it considered various approaches, two of which are described below.

The approach included in this Proposed Rule is basically to require that PHAs determine an overall average income for tenants in their family developments; characterize each building as higher income or lower income, based on whether the average income in the building is above or below the overall average; and require that lower income families be admitted to higher income buildings and higher income families be admitted to lower income buildings. This method for implementing the deconcentration policy would be easy to understand and have the widest possible impact.

Another approach that was considered, but is not included in the Proposed Rule, is to require consideration of the income of a family relative to the average income of a building only when the average income in a building is a certain percentage below or above the overall average; and then to allow the admission of families with incomes below the overall average only to those buildings in the middle range or above, and to allow the admission of families with incomes above the overall average only to those buildings with incomes in the middle range or below. Although this approach involves less administrative complexity, it also would have less impact on deconcentration.

The Department solicits comments on the changes in the entire rule but especially regarding the following:

1. To the extent that your comments express concern that this rule affects the fulfillment of statutory and policy goals other than income deconcentration, what alternative mechanisms do you suggest that still accomplish deconcentration?

2. To the extent that your comments address administrative complexity, please include alternative suggestions that achieve deconcentration.

IV. Justification for Shortened Public Comment Period

It is the general practice of the Department to provide a 60-day public comment period on all proposed rules. The Department, however, is reducing its usual 60-day public comment period to 45 days for this proposed rule. Through the PHA Annual Plans submitted to date, HUD has determined that there is in urgent need to provide PHAs with more specific direction on how to implement deconcentration policies in public housing and how to comply with requirements for nondiscrimination and affirmatively furthering fair housing in public housing admissions. The October 21, 1999 final rule provided that PHAs could determine a PHA-wide average income in family developments and categorize applicant families and public housing buildings as higher or lower income based on that average. The October 21, 1999 final rule did not make clear, however, what action PHAs must take with respect to these higher and lower income applicants relative to the higher or lower income buildings. Additionally, the rule did not specify various other critical matters regarding deconcentration requirements. The rule also did not specify how the requirement to affirmatively further fair housing would be applied in the context of admission to public housing. The first PHA Annual Plans that have been submitted to HUD generally reflect these shortcomings. HUD, therefore, needs to issue a second final rule as quickly as possible, so that PHAs that have not yet submitted their Plans can submit deconcentration plans and related fair housing admissions policies that meet the statutory requirements and accomplish the statutory goals.

V. Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this rule does not have a significant economic impact on a substantial number of small entities. This proposed rule amends the final rule published on October 21, 1999, to make clarification and plain language changes made to the earlier final rule. This proposed rule does not alter the Regulatory Flexibility finding made in the October 21, 1999 final rule.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Environmental Impact

The Finding of No Significant Impact with respect to the environment was prepared during the interim rulemaking stage of this rule, in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That Finding remains applicable to this proposed rule, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410.

Regulatory Review

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this proposed rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the final rule after its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Office of General Counsel, Regulations Division, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers applicable to the programs affected by this rule are 14.850 and 14.855.

List of Subjects in 24 CFR Part 903

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements

For the reasons stated in the preamble, HUD proposes to revise part 903 of title 24 of the Code of Federal Regulations to read as follows:

PART 903—PUBLIC HOUSING AGENCY PLANS

Subpart A—Deconcentration of Poverty and Fair Housing in Program Admissions

Sec.

903.1 What is the purpose of this subpart?
903.2 With respect to admissions, what must a PHA do to deconcentrate poverty in its developments and comply with fair housing requirements?

Subpart B—PHA Plans

903.3 What is the purpose of this subpart?
903.4 What are the public housing agency plans?
903.5 When must a PHA submit the plans to HUD?
903.6 What information must a PHA provide in the 5-Year Plan?
903.7 What information must a PHA provide in the Annual Plan?
903.9 May HUD request additional information in the Annual Plan of a troubled PHA?
903.11 Are certain PHAs eligible to submit a streamlined Annual Plan?
903.13 What is a Resident Advisory Board and what is its role in development of the Annual Plan?
903.15 What is the relationship of the public housing agency plans to the Consolidated Plan?
903.17 What is the process for obtaining public comment on the plans?
903.19 When is the 5-Year Plan or Annual Plan ready for submission to HUD?
903.21 May the PHA amend or modify a plan?
903.23 What is the process by which HUD reviews, approves, or disapproves an Annual Plan?
903.25 How does HUD ensure PHA compliance with its plans?

Authority: 42 U.S.C. 1437c; 42 U.S.C. 3535(d).

Subpart A—Deconcentration of Poverty and Fair Housing in Program Admissions

§ 903.1 What is the purpose of this subpart?

The purpose of this subpart is to specify what a Public Housing Agency must do in order to reduce the concentration of lower income and higher income public housing tenants in particular buildings or developments and to affirmatively further fair housing.

§ 903.2 With respect to admissions, what must a PHA do to deconcentrate poverty in its developments and comply with fair housing requirements?

(a) *Deconcentration of poverty and income mixing.* The PHA's admission policy with respect to deconcentration of poverty and income mixing implements section 16(a)(3)(B) of the 1937 Act (42 U.S.C. 1437n), which applies to the PHA's public housing program. Deconcentration is achieved by bringing higher income tenants into lower income developments and lower income tenants into higher income developments. The provisions of this section apply to applicants to and residents seeking voluntary transfers within public housing developments, except for those approved for demolition or for conversion to tenant-based assistance.

(1) *General.* To implement this requirement, the PHA must admit lower income families to higher income buildings (or developments) and admit higher income families to lower income buildings (or developments), using the following steps:

(i) *Step 1.* Annually determine the average income of all families residing in all of its general occupancy developments (including families residing in developments approved for demolition or conversion to tenant-based assistance and families residing in public housing units in mixed-finance developments).

(ii) *Step 2.* Annually determine the average income of all families residing in each building of each general occupancy development.

(iii) *Step 3.* Determine which general occupancy development buildings have an average income higher than the PHA average for general occupancy developments—designated "higher income buildings"—and which have an

average income lower than the PHA average for general occupancy developments—designated "lower income buildings".

(iv) *Step 4.* Determine which families on the waiting list have incomes higher than the PHA-wide average income for general occupancy developments—designated "higher income families" for this purpose—and which have incomes lower than the PHA-wide average for general occupancy developments—designated "lower income families" for this purpose.

(v) *Step 5.* When a unit becomes available for occupancy in a higher income building, the PHA must skip families on the waiting list if necessary to reach a lower income family to whom it will offer the unit. When a unit becomes available for occupancy in a lower income building, the PHA must skip families on the waiting list if necessary to reach a higher income family to whom it will offer the unit. Skipping is required, as necessary, with respect to both site-based and community-wide waiting lists, and it must be uniformly applied. If the waiting list does not contain a family in the income category to whom the unit is to be offered, the PHA may offer a unit to a family in the other income category.

(2) *Applicability of local preferences.* In determining which higher income or lower income families to admit to a lower income or a higher income building, the PHA must use its waiting list. The PHA may use local admission preferences, except if using them would result either in offering a unit in a higher income building to a higher income family or in offering a unit in a lower income building to a lower income family. However, if a PHA has a preference for homeless persons, for families paying more than 50 percent of their income in rent, or for families who are victims of domestic violence, it may use such a preference when determining which family to admit to any building, and may admit a family with such a preference instead of a family that otherwise would be offered the unit. PHA local admission preference policies must affirmatively further fair housing.

(3) *Definition of "building".* For purposes of applying this deconcentration policy, a "building" is one or more contiguous structures containing at least 8 public housing dwelling units.

(4) *Scattered site and small developments.* If a development contains no structures that qualify as a building, the deconcentration requirement is applied to the entire development as if the development were a building.

(5) *Mixed-finance developments and units newly added to a PHA's public housing stock.* For mixed-finance developments, including HOPE VI projects that are mixed finance developments, and for units newly added to a PHA's public housing stock, the requirement to deconcentrate is applicable as follows:

(i) For the initial lease-up of vacant public housing units in mixed finance developments or for units newly added to a PHA's public housing stock (subject to the possible right of return by prior residents), the average income for the public housing units in each building shall not exceed the PHA's average income for general occupancy public housing developments;

(ii) After the initial lease-up of vacant units in mixed finance developments and units newly added to a PHA's public housing stock, the leasing of public housing units is covered by the deconcentration requirements of paragraph (a)(1) through (4) of this section unless the building which contains these units is classified (based on the incomes of families residing in public housing units) as a lower income building.

(6) *Right of return.* If a PHA has provided that a family that resided in public housing on the site of a mixed-finance or other development has a right to admission to a public housing unit in that development after revitalization, this deconcentration policy does not preclude fulfilling that commitment.

(7) *Family's discretion to refuse a unit.* A family has the sole discretion whether to accept an offer of a unit made under this deconcentration policy. The PHA may not take any adverse action toward any eligible family for choosing not to accept an offer of a unit under this deconcentration policy. The PHA may uniformly limit the number of offers received by applicants.

(8) *Relationship to income targeting requirement.* Nothing in this deconcentration policy relieves a PHA of the obligation to meet the requirement to admit annually at least 40 percent families whose incomes are below 30 percent of area median income as provided by section 16(a)(2) of the 1937 Act, 42 U.S.C. 1437n(a)(2).

(b) *Fair housing requirements.* All admission and occupancy policies for public housing and Section 8 tenant-based housing programs must comply with Fair Housing Act requirements and regulations for affirmatively further fair housing. The PHA may not require any specific income or racial quotas for any development or developments.

(1) *Nondiscrimination.* A PHA must carry out its Plan in conformity with the nondiscrimination requirements in Federal civil rights laws, including title VI of the Civil Rights Act of 1964 and the Fair Housing Act. A PHA cannot assign persons to a particular section of a community or to a development or building based on race, color, religion, sex, disability, familial status or national origin for purposes of segregating populations (§ 1.4(b)(1)(ii) of this title).

(2) *Affirmatively Furthering Fair Housing.* PHA policies that govern eligibility, selection and admissions under its Plan should be designed to reduce racial and national origin concentrations. Any affirmative actions or incentives a PHA plans to take must be stated in the admission policy.

(i) HUD regulations provide that PHAs should take affirmative action to overcome the effects of conditions which resulted in limiting participation of persons because of their race, national origin or other prohibited basis (§ 1.4(b)(1)(iii) and (6)(ii) of this title).

(ii) Such affirmative action may include but is not limited to, appropriate affirmative marketing efforts; additional applicant consultation and information; and provision of additional supportive services and amenities to a development.

(3) *Validity of certification.* (i) HUD will take action to challenge the PHA's certification under § 903.7(o) where it appears that a PHA Plan or its implementation:

(A) Does not reduce racial and national origin concentration in developments or buildings and is perpetuating segregated housing; or

(B) Is creating new segregation in housing.

(ii) If HUD challenges the validity of a PHA's certification, the PHA must establish that it is providing a full range of housing opportunities to applicants and tenants or that it is implementing actions described in paragraph (b)(2)(ii) of this section.

(c) *Relationship between poverty deconcentration and fair housing.* The requirements for poverty deconcentration, in paragraph (a) of this section, and for fair housing, in paragraph (b) of this section, arise under separate statutory authorities and are independent.

Subpart B—PHA Plans

§ 903.3 What is the purpose of this subpart?

(a) This subpart specifies the requirements for PHA plans, required by

section 5A of the United States Housing Act of 1937 (42 U.S.C. 1437c–1).

(b) The purpose of the plans is to provide a framework for:

(1) Local accountability; and

(2) An easily identifiable source by which public housing residents, participants in the tenant-based assistance program, and other members of the public may locate basic PHA policies, rules and requirements concerning the PHA's operations, programs and services.

§ 903.4 What are the public housing agency plans?

(a) *Types of plans.* There are two public housing agency plans. They are:

(1) The 5-Year Plan (the 5-Year Plan) that a public housing agency (PHA) must submit to HUD once every five PHA fiscal years. The 5-Year Plan covers the five PHA fiscal years immediately following the date on which the 5-Year Plan is due to HUD; and

(2) The Annual Plan (Annual Plan) that the PHA must submit to HUD for each fiscal year immediately following the date on which the Annual Plan is due to HUD and for which the PHA receives:

(i) Section 8 tenant-based assistance (under section 8(o) of the U.S. Housing Act of 1937, 42 U.S.C. 1437f(o)) (tenant-based assistance); or

(ii) Amounts from the public housing operating fund or capital fund (under section 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437g) (public housing)).

(b) *Format.* HUD may prescribe the format of submission (including electronic format submission) of the plans. HUD also may prescribe the format of attachments to the plans and documents related to the plan that the PHA does not submit but may be required to make available locally. PHAs will receive appropriate notice of any prescribed format.

(c) *Applicability.* The requirements of this subpart only apply to a PHA that receives the type of assistance described in paragraph (a) of this section.

(d) *Authority for waivers.* In addition to the waiver authority provided in § 5.110 of this title, the Secretary may, subject to statutory limitations, waive any provision of this title on a program-wide basis, and delegate this authority in accordance with section 106 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3535(q)) where the Secretary determines that such waiver is necessary for the effective implementation of this part.

(e) *1937 Act.* References to the "1937 Act" in this part refer to the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*)

§ 903.5 When must a PHA submit the plans to HUD?

(a) 5-Year Plan. (1) The first PHA fiscal year that is covered by the requirements of this part as amended on [*date of publication of final rule in the* **Federal Register**], is the PHA fiscal year that begins October, 2000. This 5-Year Plan submitted by a PHA must be submitted for the 5-year period beginning October 1, 2000.

(2) For all PHAs, the first 5-Year Plans are due 75 days before the commencement of their fiscal year.

(3) For all PHAs, after submission of their first 5-Year Plan, all subsequent 5-Year Plans must be submitted once every 5 PHA fiscal years, no later than 75 days before the commencement of the PHA's fiscal year.

(4) PHAs may choose to update their 5-Year Plans every year as good management practice and must update their 5-Year Plans that were submitted for PHA fiscal years beginning before October 1, 2000, to comply with the requirements of this part as amended on [*date of publication of final rule in the* **Federal Register**], at the time they submit their next Annual Plan. PHAs must explain any substantial deviation from their 5-Year Plans in their Annual Plans. (Substantial deviation is determined by the PHA in accordance with criteria provided by the PHA in its Annual Plan in accordance with § 903.7(r).)

(b) *The Annual Plan.* (1) The first PHA fiscal year that is covered by the requirements of this part as amended on [*date of publication of final rule in the* **Federal Register**], is the PHA fiscal year that begins October 1, 2000.

(2) For all PHAs, the first Annual Plans are due 75 days before the commencement of their fiscal year.

(3) For all PHAs, after submission of the first Annual Plan, all subsequent Annual Plans will be due no later than 75 days before the commencement of their fiscal year.

§ 903.6 What information must a PHA provide in the 5-Year Plan?

(a) A PHA must include in its 5-Year Plan a statement of:

(1) The PHA's mission for serving the needs of low-income, very low-income and extremely low-income families in the PHA's jurisdiction; and

(2) The PHA's goals and objectives that enable the PHA to serve the needs of the families identified in the PHA's Annual Plan. For HUD, the PHA and the public to better measure the success of the PHA in meeting its goals and objectives, the PHA must adopt quantifiable goals and objectives for serving those needs wherever possible.

(b) After submitting its first 5-Year Plan, a PHA in its succeeding 5-Year Plans, must address:

(1) The PHA's mission, goals and objectives for the next 5 years; and

(2) The progress the PHA has made in meeting the goals and objectives described in the PHA's previous 5-Year Plan.

§ 903.7 What information must a PHA provide in the Annual Plan?

With the exception of the first Annual Plan submitted by a PHA, the Annual Plan must include the information provided in this section. HUD will advise PHAs by separate notice, sufficiently in advance of the first Annual Plan due date, of the information, described in this section that must be part of the first Annual Plan submission, and any additional instructions or directions that may be necessary to prepare and submit the first Annual Plan. The information described in this section applies to both public housing and tenant-based assistance, except where specifically stated otherwise. The information that the PHA must submit for HUD approval under the Annual Plan includes the discretionary policies of the various plan components or elements (for example, rent policies) and not the statutory or regulatory requirements that govern these plan components and that provide no discretion on the part of the PHA in implementation of the requirements. The PHA's Annual Plan must be consistent with the goals and objectives of the PHA's 5-Year Plan.

(a) *A statement of housing needs.* (1) This statement must address the housing needs of the low-income and very low-income families who reside in the jurisdiction served by the PHA, and other families who are on the public housing and Section 8 tenant-based assistance waiting lists, including:

(i) Families with incomes below 30 percent of area median (extremely low-income families);

(ii) Elderly families and families with disabilities;

(iii) Households of various races and ethnic groups residing in the jurisdiction or on the waiting list.

(2) A PHA must make reasonable efforts to identify the housing needs of each of the groups listed in paragraph (a)(1) of this section based on information provided by the applicable Consolidated Plan, information provided by HUD, and other generally available data.

(i) The identification of housing needs must address issues of affordability, supply, quality, accessibility, size of units and location.

(ii) The statement of housing needs also must describe the ways in which the PHA intends, to the maximum extent practicable, to address those needs, and the PHA's reasons for choosing its strategy.

(b) *A statement of the PHA's deconcentration and other policies that govern eligibility, selection, and admissions.* This statement must describe the PHA's policies that govern resident or tenant eligibility, selection and admission. This statement also must describe any PHA admission preferences, and any occupancy policies that pertain to public housing units and housing units assisted under section 8(o) of the 1937 Act, as well as any unit assignment policies for public housing. This statement must include the following information:

(1) *Deconcentration Policy.* The PHA's deconcentration policy applicable to public housing, as described in § 903.2(a).

(2) *Waiting List Procedures.* The PHA's procedures for maintaining waiting lists for admission to the PHA's public housing developments. The statement must address any site-based waiting lists, as authorized by section 6(s) of the 1937 Act (42 U.S.C. 1437d(s)), for public housing. Section 6(s) of the 1937 Act permits PHAs to establish a system of site-based waiting lists for public housing that is consistent with all applicable civil rights and fair housing laws and regulations. Notwithstanding any other regulations, a PHA may adopt site-based waiting lists where:

(i) The PHA regularly submits required occupancy data to HUD's Multifamily Tenant Characteristics Systems (MTCS) in an accurate, complete and timely manner;

(ii) The system of site-based waiting lists provides for full disclosure to each applicant of any option available to the applicant in the selection of the development in which to reside, including basic information about available sites (location, occupancy, number and size of accessible units, amenities such as day care, security, transportation and training programs) and an estimate of the period of time the applicant would likely have to wait to be admitted to units of different sizes and types (e.g., regular or accessible) at each site;

(iii) Adoption of site-based waiting lists would not violate any court order or settlement agreement, or be inconsistent with a pending complaint brought by HUD;

(iv) The PHA includes reasonable measures to assure that adoption of site-based waiting lists is consistent with affirmatively furthering fair housing, such as reasonable marketing activities to attract applicants regardless of race or ethnicity;

(v) The PHA provides for review of its site-based waiting list policy to determine if the policy is consistent with civil rights laws and certifications through the following steps:

(A) As part of the submission of the Annual Plan, the PHA shall assess changes in racial, ethnic or disability-related tenant composition at each PHA site that may have occurred during the implementation of the site-based waiting list, based upon MTCS occupancy data that has been confirmed to be complete and accurate by an independent audit (which may be the annual independent audit) or is otherwise satisfactory to HUD;

(B) At least every three years the PHA uses independent testers or other means satisfactory to HUD, to assure that the site-based waiting list is not being implemented in a discriminatory manner, and that no patterns or practices of discrimination exist, and providing the results to HUD;

(C) Taking any steps necessary to remedy the problems surfaced during the review; and (D) Taking the steps necessary to affirmatively further fair housing.

(3) *Other admissions policies.* The PHA's admission policies that include any other PHA policies that govern eligibility, selection and admissions for the public housing (see part 960 of this title) and tenant-based assistance programs (see part 982, subpart E of this title). (The information requested on site-based waiting lists and deconcentration is applicable only to public housing.)

(c) *A statement of financial resources.* This statement must address the financial resources that are available to the PHA for the support of Federal public housing and tenant-based assistance programs administered by the PHA during the plan year. The statement must include a listing, by general categories, of the PHA's anticipated resources, such as PHA operating, capital and other anticipated Federal resources available to the PHA, as well as tenant rents and other income available to support public housing or tenant-based assistance. The statement also should include the non-Federal sources of funds supporting each Federal program, and state the planned uses for the resources.

(d) *A statement of the PHA's rent determination policies.* This statement must describe the PHA's basic discretionary policies that govern rents charged for public housing units, applicable flat rents, and the rental contributions of families receiving tenant-based assistance. For tenant-based assistance, this statement also shall cover any discretionary minimum tenant rents and payment standard policies.

(e) *A statement of the PHA's operation and management.* (1) This statement must list the PHA's rules, standards, and policies that govern maintenance and management of housing owned, assisted, or operated by the PHA.

(2) The policies listed in this statement must include a description of any measures necessary for the prevention or eradication of pest infestation. Pest infestation includes cockroach infestation.

(3) This statement must include a description of PHA management organization, and a listing of the programs administered by the PHA.

(4) The information requested on a PHA's rules, standards and policies regarding management and maintenance of housing applies only to public housing. The information requested on PHA program management and listing of administered programs applies to public housing and tenant-based assistance.

(f) *A statement of the PHA grievance procedures.* This statement describes the grievance and informal hearing and review procedures that the PHA makes available to its residents and applicants. These procedures include public housing grievance procedures and tenant-based assistance informal review procedures for applicants and hearing procedures for participants.

(g) *A statement of capital improvements needed.* With respect to public housing only, this statement describes the capital improvements necessary to ensure long-term physical and social viability of the PHA's public housing developments, including the capital improvements to be undertaken in the year in question and their estimated costs, and any other information required for participation in the Capital Fund. PHAs also are required to include 5-Year Plans covering large capital items.

(h) *A statement of any demolition and/or disposition.* (1) *Plan for Demolition/Disposition.* With respect to public housing only, a description of any public housing development, or portion of a public housing development, owned by the PHA for

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which the PHA has applied or will apply for demolition and/or disposition approval under section 18 of the 1937 Act (42 U.S.C. 1437p), and the timetable for demolition and/or disposition. The application and approval process for demolition and/or disposition is a separate process. Approval of the PHA Plan does not constitute approval of these activities.

(2) *Interim Plan for Demolition/Disposition.* (i) Before submission of the first Annual Plan, a PHA may submit an interim PHA Annual Plan solely for demolition/disposition. The interim plan must provide:

(A) The required description of the action to be taken;

(B) A certification of consistency with the Consolidated Plan;

(C) A description of how the plan is consistent with the Consolidated Plan;

(D) A relocation plan that includes the availability of units in the area and adequate funding; and

(E) Confirmation that a public hearing was held on the proposed action and that the resident advisory board was consulted.

(ii) Interim plans for demolition/disposition are subject to PHA Plan procedural requirements in this part (see §§ 903.13, 903.15, 903.17, 903.19, 903.21, 903.23, 903.25), with the following exception. If a resident advisory board has not yet been formed, the PHA may seek a waiver of the requirement to consult with the resident advisory board on the grounds that organizations that adequately represent residents for this purpose were consulted.

(iii) The actual application for demolition or disposition may be submitted at the same time as submission of the interim plan or at a later date.

(i) *A statement of the public housing developments designated as housing for elderly families or families with disabilities or elderly families and families with disabilities.*

(1) With respect to public housing only, this statement identifies any public housing developments owned, assisted, or operated by the PHA, or any portion of these developments, that:

(i) The PHA has designated for occupancy by:

(A) Only elderly families;

(B) Only families with disabilities; or

(C) Elderly families and families with disabilities; and

(ii) The PHA will apply for designation for occupancy by:

(A) Only elderly families;

(B) Only families with disabilities; or

(C) Elderly families and families with disabilities as provided by section 7 of the 1937 Act (42 U.S.C. 1437e).

(2) The designated housing application and approval process is a separate process. Approval of the PHA Plan does not constitute approval of these activities.

(j) *A statement of the conversion of public housing to tenant-based assistance.*

(1) This statement describes:

(i) Any building or buildings that the PHA is required to convert to tenant-based assistance under section 33 of the 1937 Act (42 U.S.C. 1437z–5);

(ii) The status of any building or buildings that the PHA may be required to convert to tenant-based assistance under section 202 of the Fiscal Year 1996 HUD Appropriations Act (42 U.S.C. 1437t note); or

(iii) The PHA's plans to voluntarily convert under section 22 of the 1937 Act (42 U.S.C. 1437t).

(2) The statement also must include an analysis of the developments or buildings required to be converted under section 33.

(3) For both voluntary and required conversions, the statement must include the amount of assistance received commencing in Federal Fiscal Year 1999 to be used for rental assistance or other housing assistance in connection with such conversion.

(4) The application and approval processes for required or voluntary conversions are separate approval processes. Approval of the PHA Plan does not constitute approval of these activities.

(5) The information required under this paragraph (j) of this section is applicable to public housing and only that tenant-based assistance which is to be included in the conversion plan.

(k) *A statement of homeownership programs administered by the PHA.*

(1) This statement describes:

(i) Any homeownership programs administered by the PHA under section 8(y) of the 1937 Act (42 U.S.C. 1437f(y));

(ii) Any homeownership programs administered by the PHA under an approved section 5(h) homeownership program (42 U.S.C. 1437c(h));

(iii) An approved HOPE I program (42 U.S.C. 1437aaa); or

(iv) Any homeownership programs for which the PHA has applied to administer or will apply to administer under section 5(h), the HOPE I program, or section 32 of the 1937 Act (42 U.S.C. 1437z–4).

(2) The application and approval process for homeownership under the programs described in paragraph (k) of this section, with the exception of the section 8(y) homeownership program, are separate processes. Approval of the PHA Plan does not constitute approval of these activities.

(l) *A statement of the PHA's community service and self-sufficiency programs.* (1) This statement describes:

(i) Any PHA programs relating to services and amenities coordinated, promoted or provided by the PHA for assisted families, including programs provided or offered as a result of the PHA's partnership with other entities;

(ii) Any PHA programs coordinated, promoted or provided by the PHA for the enhancement of the economic and social self-sufficiency of assisted families, including programs provided or offered as a result of the PHA's partnerships with other entities, and activities under section 3 of the Housing and Community Development Act of 1968 and under requirements for the Family Self-Sufficiency Program and others. The description of programs offered shall include the program's size (including required and actual size of the Family Self-Sufficiency program) and means of allocating assistance to households.

(iii) How the PHA will comply with the requirements of section 12 (c) and (d) of the 1937 Act (42 U.S.C. 1437j (c) and (d)). These statutory provisions relate to community service by public housing residents and treatment of income changes in public housing and tenant-based assistance recipients resulting from welfare program requirements. PHAs must address any cooperation agreements, as described in section 12(d)(7) of the 1937 Act (42 U.S.C. 1437j(d)(7)), that the PHA has entered into or plans to enter into.

(2) The information required by paragraph (l) of this section is applicable to both public housing and tenant-based assistance, except that the information regarding the PHA's compliance with the community service requirement applies only to public housing.

(m) *A statement of the PHA's safety and crime prevention measures.*

(1) With respect to public housing only, this statement describes the PHA's plan for safety and crime prevention to ensure the safety of the public housing residents that it serves. The plan for safety and crime prevention must be established in consultation with the police officer or officers in command of the appropriate precinct or police departments. The plan also must provide, on a development-by-development or jurisdiction wide-basis, the measures necessary to ensure the safety of public housing residents.

(2) The statement regarding the PHA's safety and crime prevention plan must include the following information:

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(i) A description of the need for measures to ensure the safety of public housing residents;

(ii) A description of any crime prevention activities conducted or to be conducted by the PHA; and

(iii) A description of the coordination between the PHA and the appropriate police precincts for carrying out crime prevention measures and activities.

(3) If the PHA expects to receive drug elimination program grant funds, the PHA must submit, in addition to the information required by paragraph (m)(1) of this section, the plan required by HUD's Public Housing Drug Elimination Program regulations (see part 761 of this title).

(4) If HUD determines at any time that the security needs of a public housing development are not being adequately addressed by the PHA's plan, or that the local police precinct is not assisting the PHA with compliance with its crime prevention measures as described in the Annual Plan, HUD may mediate between the PHA and the local precinct to resolve any issues of conflict.

(n) *A statement of the PHA's policies and rules regarding ownership of pets in public housing.* This statement describes the PHA's policies and requirements pertaining to the ownership of pets in public housing. The policies must be in accordance with section 31 of the 1937 Act (42 U.S.C. 1437a–3).

(o) *Civil rights certification.* (1) The PHA must certify that it will carry out its plan in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), the Fair Housing Act (42 U.S.C. 3601–19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*). The PHA also must certify that it will affirmatively further fair housing.

(2) The certification is applicable to both the 5-Year Plan and the Annual Plan.

(3) A PHA shall be considered in compliance with the certification requirement to affirmatively further fair housing if the PHA fulfills the requirements of § 903.2(b) and:

(i) Examines its programs or proposed programs;

(ii) Identifies any impediments to fair housing choice within those programs;

(iii) Addresses those impediments in a reasonable fashion in view of the resources available;

(iv) Works with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement; and

(v) Maintains records reflecting these analyses and actions.

(p) *Recent results of PHA's fiscal year audit.* This statement provides the results of the most recent fiscal year audit of the PHA conducted under section 5(h)(2) of the 1937 Act (42 U.S.C. 1437c(h)).

(q) *A statement of asset management.* To the extent not covered by other components of the PHA Annual Plan, this statement describes how the PHA will carry out its asset management functions with respect to the PHA's public housing inventory, including how the PHA will plan for long-term operating, capital investment, rehabilitation, modernization, disposition, and other needs for such inventory.

(r) *Additional information to be provided.* (1) For all Annual Plans following submission of the first Annual Plan, a PHA must include a brief statement of the PHA's progress in meeting the mission and goals described in the 5-Year Plan;

(2) A PHA must identify the basic criteria the PHA will use for determining:

(i) A substantial deviation from its 5-Year Plan; and

(ii) A significant amendment or modification to its 5-Year Plan and Annual Plan.

(3) A PHA must include such other information as HUD may request of PHAs, either on an individual or across-the-board basis. HUD will advise the PHA or PHAs of this additional information through advance notice.

§ 903.9 May HUD request additional information in the Annual Plan of a troubled PHA?

HUD may request that a PHA that is at risk of being designated as troubled or is designated as troubled in accordance with section 6(j)(2) of the 1937 Act (42 U.S.C. 1437d(j)(2)), the Public Housing Management Assessment Program (part 901 of this title) or the Public Housing Assessment System (part 902 of this chapter) include its operating budget. The PHA also must include or reference any applicable memorandum of agreement with HUD or any plan to improve performance, and such other material as HUD may prescribe.

§ 903.11 Are certain PHAs eligible to submit a streamlined Annual Plan?

(a) Yes, the following PHAs may submit a streamlined Annual Plan, as described in paragraph (b) of this section:

(1) PHAs that are determined to be high performing PHAs as of the last annual or interim assessment of the PHA before the submission of the 5-Year or Annual Plan;

(2) PHAs with less than 250 public housing units (small PHAs) and that have not been designated as troubled in accordance with section 6(j)(2) of the 1937 Act; and

(3) PHAs that only administer tenant-based assistance and do not own or operate public housing.

(b) All streamlined plans must provide information on how the public may reasonably obtain additional information on the PHA policies contained in the standard Annual Plan, but excluded from their streamlined submissions.

(c) A streamlined plan must include the information provided in this paragraph (c). The Secretary may reduce the information requirements of streamlined Plans further, with adequate notice.

(1) For high performing PHAs, the streamlined Annual Plan must include the information required by § 903.7 (a), (b), (c), (d), (g), (h), (m), (n), (o), (p) and (r). The information required by § 903.7(m) must be included only to the extent this information is required for PHA's participation in the public housing drug elimination program and the PHA anticipates participating in this program in the upcoming year.

(2) For small PHAs that are not designated as troubled or that are not at risk of being designated as troubled under section 6(j)(2) of the 1937 Act the streamlined Annual Plan must include the information required by § 903.7 (a), (b), (c), (d), (g), (h), (k), (m), (n), (o), (p) and (r). The information required by § 903.7(k) must be included only to the extent that the PHA participates in homeownership programs under section 8(y). The information required by § 903.7(m) must be included only to the extent this information is required for the PHA's participation in the public housing drug elimination program and the PHA anticipates participating in this program in the upcoming year.

(3) For PHAs that administer only tenant-based assistance, the streamlined Annual Plan must include the information required by § 903.7 (a), (b), (c), (d), (e), (f), (k), (l), (o), (p) and (r).

§ 903.13 What is a Resident Advisory Board and what is its role in development of the Annual Plan?

(a) A Resident Advisory Board refers to a board or boards, as provided in paragraph (b) of this section, whose membership consists of individuals who adequately reflect and represent the residents assisted by the PHA.

(1) The role of the Resident Advisory Board (or Resident Advisory Boards) is to assist and make recommendations regarding the development of the PHA plan, and any significant amendment or modification to the PHA plan.

(2) The PHA shall allocate reasonable resources to assure the effective functioning of Resident Advisory Boards. Reasonable resources for the Resident Advisory Boards must provide reasonable means for them to become informed on programs covered by the PHA Plan, to communicate in writing and by telephone with assisted families and hold meetings with those families, and to access information regarding covered programs on the internet, taking into account the size and resources of the PHA.

(b) Each PHA must establish one or more Resident Advisory Boards, as provided in paragraph (b) of this section.

(1) If a jurisdiction-wide resident council exists that complies with the tenant participation regulations in part 964 of this title, the PHA shall appoint the jurisdiction-wide resident council or the council's representatives as the Resident Advisory Board. If the PHA makes such appointment, the members of the jurisdiction-wide resident council or the council's representatives shall be added or another Resident Advisory Board formed to provide for reasonable representation of families receiving tenant-based assistance where such representation is required under paragraph (b)(2) of this section.

(2) If a jurisdiction-wide resident council does not exist but resident councils exist that comply with the tenant participation regulations, the PHA shall appoint such resident councils or their representatives to serve on one or more Resident Advisory Boards. If the PHA makes such appointment, the PHA may require that the resident councils choose a limited number of representatives.

(3) Where the PHA has a tenant-based assistance program of significant size (where tenant-based assistance is 20% or more of assisted households), the PHA shall assure that the Resident Advisory Board (or Boards) has reasonable representation of families receiving tenant-based assistance and that a reasonable process is undertaken to choose this representation.

(4) Where or to the extent that resident councils that comply with the tenant participation regulations do not exist, the PHA shall appoint Resident Advisory Boards or Board members as needed to adequately reflect and represent the interests of residents of such developments; provided that the PHA shall provide reasonable notice to such residents and urge that they form resident councils with the tenant participation regulations.

(c) The PHA must consider the recommendations of the Resident Advisory Board or Boards in preparing the final Annual Plan, and any significant amendment or modification to the Annual Plan, as provided in § 903.21 of this title.

(1) In submitting the final plan to HUD for approval, or any significant amendment or modification to the plan to HUD for approval, the PHA must include a copy of the recommendations made by the Resident Advisory Board or Boards and a description of the manner in which the PHA addressed these recommendations.

(2) Notwithstanding the 75-day limitation on HUD review, in response to a written request from a Resident Advisory Board claiming that the PHA failed to provide adequate notice and opportunity for comment, HUD may make a finding of good cause during the required time period and require the PHA to remedy the failure before final approval of the plan.

§ 903.15 What is the relationship of the public housing agency plans to the Consolidated Plan?

(a) The PHA must ensure that the Annual Plan is consistent with any applicable Consolidated Plan for the jurisdiction in which the PHA is located. The Consolidated Plan includes a certification that requires the preparation of an Analysis of Impediments to Fair Housing Choice.

(1) The PHA must submit a certification by the appropriate State or local officials that the Annual Plan is consistent with the Consolidated Plan and include a description of the manner in which the applicable plan contents are consistent with the Consolidated Plans.

(2) For State agencies that are PHAs, the applicable Consolidated Plan is the State Consolidated Plan.

(b) A PHA may request to change its fiscal year to better coordinate its planning with the planning done under the Consolidated Plan process, by the State or local officials, as applicable.

§ 903.17 What is the process for obtaining public comment on the plans?

(a) The PHA's board of directors or similar governing body must conduct a public hearing to discuss the PHA plan (either the 5-Year Plan and/or Annual Plan, as applicable) and invite public comment on the plan(s). The hearing must be conducted at a location that is convenient to the residents served by the PHA.

(b) Not later than 45 days before the public hearing is to take place, the PHA must:

(1) Make the proposed PHA plan(s), the required attachments and documents related to the plans, and all information relevant to the public hearing to be conducted, available for inspection by the public at the principal office of the PHA during normal business hours; and

(2) Publish a notice informing the public that the information is available for review and inspection, and that a public hearing will take place on the plan, and the date, time and location of the hearing.

(c) PHAs shall conduct reasonable outreach activities to encourage broad public participation in the PHA plans.

§ 903.19 When is the 5-Year Plan or Annual Plan ready for submission to HUD?

A PHA may adopt its 5-Year Plan or its Annual Plan and submit the plan to HUD for approval only after:

(a) The PHA has conducted the public hearing;

(b) The PHA has considered all public comments received on the plan;

(c) The PHA has made any changes to the plan, based on comments, after consultation with the Resident Advisory Board or other resident organization.

§ 903.21 May the PHA amend or modify a plan?

(a) A PHA, after submitting its 5-Year Plan or Annual Plan to HUD, may amend or modify any PHA policy, rule, regulation or other aspect of the plan. If the amendment or modification is a significant amendment or modification, as defined in § 903.7(r)(2), the PHA:

(1) May not adopt the amendment or modification until the PHA has duly called a meeting of its board of directors (or similar governing body) and the meeting, at which the amendment or modification is adopted, is open to the public; and

(2) May not implement the amendment or modification, until notification of the amendment or modification is provided to HUD and approved by HUD in accordance with HUD's plan review procedures, as provided in § 903.23.

(b) Each significant amendment or modification to a plan submitted to HUD is subject to the requirements of §§ 903.13, 903.15, and 903.17.

§ 903.23 What is the process by which HUD reviews, approves, or disapproves an Annual Plan?

(a) *Review of the plan.* When the PHA submits its Annual Plan to HUD, including any significant amendment or

modification to the plan, HUD reviews the plan to determine whether:

(1) The plan provides all the information that is required to be included in the plan;

(2) The plan is consistent with the information and data available to HUD;

(3) The plan is consistent with any applicable Consolidated Plan for the jurisdiction in which the PHA is located; and

(4) The plan is not prohibited or inconsistent with the 1937 Act or any other applicable Federal law.

(b) *Disapproval of the plan.* (1) HUD may disapprove a PHA plan, in its entirety or with respect to any part, or disapprove any significant amendment or modification to the plan, only if HUD determines that the plan, or one of its components or elements, or any significant amendment or modification to the plan:

(i) Does not provide all the information that is required to be included in the plan;

(ii) Is not consistent with the information and data available to HUD;

(iii) Is not consistent with any applicable Consolidated Plan for the jurisdiction in which the PHA is located; or

(iv) Is not consistent with applicable Federal laws and regulations.

(2) Not later than 75 days after the date on which the PHA submits its plan or significant amendment or modification to the plan, HUD will issue written notice to the PHA if the plan or a significant amendment or modification has been disapproved. The notice that HUD issues to the PHA must state with specificity the reasons for the disapproval. HUD may not state as a reason for disapproval the lack of time to review the plan.

(3) If HUD fails to issue the notice of disapproval on or before the 75th day after the date on which the PHA submits its plan or significant amendment or modification to the plan, HUD shall be considered to have determined that all elements or components of the plan required to be submitted and that were submitted, and to be reviewed by HUD were in compliance with applicable requirements and the plan has been approved.

(4) The provisions of paragraph (b)(3) of this section do not apply to troubled PHAs. The plan of a troubled PHA must be approved or disapproved by HUD through written notice.

(c) *Designation of due date as submission date for first plan submissions.* For purposes of the 75-day period described in paragraph (b) of this section, the first 5-year and Annual Plans submitted by a PHA will be considered to have been submitted no earlier than the due date as provided in § 903.5.

(d) *Public availability of the approved plan.* Once a PHA's plan has been approved, a PHA must make the approved plan and the required attachments and documents related to the plan, available for review and inspection, at the principal office of the PHA during normal business hours.

§ 903.25 How does HUD ensure PHA compliance with its plan?

A PHA must comply with the rules, standards and policies established in the plans. To ensure that a PHA is in compliance with all policies, rules, and standards adopted in the plan approved by HUD, HUD shall, as it deems appropriate, respond to any complaint concerning PHA noncompliance with its plan. If HUD should determine that a PHA is not in compliance with its plan, HUD will take whatever action it deems necessary and appropriate.

Dated: March 28, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–9334 Filed 4–14–00; 8:45 am]

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Federal Register

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April 17, 2000

Part V

Department of Education

34 CFR Part 75
Direct Grant Programs; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 75

RIN 1890–AA02

Direct Grant Programs

AGENCY: Office of the Chief Financial Officer, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Education Department General Administrative Regulations (EDGAR) that govern discretionary grant programs. These proposed amendments would implement new options for the Department of Education's (Department's) application review process for discretionary grants. These changes are intended to improve the quality of the review process, provide additional flexibility, and provide greater opportunities for inexperienced, "novice applicants" to receive funding.

DATES: We must receive your comments on or before June 1, 2000.

ADDRESSES: Address all comments about these proposed regulations to Valerie A. Sinkovits, U.S. Department of Education, 400 Maryland Avenue SW., room 3652, ROB–3, Washington, DC 20202–4248. If you prefer to send your comments through the Internet use the following address: comments@ed.gov

You must include the term "Redesign" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Valerie Sinkovits. Telephone: (202) 708–7568. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

I. Invitation to Comment

We invite you to submit comments and recommendations regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the programs affected by these regulations.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 3652, Regional Office Building 3, Seventh and D Streets, S.W., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

II. Background of the Department's Redesign of the Discretionary Grants Process

The Secretary takes this action to implement several recommendations made by a Department discretionary grants reengineering team (team). In January of 1995, the Department's Reinvention Coordinating Council (RCC), chaired by the Deputy Secretary of Education, chartered a team of Department staff to redesign the discretionary grants process, including the application review process, to increase customer satisfaction and to ensure the best use of the Department's resources. The team was comprised of staff members from across the Department who had a wealth of knowledge of, and experience with, the Department's discretionary grants process and programs. Current and former Department grant recipients, as well as unsuccessful applicants, provided helpful comments, suggestions, and recommendations to the team for improving the discretionary grants process. The team received input from a variety of organizations, including institutions of higher education, State educational agencies, local educational agencies, and nonprofit organizations. In addition, numerous Department staff who are involved in all phases of the discretionary grants process, from appropriations through grant close-out, provided input and recommendations on ways to improve the grants process. Furthermore, the team researched the discretionary grants processes of other Federal agencies, including the National Science Foundation and the National Institutes of Health.

The team presented its preliminary design for the new discretionary grants process in May of 1995 at a design review conference for Department staff and customers. Based on participant recommendations and comments, the team made changes and refinements to the design. In December of 1995, the final design was approved for implementation by the Department's Executive Management Committee. Pilot tests of various aspects of the new process were conducted during fiscal year 1996 by several departmental program offices, and additional refinements were made based on the results of an external evaluation. The Department began to implement the approved redesigned discretionary grants process on October 1, 1996. Some of the most noticeable changes implemented since 1996 include: eliminating the Department's centralized grants office and forming discretionary grant teams in the Department's program offices that provide "one-stop shopping" for both grants administration and programmatic information; eliminating unnecessary and time-consuming processes such as grant negotiations prior to award; and establishing partnerships with Department grantees to ensure successful project outcomes.

III. The Team's Findings

Although the team gathered data on all phases of the Department's discretionary grants process, the majority of comments and suggestions from customers and staff alike focused on the review of grant applications—a crucial activity that plays a major role in determining which applicants will be funded.

A. Review Procedures

The team's analysis of the Department's current application review process showed that the same basic review procedures are generally used for all program competitions, regardless of the number of applications received, the average amount of the awards, or the nature of the program. Both staff and customers questioned whether it was cost-effective and efficient for the Department to employ the same review

procedures for the smallest grants as it does for the largest, most complex grants.

Perhaps more importantly, they questioned whether using the same standard review procedures for each of the Department's highly diverse programs would ultimately result in the selection of the best projects that would meet unique program goals.

The team determined that the two most common elements of the Department's application review process are: (1) using numerical scores to rate applications and (2) using primarily "outside reviewers" to review applications; that is, experts who are not employees of the Federal Government.

1. Numerical Scores

Under current practice, the Department establishes the maximum numerical score that an application may receive under a set of selection criteria for a competition. The Department then selects panels of reviewers to rate the applications under these selection criteria. Each member of a peer review panel rates applications by assigning numerical scores under the selection criteria. The scores of individual panel members are typically averaged together or, in some cases, added together by Department staff to produce a panel score for each application. Based on the panel scores, Department staff prepare rank order lists of the applications to assist in making funding determinations

Some departmental program offices also use a statistical standardization process that adjusts the scores of each reviewer to eliminate biases that result from the scoring preferences of certain reviewers. For example, some reviewers may consistently score all assigned applications higher or lower than other reviewers.

Because often there are so many highly qualified applications that score very close together, the Department may need to calculate scores to one-tenth or even one one-hundredth of a point to determine the rank order. For example, due to limited program funds, the Department might be able to fund an application scoring 97.2. However, an application scoring 97.1, only one-tenth of a point less, may not be funded.

2. Peer Reviewers

Both Department staff and customers placed great importance on the qualifications of the peer reviewers. Customers indicated that they expected a review process that assured a fair and high quality application review by trained reviewers with appropriate backgrounds and subject matter expertise.

Department staff stressed the importance of using high-quality reviewers, but also indicated significant challenges in engaging "outside" reviewers. Often, qualified, prospective reviewers have numerous professional commitments that preclude their participation in the Department's review process. Further, for certain program specialty areas, the pool of qualified experts to draw from is limited and the experts' time and services are in high demand.

B. Inexperienced Applicants

Many unsuccessful applicants, as well as grantees who had received a grant only after submitting numerous unsuccessful applications, expressed frustrations and concerns about the difficulty that inexperienced applicants have in obtaining Department discretionary grant funding. These customers felt that there was not always a "level playing field" among applicants competing for grants. They noted several factors inhibiting success, including the lack of organizational resources to hire professional grant writers with a proven track record for producing winning proposals, and the lack of resources to establish institutional grant or sponsored research offices with the mission of securing grant funding.

C. Building Better Projects

Although the primary goal of the application review process is to identify high quality projects that are worthy of funding, customers indicated that they expected additional benefits from the Department's review process. Numerous customers stated that thoughtful, substantive reviewers' comments identifying the strengths and weaknesses of the proposed project were critical to both the successful applicant and the unsuccessful applicant.

Successful applicants felt that receiving substantive reviewers' comments prior to the start of their grant was an especially timely and helpful tool for improving an already high-quality project. Unsuccessful applicants felt that reviewers' comments identifying weaknesses in their proposed project and suggestions for improvement would help them strengthen their proposals for the next competition. Both successful and unsuccessful applicants saw constructive reviewers' comments as a form of technical assistance that should be an integral part of the review process.

IV. Goals for the Redesigned Application Review Process

In redesigning the discretionary grants process, particularly the application review process, the team had several goals:

- Given the range and diversity of the Department's discretionary grant programs, program offices should have the flexibility to employ procedures for reviewing and selecting grants that most closely meet their individual program needs and result in the selection of quality projects and the timely award of grants.
- Regardless of the application review procedures the Department uses for a particular program, the Department must ensure that, in all cases, trained and qualified reviewers, with appropriate backgrounds and expertise, conduct a high quality review.
- The entire discretionary grants process must be fair, efficient, cost-effective, and result in the issuance of grant awards when the customers need them.

V. The Redesigned Application Review Process

The redesigned application review process increases the options available for reviewing and selecting grants so that the Department can better tailor the method used for a competition to meet the needs of the program. Program offices could continue to use current review and selection methods, but would be encouraged to examine the appropriateness of using the new methods for their competitions.

A. Quality Band Ratings

The redesigned application review process presents a new option for rating applications that focuses on a qualitative description of the application's merit, rather than a quantitative description (*i.e.*, numerical scores). Under the redesigned process, the Department could request that reviewers group applications of comparable merit into quality bands, rather than using numerical ratings to score and rank applications. The reviewers would place applications into one of five possible groupings or quality bands to denote distinctions in quality among the applications. Quality bands would range from highest to lowest quality (*i.e.*, "Excellent," "Very Good," "Good," "Fair" and "Unacceptable").

Under the quality band system of rating applications, all of the applications that place in a particular quality band would be considered comparable in quality, and therefore, the Department could support funding

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any of the applications in a fundable quality band.

In any competition using quality bands, the Department would rely heavily on the professional judgement of the reviewers in the rating of applications. The individual reviewers would be instructed to provide strong written justifications for the quality band rating assigned to each application, and include comments that identify the strengths and weaknesses of the application. In addition to justifying the ratings that a reviewer has given to an application, constructive narrative reviewers' comments provide critical technical assistance that can help successful applicants improve and refine their projects and will help unsuccessful applicants improve the quality of their proposals for the next competition. Peer reviewers would receive training by Department staff prior to the start of the review regarding how to provide constructive comments that are integral to the quality band rating system.

The Department would first fund all of the applications in the highest quality band (*i.e.*, the "Excellent" band) and then proceed to fund all of the applications in the next band (*i.e.*, the "Very Good" band), and so on, until all of the applications in the last band that merits funding have been funded. If faced with the inability to fund all of the applications in a particular quality band due to limited program funds, the Secretary would have discretion in determining which applications to fund within the band. As recommended by the team, in exercising that discretion, the Secretary might use a random selection procedure to select applications from within the band until available funds were exhausted. Because the Department could commit to funding any of the applications in that particular quality band, a random selection procedure is both a feasible and fair way of selecting among applications in a quality band.

It should be noted that the Department has experience with qualitative ratings in specific program competitions. Several Department programs, such as the Technology Innovation Challenge Grants Program and the Field-Initiated Studies Research Grant Program, have used qualitative rating systems. In reviewing the applications, reviewers provided written justifications supporting the qualitative ratings assigned to each application and comments focusing on the strengths and weaknesses of the applications.

B. Staff Panel Reviews

Another application review option recommended by the team was the increased use of review panels comprised solely of highly qualified Department staff. This review option is available currently to Department programs, but is not widely used.

However, the Department believes that this kind of review process might be appropriate for programs in which the awards issued were of a relatively small size or in which a high percentage of the applications under the program would ultimately be funded. Further, in competitions involving a multiple tier review process, in which two or three review panels or tiers evaluate applications, Department staff might be used by program offices to participate in one of the initial tiers of review to help determine which applications should be forwarded to the next tier for further consideration.

The team noted the following beneficial aspects of using an internal review and evaluation process for certain program competitions: (1) A high quality review is conducted by "in-house" Department experts, with appropriate backgrounds and subject matter expertise, who are familiar with the laws, regulations, and policies affecting the program and (2) the review process is more cost-effective and efficient, as the need to conduct application reviews off-site is reduced or eliminated, and the fiscal and logistical considerations of recruiting, selecting, and engaging non-Federal readers is reduced, or, in some cases, eliminated.

C. Novice Applicants

In order to address customer concerns about the difficulties that inexperienced applicants face in getting discretionary grant funding from the Department, the team recommended that, if legally permissible and consistent with the intent and purpose of the program, Department program offices could set aside funds to be awarded to novice applicants. The team suggested a streamlined application process for novice applicants, consisting of a brief application, submitted by the applicants for a smaller than average grant under the program; review and evaluation by Department staff members to establish that the applications are of sufficient quality to merit funding; use of a random selection process when the Department does not have sufficient funds to fund all of the qualified novice applications; and closer monitoring and technical assistance after award for novice grantees.

To meet individual program needs, program offices might use other review and selection procedures to assist novice applicants in obtaining funding. For example, instead of conducting a separate competition for novice applicants, a program office might hold only one competition open to all eligible applicants, including novice applicants. Under a competitive preference for a program competition using numerical scores, a novice applicant could receive a certain number of additional points based on its status as a novice. Likewise, in a program competition using quality bands, the Secretary could take into consideration the applicants' "novice" status in making funding decisions. For example, if all of the applications in a quality band could not be funded due to limited program funds, the Secretary could fund all, or a certain percentage of the novice applications in that band before funding other applications in that band.

In all cases, novice grantees would be required to follow the same regulations and requirements as other grantees under the program, and, as mentioned earlier, more stringent conditions might be imposed, if needed, on novice grantees, such as more frequent monitoring by the Department.

VI. Section-by-Section Analysis of the Proposed Regulations

A. Section 75.105 Annual Priorities

This section would be amended to reflect the use of annual priorities in competitions that use quality bands to evaluate applications. Under proposed paragraph (c)(2)(i)(B) of this section, when selecting applications in quality bands, the Secretary may consider the extent to which or how well the application meets the priority in selecting applications for funding.

The following hypothetical example illustrates how this would work. The Secretary publishes an application notice for a competition under the ABC School Technology Program, telling applicants that the Secretary will use quality bands to evaluate applications. The notice also states that the Secretary will give competitive preference to applications under this competition based on the extent to which or how well an application meets the following priority: significant involvement by members of the business community in the design and implementation of the project. In response to the application notice, the Secretary receives many applications under the ABC School Technology Program. The Secretary has sufficient funds to select all of the applications in the "Excellent" band,

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but only has sufficient funds to select 10 of the 30 applications in the "Very Good" band. Twelve of the 30 applications in the "Very Good" band address the priority.

In deciding which 10 applications to fund, the Secretary may consider the extent to which or how well the 12 applications address the priority. The Secretary may conclude, after reviewing the applications and the peer reviewers' comments, that eight of the 12 applications extensively address the priority and provide detailed information about how the applicant would implement the priority. The Secretary would select the 8 applicants that effectively addressed the priority, before funding other applications.

The Secretary would document how the Secretary made the decision as to which of the eight applications addressed the priority effectively such that they deserved to be selected over other applications and would include that documentation in the file for each application that addressed the priority.

The four applications that did not address the priority effectively enough to be given priority selection would be treated as equal to the 18 remaining applications that did not address the priority at all. The Secretary would then select the final two applications from the remaining 22 applications. The Secretary either could use random selection, or could rely on information regarding the selection criteria or other requirements relevant to the selection of applications in making the final selection, regardless of whether the applications addressed the priority.

A. Section 75.201 How the Selection Criteria Will Be Used.

This section would be amended to state that the application package or notice published in the **Federal Register** provided to applicants includes certain information for competitions that use quality bands to evaluate applications.

B. Section 75.209 Selection Criteria Based on Statutory Provisions

This section would be amended to reflect how the Secretary would use statutory criteria, along with other criteria established by the Department, in competitions that use quality bands to evaluate applications.

C. Section 75.217 How Does the Secretary Select Applications for Grants?

Paragraph (c) of this section would be revised to reflect the use of quality bands to evaluate applications. Under proposed paragraph (d), the Secretary would continue to make the final decision as to which applications to fund, whether the Secretary used rank ordering or quality bands. The proposed regulations would continue the Secretary's authority to determine which applications to fund after considering the information in the application, and the quality of the application, as determined under paragraph (c). Proposed paragraph (d) would also retain the provision that the Secretary could consider more information than was available to reviewers to make sure that all factors were properly weighed in the selection process. For example, a group of reviewers might rank an application very high. However, the Secretary might have information about the applicant's unsatisfactory past performance under prior Department grants (*e.g.*, improper use of funds or failure to achieve its approved project goals and objectives). The Secretary could consider this information under paragraph (d)(1)(iii) and decide not to fund the application.

A new paragraph (e) would be added to reflect the Secretary's ability to refuse consideration of applications that do not meet a minimum cut-off score or minimum quality band rating. The Secretary would have flexibility in deciding whether the cut-off score or quality band rating should be established in the application notice for the competition or after determining the overall quality of applications submitted under a competition.

D. Section 75.223 What Procedures Apply When the Secretary Uses Quality Bands to Evaluate Applications?

A new section 75.223 would be added to describe the procedures the Secretary would use under competitions that use quality bands to evaluate applications. These proposed regulations would permit reviewers to group applications under the following five quality bands: "Excellent," "Very Good," "Good," "Fair," and "Unacceptable." Under proposed § 75.223(b), the Secretary would not fund any application placed in the "Unacceptable" band.

In cases where the Secretary selected an application for funding from the "Fair" band, the Secretary would maintain, in the grant file, changes the applicant made to the application showing how the applicant addressed those aspects of the proposed grant that were lacking. Further, the Secretary could impose additional requirements on the grant to ensure that those aspects that were lacking in the original application are implemented properly.

Under proposed paragraph (c) of this section the experts would rate the applications against the program's selection criteria and then group applications of comparable merit into the same quality band, so that there would be no rank order within a quality band.

Proposed paragraph (d) would add a provision outlining what would happen if the Secretary grouped applications in non-numerical quality bands and there were more applications within any one quality band worthy of funding than available funds would allow. In such situations, the Secretary would use his discretion to select applications and could select randomly from within the quality band in exercising that discretion.

Proposed paragraph (d) would also address the possibility that different members of a panel might put the same application in different quality bands. In these cases, the Secretary would have to resolve the conflict, using all available information. For example, if two reviewers rated an application in the "Very Good" and one rated the application in the "Excellent" band, the Secretary might conclude that the application should be considered with the applications that were rated in the "Very Good" band, as that view predominated in the consideration of the reviewers. In other cases, the Secretary might find that one of the reviewers misunderstood portions of the application and misjudged the application. This might produce a three-reviewer split, where one member rated the application in the "Excellent" band, one member rated the application in the "Very Good" band and the third member rated the application in the "Unacceptable" band. If the Secretary determined that the third reviewer misjudged the application, the Secretary would look at the ratings of the other two reviewers to decide in which band to rate the application. This kind of judgement is similar to what happens under the current system, when the Secretary decides not to fund an application that was within the funding range because the average of the scores for an application was unjustifiably high due to a misreading of the application by one of the reviewers.

The Secretary would direct employees of the Department who act as competition managers or monitors to point out to reviewers variances in evaluations so these kinds of conflicts can be resolved in most cases during the review process. In any case, these issues would be resolved before the Secretary makes final selection decisions. In no case would a reviewer be directed to change an evaluation, only to consider whether the reviewer fully considered all of the information in the application.

The Secretary will monitor the development of the Department's use of quality bands to determine if any further regulatory clarification is needed to resolve issues that may arise from reviewers placing applications in different quality bands.

E. Section 75.224 What Are the Procedures for Using a Multiple Tier Review Process To Evaluate Applications?

Proposed § 75.224 would codify a practice that has evolved in some program offices of the Department involving the use of more than one review of an application. This review by more than one group of reviewers is known as "multiple tier review." A multiple tier review process might be used by a program office to gain different perspectives on an application. For example, one panel of researchers and another panel of practitioners might be asked to review the applications for a particular program competition. More commonly, a multiple tier review process is used to narrow the pool of applicants that will be considered for funding. After the first or second tiers of the review, only some of the applications are forwarded to the next tier for further consideration. Under the multiple tier review process, the Secretary could refuse to consider an application in the second or third tier of review if it did not meet a minimum score or place in a certain minimum quality band level in the previous tier's review. The Secretary could establish the minimum score or quality band either in the application notice for the competition or after considering the overall range in the quality of the applications. For example, if a large number of the applications were rated in the "Excellent" and "Very Good" bands in the first tier of the review, and funds were only available to fund a small number of the applications, the Secretary could decide to eliminate from further review any applications that rated below the "Excellent" band.

When a multiple tier review process is used as a means for narrowing the pool of applications that will be considered for funding, it would not be unusual for an application to receive a considerably different rating in the second or third tier than it did under the previous tier's review, even from the same reviewers. Although the reviewers in the second or third tier are still rating applications under the same selection criteria, the applications are now being reviewed within the context of a higher quality pool of applications, which has the potential for affecting the reviewers' rating practices. For this reason, the Secretary does not believe that these differences in ratings indicate errors in judgement at the prior tier.

The Secretary would also have discretion under proposed paragraph (d) to refuse consideration of an application that was rejected by any one of the groups evaluating the application in the same tier. For example, in a competition for a major statistical grant, the Secretary might choose at the first tier to have applications reviewed by a panel of statisticians and another panel of educators and citizens. If the statistical panel found the statistical model of an application valid but the panel of educators and citizens found that the result of the applicant's analysis would not advance education issues, the Secretary could refuse to consider that application in the next tier of the review process.

F. Section 75.225 What Procedures Does the Secretary Use if the Secretary Decides to Give Special Consideration to Novice Applicants?

Proposed new section 75.225 would be added to respond to the concerns of some applicants that they could not get a grant from the Department unless they had already received a grant. Proposed section 75.225 (a) would define novice applicants as applicants that have never received a grant or a subgrant from the Department program under which they seek funding, and have not had an active discretionary grant from the Federal Government in the five years before the deadline date for applications under the program.

In cases where an applicant had participated in a group that received a grant from the Department, such as a consortium or partnership, but had not acted as the grantee (fiscal agent) under the regulations for group applications in §§ 75.127–75.129, the applicant would not be treated as having had a previous grant under that program. However, if the applicant had been the grantee for the group application, then the applicant would be treated as having had a grant under the program that made the award.

When applying for assistance under a program that would use the novice application procedures, an applicant that met the definition of "novice applicant" and wanted to receive special consideration as a novice applicant would check a box on the Department's Application for Federal Education Assistance form (ED 424) to certify that it met all novice applicant requirements for the funding program.

Under proposed paragraph (c), the Secretary would have discretion in appropriate circumstances to set up a separate competition for novice applicants. This novice competition would not be used when the Department would be funding a highly complicated research project, or large projects that would require coordination among a group of organizations. As an example, the Department could set up a novice competition in which novice applicants compete for small "seed money" grants and are required to submit only brief applications addressing how they meet the selection criteria for the program. The information about how the novice competition would be managed would appear in the application notice for the competition.

The Secretary would also have discretion under proposed paragraph (c) to give special consideration to novice applications as part of a competition not explicitly restricted to novice applicants. If the Secretary chose this means of considering novice applications in a rank-order competition, the Secretary would give a novice application a certain number of additional points, as stated in the application notice for the competition, based on its status as a novice. Also, as mentioned earlier in this preamble, a program office using quality band ratings could give priority to novice applications by selecting a certain percentage of, or all, novice applications within a band before selecting other applications in that band.

Finally, proposed paragraph (d) would authorize the Secretary to place special conditions on a novice grantee to help ensure that it successfully completes the project. For example, to facilitate close monitoring of the grant, the novice grantee might be required to submit performance reports on a quarterly basis.

Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them

into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 75.217 *How the Secretary selects applications for new grants.*)

• Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

• What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected would be small local educational agencies, tribal governments, community-based organizations, nonprofit organizations, and institutions of higher education. The novice applicant procedures in these regulations would benefit small entities by giving them a greater opportunity to receive awards from the Department. The flexibility in these regulations would benefit all entities, including small entities, by improving customer service and increasing the quality of the application review process.

Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

Intergovernmental Review

These proposed regulations are not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. However, many of the programs that these proposed regulations would apply to are subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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List of Subjects in 34 CFR Part 75

Administrative practice and procedure, Education Department, Grant programs—education, Grant administration, Incorporation by reference, Performance reports, Reporting and recordkeeping requirements, Unobligated funds.

Dated: April 12, 2000.

Richard W. Riley,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend part 75 of title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for Part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

2. Section 75.105 is amended by revising paragraph (c)(2)(i) to read as follows:

§ 75.105 Annual priorities.

* * * * * *

(c) * * *

(2) * * *

(i)(A) If the Secretary prepares a rank order of the applications, the Secretary may assign some or all bonus points to an application depending upon the extent to which or how well the application meets the priority. These points are in addition to any points the applicant earns under the selection criteria (see § 75.200(b)). The application notice states the maximum number of additional points that the Secretary may award to an application depending upon the extent to which or how well the application meets the priority.

(B) If the Secretary selects applications in quality bands, the Secretary may consider the extent to which or how well the application meets the priority in selecting applications.

* * * * *

3. Section 75.201 is revised to read as follows:

§ 75.201 How the selection criteria will be used.

(a) In the application package or a notice published in the **Federal Register**, the Secretary informs applicants of—

(1) The selection criteria chosen;

(2) The factors selected for considering the selection criteria, if any; and

(3) The Secretary's decision whether to prepare a rank order of applications or group applications in non-numerical quality bands. (See 34 CFR 75.217(c))

(b) If the Secretary prepares a rank order of applications, the Secretary also informs applicants of—

(1) The total possible score for all of the criteria for a competition; and

(2) The assigned weight or maximum possible score for each criterion or factor under that criterion.

(c) If the Secretary prepares a rank order of applications and no points or weights are assigned to the selection criteria and factors used for the competition, the Secretary evaluates each selection criterion equally and within each criterion, each factor equally.

(Authority: 20 U.S.C. 1221e–3 and 3474)

4. Section 75.209 is amended by revising paragraph (a)(2) to read as follows.

§ 75.209 Selection criteria based on statutory provisions.

(a) * * *

* * * * * *

(2)(i) If the Secretary prepares a rank order of applications, assigning the maximum possible score for each of the criteria established under paragraph (a)(1) of this section.

(ii) If the Secretary groups applications in non-numerical quality bands, the Secretary considers statutory criteria with the other criteria under § 75.223(c).

* * * * *

5. Section 75.217 is revised to read as follows:

§ 75.217 How does the Secretary select applications for new grants?

(a) The Secretary selects applications for new grants on the basis of the authorizing statute, the selection

criteria, and any priorities or other requirements that have been published in the **Federal Register** and apply to the selection of applications.

(b)(1) The Secretary may use experts to evaluate the applications submitted under a competition.

(2) These experts may include individuals who are not employees of the Federal Government.

(c) Based solely on the evaluation of the quality of the applications according to the selection criteria, the Secretary either—

(1) Prepares a rank order of the applications; or

(2) Groups applications into non-numerical quality bands in accordance with the procedures in § 75.223.

(d) The Secretary determines the order in which applications will be selected, after considering the following:

(1) The information in each application.

(2) The quality of the applications as determined under § 75.217(c).

(3) Any other information—

(i) Relevant to a criterion, priority, or other requirement that applies to the selection of applications for new grants;

(ii) Concerning the applicant's performance and use of funds under a previous award under any Department program; and

(iii) Concerning the applicant's failure under any Department program to submit a performance report or its submission of a performance report of unacceptable quality.

(e)(1) The Secretary may refuse to consider applications that do not meet a minimum cut-off score or minimum quality band.

(2) The Secretary may establish the minimum cut-off score or quality band—

(i) In the application notice published in the **Federal Register**; or

(ii) After reviewing the applications to determine the overall range in the quality of applications received.

(Authority: 20 U.S.C. 1221e–3 and 3474)

5. New §§ 75.223, 75.224 and 74.225 are added to subpart D under the undesignated center heading "selection procedures" to read as follows:

§ 75.223 What procedures apply when the Secretary uses quality bands to evaluate applications?

(a) If the Secretary uses quality bands to evaluate applications, the quality bands are—

(1) Excellent, if the application is outstanding in all respects and deserves the highest priority for support;

(2) Very good, if the application is of high quality in nearly all respects and should be supported if at all possible;

(3) Good, if the application is a quality proposal that is worthy of support;

(4) Fair, if the application is acceptable but lacking in one or more aspects and there are issues that need to be addressed before it can be considered for funding;

(5) Unacceptable, if the application has serious deficiencies and should not be funded.

(b) The Secretary does not fund any application that is placed in the Unacceptable band.

(c) The experts must assign an overall band rating for each application, after considering the quality of the application under each criterion.

(d) If there are more applications within any one quality band than can be funded with remaining funds, the Secretary decides which applications to fund based solely on the Secretary's discretion and may select randomly in exercising that discretion.

(Authority: 20 U.S.C. 1221e–3 and 3474).

§ 75.224 What are the procedures for using a multiple tier review process to evaluate applications?

(a) The Secretary may use a multiple tier review process to evaluate applications.

(b) The Secretary may refuse to review applications in any tier that do not meet a minimum cut-off score or minimum quality band established for the prior tier.

(c) The Secretary may establish the minimum cut-off score or quality band—

(1) In the application notice published in the **Federal Register**; or

(2) After reviewing the applications to determine the overall range in the quality of applications received.

(d) The Secretary may, in any tier—

(1) Use more than one group of experts to gain different perspectives on an application; and

(2) Refuse to consider an application if the application is rejected under paragraph (b) of this section by any one of the groups used in the prior tier.

(Authority: 20 U.S.C. 1221e–3 and 3474)

§ 75.225 What procedures does the Secretary use if the Secretary decides to give special consideration to novice applications?

(a) As used in this section, "Novice applicant" means an applicant for a grant from ED that—

(1) Has never received a grant or subgrant under the program from which it seeks funding; and

(2) Has not had an active discretionary grant from the Federal Government in the five years before the deadline date for applications under the program.

(b) For the purposes of paragraph (a)(2) of this section, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

(c) If the Secretary determines that special consideration of novice applications is appropriate, the Secretary may either—

(1) Establish a separate competition for novice applicants; or

(2) Give competitive preference to novice applicants under the procedures in 34 CFR 75.105(c)(2).

(d) Before making a grant to a novice applicant, the Secretary imposes special conditions, if necessary, to ensure the grant is managed effectively and project objectives are achieved.

(Authority: 20 U.S.C. 1221e–3 and 3474)

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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H.R. 5/P.L. 106–182

Senior Citizens' Freedom to Work Act of 2000 (Apr. 7, 2000; 114 Stat. 198)

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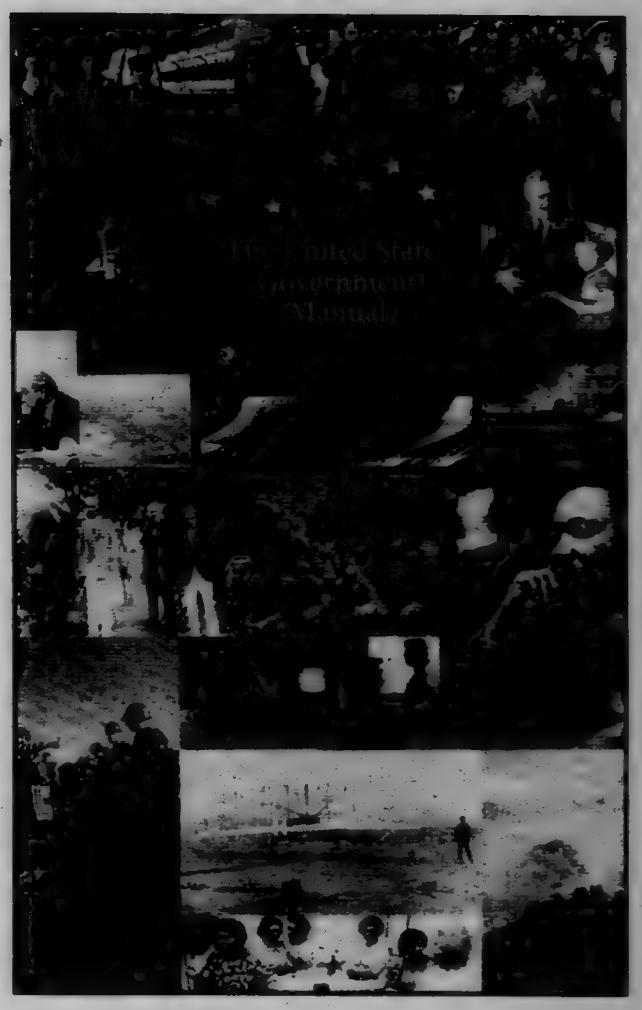

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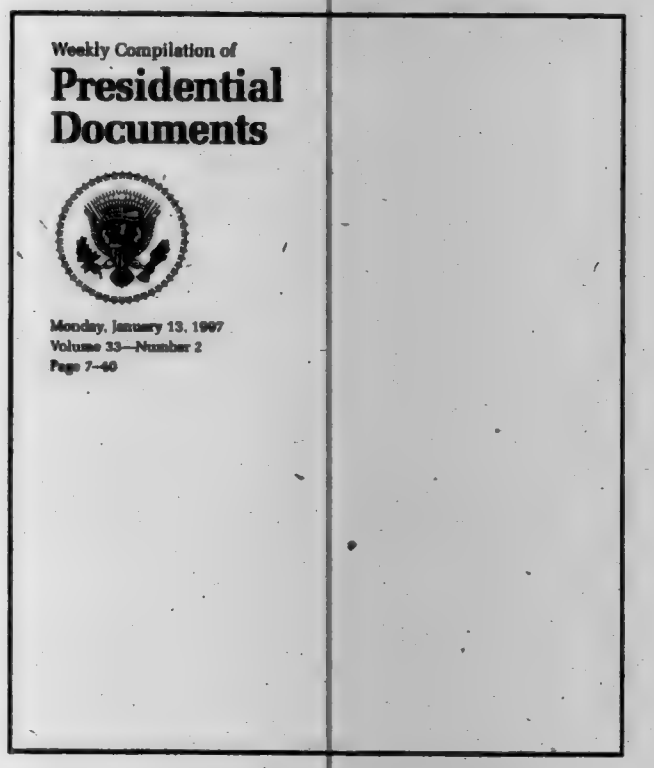

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Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 99–075–3]

Mexican Fruit Fly Regulations; Removal of Regulated Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mexican fruit fly regulations by removing the regulated portion of San Bernardino and Riverside Counties, CA, from the list of regulated areas. We have determined that the Mexican fruit fly has been eradicated from this area and that restrictions on the interstate movement of regulated articles from this area are no longer necessary to prevent the spread of the Mexican fruit fly into noninfested areas of the United States. This action relieves unnecessary restrictions on the interstate movement of regulated articles from the previously regulated area.

DATES: The interim rule was effective April 12, 2000. We invite you to comment on this docket. We will consider all comments that we receive by June 19, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–075–3, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 99–075–3.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Invasive Species and Pest Management Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly, *Anastrepha ludens* (Loew), is a destructive pest of citrus and other types of fruit. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas. The Mexican fruit fly regulations, contained in 7 CFR 301.64 through 301.64–10 (referred to below as the regulations), quarantine infested States, designate regulated areas, and restrict the interstate movement of specified fruits and other regulated articles from regulated areas in order to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. Quarantined States are listed in § 301.64(a), and regulated areas are listed in § 301.64–3(c).

In an interim rule effective September 22, 1999, and published in the **Federal Register** on September 28, 1999 (64 FR 52211–52212, Docket No. 99–075–1), we amended the Mexican fruit fly regulations by designating an area in San Bernardino and Riverside Counties, CA, as a regulated area. In a second interim rule effective December 14, 1999, and published in the **Federal Register** on December 21, 1999 (64 FR 71267–71270, Docket No. 99–075–2), we amended the Mexican fruit fly regulations by adding a portion of San Diego and Riverside Counties, CA, to the list of areas regulated because of the Mexican fruit fly.

Based on insect trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, we have determined that the Mexican fruit fly has been eradicated from the regulated area of San Bernardino and Riverside Counties, CA. The last finding of Mexican fruit fly thought to be associated with the infestation in this area was made on August 27, 1999. Since then no evidence of Mexican fruit fly infestations has been found in this area. Therefore, we are removing this area from the list of areas in § 301.64–3(c) that are regulated because of the Mexican fruit fly.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the public. The area in California affected by this document was regulated due to the possibility that the Mexican fruit fly could spread to noninfested areas of the United States. Since this situation no longer exists, the continued regulated status of this area would impose unnecessary restrictions.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule removes restrictions on the interstate movement of regulated articles from a portion of San Bernardino and Riverside Counties, CA, that has been regulated because of the Mexican fruit fly. Within this regulated area, there are 106 small entities that may be affected by this rule. These

include 2 distributors, 62 fruit sellers, 19 growers, 1 landfill, 18 nurseries, 1 packer, 1 processor, and 2 swap meets. These 106 entities comprise less than 1 percent of the total number of similar enterprises operating in the State of California.

These small entities sell regulated articles primarily for local intrastate, not interstate, movement, and the distribution of these articles was not affected by the regulatory provisions we are removing. Many of these entities also handle other items in addition to the previously regulated articles. The effect on those few entities that do move regulated articles interstate was minimized by the availability of various treatments that, in most cases, allowed these small entities to move regulated articles interstate with very little additional cost. Therefore, the effect, if any, of this rule on these entities appears to be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 301.64–3 [Amended]

2. In § 301.64–3, paragraph (c) is amended by removing the entry and the description of the regulated area for "San Bernardino and Riverside Counties", CA.

Done in Washington, DC, this 12th day of April 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–9669 Filed 4–17–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 52

[Docket No. 98–123–6]

RIN 0579–AB10

Pseudorabies in Swine; Payment of Indemnity

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations regarding the payment of indemnity for herds of swine depopulated because of pseudorabies to provide that the Animal and Plant Health Inspection Service will pay owners of the swine an indemnity equal to the difference between the net salvage received and the fair market value of the swine destroyed. We are also providing for the payment of indemnity for individual breeding sows destroyed because they are infected with pseudorabies. We have determined that this action will allow for the payment of indemnity from accelerated pseudorabies eradication program funds for a greater number of swine disposed of because they are infected with pseudorabies. This action is necessary to further pseudorabies eradication efforts and to protect swine not infected with pseudorabies from the disease.

DATES: Interim rule effective April 12, 2000. Consideration will be given only to comments received on or before June 19, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–123–6, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–123–6.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Taft, Senior Staff Veterinarian, Swine Diseases, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–7708.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service's (APHIS's) regulations in 9 CFR part 85 govern the interstate movement of swine and other livestock (cattle, sheep, and goats) in order to help prevent the spread of pseudorabies.

Pseudorabies is a contagious, infectious, and communicable disease of livestock, primarily swine. The disease, also known as Aujeszky's disease, mad itch, and infectious bulbar paralysis, is caused by a herpes virus, and is known to cause reproductive problems, including abortion and stillborn death, and death in neonatal pigs, and occasional death losses in breeding and finishing hogs. Prior to 1998, the cost of pseudorabies to pork producers alone in the United States was over $30 million annually. Of this amount, more than half, $17 million, represented the cost of vaccination, and another $11 million was attributable to pig deaths. The remainder was spent on testing.

A Federal eradication program for pseudorabies was implemented in the United States in 1989. The program is cooperative in nature and involves Federal, State, and industry participation. In an interim rule published in the **Federal Register** on January 15, 1999, and effective as of

January 12, 1999 (64 FR 2545–2550, Docket No. 98–123–2), APHIS promulgated regulations to establish an accelerated pseudorabies eradication program that provided, among other things, for the payment of indemnity by the United States Department of Agriculture (Department) for the voluntary depopulation of herds of swine known to be infected with pseudorabies.

Indemnity Paid by the Department

In our January 15, 1999, interim rule, we explained that we considered it appropriate to accelerate the pseudorabies eradication program through whole-herd buyouts because of a combination of three factors: (1) The danger that some owners might eliminate eradication efforts, such as vaccination of swine, due to depressed market conditions; (2) the relatively small number of herds infected with pseudorabies; and (3) the fact that markedly depressed prices for swine would lessen the cost to the Federal Government of whole-herd buyouts.

We explained that a surplus of live swine, due in part to reduced export markets, had slaughter facilities operating at maximum capability. Consequently, swine producers were being forced to continue feeding swine that could not go to slaughter. Swine that were being slaughtered were being sold at prices below the costs of feeding and transportation.

Under the regulations governing the accelerated eradication program, we began paying owners fair market value for herds of swine depopulated because of pseudorabies. In addition to paying 100 percent of the fair market value of the animals, we have been paying for trucking to disposal, for euthanasia and disposal, and for cleaning and disinfection of conveyances used for transporting the swine to disposal. To date, we have disposed of the herds depopulated under the accelerated eradication program by rendering. Although pseudorabies does not affect humans, we chose rendering as the method for disposal at the outset of the program because, as noted, a surplus of live swine was causing slaughtering establishments to operate at maximum capability.

Since January 1999, a reduction in swine inventories has contributed to an increase in the market value of swine. Additionally, this has created a situation where slaughtering establishments are generally not operating at maximum capability. Although the price per pound APHIS is paying for swine destroyed under the eradication program has increased over the past year, we consider it necessary to the eradication of pseudorabies to continue the accelerated eradication program. However, because slaughtering establishments can now handle swine to be destroyed under the accelerated eradication program, we consider it prudent to revise the method by which owners of swine will receive fair market value for their animals under the accelerated eradication program.

Instead of the Department paying each owner 100 percent of the fair market value of all swine disposed of under the accelerated eradication program, we will pay indemnity for the difference between whatever payment for net salvage an owner receives for herds of swine disposed of through slaughter and the fair market value of those animals. Net salvage is the amount derived from the sale of an animal after deducting freight, trucking, yardage, commission, slaughtering charges, and similar costs to the owner. This change will increase the number of pseudorabies-infected herds that can be depopulated using available program funds. Under either formula, a swine owner receives the fair market value of the swine.

To ensure that the swine for which indemnity is paid do not pose a pseudorabies risk to any swine not moving to slaughter, and to ensure that APHIS receives documentation that the swine have been destroyed, we are requiring that the swine be sent under permit directly to a recognized slaughtering establishment, where State or Federal meat inspection is available. We are requiring that the swine be moved to the recognized slaughtering establishment in a conveyance closed with an official seal that is applied and removed by an APHIS employee, a State representative, an accredited veterinarian, or an individual authorized for this purpose by an APHIS employee.

We are adding definitions in § 52.1 of this interim rule for the terms *accredited veterinarian, official seal, permit,* and *recognized slaughtering establishment.*

We define *accredited veterinarian* to mean a veterinarian approved by the Administrator in accordance with the provisions of 9 CFR part 161 to perform functions specified in 9 CFR, chapter I, subchapters B, C, and D. This definition is consistent with that set forth elsewhere in 9 CFR chapter I.

We define *official seal* to mean a serially numbered metal or plastic strip, consisting of a self-locking device on one end and a slot on the other end, that forms a loop when the ends are engaged and that cannot be reused if opened, or a serially numbered, self-locking button that can be used for this purpose.

We define *permit* to mean an official document for movement of swine that is issued by an APHIS employee, State representative, or accredited veterinarian and that lists the disease status and individual identification of the animal, where consigned, cleaning and disinfection requirements, and proof of slaughter certification by a recognized slaughtering establishment. It is standard practice for the State or Federal inspector at the recognized slaughtering establishment to submit a signed copy of the permit to the APHIS veterinarian in charge when the animal is destroyed.

We define *recognized slaughtering establishment* to mean a slaughtering establishment operating under the Federal Meat Inspection Act (21 U.S.C. 601–695) or a State meat inspection act. (A list of recognized slaughtering establishments can be obtained by contacting the person listed in this Supplementary Information under **FOR FURTHER INFORMATION CONTACT.**)

As under the program to date, the fair market value will be primarily based on a per pound compensation. The per pound compensation will continue to be based on weighted average base market prices from the previous week (as released in "USDA–AMS Livestock Market News" and as determined by calculating the average of the Wednesday through Friday prices). An additional producer cost offset will also continue to be paid according to whether the animal is a breeder pig, a baby pig, a market hog less than 200 pounds, or a market hog greater than 200 pounds.

Although we expect that the great majority of swine disposed of under the accelerated eradication program will be disposed of through sale to slaughter, we recognize that this may not be reasonable or possible for some swine. For instance, some swine may be too small to provide a profitable yield to the slaughtering facility or may not be of sufficient size to be handled by slaughtering machinery that is set for larger animals. Additionally, recognized slaughtering establishments may not accept swine that have some visible health problem, such as an abscess. Such swine are usually readily identifiable by owners and APHIS employees or State representatives without actually being sent to a recognized slaughtering establishment. In this interim rule, we are providing that we will continue to pay 100 percent of the fair market value for swine that are identified for destruction under the accelerated eradication program, even if they are not accepted by a recognized slaughtering establishment. We may

also pay 100 percent of the fair market value for swine that the owner and an authorized APHIS employee or State representative agree will not be accepted by a recognized slaughtering establishment.

Appraisal of Swine

Prior to this interim rule, § 52.3 of the regulations provided that swine to be destroyed under the accelerated eradication program were to be appraised by an APHIS employee and a representative of the State jointly, or, if the State authorities approved, by an APHIS employee alone. The regulations did not specifically provide for appraisal by a State representative alone because the States were willing to allow APHIS to assume a lead role in carrying out the depopulation and indemnity process. Recently, however, States have indicated to APHIS a willingness to assume an increased role in the appraisal of swine. Increasing State involvement would reduce the demands on APHIS resources and, in some cases, promote more rapid completion of the appraisal process. Therefore, we are amending § 52.3 to provide that swine to be destroyed under the accelerated eradication program may be appraised by a State representative alone.

Groups of Swine Eligible for Indemnity

Section 52.2 of the regulations provides that the Administrator is authorized to agree, on the part of the Department, to pay 100 percent of the expenses of purchase, destruction, and disposition of herds of swine that are destroyed because the herds are known to be infected with pseudorabies.

In § 52.1 of the regulations, a herd is defined as a group of swine maintained on common ground for any purpose, or two or more groups of swine under common ownership or supervision, that are geographically separated but have an interchange or movement of animals without regard to whether the animals are infected with or exposed to pseudorabies.

The definition of herd includes two or more groups of swine under common ownership because it is standard practice in the swine industry for a production facility to maintain groups of swine in different units in different buildings, pens, etc. The swine from the different units may or may not come into contact with each other. If there is an interchange or movement of animals between groups without regard to whether the animals are infected with or exposed to pseudorabies, then, for disease and indemnity purposes, the groups must be considered as one herd.

For the most part under the accelerated eradication program, it has been clear to APHIS and owners of swine whether different groups of swine should be considered as one herd for disease purposes. However, in certain cases, questions have arisen as to whether there was a risk of disease transmission between groups of swine under common ownership. To help address this situation, we are providing in the definition of *herd* that any risk of disease transmission between two groups of swine will be determined by the official pseudorabies epidemiologist. (*Official pseudorabies epidemiologist* is defined in the regulations as a State or Federally employed veterinarian designated by the veterinarian in charge and the State animal health official to investigate and diagnose pseudorabies in livestock.) The factors the official pseudorabies epidemiologist will use in making this determination include the physical layout of the premises and the management practices of the facility, including whether groups of swine are kept in separate areas with no interchange of potential contaminants. Additionally, the epidemiologist will examine the pseudorabies testing and vaccination history of the animals on the premises to assess where the occurrence of pseudorabies is focused and the likelihood of its transmission to separated groups of swine.

Breeding Sows

We are also including in this interim rule a provision to allow owners of breeding sows that are identified as being infected with pseudorabies to receive indemnity if those sows are sent directly to slaughter, even if the rest of the herd they are part of is not depopulated. Although depopulation of an entire herd is the quickest and surest method of ensuring that pseudorabies is eradicated, some swine owners with infected herds have chosen not to depopulate the entire herd due to the loss of production during the time necessary to replace the herd. In such cases, the alternative method of ridding a herd of pseudorabies is to remove from the herd individual sows that test positive for pseudorabies. Prior to the implementation of indemnity payments for herd depopulation under the accelerated pseudorabies eradication program, "test and removal" of individual sows was the primary method used to further the pseudorabies eradication program, although owners of individual swine disposed of because of pseudorabies were not eligible to receive indemnity from APHIS for those animals.

Because a number of swine owners have chosen not to depopulate their infected herds under the accelerated eradication program, we believe it is necessary for the continued progress of the pseudorabies eradication program to provide owners of infected herds with an incentive to rid their herds of those animals most likely to perpetuate pseudorabies within a herd. The swine that constitute the greatest risk are the breeding sows in a herd. As their name denotes, the primary purpose of breeding sows is to produce litters, whereas the purpose of other swine in the herd is generally to be moved to slaughter. Because breeding sows remain in a herd over a period of years, a sow that is infected with pseudorabies can come into contact with, and possibly infect, a number of swine in the herd over the course of its lifetime.

Therefore, to encourage the prompt removal of infected breeding sows from a herd, we are providing in § 52.2(a) of this interim rule that APHIS will pay indemnity to owners of breeding sows known to be infected with pseudorabies that are sent under permit directly to a recognized slaughtering establishment. The payment of indemnity will be carried out by the same method as that described above for whole herd depopulations—*i.e.*, APHIS will pay the owner of the swine the difference between the amount of the net salvage value the owner receives when the animal is slaughtered and the fair market value of the animal. The option of receiving indemnity for less than whole-herd depopulation will not apply to any swine other than breeding sows known to be infected with pseudorabies.

In order to make clear the criteria APHIS will use in determining whether an individual breeding sow is infected with pseudorabies, we are adding to § 52.1 a definition of *known infected breeding sow*. Under this definition, which is the same as the definition of *known infected herd*, except that it applies to individual breeding sows rather than to entire herds, breeding sows known to be infected are those that have been determined to be infected with pseudorabies based on an official pseudorabies test or an approved differential pseudorabies test, or based on a diagnosis by an official pseudorabies epidemiologist.

Presentation of Claims

Prior to this interim rule, the provisions governing the presentation to APHIS of claims for indemnity for swine destroyed because of pseudorabies were set forth in §§ 52.5 and 52.6. Because herds of swine destroyed under the accelerated

pseudorabies program prior to this interim rule were purchased in their entirety by APHIS for shipment to rendering, there was no need for the owner to report any salvage value for the swine. Under this interim rule, however, owners may receive indemnity for swine that are not purchased by APHIS but that are sent directly to slaughter. Therefore, it is necessary that the owner of the swine submit to APHIS, along with a claim for indemnity, documentation of the amount of net salvage proceeds received for the swine at slaughter. This documentation, along with the certification of destruction that APHIS will receive from the recognized slaughtering establishment when the animals are destroyed, will provide APHIS with the information needed to process payment of indemnity. We are adding the requirement for submission of a net salvage proceeds report at § 52.5 of this interim rule (discussed below).

For those swine eligible for indemnity that are purchased by APHIS rather than sent to a slaughtering establishment, the procedures for indemnity claims will be the same as those in place prior to this interim rule. (Those procedures, which were contained in §§ 52.5 and 52.6 prior to this interim rule, are consolidated in § 52.4 of this interim rule.)

Report of Net Salvage Proceeds

In § 52.5 of this interim rule, we are setting forth procedures by which an owner must report to APHIS net salvage proceeds received when swine infected with pseudorabies are sent to slaughter under the accelerated eradication program. We are providing that a report of the amount received for net salvage must be made on a salvage form that shows the gross receipts, expenses, if any, and net proceeds. An original or copy of the salvage form must be furnished by the owner to the veterinarian in charge.

We are defining "net salvage" in § 52.1 to mean the amount received for swine destroyed because of pseudorabies, after deducting freight, trucking, yardage, commission, slaughtering charges, and similar costs to the owner.

Nonsubstantive Changes

In this interim rule, we are also making some nonsubstantive changes to part 52 by redesignating § 52.4 as § 52.7, redesignating § 52.7 as § 52.6, and combining the provisions of §§ 52.5 and 52.6 into one section, new § 52.4. Additionally, we are amending the definition of *known infected herd* to remove some redundant language.

Benefits of This Interim Rule

By revising the method by which owners receive fair market value for swine disposed of under the accelerated eradication program, we will significantly extend the use of APHIS' accelerated pseudorabies eradication program funds. This will help ensure that pseudorabies is eradicated from the United States by the end of 2000.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. The nature of the emergency is the immediate need to extend the funds available to APHIS for the accelerated pseudorabies eradication program before these funds are exhausted. This action is necessary to effect the eradication of pseudorabies in the United States by the end of 2000.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 533 to make the rule effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

An analysis of the economic effects of this rule on small entities, as required by the Regulatory Flexibility Act, follows.

Potential Economic Effects

Pseudorabies is a herpes virus disease, primarily affecting swine, that is known to cause reproductive problems, including abortion, stillborn death, and death in neonatal pigs, and occasional death losses in breeding and finishing hogs. The disease is recognized to cause considerable economic losses.

A Federal eradication program for pseudorabies was implemented in the United States in 1989. The program is cooperative in nature and involves Federal, State, and industry participation. The Federal Government coordinates the national program, the State Governments promulgate and enforce intrastate regulations, and producers have contributed by testing their herds and purchasing vaccines.

In January 1999, we published regulations to establish an accelerated pseudorabies eradication program that provided, among other things, for the payment of indemnity by the Department for the voluntary depopulation of herds of swine known to be infected with pseudorabies.

Under the regulations governing the accelerated eradication program, we have been paying owners fair market value for herds of swine depopulated because of pseudorabies. In addition to paying 100 percent of the fair market value of the animals, we have been paying for trucking to disposal, for euthanasia and disposal, and for cleaning and disinfection of conveyances used for transporting the swine to disposal. To date, the herds that have been depopulated under the accelerated eradication program have been disposed of by rendering.

In this interim rule, we are providing that, instead of the Department paying each owner 100 percent of the fair market value of all swine destroyed under the accelerated eradication program, the Department will also pay indemnity for the difference between whatever net salvage value is received for herds of swine disposed of through slaughter and the fair market value of those animals. Additionally, we are providing that indemnity may be paid for breeding sows that are disposed of because they are known to be infected with pseudorabies, even if the remainder of the herd the sow is part of is not depopulated. We will continue to pay full purchase price for those swine that are not accepted at recognized slaughtering establishments.

The total amount paid to each owner whose herd is depopulated because of pseudorabies will be the same under this interim rule as under the regulations prior to this interim rule. The difference will be in how much the Department pays of that amount and how much is paid by other sources. The provision we are adding to the regulations to allow for the payment of indemnity for individual breeding sows disposed of because they are known to be infected with pseudorabies is expected to provide indemnity to owners who would not otherwise have received indemnity under the accelerated eradication program.

As explained below, we expect the number of infected herds sold to

slaughter to be a very small portion of swine slaughter sales overall. In turn, the number of individual breeding sows sold to slaughter will comprise a small fraction of the number of pseudorabies-infected swine sent to slaughter.

For the purposes of our analysis, we used information from accelerated eradication program activities for the first 4 months of fiscal year (FY) 2000 (October 1, 1999 to January 28, 2000) because we expect the participation in the accelerated eradication program that occurred during that period to be representative of participation during the 4 months following publication of this interim rule. Longer term projections, as the accelerated eradication program approaches its eradication goal and the number of participating herds decreases, would be more problematic.

From October 1, 1999, through January 28, 2000, a total of 146,300 swine from 112 herds were depopulated through the accelerated eradication program. Although this results in a nationwide average herd size of 1,306 swine, average herd sizes varied widely by State, from 39 swine (the average for the three herds depopulated in Florida) to 2,688 swine (the average for the 10 herds depopulated in Indiana).

In comparison to the 146,300 swine destroyed under the accelerated eradication program during the first 4 months of FY 2000, the total number of swine slaughtered nationwide during the same period averaged approximately 8,910,700 swine per month (slaughter numbers for January were projected based on the average of the first 3 months), yielding a 4-month total of 35,642,800. Therefore, the number of swine slaughtered under the accelerated eradication program represented about 0.4 percent of the total number of swine slaughtered. Assuming similar national and accelerated eradication program totals during the coming 4 months, any effect on slaughter prices due to infected animals going to slaughter will be slight, as explained below.

We estimated the effect on slaughter prices by considering the price flexibility for slaughter swine. The flexibility coefficient for a commodity is the percentage change in price associated with a 1 percent change in quantity, other factors being held constant. Assuming a flexibility coefficient for swine of about −0.8 to −0.9[1], a 0.4 percent increase in the quantity of slaughter swine would result in a 0.32 to 0.36 percent decrease in price. Thus, entry of swine from the accelerated eradication program into the slaughter market could result in slaughter prices falling from, for example, 40 cents per pound to 39.86 or 39.87 cents per pound, assuming all other market determinants remained constant.

[1] Flexibility coefficients based on William F. Hahn, "An Annotated Bibliography of Recent Elasticity and Flexibility Estimates for Meat and Livestock," Economic Research Service, Commercial Agriculture Division, Staff Paper No. AGES–9611, July 1996.

Savings to the Accelerated Pseudorabies Eradication Program

The major effect of this interim rule will be in reducing expenses to the accelerated pseudorabies eradication program. Program costs will be reduced by the amount that is paid at slaughter for swine destroyed under the program. Maximum potential savings can be estimated using accelerated eradication program data for the first 4 months of FY 2000. Indemnity payments, including producer cost offsets, during this period totaled $11,097,796. The producer cost offsets comprised $2,782,300 of that amount.

If accelerated eradication program participation during the coming 4 months is similar to what took place during the first 4 months of FY 2000, and assuming that the amount an owner receives at slaughter equals the fair market value of the animal minus the producer cost offset, the savings to the accelerated eradication program in indemnity payments would exceed $8 million ($11,097,796 − $2,782,300 = $8,315,496). Even after taking into account indemnity program-related expenses during the first 4 months of FY 2000 ($2,602,860) and enhanced surveillance expenses during that period ($97,024), total expenses to the program under the scenario described would be reduced to about 40 percent of what they would be without the slaughter sale option. Although, realistically, not all infected swine to be destroyed will be sold for slaughter, and the prices received at slaughter will usually not match the fair market value of the animals, savings to the accelerated eradication program are expected to be considerable.

Effects on Small Entities

This interim rule is not expected to have an effect on the total amount of compensation swine owners will receive for pseudorabies-infected swine. Additionally, it is not expected to have a significant effect on the price per pound paid for swine at slaughter.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0151 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Docket No. 98–123–6, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. Please state that your comments refer to Docket No. 98–123–6 and send your comments within 60 days of publication of this rule.

This interim rule provides that APHIS will pay an indemnity for swine destroyed because of pseudorabies that is equal to the difference between the net salvage received and the fair market value of the swine destroyed. Under these provisions, owners seeking indemnity for swine destroyed will be required to obtain a movement permit and submit to APHIS a report of net salvage proceeds. Additionally, the swine must be moved to slaughter in a means of conveyance sealed with an official seal. We are soliciting comments from the public concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average .14257 hour per response.

Estimated number of respondents: 300.

Estimated number of responses per respondent: 23.33.

Estimated total annual number of responses: 7,000.

Estimated total annual burden on respondents: 998 hours.

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 52

Animal diseases, Pseudorabies, Swine, Indemnity payments, Transportation.

Accordingly, we are amending 9 CFR part 52 as follows:

PART 52—SWINE DESTROYED BECAUSE OF PSEUDORABIES

1. The authority citation for part 52 continues to read as follows:

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, and 134b; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 52.1 is amended by revising the definitions of "herd" and "known infected herd" and by adding definitions of "accredited veterinarian", "known infected breeding sow", "net salvage", "official seal", "permit", and "recognized slaughtering establishment", in alphabetical order, to read as follows:

§ 52.1 Definitions

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with the provisions of part 161 of this chapter to perform functions specified in subchapters B, C, and D of this chapter.

* * * * *

Herd. Any group of swine maintained on common ground for any purpose, or two or more groups of swine under common ownership or supervision that are geographically separated but that are determined by an official pseudorabies epidemiologist to have an interchange or movement of animals that could cause the transmission of pseudorabies from one group to another.

* * * * *

Known infected breeding sow. Any breeding sow that has been determined to be infected with pseudorabies based on an official pseudorabies test or an approved differential pseudorabies test, or as diagnosed by an official pseudorabies epidemiologist as having pseudorabies.

Known infected herd. Any herd in which swine have been determined to be infected with pseudorabies based on an official pseudorabies test or an approved differential pseudorabies test, or based on a diagnosis by an official pseudorabies epidemiologist.

* * * * *

Net salvage. The amount received for swine destroyed because of pseudorabies, after deducting freight, trucking, yardage, commission, slaughtering charges, and similar costs to the owner.

* * * * *

Official seal. A serially numbered metal or plastic strip, consisting of a self-locking device on one end and a slot on the other end, that forms a loop when the ends are engaged and that cannot be reused if opened, or a serially numbered, self-locking button that can be used for this purpose.

Permit. An official document for movement of swine under this part that is issued by an APHIS employee, State representative, or accredited veterinarian and that lists the disease status and individual identification of the animal, where consigned, cleaning and disinfection requirements, and proof of slaughter certification by a recognized slaughtering establishment.

* * * * *

Recognized slaughtering establishment. A slaughtering establishment operating under the Federal Meat Inspection Act (21 U.S.C. 601–695) or a State meat inspection act.[4]

* * * * *

3. Section 52.2 is revised to read as follows:

§ 52.2 Payment of indemnity.

(a) Except as provided in paragraph (b) of this section, the Administrator is authorized to agree on the part of the Department to pay indemnity to the owner of herds of swine destroyed because the herds are known to be infected with pseudorabies, or individual breeding sows destroyed because they are known to be infected with pseudorabies. The amount of indemnity paid, together with the amount for net salvage the owner receives when the animals are slaughtered, shall not exceed the fair market value of the swine. Such swine must be sent directly to slaughter under permit in a conveyance closed with an official seal applied and removed by either an APHIS employee, a State representative, an accredited veterinarian, or an individual authorized for this purpose by an APHIS employee. The swine must be sent to a recognized slaughtering establishment.

(b) If swine from herds that are destroyed because the herds are known to be infected with pseudorabies are not accepted at a recognized slaughtering establishment, or the owner and an APHIS employee or State representative agree they will not be accepted by a recognized slaughtering establishment, the Administrator is authorized to pay 100 percent of the expenses of the purchase, destruction, and disposition of such swine.

(Approved by the Office of Management and Budget under control number 0579–0151)

4. In § 52.3, paragraph (a) is revised to read as follows:

§ 52.3 Appraisal of swine.

(a) Herds of swine and individual breeding sows to be destroyed because they are known to be infected with pseudorabies will be appraised by an APHIS employee and a representative of the State jointly, a representative of the State alone, or, if the State authorities approve, by an APHIS employee alone.

* * * * *

5. Section 52.6 is removed, § 52.7 is redesignated as § 52.6, § 52.4 is redesignated as § 52.7, § 52.5 is redesignated as § 52.4 and revised, and a new § 52.5 is added, to read as follows:

§ 52.4 Presentation of claims.

(a) When swine have been destroyed under § 52.2(a), any claim for indemnity must be presented, along with the report of net salvage proceeds required under § 52.5, to the veterinarian in charge on a form furnished by APHIS.

(b) When swine have been destroyed under § 52.2(b), any claim for indemnity must be presented, through the inspector in charge, to APHIS on a form furnished by APHIS.

(c) For all claims for indemnity, the owner of the swine must certify on the

[4] A list of recognized slaughtering establishments is available upon request from the Animal and Plant Health Inspection Service, 4700 River Road Unit 37, Riverdale, Maryland 20737–1231.

claim form that the swine covered are, or are not, subject to any mortgage as defined in this part. If the owner states there is a mortgage, the owner and each person holding a mortgage on the swine must sign, consenting to the payment of indemnity to the person specified on the form.

(Approved by the Office of Management and Budget under control number 0579–0137)

§ 52.5 Report of net salvage proceeds.

A report of the amount for net salvage derived from the sale of each animal for which a claim for indemnity is made under § 52.2(a) must be made on a salvage form that shows the gross receipts, expenses if any, and net proceeds. The original or a copy of the salvage form must be furnished by the owner to the veterinarian in charge.

(Approved by the Office of Management and Budget under control number 0579–0151)

Done in Washington, DC, this 12th day of April 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–9668 Filed 4–17–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 00–031–1]

Change in Disease Status of Japan Because of Rinderpest and Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations governing the importation of certain animals, meat, and other animal products by removing Japan from the list of regions declared free of rinderpest and foot-and-mouth disease. We are taking this action because the existence of foot-and-mouth disease has been confirmed there. The effect of this action is to prohibit or restrict the importation into the United States from Japan of any ruminant or swine, or any fresh, chilled, or frozen meat of any ruminant or swine. We are taking this action as an emergency measure to protect the livestock of the United States from foot-and-mouth disease.

DATES: This interim rule was effective March 8, 2000. We invite you to comment on this docket. We will consider all comments that we receive by June 19, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 00–031–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–031–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import & Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–3276.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various animal diseases, including rinderpest, foot-and-mouth disease, African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.1 of the regulations lists regions of the world that are declared free of rinderpest or free of both rinderpest and foot-and-mouth disease (FMD). Rinderpest or FMD exists in all other regions of the world not listed. Section 94.11 of the regulations lists regions of the world that have been determined to be free of rinderpest and FMD, but are subject to certain restrictions because of their proximity to or trading relationships with FMD-affected regions.

Prior to the effective date of this interim rule, Japan was listed among those countries considered free of rinderpest and FMD. However, on March 8, 2000, a suspected outbreak of FMD was detected. And on March 27, 2000, Japan's Ministry of Agriculture notified us with confirmation of the FMD diagnosis. Therefore, to protect the livestock of the United States from FMD, we are amending the regulations in § 94.1 by removing Japan from the list of regions that have been declared free of rinderpest and FMD. We are also removing Japan from the list of countries in § 94.11 that are declared to be free of these diseases, but that are subject to certain restrictions because of their proximity to or trading relationships with FMD-affected regions. As a result of this action, the importation into the United States of any ruminant or swine or any fresh (chilled or frozen) meat of any ruminant or swine that left Japan on or after March 8, 2000, is prohibited or restricted.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the introduction of FMD into the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule amends the regulations governing the importation of certain animals, meat, and other animal products by removing Japan from the list of regions declared free of rinderpest and FMD. We are taking this action because Japan's Ministry of Agriculture has reported an outbreak of FMD in that country. This action prohibits or restricts the importation into the United States of any ruminant or swine, or any fresh (chilled or frozen) meat of any ruminant or swine that left Japan on or

after March 8, 2000. This action is necessary to protect the livestock of the United States from FMD.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has retroactive effect to March 8, 2000; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94 RINDERFEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306, 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) is amended by removing the word "Japan,".

§ 94.11 [Amended]

3. In § 94.11, paragraph (a), the first sentence is amended by removing the word "Japan,".

Done in Washington, DC, this 12th day of April 2000 .

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–9667 Filed 4–17–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 00–033–1]

Change in Disease Status of the Republic of Korea Because of Rinderpest and Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations governing the importation of certain animals, meat, and other animal products by removing the Republic of Korea from the list of regions declared free of rinderpest and foot-and-mouth disease. We are taking this action because the existence of foot-and-mouth disease has been confirmed there. The effect of this action is to prohibit or restrict the importation into the United States from the Republic of Korea of any ruminant or swine, or any fresh (chilled or frozen) meat of any ruminant or swine. We are taking this action as an emergency measure to protect the livestock of the United States from foot-and-mouth disease.

DATES: This interim rule was effective March 20, 2000. We invite you to comment on this docket. We will consider all comments that we receive by June 19, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 00–033–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 00–033–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import & Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–3276.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various animal diseases, including rinderpest, foot-and-mouth disease, African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.1 of the regulations lists regions of the world that are declared free of rinderpest or free of both rinderpest and foot-and-mouth disease (FMD). Rinderpest or FMD exists in all other regions of the world not listed. Section 94.11 of the regulations lists regions of the world that have been determined to be free of rinderpest and FMD, but are subject to certain restrictions because of their proximity to or trading relationships with FMD-affected regions.

Prior to the effective date of this interim rule, the Republic of Korea was listed among those countries considered free of rinderpest and FMD. However, on March 20, 2000, a suspected outbreak of FMD was detected. And on March 28, 2000, the Republic of Korea's Ministry of Agriculture notified us with confirmation of the FMD diagnosis. Therefore, to protect the livestock of the United States from FMD, we are amending the regulations in § 94.1 by removing the Republic of Korea from the list of regions that have been declared free of rinderpest and FMD. We are also removing the Republic of Korea from the list of countries in § 94.11 that are declared to be free of these diseases, but that are subject to certain restrictions because of their proximity to or trading relationships with FMD-affected regions. As a result of this action, the importation into the United States of any ruminant or swine or any fresh (chilled or frozen) meat of

any ruminant or swine that left the Republic of Korea on or after March 20, 2000, is prohibited or restricted.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the introduction of FMD into the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule amends the regulations governing the importation of certain animals, meat, and other animal products by removing the Republic of Korea from the list of regions declared free of rinderpest and FMD. We are taking this action because the Republic of Korea's Ministry of Agriculture has reported an outbreak of FMD in that country. This action prohibits or restricts the importation into the United States of any ruminant or swine, or any fresh (chilled or frozen) meat of any ruminant or swine that left the Republic of Korea on or after March 20, 2000. This action is necessary to protect the livestock of the United States from FMD.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has retroactive effect to March 20, 2000; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERFEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306, 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) is amended by removing the words "Republic of Korea,".

§ 94.11 [Amended]

3. In § 94.11, paragraph (a), the first sentence is amended by removing the words "Republic of Korea,".

Done in Washington, DC, this 12th day of April 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–9666 Filed 4–17–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–61–AD; Amendment 39–11687; AD 2000–08–01]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Tay 650–15 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Rolls-Royce plc Tay 650–15 series turbofan engines. This AD requires the establishment of cyclic life limits for stage 1 high pressure turbine (HPT) and stage 1 low pressure turbine (LPT) disks operating under new flight plan profiles. This amendment is prompted by reports that, on some engines, cracks in the stage 1 HPT and stage 1 LPT disks could initiate and propagate at a faster rate than forecast under the flight plan profiles originally published at the time the engine design was certified. The actions specified by this AD are intended to prevent crack initiation and propagation leading to turbine disk failure, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Effective date June 19, 2000.

The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 19, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, UK, telephone 011–44–1332–242424. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7176, fax 781–238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Rolls-Royce plc (R–R) Tay 650–15 series turbofan engines

was published in the **Federal Register** on January 12, 2000 (65 FR 1831). That action proposed to establish life limits for stage 1 HPT and stage 1 LPT disks operated under the new flight plan profiles, C and D; require the removal from service of stage 1 HPT and stage 1 LPT disks prior to reaching new, lower cyclic life limits; and replace those disks with serviceable parts in accordance with R–R Service Bulletin TAY–72–1479, dated July 20, 1999.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 242 engines of the affected design in the worldwide fleet. The FAA estimates that three engines installed on aircraft of U.S. registry will be affected by this AD, and that the prorated life reduction would cost $26,658 per engine. Based on these figures, the total cost impact of the proposed AD on US operators is estimated to be $79,974.

Regulatory Impact

This rule does not have federalism implications, as defined in Executive Order (EO) No. 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under EO No. 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–08–01 Rolls-Royce plc: Amendment 39–11687. Docket 99–NE–61–AD.

Applicability: Rolls-Royce plc (R–R) Tay 650–15 series turbofan engines, with stage 1 high pressure turbine (HPT) disks, part numbers (P/Ns) JR32013 and JR33838, and stage 1 low pressure turbine (LPT) disks, P/N JR32318A. These engines are installed on but not limited to Fokker F.28 Mark 0100 (F100) series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent crack initiation and propagation leading to turbine disk failure, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

Flight Plan Profile C

(a) Remove from service stage 1 HPT disks, P/Ns JR32013 and JR33838, and stage 1 LPT disks, P/N JR32318A, operated under flight plan profile C, as defined in the R–R Tay Engine Manual, 70–01–10, pages 1–10, prior to accumulating 18,000 cycles-since-new (CSN), and replace with serviceable parts.

Flight Plan Profile D

(b) Remove from service stage 1 HPT disks, P/Ns JR32013 and JR33838, and stage 1 LPT disks, P/N JR32318A, operated under flight plan profile D, as defined in the R–R Tay Engine Manual, 70–01–10, pages 1–10, prior to accumulating 14,250 CSN, and replace with serviceable parts.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Incorporation by Reference Material

(e) The actions of this AD shall be done in accordance with R–R Service Bulletin TAY–72–1479, dated July 20, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, UK, telephone 011–44–1332–242424 . Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Effective Date of This AD

(f) This amendment becomes effective on June 19, 2000.

Issued in Burlington, Massachusetts, on April 7, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–9358 Filed 4–17–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–304–AD; Amendment 39–11682; AD 2000–07–26]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 series airplanes, that requires a

one-time detailed visual inspection to detect corrosion on the outer surface of the fuselage skin panel; application of corrosion preventive protection; and corrective action, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct corrosion of the fuselage skin panel, which could result in cracking and consequent reduced structural integrity of the airplane.

DATES: Effective May 23, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of May 23, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 series airplanes was published in the **Federal Register** on January 3, 2000 (65 FR 91). That action proposed to require a one-time detailed visual inspection to detect corrosion on the outer surface of the fuselage skin panel; application of corrosion preventive protection; and corrective action, if necessary.

Comment Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

Request to Reference Latest Service Bulletin Revision

One commenter, the manufacturer, requests that the proposed AD be revised to refer to Airbus Service Bulletin A300–53–0328, Revision 01, including Appendix 01, dated March 15, 2000, for accomplishment of the inspection. The original issue of the service bulletin, dated March 5, 1999, was referenced in the proposed AD as the appropriate source of service information. The commenter notes that the original issue of the service bulletin references a 30-month interval rather than the correct 5-year interval for certain follow-on repetitive inspections that are covered by the Corrosion Prevention Control Program (CPCP). The commenter suggests that referencing Revision 01 of the service bulletin, in which the correct interval is specified, will avoid confusion on the part of operators.

The FAA concurs. The FAA has reviewed the procedures described in Airbus Service Bulletin A300–53–0328, Revision 01, including Appendix 01, dated March 15, 2000, and has determined that they are equivalent to those described in the original issue of the service bulletin, except for certain cleaning procedures. The final rule has been revised to refer to Revision 01 of the service bulletin as the appropriate source of service information. However, a "NOTE" has been included in the final rule to provide credit for previous accomplishment of the actions required by this AD in accordance with the original issue of the service bulletin.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 3 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 or 22 work hours per airplane, depending on the airplane configuration, to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $240 or $1,320 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–07–26 Airbus Industrie: Amendment 39–11682. Docket 99–NM–304–AD.

Applicability: Model A300 series airplanes, certificated in any category; except those on which Airbus Modification 04201 has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD.

The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion of the fuselage skin panel, which could result in cracking and consequent reduced structural integrity of the airplane, accomplish the following:

Inspection

(a) Perform a one-time detailed visual inspection of the outer surface of the fuselage skin panel between fuselage frames FR39 and FR40, and between stringers 27 and 33, for corrosion; in accordance with Airbus Service Bulletin A300–53–0328, Revision 01, including Appendix 01, both dated March 15, 2000. Perform the inspection at the applicable time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD. If any corrosion is found, prior to further flight, repair (*i.e.*, rework corroded areas, or repair or replace panels, as applicable) in accordance with the service bulletin, except as provided by paragraph (b) of this AD. Temporary repairs must be replaced with permanent repairs prior to accumulation of the life limits specified in the service bulletin.

(1) For airplanes for which the date of manufacture was less than 15 years before the effective date of this AD: Inspect within 18 months after the effective date of this AD.

(2) For airplanes for which the date of manufacture was at least 15 but less than 20 years before the effective date of this AD: Inspect within 12 months after the effective date of this AD.

(3) For airplanes for which the date of manufacture was 20 or more years before the effective date of this AD: Inspect within 6 months after the effective date of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) Where Airbus Service Bulletin A300–53–0328, Revision 01, dated March 15, 2000, specifies that Airbus may be contacted for a repair, prior to further flight, replace the skin panel with a new or serviceable skin panel in accordance with the service bulletin.

Note 3: Accomplishment of the actions required by this AD in accordance with Airbus Service Bulletin A300–53–0328, dated March 5, 1999, prior to the effective date of this AD, is acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Airbus Service Bulletin A300–53–0328, Revision 01, including Appendix 01, dated March 15, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French airworthiness directive 1999–209–281(B), dated May 19, 1999.

(f) This amendment becomes effective on May 23, 2000.

Issued in Renton, Washington, on April 6, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–9112 Filed 4–17–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–83–AD; Amendment 39–11683; AD 2000–07–27]

RIN 2120–AA64

Airworthiness Directives; Various Transport Category Airplanes Equipped With Certain Honeywell Air Data Inertial Reference Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to various transport category airplanes equipped with certain Honeywell air data inertial reference units (ADIRU). This action requires inspection of a failed ADIRU to determine its modification status, and replacement of an unmodified failed ADIRU with a serviceable ADIRU. This action also provides for optional terminating action for the requirements of the AD. This amendment is prompted by reports of dual critical failures of inertial reference units on ADIRU's during flight. The actions specified in this AD are intended to prevent loss of the main sources of attitude data, consequent high pilot workload, and a significant increase in the likelihood of pilot error.

DATES: Effective May 3, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 3, 2000.

Comments for inclusion in the Rules Docket must be received on or before June 19, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–83–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Honeywell, Publications, P.O. Box 21111, Mail Stop DV–10, Phoenix, Arizona 85036. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Chicago Aircraft Certification Office, 2350 East Devon Avenue, Room 323, Des Plaines, Illinois; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wess Rouse, Aerospace Engineer, Systems and Flight Test Branch, ACE–117C, FAA, Chicago Aircraft Certification Office, 2350 East Devon Avenue, Room 323, Des Plaines, Illinois 60018; telephone (847) 294–8113; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: The FAA has recently received three reports of dual inertial reference (IR) critical faults of the air data inertial reference system comprising two or more air data inertial reference units (ADIRU) on transport category airplanes during flight. Three days prior to one of the dual IR critical fault incidents, one of those ADIRU's

had an IR critical fault in flight. During the subsequent ground check, the failed ADIRU passed the built-in test and aligned, functioning normally.

The subject ADIRU's are subject to IR critical faults related to the power supply margin. The demand for voltage increases as operating hours and temperature increase. Once the demand for voltage exceeds the capability of the power supply, the inertial reference portion of the ADIRU will exhibit an IR critical fault, while the air data portion of the ADIRU will continue to function normally. It may be possible to reset the failed inertial reference unit on the ground after the temperature of the ADIRU decreases; however, the risk of the dual critical fault increases when an ADIRU with a failed inertial reference power supply is returned to service. If two inertial reference units fail, the airplane is left with only one functioning source of attitude data. This condition could result in loss of the main sources of attitude data, consequent high pilot workload, and a significant increase in the likelihood of pilot error.

Explanation of Relevant Service Information

The FAA has reviewed and approved Honeywell Alert Service Bulletins HG2030AD–34–A0009, and HG2050AC–34–A0008, both dated March 9, 2000, which describe procedures for determining the modification status of the ADIRU. For any ADIRU part number (P/N) HG2050AC not marked as modification 2 or 3 and any ADIRU P/N HG2030AD not marked as modification 3 or 6, the alert service bulletins also describe procedures for replacement of the ADIRU with a serviceable ADIRU.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of the same type design, this AD is being issued to prevent loss of the main sources of attitude data, consequent high pilot workload, and a significant increase in the likelihood of pilot error. This AD requires inspection of a failed ADIRU to determine its modification status, and replacement of any unmodified failed ADIRU with a serviceable ADIRU. This AD also provides for optional terminating action for the requirements of the AD. The actions are required to be accomplished in accordance with the alert service bulletins described previously.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–83–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket.

A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–07–27 Transport Category Airplanes: Amendment 39–11683. Docket 2000–NM–83–AD.

Applicability: Transport category airplanes including but not limited to those listed below, certificated in any category; equipped with any Honeywell air data inertial reference unit (ADIRU) having a serial number below 0841 and a part number (P/N) listed below:

Airplane manufacturer	Model	ADIRU P/N
Boeing	737–300	HG2050AC02
	737–600	HG2050AC03
	737–700	HG2050AC04
	737–800	HG2050AC05
Airbus	A319–111	HG2030AD09
	A319–112	
	A319–113	
	A319–114	
	A319–131	
	A319–132	
	A320–111	
	A320–211	
	A320–212	

Airplane manufacturer	Model	ADIRU P/N
	A320–214	
	A320–231	
	A320–232	
	A320–233	
	A321–111	
	A321–112	
	A321–131	
	A330–202	
	A330–301	
	A330–223	
	A330–321	
	A330–322	
	A330–323	
	A340–211	
	A340–311	
	A340–212	
	A340–312	
	A340–213	
	A340–313	
Airbus	A330–202	HG2030AD10
	A330–301	
	A330–223	
	A330–321	
	A330–322	
	A330–323	
	A340–211	
	A340–311	
	A340–212	
	A340–312	
	A340–213	
	A340–313	

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the main sources of attitude data, consequent high pilot workload, and a significant increase in the likelihood of pilot error, accomplish the following:

Inspection and Replacement

(a) Prior to the next flight following any critical inertial reference failure of an ADIRU: Inspect the identification plate of the ADIRU to determine its modification status, in accordance with Honeywell Alert Service Bulletin HG2030AD–34–A0009 (for an ADIRU having P/N HG2030AD09 or HG2030AD10) or HG2050AC–34–A0008 (for an ADIRU having P/N HG2050AC02, HG2050AC03, HG2050AC04, or HG2050AC05), both dated March 9, 2000; as applicable.

(1) If any ADIRU having P/N HG2050AC02, HG2050AC03, HG2050AC04, or HG2050AC05 is not marked as modification 2 or 3: Prior to further flight, replace the ADIRU with an ADIRU as specified in either paragraph (a)(1)(i) or (a)(1)(ii) of this AD, in accordance with Honeywell Alert Service Bulletin HG2050AC–34–A0008, dated March 9, 2000.

(i) Replace with an ADIRU that has P/N HG2050AC03, HG2050AC04, or HG2050AC05; and that is marked as modification 2 or 3. Or

(ii) Replace with a serviceable ADIRU that has P/N HG2050AC03, HG2050AC04, or HG2050AC05; and that is not marked as modification 2 or 3; and that has been determined to have accumulated less than 7,000 operating hours in accordance with the alert service bulletin.

(2) If any ADIRU having P/N HG2030AD09 or HG2030AD10 is not marked with modification 3 or 6: Prior to further flight, replace the ADIRU with an ADIRU as specified in either paragraph (a)(2)(i) or (a)(2)(ii), in accordance with Honeywell Alert Service Bulletin HG2030AD–34–A0009, dated March 9, 2000.

(i) Replace with an ADIRU having P/N HG2030AD09 or HG2030AD10 that is marked as modification 3 or 6; or

(ii) Replace with a serviceable ADIRU having P/N HG2030AD09 or HG2030AD10 that is not marked as modification 3 or 6, and that has been determined to have accumulated less than 7,000 operating hours in accordance with the alert service bulletin.

Note 2: For purposes of this AD, a "serviceable" ADIRU is one that satisfies the replacement requirements of paragraph (a)(1)(ii) or (a)(2)(ii), and on which no critical inertial reference failure has occurred.

(b) Installation of all ADIRUs on the airplane that meet the criteria of paragraph (b)(1) or (b)(2) of this AD constitutes terminating action for the requirements of this AD:

(1) ADIRUs that have P/N HG2050AC03, HG2050AC04, or HG2050AC05; and that are marked as modification 2 or 3; or

(2) ADIRUs that have P/N HG2030AD09 or HG2030AD10, and that are marked as modification 3 or 6.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Chicago ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished, provided that the remaining, functioning ADIRU(s) has accumulated less than 7,000 total operating hours, as specified by Honeywell Alert Service Bulletin HG2030AD–34–A0009 (for ADIRU P/N's HG2030AD09 and HG2030AD10) or HG2050AC–34–A0008 (for an ADIRU P/N HG2050AC), both dated March 9, 2000; as applicable.

Incorporation by Reference

(e) The actions shall be done in accordance with Honeywell Alert Service Bulletin HG2050AC–34–A0008, dated March 9, 2000; or Honeywell Alert Service Bulletin HG2030AD–34–A0009, dated March 9, 2000; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Honeywell, Publications, P.O. Box 21111, Mail Stop DV–10, Phoenix, Arizona 85036. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Chicago Aircraft Certification Office, 2350 East Devon Avenue, Room 323, Des Plaines, Illinois; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on May 3, 2000.

Issued in Renton, Washington, on April 6, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–9111 Filed 4–17–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–95–AD; Amendment 39–11684; AD 2000–07–28]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Series Airplanes Equipped With Rolls-Royce 532–7 "Dart 7" (RDa–7) Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Fokker Model F27 series airplanes, that currently requires revising the Airplane Flight Manual (AFM) to provide the flightcrew with modified operational procedures to ensure continuous operation with the high pressure cock (HPC) levers in the lockout position. This amendment retains the requirements of the existing AD for the Normal and Abnormal Procedures Sections of the AFM, and

requires incorporation of amended Limitations and Emergency Procedures Sections into the AFM. This amendment is prompted by a report that certain incorrect instructions had been included in the Emergency Procedures Section of the AFM revision required by the existing AD. The actions specified in this AD are intended to ensure that flightcrews follow correct procedures that will maintain the HPC levers in a permanent lockout position to prevent consequent burnout of the engines during flight.

DATES: Effective April 18, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 18, 2000.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of October 8, 1999 (64 FR 48280, September 3, 1999).

Comments for inclusion in the Rules Docket must be received on or before May 18, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–95–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: On August 27, 1999, the FAA issued AD 99–18–22, amendment 39–11288 (64 FR 48280, September 3, 1999), applicable to certain Fokker Model F27 series airplanes, to require revising the FAA-approved Airplane Flight Manual (AFM) to provide the flightcrew with modified operational procedures to ensure continuous operation with the high pressure cock (HPC) levers in the lockout position. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions required by that AD are intended to prevent burnout of the engines during flight by ensuring that the HPC levers are in a permanent lockout position.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, has advised the FAA that certain incorrect instructions had been included in the AFM revision required by that AD.

Fokker Manual Change Notice MCNO–F27–001 was cited in the existing AD as the appropriate source of service information for placing the HPC levers in a permanent lock position (with the cruise lock withdrawal system disabled) during operation of the airplane. However, MCNO–F27–001 contains remove/replace instructions rather than the amended procedures. One operator reported that strict adherence to the instructions in its flight manual (following incorporation of the MCNO) would have resulted in incorrect "Manual Feathering Procedure" and "Propeller Overspeed Procedure."

The emergency manual feathering procedures in the MCNO specify that the HPC be placed in lockout position before the feather button is pressed; however, this procedure is intended to relight the engine in flight. Use of this procedure would result in unfeathering of the propeller and loss of control of the airplane.

FAA's Determination

In light of this information, the FAA finds that certain procedures should be amended in the AFM for Model F27 series airplanes to ensure that flightcrews follow correct procedures that will maintain the HPC levers in a permanent lockout position to prevent consequent burnout of the engines during flight. The FAA has determined that such procedures currently are not defined adequately in the AFM for these airplanes.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD supersedes AD 99–18–22 to continue to require revising the Normal and Abnormal Procedures Sections of the AFM. This AD also requires incorporation of amended Limitations and Emergency Procedures into the AFM.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to

Docket Number 2000–NM–95–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11288 (64 FR 48280, September 3, 1999), and by adding a new airworthiness directive (AD), amendment 39–11684, to read as follows:

2000–07–28 Fokker Services B.V.: Amendment 39–11684. Docket 2000–NM–95–AD. Supersedes AD 99–18–22, Amendment 39–11288.

Applicability: Model F27 series airplanes, certificated in any category, as listed in Fokker F27 Service Bulletin F27/61–40, Revision 1, dated August 1, 1997.

Compliance: Required as indicated, unless accomplished previously.

To ensure that flightcrews follow correct procedures that will maintain the high pressure cock (HPC) levers in a permanent lockout position to prevent consequent burnout of the engines during flight, accomplish the following:

AFM Revision: Normal and Abnormal Procedures Sections

(a) Within 6 months after October 8, 1999 (the effective date of AD 99–18–22, amendment 39–11288): Revise the Normal and Abnormal Procedures Sections, as applicable, of the FAA-approved Airplane Flight Manual (AFM) by incorporating Fokker F27 Service Bulletin F27/61–40, Revision 1, dated August 1, 1997; including Fokker F27 Manual Change Notification (MCNO) F27–001, dated June 30, 1997. [MCNO F27–001 specifies procedures for placing the HPC levers in a permanent lockout position (with the cruise lock withdrawal system disabled) during operation of the airplane.] This action may be accomplished by inserting a copy of MCNO F27–001 into the applicable sections of the AFM.

AFM Revision: Limitations and Emergency Procedures Sections

(b) Within 3 days after the effective date of this AD, revise the Limitations and Emergency Procedures Sections of the AFM by incorporating Fokker Manual Change Notification MCNO F27–008, dated March 1, 2000. This action may be accomplished by inserting a copy of MCNO F27–008 into the applicable sections of the AFM.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Fokker F27 Service Bulletin F27/61–40, Revision 1, dated August 1, 1997, including Fokker F27 Manual Change Notification (MCNO) F27–001, dated June 30, 1997; and Fokker Manual Change Notification MCNO F27–008, dated March 1, 2000.

(1) The incorporation by reference of Fokker Manual Change Notification MCNO F27–008, dated March 1, 2000, is approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Fokker F27 Service Bulletin F27/61–40, Revision 1, dated August 1, 1997, including Fokker F27 Manual Change Notification (MCNO) F27–001, dated June 30, 1997, was approved previously by the Director of the Federal Register as of October 8, 1999 (64 FR 48280, September 3, 1999).

(3) Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 18, 2000.

Issued in Renton, Washington, on April 6, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–9110 Filed 4–17–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–82–AD; Amendment 39–11681; AD 98–15–10 R2]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS–350B, BA, B1, B2, C, D, and D1, and AS–355E, F, F1, F2 and N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to Eurocopter France Model AS–350B, BA, B1, B2, C, D, and D1, and AS–355E, F, F1, F2 and N helicopters, that currently requires repetitive inspections of the main rotor head components, the main gearbox (MGB) suspension bars, and the ground resonance prevention system components at intervals not to exceed 400 hours time-in-service (TIS). This amendment requires the same inspections, but at intervals not to exceed 500 hours TIS. This amendment is prompted by reports of confusion and unnecessary costs associated with the difference in the current 400 hours TIS inspection interval and the current manufacturer's master service recommendation of 500 hours TIS inspection interval. The actions specified by this AD are intended to eliminate confusion and unnecessary costs and to prevent ground resonance due to reduced structural stiffness, which could lead to failure of a main rotor head or MGB suspension component and subsequent loss of control of the helicopter.

DATES: Effective May 23, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 23, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth,Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising AD 86–15–10, Amendment 39–5517 (52 FR 13233, April 22, 1987) and AD 86–15–10 R1, Amendment 39–6515 (55 FR 5833, February 20, 1990), which is applicable to Eurocopter France Model AS–350B, BA, B1, B2, C, D, and D1, and AS–355E, F, F1, F2 and N helicopters, was published in the **Federal Register** on January 20, 2000 (65 FR 3165). The action proposed to require repetitive inspections of the main rotor head components, the MGB suspension bars, and the ground resonance prevention system components at intervals not to exceed 500 hours TIS.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA has determined that this regulation is relieving in nature and imposes no additional costs or regulatory burden on any person.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–5517 (52 FR 13233, April 22, 1987) and Amendment 39–6515 (55 FR 5833, February 20, 1990) and by adding a new airworthiness directive (AD), Amendment 39–11681, to read as follows:

AD 86–15–10 R2 Eurocopter France: Amendment 39–11681. Docket No. 98–SW–82–AD. Revises AD 86–15–10, Amendment 39–5517 and AD 86–15–10 R1, Amendment 39–6515.

Applicability: Model AS–350B, BA, B1, B2, C, D, and D1, and AS–355E, F, F1, F2 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent ground resonance due to reduced structural stiffness, which could lead to failure of a main rotor head or main gearbox (MBG) suspension component and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS):

(1) For Model AS–350B, BA, B1, B2, C, D, and D1 helicopters, inspect the main rotor head components, the MGB suspension bars (struts), and the landing gear ground resonance prevention components (aft spring blades and hydraulic shock absorbers) in accordance with paragraph CC.3 of Aerospatiale Service Bulletin (SB) No. 01.17a (not dated).

(2) For Model AS–355E, F, F1, F2 helicopters, inspect the main rotor head components, the MGB suspension bars (struts), and the landing gear ground resonance prevention components (aft spring blades and hydraulic shock absorbers) in accordance with paragraph CC.3 of SB No. 01.14a (not dated).

(b) Rework or replace damaged components in accordance with SB No. 01.17a or SB No. 01.14a, as applicable.

(c) Repeat the inspections and rework required by paragraphs (a) and (b) of this AD at intervals not to exceed 500 hours TIS.

(d) If the helicopter is subjected to a hard landing or to high surface winds, when parked without effective tiedown straps installed, repeat the inspections required by paragraph (a) of this AD for the main rotor head star arms and the MGB suspension bars before further flight.

(e) In the event of a landing which exhibits abnormal self-sustained dynamic vibrations (ground resonance type vibrations), repeat all the inspections contained in paragraph (a) of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, FAA, Regulations Group, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(h) The inspections and modification shall be done in accordance with Aerospatiale Service Bulletin No. 01.17a or No. 01.14a (neither is dated). This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on May 23, 2000.

Issued in Fort Worth, Texas, on April 4, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–9109 Filed 4–17–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–9]

Amendment to Class E Airspace; Orange City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Orange City Municipal Airport, Orange City, IA. A review of the Class E airspace area for Orange City Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order.7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR) and comply with the criteria of FAA Order 7400.2D.

DATES: *Effective date:* 0901 UTC, August 10, 2000.

Comments for inclusion in the Rules Docket must be received on or before May 22, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–9, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Orange City, IA. A review of the Class E airspace for Orange City Municipal Airport, IA, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Orange City Municipal Airport, IA, will provide additional controlled airspace for aircraft operating under IFR, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a

notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 00–ACE–9". The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Orange City, IA [Revised]

Orange City Municipal Airport, IA
(Lat. 42°59′25″ N., long. 96°03′46″ W.)
Orange City NDB
(Lat. 42°59′29″ N., long. 96°03′38″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Orange City Municipal Airport and within 2.6 miles each side of the 172° bearing from the Orange City NDB extending from the 6.4-mile radius to 7.4 miles north of the airport.

* * * * *

Issued in Kansas City, MO, on April 3, 2000.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–9548 Filed 4–17–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–8]

Amendment to Class E Airspace: Sheldon, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Sheldon Municipal Airport, Sheldon, IA. A review of the Class E airspace area for Sheldon Municipal Airport indicated it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace as been enlarged to conform to the criteria of FAA Order 7400.2D.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR) and comply with the criteria of FAA Order 7400.2D.

DATES: *Effective date:* 0901 UTC, August 10, 2000.

Comments for inclusion in the Rules Docket must be received on or before May 24, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–8, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Sheldon, IA. A review of the Class E airspace for Sheldon Municipal Airport, IA, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Sheldon

Municipal Airport, IA, will provide additional controlled airspace for aircraft operating under IFR, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register** and a notice of proposed rulemaking may be published with a new comment period.

Comment Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 00–ACE–8." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regular action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g) 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Sheldon, IA [Revised]

Sheldon Municipal Airport, IA
(Lat. 43°12′30″ N., long 95°50′00″ W.)
Sheldon NDB
(Lat 43°12′51″ N., long 95°50′02″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Sheldon Municipal Airport and within 2.6 miles each side of the 160° bearing from the Sheldon NDB extending from the 6.4-mile radius to 7.4 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO on April 3, 2000.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–9549 Filed 4–17–00; 8:45 am]

BILLING CODE 4910–13–M

RAILROAD RETIREMENT BOARD

20 CFR Part 222

RIN 3220–AB40

Family Relationships

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends its regulations on determining whether a natural child has inheritance rights under appropriate state law and therefore may be entitled to railroad retirement benefits as the child of an insured employee. The Board also clarifies its regulation regarding status as a legally adopted child of an insured employee. Such revisions are necessary because of a change in the regulations

of the Social Security Administration, which became effective November 27, 1998. The Board also deletes an obsolete provision in its regulations providing that an individual may qualify as a deemed spouse only if there is no legal spouse who is entitled to a railroad retirement annuity or social security benefit.

EFFECTIVE DATE: April 18, 2000.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Senior Attorney, (312) 751–4945, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 2(d)(4) of the Railroad Retirement Act (RRA) references section 216(h) of the Social Security Act for purposes of determining whether an individual is the child of the insured employee for entitlement to a surviving child's annuity. In addition, the Board must look to the Social -Security Act to determine the status of a child for increasing a disability annuitant's annuity under the social security overall minimum provided in section 3(f)(3) of the RRA. See part 229 of this chapter. Section 216(h)(2)(A) of the Social Security Act provides that the Social Security Administration (SSA) looks to the law of the state in which the wage earner was domiciled regarding the devolution of intestate personal property to determine who would be a child for inheritance purposes.

The SSA has announced final regulations which revise its procedures for determining whether a child has inheritance rights under the appropriate state law and, thus, may be entitled to social security benefits as the child of an insured worker (63 FR 57590, October 28, 1998). Specifically, those rules have been revised to explain which state law will be applied, how SSA will apply state law requirements on time limits for determining inheritance rights, and how it will apply state law requirements for a court determination of paternity. The current rule on determining an applicant's status as a legally adopted child of an insured individual is also clarified. As a consequence, the Board must amend part 222 of its regulations, which deals with determining family relationships, to conform to SSA's new regulations.

The Board revises §§ 222.31 and 222.32 to provide that the status of child will be determined by applying the state inheritance law of the employee's domicile that is in effect when the claim for benefits is adjudicated. If the child does not have inheritance rights under that version of state law, the state law that was in effect when the insured died will be examined to determine if the status of child is met at that time.

Many state laws impose time limits within which someone must act to establish paternity for purposes of intestate succession in order to ensure the orderly administration of estates. New § 222.32 makes it clear that the Board will disregard these time limits since the purpose served by the limits is not relevant to the adjudication of benefits under the RRA. If the applicable inheritance law requires a formal determination of paternity to establish the status of child, § 222.32 provides that the Board will not require such a formal determination, but will rather make its own determination of paternity based upon the requirements of state law.

A "child" under the RRA includes an adopted child. The amendment to § 222.33 clarifies that in determining whether an individual is the legally adopted child of the employee, the Board will apply the adoption laws, rather than the inheritance laws, of the state or foreign country where the adoption took place.

Under section 216(h) of the Social Security Act an individual may qualify as a deemed spouse if a ceremonial or common law marriage cannot be established under state law, if that person's marriage to the employee would have been valid under state law but for a legal impediment, and the following requirements are met: there was a ceremonial marriage, the claimant went through the ceremony in good faith, and the claimant was living in the same household as the employee when he or she applied for the spouse annuity or when the employee died.

Formerly, the Social Security Act also required that no other person be entitled as the wife, husband, or widow(er)of the employee. However, this last requirement was deleted by § 5119(a) of Public Law 101–508. Accordingly, this amendment also deletes the now obsolete requirement contained in § 222.14(d) of the Board's regulations.

On December 8, 1999, the Board published the revisions to §§ 222.31—222.32 as a proposed rule (64 FR 68647) inviting comments on or before February 7, 2000. No comments were received.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action for purposes of Executive Order 12866. Therefore, no regulatory analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 222

Railroad employees; Railroad retirement.

For the reasons set out in the preamble, the Railroad Retirement Board amends title 20, chapter II of the Code of Federal Regulations as follows:

PART 222—FAMILY RELATIONSHIPS

1. The authority citation for part 222 continues to read as follows:

Authority: 45 U.S.C. 231f.

§ 222.14 [Amended]

2. Section 222.14(d) is removed.

3. Section 222.31 is revised as follows:

§ 222.31 Relationship as child for annuity and lump-sum payment purposes.

(a) *Annuity claimant.* When there are claimants under paragraph (a)(1), (a)(2), or (a)(3) of § 222.30, a person will be considered the child of the employee when that person is—

(1) The natural or legally adopted child of the employee (see § 222.33); or

(2) The stepchild of the employee; or

(3) The grandchild or step-grandchild of the employee or spouse; or

(4) The equitably adopted child of the employee.

(b) *Lump-sum payment claimant.* A claimant for a lump-sum payment must be one of the following in order to be considered the child of the employee:

(1) The natural child of the employee;

(2) A child legally adopted by the employee (this does not include any child adopted by the employee's widow or widower after the employee's death); or

(3) The equitably adopted child of the employee. For procedures on how a determination of the person's relationship to the employee is made, see §§ 222.32–222.33.

3. Section 222.32 is revised to read as follows:

§ 222.32 Relationship as a natural child.

A claimant will be considered the natural child of the employee for both annuity and lump-sum payment purposes if one of the following sets of conditions is met:

(a) State inheritance law. Under relevant state inheritance law, the claimant could inherit a share of the employee's personal estate as the employee's natural child if the employee were to die without leaving a will as described in paragraph (e) of this section;

(b) Natural child. The claimant is the employee's natural son or daughter, and the employee and the claimant's mother or father went through a marriage ceremony which would have been valid except for a legal impediment;

(c) By order of law. The claimant's natural mother or father has not married the employee, but—

(1) The employee has acknowledged in writing that the claimant is his or her son or daughter; or

(2) A court has decreed that the employee is the mother or father of the claimant; or

(3) A court has ordered the employee to contribute to the claimant's support because the claimant is the employee's son or daughter; and,

(4) Such acknowledgment, court decree, or court order was made not less than one year before the employee became entitled to an annuity, or in the case of a disability annuitant prior to his or her most recent period of disability, or in case the employee is deceased, prior to his or her death. The written acknowledgment, court decree, or court order will be considered to have occurred on the first day of the month in which it actually occurred.

(d) Other evidence of relationship. The claimant's natural mother or father has not married the employee, but—

(1) The claimant has submitted evidence acceptable in the judgment of the Board, other than that discussed in paragraph (c) of this section, that the employee is his or her natural mother or father; and

(2) The employee was living with the claimant or contributing to the claimant's support, as discussed in §§ 222.58 and 222.42 of this part, when—

(i) The spouse applied for an annuity based on having the employee's child in care; or

(ii) The employee's annuity could have been increased under the social security overall minimum provision; or

(iii) The employee died, if the claimant is applying for a child's annuity or lump-sum payment.

(e) *Use of state laws—(1) General.* To determine whether a claimant is the natural child of the employee, the state inheritance laws regarding whether the claimant could inherit a child's share of the employee's personal property if he or she were to die intestate will apply. If such laws would permit the claimant to inherit the employee's personal property, the claimant will be considered the child of the employee. The state inheritance laws where the employee was domiciled when he or she died will apply. If the employee's domicile was not in one of the 50 states, the Commonwealth of Puerto Rico, the Virgin slands, Guam, American Samoa, or the Northern Mariana Islands, the laws of the District of Columbia will apply.

(2) *Standards.* The Board will not apply any state inheritance law requirement that an action to establish paternity must have been commenced within a specific time period, measured from the employee's death or the child's birth, or that an action to establish paternity must have been commenced or completed before the employee's death. If state laws on inheritance require a court to determine paternity, the Board will not require such a determination, but the Board will decide paternity using the standard of proof that the state court would apply as the basis for making such a determination.

(3) *Employee is living.* If the employee is living, the Board will apply the state law where the employee is domiciled which was in effect when the annuity may first be increased under the social security overall minimum (see part 229 of this chapter). If under a version of state law in effect at that time, a person does not qualify as a child of the employee, the Board will look to all versions of state law in effect from when the employee's annuity may first have been increased until the Board makes a final decision, and will apply the version of state law most favorable to the employee.

(4) *Employee is deceased.* The Board will apply the state law where the employee was domiciled when he or she died. The Board will apply the version of state law in effect at the time of the final decision on the application for benefits. If under that version of state law the claimant does not qualify as the child of the employee, the Board will apply the state law in effect when the employee died, or any version of state law in effect from the month of potential entitlement to benefits until a final determination on the application. The Board will apply the version most beneficial to the claimant. The following rules determine the law in effect as of the employee's death:

(i) Any law enacted after the employee's death, if that law would have retroactive application to the employee's date of death, will apply; or

(ii) Any law that supersedes a law declared unconstitutional, that was considered constitutional on the employee's date of death, will apply.

4. A new paragraph (c) is added to § 222.33 to read as follows:

§ 222.33 Relationship resulting from legal adoption.

* * * * *

(c) The adoption laws of the state or foreign country where the adoption took place, not the state inheritance laws, will determine whether the claimant is the employee's adopted child.

Dated: April 6, 2000.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 00–9515 Filed 4–17–00; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 175 and 176

[Docket No. 99F–0925]

Indirect Food Additives: Adhesives and Components of Coatings and Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2,2-dibromo-3-nitrilopropionamide as a preservative for adhesives and coatings used in the manufacture of paper and paperboard intended for contact with food. This action responds to a petition filed by The Dow Chemical Co.

DATES: This rule is effective April 18, 2000; submit written objections and requests for a hearing by May 18, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–205), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 22,1999 (64 FR 19790), FDA announced that a food additive petition (FAP 9B4641) had been filed by The Dow Chemical Co., Midland, MI 48674. The petition proposed to amend the food additive regulations in § 175.105 *Adhesives* (21 CFR 175.105) and § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of 2,2-dibromo-3-nitrilopropionamide as a preservative for adhesives and coatings in the manufacture of paper and paperboard intended for contact with food.

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency

concludes that: (1) The proposed uses of the additive are safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations in §§ 175.105 and 176.170 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this final rule as announced in the notice of filing for FAP 9B4641 (64 FR 19790). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by May 18, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR 175

Adhesives, Food additives, Food packaging.

21 CFR 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR parts 175 and 176 are amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 175.105 is amended in the table in paragraph (c)(5) by alphabetically adding an entry under the headings "Substances" and "Limitations" to read as follows:

§ 175.105 Adhesives.

* * * * *

(c) * * *

(5) * * *

Substances	Limitations
* * *	* * *
2,2-Dibromo-3-nitrilopropionamide (CAS Reg. No. 10222–01–2).	For use as a preservative only.
* * *	* * *

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 346, 348, 379e.

2. Section 176.170 is amended in the table in paragraph (a)(5) by alphabetically adding an entry under the headings "List of Substances" and "Limitations" to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of Substances	Limitations
* * *	* * *
2,2-Dibromo-3-nitrilopropionamide (CAS Reg. No.10222–01–2).	For use as a preservative at a level not to exceed 100 parts per million in coating formulations and in component slurries and emulsions, used in the production of paper and paperboard and coatings for paper and paperboard.
* * *	* * *

* * * * *

Dated: March 28, 2000.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–9570 Filed 4–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor Address

AGENCY: Food and Drug Administration

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor address for International Nutrition, Inc.

DATES: This rule is effective April 18, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: International Nutrition, Inc., 6664 "L" St., Omaha, NE 68117, has informed FDA of a change of sponsor address to 7706 'I' Plaza, Omaha, NE 68127. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the change of sponsor address.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A), because it is a rule of "particular applicability." Therefore, it is not subject to congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by revising the entry for "International Nutrition, Inc." and in the table in paragraph (c)(2) by revising the entry for "043733" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * *	* * * *
International Nutrition, Inc., 7706 'I' Plaza, Omaha, NE 68127	043733
* * * *	* * * *

(2) * * *

Drug labeler code	Firm name and address
* * * *	* * * *
043733	International Nutrition, Inc., 7706 'I' Plaza, Omaha, NE 68127
* * * *	* * * *

Dated: March 17, 2000.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 00–9574 Filed 4–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

Oral Dosage Form New Animal Drugs; (S)-methoprene

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Wellmark International. The NADA provides for oral use of (S)-methoprene for the prevention and control of flea populations.

DATES: This rule is effective April 18, 2000.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540.

SUPPLEMENTARY INFORMATION: Wellmark International, 1000 Tower Rd., suite

245, Bensenville, IL 60106, filed NADA 141–162 that provides for use in dogs, 9 weeks of age and older and 4 pounds body weight or greater, for the prevention and control of flea populations. (S)-methoprene prevents and controls flea populations by preventing the development of flea eggs but does not kill adult fleas. Concurrent use of insecticides may be necessary for adequate control of adult fleas. NADA 141–162 is approved as of January 24, 2000, and the regulations are amended in 21 CFR part 520 by adding new § 520.1390 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning January 24, 2000, because no active ingredient (including any ester or salt of the drug) has been previously approved in any other application filed under section 512(b)(1) of the act.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding an entry for "Wellmark International" and in the table in paragraph (c)(2) by numerically adding an entry for "011536" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* * *
Wellmark International, 1000 Tower Rd., suite 245, Bensenville, IL 60106	011536
* * *	* * *

(2) * * *

Drug labeler code	Firm name and address
* * *	* * *
011536	Wellmark International, 1000 Tower Rd., suite 245, Bensenville, IL 60106
* * *	* * *

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

4. Section 520.1390 is added to read as follows:

§ 520.1390 (S)-methoprene.

(a) *Specifications.* Each capsule contains 154, 308, or 462 milligrams (mg) of (S)-methoprene.

(b) *Sponsor.* See No. 011536 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Conditions of use*—(1) *Amount.* Capsules are given orally, once per week at the recommended minimum dosage of 10 mg of (S)-methoprene per pound of body weight (22 mg/kilograms).

(2) *Indications for use.* For oral use in dogs, 9 weeks of age and older and 4 pounds body weight or greater, for the prevention and control of flea populations. (S)-methoprene prevents and controls flea populations by preventing the development of flea eggs but does not kill adult fleas. Concurrent use of insecticides may be necessary for adequate control of adult fleas.

Dated: March 20, 2000.
Stephen F. Sundlof,
Director, Center for Veterinary Medicine.
[FR Doc. 00–9575 Filed 4–17–00; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

Oral Dosage Form New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of sponsor for a new animal drug application (NADA) from Merial Ltd., to Vétoquinol N.–A., Inc.

DATES: This rule is effective April 18, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Merial Ltd., 2100 Ronson Rd., Iseline, NJ 08830–3077, has informed FDA that it has transferred the ownership of, and all rights and interests in, the approved NADA 113–510 (phenylbutazone granules) to Vétoquinol N.–A., Inc., 2000 chemin Georges, Lavaltrie (PQ), Canada, J0K 1H0. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c) and 520.1720b(b) to reflect the change of sponsor.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding an entry for "Vétoquinol N.–A., Inc.," and in the table in paragraph (c)(2) by numerically adding an entry for "059320" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * * * *	
Vétoquinol N.–A., Inc., 2000 chemin Georges, Lavaltrie (PQ), Canada, J0K 1H0	059320
* * * * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * * * *	
059320	Vétoquinol N.–A., Inc., 2000 chemin Georges, Lavaltrie (PQ), Canada, J0K 1H0
* * * * * * *	

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.1720b [Amended]

4. Section 520.1720b *Phenylbutazone granules* is amended in paragraph (b) by removing "050604" and by adding in its place "059320".

Dated: March 17, 2000.
Claire M. Lathers,
Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.
[FR Doc. 00–9573 Filed 4–17–00; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Hemoglobin Glutamer-200 (bovine)

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Biopure Corp. The supplemental NADA provides for flexible dosing for use of hemoglobin glutamer-200 (bovine) to treat anemia in dogs.

DATES: This rule is effective April 18, 2000.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540.

SUPPLEMENTARY INFORMATION: Biopure Corp., 11 Hurley St., Cambridge, MA 02141, is the sponsor of NADA 141–067 that provides for the veterinary prescription use of Oxyglobin® (hemoglobin glutamer-200 (bovine)) for the treatment of anemia in dogs. The drug increases systemic oxygen content (plasma hemoglobin concentration) and improves the clinical signs associated with anemia, regardless of the cause of anemia (hemolysis, blood loss, or ineffective erythropoiesis). The supplemental NADA provides for use of 10 to 30 milliliters per kilogram of body weight (mL/kg) administered at 10 mL/kg/hour. The supplemental NADA is approved as of January 11, 2000, and 21 CFR 522.1125(d) is amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(f)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval for nonfood-producing animals qualifies for 3 years of marketing exclusivity beginning January 11, 2000, because the approval contains substantial evidence of effectiveness of the drug involved, or any studies of animal safety, required for approval of the supplement and conducted or sponsored by the applicant. The 3 years of marketing exclusivity applies only to use of the dosing range of 10 to 30 mL/kg.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1125 [Amended]

2. Section 522.1125 *Hemoglobin glutamer-200 (bovine)* is amended in paragraph (d)(1) by removing "30" and adding in its place "10 to 30" and in paragraph (d)(2) by removing the phrase "for at least 24 hours".

Dated: March 17, 2000.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 00–9576 Filed 4–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 526

Intramammary Dosage Form New Animal Drugs; Cephapirin Sodium for Intramammary Infusion

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Fort Dodge Animal Health. The supplemental NADA provides for amending the milk discard statement to state the milk discard time only (i.e., to remove reference to the number of milkings).

DATES: This rule is effective April 18, 2000.

FOR FURTHER INFORMATION CONTACT: Naba K. Das, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7569.

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, Division of American Home Products Corp., 800 Fifth Street NW., P.O. Box 518, Fort Dodge, IA 50501, filed supplemental NADA 97–222 that provides for a 96-hour milk-discard time (i.e., removal of the parenthetical reference to an 8-milking milk discard time) for use of CEFA–LAK® and TODAY® (cephapirin sodium) intramammary infusion products for treatment of lactating cows for bovine mastitis. The supplemental NADA is approved as of February 4, 2000, and the regulations are amended in 21 CFR 526.365(d)(3) to reflect the approval.

Approval of this supplemental NADA conforms to the requirements of 21 CFR 510.105. Approval does not require review of the safety or effectiveness data required for approval of the NADA. Therefore, a freedom of information summary is not required.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 526

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 526 is amended as follows:

PART 526—INTRAMAMMARY DOSAGE FORMS

1. The authority citation for 21 CFR part 526 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 526.365 [Amended]

2. Section 526.365 *Cephapirin sodium for intramammary infusion* is amended in paragraph (d)(3) by removing "(8 milkings)".

Dated: March 17, 2000.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 00–9572 Filed 4–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 556

Tolerances for Residues of New Animal Drugs in Food; Fenbendazole

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoechst Roussel Vet. The supplemental NADA provides for establishing tolerances for residues of fenbendazole in edible tissues of swine. Technical corrections are also made.

DATES: This rule is effective April 18, 2000.

FOR FURTHER INFORMATION CONTACT: Janis R. Messenheimer, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578.

SUPPLEMENTARY INFORMATION: Hoechst Roussel Vet, Perryville Corporate Park III, P.O. Box 4010, Clinton, NJ 08809–4010, filed a supplement to NADA 131–675 that provides for use of Safe-Guard® (20 percent fenbendazole) Type A medicated articles to make Type B and C medicated swine feeds. The supplement provides for establishing tolerances for parent fenbendazole in swine liver and muscle. The supplement is approved as of February 10, 2000, and § 556.275 (21 CFR 556.275) is amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Section 556.275 is further amended by deleting references to safe concentrations and by adding the previously established acceptable daily intake (ADI) of total residues of fenbendazole. The footnote for "tolerance" in that section is also removed.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1061, 5630 Fishers Lane, Rockville, MD 20852, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 556 is amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

2. Section 556.275 is revised to read as follows:

§ 556.275 Fenbendazole.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of fenbendazole is 40 micrograms per kilogram of body weight per day.

(b) *Tolerances*—(1) *Cattle*—(i) *Liver (the target tissue).* The tolerance for parent fenbendazole (the marker residue) is 0.8 part per million (ppm).

(ii) [Reserved]

(iii) *Milk.* The tolerance for fenbendazole sulfoxide metabolite (the marker residue in cattle milk) is 0.6 ppm.

(2) *Swine*—(i) *Liver (the target tissue).* The tolerance for parent fenbendazole (the marker residue) is 6 ppm.

(ii) *Muscle.* The tolerance for parent fenbendazole (the marker residue) is 2 ppm.

(3) *Goats*—(i) *Liver (the target tissue).* The tolerance for parent fenbendazole (the marker residue) is 0.8 ppm.

(ii) [Reserved]

Dated: March 17, 2000.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 00–9578 Filed 4–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Bambermycins; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is updating the animal drug regulations to correctly reflect the previously approved use level for bambermycins Type C medicated cattle feed. This document amends the regulations to state the correct use level is 2 to 40 grams (g) of bambermycins per ton of feed. This action is being taken to improve the accuracy of the agency's regulations.

DATES: This rule is effective April 18, 2000.

FOR FURTHER INFORMATION CONTACT: Jack Caldwell, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0217.

SUPPLEMENTARY INFORMATION: Hoechst Roussel Vet, Perryville Corporate Park III, P.O. Box 4010, Clinton, NJ 08809–4010, is sponsor of NADA 141–034 that provides for use of GAINPRO® (bambermycins) Type A medicated articles to make Type B and Type C medicated cattle feeds. In its approval letter of October 17, 1994, the Center for Veterinary Medicine approved the use of Type C medicated feeds containing 2 to 40 g of bambermycins per ton of feed, used to provide 10 to 20 milligrams bambermycins per head per day for increased rate of weight gain in pasture cattle. At this time, 21 CFR 558.95(d)(4)(ii) is amended by removing "4 to 20" and adding in its place "2 to 40" to reflect the correct Type C medicated feed levels.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because

it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.95 [Amended]

2. Section 558.95 *Bambermycins* is amended in paragraph (d)(4)(ii) by removing "4 to 20" and adding in its place "2 to 40".

Dated: March 17, 2000.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 00–9579 Filed 4–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. 94P–0347]

Medical Devices; Reclassification and Codification of the Nonabsorbable Expanded Polytetrafluoroethylene Surgical Suture

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has issued an order in the form of a letter to W. L. Gore and Associates, Inc., reclassifying the nonabsorbable expanded polytetrafluoroethylene (ePTFE) surgical suture intended for use in soft tissue approximation and ligation, including cardiovascular surgery, from class III (premarket approval) to class II (special controls). Accordingly, the order is being codified in the Code of Federal Regulations (CFR).

EFFECTIVE DATES: The rule is effective May 18, 2000. The reclassification was effective September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Anthony D. Watson, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

SUPPLEMENTARY INFORMATION:

I. Background (Regulatory Authorities)

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Public Law 101–629), and the Food and Drug Administration Modernization Act of 1997 (the FDAMA) (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

The 1976 amendments broadened the definition of "device" in 201(h) of the act (21 U.S.C. 321(h)) to include certain articles that were once regulated as drugs. Under the 1976 amendments, Congress classified all transitional devices, i.e., those devices previously regulated as new drugs, including the nonabsorbable ePTFE surgical suture, into class III. The legislative history of the SMDA reflects congressional concern that many transitional devices were being overregulated in class III (H. Rept. 808, 101st Cong., 2d sess. 26–27 (1990); S. Rept. 513, 101st Cong., 2d sess. 27 (1990)). Congress amended section 520(l) of the act (21 U.S.C. 360j(l)) to direct FDA to collect certain safety and effectiveness information from the manufacturers of transitional devices still remaining in class III to determine whether the devices should be reclassified into class II (special controls) or class I (general controls). Accordingly, in the **Federal Register** Of November 14, 1991 (56 FR 57960), FDA issued an order under section 520(l)(5)(A) of the act, requiring manufacturers of transitional devices, including the nonabsorbable ePTFE surgical suture, to submit to FDA a summary of, and a citation to, any information known or otherwise available to them respecting the devices, including adverse safety or effectiveness information which had not been submitted under section 519 of the act (21 U.S.C. 360i). Manufacturers were to submit the summaries and citations to FDA by January 13, 1992. However, because of misunderstandings and uncertainties regarding the information required by the order, and whether the order applied to certain manufacturers' devices, many transitional class III device manufacturers failed to comply with the reporting requirement by January 13, 1992. Consequently, in the **Federal Register** of March 10, 1992 (57 FR 8462), FDA extended the reporting period to March 31, 1992.

Section 520(l)(5)(B) of the act provides that, after the issuance of an order requiring manufacturers to submit a summary of, and citation to, any information known or otherwise available respecting the devices, but before December 1, 1992, FDA was to publish regulations either leaving transitional class III devices in class III or reclassifying them into class I or II. Subsequently, as permitted by section 520(l)(5)(C) of the act, in the **Federal Register** of November 30, 1992 (57 FR 56586), the agency published a notice extending the period for issuing such regulations until December 1, 1993. Due to limited resources, FDA was unable to publish the regulations before the December 1, 1993, deadline.

Nevertheless, in accordance with sections 520(l)(5)(B) and 513(a) of the act, FDA is now reclassifying the nonabsorbable ePTFE surgical suture from class III to class II.

On September 14, 1994, FDA filed the reclassification petition submitted by W. L. Gore and Associates, Inc., requesting reclassification of the nonabsorbable ePTFE surgical suture from class III to class II.

FDA consulted with members of the General and Plastic Surgery Devices Panel (the Panel) of the Medical Devices Advisory Committee about the requested reclassification. The Panel members recommended that the nonabsorbable ePTFE surgical suture intended for use in soft tissue approximation and ligation, including cardiovascular surgery, be reclassified from class III to class II. They also recommended FDA recognized consensus standards and device-specific labeling as the special controls for this device.

After reviewing the data in the petition and considering the Panel members' recommendations, FDA agreed with their recommendations to reclassify the device from class III into class II with the recommended special controls. Based on the available information, FDA issued an order to the petitioner on September 9, 1999, reclassifying the nonabsorbable ePTFE

surgical suture, and substantially equivalent devices of this generic type, from class III to class II.

FDA identified the following FDA recognized consensus standards and labeling as special controls for the device:

1. United States Pharmacopoeia (USP) 21:
a. Monograph for Nonabsorbable Surgical Sutures;
b. Suture—Diameter <861>;
c. Suture—Needle Attachment <871>; and
d. Tensile Strength <881>.
2. Labeling:
a. Contraindication: "This device is contraindicated for use in ophthalmic and neural tissues and for use in microsurgery."
b. "For Single Use Only."
c. If the marketed suture has a different diameter than the diameter specified in USP 21—Suture Diameter <861>, then a tabular comparison of its diameter and USP suture sizes should be included in the labeling.

Accordingly, as required by 21 CFR 860.136(b)(6) of the regulations, FDA is announcing the reclassification of the generic nonabsorbable ePTFE surgical suture from class III into class II. In addition, FDA is codifying the reclassification of the device by adding new § 878.5040.

II. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this reclassification is of a type that does not individually or cumulatively have a significant effect on the human environment.

Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages, distributive impacts, and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the notice is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of the device from class III to class II will relieve all manufacturers of the device of the cost of complying with the premarket approval requirements in section 515 of the act (21 U.S.C. 360e). Because reclassification will reduce regulatory costs with respect to this device, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or state, local, and tribal governments in the aggregate, and therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

IV. Paperwork Reduction Act of 1995

FDA concludes that this final rule contains no information that is subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995. The special controls do not require the respondent to submit additional information to the public. Therefore, no burden is placed on the public.

List of Subjects in 21 CFR Part 878

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 878 is amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

1. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

2. Section 878.5035 is added to subpart E to read as follows:

§ 878.5035 Nonabsorbable expanded polytetrafluoroethylene surgical suture.

(a) *Identification.* Nonabsorbable expanded polytetrafluoroethylene (ePTFE) surgical suture is a monofilament, nonabsorbable, sterile, flexible thread prepared from ePTFE and is intended for use in soft tissue approximation and ligation, including cardiovascular surgery. It may be undyed or dyed with an approved color additive and may be provided with or without an attached needle(s).

(b) *Classification.* Class II (special controls). FDA recognized consensus standards and device-specific labeling:
(1) United States Pharmacopoeia (USP) 21:
(i) Monograph for Nonabsorbable Surgical Sutures;
(ii) Sutures—Diameter <861>;
(iii) Sutures Needle Attachment <871>; and
(iv) Tensile Strength <881>.
(2) Labeling:
(i) Contraindication: "This device is contraindicated for use in ophthalmic and neural tissues and for use in microsurgery."
(ii) "For Single Use Only."
(iii) If the marketed suture has a different diameter than the diameter specified in USP 21—Suture Diameter <861>, then a tabular comparison of its diameter and USP sizes should be included in the labeling.

Dated: April 5, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–9577 Filed 4–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket No. T–033]

Nevada State Plan; Final Approval Determination

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Final State plan approval—Nevada.

SUMMARY: This document amends OSHA's regulations to reflect the Assistant Secretary's decision granting final approval to the Nevada State plan. As a result of this affirmative determination under section 18(e) of the Occupational Safety and Health Act of 1970, Federal OSHA's standards and enforcement authority no longer apply to occupational safety and health issues covered by the Nevada plan, and authority for Federal concurrent jurisdiction is relinquished. Federal enforcement jurisdiction is retained over any private sector maritime employment, private sector employers on Indian land, and any contractors or subcontractors on any Federal establishment where the land is exclusive Federal jurisdiction. Federal jurisdiction remains in effect with respect to Federal government employers and employees. Federal OSHA will also retain authority for coverage of the United States Postal

Service (USPS), including USPS employees, contract employees, and contractor-operated facilities engaged in USPS mail operations.

EFFECTIVE DATE: April 18, 2000.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3637, 200 Constitution Avenue NW., Washington, DC 20210, (202) 693–1999.

SUPPLEMENTARY INFORMATION:

Introduction

Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, et seq., (the "Act") provides that States which desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Procedures for State Plan submission and approval are set forth in regulations at 29 CFR Part 1902. If the Assistant Secretary, applying the criteria set forth in section 18(c) of the Act and 29 CFR 1902.3 and .4, finds that the plan provides or will provide for State standards and enforcement which are "at least as effective" as Federal standards and enforcement, "initial approval" is granted. A State may commence operations under its plan after this determination is made, but the Assistant Secretary retains discretionary Federal enforcement authority during the initial approval period as provided by section 18(e) of the Act. A State plan may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in §§ 1902.3 and 1902.4 if it includes satisfactory assurances by the State that it will take the necessary "developmental steps" to meet the criteria within a three-year period (29 CFR 1902.2(b)). The Assistant Secretary publishes a "certification of completion of developmental steps" when all of a State's developmental commitments have been satisfactorily met (29 CFR 1902.34).

When a State plan that has been granted initial approval is developed sufficiently to warrant a suspension of concurrent Federal enforcement activity, it becomes eligible to enter into an "operational status agreement" with OSHA (29 CFR 1954.3(f)). A State must have enacted its enabling legislation, promulgated State standards, achieved an adequate level of qualified personnel, and established a system for review of contested enforcement actions. Under these voluntary agreements, concurrent Federal enforcement will not be initiated with regard to Federal occupational safety and health standards in those issues covered by the State plan, where the State program is providing an acceptable level of protection.

Following the initial approval of a complete plan, or the certification of a developmental plan, the Assistant Secretary must monitor and evaluate actual operations under the plan for a period of at least one year to determine, on the basis of actual operations under the plan, whether the criteria set forth in section 18(c) of the Act and 29 CFR 1902.37 are being applied.

An affirmative determination under section 18(e) of the Act (usually referred to as "final approval" of the State plan) results in the relinquishment of authority for Federal concurrent enforcement jurisdiction in the State with respect to occupational safety and health issues covered by the plan (29 U.S.C. 667(e)). Procedures for section 18(e) determinations are found at 29 CFR part 1902, Subpart D. In general, in order to be granted final approval, actual performance by the State must be "at least as effective" overall as the Federal OSHA program in all areas covered under the State plan.

An additional requirement for final approval consideration is that a State must meet the compliance staffing levels, or benchmarks, for safety inspectors and industrial hygienists established by OSHA for that State. This requirement stems from a court order by the U.S. District Court for the District of Columbia pursuant to the U.S. Court of Appeals' decision in AFL–CIO v. Marshall, 570 F.2d 1030 (D.C. Cir 1978), that directed the Assistant Secretary to calculate for each State plan State the number of enforcement personnel needed to assure a "fully effective" enforcement program.

The last requirement for final approval consideration is that a State must participate in OSHA's Integrated Management Information System (IMIS). This is required so that OSHA can obtain the detailed program performance data on a State necessary to make an objective continuing evaluation of whether the State performance meets the statutory and regulatory criteria for final and continuing approval.

History of the Nevada Plan and of Its Compliance Staffing Benchmarks

Nevada Plan

A history of the Nevada State plan, a description of its provisions, and a discussion of the compliance staffing benchmarks established for Nevada was contained in the November 16, 1999, **Federal Register** notice (64 FR 62138) proposing that final approval under Section 18(e) of the Act be granted. The Nevada State plan was submitted on December 12, 1972, initially approved on December 28, 1973 (39 FR 1008), certified as having completed all developmental steps on August 13, 1981 (42 FR 42844), concurrent Federal enforcement jurisdiction suspended on December 9, 1981 (47 FR 25323), and revised compliance staffing benchmarks for Nevada were approved on September 11, 1987 (52 FR 34381).

History of the Present Proceedings

Procedures for final approval of State plans are set forth at 29 CFR 1902, Subpart D. On November 16, 1999, OSHA published notice (64 FR 62138) of the eligibility of the Nevada State plan for determination under section 18(e) of the Act as to whether final approval of the plan should be granted. The determination of eligibility was based on monitoring of State operations for at least one year following certification, State participation in the Federal-State Integrated Management Information System, and staffing which meets the revised State compliance staffing benchmarks.

The November 16 **Federal Register** notice set forth a general description of the Nevada State plan and summarized the results of Federal OSHA monitoring of State operations during the period from July 1, 1995 through March 31, 1999, with special attention to the period from October 1, 1997 to March 31, 1999. In addition to the information set forth in the notice itself, OSHA made available as part of the record extensive and detailed exhibits documenting the plan, including copies of the State legislation, administrative regulations and procedural manuals under which Nevada operates its plan.

The most recent comprehensive evaluation report covering the period of July 1, 1995 through March 31, 1999, which was extensively summarized in the November 16 proposal and provided the principal factual basis for the proposed 18(e) determination, was included in the docket. In addition, updated data on investigation of complaints alleging discrimination for exercising one's occupational safety and health rights was submitted into the record (Exhibit 5) and was considered in the final approval process.

To assist and encourage public participation in the 18(e) determination, copies of all docket materials were maintained in the OSHA Docket Office in Washington, DC., in the OSHA Regional Office in San Francisco, and at

the Nevada Division of Industrial Relations in Carson City, Nevada. Summaries of the November 16 notice, with an invitation for public comments, were published in Nevada on November 24, 1999 in the Las Vegas Review-Journal and on November 26, 1999 in the Elko Daily Free Press, Reno Gazette Journal and Nevada Appeal.

The November 16 notice invited interested persons to submit by December 16 written comments and views regarding the Nevada plan and whether final approval should be granted. An opportunity to request an informal public hearing also was provided. Four (4) comments were received in response to this proposal; none requested an informal hearing.

Summary and Evaluation of Comments

OSHA has encouraged interested members of the public to provide information and views regarding operations under the Nevada plan to supplement the information already gathered during OSHA monitoring and evaluation of plan administration.

In response to the November 16 proposal, OSHA received comments from: Robert Ostrovsky, President, Ostrovsky and Associates, member and former Chairman, Department of Industrial Relations (DIR) Advisory Board [Ex. 3–1]; Linda M. Rogers, Vice-Chairman, DIR Advisory Board [Ex. 3–2]; John S. Rogers, CEO, Pacific Matrix Financial Corporation and former Chairman, Nevada Occupational Safety and Health Review Board [Ex. 3–3]; and Danny L. Thompson, Executive Secretary-Treasurer, Nevada State AFL–CIO [Ex. 3–4]. All four commenters expressed unqualified support for final approval. All of these comments indicated that the State has established and operates an effective safety and health program and that the State has been effective in protecting employees in Nevada. Specifically, the commenters commended the State program for, among other things: its automatic adoption of Federal standards; requirements in excess of those under Federal OSHA in such areas as pre-construction safety conferences and standards for ammonium perchlorate and tower cranes; and effective staffing.

Findings and Conclusions

As required by 29 CFR 1902.41, in considering the granting of final approval to a State plan, OSHA has carefully and thoroughly reviewed all information available to it on the actual operation of the Nevada State plan. This information has included all previous evaluation findings since certification of completion of the State plan's developmental steps, especially data for the period July 1, 1995 through March 31, 1999, and information presented in written submissions. Findings and conclusions in each of the areas of performance are as follows:

(1) Standards. Section 18(c)(2) of the Act requires State plans to provide for occupational safety and health standards which are at least as effective as Federal standards. Such standards where not identical to the Federal must be promulgated through a procedure allowing for consideration of all pertinent factual information and participation of all interested persons (29 CFR 1902.4(b)(2)(iii)); must, where dealing with toxic materials or harmful physical agents, assure employee protection throughout his or her working life (29 CFR 1902.4(b)(2)(i)); must provide for furnishing employees appropriate information regarding hazards in the workplace through labels, posting, medical examinations, etc. (29 CFR 1902.4(b)(2)(vi)); must require suitable protective equipment, technological control, monitoring, etc. (29 CFR 1902.4(b)(2)(vii)); and, where applicable to a product, must be required by compelling local conditions and not pose an undue burden on interstate commerce (29 CFR 1902.3(c)(2)).

As documented in the approved Nevada State plan and OSHA's evaluation findings made a part of the record in this 18(e) determination proceeding, and as discussed in the November 16 notice, the Nevada plan provides for the adoption of standards and amendments thereto which are identical to Federal standards. The State's laws and regulations, previously approved by OSHA and made a part of the record in this proceeding, include provisions addressing all of the structural requirements for State standards set out in 29 CFR Part 1902.

In order to qualify for final State plan approval, a State program must be found to have adhered to its approved procedures (29 CFR 1902.37(b)(2)); to have timely adopted identical or at least as effective standards, including emergency temporary standards and standards amendments (29 CFR 1902.37(b)(3)); to have interpreted its standards in a manner consistent with Federal interpretations and thus to demonstrate that in actual operation State standards are at least as effective as the Federal (29 CFR 1902.37(b)(4)); and to correct any deficiencies resulting from administrative or judicial challenge of State standards (29 CFR 1902.37(b)(5)).

As noted in the 18(e) Evaluation Report and summarized in the November 16, 1999 **Federal Register** notice, Nevada has adopted standards in a timely manner which are identical to Federal standards.

The Nevada plan provides for the automatic adoption of standards which are identical to Federal standards. A new standard becomes effective in Nevada on the effective date of the Federal standard. The State may adopt alternative standards and has adopted some standards which do not have Federal counterparts, such as standards concerning ammonium perchlorate and tower cranes. Nevada also has regulations requiring pre-construction safety conferences with the Division of Industrial Relations for certain types of construction projects.

The State also requires employers with more than 10 employees to implement safety and health programs, including a safety and health committee for employers with more than 25 employees. For issues where OSHA is considering issuing a rule, as in the case of safety and health programs, the agency does not take action to decide whether the State plan requirements are at least as effective until the Federal action is complete. Nor can OSHA review this requirement for compliance with the National Labor Relations Act (NLRA), which is independently administered by the National Labor Relations Board. The Board's General Counsel has noted in a written opinion that committee requirements under State law do not amount to a per se violation of the NLRA; however, the General Counsel has pointed out that employers must comply with State laws in a manner which does not constitute an unfair labor practice under the NLRA.

Nevada's standards adoption process continued to meet the six-month time frame for adoption of OSHA standards requiring State action during the section 18(e) evaluation period.

Where a State adopts Federal standards, the State's interpretation and application of such standards must ensure consistency with Federal interpretation and application. OSHA's monitoring has found that the State's application of its standards is comparable to Federal standards application. No challenges to State standards have occurred in Nevada.

Therefore, in accordance with section 18(c)(2) of the Act and the pertinent provisions of 29 CFR 1902.3, 1902.4 and 1902.37, OSHA finds that the Nevada program in actual operation provides for standards adoption, correction when found deficient, interpretation and application, in a manner at least as effective as the Federal Program.

(2) Variances. A State plan is expected to have the authority and procedures for the granting of variances comparable to those in the Federal program (29 CFR 1902.4(b)(2)(iv)). The Nevada State plan contains such provisions in both law and regulations which have been previously approved by OSHA. In order to quality for final State plan approval, permanent variances granted must assure employment equally as safe and healthful as would be provided by compliance with the standard (29 CFR 1902.37(b)(6)); temporary variances granted must assure compliance as early as possible and provide appropriate interim employee protection (29 CFR 1902.37(b)(7)). As noted in the 18(e) Evaluation Report and the November 16 notice, Nevada had five requests for permanent variances during the 18(e) evaluation period. Two requests were approved, two were denied, and one was canceled. The granted variances were processed in accordance with State procedures. During the section 18(e) evaluation period, no temporary variance requests were received.

Accordingly, OSHA finds that the Nevada program is able to effectively grant variances from its occupational safety and health standards.

(3) Enforcement. Section 18(c)(2) of the Act and 29 CFR 1902.3(d)(1) require a State program to provide a program for enforcement of State standards which is and will continue to be at least as effective in providing safe and healthful employment and places of employment as the Federal program. The State must require employer and employee compliance with all applicable standards, rules and orders (29 CFR 1902.3(d)(2)) and must have the legal authority for standards enforcement including compulsory process (29 CFR 1902.4(c)(2)).

The Nevada occupational safety and health statutes and implementing regulations, previously approved by OSHA, establish employer and employee compliance responsibility and contain legal authority for standards enforcement in terms substantially identical to those in the Federal Act. In order to be qualified for final approval, the State must have adhered to all approved procedures adopted to ensure an at least as effective compliance program (29 CFR 1902.37(b)(2)). The 18(e) Evaluation Report indicates no significant lack of adherence to such procedures.

(a) Inspections. In order to qualify for final approval, the State program, as implemented, must allocate sufficient resources toward high-hazard workplaces while providing adequate attention to other covered workplaces (29 CFR 1902.37(b)(8)). Data contained in the 18(e) Evaluation Report noted that Nevada uses a list of high hazard industries provided by OSHA to schedule programmed general industry inspections and uses Dodge Reports and local knowledge to schedule construction inspections. The State's strategic plan is focusing on three industries with high rates of injuries and illnesses: manufacturing, construction and hotel/casinos. During the period from October 1997 though March 1999, 53% of the State's safety inspections and 11% of health inspections were programmed. During this period 68% of programmed safety inspections and 71% of programmed health inspections uncovered violations. This exceeds the percentage of Federal programmed inspections with violations and indicates that the State's targeting system is effective.

(b) Employee Notice and Participation in Inspections: State plans must provide for inspections in response to employee complaints and must provide for an opportunity for employees and their representatives to point out possible violations through such means as employee accompaniment or interviews with employees (29 CFR 1902.4(c)(i) through (iii)). Nevada has procedures similar to Federal OSHA for processing and responding to complaints and providing for employee participation in State inspections. The data indicate that during the evaluation period the State was timely in responding to employee complaints, responding to 92% of serious safety and health complaints within the prescribed time frame of 30 days. During the period from October 1997 through March 1999, 25% of State inspections were in response to employee complaints. In 89.8% of cases during the period, complainants were informed of inspection results within 20 working days of citation issuance or, where no citations were issued, within 30 working days of the closing conference. The State also responds to non-formal complaints by letter and utilizes a phone/fax system to expedite response to non-serious complaints.

The State has procedures similar to those of Federal OSHA which require that an opportunity for employee participation in inspections be provided, either through representation on the walkaround or the conduct of interviews with a reasonable number of employees. No problems have been noted concerning employee particpation in Nevada inspections.

In addition, the State plan must provide that employees be informed of their protections and obligations under the Act by such means as the posting of notices (29 CFR 1902.4(c)(2)(iv)), and provide that employees have access to information on their exposure to regulated agents and access to records of the monitoring of their exposure to such agents (29 CFR 1902.4(c)(vi)).

To inform employees and employers of their protections and obligations, Nevada requires that a poster approved by OSHA be displayed in all covered workplaces. Requirements for the posting of the poster and other notices such as citations, contests, hearings and variances applications are set forth in the previously approved State law and regulations which are substantially identical to Federal requirements. Information on employee exposure to regulated agents and access to medical and monitoring records is provided through State standards which are identical to the Federal. No problems have been noted regarding notice of these actions to employers and employees. Therefore, OSHA has concluded that the State's performance in this area is effective.

(c) Nondiscrimination. A State is expected to provide appropriate protection to employees against discharge or discrimination for exercising their rights under the State's program including provision for employer sanctions and employee confidentiality (29 CFR 1902.4(c)(2)(v)). Section 618.445 of the Nevada Occupational Safety and Health Act and State regulations provide for discrimination protection equivalent to that provided by Federal OSHA. A total of 136 investigations of complaints alleging discrimination were completed during the evaluation period, of which 14 were found to be meritorious. The State takes appropriate action in the courts on merit cases where the employer does not voluntarily comply with the State's proposed remedy. During the evaluation period, Nevada experienced difficulty in meeting the 90-day time limit for completion of discrimination investigations. The State took action to ensure timely processing of discrimination complaints, and State performance in this area improved in Fiscal Year 1999. Statistics for the full fiscal year show that 78% of investigations were completed within 90 days. During the period from July 1 through September 30, 1999, 89% of discrimination investigations were completed within 90 days. Therefore, OSHA concludes that Nevada's performance in this area is satisfactory.

(d) Restraint of Imminent Danger; Protection of Trade Secrets. A State plan is required to provide for the prompt restraint of imminent danger situations,

(29 CFR 1902.4(c)(2)(vii)) and to provide adequate safeguards for the protection of trade secrets (29 CFR 1902.4(c)(2)(viii)). The State has provisions concerning imminent danger and protection of trade secrets in its law, regulations and operations manual which are similar to the Federal requirements. In addition, the Administrator of the Division of Industrial Relations may issue an emergency order to restrain an imminent danger situation. There were no imminent danger situations identified during the evaluation period. There were no Complaints About State Program Administration (CASPA's) filed concerning the protection of trade secrets during the report period.

(e) Right of Entry; Advance Notice. A State program is expected to have authority for right of entry to inspect and compulsory process to enforce such right equivalent to the Federal program (section 18(c)(3) of the Act and 29 CFR 1902.3(e)). In addition, a State is expected to prohibit advance notice of inspection, allowing exceptions thereto no broader than the Federal program (29 CFR 1902.3(f)). Section 618.325 of the Nevada Occupational Safety and Health Act provides for an inspector's right to enter and inspect all covered workplaces in terms substantially identical to those in the Federal Act. The Nevada law also prohibits advance notice, and implementing procedures for exceptions to this prohibition are substantially identical to the Federal procedures.

In order to be found qualified for final approval, a State is expected to take action to enforce its right of entry when denied (29 CFR 1902.37(b)(9)) and to adhere to its advance notice procedures. During the evaluation period, there were 14 denials of entry. Entry was achieved in 11 of these cases. This exceeds the Federal experience during the period. During the evaluation period, no advance notice of inspections was given.

(f) Citations, Penalties, and Abatement. A State plan is expected to have authority and procedures for promptly notifying employers and employees of violations identified during inspections, for the purpose of effective first-instance sanctions against employers found in violation of standards and for prompt employer notification of such penalties (29 CFR 1902.4(c)(2) (x) and (xi)). The Nevada plan, through its law, regulations and operations manual has established a system similar to the Federal program to provide for the prompt issuance of citations to employers delineating violations and establishing reasonable abatement periods, requiring posting of such citations for employee information, and proposing penalties.

In order to be qualified for final approval, the State, in actual operation, must be found to conduct competent inspections in accordance with approved procedures and to obtain adequate information to support resulting citations (29 CFR 1902.37(b)(10)), to issue citations, proposed penalties and failure-to-abate notifications in a timely manner (29 CFR 1902.37(b)(11)), to propose penalties for first-instance violations that are at least as effective as those under the Federal program (29 CFR 1902.37(b)(12)), and to ensure abatement of hazards including issuance of failure-to-abate notices and appropriate penalties (29 CFR 1902.37(b)(13)).

Procedures for the Nevada occupational safety and health compliance program are set out in the Nevada Operations Manual, which is patterned after the Federal manual. The State follows inspection procedures, including documentation procedures, which are similar to the Federal procedures. The 18(e) Evaluation Report notes overall adherence by Nevada to these procedures. In addition to issuing citations, the State issues "Notices of Violation" for other-than-serious violations that do not carry a penalty, when the employer agrees to abate the violation and not to contest. Nevada cited an average of 2.7 violations per safety inspection and 3.3 violations per health inspection; and 27% of both safety and health violations were cited as serious. The percentage of serious safety and health violations were lower than the comparable Federal percentages. While OSHA has disagreed with the State on the classification of some violations in the past, no systemic problems relating to violation classification have been found. The State continues to provide compliance officers with specific training and direction to ensure the proper classification of violations of standards. Nevada's lapse time from the opening conference to issuance of citation averaged 40 days for safety and 53 days for health. Both of the lapse times are comparable to Federal OSHA's citation lapse times.

Nevada's procedures for calculation of penalties are similar to those of Federal OSHA. The 18(e) Evaluation Report noted that Nevada proposed higher penalties for serious violations than Federal OSHA. The average penalty for serious safety violations was $1844 and the average serious health penalty was $1336. Eighty-eight percent (88%) of serious safety violations had abatement periods of less than 30 days, and 97% of serious health violations had abatement periods of less than 60 days. This compares favorably to Federal performance. The Notice of Violation policy has been successful in assuring prompt abatement of other-than-serious violations without litigation.

(g) Contested Cases. In order to be considered for initial approval and certification, a State plan must have authority and procedures for employer contest of citations, penalties and abatement requirements at full administrative or judicial hearings. Employees must also have the right to contest abatement periods and the opportunity to participate as parties in all proceedings resulting from an employer's contest (29 CFR 1902.4(c)(2)(xii)). Nevada's procedures for employer and employee contest of citations, penalties and abatement requirements and for ensuring employees' rights are contained in the law, regulations and operations manual made a part of the record in this proceeding. The Nevada plan provides for the review of contested cases by the Occupational Safety and Health Review Board, an independent administrative board. Decisions of the Review Board may be appealed to the appropriate State District Court.

Whenever appropriate, the State must seek administrative and judicial review of adverse adjudications. Additionally, the State must take necessary and appropriate action to correct any deficiencies in its program which may be caused by an adverse administrative or judicial determination. See §§ 1902.37(b)(14) and 1902.3 (d) and (g). Nevada has taken action when appropriate to appeal adverse decisions. The Nevada 18(e) Evaluation Report noted that a case involving egregious citations was appealed to the Nevada Supreme Court by the State. The case was settled before hearing.

(h) Enforcement Conclusion. In summary, the Assistant Secretary finds that enforcement operations provided under the Nevada plan are competently planned and conducted, and are overall at least as effective as Federal OSHA enforcement.

(4) Public Employee Program: Section 18(c)(6) of the Act requires that a State which has an approved plan must maintain an effective and comprehensive safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program must be as effective as the standards contained in an approved plan. 29 CFR 1902.3(j) requires that a State's program for public employees be as effective as

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the State's program for private employees covered by the plan. The Nevada plan provides a program in the public sector which is comparable to that in the private sector, including assessment of penalties for serious violations. Injury and illness rates in the public sector are comparable to private sector rates.

During the 18(e) Evaluation period, the State conducted 4.4% of its total inspections in the public sector. The results of these inspections were comparable to those in the private sector. Because Nevada's performance in the public sector is comparable to that in the private sector, OSHA concludes that the Nevada program meets the criteria in 29 CFR 1902.3(j).

(5) Staffing and Resources. Section 18(c)(4) of the Act requires State plans to provide the qualified personnel necessary for the enforcement of standards. In accordance with 29 CFR 1902.37(b)(1), one factor which OSHA must consider in evaluating a plan for final approval is whether the State has a sufficient number of adequately trained and competent personnel to discharge its responsibilities under the plan.

The Nevada plan provides for 22 safety compliance officers and 9 industrial hygienists as set forth in the Nevada FY 1999 grant application. The FY 2000 grant application provides for 25 safety compliance officers and 12 industrial hygienists. This staffing level exceeds the revised "fully effective" benchmarks for Nevada for health and safety staffing of 11 safety and 5 health compliance officers approved by OSHA on September 11, 1987 [52 FR 34381]. At the close of the evaluation period the State had 20 safety and 9 health compliance officer positions filled.

Nevada utilizes the OSHA Training Institute for most of its staff training. The State also conducts internal training through staff meetings regarding any new issues or standards. In addition, enforcement and consultation staffs conduct joint regional meetings to discuss standards and other issues to ensure that enforcement and consultation have the same understanding of the requirements of the standards.

Because Nevada has allocated sufficient enforcement staff to meet the revised benchmarks for that State, and personnel are trained and competent, the requirements for final approval set forth in 29 CFR 1902.37(b)(1), and in the court order in *AFL–CIO* v. *Marshall*, supra, are being met by the Nevada plan.

Section 18(c)(5) of the Act requires that the State devote adequate funds to administration and enforcement of its standards. The Nevada plan was funded at $4,917,275 in FY 1999. ($1,163,000 (24%) of the funds were provided by Federal OSHA; Nevada matched this amount and contributed an additional $2,591,275 for a total State share of $3,754,275 (76%)).

As noted in the 18(e) Evaluation Report, Nevada's funding exceeds Federal requirements in absolute terms; moreover, the State allocates its resources to the various aspects of the program in an effective manner. On this basis, OSHA finds that Nevada has provided sufficient funding and resources for the various activities carried out under the plan.

(6) Records and Reports: State plans must assure that employers in the State submit reports to the Secretary in the same manner as if the plan were not in effect (section 18(c)(7) of the Act and 29 CFR 1902.3(k)). The plan must also provide assurance that the designated agency will make such reports to the Secretary in such form and containing such information as he may from time to time require (section 18(c)(8) of the Act and 29 CFR 1902.4(1)).

Nevada employer recordkeeping requirements are identical to those of Federal OSHA, and the State participates in the BLS Annual Survey of Occupational Injuries and Illnesses as well as the OSHA Data Initiative. The State participates and has assured its continuing participation with OSHA in the Integrated Management Information System (IMIS) as a means of providing reports on its activities to OSHA.

For the foregoing reasons, OSHA finds that Nevada has met the requirements of sections 18(c)(7) and (8) of the Act on employer and State reports to the Secretary.

(7) Voluntary Compliance: A State plan is required to undertake programs to encourage voluntary compliance by employers and employees (29 CFR 1902.4(c)(2)(xiii)).

The Nevada consultation program, which until July 1, 1999 operated its private sector component under the State plan rather than OSHA's section 21(d) consultation program, includes 14 consultants and 4 trainers. The State provides consultation services to both the private and public sectors. During the evaluation period, Nevada conducted 1781 consultation visits, primarily in smaller high hazard private sector establishments. From Fiscal Year 1996 through Fiscal Year 1999, the State conducted 739 safety and health classes, reaching a total of 6,737 employers and 8,551 employees. Training covered such issues as developing safety and health programs, lockout/tagout, fall protection, hazard communication and bloodborne pathogens. In addition, the Safety Consultation and Training Section has carried out substantial promotion and outreach efforts through a multi-media campaign, including television and newspaper public service announcements, funded by the State.

Accordingly, OSHA finds that Nevada has established and is administering an effective voluntary compliance program.

(8) Injury/Illness Rates: As a factor in its section 18(e) determination, OSHA must consider whether the Bureau of Labor Statistics' annual occupational safety and health survey and other available Federal and State measurements of program impact on worker safety and health indicate that trends in worker safety and health injury and illness rates under the State program compare favorably with those under the Federal program. See § 1902.37(b)(15). Nevada's lost workday case rate for private industry declined from 4.2 in 1994 to 3.3 in 1997. The lost workday case rate for construction decreased from 7.5 to 5.6, even though there was substantial growth in the construction industry particularly in the southern part of the State. The rate for manufacturing increased slightly from 5.0 to 5.2. The rate for State and local government decreased from 3.6 to 3.4.

OSHA finds that during the evaluation period trends in worker injury and illness in Nevada were comparable with those in States with Federal enforcement.

Decision

OSHA has carefully reviewed the record developed during the above described proceedings, including all comments received thereon. The present **Federal Register** document sets forth the findings and conclusions resulting from this review.

In light of all the facts presented on the record, the Assistant Secretary has determined that the Nevada State plan for occupational safety and health, which has been monitored for at least one year subsequent to certification, is in actual operation at least as effective as the Federal program and meets the statutory criteria for State plans in section 18(e) of the Act and implementing regulations at 29 CFR Part 1902. Accordingly, the Nevada State plan is hereby granted final approval under section 18(e) of the Act and implementing regulations at 29 CFR Part 1902, effective April 18, 2000.

Under this 18(e) determination, Nevada will be expected to maintain a State program which will continue to be at least as effective as operations under the Federal program in providing

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employee safety and health at covered workplaces. This requirement includes submitting all required reports to the Assistant Secretary as well as submitting plan supplements documenting State-initiated program changes, changes required in response to adverse evaluation findings, and responses to mandatory Federal program changes. In addition, Nevada must continue to allocate sufficient safety and health enforcement staff to meet the benchmarks for State compliance staffing established by the Department of Labor, or any revision to those benchmarks.

Effect of Decision

The determination that the criteria set forth in section 18(c) of the Act and 29 CFR Part 1902 are being applied in actual operations under the Nevada plan terminates OSHA authority for Federal enforcement of its standards in Nevada, in accordance with section 18(e) of the Act, in those issues covered under the State plan. Section 18(e) provides that upon making this determination "the provisions of sections 5(a)(2), 8 (except for the purpose of carrying out subsection (f) of this section), 9, 10, 13, and 17, shall not apply with respect to any occupational safety and health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the date of determination."

Accordingly, Federal authority to issue citations for violation of OSHA standards (sections 5(a)(2) and 9); to conduct inspections (except those necessary to conduct evaluations of the plan under section 18(f), and other inspections, investigations or proceedings necessary to carry out Federal responsibilities which are not specifically preempted by section 18(e)) (section 8); to conduct enforcement proceedings in contested cases (section 10); to institute proceedings to correct imminent dangers (section 13); and to propose civil penalties or initiate criminal proceedings for violations of the Federal OSH Act (section 17) is relinquished as of the effective date of this determination.

Federal authority under provisions of the Act not listed in section 18(e) is unaffected by this determination. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act although such complaints may be initially referred to the State for investigation. Any proceeding initiated by OSHA under sections 9 and 10 of the Act prior to the date of this final determination would remain under Federal jurisdiction. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination. In the event that a State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in the State.

In accordance with section 18(e), this determination relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Nevada plan, and OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, for example, Federal OSHA retains its authority to enforce all provisions of the Act, and all Federal standards, rules or orders which relate to safety or health coverage of any private sector maritime activities (occupational safety and health standards comparable to 29 CFR Parts 1915, shipyard employment; 1917, marine terminals; 1918, longshoring; and 1919, gear certification, as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments), private employment on Indian land and any contractors or subcontractors on any Federal establishment where the land is exclusive Federal jurisdiction. Federal OSHA will also retain authority for coverage of the United States Postal Service (USPS), including USPS employees, contract employees, and contractor-operated facilities engaged in USPS mail operations and all Federal employers in Nevada. In addition Federal OSHA may subsequently initiate the exercise of jurisdiction over any issue (hazard, industry, geographical area, operation or facility) for which the State is unable to provide effective coverage for reasons which OSHA determines are not related to the required performance or structure of the State plan.

As provided by section 18(f) of the Act, the Assistant Secretary will continue to evaluate the manner in which the State is carrying out its plan. Section 18(f) and regulations at 29 CFR Part 1955 provide procedures for the withdrawal of Federal approval should the Assistant Secretary find that the State has subsequently failed to comply with any provision or assurance contained in the plan. Additionally, the Assistant Secretary is required to initiate proceedings to revoke an 18(e) determination and reinstate concurrent Federal authority under procedures set forth in 29 CFR 1902.47, *et seq.*, if his evaluations show that the State has substantially failed to maintain a program which is at least as effective as operations under the Federal program, or if the State does not submit program change supplements to the Assistant Secretary as required by 29 CFR Part 1953.

Explanation of Changes to 29 CFR Part 1952

29 CFR Part 1952 contains, for each State having an approved plan, a Subpart generally describing the plan and setting forth the Federal approval status of the plan. 29 CFR 1902.43(a)(3) requires that notices of affirmative 18(e) determinations be accompanied by changes to Part 1952 reflecting the final approval decision. This notice makes changes to Subpart W of Part 1952 to reflect the final approval of the Nevada plan.

The table of contents for Part 1952, Subpart W, has been revised to reflect the following changes:

A new Section 1952.294, Final approval determination, which formerly was reserved, has been added to reflect the determination granting final approval of the plan. This section contains a more accurate description of the current scope of the plan than the one contained in the initial approval decision.

Section 1952.295, Level of Federal enforcement, has been revised to reflect the State's 18(e) status. This replaces the former description of the relationship of State and Federal enforcement under an Operational Status Agreement voluntarily suspending Federal enforcement authority, which was entered into on December 9, 1981. Section 1952.295 describes the issues over which Federal authority has been terminated and the issues for which it has been retained in accordance with the discussion of the effects of the 18(e) determination set forth earlier in the present **Federal Register** notice.

Section 1952.296, Where the plan may be inspected, has been revised to reflect a new address for the Nevada Division of Industrial Relations.

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that this determination will not have a

significant economic impact on a substantial number of small entities. Final approval would not place small employers in Nevada under any new or different requirements, nor would any additional burden be placed upon the State government beyond the responsibilities already assumed as part of the approved plan.

Federalism

Executive Order 13132, "Federalism," emphasizes consultation between Federal agencies and the States and establishes specific review procedures the Federal government must follow as it carries out policies which affect state or local governments. OSHA has included in the Background section of today's final approval decision a detailed explanation of the relationship between Federal OSHA and the State plan States under the Occupational Safety and Health Act. OSHA has consulted extensively with Nevada throughout the period of 18(e) evaluation. Although OSHA has determined that the requirements and consultation procedures provided in Executive Order 13132 are not applicable to final approval decisions under the OSH Act, which have no effect outside the particular State receiving the approval, OSHA has reviewed the Nevada final approval decision proposed today, and believes it is consistent with the principles and criteria set forth in the Executive Order.

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health. It is issued under Section 18 of the OSH Act, (29 U.S.C. 667), 29 CFR Part 1902, and Secretary of Labor's Order No. 1–90 (55 FR 9033)).

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health, Reporting and recordkeeping requirements.

Signed at Washington, DC, this 6th day of April 2000.

Charles N. Jeffress,

Assistant Secretary.

Part 1952 of 29 CFR is hereby amended as follows:

PART 1952—[AMENDED]

1. The authority citation of part 1952 continues to read as follows:

Authority: Section 18 of the OSH Act, (29 U.S.C. 667), 29 CFR Part 1902, and Secretary of Labor's Order No. 1–90 (55 FR 9033).

Subpart W—Nevada

2. A new § 1952.294 is added, and §§ 1952.295 and 1952.296 are revised to read as follows:

§ 1952.294 Final approval determination.

(a) In accordance with section 18(e) of the Act and procedures in 29 CFR Part 1902, and after determination that the State met the "fully effective" compliance staffing benchmarks as revised in 1986 in response to a court order in AFL-CIO v. Marshall, 570 F.2d 1030 (D.C. Cir 1978), and was satisfactorily providing reports to OSHA through participation in the Federal-State Integrated Management Information System, the Assistant Secretary evaluated actual operations under the Nevada State plan for a period of at least one year following certification of completion of developmental steps. Based on an 18(e) Evaluation Report covering the period July 1, 1995 through March 31, 1999, and after opportunity for public comment, the Assistant Secretary determined that in operation the State of Nevada's occupational safety and health program is at least as effective as the Federal program in providing safe and healthful employment and places of employment and meets the criteria for final State plan approval in section 18(e) of the Act and implementing regulations at 29 CFR Part 1902. Accordingly, the Nevada plan was granted final approval and concurrent Federal enforcement authority was relinquished under section 18(e) of the Act effective April 18, 2000.

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Nevada. The plan does not cover Federal government employers and employees; any private sector maritime activities; employment on Indian land; any contractors or subcontractors on any Federal establishment where the land is exclusive Federal jurisdiction; and the United States Postal Service (USPS), including USPS employees, contract employees, and contractor-operated facilities engaged in USPS mail operations.

(c) Nevada is required to maintain a State program which is at least as effective as operations under the Federal program; to submit plan supplements in accordance with 29 CFR Part 1953; to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the U.S. Department of Labor, or any revisions to those benchmarks; and, to furnish such reports in such form as the Assistant Secretary may from time to time require.

§ 1952.295 Level of Federal enforcement.

(a) As a result of the Assistant Secretary's determination granting final approval to the Nevada State plan under section 18(e) of the Act, effective April 18, 2000, occupational safety and health standards which have been promulgated under section 6 of the Act do not apply with respect to issues covered under the Nevada Plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violations of such standards under section 5(a)(2) and 9 of the Act; to conduct inspections and investigations under section 8 (except those necessary to conduct evaluation of the plan under section 18(f) and other inspections, investigations, or proceedings necessary to carry out Federal responsibilities not specifically preempted by section 18(e)); to conduct enforcement proceedings in contested cases under section 10; to institute proceedings to correct imminent dangers under section 13; and to propose civil penalties or initiate criminal proceedings for violations of the Federal OSH Act under section 17. The Assistant Secretary retains jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the effective date of the 18(e) determination.

(b)(1) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Nevada plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to any private sector maritime activities (occupational safety and health standards comparable to 29 CFR Parts 1915, shipyard employment; 1917, marine terminals; 1918, longshoring; and 1919, gear certification, as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments), employment on Indian land, and any contractors or subcontractors on any Federal establishment where the land is exclusive Federal jurisdiction. Federal jurisdiction is also retained with respect to Federal government employers and employees. Federal OSHA will also retain authority for coverage of the United States Postal Service (USPS),

including USPS employees, contract employees, and contractor-operated facilities engaged in USPS mail operations.

(2) In addition, any hazard, industry, geographical area, operation or facility over which the State is unable to effectively exercise jurisdiction for reasons which OSHA determines are not related to the required performance or structure of the plan shall be deemed to be an issue not covered by the State plan which has received final approval, and shall be subject to Federal enforcement. Where enforcement jurisdiction is shared between Federal and State authorities for a particular area, project, or facility, in the interest of administrative practicability Federal jurisdiction may be assumed over the entire project or facility. In any of the aforementioned circumstances, Federal enforcement authority may be exercised after consultation with the State designated agency.

(c) Federal authority under provisions of the Act not listed in section 18(e) is unaffected by final approval of the Nevada State plan. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act, although such complaints may be referred to the State for investigation. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination, although such standards may not be Federally applied. In the event that the State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in that State.

(d) As required by section 18(f) of the Act, OSHA will continue to monitor the operations of the Nevada State program to assure that the provisions of the State plan are substantially complied with and that the program remains at least as effective as the Federal program. Failure by the State to comply with its obligations may result in the suspension or revocation of the final approval determination under Section 18(e), resumption of Federal enforcement, and/or proceedings for withdrawal of plan approval.

§ 1952.296 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations: Office of State Programs, Directorate of Federal-State Operations, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N3700, Washington, DC 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, Room 415, 71 Stevenson Street, San Francisco, California 94105; Office of the State Designee, Administrator, Nevada Division of Industrial Relations, 400 West King Street, Suite 400, Carson City, Nevada 89703.

[FR Doc. 00–9297 Filed 4–17–00; 8:45 am]
BILLING CODE 4510–26–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–00–121]
RIN 2115–AE47

Drawbridge Operation Regulations: Harlem River, Newtown Creek, NY

AGENCY: Coast Guard, DOT.
ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary final rule governing the operation of three New York City Bridges; the Third Avenue Bridge, mile 1.9, across the Harlem River between Manhattan and the Bronx, the Madison Avenue Bridge, mile 2.3, across the Harlem River between Manhattan and the Bronx, and the Pulaski Bridge, mile 0.6, across Newtown Creek between Brooklyn and Queens. This temporary final rule authorizes the bridge owner to close the above bridges on May 7, 2000, at different times of short duration to facilitate the running of the Five Boro Bike Tour. Vessels that can pass under the bridges without a bridge opening may do so at any time.

DATES: This temporary final rule is effective from 8 a.m. until 12 p.m. on Sunday, May 7, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–00–121) and are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 6:30 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard has determined that good cause exists under the Administrative Procedure Act (5 U.S.C. 553) to forego notice and comment for this rulemaking because notice and comment are impracticable. The Coast Guard believes notice and comment are impracticable because the requested closures are of such short duration. In the last two years, there have been few requests to open these bridges on Sunday during the hours they will be closed. Vessel traffic on the Harlem River and Newtown Creek is mostly commercial vessels that normally pass under the draws without openings. The commercial vessels that do require openings are work barges that do not operate on Sundays. The Coast Guard, for the reasons just stated, has also determined that good cause exists for this rule to be effective less than 30 days after it is published in the **Federal Register**.

Background

Third Avenue Bridge. The Third Avenue Bridge, mile 1.9, across the Harlem River between Manhattan and the Bronx, has a vertical clearance of 25 feet at mean high water and 30 feet at mean low water in the closed position. The existing operating regulations listed at § 117.789(c) require the draw to open on signal from 10 a.m. to 5 p.m., if at least a four-hour notice is given to the New York City Highway Radio (Hotline) Room. From 5 p.m. to 10 a.m., the draw need not be opened for vessel traffic.

Madison Avenue Bridge. The Madison Avenue Bridge, mile 2.3, across the Harlem River between Manhattan and the Bronx, has a vertical clearance of 25 feet at mean high water and 29 feet at mean low water in the closed position. The existing operating regulations listed at § 117.789(c) require the draw to open on signal from 10 a.m. to 5 p.m., if at least a four-hour notice is given to the New York City Highway Radio (Hotline) Room. From 5 p.m. to 10 a.m., the draw need not be opened for vessel traffic.

Pulaski Bridge. The Pulaski Bridge, mile 0.6, across the Newtown Creek between Brooklyn and Queens, has a vertical clearance of 39 feet at mean high water and 43 feet at mean low water in the closed position. The existing operating regulations require the draw to open on signal at all times.

The New York City Department of Transportation (NYCDOT) requested a change to the operating regulations for the Third Avenue Bridge, the Madison Avenue Bridge, and the Pulaski Bridge on May 7, 2000, to allow the bridges to remain in the closed position at different times to facilitate the running of the Five Boro Bike Tour.

The Third Avenue Bridge, mile 1.9, across the Harlem River between Manhattan and the Bronx and the Madison Avenue Bridge, mile 2.3, across the Harlem River between Manhattan and the Bronx, shall remain in the closed position from 8 a.m. to 11 a.m. on May 7, 2000. The Pulaski Bridge, mile 0.6, across the Newtown Creek between Brooklyn and Queens, shall remain in the closed position from 9 a.m. to 12 p.m. on May 7, 2000.

Vessels that can pass under the bridges without bridge openings may do so at all times.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This conclusion is based on the fact that the requested closures are of short duration and on Sunday morning when there have been few requests to open these bridges.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) we considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" comprises small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that the requested closures are of short duration and on Sunday when there have been few requests to open these bridges.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In section 117.789, from 8 a.m. through 11 a.m. on May 7, 2000, paragraph (c) is temporarily suspended and a new paragraph (g) is added to read as follows:

§ 117.789 Harlem River

* * * * *

(g) The draws of the Third Avenue Bridge, mile 1.9, and the Madison Avenue Bridge, mile 2.3, across the Harlem River between Manhattan and the Bronx, need not open for vessel traffic on May 7, 2000, from 8 a.m. to 11 a.m.

3. In section 117.801, from 9 a.m. through 12 p.m. on May 7, 2000, a new paragraph (a)(5) is added to read as follows:

§ 117.801 Newtown Creek, Dutch Kills, English Kills, and their tributaries.

(a) * * *

(5) The draw of the Pulaski Bridge, mile 0.6, across the Newtown Creek between Brooklyn and Queens, need not open for vessel traffic on May 7, 2000, from 9 a.m. to 12 p.m.

* * * * *

Dated: April 6, 2000.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 00–9639 Filed 4–17–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AJ69

Modified Eligibility Criteria for the Montgomery GI Bill—Active Duty

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the educational assistance and education benefit regulations of the Department of Veterans Affairs (VA). The amendments reflect statutory changes in the eligibility criteria for the Montgomery GI Bill—Active Duty which were made by the Veterans Programs Enhancement Act of 1998. This document also makes other changes for the purpose of clarification.

DATES: *Effective Date:* This final rule is effective April 18, 2000.

Applicability Date: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Advisor, Education Service (225C), Veterans Benefits Administration, 202–273–7187.

SUPPLEMENTARY INFORMATION: The Veterans Programs Enhancement Act of 1998 (Pub. L. 105–368) contains provisions that affect the educational assistance and education benefit regulations. This document amends these regulations to correspond with new statutory provisions concerning the education criteria an individual must meet in order to establish eligibility for the Montgomery GI Bill—Active Duty (MGIB).

To meet the eligibility criteria for the MGIB, a veteran, among other things, must have completed the requirements of a secondary school diploma (or the equivalency certificate). Previously, if a veteran did not actually receive a diploma, by statute a veteran could have met this criterion only by successfully completing within statutory deadlines the equivalent of 12 semester hours.

Public Law 105–368 provides that the criterion will also be met if the veteran otherwise receives academic credit for the equivalent of 12 semester hours. Thus, a veteran who did not actually earn 12 semester hours credit, but who received academic credit for 12 semester hours because of his or her life experiences before the applicable deadline, would now be eligible for MGIB. We are amending 38 CFR 21.7042, 21.7044, and 21.7045 to reflect this provision of law. We are also making nonsubstantive changes for the purpose of clarity.

Consistent with the effective date provisions of section 203 of Public Law 105–368, the date of applicability for the provisions in this final rule that affect eligibility criteria for the Montgomery GI Bill—Active Duty is October 1, 1998.

Substantive changes made by this final rule merely reflect statutory requirements. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule directly affects only individuals. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance number for the program affected by this final rule is 64.124.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health programs, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 10, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA amends 38 CFR part 21 (subpart K) as set forth below:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

1. The authority citation for part 21, subpart K is revised to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

2. In § 21.7042, paragraphs (a)(3)(ii), (b)(2)(ii), and (c)(4)(ii) are revised to read as follows:

§ 21.7042 Basic eligibility requirements.

* * * * *

(a) * * *

(3) * * *

(ii) Successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree; and

(Authority: 38 U.S.C. 3011, 3012, 3016)

* * * * *

(b) * * *

(2) * * *

(ii) Successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree;

(Authority: 38 U.S.C. 3011, 3012, 3016)

* * * * *

(c) * * *

(4) * * *

(ii) Successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree.

* * * * *

3. In § 21.7044, paragraphs (a)(3)(ii) and (b)(3)(ii) are revised to read as follows:

§ 21.7044 Persons with eligibility under 38 U.S.C. chapter 34.

* * * * *

(a) * * *

(3) * * *

(ii) Successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree. This may be done at any time.

* * * * *

(b) * * *

(3) * * *

(ii) Successfully complete (or otherwise receive academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree. This may be done at any time.

(Authority: 38 U.S.C. 3012 (a), (b))

* * * * *

4. In § 21.7045, paragraphs (b)(3)(i) and (c)(3)(i) are revised to read as follows:

§ 21.7045 Eligibility based on involuntary separation or voluntary separation.

* * * * *

(b) * * *

(3) *Educational requirement.* (i) Before the date on which VA receives

the individual's application for educational assistance under subpart K of this part, the individual must have:

(A) Successfully completed the requirements of a secondary school diploma (or equivalency certificate); or

(B) Successfully completed (or otherwise received academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree.

(c) * * *

(3) *Educational requirement.* (i) Before the date on which VA receives the individual's application for educational assistance under subpart K of this part, the individual must have:

(A) Successfully completed the requirements of a secondary school diploma (or equivalency certificate); or

(B) Successfully completed (or otherwise received academic credit for) 12 semester hours (or the equivalent) in a program of education leading to a standard college degree.

* * * * *

[FR Doc. 00–9603 Filed 4–17–00; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4091a; FRL–6568–9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of VOC and NO_X RACT Determinations for Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions impose reasonably available control technology (RACT) on twenty-six major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) located in Pennsylvania. EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act.

DATES: This rule is effective on June 19, 2000 without further notice, unless EPA receives adverse written comment by May 18, 2000. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Kathleen Henry, Chief, Permits and Technical Assessment Branch, Air Protection Division, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Kelly L. Bunker at (215) 814–2177 for information on sources #1–18 (or via e-mail at bunker.kelly@epa.gov) or Melik Spain at (215) 814–2299 for information on sources #19–26 (or via e-mail at spain.melik@epa.gov). While information may be requested via e-mail, any comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION:

I. Background

On August 1, 1995, January 6, 1995, June 14, 1995, December 8, 1995, May 31, 1995, May 2, 1996, March 21, 1996, September 13, 1996, November 4, 1997, March 24, 1998, December 7, 1998, February 2, 1999, March 3, 1999, April 9, 1999, April 20, 1999 and July 28, 1999, the Commonwealth of Pennsylvania submitted formal revisions to its State Implementation Plan (SIP). On March 24, 1998, May 29, 1998, October 2, 1998, October 16, 1998, December 7, 1998, February 2, 1999, April 9, 1999 and June 22, 1999, the Commonwealth submitted supplemental information pertaining to the Cogentrix, Scrubgrass Generating Company, Indiana University of Pennsylvania, INDSPEC, Wheelabrator-Frackville, Piney Creek, Harrisburg Steam Works and the four PP&L revisions, respectively. On July 24, 1998, PADEP submitted materials which replaced the May 2, 1996 submittal for Transit America Inc. Each source subject to this rulemaking will be identified and discussed below. Any plan approvals and operating permits submitted coincidentally with those being approved in this document, and not identified below, will be addressed in a separate rulemaking action.

Pursuant to sections 182(b)(2) and 182(f) of the Clean Air Act (CAA), Pennsylvania is required to implement RACT for all major VOC and NO_X sources by no later than May 31, 1995. The definition of a major source is determined by its size, location, the classification of that area and whether it is located in the ozone transport region (OTR), which is established by the CAA. The Pennsylvania portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area (the Philadelphia area) consists of Bucks, Chester, Delaware, Montgomery, and Philadelphia Counties and is classified as severe. The remaining counties in Pennsylvania are designated as nonattainment are classified as either moderate or marginal. However, under section 184 of the CAA, at a minimum, moderate area requirements for stationary sources, including RACT as specified in sections 182(b)(2) and 182(f), apply throughout the OTR. Therefore, RACT is applicable statewide in Pennsylvania. The Pennsylvania submittals that are the subject of this document are meant to satisfy the RACT requirements for twenty-six specific sources.

Summary of SIP Revision

The details of the RACT requirements for the source-specific plan approvals, operating permits and compliance permit can be found in the docket and accompanying technical support documents (TSD) and will not be reiterated in this document. Briefly, EPA is approving a revision to the Pennsylvania SIP pertaining to the determination of RACT for twenty-six major sources. Several of the plan approvals and operating permits contain conditions which are not relevant to the determination of VOC or NO_X RACT. These provisions are not included in Pennsylvania's SIP revision requests these sources.

RACT Determinations

The following table identifies the individual compliance permit, plan approvals, and operating permits EPA is approving. The specific emission limitations and other RACT requirements for these sources are summarized in the accompanying technical support documents, which are available upon further request from the EPA Region III office listed in the **ADDRESSES** section of this document.

Pennsylvania—VOC and NO_X Ract Determinations for Individual Sources

Source	County	*Plan approval (PA#)* Operating Permit (*OP#*) Compliance Permit (CP#) (date of issuance)	Source type	"Major source" pollutant
1. Allegheny Ludlum Steel Corporation	Westmoreland	OP 65–000–137 (5/17/99).	Specialty steel manufacturing.	NO_X
2. Cogentrix-Ringgold Cogeneration Facility	Jefferson	OP 33–137 (1/27/98), PA. 33–302–014 (11/15/90), PA. 33–399–004 (10/31/88).	Utility	NO_X
3. Doverspike Brothers Coal Co	Jefferson	OP 33–007 (1/13/99)	Utility	NO_X & VOC
4. Edison Mission Energy Homer City Coal Processing Plant.	Indiana	OP 32–000–132 (5/17/99).	Utility	NO_X
5. Harrisburg Steam Works, Ltd	Dauphin	OP 22–2005 (3/23/99)	Cogeneration facility	NO_X
6. Indiana University of Pennsylvania	Indiana	OP 32–000–200 (9/24/98).	Cogeneration facility	NO_X & VOC
7. INDSPEC Chemical Corporation	Butler	PA 10–021 (10/19/98)	Chemical manufacturing facility.	NO_X & VOC
8. Pennsylvania Power & Light Co. (PP&L)—Allentown Facility.	Lehigh	OP 39–0009 (6/1/99)	Utility	NO_X
9. PP&L—Fishbach Facility	Schuylkill	OP 54–0011 (6/1/99)	Utility	NO_X
10. PP&L—Harwood Facility	Luzerne	OP 40–0016 (6/1/99)	Utility	NO_X
11. PP&L—Jenkins Facility	Luzerne	OP 40–0017 (6/1/99)	Utility	NO_X
12. Piney Creek Ltd. Partnership	Clarion	OP 16–127 (12/18/98)	Utility	NO_X
13. Scrubgrass Generation Co	Venango	OP 61–181 (4/30/98)	Utility	NO_X
14. Statoil Energy power Paxton, LP	Dauphin	OP 22–2015 (6/30/99)	Cogeneration facility	NO_X
15. Stoney Creek Technologies, L.L.C	Delaware	CP 23–0002 (2/24/99)	Chemical manufacturing facility.	NO_X & VOC
16. Superpac, Inc.	Bucks	OP 09–0003 (3/25/99)	Graphic arts	VOC
17. Transit America Inc.	Philadelphia	PA 1563 (6/11/98)	Industrial boilers	NO_X
18. Wheelabrator Frackville Energy Company	Schuylkill	OP 54–0005 (9/18/98)	Utility	NO_X
19. American Bank Note Co	Montgomery	OP 46–0075 (8/10/98)	Graphic arts	VOC
20. Atlas Roofing Corporation	Bucks	OP 09–0039 (3/10/99)	Synthetic materials	VOC
21. Beckett	Chester	OP 15–0040 (7/8/97)	Graphic arts	VOC
22. Cove Shoe Company	Blair	OP 07–02028 (4/7/99)	Surface coating	VOC
23. Fleetwood Motor Homes	Northumberland	OP 49–0011 (10/30/98)	Surface coating	VOC
24. Hedstrom Corporation	Bedford	OP 05–02002A (4/8/99)	Surface coating	VOC
25. International Business Systems	Montgomery	OP 46–0049 (10/29/98)	Graphic arts	VOC
26. Klearfold	Bucks	OP 09–0012 (4/15/99)	Graphic arts	VOC
27. National Label Company	Montgomery	OP 46–0040 (7/28/97)	Graphic arts	VOC

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This direct final rule will be effective on June 19, 2000 without further notice unless we receive adverse comment by May 18, 2000. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

II. Final Action

EPA is approving SIP revisions submitted by the Commonwealth of Pennsylvania which consist of four plan approvals, twenty-three operating permits and one compliance permit imposing RACT on twenty-six individual major sources of NO_X and/or VOC.

III. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power

and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for twenty-six named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 19, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving Pennsylvania's source-specific RACT requirements for twenty-six sources may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone.

Dated: March 19, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(140) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(140) Revisions to the Pennsylvania Regulations, Chapter 129.91 pertaining to VOC and NOx RACT, submitted on August 1, 1995, January 6, 1995, June 14, 1995, December 8, 1995, May 31, 1995, May 2, 1996, March 21, 1996, September 13, 1996, February 2, 1999, March 3, 1999, April 9, 1999 and July 28, 1999 and supplements submitted on March 24, 1998, May 29, 1998, July 24, 1998, October 2, 1998, October 16, 1998, December 7, 1998, February 2, 1999, April 9, 1999 and June 22, 1999.

(i) Incorporation by reference.

(A) Twenty-one letters submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NOx RACT determinations in the form of plan approvals or operating permits on the following dates: August 1, 1995, January 6, 1995, June 14, 1995, December 8, 1995, May 31, 1995, May 2, 1996, March 21, 1996, September 13, 1996, November 4, 1997, March 24, 1998, December 7, 1998, February 2, 1999, March 3, 1999, April 9, 1999, April 20, 1999 and July 28, 1999 and supplements submitted on March 24, 1998, May 29, 1998, July 24, 1998, October 2, 1998, October 16, 1998, December 7, 1998, February 2, 1999, April 9, 1999 and June 22, 1999.

(B) Plan approvals (PA), Operating permits (OP), Compliance Permits (CP):

(1) Allegheny Ludlum Steel Corporation, Westmoreland County, OP 65–000–137, effective date of May 17, 1999, except for the expiration date and Condition 7;

(2) Cogentrix-Ringgold Cogeneration Facility, Jefferson County, OP 33–137, effective date of January 27, 1998, PA 33–302–014, effective date of November 15, 1990, OP 33–302–014, issued May 31, 1993, PA 33–399–004, effective date of October 31, 1988, and OP 33–399–004, issued on May 31, 1993, except for all ton per year limits and expiration dates in these permits, for Conditions 4, 5, and 6 in PA 33–302–014, for Condition 2 in OP 33–302–014, for Conditions 1, 2, 3, 4b, 4c, 4d, 4e, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, and 16 in PA 33–399–004, and for Condition 2 in OP 33–399–004.

(3) Doverspike Brothers Coal Co., Jefferson County, OP 33–007, effective date of January 13, 1999;

(4) Edison Mission Energy Homer City Generation L.P., Indiana County, OP 32–000–132, effective date of May 17, 1999;

(5) Harrisburg Steam Works, Ltd, Dauphin County, OP 22–02005, effective date of March 23, 1999, except for Conditions 5, 8, 11, 9, 10,18, 19, 22, 23, 24 and the expiration date;

(6) Indiana University of Pennsylvania, Indiana County, OP 32–000–200, effective date of September 24, 1998, except for the expiration date and Conditions 5, 7, 10, 12, 20, 21, and 22;

(7) INDSPEC Chemical Corporation, Butler County, PA 10–021, effective date of October 19, 1998 except for Condition 4, 5, the ton/year limits in Condition 8, 9, 18, 19 and all attachments;

(8) Pennsylvania Power & Light Co. (PP&L)—Allentown Facility, Lehigh County, OP 39–0009, effective date of June 1, 1999, except for the expiration date;

(9) PP&L—Fishbach Facility, Schuylkill County, OP 54–0011, issued June 1, 1999, except for the expiration date;

(10) PP&L—Harwood Facility, Luzerne County, OP 40–0016, effective date of June 1, 1999, except for the expiration date;

(11) PP&L—Jenkins Facility, Luzerne County, OP 40–0017, effective date of

June 1, 1999, except for the expiration date;

(12) Piney Creek Ltd. Partnership, Clarion County, OP 16–127, effective date of December 18, 1998 except for the ton per year and #/hr limits in Condition 4, Conditions 5 and 9;

(13) Scrubgrass Generating Co. L.P., Venango County, OP 61–181, April 30, 1998, except for Conditions 4, 6, 7, and 9;

(14) Statoil Energy Power Paxton, LP, Dauphin County, OP 22–02015, effective date of June 30, 1999 except for the expiration date and Conditions 6, 16, 19 and 20;

(15) Stoney Creek Technologies, L.L.C., Delaware County, CP–23–0002, effective date of February 24, 1999 except for Conditions 4, 6, 10.A.2, 10.B—D and 11 and the expiration date;

(16) Superpac, Inc., Bucks County, OP–09–0003, effective date of March 25, 1999; except for Conditions 4, 5, 6.a, 7, 8 (as it relates to Conditions 5 and 7 in subparagraph 8a and 8b), 9.a, 9.b, 10 and 11.b, c, e, g and h and the expiration date;

(17) Transit America Inc., Philadelphia County, PA, PLID: 1563, effective date of June 11, 1997, except for the expiration date and Conditions 4 and 5;

(18) Wheelabrator Frackville Energy Company, Schuylkill County, OP 54–0005, effective date of September 18, 1998, except for the particulate and SO2 emission limits found in Condition 4, Condition 5, 6, 7, 9, 10, 11, 12 and 13 and the expiration date;

(19) American Bank Note Co., Montgomery County, OP–46–0075, effective date of August 10, 1998 except Conditions 4.a, 12, 13, 14, and 15;

(20) Atlas Roofing Corporation, Bucks County, OP–09–0039, effective date of March 10, 1999, except for Conditions 6, 7, 8.b, 9–15 and the expiration date;

(21) Beckett Corporation, Chester County, OP–15–0040, effective date of July 8, 1997, except for Conditions 9–17 and the expiration date;

(22) Cove Shoe Company, Blair County, OP 07–02028, effective date of April 7, 1999, except for Conditions 5, 10 and the expiration date;

(23) Fleetwood Motor Homes, Northumberland County, OP 49–0011, effective date of October 30,1998, except for Conditions 3, 5, 23–31 and the expiration date;

(24) Hedstrom Corporation, Bedford County, OP 05–02002A, effective date of April 8, 1999, except for Conditions 5, 6, 8, 9, 10, 12, 15.a, 16, 17, 18 and the expiration date;

(25) Klearfold Inc., Bucks County, OP–09–0012, effective date of April 15, 1999, except for Conditions 4, 6, 7–10, 12.F, 13–22 and the expiration date;

(26) National Label Company, Montgomery County, OP–46–0040, effective date of July 28, 1997, except for the expiration date and Conditions 3, 4, 5, 6, 7, 11, the Ton per year limit in Condition 12, 14–16.

(ii) Additional Material.

(A) Remainder of the Commonwealth of Pennsylvania's August 1, 1995, January 6, 1995, June 14, 1995, December 8, 1995, May 31, 1995, May 2, 1996, March 21, 1996, November 4, 1997, March 24, 1998, December 7, 1998, February 2, 1999, March 3, 1999, April 9, 1999 and April 20, 1999 and March 24, 1998, May 29, 1998, July 24, 1998, October 2, 1998, October 16, 1998, December 7, 1998, February 2, 1999, April 9, 1999, June 22, 1999 and July 28, 1999 VOC and NO_X RACT SIP submittals and supplements.

(B) Letter from the Pennsylvania Department of Environmental Protection, dated 2/25/2000, clarifying which provisions of its RACT permits are to be incorporated into the Pennsylvania State Implementation Plan.

[FR Doc. 00–9382 Filed 4–17–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME–003–01–7004a; A–1–FRL–6572–8]

Approval and Promulgation of Air Quality Implementation Plans; Maine; RACT for VOC Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving several State Implementation Plan (SIP) revisions submitted by the State of Maine. EPA is also issuing a limited approval of one regulation submitted as a SIP revision by the State of Maine. These SIP revisions establish requirements for certain facilities which emit volatile organic compounds (VOCs). The intended effect of this action is to approve these revisions into the Maine SIP. This action is being taken in accordance with the Clean Air Act (CAA or Act).

DATES: This direct final rule is effective on June 19, 2000 without further notice, unless EPA receives adverse comment by May 18, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning Unit (mail code CAQ), U.S. Environmental Protection Agency, Region I, One Congress Street, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 918–1047, arnold.anne@epa.gov.

SUPPLEMENTARY INFORMATION: Today's action addresses several State Implementation Plan (SIP) revisions submitted by the Maine Department of Environmental Protection (DEP). These SIP submittals contain reasonably available control technology (RACT) requirements for certain VOC sources.

On November 3, 1993, EPA received a formal State Implementation Plan (SIP) submittal from the Maine Department of Environmental Protection (DEP) containing Chapter 134 "Reasonably Available Control Technology for Facilities that Emit Volatile Organic Compounds." In addition, on April 28, 1995, Maine DEP submitted a revised version of this rule to EPA as a SIP revision in order to address several issues EPA had identified with the previous submittal. Furthermore, Maine DEP also subsequently submitted source specific SIP revisions for several VOC sources on January 10, 1996, July 1, 1997, October 9, 1997, November 14, 1997, and December 10, 1997.

Background

On November 15, 1990, amendments to the 1977 Clean Air Act were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In Maine, pursuant to the Clean Air Act Amendments (CAAA) of 1990, the Portland area (York, Sagadahoc, and Cumberland counties), the Lewiston-Auburn area (Androscoggin and Kennebec counties), and the Knox and Lincoln Counties area were designated as moderate ozone nonattainment areas and the Hancock and Waldo counties area was designated as a marginal ozone nonattainment area. See 56 FR 56694 (Nov. 6, 1991).

Section 182(b)(2) of the amended Act requires states to adopt RACT rules for

all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing Control Technique Guideline (CTG)—*i.e.*, a CTG issued prior to the enactment of the CAAA of 1990; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG, *i.e.*, non-CTG sources. As previously mentioned, three areas in Maine were designated moderate ozone nonattainment areas. These areas were thus subject to the section 182(b)(2) RACT requirement.

Furthermore, the State of Maine is located in the Northeast Ozone Transport Region (OTR). The entire State is, therefore, subject to section 184(b) of the amended CAA. Section 184(b) requires that RACT be implemented in the entire state for all VOC sources covered by a CTG issued before or after the enactment of the CAAA of 1990 and for all major VOC sources (defined as 50 tons per year for sources in the OTR).

A CTG is a document issued by EPA which establishes a presumptive norm for RACT for a specific VOC source category. Under the pre-amended CAA, EPA issued CTG documents for 29 categories of VOC sources. Maine has previously addressed all of EPA's pre-1990 CTGs and EPA has approved Maine's submittals for these source categories. See 57 FR 3946, 58 FR 15281, 59 FR 31154, and 60 FR 33730. Today's document addresses requirements adopted by Maine pursuant to the non-CTG and new (*i.e.*, post-1990) CTG requirements of the CAA.

Section 183 of the amended CAA requires that EPA issue 13 new CTGs. Appendix E of the General Preamble of Title I (57 FR 18077) lists the categories for which EPA plans to issue new CTGs. On November 15, 1993, EPA issued a CTG for Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations and Reactor Processes. Also, on August 27, 1996, EPA issued a CTG for shipbuilding and repair operations and on May 26, 1996, EPA issued a CTG for wood furniture finishing operations. Furthermore, on March 27, 1998, EPA issued a CTG for aerospace coating operations. CTGs for the remaining Appendix E categories have not yet been issued.

EPA's Evaluation of Maine's Submittals

(A) New CTGs

In response to the CAA requirement to adopt RACT for all sources covered by a new CTG, on November 15, 1994, Maine submitted a negative declaration for the SOCMI Distillation and Reactors Processes CTG categories. Through the negative declaration, the State of Maine is asserting that there are no sources within the State that would be subject to a rule for these source categories. EPA is approving this negative declaration submittal as meeting the section 182(b)(2) and section 184(b) RACT requirements for these two source categories. However, if evidence is submitted by May 18, 2000 that there are existing sources within the State of Maine that, for purposes of meeting the RACT requirements, would be subject to a rule for these categories, if developed, such comments would be considered adverse and EPA would withdraw its approval action on the negative declarations.

EPA's shipbuilding CTG applies to shipbuilding and ship repair coating sources which are major VOC sources, *i.e.*, those with the potential to emit 50 tons or more per year in Maine. On October 9, 1997, Maine submitted a SIP revision for Portsmouth Naval Shipyard. EPA has evaluated the license submitted for this facility and has found it to be approvable. Generally, the facility is required to meet the VOC coating limits recommended by EPA's shipbuilding CTG. The specific requirements imposed on Portsmouth Naval Shipyard and EPA's evaluation of these requirements are detailed in a memorandum dated March 17, 2000, entitled "Technical Support Document—Maine—RACT for VOC sources" (TSD). Copies of this document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. In addition, the Bath Iron Works facility in Bath, Maine is also subject to EPA's shipbuilding CTG. Maine DEP has not yet addressed VOC RACT for this facility but will need to do so in order to fulfill the State's new CTG CAA obligations.

EPA's CTG for wood furniture finishing operations applies to facilities with the potential to emit 25 tons of VOC or more per year. EPA is aware of at least two facilities in Maine which may be covered by this CTG. They are Moosehead Manufacturing's Monson and Dover-Foxcroft plants. Maine needs to address these facilities, as well as any other facilities to which the wood furniture CTG may be applicable, in order to fulfill the State's new CTG CAA obligations.

EPA's CTG for aerospace coating operations applies to facilities with the potential to emit 25 tons of VOC or more per year. EPA is aware of at least one source in Maine, Pratt & Whitney, which may be covered by this CTG. Maine needs to address this facility, as well as any other facilities to which the aerospace CTG may be applicable, in order to fulfill the state's new CTG CAA obligations.

(B) Chapter 134 Regulation

Maine's Chapter 134 regulation requires major non-CTG VOC sources to implement RACT. The rule is based on EPA Region I's working draft rule entitled "Reasonably Available Control Technology for Facilities that Emit Volatile Organic Compounds" and EPA's national "Model Volatile Organic Compound Rules for Reasonably Available Control Technology" (June 1992).

Maine's Chapter 134 is generally consistent with EPA guidance, however, there is one outstanding issue associated with this regulation. This issue involves the generic nature of the rule and is further discussed below. In addition, there are two other aspects of the rule which are somewhat unique to Maine's regulation. These issues are also further discussed below.

(1) Outstanding Issue: Generic Nature of the Regulation

Maine's Chapter 134 establishes three RACT options. The first two options are methods of achieving RACT by either: (a) operating a system to capture and control VOC emissions such that total VOC emissions do not exceed 15% of the uncontrolled daily VOC emissions; or (b) reducing VOC use and emissions such that total VOC emissions do not exceed 20% of the total daily VOC emissions in calendar year 1990 (calculated on either a mass of VOC per mass of solids applied basis for surface coating sources or a mass of VOC per unit of production basis). The third method, stated in section 3(A)(3) of the rule, is to submit a variety of strategies as an alternative compliance plan to reduce VOC emissions.

Since the first two options of Chapter 134 define presumptive norms for RACT, that portion of the regulation meets the requirements of section 182 of the CAA. However, since the third option describes a process by which RACT can be defined but does not define RACT as required by the CAA, this portion of the rule is not approvable. Maine must define explicitly, and have approved by EPA, RACT for all of those sources which do not conform to the presumptive RACT options outlined in the regulation.

Maine has submitted to EPA many, although not all, of the necessary single source SIP revisions. Specifically, SIP revisions have been submitted for all of

the applicable sources in the following counties: York, Sagadahoc, Cumberland, Androscoggin, Kennebec, Knox, Lincoln, Hancock, Waldo, Aroostook, Franklin, Oxford, and Piscataquis. The sources for which non-CTG VOC RACT determinations have been submitted are discussed below in section (C). Maine must, however, submit, and EPA must approve, SIP revisions for all of the remaining sources which do not choose to conform to the presumptive RACT options outlined in the regulation in order for Chapter 134 to be approvable statewide. These sources are: GP Chip'n Saw and Mearl Corporation in Washington County, Irving Tanning in Somerset County, and Great Northern Paper's two facilities in Penobscot County.

(2) Other Aspects Unique to Maine's Rule

There are two other aspects of Chapter 134 which are unique to Maine's rule. These are the requirements for pulp and paper processes and the exemptions included in the rule. Section 3(A)(4) of Chapter 134 (Option D) specifically addresses VOC RACT requirements for pulp and paper processes. For example, Option D requires that emissions from the digester system, multiple effect evaporator systems, condensate stripper systems, smelt tanks, and lime kilns be controlled through incineration or wet scrubber systems in accordance with Maine's Chapter 124 "Total Reduced Sulfur Control from Kraft Pulp Mills." Chapter 134 also includes exemptions for specific pieces of equipment. For example, the rule contains an exemption for kraft recovery boilers. EPA has determined that the Chapter 134 requirements for pulp and paper processes and the exemptions included in the rule are approvable and that the rule is generally consistent with EPA guidance with the exception of the outstanding issue (i.e., the generic nature of the rule) discussed above. The specific requirements of Chapter 134 and EPA's evaluation of these requirements are detailed in the TSD. Copies of this document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

(C) Non-CTG RACT Determinations

On January 10, 1996, Maine submitted licenses for the following pulp and paper facilities: SD Warren Paper Company (Westbrook and Skowhegan), Lincoln Pulp and Paper, James River, International Paper, Boise Cascade, and Georgia Pacific. Also, on July 1, 1997, Maine submitted licenses for Champion International, Boise Cascade, and International Paper to EPA as a SIP revision. These facilities are all pulp and paper mills. These licenses include conditions which re-state some of the Chapter 134 Option D requirements. The licenses also address VOC emissions from operations that are not addressed in Option D, such as the mechanical pulping operations which occur at Boise Cascade, Champion International, and International Paper.

In addition to the pulp and paper licenses, Maine also submitted a license for Pioneer Plastics on July 1, 1997. Pioneer Plastics manufactures specialty resins and produces a decorative laminate used for counter tops and furniture. Generally, Pioneer's license requires emissions from certain reactors to be vented to an incinerator and emissions from other reactors to be vented to a vapor condenser. Also, on November 14, 1997 and December 10, 1997, Maine submitted licenses for Prime Tanning and Dexter Shoe. Prime Tanning is a leather finishing facility. Prime Tanning's license includes provisions which impose work practice and equipment standards, as well as VOC coating emission limitations, on the facility. Dexter Shoe is a shoe manufacturing facility. The majority of Dexter's VOC emissions are generated through the use of solvent based primers and adhesives. The use of low VOC products and the implementation of certain work practice and equipment standards were determined to represent RACT for Dexter. Furthermore, a license for Nissen Bakeries was submitted to EPA as a SIP revision on October 9, 1997. The majority of VOC emissions at this facility resulted from the baking of yeast-leavened bread. The license issued to Nissen Bakeries requires that the facility cease production of yeast leavened bread by May 15, 1999.

EPA has evaluated the licenses submitted for all of the facilities listed above and has found that these licenses are consistent with EPA guidance. The specific requirements imposed on each facility and EPA's evaluation of these requirements are detailed in the TSD. Copies of this document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

EPA is publishing this action without prior proposal because the Agency anticipates no adverse comments on this rulemaking. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective June 19, 2000 unless adverse or critical comments are received by May 18, 2000.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on June 19, 2000.

Final Action

EPA is issuing a full approval of Maine's Chapter 134 "Reasonably Available Control Technology for Facilities that Emit Volatile Organic Compounds" as meeting the CAA sections 182(b)(2)(C) and 184(b) non-CTG VOC RACT requirements for York, Sagadahoc, Cumberland, Androscoggin, Kennebec, Knox, Lincoln, Hancock, Waldo, Aroostook, Franklin, Oxford, and Piscataquis Counties. EPA is also issuing a limited approval of Maine's Chapter 134 for Washington, Somerset, and Penobscot Counties.

In addition, EPA is approving licenses for the following facilities and incorporating them into the Maine SIP: SD Warren Paper Company (Westbrook and Skowhegan), Lincoln Pulp and Paper, James River, International Paper, Georgia Pacific, Pioneer Plastics, Champion International, Nissen Bakeries, Prime Tanning, Dexter Shoe, Portsmouth Naval Shipyard, and Boise Cascade.

Furthermore, EPA is also approving Maine's negative declaration for the SOCMI Distillation and Reactor Processes CTG categories as meeting the CAA VOC RACT requirements for these source categories.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements

beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 19, 2000. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Maine was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 24, 2000.

Mindy S. Lubber,

Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart U—Maine

2. Section 52.1020 is amended by adding paragraph (c)(45) to read as follows:

§ 52.1020 Identification of plan.

* * * * *

(c) * * *

(45) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on April 28, 1995, January 10, 1996, July 1, 1997, October 9, 1997, November 14, 1997, and December 10, 1997.

(i) Incorporation by reference.

(A) Chapter 134 of the Maine Department of Environmental Protection regulations entitled "Reasonably Available Control Technology for Facilities that Emit Volatile Organic Compounds," effective in the State of Maine on February 15, 1995, is granted a full approval for the following counties: York, Sagadahoc, Cumberland, Androscoggin, Kennebec, Knox, Lincoln, Hancock, Waldo, Aroostook, Franklin, Oxford, and Piscataquis. This rule is granted a limited approval for Washington, Somerset, and Penobscot Counties.

(B) License Amendment #5 issued by the Maine Department of Environmental Protection to Prime Tanning Company on July 23, 1997.

(C) License Amendment #6 issued by the Maine Department of Environmental Protection to Prime Tanning Company on October 27, 1997.

(D) License issued by the Maine Department of Environmental Protection to JJ Nissen Baking Company on February 25, 1997.

(E) License Amendment #4 issued by the Maine Department of Environmental Protection to Portsmouth Naval Shipyard on July 25, 1997.

(F) License issued by the Maine Department of Environmental Protection to Dexter Shoe Company on December 5, 1996.

(G) License Amendment #1 issued by the Maine Department of Environmental Protection to Dexter Shoe Company on October 20, 1997.

(H) License Amendment #3 issued by the Maine Department of Environmental Protection to Pioneer Plastics Corporation on June 16, 1997.

(I) License Amendment #10 issued by the Maine Department of Environmental Protection to Georgia Pacific Corporation on January 4, 1996.

(J) License Amendment #5 issued by the Maine Department of Environmental Protection to Champion International Corporation on January 18, 1996.

(K) License Amendment #8 issued by the Maine Department of Environmental Protection to International Paper Company on October 4, 1995.

(L) License Amendment #9 issued by the Maine Department of Environmental Protection to International Paper Company on December 13, 1995.

(M) License Amendment #6 issued by the Maine Department of Environmental Protection to James River Corporation on December 8, 1995.

(N) License Amendment #8 issued by the Maine Department of Environmental Protection to Lincoln Pulp and Paper Co. on December 18, 1995.

(O) License Amendment #14 issued by the Maine Department of Environmental Protection to S.D. Warren Paper Company's Westbrook, Maine facility on December 18, 1995.

(P) License Amendment #14 issued by the Maine Department of Environmental Protection to S.D. Warren Paper Company's Skowhegan, Maine facility on October 4, 1995.

(Q) License Amendment #15 issued by the Maine Department of Environmental Protection to S.D. Warren Paper Company's Skowhegan, Maine facility on January 9, 1996.

(R) License Amendment #11 issued by the Maine Department of Environmental Protection to Boise Cascade Corporation on December 20, 1995.

(ii) Additional materials

(A) Letter from the Maine Department of Environmental Protection dated November 15, 1994 stating a negative declaration for the Synthetic Organic Chemical Manufacturing Industry Distillation and Reactors Control Technique Guideline categories.

(B) Nonregulatory portions of the submittal.

3. In § 52.1031, Table 52.1031 is amended by adding new state citations for Chapter 134 to read as follows:

§ 52.1031 EPA-approved Maine Regulations

* * * * *

TABLE 52.1031—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/Subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020	
134	Reasonably Available Control Technology for Facilities that Emit Volatile Organic Compounds.	2/8/95	4/18/00	[Insert *FR* citation from published date].	(c)(45)	Regulation fully approved for the following counties: York, Sagadahoc, Cumberland, Androscoggin, Kennebec, Knox, Lincoln, Hancock, Waldo, Aroostook, Franklin, Oxford, and Piscataquis. Regulation granted a limited approval for Washington, Somerset, and Penobscot Counties.
134	Reasonably Available Control Technology for Facilities that Emit Volatile Organic Compounds.	2/25/97	4/18/00	[Insert *FR* citation from published date].	(c)(45)	VOC RACT determination for JJ Nissen Baking Company.
134	Reasonably Available Control Technology for Facilities that Emit Volatile Organic Compounds.	7/23/97 10/27/97	4/18/00	[Insert *FR* citation from published date].	(c)(45)	VOC RACT determination for Prime Tanning.
134	Reasonably Available Control Technology for Facilities that Emit Volatile Organic Compounds.	7/25/97	4/18/00	[Insert *FR* citation from published date].	(c)(45)	VOC RACT determination for Portsmouth Naval Shipyard.
134	Reasonably Available Control Technology for Facilities that Emit Volatile Organic Compounds.	12/5/96 10/20/97	4/18/00	[Insert *FR* citation from published date].	(c)(45)	VOC RACT determination for Dexter Shoe.
134	Reasonably Available Control Technology for Facilities that Emit Volatile Organic Compounds.	6/16/97	4/18/00	[Insert *FR* citation from published date].	(c)(45)	VOC RACT determination for Pioneer Plastics.
134	Reasonably Available Control Technology for Facilities that Emit Volatile Organic Compounds.	1/4/96	4/18/00	[Insert *FR* citation from published date].	(c)(45)	VOC RACT determination for Georgia Pacific.
134	Reasonably Available Control Technology for Facilities that Emit Volatile Organic Compounds.	1/18/96	4/18/00	[Insert *FR* citation from published date].	(c)(45)	VOC RACT determination for Champion International.
134	Reasonably Available Control Technology for Facilities that Emit Volatile Organic Compounds.	10/4/95 12/13/95	4/18/00	[Insert *FR* citation from published date].	(c)(45)	VOC RACT determination for International Paper.
134	Reasonably Available Control Technology for Facilities that Emit Volatile Organic Compounds.	12/8/95	4/18/00	[Insert *FR* citation from published date].	(c)(45)	VOC RACT determination for James River.

TABLE 52.1031—EPA-APPROVED RULES AND REGULATIONS—Continued

State citation	Title/Subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020	
134	Reasonably Available Control Technology for Facilities that Emit Volatile Organic Compounds.	12/18/95	4/18/00	[Insert *FR* citation from published date].	(c)(45)	VOC RACT determination for Lincoln Pulp and Paper.
134	Reasonably Available Control Technology for Facilities that Emit Volatile Organic Compounds.	12/18/95	4/18/00	[Insert *FR* citation from published date].	(c)(45)	VOC RACT determination for SD Warren Paper Company's Westbrook, Maine facility.
134	Reasonably Available Control Technology for Facilities that Emit Volatile Organic Compounds.	10/4/95 1/9/96	4/18/00	[Insert *FR* citation from published date].	(c)(45)	VOC RACT determination for SD Warren Paper Company's Skowhegan, Maine facility.
134	Reasonably Available Control Technology for Facilities that Emit Volatile Organic Compounds.	12/20/95	4/18/00	[Insert *FR* citation from published date].	(c)(45)	VOC RACT determination for Boise Cascade.

[FR Doc. 00–9537 Filed 4–17–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, and 63

[FRL–6577–1]

Standards of Performance for New Stationary Sources (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP); Delegation of Authority to the States of Iowa; Kansas; Missouri; Nebraska; Lincoln-Lancaster County, NE; and City of Omaha, NE

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule and delegation of authority.

SUMMARY: The states of Iowa, Kansas, Missouri, Nebraska, and the local agencies of Lincoln-Lancaster County, Nebraska, and city of Omaha, Nebraska, have submitted updated regulations for delegation of the EPA authority for implementation and enforcement of NSPS and NESHAP. The submissions cover new EPA standards and, in some instances, revisions to standards previously delegated. EPA's review of the pertinent regulations shows that they contain adequate and effective procedures for the implementation and enforcement of these Federal standards. This action informs the public of delegations to the above-mentioned agencies.

DATES: This rule is effective on May 18, 2000. The dates of delegation can be found in the **SUPPLEMENTARY INFORMATION**; section of this document.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Effective immediately, all notifications, applications, reports, and other correspondence required pursuant to the newly delegated standards and revisions identified in this notice should be submitted to the Region 7 office, and, with respect to sources located in the jurisdictions identified in this notice, to the following addresses:

Iowa Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Urbandale, Iowa 50322.

Kansas Department of Health and Environment, Bureau of Air Quality and Radiation, Building 283, Forbes Field, Topeka, Kansas 66620.

Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson State Office Building, P.O. Box 176, Jefferson City, Missouri 65102.

Nebraska Department of Environmental Quality, Air and Waste Management Division, P.O. Box 98922, Statehouse Station, Lincoln, Nebraska 68509.

Lincoln-Lancaster County Air Pollution Control Agency, Division of Environmental Health, 3140 "N" Street, Lincoln, Nebraska 68510.

City of Omaha, Public Works Department, Air Quality Control Division, 5600 South 10th Street, Omaha, Nebraska 68510.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551–7603.

SUPPLEMENTARY INFORMATION: The supplementary information is organized in the following order:

What does this rule do?
What is the authority for delegation?
What does delegation accomplish?
What is being delegated?
What is not being delegated?
List of Delegation Tables
Table I—NSPS, 40 CFR Part 60
Table II—NESHAPS, 40 CFR Part 61
Table III—NESHAPS, 40 CFR Part 63
Summary of this action

What Does This Rule Do?

EPA is providing notice that it is delegating authority for implementation and enforcement of the Federal standards shown in the tables below to the state and local air agencies in Region 7. This rule updates the delegation tables most recently published at 63 FR 1746 (January 12, 1998.)

Section 553(b)(B) of the Administrative Procedures Act (APA) provides that an agency may forgo notice-and-comment rulemaking upon determination of "good cause" published with the rule. EPA considers these updates to be minor changes which are not subject to notice-and-comment rulemaking procedures under the APA or any other statute.

What Is the Authority for Delegation?

1. Section 111(c)(1) of the Clean Air Act (CAA) authorizes EPA to delegate authority to any state agency which submits adequate regulatory procedures for implementation and enforcement of the NSPS program. The NSPS standards are codified at 40 CFR Part 60.

2. Section 112(l) of the CAA and 40 CFR Part 63, subpart E, authorizes EPA to delegate authority to any state or local agency which submits adequate regulatory procedures for implementation and enforcement of emission standards for hazardous air pollutants. The hazardous air pollutant standards are codified at 40 CFR Parts 61 and 63, respectively.

What Does Delegation Accomplish?

Delegation confers primary responsibility for implementation and enforcement of the listed standards to the respective state and local air agencies. However, EPA also retains the authority to enforce the standards if it so desires.

What Is Being Delegated?

Tables I, II, and III below list the delegated standards. The first date in each block is the reference date to the CFR contained in the state rule. In general, the state has adopted the applicable standard through this date as noted in the table. The second date is the most recent effective date of the state agency rule for which EPA is providing or updating the delegation.

What Is Not Being Delegated?

1. EPA regulations effective after the first date specified in each block have not been delegated, and authority for implementation of these regulations is retained solely by EPA.

2. In some cases, the standards themselves specify that specific provisions cannot be delegated. You should review the standard for this information.

3. In some cases, the agency rules do not adopt the Federal standard in its entirety. Each agency rule (available from the respective agency) should be consulted for specific information.

4. In some cases, existing delegation agreements between EPA and the agencies limit the scope of the delegated standards. Copies of delegation agreements are available from the state agencies, or from this office.

5. With respect to 40 CFR Part 63, subpart A, General Provisions (see Table III), EPA has determined that sections 63.6(g), 63.6(h)(9), 63.7(e)(2)(ii) and (f), 63.8(f), and 63.10(f) cannot be delegated. Additional information is contained in an EPA memorandum titled "Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies' from John Seitz, Director, Office of Air Quality Planning and Standards, dated July 10, 1998.

List of Delegation Tables

TABLE I.—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
A	General Provisions	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
D	Fossil-Fuel Fired Steam Generators for Which Construction is Commenced After August 17, 1971.	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
Da	Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978.	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
Db	Industrial-Commercial-Institutional Steam Generating Units	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
Dc	Small Industrial-Commercial-Institutional Steam Generating Units	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
E	Incinerators	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
Ea	Municipal Waste Combustors Constructed after December 20, 1989, and on or before September 20 1994.	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	02/28/96	12/15/98
Eb	Municipal Waste Combustors for Which Construction is Commenced after September 20, 1994.	11/24/98	07/01/98	12/31/98	07/01/96
		12/23/98	06/11/99	03/20/00	12/15/98
Ec	Hospital/medical/infectious Waste Incinerators for Which Construction Commenced after June 20, 1996.	11/24/98	07/01/98	12/31/98	11/24/98
		12/23/98	06/11/99	03/20/00	12/15/98
F	Portland Cement Plants	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
G	Nitric Acid Plants	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
H	Sulfuric Acid Plants	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
I	Asphaltic Concrete Plants	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
J	Petroleum Refineries	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
K	Storage Vessels for Petroleum Liquid for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
Ka	Storage Vessels for Petroleum Liquid for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
Kb	Volatile Organic Liquid Storage Vessels for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
L	Secondary Lead Smelters	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
M	Brass and Bronze Production Plants	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
N	Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
Na	Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98

TABLE I.—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
O	Sewage Treatment Plants	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
P	Primary Copper Smelters	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
Q	Primary Zinc Smelters	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
R	Primary Lead Smelters	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
S	Primary Aluminum Reduction Plants	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
T	Wet Process Phosphoric Acid Plants	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
U	Superphosphoric Acid Plants	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
V	Diammonium Phosphate Plants	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
W	Triple Superphosphate Plants	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
X	Granular Triple Superphosphate Storage Facilities	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
Y	Coal Preparation Plants	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
Z	Ferroalloy Production Facilities	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
AA	Steel Plant Electric Arc Furnaces Constructed After October 21, 1974, and on or Before August 17, 1983.	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
AAa	Steel Plant Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
BB	Kraft Pulp Mills	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	.....
CC	Glass Manufacturing Plants	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
DD	Grain Elevators	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
EE	Surface Coating of Metal Furniture	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
GG	Stationary Gas Turbines	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
HH	Lime Manufacturing Plants	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
KK	Lead-Acid Battery Manufacturing Plants	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
LL	Metallic Mineral Processing Plants	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
MM	Auto and Light-Duty Truck Surface Coating Operations	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
NN	Phosphate Rock Plants	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
PP	Ammonium Sulfate Manufacture	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
QQ	Graphic Arts Industry: Publication Rotogravure Printing	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
RR	Pressure Sensitive Tape and Label Surface Coating Operations	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
SS	Industrial Surface Coating: Large Appliances	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
TT	Metal Coil Surface Coating	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
UU	Asphalt Processing and Asphalt Roofing Manufacture	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
VV	SOCMI Equipment Leaks (VOC)	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
WW	Beverage Can Surface Coating Industry	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
XX	Bulk Gasoline Terminals	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98
AAA	New Residential Wood Heaters	08/31/93 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	
BBB	Rubber Tire Manufacturing Industry	11/24/98 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98

Subpart
DDD
FFF
GGG
HHH
III
JJJ
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LLL
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Subpart
A
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TABLE I.—DELEGATION OF AUTHORITY—PART 60 NSPS—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska
DDD	Polymer Manufacturing Industry (VOC)	11/24/98	07/01/98	12/31/98	
		12/23/98	06/11/99	03/30/00	
FFF	Flexible Vinyl and Urethane Coating and Printing	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
GGG	Equipment Leaks of VOC in Petroleum Refineries	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
HHH	Synthetic Fiber Production Facilities	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
III	SOCMI AIR Oxidation Unit Processes	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
JJJ	Petroleum Dry Cleaners	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
KKK	VOC Leaks from Onshore Natural Gas Processing Plants	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
LLL	Onshore Natural Gas Processing: SO_2 Emissions	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
NNN	VOC Emissions from SOCMI Distillation Operations	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
OOO	Nonmetallic Mineral Processing Plants	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
PPP	Wool Fiberglass Insulation Manufacturing Plants	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
QQQ	VOC Emissions from Petroleum Refinery Wastewater Systems	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
RRR	VOC Emissions from SOCMI Reactor Processes	11/24/98	07/01/98	12/31/98	
		12/23/98	06/11/99	03/30/00	
SSS	Magnetic Tape Coating Facilities	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
TTT	Surface Coating of Plastic Parts for Business Machines	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
UUU	Calciners & Dryers in Mineral Industries	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
VVV	Polymeric Coating of Supporting Substrates Facilities	11/24/98	07/01/98	12/31/98	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98
WWW	New Municipal Solid Waste Landfills Accepting Waste On or After May 30, 1991.	11/24/98	07/01/98	12/31/98	07/01/96
		12/23/98	06/11/99	03/30/00	12/15/98

TABLE II.—DELEGATION OF AUTHORITY—PART 61 NESHAP—REGION 7

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
A	General Provisions	10/14/97	07/01/98	12/31/98	07/01/97	07/01/92	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98	05/16/95	04/04/98
B	Radon Emissions from Underground Uranium Mines	.....	07/01/98	.....	.....	.....	.....
			06/11/99				
C	Beryllium	10/14/97	07/01/98	12/31/98	07/01/97	07/01/92	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98	05/16/95	04/04/98
D	Beryllium Rocket Motor Firing	10/14/97	07/01/98	12/31/98	07/01/97	07/01/92	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98	05/16/95	04/04/98
E	Mercury	10/14/97	07/01/98	12/31/98	07/01/97	07/01/92	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98	05/16/95	04/04/98
F	Vinyl Chloride	10/14/97	07/01/98	12/31/98	07/01/97	07/01/92	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98	05/16/95	04/04/98
J	Equipment Leaks (Fugitive Emission Sources) of Benzene.	10/14/97	07/01/98	12/31/98	07/01/97	07/01/92	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98	05/16/95	04/04/98
L	Benzene Emissions from Coke By-Product Recovery Plants.	10/14/97	07/01/98	12/31/98	07/01/97	07/01/92	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98	05/16/95	04/04/98
M	Asbestos	10/14/97	07/01/98	12/31/98	07/01/97	07/01/92	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98	05/16/95	04/04/98
N	Inorganic Arsenic Emissions from Glass Manufacturing Plants.	10/14/97	07/01/98	12/31/98	07/01/97	07/01/92	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98	05/16/95	04/04/98
O	Inorganic Arsenic Emissions from Primary Copper Smelters.	10/14/97	07/01/98	12/31/98	07/01/97	07/01/92	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98	05/16/95	04/04/98
P	Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production Facilities.	10/14/97	07/01/98	12/31/98	07/01/97	07/01/92	07/01/97
		12/23/98	06/11/99	03/30/00	12/15/98	05/16/95	04/04/98
Q	Radon Emissions from Department of Energy Facilities.	.....	07/01/98	.....	.....	.....	.....
			06/11/99				

TABLE II.—DELEGATION OF AUTHORITY—PART 61 NESHAP—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
R	Radon Emissions from Phosphogypsum Stacks	.....	07/01/98 06/11/99	.....	.....	.....	.....
T	Radon Emissions from the Disposal of Uranium Mill Tailings.	.....	07/01/98 06/11/99	.....	.....	.....	.....
V	Equipment Leaks (Fugitive Emission Sources)	10/14/97 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98	07/01/92 05/16/95	07/01/97 04/04/98
W	Radon Emissions from Operating Mill Tailings	.....	07/01/98 06/11/99	.....	.....	.....	.....
Y	Benzene Emissions from Benzene Storage Vessels	10/14/97 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98	07/01/92 05/16/95	07/01/97 04/04/98
BB	Benzene Emissions from Benzene Transfer Operations.	10/14/97 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98	07/01/92 05/16/95	07/01/97 04/04/98
FF	Benzene Waste Operations	10/14/97 12/23/98	07/01/98 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98	07/01/92 05/16/95	07/01/97 04/04/98

TABLE III.—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
A	General Provisions	06/29/99 04/26/00	07/01/96 06/11/99	12/31/96 03/30/00	07/01/97 12/15/98	07/01/97 08/11/98	07/01/97 04/01/98
B	Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Section 112(j).	06/29/99 04/26/00	07/01/96 06/11/99	12/31/96 03/30/00	.....	.....	.....
D	Compliance Extensions for Early Reductions of Hazardous Air Pollutants.	06/29/99 04/26/00	07/01/96 06/11/99	12/31/96 03/30/00	12/29/92 12/15/98	11/21/94 08/11/98	12/29/92 04/01/98
F	Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.	06/29/99 04/26/00	07/01/96 06/11/99	12/31/96 03/30/00	.....	07/01/97 08/11/98	.....
G	Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	06/29/99 04/26/00	07/01/96 06/11/99	12/31/96 03/30/00	.....	07/01/97 08/11/98	.....
H	Organic Hazardous Air Pollutants for Equipment Leaks.	06/29/99 04/26/00	07/01/96 06/11/99	12/31/96 03/30/00	.....	07/01/97 08/11/98	.....
I	Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	06/29/99 04/26/00	07/01/96 06/11/99	12/31/96 03/30/00	.....	07/01/97 08/11/98	.....
L	Coke Oven Batteries	06/29/99 04/26/00	07/01/96 06/11/99	12/31/96 03/30/00	.....	.....	.....
M	Perchloroethyl ene Emissions from Dry Cleaning Facilities.	06/29/99 04/26/00	07/01/96 06/11/99	12/31/96 03/30/00	07/01/97 12/15/98	07/01/97 08/11/98	07/01/97 04/01/98
N	Chromium Emissions from Hard and Decorative Chromium Electroplating Anodizing Tanks.	06/29/99 04/26/00	07/01/96 06/11/99	12/31/96 03/30/00	07/01/97 12/15/98	07/01/97 08/11/98	07/01/97 04/01/98
O	Ethylene Oxide Sterilization Facilities	06/29/99 04/26/00	07/01/96 06/11/99	12/31/96 03/30/00	.....	07/01/97 08/11/98	.....
Q	Industrial Process Cooling Towers	06/29/99 04/26/00	07/01/96 06/11/99	12/31/96 03/30/00	07/01/97 12/15/98	07/01/97 08/11/98	07/01/97 04/01/98
R	Gasoline Distribution Facilities	06/29/99 04/26/00	07/01/96 06/11/99	12/31/96 03/30/00	07/01/97 12/15/98	07/01/97 08/11/98	07/01/97 04/01/98
S	Pulp and Paper Non-Combustion	06/29/99 04/26/00	.....	12/31/98 03/30/00	.....	.....	.....
T	Halogenated Solvent Cleaning	06/29/99 04/26/00	07/01/96 06/11/99	12/31/96 03/30/00	07/01/97 12/15/98	7/01/97 08/11/98	07/01/97 04/01/98
U	Polymers and Resins Group I	06/29/99 04/26/00	.....	12/31/98 03/30/00	07/01/97 12/15/98	07/01/97 08/11/98	07/01/97 04/01/98
W	Epoxy Resins and Non-Nylon Polyamides Production.	06/29/99 04/26/00	07/01/96 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98	07/01/97 08/11/98	07/01/97 04/01/98
X	Secondary Lead Smelting	06/29/99 04/26/00	07/01/96 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98	07/01/97 08/11/98	07/01/97 04/01/98
Y	Marine Tank Vessel Loading Operations	06/29/99 04/26/00	07/01/96 06/11/99	12/31/98 03/30/00	.....	.....	.....
AA/BB	Phosphoric Acid/Phosphate Fertilizers	06/29/99 04/26/00	.....	.....	.....	.....	.....
CC	Petroleum Refineries	06/29/99 04/26/00	07/01/96 06/11/99	12/31/98 03/30/00	.....	07/01/97 08/11/98	.....
DD	Off-Site Waste Operations	06/29/99 04/26/00	07/01/96 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98	07/01/97 08/11/98	07/01/97 04/01/98

TABLE III.—DELEGATION OF AUTHORITY—PART 63 NESHAP—REGION 7—Continued

Subpart	Source category	State of Iowa	State of Kansas	State of Missouri	State of Nebraska	Lincoln-Lancaster County	City of Omaha
EE	Magnetic Tape Manufacturing	06/29/99 04/26/00	07/01/96 06/11/99	12/31/96 03/30/00	.....	07/01/97 08/11/98	.....
GG	Aerospace Manufacturing and Rework Facilities	06/29/99 04/26/00	07/01/96 06/11/99	12/31/96 03/30/00	07/01/97 12/15/98	07/01/97 08/11/98	07/01/97 04/01/98
HH	Oil and Natural Gas Production	06/29/99 04/26/00	.....	.....	.....	.....	.....
II	Shipbuilding and Ship Repair	06/29/99 04/26/00	07/01/96 06/11/99	12/31/96 03/30/00	12/31/98 03/30/00	.....	07/01/97 04/01/98
JJ	Wood Furniture Manufacturing Operations	06/29/99 04/26/00	07/01/96 06/11/99	12/31/96 03/30/00	07/01/97 12/15/98	07/01/98 08/11/98	07/01/97 04/01/98
KK	Printing and Publishing Industry	06/29/99 04/26/00	07/01/96 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98	07/01/97 08/11/98	07/01/97 04/01/98
LL	Primary Aluminum Production	06/29/99 04/26/00	07/01/96 06/11/99	12/31/98 03/30/00	.....	.....	.....
OO	Tanks—Level 1	.....	.....	12/31/98 03/30/00	07/01/97 12/15/98	07/01/97 08/11/98	07/01/97 04/01/98
PP	Containers	.....	.....	12/31/98 03/30/00	07/01/97 12/15/98	07/01/97 08/11/98	07/01/97 04/01/98
QQ	Surface Impoundments	.....	.....	12/31/98 03/30/00	07/01/97 12/15/98	07/01/97 08/11/98	07/01/97 04/01/98
RR	Individual Drain Systems	.....	.....	12/31/98 03/30/00	07/01/97 12/15/98	07/01/97 08/11/98	07/01/97 04/01/98
VV	Oil-Water Separators and Organic-Water Separators.	.....	.....	12/31/98 03/30/00	07/01/97 12/15/98	07/01/97 08/11/98	07/01/97 04/01/98
YY	Generic MACT	06/29/99 04/26/00	.....	.....	.....	.....	.....
CCC	Steel Pickling-HCL Process	06/29/99 04/26/00	.....	.....	.....	.....	.....
DDD	Mineral Wool Production	06/29/99 04/26/00	.....	.....	.....	.....	.....
EEE	Hazardous Waste Combustors	.....	.....	12/31/98 03/30/00	.....	.....	.....
GGG	Pharmaceutical Production	06/29/99 04/26/00	.....	12/31/98 03/30/00	.....	.....	.....
HHH	Natural Gas Transmission and Storage	06/29/99 04/26/00	.....	.....	.....	.....	.....
III	Flexible Polyurethane Foam Production	.....	.....	12/31/98 03/30/00	.....	.....	.....
JJJ	Polymers and Resins Group IV	06/29/99 04/26/00	07/01/96 06/11/99	12/31/98 03/30/00	07/01/97 12/15/98	07/01/97 08/11/98	07/01/97 04/01/98
LLL	Portland Cement Manufacturing	06/29/99 04/26/00	.....	.....	.....	.....	.....
MMM	Pesticide Active Ingredient Production	06/29/99 04/26/00	.....	.....	.....	.....	.....
NNN	Wool Fiberglass Manufacturing	06/29/99 04/26/00	.....	.....	.....	.....	.....
OOO	Polymers and Resins III, Amino Resins/ Phenolic Resins.	.....	.....	.....	.....	.....	.....
PPP	Polyether Polyols Production	06/29/99 04/26/00	.....	.....	.....	.....	.....
TTT	Primary Lead Smelting	06/29/99 04/26/00	.....	.....	.....	.....	.....
XXX	Ferroalloys Production	06/29/99 04/26/00	.....	.....	.....	.....	.....

Summary of This Action

After a review of the submissions, the Regional Administrator determined that delegation was appropriate for the source categories with the conditions set forth in the original NSPS and NESHAP delegation agreements, and the limitations in all applicable regulations, including 40 CFR Parts 60, 61, and 63.

You should refer to the applicable agreements and regulations referenced above to determine specific provisions which are not delegated.

All sources subject to the requirements of 40 CFR Parts 60, 61, and 63 are also subject to the equivalent requirements of the above-mentioned state or local agencies.

EPA's review of the pertinent regulations shows that they contain adequate and effective procedures for the implementation and enforcement of these Federal standards. This rule informs the public of delegations to the above-mentioned agencies.

I. What Are the Administrative Requirements Associated With This Document?

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the agency has made a "good

cause" finding that this action is not subject to notice-and-comment requirements under the APA or any other statute (see section I. of this document), it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This minor action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act (5 U.S.C. 801 et *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Parts 460, 461 and 463

Environmental protection, Air pollution control, Intergovernmental relations.

Authority: This rule is issued under the authority of sections 101, 110, 112, and 301 of the CAA, as amended (42 U.S.C. 7401, 7410, 7412, and 7601).

Dated: April 3, 2000.

William W. Rice,

Acting Regional Administrator, Region 7.

[FR Doc. 00–9663 Filed 4–17–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 00–8; RM–9788]

Radio Broadcasting Services; Spencer and Webster, MA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of Montachusett Broadcasting, Inc. this document reallots Channel 255A from Spencer to Webster, Massachusetts, and modifies the license of Station WORC–FM to specify Webster as the community of license. *See* 65 FR 4491, published January 27, 2000. The reference coordinates for Channel 255A at Webster, Massachusetts, are 42–02–10 and 71–59–23. With this action, the proceeding is terminated.

EFFECTIVE DATE: May 16, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 00–8, adopted March 22, 2000, and released March 31, 2000. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Massachusetts, is amended by removing Spencer and Channel 255A.

3. Section 73.202(b), the Table of FM Allotments under Massachusetts, is amended by adding Webster and Channel 255A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–9615 Filed 4–17–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE51

Endangered and Threatened Wildlife and Plants; Final Rule To List as Endangered the O'ahu 'Elepaio From the Hawaiian Islands and Determination of Whether Designation of Critical Habitat is Prudent

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine the O'ahu 'elepaio (*Chasiempis sandwichensis ibidis*) to be an endangered species under the Endangered Species Act of 1973, as amended (Act). This bird is endemic to the island of O'ahu, Hawaiian Islands, where it was formerly found in all forested areas on the island. The O'ahu 'elepaio is currently found in greatly reduced numbers and is restricted to seven isolated populations occurring primarily in mid-elevation forests in portions of the Ko'olau and Wai'anae Mountains. The O'ahu 'elepaio is

threatened primarily by disease, including avian pox virus and malaria, and predation by nonindigenous mammals. Other known threats include storms with heavy rainfall and high winds that destroy nests; habitat degradation and loss, including habitat fragmentation due primarily to human impacts; and destruction of foraging habitat by feral pigs (VanderWerf 1993).

In light of new biological information provided during the public comment period, we have reanalyzed our original determination that designation of critical habitat was not prudent for this species. In summary, we find the O'ahu 'elepaio may benefit from the designation of critical habitat by indicating new areas for consultation under section 7 of the Act, and by providing educational benefits. Thus, we have determined that the designation of critical habitat is prudent for this species.

EFFECTIVE DATE: This rule takes effect on May 18, 2000.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Pacific Islands Ecoregion, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, Hawai'i 96850.

FOR FURTHER INFORMATION CONTACT: Karen W. Rosa, Assistant Field Supervisor-Endangered Species, Pacific Islands Ecoregion, at the above address (telephone 808/541–3441, FAX 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian archipelago consists of eight main islands and the shoals and atolls of the northwest Hawaiian Islands. The islands were formed sequentially by basaltic lava that emerged from a crustal hot spot located near the southeast coast of the island of Hawai'i (Stearns 1985).

The second oldest main island, O'ahu, is 2.5 million to 3.5 million years old and is heavily weathered. O'ahu has two principal mountain ranges, the Ko'olau and Wai'anae Mountains. The Ko'olau Mountains extend 60 kilometers (km) (37 miles (mi)) from southeast to northwest along the eastern half of the island. The windward (northeast) slope of these mountains is characterized by steep cliffs and short ridges less than 6 km (4 mi) long. Leeward ridges as long as 18 km (11 mi) parallel each other to the southwest and west, alternating with steep-sided stream valleys. The peak elevation in the Ko'olau Mountains occurs at Pu'u Konahua Nui (955 meters (m); 3,100 feet (ft)). The Wai'anae Mountains run from southeast to northwest in a 32-km (20-mi) arc along the western coast of O'ahu. The leeward (western) cliffs of the Wai'anae Mountains are steep; both windward and leeward ridges are less than 5 km (3 mi) in length. The peak elevation occurs at Mt. Ka'ala (1,230 m; 4,000 ft).

Currently, approximately 36 percent (134,300 ac) of O'ahu is forested (Buck *et al.* 1988). Of these forested lands, approximately 49 percent is considered native (dominated by koa (*Acacia koa*) and ōhia (*Metrosideros* spp.) forests) with the remainder (51 percent) dominated by introduced species, e.g., common guava (*Psidium guajava*), strawberry guava (*P. cattleianum*), Java plum (*Eugenia cumini*), mango (*Mangifera indica*), and several species of *Eucalyptus* (Buck *et al.* 1988).

The O'ahu elepaio is a member of the monarch flycatcher family, Monarchidae (American Ornithologists' Union 1997), and is most likely related to the genus *Monarcha* (Mayr 1943, Conant 1977). The ancestors that gave rise to 'elepaio were probably of Melanesian origin with colonization of Hawai'i occurring through Polynesia or Micronesia (Baker 1951).

A physical description of the O'ahu 'elepaio is provided by VanderWerf (1998b). O'ahu 'elepaio have a blunt, medium-length bill that is mostly black and a long tail, which is often held up at an angle. Body length is about 15 centimeters (cm) (6 inches (in)) long, and weight varies between 11 and 15 grams (0.4 and 0.5 ounces). Males are usually 10 percent larger than females. Adults have a dark brown crown and back, and white underparts with the upper breast streaked very lightly with brown. The eyebrow and forehead are rufous, lores (area between a bird's eye and the base of the bill) are white, and the auricular (the feathers covering the opening of a bird's ear) is mostly black, forming a contrasting pattern. Distinctive field marks of adults are the white wing bars, rump, and tail-tips. Males are usually more black on the throat than females, especially the chin; however, this difference is not always detectable, and some overlap occurs. Immature birds are rufous on the head, back, upper breast, and wing bars.

The 'elepaio from the island of O'ahu has been recognized as a distinct taxonomic entity since Stejneger first described it as *Chasiempis ibidis* in 1887. Wilson (1891) described the bird as *C. gayi*, but, as pointed out by Olson (1989), the epithet *ibidis* has priority over *gayi*. Various taxonomic treatments of the Hawaiian 'elepaio have described from one to six species and up to five subspecies (Sclater 1885, Stejneger 1887, Wilson and Evans 1890–1899, Wilson 1891, Rothschild 1892–1900, Henshaw 1902, Perkins 1903, MacCaughey 1919, Bryan and Greenway 1944, Pratt 1979 and 1980, Olson 1989, Olson and James 1991). The taxonomy used in this rule follows Pyle (1992) and recognizes only a single species of 'elepaio in Hawai'i (Chasiempis sandwichensis) with three subspecies, each of which is endemic to a different island. The three island-specific subspecies are the Kau'ai 'elepaio (*C. s. sclateri* Ridgeway 1882), O'ahu 'elepaio (*C. s. ibidis* Stejneger 1887), and Hawai'i 'elepaio (*C. s. sandwichensis* Gmelin 1789). These subspecies differ considerably in plumage coloration and somewhat in vocalizations, but are quite similar in ecology and behavior (Conant 1977, Pratt 1980, VanderWerf 1998b).

Based upon the geographic variation among the three subspecies of 'elepaio, species status might be appropriate for each subspecies (Conant *et al.* 1998). Systematic investigation of genetic, morphological, and vocal variation of each subspecies has begun and will help identify whether each taxon should be considered a distinct species (VanderWerf 1998b).

Comments by early naturalists indicate that the O'ahu 'elepaio was once widespread in forested areas throughout O'ahu at all elevations. Perkins (1903) remarked that "the universal distribution over the islands they severally inhabit, from the lowest bounds to the uppermost edge of continuous forest, as well as their extreme abundance and obtrusive familiarity, has caused them to be noticed by many persons who have seen no other native bird." Bryan (1905) noted that the 'elepaio "remains the most abundant Hawaiian species on the mountainside all the way from the sea to well up into the higher elevations," while MacCaughey (1919) said "the altitudinal range * * * on * * * O'ahu is approximately from 800 ft to the highest summits."

The earliest described historical range, however, was likely to have been somewhat modified by habitat destruction. MacCaughey (1919) noted, "[o]riginally, when the forests covered much more of the lowlands than at present, and extended down to the strand in many districts, the 'elepaio was abundant at the lower levels * * *" Despite their descriptions of reduced range, naturalists were optimistic about the 'elepaio's chances for survival. Henshaw (1902) wrote "* * * it is probable that when most of the Hawaiian birds are extinct the 'elepaio will long continue to maintain itself in scarcely diminished numbers." MacCaughey (1919) wrote, "[t]he one

indigenous forest bird that appears to successfully withstand the devastating influences of 'civilization' is the Hawaiian Flycatcher or 'elepaio." Munro (1944) was similarly optimistic about the 'elepaio, reporting that "[i]t is holding its own well in the O'ahu forests from which so many of the native birds have long disappeared."

Early observations indicate that the O'ahu 'elepaio was widely distributed and extremely abundant. Rothschild (1893) called the 'elepaio "one of the commonest, if not the commonest, of all the small native birds on O'ahu." Similarly, Seale (1900) said the 'elepaio was "the commonest native land bird to be found on the island." MacCaughey (1919) stated it was "the most abundant representative of the native woodland avifauna," and "abundant in all parts of its range." However, Bryan (1905) found it to be "much more frequently met within the Wai'anae mountains than in the Ko'olau range back of Honolulu," which may indicate that the species' optimum habitat is dry, rather than wet, forest.

Based on the above range descriptions, the O'ahu 'elepaio was historically very general in its habitat requirements, and occupied all types of forest at most elevations. Several authors noted that 'elepaio reached their greatest abundance in valleys at middle elevations. For example, Seale (1900) said that "its usual haunt is the densely wooded cañons at an elevation of from 800 to 1,300 feet." MacCaughey (1919) observed that the 'elepaio is "a bird of the humid and mesophytic forests," and said it "is most plentiful in the protected wooded ravines and on the valley slopes."

The generalized habitat requirements of the O'ahu 'elepaio are also shown by its ability to forage for arthropods and nest in a variety of different plant species, including nonnative species. Perkins (1903) believed that "to the changes wrought by civilization they are less susceptible than any other bird, and they may be seen feeding and even nesting in dense thickets of the introduced guava, or amongst masses of the prickly lantana, as contentedly as amongst the native vegetation." Conant (1977) studied a population that existed in a forest of entirely introduced plant species. The species shows extremely versatile foraging behavior and uses all available plant species and all heights in forests of native plant species (Conant 1981, VanderWerf 1993 and 1994). 'elepaio use all available substrates for foraging, including the ground and fallen logs, vertical trunks, branches, twigs, leaves, and the air (VanderWerf 1998b). The proportion of the substrates used for foraging depends upon the habitat. For example, in dense forests, 'elepaio use the ground more, and, in open forests, they use the air and leaves more (VanderWerf 1994).

O'ahu 'elepaio occur primarily in mesic mixed-species forests with a tall canopy and well-developed understory (VanderWerf *et al.* 1997; VanderWerf 1998b). The O'ahu 'elepaio appears to be most common in valleys and on slopes between 200 m (656 ft) and 800 m (2,625 ft) elevation (VanderWerf 1998b). Valleys may support more 'elepaio than ridges or slopes because they contain taller forest and are, therefore, more humid and protected from desiccating winds and large temperature fluctuations (VanderWerf *et al.* 1997). The species is less numerous in drier forests and on ridges (VanderWerf 1998b). O'ahu 'elepaio are not found in very wet, stunted forest on high windswept ridges and summits, in very dry scrubby forest, in forests that lack a subcanopy, or in monotypic forests (Shallenberger and Vaughn 1978; VanderWerf 1998b). 'Elepaio occur between 200 m (656 ft) and 500 m (1,641 ft) in the Ko'olau Mountain range and between 550 m (1,805 ft) and 850 m (2,789 ft) in the Wai'anae Mountain range (VanderWerf 1998b). O'ahu 'elepaio will also occur as low as 90 m (295 ft) elevation in the southern Ko'olau Mountains (VanderWerf *et al.* 1997).

The distribution and abundance of O'ahu 'elepaio do not appear to be related to the amount of native vegetation or species composition, but apparently to forest structure (VanderWerf *et al.* 1997). During an intensive bird survey of the central Ko'olau Mountains on O'ahu in 1978, Shallenberger and Vaughn (1978) found the greatest abundance of 'elepaio in alien forests, particularly areas with kukui (*Aleurites moluccana*) and guava trees, and in mixed alien-native forest. The occurrence of 'elepaio was lower in forests of entirely native species, primarily ōhia and koa. The lesser abundance in native forest found by Shallenberger and Vaughn (1978) is unlikely to be a sampling artifact since the greatest effort was made in areas of native forest. The lesser abundance is likely due to a preference for certain elevations and diverse forest structure, rather than particular plant species. Also, more recent surveys conducted in the southern Ko'olau Mountains (VanderWerf *et al.* 1997) indicate that forest structure and density are more important components of O'ahu 'elepaio habitat than plant species composition. O'ahu 'elepaio were found to be most abundant in valleys between 200 m (656 ft) and 400 m (1,312 ft) elevation, with mesic forest that contained a tall canopy and well-developed understory. 'Elepaio were found in shorter, drier forests on slopes and ridges, but were less common in this type of habitat and were not found in areas where there was no understory. Many of the plant species found at the study site were introduced species that sometimes dominated the overstory and understory. Of 70 locations sampled, 49 percent of the locations had overstories that were composed entirely of introduced species, while 50 percent had a mixture of native and introduced species. Only 1 percent had an overstory that was mostly composed of native vegetation. Within the understory, 44 percent of sites comprised only introduced species, 56 percent had a mixture of native and introduced species, and none had only native species. Native plants that are common throughout the current range of the O'ahu 'elepaio include koa, papala kepau (*Pisonia umbellifera*), mamaki (*Pipturus albidus*), and lama (*Diospyros sandwicensis*) (VanderWerf *et al.* 1997). Introduced plants that are common where 'elepaio occur include kukui, common guava, strawberry guava, mango, ti (*Cordyline terminalis*), and Christmasberry (*Schinus terebinthifolius*) (VanderWerf *et al.* 1997).

Conant (1995) identified 598 separate observations of O'ahu 'elepaio dating from 1883 to 1995. Many of these sightings occurred in the same location, but over a period of years. By consolidating observations made at the same location, researcher could identify 83 site-specific locations where 'elepaio had been seen. Sixty-nine of these sites (84 percent) have been revisited between 1990 and 1995. Of these revisited sites, only 31 (45 percent) still have 'elepaio present. In 1995, the 31 extant sites were thought to be distributed among only 6 isolated populations in the southern Ko'olau Mountains and the central Wai'anae Mountains. Further analysis of both these data and the writings of early naturalists indicates that the 'elepaio originally inhabited 75 percent of O'ahu's land mass. By 1960, only 30 percent of the original habitat was still occupied. Fifteen years later, in 1975, the distribution had declined to 14 percent of the original distribution. The O'ahu 'elepaio currently occupies an area of 4,700 ha (11,600 ac). This amount represents approximately 4 percent of its original range.

While a collapse of the O'ahu 'elepaio's range has clearly occurred, decline in population density in the remaining populations has been more

difficult to determine. Williams (1987) examined the decline of O'ahu 'elepaio using Christmas Bird Counts from 1944 to 1985. Using standardized data (one census per year with number of birds per hour of observation), Williams documents a clear downward trend in 'elepaio observations. The data show a sharp decline in O'ahu 'elepaio observations beginning in the late 1950s and continuing through the 1960s, when observations were one or fewer birds per observer hour, dropping to less than 0.5 birds per party hour after 1974.

In a 1992 report on Hawai'i forest bird conservation assessment and management, Ellis *et al.* (1992) estimated the O'ahu 'elepaio population at 200 to 500 birds. This report further stated that two subpopulations of O'ahu 'elepaio existed, one in the Wai'anae Mountains and the other in the Ko'olau Mountains. A systematic range-wide count of O'ahu 'elepaio was conducted from 1995 to 1998. Currently, the O'ahu 'elepaio population is estimated at 1,500 birds (VanderWerf 1999). Island-wide surveys are nearly complete, and the possibility that any large populations of O'ahu 'elepaio have been overlooked is unlikely (VanderWerf 1997). There are seven geographically isolated populations: three in the Ko'olau Mountains and four in the Wai'anae Mountains (VanderWerf 1997). Ellis *et al.* (1992) estimated that 20 percent of the population occurred in the Wai'anae Mountains and 80 percent in the Ko'olau Mountains. According to the 1997 estimate, 59 percent of the population occurs in the Wai'anae Mountains and 41 percent in the Ko'olau Mountains.

The present populations of O'ahu 'elepaio occur on lands owned by Federal, State, and private parties. Analyses of major land ownership patterns identify 69 percent of the current range in privately held lands, 18 percent is federally owned or leased, and 13 percent occurs in State-owned areas. Ownership patterns vary among the seven populations. Five populations have between 66 and 99 percent private ownership within their ranges, one population occurs on land primarily owned by the State, and one population occurs on Federal land. Ninety-nine percent of the current O'ahu 'elepaio range occurs within State-designated Conservation Districts. This designation offers varying degrees of protection and may permit human activities that may be detrimental to the 'elepaio. Sixteen percent of the land designated as a Conservation District occurs in a subzone designated by the State as Protective. This subzone includes State Natural Area Reserves and The Nature Conservancy of Hawai'i's Honouliuli Preserve and aims to protect valuable resources such as wildlife sanctuaries.

Previous Federal Action

We were petitioned by Mr. Vaughn Sherwood on March 22, 1994, to list the O'ahu 'elepaio as an endangered or threatened species with critical habitat. The November 15, 1994, Animal Notice of Review (59 FR 58991) classified the O'ahu 'elepaio (*Chasiempis sandwichensis gayi*) as a category 1 candidate. Category 1 candidates were those species for which we had sufficient data in our possession to support a listing proposal. On June 12, 1995 (60 FR 30827), we published a 90-day petition finding stating that the petition presented substantial information that listing may be warranted. In the February 28, 1996 (61 FR 7596), and September 19, 1997 (62 FR 49398), notices, we discontinued category designations and the O'ahu 'elepaio was listed as a candidate species. Candidate species are those for which we have on file sufficient information on biological vulnerability and threats to support proposals to list as threatened or endangered. On October 6, 1998 (63 FR 53623), we published the proposed rule to list the O'ahu 'elepaio as an endangered species. Because *C. s. gayi* is a synonym of *C. s. ibidis*, the proposed rule constituted the final 12-month finding for the petitioned action.

The processing of this final rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of this final rule is a Priority 2 action.

Summary of Comments and Recommendations

In the October 6, 1998, proposed rule and associated notifications, we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. The public comment period closed on December 7, 1998 (63 FR 53623). We contacted appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties and requested them to comment. We also published newspaper notices in the Honolulu Star-Bulletin and Honolulu Advertiser on October 26, 1998, inviting general public comment.

In response to the open comment period, we received 15 comments on the proposed rule. Three Federal agencies provided comments, two supporting listing and one neither supporting nor opposing the proposal. Four Hawai'i State agencies provided comments, one supporting the proposal and three neutral. One Honolulu County agency commented that the agency supports the listing. The proposal was supported by five individuals and one conservation organization and opposed by one nonprofit legal foundation. Relevant information provided by these commenters has been incorporated into this rule.

Written opposition to listing of the O'ahu 'elepaio was based on our supposed lack of jurisdiction to enact the proposed rule and beliefs that the rule should be withdrawn because of a presumption that no connection exists between regulation of this bird and a substantial effect on "interstate commerce." The Federal Government has the authority under the Commerce Clause of the U.S. Constitution to protect this species, for reasons given in Judge Wald's opinion and Judge Henderson's concurring opinion in *National Association of Homebuilders* v. *Babbitt*, 130 F.3d 1041 (D.C. Cir. 1997), *cert. denied*, 1185 S. Ct. 2340 (1998). That case involved a challenge to application of Endangered Species Act prohibitions to protect the listed Delhi Sands flower-loving fly. As with the O'ahu 'elepaio , the Delhi Sands flower-loving fly is endemic to only one State. Judge Wald held that application of the Endangered Species Act's prohibition against taking of endangered species to this fly was a proper exercise of Commerce Clause power to regulate: (1) Use of channels of interstate commerce; and (2) activities substantially affecting interstate commerce, because it prevented loss of biodiversity and destructive interstate competition. Judge Henderson upheld protection of the fly because doing so prevents harm to the ecosystem upon which interstate commerce depends, and because doing so regulates commercial development that is part of interstate commerce.

The Federal Government also has authority under the Property Clause of the Constitution to protect this species.

The O'ahu'elepaio occurs on Federal land on the U.S. Army's Makua Military Reservation and Schofield Barracks Military Reservation. If this species were to become extinct, the diversity of wildlife on the Makua and Schofield Barracks Military Reservations would be diminished. The courts have long recognized Federal authority under the Property Clause to protect Federal resources in such circumstances. See, e.g., *Kleppe* v. *New Mexico*, 429 U.S. 873 (1976); *United States* v. *Alford*, 274 U.S. 264 (1927); *Camfield* v. *United States*, 167 U.S. 518 (1897); *United States* v. *Lindsey*, 595 F.2d 5 (9th Cir. 1979). Therefore, our application of the Act to the O'ahu 'elepaio (*Chasiempis sandwichensis ibidis*), a bird endemic to the island of O'ahu in the Hawaiian Islands, is constitutional.

We solicited the expert opinions of four qualified and independent specialists regarding pertinent scientific and/or commercial data and assumptions relating to the taxonomy, demography, and supportive biological and ecological information for the O'ahu 'elepaio. We received written comments from two of these experts and incorporated their comments into the final rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we have determined that the O'ahu 'elepaio should be classified as an endangered species. Section 4 of the Act and regulations (50 CFR part 424) issued to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to the O'ahu 'elepaio (*Chasiempis sandwichensis ibidis*) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range.

Historical habitat loss due to factors discussed below has undoubtedly reduced the range of O'ahu 'elepaio. Although 'elepaio appear to be generalized in habitat use and can adapt to a variety of plant species, this species may be sensitive to severe changes in forest structure, such as clearing of the understory or creation of monospecific, even-aged plantations. Feral pigs may pose another threat by destroying ground cover, which provides foraging habitat for 'elepaio. The spread of certain alien plants, such as the velvet tree (*Miconia calvescens*), dramatically alters forest structure and/or diversity and poses a potential threat to the survival of O'ahu 'elepaio.

Alteration of forested areas, including changes in forest composition and forest structure and resulting habitat loss, has impacted the O'ahu 'elepaio. Early Hawaiians significantly altered the native vegetation of O'ahu, particularly in valleys used for taro cultivation. In uncultivated areas, trees were cut for firewood and construction, and fire was used to encourage the growth of grasses used for thatch (Kirch 1982). Destruction of the low-elevation forest resulted in the extinctions of numerous birds and land snails on O'ahu (Olson and James 1982, Kirch 1982). After European contact in 1778, habitat loss accelerated and began to occur at higher elevations. The sandalwood trade, which played a key role for O'ahu, required firewood, and completely eliminated native forests in the vicinity of Honolulu (Cuddihy and Stone 1990). From 1840 to about 1920, vast areas of low-and mid-elevation forest in Hawai'i were cleared for sugarcane cultivation. By the 1970s, more than 100,000 ha (274,000 acres) were under sugarcane cultivation. In contrast to early Hawaiian cultivation that was largely concentrated in mesic valleys and plains, sugarcane cultivation displaced native forest in dry leeward areas, and wide ridges and slopes such as the Leilehua Plateau between the Ko'olau and Wai'anae Mountains on O'ahu. Between 1900 and 1950, pineapple cultivation on O'ahu also resulted in a significant loss of native forests (Cuddihy and Stone 1990). Some of the areas cleared of native forest have either been replanted with exotic trees or regrown in alien vegetation. According to some estimates, approximately 36 percent of the land area on O'ahu is now covered by forest, but only about 49 percent of these forested areas is considered native vegetation (Buck *et al.* 1988).

O'ahu is the population center of the Hawaiian Islands, with about 40 percent of the State's population residing in Honolulu alone. The fastest growing areas on O'ahu, however, are suburban areas and new city development (such as creation of so-called "second cities" outside the city limits of Honolulu). Development can have significant impacts on O'ahu 'elepaio habitat through modification of forest structure and diversity. Although 99 percent of lands within the 'elepaio's range are within State-designated Conservation Districts, designation as such only offers varying degrees of protection and may allow activities, such as construction of individual houses, forestry-related activities, hunting, and recreational uses, that may be detrimental to the 'elepaio. Other types of development can also eliminate habitat. A portion of the H–3 freeway completed in 1997 runs through Halawa Valley, which supports a relatively large population of O'ahu 'elepaio (VanderWerf 1997). The effect of the freeway upon this population is unknown as no monitoring has occurred. Also, amenities such as golf courses may displace native and nonnative forests used by the O'ahu 'elepaio.

Military activities and related impacts on federally owned and leased lands may also affect the O'ahu 'elepaio. O'ahu 'elepaio currently occupy the upper slopes of Makua Valley in and adjacent to the U.S. Army's Makua Military Reservation. The lower section of Makua Valley is used as a live firing range, and the facility has a history of ordnance-induced fires (Hawai'i Heritage Program-The Nature Conservancy of Hawai'i (HHP-TNCH) 1994a). Prescribed burning occasionally results in large fires that, along with construction of firebreaks, destroys 'elepaio habitat and potentially threatens the birds. A large part of the 'elepaio range in the eastern Wai'anae Mountains occurs on the West Range of Schofield Barracks Military Reservation, where live firing also occurs and ordnance-induced fires can pose a significant threat to O'ahu 'elepaio habitat (Hawai'i Heritage Program, 1994b).

Miconia calvescens (velvet tree) is a recently naturalized species native to tropical America. This species has become invasive on islands of Hawai'i, Maui, O'ahu, and Kau'ai. Velvet tree is potentially the most invasive and damaging weed of rainforests of Pacific islands (Medeiros *et al.* 1997). This plant has the potential to greatly disrupt forest canopy and understory structure and significantly alter biological diversity. In moist conditions, this plant grows rapidly up to 15 m (49 ft) tall. This shade-tolerant tree produces abundant seed that is effectively dispersed by birds and accumulates in a large, persistent seed bank, and develops monospecific stands that eliminate understory plant species by shading and crowding (Medeiros *et al.* 1997). In Tahiti, it has become a dominant plant species in habitats similar to those of Hawai'i (Almeda 1990, Cuddihy and Stone 1990). Medeiros *et al.* (1997) state that velvet tree now dominates the forest in 65 percent of the island of Tahiti through the establishment of large, monospecific stands. This plant is now naturalized on

O'ahu at three locations in the southeastern Ko'olau Mountain range, including Manoa Valley (Medeiros *et al.* 1997), where one population of O'ahu 'elepaio is located.

Pigs (*Sus scrofa*) were introduced to Hawai'i by the Polynesian ancestors of Hawaiians, and later by western immigrants. The Polynesian strain of pig was comparatively small, and seems to have had a minimal impact on the native forests. The European strain of pig escaped domestication and invaded primarily wet and mesic forests on Kau'ai, O'ahu, Moloka'i, Maui, and Hawai'i. These pigs are large animals that threaten the continued existence of native plants and animals within these forest habitats. While foraging, pigs root and trample the forest floor. Given that O'ahu 'elepaio rely on diverse groundcover for foraging, the disturbance caused by pigs could have a major impact on the species. In a study conducted at the Hakalau Forest National Wildlife Refuge on the island of Hawai'i, researchers found that areas where the ground cover had been destroyed by feral pigs were used less frequently by the Hawai'i Island subspecies of 'elepaio for foraging (VanderWerf 1994). Expecting the same results on O'ahu is reasonable.

B. Overutilization for commercial, recreational, scientific, or educational purposes

Overutilization is not known to threaten the O'ahu 'elepaio.

C. Disease and predation

Disease and predation are considered the primary threats responsible for the severe decline of the O'ahu 'elepaio in the last few decades. Disease is believed the primary reason for reduced adult survival, and nest predation by introduced mammals, mainly black rats (*Rattus rattus*), is the primary reason for low reproductive success (VanderWerf 1998a).

Avian malaria (*Plasmodium relictum*) and poxvirus (*Avipox* virus sp.) are two documented serious disease threats to O'ahu 'elepaio, as well as all native Hawaiian forest birds (VanderWerf 1998b). Malaria and pox are transmitted by the night-biting mosquito, *Culex quinquefasciatus*, which uses wallows created by feral pigs as breeding grounds. Avian pox can also be spread through physical contact with infected birds or surfaces (VanderWerf 1998b). Avian pox causes lesions on the feet, legs, and bill. Five populations of O'ahu 'elepaio sampled for disease had birds with pox-like lesions (VanderWerf 1998b). *Culex* mosquitos, and thus malaria and pox, are more abundant at lower elevations. Although larvae do not develop well at colder temperatures, mountain elevations on O'ahu are not high enough to preclude mosquitos; therefore, diseases may be more prevalent on this island (VanderWerf 1998b). According to VanderWerf (1998b), 70 percent of O'ahu 'elepaio within low-elevation valleys have pox-like lesions. Although its effects on the O'ahu 'elepaio remain unknown, malaria may also be an important factor for the species' decline (VanderWerf 1998a).

Avian pox is known to increase adult mortality and reduce reproductive success of O'ahu 'elepaio (VanderWerf 1997, 1998a, and 1998b). O'ahu 'elepaio with pox-like lesions are thought to be seriously affected by poxvirus and have lower survival than either healthy 'elepaio or those with healed pox sores (VanderWerf 1998a). Birds with pox likely become more vulnerable to predation or exposure due to the virus weakening the bird (VanderWerf 1998b). Survival rates of birds with healed pox sores were compared with those of apparently healthy birds, and researchers found that if 'elepaio can survive the initial infection, their future survival is not adversely affected (VanderWerf 1998a). Poxvirus also affects reproductive success. Pairs having at least one individual actively infected with pox produced fewer fledglings than healthy pairs or those consisting of at least one individual with healed pox lesions (VanderWerf 1998a).

Because disease, which in many cases is difficult to control, is a factor in the decline of the O'ahu 'elepaio , the existence and survival of genetically resistant individuals is essential to the survival of this taxon. If captive propagation is necessary for the recovery of this species, capture of disease-resistant birds may improve the success of a captive propagation program and increase the survival of birds released into the wild.

A potential factor contributing to the spread of avian disease is the expansion of the range of introduced birds. Introduced birds may act as a reservoir for diseases such as avian pox. Thus, expansion of the range of introduced birds infected with avian pox into the range of O'ahu 'elepaio is likely to have occurred and contributed to the decline of O'ahu 'elepaio. Another potential factor contributing to the spread of avian disease is feral cats (*Felis catus*). Cats may be considered a significant carrier and/or vector of disease. For example, cats are known hosts of the parasite *Taxoplasma gondii*, which is known to be fatal to some native Hawaiian birds (e.g., Hawaiian crow (*Corvus hawaiiensis*)) (Wallace 1973). Stray cats on O'ahu are known to carry *Taxoplasma* antibodies (Wallace 1973), however how this parasite affects O'ahu 'elepaio is unknown.

The Hawaiian short-eared owl, or pueo (*Asio flammeus*), is the natural predator of O'ahu 'elepaio, but given the limited number of pueo left on O'ahu, the pueo has very little impact on the O'ahu 'elepaio. The main predator of O'ahu 'elepaio nests is believed to be the black rat (VanderWerf 1998a). Predation of O'ahu 'elepaio nests by black rats has lowered reproductive success and increased mortality of female O'ahu 'elepaio (VanderWerf 1998a). Reproductive success of 'elepaio, measured by the number of fledglings per pair, is higher in areas where rats were removed, compared to an area where rats were not removed (VanderWerf 1998a). Other known nonnative predators include barn owls (*Tyto alba*), feral cats, small Indian mongoose (*Herpestes auropunctatus*), Polynesian rats (*Rattus exulans*), and Norway rats (*Rattus norwegicus*) (VanderWerf 1998b). Research indicates that removal of predators (*e.g.*, rats, cats, and mongooses) from O'ahu 'elepaio territories may increase the survival of female 'elepaio. Available results indicate that survival of males was similar in areas where rat removal was conducted and where it was not conducted. For those same areas, female 'elepaio survival appeared slightly higher in areas where rats were removed. However, sample sizes were not large enough, and more data are needed to verify these results (VanderWerf 1998a). Although male and female 'elepaio share incubation responsibilities of the eggs during the day, only females incubate at night (VanderWerf 1998b). Thus, females are more vulnerable than males to predation on nests by rats, which are primarily nocturnal (VanderWerf 1998a).

Introduction of alien animals into Hawai'i is a major continual threat to all native flora and fauna. Predation associated with alien introductions could significantly and negatively affect the remaining populations of O'ahu 'elepaio. The threat of the accidental introduction of the brown tree snake (*Boiga irregularis*) from Guam, Saipan, or the Solomon Islands is of particular concern. The brown tree snake is an aggressive predator of birds that has caused a significant decline in avifauna on Pacific islands where this snake has become established. In December 1994, a live brown tree snake was found in a Schofield Barracks warehouse on the island of O'ahu. This snake was

associated with a shipment of U.S. Army materials from Tinian via Guam.

D. The Inadequacy of Existing Regulatory Mechanisms

Currently, the O'ahu 'elepaio is protected under State (Hawai'i Revised Statutes (HRS), Sect. 13–124–3A) and Federal laws (Migratory Bird Treaty Act of 1918, 16 U.S.C. 703–712, 40 Stat. 755, as amended). These laws protect the taxon from capture and collection (without appropriate permits) of individuals, nests, and eggs, but do not afford protection to the habitat of this species.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Storms with heavy rain and strong winds have been known to contribute to mortality of O'ahu 'elepaio eggs and nestlings. On O'ahu, 'elepaio nests, especially those high in trees, and their contents have been destroyed by March storms (VanderWerf 1998b). Prolonged heavy rain can also cause adults to abandon the nests; small fledglings are vulnerable to extended periods of intense rain (VanderWerf 1998b). For example, overall reproductive success in 1998 was lower than the previous year due to inclement weather experienced in late March and early April, when many nests contained eggs or small nestlings (VanderWerf 1998a). Several nests failed because they were blown out of the trees by winds in excess of 40 miles per hour (VanderWerf 1998a).

Naturally occurring events, such as hurricanes, may affect the continued existence of the O'ahu 'elepaio. Because the subspecies now exists only as seven small isolated populations, rather than one large, continuous, interbreeding population, a population decline could be exacerbated by random genetic, environmental, and demographic events. Small population size can reduce reproductive rates, increase rates of inbreeding and inbreeding depression (the expression of deleterious recessive genes occurring in the population), and facilitate the loss of future plasticity or evolutionary potential. Loss of genetic variability through genetic drift reduces the ability of small populations to cope with ecological and environmental stresses such as habitat modification and alien species.

If populations continue to decline and become extremely small, demographic events take on greater significance. For example, if weather events (*e.g.*, El Niño episodes) cause reproductive failure for one or more years, and are followed by a period of high predation, a small population has less resiliency and is vulnerable to extirpation. Hurricanes may cause large or total population loss through direct mortality, habitat destruction or modification, and dispersal of invasive alien plants. Although birds in the Hawaiian Islands have long endured hurricanes, major hurricanes in concert with low population numbers and other factors could severely affect the survival of O'ahu 'elepaio.

Another potential factor contributing to the decline of the O'ahu 'elepaio may be the competition for food or space with introduced birds such as the Japanese white-eye (*Zosterops japonicus*), white-rumped shama (*Copsychus malabaricus*), and the red-vented and red-whiskered bulbuls (*Pycnonotus cafer* and *P. jocosus*) (VanderWerf *et al.* 1997; VanderWerf 1998). Although the extent of competition has not been carefully studied, limited anecdotal and circumstantial evidence indicate that competition occurs with any alien bird species (VanderWerf *et al.* 1997; VanderWerf 1998).

The Japanese white-eye, introduced to Hawai'i in the 1930s, has expanded its range into remote areas within the last 2 decades. This species is probably the most abundant bird in Hawai'i (Pratt *et al.* 1987). Scott *et al.* (1986) demonstrated that distribution of the Japanese white-eye was negatively correlated with the distributions of native birds, including 'elepaio. 'elepaio have frequently been known to chase Japanese white-eyes from the area surrounding their nest (Conant 1977). Additionally, the red-vented bulbul was introduced to O'ahu in 1965 and greatly increased in numbers after 1970 (Williams 1987). This species is now extremely abundant in forested habitats. While primarily a fruit-eater, red-vented bulbuls take insect prey (Sheila Conant, pers. comm., 1995) and, as a particularly aggressive species, are known to chase other birds (Berger 1981).

In summary, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the O'ahu 'elepaio as endangered. The most recent estimates indicate that 1,500 O'ahu 'elepaio remain, occurring in 7 small and geographically isolated populations (VanderWerf 1998 and 1999). This bird is primarily threatened by disease, including avian pox-virus and malaria, and predation by nonindigenous mammals. Other known threats include storms with high winds that destroy nests and their contents; habitat degradation and loss, including habitat fragmentation due primarily to human impacts; and destruction of foraging habitat by feral pigs. Potential threats include the introduction and spread of alien species, such as the brown tree snake, and alien plants that alter the structure and diversity of forested areas and competition with introduced birds. Small total population size, limited distribution, and population fragmentation make this taxon particularly vulnerable to reduced reproductive vigor and the effects of naturally occurring events. Because the O'ahu 'elepaio is in danger of extinction throughout all or a significant portion of its range, it fits the definition of endangered as defined in the Act. Therefore, the determination of endangered status for the O'ahu 'elepaio is appropriate.

Critical Habitat

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection; and specific areas outside the geographical area occupied by a species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Critical habitat designation, by definition, directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by

taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species.

In the proposed rule, we indicated that designation of critical habitat for this species was not prudent because we believed a critical habitat designation would not provide any additional benefit beyond that provided through listing as endangered.

In this final rule, however, we find that designation of critical habitat is prudent for the O'ahu 'elepaio (*Chasiempis sandwichensis ibidis*). In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (e.g., *Natural Resources Defense Council* v. *U.S. Department of the Interior*, 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawai'i* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawai'i 1998)). Based on the standards applied in those judicial opinions, we believe that the designation of critical habitat for this species would be prudent.

In the absence of a finding that critical habitat would increase threats to a species, if any benefits would result from critical habitat designation, then a prudent finding is warranted. In the case of this species, some benefits may result from designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, in some instances section 7 consultation might be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. Designating critical habitat may also provide some educational or informational benefits. Therefore, we find that critical habitat is prudent for the O'ahu 'elepaio.

However, we cannot propose critical habitat designations for this subspecies at this time. Our Hawaiian field office, which would have the lead for such a proposal, is in the process of complying with the court order in *Conservation Council for Hawai'i* v. *Babbitt*, CIV NO. 97–00098 ACK (D. Haw. Mar. 9 and Aug. 10, 1998). In that case, the United States District Court for the District of Hawai'i remanded to the Service its "not prudent" findings on critical habitat designation for 245 species of Hawaiian plants. The court ordered us not only to reconsider these findings, but also to designate critical habitat for any species for which we determine on remand that critical habitat designation is prudent. Proposed designations or nondesignations for 100 species are to be published by November 30, 2000. Proposed designations or nondesignations for the remaining 145 species are to be published by April 30, 2002. Final designations or nondesignations are to be published within 1 year of each proposal. Compliance with this court order is a huge undertaking involving critical habitat determinations for over one-fifth of all species that have ever been listed under the Endangered Species Act, and over one-third of all listed plant species. In addition, we have agreed to include in this effort critical habitat designations for an additional 10 plants that are the subject of another lawsuit. See *Conservation Council for Hawai'i* v. *Babbitt*, CIV. NO. 99–00283 HG. We cannot develop proposed critical habitat designations for the Oahu elepaio without significant disruption of the field office's intensive efforts to comply with the *Conservation Council for Hawai'i* v. *Babbitt* remand.

To attempt to do so could also affect the listing program Region-wide. Administratively, the Service is divided into seven geographic regions. This subspecies is under the jurisdiction of Region 1, which includes California, Oregon, Washington, Idaho, Nevada, Hawaii, and other Pacific Islands. About one-half of all listed species occur in Region 1. Region 1 receives by far the largest share of listing funds of any Service region because it has the heaviest listing workload. Region 1 must also expend its listing resources to comply with existing court orders or settlement agreements. In fact, in the last fiscal year, all of the Region's funding allocation for critical habitat actions was expended to comply with court orders. If we were to immediately prepare proposed critical habitat designations for this subspecies notwithstanding the court order pertaining to 245 Hawaiian plant species, efforts to provide protection to many other species that are not yet listed would be delayed. While we believe some benefits may result from designating critical habitat for this subspecies, these benefits are significantly fewer in comparison to the benefits of listing a species under the Endangered Species Act because, as discussed above, the primary regulatory effect of critical habitat is limited to the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat.

As explained in detail in the Final Listing Priority Guidance for FY2000 (64 FR 57114), our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. Deferral of a proposal to designate critical habitat for the Oahu elepaio will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of the Oahu elepaio without further delay. Therefore, given the current workload in Region 1 and, particularly, the Hawaiian field office, we expect that we will be unable to develop a proposal to designate critical habitat for the Oahu elepaio until FY2004.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages public awareness and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. Funding may be available through section 6 of the Act for the State to conduct recovery activities. The protection required of Federal agencies and the prohibitions against certain activities involving listed animals are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing

this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us, under section 7(a)(2) of the Act.

Federal agency actions that may require conference and/or consultation as described in the preceding paragraph include military activities, such as military training and troop movements, taking place on federally owned or leased lands; the involvement of the Army Corps of Engineers in projects subject to section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act of 1899, such as the construction of roads and bridges and dredging projects; U.S. Environmental Protection Agency-authorized discharges under the National Pollutant Discharge Elimination System; U.S. Department of Agriculture/Natural Resources Conservation Service projects; U.S. Department of Housing and Urban Development projects; and other activities with a possible Federal nexus, such as golf course and firebreak construction.

Several of the remaining populations of this bird are located on State land utilized for military training, particularly by the U.S. Army. In the Wai'anae Mountains, those populations are found in the following areas: Pahole to Makaha, including both leeward and windward sides, and Schofield to Palehua, on the windward side. In the Ko'olau Mountains, only a fraction of the area occupied by one 'elepaio population (Aiea ridge south to the Kahauiki Stream) is under military control. Therefore, section 7 consultation will be required before any military activities that may impact the O'ahu 'elepaio , such as military training and troop movements, may take place.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.21 for endangered species, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities. Requests for copies of the regulations regarding listed wildlife and inquiries about permits and prohibitions may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 Northeast 11th Avenue, Portland, Oregon 97232–4181 (telephone 503–231–6241; facsimile 503–231–6243).

As published in the **Federal Register** on July 1, 1994, (59 FR 34272), our policy is to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not be likely to constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Likely activities that we believe could potentially result in a violation of section 9 of the Act include, but are not limited to, the following: road or firebreak construction, military troop training, or other activities that disturb the normal behavior (*e.g.*, breeding, nesting, feeding) of O'ahu 'elepaio or damage habitat used by the species. Activities that we believe would not likely result in a violation of section 9 of the Act include, but are not limited to, nondestructive activities in areas occupied by O'ahu 'elepaio, such as hiking, collecting plants for cultural usage (*e.g.*, hula halau), and hunting game animals. Activities that occur under a valid incidental take permit or in accordance with a section 7 consultation would not violate section 9.

Questions regarding whether specific activities will constitute a violation of section 9 of the Act should be directed to the Manager of the Pacific Islands Ecoregion (see **ADDRESSES** section).

By giving the O'ahu 'elepaio Federal protection under the Act, the State of Hawai'i Endangered Species Act (HRS, Sect. 195D–4(a)) is automatically invoked, prohibiting taking and encouraging conservation by State government agencies. Hawai'i's Endangered Species law states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the Act shall be deemed to be an endangered species under the provisions of this chapter and any indigenous species of aquatic life, wildlife, or land plant that has been determined to be a threatened species pursuant to the Act shall be deemed to be a threatened species under the provisions of this chapter." Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, Sect. 195D–5(c)). Funds for these activities could be made available under section 6 of the Act (State Cooperative Agreements). Thus, the Federal protection afforded to the O'ahu 'elepaio by listing as an endangered species will be reinforced and supplemented by protection under State law.

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.22.

References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Ecoregion (see **ADDRESSES** section).

Author

The primary author of this final rule is Leila Gibson, U.S. Fish and Wildlife Service (see **ADDRESSES** section). Recent data regarding the O'ahu 'elepaio were provided by Eric VanderWerf of the University of Hawai'i.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under BIRDS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
BIRDS							
*	*	*	*	*	*	*	*
'Elepaio, O'ahu	Chasiempis sandwichensis ibidis.	U.S.A. (HI)	Entire	E		NA	NA
*	*	*	*	*	*	*	*

Dated: April 5, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–9684 Filed 4–17–00; 8:45 am]

BILLING CODE 4310–55–U

Proposed Rules

Federal Register
Vol. 65, No. 75
Tuesday, April 18, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

RIN 0551–AA59

Licensing for Certain Sugar-Containing Products Under Tariff-Rate Quota

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule: Extension of comment period.

SUMMARY: The proposed rule, published in the **Federal Register** on March 17, 2000, (65 FR 14478–14484) provides for licensing of imports of sugar-containing products which enter under the tariff-rate quota (TRQ) provided for in Additional U.S. Note 8 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS). Public comments were requested by April 17, 2000. The Department is extending the public comment period to May 17, 2000.

DATES: The comment period has been extended and will expire on May 17, 2000. Comments should be received on or before this date to be assured of consideration.

ADDRESSES: Comments should be mailed or delivered to Diana Wanamaker, Import Policies and Programs Division, Foreign Agricultural Service, 1400 Independence Avenue SW, STOP 1021, U.S. Department of Agriculture, Washington, DC 20250–1021. Comments received may be inspected between 10:00 a.m. and 4:00 p.m. at room 5541–S, 1400 Independence Avenue SW, Washington, DC 20250–1021.

FOR FURTHER INFORMATION CONTACT: Diana Wanamaker at the address above, or telephone at 202–720–2916, or e-mail at *Wanamaker@fas.usda.gov*.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the **Federal Register** on March 17, 2000 (65 FR 14478–14484) and public comments were requested on or before April 17, 2000, to be assured of consideration. In view of private sector and foreign government requests that the comment period be extended in order to more fully assess the proposed import licensing requirement and its effects on business operations, the Department has decided that a 30-day extension of the comment period to May 17, 2000 would be reasonable.

Signed at Washington, D.C. on April 13, 2000.

Timothy J. Galvin,

Administrator, Foreign Agricultural Service.

[FR Doc. 00–9728 Filed 4–17–00; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 99–077–1]

RIN 0579–AB17

Karnal Bunt; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend the Karnal bunt regulations by removing from regulated areas any noninfected acreage that is more than 3 miles from a field or area associated with a bunted wheat kernel. This action would reduce the size of the areas that are regulated because of Karnal bunt in La Paz, Maricopa, and Pinal Counties of Arizona. We also propose to specify that mechanized harvesting equipment must be cleaned and disinfected before leaving a regulated area only if it has been used to harvest host crops that test positive for Karnal bunt. This action would relieve restrictions on the movement of mechanized harvesting equipment from all areas regulated because of Karnal bunt. We believe these actions would not result in a significant risk of spreading Karnal bunt.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by June 19, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–077–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–077–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Vedpal S. Malik, National Karnal Bunt Coordinator, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301)734–6774.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the fungus *Tilletia indica* (Mitra) Mundkur and is spread through the movement of infected seed. In the absence of measures taken by the U.S. Department of Agriculture (USDA) to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–14 (referred to below as the regulations).

Regulated Areas in Arizona

The regulations in § 301.89–3(e) provide the criteria for classifying a field or area as a regulated area for Karnal bunt. Under those criteria, a field or area would be classified as a regulated area when it is:

- A field planted with seed from a lot found to contain a bunted wheat kernel;
- A distinct definable area that contains at least one field that was found during survey to contain a bunted

wheat kernel (the distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of the area's proximity to a field found during survey to contain a bunted kernel); or

• A distinct definable area that contains at least one field that was found during survey to contain spores consistent with Karnal bunt and has been determined to be associated with grain at a handling facility containing a bunted wheat kernel (the distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of the area's proximity to a field that has been associated with grain at a handling facility containing a bunted kernel).

The boundaries of distinct definable areas are determined using the criteria in paragraphs (b) through (d) of § 301.89–3, which provide for the regulation of less than an entire State, the inclusion of noninfected acreage in a regulated area, and the temporary designation of nonregulated areas as regulated areas. Paragraph (c) of § 301.89 states that the Administrator may include noninfected acreage within a regulated area due to its proximity to an infestation or inseparability from the infected locality for regulatory purposes, as determined by:

• Projections of the spread of Karnal bunt along the periphery of the infestation;

• The availability of natural habitats and host materials within the noninfected acreage that are suitable for establishment and survival of Karnal bunt; and

• The necessity of including noninfected acreage within the regulated area in order to establish readily identifiable boundaries.

When we include noninfected acreage in a regulated area for one or more of these reasons, the noninfected acreage, along with the rest of the acreage in the regulated area, is intensively surveyed. Negative results from surveys of the noninfected acreage provide assurance that all infected acreage is within the regulated area. In effect, the noninfected acreage serves as a buffer zone between fields or areas associated with a bunted kernel and areas outside of the regulated area.

Based on 4 years of experience surveying noninfected acreage included in regulated areas, we have determined that a buffer zone of no more than 3 miles around a field or area associated with a bunted kernel is sufficient.

The regulations at § 301.89–3(f) set the boundaries for regulated areas in Arizona, California, New Mexico, and Texas. Certain regulated areas in Arizona, California, and Texas include noninfected acreage. In those regulated areas in California and Texas, the buffer zone does not extend more than 3 miles. However, in Arizona, regulated areas include additional noninfected acreage—in some cases up to 6 miles from a field or area associated with a bunted kernel—when the area is within contiguous agricultural acreage.

We propose to reduce the size of the regulated areas in Arizona by removing noninfected acreage that is more than 3 miles from a field or area associated with a bunted wheat kernel. This action would reduce the size of the areas in La Paz, Maricopa, and Pinal Counties of Arizona that are regulated because of Karnal bunt and would create a uniform and consistent standard for setting the boundaries of regulated areas in all affected States.

As a result of our proposal to reduce the size of the regulated areas in Maricopa and Pinal Counties so that they include only a 3-mile buffer zone around a field or area associated with a bunted kernel, we also propose to add 10 fields in Maricopa County and 5 fields in Pinal County to the respective county lists of individual fields classified as regulated areas. These 15 fields are currently part of larger regulated areas in Pinal and Maricopa Counties that would be broken up by our removing some noninfected acreage from regulation. These fields were planted in 1995 with lots of seed that contained bunted wheat kernels, so we believe it necessary to continue to regulate these fields. However, because crops from these fields have never tested positive for Karnal bunt, we see no need to establish a buffer zone around these fields.

The areas in La Paz, Maricopa, and Pinal Counties of Arizona that we propose to designate as regulated areas are described in § 301.89(f) in the rule portion of this document.

Mechanized Harvesting Equipment

Section 301.89–12 of the regulations requires cleaning and disinfection of mechanized harvesting equipment and seed conditioning equipment. Currently, mechanized harvesting equipment and seed conditioning equipment must be cleaned and disinfected before leaving a regulated area after harvesting any Karnal bunt host crops in regulated areas.

We propose to amend the regulations to require that mechanized harvesting equipment be cleaned and disinfected before leaving a regulated area only if it has been used to harvest host crops that test positive for Karnal bunt.

Our regulations concerning the testing of Karnal bunt host crops (see § 301.89–6) require that harvested host crops be tested for the presence of Karnal bunt prior to movement from the field or before commingling with other grains. This testing occurs before, or while, harvesting equipment is in the field. Harvesting equipment presents a risk only if contaminated by positive host crops. Therefore, instead of requiring all mechanized harvesting equipment to be cleaned and disinfected before leaving the regulated area, we can focus requirements on that equipment that presents a risk of spreading Karnal bunt without causing delays for the operators of mechanized harvesting equipment. This action would reduce the use of corrosive chemicals for cleaning and disinfection in regulated areas and relieve restrictions on the movement of mechanized harvesting equipment from areas regulated because of Karnal bunt.

In connection with this change, we also propose to amend § 301.89–2(i), which lists mechanized harvesting equipment as a regulated article. We would specify that mechanized harvesting equipment is a regulated article only if it has been used to harvest host crops that test positive for Karnal bunt.

The cleaning and disinfection requirements for seed conditioning equipment would remain unchanged because that equipment handles only seed, which presents a greater risk for the artificial spread of Karnal bunt.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this action, which is set forth below. The analysis addresses the effects on small entities, as required by the Regulatory Flexibility Act, and serves as the cost-benefit analysis required by Executive Order 12866.

We propose to amend the Karnal bunt regulations by removing from regulated areas any noninfected acreage that is more than 3 miles from a field or area associated with a bunted wheat kernel. This action would reduce the size of the areas that are regulated because of Karnal bunt in La Paz, Maricopa, and Pinal Counties of Arizona. We also propose to specify that mechanized harvesting equipment must be cleaned

and disinfected before leaving a regulated area only if it has been used to harvest host crops that test positive for Karnal bunt. This action would relieve restrictions on the movement of mechanized harvesting equipment from all areas regulated because of Karnal bunt.

Regulated Areas in Arizona

As a result of the proposed reduction of regulated areas in La Paz, Maricopa, and Pinal Counties of Arizona, the regulated agricultural acreage in central Arizona would decline by about 131,000 acres, reducing the regulated acreage in Arizona as a whole by about one-third, from 389,000 acres to 258,000 acres. The total regulated agricultural acreage in Arizona, California, New Mexico, and Texas would decline by about 25 percent, from approximately 484,000 acres to 353,000 acres.

This change would benefit an estimated five wheat producers operating in the areas that would no longer be regulated. These five producers would benefit because they would be able to move their wheat without restriction. Currently, wheat grain may be moved from a regulated area only if it tests negative for bunted kernels, and commercial wheat seed may not be moved from a regulated area.

However, the benefits for these producers are not likely to be significant for two reasons. First, grain is tested for Karnal bunt at no cost to producers in all regulated areas. For producers who would be affected by this change, the elimination of the current testing requirement would remove an inconvenience only, not a financial burden. Second, very little commercial wheat seed is, or is expected to be, grown in the areas that would be removed from regulation. Because of that, the elimination of the current restriction on moving commercial seed would have only a minimal economic effect on producers in the affected areas.

It is possible that, by giving affected producers new status as deregulated growers, the rule could serve to enhance the perception of the quality of the producers' wheat crop. This could, in turn, lead to higher wheat prices. However, even if producers were to benefit from higher prices for their wheat, those prices are not likely to increase significantly.

Mechanized Harvesting Equipment

The proposed change to the requirements for cleaning and disinfecting mechanized harvesting equipment would primarily benefit custom combine harvesters, who routinely move their machines into and out of regulated areas in the course of harvesting wheat for multiple producers. They would benefit because they would no longer be required to clean and disinfect their combines prior to moving them out of the regulated area, as long as the machines had not been used to harvest host crops that tested positive for Karnal bunt.

Currently, there are about 67 harvesters, including both custom operators and producers who use their own combines, operating 124 combines in regulated areas. Many of these 67 harvesters could benefit from this rule. However, the exact number who would benefit—and the extent to which each would benefit—is unknown, since the information needed to make that determination (*i.e.*, the operating characteristics for each of the harvesters) is not available. It is not uncommon, for example, for custom harvesters to move the same combine into and out of the regulated area several times in the same crop season, a situation that occurs when cutting wheat that matures at different times.

The regulations allow for several different cleaning methods, but most combine operators choose a steam treatment, which takes a minimum of 8 hours and costs from about $500 to $600 per cleaning. In addition to the cost of cleaning itself, combine operators also incur an indirect cost of approximately $2,000 for each steam cleaning, representing lost income associated with the cleaning down time. For a combine harvester, therefore, each steam cleaning can cost up to about $2,600.

The economic effect of the proposed change to the regulations would vary depending on the operator's business practices and other factors. Incurring the cost of five cleanings per year for certain individual operators is not uncommon, although some operators must clean their equipment more than five times and some fewer than five times. Certain operators in the regulated area would not benefit at all from this proposed rule because they do not move their equipment from regulated areas. However, if a custom harvester avoided the cost of five cleanings per year as a result of this proposed rule, the savings would amount to approximately $13,000.

Effects on Small Entities

Virtually all of the wheat producers and firms that would be affected by this proposed rule are likely to be categorized as small according to the Small Business Administration (SBA) size classification. Economic impacts resulting from this proposed rule would therefore largely affect small entities.

The wheat producers that could be affected by the proposed changes to the regulations are all assumed to be small entities. This assumption is based on composite data for providers of the same and similar services. There were a total of 6,135 farms in Arizona in 1997. Of those 6,135 farms, which include wheat farms, 89 percent had annual sales of less than $0.5 million, the SBA's small entity threshold for wheat farms. However, for the reasons discussed above, we do not expect this proposed rule to have a significant economic effect on these entities.

The combine operators that could be affected by the proposed changes to the regulations are also all assumed to be small entities. In 1996, there were 282 U.S. firms primarily engaged in mechanical harvesting and related activities (SIC 0722), including combining of crops. Of the 282 firms, 95 percent (or 268) had less than $5.0 million in annual sales, the SBA's small entity threshold for businesses in that SIC category. Further, in 1996, the per firm average sales for all of the 268 firms in SIC 0722 that met the SBA's definition of a small entity was $551,571. Therefore, based on our calculation of $13,000 in potential savings for many of these firms, the economic benefits of this proposal would represent 2 percent of annual sales, which would not amount to a significant economic effect on these firms.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Lists of Subjects in Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.89–2, paragraph (i) would be revised to read as follows:

§ 301.89–2 Regulated articles.

* * * * *

(i) Mechanized harvesting equipment used in the production of wheat, durum wheat, and triticale that test positive from Karnal bunt;

* * * * *

3. In § 301.89–3, paragraph (f), the entry for Arizona would be revised to read as follows:

§ 301.89–3 Regulated areas.

* * * * *

(f) * * *

ARIZONA

La Paz County. Beginning at the southeast corner of sec. 33, T. 5 N., R. 21 W.; then west to the Colorado River; then north along the Colorado River to the west edge of sec. 26, T. 6 N., R. 22 W.; then north to the northwest corner of sec. 26, T. 6 N., R. 22 W.; then east to the northeast corner of sec. 27, T. 6 N., R. 21 W.; then south to the southeast corner of sec. 10, T. 5 N., R. 21 W.; then west to the southwest corner of sec. 10, T. 5 N., R. 21 W.; then south to the point of beginning; and

Beginning at the southeast corner of sec. 36, T. 7 N., R. 21 W.; then west to the southwest corner of sec. 31, T. 7 N., R. 21 W.; then north to the northwest corner of sec. 7, T. 7 N., R. 21 W.; then east to the northwest corner of sec. 8, T. 7 N., R. 21 W.; then north to the northwest corner of sec. 5, T. 7 N., R. 21 W.; then east to the northwest corner of sec. 4, T. 7 N., R. 21 W.; then north to the northwest corner of sec. 33, T. 8 N., R. 21 W.; then east to the northeast corner of sec. 34, T. 8 N., R. 21 W.; then south to the northeast corner of sec. 3, T. 7 N., R. 21 W.; then east to the northeast corner of sec. 2, T. 7 N., R. 21 W.; then south to the northeast corner of sec. 11, T. 7 N., R. 21 W.; then east to the northeast corner of sec. 12, T. 7 N., R. 21 W.; then south to the point of beginning.

Maricopa County. Beginning at the southeast corner of sec. 12, T. 6 S., R. 6 W.; then west to the southwest corner of sec. 7, T. 6 S., R. 6 W.; then north to the northwest corner of sec. 7, T. 6 S., R. 6 W.; then west to the southwest corner of sec. 2, T. 6 S., R. 7 W.; then north to the northwest corner of sec. 14, T. 5 S., R. 7 W.; then east to the northeast corner of sec. 18, T. 5 S., R. 6 W.; then south to the southeast corner of sec. 19, T. 5 S., R. 6 W.; then east to the northeast corner of sec. 25, T. 5 S., R. 6 W.; then south to the point of beginning; and

Beginning at the southeast corner of sec. 14, T. 1 S., R. 4 W.; then west to the southwest corner of sec. 14, T. 1 S., R. 5 W.; then north to the northwest corner of sec. 14, T. 1 N., R. 5 W.; then east to the northeast corner of sec. 14, T. 1 N., R. 4 W.; then south to the point of beginning; and

Beginning at the southeast corner of sec. 6, T. 1 S., R. 2 W.; then west to the southwest corner of sec. 5, T. 1 S., R. 3 W.; then north to the northwest corner of sec. 17, T. 1 N., R. 3 W.; then east to the northeast corner of sec. 18, T. 1 N., R. 2 W.; then north to the northwest corner of sec. 8, T. 1 N., R. 2 W.; then east to the northeast corner of sec. 8, T. 1 N., R. 2 W.; then south to the southeast corner of sec. 32, T. 1 N., R. 2 W.; then west to the northeast corner of sec. 6, T. 1 S., R. 2 W.; then south to the point of beginning; and

Beginning at the southeast corner of sec. 28, T. 1 S., R. 2 E.; then west to the southwest corner of sec. 30, T. 1 S., R. 2 E.; then north to the southwest corner of sec. 18, T. 1 S., R. 2 E.; then west to the southwest corner of sec. 14, T. 1 S., R. 1 E.; then north to the southwest corner of sec. 2, T. 1 S., R. 1 E.; then west to the southwest corner of sec. 4, T. 1 S., R. 1 E.; then north to the northwest corner of sec. 4, T. 1 S., R. 1 E., then west to the southwest corner of sec. 33, T. 1 N., R. 1 W.; then north to the southwest corner of sec. 9, T. 1 N., R. 1 W.; then west to the southwest corner of sec. 12, T. 1 N., R. 2 W.; then north to the southwest corner of sec. 25, T. 2 N., R. 2 W.; then west to the southwest corner of sec. 27, T. 2 N., R. 2 W.; then north to the northwest corner of sec. 3, T. 3 N., R. 2 W.; then east to the northeast corner of sec. 1, T. 3 N., R. 1 W.; then south to the northwest corner of sec. 19, T. 3 N., R. 1 E.; then east to the northeast corner of sec. 23, T. 3 N., R. 1 E.; then south to the southeast corner of sec. 35, T. 3 N., R. 1 E.; then east to the northeast corner of sec. 1, T. 2 N., R. 1 E.; then south to the northwest corner of sec. 18, T. 1 N., R. 2 E.; then east to the northeast corner of sec. 13, T. 1 N., R. 2 E.; then south to the southeast corner of sec. 12, T. 1 S., R. 2 E.; then west to the southeast corner of sec. 9, T. 1 S., R. 2 E.; then south to the point of beginning; and

Beginning at the southeast corner of sec. 34, T. 2 N., R. 5 E.; then west to the southwest corner of sec. 31, T. 2 N., R. 5 E.; then north to the northwest corner of sec. 7, T. 2 N., R. 5 E.; then east to the northeast corner of sec. 10, T. 2 N., R. 5 E.; then south to the point of beginning; and

Beginning at the intersection of the Maricopa/Pinal County line and the southwest corner of sec. 31, T. 2 S., R. 5 E.; then north to the northwest corner of sec. 31, T. 2 S., R. 5 E.; then west to the southwest corner of sec. 25, T. 2 S., R. 4 E.; then north to the southwest corner of sec. 13, T. 2 S., R. 4 E.; then west to the southwest corner of sec. 15, T. 2 S., R. 4 E.; then north to the northwest corner of sec. 3, T. 2 S., R. 4 E.; then east to the southwest corner of sec. 35, T. 1 S., R. 4 E.; then north to the northwest corner of sec. 35, T. 1 S., R. 4 E.; then east to the northwest corner of sec. 34, T. 1 S., R. 5 E.; then north to the northwest corner of sec. 22, T. 1 S., R. 5 E.; then east to the northwest corner of sec. 20, T. 1 S., R. 6 E.; then north to the northwest corner of sec. 8, T. 1 S., R. 6 E.; then east to the northeast corner of sec. 7, T. 1 S., R. 7 E.; then south to the southeast corner of sec. 31, T. 1 S., R. 7 E.; then east to the northeast corner of sec. 5, T. 2 S., R. 7 E.; then south to the southeast corner of sec. 5, T. 2 S., R. 7 E.; then east to the Maricopa/Pinal County line; then south and west along the Maricopa/Pinal County line to the point of beginning.

The following individual fields in Maricopa County are regulated areas:

301060505	304073005	306013222
301060506	304073010	306013231
301060601	304081410	306020404
301060602	304081413	306020501
301060603	304081415	306020601
301060604	304081417	306020623
301102505	304081505	316123301
301102506	304081506	316123302
303111502	304082202	316123303
303111503	304082302	316131901
303113002	304082303	316131904
304031904	304082607	316132302
304031906	304082703	316132604
304073004		

Pinal County. Beginning at the intersection of the Maricopa/Pinal County line and the northwest corner of sec. 7, T. 2 S., R. 8 E.; then east to the

northeast corner of sec. 8, T. 2 S., R. 8 E.; then south to the southeast corner of sec. 8, T. 2 S., R. 8 E.; then east to the northeast corner of sec. 16, T. 2 S., R. 8 E.; then south to the southeast corner of sec. 28, T. 2 S., R. 8 E.; then west to the southeast corner of sec. 29, T. 2 S., R. 8 E.; then south to the southeast corner of sec. 32, T. 2 S., R. 8 E.; then west to the Maricopa/Pinal County line; then north along the Maricopa/Pinal County line to the point of beginning; and

Beginning at the intersection of the Maricopa/Pinal County line and the northeast corner of sec. 5, T. 3 S., R. 6 E.; then south to the southeast corner of sec. 32, T. 3 S., R. 6 E.; then west to the southwest corner of sec. 34, T. 3 S., R. 5 E.; then north to the southwest corner of sec. 3, T. 3 S., R. 5 E.; then west to the southwest corner of sec. 6, T. 3 S., R. 5 E.; then north to the Maricopa/Pinal County line; then east along the Maricopa/Pinal County line to the point of beginning; and

Beginning at the southeast corner of sec. 5, T. 6 S., R. 4 E.; then west to the southwest corner of sec. 5, T. 6 S., R. 3 E.; then north to the southwest corner of sec. 28, T. 5 S., R. 3 E.; then west to the southwest corner of sec. 25, T. 5 S., R. 2 E.; then north to the southwest corner of sec. 24, T. 5 S., R. 2 E.; then west to the southwest corner of sec. 23, T. 5 S., R. 2 E.; then north to the northwest corner of sec. 35, T. 4 S., R. 2 E.; then east to the northwest corner of sec. 36, T. 4 S., R. 2 E.; then north to the northwest corner of sec. 25, T. 4 S., R. 2 E.; then east to the northwest corner of sec. 29, T. 4 S., R. 3 E.; then north to the northwest corner of sec. 20, T. 4 S., R. 3 E.; then east to the northeast corner of sec. 21, T. 4 S., R. 4 E.; then south to the northeast corner of sec. 4, T. 5 S., R. 4 E.; then east to the northeast corner of sec. 3, T. 5 S., R. 4 E.; then south to the southeast corner of sec. 22, T. 5 S., R. 4 E.; then west to the southeast corner of sec. 21, T. 5 S., R. 4 E.; then south to the point of beginning.

The following individual fields in Pinal County are regulated areas:

307012207	309033507	309042621
308102604	309042544	309050104
308102605	309042545	309050109
309021801	309042601	309050122
309021804	309042607	309050207
309021812	309042619	309050209
309031304	309042620	

Yuma County. The following individual fields in Yuma County are regulated areas:

321010208	321040405	323030401
321010210	321040911	323030402
321010211	321040912	323030403
321010224	321040915	323030404
321010301	321040917	323030405
321010302	321040918	323030406
321011103	321040921	323030501
321033501	321040922	323030502
321033502	321041903	323030512
321033503	321041904	323030513
321033516	321041908	323030514
321033517	321041919	323030515
321033518	321042903	323030521
321033519		

* * * * *

4. In § 301.89–12, paragraph (a) would be revised to read as follows:

§ 301.89–12 Cleaning and disinfection.

(a) Mechanized harvesting equipment that has been used to harvest host crops that test positive for Karnal bunt and seed conditioning equipment that has been used in the production of any host crops must be cleaned and disinfected in accordance with § 301.89–13(a) prior to movement from a regulated area.

* * * * *

Done in Washington, DC, this 12th day of April 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–9670 Filed 4–17–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 210, 211, 820, and 1271

[Docket No. 97N–484S]

Suitability Determination for Donors of Human Cellular and Tissue-Based Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening for 90 days the comment period for the proposed rule concerning suitability determinations for donors of human cellular and tissue-based products. The proposed rule was published in the **Federal Register** of September 30, 1999 (64 FR 52696). This action is being taken in response to requests for an extension to allow interested parties, including State and local officials, additional time for review and to submit comments.

DATES: Submit written comments on the proposed rule by July 17, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Paula S. McKeever, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 30, 1999 (64 FR 52696), FDA published a proposed rule to require manufacturers of human cellular and tissue-based products to screen and test the donors of cells and tissue used in those products for risk factors for and clinical evidence of relevant communicable disease agents and diseases. As part of that regulatory action, the agency proposed to amend the current good manufacturing practice regulations that apply to human cellular and tissue-based products regulated as drugs, medical devices, and/or biological products to incorporate the new donor-suitability procedures into existing good manufacturing practice regulations. Interested persons were given until December 29, 1999, to submit written comments on the proposed rule.

On November 19, 1999, a comment was submitted to the docket by a professional association requesting a 60-day extension of the comment period on the proposed rule. The comment requests additional time to allow an ad hoc group of experts assembled by the organization to complete the collection and analysis of scientific data on transmissible spongiform encephalopathies and Creutzfeld-Jakob Disease. The association also noted the recent publication of the proposed rule entitled "Standards for Privacy of Individually Identifiable Health Information" by the Department of Health and Human Services (64 FR 59918, November 3, 1999), and requested an opportunity to evaluate the potential impact of that proposed rule in relation to the September 30, 1999, proposed rule. On December 1, 1999, a second comment requested an extension to at least January 31, 2000.

In addition, FDA has learned that the State of California and other jurisdictions have enacted legislation and issued regulations governing tissue donor suitability. Because those laws might conflict with provisions in the September 30, 1999, proposed rule, FDA has invited State officials to participate in this rulemaking. The agency would appreciate comment on: (1) The need for uniform national standards for donor suitability determinations to prevent communicable disease transmission

through human cellular and tissue-based products, (2) the scope of such proposed national requirements and their impact upon State laws, (3) FDA's proposal not to preempt State laws on legislative consent for cornea transplants, and (4) any issues raised by this proposed rule possibly affecting State laws and authorities. To allow sufficient time for this to occur, as well as to allow all interested persons additional time to evaluate information and submit meaningful comments, the agency is reopening the comment period for 90 days.

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding the proposed rule by July 17, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The proposed rule and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 10, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–9581 Filed 4–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 70

RIN 1076–AD98

Certificate of Degree of Indian or Alaska Native Blood

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: This rule will establish documentation requirements and standards for filing, processing, and issuing a Certificate of Degree of Indian or Alaska Native Blood (CDIB) by the Bureau of Indian Affairs (Bureau). This rule will provide the policies and standards that will allow the Bureau to issue, amend, or invalidate CDIBs. The Bureau issues CDIBs to assist individuals in establishing their eligibility for programs and services based upon their status as American Indians and/or Alaska Natives.

DATES: Send your comments to reach us on or before July 17, 2000.

We plan to hold consultations on this proposed rule. The dates of the consultations are:

April 14, 2000, in Anchorage, Alaska;

May 10, 2000, in Rapid City, South Dakota; and

May 24, 2000, in Albuquerque, New Mexico.

See **SUPPLEMENTARY INFORMATION** for the addresses of the consultations. Each meeting will begin at 9:00 a.m. and end at 4:00 p.m (local time).

ADDRESSES: You may mail comments to Karen Ketcher, Branch of Tribal Operations, Eastern Oklahoma Region, Department of the Interior, Bureau of Indian Affairs, 101 North 5th Street, Muskogee, OK 74401. You may also hand-deliver comments to us at Room 426, at the same address. For information about filing comments electronically, see the **SUPPLEMENTARY INFORMATION** section under "Electronic access and filing address." Comments will be available for inspection at this electronic address from 9:00 a.m. to 3:00 p.m. Central Standard time, Monday through Friday beginning approximately two weeks after publication of this proposed rule in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Karen Ketcher, Tribal Operations, Eastern Oklahoma Region, Bureau of Indian Affairs, 918–687–2313. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8:00 a.m. and 4:00 p.m. Central Standard time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION

I. Public Comment Procedures

Electronic Access and Filing Address

You may access an electronic version of this proposed rule through our home page (www.doi.gov/bia/otshome.html). You may also comment via the Internet to: Karen Ketcher@bia.gov. Please also include "Attention: 1076–AD98" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at 918–687–2313.

Written Comments

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any change you recommend. Where possible, you should reference the specific section or paragraph of the proposal you are addressing. We may not consider or include in the Administrative Record for the final rule comments which we receive after the close of the comment period (See **DATES**) or comments delivered to an address other than those listed above (See **ADDRESSES**). Comments, including names, street addresses, and other contact information of respondents, will be available for public review at this address during regular business hours (7:45 a.m. to 4:15 p.m. Central Standard time), Monday through Friday, except Federal holidays. We will also post all comments on the regulation's Internet page at the end of the comment period. Individual respondents may request confidentiality. If you wish to request that we consider withholding your name, street address, and other contact information (such as Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

Consultations

We will hold consultations at the following locations on the dates and times specified:

April 14, 2000, in Anchorage, Alaska, at the Holiday Inn, 239 W. 4th Avenue, Anchorage, Alaska 99501;

May 10, 2000, in Rapid City, South Dakota at the Best Western Ramkota Hotel, 2111 North LaCrosse Street, Rapid City, South Dakota 57701; and,

May 24, 2000, in Albuquerque, New Mexico at the Best Western Winrock Inn, 18 Winrock Center, Albuquerque, New Mexico 87110.

Any person who wants to participate in a particular consultation should notify Karen Ketcher, the person identified under **FOR FURTHER INFORMATION CONTACT** at least one week before the consultation. If no one expresses an interest in participating in a consultation at a given location by that date, we will not hold that consultation. If only one person expresses an interest, we may hold a public meeting rather than a consultation, and we will include the results in the Administrative Record. If we hold a consultation, we will continue the consultation until everyone who wants to testify has done so. In order to assist the transcriber and to ensure an accurate record, we request that you give the transcriber a copy of your testimony. In order to assist us in preparing appropriate responses/answers to your questions, we also ask that if you plan to testify, please submit

an advance copy of your testimony to us at the address previously specified (See **ADDRESSES**). However, this submission of the advance copy of your testimony is not required.

The meeting sites are accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the consultation, such as interpreting service, assistive listening device, or materials in an alternate format, must notify Karen Ketcher, the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled consultation date. Although we will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

II. Background

A Certificate of Degree of Indian or Alaska Native Blood (CDIB) certifies that an individual possesses a specific degree of Indian blood of a federally recognized Indian tribe(s). A deciding Bureau official issues the CDIB. We issue CDIBs so that individuals may establish their eligibility for those programs and services based upon their status as American Indians and/or Alaska Natives. A CDIB does not establish membership in a federally recognized Indian tribe, and does not prevent an Indian tribe from making a separate and independent determination of blood degree for tribal purposes.

In reviewing the Bureau's practices, the Interior Board of Indian Appeals (IBIA) ruled that the degree of Indian blood of an individual Indian cannot be changed by the Bureau on the basis of "the evidentiary standards set forth in *unwritten* policy statements" and advised the Bureau to develop and issue regulations, *Underwood* v. *Deputy Assistant Secretary-Indian Affairs*, 93 I.D. 13, 14 IBIA 3, January 31, 1986. In the absence of regulations, the Bureau has been without the authority to invalidate or amend CDIBs issued in error. As a result, there are individuals who do not receive services for which they may qualify and individuals who receive services for which they do not qualify.

Some early Bureau and tribal records do not indicate degrees of Indian blood or are inconsistent. Changes and corrections have been made to these records without an indication of who made the change or the basis upon which they were made. Errors occurred when individuals submitted delayed or amended birth certificates and delayed death certificates as documentation for Indian blood certification. Amended birth documents often contain unreliable birth data, or data that was received long after the original birth certification had been issued. For example, some birth fathers do not recognize their children until later in life or when ordered to do so by a court having jurisdiction, long after a birth certification may have first been issued. Adoption records often contain limited birth data. Only extensive research provides additional birth data. Corrections are required when birth certificates and death certificates are amended, adoption and paternity records become available, or complete family history information and/or documents not initially submitted are received.

The rolls of federally recognized Indian tribes may be used as the basis for issuing CDIBs. The base rolls of some tribes are deemed to be correct by statute, even if errors exist. For example, the 1906 Federal rolls for the Cherokee, Chickasaw, Choctaw, Creek, and Seminole were prepared for purposes of allotment of tribal lands, and persons of two or more of these tribes were enrolled only with the tribe of the territory of his/her residence and only with that tribe's blood degree listed. Subsequently, the Act of August 4, 1947, 61 Stat. 731, declared that the base rolls of these tribes are conclusive as to blood degree when determining the restricted status of inherited, allotted lands.

Existing federal laws and regulations require some form of proof of Indian blood for various purposes. Some of these regulations even expressly refer to Certifications of Degree of Indian Blood. Unless these laws and regulations are amended to eliminate the need for a method of proving Indian blood or Indian blood degree, uniform standards for issuance, amendments and denials of Certificates of Degree of Indian Blood are essential for compliance with the law.

The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 sections 463 and 465 of the Revised Statutes, and 25 U.S.C. 2 and 9. Publication of the proposed rule by the Department provides the public an opportunity to participate in the rule making process. Interested persons may submit written comments regarding the proposed rule to the location identified in the **ADDRESSES** section of this document.

III. Procedural Matters

Executive Order 12866

In accordance with the criteria in Executive Order 12866, this proposed rule is not a significant regulatory action. This proposed rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Nor does this proposed rule create inconsistencies with other agencies' actions; affect entitlements, grants user fees, loan programs, or their recipients; or raise novel legal or policy issues.

Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Neither a Regulatory Flexibility Analysis or a Small Entity Compliance Guide is required.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act, this proposed rule will not "significantly or uniquely" affect small governments nor does it produce a Federal mandate of $100 million or more in any year.

Executive Order 12630

In accordance with Executive Order 12630, this proposed rule does not have "significant takings" implications. This rule does not pertain to "taking" of private property interests, nor does it impact private property.

Executive Order 13132

In accordance with Executive Order 13132, this proposed rule does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of States.

Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system.

National Environmental Protection Act

In accordance with the National Environmental Protection Act and 318 DM 2.2(G) and 6.3(D), this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Paperwork Reduction Act

Sections 70.11, 70.22, 70.23, 70.24, 70.30, and 70.34 contain information collection and submission requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of the proposed regulations to the Office of

Management and Budget (OMB) for review. The agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. We will not require collection of this information until OMB has given its approval.

1. Information Collection Request

Type of Review: New.
Title: Request for Certificate of Degree of Indian or Alaska Native Blood.
Affected Entities: Individual Indians who may be eligible to receive program services based upon their status and/or degree of Indian or Alaska Native blood.
Abstract: The purpose of this collection is to assist in determining the eligibility of individuals for various programs and services available to American Indians and Alaska Natives. Disclosure of information may be given to the Department of the Interior and the Department of Justice when required for litigation or anticipated litigation. Notification of inquiries or access must be addressed to the appropriate Regional Director, Bureau of Indian Affairs.

Submission of this information is voluntary. However, not providing information may result in a determination that an individual is not eligible to receive program services based upon his/her status as an American Indian or Alaska Native. The information to be collected includes: certificates of birth and death, probate determinations, court orders, affidavits, Federal or tribal census records, and Social Security records.

All information and documentation is to be collected once from each Requester. The reporting and record keeping burden for this collection of information is estimated to average 1.5 hours for each response for an estimated 285,000 requests per year or 427,000 hours, including the time for reviewing instructions, searching existing data sources and gathering needed data. Collection of information and documentation for the appeals procedures is expected to involve 12 regions receiving 2,400 appeals. The reporting and record keeping burden for this collection of information is estimated to average 2.5 hours for each appeal for an estimated 6,000 hours per year, including the time for reviewing instructions, searching existing data sources and gathering needed data. Thus, the estimated total annual reporting and record keeping burden for this entire collection is estimated to be 433,000 hours.

Individuals will be required to sign, under penalty of perjury, a statement verifying the truth of all of the information provided in the CDIB packet.

2. We consider comments by the public on this proposed collection of information in:

(a) Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(b) Evaluating the accuracy of the agency's estimates of burden of the proposed collection of information, including the methodology and assumptions used.

(c) Enhancing the quality, utility, and clarity of the information to be collected.

(d) Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Tribes, organizations and individuals desiring to submit comments on the information collection requirement should direct them to Attention: Desk Officer for the Department of the Interior, Office of Information & Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Room 10102, Washington, DC 20503. A copy should be sent to Karen Ketcher, Branch of Tribal Operations, Eastern Oklahoma Region, Department of the Interior, Bureau of Indian Affairs, 101 North 5th Street, Muskogee, OK 74401, or hand deliver them to Room 426, at the same address. Comments will be available for inspection at this address from 9:00 a.m. to 3:00 p.m., Central Standard Time, Monday through Friday beginning approximately two weeks after publication of this proposed rule in the **Federal Register**. Please note, these comments on the proposed form are in addition to comments you may have on the proposed regulation itself.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulations.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). This proposed rule does not have an annual effect on the economy of $100 million or more nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This proposed rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 13084

Executive Order 13084 requires each agency to have an effective process to permit elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities. On January 31, 1986, the Interior Board of Indian Appeals (IBIA) ruled that the degree of Indian blood of an individual Indian cannot be changed by the Bureau on the basis of "the evidentiary standards set forth in unwritten policy statements" and advised the Bureau to develop and issue regulations, *Underwood* v. *Deputy Assistant Secretary-Indian Affairs*, IBIA 93 I.D. 13, 14, IBIA 3. This IBIA decision affected tribes in eastern Oklahoma.

As a result, representatives from the Bureau Central Office, the Eastern Oklahoma Region, the Tulsa Office of the Field Solicitor, and the tribes which contracted the CDIB function under the Self-Determination and Education Assistance Act, P.L.93–638, met on August 11–13, 1987, at the Chickasaw Motor Inn, Sulphur, Oklahoma, to develop CDIB regulations for eastern Oklahoma. Ten of the twenty-seven individuals attending this meeting represented various tribes in eastern Oklahoma. On September 13–14, 1988, this same work group met again for a second meeting in Muskogee, Oklahoma, to continue the work on these CDIB regulations. A Central Office Enrollment staff member attended this meeting and recommended that the CDIB regulations be written as nation-wide regulations for the Bureau. The work group accepted this recommendation and held nine additional meetings beginning May 10, 1989, through June 15, 1992, when a draft was forwarded to Central Office,

Division of Tribal Government Services, Washington, D.C. On September 13–16, 1994, two members of the work group (one tribal and one Bureau) traveled to Washington, D.C. to prepare the draft for publishing in the **Federal Register**.

In the mean time, the Inter-Tribal Council for the Five Civilized Tribes (Cherokee, Chickasaw, Choctaw, Creek, and Seminole) passed Resolution No. 97–13, on April 11, 1997, requesting that the proposed regulations drafted by the Bureau and Tribal personnel be published. A second request, Resolution No. 97–18, enacted on July 11, 1997, urged publication of the proposed CDIB regulation. On December 2–3, 1999, the Eastern Oklahoma Region conducted a CDIB technical assistance workshop to train approximately 45 individuals (30 being tribal enrollment staff), who are involved with the CDIB function. They fully supported the publication of the proposed CDIB regulations.

OMB Control #1076–01____
Expiration Date: ____

Bureau of Indian Affairs Certificate of Degree of Indian or Alaska Native Blood Instructions

All portions of the Request for Certificate of Degree of Indian or Alaska Native Blood (CDIB) must be completed. You must show your relationship to an enrolled member(s) of a federally recognized Indian tribe, whether it is through your birth mother or birth father, or both. A federally recognized Indian tribe means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community which appears on the list of recognized tribes published in the **Federal Register** by the Secretary of the Interior (25 U.S.C. § 479a–1(a)).

• Your degree of Indian blood is computed from lineal ancestors of Indian blood who were enrolled with a federally recognized Indian tribe or whose names appear on the designated base rolls of a federally recognized Indian tribe.

• You must give the maiden names of all women listed on the Request for CDIB, unless they were enrolled by their married names.

• A *Certified Copy of a Birth Certificate* is required to establish your relationship to a parent(s) enrolled with a federally recognized Indian tribe(s).

• If your parent is not enrolled with a federally recognized Indian tribe, a *Certified Copy of your parent's Birth or Death Certificate* is required to establish your parent's relationship to an enrolled member of a federally recognized Indian tribe(s). If your grandparent(s) were not enrolled members of a federally recognized Indian tribe(s), a *Certified Copy of the Birth or Death Certificate for each grandparent* who was the child of an enrolled member of a federally recognized Indian tribe is required.

• Certified copies of Birth Certificates, Delayed Birth Certificates, and Death Certificates may be obtained from the State Department of Health or Bureau of Vital Statistics in the State where the person was born or died.

• In cases of adoption, the degree of Indian blood of the natural (birth) parent must be proven.

• Refer to 25 CFR Part 70, CDIB to determine what documents are acceptable.

1. Your request and supporting documents should be returned to the Agency from whom you receive services.

2. Incomplete requests will be returned with a request for further information. No action will be taken until the request is complete.

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BUREAU OF INDIAN AFFAIRS
REQUEST FOR CERTIFICATE OF DEGREE OF INDIAN OR ALASKA NATIVE BLOOD

Requester's Name (list all names by which Requester is or has been known):	**Requester's Address (including zip code):**	**Date Received by Bureau of Indian Affairs:**

Requester's Date of Birth: Requester's Place of Birth: Is Requester Adopted? ☐ Yes ☐ No Are Requester's Parents Adopted? ☐ Yes ☐ No If Yes, list natural (birth) parents: (If known) Tribe(s) with which Requester is enrolled: Roll Nos:	Father's name: Tribe: Roll No.: DOB: Deceased ☐ Yes ☐ No Year____	Paternal Grandfather's Name: Tribe: Roll No: DOB: Deceased/Year____ Paternal Grandmother's Name: Tribe: Roll No: DOB: Deceased/Year____	Paternal Great Grandfather's Name: Tribe: Roll No: DOB: Deceased/Year____ Paternal Great Grandmother's Name: Tribe: Roll No: DOB: Deceased/Year____ Paternal Great Grandfather's Name: Tribe: Roll No: DOB: Deceased/Year____ Paternal Great Grandmother's Name: Tribe: Roll No: DOB: Deceased/Year____
	Mother's Name: Tribe: Roll No.: DOB: Deceased ☐ Yes ☐ No Year____	Maternal Grandfather's Name: Tribe: Roll No: DOB: Deceased/Year____ Maternal Grandmother's Name: Tribe: Roll No: DOB: Deceased/Year____	Maternal Great Grandfather's Name: Tribe: Roll No: DOB: Deceased/Year____ Maternal Great Grandmother's Name: Tribe: Roll No: DOB: Deceased/Year____ Maternal Great Grandfather's Name: Tribe: Roll No: DOB: Deceased/Year____ Maternal Great Grandmother's Name: Tribe: Roll No: DOB: Deceased/Year____

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NOTICES AND CERTIFICATION

NOTICE OF APPEAL RIGHTS.

- When you receive your CDIB, you must review it for the correct name spelling, birth dates, and blood degrees. If you believe that there are any mistakes on the CDIB, you must give a written request for corrections and provide supporting documentation to the issuing officer within 45 days (60 for Alaska tribes) of the date on the letter. If you fail to meet this deadline, appeal rights will be lost. If the issuing officer decides that corrections are not needed, he or she will send a written determination with an explanation through certified mail to you and provide you with a copy of the appeals procedures contained in 25 CFR §§ 70.30 - 70.37.

- If you are denied a CDIB, you will be given a written determination with an explanation for the denial and a copy of the appeal procedures.

NOTICE OF PAPERWORK REDUCTION ACT.

The information collection requirement contained in 25 CFR § 70.11 and this request have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), and assigned clearance number _____. The agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Information is collected when individuals seek certification that they possess sufficient Indian blood to receive Federal program services based upon their status as American Indians or Alaska Natives. The information collected will be used to assist in determining eligibility of the individual to receive Federal program services. The information is supplied by a respondent to obtain a Certificate of Degree of Indian or Alaska Native Blood. It is estimated that responding to the request will take an average of 1.5 hours to complete. This includes the amount of time it takes to gather the information and fill out the form. If you wish to make comments on the form, please send them to the Information Collection Control Officer, Bureau of Indian Affairs, 1849 C Street NW, MS 4657-MIB, Washington, DC 20240. Note: comments, names and addresses of commentatators are available for public review during regular business hours. If you wish us to withhold this information, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law. In compliance with the Paperwork Reduction Act of 1995, as amended, the collection has been reviewed by the Office of Management and Budget and assigned a number and expiration date. The number and expiration date are at the top right corner of the form. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless there is a valid OMB clearance number.

NOTICE OF PRIVACY ACT STATEMENT.

This information is collected as provided pursuant to the Privacy Act, 5 U.S.C. 552a. The Bureau of Indian Affairs will not disclose any record containing such information without the written consent of the respondent unless the requestor uses the information to perform assigned duties. The primary use of this information is to certify that an individual possesses Indian blood to receive Federal program services. Examples of others who may request the information are U.S. Department of Justice or in a proceeding before a court or adjudicative body; Federal, state, local, or foreign law enforcement agency; Members of Congress; Department of Treasury to effect payment; a Federal agency for collecting a debt; and other Federal agencies to detect and eliminate fraud.

NOTICE OF EFFECTS OF NON-DISCLOSURE.

Disclosure of the information on this CDIB request is voluntary. However, proof of Indian blood is required to receive Federal program services.

NOTICE OF STATEMENTS AND SUBMISSIONS.

Falsification or misrepresentation of information provided on this request is punishable under Federal Law, 18 U.S.C. 1001. Conviction may result in a fine and/or imprisonment of not more than 5 years.

I request a CDIB, and certify that I have read the instructions, and above notices about my request for a CDIB. I further certify that the information which I have provided with this request to the Bureau of Indian Affairs is true and correct.

_____ _____
(Requester's signature) (date)

Drafting Information

The primary authors of this document are Karen Ketcher, Tribal Operations Specialist, Eastern Oklahoma Region; Suzanne Chaney, Tribal Government Specialist, Southern Plains Region; Timothy DeAsis, Tribal Government Officer, Alaska Region; Donna Peterson, Tribal Government Specialist, Western Region; De Springer, Tribal Government Officer, Midwest Region; James Vallie, Tribal Government Specialist, Southern Pueblos Agency; Susan Work, Attorney, Tulsa Field Solicitor's Office; Dorson Zunie, Tribal Government Officer, Pacific Region; Duane Bird Bear, Chief, Division of Tribal Government Services, Central Office; R. Lee Fleming, Chief, Branch of Acknowledgment and Research, Central Office; Carolyn Newman, Tribal Enrollment Specialist, Central Office.

List of Subjects in 25 CFR Part 70

Alaska Natives, Indians, Indians-Federal certification.

For the reasons given in the preamble, the Bureau of Indian Affairs proposes to add a new Part 70 to Title 25, Chapter I, Subchapter F—Tribal Government, of the Code of Federal Regulations as set forth below.

PART 70—CERTIFICATE OF DEGREE OF INDIAN OR ALASKA NATIVE BLOOD

Subpart A—General Information

Sec.

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70.2 What terms do I need to know?
70.3 What is a Certificate of Degree of Indian or Alaska Native Blood?
70.4 Who issues, amends, invalidates a Certificate of Degree of Indian or Alaska Native Blood; or denies issuance of a Certificate of Degree of Indian or Alaska Native Blood?
70.5 Is the information and documentation I submit with my Certificate of Degree of Indian or Alaska Native Blood request available to the public?
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Subpart B—Determining Eligibility

70.10 How do I know if I am eligible to receive a Certificate of Degree of Indian or Alaska Native Blood?
70.11 How do I establish my eligibility to receive a Certificate of Degree of Indian or Alaska Native Blood?
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70.20 What steps do I need to follow to obtain a Certificate of Degree of Indian or Alaska Native Blood?
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70.23 What primary documents can I submit to establish my relationship to a lineal ancestor who is listed on a base roll?
70.24 What supporting documents must I submit to establish my relationship to a lineal ancestor listed on a base roll?

Subpart D—Information on Bureau Actions on Certificate of Degree of Indian or Alaska Native Blood Requests

70.25 How will I know what information the deciding Bureau official will rely upon to determine whether I receive a Certificate of Degree of Indian or Alaska Native Blood?
70.26 What steps do I follow if I possess Indian or Alaska Native blood from more than one federally recognized Indian tribe?
70.27 What information is shown on the Certificate of Degree of Indian or Alaska Native Blood which the Bureau issued to me?
70.28 Do I become a member of an Indian Tribe when the Bureau issues me a Certificate of Degree of Indian or Alaska Native Blood?
70.29 What response can I expect from the Bureau when I make a request for a Certificate of Degree of Indian or Alaska Native Blood?

Subpart E—Appeal Procedures

70.30 What can I do if I do not agree with the deciding Bureau official who issued the degree of Indian blood or other information contained on my Certificate of Degree of Indian or Alaska Native Blood?
70.31 What can I do if my request for a Certificate of Degree of Indian or Alaska Native Blood is denied?
70.32 What is the deadline for filing my appeal, and what will happen if I do not meet the deadline?
70.33 What are the steps for filing an appeal when I disagree with the information on the Certificate of Degree of Indian or Alaska Native Blood which the deciding Bureau official provided?
70.34 Can I submit additional information if I choose to file an appeal and what is the burden of proof?
70.35 What action can I expect from the Bureau's Regional Director if I file an appeal?
70.36 What action can I expect if I appeal the Regional Director's decision?

Subpart F—Other

70.37 Can my Certificate of Degree of Indian or Alaska Native Blood be invalidated or amended to change my degree of Indian blood? If so, under what circumstances?
70.38 Can my Certificate of Degree of Indian or Alaska Native Blood be sent to an authorized third party?

Authority: 5 U.S.C. 301; 25 U.S.C. 2 and 9.

Subpart A—General Information

§ 70.1 What is the purpose of this part?

This part specifies the requirements for the documentation of degree of Indian blood and uniform standards by which we may issue, amend, or invalidate a Certificate of Degree of Indian or Alaska Native Blood. The Bureau issues CDIBs to assist individuals in establishing their eligibility for programs and services based upon their status as American Indians and/or Alaska Natives.

(a) CDIBs do not establish membership in federally recognized Indian tribes.

(b) CDIBs may not be used for purposes of determining restricted or trust status of Indian lands if the blood degree on the CDIB is inconsistent with a determination of blood degree based on any federal law containing special standards for determination of the landowner's Indian blood degree or for probate purposes.

§ 70.2 What terms do I need to know?

As used in this part:

Adopted person means a person who has been permanently placed for adoption with a substitute parent(s) pursuant to tribal or state law.

Authorized representative means any properly designated person, including the parent of a child (under 18 years), the legal guardian, lawyer, and/or the parent who has legal custody, who files a request or an appeal on behalf of the person.

Base roll means the specified allotment, annuity, census, or other roll upon which membership in a federally recognized Indian tribe is based, as designated by a federal statute, by the Secretary, or by the tribe's written governing document, such as a constitution, enrollment ordinance, or resolution; or the Alaska Native Claims Settlement Act roll established pursuant to 43 U.S.C. 1604.

Bureau means Bureau of Indian Affairs, Department of the Interior.

CDIB means Certificate of Degree of Indian (or Alaska Native) Blood.

Commissioner means the Commissioner of Indian Affairs or the Deputy Commissioner of Indian Affairs.

Deciding Bureau Official means the Regional Director, Superintendent/Field Representative or the Secretary's designee with delegated administrative jurisdiction for the federally recognized Indian tribe(s) from which your Indian blood is derived.

Department means the Department of the Interior.

Indian means any person of Indian or Alaska Native blood who is a member

of those tribes listed or eligible to be listed in the **Federal Register** pursuant to 25 U.S.C. 479a–1(a); or any descendant of such person who was residing within its boundaries of any Indian reservation on June 1, 1934; or any person not a member of one of the listed or eligible to be listed tribes who possesses at least one-half degree of Indian blood. For purposes of these regulations, Eskimos and other aboriginal peoples of Alaska shall be considered Indians.

Indian blood means Indian or Alaska Native blood of a Federally recognized Indian tribe.

Indian tribe means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community which appears on the list of recognized tribes published in the **Federal Register** by the Secretary of the Interior (25 U.S.C. 479a–1(a)).

Lineal ancestor means a direct ancestor, such as a parent, grandparent or great-grandparent. Collateral relatives such as aunts, uncles, brothers, and sisters, are not considered lineal ancestors.

Maternal refers to the mother's side.

Paternal refers to the father's side.

Regional Director means the director of a specific Bureau region, or his/her designee, who has delegated administrative jurisdiction over the local field office(s) responsible for administering the affairs of a federally recognized Indian tribe(s).

Requester means the individual or the authorized representative making the formal request for a CDIB.

Secretary means the Secretary of the Department of the Interior, or his/her designee.

Superintendent/Field Representative means the Bureau official in charge of the agency/field office, or his/her designee, who has immediate delegated administrative responsibility for the affairs of a federally recognized Indian tribe.

§ 70.3 What is a Certificate of Degree of Indian or Alaska Native Blood?

A CDIB is an official document that certifies an individual possesses a specific degree of Indian blood of a federally recognized Indian tribe.

§ 70.4 Who issues, amends, invalidates a Certificate of Degree of Indian or Alaska Native Blood; or denies issuance of a Certificate of Degree of Indian or Alaska Native Blood?

Only one of the following deciding Bureau officials with delegated administrative jurisdiction for the federally recognized Indian tribe(s) from which your Indian blood is derived may sign, issue, amend, or invalidate the CDIB, or deny issuance of the CDIB:

(a) The Regional Director;

(b) The Superintendent/Field Representative; or

(c) The Secretary's designee.

§ 70.5 Is the information and documentation I submit with my Certificate of Degree of Indian or Alaska Native Blood request available to the public?

(a) CDIB records are protected from disclosure under the Privacy Act, 5 U.S.C. 552a. Personal information contained in the CDIB file will not be available to the public.

(b) A statement may be provided to a Federal, State, or local agency that your CDIB has been amended or that your CDIB has been invalidated, if a request is made by a Federal, State, or local agency where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, contract, license, grant or other benefit.

§ 70.6 Information collection.

The information collection requirement contained in § 70.11 has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), and assigned clearance number _____. Information is collected when individuals seek certification that they possess Indian blood to receive Federal program services based upon their status as American Indians.

Subpart B—Determining Eligibility

§ 70.10 How do I know if I am eligible to receive a Certificate of Degree of Indian or Alaska Native Blood?

You are eligible to receive a CDIB if your name or the name of your lineal ancestor appears as an Indian by blood on a base roll of a federally recognized Indian tribe.

§ 70.11 How do I establish my eligibility to receive a Certificate of Degree of Indian or Alaska Native Blood?

You have the burden of proving you are eligible to receive a CDIB. To establish your eligibility, you must do one of the following:

(a) You must be listed as an Indian by blood on a designated base roll.

(b) You must furnish proof of your relationship to your closest lineal ancestor who has received a CDIB. Your proof must meet the requirements of §§ 70.22 and 70.23. We will presume that your ancestor's CDIB contains an accurate statement of degree of Indian blood unless we find that the blood degree in the CDIB is inaccurate or unless you challenge the accuracy of the blood degree as stated on that CDIB.

(c) You must furnish proof of your relationship with a lineal ancestor listed as an Indian by blood on the base roll(s). This proof must meet the requirements of §§ 70.22 and 70.23. This paragraph applies only if:

(1) We or you challenge the accuracy of the blood degree contained in the CDIB of your closest lineal ancestor; or

(2) There is no CDIB for your closest lineal ancestor.

§ 70.12 How does the Bureau compute my degree of Indian blood and does the Bureau compute Indian or Alaska Native blood of an adoptive parent?

Your degree of Indian blood is computed from the Indian blood degree of your lineal ancestors. Lineal ancestry and blood degree are based on birth parentage as explained in this section.

(a) You obtain one-half of the Indian blood of each of your birth parents.

(1) You obtain one-half of the Indian blood of your birth mother. For example, if your grandmother was full blood, your mother obtained one-half Indian blood from your grandmother. Using that example, if your mother obtained no Indian blood through her father, then you obtained one-fourth Indian blood from your mother.

(2) You obtain one-half of the Indian blood from your birth father. If you were born out of wedlock, then you will obtain one-half of the Indian blood from your birth father only if his identity is proven under § 70.13.

(3) To calculate your total Indian blood degree, add together your blood degree obtained from your birth mother and your blood degree obtained from your proven birth father. As an example, if you obtain one-fourth degree Indian blood from your mother and one-fourth degree of Indian blood from your father, your degree of Indian blood is one-half ($\frac{1}{4}+\frac{1}{4}=\frac{1}{2}$).

(b) An adoptive parent is not a lineal ancestor and blood degree cannot be derived from an adoptive parent.

§ 70.13 How can I prove my descent if I or an ancestor was born out of wedlock?

This section applies to you if you or one of your ancestors was born out of wedlock. For purposes of blood degree computation, you can prove the identity of your or your ancestor's birth father if you can provide any one of the following for each person born out of wedlock:

(a) The person's certified birth certificate listing the name of the father;

(b) A written document in which the birth father acknowledged paternity of the person born out of wedlock. The document must have been:

(1) Filed in a state court child custody proceeding as defined by the Indian Child Welfare Act, 25 U.S.C. 1903; or

(2) Recorded with an Office of Vital Statistics or other state agency authorized by law to receive paternity acknowledgments in the state where the person was born;

(c) A final court order that contains a finding establishing paternity. The court issuing the order must have jurisdiction in a paternity determination, child support case, parental rights termination, adoption, determination of heirship as described in § 70.23, or other judicial proceeding in which paternity is an essential element; or

(d) A final decision of an administrative law judge in an Indian probate proceeding filed under 43 CFR part 4 that establishes paternity.

Subpart C—Obtaining a Certificate of Degree of Indian or Alaska Native Blood

§ 70.20 What steps do I need to follow to obtain a Certificate of Degree of Indian or Alaska Native Blood?

To obtain a CDIB you must follow the procedures in this section.

(a) You must request a CDIB form from the local Bureau office.

(b) You must complete the request, including verification that you have read the summary describing your rights if you disagree with any decisions concerning your request.

(c) You must sign the request unless you meet one of the following exceptions:

(1) If you are a minor under the age of 18, only your custodial parent may complete and sign the request for you. A custodial parent includes:

(i) An adoptive parent;

(ii) A court-appointed legal guardian; or

(iii) An Indian custodian as defined by the Indian Child Welfare Act, 25 U.S.C. 1903.

(2) If you are physically incapacitated, one of the following may complete the request for you:

(i) A court-appointed legal guardian;

(ii) A court-appointed conservator; or

(iii) A person to whom you have given a written power of attorney.

(3) Only a court-appointed legal guardian may complete the request for an adult who has been declared mentally incompetent by a court having jurisdiction.

(d) After completing and signing the request, you must submit it and any required documents to the Bureau official who has delegated administrative jurisdiction over the federally recognized Indian tribe(s) from which your Indian blood is derived.

§ 70.21 Are there penalties for filing false information?

Yes. Under 18 U.S.C. 1001, Bureau personnel are required to report any person who knowingly files false or fraudulent information. Persons convicted of this offense may be fined and/or imprisoned not more than five (5) years.

§ 70.22 What documents must I submit with my request?

When you submit your request for a CDIB, you must also submit the documents required by this section.

(a) If you are listed on an officially approved base roll, the only thing you must submit is a request with an original signature.

(b) If you are not on a base roll, you must submit at least one of the primary records required by § 70.23. The record that you submit must establish your relationship to your closest lineal ancestor who either:

(1) Has received a CDIB which contains an accurate statement of degree of Indian blood, or

(2) Is listed on a base roll.

(c) Depending upon which of the documents listed in § 70.23 you submit, you may also have to submit additional documents required by § 70.24.

§ 70.23 What primary documents can I submit to establish my relationship to a lineal ancestor who is listed on a base roll?

To meet the requirement in § 70.22(b) for establishing your relationship to an ancestor, you must submit at least one of the documents listed in the following table. Each document that you submit must meet the conditions shown in the table.

If you submit a primary document such as...	It must...	And...	And...
(a) Birth certificate	Be certified by the state where you and/or your lineal ancestor were born.	You must submit the original reproduction of the birth certificate that contains the person's parentage, the state seal, the state registrar's signature, and the state file number.[1]	
(b) Delayed certificate of birth	Be certified by the state where you and/or your lineal ancestor were born.	You must submit the original reproduction of the delayed birth certificate that contains the person's parentage, the state seal, the state registrar's signature, and the state file number.	You must verify the birth parent information by submitting at least one of the supporting documents listed in § 70.24.[1]
(c) Record showing that you or your ancestor were born outside the United States.	Be a certified copy of the official U.S. Department of State record of birth or a certified copy or translation of the record of birth on file with the foreign agency responsible for recording vital records.	If the Department of State record is not available, you may submit the Department of State's Notice of No Record on File and a certified copy or translation of the record on file with the foreign agency responsible for recording vital records.	
(d) A replacement birth certificate due to adoption.	Show your new name and the name(s) of your adoptive parent(s).	You must also submit one of the documents identified in § 70.24(b).	
(e) A certificate of death or a delayed certificate of death for your lineal ancestor.	Show the ancestor's parentage ...	You must submit the original reproduction of the death record, showing parentage, the state seal, the state registrar's signature, and the state file number.	You must also verify the "parent's names" by submitting at least one of the documents listed in § 70.24.

If you submit a primary document such as...	It must...	And...	And...
(f) A determination of heirship	Be issued by order of a court having jurisdiction in a determination of heirship proceeding.	Filed under Federal statute, an administration of estate or probate proceeding; or issued by order of an administrative law judge in an Indian probate proceeding filed under 43 CFR part 4.[2]	You must submit at least one of the supporting documents listed in § 70.24(a)(2)–(5).

[1] If state law prohibits the release of a full photocopy of the birth certificate or delayed birth certificate without a court order, you may submit a computer generated or transcriptional record. The record must be verified by the sworn statement or affidavit of your Indian parent, family member (if Indian parent(s) is deceased), or other person familiar with your family ancestry (if Indian parent(s) or other family member(s) are deceased). A sworn statement or affidavit must follow the requirements of § 70.24(a)(4).

[2] The order must identify the heirs of the decedent who is the subject of the proceeding. The order will only be used to prove family relationships; no specific recitation or finding of blood degree contained in the order may be used as evidence of blood degree. An order determining heirs in a quiet title, partition or other civil action may not be used as a primary document.

§ 70.24 What supporting documents must I submit to establish my relationship to a lineal ancestor listed on a base roll?

(a) If you submit one of the primary documents listed in § 70.23(b), (e), or (f), you must also submit at least one of the supporting documents specified in the following table.

You can submit a supporting document such as...	But...
(1) A determination of heirship court order or administrative law judge order as described in § 70.23(f) as a supporting document.	If you use a determination of heirship or administrative law judge order as a primary document, you cannot use another determination of heirship or administrative law judge order as a supporting document.
(2) The hospital birth certificate as a record of birth to support a primary document.	It does not necessarily establish parentage.
(3) A certified transcription issued by the Bureau of Census, proof of death and heirship records and per capita payment records, Federal and tribal census records, and Social Security records..	
(4) An affidavit or an original written declaration made under oath before a notary public may be used to support a primary document to identify or clarify discrepancies in names and to verify facts.	You must follow the rules in § 70.24(c).[1]

[1] If identification is not questioned, minor variations, such as in spelling of names, may not require further proof.

(b) If you or one of your lineal ancestors was adopted and you submitted a replacement birth certificate as a primary document under § 70.23(d), you must submit one of the documents specified in the following table.

If...	And...	Then...
(1) The adoption occurred after November 8, 1978.	We received adequate documents from the adoption court or attorney of record under the Indian Child Welfare Act (25 U.S.C. 1951).	Ask us to use all of the documents that identify the adoptee's birth parents.[1]
(2) The adoption occurred after November 8, 1978.	We received documents under the Indian Child Welfare Act but they are not sufficient to establish the identity of the adoptee's birth parents.	You must submit one of the documents specified in paragraph (d) of this section.
(3) The adoption occurred after November 8, 1978.	We received no documents on the adoption under the Indian Child Welfare Act.	You must either ask us to request this information from the court which entered the final decree, or submit one of the documents specified in paragraph (d) of this section.
(4) The adoption occurred before November 8, 1978.		You must submit one of the documents specified in paragraph (d) of this section.

[1] We will keep this information in a restricted file that is not accessible to the adopted person or anyone not involved in the certification process.

(c) If you submit an affidavit as a supporting document under § 70.24(a)(4), it must meet all of the following criteria:

(1) The affidavit must be executed by someone who has personal knowledge of facts or events, such as a relative;

(2) You cannot execute the affidavit;

(3) The affidavit must include a statement advising the individual signing the affidavit that he or she is subject to criminal penalties for knowingly filing false or fraudulent information to an agency of the United States Government; and

(4) The affidavit must be notarized.

(d) To meet the requirements of paragraphs (b)(2) through (b)(4) of this section, you must submit all of the documents specified in any one of the following paragraphs.

(1) A certified copy of a document or documents which identify the adoptee and the adoptee's birth parents, filed

with the court in the adoption case, such as a consent to adoption, a consent to termination of parental rights, an order terminating parental rights, or an adoption decree;

(2) Any statement, letter or other document provided and executed by a judge of the court which entered the final decree, upon request of the adoptee, which identifies the adoptee and the adoptee's birth parents and tribal affiliation, as authorized by the Indian Child Welfare Act (25 U.S.C. 1917); or

(3) A certified copy of a document which identifies the adoptee by his or her original name, which was filed with the court in the adoption case, together with one of the following:

(i) An original birth certificate established at the adoptee's birth; or

(ii) A hospital birth certificate listing the name(s) of the adoptee's birth parent(s).

Subpart D—Information on Bureau Actions on Certificate of Degree of Indian or Alaska Native Blood Requests

§ 70.25 How will I know what information the deciding Bureau official will rely upon to determine whether I receive a Certificate of Degree of Indian or Alaska Native Blood?

We will base the decision to issue a CDIB on the standard in § 70.11, using information contained in Bureau and tribal records and additional information that you provide under §§ 70.23 and 70.24.

§ 70.26 What steps do I follow if I possess Indian or Alaska Native blood from more than one federally recognized Indian tribe?

If you possess Indian blood derived from more than one federally recognized Indian tribe, you may ask the Bureau official to issue a CDIB that confirms your total degree of Indian blood.

(a) If you make this request, you must send a certified copy of any previously issued CDIB documenting blood degree of other federally recognized Indian tribes to the address of the Bureau official.

(b) If you do not have a CDIB showing the tribal blood you possess, you must:

(1) Request a CDIB from the Bureau Office with administrative jurisdiction over the tribe from which your Indian blood is derived; and

(2) If more than one Bureau office is involved, you must submit the CDIBs that you received under this paragraph to the Bureau office under paragraph (a) of this section that you designated to issue the CDIB showing your total blood degree.

§ 70.27 What information is shown on the Certificate of Degree of Indian or Alaska Native Blood which the Bureau issued to me?

The CDIB that we issue under this part contains all of the information shown in this section.

(a) Your full name as it appears on the state certified reproduction of your birth record or replacement birth record;

(b) Your date of birth;

(c) The date the CDIB is issued;

(d) Your documented blood degree;

(e) The names of the federally recognized Indian tribe(s) from which your blood degree is derived;

(f) The base roll is identified;

(g) The deciding Bureau officer's signature and title;

(h) The issuing office and address; and

(i) The following statement: This CDIB is the property of the U.S. Government. It may not be used to determine restricted or trust status of lands owned by a CDIB holder who is subject to any Federal law containing special standards for determining blood degree for purposes of identifying restricted or trust land status. This document does not constitute membership in the referenced tribe(s). The tribe is the sole determiner of tribal membership and should be contacted for further information. Counterfeiting, altering, or misusing this CDIB is a violation of 18 U.S.C. 499 and 701. The Bureau of Indian Affairs may recall this CDIB upon issuing a final decision to recall after exhaustion of appeal rights.

§ 70.28 Do I become a member of an Indian Tribe when the Bureau issues me a Certificate of Degree of Indian or Alaska Native Blood?

No.

(a) A CDIB issued by the Bureau does not establish membership in a federally recognized Indian tribe. Only a tribe may determine membership.

(b) The issuance of a CDIB is not an enrollment action and 25 CFR 62.4 is not applicable to actions related to CDIBs.

§ 70.29 What response can I expect from the Bureau when I make a request for a Certificate of Degree of Indian or Alaska Native Blood?

(a) The deciding Bureau official may determine your degree of Indian blood and issue a CDIB within 45 to 60 days. The deciding Bureau official will notify the requester if more time is needed to process the request.

(1) We will either:

(i) Send you the CDIB by regular mail at the address on your request or change of address received by the deciding Bureau official, or

(ii) Give you the CDIB in person with the letter under § 70.20(a)(2). You will be required to sign and date an acknowledgment that you received both the CDIB and this letter. You will be provided a copy of this acknowledgment as a receipt.

(2) We will include a letter with the CDIB that:

(i) Tells you to carefully review the information on the CDIB to be sure that it is accurate;

(ii) States that if you disagree with any of the information on the CDIB, you should take the steps described in the letter; and

(iii) Describes the steps in § 70.30 of these regulations.

(b) The deciding Bureau official may deny your CDIB request, if you fail to establish that you have Indian blood under the eligibility requirements of § 70.10.

(1) We will either:

(i) Send you the denial in writing by certified mail at the address appearing on your request or change of address received by the deciding Bureau official, or

(ii) Give you the denial in person with the letter under § 70.20(b)(2). You will be required to sign and date an acknowledgment that you received both the denial and this letter. You will be provided a copy of this acknowledgment as a receipt.

(2) The denial letter will:

(i) Explain the reason(s) for the denial; and

(ii) Contain a statement of your appeal rights and enclose a copy of subpart E of this part.

Subpart E—Appeal Procedures

§ 70.30 What can I do if I do not agree with the deciding Bureau official who issued the degree of Indian blood or other information contained on my Certificate of Degree of Indian or Alaska Native Blood?

(a) If you do not agree with the degree of Indian blood or other information on the CDIB, you must notify the deciding Bureau official in writing within 45 days of the date of the letter (60 days for Alaska tribes) that transmitted the CDIB. Your notification must:

(1) State that you believe there has been a mistake;

(2) Describe the mistake which you believe has been made; and

(3) Include any additional documentation to show why you believe a correction is needed.

(b) The deciding Bureau official will:

(1) Review your letter and make corrections on the CDIB, if he or she determines that a mistake was made.

(2) Send you a letter containing:

(i) His or her response decision, including a corrected or new CDIB, or an explanation about why his or her decision has not been changed; and

(ii) A statement of your appeal rights and an enclosed copy of this subpart E.

(c) The deciding Bureau official's response decision must be delivered to you either:

(1) By certified mail, return receipt requested, at the address appearing on your request or change of address received by the deciding Bureau official; or

(2) In person, by giving you the response decision and having you sign and date an acknowledgment that you received the response decision and also the corrected or new CDIB, if a corrected or new CDIB is given to you.

(d) If you disagree with the deciding Bureau official's response decision, you may file an appeal if you are the person named in the CDIB. You may also have your authorized representative or an attorney file an appeal on your behalf.

§ 70.31 What can I do if my request for a Certificate of Degree of Indian or Alaska Native Blood is denied?

If your request for a CDIB is denied, you may file an appeal if you are the person named in the denial. You may also have your authorized representative or an attorney file an appeal on your behalf.

§ 70.32 What is the deadline for filing my appeal, and what will happen if I do not meet the deadline?

(a) You must appeal any decision made under this part within 45 days of receiving the decision (60 days for Alaska tribes). (Decisions made under this part are: a denial decision described in § 70.29(b), a response decision described in § 70.30 or a decision to invalidate or amend your CDIB as described in § 70.37.)

(1) The 45-day appeal period begins on the day of delivery indicated on the return receipt of certified mail, or on the date our records indicate you personally received the letter.

(2) The date of filing your notice of appeal is the date it is postmarked or the date it is personally delivered to the Regional Director's office.

(3) If the 45th day (60th day for Alaska tribes) falls on a Saturday, Sunday, legal holiday, or other nonbusiness day, the appeal period will end on the following working day.

(b) If you do not appeal the decision within the 45-day appeal period (60-day for Alaska tribes), the decision becomes final for the Department and is not subject to reconsideration. No extension of time will be granted for filing a notice of appeal.

§ 70.33 What are the steps for filing an appeal when I disagree with the information on the Certificate of Degree of Indian or Alaska Native Blood which the deciding Bureau official provided?

You must file your appeal, by mail or by personal delivery, with the Regional Director named in the decision you are appealing.

(a) You may file an appeal on behalf of more than one person. Each appealing party must meet the requirements for appeals and must be listed in the appeal.

(b) Your address and the address of each appealing party must appear in the appeal. You must promptly notify the Regional Director of any change of address, otherwise the address you furnish in the appeal shall be the address of record.

(c) You may request additional time to submit supporting evidence. The Regional Director may grant you a reasonable period to submit your evidence. However, you will not be granted additional time to file your appeal.

(d) If you allow an authorized representative to file your appeal, we will recognize the authorized representative as fully controlling the appeal on your behalf.

(1) We will serve any document relating to the appeal on the authorized representative and consider the document to be served on you.

(2) If you have more than one authorized representative, service upon one of your authorized representatives is sufficient.

§ 70.34 Can I submit additional information if I choose to file an appeal and what is the burden of proof?

You should include any supporting evidence not previously furnished and you may include a copy or reference to any Bureau or tribal records having a direct bearing on the action. The burden of proof is on you or your authorized representative.

§ 70.35 What action can I expect from the Bureau's Regional Director if I file an appeal?

(a) The Regional Director must acknowledge in writing the receipt of your appeal.

(b) The Regional Director will consider the material that you submit together with whatever additional information he/she considers pertinent. If the Regional Director relies upon any additional information, he/she must identify it in the decision.

(c) The Regional Director may issue special instructions to facilitate his/her work. These instructions must not conflict with this part.

(d) The Regional Director must issue a written decision on your appeal within 60 days after:

(1) Receipt of the appeal; or

(2) Timely submission of any additional documents, if you were given an extension to submit additional documents.

(e) If you are appealing the action of the Regional Director or the Regional Director recuses for cause his/her authority to make a final decision, he/she must forward the appeal to the Commissioner for final action together with any relevant information or records and his/her recommendations.

§ 70.36 What action can I expect if I appeal the Regional Director's decision?

If you appeal the Regional Director's decision, the Commissioner must issue a written decision on your appeal within 60 days after:

(a) Receiving your appeal; or

(b) Timely submission of any additional documents, if you were given an extension to submit additional documents.

Subpart F—Other

§ 70.37 Can my Certificate of Degree of Indian or Alaska Native Blood be invalidated or amended to change my degree of Indian blood? If so, under what circumstances?

(a) Under some circumstances, we can invalidate or amend your CDIB without you asking.

(1) The deciding Bureau official may amend your CDIB if there was a mathematical error in computing degree of Indian blood. For example, if your mother's CDIB shows her degree of Indian blood as 4/4, your father's shows his degree of Indian blood as 3/4, and your CDIB shows your degree of Indian blood as 5/8, the deciding Bureau official will issue a decision that your degree of Indian blood will be increased to 7/8.

(2) The deciding Bureau official may invalidate or amend your CDIB if it contains a substantial error in your degree of Indian blood that results in a manifest injustice to you or to the public interest. For example, if someone obtains a CDIB based on fraudulent proof of descendancy from someone on the base rolls or based on a substantial mistake of fact, the CDIB may be invalidated or amended.

(b) At your request, the deciding Bureau official may amend the degree of Indian blood on your CDIB.

(1) Your request should cite a mathematical error on the base roll or a substantial error related to the determination of your degree of Indian

blood accompanied by any necessary supporting documentation.

(2) If your request does not meet these requirements, the deciding Bureau official may deny the request without further review. If your request meets these requirements, the deciding Bureau official will examine the Bureau records and any other information that you provide, and will make a decision.

(c) The deciding Bureau official must notify you in writing of a decision issued under this section. The notification must:

(1) Include a statement that the decision may be appealed under 25 CFR part 70;

(2) Identify the official to whom you may appeal; and

(3) Enclose a copy of subpart E of this part.

(d) The deciding Bureau official's decision must be delivered to you by certified mail, return receipt requested, at the address appearing on your request or change of address received by the deciding Bureau official, or in person. If the notification of the decision is delivered in person, you will be required to sign and date an acknowledgment that you received both the notification and a copy of subpart E. You will be provided a copy of this acknowledgment as a receipt.

(e) If you disagree with a decision made under this section, you may file an appeal if you are named in the CDIB or the amendment or invalidation of the CDIB. You may authorize a representative, including an attorney, to file an appeal in your behalf.

§ 70.38 Can my Certificate of Degree of Indian or Alaska Native Blood be sent to an authorized third party?

Yes. Upon your request, the CDIB may be sent or released to an authorized representative or other designated third party.

Dated: April 7, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–9421 Filed 4–17–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AJ49

Outer Burial Receptacles

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: By statute the Department of Veterans Affairs (VA) is authorized to provide a monetary allowance for each new burial in a VA national cemetery where a privately-purchased outer burial receptacle is used in lieu of a government-furnished graveliner. This document proposes to establish a mechanism for implementing these provisions.

DATES: Comments must be received on or before June 19, 2000.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to "OGCRegulations@mail.va.gov". Comments should indicate that they are submitted in response to "RIN 2900–AJ49." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Ken Greenberg, Staff Assistant, Office of Operations Support (402), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Telephone: 202–273–5179 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Public Law 100–322 authorizes VA to provide a graveliner at no cost to the family for the casketed remains of individuals buried in open national cemeteries. Typically, a graveliner is pre-cast concrete or thermoplastic in the form of a box with a removable lid. The casket is placed inside the graveliner which assist in maintaining the integrity of the soil around the grave by reducing the likelihood of a sunken grave.

Public Law 104–275 was enacted on October 9, 1996. The Public Law allowed VA to provide a monetary allowance for each new burial in a VA national cemetery where a privately-purchased outer burial receptacle is used in lieu of a government-furnished graveliner.

Under the Public Law, the monetary allowance is equal to the average cost of the government-furnished graveliner which would have been furnished, minus any administrative costs incurred by VA. As an example, if it costs VA an average of $125 to purchase a graveliner and the administrative cost to process an allowance for a privately-purchased outer burial receptacle is $10, VA would pay a monetary allowance of $115 toward the cost of the privately-purchased outer burial receptacle. VA would update the allowance annually by notice in the **Federal Register** to reflect the current average cost of purchasing graveliners by VA minus the administrative cost for VA to process the allowance. Under the proposed rule, the next allowance payable for interments occurring during the period from October 9, 1996, through December 31, 1999, would be the rate determined for fiscal year 1999. This would reduce the administrative burden required to calculate allowances, and would expedite payment to recipients. Further, this is warranted since the average cost to the government to purchase graveliners has not varied significant since 1996.

The average cost of graveliners would not include graveliners procured and pre-placed in gravesites as part of cemetery gravesite development projects or double depth graveliners. The costs of these two types of graveliners purchased are not representative of the cost of a single-depth graveliner purchased for installation at the time of interment. The double depth liners hold two caskets, whereas the single depth liners hold one casket. Pre-placed liners are procured as part of a larger gravesite development construction project.

The proposed rule provides that an application for payment of the monetary allowance would not be required. Currently, all information necessary for identifying the individual entitled to payment of the monetary allowance is included in information already being collected under the National Cemetery Administration's Burial Operation Support System (BOSS).

Further, we have a method for determining in almost all cases those individuals entitled to the allowance for purchasing outer burial receptacles prior to January 1, 2000. In almost all cases when an outer burial receptacle was purchased, the person listed as the next of kin paid for it. Accordingly, we believe there is a basis for a presumption that such person paid for the outer burial receptacle. Accordingly, for burials during the period October 9, 1996, through December 31, 1999, the allowance would be paid to the person identified as the next of kin in records contained in the BOSS. However, if a person who is not listed as the next of kin provides evidence that he or she paid for the outer burial receptacle, the allowance would be paid instead to that person.

In burials where a casket already exists in a grave with or without a graveliner, placement of a second casket in an outer burial receptacle would not be permitted in the same grave unless the national cemetery director

determines that the already interred casket would not be damaged.

Regulatory Flexibility Act

The Secretary certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The proposed rule would not affect the sale of outer burial receptacles. Further, the basic provisions of the proposed rule reflect statutory requirements. Accordingly, pursuant to 5 U.S.C. 605(b), the proposed rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Number for programs affected by this regulation is 64.201.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Investigations, Parking, Penalties, Postal Service, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, wages.

Approved: March 13, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 1 is proposed to be amended as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 1.629 is added to read as follows:

§ 1.629 Monetary allowance in lieu of a government-furnished outer burial receptacle.

(a) *Definitions. Outer Burial Receptacle.* For the purpose of this section, an outer burial receptacle means a graveliner, burial vault, or other similar type of container for a casket.

(b) *Purpose.* This section provides for payment of a monetary allowance for an outer burial receptacle for any interment in a VA national cemetery where a privately-purchased outer burial receptacle has been used in lieu of a government-furnished graveliner.

(c) *Second Interments.* In burials where a casket already exists in a grave with or without a graveliner, placement of a second casket in an outer burial receptacle will not be permitted in the same grave unless the national cemetery director determines that the already interred casket will not be damaged.

(d) *Payment of monetary allowance.* VA will pay a monetary allowance for each burial in a VA national cemetery where a privately-purchased outer burial receptacle was used on and after October 9, 1996. For burials on or after January 1, 2000, the person identified in records contained in the National Cemetery Administration Burial Operations Support System as the person who privately purchased the outer burial receptacle will be paid the monetary allowance. For burials during the period October 9, 1996, through December 31, 1999, the allowance will be paid to the person identified as the next of kin in records contained in the National Cemetery Administration Burial Operations Support System based on the presumption that such person privately purchased the outer burial receptacles [however, if a person who is not listed as the next of kin provides evidence that he or she privately purchased the outer burial receptacle, the allowance will be paid instead to that person]. No application is required to receive payment of a monetary allowance.

(e) *Amount of the allowance.* (1) For calendar year 2000 and each calendar year thereafter, the allowance will be the average cost, as determined by VA, of government-furnished graveliners, less the administrative costs incurred by VA in processing and paying the allowance.

(i) The average cost of government-furnished graveliners will be based upon the actual average cost to the government of such graveliners during the most recent fiscal year ending prior to the start of the calendar year for which the amount of the allowance will be used. This average cost will be determined by taking VA's total cost during that fiscal year for single-depth graveliners which were procured for placement at the time of interment and dividing it by the total number of such graveliners procured by VA during that fiscal year. The calculation shall exclude both graveliners procured and pre-placed in gravesites as part of cemetery gravesite development projects and all double-depth graveliners.

(ii) The administrative costs incurred by VA will consist of those costs that relate to processing and paying an allowance, as determined by VA, for the calendar year ending prior to the start of the calendar year for which the amount of the allowance will be used.

(2) For calendar year 2000 and each calendar year thereafter, the amount of the allowance for each calendar year will be published in the "Notices" section of the **Federal Register**. The **Federal Register** Notice will also provide, as information, the determined average cost of government-furnished graveliners and the determined amount of the administrative costs to be deducted.

(3) The published allowance amount for interments which occur during calendar year 2000 will also be used for payment of any allowances for interments which occurred during the period from October 9, 1996, through December 31, 1999.

(Authority: 38 U.S.C. 2306(d)).

[FR Doc. 00–9602 Filed 4–17–00; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 4091b; FRL–6569–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Approval of VOC and NOx RACT Determinations for Individual Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions impose reasonably available control technology (RACT) on twenty-six major sources of volatile organic compounds (VOC) and nitrogen oxides (NOx) located in Pennsylvania. EPA is proposing these revisions to establish RACT requirements in accordance with the Clean Air Act. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in the Technical Support Documents (TSD) prepared in support of this rulemaking action. A copy of the TSD's are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA

receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received by May 18, 2000.

ADDRESSES: Written comments on this action should be addressed to Kathleen Henry, Chief, Permits and Technical Assessment Branch, Air Protection Division, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Kelly L. Bunker at (215) 814–2177, for information on sources #1–18 (or via e-mail at bunker.kelly@epa.gov) or Melik Spain at (215) 814–2299 for information on sources #19–26 (or via e-mail at spain.melik@epa.gov). While information may be requested via e-mail, any comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: For further information concerning this action to propose approval of VOC and NOx RACT determinations for twenty-six individual sources in Pennsylvania as a revision to the Commonwealth's SIP, please see the information provided in the direct final action, of the same Title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: March 19, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–9383 Filed 4–17–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME–003–01–7004b; A–1–FRL–6572–7]

Approval and Promulgation of Air Quality Implementation Plans; Maine; RACT for VOC sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve several State Implementation Plan (SIP) revisions submitted by the State of Maine. EPA is also proposing a limited approval of one regulation submitted as a SIP revision by the State of Maine. These SIP revisions establish requirements for certain facilities which emit volatile organic compounds (VOCs). In the Final Rules section of this **Federal Register**, EPA is approving these SIP revisions as a direct final rule without prior proposal because the Agency anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before May 18, 2000.

ADDRESSES: Comments may be mailed to David Conroy, Unit Manager, Air Quality Planning Unit (mail code CAQ), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 918–1047, arnold.anne@epa.gov.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 24, 2000.

Mindy S. Lubber,

Regional Administrator, EPA New England.

[FR Doc. 00–9538 Filed 4–17–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 435

[FRL–6581–1]

Effluent Limitations Guidelines for the Oil and Gas Extraction Point Source Category; Announcement of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of meeting.

SUMMARY: EPA will conduct a public meeting on the upcoming Synthetic-based Drilling Fluids (SBFs) rulemaking on Tuesday, April 25, 2000, from 1 p.m. to 5:30 p.m. Central Standard Time.

The Office of Science and Technology within EPA's Office of Water is holding the public meeting to inform all interested parties of the current status of the SBF effluent guideline. EPA intends to finalize effluent limitations guidelines and standards regarding these fluids (used in the oil and gas extraction industrial category) in December 2000. EPA plans to publish a Notice of Data Availability for this rulemaking very shortly. At the meeting on April 25, EPA will report on the status of the rulemaking; new data submissions available for public comment; revised economic and engineering models and results incorporating the new data; descriptions of "best management practices" (BMPs) as potential alternative requirements to reduce the discharges of toxic and hazardous pollutants; and paperwork requirements associated with implementation of the BMP alternative compliance methods. EPA will use this meeting to solicit public comment on any of the issues or information presented in the notice of data availability and in the administrative record supporting the notice.

DATES: EPA will conduct the SBF public meeting on Tuesday, April 25, 2000, from 1 p.m. to 5:30 p.m. Central Standard Time.

ADDRESSES: The SBF public meeting will be held at the Minerals Management Service (MMS), Gulf of Mexico OCS Region Office, Room 111,

1201 Elmwood Park Boulevard, New Orleans, LA, 70123–2394.

FOR FURTHER INFORMATION CONTACT: Mr. Carey A. Johnston, Office of Water (4303), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 260–7186; e-mail address: johnston.carey@epa.gov.

SUPPLEMENTARY INFORMATION: On February 3, 1999 (64 FR 5488), EPA proposed technology-based effluent limitations guidelines and standards under the Clean Water Act (33 U.S.C. 1251 *et seq.*) for the discharge of pollutants from oil and gas drilling operations associated with the use of SBFs and other non-aqueous drilling fluids into waters of the United States. This proposed rule applies to certain existing and new facilities in the offshore subcategory (*i.e.*, facilities seaward of the inner territorial boundary) and the Cook Inlet, Alaska, portion of the coastal subcategory of the oil and gas extraction point source category.

The SBF meeting on April 25, 2000 is open to the public, and limited seating for the public is available on a first-come, first-served basis. For information on the location, see the **ADDRESSES** section above. Visitors attending the SBF public meeting will need to sign in at the MMS guard booth and obtain a visitors badge.

If you wish to present formal comments at the public meeting you should have a written copy for submittal. No meeting materials will be distributed in advance of the public meeting; all materials will be distributed at the meeting. Limited teleconferencing capability will be available for the meeting. Persons wishing to participate via telephone or who have special audio-visual needs should contact Mr. Carey A. Johnston, (202) 260–7186. For those unable to attend the meeting, a document summary will be available following the meeting and can be obtained by an e-mail or telephone request to Mr. Carey A. Johnston at the above address.

Dated: April 12, 2000.

James Hanlon,

Acting Director, Office of Science and Technology.

[FR Doc. 00–9656 Filed 4–17–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–701; MM Docket No. 97–169; RM–9121 and RM–9170]

Radio Broadcasting Services; Coon Valley and Westby, WI and Lanesboro, MN

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration, denial.

SUMMARY: This document denies a petition for reconsideration of a *Report and Order Order*, 63 FR 30145 (June 3, 1998), that allotted Channel 280A to both Westby, Wisconsin, and Lanesboro, Minnesota. These allotments provide first local aural transmission services to two communities that are more populous than Coon Valley, Wisconsin.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 97–169, adopted on March 22, 2000, and released on March 31, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, DC. 20554. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–9614 Filed 4–17–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–736, MM Docket No. 00–59, RM–9734]

Radio Broadcasting Services; Cloverdale, Point Arena, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Point Broadcasting, permittee of unbuilt station on Channel 296B1, Point Arena, CA, requesting to substitute Channel 296A for Channel 296B1 at Point Arena, reallot Channel 296A from Point Arena to Cloverdale, CA and modify its construction permit to specify the Class A channel. In view of the fact that our resolution of this proceeding may affect the outcome of MM Docket No. 99–180, it may be necessary ultimately to combine these dockets into a single Report and Order. Channel 296A can be allotted to Cloverdale, CA in compliance with the Commission's minimum distance separation requirements at petitioner's specified site 0.8 kilometers (0.5 miles) south of the community at coordinates 38–48–00 and 123–01–00.

DATES: Comments must be filed on or before May 22, 2000, and reply comments on or before June 6, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jerrold Miller, Miller & Miller, P.C. P.O. Box 33003 Washington, DC 20033 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–59 adopted March 22, 2000, and released March 31, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–9613 Filed 4–17–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–700; MM Docket No. 00–57; RM–9825]

Radio Broadcasting Services; Gadsden and Springville, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Capstar Royalty II Corporation, licensee of Station WQEN(FM), Channel 279C1, Gadsden, Alabama, requesting the substitution of Channel 279C for Channel 279C1, the reallotment of Channel 279C to Springville, Alabama, as that locality's first local aural transmission service, and modification of its license accordingly. Coordinates used for this proposal are 33–58–04 NL and 86–12–35 WL. (See **SUPPLEMENTARY INFORMATION**, *infra.*)

DATES: Comments must be filed on or before May 22, 2000, and reply comments on or before June 6, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Gregory L. Masters and E. Joseph Knoll, III, Wiley, Rein & Fielding, 1776 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–57, adopted March 22, 2000, and released March 31, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Station WQEN is currently licensed to operate on Channel 279C1 at Gadsden. However, 47 CFR Part 73, Radio Broadcast Services, § 73.202(b), the Table of FM Allotments, lists Channel 279C at Gadsden. Commission records reflect that Station WQEN filed a one-step application for a construction permit (File No. BPH–19971114IH) to change its channel of operation to Channel 279C1. A license to cover the construction permit (File No. BLH–19980710KE) was granted December 6, 1999.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–9612 Filed 4–17–00; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1827, 1835 and 1852

Submission of Final Reports Under NASA Research and Development Contracts

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This is a proposed rule to revise report submission requirements under NASA research and development (R&D) contracts and clarify that contractors cannot release these final reports until NASA has completed its Document Availability Authorization (DAA) review and the availability of the report has been determined.

DATES: Comments should be submitted on or before June 19, 2000.

ADDRESSES: Interested parties should submit written comments to Celeste Dalton, NASA Headquarters Office of Procurement, Contract Management Division (Code HK), Washington, DC, 20546. Comments may also be submitted by email to *cdalton@hq.nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Celeste Dalton (202) 358–1645.

SUPPLEMENTARY INFORMATION:

A. Background

NASA's Center for AeroSpace Information (CASI) serves as a repository of NASA scientific and technical information (STI). This includes information developed under NASA-sponsored research and development efforts. The NFS currently requires that copies of the final report and other progress reports under R&D contracts be submitted to CASI. The need for other progress reports no longer exists. Copies of only the final report required under an R&D contract must be submitted to CASI. Before NASA STI is made available, it is subject to a NASA Document Availability Authorization (DAA) review and release determination. Contractors cannot release final reports resulting from NASA R&D contracts until NASA has completed its Document Availability Authorization (DAA) review (NASA Form 1676).

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C.601 *et seq.*) because it only affects small business entities whose R&D contracts required progress reporting.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any new record keeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C 3501, *et seq.*

List of Subjects in 48 CFR Parts 1827, 1835 and 1852

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR parts 1827, 1835, and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 1827, 1835, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

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PART 1827—PATENTS, DATA, AND COPYRIGHTS

2. Revise section 1827.406–70 to read as follows:

1827.406–70 Reports of work.

(a) When considered necessary for monitoring contract performance, contracting officers must require contractors to furnish reports of work performed under research and development contracts (fixed-price and cost reimbursement), interagency agreements, or in cost-reimbursement supply contracts. This purpose may be achieved by including the following general requirements, modified as needed to meet the particular requirements of the contract, in the section of the contract specifying data delivery requirements:

(1) *Monthly progress reports.* Reports should be in narrative form, brief, and informal. They should include a quantitative description of progress, an indication of any current problems that may impede performance, proposed corrective action, and a discussion of the work to be performed during the next monthly reporting period. (Normally, this requirement should not be used in contracts with nonprofit organizations.)

(2) *Quarterly progress reports.* In addition to factual data, these reports should include a separate analysis section interpreting the results obtained, recommending further action, and relating occurrences to the ultimate objectives of the contract. Sufficient diagrams, sketches, curves, photographs, and drawings should be included to convey the intended meaning.

(3) *Final report.* This report should summarize the results of the entire contract, including recommendations and conclusions based on the experience and results obtained. The final report should include tables, graphs, diagrams, curves, sketches, photo graphs, and drawings in sufficient detail to explain comprehensively the results achieved under the contract. The final report must comply with NPG 2200.2A, Guidelines for Documentation, Approval, and Dissemination of NASA Scientific and Technical Information.

(4) *Report Documentation Page.* The final report must include a completed Report Documentation Page, Standard Form (SF) 298 as the final page of the report.

(b) The contracting officer must consider the desirability of providing reports on the completion of significant units or phases of work, in addition to periodic reports and reports on the completion of the contract.

(c) Submission of Final Report. In addition to the original of the final report submitted to the contracting officer, contracts containing the clause at 1852.235–70, Center for AeroSpace Information—Final Scientific and Technical Reports (see 1835.070(a)), must require the concurrent submission of a reproducible copy and a printed or reproduced copy of the final report to the NASA Center for AeroSpace Information (CASI).

(d) NASA Review of Final Report. When required by the contract, final reports submitted to NASA for review, shall be reviewed for technical accuracy, conformance with applicable law, policy and publication standards, and to determine the availability and distribution of NASA-funded documents containing scientific and technical information (STI) (NASA Form 1676, NASA Scientific and Technical Document Availability Authorization (DAA)). The final report must not be released outside of NASA until NASA's DAA review has been completed and the availability of the document has been determined. The document is considered available when it is accessible through CASI.

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

3. In section 1835.070, revise paragraph (a) to read as follows:

1835.070 NASA contract clauses and solicitation provision.

(a) The contracting officer must insert the clause at 1852.235–70, Center for AeroSpace Information—Final Scientific and Technical Reports, in all research and development contracts, interagency agreements, and in cost-reimbursement supply contracts involving research and development work.

* * * * *

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Revise section 1852.235–70 to read as follows:

1852.235–70 Center for AeroSpace Information—Final Scientific and Technical Reports.

As prescribed in 1835.070(a), insert the following clause:

Center for Aerospace Information—Final Scientific and Technical Reports (XXX)

(a) The Contractor should register with and avail itself of the services provided by the NASA Center for AeroSpace Information (CASI) (http://www.sti.nasa.gov) for the conduct of research or research and development required under this contract. CASI provides a variety of services and products as a central NASA repository of research information, which may enhance contract performance. The address is set out in paragraph (d) of this clause.

(b) Should the CASI information or service requested by the Contractor be unavailable or not in the exact form necessary by the Contractor, neither CASI nor NASA is obligated to search for or change the format of the information. A failure to furnish information shall not entitle the Contractor to an equitable adjustment under the terms and conditions of this contract.

(c) In addition to the final report, as defined at 1827.406–70(a)(3), submitted to the contracting officer, a reproducible copy and a printed or reproduced copy of the final report or data shall be concurrently submitted to: Center for AeroSpace Information (CASI), Attn: Document Processing Section, 7121 Standard Drive, Hanover, Maryland 21076–1320, Phone: 301–621–0390, FAX: 301–621–0134.

(d) The last page of the final report submitted to CASI shall be a completed Standard Form (SF) 298, Report Documentation Page. In addition to the copy of the final report, the contractor shall provide, to CASI, a copy of the letter transmitting the final report to NASA for its Document Availability Authorization (DAA) review.

(e) The contractor shall not release the final report, outside of NASA, until the DAA review has been completed by NASA and availability of the report has been determined.

(End of clause)

[FR Doc. 00–9555 Filed 4–17–00; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG02

Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Vermilion Darter as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and notice of petition finding.

SUMMARY: We, the Fish and Wildlife Service (Service), propose to list the vermilion darter (*Etheostoma chermocki*) as endangered under the authority of the Endangered Species Act of 1973, as amended (Act). The vermilion darter is found only in 11.6 kilometers (7.2 miles) of the main-stem of Turkey Creek, and the lowermost reaches of Dry Creek and Beaver Creek,

within the Turkey Creek drainage, a tributary of the Locust Fork of the Black Warrior River, northeast Jefferson County, Alabama. Impoundments within the upper mainstem of Turkey Creek and its tributaries, along with water quality degradation, have altered the stream's dynamics and reduced the darter's range significantly. The surviving population is currently threatened by pollutants (*i.e.*, sediment, nutrients, pesticide and fertilizer runoff) that wash into the streams from the land surfaces. Since the vermilion darter has such a restricted range, it is also threatened by potential catastrophic events (*e.g.*, toxic chemical spill). This proposed rule, if made final, will extend the protection of the Act to the vermilion darter. We are seeking data and comments from the public.

DATES: Comments from all interested parties must be received by June 19, 2000. Requests for public hearings must be received by June 2, 2000.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods. (1) You may submit written comments to the Field Supervisor, U.S. Fish and Wildlife Service, Mississippi Field Office, 6578 Dogwood View Parkway, Jackson, Mississippi 39213.

(2) You may send comments by e-mail to daniel__drennen@fws.gov. Please submit these comments as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: [RIN number]" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly at the above address or by telephone at 601/965–4900.

(3) You may hand-deliver comments to the above address. Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel J. Drennen at the above address, or telephone 601/965–4900; facsimile 601/965–4340.

SUPPLEMENTARY INFORMATION:

Background

Boschung *et al.* (1992) formally described the vermilion darter (*Etheostoma chermocki* (Teleostei: Percidae)) from the Black Warrior River drainage of Alabama. This fish is a medium-sized darter reaching about 7.1 centimeters (2.8 inches) total length (length from tip of snout to longest portion of tail fin) (Boschung *et al.* 1992, Suttkus and Bailey 1993, Mettee *et al.* 1996). The vermilion darter belongs to the subgenus Ulocentra ("snub-nosed darters"), which includes fish that are slightly laterally compressed, have complete lateral lines, broadly connected gill membranes, a short head, and a small pronounced mouth. The vermilion darter is distinguished by extensive vermilion (reddish-orange) pigmentation on the fins and body, especially on the belly. Males have a bright red spot on the membrane between the first spines of the spinous dorsal (upper) fin. During breeding, the males have red blotches along the side of the body (Boschung *et al.* 1992, Suttkus and Baily 1993, and Metee *et al.* 1996). The female's red spots are smaller.

Currently, the vermilion darter is found only in the Turkey Creek drainage, a tributary of the Locust Fork of the Black Warrior River, Jefferson County, Alabama. The current range of the vermilion darter is 11.6 kilometers (km) (7.2 miles (mi)) of the mainstem of Turkey Creek and the lowermost reaches (0.8 km (0.5 mi) total) of Dry and Beaver Creeks. Extensive surveys in similar habitats have failed to locate this species outside of its current drainage (Boschung *et al.* 1992, Blanco *et al.* 1995, Mettee *et al.* 1996, Shepard *et al.* 1998, Blanco and Mayden 1999). The Turkey Creek drainage is primarily owned by private landowners, with only approximately 1.6 km (1 mi) of stream bank owned by Jefferson County.

The historic population size of the vermilion darter within the Turkey Creek drainage is unknown. In the 1960s and 1970s, the vermilion darter was common at the Highway 79 bridge site, which roughly bisects the fish's range, but by 1992, occurrences of the darter had become very rare at that site (Boschung *et al.* 1992; K. Marion, University of Alabama in Birmingham, pers. comm. 1998). Currently, populations of vermilion darters are meager and isolated within certain areas of Turkey Creek, due to natural or manmade barriers, like a waterfall and several impoundments. Dispersal beyond the current range of this species is not likely (Blanco and Mayden 1997) because of these barriers and increasing point-source pollution (pollution created from a single source, like sewage effluent) and nonpoint-source pollution (pollution created from larger processes and not from one concentrated point source, like excess sediment washing into a stream after a rain). Blanco and Mayden (1999) estimated the population size at more than 1,800 individuals, based on the number of vermilion darters caught per fishing attempts and amount of time within the Turkey Creek mainstem and the tributaries of Dry and Beaver Creeks.

Habitat for the vermilion darter is similar to that of other snub-nosed darters found in small to medium-sized clear streams, with gravel riffles and moderate currents (Kuehne and Barbour 1983, Etnier and Starnes 1993). Boschung *et al.* (1992) described the stream habitat for vermilion darters as 3 to 20 meters (m) (10 to 65 feet (ft)) wide, 0.01 to more than 0.5 m (0.03 to more than 1.64 ft) in depth, with pools of moderate current alternating with riffles of moderately swift current, and low water turbidity. Blanco and Mayden (1999) found this species primarily in areas dominated by fine gravel with some coarse gravel or cobble. This species is absent in habitats with only a bedrock bottom, but has been found on bedrock with sand and gravel. Vermilion darters have been found in habitats with consistent water velocity, within run habitats (stream zones with faster water), upstream at the foot of a run, and in the transition zone between a run/riffle (fast water) and pool (slow water) habitat (Blanco and Mayden 1999). This species is generally not found in deeper pool habitats. Vermilion darters are associated with aquatic vegetation such as *Potamogeton* spp., *Ceratophyllum* spp., and *Myriophyllum* spp. (Boshung *et al.* 1992). Vermilion darters are absent from habitats immediately downstream of impoundments and areas of point-source pollution (Blanco and Mayden 1999).

The only known spawning habitat for vermilion darters, at the confluence of Turkey Creek and the runoff from Tapawingo Springs (near the Highway 79 bridge), consists of a mixture of fine silt on small gravel interspersed with larger gravel, cobble, small boulders, vegetation, and occasional filamentous algae. Clean rock surfaces, as found here, are necessary for egg laying (Stiles, Samford University, Birmingham, Alabama, pers. comm. 1999). There are also small sticks and limbs on the bottom substrate and within the water column (Stiles, pers. comm. 1999). Little is known about the life-history of the vermilion darter; however, most Ulocentra species live 2 to 3 years and feed primarily on snails and aquatic insects (Carlander 1997).

Previous Federal Action

We have been monitoring the status of the species since the early 1990s and have funded several status surveys (Blanco *et al.* 1995 and Blanco and

Mayden 1997). We received a petition to emergency-list the vermilion darter as endangered on July 23, 1998, from Robert Reid, Jr., of Birmingham, Alabama. On August 18, 1998, we received supplemental information on the species and a request to be copetitioner from Dr. Paul Blanchard of Samford University, Birmingham, Alabama. The petition stated that the vermilion darter was limited in range and imminently threatened with extinction. We found that the petition presented substantial information indicating that listing the species may be warranted, but that emergency listing was not warranted. We published a notice announcing our 90-day finding and initiation of the species' status review in the **Federal Register** on January 26, 1999 (64 FR 3913).

Section 4(b)(3)(B) of the Act requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information, we make a finding within 12 months of the date of the receipt of the petition, on whether the action requested is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. This proposed rule constitutes our 12-month finding on the petitioned action.

The processing of this proposed rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of this proposed rule is a Priority 3 action.

Summary of Factors Affecting the Species

The procedures for adding species to the Federal Lists are found in section 4 of the Act (16 U.S.C. 1531 *et seq.*) and the accompanying regulations (50 CFR part 424). A species may be determined to be an endangered or a threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the vermilion darter (*Etheostoma chermocki* Boschung) are as follows.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The primary threats to the vermilion darter within the Turkey Creek watershed are nonpoint-source pollution and alteration of flow regimes. Restricted and localized in range, the vermilion darter is vulnerable to human-induced impacts to its habitat, such as siltation (excess sediments suspended or deposited in a stream), nutrification (excessive nutrients, such as nitrogen and phosphorus, present), and impoundments.

Excessive siltation renders the habitat unsuitable for feeding and reproduction of vermilion darters and associated fish species. Sediment has been shown to wear away and/or suffocate periphyton (organisms that live attached to objects underwater), disrupt aquatic insect communities, and negatively impact fish growth, survival, and reproduction (Waters 1995). Sediment is the most abundant pollutant produced in the Mobile River Basin (Alabama Department of Environmental Management 1996). Potential sediment sources within a watershed include virtually all activities that disturb the land surface. The amount and impact of sedimentation on the vermilion darter's habitat may be locally correlated with the land use practices such as construction, urbanization, and silviculture. Turkey Creek has been noted to be brown-orange from sediment and completely turbid after heavy to even medium rainfalls (Blanchard pers. comm. 1998). Four major soil types occur within the Turkey Creek watershed (Gorgas, Leesburg, Montevallo, and Nauvoo), and all are considered highly erodible due to the steep topography (R. Goode, Natural Resources Conservation Service, Birmingham, Alabama, pers. comm. 1988). Urbanization has contributed significantly to siltation within the Turkey Creek watershed. The approximately 91-square kilometer (sq km) (35-square mile (sq mi)) Turkey Creek watershed drains 22,149 hectares (54,731 acres) of Jefferson County, the most populous county in the State. Blanchard *et al.* (1998) identified five specific nonpoint-source siltation sites that are currently impacting the Turkey Creek watershed, including a major road extension within 0.3 km (1,000 ft) of Turkey Creek and four sites affecting Beaver Creek, a major tributary to Turkey Creek (*i.e.*, a bridge, road and sewer line construction, and a wood pallet plant). A proposed expansion of the Jefferson County landfill, if implemented, would likely contribute to increased sedimentation of Turkey Creek.

Nutrification is a major problem in Turkey Creek. Water quality data for Turkey Creek taken between September 1996 and February 1997 upstream of the Turkey Creek Waste Water Treatment Plant (TCWWTP), located within the range of the darter, showed high values for conductivity (Blanco and Mayden 1999). Similarly, water quality data for Turkey Creek taken along Turkey Creek Road, also within the darter's range, in June 1997 indicated high values for conductivity (Shepard *et al.* 1998). High conductivity values are an indicator of hardness and alkalinity and may denote water nutrification (Hackney *et al.* 1992, Tennessee Valley Authority 1992). Domestic pollution (septic and grey water) and excessive use of fertilizers and pesticides on lawns and along roadsides result in the concentration of nutrients and toxic chemicals within watersheds such as Turkey Creek. Nutrification promotes heavy algal growth that covers and eliminates clean rock or gravel habitats necessary for vermilion darter feeding and spawning. Shepard *et al.* (1998) noted a thin veneer of algae, indicating eutrophic conditions (increased levels of nitrogen and phosphorus) in Turkey Creek at the town of Morris, downstream of the range of the darter. Blanco *et al.* (1995) also noted increased levels of filamentous algae in Dry Creek and above the Turkey Creek Falls, within the range of the darter. The vermilion darter habitat along Turkey Creek Road was given a poor general index of biological integrity score (a numerical evaluation of the biological health of a stream) in 1997 because of domestic pollution (Shepard *et al.* 1998).

The Alabama Department of Environmental Management has reported seven violations for the TCWWTP between April 1995 and March 1998 (Blanchard *in litt.* 1998). These violations were for daily maximum fecal coliform values of almost 2 to 4 times more than permit limits. With local human population growing in the area, the TCWWTP is expected to be at full capacity soon, discharging 11,355 cubic meters per day (3,000,000 gallons per day) (Blanchard, pers. comm. 1999). A fish kill in Turkey Creek in 1997 may have been caused by raw sewage released into the creek following a sewage line break and repair (Moss 1997). Blanco and Mayden (1999) attributed the absence of darters immediately downstream of the TCWWTP to chlorine in treated wastewater overflows. However,

chlorine sterilization of effluent (wastewater outflows) was recently replaced with ultraviolet light sterilization.

There are six impoundments in Turkey and Dry Creeks (*i.e.*, Turkey Creek Lakes, Shadow Lake, Strip-mine Lake, Innsbrook Lake, Pinson Valley High Pond, and Horse Ranch Pond) (Blanco and Mayden 1999). These impoundments serve as dispersal barriers, affect water quality by reducing water flow and concentrating pollutants, and contribute to the isolation and separation of the vermilion darter populations (Blanco and Mayden 1999). Blanco and Mayden (1999) noted a 40-percent decline of vermilion darters collected between 1995 and 1998 at two sites directly affected by impoundments. Population density estimates, expressed as the number of vermilion darters caught per fishing attempts and vermilion darters caught per amount of time spent fishing, declined by approximately 42 percent and 71 percent, respectively (Blanco and Mayden 1997). However, since historical population information is unknown, Blanco and Mayden (1997) were unclear if the decline represented a long- or short-term decline. Blanco and Mayden (1999) noted a 71-percent decline of vermilion darter habitat within the species' 11.6-km (7.2-mi) range in the Turkey Creek drainage between 1995 and 1998. Approximately 8.2 km (5.1 mi) of the lost vermilion darter habitat was associated with the TCWWTP; two impoundments, a housing development, and pond dredging along Turkey Creek and Dry Creek; and increased siltation due to road maintenance along Beaver Creek (Blanco *et al.* 1995, Blanco and Mayden 1997, Blanco and Mayden 1999).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

In general, small species of fish such as the vermilion darter, which are not utilized for either sport or bait purposes, are unknown to the general public. However, listing the vermilion darter may make it more attractive to collectors through recognition of its rarity. Vermilion darters are found in shallow riffles and pools in restricted portions of Turkey Creek. These areas are easily accessible from public roads or bridges. The darter is also sensitive to a variety of easily obtained chemicals and products. These factors would make vandalism virtually undetectable and uncontrollable. Collection for scientific and educational purposes is not currently identified as a threat, but it must be regulated based on this species' restricted range and deteriorating habitat.

C. Disease or Predation

Disease or natural predators do not present any known threats to the vermilion darter. To the extent that disease or predation occurs, these factors become a more important consideration as the total population decreases in number.

D. The Inadequacy of Existing Regulatory Mechanisms

No environmental laws require persons to specifically consider the vermilion darter or ensure that a project will not jeopardize its continued existence. The vermilion darter has been designated an endangered species by Alabama and is protected under Alabama's Nongame Species Regulation 220–2–.92–.90ER, which protects the species from overcollecting. Application of current State and Federal water quality regulations have not adequately protected the vermilion darter habitat from point- and nonpoint-source pollution.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The current range of the vermilion darter is restricted to localized sites within the mainstem of Turkey Creek and the lowermost reaches of Dry Creek and Beaver Creek, within the Turkey Creek drainage. Subsequently, genetic diversity has likely declined due to fragmentation, separation, and destruction of vermilion darter populations. Potential genetic variation and diversity within a species are essential for recovery, adaptation to environmental change, and long-term viability (capability to live, reproduce, and develop) (Noss and Cooperrider 1994, Harris 1984). The long-term viability of a species is founded on conservation of numerous interbreeding local populations throughout the range of the species (Harris 1984). Interbreeding populations of vermilion darters are becoming increasingly separated.

The limited distribution of the vermilion darter makes populations vulnerable to extirpation (elimination) from catastrophic events such as an accidental toxic chemical spill, heavy pesticide or contaminant runoff, increased siltation, vandalism, or changes in flow regimes. A major highway (State Highway 79) divides the watershed. Eastward (upstream), the watershed is experiencing rapid residential and business growth; while to the west (downstream), there are numerous commercial, residential, and reclaimed strip-mining sites.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the vermilion darter in determining to propose this rule. Based on this evaluation, the preferred action is to list the vermilion darter as endangered. The Act defines an endangered species as one that is in danger of extinction throughout all, or a significant portion, of its range. A threatened species is one that is likely to become endangered in the foreseeable future throughout all or a significant portion of its range. Endangered status is appropriate for the vermilion darter due to its occurrence as isolated meager populations within a very limited range, segmented by barriers (*i.e.*, impoundments). The escalation of nonpoint-source pollution from siltation and nutrification within the species' habitat further threatens this species' survival. Isolated population segments are also subject to declining genetic diversity, reducing their chances for long-term viability. The possibility for catastrophic events (*e.g.*, discharges, toxic chemical spills) also poses a threat to the survival of the vermilion darter.

Critical Habitat

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection; and specific areas outside the geographical area occupied by a species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Critical habitat designation directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

Section 4(a)(3) of the Act, as amended, and implementing regulations

(50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species.

We propose that critical habitat is prudent for the vermilion darter. In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we believe that the designation of critical habitat for this species would be prudent.

Due to the small number of populations, the vermilion darter is vulnerable to unrestricted collection, vandalism, or other disturbance. We remain concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, we have examined the evidence available and have not found specific evidence of taking, vandalism, collection, or trade of this species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if any benefits would result from critical habitat designation, then a prudent finding is warranted. In the case of this species, designation of critical habitat may provide some benefits. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, in some instances, section 7 consultation might be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. Some educational or informational benefits may result from designating critical habitat. Therefore, we find that critical habitat is prudent for the vermilion darter.

As explained in detail in the Final Listing Priority Guidance for FY2000 (64 FR 57114), our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. We anticipate in FY 2000 and beyond giving higher priority to critical habitat designation, including designations deferred pursuant to the Final Listing Priority Guidance for FY2000, such as the designation for this species, than we have in recent fiscal years. We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. Deferral of the critical habitat designation for this species will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions; while allowing us to put in place protections needed for the conservation of the vermilion darter without further delay. We will make the final critical habitat determination with the final listing determination for the vermilion darter. If this final critical habitat determination is that critical habitat designation is prudent, we will develop a proposal to designate critical habitat for this species as soon as feasible, considering our workload priorities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal activities that could occur and impact the vermilion darter include, but are not limited to, the carrying out or the issuance of permits for reservoir construction, stream alteration, discharges, wastewater facility development, water withdrawal projects, pesticide registration, mining, and road and bridge construction. Activities affecting water quality may also impact the vermilion darter and are subject to the U.S. Army Corps of Engineers' and the U.S. Environmental Protection Agency's regulations and permit requirements under the authority of the Clean Water Act and the National Pollutant Discharge Elimination System (NPDES). It has been our experience, however, that nearly all section 7 consultations have been resolved so that species are protected and project objectives are met.

Listing the vermilion darter provides for the development and implementation of a recovery plan for the species. This plan will bring together Federal, State, and regional agency efforts for conservation of the species. A recovery plan will establish a framework for agencies to coordinate their recovery efforts. It will also describe the site-specific management actions necessary to achieve conservation and survival of the species.

The Act and its implementing regulations, found at 50 CFR 17.21, set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part,

make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt any such conduct), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and agents of State conservation agencies.

Our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify, to the maximum extent practicable, those activities that would or would not constitute a violation of section 9 of the Act if this species is listed. The intent of this policy is to increase public awareness as to the effects of the listing on future and ongoing activities within a species' range.

If the species is listed, we believe the following would not be likely to result in a violation of section 9:

(1) Existing discharges into waters supporting this species, which require Federal authorization or permits (*e.g.*, activities subject to sections 402, 404, and 405 of the Clean Water Act and discharges regulated under the NPDES), provided such discharges are in compliance with an incidental take statement and any reasonable and prudent measures issued pursuant to a consultation conducted in accordance with section 7 of the Act;

(2) Normal agricultural and silvicultural practices, including pesticide and herbicide use, that are carried out in accordance with any existing regulations, permit and label requirements, and best management practices;

(3) Development and construction activities designed and implemented pursuant to State and local water quality regulations and implemented using best management practices;

(4) Existing recreational activities such as swimming, wading, canoeing, and fishing; and

(5) Lawful commercial and sport fishing.

Activities that we believe could potentially result in a violation of section 9 of the Act, if the vermilion darter was listed, include, but are not limited to:

(1) The unauthorized collection or capture of this species;

(2) Unauthorized destruction or alteration of the species' habitat (*e.g.*, unpermitted instream dredging, channelization, and discharge of fill material);

(3) Violation of any discharge or water withdrawal permit having an effect on vermilion darter habitat;

(4) Illegal discharge or dumping of toxic chemicals or other pollutants into waters supporting the vermilion darter; and

(5) Use of pesticides and herbicides in violation of label restrictions within the species' watershed.

We will review other activities not identified above on a case-by-case basis to determine if a violation of section 9 of the Act may be likely to result from such activity should the vermilion darter become listed. We do not consider these lists to be exhaustive and provide them as information to the public.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of our Mississippi Field Office (see **ADDRESSES** section).

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, for incidental take in connection with otherwise lawful activities, and/or economic hardship. Requests for copies of the regulations and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Blvd., Atlanta, GA, 30345 (telephone 404/679–7313; facsimile 404/679–7081).

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

We will take into consideration any comments and additional information received on this species when making a final determination regarding this proposal. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

In accordance with interagency policy published on July 1, 1994 (59 FR 34270), upon publication of this proposed rule in the **Federal Register**, we will solicit expert reviews by at least three specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomic, biological, and ecological information for the vermilion darter. The purpose of such a review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including the input of appropriate experts. We will summarize the opinions of these reviewers in the final decision document. The final determination may differ from this proposal based upon the information we receive.

You may request a public hearing on this proposal. Your request for a hearing must be made in writing and filed within 45 days of the date of publication of this proposal in the **Federal Register**. Address your requests to the Field Supervisor (see **ADDRESSES** section).

Executive Order 12866

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to the following: (1) Are the requirements of the rule clear? (2) Is the discussion of the rule in the Supplementary Information section of the preamble helpful to understanding

the rule? (3) What else could we do to make the rule easier to understand?

National Environmental Policy Act

We have determined that an environmental assessment and environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.22.

References Cited

A complete list of all references cited in this document, as well as others, is available upon request from the Field Supervisor (see **ADDRESSES** section).

Author

The primary author of this document is Daniel J. Drennen (see **ADDRESSES** section) (601/965–4900).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.11(h) by adding the following to the List of Endangered and Threatened Wildlife, in alphabetical order under FISHES:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
*	*	*	*	*	*	*	
Darter, vermilion	*Etheostoma chermocki.*	U.S.A. (AL)	Entire	E		NA	NA
*	*	*	*	*	*	*	

Dated: April 5, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–9672 Filed 4–17–00; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 65, No. 75
Tuesday, April 18, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Commodity Supplemental Food Program: Elderly Income Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the adjusted income guidelines to be used by State agencies in determining the eligibility of elderly persons applying to participate in the Commodity Supplemental Food Program (CSFP). These guidelines are to be used in conjunction with the CSFP regulations under 7 CFR part 247.

EFFECTIVE DATE: April 18, 2000.

FOR FURTHER INFORMATION CONTACT: Lillie F. Ragan, Assistant Branch Chief, Household Programs Branch, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594, or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.565 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29112).

Description

The Food Security Act of 1985 (Pub. L. 99–198) amended section 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note) to require that the Secretary permit agencies administering the CSFP to serve low-income elderly persons if such service can be provided without reducing service levels for women, infants, and children. The law also mandates establishment of income eligibility requirements for elderly participation. Prior to enactment of Pub. L. 99–198, elderly participation was restricted by law to three designated pilot projects which served the elderly in accordance with agreements with the Department.

To implement the CSFP mandates of Pub. L. 99–198, the Department published an interim rule on September 17, 1986 at 51 FR 32895 and a final rule on February 18, 1988, at 53 FR 4831. These regulations defined "elderly persons" as those who are 60 years of age or older (7 CFR 247.2). The final rule further stipulates that elderly persons certified on or after September 17, 1986 must have "household income at or below 130 percent of the Federal Poverty Income Guidelines published annually by the Department of Health and Human Services." (7 CFR 247.7(a)(3)).

The Federal Poverty Income Guidelines are revised annually to reflect changes in the Consumer Price Index. The revision for 2000 was published by the Department of Health and Human Services in the **Federal Register** on February 15, 2000 at 65 FR 7555. To establish income limits of 130 percent, the guidelines were multiplied by 1.30 and the results rounded up to the next whole dollar.

At this time, the Department is publishing the income limits of 130 percent of the poverty income guidelines. The table in this notice contains the income limits by household size to be used for elderly certification in the CSFP. In past years, we have made the revised guidelines effective from July 1 to the following June 30, to conform to the effective period used in USDA child nutrition programs. Beginning this year, we are making the guidelines effective on the date that they are published in the **Federal Register** in order to diminish the time gap between CSFP adjustments and cost-of-living adjustments in Social Security benefits, which are made in January each year. These guidelines will remain in effect until publication of a notice with revised guidelines in 2001.

FNS INCOME ELIGIBILITY GUIDELINES FOR THE ELDERLY IN CSFP (130 PERCENT OF POVERTY INCOME GUIDELINES)

[Effective April 18, 2000]

Family size	Annual	Month	Week
1	10,855	905	209
2	14,625	1,219	282
3	18,395	1,533	354
4	22,165	1,848	427
5	25,935	2,162	499
6	29,705	2,476	572
7	33,475	2,790	644
8	37,245	3,104	717
For each additional family member add	+3,770	+315	+73

Authority: Pub. L. 93–86 (7 U.S.C. 612c note)

Dated: April 12, 2000.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 00–9644 Filed 4–17–00; 8:45 am]
BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–605, A–588–609, A–580–605, A–559–601]

Revocation of Antidumping Duty Orders: Color Picture Tubes From Canada, Japan, the Republic of Korea, and Singapore

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of revocation of antidumping duty orders: Color picture tubes from Canada, Japan, the Republic of Korea, and Singapore.

SUMMARY: Pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the United States International Trade Commission ("the Commission") determined that revocation of the

antidumping duty orders on color picture tubes ("CPTs") from Canada, Japan, the Republic of Korea ("Korea"), and Singapore, is not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (65 FR 17901 (April 5, 2000)). Therefore, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1), the Department of Commerce ("the Department") is revoking the antidumping duty orders on CPTs from Canada, Japan, Korea, and Singapore. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2), the effective date of revocation is January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207.

EFFECTIVE DATE: January 1, 2000.

Background

On March 1, 1999, the Department initiated, and the Commission instituted, sunset reviews (64 FR 9970 and 64 FR 10014, respectively) of the antidumping duty orders on CPTs from Canada, Japan, Korea, and Singapore, pursuant to section 751(c) of the Act. As a result of these reviews, the Department found that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the antidumping orders revoked (*see Final Results of Expedited Sunset Reviews: Color Picture Tubes from Canada, Japan, the Republic of Korea, and Singapore*, 64 FR 48354 (September 3, 1999)).

On April 5, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on CPTs from Canada, Japan, Korea, and Singapore would not likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Color Picture Tubes from Canada, Japan, Korea and Singapore*, 65 FR 17901 (April 5, 2000)).

Scope

The merchandise subject to these antidumping duty orders is color picture tubes from Canada, Japan, Korea, and Singapore. The subject merchandise is defined as cathode ray tubes suitable for use in the manufacture of color television receivers or other color entertainment display devices intended for television viewing. Where a CPT is shipped and imported together with all parts necessary for assembly into a complete television receiver (*i.e.*, as a "kit"), the CPT is excluded from the scope of these orders. In other words, a kit and a fully assembled television are a separate class or kind of merchandise from the CPT. Accordingly, the Department determined that, when CPTs are shipped together with other parts as television receiver kits, they are excluded from the scope of the order. With respect to CPTs which are imported for customs purposes as incomplete televison assemblies, we determined that these entries are included within the scope of these investigations unless both of the following criteria are met: (1) The CPT is "physically integrated" with other television receiver components in such a manner as to constitute one inseparable amalgam and (2) the CPT does not constitute a significant portion of the cost or value of the items being imported.[1] Such merchandise was classifiable under Harmonized Tariff Schedule (HTS) item numbers 8540.11.00.10, 8540.11.00.20, 8540.11.00.30, 8540.11.00.40, 8540.11.00.50 and 8540.11.00.60. However, due to changes in the HTS, the subject merchandise is currently classifiable under HTS items 8540.11.10, 8540.11.24, 8540.11.28, 8540.11.30, 8540.11.44, 8540.11.48, and 8540.11.50. The HTS item numbers are provided for convenience and customs purposes only. The written description remains dispositive.

Determination

As a result of the determination by the Commission that revocation of these antidumping duty orders is not likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(1), is revoking the antidumping duty orders on CPTs from Canada, Japan, Korea, and Singapore. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2)(ii), this revocation is effective January 1, 2000. The Department will instruct the U.S. Customs Service to discontinue the suspension of liquidation and collection of cash deposit rates on entries of the subject merchandise entered or withdrawn from warehouse on or after January 1, 2000 (the effective date). The Department will complete any pending administrative reviews of these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

[1] *See Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value; Color Picture Tubes From Japan*, 53 FR 430 (January 7, 1988).

Dated: April 12, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–9686 Filed 4–17–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–504]

Notice of Extension of Time Limit for Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limit.

EFFECTIVE DATE: April 18, 2000.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on petroleum wax candles from the People's Republic of China. This review involves four respondents (Universal Candle Company, Ltd., Liaoning Native Product Import & Export Corporation, Tianjin Native Produce Import and Export Group Corporation, Ltd., and Rich Talent Trading, Ltd.) and covers the period August 1, 1998–July 31, 1999.

FOR FURTHER INFORMATION CONTACT: Martin Odenyo at (202) 482–5254 or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), the Department is extending the time limit for completion of the preliminary results until Wednesday, August 30, 2000. See April 6, 2000 Memorandum from Richard O. Weible to Joseph A. Spetrini, on file in Room B–099 of the main Commerce building. The final

results of this administrative review will continue to be due no later than 120 days after the date on which the preliminary results are published.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act, as amended.

Dated: April 6, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 00–9688 Filed 4–17–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–827]

Static Random Access Memory Semiconductors From Taiwan; Amended Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 18, 2000.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson or Irina Itkin, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1776 or (202) 482–0656, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999).

Amendment to Final Results

In accordance with section 751(a) of the Act, on March 8, 2000, the Department published the final results of the 1997–1998 new shipper review on static random access memory semiconductors (SRAMs) from Taiwan, in which we determined that U.S. sales of SRAMs from Taiwan were made at less than normal value (65 FR 12214). On March 13, 2000, we received an allegation, timely filed pursuant to 19 CFR 351.224(c)(2), from the petitioner, Micron Technology, Inc. (Micron), that the Department made a ministerial error in its final results. We did not receive comments from GSI Technology, Inc. (GSI Technology), the sole respondent.

After analyzing Micron's submission, we have determined, in accordance with 19 CFR 351.224, that a ministerial error was made in our final margin calculation for GSI Technology. Specifically, we find that we failed to properly apply the hierarchy for defining contemporaneous sales as set forth in 19 CFR 351.414(e)(2) when matching U.S. and home market sales. This resulted in our making certain non-contemporaneous comparisons for purposes of the final results.

In addition to the alleged error identified by Micron, we find that our calculations contained two additional ministerial errors which were not identified by any party to this proceeding. Specifically, we find that we overstated general and administrative (G&A) expenses by including research and development expenses in the costs to which the G&A rate was applied, and our calculation of the import value used to compute the assessment rate contained a mathematical error.

For a detailed discussion of the ministerial errors noted above, as well as the Department's analysis, see the memorandum to Louis Apple from the Team, dated April 11, 2000.

Therefore, in accordance with 19 CFR 351.224(e), we are amending the final results of the 1997–1998 antidumping duty new shipper review on SRAMs from Taiwan. The revised weight-averaged dumping margin is as follows:

Exporter/manufacturer	Original final margin percentage	Revised final margin percentage
GSI Technology	7.38	9.05

Scope of the Review

The products covered by this review are synchronous, asynchronous, and specialty SRAMs from Taiwan, whether assembled or unassembled. Assembled SRAMs include all package types. Unassembled SRAMs include processed wafers or die, uncut die and cut die. Processed wafers produced in Taiwan, but packaged, or assembled into memory modules, in a third country, are included in the scope; processed wafers produced in a third country and assembled or packaged in Taiwan are not included in the scope. The scope of this review includes modules containing SRAMs. Such modules include single in-line processing modules, single in-line memory modules, dual in-line memory modules, memory cards, or other collections of SRAMs, whether unmounted or mounted on a circuit board. The scope of this review does not include SRAMs that are physically integrated with other components of a motherboard in such a manner as to constitute one inseparable amalgam (*i.e.*, SRAMs soldered onto motherboards). The SRAMs within the scope of this review are currently classifiable under the subheadings 8542.13.8037 through 8542.13.8049, 8473.30.10 through 8473.30.90, and 8542.13.8005 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: April 11, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–9687 Filed 4–17–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–603, C–583–604, A–580–601, C–580–602]

Continuation of Antidumping Duty Orders and Countervailing Duty Orders: Top-of-the-Stove Stainless Steel Cooking Ware From Taiwan and Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of antidumping orders and countervailing duty orders: Top-of-the-stove stainless steel cooking ware from Taiwan and Korea.

SUMMARY: On July 27, 1999, and September 3, 1999, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty orders and countervailing duty orders on top-of-the-stove stainless steel cooking ware ("TOS cookware") from Taiwan and the Republic of Korea ("Korea") would likely lead to continuation or recurrence of dumping and countervailable subsidies (64 FR 40570 (July 27, 1999) and 64 FR 48372 and 48374 (September 3, 1999)). On April 5, 2000, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty orders and countervailing duty orders

on TOS cookware from Taiwan and Korea would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (65 FR 17902 (April 5, 2000)). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing this notice of the continuation of the antidumping duty orders and countervailing duty orders on TOS cookware from Taiwan and Korea.

EFFECTIVE DATE: April 18, 2000.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207.

Background

On February 1, 1999, the Department initiated, and the Commission instituted, sunset reviews (64 FR 4840 and 64 FR 4896, respectively) of the antidumping duty orders and countervailing duty orders on TOS cookware from Taiwan and Korea pursuant to section 751(c) of the Act. As a result of these reviews, the Department found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the orders revoked. [1] In addition, the Department found that revocation of the countervailing duty orders would likely lead to continuation or recurrence of a countervailable subsidy and notified the Commission of the net subsidy likely to prevail, as well as the nature of the subsidy. [2]

On April 5, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders and countervailing duty orders on TOS cookware from Taiwan and Korea would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. [3]

[1] *See Final Results of Expedited Sunset Reviews: Top-of-the-Stove Stainless Steel Cookware from the Republic of Korea and Taiwan*, 64 FR 40570 (July 27, 1990).

[2] *See Final Results of Expedited Sunset Review: Top-of-the-Stove Stainless Steel Cookware from Taiwan*, 64 FR 48372 (September 3, 1999); and *Final Results of Expedited Sunset Review: Top-of-the-Stove Stainless Steel Cookware from the Republic of Korea*, 64 FR 48374 (September 3, 1999).

[3] *See Porcelain-on-Steel Cooking Ware from China, Mexico, and Taiwan, and Top-of-the-Stove Stainless Steel Cooking Ware from Korea and Taiwan*, 65 FR 17902 (April 5, 2000).

Scope

The merchandise subject to these antidumping duty orders and countervailing duty orders is TOS cookware from Korea and Taiwan. The subject merchandise is all non-electric cooking ware of stainless steel which may have one or more layers of aluminum, copper or carbon steel for more even heat distribution. The subject merchandise includes skillets, frying pans, omelette pans, saucepans, double boilers, stock pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers. Excluded from the scope of the order are stainless steel oven ware and stainless steel kitchen ware. The Department has issued several scope clarifications for these two orders. For imports of the subject merchandise from South Korea, certain stainless steel pasta and steamer inserts are within the scope (63 FR 41545 (August 4, 1998)), certain stainless steel eight-cup coffee percolators are within the scope (58 FR 11209; February 24, 1993), and certain stainless steel stock pots and covers are within the scope of the order (57 FR 57420 (December 4, 1992)). For imports of the subject merchandise from Taiwan, "universal pan lids" are not within the scope of the order (57 FR 57420 (December 4, 1992)) and Max Burton's StoveTop Smoker is within the scope of the order (60 FR 36782 (July 18, 1995)). Moreover, as a result of a changed circumstances review, the Department revoked the order on Korea with regards to certain stainless steel camping ware (1) made of single-ply stainless steel having a thickness no greater than 6.0 millimeters; and (2) consists of 1.0, 1.5, and 2.0 quart saucepans without handles and with lids that also serve as fry pans (62 FR 3662 (January 24, 1997)). Subject merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 7323.93.00 and 9604.00.00. The HTS item numbers are provided for convenience and customs purposes only. The written description remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of these antidumping duty orders and countervailing duty orders would likely lead to continuation or recurrence of dumping, countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders and countervailing duty orders on TOS cookware from Taiwan and Korea. The Department will instruct the U.S. Customs Service to continue to collect duty deposits at the rate in effect at the time of entry for all imports of subject merchandise.

As a result, pursuant to section 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of these orders not later than March 2005.

Dated: April 12, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–9085 Filed 4–17–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at oetca@ita.doc.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged

or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230, or transmit by E-mail at oetca@ita.doc.gov. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 00–00003." A summary of the application follows.

Summary of the Application

Applicant: North America Fruit Trading Alliance, L.L.C. ("NAFTA"), PO Box 574, Frankfort, Michigan 49635.

Contact: Donald W. Nugent, President, Telephone: (231) 352–7181.

Application No.: 00–00003.

Date Deemed Submitted: April 10, 2000.

Members (in addition to applicant): Graceland Fruit, Inc., Frankfort, MI; Burnette Foods, Inc., Elk Rapids, MI; Milne Fruit Products, Inc., Prosser, WA (Controlling Entity: Ocean Spray Cranberries, Inc., Lakeville, MA); and Northern Michigan Fruit Co., Omena, MI.

NAFTA seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. Products

Processed red cherries (prunus cerasus); cherry products including but not limited to cherry pie filling, water pack cherries, cherry juice concentrate, dried cherries, frozen pack cherries, individually quick frozen cherries, cherry sausage, cherry jams, jellies an sauces.

Processed sweet cherries including but not limited to individually quick frozen and stored in freezer (IQF); cherries canned in water, light syrup, heavy syrup, extra heavy syrup or as a pie fill; and juice from sweet cherries.

2. Technology Rights

Patents, trademarks, service marks, copyrights, trade secrets, know-how, and semiconductor mask works, involving cherry processing.

3. Export Trade Facilitation Services (as they Relate to the Export of Products and Technology Rights)

Trade promotion, marketing, sales, and transportation services (including packing, transportation, wharfing and handling, trade documentation, freight forwarding, storage, and customs clearance).

Export Markets

The Export Markets include all parts of the world except the United States, (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

The proposed Export Trade Certificate of Review would extend antitrust protection to NAFTA to conduct the following export trade activities:

1. Negotiate and enter into agreements with buyers in the Export Markets;

2. Negotiate and enter into agreements with foreign governments and other persons in the Export Markets regarding the quantities, time periods, prices, terms, and conditions upon which the Members will export Products and/or Technology Rights through NAFTA.

3. Allocate export sales and/or Export Markets among the Members on the basis of each Member's commitment of Products and/or Technology Rights for export;

4. Establish prices and terms of sale for the Export Markets;

5. Use the NAFTA or other common brand or label;

6. Negotiate and enter into agreement, on behalf of and with the advice of the Members, for the provision of Export Trade Facilitation Services (including trade shows, advertising, and contract marketing services);

7. Share among the Members the cost of Export Trade Facilitation Services;

8. Grant exclusive distribution rights in Export Markets for Products and/or Technology Rights to non-Members; "Exclusive" means that the non-Member distributor may agree not to represent any person or firms other than NAFTA in the export of Products and/or Technology Rights in any Export Markets; and/or NAFTA may agree not to export Products and/or Technology Rights in any Export Market through any distributor other than that non-Member distributor;

9. Advise and cooperate with the United States Government or any agency of the United States Government in establishing procedures regulating the export of Products and/or Technology Rights; and

10. Conduct product research and design for Products (and develop, obtain, and license associated Technology Rights) only when conducted exclusively for export, including meeting foreign regulatory requirements and foreign buyers specifications, and identifying and designing for foreign buyer preferences; provided, however, that the Export Trade Activities and Methods of Operation do not cover activity that relates to the use of Technology Rights for the U.S. domestic market.

Definition

"Supplier" means a person, including each member, who produces, provides, or sells Products, Technology Rights, or Export Trade Facilitation Services.

Dated: April 12, 2000.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 00–9493 Filed 4–17–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Oversees Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the following overseas trade missions to be held between August and November 2000. For a more complete description of the trade mission, obtain a copy of the mission statement from the Project Officer indicated below. The recruitment and selection of private sector participants for these missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions announced by Secretary Daley on March 3, 1997.

Clean Energy Trade Mission to Indonesia

Jakarta, Indonesia
August 29–30, 2000
Recruitment closes June 1, 2000
For further information contact: Kathryn Hollander, U.S. Department of Commerce, Tel: 202–482–0385, Fax:

482–0170, E-Mail: Kathryn__Hollander@ita.doc.gov

Natural Gas Technology/Power Plant Retrofitting Business Development Mission to Mexico

Mexico City and Monterrey, Mexico
September 10–14, 2000
Recruitment closes June 1, 2000
For further information contact: Samuel Beatty, U.S. Department of Commerce, Tel: 202–482–0179, Fax: 202–482–0170, E-Mail: Samuel__Beatty@ita.doc.gov

District Heating Mission to Russia

Moscow and St. Petersburg, Russia
October 15–21, 2000
Recruitment closes June 1, 2000
For further information contact: Rachel Halpern, U.S. Department of Commerce, Tel: 202–482–4423, Fax: 202–482–0170, E-Mail: Rachel__Halpern@ita.doc.gov

Clean Energy Trade Mission to Saudi Arabia

The United Arab Emirates, Qatar and Oman
October 24–November 1, 2000
Recruitment closes June 1, 2000
For further information contact: Joseph Ayoub, U.S. Department of Commerce, Tel: 202–482–0313, Fax: 202–482–0170, E-Mail: Joseph__Ayoub@ita.doc.gov

Natural Gas and Cogeneration Technologies Business Development Mission

Rio de Janeiro and Sao Paulo, Brazil
November 5–9, 2000
Recruitment closes June 1, 2000
For further information contact: Sam Beatty, U.S. Department of Commerce, Tel: 202–482–4179, Fax: 202–482–0170, E-mail: Samuel__Beatty@ita.doc.gov

Power Plant Renovation & Modernization/Natural Gas Utilization/ Renewable Energy

Trade Mission to South Africa, Pretoria and Johannesburg, South Africa
November 13–17, 2000
Recruitment closes June 1, 2000
For further information contact: John Rasmussen, U.S. Department of Commerce, Tel: 482–1889, Fax: 202–482–0170, E-mail: John Rasmussen@ita.doc.gov

Clean Energy Trade Mission to China

Beijing, Chengdu and Guangzhou, China
November 20–24, 2000
Recruitment closes June 1, 2000
For further information contact: Kathryn Hollander, U.S. Department of Commerce, Tel: 202–482–0385, Fax: 202–482–0170, E-mail: Kathryn__Hollander@ita.doc.gov

Clean Energy Trade Mission to India

New Delhi, Chennai, Calcutta and Mumbai, India
November 26–December 3, 2000
Recruitment closes June, 2000
For further information contact: Nazir Bhagat, U.S. Department of Commerce, Tel: 202–482–3855, Fax: 202–482–5666, E-mail Nazir__Bhagat@ita.doc.gov

FOR FURTHER INFORMATION CONTACT: Reginald Beckham , U.S. Department of Commerce. Tel: 202–482–5478, Fax: 202–482–1999.

Dated: April 12, 2000.

Tom Nisbet,

Director, Promotion Planning and Support Division, Office of Export Promotion Coordination.

[FR Doc. 00–9689 Filed 4–17–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 000410098–0098–01]

RIN 0660–ZA12

Market for Satellite Communications and the Role of Intergovernmental Satellite Organizations

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice, request for comments.

SUMMARY: The Department of Commerce requests comments regarding the advantages accorded signatories of the International Telecommunications Satellite Organization (INTELSAT), in terms of immunities, market access, or otherwise, in the countries or regions served by INTELSAT, the reason for such advantages, and an assessment of progress toward fulfilling a pro-competitive privatization of that organization.[1] The International Anti-Bribery and Fair Competition Act of 1998, Pub. L. No. 105–366, implements the Organization for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the OECD Convention). In that legislation, the U.S. Congress imposed certain reporting requirements for the Department of Commerce to begin in 1999 and to continue annually for each of the next five years. The Secretary of Commerce issued the first report in July 1999. See Addressing the Challenges of International Bribery and Fair Competition—The First Annual Report Under Section 6 of the International Anti-Bribery and Fair Competition Act of 1998, July 1999. The report may be viewed at http://www.ita.doc.gov/legal/master.html.

The House report on the legislation expresses an expectation for extensive fact-findings on the nature of the market for satellite communications and, in particular, the role of the then intergovernmental satellite organizations (ISOs) INTELSAT and Inmarsat. The report required by the legislation monitors the implementation and enforcement of other nations' commitments under the OECD Convention and tracks the reduction of privileges and immunities for the ISOs. This Request for Comments (RFC) will assist the Secretary of Commerce in responding to those reporting requirements.

Moreover, on March 17, 2000, the President signed into law the Open-Market Reorganization for the Betterment of International Telecommunications (ORBIT) Act, Pub. L. No. 106–180. This legislation seeks to "promote a fully competitive global market for satellite communications services for the benefit of consumers and providers of satellite services and equipment by fully privatizing the intergovernmental satellite organizations, INTELSAT and Inmarsat." *Id.* at sec. 2. In addition, the ORBIT Act requires the President to provide an annual report to Congress on the progress of privatization in relation to the objectives, purposes, and provisions of the Act, including the "(v)iews of the industry and consumers on privatization" and the "[i]mpact privatization has had on United States industry, United States jobs, and United States industry's access to the global marketplace." *See id.* at sec. 646(b)(3) and (4). By this public notice and RFC, we are also soliciting the views of the industry and consumers on such privatization.

DATES: Comments must be received by May 8, 2000.

ADDRESSES: The Department invites the public to submit written comments in paper or electronic form. Comments may be mailed to Milton Brown, National Telecommunications and Information Administration (NTIA), Room 4713, U.S. Department of Commerce, 14th and Constitution

[1] The Department notes that Inmarsat privatized on April 15, 1999 and therefore this section of the RFC is limited to INTELSAT.

Avenue, NW, Washington, DC 20230. Paper submissions should include a version on diskette in ASCII, Word Perfect (please specify version), or Microsoft Word (please specify version) format.

Comments submitted in electronic form may be sent to privatization@ntia.doc.gov. Electronic comments should be submitted in the formats specified above.

FOR FURTHER INFORMATION CONTACT: Milton Brown, NTIA/OCC, (202) 482–1816.

SUPPLEMENTARY INFORMATION:

Background

INTELSAT is a treaty-based global communications satellite cooperative with 143 member countries. INTELSAT was created to enhance global communications and to spread the risks of creating a global satellite system across telephone operating companies from many countries.[2] Inmarsat was created to improve the global maritime communications satellite system that would provide distress, safety, and communications services to seafaring nations in a cooperative, cost-sharing entity. Inmarsat privatized on April 15, 1999.

As an intergovernmental satellite organization, INTELSAT is governed by "Parties" and managed by "signatories." The Parties are the national government members of the organizations who have signed the INTELSAT Agreement. Signatories are designated by each party to participate in the commercial operations of the organization. They hold ownership interests in varying degrees. They also assist with the operation and management of the systems and are distributors of ISO services in their own countries. Signatories may be government-owned or controlled telecommunications monopolies or other telecommunications service providers. The publically traded Comsat Corporation (Comsat) is the U.S. Signatory to INTELSAT.[3] INTELSAT is subject to oversight by the Assembly of Parties, and signatories are subject to oversight by their respective governments.

To implement public service obligations effectively and as part of INTELSAT's unique treaty status as an international organization, it benefits from certain privileges and immunities. As such, it is generally immune from suit, including private or public prosecution on antitrust charges.[4] Moreover, INTELSAT does not pay taxes on revenues, and exemptions extend to import duties and taxes, communications and property taxes. Signatories, however, are subject to national taxes, including taxes on their share of the organization's distributed returns.

The International Anti-Bribery and Fair Competition Act of 1998, Pub. L. 105–366, requires the Secretary of Commerce to submit a report to the House of Representatives and the Senate that contains information regarding the OECD Convention including the following: (1) A list of countries that have ratified the Convention; (2) a description of the domestic laws enacted by each party to the Convention that implements commitments under the Convention; and (3) an assessment of the measures taken by each party to the Convention during the previous year to fulfill its obligations under the Convention. See Pub. L. 105–366, sec. 6(a). Accordingly, the Secretary of Commerce is required to report, *inter alia*, on the "terms of market access, government ownership, government contracts or connections, privileges and immunities, favorable treatment by national regulatory authorities or tax treatment * * * in the countries or regions served by the (INTELSAT), and the reasons for such advantages." H.R. Rep. No. 105–802, at 9 (1998). In preparation for this report, the Secretary of Commerce is required to seek and incorporate comments from the private sector, including competing satellite companies and satellite services users. *Id.* The Secretary of Commerce issued the first report in July 1999. See Addressing the Challenges of International Bribery and Fair Competition—The First Annual Report Under Section 6 of the International Anti-Bribery and Fair Competition Act of 1998, July 1999. The report may be viewed at http://www.ita.doc.gov/legal/master.html.

We are now formally soliciting public comment for the Secretary's second annual report on the advantages, in terms of immunities, market access, or otherwise, in the countries or regions served by INTELSAT, the reasons for such advantages, and an assessment of progress toward fulfilling a pro-competitive privatization of this organization. "Pro-competitive privatization" is defined as "privatization that the President determines to be consistent with the United States policy of obtaining full and open competition to such organizations (or their successors), and nondiscriminatory market access, in the provision of satellite services." See Pub. L. 105–366, sec. 5(a)(2). Respondents may find it useful to review the full text of the International Anti-Bribery and Fair Competition Act of 1998.

On March 17, 2000, the President signed into law the Open-market Reorganization for the Betterment of International Telecommunications (ORBIT) Act. Pub. L. 106–180. The purpose of the ORBIT Act is "to promote a fully competitive global market for satellite communications services for the benefit of consumers and providers of satellite services and equipment by fully privatizing the intergovernmental satellite organizations, INTELSAT and Inmarsat." *Id.* at sec. 2. To achieve this goal, the ORBIT Act provides specific criteria for licensing and market access for INTELSAT, Inmarsat and New Skies Satellites, and changes the statutes affecting Comsat. In addition, the ORBIT Act requires the President to provide an annual report to Congress on the progress of privatization in relation to the objectives, purposes, and provisions of the Act including the "(v)iews of the industry and consumers on privatization" and the "(i)mpact privatization has had on United States industry, United States jobs, and United States industry's access to the global marketplace." See *id.* at section 646(b)(3) and (4). By this public notice and RFC, we are also soliciting the views of the industry and consumers on the privatization of INTELSAT and Inmarsat with respect to the goals of achieving a pro-competitive privatization of these organizations. Respondents may find it useful to review the full text of the ORBIT Act.

Kathy Smith,

Chief Counsel.

[FR Doc. 00–9628 Filed 4–17–00; 8:45 am]

BILLING CODE 3510–60–P

[2] *See* Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies.

[3] We note that there is a pending merger between Comsat and Lockheed Martin Corporation.

[4] We also note that the ORBIT Act limits privileges and immunities previously afforded Comsat as the U.S. Signatory to INTELSAT. See Pub. L. 106–180, sec. 642(b).

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Information Collection; Comment Request

AGENCY: Deputy Under Secretary of Defense for Program Integration, DoD.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Deputy Under Secretary of Defense for Program Integration (DUSD(PI)), Department of Defense, hereby announces that it is seeking renewal of the following currently approved information collection activity. Before submitting this information collection requirement for clearance by the Office of Management and Budget (OMB), DUSD (PI) is soliciting public comment on specific aspects of the activity identified below.

DATES: Comments are due no later than June 19, 2000.

ADDRESSES: Forward comments to the Office of the Under Secretary of Defense for Personnel & Readiness, Program Integration, Legal Policy, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: Lt Col Karen J. Kinlin, OUSD (P&R) PI–LP, 4000 Defense Pentagon, Room 4C763, Washington, DC 20301–4000; telephone (703) 697–3387; facsimile (703) 693–6708.

SUPPLEMENTARY INFORMATION: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Under Title 10 U.S.C. 1552, the Secretary of a Military Department may correct any military record within their Department when the Secretary considers it necessary to correct an error or remove an injustice. The DD Form 149, "Application for Correction of Military Records Under the Provisions of Title 10 U.S. Code, section 1552," allows and applicant to request correction of a military record. The form provides an avenue for active duty Service members and former Service personnel who believe an error is contained in their military records and/or they have suffered an injustice to request relief.

Title: Application for Correction of Military Records Under the Provisions of Title 10, United States Code, section 1552.

Applicable Form: DD Form 149.

OMB Control Number: 0704–0003.

Affected Public: Individuals or households.

Annual Burden Hours: 14,000.

Number of Respondents: 28,000

Responses Per Respondent: 1.

Average Burden Per Response: 30 minutes.

Frequency: One-time.

Dated: April 12, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–9568 Filed 4–17–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Defense Intelligence Agency, Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: April 25, 2000 (8 a.m. to 4 p.m.).

ADDRESSES: The Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340.

FOR FURTHER INFORMATION CONTACT: Maj. Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: April 12, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–9567 Filed 4–17–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee Meeting Notice

AGENCY: U.S. Army Training and Doctrine Command (TRADOC).

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10 (a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following meeting:

Name of Committee: Distance Learning/Training Technology Subcommittee of the Army Education Advisory Committee.

Dates: 3–4 May 2000.

Place: University of California at Los Angeles (UCLA).

Time: 0830–1630 on 3 May 2000; 0830–1600 on 4 May 2000.

Proposed Agenda: On May 3rd, Dr. Maha Ashour-Abdalla, Director of Science and Technology for UCLA's Center for Digital Innovation (CDI), will conduct presentations that focus on UCLA's initiatives in interactive education, administration and management of courses, and discussions of future programs planned for the CDI. Updates on The Army Distance Learning Program (TADLP) and discussions of Student Management and Adult Learning will complete the 2 day program.

Purpose of the Meeting: The members will advise the Assistant Deputy Chief of Staff (ADCST), HQ Training and Doctrine Command (TRADOC), on matters pertaining to education and training technologies.

FOR FURTHER INFORMATION CONTACT: All communications regarding this subcommittee should be addressed to Mr. Richard Karpinski, at Commander, Headquarters TRADOC, ATTN: ATTG–CF (Mr. Karpinski), Fort Monroe, VA 23651–5000; telephone number (757) 728–5531.

SUPPLEMENTARY INFORMATION: Meeting of the advisory committee is open to the public. Because of restricted meeting space, attendance will be limited to those persons who have notified the Advisory Committee Management Office in writing at least five days prior to the meeting of their intention to attend. Contact Mr. Karpinski (757–728–5531) for meeting agenda and specific locations.

Any member of the public may file a written statement with the committee before, during, or after the meeting. To the extent that time permits, the committee chairman may allow public

presentations or oral statement at the meeting.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 00–9694 Filed 4–17–00; 8:45 am]
BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Withdrawal of Preparation of Draft Environmental Impact Statement for the Anacostia River and Tributaries, District of Columbia and Maryland, Northwest Branch Watershed, Montgomery County, Maryland, Draft Ecosystem Restoration Report and Integrated Environmental Assessment

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of withdrawal.

SUMMARY: The U.S. Army Corps of Engineers, Baltimore District, is withdrawing its intent to prepare a Draft Environmental Impact Statement (DEIS) for environmental restoration in the Northwest Branch watershed. Montgomery County, Maryland. The Corps' environmental analyses have not identified any significant impacts associated with the proposed action, therefore, intent to prepare a DEIS is hereby terminated. The Corps is preparing a draft Environmental Assessment (EA) for the proposed environmental restoration. The draft EA will evaluate environmental effects of restoring riverine, wetland, and riparian habitat at eleven sites in the Northwest Branch watershed. Montgomery County and the Maryland-National Capital Park and Planning Commission are the cost-sharing partners and are participating in the feasibility study and draft EA development. The goal of this project is to provide site-specific restoration measures to enhance, preserve, and restore portions of the watershed that have been degraded by urban development pressures. Formulation of the restoration measures focuses on examining existing conditions and determining the feasibility of restoring portions of degraded ecosystem structure, function, and dynamic processes to a less degraded condition.

FOR FURTHER INFORMATION CONTACT: Questions about the termination of the DEIS can be addressed to Ms. Nancy Jedziniak, Study Manager, Baltimore District, U.S. Army Corps of Engineers, ATTN: CENAB–PL–P, P.O. Box 1715, Baltimore, Maryland 21203–1715, telephone (410) 962–2926. E-mail address: nancy.e.jedziniak@usace.army.mil.

SUPPLEMENTARY INFORMATION: A DEIS was in the process of being prepared by the Corps. During the National Environmental Policy Act (NEPA) process, it became apparent that the set of alternatives chosen as the final restoration plan did not produce any significant, long-term, or adverse impacts to the environment or its surroundings. Therefore, the DEIS process has been terminated. A draft ecosystem restoration report and draft EA have been prepared, and will be available for public review and comment in March 2000.

John A. Hall,
Alternative Army Federal Register Liaison Officer.
[FR Doc. 00–9692 Filed 4–17–00; 8:45 am]
BILLING CODE 3710–41–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Withdrawal of Preparation of a Draft Environmental Impact Statement (DEIS) for the Upper North Branch Potomac Environmental Resources Study Draft Integrated Feasibility Report and Environmental Impact Statement

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of withdrawal.

SUMMARY: The U.S. Army Corps of Engineers, Baltimore District (Corps), is withdrawing its intent to prepare a DEIS for environmental restoration in the Upper North Branch Potomac watershed, Garrett County, Maryland, and portions of Grant and Mineral Counties, West Virginia. The Corps" environmental analyses have not identified any significant impacts associated with the proposed action, therefore, intent to prepare a DEIS is hereby terminated. The Corps is preparing a draft Environmental Assessment (EA) for the proposed environmental restoration. The draft EA will evaluate environmental effects of restoring riverine, wetland, and riparian habitat at three sites in the Upper North Branch Potomac watershed. The Maryland Department of the Environment is the cost-sharing partner and is participating in the Environmental Restoration Report and draft EA development. The West Virginia sponsors have decided to withdraw from the study at this time. The goal of this project is to provide site specific restoration measures to enhance, preserve, and restore portions of the watershed that have been degraded by abandoned mine lands. Formulation of the restoration measures focuses on examining existing conditions and determining the feasibility of restoring portions of degraded ecosystem structure, function, and dynamic processes to a less degraded condition.

FOR FURTHER INFORMATION CONTACT: Questions about the termination of the DEIS can be addressed to Mr. Peter Noy, Study Manager, Baltimore District, U.S. Army Corps of Engineers, ATTN: CENAB–PL–P, PO Box 1715, Baltimore, Maryland 21203–1715, telephone (410) 962–6100. E-mail address: peter.m.noy@usace.army.mil.

SUPPLEMENTARY INFORMATION: A DEIS was in the process of being prepared by the Corps. During the National Environmental Policy Act (NEPA) process, it became apparent that the set of alternatives chosen as the final restoration plan for the sites within Maryland did not produce any significant, long-term, or adverse impacts to the environment or its surroundings. Therefore, the DEIS process has been terminated. A draft feasibility report and draft EA have been prepared, and will be available for public review and comment.

John A. Hall,
Alternate Army Federal Register Liaison Officer.
[FR Doc. 00–9693 Filed 4–17–00; 8:45 am]
BILLING CODE 3710–41–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 19, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public

participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 12, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension.
Title: Lender's Application for Payment of Insurance Claims, ED Form 1207.
Frequency: On Occasion.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Businesses or other for-profit.
Reporting and Recordkeeping Hour Burden: Responses: 2,588; Burden Hours: 699.
Abstract: The ED Form 1207—Lender's Application for Payment of Insurance Claim—is completed for each borrower for whom the lender is filing a Federal claim. Lenders must file for payment within 90 days of the default, depending on the type of claim filed. There have been no changes made to this collection since the last clearance process.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe_Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–9610 Filed 4–17–00; 8:45 am]
BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 18, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV. Interested persons can access this document on the Internet:

(1) Go to IFAP at *www.ifap.ed.gov*.
(2) Click on "Current SFA Publications".
(3) Scroll down and click on "FAFSA and Renewal FAFSA Forms and Instructions".
(4) Click on "By 2001–2002 Award Year".
(5) Click on "FAFSA Instructions".
(6) Click on the red icon to open or download the file.

Please note that you will need the free Adobe Acrobat Reader software, version 4.0 or greater, to view this file. This software can be downloaded for free from Adobe's website: www.adobe.com.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 12, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Student Financial Assistance

Type of Review: Revision
Title: Free Application for Federal Student Aid (FAFSA)
Frequency: Annually
Affected Public: Individuals or households
Reporting and Recordkeeping Hour Burden: Responses: 11,134,376; Burden Hours: 7,073,050.
Abstract: Collects identifying and financial information from students applying for Federal student aid for postsecondary education. Used to calculate Expected Family Contribution and determine eligibility for grants and loans, under Title IV of the HEA.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements

should be directed to Patrick Sherrill at (202) 708–9346 (fax). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–9609 Filed 4–17–00; 8:45 am]
BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP95–408–037]

Columbia Gas Transmission Corporation; Notice of Filing

April 12, 2000.

Take notice that on April 3, 2000, Columbia Gas Transmission Corporation (Columbia) filed to report on the sharing with its customers of a portion of the profits from the sale of certain base gas as provided in Columbia's Docket No. RP95–408 rate case settlement. (See Stipulation II, Article IV, Sections A through E, in Docket No. RP95–408 approved at Columbia Gas Transmission Corp., 79 FERC ¶ 61,044 (1997)).

Columbia states that the sales of base gas have generated additional profits of $12,454,242 (above a $21.4 million threshold) requiring a sharing of 10 percent of the excess profits with customers and $58,577 (above a $41.5 million threshold) requiring a sharing of 50 percent of the excess profits with customers in accordance with Stipulation II, Article IV, Section C. Consequently, $1,292,013, inclusive of interest, has been allocated to affected customers and credited to their April invoices, which credits remain subject to Commission acceptance of this filing.

Columbia states that copies of its filing have been mailed to all affected customers and state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed on or before April 19, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–9595 Filed 4–17–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–71–020]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

April 12, 2000.

Take notice that on April 6, 2000 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing recalculated rates, supporting workpapers and pro forma tariff sheets pursuant to Ordering Paragraph (B) of the Commission's Order on Initial Decision issued on March 17, 2000 (March 17 Order) in Docket No. RP97–71–000.

Transco states that the purpose of the instant compliance filing is to submit recalculated rates and supporting workpapers to adjust the Docket No. RP97–71 rates using the return on equity of 12.40 percent and cost of debt of 8.21 percent approved in the March 17 Order. The period covered by the recalculated rates reflected in the instant filing extends from May 1, 1997 through March 31, 2000.

The March 17 Order also directs Transco to file pro forma tariff sheets reflecting on a prospective basis the elimination of the revenue credit related to a discount given to Tennessee Gas Pipeline Company and Public Service Electric and Gas Company under Transco's Rate Schedule X–15 and reflecting the approved rate of return. Accordingly, Transco submits in the instant filing pro forma tariff sheets containing revised rates that reflect, on a prospective basis, the removal of the effects of the Rate Schedule X–15 rate discount from Transco's billing determinants in its rate design volumes, as well as the rate of return approved in the March 17 Order, and supporting workpapers for such rates.

Transco states that copies of the filing are being mailed to all parties in Docket No. RP97–71–000 and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed on or before April 19, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be reviewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–9596 Filed 4–17–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–54–000]

Unicom Investments, Inc.; Notice of Filing

April 12, 2000.

Take notice that on March 29, 2000, Unicom Investments, Inc. (UII), on behalf of itself and certain grantor trusts, business trusts or limited liability companies or partnerships of limited liability companies of which UII would be the sole beneficiary or member, filed with the Federal Energy Regulatory Commission a letter clarifying that the facilities leased under the lease/leaseback transactions described in its Petition of March 17, 2000 may include associated step-up transformers and/or interconnecting transmission facilities.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before April 21, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/

online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–9630 Filed 4–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR99–257–006]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

April 12, 2000.

Take notice that on April 6, 2000, Williams Gas Pipelines Central Inc. (Williams) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective November 1, 1999.

Substitute Second Revised Sheet No. 267.
Sheet No. 268

On December 30, 1999, Williams filed revised tariff sheets and a Reconciliation and Refund report in the above-referenced dockets related to the settlement of all Gas Supply Realignment (GSR) cost issues. That filing is pending before the Commission. In that filing, Williams inadvertently deleted sections 14.4 and 14.5 of the General Terms and Conditions of its tariff. Those sections dealt with Stranded Investment and Exit Fees, respectively, and did not relate to GSR costs in any way. The instant filing proposes to reinstate these sections as sections 14.3 and 14.4 to be consistent with the numbering of preceding sections in Article 14. Williams is not proposing any changes in the language of these sections.

Williams states that copies of the revised tariff sheets are being mailed to all parties on the Commission's official service list as well as to William's jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–9597 Filed 4–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2062–000]

Wisconsin Electric Power Company; Notice of Filing

April 10, 2000.

Take notice that on April 3, 2000, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing a short-term firm Transmission Service Agreement and a non-firm Transmission Service Agreement between itself and The Detroit Edison Company (DTE). The Transmission Service Agreements allow DTE to receive transmission services under Wisconsin Energy Corporation Operating Companies' FERC Electric Tariff, Volume No. 1.

Copies of the filing have been served on DTE, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before April 24, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–9592 Filed 4–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7918–003]

Robert R. Conner; Notice of Availability of Draft Environmental Assessment

April 12, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Energy Projects has reviewed the application dated August 6, 1999, requesting the Commission's authorization to surrender the exemption from licensing for the existing Walker Mill Hydroelectric Project, located on the West Prong of the Little Pigeon River in Sevier County, Tennessee, and has prepared a Draft Environmental Assessment (Draft EA) for the proposed and alternative actions.

Copies of the Draft EA can be viewed at the Commission's Public Reference Room, Room 2A 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. The document also may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

Any comments on the Draft EA should be filed within 30 days from the date of this notice and should be addressed to Dave Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix "Walker Mill Surrender of Exemption from Licensing, Project No. 7918–003" to the first page of your comments.

For further information, please contact Jim Haimes, staff environmental protection specialist, at (202) 219–2780 or at his E-mail address, james.haimes@ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–9594 Filed 4–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2722–006; Utah]

PacifiCorp Power Company; Notice of Availability of Final Environmental Assessment

April 12, 2000.

In accordance with the National Environmental Policy Act of 1969 and

the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new license for the Pioneer Hydroelectric Project, and has prepared a Final Environmental Assessment (FEA). The project is located on the Ogden River near the City of Ogden, Weber County, Utah. The water to operate the project comes from the Pineview dam, via the Ogden Canyon Conduit. The dam is owned and operated by the Bureau of Reclamation (BOR). However, a portion of the 5.5-mile-long flowline is located within the Cache National Forest, administered by the U.S. Forest Service (FS).

On February 17, 2000, the Commission staff issued a draft environmental assessment (DEA) for the project and requested that comments be filed with the Commission within 30 days. Comments on the DEA were filed by the U.S. Department of the Interior, Fish and Wildlife Service and PacifiCorp and are addressed in the FEA.

The FEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, NE, Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–9593 Filed 4–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Availability of Draft License Application and Preliminary Draft Environmental Assessment

April 12, 2000.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. *Type of Application:* Major New License.

b. *Project No.:* P–271.

c. *Date filed:* April 4, 2000.

d. *Applicant:* Entergy Arkansas, Inc.

e. *Name of Project:* Carpenter-Remmel Hydroelectric Project.

f. *Location:* Located on the Ouachita River in Garland and Hot Spring Counties, Arkansas, and immediately downstream from the U.S. Army Corps of Engineers Blakely Mountain Dam. The Carpenter-Remmel Hydroelectric Project includes the Carpenter development at river mile 461 and the Remmel development at river mile 450.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.A. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. W. Henry Jones, Entergy Hydro Operations, P.O. Box 218, Jones Mills, AR 72105, (501) 844–2148 or email: wjones7@Entergy.com.

Mr. Gary Liimatainen, Kleinschmidt Associates, 75 Main Street, P.O. Box 576, Pittsfield, ME 04967, (207) 487–3328 or e-mail: Gary@Kassociates.com.

i. *FERC Contact:* Ed Lee at (202) 219–2809 or E-mail address at Ed.Lee.ferc.fed.us.

j. *Status of Project:* With this notice the Commission is soliciting (1) Preliminary terms, conditions, and recommendations on the Preliminary Draft Environmental Assessment (DEA), and (2) comments on the Draft License Application. Entergy Arkansas, Inc. is not claiming preference under Section 7(a) of the Federal Power Act § 16.

k. *Comment Date:* July 17, 2000.

All comments on the Preliminary DEA and Draft License Application should be sent to the addresses noted above in Item (h), with one copy filed with FERC at the following address: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

All comments must include the project name and number and bear the heading "Preliminary Comments", "Preliminary Recommendations", "Preliminary Terms and Conditions", or "Preliminary Prescriptions".

l. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.W., Room 2–A, Washington, D.C. 20426, or by calling (202) 219–1271. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

Entergy Arkansas, Inc. has mailed a copy of the Preliminary DEA and Draft License Application to interested entities and parties. Copies of these documents are available for review at Entergy's Public Information File, the Garland and Hot Spring County Public Libraries in Arkansas, or by calling (501) 844–2148 or by e-mailing wjones7@Entergy.com.

m. *With this notice, we are initiating consultation with the Arkansas State Historic Preservation Officer, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.*

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–9631 Filed 4–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Environmental Impact Statement for the Proposed Big Sandy Project, Arizona

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Intent

SUMMARY: In accordance with Section 102(2) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4332, Western Area Power Administration (Western), and the Bureau of Land Management (BLM), Kingman Field Office, intend to prepare an Environmental Impact Statement (EIS) regarding the proposal by Caithness Big Sandy, LLC (Caithness), an energy development and operating company, to construct a 720 megawatt (MW) electric generating facility, including a 16-inch, high-pressure natural gas supply pipeline, permanent access road, and water supply wells and pipeline system. Caithness proposes to interconnect the generating facility with the existing Mead-Phoenix Project 500-kilovolt (kV) Transmission Line near Wikieup, Arizona. The generating facility would be constructed on private land in Mohave County, Arizona. The natural gas supply pipeline and access road would be constructed on private and public lands. The Federal public lands are administered by the U.S. Department of the Interior, BLM. Per 40 CFR part 1501.5(b), Western and BLM will serve as joint lead agencies to prepare the EIS.

This notice announces Western's and BLM's intention to prepare an EIS and hold a public scoping meeting for the proposed project. The scoping process will include notifying the general public and Federal, State, local, and tribal agencies of the proposed action. The purpose of scoping is to identify public and agency issues, and alternatives to be considered in the EIS.

DATES: The scoping meeting will be held on May 3, 2000, beginning at 7 p.m., in Wikieup, Arizona. Written comments on the scope of the EIS for the proposed project should be received no later than June 2, 2000. Comments on the project will be accepted throughout the NEPA process.

ADDRESSES: The scoping meeting will be held at Owens Whitney School, 14109 Chicken Springs Road, Wikieup, Arizona. Comments should be addressed to Mr. John Holt, Environment Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005, fax (602) 352–2630, e-mail holt@wapa.gov; or Mr. Don McClure, Planning and Environmental Specialist, Kingman Field Office, Bureau of Land Management, 2475 Beverly Avenue, Kingman, AZ 86401, fax (520) 692–4414, e-mail don__mcclure@blm.gov.

FOR FURTHER INFORMATION CONTACT: Mr. John Holt, Environment Manager, Western Area Power Administration at the address or fax above, telephone (602) 352-2592, or Ms. Sally Edwards, BLM Project Manager, 2475 Beverly Avenue, Kingman, AZ 86401, telephone (970) 593–0501, fax (520) 692–4414, e-mail sei@frii.com. For general information on the U.S. Department of Energy's (DOE) NEPA review procedures or status of a NEPA review, contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, telephone (202) 586–4600 or (800) 472–2756. For information related to BLM NEPA compliance, contact Mr. Don McClure, Planning and Environmental Specialist, at address or fax above, telephone (520) 692–4403.

SUPPLEMENTARY INFORMATION: Caithness proposes to construct the Big Sandy Project on private and public lands near Wikieup, Arizona. The project would be a "merchant plant," meaning it would not be owned by a utility nor by a utility affiliate selling power to its utility, nor is it supported by a long-term power purchase agreement with a utility. Caithness would sell power on a short and mid-term basis to customers and the on-the-spot market. Power purchases by customers would be voluntary, and all economic costs would be borne by Caithness.

The project would consist of two phases. The first phase would consist of a 500 MW natural gas-fired, combined cycle power plant and on-site supporting infrastructure including an administration building, warehouse storage, water treatment and storage facilities, cooling towers, water storage/evaporation pond, gas conditioning equipment, and a new access road; a new 500-kV switchyard with electrical equipment to accommodate an interconnection with the Mead-Phoenix Project 500-kV Transmission Line; a 16-inch, high-pressure natural gas supply pipeline between the generating facility and at least one natural gas supply line; and water supply wells and pipeline system. The second phase would consist of an additional 220 MW combined-cycle power plant that would be installed adjacent to the first phase power plant. The generating facility and infrastructure would be built on private property in Section 5, Township 15 North, Range 12 West, about 4 miles southeast of Wikieup, Arizona, and about 2 miles east of the U.S. Highway 93 crossing of the Big Sandy River. The water supply wells would provide potable and cooling water. The project's water requirements would be approximately 3,200 acre-feet annually. A new buried supply pipeline would bring high-pressure gas to the generating facility to fuel the gas-fired turbines from at least one of several natural gas transmission pipelines that are located about 36 miles north of the generating facility. The new gas pipeline would be constructed parallel, within and/or adjacent to rights-of-way for U.S. Highway 93, and Mohave County roads and utility easements. The pipeline would cross private and public lands administered by the BLM and the Arizona State Land Department.

In accordance with DOE policy on open transmission access and Western's Open Access Transmission Tariff, Western proposes to enter into construction and interconnection agreements with Caithness to provide an interconnection with the Mead-Phoenix Project Transmission Line and transmission services to deliver power from the generating facility. The proposal would incorporate new generation into Western's transmission system.

Construction of the project would take about 18 months, beginning in early 2001, with the first phase in commercial operation by summer 2002. The Arizona Department of Transportation is currently conducting an Environmental Assessment on a proposal to widen U.S. Highway 93 between Wikieup and Interstate 40. Caithness proposes to site the natural gas supply pipeline within and/or adjacent to the U.S. Highway 93 rights-of-way. Initial highway widening construction is planned for 2003. Therefore, the proposed natural gas supply pipeline would be installed prior to the highway widening.

Caithness has selected the site for the generating facility on private land based on land and water availability, close proximity to Western's Mead-Phoenix Project 500-kV Transmission Line, and other considerations. State and local agencies are responsible for siting and permitting the proposed generating facility. If the project is approved, the location of the generating facility necessitates that the proposed natural gas supply pipeline, a permanent access road, and a portion of the water pipeline system use BLM-managed lands.

The EIS will be prepared following the requirements of the Council on Environmental Quality's NEPA implementing regulations (40 CFR part 1500–1508). The EIS will include the analysis of effects from constructing and operating of all components of the project. The no action alternative will be analyzed in the EIS. The EIS will address alternate routings for the natural gas supply pipeline, connection locations to existing natural gas supply pipelines, location of worker accommodations, long-term water supply and use, and other issues raised during the scoping process. Full public participation, disclosure, coordination, and involvement with appropriate Federal, State, local, and tribal government agencies are planned for the entire EIS process. The EIS process will include public information/scoping meetings (May 2000), public review of the Draft EIS (September 2000), a public hearing on the Draft EIS (October 2000), distribution of the Final EIS (January 2001), and Western's and BLM's independent Records of Decision (February 2001).

The licensing and permitting for the project is expected to be completed in March 2001 when construction of the first phase would begin. Commercial operation is scheduled to begin in August 2002. The second phase is planned to be completed in December 2003.

Dated: April 6, 2000.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 00–9632 Filed 4–17–00; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6581–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; for ICRs NSPS Subpart G, NSPS Subpart K, NSPS Subpart PP, NSPS Subpart QQQ, MACT–NESHAP Subpart N, MACT–NESHAP Subpart O, MACT–NESHAP Subpart N, MACT–NESHAP Subpart S, MACT–NESHAP Subpart EE, MACT–NESHAP Subpart III, MACT–NESHAP Subpart MMM

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following ten continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described at the beginning of **SUPPLEMENTARY INFORMATION.**

DATES: Comments must be submitted on or before June 19, 2000.

ADDRESSES: U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Mail Code 2223A, Washington, DC 20460. A hard copy of an ICR may be obtained without charge by calling the identified information contact individual for each ICR in Section B of the Supplementary Information.

FOR FURTHER INFORMATION CONTACT: For specific information on the individual ICRs see section B of the Supplementary Information.

SUPPLEMENTARY INFORMATION:

For All ICRs

The EPA is charged under section 111 of the Clean Air Act, as amended, to establish standards of performance for new stationary sources (NSPS regulations) that reflect:

> * * * application of the best technological system of continuous emissions reduction which (taking into consideration the cost of achieving such emissions reduction, or any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated (Section 111(a)(l)).

The Agency refers to this charge as selecting the best demonstrated technology (BDT). Section 111 also requires that the Administrator review and, if appropriate, revise such standards every four years.

For NESHAP or MACT–NESHAP regulations the EPA is charged under section 112 of the Clean Air Act, as amended, to establish standards of performance for each category or subcategory of major sources and area sources of hazardous air pollutants. These standards are applicable to new or existing sources of hazardous air pollutants and shall require the maximum degree of emission reduction:

In addition, section 114(a) states that the Administrator may require any owner or operator subject to any requirement of this Act to:

> * * * (A) establish and maintain such records; (B) make such reports; (C) install, use, and maintain such monitoring equipment, and use such audit procedures, or methods; (D) sample such emissions (in accordance with such procedures or methods, at such locations, at such intervals, during such periods, and in such manner as the Administrator shall prescribe); (E) keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical; (F) submit compliance certifications in accordance with section 114(a)(3); and (G) provide such other information as the Administrator may reasonably require.

In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved Information Collection Request (ICR). Where applicable, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paper Work Reduction Act.

A. List of ICRs Planned To Be Submitted

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following ten continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB):

(1) NSPS Subpart G, Nitric Acid Plants. EPA ICR No. 1056.06. OMB Control No. 2060–0019. Expiration November 30, 2000.

(2) NSPS Subpart K, Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced after June 11, 1973, and Prior to May 19, 1978. EPA ICR No. 1792. OMB Control No. 2060–0009. Expiration September 30, 2000.

(3) NSPS Subpart PP, Ammonium Sulfate Manufacturing Plants. EPA ICR No 1066.03. OMB Control No. 2060–0032. Expiration November 30, 2000.

(4) NSPS Subpart QQQ, Petroleum Refinery Wastewater Systems. EPA ICR No. 1136.04. OMB Control No. 2060–0172. Expiration December 31, 2000.

(5) MACT–NESHAP Subpart N, Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks. EPA ICR No. 1611. OMB Control No. 2060–0327. Expiration December 31, 2000.

(6) MACT–NESHAP Subpart O, Commercial Ethylene Oxide

Sterilization and Fumigation Operations. EPA ICR No. 1666.04. OMB Control No. 2060–0283. Expiration December 31, 2000.

(7) MACT–NESHAP Subpart S, Pulp and Paper Industry. EPA ICR No.1805. OMB Control No. 2060–0377. Expiration December 31, 2000.

(8) MACT–NESHAP Subpart EE, Magnetic Tape Manufacturing Operations. EPA ICR No. 1678.03, OMB Control No. 2060–0326. Expiration December 31, 2000.

(9) MACT–NESHAP Subpart III, Flexible Polyurethane Foam Production. EPA ICR No. 1783.02. OMB Control No. 2060–0357. Expiration January 31, 2000.

(10) MACT–NESHAP Subpart MMM, Pesticide Active Ingredient (PAI) Production. EPA No. 1807.01. OMB Control No. 2060–0370. Expiration November 30, 2000.

B. Contact Individuals for ICRs

(1) NSPS Subpart G, Nitric Acid Plants. Sandi Jones, tel: (202) 564–7038; FAX: (202) 564–0009; e-mail: *jones.sandra@epa.gov*. EPA ICR No. 1056.06. OMB Control No. 2060–0019. Expiration November 30, 2000.

(2) NSPS Subpart K, Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced after June 11, 1973, and Prior to May 19, 1978. Everett Bishop tel: (202) 564–7032; FAX: (202) 564–0050; e-mail: *bishop.everett@epa.gov*. EPA ICR No. 1792. OMB Control No. 2060–0009. Expiration September 30, 2000.

(3) NSPS Subpart PP, Ammonium Sulfate Manufacturing Plants. Stephen Howie, tel: (202) 564–4146; FAX: (202) 564–0085; e-mail: *howie.stephen@epa.gov*. EPA ICR No 1066.03. OMB Control No. 2060–0032. Expiration November 30, 2000.

(4) NSPS Subpart QQQ, Petroleum Refinery Wastewater Systems. Dan Chadwick, tel: (202) 564–7054, Fax (202) 564–0050, e-mail *chadwick.dan@epa.gov*. EPA ICR No. 1136.04. OMB Control No. 2060–0172. Expiration December 31, 2000.

(5) MACT–NESHAP Subpart N, Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks. Scott Throwe, tel: (202) 564–7013, FAX: (202) 564–0050, e-mail: *throwe.scott@epa.gov*. EPA ICR No. 1611. OMB Control No. 2060–0327. Expiration December 31, 2000.

(6) MACT–NESHAP Subpart O, Commercial Ethylene Oxide Sterilization and Fumigation Operations. Jonathan Binder, tel: (202) 564–2516; FAX: (202) 564–0009; e-mail: *binder.jonathan@epa.gov*. EPA ICR No. 1666.04. OMB Control No. 2060–0283. Expiration December 31, 2000.

(7) MACT–NESHAP Subpart S, Pulp and Paper Industry. Belinda Breidenbach, tel: (202) 564–7022; FAX: (202) 564–0050; e-mail: *breidenbach.belinda@epa.gov*. EPA ICR No.1805. OMB Control No. 2060–0377. Expiration December 31, 2000.

(8) MACT–NESHAP Subpart EE, Magnetic Tape Manufacturing Operations. Steven Hoover, tel: (202) 564–7007; FAX: (202) 564–0050; e-mail: *hoover.steven@epa.gov*. EPA ICR No. 1678.03, OMB Control No. 2060–0326. Expiration December 31, 2000.

(9) MACT–NESHAP Subpart III, Flexible Polyurethane Foam Production. Greg Fried, tel: (202) 564–7016; FAX: (202) 564–0050; e-mail: *fried.gregory@epa.gov*. EPA ICR No. 1783.02; OMB Control Number 2060–0357. Expiration April 30, 2000.

(10) MACT–NESHAP Subpart MMM, Pesticide Active Ingredient (PAI) Production. Stephen Howie, tel: (202) 564–4146; FAX: (202) 564–0085; e-mail: *howie.stephen@epa.gov*. EPA No. 1807.01. OMB Control No. 2060–0370. Expiration November 30, 2000.

C. Individual ICRs

Nitric Acid Plants

(1) NSPS Subpart G, Nitric Acid Plants. EPA ICR No. 1056.06. OMB Control No. 2060–0019. Expiration November 30, 2000.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR part 60, subpart G, Standards of Performance for Nitric Acid Plants. This information is used by the Agency to identify sources subject to the standards and to insure that the best demonstrated technology is being properly applied. The standards require periodic recordkeeping to document process information relating to the sources' ability to meet the requirements of the standard and to note the operation conditions under which compliance was achieved.

In the Administrator's judgment, nitrogen oxides and particulate matter emissions from nitric acid plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, NSPS were promulgated for this source category.

Owners or operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of demonstration of the continuous monitoring system (CMS); notification of the date of the initial performance test; and the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports and records are required, in general, of all sources subject to NSPS.

Monitoring requirements specific to nitric acid plants provide information on nitrogen oxide emissions. The owners or operators are required to record the production rate of nitric acid produced, the hours of operation of the source, and the levels of nitrogen oxides emitted into the atmosphere, and the volumetric flow rate of the effluent gas. Owners or operators of affected facilities are required to install, calibrate, maintain, and operate a continuous monitoring system (CMS) for the measurement and recording of nitrogen oxides. All other information required by this part recorded in a permanent form suitable for inspection. The file shall be retained for at least two years.

Burden Statement: The estimate was based on the assumption that there are approximately 30 sources subject to the standards and there would be 1 new affected facility each year. That would account for an annual average of 32 affected facilities over each of the next three years covered by the ICR. For new sources, it was estimated that it would take: 1 person hours to read the instructions, 60 person hours to conduct the initial performance tests (assuming that 20% of the tests must be repeated), and 7 person hours to gather the information and write the initial reports. For all sources, it was estimated that it would take: 192 person hours to fill out semiannual reports and 2,664 person hours to enter information for records of operating parameters. The annual average burden to industry for the three-year period covered by this ICR from recordkeeping and reporting requirements has been estimated at 2,941 person hours.

Storage Vessels for Petroleum Liquids

(2) NSPS Subpart K, Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced after June 11, 1973, and Prior to May 19, 1978. EPA ICR No. 1792. OMB Control No. 2060–0009. Expiration September 30, 2000.

Abstract: The New Source Performance Standards (NSPS) for Storage Vessels for Petroleum Liquids, subpart K was proposed on June 11, 1973 and promulgated on March 8, 1974 (39 FR 9308). These performance standards apply to storage vessels of petroleum liquids for which construction, reconstruction, or modification commenced after June 11, 1973, and prior to May 19, 1978. Facilities subject to this subpart are those that operate a storage vessel with petroleum liquids which has a storage capacity greater than 151,416 liters (40,000 gallons), and for which construction commenced after June 11, 1973, and prior to May 19, 1978; storage vessel greater than 151,416 liters (40,000 gallons) but not exceeding 246,052 liters (65,000 gallons), and commences construction or modification after March 8, 1974, and prior to May 19, 1978; and storage vessel that has a capacity greater than 246,052 liters (65,000 gallons), and commences construction or modification after June 11, 1973, and prior to May 19, 1978.

There are approximately 220 respondents, reporting on approximately 5,500 petroleum storage vessels that are subject to this standard. The number of respondents was from a data pull of the Aerometric Information Retrieval System (AIRS) Facility Subsystem (AFS), discussions with Environmental Protection Agency (EPA) Regional staff, and members of EPA's CSI project on petroleum refinery. Since the applicability dates for this standard are closed ended, there will be no additional sources subject to the requirements of NSPS subpart K. New, modified, or reconstructed sources would be subject to NSPS subpart Kb. Volatile organic compounds (VOCs) are the pollutants regulated under this standard. The standard limits VOC emissions by maintaining necessary information and the installation of equipment, if required, *i.e.* floating roof, vapor recovery or their equivalents. The equipment is required when the true vapor pressure of the stored petroleum liquid is equal or greater than 78mm Hg (1.5 psia), but not greater than 570mm Hg (11.1psia).

Burden Statement: It is estimated that 150 Respondents are affected by subpart K. The universe of sources subject to this subpart is closed by its applicability dates. The estimated reporting burden is 2.5 hours/respondent/year for recordkeeping. The frequency for collecting this information depends on the number of times in a year the petroleum storage tank is emptied and refilled. The estimate for this is once a year.

Ammonium Sulfate Manufacturing Plants

(3) NSPS Subpart PP, Ammonium Sulfate Manufacturing Plants. EPA ICR No 1066.03. OMB Control No.2060–0032. Expiration November 30, 2000.

Abstract: The Administrator has judged that PM emissions from ammonium sulfate manufacturing plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners/operators of ammonium sulfate manufacturing plants must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; and the notification of the date of the initial performance test. The recordkeeping requirements for ammonium sulfate plants consist of the occurrence and duration of all start-ups and malfunctions, the initial performance tests results, amount of ammonium sulfate feed material, and the pressure drop across the emission control system. Records of startups, shutdowns and malfunctions shall be noted as they occur. Records of the performance test should include information necessary to determine the conditions of the performance test, and performance test measurements (including pressure drop across the emission control system) and results. The CMS shall record pressure drop across the scrubbers continuously and automatically.

Burden Statement: The annual burden per each industry respondent is estimated to consist of 91.25 hours per year which reflects the time needed to record the operating parameters of emissions (flow and pressure drop across the emissions control system). This figure reflects 0.25 hours per day multiplied by 365 days in a year.

No new sources or reconstruction of existing sources are anticipated during the next three years. If any new sources or reconstruction were to occur, the one-time burden per new source is estimated at 129 hours, including: 1 hour to read instructions; 119 hours to perform four Reference Method 9 tests; 2 hours for notification of construction/modification; 2 hours for notification of anticipated startup; 1 hour for notification of actual startup; 2 hours for notification of initial performance test; and 2 hours for notification of demonstration of continuous monitoring system. The annual public reporting and recordkeeping burden for this collection of information is estimated to average 87.5 hours per response.

Petroleum Refinery Wastewater Systems

(4) NSPS Subpart QQQ, Petroleum Refinery Wastewater Systems. EPA ICR No. 1136.04. OMB Control No. 2060–0172. Expiration December 31, 2000.

Abstract: Entities potentially affected by this action are those petroleum refinery wastewater systems located in petroleum refineries for which construction, modification, or reconstruction commenced after May 4, 1987. More specifically affected facilities include individual drain systems, oil-water separators and aggregate facilities (individual drain systems together with downstream sewer lines and oil-water separators). Owners or operators of the affected facilities described must provide EPA, or the delegated State regulatory authority with the following one-time-only reports (specified in 40 CFR 60.698). Notification of construction, modification, startup, shutdown, malfunction, and the date and results of the initial performance test. Owners and operators are also required to keep records of design and operating specifications of all equipment installed to comply with the standards such as water seals, covers, roof seals, and control devices. Owners and operators must submit semiannual certification reports indicating that all emission detection tests and visual inspections required by the standards are carried out. EPA or the delegated State regulatory authority uses this information to ensure that equipment design and operating specifications are met.

Burden Statement: The estimate was based on the assumption that there would be zero new effected facilities subject to subpart QQQ per year. Approximately 200 sources are currently subject to these standards. The annual burden of reporting and recordkeeping for facilities subject to subpart QQQ are summarized by the following information. The reporting requirements for all subpart QQQ affected facilities are as follows: Read instructions (1 person-hour), Notification of construction (2 person-hours), Notification of anticipated start-up (2 person-hours), Notification of actual start-up (2 person-hours), Semiannual report (8 person-hours). The reporting requirements for facilities that have oil-water separators and process drain systems are as follows: Monthly inspection (2 person-hours), Semiannual inspection (8 person-hours), Performance test (330 person-hours), Design specifications and

compliance certifications (40 person-hours). The recordkeeping requirements for all subpart QQQ affected facilities are; Time to enter information (1.5 person-hours).

Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks

(5) NESHAP Subpart N, Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks. EPA ICR No. 1611. OMB Control No. 2060–0327. Expiration December 31, 2000.

Abstract: Entities potentially affected by this action are owners/operators of hard and decorative chromium electroplating and chromium anodizing operations. The Administrator has judged that chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners/operators of affected hard and decorative chromium electroplating and chromium anodizing operations must notify EPA of construction, modification, startups, shut downs, date and results of initial performance test and provide reports of excess emissions. They must also develop startup, shutdown, malfunction plans and develop an operation and maintenance plan for their control system. Affected facilities also must provide notification of compliance status and report monitoring deviations.

Burden Statement: The annual public reporting and record-keeping burden for this collection of information is estimated to average 516,186 person hours. There are 5020 affected entities. The burden estimates for the record keeping and reporting requirements for the Chrome Electroplating and Anodizing NESHAP are initial performance test—350 hours, initial notification for construction/reconstruction, anticipated startup, actual startup, performance test—2 hours each, notification of physical or operational change—8 hours, operation and maintenance plan—10 hours, compliance status reports—6 hours, waiver application—6 hours, maintaining monitoring data records for wetting agents, foam blankets—0.25 hours, maintaining monitoring data records for composite mesh pads, packed bed scrubbers—0.5 hours, and maintaining records of trivalent chromium bath purchases—0.5 hours.

Commercial Ethylene Oxide Sterilization and Fumigation Operations

(6) MACT–NESHAP Subpart O, Commercial Ethylene Oxide Sterilization and Fumigation Operations. EPA ICR No. 1666.04. OMB Control No. 2060–0283. Expiration December 31, 2000.

Abstract: Entities potentially affected by this action are those which are subject to NESHAP subpart O, or operators of new and existing commercial ethylene oxide (EO) sterilization and fumigation facilities that use air pollution control devices that are in operation after promulgation of the NESHAP in 1994.

The Agency is required under section 112(d) of the Clean Air Act, as amended, to regulate emissions of hazardous air pollutants listed in section 112(b). In the Administrator's judgement, ethylene oxide (EO) emitted from commercial EO sterilization and fumigation operations causes or contributes significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. Consequently, the NESHAP for EO emissions have been developed for this source category.

Certain records and reports are necessary to enable the Administrator to: (1) identify new, modified, reconstructed, and existing sources subject to the standards; and (2) ensure that the standards, which are based on maximum achievable control technology (MACT) and generally available control technology (GACT), are being achieved. These records and reports are required under the General Provisions of 40 CFR part 63, subpart A (as authorized under sections 101, 112, 114, 116, and 301 of the Clean Air Act as amended by Public Law 101–549 (U.S.C. 7401, 7412, 7414, 7416, 7601).

Owners or operators of affected facilities must submit one-time reports of start of construction, anticipated or actual startup dates, and physical or operation changes to existing facilities. In addition, owners or operators of existing commercial EO sterilization and fumigation operations will submit one-time reports of actual annual EO use. Owners or operators of new commercial EO sterilization and fumigation operations will submit one-time reports of estimated annual EO use.

Reports of initial emissions testing are necessary to determine that the applicable emission limit is being met. The owner or operator of a commercial EO sterilization and fumigation operation that uses an air pollution control device to meet the emission limit is required to maintain records of the site-specific monitoring parameters as well as daily and monthly inspections of the control device. The emissions test reports and other records are used to determine that all sources subject to these NESHAP are achieving the standards.

The recordkeeping requirements are: (1) five year retention or records (sections 63.360(a), 63.367(a), 63.7(g)(3), 63.10(b)(1)); (2) records of control equipment maintenance, inspections, malfunctions (occurrence, duration, and corrections), continuous monitoring systems malfunctions or in operations, calibrations, and parameters, measurements to demonstrate compliance, performance test results, daily and monthly inspections, and documents supporting initial notifications and notification of compliance status (daily and monthly) (sections 63.360(a), 63.367(a), 63.10(b)(2)(ii), (vi)–(xii), (xiv), 63.10(c)(1), (5), (8), (10)–(14)); (3) emission testing (occurrence and duration) (sections 63.360(a), 63.367(a), 63.10(b)(2)); and (4) records of EO use (sections 63.362, 63.367(b) and (c)). The reporting requirements are: (1) notification and reports of startup, construction or modification (sections 63.360, 63.366(a)–(c), 63.5(a), 63.5(b)(1), (4)–(6), (d)(3)–(4), (e), 63.6(e), 63.9(a)–(b)(1)(i), (b)(2)–(3), 63.10(d)(5)); (2) notification and reports of emission and performance tests and results (including continuous monitoring system quality control programs, performance evaluations/summaries, and site-specific test plans (sections 63.360(a), 63.366(a) and (c), 63.7(a)–(c), (e)–(h), 63.8(d)–(e), 63.9(e), (g)(1), 63.10(d)(1)–(2), (e)(1)–(2)(i)); (3) notification and report of compliance status, including performance tests (sections 63.363(a), 63.363, 63.366(a)–(c), 63.9(h)); (4) notification and report for waiver applications (sections 63.360(a), 63.366(a) 63.9(h)); (5) notification and reports for waiver applications (sections 63.360(a) 63.366(a), 63.7(h)); (6) request for extension of compliance and progress reports; (7) use of alternative standards, including alternative monitoring (sections 63.360, 63.366(b)(3), 63.7(b)–(c), (e)–(h), 63.8(f), 63.10(d)(1)–(2)); and (8) notification and report of non-compliance, including excess emissions (sections 63.360(a), 63.366(a), 63.10(e)(3)(i)–(iv), (vi)–(viii)).

Burden Statement: The annual public reporting burden for this collection of information is estimated to average 241 hours per respondent per year. This burden includes reading instructions and reporting on the initial and repeat performance tests. The annual public report writing burden is estimated to average 44 hours per respondent per

year. This burden includes writing reports on construction, reconstruction, start-up, compliance status, and the initial and repeat performance tests. The annual public data entry burden is estimated to average 12 hours per respondent per year.

Pulp and Paper Industry

(7) MACT–NESHAP Subpart S, Pulp and Paper Industry. EPA ICR No. 1805. OMB Control No. 2060–0377. Expiration December 31, 2000.

Abstract: Respondents are owners and operators of new and existing sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills that emit hazardous air pollutants (HAP's). There are currently 122 kraft, 2 soda, 15 sulfite, and 14 stand-alone semichemical pulp mills in the United States. Of the 153 facilities that comprise the source category, 149 are expected to meet the applicability criteria defined in the final rule. No new facilities (pulp mills) are expected to be constructed in the next 5 years; however, approximately 20 new recovery furnaces, 20 new smelt dissolving tanks, and 15 new lime kilns are expected to be constructed at existing kraft pulp mills in the next 5 years. In addition, two new semichemical combustion units and no new soda or sulfite combustion sources are expected to be constructed in the next 5 years.

Owners or operators of combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills to which this regulation is applicable must install and monitor a specific control system that reduces HAP emissions to the compliance level. Owners or operators also would be required to install, operate and maintain a continuous monitoring system (CMS) for each affected source. To ensure compliance with the proposed particulate matter (PM) and PM HAP standards, owners or operators of kraft and soda recovery furnaces and lime kilns equipped with electrostatic precipitators (ESP's) would be required to maintain opacity levels below a specified level. Owners or operators of affected sources equipped with control devices other than ESP's would be required to establish control device or process operating parameter ranges that indicate the control device or process is being operated and maintained in accordance with good air pollution control practices. The control device or process operating parameter ranges would be established during the initial performance test or subsequent performance tests. Owners or operators complying with the proposed total gaseous organic HAP limit for new kraft and soda recovery furnaces that use a non-direct contact evaporator (NDCE) recovery furnace with a dry ESP system are exempt from monitoring requirements for gaseous organic HAP's because the use of this equipment ensures continuous compliance with the emission limit.

The respondents are subject to the general NESHAP recordkeeping and reporting requirements including those associated with the initial notification and the notification of compliance status for the first 6 months following the compliance date of the NESHAP and every 6 months thereafter. In addition, respondents would be required to submit with the initial notification an implementation plan that describes the NESHAP compliance procedures the mill plans to use and the associated monitoring and recordkeeping procedures. Respondents electing to comply with the emission limit or emission reduction requirements as described in the proposed rule for pulp and paper combustion sources must record the average values of equipment operating parameters as specified in sections 63.864 and 63.866 of the proposed rule.

Burden Statement: The burden hours include 2 hours to read instructions. For the required activities the initial Performance Test requirements PM test (Method 5 or 29) takes 217 hours, the PM HAP test (Method 29 and 101a) takes 447 hours, the TGO HAP (Method 308) takes 243 hours, and the TGO HAP (Method 25A) takes 243 hours. It is assumed that 20% will repeat the performance test due to failure. Performance Spec Test (certification) and any repeat tests take 13 hours for CMS and 36 hours for COMS.

Initial notifications including the notification of construction/reconstruction, notification of anticipated startup, notification of actual startup, notification of initial performance test(s), notification of initial CMS/COMS demonstration all require two hours. The notification of physical/operational changes takes eight hours, and the notification of compliance status four hours.

Recordkeeping Requirements include records and documentation of supporting calculations for compliance determinations (8 hours), records of compliant monitoring parameter ranges (2 hours), and records certifying that an NDCE recovery furnace equipped with a dry ESP system is used to comply with the total gaseous organic HAP standard for kraft and soda recovery furnaces (2 hours). It is estimated that 40 hours are needed to develop a record system, and 100 hours to develop a startup, shutdown, and malfunction plan.

Magnetic Tape Manufacturing Operations

(8) MACT–NESHAP Subpart EE, Magnetic Tape Manufacturing Operations. EPA ICR No. 1678.03, OMB Control No. 2060–0326. Expiration December 31, 2000.

Abstract: Entities potentially affected by this action are those which are subject to National Emission Standards for Hazardous Air Pollutants (NESHAP) Subpart EE, owners and operators of new and existing magnetic tape manufacturing operations located at major sources of hazardous air pollutants (HAP) as defined in section 112 of the Clean Air Act.

The Administrator has judged that the HAP emissions from magnetic tape manufacturing operations cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners/operators of affected magnetic tape manufacturing operations must notify EPA of construction, modification, startups, shutdowns, date and results of initial performance test and provide semiannual reports of excess emissions. They must also develop startup, shutdown, malfunction plans and develop a quality control plan for their continuous monitoring system. Affected facilities also must provide notification of compliance status and report quarterly monitoring exceedances. This information enables the Agency to: (1) Identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Consequently, these information collection requirements are mandatory, and the records required by this NESHAP must be retained by the owner or operator for at least five years.

Burden Statement: In the previously approved ICR, the average annual burden to the industry over the next three years to meet these record-keeping and reporting requirements was estimated at 7042 person-hours. The total annualized cost burden was estimated at $246,470. This is based on an estimated 13 respondents and a frequency of response of 2. The average annual burden for reporting only is projected to be 709 person-hours.

Flexible Polyurethane Foam

(9) MACT–NESHAP Subpart III, Flexible Polyurethane Foam Production. EPA ICR No. 1783.02. OMB Control No. 2060–0357. Expiration January 31, 2000.

Abstract: Respondents are owners and operators of new and existing facilities that engage in the manufacture of flexible polyurethane foam products and emit hazardous air pollutants (HAP's). This includes facilities making slabstock flexible polyurethane foam ("slabstock foam"), rebond flexible polyurethane foam ("rebond foam"), and/or molded flexible polyurethane foam ("molded foam"). All of the 176 facilities that comprise the source category are expected to meet the applicability criteria defined in the final rule. Few facilities are expected to be constructed in the next 5 years.

Owners or operators of flexible polyurethane foam production facilities must choose one of the compliance options described in the rule or reduce HAP emissions to below the compliance level. The respondents are subject to follow sections of subpart A relating to NESHAP. For slabstock foam producers, these requirements include those associated with the initial notification and the notification of compliance status for the first six months, and every six months thereafter. In addition, respondents would be required to submit with the initial notification a precompliance report that describes the HAP compliance procedures, and recordkeeping procedures. Respondents electing to comply with the slabstock foam emission limitation using recovery devices must measure and record emissions as specified in section 63.1297–1 of the proposed rule. Molded and rebond foam producers have only to submit an initial compliance report.

If the owner or operator identifies any deviation resulting from a known cause for which no Federally-approved or promulgated exemption from an emission limitation or standard applies, the compliance report shall also include all records that the source is required to maintain that pertain to the periods during which such deviation occurred, as well as the following: the magnitude of each deviation; the reason for each deviation; a description of the corrective action taken for each deviation, including action taken to minimize each deviation and action taken to prevent recurrence; and a copy of all quality assurance activities performed on any element of the monitoring protocol.

Owners or operators of slabstock flexible polyurethane foam production facilities must maintain a copy of all HAP usage records onsite for a minimum of 5 years. Upon request from the regulating entity, facilities must submit all reports (to EPA or the respondent's State or local agency, whichever has been delegated enforcement authority by EPA).

Burden Statement: EPA estimates a total annual reporting and recordkeeping burden for this collection averaged over the first 3 years of $571,765 and 17,796 burden hours per year for the entire source category. The average burden, per respondent, is 101 hours per year.

The rule requires an initial one-time notification from each respondent and subsequent notification every six months to indicate their compliance status. At the time of the initial notification each respondent must submit a precompliance report that describes compliance procedures. A respondent must also keep necessary records of data to determine compliance with the standards in the regulation. Facilities would record this data monthly. EPA estimates the initial information collection requirements affects 176 respondents.

Pesticide Active Ingredient

(10) MACT–NESHAP Subpart MMM, Pesticide Active Ingredient (PAI) Production. EPA No. 1807.01. OMB Control No. 2060–0370. Expiration November 30, 2000.

Abstract: These standards apply to owners and operators of new and existing facilities that engage in the production of pesticide active ingredients and emit hazardous air pollutants (HAP's). Specific affected facilities for each subpart are found at 40 CFR 63.1360. Owners or operators of PAI production facilities to which this regulation applies must choose one of the compliance options described in the rule or install and monitor a specific control system that reduces HAP emissions to the compliance level. The respondents are subject to sections of subpart A of 40 CFR part 63 relating to NESHAP. These requirements include those associated with the applicability determination; the notification that the facility is subject to the rule; and the notification of testing (control device performance test and CMS performance evaluation); the results of performance testing and CMS performance evaluations; startup, shutdown, and malfunction reports; and semiannual or quarterly summary reports and/or excess emissions and CMS performance reports. In addition to the requirements of subpart A, many respondents are required to submit a precompliance plan and LDAR reports, and plants that wish to implement emissions averaging provisions must submit an emissions averaging plan.

Respondents electing to comply with the emission limit or emission reduction requirements for process vents, storage tanks, or wastewater must record the values of equipment operating parameters as specified in section 63.1367 of the rule.

If the owner or operator identifies any deviation resulting from a known cause for which no Federally-approved or promulgated exemption from an emission limitation or standard applies, the compliance report shall also include all records that the source is required to maintain that pertain to the periods during which such deviation occurred, as well as the following: the magnitude of each deviation; the reason for each deviation; a description of the corrective action taken for each deviation, including action taken to minimize each deviation and action taken to prevent recurrence; and a copy of all quality assurance activities performed on any element of the monitoring protocol.

Owners or operators of PAI production facilities subject to the rule must maintain a copy of all monitored equipment operating parameter values that demonstrate compliance with the standards. Records and reports must be retained for a total of 5 years (2 years at the site; the remaining 3 years of records may be retained off-site). The files may be maintained on microfilm, on a computer or floppy disks, on magnetic tape disks, or on microfiche.

Since many of the facilities potentially affected by the proposed standards are currently subject to new source performance standards (NSPS), the standards include an exemption from the NSPS for those sources. That exemption eliminates a duplication of information collection requirements.

Burden Statement: The estimated one-time burden to implement recordkeeping and reporting requirements is broken down into several categories. All sources will face an initial burden of 319 hours, consisting of: 2 hours for reading instructions; 13 hours for the CMS performance evaluation test; 2 hours for notification of the initial performance test; 2 hours for notification of the CMS performance test; 80 hours for notification of compliance status (with performance test); 40 hours to develop a record system; 100 hours to develop a startup, shutdown, and malfunction plan; 40 hours to develop a QA/QC plan for the CMS; and 40 hours to train personnel.

New sources (an estimated 2 per year) will face, in addition to the above burden, a one-time burden of 10 hours

for: 2 hours for notification of construction; 4 hours for notification of actual startup; 2 hours for notification of initial performance test; and 2 hours for notification of CMS performance evaluation. Reconstructed sources (an estimated one per year) will face a burden of 10 hours per occurrence broken out in the same manner. Ten percent of all sources annually are expected to be required to submit notifications of process change for an estimated burden of 8 hours per occurrence.

Recurrent burden affecting all respondents is estimated at 762 hours per year. This is broken down as follows: 188 hours for LDAR reporting (40% of initial and annual monitoring and repair labor); 78 hours to record startup, shutdowns, and malfunctions; 320 hours to record continuous monitoring data (one hour per day per source times 320 operating days per year); 96 hours to compile data; 32 hours to enter and verify data for semiannual reports (16 hours per occurrence times twice a year); 48 hours for calibrating CMS.

In addition, there will be semiannual reporting requirements for all plants, differing in amount depending on whether the plant experiences exceedances. The estimated burden for plants with no exceedances (estimated at 90% of affected sources) is 16 hours per respondent; the estimated burden in the case of exceedances (10% of affected sources) is 48 hours per respondent.

Finally, those existing sources opting for an emissions averaging plan (10% of existing sources only) is 20 hours per respondent.

Dated: April 7, 2000.

Michael Stahl,

Acting Director, Office of Compliance.

[FR Doc. 00–9657 Filed 4–17–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6581–2]

Agency Information Collection Activities: Collection; Comment Request; State Clean Air Act Section 507 Program Cooperative Agreement Outreach Pilot Program Evaluation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): State Clean Air Act Section 507 Program Cooperative Agreement Demonstration Outreach Pilot Program Evaluation, EPA ICR No. 1958.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 19, 2000.

ADDRESSES: U.S. EPA Office of Policy and Reinvention, Office of the Small Business Ombudsman (2131), 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Karen V. Brown, at EPA, by telephone (202) 260–1390, via FAX on (202) 401–2302, by e-mail at *brown.karen@epa.gov*, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1958.01.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those in certain small business sectors.

Title: State Clean Air Act Section 507 Program Cooperative Agreement Demonstration Outreach Pilot Program Evaluation; EPA ICR No. 1958.01).

Abstract: The EPA Office of the Small Business Ombudsman was authorized and funded by the fiscal year 1999 VA/HUD & Independent Agencies Appropriations Act to award grants or cooperative agreements to "Strengthen State Small Business Ombudsman (SBO) and State Technical Assistance Programs (SBAP) Created Under Section 507 of The Clean Air Act Amendments (CAAA)." The ultimate objective of these awards is to make improvements and strengthen these programs. The Congress further emphasized the important role these programs can play in promoting small business compliance with emission limitations set under State Implementation Plans to attain National Ambient Air Quality Standards. Under the Congressional mandate EPA must report on "the grants (cooperative agreements), their use and effectiveness," and also provide Congress with an estimate of emission reductions achieved by these projects more generally. Thus, through a competitive process, the ten State cooperative agreement awardees, are required to measure the results/impacts of their innovative developmental work and outreach efforts. In order to do this, some, but not all, awardees will need to solicit information from the small business community that voluntarily use these programs. This information will be confidential. This is a "generic" information collection request (ICR) to enable the 10 State SBO or SBAP Programs to collect information on the results/effectiveness of their projects so that the States and EPA can better understand which types of outreach were most effective. State SBOs/SBAPs and EPA are interested in judging the results of various measurement methods such as comment/response cards, on-site interviews, mailed/Internet-surveys/on-site question-naires, and telephone surveys.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of future information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: There is not an annual reporting burden as a result of this ICR. Rather, it is a one-time reporting burden which may occur during various time phases and aspects of some of the 10 State SBO/SBAP outreach projects. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources;

complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected: Respondents for the purpose of this ICR will mostly be small businesses like in the water heater and boiler manufacturing industry, reinforced plastics and boat manufacturing industry, gasoline dispensing sites an transport vehicles, auto repair and salvage yards, and a potential wide spectrum of other small business types depending upon who they come in contact with during the development and outreach effort. A broad rang of SIC codes could conceivably thus be covered such as: 01, 07, 20 22, 23, 27, 28, 34, 35, 26, 37, and 55. Also, one or more of the following State offices: environmental agency (SIC 9511), commerce or economic development department (9611), governor's office (9111), or ombudsman's office (9511). These departments are typically responsible for the conduct of the State SBO or SBAP.

Estimated Number of Respondents: 3,900.

Frequency of Response: sporadic—one time.

Estimated Total Hours of Burden: 4,200.

Total Cost Burden: $135,000.

Dated: April 12, 2000.

Karen V. Brown,

Small Business Ombudsman.

[FR Doc. 00–9661 Filed 4–17–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6580–7]

National Drinking Water Advisory Council Notice of Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C.S3300f *et seq.*), will be held on May 10, 2000, from 9 a.m. until 5 p.m., May 11, 2000, from 8:30 a.m. until 1:15 p.m., at the Sir Francis Drake Hotel, 450 Powell Street, San Francisco, California. Panel discussions will be held on sensitive subpopulations and the CALFED Bay Delta Program. Other agenda items include a regulatory update, final report from the Small Systems Implementation Working Group, interim report from the Contaminant Candidate List/Six Year Review Working Group, Source Water Strategy and follow up actions to the Futures Forum held in December 1999.

The meeting is open to the public. The Council encourages the hearing of outside statements and will allocate one hour for this purpose. Oral statements will be limited to five minutes, and it is preferred that only one person present the statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone at (202) 260–2285 before May 4, 2000.

Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received prior to the meeting will be distributed to all members of the Council before any final discussion or vote is completed. Any statements received after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Members of the public that would like to attend the meeting, present an oral statement, or submit a written statement, should contact Ms. Charlene Shaw, Designated Federal Officer, National Drinking Water Advisory Council, U.S. EPA, Office of Ground Water and Drinking Water (4601), 401 M Street SW., Washington, D.C. 20460. The telephone number is Area Code (202) 260–2285 or E-Mail shaw.charlene@epa.gov.

Dated: April 12, 2000.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 00–9662 Filed 4–17–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6581–3]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Environmental Engineering Committee (EEC) of the USEPA Science Advisory Board (SAB) will meet by conference call May 3, 2000 from 3–5 p.m. Eastern Time. Participation in this conference call is by telephone only; a limited number of lines have been reserved for members of the public wishing to participate.

Purpose of the Meeting—The primary purpose of the meeting is to allow the Committee to consider the report of its Technology Evaluation Subcommittee. The Subcommittee reviewed the degree to which quality management is built into the Environmental Technology Verification (ETV) program at a public meeting March 6–8, 2000 as announced in the February 15, 2000 **Federal Register** (65 FR 7550). When the Subcommittee's report is approved by the EEC, it will be forwarded to the Executive Committee of the Science Advisory Board for approval before being transmitted to the Agency. To the extent that time allows, the EEC will conduct other routine business at the meeting such as discussion of reports in progress and planned activities.

The documents reviewed by the Subcommittee are available from the Office of Research and Development as announced in the **Federal Register**, Volume 65, Number 8 on January 12, 2000. Copies of the Subcommittee's draft report will be available from Ms. Kathleen White Conway after April 25, 2000.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments must contact Ms. Kathleen White Conway, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4559; FAX (202) 501–0582; or via e-mail at conway.katheen@epa.gov. Email is preferred. Requests for oral comments must be in writing (e-mail, fax or mail) and received by Ms. Conway no later than noon Eastern Time on April 26.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a

meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files—in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY1999 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256.

Meeting Access

Individuals requiring special accommodation at this teleconference meeting should contact Ms. Conway at least five business days prior to the meetings so that appropriate arrangements can be made.

Dated: April 12, 2000.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 00–9659 Filed 4–17–00; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6581–5]

Blackberry Valley Drum Site, Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a settlement for the reimbursement of all past response costs with Greenville County pursuant to section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(h)(1) concerning the Blackberry Valley Drum Superfund Site (Site) located in Greenville, Greenville County, South Carolina. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4, (WMD–CPSB) 61 Forsyth Street, SW, Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

Dated: March 31, 2000.

James T. Miller,

Acting Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 00–9658 Filed 4–17–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority, Emergency Processing Provision, and Submission to OMB

SUMMARY:

Background

Notice is hereby given of final approval of revisions to current information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public) and the Paperwork Reduction Act emergency processing provision, as per 5 CFR 1320.13. The emergency approval is only valid until October 31, 2000. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Chief, Financial Reports Section—Mary M. West—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829); OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7860).

Final Approval Under OMB Delegated Authority of the Revision Without Extension of the Following Reports

1. Report title: Bank Holding Company Report of Changes in Investments and Activities.

Agency form number: FR Y–6A.

OMB Control number: 7100–0124.

Effective Date: April 11, 2000.

Frequency: on occasion.

Reporters: bank holding companies, state member banks not affiliated with a bank holding company.

Annual reporting hours: 12,571.

Estimated average hours per response: 0.95 hours.

Number of respondents: 2,406.

Small businesses are not affected.

General description of report: This information collection is mandatory (12 U.S.C. 1844(b) and (c)) and is not routinely given confidential treatment. However, confidential treatment for the report information can be requested, in whole or part, in accordance with the instructions to the form.

Abstract: The Bank Holding Company Report of Changes in Investments and Activities is an event-generated report filed by top-tier bank holding companies to report changes in regulated investments and activities made pursuant to the Bank Holding Company Act and Regulation Y. The report collects information relating to acquisitions, divestitures, changes in activities, and legal authority. The number of FR Y–6As submitted varies depending on the reportable activity engaged in by each bank holding company.

As a result of the enactment of the Gramm-Leach-Bliley Act of 1999, the Federal Reserve has: (1) Required financial holding companies, other bank holding companies, and state member banks not affiliated with a bank holding company or financial holding company to complete the form, (2) added structure items to capture information on financial holding company status, financial subsidiary holder status, functionally regulated subsidiaries, and financial subsidiaries, (3) revised the index of regulatory codes and provisions and the index of activity codes, and (4) revised the instructions for the types of investments reportable on the form.

On March 17, 2000, the Federal Reserve published an interim rule in the **Federal Register** that established procedures that generally require a financial holding company to file a post-commencement notice with the appropriate Federal Reserve Bank within 30 days of commencing a financial activity or acquiring a company engaged in a financial activity (see 12 CFR 225.87). For activities or investments commencing before April 11, 2000, this notice could be submitted in the form of a letter and the agency form number for this information collection was the FR 4012.

For activities or investments commencing on or after April 11, 2000, and until the Federal Reserve indicates otherwise, an FHC must use the modified FR Y–6A to satisfy the post-commencement notice requirement. An FHC need not submit any additional documentation to fulfill the post-commencement notice requirement.

The Federal Reserve soon will undertake a comprehensive review of the FR Y–6A in order to streamline the form and instructions and make them easier to understand and complete. This review will include a **Federal Register** notice and a request for public comments.

2. Report title: Foreign Banking Organization Structure Report on U.S. Banking and Nonbanking Activities.

Agency form number: FR Y–7A.

OMB Control number: 7100–0125.

Effective Date: April 11, 2000.

Frequency: annual, on occasion.

Reporters: foreign banking organizations.

Annual reporting hours: 3,321.

Estimated average hours per response: 4.65 hour for annual reporters, 5 hours for financial holding companies that file on an event-generated basis.

Number of respondents: 327.

Small businesses are not affected.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c), 3106, and 3108(a)). Upon request from a respondent, certain information may be given confidential treatment pursuant to the Freedom of Information Act (5 U.S.C. §§ 552(b)(4) and (6)).

Abstract: The FR Y–7A is an annual structural report completed by foreign banking organizations that engage in banking in the United States, either indirectly through a subsidiary bank, Edge or agreement corporation, or commercial lending company, or directly through a branch or agency. The report collects structural information on the foreign banking organization and its subsidiaries and is currently filed as of the reporter's fiscal year end. The information contained in this report is used by the Federal Reserve System to assess the foreign banking organization's ability to be a continuing source of strength to its U.S. banking operations and to determine compliance with U.S. laws and regulations.

As a result of the enactment of the Gramm-Leach-Bliley Act of 1999 (GLB Act), the Federal Reserve has: (1) Required foreign banking organizations that are financial holding companies to report changes in investments and activities related to the GLB Act on the FR Y–7A on an event-generated basis and file the report thirty calendar days after the event, (2) added structure items to capture information on financial holding company status, financial subsidiary holder status, functionally regulated subsidiaries, and financial subsidiaries, (3) revised the index of regulatory codes and provisions and the index of activity codes, and (4) revised the instructions for the types of investments reportable on the form.

On March 17, 2000, the Federal Reserve published an interim rule in the **Federal Register** that established procedures that generally require a financial holding company to file a post-commencement notice with the appropriate Federal Reserve Bank within 30 days of commencing a financial activity or acquiring a company engaged in a financial activity (see 12 CFR 225.87). For activities or investments commencing before April 11, 2000, this notice could be submitted in the form of a letter and the agency form number for this information collection was the FR 4012.

For activities or investments commencing on or after April 11, 2000, and until the Federal Reserve indicates otherwise, an FHC must use the modified FR Y–7A to satisfy the post-commencement notice requirement. An FHC need not submit any additional documentation to fulfill the post-commencement notice requirement.

The Federal Reserve soon will undertake a comprehensive review of the FR Y–7A, which will include a **Federal Register** notice and a request for public comment.

Board of Governors of the Federal Reserve System, April 13, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–9676 Filed 4–17–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY:

Background

Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Chief, Financial Reports Section—Mary M. West—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829), OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7860).

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Report

1. Report title: The Recordkeeping and Disclosure Requirements in Connection with Regulation Z (Truth in Lending).

Agency form number: unnum Reg Z.

OMB Control Number: 7100–0199.

Frequency: Event-generated.

Reporters: State Member Banks.

Annual reporting hours: 1,863,754 hours.

Estimated average hours per response: Open-end credit: initial terms 2.5 minutes, change in terms 1 minute; Periodic statement 45 seconds; Error resolution 15 minutes; Credit and charge card accounts: Advance disclosures 10 seconds, renewal notice 5 seconds, insurance notice 15 seconds; Home equity plans: advance disclosure 2 minutes, change in terms 2 minutes; Closed-end credit disclosures 6.4 minutes; Advertising 30 minutes.

Number of respondents: 988.

Small businesses are affected.

General description of report: Title I of the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*) authorizes the Board to issue regulations to carry out the provisions of the Consumer Credit Protection Act (15 U.S.C. 1604(a)). Since the Federal Reserve does not collect any information, no issue of confidentiality arises. Transaction-or account-specific disclosures and billing error allegations are not publicly available and are confidential between the creditor and consumer. Abstract: Regulation Z (12 CFR part 226) implements the Truth in Lending Act (15 U.S.C. 1601 *et seq.*). The act and regulation ensure adequate disclosure of the costs and terms of credit to consumers on an event-generated basis. For open-end credit (revolving credit accounts), creditors are required to disclose information about the initial costs and terms and to provide periodic statements of account activity, notices of change in terms, and statements of rights concerning billing error procedures. The regulation also requires specific types of disclosures for credit and charge card accounts, and home equity plans. For closed-end loans (such as mortgage and installment loans) cost disclosures are required to be provided prior to consummation. Specific products trigger special disclosures, such as reverse mortgages, certain variable rate loans, and certain mortgages with rates and fees above a specific amount. Regulation Z also contains rules concerning credit advertising. Creditors are required to retain records as evidence of compliance with Regulation Z for twenty-four months (subpart D, section 226.25).

Board of Governors of the Federal Reserve System, April 13, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–9677 Filed 4–17–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 3, 2000.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Sara J. Harrison, Little Rock, Arkansas; to retain voting shares of Southern State Bancshares, Inc., Malvern, Arkansas, and thereby indirectly retain voting shares of Southern State Bank, Malvern, Arkansas.

Board of Governors of the Federal Reserve System, April 13, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–9678 Filed 4–17–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 12, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Wachovia Corporation,* Winston-Salem, North Carolina; to merge with Commerce National Corporation, Winter Park, Florida, and thereby indirectly acquire National Bank of Commerce, Winter Park, Florida.

Board of Governors of the Federal Reserve System, April 13, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–9679 Filed 4–17–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 2, 2000.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411

Locust Street, St. Louis, Missouri 63166–2034:

1. National Commerce Bancorporation, Memphis, Tennessee; through its existing wholly owned nonbank subsidiary, TransPlatinum Service Corp., Nashville, Tennessee, to acquire Prime Financial Services, Inc., Dresden, Tennessee, and thereby engage in factoring activities, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, April 12, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–9601 Filed 4–17–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–00–3]

Fiscal Year 2000 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications to establish, or expand and improve, Statewide Senior Legal Hotlines whose purpose is to advance the quality and accessibility of the legal assistance provided to older people.

SUMMARY: The Administration on Aging announces that under this program announcement it will hold a competition for grant awards for four (4) to five (5) projects that establish, or expand and improve, Statewide Senior Legal Hotlines aimed at advancing the quality and accessibility of the legal assistance provided to older people.

The deadline date for the submission of applications is June 16, 2000. Eligibility for grant awards is limited to public and/or nonprofit agencies, organizations, and institutions experienced in providing legal assistance to older persons.

Application kits are available by writing to the Department of Health and Human Services, Administration on Aging, Office of Program Development, 330 Independence Avenue, SW, Room 4264, Washington, DC 20201, or by calling 202/619–2987.

Dated: April 12, 2000.

Jeanette C. Takamura,

Assistant Secretary for Aging.

[FR Doc. 00–9643 Filed 4–17–00; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Human Immunodeficiency Virus Prevention Projects for Community-Based Organizations, Program Announcement #00023

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Human Immunodeficiency Virus Prevention Projects for Community-Based Organizations, Program Announcement #00023.

Times and Dates: 9 a.m.–9:15 a.m., April 14, 2000 (Open); 9:15 a.m.–12 p.m., April 14, 2000 (Closed).

Place: This meeting will be conducted in two separate, simultaneous conference call sessions. To participate, please dial 1–800–713–1971 and when prompted, enter participant code #848941, and 1–800–713–1971 and when prompted, enter participant code #868508. The call will only be open to the public for the first fifteen minutes, after which the review process will begin.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of five applications received in response to Program Announcement #00023. These five applications were originally deemed ineligible, however, after careful reconsideration, it was determined that they should be given the same consideration as applications reviewed during the original SEP meeting that took place March 20–24, 2000.

Contact Person for More Information: Megan Foley or Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail MZF3@cdc.gov or EOW1@cdc.gov.

This notice is being published less than 15 days in advance of the meeting due to administrative oversight and program delays. The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 12, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–9608 Filed 4–13–00; 11:52 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Albendazole Suspension for Goats; Availability of Data

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of effectiveness, target animal safety, and human food safety, and environmental data that may be used in support of a new animal drug application (NADA) or supplemental NADA for oral use of albendazole suspension for treatment of adult liver flukes in nonlactating goats. The data, contained in Public Master File (PMF) 5582, were compiled under National Research Support Project–7 (NRSP–7), a national agricultural research program for obtaining clearances for use of new drugs in minor animal species and for special uses.

ADDRESSES: Submit NADA's or supplemental NADA's to the Document Control Unit (HFV–199), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Gillian A. Comyn, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7568.

SUPPLEMENTARY INFORMATION: Albendazole suspension, used for the treatment of adult liver flukes (*Fasciola hepatica*) in nonlactating goats, is a new animal drug under section 201(v) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(v)). As a new animal drug, albendazole is subject to section 512 of the act (21 U.S.C. 360b), requiring that its uses in goats be the subject of an approved NADA or supplemental NADA. Goats are a minor species under § 514.1(d)(1)(ii) (21 CFR 514.1(d)(1)(ii))

The NRSP–7 Project, Western Region, College of Veterinary Medicine, University of California, Davis, CA 95616, has provided target animal safety, effectiveness, human food safety, and environmental data for oral use of

albendazole solution for treatment of adult liver flukes (*Fasciola hepatica*) in nonlactating goats. These data are contained in PMF 5582.

Under 21 CFR 25.15(d) and 25.33(d)(4), sponsors of NADA's and supplemental NADA's for drugs in minor species, including wildlife and endangered species, are categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement when the drug has been approved for use in another or the same species where similar animal management practices are used. The categorical exclusion applies unless, as defined in § 25.21 (21 CFR 25.21), extraordinary circumstances exist which indicate that the proposed action may significantly affect the quality of the human environment. Therefore, based upon information available, FDA agrees that when the application is submitted, the applicant may claim a categorical exclusion under § 25.33(d)(4) provided that the applicant can state that to the best of the applicant's knowledge, as in § 25.21, no extraordinary circumstances exist. It is assumed that the applicant has made a reasonable effort to determine that no extraordinary circumstances exist.

Sponsors of NADA's or supplemental NADA's may, without further authorization, reference the PMF 5582 to support approval of an application filed under § 514.1(d). An NADA or supplemental NADA must include, in addition to reference to the PMF, animal drug labeling and other information needed for approval, such as: Data supporting extrapolation from a major species in which the drug is currently approved or authorized reference to such data; data concerning manufacturing methods, facilities, and controls; and information addressing potential environmental impacts of the manufacturing process. Persons desiring more information concerning the PMF or requirements for approval of an NADA or supplement may contact Gillian A. Comyn (address above).

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, from 9 a.m. to 4 p.m., Monday through Friday.

Dated: March 20, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–9571 Filed 4–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0497]

Request for Proposed Standards for Unrelated Allogeneic Peripheral and Placental/Umbilical Cord Blood Hematopoietic Stem/Progenitor Cell Products; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening for 90 days the comment period for the notice requesting the submission of proposed product standards for unrelated allogeneic peripheral and placental/umbilical cord blood hematopoietic stem/progenitor cells. The notice was published in the **Federal Register** of January 20, 1998 (63 FR 2985). FDA is taking this action in response to a request for an extension and to allow interested parties additional time for review and to submit comments on proposed product standards.

DATES: Submit written comments by July 17, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 20, 1998 (63 FR 2985), FDA published a notice requesting proposed product standards intended to ensure the safety and effectiveness of minimally manipulated hematopoietic stem/progenitor cells derived from peripheral and cord blood for unrelated allogeneic use. Interested persons were given until January 20, 2000, to submit written comments. On January 18, 2000, a comment requesting that the agency extend the comment period was submitted to the docket. The comment noted that comprehensive standards that cover all aspects of cord blood banking have been drafted. However, additional editing and final review is required before submission to the docket. FDA finds it appropriate to reopen the comment period to permit interested persons additional time to submit proposed product standards intended to ensure the safety and effectiveness of minimally manipulated hematopoietic stem/progenitor cells derived from peripheral and cord blood for unrelated allogeneic use. Therefore the agency is reopening the comment period for an additional 90 days, until July 17, 2000, to allow the public more time to submit proposed product standards.

Interested persons may submit to the Dockets Management Branch (address above) written comments on proposing product standards intended to ensure the safety and effectiveness of minimally manipulated hematopoietic stem/progenitor cells derived from peripheral and cord blood for unrelated allogeneic use by July 17, 2000. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 10, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–9582 Filed 4–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 79N–0113; DESI 2847]

Pediatric Parenteral Multivitamin Products; Drug Efficacy Study Implementation; Announcement of Marketing Conditions; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of January 26, 2000 (65 FR 4253). The document announced the conditions for marketing pediatric parenteral multivitamin drug products for the indications for which they are

now regarded as effective. The document was published with an inadvertent error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In FR Doc. 00–1787 appearing on page 4253 in the **Federal Register** of Wednesday, January 26, 2000, the following correction is made:

On page 4255, in the first column, in paragraph *B.*2.(a), beginning in the second line, the sentence "Caution: Federal law prohibits dispensing without prescription" is corrected to read "Rx only."

This change is made in accordance with section 126(a) of the Food and Drug Modernization Act of 1997. Section 126(a) modified section 503(b)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)(4)).

Dated: April 7, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–9580 Filed 4–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of May 2000.

Name: HRSA AIDS Advisory Committee (HAAC).

Date and Time: May 17, 2000; 8:30 a.m.–5 p.m.; May 18, 2000; 8:30 a.m.–5 p.m.

Place: Doubletree Park Terrace, 1515 Rhode Island Avenue, NW, Washington, DC 20005, Telephone: (202) 232–7000.

The meeting is open to the public.

Agenda: Agenda items for the meeting include reauthorization issues of the Ryan White CARE Act, program updates, policy paper presentations, and health services research/evaluation meeting update and discussion.

Anyone requiring further information should contact Joan Holloway, HIV/AIDS Bureau, Parklawn Building, Room 7–13, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–5761.

Dated: April 12, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–9584 Filed 4–17–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of May 2000.

Name: National Advisory Council on Migrant Health.

Date and Time: May 4, 2000; 9 a.m.–5 p.m.; May 5, 2000; 9 a.m.–5 p.m.

Place: Portland Marriott Downtown, 1401 SW Naito Parkway, Portland, Oregon 97201, Phone: (503) 226–7600; Fax: (503) 221–1789.

The meeting is open to the public.

Agenda: This will be a meeting of the Council. The agenda includes an overview of general Council business activities and priorities. Topics of discussion will include the Year 2000 recommendations, Migrant issues in the Upper Northwest, and updates on research related to the Migrant Health Program. The Council meeting is being held in conjunction with the National Association of Community Health Centers, annual National Farmworker Health Conference, May 5–7, 2000.

Anyone requiring information regarding the subject Council should contact Judy Rodgers, Migrant Health Program, staff support to the National Advisory Council on Migrant Health, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East-West Highway, Bethesda, Maryland 20814, Telephone (301) 594–4304.

Agenda items are subject to change as priorities indicate.

Dated: April 12, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–9583 Filed 4–17–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families; Office of Refugee Resettlement

Modification to the Standing Announcement Published in the Federal Register on December 9, 1997 (62 FR 64856)

AGENCY: Office of Refugee Resettlement (ORR) Administration for Children and Families, DHHS.

ACTION: Notice of cancellation.

SUMMARY: The Office of Refugee Resettlement Standing Announcement (62 FR 64856) issued December 9, 1997 is hereby modified to reflect the cancellation of three program areas: Category 3, Community Orientation, Category 4, Technical Assistance to Orientation Grantees, and Category 5, Mental Health.

Closing dates for Category 1, Preferred Communities, Category 2, Unanticipated Arrivals, and Category 6, Ethnic Community Organizations will remain unchanged, *i.e.* January 31 and June 30 every year.

These changes are effective with the date of this publication.

For further information, please contact Marta Brenden, Office of Refugee Resettlement, telephone 202–205–3589.

Dated: April 13, 2000.

Carmel Clay-Thompson,

Acting Director, Office of Refugee Resettlement.

[FR Doc. 00–9634 Filed 4–17–00; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–28]

Notice of Submission of Proposed Information Collection to OMB; Cooperative Membership

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 18, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0025) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Cooperative Membership.

OMB Approval Number: 2502–0025.

Form Numbers: HUD–93203.

Description of the Need for the Information and Its Proposed Use: For cooperative type mortgages, HUD will collect information of prospective cooperative members totaling not less than the percentage of cooperative subscribers necessary to validate the cooperative presale requirement.

Respondents: Individuals or households.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Form HUD–93203	300		1		0.5		150

Total Estimated Burden Hours: 150.

Status: Reinstate approval without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 11, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–9600 Filed 4–1–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–933–00–1320–EL; COC 61209]

Notice of Coal Lease Offering By Sealed Bid

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that certain coal resources in the lands hereinafter described in Delta County, Colorado, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

DATES: The lease sale will be held at 10 a.m., Tuesday, May 23, 2000. Sealed bids must be submitted no later than 9 a.m., Tuesday, May 23, 2000.

ADDRESSES: The lease sale will be held in the Conference Room, Fourth Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado. Sealed bids must be submitted to the Cashier, First Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Karen Purvis at (303) 239–3795.

SUPPLEMENTARY INFORMATION: The tract will be leased to the qualified bidder submitting the highest offer, provided that the high bid meets the fair market value determination of the coal resource. The minimum bid for this tract is $100 per acre or fraction thereof. No bid less than $100 per acre or fraction thereof will be considered. The minimum bid is not intended to represent fair market value.

Sealed bids received after the time specified above will not be considered.

In the event identical high sealed bids are received, the tying high bidders will be requested to submit follow-up bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

Fair market value will be determined by the authorized officer after the sale.

Coal Offered: The coal resource to be offered is limited to coal recoverable by underground mining methods in the D and B2 seams on the Iron Point Tract in the following lands:

T. 12 S., R. 91 W., 6th P.M.
Sec. 33, lots 1 to 3, inclusive, 6 to 11, inclusive, 14 to 16, inclusive, SE¼NW¼, and S½NE¼;
Sec. 34, lots 1 to 16, inclusive, and S½N½.
T. 13 S., R. 91 W., 6th P.M.
Sec. 2, SW¼NW¼, NW¼SW¼, and E½SW¼;
Sec. 3, lots 1 to 4, inclusive, S½N½, and N½S½;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 5, SE¼SW¼ and S½SE¼;
Sec. 8, NE¼;
Sec. 9, NW¼ and N½SW¼;
Sec. 11, NE¼NW¼.
Containing 3210.82 acres.

Total recoverable reserves are estimated to be 32.6 million tons. The underground minable coal is ranked as high volatile C bituminous coal.

The estimated coal quality for the D and B2 seams on an as-received basis is as follows:

	D Seam	B2 Seam
Btu	11,890 Btu/lb	12,480 Btu/lb.
Moisture	8.67%	7.39%
Sulfur content.	0.43%	0.46%
Ash content.	8.17%	7.39%

Rental and Royalty: The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre or fraction thereof and a royalty payable to the United States of 8 percent of the value of coal mined by underground methods. The value of the coal will be determined in accordance with 30 CFR 206.

Notice of Availability: Bidding instructions for the offered tract are included in the Detailed Statement of Coal Lease Sale. Copies of the statement and the proposed coal lease are available upon request in person or by mail from the Colorado State Office at the address given above. The case file is available for inspection in the Public Room, Colorado State Office, during normal business hours at the address given above.

Dated: April 12, 2000.

Matthew R. McColm,

Mining Engineer, Branch of Solid Minerals Resource Services.

[FR Doc. 00–9616 Filed 4–17–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–933–99–1320–EL; COC 61357]

Notice of Coal Lease Offering By Sealed Bid

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that certain coal resources in the lands hereinafter described in Delta and Gunnison Counties, Colorado, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

DATES: The lease sale will be held at 1 p.m., Tuesday, May 23, 2000. Sealed bids must be submitted no later than 12 noon, Tuesday, May 23, 2000.

ADDRESSES: The lease sale will be held in the Conference Room, Fourth Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado. Sealed bids must be submitted to the Cashier, First Floor, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Karen Purvis at (303) 239–3795.

SUPPLEMENTARY INFORMATION: The tract will be leased to the qualified bidder submitting the highest offer, provided that the high bid meets the fair market value determination of the coal resource. The minimum bid for this tract is $100 per acre or fraction thereof. No bid less than $100 per acre or fraction thereof will be considered. The minimum bid is not intended to represent fair market value.

Sealed bids received after the time specified above will not be considered.

In the event identical high sealed bids are received, the tying high bidders will be requested to submit follow-up bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

Fair market value will be determined by the authorized officer after the sale.

Coal Offered: The coal resource to be offered is limited to coal recoverable by underground mining methods in the D seam on the Elk Creek Tract in the following lands:

T. 12 S., R. 90 W., 6th P.M.
Sec. 31, all;
Sec. 32, lots 3 to 6 inclusive, lots 11 to 14, inclusive, and NW¼.
T. 12 S., R. 91 W., 6th P.M.
Sec. 35, all;
Sec. 36, all.
T. 13 S., R. 90 W., 6th P.M.
Sec. 5, lots 7 to 10, inclusive, lots 14 to 15, inclusive, and lots 17 to 18, inclusive;
Sec. 6, lots 8 to 17, inclusive.
T. 13 S., R. 91 W., 6th P.M.
Sec. 1, lots 1 to 4 inclusive, S½NW¼, and SW¼;
Sec. 2, lot 1 and S½NE¼;
Sec 12, S½NE¼ and NW¼.
Containing 4,443.57 acres.

Total recoverable reserves are estimated to be 20.92 million tons. The underground minable coal is ranked as high volatile C bituminous coal. The estimated coal quality for the D seam on an as-received basis is as follows:
Btu—11,890 Btu/lb.
Moisture—8.67%
Sulfur Content—0.43%
Ash Content—8.17%

Rental and Royalty: The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre or fraction thereof and a royalty payable to the United States of 8 percent of the value of coal mined by underground methods. The value of the coal will be determined in accordance with 30 CFR 206.

Notice of Availability: Bidding instructions for the offered tract are included in the Detailed Statement of Coal Lease Sale. Copies of the statement and the proposed coal lease are available upon request in person or by mail from the Colorado State Office at the address given above. The case file is available for inspection in the Public Room, Colorado State Office, during normal business hours at the address given above.

Dated: April 12, 2000.

Matthew R. McColm,

Mining Engineer, Branch of Solid Minerals Resource Services.

[FR Doc. 00–9617 Filed 4–17–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–00–5101–ER–A172; AZA–31094]

Notice of Intent To Prepare an Environmental Impact Statement (EIS) on 500kv Line in Maricopa County, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an EIS on a 500kv line and notice of scoping meetings.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) is proposing to prepare an EIS for Arizona Public Service Company's (APS) Southwest Valley 500kv Transmission Line Project in the southwest metropolitan area of Phoenix, Arizona.

DATES: The public, state, and local governments, and other federal agencies are asked to participate in the EIS process. Written comments on the initial scoping process will be accepted until May 19, 2000. Public scoping meetings will be held from 6 p.m. to 9 p.m. on May 2, 2000, at the Millennium High School, 14802 W. Wigwam Boulevard, Goodyear, Arizona, and from 6 p.m. to 9 p.m. on May 4, 2000, at the Buckeye Union High School Gym, 902 E. Eason Avenue, Buckeye, Arizona. Additional meetings will be considered as appropriate.

SUPPLEMENTARY INFORMATION: APS plans to construct and operate a 500kv transmission line from the existing Palo Verde Nuclear Generating Station (approximately 45 miles west of Phoenix, Arizona) to a proposed 500/230kv substation located 30 to 50 miles to the east. The project would provide needed energy to the Phoenix metropolitan area and the southwest valley. The proposed project will take approximately one year to construct, with an in-service date of January 2003. The BLM's scooping process for the EIS will include: (1) Identification of significant issues; (2) identification of

sensitive or critical environmental impacts; (3) identification of reasonable alternative transmission line routes and substation sites; and (4) notifying interested groups, individuals, and agencies so that additional information concerning these issues and concerns can be obtained.

ADDRESSES: Comments should be sent to Michael A. Taylor, Phoenix Field Manager, Bureau of Land Management, Phoenix Field Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

FOR FURTHER INFORMATION CONTACT: Kathy Pedrick, Project Manager, Phoenix Field Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027, (623) 580–5500.

Dated: April 5, 2000.

Margo E. Fitts,

Assistant Field Manager, Support Services.

[FR Doc. 00–9671 Filed 4–17–00; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice.

SUMMARY: To comply with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), we are notifying you that we have submitted an information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval. We are also soliciting your comments on this ICR, which describes the information collection, its expected costs and burden, and how the data will be collected.

DATES: Written comments should be received on or before May 18, 2000.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0129), 725 17th Street, NW, Washington, DC 20503. Copies of these comments should also be sent to us. The U.S. Postal Service address is Minerals Management Service, Royalty Management Program, Rules and Publications Staff, PO Box 25165, MS 3021, Denver, Colorado 80225–0165; the courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225; and the email address is RMP.comments@mms.gov. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For questions concerning this collection of information, please contact Anne Ewell, RIK Study Team, telephone (703) 787–1584. You may also obtain copies of this collection of information at no cost by contacting Jo Ann Lauterbach, MMS's Information Collection Clearance Officer, at (202) 208–7744.

SUPPLEMENTARY INFORMATION:

Title: Bids and Financial Statements for Sale of Royalty Oil and Gas (RIK Pilots).

OMB Control Number: 1010–0129.

Bureau Form Number: Form MMS–4440, Summary of Receipt and Delivery Volumes.

Abstract: The Secretary of the Interior, under the Mineral Leasing Act (30 U.S.C. 192) and the Outer Continental Shelf Lands Act (43 U.S.C. 1353), is responsible for the management of royalties on minerals produced from leased Federal lands. MMS carries out these responsibilities for the Secretary. Most royalties are now paid in value—when a company or individual enters into a contract to develop, produce, and dispose of minerals from Federal lands, that company or individual agrees to pay the United States a share (royalty) of the full value received for the minerals taken from leased lands. MMS has undertaken several pilot programs to study the feasibility of taking the Government's royalty in the form of production, that is, as RIK. The collections of information addressed in this information collection request (ICR) are necessary because the Secretary of the Interior must hold competition when selling to the public; protect actual RIK production before, during, and after any sale; and obtain a fair return on royalty production sold. MMS must fulfill those obligations for the Secretary. The reporting requirements are as follows:

a. The actual bids potential purchasers will submit when MMS offers production for competitive sale;

b. Bidders' statements of financial qualification;

c. Form MMS–4440, Summary of Receipt and Delivery Volumes;

d. Report of Gas Analysis (RGA); and

e. Letters of Credit (LOC).

On May 24, 1999, OMB granted emergency approval for MMS to collect, from potential purchasers, their financial statements and their bids on Federal RIK oil or gas offered for sale by MMS. On August 4, 1999, MMS published a 60-day **Federal Register** Notice (64 FR 42410) soliciting public comments on MMS's request to renew OMB's approval to collect those two items of information. No comments were received.

As the pilots progressed, MMS recognized the need to collect three additional items-Form MMS–4440, RGA, and LOCs.

MMS will evaluate the bids to determine which competitive offer to purchase RIK is most advantageous to the Government. The financial statements will be used to evaluate the risk of a bidder not following through on all aspects of its offer, including timely taking of RIK and payment for it. At the request of some small businesses, MMS will accept LOCs to help offset that risk. A small number of purchasers will pay for RIK production by delivering like quality and quantities to a location designated by MMS. They will report monthly to MMS on Form MMS–4440, for each pipeline, the specific daily volumes and qualities (usually expressed as MMBtu's) of MMS's RIK natural gas volumes that the respondent has been nominated to receive/actually has received and similar information on volumes the respondent has been nominated to deliver and actually has delivered to MMS or its agent. MMS may occasionally ask for an RGA to verify the reported quality of such production at the delivery point.

If a company does not submit a timely competitive bid, MMS may not sell Federal RIK to them. Failure of MMS to evaluate a bidder's financial qualifications would increase the risk that a purchaser might fail to take the production, fail to reserve pipeline transportation to move it, fail to pay for it, or fail to deliver it to a delivery point designated by MMS. Such failures would likely incur storage costs, monetary penalties for failure to meet delivery due dates, or loss of the

production. Administrative costs could be incurred to recover those costs as well. MMS would be unable to identify late delivery or under-delivery by contractors paying for RIK they have taken by delivering like value production to an MMS-designated delivery point if the contractors did not file Form MMS–4440. Failure to submit an RGA could impair MMS's ability to assure a full return on the sale of Federal royalty natural gas. If MMS could not accept LOCs, some small businesses might be disqualified from purchasing Federal royalty production.

No proprietary information will be submitted to MMS under this collection. No items of a sensitive nature are collected. Responses are required to obtain or retain benefits.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Estimated Number and Type of Respondents/Affected Entities: Approximately 37 companies who will submit one or multiple bids on Federal royalty oil or gas; 25 of them will also submit a financial statement and 5 may also submit an LOC. Of those who submit winning bids, a subset six will also submit Form MMS–4440 and an RGA.

Frequency of Response: Depending on the contract terms of MMS's offer, bids are accepted monthly, twice annually, or annually; bidders have the option to submit one or multiple bids. Form MMS–4440 is required monthly from a small subset of successful bidders who might also be asked to submit an RGA about once a year. Financial statements and LOCs are required about once a year.

Burden Statement and Estimated Annual Reporting and Recordkeeping "Hour"

Burden: We estimate the respondent burden to average 1 hour for each bid, financial statement, or LOC. Hard copies must be submitted for these three items. We estimate the respondent burden to average .5 hour per pipeline for Form MMS–4440 and .5 hour delivery point for each RGA, both of which may be submitted electronically. The total hour burden for these five requirements is 1,324 hours annually, including recordkeeping. Refer to the following chart:

BURDEN BREAKDOWN

Reporting/recordkeeping requirements	Estimated number of respondents	Annual frequency	Estimated number of responses Per Yr	Burden per requirement in hours	Annual burden hours
Bids	37	On Occasion	747	1	747
Financial Statements	25	On Occasion	25	1	25
Summary of Receipt and Delivery Volumes (Form MMS–4440	06	Monthly	1,080	.5	540
Report of Gas Analysis	06	On Occasion	10	.5	05
Letters of Credit	05	On Occasion	07	1	07
Total Reporting	*79		1,869		1,324

*NOTE: A respondent is counted each time a different form is submitted. Unsuccessful bidders will submit only 2 forms.

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: This collection of information will require total capital start-up costs of $1,500 ($250 x 6 respondents) to adjust their automated production reporting systems to provide information to MMS in Form MMS–4440 format.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by May 18, 2000.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach (202) 208–7744.

Dated: April 12, 2000.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 00–9690 Filed 4–17–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Boundary Revision; Rocky Mountain National Park

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of boundary revision, Rocky Mountain National Park.

SUMMARY: This notice announces a revision of the boundary of Rocky Mountain National Park to include two parcels donated by Rocky Mountain National Park Associates, Inc. The National Park Service has determined that this boundary revision is necessary for the proper preservation and protection of the National Park.

DATES: The effective date of this Order is the April 18, 2000.

FOR FURTHER INFORMATION CONTACT: Superintendent, Rocky Mountain National Park, at the above address or by telephone at 970–586–1399.

SUPPLEMENTARY INFORMATION: 16 U.S.C. 4601–9(c)(1) authorizes the Secretary of the Interior to make this boundary revision. This boundary adjustment will add two parcels of land comprised of 28.33 acres and 18.19 acres to Rocky Mountain National Park in Larimer County, Colorado.

The above parcels are depicted as tract numbers 06–142 and 07–152 on land acquisition map, segments 6 and 7, having drawing number 121/92,002, sheet 7 and 8 of 11. The map is on file at the National Park Service, Intermountain Land Resources Program

Center, and at the Office of the Superintendent, Rocky Mountain National Park.

Dated: February 2, 2000.

Karen P. Wade,

Director, Intermountain Region.

[FR Doc. 00–9586 Filed 4–17–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Approval of Record of Decision; Final Environmental Impact Statement and General Management Plan for Redwood National and State Parks, Humboldt and Del Norte Counties, California

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub.L. 91–190, as amended), and the regulations promulgated by the Council of Environmental Quality at 40 CFR 1505.2, the Department of the Interior, National Park Service has prepared and approved a Record of Decision for the Final Environmental Impact Statement (FEIS) for the General Management Plan (GMP) for Redwood National and State Parks, California.

Redwood National and State Parks are comprised of Redwood National Park and three state parks included within the national park boundary, Jedediah Smith, Del Norte Coast, and Prairie Creek Redwoods State Parks. The Final GMP is a joint General Management Plan/General Plan (GMP/GP) produced in cooperation with the State of California's Department of Parks and Recreation. This document incorporates all the elements of an Environmental Impact Report/General Plan (EIR/GP) required under state law. The National Park Service (NPS) and the California Department of Parks and Recreation (CDPR) will use the joint plan as a comprehensive guide for managing the 105,516-acre area of contiguous federal and state parklands cooperatively. The California State Park and Recreation Commission issued a resolution following a public hearing on the FEIR/GP on November 17, 1999 unanimously approving the Proposed Action (alternative 1) as it appeared in the FEIS/R as the option under which the three state parks will be managed. The CDPR has completed its conservation planning and environmental impact analysis process required under the California Environmental Quality Act.

The NPS will implement actions identified as the Proposed Action (alternative 1) in the Final General Management Plan/General Plan, as described in the Final EIS/R issued in November 1999. The Draft EIS/R was issued in August 1998 and analyzed three alternatives in addition to the Proposed Action. Under the no action alternative (alternative 2), the parks would be managed according to the prescriptions in the 1980 Redwood National Park General Management Plan and the 1985 State Redwoods Parks General Plan, and subsequent approved planning documents based on those general plans. Under the Preservation Emphasis alternative (alternative 3), the agencies would emphasize the preservation and restoration of the parks' resources and values; opportunities for public use and enjoyment would be limited to experiences that are consistent with this high degree of resource stewardship. This was the environmentally preferred alternative but it was not selected because it unnecessarily restricted visitor use without a substantial concomitant increase in benefits to the resources when compared to the selected action. Under the Visitor Use Emphasis alternative (alternative 4), the agencies would provide a wide spectrum of appropriate visitor experiences that relate to the parks' resources, consistent with overarching obligations to protect the parks' resources and values.

The Record of Decision is a concise statement of all alternatives considered, what decisions were made, and the rationale supporting the selection of the final plan. It also contains a synopsis of the conservation planning and environmental impact analysis process, identifies the environmentally preferred alternative, notes the important public collaboration undertaken and its part in the decision, and summarizes the critical mitigation measures.

Copies of the complete Record of Decision may be obtained from the Superintendent, Redwood National and State Parks, 1111 Second Street, Crescent City, CA, or via telephone at (707) 464–6101.

Dated: April 6, 2000.

John J. Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 00–9587 Filed 4–17–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Realty Action; Mojave National Preserve

AGENCY: National Park Service, Interior.

SUMMARY: Proposed Exchange of Federal Property for Private Property at Mojave National Preserve.

FOR FURTHER INFORMATION CONTACT: Sondra S. Humphries, Chief, Pacific Land Resources Program Center at (415) 427–1416.

SUPPLEMENTARY INFORMATION: Public comments will be accepted for a period of 45 calendar days from the date of this notice. In order to resolve the encroachment of a private residence and ranch headquarters on federal land, it is necessary for the National Park Service to effect a land exchange at Mojave National Preserve, San Bernardino County, California.

Authority for the land exchange is contained in 16 U.S.C. 410aaa–56. The land to be conveyed by the United States of America is located approximately 15 miles northwesterly from Interstate Highway 15 off of Essex Road and contains 40.00 acres, more or less.

The land to be acquired by the United States of America is located seven miles northeast of the intersection of Essex and Black Canyon Roads and also contains 40.00 acres, more or less.

Both sites were surveyed for the presence of hazardous materials and none were found. In addition, natural and cultural resource surveys were conducted and impacts were found to be minimal. The biological survey did not disclose the presence of any rare, endangered or threatened species.

Title to the lands being exchanged will be subject to encumbrances of record as well as existing rights-of-way.

The value of the lands to be exchanged shall be determined by a current fair market appraisal and if they are not equal, the value shall be equalized by payment of cash and/or donation, as circumstances require.

The 40.00 acre parcel to be acquired by the United States of America will enable the National Park Service to further protect critical Desert Tortoise Habitat within the Preserve.

Detailed information concerning this proposal, land descriptions, Land Protection Plan and other information are available at the National Park Service, Pacific Land Resources Program Center, 600 Harrison Street, Suite 600, San Francisco, California, 94107–1372.

Comments will be accepted from interested parties for a period of 45 calendar days from the date of this notice, and may be submitted to the above address. Comments will be evaluated and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate, the realty action will become the

final determination of the Department of the Interior.

Dated: October 6, 1999.

Martha K. Leicester,

Acting Regional Director, Pacific West Region.

[FR Doc. 00–9585 Filed 4–17–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Approved Director's Orders 53, the Revised Guidance for All Special Park Uses in Units of the National Park Service

AGENCY: National Park Service, Interior.

ACTION: Public notice of approved policy statement.

SUMMARY: The National Park Service (NPS) announces approval of Director's Order #53, the revised guidance document for all special park uses in National Park. This Director's Order was developed to provide policy guidance to NPS managers who deal with requests for special park uses including but not limited to special events, utility rights-of-way including those for telecommunication antenna sites, commercial filming and photography, and other uses. This material will appear as Director's Order #53, Special Park Uses, and be distributed to all NPS units. This document provides policy and procedures to park managers concerning all aspects of requests for special uses in the National Park System, from the initial contact, through review and approval of permits, on-scene protection of resources, and ending with complete recovery and restoration of the site. This document supersedes and replaces the existing NPS–53, as well as Director's Order 53A dealing only with telecommunications, and consists of a concise treatment of the entire subject of special park uses.

SUPPLEMENTARY INFORMATION: On October 12, 1999, the NPS published a notice in the **Federal Register** (64 FR 55309) that draft Director's Order #53 was available for public review and asking for comment. The NPS received a total of two responses to that notice. These comments and the NPS responses are as follows:

Analysis of Comments

Comment: One respondent objected to use by the NPS of condition number 8 on the existing, pre-printed Special Use Permit form as being inapplicable in most circumstances. Condition number 8 dealt with required compliance with Executive Order 11246, equal opportunity compliance.

Response: The NPS agrees that compliance with Executive Order 11246 should not be required of Special Use Permit holders and is taking steps to remove that section from the pre-printed special use permit form.

Comment: One respondent, commenting on the proposed policy section dealing with Native American Rights, pointed out the existence of additional authorities over and above what the proposed policy section had already cited.

Response: The NPS agrees and has added the additional authorities suggested. The final Director's Order was approved on April 4, 2000. An electronic copy of the approved order may be viewed and downloaded from the internet at URL *www.nps.gov/refdesk/DOrders/index.htm*, or a copy may be obtained by writing: National Park Service, Ranger Activity Division, 1849 C St. NW, Suite 7408, Washington, DC 20240, or by calling 202–208–4874.

EFFECTIVE DATE: This policy document is in effect from the date of approval by the Director, National Park Service.

FOR FURTHER INFORMATION CONTACT: Dick Young at 757–898–7846, or 757–898–3400, ext. 51.

Dated: April 7, 2000.

Chris Andress,

Chief, Ranger Activities Division.

[FR Doc. 00–9588 Filed 4–17–00; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–269–270 (Review) and 731–TA–311–317 and 379–380 (Review)]

Brass Sheet and Strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden [1]

Determinations

On the basis of the record [2] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the countervailing duty orders on brass sheet and strip from Brazil and France, and the antidumping duty orders on brass sheet and strip from Brazil, Canada, France, Germany, Italy, and Japan, would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3] The Commission further determines that revocation of the antidumping duty orders on brass sheet and strip from Korea, the Netherlands, and Sweden would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[4]

Background

The Commission instituted these reviews on February 1, 1999 (64 FR 4892) and determined on May 6, 1999 that it would conduct full reviews (64 FR 27294, May 19, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on July 19, 1999 (64 F.R. 38688). The hearing was held in Washington, DC, on February 10, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on April 12, 2000. The views of the Commission are contained in USITC Publication 3290 (April 2000), entitled Brass Sheet and Strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden: Investigations Nos. 701–TA–269 & 270 (Review), and 731–TA–311–317 and 379–380 (Review).

Issued: April 12, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–9591 Filed 4–17–00; 8:45 am]

BILLING CODE 7020–02–U

[2] The record is defined in § 207.2(f) of the Commission's rules of practice and Procedure (19 CFR 207.2(f)).

[3] Commissioner Thelma J. Askey dissenting with respect to Brazil and Canada.

[4] Chairman Lynn M. Bragg dissenting with respect to Korea and the Netherlands and Commissioner Deanna Tanner Okun dissenting with respect to Korea.

[1] The investigation numbers are as follows: Brazil is 701–TA–269 (Review) and 731–TA–311 (Review), Canada is 731–TA–312 (Review), France

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. AA1921–197 (Review), 701–TA–231, 319–320, 322, 325–328, 340, 342, and 348–350 (Review), and 731–TA–573–576, 578, 582–587, 604, 607–608, 612, and 614–618 (Review)]

Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the countervailing duty and antidumping duty orders on certain carbon steel products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty and antidumping duty orders on certain carbon steel products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: April 7, 2000.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On December 3, 1999, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (64 F.R. 71494, December 21, 1999). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's web site.

Participation in the Reviews and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the reviews will be placed in the nonpublic record on August 16, 2000, and a public version will be issued thereafter, pursuant to § 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on September 12, 2000 (cold-rolled), September 13, 2000 (corrosion), and September 15, 2000 (plate) at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 7, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 8, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by § 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.65 of the Commission's rules; the deadline for filing is August 28, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.67 of the Commission's rules. The deadline for filing posthearing briefs is September 22, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before September 22, 2000. On October 25, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before October 27, 2000, but such final comments must not contain new factual information and must otherwise comply with § 207.68 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the

Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: April 12, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–9590 Filed 4–17–00; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–678, 679, 681, and 682 (Reviews)]

Stainless Steel Bar From Brazil, India, Japan, and Spain

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the antidumping duty orders on stainless steel bar from Brazil, India, Japan, and Spain.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orders on stainless steel bar from Brazil, India, Japan, and Spain would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202–205–3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On April 6, 2000, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (64 FR 73579, December 30, 1999) was adequate with respect to each review, and that the respondent interested party group response was adequate with respect to Spain but inadequate with respect to Brazil, India, and Japan. The Commission also found that other circumstances warranted conducting full reviews with respect to Brazil, India, and Japan.

A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: April 10, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–9589 Filed 4–17–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Notice of information under review; extension of an currently approved collection; request an emergency extension for an existing data collection, the National Crime Victimization Survey (NCVS)

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, has submitted the following information collection request for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by April 25, 2000. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Department of Justice Desk Officer, (202) 395–7860, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Craig Perkins, 202–307–0758, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW, Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of he burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension and revision of a currently approved collection.

2. *Title of the Form/Collection:* National Crime Victimization Survey.

3. *Agency form Number, if any, and the applicable component of the Department of Justice sponsoring the collection:* NCVS–1 and NCVS–2.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The National Crime Victimization Survey collects, analyzes, publishes, and disseminates statistics on the amount and type of crime committed against households and individuals in the United States. Respondents include persons age 12 or older living in about 49,200 interviewed households. Other: None.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 109,400 respondents at 1.95 hours per interview.

6. *An estimate of the total public burden (in hours) associated with the collection:* 70,958 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW, Washington, DC 20530, or via facsimile at (202) 514–1534.

Dated: April 12, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 00–9620 Filed 4–17–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Proposed Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: New collection comprehensive strategy stakeholder survey.

The Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by May 15, 2000. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Department of Justice Desk Officer, (202) 395–7860, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Dean V. Hoffman, Program Manager, Office of Juvenile Justice and Delinquency Prevention, 810 7th Street, NW, Washington, DC 20531, or facsimile at (202) 353–9096.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses).

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Comprehensive Strategy Stakeholder Survey.

(3) *Agency form number:* None.

(4) *Component of the sponsoring the collection:* Form: None. Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice.

(5) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: None. Abstract: This information will be collected to provide critical information on the relationship between community and State-level contextual factors and the Comprehensive Strategy planning and implementation processes. The survey will also document the progress and obstacles of implementing Comprehensive Strategy in select communities and the lessons learned in the planning process.

(6) *Estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 250 responses at 1 hour and 30 minutes per response. *Estimate of the total public burden (in hours) associated with the collection:* 375 annual burden hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Office, United States Department of Justice, Information Management and Security Staff Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue NW, Washington, DC 20530.

Dated: April 12, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–9618 Filed 4–17–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Proposed Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: New collection comprehensive strategy site coordinator telephone interview.

The Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by May 15, 2000. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affair, Attention: Department of Justice Desk Officer, (202) 395–7860, Washington, DC 20530.

During the first 60 days of this same review period, a regulator review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Dean V. Hoffman, Program Manager, Office of Juvenile Justice and Delinquency Prevention, 810 7th Street, NW, Washington, DC 20531, or facsimile at (202) 353–9096. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses).

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Comprehensive Strategy Site Coordinator Telephone Interview.

(3) *Agency form number:* None.

(4) *Component of the Department of Justice sponsoring the collection Form:* None. Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice.

(5) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: None. Abstract: This information will be collected to provide OJJDP with an understanding of the different processes by which communities have adapted the Comprehensive Strategy framework to their own community contexts. The site coordinator telephone interview will provide knowledge of Comprehensive Strategy development within each site and information on challenges, critical success factors, key participants, and training activities in each site.

(6) *Estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 45 responses at 40 minutes per response. *Estimate of the total public burden (in hours) associated with the collection:* 30 annual burden hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Office, United States Department of Justice, Information Management and Security Staff Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue NW, Washington, DC 20530.

Dated: April 11, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 00–9619 Filed 4–17–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of an open meeting of the Advisory Commission on Construction Safety and Health (ACCSH).

SUMMARY: OSHA is notifying the public that the ACCSH will meet May 4–5, 2000 at the Francis Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC. This meeting is open to the public.

DATES, TIMES, AND ROOMS: The ACCSH will meet on Thursday, May 4 from 8:30 a.m. to 4 p.m. and on Friday, May 5 from 9 a.m. to noon in room N–3437 B, C, and D. The ACCSH work groups will meet May 2–3 and, if necessary, after noon on May 5.

FOR FURTHER INFORMATION CONTACT: Veneta Chatmon, Office of Public Affairs, Room N–3647, telephone (202) 693–1999 at the Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210.

SUPPLEMENTARY INFORMATION: An official record of the meeting will be available for public inspection at the OSHA Docket Office, Room N–2625, telephone 202–693–2350. All ACCSH meetings and those of its work groups are open to the public. Individuals needing special accommodation should contact Veneta Chatmon no later than April 30, 2000 at the address listed under **FOR FURTHER INFORMATION CONTACT.**

The agenda items for this meeting include:

- Remarks by the Assistant Secretary for Occupational Safety and Health, Charles N. Jeffress.
- ACCSH work group updates, including:
  - Data Collection and Targeting.
  - Musculoskeletal Disorders.
  - Subpart N—Cranes.
  - Fall Protection.
  - Hexavalent Chromium.
  - Process Safety Management.
  - OSHA Form 170.
  - Noise in Construction.
  - Directorate of Construction Reports.
  - Special Presentations, including:
  - Carolina Star Program.
  - OSHA's Rulemaking Process.

The following ACCSH work groups will meet in the Frances Perkins Building:

Safety and Health Program Management and Training: 8:30—10:30 a.m., Tuesday, May 2, room N–3437 C.

Hexavalent Chromium: 10 a.m. to noon, Tuesday, May 2, room N–3437 B.

OSHA Form 170: 1 to 5 p.m., Tuesday, May 2, room N–3437 B.

Process Safety Management: 1 to 3 p.m., May 2, room N–3437 C.

Musculoskeletal Disorders: 1–4 p.m., Wednesday, May 3, room N–3437 B.

Noise in Construction: 10 a.m. to noon, Wednesday, May 3, room N–3437 D.

Data Collection/Targeting: 1 to 4 p.m., Wednesday May 3, room N–3437 B.

Fall Protection: 1:15 to 5 p.m., Wednesday, May 3, room N–3437 C.

Work groups may also meet after the adjournment of the ACCSH meeting on Friday, May 5, 2000.

For up-to-date information on ACCSH activities and scheduling, please refer to the OSHA Web site at *http://www.osha.gov*, or call Jim Boom in OSHA's Directorate of Construction at (202) 693–1839.

Interested parties may submit written data, views, or comments, preferably with 20 copies, to Veneta Chatmon at the address listed above under "For Further Information Contact." OSHA will provide submissions received prior to the meeting to ACCSH members, and will include each submission in the record of the meeting. Attendees may also request to make an oral presentation by notifying Veneta Chatmon before the meeting. The request must state the amount of time desired, the interest represented by the presenter (*e.g.*, the name of the business, trade association, government agency),

if any, and a brief outline of the presentation. The Chair of ACCSH may grant the request at his/her discretion and as time permits.

Authority: Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 7 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), and Secretary of Labor's Order No. 6–96 (62 FR 181).

Signed at Washington, DC on April 13, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–9645 Filed 4–17–00; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–344]

Portland General Electric, Trojan Nuclear Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–1 issued to Portland General Electric Company (PGE), the licensee, for the Trojan Nuclear Plant, a permanently shutdown nuclear reactor facility located in Prescott, Oregon.

Environmental Assessment

Identification of Proposed Action

The proposed action would revise the Trojan Nuclear Plant (TNP) Permanently Defueled Technical Specifications (PDTS) by removing Figure 4.1–1, "Site and Exclusion Area Boundaries," from Section 4.0, "Design Features," and incorporate the applicable portion of this figure in the Trojan Nuclear Plant Defueled Safety Analysis Report (DSAR). The proposed action would also make other associated administrative changes resulting from the deletion of Figure 4.1–1, as well as an editorial change to the table of contents. The proposed action is in accordance with the licensee's application for amendment dated November 16, 1999.

The Need for the Proposed Action

The licensee proposed to remove the Trojan site map from the PDTS and incorporate the applicable portion of this figure in the TNP DSAR as part of the NRC's technical specification (TS) improvement initiative which encourages licensees to request removal of inappropriate and/or unnecessary information from their TSs. This type of site-specific information is not required to be in TSs under 10 CFR 50.36 requirements. Furthermore, this proposed change is consistent with NRC guidance in draft NUREG–1625, "Proposed Standard Technical Specifications (TS) for Permanently Defueled Westinghouse Plants." In concert with Section 50.36 requirements, NUREG–1625 provides guidance in determining a minimum set of standard requirements for permanently shutdown reactor facilities. Additional editorial and administrative changes were also proposed for consistency with the change discussed above.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed amendment to the TNP TSs and concludes that issuance of the proposed amendment will not have an environmental impact. The proposed change in TS site-specific information is consistent with the regulations and regulatory guidance and is considered editorial and administrative in nature. The licensee does not propose any disposal or relocation of nuclear fuel or any changes to structures, systems, components, or site boundaries.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historical sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Trojan plant.

Agencies and Persons Contacted

In accordance with its stated policy, on March 13, 2000, the staff consulted with the State of Oregon official, Mr. Adam Bless of the Oregon Office of Energy, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 16, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, http:www.nrc.gov (the Electronic Reading Room).

Dated at Rockville, Maryland, this 7th day of April 2000.

For the Nuclear Regulatory Commission.

John B. Hickman,

Project Manager, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–9625 Filed 4–17–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Workshop Concerning the Revision of the Oversight Program for Nuclear Fuel Cycle Facilities

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of public workshop.

SUMMARY: NRC will hold a public workshop at the Nuclear Energy Institute (NEI), 1776 I Street, NW (Republic Place), in Washington, DC to provide the public, those regulated by the NRC, and other stakeholders, with information about and an opportunity to

provide views on how NRC plans to revise its oversight program for nuclear fuel cycle facilities. This public workshop follows the recent public stakeholder workshop held on March 22–23, 2000. Presentations and other documents provided at each workshop are placed on the NRC Internet web page (http://www.nrc.gov/NMSS/FCSS/FCOB/INSP/REVISED/fcindex.htm).

Similar to the revision of the oversight program for commercial nuclear power plants, NRC initiated an effort to improve its oversight program for nuclear fuel cycle facilities. This is described in SECY–99–188 titled, "Evaluation and Proposed Revision of the Nuclear Fuel Cycle Facility Safety Inspection Program." SECY–99–188 is available in the Public Document Room and on the N R C Web Page at http://www.nrc.gov/NRC/COMMISSION/SECYS/index.html.

Purpose of Workshop

To obtain stakeholder views for improving the NRC oversight program for ensuring licensee and certificate holders maintain protection of worker and public health and safety, protection of the environment, and safeguards for special nuclear material and sensitive information and material in the interest of national security. The oversight program applies to nuclear fuel cycle facilities regulated under 10 CFR parts 40, 70, and 76.

The facilities currently include gaseous diffusion plants, highly enriched uranium fuel fabrication facilities, low-enriched uranium fuel fabrication facilities, and a uranium hexafluoride (UF_6) production facility. These facilities possess large quantities of materials that are potentially hazardous (i.e., radioactive, toxic, and/or flammable) to the workers, public, and environment. In revising the oversight program, the goal is to have an oversight program that: (1) provides earlier and more objective indications of acceptable and changing safety and national security related performance, (2) increases stakeholder confidence in the NRC, and (3) increases regulatory effectiveness, efficiency, and realism. In this regard, the NRC desires the revised oversight program to be more risk-informed and performance-based and more focused on significant risks and poorer performers.

The public workshop will focus on:

- Plans for communicating revision of the oversight program with stakeholders internal and external to the NRC.
- Cornerstones of safety and national security for meeting the NRC mission.
- Performance indicators for monitoring licensee/certificatee performance within each cornerstone area.

DATES: Members of the public and other stakeholders are invited to attend and participate in the workshop, which is scheduled for 9:00 a.m. to 5:00 p.m. on Wednesday, May 24, and Thursday, May 25, 2000.

ADDRESSES: NEI, 1776 I Street (Republic Place), Washington, DC. Visitor parking around NEI is limited; however, the public meeting site may be reached from Rockville by taking the Red line metro to Farragut North, and exiting at K Street. Farragut Park will be in front of you. Notice that 17th Street is parallel to the park. Walk one block along 17th Street to I Street, turn right, walk one more block. NEI is on the left on corner of 18th and I Streets, NW From Reagan National Airport, NEI may be reached by taking the Blue line train towards Addison Road to Farragut West. Exit to 18th Street, and NEI is diagonally across the street on the corner of 18th and I Streets, NW.

FOR FURTHER INFORMATION CONTACT: Walter Schwink, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7156, e-mail *wss@nrc.gov*.

Dated at Rockville, Maryland this 13th day of April 2000.

For the Nuclear Regulatory Commission.

Philip Ting,

Chief, Operations Branch, Division of Fuel Cycle Safety and Safeguards.

[FR Doc. 00–9627 Filed 4–17–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards and Advisory Committee on Nuclear Waste Joint Subcommittee Meeting; Notice of Meeting

The Advisory Committee on Reactor Safeguards (ACRS) and the Advisory Committee on Nuclear Waste (ACNW) Joint Subcommittee will hold a meeting on May 4, 2000, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, May 4, 2000—8:30 a.m. until the conclusion of business

The ACRS and ACNW Joint Subcommittee will discuss the development of risk-informed regulation in the Office of Nuclear Material Safety and Safeguards, including risk-informing fuel cycle programs, integrated safety assessments, byproduct material risk analysis, dry cask storage risk analysis, the results of a public workshop on the use of risk information in regulating the use of nuclear materials, and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the ACRS and ACNW full Committees.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the ACRS and ACNW full Committees. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS/ACNW staff members named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding these matters.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Subcommittee's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant senior fellow, John N. Sorensen (telephone 301/415–7372) between 8:00 a.m. and 5:45 p.m. (EDT) or by e-mail JNS@NRC.gov or senior staff engineer, Michael T. Markley (telephone: 301–415–6885). Persons planning to attend this meeting are urged to contact the above-named individuals one to two working days prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: April 11, 2000.

Sam Duraiswamy,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 00–9621 Filed 4–17–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on May 10, 2000, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, May 10, 2000—1 p.m. until the conclusion of business

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: April 12, 2000.

Richard K. Major,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 00–9622 Filed 4–17–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Correction to Notice of Petitions and Director's Decisions

On April 11, 2000, (65 FR 19398), the **Federal Register** published notice of Petitions and Director's Decisions. On page 19398 there was a notice entitled "Power Authority of the State of New York; Facility Operating License DPR–64 Receipt of Petition for Director's Decision Under 10 CFR 2.206." The title of this notice should have been "Consolidated Edison Company of New York, Inc.; Facility Operating License DPR–26 Receipt of Petition for Director's Decision Under 10 CFR 2.206."

Dated at Rockville, Maryland, this 11th day of April 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–9623 Filed 4–17–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Office of Nuclear Material Safety and Safeguards, Spent Fuel Project Office; Notice of Issuance and Availability of NUREG–1567, Standard Review Plan for Spent Fuel Dry Storage Facilities

The United States Nuclear Regulatory Commission (NRC) has issued the final report NUREG–1567, "Standard Review Plan for Spent Fuel Dry Storage Facilities".

The Standard Review Plan for Spent Fuel Dry Storage Facilities provides guidance to the NRC staff for reviewing applications for license approval or renewal for commercial independent spent fuel storage installations (ISFSIs). An ISFSI may be co-located with a reactor or may be away from a reactor site. These installations may be designed for the storage of irradiated nuclear fuel and associated radioactive materials.

NUREG–1567 is intended for use by the NRC staff. Its objectives are to: (1) Summarize the requirements in Title 10, Code of Federal Regulations, Part 72 for facility approval; (2) describe the procedures by which the NRC staff determines that these requirements have been satisfied; and (3) document the practices developed by the staff in previous reviews of facility applications.

NUREG–1567 is available for inspection, and copying for a fee, at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington DC 20555–0001. Copies of NUREG–1567 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328, telephone no. 1–202–512–1800, or the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, telephone no. 1–800–553–6847. This document is also available at the NRC web site, *http://www.nrc.gov*. See the link under "Technical Reports in the NUREG Series" on the "Reference Library Page."

Dated at Rockville, Maryland, this 11th day of April, 2000.

For the Nuclear Regulatory Commission.

M. Wayne Hodges,

Deputy Director, Technical Review Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–9626 Filed 4–17–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Office of Nuclear Material Safety and Safeguards Spent Fuel Project Office; Notice of Issuance and Availability of NUREG–1617 Standard Review Plan for Transportation Packages for Spent Nuclear Fuel

The United States Nuclear Regulatory Commission (NRC) has issued the final report NUREG–1617, "Standard Review Plan for Transportation Packages for Spent Nuclear Fuel."

The Standard Review Plan for Transportation Packages for Spent Nuclear Fuel provides guidance to the NRC staff for the review and approval of applications for packages used to transport spent nuclear fuel under Title 10 of the Code of Federal Regulations, Chapter 1, Part 71 (10 CFR Part 71).

NUREG–1617 is intended for use by the NRC staff. Its objectives are to (1) summarize 10 CFR Part 71 requirements for package approval, (2) describe the procedures by which the NRC staff determines that these requirements have been satisfied, and (3) document the practices developed by the staff in reviews of package applications.

NUREG–1617 is available for inspection, and copying for a fee, at the

NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20555–0001. Copies of NUREG–1617 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328, telephone no. 1–202–512–1800, or the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, telephone no. 1–800–553–6847. This document is also available at the NRC web site, *http://www.nrc.gov*. See the link under "Technical Reports in the NUREG Series" on the "Reference Library Page."

Dated at Rockville, Maryland, this 31st day of March, 2000.

For the Nuclear Regulatory Commission.

M. Wayne Hodges,

Deputy Director, Technical Review Directorate, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–9624 Filed 4–17–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

April 1, 2000.

Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of April 1, 2000, of three rescission proposals and two deferrals contained in one special message for FY 2000. The message was transmitted to Congress on February 9, 2000.

Rescissions (Attachments A and C)

As of April 1, 2000, three rescission proposals totaling $128 million have been transmitted to the Congress.

Attachment C shows the status of the FY 2000 rescission proposals.

Deferrals (Attachments B and D)

As of April 1, 2000, $726 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 2000.

Information From Special Message

The special message containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the edition of the **Federal Register** cited below: 65 FR 9017, Wednesday, February 23, 2000.

Jacob J. Lew,

Director.

Attachments

ATTACHMENT A.—STATUS OF FY 2000 RESCISSIONS

[in millions of dollars]

	Budgetary resources
Rescissions proposed by the President	128.0
Rejected by the Congress	
Currently before the Congress for less than 45 days	128.0

ATTACHMENT B.—STATUS OF FY 2000 DEFERRALS

[in millions of dollars]

	Budgetary resources
Deferrals proposed by the President	1,622.0
Routine Executive releases through April 1, 2000 (OMB/Agency releases of $896.0 million).	−896.0
Overturned by the Congress.	
Currently before the Congress	726.0

ATTACHMENT C.—STATUS OF FY 2000 RESCISSION PROPOSALS—AS OF APRIL 1, 2000

[Amounts in thousands of dollars]

Agency/bureau/account	Rescission No.	Amounts pending before Congress		Date of message	Previously withheld and made available	Date made available	Amount rescinded	Congressional action
		Less than 45 days	More than 45 days					
Department of Energy:								
Atomic Energy Defense Activities: Defense Environmental Restoration and Waste Management	R00–1	13,000	.....	2–9–00	(*)	.....	.....	.....
Energy Programs: SPR Petroleum Account	R00–2	12,000	.....	2–9–00	(*)	.....	.....	.....

ATTACHMENT C.—STATUS OF FY 2000 RESCISSION PROPOSALS—AS OF APRIL 1, 2000—Continued

[Amounts in thousands of dollars]

Agency/bureau/account	Rescission No.	Amounts pending before Congress		Date of message	Previously withheld and made available	Date made available	Amount rescinded	Congressional action
		Less than 45 days	More than 45 days					
Department of Housing and Urban Development:								
Public and Indian housing: Housing Certificate Fund	R00–3	103,000	.....	2–9–00	(*)	.....	.....	.....
Total, Rescissions	.....	128,000	.....	.....	.....	.....	.....	.....

*No funds are being withheld.

ATTACHMENT D.—STATUS OF FY 2000 DEFERRALS—AS OF APRIL 1, 2000

[Amounts in thousands of dollars]

Agency/bureau/account	Deferral No.	Amounts Transmitted		Date of message	Releases (–)		Congressional action	Cumulative adjustments	Amount deferred as of 4-1-00
		Original request	Subsequent change (+)		Cumulative OMB/agency	Congressionally required			
Department of State:									
Other: United States Emergency Refugee and Migration Assistance Fund	D00–1	172,858	.....	2–9–00	27,548	.....	.....	.....	145,310
International Assistance Programs:									
International Security Assistance: Economic Support Fund	D99–2	1,449,159	.....	2–9–00	868,450	.....	.....	.....	.....
Total, deferrals	.....	1,622,017	.....	.....	895,998	.....	.....	.....	726,019

[FR Doc. 00–9691 Filed 4–17–00; 8:45 am]
BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24388, 812–11636]

The Vantagepoint Funds and Vantagepoint Investment Advisers, LLC; Notice of Application

April 11, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: Applicants, The Vantagepoint Funds (the "Fund") and Vantagepoint Investment Advisers, LLC (the "Adviser") request an order that would permit applicants to enter into and materially amend subadvisory agreements without shareholder approval.

FILING DATES: The application was filed on June 2, 1999 and amended on October 6, 1999 and February 9, 2000. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 5, 2000 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests could state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0609. Applicant, 777 North Capitol Street, NE, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or George J. Zornada, Branch Chief at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Sreet NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Fund, a Delaware business trust, is registered under the Act as an open-end management investment company. The Fund is currently comprised of thirteen different series (each a "Portfolio," and collectively the "Portfolios"), each of which has its own investment objectives and policies. The Adviser, a Delaware limited liability company, serves as investment adviser to each of the Portfolios, and is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act").[1]

[1] Applicants also request relief with respect to any future Portfolios, and any other registered open-end management investment company or portfolio thereof, that is (i) managed in a manner consistent with the application and (ii) for which the adviser

Continued

2. The Fund has entered into an investment advisory agreement with the Adviser ("Management Agreement"). The Management Agreement has been approved by the Fund's board of trustees (the "Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Fund or the Adviser ("Independent Trustees"), as well as the Fund's initial shareholder. The Fund and the Adviser have entered into agreements ("Subadvisory Agreements") with one or more subadvisers ("Subadvisers"). Under the Management Agreement, the Adviser has overall supervisory responsibility for the investment program of the Portfolios and recommends to the Board the selection of Subadvisers to provide one or more Portfolios with day-to-day portfolio management services. The Portfolios currently have 21 Subadvisers, each of which is an investment adviser registered or exempt from registration under the Advisers Act. Future Subadvisers will be registered or exempt from registration under the Advisers Act. Each Portfolio pays the Adviser a fee based on the net assets of the Portfolio.

3. The Adviser recommends each Subadviser based on, among other things, an evaluation of the Subadviser's investment style, experience, personnel, performance history, fees, consistency of return and compliance and control capabilities. The Adviser reviews, monitors and reports to the Board regarding the performance and procedures of the Subadvisers. The Adviser may recommend to the board reallocation of assets of a Portfolio among Subadvisers, if necessary, and the Adviser also may recommend hiring additional Subadvisers or the termination of Subadvisers in appropriate circumstances. Each Subadviser will be paid directly by the Fund at a rate that has been negotiated with the Adviser and approved by the Board. Applicants also state that, as a condition to the requested order, shareholders of a Portfolio will approve any change to a Subadvisory Agreement if such change would result in an increase in the overall management and advisory fees payable by the Portfolio that have been approved by the shareholders of the Portfolio.

4. Applicants request an order to permit the Adviser, subject to oversight by the Board, to enter in and materially amend Subadvisory Agreements without shareholder approval. The requested relief will not extend to a Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Fund or the Adviser, other than by reason of serving as a Subadviser to me or more of the Portfolios (an "Affiliated Subadviser"). None of the current Subadvisers is an Affiliated Subadviser.

or any entity controlling, controlled by, or under common control with the Adviser serves as investment adviser ("Future Fund"). The Fund is the only existing ivnestment company that currently intends to rely on the order.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) of the Act from section 15(a) of the Act and rule 18f–2 under the Act to permit them to enter into and materially amend Subadvisory Agreements without shareholder approval.

3. Applicants assert that under the structure described in the application, the Portfolios' shareholders rely on the Adviser to select and monitor one or more subadvisers best suited to achieve a Portfolios' investment objectives. Applicants contend that, from the perspective of the investor, the role of the Subadvisers is comparable to that of individual portfolio manages employed by other investment advisory firms. Applicants contend that requiring shareholder approval of each Subadviser Agreement would impose expenses and unnecessary delays on the Portfolios, and may preclude the Adviser from promptly acting in a manner considered advisable by the Board. Applicants note that the Management Agreement between the Fund and the Adviser will remain subject to section 15(a) of the Act and rule 18f–2 under the Act, including the requirements for shareholder approval.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Portfolio may rely on the order, the operation of the Portfolio as described in the application will be approved by the vote of a majority of the Portfolio's outstanding voting securities, as defined in the Act, or in the case of a Portfolio or Future Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by Condition 2, by the initial shareholder(s) before the shares of such Portfolio or Future Fund are offered to the public.

2. The Fund will disclose in its prospectus the existence, substance and effect of any order granted pursuant to the application. In addition, each Portfolio and any Future Fund will hold itself out to the public is employing the management structure described in the application. The prospectus with respect to the Portfolios and any Future Fund will prominently disclose that the Adviser has the ultimate responsibility to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of any new Subadviser, shareholders will be furnished all information about the new Subadviser that would be included in a proxy statement. Such information will include any changes caused by the addition of the new Subadviser. To meet this condition, the Adviser will provide shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

4. At all times, a majority of the Board will be independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees.

5. No trustee or officer of the Fund or director of officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such trustee, officer or director) any interest in a Subadviser except for: (a) Ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadyiser or an entity that controls, is controlled by or is under common control with a subadviser.

6. When a change of Subadviser is proposed for a Portfolio with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make ad separate finding, reflected in the minutes of the meeting of the Board, that such change is in the best interests of the Portfolio and its shareholders and that the change does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. Neither the Fund nor the Adviser will enter into a Subadvisory Agreement with an Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Portfolio.

8. The Adviser will provide management services to the Portfolios, including overall supervisory responsibility for the general management and investment of each Portfolio's securities portfolio, and, subject to review and approval by the Board will (a) set each Portfolio's overall investment strategies; (b) evaluate, select and recommend Subadvisers to manage all or a portion of a Portfolio's assets; (c) allocate and, when appropriate, reallocate a Portfolio's assets among multiple Subadvisers; (d) monitor and evaluate the investment performance of the Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with the relevant Portfolio's investment objectives, policies, and restrictions.

9. Shareholders of a Portfolio will approve any change to a Subadvisory Agreement if such change would result in an increase in the overall management and advisory fees payable by the Portfolio that have been approved by the shareholders of the Portfolio.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–9635 Filed 4–17–00; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending March 17, 2000.

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–7076.
Date Filed: March 15, 2000.
Parties: Members of the International Air Transport Association.
Subject: PTC COMP 0592 dated 14 March 2000, Mail Vote 071—Resolution 010x, General Increase Resolution between Japan and USA/US Territories, Intended effective date: 15 April 2000.

Docket Number: OST–2000–7084.
Date Filed: March 16, 2000.
Parties: Members of the International Air Transport Association.
Subject: PTC2 AFR 0077 dated 22 February 2000, PTC2 AFR 0080 dated 17 March 2000, (Adoption of Mail Vote 067), Mail Vote 067—Within Africa Expedited Resolutions, r–1—002ss, r–3—071ww, r–2—071fa, r–4—076k, Intended effective date: 1 April 2000.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 00–9636 Filed 4–17–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports; Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The nature of the information collection is described as well as its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 7, 2000 (FR Vol. 65, No. 25, 5928). No comments were received.

DATES: Comments must be submitted on or before May 18, 2000.

FOR FURTHER INFORMATION CONTACT: Richard Walker, Maritime Administration, MAR–810, 400 Seventh Street, SW., Washington, D.C. 20590. Telephone 202–366–8888, or FAX 202–366–6988.

Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Inventory of American Intermodal Equipment.

OMB Control Number: OMB #2133–0503.

Type of Request: Extension of currently approved collection.

Affected Public: U.S. steamship and intermodal equipment leasing companies.

Form(s): None.

Abstract: The collection consists of an intermodal equipment inventory that provides data essential to both the government and the transportation industry in planning for the most efficient use of intermodal equipment.

Annual Estimated Burden Hours: 66 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, D.C. 20503, Attention MARAD Desk Officer.

Comments Are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, D.C. on April 13, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–9681 Filed 4–17–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2000–7245]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel YANKEE.

SUMMARY: As authorized by Public Law 105–383, the Secretary of

Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S. build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub.L. 105–383 and MARAD's regulations at 46 CFR 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before May 18, 2000.

ADDRESSES: Comments should refer to docket number MARAD–2000–7245. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR 832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: Title V of P.L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (less than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commentor's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR 388.

Vessel Proposed for Waiver of the U.S.–Build Requirement

(1) Name of vessel and owner for which waiver is requested:

Name of vessel: YANKEE Owner: Yankee Sailing LLC.

(2) Size, capacity and tonnage of vessel: According to the Applicant "50′ 7" OAL, Breadth 15.6′, draft 4.4′ Gross tonnage 12 tons, Net Tonnage 11. Tons, Displacement 38 tons. (Title 46 U.S.C. simplified measurement system.)"

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Intended use, Geographic area: Carrying passengers for hire for coastal sailing excursions for sail and navigational training purposes where passengers are encouraged and taught to participate in the operation of the vessel. Pending USCG certification of the vessel these excursions will involve 6 passengers or less. If certification is obtained under this waiver, the number of passengers will not exceed 12 passengers. Current plans are to operate the vessel along the Northeast coast between New York and Eastport Maine. It is intended that the center of operation will be out of New London CT."

(4) Date and place of construction and (if applicable) rebuilding. Date of construction: 1959, place of construction: Scheepswerf Westhaven, Zaadam, Holland.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "The impact would be minimal. There are currently no sailing vessels carrying passengers out of the New London harbor. Neighboring harbors that have commercial sailing vessels are mostly offering day trips of two to three hours as opposed to inter port excursions."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "Since the vessel was purchased by the current owner and documented as a U.S. vessel in January of 1999, over $50,000 dollars has been spent on the vessel in local boat yards and on U.S. manufactured wiring, plumbing and electronics products. If the vessel can establish itself in the area as a successful small business with USCG certification it will continue to require the services of the local marine industry here in eastern Connecticut."

Dated: April 13, 2000.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–9682 Filed 4–17–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2000–7247]

Request for Public Comments on an Evaluation of the Maritime Security Program/Voluntary Intermodal Sealift Agreement Program

AGENCY: Maritime Administration, United States Department of Transportation.

ACTION: Notification of open docket for public comment.

SUMMARY: The Maritime Administration (MARAD) is assessing the impact of the Maritime Security Program (MSP) and its associated Emergency Preparedness Program (EPP), the Voluntary Intermodal Sealift (VISA) program. The evaluation will seek to determine the contribution of MSP/VISA to the achievement of Department of Transportation (DOT) and MARAD national security goals by identifying the causal relationship between MSP/VISA and the goals, to the extent that causality can be reliably measured. As part of DOT's implementation of the Government Performance and Results Act, MARAD has been investigating in-depth how well its major programs are working to achieve stated objectives. As set out in DOT and MARAD strategic plans to meet U.S. national security goals, the MSP is designed to help ensure that an active U.S. merchant fleet—and the trained personnel needed to operate both privately-owned active commercial vessels and Government-owned and controlled reserve ships—will be available to meet Department of Defense (DoD) requirements for sealift during national emergencies. In FY 2000, these requirements include DoD access to 165,000 TEUs (20-foot equivalent units of container capacity) or 14.5 million square feet of U.S.-flag commercial vessel capacity and to carriers' intermodal transportation equipment and service networks.

FOR FURTHER INFORMATION CONTACT: Raymond R. Barberesi, Director, Office of Sealift Support, MAR–630, Room 7307, Maritime Administration, 400 Seventh Street, SW, Washington, D.C. 20590, telephone number: 202–366–2323 or fax 202–493–2180.

SUPPLEMENTARY INFORMATION: On March 10, 1995, the Administration submitted

legislation to the Congress proposing the MSP and the EPP, based on its analysis of current and future national security sealift requirements and the likely composition of the privately-owned U.S.-flag merchant fleet. The Congress found that, "Without remedial action, there simply will be no U.S. fleet to conduct foreign commerce, and the United States may have difficulty manning our Ready Reserve Force (RRF) and will have to rely on foreign-flag shipping for all imports and exports and for the sustainment of future military operations" (Senate Report 104–167). Public Law (P.L.) 104–239, the Maritime Security Act of 1996, was enacted on October 8, 1996, to "assure the continued presence of an active, privately owned, U.S.-flag and U.S.-crewed merchant shipping fleet to meet national and foreign commerce needs and to provide sustainment sealift capability in time of war or national emergency." P.L. 104–239 establishes the MSP fleet "* * * of active, militarily useful, privately-owned vessels to meet national defense and other security requirements and maintain a United States presence in international commercial shipping."

As authorized through FY 2005, the MSP provides financial assistance to vessel operators to partially offset the higher costs of U.S.-flag operation in international trade. In return, MSP participants must commit enrolled vessels and associated intermodal resources to a DoD-approved EPP. The VISA program is the element of the MSP which assures DoD access to the U.S. commercial fleet by providing intermodal sealift and total logistical support to DoD in a time of war, national emergency, or whenever the Secretary of Defense determines it is necessary for national security. The VISA program enables DoD to secure space to transport military supplies and equipment. Today, MSP vessels constitute the vast majority (70 percent) of VISA sealift capacity.

MARAD is seeking empirical information from vessel operators and other affected parties in the maritime and transportation industries, such as shippers, maritime labor, DoD and other Federal agencies to assess the MSP's impact on DoD sealift capability and the U.S. merchant fleet. Information is requested on the following issues: (1) Whether the MSP and the VISA programs have accomplished the goals of "ensuring the availability of a U.S. maritime fleet for wartime or national emergencies and * * * to retain a pool of qualified mariners to serve on these vessels"; (2) The effectiveness of the MSP as a mechanism to retain vessels under U.S. registry; (3) The effect of the MSP's fixed financial assistance of $2.1 million per ship annually on the international competitiveness of MSP carriers; (4) The impact of the MSP payment as an economic incentive for carriers to replace existing vessels with newer ships; (5) Whether other factors have greater impact on carriers' fleet replacement decisions, and, if so, what these are; (6) The aspects of the MSP or VISA program that affect carriers' willingness to participate; (7) The appropriateness of the compensation levels for carriage of contingency cargoes; (8) The impact of statutory restrictions—*i.e.*, Section 656 (cargo movements in domestic noncontiguous trade) and Section 804 (prohibition on operating competing foreign-flag vessels) of the Merchant Marine Act, 1936, as amended; the cap on the amount of cargo preference that can be carried on MSP vessels; the requirement to operate 320 days a year; Section 2 citizenship requirements, and trust arrangements; (9) The external factors that have a significant effect on program impact; (10) MSP participant plans if the MSP is not authorized beyond 2005; and (11) The aspects of program implementation that need to be changed to accomplish program objectives. MARAD is also soliciting comments as to whether other complementary programs, policies, or Federal Government actions would meet the statutory objectives of P.L. 104–239.

You may submit written comments by hand or mail by the close of business on June 15, 2000 to the Docket Management Facility, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. Comments should refer to docket number MARAD–2000–7247. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.D.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*. The Maritime Administration, as a matter of discretion, will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

Dated: April 13, 2000.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 00–9683 Filed 4–17–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before May 18, 2000.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590 or at http://dms.dot.gov.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 12, 2000.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12440–N	RSPA–00–7212	Luxfer Inc., Riverside, CA	49 CFR 173.301(h), 173.302(a), 178.46(a)(4), 178.46(c)(i).	To authorize the manufacture, marking and sale of non-DOT specification cylinders for use in transporting various Division 2.2 materials. (Modes 1, 2, 3, 4.)
12442–N	RSPA–00–7208	Cryogenic Vessel Alternatives, La Porte, TX.	49 CFR 178.338	To authorize the transportation in commerce of liquid nitrogen, cryogenic liquid, Division 2.2 in insulated portable tanks by cargo vessel for delivery to oil and gas production facilities. (Modes 1, 3.)
12443–N	RSPA–00–7209	ChemCentral/Charlotte, Charlotte, NC.	49 CFR 174.67(i) & (j)	To authorize rail cars containing Class 8 hazardous materials to remain attached to unloading connectors without the physical presence of an unloader. (Mode 2.)
12444–N	RSPA–00–7210	ST Services, Dallas, TX	49 CFR 174.67(i) & (j)	To authorize rail cars containing Class 3 hazardous material to remain attached to unloading connectors without the physical presence of an unloader. (Mode 2.)
12446–N	RSPA–00–7211	Japan Defense Agency, Redstone Arsenal, AL.	49 CFR 173.301(i)	To authorize the transportation in commerce of foreign high pressure gas cylinders containing Division 2.2 material. (Modes 1, 2.)
12449–N	RSPA–00–7213	Indesin S.A. de C.V., Estado de, MX.	49 CFR 173.315	To authorize the manufacture, marking and sale of a non-DOT specification pressure vessel for use in transporting compressed gases classed in Division 2.1 and 2.2. (Modes 1, 2, 3.)
12450–N	RSPA–00–7214	Indesin S.A. de C.V., Estado de, MX.	49 CFR 173.315	To authorize the manufacture, marking and sale of a non-DOT specification pressure vessel for use in transporting chlorine, Division 2.3. (Modes 1, 2, 3.)

[FR Doc. 00–9637 Filed 4–17–00; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before May 3, 2000.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW, Washington, DC or at http://dms.dot.gov.

This notice of receipt of applications for modification of exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 12, 2000.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
3216–M	.....	DuPont SHE Excellence Center, Wilmington, DE [1]	3216
6658–M	.....	Mason & Hanger Corp. (USDOE/Pantex Plant), Amarillo, TX [2]	6658
11316–M	.....	TRW Automotive, Queen Creek, AZ [3]	11316
1916–M	RSPA–1997–2740	CP Industries, Inc., McKeesport, PA [4]	11916

Application No.	Docket No.	Applicant	Modification of exemption
12155–M	RSPA–1998–4558	S&C Electric Company, Chicago, IL[5]	12155
12221–M	RSPA–1999–5160	Advanced Technology Materials, Inc. (ATMI) Danbury, CT[6]	12221

[1] To modify the exemption to allow for the use of an additional manufactured non-DOT specification multi-unit tank car tank for the transportation of certain Division 2.1 and 2.2 gases.

[2] To modify the exemption to request renewal; authorize a design change to the steel drum for the transportation of certain Division 1.1 and 1.2 materials.

[3] To modify the exemption to authorize a combination tray/tote as an additional packaging method for the transportation of certain cartridges, power device classed as Division 1.4S and airbag inflators or airbag modules classed as Division 4.1 or Class 9.

[4] To modify the exemption to authorize the use of additional DOT Specification cylinders with an outside diameter equal to or larger than 18 inches; correct language in the exemption dealing with monitoring and reporting.

[5] To modify the exemption to authorize an alternative pressure vessel constructed of spirally-wound fiberglass for the transportation of certain Division 2.2 materials.

[6] To modify the exemption to authorize non-DOT specification containers to be constructed of stainless steel; smaller initial capacity size for specific lab containers; and the inclusion of Division 2.2, 6.1 and additional Division 2.3 materials.

[FR Doc. 00–9638 Filed 4–17–00; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

THE FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (collectively, the "agencies") hereby give notice that they plan to submit to the Office of Management and Budget (OMB) requests for review of the information collection described below. The agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid Office of Management and Budget (OMB) control number. The agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), intend to extend, without revision, the following currently approved information collection: the Foreign Branch Report of Condition (FFIEC 030). At the end of the comment period, the comments and recommendations received will be analyzed to determine whether the FFIEC and the agencies should modify the information collection. The agencies will then submit the report to OMB for review and approval.

DATES: Comments must be submitted on or before June 19, 2000.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Written comments on the FFIEC 030 should be submitted to the Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Third Floor, Attention: 1557–0099, Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov. Comments will be available for inspection and photocopying at the OCC=s Public Reference Room, 250 E Street, SW, Washington, DC 20219 between 9 a.m. and 5 p.m. on business days. Appointments for inspection of comments may be made by calling (202) 874–5043.

Board: Written comments on the FFIEC 030 should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M–P–500 between 9 a.m. and 5 p.m., except as provided in section 261.12 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12(a).

FDIC: Written comments on the FFIEC 030 should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov]. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Additional information or a copy of the collection may be requested from:

OCC: Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board: Mary M. West, Chief, Financial Reports Section, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

FDIC: Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal To Extend for Three Years Without Revision the Following Currently Approved Collection of Information

Title: Foreign Branch Report of Condition.
Form Number: FFIEC 030.
Frequency of Response: Annually, and quarterly for significant branches.
Affected Public: Business or other for-profit.
For OCC:
OMB Number: 1557–0099.
Number of Respondents: 143 annual respondents 56 quarterly respondents.
Estimated Time per Response: 3.9 burden hours.
Estimated Total Annual Burden: 1431 burden hours.
For Board:
OMB Number: 7100–0071.
Number of Respondents: 40 annual respondents 26; quarterly respondents.
Estimated Time per Response: 3.9 burden hours.
Estimated Total Annual Burden: 468 burden hours.
For FDIC:
OMB Number: 3064–0011.
Number of Respondents: 36 annual respondents; no quarterly respondents.
Estimated Time per Response: 3.9 burden hours.
Estimated Total Annual Burden: 140.4 burden hours.

General Description of Report

This information collection is mandatory: 12 U.S.C. 321, 324, and 602 (Board); 12 U.S.C. 602 (OCC); and 12 U.S.C. 1828 (FDIC). This information collection is given confidential treatment (5 U.S.C. 552 (b)(8)). Small businesses (that is, small banks) are not affected.

Abstract

This report contains asset and liability information for foreign branches of insured U.S. commercial banks and is required for regulatory and supervisory purposes. The information is used to analyze the foreign operations of U.S. commercial banks. All foreign branches of U.S. banks regardless of charter type file this report with the appropriate Federal Reserve District Bank. The Federal Reserve collects this information on behalf of the U.S. bank's primary federal bank regulatory agency.

Request for Comment

Comments are invited on:
a. Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;
b. The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;
c. Ways to enhance the quality, utility, and clarity of the information to be collected;
d. Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and
e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Dated: March 31, 2000.
Mark J. Tenhundfeld,
Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, April 13, 2000.
Jennifer J. Johnson,
Secretary of the Board.

Dated at Washington, DC, this 4th day of April, 2000.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Executive Secretary.

[FR Doc. 00–9675 Filed 4–17–00; 8:45 am]
BILLING CODE OCC 4810–33–P, Board 6210–01–P6714–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974, as Amended; System of Records

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of alteration of a system of records.

SUMMARY: The Treasury Department, Internal Revenue Service, gives notice of a proposed revision to the system of records entitled "Security Clearance Files-Treasury/IRS 34.016," which is subject to the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

DATES: This notice will be adopted without further publication in the **Federal Register** on April 18, 2000, unless modified by a subsequent notice to incorporate comments received from the public.

FOR FURTHER INFORMATION CONTACT: Mary Anderson, Program Analyst, Personnel Security Office A:PS:PSO, Internal Revenue Service, 1111 Constitution Avenue, NW, Room 4244, Washington, DC 20224, telephone (202) 622–9245.

SUPPLEMENTARY INFORMATION: On February 10, 1999, Delegation Order #133, as revised, authorized the Chief, Management and Finance to process security clearances for IRS personnel in critical sensitive or noncritical sensitive positions or assignments. This authority can be re-delegated no lower than the Personnel Security Officer. The security clearance information (*i.e.*, grants, cancellations, and denials) is maintained by the Chief, Agencywide Shared Services, within the IRS Personnel Security Office.

The purpose of the alteration is to bring the notice pertaining to Security Clearance Files-Treasury/IRS 34.016 into compliance with the Privacy Act by making changes which reflect the transfer of responsibility for the system. The alterations include: A change to "System location," "Retrievability," "Safeguards," "System manager," and "Record access procedures." In addition, the Privacy Act notice data element "Purpose" is being added to the notice to conform to the requirements of the Act. The system notice was last published in its entirety in the **Federal Register**, Vol 63, page 69869, on December 17, 1998.

The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974, as amended, which requires the submission of a new or altered system report. For the reasons set forth in this preamble, the IRS proposes to amend its system of records Treasury/IRS 34.016.

Dated: April 10, 2000.
Shelia Y. McCann,
Deputy Assistant Secretary (Administration).

Treasury/IRS 34.016

SYSTEM NAME:

Security Clearance Files—Treasury/IRS.

SYSTEM LOCATION:

Description of change: Replace the current statement with the following: "Internal Revenue Service, Personnel Security Office, 1111 Constitution

Avenue, NW, Room 4244, Washington, DC 20224."

* * * * *

Description of change: Immediately preceding the heading "Routine Uses of Records Maintained in the System Including Categories of Users and the Purposes of Such Uses," insert the following entry:

PURPOSE:

This system of records documents issuances, transfers, and cancellations of security clearances issued to Internal Revenue Service employees in critical sensitive and noncritical sensitive positions."

* * * * *

RETRIEVABILITY:

Description of change: Replace the current statement with the following: "Indexed by name or social security number."

SAFEGUARDS:

Description of change: Replace the current statement with the following: "Access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00, and the Manager's Security Handbook, IRM 1(16)12. Records are stored in locked file cabinets and computerized records are password protected."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Description of change: Replace the current statement with the following: "Official prescribing policies and practices—Chief, Agencywide Shared Services, 1111 Constitution Avenue, NW, Washington, DC 20224. Official maintaining the system and records—Personnel Security Officer, A:PS:PSO, 1111 Constitution Avenue, NW, Room 4244, Washington, DC 20224."

* * * * *

RECORD ACCESS PRECDURES:

Description of change: Replace the current statement with the following: "Individuals seeking access to this system of records or seeking to contest its content may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the IRS Personnel Security Officer, A:PS:PSO, 1111 Constitution Avenue, NW, Room 4244, Washington, DC 20224."

* * * * *

[FR Doc. 00–9646 Filed 4–17–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0089]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before May 18, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0089."

SUPPLEMENTARY INFORMATION:

Title: Statement of Dependency of Parent(s), VA Form 21–509.

OMB Control Number: 2900–0089.

Type of Review: Extension of a currently approved collection.

Abstract: 38 U.S.C 102 requires that income and dependency must be determined before benefits may be paid to or for a dependent parent. VA Form 21–509 is used to gather the necessary information from the applicant to make this determination.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 2, 1999, on page 67629.

Affected Public: Individuals or households.

Estimated Annual Burden: 20,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 40,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 12035, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0089" in any correspondence.

Dated: March 27, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–9604 Filed 4–17–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0321]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before May 18, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8135 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0321."

SUPPLEMENTARY INFORMATION:

Title: Appointment of Veterans Service Organization as Claimant's Representative, VA Form 21–22.

OMB Control Number: 2900–0321.

Type of Review: Revision of a currently approved collection.

Abstract: The form is used by VA beneficiaries to appoint any one of a number of recognized service organizations to represent them in the prosecution of their VA claims. The information is used to determine who has access to the beneficiary's claim file. In addition, it determines who has the right to receive copies of correspondence from VA to the

beneficiary. VA may recognize representatives of service organizations to assist beneficiaries in the prosecution of VA claims, but no individual shall be recognized unless such individual has filed a power of attorney, executed in a manner prescribed by VA.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 25, 2000 at pages 4017 and 4018.

Affected Public: Individuals or households.

Estimated Annual Burden: 27,083 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 325,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0321" in any correspondence.

Dated: March 4, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–9605 Filed 4–17–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Voluntary Service National Advisory Committee; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that the annual meeting of the Department of Veterans Affairs Voluntary Service National Advisory Committee will be held at the Clarion Plaza Hotel, 9700 International Boulevard, Orlando, FL, May 31–June 3, 2000. The meeting begins with participant registration from 12 noon to 5 p.m. on Tuesday, May 30, and from 8 am to 5 pm Wednesday, May 31, through Friday, June 2, 2000, in Ballroom C/D Foyer.

The committee, comprised of fifty nine national voluntary organizations, advises the Under Secretary of Health and other members of the Department of Veterans Affairs Central Office staff on how to coordinate and promote volunteer activities within VA facilities. The primary purposes of this meeting are: To provide for committee review of volunteer policies and procedures; to accommodate full and open communications between the organizations, representatives and the Voluntary Service Office and field staff; to provide educational opportunities geared towards improving volunteer programs with special emphasis on methods to recruit, retain, motivate and recognize volunteers; and to approve committee recommendations.

Pre-meeting activities include: Tuesday, May 30, 2000, VAVS Field Staff will meet from 4 p.m. until 6 p.m. in Salon 5 & 6; the National Executive Committee will meet on Wednesday, May 31, from 8 a.m. until 12 p.m. in Salon 5 & 6; VISN 8 staff will provide a Health Fair from 9 a.m.–5 p.m. in Salon 7; there will be an a new member orientation from 1:00 p.m. until 2:30 p.m. in Ballroom D; and from 3 p.m. until 4:30 p.m. there will be an open forum in Ballroom D. Opening ceremonies will begin at 6:00 p.m. featuring Thomas L. Garthwaite, M.D., as keynote speaker.

On Thursday, June 1, 2000, there will be a Business Session from 8:30 a.m. until 11:30 a.m. in Ballroom D. The workshop topics include, Satisfaction Through Service, Salon 4; Volunteerism Corporate Style, Salon 5; Where Have All the Volunteers Gone—Recruitment/Retention, Salon 7 & 8; Homeless Veterans Programs, Salon 9 & 10.

On Friday, June 2, 2000, a NAC Business Session will be held from 8:30 a.m.–10 a.m., Ballroom C & D. The educational workshops will be repeated from 10:30 a.m.–12:30 p.m. and from 3 p.m.–4:30 p.m., rooms remain the same as on Thursday. The James H. Parke luncheon will be from 12:30 p.m.-2 p.m. in Ballroom C & D, honoring the 2000 recipient of the James H. Parke Scholarship.

On the morning of Saturday, June 3, 2000, the NAC will hold a Business Session from 8:30 a.m.–11:30 a.m. in Ballroom C & D. A critique of the meeting will be held from 11:30 a.m.-12:30 p.m. in Salon 3 & 4. A closing celebration honoring the NAC Volunteers of the Year will be held in Ballroom C & D, beginning at 6:00 p.m.

The meeting is open to the public. Individuals interested in attending are encouraged to contact: Ms. Laura Balun, Administrative Officer, Voluntary Service Office (10C2), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC, 20420, (202) 273–8392.

Dated: May 11, 2000.

By Direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 00–9607 Filed 4–17–00; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Amendment of System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

Notice is hereby given that the Department of Veterans Affairs (VA) is revising an existing routine use to the system of records entitled "Personnel and Accounting Pay System-VA" (27VA047) as set forth in the **Federal Register** 40 FR 38095 (8/26/75) and amended in 48 FR 16372 (4/15/83), 50 FR 23009 (5/30/85), 51 FR 6858 (2/26/86), 51 FR 25968 (7/17/86), 55 FR 42534 (10/19/90), 56 FR 23952 (5/24/91), 58 FR 39068 (7/21/93), 58 FR 40852 (7/30/93), 60 FR 35448 (7/7/95), 62 FR 41483 (8/1/97), and 62 FR 68362 (12/31/97). This system of records contains information on current and former salaried VA employees.

Public Law 103–94 (October 6, 1993) created section 5520a of Title 5, United States Code, which permits the garnishment of Federal employees' wages. The Office of Personnel Management (OPM) issued regulations (5 CFR part 582) which implement the legislation. VA added a new routine use No. 28 on July 7, 1995, to system of records 27VA047 in order to comply with this legislation. This route specifically permitted the disclosure of information to a garnisher concerning the name and address of any new employer of a former VA employee who is the subject of a garnishment by legal process.

In conjunction with a garnishment procedure against a current employee, Federal agencies may also be served with interrogatories, and must respond to them in accordance with 5 U.S.C. 5520a and OPM regulations 5 CFR 582.202(a) and 582.303. The information sought under interrogatories is usually personal information protected by the Privacy Act, 5 U.S.C. 552a. Consequently, VA may provide information in response to the interrogatories only when the Privacy Act authorizes the disclosure.

It is unlikely employees would provide prior consent to the disclosure of information in response to interrogatories. In addition,

interrogatories are not usually accompanied by a court order directing an agency to answer the interrogatories. Consequently, we are revising existing routine use number 28 in order to comply with the provisions on interrogatories found in 5 U.S.C. 5520a and OPM's regulations.

VA has determined the release of information for this purpose is a necessary and proper use of the information in this system of records and the revision of existing routine use number 28 for transfer of this information is appropriate.

An altered system of records report and a copy of the revised system notice have been sent to the House of Representatives Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) and guidelines issued by OMB (59 FR 37906, 37916–18 (7/25/94)).

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed routine use of the system of records to the Director, Office of Regulations Management (O2D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. All relevant material received before May 18, 2000 will be considered. All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the **Federal Register** by VA, the new routine use statement is effective May 18, 2000.

Approved April 4, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

[FR Doc. 00–9606 Filed 4–17–00; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 65, No. 75
Tuesday, April 18, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[CN–00–003]

RIN 0581–AB82

Grade Standards and Classification for American Pima Cotton

Correction

In proposed rule document 00–8298 beginning on page 17609 in the issue of Tuesday, April 4, 2000, make the following correction:

§§28.511–28.517 [Corrected]

On page 17611, in the first and second columns, after amendatory instruction 5., the table of contents for §§28.511–28.517 is corrected to read as follows:

Official Cotton Standards of the United States for the Leaf Grade of American Pima Cotton

28.511 Leaf Grade No. 1.
28.512 Leaf Grade No. 2.
28.513 Leaf Grade No. 3.
28.514 Leaf Grade No. 4.
28.515 Leaf Grade No. 5.
28.516 Leaf Grade No. 6.
28.517 Leaf Grade No. 7.

[FR Doc. C0–8298 Filed 4–17–00; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–10]

Revision of Class D Airspace, Alexandria England AFB, LA; Revocation of Class D Airspace, Alexandria Esler Regional Airport, LA; and Revision of Class E Airspace, Alexandria, LA

Correction

In final rule document 00–7347 beginning on page 15860 in the issue of Friday, March 24, 2000, make the following correction:

§71.1 [Corrected]

On page 15861, in the first column, in the second line under the heading **ASW LA D Alexandria, LA [Revised]**, "Lat. 31°19′55″ N." should read, " Lat. 31°19′39″ N.".

[FR Doc. C0–7347 Filed 4–17–00; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Tuesday,
April 18, 2000

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 30 and 52
Federal Acquisition Regulation; Cost Accounting Standards Administration; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 30 and 52

[FAR Case 1999–025]

RIN 9000–AI70

Federal Acquisition Regulation; Cost Accounting Standards Administration

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to delineate the process for determining and resolving the cost impact on contracts and subcontracts when a contractor makes a compliant change to a cost accounting practice or follows a noncompliant practice.

DATES: Interested parties should submit comments in writing on or before June 19, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405. Submit electronic comments via the Internet to: farcase.1999–025@gsa.gov. Please submit comments only and cite FAR case 1999–025 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501–0692. Please cite FAR case 1999–025.

SUPPLEMENTARY INFORMATION:

A. Background

FAR Part 30, Cost Accounting Standards Administration, describes policies and procedures for applying the Cost Accounting Standards Board (CASB) rules and regulations to negotiated contracts and subcontracts. The CASB's rules, regulations, and Cost Accounting Standards (CAS) are codified at 48 CFR Chapter 99 (FAR Appendix). Negotiated contracts not exempt in accordance with 48 CFR 9903.201–1(b) are subject to CAS (CAS-covered contracts).

The CASB found that the Government does not always implement in a uniform manner the administrative process for making contract price and cost adjustments resulting from contractor changes in cost accounting practice. The CASB further found that the procedures and processes are not widely understood or adequately documented.

This proposed FAR rule delineates the entire cost-impact process the Government and contractor must follow when a contractor makes a compliant change to a cost accounting practice or follows a noncompliant practice. The rule should make the cost-impact process easier to understand, thereby reducing the overall amount of administrative effort currently being expended to resolve individual cases. Specifically, the rule—

1. Defines the cognizant Federal agency official (CFAO) as the contracting officer assigned to administer CAS for all contracts in a business unit. The CFAO's functions are to make determinations for all CAS-covered contracts and subcontracts, including—

a. Whether a change in cost accounting practice or a noncompliance has occurred; and

b. If a change in cost accounting practice or a noncompliance has occurred, how any resulting cost impacts are resolved;

2. Provides procedures that the Government and the contractor must follow when there are voluntary (including desirable) changes to disclosed or established cost accounting practices, mandatory changes required to comply with new or modified standards, and noncompliances with CAS.

3. Provides a streamlined process that does not require submission of cost-impact estimates or contract price adjustments for every CAS-covered contract affected by the change in cost accounting practice. The process creates a three-step sequential process that includes—

a. An initial evaluation to determine materiality of the changes;

b. If the cost is material, the use of a general dollar magnitude (GDM) proposal, whereby the contractor is provided the opportunity to include only the minimum data needed to resolve the cost impact. The rule encourages settlement of material cost impacts based on the GDM proposal to the maximum extent possible; and

c. If the GDM proposal is insufficient or inadequately supported, the submission of a detailed cost-impact proposal.

4. Provides revised procedures for negotiating and resolving the cost impact, including—

a. Requiring the CFAO to invite all contracting officers to participate in negotiations when the cost or price of any of their contracts may be increased or decreased by at least $100,000 (the current amount is $10,000);

b. Providing the CFAO with significant flexibility to resolve the cost impact by permitting the CFAO to use an alternate method, rather than the method of adjusting all affected contracts, provided the Government will not pay more, in the aggregate, than it would have paid if the CFAO did not use the alternate method; and

c. Requiring the CFAO to execute all contract modifications concurrently.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because contracts and subcontracts with small businesses are exempt from all CAS requirements in accordance with 48 CFR 9903.201–1(b)(3). An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR subparts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 1999–025), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the proposed rule contains information collection requirements. FAR Part 30 requires certain contractors to provide information on CAS-covered subcontractors and to submit cost-impact proposals when there are changes in cost accounting practices. The collection of this information is currently approved under Office of Management and Budget Number 9000–0129. The proposed rule decreases the collection requirements, since the rule provides a—

1. Specific, but flexible, cost-impact process that should reduce the overall administrative burden currently being experienced by contractors; and

2. General format for contractors to use in preparing cost-impact proposals. This format includes flexible criteria that permit the contractor an opportunity to include only the minimum data needed to resolve the cost impact.

Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 175 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows:

Respondents: 644.

Responses per respondent: 2.27.

Total annual responses: 1461.88.

Preparation hours per response: Reduced from 200.73 to 175.00.

Total response burden hours: Reduced from 293,471 to 255,829.

Accordingly, a request for amendment of information collection requirements will be submitted to OMB at the final rule stage.

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than June 19, 2000 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVR), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB control number 9000–0129, FAR Case 1999–025, Cost Accounting Administration, in all correspondence.

List of Subjects in 48 CFR Parts 30 and 52

Government procurement.

Dated: April 10, 2000.

Jeremy F. Olson,

Acting Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 30 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 30 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

2. Add section 30.001 to read as follows:

30.001 Definition.

Cognizant Federal agency official (CFAO), as used in this part, means the contracting officer assigned by the cognizant Federal agency to administer the Cost Accounting Standards.

3. Amend section 30.202–6 by revising paragraphs (b), (c), and (d) to read as follows:

30.202–6 Responsibilities.

* * * * *

(b) The contracting officer must not award a CAS-covered contract until the cognizant Federal agency official (CFAO) (see 30.601) has made a written determination that a required Disclosure Statement is adequate unless, in order to protect the Government's interest, the contracting officer waives the requirement for an adequacy determination before award. In this event, the CFAO must make a determination of adequacy as soon as possible after the award.

(c) The auditor is responsible for conducting reviews of Disclosure Statements for adequacy and compliance.

(d) The CFAO is responsible for determinations of adequacy and compliance of the Disclosure Statement.

4. Revise section 30.202–7 to read as follows:

30.202–7 Determinations.

(a) *Adequacy determination.* (1) As prescribed by 48 CFR 9903.202–6 (FAR Appendix), the auditor must—

(i) Conduct a review of the Disclosure Statement to ascertain whether it is current, accurate, and complete; and

(ii) Report the results to the CFAO.

(2) The CFAO must determine if the Disclosure Statement adequately describes the contractor's cost accounting practices and take one of the following actions:

(i) If the Disclosure Statement is inadequate, request a revised Disclosure Statement and identify any areas of inadequacy.

(ii) If the Disclosure Statement is adequate, notify the contractor in writing, with copies to the auditor and contracting officer. The notice of adequacy must state that the contractor must not consider a disclosed practice, by virtue of such disclosure, an approved practice for pricing proposals or accumulating and reporting contract performance cost data.

(3) Generally, the CFAO should furnish the contractor notification of adequacy or inadequacy within 30 days after the CFAOs receives the Disclosure Statement.

(b) *Compliance determination.* (1) After the notification of adequacy, the auditor must—

(i) Conduct a detailed compliance review to ascertain whether or not the disclosed practices comply with part 31 and the CAS; and

(ii) Advise the CFAO of the results.

(2) The CFAO—

(i) Must take action regarding noncompliance with CAS under FAR 30.605;

(ii) May require a revised Disclosure Statement and adjustment of the contract price or cost allowance; and

(iii) Must process a noncompliance with part 31 separately, in accordance with normal administrative practices.

5. Amend section 30.202–8 by revising paragraph (a) to read as follows:

30.202–8 Subcontractor disclosure statements.

(a) When the Government requires determinations of adequacy or inadequacy of subcontractor disclosure statements, the CFAO of the subcontractor must provide this determination to the CFAO of the contractor or next higher-tier subcontractor. The CFAO(s) of the higher-tier subcontractor or contractor must not reverse the determination of the CFAO of the subcontractor.

* * * * *

6. Section 30.601 is revised to read as follows:

30.601 Responsibility.

(a) The cognizant Federal agency must perform CAS administration for all contracts in a business unit even when the contracting officer retains other administration functions. The CFAO must make all required determinations for all CAS-covered contracts and subcontracts, including—

(1) Whether a change in cost accounting practice or noncompliance has occurred; and

(2) If a change in cost accounting practice or noncompliance has occurred, how any resulting cost impacts are resolved.

(b) Within 30 days after the award of any new contract or subcontract subject to CAS, the contracting officer, contractor, or subcontractor making the award must request the CFAO to perform administration for CAS matters (see subpart 42.2).

30.602 [Redesignated as 30.603 and revised]

6a. Remove section 30.603 and redesignate section 30.602 as 30.603 and revise it to read as follows:

30.603 Changes to disclosed or established cost accounting practices.

30.602 [Added]

6b. Add a new section 30.602 to read as follows:

30.602 Materiality.

Agencies must adjust contracts (or use another suitable method (see 30.606)) and withhold amounts payable for CAS noncompliances, new standards, or voluntary changes only if the CFAO determines that the amounts involved are material. The CFAO must—

(a) In determining materiality, use the criteria in 48 CFR 9903.305 (FAR Appendix); and

(b) If the CFAO determines that the amount involved is immaterial—

(1) Make no contract adjustments; and

(2) In the case of noncompliance issues, inform the contractor that if the noncompliance is not corrected, the Government reserves the right to make appropriate contract adjustments should the cost impact become material in the future.

30.602–1 and 30.602–2 [Removed]

6c. Sections 30.602–1 and 30.602–2 are removed.

6d. Section 30.603–1 is added to read as follows:

30.603–1 Mandatory changes required to comply with new or modified standards.

(a) *General.* (1) Offerors must state whether or not the award of the contemplated contract would require a change to established cost accounting practices affecting existing contracts and subcontracts (see 52.230–1). The contracting officer must ensure that the contractor's response to the notice is made known to the CFAO.

(2) A new or modified standard—

(i) Is applicable prospectively to contracts and subcontracts awarded before the effective date of the new or modified standard when a new contract or subcontract containing the clause at 52.230–2 or 52.230–5 is awarded on or after the effective date of the new or modified standard; and

(ii) May require equitable adjustments, but only to those contracts or subcontracts awarded before the effective date of the new or modified standard (see 52.230–2 or 52.230–5).

(3) Contracting officers should encourage contractors to submit to the CFAO any change in accounting practice in anticipation of complying with a new or modified standard as soon as practical after the CASB promulgates the new or modified standard.

(b) *Accounting changes.* Contractors must submit a description of any change in cost accounting practice required to comply with a new or modified CAS within 60 days (or other mutually agreed to date) after award of a contract requiring a change (see 52.230–6).

30.602–3 [Redesignated as 30.603–2 and revised]

6e. Section 30.602–3 is redesignated as 30.603–2 and revised to read as follows:

30.603–2 Voluntary changes.

(a) *General.* The contractor may voluntarily change its disclosed or established cost accounting practices. The Government may adjust the contract price for voluntary changes. However, the Government must not allow increased costs, in the aggregate, resulting from a voluntary change unless the CFAO determines that the change is desirable and not detrimental to the interests of the Government.

(b) *Accounting changes.* The contractor must notify the CFAO and submit a description of any voluntary cost accounting practice change not less than 60 days (or such other date as may be mutually agreed to) before implementation of the voluntary change (see 52.230–6).

(c) *Desirable changes.* When a contractor requests that a voluntary change be deemed desirable, the CFAO must promptly evaluate the contractor's request and must, as soon as practical, notify the contractor in writing whether the change is or is not desirable.

(d) *Retroactive changes.* If a contractor requests that a voluntary change (including those requested to be deemed desirable) include a retroactive applicability date (*e.g.*, to the beginning of the current contractor fiscal year in which the notification is made), the contractor must submit the rationale for the action. The CFAO must promptly evaluate the contractor's request and must, as soon as practical, notify the contractor in writing whether the change is or is not retroactive.

(e) *Contractor changes without Government notification.* If a contractor implements any change in cost accounting practice without submitting the notice required under this subsection, the CFAO must consider the change a failure to follow a cost accounting practice consistently and process it as a noncompliance in accordance with 30.605.

6f. Sections 30.604 through 30.607 are added to read as follows:

30.604 Processing changes to disclosed or established cost accounting practices.

(a) *Scope.* This section applies to mandatory and voluntary (including desirable) changes in cost accounting practices.

(b) *Procedures.* Upon receipt of the contractor's notification and description of the change in cost accounting practice, the CFAO, with the assistance of the auditor, should review the proposed change concurrently for adequacy and compliance. If the CFAO—

(1) Identifies any area of inadequacy, the CFAO must request a revised description of the new cost accounting practice;

(2) Determines that the disclosed practice is noncompliant, the CFAO must notify the contractor in writing that, if implemented, the CFAO will handle the accounting change as a noncompliance; or

(3) Determines the description of the change is both adequate and compliant, the CFAO must notify the contractor in writing. If the CFAO determines—

(i) The cost impact is material, the CFAO must—

(A) Request that the contractor submit, by a specified date, a general dollar magnitude (GDM) proposal; and

(B) Attempt to use the contractor's GDM proposal to the maximum extent possible to negotiate and resolve the cost impact; or

(ii) The cost impact is immaterial, the CFAO must provide notification to the contractor, and conclude the cost-impact process with no contract adjustments.

(c) *General dollar magnitude (GDM) proposal.* The GDM proposal—

(1) Provides information to the CFAO on the estimated overall impact of a change in cost accounting practice on affected CAS-covered contracts and subcontracts that were awarded based on the previous accounting practice; and

(2) Assists the CFAO in determining whether individual contract or

subcontract price adjustments are required.

(d) *General dollar magnitude proposal content.* The GDM proposal must—

(1) Include a sufficient number of individual contract and/or subcontract cost-impact estimates, by contract number and agency, to support the GDM estimate (including identification of the individual contracts with the largest dollar impact);

(2) Include by contract type an "All Other" category to reflect the total cost impact for those contracts not separately identified by the contractor in paragraph (d)(1) of this section;

(3) Provide a computation of the cost impact based on the difference between the estimated costs to complete under the current practice and the estimated costs to complete under the revised practice;

(4) Provide a computation of the cost impact using a consistent cost baseline. A consistent cost baseline means that the amounts before and after the change are not based on different scopes of contract efforts, levels of operation, methods of operation, or other information that is not related specifically to the cost accounting practice change. The cost impact must be based on the revised forward pricing rates and current contract estimates to complete that incorporate the new cost accounting practice;

(5) Group the CAS-covered contracts by contract type, limited to the following contract types:

(i) Firm-fixed-price.

(ii) Time-and-materials.

(iii) Incentive-type (*e.g.*, fixed-price incentive and cost-plus-incentive-fee).

(iv) Cost-reimbursement other than incentive-type (*e.g.*, cost-plus-fixed-fee and cost-plus-award-fee); and

(6) Recommend specific contract adjustments to settle the cost impact of the cost accounting practice change.

(e) *CFAO evaluation.* The CFAO must promptly evaluate the GDM proposal. If the cost impact is—

(1) Material, the CFAO must—

(i) Negotiate and resolve the cost impact (see 30.606);

(ii) Request that the contractor submit, by a specified date, a revised GDM proposal with specific additional individual contract data (*e.g.*, contracts with a dollar impact exceeding a specific dollar amount); or

(iii) Request a detailed cost-impact (DCI) proposal if the CFAO determines that the GDM proposal cannot be adequately supported or does not contain sufficient data to resolve the cost impact. The CFAO must indicate in the written request to the contractor that the DCI proposal must include all contracts and subcontracts having an estimate to complete exceeding a specified amount, established by the CFAO, that is based on the old cost accounting practice. The specified amount must be high enough so that the DCI proposal does not contain an excessive number of contracts and subcontracts but results in the proposal recognizing a reasonably high dollar percentage of the total estimate to complete; or

(2) Immaterial, the CFAO must provide notification to the contractor, and conclude the cost-impact process with no contract adjustments.

(f) *Detailed cost impact (DCI) proposal.* The DCI proposal must—

(1) Measure the magnitude of the impact of the change on existing CAS-covered contracts and subcontracts subject to adjustment;

(2) Include all contracts and subcontracts having an estimate to complete, based on the old accounting practice, exceeding a specified amount established by the CFAO;

(3) Include, by contract type, an "All Other" category to reflect the total cost impact for those contracts that do not exceed the specified amount; and

(4) Group the CAS-covered contracts by contract type, limited to the following contract types:

(i) Firm-fixed-price.

(ii) Time-and-materials.

(iii) Incentive-type (*e.g.*, fixed-price incentive and cost-plus-incentive-fee).

(iv) Cost-reimbursement other than incentive-type (*e.g.*, cost-plus-fixed-fee and cost-plus-award-fee).

(g) *Contract adjustments.* The CFAO—

(1) Negotiates and resolves the cost impact on behalf of all Government agencies;

(2) Must invite contracting officers to participate in negotiations when the cost or price of any of their contracts may be increased or decreased by at least $100,000;

(3) At the conclusion of negotiations, must prepare a negotiation memorandum and send copies to auditors and contracting officers;

(4) If contract adjustments are necessary, must distribute modifications to the awarding agencies, requesting signatures by a specified date. The awarding agencies must return the signed modifications by the specified date or notify the CFAO of the reasons for the delay;

(5) After receipt of the signed modifications described in paragraph (f)(4) of this section, must concurrently obtain contractor signatures on all the modifications; and

(6) May unilaterally adjust the contract(s) if the CFAO and the contractor fail to agree on the adjustment.

(h) *Remedies.* If the contractor does not submit the accounting change description or the required cost-impact proposal, the CFAO—

(1) With the assistance of the auditor, should estimate the general dollar magnitude of the cost impact on CAS-covered contracts and subcontracts;

(2) May withhold an amount not to exceed 10 percent of each subsequent payment related to the contractor's CAS-covered contracts (up to the estimated general dollar magnitude of the cost impact), until the contractor furnishes the required information; and

(3) May unilaterally adjust the contract(s).

30.605 Noncompliance with CAS requirements.

(a) *Types of noncompliances.* (1) A cost-estimating noncompliance occurs when there is a failure, when estimating proposal costs, to follow—

(i) Applicable CAS requirements; or

(ii) Consistently disclosed or established accounting practices.

(2) A cost-accumulation noncompliance occurs when there is a failure, when accumulating costs, to follow—

(i) Applicable CAS requirements; or

(ii) Consistently disclosed or established accounting practices.

(b) *Determination of noncompliance.* (1) The CFAO must make an initial finding of compliance or noncompliance and notify the auditor within 15 days after receiving a report of alleged noncompliance from the auditor.

(2) If the CFAO makes an initial finding of noncompliance, the CFAO must—

(i) Immediately notify the contractor in writing of the exact nature of the noncompliance; and

(ii) Allow the contractor 60 days to agree or to submit reasons why the contractor considers the existing practices to be in compliance.

(3) The CFAO must—

(i) Review the reasons why the contractor considers the existing practices to be in compliance;

(ii) Make a determination of compliance or noncompliance;

(iii) Notify the contractor and the auditor in writing of the determination of compliance or noncompliance, including a written explanation as to why the CFAO agrees or disagrees with the contractor's rationale; and

(iv) If the CFAO makes a determination of noncompliance, follow the procedures in paragraphs (c) through (h) of this section, as appropriate.

(c) *Correcting noncompliances.* (1) The contractor must submit a description of any cost accounting practice change needed to correct a noncompliance (see 52.230–6).

(2) The CFAO—

(i) With the assistance of the auditor, should review the proposed change concurrently for adequacy and compliance (see 30.202–7); and

(ii) When the description of the change is both adequate and compliant, must notify the contractor in writing; and when the cost impact is—

(A) Material, the CFAO must—

(*1*) Request that the contractor submit, by a specified date, a general dollar magnitude (GDM) proposal; and

(*2*) Attempt to use the contractor's GDM proposal to the maximum extent possible to negotiate and resolve the cost impact;

(B) Immaterial, the CFAO must—

(*1*) Inform the contractor in writing that if the noncompliance is not corrected, the Government reserves the right to make appropriate contract adjustments should the noncompliance become material in the future; and

(*2*) Conclude the cost-impact process with no contract adjustments.

(d) *General dollar magnitude (GDM) proposal.* The GDM proposal must—

(1) Include a sufficient number of individual contract and/or subcontract cost-impact estimates, by contract number and agency, to support the GDM estimate (including identification of the individual contracts with the largest dollar impact);

(2) Include by contract type an "All Other" category to reflect the total cost impact for those contracts not separately identified by the contractor in paragraph (d)(1) of this section;

(3) Provide a computation of the cost impact as follows:

(i) For cost-estimating noncompliances, the impact is the difference between—

(A) The negotiated contract cost or price; and

(B) What the negotiated contract cost or price would have been had the contractor used a compliant practice.

(ii) For cost-accumulation noncompliances, the impact is the difference between—

(A) The costs that were accumulated under the noncompliant practice; and

(B) The costs that would have been accumulated if the compliant practice had been applied (from the time the noncompliant practice was first applied until the date the noncompliant practice was replaced with a compliant practice).

(4) Group the CAS-covered contracts by contract type, limited to the following contract types:

(i) Firm-fixed-price.

(ii) Time-and-materials.

(iii) Incentive-type (*e.g.*, fixed-price incentive and cost-plus-incentive-fee).

(iv) Cost-reimbursement other than incentive-type (*e.g.*, cost-plus-fixed-fee and cost-plus-award-fee);

(5) Include the total overpayments made by the Government during the period of noncompliance so that the CFAO can calculate and recover the proper interest amount; and

(6) Recommend specific contract adjustments to settle the cost impact resulting from the noncompliance.

(e) *CFAO evaluation.* The CFAO must promptly evaluate the GDM proposal. If the cost impact is—

(1) Material, the CFAO must—

(i) Negotiate and resolve the cost impact (see 30.606);

(ii) Request the contractor submit, by a specified date, a revised GDM proposal with specific additional individual contract data (*e.g.*, contracts with a dollar impact exceeding a specific dollar amount); or

(iii) Request a detailed cost-impact (DCI) proposal if the CFAO determines that the GDM proposal cannot be adequately supported or does not contain sufficient data to resolve the cost impact. The CFAO must indicate in the written request to the contractor that the DCI proposal must include all contracts and subcontracts having a contract value exceeding a specified amount, established by the CFAO. The specified amount must be high enough so that the DCI proposal does not contain an excessive number of contracts and subcontracts but results in the proposal recognizing a reasonably high dollar percentage of the contracts impacted by the noncompliance.

(2) When the cost impact is immaterial, the CFAO must—

(i) Inform the contractor in writing that if the noncompliance is not corrected, the Government reserves the right to make appropriate contract adjustments should the noncompliance become material in the future; and

(ii) Conclude the cost-impact process with no contract adjustments.

(f) *Detailed cost-impact (DCI) proposal.* The DCI proposal must—

(1) Measure the magnitude of the impact of the noncompliance on CAS-covered contracts and subcontracts subject to adjustment;

(2) Include all contracts and subcontracts having a contract value exceeding a specified amount established by the CFAO;

(3) Include by contract type an "All Other" category to reflect the total cost impact for those contracts that do not exceed the specified amount; and

(4) Group the CAS-covered contracts by contract type, limited to the following contract types:

(i) Firm-fixed-price.

(ii) Time-and-materials.

(iii) Incentive-type (*e.g.*, fixed-price incentive and cost-plus-incentive-fee).

(iv) Cost-reimbursement other than incentive-type (*e.g.*, cost-plus-fixed-fee and cost-plus-award-fee).

(g) *Contract adjustments.* The CFAO must—

(1) Follow the procedures at 30.604(f); and

(2) In accordance with the clause at 52.230–2, Cost Accounting Standards, or 52.230–5, Cost Accounting Standards—Educational Institution—

(i) Include and separately identify, as part of the computation of the contract price adjustment(s), applicable interest on any increased cost paid to the contractor as a result of the noncompliance;

(ii) Compute interest from the date of overpayment to the time the adjustment is effected in accordance with 26 U.S.C. 6621(a)(2), as follows:

(A) If the costs were incurred and paid evenly over the fiscal years during which the noncompliance occurred, use the midpoint of the period in which the noncompliance began as the baseline for the computation of interest.

(B) If the costs were not incurred and paid evenly over the fiscal years during which the noncompliance occurred, use an alternate method.

(h) *Remedies.* If the contractor does not submit the required cost-impact proposal, the CFAO must follow the procedures at 30.604(h).

30.606 Resolving cost impacts.

(a) *General.* (1) The CFAO may resolve a cost impact attributed to a change in cost accounting practice or a noncompliance by adjusting a single contract, several but not all contracts, all contracts, or any other suitable method;

(2) The CFAO must choose a method to resolve the cost impact that approximates the amount, in the aggregate, that would have resulted if individual contracts had been adjusted; and

(3) Where there is a voluntary change (other than a change that the CFAO has determined to be desirable) or a noncompliance, the CFAO must not agree to a method that results in the payment of increased costs, in the aggregate, by the Government.

(b) *Adjusting contracts.* The CFAO may adjust some or all contracts with a material cost impact. When the adjustments are made to reflect increased costs associated with cost-reimbursement contracts, the CFAO

must prevent payment of the increased costs through a cost disallowance.

(c) *Alternate methods.* (1) The CFAO may use an alternate method instead of adjusting contracts to resolve the cost impact, provided the Government will not pay more, in the aggregate, than would be paid if the CFAO did not use the alternate method;

(2) The CFAO may not use an alternate method when the alternate method would result in—

(i) An under-recovery of monies by the Government (*e.g.*, due to cost overruns);

(ii) An inappropriate increase in profit on contracts beyond the level negotiated; or

(iii) Distortions of incentive provisions and relationships between target costs, ceiling costs, and actual costs for incentive-type contracts.

(3) When using an alternate method that excludes the costs from an indirect cost pool, the CFAO must—

(i) Make such exclusion only for contractor fiscal years that have ended; and

(ii) Adjust the exclusion to reflect the Government participation rate for cost-reimbursement contracts. For example, if there are increased costs to the Government of $100,000, and the indirect cost pool where the adjustment is to be affected has a Government participation rate of 50 percent for cost-reimbursement contracts, the contractor must exclude $200,000 from the indirect cost pool ($100,000/50% = $200,000).

(d) *Offsets.* (1) The CFAO may offset increased costs to the Government against decreased costs to the Government for some or all contracts, depending upon the particular facts and circumstances.

(2) The CFAO must not use the offset process if it would result in the Government paying more, in the aggregate, than would be paid had the offset process not been used.

(3) In determining what contracts should be offset, the CFAO must consider the following:

(i) For any offsets that include incentive contracts, the CFAO must assure that the impact on the incentive provisions are not materially different from what would be obtained if individual contracts were adjusted.

(ii) Within a segment, the CFAO may combine the effect of several changes in accounting practice in the offset consideration if the changes have the same effective date.

(iii) The CFAO may offset cost increases at one segment of a company by decreases at another segment if the accounting change results in costs flowing between those segments. The CFAO responsible for the organizational level that directed the change should administer such offsets.

(iv) When the result of the offset process is net increased costs, and the decision is to adjust a cost-reimbursement contract(s), the CFAO must prevent payment of the net increased costs through a cost disallowance.

(e) *Contract profit or fee.* (1) The CFAO must adjust profit or fee whenever specifically provided for by law or the terms of the contract.

(2) The CFAO should make any necessary adjustment to assure that the Government pays no more profit or fee, in the aggregate, than would have been paid had the change or noncompliance not occurred, unless such action is otherwise precluded by law or the terms of the contract.

(f) *Coordination.* When resolving cost impacts, the CFAO must coordinate with the affected contracting officers (see 30.604(f)) before determining the method of resolution (*i.e.*, adjust contracts, apply an alternate method, use the offset process). However, the CFAO has the sole authority for that determination.

30.607 Subcontract administration.

When a negotiated CAS price adjustment or a determination of noncompliance is required at the subcontract level, the CFAO of the subcontractor must make the determination and furnish a copy of the negotiation memorandum to the affected CFAO(s) of the contractor or next higher-tier subcontractor, as appropriate. The CFAO(s) of higher-tier subcontractors or contractors must not reverse the determination of the CFAO of the subcontractor.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Revise section 52.230–6 to read as follows:

52.230–6 Administration of Cost Accounting Standards.

As prescribed in 30.201–4(d)(1), insert the following clause:

Administration of Cost Accounting Standards (Date)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (a) through (c) and (e) through (h) of this clause:

(a) Submit to the Cognizant Federal Agency Official (CFAO) a description of any cost accounting practice change as outlined in paragraphs (a)(1) through (3). If a Contractor implements any change in cost accounting practice without submitting the notice required by this paragraph, the change will be a failure to follow paragraph (a)(4) of the clause at FAR 52.230–3, Disclosure and Consistency of Cost Accounting Practices.

(1) For any change in cost accounting practices required in accordance with paragraphs (a)(3) and (a)(4)(i) of the clause at FAR 52.230–2, Cost Accounting Standards, or paragraphs (a)(3), (a)(4)(i), or (a)(4)(iv) of the clause at FAR 52.230–5, Cost Accounting Standards—Educational Institution, submit a description of the change within 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) after award of a contract requiring this change.

(2) For any change in cost accounting practices proposed in accordance with paragraphs (a)(4)(ii) or (iii) of the clauses at FAR 52.230–2, Cost Accounting Standards, and FAR 52.230–5, Cost Accounting Standards—Educational Institution, or with paragraph (a)(3) of the clause at FAR 52.230–3, Disclosure and Consistency of Cost Accounting Practices, submit a description of the change not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change. If the change includes a proposed retroactive applicability date (*e.g.*, to the beginning of the current Contractor fiscal year in which the notification is made), submit rationale supporting the proposed retroactive applicability date.

(3) Submit a description of the change necessary to correct a failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by paragraph (a)(5) at FAR 52.230–2, Cost Accounting Standards, and FAR 52.230–5, Cost Accounting Standards—Educational Institution; or by paragraph (a)(4) at FAR 52.230–3, Disclosure and Consistency of Cost Accounting Practices)—

(i) Within 60 days (or such other date as may be mutually agreed to) after the date of agreement with the initial finding of noncompliance; or

(ii) In the event of Contractor disagreement with the initial finding of noncompliance, within 60 days of the date that the CFAO notifies the Contractor of the determination of noncompliance.

(b) When requested by the CFAO, submit a general dollar magnitude (GDM) proposal on or before the date specified by the CFAO, or other mutually agreed to date.

(1) For changes subject to paragraph (a)(1) or (a)(2) of this clause, the GDM proposal shall—

(i) Include a sufficient number of individual contract and/or subcontract cost-impact estimates, by contract number and agency, to support the GDM estimate (including identification of the individual contracts with the largest dollar impact);

(ii) Include by contract type an "All Other" category to reflect the total cost impact for those contracts not separately identified;

(iii) Provide a computation of the cost impact based on the difference between the estimated costs to complete under the current practice and the estimated costs to complete under the revised practice;

(iv) Provide a computation of the cost impact using a consistent cost baseline. A consistent cost baseline means that the

amounts before and after the change are not based on different scopes of contract efforts, levels of operation, methods of operation, or other information that is not related specifically to the cost accounting practice change. The cost impact shall be based on the revised forward pricing rates and current contract estimates to complete that incorporate the new cost accounting practice;

(v) Group the CAS-covered contracts by contract type, limited to the following contract types:

(A) Firm-fixed-price.

(B) Time-and-materials.

(C) Incentive-type (*e.g.*, fixed-price incentive and cost-plus-incentive-fee).

(D) Cost-reimbursement other than incentive-type (*e.g.*, cost-plus-fixed-fee and cost-plus-award-fee); and

(vi) Recommend specific contract adjustments to settle the cost impact of the cost accounting practice change.

(2) For changes submitted pursuant to paragraph (a)(3) of this clause, the GDM proposal shall—

(i) Include a sufficient number of individual contract and/or subcontract cost impact estimates, by contract number and agency, to support the GDM estimate (including identification of the individual contracts with the largest dollar impact);

(ii) Include by contract type an "All Other" category to reflect the total cost impact for those contracts not separately identified;

(iii) Provide a computation of the cost impact as follows:

(A) For cost-estimating noncompliances, the impact is the difference between—

(*1*) The negotiated contract cost or price; and

(*2*) What the negotiated contract cost or price would have been had the Contractor used a compliant practice.

(B) For cost-accumulation noncompliances, the impact is the difference between—

(*1*) The costs that were accumulated under the noncompliant practice; and

(*2*) The costs that would have been accumulated if the compliant practice had been applied (from the time the noncompliant practice was first applied until the date the noncompliant practice was replaced with a compliant practice);

(iv) Group the CAS-covered contracts by contract type, limited to the following contract types:

(A) Firm-fixed-price.

(B) Time-and-materials.

(C) Incentive-type (*e.g.*, fixed-price incentive and cost-plus-incentive-fee).

(D) Cost-reimbursement other than incentive-type (*e.g.*, cost-plus-fixed-fee and cost-plus-award-fee);

(v) Include the total overpayments made by the Government during the period of noncompliance so that the CFAO can calculate and recover the proper interest amount; and

(vi) Recommend specific contract adjustments to settle the cost impact resulting from the noncompliance.

(c) When requested by the CFAO, submit a detailed cost-impact (DCI) proposal on or before the date specified by the CFAO, or other mutually agreed to date. The DCI proposal shall—

(1) Measure the magnitude of the impact of the change on CAS-covered contracts and subcontracts subject to adjustment;

(2) Include all contracts and subcontracts having an estimate to complete, based on the old accounting practice, exceeding a specified amount established by the CFAO;

(3) Include by contract type an "All Other" category to reflect the total cost impact for those contracts that do not exceed the specified amount; and

(4) Group the CAS-covered contracts by contract type, limited to the following contract types:

(i) Firm-fixed-price.

(ii) Time-and-materials.

(iii) Incentive-type (*e.g.*, fixed-price incentive and cost-plus-incentive-fee).

(iv) Cost-reimbursement other than incentive-type (*e.g.*, cost-plus-fixed-fee and cost-plus-award-fee).

(d) If the Contractor does not submit the information required by paragraph (a), (b), or (c) of this clause within the specified time, or any extension granted by the CFAO, the CFAO may—

(1) Withhold an amount not to exceed 10 percent of each subsequent amount payment to the Contractor's CAS-covered contracts, up to the estimated general dollar magnitude of the cost impact, until such time as the Contractor provides the required information to the CFAO; and

(2) Unilaterally adjust the contract(s).

(e) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with paragraphs (a)(4) and (a)(5) of the clauses at FAR 52.230–2 and 52.230–5; or with paragraph (a)(3) or paragraph (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause at FAR 52.230–3.

(f) For all subcontracts subject to the clauses at FAR 52.230–2, 52.230–3, or 52.230–5—

(1) So state in the body of the subcontract, in the letter of award, or in both (do not use self-deleting clauses);

(2) Include the substance of this clause in all negotiated subcontracts; and

(3) Within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administration office cognizant of the subcontractor's facility:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

(g) Notify the Contracting Officer in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contract price or estimated cost and fee. The Contractor shall—

(1) Provide this notice within 30 days after the Contractor receives the proposed subcontract adjustments; and

(2) Include a proposal for adjusting the higher-tier subcontract or the contract appropriately.

(h) For subcontracts containing the clause at FAR 52.230–2 or FAR 52.230–5, require the subcontractor to comply with all standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier. (End of clause).

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Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1230

Pork Promotion, Research, and Consumer Information Program: Procedures for the Conduct of Referendum; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1230

[No. LS–99–14]

Pork Promotion, Research, and Consumer Information Program: Procedures for the Conduct of Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and notice and request for comments.

SUMMARY: This proposed rule sets forth the procedures for conducting a referendum to determine if producers and importers favor continuation of the Pork Checkoff, formally known as the Pork Promotion, Research, and Consumer Information Order (Order). The Pork Checkoff was implemented September 5, 1986, as authorized by the Pork Promotion, Research, and Consumer Information Act of 1985 (Act). The Secretary of Agriculture (Secretary) will conduct a referendum among persons who have been producers and importers during a representative period, as determined by the Secretary, to determine whether the producers and importers favor the continuation of the Pork Checkoff. The referendum would be conducted on dates to be determined by the Secretary. The Pork Checkoff would be terminated if a majority of producers and importers voting in the referendum favor termination.

DATES: Written comments on this proposed rule must be received by May 18, 2000. Comments on the information collection requirements of this proposed rule must be received by June 19, 2000.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch, Room 2627-S; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA; STOP–0251; 1400 Independence Avenue, SW.; Washington, D.C. 20250–0251. Comments may also be sent by e-mail to Ralph.Tapp@usda.gov or by fax to 202/720–1125. State that your comments refer to Docket No. LS–99–14. Comments received may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays, or on the internet at www.ams.usda.gov/lsg/mpb/rp-pork.htm.

Pursuant to the Paperwork Reduction Act of 1995 (PRA), also send comments regarding the merits of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to the above address. Comments concerning the information collection requirements contained in this proposed rule should also be sent to the Desk Officer for Agriculture, Offices of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch on 202/720–1115, fax 202/720–1125, or by e-mail Ralph.Tapp@usda.gov.

Producers can determine the location of county Farm Service Agency (FSA) offices by contacting (1) the nearest county FSA office, (2) the State FSA office, or (3) through an online search of the FSA website at www.fsa.usda.gov/pas/search.htm. From the options available on this webpage select "FSA Field Office Search," select "St Abbrv," and enter the county name in the "Cnty code" block. Some county FSA offices service multiple counties.

SUPPLEMENTARY INFORMATION: This proposed rule is authorized under Act (7 U.S.C. 4801–4819).

Question and Answer Overview

Why Are Rules Being Proposed for a Referendum on the Pork Checkoff Program?

Later this year, the Department of Agriculture (Department) will conduct a referendum to determine whether producers and importers favor continuation of the pork checkoff program. We want to make sure that our voting procedures and ballots are easily understood and fair. By sharing our proposed procedures and ballots in this document, we can get your feedback on how to make this voting process the best possible.

How Long Do I Have To Comment on the Proposed Rule?

You have 30 days to comment on this proposal. That means your written comments must be received by May 18, 2000. You can mail, fax, or e-mail your comments. Additionally, you have 60 days to provide written comments to OMB on the paperwork burden associated with this proposal. Those comments must be received by June 19, 2000.

Who Is Eligible To Vote in the Referendum?

People and businesses who pay the pork checkoff are eligible to vote. This means that there are three types of eligible voters: (1) persons who produce and sell hogs and pigs in the United States in their own name; (2) persons who import hogs, pigs, or pork products into the United States in their own name; and (3) persons who are designated to cast the single vote for a business that produces and sells, or imports hogs, pigs, or pork products into the United States. In all cases, to be eligible, the person or business would have had to sell hogs, pigs or pork products sometime during the year preceding the referendum voting period.

Persons ineligible to vote include persons who do not pay the pork checkoff such as contract growers as well as persons who left hog farming more than 1 year before the referendum.

When Will the Referendum Be Held?

As soon as we analyze comments on this proposal and make necessary refinements to these voting procedures, a final rule will be published in the **Federal Register**. The final rule will designate two consecutive business days during which producers may vote in-person at the FSA county offices as well as the procedures and dates for casting an absentee ballot. Importers will vote only by mail during the period provided for producer balloting.

Where Do I Vote if I'm a U.S. Producer?

In-person voting will take place at the Department's FSA county offices. If you currently participate in FSA programs, you should vote at the FSA county office where you normally do business. If you do not participate in FSA programs, go to the FSA office in the county where you raise hogs and pigs (or if you raise hogs and pigs in more than one county, the FSA county office where most of your business is conducted). All FSA office locations can be found on the FSA website at www.fsa.usda.gov/pas/search.htm.

Can I Vote by Absentee Ballot?

Yes. We recognize that producers are very busy so absentee balloting will be allowed. Eligible voters may request an absentee ballot from the appropriate county FSA office. Absentee ballots will be available beginning 30 days before the in-person voting. Producers can stop by FSA county offices at their convenience to pick up a ballot or request one by mail. To count, absentee ballots must be postmarked by the last day of the voting period and be received no later than five business days following the voting period.

Where Do I vote if I'm an Importer?

Voting will take place by mail. Importers can request a ballot from the

FSA headquarters office in Washington, D.C., at the address listed in this proposed rule.

How Will the Department Make Certain That Only Eligible Persons Vote in the Referendum?

FSA county offices will publicly display a list of all people who have voted at that office, by absentee ballot as well as in-person. This will allow scrutiny by everyone. If a producer believes that an ineligible person has voted, he or she can challenge that person's ballot. Once a challenge is made, the Department will investigate and determine whether a voting violation has occurred. The Department will require importers to submit proof that they paid the pork assessment when they request their ballots.

Regulatory Impact Analysis

Executive Orders 12866 and 12998 and the Regulatory Flexibility Act

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

This proposed rule has been reviewed under Executive Order 12998, Civil Justice Reform. It is not intended to have a retroactive effect. The Act states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that any person subject to the Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law, and requesting a modification of the Order or an exemption from certain provisions or obligations of the Order. The petitioner will have the opportunity for a hearing on the petition. Thereafter the Secretary will issue a decision on the petition. The Act provides that the district court of the United States in any district in which the petitioner resides or carries on business has jurisdiction to review a ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's decision.

The petitioner must exhaust his or her administrative remedies before he or she can initiate any such proceedings in the district court.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 United States Code (U.S.C.) 601 *et seq.*), the Administrator of AMS has considered the economic impact of this proposed action on small entities.

According to the December 29, 1999, issue of the "Hogs and Pigs" report published by the National Agricultural Statistics Service (NASS), the number of farms with hogs and pigs was 98,460. According to the U.S. Customs Service, in 1999 there were 524 importers of hogs, pigs, pork and pork products in the United States. The majority of the 98,460 hog producers and 524 importers subject to the Order should be classified as small entities under the criteria established by the Small Business Administration.

This proposed rule is authorized under the Act and would establish procedures for the conduct of a referendum to determine whether producers and importers favor continuation of the Pork Checkoff. Such procedures would permit all eligible producers and importers who have been engaged in the production and sale or importation of hogs, pigs, pork, and pork products to vote in the referendum. Participation in the referendum is voluntary. Producers may cast their votes either by absentee ballots or in-person at county FSA offices. Importers would cast their ballots by mail at the FSA headquarters office in Washington, D.C.

The information collection requirements, as discussed below, would be minimal. Casting votes by mail or in-person would not impose a significant economic burden on participants. Accordingly, the Administrator of AMS has determined that this proposed rule will not have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction Act

This proposed rule contains reporting requirements that are subject to public comment and review by OMB under PRA (44 U.S.C. Chapter 35). In accordance with 5 CFR Part 1320, we include the description of the reporting requirements and an estimate of the annual burden on producers and importers required to report information under this proposed rule. The information collection requirements in this proposed rule are being submitted for OMB approval.

Title: Pork Promotion, Research, and Consumer Information Program: Procedures for the Conduct of Referendum

OMB Number: 0581–New collection.

Expiration Date of Approval: 3 years from date of approval.

Type of Request: Approval of new information collection.

Abstract: The purpose of this proposed rule is to determine whether pork producers and importers favor continuation of the Pork Promotion, Research, and Consumer Information Program. The question on the ballot will be: "Do you favor the continuation of the Pork Checkoff which funds the Pork Promotion, Research, and Consumer Information Program? Yes or No." For producers, provisions are made for in-person voting, absentee voting, registration lists and the challenge of voters. For importers, provision is made for voting by mail only. Importers would submit a copy of the U.S. Customs Service Form 7501 (as proof of eligibility) along with their request for a mail ballot.

AMS estimates that the cost per person to comply with the reporting provision of this proposed rule is $20 per hour for a total cost of $207,400. This is based on an estimated 50,000 voters participating in the referendum.

In this proposed rule, information collection requirements include a one-time submission of the required information on the following forms which are included in an Appendix at the end of this action.

(a) Producers voting in-person would:

(1) Sign the In-Person Voter Registration List (Form LS–75).

(2) Complete a Ballot Form (Form LS–72).

(3) Insert the ballot into the "PORK BALLOT" envelope (Form LS–72–1).

(4) Complete the Certification and Registration Form that is printed on the "PORK REFERENDUM" envelope (Form LS–72–2), and insert the "PORK BALLOT" envelope (Form LS–72–1), with the enclosed ballot, in the "PORK REFERENDUM" envelope (Form LS–72–2).

(b) Producers voting absentee would:

(1) Complete, a combined registration and absentee ballot form (Form LS–73).

(2) Insert the ballot portion in a "PORK BALLOT" envelope (Form LS–72–1).

(3) Put the sealed "PORK BALLOT" (Form LS–72–1) envelope and the registration form in the "PORK REFERENDUM" envelope (Form LS–73–1).

(c) Importers voting in the referendum would have their names placed on a Importer Ball Request List (Form LS–77) by FSA employees. They would vote using a mail ballot package consisting of

an Importer Ballot, Registration, Certification (Form LS–76), a "Pork Ballot" envelope (Form LS–72–1), and a "Pork Referendum" envelope (Form LS–72–2). They would complete the ballot and registration form and place the ballot in the "Pork Ballot" envelope, and place it in the "Pork Referendum" envelope along with the registration form.

(d) The proposed rule requires each producer of hogs and pigs, who votes in person to record on the In-Person Voter Registration List (Form LS–75) his or her name and the name of the corporation or other entity he or she represents. Employees in each county FSA office will fill out the Absentee Voter Request List (Form LS–74).

1. *In-Person Voting Ballot:* Form LS–72, Pork Ballot Envelope: Form LS–72–1, In-Person Registration and Certification Envelope: Form LS–72–2.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average .10 hour per response.

Respondents: Only producers voting in-person in the referendum would use the forms.

Estimated Number of Respondents: 25,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,500 hours.

Total Cost: $50,000.

2. *Absentee Registration and Certification and Voting Ballot:* Form LS–73, Pork Ballot Envelope: Form LS–72–1, Pork Referendum Envelope: Form LS–73–1.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average .10 hour per response.

Respondents: Only producers requesting an absentee ballot to vote in the referendum would use the forms.

Estimated Number of Respondents: 25,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,500 hours.

Total Cost: $50,000.

3. *In-Person Voter Registration List:* Form LS–75.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average .02 hour per response.

Respondents: Only producers voting in-person in the referendum would use this form.

Estimated Number of Respondents: 25,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 500 hours.

Total Cost: $10,000.

4. *Absentee Voter Request List:* Form LS–74.

Estimate of Burden: Employees in each county FSA office would fill out one or more of the Absentee Voter Request Lists (Form LS–74). Because only county FSA employees would complete the Absentee Voter Request List, the estimated average reporting burden would not apply to the producer voting absentee in the referendum.

5. *Challenge of Voters.*

Estimate of Burden: The public reporting burden for this collection of information is estimated to average .08 hour per response.

Respondents: Only producers wishing to challenge a vote of another producer would be required to provide such challenge in writing to the county FSA office.

Estimated Number of Respondents: 2,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 320 hours.

Total Cost: $6,400.

6. *Proof of Eligibility.*

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Producers responding to a challenge of their eligibility to vote would be required to submit to the county FSA office records such as sales documents, or other similar documents to prove that the person was a producer during the representative period.

Estimated Number of Respondents: 2,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,000 hours.

Total Cost: $40,000.

7. *Appealing a Challenge of Eligibility*

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Producers appealing a determination of their ineligibility to vote in the referendum would be required to submit to the county FSA office records such as sales documents, or other similar documents to prove that the person was a producer during the representative period.

Estimated Number of Respondents: 2,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2,000 hours.

Total Cost: $40,000.

8. *Importer Ballot:* Form LS–76, Pork Ballot Envelope: Form LS–72–1, Pork Referendum Envelope: Form LS–73–1.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average .10 hour per response.

Respondents: Importers who can only vote by mail ballot in the referendum would use the forms.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 50 hours.

Total Cost: $1,000.

9. Submission of U.S. Customs Service Form 7501 as proof of importer eligibility.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Importers voting in the referendum would submit a copy of U.S. Customs Service Form 7501 with their request for a mail ballot.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on: 500 hours.

Total Cost: $10,000.

10. *Importer Ballot Request List:* Form LS–77.

Estimate of Burden: Employees in the Washington D.C. FSA headquarters office would fill out the Importer Ballot Request List (Form LS–77). Because only headquarters FSA employees would complete the Importer Ballot Request List, the estimated average reporting burden would not apply to importers voting in the referendum.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments concerning the information collection requirements contained in this action should

reference the Docket Number LS–99–14, together with the date and page number of this issue of the **Federal Register**. Comments also may be sent to Ralph L. Tapp, Chief; Marketing Programs Branch, Room 2627–S; Livestock and Seed Program, AMS, USDA; STOP 0251; 1400 Independence Avenue, SW.; Washington, D.C. 20250–0251; by fax at 202/720–1125, or by e-mail at Ralph.Tapp@usda.gov. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503. All comments received will be available for public inspection during regular business hours, 8 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, at the same address. All responses to this rule will be summarized and included in the request for OMB approval.

OMB is required to make a decision concerning the collection of information contained in this rule between 30 days and 60 days after publication. Therefore, a comment to OMB is best assured of being considered if OMB receives it within 30 days after publication.

Background

The Act provides for the establishment of a coordinated program of promotion and research designed to strengthen the pork industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for pork and pork products. The program is financed by a pork checkoff assessment of 0.45 percent of the market value of domestic hogs and pigs and an equivalent amount on imported hogs and pigs and imported pork and pork products. Pursuant to the Act, an Order was made effective September 5, 1986, and the collection of assessments began on November 1, 1986.

The Act provides that at the request of a number of persons equal to at least 15 percent of persons who have been producers and importers during a representative period as determined by the Secretary, the Secretary would conduct a referendum to determine whether the producers and importers favor the continuation of the Pork Checkoff. Based on statistical data reported by NASS in the December 29, 1998, issue of the "Hogs and Pigs" report and information from the 1997 Census, there were 98,892 producers who sold hogs and pigs in 1998. According to data submitted by U.S. Customs Service, in 1998, there were 1,017 importers of hogs, pigs, pork, and pork products. The total number of producers and importers who would be eligible to sign the petition was 99,909. Fifteen percent of 99,909 equals 14,986. Therefore, AMS determined that a petition containing 14,986 valid signatures was sufficient to request a referendum.

On May 24, 1999, a petition containing 19,043 names was submitted to AMS. AMS conducted a signature validation process to ensure that the petitioners were pork producers or importers during the representative period, January 1, 1997, to June 1, 1999, and signed the petition. However, the Department concluded that the validation process is vulnerable to criticism in a number of respects and that the Department cannot be certain of the exact number of valid signatures. Because many thousands of valid signatures were received, however, the Secretary has determined to hold a referendum at the Department's expense in the interest of fairness. Since the initial referendum in 1988, pork producers and importers have not had the opportunity to vote on the continuation of the pork checkoff program.

The purpose of the proposed rule is to determine whether pork producers and importers favor continuation of the Pork Promotion, Research, and Consumer Information Order. Therefore, the question on the ballot will be: "Do you favor the continuation of the Pork Checkoff program which funds the Pork Promotion, Research, and Consumer Information Order? Yes or No." Support of the program by a majority of persons who pay assessments is essential to both the establishment and the continuation of this program. Assessment collection under the Order would be terminated not later than 30 days after the date it is determined that termination of the Order is favored by a majority of the producers and importers voting in the referendum. The Order would be terminated in an orderly manner as soon as practical after the date of such determination.

The initial referendum was conducted in 1988, and this is the first referendum conducted since the initial one.

The proposed rule sets forth procedures to be followed in conducting the referendum under the Act, including definitions, representative period, supervision of the referendum, mail ballots, challenge of voters and appeals, in-person voting procedures, absentee voting procedures, importer voting procedures, reporting referendum results, and disposition of the ballots and records. FSA will assist in the conduct of the referendum by (1) providing the polling places; (2) counting ballots; (3) determining the eligibility of challenged voters; and (4) reporting referendum results.

Interested persons are invited to comment on this proposed rule. A 30-day comment period is provided to submit comments on this proposal. This comment period is deemed appropriate in order to conduct a referendum as soon as possible.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Pork and pork products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 1230 be amended as follows:

PART 1230—PORK PROMOTION, RESEARCH, AND INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

2. A new subpart E is added to read as follows:

Subpart E—Procedures for the Conduct of Referendum Definitions

Sec.

1230.601 Act.
1230.602 Administrator, AMS.
1230.603 Administrator, FSA.
1230.604 Department.
1230.605 Farm Service Agency.
1230.606 Farm Service Agency County Committee.
1230.607 Farm Service Agency County Executive Director.
1230.608 Farm Service Agency State Committee
1230.609 Imported porcine animals, pork, and pork products.
1230.610 Importer.
1230.611 Order.
1230.612 Porcine animal.
1230.613 Person.
1230.614 Pork.
1230.615 Pork product.
1230.616 Producer.
1230.617 Public notice.
1230.618 Referendum.
1230.619 Representative period.
1230.620 Secretary.
1230.621 State.
1230.622 Voting period.

Referendum

1230.623 General.
1230.624 Supervision of referendum.
1230.625 Eligibility.
1230.626 Time and place of registration and voting.
1230.627 Facilities for registering and voting.
1230.628 Registration form and ballot.
1230.629 Registration and voting procedures for producers.
1230.630 Registration and voting procedures for importers.

1230.631 List of registered voters.
1230.632 Challenge of voters.
1230.633 Receiving ballots.
1230.634 Canvassing ballots.
1230.635 FSA county office report.
1230.636 FSA State office report.
1230.637 Results of the referendum.
1280.638 Disposition of ballots and records.
1230.639 Instructions and forms.

Subpart E—Procedures for the Conduct of Referendum Definitions

§ 1230.601 Act.

The term *Act* means the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819) and any amendments thereto.

§ 1230.602 Administrator, AMS.

The term *Administrator*, AMS, means the Administrator of the Agricultural Marketing Service, or any officer or employee of the Department to whom there has heretofore been delegated or may hereafter be delegated the authority to act in the Administrator's stead.

§ 1230.603 Administrator, FSA.

The term *Administrator*, FSA, means the Administrator, of the Farm Service Agency, or any officer or employee of the Department to whom there has heretofore been delegated or may hereafter be delegated the authority to act in the Administrator's stead.

§ 1230.604 Department.

The term *Department* means the United States Department of Agriculture.

§ 1280.605 Farm Service Agency.

The term *Farm Service Agency* also referred to as "FSA" means the Farm Service Agency of the Department.

§ 1230.606 Farm Service Agency County Committee.

The term *Farm Service Agency County Committee*, also referred to as the *FSA County Committee* or *COC*, means the group of persons within a county elected to act as the Farm Service Agency County Committee.

§ 1230.607 Farm Service Agency County Executive Director.

The term *Farm Service Agency County Executive Director* also referred to as the *CED*, means the person employed by the FSA County Committee to execute the policies of the FSA County Committee and be responsible for the day-to-day operations of the FSA county office, or the person acting in such capacity.

§ 1230.608 Farm Service Agency State Committee.

The term *Farm Service Agency State Committee*, also referred to as *FSA State Committee* or *STC*, means the group of persons within a State selected by the Secretary to act as the Farm Service Agency State Committee.

§ 1230.609 Imported porcine animals, pork, and pork products.

The term *Imported porcine animals, pork, and pork products* means those animals, pork, or pork products that are imported into the United States and subject to assessment under the harmonized tariff schedule numbers identified in § 1230.110 of the regulations.

§ 1230.610 Importer.

The term *Importer* means a person who imports porcine animals, pork, or pork products into the United States.

§ 1280.611 Order.

The term *Order* means the Pork Promotion, Research, and Consumer Information Order.

§ 1230.612 Porcine animal.

The term *Porcine animal* means a swine, that is raised:

(a) As a feeder pig, that is, a young pig sold to another person to be finished over a period of more than 1 month for slaughtering;

(b) For breeding purposes as seed stock and included in the breeding herd; and

(c) As a market hog, slaughtered by the producer or sold to be slaughtered, usually within 1 month of such transfer.

§ 1230.613 Person.

The term *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1230.614 Pork.

The term *Pork* means the flesh of a porcine animal.

§ 1230.615 Pork product.

The term *Pork product* means an edible product processed in whole or in part from pork.

§ 1230.616 Producer.

The term *Producer* means a person who produces porcine animals in the United States for sale in commerce.

§ 1230.617 Public notice.

The term *Public notice* means information regarding a referendum that would be provided by the Secretary, such as press releases, newspapers, electronic media, FSA county newsletters, and the like. Such notice would contain the referendum date and location, registration and voting requirements, rules regarding absentee voting, and other pertinent information.

§ 1230.618 Referendum.

The term *Referendum* means any referendum to be conducted by the Secretary pursuant to the Act whereby persons who have been producers and importers during a representative period would be given the opportunity to vote to determine whether producers and importers favor continuation of the Order.

§ 1230.619 Representative period.

The term *Representative period* means the 12-consecutive months prior to the referendum.

§ 1230.620 Secretary.

The term *Secretary* means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom there has been delegated or to whom authority may hereafter be delegated to act in the Secretary's stead.

§ 1230.621 State.

The term *State* means each of the 50 States.

§ 1230.622 Voting period.

The term *Voting period* means the 2-consecutive business day period for in-person voting.

Referendum

§ 1230.623 General.

(a) A referendum to determine whether eligible pork producers and importers favor continuation of the Pork Checkoff would be conducted in accordance with this subpart.

(b) The Pork Checkoff would be terminated only if a majority of producers and importers voting in the referendum favor such termination.

(c) The referendum would be conducted at the county FSA offices for producers and at FSA headquarters office in Washington, D.C., for importers.

§ 1230.624 Supervision of referendum.

The Administrator, AMS would be responsible for conducting the referendum in accordance with this subpart.

§ 1230.625 Eligibility.

(a) Eligible producers and importers. Persons eligible to register and vote in the referendum include:

(1) Individual Producers. Each individual who produces hogs or pigs for sale in commerce during the representative period and does so in his or her own name is entitled to cast one ballot.

(2) Producers who are a corporation or other entity. Each corporation or other

entity that produces hogs or pigs for sale in commerce during the representative period is entitled to cast one ballot. A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation engaged in the production of hogs and pigs would be entitled to only one vote; provided, however, that any member of a group may register to vote as a producer if he or she sells hogs or pigs in his or her own name.

(3) Importers. Each importer who imports hogs, pigs, pork, or pork products during the representative period is entitled to cast one ballot. A group of individuals, such as members of a family, joint tenant, tenants in common, a partnership, or a corporation engaged in the importation of hogs, pigs, pork, or pork products would be entitled to only one vote; provided, however, that any member of a group may register to vote as a importer if he or she imports hogs, pigs, pork, or pork products in his or her own name.

(b) Proxy registration and voting. Proxy registration and voting is not authorized, except that an officer or employee of a corporate producer or importer, or any guardian, administrator, executor, or trustee of a producer's or importer's estate, or an authorized representative of any eligible producer or importer (other than an individual producer or importer), such as a corporation or partnership, may register and cast a ballot on behalf of that entity. Any individual who registers to vote in the referendum on behalf of any eligible producer or importer corporation or other entity would certify that he or she is authorized to take such action.

§ 1230.626 Time and place of registration and voting.

(a) Producers. The referendum shall be held for 2-consecutive days on dates to be determined by the Secretary. Eligible producers shall register and vote following the procedures in § 1230.629. Producers shall register and vote during the normal business hours of each county FSA office or request absentee ballots from the county FSA offices by mail or facsimile, or pick up an absentee ballot in person.

(b) Importers. The referendum shall be conducted by mail ballot by the FSA headquarters office in Washington, D.C., during dates to be determined by the Secretary. Importer voting shall take place during the same time period provided producers for in-person and absentee voting in the referendum.

§ 1230.627 Facilities for registering and voting.

(a) Producers. Each county FSA office will provide:

(1) Adequate facilities and space to permit producers of hogs and pigs to register and to mark their ballots in secret,

(2) A sealed box or other designated receptacle for registration forms and ballots that is kept under observation during office hours and secured at all times, and

(3) Copies of the Order for review.

(b) Absentee Ballots. Each FSA county office shall provide each producer an absentee ballot package upon request. Producers can pick up an absentee ballot in person or request it by mail or facsimile. The FSA county office shall record receipt of the completed absentee ballot and place it in a secure ballot box.

(c) Importers. The FSA headquarters office will:

(1) Mail ballot packages to eligible importers upon request,

(2) Have a sealed box or other designated receptacle for registration forms and ballots that is kept under observation during office hours and secured at all times, and

(3) Mail copies of the Order to importers if requested.

§ 1230.628 Registration form and ballot.

(a) Producers. (1) A ballot (Form LS–72) and combined registration and certification form (Form LS–72–2) will be used for voting in-person. The information required on the registration form will include name, address, and county of voter residence. The form also will contain the certification statement referenced in § 1230.629. The ballot will require producers to check a "yes" or "no."

(2) A combined registration and voting form (Form LS–73) will be used for absentee voting. The information required on this combined registration and voting form will include name, address, telephone number, and county of voter residence. The form will also contain the certification statement referenced in § 1230.629. The ballot will require producers to check "yes" or "no."

(b) Importers. A combined registration and ballot (Form LS–76) will be used for importer voting. The information required on the combined registration and ballot will include name, address, and telephone number. The form will also contain a certification statement referenced in § 1230.630. The ballot will require importers to check "yes" or "no."

§ 1230.629 Registration and voting procedures for producers.

(a) Registering and voting in-person. (1) Each eligible producer who wants to vote whether as an individual or as a representative of a corporation or other entity would register during the voting period at the county FSA office where FSA maintains and processes the individual producer's or corporation or other entities' administrative farm records. A producer voting as an individual or as a representative of a corporation or other entity not participating in FSA programs, shall register and vote in the county FSA office serving the county where the individual producer or corporation or other entity owns hogs and pigs. An individual or an authorized representative of a corporation or other entity who owns hogs and pigs in more than one county would register and vote in the FSA county office where the individual or corporation or other entity does most of its business. Producers shall be required to record on the In-Person Voter Registration List (Form LS–75) their names and, if applicable, the name of the corporation or other entity they represent before they can receive a registration form and ballot. To register, producers shall complete the registration form (Form LS–72–2) and certify that:

(i) They or the corporation or other entity they represent were producers during the specified representative period; and

(ii) The person voting on behalf of a corporation or other entity referred to in § 1230.613 is authorized to do so;

(2) Each eligible producer who has not voted by means of an absentee ballot may cast a ballot in person at the location and time set forth in § 1230.626 and on the dates to be announced by the Secretary. Eligible producers who record their name or the corporation or other entity they are authorized to represent on the In-Person Voter Registration List (Form LS–75) will receive a registration form/envelope (Form LS–72–2) and a ballot (Form LS–72). Voters will enter the information requested on the combined registration and certification form/envelope (Form LS–72–2) as indicated above. Producers will then mark their ballots to indicate "yes" or "no." Producers will place their completed ballots in an envelope marked "PORK BALLOT" (Form LS–72–1), seal and place it in the completed and signed registration form/envelope marked "PORK REFERENDUM" (Form LS–72–2), seal that envelope and personally place it in a box marked "Ballot Box" or other designed receptacle. Voting will be conducted

under the supervision of the county FSA CED.

(b) Absentee voting. (1) Eligible producers who are unable to vote in person may request an absentee voting package consisting of a combined registration and absentee ballot form (Form LS–73) and two envelopes—one marked "PORK BALLOT" (Form LS–72–1) and the other marked "PORK REFERENDUM" (Form LS–73–1) by mail, facsimile, or by picking up one in person from the county FSA office where FSA maintains and processes the producer's administrative farm records.

(2) If a producer, whether requesting an absentee ballot as an individual or an authorized representative of a corporation or other entity does not participate in FSA programs, and therefore does not have administrative records at a county FSA office, he or she may request an absentee voting package by mail, facsimile, or pick it up in-person from the county FSA office serving the county where the individual or corporation or other entity owns hogs and pigs. An individual or authorized representative of a corporation or other entity, who owns hogs or pigs in more than one county can request an absentee ballot from the county FSA office where the producer or corporation or other entity does most of their business.

(3) An absentee voting package will be mailed to producers by the FSA CED to the address provided by the prospective voter. Only one absentee registration form and absentee ballot will be provided to each eligible producer. The absentee ballots and registration forms may be requested during a specified time period that will be announced by the Secretary.

(4) The county FSA office will enter on the Absentee Voter Request List (Form LS–74) the name and address of the individual or corporation or other entity requesting an absentee ballot and the date the forms were requested.

(5) To register, eligible producers shall complete and sign the combined registration form and absentee ballot (Form LS–73) and certify that:

(i) They or the corporation or other entity they represent were producers during the specified representative period;

(ii) If voting on behalf of a corporation or other entity referred to in § 1230.613, they are authorized to do so.

(6) A producer, after completing the absentee voter registration form and the ballot, shall remove the ballot portion of the combined registration and absentee ballot form (Form LS–73) and seal the completed ballot in a separate envelope marked "PORK BALLOT" (Form LS–72–1) and place the sealed envelope in a second envelope marked "PORK REFERENDUM" (Form LS–73–1) along with the signed registration form. Producers will be required to print their names on the envelope marked "PORK REFERENDUM" (Form LS–73–1), and mail or hand deliver it to the county FSA office from which the producer or corporation or other entity obtained the absentee voting package.

(7) Absentee ballots returned by mail will have to be postmarked with a date not later than the last day of the voting period and be received in the county FSA office by the close of business on the fifth business day after the last day of the voting period. Absentee ballots received after that date will be counted as invalid ballots. Upon receiving the "PORK REFERENDUM" envelope (Form LS–73–1) containing the registration form and ballot, the county FSA CED would place it, unopened in a secure ballot box. Before placing the "Pork Referendum" envelope (Form LS–73–1) in the ballot box the county FSA CED would record the date the absentee ballot was received in the FSA county office on the absentee Ballot Request List (Form LS–74).

§ 1230.630 Registration and voting procedures for importers.

(a) Individual importers, corporation, or other entities can obtain the registration and certification forms, ballots and envelopes by mail from the following address: USDA, FSA, Operations Review and Analysis Staff, Attention: William A. Brown, Post Office Box XXXX, Washington, D.C., XXXXX. Importers may pick up the voting materials in-person at USDA, FSA, Operations Review and Analysis Staff, Room 2741, South Agriculture Building, 1400 Independence Avenue, SW., Washington, D.C. Importers may request voting materials by facsimile. The facsimile number is 202/690–3354.

(b) When requesting a ballot, eligible importers will be required to submit a U.S. Customs Service Form 7501 showing that they paid the pork assessment during the representative period.

(c) Upon receipt of a request and U.S. Customs Service Form 7501, the voting materials will be mailed to importers by the FSA headquarters office in Washington, D.C., to the address provided by the importer or corporation or other entity. Only one mail ballot and registration form will be provided to each eligible importer. The forms must be requested during a specified time period to be announced by the Secretary.

(d) The FSA headquarters office in Washington, D.C., will enter on the Importer Ballot Request List (Form LS–77) the name and address of the importer requesting a ballot and the date of the request.

(e) To register, eligible importers would complete and sign the combined registration form and ballot (Form LS–76) and certify that:

(1) To the best of their knowledge and belief the information provided on the form is true and accurate;

(2) If voting on behalf of an importer corporation or other entity referred to in § 1230.613, they are authorized to do so.

(f) Eligible importers, after completing the ballot and registration form, would remove the ballot portion of the combined registration form and ballot form (Form LS–76) and seal the completed ballot in a separate envelope marked "PORK BALLOT" (Form LS–72–1) and place the sealed envelope in a second envelope marked "PORK REFERENDUM" (Form LS–73–1) along with the signed registration form. Importers or corporations or other entities would legibly print their names on the envelope marked "PORK REFERENDUM" (Form LS–73–1), and mail the envelope to the FSA headquarters office at the following address: USDA, FSA, Operations Review and Analysis Staff, Attention: William A. Brown, Post Office Box XXXX, Washington, D.C., XXXXX. Importers may hand deliver the "Pork Referendum" envelope to USDA, FSA, Operations Review and Analysis Staff, Room 2741, South Agriculture Building, 1400 Independence Avenue, SW., Washington, D.C.

(g) The "PORK REFERENDUM" envelope containing the registration and ballot has to be postmarked with a date not later than the last day of the voting period and be received in the FSA office by the close of business on the fifth business day after the date of the last day of the voting period. Ballots received after that date will be counted as invalid ballots. Upon receiving the "PORK REFERENDUM" envelope (Form LS–73–1) containing the registration form and ballot, an FSA employee will place it, unopened in a secure ballot box. Before placing the "PORK REFERENDUM" envelope (Form LS–73–1) in the ballot box, the FSA employee will record the date the ballot was received in the FSA headquarters office in Washington, D.C., on the Importer Ballot Request List (Form LS–77).

§ 1230.631 List of registered voters.

(a) Producers. The Voter Registration List (Form LS–75) and the Absentee Voter Request List (Form LS–74) will be available for inspection on the 2 days of

the voting period and the six business days following the date of the last day of the voting period at the county FSA office. The lists will be posted during regular office hours in a conspicuous public location at the FSA county office. Absentee ballots arriving after the Absentee Voter Request List is first posted will be recorded on the Absentee Voter Request List each day. The complete In-Person Voter Request List will be posted in the FSA county office on the first business day after the date of the last day of the voting period. The complete Absentee Voter Request List will be posted in the FSA county Office on the sixth business day after the date of the last day of the voting period.

(b) Importers. The Importer Ballot Request List (Form LS–77) will be maintained by the FSA headquarters office in Washington, D.C., and not posted. Importers will be required to submit proof of eligibility a copy of a U.S. Customs Service Form 7501 with their request for a ballot.

§ 1280.632 Challenge of votes.

(a) Challenge period. During the dates of the 2-consecutive day voting period and the six business days following the voting period, the ballots of producers may be challenged at the FSA county office.

(b) Who can challenge. Any person can challenge a producer's vote. Any person who wants to challenge shall do so in writing and shall include the full name of the individual or corporation or other entity being challenged. Each challenge of a producer voter must be made separately and each challenge must be signed by the challenger.

(c) Who can be challenged. Any producer having cast an in-person ballot or an absentee ballot whose name is posted on the Voter Registration List or the Absentee Voter Request List can be challenged. Absentee ballots have to be received in the FSA county office before a producer's vote can be challenged.

(d) Determination of challenges. The FSA County Committee or its representative, acting on behalf of the Administrator, AMS, will make a determination concerning the challenge and will notify challenged producers as soon as practicable, but no later than eleven business days after the date of the last day of the voting period. If the FSA County Committee or its representative, acting on behalf of the Administrator, AMS, is unable to determine whether a person was a producer during the representative period, it will require the person to submit records such as sales documents, or other similar documents to prove that the person was a producer during the representative period. The FSA County Committee will then make a decision on the producer's eligibility and notify the producer of its decision.

(e) Challenged ballot. A challenge to a ballot shall be deemed to have been resolved if the determination of the FSA County Committee or its representative acting on behalf of the Administrator, AMS, is not appealed within the time allowed for appeal or there has been a determination by FSA after an appeal.

(f) Appeal. A person declared to be ineligible to register and vote by the FSA County Committee or its representative, acting on behalf of the Administrator, AMS, can file an appeal at the FSA county office within five business days after the date of receipt of the letter of notification of ineligibility. The FSA county office shall send a producers's appeal by facsimile to the FSA State Committee on the date it is filed at the FSA county office or as soon as practical thereafter.

(g) An appeal will be determined by the FSA State Committee as soon as practicable, but in all cases not later than the thirtieth business day after the date of the last day of the voting period. The FSA State Committee shall send its decision on a producer's appeal to the FSA County office where the producer was initially challenged. The FSA County office shall notify the challenged producers of the FSA State Committee's determination on their appeals. The FSA State Committee's determination on an appeal shall be final.

§ 1230.633 Receiving ballots.

(a) *Producers.* A ballot shall be considered to be received on time if:

(1) It was cast in-person in the county FSA office prior to the close of business on the date of the last day of the voting period; or

(2) It was cast as an absentee ballot, having a postmarked date not later than the last day of the voting period and was received in the county FSA office not later than the close of business, five business days after the last day of the voting period.

(b) *Importers.* A ballot shall be considered to be received on time if it had a postmark not later than the date of the last day of the voting period and was received in the FSA headquarters office in Washington, D.C., not later than the close of business, five business days after the last day of the voting period.

§ 1230.634 Canvassing ballots.

(a) *Producers.* (1) Counting the ballots. Under the supervision of FSA County Executive Director acting on behalf of the Administrator, AMS, the registration forms and ballots for producer voters will be checked against the Voter Registration List (Form LS–75) and the Absentee Voter Request List (Form LS–74) to determine properly registered voters. The ballots of producers voting in-person whose names are not on the Voter Registration List (Form LS–75), will be declared invalid. Likewise, the ballots of producers voting absentee whose names are not on the Absentee Voter Request List (Form LS–74) will be declared invalid. All ballots of challenged producer voters declared ineligible and invalid ballots will be kept separate from the other ballots and the envelopes containing these ballots will not be opened. The valid ballots will be counted on the thirty-first business day after the last day of the voting period. FSA county office employees will remove the sealed "PORK BALLOT" envelope (Form LS–72–1) from the registration form/envelopes or absentee ballot envelopes of all eligible producer voters and all challenged producer voters determined to be eligible. After removing all "Pork Ballot" envelopes, FSA county employees will shuffle the sealed "Pork Ballot" envelopes or otherwise mix them up so that ballots cannot be matched with producers' names. After shuffling the "Pork Ballot" envelopes, FSA county employees will open them and count the ballots. The ballots will be counted as follows:

(i) Number of eligible producers casting valid ballots;

(ii) Number of producers favoring continuation of the Pork Checkoff;

(iii) Number of producers favoring termination of the Pork Checkoff;

(iv) Number of challenged producer ballots deemed ineligible;

(v) Number of invalid ballots; and

(vi) Number of spoiled ballots.

(2) *Invalid ballots.* Ballots will be declared invalid if a producer voting in-person has failed to sign the Voter Registration List (Form LS–75) or an absentee voter's name is not recorded on the Absentee Voter Request List (Form LS–74), or the registration form or ballot was incomplete or incorrectly completed.

(3) *Spoiled ballots.* Ballots will be considered spoiled if they are mutilated or marked in such a way that either the "yes" or "no" vote is illegible. Spoiled ballots shall not be considered as approving or disapproving the Pork Checkoff, or as a ballot cast in the referendum.

(4) *Confidentiality.* All ballots shall be confidential and the contents of the ballots not divulged except as the Secretary may direct. The public may witness the opening of the ballot box

and the counting of the votes but may not interfere with the process.

(b) *Importers.* (1) Counting the ballots. FSA headquarters personnel acting on behalf of the Administrator, AMS, will check the registration forms and ballots for all importer voters against the Importer Ballot Request List (Form LS–77) to determine properly registered voters. The ballots of importers voting whose names are not recorded on the Importer Ballot Request List (Form LS–77), will be declared invalid. All ballots of importer voters declared invalid will be kept separate from the other ballots and the envelopes containing these ballots will not be opened. The valid ballots will be counted on the thirty-first business day after the date of the last day of the voting period. FSA headquarter office employees will remove the sealed "PORK BALLOT" envelope (Form LS–72–1) from the "Pork Referendum" envelopes (Form LS–73–1) of all eligible importer voters. After removing all "Pork Ballot" envelopes, FSA headquarter employees will shuffle the sealed "Pork Ballot" envelopes or otherwise mix them up so that ballots cannot be matched with importers' names. After shuffling the "Pork Ballot" envelopes, FSA headquarters employees will open the envelopes and count the ballots. The ballots will be counted as follows:

(i) Number of eligible importers casting valid ballots;

(ii) Number of importers favoring continuation of the Pork Checkoff;

(iii) Number of importers favoring termination of the Pork Checkoff;

(iv) Number of importer ballots deemed invalid; and

(v) Number of spoiled ballots.

(2) *Invalid ballots.* Ballots will be declared invalid if an importer voter's name was not recorded on the Importer Ballot Request List (Form LS–77), or the registration form or ballot was incomplete or incorrectly completed.

(3) Spoiled ballots. Ballots will be considered spoiled if they were mutilated or marked in such a way that either the "yes" or "no" vote was illegible. Spoiled ballots shall not be considered as a ballot cast in the referendum.

(4) *Confidentiality.* All ballots shall be confidential and the contents of the ballots not divulged except as the Secretary may direct. The public can witness the opening of the ballot box and the counting of the votes but can not interfere with the process.

§ 1230.635 FSA county office report.

The FSA county office will notify the FSA State office of the results of the referendum. Each FSA county office will transmit the results of the referendum in its county to the FSA State office. Such report will include the information listed in § 1230.634. The results of the referendum in each county will be made available to the public. A copy of the report of results will be posted for 30 days in the FSA county office in a conspicuous place accessible to the public, and a copy will be kept on file in the FSA county office for a period of at least 12 months after the referendum.

§ 1230.636 FSA State office report.

Each FSA State office will transmit to the Administrator, FSA, a written summary of the results of the referendum received from all FSA county offices within the State. The summary shall include the information on the referendum results contained in the reports from all county offices within each State and be certified by the FSA State Executive Director. The FSA State office will maintain a copy of the summary where it will be available for public inspection for a period of not less than 12 months.

§ 1230.637 Results of the referendum.

(a) The Administrator, FSA, will submit the combined results of the FSA State offices' results of the producers' vote and the FSA headquarters office results of the importers' vote to the Administrator, AMS. The Administrator, AMS, will prepare and submit to the Secretary a report of the results of the referendum. The results of the referendum will be issued by the Department in an official press release and published in the **Federal Register**. State reports on producer balloting, FSA headquarters office report on importer balloting, and related papers will be available for public inspection in the office of the Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2627, South Agriculture Building, 1400 Independence Avenue, SW., Washington, D.C.

(b) If the Secretary deems it necessary, the report of any State or county shall be re-examined and checked by such persons as may be designated by the Secretary.

§ 1230.638 Disposition of ballots and records.

(a) Producer Ballots and Records. Each FSA County Executive Director will place in sealed containers marked with the identification of the referendum, the voter registration list, absentee voter request list, voted ballots, challenged registration forms/envelopes, challenged absentee voter registration forms, challenged ballots found to be ineligible, invalid ballots, spoiled ballots, and county summaries. Such records will be placed under lock in a safe place under the custody of the FSA County Executive Director for a period of not less than 12 months after the referendum. If no notice to the contrary is received from the Administrator, FSA, by the end of such time, the records shall be destroyed.

(b) Importer Ballots and Records. The FSA headquarters office in Washington, D.C., will deliver the importer U.S. Customs Service Form 7501 the voter registration list, voted ballots, invalid ballots, spoiled ballots, and national summaries and records to the Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2627, South Agriculture Building, 1400 Independence Avenue, SW., Washington, D.C. A Marketing Programs Branch employee will place the ballots and records in sealed containers marked with the identification of the referendum. Such ballots and records will be placed under lock in a safe place under the custody of the Marketing Programs Branch for a period of not less than 12 months after the referendum. If no notice to the contrary is received from the Administrator, AMS, by the end of such time, the records shall be destroyed.

§ 1230.639 Instructions and forms.

The Administrator, AMS, is authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart to govern the conduct of the referendum.

Dated: April 12, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix—Pork Referendum Forms

The following nine forms referenced in Subpart E Part 1230—Procedures for the Conduct of a Referendum—will be used for registering and voting in the pork referendum and for listing registered voters.

LS–72 In-Person Voting Ballot
LS–72–1 Pork Ballot Envelope
LS–72–2 In-Person Registration and Certification Envelope
LS–73 Absentee Voting Ballot and Registration and Certification Form
LS–73–1 Pork Referendum Envelope
LS–74 Absentee Voter Request List
LS–75 In-Person Voter Registration List
LS–76 Importer Ballot, Registration, and Certification Form
LS–77 Importer Ballot Voter Request List

BILLING CODE 3410–02–P

FORM APPROVED - OMB NO. 0581-0093

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

IN-PERSON VOTING

REFERENDUM ON THE PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

According to the Privacy Act of 1974 (5 USC 552a) and the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0093. The time required to complete this information collection is estimated to average .05 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The authority for requesting the information to be supplied on this form is the Pork, Promotion, Research, and Consumer Information Act of 1985. The information would be furnished to pork producers and importers of pork and pork products who voluntarily participate in the referendum.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means of communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

You may, by law, be fined up to $10,000, imprisoned up to 5 years, or both, for knowingly or willfully making false statements within this document (18 USC Section 1001).

INSTRUCTIONS TO VOTERS ***(Please read carefully):***

1. Before you can **VOTE**, you must sign the **In-Person Voter Registration List.**
2. Individual producers and other producer entities may vote at the county Farm Service Agency (FSA) office where FSA maintains and processes the producer's administrative farm records. Producers not participating in FSA programs may vote in the county FSA office serving the county where the producer owns porcine animals.
3. Complete and sign the **In-Person Registration and Certification** on the **"PORK REFERENDUM"** envelope.
4. Mark "Yes" or "No" on the **In-Person Ballot** below.
5. Put this form into the envelope marked **"PORK BALLOT,"** and seal it.
6. Put the **"PORK BALLOT"** envelope into the **"PORK REFERENDUM"** envelope, seal it, and place it in the designated "Ballot Box."

IN-PERSON BALLOT

Do you favor the continuation of the Pork Checkoff program which funds the Pork Promotion, Research, and Consumer Information Order?

( ) YES ( ) NO

Put this **In-Person Ballot** into the envelope marked **"PORK BALLOT,"** and seal it. Place the sealed **"PORK BALLOT"** in the envelope marked **"PORK REFERENDUM,"** and seal it. Place the **"PORK REFERENDUM"** envelope in the designated "Ballot Box".

LS-72 (PROPOSAL 6)

PORK BALLOT

Seal and insert into envelope marked "Pork Referendum".

LS-72-1 (11-99)

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PORK REFERENDUM

FORM APPROVED - OMB NO. 0581-0093

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

REFERENDUM ON THE PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

IN PERSON REGISTRATION AND CERTIFICATION

According to the Privacy Act of 1974 (5 USC 552a) and the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0093. The time required to complete this information collection is estimated to average .05 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The authority for requesting the information to be supplied on this form is the Pork Promotion, Research, and Consumer Information Act of 1985. The information would be furnished to pork producers, pork importers and importers of pork and pork products who voluntarily participate in the referendum.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means of communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

You may, by law, be fined up to $10,000, imprisoned up to 5 years, or both, for knowingly or willfully making false statements within this document (18 USC Section 1001).

NOTE: If you are voting as an individual, or as joint tenants, tenants in common, a family or other group, please print your name, address, county, and telephone number in the spaces provided. If you are voting on behalf of a legal entity (partnership, corporation, estate, etc.), print its name, address, county, and telephone number in the spaces provided. Failure to complete, sign and return this form will invalidate the In-Person Ballot.

NAME *(See note above)*	TELEPHONE NUMBER *(Including area code)*
MAILING ADDRESS *(Street, P.O. Box, or Route No., City, State, ZIP Code)*	**COUNTY**

CERTIFICATION STATEMENT

***I HEREBY CERTIFY** that at sometime during the period (Date) through (Date), I, or the entity that I represent, was a pork producer and that if I am voting as the representative of an entity, I am authorized to do so and that to the best of my knowledge and belief the information provided herein is true and accurate.*

SIGNATURE	DATE

LS-72-2 (PROPOSAL 6)

FORM APPROVED - OMB NO. 0581-0093

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

REFERENDUM ON THE PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

ABSENTEE VOTING

Important information concerning your rights and liabilities under federal law appears on the reverse of this form.

INSTRUCTIONS TO VOTERS ***(Please read carefully):***

1. Complete and sign the **Registration and Certification Statement** below. (If you are voting as an individual, or as joint tenants, tenants in common, a family or other group, please print your name, address, county, and telephone number in the spaces provided. If you are voting on behalf of a legal entity, such as a partnership, corporation, estate, etc., print its name, address, county and telephone number in the spaces provided.)

2. Mark "Yes" or "No" on the **Absentee Ballot** below.

3. Separate the completed **Absentee Ballot** from the rest of this form, and put it in the envelope marked **"PORK BALLOT."** Seal the **"PORK BALLOT"** envelope.

4. Place both the sealed **"PORK BALLOT"** envelope and the completed and signed **Registration and Certification Statement** into the envelope marked **"PORK REFERENDUM."** Seal the **"PORK REFERENDUM"** envelope. Make sure that your name and address appear in the upper left-hand corner of the **"PORK REFERENDUM"** envelope.

5. Mail or deliver the **"PORK REFERENDUM"** envelope to the county Farm Service Agency (FSA) office from which you obtained the absentee voting materials. To be counted, your **"PORK REFERENDUM"** envelope must contain the correct and completed forms, and must be postmarked not later than the close of business on the date of the last day of in-person voting and arrive in the county FSA office not later than 5 business days after the date of the last day of the in-person voting. **Incomplete or late ballots will not be counted.**

REGISTRATION AND CERTIFICATION STATEMENT (Absentee voting)

Please print name, address, county and telephone number in the spaces provided below. Failure to complete, sign and return this Registration and Certification Statement will invalidate the Absentee Ballot.

NAME *(See instruction number 1 above.)*	TELEPHONE NUMBER *(including area code)*
MAILING ADDRESS *(Street, P.O. Box, or Route No., City, State, ZIP Code)*	COUNTY

***I HEREBY CERTIFY** that at sometime during the period (Date) through (Date), I, or the entity that I represent, was a pork producer and that if I am voting as the representative of an entity, I am authorized to do so; and that to the best of my knowledge and belief the information provided herein is true and accurate.*

SIGNATURE	DATE

LS-73 (PROPOSAL 5) Put the completed **Absentee Voting Registration and Certification Statement** in the envelope marked **"PORK REFERENDUM."**

SEPARATE HERE

ABSENTEE BALLOT

Do you favor the continuation of the Pork Checkoff program which funds the Pork Promotion, Research, and Consumer Information Order? ( ) YES ( ) NO

Separate this "ABSENTEE BALLOT," put it into the "PORK BALLOT" envelope, and seal it. Place both the sealed "PORK BALLOT" envelope and the completed "REGISTRATION AND CERTIFICATION STATEMENT," into the "PORK REFERENDUM," envelope and seal it., Mail or deliver the "PORK REFERENDUM," envelope to the appropriate county FSA office.

LS-73 (PROPOSAL 5)

See reverse of form for Privacy Act Statement.

According to the Privacy Act of 1974 (5 USC 552a) and the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0093. The time required to complete this information collection is estimated to average 0.10 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The authority for requesting the information to be supplied on this form is the Pork, Promotion, Research, and Consumer Information Act of 1985. The information would be furnished to pork producers and importers of pork and pork products who voluntarily participate in the referendum.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means of communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

You may, by law, be fined up to $10,000, imprisoned up to 5 years, or both, for knowingly or willfully making false statements within this document (18 USC Section 1001).

PORK REFERENDUM

LS-73-1 (PROPOSAL 1)
Name and Return Address

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FORM APPROVED - OMB NO. 0581-0093

ABSENTEE VOTER REQUEST LIST

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

REFERENDUM ON THE PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

_____ **COUNTY** *(Enter name of county)*

NOTE: A separate "Absentee Voter Request List" must be maintained for each county served.

PLEASE PRINT REQUIRED INFORMATION

DATE REQUESTED	NAME OF VOTER	REPRESENTING *If voting as the authorized representative of a legal entity (partnership, corporation, estate, etc.) enter its name*	BALLOT MAILING ADDRESS	DATE BALLOT RECEIVED BY FSA

LS-74 (11-00)

FORM APPROVED - OMB NO. 0581-0093

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

IN-PERSON VOTER REGISTRATION LIST

REFERENDUM ON THE PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

_____ **COUNTY** *(Enter name of county)*

NOTE: A separate "In-Person" Voter Registration List must be maintained for each county served.

PLEASE PRINT REQUIRED INFORMATION

NAME OF VOTER		REPRESENTING *If voting as the authorized representative of a legal entity (partnership, corporation, estate, etc.) enter its name.*

FORM APPROVED - OMB NO. 0581-0093

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

IMPORTER VOTING

REFERENDUM ON THE PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

Important information concerning your rights and liabilities under federal law appears on the reverse of this form.

INSTRUCTIONS TO VOTERS ***(Please read carefully):***

1. Complete and sign the **Registration and Certification Statement** below. (If you are voting as an individual, please print your name, address, county, and telephone number in the spaces provided. If you are voting on behalf of a legal entity, such as a partnership, corporation, estate, etc., print its name, address, county and telephone number in the spaces provided.)

2. Mark "Yes" or "No" on the Ballot below.

3. Separate the completed **Ballot** from the rest of this form, and put it in the envelope marked **"PORK BALLOT."** Seal the **"PORK BALLOT"** envelope.

4. Place both the sealed **"PORK BALLOT"** envelope and the completed and signed **Registration and Certification Statement** into the envelope marked **"PORK REFERENDUM."** Seal the **"PORK REFERENDUM"** envelope. Make sure that your name and address appear in the upper left-hand corner of the **"PORK REFERENDUM"** envelope.

5. Mail or deliver the **"PORK REFERENDUM"** envelope to the Farm Service Agency (FSA) office in Washington, D.C. To be counted, your **"PORK REFERENDUM"** envelope must be postmarked not later than the close of business on the date of the last day of the referendum and arrive in the Washington, D.C. FSA office not later than 5 business days after the date of the last day of the in-person voting. **Incomplete or late ballots will not be counted.**

6. Address of the Washington, DC Office: USDA, FSA, Review and Analysis Staff; Attention: William A. Brown; STOP-0531, Room 2741-S, 1400 Independence Ave., SW; Washington, DC 20250-0531.

REGISTRATION AND CERTIFICATION STATEMENT (Mail Voting)

Please print name, address, county and telephone number in the spaces provided below. Failure to complete, sign and return this Registration and Certification Statement will invalidate the Mail Ballot.

NAME *(See instruction number 1 above.)*	TELEPHONE NUMBER *(including area code)*
MAILING ADDRESS *(Street, P.O. Box, or Route No., City, State, ZIP Code)*	COUNTY

I HEREBY CERTIFY **that if I am voting as the representative of an entity, I am authorized to do so; and that to the best of my knowledge and belief the information provided herein is true and accurate.**

SIGNATURE	DATE

LS-76 (PROPOSAL 3) Put the completed **Mail Voting Registration and Certification Statement** in the envelope marked **"PORK REFERENDUM."**

SEPARATE HERE

MAIL BALLOT

Do you favor the continuation of the Pork Checkoff program which funds the Pork Promotion, Research, and Consumer Information Order? ( ) YES ( ) NO

Separate this "MAIL BALLOT," put it into the "PORK BALLOT" envelope, and seal it. Place the sealed "PORK BALLOT" envelope and the completed "REGISTRATION AND CERTIFICATION STATEMENT", into the "PORK REFERENDUM," envelope and seal it. Mail or deliver the "PORK REFERENDUM," envelope to the Washington, D.C. FSA office.

LS-76 (PROPOSAL 3) *See reverse of form for Privacy Act Statement.*

VOL 65 ISS 75 AP 18 2000 UMI

FORM APPROVED - OMB NO. 0581-0093

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

REFERENDUM ON THE PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

IMPORTER BALLOT VOTER REQUEST LIST

PLEASE PRINT REQUIRED INFORMATION

DATE REQUESTED	NAME OF VOTER	REPRESENTING *If voting as the authorized representative of a legal entity (partnership, corporation, estate, etc.) enter its name*	BALLOT MAILING ADDRESS	DATE BALLOT RECEIVED BY FSA

Federal Register

Tuesday,
April 18, 2000

Part IV

Department of Education

Reading Excellence Program; Notices

DEPARTMENT OF EDUCATION

Reading Excellence Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of final priorities, application requirements, and selection criteria.

SUMMARY: The Assistant Secretary for the Office of Elementary and Secondary Education announces final priorities, application requirements, and selection criteria under the Reading Excellence Program. The Assistant Secretary is using these priorities, application requirements, and selection criteria for competitions in fiscal year 2000 and may use them for future competitions. Grants are made to State educational agencies (SEA) that will, in turn, award subgrants to local educational agencies (LEAs) for two types of activities: Local Reading Improvement subgrants (LRI) and Tutorial Assistance (TAG) subgrants.

EFFECTIVE DATE: These priorities, application requirements and selection criteria are effective May 18, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Rhett, Reading Excellence Program, U. S. Department of Education, 400 Maryland Avenue, SW, Room 5C141, Washington, DC 20202–6200. Telephone: (202) 260–8228. Fax: (202) 260–8969. Internet: http://www.reading__excellence@ed.gov

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The Reading Excellence Program is designed to improve reading for children in high poverty schools and in schools needing improvement by supporting research-based reading instruction and tutoring. The Reading Excellence Act was authorized to carry out the following purposes:

- Teach every child to read by the end of third grade.
- Provide children in early childhood with the readiness skills and support they need to learn to read once they enter school.
- Expand the number of high quality family literacy programs.
- Provide early intervention to children who are at risk of being identified for special education inappropriately.
- Base instruction, including tutoring, on scientifically-based reading research.

Public Comment

In response to the Assistant Secretary's invitation in the notice of proposed priorities, two parties submitted comments on the proposed priorities and selection criteria. An analysis of the comments and of the changes in the priorities since publication of the notice of proposed priorities follows.

We discuss substantive issues under the priority or criterion to which they pertain. Generally, we do not address technical and other minor changes and suggested changes the law does not authorize the Assistant Secretary to make under the applicable statutory authority.

Analysis of Comments and Changes

General

Comment: A commenter disagreed with the emphasis the notice places on State leadership because there will not be adequate funds to carry out State-level activities including extensive professional development.

Discussion: Although we understand the State's concerns about insufficient funds for State-level activities, the amount available to the State for administrative costs at the State level is set by statute.

Changes: None.

Comment: A commenter suggested that the notice should be amended to focus on children who, in spite of excellent classroom instruction, will need individualized instruction to supplement the classroom reading program in order to successfully learn to read and write by the end of third grade.

Discussion: We are in full agreement that, in spite of research-based instruction, some students will need additional instructional support. However, strategies to address this need (extended learning such as tutoring, summer programs and kindergarten transition) are already required by the Reading Excellence Act. Schools must implement them in addition to strategies for changing regular classroom instruction.

Changes: None.

Priorities

Comment: A commenter proposed that the priorities be expanded to include students who are most likely to be unsuccessful in their classroom programs.

Discussion: The Reading Excellence Act already requires schools to address the needs of children at risk of failing in their classroom programs. The primary focus of the REA program is to help disadvantaged schools throughout the nation improve reading achievement, with early intervention strategies being a key element of instructional support.

Changes: None.

Absolute Priority

Comment: A commenter suggested that tutorial activities be defined to include tutorial activities that take place in the school by certified teachers using research-based instruction, which is documented as being effective over many replications of implementations.

Discussion: The Reading Excellence Act legislation requires that additional support for children experiencing reading difficulties be provided by supervised individuals, including tutors, who have been appropriately trained using scientifically-based reading research. There is no requirement for using certified teachers to provide this additional support.

Changes: None.

Application Requirements

Comment: A commenter suggested that the required list of eligible districts and schools is burdensome and unnecessary because the Department has made it very clear that it is not the intent of the Reading Excellence Program to fund every eligible school and district.

Discussion: Although we do not wish to impose additional burden, the submission of this information will enable the panelists to determine the likelihood that the requested funding amount will sufficiently fund the number of proposed subgrants for two years and at a level that will make a substantive improvement in reading instruction and student outcomes.

Changes: None.

Selection Criterion—Understanding and Commitment to Effective Reading Instruction Based on Scientifically Based Reading Research

Comment: A commenter suggested that we add an additional item under this criterion that the literature review and application of the scientifically based reading research include attention to children at risk by requiring individualized instruction beyond that given in the normal classroom setting.

Discussion: The Reading Excellence Act requires schools to serve all children, including those that need extra support, and schools may use a variety of strategies to achieve this. It would be inappropriate to emphasize a

specific approach to meeting the needs of a limited group of children.

Changes: None.

Selection Criterion—Quality of Local District and School Activities

Comment: A commenter suggested that item (3)(c) be revised to say that the proposed activities to improve reading instruction will also attend to children whose level of achievement indicates that they will need individualized tutorial support to be proficient readers and writers by the end of third grade along with English language learners and children with special needs.

Discussion: We agree with the clarification added to this criterion by the commenter, but we do not wish to emphasize a specific approach for intervention.

Changes: The comment is addressed by changing item (3)(c) to evaluate the extent to which the proposed activities will improve reading instruction for all children, including English language learners, children with special needs, and children whose level of achievement indicates that they will need additional instructional support.

Selection Criterion—Quality of the Plan for State Leadership, Oversight, and Evaluation

Comment: A commenter suggested revising item (4)(e) to include the development of comprehensive early literacy programs in every school in the coordination between REA and current State and local efforts.

Discussion: We agree with highlighting coordination with comprehensive early literacy programs. However, we do not want to limit the coordination to such efforts because of the need for states to coordinate with non-school programs such as family literacy.

Changes: The comment is addressed by changing item (4)(e) under selection criterion, Quality of the plan for State leadership, oversight and evaluation, to evaluate the extent to which the proposed activities coordinate REA with other State initiatives and programs, including how the REA grant will add to current State and local efforts such as comprehensive early literacy programs.

Collection of Information

Comment: A commenter recommended emphasizing "every child" so that applicants will be required to address the children who will, in spite of excellent classroom instruction, still need additional instructional support to be successful readers by the end of third grade.

Discussion: Applicants are expected to show throughout their proposals their ability and intention to serve every child and to describe specific interventions that will be used.

Changes: None

Supplementary Information-Discussion Of Priorities

Note: This notice does not solicit applications. In any year in which the Assistant Secretary chooses to use these priorities, we invite applications through a notice in the **Federal Register**.

Priorities

Absolute Priority

Under this priority the Assistant Secretary gives an absolute preference to SEAs that exclusively fund, at the subgrant level, activities to improve kindergarten through grade three reading instruction and related early childhood, professional development, family literacy, extended learning and tutorial activities.

Competitive Priority

Section 2253(c)(2)(C) of the Reading Excellence Act requires that priority be given to SEAs whose States have modified, are modifying, or provide an assurance that they will modify their elementary school teacher certification requirements within 18 months after receiving an REA grant. The modification must increase the training and the methods of teaching reading required for certification as an elementary school teacher to reflect scientifically-based reading research. However, nothing in the REA may be construed to establish a national system of teacher certification.

The Assistant Secretary will award up to 5 additional points to applicants that meet this priority. Two points will be awarded to applicants that provide an assurance only. To receive the additional three points, the SEA must include detailed plans or have implemented changes that describe high quality teacher preparation that reflects scientifically-based reading research.

Application Requirements

The Assistant Secretary announces the following application requirements:

A. Eligible LEAS and Schools (Sec. 2255 and Sec. 2256)

To be considered for funding, an application must include a list of all eligible LEAs and the number of eligible schools, and the number of children and teachers in the eligible schools at the time the application is submitted. Successful applicants must provide a list of eligible LEAs and schools at the time that subgrants are awarded.

B. Funding Recommendations (Sec. 2253(c)(2)(C))

To be considered for funding, an application must receive a majority recommendation from the panel of reviewers. Any applications not receiving recommendations to be funded from a majority of the review panel, regardless of the numerical score, will not be considered.

Selection Criteria

The Assistant Secretary announces that the following selection criteria will be used to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in the parentheses. There are no specific point totals for the subcategories within each criterion.

(1) Understanding and commitment to effective reading instruction based on scientifically-based reading research. (15 points)

In determining the State's understanding and commitment to effective reading instruction based on scientifically-based reading research, the Secretary considers the following factors:

(a) The extent to which the proposed project incorporates a deep understanding of the scientifically-based reading research literature and how it applies in their State and local education systems.

(b) The extent to which the scientific literature on reading is implemented in proposed grant activities.

(2) Demonstration of need. (10 points)

In determining the need for the proposed project, the following factors are included:

Demographic and social data on the target population for this program (children and families) and State efforts and initiatives in reading, including current professional development activities related to the teaching of reading and family literacy, standards and assessments, and other related activities; and their relation, if any, to findings from scientifically-based reading research.

(3) Quality of local district and school activities. (35 points)

In determining the quality of the services to be provided by local activities, the Secretary considers the following factors:

(a) How the proposed project would change classroom instruction in schools under Local Reading Improvement subgrants. In particular, what

professional development activities would be implemented.

(b) The extent to which the proposed activities support research-based classroom reading instruction (including extended learning such as tutoring and summer programs, kindergarten transition, and family literacy/involvement).

(c) The extent to which the proposed activities will improve reading instruction for all children, including English language learners, children with special needs, and children whose level of achievement indicates that they will need additional instructional support.

(d) The extent to which the Tutorial Assistance subgrant activities of the proposed project reflect up-to-date knowledge of reading research and effective practice.

(4) Quality of the plan for State leadership, oversight and evaluation. (25 points)

In determining the quality of the plan for State leadership, oversight and evaluation, the Secretary considers the following factors:

(a) The adequacy of procedures for ensuring success under this grant, including how the State will ensure that school activities will use practices based on scientifically-based reading research, especially professional development activities for K–3 teachers.

(b) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including:

- Development of the reading and literacy partnership for overseeing proposed grant activities;
- Guidance provided to eligible districts and schools for developing applications;
- Subgrant processes and criteria; and
- Leadership, technical assistance, and monitoring activities for subgrantees that ensure continuous improvement in reading.

(c) The qualifications, including relevant training and experience, of the key SEA staff responsible for managing the grant activities described above.

(d) The quality of the State's evaluation design, including student outcome measures or indicators for grades K–3, subgrant (Local Reading Improvement and Tutorial Assistance) and school implementation measures and indicators, a timeline for data collection and reporting, provisions for feedback to districts, and identification of a qualified evaluator or inclusion of appropriate criteria.

(e) The extent to which the proposed activities coordinate REA with other State initiatives and programs, including how the REA grant will add to current State and local efforts such as comprehensive early literacy programs.

(5) Adequacy of resources. (15 points)

In determining the adequacy of resources, the Secretary considers the following factors:

(a) The extent to which the average and range of amounts proposed, including the amounts per school, that will provide sufficient resources to accomplish the tasks of Local Reading Improvement and Tutorial Assistance subgrants.

(b) The budget provides sufficient detail and an appropriate level of funding to accomplish the purposes of this grant.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

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http://ocfo.ed.gov/fedreg.htm
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To use the PDF you must have the Adobe Acrobat Reader Program, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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http://access.gpo.gov/nara/index.html

(Catalog of Federal Assistance Number: 84.338 Reading Excellence Program

Program Authority: 20 U.S.C. 6661 *et seq.*

Dated: April 12, 2000.

Michael Cohen,

Assistant Secretary for Office of Elementary and Secondary Education.

[FR Doc. 00–9641 Filed 4–13–00; 1:32 pm]

BILLING CODE 4001–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.338]

Reading Excellence Program

ACTION: Notice inviting applications for new awards for Fiscal Year (FY) 2000.

Purpose of Program: The Reading Excellence Program provides competitive grants to eligible State educational agencies to award competitive subgrants to local educational agencies to fund local reading improvement programs and tutorial assistance programs.

Eligible Applicants: State educational agencies (SEAs) that were not funded in FY 1999; the District of Columbia; Puerto Rico; the Virgin Islands; Guam; American Samoa; and the Commonwealth of the Northern Mariana Islands.

Applications Available: April 14, 2000.

Deadline for Transmittal of Applications: May 22, 2000.

Note: An application for an award may be submitted by electronic mail (email), regular mail, or hand delivery.

Special Instructions for Applications Submitted by Email

Applications submitted by email should include an electronic return receipt and should be emailed to:

grantspolicy@ed.gov

Applications submitted by email may be submitted in one of the following formats: (1) Microsoft Word (Version Word 95 or Word 97) or (2) portable document format (PDF). The preferred version is Word 97; however, all versions must have text search capability. The electronic version will be the official file copy. To ensure the integrity of the program, the Department will return a printed version to the applicant. The returned receipt and copy will be considered proof of receipt. All forms requiring original signatures (ED–424, Application for Federal Education Assistance; SF 424B, Assurances: Non-Construction Programs; ED 80–0013, Certifications Regarding Lobbying, Debarment, Suspension and other Responsibility Matters; and Drug-Free Workplace Requirements; ED 80–0014, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions; and Form LLL, Disclosure of Lobbying Activities) must be mailed to the Department by the deadline date, as set out above under the *Deadline for Transmittal* section. Please send a hard copy of your application in addition to

the electronic copy to ensure that your application is formatted properly when printed.

Note: Some of the procedures in these instructions for transmitting applications differ from those in 34 CFR 75.102 (EDGAR). Under 5 U.S.C. 553, the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these exceptions to EDGAR make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Deadline for Intergovernmental Review: June 21, 2000.

Estimated Available Funds: $241,100,000.

Estimated Range of Awards: $500,000–$60,000,000.

Estimated Average Size of Awards: $20,092,000.

Estimate Number of Awards: 12.

Project Period: Up to 36 months.

Minimum Grant Award for SEAs: $500,000 for SEAs, $100,000 minimum for territories.

Note: The Department is not bound by any estimates in this notice.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 100 pages, using the following standards:

- A page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Single space (no more than six lines per vertical inch) all text in the application narrative.
- Use a font that is either 11-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the letters of support or the two permissible appendices. However, you must include all of the application narrative in Part III.

Our reviewers will not read any pages of your application that:

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; (b) 34 CFR part 299; and (c) the notice of final priorities, application requirements, and selection criteria as published elsewhere in this issue of the **Federal Register**.

For Applications and Further Information: Send an email message requesting an application to:
reading_excellence@ed.gov

You may also receive an application by downloading it from the reading excellence website:
http://www.ed.gov/offices/OESE/REA/index.html
or by contacting Nancy Rhett, U.S. Department of Education, 400 Maryland Avenue, SW, Room 5C141, Washington, DC 20202–6200; Telephone: (202) 260–8228. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request by contacting Katie Mincey, Director, Alternate Format Center, 330 C St. SW, Room 1000, Washington, DC 20202–4560; by calling (202) 260–9895 or 205–8113; or by emailing:

katie_mincey@ed.gov

Individuals with disabilities also may obtain a copy of the application package in an alternate format by contacting Ms. Mincey. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

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http://access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C. 6661 et seq.

Dated: April 12, 2000.

Michael Cohen,

Assistant Secretary, Elementary and Secondary Education.

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Tuesday,
April 18, 2000

Part V

Department of Education

Elementary School Counseling Demonstration Program; Notices

VOL 65 ISS 75 AP 18 2000 UMI

DEPARTMENT OF EDUCATION

Elementary School Counseling Demonstration Program

AGENCY: Department of Education.

ACTION: Notice of final priority and selection criteria.

SUMMARY: The Assistant Secretary announces the final priority and selection criteria for fiscal year (FY) 2000 under the Elementary and Secondary Education Act, Title X—Programs of National Significance, Part A—Fund for the Improvement of Education—Section 10102, Elementary School Counseling Demonstration Program. The Office of Elementary and Secondary Education, Safe and Drug-Free Schools Program will administer this new grant competition. The Assistant Secretary takes this action to focus Federal financial assistance on establishing and expanding elementary school counseling programs. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2000 and later years.

EFFECTIVE DATE: This notice of priority and selection criteria takes effect on May 18, 2000.

FOR FURTHER INFORMATION CONTACT: Loretta Riggans, Safe and Drug-Free Schools Program, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E220, Washington, DC 20202–6123. Telephone: (202) 260–2661, email address: Loretta_Riggans@ed.gov, Fax: (202) 260–7767. Internet: http://www.ed.gov/offices/OESE/SDFS. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.* Braille, large print, audiotape, or computer diskette) upon request to the contact person listed in the preceding paragraph.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published elsewhere in this issue of the **Federal Register**.

SUPPLEMENTARY INFORMATION: This notice contains the final priority and selection criteria for the Elementary School Counseling Demonstration Program (CFDA #84.215E).

The Assistant Secretary may make awards for up to 36 months to local educational agencies (LEAs) to establish or expand elementary school counseling programs.

In making awards under this grant program, the Assistant Secretary ensures an equitable geographic distribution among the regions of the United States and among urban, suburban, and rural areas.

Contingent upon the availability of funds, the Assistant Secretary may make additional awards in FY 2001 from the rank-ordered list of unfunded applications from this competition.

Eligible Applicants: Eligible applicants under this competition are local educational agencies (LEAs) only. LEAs may apply in consortia with one or more LEAs; however, each participating LEA must ensure that all requirements of the priority for this competition are met.

Deadline for Receipt of Applications: Applications for this competition must be received at the address specified in the notice inviting applications for this competition no later than 4:30 p.m. Eastern Time on June 9, 2000. Applications received after that time will not be read. Postmarked dates will not be accepted.

Absolute Priority: Under 34 CFR 75.105(c)(3) and Title X, Section 10102 of the Elementary and Secondary Education Act, the Assistant Secretary gives an absolute preference to applications that meet the following priority. The Assistant Secretary funds under this competition *only* applications that meet this absolute priority.

Under the absolute funding priority for this grant competition, LEA projects must establish or expand elementary school counseling programs at schools with at least one grade below fifth and no grade higher than eighth.

Statutory Requirements: The statute requires each program assisted under this competition to:

(1) Be comprehensive in addressing the personal, social, emotional, and educational needs of all students;

(2) Use a developmental, preventive approach to counseling;

(3) Increase the range, availability, quantity, and quality of counseling services in elementary schools of the local educational agency;

(4) Expand counseling services only through qualified school counselors, school psychologists, and school social workers;

(5) Use innovative approaches to increase children's understanding of peer and family relationships, work and self, decisionmaking, academic and career planning, or to improve social functioning;

(6) Provide counseling services that are well-balanced among classroom group and small group counseling, individual counseling, and consultation with parents, teachers, administrators, and other pupil services personnel;

(7) Include inservice training for school counselors, school social workers, school psychologists, other pupil services personnel, teachers, and instructional staff;

(8) Involve parents of participating students in the design, implementation, and evaluation of a counseling program;

(9) Involve collaborative efforts with institutions of higher education, businesses, labor organizations, community groups, social service agencies, or other public or private entities to enhance the program and promote school-linked services integration; and

(10) evaluate annually the effectiveness and outcomes of the counseling services and activities assisted under this program.

The statute also requires each applicant to—

(1) Assure that the funds made available under this grant for any fiscal year will be used to supplement and, to the extent practicable, increase the level of funds that would otherwise be available from non-Federal sources for the program described in the application, and must in no case supplant those funds from non-Federal sources; and

(2) Assure that the applicant will appoint an advisory board composed of parents, school counselors, school psychologists, school social workers, other pupil services personnel, teachers, school administrators, and community leaders to advise the LEA on the design and implementation of the counseling program.

Definitions: The following definitions apply to this competition:

(1) The term 'school counselor' means an individual who has documented competence in counseling children and adolescents in a school setting and who—

(A) Possesses State licensure or certification granted by an independent professional regulatory authority;

(B) In the absence of such State licensure or certification, possesses national certification in school counseling or a specialty of counseling granted by an independent professional organization; or

(C) Holds a minimum of a master's degree in school counseling from a program accredited by the Council for Accreditation of Counseling and Related Educational Programs or the equivalent;

(2) The term 'school psychologist' means an individual who—

(A) Possesses a minimum of 60 graduate semester hours in school psychology from an institution of higher education and has completed 1,200 clock hours in a supervised school

psychology internship, of which 600 hours shall be in the school setting;

(B) Possesses State licensure or certification in the State in which the individual works; or

(C) In the absence of such State licensure or certification, possesses national certification by the National School Psychology Certification Board;

(3) The term 'school social worker' means an individual who holds a master's degree in social work and is licensed or certified by the State in which services are provided or holds a school social work specialist credential; and

(4) The term 'supervisor' means an individual who has the equivalent number of years of professional experience in such individual's respective discipline as is required of teaching experience for the supervisor or administrative credential in the State of such individual.

Selection Criteria: The following criteria will be used to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points.

(1) *Need for the project.* (20 points)

Applicants must propose projects that demonstrate the greatest need for new or additional counseling services among children in the elementary schools served by the project.

In determining applications with the greatest need, the following factors are considered:

(A) The magnitude or severity of the problem to be addressed by the proposed project.

(B) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(C) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses; and

(D) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

In describing the proposed project, applicants must:

(1) Describe the elementary school population to be targeted by the program; the particular personal, social, emotional, educational, and career development needs of such population; and the current school counseling resources available for meeting such needs; and

(2) Describe how any diverse cultural populations, if applicable, would be served through the program.

(2) *Quality of the project design.* (20 points)

Applicants must propose projects that demonstrate the most promising and innovative approaches for initiating or expanding counseling services in the target elementary schools.

The following factors are considered in determining the quality of the project design:

(A) The extent to which the design of the proposed project is appropriate to, and will successfully address, the counseling needs of the target population.

(B) The quality of the proposed demonstration design and procedures for documenting project activities and results.

(C) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(D) The extent to which the proposed project will establish linkages with other appropriate agencies or organizations providing services to the target population.

In describing the project design, applicants must describe the activities, services, and training to be provided by the program and the specific approaches to be used to meet the needs of the target population.

(3) *Significance of the project.* (20 points)

Applicants must propose projects that demonstrate the greatest potential for replication and dissemination. The following factors are considered in determining the significance of the project:

(A) The likely utility of the products (such as information, materials, processes, or techniques) that will result from the proposed project, including the potential for their being used effectively in a variety of other settings.

(B) The extent to which the results of the proposed project are to be disseminated in ways that will enable others to use the information or strategies.

(C) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(D) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities, including information about effectiveness of the approach or strategies employed by the project.

(4) *Quality of the project evaluation.* (20 points)

Applicants must provide a detailed description of their plan to annually evaluate the outcomes and effectiveness of the proposed counseling services and strategies. The following factors are considered in determining the quality of the project evaluation:

(A) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(B) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(C) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(D) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

In describing the proposed project evaluation, applicants must:

(1) Describe the methods to be used to evaluate the outcomes and effectiveness of the project.

(2) Agree to cooperate with any national evaluation of this grant competition that the Assistant Secretary may require.

(5) *Quality of the management plan.* (10 points)

Applicants must provide a detailed description of their plan to manage the activities outlined in their proposal. The following factors are considered in determining the quality of the management plan:

(A) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(B) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(C) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

In describing the management plan, applicants must:

(1) Describe the collaborative efforts to be undertaken with institutions of higher education, businesses, labor

organizations, community groups, social service agencies, and other public or private entities to enhance the program and promote school-linked services integration; describe collaborative efforts with institutions of higher education which specifically seek to enhance or improve graduate programs specializing in the preparation of elementary school counselors, school psychologists, and school social workers; and

(2) Document that the applicant has the personnel qualified to develop, implement, and administer the program.

(6) *Adequacy of resources.* (10 points)

Applicants must describe the resources committed to the proposed project.

In determining the adequacy of resources for the proposed project, the following factors are considered:

(A) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(B) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(C) The potential for the incorporation of the project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding.

Waiver of Proposed Rulemaking

It is the Assistant Secretary's practice, in accordance with the Administrative Procedure Act (5 U.S.C. 553), to offer interested parties the opportunity to comment on proposed rules. Section 437(d)(1) of the General Education Provision Act (GEPA), however, exempts from this requirement rules that apply to the first competition under a new or substantially revised program. This is the first competition under the Elementary School Counseling Demonstration Program since that program was authorized as part of the Elementary and Secondary Education Act of 1965 as amended by the Improving America's Schools Act of 1994.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local government for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Program Authority: 20 U.S.C. 8002

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(Catalogue of Federal Domestic Assistance Number: 84.215E, Elementary School Counseling Demonstration Program)

Dated: April 14, 2000.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 00–9781 Filed 4–14–00; 1:52 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.215E]

Elementary School Counseling Demonstration Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for Fiscal Year 2000.

Purpose of Program: To assist local educational agencies to establish or expand elementary school counseling programs.

Absolute Priority: Under 34 CFR 75.105(c)(3) and Title X, Section 10102 of the Elementary and Secondary Education Act, the Assistant Secretary gives an absolute preference to applications that meet the following priority. The Assistant Secretary funds under this competition *only* applications that meet this absolute priority.

Under the absolute funding priority for this grant competition, LEA projects must establish or expand elementary school counseling programs at schools with at least one grade below fifth and no grade higher than eighth.

Eligible Applicants: Local educational agencies.

Applications Available: April 18, 2000.

Deadline for Receipt of Applications: June 9, 2000.

Note: We must receive all applications no later than 4:30 p.m. Eastern Time on the deadline date. Applications received after that date and time will not be read. Postmarked dates will not be accepted. This requirement takes exception to the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.102. Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, this exception to EDGAR makes procedural changes only and does not establish new substantive policy. Therefore, under 5 U.S.C. 553 (b)(A), the Assistant Secretary for OESE has determined that proposed rulemaking is not required. Applications by mail should be sent to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.215E, Room 3633, ROB #3, Washington, D.C. 20202–4725. The address for applications delivered by hand is: U.S. Department of Education, Application Control Center, Attention: CFDA #84.215E, Regional Office Building #3, Room 3633, 7th and D Streets, SW, Washington, DC 20202–4725.

Deadline For Intergovernmental Review: June 19, 2000.

Available Funds: $20,000,000.

Maximum Grant: $400,000.

Estimated Range of Awards: $250,000–$400,000.

Estimated Average Size of Awards: $325,000.

Estimated Number of Awards: 60.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, 85, 97, 98, 99; and (b) the Notice of Final Priority and Selection Criteria for FY 2000 published elsewhere in this issue of the **Federal Register**.

FOR APPLICATIONS OR INFORMATION CONTACT: Loretta Riggans, Safe and Drug-Free Schools Program, 400 Maryland Avenue, SW, Room 3E220, Washington, DC 20202–6123. Telephone: (202) 260–2661. The e-mail address is:

loretta—riggans@ed.gov.

Internet: www.ed.gov/offices/OESE/SDFS.

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Program Authority: 20 U.S.C. 8002.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 00–9782 Filed 4–14–00; 1:52 pm]

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H.R. 1374/P.L. 106–183

To designate the United States Post Office building located at 680 U.S. Highway 130 in Hamilton, New Jersey, as the "John K. Rafferty Hamilton Post Office Building". (Apr. 13, 2000; 114 Stat. 200)

H.R. 3189/P.L. 106–184

To designate the United States post office located at 14071 Peyton Drive in Chino Hills, California, as the "Joseph Ileto Post Office". (Apr. 14, 2000; 114 Stat. 201)

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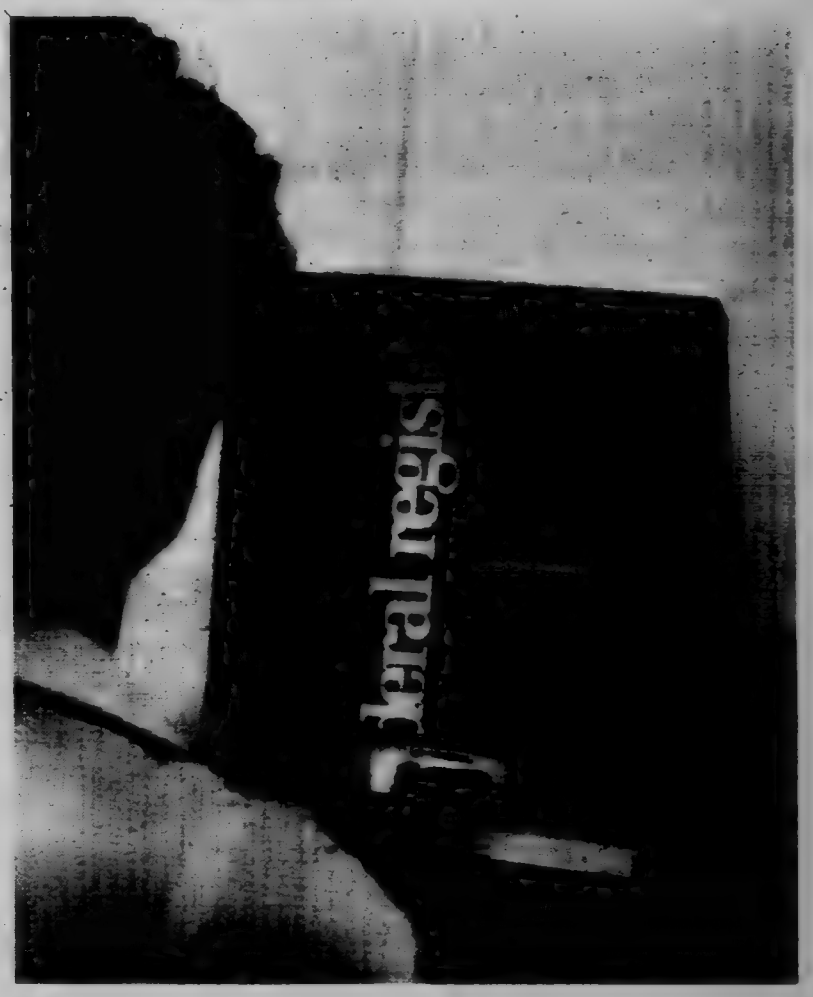

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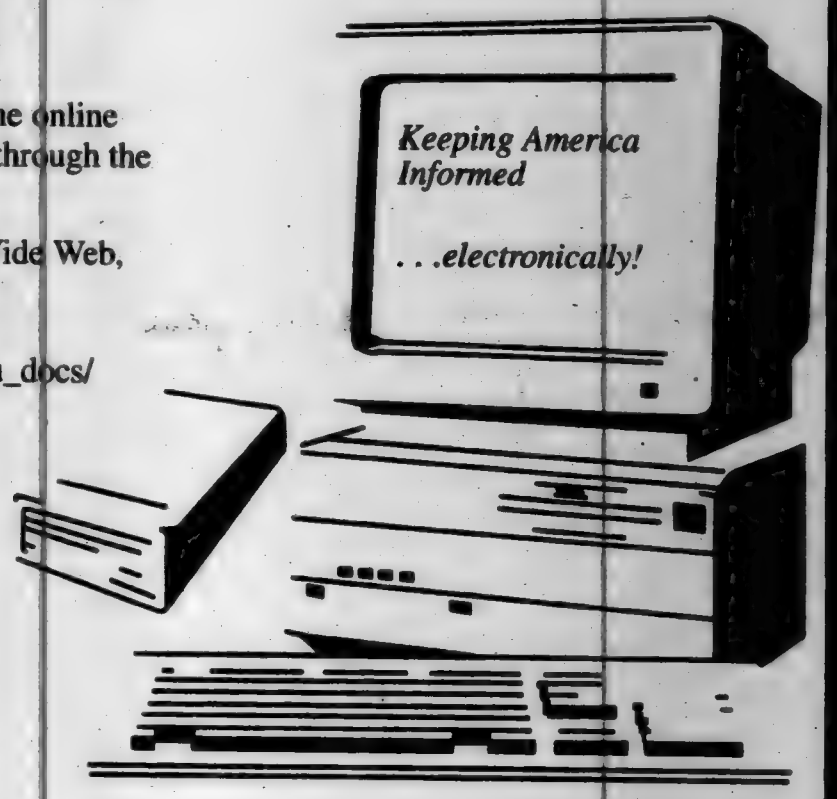

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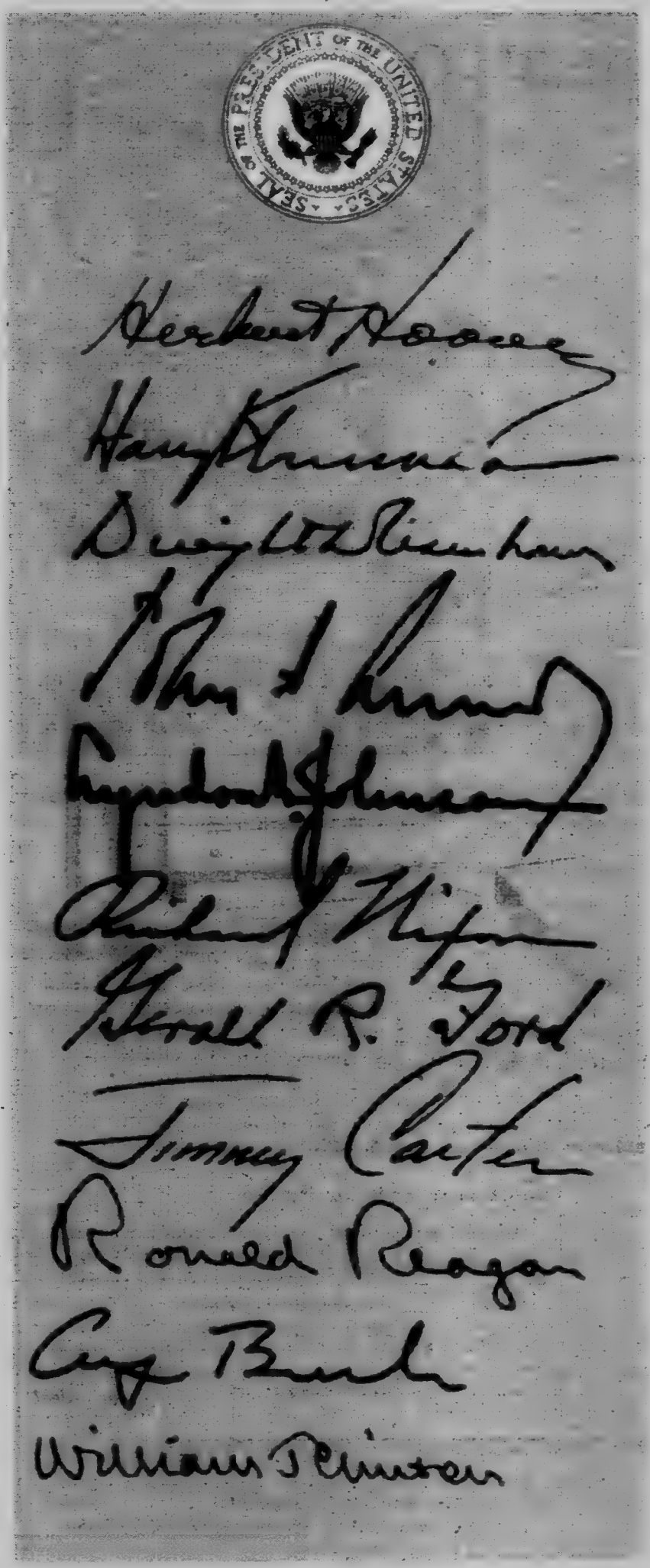

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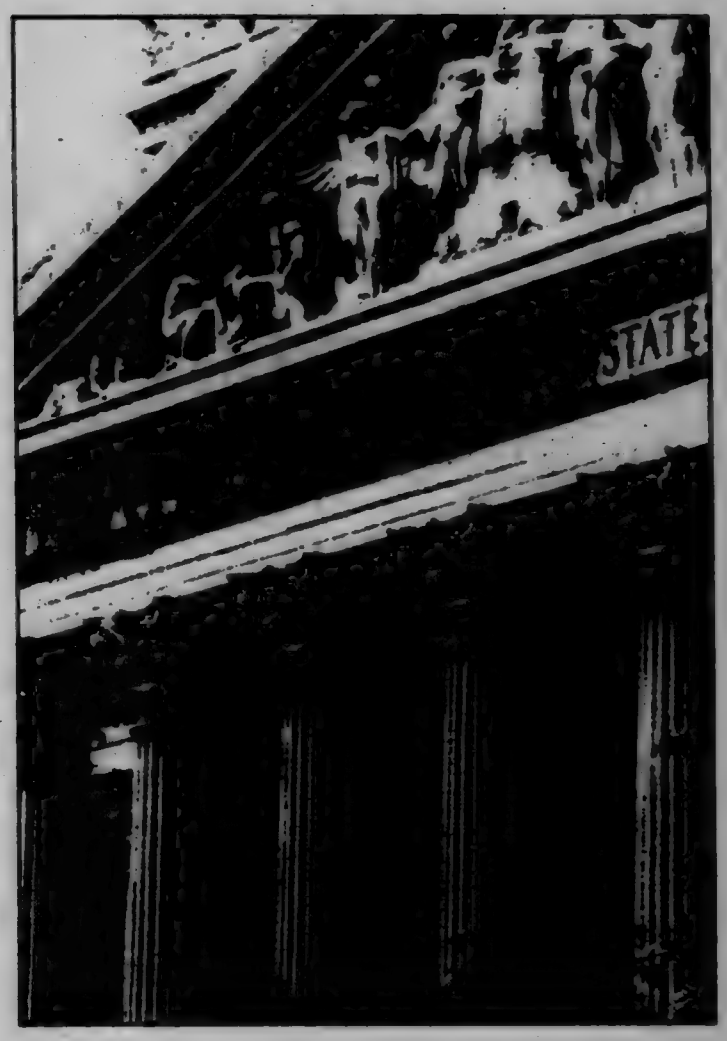

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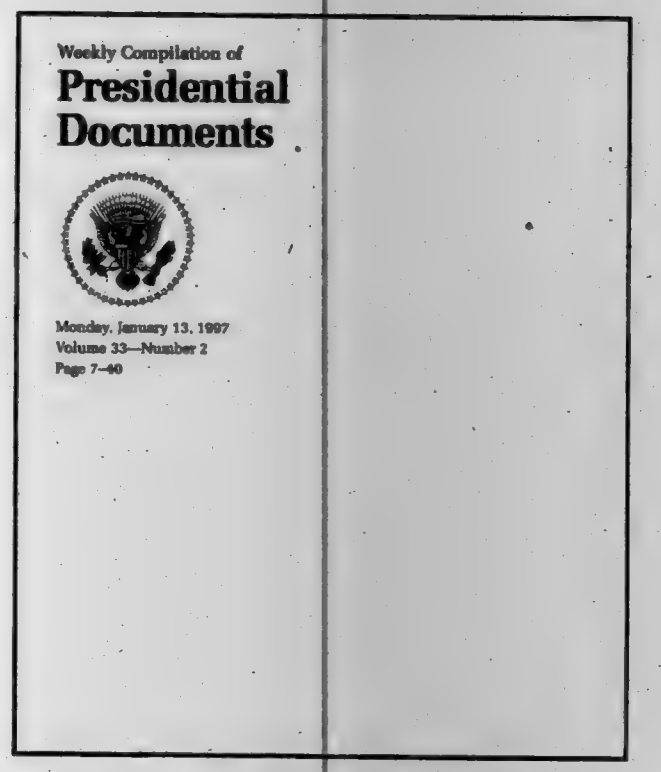

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Rules and Regulations

Federal Register
Vol. 65, No. 76
Wednesday, April 19, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 330

RIN 3206–AF36

Full Consideration of Displaced Defense Employees

AGENCY: U.S. Office of Personnel Management.

ACTION: Final regulation.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to remove the regulations regarding full consideration of displaced Department of Defense employees because the implementing statute has expired and the program has been superseded.

EFFECTIVE DATE: This regulation is effective on May 19, 2000.

FOR FURTHER INFORMATION CONTACT: Jacqueline Yeatman on (202) 606–0960, FAX (202) 606–2329, TDD (202) 606–0023 or by email at jryeatma@opm.gov.

SUPPLEMENTARY INFORMATION: The regulations at 5 CFR part 330 subpart I were published April 9, 1993, implementing section 4432 of the National Defense Authorization Act for Fiscal Year 1993 (Pub. L. 102–484). The statute provided up to 2 years of full consideration in non-Defense jobs for Department of Defense employees who were separated by reduction in force between October 23, 1991 and September 30, 1997. This section of Public Law 102–484 preceded the regulations at 5 CFR part 330 Subpart G, which in 1996 established the Interagency Career Transition Assistance Plan (ICTAP). DOD employees separated by reduction in force are currently eligible for ICTAP selection priority for vacancies in non-Defense agencies under those regulations. Because this section of the Public Law has expired and been superseded by the ICTAP, OPM is deleting the current material in part 330 (subpart I) and reserving this subpart for future use.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 330

Armed forces reserves, Government employees.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, the Office of Personnel Management is amending 5 CFR part 330 as follows:

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

1. The authority citation for part 330 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR 1954–58 Comp., p. 218; § 330.102 also issued under 5 U.S.C. 3327; subpart B also issued under 5 U.S.C. 3315 and 8151; § 330.401 also issued under 5 U.S.C. 3310; subpart H also issued under 5 U.S.C. 8337(h) and 8457(b); subpart K also issued under sec. 11203 of Pub. Law 105–33.

Subpart I—[Reserved]

2. In part 330, subpart I consisting of § 330.901 through § 330.903, is removed and reserved.

[FR Doc. 00–9727 Filed 4–18–00; 8:45 am]
BILLING CODE 6325–01–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 9007, 9034, 9035, and 9038

[Notice 2000–8]

Public Financing of Presidential Primary and General Election Candidates

AGENCY: Federal Election Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: On November 15, 1999, the Commission published the text of revised regulations governing publicly financed Presidential campaigns. 64 FR 61777 (Nov. 15, 1999). The revised rules modify the Commission's audit procedures. They also address the "bright line" between primary and general election expenses, and the formation of Vice Presidential committees prior to nomination. The Commission announces that these rules are effective as of April 19, 2000.

EFFECTIVE DATE: April 19, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Assistant General Counsel, 999 E Street, NW, Washington, DC 20463, (202) 694–1650 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is announcing the effective date of revised regulations at 11 CFR 9007.1, 9034.4 and 9038.1, and new regulations at 11 CFR 9035.3. The revisions to 11 CFR 9007.1 and 9038.1 replace the Exit Conference Memorandum that is currently provided to audited committees at the exit conference following an audit with a Preliminary Audit Report that will be approved by the Commission before it is provided to the audited committees after the exit conference. Revised 11 CFR 90934.4 clarifies the applicability of the so-called "bright line" rules that govern expenditures made in connection with both the primary and the general election, and revises those portions allocating payroll and overhead costs for the use of campaign offices prior to a candidate's nomination. New 11 CFR 9035.3 addresses when contributions to, and expenditures by, Vice Presidential committees must be aggregated with contributions to, and expenditures by, the primary campaign of that party's eventual Presidential nominee, for purposes of the contribution and expenditure limits for publicly funded Presidential campaigns.

Sections 9009(c) and 9039(c) of Title 26, United States Code, require that any rules or regulations prescribed by the Commission to carry out the provisions of Title 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days prior to final promulgation. These rules were

transmitted to Congress on November 9, 1999. Thirty legislative days expired in the Senate and the House of Representatives on April 3, 2000.

Announcement of Effective Date: New 11 CFR 9035.3 and amended 11 CFR 9007.1, 9034.4 and 9038.1, as published at 64 FR 61777 (Nov. 15, 1999), are effective as of April 19, 2000.

Dated: April 13, 2000.

Darryl R. Wold,

Chairman, Federal Election Commission.

[FR Doc. 00–9732 Filed 4–18–00; 8:45 am]

BILLING CODE 6715–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–14–AD; Amendment 39–11692; AD 2000–06–06]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Eurocopter France Model SA–366G1 helicopters, that requires replacing certain electrical modules with airworthy electrical modules. This amendment is prompted by the discovery of several defective electrical modules. The actions specified by this AD are intended to prevent loss of electrical continuity, which could cause loss of critical systems and subsequent loss of control of the helicopter.

EFFECTIVE DATE: May 24, 2000.

FOR FURTHER INFORMATION CONTACT: Robert McCallister, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5121, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Eurocopter France Model SA–366G1 helicopters was published in the **Federal Register** on January 10, 2000 (65 FR 1353). That action proposed to require replacing certain electrical modules with airworthy electrical modules.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 94 helicopters of U.S. registry will be affected by this AD, that it will take approximately 100 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $2,969 for the maximum number of modules replaced per helicopter, but the manufacturer has stated that the parts will be provided at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $564,000.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 2000–06–06 Eurocopter France: Amendment 39–11692. Docket No. 99–SW–14–AD.

Applicability: Model SA–366G1 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 400 hours time-in-service or within 6 calendar months, whichever occurs first, unless accomplished previously.

To prevent loss of electrical continuity, which could cause loss of required systems and subsequent loss of control of the helicopter, accomplish the following:

(a) Replace each "CONNECTRAL" green electrical module that does not have a white dot on the face and that has a manufacturing code of 95/16 through 96/21 with an airworthy electrical module. Those manufacturing codes identify modules manufactured between the beginning of the 16th week of 1995 and the end of the 21st week of 1996.

Note 2: Eurocopter France Service Bulletin No. 01.25, dated May 28, 1998, pertains to the subject of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on May 24, 2000.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile AD 98–251–022(A), dated July 1, 1998.

Issued in Fort Worth, Texas, on April 11, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–9820 Filed 3–18–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–70–AD; Amendment 39–11690; AD 2000–08–04]

RIN 2120–AA64

Airworthiness Directives; Robinson Helicopter Company Model R44 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Robinson Helicopter Company (RHC) Model R44 helicopters. This action requires replacing certain serial number (S/N) sprag clutches with an airworthy sprag clutch as specified in this AD. This amendment is prompted by several reports of sprag clutch failures. The actions specified by this AD are intended to prevent a sprag clutch failure, loss of main rotor RPM during autorotation, and subsequent loss of control of the helicopter.

DATES: Effective May 4, 2000. Comments for inclusion in the Rules Docket must be received on or before June 19, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–70–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Elizabeth Bumann, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5265; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On April 5, 1999, the FAA issued AD 99–07–18, Amendment 39–11127 (64 FR 17964, April 13, 1999), to require inserting a Special Pilot Caution into the Rotorcraft Flight Manual (RFM) to alert pilots of the potential for the sprag clutch failing to overrun during autorotation maneuvers. The Special Pilot Caution was an interim measure until permanent corrective action was developed by the manufacturer. The FAA now believes that the affected sprag clutches need to be replaced within 30 days or 50 hours time-in-service (TIS), whichever occurs first. Since the sprag clutch is such a critical component of the rotor drive system, this AD requires replacing sprag clutch part number (P/N) C188–3, S/N 0003 through 0505, inclusive, with sprag clutch, P/N C188–3, S/N 0506 and higher. This amendment is prompted by several reports of clutch assemblies, including one from wreckage of an accident, with cracked or fractured sprag ends. The actions specified by this AD are intended to prevent a sprag clutch failure, loss of main rotor RPM during autorotation, and subsequent loss of control of the helicopter.

The FAA has reviewed RHC Service Bulletin SB–36, dated November 5, 1999, which describes replacing the sprag clutch, P/N C188–3, S/N 0453 through 0505, inclusive, with sprag clutch, P/N C188–3, S/N 0506 and subsequent. RHC Service Bulletin SB–32, dated March 22, 1999, affected this same P/N, S/N 0003 through 0452.

Since an unsafe condition has been identified that is likely to exist or develop on other Robinson R44 helicopters of the same type design, this AD is being issued to prevent a sprag clutch failure, loss of main rotor RPM during autorotation, and subsequent loss of control of the helicopter. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter after an actual engine failure. Therefore, replacing sprag clutch, P/N C188–3, S/N 0003 through 0505, inclusive, with sprag clutch, P/N C188–3, S/N 0506 and higher, is required within 30 calendar days or 50 hours time-in-service after the effective date of this AD, whichever occurs first, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 200 helicopters will be affected by this proposed AD, that it will take approximately 4 work hours to replace a sprag clutch, and that the average labor rate is $60 per work hour. Required parts will cost approximately $3,600 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $768,000.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–70–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency

regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD), to read as follows:

AD 2000–08–04 Robinson Helicopter Company: Amendment 39–11690. Docket No. 99–SW–70–AD.

Applicability: Model R44 Helicopters, serial number (S/N) 0001 through 0541, inclusive, 0543, 0550, 0556, and 0565 with sprag clutch, part number (P/N) C188–3, S/N 0003 through 0505, inclusive, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Within 30 calendar days or 50 hours time-in-service, whichever occurs first, unless accomplished previously.

To prevent sprag clutch failure, loss of main rotor RPM during autorotation, and subsequent loss of control of the helicopter, accomplish the following:

(a) Replace sprag clutch, P/N C188–3, S/N 0003 through 0505, inclusive, with sprag clutch P/N C188–3, S/N 0506 or higher.

(b) Remove from the Rotorcraft Flight Manual the Special Pilot Caution, dated March 22, 1999, contained in Robinson Helicopter Company R44 Service Bulletin SB–32 dated March 22, 1999, or the Special Pilot Caution insert in the Normal Procedures Section of the Rotorcraft Flight Manual between pages P.4–8 and P.4–9 required by AD 99–07–18, Docket No. 99–SW–25–AD, Amendment 39–11127 (64 FR 17964, April 13, 1999), as applicable.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on May 4, 2000.

Issued in Fort Worth, Texas, on April 11, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–9818 Filed 4–18–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29995; Amdt. No. 1986]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendments is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM0 as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the FIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (RERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on April 14, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective May 18, 2000*

Ocala, FL, Ocala Regional/Jim Taylor Field, ILS RWY 36, Orig
Ocala, FL, Ocala Regional/Jim Taylor Field, LOC RWY 36, Amdt 8a, CANCELLED

** * * Effective June 15, 2000*

Oxnard, CA, Oxnard, VOR RWY 25, Amdt 9
Oxnard, CA, Oxnard, ILS RWY 25, Amdt 9
Destin, FL Destin-Fort Walton Beach, GPS RWY 14, Orig, CANCELLED
Destin, FL Destin-Fort Walton Beach, RNAV RWY 14, Orig
Destin, FL Destin-Fort Walton Beach, GPS RWY 32, Orig, CANCELLED
Destin, FL Destin-Fort Walton Beach, GPS RWY 32, Orig
Tampa, FL, Tampa Intl, GPS RWY 9, Orig, CANCELLED
Tampa, FL, Tampa Intl, RNAV RWY 9, Orig
Tampa, FL, Tampa Intl, GPS RWY 27, Orig, CANCELLED
Tampa, FL, Tampa Intl, RNAV RWY 27, Orig
Tampa, FL, Tampa Intl, GSP RWY 36R, Orig, CANCELLED
Tampa, FL, Tampa Intl, GPS RWY 36R, Orig
Chicago, IL, Chicago O'Hare Intl, VOR RWY 22R, Amdt 9
Chicago, IL, Chicago O'Hare Intl, LOC RWY 4L, Amdt 19
Chicago, IL, Chicago O'Hare Intl, NDB RWY 9R, Amdt 17
Chicago, IL, Chicago O'Hare Intl, NDB RWY 14L, Amdt 23
Chicago, IL, Chicago O'Hare Intl, NDB RWY 14R, Amdt 22
Chicago, IL, Chicago O'Hare Intl, VOR RWY 27R, Amdt 23
Chicago, IL, Chicago O'Hare Intl, ILS RWY 9L, Amdt 7
Chicago, IL, Chicago O'Hare Intl, ILS RWY 9L, Amdt 14
Chicago, IL, Chicago O'Hare Intl, ILS RWY 27R, Amdt 25
Chicago, IL, Chicago O'Hare Intl, RNAV RWY 9R, Orig
Chicago/Lake In The Hills, IL, Lake In The Hills, VOR–A, Orig, CANCELLED
Chicago/Lake In The Hills, IL, Lake In The Hills, VOR–A, Orig
Chicago/Lake In The Hills, IL, Lake In The Hills, VOR RWY 26, Amdt 3
Chicago/Lake In The Hills, IL, Lake In The Hills, GPS RWY 8, Orig, CANCELLED
Chicago/Lake In The Hills, IL, Lake In The Hills, RNAV RWY 8, Orig
Chicago/Prospect Heights/Wheeling, IL, Palwaukee Muni, VOR RWY 1, Orig-A, CANCELLED
Chicago/Prospect Heights/Wheeling, IL, Palwaukee Muni, VOR RWY 16, Orig
Chicago/Prospect Heights/Wheeling, IL, Palwaukee Muni, ILS RWY 16, Amdt 1
Chicago/Waukegan, IL, Waukegan Regional, NDB OR GPS RWY 23, Amdt 2
Chicago/Waukegan, IL, Waukegan Regional, ILS RWY 23, Amdt 4
Chicago/Waukegan, IL, Waukegan Regional, VOR/DME RNAV OR GPS RWY 5, Amdt 2
Grayslake, IL, Campbell, VOR OR GPS–A, Amdt 4, CANCELLED
Grayslake, IL, Campbell, VOR—A, Orig
Grayslake, IL, Campbell, RNAV–B, Orig
Greenwood/Wonder Lake, IL, Galt Field, VOR–A, Amdt 10
Greenwood/Wonder Lake, IL, Galt Field, RNAV–B, Orig
Burlington, IA, Burlington Regional, VOR/DME OR GPS RWY 12, Amdt 5
Burlington, IA, Burlington Regional, VOR OR GPS RWY 30, Amdt 12
Georgetown, KY, Georgetown Scott County-Marshall Field, GPS RWY 3, Orig, CANCELLED
Georgetown, KY, Georgetown Scott County-Marshall Field, RNAV RWY 3, Orig
Georgetown, KY, Georgetown Scott County-Marshall Field, GPS RWY 21, Orig, CANCELLED
Georgetown, KY, Georgetown Scott County-Marshall Field, RNAV RWY 21, Orig, CANCELLED
Alexandria, LA, Alexandria Intl, VOR OR GPS RWY 32, Amdt 1
New Orleans, LA, Lakefront, VOT/DME OR GPS RWY 36L, Amdt 8
Sanford, ME, Sanford Regional, ILS RWY 7, Amdt 3
Northhampton, MA, Northmapton, VOR/DME–B, Amdt 5

Elko, NV, Elko Muni-J.C. Harriis Field, VOR OR GPS–A, Amdt 4
Elko, NV, Elko Muni-J.C. Harriis Field, VOR/DME OR GPS–B, Amdt 3
Elko, NV, Elko Muni-J.C. Harriis Field, LDA/DME RWY 23, Amdt 5
Newark, NJ, Newark Intl, VOR/DME RWY 22R, Amdt 4
Newark, NJ, Newark Intl, VOR/DME RWY 22L, Orig
Newark, NJ, Newark Intl, ILS RWY 22R, Amdt 3
Newark, NJ, Newark Intl, ILS RWY 22L, Amdt 10
Newark, NJ, Newark Intl, GPS RWY 22L, Orig, CANCELLED
Newark, NJ, Newark Intl, RNAV RWY 22L, Orig
Newburgh, NY, Stewart Intl, ILS RWY 9, Amdt 8
Lancaster, PA, Lancaster, VOR/DME RWY 8, Amdt 4
Lancaster, PA, Lancaster, VOR/DME OR GPS RWY 26, Amdt 8
Philadelphia, PA, Northeast Philadelphia, LOC BC RWY 6, Amdt 6
Philadelphia, PA, Philadelphia International, ILS RWY 27L, Amdt 10
Murfreesboro, TN, Murfreesboro Muni, RNAV RWY 18, Orig
Murfreesboro, TN, Murfreesboro Muni, RNAV RWY 36, Orig
Dallas, TX, Dallas-Love Field, ILS RWY 13L, Amdt 30
Dallas, TX, Dallas-Love Field, ILS RWY 13R, Amdt 4
Hot Springs, VA, Ingalls Field, ILS RWY 25, Amdt 3
Fond Du Lac, WI, Fond Du Lac County, NDB OR GPS RWY 9, Amdt 6A, CANCELLED
Oshkosh, WI, Wittman Regional, LOC/DME BC RWY 18, Amdt 6

The FAA published an amendment in Docket No. *29977*, Amdt. No. *1985* to Part 97 of the Federal Aviation Regulations (Vol. 65, No. 67 Page 17991; Dated Thursday, April 6, 2000), Under Section 97.27 effective *June 15, 2000* which is hereby amended as follows:

Cuba, Mo, Cuba Muni, NDB or GPS RWY 18, Amdt 2, Cancelled Cuba, MO, Cuba Muni, NDB or GPS RWY 36, Amdt 2, Cancelled

* * * *Effective August 10, 2000*

Mobile, AL, Mobile Downtown, VOR RWY 18, Orig-A
Mobile, AL, Mobile Downtown, NDB OR GPS RWY 14, Amdt 2B
Muscle Shoals, AL, Muscle Shoals/Northwest Alabama Regional, VOR/DME or GPS RWY 11, Amdt 5D
Muscle Shoals, AL, Muscle Shoals/Northwest Alabama Regional, VOR or GPS RWY 29, Amdt 26D
Talladega, AL, Talladega Muni, GPS RWY 21, Orig-A
Tuscaloosa, AL, Tuscaloosa Muni, VOR or TACAN RWY 22, Amdt 14B
Coretz, CO, Cortez Muni, GPS RWY 21, Orig-A
Grand Junction, CO, Walker Field, GPS RWY 29, Orig-A
Alton/St. Louis, IL, St. Louis Regional, LOC BC RWY 11, Amdt 7B
Champaign/Urbana, IL, University of Illinois-Willard, LOC BC RWY 14R, Amdt 7B
Champaign/Urbana, IL, University of Illinois-Willard, GPS RWY 18, Orig-A
Chicago, IL, Chicago Midway, VOR/DME RNAV or GPS RWY 22L, Amdt 3A
Decatur, Il, Decatur, VOR RWY 18, Orig-A
Mount Vernon, VOR RWY 5, Amdt 16A
Mount Vernon, GPS RWY 5, Orig-A
Quincy, IL, Quincy Muni Baldwin Field, NDB RWY 4, Amdt 17A
Quincy, IL, Quincy Muni Baldwin Field, VOR/DME RNAV or GPS RWY 31, Amdt 3A
Goodland, KS, Goodland Muni, NDB or GPS RWY 30, Amdt 6B
Great Bend, KS, Great Bend Muni, NDB or GPS RWY 35, Amdt 2A
Battle Creek, MI, W.K. Kellogg, GPS RWY 5, Orig-A
Alliance, NE, Alliance Muni, VOR RWY 12, Amdt 3A
Alliance, NE, Alliance Muni, VOR RWY 30, Amdt 2A
Fremont, NE, Fremont Muni, VOR RWY 13, Orig-C
Fremont, NE, Fremont Muni, GPS RWY 13, Orig-A
Hastings, NE, Hastings Muni, VOR RWY 14, Amdt 16C
Hastings, NE, Hastings Muni, NDB RWY 14, Amdt 12C
Hastings, NE, Hastings Muni, GPS RWY 14, Orig-B
Poughkeepsie, NY, Dutchess County, VOR/DME or GPS RWY 24, Amdt 3C
Syracuse, NY, Syracuse Hancock Intl, VOR RWY 15, Amdt 22C
Syracuse, NY, Syracuse Hancock Intl, GPS RWY 33, Orig-C
Siler City, NC, Siler City Municipal, VOR or GPS–A, Amdt 2
Siler City, NC, Siler City Municipal, NDB RWY 22, Amdt 1
Siler City, NC, Siler City Municipal, RNAV RWY 22, Orig
Akron, OH, Akron-Canton Regional, VOR or GPS RWY 5, Amdt 2A
Dayton, OH, James M. Cox Dayton Intl, VOR/DME RNAV or GPS RWY 6R, Amdt 8A
Corvallis, OR, Corvallis Muni, GPS RWY 35, Orig-A
Allentown, PA, Lehigh Valley International LOC BC RWY 24, Amdt 20A
College Station, TX, Easterwood Field, NDB RWY 34, Amdt 11C
Newport News, VA, Newport News/Williamsburg Intl, NDB RWY 7, Amdt 3D
Bremerton, WA, Bremerton National, GPS RWY 1, Amdt 1A
Moses Lake, WA, Grant County Intl, VOR–3, RWY, 14L, Amdt 1A
Moses Lake, WA, Grant County Intl, VOR RWY, 22, Amdt 5A
Walla Walla, WA, Walla Walla Regional, GPS RWY 2, Orig-A
Appleton, WI, Outagamie County Regional, NDB RWY 29, Amdt 1B
Appleton, WI, Outagamie County Regional, NDB or GPS RWY 3, Amdt 14D
Jamesville, WI, Rock County, VOR/DME RWY 22, Orig-B
Jackson, WY, Jackson Hole, VOR/DME or GPS RWY 36, Amdt 4B
Laramie, WY, Laramie Regional, VOR or TACAN or GPS RWY 12, Amdt 5A
Rock Springs, WY, Rock Springs-Sweetwater Springs, VOR/DME or GPS RWY 9, Amdt 2A

[FR Doc. 00–9831 Filed 4–18–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29996; Amdt. No. 1987]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the District of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charters printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Polices and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on April 14, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
02/18/00	OH	Wilmington	Airborne Airpark	0/1635	NDB Rwy 4L, Amdt 2C... Replaces TL–07
02/30/00	CA	Concord	Buchanan Field	0/3142	VOR Rwy 19R Amdt 12A... This replaces FDC 0/1403 in TL 00–06
03/13/00	CT	Windsor Locks	Bradley Intl	0/2438	ILS Rwy 6 Amdt 34 (CAT I, II, III)...
03/14/00	MD	Hagerstown	Hagerstown Regional-Richard A. Henson Field.	0/2527	ILS Rwy 27 Amdt 8...

FDC date	State	City	Airport	FDC No.	SIAP
03/18/00	WY	Gillette	Gillette-Campbell Co	0/2664	LOC/DME BC Rwy 16, Amdt 3... Replaces TL–09
03/18/00	WY	Gillette	Gillette-Campbell Co	0/2665	ILS Rwy 34, Amdt 2A... Replaces TL–09
03/18/00	WY	Gillette	Gillette-Campbell Co	0/2667	VOR or GPS Rwy 17, AMDT 6A... Replaces TL–09
03/28/00	AK	Anaktuvuk Pass	Anaktuvuk Pass	0/3086	NDB–B, Orig...
03/28/00	IL	Morris	Morris Muni-James R. Washburn Field	0/3089	VOR or GPS–A, Amdt 9...
03/29/00	CA	Colusa	Colusa County	0/3130	VOR or GPS–A Amdt 4B...
03/29/00	CA	Visalia	Visalia Muni	0/3097	VOR Rwy 12 Amdt 5...
03/29/00	CA	Visalia	Visalia Muni	0/3098	GPS Rwy 12 Orig...
03/29/00	MA	Mansfield	Mansfield Muni	0/3123	NDB Rwy 32 Amdt 6A...
03/30/00	CA	Oakland	Metropolitan Oakland Intl	0/3165	VOR or GPS Rwy 9R, Amdt 7...
03/31/00	ND	Fargo	Hector Intl	0/3201	ILS Rwy 35, Amdt 32C...
03/31/00	OH	Findlay	Findlay	0/3196	VOR or GPS Rwy 7, Amdt 11...
04/03/00	AR	Rogers	Rogers Muni-Carter Field	0/3231	NDB or GPS Rwy 19, Orig–B...
04/03/00	AR	Rogers	Rogers Muni-Carter Field	0/3232	ILS Rwy 19, Amdt 2B...
04/03/00	FL	Orlando	Orlando Intl	0/3243	Radar-1, Amdt 5A...
04/03/00	FL	Orlando	Orlando Intl	0/3245	ILS Rwy 18R, Amdt 5...
04/03/00	FL	Orlando	Orlando Intl	0/3246	GPS Rwy 36L, Amdt 1...
04/03/00	FL	Orlando	Orlando Intl	0/3259	VOR/DME or GPS Rwy 36R, Amdt 9...
04/03/00	FL	Orlando	Orlando Intl	0/3260	VOR Rwy 18L, Amdt 3...
04/03/00	FL	Orlando	Orlando Intl	0/3263	VOR/DME or GPS Rwy 18R Amdt 5...
04/03/00	FL	Orlando	Orlando Intl	0/3264	VOR Rwy 18R Amdt 3...
04/03/00	FL	Orlando	Orlando Intl	0/3265	VOR/DME or GPS Rwy 18L Amdt 5...
04/03/00	FL	Orlando	Orlando Intl	0/3266	VOR/DME Rwy 36L Amdt 4A...
04/03/00	MN	Duluth	Duluth Intl	0/3258	ILS Rwy 9, Amdt 19...
04/03/00	PR	San Juan	Luis Munoz Marin Intl	0/3272	ILS Rwy 8, Amdt 15C...
04/03/00	PR	San Juan	Luis Munoz Marin Intl	0/3273	HI–ILS/DME Rwy 8, Orig-A...
04/04/00	CA	Chino	Chino	0/3302	ILS Rwy 26R Amdt 5...
04/04/00	CA	San Diego	Montgomery Field	0/3285	NDB or GPS Rwy 28R Amdt 1A...
04/04/00	FL	Orlando	Orlando Intl	0/3292	ILS Rwy 36R, Amdt 6 (Cat I, II, III)...
04/04/00	MT	Colstrip	Colstrip	0/3289	GPS Rwy 6, Orig...
04/04/00	MT	Colstrip	Colstrip	0/3290	GPS Rwy 24, Orig...
04/04/00	RI	Westerly	Westerly State	0/3286	LOC Rwy 7 Amdt 5A...
04/05/00	GUA	Agna	Guam Intl	0/3339	NDB/DME Rwy 24R Orig-A...
04/05/00	HI	Kahului	Kahului	0/3334	VOR Rwy 20 Orig...
04/05/00	HI	Kahului	Kahului	0/3335	NDB Rwy 20 Amdt 11...
04/05/00	HI	Kahului	Kahului	0/3337	LOC/DME BC Rwy 20 Amdt 13...
04/05/00	HI	Kahului	Kahului	0/3338	ILS Rwy 2 Amdt 23...
04/05/00	HI	Kahului	Kahului	0/3370	NDB/DME or GPS Rwy 2 Amdt 2...
04/05/00	HI	Lihue	Lihue	0/3340	VOR/DME or Tacan Rwy 21 Amdt 3...
04/05/00	MP	Tinian Island	West Tinian	0/3341	NDB–A Amdt 1A...
04/05/00	TN	Jackson	McKellar-Sipes Regional	0/3330	ILS Rwy 2, Amdt 7A...
04/06/00	CA	Oakland	Metropolitan Oakland Intl	0/3409	ILS Rwy 11 Amdt 4...
04/06/00	MN	Thief River Falls	Thief River Falls Regional	0/3403	ILS Rwy 31, Amdt 2A...
04/06/00	TN	Dyersburg	Dyersburg Muni	0/3394	NDB Rwy 4 Orig...
04/06/00	WI	Madison	Dane County Regional-Truax Field	0/3406	VOR or Tacan or GPS Rwy 31, Amdt 24B...
04/07/00	CA	Ukia	Ukiah Muni	0/3430	LOC Rwy 15 Amdt 5...
04/07/00	MN	Minneapolis	Minneapolis-St Paul Intl (Wold-Chamberlain).	0/3437	ILS PRM Rwy 30L, Amdt 3C...
04/07/00	MN	Minneapolis	Minneapolis-St Paul Intl (Wold-Chamberlain).	0/3438	ILS PRM Rwy 30R, Amdt 5...
04/07/00	MN	Minneapolis	Minneapolis-St Paul Intl (Wold-Chamberlain).	0/3439	ILS PRM Rwy 12R Amdt 2B...
04/07/00	MN	Minneapolis	Minneapolis-St Paul Intl (Wold-Chamberlain).	0/3440	ILS PRM Rwy 12L, Amdt 3A...
04/11/00	CA	Visalia	Visalia Muni	0/3561	NDB Rwy 30 Amdt 3A...
04/11/00	CA	Visalia	Visalia Muni	0/3562	ILS Rwy 30 Amdt 5A...
04/11/00	CA	Visalia	Visalia Muni	0/3564	GPS Rwy 30 Orig...
04/11/00	MO	Kansas City	Kansas City Downtown	0/3567	ILS Rwy 19, Amdt 20D...
04/11/00	ND	Fargo	Hector Intl	0/3557	ILS Rwy 17, Amdt 4B...
04/11/00	VT	Burlington	Burlington Intl	0/3510	HI–ILS/DME Rwy 33 Amdt 1...
04/11/00	VT	Burlington	Burlington Intl	0/3512	ILS/DME Rwy 33 Orig-B...

FDC date	State	City	Airport	FDC No.	SIAP
04/11/00	VT	Burlington	Burlington Intl	0/3513	NDB or GPS Rwy 15 Amdt 19B...
04/11/00	VT	Burlington	Burlington Intl	0/3514	ILS Rwy 15 Amdt 21 C...
04/11/00	VT	Burlington	Burlington Intl	0/3515	VOR or GPS Rwy 1 Amdt 11A...
12/03/99	HI	Kailua-Kona	Keahole-Kona Intl at Keahole	0/9515	ILS DME Rwy 17 Amdt 9...

[FR Doc. 00–9832 Filed 4–18–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29997; Amdt. No. 1968]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAP's, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedures Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standards for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with a Global Positioning System (GPS) and or Flight Management System (FMS) equipment. In consideration of the above, the applicable SIAP's will be altered to include "or GPS or FMS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS or FMS procedure is developed, the procedure title will be altered to remove "or GPS or FMS" from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped-aircraft can be flow by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as "RNAV" will be redesignated as "VOR/DME RNAV" without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which

frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on April 14, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified.

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

* * * *Effective June 15, 2000*

Aniak, AK, Aniak, NDB/DME or GPS RWY 28, Amdt 2, CANCELLED
Aniak, AK, Aniak, NDB/DME RWY 28, Amdt 2
Ketchikan, AK, Ketchikan Intl, NDB/DME or GPS–A, Amdt 6B, CANCELLED
Ketchikan, AK, Ketchikan Int, NDB/DME–A, Amdt 6B
McGrath, AK, McGrath, NDB or GPS–B, Amdt 1, CANCELLED
McGrath, AK, McGrath, NDB–B, Amdt 1
St. George, AK, St. George, NDB/DME or GPS–A, Orig, CANCELLED
St. George, AK, St. George, NDB/DME–A, Orig
Sandpoint, AK, NDB/DME or GPS–B, Orig, CANCELLED
Sandpoint, AK, NDB/DME–B, Orig
Sitka, AK, Sitka Rocky Gutierrez, NDB/DME or GPS–B, Orig, CANCELLED
Sitka, AK, Sitka Rocky Gutierrez, NDB/DME–B, Orig
Decatur, AL, Decatur/Pryor Field Regional, VOR or GPS RWY 18, Amdt 12, CANCELLED
Decatur, AL, Decatur/Pryor Field Regional, VOR RWY 18, Amdt 12
Colusa, CA, Colusa County, VOR or GPS–A, Amdt 4B, CANCELLED
Colusa, CA, Colusa County, VOR–A, Amdt 4B
Logansport, IN, Logansport Muni, VOR/DME RNAV or GPS RWY 27, Amdt 3, CANCELLED
Logansport, IN, Logansport Muni, VOR/DME RNAV RWY 27, Amdt 3
Somerset, KY, Somerset-Pulaski County—J.T. Wilson Field, NDB or GPS RWY 4, Amdt 6, CANCELLED
Somerset, KY, Somerset-Pulaski County—J.T. Wilson Field, NDB RWY 4, Amdt 6
Monroe, LA, Monroe Regional, NDB or GPS RWY 4, Amdt 14B, CANCELLED
Monroe, LA, Monroe Regional, NDB RWY 4, Amdt 14B
Kansas City, MO, Kansas City Intl, NDB or GPS RWY 9, Amdt 8, CANCELLED
Kansas City, MO, Kansas City Intl, NDB RWY 9, Amdt 8
Meridian, MS, Meridian/Key Field, NDB or GPS RWY 1, Amdt 19, CANCELLED
Meridian, MS, Meridian/Key Field, NDB RWY 1, Amdt 19
Dickinson, ND, Dickinson Muni, NDB or GPS RWY 32, Orig, CANCELLED
Dickinson, ND, Dickinson Muni, NDB RWY 32, Orig
Santa Fe, NM, Santa Fe Muni, NDB or GPS RWY 2, Amdt 4, CACELLED
Santa Fe, NM, Santa Fe Muni, NDB RWY 2, Amdt 4
Middletown, NY, Middletown/Randall, NDB or GPS–A, Orig, CANCELLED
Middletown, NY, Middletown/Randall, NDB–A, Orig
El Paso, TX, El Paso Intl, VOR or GPS RWY 26L, Amdt 29B, CANCELLED
El Paso, TX, El Paso Int, VOR RWY 26L, Amdt 29B
Cheyenne, WY, Cheyenne, NDB or GPS RWY 26, Amdt 13, CANCELLED
Cheyenne, WY, Cheyenne, NDB RWY 26, Amdt 13

[FR Doc. 00–9833 Filed 4–18–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 161, 250, and 284

[Docket Nos. RM98–10–002 and RM98–12–002]

Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services

Issued April 12, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order extending time for compliance filings.

SUMMARY: The Federal Energy Regulatory Commission is extending the time for pipelines to make filings to comply with Order No. 637 relating to regulation of short-term natural gas transportation services and regulation of interstate natural gas transportation services which was published in the **Federal Register** of February 25, 2000.

DATES: Pipeline compliance filings will be due on June 15, 2000, July 17, 2000, and August 15, 2000, according to the schedule set out in **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC, 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2294; and

Robert A. Flanders, Office of Markets, Tariffs, and Rates Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2084.

SUPPLEMENTARY INFORMATION:

Order Extending Time for Compliance

On February 9, 2000, The Federal Energy Regulatory Commission (Commission) issued Order No. 637 [1] that, among other things, required pipelines to file pro forma tariff sheets on May 1, 2000, to comply with the adopted regulations. Shippers were given 30 days to file comments or protests. The Commission is extending the time for filing and staggering the compliance schedule.

On March 10, 2000, the Pipeline Transportation Customer Coalition [2] filed a motion requesting the Commission to extend the filing of the *pro forma* tariff sheets beyond the May 1, 2000 date. They contend the Commission should adopt a staggered schedule to provide customers on multiple pipelines with the opportunity to effectively respond to the pipeline

[1] Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, 65 FR 10156 (Feb. 25, 2000), III FERC Stats. & Regs. Regulations Preambles ¶ 31,091 (Feb. 9, 2000).

[2] Independent Petroleum Association of America, Process Gas Consumers Group, American Iron and Steel Institute, Georgia Industrial Group, American Forest & Paper Association, Alcoa, Inc., United States Gypsum Company, Dynegy Marketing and Trade, Natural Gas Supply Association, American Public Gas Association, Pennsylvania Office of Consumer Advocate, Ohio Consumers' Counsel, and National Association of State Utility Consumer Advocates.

filings. They also request an extension of the time within which to prepare comments or protests to 45 days.

The Commission is extending and staggering the schedule for *pro forma* compliance filings to provide shippers an opportunity to fully respond to each pipeline filing. The revised schedule is set out below. The Commission denies the request to extend the time period for comments. Given the staggered schedule, shippers should be able to file comments within the 30 day period.

The pipelines listed below are to make their *pro forma* tariff filing by the date indicated:

Pipelines To File on June 15, 2000

Algonquin Gas Transmission Co.
Algonquin LNG, Inc.
ANR Pipeline Co.
ANR Storage Co.
Arkansas Western Pipeline Co., LLC
Black Marlin Pipeline Company
Blue Lake Gas Storage Co.
Canyon Creek Compression Co.
Caprock Pipeline Co.
Carnegie Interstate Pipeline Co.
Chandeleur Pipe Line Company
CNG Transmission Corp.
Colorado Interstate Gas Co.
Columbia Gas Transmission Corp.
Columbia Gulf Transmission Co.
Crossroads Pipeline Co.
Dauphin Island Gathering Partnership
Destin Pipeline Company, LLC
Discovery Gas Transmission, LLC
Dynegy Midstream Pipeline, Inc
East Tennessee Natural Gas Co.
Egan Hub Partners, L.P.
El Paso Natural Gas Co.
Garden Banks Gas Pipeline, LLC
Great Lakes Gas Transmission, L.P.
Kansas Pipeline Co.
Kinder Morgan Interstate Gas Transmission, LLC
Kern River Gas Transmission Co.
KN Wattenberg Transmission, L.L.C.
Koch Gateway Pipeline Co.
MIGC, Inc.
Mojave Pipeline Co.

Pipelines To File on July 17, 2000

Eastern Shore Natural Gas Co.
Equitrans, L.P.
Florida Gas Transmission Co.
Gas Transport, Inc.
Granite State Gas Transmission Corp.
Gulf States Transmission Corp.
High Island Offshore System, LLC
Iroquois Gas Transmission System
KO Transmission Co.
Maritimes & Northeast Pipeline Co.
Michigan Gas Storage Co.
Mid Louisiana Gas Co.
Midcoast Interstate Transmission Co.
Midwestern Gas Transmission Co.
Mississippi Canyon Gas Pipeline, LLC
Mississippi River Transmission Co.
National Fuel Gas Supply Corp.
Natural Gas Pipeline Co. of America
Nautilus Pipeline Company, LLC
Nora Transmission Co.
Norteno Pipeline Co.
Northern Border Pipeline Co.
Northern Natural Gas Co.
Northwest Pipeline Corp.
OkTex Pipeline Co.
Overthrust Pipeline Co.
Ozark Gas Transmission, LLC
Pacific Interstate Offshore Co.
Paiute Pipeline Co.
Panhandle Eastern Pipe Line Co.
PG&E Gas Transmission, Northwest
Pine Needle LNG Company, LLC
Questar Pipeline Co.

Pipelines To File on August 15, 2000

Cove Point LNG, L.P.
Petal Gas Storage Co.
Portland Natural Gas Transmission Corp.
Reliant Energy Gas Transmission Corp.
Sabine Pipe Line Co.
Sea Robin Pipeline Company
South Georgia Natural Gas Co.
Southern Natural Gas Co.
Southwest Gas Storage Company
Steuben Gas Storage Co.
Stingray Pipeline Company
TCP Gathering Co.
Tennessee Gas Pipeline Co.
Texas Eastern Transmission Corp.
Texas Gas Transmission Corp.
Texas-Ohio Pipeline, Inc.
Total Peaking Services, LLC
Trailblazer Pipeline Co.
TransColorado Gas Transmission
Transcontinental Gas Pipe Line Co.
Transwestern Pipeline Co.
Trunkline Gas Co.
Trunkline LNG Co.
Tuscarora Gas Transmission Co.
USG Pipeline Company
U–T Offshore System, LLC
Venice Gathering System, LLC
Viking Gas Transmission Co.
WestGas InterState, Inc.
Western Gas Interstate Co.
Williams Gas Pipelines Central
Williston Basin Interstate Pipeline Co.
Wyoming Interstate Company, Ltd.
Young Gas Storage Company, Ltd.

Any interstate pipeline providing Part 284 service that is not included in this list is required to make its *pro forma* compliance filing on August 15, 2000.

By the Commission.

David P. Boergers,

Secretary.

[FR Doc. 00–9629 Filed 4–18–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Parts 41 and 42

[Public Notice 3283]

Visas: Documentation of Immigrants and Nonimmigrants Under the Immigration and Nationality Act, as Amended

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

SUMMARY: The enactment of legislation over the past few years has created new immigrant and nonimmigrant visa categories. Additionally, some visa classification symbols are removed due to the expiration of certain immigrant visa programs. This rule amends both the immigrant and nonimmigrant classification tables.

EFFECTIVE DATE: This rule takes effect on April 19, 2000.

ADDRESSES: Chief, Legislation and Regulation Division, Visa Office, Washington, DC 20522–1013.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Chief, Legislation and Regulations Division, 202–663–1204.

SUPPLEMENTARY INFORMATION:

How Is the Nonimmigrant Visa Table Affected?

The rule amends the nonimmigrant visa classification table at 22 CFR 41.12 by removing the classification H–1A and by adding a new classification H–1C. This rule implements sec. 2 of Public Law 106–95. The law adds a new class of nonimmigrants for nurses coming to areas where there is a health professional shortage. These nurses have been given the classification symbol H–1C. The same law repeals INA 101(a)(15)(H)(i) relating to former registered nurses classified as H–1A. This rule, therefore, removes the H–1A category and adds the H–1C category to the nonimmigrant table.

The Department is also taking this opportunity to correct a typographical error for the NATO–2 entry.

How Is the Immigrant Visa Classification Table Affected?

This rule amends the immigrant visa classification table at 22 CFR 42.11 by including NATO employees and their spouses and children in the special immigrant categories SK1, SK3 and SK4. The rule implements section 421(a) of Public Law 105–277 which added NATO employees and their spouse and unmarried children to the special

immigrant category under INA 101(a)(27)(L).

This rule removes the ES1 category established by sec. 4 of Public Law 102–509, which provided for the issuance of visas for no more than 750 scientists of exceptional ability from the independent states and the Baltics over a four-year period commencing October 24, 1992. These scientists were given the classification symbol ES1. The program terminated on October 23, 1996.

Final Rule

Administrative Procedure Act

The Department is publishing this rule as a final rule pursuant to 5 U.S.C. 553(a)(2) and the "good cause" provisions of 5 U.S.C. 553(b)(B); notice and comment are not necessary in light of the fact that this rule relates to agency management and merely establishes or removes visa symbols used internally by the Department. The rule makes no substantive regulatory changes.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department of State does not consider this rule, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects

22 CFR Part 41

Aliens, Passports and visas.

22 CFR Part 42

Immigration, Passports and visas.

Accordingly, the Department of State amends 22 CFR Chapter I as set forth below.

PART 41—[AMENDED]

1. The authority citation for part 41 continues to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681 *et seq.*

2. Amend the table in § 41.12 as follows:

a. Remove the entry for H–1A;.

b. Add a new entry for H–1C, in alpha-numeric order; and

c. Amend the NATO–2 entry in the second column by adding "or Immediate Family" following the words "Such a Force".

The addition reads as follows:

§ 41.12 Classification symbols.

* * * * *

NONIMMIGRANTS

Symbol	Class	Section of law
H–1C	Nurses in health professional shortage areas	101(a)(15)(H)(i)(c).

PART 42—[AMENDED]

3. The authority citation for part 42 continues to read as follows:

Authority: 8 U.S.C. 1104.

4. Amend the table in § 42.11 as follows:

a. Remove the entry for ES1 from the section entitled "Employment 2nd Preference * * *"; and

b. Revise the entries for SK1, SK–2, SK3 and SK4 in the section entitled "Employment 4th Preference * * *.".

The revisions read as follows:

§ 42.11 Classification symbols.

* * * * *

IMMIGRANTS

Symbol	Class	Section of law
	Employment 4th Preference (Certain Special Immigrants)	
SK1	Certain Retired International Organization or NATO employees	101(a)(27)(I)(iii) & 101(a)(27)(L).
SK2	Spouse of SK1	101(a)(27)(I)(iv) & 101(a)(27)(L).

IMMIGRANTS—Continued

Symbol	Class	Section of law
SK3	Certain Unmarried Sons or Daughters of an International Organization or NATO Employee	101(a)(27)(I)(i) & 101(a)(27)(L).
SK4	Certain Surviving Spouses of Deceased International Organization or NATO Employee	101(a)(27)(I)(ii) & 101(a)(27)(L).

Dated: March 6, 2000.

Mary A. Ryan,

Assistant Secretary of State for Consular Affairs, U.S. Department of State.

[FR Doc. 00–9104 Filed 4–18–00; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 247

RIN 1510–AA44

Regulations Governing FedSelect Checks

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule; removal.

SUMMARY: The Financial Management Service (FMS) is removing Part 247 from Title 31 of the Code of Federal Regulations. This Part governs the use of FedSelect checks by Federal agencies in making certain Federal payments. The Debt Collection Improvement Act of 1996 (DCIA) and implementing regulations require that most Federal payments be made electronically after January 1, 1999. The increased use of electronic funds transfer (EFT) has resulted in lower check volumes and reduced Federal agency reliance on non-EFT payment mechanisms. Due to the decrease in check volume and the availability of low cost alternatives to FedSelect, such as third party drafts, FMS has determined that FedSelect is no longer a cost-effective mechanism for making certain Federal government payments and is terminating the program on March 31, 2000.

EFFECTIVE DATE: This removal of 31 CFR Part 247 is effective April 19, 2000.

FOR FURTHER INFORMATION CONTACT: Matthew Helfrich, Financial Program Specialist, at (202) 874–6754; Sally Phillips, Senior Financial Program Specialist, at (202) 874–7106; Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, at (202) 874–6590; or James Regan, Attorney-Advisor, at (202) 874–6680.

SUPPLEMENTARY INFORMATION: On May 16, 1995, FMS published a final rule codified at 31 CFR Part 247 governing the use of FedSelect checks for paying certain obligations of Federal agencies [60 FR 25993]. The final rule included procedural instructions for using FedSelect checks and defined the rights and liabilities of the United States, Federal Reserve Banks, banks, and others in connection with FedSelect checks. FedSelect checks were developed for use by Federal agencies for "on-demand" payment needs. On September 25, 1998, FMS published a final rule in the **Federal Register** (63 FR 51490), Management of Federal Agency Disbursements, codified at 31 CFR part 208 (EFT rule), implementing certain requirements of the DCIA, Pub. L. 104–134, chap. 10, 110 stat. 1321–358. The EFT rule requires Federal agencies to make most payments by EFT after January 1, 1999.

Because this rule relates to a payment system for Federal agencies, notice and comment are not required pursuant to 5 U.S.C. 553(a)(2) and (b)(A). Moreover, notice and comment are contrary to the public interest because the prompt removal of the current FedSelect regulations will result in savings to taxpayers without adversely affecting federal payments. For these reasons, good cause is found pursuant to 5 U.S.C. 553(d)(3) to make removal of the FedSelect regulations immediately effective. Because notice and comment are not required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601) do not apply. Finally, this rule is not a significant regulatory action for purposes of Executive Order 12866.

The number of Treasury-disbursed, non-tax refund payments made by EFT rose from 55% in FY 1995 to 75% by the close of FY 1999. The number of check payments over this period have decreased correspondingly. Moreover, cost-effective alternatives to FedSelect have emerged, such as third party drafts and government purchase card convenience checks. Due to the decrease in check volume and the growing use of more cost-effective alternatives by Federal agencies, the FedSelect program will be terminated on March 31, 2000.

PART 247—[REMOVED]

For the reasons set out above, 31 CFR Part 247 is removed.

Authority: 31 U.S.C. 3321, 3325, and 3327.

Richard L. Gregg,

Commissioner.

[FR Doc. 00–9755 Filed 4–18–00; 8:45 am]

BILLING CODE 4810–35–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NY40–2–209, FRL–6573–1]

Approval and Promulgation of Implementation Plans; New York; Nitrogen Oxides Budget and Allowance Trading Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is announcing approval of New York's State Implementation Plan (SIP) revision for ozone. This SIP revision relates to New York's portion of the Ozone Transport Commission's September 27, 1994 Memorandum of Understanding, which includes a regional nitrogen oxides budget and allowance (NO_X Budget) trading program that will significantly reduce NO_X emissions generated within the Ozone Transport Region, which includes New York State. EPA is approving New York's regulations, which implement Phase II of the NO_X Budget Trading Program, since they reduce NO_X emissions and help achieve the national ambient air quality standard for ozone.

DATES: This rule is effective on May 19, 2000.

ADDRESSES: Copies of the State submittal and supporting documents are available for inspection during normal business hours, at the following addresses:

Environmental Protection Agency, Region II Office, Air Programs Branch,

290 Broadway, 25th Floor, New York, New York 10007–1866.
New York State Department of Environmental Conservation, Division of Air Resources, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Richard Ruvo, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4014.

SUPPLEMENTARY INFORMATION:

Overview

The EPA is approving the New York State Department of Environmental Conservation's (New York's) Nitrogen Oxides Budget and Allowance (NO_X Budget) Trading Program for 1999, 2000, 2001 and 2002.

The following table of contents describes the format for this **SUPPLEMENTARY INFORMATION** section:

Overview
EPA's Action
What Action is EPA Approving?
Why is EPA Approving this Action?
When Did EPA Propose to Approve New York's Program?
What are the Public's Comments on EPA's Proposal?
What is the Ozone Transport Commission's Memorandum of Understanding?
Where is Additional Information Available on EPA's Action?
Conclusion
Administrative Requirements

EPA's Action

What Action Is EPA Approving?

The EPA is approving a revision to New York's Ozone State Implementation Plan (SIP) which New York submitted on April 29, 1999. This SIP revision relates to New York's NO_X Budget Trading Program, also referred to as Phase II. New York's regulations which implement the NO_X Budget Trading Program are:

- New Subpart 227–3, "Pre-2003 Nitrogen Oxides Emissions Budget and Allowance Program"
- Guidance for Implementation of Emissions Monitoring Requirements for the NO_X Budget Program, January 28, 1997
- NO_X Budget Program Monitoring Certification and Reporting Requirements, July 3, 1997
- Electronic Data Reporting, Acid Rain Program/NO_X Budget Program, July 3, 1997
- Amended Part 200, "General Provisions"
- Amended Subpart 227–1, "Stationary Combustion Installations" and
- Amended Subpart 227–2, "Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO_X)."

Part 200 contains general provisions applicable to New York's Title 6 regulations. Part 200 includes definitions and references to other applicable documents, guidelines and methodologies that a source should consult when meeting requirements of specific New York regulations. New York originally incorporated these documents when New York proposed and adopted the regulations themselves. Part 200 lists these documents for reference along with where anyone can obtain them.

EPA is approving those provisions of part 200 needed for the purposes of enforcing the SIP, as well as for enforcing New York's NO_X Budget Trading Program. Specifically, EPA is approving sections 200.1 "Definitions," section 200.6 "Acceptable ambient air quality," section 200.7 "Maintenance of equipment," and most of section 200.9 "Referenced material."

EPA has previously discussed its approval of the state definitions in section 200.1 in prior actions which approved specific New York regulations that relied on the definitions, such as parts 218 and 227–3. Section 200.1 contains a definition of "federally enforceable" which EPA accepts with the following understanding: (1) the definition applies to provisions of a Title V permit that are correctly identified as federally enforceable, and (2) a source accepts operating limits and conditions to lower its potential to emit to become a minor source, not to "avoid" any applicable requirement. New York should clarify this definition in the future.

EPA is not incorporating sections 200.2 "Safeguarding information," 200.3 "False statement," 200.4 "Severability," 200.5 "Sealing," and 200.8 "Conflict of interest" because EPA can take enforcement actions related to one of these sections under its own corresponding federal regulations.

EPA is approving and including section 200.9 in the table in 40 CFR 52.1679 of EPA approved regulations for the benefit of the regulated community. Section 200.9 incorporates by reference specific federal and state laws and regulations including the three emissions monitoring guidance documents referenced above. Most of these were previously approved in past rulemakings. EPA is not approving the federal laws and regulations incorporated by reference in section 200.9 because they are already federally enforceable.

Section 200.10 lists regulations promulgated by the EPA. Since these regulations are already federally enforceable EPA is not incorporating them into the SIP. EPA is not including section 200.10 in the table in 40 CFR 52.1679.

Why Is EPA Approving This Action?

EPA is approving this action to:

- Fulfill New York's and EPA's requirements under the Clean Air Act (the Act)
- Make New York's NO_X Budget Trading Program federally-enforceable, and
- Make the significant NO_X emission reductions available for credit toward the attainment SIP.

When Did EPA Propose To Approve New York's Program?

On October 14, 1999, EPA published in the **Federal Register** (64 FR 55667) a Proposed Rulemaking to approve New York's regulations as a SIP revision and providing for a 30-day public comment period, which ended on November 15, 1999.

What Are the Public's Comments on EPA's Proposal?

EPA received no public comments regarding the Proposed Rulemaking.

What Is the Ozone Transport Commission's Memorandum of Understanding?

The Ozone Transport Commission (OTC) adopted a Memorandum of Understanding (MOU) on September 27, 1994, which committed the signatory states to the development and proposal of a region-wide reduction in NO_X emissions, with one phase of reductions by 1999 and another phase of reductions by 2003. The Act required RACT to reduce NO_X emissions by May of 1995. The OTC MOU obligated further reductions in NO_X emissions by 1999 (known as Phase II) and by 2003 (known as Phase III).

Where Is Additional Information Available on EPA's Action?

A detailed discussion of this program is available in the October 14, 1999 Proposed Rulemaking (64 FR 55667). A Technical Support Document, prepared in support of the proposed rulemaking, contains the full description of New York's submittal and EPA's evaluation. A copy of the Technical Support Document is available upon request from the EPA Regional Office listed in the **ADDRESSES** section.

Conclusion

EPA is approving New York's program which implements the Ozone

Transport Commission's September 27, 1994 Memorandum of Understanding (Phase II). The EPA is approving, as part of the SIP, the new regulation, Subpart 227–3, and amendments to the sections as discussed of the regulations part 200, subpart 227–1 and subpart 227–2, which implement Phase II of the NO_x Budget Trading Program. EPA is approving these regulations, submitted by New York on April 29, 1999, as part of the SIP.

Administrative Requirements

Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation. This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements

under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 19, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 28, 2000.

William J. Muszynski,

Acting Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart HH—New York

2. Section 52.1670 is amended by adding new paragraph (c)(95) to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(c) * * *

* * * * *

(95) A revision to the State Implementation Plan submitted on April 29, 1999 by the New York State Department of Environmental Conservation that establishes the NO_X Budget Trading Program.

(i) Incorporation by reference:

(A) Regulation Subpart 227–3 of Title 6 of the New York Code of Rules and Regulations, entitled "Pre-2003 Nitrogen Oxides Emissions Budget and Allowance Program" adopted on January 12, 1999, and effective on March 5, 1999.

(B) Amendments to Title 6 of the New York Code of Rules and Regulations, Part 200, "General Provisions," Subpart 227–1, "Stationary Combustion Installations," and Subpart 227–2, "Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO_X)" adopted on January 12, 1999, and effective on March 5, 1999.

(ii) Additional information:

(A) Letter from the New York Department of Environmental Conservation dated April 29, 1999, submitting the NO_X Budget Trading Program as a revision to the New York State Implementation Plan for ozone.

(B) Guidance for Implementation of Emissions Monitoring Requirements for the NO_X Budget Program, dated January 28, 1997.

(C) NO_X Budget Program Monitoring Certification and Reporting Requirements, dated July 3, 1997.

(D) Electronic Data Reporting, Acid Rain/NO_X Budget Program, dated July 3, 1997.

3. In § 52.1679, the table is amended as follows:

A. By revising the entry for Part 200;

B. By removing the entry for "Part 227, Stationary Combustion Installations (except as noted)";

C. By removing the entry for "Part 227, Stationary Combustion Installations/section 27.2(b)(1)"; and

D. By adding a new entry for "Part 227, Stationary Combustion Installations";

E. By adding a new entries for subparts 227–1, 227–2, and 227–3 to read as follows:

The revised and added entries read as follows:

§ 52.1679 EPA—approved New York regulations.

New York State regulation	State effective date	Latest EPA approval date	Comments
Part 200, General Provisions sections 200.1, 200.6, 200.7 and 200.9.	3/5/99	[4/19/00 and FR page citation].	Redesignation of non-attainment areas to attainment areas (200.1(av)) does not relieve a source from compliance with previously applicable requirements as per letter of Nov. 13, 1981 from H. Hovey, NYSDEC. Changes in definitions are acceptable to EPA unless a previously approved definition is necessary for implementation of an existing SIP regulation.

New York State regulation	State effective date	Latest EPA approval date	Comments
			EPA is including the definition of "federally enforceable" with the understanding that (1) the definition applies to provisions of a Title V permit that are correctly identified as federally enforceable, and (2) a source accepts operating limits and conditions to lower its potential to emit to become a minor source, not to "avoid" applicable requirements. EPA is approving incorporation by reference of those documents that are not already federally enforceable.
Part 227, Stationary Combustion Installations [1972 version]/section 227.2(b)(1).	5/1/72	9/22/72 ..... 37 FR 19814	
Part 227, Stationary Combustion Installations	.....	.....	Existing Part 227 is renumbered Subpart 227–1.
Subpart 227–1, Stationary Combustion Installations ...	3/5/99	[4/19/00 and FR page citation].	Renumbered sections 227–1.2(a)(2), 227–1.4(a), and 227–1.4(d) continue to be disapproved according to 40 CFR 52.1678(d) and 52.1680(a). (New York repealed existing Part 227.5.)
Subpart 227–2, Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO_X)/sections 227–2.3(h), 227–2.5(b), 227–2.5(e), and 227–2.6.	3/5/99	[4/19/00 and FR page citation].	EPA is including sections 227–2.3(h), 227–2.5(b), 227–2.5(e), and 227–2.6 as part of the SIP for purposes of the NO_X Budget Trading Program. EPA will act on the remaining sections of 227–2 in a future rulemaking.
Subpart 227–3, Pre-2003 Nitrogen Oxides Emissions Budget and Allowance Program.	3/5/99	[4/19/00 and FR page citation].	Approval of NO_X Budget Trading Program for 1999, 2000, 2001 and 2002. To meet its attainment demonstration commitments and the interstate MOU, New York will need to amend their regulations to establish the NO_X caps in the State during 2003 and beyond.

[FR Doc. 00–9544 Filed 4–18–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NY41–210; FRL–6572–9]

Approval and Promulgation of Air Quality Implementation Plans; New York; Approval of Carbon Monoxide State Implementation Plan Revision; Removal of the Oxygenated Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a State Implementation Plan (SIP) revision submitted by the State of New York on August 30, 1999. That revision removes New York's oxygenated gasoline program as a carbon monoxide control measure from the State's SIP. EPA is approving that revision because EPA has also determined that the New York—Northern New Jersey—Long Island carbon monoxide nonattainment area has attained the carbon monoxide National Ambient Air Quality Standards.

EFFECTIVE DATE: This rule will be effective May 19, 2000.

ADDRESSES: Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866

New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233

FOR FURTHER INFORMATION CONTACT: Michael P. Moltzen, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–3710.

SUPPLEMENTARY INFORMATION: EPA is determining that the New York—Northern New Jersey—Long Island carbon monoxide (CO) nonattainment area [1] has attained the health-related CO National Ambient Air Quality Standards (NAAQS). EPA is also determining that New York's winter-time oxygenated gasoline (oxyfuel) program is no longer needed to ensure that air quality levels remain healthful. As a consequence of these determinations, EPA is approving a State Implementation Plan (SIP) revision submitted by the State of New York on August 30, 1999. That revision removes New York's oxyfuel program as a CO control measure from the State's CO SIP. It has been determined that the program is no longer necessary to keep ambient CO concentrations below the CO NAAQS. For additional detail regarding this determination, the reader is referred to the proposal for today's action, published in the October 8, 1999 **Federal Register** (64 FR 54851). Additional detail regarding that determination can also be found in EPA's proposed and final rules removing oxyfuel in New Jersey, which are published in the September 9, 1999 **Federal Register** (64 FR 48970) and the November 22, 1999 **Federal Register** (64 FR 63690), respectively. In addition, EPA's direct final action approving the removal of the oxyfuel program in Connecticut can be found in the December 1, 1999 **Federal Register** (64 FR 67188). It should be noted that there were no adverse comments associated with the proposed removal of the winter-time oxyfuel program in New York State.

EPA intends to propose action on the remainder of New York's August 30, 1999 CO SIP revision in a separate notice which will be published in the **Federal Register** shortly. Neither New

[1] This area is comprised of counties in Northern New Jersey, downstate New York and Southwestern Connecticut. The Connecticut portion of the area was redesignated to attainment on March 10, 1999 at 64 FR 12005. The remainder of the area is still designated nonattainment.

York's redesignation request nor any of the other elements in that submittal are directly related to, or required for, the action EPA is finalizing today.

Conclusion

EPA is finalizing a rulemaking to approve New York's August 30, 1999 SIP revision to remove the State's oxygenated gasoline program from the federally-approved SIP. Therefore, sections of New York's regulation Part 225–3, "Fuel Composition and Use—Gasoline", specifically those that provide for the oxyfuel program, are removed from the SIP. See § 52.1670 *Identification of Plan*, in the regulations section of this notice, for further detail on the sections of New York's Part 225–3 which pertain to the oxyfuel program and which are removed from the State's CO SIP. EPA's authority to approve removal of a state's oxyfuel program is set forth at Clean Air Act section 211(m)(6). EPA has determined that the criteria of section 211(m)(6) have been satisfied and removal of the oxyfuel program at this time is appropriate.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation. This final rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-state relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that

achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves changes to the SIP and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 19, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations.

Dated: March 23, 2000.

William J. Muszynski,

Acting Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart HH—New York

2. Section 52.1670 is amended by adding new paragraph (c)(96) to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(c) * * *

* * * * *

(96) Revisions to the New York State Implementation Plan (SIP) for carbon monoxide concerning the oxyfuel program, dated August 30, 1999, submitted by the New York State Department of Environmental Conservation (NYSDEC).

3. The table in § 52.1679 is amended by removing the existing entry for Subpart 225–3, "Fuel Composition and Use—Gasoline," and adding a new entry for Subpart 225–3 in numerical order to read as follows:

§ 52.1679 EPA—approved New York State regulations.

State regulation	State effective date	EPA approved date	Comments
* * *	*	*	* * *
Part 225–3, "Fuel Composition and Use—Gasoline;" sections 225–3.1, 225–3.2, 225–3.3, 225–3.6, 225–3.8, 225–3.10.	9/2/93	[4/19/00 and citation of this document].	This action removes the following sections of Part 225–3, which pertain to the oxygenated gasoline program, from the State's CO SIP: sections 225–3.4, 225–3.5, 225–3.7, 225–3.9. The Variance adopted by the State pursuant to section 225–3.8 becomes applicable only if approved by EPA as a SIP revision.
* * *	*	*	* * *

[FR Doc. 00–9543 Filed 4–18–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 214–0232; FRL–6578–6]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District, Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and Sacramento Metropolitan Air Quality Management District (SMAQMD) portions of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on January 26, 2000 and concern volatile organic compound (VOC) emissions from gasoline transfer into stationary storage container, delivery vessels and bulk plants, and from organic chemical manufacturing operations. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

EFFECTIVE DATE: These rules are effective on May 19, 2000.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted rules at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, CA 93721

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento, CA 95826

FOR FURTHER INFORMATION CONTACT: Max Fantillo, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1183.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Proposed Action

On January 26, 2000 (65 FR 4208), EPA proposed to approve the following rules into the California SIP.

Local agency	Rule No. #	Rule title	Adopted	Submitted
SJVUAPCD	4621	Gasoline Transfer into Stationary Containers, Delivery Vessels, and Bulk Plants	06/18/98	08/21/98
SMAQMD	464	Organic Chemical Manufacturing Operations	07/23/98	05/13/99

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

No comments were submitted that change our assessment that the submitted rules comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these rules into the California SIP.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 19, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 30, 2000.

Nora McGee,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(263)(i)(C)(*2*) and (c)(273) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(263) * * *

(i) * * *

(C) * * *

(*2*) Rule 464, adopted on July 23, 1998.

* * * * *

(273) New and amended regulations for the following APCD's were submitted on August 21, 1998, by the Governor's designee.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4621, amended on June 18, 1998.

* * * * *

[FR Doc. 00–9542 Filed 4–18–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA095–0234; FRL–6579–3]

Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval of revisions to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on February 22, 2000 and concerns emissions of sulfur dioxide (SO_2). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action approves a local rule that regulates emissions of sulfur compounds and directs California to correct a rule deficiency. There will be no sanctions clock as Ventura County Air Pollution Control District is in attainment for SO_2.

EFFECTIVE DATE: This rule is effective on May 19, 2000.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted rule revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Ventura County APCD, 669 County Square Dr., 2nd Fl., Ventura, CA 93003–5417.

FOR FURTHER INFORMATION CONTACT: Stanley Tong, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1191.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Proposed Action

On February 22, 2000 (65 FR 8676), EPA proposed a limited approval of the following rule that was submitted for incorporation into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
VCAPCD	54	Sulfur Compounds	6/14/94	7/13/94

We proposed a limited approval because we determined that this rule improves the SIP and is largely consistent with the relevant CAA requirements. However, we cannot grant a full approval because the rule contains a deficiency which was discussed in our proposed action. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of the submitted rule. This action incorporates the submitted rule into the California SIP, including the provision that was identified as deficient. As stated in the proposed rule, EPA is finalizing this action in

order to strengthen the SIP. There is no sanctions clock as VCAPCD is in attainment for SO_2. Note that the submitted rule has been adopted by the VCAPCD, and EPA's final limited approval does not prevent the local agency from enforcing the rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Executive Order 13121, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. Union Electric Co., v. U.S. EPA, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no

additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 19, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Sulfur Oxides.

Dated: April 3, 2000.

Laura Yeshii,

Acting Regional Administrator Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(198)(i)(J)(*4*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(198) * * *

(i) * * *

(J) * * *

(*4*) Rule 54, amended on June 14, 1994.

* * * * *

[FR Doc. 00–9660 Filed 4–18–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–777; MM Docket No. 99–344; RM–9709]

Radio Broadcasting Services; Lampasas and Leander, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 255C1 from Lampasas, Texas, to Leander, Texas, and modifies the license for Station KJFK to specify operation on Channel 255C1 at Leander in response to a petition filed by Shamrock Communications, Inc. See 64 FR 71098, December 20, 1999. The coordinates for Channel 255C1 at Leander are 30–43–34 and 97–59–23. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 22, 2000.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–344, adopted March 29, 2000, and released April 7, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Lampasas, Channel 255C1, and adding Leander, Channel 255C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–9776 Filed 4–18–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 224 and 226

[Docket No. 000404093–0093–01; I.D. 121196A]

RIN 0648–AN90

Endangered and Threatened Species; Final Rule to Remove Umpqua River Cutthroat Trout From the Federal List of Endangered and Threatened Species

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS has determined that the Umpqua River cutthroat trout (*Oncorhynchus clarki clarki*) population, formerly identified as an Evolutionarily Significant Unit (ESU) of the species, is part of a larger population segment that previously was determined to be neither endangered nor threatened

as defined by the Endangered Species Act (ESA). Therefore, NMFS determines that the Umpqua River cutthroat trout should be removed from the Federal List of Endangered and Threatened species. This action will remove all ESA protections, including critical habitat designated for this species in the Umpqua River basin. The U.S. Fish and Wildlife Service (FWS) concurs with this action and has recently obtained sole jurisdiction over this species. In the future, FWS will be responsible for ESA actions pertaining to all cutthroat trout.

DATES: This rule is effective April 19, 2000.

FOR FURTHER INFORMATION CONTACT: Garth Griffin at (503) 231–2005 or Christopher Mobley at (301) 713–1401 of NMFS, or Catrina Martin (503) 231–6131 of FWS. Reference materials regarding this determination can also be obtained via the internet at www.nwr.noaa.gov.

SUPPLEMENTARY INFORMATION:

Species Background

The coastal cutthroat trout subspecies (*Oncorhynchus clarki clarki*) is native to western North America and is found in the coastal temperate rainforests from southeast Alaska to northern California (Trotter, 1989). The populations addressed in this document inhabit the Umpqua River basin of coastal Oregon. Details of the coastal cutthroat trout's life history and ecology, including particular aspects of the various resident and migratory life forms, can be found in published reviews by Pauley et al. (1989), Trotter (1989), Behnke (1992), Johnson et al. (1994), and Johnson et al. (1999).

Previous Federal ESA Actions Related to Coastal Cutthroat Trout

Descriptions of previous Federal ESA actions pertaining to coastal cutthroat trout are summarized in the proposed rule (64 FR 16397, April 5, 1999) and the initial listing determination (61 FR 41514, August 9, 1996). In response to an ESA petition, NMFS proposed to list the Umpqua River cutthroat trout ESU as endangered on July 8, 1994 (59 FR 35089), and made the listing final on August 9, 1996 (61 FR 41514). The listing was followed by a critical habitat designation on January 9, 1998 (63 FR 1388).

After making these findings, NMFS conducted an expanded ESA review of coastal cutthroat trout that identified six ESUs in Washington, Oregon, and California (Johnson, 1999). One of the conclusions of this more comprehensive review was that the Umpqua River cutthroat trout populations are part of a larger Oregon Coast ESU bounded by Cape Blanco in the south and the Columbia River mouth in the north. Moreover, NMFS determined that the larger ESU did not warrant listing under the ESA. In light of these findings, NMFS and FWS proposed to delist the Umpqua River ESU on April 5, 1999 (64 FR 16397).

This proposal was announced jointly with FWS because section 4(a)(2)(B) of the ESA requires its concurrence on any NMFS delisting action. The proposal also noted that a determination would be made regarding which of the two agencies should have sole ESA jurisdiction over this species. On [insert publication date of "cutthroat jurisdiction" FRN], the agencies published a notice announcing that FWS would retain this authority but that NMFS would complete the final determination on the Umpqua delisting proposal. FWS will deal with other elements of the April 5, 1999, proposed rule (e.g., the proposed listing of cutthroat trout populations from Southwestern Washington and the lower Columbia River) in a separate rulemaking. It should be noted that FWS does not employ the phrase "ESU" to describe a Distinct Population Segment (DPS) under the ESA. In addition, NMFS' April 1999 classification of the Oregon Coast ESU as a "candidate species" may no longer apply because FWS' definition of candidates differs from NMFS' definition (see 61 FR 7596, February 28, 1996, and 64 FR 33466, June 23, 1999).

The agencies requested informatin on all aspects of the April 1999 proposal, and NMFS held public hearings on May 25–26, 1999, to solicit additional comments (64 FR 20248, April 26, 1999). In accordance with a July 1, 1994, interagency policy (59 FR 34270), NMFS also solicited scientific peer review on the proposal from 12 species experts and received three responses. Government agencies, non-government organizations, the scientific community, and other individuals submitted a total of 26 comments on the proposal. Many respondents offered similar comments, hence these are addressed together in this document. NMFS has evaluated only those comments specific to ESU delineations for cutthroat trout in Oregon coastal basins. FWS will address comments on other issues (e.g., population status, efficacy of conservation efforts, factors contributing to the species' decline, etc.) in future determinations relating to coastal cutthroat trout.

Summary of Comments

Comment 1: Some commenters questioned the sufficiency and accuracy of the data NMFS employed in the delisting proposal. In contrast, the peer reviewers generally found that NMFS' status review was comprehensive and credible even though they may have not concurred with all of the conclusions. Two peer reviewers cited additional data and reports that the agencies should assess before making a risk assessment and noted an apparent omission in NMFS' status review document (Johnson et al., 1999).

Response: Section 4(b)(1)(A) of the ESA requires that NMFS make its listing determinations solely on the basis of the best available scientific and commercial data, after reviewing a species' status and taking into account any efforts being made to protect it. NMFS believes that information contained in the agency's status reviews (Johnson et al., 1994; Johnson et al., 1999), together with more recent information obtained in response to the proposed rule, represent the best scientific and commercial information presently available for the Umpqua River cutthroat trout populations addressed in this final rule. NMFS has made every effort to conduct an exhaustive review of all available information, solicited information and opinion from all interested parties, and subjected the conclusions to peer reviewers.

With respect to the data/reports cited by peer reviewers, NMFS agrees that these and other data sets may be helpful in determining the degree of risk the species currently faces. However, for this final rule the agency has focused solely on information that relates to identifying ESUs along the Oregon coast (specifically whether any new data would contradict the agency's proposal to include the Umpqua River populations as part of a larger Oregon Coast ESU). Much of the data provided by reviewers specifically focused on abundance data that were not directly relevant to delineating ESU boundaries. As previously described in this document, FWS will be responsible for making any future risk assessments for coastal cutthroat trout. NMFS has transmitted all relevant information and data sets to FWS.

NMFS recognizes the omission that two peer reviewers cited in the status review's description of average annual river flows (Figure 8, page 26 of Johnson *et al.*, 1999). The agency notes that a representation of the correct figure can be found in NMFS' status review for West Coast chinook salmon (Figure 5, page 16 of Myers *et al.*, 1998).

Comment 2: Some commenters contended that the ESUs were delineated in an arbitrary manner and they questioned NMFS' analyses and interpretation of genetic results. One peer reviewer suggested that NMFS should de-emphasize the genetic data when determining ESUs and give more consideration to other types of information, e.g., life history traits and ecological data.

Response: NMFS disagrees with the contention that cutthroat trout ESUs were delineated in an arbitrary manner and believes that available genetic and ecological data do support NMFS' ESU delineations for this species. For example, the status review (Johnson et al., 1999) describes the marked genetic differences between cutthroat trout populations from the Washington and Oregon coasts. These differences, coupled with a significant migrational barrier at the mouth of the Columbia River and a major biogeographic boundary for marine and terrestrial species at Cape Blanco, provide substantial evidence of a distinct population segment along the Oregon coast. Similar findings using both genetic and ecological data formed the basis for other ESU delineations.

Since the beginning of the coastal cutthroat trout status review in 1993, NMFS has continually sought and evaluated input from the public, comanagers, and species experts regarding how best to characterize the population structure and status of *O. clarki clarki*. The agency has made every attempt to conduct a rigorous scientific assessment of this species and document the rationale for the resultant ESA decisions. In comparison with ESA status reviews for other salmonids, these decisions were more difficult to make because key data were often scarce or nonexistent. In particular, while genetic and life history data suggested that cutthroat trout populations may be structured differently than other Pacific salmon species, it was not clear how these differences should be interpreted in terms of ESU delineations.

NMFS has published a policy describing how it will apply the ESA definition of "species" to anadromous salmonid species (56 FR 58612, November 20, 1991). More recently, NMFS and FWS published a joint policy, which is consistent with NMFS' policy, regarding the definition of "distinct population segments" (61 FR 4722, February 7, 1996). NMFS' policy states that one or more naturally reproducing salmonid populations will be considered to be distinct and, hence, species under the ESA, if they represent an ESU of the biological species. To be considered an ESU, a population must satisfy two criteria: (1) It must be reproductively isolated from other population units of the same species; and (2) it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute but must have been strong enough to permit evolutionarily important differences to occur in different population units. The second criterion is met if the population contributes substantially to the ecological or genetic diversity of the species as a whole. Guidance for applying this policy is contained in a scientific paper entitled "Pacific Salmon (*Oncorhynchus* spp.) and the Definition of 'Species' Under the Endangered Species Act" (Waples, 1991a) and in a NOAA Technical Memorandum: "Definition of 'Species' Under the Endangered Species Act: Application to Pacific Salmon" (Waples, 1991b).

NMFS continues to believe that genetic analyses are an essential component of ESA status reviews. These analyses, in conjunction with life history and ecological assessments, provide an important view into the population structure of a species while helping to discern whether a species faces a genetically-based conservation risk. During the past year, NMFS has compiled additional genetic data relevant to the Oregon Coast/Umpqua ESU determination. Preliminary analyses of these new data (including 16 samples from the Oregon coast) do not change any of the major relationships observed among coastal cutthroat trout populations during the coastwide status review (NMFS, 2000). As was the case before the proposed delisting, genetic samples for the Umpqua River populations are loosely clustered within a group encompassing the Oregon and Northern California coasts.

While some commenters provided independent interpretations of the existing data, none provided substantial new information regarding ESU configurations along the Oregon coast. NMFS concurs with comments by several reviewers that unique ecological conditions in the Umpqua River basin could make these cutthroat trout populations adaptively different from populations in other coastal basins. As Johnson et al. (1999) describe, there was considerable uncertainty about how best to characterize ESUs for this species. NMFS scientists evaluated several alternative ESU scenarios (ranging from a single subspecies ESU to numerous basin-sized ESUs) and ultimately identified six ESUs for the species. A considerable part of these deliberations focused on the Umpqua River basin and its cutthroat trout populations. In the end, NMFS scientists concluded that "new information that has become available since completion of the status review does not materially change our understanding of any factors that contribute to ESU determinations for coastal Oregon cutthroat trout" (NMFS, 2000).

Comment 3: Some commenters stated that Umpqua River cutthroat trout should be removed from endangered species status only when the population actually recovers, not when it is redefined as part of a larger ESU. Many were concerned that removing ESA protections could cause the Umpqua River populations to become extinct. One commenter suggested that NMFS should establish measurable delisting criteria.

Response: NMFS believes that ESA determinations should reflect the best available information on a species' status and population structure and that § 3(15) of the ESA requires that listing decisions be made at a scale no smaller than a DPS. According to criteria at 50 CFR 424.11(d), NMFS may delist a species if information shows that the species is no longer endangered or threatened because of (1) extinction, (2) recovery, or (3) the original data for classifying the species were in error. NMFS believes that the latter case applies to this delisting, i.e., new information indicates that the original listing was in error and that the Umpqua River populations should be considered part of a larger DPS.

As described in Comment #2, NMFS' policy states that a DPS of Pacific salmon must represent an ESU of the biological species (56 FR 58612, November 20, 1991). When appropriate, NMFS will revise the boundaries of an ESU (e.g., the recent cases of chum salmon (64 FR 14508, March 25, 1999) and chinook salmon (64 FR 50394, September 16, 1999)). In the case of the Umpqua River cutthroat trout, this revision resulted in a revised risk assessment wherein NMFS concluded that the larger Oregon Coast ESU was neither threatened nor endangered under the ESA (64 FR 16397, April 5, 1999). NMFS shares many of the concerns expressed about the health of the Umpqua River populations, in particular the precarious status of the anadromous (sea-run) life form. It is unclear whether de-listing the Umpqua River cutthroat trout will lead to a local extinction, but the agency anticipates that local, state, and Federal conservation efforts will continue to progress. Key among these will be the Northwest Forest Plan (overarching

management strategy for Federal lands in the basin) and the state and locally driven Oregon Plan for Salmon and Watersheds. NMFS will encourage, and where possible support these and other efforts to help Umpqua Basin cutthroat trout.

Determinations

Based on an assessment of the available scientific and commercial information, and after taking into account public and peer review comments, NMFS finds that the Umpqua River cutthroat trout is no longer a "species" as defined by the ESA. New information collected during the coastwide status review indicate that the Umpqua River populations are part of a larger Oregon Coast ESU that previously was determined to be neither threatened nor endangered under the ESA (64 FR 16397, April 5, 1999). Therefore, NMFS concludes that the Umpqua River cutthroat trout should be removed from the Federal List of Endangered and Threatened species, thereby removing all protections provided by the ESA. FWS concurs with this action in accordance with 4(a)(2)(B) of the ESA.

As a result of this delisting, the taking, interstate commerce, import, and export of Umpqua River cutthroat trout will no longer be prohibited by the ESA. In addition, Federal agencies will no longer be required to consult with NMFS under section 7 of the ESA in the event activities they authorize, fund, or carry out adversely affect Umpqua River cutthroat trout.

In accordance with 5 U.S.C. 553(d), NMFS has determined that this rule relieves an existing restriction and that there is good cause to make the effective date of this delisting immediate. Delaying the delisting would keep the ESA's take prohibitions in place (as well as the resultant ESA consultation and permitting requirements) and result in needless expenditures of time and money. An immediate delisting will provide prompt public notification and allow NMFS and other Federal agencies to focus limited resources on actions affecting listed species.

Critical Habitat

Critical habitat for the Umpqua River cutthroat trout was designated on January 9, 1998 (63 FR 1388). It includes all estuarine areas and river reaches accessible to the species in the Umpqua River basin, except areas above longstanding, naturally impassable barriers. The ESA defines critical habitat as "specific areas within the geographical area occupied by the species, at the time it is listed on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection." Because critical habitat can be designated only for species listed as endangered or threatened under the ESA, there will be no designated critical habitat for the Umpqua River cutthroat trout upon publication of this final rule.

Classification

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F.2d 825 (6th Cir. 1981), NMFS concluded that all ESA listing actions are not subject to environmental assessment requirements of the National Environmental Policy Act. See NOAA Administrative Order 216–6 (see **ADDRESSEES**).

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered in determinations regarding the status of species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this proposed rule is exempt from review under Executive Order 12866.

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

References

A complete list of all references cited herein is available upon request (see **ADDRESSES**) and can also be obtained from the internet at *www.nwr.noaa.gov*.

List of Subjects

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

50 CFR Part 226

Endangered and threatened species.

Dated: April 14, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 224 and 226 are amended as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

§ 224.101 [Amended]

2. In § 224.101, in paragraph (a), remove the words "Umpqua River cutthroat trout (*Oncorhynchus clarki clarki*)".

PART 226—DESIGNATED CRITICAL HABITAT

3. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

§ 226.206 [Removed and reserved]

4. Remove and reserve § 226.206.

Table 4 to Part 226 [Removed and reserved]

5. Remove and reserve Table 4 to part 226.

[FR Doc. 00–9842 Filed 4–18–00; 8:45 am]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 981216308–9124–02; I.D. 040500B]

RIN 0648–AJ67

Atlantic Highly Migratory Species (HMS) Fisheries; Vessel Monitoring Systems

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Delay of effectiveness.

SUMMARY: NMFS further delays the effective date of a section of a final rule published May 28, 1999, which required certain vessel owner/operators to install a NMFS-approved vessel monitoring system (VMS). The effective date of the VMS requirement is delayed until September 1, 2000.

DATES: The effective date of 50 CFR 635.69 is September 1, 2000.

ADDRESSES: Copies of the Highly Migratory Species Fishery Management Plan (HMS FMP), the final rule and supporting documents can be obtained from Rebecca Lent, Chief, Highly Migratory Species Division, Office of

Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Jill Stevenson, NMFS, (301) 713–2347, or Buck Sutter (727) 570–5447.

SUPPLEMENTARY INFORMATION: The final regulations to implement the HMS FMP, and Amendment 1 to the Atlantic Billfish Fishery Management Plan (64 FR 29090, May 28, 1999) included a provision requiring an owner or operator of a commercial vessel permitted to fish for Atlantic HMS under § 635.4 and that fishes with a pelagic longline to install a NMFS-approved VMS unit on board the vessel and operate the VMS unit whenever the vessel leaves port with pelagic longline gear on board. The VMS requirement of the final rule (§ 635.69) was to be effective September 1, 1999.

On August 9, 1999, NMFS delayed the effective date of this final rule until January 1, 2000 (64 FR 43101). On October 14, 1999, NMFS again delayed the effective date of this final rule until June 1, 2000 (64 FR 55633). NMFS further delays the effective date of implementation of the VMS regulations until September 1, 2000.

Dated: April 10, 2000.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–9699 Filed 4–18–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 041200A]

Fisheries of the Exclusive Economic Zone Off Alaska, Pacific Cod in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Apportionment of reserve.

SUMMARY: NMFS is apportioning the initial reserve of Pacific cod in the Gulf of Alaska (GOA). This action is necessary to allow incidental catch of Pacific cod to be retained in other directed fisheries and to account for previous harvest of the total allowable catch (TAC) in the GOA.

This action is necessary to meet the objectives in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and is intended to further the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 19, 2000, until 2400 hrs, A.l.t., December 31, 2000. Comments must be received by May 4, 2000.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Administrator for Fisheries, Sustainable Fisheries Division, Alaska Region, NMFS, 709 West 9th Street, Room 453, Juneau, AK 99801 or P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th St., Room 453, Juneau, AK 99801. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, (907)481–1780, fax (907)481–1781, or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION:

NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the FMP prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The initial TAC of Pacific cod in the Western, Central, and Eastern Regulatory Areas of the GOA was established by the Final 2000 Harvest Specifications for Groundfish of the GOA (65 FR 8298, February 18, 2000) as 16,500 metric tons (mt), 27,264 mt, and 3,208 mt, respectively. Directed fishing for Pacific cod for processing by the offshore component in the Western Regulatory Area of the GOA was closed on February 7, 2000, and by the inshore component in the Western and Central Regulatory Areas of the GOA on March 4, 2000, under § 679.20(d)(1)(iii), in order to prevent exceeding the allocation for processing by the offshore and inshore components in these areas (65 FR 6561, February 10, 2000, and 65 FR 12137 and 12138, March 8, 2000).

The reserves of Pacific cod in the GOA were created by the Final 2000 Harvest Specifications for Groundfish of the GOA (65 FR 8298, February 18, 2000) as a management buffer to prevent exceeding the TACs and to provide greater assurance that Pacific cod could be retained as bycatch throughout the fishing year.

The Administrator, Alaska Region, NMFS, (Regional Administrator), has determined that the initial TAC for Pacific cod in the GOA needs to be supplemented from the Pacific cod reserve for the GOA in order to allow incidental catch of Pacific cod to be retained in other fisheries and to account for prior harvest. Therefore, in accordance with § 679.20(b)(3)(i)(A), NMFS is apportioning 11,743 mt of Pacific cod from the reserve to the TAC in the GOA: 4,125 mt in the Western, 6,816 mt in the Central, and 802 mt in the Eastern Regulatory Areas.

Pursuant to § 679.20(a)(6)(iii), the apportionment of the Pacific cod reserve in the GOA is allocated to vessels catching Pacific cod for processing by the inshore and offshore components as 90 percent and 10 percent of the TAC respectively. This action increases the total allocation of the 2000 Pacific cod TACs for vessels catching Pacific cod for processing by the inshore component to 18,563 mt, 30,672 mt, and 3,609 mt in the Western, Central, and Eastern Regulatory Areas respectively, and for the offshore component to 2,062 mt, 3,408 mt and 401 mt in the Western, Central, and Eastern Regulatory Areas respectively. In accordance with § 679.20(b)(3)(iii)(A), NMFS finds that there is good cause for not providing the public with a prior opportunity to comment. As of March 25, 2000, NMFS estimates the initial TACs of 14,850 mt and 24,538 mt allocated to the inshore component in the Western and the Central Regulatory Areas of the GOA have been reached and that the initial TAC of 1,650 mt allocated to the offshore component in the Western Regulatory Area of the GOA has been reached. This action is necessary to allow retention of amounts of Pacific cod that are caught incidentally while conducting directed fishing for other species in these areas.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the initial TAC limitations for Pacific cod established in the Final 2000 Harvest Specifications for Groundfish in the GOA. This action will allow incidental catch of Pacific cod to be retained in other directed fisheries. The alternative is to prohibit retention of Pacific cod which is contrary to the FMP goals of providing the opportunity to more fully utilizing the available TACs and reducing discards. A delay in the effective date is impracticable and

contrary to the public interest as it relieves a potential restriction. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 13, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–9844 Filed 4–18–00; 8:45 am]

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Proposed Rules

Federal Register
Vol. 65, No. 76
Wednesday, April 19, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–77–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A310 series airplanes. This proposal would require modification of the position 1 flap screw jack. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent fracture of the lead screw of the position 1 flap screw jack, which could result in failure of the tie bar and possible disconnection of the flap structure from the airplane.

DATES: Comments must be received by May 19, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–77–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–77–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–77–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A310 series airplanes. The DGAC advises that, during routine maintenance, a fractured lead screw was detected in a position 1 flap screw jack. After an inspection of the fleet, additional occurrences of broken or cracked lead screws were reported. Investigation into the fractured lead screws revealed that the cause was attributed to interference between the ball nut and the trunnion fork end due to the installation of the ball nut being offset 180 degrees after maintenance. Such interference between the ball nut and trunnion fork end could lead to fracture of the lead screw of the position 1 flap screw jack. This condition, if not corrected, could result in failure of the tie bar and possible disconnection of the flap structure from the airplane.

Explanation of Relevant Service Information

The manufacturer has issued Airbus Service Bulletin A310–27–2075, Revision 02, dated February 8, 2000, which describes procedures for modification of the position 1 flap screw jack. The modification involves the installation of a bracket, which will prevent incorrect installation of the ball nut. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 1999–510–299(B), dated December 29, 1999, in order to assure the continued airworthiness of these airplanes in France.

The Airbus service bulletin references Lucas/Liebherr Service Bulletin 537–27–M537–15, dated May 12, 1994, as an additional source of service information for accomplishing the modification proposed by this AD.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the position 1 flap control screw jack. The actions would be required to be accomplished in accordance with the Airbus service bulletin described previously.

Cost Impact

The FAA estimates that 41 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $105 per airplane. Based on these figures, the cost impact of the proposed modification AD on U.S. operators is estimated to be $9,225, or $225 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 2000–NM–77–AD.

Applicability: Model A310 series airplanes, certificated in any category, except those airplanes on which Airbus Modification 10855 or Airbus Service Bulletin A310–27–2075 has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fracture of the lead screw of the position 1 flap screw jack, which could result in failure of the tie bar and possible disconnection of the flap structure from the airplane, accomplish the following:

Modification

(a) Within 18 months after the effective date of this AD, modify the position 1 flap screw jack in accordance with Airbus Service Bulletin A310–27–2075, Revision 02, dated February 8, 2000.

Note 2: Modifications accomplished prior to the effective date of this AD, in accordance with Airbus Service Bulletin A310–27–2075, dated November 18, 1994, or Revision 01, dated July 20, 1995, are considered acceptable for compliance with the modification specified by this AD.

Note 3: The Airbus service bulletin references Lucas/Liebherr Service Bulletin 537–27–M537–15, dated May 12, 1994, as an additional source of service information for accomplishing the applicable action required by this AD.

Spares

(b) As of the effective date of this AD, no person shall install on any airplane a position 1 flap screw jack having part number 537G0000–02, unless modified in accordance with this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in French airworthiness directive 1999–510–299(B), dated December 29, 1999.

Issued in Renton, Washington, on April 13, 2000.

Charles D. Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–9823 Filed 4–18–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–54–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A300–600, and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300, A300–600, and A310 series airplanes. This proposal would require replacement of the transformer rectifier units (TRU) in the avionics compartment with new, improved TRU's. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority.

The actions specified by the proposed AD are intended to prevent failure of the TRU's. Failure of multiple TRU's could result in loss of the thrust reversers, autothrottle, flaps, and various systems (wing/cockpit window anti-ice, trim tank pumps, and windshield wipers) on the airplane; or incorrect information displayed to the flight crew.

DATES: Comments must be received by May 19, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–54–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–54–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–54–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300, A300–600, and A310 series airplanes. The DGAC advises that it has received reports of failures in operation of the direct current (DC) electrical power transformer rectifier units (TRU). Investigation of these failures revealed that the temperature level that triggers the fan may lead to the overheat and failure of one or more TRU's. Failure of multiple TRU's, if not corrected, could result in loss of the thrust reversers, autothrottle, flaps, and various systems (wing/cockpit window anti-ice, trim tank pumps, and windshield wipers) on the airplane; or incorrect information displayed to the flight crew.

Explanation of Relevant Service Information

The manufacturer has issued Airbus Service Bulletin A300–24–0089, dated March 4, 1998 (for Model A300 series airplanes), A300–24–6068, dated January 28, 1998 (for Model A300–600 series airplanes), and A310–24–2077, dated January 21, 1998 (for Model A310 series airplanes). These service bulletins describe procedures for replacement of the TRU's in the avionics compartment with new, improved TRU's. The new TRU's utilize a reduced working temperature, thus improving the reliability of the TRU's. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 1999–435–296(B), dated November 3, 1999, in order to assure the continued airworthiness of these airplanes in France.

The Airbus service bulletins reference AUXILEC Service Bulletin F11QB3121–24–007, dated February 2, 1998, as an additional source of service information for accomplishing the replacement proposed by this AD.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of the TRU's in the avionics compartment with new, improved TRU's. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Foreign Airworthiness Directive

The proposed rule would differ from the French airworthiness directive in that it would require accomplishment of the replacement described previously, within 6 months after the effective date of this AD. The parallel French airworthiness directive specifies accomplishment of the replacement prior to September 30, 2001 (18 months after the effective date). In developing an appropriate compliance time for this AD, the FAA considered not only the DGAC's and the manufacturer's recommendations, but the degree of urgency associated with addressing the subject unsafe condition and the average utilization of the affected fleet. In light of these factors, the FAA finds a 6-month compliance time for the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

The FAA estimates that 122 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required

parts would be provided by the manufacturer at no cost to the operators if modification of the TRU's is accomplished at the vendor's (AUXILEC) facilities, otherwise the required parts would cost approximately $253 per TRU. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $120 and $1,132 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 2000–NM–54–AD.

Applicability: Model A300, A300–600, and A310 series airplanes; certificated in any category; equipped with AUXILEC transformer rectifier units (TRU) having part number (P/N) F11QB3121.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of multiple TRU's, which could result in loss of the thrust reversers, autothrottle, flaps, and various systems (wing/cockpit window anti-ice, trim tank pumps, and windshield wipers) on the airplane; or incorrect information displayed to the flight crew; accomplish the following:

Replacement

(a) Within 6 months after the effective date of this AD, replace the TRU's in the avionics compartment with new, improved TRU's, in accordance with Airbus Service Bulletins A300–24–0089, dated March 4, 1998 (for Model A300 series airplanes); A300–24–6068, dated January 28, 1998 (for Model A300–600 series airplanes); or A310–24–2077, dated January 21, 1998 (for Model A310 series airplanes); as applicable.

Note 2: The Airbus service bulletins reference AUXILEC Service Bulletin F11QB3121–24–007, dated February 2, 1998, as an additional source of service information for accomplishing the replacement required by this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directive 1999–435–296(B), dated November 3, 1999.

Issued in Renton, Washington, on April 13, 2000.

Charles D. Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–9822 Filed 4–18–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–363–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 707, 727C, and 727–100C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 707, 727C, and 727–100C series airplanes, that currently requires repetitive inspections to detect cracking of the main cargo door skin and frames, and repair, if necessary. The existing AD also provides optional terminating modifications. This action would mandate follow-on repetitive inspections of repaired or modified areas for certain airplanes. This proposal is prompted by reports of cracking and/or tearing of the main cargo door outer skin and subsequent failure of the door frame. The actions specified by the proposed AD are intended to detect and correct such cracking and/or tearing, which could result in failure of the door frame and consequent rapid decompression of the airplane.

DATES: Comments must be received by June 5, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–363–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Walt Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–363–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–363–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 17, 1983, the FAA issued AD 83–02–09, amendment 39–4549 (48 FR 6953, February 17, 1983), applicable to certain Boeing Model 707, 727C, and 727–100C airplanes, to require inspection and repair, if necessary, of the main cargo door structure. That action was prompted by reports of skin cracking and door frame failures. The requirements of that AD are intended to detect cracking prior to reaching critical length, which could result in rapid decompression or loss of a portion of the main cargo door.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has reviewed and approved Boeing Service Bulletin 727–52A0079, Revision 6, dated January 11, 1990. The service bulletin describes procedures for repetitive detailed visual, eddy current, and X-ray inspections of the main cargo door outer skin and the door frames between body stations (BS) 505 and 595 to detect cracking, and repair of any cracks. The service bulletin also describes procedures for modification of the main cargo door and detailed visual and eddy current inspections of the modified or repaired areas. Revisions 4 and 5 of the service bulletin were referenced in the existing AD as an appropriate source of service information for accomplishment of the inspections and modifications for the Model 727 series airplanes.

The FAA also has reviewed and approved Revision 4 of Boeing Service Bulletin 2999, dated January 31, 1991. Revision 3 of the service bulletin was referenced in the existing AD as the appropriate source of service information for accomplishment of the inspections and modifications for the Model 707 series airplanes. The requirements for inspections and modifications of the Model 707 are unchanged in this proposed AD because the detailed visual and eddy current inspections of the modified or repaired areas are required by AD 85–12–01 R1, amendment 39–5439 (51 FR 36002, October 8, 1986).

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 83–02–09 to continue to require repetitive inspections to detect cracking of the main cargo door outer skin and frames, and repair, if necessary. This proposed AD would mandate follow-on repetitive inspections of modified or repaired areas for certain airplanes.

Paragraph (e) of the existing AD will not be restated in this proposal due to the FAA's determination that calculating the number of landings/flight cycles by fleet average would not allow for detection of cracks in a timely manner.

Additionally, restatement of the requirements of the existing AD has been revised to remove all references to the use of "later FAA-approved revisions of the applicable service bulletin," in order to be consistent with FAA policy in that regard. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD, since later revisions of the service bulletin may be approved as an alternative method of compliance with this AD, as provided by paragraph (g)(1) of this AD.

Difference Between Proposed Rule and Service Bulletins

Operators should note that, although the service bulletins specify that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Cost Impact

There are approximately 50 Model 707 and 308 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1 Model 707 and 81 Model 727 airplanes of U.S. registry would be affected by this proposed AD.

The cost impact information in AD 83–02–09 inadvertently contained information relevant only to the X-ray inspection; however, since the detailed visual and eddy current inspections are also acceptable methods to detect cracking, this proposed AD includes the estimated number of work hours necessary to accomplish any one of the three inspection methods. Additionally, the FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $40 per work hour to

$60 per work hour. The cost impact information, below, has been revised to reflect these changes.

Should an operator elect to accomplish the detailed visual inspection that is currently required by AD 83–02–09, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the detailed visual inspection is estimated to be $60 per airplane.

Should an operator elect to accomplish the eddy current inspection that is currently required by AD 83–02–09, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the eddy current inspection is estimated to be $60 per airplane.

Should an operator elect to accomplish the X-ray inspection that is currently required by AD 83–02–09, it would take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the X-ray inspection is estimated to be $180 per airplane.

The detailed visual inspection (for Model 727 series airplanes only) proposed by this AD would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the detailed visual inspection is estimated to be $4,860, or $60 per airplane.

The eddy current inspection (for Model 727 series airplanes only) proposed by this AD would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the eddy current inspection is estimated to be $4,860, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–4549 (48 FR 6953, February 17, 1983), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 99–NM–363–AD. Supersedes AD 83–02–09, Amendment 39–4549.

Applicability: Model 707, 727C, and 727–100C series airplanes; as listed in Boeing Service Bulletins 2999, Revision 3, dated January 12, 1972, and 727–52–79, Revision 4, dated June 19, 1981; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the main cargo door skin and frames, which could result in failure of the door frame, and consequent rapid decompression of the airplane, accomplish the following:

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Restatement of Requirements of AD 83–02–09

Initial Inspection

(a) Within 500 landings after March 3, 1983 (the effective date of AD 83–02–09, amendment 39–4549), or prior to the accumulation of 25,000 total landings after March 3, 1983, whichever occurs later: Perform an inspection (detailed visual, eddy current, or X-ray) to detect cracks of the main cargo door outer skin and frames between body stations (BS) 505 and 595, from the lower edge of the door hinge a minimum of 6 inches down, and 6 inches above, and 3 inches below the center line of stringer 10, in accordance with Boeing Service Bulletin 2999, Revision 3, dated January 12, 1972, or Revision 4, dated January 31, 1991 (for Model 707 series airplanes); or Boeing Service Bulletin 727–52–79, Revision 4, dated June 19, 1981, or Boeing Alert Service Bulletin 727–52A0079, Revision 5, dated June 17, 1983, or Revision 6, dated January 11, 1990 (for Model 727 series airplanes); as applicable.

Repetitive Inspections

(b) Repeat the inspection required by paragraph (a) of this AD at the times specified in paragraph (b)(1), (b)(2) or (b)(3) of this AD; as applicable; until accomplishment of the modification required by paragraph (d) of this AD.

(1) Repeat the detailed visual inspection at intervals not to exceed 500 landings.

(2) Repeat the eddy current inspection at intervals not to exceed 750 landings.

(3) Repeat the X-ray inspection at intervals not to exceed 1,000 landings.

Repair

(c) If any cracking is detected during any inspection required by paragraph (a) or (b) of this AD: Prior to further flight, repair any cracks detected in accordance with Boeing Service Bulletin 2999, Revision 3, dated January 12, 1972, or Revision 4, dated January 31, 1991 (for Model 707 series airplanes); or Boeing Service Bulletin 727–52–79, Revision 4, dated June 19, 1981, or Boeing Alert Service Bulletin 727–52A0079, Revision 5, dated June 17, 1983, or Revision 6, dated January 11, 1990 (for Model 727 series airplanes), as applicable.

Optional Terminating Action

(d) Modification of the main cargo door in accordance with Part II, Option 1 or Option

2, as applicable, of the Accomplishment Instructions of Boeing Service Bulletin 2999, Revision 3, dated January 12, 1972, or Revision 4, dated January 31, 1991 (for Model 707 series airplanes); or Boeing Service Bulletin 727–52–79, Revision 4, dated June 19, 1981, or Boeing Alert Service Bulletin 727–52A0079, Revision 5, dated June 17, 1983, or Revision 6, dated January 11, 1990 (for Model 727 series airplanes); as applicable; constitutes terminating action for the requirements of paragraphs (a) and (b) of this AD.

New Requirements of This AD

Post-Repair/Post-Mod Repetitive Inspections

(e) For Model 727 series airplanes: Within 27,000 flight cycles after accomplishment of the repair specified in paragraph (c) of this AD, and/or the modification specified in paragraph (d) of this AD, as applicable; or within 1,000 flight cycles after the effective date of this AD; whichever occurs later; accomplish the requirements of paragraph (e)(1) or (e)(2) of this AD, as applicable.

(1) For airplanes that have accomplished the modification specified in Part II, Option 1, of the Accomplishment Instructions of Boeing Service Bulletin 727–52–79, Revision 4, dated June 19, 1981, or Boeing Alert Service Bulletin 727–52A0079, Revision 5, dated June 17, 1983, or Revision 6, dated January 11, 1990: Perform a detailed visual and eddy current inspection of the modified area and/or any repaired area, to detect cracks, in accordance with the service bulletin. Repeat the inspections at intervals not to exceed 3,800 flight cycles.

(2) For airplanes that have accomplished the modification specified in Part II, Option 2, of the Accomplishment Instructions of Boeing Service Bulletin 727–52–79, Revision 4, dated June 19, 1981, or Boeing Alert Service Bulletin 727–52A0079, Revision 5, dated June 17, 1983, or Revision 6, dated January 11, 1990: Perform an internal and external detailed visual and an eddy current inspection of the modified area to detect cracks in accordance with the service bulletin. Repeat the inspections at intervals not to exceed 3,800 flight cycles.

Repair

(f) If any cracking is detected during any inspection required by paragraph (e)(1) or (e)(2) of this AD: Prior to further flight, repair any cracks detected in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(g)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance approved previously in accordance with AD 83–02–09, amendment 39–4549, are approved as alternative methods of compliance with this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Note 4: Incorporation of the Boeing Model 707–720 Supplemental Structural Inspection Document (SSID) into the operator's approved airplane maintenance program constitutes an approved alternative method of compliance for Model 707 and 720 series airplanes.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 13, 2000.

Charles D. Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–9821 Filed 4–18–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–80–AD]

Airworthiness Directives; Bell Helicopter Textron Canada Model 206L, L–1, L–3, and L–4 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Bell Helicopter Textron Canada (BHTC) Model 206L, L–1, L–3, and L–4 helicopters. That AD currently requires removing the horizontal stabilizer supports and inspecting the edges of the tailboom skins around the horizontal stabilizer openings for a crack. This action would require inspecting the tailboom skins for a crack, replacing a cracked tailboom with a modified tailboom before further flight, and implementing a recurring inspection of the modified tailboom. This proposal is prompted by several additional reports of cracks found during mandatory inspections. The actions specified by the proposed AD are intended to detect a crack in the tailboom and to prevent separation of the tailboom from the helicopter and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before June 19, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–80–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111 telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments

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submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–80–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–80–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On June 16, 1999, the FAA issued AD 99–13–12, Amendment 39–11207 (64 FR 33747, June 24, 1999), to require at specified time intervals visually inspecting and preflight checking for cracks around the horizontal stabilizer opening. The AD also requires within 50 hours time-in-service (TIS) removing the horizontal stabilizer supports and visually inspecting the edges of the tailboom skins around the horizontal stabilizer openings for a crack using a fluorescent-penetrant inspection. That action was prompted by crack growth analysis that indicated the need to detect cracks before they propagate from underneath the horizontal stabilizer supports. The requirements of that AD are intended to detect a crack in the tailboom skin, prevent separation of the tailboom from the helicopter, and subsequent loss of control of the helicopter.

Since the issuance of that AD, several additional cracks in tailbooms were found during mandatory inspections.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTC Model 206L, L–1, L–3, and L–4 helicopters of the same type design, the proposed AD would supersede AD 99–13–12 to require the following:

- Inspecting the tailboom skins for a crack;
- Replacing any cracked tailboom with an airworthy modified tailboom;
- Modifying the tailboom within the next 300 hours time-in-service (TIS) by adding a doubler on the left side of the tailboom in the area of the left horizontal stabilizer, and
- Inspecting the modified tailboom for a crack at intervals not to exceed 1200 hours TIS.

This proposal is prompted by several additional reports of cracks found during mandatory inspections. The actions specified by the proposed AD are intended to detect a crack in the tailboom and to prevent separation of the tailboom from the helicopter and subsequent loss of control of the helicopter.

Transport Canada, which is the airworthiness authority for Canada, has notified the FAA that an unsafe condition may exist on BHTC Model 206L, L–1, L–3, and L–4 helicopters. Transport Canada advises that cracks were found on the tailboom skins in the area of the horizontal stabilizer.

BHTC has issued Alert Service Bulletin 206L–99–115, Revision D, dated January 26, 2000 (ASB), which specifies modifying the tailboom by adding a doubler on the left side of the tailboom in the area of the left horizontal stabilizer and inspecting the modified tailboom for a crack at intervals not to exceed 1200 hours of operation. Transport Canada classified Revision A of this ASB as mandatory and issued AD CF–98–42R2, dated July 22, 1999. Transport Canada has subsequently issued AD CF–1998–42R3, dated February 17, 2000, which extended the compliance date.

These helicopter models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

The FAA estimates that 1546 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 52 work hours to inspect and replace the tailbooms, if necessary, and that the average labor rate is $60 per work hour. Required parts would cost approximately $22,954 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $40,310,404 if all tailbooms must be replaced.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11207 (64 FR 33747, June 24, 1999), and by adding a new airworthiness directive (AD), to read as follows:

Bell Helicopter Textron Canada: Docket No. 99–SW–80–AD. Supersedes AD 99–13–12, Amendment 39–11207, Docket No. 99–SW–23–AD.

Applicability: Model 206L, serial numbers (S/N) 45004 through 45049, 45051 through 45153, and 46601 through 46617; Model 206L–1, S/N 45154 through 45790; Model 206L–3, S/N 51001 through 51612; and Model 206L–4, S/N 52001 through 52163, 52165 through 52212, and 52214 through 52216, with tailboom, part number (P/N) 206–033–004-all dash numbers, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not

been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect a crack in the tailboom skin and to prevent separation of the tailboom from the helicopter and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight and thereafter at intervals not to exceed 10 hours time-in-service (TIS) until accomplishing the one-time fluorescent-penetrant inspection (FPI) required by paragraph (c)(2) of this AD, visually inspect for any crack in the shaded areas shown in Figure 1. Use a 10-power or higher magnifying glass. If a crack is found, replace the tailboom with an airworthy tailboom modified according to the requirements of paragraph (e) of this AD before further flight.

(b) At intervals not to exceed 5 hours TIS, visually check for any crack in the tailboom as depicted by the shaded areas shown in Figure 1. If any crack is found, replace the tailboom with an airworthy tailboom modified according to the requirements of paragraph (e) of this AD before further flight. The visual check may be performed by an owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with paragraph (b) of this AD in accordance with sections 43.11 and 91.417 (a)(2)(v) of the Federal Aviation Regulations (14 CFR sections 43.11 and 91.417 (a)(2)(v)).

(c) Within 50 hours TIS:

(1) Remove all 4 horizontal stabilizer supports, P/N 206–023–100-all dash numbers, from the tailboom and the horizontal stabilizer.

(2) Perform a one-time FPI of the edges of the tailboom skins for any crack around the left and right horizontal stabilizer openings (Figure 1). Remove paint and primer to inspect the edges and exterior skin surface in the skin area at least ¾ inch around the edges of the horizontal stabilizer openings.

(3) If a crack is found, replace the tailboom with an airworthy tailboom modified according to the requirements of paragraph (e) of this AD before further flight.

BILLING CODE 4910–13–U

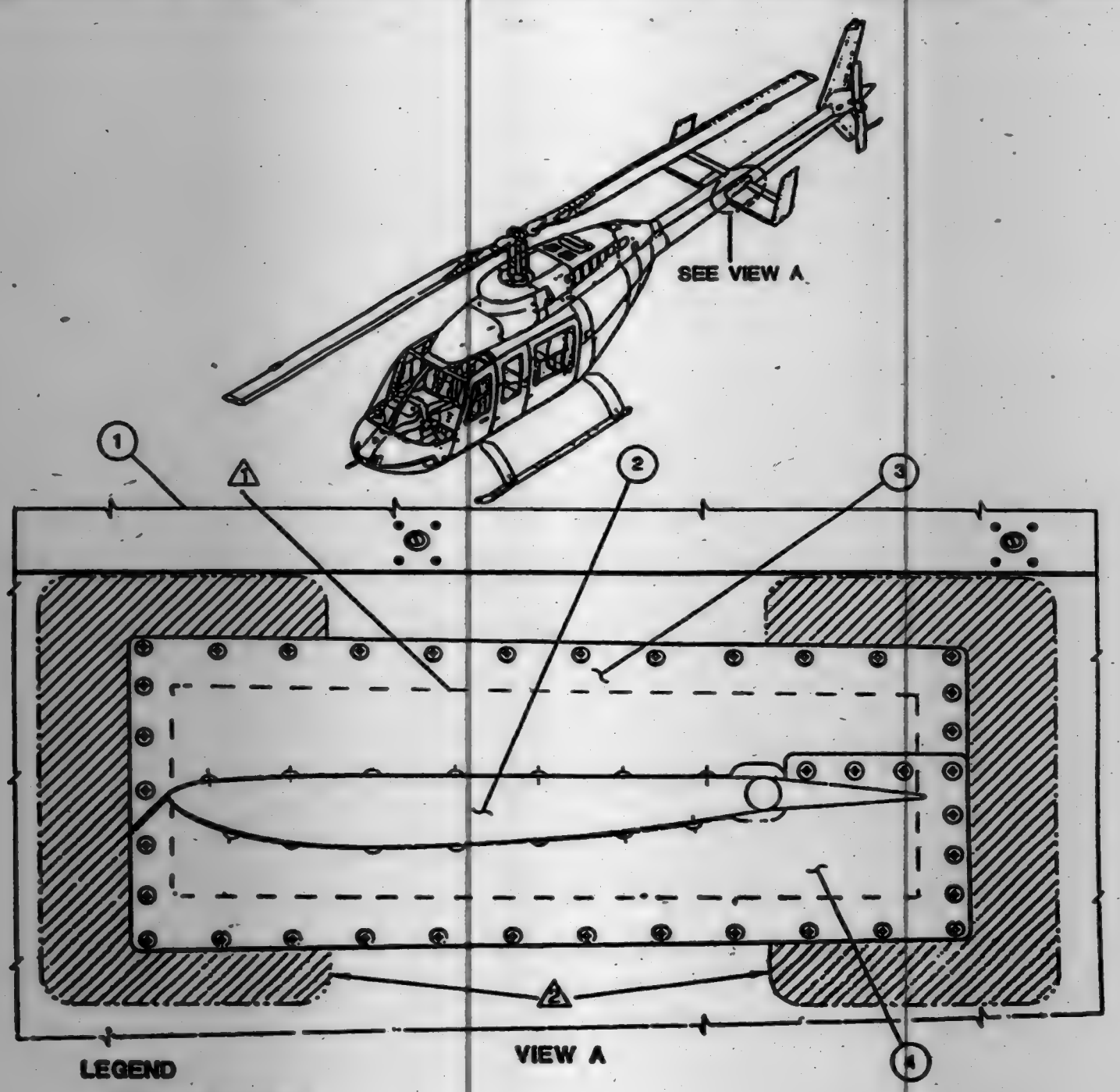

LEGEND

1. Tailboom assembly
2. Horizontal stabilizer
3. Upper support
4. Lower support

NOTES

2 Inspect for a crack in these two areas on both sides of the tailboom.

1 Inspect entire edge of stabilizer opening on both sides of the tailboom.

Figure 1

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(d) At intervals not to exceed 100 hours TIS after completion of the FPI, accomplish the following:

(1) Remove all 4 horizontal stabilizer supports, P/N 206–023–100-all dash numbers, from the tailboom and the horizontal stabilizer.

(2) Visually inspect the entire edge of the horizontal stabilizer opening on both sides of the tailboom for any crack using a 10-power or higher magnifying glass.

(3) If a crack is found, replace the tailboom with an airworthy tailboom modified according to the requirements of paragraph (e) of this AD before further flight.

(e) Within the next 300 hours TIS, inspect and modify the tailboom in accordance with Parts I, II, and III of Bell Helicopter Textron Canada (BHTC) Alert Service Bulletin 206L–99–115, Revision D, dated January 26, 2000 (ASB). If a crack is found while accomplishing Part I of the ASB, replace the tailboom with an airworthy tailboom modified as required by this paragraph before further flight. After accomplishing the modification, inspect the modified tailboom at intervals not to exceed 1200 hours TIS in accordance with Part IV of the ASB.

(f) Modifying and inspecting the tailboom in accordance with paragraph (e) of this AD is terminating action for the requirements of paragraphs (a) through (d) of this AD.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(h) Special flight permits may be issued for a one-time flight, not to exceed 5 hours TIS and a maximum of one landing in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), to operate the helicopter to a location where the requirements of this AD can be accomplished. The visual preflight check required by paragraph (b) of this AD must be accomplished prior to making a one-time flight.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD CF–98–42R3, dated February 17, 2000.

Issued in Fort Worth, Texas, on April 12, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–9819 Filed 4–18–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–9]

Proposed Amendment to Class D and Class E5 Airspace, Greenwood, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend Class D and Class E airspace at Greenwood-Leflore Airport, Greenwood, MS. An Area Navigation (RNAV) Runway (RWY) 18 Standard Instrument Approach Procedure (SIAP) has been developed for Greenwood, MS. As a result, additional controlled airspace extending upward from the surface and extending upward from 700 feet above Ground Level (AGL) is needed to accommodate the SIAP.

DATES: Comments must be received on or before May 19, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 00–ASO–9, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–ASO–9." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class D and Class E5 airspace at Greenwood-Leflore Airport, Greenwood, MS. An RNAV RWY 18 SIAP has been developed for Greenwood-Leflore Airport. Additional controlled airspace extending upward from the surface and extending upward from 700 feet AGL is needed to accommodate the SIAP. Class D airspace designations are published in Paragraph 5000, Class E4 airspace designations are published in Paragraph 6004, and Class E5 airspace designations are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E5 airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant

regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 289.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ASO MS D Greenwood, MS [Revised]

Greenwood-Leflore Airport, MS
(Lat. 33°29′44″ N, long. 90°05′03″ W)

That airspace extending upward from the surface, to and including 2,700 feet MSL within a 4.4-mile radius of the Greenwood-Leflore Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D Airspace Area.

* * * * *

ASO MS E4 Greenwood, MS [Revised]

Greenwood-Leflore Airport, MS
(Lat. 33°29′44″ N, long. 90°05′03″ W)
Greenwood VORTAC
(Lat. 33°27′50″ N, long. 90°16′38″ W)

That airspace extending upward from the surface within 1.4 miles each side of the Greenwood VORTAC 079° radial, extending from the 4.4-mile radius of Greenwood-Leflore Airport to 4 miles east of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the earth.

* * * * *

ASO MS E5 Greenwood, MS [Revised]

Greenwood-Leflore Airport, MS
(Lat. 33°29′44″ N, long. 90°05′03″ W)
Greenwood VORTAC
(Lat. 33°27′50″ N, long. 90°16′38″ W)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Greenwood-Leflore Airport and within 1.2 miles each side of the Greenwood VORTAC 079° radial, extending from the 6.9-mile radius to 2 miles east of the VORTAC.

* * * * *

Issued in College Park, Georgia, on March 31, 2000.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–9216 Filed 4–18–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AGL–10]

Proposed Establishment of Class E Airspace; Minneapolis, Crystal Airport, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Minneapolis, Crystal Airport, MN. Crystal Airport is served by Federal Aviation Regulations Part 135 air carrier operations. Controlled airspace extending upward from the surface is needed to contain aircraft executing instrument flight procedures and provide a safer operating environment when the control tower is closed. The airport meets the minimum communications and weather observation and reporting requirements for controlled airspace extending upward from the surface. This action proposes to create controlled airspace with a 3.8-mile radius for this airport.

DATES: Comments must be received on or before May 22, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 00–AGL–10, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–AGL–10." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for

comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Minneapolis, Crystal Airport, MN, to accommodate FAR Part 135 (14 CFR part 135) air carrier aircraft executing instrument flight rules procedure during periods when the control tower is closed. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from the surface of the earth are published in paragraph 6002 of FAA Order 7400.9G dated September 11, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 11, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 6002 Class E airspace designated as a surface area.

* * * * *

AGL MN E2 Minneapolis, Crystal Airport, MN [New]

Crystal Airport, MN
(Lat. 45°08'42"N., long 93°12'41"W.)

Within a 3.8-mile radius of the Minneapolis, Anoka County-Blaine Airport. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on March 22, 2000.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 00–9215 Filed 4–18–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 864, 866, 868, 870, 872, 874, 876, 878, 884, 886, and 888

[Docket No. 99N–0035]

Medical Devices; Reclassification of 38 Preamendments Class III Devices into Class II

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening for 90 days the comment period for the submission of comments regarding 6 of the 38 devices proposed for reclassification from class III into class II. The proposed rule was published in the **Federal Register** of March 15, 1999 (64 FR 12774). The agency is taking this action in part in response to a request for more time to submit comments to FDA regarding several of the guidance documents that were not made available when the March 15, 1999, proposed rule was published. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of these guidance documents for comment.

DATES: Submit written comments on the proposed rule by July 18, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–2974.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 15, 1999 (64 FR 12774), FDA published a proposed rule to reclassify 38 preamendments class III devices into class II and to establish special controls for these devices. Interested persons were given until June 14, 1999, to comment on the proposed rule.

A trade association requested that FDA reopen the comment period for the following six devices: (1) Vascular graft prosthesis of less than 6 millimeters diameter, (2) pacemaker lead adaptor, (3) annuloplasty ring, (4) cardiopulmonary bypass defoamer, (5) cardiopulmonary bypass arterial line blood filter, and (6) cardiopulmomonary bypass oxygenator. The request noted that FDA had not made the guidance documents that were proposed as special controls for these six devices available for comment through the agency's Good Guidance Practices (GGP's). The request further noted that it was impossible to comment on the proposed reclassification without the guidance documents being available. Therefore, the trade association requested that FDA extend the comment period until at least 90 days after the guidance documents are publicly available for comment.

FDA also identified an additional three devices for which the agency had

not issued the guidance documents proposed as special controls in accordance with the GGP policy: The indwelling blood carbon dioxide partial pressure (Pco_2) analyzer, the indwelling blood hydrogen ion concentration (pH) analyzer, and the indwelling blood oxygen partial pressure (Po_2) analyzer. In the near future, FDA intends to announce the availability of two guidance documents for these three devices and will reopen the comment period on the reclassification of those devices at that time.

Accordingly, FDA is reopening the comment period for the March 15, 1999, proposed rule to allow additional time for interested persons to comment on the following six devices:

TABLE 1

21 CFR Section	Device Name
870.3450	Vascular graft prosthesis of less than 6 millimeters diameter
870.3620	Pacemaker lead adaptor
870.3800	Annuloplasty ring
870.4230	Cardiopulmonary bypass defoamer
870.4260	Cardiopulmonary bypass arterial line blood filter
870.4350	Cardiopulmonary bypass oxygenator

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding the proposed rule only with respect to the six devices listed above by July 18, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 3, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–9709 Filed 4–18–00; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRN–6561–7]

RIN 2050–AE07

Hazardous Waste Identification Rule (HWIR); Extension of Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of the public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period on an exemption from hazardous waste management discussed in the proposed Hazardous Waste Identification Rule (HWIR) **Federal Register** document published on November 19, 1999 (64 FR 63382). To ensure we consider your comments on the November 19, 1999 **Federal Register** discussion of the concentration-based HWIR exemption and the possible revisions to the Land Disposal Restriction (LDR) treatment standards (64 FR 63382, Sections V–XX and Sections XXI–XVI, as applicable, of the preamble), they must be postmarked on or before August 15, 2000.

Please note that today's document does *not* re-open the comment period on the revisions to the mixture and derived-from rules that were proposed in the November 19, 1999 HWIR proposed rule (64 FR 63382, Sections I–IV, Sections XXI–XVI (as applicable) of the preamble and the proposed regulatory language amending 40 CFR part 261). That comment period ended February 17, 2000.

DATES: Comments must be submitted on or before August 15, 2000.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–1999–WH2P–FFFFF to: (1) if using regular US Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002, or (2) if using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. Comments may also be submitted electronically through the Internet to: rcra-docket@epa.gov. Comments in electronic format should also be identified by the docket number F–1999–WH2P–FFFFF and must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460–0002.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703–412–9810 or TDD 703–412–3323.

For information on specific aspects of notice, contact Tracy Atagi, Office of Solid Waste 5304W, U.S. Environmental Protection Agency Headquarters (EPA, HQ), 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002, (703) 308–8672, atagi.tracy@epa.gov; for specific information on the risk modeling system, contact David Cozzie, Office of Solid Waste 5307W, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460–0002, (703) 308–0479, cozzie.david@epa.gov.

SUPPLEMENTARY INFORMATION: The notice and other material associated with this action can be electronically accessed on the Internet at http://www.epa.gov/epaoswer/hazwaste/id/hwirwste/index.htm.

The official record for this rulemaking will be kept in paper form. Accordingly,

EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the record maintained at the address in **ADDRESSES** at the beginning of this document.

We will respond to submitted comments, whether written or electronic, in a notice in the **Federal Register** or in a response to comments document placed in the official record for this rulemaking. We will not immediately reply to electronically submitted comments other than to seek clarification of comments that may be garbled in transmission or during conversion to paper form, as discussed above.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Waste treatment and disposal.

Dated: April 5, 2000.

Elizabeth A. Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 00–9795 Filed 4–18–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–782; MM Docket No. 00–64, RM–9117]

Radio Broadcasting Services; Tullahoma, TN and Madison, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Tennessee Valley Radio, Inc., proposing the reallotment of Channel 227C1 from Tullahoma, Tennessee, to Madison, Alabama, and the modification of Station WPZM(FM)'s license accordingly. Channel 227C1 can be reallotted to Madison in compliance with the Commission's minimum distance separation requirements with a site restriction of 50.6 kilometers (31.4 miles) northeast at petitioner's presently licensed site. The coordinates for Channel 227C1 at Madison are 35–02–04 North Latitude and 86–22–52 West Longitude. In accordance with the provisions of section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 227C1 at Madison, Alabama.

DATES: Comments must be filed on or before May 30, 2000, reply comments on or before June 14, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jocelyn R. Roy, Gardner, Carton & Douglas, 1391 K Street, NW., Suite 900, East Tower, Washington, DC. 20005 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–64, adopted March 29, 2000, and released April 7, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in CFR 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–9777 Filed 4–18–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–775; MM Docket No. 00–60, RM–9627; MM Docket No. 00–61, RM–9640; MM Docket No. 00–62; RM–9646]

Radio Broadcasting Services; Sheffield, PA; Erie, IL; Due West, SC

AGENCYL: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes three new allotments at Sheffield, Pennsylvania; Erie, Illinois; and Due West, South Carolina.

DATES: Comments must be filed on or before May 30, 2000, and reply comments on or before June 14, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Arthur V. Belendiuk, Esq., Smithwick & Belendiuk, P.C., 1990 M Street, NW., Suite 510, Washington, DC 20036 (Counsel for Port Erie Communications); Lee J. Peltzman, Shainis & Peltzman, Chartered, 1901 L Street, NW., Suite 290, Washington, DC 20036 (Counsel Erie Foods International, Inc.); Patricia M. Chuh, Pepper & Corazzini, LLP, 1776 K Street, NW, Suite 200, Washington, DC 20006–2334 (Counsel for Sutton Radiocasting Corporation).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–60; MM Docket No. 00–61; and MM Docket No. 00–62, adopted March 29, 2000, and released April 7, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036 .

The Commission requests comments on a petition filed by Port Erie Communications proposing the allotment of Channel 286A at Sheffield, Pennsylvania, as the community's first local aural transmission service. Channel 286A can be allotted to Sheffield in compliance with the

Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 286A at Sheffield are 41–42–42 North Latitude and 79–00–56 West Longitude. Since Sheffield is located within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence has been requested.

The Commission requests comments on a petition filed by Erie Foods International, Inc., proposing the allotment of Channel 288A at Erie, Illinois, as the community's first local aural transmission service. Channel 288A can be allotted to Erie in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.6 kilometers (0.4 miles) east to avoid a short-spacing to licensed site of Station KQLI(FM), Channel 285C3, DeWitt, Iowa. The coordinates for Channel 288A at Erie are 41–39–22 North Latitude and 90–04–23 West Longitude.

The Commission also requests comments on a petition filed by Sutton Radiocasting Corporation proposing the allotment of Channel 237A at Due West, South Carolina, as the community's first local aural transmission service. Channel 237A can be allotted to Due West in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.5 kilometers (3.4 miles) south to avoid a short-spacing to the licensed site of Station WBTS(FM), Channel 238C1, Athens, Georgia. The coordinates for Channel 237A at Due West are 34–17–13 North Latitude and 82–24–23 West Longitude.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–9778 Filed 4–18–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–776, MM Docket No. 00–63, RM–9837]

Radio Broadcasting Services; Greenville and Cooper, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by KRBE LICO, Inc. requesting the reallotment of Channel 228C3 from Greenville, Texas, to Cooper, Texas, and modification of the license for Station KIKT(FM) to specify Cooper, Texas, as the community of license. The coordinates for Channel 228C3 at Cooper are 33–21–55 and 95–41–55. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 228C3 at Cooper.

DATES: Comments must be filed on or before May 30, 2000, and reply comments on or before June 14, 2000.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Mark N. Lipp, 600 14th Street, NW, Suite 800, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–63, adopted March 29, 2000, and released April 7, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–9779 Filed 4–18–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 567 and 568

[Docket No. NHTSA–99–5673]

RIN 2127–AE27

Vehicles Built in Two or More Stages

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of establishment of a negotiated rulemaking advisory committee and notice of meeting.

SUMMARY: NHTSA announces the establishment of a Negotiated Rulemaking Committee to develop recommended amendments to the existing NHTSA regulations (49 CFR parts 567, 568) governing the certification of vehicles built in two or more stages to the Federal motor vehicle safety standards (49 CFR part 571). The purpose of the amendments would be to assign certification responsibilities more equitably among the various participants in the multi-stage vehicle manufacturing process. The Committee will develop its recommendations through a negotiation process. The Committee will consist of persons who represent the interests that would be affected by the proposed rule, such as first-stage, intermediate and final-stage manufacturers of motor vehicles, equipment manufacturers, vehicle converters, testing facilities, trade associations that represent various manufacturing groups, and consumers. This notice also announces the time and place of the first advisory committee meeting. The public is invited to attend; an opportunity for members of the public to make oral presentations will be provided if time permits.

DATES: The meeting will be from 10:00 a.m. to 5:00 p.m. on Wednesday, May

10, 2000, and will continue from 9:00 a.m. to 3:00 p.m. on Thursday, May 11, 2000.

ADDRESSES: The meeting will take place at 1752 N Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues, you may call Charles Hott, Office of Crashworthiness Standards, at 202–366–4920.

For legal issues, you may call Rebecca MacPherson, Office of the Chief Counsel, at 202–366–2992.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC, 20590.

SUPPLEMENTARY INFORMATION:

I. Background

On May 20, 1999, the National Highway Traffic Safety Administration (NHTSA) published a notice of intent to establish an advisory committee (Committee) for a negotiated rulemaking to develop recommendations for regulations governing the certification of vehicles built in two or more stages. The notice requested comment on membership, the interests affected by the rulemaking, the issues that the Committee should address, and the procedures that it should follow. The reader is referred to that notice (64 FR 27499) for further information on these issues.

NHTSA received 17 comments on the notice of intent. All commenters endorsed the concept of using the negotiated rulemaking process for this subject. Commenters generally supported the proposed list of issues without specific comment.

Based on this response, and for the reasons stated in the notice of intent, we have determined that establishing an advisory committee on this subject is appropriate and in the public interest. In accordance with the Federal Advisory Committee Act (FACA; 5 U.S.C. App. I sec. 9(c)), we prepared a Charter for the Establishment of a Negotiated Rulemaking Advisory Committee. We intend to file the charter within fifteen (15) days from the date of this publication.

II. Membership

A total of 20 individuals were nominated or applied for membership to the Committee, either through written comments or through follow-up telephone calls.

In considering requests for representation on the Committee, we had to first determine whether the requesters represent interests significantly affected by the proposed rulemaking. As identified in the notice of intent, in addition to the Department of Transportation (DOT), these interests are: manufacturers of various stages of motor vehicles, equipment manufacturers, vehicle converters, testing facilities, trade associations that represent various manufacturing groups, and consumers of the affected vehicles.

Following is the list of Committee members, identified by interest. Members are encouraged to designate alternates who can serve in place of the member if necessary. As noted in the notice of intent, the Committee will make its decisions through a process of negotiation leading to consensus. "Consensus" means the unanimous concurrence among the interests represented on the Committee, unless the Committee explicitly adopts a different definition.

The meetings of the Committee will be facilitated by Phillip Harter and Alan Strasser of the Mediation Institute. The organizations and interests that will participate in the negotiated rulemaking are:

National Highway Traffic Safety Administration:

1. Rebecca MacPherson, Department of Transportation, NHTSA;

Incomplete Vehicle Manufacturers:

2. Timothy Blubaugh, Freightliner Corporation;
3. Lindsay Harding, Ford Motor Company;
4. Paul Murphy, Motor Coach Industries, International;
5. David Stensland, Navistar International Transportation Corporation;
6. Glenn Zuchniewicz, General Motors Corporation;

Component Manufacturers:

7. Jerome Loftus, Atwood Mobile Products;
8. Paul Wagner, Bornemann Products, Inc.

Final Stage Manufacturers:

9. Andy Callaway, Mark III Industries;
10. Phillip Headley, Environmental Industries Association;
11. David Humphreys, Recreational Vehicle Industry Association (RVIA);
12. Michael Kastner, National Truck Equipment Association (NTEA);
13. Mark Sidman, Ambulance Manufacturers Division, Manufacturers Council of Small School Buses, and Mid-Size Bus Manufacturers Association;
14. Thomas Turner, Blue Bird Body Company;
15. Becky Plank, National Mobility Equipment Dealers Association (NMEDA);

Dealers:

16. Douglas Greenhaus, National Automobile Dealers Association (NADA);

Testing Facilities:

17. John Phillips, Transportation Research Center (TRC);

Consumer Representatives:

18. Christopher Amos, National Association of Fleet Manufacturers;
19. Mark Edwards, AAA;
20. Clarence Ditlow, Center for Auto Safety;
21. Bob Herman, Paralyzed Veterans of America (PVA).

III. Participation by Non-Members

Meetings of the Committee will be open to the public so that individuals who are not part of the Committee may attend and observe. Any person attending the Committee meetings may address the Committee, if time permits, or file statements with the Committee.

IV. Key Issues for Negotiation

In its notice of intent, NHTSA tentatively identified major issues that should be considered in this negotiated rulemaking and asked for comment concerning the appropriateness of these issues for consideration and whether other issues should be added. These issues were:

- Equitable and effective allocation of certification responsibility;
- Enforcement issues relevant to each stage of manufacturing;
- Costs to regulated parties of testing or certification;
- Effects on safety;
- Effects on small businesses;
- Enforceability against later-stage manufacturers of standards that include dynamic testing;
- Feasibility and cost effectiveness of alternate methods (e.g., testing, computer modeling, or other as-yet-unspecified methods) to ensure compliance of completed vehicles with requirements of applicable FMVSSs;
- Mechanisms for incorporating alternate methods of ensuring compliance into these regulations;
- Mechanisms for sharing costs of testing;
- Requirements tailored to the capabilities and circumstances of each class of vehicles;
- Extended leadtime for implementation of FMVSSs for final-stage manufacturers;
- Recall and warranty responsibilities of manufacturers;
- Pass-through certification as a compliance option;
- Relative administrative/compliance burdens of certification on first-stage and later-stage manufacturers; and

• Scope of compliance "envelopes" prescribed by first-stage manufacturers and ability of intermediate- and final-stage manufacturers to stay within those envelopes.

Commenters neither objected to these issues nor suggested that additional issues be addressed. Accordingly, they will be the issues considered by the Committee.

V. Procedures and Schedule

Staff support for the Committee will be provided by NHTSA and the facilitator, and meetings will take place in Washington, DC, unless agreed otherwise by the Committee.

Consistent with FACA requirements, the facilitator will prepare summaries of each Committee meeting. These summaries and all documents submitted to the Committee will be placed in the public docket for this rulemaking.

As stated in the notice of intent, the Committee's objective is to prepare a report containing an outline of its recommendations for a notice of proposed rulemaking with suggestions for specific preamble and regulatory language based on the Committee's recommendations, as well as information relevant to a regulatory evaluation and an evaluation of the impacts of the proposal on small businesses.

NHTSA intends to accept the Committee recommendations, keeping in mind its statutory authority and other legal requirements. In the event that the agency rejects any of the recommendations, the preamble to a NPRM addressing the issues that were the subject of the negotiations will explain the reasons for the rejection.

VI. Authority

5 U.S.C. sections 561 *et seq.*, delegation of authority at 49 CFR 1.50.

Issued on: April 14, 2000.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 00–9829 Filed 4–18–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF92; RIN 1018–AF95

Endangered and Threatened Wildlife and Plants; Extension of Comment Periods on Proposed Critical Habitat for the Spectacled Eider and Steller's Eider

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of extension of comment period.

SUMMARY: The Fish and Wildlife Service (Service) provides notice that the comment periods on the proposed rules designating critical habitat for spectacled eider (*Somateria fischeri*) and Steller's eider (*Polysticta stelleri*) are extended. The spectacled eider and Steller's eider are found in marine waters and coastal wetlands in Alaska. All interested parties are invited to submit comments on these proposals.

DATES: The comment period for the proposed rule concerning spectacled eiders, which originally closed on May 8, 2000, now closes on June 30, 2000. The comment period for the proposed rule concerning Steller's eiders, which originally closed on May 12, 2000, now closes on June 30, 2000.

ADDRESSES: Written data or comments on the spectacled eider should be submitted to the Field Supervisor, Ecological Services Field Office, Anchorage, U.S. Fish and Wildlife Service, 605 W. 4th Ave. Rm G–62, Anchorage, AK 99501; Fax: 907/271–2786. Written data or comments on the Steller's eider should be submitted to the Field Supervisor, Northern Alaska Ecological Services, 101 12th Ave., Rm 110, Fairbanks, AK 99701. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

The deadline for requesting public hearings for the spectacled eider critical habitat proposal was March 24, 2000. The deadline for requesting public hearings for the Steller's eider critical habitat proposal is April 27, 2000. In order to be considered valid, requests must have been, or must be, submitted in writing and received at the offices indicated above before the public hearing request deadline date.

FOR FURTHER INFORMATION CONTACT: For the proposed rule concerning spectacled eiders, contact Ann G. Rappoport, Field Supervisor, Ecological Services Field Office, Anchorage, U.S. Fish and Wildlife Service, 605 W. 4th Ave. Rm G–62, Anchorage, AK 99501; phone: 907/271–2787 or toll-free 800/272–4174; Fax: 907/271–2786. For the proposed rule concerning Steller's eiders, contact Ted Swem, Endangered Species Branch, at Northern Alaska Ecological Services, 101 12th Ave., Rm 110, Fairbanks, AK, 99701; phone: 907/456–0203; fax: 907/456–0208.

SUPPLEMENTARY INFORMATION:

Background

The spectacled eider is a large seaduck found in marine waters and coastal areas from the Nushagak Peninsula of southwestern Alaska north to Barrow and east nearly to the Canadian Border. The species may be threatened by habitat degradation, lead poisoning, increased predation rates, and hunting and other human disturbance. The Steller's eider is a seaduck found in coastal and marine waters from the eastern Aleutian Islands around the western and northern coasts of Alaska to the Canada border. The Alaska-breeding population of this species is thought to have decreased significantly, but the causes of the suspected decline are unknown. On February 8, 2000, the Service published a proposed rule (65 FR 6114) to designate critical habitat for the spectacled eider, and on March 13, 2000, the Service published a proposed rule (65 FR 13262) to designate critical habitat for the Steller's eider.

The comment period for the proposed rule designating critical habitat for spectacled eiders originally closed on May 8, 2000. The comment period for the proposed rule designating critical habitat for Steller's eiders originally closed on May 12, 2000. Following publication of the proposed rules several parties expressed concern that the original comment periods did not allow sufficient time for review and comment by individuals and communities that may be affected by the proposed designation of critical habitat. The parties specifically indicated that the original comment periods may be inadequate for communities in remote areas and communities that are populated predominantly by Alaska Natives, for many of whom English is a second language. Additionally, we anticipate that the comment periods for the economic analyses associated with these proposed critical habitat designations will be open during June 2000. We wish to solicit comments on the proposed rules and their respective economic analyses simultaneously. In order to accommodate these

considerations, the Service is extending the comment period for both proposed rules until June 30, 2000. Written comments may be submitted to the appropriate Service office as specified in the **ADDRESSES** section.

Author

The primary author of this notice is Susan Detwiler, U.S. Fish and Wildlife Service, Division of Endangered Species, 1011 E. Tudor Rd., Anchorage, AK 99503.

Authority

The authority of this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: April 12, 2000.

David B. Allen,

Regional Director, Region 7, Fish and Wildlife Service.

[FR Doc. 00–9812 Filed 4–18–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 041000E]

RIN 0648–AN39

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 12

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of Amendment 12 to the FMP for the snapper-grouper fishery off the southern Atlantic states; request for comments.

SUMMARY: NMFS announces that the South Atlantic Fishery Management Council (Council) has submitted Amendment 12 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP) for review, approval, and implementation by NMFS. Amendment 12 would replace the current emergency rule that addresses overfishing of red porgy and is in accordance with section 305(c)(3)(B) of the Magnuson-Stevens Act. Amendment 12 would implement permanent measures to rebuild the red porgy resource, limit the harvest and possession of red porgy in or from the exclusive economic zone (EEZ) off the southern Atlantic states to specified incidental catch amounts, add to the factors that may be established or modified via the FMP's framework procedure for regulatory adjustments, and modify the snapper-grouper limited access system to allow trip-limited permit transfers among the same vessel owner, regardless of vessel size. Written comments are requested from the public.

DATES: Comments must be received no later than 5 p.m., eastern standard time, on June 19, 2000.

ADDRESSES: Written comments should be sent to Peter Eldridge, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet.

Requests for copies of Amendment 12, which includes a final supplemental environmental impact statement, initial regulatory flexibility analysis, regulatory impact review, and a social impact assessment/fishery impact statement may be obtained from the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: 843–571–4366; fax: 843–769–4520; e-mail: safmc@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Peter Eldridge, 727–570–5305; fax 727–570–5583; e-mail: peter.eldridge@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act, requires each Regional Fishery Management Council to submit any FMP or amendment to NMFS for review, and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a document in the **Federal Register** stating that the amendment is available for public review and comment.

Under Amendment 12, the Council proposes management measures to limit the harvest and possession of red porgy to incidental catches. Specifically, a recreational fisherman would be restricted to one red porgy per day or per trip, whichever is more restrictive. A commercial fisherman would be limited to 50 lb (22.7 kg) per trip during the months of May through December and to one red porgy per day or per trip, whichever is more restrictive, during January through April. The current prohibition on sale of red porgy during March and April would be extended to the months of January through April.

The Council also proposes to clarify that actions taken under the framework procedure regarding essential fish habitat (EFH) and EFH Habitat Areas of Particular Concern may include restrictions on gear and fishing activities.

In addition, the Council proposes to allow a vessel owner who has been issued a trip-limited permit to transfer the permit to another vessel owned by the same entity, regardless of vessel size. This action would ease an administrative burden on vessel owners.

Under Amendment 12, the Council proposes to establish the following measures for red porgy through the FMP's framework procedure: maximum sustainable yield (MSY); optimum yield (OY); maximum fishing mortality threshold, the fishing mortality rate which, if exceeded, constitutes overfishing; minimum stock size threshold, the stock size below which red porgy are overfished; and a stock rebuilding schedule, the period during which the overfished red porgy resource should be rebuilt to a level that will support MSY.

Amendment 12's action which establishes an OY for red porgy does not quantify a specific annual yield or range of yields associated with the spawning biomass that would produce OY. NMFS is specifically inviting comment on a quantitative yield estimate of OY, realizing that this yield must be less than or equal to MSY.

In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to implement Amendment 12 to determine if it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

NMFS will consider comments received by June 19, 2000, in its decision to approve, disapprove, or partially disapprove the amendment. NMFS will not consider comments received after that date in its decision; NMFS will address all the comments received on Amendment 12 or on its proposed rule in the preamble of the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 12, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–9697 Filed 4–18–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 041000G]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Announcement of Public Meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting on May 3 and 4, 2000, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Wednesday, May 3, 2000, beginning at 9:30 a.m., and Thursday, May 4, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Providence Biltmore Hotel, 11 Dorrance Street, Kennedy Plaza, Providence, RI 02903; telephone (401) 421–0700. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Wednesday, May 3, 2000

After introductions, the meeting will begin with reports on recent activities from the Council Chairman, Executive Director, the Administrator, Northeast Region, NMFS (Regional Administrator), Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, and representatives of the Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission. Following reports, the Council's Research Steering Committee Chairman will provide a briefing on progress to fund collaborative research projects submitted by fishermen and researchers in response to a Congressional appropriation for groundfish research in New England. The Council will approve procedures to determine final decisions on proposals submitted for funding. During the Groundfish Committee report the Council will discuss and possibly approve committee recommendations developed for Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP). These include committee recommendations on overfishing definitions for species managed through the FMP and for biological goals and rebuilding schedules. The day will conclude with a report from the Whiting Committee. The Council will consider final approval of Framework Adjustment 35 to the Northeast Multispecies FMP (whiting raised footrope trawl exempted fishery). The action would allow a seasonal whiting raised footrope trawl fishery to occur in Upper Cape Cod Bay. Issues to be addressed include: Season, area and gear requirements; possible modification of the current raised footrope trawl gear specifications for Small Mesh Areas 1 and 2; possible adjustment to the October/November closure of Blocks 124 and 125 or an exemption for participants in the raised footrope trawl fishery; whiting possession limits and bycatch restrictions; possible modification to the bycatch restrictions for Small Mesh Areas 1 and 2; monitoring recommendations; and possible requirement for vessels to use multispecies days-at-sea when participating in the raised footrope trawl fishery.

Thursday, May 4, 2000

The second day of the meeting will begin with a Herring Committee Report. This will include discussion and possible approval of an in-season adjustment to area specific Total Allowable Catches and consideration of measures to provide access to the herring resource for the fixed gear fishery. There also will be a report on the development of a controlled access or limited entry system in the Atlantic herring fishery in light of the Mid-Atlantic Fishery Management Council's limited entry proposals for the Atlantic mackerel fishery. During the Monkfish Committee discussion which will follow, the Council will provide guidance on issues raised at the most recent committee meeting. These include: Revision of the limited access permit qualification period to allow vessels to fish south of the North Carolina/Virginia border; delay in implementation of the Southern Fishery Management Area trip limit, pending review of data for the fishery following the November 8, 1999, implementation of year 1 measures; establishment of procedures and options for addressing monkfish bycatch in fisheries managed under other fishery management plans; and discussion of methods to address a proposal for an inshore/offshore line in the Mid-Atlantic region. The Sea Scallop Committee will present proposed Atlantic Sea Scallop FMP Amendment 10 management alternatives. Alternatives selected for further development will be analyzed in terms of their scallop, habitat, bycatch, gear conflict, enforcement, and social and economic impacts in a Draft Supplemental Environmental Impact Statement (DSEIS). Under consideration are proposals for: Rotational area management (which would also require a re-estimation of the overfishing definition reference points, consistent with the expected change in size selection and other factors); a requirement for scallop nets to be modified to achieve the same selectivity and/or equivalent fishing mortality as dredges; a change in the fishing year and the annual review process and possibly adjusting the present crew size limits. Prior to addressing any other outstanding business, the Capacity Committee will update the Council on the recent activities.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this announcement that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

The Council will consider public comments at a minimum of two Council meetings before making recommendations to the Regional Administrator on any framework adjustment to a fishery management plan. If she concurs with the adjustment proposed by the Council, the Regional Administrator has the discretion to publish the action either as proposed or final regulations in the **Federal Register**. Documents pertaining to framework adjustments are available for public review 7 days prior to a final vote by the Council (see **ADDRESSES**).

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: April 12, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–9698 Filed 4–18–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 76
Wednesday, April 19, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 00–025–1]

Commodity Pest Risk Analysis Process; Public Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This is to notify importers and exporters of fruits and vegetables, as well as other interested persons, that the Plant Protection and Quarantine program of the Animal and Plant Health Inspection Service will be hosting a symposium to discuss issues related to its commodity pest risk analysis process. The symposium will include presentations to exchange information with the public on the current "state of the art" in risk assessment methodology, the Agency's obligations under international trade agreements, and the status of our ongoing process improvement efforts, and will provide opportunities for interested persons to offer comments and suggestions for improving our current commodity pest risk analysis process.

DATES: The symposium will be held on Thursday, May 18, 2000, from 8:30 a.m. to 4:30 p.m., and Friday, May 19, 2000, from 8:30 a.m. to 2 p.m.

ADDRESSES: The symposium will be held in the USDA Center at Riverside, 4700 River Road, Riverdale, MD. Travel directions to the USDA Center at Riverside are available on the Internet at http://www.aphis.usda.gov/mb/mrphr/aphismap.html. Picture identification is required to gain access to the building. Parking is available next to the building for a $2 fee (please have quarters or $1 bills available). The nearest Metro station is the College Park station on the Green Line, which is within walking distance.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith C. Jones, Regulatory Coordination Specialist, PPQ, APHIS, 4700 River Road Unit 141, Riverdale, MD 20737–1236; telephone (301) 734–7467, fax (301) 734–8693, or e-mail Meredith.C.Jones@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On October 8, 1999, we published a notice in the **Federal Register** (64 FR 54859–54860, Docket No. 99–079–1) in which we solicited comments from the public regarding several recommendations made in a report on the Animal and Plant Health Inspection Service's (APHIS') Plant Protection and Quarantine safeguarding system. Specifically, we sought comments on several issues related to the commodity pest risk analysis process used by the Plant Protection and Quarantine programs and stated that we would use the information provided in the comments as we considered options to improve public involvement in the process and public access to information about new and pending pest risk analyses. In our October 1999 notice, we also stated that we were considering convening a symposium to review and discuss the existing international standards for pest risk analysis and the current "state of the art" relative to conducting pest risk analyses. We are publishing this notice to inform the public as to the dates and location, as well as a draft agenda, for the symposium.

The symposium will be held on May 18 and 19, 2000, at the USDA Center at Riverside in Riverdale, MD (see the **DATES** and **ADDRESSES** sections at the beginning of this notice for more specific information regarding the location of the symposium and each day's start and finish times). While we are still working to finalize the agenda for the symposium, we have identified the following areas that we expect to cover during the two days:

Day One—May 18, 2000

- Introductory remarks; purpose and objectives of the symposium.
- Overview of risk analysis within APHIS.
- Legal issues; risk analysis under the Sanitary and Phytosanitary Agreements (obligations, challenges, international standards, risk analysis in other countries).
- Present use of qualitative and quantitative methods (probabilistic risk assessments, qualitative risk assessments, uncertainty).
- External perspectives (industry views, transparency, stakeholder input).
- Breakout sessions to allow for open dialog between APHIS and the public.

Day Two—May 19, 2000

- Safeguard report recommendations.
- Report from APHIS Process Improvement Team (pest risk assessment process update and addressing the backlog of assessments, including electronic access initiatives).
- Three discussion groups (stakeholder input, levels and types of risk assessments, and public access), each led by an APHIS facilitator.
- Reports from discussion groups and open discussion period.
- Conclusion (summary of information gathered and closing remarks).

We will use the information gathered during the presentations, breakout sessions, and group discussions as we consider options for increasing the level of public involvement in our commodity pest risk analysis process and providing the public with access to information on new and pending pest risk analyses.

Registration Information

There is no fee to register for the symposium. On-site registration will be available at the symposium, but we recommend that you register in advance, as attendance may be limited due to space considerations. An advance registration form is available on the Internet at http://www.aphis.usda.gov/ppq. You may also register in advance for the symposium by providing your name, address, telephone number, and organization to the person listed under **FOR FURTHER INFORMATION CONTACT**. If you are registering in advance, we ask that you submit your registration by May 12, 2000.

Done in Washington, DC, this 14th day of April 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–9792 Filed 4–18–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on May 3, 2000, at the North Tahoe Conference Center, 1318 N. Lake Blvd. Kings Beach CA 96143. This Committee, established by the Secretary of Agriculture on December 15, 1998, (64 FR 2876) is chartered to provide advice to the Secretary of Agriculture and the Federal Interagency Partnership on the protection of the environmental and economic health of the Lake Tahoe Region.

DATES: The meeting will be held May 3, 2000 beginning at 9:00 a.m. and ending at 4:30 p.m.

ADDRESSES: The meeting will be held at the North Tahoe Conference Center, 1318 N. Lake Blvd. Kings Beach, CA 96143.

FOR FURTHER INFORMATION CONTACT: Ed Gee or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service, 870 Emerald Bay Road Suite 1, South Lake Tahoe, CA 96150, (530) 573–2642.

SUPPLEMENTARY INFORMATION: The committee will meet jointly with the Lake Tahoe Basin Executive Committees. Items to be covered on the agenda include: [1] Update of the Chapter renewal and announcement of new member: [2] budget subcommittee report ;[3] status report on summer events; [4] usefulness of the Committee to the Federal Partnership: [5] TRPA proposal to expedite EIP implementation; [6] update on Washoe Tribe issues and projects; [7] US Postal Service response to the Committee letter; and [8] open public comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: April 7, 2000.

Edmund Gee,

Acting Forest Supervisor.

[FR Doc. 00–9724 Filed 4–18–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Oregon Coast Provincial Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Oregon Coast Provincial Advisory Committee (PAC) will meet on May 25, 2000, at the Siuslaw National Forest, 4077 S.W. Research Way, Corvallis, Oregon. This is a change from the date of April 27, 2000, originally announced in the **Federal Register**, April 3, 2000 (Vol. 65, Number 64, page 17483). As stated in the original notice, the meeting time is 9:00 a.m. until 3:30 p.m. and all agenda items remain the same.

Interested citizens are encouraged to attend. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Joni Quarnstrom, Public Affairs Specialist, Siuslaw National Forest, 541–750–7075, or write to the Forest Supervisor, Siuslaw National Forest, P.O. Box 1148, Corvallis, Oregon 97339.

Dated: April 13, 2000.

Jose L. Linares,

Acting Forest Supervisor.

[FR Doc. 00–9736 Filed 4–18–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Telecommunications and Information Administration (NTIA).

Title: Public Telecommunications Facilities Program (PTFP).

Agency Form Number: None.

OMB Approval Number: 0660–0001.

Type of Request: Extension of a currently approved collection.

Burden Hours: 7,836 per year.

Number of Respondents: 1,966 per year.

Average Hours per Response: NTIA estimates that it takes an average of 39 hours a year to gather the information, complete the reports, and submit them to NTIA/PTFP.

Needs and Uses: Construction schedules/planning timetables are obtained to ensure the ability of NTIA/PTFP to monitor a project through quarterly performance reports, which alert NTIA/PTFP if the project is falling behind in its completion. Close-out reports enable the agency to be sure that Federal funds were expended in accordance with the grant award. Annual reports enable the agency to be sure that the Federal interest is maintained and protected for the statutorily specified 10-year period.

Affected Public: Not-for-profit institutions; state, local, or tribal governments.

Frequency: Varies—some on occasion, some quarterly, some annually.

Respondent's Obligation: Required to retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482–3272, Office of the Chief Information Officer, Department of Commerce, Room 5027, 1401 Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at lengelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: April 13, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–9780 Filed 4–18–00; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Census Bureau

Current Population Survey (CPS)—Annual Demographic Survey (ADS) for March 2001

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 19, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Tim Marshall, Census Bureau, FOB 3, Room 3340, Washington, DC 20233–8400, at (301) 457–3806.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau will conduct the ADS in conjunction with the March 2001 CPS. The Census Bureau has conducted this supplement annually for over 50 years. The Census Bureau, the Bureau of Labor Statistics, and the Department of Health and Human Services sponsor this supplement.

In the ADS, we collect information on work experience, personal income, noncash benefits, health insurance coverage, and migration.

The work experience items in the ADS provide a unique measure of the dynamic nature of the labor force as viewed over a one-year period. These items produce statistics that show movements in and out of the labor force by measuring the number of periods of unemployment experienced by persons, the number of different employers worked for during the year, the principal reasons for unemployment, and part-/full-time attachment to the labor force. We can make indirect measurements of discouraged workers and others with a casual attachment to the labor market.

The income data from the ADS are used by social planners, economists, government officials, and market researchers to gauge the economic well-being of the country as a whole and selected population groups of interest. Government planners and researchers use these data to monitor and evaluate the effectiveness of various assistance programs. Market researchers use these data to identify and isolate potential customers. Social planners use these data to forecast economic conditions and to identify special groups that seem to be especially sensitive to economic fluctuations. Economists use March data to determine the effects of various economic forces, such as inflation, recession, recovery, and so on, and their differential effects on various population groups.

A prime statistic of interest is the classification of persons in poverty and how this measurement has changed over time for various groups. Researchers evaluate March income data not only to determine poverty levels but also to determine whether government programs are reaching eligible households.

The March 2001 supplement instrument will consist of the same items that were included in the March 2000 instrument.

II. Method of Collection

The ADS is conducted at the same time as the Basic CPS by personal visits and telephone interviews, using computer-assisted personal interviewing and computer-assisted telephone interviewing.

III. Data

OMB Number: 0607–0354.
Form Number: None. We conduct all interviewing on computers.
Type of Review: Regular.
Affected Public: Individuals or households.
Estimated Number of Respondents: 80,000.
Estimated Time Per Response: 25 minutes.
Estimated Total Annual Burden Hours: 33,333.
Estimated Total Annual Cost: There are no costs to the respondents other than their time to answer the CPS questions.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13, United States Code, Section 182; and Title 29, United States Code, Sections 1–9.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 18, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–9785 Filed 4–18–00; 8:45 am]
BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Manufacturers' Shipments, Inventories, and Orders (M3) Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 19, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Lee Wentela, Bureau of the Census, FOB #4 Room 2232, Washington, DC 20233–6913 and (301) 457–4832.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to submit the Manufacturers' Shipments, Inventories, and Orders (M3) survey to the Office of Management and Budget for review. The M3 requests data from domestic manufacturers on form M–3(SD). The survey is mailed at the end of each month. Data requested are shipments, new orders, unfilled orders, total inventory, materials and supplies, work-in-process, and finished goods. It is currently the only survey that provides broad-based monthly statistical data on the economic conditions in the domestic manufacturing sector.

The M3 survey is designed to measure current industrial activity and to provide an indication of future production commitments. The value of

shipments measures the value of goods delivered during the month by domestic manufacturers. Estimates of new orders serve as an indicator of future production commitments and represent the current sales value of new orders received during the month, net of cancellations. Substantial accumulation or depletion of unfilled orders measures excess or deficient demand for manufactured products. The level of inventories, especially in relation to shipments, is frequently used to monitor the business cycle.

The estimated total annual burden hours are increased from 20,600 to 24,000 to reflect an increase in the survey panel. The conversion of the survey from the Standard Industrial Classification system to the North American Industry Classification System will result in new and reconfigured industry categories, which require a larger survey panel to ensure sufficient coverage in all industries.

II. Method of Collection

Respondents submit data on form M–3(SD) via mail, facsimile machine, Touchtone Data Entry (TDE), Voice Recognition Entry (VRE), or via the Internet. Analysts call respondents who usually report, to obtain data in time for preparing the monthly estimates.

III. Data

OMB Number: 0607–0008.
Form Number: M–3(SD).
Type of Review: Regular.
Affected Public: Businesses, large and small, or other for profit organizations.
Estimated Number of Respondents: 6,000 monthly.
Estimated Time Per Response: 20 minutes.
Estimated Total Annual Burden Hours: 24,000.
Estimated Total Annual Cost: $436,800.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13 U.S.C., Sections 131 and 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 13, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–9786 Filed 4–18–00; 8:45 am]
BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Quarterly Survey of State and Local Tax Revenues

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 19, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Russell Price, Chief, Public Finance Analysis Branch–B, Governments Division, U.S. Bureau of the Census, Washington DC 20233–6800 (301–457–1488).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request an extension of the Quarterly Survey of State and Local Tax Revenue. The Bureau needs state and local tax data to publish benchmark statistics on public sector taxes; to provide data to the Bureau of Economic Analysis for GDP calculations and other economic indicators; and to provide data for economic research and comparative studies of governmental finances. Data are collected on a quarterly basis from state and local tax collecting agencies.

Tax collection data are used to measure economic activity for the Nation as a whole, as well as for comparison among the various states. These data also are useful in comparing the mix of taxes employed by individual states, and in determining the revenue raising capacity of different types of taxes.

The Quarterly Survey of Property Tax Collections (Form F–71) is sent to 5,800 local government tax collecting agencies in 530 county areas. While some counties are served by a single county level tax collection agency, others have county, city, township, and even school district collectors. Each agency is asked to report the total property tax collections during the past quarter.

The Quarterly Survey of State Tax Collections (Form F–72) is sent to a state level revenue, finance, or budget agency in each state to report tax collection data for the preceding 3-month period.

The Quarterly Survey of Selected Local Taxes (Form F–73) is sent to 55 local tax collection agencies known to have substantial collections of local general sales and/or local individual income taxes.

The expected decrease in the respondent burden is due to a slight reduction in the universe of the survey. Due to the disincorporation and consolidation of certain tax collecting agencies, the number of respondents receiving Form F–71 has decreased by 100. There are no planned content changes to this form or the F–72 and F–73 forms.

II. Method of Collection

The F–71 and F–73 portions of the survey are conducted by mail canvass. Responses are screened manually and then entered on a microcomputer.

F–72 forms are sent to respondents by facsimile. Respondents are given the option of returning the forms through facsimile or by mail. Several respondents have requested to conduct the survey through electronic mail.

Telephone follow-up of large property tax collectors is the main method used to maximize response. In those instances when we are not able to obtain a response, estimates are made for non-respondents by using data of the same quarter from the last year it had been received.

III. Data

OMB Number: 0607–0112.
Form Number: F–71, F–72, and F–73.
Type of Review: Regular.

Affected Public: State and local governments.

Estimated Number of Respondents: 5906.

Estimated Time Per Response: 25 minutes.

Estimated Total Annual Burden Hours: 5957.

Estimated Total Annual Cost: The estimated cost to the respondents is $107,226.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 13, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–9787 Filed 4–18–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Census 2000 Test Program Supplement.

Form Number(s): These computer based survey instruments will have no form number.

Agency Approval Number: 0607–0862.

Type of Request: Revision of a currently approved collection.

Burden: 1,680 hours (added to the current total of 8,013 hours).

Number of Respondents: 6,660 (added to the current total of 200,300).

Avg Hours Per Response: Residence Rules Survey-20 minutes; Internet Usage Survey-5 minutes.

Needs and Uses: The Census Bureau will test several methodologies, techniques, and strategies during Census 2000. We received Office of Management and Budget (OMB) approval to conduct four separate tests, which are collectively referred to as The Census 2000 Test Program. We now request approval for supplemental collections associated with two of the tests, which are the Alternative Questionnaire Experiment in 2000 (AQE2000) Residence Rules Survey, and the Response Mode and Incentive Experiment (RMIE) Internet Usage Survey. Results of these tests will help in the planning of the 2010 Census.

One component of the AQE2000 tests the effectiveness of alternative presentation formats of residence rules. A sub sample of the AQE2000 sample households that returned the experimental (alternate version of the presentation format) and control (current versions of the presentation format) short forms that also provided telephone contact information will be reinterviewed. The Residence Rules Survey will be conducted by telephone with the person in the household who signed the census form, or a knowledgeable other person. Topics addressed in the reinterview include obtaining an independent listing of all household members on April 1st (including potentially omitted persons), and determining whether these members are classified as residents according to the Census Bureau's residence rules. Other issues to be explored include respondents' ability to comprehend the residence rules, and possible sources of misconceptions stemming from experimental or control versions of the presentation format.

In the RMIE, sample households will receive an invitation in the census short-form mail package inviting them to respond by one of three experimental response modes rather than by mail—CATI, interactive voice response (IVR), and an Internet Questionnaire (IQ). An incentive of a calling card worth 30 minutes of free long distance calls will also be tested. The RMIE Internet Usage Survey (IUS) will determine why households that were given the option to respond by Internet instead responded by mail. The IUS also will enable analysis of households that received the incentive and those that did not. The IUS will consist of follow-up telephone interviews with a sub sample of RMIE households invited to respond by the Internet but who actually respond by mail. The purpose of these interviews is to assess the barriers to responding to the census by the Internet. Topics to be covered by the interview include whether or not the respondent has access to the Internet, why they did not use the Internet to respond (if they have access) and if the respondent was aware of the incentive offered (of those in the incentive group).

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Sections 141 and 193.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: April 14, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–9826 Filed 4–18–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Exception to Reporting Requirement Under the Import Certificate/ Delivery Verification Procedures

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 19, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Office of the Chief Information Officer, Room 5027, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, BXA ICB Liaison, Department of Commerce, Office of Planning, Evaluation and Management, Room 6881, 14th & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. and participating countries have agreed to establish Import Certificate (IC) and Delivery Verification (DV) requirements to help control the disposition of strategically important commodities. To comply with the commitment, BXA requires exporters to obtain IC documentation from foreign importers prior to submitting an export license application. BXA may also require a DV Certification which is a confirmation from the government to which the export has been made that the commodity is accounted for by the importer. This reporting requirement allows exporters to request an exception to the import certificate (or its equivalent) and requests for exceptions to the delivery verification procedures.

II. Method of Collection

Written submission.

III. Data

OMB Number: 0694–0001.
Form Number: None.
Type of Review: Regular submission for extension of a currently approved collection.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 21.
Estimated Time Per Response: .5 hours per response.
Estimated Total Annual Burden Hours: 11.
Estimated Total Annual Cost to Public: No start-up capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: April 13, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Chief Information Officer.

[FR Doc. 00–9783 Filed 4–18–00; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Application for Duplicate License

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 19, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Office of the Chief Information Officer, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, BXA ICB Liaison, Department of Commerce, Office of Planning, Evaluation and Management, Room 6881, 14th and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information is necessary to identify original export licenses of respondents who request duplicate licenses for lost or destroyed licenses. The licensee must submit a letter certifying that the original license issued to a licensee has been lost or destroyed. They must provide the circumstances under which it was lost or destroyed, and if found, will return either the original or the duplicate to BXA. All other record keeping requirements pertaining to the original license remain in effect for duplicate licenses.

II. Method of Collection

Written submission.

III. Data

OMB Number: 0694–0031.
Form Number: None.
Type of Review: Regular Submission.
Affected Public: Businesses and other for-profit institutions, small businesses or organizations.
Estimated Number of Respondents: 26.
Estimated Time Per Response: 16 minutes.
Estimated Total Annual Burden Hours: 7 hours.
Estimated Total Annual Cost to Public: No start-up costs or capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 13, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–9784 Filed 4–18–00; 8:45 am]

BILLING CODE 3510–33–P

VOL 65 ISS 76 AP 19 2000 UMI

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1061]

Grant of Authority; Establishment of a Foreign-Trade Zone, Fort Lauderdale, Florida Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for " * * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the City of Fort Lauderdale, Florida (the Grantee), has made application to the Board (FTZ Docket 12–99, filed 3/19/99), requesting the establishment of a foreign-trade zone in the Fort Lauderdale, Florida, area, adjacent to the Port Everglades Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (64 FR 14859, 3/29/99); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 241, at the sites described in the application, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the grantee's implementation of the site management plan presented for the record in this case.

Signed at Washington, DC, this 6th day of April 2000.

Foreign-Trade Zones Board.

William M. Daley,

Secretary of Commerce, Chairman and Executive Officer.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–9825 Filed 4–18–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Administrative Antidumping Duty and New Shipper Reviews, and Final Rescission of New Shipper Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Final Results of Administrative and New Shipper Reviews, and Rescission of New Shipper Review: Freshwater Crawfish Tail Meat from the People's Republic of China.

SUMMARY: On October 12, 1999, the Department of Commerce (the Department) published the preliminary results of its administrative and new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC). The administrative review covers the period March 26, 1997 through August 31, 1998 with the exception of the administrative review of Ningbo Nanlian Frozen Foods Co., Ltd. (Ningbo Nanlian) which covers the period April 1, 1998 through August 31, 1998.

Based on our analysis of the comments received, we have made changes to the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: April 19, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn, Sarah Ellerman, Mike Strollo, or Maureen Flannery, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–0648, (202) 482–4106, (202) 482–5255 and (202) 482–3020, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR part 351 (1998).

Background

On October 12, 1999, the Department published the preliminary results of review of the antidumping duty order on freshwater crawfish tail meat from the PRC (64 FR 8543). On November 12, 1999, we received comments from respondents Nantong Delu Aquatic Food Co., Ltd. (Nantong Delu), Yancheng Foreign Trade Corporation (Yancheng FTC), and Ocean Harvest Wholesale Inc., an importer. On November 24, 1999, we received comments from respondents Qingdao Rirong and Lianyungang Haiwang, Baolong Biochemical, and Ningbo Nanlian, and from Maritime Trading Company, an importer. On November 24, 1999 we also received comments on behalf of the following interested parties: Worldwide Link, Inc., Captain Charlie Seafood Wholesale Co., U.S.A., Ocean Duke, Boston Seafood Processors, Maritime Trading, COB Development Corp., Atlantic Gem, Neptune Fisheries, Pacific Giant, and Intraco, all importers; and Huaiyin Foreign Trade Corporation (30) (HFTC30), an exporter. We also received comments from the petitioner, the Crawfish Processors Alliance (CPA). On December 6, 1999, we received rebuttal comments.

On February 3, 2000, we issued questionnaires to certain interested parties regarding possible relationships among certain producers and exporters of subject merchandise. On February 17, 2000, we received responses. From February 22 through March 3, 2000, we conducted verification of this information in China, and met with various Chinese government entities and U.S. embassy staff in China. Huaiyin Foreign Trade Corporation (5) (HFTC5) did not allow Department officials to meet with HFTC5 officials or conduct a verification of its response. We also conducted a telephone interview with Yancheng Yaou Seafood Co., Ltd. (Asia-Europe), formerly known as Yancheng Baolong Aquatic Foods Co., Ltd. On March 20, 2000, we received timely comments from several interested parties regarding the Department's memoranda detailing these verifications and meetings, and our attempts to conduct verification of HFTC5. On March 23, 2000, the Department conducted a public hearing on the issues presented by interested parties in their November 24, 1999 case briefs, their December 8, 1999 rebuttal briefs, and their March 20, 2000 comments regarding the Department's memoranda.

The Department has now completed these reviews in accordance with section 751 of the Act.

Scope of Review

The product covered by this review is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 0306.19.00.10 and 0306.29.00.00. The HTS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memo) from Edward C. Yang, Director, Office 9, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated April 7, 2000, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building (B–099). In addition, a complete version of the Decision Memo can be accessed directly on the Web at *www.ita.doc.gov/import_admin/records/frn/*. The paper copy and electronic version of the Decision Memo are identical in content.

Rescission of New Shipper Review for Baolong Biochemical

In our preliminary results, we concluded that Baolong Biochemical did not have a *bona fide* sale to the United States during the review period, and thus was not entitled to a review under section 751(a)(2)(B) of the Act. For a further discussion of these issues, see the relevant sections of the Decision Memo. *See* also *Memorandum to Robert S. LaRussa from Barbara E. Tillman: Issues for the Preliminary Results of Review Concerning Bona Fide Sales and the Use of Facts Available (Facts Available Memorandum)*, dated September 30, 1999. We subsequently clarified for all parties that this rescission was a preliminary determination and that the Department would accept comments on this issue. After reviewing the comments received with respect to Baolong Biochemical, we have concluded that our preliminary determination was appropriate and, because Baolong Biochemical has no *bona fide* sales during the period of review, we are rescinding the new shipper review of Baolong Biochemical. We will instruct the Customs Service to require the posting of cash deposits, rather than bond, for imports of crawfish exported by Baolong Biochemical.

Use of Facts Available

For a discussion of our application of facts otherwise available, see the "Facts Available" section of the Decision Memo, which is on file in B–099 and available on the Web at *www.ita.doc.gov/import_admin/records/frn/*.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations for Qingdao Rirong. Any alleged programming or clerical errors are discussed in the relevant sections of the "Decision Memorandum," accessible in B–099 and on the Web at *www.ita.doc.gov/import_admin/records/frn/*.

Ningbo Nanlian

Based on an analysis of the record, we have determined that Ningbo Nanlian does not merit a separate rate. For a discussion of this issue, see the section of the *Decision Memo* entitled "Facts Available for Ningbo Nanlian" and the proprietary version of the Memorandum from Edward C. Yang to Joseph A. Spetrini regarding "Relationship of HFTC5 and Ningbo Nanlian," dated April 7, 2000 (*Ningbo Nanlian/HFTC5 Decision Memo.*)

HFTC Entities

Based on our analysis of comments received, we have concluded the following. The HFTC entity now known as HFTC5, a.k.a. Huaiyin Cereals and Oils Import and Export Corporation, is the same HFTC entity that was assigned a separate rate in the LFTV investigation.

The Department has also determined that, since HFTC30 has not requested a separate rate, HFTC30 is not entitled to a separate rate in this review. However, all Chinese crawfish exporters not specifically named, including HFTC30, were subject to the review as part of the PRC entity of which they are considered part. Their rate is 201.63 percent.

Final Results of Review

We determine that the following weighted-average margins exist for the period March 26, 1997 through August 31, 1998:

Manufacturer/exporter	Time period	Margin (percent)
Qingdao Rirong Foodstuff Co., Ltd.	03/26/97–08/31/98	0.00
Lianyungang Haiwang Aquatic Products Co., Ltd.	03/26/97–08/31/98	201.63
PRC-wide rate [1]		201.63

[1] Binzhou Prefecture Foodstuffs Import & Export Corp., Huaiyin Foreign Trade Corp., Huaiyin Foreign Trade Corporation (5) (also known as Huaiyin Cereals, Oils & Foodstuffs), Huaiyin Foreign Trade Corporation (30), Huaiyin Ningtai Fisheries Co., Ltd., Nantong Delu Aquatic Food Co., Ltd., Ningbo Nanlian Frozen Foods Co., Ltd. (for the period 4/1/98–8/31/98), Yancheng Baolong Aquatic Foods Co., Ltd., and Yancheng Baolong Foreign Trade Corp. are subject to the PRC-wide rate of 201.63%.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent and therefore de minimis, the Department shall require no deposit of estimated antidumping duties; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-

specific rate established for the most recent period; (3) for all other PRC exporters, the cash deposit rate will be the PRC-wide rate, 201.63 percent; and (4) for all other non-PRC exporters of the subject merchandise, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751 and 777(i) of the Act.

Dated: April 7, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix I

1. Facts Available
   - A. Non-Respondents and Improperly Filed and Served Responses
   - B. Haiwang
   - C. Ningbo Nanlian
   - D. HFTC5
2. Recission of the New Shipper Review of Yancheng Baolong Biochemical Products (Baolong Biochemical)
3. Circumstance of Sale Adjustments: Imputed Credit Expense
4. Factor Valuation
5. Deposit and Assessment Rates for HFTC30 and other companies with Huaiyin Foreign Trade Corporation in their title.

[FR Doc. 00–9824 Filed 4–18–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Notice of Request for an Extraordinary Challenge Committee

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Request for an Extraordinary Challenge Committee to review issues raised by the June 18, 1999 and February 10, 2000 decisions of the binational NAFTA Panel that reviewed the final results of administrative review and the redetermination pursuant to remand by the United States Department of Commerce (the Department) in the above-captioned proceeding. This request was filed with the United States Section of the NAFTA Secretariat on March 23, 2000.

SUMMARY: On March 23, 2000, the Office of the United States Trade Representative filed a Request for an Extraordinary Challenge Committee to review decisions dated June 18, 1999 and February 10, 2000. On June 18, 1999, the panel convened in this proceeding issued it Opinion an Order. The Panel remanded to the International Trade Administration on the grounds that the Department erred in basing its normal-value calculations on Type I cement in both bulk and bagged form, and it remanded this issue to the Department for recalculation using only sales in bulk form. On February 10, 2000 the Panel affirmed the Final Results of Redetermination pursuant to Panel Remand, without commenting on the bulk/bagged issue. The NAFTA Secretariat has assigned Case Number ECC–2000–1904–01USA to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904.13 of the Agreement, the Government of the United States, Canada and Mexico established *Rules of Procedure for Article 1904 Extraordinary Challenge Committees* ("ECC Rules"). These ECC Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8702). The ECC Rules give effect to the provisions of Chapter Nineteen of the Agreement with respect to Extraordinary Challenge Committee proceedings conducted pursuant to Article 1904 of the Agreement. The ECC Rules are intended to result in decisions typically within 90 days after the establishment of an Extraordinary Challenge Committee. The Extraordinary Challenge Committee proceeding in this matter will be conducted in accordance with these ECC Rules.

Background

On April 9, 1997, the Department published the final results of the fifth administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. During the period of review, respondent CEMEX, S.A. de C.V., sold Type II cement in bulk form in the United States. Because the Department found CEMEX's home-market sales of Type II cement to be outside the ordinary course of trade, the Department compared CEMEX's U.S. sales of Type II cement to its home-market sales of a similar product—Type I cement. The Department determined that the foreign like product included all Type I cement, whether or not packed in bags. CEMEX objected to the Department's finding that the "similar" foreign like products included both bulk and bagged merchandise, and it requested binational panel review pursuant to Chapter 19 of the NAFTA.

On June 18, 1999, the Panel convened in this proceeding issued its Opinion and Order. The Panel held that the Department erred in basing its normal-value calculations on Type I cement in both bulk and bagged form, and it remanded this issue to the Department for recalculation using only sales in bulk form. In reaching its decision, the Panel held that *Koyo Seiko Co., Ltd.* v. *United States*, 66F. 3d 1204 (Fed. Cir. 1995), does not mandate deference to the Department's foreign-like-product analysis in this case, and it made findings of fact relying on evidence that was not part of the administrative record. One panelist dissented from the Panel's resolution of the bulk/bagged issue with respect to the standard of

review and the Panels reliance of evidence that was not part of the administrative record.

Commerce issued its determination on remand on November 15, 1999. The Department explained, "[w]e have implemented the Panel's ruling and revised our calculations to exclude home-market sales of bagged cement from the calculation of normal value." The Panel affirmed the Department's Remand Determination, without commenting on the bulk/bagged issue.

Request for an Extraordinary Challenge Committee:

On March 23, 2000, the United States Trade Representative filed a Request for an Extraordinary Challenge Committee on behalf of the United States Government in its capacity as a Party to the North American Free Trade Agreement, with the United States Secretary of the NAFTA Secretariat. The United States alleges that the Panel manifestly exceeded its powers, authority or jurisdiction by failing to apply the appropriate standard of review in three instances: (1) When the panel declined to defer to the Department's interpretation of the model-match provisions of the statute, as required by binding precedent of the U.S. Court of Appeals for the Federal Circuit as set forth in *Koyo Seiko Co., Ltd.* v. *United States*, 66 F.3d 1204 (Fed. Cir. 1995); (2) when it did not confine its review to the administrative record developed before the investigating authority; and (3) when, upon holding that the Department did not apply the foreign-like-product statute properly, it usurped the Department's authority as investigating authority and issued its own findings of fact.

Rule 40 of the ECC Rules requires that Notices of Appearance in this proceeding must be filed with the United States Secretary within 10 days after the Request is filed (By April 3, 2000). Rule 42 of the ECC Rules, briefs must be filed with the United States Secretary within 21 days of the filing of the Request (by April 13, 2000).

Dated: March 27, 2000.

Carstina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 00–9725 Filed 4–18–00; 8:45 am]

BILLING CODE 3510–GT–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041000B]

Availability of a Draft Environmental Assessment/Finding of No Significant Impact and Receipt of an Application for an Incidental Take Permit (1233)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of availability.

SUMMARY: NMFS has received an application for an incidental take permit (Permit) from the Idaho Department of Fish and Game (IDFG) according to the Endangered Species Act of 1973, as amended (ESA). As required by the ESA, IDFG has also prepared a conservation plan (Plan) designed to minimize and mitigate any such take of endangered or threatened species. The Permit application is for the incidental take of ESA-listed adult and juvenile salmonids associated with otherwise lawful recreational fisheries on non-listed species in the Snake River and its tributaries in the State of Idaho. The duration of the proposed Permit and Plan is five years. The Permit application includes the proposed Plan submitted by IDFG. NMFS also announces the availability of a draft Environmental Assessment (EA) for the Permit application. NMFS is furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on these documents. All comments received will become part of the public record and will be available for review pursuant to the ESA.

DATES: Written comments from interested parties on the Permit application, Plan, and draft EA must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific daylight time on May 19, 2000.

ADDRESSES: Written comments on the application, Plan, or draft EA should be sent to Herbert Pollard, Sustainable Fisheries Division, NWR2, 525 NE Oregon Street, Suite 510, Portland, OR 97232–2737. Comments may also be sent via fax to (208) 378–5699. Comments will not be accepted if submitted via e-mail or the internet. Requests for copies of the Permit application, Plan, and draft EA should be directed to the Sustainable Fisheries Division (H/IF Br.), NWR2, 525 NE Oregon Street, Suite 510, Portland, OR 97232–2737. Comments received will also be available for public inspection, by appointment, during normal business hours by calling (208) 378–5614.

FOR FURTHER INFORMATION CONTACT: Herbert Pollard, Portland, OR (ph.: (208) 378–5614, fax: (208) 378–5699, e-mail: Herbert.Pollard@noaa.gov)

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the "taking" of a species listed as endangered or threatened. The term "take" is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Species Covered in This Notice

The following species, evolutionarily significant units (ESU's), and runs are included in the Plan and Permit application:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened naturally produced and artificially propagated Snake River (SnR) spring/summer, threatened SnR fall.

Sockeye salmon (*O. nerka*): endangered SnR.

Steelhead (*O. mykiss*): threatened SnR.

To date, final protective regulations for threatened SnR steelhead under section 4(d) of the ESA have not been promulgated by NMFS. Protective regulations are currently proposed for threatened SnR Steelhead (64 FR 73479, December 30, 1999. This notice of receipt of an application requesting take of this species is issued as a precaution in the event that NMFS issues final protective regulations that prohibit take of threatened SnR steelhead. The initiation of a 30-day public comment period on the application, including its proposed takes of threatened SnR steelhead does not presuppose the contents of the eventual final protective regulations.

Background

From 1993 through 1998 recreational fisheries managed by IDFG were conducted under the terms of a section 10 (a)(1)(B) permit (844) issued by NMFS on May 20, 1993. On May 26, 1999, permit 844 was replaced with permit 1150 for continued conduct of the same activities. Permit 1150 was issued for only 7 months and expired on December 31, 1999. IDFG has applied

for a 5-year ESA section 10(a)(1)(B) permit (1233) for incidental takes of ESA-listed adult and juvenile salmonids associated with recreational fisheries during 2000 through 2004 on non-listed species in the Snake River and its tributaries in the State of Idaho.

Conservation Plan

The Conservation Plan prepared by IDFG describes measures designed to monitor, minimize, and mitigate the incidental takes of ESA-listed anadromous salmonids associated with some or all of the following fisheries which are expected to occur during 2000 through 2004:

Resident Fish Species Sport Fishing - General Fishing Regulations

The general statewide stream season in Idaho runs from Saturday of the Memorial Day weekend through November 30. Exceptions to the general stream season include certain river sections that are open year-round and rivers or stream sections that are closed to all fishing for all or part of the general stream season. Most lakes, ponds and reservoirs are open to fishing the entire year, with exceptions to protect particular resources.

Anadromous Salmon Sport Fishing - Anadromous Salmon Fishing Regulations

Fisheries for spring/summer chinook salmon, when returns allow, typically occur from mid-May up to August 4. Closing salmon fishing on or before August 4 is designed to protect listed fall chinook. Chinook fisheries are based on quotas of non-listed components and take limits of ESA-listed components of the run. Chinook fisheries may be closed on short notice when in-season monitoring indicates that criteria are met.

Spring and Fall Steelhead Sport Fishing - Steelhead Fishing Regulations

The steelhead harvest season lasts from September 1 through April 30, except steelhead may not be harvested until October 15 on the Clearwater River and the mainstem Salmon River fishery closes on March 31. The Little Salmon River is the only Salmon River tributary open to harvest of steelhead. Only non-listed, hatchery-produced steelhead that have been marked by a clipped adipose fin may legally be harvested by anglers.

Incidental mortalities of ESA-listed fish associated with the IDFG recreational fishery programs are requested at levels specified in the Permit application. IDFG is proposing to limit state recreational fisheries such that the incidental impacts on ESA-listed salmonids will be minimized. Three alternatives for the IDFG fisheries were provided in the Plan, including: (1) the no action alternative; (2) the proposed conservation plan alternative (based on continuing fisheries at levels similar to those permitted since 1995); and (3) historic fishing levels.

Environmental Assessment/Finding of No Significant Impact

The EA package includes a draft EA and a draft Finding of No Significant Impact (FONSI) which concludes that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment, within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended. Three Federal action alternatives have been analyzed in the EA, including: (1) the no action alternative; (2) issue a permit without conditions; and (3) issue a permit with conditions.

This notice is provided pursuant to section 10(c) of the ESA and the NEPA regulations (40 CFR 1506.6). NMFS will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the NEPA regulations and section 10(a) of the ESA. If it is determined that the requirements are met, a permit will be issued for incidental takes of ESA-listed anadromous salmonids under the jurisdiction of NMFS. The final NEPA and permit determinations will not be completed until after the end of the 30-day comment period and will fully consider all public comments received during the comment period. NMFS will publish a record of its final action in the **Federal Register**.

Dated: April 13, 2000.

Craig Johnson,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–9841 Filed 4–18–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041000C]

Availability of a Draft Environmental Assessment/Finding of No Significant Impact and Receipt of an Application for an Incidental Take Permit (1248)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of availability.

SUMMARY: NMFS has received an application for an incidental take permit (Permit) from the Washington Department of Fish and Wildlife (WDFW) according to the Endangered Species Act of 1973, as amended (ESA). As required by the ESA, WDFW has also prepared a conservation plan (Plan) designed to minimize and mitigate any such take of endangered or threatened species. The Permit application is for the incidental take of ESA-listed adult and juvenile salmonids associated with otherwise lawful recreational fisheries on non-listed species in the upper Columbia River and its tributaries in the state of Washington. The duration of the proposed Permit and Plan is five years. The Permit application includes the proposed Plan submitted by WDFW. NMFS also announces the availability of a draft Environmental Assessment (EA) for the Permit application. NMFS is furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on these documents. All comments received will become part of the public record and will be available for review pursuant to the ESA.

DATES: Written comments from interested parties on the Permit application, Plan, and draft EA must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5:00 pm Pacific daylight time on May 19, 2000.

ADDRESSES: Written comments on the application, Plan, or draft EA should be sent to Lance Kruzic, Sustainable Fisheries Division, F/NWR3, 525 NE Oregon Street, Suite 510, Portland, OR 97232–2737. Comments may also be sent via fax to 503–872–2737. Comments will not be accepted if submitted via e-mail or the internet. Requests for copies of the Permit application, Plan, and draft EA should be directed to the Sustainable Fisheries Division, F/NWO3, 525 NE Oregon Street, Suite 510, Portland, OR 97232–2737. Comments received will also be available for public inspection, by appointment, during normal business hours by calling 503–230–5407.

FOR FURTHER INFORMATION CONTACT: Lance Kruzic, Portland, OR (ph: 503–231–2178, fax: 503–872–2737, e-mail: Lance.Kruzic@noaa.gov).

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the "taking" of a species listed as endangered or threatened. The term "take" is defined under the ESA to

mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Species Covered in This Notice

The following species, evolutionarily significant units (ESU's), and runs are included in the Plan and Permit application:

Chinook salmon (*Oncorhynchus tshawytscha*): endangered naturally produced and artificially propagated upper Columbia River (UCR) spring.

Steelhead (*O. mykiss*): endangered naturally produced and artificially propagated UCR.

Background

On March 13, 2000, WDFW submitted an application to NMFS for an ESA section 10(a)(1)(B) permit for an incidental take of ESA-listed anadromous fish species associated with seven recreational fishery programs to be conducted above Priest Rapids Dam on the Columbia River and its tributaries from 2000 to 2004. Currently, this includes endangered spring chinook salmon and steelhead in the UCR Evolutionarily Significant Units (ESUs). The proposed fisheries solely target resident trout, smallmouth bass, walleye, sturgeon, whitefish, and non-listed chinook salmon. The proposed implementation of these fisheries will allow fishing for recreational purposes and will provide economic opportunity for local communities through the sale of licences, equipment, and the conduct of other financial transactions related to the recreational fisheries.

Conservation Plan

The Conservation Plan prepared by WDFW describes measures designed to monitor, minimize, and mitigate the incidental takes of ESA-listed anadromous salmonids associated with some or all of the following fisheries that are expected to occur during 2000 through 2004:

Rainbow, Cutthroat, and Brook Trout Sport Fishery

This fishery is scheduled to occur June 1 through September 30 in the mainstem Methow River, and two of its tributaries, the Chewuch and Twisp rivers. However, due to stream runoff, angling typically occurs after the first part of July. The regulations for this fishery are catch and release of trout only using unscented, artificial flies and lures with single, barbless hooks. Bait is prohibited.

Summer/Fall Chinook Salmon Sport Fishery

Summer/fall chinook salmon in the UCR region are not listed under the ESA. Angling for summer/fall chinook salmon above Priest Rapids Dam is allowed from September 16 to December 31. However, most of the angling only occurs until the middle of October.

Leavenworth Hatchery Spring Chinook Salmon Sport Fishery

Spring chinook salmon returning to Leavenworth Hatchery are not indigenous to the ESU and were not included as part of the ESU. Inseason run abundance of hatchery and wild spring chinook salmon returning to the UCR determines if and when the harvest of hatchery chinook salmon will be allowed. This fishery typically occurs in May and June. Angling is allowed only from the mouth of Icicle Creek upstream to 400 feet below the Leavenworth Hatchery adult collection facility.

Smallmouth Bass Sport Fisheries

This fishery is open year round under permanent state regulations in the mainstem Columbia River and Okanogan River below Malott Bridge. However, most angling occurs after spring runoff (July through September) when streamflows and warmer water permit successful angling. Anglers typically use buoyant plugs and soft bodied jigs.

Walleye Sport Fisheries

The walleye fishery is open year round under permanent state regulations in the mainstem Columbia River, with most angling occurring between January and April, when the fish aggregate prior to spawning. Most of the fishing occurs below the tailraces of the mainstem Columbia River dams. Fishing tackle typically includes soft body grubs, buoyant plugs, and spinner baits.

Sturgeon Sport Fishery

A year round, catch and release only, sturgeon fishery occurs under permanent state regulations in the mainstem Columbia River. Limited angling occurs in the mainstem river above Priest Rapids Dam using very large hooks (>4/0) with bait. Fishing occurs primarily in the deep water areas.

Whitefish Sport Fishery

This fishery is proposed to occur from December 1 through March 3 of each year. Use of bait is allowed if hooks are size #14 (3/16 hook gap size) or smaller. Fishing is limited to the following specific locations: Chewuch River from the mouth to the Pasayten Wilderness boundary, Methow River from the mouth to the falls above Brush Creek, Similkameen River from the mouth to the Canadian border, Entiat River from the mouth to Entiat Falls, and the Wenatchee River from the mouth to Highway 2 bridge at Leavenworth.

Other Gamefish and Non-gamefish Sport Fisheries

In addition to the fish species listed above, over 20 other species may be incidentally taken by anglers while fishing in the specific areas above.

Incidental mortalities of ESA-listed fish associated with the WDFW recreational fishery programs are requested at levels specified in the Permit application. WDFW is proposing to limit state recreational fisheries such that the incidental impacts on ESA-listed salmonids will be minimized. Two alternatives for the WDFW fisheries were provided in the Plan, including: (1) the no action alternative; (2) and the proposed conservation plan alternative (based on implementation of the fisheries with a comprehensive monitoring program).

Environmental Assessment/Finding of No Significant Impact

The EA package includes a draft EA and a draft Finding of No Significant Impact (FONSI) which concludes that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment, within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended. Three Federal action alternatives have been analyzed in the EA, including: (1) the no action alternative; (2) issue a permit without conditions; and (3) issue a permit with conditions.

This notice is provided pursuant to section 10(c) of the ESA and the NEPA regulations (40 CFR 1506.6). NMFS will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the NEPA regulations and section 10(a) of the ESA. If it is determined that the requirements are met, a permit will be issued for incidental takes of ESA-listed anadromous salmonids under the jurisdiction of NMFS. The final NEPA and permit determinations will not be completed until after the end of the 30-day comment period and will fully consider all public comments received

during the comment period. NMFS will publish a record of its final action in the **Federal Register**.

Dated: April 13, 2000.

Craig Johnson,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–9843 Filed 4–18–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041400B]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings of the Standing and Special Red Drum Scientific and Statistical Committee (SSC) and the Red Drum Advisory Panel (AP).

DATES: The Standing and Special Red Drum SSC will meet on Wednesday, May 3, 2000 beginning at 1 p.m. and will conclude by 12 noon on Thursday, May 4, 2000; the Red Drum AP will meet on Friday, May 5, 2000 from 8 a.m. until 3 p.m.

ADDRESSES: The SSC meeting will be held at the Tampa Airport Hilton Hotel, 2225 Lois Avenue, Tampa, FL 33607; telephone 813–877–6688. The AP meeting will be held at the New Orleans Airport Hilton, 901 Airline Drive, Kenner, LA 70062; telephone: 504–469–5000.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Peter Hood, Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The SEC will convene to review the 1999/2000 red drum stock assessment. A Red Dum Stock Assessment Panel (SAP) member will present the assessment to the SSC related to setting an allowable biological catch (ABC) range in the Gulf of Mexico. The SSC may also review estimates of stock size (biomass at maximum sustainable yield [Bmsy]), minimum stock size thresholds (MSST), escapement rates of juveniles to offshore waters, and adult red drum bycatch in shrimp trawls. Based on this review, the SSC may recommend to the Council levels for total allowable catch (TAC), bag limits, size limits, commercial quotas, and other measures for the red drum fishery.

The AP will meet to review the 1999/2000 red drum stock assessment. A Red Drum SAP member will also present the assessment to the AP. The AP will also provide recommendations to the Council.

Based on recommendations from the above meetings, the Council, at its May meeting in New Orleans, LA will decide if changes are needed to current red drum management measures. Currently, it is illegal to harvest or possess red drum in Federal waters.

A copy of the agenda can be obtained by contacting the Gulf Council (see **ADDRESSES**).

Although other non-emergency issues not on the agenda may come before the Standing and Special Red Drum SSC and the Red Drum AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the Standing and Special Reef Fish SSC and the Red Drum AP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. Special Accommodations.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by April 27, 2000.

Dated: April 7, 2000.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–9846 Filed 4–18–00; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041300B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application for a scientific research permit (1249); receipt of applications to modify permits (1115, 1156, 1193); and issuance of modifications to an existing permit (1048).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement:

NMFS has received a permit application from Mr. E.P. Taft, of Alden Research Laboratory (ALR) (1249); NMFS has received applications for permit modifications from: Chelan County Public Utility District No. 1 at Wenatchee, WA (CCPUD)(1115), the U.S. Environmental Protection Agency at Corvallis, OR (EPA)(1156), and the Fish Passage Center at Portland, OR (FPC)(1193); and NMFS has issued modifications to a scientific research permit to the Sonoma County Water Agency (SCWA) (1048).

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. eastern daylight time on May 19, 2000.

ADDRESSES: Written comments on the new application or any of the new modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the internet. The applications and related documents are available for review in the indicated office, by appointment:

For permits 1115, 1156, 1193: Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737 (ph: 503–230–5400, fax: 503–230–5435).

For permit 1048: Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (ph: 707–575–6066, fax: 707–578–3435).

For permit 1249: Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (ph: 301–713–1401, fax: 301–713–0376).

Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permit 1249: Terri Jordan, Silver Spring, MD (ph: 301–713–1401, fax: 301–713–0376, e-mail: Terri.Jordan@noaa.gov).

For permit 1048: Dan Logan, Protected Resources Division, Santa Rosa, CA (ph: 707–575–6053, fax: 707–578–3435, e-mail: Dan.Logan@noaa.gov).

For permits 1156, 1193: Leslie Schaeffer, Portland, OR (ph: 503–230–5433, fax: 503–230–5435, e-mail: Leslie.Schaeffer@noaa.gov).

For permit 1115: Robert Koch, Portland, OR (ph: 503–230–5424, fax: 503–230–5435, e-mail: Robert.Koch@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species, evolutionarily significant units (ESU's), and runs are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened Snake River (SnR) spring/summer, threatened SnR fall, endangered upper Columbia River (UCR) spring, threatened Puget Sound (PS), threatened Upper Willamette River (UWR), threatened Lower Columbia River (LCR).

Coho salmon (*O. kisutch*): threatened Southern Oregon/Northern California Coast (SONCC), threatened Central California Coast (CCC).

Sockeye salmon (*O. nerka*): endangered SnR.

Steelhead (*O. mykiss*): endangered UCR, threatened middle Columbia River (MCR), threatened SnR, threatened LCR.

Shortnose sturgeon (*Acipenser brevirostrum*).

To date, final protective regulations for threatened PS, UWR, and LCR chinook salmon and SnR, MCR, and LCR steelhead under section 4(d) of the ESA have not been promulgated by NMFS. Protective regulations are currently proposed for PS, UWR, and LCR chinook salmon (65 FR 169, January 3, 2000) and SnR, MCR, and LCR steelhead (64 FR 73479, December 30, 1999). This notice of receipt of applications requesting takes of these species is issued as a precaution in the event that NMFS issues final protective regulations. The initiation of a 30-day public comment period on the applications, including their proposed takes of PS, UWR, and LCR chinook salmon and SnR, MCR, and LCR steelhead does not presuppose the contents of the eventual final protective regulations.

New Application Received

ARL (1249) requested a 2-year permit to take a maximum of 200 1+ yr captively bred shortnose sturgeon from the Conte Anadromous Fish Research Center to conduct applied fish passage facility research and development, with the intent of identifying what fish passage design and operating conditions are necessary to maximize biological effectiveness of shortnose sturgeon diversion around dams in the Connecticut and Santee-Cooper River systems.

Modification Requests Received

CCPUD requests a modification to permit 1115, which authorizes annual takes of adult and juvenile naturally produced and artificially propagated UCR spring chinook salmon and adult and juvenile naturally produced and artificially propagated UCR steelhead associated with six fish passage studies at Rocky Reach Dam, Rock Island Dam, and the Lake Chelan hydroelectric project on the Columbia River. The goals of the research are: (1) to evaluate the juvenile fish bypass systems at the mainstem river dams, (2) to monitor juvenile fish gas bubble trauma at the dams, (3) to develop operational measures that will enhance adult steelhead passage survival at the dams, (4) to evaluate new acoustic tagging technology used to monitor the behavior of juvenile salmonids as they migrate through passage facilities at Rocky Reach Dam, (5) to use passive integrated transponder (PIT) and radio tagging technology to assess the survival of juvenile salmonids at the dams, and (6) to determine the types and numbers of adult salmonids that may be present in the Lake Chelan bypass reach after spill at the Lake Chelan hydroelectric project is curtailed. Results from the research will be used to improve the operation of fish passage facilities at the dams, determine how fish are affected by gas bubbles and what can be done to minimize gas bubble trauma, evaluate the relative benefits of PIT and radio tagging technologies, and identify a mitigation strategy to protect anadromous fish that may become stranded in the Lake Chelan bypass reach after spill is curtailed. For the modification, CCPUD requests an increase in the annual takes of juvenile naturally produced and artificially propagated UCR spring chinook salmon and juvenile naturally produced UCR steelhead associated with Studies 1, 2, 4, and 5. Associated increases in ESA-listed juvenile fish indirect mortalities are also requested. The modification is requested to be valid for the duration of permit 1115, which expires on December 31, 2002.

On April 7, 2000, NMFS published a notice in the **Federal Register** (65 FR 18310) that an application had been received from EPA for a modification request to permit 1156. For the modification EPA had requested an annual take of juvenile naturally produced and artificially propagated UCR spring chinook salmon, juvenile naturally produced and artificially propagated PS chinook salmon, juvenile UWR chinook salmon, juvenile SnR steelhead, juvenile naturally produced and artificially propagated UCR steelhead, juvenile MCR steelhead, and juvenile LCR steelhead associated with research designed to collect data to enforce the Clean Water Act in the Pacific Northwest. NMFS has received an amendment of EPA's application for a modification to permit 1156. In the application amendment, EPA requests an annual take of LCR chinook salmon associated with the research. The additional species is requested because an additional sampling location has been added to the research to accommodate and coordinate with the Regional Environmental Monitoring and Assessment Program in the Cascades Ecoregion. The ESA-listed fish are proposed to be captured using electrofishing, examined, and released. The modification as amended is requested to be valid for the duration of the permit, which expires on December 31, 2002.

FPC requests a modification to permit 1193, which authorizes annual takes of juvenile SnR sockeye salmon, juvenile SnR fall chinook salmon, juvenile naturally produced and artificially propagated SnR spring chinook salmon,

juvenile naturally produced and artificially propagated UCR spring chinook salmon, and juvenile naturally produced and artificially propagated UCR steelhead associated with FPC's Smolt Monitoring Program at the hydropower dams on the Snake and Columbia Rivers in the Pacific Northwest. For the modification, FPC requests annual takes of juvenile MCR steelhead and juvenile LCR chinook salmon and an increase in the annual takes of juvenile SnR fall chinook salmon and juvenile naturally produced and artificially propagated SnR spring/summer chinook salmon associated with the research. The increased take is requested because a larger than anticipated outmigration run of these ESA-listed species is estimated in 2000 and to provide a sufficient number of tagged fish to develop statistically significant survival estimates. Tagged fish are proposed to be used to provide information relative to fish migration timing through the Columbia Basin hydrosystem. ESA-listed juvenile fish are proposed to be captured, handled (examined and/or PIT tagged), and released. Associated increases in ESA-listed juvenile fish indirect mortalities are also requested. The modification is requested to be valid for the duration of permit 1193, which expires on December 31, 2003.

Permit Modification Issued

Notice was published on March 25, 1999 (64 FR 14432), that SCWA had applied for a modification to permit 1048 to take threatened Central California Coast coho salmon. Modification 1 to Permit 1048 was issued on April 5, 2000, and authorizes an increase in annual intentional take of adult, juvenile, and carcasses of threatened CCC coho salmon associated with fish population and habitat studies within the Russian River basin of the CCC coho salmon ESU. The scientific research consists of five assessment tasks for which ESA-listed fish will be taken: (1) Population trend estimates, (2) carcass counts, (3) redd surveys, (4) acquisition of tissue and scale samples for genetic analysis; and (5) habitat quality evaluation. A corresponding increase in unintentional mortalities is in ESA-listed adult and juvenile salmon is authorized. Modification 1 is valid for the duration of permit 1048, which expires June 30, 2002.

Dated: April 13, 2000.

Craig Johnson,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–9845 Filed 4–18–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF EDUCATION

National Commission on Mathematics and Science Teaching for the 21st Century; Meeting

AGENCY: National Commission on Mathematics and Science Teaching for the 21st Century, Department of Education

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Commission on Mathematics and Science Teaching for the 21st Century (Commission). This notice also describes the functions of the Commission. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the general public of their opportunity to attend.

DATE AND TIME: Monday, May 8, 2000 from 3:30 to approximately 6:30 p.m. and Tuesday, May 9 from 8:30 a.m. to adjournment at approximately 4:30 p.m.

ADDRESSES: Washington Plaza, Franklin Room, 10 Thomas Circle, NW at Massachusetts Avenue and 14th Street, Washington, DC 20005, telephone: (202) 842–1300, (800) 424–1140, fax: (202) 371–9602.

FOR FURTHER INFORMATION CONTACT: Dr. Linda P. Rosen, Executive Director, The National Commission on Mathematics and Science Teaching for the 21st Century, U.S. Department of Education, Room 6W252, 400 Maryland Avenue, SW, Washington, DC 20202, telephone: (202) 260–8229, fax: (202) 260–7216.

SUPPLEMENTARY INFORMATION: The National Commission on Mathematics and Science Teaching for the 21st Century was established by the Secretary of Education and is governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463, as amended; 5 U.S.C.A. Appendix 2). The Commission was established to address the pressing need to significantly raise student achievement in mathematics and science by focusing on the quality of mathematics and science instruction in K–12 classrooms nationwide. The Commission will develop a set of recommendations with a corresponding, multifaceted action strategy to improve the quality of teaching in mathematics and science.

The meeting of the Commission is open to the public. The proposed agenda will focus on the Commission's draft report and potential recommendations. Other topics that may be addressed at the meeting include: (1) Financial incentives for mathematics and science teachers, (2) alternative routes into the profession, and (3) preparation of teachers of mathematics and science. The proposed agenda will include both plenary sessions and presentations.

Space may be limited and you are encouraged to register in advance if you plan to attend. You may register through the Internet at America__Counts@ed.gov or Jamila__Rattler@ed.gov. Please include your name, title, affiliation, complete address (including e-mail, if available), telephone and fax numbers. If you are unable to register through the Internet, you may fax your registration information to The National Commission on Mathematics and Science Teaching for the 21st Century at (202) 260–7216 or mail to The National Commission on Mathematics and Science Teaching for the 21st Century, U.S. Department of Education, Room 6W252, 400 Maryland Avenue, SW, Washington, DC 20202. Any individual who will need accommodations for a disability in order to attend the meeting (i.e., interpreting services, assistive listening devices, materials in alternative format) should notify Jamila Rattler at (202) 260–8229 by no later than April 27, 2000. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

Records will be kept of all Commission proceedings, and will be available for public inspection at The National Commission on Mathematics and Science Teaching for the 21st Century, 400 Maryland Avenue, SW, Room 6W252 from the hours of 8:30 a.m. to 5:00 p.m. weekdays, except Federal holidays.

Frank S. Holleman, III,

Deputy Secretary.

[FR Doc. 00–9701 Filed 4–18–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, May 4, 2000, 6 p.m.–9:30 p.m.

ADDRESSES: College Hill Library, Front Range Community College, 3705 West 122th Avenue, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Regular update—Colorado Department of Public Health and Environment
2. Panel discussion on worker health and safety issues
3. Follow-on soil action level review by regulators
4. Update on results of test burn and/or controlled burn at Rocky Flats
5. Committee updates
6. Other Board business may be conducted as necessary

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9:00 a.m. to 4:00 p.m. Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC, on April 13, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–9772 Filed 4–18–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-specific Advisory Board (EM SSAB) Oak Ridge. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, May 3, 2000: 6–9:30 p.m.

ADDRESSES: Garden Plaza, 215 S. Illinois Avenue, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Theresa Perry, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, (865) 576–8956.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. A representative from the Oak Ridge Health Agreement Steering Panel will discuss their final report, "Releases of Contaminants from Oak Ridge Facilities and Risks to Public Health," dated December 1999

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Carol Davis at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing to Teresa Perry, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (423) 576–8956.

Issued at Washington, DC, on April 13, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–9773 Filed 4–18–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Request for Emergency Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection listed at the end of this notice to the Office of Management and Budget (OMB) for emergency processing under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*) by Friday, April 21, 2000. The reason for this emergency clearance request is to obtain data needed for responding to requests from the Secretary of Energy and Congress on the impact of interruptible natural gas contracts, which affected home heating oil supplies in the Northeastern United States during January and February 2000.

The Supplementary Information contains the following: (1) The collection number and title; (2) a summary of the collection of information, which includes the sponsor (*i.e.*, the DOE component), current OMB document number (where applicable), type of request (new,

revision, extension, or reinstatement), response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) a description of the likely respondents; and (5) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

DATES: Comments must be filed by April 20, 2000.

ADDRESSES: Address comments to Mr. Erik Godwin, Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW, Washington, DC 20503. (Mr. Godwin may be reached by telephone at (202) 395–3084. Comments should also be addressed to the Statistics and Methods Group at the address immediately below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Mr. Miller may be contacted by telephone at (202) 426–1103, FAX at (202) 426–1081, or e-mail at Herbert.Miller@eia.doe.gov.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. EIA–903, "Natural Gas Service Interruptions in the Northeast during January and February 2000."

2. The Energy Information Administration plans to collect information from 25 companies which deliver natural gas (*i.e.*, have natural gas service arrangements) to consumers in the Northeast.

The form consists of six parts. Part I contains identification data; Part II, information on selected characteristics of interruptible service arrangements provided to end-use customers; Part III, names and contact information for customers with interruptible service agreements who were interrupted; Part IV, baseline monthly and weekly information for those categories of service which were interrupted during December 1999, and January and February 2000; Part V, names and contact information for customers with firm service agreements who were interrupted; and Part VI, names and contact information for customers that declined natural gas service when interruptions were ended and natural gas service was offered/available in the report State. This is a new survey and a new OMB number is being requested. The response obligation will be mandatory.

3. The data are needed to respond to a request from the Secretary of Energy and Congress to jointly conduct a study on the impact of interruptible contracts on home heating oil supplies in the Northeast, during January and February 2000.

4. Respondents will be 25 natural gas companies who deliver natural gas to consumers.

5. The reporting burden is expected to be 500 hours. (25 respondents × 1 response × 20 hours).

Statutory Authority: Section 3507(j)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC, April 17, 2000.

Nancy J. Kirkendall,

Acting Director, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 00–9906 Filed 4–18–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1828–000]

ANP Marketing Company; Notice of Issuance of Order

April 13, 2000.

ANP Marketing Company (ANP Marketing) submitted for filing a rate schedule under which ANP Marketing will engage in wholesale electric power and energy transactions as a marketer. ANP Marketing also requested waiver of various Commission regulations. In particular, ANP Marketing requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by ANP Marketing.

On April 10, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by ANP Marketing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, ANP Marketing is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; Provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of ANP Marketing's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 10, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–9759 Filed 4–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–75–003]

California Electricity Oversight Board; Notice of Filing

April 13, 2000.

Take notice that on March 20, 2000, the California Independent System Operator Corporation (ISO) tendered for filing an amendment to its Amended and Restated Bylaws, as revised December 1999. The Amended and Revised Bylaws are intended to comply with the Commission's Order in the above-captioned docket. The instant amendment requests that the Commission accept the amendment effective March 20, 2000.

The ISO states that this filing has been served upon all persons on the official service list in the above-identified docket.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and

385.214). All such motions and protests should be filed on or before April 24, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–9770 Filed 4–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–030]

Koch Gateway Pipeline Company; Notice of Negotiated Rate Filing

April 13, 2000.

Take notice that on April 11, 2000, Koch Gateway Pipeline Company (Koch) tendered for filing the following contracts reflecting negotiated rate transactions:

Special Negotiated Rate Between Koch and KET Energy Trading, Contracts Nos. 27619 and 27621

Koch states that it requests a waiver of Section 154.207 of the Commission's regulations to allow the filing to be effective on October 1, 1999.

Koch states that it has served copies of this filing upon each of all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance.

David P. Boergers,

Secretary.

[FR Doc. 00–9766 Filed 4–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM00–1–25–002]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

April 13, 2000.

Take notice that on April 7, 2000, Mississippi River Transmission Corporation (MRT) tendered for filing as apart of its Gas Tariff, Third Revised Volume No. 1, the sheets listed below to become effective June 1, 2000:

Substitute Thirty Fourth Revised Sheet No. 5
Substitute Thirty Fourth Revised Sheet No. 6
Substitute Thirty First Revised Sheet No. 7
Substitute Eleventh Revised Sheet No. 8

MRT states that the purpose of this filing is to adjust the Fuel Use and Loss Percentages under its Rate Schedules FTS, SCT, ITS, FSS and ISS pursuant to Section 22 of the General Terms and Conditions of its FERC Gas Tariff and the Commission's order in Docket No. TM00–1–25–000. MRT further states, subject to the Commission's authorization, the filing will replace and supersede the tariff filing made by MRT on October 1, 1999 in Docket No. TM00–1–25–000.

MRT states that a copy of this filing is being mailed to each of the parties to this proceeding, its customers and to the state commissions of Arkansas, Illinois, and Missouri.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before April 28, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–9769 Filed 4–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–66–000]

Missouri Joint Municipal Electric Utility Commission and the City of Harrisonville, Missouri v. UtiliCorp United Inc.; Notice of Complaint

April 13, 2000.

Take notice that on April 11, 2000, the City of Harrisonville, Missouri and the Missouri Joint Municipal Electric Utility Commission on behalf of its member cities El Dorado Springs, Odessa, and Rich Hill, Missouri, filed a complaint against UtiliCorp United Inc. d/b/a Missouri Public Service (MPS). The complaint asserts that MPS has recovered certain impermissible purchased power expenses through MPS's fuel adjustment clause (FAC), in violation of the filed rate and the Commission's fuel clause regulations, 18 CFR 35.14. The complaint requests that the Commission: (1) Initiate an audit and investigation of MPS's application of the fuel adjustment clause, (2) by issuing a notice of rate examination and/or order to show cause under 18 CFR 385.209, require MPS to bear the burden of demonstrating in that audit and investigation that it has not included any improper energy purchase costs in its FAC billings from at least 1997 to date, and (3) require MPS to provide refunds (with interest) as appropriate to reflect correct application of the FAC, *i.e.*, elimination of all improper purchased energy costs, with respect to all relevant periods. The complainants also request consolidation of this proceeding with the complaint in Docket No. EL00–43–000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 1, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Answers to the complaint shall also be due on or before May 1, 2000.

David P. Boergers,

Secretary.

[FR Doc. 00–9765 Filed 4–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–1675–000 and ER00–1676–000 (Not Consolidated)]

Reliant Energy Desert Basin, LLC, Fulton Cogeneration Associates, L.P.; Notice of Issuance of Order

April 13, 2000.

Reliant Energy Desert Basin, LLC and Fulton Cogeneration Associates, L.P. (hereafter, "the Applicants") filed with the Commission rate schedules in the above-captioned proceedings, respectively, under which the Applicants will engage in wholesale electric power and energy transactions at market-based rates, and for certain waivers and authorizations. In particular, certain of the Applicants may also have requested in their respective applications that the Commission grant blanket approval under 18 CFR part 34 of all future issuances for securities and assumptions of liabilities by the Applicants. On April 12, 2000, the Commission issued an order that accepted the rate schedules for sales of capacity and energy at market-based rates (Order), in the above-docketed proceedings.

The Commission's April 12, 2000 Order granted, for those Applicants that sought such approval, their request for blanket approval under Part 34, subject to the conditions found in Appendix B in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, if the Applicants have requested such authorization, the Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of the Applicants' issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 12, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. This issuance may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–9760 Filed 4–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–244–000]

Sumas International Pipeline Inc.; Notice of Proposed Changes in FERC Gas Tariff

April 13, 2000.

Take notice that on April 10, 2000, Sumas International Pipeline Inc. (SIPI), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheets to become effective May 1, 2000:

Second Revised Sheet Number 10
Second Revised Sheet Number 11
Original Sheet Number 11A
Second Revised Sheet Number 12
First Revised Sheet Number 12A
Third Revised Sheet Number 13
First Revised Sheet Number 13A
First Revised Sheet Number 13B
First Revised Sheet Number 13C
Original Sheet Number 13D
Original Sheet Number 13E
Original Sheet Number 13F
First Revised Sheet Number 16A
First Revised Sheet Number 21A

SIPI asserts that the purpose of this filing is to comply with Order No. 587 issued on July 17, 1996 in general, and in particular Order Nos. 587–G, 587–H and 487–K, and the Notice Clarifying Procedures for Filing Tariff Sheets issued on September 12, 1996, in Docket No. RM96–1–000. These pro-forma sheets reflect the requirement that interstate natural gas pipelines follow standardized procedures for critical business practices (nominations; allocations, balancing and measurement; involving; and capacity release) and standardized protocols and file formats for electronic communication except where waivers have been granted.

SIPI states that copies of this filing were mailed to all customers of SIPI and Interested Parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–9768 Filed 4–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–166–000]

Williams Gas Pipelines Central, Inc.; Notice of Petition to Amend

April 13, 2000.

Take notice that on April 3, 2000, Williams Gas Pipelines Central, Inc. (Williams), 3800 Frederica Street, Owensboro, Kentucky 42301, filed an

application pursuant to Section 7(c) of the Natural Gas Act (NGA), as amended, for further amendment to the certificate of public convenience and necessity issued in this proceeding on December 30, 1963, authorizing the Webb storage field in Grant County, Oklahoma.

Specifically, Williams seeks authority to increase the effective storage area by: (1) Acquiring the gas storage rights under an additional 480 acres for a buffer zone, adjacent to the west boundary of the storage leasehold interests previously authorized; (2) constructing three 4-inch gathering laterals of approximately 1500 feet, 250 feet and 125 feet to connect 14 existing production wells, converted to pressure relief well operation, to the storage system; and, (3) installing and operating measurement and appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance).

Any questions regarding the application may be directed to David N. Roberts, Manager of Tariffs and Regulatory Analysis, P.O. Box 20008, Owensboro, Kentucky 42304, (270) 688–6712.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 4, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and the regulations under the Natural Gas Act 18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervener status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other interveners. An intervener can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervener must serve copies of comments or any other filing it makes with the Commission to every other intervener in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents,and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, Commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court. The Commission will consider all comments and concerns equally, whether filed by comments or those requesting intervener status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon, the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act, as amended, and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this Application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the requested authorization is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for unless otherwise advised, it will be unnecessary for Williams to appear or to be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–9761 Filed 4–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1801–000, *et al.*]

Sierra Pacific Power Company, *et al.*; Electric Rate and Corporate Regulation Filings

April 12, 2000.

Take notice that the following filings have been made with the Commission:

1. Sierra Pacific Power Company, et al.

[Docket No. ER00–1801–000]

Take notice that on March 30, 2000 Nevada Power Company (Nevada Power) and Sierra Pacific Power Company (Sierra Pacific) tendered for filing an amendment to the joint open-access transmission tariff filed on March 3, 2000, in Docket No. ER00–1801–000, in anticipation of the pending merger among Nevada Power, Sierra Pacific, and Portland General Electric Company. The amendment incorporates two transmission loss studies also filed on March 30, 2000, by Nevada Power and Sierra Pacific, in Docket Nos. ER00–2004–000 and ER00–2003–000 respectively, that indicate a change in the factor used to calculate transmission service losses under their joint open-access transmission tariff, FERC Original Volume No. 1, filed in Docket No. ER99–34–000.

Copies of this filing have been served upon those persons on the Commission's official service list compiled in Docket No. ER00–1801–000.

Nevada Power and Sierra Pacific request that the filing be made effective in Docket No. ER00–1801–000 as of the effective date of that joint tariff.

Comment date: May 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. El Paso Energy Corporation and the Coastal Corporation

[Docket No. EC00–73–000]

Take notice that on April 3, 2000, pursuant to Federal Power Act (FPA) Section 203, 16 U.S.C. 824b, and Part 33 of the Commission's regulations, 18 CFR part 33, El Paso Energy Corporation (El Paso Energy) and The Coastal Corporation (Coastal) on behalf of their respective FPA-jurisdictional subsidiaries (collectively, Applicants) applied for all Commission approvals necessary to consummate their proposed merger. Applicants state that the FPA-jurisdictional subsidiaries of El Paso Energy and Coastal are power marketers and merchant plants with market-based rate authority.

El Paso Energy is an energy holding company whose subsidiary operations include interstate and intrastate transportation and storage of natural gas; gathering, exploration, production, processing and marketing of natural gas; independent power generation; power marketing; and the development of energy infrastructure facilities worldwide. Coastal is a diversified energy holding company with subsidiary operations in natural gas transportation, storage, gathering and processing; petroleum refining, marketing and distribution; gas and oil exploration and production; coal mining; and power generation and marketing.

Comment date: June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. PG&E Dispersed Generating Company, LLC

[Docket No. EG00–124–000]

Take notice that on April 6, 2000, PG&E Dispersed Generating Company, LLC (PG&E Dispersed Gen), a Delaware limited liability company with its principal place of business at 7500 Old Georgetown Road, Bethesda, MD 20814, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

PG&E Dispersed Gen proposes to construct, own or lease and operate three additional generating facilities in Ohio. The proposed power plants are expected to commence commercial operation on or about July 1, 2000. All output from the plants will be sold by PG&E Dispersed Gen exclusively at wholesale.

Comment date: May 3, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Orion Power Midwest, L.P.

[Docket No. ER00–2129–000]

Take notice that on April 4, 2000, Orion Power MidWest, LLC filed a letter of name change to Orion Power MidWest, L.P.

Comment date: April 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. RS Cogen, L.L.C.

[Docket No. QF00–32–000]

Take notice that on April 11, 2000, RS Cogen, L.L.C. (RS Cogen) located at 1300 PPG Drive, Westlake, Louisiana 70669, filed a supplement to its application pursuant to Section 292.207(b) of the Commission's regulations for a determination by the Commission that RS Cogen's cogeneration facility is a qualifying facility under the Public Utility Regulatory Policies Act of 1978 and the Commission's regulations thereunder.

Comment date: May 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. LS Power Marketing, LLC

[Docket No. ER96–1947–015]

Take notice that on April 7, 2000, LS Power Marketing, LLC (LSPM), tendered for filing a Notification of Change in Status and Updated Market Power Analysis, notifying the Commission of certain changes in its affiliation with various generating companies, as a result of indirect acquisitions and dispositions by its affiliates. LSPM also noted that it has changed its principal place of business and that none of its affiliates currently holds any interests in electric generating capacity for which construction commenced on or before July 9, 1996.

Comment date: April 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. PJM Interconnection, L.L.C.

[Docket No. ER00–1745–001]

Take notice that on April 6, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing a supplement to its March 1, 2000, filing of an executed umbrella service agreement for network integration transmission service under state required retail access programs with Total Gas & Electric, Inc., including the specification sheets. The specification sheets inadvertently were not included in the March 1, 2000 filing when the agreement was originally filed.

PJM reiterated its request for a waiver of the Commission's 60-day notice requirement to allow an effective date for the agreement of February 1, 2000.

Copies of this supplemental filing were served upon Total Gas & Electric, Inc. and the state commissions within the PJM control area.

Comment date: April 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Texas Electric Marketing, LLC

[Docket No. ER00–1780–001]

Take notice that on April 7, 2000, Texas Electric Marketing, LLC (TEM), tendered for filing supplemental to its March 2, 2000, application for blanket authorizations and certain waivers filed with the Commission in the above-referenced docket.

Comment date: April 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. PJM Interconnection, L.L.C.

[Docket No. ER00–2079–001]

Take notice that on April 7, 2000, PJM Interconnection, L.L.C. (PJM), on behalf of the PJM Reliability Committee, tendered for filing amendments to its April 3, 2000 filing in this docket that, among other things, amended Schedules 5.2, and 7 of the Reliability Agreement Among Load Serving Entities in the PJM Control Area (RAA) to implement Active Load Management procedures. The amended filing clarifies certain terms in Schedules 5.2 and 7 of the RAA.

Copies of this filing were served upon all parties to the RAA and each state electric utility regulatory commission in the PJM control area.

PJM, on behalf of the PJM Reliability Committee, requests an effective date of June 7, 2000 for the amendments filed in this docket as revised in the April 7, 2000 filing.

Comment date: April 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Electric Power Company

[Docket No. ER00–2137–000]

Take notice that on April 6, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a revision to Appendix O to the Interconnection Agreement between itself and Wisconsin Public Service Corporation (WPS). The revision replaces the Thunder Point of Interconnection with the new Crivitz Point of Interconnection.

Wisconsin Electric requests an effective date of May 25, 1999 and waiver of the Commission's notice requirements in recognition that the extensive negotiations leading to the executed revision have only recently been concluded.

Copies of the filing have been served on WPS, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: April 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–2141–000]

Take notice that on April 6, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Amendment

No. 3 to Supplement No. 8 to the Market Rate Tariff to incorporate a Settlement Procedures Agreement with PECO Energy Company into the tariff provisions.

Allegheny Energy Supply requests a waiver of notice requirements to make the Amendment effective as of March 30, 2000 or such other date as ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: April 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, et al.

[Docket No. ER00–2142–000]

Take notice that on April 6, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 75 to add MIECO Inc., to Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreements is April 5, 2000 or a date ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: April 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER00–2143–000]

Take notice that on April 6, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Statoil Energy Services, Inc.

The foregoing Service Agreements are filed under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreements, Virginia Power will provide point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of April 6, 2000, the date of filing of the Service Agreements.

Copies of the filing were served upon Statoil Energy Services, Inc., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: April 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Virginia Electric and Power Company

[Docket No. ER00–2144–000]

Take notice that on April 6, 2000, Virginia Electric and Power Company (Virginia Power) tendered for filing Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to The Legacy Energy Group, LLC.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreements, Virginia Power will provide point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of April 6, 2000, the date of filing of the Service Agreements.

Copies of the filing were served upon The Legacy Energy Group, LLC, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: April 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Virginia Electric and Power Company

[Docket No. ER00–2145–000]

Take notice that on April 6, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and Statoil Energy Services, Inc. Under the Service Agreement, Virginia Power will provide services to Statoil Energy Services, Inc., under the terms of the Company's Revised Market-Based Rate Tariff designated as FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000.

Virginia Power requests an effective date of April 6, 2000, the date of filing of the Service Agreement.

Copies of the filing were served upon Statoil Energy Services, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: April 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Virginia Electric and Power Company

[Docket No. ER00–2146–000]

Take notice that on April 6, 2000, Virginia Electric and Power Company (Virginia Power), tendered for filing Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to El Paso Merchant Energy, L.P.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreements, Virginia Power will provide point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of April 6, 2000, the date of filing of the Service Agreements.

Copies of the filing were served upon El Paso Merchant Energy, L.P., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: April 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. New England Power Pool

[Docket No. ER00–2148–000]

Take notice that on April 7, 2000, the New England Power Pool (NEPOOL) Participants Committee and Transmission Owners submitted as a supplement to the NEPOOL Open Access Transmission Tariff (the NEPOOL Tariff) a rule for implementing Ancillary Service Schedule 2 (Reactive Supply and Voltage Control from Generation Sources Service) of the NEPOOL Tariff (the Schedule 2 Implementation Rule). The NEPOOL Participants Committee and Transmission Owners state that the Schedule 2 Implementation Rule documents the details for implementing the procedure and method for calculating the costs identified in Schedule 2 of the NEPOOL Tariff.

The NEPOOL Participants Committee and Transmission Owners state that copies of these materials were sent to the NEPOOL Participants and the six New England State governors and regulatory commissions.

Comment date: April 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. TXU Electric Company

[Docket No. ER00–2149–000]

Take notice that, on April 7, 2000, TXU Electric Company (TXU Electric), tendered for filing an executed transmission service agreement (TSA) with FPL Energy Power Marketing, Inc., for certain Planned Service and Unplanned Service transactions under TXU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections.

TXU Electric requests an effective date for the TSA that will permit it to become effective as of March 9, 2000. Accordingly, TXU Electric seeks waiver of the Commission's notice requirements.

Copies of the filing were served on FPL Energy Power Marketing, Inc., as well as the Public Utility Commission of Texas.

Comment date: April 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Indianapolis Power & Light Company

[Docket No. ER00–2150–000]

Take notice that on April 7, 2000, Indianapolis Power & Light Company (IPL), tendered for filing a market-based power sales tariff.

IPL requests that the tariff supersede the market-based power sales tariff filed in Docket No. ER00–1026–001.

Copies of this filing were served on the Indiana Utility Regulatory Commission.

Comment date: April 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Southern Indiana Gas and Electric Company

[Docket No. ER00–2151–000]

Take notice that on April 7, 2000, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing a Wholesale Energy Service Agreement dated March 21, 2000, with Tractebel Energy Marketing, Inc., concerning the provision of electric service to Tractebel Energy Marketing, Inc., as a umbrella service agreement under its market-based Wholesale Power Sales Tariff:

Comment date: April 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Southwest Power Pool, Inc.

[Docket No. ER00–2153–000]

Take notice that on April 7, 2000, Southwest Power Pool, Inc. (SPP), on behalf of its members, tendered for filing changes to its open access transmission tariff (Tariff) in order to revise its tariff provisions to allow SPP to allow SPP to waive its deposit requirements on a non-discriminatory basis for customers that have been determined by SPP to be creditworthy.

SPP requests an effective date of April 8, 2000, for these changes.

Copies of this filing were served upon all members and customers of SPP, and on all affected state commissions.

Comment date: April 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–9771 Filed 4–18–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

April 13, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Minor License.

b. *Project No.:* 11566–000.

c. *Date Filed:* December 12, 1995.

d. *Applicant:* Ridgewood Maine Hydro Partners, L.P.

e. *Name of Project:* Damariscotta Mills Project.

f. *Location:* On the Damariscotta River in Lincoln County, near Newcastle, Nobleboro, and Jefferson, Maine.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Kevin M. Webb, CHI Energy, Inc., Andover Business Park, 200 Bulfinch Drive, Andover, MA 01810, (978) 681–7727.

i. *FERC Contact:* Any questions on this notice should be addressed to Michael Spencer, E-mail address, michael.spencer@ferc.fed.us, or telephone (202) 219–2846.

j. Deadline for comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application has been accepted for filing and is ready for environmental analysis at this time.

l. *Description of the Project:* The existing project consists of: (1) a 5-foot-high, 124-foot-long concrete dam with three stoplog bays referred to as the "Fishway Dam"; (2) a 5-foot-high, 40-foot-long dike; (3) a 9.5-foot-high, 57-foot-long concrete dam with two waste gates and a stoplog bay referred to as the "Waste Gate Dam"; (4) a 15-foot-high intake structure, referred to as the "Intake Dam" consisting of: (a) two stone masonry wing walls, extending 125 feet along the east bank and 50 feet along the west bank of the impoundment; (b) steel trashracks and (c) a wooden gatehouse containing a manually operated wooden headgate; (5) a 4,625-acre reservoir with 6,875 acre-feet storage volume at the normal surface elevation of 54.35 feet, National Geodetic Vertical Datum (NGVD); (6) a 5.6-foot-diameter, 350-foot-long steel penstock; (7) a surge tank at the end of

the penstock; (8) a 30×35 foot masonry powerhouse containing a single generating unit having an installed capacity of 460 kW and an average annual generation of 1,830 MWh; (9) a 100-foot-long, 12.47–kV underground transmission line; and (10) appurtenant facilities.

m. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address shown in item h.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause of extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Environmental Engineering Review, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 00–9758 Filed 4–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent to File Application for a New License

April 13, 2000.

Take notice that the following notice of intent has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent to File an Application for New License.

b. *Project No.:* 2067.

c. *Date filed:* July 30, 1999.

d. *Submitted By:* Oakdale Irrigation District and Sam Joaquin Irrigation District, current licensees.

e. *Name of Project:* Tulloch.

f. *Location:* On the Stanislaus River in Tuolumne and Calaveras Counties, California.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6.

h. Pursuant to Section 16.19 of the Commission's regulations, the licensee is required to make available the information described in Section 16.7 of the regulations. Such information is available from the licensee at Tri-Dam Project, 31885 Old Strawberry Road, Strawberry, California 95375. Interested parties can contact Steve Felte on (209) 965–3996.

i. *FERC Contact:* Héctor M. Pérez, (202) 219–2843, *hector.perez@ferc.fed.us.*

j. *Expiration Date of Current License:* December 31, 2004.

k. The project consists of a dam and reservoir, a penstock, a powerhouse with an installed capacity of 8,550 kilowatts, and a switchyard.

l. The licensee states its unequivocal intent to submit an application for a new license for Project No. 2067. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 2002.

m. A copy of the notice of intent is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The notice may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

David P. Boergers,

Secretary.

[FR Doc. 00–9762 Filed 4–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Lease of Project Lands for Non-Project Use and Soliciting Comments, Motions To Intervene, and Protests

April 13, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Lease of Project Lands for Non-Project Use.

b. *Project No.:* 2503–057.

c. *Date Filed:* March 24, 2000.

d. *Applicant:* Duke Energy Corporation.

e. *Name of Project:* Keowee-Toxaway Project.

f. *Location:* The project is located on Lake Keowee in Oconee County, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Joe Hall, Lake Management Representative, Duke Power Company, P.O. Box 1006, Charlotte, NC 28201–1006, (704) 382–8576.

i. *FERC Contact:* Any questions about this notice should be addressed to Amy K. Chang, E-mail address, *amy.chang@ferc.fed.us*, or telephone number, (202) 208–1199.

j. *Deadline for filing comments and/or motions:* May 17, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the Project Number, P–2503–057, on any comments or motions filed.

k. *Description of Filing:* Duke Energy Corporation (Licensee) requests Commission approval to grant a lease to Keowee Key Property Owner's Association (KKPOA) for five commercial/residential marine areas which would utilize 12 parcels of land containing a total of 11.34 acres. This proposal involves the use of the following existing facilities: 1 boat ramp, 2 commercial gasoline sales docks, and 12 cluster dock facilities with a total of 185 boat slips. Some of these existing facilities were previously approved by the Commission (see 28 FERC ¶62,440 and 35 FERC ¶162,025). In addition, KKPOA has proposed to construct an additional 5 cluster dock facilities with a total of 90 boat slips.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at *www.ferc.fed.us/online/rims.htm.* Call (202) 208–2222 for assistance.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–9763 Filed 4–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2000–010]

Power Authority of the State of New York; Notice of Meetings To Discuss Settlement for Relicensing of the St. Lawrence-FDR Power Project

April 13, 2000.

The establishment of the Cooperative Consultation Process (CCP) Team and the Scoping Process for relicensing of the St. Lawrence-FDR Power Project was identified in the NOTICE OF MEMORANDUM OF UNDERSTANDING, FORMATION OF COOPERATIVE CONSULTATION PROCESS TEAM, AND INITIATION OF SCOPING PROCESS ASSOCIATED WITH RELICENSING THE ST. LAWRENCE-FDR POWER PROJECT issued May 2, 1996, and found in the **Federal Register** dated May 8, 1996, Volume 61, No. 90, on page 20813.

The following is a list of the tentative meetings for the CCP Team to continue settlement negotiations on ecological and local issues. The meetings will be conducted at the New York Power Authority's (NYPA) Robert Moses Powerhouse, at 10:00 a.m., located in Massena, New York.

The CCP Team will meet:

April 25, 2000
May 31, 2000
June 28, 2000
August 8, 2000

If you would like more information about the CCP Team and the relicensing process, please contact any one of the following individuals:

Mr. Thomas R. Tatham, New York Power Authority, (212) 468–6747, (212) 468–6141 (fax), EMAIL: *Tatham.T@NYPA.Gov*

Mr. Bill Little, Esq, New York State Dept. of Environmental Conservation, (518) 457–0986, (518) 457–3978 (fax), EMAIL: *WGLittle@GW.DEC.State.NY.US*

Dr. Jennifer Hill, Federal Energy Regulatory Commission, (202) 219–2797, (202) 219–2732 (fax), EMAIL: *Jennifer.Hill@FERC.FED.US*

Further information about NYPA and the St. Lawrence-FDR Power Project can be obtained through the Internet at *http://www.stl.nypa.gov/index.html.* Information about the Federal Energy Regulatory Commission can be obtained at *http://www.ferc.fed.us*

David P. Boergers,

Secretary.

[FR Doc. 00–9764 Filed 4–18–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–199–000]

Reliant Energy Gas Transmission Company; Notice of Technical Conference

April 13, 2000.

In the Commission's order issued on March 31, 2000[1] the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Tuesday, May 2, 2000, at 9:30 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 00–9767 Filed 4–18–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–64043A; FRL–6550–8]

Azinphos-Methyl; Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

[1] 90 FERC ¶61,341.

SUMMARY: This order announces the use deletions and cancellations as requested by the companies that hold the registrations of pesticide products containing the active ingredient azinphos methyl and accepted by EPA, pursuant to section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This order follows up a December 3, 1999, notice of receipt of requests for amendments to delete uses and receipt of a request for registration cancellations. In that notice, EPA indicated that it would issue an order confirming the voluntary use deletions and registration cancellations. As of April 19, 2000 any distribution, sale, or use of azinphos methyl products is only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

DATES: The cancellations are effective April 19, 2000.

FOR FURTHER INFORMATION CONTACT: Barry O'Keefe, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–8035; fax number: 703–308–8041; e-mail address: okeefe.barry@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. However, you may be potentially affected by this action if you manufacture, sell, distribute, or use azinphos methyl products. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit I of this document. The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document and certain other available support documents from the EPA Internet Home Page at http://www.epa.gov/. You may access this document by selecting "Laws and Regulations" on EPA's Home Page and then looking up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. To access information about the risk assessment for azinphos methyl, go to the Home Page for the Office of Pesticide Programs or go directly to http://www/epa.gov/oppsrrd1/op/azm.htm.

2. *In person.* The Agency has established an official record for this action under docket control number [OPP–64043A]. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is 703–305–5805.

II. Background

A. What Action is the Agency Taking?

In a memorandum of agreement ("Agreement") effective August 2, 1999, EPA and a number of registrants of products containing azinphos methyl agreed to several voluntary measures to reduce the dietary, agricultural worker, and ecosystem risks associated with azinphos methyl exposure. As part of the Agreement, the signatory and non-signatory registrants, among other things, agreed to delete the use of azinphos methyl products on cotton in Louisiana and east of the Mississippi River, and on sugarcane, ornamentals (except for nursery stocks), Christmas trees, shade trees, and forest trees.

On December 3, 1999 (64 FR 67899) (FRL–6394–8), EPA published in the **Federal Register** a notice of the Agency's receipt of requests from the signatory registrants and one non-signatory registrant of pesticide products containing azinphos methyl to amend their registrations to delete the use of azinphos methyl products on cotton in Louisiana and east of the Mississippi River, and on sugarcane, ornamentals (except for nursery stocks), Christmas trees, shade trees, and forest trees pursuant to section 6(f)(1)(A) of FIFRA. The registrations for which amendments were requested are identified in Table 1 below. EPA also announced the request of one of the signatory registrants to cancel some of its registrations of pesticide products containing azinphos methyl. The registrations for which cancellation was requested are identified in Table 2.

TABLE 1.—REGISTRATIONS WITH REQUESTED AMENDMENTS

Company	Reg. No.	Product	SLNs
Bayer Corporation	3125–108	85% Technical	
	3125–102	22.2% Emulsifiable Concentrate	
	3125–301	50% Wettable Powder	NJ9400300
Makhteshim Chemical Works, Ltd	11678–4	85% Technical	
	11678–53	85% Formulation Intermediate	
Makhteshim-Agan of North America, Inc	66222–11	50% Wettable Powder	
	66222–12	22.1% Emulsifiable Concentrate	
	66222–16	22.1% Emulsifiable Concentrate	
Gowan Company	10163–78	50% Wettable Powder	AZ94000800
	10163–80	22.2% Emulsifiable Concentrate	

TABLE 1.—REGISTRATIONS WITH REQUESTED AMENDMENTS—Continued

Company	Reg. No.	Product	SLNs
	10163–95	85% Technical	.....
	10163–138	35% Wettable Powder	
	10163–139	35% Wettable Powder	.....
	10163–180	50% PVA (Water Soluble Bags)	.....
Micro-Flo Corporation	51036–76	22.2% Emulsifiable Concentrate	.....
	51036–130	35% Wettable Powder	.....
	51036–164	50% Water Dispensable Granules	AZ99000500
Platte Chemical Company	34704–691	22.2% Emulsifiable Concentrate	.....

TABLE 2.—REGISTRATIONS WITH CANCELLATION REQUESTS

Company	Reg. No.	Product	SLNs
Micro-Flo Corporation	*51036–76	22.2% Emulsifiable Concentrate	TX89001100
	51036–205	50% Wettable Powder	.....
	51036–207	22.2% Emulsifiable Concentrate	.....

* Note that EPA Reg. No. 51036–76 is not being canceled; rather SLN TX89001100 is being canceled.

B. What is the Agency's Authority for Taking this Action?

In the December 3, 1999, FR Notice, EPA requested public comment on the voluntary cancellation and use deletion requests, and provided a 30-day comment period. The registrants requested that the Administrator waive the 180-day period provided under FIFRA section 6(f)(1)(C). No public comments were submitted to the docket in response to EPA's request for comments.

III. Cancellation Order

Pursuant to section 6(f) of FIFRA, EPA is approving the requested use deletions and the requested registration cancellations. Accordingly, the Agency orders that the registrations identified in Table 1 above are hereby amended to delete use on cotton in Louisiana and east of the Mississippi River, and on sugarcane, ornamentals (except for nursery stocks), Christmas trees, shade trees, and forest trees. The Agency also orders that the registrations identified in Table 2 are hereby canceled. Any distribution, sale, or use of existing stocks of the products identified in Tables 1 and 2 above in a manner inconsistent with the terms of this Order or the Existing Stock Provisions in Unit IV of this **Federal Register** Notice will be considered a violation of section 12(a)(2)(K) of FIFRA and/or section 12(a)(1)(A) of FIFRA.

IV. Existing Stocks Provisions

For purposes of this Order, the term "existing stocks" is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the amendment or cancellation.

A. Distribution or Sale by Registrants

Unless existing stocks of products identified in Table 1 above have been relabeled in a manner consistent with the Agreement, the distribution or sale of such stocks by registrants is not lawful under FIFRA after April 19, 2000, except for the purposes of returns and relabeling, shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or for proper disposal. The distribution or sale of existing stocks of products identified in Table 2 above by registrants is not lawful under FIFRA after April 19, 2000, except for the purposes of shipping such stocks for export consistent with the requirements of section 17 of FIFRA or for proper disposal.

B. Distribution or Sale by Other Persons

Unless existing stocks of products identified in Table 1 above have been relabeled in a manner consistent with the Agreement, the distribution or sale of such stocks by persons other than registrants is not lawful under FIFRA after April 19, 2000, except for the purposes of returns and relabeling, shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or for proper disposal. The distribution or sale of existing stocks of products identified in Table 2 by persons other than registrants is not lawful under FIFRA after April 19, 2000, except for the purposes of shipping such stocks for export consistent with the requirements of section 17 of FIFRA or for proper disposal.

C. Use of Existing Stocks

The use of existing stocks of products identified in Tables 1 and 2 above on cotton in Louisiana and east of the Mississippi River, and on sugarcane, ornamentals (except nursery stock), Christmas trees, shade trees, and forest trees will be lawful under FIFRA until such stocks are depleted provided that the use is in accordance with either the directions for use contained in the Agreement or the existing labeling of that product.

List of Subjects

Environmental protection, pesticides and pests.

Dated: April 10, 2000.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 00–9798 Filed 4–18–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–923; FRL–6495–7]

Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain

pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–923, must be received on or before May 19, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–923 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Marshall Swindell, PM 33 Regulatory Management Branch I, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–6341; e-mail address: swindell.marshall@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production. Animal production. Food manufacturing. Pesticide manufacturing.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–923. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–923 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–923. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your

response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 11, 2000.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Milliken Chemical

8F5007

EPA has received a supplement to a pesticide petition (8F5007) from Milliken Chemical, P.O. Box 1927, Spartanburg, SC 29304–1927, proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for silver sodium hydrogen zirconium phosphate, when used as an antimicrobial agent at levels up to 2% by weight, in or on polymers used for food-contact surfaces, for the following applications: containers, tubing, utensils, hardware, filters, appliances, food preparation, or processing surfaces, food storage devices, coverings, film, packaging (other than food packaging regulated exclusively by the Food, and Drug Administration (FDA)), fabrics, equipment, conveyance, and transport items, and tools. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time, or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* Silver sodium hydrogen zirconium phosphate will not be used on growing plants. Plant metabolism studies are therefore not necessary.

2. *Analytical method.* Silver sodium hydrogen zirconium phosphate and its potential migration products, silver and zirconium, have been determined to be at such low levels that there is no need for an established method for quantitating levels of such residues in or on food.

3. *Magnitude of residues.* The proposed use of silver sodium hydrogen zirconium phosphate is at levels up to 2% by weight in or on substances such as polymers. Migration studies estimate the maximum amounts of silver and zirconium that might migrate from a polymer impregnated with silver sodium hydrogen zirconium phosphate are less than the limits of detection (i.e., 10 parts per billion (ppb) for silver, and 20 ppb for zirconium). The levels of anticipated residues of silver and zirconium that might migrate from contact substances into or onto food are expected to be negligible.

B. Toxicological Profile

1. *Acute toxicity.* The acute toxicity data for silver sodium hydrogen zirconium phosphate are the following: (i) The acute median lethal oral dose in rats is greater than 5 g/kg body weight (Toxicity Category IV); (ii) the acute median lethal dermal dose in rats is greater than 2 g/kg body weight (Toxicity Category III); (3) the acute inhalation median lethal concentration is greater than 5.18 milligram liter (mg/L) in rats with nose only exposure (Toxicity Category IV); (iv) eye irritation and opacity is reversible within 72 hours in rabbits (Toxicity Category III); (v) no dermal irritation is induced when applied at 0.5 g under occlusion to rabbits (Toxicity Category IV); and (vi) no evidence of dermal sensitization is produced in guinea pigs.

2. *Genotoxicity.* Mutagenicity tests for silver sodium hydrogen zirconium phosphate are negative in the *Ames Salmonella typhimurium*, and *Escherichia coli* (wp2 uvrA) assays with and without activation, and are negative in the forward mutation mouse lymphoma assay with and without activation. Silver sodium hydrogen zirconium phosphate shows no evidence for chromosome-damaging activity in the mouse micronucleus test.

3. *Reproductive and developmental toxicity.* Doses up to 1,000 milligrams/kilograms/day (mg/kg/day) of silver sodium hydrogen zirconium phosphate showed no evidence for maternal toxicity and no statistically significant test material-related effects on the growth and development of offspring. Visceral and skeletal anomalies were proportional in fetuses from control and treated rats. The maternal (systemic) no observed adverse effect level (NOAEL) was 1,000 mg/kg/day, and the developmental (fetal) NOAEL was 1,000 mg/kg/day.

4. *Subchronic toxicity*—i. *Palatability study.* Doses up to 1,000 mg/kg/day of silver sodium hydrogen zirconium phosphate in the diet of male and female rats for 14 days caused no deaths, no abnormal clinical signs, no effects on body weights, and no palatability problems.

ii. *Ninety-day oral toxicity.* Male and female rats were administered silver sodium hydrogen zirconium phosphate in the diet for 13 weeks at concentrations up to 1,000 mg/kg/day. Increases in cholesterol in males and in alkaline phosphatase in females were observed but were not biologically significant. The NOAEL was 1,000 mg/kg/day, and the NOAEL was 30 mg/kg/day.

5. *Chronic toxicity.* No chronic exposure to silver sodium hydrogen zirconium phosphate is expected, therefore, no chronic toxicity studies are needed. Five chronic toxicity studies failed to show effects when silver was administered in the drinking water of rats.

6. *Carcinogenicity.* No chemical carcinogenicity is expected from silver sodium hydrogen zirconium phosphate. This is based on the absence of significant adverse toxicological effects in the subchronic study, and negative genotoxicity data. Negligible exposure to migrant silver is expected from the proposed uses of silver sodium hydrogen zirconium, based on migration studies. The levels of silver found in the normal human diet are greater than could potentially arise from migration. EPA classifies silver as a Group D carcinogen.

7. *Metabolite toxicology.* The principal migration products from silver sodium hydrogen zirconium phosphate are silver and zirconium. Silver has an EPA reference dose (RfD) of 0.005 mg/kg/day and does not occur normally in animal or human tissues. The major effect of excessive absorption of silver is local or generalized impregnation of the tissue with silver, a condition called argyria. Argyria is not associated with any adverse health effects. Silver is absorbed from the lungs and in small amounts from the gastrointestinal (GI) tract, and form complexes with albumin. The GI tract is the major route of excretion of silver (90 to 99% in 2 days).

Zirconium is extensive in the human diet with the daily uptake up to 125 mg. The toxicity level for this ubiquitous element is negligible. Zirconium is present and retained in high quantities in biological systems, but has not been associated with any specific metabolic function. The average body burden is 250 mg.

8. *Endocrine disruption.* Silver sodium hydrogen zirconium phosphate, silver, and zirconium are not chemically or structurally similar to natural hormones, and are not expected to disrupt, block, enhance, mimic, or otherwise interfere with normal endocrine system functions.

C. Aggregate Exposure

1. *Dietary exposure.* Based on the toxicity data, an aggregate risk, or likelihood of the occurrence of an adverse health effect resulting from all routes of exposure to silver sodium hydrogen zirconium phosphate is not anticipated. Used in polymeric food contact substances, dietary exposures to migrant silver and zirconium are estimated in migration studies to be below 10 ppb for silver, and 20 ppb for zirconium. These levels are much less than in a normal human diet. For the migration studies, silver sodium hydrogen zirconium phosphate was embedded in a polymer, and migrant silver and zirconium were extracted into ethanol for quantitation by atomic absorption (silver) and UV/VIS absorption (zirconium). The Estimated Dietary Intakes (EDIs) that might be expected to enter the diet as a result of the proposed use of the silver sodium hydrogen zirconium phosphate were 12 µg/day (silver), and 24 µg/day (zirconium). These levels are not expected to induce toxicity.

i. *Food.* Silver sodium hydrogen zirconium phosphate will be incorporated into polymeric food contact substances, will not be introduced intentionally into food, and is not expected to induce acute or chronic toxicological concerns. The calculated RfD for silver sodium hydrogen zirconium phosphate is 0.003 mg/kg/day and is based on the subchronic toxicity (NOAEL=30 mg/kg/day) and accepted uncertainty factors that account for extrapolation from the subchronic NOAEL, extrapolation from animals to humans, variation among the human population, and a worst case modifying factor. EPA RfD for silver is 0.005 mg/kg/day.

ii. *Drinking water.* Silver sodium hydrogen zirconium phosphate will be incorporated into polymeric food contact substances and will not be introduced intentionally into the environment or the drinking water. If a drinking water exposure of 1 mg were assumed, the lifetime daily exposure level would be 1.0×10^{-6} mg/kg/day and would not cause toxic responses.

2. *Non-dietary exposure.* The proposed uses of silver sodium hydrogen zirconium phosphate are not expected to result in any significant non-dietary exposure for the general population.

D. Cumulative Effects

The cumulative exposure assessment provides an estimate of the extent to which a defined population is exposed to two or more chemicals which share a common mechanism of toxicity by all relevant routes and from all relevant sources. There are no data to suggest that silver or zirconium are synergistic or antagonistic of each other, or of silver sodium hydrogen zirconium phosphate.

E. Safety Determination

1. *U.S. population.* The toxicology data provided to establish an exemption from the requirement of a tolerance for silver sodium hydrogen zirconium phosphate demonstrate that this substance is of a very low order of toxicity. The EDIs for the silver and zirconium migrants from the pesticide chemical are 12 µg/day (4 ppb) for silver, and 24 µg/day (8 ppb) for zirconium. These exposure levels are not significant health or safety concerns. The RfD for silver sodium hydrogen zirconium phosphate is 0.003 mg/kg/day and is comparable to the RfD of 0.005 mg/kg/day for silver. For zirconium, neither an RfD nor an ADI have been established due to the absence of toxicological concern for this ubiquitous element. Zirconium is present at high levels in foods; the average daily intake is estimated to be 4.2 mg/kg/day. This level far exceeds the maximum contribution of zirconium anticipated from silver sodium hydrogen zirconium phosphate in polymeric food-contact materials.

For drinking water, EPA has established a Secondary Maximum Contaminant Level (SMCL) for silver of 0.1 mg/L, and the FDA bottled drinking water standard is 50 µg/L. These standards far exceed the anticipated drinking water exposure levels of 0.039 µg/kg calculated for silver sodium hydrogen zirconium phosphate.

2. *Infants and children.* The potential for additional sensitivity of infants and children was assessed from a developmental toxicity study in rats. Doses up to 1,000 mg/kg/day elicited no maternal toxicity and no significant effects on the growth and development of offspring (fetal NOAEL = 1,000 mg/kg/day).

Based on migration data with silver sodium hydrogen zirconium phosphate, consumption patterns of infants and children (i.e., a 10 kg child consumes 1 kg of food), and the assumption that 80% of the diet comes into contac : with polymeric packaging material containing the pesticide chemical, the expected dietary exposure to silver and zirconium are calculated as:

Silver: 0.80 × 5 ppb = 4 ppb (4 ppb of 1,000 g daily diet = 4 µg/person/day).

Zirconium: 0.80 × 10 ppb = 8 ppb (8 ppb of 1,000 g daily diet = 8 µg/person/day).

These exposure levels are not expected to cause toxicological responses.

There is no evidence that infants and children would: (1) consume disproportionately high levels of food containing residues of sodium hydrogen zirconium phosphate, silver or zirconium; (2) be more susceptible to silver sodium hydrogen zirconium phosphate, silver or zirconium; (3) be susceptible to growth and development defects or neurological effects induced by silver sodium hydrogen zirconium phosphate; or (4) experience harm from cumulative or aggregate exposures to silver sodium hydrogen zirconium phosphate or to silver and zirconium.

F. International Tolerances

There are no international tolerances for silver sodium hydrogen zirconium phosphate. There are no U.S. EPA, CODEX (international), Canadian or Mexican tolerances for silver.

[FR Doc. 00–9665 Filed 4–18–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[PF–936; FRL–6554–3]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the amendment of a pesticide petition (PP7E4920), proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–936, must be received on or before May 19, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–936 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Treva C. Alston, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8373; e-mail address: alston.treva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–936. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–936 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–936. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 10, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Novartis Crop Protection, Inc.

7E4920

Amended Pesticide Petition

On April 15, 1998, EPA published a notice that it had received a pesticide petition (7E4920) from Novartis Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419, proposing tolerances for the herbicide safener cloquintocet-mexyl acetic acid, (5-chloro-8-quinolinyl)oxy-,1-methylhexylester; CGA-185072) in or on raw agricultural commodities (RACs) of wheat. EPA has received an amendment to PP 7E4920 from Novartis Crop Protection, Inc., proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to increase, as requested by EPA, the original proposed tolerances; thereby establishing tolerances for the combined residues of cloquintocet-mexyl and its acid metabolite, CGA-153433 (5-chloro-8-quinolinyl)oxy-acetic acid), in or on the RACs wheat, grain at 0.1 part per million (ppm); wheat, forage at 0.1 ppm; wheat, hay at 0.1 ppm; and wheat, straw at 0.1 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of cloquintocet-mexyl in wheat has been investigated. Total residues in all crop samples are low. Metabolism involves primarily rapid hydrolysis of the parent to the resulting acid followed by conjugation.

2. *Analytical method.* Novartis has submitted practical analytical methods for the determination of cloquintocet-mexyl and its major plant metabolite CGA-153433 in wheat RACs. Cloquintocet-mexyl is extracted from crops with acetonitrile, cleaned up by solvent partition and solid phase extraction and determined by column switching high performance liquid chromotography (HPLC) with ultra violet (UV) detection. CGA-153433 is extracted from crops with an acetone-buffer (pH=3) solution, cleaned up by solvent partition and solid phase extraction, and determined by HPLC with UV detection. The limits of quantification (LOQ) for the methods are 0.02 ppm for cloquintocet-mexyl in forage and grain, 0.05 ppm for cloquintocet-mexyl in straw, and 0.05 ppm for CGA-153433 in forage, straw and grain.

3. *Magnitude of residues.* Both Canadian and United States spring wheat residue trials were conducted. Twelve residue trials were conducted from 1989–1992 in the major spring wheat growing areas of Manitoba, Alberta, and Saskatchewan, which share compatible crop zones with the major spring wheat growing areas of the United States (MT, ND, SD, MN). Nine trials were conducted in 1989–91 with a tank mix of clodinafop-propargyl active ingredient (a.i.) and the cloquintocet-mexyl safener as separate EC formulations and three trials in 1992 were conducted with clodinafop-propargyl and the cloquintocet-mexyl safener as a pre-pack EC formulation. All trials had a single post-emergence application of CGA-185072 at a rate of 20 gram active ingredient/hectacre (g a.i./ha). In 1998, an additional six spring wheat trials were conducted in the major growing areas of the United States. In these trials, cloquintocet-mexyl was applied as a safener in conjunction with clodinafop-propargyl as a 240EC formulation. The rate of cloquintocet-mexyl applied was 17 g a.i./ha as a single application. Samples of 30-day forage and hay, and mature straw and grain treated 60 days prior to harvest were taken for analysis. Grain treated at an exaggerated rate in one trial was processed under simulated commercial processing conditions. At pre-harvest intervals (PHIs) of 55–97 days, no detectable residues of cloquintocet-mexyl or its metabolite CGA-153433 were found in mature grain or straw from these trials. Separate decline studies three on green forage showed no detectable residues of cloquintocet-mexyl or CGA-153433 at 3 days after application. Freezer storage stability studies indicated reasonable stability of both analytes for a period of 1 year, with cloquintocet-mexyl declining to 83% in grain and 67% in straw after 2 years, while CGA-153433 was stable for at least 2 years.

B. Toxicological Profile

1. *Acute toxicity.* The acute oral and dermal LD_{50} values for cloquintocet-mexyl are greater than 2,000 milligrams/kilograms (mg/kg) for rats of both sexes, respectively. Its acute inhalation LC_{50} in the rat is greater than 0.935 milligram/liter (mg/L), the highest attainable concentration. Cloquintocet-mexyl is slightly irritating to the eyes, minimally irritating to the skin of rabbits, but was found to be sensitizing to the skin of the guinea pig. This technical will carry the EPA signal word "Caution."

2. *Genotoxicity.* The mutagenic potential of cloquintocet-mexyl was investigated in six independent studies covering different end points in eukaryotes and prokaryotes *in vivo* and *in vitro*. These tests included: Ames reverse mutation with *Salmonella typhimurium* and Chinese hamster V79 cells *in vitro*; chromosomal aberrations using human lymphocytes *in vitro* and the mouse micronucleus test *in vivo*; and DNA repair using rat hepatocytes and human fibroblasts *in vitro*. Cloquintocet-mexyl was found to be negative in all these tests and, therefore, is considered devoid of any genotoxic potential at the levels of specific genes, chromosomes or DNA primary structure.

3. *Reproductive and developmental toxicity.* Dietary administration of cloquintocet-mexyl over 2 generations at levels as high as 10,000 part per million (ppm) did not affect mating performance, fertility, or litter sizes, but a slightly reduced body weight development of adults and pups was noted at this level. The target organ was the kidney in adults and pups. The treatment had no effect on reproductive organs. The no observed adverse effect level (NOAEL) for toxicity to the offspring and parental toxicity was 5,000 ppm, corresponding to a mean daily intake of 370 to 422 mg/kg/day of cloquintocet-mexyl. The reproductive NOAEL was > 10,000 ppm (722 mg/kg/day).

In a developmental toxicity study in rats, the highest dose level of 400 mg/kg bwt day resulted in reduced body weight gain of the dams and signs of retarded fetal development. No teratogenic activity of the test article was detected. The NOAEL for dams and fetuses was 100 mg/kg bwt day.

In a developmental toxicity study in rabbits, mortality was observed in dams at dose levels of 300 mg/kg. No teratogenic effects were noted. Fetuses showed signs of slightly retarded development. The NOAEL for both dams and fetuses was 60 mg/kg bwt day. EPA's Hazard Identification Assessment Review Committee (HIARC) suggested the maternal NOAEL was 60 mg/kg, but the developmental toxicity NOAEL is > 300 mg/kg/day.

4. *Subchronic toxicity.* In a 90-day study, rats fed 6,000 ppm exhibited reduced body weight gain and one male died with acute nephritis and inflamed urinary bladder. Reduced liver and kidney weights were observed in males fed 1,000 and 6,000 and in females fed 6,000 ppm. Target organs were identified to be kidney and urinary bladder. The NOAEL was 150 ppm (9.66 mg/kg in males and 10.2 mg/kg in females). EPA's HIARC concluded that the NOAEL in females was 6,000 ppm (407 mg/kg/day).

In a 90-day study in beagle dogs, a level of 40,000 ppm resulted in deterioration of general condition so that the feeding level was reduced in a stepwise fashion to 15,000 ppm. Anemia was noted at 15,000 and 1,000 ppm. The NOAEL of 100 ppm was equivalent to a mean daily intake of 2.9 mg/kg in males and females.

5. *Chronic toxicity.* In a 12-month feeding study in dogs, 15,000 ppm resulted in inappetence and body weight loss. As a result, this feeding level was adjusted to 10,000 ppm after 2 weeks. Animals fed this level exhibited anemia and an elevation in blood urea levels. The kidney was considered the target organ. The NOAEL of 1,500 ppm was equivalent to a mean daily intake of 43.2 mg/kg in males and 44.8 mg/kg in females.

Lifetime dietary administration of cloquintocet-mexyl to mice resulted in reduced body weights in both sexes at 5,000 ppm. Overall body weight gain was reduced by 17% to 22% in males and females, respectively, indicating the MTD was achieved or exceeded. Histopathological examination revealed chronic inflammation of the urinary bladder. There was no indication of any tumorigenic response due to treatment. The NOAEL of 1,000 ppm was equivalent to a mean daily dose of 111 mg/kg in males and 102 mg/kg in females.

Rats were fed a top feeding level of 2,000 ppm, based on the 90-day subchonic study, for a lifetime. This feeding level was well-tolerated, but produced hyperplasia of the thymus in males at the top dose and hyperplasia of the thyroid in females at 1,000 and 2,000 ppm. There was no increase in tumors of any type and the total number of tumor-bearing animals showed no dose-related trends. The NOAEL of 100 ppm was equivalent to a mean daily dose of 4.33 mg/kg in females. EPA's HIARC suggested that the NOAEL in male rats was 1,000 ppm (36.4 mg/kg/day).

6. *Carcinogenicity.* There is no evidence supporting any oncogenic potential associated with cloquincet-mexyl. EPA's HIARC classified cloquintocet-mexyl as a "not likely" human carcinogen according to the proposed guidelines for carcinogen risk assessment.

7. *Animal metabolism.* In rats, approximately 50% of an oral dose of cloquintocet-mexyl was rapidly absorbed through the gastrointestinal tract and excreted via urine and bile. The administered dose was excreted independent of sex and was essentially complete within 48 hours. Ninety-five percent of the excreted dose was associated with one metabolite, an acid residue of cloquintocet-mexyl, CGA-153433. Simultaneous administration of the cloquintocet-mexyl and clodinafop-propargyl did not alter the rate of excretion of cloquintocet-mexyl or its metabolite pattern.

8. *Metabolite toxicology.* At the present time there is no evidence which affords an association of the toxicity noted with the highest feeding levels of cloquintocet-mexyl with its primary metabolite, CGA-153433.

9. *Endocrine disruption.* A special study was conducted to investigate a histological finding of hyperplasia of thyroid gland epithelium noted in the female rat in the standard lifetime combined chronic toxicity and carcinogenicity study. This study was a 28-day oral gavage study with a 28-day recovery period at dose levels as high as 400 mg/kg/day or approximately 4,000 ppm. No effect was noted on the level of thyroid hormones at any of the treatment levels. Although a slight stimulation of the thyroid and an accompanying increase in pituitary basophilic cells were noted at the end of 28-days, these effects were reversible in the recovery period.

C. Aggregate Exposure

1. *Dietary exposure.* Cloquintocet-mexyl is intended as a safener for the postemergence herbicide, clodinafop-propargyl, used on wheat. The use rate for cloquintocet-mexyl is very low (formulated at a 1:4 ratio of safener to active ingredient and results from plant metabolism and residue studies show that residues are below the detection limit in wheat grain and other wheat fractions. The tolerance expression will include parent cloquintocet-methyl and the corresponding hydrolysis product, CGA-153433, and tolerances are being proposed at 0.1 ppm in wheat grain, forage, hay, and straw. No tolerances are proposed for secondary residues in animal commodities since residues would be far below the LOQ of existing analytical methodology.

i. *Food.* Chronic and acute dietary exposure analyses were conducted using the dietary exposure evaluation model (DEEM) from Novigen Sciences and the 1994–96 Continuing Survey of Food Intake by Individuals (CSFII). Chronic and acute tier one dietary assessments were made assuming tolerance-level residues and treatment of 100% of all planted wheat.

a. *Chronic.* Chronic exposure was compared to a reference dose (RfD) of 0.04 mg/kg/day which was derived from

a NOAEL of 4.3 mg/kg/day in a chronic toxicity/carcinogenicity study in female rats and a 100x uncertainty factor (UF). Exposure was calculated assuming that 100% of crop was treated and residues were at the proposed tolerance levels of 0.1 ppm for wheat grain and associated fractions. Exposure for the U.S. population was minimal with 0.4% of the RfD utilized and this result was the same for the U.S. population through all seasons and all ethnic groups. The most sensitive subpopulation was children (1–6 years old) with an exposure of 0.9% of the chronic RfD. These results are extremely conservative since tolerance values were used and are reflective of the maximum application rate and minimum PHI. In addition, it was assumed that all planted acres are treated. Therefore, there is more than a reasonable certainty of no harm resulting from exposure to residues of cloquintocet-mexyl.

b. *Acute.* Acute exposure was assessed for the female population (13+ years) only and was compared to an acute RfD of 1.0 mg/kg/day based on a NOAEL of 100 mg/kg/day from a developmental toxicity study in rats and a 100x UF. The resulting assessment revealed that exposures to all female subpopulations reported in the DEEM were between 0.03%–0.04% of the RfD at the 95th percentile of exposure. The 95th percentile is the appropriate percentile to consider since this assessment is based on tolerance-level residues and 100% of crop treated was assumed. Even at the 99.9th percentile of exposure, the results show that females (13–50 years old) utilize only 0.07% of the acute RfD. EPA's HIARC concluded that no acute dietary assessment was necessary for the general population because a suitable toxicological endpoint (resulting from a single dose exposure) was not identified in either the rat or rabbit developmental studies.

ii. *Drinking water.* Another potential route of exposure to residues of pesticides includes drinking water. Field and laboratory study results have demonstrated that cloquintocet-mexyl and its degradation products have minimal potential to reach surface or ground water. Thus, drinking water exposure to cloquintocet-mexyl and its degradation products was not included in the aggregate risk assessment. Also, since cloquintocet-mexyl is not intended for uses other than the agricultural use on wheat, there is no potential for non-occupational exposure.

The estimated exposures of cloquintocet-mexyl and its main environmental degradate were combined and the hazards for both compounds were based on the RfD values determined for cloquintocet-mexyl alone. The estimated water concentrations for cloquintocet-mexyl and the degradate were estimated, weighted and combined based on applications rates adjusted for the maximum concentration of the degradate present in the aerobic soil metabolism studies.

The GENEEC and SCI–GROW models respectively provided the estimated surface water and ground water concentrations. The estimated acute exposures from drinking surface and ground water were 0.04964 part per billion (ppb) and 0.006166 ppb, respectively. The females 13+ years sub-population was the only subgroup which was required for the acute exposure assessment. The acute exposures for females 13+ years were based on 1.0 mg/kg/day. Based on the 95th percentile acute dietary assessment, the females (13+/nursing) was the most exposed female sub-population at 3.71E-6 mg/kg/day. This resulted in an acute DWLOC of 30,000 ppb. Therefore, the estimated acute surface and ground water exposures for cloquintocet-mexyl and its degradate did not exceed the exposure allowed by the risk cup. The chronic dietary exposures for all sub-populations provided DWLOC values of 224 to 1,396 ppb. The estimated chronic exposures from drinking surface and ground water were 0.00316 ppb and 0.006166 ppb, respectively. Therefore, the estimated acute and chronic drinking water exposures of cloquintocet-mexyl and its degradate did not exceed the exposures allowed by the risk cup.

2. *Non-dietary exposure.* Exposure to cloquintocet-mexyl for the mixer/loader/ground-boom/aerial applicator and flagger was calculated using the pesticide handlers exposure data base. It was assumed that the product would be applied 6 days per year by ground-boom application to a maximum of 80 acres per day by the grower, 15 days per year by ground-boom application to a maximum of 80 acres per day by the commercial ground-boom applicator, and 15 days per year to a maximum of 350 acres per day by the aerial applicator, at a maximum use rate of 7.1 grams cloquintocet-mexyl per acre. For purposes of this assessment, it was assumed that an applicator would be wearing a long-sleeved shirt and long pants and the mixer/loader would, in addition, wear gloves. Daily doses were calculated for a 70 kg person assuming 100% dermal penetration. Short-term and intermediate-term dermal and inhalation risk assessments were performed. Doses and endpoints used for risk assessments were based on Agency determined toxicological endpoints recommended by the HIARC. The NOAEL of 200 mg/kg/day from the 28-day rat dermal toxicity study was used for short-term and intermediate-term dermal risk assessments. The NOAEL of 100 mg/kg/day from the developmental toxicity study in rats was used for short-term inhalation risk assessments. The NOAEL of 4.3 mg/kg/day from the 2-year chronic toxicity study in rats was used for intermediate-term risk assessments. Based on the use pattern, no long-term dermal or inhalation exposure is expected to occur and long-term risk assessments are not required.

Large margins of exposure (MOE) exist for all occupational exposure scenarios. Short-term dermal exposure MOEs ranged from 6.4E+04 for the commercial open mixer-loader to 2.8E+06 for the commercial or grower groundboom enclosed-cab applicator. Intermediate-term dermal exposure MOEs ranged from 1.6E+06 for the commercial open mixer-loader to 1.7E+08 for the grower ground-boom enclosed-cab applicator. Short-term inhalation exposure MOEs ranged from 2.8E+06 for the commercial open mixer-loader to 1.3E+08 for the commercial or grower ground-boom enclosed-cab applicator. Intermediate-term inhalation exposure MOEs ranged from 3.0E+06 for the commercial open mixer-loader to 3.4E+08 for the grower ground-boom enclosed-cab applicator.

Although there are no residential uses of cloquintocet-mexyl, there is potential for residential exposure to spray drift resulting from aerial application. No standard operating procedure exists for performing this risk assessment; however, a very conservative risk assessment was performed assuming dermal exposure equal to total deposition to outside clothing for a flagger as well as inhalation exposure equivalent to a pesticide flagger, as reflected in PHED. A dermal absorption factor of 100% and offsite drift of 15% were assumed. The area assumed to be adjacent to the sensitive area was one acre. Large MOEs exist for this potential exposure scenario. Dermal exposure MOEs were 2.4E+07 for a 15 kg child and 1.1E+08 for a 70 kg adult. Inhalation MOEs were 1.8E+09 for a 15 kg child and 8.6E+09 for a 70 kg adult.

D. Cumulative Effects

Novartis has considered the potential for a cumulative exposure assessment for effects of cloquintocet-mexyl and other substances with the same mechanism of toxicity. It is concluded that such a determination would be

inappropriate at this time because of the unique role of cloquintocet-mexyl as a product-specific safener.

E. Safety Determination

1. *U.S. population.* Acute and chronic dietary exposure is minimal for cloquintocet-mexyl and corresponding hydrolysis product, CGA-153433. Both chronic and acute exposure estimates at the 95th percentile showed that less than 1.0% of the reference dose is utilized in all populations. These exposure estimates are extremely conservative and are based on tolerance-level residues and assume all planted acres are treated.

Exposure through the consumption of drinking water is minimal from both surface water and ground water model estimates and in all cases less than 1% of the risk cup is utilized. The estimated water concentrations are very conservative since conservative model parameters were assumed.

There are no residential uses of cloquintocet-mexyl that would result in non-dietary exposure. However, there is a remote possibility that spray drift resulting from aerial application could lead to residential exposure. Since exposure from spray drift would be an unlikely event, it is not appropriate to include non-dietary exposure into the aggregate assessment. Therefore, it is concluded that there is a more than a reasonable certainty that no harm will result from aggregate exposure to residues of cloquintocet-mexyl.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of cloquintocet-mexyl, data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat have been considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from chemical exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to a chemical on the reproductive capability of mating animals and data on systemic toxicity.

The highest dose level of 400 mg/kg/day in a developmental toxicity study in rats resulted in reduced body weight gain of the dams and signs of retarded fetal development. No teratogenic activity due to the test article was detected. The NOAEL for dams and fetuses was 100 mg/kg/day. Although mortality was observed in rabbit dams at the dose level of 300 mg/kg/day, no teratogenic effects were noted. The maternal NOAEL was 60 mg/kg/day, but the developmental NOAEL was > 300 mg/kg/day.

Dietary administration of cloquintocet-mexyl over 2-generations at levels as high as 10,000 ppm did not affect mating performance, fertility, or litter sizes in rats, but a slightly reduced body weight development of adults and pups was noted at this level. The target organ was kidney in adults and pups. The treatment had no effect on reproductive organs. The parental and developmental NOAEL was 5,000 ppm, corresponding to a mean daily intake of 370 to 422 mg/kg/day of cloquintocet-mexyl. The reproductive NOAEL was > 10,000 ppm (722 mg/kg/day). FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base. Based on the current toxicological data requirements, the data base relative to prenatal and postnatal effects for children is complete. EPA's HIARC concluded that there was no concern for an increased susceptibility for cloquintocet-mexyl based on the reproduction study in rats and the developmental studies in rat and rabbit. Further, for cloquintocet-mexyl, the NOAEL of 4.3 mg/kg/day from the combined chronic/oncogenicity study in rats, which was used to calculate the RfD, is already lower than the developmental NOAEL of 100 mg/kg/day for the rat developmental toxicity study. Further, the developmental and parental NOAEL of 370 mg/kg/day from the cloquintocet-mexyl reproduction study is nearly 100 times greater than the NOAEL for the combined chronic/oncogenicity rat study. These data would indicate that there is no additional sensitivity of infants and children to cloquintocet-mexyl. Therefore, it is concluded that an additional UF is not warranted to protect the health of infants and children from the use of cloquintocet-mexyl.

Using conservative exposure assumptions, dietary exposure to the most sensitive subpopulation, children (1–6 years old), is 0.9% of the chronic reference dose (RfD). Chronic dietary exposure to infants (non-nursing, 1–6 years old) is 0.2% of the chronic RfD. EPA's HIARC concluded that no acute dietary assessment was necessary for the general population (infants and children) because a suitable toxicological endpoint (resulting from a single dose exposure) was not identified in either the rat or rabbit developmental studies.

Although not required, acute dietary exposure to infants and children was assessed. Acute exposures for all infants and children at the 95th percentile are less than 1.0% of the acute RfD (0.08% of the RfD for the most sensitive subpopulation, children 1–6 years). Exposures to drinking water for children (1–6 years old) and infants utilize less than 1% of the chronic and acute RfD values (worst-case surface water estimates). These results show that aggregate exposure to residues of cloquintocet-mexyl in the diet and drinking water is negligible. Based on the completeness and reliability of the toxicity data and the conservative nature of the exposure assumptions, it is concluded that there is a more than reasonable certainty that no harm will result to infants and children from exposure to residues of cloquintocet-mexyl.

F. International Tolerances

Cloquintocet-mexyl is used as a safener for the herbicide, clodinafop-propargyl. There are no Codex Alimentarius Commission (CODEX) maximum residue levels (MRLs) established for residues of cloquintocet-mexyl in or on RACs.

[FR Doc. 00–9796 Filed 4–18–00; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50868; FRL–6553–3]

Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice

SUMMARY: This notice announces receipt of an application 67986–EUP–E from AgriPhi, Inc. requesting an experimental use permit (EUP) for the microbial bacteriophages. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments, identified by docket control number OPP–50868, must be received on or before May 19, 2000.

ADDRESSES: Comments and data may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number

OPP–50868 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Linda Hollis, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8733; and e-mail address: hollis.linda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to tomato greenhouse operators and tomato farmers for beneficial use in the control of bacterial diseases of tomato such as: bacterial spot of tomato and pepper, in addition to bacterial canker, speck or wilt of tomato, bacterial brown spot, common or halo blight of beans, blackleg and soft rot of potato, black rot of crucifers, fireblight of apple and pear. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–50868. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–50868 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/6.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–50868. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Proposed Experimental Program

AgriPhi, Inc. seeks to continue their ongoing EUP program by requesting a 2 year experimental use permit to further evaluate the effectiveness of AGRIPHAGE (a bacteriophage) under normal production conditions for its control of bacterial speck of tomato (*Pseudomonas syringae pv. tomato*) and bacterial black spot of tomato/pepper (*Xanthomonas campestris pv. vesicatoria*). Testing will be conducted in the states of Arizona, Florida, Georgia, Kentucky, New Mexico, and South Carolina on a total of 2,810 acres. Approximately 200 pounds of the active ingredient or 10,000 pounds of the formulated product will be used for testing.

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III. What Action is the Agency Taking?

Following the review of the AgriPhi, Inc. application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

List of Subjects

Environmental protection, Experimental use permits.

Dated: April 5, 2000.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 00–9664 Filed 4–18–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00652; FRL–6552–2]

Pesticides; Guidance for Pesticide Registrants on First Aid Instructions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is announcing the availability of guidance which provides revised first aid instructions for all pesticide products. Pesticide Registration (PR) Notice 2000–3 is effective now, but comments will be accepted for 30 days, after which the Agency may revise the notice. The first aid instructions have been revised to reflect more medically correct information and to make them easier to find and be understood.

DATES: Comments, identified by docket control number OPP–00652, must be received on or before May 19, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00652 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Amy Breedlove, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9069; fax number: (703) 305–5884; e-mail address: breedlove.amy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who register or regulate pesticides, as well as poison control centers, and the medical community, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and the PR Notice from the Office of Pesticide Programs' Home Page at http://www.epa.gov/pesticides/. You can also go directly to the listings from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *Fax on Demand.* You may request a faxed copy of the PR Notice titled "First Aid Statements on Pesticide Product Labels," by using a faxphone to call (202) 401–0527 and selecting item 6126. You may also follow the automated menu.

3. *In person.* The Agency has established an official record for this action under docket control number OPP–00652. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00652 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6, Suite 8, or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00652. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of

the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Guidance Does this PR Notice Provide?

The PR Notice provides revised recommended first aid instructions for all pesticide products, unless they are determined to be medically inappropriate. Some of the major changes include revising the ingestion first aid statements so that inducing vomiting is only recommended by a doctor or poison control center, not the label; the first aid statements are now the same for all toxicity categories; the instructions have been revised to be easier to understand and, in some cases, more explicit. The heading "First Aid" is being recommended for use in place of "Statement of Practical Treatment." In addition, a format using non-narrative text and a box or table to highlight the information is being suggested. The PR Notice provides separate instructions for products containing petroleum distillates. The recommendation is now being made to avoid ingesting any water (or other liquids) for these products, unless data shows it is advantageous.

While the PR Notice is effective now, we will accept comments for 30 days. If the PR Notice is revised, EPA will issue an updated notice.

B. Why is a PR Notice Guidance and Not a Rule?

The PR Notice discussed in this notice is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, this policy is not binding on either EPA or any outside parties. Although this guidance document provides a starting point for EPA decisions, EPA will depart from this policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that this policy is not appropriate for a specific pesticide or that the specific circumstances demonstrate that this policy should be abandoned.

EPA has stated in this notice that it will make available revised guidance after consideration of public comment, if necessary. Public comment is not being solicited for the purpose of converting this guidance document into a binding rule. EPA will not be codifying this policy in the Code of Federal Regulations. EPA is allowing for comments so as to ensure the revised guidance is complete and medically accurate.

The "revised" guidance will not be an unalterable document. Once a "revised" guidance document is issued, EPA will continue to treat it as guidance, not a rule. Accordingly, on a case-by-case basis, EPA will decide whether it is appropriate to depart from the guidance or to modify the overall approach in the guidance. In the course of commenting on this guidance document, EPA would welcome comments that specifically address how the guidance document can be structured so that it provides meaningful guidance without imposing binding requirements.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, First aid.

Dated: April 14, 2000.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 00–9797 Filed 4–18–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6581–8]

Prospective Purchaser Agreement and Covenant Not To Sue Under the Comprehensive Environmental Response, Compensation, and Liability Act Regarding the Yurgin Motors Superfund Site, Mantua Township, NJ

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed prospective purchaser agreement and request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA"), 42 U.S.C. 9601 *et seq.*, the U.S. Environmental Protection Agency ("EPA") announces a proposed administrative settlement with the Matthew F. Guzzo (The "Settling Party"), a "prospective purchaser" of the Yurgin Motors Superfund Site ("Site") in Mantua Township, New Jersey. The proposed administrative settlement is memorialized in an Agreement And Covenant Not To Sue ("Agreement") between EPA and Matthew F. Guzzo. By this Notice, EPA is informing the public of the proposed settlement and of the opportunity to comment.

In 1996 EPA performed a CERCLA removal action at the Site, a wooded lot of some 26 acres in a residential area. The previous owner operated an automotive repair facility at the Site, leaving behind various waste materials containing hazardous substances. During the removal action EPA removed drums, compressed gas cylinders, small containers containing corrosive and ignitable wastes, PCBs, and halogenated solvents from the Site. Now abandoned, the Site is an eyesore with dilapidated buildings and has attracted trash dumpers. Mr. Guzzo has pledged to demolish the buildings, clean up the Site, and remove two empty underground storage tanks. EPA believes this settlement serves the public interest because the Site will be restored to a useful condition.

Under the agreement, Matthew Guzzo will pay $6,500 to EPA and in return will receive a covenant not to sue from the United States for civil liabilities pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), with the respect to existing contamination present at the Site.

EPA will consider any comments received during the comment period

and may withdraw or withhold consent to the proposed settlement if any comments provide information which indicates the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway, 17th Floor, New York, New York 10007–1866. Telephone: (212) 637–3142.

Pursuant to EPA guidance, the Agreement may not be issued without the concurrence of the Assistant Attorney General for Environment and natural resources of the U.S. Department of Justice. The Assistant Attorney general has approved the proposed Agreement in writing.

DATES: Comments must be provided within May 19, 2000.

ADDRESSES: Comments should be sent to the U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway, 17th Floor, New York, NY 10007–1866 and should refer to: the Yurgin Motors Superfund Site, U.S. EPA Docket No. II–CERCLA 99–0104.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway, 17th Floor, New York New York 10007–1866. Telephone: (212) 637–3142.

SUPPLEMENTARY INFORMATION: A copy of the proposed administrative settlement may be obtained in person or by mail from Neil Norrell, U.S. Environmental Protection Agency, 2890 Woodbridge Avenue Edison, New Jersey 08837–3679. Telephone: (732) 321–4357.

Dated: April 6, 2000.

William J. Muszynski,

Acting Regional Administrator, Region II.

[FR Doc. 00–9794 Filed 4–18–00; 8:45 am]

BILLING CODE 6560–60–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

April 12, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 19, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESS: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Number: 3060–0342.

Title: Section 74.1284 Rebroadcasts.

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 100.

Estimated time per response: 1 hour.

Total annual burden: 100 hours.

Total annual costs: $0.

Needs and Uses: Section 74.1284 requires that the licensee of an FM Translator station obtain prior consent from the primary FM broadcast station or other FM translator before rebroadcasting their programs. In addition, the licensee must notify the Commission of the call letters of each station rebroadcast and must certify that written consent has been received from the licensee of that station. The data are used by FCC staff to update records and to assure compliance with FCC rules and regulations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–9703 Filed 4–18–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 10, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 19, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0589.
Title: Remittance Advice and Continuation Sheet.
Form No.: FCC Form 159 and 159–C.
Type of Review: Extension of currently approved collection.
Respondents: Individual or households, business or other for-profit, not-for-profit institutions, state, local or tribal governments.
Number of Respondents: 635,738.
Estimated Time Per Response: .50 hours (30 minutes).
Frequency of Response: On occasion reporting requirement.
Total Annual Burden: 317,869 hours.
Total Annual Cost: N/A.
Needs and Uses: The FCC Forms 159 and 159–C are required for payment of regulatory fees, and for use when paying for multiple filings by a single payment instrument, or when paying by credit card. The forms require specific information to track payment history, and to facilitate the efficient and expeditious processing of collections by a lockbox bank. The forms were revised to include the FCC Registration Number (FRN) which is used for anyone who requires services from the Commission. These forms were approved by the Office of Management and Budget (OMB) under their emergency processing provisions on March 3, 2000. This notice is to obtain comment prior to obtaining the full three-year OMB approval.

OMB Control No.: 3060–0728.
Title: Supplemental Information Requesting FCC Registration Number for Debt Collection.
Form No.: N/A.
Type of Review: Extension of currently approved collection.
Respondents: Individual or households, business or other for-profit, not-for-profit institutions, state, local or tribal governments.
Number of Respondents: 1,532,064.
Estimated Time Per Response: .017 hours (1 minute).
Frequency of Response: On occasion reporting requirement.
Total Annual Burden: 26,045 hours.
Total Annual Cost: N/A.
Needs and Uses: The FCC Registration Number (FRN) is used by the FCC for the purpose of collecting and reporting on any delinquent amounts arising out of such person's relationship with the Federal Communications Commission (FCC). It is also used by any person doing business with the Commission that does not require a regulatory fee. This collection was approved by the Office of Management and Budget (OMB) under their emergency processing provisions on March 3, 2000. This notice is to obtain comment prior to obtaining the full three-year OMB approval.

OMB Control No.: 3060–0917.
Title: CORES Registration Form.
Form No.: FCC Form 160.
Type of Review: Extension of currently approved collection.
Respondents: Individual or households, business or other for-profit, not-for-profit institutions, state, local or tribal governments.
Number of Respondents: 500,000.
Estimated Time Per Response: .166 hours (10 minutes).
Frequency of Response: One time reporting requirement.
Total Annual Burden: 83,000 hours.
Total Annual Cost: N/A.
Needs and Uses: This form is used for a standard data repository for entity name, address, Tax Identification Number (TIN), telephone number, e-mail, fax, contact representative, and contact representative information. The Commission Registration System (CORES) will assign each entity doing business with the Commission a FCC Registration Number (FRN). The purpose of the FRN is for collecting and reporting on any delinquent amounts arising out of such person's relationship with the FCC. This form was approved by the Office of Management and Budget (OMB) under their emergency processing provisions on March 3, 2000. This notice is to obtain comment prior to obtaining the full three-year OMB approval.

OMB Control No.: 3060–0918.
Title: CORES Update/Change Form.
Form No.: FCC Form 161.
Type of Review: Extension of currently approved collection.
Respondents: Individual or households, business or other for-profit, not-for-profit institutions, state, local or tribal governments.
Number of Respondents: 250,000.
Estimated Time Per Response: .166 hours (10 minutes).
Frequency of Response: On occasion reporting requirement.
Total Annual Burden: 41,500 hours.
Total Annual Cost: N/A.
Needs and Uses: This form will be used to update/change entity name, address, telephone number, e-mail, fax, contact representative, and contact representative information that is in the CORES system. The Commission Registration System (CORES) will assign each entity doing business with the Commission a FCC Registration Number (FRN). The purpose of the FRN is for collecting and reporting on any delinquent amounts arising out of such person's relationship with the FCC. This form was approved by the Office of Management and Budget (OMB) under their emergency processing provisions on March 3, 2000. This notice is to obtain comment prior to obtaining the full three-year OMB approval.

OMB Control No.: 3060–0919.
Title: CORES Certification Form.
Form No.: FCC Form 162.
Type of Review: Extension of currently approved collection.
Respondents: Individual or households, business or other for-profit, not-for-profit institutions, state, local or tribal governments.
Number of Respondents: 50,000.
Estimated Time Per Response: .084 hours (5 minutes).
Frequency of Response: On occasion reporting requirement.
Total Annual Burden: 4,200 hours.
Total Annual Cost: N/A.
Needs and Uses: This form will be used during the transition period of the FCC Registration Number (FRN) to allow all Bureaus and Offices of the FCC to update all FCC forms requiring a block for FRN. The FRN will be used to collect and report any delinquent amounts arising out of such person's relationship with the Commission. This form was approved by the Office of Management and Budget (OMB) under their emergency processing provisions on March 3, 2000. This notice is to obtain comment prior to obtaining the full three-year OMB approval.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 00–9704 Filed 4–18–00; 8:45 am]
BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

April 11, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the

Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 19, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0868.
Title: Construction of Grand-Fathered Multilateration Location Monitoring Service (LMS) Sites.
Form Number: N/A.
Type of Review: Extension.
Respondents: Business or other for-profit.
Number of Respondents: 10.
Estimated Time Per Response: 10 hours.
Frequency of Response: On occasion.
Total Annual Burden: 10 hours.
Total Annual Cost: 1,075.
Needs and Uses: This collection will allow the Commission to determine which LMS licensees are operating in compliance with our rules. Prior to the December 15, 1998, multilateration LMS auction, the Commission must determine the current status of certain grand-fathered licenses. For due diligence and valuation purposes, the Commission needs to know whether these licensees have constructed and put their facilities into operation as required by our rules.

OMB Control Number: 3060–0441.
Title: 90.621(b)(4) Selection and assignment of frequency.
Form Number: N/A.
Type of Review: Extension
Respondents: Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government.
Number of Respondents: 33.
Estimated Time Per Response: 1.5 hours.
Frequency of Response: On occasion.
Total Annual Burden: 25.
Total Annual Cost: 9,234.
Needs and Uses: Rule requires SMR applicants who wish to locate stations closer than required mileage separation from existing co-channel station to file additional information and in some instances, a waiver.

OMB Control Number: 3060–0461
Title: 90.173 Policies governing the assignment of frequencies.
Form Number: N/A.
Type of Review: Extension.
Respondents: Business or other for-profit and State, Local or Tribal Government
Number of Respondents: 200.
Estimated Time Per Response: 4.5 hours.
Frequency of Response: On occasion.
Total Annual Burden: 900 hours.
Total Annual Cost: N/A.
Needs and Uses: Information needed to determine that licensee is in violation of rules so identifier can be given licensing preference for channels recovered.

OMB Control Number: 3060–0691.
Title: Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside of the Designated Filing Areas in the 896–901 MHz Bands Allotted to the Specialized Mobile Radio Pool, 2nd Order on Reconsideration & 7th Report and Order for the 900 MHz Specialized Mobile Radio Service.
Form Number: N/A.
Type of Review: Extension.
Respondents: Business or other for-profit (P), and Individuals or households.
Number of Respondents: 1,020.
Estimated Time Per Response: 7 hours.
Frequency of Response: On occasion.
Total Annual Burden: 1,139.
Total Annual Cost: 284,251.
Needs and Uses: This collection will be used to ensure that applicants comply with Commission Rules. Respondents will be individuals or entities who will be acquiring licenses for use of spectrum in wireless communications.

OMB Control Number: 3060–0865.
Title: Wireless Telecommunications Bureau Universal Licensing System Record-keeping and Third Party Disclosure Requirements.
Form Number: N/A.
Type of Review: Extension.
Respondents: Business or other for-profit (P), Individuals or households, Not-for-profit institutions, and State, Local or Tribal Government.
Number of Respondents: 62,790.
Estimated Time Per Response: 393 hours.
Frequency of Response: On occasion.
Total Annual Burden: 77,164.
Total Annual Cost: N/A.
Needs and Uses: ULS establishes streamlined set of rules that minimize filing requirements, eliminates redundant, or unnecessary submission requirements; and assures ongoing collection of reliable licensing and ownership data. The record keeping and third party disclosure requirements contained in this collection are a result of the elimination of a number of filing requirements. The ULS forms contain a number of certifications, however, applicants must maintain records to document compliance with the requirements for which they provide certifications. In some instances third party co-ordinations are required.

OMB Control Number: 3060–0280.
Title: 90.633(f) & (g) Conventional systems loading requirements (wide area systems).
Form Number: N/A.
Type of Review: Extension.
Respondents: Business or other for-profit (P), Not-for-profit institutions, and State, Local or Tribal Government.
Number of Respondents: 15.
Estimated Time Per Response: 1 hour.
Frequency of Response: On occasion.
Total Annual Burden: 10.
Total Annual Cost: 2,964.
Needs and Uses: Rule provides for the authorization of wide area or ribbon systems upon an appropriate showing of need. The information is used to determine if such systems should be authorized.

OMB Control Number: 3060–0702.
Title: Amendment of Part 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Amendment of the Commission's Cellular PCS Cross-Ownership Rule, Notice of Proposed Rule Making.
Form Number: FCC Forms 175 and 600.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit, individuals or households, not-for-profit institutions, and state, local or tribal government.
Number of Respondents: 6,000.
Estimated Time Per Response: 13 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 77,817.

Total Annual Cost: 17,087,948.00.

Needs and Uses: Applicants are required to file certain information so that the Commission can determine whether the applicants are legally, technically, and financially qualified to be licensed and to determine whether applicants claiming designated entity status are entitled to certain benefits. Affected parties include any member of the public who wishes to become a broadband PCS licensee.

OMB Control Number: 3060–0697.

Title: Revision of part 22 and part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems (Second Report and Order and Further Notice of Proposed Rulemaking Memorandum Opinion and Order on Reconsideration and Third Report and Order.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, individuals or households, not-for-profit institutions, state, local, or tribal government.

Number of Respondents: 600.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Total Annual Burden: 600 hours.

Total Annual Cost: N/A.

Needs and Uses: The information will be used by the Commission to facilitate the successful coexistence of incumbent and geographic area paging licensees; to lessen the administrative burden on licensees and to simplify the paging licensing database; to determine the partitioned service areas and the geographic area licensee's remaining service area of parties to a partitioning agreement; to determine whether a geographic area licensee and parties to partitioning and disaggregation agreements have met the applicable coverage requirements for their respective service areas; to determine whether an applicant is eligible to receive bidding credits as a small business; to determine the real parties in interest of any joint bidding agreements; and to determine the appropriate unjust enrichment compensation to be remitted to the government.

OMB Control Number: 3060–0066.

Title: Application for Renewal of Instructional Television Fixed Station and/or Response Station(s) and Low Power Relay Station(s) License.

Form Number: FCC 330–R.

Type of Review: Extension of currently approved collection.

Respondents: Not for-profit institutions, state, local or tribal government.

Number of Respondents: 75.

Estimated Time per Response: 3 hours.

Total Annual Burden: 225 hours.

Total Annual Costs: $0.

Needs and Uses: FCC 330–R is used by licensees of Instructional Television Fixed (ITFS), Response, and Low Power Relay Stations to file for renewal of their licenses. The data are used by FCC staff to ensure that ITFS licensees continue to meet basic Commission policies and rules, as well as statutory requirements to remain a licensee.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–9705 Filed 4–18–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 12, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 19, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0837.

Title: Application for DTV Broadcast Station License.

Form No.: FCC Form 302–DTV.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 100.

Estimated Time Per Response: 1.5 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 150 hours.

Total Annual Cost: $22,000.

Needs and Uses: The FCC Form 302–DTV is used by licensees and permittees of DTV broadcast stations to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit and to ensure that any changes made to the station will not have any impact on other stations and the public. Data is extracted from the FCC Form 302–DTV for inclusion in the license to operate the station.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–9702 Filed 4–18–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 217–011657–002.

Title: Zim/Italia-D'Amico Space Charter Agreement.

Parties: Zim Israel Navigation Company Ltd., Italia D'Navigazione S.p.A., D'Amico Di Navigazione S.p.A.

Synopsis: The parties are amending their agreement by deleting Israel from the geographic scope, revising the amount of space available to Zim, and removing restrictions on allocated space for cargo moving eastbound from Haifa and cargo loaded/discharged at Piraeus.

Agreement No.: 232–011701.

Title: P&O Nedlloyd/FMC Agreement 232–011694, Cross Space Charter and Sailing Agreement.

Parties: CGA CGM, S.A., China Shipping Container Line, P&O Nedlloyd Limited, P&O Nedlloyd B.V.

Synopsis: The proposed agreement authorizes the parties to exchange container slots and agree upon the chartering, deployment, and utilization of vessels in the trade between U.S. East Coast ports and points, and ports and points in Panama, Jamaica, and the Far East (Japan/Hong Kong range). The parties have requested expedited review.

Agreement No.: 217–011702.

Title: Hapag-Lloyd/Lykes Space Charter Agreement.

Parties: Hapag-Lloyd Container Linie GmbH ("Hapag-Lloyd"), Lykes Lines Ltd., LLC ("Lykes").

Synopsis: The proposed Agreement would permit Lykes to charter space to Hapag-Lloyd in the trade between United States Atlantic and Gulf ports and ports in countries bordering on the Mediterranean Sea. The Agreement also provides for limited forms of cooperation in connection with the chartering of that space.

Agreement No.: 232–011703.

Title: NYKNOS/CSAV Space Charter and Sailing Agreement.

Parties: Compania Sud Americana de Vapores, S.A., NYKNOS Joint Service Agreement.

Synopsis: The proposed Agreement would permit the parties to charter space to one another and to coordinate their vessel services in the trade between the Atlantic and Gulf Coasts of the United States and ports in Panama, Colombia, Venezuela, and Pacific Coast ports in Central and South America. They would also be permitted to cooperate in matters related to equipment and various shoreside services. The parties have requested expedited review.

Dated: April 14, 2000.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–9828 Filed 4–18–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicant

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Nextrans International, Inc., 1225 W. 190th Street, Suite 310, Gardena, CA 90248, Officers: John A. Kamischke, President (Qualifying Individual), Roy W. Cheong, Secretary

Transcon Shipping Co., Inc., 2157 Center Ave., Unit #4, Fort Lee, NJ 07024, Officers: Terrence P. Lynch, President (Qualifying Individual), Wai Wong, Vice President

Galaxy Shipping Company, Inc., 314 Whites Landing, Long Beach, CA 90803, Officers: Eliane Tiharu Susaki, Secretary (Qualifying Individual), Les Atterbury III, President

MTL Worldwide Agency, Inc., 228 51st Street, Brooklyn, NY 11220, Officer: Aleksandr Solovyev, President (Qualifying Individual)

Trans Orient Express LLC, 2625 Athena Place, Fullerton, CA 92833, Officers: Edward Chang, Chief Operating Officer (Qualifying Individual), Jia He Bai, President

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Transunion America, Inc., 66–00 Long Island Expressway, Suite 200, Maspeth, NY 11378, Officers: Brigid Gatti, Secretary, Geri S. Alex, Import and Export Manager (Qualifying Individuals), Jose Viano, President

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants

Cardel International Shipping Corp., 405 North 61st Avenue, Hollywood, FL 33024, Officer: Carmen Delgado, President (Qualifying Individual)

Dated: April 14, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–9827 Filed 4–18–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting; Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, April 24, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: April 14, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–9882 Filed 4–14–00; 5:00 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00073]

Research Grants for Investigating the Cost, Onset, and Development of Community Measurements of Secondary Conditions in Persons With Disabilities; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 research grant funds. The purpose of this program is to support research projects in three Focus Areas related to: (1) Cost identification of secondary conditions; (2) determining patterns related to the onset and course of secondary conditions among persons with disabilities; and (3) the development of measures and instruments at the community level to assess those environmental factors that contribute to or mitigate the development of secondary conditions. CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus area of Disability and Secondary Conditions. For the conference copy of "Healthy People 2010," visit the internet site *http://www.health.gov/healthypeople*.

B. Eligible Applicants

Applications may be submitted by public and private non-profit organizations, including universities; university-affiliated systems, including not-for-profit medical centers; research institutions and rehabilitation hospitals; State health departments and other related State government agencies; and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $3,500,000 will be available in FY 2000 to fund 10 to 12 research grants. It is expected that the average award for projects in Focus Areas 1 and 3 will be $280,000, ranging from $240,000 to $320,000. It is expected that awards in Focus Area 2 will not exceed $350,000.

It is anticipated that awards will begin on or before September 1, 2000, for a twelve month budget period within a project period of up to three years. Funding estimates are subject to change. Continuation awards within an approved project period will be based on satisfactory progress as evidenced by required reports, monitoring conducted by the funding agency, and the availability of funds.

Applicants cannot include activities related to more than one Focus Area in the same proposal. In the event that an applicant elects to address more than one Focus Area, complete and separate applications must be submitted.

Use of Funds

Grant funds may be used to support personnel services, supplies, equipment, travel, subcontracts, and other services directly related to project activities consistent with the approved scope of work. Project funds cannot be used to supplant other available applicant or collaborating agency funds, for construction, for lease or purchase of facilities or space, or for patient care. Project funds cannot be used for individualized preventive measures (direct patient support) such as for wheelchairs, medical appliances, or assistive technology unless specifically approved by the funding agency.

CDC will sponsor annual workshops for all grantees. By virtue of accepting an award, applicants will have agreed to use grant funds to travel to and participate in these workshops. Applicants should budget travel funds for two staff members to attend one workshop in Atlanta during the first year, and also for two staff members to participate in the Disability Forum of the American Public Health Association conference in Boston in November 2000.

Funding Preferences

The precise number of awards in each of the three Focus Areas is not yet known, but CDC anticipates that no fewer than three awards will be made in each Focus Area. Scores and rankings of applications reviewed will be distinguished by individual Focus Area. Award decisions will be made according to Focus Area. The CDC review and award decision process will take into account achieving a balance of projects based on targeted population groups of persons with disabilities selected for emphasis, methodological variation, and geographical distribution considerations, such as urban/rural distinctions. CDC has an expressed interest in considering applications that address multiple diagnostic categories of persons with disabilities within the research design.

D. Programmatic Interests

The programmatic interest is centered on the following:

Focus Area 1: This Focus Area includes research on selected secondary conditions using cost identification methods (*i.e.*, "cost analysis", "cost itemization," "cost inventory"), or, at the discretion of the applicant, expansion of cost identification research to incorporate methods of cost-effectiveness analysis. As a foundation, proposed research under this Focus Area must utilize cost identification methods. This research can also include fundamental cost identification augmented by cost-effectiveness analysis, or cost-utility analysis which is a specialized form of cost-effectiveness analysis.

This research can include identifying costs and outlays for: (i) The individual, care givers, or third party payers; costs for personal care assistance services; (ii) costs for adaptive equipment and technology; (iii) costs of interventions applied toward preventing or treating secondary conditions; and (iv) direct costs related to treatment of the underlying disability itself, as distinguished from direct costs associated with the identified secondary conditions.

Focus Area 2: This Focus Area is designed to measure patterns of onset and course of selected secondary conditions that undermine and adversely affect the quality of life and independence of persons with disabilities. Methods for measuring patterns of onset can rely on direct observation of a currently ongoing or newly established cohort of participants, or statistical modeling using observational data derived from a currently ongoing or newly established cohort of participants.

As an option within Focus Areas 1 and 2, applicants can target persons with disabilities as a population at large or can also select one or more demographic sub-populations (or combinations of sub-populations) such as women, men, members of ethnic minority groups, children, adolescents, older adults specified by age range, persons with limb loss, *etc.*, as discrete populations for inclusion in the research design.

Focus Area 3: This Focus Area includes research to develop measurements of the community environment as outlined in the ICIDH–

2 framework. The "ICIDH–2" refers to the revision of the "International Classification of Impairments, Disabilities, and Handicaps," now entitled the "International Classification of Functioning and Disability." This document states that "environmental factors make up the physical, social and attitudinal environment in which people live and conduct their lives. The factors are external to individuals and can have a positive or negative influence on a person's participation as a member of society, on performance of activities of a person, or on a person's body function or structure."

The primary goals for research proposed and conducted within Focus Area 3 should be to develop and subsequently disseminate reliable, valid, and realizable measurement instruments that assess or quantify the various kinds of environmental factors affecting persons with disabilities in their communities.

E. Program Requirements

The Focus Areas described in the Programmatic Interests section convey the investigative characteristics of proposed research that meet the intention of this announcement. The following are program requirements: (1) Develop a work plan; (2) describe the potential collaborators and organizational structures; (3) outline the research methods and management approach; and (4) disseminate the results of the research among persons with disabilities, disability service organizations, advocacy groups, governmental agencies, non-governmental organizations, and researchers.

F. Application Content

The PHS 398 grant application form requires the applicant to enter the project title on page 1 (Form AA, "face page") and the project description (abstract) on page 2 (Form BB). Applicants are requested to identify their selected Focus Area at the beginning of the text within the space provided for the project description (abstract) on Form BB.

The main body of the application narrative should not exceed 40 double-spaced pages. For purposes of this announcement, note that this maximum number of pages allowed exceeds the maximum number of pages (25 pages) indicated in the PHS 398 grant application form (Form CC, "Research Grant Table of Contents"). The budget justification and biographical sketch sections do not count toward the maximum page limit. Pages must be numbered and printed on only one side of the page. All material must be typewritten, with 10 characters per inch type (12 point) on 8½" by 11" white paper with at least 1" margins, headers and footers (except for applicant-produced forms such as organizational charts, graphs and tables, *etc.*). Applications must be held together only by rubber bands or metal clips, and not bound together in any other way. Attachments to the application should be held to a minimum in keeping to those items required or referenced by this announcement.

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated according to the criteria listed in those sections of this announcement, so it is important to follow them in laying out your program plan.

G. Submission and Deadline

Letter of Intent (LOI)

A Letter of Intent may be submitted by prospective applicants. It must identify this announcement number, name the proposed project director, and cite the applicant's selected Focus Area of emphasis. The letter will not be used to eliminate potential applicants, but it will enable CDC to determine the level of interest in the announcement and plan the review more efficiently. Facsimile or e-mail messages will not be accepted as a Letter of Intent response.

On or before May 18, 2000, submit the Letter of Intent to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and five copies of PHS–398 NIH Form (OMB Number 0925–0001) and adhere to the instructions on the Errata Instruction Sheet for PHS–398. Forms are available for download at *http://www.cdc.gov* or in the application kit.

On or before June 22, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications will be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

Late Applications: Applications that do not meet the criteria in (a) or (b) above will be considered late. Late applications will not be considered in the current competition and will be returned to the applicant.

H. Evaluation Criteria (Total 100 Points)

Applications will be reviewed and evaluated individually against the following criteria by an independent review group appointed by CDC. A separate independent review group will be assigned to review applications in each of the three Focus Areas.

1. Evidence of Understanding and Protocol Planning: (10 Points)

Evaluation will be based on:

a. The applicant's description of the public health significance of secondary conditions and adherence to the purposes of this announcement, including current activities in place related to the study of secondary conditions, their prevention, and/or the disabling process.

b. The rationale for determining and addressing the selected Focus Area from among those outlined in the Programmatic Interests section.

c. As applicable, the applicant's approach to developing an inventory of necessary cost, economic, and other relevant disability data sources; the process by which study populations or community settings would be identified; and the feasibility of initiating all protocol/research development components on schedule at the outset of the project.

2. Research Resources and Organizational Capacity: (20 Points)

Evaluation will be based on:

a. The capability of the applicant to conduct the project, taking into account its institutional experience and current activities in the field proposed for this research.

b. The ability of the applicant to ensure timely and complete access to needed economic and demographic data, selected population(s), or community data related to the selected Focus Area over the entire course of the project.

c. The capacity to provide evidence of effective organizational collaborations, research linkages and formal agreements (including contractual), enabling the applicant to meet all project implementation and operational requirements.

d. Depending on the selected Focus Area, the applicant's competencies in:

(1) Concepts of cost identification;

(2) Methods for assessing the onset and course of secondary conditions;

(3) Understanding and use of the ICIDH–2; and

(4) working with the disability community and other partners to improve access and independence for persons with disabilities in the environmental aspects of the community settings chosen for investigation.

3. Research Approach: (40 Points)

Evaluation will be based on:

a. The appropriateness with which the proposed methods, sources of data, and project linkages convincingly and comprehensively meet the intention of this announcement.

b. The overall strength of the research design including:

(1) The rationale, feasibility, and appropriateness of the study protocol and methods to be employed in relation to the purpose and programmatic interests outlined in this announcement;

(2) Inclusion and discussion of case definitions, methods of enrolling and managing cohorts, and/or enlisting community input;

(3) The quality and scope of the data collection and data analysis plan, including a description of the strengths and weaknesses of each data set relative to the proposed project;

(4) Ready access to key background and foundational data sets and literature;

(5) The adequacy of the calculated statistical power and the potential capacity of the research design to generate observations of hypothesized or meaningful effects during the study period;

(6) The quality and scope of the plan to ensure that the confidentiality of all study participants would be preserved;

(7) The process by which the research will be tracked and evaluated; and

(8) the potential for effectively addressing start-up activities and specific and measurable research objectives during the first year of the proposed project.

c. The feasibility of the project related to:

(1) Prompt assembling of an effective research team with the experience and time commitments to promote full attention to implementing the study design;

(2) The potential degree of reliability and replicability of the study; and

(3) The overall plan for completing the analyses, and disseminating the findings and recommendations of the research in subsequent presentations and publications for benefit to other populations, including applications for national use.

4. Management Plan and Project Goals and Objectives: (30 Points)

Evaluation will be based on:

a. The presentation of the detailed management work plan and approach, the accounts of the project's location and functional capacity within the host organizational structure, and the process by which the applicant will meet all goals and objectives of the proposed project.

b. The degree to which approaches to meeting proposed goals and specific objectives are convincing, and the likelihood of achieving those objectives within the prescribed time frames. This includes the presentation of overarching goals for the entire three year project period with a detailed work plan denoting monthly or quarterly objectives covering the first two budget years.

c. The presentation of the specified tasks and responsibilities to be assigned for all positions proposed for financial assistance, and for other personnel contributing to the project.

d. The process for overall evaluation of the entire project including the assignment of responsibility for ongoing review of specified components.

e. The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic minorities, and racial groups in the proposed research. This includes: the proposed plan for the inclusion of racial ethnic minority populations and both sexes for appropriate representation; the proposed justification when representation is limited or absent; a statement as to whether the design of the study is adequate to measure differences when warranted; and a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

f. The applicant's approach to providing opportunities for persons with disabilities to participate in project operations, activities, and administrative or research staffing.

5. Project Budget: (Not Scored)

This includes the adequacy of the applicant's proposed budget in relation to program operations, collaborations, and services; the degree of cost-sharing; and the extent to which the budget is reasonable, clearly justified, accurate, and consistent with the purpose of this announcement.

6. Human Subjects: (Not Scored)

This includes the degree to which the applicant proposes to comply with Department of Health and Human Services regulations (45 CFR Part 46) regarding the protection of human subjects.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with an original, plus two copies of:

1. Semi-annual progress reports, due 30 days after the close of each six-month period based on the starting date of the project;

2. Financial Status Reports, due no later than 90 days after the end of each budget period; and

3. Final Financial Status Reports and performance reports, due no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see the ATTACHMENT in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status

J. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized by section 301(a) (42 U.S.C. 241(a)) and section 317 (42 U.S.C. 247b) of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.184.

K. Where To Obtain Additional Information

This and other CDC Program Announcements can be found on the CDC web site. The CDC home page address on the Internet is: *http://www.cdc.gov.*

To receive additional written information and to request an application kit, call 1–888-GRANTS4 (1–888–472–6874). You will be asked to

leave your name, address, and telephone number and instructed to identify the announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance can be obtained from: William Paradies, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146,Telephone (770) 488–2721, Internet address: wep2@cdc.gov

General program assistance can be obtained from: Joseph B. Smith, Disability and Health Branch, National Center for Environmental Health, CDC, 4770 Buford Highway, Building 101, Mailstop F–29, Atlanta, Georgia 30341, Telephone (770) 488–7082, Internet address: jos4@cdc.gov

Research-related technical assistance for Focus Areas 1 and 2 is available from: John F. Hough, Dr.P.H., National Center for Environmental Health, CDC, 4770 Buford Highway, Building 101, Mailstop F–29, Atlanta, Georgia 30341, Telephone (770) 488–7830, Internet Address: jph7@cdc.gov

Research-related technical assistance for Focus Area 3 is available from: Donald J. Lollar, Ed.D., National Center for Environmental Health, CDC, 4770 Buford Highway, Building 101, Mailstop F–29, Atlanta, Georgia 30341, Telephone (770) 488–7094, Internet address: dcl5@cdc.gov

Dated: April 11, 2000.

John L. Williams,

Director, Procurement and Grants Office.

[FR Doc. 00–9456 Filed 4–18–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93631–00–02]

Developmental Disabilities: Request for Public Comments on Proposed Developmental Disabilities Funding Priorities for Projects of National Significance for Fiscal Year 2000

AGENCY: Administration on Developmental Disabilities (ADD), ACF, DHHS.

ACTION: Notice of request for public comments on developmental disabilities tentative funding priorities for Projects of National Significance for Fiscal Year 2000.

SUMMARY: The Administration on Developmental Disabilities (ADD) announced that public comments are being requested on tentative funding priorities for Fiscal Year 2000 Projects of National Significance prior to being announced in its final form.

We welcome comments and suggestions on this proposed announcement and funding priorities that will assist in bringing about the increased independence, productivity, integration, and inclusion into the community of individuals with developmental disabilities.]

DATES: The closing date for submission of comments is June 19, 2000.

ADDRESSES: Comments should be sent to: Sue Swenson, Commissioner, Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, SW, Room 300F, Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Administration for Children and Families (ACF), Pat Laird, 370 L'Enfant Promenade, SW, Room 300F, Washington, DC, 20447, 202/690–7447.

SUPPLEMENTARY INFORMATION: This announcement consists of two parts:

Part I

Background

A. Goals of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities is located within the Administration for Children and Families, Department of Health and Human Services (DHHS). Although different from the other ACF program administrators in the specific constituency it serves, ADD shares a common set of goals that promote the economic and social well being of families, children, individuals and communities. Through national leadership, we see:

- Families and individuals empowered to increase their own economic independence and productivity;
- Strong, health, supportive communities having a positive impact on the quality of life and the development of children;
- Partnerships with individuals, front-line service providers, communities, States and Congress that enable solutions which transcend traditional agency boundaries;
- Services planned and integrated to improve client access; and
- A strong commitment to work with Native Americans, individuals with developmental disabilities, refugees and migrants to address their needs, strengths and abilities.

Emphasis on these goals and progress toward them will help more individuals, including those with developmental disabilities, to live productive and independent lives integrated into their communities. The Projects of National Significance Program is one means through which ADD promotes the achievement to these goals.

Two issues are of particular concern with these projects. First, there is a pressing need for networking and cooperation among specialized and categorical programs, particularly at the service delivery level, to ensure continuation of coordinated services to people with development disabilities. Second, project findings and successful innovative models of projects need to be made available nationally to policy makers as well as to direct service providers.

B. Purpose of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities is the lead agency within ACF and DHHS responsible for planning and administering programs that promote the self-sufficiency and protect the rights of individuals with developmental disabilities.

The 1996 Amendment (Public Law 104–183) to the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000 *et seq.*) (the Act) supports and provides assistance to States and public and private nonprofit agencies and organizations to assure that individuals with developmental disabilities and their families participate in the design of and have access to culturally competent services, supports, and other assistance and opportunities that promote independence, productivity and integration and inclusion into the community.

The Act points out that:

- Disability is a natural part of the human experience that does not diminish the right of individuals with developmental disabilities to enjoy the opportunity for independence, productivity and inclusion into the community;
- Individuals whose disabilities occur during their development period frequently have severe disabilities that are likely to continue indefinitely;
- Individual with developmental disabilities often require lifelong specialized services and assistance, provided in a coordinated and culturally competent manner by many

agencies, professionals, advocates, community representatives, and others to eliminate barriers and to meet the needs of such individuals and their families;

The Act further finds that:

- Individual with developmental disabilities, including those with the most several developmental disabilities, are capable of achieving independence, productivity, and integration and inclusion into the community, and often require the provision of services, supports and other assistance to achieve such;
- Individual with developmental disabilities have competencies, capabilities and personal goals that should be recognized, supported, and encouraged, and any assistance to such individuals should be provided in an individualized manner, consistent with the unique strengths, resources, priorities, concerns, abilities, and capabilities of the individual;
- Individuals with developmental disabilities and their families are the primary decision makers regarding the services and supports such individuals and their families receive; and play decision making roles in policies and program that affect the lives of such individuals and their families; and
- It is the nation's interest for individuals with developmental disabilities to be employed, and to live conventional and independent lives as a part of families and communities.
- Toward these ends, ADD seeks to enhance the capabilities of families in assisting individuals with developmental disabilities to achieve their maximum potential, to support the increasing ability of individuals with developmental disabilities to exercise greater choice and self-determination, to engage in leadership activities in their communities, as well as to ensure the protection of their legal and human rights.
- Programs funded under the Act are:
- Federal assistance to State developmental disabilities councils;
- State system for the protection and advocacy of individual's rights;
- Grants to university affiliated programs for interdisciplinary training, exemplary services, technical assistance, and information dissemination; and
- Grants for Projects of National Significance.

C. Description of Projects of National Significance

Under Part E of the Act, demonstration grants and contracts are awarded for projects of national significance that support the development of national and State policy to enhance the independence, productivity, and integration and inclusion of individuals with developmental disabilities through:

- Data collection and analysis;
- Technical assistance to enhance the quality of State developmental disabilities councils, protection and advocacy systems, and university affiliated programs; and
- Other projects of sufficient size and scope that hold promise to expand or improve opportunities for individuals with developmental disabilities, including:

—technical assistance for the development of information and referral systems;
—educating policy makers;
—Federal interagency initiatives;
—the enhancement of participation of racial and ethnic minorities in public and private sector initiatives in developmental disabilities;
—transition of youth with developmental disabilities from school to adult life.

Section 162(d) of the Act requires that ADD publish in the **Federal Register** proposed priorities for grants and contracts to carry out Projects of National Significance. The Act also requires a period of 60 days for public comment concerning such proposed priorities. After analyzing and considering such comments, ADD must publish in the **Federal Register** final priorities for such grants and contracts, and solicit applications for funding based on the final priorities selected.

The following section presents the proposed priority areas for Fiscal Year 2000 Projects of National Significance. We welcome specific comments and suggestions. We would also like to receive suggestions on topics which are timely and relate to specific needs in the developmental disabilities field.

Please be aware that the development of the final funding priority is based on the public comment response to this notice, current agency and Departmental priorities, needs in the field of developmental disabilities and the developmental disabilities network, etc., as well as the availability of funds for this fiscal year.

Part II

Fiscal Year 2000 Proposed Priority Areas for Projects of National Significance

ADD is interested in all comments and recommendations which address areas of existing or evolving national significance related to the field of developmental disabilities.

ADD also solicits recommendations for project activities which will advocate for public policy change and community acceptance of all individuals with developmental disabilities and families so that such individuals receive the culturally competent services, supports, and other assistance and opportunities necessary to enable them to achieve their maximum potential through increased independence, productivity, and integration into the community.

ADD is also interested in activities which promote the inclusion of all individuals with development disabilities, including individuals with the most severe disabilities, in community life; which promote the interdependent activity of people with developmental disabilities and people without disabilities; and which recognize the contributions of these people (whether they have a disability or not), who share their talents at home, school, and work, and in recreation and leisure time.

No proposals, concept papers or other forms of applications should be submitted at this time. Any such submission will be discarded.

ADD will not respond to individual comment letters. However, all comments will be considered in preparing the final funding solicitation announcement and will be acknowledged and addressed in that announcement.

Please be reminded that, because of possible funding limitations, the proposed priority areas listed below may not be published in a final funding solicitation for this fiscal year.

Comments should be addressed to: Sue Swenson, Commissioner, Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, SW, Room 300F, Washington, DC 20447.

Proposed Fiscal Year 2000 Priority Area 1: Mobilizing for Change/Rapid Deployment of Good Ideas

In March of 1993, President Clinton unveiled his new initiative to reinvent the federal government. He proposed a leaner, more efficient government that viewed the American people as its customers. The President discussed how all of us to some extent count on the government to do certain things such as, "protect the environment, to provide education and health care and other basic needs." However, he pointed out that a "democracy can become quickly an empty phrase, if those who are elected to serve cannot meet the needs

of the people except with Government that costs too much or is too slow or too arrogant or too unresponsive." Federal workers were empowered to reinvent their agencies in ways that would put customers first, cut red tape, get results, and get back to basics.

At ADD, our agency efforts resulted in a document called "The Roadmap to the Future," which was developed together with the programs it funds, establishes a course of action for ADD and for its programs. The Roadmap defines the mission and vision of ADD, of the State Developmental Disabilities Councils (DDCs), of the Protection and Advocacy Systems (P&As), of the Universities Affiliated Programs (UAPs), and of the Projects of National Significance (PNS), and it identifies goals created to increase the independence, productivity, and integration and inclusion of people with developmental disabilities and their families. Program activities will be directed toward achieving the Roadmap goals.

The Projects of National Significant (PNS) Program is one of the activities of ADD. Every year since 1975 there have been model demonstration projects funded to increase the independence, productivity, and integration and inclusion of people with developmental disabilities. These projects have generated inventive approaches, strategies, and methodologies in addressing pervasive problems or needs of individuals with developmental disabilities and their families. Over the years, PNS projects have contributed to the knowledge base of the developmental disabilities field and the larger disability field as well. In the past decade, the leadership capacity of individuals with developmental disabilities, especially self-advocates, has been nourished and strengthened by the funding of PNS projects.

Although dissemination of information from these projects has been a requirement of funding, it is a concern of ADD's that the rich volume of knowledge and information produced by these projects has not reached a broader of people who either could directly benefit form it or are in a position to replicate it. More important, depending on the target audience, we have not been successful in influencing permanent behavioral changes. The explosion of communications arts and technology offer new possibilities for reaching a broader audience. A major challenge lies in connecting with those segments of our population who do not have easy access to a computer or English is not their primary language or there are cultural differences. New design models of transferring knowledge and fostering utilization must be explored if we are to meet the needs of Americans with disabilities and their families. ADD is extremely interested in supporting this "reinvention " of new models under this priority area.

These models must surpass our standard methods of communication best practices and practical solutions to those we serve and those who serve them. Projects must be outcome driven—demonstrating effectiveness and behavioral changes of the targeted population. Content area is open to any proven, positive results-based practice, methodology or processing the field of developmental or other disabilities or directly related field such as universal design. It can be an expansive as systems change or a new paradigm. These new models should consider creative partnering implementing the project. A few examples of this by the Federal government are the JedI project under the U.S. Geological Survey and The Knowledge Loom under the U.S. Department of Education/Office of Educational Research and Improvement. The former, which stands for joint education initiative, utilized CD–ROM technology containing different types of data and in conjunction with teachers developed educational materials that could be used in the classroom. The latter is a recent project funded to create an electronic interactive workspace for anyone interested in the education environment.

In the last century we were the beneficiaries of extraordinary human developments that would have been considered inconceivable by many; it has raised our level of expectation for this new century. This is no less true for people with developmental disabilities and their families who, in this age of the Internet, the PC, and satellite downlinks, expect there will be new models available to everyone who needs them. ADD views this priority area as an unprecedented opportunity to take what we have learned through federally funded projects and find enterprising, inventive, and imaginative ways of using the knowledge so that all will benefit—people with developmental disabilities and other disabilities, professionals who serve them, their families, and the communities in which they live.

Proposed Fiscal Year 2000 Priority Area 2: Bridging the Digital Divide: Building Content

In a White House speech on February 2, 2000, President Clinton stated: "Access to computers and the Internet and the ability to effectively use this technology are becoming increasingly important for full participation in America's economic, political and social life. People are using the Internet to find lower prices for goods and services, work from home or start their own business, acquire new skills using distance learning, and make better informed decisions about their healthcare needs."

The President expressed his concern over the widening gap of access: "Access to computers and the Internet has exploded during the Clinton-Gore Administration. Unfortunately, there is strong evidence of a 'digital divide'—a gap between those individuals and communities that have access to these Information Age tools and those who don't. In some instances, this divide is actually widening." The President has proposed three basic approaches to narrowing the digital divide: (1) Provide hardware and connections to people who do not yet have them; (2) provide training in the use of computers and the internet; and (3) build relevant content on the Internet, to attract new users. ADD continues to encourage its grantees and partners in all three of these strategies, but realizes that a national approach is necessary to the third strategy of building relevant content.

A person with a developmental disability is legislatively defined as someone whose disability occurred before age 22; is severe and lifelong; and is likely to result in an ongoing, long-term need for services and supports. In other words, people with developmental disabilities are likely to need to rely on multiple systems of supports in order simply to live their lives. And yet, information that could be used to improve decision-making is not easily accessible to people with developmental disabilities, their families, their advocates, their providers of services and supports, or even to the policymakers who design and fund systems. For people with developmental disabilities, Internet access to relevant information is limited.

For the majority of people with developmental disabilities and their families, Medicaid is the most relevant system; it is their lifeline. Yet it is a very complex system whose possibilities change almost constantly, and quite rapidly. As States submit new ideas to the Health Care Finance Administration (HCFA) in Home and Community-Based Services (HCBS) waiver plans, and as these state-generated plans are approved, possibilities for all other States and all other citizens shift. In addition, the Medicaid program is complex due to the "patchwork quilt of incremental statutory amendments and

administrative policy changes spread over several decades." (GAO, 1996)

Nevertheless, many (though not all) of the Medicaid questions to which people need answers are repetitive and sometimes simple. Clear, honest, user-friendly answers to frequently asked questions are often a feature of Web sites on any topic and may be one of the best uses of the Internet.

ADD is proposing to fund one project to build an Internet site that will provide relevant content and attractive information on what is possible under the Medicaid program. The site should be user-friendly and useful to a broad range of users, including people with developmental and other related disabilities, their families, their advocates, DD network members, state policymakers, regional HCFA staff, and other interested persons. The site should be responsive to the needs and wants of its users, and should collect and measure user satisfaction. It should post frequently asked questions (FAQs) about Medicaid with their answers, and should encourage frank and open "human" interchanges between users. The site must be accessible to people with a broad range of disabilities. Proposing organizations must show that they (1) are credible sources of information to people with developmental disabilities and (2) that they intend to comply with accessibility standards and go beyond compliance to improve access as much as possible. Special care should be taken to make the site useful and attractive to young persons with developmental and other disabilities.

Proposed Fiscal Year 2000 Priority Area 3: Managing Our Program Knowledge Through Web Improvement

The Developmental Disabilities Assistance and Bill of Rights Act (DD Act) provides authorization for three State Programs and a national program that seek to increase the independence, productivity, and inclusion of persons with developmental disabilities.

A Developmental Disabilities Council (DD Council) in each State promotes, through systemic change, capacity building, and advocacy activities, the development of a comprehensive consumer-centered system of coordinated and culturally competent services, supports, and other assistance. The priority areas addressed by DD Councils include employment, community living, child development, and system coordination and community education.

The Protection and Advocacy (P&A) System provides for the protection and advocacy of legal and human rights. The P&A System advocate on behalf of, and provide advocacy services to persons with developmental disabilities in issue areas related to their disabilities, including: education, abuse and neglect, institutional and habitation services, guardianship issues, and housing issues.

The University Affiliated Program (UAPs) are public and private non-profit agencies in the States and territories, each affiliated with a university. Each UAP receives annual discretionary funding for operational and administrative support, which provides a platform for interdisciplinary training, clinical and community-based service activities, technical assistance to community services personnel, and information/dissemination activities.

In addition to State-based programs, ADD funds research and demonstration grants in an effort to address and increase our understanding of issues of national scope. The Projects of National Significance (PNS) program focuses on the most pressing issues affecting people with developmental disabilities and their families. Project issues transcend the borders of States and territories, while project designs are oriented to permit local implementation of practical solutions.

Each of these programs has a uniqueness and breadth of knowledge that if managed through modern technology would result in a knowledge resource warehouse. The nation cannot afford a digital divide between these programs and between these programs and those they serve. With these programs in mind, ADD is interested in funding a project for the development or enhancement of a model website whose design features are easily employable by each program; its approach on the cutting edge. It should be seen as the beginning of a new form of cyber architecture with a focus on continuous improvement that will enable those programs to improve their use of the web and their ability to hyperlink to others.

This new model website would enhance the ability of ADD's programs to exchange information and build upon ongoing diverse enterprises throughout the developmental disabilities community. At the same time, the contributions and achievements of these programs towards the quality of life of persons with disabilities and their families should be easily disseminated and accessible. It should support the development of strategies, technologies, and media channels for the management of knowledge generated/produced by these programs. This site should operate as an information center as well as a networking tool for the programs and others. This website is not about outcomes exclusively but content and access to content that affects the lives of people with developmental disabilities and their families. ADD envisions that the first year would begin with the UAPs and the PNS projects with the understanding the model website be inclusive of the other programs over the duration of the project. It is expected that the site would be open to everyone; including the average citizen, people working in each program, and people working in related programs. Also, it should be accessible to people with a broad range of disabilities utilizing the most current accessibility standards. ADD would be supportive of applicants that represent a consortia of UAPSs and DD Councils.

(Federal Catalog of Domestic Assistance Number 93.631—Developmental Disabilities—Projects of National Significance)

Dated: April 7, 2000.

Sue Swenson,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 00–9748 Filed 4–18–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–4202]

Agency Information Collection Activities; Announcement of OMB Approval; Application to Market a New Drug, Biologic, or an Antibiotic Drug for Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Application to Market a New Drug, Biologic, or an Antibiotic Drug for Human Use" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 2, 2000 (65 FR 4979), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An

agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0338. The approval expires on March 31, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: April 12, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–9714 Filed 4–18–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0969]

Risk Assessment of the Public Health Impact of Streptogramin Resistance in Enterococcus faecium Attributable to the Use of Streptogramins in Animals; Request for Comments and for Scientific Data and Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments and for scientific data and information.

SUMMARY: The Food and Drug Administration (FDA), Center for Veterinary Medicine (CVM), is announcing plans to develop a prototypic risk assessment (RA) model that accounts for the transfer of resistance determinants from bacteria in food-producing animals to bacteria in humans. The agency requests comments on their approach to the RA model and requests that scientific data and information relevant to the conduct of the RA be submitted. This model will be applied to assess the association between the development of streptogramin (quinupristin/dalfopristin (QD)) resistant *Enterococcus faecium* in humans and the use of virginiamycin in food-producing animals. The center will attempt to use the RA model to quantify the human health impact attributable both to direct acquisition of resistant *E. faecium* from food-producing animals and to the transfer of resistance determinants from *E. faecium* in food-producing animals to *E. faecium* in humans.

DATES: Submit written comments, scientific data, and information by June 19, 2000.

ADDRESSES: Single copies of "A Proposed Framework for Evaluating and Assuring the Human Safety of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals" (hereinafter referred to as the Framework Document) is discussed in the **SUPPLEMENTARY INFORMATION** section of this document and may be obtained by writing to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist the office in processing your request. This document is also available through CVM's homepage on the Internet at http://www.fda.gov/cvm/fda/mappgs/antitoc.html. Submit written comments, scientific data, and information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Nicholas E. Weber, Center for Veterinary Medicine (HFV–150), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6986, FAX 301–594–2298, or e-mail nweber@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 6, 1999 (64 FR 887), FDA published a notice of availability of a discussion paper (the Framework Document). This Framework Document sets out a conceptual risk-based process for evaluating the microbial safety of antimicrobial drugs intended for use in food-producing animals. The proposed RA furthers the tenets of the Framework Document by developing a RA model to quantify the potential human health impact of resistant bacteria acquired from animals via food.

Thus, CVM proposes to conduct its second antimicrobial resistance RA. A draft of CVM's first antimicrobial resistance RA model and associated documents are available on CVM's homepage on the Internet at http://www.fda.gov/cvm/fda/mappgs/ra/risk.html. The first RA modeled the human health impact of fluoroquinolone resistant *Campylobacter* infections associated with the consumption of chicken. CVM proposes to develop a second RA that will account for both the acquisition of resistant bacteria and the transfer of resistance determinants from bacteria in food-producing animals to bacteria in humans. This model will be applied to assess the association between the presence of streptogramin (QD) resistant *Enterococci faecium* in humans and the use of streptogramins (virginiamycin) in food-producing animals as an example of risk attributed to transference of resistance determinants.

In September 1999, FDA's Center for Drug Evaluation and Research approved Synercid™, a streptogramin (QD), for use in human medicine for treatment of vancomycin resistant *E. faecium* (VREF) bacteremias as well as for treatment of *Staphylococcus aureus* and *Streptococcus pyogenes* skin and soft tissue infections. At the current time, QD is considered to be the last line of therapy for VREF. Another streptogramin, virginiamycin, has been used in food-producing animals for 26 years. The initial approval was for chickens, but virginiamycin was subsequently approved for use in turkeys, swine, and most recently in cattle. This RA will seek to quantify the public-health risk attributable to the use of virginiamycin in food-producing animals. *Enterococcus faecium* that develop resistance due to exposure to virginiamycin also demonstrate reduced susceptibility to QD. These resistant strains of *E. faecium* can contaminate meat products and thereby enter the human intestine. It is thought that these resistant strains contaminating meat products may cause problems for the human in two major ways: By becoming host-adapted or by transferring resistance determinants to endogenous human *E. faecium*.

It is generally believed that the indigenous intestinal microflora of healthy humans inhibit colonization by bacteria from exogenous sources. In the case of illness requiring antibiotic therapy however, associated perturbations due to drug treatment may result in colonization by organisms not included in the flora of healthy individuals. This scenario could result in the intestinal colonization and proliferation of antibiotic resistant bacteria from the external environment. Enterococcal infections comprise 20 to 30 percent of over 2 million hospital-acquired infections per year in the United States (Ref. 1). VREF infections are almost exclusively hospital infections and account for about 14 percent of all enterococcal infections, although this varies widely (5 to 70 percent) from hospital to hospital, according to hospital vancomycin use, teaching versus nonteaching hospital status, and hospital size (number of beds) (Refs. 1 and 2). This translates to about 70,000 VREF infections per year which will most likely be treated with QD . Among VREF bacteremic patients treated with QD, emerging resistance

has been documented in about 4 percent of cases (Ref. 3).

QD is a mixture of streptogramin A (S_A) and streptogramin B (S_B) compounds. Resistance to Type B streptogramins is widespread among enterococci and other organisms. S_B resistance is due to hydrolysis of the antibiotic mediated by the *vgb* gene (Ref. 4), or more commonly, by ribosomal methylation mediated by the *ermB* gene product (Ref. 5). Expression of *erm* confers collateral resistance to macrolides, lincosamides, and streptogramin B (MLS_B) antimicrobials. Expression of S_B resistance determinants is not sufficient to confer resistance either to S_A or to the combination of compounds (Ref. 6). S_A resistance has been linked to two genes in *E. species*, *satA* (Ref. 7) and *satG* (Ref. 8). These genes encode related enzymes that inactivate the drug by acetylation, and expression imparts resistance to the mixture of S_A and S_B. Both genes have been found on plasmids and shown to be transferable *in vitro* to susceptible strains. However, a number of S_A resistant enterococci carry neither locus (Ref. 9), indicating that the complete complement of streptogramin resistance determinants has not been identified in enterococci.

Data on the prevalence of QD resistance in hospitals, the environment, and the community is sparse. QD-resistant *E. faecium* has been detected in the stools of healthy adults in the community. Because these individuals had not received QD therapy, some have assumed that the resistant strain entered the human population from an agricultural food production environment where virginiamycin is used or, possibly, following exposure to other drugs that conferred cross-resistance to streptogramins.

The prevalence of streptogramin resistant enterococci in the animal production environment and on animal derived food is largely unknown. For the purpose of this RA, data on human exposure to enterococci through the food supply and the rate at which these organisms possess determinants conferring resistance to streptogramin antibiotics is critical. Preliminary data collected on isolates from the poultry production environment suggest that about 65 percent of *E. faecium* are resistant to streptogramins (MIC≥4µg mg/ml) (Ref. 10). Data on the prevalence of these organisms and their antibiotic resistance phenotypes associated with retail products are very limited but critical to the RA process.

II. Objectives of the Risk Assessment

FDA is planning to conduct a RA of the potential harm to hospitalized patients by *E. faecium* resistant to the streptogramin combination drug (QD) associated with the use of virginiamycin in food-producing animals. A RA is a systematic and comprehensive collection and analysis of information that promotes an understanding of the interactions of various factors in a complex situation and provides a basis for making decisions. One goal of this RA is to organize a broad array of information and to study the complex set of interactions necessary to review the current uses of virginiamycin and their impact on public health in an effort to make sound science-based decisions. An underlying goal of this RA is to provide experience and a method for modeling risk involving transfer of resistance determinants from strains of bacteria found in food-producing animals to those found in people. It is anticipated that the RA will reveal data gaps and help guide the industry, FDA, and related agencies in setting research priorities.

III. Risk Assessment Plan

FDA's RA plan will attempt to determine the relationship between the use of virginiamycin in food-producing animals, and the development and dissemination of QD-resistant *E. faecium* in contaminated meat products. Examination of this relationship will be used to describe health effects in humans resulting from exposure to meat contaminated with QD resistant *E. faecium*. To accurately assess human exposure to QD-resistant *E. faecium* from contaminated meat, the RA will seek and analyze the following four types of information concerning the epidemiology of foodborne QD-resistant *E. faecium*. Information concerning the molecular epidemiology and associated carriage of resistance determinants of *E. faecium* with respect to the on-farm environment, carcass/retail meat contamination, other foods, and to the human community (both within and outside of the hospital setting) will be collected and analyzed.

1. Concerning the on-farm component of the RA, CVM will analyze epidemiological evidence pertaining to the following areas in each animal species studied: The prevalence of *E. faecium* colonization, the proportion of animals exposed to virginiamycin, the rate of selection of QD resistance in *E. faecium*, the emergence and dissemination of QD resistance determinants in virginiamycin exposed live animals and in their environment (including the level of fecal shedding).

2. The RA will also seek to collect and analyze information on the frequency of occurrence of post-slaughter contamination with QD resistant *E. faecium* to include carcass and retail sampling, and, where data are available, the impact of other agricultural sources of QD resistant *E. faecium* on food products destined for human consumption. Modeling may be used when data are collected at slaughter and retail outlets to estimate actual human exposure.

3. Human exposure is a function of QD-resistant *E. faecium* prevalence in the food supply and the consumption patterns of the population. The level of QD-resistant *E. faecium* contamination of meat destined for human consumption is very critical exposure information. Thus, the RA will evaluate information on the level of QD-resistant *E. faecium* in retail meat classes where data are available and combine this information with food consumption patterns. The RA will then produce estimates of QD-resistant *E. faecium* gut flora colonization likely given the levels of meat consumption by different subpopulations.

4. The RA will include an examination of the number of people who may enter the hospital colonized with QD-resistant *E. faecium*, and the proportion of those who are likely to develop VREF infections and require QD treatment. In addition, the RA will seek to evaluate the rate of emergence of QD-resistant *E. faecium* in the hospital environment and its dissemination within the hospital setting.

The RA process will seek to quantify the risk associated with virginiamycin use in animals utilizing data and information in a number of areas including: Prevalence of QD-resistant *E. faecium* pre- and post-slaughter contamination; molecular epidemiology of *E. faecium* carriage of resistance determinants in animal, community, and human clinical isolates; epidemiology of community and hospital sources of QD-resistant *E. faecium*; and prevalence of QD-resistant VREF infections, and molecular fingerprinting and epidemiology of QD resistance transfer to VREF in humans. All uncertainties and assumptions will be identified and documented. The RA process will also include an evaluation of the adequacy of current scientific knowledge, data, and information. This will be used to suggest where future research could be directed to reduce the uncertainty in the risk estimate.

IV. Data and Information Requested

FDA requests comments on the RA approach outlined in the RA plan and the submission of any information relevant to the RA. The purpose of the request for comments and data is to gather relevant information from a broad base of stakeholders to help the agency develop a science-based RA model. While some preliminary data are available, as indicated in section I of this document, the agency specifically requests data that would help to quantify the steps outlined in section III of this document. A list of requested information is presented below; however, the list is not exhaustive, and the agency encourages submission of any additional data relevant to this RA. The requested information includes, but is not limited to the following:

1. The prevalence of *E. faecium* and the prevalence of QD resistant *E. faecium* among all *E. faecium* in food-producing animals;
2. Virginiamycin use information, including the proportion of food-producing animals in each class that receive virginiamycin;
3. The prevalence of carcasses contaminated with *E. faecium* and among those, the prevalence of carcasses contaminated with QD-resistant *E. faecium*;
4. Procedures during slaughtering and food processing which modify enterococcal contamination and load on the carcass or product;
5. The prevalence and load of QD-resistant *E. faecium* in humans in the community acquired from contaminated meat products of each class;
6. Consumption and food preparation patterns that would aid in apportioning potential *E. faecium* ingestion among chicken, turkey, pork, beef, and other sources;
7. The prevalence of colonization by *E. faecium* and infection rates due to *E. faecium* in humans, for: (a) All *E. faecium*, (b) vancomycin resistant *E. faecium*, (c) QD-resistant *E. faecium*, and (d) QD-resistant/vancomycin resistant *E. faecium*;
8. The rate at which QD resistance and vancomycin resistance will be transferred among *E. faecium* in humans;
9. The enterococcal disease infection rate among humans harboring vancomycin resistant *E. faecium*;
10. Genetic fingerprinting for molecular epidemiology of *E. faecium* strains and details of the mechanisms of associated resistance, including gene identification; and
11. Other pertinent data.

FDA's CVM requests that reports of data include a description of the population from which samples were taken and a description of sampling and culture procedures used. All prevalence information or rates need to be provided with numerators and denominators. Likewise, count data is most useful if it is provided with information about the distribution of counts, such as with a range or with the mean and standard deviation. For the RA to become a useful regulatory tool for protection of public health in the United States, it must be based on good quality, contemporaneous data gathered in the United States, or from populations demonstrated to be representative of the U.S.-population.

FDA believes that the credibility and validity of the RA requires that the process for the conduct of the RA be transparent, and all data and information evaluated in the context of the RA and utilized in the RA should be publicly available. Accordingly, any data or information submitted in response to this document should be in a form that permits public disclosure. Submitters of data and information should not mark any information as "Confidential" and should fully expect that any data or information submitted will be made available to the public. Questions regarding the public availability of data and information submitted in response to this document, including questions on maintaining confidentiality while maximizing the utility of the data, should be directed to the contact person above.

As noted, the purpose of this request for data is to gather relevant information to facilitate a valid RA of the human health impact attributable both to direct acquisition of resistant *E. faecium* from food-producing animals and to the transfer of resistance determinants from *E. faecium* in food-producing animals to *E. faecium* in humans. The larger goal is the development of a prototype quantitative RA model that incorporates a segment modeling the transfer of resistance determinants from animal bacteria to human bacteria. This model along with CVM's first quantitative antimicrobial RA model for acquisition of resistant food-borne bacteria will be used to help the agency make appropriate risk management decisions about the use of antimicrobials in food-producing animals. Accordingly, it is acceptable that data submitted in response to this document be "blinded" in the sense that the data need not identify the particular manufacturer, animal producer, or processor that was the source of the samples underlying the results. However, the agency must be assured of the validity of the study design and data.

The RA team plans to present a summary of responses to this document as part of the completed RA document.

Comments and scientific data and information should be addressed to the Dockets Management Branch (address above) and identified with the docket number found in brackets in the heading of this document. Received materials may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. The Centers for Disease Control and Prevention National Nosocomial Infections Surveillance (NNIS) System, NNIS Report, data summary from October 1986 to April 1996, issued May 1996, *American Journal of Infection Control*, 24(5), pp. 380–388, 1996.
2. Moellering, R. C., P. K. Linden, J. Reinhardt, E. A. Blumberg, et al., "The Efficacy and Safety of Quinupristin/dalfopristin for the Treatment of Infections Caused by Vancomycin-resistant *Enterococcus faecium*," Synercid Emergency Use Study Group, *Journal of Antimicrobial Chemotherapy*, 44(2), pp. 251–261, 1999.
3. Huycke, M., D. Sahm, and M. Gilmore, "Multiple-Drug Resistant Enterococci: The Nature of the Problem and an Agenda for the Future," *Emerging Infectious Diseases*, 4(2), pp. 239–249, 1998.
4. Jensen, L. B., A. M. Hammerum, F. M. Aerestrup, A. E. Van Den Gofaard, and E. E. Stobberingh, "Occurrence of *satA* and *vgb* Genes in Streptogramin-resistant *Enterococcus faecium* Isolates of Animal and Human Origins in The Netherlands," *Antimicrobial Agents and Chemotherapy*, vol. 42, pp. 3330–3331, 1998.
5. Leclercq, R., and P. Courvalin, "Bacterial Resistance to Macrolide, Lincosamide, and Streptogramin Antibiotics by Target Modification," *Antimicrobial Agents and Chemotherapy*, 35(7), pp. 1267–1272, 1991.
6. Bozdogan, B., and R. Leclercq, "Effects of Genes Encoding Resistance to Streptogramins A and B on the Activity of Quinupristin-Dalfopristin Against *Enterococcus faecium*," *Antimicrobial Agents and Chemotherapy*, 43(11), pp. 2720–2725, 1999.
7. Rende-Fournier, R., R. Leclercq, M. Galimand, J. Duval, and P. Courvalin, "Identification of the *satA* Gene Encoding a Streptogramin A Acetyltransferase in *Enterococcus faecium* BM4145," *Antimicrobial Agents and Chemotherapy*, 37(10), pp. 2119–2125, 1993.
8. Werner, G., and W. Witte, "Characterization of a New Enterococcal Gene, *satG*, Encoding a Putative Acetyltransferase Conferring Resistance to Streptogramin A Compounds," *Antimicribial Agents and Chemotherapy*, 43(7), pp. 1813–1814, 1999.

9. Soltani, M., D. Beighton, J. Philpott-Howard, N. Woodford, "Mechanisms of Resistance to Quinupristin-dalfopristin among Isolates of *Enterococcus Faecium* from Animals, Raw Meat, and Hospital Patients in Western Europe," *Antimicrobial Agents and Chemotherapy*, 44(2), pp. 433–436, 2000.

10. English, L. L., J. R. Hayes, D. G. White, S. W. Joseph, L. E. Carr, and D. D. Wagner, "Antibiotic Susceptibility Profiles of *Enterococcus* Isolates from the Poultry Production Environment," Abstract J17, *2000 FDA Science Forum FDA and the Science of Safety: New Perspectives*, p. 73, 2000.

Dated: April 11, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–9696 Filed 4–14–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 00D–1086, 00D–1087, 00D–1088, 00D–1089, 00D–1090, and 00D–1091]

Guidance Documents for Premarket Notification (510(k)) Submissions for Six Devices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of six guidance documents. These six guidance documents are intended to serve as special controls for six devices that FDA has proposed previously to reclassify from class III (premarket approval) to class II (special controls). Elsewhere in this issue of the **Federal Register**, FDA is reopening the comment period on the proposed reclassification of the six devices and one other device. FDA is now inviting comment on these guidance documents because they were not available for comment at the time of the publication of the proposed reclassification (64 FR 12774, March 15, 1999).

DATES: Submit written comments by July 18, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number for the appropriate guidance document found in the **SUPPLEMENTARY INFORMATION** section. Submit written requests for single copies on a 3.5″ diskette of one or more of these guidance documents to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance documents.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–2974.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 15, 1999, FDA published a proposed rule to reclassify 38 preamendments class III devices into class II and to establish special controls for these devices. FDA invited interested persons to comment on the proposed rule by June 14, 1999.

FDA received one request to reopen the comment period for six devices. The request noted that FDA had not made the guidance documents that were proposed as special controls for these six devices available for comment through FDA's Good Guidance Practices (GGP's) (62 FR 8961, February 27, 1997). The request further noted that it was impossible to comment on the proposed reclassification without the guidance documents being available. Therefore, the requester asked that FDA extend the comment period until at least 90 days after the guidance documents are publicly available. FDA agreed with the request. FDA also identified three additional devices for which the agency had not issued the guidance documents proposed as special controls in accordance with the GGP policy.

The agency is announcing the availability of the following six guidance documents (each with a separate docket number) for six of these nine devices. In the near future, FDA will announce the availability of two guidance documents that will address the other three devices.

The six guidance documents, with their docket numbers, and Facts-on-Demand (FOD) numbers are as follows:

Guidance document	Docket No.	FOD No.	21 CFR Section	Device name
Guidance for the Submission of Research and Marketing Applications for Permanent Pacemaker Leads and for Pacemaker Lead Adaptor 510(k) Submissions.	00D–1086	372	870.3260	Pacemaker lead adaptor.
Guidance Document for Vascular Prostheses 510(k) Submissions.	00D–1087	1357	870.3450	Vascular graft prosthesis of less than 6 millimeter diameter.
Guidance for Annuloplasty Rings 510(k) Submissions.	00D–1088	1358	870.3800	Annuloplasty ring.
Guidance for Extracorporeal Blood Circuit Defoamer 510(k) Submissions.	00D–1089	1632	870.4230	Cardiopulmonary bypass defoamer.
Guidance for Cardiopulmonary Bypass Arterial Line Blood Filter 510(k) Submissions.	00D–1090	1622	870.4260	Cardiopulmonary bypass arterial line blood filter.
Guidance for Cardiopulmonary Bypass Oxygenators 510(k) Submissions.	00D–1091	1361	870.4360	Cardiopulmonary bypass oxygenators.

These guidance documents represent the agency's current thinking on premarket notifications for these devices. These guidance documents do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both. Under FDA's GGP policy, each of these guidance documents is a Level 2 guidance.

II. Electronic Access

In order to receive these guidance documents via your fax machine, call the CDRH FOD system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system and enter the document number listed above followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of these guidance documents may do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes these guidance documents, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. These guidance documents are also available at http://www.fda.gov/cdrh/ODE.

III. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding these guidance documents by July 18, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number for each guidance document as listed in the table in the **SUPPLEMENTARY INFORMATION** section of this document. If you wish to comment on more than one guidance document, please submit your comments separately for each guidance document. The guidance documents and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 3, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–9710 Filed 4–18–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Industry Grassroots Meeting: Report on Partnership Activities

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration (FDA), Office of Regulatory Affairs, San Francisco District Office is announcing the following meeting entitled "Industry Grassroots Meeting: Report on Partnership Activities." The purpose of the meeting is to report the Partnership Among Industry and Regulators (PAIR) Committee activities and to solicit input from participants for future activities and projects for the PAIR Committee. The PAIR Committee was formed as a result of an action item coming out of a similar grassroots meeting held at the Oakland Federal Bldg. in January of 1997.

Date and Time: The meeting will be held on May 10, 2000, from 8 a.m. to 5 p.m.

Location: The meeting will be held at the Oakland Federal Bldg., North Tower, 3d Floor Auditorium, 1301 Clay St., Oakland, CA 94612.

Contact: Jake Pearson, San Francisco District Office (HFR–PA 160), 510–337–6877, FAX 510–337–6701, e-mail jpearson@ora.fda.gov, or Kathryn D. Macropol (HFR–PA 140), 510–337–6867, e-mail kmacropo@ora.fda.gov, Food and Drug Administration, 1431 Harbor Bay Pkwy., Alameda, CA 94502. Information is also available at the PAIR website at http://www.pair-ca.org.

Registration: There is no charge to attend the meeting; however, registration is required. The meeting is open to all interested in management and regulatory affairs activities of industries regulated by FDA. While attendance would most benefit those industries located in Northern California, all interested groups are encouraged to attend. You may register via the Internet at http://www.pair-ca.org and by completing the online registration form. Alternatively, you can register by sending your name, title, firm name, address, telephone, fax number, and e-mail address (if available) to the contacts listed above. Please include any topics of interest you would like to have included in the program.

If you need special accommodations due to a disability, please notify Jake Pearson at least 7 days in advance.

Dated: April 12, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–9712 Filed 4–18–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–4201]

Guidance for Industry: Dioxin in Anti-caking Agents Used in Animal Feed and Feed Ingredients; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised guidance for industry (#98) entitled "Dioxin in Anti-caking Agents Used in Animal Feed and Feed Ingredients." The guidance is intended to notify members of the feed industry of recent findings regarding the presence of dioxins congeners that may be present in anti-caking agents in animal feeds and to offer general advice regarding monitoring of these products. This guidance has been revised in response to comments.

DATES: Submit written comments at any time.

ADDRESSES: Submit written comments on this guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Copies of the guidance document entitled "Dioxin in Anti-caking Agents Used in Animal Feed and Feed Ingredients" may be obtained on the Internet from the CVM home page at http://www.fda.gov/cvm/fda/TOCs/guideline.html. Persons without Internet access may submit written requests for single copies of the guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

FOR FURTHER INFORMATION CONTACT:

For general questions regarding the guidance document: Judy A. Gushee, Center for Veterinary Medicine (HFV–230), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0150, e-mail: jgushee@cvm.fda.gov.

For scientific questions regarding the guidance document: Randall A.

Lovell, Center for Veterinary Medicine (HFV–222), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0176, e-mail: rlovell@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 15, 1999 (64 FR 55948), FDA published a notice of availability of a guidance entitled "Dioxin in Anti-caking Agents Used in Animal Feed and Feed Ingredients." This guidance was issued as a Level 1 guidance consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It was implemented without prior public comment because of concern for the public health. The guidance was intended to notify the feed industry of recent findings regarding the presence of dioxins in mined clays that may be used as anti-caking agents in animal feeds and to offer general advice regarding monitoring of these clays. The agency received comments regarding this guidance and has revised the guidance in response to the comments. The following is a discussion of the issues raised by the comments.

II. Discussion of Comments

The agency received two comments on the guidance. One comment was from the feed industry objecting to the term "mined clay products" and one was from a company that produces limestone objecting to the term "lime."

(Comment 1) One comment noted that the term "mined clay products" was not appropriate because materials labeled as silicate and lime also tested positive to one or more of the dioxin congeners. We agree with the comment that the term was inappropriate for the scope of the affected product. FDA was attempting to use a generic term to describe the source of products of concern. FDA has revised the guidance document by replacing the term "mined clay products" with "clay and non-clay anti-caking products." We have added the term "anti-caking" to emphasize that our primary concern is for the use of these products in feed and feed ingredients and not when used as litter or absorbents.

This comment also noted that of the terms montmorillonite, bentonite, and ground clay, only montmorillonite has a mineral definition. It was also noted that the animal feed industry and its suppliers do not follow scientific terminology for classification and description of these anti-caking animal feed ingredients. The comment recommended that FDA contact the U.S. Geological Survey (USGS) and the Clay Minerals Society (CMS) for assistance in mineral terminology. It was also suggested that the samples, which were analyzed for dioxin, be evaluated for their mineralogy and then properly classified based on the mineralogical components according to accepted scientific guidelines.

FDA was aware that many of the terms used by suppliers and the feed industry were only loosely based on mineralogy and were often more closely associated with some property (e.g., ball clay) of the product than mineralogical components. However, FDA did not fully understand the scope of the interchanging of the terms used by suppliers of these products. FDA agrees that classifying these products based upon the mineralogical components according to accepted scientific guidelines is preferred. FDA has contacted the USGS regarding analyzing the samples for their mineralogy. We have also contacted the USGS and the CMS for information on developing a scientifically accurate naming scheme based on mineralogy. We plan to seek the assistance of the feed industry and the Association of American Feed Control Officials (AAFCO) to implement a scientifically accurate naming scheme based on mineralogy.

(Comment 2) Another comment objected to the use of the term "lime." The National Lime Association (NLA) noted that limestone is a naturally occurring mineral, while lime is not. Lime, according to the NLA, consists of either calcium oxide or calcium hydroxide and results from reacting "limestone" (calcium carbonate) and heat.

FDA does not dispute the NLA's definition of lime and, as mentioned above, has revised the terminology for the products of concern from "mined clay products" to "clay and non-clay anti-caking products." FDA realizes that this does not directly address the NLA's concern that a product might have been incorrectly identified in the survey. FDA reported the findings based on what was on the label of the product sampled or by what the product was called by the company when the FDA investigator collected it.

In essence, the concern expressed by the NLA for the correct identification of the product is the same as that expressed by the other comment and is a concern shared by FDA. We encourage the NLA to work with its members, companies producing limestone, the feed industry, and AAFCO to ensure a scientifically accurate naming scheme is applied to the products supplied to the feed industry.

III. Status of this Guidance

This guidance represents the agency's current thinking on the presence of dioxin congeners in anti-caking agents. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

FDA plans to continue to sample regulated clay and non-clay anti-caking products for dioxin in conjunction with the Environmental Protection Agency and other Government agencies. Plans are also underway to sample other feed components for dioxin.

IV. Comments

As with all of FDA's guidances, the public is encouraged to submit to the Dockets Management Branch (address above) written comments with new data or other new information regarding this guidance. The comments will be periodically reviewed, and, where appropriate, the guidance will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Dated: April 11, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–9711 Filed 4–18–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–0790]

Draft Guidance for Industry: The Use of Published Literature in Support of New Animal Drug Approval; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability for comment of a draft guidance for industry entitled "The Use of Published Literature in Support of New Animal Drug Approval." The draft guidance is intended to fulfill the section of the FDA Modernization Act of 1997 (FDAMA) that requires the agency to issue guidance to clarify the circumstances in which published matter may be the basis for approval of a supplemental application. The draft guidance also clarifies the circumstances in which published

literature may be the basis for approval of an original application. The draft guidance is intended to provide specific advice on when FDA may be able to rely on published literature, with or without the submission of underlying data, to support new animal drug approval.

DATES: Submit written comments on the draft guidance for industry by July 18, 2000.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on this draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Copies of the draft guidance may be obtained on the Internet at http://www.fda.gov/cvm/fda/TOCs/guideline.html.

FOR FURTHER INFORMATION CONTACT: Gail L. Schmerfeld, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20850, 301–594–1620, e-mail: gschmer1@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 403(b) of FDAMA (Public Law 105–115) requires FDA to issue guidances to clarify the requirements for, and facilitate the submission of data to support, the approval of supplemental applications for articles approved under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*) or section 351 of the Public Health Service Act (42 U.S.C. 262). This provision includes a requirement that FDA publish guidance to clarify circumstances in which published matter may be the basis for approval of a supplemental application.

This draft guidance for industry clarifies the circumstances in which published literature may be the basis for approval of both original and supplemental new animal drug applications. Specifically, the draft guidance describes the circumstances under which FDA could rely on published literature without access to the underlying data and the circumstances under which the applicant should provide additional information about a published study.

II. Significance of Guidance

This draft guidance represents the agency's current thinking with regard to the use of published literature in support of new animal drug approval. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both. The agency has developed this draft guidance in accordance with the agency's good guidance practices (62 FR 8961, February 27, 1997), which set forth the policies and procedures for the development, issuance, and use of guidance documents.

III. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance by July 18, 2000. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 10, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–9713 Filed 4–18–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: National Donor Sabbath Organ Procurement Organization Survey—New

November 10–12, 2000, will mark the fifth annual National Donor Sabbath (NDS), a time for clergy throughout the Nation to help increase awareness about the critical need for organs and tissues. In support of the 1999 NDS, the Health Resources and Services Administration, Office of Special Programs, Division of Transplantation (DoT) distributed to 61 Organ Procurement Organizations (OPO) in the U.S. more than 300,000 organ donor awareness lapel pins attached to paper backings containing NDS information. The OPOs were asked to distribute the pins to their local clergy to be used for further distribution and education of their congregation. DoT plans to replicate this activity for 2000 NDS.

While DoT believed the 1999 pin distribution to be a positive educational tool there exists a need to properly investigate the efficacy of the pins as an aid in promoting NDS. The Division wishes to examine the pin distribution in 2000 NDS in order to plan the most effective, efficient, and cost effective role for DoT in subsequent observances of NDS. Investigation will consist of requesting each OPO to complete a short survey concerning usage, distribution, and impact of the pins. This is a one-time survey.

ESTIMATES OF ANNUALIZED HOUR BURDEN

Subjects	Number of respondents	Responses per respondent	Total responses	Hrs. per response	Total hour burden
Organ Procurement Organizations	60	1	60	.33	20

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 13, 2000.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–9757 Filed 4–18–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)-443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Grants for Hospital Construction and Modernization—Federal Right of Recovery and Waiver of Recovery (42 CFR, Subpart H) (OMB No. 0915–0099)—Extension

The regulation known as "Federal Right of Recovery and Waiver of Recovery," provides a means for the Federal Government to recover grant funds and a method of calculating interest when a grant-assisted facility under Titles VI and XVI is sold or leased, or there is a change in use of the facility. It also allows for a waiver of the right of recovery under certain circumstances. Facilities are required to provide written notice to the Federal Government when such a change occurs; and to provide copies of sales contracts, lease agreements, estimates of current assets and liabilities, value of equipment, expected value of land on the new owner's books and remaining depreciation for all fixed assets involved in the transactions, and other information and documents pertinent to the change of status.

ESTIMATES OF ANNUALIZED HOUR BURDEN

Regulation	Number of respondents	Responses per respondent	Hours per response	Total burden hours
124.704(b) and 707	20	1	3	60

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 13, 2000.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–9756 Filed 4–18–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Early Therapeutics Development with Phase 2 Emphasis.

Date: May 8–9, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate contract proposals.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Lalita D. Palekar, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8066, Bethesda, MD 20892–7405, 301–496–7575.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology

Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 11, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–9720 Filed 4–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel.

Date: April 27, 2000.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Conference Room B2B32/Bldg 31, 31 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ken D Nakamura, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institute of Health, Bethesda, MD 20892, 301–402–0838.

This notice is being published less that 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: April 11, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–9722 Filed 4–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Health Services Research Review Subcommittee.

Date: June 15, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Bethesda, MD 20814.

Contact Person: Elsie Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, etaylor@niaaa.nih.gov.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Clinical and Treatment Subcommittee.

Date: June 29–30, 2000.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 1450 Glenarm Place, Denver, CO 80202.

Contact Person: Elsie Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, etaylor@niaaa.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 12, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy

[FR Doc. 00–9715 Filed 4–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: May 9, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, Presidential Board Room, One Washington Circle, NW., Washington, DC 20037.

Contact Person: Paula S. Strickland, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C02, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–402–0643.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 12, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–9716 Filed 4–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Disease; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Disease Special Emphasis Panel.

Date: April 25, 2000.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700–B Rockledge Drive, Room 2220, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anna Ramsey-Ewing, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550, ar15o@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 12, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–9717 Filed 4–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Mid Career Investigator Award in Patient-Oriented Research.

Date: April 26, 2000.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin Avenue, Gateway Building, Rm 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ramesh Vemuri, Office of Scientific Review, National Institute on Aging, Bethesda Gateway Building, Suite 2C212, Bethesda, MD 20892, 301–496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: April 25, 2000.

Time: 10:15 a.m. to 11:15 a.m.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin Avenue, Gateway Building, Rm 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jeffrey M. Chernak, Bethesda Gateway Building, 7201 Wisconsin Avenue, Rm 2C212, Bethesda, MD 20892, 301–496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: April 26, 2000.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin Avenue, Gateway Building, Rm 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Nekola, Chief, Office of Scientific Review, National Institute on Aging, Bethesda Gateway Building, Suite 2C212, Bethesda, MD 20892, 301–496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 12, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–9718 Filed 4–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Date: June 7–8, 2000.

Closed: June, 7, 2000, 7 p.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20892.

Open: June 8, 2000, 8:30 a.m. to 3:30 p.m.

Agenda: Progam documents.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD. 20892.

Contact Person: James F. Vaughan, Executive Secretary, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 11, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–9719 Filed 4–18–00; 8:45 am]

BILLING CODE 4140–01–M

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, 05/2000 ZNS–1 SRB–W (03).

Date: April 27, 2000.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alan L. Willard, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd. Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 11, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–9721 Filed 4–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 26, 2000.

Time: 1 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Sheraton University City Hotel Philadelphia, 36th and Chestnut Streets, Philadelphia, PA 19104–5939.

Contact Person: Sheila O'Malley, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: April 11, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–9723 Filed 4–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: May 25–26, 2000.

Open: May 25, 2000, 1 pm to 5:30 pm.

Agenda: Called to Order; Report of Minority Program Review; Report on Working Group on Program; Program Highlights; and Review of Behavioral and Social Review Program.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Closed: May 26, 2000, 8 am to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Contact Person: Miriam F. Kelty, PhD, Director, Office of Extramural Affairs, National Institute on Aging, National Institutes on Health, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–496–9322.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 13, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–9805 Filed 4–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel "Drug Abuse Prevention Dissemination".

Date: April 19, 2000.

Time: 11 am to 1 pm.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: April 13, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–9807 Filed 4–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 19, 2000.

Time: 1:30 pm to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178 MSC 7844, Bethesda, MD 20892, (301) 435–1249.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 28, 2000.

Time: 1 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: H. Mac Stiles, DDS, PhD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7816, Bethesda, MD 20892, 301–435–1785.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 1, 2000.

Time: 2 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Marcelina B. Powers, DVM, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1720.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 3, 2000.

Time: 1 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, bannerc@drg.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 3, 2000.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Marcelina B. Powers, DVM, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892 (301) 435–1720.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 13, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–9806 Filed 4–18–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospect Grant of Exclusive License: Therapeutic and Diagnostic Uses of Novel Thiolesters for HIV and Other Applications

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 35 U.S.C. 209 (c)(1) and 37 CFR 404.7 (a) (1) (i) that the National Institutes of Health (NIH), Department of Health and Human Services (DHHS), is contemplating the grant of an exclusive license worldwide to practice the inventions embodied in patents under "Supplementary Information" to Achillion Pharmaceuticals, Inc., having a place of business in New Haven, Connecticut. The patent rights in these inventions have been assigned to the government of the United States of America.

DATES: Only written comments and/or license applications which are received by the NIH Office of Technology Transfer on or before June 19, 2000 will be considered.

ADDRESSES: Requests for a copy of these patent applications, inquiries, comments, and other materials relating to the contemplated license should be directed to: Mr. J.P. Kim, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Telephone: (301) 496–7056, ext. 264; Facsimile: (301) 402–0220. A signed Confidential Disclosure Agreement (CDA) may be required to receive copies of the patent application.

SUPPLEMENTARY INFORMATION: The patent applications to be licensed are: "Novel Thiolesters and Uses Thereof", U.S. Provisional Patent Application Serial

No. 60/089,842, filing date 06/19/1998, "Novel Thiolesters and Uses Thereof", PCT International Patent Application No. PCT/US99/13856, International Filing Date 06/18/1999.

The zinc finger has been found in many proteins and in a great variety of species (e.g., the zinc finger structure can be found in the human immunodeficiency virus (HIV)). In viruses, the zinc-binding domains of nucleocapsid proteins have been identified as being involved in both early and late phases of viral replication, thus making them potentially attractive targets for antiviral agents.

The present invention provides for a novel family of thiolesters and uses thereof. These thiolesters are capable of inactivating viruses and other agents by a variety of mechanisms, particularly by complexing with metal ion-complexing zinc fingers. The invention further provides for methods for inactivating a virus, such as HIV, using these compounds, and thereby also inhibiting transmission of the virus.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to the use of novel thiolesters of the invention for therapeutic and diagnostic uses for anti-viral and anti-retroviral (including anti-HIV/AIDS), anti-tumor, anti-parasitic (e.g., malaria), anti-bacterial, and anti-fungal applications, as well as for agricultural uses (e.g., insecticidal use).

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act (FOIA), 5 U.S.C. 552.

Dated: April 13, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–9809 Filed 4–18–00; 8:45 am]

BILLING CODE 4140–01–P]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; National Toxicology Program (NTP) Board of Scientific Counselors Technical Reports Review Subcommittee Meeting; Review of Draft NTP Technical Reports

Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the NTP Board of Scientific Counselors Technical Reports Review Subcommittee on May 18, 2000 in the Rodbell Auditorium, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 8:30 a.m. on May 18 and is open to the public. The primary agenda topic is the peer review of draft Technical Reports of long-term toxicology and carcinogenesis studies from the NTP. There will also be a presentation about the beneficial effects of the NIH2000 diet in chronic studies.

Tentatively scheduled for peer review on May 18 are draft Technical Reports of six two-year studies, listed alphabetically in the attached table, along with supporting material. Studies were conducted using Fischer 344 rats and/or B6C3F$_1$ mice. The tentative order of review is given in the far right column of the table.

Draft Reports Available for Public Review and Comment

Approximately one month prior to the meeting, the draft reports will be available for public review and comment on the Internet free of charge through the Environmental Health Information Service (EHIS) at http://ehis.niehs.nih.gov. Printed copies can be obtained, as available, from: Central Data Management, NIEHS, PO Box 12233 MD E1–02, Research Triangle Park, NC 27709, T: 919–541–3419, FAX: 919–541–3687, or email: CDM@niehs.nih.gov.

The NTP Board of Scientific Counselors Technical Reports Review Subcommittee meeting is open to the public and public comment on any of the Technical Reports is welcome. Time will be provided for public comment on each of the reports under review. In order to facilitate planning for the meeting, persons requesting time for an oral presentation on a particular Technical Report are asked to notify the Executive Secretary, Dr. Mary S. Wolfe (PO Box 12233, MD A3–07, Research Triangle Park, NC 27709; telephone 919/541–3971; FAX 919/541–0295; email wolfe@niehs.nih.gov). Persons registering to make comments are asked to provide, if possible, a written copy of their statement by May 12th to enable review by the Subcommittee and staff prior to the meeting. Written statements can supplement and may expand the oral presentation, and each speaker is asked to provide his/her name, affiliation, mailing address, phone, fax, e-mail and supporting organization (if any). At least seven minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes. Registration for making public comments will also be available on-site. If registering on-site to speak and reading oral comments from printed copy, the speaker is asked to bring 25 copies of the text. These copies will be distributed to the Chair and Subcommittee members and supplement the record.

Written comments, in lieu of making oral comments, are also welcome. The comments should include name, affiliation, mailing address, phone, fax, e-mail and sponsoring organization (if any) and preferably be received by May 12th to enable review by the Subcommittee and staff prior to the meeting.

Request for Additional Information

The NTP would welcome receiving toxicology and carcinogenesis information from completed, ongoing, or planned studies as well as current production data, human exposure information, and use patterns for any of the chemicals listed in this announcement. Please forward this information to Central Data Management at the address given above who will relay it to the appropriate staff scientist.

The agenda and a roster of Subcommittee members will be available prior to the meeting on the NTP web homepage at http://ntp-server.niehs.nih.gov and upon request from the Executive Secretary. Following the meeting, summary minutes will be available on the NTP web homepage and upon request to Dr. Wolfe.

Attachment

Dated: April 11, 2000.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

TECHNICAL REPORTS TENTATIVELY SCHEDULED FOR REVIEW BY THE NTP BOARD OF SCIENTIFIC COUNSELORS TECHNICAL REPORTS REVIEW SUBCOMMITTEE ON MAY 18, 2000

Chemical CAS No.	Report No.	Primary uses	Route and exposure levels	Review order
Chloral Hydrate 302–17–0	TR–502	The primary sedative used in children.	Gavage (water vehicle) Mice: 0, 25, 50, or 100 mg/kg.	4
Chloral Hydrate (feed restricted) 302–17–0.	TR–503	The primary sedative used in children.	Gavage (water vehicle; feed restriction study) Male Mice: 0, 25, 50, or 100 mg/kg.	5
p,p'-Dichlorodiphenyl Sulfone 80–07–9.	TR–501	Starting product in production of polysulfones and polyethersulfones; by-product of pesticide production.	Feed Male Rats: 0, 10, 30, or 100 ppm; Female Rats & Mice: 0, 30, 100, or 300 ppm.	6
Indium Phosphide 22398–80–7	TR–499	Used in making semiconductors, lasers, solar cells, and photodiodes.	Inhalation Rats & Mice: 0, 0.03, 0.1, or 0.3 mg/m^3.	1
Naphthalene 91–20–3	TR–500	Ingredient in moth repellants and toilet bowl deodorants and as an intermediate in a variety of chemical synthesis processes.	Inhalation Rats: 0, 10, 30, or 60 ppm.	2
Sodium Nitrite 7632–00–0	TR–495	Color fixative and preservative in meats and fish; also used in a variety of industrial processes.	Drinking water Rats & Mice: 0, 750, 1500, or 3000 ppm.	3

[FR Doc. 00–9810 Filed 4–18–00; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–29]

Notice of Submission of Proposed Information Collection to OMB; Manufactured Home Construction and Safety Standards Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 19, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0233) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddin@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Manufactured Home Construction and Safety Standards Program.

OMB Approval Number: 2502–0233.

Form Numbers: HUD–101, –203, –203–B, –301, –302, –303, –304.

Description of the Need for the Information and Its Proposed Use: The Manufactured Home Construction and Safety Standards Act authorizes HUD to promulgate and enforce reporting standards for the production of manufactured housing. HUD uses the information collected to support an inspection program and to facilitate recalls as necessary.

Respondents: Business or other for-profit entities.

Frequency of Submission: On occasion.

Reporting Burden	Number of Respondents	×	Frequency of response	×	Hours per response	=	Burden hours
	283		24		1.2		8,032

Total Estimated Burden Hours: 8,032.

Status: Reinstate approval with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 11, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Office.

[FR Doc. 00–9734 Filed 4–18–00; 8:45 am]

BILLING CODE 4310–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Letters of Authorization to Take Marine Mammals

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of issuance of Letters of Authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations [50 CFR 18.27(f)(3)], notice is hereby given that Letters of Authorization to take polar bears and Pacific walrus incidental to oil and gas industry exploration, development, and production activities have been issued to the following companies:

Company	Activity	Date issued
Exxon Mobil	Exploration ...	March 16, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3810.

SUPPLEMENTARY INFORMATION: Letters of Authorization were issued in accordance with U.S. Fish and Wildlife Service Federal Rules and Regulations "Marine Mammals; Incidental Take During Specified Activities (65 FR 5275; February 3, 2000)."

Dated: March 27, 2000.

Gary Edwards,

Deputy Regional Director.

[FR Doc. 00–9726 Filed 4–18–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–070–99–5101–00; J–608; UTU–77149, UTU–77164, UTU–78301, FERC Doc. No. CP00–68–000]

San Juan County, New Mexico; La Plata, Montezuma, Dolores, and San Miguel Counties, Colorado; and San Juan, Grand, Emery, Carbon, Sanpete, Utah, Juab and Salt Lake Counties, Utah; EIS for a Refined Petroleum Products Pipeline, Natural Gas Pipelines and Utility Corridor Analysis and Plan Amendments

AGENCY: Bureau of Land Management, Utah.

ACTION: Revised Notice of Intent to Prepare an Environmental Impact Statement (EIS) (original notice was published April 28, 1999, (FR Vol. 64, No. 83 p. 23349–23351) for the construction of underground pipeline facilities and above ground structures for the transportation of Refined Petroleum Products and Natural Gas and Notice of Scoping Meetings.

SUMMARY: On April 28, 1999, the Bureau of Land Management, Utah, announced its intent to prepare an Environmental Impact Statement (EIS) and conduct EIS Scoping Meetings for: (1) Construction of Pipeline Facilities and Transportation of refined petroleum products via underground pipeline in San Juan County, New Mexico; La Plata, Montezuma, Dolores, and San Miguel Counties, Colorado; and San Juan, Grand, Emery, Carbon, Sanpete, Utah, Juab and Salt Lake Counties, Utah; and (2) Construction of Pipeline Facilities and Transportation of natural gas via an underground pipeline in Emery, Carbon, Sanpete, Utah, Juab, and Salt Lake Counties. This revised notice is to clarify the proposals, nature of the proposals, responsible officials, roles of responsible officials, and decisions. This revised notice also updates the project schedule and public involvement.

Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, the Bureau of Land Management (BLM), Utah State Office, will be the lead agency directing the preparation of an EIS on the impacts of proposed transportation of refined petroleum products and natural gas through pipelines located on public lands, including BLM and National Forest System, State, and private lands in northwest New Mexico, southwest Colorado, and southeast to north-central Utah. In addition, the EIS will also analyze utility corridors across the Manti-LaSal and Uinta National Forests to identify the use and allocate National Forest System Lands which may or may not expand the existing designated corridors and/or identify other corridors. This analysis may result in Forest Plan amendments to the Manti-LaSal and Uinta National Forest Land and Resource Management Plans. The Federal Energy Regulatory Commission (FERC) and USDA Forest Service, Manti-LaSal and Uinta National Forests, will be participating in the EIS preparation as Cooperating Agencies in accordance with Title 40, Code of Federal Regulations, Section 1501.6. The EIS will address all reasonable alternatives including locating the pipelines on and off USFS and public lands.

SUPPLEMENTARY INFORMATION: Williams Pipeline Company has proposed to transport refined petroleum products to the Wasatch Front in Utah, using a combination of existing pipelines in New Mexico and Colorado, and a new segment of pipeline in Utah from near Crescent Junction, Utah to a terminal on the Wasatch Front. The refined petroleum products would include diesel fuel, fuel oil, jet fuel, and gasoline. In addition to the Williams proposal, Questar Pipeline Company (Questar) and Kern River Gas Transmission Company (Kern River) have proposals to transport natural gas from Price, Utah to the Wasatch Front and connect to an existing Kern River pipeline located in central Juab county and western Utah county. Questar has proposed to loop it's existing pipeline from Price to Payson, provide natural-gas service to the communities of Goshen, Genola, and Elberta, and connect to the existing Kern River Pipeline near Elberta. Kern River has proposed to construct a new pipeline from Price to near Indianola, then to a point just north of Nephi, and then westerly to intersect the existing Kern River Pipeline in Dog Valley.

Preliminary Issues

Issues identified at this time include: biology; visual resources; soils, water, and air resources and quality; threatened, endangered and sensitive plant and animal species; cultural and historic resources; public health and safety; geologic and land stability; roadless areas; multiple entries resulting in repetitive impacts and the ability to meet use demands; capacity of the utility corridor; and social and economic impacts in association with oil and natural gas pipeline construction and operation. Other issues and concerns may be identified through

scoping and development of this public notification process.

Possible Alternatives

The EIS will analyze the Proposed Action and No-Action Alternative as well as corridor capacity. Other alternatives may include different routes for portions of the proposed pipelines, fewer but larger pipelines in the corridor, and optional sites for pipeline facilities, as well as mitigating measures to minimize impacts.

Responsible Officials

The Responsible Officials are: Sally Wisely, the BLM Utah State Director (Utah State Office, 324 South State Street, Suite 301, Salt Lake City, Utah 84111; the Manti-LaSal National Forest Supervisor (Manti-LaSal National Forest, 599 West Price River Drive, Price, Utah 84501); and Peter W. Karp, the Uinta National Forest Supervisor (Uinta National Forest, 88 West 100 North, Provo, Utah 84601). Additional information about the natural gas pipeline proposals is available from Paul McKee of the FERC's Office of External Affairs at (202) 208–1088 (refer to Docket No. CP00–68–000).

Decisions to be Made

The purpose of the EIS is to disclose to the public and permitting agencies the environmental impacts of constructing and operating the proposed projects. If one or more of the projects are approved, the participating agencies would take the following actions. The BLM, as the lead agency, would sign the necessary Record of Decision (ROD) for the issuance of right-of-way grants under the Mineral Leasing Act for the pipeline proposals. FERC, as a Cooperating Agency and the regulatory agency for the transmission of natural gas in interstate commerce, would issue the natural gas pipeline companies Certificates of Public Convenience and Necessity under the Natural Gas Act. The Forest Service, as a cooperating agency, would sign the necessary Record(s) of Decision for the Forest Land and Resource Management Plan Amendments (may include standards and guidelines) on the Manti-LaSal and Uinta National Forests. The USFS ROD would also include the use and allocation of National Forest System Lands which may or may not expand the existing designated utility corridor(s) and/or identify other corridor(s).

Tentative Project Schedule

The tentative project schedule is as follows:

- Begin Public Comment Period—April 1999.
- Scoping Meetings—May and June 1999, May 10, 11, 2000.
- Scoping Comment Period Ends—May 17, 2000.
- File Draft EIS—October 1, 2000.
- File Final EIS—February 2001.
- Record of Decision—March, 2001.

Public Scoping Meetings

Nine public scoping meetings were held on the following dates and in the following locations: May 18, 1999, Green River, Utah, May 19, 1999, Moab, Utah, May 20, 1999, Price, Utah, May 25, 1999, Salt Lake City, Utah, May 26, 1999, Payson, Utah, May 27, 1999, Lehi, Utah, June 2, 1999, Dolores, Colorado, June 3, 1999, Durango, Colorado, and June 23, 1999, Price, Utah. Additional public scoping meetings will be held in West Valley City, Utah, on May 10, 2000, and at Nephi, Utah on May 11, 2000.

Public Input Requested

Comments concerning the Proposed Action and EIS should address environmental issues to be considered, feasible alternatives to examine, possible mitigation, and information relevant to or bearing on the Proposed Action.

DATES: An additional comment period for scoping of the EIS will commence with publication of this revised notice. Written comments must be submitted on or before May 19, 2000.

Comments, including names and street addresses of respondents will be available for public review at the BLM Utah State Office and will be subject to disclosure under the Freedom of Information Act (FOIA). They may be published as part of the EIS and other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review and disclosure under the FOIA, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, will be made available for public inspection in their entirety.

ADDRESSES: Comments should be sent to LaVerne Steah, EIS Team Leader, Bureau of Land Management, Utah State Office, 324 South State Street, Suite 301, Salt Lake City, UT 84111 or at the website: QWK–EIS.ORG.

FOR FURTHER INFORMATION CONTACT: LaVerne Steah, (801) 539–4114 or e-mail: LaVerne_Steah@blm.gov

Dated: April 10, 2000.

Linda Colville,

Acting Utah State Director.

[FR Doc. 00–9460 Filed 4–18–00; 8:45 am]

BILLING CODE 4310–DQ–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of information collection.

SUMMARY: Under the Paperwork Reduction Act of 1995, we are soliciting comments on an information collection titled Office of Indian Royalty Assistance Customer Satisfaction Survey, OMB 1010–0098, which expires on November 30, 2000. We are preparing an information collection request, which we will submit to the Office of Management and Budget (OMB), for a 3-year extension of this information collection.

DATES: Written comments should be received on or before June 19, 2000.

ADDRESSES: The mailing address for written comments regarding this information collection is David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225. Courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225. The Internet address is RMP.comments@mms.gov.

PUBLIC COMMENT PROCEDURE If you wish to comment, you may submit your comments by any one of several methods and to the mailing addresses stated in the **ADDRESSES** section of this Notice. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include Attn: Office of Indian Royalty Assistance Customer Satisfaction Survey, OMB Control Number 1010–0098, and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact David S. Guzy directly (303) 231–3432.

We will post public comments after the comment period closes on the Internet at *http://www.rmp.mms.gov.* You may arrange to view paper copies of the comments by contacting David S. Guzy, Chief, Rules and Publications

Staff, telephone (303) 231–3432, FAX (303) 231–3385. Our practice is to make comments, including names and addresses of respondents, available for public review on the Internet and during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, email *Dennis.C.Jones@mms.gov*. A copy of the information collection is available to you without charge upon request.

Title: Office of Indian Royalty Assistance Customer Satisfaction Survey, OMB Control Number 1010–0098.

Abstract: Section 3506(c)(2)(A) of the Paperwork Reduction Act requires each agency "to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian Lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian Lands and the OCS; for collecting royalties from lessees who produce minerals; and for distributing the funds collected in accordance with applicable laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions and assists the Secretary in carrying out his Indian trust responsibility.

Executive Order 12862 requires Federal agencies to develop and implement customer service standards. As part of these standards, the Office of Indian Royalty Assistance (OIRA) pledges to "work continuously to streamline and improve our services." When individual Indian mineral owners request assistance from OIRA offices, we include a postage-paid Customer Satisfaction Survey card when responding to the owner's request. This survey card asks Indian mineral owners several questions regarding the quality of service that our offices are providing to them.

The information collected from these Customer Satisfaction Survey cards helps us determine the effectiveness of our office and guides us in developing and implementing new procedures to improve our service.

We receive approximately 300 completed survey cards annually. Based on this response rate and the 2 minutes required to complete the survey card, we estimate the annual reporting and recordkeeping "hour" burden is 10 hours; there is no "non-hour" burden.

Frequency: On occasion.

Estimated Number and Description of Respondents: 300 individual Indian mineral owners.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 10 hours.

Estimated Annual Reporting and Recordkeeping "Non-Hour" Burden: 0 hours.

Dated: April 12, 2000.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 00–9803 Filed 4–18–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Assessment Prepared for Proposed Western Gulf Sale 177 on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of the environmental assessment on proposed western Gulf of Mexico Lease Sale 177.

SUMMARY: The Minerals Management Service (MMS) has prepared an environmental assessment (EA) for the proposed annual Lease Sale 177 for the Western Planning Area of the Gulf of Mexico Outer Continental Shelf.

In this EA, MMS has reexamined the potential environmental effects of the proposed action and alternatives based on any new information regarding potential impacts and issues that were not available at the time the Final Environmental Impact Statement (FEIS) for Lease Sales 171, 174, 177, and 180 was prepared.

In summary, no new significant impacts were identified for proposed Lease Sale 177 that were not already assessed in the FEIS for Lease Sales 171, 174, 177, and 180. As a result, MMS determined that a supplemental EIS is not required and prepared a Finding of No New Significant Impact.

If you wish to comment, you may mail or hand-carry written comments to the Department of the Interior, Minerals Management Service, Regional Director (MS–5410), Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section at number below. You may obtain single copies of the EA from the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, LA 70123–2394 or by calling 1–800–200–GULF.

Dated: April 13, 2000.
Chris C. Oynes,
Regional Director, Gulf of Mexico OCS Region.
[FR Doc. 00–9738 Filed 4–18–00; 8:45 am]
BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

60 Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: National Park Service, Department of the Interior, Golden Gate National Recreation Area.

ACTION: Notice and request for comments.

SUMMARY: The Golden Gate National Recreation Area (GGNRA) is a national park which comprises over 76,000 acres of coastal lands spanning three California counties: Marin, San Francisco and San Mateo. GGNRA is proposing to conduct survey interview in peak, shoulder and off-peak season of calendar year 2000, and possibly through Spring 2001, to identify the market viability and specific visitor flow information for operationlizing recreational ferry services to sites within the GGNRA on San Francisco Bay such as Ft. Baker, Crissy Field (Presidio) and Ft. Mason. The results of these surveys will be used to develop alternative plans for a possible ferry service and to forecast potential demand for water shuttle access to GGNRA's sites, as well as land-based transit connections. Intercept interviews will be conducted at 5 park sites and at least 2 non-park sites. Telephone surveys will be conducted in 3–4 counties surrounding the park to determine latent demand for ferry service, and under what conditions such service might be used.

	Estimated number of	
	Responses	Burden hours
GGNRA Water Shuttle Access Plan: Telephone Interviews	1400	240
GGNRA Water Shuttle Access Plan: Intercept Surveys	8400	700
Total	9800	940

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service (NPS) is soliciting comments on: (a) Whether the collection of information is necessary for such a reliable and valid market analyses and to support the proper performance of the functions of the GGNRA in evaluating the best alternative operations in the interest of the government and the general public, including whether the information will have practical utility; (b) the accuracy of the NPS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) the quality, utility, and clarity of the information to be collected; and (d) how to minimize the burden of the collection of information on those who are to respond, while maintaining an unbiased sample, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

DATES: Public comments will be accepted on or before June 19, 2000.

SEND COMMENTS TO: GGNRA, Attn. Mike Savidge, Bay and Franklin St., Bldg., 201, Ft. Mason, San Francisco, CA 94123.

FOR FURTHER INFORMATION CONTACT: Mike Savidge at (415) 561–4725.

SUPPLEMENTARY INFORMATION: *Title:* Scope of Work for Water Shuttle Access Plan.

Bureau Form Number: None.

OMB Number: To be requested.

Expiration Date of Approval: To be requested.

Type of Request: Request for new clearance.

Description of Need: The Metropolitan Transportation Commission (MTC) of the San Francisco Bay Area has identified updated data collection and surveys of this nature as critical to the foundation of improving alternative transportation access to GGNRA, and particularly to the feasibility of developing a potential water shuttle service to park sites. GGNRA has also been identified as one of five national park demonstration sites to improve alternative transportation access through a coordinated program with the U.S. Department of Transportation (DOT) because of its over 15 million visitors per year. To support these efforts, GGNRA needs information to better develop ridership potential to alternate park sites, and to determine the specific market feasibility and operational plans for alternative modes of access to GGNRA sites, particularly by ferry service. Such a need was identified in a GGNRA Travel Study completed in 1977 and remains today. GGNRA seeks to acquire this information in order to plan for increasing alternative access modes to the park and to decongest the critical roadway corridors to park sites such as the Golden Gate Bridge and Rt. 101 which result in both extensive traffic delays for visitors and other residents.

Automated Data Collection: At the present time, there is no automated way to gather this information, since the information gathering process involves asking visitors and/or the general public to identify characteristics, use patterns, expectations, preferences and perceptions that are relevant to a study of ferry service. Computerized responses could not be controlled for bias as intercept and random digit dialing surveys can be.

Description of respondents: Intercept interviews will be conducted with a random sample of individuals who visit GGNRA sites to include Alcatraz, Muir Woods, Presidio, Ft. Mason and the Marin Headlands. Intercept interviews will also be conducted at non-park sites in San Francisco and the East Bay with a random sample of individuals who are not visiting GGNRA. Telephone surveys will be conducted with a random sample of residents of the Counties of San Francisco, Alameda and one or two other counties surrounding the Bay as yet unselected.

Estimated average number of respondents: 1400 (completed telephone interviews); 8400 (completed intercept interviews).

Estimated average number of responses: Each respondent will respond only one time, so the number of responses will be the same as the number of respondents.

Estimated average burden hours per response: 10 minutes (telephone

interviews); 5 minutes (intercept surveys).

Frequency of Response: 1 time per respondent.

Estimated annual reporting burden: 940 hours.

Dated: April 13, 2000.

Betsy Chittenden,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 00–9707 Filed 4–18–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Lincoln Boyhood National Memorial, Indiana

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to prepare a General Management Plan and Environmental Impact Statement for Lincoln Boyhood National Memorial, Indiana.

SUMMARY: The National Park Service (NPS) will prepare a General Management Plan (GMP) and an associated Environmental Impact Statement (EIS) for Lincoln Boyhood National Memorial, Indiana, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This notice is being furnished as required by NEPA Regulations 40 CFR 1501.7.

To facilitate sound planning and environmental assessment, the NPS intends to gather information necessary for the preparation of the EIS, and to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are invited.

Participation in the planning process will be encouraged and facilitated by various means. Notification of all public involvement opportunities will be announced in the local press and in NPS mailings. To begin the public process, the NPS will conduct a scoping meeting to explain the planning effort and to solicit opinion about issues to address in the GMP/EIS.

DATES: Two public scoping meetings will be held on Wednesday, May 3, 2000 at the Lincoln Boyhood National Memorial Visitor Center, Highway 162, in Lincoln City, Indiana. An afternoon session will be held from 1:00 p.m. to 3:00 p.m.; an evening session will be held from 6:30 p.m. to 8:30 p.m. Both sessions will be in the Nancy Hanks Lincoln Hall. More information about the meetings is available from the Superintendent, Lincoln Boyhood National Memorial, at the address and telephone number below.

ADDRESSES: Written comments and information concerning the scope of the EIS and other matters, or requests to be added to the project mailing list should be directed to: Ms. Dusty Shultz, Superintendent, Lincoln Boyhood National Memorial, P.O. Box 1816, Lincoln City, IN 47552–1816. Telephone: 812–937–4541. E-mail: dusty__shultz@nps.gov

FOR FURTHER INFORMATION CONTACT: Superintendent, Lincoln Boyhood National Memorial, at the address and telephone number above.

SUPPLEMENTARY INFORMATION: Lincoln Boyhood National Memorial preserves the site of the farm where Abraham Lincoln spent 14 formative years of his life. He and his family moved to Indiana in 1816 and stayed until 1830 when they moved to Illinois. During this period, Lincoln grew physically and intellectually into a man. The people he knew here and the things he experienced had a profound influence on his life. The time he spent here helped shape the man that went on to lead the country. This site is the most direct tie with that time of his life. Lincoln Boyhood National Memorial is also significant because it represents that period within the history of the preservation movement, when the creation of memorial edifices and landscapes were an important expression of the nation's respect and reverence for Abraham Lincoln.

In accordance with NPS Park Planning policy, the GMP will ensure the Memorial has a clearly defined direction for resource preservation and visitor use. It will be developed in consultation with servicewide program managers, interested parties, and the general public. It will be based on an adequate analysis of existing and potential resource conditions and visitor experiences, environmental impacts, and costs of alternative courses of action.

The environmental review of the GMP/EIS for the Memorial will be conducted in accordance with requirements of the NEPA (42 U.S.C. 4371 *et seq.*), NEPA regulations (40 CFR 1500–1508), other appropriate Federal regulations, and National Park Service procedures and policies for compliance with these regulations.

Dated: April 12, 2000.

David N. Given,

Acting Regional Director.

[FR Doc. 00–9708 Filed 4–18–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 8, 2000. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by May 4, 2000.

Carol D. Shull,

Keeper of the National Register.

ALASKA

Kenai Peninsula Borough-Census Area

Johnson, Harry A., Trapline Cabin, 20 mi. S of Hope, Hope, 00000424

CALIFORNIA

Los Angeles County

St. John's Episcopal Church, 514 W. Adams Blvd., Los Angeles, 00000425

San Diego County

Naval Training Station, Barnett St. and Rosecrans Blvd., San Diego, 00000426

FLORIDA

Collier County

Monroe Station, Jct. of Tamiami Trail and Loop Rd., Ochopee, 00000427

Orange County

Polasek, Albin, House and Studio, 633 Osceola Ave., Winter Park, 00000428

MARYLAND

Frederick County

Linganore Farm, 6229 Linganore Rd., Frederick, 00000429

MISSOURI

Greene County

Hotel Sansone, (Springfield, Missouri MPS (Additional Documentation)) 312 Park Central East, Springfield, 00000430

Marquette Hotel, (Springfield, Missouri MPS (Additional Documentation)) 400 East Walnut, Springfield, 00000431

Jackson County

Baker-Vawter Building, 915–917 Wyandotte, Kansas City, 00000432

Columbia Building, 2006–2012 Wyandotte St., Kansas City, 00000433
Helping Hand Institute Building, 523 Grand Blvd., Kansas City, 00000434
National Garage, 1100–1110 McGee St., Kansas City, 00000436
Safeway Stores and Office and Warehouse Building, 2029–2043 Wyandotte St., Kansas City, 00000435

Scotland County

Bible Grove Consolidated District #5 School, South side of Rte T. at Bible Grove, Bible Grove, 00000441

St. Louis County

Kreienkamp Store, 19160 Melrose Rd., Wildwood, 00000439

St. Louis Independent City

Hamilton—Brown Shoe Factory, 2031 Olive St., St. Louis, 00000437
Kennard, J., and Sons Carpet Company Building, 400 Washington Ave., St. Louis, 00000438
Stork Inn, 4527 Virginia Ave, 3301 Taft Ave., 4526 Idaho Ave., St. Louis, 00000440

NORTH CAROLINA

Chatham County

Pittsboro Historic District, (Pittsboro MRA) Roughly bounded by Chatham St., Small St., Rectory St., and Launis St., Pittsboro, 00000442

Johnston County

Brooklyn Historic District, Roughly bounded by Spring Branch Creek, S. Fifth St., S. Third St., and Lee St., Smithfield, 00000443

Lenoir County

CSS NEUSE, 2612 W. Vernon Ave., Kinston, 00000444

OREGON

Hood River County

Cliff Lodge, 3345 Cascade Ave., Hood River, 00000445

Jackson County

Ashland Downtown Historic District, Roughly bounded by Lithia Way/C St., Church, Lithia Park/Hargadine, and Gresham Sts., Ashland, 00000446

Multnomah County

Fairmount Hotel, 1920 NW 26th Ave., Portland, 00000448
Villa St. Clara Apartments, 909 SW Twelfth Ave., Portland, 00000449

Yamhill County

Union Block, 610–620 W. First St., Newberg, 00000450

PENNSYLVANIA

Allegheny County

Phipps—McElveen Building, 525–529 Penn Ave., Pittsburgh, 00000451

Jefferson County

Segers, Redferd, House, US 219, opposite Snyder Township Rte 1025, Snyder Township, 00000447

Washington County

Nelson, John H., House, 104 Colvin Rd., Fallowfield, 00000452

TEXAS

Travis County

Austin Central Fire Station #1, 401 E. Fifth St., Austin, 00000454

Wood County

Robinson, Florence, Cottage, Washington Place at Emma B. Smith Blvd., Jarvis Christian College, Hawkins, 00000453

WASHINGTON

Spokane County

Mount Saint Michael, 8500 N. Saint Michael Rd., Spokane, 00000456

WISCONSIN

Door County

Zahn, August, Blacksmith Shop and House, 8152 WI trunk 57, Baileys Harbor, 00000455

A request for REMOVAL has been made for the following resource:

MASSACHUSETTS

Worcester County

Northborough Town Hall, NE corner of W. Main and Blake St., Northborough, 72000151

[FR Doc. 00–9706 Filed 4–18–00; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions that are new, modified, discontinued, or completed since the last publication of this notice on January 21, 2000. The January 21, 2000, notice should be used as a reference point to identify changes. This annual notice should be used as a point of reference to identify changes in future notices. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities. Additional Bureau of Reclamation (Reclamation) announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Sandra L. Simons, Manager, Water Contracts and Repayment Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2902.

SUPPLEMENTARY INFORMATION: Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and 43 CFR 426.20 of the rules and regulations published in 52 FR 11954, Apr. 13, 1987, Reclamation will publish notice of the proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the "Final Revised Public Participation Procedures" for water resource-related contract negotiations, published in 47 FR 7763, Feb. 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. Each proposed action is, or is expected to be, in some stage of the contract negotiation process in 2000. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (i) The significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Acronym Definitions Used Herein

(BON) Basis of Negotiation
(BCP) Boulder Canyon Project
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(CRSP) Colorado River Storage Project
(D&MC) Drainage and Minor Construction
(FR) Federal Register
(IDD) Irrigation and Drainage District
(ID) Irrigation District
(M&I) Municipal and Industrial
(NEPA) National Environmental Policy Act
(O&M) Operation and Maintenance
(P–SMBP) Pick-Sloan Missouri Basin Program
(PPR) Present Perfected Right
(RRA) Reclamation Reform Act
(R&B) Rehabilitation and Betterment
(SOD) Safety of Dams
(SRPA) Small Reclamation Projects Act
(WCUA) Water Conservation and Utilization Act
(WD) Water District

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5346.

Modified Contract Action

4. Pioneer Ditch Company, Boise Project, Idaho; Clark and Edwards Canal and Irrigation Company, Enterprise Canal Company, Ltd., Lenroot Canal Company, Liberty Park Canal Company, Parsons Ditch Company, Poplar ID, Wearyrick Ditch Company, all in the Minidoka Project, Idaho; Juniper Flat District Improvement Company, Wapinitia Project, Oregon: Amendatory repayment and water service contracts; purpose is to conform to the RRA (Public Law 97–293).

Discontinued Contract Action

10. Five individual contractors, Umatilla Project, Oregon: Repayment agreements for reimbursable cost of dam safety repairs to McKay Dam. Agreements not needed, contractors are being billed for reimbursement.

Completed Contract Action

4. Pioneer Ditch Company, Boise Project, Idaho; Clark and Edwards Canal and Irrigation Company, Enterprise Canal Company, Ltd., Lenroot Canal Company, Liberty Park Canal Company, Parsons Ditch Company, Poplar ID, Wearyrick Ditch Company, all in the Minidoka Project, Idaho; Juniper Flat District Improvement Company, Wapinitia Project, Oregon; Roza ID, Yakima Project, Washington: Amendatory repayment and water service contracts; purpose is to conform to the RRA (Public Law 97–293). Contract with Roza ID executed February 14, 2000.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

New Contract Actions

36. Townsend Flat Ditch Company or its shareholders, Centerville Community Services District and McConnell Foundation, CVP, California: Proposed exchange contract for 6,000 acre-feet of water in relation to the Clear Creek restoration and fish passage program in Section 3406(b)(12) of the Central Valley Project Improvement Act.

37. Colusa County WD, CVP, California: Proposed long-term Warren Act contract for conveyance of up to 4,500 acre-feet of ground water through the Tehama-Colusa Canal.

Discontinued Contract Actions

22. Widren WD, CVP, California: Assignment of 2,940 acre-feet of Widren WD's water service contract to the City of Tracy. The assignment will require approval of conversion of the District's CVP irrigation water to M&I.

23. Warren Act Contracts, CVP, California: Execution of long-term Warren Act contracts with various entities for conveyance of non-project water in the Delta-Mendota Canal.

Lower Colorado region: Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

New Contract Actions

58. San Carlos-Apache Tribe, CAP, Arizona: Agreement among the United States, Salt River Project Agricultural Improvement and Power District, and Salt River Valley Water Users' Association for exchange of up to 14,000 acre-feet of Black River Water for CAP water.

59. San Carlos-Apache Tribe, Arizona: Agreement among the San Carlos-Apache Tribe, the United States, and Phelps Dodge Corporation for the lease of Black River Water.

60. Arizona Water Banking Authority and Southern Nevada Water Authority, BCP, Arizona and Nevada: Contract to provide for the interstate contractual distribution of Colorado River water through the offstream storage of Colorado River water in Arizona, the development by the Arizona Water Banking Authority of intentionally created unused apportionment, and the release of this intentionally created unused apportionment by the Secretary of the Interior to Southern Nevada Water Authority.

Discontinued Contract Action

55. Cibola Valley IDD, BCP, Arizona: Amendment to the District's Colorado River water delivery contract to permanently reduce the District's water entitlement by approximately 600 acre-feet per year to facilitate the transfer of such water to a golf course development in the Lake Havasu area. New or amendatory Colorado River water delivery contract with the entitlement holder for the transferred water.

Completed Contract Actions

34. Bureau of Land Management, BCP, California: Agreement for 1,000 acre-feet

per year of Colorado River water in accordance with Secretarial Reservation.

54. Miscellaneous PPR No.11, BCP, California: Assign the contract from Dickman et al. to Sonny Gowan.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–4419.

Completed Contract Action

1. Individual irrigators, M&I, and miscellaneous water users, Initial Units, CRSP; Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 10 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(f) Margarett W. Furey, Wayne N. Aspinall Unit, CRSP, Colorado: Contract for 1 acre-foot to support augmentation plan. R&D Investment has filed an application with the Division 4 Water Court of the State of Colorado seeking decree for a domestic well to serve the Ms. Furey domestic in-house residential use, lawn and garden irrigation, pond evaporation, and stock watering.

Great Plains Region: Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247–7730.

New Contract Actions

37. North Fork Valley Ditch (Individual), Shoshone Project, Buffalo Bill Dam, Wyoming: Exchange water service contract not to exceed 1,000 acre-feet of water to service 855 acres.

38. Virginia L. and Earl K. Sauerwein (Individual), Shoshone Project, Buffalo Bill Dam, Wyoming: Exchange water service contract not to exceed 100 acre-feet of water to service 126 acres.

39. Denise J. Evans (Individual), Shoshone Project, Buffalo Bill Dam, Wyoming: Exchange water service contract not to exceed 100 acre-feet of water to service 48.5 acres.

40. Glendo Unit, P–SMBP, Wyoming: Initiate negotiations for renewal of long-term water service contracts for Burbank Ditch, New Grattan Ditch Company, Torrington ID, Lucerne Canal and Power Company, and Wright and Murphy Ditch Company.

41. Glendo Unit, P–SMBP, Nebraska.: Initiate negotiations for renewal of long-term water service contracts for Bridgeport, Enterprise, and Mitchell ID, and Central Nebraska Public Power and Irrigation District.

Modified Contract Actions

7. Northern Cheyenne Indian Reservation, Yellowtail Unit, Lower Bighorn Division, P–SMBP, Montana: The Northern Cheyenne Reserved Water Rights Settlement Act of 1992 allocates to the Tribe, 30,000 acre-feet of water per year stored at Bighorn Reservoir, Montana. In accordance with section 9 of the Act, Reclamation and the Tribe must negotiate a management agreement for the water. The Tribe is to pay the United States both capital and O&M costs for water the Tribe uses or sells from this storage for M&I purposes. Reclamation and the Tribe are continuing to negotiate the terms of the Agreement. A date for execution has not been scheduled.

9. Angostura ID, Angostura Unit, P–SMBP, South Dakota: The District had a contract for water service which expired on December 31, 1995. An interim 3-year contract provided for a continuing water supply and the District to operate and maintain the dam and reservoir. The proposed long-term contract would provide a continued water supply for the District and the District's continued O&M of the facility. A BON for another 3-year interim contract has been submitted for approval.

11. P–SMBP, Kansas and Nebraska: Anticipate executing renewal of long-term water supply contracts with Kansas-Bostwick, Nebraska-Bostwick, Frenchman Valley, Frenchman-Cambridge, and Almena IDs by the end of July 2000. The renewed long-term water service contracts will take effect January 1, 2001.

14. P–SMBP, Kansas: Water service contracts with the Kirwin and Webster IDs in the Solomon River Basin in Kansas will be extended for a period of 4 years in accordance with Public Law 104–326 enacted October 19, 1996. Water service contracts will be renewed prior to expiration. The 4-year contract extension for Kirwin ID has been executed.

21. Lower Marias Unit, P–SMBP, Montana: Water service contract expired June 1997. Initiating renewal of existing contract for 25 years for up to 480 acre-feet of storage from Tiber Reservoir to irrigate 160 acres. Received approved BON from the Commissioner. Currently developing the contract and consulting with the Tribes regarding the Water Rights Compact. A 1-year interim contract has been issued to continue delivery of water until the necessary actions can be completed to renew a long-term contract. Another 1-year interim contract will be issued to continue the delivery of water until the long-term renewal process can be completed.

22. Lower Marias Unit, P–SMBP, Montana: Initiating 25-year water service contract for up to 750 acre-feet of storage from Tiber Reservoir to irrigate 250 acres. A 1-year temporary contract has been issued to allow additional time to complete necessary actions required for the long-term contract. Another 1-year temporary contract will be issued to continue the delivery of water until the long-term renewal process can be completed.

23. Lower Marias Unit, P–SMBP, Montana: Water service contract expired May 31, 1998. Initiating renewal of the long-term water service contract to provide 4,570 acre-feet of storage from Tiber Reservoir to irrigate 2,285 acres. A 1-year interim contract has been issued to continue delivery of water until the necessary actions can be completed to renew the long-term contract. Another 1-year temporary contract will be issued to continue the delivery of water until the long-term renewal process can be completed.

25. Savage ID, P–SMBP, Montana: An interim contract has been entered into with the District. The District is currently seeking title transfer. The contract is subject to renewal on an annual basis pending outcome of the title transfer process. A second interim contract will be entered into with the District pending possible long-term renewal of the water service portion of the contract.

34. Tom Green County and Improvement District No. 1, San Angelo Project, Texas: The irrigation district is requesting a deferment of its 2000 construction payment. A BON has been submitted for approval.

Completed Contract Action

14. P–SMBP, Kansas: Water service contracts with the Kirwin and Webster IDs in the Solomon River Basin in Kansas will be extended for a period of 4 years in accordance with Public Law 104–326 enacted October 19, 1996. Water service contracts will be renewed prior to expiration. The 4-year contract extension for Kirwin ID has been executed.

Dated: April 12, 2000.

Wayne O. Deason,

Associate Director, Office of Policy.

[FR Doc. 00–9739 Filed 4–18–00; 8:45 am]

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VOL 65 ISS 76 AP 19 2000 UMI

DEPARTMENT OF JUSTICE

Civil Rights Division; Office of Special Counsel for Immigration Related Unfair Employment Practices; Immigration Related Employment Discrimination: Public Education Grants

AGENCY: Office of Special Counsel for Immigration Related Unfair Employment Practices, Civil Rights Division, U.S. Department of Justice.

ACTION: Notice of availability of funds and solicitation for grant applications.

SUMMARY: The Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) announces the availability of funds for grants to conduct public education programs about the rights afforded potential victims of employment discrimination and the responsibilities of employers under the antidiscrimination provisions of the Immigration and Nationality Act (INA), 8 U.S.C. 1324b.

It is anticipated that a number of grants will be competitively awarded to applicants who can demonstrate a capacity to design and successfully implement public education campaigns to combat immigration related employment discrimination. Grants will range in size from $40,000 to $100,000.

OSC will accept proposals from applicants who have access to potential victims of discrimination or whose experience qualifies them to educate workers, employers and the general public about the antidiscrimination provisions of the INA. OSC welcomes proposals from diverse nonprofit organizations such as local, regional or national ethnic and immigrants' rights advocacy organizations, labor organizations, trade associations, industry groups, professional organizations, or other nonprofit entities, including state and local government agencies, providing information services to potential victims of discrimination and/or employers.

APPLICATION DUE DATE: June 5, 2000.

FOR FURTHER INFORMATION CONTACT: Pattia McEvoy, Public Affairs Specialist, Office of Special Counsel for Immigration Related Unfair Employment Practices, 1425 New York Ave., NW, Suite 9000, P.O. Box 27728, Washington, DC 20038–7728. Tel. (202) 616–5594, or (202) 616–5525 (TDD for the hearing impaired). OSC's e-mail address is: osc.crt@usdoj.gov

SUPPLEMENTARY INFORMATION: The Office of Special Counsel for Immigration on Related Unfair Employment Practices of the Civil Rights Division of the Department of Justice announces the availability of funds to conduct cost-effective public education programs concerning the antidiscrimination provisions of INA. Funds will be awarded to selected applicants who propose cost-effective ways of educating employers, workers covered by this statute, and/or the general public.

Background

The Immigration and Nationality Act makes knowingly hiring unauthorized workers unlawful, and requires employers to verify the identity and work authorization of all new employees. Employers who violate this law are subject to sanctions, including fines and possible criminal prosecution.

The INA also prohibits employers of four or more employees from discriminating on the basis of citizenship status or national origin in hiring, firing, recruitment or referral for a fee, and prohibits employers from engaging in document abuse in the employment eligibility verification process.

U.S. citizens and certain classes of work authorized individuals are protected from *citizenship status discrimination*. Protected non-citizens include:

- Temporary Residents;
- Legal Permanent Residents;
- Refugees;
- Asylees.

Citizens and *all* work authorized individuals are protected from *discrimination on the basis of national origin*. However, this prohibition applies only to employers with four to fourteen employees. National origin discrimination complaints against employers with fifteen or more employees remain under the jurisdiction of the Equal Employment Opportunity Commission pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, *et seq.*

In addition, under the *document abuse provision* of the law, employers must accept all forms of work authorization and proof of identity allowed by the Immigration and Naturalization Service (INS) for completion of the Employment Eligibility Verification (I–9) Form. Employers may not prefer or require one form of documentation over another for hiring purposes. Requiring more or specific documents to prove identity and work authorization may constitute document abuse.

OSC is responsible for receiving and investigating discrimination charges and, when appropriate, filing complaints with specially designated administrative law judges. OSC also initiates independent investigations of possible immigration related job discrimination.

While OSC has established a record of vigorous enforcement, studies by the U.S. General Accounting Office and other sources have shown that there is an extensive lack of knowledge on the part of protected individuals and employers about the antidiscrimination provisions of the INA. Enforcement cannot be effective if potential victims of discrimination are not aware of their rights. Moreover, discrimination can never be eradicated so long as employers are not aware of their responsibilities.

Purpose

OSC seeks to educate both workers and employers about their rights and responsibilities under the antidiscrimination provisions of INA. Because previous grantees have developed a wealth of materials (e.g., brochures, posters, booklets, information packets and videos) to educate these groups, OSC has determined that the main focus of the program should be on the *actual delivery* of these materials to educate further both potential victims and employers. OSC seeks proposals that will use *existing materials* effectively to educate large numbers of workers or employers about exercising their rights or fulfilling their obligations under the antidiscrimination provisions. OSC will, of course, consider any proposal that articulates and substantiates other creative means of reaching these populations.

Program Description

The program is designed to develop and implement cost-effective approaches to educate potential victims of employment discrimination about their rights and to educate employers about their responsibilities under INA's antidiscrimination provisions. *Applications may propose to educate potential victims only, employers only, or both in a single campaign.* Program budgets must include the travel, lodging and other expenses necessary for up to two program staff members to attend the mandatory OSC grantee training (2 days) held in Washington, DC at the beginning of the grant period (late Autumn). Proposals should outline the following key elements of the program:

Part I: Intended Audience

The educational efforts under the grant should be directed to (1) work-authorized non-citizens who are protected individuals, since this group is especially vulnerable to employment discrimination; (2) those citizens who

are most likely to become victims of employment discrimination; and/or (3) employers, especially small businesses. The proposals should define the characteristics of the work authorized population or the employer group(s) intended to be the focus of the educational campaign, and the applicant's qualifications to reach credibly and effectively large segments of the intended audiences(s).

The proposals should also detail the reasons for focusing on each group of protected individuals or employers by describing particular needs or other factors to support the selection. In defining the campaign focuses and supporting the reasons for the selection, applicants may use census data, studies, surveys, or any other sources of information of generally accepted reliability.

Part II: Campaign Strategy

We encourage applicants to devise effective and creative means of public education and information dissemination that are specifically designed to reach the widest possible intended audience. Those applicants proposing educational campaigns addressing potential victims of discrimination should keep in mind that some of the traditional methods of public communication may be less than optimal for educating members of national or linguistic groups that have limited community-based support and communication networks.

Some grantees who are conducting citizenship campaigns have, in the past, combined those efforts and resources with the INA antidiscrimination education campaigns in order to maximize the scope and breadth of the project and to reach a larger number of individuals. Applicants proposing to combine these efforts, should discuss how the programs will interact and how the budgets will be administered.

Proposals should discuss the components of the campaign strategy, detail the reasons supporting the choice of each component, and explain how each component will effectively contribute to the overall objective of cost-effective dissemination of useful and accurate information to a wide audience of protected individuals or employers. Discussions of the campaign strategies and supporting rationale should be clear, concise, and based on sound evidence and reasoning.

Since there presently exists a wealth of materials for use in educating the public, applicants should include in their budget proposals the costs for distribution of materials received from OSC or from current/past OSC grantees. *To the extent that applicants believe the development of original materials particularly suited to their campaign is necessary, their proposal should articulate in detail the circumstances requiring the development of such materials. All such materials must be approved by OSC prior to production to ensure legal accuracy and proper emphasis. Proposed revisions/translations of OSC-approved materials must also be submitted for clearance. All information distributed should also identify OSC as a source of assistance, information and action, and include the correct address and telephone numbers of OSC, (including the toll-free numbers, TDD numbers) and OSC e-mail and Internet addresses.*

Part III: Evaluation of the Strategy

One of the central goals of this program is determining what public education strategies are most effective and thus, should be included in future pubic education efforts. Therefore, it is crucial that the methods of evaluating the campaign strategy and public education materials and their results be carefully detailed. A full evaluation of a project's effectiveness is due within 60 days of the conclusions of a campaign. Interim evaluation/activity reports are due at least quarterly, or more frequently as needed throughout the grant year.

Selection Criteria

The final selection of grantees for award will be made by the Special Counsel for Immigration Related Unfair Employment Practices.

A panel made up of OSC staff will review and rate the applications and make recommendations to the Special Counsel regarding funding. The panel's results are advisory in nature and not binding on the Special Counsel. *Letters of support, endorsement, or recommendation are not part of the grant application process and will not be considered.*

In determining which applications to fund, OSC will consider the following (based on a one-hundred point scale):

1. Program Design (50 Points)

Sound program design and cost-effective strategies for educating the intended population are imperative. Consequently, areas that will be closely examined include the following:

a. Evidence of in-depth knowledge of the goals and objectives of the project. (15 points)

b. Selection and definition of the intended audience(s) for the campaign, and the factors that support the selection, including special needs, and the applicant's qualifications to reach effectively the intended audience(s). (10 points)

c. A cost-effective campaign strategy for educating employers and/or members of the protected class, with a justification for the choice of strategy, including the degree to which the campaign has prevented immigration related unfair employment practices and has reached individuals with such claims. (15 points)

d. The evaluation methods proposed by the applicant to measure the effectiveness of the campaign and their precision in indicating to what degree the campaign is successful. (10 points)

2. Administrative Capability (20 Points)

Proposals will be rated in terms of the capability of the applicant to define the intended audience, reach it and implement the public education and evaluation components of the campaign:

a. Evidence of proven ability to provide high quality results. (10 points)

b. Evidence that the applicant can implement the campaign, and complete the evaluation component within the time lines provided.

Note: OSC's experience during previous grant cycles has shown that a number of applicants choose to apply as a consortium of individual entities; or, if applying individually, propose the use of subcontractors to undertake certain limited functions. It is essential that these applicants demonstrate the proven management capability and experience to ensure that, as lead agency, they will be directly accountable for the successful implementation, completion, and evaluation of the project. (10 points)

3. Staff Capability (10 Points)

Applications will be evaluated in terms of the degree to which:

a. The duties outlined for grant-funded positions appear appropriate to the work that will be conducted under the award. (5 points)

b. The qualifications of the grant-funded positions appear to match the requirements of these positions. (5 points)

Note: If the grant project manager or other member of the professional staff is to be hired later as part of the grant, or should there be any change in professional staff during the grant period, hiring is subject to review and approval by OSC at that time.

4. Previous Experience (20 Points)

The proposals will be evaluated on the degree to which the applicant demonstrates that it has successfully carried out programs or work of a similar nature in the past.

Eligible Applicants

This grant competition is open to nonprofit organizations, including labor organizations and state and local government agencies.

Grant Period and Award Amount

It is anticipated that several grants will be awarded and will range in size from $40,000 to $100,000.

Publication of this announcement does not require OSC to award any specific number of grants, or to obligate all or any part of available funds. The period of performance will be twelve months from the date of the grant award, in most cases beginning October 1, 2000.

Application Deadline

All applications must be received by 6:00 PM EDT, on _____. If using regular first-class mail, send to: Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, P.O. Box 27728, Washington, D.C. 20038–7728. If using overnight or priority mail, send to: Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, 1425 New York Ave., N.W., suite 9000, Washington, D.C. 20005. *Applications may not be submitted via facsimile machine.*

Application Requirements

Applicants should submit an original and two (2) copies of their completed proposal by the deadline established above. All submissions must contain the following items in the order listed below:

1. A completed and signed Application for Federal Assistance (Standard Form 424). **Note:** the Catalogue of Federal Domestic Assistance number is 16.110 and the title is, Education & Enforcement of the Antidiscrimination Provision of the Immigration and Nationality Act (box #10 of the SF 424).

2. OJP Form 4061/6 (Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements).

3. OJP Form 4000/3 (Assurances).

4. An abstract of the full proposal, not to exceed one page.

5. A program narrative of not more than fifteen (15) double-spaced typed pages that includes the following:

a. A clear statement describing the approach and strategy to be used to complete the tasks identified in the program description;

b. A clear statement of the proposed goals and objectives, including a listing of the major events, activities, products and timetables for completion;

c. the proposed staffing plan (**Note:** If the grant project manager or other professional staff member is to be hired later as part of the grant, or should there be a change in professional staff during the grant period, hiring is subject to review and approval by OSC at that time); and

d. Description of how the project will be evaluated.

6. A proposed budget outlining all direct and indirect costs for personnel, fringe benefits, travel, equipment, supplies, subcontracts, and a short narrative justification of each budgeted line item cost. If an indirect cost rate is used in the budget, then a copy of a current fully executed agreement between the applicant and the cognizant Federal agency must accompany the budget. **Note:** Program budgets must include the travel, lodging and other expenses necessary for not more than two program staff members to attend the mandatory OSC grantee training (2 days) held in Washington, D.C. at the beginning of the grant period (late Autumn).

7. Copies of resumes of the professional staff proposed in the budget.

In order to facilitate handling, please do not use covers, binders or tabs.

Application forms may be obtaining by writing or telephoning: Office of Special Counsel for Immigration Related Unfair Employment Practices, P.O. Box 27728, Washington, D.C. 20038–7728. Tel. (202) 616–5594, or (202) 616–5525 (TDD for the hearing impaired). This announcement will also appear on the World Wide Web at www.usdoj.gov/cert/osc/.

Approved: April 13, 2000.

Robin M. Stutman,

Acting Special Counsel, Office of Special Counsel for Immigration, Related Unfair Employment Practices.

[FR Doc. 00–9735 Filed 4–18–00; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under The Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on March 14, 2000, a complaint and a proposed consent decree in *United States and the State of Colorado* v. *Beazer East, Inc. and Butala Construction Company,* Civil Action No. 00–561, were lodged with the United States District Court for the District of Colorado.

In this action, the United States seeks recovery of approximately $631,000 in unreimbursed response costs incurred in relation to Operable Unit #2 of the Smeltertown Superfund Site, located near Salida, Colorado, under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act. The State of Colorado seeks recovery of response costs to be incurred at the Site. Under the proposed decree, the defendants will implement a remedial action selected by the United States Environmental Protection Agency, which is designed to prevent the further migration of hazardous substances at Operable Unit #2, and will reimburse all of EPA's past costs, as well as all of EPA's and the State of Colorado's future response costs incurred at Operable Unit #2.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and State of Colorado* v. *Beazer East, Inc. and Butala Construction Company,* D.J. Ref. 90–11–3–1522.

The propose consent decrees may be examined at the Office of the United States Attorney, 1961 Stout Street, 11th Floor, Drawer 3608, Denver, CO 80294; at U.S. EPA Region VIII, 999 18th Street, Denver, Colorado 80202; and at the Consent Decree Library, P.O. U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $20.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–9743 Filed 4–18–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on April 7, 2000, a proposed Consent Decree in *United States* v. *Fleetwood Industries, Inc., et al.* Civil Action No. 00–CV–1818, was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action the United States sought the reimbursement of response costs in connection with the Berks Landfill Superfund Site in Spring Township, Pennsylvania ("the Site") pursuant to

the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.* The Consent Decree resolves the United States' claims against Fleetwood Industries, Inc., Herre Brothers, Inc., Heyco Metals, Inc., Kief Industries, Inc., Charles Koenig Wheel Alignment Service and Garage, and Brian R. Schlappich, Inc. for response costs incurred as a result of the release or threatened release of hazardous substances at the Site. These parties will pay the United States $82,297.77.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044, and should refer to *United States* v. *Fleetwood Industries, Inc., et al.*, D.J. Ref. 90–11–2–1347.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, Pennsylvania 19106, or at the Region 3 Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103. A copy of the Consent Decree may also be obtained by mail by requesting a copy from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please enclose a check in the amount of $8.75 (35 pages at 25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–9740 Filed 4–18–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

Notice is hereby given that on March 30, 2000, a proposed Consent Decree in *United States* v. *Morton International, Inc.*, Case No. 1:00–CV–220 was lodged in the United States District Court for the Western District of Michigan. The Complaint filed by the United States pursuant to sections 301 and 309 of the Clean Water Act ("Act"), 33 U.S.C. 1311 and 1319 alleges that during the period November, 1994 through January 1998, at its magnesium-based chemical manufacturing facility in Manistee, Michigan, Morton discharged into Manistee Lake effluent which failed to comply with the effluent limits of its National Pollutant Discharge Elimination System Permit, in violation of its Permit and the Act. Under the proposed Consent Decree Morton would pay a civil penalty of $75,500 and perform Supplemental Environmental Projects in settlement of the civil violations alleged in the Complaint.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States* v. *Morton International, Inc.*, D.J. Ref. No. 90–5–1–1–06486.

The proposed Consent Decree may be examined at the United States Attorney for the Western District of Michigan, 330 Ionia Avenue, NW, 5th Floor, Grand Rapids, MI 49503 and the United States Environmental Protection Agency, Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604. A copy of the Consent Decree may also be obtained by regular mail addressed to the Department of Justice Consent Decree Library, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. For a copy of the Consent Decree, please enclose a check in the amount of $8.00 (25 cents per page reproduction costs) payable to Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–9741 Filed 4–18–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with the Departmental Policy, 28 CFR 50.7, notice is hereby given that on March 24, 2000, the United States lodged a proposed consent decree with the United States District Court for the Western Disctrict of Wisconsin, in *United States* v. *Redi-Serve Foods Limited Partnership*, Case No. 00–C–0166–C (W.D. Wis. 2000), under Section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b). The proposed consent decree resolves certain claims of the United States against Redi-Serve Foods Limited Partnership ("Redi-Serve"), arising out of Redi-Serve's meat processing facility located at 1200 Industrial Drive in Fort Atkinson, Wisconsin.

Under the proposed Consent Decree, Redi-Serve will pay the United States a $195,000 civil penalty. The proposed Consent Decree requires Redi-Serve to retain a certified opacity observer to perform a daily stack inspection and report to the United States Environmental Protection Agency ("U.S. EPA") any visible emission readings which exceed 20%. The proposed Consent Decree also requires Redi-Serve to report to U.S. EPA any temperature excursions (of minus 25 degrees Fahrenheit from the last stack test), malfunctions or down times for the thermal oxidizer. The proposed Consent Decree will terminate eighteen months after its entry by the United States District Court for the Western District of Wisconsin.

The Department of Justice will accept written comments relating to the proposed Consent Decree for 30 days after publication of this Notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States* v. *Redi-Serve Foods Limited Partnership*, Case No. 00–C–0166 C (W.D. Wis. 2000), DOJ No. 90–5–2–1–2188. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Western District of Wisconsin, Madison, Wisconsin, and at the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed Consent Decree may be obtained by mail from the U.S. Department of Justice, Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy, please enclose a check for reproduction costs (at 25 cents per page) in the amount of $3.50 for the Decree, payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–9742 Filed 4–18–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. The Earthgrains Company, Specialty Foods Corporation, and Metz Holdings, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the Northern District of Illinois, Chicago, IL, in *United States* v. *The Earthgrains Company, Specialty Foods Corporation, and Metz Holdings, Inc.*, Civ. No. 00 CV 1687 (J. Bucklo).

On March 20, 2000, the United States filed a Complaint, which sought to enjoin Earthgrains from acquiring Metz or from entering into or carrying any agreement or understanding the effect of which would be to combine the businesses or assets of Earthgrains and Metz. The Complaint alleged that Earthgrains's acquisition of Metz would lessen competition substantially in the sale of white pan bread though retail outlets in violation of section 7 of the Clayton Act, 15 U.S.C. 18, in many markets in the Midwest, including Kansas City, MO; Omaha, NE; Des Moines, IA; and many smaller communities in Illinois, Iowa, Kansas, Missouri, and Nebraska.

The proposed Final Judgment, also filed on March 20, 2000, requires Earthgrains and Metz to divest two popular brands of white pan bread, Colonial and Taystee, and such other assets (*e.g.*, Earthgrains's Des Moines bakery, bread routes, customer lists, thrift stores, depots, warehouses, and trucks) as the government determines is necessary in order to create an effective and viable competitor in the sale of white pan bread in the geographic areas in which the acquisition would adversely affect competition. A Hold Separate Stipulation and Order requires the defendants to maintain, prior to divestiture, the competitive independence of many of the operations that must be sold under the Judgment.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, D.C. 20530 [telephone: (202) 307–0924].

Constance K. Robinson,
Director of Operations & Merger Enforcement.

[Civil No: 00C 1687]

Judge Bucklo,
Magistrate Judge Nolan.

Hold Separate Stipulation and Order

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that

I. Definitions

As used in this Hold Separate Stipulation and Order:

A. "Earthgrains" means defendant The Earthgrains Company, a Delaware corporation with its headquarters in St. Louis, Missouri, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. "Specialty Foods" means defendant Specialty Foods Corporation, a Delaware corporation with its headquarters in Deerfield, Illinois, and includes its successors and assigns, and its subsidiaries (including defendant Metz Holdings, Inc. or "Metz"), divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Acquirer" means the entity or entities to whom defendants divest the Relevant Baking Assets.

D. "Relevant Banking Assets" means:

1. A perpetual, royalty-free, freely assignable and transferable, and exclusive license to make, have made, use or sell white pan bread in the Relevant Territory under each of the Relevant Labels; and

2. Each of the Additional Baking Assets.

E. "Additional Baking Assets" means:

1. Earthgrains' Des Moines, IA bakery;

2. A perpetual, royalty-free, freely assignable and transferable, and exclusive license to make, have made, use or sell under each of the Relevant Labels any bread, bun or roll other than white pan bread in the Relevant Territory;

3. All trucks and other vehicles, depots and warehouses, and thrift stores used by defendants in the sale and distribution of bread, buns and rolls under each of the Relevant Labels in the Relevant Territory; and

4. All route books, customer lists, contracts and accounts used by defendants in the sale and distribution of bread, buns and rolls under each of the Relevant Labels in the Relevant Territory.

F. "Label" means all legal rights associated with a brand's trademarks, trade names, copyrights, service names, service marks, intellectual property, designs, and trade dress; the brand's trade secrets; the brand's technical information and production know-how, including, but not limited to, recipes and formulas used to produce bread currently sold under the brand, and any improvements to, or line extensions thereof; and packaging, marketing and distribution know-how and documentation, such as customer lists and route maps, associated with the brand.

G. "Relevant Labels" means:

(1) Earthgrain's Colonial label; and

(2) Metz's Taystee label (a license to which label may be divested to an Acquirer without prior approval of the licensor, Interstate Brands West Corporation, see the letter hereto attached as an appendix to the proposed Final Judgment, Exhibit A).

H. "Relevant Territory" means:

(1) Every county in the state of Iowa;

(2) The following counties in the state of Nebraska: Burt, Butler, Cass, Colfax, Cuming, Dodge, Douglas, Gage, Jefferson, Johnson, Lancaster, Nemaha, Otoe, Pawnee, Platte, Richardson, Saline, Sarpy, Saunders, Stanton, Seward, and Washington;

(3) The following counties in the state of Kansas: Atchison, Brown, Clay, Dickinson, Doniphan, Douglas, Franklin, Geary, Jackson, Jefferson, Johnson, Leavenworth, Lyon, Marshall, Miami, Morris, Nemaha, Osage, Pottawatomie, Riley, Shawnee, Washington, Waubaunsee, and Wyandotte;

(4) The following counties in the state of Illinois: Carroll, Henry, Mercer, Rock Island, and Whiteside; and

(5) The following counties in the state of Missouri: Andrew, Atchison, Buchanan, Caldwell, Carroll, Cass, Clay, Clinton, Daviess, De Kalb, Gentry, Grundy, Harrison, Holt, Jackson, Lafayette, Livingston, Mercer, Nodaway, Pettis, Platte, Ray, Saline, and Worth.

I. "Earthgrain's Des Moines, IA bakery" means the bakery located at 1225–1303 2nd Avenue, Des Moines, IA 50314, and all of Earthgrain's rights, titles and interests in any tangible assets (*e.g.*, land, buildings, other real property and improvements, fixtures, machinery, tooling, fixed assets, personal property, inventory, office furniture, material, supplies and equipment) relating thereto, including all fee and leasehold and renewal rights in such assets or any

options to purchase any adjoining property.

J. "White Pan Bread" means white bread baked in a pan, but shall not include hamburger and hot dog buns, or variety breads such as French bread and Italian bread.

II. Objectives

The Final Judgment filed in this case is meant to ensure defendants' prompt divestitures of the Relevant Baking Assets for the purpose of establishing one or more viable competitors in the production and sale of white pan bread in the Relevant Territory in order to remedy the effects that the United States alleges would otherwise result from Earthgrain's acquisition of Metz. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that the Relevant Baking Assets remain independent, economically viable, and ongoing business concerns that will remain independent and uninfluenced by Earthgrains, and that competition is maintained during the pendency of the ordered divestitures.

III. Jurisdiction and Venue

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District for the Northern District of Illinois, Eastern Division.

IV. Compliance with and entry of Final Judgment

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time from all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Defendants represents that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V. Hold Separate Provisions

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and continue to operate the Relevant Baking Assets as independent competitive businesses, with management, sales and operations of such assets held entirely separate, distinct and apart from those of Earthgrains's other operations. Earthgrains shall not coordinate its production, marketing, or terms of sale of any products with those produced by or sold under any of the Relevant Baking Assets. Within twenty (20) days after the entry of the Hold Separate Stipulation and Order, defendants will inform the United States of the steps defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Earthgrains shall take all steps necessary to ensure that (1) the Relevant Baking Assets will be maintained and operated as independent, ongoing, economically viable and active competitors in the production and sale of bread; (2) management of the Relevant Baking Assets will not be influenced by Earthgrains (or Metz); and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning production, distribution or sales of products by or under any of the Relevant Baking Assets will be kept separate and apart from Earthgrains's other operations. Earthgrains influence over the production and sale of products utilizing the Relevant Baking Assets shall be limited to that necessary to carry out its obligations under this Hold Separate Stipulation and Order and the proposed Final Judgment. Earthgrains may, however, receive historical aggregate financial information (excluding capacity utilization or pricing information relating to the Relevant Baking Assets to the extent necessary to allow Earthgrains to prepare financial reports, tax returns, and other legally required reports).

C. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the products produced by or sold under Relevant Baking Assets, and shall maintain at 1999 or previously approved levels for 2000, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Relevant Baking Assets and otherwise maintain the Relevant Baking Assets as active competitors in the Relevant Territory.

D. Earthgrains shall take all steps necessary to ensure that its Des Moines, IA bakery will be maintained and operated as an independent, ongoing, economically viable business concern.

E. Earthgrains shall provide sufficient working capital and lines and sources of credit to continue to maintain the Relevant Baking Assets as economically viable and competitive, ongoing businesses, consistent with the requirements of Section V (A) and (B).

F. Earthgrains shall take all steps necessary to ensure that its Des Moines, IA bakery is fully maintained in operable condition at no less than its current capacity and sales, and shall maintain and adhere to normal repair and maintenance schedules for the Relevant Baking Assets.

G. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Relevant Baking Assets.

H. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues

and income of products produced, distributed or sold utilizing the Relevant Baking Assets.

I. Except in the ordinary course of business or as otherwise consistent with this Hold Separate Stipulation and Order, defendants shall not hire, transfer, terminate, or otherwise alter the salary or employment agreements for any Earthgrains, Metz, or Specialty Foods employee who, on the date of defendants' signing of this Hold Separate Stipulation and Order, either: (1) Works in Earthgrains's Des Moines, IA bakery or in the production, distribution or sale of bread, buns or rolls under a Relevant Baking assets or (2) is a member of management referenced in Section V(J) of this Hold Separate Stipulation and Order.

J. Until such time as the Relevant Baking Assets are divested pursuant to the terms of the Final Judgment, the Relevant Baking Assets shall be managed by Mr. Paul Johnson, Vice President for Earthgrains's Iowa/Nebraska Zone. Mr. Johnson shall have complete managerial responsibility for the Relevant Baking Assets, subject to the provisions of this Order and the proposed Final Judgment. In the event that Mr. Johnson is unable to perform his duties, defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should defendants fail to appoint a replacement acceptable to the United States within ten (10) working days, the United States shall appoint a replacement.

K. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to a Acquirer or Acquirers acceptable to the United States.

L. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestitures required by the proposed Final Judgment or until further order of the Court.

Dated: March 17, 2000.

For Plaintiff, United States of America:

Anthony E. Harris,

Esquire, IL Bar #1133713, U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20005, (202) 307–6583.

Respectfully submitted,

For Defendant, The Earthgrains Company:

Roxanne E. Henry;

Esquire, DC Bar #351569, Howrey Simon Arnold & White, 1299 Pennsylvania Avenue, NW, Washington, DC 20005, (202) 383–6503.

For Defendants, Specialty Foods Inc. and Metz Holdings, Inc:

Roxanne E. Henry;

Esquire, DC Bar #351569, Howrey Simon Arnold & White, 1299 Pennsylvania Avenue, NW, Washington, DC 20005, (202) 383–6503.

Order

It is so ordered by the Court, this 20th day of March 2000.

United States District Judge

Final Judgment

Whereas, plaintiff, the United States of America, having filed its Compliant in this action on March 20, 2000 and plaintiff and defendants, The Earthgrains Company, Specialty Foods Corporation, and Metz Holdings, Inc., by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture by defendants of the Relevant Baking Assets and, if necessary, the Additional Relevant Baking Assets to assure that competition is not substantially lessened;

And whereas, the United States requires defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Compliant;

Exhibit A

And whereas, defendants have represented to the United States that the divestitures ordered herein can and will be made and that they will later raise no claims of hardship, mistake or difficulty as grounds for asking the Court to modify any of the injunctive provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered, adjudged, and decreed as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

II. Definition

As used in this Final Judgment:

A. "Earthgrains" means defendant The Earthgrains Company, a Delaware corporation with its headquarters in St. Louis, Missouri, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

B. "Specialty Foods" means defendant Specialty Foods Corporation, a Delaware corporation with its headquarters in Deerfield, Illinois, and includes its successors and assigns, and its subsidiaries (including defendant Metz Holdings, Inc. or "Metz"), divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Acquirer" means the entity or entities to whom defendants divest the Relevant Baking Assets.

D. "Relevant Baking Assets" means:

1. A perpetual, royalty-free, freely assignable and transferrable, and exclusive license to make, have made, use or sell white pan bread in the Relevant Territory under each of the Relevant Labels; and

2. Such Additional Baking assets as the United States, in its sole discretion, determines may be reasonably necessary for an Acquirer or Acquirers to complete effectively and viably in the sale of white pan bread under each of the Relevant Labels in the Relevant Territory.

E. "Additional Baking Assets" means:

1. Earthgrains's Des Moines, IA bakery;

2. A perpetual, royalty-free, freely assignable and transferrable, and exclusive license to make, have made, use or sell under each of the Relevant Labels any bread, buns or rolls other than white pan bread in the Relevant Territory.

3. All trucks and other vehicles, depots and warehouses, and thrift stores used by defendants in the sale and distribution of bread, buns or rolls under each of the Relevant Labels in the Relevant Territory; and

4. All route books, customer lists, contracts and accounts used in defendants' distribution and sale of bread, buns or rolls under each of the Relevant Labels in the Relevant Territory.

F. "Label" means all legal rights associated with a brand's trademarks, trade names, service names, service

marks, intellectual property, copyrights, designs, and trade dress; the brand's trade secrets; the brand's technical information and production know-how, including, but not limited to, recipes and formulas used to produce bread currently sold under the brand, and any improvements to, or line extensions thereof; and packaging, marketing and distribution know-how and documentation, such as customer lists and route maps, associated with the brand.

G. "Relevant Labels" means:

(1) Earthgrains's Colonial label; and

(2) Metz's Taystee label (a license to which label may be divested to an Acquirer without prior approval of the licensor, Interstate Brands West Corporation, *see* the letter attached hereto as Appendix A).

H. "Relevant Territory" means:

(1) Every county in the state of Iowa;

(2) The following counties in the state of Nebraska: Burt, Butler, Cass, Colfax, Cuming, Dodge, Douglas, Gage, Jefferson, Johnson, Lancaster, Nemaha, Otoe, Pawnee, Platte, Richardson, Saline, Sarpy, Saunders, Stanton, Seward, and Washington;

(3) The following counties in the state of Kansas: Atchison, Brown, Clay, Dickinson, Doniphan, Douglas, Franklin, Geary, Jackson, Jefferson, Johnson, Leavenworth, Lyon, Marshall, Miami, Morris, Nemaha, Osage, Pottawatomie, Riley, Shawnee, Washington, Waubaunsee, and Wyandotte;

(4) The following counties in the state of Illinois: Carroll, Henry, Mercer, Rock Island, and Whiteside; and

(5) The following counties in the state of Missouri: Andrew, Atchison, Buchanan, Caldwell, Carroll, Cass, Clay, Clinton, Daviess, De Kalb, Gentry, Grundy, Harrison, Holt, Jackson, Johnson, Lafayette, Livingston, Mercer, Nodaway, Pettis, Platte, Ray, Saline, and Worth.

I. "Earthgrains's Des Moines, IA bakery" means the bakery located at 1225–1303 2nd Avenue, Des Moines, IA 50314, and all of Earthgrains's rights, titles and interests in any tangible assets (*e.g.*, land, buildings, other real property and improvements, fixtures, machinery, tooling, fixed assets, personal property, inventory, office furniture, material, supplies and equipment) relating thereto, including all fee and leasehold and renewal rights in such assets or any options to purchase any adjoining property.

J. "White Pan Bread" means white bread baked in a pan but shall not include hamburger and hot dog buns, or variety breads such as French bread and Italian bread.

III. Applicability

A. The provisions of this Final Judgment apply to defendants, their successors and assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets, or of a lesser business unit that includes the Relevant Baking Assets, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

IV. Divestitures

A. Defendants are hereby ordered and directed, in accordance with the terms of this Final Judgment, within ninety (90) calendar days after the filing of the Complaint in this matter, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest all Relevant Baking Assets as viable, ongoing businesses to a Acquirer or Acquirers acceptable to the United States, in its sole discretion.

B. Defendants shall use their best efforts to accomplish the divestitures ordered by this Final Judgment as expeditiously and timely as possible. The United States, in its sole discretion, may extend the time period for any divestiture two additional periods of time, not to exceed thirty (30) calendar days each.

C. In accomplishing the divestitures ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Relevant Baking Assets. Defendants shall inform any person making an inquiry regarding a possible purchase of the Relevant Banking Assets that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall also offer a furnish to any prospective Acquirer, subject to customary confidentiality assurances, all information and documents relating to the Relevant Baking Assets customarily provided in a due diligence process except such information or documents subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

D. Defendants shall provide the Acquirer and the United States information relating to the personnel involved in the production, development, and sale of the divestiture assets to enable the Acquirer to make offers of employment. Defendants shall not interfere with any negotiations by any Acquirer to employ any Earthgrains (or former Specialty Foods or Metz) employee who works at, or whose primary responsibility concerns, any bakery business that is part of the Relevant Banking Assets.

E. Defendants shall permit prospective Acquirers of the Relevant Baking Assets to have access to personnel and to any and all environmental, zoning, and other permit documents and information, and to make inspection of the Relevant Baking Assets, and have access to any and all financial, operational, business, strategic or other documents and information customarily provided as part of a due diligence process.

F. Defendants shall warrant to any Acquirer of Earthgrains's Des Moines, IA bakery that the bakery will be fully operational on the date of sale.

G. Defendants shall not take any action, direct or indirect, that will impede in any way the operation, sale, or divestiture of the Relevant Baking Assets.

H. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV or by trustee appointed pursuant to Section V of this Final Judgment shall include all Relevant Baking Assets and be accomplished by selling or otherwise conveying each asset to an Acquirer in such a way as to satisfy the United States, in its sole discretion, that the Relevant Baking Assets can and will be used by the Acquirer as part of a viable, ongoing business or businesses engaged in sale of white pan bread in the Relevant Territory. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to an Acquirer (or Acquirers) for whom it is demonstrated to the United States's sole satisfaction that: (1) The Acquirer(s) has the capability and intent of competing effectively in the sale of white pan bread in each area in the Relevant Territory; (2) the Acquirer(s) has the managerial, operational, and financial capability to compete effectively in the sale of white pan bread in each area of the Relevant Territory; and (3) none of the terms of any agreement between an Acquirer and defendants give any defendant the ability unreasonably to raise the Acquirer's costs, lower the Acquirer's efficiency, or otherwise interfere in the

ability of the Acquirer to compete effectively in the Relevant Territory.

V. Appointment of Trustee

A. In the event that defendants have not divested the Relevant Baking Assets within the time specified in Section IV(A) of this Final Judgment, defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee to be selected by the United States, at its sole discretion, to effect the divestiture of the Relevant Baking Assets. Defendants shall not object to the selection of the trustee on any grounds other than irremediable conflict of interest. Defendants must make any such objection within five (5) business days after the United States notifies defendants of the trustee's selection.

B. After the appointment of the trustee becomes effective, only the trustee shall have the right to divest the unsold Relevant Baking Assets. The trustee shall have the power and authority to accomplish any and all divestitures to an Acquirer(s) acceptable to the United States at such price and on such terms as are then obtainable upon reasonable efforts of the trustee, subject to the provisions of Sections IV and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. The trustee shall divest the unsold Relevant Baking Assets in the manner that is most conducive to remedying the loss of competition alleged in the Complaint. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divesitures at the earliest possible time to an Acquier or Acquirers acceptable to the United States, and shall have such other powers as this Court shall deem appropriate.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of each asset sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the disvestiture and the speed with which it is accomplished.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures and shall take no action to interfere with or impede the trustee's accomplishment of the divestiture of the Relevant Baking Assets. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities for the Relevant Baking Assets, and to defendants' overall businesses as is reasonably necessary to effectuate the divestiture. Defendants shall provide financial or other information relevant to the Relevant Baking Assets customarily provided in a due diligence process as the trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development or commercial information. Subject to customary confidentiality assurances, defendants shall permit prospective Acquirers of any Relevant Baking Assets to have reasonable access to the information provided to the trustee and to management personnel for the Relevant Baking Assets, and to make inspection of any physical facilities for the Relevant Baking Assets.

E. After the trustee's appointment, the trustee shall file biweekly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding period, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Relevant Baking Assets, and shall describe in detail each contact with any such person during the period. The trustee shall maintain full records of all efforts to divest the Relevant Baking Assets.

F. The United States may object to a proposed divestiture by the trustee in the manner prescribed in Section VI of this Final Judgment. Defendants shall not object to a divestiture by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

G. If the trustee has not accomplished such divestitures within one hundred and twenty (120) days after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) The trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations for completing the required divestiture; provided, however, that to the extent such report contains information that the trustee deems confidential, it shall not be filed in the public docket of the Court. The trustee shall at the same time furnish a copy of such reports to the parties, who shall have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall thereafter enter such orders as it shall deem appropriate in order to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice of Proposed Divestitures

A. Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify the United States of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the Relevant Baking Assets that is the subject of the definitive agreement, together with full details of same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States, in its sole discretion, may request from defendants, the proposed Acquirer(s), any other third party, or the trustee additional information concerning the proposed divestiture, the proposed Acquirer, or any other potential Acquirer. Defendants and the trustee

shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice, or within twenty (20) calendar days after the United States has been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the trustee, whichever is later; the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to defendants (and the trustee, if applicable) that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(F) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer, or upon objection by the United States, a divestiture proposed under Section IV or Section V of this Final Judgment shall not be consummated. Upon objection by defendants under the provision in Section V(F), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every twenty (20) calendar days thereafter until the divestiture has been completed, whether pursuant to Section IV or Section V of this Final Judgment, defendants shall deliver to the United States as affidavit as to the fact and manner of compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring any interest in the Relevant Baking Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that defendants have taken to solicit buyers for any and all Relevant Baking Assets and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by defendants, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, defendants shall deliver to the United States an affidavit which describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, defendants' efforts to maintain and operate each Relevant Baking Asset as a viable active competitor; to maintain separate management, staffing, sales, marketing and pricing of each asset; and to maintain each asset in operable condition at current capacity configurations. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after any such change has been implemented.

C. For a one-year period following the completion of each divestiture, defendants shall preserve all records of any and all efforts made to preserve and divest the Relevant Baking Assets.

VIII. Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the sale of any Relevant Baking Asset.

IX. Financing

Defendants are ordered and directed not to finance all or any part of any acquisition by any person made pursuant to Sections IV or V of this Final Judgment.

X. Compliance Inspection

For purposes of determining or securing compliance with the Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, shall be permitted:

1. Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to any matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and

2. Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit such written reports, under oath if requested with respect to any matter contained in the Final Judgment and the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in Sections IV, VI or X of this Final Judgment shall be divulged by the United States to any person other than an authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to the United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, "Subject" to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the United States shall give defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XIII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated _____, 2000.

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

United States District Judge

Interstate Brands Corporation,
East Armour Blvd., 64111/P.O. Box 419627, Kansas City, MO 64141–5627, (816) 502–4000

Legal Department

March 17, 2000.

Mr. David E. Groce,
The Earthgrains Company, 8400 Maryland Avenue, St. Louis, MO 63105.

Dear David: I understand that The Earthgrains Company has agreed to acquire Metz Baking Company ("Metz"), and that both firms have agreed to resolve certain competitive concerns raised by the U.S. Department of Justice ("DOJ") in connection with this merger by entering into a consent decree. I have been advised that the consent decree would require Earthgrains and Metz to divest, to a purchaser approved by DOJ, Metz's license rights under the TAYSTEE® trademark for certain geographic areas in the Midwest. Interstate Brands West Corporation, will, upon the request of Metz and in accordance with the provisions of the License Agreement dated July 27, 1987, between American Bakeries Licensing Co. (our predecessor in interest) and Heileman Baking Company (Metz's predecessor in interest) (except for provisions of Articles 5(G) and 9 requiring prior written approval of sublicensees), consent to a transfer and sublicense of the TAYSTEE® trademark to any third party approved by DOJ under the proposed consent decree. Any final decision concerning whether the sublicensing of the TAYSTEE® trademark to such third party satisfies the conditions of the consent decree shall be in the sole discretion of the United States.

Sincerely,

Kim B. Murphy,
Sr. Staff Attorney.

Appendix A

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedure and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On March 20, 2000, the United States field a civil antitrust suit the alleges that an acquisition by The Earthgrains Company ("Earthgrains") of Metz Holdings, Inc. ("Metz") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The complaint alleges that in many markets in the Midwest, Earthgrains and Metz are two of only a few significant competitors in the production and sale of white pan bread, and that their combination would substantially lessen competition in these already highly concentrated markets, including Kansas City, Missouri,; Omaha, Nebraska; Des Moines, Iowa; and many smaller communities in Illinois, Iowa, Kansas, Missouri, and Nebraska. According to the Complaint, the loss of competition would likely result in retailers and consumers paying higher prices for white pan bread in these areas. The prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) a permanent injunction that would prevent Earthgrains from acquiring control of Metz or otherwise combining Metz's assets with its own business.

At the same time the Complaint was filed, the United States also filed a proposed settlement that would permit Earthgrains to complete its acquisition of Metz, yet preserve competition in the markets in which the transaction would otherwise raise significant competitive concerns. The settlement consists of a proposed Final Judgment and a Hold Separate Stipulation and Order. In essence, the Hold Separate Stipulation and Order would require Earthgrains to maintain certain bread brands, and associated production and distribution assets, as economically viable, ongoing concerns, operated independently of Earthgrains' other businesses until the divestitures mandated by the Final Judgment have been accomplished.

The proposed Final Judgment orders defendants to divest to one or more acquirers the Colonial and Taystee labels of white pan bread for use in each of the affected markets, including all of the cities and counties identified in the proposed Final Judgment. See Final Judgment, § II (H). Because an acquirer may require other assets in order to compete effectively and viably in the sale of white pan bread in the affected areas, under the Final Judgment the United States may, in its sole discretion, require the divestiture of additional assets, including (a) Earthgrains' Des Moines, IA bakery; (b) a license to produce buns, rolls and any other bread under the Colonial and Taystee labels; (c) Earthgrains' and Metz's bread routes, trucks, and customer lists; and (d) other ancillary assets currently used by Eathgrains and Metz in the production, distribution and sale of white pan bread under the Colonial or Taystee labels. Defendants must complete these divestitures within 90 days after filing of the Complaint,[1] or five days after entry of the Final Judgment, whichever is later. If they do not complete the divestitures within the prescribed time, the Court may appoint a trustee to see the assets.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

1. Earthgrains. Earthgrains, based in St. Louis, Missouri, is the nation's second largest wholesale commercial baker. It operates a total of 43 commercial bakeries throughout the United States, though its bread production and sales are concentrated primarily in the South and Midwest. In 1999, Earthgrains reported sales of $1.93 billion.[2]

2. Specialty Foods and Metz. Specialty Foods Corporation is a privately held concern that owns several baking operations, including Metz. Metz, based in Deerfield, Illinois, is one of the largest regional wholesale commercial bakers. It produces and sells white pan bread throughout the Midwest, primarily in Colorado, Illinois, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Utah, and Wisconsin. In 1999, Metz's total revenue exceeded $600 million.

3. The proposed transaction. On November 15, 1999, Earthgrains agreed to acquire Metz from Specialty Foods for about $625 million. This proposed

[1] The Complaitn was filed on march 20, 2000.

[2] The Complaint inaccurately alleges that Earthgrains operates 28 commercial bakeries and reported sales of $1.6 billion in 1999. It, in fact, operated 43 commercial bakeries and reported $1.93 million in annual sales.

transaction, which would combine Earhtgrains and Metz and substantially lessen competition in the sale of white pan bread in many areas of the Midwest, precipitated the government's antitrust suit.

B. The Bread Industry and the Competitive Effects of the Transaction

1. White pan bread. White pan bread describes the ubiquitous, white, sliced, soft loaf known to most consumers as "plain old white bread." An American household staple, typically used for sandwiches, white pan bread is sold in the commercial bread aisle of every grocery store, as well as many other retail stores. White pan bread differs significantly from other types of bread, such as variety bread (*e.g.*, wheat, rye or French) and freshly baked in-store breads, in taste, texture, uses, perceived nutritional value, keeping qualities, and appeal to various groups of consumers. Families with young children, for instance, strongly prefer to purchase white pan bread because children prefer this bread.

Because of its unique appeal and distinguishing attributes, a small but significant increase in the price of white pan bread by all producers would not cause a significant number of current purchasers to substitute any other type of breads, or for that matter, any other product. The sale of white pan bread to consumers through retailers is, therefore, a relevant product market in which to assess the competitive effects of the acquisition.

White pan bread is mass produced on high-speed production lines by wholesale commercial bakers, who package and sell it to retailers under either their own brand or a private label (*i.e.*, a brand controlled by a grocery chain or buying cooperative). Though physically similar to private label brand, branded white pan bread is perceived by consumers as higher quality bread; consequently, consumers often pay a premium of twice as much or more for branded white pan bread.

The Complaint alleges that the provision of white pan bread through retail outlets takes place in highly localized geographic markets. The high transportation costs, short shelf life, and extensive bakery control over the sale of their branded white bread products all make it very expensive and difficult for retail stores and consumers to purchase white pan bread from bakers that are not local market incumbents.

2. Competition between Earthgrains and Metz in the sale of white pan bread. Earthgrains and Metz compete directly in producing, promoting, and selling both private label and branded white pan bread to grocery retailers, who in turn sell it to consumers. In the relevant areas alleged in the Complaint, Earthgrains sells two brands of white pan bread, either IronKids and Colonial or IronKids and Rainbo, and Metz sells two brands of white pan bread, either Pillsbury and Old Home or Pillsbury and Taystee.

Earthgrains and Metz recognize the keen rivalry between their bread products in the relevant geographic markets. To avoid losing sales to the other, each has engaged in extensive promotional and couponing campaigns that reduce the prices charged for their branded white pan breads to the benefit of retailers and consumers. Each also competed against the other in pricing and in improving the quality and services offered in connection with both branded and private label white pan bread. Through these activities, Earthgrains and Metz have each operated as a significant competitive constraint on the other's prices for branded and private label white pan bread.

3. Anticompetitive consequences of the acquisition. The Complaint alleges that Earthgrains's acquisition of Metz would remove the competitive constraint each has had on the other, and create (or facilitate Earthgrains's exercise of) market power (*i.e.*, the ability to increase prices to consumers) in a number of relevant geographic markets throughout the Midwest, including Kansas City, Missouri; Omaha, Nebraska; and Des Moines, Iowa metropolitan areas; and in many smaller communities in Illinois, Iowa, Kansas, Missouri and Nebraska.

Specifically, the Complaint alleges that in each of the markets, Earthgrains and Metz are two of only a few significant competitors. The acquisition would increase concentration significantly in these already highly concentrated, difficult-to-enter markets.[3] Post-acquisition, Earthgrains would dominate each market, accounting for at least 58 percent of all sales of white pan bread in the Omaha market, at least 52 percent in the Kansas City market, about 56 percent in the Des Moines market, and likely half or more of all sales of white pan bread in many smaller communities in Iowa, western Illinois, northeastern Kansas, northwestern Missouri, and eastern Nebraska. Moreover, after the merger, Earthgrains and only one or two other competitors would control more than 90 percent of annual sales revenues of white pan bread in these areas.

The Complaint alleges that Earthgrains's acquisition of Metz in each of these markets would cause a substantial reduction in competition either from an increased likelihood of coordinated pricing that would result from the elimination of a significant competitor, Metz, or from the likelihood that Earthgrains will acquire the power to unilaterally increase prices to consumers for branded white pan bread after the merger. In both instances, the merger is likely to lead to higher prices to consumers who purchase white pan bread through retail outlets in the relevant areas.

The Complaint alleges that entry by other wholesale commercial bakers into the sale of white pan bread in any of the adversely affected geographic markets is time-consuming, expensive and difficult, and hence, unlikely to soon counteract these anticompetitive effects.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in the sale of white pan bread in each of the relevant geographic markets. Within 90 days after March 20th, the date the Complaint was filed, or five days after entry of the Final Judgment, whichever is later, defendants must divest two of their popular white pan bread brands, the Colonial and Taystee labels,[4] and such other production and distribution assets that the United States determines may be necessary to create an economically viable competitor in the sale of white pan bread in each geographic market.[5] It may well be that the sale to an

[3] The Herfindahl-Hirschman Index ("HHI") is a widely-used measure of market concentration. Following the acquisition, the approximate post-merger HHIs, calculated from 1999 dollar sales, would be about 3800 with a change of 875 points for the Omaha area; 3400 with a change of 1378 points for the Kansas City area; and 3500 with a change of 1530 points for the Des Moines area. Under the Merger Guidelines, an acquisition that increases the HHI by 50 points or more in a market in which the post-merger HHI will exceed 1800 points may raise serious competitive concerns.

[4] As defined in the Final Judgment, a "label" "means all legal rights associated with a brand's trademarks, trade names, service names, service marks, intellectual property, copyrights, designs, and trade dress; the brand's trade secrets; the brand's technical information and production known-how, including, but not limited to, recipes and formulas used to produce bread currently sold under the brand, and any improvements to, or line extensions thereof; and packaging, marketing and distribution know-how and documentation, such as customer lists and route maps, associated with the brand." Final Judgment, § II(F). Divesting a label would require defendants to grant, at a minimum, "[a] perpetual, royal-free, freely assignable and transferrable, and executive license to make, have made, use or sell white pan bread in the Relevant Territory under each of the Relevant Labels." *Id.*, § II(D)(1).

[5] These assets are defined in the Final Judgment as the "Additional Baking Assets." See Final Judgment, § II(E).

existing wholesale baker of exclusive rights to make and sell white pan bread under either the Colonial and Taystee labels is all that is required to accomplish this goal. Depending on the acquirer's requirements, however, effective divestiture may require the sale other assets such as Earthgrain's Des Moines, IA bakery, which currently services the relevant areas; a license to sell buns, rolls, or other bread under the Colonial and Taystee labels; and the bread routes, trucks, thrift stores, depots, warehouses, customers contracts and lists used by Earthgrains and Metz in production, distribution, and sale of white pan bread under the Colonial and Taystee labels. Defendants must use their best efforts to accomplish the divestitures as expeditiously as possible. The proposed Final Judgment provides that the assets must be divested in such a way as to satisfy the United States, in its sole discretion, that the assets can and will be used by the acquirer as part of a viable, ongoing business or businesses engaged in the sale of white pan bread in the geographic areas covered by the Final Judgment.[6]

If defendants do not accomplish the ordered divestitures within the prescribed time period, the proposed Final Judgment provides that the Court will appoint a trustee to complete the divestitures. If a trustee is appointed, the proposed Final Judgment provides that defendants must pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestiture is accomplished. After his or her appointment becomes effective, the trustee will file periodic, biweekly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the required divestiture. At the end of six months, if the divestiture has not been accomplished, then the trustee and the parties will make recommendations to the Court, which shall enter such orders as appropriate.

The relief in the Final Judgment has been tailored to ensure that the ordered divestitures maintain competition that would have been eliminated as a result of the merger and prevent the exercise of market power after the merger in each of the various markets alleged in the Complaint.

[6] These areas, listed in the "Relevant Territory" definition of the Final Judgment, § II(H), include a number of cities and counties in Illinois, Iowa, Kansas, Missouri and Nebraska.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendant.

V. Procedures Available for Modification of the Proposed Final Judgment

The parties have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry of the decree upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final judgment. Any person who wishes to comments should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to The Proposed Final Judgment,

The United States considered, as an alternative to the proposed Final Judgment a full trial on the merits against defendants Earthgrains, Specialty Foods and Metz. The United States could have continued the litigation to seek preliminary and permanent injunctions against Earthgrains's acquisition of Metz. The United States is satisfied, however, that defendants' divestiture of the assets described in the proposed Final Judgment will establish, preserve and ensure a viable competitor in each of the relevant markets identified by the United States. To this end, the United States is convinced that the proposed relief, once implemented by the Court, will prevent Earthgrains's acquisition of Metz from having adverse competitive effects.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires the proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly

settlement through the consent decree process."[7] Rather,

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D.Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public" *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), quoting *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981); see also Microsoft, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[8]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest' (citations omitted)."[9]

Moreover, the court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case," Microsoft, 56 F.3d at 1459. Since "[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that the court "is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States might have but did not pursue. *Id.*

VIII. Determinative Documents

There is a single determinative document within the meaning of the APPA that was considered by the United States in formulating the proposed Final Judgment. That document, a letter dated March 17, 2000 from Kim Murphy, an attorney at Interstate Brands Corporation ("IBC"), to David Groce, General Counsel of Earthgrains, is attached to the Final Judgment as Appendix A. (A copy of this letter is reproduced in the attached Appendix). Although defendants proposed licensing the Taystee label as a step toward alleviating the competitive harm, Metz's license rights to that label were subject to the approval of the original licensee, IBC. Defendants subsequently secured assurances from IBC that it would permit the Taystee label to be licensed to an acquirer acceptable to the United States under the terms of the Final Judgment. Divestiture of the Taystee label became acceptable to the United States only after it had received that written assurance.

Dated: April 7, 2000.

Respectfully submitted,

Anthony E. Harris, Illinois Bar #1133713.
U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–6583.

Certificate of Service

I hereby certify that on April 7, 2000, I caused a copy of the foregoing Competitive Impact Statement to be served by causing the pleading to be mailed first-class, postage prepaid, to a duly authorized legal representative of each of the defendants, as follows:

The Earthgrains Company

Roxann E. Henry, Esquire, Howrey Simon Arnold & White, 1299 Pennsylvania Avenue, NW, Washington, DC 20004

Specialty Foods Corporation and Metz Holdings, Inc.

David E. Schreibman, Esquire, Vice President, Secretary and General Counsel, Specialty Foods Corporation, 520 Lake Cook Road, Deerfield, IL 60015.

Anthony E. Harris, (IL Bar #1133713).

[FR Doc. 00–9747 Filed 4–18–00; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Joint Motion To Modify Final Judgment and United States' Memorandum in Support of Motion To Modify; United States v. Baroid Corp., et al.

Notice is hereby given that the United States and Diamond Products International ("DPI") have filed a joint motion to modify the final judgment filed in a civil antitrust case, *United States* v. *Baroid Corpation., et al.* Civil Action No. 93–2621, in the United States District Court for the District of Columbia. The Department has consented to modification of the Judgment but has reserved the right to withdraw its consent if it determines that, based upon comments filed or other information received, consent to the modification is not in the public interest.

This case was filed on December 23, 1993, and alleged that the merger of Dresser Industries, Inc. ("Dresser") and Baroid Corporation ("Baroid") might substantially lessen competition in the United States in the manufacture and sale of two oil field service products, diamond drill bits and drilling fluids, in violation of section 7 of the Clayton Act. The Final Judgment was entered on April 12, 1994.

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[7] 119 Cong. Rec. 24598 (1973). See *United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in (1974) U.S.C.C. A.N. 6535, 6538.

[8] *United States* v. *Bechtel Corp.*, 648 F.2d at 666 (citations omitted) (emphasis added); see *United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716. See also *United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), cert. denied, 465 U.S. 1101 (1984).

[9] *United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), aff'd sub nom. *Maryland* v. *United States*, 460 U.S. 1001 (1983) quoting *United States* v. *Gillette Co.*, supra, 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

Under the Final Judgment, Dresser was required to divest Baroid's diamond bit business, which included all Baroid assets used in the United States to research, develop, test, manufacture, service, or market its diamond drill bits. Pursuant to the judgment, Dresser sold that business to a company then called International Superior Products, Inc., and now known as Diamond Products International ("DPI").

Paragraph V.F. of the Final Judgment states that the purchaser of the divested diamond drill bit business may not sell that business to, or combine that business with the diamond bit business of, any of four named companies: Dresser (now part of Halliburton Company), Camco, Inc. (Now part of Schlumberger Ltd.), Baker Hughes, Inc., or Smith International, Inc, or any of their subsidiaries or affiliates. The joint motion proposes modifying the Final Judgment to eliminate the absolute prohibition or transactions involving Camco, Baker Hughes, or Smith and instead require DPI to give notice to the Department of any such proposed transactions. The Final Judgment would continue to bar DIP from selling its diamond drill bit business to, or combining that business with the diamond drill bit operations, of Dresser, the firm required by the Final Judgment to divest the diamond bit business in the final instance.

Copies of the Complaint and Judgment, the joint motion, and the United States' supporting memorandum are available for inspection in Room 215, Antitrust Division, U.S. Department of Justice, 325 7th St., NW, Washington, DC 20530 and at the Office of the Clerk of the United States District Court for the District of Columbia, Third Street and Constitution Avenue, NW, Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Comments to the Department of Justice and to the Court regarding the proposed modification of the Final Judgment are invited from members of the public. They should be addressed to Roger W. Fones, Chief, Transportation, Energy and Agriculture Section, Antitrust Division, U.S. Department of Justice, Suite 500, 325 7th Street, NW, Washington, DC 20530 (202–307–6351). Such comments must be received within 50 days.

Constance K. Robinson,

Director of Operations & Merger Enforcement, Antitrust Division.

[FR Doc. 00–9746 Filed 4–18–00; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Training Grant Program " Internet-Based OSHA Expert Compliance Assistance System

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of availability of funds and request for grant applications.

SUMMARY: The Occupational Safety and Health Administration (OSHA) awards funds to nonprofit organizations to conduct safety and health training and education. This notice announces grant availability for training employers in an internet-based OSHA expert compliance assistance system. The notice describes the scope of the grant program and provides information about how to get detailed grant application instructions. Applications should not be submitted without the applicant first obtaining the detailed grant application instructions mentioned later in the notice.

Section 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670) authorizes this program.

DATES: Applications must be received by June 9, 2000.

ADDRESSES: Submit grant applications to the Office of Science and Technology Assessment, Directorate of Technical Support, OSHA, 200 Constitution Avenue, NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Roy F. Gurnham, Director, Office of Science and Technology Assessment, Directorate of Technical Support, OSHA, (202) 693–2024, e-mail roy.gurnham@osha.gov.

SUPPLEMENTARY INFORMATION:

What Is the Purpose of the Grant Program?

OSHA's strategic plan contains goals to improve workplace safety and health for all workers, change the workplace culture to increase employer and worker awareness of, commitment to, and involvement in safety and health, and to secure public confidence through excellence in the development and delivery of OSHA's programs and services. OSHA's intent is to reduce the number of worker injuries, illnesses and fatalities by focusing nationwide attention and Agency resources on the most prevalent types of workplace injuries and illnesses, the most hazardous industries and the most hazardous workplaces. This grant is one of the mechanisms OSHA is using to achieve its strategic goals.

This grant provides funds to train employers to recognize, avoid, and prevent safety and health hazards in their workplaces.

The program emphasizes three areas.

- Educating employers in small businesses. A small business has 250 or fewer workers.
- Training employers in new OSHA standards.
- Training employers in high risk activities or hazards identified by OSHA.

Grantees are expected to develop Internet expert software, training and/or educational programs that address compliance assistance and Material Safety Data Sheet assistance as described below, and conduct the training. Grantees will also be expected to follow-up with people who have been trained by their program to find out what, if any, changes were made to reduce hazards in their workplaces as a result of the training.

What Are the Training Topics for This Grant?

The purpose of this notice is to announce that funds are available for a grant to train employers in an Internet-based OSHA expert compliance assistance system. Each grant application must address the following:

- Use of an Internet-based diagnostic ("expert") software system that, using a down loadable, on-line interview process, will give the user a compliance profile for each facility covered by the interview as well as a comprehensive "to-do" list to help the user manage compliance. The information must be customized for each facility and must be kept current over the Internet;
- The system must be capable of automatically downloading, indexing, viewing, and printing Material Safety Data Sheets (MSDS) files. Once tagged, MSDSs would be monitored and user files would be automatically updated via the Internet;
- Use of training materials for the purpose of training employers how to use the system.

Who Is Eligible To Apply for a Grant?

Any non-profit educational foundation is eligible to apply. Applicants will be required to submit evidence of nonprofit status, preferably from the IRS.

What Can Grant Funds Be Spent On?

Grant funds can be spent on the following:

- Conducting training.
- Conducting other activities that reach and inform workers and employers about occupational safety

and health hazards and hazard abatement.

• Developing educational materials for use in the training.

Are There Restrictions on How Grant Funds Can Be Spent?

OSHA will not provide funding for the following activities.

1. Any activity that is inconsistent with the goals and objectives of the Occupational Safety and Health Act of 1970.

2. Training involving workplaces that are not covered by the Occupational Safety and Health Act. Examples include state and local government workers in non-State Plan States and workers covered by section 4(b)(1) of the Act.

3. Production, publication, reproduction or use of training and educational materials, including newsletters and instructional programs, that have not been reviewed by OSHA for technical accuracy.

4. Activities that address issues other than recognition, avoidance, and prevention of unsafe or unhealthy working conditions. Examples include workers' compensation, first aid, and publication of materials prejudicial to labor or management.

5. Activities that provide assistance to workers in arbitration cases or other actions against employers, or that provide assistance to employers and/or workers in the prosecution of claims against Federal, State or local governments.

6. Activities that directly duplicate services offered by OSHA, a State under an OSHA-approved State Plan, or consultation programs provided by State designated agencies under section 21(d) of the Occupational Safety and Health Act.

7. Activities intended to generate membership in the grantee's organization. This includes activities to acquaint nonmembers with the benefits of membership, inclusion of membership appeals in materials produced with grant funds, and membership drives.

What Other Grant Requirements Are There?

1. *OSHA review of expert software systems and educational materials.* OSHA will review all expert software systems and educational materials produced by the grantee for technical accuracy. OSHA will also review training curriculums and training materials for accuracy before they are used.

When grant recipients produce training materials, they will provide copies of completed materials to OSHA before the end of the grant period. All materials produced by grantees may be placed on the Internet by OSHA.

2. *OMB and regulatory requirements.* Grantees will be required to comply with the following documents.

• 29 CFR part 95, which covers grant requirements for nonprofit organizations, including universities and hospitals. These are the Department of Labor regulations.

• OMB Circular A–122, which describes allowable and unallowable costs for nonprofit organizations.

• OMB Circular A–133, which provides information about audit requirements.

3. *Certifications.* All applicants will be required to certify to a drug-free workplace in accordance with 29 CFR part 98, to comply with the New Restrictions on Lobbying published at 29 CFR part 93, to make a certification regarding the debarment rules at 29 CFR part 98, and to complete a special lobbying certification.

How Are Applications Reviewed and Rated?

OSHA staff will review grant applications and present the results to the Assistant Secretary who will make the selection of the organization to be awarded the grant.

OSHA will give preference to applications which:

• Address multiple safety and health subjects.

• Train managers and/or supervisors.

• Serve multiple employers. OSHA is interested in reaching more than one employer with each grant awarded.

The following factors will be considered in evaluating grant applications.

1. Program Design

a. The proposed training and education program addresses the topics set out above.

b. The proposal plans to train employers and clearly estimates the numbers to be trained.

c. The planned activities are appropriate for the employers to be trained.

d. There is a plan for OSHA to review the software and educational materials.

e. There is a plan to evaluate the program's effectiveness and this includes plans to follow-up with trainees to see if the training resulted in workplace change.

f. The planned work can be accomplished in one year.

2. Program Experience

a. The organization applying for the grant demonstrates experience with occupational safety and health.

b. The organization applying for the grant demonstrates experience training adults in work-related subjects.

c. The staff to be assigned to the project have experience in (1) occupational safety and health, (2) the specific topic chosen, and (3) training adults.

d. The organization applying for the grant demonstrates experience in recruiting and training the population it proposes to serve under the grant.

3. Administrative Capability

a. The applicant organization demonstrates the capacity to maintain fiscal management.

b. The application is complete, including forms, budget detail, narrative and work plan, and required attachments.

4. Budget

a. The budgeted costs are reasonable.

b. The budget complies with Federal cost principles (which can be found in applicable OMB Circulars) and with OSHA budget requirements contained in the grant application instructions.

In addition to the factors listed above, the Assistant Secretary will take other items into consideration, such as the geographical distribution of the grant programs and the coverage of populations at risk.

How Much Money Is Available for Grants?

There is approximately $100,000 available for this program.

How Long Are Grants Awarded for?

Grants are awarded for a one year period

How Do I Get a Grant Application Package?

Grant application instructions may be obtained from the OSHA Directorate of Technical Support, 200 Constitution Avenue, NW, Washington, DC 20210.

When and Where Are Applications To Be Sent?

The application deadline is 4:30 p.m. Eastern Time, Friday, June 9, 2000.

Applications are to be mailed to the Office of Science and Technology Assessment, Directorate of Technical Support, OSHA, 200 Constitution Avenue, NW, Washington, DC 20210. Applications may be sent by fax to (202) 693–1644.

How Will I Be Told if My Application Was Selected?

Organizations selected as grant recipients will be notified by a representative of the Assistant Secretary. An applicant whose proposal is not selected will be notified in writing.

Notice that an organization has been selected as a grant recipient does not constitute approval of the grant application as submitted. Before the actual grant award, OSHA will enter into negotiations concerning such items as program components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Assistant Secretary reserves the right to terminate the negotiation and decline to fund the proposal.

Signed at Washington, DC, this 6th day of April 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–9754 Filed 4–18–00; 8:45 am]

BILLING CODE 4510–26–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* May 1, 2000.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for College and University Teachers, submitted to the Division of Education at the March 1, 2000 deadline.

2. *Date:* May 2, 2000.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes School Teachers, submitted to the Division of Education at the March 1, 2000 deadline.

3. *Date:* May 3, 2000.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for College and University Teachers, submitted to the Division of Education at the March 1, 2000 deadline.

4. *Date:* May 5, 2000.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for College and University Teachers, submitted to the Division of Education at the March 1, 2000 deadline.

5. *Date:* May 8–9, 2000.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Humanities Focus Grants, submitted to the Division of Education at the April 15, 2000 deadline.

6. *Date:* May 15–16, 2000.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Humanities Focus Grants, submitted to the Division of Education at the April 15, 2000 deadline.

7. *Date:* May 18–19, 2000.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Humanities Focus Grants, submitted to the Division of Education at the April 15, 2000 deadline.

8. *Date:* May 19, 2000.
Time: 9 a.m. to 6 p.m.
Room: 415.
Program: This meeting will review applications for Regional Humanities Centers Planning Grants, submitted to the Office of Challenge Grants at the March 31, 2000 deadline.

9. *Date:* May 19, 2000.
Time: 8:30 a.m. to 5 p.m.
Room: 527.
Program: This meeting will review applications for Extending the Reach Faculty Research Grants in Faculty Research Grants, submitted to the Division of Research Programs at the April 10, 2000 deadline.

10. *Date:* May 22, 2000.
Time: 8:30 a.m. to 5 p.m.
Room: 527.
Program: This meeting will review applications for Extending the Reach Faculty Research Grants in Faculty Research Grants, submitted to the Division of Research Programs at the April 10, 2000 deadline.

Laura S. Nelson,

Advisory Committee Management Officer.

[FR Doc. 00–9814 Filed 4–18–00; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 150, "Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters under Section 274".

2. *Current OMB approval number:* 3150–0032.

3. *How often the collection is required:* 10 CFR 150.16(b), 150.17(c),

and 150.19(c) require the submission of reports following specified events, such as the theft or unlawful diversion of licensed radioactive material. The source material inventory reports required under 10 CFR 150.17(b) must be submitted annually by certain licensees.

4. *Who is required or asked to report:* Agreement State licensees authorized to possess source or special nuclear material at certain types of facilities, or at any one time and location in greater than specified amounts.

5. *The number of annual respondents:* 9 Agreement State licensees.

6. *The number of hours needed annually to complete the requirement or request:* 42 hours.

7. *Abstract:* 10 CFR part 150 provides certain exemptions from NRC regulations for persons in Agreement States. Part 150 also defines activities in Agreement States and in offshore waters over which NRC regulatory authority continues, including certain information collection requirements. The information is needed to permit NRC to make reports to other governments and the International Atomic Energy Agency in accordance with international agreements. The information is also used to carry out NRC's safeguards and inspection programs.

Submit, by June 19, 2000, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 13th day of April, 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–9750 Filed 4–18–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–247]

Consolidated Edison Company of New York, Inc., Indian Point Nuclear Generating Unit No. 2; Issuance of Final Director's Decision Under 10 CFR 2.206

By letter dated September 15, 1999, Mr. David A. Lochbaum, on behalf of the Union of Concerned Scientists (Petitioner), pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR 2.206), requested that the U.S. Nuclear Regulatory Commission (Commission or NRC) take action with regard to the Indian Point Nuclear Generating Unit No. 2 (IP2), owned and operated by Consolidated Edison Company of New York, Inc. (Con Ed). The Petitioner requested that the NRC take enforcement action to modify or suspend the operating license for IP2, operated by Con Ed (the licensee), to prevent the reactor from resuming operation until the five issues identified in the attachment to the Petition have been fully resolved. As an acceptable alternative in lieu of a suspension or modification of the license, the Petitioner requested that the NRC issue a confirmatory action letter or an order requiring these issues to be fully resolved before unit restart. The five issues that were raised in the Petition are (1) The apparent violation of station battery design and licensing bases, (2) the apparent failure to adequately correct circuit breaker problems, (3) the apparent unreliability of emergency diesel generators, (4) the potentially unjustified license amendment for undervoltage and degraded voltage relay surveillance intervals, and (5) the apparent errors and nonconservatisms in individual plant examinations (IPEs). Along with the last issue, the Petitioner stated that the event on August 31, 1999, at IP2 revealed potential problems with the plant-specific risk assessment developed by the licensee and now used to establish priorities for maintenance and inspections. Additionally, the Petitioner requested that a public hearing on this Petition be conducted in the vicinity of the plant before its restart is authorized by the NRC. In a transcribed telephone conversation between the Petitioner and the members of the NRC's Petition Review Board on September 22, 1999, the Petitioner clarified two of the issues in the Petition. First, the Petitioner stated that because of an apparent failure to accomplish the commitment in the NRC's safety evaluation for the license amendment mentioned in the Petition, the Petitioner was concerned that past licensing commitments may not have been implemented. Second, the Petitioner questioned whether the amount of time the licensee took to perform certain actions during the event on August 31, 1999, was consistent with the times expected if a station blackout (SBO) had occurred since many of the procedures and processes in response to an SBO event were used.

The Director of the Office of Nuclear Reactor Regulation has addressed the technical concerns provided by the Petitioner. However, the Petitioner's request for the staff to take enforcement action was not granted for the reasons that are explained in the "Final Director's Decision Pursuant to 10 CFR 2.206" (DD–00–02). The complete text of the Final Director's Decision is available for public inspection at the Commission's Public Document Room located in the Gelman Building, 2120 L Street, NW., Washington, DC, and will be accessible electronically from the agencywide documents access and management system (ADAMS) public library component on the NRC web site, *http://www.nrc.gov* (the electronic reading room).

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided for by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 13th day of April 2000.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–9751 Filed 4–18–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 and 50–323]

Pacific Gas and Electric Company; Notice of Consideration of Issuance of Amendment to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–80 and DPR–82 issued to Pacific Gas and Electric Company (the licensee) for operation of the Diablo Canyon Power Plant, Units 1 and 2, located in San Luis Obispo County, California.

The proposed amendment would revise several sections of the improved Technical Specification (ITS) to correct 20 editorial errors made in either (1) The application dated June 2, 1997 (and supplemental letters), for the ITS, or (2) the certified copy of the ITS that was submitted in the licensee's letters of May 19 and 27, 1999. The proposed amendment would also revise 11 instances of incorrect incorporation of the current Technical Specifications (CTS) into the ITS. The ITS were issued as License Amendments 135 and 135 dated May 28, 1999, and will be implemented by the licensee to replace the CTS by May 31, 2000.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed elimination of the channel calibration for the turbine stop valve position switches will not change the probability or consequences of an accident previously evaluated since they are not subject to drift. Since the limit switches do not drift and therefore do not have a setpoint that can potentially change, the remaining verification of the trip actuation device operational test (TADOT) will provide all necessary assurances of Operability.

The proposed elimination of the TADOT for the auto stop oil pressure will not change the probability or consequences of an accident previously evaluated since the TADOT verifies the same requirements as the required channel calibration.

The proposed elimination of the requirement to calibrate the neutron wide range detectors will not change the probability or consequences of an accident previously evaluated since they are only used to monitor power following an accident. They provide no automatic control or actuation functions. Since an accident must first occur before these channels are used, this change can not increase the probability or consequences of an accident. Further, the necessary elements of the calibration for the channel and the detector will be accomplished through cross correlation similar to the power range detectors.

The remaining proposed changes are administrative in nature. They correct errors made while incorporating the current Technical Specifications (CTS) into the improved Technical Specifications (ITS), or errors made while creating the final copy of the ITS from the NRC reviewed mark-up of NUREG–1431. The proposed change of the Shift Supervisor title to Shift Manager is administrative since it does not decrease the responsibilities of the individual.

There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. The proposed changes are administrative.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed elimination of the calibration for the turbine stop valve position switches will not create the possibility of a new or different kind of accident since they are not subject to drift. The remaining verification of the TADOT will provide all necessary assurances of operability.

The proposed elimination of the TADOT for the auto stop oil pressure will not create the possibility of a new or different kind of accident since this test will not evaluate anything not already verified by the required channel calibration.

The proposed elimination of the requirement to calibrate the neutron wide range detectors will not create the possibility of a new or different kind of accident since they are only used to monitor power following an accident. They provide no automatic control or actuation functions. Since an accident must first occur before these channels are used, this change can not cause a new or different type of an accident. Further, the necessary elements of the calibration for the channel and the detector will be accomplished through cross correlation similar to the power range detectors.

The remaining proposed changes are administrative in nature. They correct errors made while incorporating the CTS into the ITS, or errors made while creating the final copy of the ITS from the NRC reviewed mark-up of NUREG–1431. The proposed change of the Shift Supervisor title to Shift Manager is administrative since it does not decrease the responsibilities of the individual.

There are no hardware changes nor are there any changes in the method by.which any safety-related plant system performs its safety function. The changes are administrative in nature so there are no new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed elimination of the calibration for the turbine stop valve position switches will not reduce the margin of safety since they are not subject to drift. The remaining verification of the TADOT will provide all necessary assurances of operability.

The proposed elimination of the TADOT for the auto stop oil pressure will not reduce the margin of safety since this test will not evaluate anything not already verified by the channel calibration.

The proposed elimination of the requirement to calibrate the neutron wide range detectors will not reduce the margin of safety since they are only used to monitor power following an accident. They provide no automatic control or actuation functions. Since an accident must first occur before these channels are used, this change can not decrease the margin of safety. Further the necessary elements of the calibration for the channel and the detectors will be accomplished through cross correlation similar to the power range detectors.

The remaining proposed changes are administrative in nature. They correct errors made while incorporating the CTS into the ITS, or errors made while creating the final copy of the ITS from the NRC reviewed mark-up of NUREG–1431. The proposed change of the Shift Supervisor title to Shift Manager is administrative since it does not decrease the responsibilities of the individual.

The proposed changes do not affect the acceptance criteria for any analyzed event. There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 19, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Christopher J. Warner, Esq., Pacific Gas and Electric Company, P. O. Box 7442, San Francisco, California 94210, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request

should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 16, 2000, as supplemented by letter dated April 11, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 13th day of April 2000.

For the Nuclear Regulatory Commission.

Steven D. Bloom,

Project Manager, Section #2, Project Directorate IV and Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–9752 Filed 4–18–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission

DATES: Weeks of April 17, 24, May 1, 8, 15, and 22, 2000

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland

STATUS: Public and Closed

MATTERS TO BE CONSIDERED:

Week of April 17

There are no meetings scheduled for the Week of April 17.

Week of April 24—Tentative

There are no meetings scheduled for the Week of April 24.

Week of May 1—Tentative

Tuesday, May 2

9:30 a.m. Briefing on Oconee License Removal (Public Meeting) (Contact: Dave Lange, 301–415–1730)

Wednesday, May 3

9:25 a.m. Affirmation Session (Public Meeting) (If needed)

9:30 a.m. Briefing on Efforts Regarding Release of Solid Material (Public Meeting) (Contact: Frank Cardile, 301–415–6185)

Week of May 8—Tentative

Monday, May 8

10:00 a.m. Briefing on Lessons Learned from the Nuclear Criticality Accident at Tokaimura and the Implications on the NRC's Program (Public Meeting) (Contact: Bill Troskoski, 301–415–8076)

Tuesday, May 9

8:55 Affirmation Session (Public Meeting) (If needed)

9:00 a.m. Meeting with Stakeholders on Efforts Regarding Release of Solid Material (Public Meeting) (Contact: Frank Cardile, 301–415–6185)

Week of May 15—Tentative

Tuesday, May 16

9:25 a.m. Affirmation Session (Public Meeting) (If needed)

Week of May 22—Tentative

Thursday, May 25

8:30 a.m. Briefing on Operating Reactors and Fuel Facilities (Public Meeting)

10:15 a.m. Briefing on Status of Regional Programs, Performance and Plans (Public Meeting)

1:30 p.m. Briefing on Improvements to 2.206 Process (Public Meeting)

*THE SCHEDULE FOR COMMISSION MEETINGS IS SUBJECT TO CHANGE ON SHORT NOTICE. TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 415–1292. CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov.SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: April 16, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–9907 Filed 4–17–00; 12:48 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from March 25, 2000, through April 7, 2000. The last biweekly notice was published on April 5, 2000 (65 FR 17908).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By May 19, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: January 20, 2000.

Description of amendment request: The proposed amendment would revise the technical specifications (TSs) to extend the allowable completion times for the required actions associated with restoration of an inoperable emergency diesel generator (EDG), and permit the performance of the 24-hour EDG endurance run during Modes 1 and 2 (i.e., "Power Operation" or "Startup"). A new requirement is proposed which

will require verification of the opposite unit's EDGs when the affected EDG is inoperable.

Basis for proposed no significant hazards consideration determination. As required by 10 CFR 50.92(c), the staff's analysis of the issue of no significant hazards consideration is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes include the extension of the completion time for the EDGs from 72 hours to 14 days. In conjunction with the proposed change, a new required action is proposed to be incorporated into the TSs that will require verification of the operability of the opposite unit's EDGs while the affected EDG is inoperable. The proposed changes do not significantly increase the probability of occurrence of a previously evaluated accident because the EDGs are not initiators of accidents. Extending the completion times of the EDGs would not have any impact on the frequency of any accident previously evaluated and, therefore, the probability of a previously analyzed accident is unchanged. The proposed change to the completion time for EDGs will not result in any changes to the plant activities associated with EDG maintenance. The EDGs mitigate the consequences of previously evaluated accidents involving a loss of normal power, the safety-related buses and as such, the operability or availability of the EDGs could affect accident consequences. A configuration risk management program (CRMP) was developed and will be used to ensure that the risk impact of equipment out of service is appropriately evaluated prior to performing any maintenance activity. Increases in risk posed by potential combinations of equipment out of service during the EDG extended completion time will be managed under the CRMP. In addition, compensatory actions have been identified to mitigate an increase in risk. Procedures have been developed to implement the compensatory actions.

The proposed changes also include a change to the TS surveillance requirement related to the conduct of the 24-hour EDG endurance run. Specifically, the change would permit the endurance run to be performed during Modes 1 and 2. The test configuration to be used is consistent with the configuration currently used during the one-hour monthly EDG tests currently conducted.

The probability of an accident is not increased by performing the 24-hour endurance run in Modes 1 and 2 since the EDGs are used to support mitigation of the consequences of an accident. The failure of an EDG while testing is not an assumed initiator of a previously analyzed accident. The EDGs were designed to be tested by running in parallel with offsite power and design features such as protective devices were included. The proposed change does not affect parallel testing design features, the consequences of postulated failures during parallel testing, and postulated interactions with offsite power during parallel testing. If problems are encountered during testing, the EDG connection to the bus will be interrupted, allowing the offsite circuits to continue to supply the bus. Testing of the EDG does not affect the remainder of the safety-related equipment analyzed to mitigate the consequences of an accident. The control logic prevents potential damage of the emergency core cooling System (ECCS) equipment powered by the EDG to ensure that the ECCS equipment is available in the event of an actual safety injection with or without a Loss of Offsite Power (LOOP). Only one EDG per unit will be tested in parallel with the offsite sources at a time in order to prevent any grid disturbance from potentially affecting more than one EDG. Thus, during the test, the remaining EDG, which is capable of supplying power to mitigate all design basis accidents, will be available to respond normally to a start signal.

To fully evaluate the effect of the proposed EDG TS changes, probabilistic risk assessment (PRA) methods and deterministic analyses were utilized. The results of the risk analysis show no significant increase in Core Damage Frequency (CDF) and Large Early Release Frequency (LERF).

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not involve a physical change to the plant. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner except for the following. The electrical lineup for performing the 24-hour run will be the same as the lineup for performance of the one-hour run, which is routinely performed at least once per month for each EDG. The difference between these two surveillances is in their duration. There is no change being made to the parameters within which the plant is operated. There are no setpoints affected by this proposed change at which protective or mitigative actions are initiated. This proposed changes will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No alteration in the procedures, which ensure that the plant remains within analyzed limits, is being proposed, and no change is being made to the procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced. Other than the changes in duration of EDG unavailability from 72 hours to 14 days and on-line testing from 60 minutes to 24 hours, the change does not alter assumptions made in the safety analysis and licensing basis.

Therefore, these proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The proposed changes will extend the allowable Completion Times for the Required Actions associated with restoration of an inoperable EDG and allow the performance of the 24-hour endurance run at power. In conjunction with the proposed changes, a new required action is proposed to be incorporated into the TSs. The new action will require verification of the operability of the opposite unit's EDGs while the affected EDG is inoperable. These actions will be taken to ensure the availability of the remaining alternating current power sources to the affected engineered safety feature bus.

The CRMP will be used to ensure that the risk impact of equipment out of service is appropriately evaluated prior to performing any maintenance activity. Increase in risk posed by potential combinations of equipment out of service during the EDG extended completion time will be managed under the CRMP. In addition, compensatory actions have been identified to mitigate increase in risk. Procedures have been developed to implement the compensatory actions.

With regard to the proposed change for the 24-hour endurance run, the EDGs were designed to be tested by running in parallel with offsite power and, design features such as protective devices were included. The proposed change does not affect parallel testing design features, the consequences of postulated failures during parallel testing, and postulated interactions with offsite power during parallel testing. If problems are encountered during testing, the EDG connection to the bus will be interrupted allowing the offsite circuits to continue to supply the bus. Further, the EDG system design includes emergency override of the test mode for both accident conditions (safety injection) and loss of offsite power to permit a response to actual emergency signals and return control of the EDG to the automatic control system.

Therefore, implementation of the proposed changes will not involve a significant reduction in the margin of safety.

Based on the staff's analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit No. 3, Citrus County, Florida

Date of amendment request: March 6, 2000.

Description of amendment request: The proposed amendment would revise the Improved Technical Specification (ITS) Action Condition and Surveillance Requirement (SR) for the safety-related diesel-driven emergency feedwater pump (EFP–3). The ITS required

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inventory volume for lube oil would be revised to agree with the actual test values and are included in the ITS Action Condition, SR and Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The revised lube oil requirements are being made to ensure EFP–3 is capable of seven days of continuous operation. The proposed amendment provides the same functional requirement as previously approved. The EFW system is used for accident mitigation and is not an initiator of design basis accidents. Therefore, the probability of previously analyzed events is not affected by this change. No capability or design functions of EFP–3 or the emergency feedwater (EFW) system will change. The initial conditions for accidents that require EFW and accident mitigation capability of the EFW system will remain unchanged. Therefore, the proposed amendment will not increase the consequences of evaluated accidents.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The revised ITS Condition will ensure equipment is restored to operable status in accordance with previously approved timeframes and functional levels. The revised SR will assure the same functional requirement as the previously approved SR. Lube oil will be stored on-site and the lube oil inventory in the sump ensures adequate time to transfer the stored inventory into the engine. No new plant configurations or conditions are created by these revised ITS Conditions or SR. Therefore, the proposed amendment cannot create the possibility of an accident of a different type than previously evaluated in the Safety Analysis Report.

3. Does not involve a significant reduction in the margin of safety.

The proposed ITS Condition and SR changes ensure adequate lube oil inventory is available to operate EFP–3 for seven days. The proposed changes replace the calculated lube oil inventory values with a more conservative value derived from actual test data for EFP–3. The revised SR ensures the same functional requirement for a seven-day supply of lube oil for EFP–3 as was previously approved. Similarly, the revised ITS Condition ensures the same functional level as currently approved by requiring that a reduced lube oil inventory of less than seven days but more than six days is restored to the seven-day level within 48 hours. The revised SR allows the lube oil inventory to be stored off engine. The inventory in the EFP–3 sump and auxiliaries provides sufficient time to permit the transfer of stored inventory into the engine. EFP–3 is designed to allow monitoring of lube oil level and addition of lube oil while the engine is operating. Based on the above, the revised ITS meets the same intent as the currently approved specifications. Therefore, there is no reduction in the margin of safety associated with the proposed ITS amendment.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC–A5A, P. O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Section Chief: Richard P. Correia.

Pacific Gas and Electric Company, Docket Nos. 50–275, Diablo Canyon Nuclear Power Plant, Unit No. 1, San Luis Obispo County, California

Date of amendment requests: December 31, 1999, as supplemented by letter dated January 18, 2000.

Description of amendment requests: The amendment would revise Section 2.C.(1) of Facility Operating License No. DPR–80 for the Diablo Canyon Power Plant, Unit No. 1 to authorize operation at reactor core power levels not to exceed 3411 megawatts thermal (100 percent rated power). This amendment would also (1) revise the definition in Section 1.1 of the technical specifications (TS) of rated thermal power to reflect Unit 1 operation at the uprated reactor core power level, (2) change the reactor core safety limits in TS Figure 2.1.1–1 to reflect the current fuel type and provide additional margin for OTΔT and OPΔT setpoint calculations, and change the nominal full power T_{avg} in the OTΔT and OPΔT function in Notes 1 and 2 to TS Table 3.3.3–1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

All previously evaluated accidents have been reviewed for the proposed increase in Unit 1 power rating, and these reviews are summarized in WCAP–14819, "Pacific Gas and Electric Company Diablo Canyon Power Plant, Unit 1 3425 MWt [megawatt thermal] Uprating Program Licensing Report." The majority of the Diablo Canyon Power Plant (DCPP) accident analyses already bound the higher power rating of Unit 2 combined with the lower reactor coolant system (RCS) flow rate of Unit 1. Hence, the uprate has no impact on these previously evaluated accidents. This is also true of dose assessment, which remains based on the original 3566 MWt core source terms and is not impacted by the uprate.

The previously evaluated accidents that are impacted by the uprate are large break loss-of-coolant accident (LOCA), small break LOCA, the OTΔT/ OPΔT setpoint calculations, and accidental depressurization of the RCS. The large break LOCA was reanalyzed for uprated conditions using best estimate methodology. The reanalysis demonstrated no increase in consequence and was approved by the NRC in License Amendments 121 (Unit 1) and 119 (Unit 2). The small break LOCA was also reanalyzed, and continues to demonstrate a large margin to peak clad temperature limits. The current OTΔT/OPΔT setpoints are bounding for the Unit 1 uprated power conditions based on revising the reactor core safety limits in TS Figure 2.1.1–1 to credit the exclusive use of Vantage 5 fuel. The accidental RCS depressurization reanalysis shows that the departure from nucleate boiling ratio remains above the applicable limit value. In summary, no design or analysis acceptance criteria will be exceeded, the functional integrity of all plant systems are unaffected, and there is no impact on the integrity of the fission product barriers or assumed dose source terms. Therefore, the consequences of all previous evaluated accidents are not substantially increased.

It was determined that there would be no impact on any component reliabilities assumed in the PRA model, and therefore no impact on the resulting core damage frequency. The PRA model envelopes both units, based on using the originally higher rated Unit 2 power level.

The operation impacts of the proposed power increase were reviewed against the unit design capability, and it was determined that no system, structure, or component would exceed design conditions or loads. While the low pressure turbines see a small (less than 1.5°F) increase in temperature, the effect on missile generation probability is not significant. There is no significant increase in the probability of component failure, offsite power loss, or any other accident initiator. Therefore, the probability of all previously evaluated accidents is not substantially increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Normal operation will not be substantially impacted by increasing the Unit 1 licensed power rating to match Unit 2. Procedures will be essentially unchanged, or where changes are required, they will be made to more closely resemble those in effect at Unit 2. Training will communicate all impacts to personnel and the plant simulator will be updated to match the power level of both

Units 1 and 2. There is, therefore, no possibility of a new or different kind of accident related to human performance.

Plant systems, structures, and components have been evaluated for the proposed uprate. Most have identical counterparts in operation at Unit 2 at this higher power level. A few are slightly different, such as the generator cooling system, and for these the design margins have been reviewed and found to be acceptable. Therefore, there is no possibility of a new or different kind of accident related to system, structure, or component performance.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant reduction in a margin of safety because the margin of safety associated with plant parameters as verified by the results of the accident analyses are within acceptable limits. As mentioned, most analyses demonstrating adequate margins of safety already assume the higher thermal power rating of Unit 2 and bound Unit 1 at the uprated thermal power conditions. The few transients that are reanalyzed meet the applicable acceptance criteria.

The reactor core safety limits specified in TS Figure 2.1.1–1 envelope operation with both 17x17 standard and 17x17 Vantage 5 fuel. The proposed change revises the reactor core safety limits in Figure 2.1.1–1 to credit the exclusive use of Vantage 5 fuel. These revised safety limits will continue to satisfy fuel design criteria. The current $OT\Delta T$ and $OP\Delta T$ setpoints provide adequate margin to the revised reactor core safety limits at the uprated Unit 1 conditions, which include a slightly higher nominal full power T_{avg} in Notes 1 and 2 to ITS Table 3.3.3–1.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: August 11, 1999.

Description of amendment request: **The proposed amendment clarifies the use of containment overpressure for ensuring adequate net positive suction head (NPSH) for the emergency core cooling system (ECCS) pumps.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. The proposed License Amendment Request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed license amendment request does not involve any physical changes to plant Structures, Systems, or Components (SSC), or how the SSC are operated, maintained, and tested. The proposed changes involve the acceptability of taking credit for a specific amount of containment overpressure following the initiation of an event. This credit involves the mitigation of an event, and not prevention or identification of an event. Credit for containment overpressure is not considered a precursor to any event.

Crediting containment overpressure does not turn an Anticipated Operational Occurrence (AOO) into an Abnormal Operational Transient (AOT) or a Design Basis Accident (DBA).

Calculations performed in support of the license amendment request provide a conservative estimate of the Minimum Containment Pressure Available (MCPA) following all design and licensing basis events for which some amount of containment overpressure is required. The NPSH calculations for the Residual Heat Removal (RHR) and Core Spray (CS) pumps include conservative assumptions and input values ensure that, barring beyond-design-basis loss of containment integrity, adequate NPSH is provided to the RHR and CS pumps for the entire duration of any of these events.

The proposed license amendment request makes a change to the PBAPS licensing basis to clearly define amount of containment overpressure allowed. This value is designated as the Containment Overpressure License (COPL). Conservative analyses have assured that the MCPA is always greater than this COPL for design basis events. Therefore, adequate NPSH is provided to the RHR and Core Spray pumps for all design and licensing basis events.

The evaluation for MCPA and NPSH includes the consideration for any one single active failure. The worst-case single active failure is the failure of one electrical division. There is no credible single active failure that can compromise the containment integrity. The evaluation for MCPA and NPSH does not place any restrictions on system operation following a design or licensing basis event. The analysis concludes that adequate NPSH will be available, even assuming the worst single active failure.

Therefore, the proposed license amendment request does not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed License Amendment Request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed license amendment request does not involve any physical changes to plant SSC, or how the SSC are operated, maintained, and tested. This proposed license amendment request involves the acceptability of taking credit for some amount of containment overpressure following the initiation of an event. This credit involves the mitigation of an event, and not prevention or identification of an event. Credit for containment overpressure is not considered a precursor to any event. Worst-case single active failure (i.e., loss of one electrical division) was considered in the assessment of MCPA and COPR [containment overpressure required]. The supporting calculations indicate that adequate NPSH is provided to the RHR and CS pumps for all design and licensing basis events, even with the worst single active failure.

Therefore, the proposed license amendment request does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed License Amendment Request does not involve a significant reduction in a margin of safety.

The MCPA and NPSH analyses supporting this license amendment request include conservative assumptions and use conservative input values that are consistent with or bound the analytical limits of the PBAPS Technical Specifications. These analyses indicate that adequate NPSH margin is available for operation of the RHR and CS systems to meet their safety functions following any design or licensing basis event. This includes operation of RHR in Suppression Pool Cooling, Wetwell Spray, Drywell Spray, and Low Pressure Coolant Injection modes, and CS in Short Term and Long Term Spray Cooling. Therefore, the proposed license amendment request does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: James W. Clifford.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: January 19, 2000 (PCN–512).

Description of amendment requests: **The amendment application proposes to revise the San Onofre Nuclear**

Generating Station, Units 2 and 3, technical specifications (TSs) Surveillance Requirement (SR) 3.0.3.

SR 3.0.3 allows compliance with the requirement to declare a limiting condition for operation not met to be delayed whenever it is discovered that a surveillance was not performed within its specified frequency (a missed surveillance). Presently, SR 3.0.3 allows a delay "up to 24 hours or up to the limit of the specified Frequency, whichever is less." The licensee proposes to revise the allowable delay "up to 24 hours or up to the limit of the specified Frequency, whichever is greater."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed change would extend the maximum allowable time for completing a Surveillance not performed within its specified Frequency (a missed Surveillance) without declaring the affected Limiting Condition For Operation (LCO) not met. The presently allowed time is up to 24 hours from the time of discovery or up to the limit of the specified Frequency, whichever is less. The proposed allowed time is up to 24 hours from the time of discovery or up to the limit of the specified Frequency, whichever is greater.

Surveillances are rarely missed. This is demonstrated by a limited review of Licensee Event Reports (LERs), which found very few occurrences of missed Surveillances, given the number of LERs submitted and the large number of Surveillances performed. Moreover, Surveillances, whether performed inside or outside the required Frequency, nearly always verify conformance with Technical Specification requirements. This is demonstrated by a survey of selected licensees regarding entries into Surveillance Requirement (SR) 3.0.3. As stated in Generic Letter 87–09, "* * * the vast majority of surveillances do in fact demonstrate that systems or components are operable." As stated in the SR 3.0.3 Bases, "* * * the most probable result of any particular Surveillance being performed is the verification of conformance with the requirements."

Therefore, it is unlikely that plant equipment would be inoperable during the time period of up to 24 hours or up to the limit of the specified Frequency, whichever is greater, that would be allowed under the proposed change for the completion of a missed Surveillance.

If, upon discovery of a missed Surveillance, it is known that the Surveillance would fail, SR 3.0.1 would require that the affected LCO be declared not met and the appropriate Condition(s) entered.

Performance of some Surveillances carries with it a slight risk, either from making some plant equipment temporarily inoperable or from performing plant manipulations, or both. The increase in plant risk from performing such Surveillances, combined with the confidence that a Surveillance test will be satisfactory when performed, together provide justification for extending the current allowable time to up to 24 hours or up to the specified Frequency, whichever is greater.

The foregoing discussion demonstrates that the probability or consequences of any accident previously evaluated will not be significantly increased by the proposed change.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This amendment request is administrative in nature and does not involve any change to plant equipment. Therefore, it will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

This amendment request does not change the manner in which safety limits or limiting safety settings are determined.

As discussed above, Surveillances are rarely missed, and, when performed, Surveillances nearly always verify conformance with Technical Specification requirements, making it unlikely that plant equipment would be inoperable during the time period of up to 24 hours or up to the limit of the specified Frequency, whichever is greater, that would be allowed under the proposed change for the completion of a missed Surveillance.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: March 17, 2000.

Description of amendment request: Revise Technical Specification 3/4.7.4 to revise the surveillance requirements (SRs) 4.7.4.b.1 and 4.7.4.b.2 to incorporate the wording from the Westinghouse Standard Improved Technical Specifications (NUREG–1431) and to delete SR 4.7.4.b.3. SR 4.7.4.b.3 requires verifying at least once per 18 months that each screen wash booster pump and the traveling screen start automatically on a safety injection test signal. The licensee also proposed changes to the Technical Specifications Bases associated with the Technical Specification changes and administrative changes to the Bases Index.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

NUREG 1431 related changes:

Incorporating the NUREG 1431 [Westinghouse Standard Improved Technical Specifications] wording for SR 4.7.4.b.1 and SR 4.7.4.b.2 does not significantly increase the probability of an accident because the surveillance testing of the Essential Cooling Water system has no effect on accident initiation probability. This change does not significantly increase the consequences of an accident because the surveillance requirements still provide adequate assurance that the Essential Cooling Water system can provide its design function.

Screen wash system changes:

Eliminating the requirement for the Essential Cooling Water traveling screens and screen wash booster pumps to start on a safety injection signal does not increase the probability of any accident previously evaluated. The traveling screens and the screen wash booster pumps have no potential for initiating an accident. Eliminating the requirement for the traveling screens and the screen wash booster pumps to start on a safety injection signal does not increase the consequences of any accident previously evaluated. A control system is provided to automatically start and stop the traveling screens during normal operation. A high differential water level sensed across any traveling screen alarms in the control room and automatically starts the screen wash booster pump and, after reaching adequate screen wash pressure, starts the traveling screen. A safety injection signal is not needed for this function. In addition, there are no circumstances associated with any event requiring a safety injection signal that would cause a high differential water level across the traveling screen.

The changes to the Bases Index are administrative and have no relevance to accident probability or consequences.

Based on the above, STPNOC [STP Nuclear Operating Company] concludes that the proposed change does not increase the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

NUREG 1431 related changes:

Incorporation of the NUREG 1431 wording into the surveillance requirements does not create the possibility of a new or different kind of accident because the surveillance requirements are not substantially changed and do not involve any different operational configurations for the station.

Screen wash system changes:

Elimination of the requirement to start the traveling screen and screen wash booster pump on a safety injection signal will not create the possibility of a new or different kind of accident from any accident previously evaluated. As discussed above, the traveling screens and screen wash booster pump have no potential to initiate an accident. In addition, STPNOC is not proposing any different operational configurations for the station.

The changes to the Bases Index are administrative and have no relevance to accidents.

Based on the above, STPNOC concludes that the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

NUREG 1431 related changes:

Incorporation of the NUREG 1431 wording for SR 4.7.4.b.1 and SR 4.7.4.b.2 does not significantly change the way the surveillance requirements will be performed. The Surveillance Requirements still provide adequate assurance that the Essential Cooling Water will perform its function. There is no change in the operational configuration of the plant. Consequently, the changes to these surveillance requirements do not significantly affect the margin of safety.

Screen wash system changes:

Elimination of the requirement for the traveling screen and screen wash booster pump to start on a safety injection signal will not prevent the traveling screen and screen wash booster pump to start when required. The systems will start automatically without the need for a safety injection signal. In addition, there is no design basis or mechanistic reason to postulate the need to automatically start the traveling screens or screen wash booster pump on a safety injection signal.

The changes to the Bases Index are administrative and have no relevance to the safety margin.

Based on the above, STPNOC concludes that the proposed change does not involve a significant decrease in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 31, 2000 (ET 00–0018).

Description of amendment request: The proposed amendment would modify the actions for Limiting Condition for Operation (LCO) 3.7.9, "Ultimate Heat Sink (UHS)," of the technical specifications (TSs). The proposed new Action A would allow the plant to operate with the plant inlet water temperature of the UHS above 90 °F, if the licensee verified the required cooling capacity within 4 hours and once per 12 hours thereafter, but that the plant would be shut down if the water temperature exceeded 94 °F. This would change the current requirement to shut down the plant if the inlet water temperature of the UHS exceeded the 90 °F. The time to shut down the plant is not being changed in the amendment request.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve any physical alteration of plant systems, structures or components. The proposed change provides an allowance for the plant to continue operation with [the] plant inlet water temperature [of the UHS] in excess of the current Technical Specification limit of 90 °F with the verification that required cooling capacity being maintained and [the plant inlet water] temperature ≤ 94 °F. The 94 °F limit is less than the design limit of 95 °F for associated plant components. The plant inlet water temperature is not assumed to be an initiating condition of any accident analysis evaluated in the Updated Safety Analysis Report (USAR). Therefore, the allowance for the [plant inlet] water temperature to be in excess of the current limit does not involve an increase in the probability of an accident previously evaluated in the USAR. The UHS supports OPERABILITY of safety related systems used to mitigate the consequences of an accident. Plant operation for brief periods with [the] plant inlet water temperature greater than 90 °F up to 94 °F will not adversely affect the OPERABILITY of these safety related systems and will not adversely impact the ability of these systems to perform their safety related functions. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated in the USAR.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve any physical alteration of plant systems, structures or components. The temperature of the plant inlet water being greater than 90 °F but less than or equal to 94 °F (with the main cooling lake dam intact) does not introduce new failure mechanisms for systems, structures or components not already considered in the USAR. The 94 °F limit is less than the design limit of 95 °F for associated plant components. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change will allow an increase in [the] plant inlet water temperature above the current Technical Specification limit of 90 °F for the UHS, provided [the] UHS temperature is maintained below 95 °F and that the required cooling capacity is verified maintained within 4 hours and once per 12 hours thereafter. Additionally, the plant inlet water temperature will be verified to be ≤94 °F once per 12 hours. The proposed change does not alter any safety limits, limiting safety system settings, or limiting conditions for operation, and the proposed changes provide continued assurance that with a plant inlet water temperature > 90 °F, the design temperature of safety related equipment are maintained within acceptable limits such that a safe shutdown of the plant can be performed. In addition, avoiding a plant transient during environmental conditions that could challenge the stability of the Electrical Power System offsets any perceptible reduction in the margin of safety as a result of the proposed change. Thus, the proposed change does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Section Chief: Stephen Dembek.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notice was previously published as a separate individual notice. The notice content was the same as above. It was published as an individual notice either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. It is repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: March 29, 2000 (TS–402).

Brief description of amendments: Changes Technical Specification 3/4.6.4.1 "Secondary Containment" to permit maintenance on a secondary containment access door when one or more units are operating and the other door is closed.

Date of publication of individual notice in the **Federal Register:** April 6, 2000 (65 FR 18141)

Expiration date of individual notice: April 20, 2000.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: August 26, 1999, as supplemented on February 24, and March 14, 2000.

Brief description of amendment: This amendment revises Technical Specification 3/4.9.4, and its associated bases, to allow the personnel airlock and certain other containment penetrations to remain open during refueling operations provided specific administrative controls are met. This amendment is approved for use during refueling outage 9 and operating cycle 10.

Date of issuance: March 27, 2000.

Effective date: March 27, 2000.

Amendment No.: 97.

Facility Operating License No. NPF–63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** October 6, 1999 (64 FR 54374).

The February 24, and March 14, 2000, submittals contained clarifying information only, and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 27, 2000.

No significant hazards consideration comments received: No.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: May 20, 1999.

Brief description of amendments: The amendments changed the Technical Specification (TS) value for the minimum suppression chamber water level to a more conservative value.

Date of issuance: March 30, 2000.

Effective date: Immediately, to be implemented within 60 days.

Amendment Nos.: 176 & 172.

Facility Operating License Nos. DPR–19 and DPR–25: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 25, 1999 (64 FR 46426).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 30, 2000.

No significant hazards consideration comments received: No.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: December 17, 1999, as supplemented March 8, 2000.

Brief description of amendment: The amendment revises Technical Specification (TS) 2.1, "Safety Limits (SLs)," changing the safety limit minimum critical power ratio limits in TS 2.1.1.2 to reflect the results of cycle-specific calculations performed for Fermi 2 operating Cycle 8.

Date of issuance: March 30, 2000.

Effective date: As of the date of issuance and shall be implemented prior to the startup from the seventh refueling outage.

Amendment No.: 138.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** January 26, 2000 (65 FR 4269).

The March 8, 2000, letter provided clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 30, 2000.

No significant hazards consideration comments received: No.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: July 30, 1999, as supplemented December 17, 1999, and March 1, 2000.

Brief description of amendment: The amendment revises Technical Specification (TS) 3.3.1.1, "Reactor Protection System (RPS) Instrumentation," to reflect the activation of the automatic trip associated with the oscillation power range monitor (OPRM). The amendment also revises TS 3.4.1, "Recirculation Loops Operating," to remove requirements related to the manual detection and suppression of core thermal-hydraulic instabilities because these actions are no longer necessary after the OPRM upscale function is activated.

Date of issuance: March 31, 2000.

Effective date: As of the date of issuance and shall be implemented prior to the startup from the seventh refueling outage.

Amendment No.: 139.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 3, 1999 (64 FR 59800).

The December 17, 1999, and March 1, 2000, letters provided clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 2000.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: August 6, 1998, as supplemented by letter dated February 16, 2000.

Brief description of amendment: The amendment revises the minimum and the maximum concentration limits for the sodium hydroxide tank. The amendment also deletes the maximum specified tank volume and revises the minimum specified tank volume to refer to the parameter used in the safety analysis with no allowance for instrument uncertainty.

Date of issuance: March 28, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 206.

Facility Operating License No. DPR–51: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 10, 1999 (64 FR 6695).

The February 16, 2000, letter provided clarifying information that did not change the scope of the August 6, 1998, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 28, 2000.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: January 27, 2000.

Brief description of amendment: The amendment deleted the current requirements of Technical Specification (TS) 4.7.9.1.2.d, "Source installed in the Boronometer," associated with the installed boronometer sealed source. The source was recently removed and stored, and the requirements of TS 4.7.9.1.2.d are no longer applicable.

Date of issuance: March 24, 2000.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment No.: 212.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 23, 2000 (65 FR 9007).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 24, 2000.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: January 27, 2000.

Brief description of amendment: The amendment relocated the schedule for the withdrawal of reactor vessel material surveillance specimens, from the Technical Specifications to the Safety Analysis Report, pursuant to the guidance provided in Generic Letter 91–01, "Removal of the Schedule for the Withdrawal of Reactor Vessel Material Specimens From Technical Specifications." Changes to the related Bases were also made. In addition, the proposed change to the surveillance specimen removal schedule was approved.

Date of issuance: April 4, 2000.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment No.: 213.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 23, 2000 (65 FR 9007).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 4, 2000.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: July 26, 1999, as supplemented by submittal dated December 7, 1999.

Brief description of amendment: This amendment permits implementation of 10 CFR Part 50, Appendix J, Option B, and reference Regulatory Guide 1.163, "Performance-Based Containment Leak Test Program," dated September 1995, which specifies a method acceptable to the NRC for complying with Option B. These changes relate only to Type B and C (local) leakage rate testing. The use of Option B for Type A (integrated) leakage rate testing was approved on February 22, 1996, by License Amendment No. 205.

Date of issuance: March 28, 2000.

Effective date: Immediately as of its date of issuance and shall be implemented within 120 days.

Amendment No.: 240.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 25, 1999 (64 FR 46437).

The letter of December 7, 1999, contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 28, 2000.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of application for amendment: September 9, 1999, as supplemented by submittal dated February 28, 2000.

Brief description of amendment: This amendment includes nine minor, unrelated revisions to the technical specifications (TSs). These revisions, which are minor in both content and safety significance, include

clarifications and editorial changes to the TSs.

Date of issuance: March 30, 2000.

Effective date: Immediately as of the date of issuance and shall be implemented within 90 days.

Amendment No.: 111.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 3, 1999 (64 FR 59803).

The supplemental information contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 30, 2000.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: December 3, 1998.

Brief description of amendments: The amendments made administrative changes to several Technical Specifications to remove obsolete information, provide consistency between Unit 1 and Unit 2, provide consistency with the Standard Technical Specifications, provide clarification, and correct typographical errors.

Date of issuance: March 31, 2000.

Effective date: March 31, 2000, with full implementation within 30 days.

Amendment Nos.: 243 and 224.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 31, 1999 (64 FR 47535).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 31, 2000.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: December 6, 1999, as supplemented March 17, 2000.

Brief description of amendment: Amendment to technical specifications changes the safety limit minimum critical power ratio (SLMCPR) from 1.06 to 1.08 for two recirculation loop operation and from 1.07 to 1.09 for single recirculation loop operation.

Date of issuance: March 31, 2000.

Effective date: March 31, 2000, to be implemented within 30 days.

Amendment No.: 182.

Facility Operating License No. DPR–46: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 29, 1999 (64 FR 73093).

The March 17, 2000, letter provided additional clarifying information that was within the scope of the original application and **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 2000.

No significant hazards consideration comments received: No.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: December 6, 1999, as supplemented by letters dated February 22 and March 14, 2000.

Brief description of amendment: The amendment modifies the Technical Specification (TS) surveillance requirements associated with ensuring a limited number of charging and high pressure safety injection pumps are incapable of injecting into the Reactor Coolant System when the plant is shutdown. In addition, the TS Bases are modified to address these changes.

Date of issuance: March 30, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 243.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 26, 2000 (65 FR 4285).

The February 22 and March 14, 2000, supplemental letters provided clarifying information that did not change the staff's original no significant hazards consideration determination or expand the scope of the application as published.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 30, 2000.

No significant hazards consideration comments received: No.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: September 7, 1999.

Brief description of amendment: The amendment removes the current special exception which precludes applying the 18-month functional testing surveillance to the Steam Generator Hydraulic Snubbers for Technical Specification 3/4.7.8, "Plant Systems, Snubbers."

Date of issuance: March 31, 2000.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 244.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 26, 2000 (65 FR 4283).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 2000.

No significant hazards consideration comments received: No.

Portland General Electric Company, et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: January 29, 1998.

Brief description of amendment: The amendment deletes paragraph 2.D of Facility Operating License No. NPF–1 and revises the Permanently Defueled Technical Specifications (PDTS) by deleting PDTS 5.7.1.1(b). These changes remove the requirements for a security program at the 10 CFR part 50 licensed site once the spent nuclear fuel has been relocated to the 10 CFR part 72 licensed Independent Spent Fuel Storage Installation.

Date of issuance: April 6, 2000.

Effective date: April 6, 2000, to be implemented within 30 days after the transfer of the last cask of spent nuclear fuel from the spent fuel pool to the independent spent fuel storage installation is complete.

Amendment No.: 203.

Facility Operating License No. NPF–1: The amendment changes the Operating License and the Permanently Defueled Technical Specifications.

Date of initial notice in Federal Register: September 8, 1999 (64 FR 48865).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 6, 2000.

No significant hazards consideration comments received: No.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: July 23, 1999, as supplemented September 13, 1999, and January 31, 2000.

Brief description of amendments: The amendments revised the Technical Specifications to remove the restriction on performing the 24-hour endurance run test of emergency diesel generators (EDGs) every 18 months only during shutdown. Additionally, for Salem Unit 1 only, a note associated with a one-time extension of a surveillance requirement was deleted.

Date of issuance: March 30, 2000.

Effective date: As of its date of issuance and shall be implemented within 60 days.

Amendment Nos.: 229 and 210.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 6, 1999 (64 FR 54380).

The January 31, 2000, supplement provided clarifying information that did not change the initial proposed no significant hazards consideration determination and did not expand the scope of the original application as published.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 30, 2000.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: October 4, 1999.

Brief description of amendments: The amendments revised the Technical Specifications 5.5.6, "Prestressed Concrete Containment Tendon Surveillance Program," to incorporate three exceptions to Regulatory Guide (RG) 1.35, Revision 2, 1976. The exceptions concern the number of tendons detensioned, inspection of concrete adjacent to vertical tendons, and the time during which areas adjacent to tendons are inspected.

Date of issuance: March 27, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–112; Unit 2–90.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 9, 2000 (65 FR 6411).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 27, 2000.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: April 29, 1999 (TS 99–04).

Brief description of amendments: The amendments delete Sequoyah Nuclear Plant Technical Specification (TS) monthly surveillance test on the auxiliary feedwater suction pressure switches.

Date of issuance: March 29, 2000.

Effective date: As of the date of issuance, to be implemented no later than 45 days after issuance.

Amendment Nos.: 253 and 244.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the TS.

Date of initial notice in ***Federal Register:*** May 19, 1999 (64 FR 27325).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 29, 2000.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: August 30, 1999.

Brief description of amendments: Requirements related to containment isolation valves that were located in two different sections of the technical specifications were consolidated into one section. Also, conditions relating to or usage of a check valve as an isolation device was clarified.

Date of issuance: March 29, 2000.

Effective date: March 29, 2000.

Amendment Nos.: 254 and 245.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the technical specifications.

Date of initial notice in ***Federal Register:*** October 6, 1999 (64 FR 54382).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 29, 2000.

No significant hazards consideration comments received: No.

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: January 13, 2000.

Brief description of amendments: The amendments: (1) Revise Technical Specification 3.8.3 (Condition B and Surveillance Requirement (SR) 3.8.3.2) to increase the required emergency diesel generator (EDG) lube oil inventory values; (2) Revise SR 3.8.3.2, for EDG lube oil inventory, to add a note stating that the surveillance is not required to be performed until the diesel has been in shutdown greater than 10 hours; and (3) Delete the footnote associated with SR 3.8.4.7 which provided a "one time only" alternative to battery testing requirements.

Date of issuance: March 24, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 75 and 75.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 23, 2000 (65 FR 9012). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 24, 2000.

No significant hazards consideration comments received: No

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: January 13, 2000.

Brief description of amendments: The amendments add "NOTE 3" to Surveillance Requirement 3.3.1.10 to allow entry into MODES 2 or 1 without the performance of N–16 detector plateau verification until 72 hours after achieving equilibrium conditions at greater than or equal to 90 percent rated thermal power.

Date of issuance: March 24, 2000.

Effective date:E As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 76 and 76.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 23, 2000 (65 FR 9013)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 24, 2000.

No significant hazards consideration comments received: No.

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: January 13, 2000.

Brief description of amendments: The amendments add "NOTE 3" to Surveillance Requirement 3.3.1.10 to allow entry into MODES 2 or 1 without the performance of N–16 detector plateau verification until 72 hours after achieving equilibrium conditions at greater than or equal to 90 percent rated thermal power.

Date of issuance: March 24, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendments Nos.: 76 and 76.

Facility Operating License Nos. NPF–84 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register***: February 23, 2000 (65 FR 9013).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 24, 2000.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri.

Date of application for amendment: December 3, 1999 (ULNRC–04158).

Brief description of amendment: The amendment changed Section 5.6.6, "Reactor Coolant System (RCS) Pressure and Temperature Limits Report (PTLR)," of the improved Technical Specifications (ITS) that were issued on May 28, 1999, in Amendment No. 133. The current Technical Specifications (CTS) remain in effect until the ITS are implemented on or before April 30, 2000. The changes to the ITS approve the use of the PTLR by the licensee to make changes to the plant pressure temperature limits and low temperature over pressure protection limits without prior NRC staff approval, in accordance with Generic Letter 96–03, "Relocation of the Pressure Temperature Limit Curves and Low Temperature Overpressure Protection System Limits," dated January 31, 1996. The changes (1) add the word criticality to ITS subsection 5.6.6.a as one of the reactor conditions for which RCS pressure and temperature limits will be determined, (2) add the phrase "and COMS PORV," where COMS PORV stands for cold overpressure mitigation system power operated relief valve, to the introductory paragraph of ITS subsection 5.6.6.b to show that the analytical methods listed in the subsection are also the COMS PORV, and (3) replace the two documents listed in ITS subsection 5.6.6.b by the reference to the NRC letter that approves use of the PTLR and the Westinghouse topical report, WCAP–14040-NP-A, Revision 2, "Methodology Used to Develop Cold Overpressure Mitigating System Setpoints and RCS Heatup and Cooldown Limit Curves," dated January 1996, that provides the methodology that will be used by licensee in using the PTLR report. The current plant pressure temperature limits and low temperature overpressure protection limits are in the CTS and were approved in Amendment No. 124, which was issued April 2, 1998.

Date of issuance: March 24, 2000.

Effective date: March 24, 2000, to be implemented no later than April 30, 2000.

Amendment No.: 134.

Facility Operating License No. NPF–30: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 29, 1999 (64 FR 73101).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 24, 2000.

No significant hazards consideration comments received: No

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: January 14, 2000, as supplemented by letter dated February 17, 2000 (ULNRC–04172 and -04187).

Brief description of amendment: The amendment revised several sections of the improved Technical Specification (ITSs) to correct 14 editorial errors made in either (1) the application dated May 15, 1997, (and supplementary letters) for the ITSs, or (2) the certified copy of the ITSs that was submitted in the licensee's letters of May 27 and 28, 1999. The ITSs were issued as Amendment No. 133 by the staff in its letter of May 28, 1999, and will be implemented by the licensee to replace the current TSs by April 30, 2000.

Date of issuance: March 27, 2000.

Effective date: March 27, 2000, to be implemented by April 30, 2000.

Amendment No.: 135.

Facility Operating License No. NPF–30: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 23, 2000 (65 FR 9013) and February 25, 2000 (65 FR 10118).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 27, 2000.

No significant hazards consideration comments received: No.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont.

Date of application for amendment: June 15, 1999, as supplemented on January 14, 2000.

Brief description of amendment: The amendment revises Technical Specifications (TSs) Sections 3.1/4.1 Reactor Protection System and 3.2/4.2 Protective Instrument Systems instrumentation, tables, and the associated Bases to increase the surveillance test intervals (STIs), add allowable out-of-service times (AOTs), replace generic emergency core cooling system actions for inoperable instrument channels with function-specific actions, and relocate selected trip functions from the TSs to a Vermont Yankee controlled document. In addition, revision to TS Section 3.1/4.1 Reactor Protection System and the associated Bases is proposed to remove the RUN Mode APRM Downscale/IRM High Flux/Inoperative Scram Trip Function (APRM Downscale RUN Mode SCRAM). The submittal also proposes to implement editorial corrections and administrative changes that do not alter the meaning or intent of the requirements.

Date of Issuance: April 3, 2000.

Effective date: As of the date of issuance, and shall be implemented within 90 days.

Amendment No.: 186.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 20, 1999 (64 FR 56535).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated April 3, 2000.

No significant hazards consideration comments received: No

Dated at Rockville, Maryland, this 12th day of April 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–9680 Filed 4–18–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Requests, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:
Rule 489 and Form F–N, SEC File No. 270–361, OMB Control No. 3235–0411
Form 24F–2, SEC. File No. 270–399, OMB Control No. 3235–0456

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 ("Act") [44 U.S.C. 3501 *et seq.*], the Securities and Exchange Commission ('Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 489 under the Securities Act of 1993, Filing of Form by Foreign Banks and Certain of their Holding Companies and Finance Subsidiaries; and Form F–N, Appointment of Agent for Service of Process by Foreign Banks and Foreign Insurance Companies and Certain of Their Holding Companies and Finance Subsidiaries Making Public Offerings of Securities in the United States.

Rule 489 under the Securities Act of 1933 [17 CFR 230.489] requires foreign banks and insurance companies and holding companies and finance subsidiaries of foreign banks and foreign insurance companies that are excepted from the definition of "investment company" by virtue of Rules 3a–1, 3a–5, and 3a–6 under the Investment Company Act of 1940 to file Form F–N to appoint an agent for service of process in the United States when making a public offering of securities. Approximately seven entities are required by Rule 489 to file Form F–N, which is estimated to require an average of one hour to complete. The estimated annual burden of complying with the rule's filing requirement is approximately eight hours, as one of the entities has submitted multiple filings.

Under 17 CFR 270.24f–2, any open-end management companies ("mutual funds"), unit investment trusts ("UITs") or face-amount certificate companies (collectively, "funds") that are deemed to have registered an indefinite amount of securities must, not later than 90 days after the end of any fiscal year in which it has publicly offered such securities, file Form 24F–2 with the Commission. Form 24F–2 is the annual notice of securities sold by funds that accompanies the payment of registration fees with respect to the securities sold during the fiscal year.

The Commission estimates that 8,203 funds file Form 24F–2 on the required annual basis. The average annual burden per respondent for Form 24F–2 is estimated to be one hour. The total annual burden for all respondents to Form 24F–2 is estimated to be 8,203 hours.

Compliance with the collection of information required by Form 24F–2 is mandatory. The Form 24F–2 filing that must be made to the Commission is available to the public.

The estimates of average burden hours are made solely for the purposes of the PRA and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549.

Dated: April 11, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–9788 Filed 4–18–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42685; File No. 4–430]

Order Staying the Deadlines for Decimal Implementation and Notice of Request for Comment on Revised Decimal Implementation Schedules

April 13, 2000.

On January 28, 2000, the Securities and Exchange Commission ("Commission") issued an order (the "Decimals Order") [1] requiring the American Stock Exchange LLC ("AMEX"), the Boston Stock Exchange, Inc. ("BSE"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"), the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Exchange, Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("PHLX") (collectively the "Participants") [2] to facilitate an orderly transition to decimal pricing in the United States securities markets. The Decimals Order prescribed a timetable for the Participants to begin trading some equity securities (and options on those equity securities) in decimals by July 3, 2000, and all equities and options by January 3, 2001.

On March 6, 2000, despite previous assurances of readiness, the NASD announced that The Nasdaq Stock Market Inc. ("Nasdaq") would not have sufficient capacity to meet the target dates for implementation. [3] The NASD also expressed concerns regarding overall industry readiness and requested that the Commission work with the industry and the markets to determine an appropriate time frame that would not impose unnecessary risks on investors. [4]

[1] *See* Securities Exchange Act Release No. 42360 (Jan. 28, 2000), 65 FR 5004 (Feb. 2, 2000) ("Decimals Order").

[2] Since the date of the Decimals Order, the Commission approved the registration of the International Securities Exchange ("ISE") as a national securities exchange. *See* Securities Exchange Act Release No. 42455 (Feb. 24, 2000), 65 FR 11388 (March 2, 2000). On March 10, 2000, the Commission included the ISE within the term "Participants" for purposes of the Decimals Order. *See* Securities Exchange Act Release No. 42516 (March 10, 2000), 65 FR14637 (March 17, 2000) ("Extension Order").

[3] *See* Letters from Frank G. Zarb, Chairman and Chief Executive Officer, NASD, to Arthur Levitt, Chairman, Commission, dated March 6, 2000 and March 21, 2000.

[4] Nasdaq has committed to stepping up its efforts (including, at the Commission's request, hiring an independent consultant to advise on capacity issues) to help ensure that it manages its growth responsibly. The Commission expects, and has been assured, that Nasdaq will dedicate substantial

The Commission remains committed to implementing decimal pricing an expeditiously as possible. Decimal pricing could benefit investors by enhancing investor comprehension, facilitating globlization of our markets, and potentially reducing transaction costs. At the same time, however, the Commission believes that decimal pricing must be implemented in a manner that does not have a negative impact on the order routing, trading, and settlement systems of the markets and the securities industry, and that does not result in investor confusion.

In light of the NASD's announcement that it is unable to meet the original planned implementation schedule for decimalization, and subsequent communications with the Participants, the industry, and others, the Commission hereby suspends the deadlines in the Decimals Order.[5] The Commission also requests comment on two alternatives for initiating decimal trading in exchange-listed equity securities this year.

I. Alternative Schedules To Implement Decimal Pricing

Since the NASD's announcement, the Commission, Participants, and other members of the securities industry have continued to discuss industry readiness and the feasibility and advisability of proceeding with the timetable set forth in the Decimals Order and the Extension Order without, or with the limited participation of, Nasdaq.[6] Based on these discussions, it appears that decimal pricing in at least some exchange-listed securities may be feasible this year. Specifically, the securities exchanges have indicated that their individual systems are prepared to convert to decimal pricing by July 3, 2000.[7] The NASD has also asserted that Nasdaq has sufficient capacity to implement decimal pricing for exchange-listed securities (*i.e.* the third market) by September 4, 2000,[8] with full implementation of decimal pricing by March 31, 2001.[9] Two electronic communications networks stated that they are prepared for decimals, and that trading exchange-listed securities in decimals should not be delayed because of Nasdaq's inability to meet the July 3rd target date.[10]

The vast majority of the Participants and securities firms, however, believe that it would not be advisable to implement widespread trading of exchange-listed securities in decimals while trading of Nasdaq securities remains in fractions, due to concerns about investor confusion and systems implications.[11]

On April 6, 2000, Chairman Levitt received a letter from Congressmen Thomas Bliley, Michael Oxley, and Edward Markey, urging the Commission to order the markets to begin decimal pricing in all exchange-listed securities by September 4, 2000,[12] even though Nasdaq securities would continue to be quoted in fractions.

In response to the changed circumstances resulting from the NASD's announcement, the Commerce Committee Letter, and industry comments, the Commission is soliciting public comment on two alternative proposals. First, the Commission requests comment on beginning trading in all exchange-listed securities in decimals (in nickel or penny increments) by September 4, 2000. Second, if commenters believe that this implementation date for full decimalization of exchange-listed securities is not feasible, the Commission requests comment on phasing in decimal pricing in certain exchange-listed securities on a pilot basis ("Decimals Pilot"). The Decimals Pilot could begin by September 4, 2000, and would initially include a small number of exchange-listed securities, and options on those securities, selected by the Participants. The selected exchange-listed securities could be quoted on increments of a penny. The Decimals Pilot would expand to all listed stocks on March 31, 2001, at which time all exchange-listed securities and options on those securities would be traded in decimals. Nasdaq may add selected Nasdaq securities to the Decimals Pilot if it is feasible and would not delay Nasdaq's overall readiness for decimals. In any event, the Commission fully expects Nasdaq to be ready to initiate decimal pricing in Nasdaq securities by the termination of the Decimals Pilot on March 31, 2001.

II. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning both of the proposals discussed above. In particular, the Commission seeks comment on the following issues, particularly as they relate to the feasibility of simultaneously pricing exchange-listed securities in decimals and Nasdaq securities in fractions ("Dual Pricing"):

1. Is it feasible to begin Dual Pricing by September 4, 2000? If it is feasible, should trading in all exchange-listed securities be in nickel or penny increments? If it is not feasible to begin Dual Pricing by September 4, 2000, why not?

2. What, if any, systems changes or other steps would be necessary to implement Dual Pricing by this

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resources and the attention of senior management to the conversion to decimal pricing. The Commission is monitoring Nasdaq's efforts closely.

[5] The two earliest deadlines set by the Decimals Order required the Participants to submit jointly by March 13, 2000 a decimals implementation plan, and each Participant to submit by March 28, 2000 proposed rule changes necessary to implement the decimals implementation plan. These deadlines were extended (to April 14, 2000 and April 28, 2000, respectively) as a result of the NASD announcing that it would be unable to begin implementing decimal pricing on July 3, 2000. *See* Extension Order, *supra* note 2.

[6] For example, Chairman Levitt recently wrote to each Participant asking for their views regarding, in part, the feasibility and advisability of trading simultaneously exchange-listed securities in decimals and Nasdaq securities in fractions, *See* Letter from Arthur Levitt, Chairman, Commission, to Participants, dated March 10, 2000.

[7] *See* Letters to Arthur Levitt, Chairman, Commission, from Richard A. Grasso, Chairman and Chief Executive Officer, NYSE, dated March 22, 2000; Philip D. DeFeo, Chairman and Chief Executive Officer, PCX, dated March 21, 2000; Charles J. Henry, President and Chief Operating Officer, CBOE, dated March 21, 2000; David Krell, President and Chief Executive Officer, ISE, dated March 21, 2000; William G. Morton, Jr., Chairman and Chief Executive Officer, BSE, dated March 21, 2000; Salvatore F. Sodano, Chairman and Chief Executive Officer, AMEX, dated March 21, 2000; Robert H. Forney, President and Chief Executive Officer, CHX, dated March 20, 2000; Meyer S. Frucher, Chairman and Chief Executive Officer, PHLX, dated March 20, 2000; and David Colker, President and Chief Operating Officer, CSE, dated March 17, 2000 ("March 2000 Letters to Arthur Levitt").

[8] *See* Letter from Richard Ketchum, President, NASD, to Annette Nazareth, Director, Division of Market Regulation ("Division"), and Robert L.D. Colby, Deputy Director, Division, Commission, dated April 12, 2000.

[9] *Id.*

[10] *See* Letter from Douglas Atkin, President and Chief Executive Officer, Instinet Corporation, to Annette Nazareth, Director, Division, Commission, dated March 21, 2000; *see also* Letter from Cameron Smith, General Counsel, Island ECN, to Annette Nazareth, Director, Commission, dated April 10, 2000

[11] The Participants also noted that systems and applications software would have to be modified to handle a mix of decimal and fractional prices for a large number of securities over an extended period of time. *See* March 2000 Letters to Arthur Levitt, *supra* note 7. Order receiving, routing and processing systems at brokerage firms and service bureaus would have to create and maintain a table containing price formats for each security to perform price format checking. *Id.* The Participants and securities firms were generally concerned that bifurcating the markets without systems changes and testing could increase error and corresponding rejection rates. *Id.*

[12] *See* Letter from Chairman Thomas Bliley, Committee on Commerce, U.S. House of Representatives; Chairman Michael G. Oxley, Subcommittee on Finance and Hazardous Materials, U.S. House of Representatives; and Congressman Edward J. Markey, Ranking Member, Subcommittee on Telecommunications, Trade, and Consumer Protection, U.S. House of Representatives; to Arthur Levitt, Chairman, Commission, dated April 4, 2000 ("Commerce Committee Letter").

September 4, 2000 deadline? What type of changes would need to be made to the systems of securities firms, investment companies, and vendors? What would be the impact on systems capacity? In light of your answers to the foregoing questions, what changes would need to be made to the current decimals testing schedule?

3. Is the risk of customer confusion because of Dual Pricing Significant, and if so, how should it be addressed?

4. If commenters believe that implementing Dual Pricing by September 4, 2000 is not feasible, what date(s) is(are) feasible to implement Dual Pricing? Commenters should include a discussion of the systems changes and testing schedules that would be needed for their alternative implementation date(s).

5. In addition, if commenters believe that implementing Dual Pricing by September 4, 2000 is not feasible, is the alternative Decimals Pilot proposal feasible or preferable? If commenters believe that the Decimals Pilot is feasible, what, if any, systems changes or other steps would be necessary to facilitate this schedule? In particular, what changes would need to be made to the current decimals testing schedule? What type of changes would need to be made to the systems of securities firms, investment companies, and vendors? What would be the impact on systems capacity? Is there a risk of customer confusion, and if so, how should it be addressed?

6. If commenters believe that the Decimals Pilot is not feasible, what alternative would expedite the implementation of decimal pricing in exchange-listed and Nasdaq securities? Commenters should include a discussion of the systems changes and testing schedules that would be needed for their alternative, including implementation date(s).

7. Commenters are requested to offer specific views on the optional schedule for implementing decimal pricing in options based on exchange-listed and Nasdaq stocks subject to decimal pricing.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov*. All submissions should refer to File No. 4–430 and should be submitted by May 10, 2000. Comment letters received will be available for public inspection and copying in the Commission's Public Reference Room. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://ww.sec.gov).

III. Conclusion

Because Nasdaq is unable to meet the implementation schedules set forth in the Decimals Order and the Commission is seeking comments on alternative proposals for implementing decimal pricing, the Commission believes that it is in the public interest in maintaining fair and orderly markets and to protect investors to suspend the deadlines in the Decimal Order and the Extension Order.

Accordingly, it is hereby ordered that all deadlines in the Decimals Order and the Extension Order be suspended. After reviewing any comments received, the Commission intends to issue an order for the implementation of decimal pricing.

It is hereby further ordered that the Participants continue to discuss the implementation of decimal pricing collectively and with interested market participants, and work together and with others in developing an implementation plan in anticipation of decimal pricing. The Decimals Order directed the Participants to act jointly in discussing a plan to implement decimal pricing in the equities and options markets, and to discuss that plan with other interested market participants. While this order suspends all deadlines in the Decimals Order, the Order otherwise remains in effect.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–9789 Filed 4–18–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42668, File No. 4–431]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing of the Plan for Allocation of Regulatory Responsibilities Between the International Securities Exchange LLC and the National Association of Securities Dealers, Inc.

April 11, 2000.

Pursuant to section 17(d) of the Securities Exchange Act of 1934 ("Act"),[1] Rule 17d–2 thereunder,[2] notice is hereby given that on April 3, 2000, the International Securities Exchange LLC ("ISE") and the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission" a plan for the allocation of regulatory responsibilities.

I. Introduction

Section 19(g)(1) of the Act[3] among other things, require every national securities exchange and registered securities association ("SRO") to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to section 17(d) or 19(g)(2)[4] of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). This regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.[5] With respect to a common member. Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d–1 and Rule 17d–2 under the Act.[6] Rule 17d–1, adopted on April 20, 1976,[7] authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules. When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with applicable financial responsibility rules.

On its face, Rule 17d–1 deals only with an SRO's obligations to enforce

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[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2.

[3] 15 U.S.C. 78s(g)(1).

[4] 15 U.S.C. 78s(g)(2).

[5] Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94–75, 94th Cong., 1st Session. 32 (1975).

[6] 17 CFR 240.17d–1 and 17 CFR 240.17d–2.

[7] Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18809 (May 3, 1976).

broker-dealers' compliance with the financial responsibility requirements. Rule 17d–1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices, and trading activities and practices.

To address regulatory duplication in these other areas, on October 28, 1976, the Commission adopted Rule 17d-2 under the Act.[8] This rule permits SROs to propose joint plans allocating regulatory responsibilities with respect to common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to and foster the development of a national market system and a national clearance and settlement system, and in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

II. The Plan

The ISE and the NASD filed with the Commission a plan for allocating regulatory responsibilities pursuant to Rule 17d-2. The plan is intended to reduce regulatory duplication for firms that are common members of the ISE and the NASD. Included in the plan is an attachment ("ISE Certification") that clearly delineates regulatory responsibilities with respect to ISE rules. The ISE Certification lists every ISE rule that, under the plan, the NASD would bear responsibility for overseeing and enforcing with respect to common members.

The text of the proposed 17d-2 plan is as follows:

Agreement Among the National Association of Securities Dealers, Inc., NASD Regulation, Inc. and The International Securities Exchange LLC; Pursuant to Section 17(d) and Rule 17d-2

This agreement (*Agreement*) pursuant to Section 17(d) and Rule 17d-2 of the Securities Exchange Act of 1934 (Act) is by and among the National Association of Securities Dealers, Inc. (*NASD*), a Delaware Corporation registered as a registered securities association subject to regulation by the Securities and Exchange Commission (*SEC*) under the Securities Exchange Act of 1934 (the Act), whose principal offices are located at 1735 K Street, NW., Washington, DC 20006, NASD Regulation, Inc. (*NASDR*), a wholly-owned subsidiary of NASD, whose principal offices are located at 1735 K Street, NW., Washington, DC 20006, and the International Securities Exchange LLC, a New York limited liability company registered as a national securities exchange subject to regulation by the SEC under the Act, whose principal offices are located at 60 Broad Street, New York, New York 10004 (hereafter referred to as *Exchange*) (NASD, NASDR, and Exchange hereafter may be referred to collectively as the *parties* or individually as a *party*).

In consideration of the mutual covenants contained hereafter, and in consideration of other valuable consideration, NASD, NASDR, and the Exchange hereby agrees as follows:

1. *Term.* This Agreement shall be effective on the date the SEC approves this Agreement under Section 17(d) (*Effective Date*).

2. *Entities.* The Exchange is a registered securities exchange, as defined in Section 6 of the Act, and a self-regulatory organization, as defined in Section 3(a)(26) of the Act (*SRO*). The NASD is a registered securities association, as defined in Section 15A of the Act and an SRO. Both parties are responsible for fulfilling certain regulatory obligations and performing certain regulatory functions under the Act. Under the Plan of Allocation and Delegation of Functions By NASD to Subsidiaries (*Delegation Plan*), Section II., A., NASD has delegated certain of those regulatory obligations and functions to NASDR, including the regulatory obligations and functions that are the subject of this agreement. For the purposes of this agreement, NASDR shall be considered the entity responsible for fulfilling the NASD's regulatory obligations and performing the NASD's regulatory functions.

3. *Members.* The parties that are SROs have brokers or dealers as their members, and some of the brokers or dealers are members of both such parties (hereinafter, members of both such parties and persons associated with such members are referred to collectively as *Common Members*). Each party that is an SRO has regulatory obligations under the Act and the rules of the party for Common Members.

4. *Structure.*

(a) *Rule 17d–1.* Under Rule 17d–1, the SEC shall designate by written notice to one of the parties the regulatory obligation for assuring that a Common Member, who is also a member of Securities Investor Protection Corporation, complies with applicable financial responsibility rules, as defined in Section 3(a)(40) of the Act. The parties are not requesting that the SEC change the existing designated examining authority (*DEA*) under Rule 17d–1 of any Common Members. Going forward, the parties shall request the SEC to designate the NASD as the DEA under Rule 17d–1 for such members or persons who are solely members of the NASD and that become Common Members. Unless the NASD is designated the DEA for a Common Member, NASDR specifically excludes from this Agreement any undertaking to exercise regulatory responsibility for, or supervision of, Common Members to assess such Common Members' conduct under applicable financial responsibility rules, including examining for, receiving reports relating to, and enforcing compliance with, such rules.

(b) *Rule 17d–2.* Under Rule 17d–2, the parties may agree, in a plan or agreement, to provide for coordinated, non-duplicative regulation and enforcement, and to service other purposes of the Act: (a) to allocate certain regulatory responsibilities that both parties have to one of the parties; (b) to relieve a party of its regulatory responsibility and obligations for a certain function under the Act if the other party agrees to exercise such responsibility and undertake such obligation for the specified function on behalf of the other party; and, (c) to provide for the allocation of expenses reasonably incurred by the party agreeing to exercise the responsibility and undertake the obligation for the specified function in the plan or agreement.

(1) Pursuant thereto, the Exchange has exclusive regulatory responsibility for identifying, in a certification, as amended by the Exchange from time to time, and attached hereto and made a part of this Agreement (*ISE Certification*), the rules of the Exchange that are identical or substantially similar to NASD rules and, therefore, are the subject of this Agreement.

5. *Services.* NASDR agrees to provide the following services (*Services*) as it relates to Common Members:

(a) *Membership Activities.*

(1) NASDR will receive and process in the Central Registration Depository (*CRD*) applications, reports, information, filings, fingerprint cards, and notices generally relating to: (a) a broker's or dealer's application for membership or participation in the Exchange, (b) associated person status, (c) registration as a principal of any type, a representative of any type, or any other type of employee required to register or required to pass a qualification examination.

(2) NASDR will receive and process in the CRD documentation of notice of the passage of the appropriate qualification examination for such principal, registered representative, or other employee required to qualify by examination and, subsequently, forward such information to the Exchange.

(3) NASDR will advise the Exchange daily of any changes in the rights or status of members (including officer and partner changes), associated persons, registered personnel, and other persons.

(4) *Forwarding Fees.* NASDR shall collect and forward monthly to the Exchange, any applicable fees for the account of the Exchange. NASDR agrees to provide the Exchange with an accounting of such fees in January of each year. The Exchange will reimburse NASDR for reasonable expenses incurred for performing both accounting functions.

(5) Common Members will be required to send to NASDR all letters, termination notices or other material relating to their associated persons.

(6) *Exclusions.*

(a) NASDR will not review the membership application, reports, filings, fingerprint cards,

[8] Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49093 (November 8, 1976).

notices, or other writings filed to determine if such documentation submitted by a broker or dealer, or a person associated with a broker or a dealer, or other persons required to register or qualify by examination: (a) meets the Exchange requirements for general membership or for specified categories of membership or participation in the Exchange, such as (i) Primary Market Maker Membership (*PMM*); (ii) Competitive Market Maker Membership (*CMM*); or (iii) Electronic Access Membership (*EAM*) (or any similar type of exchange membership or participation that is created after this agreement is executed); or (b) meets the Exchange requirements to be associated with, or employed by, an Exchange member or participant in any capacity, such as a Designated Trading Representative (*DTR*) (or any similar type of participation, employment category or title, or associated-person category or class that is created after this agreement is executed).

(b) NASDR will not review applications or other documentation filed to requires a change in the rights or status described in paragraph 6(a) above, including termination or limitation on activities, of a member or a participant of the Exchange, or a person associated with, or requesting association with, a member or a participant of the Exchange.

(c) When, as a result of processing letters, termination notices, or other material relating to their associated persons, NASDR becomes aware of a statutory disqualification with respect to a Common Member, NASDR shall determine, pursuant to Section 15A(g) or Section 6(c) of the Act, the acceptability or continued acceptability of the person to whom such statutory disqualification applies, but will not make a determination regarding Exchange membership or participation, or association of a person with an Exchange member. NASDR shall advise the Exchange in writing of its actions in this regard. The Exchange shall, within 30 days of receiving such information from NASDR, determine whether to permit a statutorily disqualified Common Member to become or to remain an Exchange member or a participant, or a person associated with a member. The Exchange will advise NASDR of its decision. The Exchange will reimburse NASDR for reasonable expenses incurred for notifying the Exchange of the NASD's decision regarding a statutory disqualification under Section 15A(g) or Section 6(c) of the Act.

(b) *Branch Office Activities.* NASDR will receive and process notices, filings, or registrations received regarding a Common Member's branch offices, including notices, filings, or registrations to designate offices of supervisory jurisdiction, and agrees to provide notice to the Exchange of such filings. The Exchange will reimburse NASDR for reasonable expenses incurred for providing the Exchange notification.

(c) *Examinations.* NASDR will perform routine, cycle, cause, and special examinations of Exchange members, and will provide copies of the examination reports to the Exchange. The Exchange will reimburse NASDR for reasonable expenses incurred for providing examination reports to the Exchange.

(1) This undertaking is limited to examining Common Members for compliance with: (a) the federal securities laws and the rules and regulations thereunder, except that it does not include examining any Common Member for compliance with financial responsibility rules on behalf of the Exchange (unless the SEC has designated NASD as the *DEA* for the Common Member under Rules 17d–1); (b) other applicable federal laws, rules and regulations, including the rules of the Municipal Securities Rulemaking Board (*MSRB*); and (c) the rules of the Exchange that are identical or substantially similar to NASD rules because they have been certified by the Exchange as such, or, when applied to the Common Member's conduct or activities conducted on the Exchange or in connection or in relation to the Exchange, the rules are identical or substantially similar in that the rule's application to the Common Member's conduct or activities on the Exchange, in connection with, or in relation to, the Exchange would not require an examiner to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Common Member's activity, conduct, or output in relation to the rule.

(2) This undertaking specifically excludes any obligation or responsibility for NASDR to examine Common Members for compliance with Exchange rules for which regulatory responsibility is allocated to an SRO under the multilateral Rule 17d-2 agreement relating to options sales practices, as amended from time to time (the *Options Rule 17d-2 Agreement*).

(3) This undertaking specifically excludes any obligation or responsibility for NASDR to examine Common Members for compliance with Exchange rules that are: (i) related to administrative or housekeeping Exchange functions; or (ii) related to the trading in and operation of the Exchange market (*Exchange market rules*).

(d) *Violations.*

(1) If NASDR discovers an apparent violation of a federal statute or regulation or an Exchange rule listed above in paragraph 5.(c)(1) for which NASDR agrees to examine a Common Member for compliance, NASDR shall investigate the apparent violation, notify the Exchange of the results of the investigation and provide a copy of any written report, determine if additional regulatory action is required, take any disciplinary or other regulatory action required, and provide notice to the Exchange at the termination of the matter by enforcement or other action. If a disciplinary proceeding is conducted by NASDR, NASDR will apply the NASD Code of Procedure (the Rule 9000 Series) and other applicable NASD procedural rules. The Exchange will reimburse NASDR for reasonable expenses incurred for providing any information, notices, or reports contemplated under this provision.

(2) If NASDR discovers an apparent violation of an Exchange Rule not within the examination responsibility of NASDR as described above in paragraph 5.(c)(1), NASDR shall notify the Exchange and refer the matter to the Exchange for further examination, investigation, or enforcement or regulatory action, as determined by the Exchange.

(e) *Advertising Materials.* NASDR will review advertising materials and other communications with customers for compliance with then applicable NASD rules and interpretations. This undertaking specifically excludes any obligation or responsibility for NASDR to review advertising materials and other communications with customers for compliance with Exchange rules that are unique to the Exchange, or, when applied to the member's conduct or activities regarding advertising or other communications with customers, are unique in that the rule's application to the member's conduct or activities would require a reviewer or examiner to develop one or more new reviewing or examination standards, modules, procedures, or criteria in order to analyze the application of the rule to the member's advertising materials or other communications with customers.

6. *Information Sharing.* The parties agree to provide each other with the following information:

(a) *General.* A party shall promptly furnish to the other party any information which the party determines indicates possible financial, operational, or other problems of any Common Member, including but not limited to early warning indications of potential problems resulting from unusual accumulations or concentrations of securities positions or market fluctuations.

(b) *Special Surveillance Categories.* The parties shall inform each other of any special surveillance categories utilized by the other party in its surveillance of a Common Member. As the DEA under Rule 17d-1 for a Common Member, NASDR shall furnish the Exchange with a description of the financial or operational factors that would cause a Common Member to be placed in one or another of such categories, and, if the NASDR takes subsequent action against the Common Member, NASDR shall inform the Exchange. The Exchange will reimburse NASDR for reasonable expenses incurred for providing such information and notices contemplated under this provision.

(c) *Common Member Special Surveillance.* As the DEA under rule 17d-1 for a Common Member, NASDR shall give the Exchange immediate oral notice of (i) the placing of a Common Member in a Securities Investor Protection Act of 1970 Section 5(a) surveillance category, along with the particular factors that caused such member to be so placed in such category; (ii) any change in such Section 5(a) surveillance category in which any Common Member has been placed and the reasons for such change; and (iii) the removal of any Common Member from the surveillance category and the reasons therefor. NASDR shall confirm such notice in writing at the earliest practicable time. The term "Immediate Notice" shall mean (i) notice by NASDR to the Exchange under this Agreement that is provided at the same time that NASDR provides notice to the SEC; or (ii) where notification to the SEC is not required, at the earliest practicable time. The Exchange will reimburse NASDR for reasonable expenses incurred for providing

any information or notices contemplated under this provision.

(d) *Operational or Other Restrictions.* As the DEA under Rule 17d-1 for a Common Member, NASDR shall give the Exchange prompt oral notice of (i) any decision to suspend, or to place other operational or financial restrictions upon, any Common Member (other than new members) and (ii) of any event that requires notice to either the SEC or the Securities Investor Protection Corporation ("SIPC") in connection with Rule 17a-11 under the Act. NASDR shall confirm such notice in writing at the earliest practicable time. The Exchange will reimburse NASDR for reasonable expenses incurred for providing any information and notices contemplated under this provision.

(e) *Reports.* Upon reasonable request, a party will make available promptly to a requesting party any financial, operational, or related report filed with the party by a Common Member, files, information on customer complaints, termination notices, copies of an examination report, investigative material, or other documents involving compliance with the federal securities laws and regulations and the rules of the parties by the Common Member, or other documents in the possession of the party receiving the request relating to the Common Member as necessary to assist the other party in fulfilling the self-regulatory responsibilities, obligations, and functions allocated under this Agreement. The parties agree that a party will make available promptly to the requesting party witnesses as necessary to assist the other party in fulfilling the self-regulatory responsibilities allocated under this Agreement. The non-requesting party will pay all reasonable travel and other expenses incurred by its employees to the extent that the requesting party requires such employees to serve as a witness, and provide information or other assistance pursuant to the Agreement.

(f) *Customer Complaints.* If a party receives a copy of a customer complaint relating to a Common Member's activity or conduct, and the activity or conduct is not the regulatory responsibility of the party receiving such customer complaint, the party will forward to the other party, on recognition, copies of such customer complaints.

(g) *Disciplinary Actions.* Upon reasonable request of a party, the other party shall use reasonable efforts to furnish the requesting party information on informal or formal disciplinary actions involving a Common Member. The requesting party will reimburse the other party for reasonable expenses incurred for providing such information.

(h) *Information-Miscellaneous.* Where not otherwise provided, in consideration for NASDR assuming any of the above referenced regulatory responsibilities and obligations of the Exchange with respect to Common Members and thereafter providing information to the Exchange in any form that is necessary or desirable to the Exchange in order for the Exchange to fulfill its regulatory obligations under the Act or in order for the Exchange to remain informed of the actions of its members and associated persons, the Exchange will reimburse NASDR for all reasonable expenses incurred in order to provide such information.

7. *Special or Cause Examinations.* Nothing in this Agreement shall restrict or in any way encumber the right of a party to conduct special or cause examinations of Common Members as either party, in its sole discretion, shall deem appropriate or necessary.

8. *Confidential Information.* The parties are subject to the Confidentiality and Non-Disclosure Agreement entered into by the parties on September 21, 1999 (*Confidentiality Agreement*), the provisions of which are attached hereto in their entirety and made a part of this Agreement.

9. *Fees.* NASDR will provide the Exchange with ninety (90) days advance written notice in the event that NASDR decides to charge the Exchange for any expenses incurred or services performed under this Agreement not otherwise set forth above. The Exchange will have thirty (30) days from the date of such notification to inform the NASDR that the Exchange will perform for itself the applicable regulatory responsibilities allocated NASDR under the Agreement or enter into an agreement pursuant to applicable rules of the SEC with another SRO with respect to the performance of such responsibilities.

10. *Indemnification.* Neither party, including respective directors, governors, officers, employees and agents, will be liable to the other party and its directors, governors, officers, employees and agents for any liability, loss or damage resulting from any delays, inaccuracies, errors or omissions with respect to its performing or failing to perform regulatory responsibilities, obligations, or functions, except as otherwise provided for under the Act or in instances of gross negligence, willful misconduct or reckless disregard, or breach of confidentiality. Both parties understand and agree with each other that the regulatory responsibilities are being performed on a good faith and best effort basis and no warranties, express or implied, are made by either party to the other party with respect to any of the responsibilities to be performed by either of these parties hereunder.

11. *Arbitration.* Any claim, dispute, controversy or other matter in question with regard to the Agreement that cannot be resolved by negotiation between the parties shall be submitted to arbitration in accordance with the rules and regulations of the American Arbitration Association; provided, however, that (1) submission of any such claim, dispute, controversy or other matter in question to the American Arbitration Association shall not be required if the parties agree upon another arbitration forum, (2) the foregoing shall not preclude either party from pursuing all available administrative, judicial or other remedies for infringement of a registered patent, trademark, service mark or copyright, (3) the parties shall not submit claims for punitive damages, and do hereby waive any right to the same, and (4) the arbitrators shall not be authorized to award punitive damages.

12. *SEC Approval.*

(a) The parties agree to promptly file this Agreement with the SEC for its review and approval.

(b) If approved by the SEC, the Exchange will notify Common Members of the general terms of the Agreement and its impact on members. The notice will be sent on behalf of both parties and prior to being sent, NASDR will review and approve the notice.

13. *Definitions.* Unless otherwise defined in this Agreement, or unless the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Act and the rules and regulations thereunder.

14. *Subsequent Parties; Limited Relationship.* This Agreement shall insure to the benefit of and shall be binding upon the parties hereto and their respective legal representatives, successors, and assigns. Nothing is this Agreement, expressed or implied, is intended or shall (i) confer on any person other than the parties hereto, or their respective legal representatives, successors, and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, (ii) constitute the parties hereto partners or participants in a joint venture, or (iii) appoint one party the agent of the other.

15. *Assignment.* Neither party may assign the Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed, *provided, however,* that either party may assign the Agreement to a corporation controlling, controlled by or under common control with the assigning party without the prior written consent of the other party.

16. *Severability.* Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

17. *Termination.*

(a) *Termination for Cause.* Either party may terminate the Agreement due to breach by the other party. The party aggrieved by the breach shall give written notice to the other party that the Agreement shall be terminated not earlier than sixty (60) calendar days form receipt of the notice, and such notice shall state with specificity the grounds for termination. If the breach is curable, the party in breach will have the right to cure such breach prior to the date stated for termination, and, should the breach be cured and written notice of such cure served on the aggrieved party prior to the date stated for termination, such notice shall vacate the notice to terminate.

(b) *Termination for Convenience.* Either party may terminate the Agreement for any other reason by giving written notice to the other party that the Agreement will terminate not less than ninety (90) days from receipt of the notice. The notice will specify the basis for termination. The Exchange will pay NASDR the amount due for authorized work and expenses incurred in completion of such authorized work as of the effective date of termination.

18. *General.* The parties agree to perform all acts and execute all supplementary instruments or documents that may be

reasonably necessary or desirable to carry out the provisions of this Agreement.

19. *Liaison and Notices.* All questions regarding the implementation of this Agreement shall be directed to the persons identified in subsections (*a*) *and* (*b*), as applicable, below. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon (i) actual receipt by the notified party or (ii) constructive receipt (as of the date marked on the return receipt) if sent by certified or registered mail, return receipt requested, to the following addresses:

(a) If to NASDR: NASD Regulation, Inc., Office of General Counsel, 1735 K Street, N.W., Washington, D.C. 20006, Attn: Alden S. Adkins.

With, if a notice of breach or default, a required copy to: National Association of Securities Dealers, Inc., 1735 K Street, NW., Washington, D.C. 20006, Attn: Office of General Counsel—Contracts Group.

(b) If to the Exchange:

International Securities Exchange LLC, Senior Vice President, Chief Regulatory Officer & General Counsel, 60 Broad Street, New York, New York 10004, Attn: Michael J. Simon.

With, if a notice of breach or default, a required copy to: Same address as above.

20. *Regulatory Responsibility.* Pursuant to Section 17(d)(1)(A) of the Act, and Rules 17d–2 thereunder, NASDR and the Exchange jointly request the SEC, upon its approval of this Agreement, to relieve the Exchange of any and all responsibilities with respect to the matters allocated to NASDR pursuant to this Agreement for purposes of Section 17(d) and 19(g) of the Act, provided however that the Exchange will continue to have exclusive regulatory responsibility for ensuring the continued validity of the certifications made under Section 5.(c)(1) herein.

21. *Governing Law.* This Agreement shall be deemed to have been made in the State of New York, and shall be construed and enforced in accordance with the law of the State of New York, without reference to principles of conflicts of laws thereof. Each of the parties hereby consents to submit to the jurisdiction of the courts by or for the State of New York in connection with any action or proceeding relating to this Agreement.

22. *Survival of Provisions.* Provisions intended by their terms or context to survive and continue notwithstanding delivery of the Services by NASDR, the payment of the price by the Exchange, and any expiration of this Agreement shall survive and continue, including but not limited to, the items referred to in Sections 8, 9, and 10.

ISE Certification—ISE Rules Certification for 17d–2 Agreement With NASD

The ISE hereby certifies that the requirements contained in the ISE rules listed below are identical to, or substantially similar to, NASD rules.

ISE Rule 403 (Nominal Employment)
ISE Rule 408 (Prevention of the Misuse of Material Nonpublic Information)
ISE Rule 409 (Disciplinary Action of Other Organizations)
ISE Rule 601 (Registration of Options Principals)
ISE Rule 602 (Registration of Representatives)
ISE Rule 603 (Termination of Registered Persons)
ISE Rule 604 (Continuing Education for Registered Persons)
ISE Rule 606 (Other Affiliations of Registered Persons)
ISE Rule 607 (Branch Offices)
ISE Rule 613 (Statements of Accounts to Customers)
ISE Rule 614 (Statements of Financial Condition to Customers)
ISE Rule 615 (Addressing of Communications to Customers)
ISE Rule 617 (Restrictions on Pledge and Lending of Customers' Securities)
ISE Rule 619 (Guarantees)
ISE Rule 620 (Profit Sharing)
ISE Rule 621 (Assuming Losses)
ISE Rule 622 (Transfer of Accounts)
ISE Rule 623 (Communications to Customers)
ISE Rule 624 (Brokers' Blanket Bond)
ISE Rule 626 (Telephone Solicitation)
ISE Rule 1202 (Margin Requirements)
ISE Rule 1203 (Meeting Margin Calls by Liquidation Prohibited)
ISE Rule 1400 (Maintenance, Retention and Furnishing of Books, Records and Other Information)
ISE Rule 1407 (Market Maker Hedge Exemption from Nasdaq Short Sale Rule)

III. Solicitation of Comments

In order to assist the Commission in determining whether to approve this plan and to relieve the ISE of those responsibilities designated to the NASD, interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed with the Commission, and all written communications relating to the proposed plan between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. 4–431 and should be submitted by May 10, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–9791 Filed 4–18–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42660; File No. SR–PCX–00–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc., Rescinding the Exchange's Off-Board Trading Rules

April 10, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 26, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The Exchange's proposed rule change raises issues similar to those raised by the New York Stock Exchange's ("NYSE" proposal to repeal NYSE Rule 390, which rule generally prohibits NYSE members and their affiliates from effecting transactions in certain NYSE-listed securities away from a national securities exchange. The Commission recently issued the notice of filing for the NYSE's proposal ("NYSE Notice") and solicited comment on a number of important issues that have broad implications for the structure of the U.S. securities markets.[3] Specifically, the Commission requested comment on market fragmentation—the trading of orders in multiple locations without interaction among those orders—and on

[9] 17 CFR 200.30–3(a)(34).

[1] 15 U.S.C. &78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42450 (Feb. 23, 2000), 65 FR 10577 (Feb. 28, 2000) File No. SR–NYSE–99–48). The Commission notes that similar proposals have been filed by the American Stock Exchange, Securities Exchange Act Release No. 42460 (February 25, 2000), 65 FR 11618 (March 3, 2000) (File No. SR–Amex–00–05); the Chicago Stock Exchange, Securities Exchange Act Release No. 42459 (Feb. 25, 2000), 65 FR 11619 (March 3, 2000) (File No. SR–CHX–99–28); the Philadelphia Stock Exchange, Securities Exchange Act Release No. 42458 (Feb. 25, 2000), 65 FR 11628 (March 3, 2000) (File No. SR–Phlx–00–12); and the Boston Stock Exchange, SR–BSE–00–02.

several options for addressing market fragmentation. To promote a comprehensive discussion of off-board trading restrictions and related market fragmentation issues, the Commission requests that persons interested in the Exchange's proposal refer to the NYSE Notice and submit comments that respond to the questions presented in the NYSE Notice.[4]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate Rules 5.43–5.49 and to modify Rule 5.5(b) which relate to off-board trading restrictions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to eliminate Rules 5.43–5.49 and to modify Rule 5.5(b) which relate to off-board trading restrictions. The Exchange believes that once the Commission approves the NYSE's proposal to rescind its off-board trading restrictions, the Exchange's off-board trading restrictions will no longer be necessary or appropriate.[5]

2. Statutory Basis

The proposed rule changes are consistent with Section 6(b) of the Act[6] in general and furthers the objectives of Section 6(b)(5)[7] in particular in that they are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furthermore of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. The Commission also invites interested persons to submit written data, views, and arguments on the market fragmentation issues presented in the NYSE Notice.[8] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–00–11 and should be submitted by May 10, 2000. Comments responding to the Commission's request for comment on market fragmentation issues should refer to File No. SR–NYSE–99–48 and should be submitted by April 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–9790 Filed 4–18–00; 8:45 am]

BILLING CODE 8010–01–M

[4] The Commission notes that the NYSE Notice is available on the Commission's website at: <http://www.sec.gov/rules/sros/ny9948n.htm.>

[5] Telephone conversation between Michael D. Pierson, Senior Attorney, Regulatory Policy, Exchange, and Rebekah Liu, Special Counsel, Division of Market Regulation, Commission, dated April 3, 2000.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] *See supra* notes 3 and 4.

[9] 17 CFR 200.30–3(a)(12).

SELECTIVE SERVICE SYSTEM

Form Submitted to the Office of Management and Budget for Extension of Clearance

The form described below has been modified and has been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

SSS Form 22

Title: Claim Documentation Form—Conscientious Objector.

Purpose: It is used to document a claim for classification as a conscientious objector.

Respondents: Registrants who claim to be conscientious objectors.

Frequency: One-time.

Burden: The reporting burden is one hour per individual.

Copies of the above identified form can be obtained upon written request to the Selective Service System, Reports Clearance Officer, Arlington, Virginia, 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form should be sent within 30 days of publication of this notice to the Selective Service System, Reports Clearance Officer, Arlington, Virginia, 22209–2425.

A copy of the comments should be sent to Office of Information and Regulatory Affairs. Attention: Desk Officer, Selective Service System, Office

of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20435.

Dated: April 12, 2000.

Gil Coronado,

Director.

[FR Doc. 00–9813 Filed 4–18–00; 8:45 am]

BILLING CODE 8015–01–M

DEPARTMENT OF STATE

[Public Notice Number 3265]

International Telecommunication Advisory Committee; Notice of Charter Renewal

The Department of State announces that it has renewed the charter of the International Telecommunication Advisory Committee (ITAC), a committee under the Federal Advisory Committee Act (FACA), Public Law 92–463. The purpose of the ITAC is to advise the Department of State and provide strategic planning recommendations on telecommunications and information policy matters related to United States participation in the work of international telecommunication treaty organizations. The ITAC is composed of three Sectors—Radiocommunication, Telecommunication Development, and Telecommunication Standardization.

Members of the general public may attend ITAC meetings. Entrance to the Department of State is controlled; people intending to attend any of the ITAC meetings should notify the Department by fax at (202) 647–7407 not later than 24 hours before the meeting. One of the following valid photo identifications will be required for admission: U.S. driver's license, passport, U.S. Government identification card. Enter from the C Street Lobby; in view of escorting requirements, non-Government attendees should plan to arrive not less than 15 minutes before the meeting begins. Actual room assignments may be determined at the lobby or by calling the Secretariat at 202 647–0965/2592.

Attendees may join in the discussions, subject to the instructions of the Chair. Admission of members will be limited to seating available.

Dated: April 12, 2000.

Julian Minard,

Executive Secretary, Multilateral Trade Affairs, U.S. Department of State.

[FR Doc. 00–9799 Filed 4–18–00; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice 3291]

Revocation of December 21, 1999 Determination under Section 2(b)(1)(B) of the Export-Import Bank Act of 1945, as Amended

Pursuant to section 2(b)(1)(B) of the Export-Import Bank Act of 1945, as amended, and Executive Order 12166 of October 19, 1979, the determination dated December 21, 1999, with respect to Export-Import Bank financing in connection with cases APO70202XX and APO67280XX is hereby revoked.

This determination shall be published in the **Federal Register**.

Dated: March 31, 2000.

Madeleine K. Albright,

Secretary of State, U.S. Department of State.

[FR Doc. 00–9730 Filed 4–18–00; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF STATE

Bureau for International Narcotics and Law Enforcement Affairs; Anti-Crime Training and Technical Assistance Program (ACTTA)

[Public Notice 3292]

AGENCY: Office of Europe, NIS, and Training; Bureau for International Narcotics and Law Enforcement Affairs, State.

ACTION: Notice.

SUMMARY: State Department's Bureau for International Narcotics and Law Enforcement Affairs (INL) developed the Anti-Crime Training and Technical Assistance program (ACTTA) in 1994 to bring U.S. Federal law enforcement agencies together to provide training and technical assistance in consultation with their counterparts throughout the world. Training continues to focus on combating transnational organized crime, financial crimes, and narcotics trafficking. The goal of the program is to increase the professionalism and develop the technical capabilities of foreign law enforcement institutions to combat organized crime and to ensure that through international law enforcement cooperation, U.S. agencies and their foreign counterparts succeed in intercepting the movement of transnational organized criminal elements in the United States.

The ACTTA program continues to include the participation of non-Federal agencies (e.g., universities, non-profit organizations) in the design and implementation of scientific evaluations of these programs. This non-Federal component of the ACTTA program has a timeframe of 2000–2002.

DATES: Strict deadlines for submission to the FY 2000 process are: A full proposal must be received at INL no later than Wednesday, May 31. A letter of intent will not be required. We anticipate that review of full proposals will occur during June 2000 and funding should begin during September 2000 for most approved projects.

September 1, 2000 should be used as the proposed start date on the proposal, unless otherwise directed by a program manager. Applicants should be notified of their status within 3 months of submission deadline. The proposal must be submitted in accordance with the guidelines below. Failure to heed these guidelines may result in the proposal being returned without review.

ADDRESSES: The proposal may be submitted to: U.S. Department of State, Bureau of International Narcotics and Law Enforcement Affairs, Navy Hill South, 2430 E Street NW, Washington, DC 20520, Attn: Linda Gower.

FOR FURTHER INFORMATION CONTACT: Linda Gower at above address, TEL: 202–776–8774, FAX: 202–776–8775, or Thom Browne at above address, TEL: 202–736–4662, FAX: 202–647–6962.

Once the RFA deadline has passed, DOS staff may not discuss competition in any way with applicants until the proposal review process has been completed.

SUPPLEMENTARY INFORMATION:

Funding Availability

This Program Announcement is for one project to be conducted by agencies/programs outside the Federal government, over a period of up to two years. The actual funding level will depend upon availability of funds. Current plans are for up to a total of $800,000 to be available for one new ACTTA award. The funding instrument for this award will be a grant or a cooperative agreement. Funding for non-U.S. institutions and contractual arrangements for services and products for delivery to INL are not available under this announcement. Matching share, though encouraged, is not required by this program. No proposal should exceed a total cost of $800,000.

Program Authority

Authority: Section 635(b) of the Foreign Assistance Act of 1961, as amended.

Program Objectives

The goal of the ACTTA program is to increase the technical capabilities of foreign country law enforcement institutions to control organized crime,

combat corruption, institute democratic practices, and to ensure that through international law enforcement cooperation, U.S. agencies succeed in intercepting the movement of transnational organized criminal elements into the U.S. and throughout the world.

The program objectives of the ACTTA program are: (1) Combat the growing threat to U.S. national security posed by the broad range of organized crime activities, (2) help emerging democracies strengthen their national and law enforcement institutions to counter illegal criminal activities, (3) help emerging democracies develop laws and prosecutorial frameworks to counter organized crime activities, and (4) provide foreign law enforcement institutions with the skills to detect, arrest, and prosecute major transnational criminal offenders.

Program Priorities

The FY 2000 ACTTA Program Announcement invites program evaluation design proposals for the following program priority:

(1) Program evaluation (process and impact) of USG-funded international law enforcement training academies.

For the purpose of this announcement, the International Law Enforcement Academy in Bangkok, Thailand will be the focus of the program evaluation. Applicants should propose technical designs (measurements and comparisons) to be used in evaluating the training academy and test those designs by collecting data on the program's performance. Applicants should identify and apply the appropriate evaluation methodologies and research designs, construct and field test/validate a survey instrument, compile written survey protocols, train interviewers as necessary, perform extensive survey related tasks and perform the appropriate survey follow up, analyze raw data for significance, and develop a final report of results and recommendations.

Any grant applicants who will be working with counterpart research institutions/universities to implement the proposed assessment or evaluation programs may sub-grant or sub-contract services to assist in fulfilling program objectives.

Eligibility

Eligibility is limited to non-Federal agencies and organizations. Proposers are urged to seek collaboration with counterpart research institutions/universities either in the U.S. or overseas. Experience of U.S. evaluators related to conducting criminal justice evaluations in international settings is required. Universities and non-profit organizations are included among entities eligible for funding under this announcement. Direct funding for non-U.S. institutions is not available under this announcement.

Evaluation Criteria

Consideration for financial assistance will be given to those proposals which address the Program Priority identified above and meet the following evaluation criteria:

(1) Relevance (15%): Importance and relevance to the goal and objectives of the ACTTA program identified above.

(2) Methodology (25%): Adequacy of the proposed approach and activities, including development of relevant experimental evaluation designs, project milestones, and final products.

(3) Readiness (25%): Relevant history and experience in conducting program evaluations of training-related programs (primarily in an international setting), strength of proposed evaluation teams, past performance record of proposers.

(4) Linkages (20%): Connections to existing law enforcement agencies and/or counterpart research institutions/universities in the target country outlined in the Program Priority above.

(5) Costs (15%): Adequacy/efficiency of the proposed resources; appropriate share of total available resources.

Selection Procedures

All proposals will be evaluated and ranked in accordance with the assigned weights of the above evaluation criteria by independent peer panel review composed of INL and other Federal USG agency experts. The panel's recommendations and evaluations will be considered by the program manager in the final selection. Those ranked by the panel and program manager as not recommended for funding will not be given further consideration and will be notified of non-selection. For the proposals rated for possible funding, the program manager will: (a) Ascertain which proposals meet the objectives and fit the criteria posted; (b) select the proposal to be funded; (c) determine the total duration of funding for the proposal; and (d) determine the amount of funds available for the proposal.

Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding.

Proposal Submission

The guidelines for proposal preparation provided below are mandatory. Failure to heed these guidelines may result in proposals being returned without review.

(a) Full Proposals

(1) Proposals submitted to INL must include the original and three unbound copies of the proposal. (2) Program descriptions must be limited to 20 pages (numbered), not including budget, personal vitae, letters of support and all appendices, and should be limited to funding requests for one to two years duration. Federally mandated forms are not included within the page count. (3) Proposals should be sent to INL at the above address. (4) Facsimile transmissions of full proposals will not be accepted.

(b) Required Elements

(1) *Signed title page:* The title page should be signed by the Project Director (PD) and the institutional representative. The PD and institutional representative should be identified by full name, title, organization, telephone number and address. The total amount of Federal funds being requested should be listed for each budget period.

(2) *Abstract:* An abstract must be included and should contain an introduction of the problem, rationale and a brief summary of work to be completed. The abstract should appear as a separate page, headed with the proposal title, institution(s) name, investigator(s), total proposed cost and budget period.

(3) *Prior program evaluation experience:* A summary of prior evaluation experience (especially those related to training programs) should be described, including evaluations related to program priorities identified above and/or conducted in foreign countries. Reference to each prior program evaluation award should include the title, agency, award number, period of award and total award. The section should be a brief summary and should not exceed two pages total.

(4) *Statement of work:* The proposed project must be completely described, including identification of the problem, project objectives, proposed evaluation methodology, relevance to the goal and objectives of the ACTTA program, and the program priority listed above. Benefits of the proposed project to U.S. anti-crime efforts should be discussed. A year-by-year summary of proposed work must be included clearly indicating that each year's proposed work is severable and can easily be separated into annual increments of meaningful work. The statement of work, including figures and other visual materials, must not exceed 20 pages of length.

(5) *Budget:* Applicants must submit a Standard form 424 (4–92) "Application for Federal Assistance," including a detailed budget using the Standard Form 424a (4–92), "Budget Information—Non-Construction Programs." The proposal must include total and annual budgets corresponding with the descriptions provided in the statement of work.

Additional text to justify expenses should be included (i.e., salaries and benefits by each proposed staff person; direct costs such as travel (airfare, per diem, miscellaneous travel costs); equipment, supplies, contractual, and indirect costs). Indicate if indirect rates are DCAA or other Federal agency approved or proposed rates and provide a copy of the current rate agreement. In addition, furnish the same level of information regarding sub-grantee costs, if applicable, and submit a copy of your most recent A–110 audit report.

(6) Vitae: Abbreviated curriculum vitae are sought with each proposal. Vitae for each project staff person should not exceed three pages in length.

(c) Other Requirements

Primary Applicant Certification—All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying." Applicants are also hereby notified of the following:

1. Non procurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, section 105) are subject to 15 CFR Part 26, "Non-procurement Debarment and Suspension," and the related section of the certification form prescribed above applies;

2. Drug Free Workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR Part 26, Subpart F, "Government wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying—Persons (as defined at 15 CFR Part 26, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants of more than $100,000; and

4. Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit SFLLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 26, appendix B.

Lower Tier Certifications

(1) Recipients must require applicants/bidders for sub-grants or lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure Form SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to Department of State (DOS). SF–LLL submitted by any tier recipient or sub-recipient should be submitted to DOS in accordance with the instructions contained in the award document.

(2) Recipients and sub-recipients are subject to all applicable Federal laws and Federal and Department of State policies, regulations, and procedures applicable to Federal financial assistance awards.

(3) Pre-award Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation to the applicant on the part of Department of State to cover pre-award-costs.

(4) This program is subject to the requirements of OMB Circular No. A–110, "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," OMB Circular No. A–133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions," and 15 CFR Part 24, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," as applicable. Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

(5) All non-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associate with the applicant have been convicted of, or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

(6) A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(7) No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(i) The delinquent account is paid in full,

(ii) A negotiated repayment schedule is established and at least one payment is received, or

(iii) Other arrangements satisfactory to the Department of State are made.

(8) Buy American-Made Equipment or Products—Applicants are reminded that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible.

(9) The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct cost dollar amount in the application, whichever is less.

(d) If an application is selected for funding, the Department of State has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of State.

(e) In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin or disability shall be excluded from participation in, denied benefits of or be subjected to discrimination under any program or activity receiving assistance from the INL IDR program.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The standard forms have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB approval number 0348–0043, 0348–0044, and 0348–0046.

Classification: This notice has been determined to be not significant for purposes of Executive Order 12866.

Dated: April 12, 2000.

Thomas M. Browne, Jr.,

Deputy Director, Office of Europe, NIS, and Training, Bureau of International Narcotics and Law Enforcement Affairs, U.S. Department of State.

[FR Doc. 00–9731 Filed 4–18–00; 8:45 am]

BILLING CODE 4710–17–U

DEPARTMENT OF STATE

[Public Notice 3294]

Bureau of Educational and Cultural Affairs, Armenia Connectivity 2000 Program; Request for Proposals

SUMMARY: The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs announces an open competition for the Armenia Connectivity 2000 Program. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to expand the educational opportunities available to secondary school students in Armenia by providing access to the Internet and a related curriculum to help promote civic education and economic reform. The maximum amount of the award will be $954,000.

Program Information

Overview

The Armenia Connectivity 2000 program has been designed to respond to the important need to introduce the youth of Armenia to a broad range of ideas about civil society.

Students and teachers at schools throughout the country need access to models of societal development through civic education. The Internet can provide a wealth of information about democratic societies and a vital forum for the exchange of views with U.S. students and teachers. Through this program Armenian schools will be able to incorporate civics into their curricula and improve general education with Internet resources and access to information under the guidance of specially trained teachers.

The goals of this program are (1) To provide Armenian students with the opportunity to learn democratic values while developing technical computer-based skills, (2) to improve and broaden the civic education curriculum in Armenian schools, (3) to provide access for schools in isolated areas to information about the United States and other democratic societies and about related Internet resources, and (4) to develop and promote linkages to schools in the United States and other countries.

The main components of this program are as follows:

- Selecting schools (Armenian and U.S.),
- Providing access to the Internet to the Armenian schools, including making sites suitable for a computer center, installing hardware and cabling, and ensuring connectivity,
- Connecting students and teachers at Armenian schools with their counterparts at U.S. schools in joint telecurriculum projects,
- Providing training for teacher-trainers who will in turn provide training to teachers and students in the selected schools and, later, to other community members,
- Developing an educational curriculum that utilizes the Internet and coordinating the use of curricula from other related programs.

Guidelines

This grant should begin on or about July 15, 2000, subject to availability of funds. The grant period should be two years.

The grant recipient will select schools in Armenia for the installation of a computer center, the provision of training, and the implementation of a civic education curriculum that emphasizes use of the Internet. The recommended minimum number of schools is 40. Proposals that can include up to or more than 70 schools through greater efficiencies and cost-sharing will be considered more competitive. These selected schools will be partnered, either one-to-one or in small groups, with U.S. schools so that Armenian students and faculty may work on joint projects with their American peers over the Internet in order to practice their newly-developed knowledge of using this tool for educational purposes.

The schools will be provided with computers, printers, and other items necessary to afford them Internet connectivity. This will be accompanied by improvements to the classrooms to ensure that the facilities are suitable and secure. Once established, a center will be staffed by a site monitor who will oversee its use.

At an early stage of the project, the grant recipient will train Armenians in order to develop a core group of teacher-trainers in Internet education, American Studies, English, civic education, curriculum development, and teaching methodologies. In addition to training at sites in Yerevan and other regions of Armenia, a limited number of exchanges—Armenian trainers to the United States and U.S. trainers to Armenia—will facilitate these training efforts and bring the new trainers in contact with teachers who are skilled in using the Internet in the classroom.

The regional teacher-trainers will be responsible for conducting local training at a certain number of schools in their region. Their training of teachers and students will focus on basic computer skills, use of electronic mail and bulletin boards, and use of the World Wide Web for research and for supplementing lesson plans. The regional trainers will also supervise the site monitors.

Once schools have access to the Internet and the students and teachers have acquired basic computer and Internet skills, the program focus will turn to the development of the content of Internet activities, an essential component. The primary goal of this program is for students and teachers to use the Internet to learn about civil society, including the basics of democracy, volunteerism, conflict resolution, good citizenship, and civic responsibility, such as voting. A secondary goal is for students and teachers to use the Internet for English and American Studies topics, such as literature, history, government, and geography, and for the improvement of teaching of such subjects as economics and social studies researching the riches of the Internet and learning to use them in the normal curriculum. The development of a curriculum with these purposes will be a key responsibility of the grant recipient.

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines

The grant award may not exceed $954,000. Organizations with less than four years of experience in conducting international exchange programs are not eligible for this grant.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants should provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Administrative costs, including indirect rates, should be kept to a minimum and cost-shared as possible.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFP should reference the above title and number ECA/PE/C–00–49.

FOR FURTHER INFORMATION CONTACT: The Youth Programs Division, Office of Citizen Exchanges, ECA/PE/C/PY, Room 568, U.S. Department of State, 301 4th Street, SW, Washington, DC 20547, (202) 619–6299; Fax: (202) 619–5311; E-mail: clantz@pd.state.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms,

specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Carolyn Lantz on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/rfps. Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC, time on Friday, June 2, 2000. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and eight copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C–00–49, Program Management, ECA/EX/PM, Room 336, 301 4th Street, SW, Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the U.S. Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with the Bureau. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

The Bureau therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through the FREEDOM Support Act of 1992.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: April 10, 2000.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs, U.S. Department of State.

[FR Doc. 00–9801 Filed 4–18–00; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 3295]

Bureau of Educational and Cultural Affairs Offices of the Fulbright Representative: Moscow, Russia and Kyiv, Ukraine; Notice: Request for Proposals

SUMMARY: The Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs (ECA) announces an open competition for organizations to serve as the fiscal disbursing agent for the Offices of the Fulbright Representative in Moscow, Russia and in Kyiv, Ukraine. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to provide fiscal disbursing services to one or both Offices (Moscow and/or Kyiv). A separate proposal must be submitted for each country's office, i.e., organizations that apply as the disbursing agent for both the Moscow and Kyiv Offices must submit two distinct proposals addressing the particular budgetary guidelines and any other country-specific requirements for each Office as outlined in the RFP.

Program Information

Overview

The Offices of the Fulbright Representative are responsible for the overseas management of the Fulbright Program and the Junior Faculty Development Program (JFDP), both of which are ECA educational exchange programs, in the Russian Federation and Ukraine. ECA and the Public Affairs Section (PAS) of the U.S. Embassy have full authority over all program operations, policy issues, and management concerns, including the selection and supervision of the Directors of the Fulbright Offices (who are U.S. citizens) and their staffs. The staffs of the Offices of the Fulbright Representative are responsible for all program operations of the Fulbright Program and the JFDP in their respective country and report first and foremost to the PAS and ECA.

Due to legal constraints and logistical obstacles, the U.S. Government is unable to provide operating funds directly to the Offices of the Fulbright Representative in Russia and Ukraine. Thus, through this RFP, ECA requests the services of a recipient organization to be responsible solely for disbursing U.S. Government funds in support of the activities of the Offices of the Fulbright Representative. These services hinge on the organization's ability to maintain a legal status in Russia and/or Ukraine in order to serve as a fiscal agent capable of disbursing, on a timely and consistent basis, funds for the programmatic and administrative operations of the Offices. The specific duties of the ECA recipient organization requested in this RFP are outlined below.

Guidelines

The ECA recipient organization will be responsible for the following:

1. Performing all legal requirements necessary to maintain the office space, staffing, and program activities of the Fulbright Offices in Moscow and/or Kyiv.

2. Demonstrating the ability, in terms of an accounting staff knowledgeable in Russian and/or Ukrainian law, to provide the Fulbright Offices with cash (dollars and/or rubles and/or hryvna) and/or pay bills directly.

3. Providing proof of legal status/registration, as well as evidence of the ability to handle a wide range of payments.

4. Advancing budget funds to the Fulbright Offices in Moscow and/or Kyiv to conduct all activities, programmatic as well as administrative.

5. Payment of salaries and benefits—including housing allowance—for the Directors of the Fulbright Offices in Moscow and/or Kyiv. Actual salaries will be determined by the PAS.

6. Payment of salaries and benefits for local staff—including meal allowance for Moscow staff only. Actual salaries will be determined by the PAS.

7. Assisting the PAS in the recruitment of Fulbright Offices staff when vacancies occur. Final selection will be made by the PAS.

8. Consulting and cooperating, on administrative matters, with the U.S.-based organizations responsible for the administration of the Fulbright Program and the JFDP in the United States.

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Please note: The following information is provided as background only and should not be misconstrued as the objectives of this RFP.

The Fulbright Program offers research and lecture opportunities at universities in the United States to leading scholars from Russia and Ukraine, whereas the JFDP supports the training of young university faculty from Russia and Ukraine to audit courses and work closely with faculty mentors at U.S. universities in order to upgrade their teaching skills and develop new curricula in designated fields of study. The Offices of the Fulbright Representative ensure the successful and open competition for both Fulbright and JFDP grants, and provide logistical assistance to program participants while they are in Russia or Ukraine. In addition, the Offices of the Fulbright Representative are responsible for supporting U.S. Fulbright scholars in Russia and Ukraine, in order to ensure their well being, and the well being of their dependents while overseas.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit comprehensive budgets with each proposal. Awards may not exceed $308,000 for the Moscow Office and $210,000 for the Kyiv Office. The total of any administrative pass through charges, including indirect costs, may not exceed 15% of the total budget for each Office. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

In order to propose accurate budget figures, applicants are encouraged to contact ECA directly and request an information sheet detailing actual Fulbright Office costs.

Allowable costs include, but are not limited to:

(1) Staff salaries and benefits.

(2) Rent and utilities for the Moscow and/or Kyiv Offices.

(3) Necessary office supplies and equipment.

(4) Shipment of program materials from Russia and/or Ukraine to the United States.

(5) Maintenance of a reliable communications system (telephone, fax, and e-mail).

(6) Recruitment and any other necessary travel by program staff, including per diem.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with the Bureau concerning this RFP should reference the above title and number *ECA/A/E/EUR 00–07.*

FOR FURTHER INFORMATION CONTACT: The Office of Academic Exchange Programs, ECA/A/E/EUR, SA–44, Room 246, U.S. Department of State, 301 4th Street, S.W., Washington, D.C. 20547, telephone: 202–205–0525; fax: 202–260–7985, or E-mail: nsargent@usia.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Nadine Asef-Sargent on all inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/rfps. Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5:00 p.m. Washington, DC time on Thursday, May 25, 2000. Faxed documents will not be

accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that its proposal(s) is/are received by the above deadline. There are no exceptions to this deadline.

Applicants must follow all instructions in the Solicitation Package. The original and nine (9) unbound copies of the proposal(s) should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: *ECA/A/E/EUR–00–07*, Program Management, ECA/EX/PM, Room 336, 301 4th Street, SW, Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs Section at the US Embassy for its review; with the goal of reducing the time it takes to receive embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with the Bureau. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

ECA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package.

The program office, as well as the Public Affairs Section overseas, where appropriate will review all eligible proposals. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Bureau elements. Final funding decisions are at the discretion of the Department of State's Under Secretary for Public Diplomacy and Public Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Program Management: Proposals should exhibit substance, precision, innovation, and relevance to the Bureau's mission. Objectives should be reasonable, feasible, and flexible. Proposals should demonstrate the organization's ability to cooperate with a variety of entities, including the U.S. Government, non-profit organizations, foreign banking institutions, and others. Relevant work plan should demonstrate substantive undertakings and logistical capacity. Work plan should adhere to the program overview and guidelines described above.

2. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity.

3. Institution's Record/Ability: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals. Proposals should demonstrate an institutional record of successful exchange program administration, particularly responsible fiscal management and full compliance with all reporting requirements for any past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

4. Cost-effectiveness/Cost-sharing: The overhead and administrative components of the proposal, including salaries, should be kept as low as possible. All other items should be necessary and appropriate.

5. Project evaluation: Proposals should include a plan to evaluate the success of the fiduciary arrangement and make recommendations for improving the process in the future.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries . . .; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations. * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the

right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: April 13, 2000.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs, U.S. Department of State.

[FR Doc. 00–9802 Filed 4–18–00; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 3293]

Bureau of Educational and Cultural Affairs; Program Title: Small Grants Competition; Grassroots Citizen Participation in Democracy; Request for Proposals

SUMMARY: The Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs of the U.S. Department of State, announces a small grants competition on Citizen Participation in Democracy. U.S. public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to develop exchanges and training programs in the below mentioned countries of Sub-Saharan Africa, the Middle East or Latin America (countries listed under guidelines.)

Program Information

Overview

The Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs of the U.S. Department of State, announces an FY2000 small grants competition for local community-based organizations interested in internationalizing their educational, professional and cultural efforts or gaining support for ongoing international exchange programs. This competition is aimed at local-level grassroots organizations that have not received prior funding directly from the Bureau. Creative and innovative ideas are sought.

One goal of this initiative is to encourage smaller organizations or local units of national groups to expand the scope of their work by building linkages with counterparts in certain other countries. This may be accomplished by providing professional experience and exposure to American life and culture through internships, workshops and other learning-sharing experiences hosted by local institutions and home stays with members of the community. The experiences also will provide Americans the opportunity to learn about different cultures. Travel under these grants may constitute a two-way exchange or provide only for foreigners to visit the United States. The program is not academic in nature; it is designed to provide practical, hands-on experience in U.S. public/private sector settings that may be adapted to an individual's institution upon return home. Proposals may combine elements of professional enrichment, job shadowing and internships appropriate to the language ability and interests of the participants.

Exchanges and training programs supported by the institutional grants from the Bureau should operate at two levels: they should enhance partnerships, and they should offer practical information to individuals and groups to assist them with their professional and volunteer responsibilities. Viable proposals usually have the following characteristics:

- A strong existing partnership between a U.S. organization and an in-country institution;
- A proven track record of working in the proposed issue area;
- Cost-sharing from U.S. and/or in-country sources, including donations of air fares, hotel and/or housing costs, ground transportation, interpreters, etc.;
- Experienced staff with language facility; a clear, convincing plan showing how long-term results will be accomplished as a result of the activity funded by the grant;
- A follow-on plan beyond the scope of the Bureau grant.

The Bureau wants to see tangible forms of time and money contributed to the project by the prospective grantee institution, as well as funding from third party sources. If proposals received are of equal strength, preference will go to those with higher cost-sharing.

Exchanges should be two-to-three weeks in length. It is anticipated that programs will be conducted between September 2000 and August 2001. Successful projects will enhance the participants' skills in leadership, participatory democracy, NGO development, and open the potential for longer-term partnerships.

Applicants should identify the local organizations and individuals in the counterpart country with whom they are proposing to collaborate and describe in detail previous cooperative programming and/or contacts. Specific information about the counterpart organizations' activities and accomplishments is required and should be included in the section on Institutional Capacity.

This year the small grants competition will be focused on one over-all theme of Grassroots Citizen Participation in Democracy. Under this theme, consideration will be given to related priority topics. Suggestions are listed below.

Grassroots Citizen Participation in Democracy

Democracy takes root and flourishes where there is grass-roots participation in decision-making and citizen participation is valued and practiced. Since most civic activities are concerned with community-based issues that directly affect individuals' lives, local issues and institutions should be the focus of the exchange program. Single-country activities should be built around a specific theme or target audience. Target audiences may include, but are not limited to: women in business, NGO leaders, professional women, special interest groups (*i.e.* ethnic minorities, people with disabilities, economically disadvantaged persons). The Bureau is looking for programs that will result in the creation of a sustainable professional association or coalition with activities continuing after the grant period.

Priority Topics

Strengthening Grassroots Democracy: Training NGO leadership and addressing organizational governance issues; building coalitions; networking; lobbying elected officials; media strategies; fund raising; volunteerism; addressing civic values; NGO roles in mediating conflict in the community.

Equal Treatment of Women Under the Law: Educating women about existing anti-discriminatory laws, including domestic violence legislation; understanding legal rights and options; addressing attitudes of the judiciary; building community support to combat violence against women, including trafficking in Women and children.

Women and Political Leadership: running for elective office and/or managing electoral campaigns; developing a media strategy; public speaking/communication skills; meeting challenges and responsibilities of public office once elected.

Local Governance: strengthening local governments and making them more responsive to local needs; local

government administration, including budget development, financial management; tax policies and mechanisms; election practices; management of municipal services; committee and staff structures; drafting of legislation and relationships with regional and national governments.

Guidelines

All projects should focus on one country, promote local community contacts with that country and address one or more of the priority topics described above. Since most civic activities are concerned with community-based issues that directly affect individuals? lives, local issues and institutions should be the focus of proposed exchange programs. Target audiences may include, but are not limited to: NGO leaders, women in business, professional women, special interest groups (*i.e.* ethnic minorities, those with disabilities or economically disadvantaged). Applicants should carefully note the following restrictions for proposals in these specific geographic areas:

Africa

Only proposals for Kenya, Madagascar, Malawi, Tanzania, Uganda, and Zambia will be considered. Contact for African programs: Orna Blum, 202/260–2754; E-Mail {oblum@usia.gov}

Middle East

Only proposals for Kuwait, Oman, Qatar, the United Arab Emirates and Yemen will be considered. Contact for Middle East programs: Tom Johnston, 202/619–5325; E-Mail {tjohnsto@usia.gov}

Latin America

Only proposals for Colombia, Venezuela and Chile will be considered.

Contact for Latin American programs: Laverne Johnson, 202/619–5337; E-Mail {ljohnson@usia.gov}

Budget Guidelines

The grant-making process will be specifically streamlined to accommodate first-time applicants. Priority will be given to grant proposals with budgets ranging from $15,000 to $40,000. No proposal above $50,000 will be eligible. Contingent on budget uncertainties, approximately, two hundred and fifty-thousand dollars has been allotted for this competition. Awards will be announced around August 1, 2000.

Allowable costs include the following:

(1) Program Expenses.

(2) Administrative Expenses including indirect costs.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFP should reference the above title and number ECA/PE/C–00–47.

FOR FURTHER INFORMATION, CONTACT: The Office of Citizen Exchanges, ECA/PE/C, Room 224, U.S. Department of State, 301 4th Street, S.W., Washington, D.C. 20547, telephone number 202/619–5348 and fax number 202/260–0440 , Internet address to request a Solicitation Package (see above regional contacts). The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer listed above on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/rfps. Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, D.C. time on Friday, June 2, 2000. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and ten copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C–00–47, Program Management, ECA/EX/PM, Room 336, 301 4th Street, SW, Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the US Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

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The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with the Bureau. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

The Bureau therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

In support of first-time applicants, the grant proposal, budget and review process has been modified for this competition. The proposal narrative should not exceed six pages double-spaced and be developed around the review criteria below. Budget should be contained on one page. Please follow the enclosed Request for Proposal(RFP) Proposal Submission Instructions(PSI). Proposals will be reviewed in two tiers. First, all proposals will be read and reviewed by a qualified staff team from the Office of Citizen Exchanges and the respective Department of State regional bureaus. Second, the most competitive will be forwarded to embassies overseas and to panels of Bureau-wide State Department officers for formal advisory review. Non-finalists will be advised at this point in the process. Final funding decisions will be made at the discretion of the Under Secretary of State for Public Diplomacy and Public Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Citizen Exchanges Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of program idea and ability to achieve objectives:* Program objectives should be clearly and precisely stated. Applications should respond to priorities in this announcement and articulate the organization's ability to successfully carry out objectives. Staff and participant responsibilities and timetable should be clearly designated.

2. *Cost effectiveness and Cost sharing:* Administrative costs should be kept low. Proposals should maximize cost-sharing through support and in-kind contributions.

3. *Monitoring/Reporting:* Proposals should provide a brief plan for submitting written reports midway through the program and at the end. Reports should include accomplishments, problems encountered, and impact on American and overseas communities.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

5. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionannaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations...and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

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Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: April 10, 2000.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs, U.S. Department of State.

[FR Doc. 00–9800 Filed 4–18–00; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice #3277]

Shipping Coordinating Committee Maritime Safety Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 9:30 a.m. on Thursday, May 11, 2000, in Room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street, SW, Washington, DC. The purpose of this meeting will be to finalize preparations for the 72nd Session of the Maritime Safety Committee, and associated bodies of the International Maritime Organization (IMO), which is scheduled for May 17–26, 2000, at IMO Headquarters in London. At this meeting, papers received and the draft U.S. positions will be discussed.

Among other things, the items of particular interest are:

a. Bulk carrier safety;

b. Role of the human element;

c. Formal safety assessment;

d. Piracy and armed robbery against ships;

e. Reports of seven subcommittees—Training and watchkeeping; Flag State implementation; Bulk liquids and gases; Radiocommunications and search and rescue; Safety of navigation; Dangerous goods, solid cargoes and containers; Fire protection; and, Ship design and equipment;

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Joseph J. Angelo, Commandant (G–MS), U.S. Coast Guard, 2100 2nd Street, SW, Room 1218, Washington, DC 20593–0001 or by calling (202) 267–2970.

Dated: April 6, 2000

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee, U.S. Department of State.

[FR Doc. 00–9729 Filed 4–18–00; 8:45 am]

BILLING CODE 4710–17–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular; Bird Ingestion Certification Standards

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular and request for comments.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) No. 33.76–1, Bird Ingestion Certification Standards.

DATES: Comments must be received on or before June 19, 2000.

ADDRESSES: Send all comments on the proposed AC to the Federal Aviation Administration, Attn: Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, MA, 01803–5299.

FOR FURTHER INFORMATION CONTACT: Marc Bouthillier, Engine and Propeller Standards Staff, ANE–110, at the above address, telephone (781) 238–7120, fax (781) 238–7199. A copy of the subject AC may also be obtained electronically by writing to the following Internet address: "marc.bouthillier@faa.gov". Additionally, you may obtain a copy of the draft AC directly from the internet at the following address http://www.faa.gov/avr/air/acs/draftach.htm.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the subject AC may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT**. Interested persons are invited to comment on the proposed AC, and to submit such written data, views, or arguments as they desire. Commenters must identify the subject of the AC, and subject comments in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Engine and Propeller Directorate, Aircraft Certification Service, before issuance of the final AC.

Background

This draft advisory circular (AC) provides guidance and acceptable methods, but not the only methods, that may be used to demonstrate compliance with the bird ingestion requirements of § 33.76 of the Federal Regulations, Title 14 of the Code of Federal Regulations once that regulation becomes final. A proposal to amend the Federal Aviation Regulations by adding a new section, § 33.76, was published in the **Federal Register** on December 11, 1998 (64 FR 68635). Although this draft AC does refer to regulatory requirements that would be mandatory, this draft AC is not, in itself, mandatory. This AC would neither change any regulatory requirements nor authorizes changes in or deviations from the regulatory requirements.

This effort was adopted as a part 33 and Joint Aviation Regulations for engines (JAR–E) harmonization project and was selected as an Aviation Rulemaking Advisory Committee (ARAC) project. This draft AC provides information and guidance that addresses Federal Aviation Administration (FAA) type certification standards for aircraft turbine engines with regard to bird ingestion. The requirements under § 33.76 reflect recent analysis of the bird threat encountered in service by turbine engine powered aircraft.

This advisory circular, published under the authority granted to the Administrator by 49 U.S.C. 106(g), 40113, 44701–44702, 44704, provides guidance for these proposed requirements.

Issued in Burlington, Massachusetts, on April 12, 2000.

Thomas A. Boudreau,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–9839 Filed 4–18–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2000–7246]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PUFFIN.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S. build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub.L. 105–383 and MARAD's regulations at 46 CFR 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before May 19, 2000.

ADDRESSES: Comments should refer to docket number MARAD–2000–7246. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR 832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (less than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commentor's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR 388.

Vessel Proposed for Waiver of the U.S.-build Requirement

(1) Name of vessel and owner for which waiver is requested: Name of vessel: Sailing Vessel PUFFIN. U.S. Documentation Number 697029. Owner: Thomas B. Brener.

(2) Size, capacity and tonnage of vessel: According to the Applicant "PUFFIN is a fractional sloop rigged sailing vessel 35.8 feet in length with a gross registered tonnage of 9 tons pursuant to 46 U.S.C. 14502. She has a 4.8′ draft with a steadying and stable wing keel and a flush deck. She would carry no more than 6 paying passengers."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "My own approach to the teaching of sailing and exploration is specific and is not offered by any other organization or individual in the intended use areas in U.S. East Coast waters from Delaware Bay to Rhode Island and in the Atlantic Waters of South-Central Florida. A day or week aboard "PUFFIN" will be an experience that combines the discovery of new places, fish, plants, animals and birds with the sense of sailing and the feel of the elements. It is my hope to be able to open up new vistas for anyone, including the physically challenged, the deaf and the blind. This particular vessel is an ideal vessel for the purposes of teaching sailing through feel and touch. She is a non-polluting, stable, small, shallow draft sailing platform capable of a long run offshore for those who may want to see a bird migration from a perch in the near coastal Atlantic Ocean. The cost for such an excursion would be about $300 a day including the captain."

(4) Date and place of construction and (if applicable) rebuilding. Date of construction: 1985, place of construction: Alkmaar, Holland.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "My own approach to the teaching of sailing and exploration is specific and is not offered by any other organization or individual in the intended use areas in U.S. East Coast waters from Delaware Bay to Rhode Island and in the Atlantic Waters of South-Central Florida."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "Given that this will be a small private enterprise working, at times, in conjunction with not-for-profit concerns that would be performing a service that historically provides a very small financial return; there will be no impact on U.S. shipyards. U.S. production shipyards to not manufacture a vessel such as "PUFFIN" and the market for such a vessel is very small, possibly non-existent. The cost to build a similarly equipped vessel based on the attached survey would be $190,000. Given that the estimated return would net less than $15,000 per year after expenses, there is clearly no economic justification to construct a new vessel for this purpose."

By Order of the Maritime Administrator.

Dated: April 14, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–9804 Filed 4–18–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Open Meeting of the Information Reporting Program Advisory Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Open Meeting of the Information Reporting Program Advisory Committee.

SUMMARY: In 1991 the IRS established the Information Reporting Program Advisory Committee (IRPAC) in response to a recommendation made by the United States Congress. The primary purpose of IRPAC is to provide an organized public forum for discussion of relevant information reporting issues between the officials of the IRS and representatives of the payer/practitioner community. IRPAC offers constructive observations about current or proposed policies, programs, and procedures and, when necessary, suggests ways to improve the operation of the Information Reporting Program (IRP).

There will be a meeting of IRPAC on Thursday, May 11, 2000. The meeting will be held in Room 3313 of the Internal Revenue Service Main Building, which is located at 1111 Constitution Avenue, NW., Washington, DC. A summarized version of the agenda along with a list of topics that are planned to be discussed are listed below.

Summarized Agenda for Meeting

9:00 Meeting Opens
11:30 Break for Lunch
1:00 Meeting Resumes
4:00 Meeting Adjourns

The topics that are planned to be covered are as follows:

(1) IRPAC Paper on Electronic Payee Statements
(2) IRPAC Paper on the Threshold for Reporting Interest on Canadian Deposit Accounts
(3) IRPAC Paper on Reporting Cancellation of Indebtedness Income
(4) IRS Update on the New Section 1441 Regulation
(5) IRPAC Paper on Expanding the Combined Federal/State Information Return Filing Program
(6) IRPAC Paper on Tax Certifications for Disregarded Entities
(7) IRPAC Update on IRPAC's Articles in the "SSA/IRS Reporter"
(8) IRS Update on Proposed Changes to Form W–2, Form 1099–DIV, and Form 1099–MISC
(9) IRS Update on Proposed Changes to the Form SS–8
(10) IRPAC Paper on Reporting the Revocation of a Roth IRA
(11) IRPAC Paper on Reporting Recharacterizations and Reconversions
(12) IRS Update on the Proposed Taxpayer Identification Number (TIN) Matching System
(13) IRS Update on the IRS/SSA Magnetic Media/Electronic Filing Seminars for 2000

Note: Last minute changes to these topics are possible and could prevent advance notice.

SUPPLEMENTARY INFORMATION: IRPAC currently reports to the National Director, Office of Specialty Taxes, who is the executive responsible for information reporting payer compliance. IRPAC is instrumental in providing advice to enhance the IRP Program. Increasing participation by external stakeholders in the planning and improvement of the tax system will help achieve the goals of increasing voluntary compliance, reducing burden, and improving customer service.

IRPAC is currently comprised of representatives from various segments of the information reporting payer/practitioner community. IRPAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend two public meetings each year.

DATES: The meeting will be open to the public, and will be in a room that accommodates approximately 80 people, including members of IRPAC and IRS officials. Seats are available to members of the public on a first-come, first-served basis. In order to get your name on the building access list, *notification of intent to attend this meeting must be made with Ms. Thomasine Matthews no later than Monday, May 8, 2000.* Ms. Matthews can be reached by e-mail at thomasine.matthews@irs.gov, or by telephone at 202–622–4214. Notification of intent to attend should include your name, organization and phone number. If you leave this information for Ms. Matthews in a voice-mail message, please spell out all names.

A draft of the agenda will be available via e-mail or facsimile transmission the week prior to the meeting. Please call or

e-mail Ms. Thomasine Matthews on or after Wednesday, May 3, 2000, to have a copy of the agenda faxed or e-mailed to you. Please note that a draft agenda will not be available until that date.

ADDRESSES: If you would like to have IRPAC consider a written statement at a future IRPAC meeting (not this upcoming meeting), please write to Ms. Kate LaBuda at the IRS, Office of Payer Compliance, OP:EX:ST:PC, Room 2013, 1111 Constitution Avenue, NW., Washington, DC 20224, or e-mail her at kate.labuda@irs.gov.

FOR FURTHER INFORMATION CONTACT: To get on the access list to attend this meeting, or to have a copy of the agenda faxed to you on or after May 3, 2000, please e-mail Ms. Thomasine Matthews at thomasine.matthews@irs.gov, or call her at 202–622–4214. For general information about IRPAC, please e-mail Ms. Kate LaBuda at kate.labuda@irs.gov or call her at 202–622–3404.

Dated: April 12, 2000.

Gwen Glaize,

Director, Office of Payer Compliance, Office of Examination.

[FR Doc. 00–9700 Filed 4–18–00; 8:45 am]

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Federal Register

Wednesday,
April 19, 2000

Part II

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2520

Annual Reporting and Disclosure Requirements; Final Rule

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2520

RIN 1210–AA52

Annual Reporting and Disclosure Requirements

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains amendments to Department of Labor (Department) regulations relating to the annual reporting and disclosure requirements under part 1 of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act). The amendments contained in this document are necessary to conform the regulations to revisions to the annual return/report forms (Form 5500 Series) intended to streamline the annual report required to be filed by administrators of employee pension and welfare benefit plans under part 1 of Title I of ERISA. The regulatory amendments, in conjunction with the revisions to the Form 5500 Series, which were published in the **Federal Register** on February 2, 2000, 65 FR 5026, are intended to reduce the annual reporting burdens on employee benefit plans while ensuring that the Department has access to the information it needs to carry out its administrative and enforcement responsibilities under ERISA and that participants and beneficiaries have access to the information they need to protect their rights and benefits under ERISA. Other amendments contained in this document modify the reporting requirements for certain group insurance arrangements. The remaining amendments are technical in nature and are designed to clarify existing reporting regulations. The amendments will affect the financial and other information required to be reported and disclosed by employee benefit plans filing Form 5500 Series reports under part 1 of Title I of ERISA.

DATES: *Effective Date:* This regulation is effective on May 19, 2000. The amendments generally apply to employee benefit plan years beginning on or after January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Eric A. Raps, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration (PWBA), (202) 219–8515 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Background

Under Titles I and IV of ERISA, and the Internal Revenue Code, as amended, pension and other employee benefit plans are generally required to file annual return/reports concerning, among other things, the financial condition and operations of the plan. These annual reporting requirements generally can be satisfied by filing the Form 5500 Series in accordance with its instructions and related regulations. The Form 5500 Series is the primary source of information concerning the operation, funding, assets and investments of pension and other employee benefit plans. In addition to being an important disclosure document for plan participants and beneficiaries, the Form 5500 Series is a compliance and research tool for the Department, and a source of information and data for use by other federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies.

On September 3, 1997, the Department in conjunction with the Internal Revenue Service and Pension Benefit Guaranty Corporation (the Agencies) published in the **Federal Register** (62 FR 46556) proposed changes to the Form 5500 Series. The Agencies received over 60 public comments and received oral testimony from employer groups, employee representatives, financial institutions, service organizations and others on the form streamlining proposal. In response to public comments, the Agencies made various adjustments to the proposed forms and instructions. Those comments and the changes in the forms and instructions are discussed in the notice of adoption of revised forms published separately on February 2, 2000, in the **Federal Register** (65 FR 5026).

As part of the development of the revised Form 5500 Series, the Department published in the **Federal Register** (63 FR 68370), on December 10, 1998, proposed amendments to the annual reporting regulations (Part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations) which were necessary to implement certain of the proposed changes to the Form 5500 Series. A number of technical amendments to the regulations were also proposed in order to update certain of the reporting and disclosure regulations. In the December 10, 1998 notice, the Department stated that the public comments submitted in response to the September 3, 1997 Notice of proposed forms revisions would be treated as part of the public record for the Notice of proposed rulemaking, and, to the extent those comments included information relevant to the proposed regulatory amendments, the Department would treat those comments as comments on the Notice of proposed rulemaking to avoid the need to submit duplicate public comments. The Department received four comments in response to the December 10, 1998 notice.

The Department has decided, after reviewing the relevant comments on the proposed amendments and proposed form revisions, to adopt the proposed regulatory amendments largely as proposed with certain technical or clarifying changes.

B. Discussion of the Final Regulation and Comments

1. Section 2520.103–1

Section 2520.103–1 generally describes the content of the Form 5500 Series as a limited exemption and alternative method of compliance. One of the central changes announced in the September 3, 1997 Notice of proposed forms revisions for improving the Form 5500 Series was the development of one Form 5500 for use by both "large plan" filers (plans that previously could file the Form 5500) and "small plan" filers (plans that previously could file the Form 5500–C/R. The new Form 5500 was structured along the lines of tax returns familiar to individual and corporate taxpayers—a simple main form with basic information necessary to identify the plan for which the report is filed that guides each filer to those schedules applicable to the filer's specific type of plan. Although the Form 5500–C/R was eliminated, limited financial reporting options for small plans has been preserved.[1] To accommodate these form changes, the regulatory amendments to § 2520.103–1 update the references to the annual report in that section to reflect the new structure and components of the Form 5500 Series.[2]

2. Section 2520.103–2

Welfare plans participating in a group insurance arrangement (GIA) are exempt from filing individual annual reports under conditions set forth in

[1] For example, plans eligible to file as small plans that take advantage of the simplified reporting rules will continue to be exempt from the annual audit requirements contained in ERISA section 103 and will continue to be relieved of the obligation to file certain schedules required for large plan filers (*e.g.*, Schedule C—Service Provider Information).

[2] The amendments also delete the cross-reference to obsolete § 2520.103–7. This provision was removed from the Code of Federal Regulations on July 1, 1996 (61 FR 33847).

§ 2520.104–43 provided that the trust, trade association, or other entity which holds the insurance contracts and acts as a conduit for the payment of insurance premiums files an annual report for the entire arrangement. Section 2520.103–2 prescribes the contents of the annual report for GIAs in order for the participating plans to be eligible for the exemption described in § 2520.104–43. The annual report required to be filed under § 2520.103–2 must contain a completed Form 5500, any required schedules and attachments, a report by an independent qualified public accountant (IQPA), and separate financial statements if prepared by the IQPA in order to form the opinion required by § 2520.103–2(b)(5). As with the changes adopted in § 2520.103–1, the regulatory amendments update the references in § 2520.103–2 to the annual report to reflect the new structure and components of the Form 5500 Series. The regulatory amendments also conform § 2520.103–2 to the amendments of §§ 2520.104–21 and 2520.104–43 (described in section B.7 of this preamble). Of particular note for GIAs is the addition of a new Schedule D (DFE/Participating Plan Information) to the Form 5500 Series. The Schedule D, which is described in more detail below, is primarily intended to serve as a multipurpose schedule for reporting certain information on relationships between plans and entities, including GIAs, that are classified as "direct filing entities" or DFEs.

3. Sections 2520.103–3, 2520.103–4, 2520.103–9, 2520.103–12 and 2520.103–1(e)

(a) Common/Collective Trusts (CCTs) and Pooled Separate Accounts (PSAs)

Section 2520.103–3 provides an exemption from certain annual reporting requirements for plan assets held in a CCT maintained by a bank, trust company or similar institution. Section 2520.103–4 provides a similar exemption for plan assets held in a PSA maintained by an insurance carrier. Pursuant to §§ 2520.103–3 and 2520.103–4, a plan investing in these entities generally is not required to include information regarding the individual transactions of the entity in the plan's annual report. Rather, the plan must include in its annual report certain information regarding: (i) the current value of the plan's units of participation in the CCT or PSA, (ii) transactions involving the acquisition and disposition of units of participation in the CCT or PSA, and (iii) a statement of the assets and liabilities of the CCT or PSA. Further, the Department, pursuant to §§ 2520.103–3(c)(3) and 2520.103–4(c)(3), exempts plans and GIAs from filing a statement of the assets and liabilities of the CCT and/or PSA as part of their annual report if the bank, trust company, similar institution or insurance carrier sponsoring the CCT or PSA files directly with the Department a statement of assets and liabilities for the fiscal year of the CCT or PSA ending with or within the plan year for which the information is being filed, and a list of participating plans identified by employer identification number (EIN), plan number and name of plan sponsor. In such a case, the bank, trust company, similar institution or insurance carrier sponsoring the CCT or PSA that files a statement of assets and liabilities directly with the Department must, within 120 days after the end of the plan year of the participating plan, transmit and certify the information needed by the plan administrator to file the annual report including, among other things, the CCT's or PSA's annual statement of assets and liabilities. See §§ 2520.103–5 and 2520.103–9(b)(3)(ii). In addition, the bank, trust company or insurance carrier sponsoring the CCT or PSA must furnish to the plan administrator a certification that a copy of its statement of assets and liabilities has been timely filed with the Department.

The absence of a standardized report for CCTs and PSAs to use in filing information directly with the Department has made it virtually impossible for the Department to correlate and effectively use the data regarding the plan assets held for investment by CCTs and PSAs. Further, the value of plan assets invested in CCTs and PSAs increased between 1990 and 1996, the latest year for which information is available, from $113.9 billion to $280 billion. The Department, accordingly, has concluded that a change in the current reporting rules is needed to enable it to continue to satisfy its research, disclosure and enforcement responsibilities.

Under the new Form 5500 Series and revised annual reporting regulations, as under the current Form 5500 Series and regulations, CCTs and PSAs may still elect to file information on behalf of their participating plans. Also, all CCTs and PSAs must notify participating plans within 120 days after the end of the plan year whether it intends to file a Form 5500 as a DFE, and furnish the plan administrator with the CCT's or PSA's statement of assets and liabilities as well as additional information about the assets held by such CCT or PSA needed by the plan administrator to satisfy its reporting obligations under Title I of ERISA.

The major change in this area is the new requirement that CCTs and PSAs electing to file as DFEs must report information on the Form 5500 as the standardized reporting format for all filers. In the case of a CCT or PSA that elects to file as a DFE, the CCT or PSA must complete: (i) applicable items on the revised Form 5500; (ii) a Schedule D to list all participating plans at any time during the year and all CCTs, PSAs, or investment entities described in § 2520.103–12 (103–12 IEs) that such CCT or PSA invested in during the year; and (iii) a Schedule H (Financial Information) (formerly referred to as the Schedule FIN in the September 3, 1997 **Federal Register** Notice of proposed forms revisions).

A large plan investing in one or more CCTs or PSAs that elect to file as a DFE may continue to include in its annual report, pursuant to revised §§ 2520.103–3 and 2520.103–4, the current value of its interest in these entities as a single entry on the appropriate lines in the plan's Schedule H (Financial Information) as of the beginning and end of the plan year. A large plan investing in a CCT or PSA which files as a DFE also reports on the plan's Schedule H income and expense statement the net investment gain/loss for each class of DFE as a single entry for each class of DFE. Schedule D (DFE/Participating Plan Information) must be attached to the plan's Form 5500 to report information about the plan's participation in all CCTs and PSAs, regardless of whether they file as DFEs.

In the case of small plans with CCT or PSA investments, regardless of whether the CCT or PSA files as a DFE, the small plan must file a Schedule D, but will report total assets and total income, respectively, on single line items of the small plan Schedule I financial statements without separate Schedule I financial statement reporting on CCT or PSA investments.

Thus, the reporting for large plans investing in CCTs and PSAs that elect to file as DFEs and for small plan filers has not changed significantly from the current reporting requirements. Similarly, except for the addition of Schedule H (Part II), generally the information that must be filed by a CCT or PSA that elects to file as a DFE would be substantially the same as the current reporting requirements.

Under revised §§ 2520.103–3 and 2520.103–4, if a CCT or PSA does not file a Form 5500 as a DFE, large employee benefit plans must break out their percentage interest in the underlying assets of the CCT or PSA and

report that interest as a dollar value in the appropriate categories on the asset and liability statement contained in Schedule H (Financial Information). The failure by a large plan to break out its allocated interest in a CCT or PSA on the asset and liability statement contained in Schedule H when the CCT or PSA does not file as a DFE will be considered a failure by the plan administrator to file a complete Form 5500. The Department does not envision this as imposing a substantial additional burden on large plan filers because there is only a small number of general investment categories on the Schedule H (for example, interest bearing cash; U.S. government securities; corporate debt instruments; corporate stock; partnership/joint venture interests; real estate; loans; registered investment companies; other assets; and employer securities) such that the currently required asset and liability statement of the CCT or PSA should provide for many filers most of the detail needed to break the assets and liabilities into these categories. Also, large plan filers investing in CCTs and PSAs that do not file as DFEs may still report the net investment gain/loss with respect to their participation in a CCT or PSA as part of single entries on Part II of the Schedule H (income and expense statement) and will continue to report their interest in a CCT or PSA on the Form 5500 financial schedules (other than Part I of Schedule H) in the same general manner as under current rules (e.g., current value of the units of participation in CCTs and PSAs will be reported on the schedule of assets held for investment and the Schedule D).

The Department believes that these changes to the reporting requirements for plans investing in CCTs and PSAs is the best available alternative for effectively capturing the information needed to carry out the Department's oversight responsibilities about the substantial amount of plan assets held by CCTs and PSAs, while ensuring that there is adequate disclosure regarding those plan investments to plan participants and beneficiaries. The Department, therefore, is exercising its regulatory authority under sections 103(b)(4), 104(a)(3), 110 and 505 to modify the reporting requirements with respect to plans that participate in CCTs and PSAs.

Some commentators stated that substantial lead time would be needed by CCTs and PSAs to prepare for the new reporting requirements and suggested delaying the implementation year. As discussed in the Notice of Adoption of Revised Forms published separately on February 2, 2000, in the **Federal Register** (65 FR 5026), to facilitate the transition to the new reporting rules for DFEs, the Department is clarifying the due date for Form 5500 DFE filings and adopting a transitional reporting rule for DFEs, other than GIAs, and for plans participating in DFEs, other than GIAs. First, as to the due date, inasmuch as the DFE filing continues to be considered an integral part of the annual report of each participating plan, the plan's annual report will continue to be treated as not complete unless the DFE information is filed within the prescribed time. The regulatory amendments clarify that, as with the current rule for statements of assets and liabilities, the DFE Form 5500 filing should pertain to the DFE fiscal year ending with or within the plan year. For example, if a DFE fiscal year begins on July 1 and ends on June 30, and the plan year begins on January 1 and ends on December 31, the DFE's 1999 Form 5500 filing should be for the fiscal year of the DFE ending on June 30, 1999. The regulatory amendments also establish the filing due date for all DFEs, other than GIAs, as no later than 9½ months after the end of the DFE's fiscal year.[3] This structure is intended to provide a simple and predictable filing deadline for DFEs while also ensuring that all DFE filings will be due on or before the latest possible due date for the annual report of any participating plan.

Second, the transitional rule applies to plans participating in CCTs or PSAs which do not elect to file as a DFE for their fiscal year ending in 1999. The transitional rule waives for the 1999 plan year the requirement that large plan filers break out their percentage interest in the underlying assets of the CCT or PSA that do not file as DFEs as dollar value entries in the appropriate categories on the asset and liability statement contained in Schedule H (Financial Information). Rather, for the 1999 plan year, plans may report their interest in the CCT or PSA on the aggregate amount lines of the plan's asset and liability statement (i.e., lines 1c(9) and 1c(10) of Schedule H) as of the beginning and end of the plan year even if the CCT or PSA does not file a Form 5500 as a DFE. Plans participating in a CCT or PSA also are not required to attach the CCT's or PSA's statement of assets and liabilities to its 1999 filing.

[3] The Department did not extend the filing due date for GIAs (i.e., due no later than the last day of the seventh calendar month after the end of the GIA fiscal year) because the GIA filing is in lieu of the plan's filing rather than supplementing the plan's filing (as is the case of filings made by CCTs, PSAs, master trusts and 103–12IEs). GIAs, however, are able to obtain the filing extension that is available to plans (i.e., 2½ months by timely filing an IRS Form 5558).

(b) Master Trusts and 103–12 Investment Entities

Section 2520.103–1(e) provides for special reporting rules for plans that participate in master trusts. In general, a master trust is a trust maintained by a bank, trust company or similar regulated financial institution to hold the assets of more than one plan sponsored by a single employer or by a group of employers under common control. Such plans must report the value of their interest in the master trusts as a single asset category in the plan's statement of assets and liabilities. The plan's share of master trust earnings, and realized and unrealized gains and losses is reported in the plan's statement of income, expenses and changes in net assets for the plan year. Under current rules, a separate annual report for each master trust is required to include certain information such as the statement of assets and liabilities, income and expense statement, service provider information, five percent reportable transactions schedule and schedule of assets held for investment, all of which are required to be separately reported for each master trust investment account. The amendments to § 2520.103–1(e) generally do not change the information required to be reported regarding the master trust and the related master trust investment accounts, but rather establish the Form 5500 Series as the standardized annual reporting format for each master trust investment account.

Section 2520.103–12 provides an exemption and alternative method of reporting for plans investing in certain investment entities the assets of which are deemed to include plan assets under § 2510.3–101. Specifically, if the 103–12 IE files certain information directly with the Department, the plan administrator is not required to include in the plan's annual report information regarding the underlying assets and individual transactions of the 103–12 IE. Instead, the administrator may report regarding the plan's investment or units of participation in the investment entity. The amendments to § 2520.103–12(b) do not change the information required to be reported by the 103–12 IE, but rather establish the Form 5500 Series as the standardized reporting format.

4. Section 2520.103–5

Section 2520.103–5 implements for certain annual reporting purposes the requirement in section 103(a)(2) of the Act under which insurance carriers or other organizations which provide some

or all of the benefits under a plan or hold plan assets, banks or similar institutions which hold plan assets, and plan sponsors[4] must transmit and certify to the accuracy and completeness of such information as is needed by the plan administrator to comply with the requirements of Title I of the Act. Because the filing requirements for employee benefit plans participating in a CCT or PSA generally will be affected by whether such CCT or PSA directly files as a DFE, § 2520.103–5 has been amended to clarify the notice and information obligations CCT and PSA sponsors have to plan administrators.

In the case of a CCT or PSA, the amendments require that such CCT or PSA notify its participating plans whether it intends to file a Form 5500 as a DFE, and to furnish the plan administrator with the information about the assets held by such CCT or PSA, respectively, needed by the plan administrator to satisfy its obligations under Title I of ERISA. The notification must be provided within the same period of time already required by § 2520.103–5 (i.e., 120 days after the close of each participating plan's plan year). Revised § 2520.103–5 does not contain detailed rules relating to the manner of the exchange of information between the plan and the CCT or PSA. Rather, plan administrators should develop with the sponsors of the CCT or PSA a suitable procedure whereby the plan administrator can establish to his or her satisfaction that the administrator and the Department will receive all of the required information in a timely fashion. The plan administrator, however, continues to be responsible for monitoring the conduct of the CCT or PSA sponsor and ultimately may be subject to Title I annual reporting penalties if the plan's annual report is rejected because the CCT or PSA failed to meet its commitment to file a DFE Form 5500 or because of defects in the DFE information filed by the CCT or PSA.

5. Section 2520.103–6 and Section 2520.103–11

Section 2520.103–6 sets forth the definition of reportable (5%) transactions for the Form 5500, and section 2520.103–11 provides rules for preparing the schedule of assets held for investment purposes and the schedule of assets held for investment purposes that were both acquired and disposed of within the same plan year (hereinafter collectively referred to as the schedules of assets held for investment purposes). The proposed regulations would have amended the reportable transactions rules to no longer require that participant directed transactions under an individual account plan be reported on the schedule of reportable transactions. Similarly, the proposed amendments to § 2520.103–11 would have eliminated for such participant directed assets the requirement to prepare the "historical cost" entry on the schedules of assets held for investment purposes. The amendments would not have relieved the administrator from including in the schedules of assets held for investment purposes descriptions and current values for assets held at a participant's or beneficiary's direction. The amendments are being adopted largely as proposed.

Sections 2520.103–6 and 2520.103–11, as amended, provide that, solely for purposes of the reporting relief for participant directed transactions, a transaction will be considered "directed" by a participant or beneficiary if it has been authorized by such participant or beneficiary. The Department in the final rule has modified the definition of the term "directed" by eliminating the requirement that the participant or beneficiary "affirmatively" authorize the transaction. The purpose of this change is to clarify that the term "directed" encompasses investments authorized through automatic enrollments, negative investment elections or default investment options under the terms of the plan instrument or instruments. This modification is intended to respond to comments that indicated the proposed reporting relief under §§ 2520.103–6 and 2520.103–11 would be ineffective if plan administrators were required to segregate such authorized transactions made without an "affirmative" direction from a participant or beneficiary. The Department notes, however, that these amendments do not affect the conditions for the fiduciary liability relief prescribed by § 2550.404c–1 which applies to a narrower class of transactions.

The Department is also amending § 2520.103–6 to include a special rule for the reportable transaction schedule for initial plan years. Section 2520.103–6(b)(1) currently requires calculation of the 5% thresholds for reportable transactions to be calculated using current value of assets as of the beginning of the plan year. Concerns have been expressed by filers that in the case of an initial plan year the current rule results in virtually all investment transactions during such plan year as being reportable transactions under § 2520.103–6. The Department does not believe that this result was intended under ERISA inasmuch as the purpose of the reportable transaction rules is to identify transactions relating to a significant portion of the plan's assets because these transactions are likely to pose the greatest financial risk to a plan. Accordingly, the Department is amending § 2520.103–6 to provide that the current value of plan assets as of the end of the plan year can be used for preparing the schedule of reportable transactions for the initial plan year.

Although the schedule of reportable transactions and schedules of assets held for investment purposes continue to be required as part of the annual report, filers are allowed to continue to use the format prescribed by the instructions to the Form 5500 or a similar format for preparing the schedules as long as the content requirements of §§ 2520.103–6 and 2520.103–11 are met and the same size paper as the Form 5500 is used.

6. Section 2520.103–10

Section 2520.103–10 identifies the separate financial schedules that are required to be included in the annual report filed for a plan under § 2520.103–1(a)(2) or a GIA under § 2520.103–2. The Department is amending § 2520.103–10 to update references to the annual report financial schedules to the schedules associated with the new Form 5500. Further, § 2520.103–10 is being amended to reflect the fact that under the new Form 5500 the use of the revised Schedule G is mandatory for large plans, master trust investment accounts, 103–12 IEs and GIAs required to report a schedule of party in interest transactions, a schedule of loans and fixed income obligations in default, and/or a schedule of leases in default. These schedules, through the 1998 plan year, could be filed on the Schedule G or by using a similar format and using the same size paper as the current Schedule G.

7. Section 2520.104–21 and Section 2520.104–43

Sections 2520.104–21 and 2520.104–43 provide an exemption from certain Title I reporting and disclosure requirements for welfare plans that are part of a GIA, as defined in paragraph (b) of section 2520.104–21, if the GIA files a Form 5500 Series annual report on behalf of all the participating plans. The annual reporting exemption is available if the arrangement, among other things, uses a trust (or other entity such as a trade association) as the

[4] Neither the new Form 5500 nor these regulatory amendments change the plan sponsors' obligations described in § 2520.103–5.

holder of the insurance contracts and the conduit for payment of premiums to an insurance company. See §§ 2520.104–21(b)(3) and 2520.104–43. The amendments to §§ 2520.104–21 and 2520.104–43 provide that the reporting exemption is available only in those cases in which the GIA utilizes a trust as the conduit for the payment of the premiums. The amendments also modify the examples in paragraph (d) of § 2520.104–21 to reflect that change. In the Department's view, clarifying the trust requirement in the reporting exemption for GIAs conforms it with section 403 of ERISA and § 2550.403a–1, which do not provide a trust exception for GIAs.[5] The Department does not envision that the amendments will create administrative burdens for GIAs or result in increased costs for participating plans because the plan assets already must be separately accounted for and subjected to an annual audit by an IQPA. However, the Department has adopted a delayed applicability date to allow a transition period for GIAs that currently do not use a trust. Specifically, the requirement that GIAs must use a trust as the conduit for the payment of all insurance premiums to the insurance company, for purposes of the reporting exemption described in §§ 2520.104–21 and 2520.104–43, applies beginning with the first reporting year commencing on or after January 1, 2001.

8. Sections 2520.104–41 and 2520.104–46

Section 2520.104–41 provides a simplified method of annual reporting for plans with fewer than 100 participants and § 2520.104–46 waives the IQPA requirement for such small plans. In general, small plans eligible to file simplified reports are currently required to file the Form 5500–C every third plan year and the Form 5500–R (an abbreviated version of the Form 5500–C) for the two intervening plan years. As indicated previously, the Agencies are replacing the Form 5500 and the Form 5500–C/R with a single Form 5500 for use by all filers, with simplified reporting options for small plans being incorporated into the structure and components of the new Form 5500. The final rule amends §§ 2520.104–41 and 2520.104–46 to conform the terms used in the regulations to the new Form 5500.

9. Section 2520.104–44

Section 2520.104–44 contains a limited exemption and alternative method of compliance for annual reporting by certain unfunded and insured plans. The current Form 5500 Series instructions provide for limited reporting for pension plans exclusively using a tax deferred annuity arrangement under Internal Revenue Code section 403(b)(1) and/or a custodial account for regulated investment company stock under Internal Revenue Code section 403(b)(7). The Department has previously expressed its view that such plans are not subject to the IQPA audit requirements as part of their annual reporting obligations under Title I of ERISA. The Department is adopting a technical amendment to § 2520.104–44 to clarify the availability of this exemption.

10. Section 2520.104b–10

Section 2520.104b–10 sets forth the requirements for the summary annual report (SAR) and prescribes formats for such reports. The amendments to section 2520.104b–10 conform the SAR requirements to the new Form 5500 Series. For example, the amendments restate the information listed in §§ 2520.104b–10(d)(3) and 2520.104b–10(d)(4) that is available to participants and beneficiaries under the heading "Your Rights to Additional Information" so that it is consistent with the new Form 5500 Series.

The amendments also address the elimination of the Form 5500–R. Under current SAR rules, administrators of small plans are not required to prepare and furnish a SAR for those plan years in which a Form 5500–R is filed if one of the two following methods of compliance is met. Under the first method of compliance, plans must furnish participants (and beneficiaries receiving benefits under a pension plan) with a copy of the filed Form 5500–R as a substitute for furnishing the SAR. Under the second method, plans are required to notify participants and such beneficiaries in writing of their right upon written request to receive free-of-charge a copy of the Form 5500–R filed by the plan. Under the second method of compliance, § 2520.104b–10(b)(2)(ii) permits active participants to be notified by posting the notice at worksite locations in a manner reasonably calculated to ensure disclosure of the information. The Form 5500–R furnished under either method of compliance must be accompanied by a prescribed notice. Because the Form 5500–R has been eliminated, small plans will be required to furnish a SAR every year.

In order to facilitate compliance with the SAR requirement, the Department also updated its cross-reference guide to correspond to the line items of the SAR to the relevant line items on the new Form 5500 and/or schedules. The cross-reference guide, as before, continues to be an appendix to § 2520.104b–10.

C. Findings Regarding the New Form 5500 as a Limited Exemption and Alternative Method of Compliance

Section 104(a)(2)(A) of the Act authorizes the Secretary of Labor (Secretary) to prescribe by regulation simplified reporting for pension plans that cover fewer than 100 participants. Section 104(a)(3) authorizes the Secretary to exempt any welfare plan from all or part of the reporting and disclosure requirements of Title I of ERISA or to provide simplified reporting and disclosure, if the Secretary finds that such requirements are inappropriate as applied to such plans. Section 110 permits the Secretary to prescribe for pension plans alternative methods of complying with any of the reporting and disclosure requirements if the Secretary finds that: (1) The use of the alternative method is consistent with the purposes of ERISA and it provides adequate disclosure to plan participants and beneficiaries, and adequate reporting to the Secretary; (2) application of the statutory reporting and disclosure requirements would increase costs to the plan or impose unreasonable administrative burdens with respect to the operation of the plan; and (3) the application of the statutory reporting and disclosure requirements would be adverse to the interests of plan participants in the aggregate.

For purposes of Title I of ERISA, the filing of a completed Form 5500 (including any required statements, schedules, and IQPA report) generally constitutes compliance with the limited exemption and alternative method of compliance in 29 CFR 2520.103–1(b). The findings required under ERISA sections 104(a)(3) and 110 relating to the use of the Form 5500, as revised, as an alternative method of compliance and limited exemption from the reporting and disclosure requirements of part 1 of Title I of ERISA are addressed below.

1. General Findings

In adopting revisions to the Form 5500 Series and the amendments in this final rule, the Department attempted to

[5] ERISA Technical Release 92–01 (57 FR 23272 and 58 FR 45359) announced interim relief from the trust and certain reporting requirements of ERISA for certain contributory welfare plans. Cafeteria plans of the individual employers participating in a GIA may continue to rely on the trust relief in Technical Release 92–01. Technical Release 92–01, however, is not available to GIAs or to participant contributions after they have been segregated from an employer's general assets and transmitted to the GIA.

balance the needs of participants, beneficiaries and the Department to obtain information necessary to protect ERISA rights and interests with the needs of administrators to minimize costs attendant with the reporting of information to the federal government. The Department makes the following findings under sections 104(a)(3) and 110 of the Act with regard to the utilization of the revised Form 5500 (and revised statements and schedules required to be attached to the Form 5500) as an alternative method of compliance and limited exemption pursuant to 29 CFR 2520.103–1(b).

The use of the revised Form 5500 as an alternative method of compliance is consistent with the purposes of Title I of ERISA and provides adequate disclosure to participants and beneficiaries and adequate reporting to the Secretary. While the information required to be reported on or in connection with the revised Form 5500 deviates, in some respects, from that delineated in section 103 of the Act, the information essential to ensuring adequate disclosure and reporting under Title I is required to be included on or as part of the Form 5500, as revised.

The use of Form 5500 as an alternative method of compliance relieves plans subject to the annual reporting requirements from increased costs and unreasonable administrative burdens by providing a standardized format which facilitates reporting, eliminates duplicative reporting requirements, and simplifies the content of the annual report in general. The Form 5500, as revised, is intended to further reduce the administrative burdens and costs attributable to compliance with the annual reporting requirements.

Taking into account the above, the Department has determined that application of the statutory annual reporting and disclosure requirements without the availability of the Form 5500 would be adverse to the interests of participants in the aggregate. The revised Form 5500 provides for the reporting and disclosure of basic financial and other plan information described in section 103 in a uniform, efficient, and understandable manner, thereby facilitating the disclosure of such information to plan participants.

Finally, the Department has determined under section 104(a)(3) that a strict application of the statutory reporting requirements, without taking into account the revisions to the Form 5500, would be inappropriate in the context of welfare plans for the same reasons discussed in this section C (the streamlined form reduces filing burdens without impairing enforcement, research and policy needs while at the same time providing adequate disclosure to participants and beneficiaries).

2. Special Findings

(a) Schedule A (Insurance Information)

Schedule A must be attached to the annual report if any benefits under a plan that is subject to Title I of ERISA are provided by an insurance company, insurance service or other similar organization. Although most of the Schedule A data has been retained substantially unchanged, certain changes were made to conform the Schedule A to recent accounting industry changes on "current value" financial reporting of investment-type contracts with insurance companies,[6] and to collect: (i) better identifying information on the type of insurance contracts and type of insured benefits being reported and (ii) the insurer's employer identification number and National Association of Insurance Commissioners' (NAIC) code.

In the interest of the efficient administration of ERISA, the Department has attempted to align the reporting and disclosure requirements, where possible and to the extent consistent with the interests of plan participants, with generally accepted accounting principles (GAAP). The Schedule A changes adopted by the Department are intended to be consistent with the Financial Accounting Standards Board Statement of Financial Accounting Standards No. 110 (FAS 110) and No. 126 (FAS 126) and American Institute of Certified Public Accountants Statement of Position 94–4 (SOP 94–4), which generally require the disclosure of the fair value of investment contracts with insurance companies (except for certain investment contracts held by defined benefit pension plans and "fully benefit responsive" contracts held by defined contribution pension and welfare plans with assets of $100 million or less). Because it is the Department's view that the Schedule A reporting requirements generally should be the same for small and large plans, the revised Form 5500 does not provide different Schedule A reporting standards depending on the size of the plan.

The Department also believes that the additional information required to be reported on the Schedule A (i.e., reporting fees and commissions paid to persons other than agents and brokers, improved identification of the types of insurance products, the NAIC code, and the EIN of the insurance company (or similar organization)) is useful to the Department in accomplishing its oversight responsibilities, and should not be burdensome to plans inasmuch as it can be provided to plans at the same time the insurance company (or similar organization) furnishes the other information required by section 103(a)(2) and the related annual reporting regulations.

(b) Schedule C (Service Provider Information)

Schedule C must be attached to the Form 5500 filed by large plan filers if any person received, directly or indirectly, $5,000 or more in compensation from the plan for all services rendered to the plan during the plan year. The major changes to the Schedule C involve eliminating the requirement to annually identify plan trustees, limiting the current requirement to explain certain service provider terminations to terminations of accountants and enrolled actuaries, and limiting the number of plan service providers required to be individually reported to the forty top paid service providers at or above the $5,000 threshold. The Department notes that trustee information already must be disclosed in the summary plan description (SPD), and changes in trustees must be disclosed in a summary of material modification (SMM). SPDs and SMMs must be furnished automatically, whereas the Form 5500 is required to be disclosed only on request. Further, although the reason for the termination will not be required to be reported in the case of other service provider terminations that previously were required to be reported, to the extent a service provider receives $5,000 or more in compensation from the plan, comparing the list of service providers on Schedule Cs from year to year will allow a participant or beneficiary to determine whether a particular service provider (such as an investment manager, trustee, or custodian) was terminated. With respect to limiting of the Schedule C list of service providers to the forty top paid providers receiving $5,000 or more in compensation, only 54 employee benefit plans filing the 1996 Form 5500 listed 40 or more service providers on their Schedule Cs. Those 54 filings constituted less than one percent of the Form 5500 filings received. These Schedule C changes will not, in the Department's view,

[6] ERISA § 3(26) defines "current value" as "fair market value where available and otherwise the fair value as determined in good faith by a trustee or named fiduciary * * * pursuant to the terms of the plan and in accordance with the regulations of the Secretary, assuming an orderly liquidation at the time of such determination."

result in inadequate disclosure to participants and beneficiaries in large plans. Because Schedule C is not required to be filed by small plans, the Schedule C changes described herein would not affect the annual reports of those plans.

(c) Schedule D (DFE/Participating Plan Schedule)

As indicated previously, the new DFE reporting rules were developed in an effort to improve the reporting requirements for plans participating in CCTs, PSAs, master trusts, 103–12 IEs and GIAs. With the exception of the new requirement for small plans on the Schedule D to report year-end dollar value of interests in individual CCTs, PSAs, master trusts and 103–12 IEs, substantially all of the information that would be required to be reported by employee benefit plans under the new DFE reporting regime is currently required to be reported. Similarly, substantially all of the information that is required to be reported by DFEs is currently required to be filed by CCTs and PSAs that elect to file as DFEs as well as master trusts, 103–12 IEs and GIAs. Thus, the Department believes that the major change in reporting with respect to DFEs is that information must be reported in a standardized format using the Form 5500 and associated schedules.[7] The Department does not believe that the new DFE rules should result in material cost increases or administrative burdens for plans. Further, direct reporting by CCTs, PSAs, 103–12 IEs and GIAs continues to be optional. To the extent there are cost or burden increases being passed through to the plan by the entity, plans can evaluate those annual reporting implications when deciding whether to participate in a CCT, PSA, 103–12 IE or GIA. The information that is available to be disclosed to participants and beneficiaries under the current annual reporting regime would not be reduced under the new Form 5500. Finally, as indicated previously, continuation of the current rules would result in inadequate reporting to the Department, would mean that the Department would continue to be unable to correlate and effectively use the data regarding the more than $2 trillion in plan assets invested by plans in DFEs or entities eligible to file as DFEs, and, therefore, in the Department's view, would be adverse to the interests of participants and beneficiaries in the aggregate.

(d) Schedule of Reportable Transactions and Schedules of Assets Held for Investment Purposes

A major underlying purpose for the schedule of reportable transactions is to identify significant transactions that may reveal fiduciary misconduct. Information on the schedule of reportable transactions regarding participant directed transactions is not generally relevant to that purpose. Similarly, historical cost information on the schedules of assets held for investment purposes is intended to provide information on the investment gain/loss performance of the specific assets or classes of assets. The plan's aggregate gain or loss on a class of assets held as a result of collective participant direction generally does not provide meaningful information on the gain or loss to a particular participant's account resulting from individually directed transactions. In light of the purposes underlying the reporting requirements and the additional costs and administrative burdens to plans from having to include this participant directed transaction information in these schedules, the Department believes that the revisions to these schedules are in the interest of participants and beneficiaries, will provide adequate disclosure to plan participants and beneficiaries, and will provide adequate reporting to the Department.

Other Supplementary Information

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and likely to have a significant economic impact on a substantial number of small entities. If an agency determines that a final rule is likely to have a significant economic impact on a substantial number of small entities, section 604 of the RFA requires the agency to present a final regulatory flexibility analysis at the time of the publication of the notice of final rulemaking describing the impact of the rule on small entities. Small entities include small businesses, organizations, and governmental jurisdictions.

For purposes of analysis under the RFA, the Pension and Welfare Benefits Administration (PWBA) considers a small entity to be an employee benefit plan with fewer than 100 participants. The basis for this definition is found in section 104(a)(2) of ERISA, which permits the Secretary to prescribe simplified annual reports for pension plans which cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for simplified annual reporting and disclosure if the statutory requirements of part 1 of Title I of ERISA would otherwise be inappropriate for welfare benefit plans. Pursuant to the authority of sections 104(a)(2) and 104(a)(3), the Department has previously issued certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans covering fewer than 100 participants and which satisfy certain other requirements.

The definition of small entity used for the purpose of regulatory flexibility analysis differs from a definition of small business based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (5 U.S.C. 631 *et seq.*). Because of this, PWBA consulted with the SBA's Office of Advocacy on the use of its definition for purposes of the RFA analysis, and sought comments on the size standard used for purposes of its analysis and the estimated impact of the proposal on small entities. No comments were received which addressed the size standard under the RFA or the estimated impact on small entities.

PWBA has conducted a final regulatory flexibility analysis which takes into account both the general and specific findings specified in section C of this preamble as well as the public comments on the September 3, 1997 Notice of proposed forms revisions and the December 10, 1998 Notice of proposed rulemaking. This analysis is summarized below.

(1) The Department is promulgating this rule to amend the regulations relating to the annual reporting and disclosure requirements of section 103 of ERISA to conform existing regulations to revisions to the annual return/report forms (Form 5500). The extensive revision of the Form 5500 was undertaken for the purpose of streamlining and simplifying the form, and facilitating the implementation of an updated and efficient electronic processing system for Form 5500 filings.

[7] In the case of GIAs, the current rules require use of a Form 5500. For master trusts and 103–12 IEs, the Form 5500 instructions already require the filer either use the Form 5500 and schedules or report information in the same format using the same categories as those specified in the Form 5500. In the case of CCTs and PSAs, the Department does not believe imposing similar formatting requirements should involve any significant additional burden. The Department also believes that there will be minimal additional burden in requiring CCTs and PSAs that elect to file as a DFE to report income and expenses on Schedule H (Part II).

(2) Section 103 of ERISA requires every employee benefit plan covered under part 1 of Title I of ERISA to publish and file an annual report concerning, among other things, the financial conditions and operations of the plan. Section 109 of ERISA authorizes the Secretary to prescribe forms for the reporting of information that is required to be submitted as part of the annual report.

The Secretary may also prescribe alternative methods of complying with reporting and disclosure requirements if the Secretary finds that: (a) the use of the alternative method is consistent with the purposes of ERISA and provides adequate disclosure to participants and beneficiaries and adequate reporting to the Secretary, (b) application of the statutory reporting and disclosure requirements would increase costs to the plan or impose unreasonable administrative burdens with respect to the operation of the plan, and (c) the application of the statutory reporting and disclosure requirements would be adverse to the interests of plan participants in the aggregate.

The Department finds that use of the Form 5500 as revised constitutes an alternative method of compliance which is consistent with these conditions. Generally, the Department believes that use of the revised Form 5500 will relieve plans of all sizes from increased costs and unreasonable burdens that would otherwise arise by providing a standard format which facilitates reporting required by the statute, eliminates duplicative reporting requirements, and streamlines the content of the annual report.

(3) The Department, in conjunction with the IRS and PBGC, made a number of changes to the existing Form 5500 Series in an effort to reduce paperwork burdens and costs and enhance the utility of the annual report forms generally. The regulatory amendments adopted herein are designed to ease the burden of plans, both large and small, in complying with the reporting and disclosure requirements of ERISA. The regulatory amendments do not directly affect the number of small plans required to comply with the annual reporting requirements or change existing small plan limited exemptions from reporting requirements. Thus, for example, under the final rule small plans will continue to be exempt from reporting service provider information and supplying the report of an independent qualified public accountant. In addition, the conforming rules generally preserve the more limited reporting for small plans which is presently in effect.

(4) The 1995 Form 5500 filings indicate that there are approximately 662,000 small pension and welfare benefit plans required to file Form 5500 under Title I of ERISA. Because a significant number of insured or unfunded welfare plans with fewer than 100 participants are currently exempt from Form 5500 filing requirements and will continue to be exempt under the proposed revisions to the Form 5500 Series, other data sources must be consulted in order to assess the number of small plans impacted by the regulation in the context of a credible universe estimate. The 1996 Medical Expenditure Panel Survey, as tabulated by the Agency for Health Care Policy and Research, indicates the number of establishments offering health and other welfare plans. Using 1995 Census Bureau data on the ratio of firms to establishments, this establishment-based plan count can be converted to the number of welfare plans offered by firms. Adjusting this number to allow for multiemployer plans (in which two or more firms participate in a given plan), and for the number of welfare plans with 100 or more participants, yields an estimate of 6 million small welfare plans. The final rule, therefore, will impact only 662,000, or 11 percent of 6 million small plans.

(5) The revisions to the Form 5500 are expected to result in aggregate savings of $64 million per year for all plans completing and filing the form. Of this total, savings of $59 million (an 11 percent reduction) is attributable to large plans, and saving of $5 million (a 3 percent reduction) is attributable to small plans. While the revision of the form is expected to be beneficial to all plans, the savings by small plans is smaller relative to the large plan savings for two principal reasons. First, the reporting requirements for small plans are generally more limited under existing regulations. This is illustrated by the fact that 81 percent of all filers are small plans, while these small plans represent only 23 percent of total burden cost. As a consequence, current annual reporting requirements for small plans included fewer elements that might have been considered for revision or elimination.

In addition, although burden is expected to be reduced in the aggregate for all small plan filers, under certain circumstances the revisions of the form will result in the reporting of additional information by some small plan filers, offsetting to some degree the aggregate reduction in burden. Under the filing requirements in effect prior to implementation of this final rule, small plans were required to file a Form 5500–C at least once every three years, and the less detailed Form 5500–R in the two intervening years. While the ratio of Form 5500–R to Form 5500–C filings has varied from year to year, on average about 55% of all annual small plan filings have been on the Form 5500–R (45% on the Form 5500–C) because many small plans elected to file the Form 5500–C each year. Under this final rule, the more limited reporting for small plans is generally maintained, but the Form 5500–C/R is eliminated, increasing to some extent the burden for those who would have filed Form 5500–R for two of every three years, and offsetting the burden decrease for Form 5500–C filers. These changes for small plan filers are taken into account in the aggregate cost estimates.

(6) Costs for revisions to automated systems are not expected to impact small plans because it is assumed that small plans generally do not develop software to be used for preparation and filing of Form 5500. Although small plans seek the assistance of service providers for preparation and filing of the Form 5500, as noted below, the Department assumes that those service providers will not pass on to the small plans their development costs, or the fees they pay for software support if they purchase software from other developers.

(7) Completion of the Form 5500 requires a mixture of professional and clerical skills. As noted below, the burden estimate study indicated that about 90% of filers purchase services of service providers to file Form 5500, although filer resources are normally required to prepare documents for the service providers, review information submitted, and sign the form even when service providers maintain records and prepare the form. Both provider fees and filer time are included in the cost estimates presented here, based on information reported in the survey. It is assumed that these practices will not change as a result of the revisions to the Form 5500 Series.

(8) No significant alternatives to the final rule which would minimize the impact on small entities have been identified, although the review and proposed revision of the Form 5500 Series were undertaken to reduce paperwork burden for all filers while maintaining the more limited reporting for small plans. The Department believes it has minimized the economic impact of the forms revision and conforming rules on small plans to the extent possible while recognizing plan participants' and the Department's need

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for information to protect participant rights under Title I of ERISA, and needs of other interested parties for timely statistical information on employee benefit plans.

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this regulatory action creates a novel method of statutory compliance consistent with the President's priorities that will reduce paperwork and regulatory compliance burdens on businesses, including small businesses and organizations, and make better use of scarce federal resources, consistent with the mandates of the Paperwork Reduction Act (PRA) and the President's priorities. Therefore, this notice is "significant" and subject to OMB review under Executive Order 12866(3)(f)(4). Accordingly, the Department has undertaken an assessment of the costs and benefits of this regulatory action. This analysis follows the description of ERISA's annual reporting requirements and the development of the new Form 5500.

Background

Under part 1 of Title I of ERISA, administrators of pension and welfare benefit plans (collectively referred to as employee benefit plans) are required to file annual returns/reports concerning their financial condition and operations. ERISA section 104(a)(2)(A) authorizes the Secretary to prescribe by regulation simplified reporting for pension plans that cover fewer than 100 participants. Section 104(a)(3) authorizes the Secretary to exempt any welfare plan from all or part of the reporting and disclosure requirements of Title I or to provide simplified reporting and disclosure if the Secretary finds that such requirements are inappropriate as applied to such plans. Section 110 permits the Secretary to prescribe for pension plans alternative methods of complying with any of the reporting and disclosure requirements if the Secretary finds that: (1) The use of the alternative method is consistent with the purposes of ERISA and provides adequate disclosure to plan participants and beneficiaries and adequate reporting to the Secretary; (2) application of the statutory reporting and disclosure requirements would increase costs to the plan or impose unreasonable administrative burdens with respect to the operation of the plan; and (3) the application of the statutory reporting and disclosure requirements would be adverse to the interests of plan participants in the aggregate.

For purposes of Title I of ERISA, the filing of a completed Form 5500 (including any required statements, schedules, and the report of an independent qualified public accountant) generally constitutes compliance with the limited exemption and alternative method of compliance set forth by regulation in § 2520.103–1(b). As stated in this preamble, the Department has made the determination that application of the statutory annual reporting and disclosure requirements without the availability of the Form 5500 as revised would be adverse to the interests of participants in the aggregate. The use of the new Form 5500 as an alternative method of compliance would relieve plans subject to the annual reporting requirements from increased costs and unreasonable administrative burdens by providing a standardized format which facilitates reporting, eliminates duplicative reporting requirements, and simplifies the content of the annual report in general.

The Form 5500 Series serves as the primary source of information concerning the operation, funding, assets and investments of pension and other employee benefit plans. The Form 5500 is not only an important disclosure document for participants and beneficiaries, but also a compliance and research tool for the Department and a source of information and data for use by other federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies.

The Pension and Welfare Benefits Administration, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation have conducted an extensive review of the Form 5500 Series in an effort to streamline the information required to be reported and the methods by which the information is filed and processed. A proposed revision of the Form 5500 Series was published in the **Federal Register** on September 3, 1997 (62 FR 46556). The proposal was designed to lower the administrative burdens and costs incurred by the more than 800,000 employee benefit plans that annually file the Form 5500 Series. A public hearing on the proposed revision was held on November 17, 1997, and written comments on the proposal were received until the public record was closed on December 3, 1997. On February 4, 1998, the Department announced that, in response to public comments, the implementation of the new Form 5500 would be delayed until the 1999 plan year.

The Form 5500 as revised by the Agencies in response to comments received on the proposal and information presented at the public hearing, was submitted to the Office of Management and Budget (OMB) for approval under the PRA and a Notice was published in the **Federal Register** on June 24, 1998 (63 FR 34493) which provided a 30-day opportunity to submit comments to OMB on the new Form 5500. At the same time, a draft version of the new Form 5500 was also made available on PWBA's Internet site (http://www.dol.gov/dol/pwba) as part of the Agencies' commitment to make information about the new forms available to plans and their service providers at the earliest opportunity. Following its PRA review, OMB gave conditional PRA approval to the new Form 5500 on August 26, 1998. The approval was conditioned on the Agencies making minor technical adjustments to the form [8] and soliciting

[8] The OMB conditions were published in the **Federal Register** on December 10, 1998 (63 FR 68370) in the preamble to the proposed amendments to the Department of Labor reporting regulations that would conform them to the previously published proposed form changes. The conditions, as stated in footnote number 1 to that preamble, involved (i) consolidating the separate reporting of long-term and short-term corporate debt instruments into one line item for all corporate debt instruments on the Schedule H (Income and Expense Statement), (ii) adding a clarifying instructional statement to the text on line 5 of Schedule R, (iii) bolding instructional text on line 3 of Schedule T, (iv) adding a statement to the Schedule C instructions that trades and businesses (whether or not incorporated) are "persons" required to be reported as service providers, and (v) clarifying the instructions for line 3b(2) of Schedule

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public comments on computer scannable versions of the new form. On June 28, 1999, the Agencies published a **Federal Register** notice (64 FR 34686) soliciting public comments on the draft computer scannable versions of the new form developed by two vendors who were competing for the contract to install the ERISA Filing Acceptance System (EFAST). Contracts were initially awarded to two national computer firms to competitively develop this system and the computer scannable versions of the new Form 5500. The Agencies subsequently selected the vendor to process the final scannable version of the new Form 5500. Although the reformatting of the form approved by OMB on August 26, 1998 to a computer scannable form affects the appearance and length of the new form, the data elements have not been affected. See the EFAST Internet site at www.efast.dol.gov and the Notice of Adoption of Revised Forms (published separately on February 2, 2000 in the **Federal Register** (65 FR 5026)) for information on filing the 1999 Form 5500.[9]

The final Form 5500 to be used for 1999 and later plan years incorporates the new structure as proposed (i.e., a short form that serves both as a simple registration statement and a checklist that guides each filer to the more detailed schedules that are applicable to the filer's specific type of plan). The new structure allows filers to assemble and file a "customized" report, and also allows the Agencies to maintain a less costly and more efficient processing system.[10] Because information reported to the Department is also subject to ERISA's disclosure provisions, the Department in this final rule has attempted to balance the needs of participants, beneficiaries and the Department to obtain information necessary to protect ERISA rights and interests with the needs of administrators to minimize costs attendant with the reporting of information to the federal government.

The Department believes that the current action conforming rules related to annual reporting obligations for employee benefit plan administrators to the new Form 5500 Series is consistent with the principles set forth in the Executive Order in that it will reduce costs and paperwork burdens over the life of the forms while enhancing the ability to protect benefits with timely and accurate information.

Overview of Costs and Benefits of the Regulation

This regulation conforms the reporting and disclosure regulations of Title I of ERISA to the revisions made to the Form 5500 for the purpose of streamlining and simplifying the form, and reduces burdens while ensuring that both the Department and participants have sufficient information to protect participant rights under ERISA. The Department has assessed the costs and benefits of the final regulation relative to the costs of annual reporting in the current environment. The benefits and costs of the statutory annual reporting requirements and current practices are included in the baseline and are, therefore, not considered benefits or costs of the final regulation.

The baseline net costs of the annual reporting requirements include the benefits which arise from the use of a standardized reporting form, the costs of maintaining certain records, communicating with professional service providers, and completing and mailing the form each time it is required to be filed. The unit cost of completing and filing the form is known to be highly variable due to the very large number of filer types (e.g., defined benefit and defined contribution pension plans, fully insured and trust-funded welfare plans, small and large plans, etc.) with differing data requirements. In addition, assessment of a baseline cost was further complicated by differing methodologies used by the Department and by the Internal Revenue Service for estimating the burden of the Form 5500 for PRA purposes. The PRA burden is relevant because it is assumed that the baseline cost of the annual reporting requirement is the total cost of the PRA burden prior to the revision of the form. The cost of the regulation is assumed to be the estimated cost of the PRA burden for preparing and filing the Form 5500 as revised, plus the estimated cost of any automated system changes for filers and service providers to implement the revisions to the Form 5500, less the baseline PRA cost.

The Agencies solicited comments on the burden estimates of the proposed changes to the Form 5500 in September of 1997. The comments indicated that the burden estimates were too low. In order to address these comments, and in an effort to develop a consistent approach to the estimation of the burden of the form, the Agencies undertook an evaluation of their burden estimation methodologies for the purpose of developing a revised and uniform methodology. The Agencies have subsequently adopted the methodological approach developed in the course of this study.

The results of the study, which involved the input of employee benefits professionals and a survey of actual plan sponsor and service provider filers of the Form 5500,[11] supply the basis of both the baseline cost shown here, as well as the estimated cost of completing and filing the revised Form 5500 for those portions attributable to the Department under Title I of ERISA. The additional economic cost of automated system change was estimated based on a separate consultation with a small number of entities which either develop, purchase, or offer automated systems for annual reporting by employee benefit plans. The burden methodology study addressed the time required by filers and service providers to maintain necessary records and complete the form, but did not address the potential cost of adjustments which may be required for automated systems to alter output format for consistency with the changes made to the organization of the information on the form. While these costs would not necessarily be borne by plans or by respondents to the information collection provisions of the regulation, costs of this nature are expected to be incurred and are appropriately accounted for in the analysis of the

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H regarding the inapplicability of the "short plan year" provisions of 29 CFR 2520.104–50 to Direct Filing Entity Form 5500s filed for GIAs and 103–12 IEs.

[9] To allow filers more time to transition to the new computer scannable formats for the Form 5500 Series and EFAST, the Agencies announced on March 22, 2000, that, for filers whose 1999 Form 5500 Series would be due on or before July 31, 2000, the deadline for filing has been extended to October 16, 2000. See PWBA News Release USDL 00–16, dated March 22, 2000, for details on the transition-year automatic extension.

[10] There are 13 schedules as part of the new Form 5500 package—five pension schedules, seven financial schedules, and one fringe benefit schedule. The pension Schedules are: Schedule B (Actuarial Information), Schedule E (ESOP Annual Information), Schedule R (Retirement Plan Information), Schedule T (Qualified Pension Plan Coverage Information), and Schedule SSA (Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits). The financial Schedules are: Schedule A (Insurance Information), Schedule C (Service Provider Information), Schedule D (DFE/Participating Plan Information); Schedule G (Financial Transaction Schedules), Schedule H (Financial Information), Schedule I (Financial Information-Small Plan) and Schedule P (Annual Return of Fiduciary of Employee Benefit Trust). The fringe benefit schedule is Schedule F (Fringe Benefit Plan Annual Information Return). The new schedules are Schedules D, H, I, R and T; the schedules that have been revised are Schedules A, C and G; and the schedules that have either not been revised or have undergone minimal changes are Schedules B, E, F, P and SSA.

[11] The survey was designed and conducted by a survey research organization and received prior approval by OMB under control number 1210–0109 based on the Department's submission of the information collection request.

impact of this final regulation. The findings of these surveys are discussed in greater detail in the discussion of costs below.

The principal benefit of the regulation arises from the streamlining of the form, the elimination and clarification, where possible, of elements known to contribute to errors or confusion, and the improved organization of the form, which are expected to result in direct savings for filers. Other benefits less readily quantifiable include the availability of more complete information on the large volume of assets held by DFEs, and support of a simplified and expedited system for processing the Form 5500 that provides better and faster enforcement as well as better and faster disclosure.

The net benefits of the revisions of the Form 5500 attributable to the Department are estimated at approximately $59 million in the first year of implementation, and approximately $64 million in each subsequent year. The savings figure is somewhat lower in the first year due to the costs of automated system modifications, which are expected to amount to approximately $5 million. The total baseline cost of completion of the portions of the Form 5500 attributed to the Department is estimated at $717.8 million, while the cost of completion of the revised Form 5500 is estimated at $653.7 million. This estimate of savings does not yet take into account additional and potentially significant savings which may be realized in connection with the implementation of EFAST.

Benefits

The revision of the Form 5500 Series was undertaken in an effort to simplify and streamline the annual return/report, and reduce the reporting burden on filers. The new form is intended to reduce the total amount of information to be reported by many plans by eliminating information that is not useful for enforcement, disclosure to participants and beneficiaries, research, or other statutorily mandated missions. The revisions are also designed to eliminate redundant items and revise questions that have historically produced filing errors. The revisions also generally require welfare plans to complete fewer items than pension plans, and small plans to complete fewer items than large plans.

The revisions eliminate the Form 5500–C/R, but maintain limited financial reporting similar to the existing Form 5500–R for small plans. Plans currently exempt from filing a return/report (such as certain small unfunded/insured welfare plans and certain Simplified Employee Pensions (SEPs), or those eligible for limited reporting options (such as certain Internal Revenue Code section 403(b) plans) will continue to be eligible for that annual reporting relief.

The revisions restructure the Form 5500 along the lines familiar to individual and corporate taxpayers—a simple main form with basic information necessary to identify the plan for which the report is filed, along with a checklist of the schedules being filed which are applicable to the filer's plan type. The structure should aid filers by allowing them to assemble and file a return that is customized to their plan. Instructions to the form have been reorganized with the intention that they be easier to use due to grouping on the basis of the schedules to be attached. In other words, the revised instructions will allow filers to go directly to the instructions which apply to them, and bypass those which do not apply.

Based on the elimination of certain information and reformatting of the Form 5500 Series, the burden of preparing and filing the form is estimated to be reduced by almost 9 percent per year over the life of the form. As noted earlier, the savings is estimated to amount to $64 million per year, before adjustment for additional costs expected to be incurred for automated system changes.

The revisions also establish the Form 5500 as the standardized reporting format for DFEs. The DFE reporting rules were intended to simplify the annual reporting requirements for participating plans and eliminate confusion regarding the reporting obligations of plans which participate in DFEs. Standardization of the information reported by DFEs is expected to allow the Department to correlate asset information with plans and to use the DFE data more effectively for enforcement, disclosure and research purposes with respect to the approximately $2 trillion in plan assets presently held by DFEs or entities eligible to file as DFEs.[12] Improved data is expected to contribute to the meaningful analysis of the assets of pension plans because approximately 45 percent of private pension assets are held by DFEs or entities eligible to file as DFEs.

The revisions are also designed to support and facilitate EFAST, the processing system being developed to simplify and expedite the processing of the Form 5500. This new system will rely on electronic filing with automatic error detection, and optical scanning technology and optical character recognition to computerize the paper forms, resulting in increasing efficiencies in processing and corresponding reductions in the government's processing costs. Implementation of the single form with multiple schedules is also expected to reduce the government's costs to process the forms, due to the overall reduction in the information submitted.

Costs of the Regulation

The baseline costs of annual reporting consist of a number of elements such as the time and cost of maintaining records for the purpose of reporting on Form 5500, the time and cost of hiring service providers such as accountants and administrators to complete all or part of work necessary to maintain appropriate records and complete and file the form, time required to communicate with and review the work of service providers, and time required to complete and file the form manually or through automation. The variability of these elements is dependent upon choices made by filers as well as the nature and size of their plans.

In order to develop an accurate estimate of baseline cost to file Form 5500, among other reasons, the Agencies involved in the revision of the Form 5500 engaged a survey research firm to conduct a survey of filers. Because of the wide variation in filing behavior and requirements among sponsors and service providers, the survey included a sample intended to be reasonably representative of the filer universe, rather than a probability sample, which would have been substantial in size thereby resulting in a survey which would have been very costly to conduct. A very large sample was not considered likely to result in more reliable data in any event because neither sponsors nor service providers tend to maintain detailed records of the time required or costs of preparing and filing Form 5500.

The methodology for the survey was developed by the contractor with input from experts who are familiar with reporting requirements and who file Form 5500 professionally. Survey respondents were asked to report sponsor burden in hours, and service provider burden in actual dollars spent for purchased services. The survey showed that about 90 percent of filers employ service providers for the completion and filing of Form 5500. The baseline survey, which referred to the 1997 Form 5500 (the latest available at

[12] Estimate based on the total assets held by private pension plans in 1999 as reported by the Federal Reserve Board and the percentage of all plan assets reported to be invested in these entities in 1995 Form 5500 filings.

the time the survey was initiated) after application of actual responses across filer categories, indicated that 2,131,261 sponsor hours and $557,907,442 in fees were expended annually in the completion of the Department's elements of the Form 5500. The total cost of $717,752,000, which includes the cost represented by the sponsor hours, is calculated using an assumed average rate of $75 per burden hour.[13]

The change in burden for the 1999 Form 5500 was estimated by means of a second survey of the respondents which focused on the changes made to the form. The relationship between hours and costs was assumed to remain constant. After application of responses across filer categories, the second phase of the survey indicated a reduction from the baseline sponsor hours to 1,817,412 and a reduction from the baseline cost to $517,367,000. The total cost of filing the 1999 Form 5500 was therefore estimated at $653,673,000, including the hours at a rate of $75 per hour. It is the Department's view that these estimates, while somewhat different from those presented at the time of the proposal, represent reasonable current estimates of the cost of the baseline and regulation due to the design of the survey and its reliance on a representative group of actual filers.

As noted, however, filers who rely on automated recordkeeping and document production systems for completion of the Form 5500 may be expected to incur other costs to reconfigure output for consistency with the new organization of the form. Although maintenance of automated systems is not required, it is assumed that sponsors and service providers who currently make use of automated systems due to their improved efficiency will revise and continue to make use of such systems in the future. In order to establish a basis for the estimate of the cost of these revisions, the Department arranged for the conduct of a separate survey of a total of 9 software developers and service providers that either offer software to complete Form 5500 or services which incorporate a software package either developed internally or purchased from an outside software developer.

These respondents were asked to describe the nature of the changes that would be required, and either the magnitude and nature of their costs to make changes or the fees they would charge in order to recover their costs. Most respondents indicated that system updating is a relatively constant process, but that substantial additional work would be required for 1999 principally to modify system output. Developers indicated that they anticipated charging either a one-time fee to their system purchasers, or a percentage increase in the maintenance fees charged to system purchasers. Based on the information collected in the survey, those system purchasers are predominantly service providers to plans. Service provider responses to the survey appeared to indicate in general that additional fees charged to them for system programming and maintenance would not necessarily be passed on to plans.

This may be explained in several ways, including the fact that service providers may view the investment in software revision as an investment to be used for future earnings, that they may be in a position to spread such increases over many clients resulting in a small rate of profit reduction per client, that they may expect to readily recover the investment in efficiency gains arising from the streamlining of the form and electronic filing, and the fact that existing service provider fees are based on a complex set of factors not necessarily directly related to the service provider's direct cost of providing a specific service such as the completion of Form 5500.

Based on the ratios of the numbers of plans per automated system reported by respondent, reported estimates of charges to recover reprogramming costs, and the number of plans estimated to make use of service providers for the completion and filing of Form 5500, it is estimated that developers and providers will invest approximately $5 million in reprogramming efforts prior to implementation of the revised Form 5500.

Paperwork Reduction Act Statement

This final regulation imposes no new information collection requirements in addition to the information collection requirements associated with the submission of the Form 5500 Series (OMB control numbers 1210–0110 and 1210–0089) and the ERISA Summary Annual Report (OMB Control number 1210–0040).

Small Business Regulatory Enforcement Fairness Act

This final rule is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and is being transmitted to Congress and the Comptroller General for review. The final rule, however, is not a "major rule," as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this final regulation does not include any Federal mandate that may result in expenditures by State, local or tribal governments, and would not impose an annual burden exceeding $100 million on the private sector.

Executive Order 13132 Statement

This final rule does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supercede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. This final rule, therefore, does not affect the States or change the relationship or distribution of power between the national government and the States. Further, this final rule implements certain revisions to annual reporting and disclosure regulations which have been in effect in similar form for many years. The amendments incorporated in this final rule do not alter the fundamental requirements of the statute with respect to the reporting and disclosure requirements for employee benefit plans, and as such have no implications for the States or the relationship or distribution of power between the national government and the States.

Statutory Authority

This regulation is adopted pursuant to the authority in sections 101, 103, 104, 109, 110, 111, 504 and 505 of ERISA

[13] The average rate used for this estimate is based on average labor hour rates for lawyers, accountants, budget analysts and financial managers from the 1998 Employment Cost Index and the 1997 Occupational Employment Statistics Survey (Bureau of Labor Statistics) as adjusted for estimated overhead and profit margin.

and under Secretary of Labor's Order No. 1–87, 52 FR 13139, April 21, 1987.

List of Subjects in 29 CFR Part 2520

Accountants, Disclosure requirements, Employee benefit plans, Employee Retirement Income Security Act, Pension plans, Pension and welfare plans, Reporting and recordkeeping requirements, and Welfare benefit plans.

In view of the foregoing, Part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations is amended as set forth below:

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

1. The authority citation for Part 2520 continues to read as follows:

Authority: Secs. 101, 102, 103, 104, 105, 109, 110, 111(b)(2), 111(c), and 505, Pub. L. 93–406, 88 Stat. 840–52 and 894 (29 U.S.C. 1021–1025, 1029–31, and 1135); Secretary of Labor's Order No. 27–74, 13–76, 1–87, and Labor Management Services Administration Order 2–6.

Sections 2520.102–3, 2520.104b–1 and 2520.104b–3 also are issued under sec. 101(a), (c) and (g)(4) of Pub. L. 104–191, 110 Stat. 1936, 1939, 1951 and 1955 and, sec. 603 of Pub. L. 104–204, 110 Stat. 2935 (29 U.S.C. 1185 and 1191c).

2. Section 2520.103–1 is amended by revising the phrase "section 104(a)(1)(A)" in paragraph (a) introductory text to read "section 104(a)(1)", revising the introductory text of paragraph (b), paragraph (b)(1), the first sentence of paragraph (b)(2)(i), paragraphs (b)(4), (c), (d) and the first sentence of paragraph (e) and by adding a paragraph (f) to read as follows:

§ 2520.103–1 Contents of the annual report.

* * * * *

(b) *Contents of the annual report for plans with 100 or more participants electing the limited exemption or alternative method of compliance.* Except as provided in paragraph (d) of this section and in §§ 2520.103–2 and 2520.104–44, the annual report of an employee benefit plan covering 100 or more participants at the beginning of the plan year which elects the limited exemption or alternative method of compliance described in paragraph (a)(2) of this section shall include:

(1) A Form 5500 "Annual Return/Report of Employee Benefit Plan" and any statements or schedules required to be attached to the form, completed in accordance with the instructions for the form, including Schedule A (Insurance Information), Schedule B (Actuarial Information), Schedule C (Service Provider Information), Schedule D (DFE/Participating Plan Information), Schedule G (Financial Transaction Schedules), Schedule H (Financial Information), Schedule R (Retirement Plan Information), and the other financial schedules described in § 2520.103–10. See the instructions for this form.

(2) * * *

(i) A statement of assets and liabilities at current value presented in comparative form for the beginning and end of the year. * * *

* * * * *

(4) In the case of a plan, some or all of the assets of which are held in a pooled separate account maintained by an insurance company, or a common or collective trust maintained by a bank or similar institution, a copy of the annual statement of assets and liabilities of such account or trust for the fiscal year of the account or trust which ends with or within the plan year for which the annual report is made as required to be furnished to the administrator by such account or trust under § 2520.103–5(c). Although the statement of assets and liabilities referred to in § 2520.103–5(c) shall be considered part of the plan's annual report, such statement of assets and liabilities need not be filed with the plan's annual report. See §§ 2520.103–3 and 2520.103–4 for reporting requirements for plans some or all of the assets of which are held in a pooled separate account maintained by an insurance company, or a common or collective trust maintained by a bank or similar institution.

* * * * *

(c) *Contents of the annual report for plans with fewer than 100 participants.* Except as provided in paragraph (d) of this section and in §§ 2520.104–43 and 2520.104a–6, the annual report of an employee benefit plan which covers fewer than 100 participants at the beginning of the plan year shall include a Form 5500 "Annual Return/Report of Employee Benefit Plan" and any statements or schedules required to be attached to the form, completed in accordance with the instructions for the form, including Schedule A (Insurance Information), Schedule B (Actuarial Information), Schedule D (DFE/Participating Plan Information), Schedule I (Financial Information—Small Plan), and Schedule R (Retirement Plan Information). See the instructions for this form.

(d) *Special rule.* If a plan has between 80 and 120 participants (inclusive) as of the beginning of the plan year, the plan administrator may elect to file the same category of annual report (i.e., the annual report for plans with 100 or more participants under paragraph (b) of this section or the annual report for plans with fewer than 100 participants under paragraph (c) of this section) that was filed for the previous plan year.

(e) *Plans which participate in a master trust.* The plan administrator of a plan which participates in a master trust shall file an annual report on Form 5500 in accordance with the instructions for the form relating to master trusts and master trust investment accounts. * * *

(f) *Electronic filing.* The Form 5500 "Annual Return/Report of Employee Benefit Plan" may be filed electronically or through other media in accordance with the instructions accompanying the form, provided the plan administrator maintains an original copy, with all required signatures, as part of the plan's records.

3.–4. Section 2520.103–2 is amended by revising paragraph (b)(1), the first sentence of paragraph (b)(2)(i) and paragraph (b)(4) and by adding paragraph (c) to read as follows:

§ 2520.103–2 Contents of the annual report for a group insurance arrangement.

* * * * *

(b) *Contents.* (1) A Form 5500 "Annual Return/Report of Employee Benefit Plan" and any statements or schedules required to be attached to the form, completed in accordance with the instructions for the form, including Schedule A (Insurance Information), Schedule C (Service Provider Information), Schedule D (DFE/Participating Plan Information), Schedule G (Financial Transaction Schedules), Schedule H (Financial Information), and the other financial schedules described in § 2520.103–10. See the instructions for this form.

(2) * * *

(i) A statement of all trust assets and liabilities at current value presented in comparative form for the beginning and end of the year. * * *

* * * * *

(4) In the case of a group insurance arrangement some or all of the assets of which are held in a pooled separate account maintained by an insurance carrier, or in a common or collective trust maintained by a bank, trust company or similar institution, a copy of the annual statement of assets and liabilities of such account or trust for the fiscal year of the account or trust which ends with or within the plan year for which the annual report is made as required to be furnished by such account or trust under § 2520.103–5(c). Although the statement of assets and

liabilities referred to in § 2520.103–5(c) shall be considered part of the group insurance arrangement's annual report, such statement of assets and liabilities need not be filed with its annual report. See §§ 2520.103–3 and 2520.103–4 for reporting requirements for plans some or all of the assets of which are held in a pooled separate account maintained by an insurance company, or a common or collective trust maintained by a bank or similar institution, and see § 2520.104–43(b)(2) for when the terms "group insurance arrangement" or "trust or other entity" shall be, respectively, used in place of the terms "plan" and "plan administrator."

* * * * *

(c) *Electronic filing.* The Form 5500 "Annual Return/Report of Employee Benefit Plan" may be filed electronically or through other media in accordance with the instructions accompanying the form, provided the trust or other entity described in § 2520.104–43(b) maintains an original copy, with all required signatures, as part of the trust's or entity's records.

5.–6. Section 2520.103–3 is amended by revising paragraphs (a) and (c) to read as follows:

§ 2520.103–3 Exemption from certain annual reporting requirements for assets held in a common or collective trust.

(a) *General.* Under the authority of sections 103(b)(3)(G), 103(b)(4), 104(a)(2)(B), 104(a)(3), 110 and 505 of the Act, a plan whose assets are held in whole or in part in a common or collective trust maintained by a bank, trust company, or similar institution which meets the requirements of paragraph (b) of this section shall include as part of the annual report required to be filed under §§ 2520.104a–5 or 2520.104a–6 the information described in paragraph (c) of this section. Such plan is not required to include in its annual report information concerning the individual transactions of the common or collective trust. This exemption has no application to assets not held in such trusts.

* * * * *

(c) *Contents.* (1) A plan which meets the requirements of paragraph (b) of this section, and which invests in a common or collective trust that files a Form 5500 report in accordance with § 2520.103–9, shall include in its annual report: information required by the instructions to Schedule H (Financial Information) or Schedule I (Financial Information—Small Plan) about the current value of and net investment gain or loss relating to the units of participation in the common or collective trust held by the plan; identifying information about the common or collective trust including its name, employer identification number, and any other information required by the instructions to the Schedule D (DFE/Participating Plan Information); and such other information as is required in the separate statements and schedules of the annual report about the value of the plan's units of participation in the common or collective trust and transactions involving the acquisition and disposition by the plan of units of participation in the common or collective trust.

(2) A plan which meets the requirements of paragraph (b) of this section, and which invests in a common or collective trust that does not file a Form 5500 report in accordance with § 2520.103–9, shall include in its annual report: information required by the instructions to Schedule H (Financial Information) or Schedule I (Financial Information—Small Plan) about the current value of the plan's allocable portion of the underlying assets and liabilities of the common or collective trust and the net investment gain or loss relating to the units of participation in the common or collective trust held by the plan; identifying information about the common or collective trust including its name, employer identification number, and any other information required by the instructions to the Schedule D (DFE/Participating Plan Information); and such other information as is required in the separate statements and schedules of the annual report about the value of the plan's units of participation in the common or collective trust and transactions involving the acquisition and disposition by the plan of units of participation in the common or collective trust.

7. Section 2520.103–4 is amended by revising paragraphs (a) and (c) to read as follows:

§ 2520.103–4 Exemption from certain annual reporting requirements for assets held in an insurance company pooled separate account.

(a) *General.* Under the authority of sections 103(b)(3)(G), 103(b)(4), 104(a)(2)(B), 104(a)(3), 110 and 505 of the Act, a plan whose assets are held in whole or in part in a pooled separate account of an insurance carrier which meets the requirements of paragraph (b) of this section shall include as part of the annual report required to be filed under § 2520.104a–5 or § 2520.104a–6 the information described in paragraph (c) of this section. Such plan is not required to include in its annual report information concerning the individual transactions of the pooled separate account. This exemption has no application to assets not held in such a pooled separate account.

* * * * *

(c) *Contents.* (1) A plan which meets the requirements of paragraph (b) of this section, and which invests in a pooled separate account that files a Form 5500 report in accordance with § 2520.103–9, shall include in its annual report: information required by the instructions to Schedule H (Financial Information) or Schedule I (Financial Information—Small Plan) about the current value of, and net investment gain or loss relating to, the units of participation in the pooled separate account held by the plan; identifying information about the pooled separate account including its name, employer identification number, and any other information required by the instructions to the Schedule D (DFE/Participating Plan Information); and such other information as is required in the separate statements and schedules of the annual report about the value of the plan's units of participation in the pooled separate accounts and transactions involving the acquisition and disposition by the plan of units of participation in the pooled separate account.

(2) A plan which meets the requirements of paragraph (b) of this section, and which invests in a pooled separate account that does not file a Form 5500 report in accordance with § 2520.103–9, shall include in its annual report: information required by the instructions to Schedule H (Financial Information) or Schedule I (Financial Information—Small Plan) about the current value of the plan's allocable portion of the underlying assets and liabilities of the pooled separate account and the net investment gain or loss relating to the units of participation in the pooled separate account held by the plan; identifying information about the pooled separate account including its name, employer identification number, and any other information required by the instructions to the Schedule D (DFE/Participating Plan Information); and such other information as is required in the separate statements and schedules of the annual report about the value of the plan's units of participation in the pooled separate account and transactions involving the acquisition and disposition by the plan of units of participation in the pooled separate account.

8. Section 2520.103–5 is amended by redesignating paragraph (c)(1)(iii) as paragraph (c)(1)(iv), redesignating paragraphs (c)(2)(ii) and (c)(2)(iii), as paragraphs (c)(2)(iii) and (c)(2)(iv),

revising all references in the section to the term "section 104(a)(1)(A)" to read "section 104(a)(1)", revising paragraphs (c)(1)(ii) and (c)(2)(i) and adding new paragraphs (c)(1)(iii), and (c)(2)(ii) to read as follows:

§ 2520.103–5 Transmittal and certification of information to plan administrator for annual reporting purposes.

* * * * *

(c) * * *

(1) * * *

(ii) Holds assets of a plan in a pooled separate account and files a Form 5500 report pursuant to § 2520.103–9 for the participating plan's plan year—

(A) A copy of the annual statement of assets and liabilities of the separate account for the fiscal year of such account ending with or within the plan year for which the participating plan's annual report is made,

(B) A statement of the value of the plan's units of participation in the separate account,

(C) The Employer Identification Number (EIN) of the separate account, entity number required for purposes of completing the Form 5500 and any other identifying number assigned by the insurance carrier to the separate account,

(D) A statement that a filing pursuant to § 2520.103–9(c) will be made for the separate account (for its fiscal year ending with or within the participating plan's plan year) on or before the filing due date for such account in accordance with the Form 5500 instructions, and

(E) Upon request of the plan administrator, any other information that can be obtained from the ordinary business records of the insurance carrier and that is needed by the plan administrator to comply with the requirements of section 104(a)(1) of the Act and § 2520.104a–5 or § 2520.104a–6;

(iii) Holds assets of a plan in a pooled separate account and does not file a Form 5500 report pursuant to § 2520.103–9 for the participating plan's plan year—

(A) A copy of the annual statement of assets and liabilities of the separate account for the fiscal year of such account that ends with or within the plan year for which the participating plan's annual report is made,

(B) A statement of the value of the plan's units of participation in the separate account,

(C) The EIN of the separate account and any other identifying number assigned by the insurance carrier to the separate account,

(D) A statement that a filing pursuant to § 2520.103–9(c) will not be made for the separate account for its fiscal year ending with or within the participating plan's plan year, and

(E) Upon request of the plan administrator, any other information that can be obtained from the ordinary business records of the insurance carrier and that is needed by the plan administrator to comply with the requirements of section 104(a)(1) of the Act and § 2520.104a–5 or § 2520.104a–6.

* * * * *

(2) * * *

(i) In a common or collective trust that files a Form 5500 report pursuant to § 2520.103–9 for the participating plan's plan year—

(A) A copy of the annual statement of assets and liabilities of the common or collective trust for the fiscal year of such trust ending with or within the plan year for which the participating plan's annual report is made,

(B) A statement of the value of the plan's units of participation in the common or collective trust,

(C) The EIN of the common or collective trust, entity number assigned for purposes of completing the Form 5500 and any other identifying number assigned by the bank, trust company, or similar institution,

(D) A statement that a filing pursuant to § 2520.103–9(c) will be made for the common or collective trust (for its fiscal year ending with or within the participating plan's plan year) on or before the filing due date for such trust in accordance with the Form 5500 instructions, and

(E) Upon request of the plan administrator, any other information that can be obtained from the ordinary business records of the bank, trust company or similar institution and that is needed by the plan administrator to comply with the requirements of section 104(a)(1) of the Act and §§ 2520.104a–5 or 2520.104a–6.

(ii) In a common or collective trust that does not file a Form 5500 report pursuant to § 2520.103–9 for the participating plan's plan year—

(A) A copy of the annual statement of assets and liabilities of the common or collective trust for the fiscal year of such account that ends with or within the plan year for which the participating plan's annual report is made,

(B) A statement of the value of the plan's units of participation in the common or collective trust,

(C) The EIN of the common or collective trust and any other identifying number assigned by the bank, trust company or similar institution,

(D) A statement that a filing pursuant to § 2520.103–9(c) will not be made for the common or collective trust for its fiscal year ending with or within the participating plan's plan year, and

(E) Upon request of the plan administrator, any other information that can be obtained from the ordinary business records of the bank, trust company or similar institution and that is needed by the plan administrator to comply with the requirements of section 104(a)(1) of the Act and §§ 2520.104a–5 or 2520.104a–6.

* * * * *

9. Section 2520.103–6 is amended by redesignating paragraph (b)(1) as paragraph (b)(1)(i), revising paragraphs (a) and (b)(1)(ii), and adding paragraph (f) to read as follows:

§ 2520.103–6 Definition of reportable transaction for Annual Return/Report.

(a) *General.* For purposes of preparing the schedule of reportable transactions described in § 2520.103–10(b)(6), and subject to the exceptions provided in §§ 2520.103–3, 2520.103–4 and 2520.103–12, with respect to individual transactions by a common or collective trust, pooled separate account, or a 103–12 investment entity, a reportable transaction includes any transaction or series of transactions described in paragraph (c) of this section.

(b) * * *

(1) * * *

(ii) Except as provided in paragraphs (c)(2) and (d)(1)(vi) of this section (relating to assets acquired or disposed of during the plan year), with respect to schedules of reportable transactions for the initial plan year of a plan, "current value" shall mean the current value, as defined in section 3(26) of the Act, of plan assets at the end of a plan's initial plan year.

* * * * *

(f) *Special rule for certain participant-directed transactions.* Participant or beneficiary directed transactions under an individual account plan shall not be taken into account under paragraph (c)(1) of this section for purposes of preparing the schedule of reportable transactions described in this section. For purposes of this section only, a transaction will be considered directed by a participant or beneficiary if it has been authorized by such participant or beneficiary.

10. Section 2520.103–9 is revised to read as follows:

§ 2520.103–9 Direct filing for bank or insurance carrier trusts and accounts.

(a) *General.* Under the authority of sections 103(b)(4), 104(a)(3), 110 and 505 of the Act, an employee benefit

plan, some or all of the assets of which are held in a common or collective trust or a pooled separate account described in section 103(b)(3)(G) of the Act and §§ 2520.103–3 and 2520.103–4, is relieved from including in its annual report information about the current value of the plan's allocable portion of assets and liabilities of the common or collective trust or pooled separate account and information concerning the individual transactions of the common or collective trust or pooled separate account, provided that the plan meets the requirements of paragraph (b) of this section, and, provided further, that the bank or insurance carrier which holds the plan's assets meets the requirements of paragraph (c) of this section.

(b) *Application.* A plan whose assets are held in a common or collective trust or a pooled separate account described in section 103(b)(3)(G) of the Act and §§ 2520.103–3 and 2520.103–4, provided the plan administrator, on or before the end of the plan year, provides the bank or insurance carrier which maintains the common or collective trust or pooled separate account with the plan number, and name and Employer Identification Number of the plan sponsor as will be reported on the plan's annual report.

(c) *Separate filing by common or collective trusts and pooled separate accounts.* The bank or insurance carrier which maintains the common or collective trust or pooled separate account in which assets of the plan are held shall file, in accordance with the instructions for the form, a completed Form 5500 "Annual Return/Report of Employee Benefit Plan" and any statements or schedules required to be attached to the form for the common or collective trust or pooled separate account, including Schedule D (DFE/Participating Plan Information) and Schedule H (Financial Information). See the instructions for this form. The information reported shall be for the fiscal year of such trust or account ending with or within the plan year for which the annual report of the plan is made.

(d) *Method of filing.* The Form 5500 "Annual Return/Report of Employee Benefit Plan" may be filed electronically or through other media in accordance with the instructions accompanying the form, provided the bank or insurance company which maintains the common or collective trust or pooled separate account maintains an original copy, with all required signatures, as part of its records.

11. Section 2520.103–10 is revised to read as follows:

§ 2520.103–10 Annual report financial schedules.

(a) *General.* The administrator of a plan filing an annual report pursuant to § 2520.103–1(a)(2) or the report for a group insurance arrangement pursuant to § 2520.103–2 shall, as provided in the instructions to the Form 5500 "Annual Return/Report of Employee Benefit Plan," include as part of the annual report the separate financial schedules described in paragraph (b) of this section.

(b) *Schedules.* (1) *Assets held for investment.* (i) A schedule of all assets held for investment purposes at the end of the plan year (see § 2520.103–11) with assets aggregated and identified by:

(A) Identity of issue, borrower, lessor or similar party to the transaction (including a notation as to whether such party is known to be a party in interest);

(B) Description of investment including maturity date, rate of interest, collateral, par, or maturity value;

(C) Cost; and

(D) Current value, and, in the case of a loan, the payment schedule.

(ii) Except as provided in the Form 5500 and the instructions thereto, in the case of assets or investment interests of two or more plans maintained in one trust, all entries on the schedule of assets held for investment purposes that relate to the trust shall be completed by including the plan's allocable portion of the trust.

(2) *Assets acquired and disposed within the plan year.* (i) A schedule of all assets acquired and disposed of within the plan year (see § 2520.103–11) with assets aggregated and identified by:

(A) Identity of issue, borrower, issuer or similar party;

(B) Descriptions of investment including maturity date, rate of interest, collateral, par, or maturity value;

(C) Cost of acquisitions; and

(D) Proceeds of dispositions.

(ii) Except as provided in the Form 5500 and the instructions thereto, in the case of assets or investment interests of two or more plans maintained in one trust, all entries on the schedule of assets held for investment purposes that relate to the trust shall be completed by including the plan's allocable portion of the trust.

(3) *Party in interest transactions.* A schedule of each transaction involving a person known to be a party in interest except do not include:

(i) A transaction to which a statutory exemption under part 4 of title I applies;

(ii) A transaction to which an administrative exemption under section 408(a) of the Act applies; or

(iii) A transaction to which the exemptions of section 4975(c) or 4975(d) of the Internal Revenue Code (Title 26 of the United States Code) applies.

(4) *Obligations in default.* A schedule of all loans or fixed income obligations which were in default as of the end of the plan year or were classified during the year as uncollectible.

(5) *Leases in default.* A schedule of all leases which were in default or were classified during the year as uncollectible.

(6) *Reportable transactions.* A schedule of all reportable transactions as defined in § 2520.103–6.

(c) *Format requirements for certain schedules.* See the instructions to the Form 5500 "Annual Return/Report of Employee Benefit Plan" as to the format requirement for the schedules referred to in paragraphs (b)(1), (b)(2) or (b)(6) of this section.

12. Section 2520.103–11 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 2520.103–11 Assets held for investment purposes.

(a) *General.* For purposes of preparing the schedule of assets held for investment purposes described in § 2520.103–10(b)(1) and (2), assets held for investment purposes include those assets described in paragraph (b) of this section.

* * * * *

(d) *Special rule for certain participant-directed transactions.* Cost information may be omitted from the schedule of assets held for investment purposes for assets described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section only with respect to participant or beneficiary directed transactions under an individual account plan. For purposes of this section only, a transaction will be considered directed by a participant or beneficiary if it has been authorized by such participant or beneficiary.

13. Section 2520.103–12 is amended by revising the last two sentences of paragraph (a), revising paragraph (b), and also adding a new paragraph (f) to read as follows:

§ 2520.103–12 Limited exemption and alternative method of compliance for annual reporting of investments in certain entities.

(a) * * * The plan is not required to include in its annual report any information regarding the underlying assets or individual transactions of the entity, provided the information described in paragraph (b) regarding the entity is reported directly to the Department on behalf of the plan administrator on or before the filing due date for the entity in accordance with

the instructions to the Form 5500 Annual Return/Report. The information described in paragraph (b), however, shall be considered as part of the annual report for purposes of the requirements of section 104(a)(1) of the Act and §§ 2520.104a–5 and 2520.104a–6.

(b) The following information must be filed regarding the entity described in paragraph (c) of this section:

(1) A Form 5500 "Annual Return/Report of Employee Benefit Plan" and any statements or schedules required to be attached to the form for such entity, completed in accordance with the instructions for the form, including Schedule A (Insurance Information), Schedule C (Service Provider Information), Schedule D (DFE/Participating Plan Information), Schedule G (Financial Transaction Schedules), Schedule H (Financial Information), and the schedules described in § 2520.103–10(b)(1) and (b)(2). See the instructions for this form. The information reported shall be for the fiscal year of such entity ending with or within the plan year for which the annual report of the plan is made.

(2) A report of an independent qualified public accountant regarding the financial statements and schedules described in paragraph (b)(1) of this section which meets the requirements of § 2520.103–1(b)(5).

* * * * *

(f) *Method of filing.* The Form 5500 "Annual Return/Report of Employee Benefit Plan" may be filed electronically or through other media in accordance with the instructions accompanying the form provided the entity described in paragraph (c) of this section maintains an original copy, with all required signatures, as part of its records.

14. Section 2520.104–21 is amended by revising paragraphs (b)(3) and (d), and adding paragraph (e) to read as follows.

§ 2520.104–21 Limited exemption for certain group insurance arrangements.

* * * * *

(b) * * *

(3) Uses a trust (or other entity such as a trade association) as the holder of the insurance contracts and uses a trust as the conduit for payment of premiums to the insurance company.

* * * * *

(d) *Examples.* (1) A welfare plan has 25 participants at the beginning of the plan year. It is part of a group insurance arrangement of a trade association which provides benefits to employees of two or more unaffiliated employers, but not in connection with a multiemployer plan as defined in the Act. Plan benefits are fully insured pursuant to insurance contracts purchased with premium payments derived half from employee contributions (which the employer forwards within three months of receipt) and half from the general assets of each participating employer. Refunds to the plan are paid to participating employees within three months of receipt as provided in the plan and as described to each participant upon entering the plan. The trade association holds the insurance contracts. A trust acts as a conduit for payments, receiving premium payments from participating employers and paying the insurance company. The plan appoints the trade association as its plan administrator. The association, as plan administrator, provides summary plan descriptions to participants and beneficiaries, enlisting the help of participating employers in carrying out this distribution. The plan administrator also makes copies of certain plan documents available to the plan's principal office and such other places as necessary to give participants reasonable access to them. The plan administrator files with the Secretary an annual report covering activities of the plan, as required by the Act and such regulations as the Secretary may issue. The exemption provided by this section applies because the conditions of paragraph (b) have been satisfied.

(2) Assume the same facts as paragraph (d)(1) of this section except that the premium payments for the insurance company are paid from the trust to an independent insurance brokerage firm acting as the agent of the insurance company. The trade association is the holder of the insurance contract. The plan appoints an officer of the participating employer as the plan administrator. The officer, as plan administrator, performs the same reporting and disclosure functions as the administrator in paragraph (d)(1) of this section, enlisting the help of the association in providing summary plan descriptions and necessary information. The exemption provided by this section applies.

(3) The facts are the same as paragraph (d)(1) of this section except the welfare plan has 125 participants at the beginning of the plan year. The exemption provided by this section does not apply because the plan had 100 or more participants at the beginning of the plan year. See, however, § 2520.104–43.

(4) The facts are the same as paragraph (d)(2) of this section except the welfare plan has 125 participants. The exemption provided by this section does not apply because the plan had 100 or more participants at the beginning of the plan year. See, however, § 2520.104–43.

(e) *Applicability date.* For purposes of paragraph (b)(3) of this section, the arrangement may continue to use an entity (such as a trade association) as the conduit for the payment of insurance premiums to the insurance company for reporting years of the arrangement beginning before January 1, 2001.

15. Section 2520.104–41 is amended by revising paragraphs (b) and (c) to read as follows:

§ 2520.104–41 Simplified annual reporting requirements for plans with fewer than 100 participants.

* * * * *

(b) *Application.* The administrator of an employee pension or welfare benefit plan which covers fewer than 100 participants at the beginning of the plan year and the administrator of an employee pension or welfare benefit plan described in § 2520.103–1(d) may file the simplified annual report described in paragraph (c) of this section in lieu of the annual report described in § 2520.103–1(b).

(c) *Contents.* The administrator of an employee pension or welfare benefit plan described in paragraph (b) of this section shall file, in the manner described in § 2520.104a–5 and in accordance with the instructions for the form, a completed Form 5500 "Annual Return/Report of Employee Benefit Plan" and any statements or schedules required to be attached to the form, including Schedule A (Insurance Information), Schedule B (Actuarial Information), Schedule D (DFE/Participating Plan Information), Schedule I (Financial Information—Small Plan), and Schedule R (Retirement Plan Information). See the instructions for this form.

16. Section 2520.104–43 is amended by revising paragraphs (b)(1)(ii) and (b)(2) to read as follows:

§ 2520.104–43 Exemption from annual reporting requirement for certain group insurance arrangements.

* * * * *

(b) * * *

(1) * * *

(ii) an annual report containing the items set forth in § 2520.103–2 has been filed with the Secretary of Labor in accordance with §§ 2520.104a–6 by the trust or other entity which is the holder of the group insurance contracts by which plan benefits are provided.

(2) For purposes of this section, the terms "group insurance arrangement" or "trust or other entity" shall be used in place of the terms "plan" and "plan administrator," as applicable, in §§ 2520.103–3, 2520.103–4, 2520.103–6,

2520.103–8, 2520.103–9 and 2520.103–10.

* * * * *

17. Section 2520.104–44 is amended by revising the second sentence of paragraph (a)(2), removing the word "and" at the end of paragraph (b)(1)(iii), revising the period at the end of paragraph (b)(2) to a semicolon, and adding the word "and" after such semicolon, adding paragraph (b)(3), and revising paragraph (c)(1) to read as follows:

§ 2520.104–44 Limited exemption and alternative method of compliance for annual reporting by unfunded plans and certain insured plans.

(a) * * *

(2) * * * An employee pension benefit plan which meets the requirements of paragraph (b)(2) or (b)(3) of this section is not required to comply with the annual reporting requirements described in paragraph (c) of this section.

(b) * * *

(3) A pension plan using a tax deferred annuity arrangement under section 403(b)(1) of the Internal Revenue Code (Title 26 of the United States Code) and/or a custodial account for regulated investment company stock under Code section 403(b)(7) as the sole funding vehicle for providing pension benefits.

(c) * * *

(1) Completing certain items of the annual report relating to financial information and transactions entered into by the plan as described in the instructions to the Form 5500 "Annual Return/Report of Employee Benefit Plan" and accompanying schedules;

* * * * *

18. Section 2520.104–46 is amended by revising paragraph (d)(1) to read as follows:

§ 2520.104–46 Waiver of examination and report of an independent qualified public accountant for employee benefit plans with fewer than 100 participants.

* * * * *

(d) *Limitations.* (1) The waiver described in this section does not affect the obligation of the plan described in paragraph (b)(1), or (b)(2) of this section to file the Form 5500 "Annual Return/Report of Employee Benefit Plan" and all applicable financial schedules and statements as prescribed by the instructions to the form. See § 2520.104–41.

* * * * *

19. Section 2520.104b–10 is amended by revising the phrase in the first sentence of paragraph (a) "paragraphs (b) and (g)" to read "paragraph (g)", by removing and reserving paragraph (b), and by revising paragraph (c) introductory text and paragraph (f) to read as follows.

§ 2520.104b–10 Summary Annual Report.

* * * * *

(c) *When to furnish.* Except as otherwise provided in this paragraph (c), the summary annual report required by paragraph (a) of this section shall be furnished within nine months after the close of the plan year.

* * * * *

(f) *Furnishing of additional documents to participants and beneficiaries.* A plan administrator shall promptly comply with any request by a participant or beneficiary for additional documents made in accordance with the procedures or rights described in paragraph (d) of this section.

* * * * *

§ 2520.104b–10 [Amended]

20. Section 2520.104b–10 is further amended as follows.

a. The following sentence from paragraph (d)(3) under the heading "Basic Financial Statement" is removed:

[For plans filing form 5500K, omit separate entries for employer contributions and employee contributions and insert instead "contributions by the employer and employees of ($)"].

b. In paragraph (d)(3), in the list under the heading "Your Rights to Additional Information" items 1. through 8. are revised and items 9. and 10. are added to read as follows:

* * * * *

1. an accountant's report;

2. financial information and information on payments to service providers;

3. assets held for investment;

4. fiduciary information, including non-exempt transactions between the plan and parties-in-interest (that is, persons who have certain relationships with the plan);

5. loans or other obligations in default or classified as uncollectible;

6. leases in default or classified as uncollectible;

7. transactions in excess of 5 percent of the plan assets;

8. insurance information including sales commissions paid by insurance carriers;

9. information regarding any common or collective trusts, pooled separate accounts; master trusts or 103–12 investment entities in which the plan participates, and

10. actuarial information regarding the funding of the plan.

* * * * *

c. In paragraph (d)(4), in the list under the heading "Your Rights to Additional Information" items 1. through 7. are revised and items 8. and 9. as added to read as follows:

1. an accountant's report;

2. financial information and information on payments to service providers;

3. assets held for investment;

4. fiduciary information, including non-exempt transactions between the plan and parties-in-interest (that is, persons who have certain relationships with the plan);

5. loans or other obligations in default or classified as uncollectible;

6. leases in default or classified as uncollectible;

7. transactions in excess of 5 percent of the plan assets;

8. insurance information including sales commissions paid by insurance carriers; and

9. information regarding any common or collective trusts, pooled separate accounts, master trusts or 103–12 investment entities in which the plan participates.

d. The last sentence of both paragraphs (d)(3) and (d)(4) under the heading "Your Rights to Additional Information" are revised to read as follows:

"Requests to the Department should be addressed to: Public Disclosure Room, Room N5638, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210."

e. The last sentence of the undesignated paragraph following paragraph (e)(2) is removed.

21. The appendix to § 2520.104b–10 is revised to read as follows:

APPENDIX TO § 2520.104b–10—THE SUMMARY ANNUAL REPORT (SAR) UNDER ERISA: A CROSS-REFERENCE TO THE ANNUAL REPORT

SAR Item	Form 5500 Large Plan Filer Line Items	Form 5500 Small Plan Filer Line Items
A. PENSION PLAN		
1. Funding arrangement	Form 5500—9a	Same.
2. Total plan expenses	Sch. H—2j	Sch. I—2i.
3. Administrative expenses	Sch. H—2i(5)	Not applicable.
4. Benefits paid	Sch. H—2e(4)	Sch. I—2e.
5. Other expenses	Sch. H—Subtract the sum of 2e(4) & 2i(5) from 2j	Sch. I—2h.
6. Total participants	Form 5500—7f	Same.
7. Value of plan assets (net):		
a. End of plan year	Sch. H—1l [Col. (b)]	Sch. I—1c [Col. (b)].
b. Beginning of plan year	Sch. H—1l [Col. (a)]	Sch. I—1c [Col. (a)].
8. Change in net assets	Sch. H—Subtract 1l [Col. (a)] from 1l[Col. (b)]	Sch. I—Subtract 1c [Col. (a) from 1c [Col. (b)].
9. Total income	Sch. H—2d	Sch. I—2d.
a. Employer contributions	Sch. H—2a(1)(A) & 2a(2) if applicable	Sch. I—2a(1) & 2b if applicable.
b. Employee contributions	Sch. H—2a(1)(B) & 2a(2) if applicable	Sch. I—2a(2) & 2b if applicable.
c. Gains (losses) from sale of assets	Sch. H—2b(4)(C)	Not applicable.
d. Earnings from investments	Sch. H—Subtract the sum of 2a(3), 2b(4)(C) and 2C from 2d.	Sch. I—2c.
10. Total insurance premiums	Total of all Schs. A –5b	Total of all Schs. A—5b.
11. Funding deficiency:		
a. Defined benefit plans	Sch. B—10	Same.
b. Defined contribution plans	Sch. R—6c, if more than zero	Same.
B. WELFARE PLAN		
1. Name of insurance carrier	All Schs. A—1(a)	Same.
2. Total (experience rated and non-experienced rated) insurance premiums.	All Schs. A—Sum of 8a(4) and 9(a)	Same.
3. Experience rated premiums	All Schs. A—8a(4)	Same.
4. Experience rated claims	All Schs. A—8b(4)	Same.
5. Value of plan assets (net):		
a. End of plan year	Sch H.—1l [Col. (b)]	Sch. I—1c [Col. (b)].
b. Beginning of plan year	Sch H.—1l [Col. (a)]	Sch. I—1c [Col. (a)].
6. Change in net assets	Sch. H—Subtract 1l [Col. (a)] from 1l [Col. (b)]	Sch. I—Subtract 1c [Col. (a)] from 1c [Col. (b)].
7. Total income	Sch. H—2d	Sch. I—2d.
a. Employer contributions	Sch. H—2a(1)(A) & 2a(2) if applicable	Sch. I—2a(1) & 2b if applicable.
b. Employee contributions	Sch. H—2a(1)(B) & 2a(2) if applicable	Sch. I—2a(2) & 2b if applicable.
c. Gains (losses) from sale of assets	Sch. H—2b(4)(C)	Not applicable.
d. Earnings from investments	Sch. H—Subtract the sum of 2a(3), 2b(4)(C) and 2c from 2d.	Sch. I—2c.
8. Total plan expenses	Sch. H—2j	Sch. I—2i.
9. Administrative expenses	Sch. H—2i(5)	Not applicable.
10. Benefits paid	Sch. H—2e(4)	Sch. I—2e.
11. Other expenses	Sch. H—Subtract the sum of 2e(4) & 2i(5) from 2j	Sch. I—2h.

Signed at Washington, D.C., this 12th day of April, 2000.

Leslie Kramerich,

Acting Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.

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Part III

Department of Housing and Urban Development

Tenant-Based Section 8 Program: Procedures for Determining Baseline Unit Allocations, Verifying Unit Allocations, Accessing, Using, Restoration of and Recapture of Program Reserves and Transfers of Baseline Unit Allocations; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Doc. No. FR–4458–N–07]

Tenant-Based Section 8 Program: Procedures for Determining Baseline Unit Allocations, Verifying Unit Allocations, Accessing, Using, Restoration of and Recapture of Program Reserves and Transfers of Baseline Unit Allocations

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: On October 21, 1999, HUD published its final rule specifying the method HUD will use in allocating housing assistance available to renew expiring contracts with public housing agencies (PHAs) for Section 8 tenant-based housing assistance. As required by statute, the final rule was developed using negotiated rulemaking procedures. This notice, which was also developed during the negotiated rulemaking process, provides guidance on several topics relating to the final rule, including the procedures for verifying unit allocations; the accessing, using, restoration of and recapture of program reserves in the Annual Contributions Contract (ACC) Reserve Account; and the transfer of baseline unit allocations. HUD will make the necessary revisions to its standard ACC to incorporate the policies and procedures announced in this notice.

FOR FURTHER INFORMATION CONTACT: Robert Dalzell, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4204, Washington, DC 20410; telephone (202) 708–1380. (This is not a toll-free number.) Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Introduction

HUD developed this Notice during the negotiated rulemaking process that resulted in the publication of a revised 24 CFR 982.102 on October 21, 1999 (64 FR 56882). The Notice covers five separate topics:

- Section II (entitled "Determination of Initial baseline (as of December 31, 1999)") describes procedures for establishing the initial baseline number of units reserved for each PHA;
- Section III (entitled "Verifying Number of Renewal Units") describes the procedures for verifying unit allocations;
- Section IV (entitled "Annual Contributions Contract (ACC) Reserve Account") describes the procedures for accessing reserves in the ACC Reserve Account, the permissible uses of reserves, and the policy for restoration of depleted reserves;
- Section V states HUD's policy on recapturing program reserves in the PHA's ACC Reserve Account; and
- Section VI (entitled "Reduction of Adjusted Baseline Number of Units and Budget Authority") explains the procedures to be followed to require transfers of baseline unit allocations in the tenant-based Section 8 program.

This Notice supersedes Notices PIH 98–65 and 99–1, as well as HUD's February 18, 1999 **Federal Register** notice (64 FR 8187). HUD will make the necessary revisions to its standard ACC to incorporate the policies and procedures announced in this Notice.

The renewal funding methodology listed in revised 24 CFR 982.102 is designed to provide adequate funding for the number of units reserved for each PHA. PHAs have significant flexibility to manage their programs within the available funding including the amount of program reserves available in each PHA's ACC Reserve Account. HUD advises PHAs to use this flexibility first of all to ensure that they assist the number of families that equal the number of units reserved for the PHA—the baseline number of units. Because of local conditions, it is possible that PHAs may have some funds remaining after assisting the number of families that equal the PHA's baseline. HUD encourages PHAs in this situation to assist additional families; however, HUD also has to caution PHAs to carefully assess their local conditions (demographics of waiting list, turnover rate, future renewal funding) prior to issuing vouchers to families above those equivalent to the PHA's baseline. PHA's must plan ahead to avoid becoming overextended and unable to maintain adequate support for families in their tenant-based program.

II. Determination of Initial Baseline (As of December 31, 1999)

In order to calculate the allocation of renewal funding in the tenant based Section 8 program, HUD uses a renewal units number as a factor in its calculation (renewal units equal the number of units for which funding is reserved on HUD books for a PHA's program). HUD has established an initial baseline number of units reserved for each PHA as of December 31, 1999, to be used in calculating the renewal units number for calendar year 2000 and subsequent years (see 24 CFR § 982.102(d)(1)(ii)). HUD used the following process to determine the December 31, 1999 initial baseline:

Step 1: HUD determined the number of families assisted as of October 1, 1997. For purposes of calculating the initial baseline, HUD determined the number of assisted units under lease on October 1, 1997. The number of assisted units under lease was specified in the supporting documentation submitted by PHAs with the Voucher for Payment of Annual Contributions and Operating Statement (Form HUD–52681).

Step 2: HUD determined the adjusted reserved number of units as of October 1, 1997. HUD determined the number of reserved units as of October 1, 1997. HUD then added the number of authorized units reserved after October 1, 1997 as a result of HUD's review, conducted in Federal Fiscal Year 1998, of leasing in excess of the number of units reserved, in accordance with PIH Notice 98–22 and letters sent to each affected PHA.[1] The result of the addition is the adjusted reserved number of units.

Step 3: HUD compared the number of adjusted reserved units and the number of leased units as of October 1, 1997. In performing this step of the calculation, HUD compared the number of adjusted reserved units (from Step 2) and the number of leased units as of October 1, 1997 (from Step 1) and used the higher of the two as the basis of further calculation in step 4. The comparison was done separately for the certificate and the voucher programs.

Step 4: HUD added any additional units reserved for the PHA from October 1, 1997 to December 31, 1999 to the result of Step 3. HUD included all additional units reserved for the PHA from October 1, 1997 until December 31, 1999. Adjustments included incremental funding as well as conversion funding awarded to provide continued assistance to assisted families pursuant to the conversion of project based assistance to tenant based assistance. HUD also included adjustments for assistance transferred from one housing agency to another.[2]

Step 5: Finally, HUD added the calculated number of units from Step 4 in the certificate program to the calculated number of units from Step 4 in the voucher program to establish the

[1] This adjustment was necessary to avoid double counting units in the course of performing the comparison since a portion of the additional authorized units would also be included in the number of units leased on October 1, 1997.

[2] In this case, the gaining PHA's adjusted baseline would increase and the transferring PHA's adjusted baseline would decrease in an amount equal to the number of units transferred.

initial baseline (as of December 31, 1999) for each PHA.

For example, on October 1, 1997, the "Main Street" Housing Authority was listed as having 100 reserved voucher units in HUD's records and subsequently reported that it was leasing 110 units in its voucher program at that time. HUD determined in 1998 that 5 units (vouchers) should be added to the Main Street Housing Authority as additional authorized units. In performing the first three steps of the calculation, HUD would have done the following: Step 1—determined that the housing authority was leasing 110 units as of October 1, 1997; Step 2—added the 5 additional authorized units to the 100 reserved units to calculate a total of 105 adjusted reserved voucher units; and Step 3—compared the 105 adjusted reserved units in the Main Street Housing Authority's voucher program to the 110 units reported as actually leased. Because the 110 units reported as leased exceeded the 105 adjusted reserved units in the housing authority's voucher program, HUD would have used 110 units as the result of step 3 of the calculation for the housing authority's voucher program. Or alternatively, the housing authority might have reported that it was leasing 100 voucher units on October 1, 1997 in Step 1 in which case HUD would have compared the 100 units with the 105 adjusted reserved units in its voucher program and would have used 105 units as the result of Step 3 of the calculation. HUD would have performed a similar analysis of the housing authority's certificate program. For example for Step 1—the housing authority reported a lease rate of 175 in its certificate program as of October 1, 1997. For Step 2—HUD's records listed the Main Street Housing Authority as having 200 reserved certificate units as of October 1, 1997. HUD would have compared the two and determined that 200 certificate units was the result of the calculation of Step 3.

To continue the example for Step 4, in Fiscal Year 1998 HUD reserved funding for 10 voucher units for the Main Street Housing Authority under the Family Unification Program. In Fiscal Year 1999 the authority had 10 voucher units added to its inventory as a result of the conversion of a property from project based to tenant based assistance. All 20 of these additional units added subsequent to 1997 would have been added to the number of units calculated in Step 3 to calculate the number of units for the housing authority's voucher program, 130. No units were added to the housing authority's certificate program after October 1, 1997. HUD's unit number for the certificate program would therefore remain 200 units.

To complete the example for Step 5, HUD would have added the number of vouchers, 130 to the number of certificates, 200 to establish a December 31, 1999 initial baseline of 330 total units.

III. Verifying Number of Renewal Units

A. Section 8 Finance Division Exhibit

HUD uses the number of renewal units to calculate the amount of renewal funding. HUD has determined the December 31, 1999 initial baseline number of units to be used for each PHA's renewal calculation for calendar year 2000.The initial baseline is a primary component of the renewal units factor.

In March of 2000 the Section 8 Finance Division in the Headquarters Office of PIH has mailed to each PHA a letter with an exhibit that lists the number of units in the PHA's initial baseline (as of December 31, 1999). An example of this exhibit is attached as Appendix A to this Notice. The Section 8 Finance Division will simultaneously send a copy of the exhibits to the Section 8 Financial Management Center (FMC).

The exhibit will separately list:

1. All of the unit counts assigned to each active increment in HUDCAPS for the PHA as of December 31, 1999;
2. The number of leased units as of October 1, 1997;
3. The number of reserved units as of October 1, 1997;
4. Any additional authorized units reserved as a result of HUD's review of leasing in excess of contract levels conducted in Federal Fiscal Year 1998 and 1999 in accordance with letters sent to each affected PHA;
5. Any units reserved for the PHA between October 1, 1997 and December 31, 1999;
6. The total number of units scheduled to expire after December 31, 2000;
7. The total number of units determined to make up the Renewal Units for the purposes of calculating the allocation of renewal funding for calendar year 2000.

B. PHA Error Notifications

PHAs will have 90 days from the date of the letter to review HUD's listing of the numbers of units and to notify HUD of any errors:

1. The PHA's notification must at a minimum specify the increment(s) in error, state that the PHA believes that HUD has made an error in determining the number of units, indicate the correct number of units, include documentary evidence demonstrating that the unit count is in error and provide a narrative explanation of how the documentation shows that HUD's baseline unit exhibit is in error.
2. The notification must be received by the FMC no later than 90 days from date of the letter at the following address: ATTN: Baseline Unit Review, Denise Rock, 2345 Grand Blvd., Suite 1150, Kansas City, MO 64108–2603;
3. If the FMC does not receive a notification of errors within the prescribed time frame, HUD will consider the renewal units number and the other listed unit numbers established and will not consider later requests for adjustments to the unit count based on error except in extraordinary circumstances.

C. FMC Review of Error Notifications

The FMC will review any error notifications submitted by PHAs within a reasonable time period in light of the number of error notifications received [3] (while the error notification is under review, HUD will not change the allocation of renewal funding to compensate for the asserted error):

1. If the FMC determines that an error has occurred, it will make an adjustment to the PHA's renewal unit count; however, in making its determination, the FMC will review and revise any element in calculation of the initial baseline and the number of renewal units.

a. If HUD determines there is sufficient funding available, HUD will make appropriate adjustments to the applicable PHA's renewal unit count for the calendar year in which it makes the determination, otherwise the adjustment will be applied to the following calendar year (it will not be retroactive).

b. The FMC will send the PHA a revised unit exhibit with a description of when and how the adjustment to compensate for the error will be made (with a copy to the Section 8 Finance Division in PIH Headquarters).

2. If the FMC determines that there is no error, it will send a letter to the notifying PHA indicating that it does not believe that there is an error with an explanation of its reasoning.

3. If a PHA disagrees with the FMC's determination (either concluding that there is no error or disagreeing with the number of units in error), it can ask for the Assistant Secretary of Public and Indian Housing to reconsider the

[3] The FMC will attempt to complete its reviews within 60 days.

determination of the FMC in accordance with the following procedure:

a. Its request for reconsideration must be sent to the FMC and received no later than 30 days after the date of the FMC's reply to the PHA's notification.

b. The request for reconsideration must clearly state the nature of the disagreement and the reason that the determination of the FMC is incorrect.

c. The FMC will forward the request to the Section 8 Finance Division in PIH Headquarters.

d. The Assistant Secretary shall have the same ability to respond to the PHA's error notification that the FMC has in III.C.1 and III.C.2 above.

e. The Assistant Secretary for Public and Indian Housing will reply to the request for reconsideration within a reasonable time period (generally within 30 days).

i. If the Assistant Secretary agrees with all or part of the PHA's request for reconsideration, the Assistant Secretary will issue an appropriate directive to the FMC and will also provide a written response to the applicable PHA.

ii. If the Assistant Secretary disagrees with the PHA's request for reconsideration, the Assistant Secretary will provide the PHA with a written response explaining why the PHA's request will not be further considered.

iii. The decision of the Assistant Secretary shall be final.

IV. Annual Contributions Contract (ACC) Reserve Account

A. General

HUD continues to maintain local program reserves (ACC reserve accounts) for each PHA's program in the amount determined by HUD in accordance with the PHA's Consolidated Annual Contributions Contract. In accordance with the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105–276, 112 Stat. 2461, approved October 21, 1998) (the Public Housing Reform Act), HUD revised its methodology for allocating funding for the renewal of expiring contracts in the tenant-based Section 8 program. HUD anticipates that some PHAs may not receive adequate budget authority to support the adjusted baseline number of units under the revised allocation system. Some PHAs may experience increases in the cost per unit of tenant-based assistance that exceed the per unit costs predicted by the revised renewal allocation methodology and would therefore not have sufficient funds to support the adjusted baseline. In order to provide reasonable assurance that there will be adequate funding to support families assisted in the tenant-based Section 8 program, HUD believes that PHAs should have access to an Annual Contributions Contract (ACC) Reserve Account. The approved reserve level is 1/6th of the current year projected expenditures from the PHA's approved budget for a given year.

There are separate ACC Reserve Accounts for both the certificate and voucher programs. The amounts in each program reserve (certificate or voucher) are fungible and can be budgeted and requisitioned, as needed, from the ACC Reserve Account for either program. Amounts accumulated by a PHA in the ACC Reserve Account above the approved reserve level are considered excess reserves.

B. Procedures for Accessing ACC Reserve Account

A PHA will be permitted to access up to 50% of its approved reserve level under the circumstances noted below if the PHA is not designated as troubled under the Section 8 Management Assessment Program (SEMAP) and is not in breach of its ACC. To access balances in the ACC Reserve Account, the PHA must submit a budget or budget revision to the FMC.

In order for a non-troubled PHA that has not breached its ACC to access ACC Reserve Account balances in excess of 50% of the approved reserve level, it must submit the following to the FMC:

1. A budget or budget revision.

2. A narrative justification that clearly outlines the circumstances that cause the PHA to need to access reserves in the ACC Reserve Account.

3. A plan that describes:

a. The appropriate steps that it is taking to ensure that it will not exceed its budget authority, including balances in the ACC Reserve Account, in the current fiscal year;

b. How it will reduce (and ultimately eliminate) its reliance on reserve funding over the subsequent 2 years; and

c. In instances in which the PHA is obligated to restore reserves, its plan for restoring reserves.

PHAs designated as troubled under SEMAP may access reserves only after the FMC has approved the request. The FMC shall inform the applicable Troubled Agency Recovery Center (TARC) in the event a troubled PHA requests access to its reserves and shall also inform the TARC of the proposed decision on the request. A troubled PHA may be required by the FMC and/or the TARC to provide documentation and/or justification to substantiate its request to access reserve funds.

C. Permissible Uses of ACC Reserves

1. *Supporting the Reserved Number of Units.* A PHA must compare the budget authority assigned to the PHA by HUD pursuant to the allocation of renewal funding with the actual per unit costs the PHA is incurring. If at any time the PHA determines that the overall cost of maintaining assistance for the number of families assisted under the PHA's program (but not exceeding the number of units reserved to the PHA) has increased to a level that will not be supported within the budget authority that HUD has assigned to the PHA, the PHA may request authorization to use a portion of its ACC Reserve Account. In this instance HUD will restore depleted reserves in accordance with Section IV.D. below subject to the availability of funds.

2. *Supporting Units Above the Reserved Number of Units.* a. A PHA may issue as many vouchers as can be prudently supported within the PHA's allocated annual budget authority even if the number of vouchers exceeds the number of units reserved for the PHA. PHAs that exercise this flexibility are engaging in "maximized leasing." "Maximum leased units" means the number of leased units in excess of the number reserved. *It is important for PHAs that take advantage of maximized leasing to examine the long term impact of maximized leasing to ensure that it does not jeopardize adequate support for the reserved number of units in subsequent years.*

The units supported above the PHA's reserved number of units (maximized leased units) will not be supported by HUD's calculation of the allocation of renewal funding. The PHA may not receive sufficient budget authority in subsequent years to be able to maintain maximized leased units exceeding the number of units reserved. The PHA may use the ACC Reserve Account to maintain assistance for maximized leased units on a temporary basis while the PHA takes steps to reduce the size of its program through attrition back to its reserved number of units or the number of units that can be supported by its allocated budget authority on a long term basis. The PHA may not use the ACC Reserve Account to support units beyond the number of units supported by annual budget authority (apart from the ACC Reserve Account) for more than a year except under exceptional circumstances. A PHA that uses the ACC Reserve Account in this situation must restore the amount of reserves depleted to support maximized leased units by using less than its full

annual budget authority in subsequent years.

b. A PHA that is close to leasing all of the units that can be supported within annual budget authority may issue more vouchers than the PHA can actually support with annual budget authority (without using its ACC Reserve Account) on the assumption that not all issued units will ultimately be used. PHAs that are close to leasing a number of units that fully utilizes their available annual budget authority can be expected to occasionally exceed their annual budget authority based on more families than predicted leasing units; in such instances the PHA is permitted to support units not supported by annual budget authority through use of the ACC Reserve Account. PHAs are to manage their lease-up and turnover rates to attempt to achieve full utilization of their annual budget authority without relying on the ACC Reserve Account. PHAs that use the ACC Reserve Account in this situation must restore the amount of ACC Reserve Account funds used to temporarily support lease-up that exceeds annual budget authority by using less than their full annual budget authority in subsequent years.

c. A PHA that has had to use the ACC Reserve Account to support units beyond its reserved number of units must not admit families on its waiting list until the number of families in its program is reduced below the reserved number of units through attrition [4] or it is able to support families from the waiting list within its annual budget authority apart without using funds in the ACC Reserve Account.

D. Restoration of Depleted Reserves.

Subject to the availability of appropriated funds, HUD will restore ACC Reserve Account amounts to the ⅙th level in accordance with the following:

1. HUD will determine the amount by which the ACC Reserve Account is depleted below the approved reserve level based on the ACC Reserve Account level recorded in HUDCAPS from the most recent year end statement approved and processed by the FMC compared to the approved budget for the current year at the time that the Department calculates the amounts to be restored.

2. HUD will determine if a PHA has leased more than its reserved number of units based on its most recent HUD approved Year End Statement; if the PHA has leased more than its reserved number of units, HUD will not restore any depleted ACC Reserve Account for such an agency during the PHA's current fiscal year. However, HUD may grant an exception to this policy on a case by case basis where a PHA has substantially depleted the ACC Reserve Account and HUD has determined that the PHA is not providing long term support for units not supported by annual budget authority.

3. HUD shall determine the schedule for restoration of depleted ACC Reserves in instances where a PHA has not leased more than its reserved number of units or HUD has determined that the housing agency is not providing long term support for units not supported by annual budget authority apart from the funds in the ACC Reserve Account.

V. Excess ACC Reserve Amounts

At its discretion, HUD may recapture ACC Reserve Account amounts in excess of the approved reserve level.

VI. Reduction of Adjusted Baseline Number of Units and Budget Authority

A. Beginning with PHA Fiscal Years December 31, 1999 and thereafter, HUD will assess the leasing rate and use of budget authority of each PHA on an annual basis when HUD processes the PHA's year end statement (Approximately six months after the end of the PHA's fiscal year) to determine if HUD will transfer some or all of the PHA's unexpended annual budget authority to another PHA.

B. In performing the assessment, HUD will exclude units (and their associated budget authority) awarded to the PHA for: litigation purposes; on schedule replacement/relocation purposes; as well as budget authority for a funding increment whose effective date is less than 8 months prior to the end of the PHA's fiscal year in which such funds are reallocated.

For example for calendar year 2000 the Main Street Housing Authority has an adjusted baseline of 130 units. In 1999, HUD awarded 10 units to the PHA to provide for relocation of 10 families living in 10 units of public housing approved for demolition. The demolition is not scheduled to take place until the end of calendar year 2000 and the 10 units are being held by the PHA until they are needed to support the demolition. For the purposes of assessing the PHA's lease-up rate, HUD would exclude the 10 units and only perform the assessment on the 120 units remaining. It would take the 10 units and multiply them by the adjusted per unit cost for the housing authority ($4,800) and subtract the result from the housing authority's overall budget authority ($48,000) in performing the assessment below.

C. If the assessment reveals that the PHA's lease rate is less than 90% of the reserved number of units ("90% unit threshold") and the PHA has expended less than 90% of its annual budget authority (90% annual budget authority threshold"), HUD will issue a warning to the PHA, the applicable PHA governing board and the chief executive officer of the unit of local or state government. The warning will state that if the PHA fails to increase its lease rate to 95% of the number of reserved units by the time that it submits its 2nd budget after the warning (approximately 16 months after the warning), then it's unexpended baseline authority would be subject to reallocation by HUD to another PHA.

For example, the Main Street Housing Authority has a fiscal year that ends on December 31, 1999. At the time that it submits its year end statement (around February of 2000), it reports that the number of units months leased for its 1999 fiscal year was 1020 (the equivalent of 85 units out of the possible 130) and that it expended $408,000 out of a total annual budget authority of $611,000. When HUD performs its assessment in conjunction with approving the year end statement (around June of 2000), it will perform the following steps:

1. HUD will subtract the 10 relocation units from 130 adjusted baseline number of units.

2. For the remaining 120 units available for lease-up, HUD will compare the possible units months leased (120 × 12 or 1,440) with the number of actual units months leased (1020) to derive the lease-up percentage (71%).

3. Since the lease-up percentage falls below the 90% threshold, HUD will determine the percentage use of annual budget authority as follows:

a. HUD will first subtract the annual budget authority for the 10 excluded relocation units ($48,000) from the total annual budget authority for the PHA ($611,000) to determine the available annual budget authority ($611,000 − $48,000=$563,000).

b. HUD will then divide the amount expended ($408,000) by the amount of the available budget authority ($563,000) to determine the percentage of budget authority utilization ($408,000/$563,000=72%).

In this instance the assessment would indicate that the housing authority should be issued a warning based on the

[4] In this instance, the PHA cannot simply return to 100% leasing of its reserved number of units before it can start issuing new vouchers because if it does it will again become overextended. It must drop at least one unit below the reserved number of units to be in a position to issue new vouchers.

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fact that its lease up rate is 71% and its budget authority utilization rate is 72%—both below the 90% thresholds.

D. When the PHA submits its second budget after receipt of the warning, the PHA will provide a status report on its lease-up rate to the FMC. If the PHA has failed to achieve a lease up rate of 95% of its total number of reserved number of units minus any special category units (e.g., units reserved for relocation purposes or due to litigation), the FMC will reduce both the PHA's annual budget authority and its adjusted baseline number of units.

1. In this instance, the FMC will require that budget authority not required to support currently assisted families through the end of contract increment(s) terms(s) will be deleted from the PHA's budget so as to bring its budget authority utilization rate to 95%. Budgetary authority amounts deleted from the PHA's budget will be made available for reallocation.

2. HUD will calculate the number of units the deleted budget authority under section D.1. above would have supported based on the PHA's adjusted per unit cost.

3. HUD will delete the number of units calculated under section D.2. for the purpose of calculating future renewal funding for the PHA.

For example, the Main Street Housing Authority will process its first budget about 4 months after having received the warning in October of 2000. At the time that it processes its second budget after the warning in October of 2001, it would provide a report on its status in terms of its lease-up rate. At that time, it reports that its lease up rate has improved from the equivalent of 85 units to 105 units. The lease-up percentage would have increased from 71% to 88%. It would also report that its budget authority utilization rate increased from 72% to 85% (from $408,000 to $478,550). In this instance HUD would calculate the amount of budget authority that would bring the PHA to 95% utilization of its budget authority ($478,550/.95=$503,157). HUD would then delete the remaining budget authority ($563,000 −$503,157=$59,842) from the PHA's annual budget authority. HUD would also calculate the number of units that the subtracted budget authority represents ($59,842 divided by $4,800 per unit cost = 12 units) and subtract those units from the PHA's adjusted baseline for the purpose of calculating future renewals.

E. Each year HUD will issue a PIH Notice (and subsequent **Federal Register**) notice outlining the criteria for determining the PHAs to be recipients of reallocated budget authority. The notice will outline the process for implementing the transfer as well as the number of units and the priority for reallocating budget authority.

Dated: April 12, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

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Part IV

Department of Health and Human Services

Secretary's Advisory Committee on Genetic Testing; Notice of Meeting

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Secretary's Advisory Committee on Genetic Testing

AGENCY: Office of the Secretary, DHHS.

ACTION: Notice of Meeting and Request for Public Comments on Preliminary Final Recommendations on Oversight of Genetic Testing.

Pursuant to Public Law 92–463 notice is hereby given of a meeting of the Secretary's Advisory Committee on Genetic Testing (SACGT). The meeting will be held from 8:45 a.m. to 5:00 p.m June 5, 2000 to June 7, 2000 at the Governor's House Hotel, 1615 Rhode Island Avenue, NW, Washington, DC 20036. In addition to completing its report on oversight, the Committee will also be exploring the impact of gene patenting and restrictive licensing on the cost, quality, and accessibility of genetic testing, Federal regulatory requirements regarding informed consent in genetic research involving information-gathering about family members, and genetics education of health professionals. The meeting will be open to the public, with attendance limited to space available. Individuals who wish to provide public comment on the oversight recommendations of genetic tests or other issues should contact Susanne Haga at 301–496–9838. A draft agenda will be posted at the following website address http://www4.od.nih.gov/oba/sacgt.htm prior to the meeting.

SACGT was chartered to advise the Department of Health and Human Services on the medical, scientific, ethical, legal, and social issues raised by the development of and use of genetic tests. SACGT is presently assessing the adequacy of current oversight of genetic testing in the United States, in consultation with the public. After careful analysis of the issues and an effort to gather and consider public comments, SACGT drafted preliminary conclusions and recommendations on oversight of genetic tests. It is now seeking further public comments on these preliminary conclusions and recommendations. The preliminary recommendations will also be posted on SACGT's website and sent to groups and individuals who submitted comments in the prior comment period.

The public is encouraged to submit written comments on this preliminary report by May 22, 2000. SACGT's mailing address is: SACGT, National Institutes of Health, 6000 Executive Blvd., Suite 302, Bethesda, Maryland 20892. SACGT's facsimile number is 301–496–9839. Comments can also be sent via e-mail to hagas@od.nih.gov. All public comments received will be available for public inspection at the SACGT office between the hours of 8:30 a.m. and 5:00 p.m. Questions about this request for public comment can be directed to Susanne Haga, Ph.D., Program Analyst, SACGT, by e-mail (hagas@od.nih.gov) or telephone (301–496–9838).

Adequacy of Oversight of Genetic Tests

Preliminary Conclusions and Recommendations of the Secretary's Advisory Committee on Genetic Testing

Executive Summary

The Secretary's Advisory Committee on Genetic Testing (SACGT) was chartered in 1998 to advise the Department of Health and Human Services (DHHS) on the medical, scientific, ethical, legal, and social issues raised by the development and use of genetic tests. In June 1999, Dr. David Satcher, Assistant Secretary for Health and Surgeon General, asked SACGT to assess, in consultation with the public, the adequacy of oversight of genetic tests and, if warranted, based on a consideration of the public comments and an analysis of the issues, to recommend options for additional oversight and to ensure public access to quality genetic tests. Dr. Satcher asked the Committee to report back by March 15, 2000, and to organize its report around five major issues:

- What criteria should be used to assess the benefits and risks of genetic tests?
- How can the criteria for assessing the benefits and risks of genetic tests be used to differentiate categories of tests? What are the categories, and what kind of mechanism could be used to assign tests to the different categories?
- What process should be used to collect, evaluate, and disseminate data on single tests or groups of tests in each category?
- What are the options for oversight of genetic tests and the advantages and disadvantages of each option?
- What is an appropriate level of oversight for each category of genetic test?

SACGT worked intensely through the summer and fall of 1999 to design a multifaceted process to gather public comments on genetic testing oversight issues. The public consultation process was carried out during a 60-day period from December 1, 1999, to January 31, 2000, and involved a **Federal Register** notice, a targeted mailing to 2,500 individuals and organizations, a website consultation, and a public meeting that was held on January 27, 2000. In addition, SACGT conducted a literature review and analysis of scholarly articles on genetic testing.

On February 24–25, 2000, SACGT met to review public comments received and to develop recommendations on the adequacy of oversight of genetic testing. SACGT carefully reviewed the public input received, which highlighted the importance of ensuring the quality of, and access to, genetic tests. In addition, many of the public comments expressed concern about the potential for genetic test results to be used to discriminate against people in areas such as employment and health insurance. After considering the public comments, SACGT developed the following preliminary overarching principles and recommendations.

Overarching Principles

- One of the main goals of genetic testing is to improve the health and well-being of individuals and families. No test should be introduced in the market before it is established that it can diagnose and/or predict a health-related condition accurately and safely. Thus, the public is best served by ensuring both the appropriate oversight of genetic tests and the continued development of genetic tests.
- The public, through involvement of advocacy groups, organizations, and individuals, needs to be involved in the ongoing consideration of issues surrounding genetic testing. This will be particularly important in addressing the concerns of minority populations and diverse communities regarding the purposes and uses of genetic testing.
- Since genetic education and counseling are critical to the appropriate use, interpretation, and understanding of genetic test results, efforts to ensure the education of the public and of health providers about genetics are necessary.
- Federal legislation is needed to prohibit discrimination in employment and health insurance based on genetic information. Federal legislation is also needed to protect the privacy of genetic information in medical records. Without these protections, the public will be reluctant to undergo genetic tests that might be beneficial to its health and well-being.

Recommendations

Issue 1: What criteria should be used to assess the benefits and risks of genetic tests?

- Analytical validity, clinical validity, clinical utility, and social issues should be the major criteria used

to assess the benefits and risks of genetic tests.

Issue 2: How can the criteria for assessing the benefits and risks of genetic tests be used to differentiate categories of tests? What are the categories, and what kind of mechanism could be used to assign tests to the different categories?

- For the purposes of review, a useful way to consider tests is to assess them across several dimensions. These criteria are necessary but may not be sufficient for all tests.
- Is the test at this stage of development primarily diagnostic or predictive?
- Is the mutation being tested for highly or weakly penetrant?
- Is a proven intervention available to prevent or treat the disease for which the test is being conducted?
- Is the test used for population-based screening or testing of individuals?
- Is the prevalence of the disorder for which the test is used high or low?
- Is there potential for stigmatization of individuals or groups from the test results?
- Is the test designed or able to identify more than one condition?

For example, predictive tests require more scrutiny than do diagnostic tests. Similarly, tests for weakly penetrant mutations require more assessment than do those for highly penetrant genes. Tests for conditions for which no interventions are available would be more problematic than tests for conditions for which interventions exist. Thus, for example, a high-scrutiny test would be one that is predictive, detects a mutation that is weakly penetrant, and for which a proven intervention is not available. These dimensions should be considered in the review of genetic tests, and test developers should indicate the categories into which their test(s) fit.

Issue 3: What process should be used to collect, evaluate, and disseminate data on single tests or groups of tests in each category?

- The responsibility for collecting initial data on the analytical validity of a test lies with the test developer.
- Initial knowledge of the clinical validity of a genetic test is essential to assess its safety and efficacy. Further knowledge will depend on additional research and the long-term systematic collection and analysis of additional data. Researchers and test developers should gather and share initial data on the clinical validity and utility of genetic tests.
- Since data sharing and analysis are critical, relevant DHHS agencies should work collaboratively with researchers and test developers to advance data collection and provide this information to health care providers and the public. Initial exploratory data collection efforts among DHHS agencies, which have been coordinated by the Centers for Disease Control and Prevention, have been of value and should continue.
- Protecting the confidentiality of data and the privacy of individuals is essential to the progress of data collection efforts.
- Laboratories should be encouraged or required to make pre- and post-marketing data on genetic tests available in a timely, accurate, and understandable manner.
- Post-market data collection can enhance understanding of current applications of a genetic test and is important for any expansion of the use of a genetic test beyond the initial indications approved when the test is made available. Laboratories providing clinical genetic services should commit to post-market data collection efforts.

Issue 4: What are the options for oversight of genetic tests and the advantages and disadvantages of each option?

- Based on the rapidly evolving nature of genetic tests, their anticipated widespread use, and extensive concerns expressed by the public about their potential for misuse or misinterpretation, additional oversight is warranted for all genetic tests.
- The Food and Drug Administration (FDA) should be the lead federal agency responsible for reviewing, approving, and labeling of all new genetic tests. FDA review should focus on the claims of analytical and clinical validity made by the developer of the test and be appropriate to the level of scrutiny warranted by the test. The agency should develop flexible mechanisms for review of new genetic tests that minimize both the time and the cost of review without jeopardizing the quality of the assessment of test validity. These mechanisms should, for example, include the use of deemed reviewers and standards developed in concert with professional organizations.
- Clinical Laboratory Improvement Amendment regulations should be augmented to provide more specific provisions for ensuring the quality of laboratories conducting genetic tests.
- DHHS agencies should be provided with sufficient resources to carry out expanded oversight of genetic tests, including coordinated data collection, review, and information dissemination.

Issue 5: What is an appropriate level of oversight for each category of genetic test?

- Institutional Review Board review should be conducted of all research protocols for genetic tests in which individually identifiable human subjects or samples are used, regardless of the funding source. Institutions that lack an IRB must obtain the services of a qualified board. Efforts will be needed to ensure that IRBs are suitably equipped to carry out these reviews. In addition, informed consent must be obtained from all subjects participating in such research.
- FDA should give particular attention to the review of genetic tests that are used to predict diseases and conditions for which no safe and effective interventions are available. Other tests may also warrant a higher level of scrutiny in the FDA review process.
- In the future, tests may be developed that raise major social and ethical concerns. Because FDA's review will focus on assuring the analytical and clinical validity of a test, the agency's capacity to assess the ethical and social implications of a test may not be sufficient. The Secretary should consider the development of a mechanism to ensure the identification, and appropriate review, of tests that raise major social and ethical concerns.
- The U.S. Preventive Services Task Force with augmented resources, or a similar body set up or given deemed status for this purpose, should review genetic tests that are already on the market for evaluation of clinical efficacy and development of guidelines about their appropriate use.

Additional Recommendations for the Appropriate Use of Genetic Tests

- Individual and family members considering a genetic test should have access to appropriate genetic education and counseling resources to ensure their ability to make an informed decision about being tested.
- Written informed consent should be obtained for tests used for predictive purposes. The extent to which written informed consent should be obtained for all other genetic tests requires further deliberation.
- Current regulations under FDA and the Federal Trade Commission should be enforced in the area of genetic test promotion and marketing.

On March 15, 2000, SACGT forwarded preliminary recommendations to Dr. Satcher. At this time, the Committee invites public comment on this preliminary draft of its conclusions and recommendations, and at its next meeting, June 5–7, 2000, the Committee will review the comments received and will then develop a final

report to the Secretary. With the completion of this assignment, SACGT will move on to consider a number of other high-priority issues raised by genetic tests that are not the subject of this report.

Adequacy of Oversight of Genetic Tests

Preliminary Conclusions and Recommendations of the Secretary's Advisory Committee on Genetic Testing

Introduction

The Secretary's Advisory Committee on Genetic Testing (SACGT) was chartered in June 1998 to advise the Department of Health and Human Services (DHHS) on the medical, scientific, ethical, legal, and social issues raised by the development and use of genetic tests. The formation of SACGT was recommended by the National Institutes of Health (NIH)-Department of Energy (DOE) Task Force on Genetic Testing and the Joint NIH-DOE Committee to Evaluate the Ethical, Legal, and Social Implications Program of the Human Genome Project. At SACGT's first meeting in June 1999, Dr. David Satcher, Assistant Secretary for Health and Surgeon General, asked the Committee to assess, in consultation with the public, the adequacy of current oversight of genetic tests and, if warranted, to recommend options for additional oversight.

Dr. Satcher provided SACGT with a framework of five central questions around which to organize the assessment and requested that SACGT report back by March 15, 2000. During the summer and fall of 1999, the Committee gathered background information on genetic testing, designed five approaches to gather professional and public opinions on oversight of genetic testing, and prepared a document for soliciting public comment. The public consultation was held from December 1, 1999, to January 31, 2000. On February 24–25, 2000, the Committee met to review the public input received and to develop conclusions and recommendations on the adequacy of oversight of genetic testing. SACGT submitted a brief report of its preliminary recommendations to Dr. Satcher on March 15, 2000.

This report presents for public comment SACGT's preliminary conclusions and recommendations. Public comments will be reviewed at SACGT's next meeting, June 5–7, 2000, after which the Committee will submit its final conclusions and recommendations to the Secretary.

Background

Decades of genetics research have brought about many important medical and public health advances. The pace of discovery in this area has enabled scientists to make rapid progress in understanding the role of genetics in many common yet complex diseases and conditions, such as heart disease, cancer, and diabetes. It also has increased knowledge that may lead to the development of new tests to identify these disease conditions in individuals, sometimes before symptoms occur.

Genetic testing involves the analysis of chromosomes, DNA, RNA, genes, and/or gene products to determine whether an alteration is present that is causing or is likely to cause a specific disease or condition. Genetic tests can be performed for a number of purposes. Moreover, a test can be used in more than one way. For example, a test used for diagnostic purposes could also be used to predict risk of disease.

- *Preimplantation diagnosis* is used following *in vitro* fertilization to diagnose a genetic disease or condition in a preimplantation embryo.
- *Prenatal diagnosis* is used to diagnose a genetic disease or condition in a developing fetus.
- *Newborn screening* is performed in newborns in state public health programs to detect certain genetic diseases for which early diagnosis and treatment are available.
- *Carrier testing* is performed to determine whether an individual carries one copy of an altered gene for a particular recessive disease. The term "recessive" refers to diseases that will occur only if both copies of a gene that an individual receives have a disease-associated mutation; thus, each child born to two carriers of a mutation in the same gene has a 25-percent risk of being affected with the disorder.
- *Diagnostic/confirmatory testing* is used to identify or confirm the diagnosis of a disease or condition in an affected individual. Diagnostic testing may also be useful to help determine the course of a disease and choice of treatment.
- *Presymptomatic testing* is used to determine whether individuals who have a family history of a disease but no current symptoms have the gene alteration associated with the disease.
- *Predictive testing* determines the probability that a healthy individual with or without a family history of a certain disease might develop that disease.

In the part, many tests were developed to detect or confirm rare genetic diseases. More recently, tests have been developed to detect mutations that may be involved in or contribute to more common, complex conditions (such as breast, ovarian, and colon cancer and cardiovascular disease), the effects of which generally do not appear until later in life. Optimally, these tests are used to predict a person's predisposition to disease where there is a family history of the disease. In general, such tests are not recommended for individuals without a family history of the disease.

The process of discovering and understanding genetic mutations and their role in disease is extremely complex and can involve many years of investigation. In addition, because the genome is vast, discovering a specific disease-related gene has, up to now, been a difficult and time-consuming process. Nevertheless, the development and clinical use of genetic tests is expected to increase rapidly over the next decade, driven in large part by research funded and conducted by agencies within DHHS, especially NIH, as well as by work in the private sector. The Human Genome Project, a major international collaborative effort established and supported by public groups, including NIH and DOE, is expected to have a major impact on gene discovery and genetic test development. The results of the Human Genome Project, along with new technical advances, such as tandem mass spectrometry, microarrays, and gene chips, will speed the pace of disease gene discovery.

Once the entire sequence of the human genome has been determined, scientists will have a critical tool to better understand the contribution of each gene to the development and function of the human body. Even then, however, the role played by a specific gene mutation in disease will not be completely understood because of the effects of confounding factors such as gene-gene interactions and environmental influences (smoking and diet, for example). A full understanding of the role of genetic mutation in the current and future health of individuals will require more research, ranging from detailed biochemical studies to population-based studies that focus on clarifying and elucidating the significance of how genes interact with each other and with the environment.

A rising new area in medicine is pharmacogenomics, the combination of the fields of genomics and pharmacology that builds on the work of the Human Genome Project. Much of human variation is due to small differences in a person's DNA, referred to as single nucleotide polymorphisms (SNPs). Pharmacogenomics is the

application of genetic science and technology to understand how these genetic variations influence responses to medicines. Because individuals may not react in the same way to a given drug, understanding the correlation between a person's unique SNPs and his or her drug response will be of great benefit. This knowledge will help health professionals determine a person's likely response to a medicine before it is prescribed. Other potential benefits of pharmacogenomics include the development of effective therapies, prescribed with less trial and error, and the ability to target beneficial drugs and reduce adverse drug reactions.

At present, genetic testing is clinically available for more than 300 diseases or conditions in more than 200 laboratories in the United States, and investigators are exploring the development of tests for an additional 325 diseases or conditions.[i] A recent survey of genetic testing laboratories found that over a three-year period, the total number of genetic tests performed increased by at least 30 percent each year, rising from nearly 100,000 in 1994 to more than 175,000 in 1996.[ii]

In 1997, the NIH–DOE Task Force on Genetic Testing charged to review genetic testing in the United States and to make recommendations to ensure the development of safe and effective genetic tests—concluded that although genetic testing was developing successfully in the United States, some concerns about it exist.[iii] The Task Force grouped the concerns into four major categories: (1) The manner in which tests are introduced into clinical practice; (2) the adequacy and appropriate regulation of laboratory quality assurance; (3) the degree of understanding of genetics on the part of health care providers, patients, and the public; and (4) the continued availability and quality of testing for rare diseases.

A number of the Task Force recommendations were aimed at enhancing the way in which tests are developed, reviewed, and used in clinical practice. The Task Force explored the question of how tests should be assessed and made suggestions about the need for additional data and external review of genetic tests. While recommending that revisions to the current review process may be needed to assess the effectiveness and usefulness of genetic tests, the Task Force did not specify how the review of laboratory-based genetic tests should be changed.

DHHS established SACGT to help the nation prepare for some of the revolutionary changes in clinical and public health practice resulting from the continued and increasing use of genetic testing. SACGT builds on the work of the Task Force by assessing whether current programs for assuring the accuracy and effectiveness of genetic tests are satisfactory or whether other measures are needed.

It is critical for the public to understand that while genetic tests can be extremely beneficial, they also can pose risks, including medical and psychological risks, risks to families, and social and economic risks that may affect entire groups as well as individuals. As the diagnostic and predictive uses of genetic testing continue to increase, and as the effects of testing on society become clearer, its impact will become broader and ultimately will affect all of our lives. Because the use and ramifications of these tests are not yet fully realized, additional consideration is needed regarding whether current programs for assuring the safety and effectiveness of genetic tests are satisfactory or whether additional oversight measures are needed before such tests are introduced for wide-scale use.

Charge to the Committee

SACGT was asked to frame its recommendations around the following five issues:

- What criteria should be used to assess the benefits and risks of genetic tests?
- How can the criteria for assessing the benefits and risks of genetic tests be used to differentiate categories of tests? What are the categories, and what kind of mechanism could be used to assign tests to the different categories?
- What process should be used to collect, evaluate, and disseminate data on single tests or groups of tests in each category?
- What are the options for oversight of genetic tests and the advantages and disadvantages of each option?
- What is an appropriate level of oversight for each category of genetic test?

The level of oversight of genetic tests has significant medical, social, ethical, legal, economic, and public policy implications. Because the system of oversight can greatly affect those who undergo genetic testing, those who provide tests in health care practice, and those who work or invest in the development of such tests—SACGT actively sought public input on the five questions listed above. The Committee concluded that to fully respond to its charge, it was especially important to reach out to diverse communities that might have particular concerns about genetic testing and members of the public who have not yet undergone genetic testing, but are likely to face decisions about these tests in the future.

Public Consultation Process

SACGT employed several mechanisms for gathering public comment and assessing the status of prior debate about the issues surrounding genetic testing. A **Federal Register** notice, a targeted mailing to interested individuals and organizations, a web-based consultation, and a public meeting provided several venues in which the public could submit comments.[iv] To provide a framework for receiving input on the five questions in the Committee's charge, SACGT developed a document, A Public Consultation on Oversight of Genetic Tests, which provided background information about genetic tests, including their current limitations, benefits and risks, and provisions for oversight currently in place. A summary of the consultation document was prepared in English and Spanish.

SACGT received nearly 400 comments from the general public, health professionals, individuals and families affected with genetic conditions, religious groups, state health departments, industry, professional organizations, academia, and patient advocacy organizations. The comments were analyzed qualitatively with respect to the five specific issues SACGT was asked to address. (Because the comments were not a representative sample of the U.S. population, no attempt was made to perform statistical analysis.) SACGT was enormously impressed with the effort people made to participate in this process and believes that its recommendations are strengthened and enriched by the views, opinions, and perspectives the public has shared.

As part of its effort to gather broad-based perspectives on the oversight of genetic testing, SACGT also conducted a literature review and analysis of more than 70 published scholarly articles on genetic testing. Most of the articles were published within the last five years and were written by professionals in the fields of law, science, and bioethics.

Characteristics of Genetic Tests and Implications for Oversight

Genetic tests currently have certain limitations that are relevant to the issue of oversight.[v] One important limitation is that a test may not detect every mutation a gene may have. (A single gene can have many different mutations, and they can occur anywhere along the gene.) Moreover, not all mutations have

the same effects. For example, more than 800 different mutations of the cystic fibrosis gene have been identified, some of which cause varying degrees of disease severity and some of which appear to cause no symptoms at all. This means that a positive test for a specific cystic fibrosis mutation may not provide a clear picture of how the disease is likely to affect an individual. A negative test result cannot completely rule out the disease because the test will usually focus only on the more common mutations and will not detect rare ones. In addition, the frequency of common cystic fibrosis mutations varies among population groups.

Complexity of Human Disease

Another current limitation of genetic tests, especially if used for predictive purposes, relates to the complexities of how diseases develop. Diseases and conditions can be caused by the interaction of many genetic and environmental factors. Thus, predictive tests cannot provide absolute answers for everyone who might be at risk for a disease such as breast or colon cancer. For example, mutations in the breast cancer 1 gene (BRCA1) occur in about half of families with histories of multiple cases of breast and ovarian cancer. If a woman with no family history of the disease has the BRCA1 mutation, it may not mean that she will develop breast or ovarian cancer. Likewise, if she does not have the mutation, she still cannot be sure she will never develop breast or ovarian cancer. Furthermore, because of varying genetic and environmental factors, even the same mutations may present different risks to different people and to different populations. The same mutation in the cystic fibrosis gene in individuals from different populations may have different clinical effects as a result of variations in other genetic and environmental factors.

Gap Between Diagnosis and Treatment

Another important consideration related to the limitations of genetic testing is that effective treatments are not available for many diseases and conditions now being diagnosed or predicted through genetic testing, and, in some instances, they may not be available for some time—a situation sometimes called the "therapeutic gap." However, while knowledge that a disease or condition will or could develop may not provide any direct clinical benefit, it may lead to increased monitoring that could help manage the disease or condition more effectively. At the same time, information about risk of future disease can have significant emotional and psychological effects, and, in the absence of privacy and anti-discrimination protections, that information can also lead to discrimination or other forms of misuse of personal genetic information.

The Changing Nature of Genetic Information

In addition to the limitations of genetic tests, information provided by genetic tests also has potential benefits and risks. Understanding the benefits and risks of a genetic test to individuals or particular populations, which may change over time as more information is gathered, is critical in determining its appropriate use in clinical and public health practice. As further research is conducted and knowledge gained, the validity of test results may increase or decrease.

Potential Benefits of Genetic Tests

Individuals with a family history of a disease live with uncertainties about their own lives as well as their children's futures that may be relieved by having a genetic test. For example, if the test result is positive, it can provide an opportunity for psychological counseling and for the introduction of risk-reducing interventions, such as regular screening practices and healthier lifestyles. Early interventions (such as annual colonoscopies to check for precancerous polyps, the earliest signs of colon cancer) could help prevent deaths from colon cancer. If the test result is negative (the mutation is not present), in addition to feeling tremendous relief, individuals may also no longer need frequent checkups and screening tests, some of which may be uncomfortable and/or expensive.

Genetic tests can sometimes provide important information about the course a disease may take. For example, certain cystic fibrosis mutations are predictive of a mild form of the disease. Other gene mutations may identify cancers that are likely to grow aggressively.

Genetic tests also can provide information to improve treatment strategies. Because genetic factors may affect how individuals respond to drugs, the knowledge that an individual carries a particular genetic mutation can help health care providers tailor therapy. For example, individuals with Alzheimer disease who have two copies of a certain gene do not respond to a drug used in some Alzheimer's patients.[vi] In individuals with the disease who do not have both copies of that gene, however, the drug seems to slow progression of the disease.

Potential Risks of Genetic Tests

However, at the same time that genetic tests offer great potential benefits, they can also pose risks. Genetic testing poses potential physical, medical, psychological, and social and economic risks to individuals being tested and to members of their families. For the most part, the physical risks of genetic testing are minimal, because most genetic tests are performed on blood samples or cells obtained by swabbing the lining of the cheek. The procedures required to carry out prenatal genetic testing can cause miscarriage in 1 in 200 to 400 cases.

The medical risks of genetic testing relate to actions taken in response to the results of a genetic test. Positive test results can have an impact on a person's reproductive and other life choices. For example, individuals with positive test results may choose not to have children or may opt to take extraordinary preventive measures, such as surgical removal of the breasts to prevent the possible development of cancer. Individuals with negative test results may forgo screening or preventive care because they mistakenly believe they are no longer at risk for developing a given disease. Substantial risks are posed by incorrect test results or the misinterpretation of test results. False negative test results can mean delays in diagnosis and treatment, while false positive results can lead to follow-up testing and therapeutic interventions that are unnecessary, inappropriate, and sometimes irreversible.

Genetic test results have potential psychological and emotional risks. Predictive testing of healthy individuals may have significant psychological and social impacts. The knowledge about disease risk may prove burdensome because of uncertainty about how to manage risk when data about the efficacy or preventive measures is constantly changing, such as controversies about dietary interventions or the use of hormone replacement therapy in preventing heart disease.

The emotional impact of positive test results can be significant and can cause persistent worry, confusion, anger, depression, and even despair. Individuals who have relatives with a disorder may have developed a frightening picture of what their own future may hold. Negative test results also can have significant emotional effects. While most people will feel greatly relieved by a negative result, they may also feel guilty for escaping a disease that others in the family have developed (known as survival guilt). A

negative test result may provide a false sense of security because an individual may not understand that even with a negative test result, he or she still bears the same risk of disease as the general population.

Because genetic test results reveal information about the individual and the individual's family, test results can shift family dynamics in pronounced ways. For example, if a child tests positive for sickle cell trait (having one copy of the sickle cell gene) during newborn screening, it implies that one of the parents is a carrier. It is also possible for genetic tests to inadvertently disclose information about a child's parentage.

Genetic test results can pose risks for groups if they lead to stigmatization of that group and discrimination of its members. Concerns about the potential risks of discrimination and stigmatization, based on information gained from genetic testing are particularly acute among groups who have experienced genetic discrimination in the past and other forms of discrimination.

It is important to point out that the potential risks described above relate to genetic testing for conditions that are solely health-related. In the future, it may be possible to develop tests that could be used to diagnose conditions that are related to certain predispositions that also have a behavioral component, such as alcohol abuse, nicotine addiction, or eating disorders, or to predict future behavior. Although the assumption that single genes, or even many genes, can predict complex human actions is simplistic, the possibility of such tests raises profound concerns because their potential psychological, social and economic harms are so significant and the potential misuse of such information is so great. Because of these complexities, SACGT focused its discussions on the use of genetic tests to determine health-related information about individuals and/or families.

Current System of Oversight of Genetic Tests

As part of its charge, SACGT reviewed the provisions for oversight of genetic tests already in place. Currently, government agencies accord genetic and nongenetic tests the same level of oversight. Genetic tests are regulated at the federal level through three mechanisms:

(1) the Clinical Laboratory Improvement Amendments (CLIA);

(2) the Federal Food, Drug, and Cosmetic Act; and

(3) during investigational phases, the Federal Policy for the Protection of Human Subjects (45 CFR part 46, 21 CFR part 50, and 21 CFR part 56).

Four DHHS organizations have roles in the oversight of genetic tests: the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), the Health Care Financing Administration (HCFA), and the Office for Protection from Research Risks (OPRR). Although they do not have regulatory functions, NIH, the Health Resources and Services Administration (HRSA), and the Agency for Healthcare Research and Quality (AHRQ) support research activities and demonstration projects that generate knowledge about and experience with genetics and genetic testing. In addition, some states regulate genetic tests, and some professional organizations have issued relevant guidelines for professional practice.

The Roles of CDC and HCFA

All laboratory tests performed for the purpose of providing information about the health of an individual must be conducted in laboratories certified under CLIA. The regulatory requirements applied to these laboratories increase in stringency with the complexity of the tests performed. Under CLIA, HCFA's Division of Laboratories and Acute Care, in partnership with CDC's Division of Laboratory Systems, develops standards for laboratory certification. In addition, CDC conducts studies and convenes conferences to help determine when changes in regulatory requirements are needed. The advice of the Clinical Laboratory Improvement Advisory Committee may also be sought regarding these matters.

The CLIA program provides oversight of laboratories through on-site inspections conducted every two years by HCFA, using its own scientific surveyors or surveyors of deemed organizations or state-operated CLIA programs approved for this purpose. This oversight includes a comprehensive evaluation of the laboratory's operating environment, personnel, proficiency testing, quality control, and quality assurance. The laboratory director plays a critical role in assuring the safe and appropriate use of laboratory tests. The laboratory director must meet the required CLIA qualifications for laboratory director and must ensure that the test methodologies selected are capable of providing the quality of results required for patient care. Laboratory directors are required to take specific actions to establish a comprehensive quality assurance program, as outlined by CLIA, that ensures that the continued performance of all steps in the testing process is accurate. Although laboratories under CLIA are responsible for all aspects of the testing process (from specimen collection through analysis and reporting of the results), CLIA oversight has emphasized intra-laboratory processes as opposed to the clinical uses of test results.

CLIA has not specifically outlined in its current review processes additional aspects of oversight that are critical to the appropriate use of genetic tests, such as clinical validity and clinical utility. Also unaddressed are the issues of informed consent for clinical genetic testing after the research phase and adequate access to genetic counseling to assure the appropriate transfer of information. HCFA and CDC are taking steps to develop more specific laboratory requirements for genetic testing under CLIA, including provisions for the pre- and post-analytical phases of the testing process, and CDC will be issuing a Notice of Intent in the **Federal Register** to gather public comment on the proposed changes to CLIA.

Through its Office of Genetics and Disease Prevention, CDC also has a role in addressing the public health impact of advances in genetic research, furthering the collection, analysis, dissemination, and use of peer-reviewed epidemiologic information on human genes and coordinating the translation of genetic information into public health research, policy, and practice. CDC is also leading an interagency effort to explore how voluntary, public/private partnerships might help encourage and facilitate the gathering, review, and dissemination of data on the clinical validity of genetic tests. Two pilot data collection efforts, one for cystic fibrosis and one for hereditary hemochromatosis, are in the preliminary stages.

The Role of FDA

All laboratory tests and their components are subject to FDA oversight under the Federal Food, Drug, and Cosmetic Act. Under this law, laboratory tests are considered to be diagnostic devices, and tests that are packaged and sold as kits to multiple laboratories require pre-market approval or clearance by FDA. This pre-market review involves an analysis of the device's accuracy as well as its analytical sensitivity and specificity. Pre-market review is performed based on data submitted by sponsors to scientific reviewers in the Division of Clinical Laboratory Devices in FDA's

Office of Device Evaluation. In addition, for devices for which the link between clinical performance and analytical performance has not been well established, FDA requires that additional analyses be conducted to determine the test's clinical characteristics, that is, its clinical sensitivity and specificity. In some cases, FDA requires that the predictive value of the test be analyzed for positive and negative results.

The majority of new genetic tests are being developed by laboratories and are being provided as clinical laboratory services. These tests are referred to as in-house tests or "home brews." FDA has stated that it has authority, by law, to regulate such tests, but the agency has elected as a matter of enforcement discretion to not exercise that authority, in part because the number of such tests is estimated to exceed the agency's current review capacity.

However, FDA has taken steps to establish a measure of regulation of home brew tests by instituting controls over the active ingredients (analyte-specific reagents) used by laboratories to perform genetic tests. This regulation subjects reagent manufacturers to certain general controls, such as good manufacturing practices.

With few exceptions, however, the current regulatory process does not require a pre-market review of the reagents. (The exceptions involve certain reagents that are used to ensure the safety of the blood supply and to test for high-risk public health problems such as HIV and tuberculosis.) The regulation restricts the sale of reagents to laboratories performing high-complexity tests and requires that certain information accompany both the reagents and the test results. The labels for the reagents must, among other things, state that "analytical and performance characteristics are not established." Also, the test results must identify the laboratory that developed the test and its performance characteristics and must include a statement that the test "has not been cleared or approved by the U.S. FDA." In addition, the regulation prohibits direct marketing of home brew tests to consumers. In 1999, FDA established the Molecular and Clinical Genetics Panel of the Medical Devices Advisory Committee to serve as a source of independent advice in the area of DNA-based diagnostics.

The Role of Regulations Protecting Human Subjects

Additional oversight is provided during the research phase of genetic testing if the research involves human subjects or identifiable samples of their DNA. OPRR and FDA administer regulations governing the protection of human research subjects. OPRR oversees the protection of human research subjects in DHHS-funded research. FDA oversees the protection of human research subjects in trials of investigational (not yet approved) devices, drugs, or biologics being developed for eventual commercial use.

Fundamental requirements of these regulations are that experimental protocols involving human subjects must be reviewed by an organization's Institutional Review Board (IRB) to assure the safety of the subjects, to review and approve the informed consent process, and to evaluate whether risks outweigh potential benefits. The regulations apply if the trial is funded in whole or in part by a DHHS agency or if the trial is conducted with the intent to develop a test for commercial use. However, FDA regulations do not apply to laboratories developing home brew genetic tests, because at present FDA has elected not to exercise its enforcement authority. CLIA requirements apply to DHHS-funded research only if the results of the genetic test are used for patient care, meaning that results are provided to a subject, to the subject's family, or to the subject's health care provider. OPRR regulations would apply if the laboratory was funded by DHHS or was conducting research at an institution that receives DHHS funding.

The Role of NIH

The mission of NIH is to support and conduct medical research to improve health. This research encompasses basic, clinical, behavioral, population-based, and health services research. In addition to funding a substantial amount of genetics research, including the Human Genome Project, and assuring that the research is conducted in accordance with human subject regulations and other pertinent guidelines, NIH supports a number of other programs that have an important role in disseminating knowledge and technology to the public and private sectors. NIH also produces consensus statements and technology assessment reports on issues important to health care providers, patients, and the general public. Topics related to genetic testing have included the development and assessment of newborn screening for sickle cell disease, genetic testing for cystic fibrosis, and screening for and management of phenylketonuria (PKU).

The Role of AHRQ

As the lead federal agency in health care quality, AHRQ is expected to play a greater role in promoting research on optimal methods of organizing, delivering, and financing genetic services and measuring the impact of these factors on the quality of patient care. AHRQ now plays an important role in making better health-related information available to health plans, purchasers of health care, clinicians, and patients, and in developing methods for facilitating shared patient-physician decision-making. In particular, the agency has developed an instrument (Consumer Assessment of Health Plans, or CAHPS) that allows consumers to assess their current health plan and a website that catalogues clinical practice guidelines. The Technology Assessment Program of the agency has a role in rigorously evaluating the beneficial and adverse outcomes associated with health care interventions (both diagnostic and therapeutic) in order to inform consumers, health professionals, and payors. AHRQ also supports the U.S. Preventive Services Task Force, which rigorously reviews evidence for the effectiveness of more than 100 interventions to prevent illnesses and conditions, including screening tests for genetically determined conditions such as PKU and Down Syndrome, and recommends which of these interventions clinicians should provide to their patients.

The Role of HRSA

The mission of HRSA is to assure access to health care, including genetic services, for those who are medically underserved. Access is attained through a broad range of programs including support for community health centers, maternal and child programs, health professional training programs, and state public health agency infrastructure (Maternal and Child Health Block Grants). The Genetic Services Program of HRSA promotes support and leadership for assurance, assessment and policy development for utilization of genetic medicine and technology within health care and public health practice. In this role, HRSA has supported the development and quality assurance of screening tests for PKU, congenital hypothyroidism, and sickle cell anemia and for the management of these conditions within the health care setting and within newborn screening programs. In addition, HRSA has provided funding to assist public health systems develop genetic medicine and technology and demonstration projects

related to the translation of genetic technology into practice. With a special focus on underserved populations, these programs have evaluated how genetic tests are used in practice and have identified barriers to access and use.

The Role of the States

State health agencies, particularly state public health laboratories, have an oversight role in genetic testing, including the licensure of personnel and facilities that perform genetic tests. State public health laboratories and state-operated CLIA programs, which have been deemed equivalent to the federal CLIA program, are responsible for quality assurance activities. A few states, such as New York and California, have promulgated regulations that go beyond the requirements of CLIA. States also administer newborn screening programs and provide other genetic services through maternal and child health programs.

The state newborn screening laboratories must meet the requirements of CLIA's quality control and proficiency testing programs, but in general there is little Federal oversight of their programs. State newborn screening laboratories and many commercial laboratories that perform testing for state newborn screening programs have used the National Newborn Screening Quality Assurance Program for verifying test accuracy and for meeting CLIA quality assurance requirements. This is particularly important because of the absence of a requirement for HCFA-approved proficiency testing programs for newborn screening.

The Role of the Private Sector

Recognized professional organizations provide oversight in voluntary partnership with HCFA and CDC, some of which serve as agents for the government in accreditation activities. These groups also develop laboratory and clinical guidelines and standards. A number of organizations are involved in helping to assure the quality of laboratory practices and in developing clinical practice guidelines to ensure the appropriate use of genetic tests. These organizations include the following:

- the College of American Pathologists (CAP), which develops standards for its membership and establishes and operates proficiency testing programs;
- the NCCLS (formerly called the National Committee on Clinical Laboratory Standards), which develops standards for test methodologies;
- the American College of Medical Genetics (ACMG), which develops guidelines for the use of particular tests and test methodologies and works with CAP to provide proficiency tests for certain genetic tests; and
- COLA, a nonprofit, physician-directed, national accrediting organization whose purpose is to promote excellence in medicine and patient care through programs of voluntary education, achievement, and accreditation.

Other organizations, such as the American Academy of Pediatrics, the American College of Obstetrics and Gynecology, the American Society of Human Genetics, and the National Society of Genetic Counselors, are also involved in the development of guidelines and recommendations regarding the appropriate use of genetic tests. Patient advocacy groups, as well as individuals and families affected with genetic conditions, also play an important role in setting standards and in developing guidelines through advocacy and monitoring of health care practices.

Conclusions and Recommendations

SACGT was asked to assess whether current programs for assuring the accuracy and effectiveness of genetic tests are satisfactory or whether other measures are needed. This assessment requires consideration of the potential benefits and risks (including social, economic, psychological, and medical harms) to individuals, families, and society, and, if necessary, the development of a method to categorize genetic tests according to these benefits and risks. Considering the benefits and risks of each genetic test is critical in determining its appropriate use in clinical and public health practice.

Genetic tests offer great promise and provide hope for many people who wish to improve the health of their families and themselves. At the same time, if introduced prematurely or applied inappropriately, the outcomes of genetic testing could place some individuals and groups at risk. Thus, an important balance must be struck between the need to encourage the development and dissemination of new tests and the need to ensure that their introduction yields more benefit than harm.

SAGCT was guided by a recurrent theme that emerged from the public comments. Although many citizens believe that the risks and potential benefits of genetic tests are no different than those posed by any other type of medical test, there is a widespread perception that these tests are different and that people experience genetic testing in a way that is dissimilar to the experience of other forms of medical testing.

Comments received from the public by SACGT highlighted lingering and persistent concerns about the risks of inappropriate disclosure of genetic information about individuals and the potential that such disclosure would result in stigma and discrimination. One individual wrote that the public "will not be able to utilize fully the promise of genetic testing without assurances of the privacy of test results and safeguards against discrimination in health care and employment."

Based on these and other concerns, SACGT arrived at several overarching principles that address public concerns and relate to the establishment of enhanced oversight.

- One of the main goals of genetic testing is to improve the health and well-being of individuals and families. No test should be introduced in the market before it is established that it can diagnose and/or predict a health-related condition accurately and safely. Thus, the public is best served by ensuring both the appropriate oversight of genetic tests and the continued development of genetic tests.
- The public, through involvement of advocacy groups, organizations, and individuals, needs to be involved in the ongoing consideration of issues surrounding genetic testing. This will be particularly important in addressing the concerns of minority populations and diverse communities regarding the purposes and uses of genetic testing.
- Since genetic education and counseling are critical to the appropriate use, interpretation, and understanding of genetic test results, efforts to ensure the education of the public and of health providers about genetics are necessary.
- Federal legislation is needed to prohibit discrimination in employment and health insurance based on genetic information. Federal legislation is also needed to protect the privacy of genetic information in medical records. Without these protections, the public will be reluctant to undergo genetic tests that might be beneficial to its health and well-being.

In addition to developing these basic principles, SACGT considered each of the five questions in its charge separately, recognizing that there is tremendous overlap in the issues raised under each question. The Committee's conclusions and recommendations are based on its analysis of the public input received, the literature reviewed, and discussions held on these issues at each of its four public meetings.

Issue 1. What criteria should be used to assess the benefits and risks of genetic tests?

• Analytical validity, clinical validity, clinical utility, and social considerations should be the major criteria used to assess the benefits and risks of genetic tests.

SACGT identified four criteria'analytical validity,[vii] clinical validity,[viii] clinical utility,[ix] and societal issues—that can be used to assess the benefits and risks of a genetic test. The importance of these criteria was confirmed in the public comment process. Assessing the potential benefits and risks of a genetic test is a process that occurs in stages. Before a test is used in clinical or public health practice, a determination must be made regarding the test's effectiveness in the laboratory—that is, whether a test is analytically valid. The degree of complexity of the test is a particularly important factor in assessing analytical validity.

Analytical Validity

Analytical validity is an indicator of how well a test measures the property or characteristic it is intended to measure. In a DNA-based test, an analytically valid test would be positive when the particular gene mutation is present (*analytical sensitivity*) and negative when the gene mutation is absent (*analytical specificity*). A key measure of a test's analytical validity is its accuracy, or the probability that the measured value will be within a predefined range or the true activity or level. Another measure of analytical validity is reliability, or the probability of repeatedly getting the same test result. During the process of validating a new genetic test, how well it performs will be compared to how well the best existing method or "gold standard" performs. Sometimes, if a gold standard does not exist for a new genetic test, the test's performance must be based on how well it performs in samples from individuals known to have the disease.

While the analytical validity of a test must be determined, it is not a sufficient criterion for assessing the potential benefits and risks of a test. Members of the public noted that the availability of treatment options or the opportunity for prevention or amelioration of disease through lifestyle change are key requirements in assessing benefits and that in the absence of such interventions, benefits diminish. It is important to remember, however, that for some individuals, knowledge of a condition—even without options for prevention or treatment—can be of value. The possibility that a genetic test can resolve uncertainty is an important benefit for some individuals. Conversely, some individuals find value in not knowing the results of a test for which no intervention is available.

Clinical Validity and Utility

Once the analytical validity of a test is established, the second step in assessing the benefits and risks of a genetic test is to evaluate how well it performs in the clinical environment. This involves evaluating a test's clinical validity and clinical utility. Clinical validity refers to the accuracy of the test in diagnosing or predicting risk for a health condition and is measured by the sensitivity, specificity, and predictive value of the test for a given health condition. Clinical utility involves identifying the outcomes associated with positive and negative test results. Because the clinical validity and clinical utility of a genetic test may vary depending upon the health condition and the population to be tested, these criteria must be assessed on an individual basis for each test.

Thus, in considering a system for assessing benefits and risks, it is crucial to recognize that only individuals can weigh the balance between negatives and positives once a test is deemed safe and efficacious and that not everyone will make the same choice. Participants at the public meeting stated that one of the major benefits of genetic testing is that it enables patients to make informed medical decisions and life choices. One participant summed up this view by noting that "Individuals expect a high level of accuracy and to be able to use the genetic information obtained to make medical or personal decisions."

The complexity of the interpretation of a test result is a critical determinant of risk, and the contribution of other genetic factors as well as environmental factors to disease development can complicate the interpretation of a test result. The more complex the interpretation, the greater the possibility for harm. For example, a test might be clinically valid and useful in one population, but not in another. Or, a test might be appropriate for use in adults, but not in newborns. In addition, genotype/phenotype correlations vary within a given disease category, even for single gene disorders.

An important distinction in considering the risks and potential benefits of a test is that between the technical aspects of a given test—that is, its clinical validity and utility—versus how it is interpreted by health care providers and the individuals undergoing testing. A clinically valid test in the hands of a poorly trained health care provider can pose as much risk as a less valid or accurate test that is correctly interpreted. A clinically valid test administered to individuals without involving them in an informed decision-making process can also pose considerable risk to that individual or family. Thus, one way to minimize harms is to ensure that tests are administered by qualified professionals and that appropriate education and genetic counseling is provided.

Individuals submitting comments to SACGT frequently mentioned the need for health care providers to demonstrate competence in understanding the information and its implications, and a number of individuals suggested that availability of and access to genetic counseling would reduce the public's concerns about genetic testing. One commenter noted that the issues of benefits and risks are "the reason that genetic counseling and evaluation is so necessary for genetic testing." In addition, one private laboratory that offers genetic testing services stated that "many of the questions we receive from client health care providers and patients relate to the translation and interpretation of genetic information in our medical reports." In fact, commenters often mentioned that inadequate public understanding and physician education are causes of the confusion and risks associated with genetic testing. One commenter urged "more emphasis * * * on improving the education and influencing the attitudes of health professionals regarding genetic matters." Participants in the public meeting also emphasized the importance of education in minimizing the potential harms of genetic testing and in maximizing its potential benefits to diverse communities.

Factors to Be Considered in Assessing Clinical Validity

A test's clinical validity is influenced by a number of factors, including the purpose of the test, the prevalence of the disease or condition for which the test is being conducted, and the adequacy of the information available to determine clinical validity. Genetic tests have a number of purposes, and some are used for more than one purpose. The acceptable level of the predictive value of a genetic test may vary depending on the purpose for which the test is used (for example, for diagnosing a condition in a person with symptoms or for predicting a future health risk in an otherwise asymptomatic individual).[xi] In addition, a higher predictive value may be required of a test for which no

other confirmatory test or clinical measure is available.

Clinical validity, particularly predictive value, is influenced by the prevalence of the condition in the population. Assessing clinical validity may be particularly challenging in the case of tests for rare diseases. This is because gathering statistically significant data may be difficult, as relatively few people have these diseases. Thus, prevalence may be a factor in determining how much data on test performance should be available before a test is offered in patient care.

For many genetic tests, particularly those that are predictive or presymptomatic, knowledge of the test's clinical validity may be incomplete for many years after the test is developed. When information that may affect clinical validity is incomplete, the potential harms of the test may increase and must be considered more carefully.

Factors to Be Considered in Assessing Clinical Utility

Clinical utility takes into account the impact and usefulness of the test results to the individual, the family, and society. The benefits and risks to be considered include the psychological, social, and economic consequences of testing as well as the implications for health outcomes. Decisions about the use of a genetic test should be based upon a consideration of the risks of any follow-up tests required to confirm an initial positive test, the efficacy of available treatments, the degree of certainty with which a diagnosis can be made, and the potential for adverse psychological and social and economic effects versus beneficial treatment if a diagnosis is made. Factors affecting clinical utility include (1) the purpose of the test; (2) the quality of evidence for assessing outcomes; (3) the potential benefits and risks of test results; (4) the nature of the health condition and its potential outcomes; (5) uncertainties of genetic test results; and (6) the provision of information concerning other family members.

Purpose of the Test

As in assessing clinical validity, the purpose of the test is an important factor in assessing clinical utility. Different risks and uncertainties are associated with genetic tests that are used to predict a future disease or condition than with those that are used for diagnostic purposes. For example, the use of a test for a specific mutation to aid in the diagnosis of cystic fibrosis in a person who has symptoms has different implications than the use of a test to determine whether a woman with no symptoms has a risk for breast and ovarian cancer because she has a BRCA1 or BRCA2 mutation that might alter her risks. Tests used for diagnostic purposes will most likely be conducted as part of a clinical evaluation to diagnose a specific disease, or they will be used for diseases or conditions that are clearly inherited.

The use of a genetic test in population screening may raise greater concern than the use of the same test in an individual seeking information about his or her health. In population screening, a large number of healthy people may receive unexpected test results that may or may not provide definitive information. Decisions about whether to use genetic tests for screening should take into account the prevalence of the condition, because the higher the prevalence of the genetic condition, the greater the number of people who may receive unnecessary treatment or false reassurance if the test produces false positive or false negative results. On the other hand, if treatment options are available, screening for highly prevalent conditions may have significant public health value.

The Quality of the Evidence for Assessing Outcomes

The quality of evidence for assessing outcomes of genetic test results is a factor to consider in determining the clinical utility of a genetic test. Often, the evidence needed to assess clinical utility is limited or lacking. Established methods for evaluating the quality of the evidence should be used to assess outcomes. (Issues pertaining to data collection and analysis are addressed more fully in Issue 3, below.)

Potential Benefits and Risks

A number of potential benefits and risks of genetic testing can be associated with positive or negative test results. For example, potential benefits of a positive test result include the possibility that it may provide knowledge of diagnosis or risk status, it could allow preventive steps or treatment interventions to be taken, or it may identify information about risk status in other family members (also a potential harm). The potential benefits of a negative test result include ruling out a specific genetic diagnosis or risk and/or eliminating the need for unnecessary screening or treatment.

The potential risks of a positive test result include exposure of individuals to unproven treatments; potential for social, psychological, and economic harms, including altered self-image, impact on family relationships, stigmatization, and potential exclusion from health insurance and employment; and identification of risk status in other family members (also a potential benefit). For false positive test results, individuals may be exposed to unnecessary screening or treatment. A negative test result could give false reassurance regarding risk due to nongenetic causes or induce psychological effects such as survivor guilt. False negative test results may delay diagnosis, screening, and treatment.

The Nature of the Health Condition

In determining the relative risks and benefits of a given test, these outcomes also must be considered in light of the nature (severity, degree of associated disability, or potentially stigmatizing characteristics) of the disorder being tested for, which is an important factor in assessing clinical utility. For example, a genetic test for periodontal disease may raise less concern than a test for cancer, and genetic tests developed for conditions such as alcoholism or mental illness might cause even greater concern because of possible misuse of such information. Health outcomes, as measured by such indicators as morbidity and mortality, are important in assessing clinical utility of genetic testing, and they can be affected by both the nature of the health condition as well as the availability, nature, and efficacy of treatment. The greater the uncertainty about the health outcomes associated with a test result, the greater the potential harms of the test. This is an important consideration in genetic testing for common health problems such as cancer and cardiovascular disease, since health outcomes typically are the result of the combined effects of genetic, environmental, and behavioral risk factors.

Uncertainties of Genetic Test Results

Genetic tests used to predict a specific disease or condition in otherwise healthy persons are associated with greater uncertainties and risks than are those used to diagnose a disease or condition. Currently, tests used for predictive purposes will provide an estimate of a person's risk of developing a particular disease or condition. However, the risk assessment may be inaccurate because of other genetic and environmental factors that have not been accounted for or are not yet known. Even so, predictive genetic tests may have profound effects on the lives of otherwise healthy individuals.

False negative results are more common in the early stages of the development of diagnostic tests,

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including genetic tests. Genetic tests in early development may identify only a portion of mutations associated with a given health outcome. The role of other genetic and environmental factors is still unknown for many conditions and will also affect the certainty of genetic test results.

Implications for Family

Because genetic information may have implications for relatives of the individual being tested, the potential of the test to reveal information about family members or to alter interfamilial relationships are additional factors to be considered in assessing a test's clinical utility. For example, DNA-based tests for cystic fibrosis, sickle cell anemia, or other conditions will identify carriers for the condition as well as those who are affected. If an individual tests positive for Huntington's disease, first-degree relatives are then known to have a 50 percent chance of carrying the same mutation. Some of these relatives may not wish to discover their risk, while others may wish to use the test results of their relatives to make a decision about their own genetic testing.

Factors to Be Considered in Assessing Social Issues

Important social considerations may heighten the risks of certain tests, even if they are accurate and clinically meaningful. Tests for certain health conditions may carry special risks because of the social implications of the health condition, for example, conditions associated with mental illness or dementia. Thus, some dimensions of genetic testing may affect society as a whole and certain social groups as well as individuals, and this requires that special consideration be given to the potential for further stigmatization and discrimination of members of vulnerable or at-risk groups.

Genetic test results can change how people are viewed by their family, friends, and society as well as how people view themselves. People diagnosed with or at risk for genetic diseases or conditions may be affected by the way others begin to see and interact with them. Having or being at risk for a disease or condition that is viewed by society in a negative light can result in stigmatization, and emotional and psychological harms. In addition to changes in how they are seen by others, social influences can affect self-perception and have a profound impact on life decisions.

Diagnostic or predictive genetic information about an individual could lead to discrimination in health insurance, life insurance, education, and employment, a fear expressed repeatedly in public comments to SACGT. The fear of discrimination may be particularly acute for people with or at risk for diseases or conditions that are chronic and severely disabling and that lack effective or affordable treatments. Educational opportunities may be restricted, further limiting life possibilities. Fears of genetic discrimination have made the establishment of federal privacy and anti-discrimination protections a high priority for many. In addition to concern about discrimination, there may be downstream effects of a transformation in medicine to a focus on predicting future disease risks that are not yet fully understood.

Significant social concerns have grown out of painful memories of the American eugenics movement and the more recent history of programs that tested African Americans for sickle cell disease and disadvantaged populations for "feeble-mindedness." Because these programs heightened discrimination against those tested, tests developed for use in certain targeted population groups may carry higher risks.

In addition, because social categories used to classify ethnocultural differences often do not accurately reflect actual genetic variation within a population, care should be taken to ensure accurate interpretation of genetic test results by obtaining, to the extent possible, accurate knowledge regarding the ethnocultural and/or genetic background of the individuals being tested. A further note of caution is also necessary. In developing genetic tests, it will be important to ensure that they are accurate when used in different populations, even though doing so may inadvertently reinforce the erroneous assumption that there is a straightforward, one-to-one relationship between one's genes and one's ethnocultural identity, possible resulting in stigmatization. Even accurate tests can reinforce misguided cultural notions.

Issue 2: How can the criteria for assessing the benefits and risks of genetic tests be used to differentiate categories of tests? What are the categories and what kind of mechanism could be used to assign tests to the different categories?

SACGT considered whether analytical validity, clinical validity, clinical utility, and social issues could be used to characterize the potential benefits and risks associated with a given test. Using this information, SACGT suggested in the public consultation document that tests might be organized into categories such as "high risk" and "low risk," while acknowledging that this would not be a simple or straightforward task. Categorization would depend on the consideration of a combination of factors, including test characteristics, availability of safe and effective treatments, and the social consequences of a diagnosis or identification of risk status. In 1975, the National Academy of Sciences recommended that genetic tests be considered in terms of three categories, based on the complexity and usefulness of the information to the individual being tested.[xii]

The difficulty of arriving at a straightforward schema was reflected in the public comments received. Some individuals suggested categorizing genetic tests by the purpose of the test, such as newborn screening, prenatal, carrier, predictive, or diagnostic testing. Others suggested categorizing tests by the availability of treatment or preventive measures, by the demonstration of clinical validity, or by the stage of development of the test.

A number of public commenters believed that certain genetic tests raise more ethical, legal, and social concerns than do others. In this category, they identified prenatal, presymptomatic, and predictive tests, especially when no treatment measures are available. Commenters viewed diagnostic and confirmatory tests and tests for diseases for which treatment is available as raising less concern.

Additional considerations for the level of review of genetic tests include gene frequency—that is, whether the test would be for a common or an orphan (rare) disease; whether the test will be used for population-based screening or individual testing; the potential for stigmatization of individuals or groups; and the availability of independent methods of confirmation to reduce the occurrence of false-positive test results.

For the purposes of review, a useful way to consider tests is to assess them across several dimensions. These criteria are necessary but may not be sufficient for all tests.

- Is the test at this stage of development primarily diagnostic or predictive?
- Is the mutation being tested for highly or weakly penetrant?[xiii]
- Is a proven intervention available to prevent or treat the disease for which the test is being conducted?
- Is the test used for population-based screening or testing of individuals?
- Is the prevalence of the disorder for which the test is used high or low?

• Is there potential for stigmatization of individuals or groups from the test results?

• Is the test designed or able to identify more than one condition?

For example, predictive tests require more scrutiny than do diagnostic tests. Similarly, tests for weakly penetrant mutations require more assessment than do those for highly penetrant genes. Tests for conditions for which no interventions are available would be more problematic than tests for conditions for which interventions exist. Thus, for example, a high-scrutiny test would be one that is predictive, detects a mutation that is weakly penetrant, and for which a proven intervention is not available. These dimensions should be considered in the review of genetic tests, and test developers should indicate the categories into which their test(s) fit.

Issue 3: What process should be used to collect, evaluate, and disseminate data on single tests or groups of tests in each category?

Currently, data about genetic tests are collected by a number of different organizations. While some of these data are publicly available, others are not. Data on clinical application of a test could be collected and evaluated by a number of sources, including professional organizations, individual laboratories, academic institutions, and/or governmental agencies. Inherent in any extension of data collection requirements is an added burden to the delivery system as well as an added cost for provision of health care. These are important considerations that must be carefully understood and resolved.

SACGT considered many options for collection, evaluation, and dissemination of data on genetic tests, including the following:

• Continuing reliance on the current practice of allowing laboratories to base decisions on information they collect and analyze, including their own data or data they glean from other sources, such as research publications or consensus conferences.

• Requiring that each laboratory that offers a test be responsible for collecting and analyzing the information that is necessary to support its claims, according to national standards.

• Establishing that a government agency take primary responsibility for collecting information on clinical applications of tests that detect particular mutations and defining the appropriate claims for such tests.

• Forming a consortium of government, professional associations, and industry to create, collect, and analyze information about clinical applications.

Regardless of the option chosen for data collection, once the data have been collected and evaluated, they must be disseminated in an appropriate manner to health care practitioners and the public. One public commenter stated that "the public needs to be informed about general information that evolves from the data about genetic tests, at the same time as the practitioners are informed." Others suggested that information should be easily accessible by all and recommended an Internet-based database system. One commenter supported "the concept of developing peer reviewed Internet resources that provide information on genetic tests for health providers and the public."

SACGT concludes that databases on genetic tests should include not only data generated prior to offering the test for clinical use, but also data generated as part of any post-market evaluation. One option for dissemination is to require laboratories to release summaries of data on clinical application as part of the process of offering the test. Such summaries could be directed to health care professionals, to the general public, or to both. In addition, different methods of collection and distribution of information may be used for different tests. Guidelines or regulations might be required to make those distinctions. One method would be to rely upon publications and professional societies to inform readers and members, with the expectation that practitioners will inform the public over time. Alternatively, the federal government or a consortium could be responsible for ensuring that relevant data are available for both professional and public use.

Through the public comment process, SACGT learned that the issues of privacy and confidentiality of data collected for research is a major concern of individuals participating in such studies. One commenter noted that "collection of data to establish analytic and clinical validity is severely compromised by fear of discrimination." Many individuals indicated that they would be willing to share genetic test results and individually identifiable information if informed consent were obtained and assurances of confidentiality were provided. Many commenters recommended that data collected for research should be anonymized or coded to protect the privacy and confidentiality of the individual and the data. Participants at the public meeting suggested that individuals involved in research studies should receive feedback on the outcomes and findings of the study. Others have suggested that there are risks involved in receiving investigational tests results before the meaning of the information is understood.

• The responsibility for collecting initial data on the analytical validity of a test lies with the test developer.

• Initial knowledge of the clinical validity of a genetic test is essential to assess its safety and efficacy. Further knowledge will depend on additional research and the long-term systematic collection and analysis of additional data. Researchers and test developers should gather and share initial data on the clinical validity and utility of genetic tests.

• Since data sharing and analysis are critical, relevant DHHS agencies should work collaboratively with researchers and test developers to advance data collection and provide this information to health care providers and the public. Initial exploratory data collection efforts among DHHS agencies, which have been coordinated by the Centers for Disease Control and Prevention, have been of value and should continue.

• Protecting the confidentiality of data and the privacy of individuals is essential to the progress of data collection efforts.

Need for Post-Market Data Collection and Dissemination

SACGT believes that it is critical that data continue to be collected after genetic tests reach the market. In addition, there is no current requirement that data about a test's analytical validity, clinical validity, or clinical utility, or lack thereof, should be disclosed to health care providers or patients. BRCA1 is an example of a test that should have been released with disclaimers about the limited knowledge about the test's clinical validity, which was based on data from a small and highly selected group of families in which multiple cases of cancer had occurred. Better post-market data collection and analysis will allow for expansion of the use of the test after it has been proven and understood in the initial target population. There should be some assurance that additional data will be collected after a test is preliminarily approved, using some minimal standards, and that data will be continuously reported, so that at any given point in time the level of knowledge about any test is sufficient and that for a selective few tests, more intensive studies are needed.

• Laboratories should be encouraged or required to make pre- and post-marketing data on genetic tests available

in a timely, accurate, and understandable manner.

• Post-market data collection can enhance understanding of current applications of a genetic test and is important for any expansion of the use of a genetic test beyond the initial indications approved when the test is made available. Laboratories providing clinical genetic services should commit to post-market data collection efforts.

Issue 4: What are the options for oversight of genetic tests and the advantages and disadvantages of each option?

Oversight of genetic tests can occur through multiple approaches. SACGT identified a number of possible directions that could be taken to improve oversight of genetic tests, including (1) strengthening and expanding current CLIA or FDA regulations or voluntary standards and guidelines; (2) forming interagency review boards; or (3) forming a consortium of representatives from government, industry, and professional organizations.

In assessing whether further oversight is warranted, SACGT emphasized the importance of considering the implications that further oversight may have on the current system and all parties involved as well as the trade-offs and the evolving nature of genetic research and technology. SACGT also recognized that there are many areas beyond test development, use, and marketing, such as the training and education of health care providers and public understanding of genetics that might have an equally important impact on assuring the safety and effectiveness of a genetic test.

The public comments were evenly divided between favoring a greater federal role in oversight versus forming a public/private consortium that would be responsible for oversight. Commenters noted the advantages of a consortium, including flexibility and broad representation of stakeholders. The advantages of a greater federal role cited in public comments are increased resources, centralization of oversight, and the provision of rigorous standards. Some commenters specifically recommended FDA as the federal agency of choice to oversee genetic tests. One said that "FDA should use the authority it has to regulate all genetic tests and any kits that might be developed as part of gene sequencing." Others suggested that strengthening current CLIA regulations was preferable. Still others favored integrating all three approaches, with expansion of a consortium approach integrated with enhanced roles for FDA oversight of test validity and expanded CLIA oversight of testing practices, including enforcement of requirements for pre- and post-analytical test functions. Participants in the public meeting suggested that oversight should not be limited to the tests themselves, but should also apply to the manner in which the tests are used.

• Based on the rapidly evolving nature of genetic tests, their anticipated widespread use, and extensive concerns expressed by the public about their potential for misuse or misinterpretation, additional oversight is warranted for all genetic tests.

The type of oversight required will differ depending on the stage of development of the test and whether it falls into the "high-scrutiny" or "low-scrutiny" categories. However, several actions could be taken to strengthen the federal oversight role to ensure that some level of review occurs for all tests. In particular, the roles of CLIA and FDA in oversight should be strengthened and expanded.

• The Food and Drug Administration (FDA) should be the lead federal agency responsible for reviewing, approving, and labeling of all new genetic tests. FDA review should focus on the claims of analytical and clinical validity made by the developer of the test and be appropriate to the level of scrutiny warranted by the test. The agency should develop flexible mechanisms for review of new genetic tests that minimize both the time and the cost of review without jeopardizing the quality of the assessment of test validity. These mechanisms should, for example, include the use of deemed reviewers and standards developed in concert with professional organizations.

Various elements of a genetic test (analytical validity, clinical validity, clinical utility, and test methodology) raise different issues that require further oversight. A genetic test should not be used in clinical practice (that is, for other than research purposes) unless it has been shown to detect reliably the mutation that it is intended to detect. CLIA requires a laboratory that offers a test to determine the analytical validity of the test before it is used in clinical practice. In the current system, the laboratory intending to offer a test decides when it has met CLIA's requirement, a judgment that may later be evaluated during a CLIA inspection. SACGT believes that the current system requires review. Standards should be enhanced to assist laboratories in deciding when a test's analytical validity has been determined and is acceptable, or laboratories should be required to obtain the concurrence of an independent third party before a test is offered for use in clinical practice.

• Clinical Laboratory Improvement Amendment regulations should be augmented to provide more specific provisions for ensuring the quality of laboratories conducting genetic tests.

The additional oversight and data collection efforts recommended by SACGT will require enhanced resources.

• DHHS agencies should be provided with sufficient resources to carry out expanded oversight of genetic tests, including coordinated data collection, review, and information dissemination.

Finally, professional organizations and state health departments can provide additional oversight protections. Organizations such as CAP, ACMG, and NCCLS have developed guidelines and standards for the development and use of genetic tests, and they continue to do so; state health departments may require laboratory facilities and personnel that perform genetic tests be licensed, and importantly, patient advocacy groups as well as individuals and families affected with a genetic condition will continue to play an important role in setting standards and in developing guidelines.

Issue 5: What is an appropriate level of oversight for each category of genetic test?

At this time, no systematic or credible mechanism is in place for reviewing evidence about genetic tests before they are introduced into clinical practice using standardized methodologies. Thus, it is difficult to determine with great certainty when a test is ready to move from research to clinical practice. (In clinical practice, test results go back to the patient or the patient's family, as opposed to only being part of data collection.) In addition, once tests enter the health care system, it is difficult to retrieve data on their use and outcomes. SACGT concluded that although genetic tests should be evaluated at all stages, from development through clinical application, the level and focus of review should be appropriate to the stage and complexity of the test itself. For example, diagnostic tests for a disease with high penetrance and for which an intervention is available may require less scrutiny than predictive tests for a disease for which no proven intervention is available.

Also important is the degree to which benefits are provided by positive and negative test results. In general, genetic tests should provide information that people will find useful in making decisions relating to their health and well-being. Some consumers might assume that a test would not be made

available unless it has a health benefit. For example, a negative genetic test result may provide a useful basis of information for informed decision-making. Others have argued that access to information, even it if does not lead to a health-related intervention, is itself useful. There is currently no requirement that the clinical utility of a genetic test be assessed before it is used in clinical practice, and additional oversight may be needed to ensure greater awareness of the utility of the test.

In considering the level of oversight warranted, the risks, benefits, and economic implications (both short- and long-term) associated with oversight must be considered. More stringent oversight, for example, may ensure greater certainty that a test has been shown to be accurate and useful, that patient safeguards are in place, and that health care dollars are not spent on tests of little value. On the other hand, additional oversight may unnecessarily delay the introduction of new tests (or improvements to existing tests) into clinical practice and increase the costs of test development, which may in turn discourage the development of new tests. The provision of any type of additional oversight is likely to have implications for resources that may affect the costs of genetic tests and public access to them.

The public comments emphasized a need for guidelines or national standards to determine when a test is ready for clinical use. Many commenters stated that a test should be considered ready for clinical use when clinical validity and utility have been demonstrated. One said that investigational tests are ready for general use "only when sufficient data has been collected and evaluated to determine accuracy, validity, and utility in different populations." Participants in the public meeting said that it was important that the benefits of immediate test application be weighed against what might be lost if the test is not available. In general, commenters thought that tests for rare diseases should be given special considerations so that their availability would not be limited. One said that special consideration for genetic tests for rare diseases "must be given in order to ensure access to such tests, even before validity is confirmed."

Systematic and ongoing review of genetic tests would provide information to health care providers and individuals to assist their decision-making about the usefulness of the test and its potential risks and benefits. The level of confidence in the information presented to individuals on genetic tests should be high.

Making information available and understandable about a test's accuracy and predictive power and the availability of therapy for the disease the test is designed to test for is important to the public, but most commenters thought that this would not be a sufficient form of oversight. Similarly, while commenters believed that the review of promotional materials would be an important part of the oversight process of genetic tests, this alone would not be sufficient for oversight.

Ongoing review is essential, because when test manufacturing methods and materials change, either deliberately or inadvertently, the performance characteristics of a test can change as well, altering its analytical validity. Although CLIA requires reevaluation of tests when the methodology changes, stronger incentives are needed to re-qualify tests when methods and materials change to demonstrate equivalent analytical validity performance.

In addition to considering the levels of oversight required, SACGT considered the timing of such oversight. Because the clinical validity of tests changes as it is used in a population, oversight must consider the entire continuum of test introduction and use over time, from the earliest stages of research to wide-scale clinical application.

SACGT determined that different levels of oversight are warranted for different phases and types of genetic tests. Specific recommendations are made for tests in the research phase of development, the review of tests prior to clinical and public health use, and tests already on the market.

Oversight of Tests in the Research Phase of Development

Analytical validity should be determined in the research phase. Clinical validity can be established only by the expansion of testing to larger numbers of people. Thus, a test in the research phase must satisfy somewhat different standards than one that has been widely used in clinical settings. There must also be a rationale for a test's clinical application and for establishing a population in which testing would be appropriate. In some cases, laboratories that are developing genetic tests for eventual use in clinical practice conduct studies using identifiable patient samples.[xiv] Unless the study is conducted with federal funding or is intended for submission to FDA, there is no federal requirement that laboratories obtain informed consent from a patient participating in that study. Further, at present, not all facilities developing genetic tests have IRB oversight bodies in place, because IRBs are not legally required for institutions that do not conduct DHHS-funded research.

- Institutional Review Board review should be conducted of all research protocols for genetic tests in which individually identifiable human subjects or samples are used, regardless of the funding source. Institutions that lack an IRB must obtain the services of a qualified board. Efforts will be needed to ensure that IRBs are suitably equipped to carry out these reviews. In addition, informed consent must be obtained from all subjects participating in such research.

Transition of Genetic Tests to Clinical and Public Health Use

Once a laboratory has established the analytical validity of a test, its clinical validity and utility can be established only by testing in human populations. Questions must be answered about a test's ability to generate information about the presence, or possibility of future occurrence, of a disease. Determining a genetic test's clinical validity is a complex process, often requiring years of work. At the same time, many would like to see gene discoveries quickly translated into practical use as soon as the discoveries are made, often before the clinical validity of the test is fully established. The use of the test is then refined as new information becomes available. No federal standards guide how laboratories determine when enough is known about a genetic test for it to be used in clinical practice or the extent to which uncertainties about a test's characteristics must be disclosed. FDA should play a central role in serving as the "gatekeeper" for the introduction of new tests and should have the resources to carry out timely reviews.

Many tests are likely to fall into the "low-scrutiny" category and would receive expedited review. For those tests that raise concerns—because they are predictive rather than diagnostic, weakly penetrant, detect a disorder for which no proven intervention exists, or detect a gene mutation in a subpopulation at greater risk for stigma or discrimination—greater scrutiny is warranted.

- FDA should give particular attention to the review of genetic tests that are used to predict diseases and conditions for which no safe and effective interventions are available. Other tests may also warrant a higher

level of scrutiny in the FDA review process.

• In the future, tests may be developed that raise major social and ethical concerns. Because FDA's review will focus on assuring the analytical and clinical validity of a test, the agency's capacity to assess the ethical and social implications of a test may not be sufficient. The Secretary should consider the development of a mechanism to ensure the identification, and appropriate review, of tests that raise major social and ethical concerns.

SACGT can play an important coordinating role in the oversight of genetic tests. The Committee, which includes nonvoting liaison members from AHRQ, CDC, FDA, HCFA, HRSA, and NIH, made a commitment to follow the progress of DHHS in implementing enhanced oversight and to provide ongoing advice about the oversight issues as necessary. SACGT should not engage in case-by-case review of genetic tests, but should serve as a forum for public discussion of evolving concerns about the issues raised in the approval, release, and ongoing review of genetic tests.

Review of Tests Already on the Market

SACGT believes that some tests already on the market should be further evaluated for clinical efficacy and that guidelines should be developed for their appropriate use. A body similar to the U.S. Preventive Services Task Force could be constituted to conduct such reviews. Such a group could develop methodology that emphasizes systematic analytic procedures to review scientific evidence for the purpose of developing sound practice guidelines for genetic testing. Evaluations could be submitted for consideration by medical organizations, specialty societies, government agencies, and other groups concerned with the delivery of genetic services and could be published in peer-reviewed medical journals and other publications.

• The U.S. Preventive Services Task Force with augmented resources, or a similar body set up or given deemed status for this purpose, should review genetic tests that are already on the market for evaluation of clinical efficacy and development of guidelines about their appropriate use.

Additional Recommendations for the Appropriate Use of Genetic Tests

In addition to responding to the five questions in its charge, SACGT developed several recommendations directed toward improving the safe and responsible introduction of genetic tests to the public.

• Individual and family members considering a genetic test should have access to appropriate genetic education and counseling resources to ensure their ability to make an informed decision about being tested.

Current oversight does not specifically address whether genetic education and qualified counseling should be made available for all genetic tests. Genetic test results may be difficult to interpret and present in an understandable manner, raise important questions related to disclosure of test results to family members, and sometimes involve difficult treatment decisions. Because of these intricate issues, some have suggested that those who offer genetic tests should be encouraged or required to make genetic education or counseling available to those considering genetic testing and their family members.

• Written informed consent should be obtained for tests used for predictive purposes. The extent to which written informed consent should be obtained for all other genetic tests requires further deliberation.

Even after a test has been accepted into clinical practice, some observers have suggested that because of the predictive power of genetic tests and the impact that test results may have on individuals and their families, tests should not be administered unless the individual has been fully informed of the test's risks and benefits and a written informed consent has been obtained. There is currently no requirement for such an informed consent.

• Current regulations under FDA and the Federal Trade Commission should be enforced in the area of genetic test promotion and marketing.

Although the federal government requires that promotion and marketing of products and services (which sometimes takes the form of educational materials) be truthful and not deceptive, federal agencies have taken little enforcement action against false or deceptive claims involving genetic tests. While some believe that false or deceptive claims are not currently a problem, others have suggested that promoting or advertising genetic tests, especially to patients/consumers, should be prohibited. Another suggestion is to permit the promotion and advertising of genetic tests, while also emphasizing taking action against those who make false or deceptive claims.

Conclusion

On March 15, 2000, SACGT forwarded its preliminary draft recommendations to Dr. Satcher. The Committee invites public comment on this preliminary draft of its conclusions and recommendations, and at its next meeting, June 5–7, 2000, the Committee will review the comments received and will develop a final report to the Secretary. With the completion of this assignment, SACGT will move on to consider a number of other high-priority issues, relevant to genetic tests and not addressed in this report.

[i] These statistics were provided by GeneTests, a directory of clinical laboratories providing testing for genetic disorders, which can be found at the following website: *http://www.genetests.org*

[ii] McGovern, M.M.; Benach, M.O.; Wallenstein, S.; *et al.* Quality assurance in molecular genetic testing laboratories. JAMA 281(9): 835–40, 1999.

[iii] Holtzman, N.A.; Watson, M.S. (eds.) Promoting Safe and Effective Genetic Testing in the United States: Final Report of the Task Force on Genetic Testing. Baltimore: Johns Hopkins University Press, 1997.

[iv] The consultation document was mailed to 2,500 individuals and organizations in late November 1999, and comments were received until January 31, 2000. A public meeting was held at the University of Maryland, Baltimore, on January 27, 2000, which was planned and organized by a steering group composed of SACGT members and additional experts knowledgeable about issues of concern to diverse communities.

[v] Some of the information presented in this section regarding genes, genetics research, and genetic testing is adapted from Understanding Gene Testing, a booklet produced by the National Cancer Institute and the National Human Genome Research Institute. The booklet is available at *http://www.accessexcellence.org/AE/AEPC/NIH/index.html.*

[vi] Farlow, M.R.; *et al.* Treatment outcome of tacrine therapy depends on apolipoprotein genotype and gender of the subjects with Alzheimer's disease. Neurology 50(3): 669–77, 1998.

[vii] The term analytical validity refers to how well a test performs in the laboratory, that is, how well the test measures the property or characteristic it is intended to measure. (In the case of a genetic test, the property can be DNA, proteins, or metabolites.) In other words, does the test do what its makers claim it does? If so, it must produce the same results repeatedly and in different laboratories (given the same set of procedures).

[viii] Clinical validity refers to the accuracy with which a test predicts the presence or absence of a clinical condition or predisposition. Thus, a test would be clinically valid if it successfully detects the disease or predisposition. Initially, the test has to be conducted on individuals who are known to have the condition (as well as those who do not) to determine its success rate.

[ix] Clinical utility refers to the usefulness of the test and the value of the information to the person being tested. If a test has utility, it means that the results—positive or negative—provide information that is of

value to the person being tested because he or she can use that information to seek an effective treatment or preventive strategy. Even if no interventions are available to treat or prevent the disease or condition, there may be benefits associated with knowledge of a result.

[x] Prevalence refers to the percentage of a population that is affected with a particular disease at any given time.

[xi] A genetic test may either have positive predictive value (the probability that an individual with a positive test result will develop the disease) or negative predictive value (the probability that an individual with a negative result will not get the disease), depending upon its clinical sensitivity and specificity (clinical validity).

[xii] National Research Council. Committee for the Study of Inborn Errors of Metabolism. Genetic Screening: Programs, Principles, and Research. Washington, DC: National Academy of Sciences, 1975.

[xiii] Penetrance is a concept indicating the likelihood that a given gene will result in disease. For example, if a condition is not expressed in every person who carries the mutation, it is said to have reduced penetrance.

[xiv] The National Bioethics Advisory Commission has addressed ethical issues concerning the use of human biological materials in research and made a number of recommendations relevant to some of the issues discussed here. National Bioethics Advisory Commission. Research Involving Human Biological Materials: Ethical Issues and Policy Guidance. Report and Recommendations of the National Bioethics Advisory Commission. 1999.

Secretary's Advisory Committee on Genetic Testing

National Institutes of Health, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892, 301–496–9839 (facsimile), sc112c@nih.gov (email), http://www4.od.nih.gov/oba/sacgt.htm (website).

Date: April 14, 2000.

Sarah Carr,

Executive Secretary, SACGT.

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 1374/P.L. 106–183

To designate the United States Post Office building located at 680 U.S. Highway 130 in Hamilton, New Jersey, as the "John K. Rafferty Hamilton Post Office Building". (Apr. 13, 2000; 114 Stat. 200)

H.R. 3189/P.L. 106–184

To designate the United States post office located at 14071 Peyton Drive in Chino Hills, California, as the "Joseph Ileto Post Office". (Apr. 14, 2000; 114 Stat. 201)

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Thursday, April 20, 2000

Presidential Documents

Title 3—

The President

Proclamation 7291 of April 12, 2000

National D.A.R.E. Day, 2000

By the President of the United States of America

A Proclamation

Children face many challenges in today's complex society. Peer pressure to abuse drugs and alcohol; negative influences in films, music, television, and videos; school violence; gang activities; fear and low self-esteem—any or all of these pressures can lead young people to make unwise choices that can jeopardize their future and even their lives. Since 1983, however, there has been a strong positive influence in the lives of America's children that is helping them to navigate safely through these dangers and uncertainties: Drug Abuse Resistance Education (D.A.R.E.).

D.A.R.E. was developed jointly by the Los Angeles Police Department and the Los Angeles Unified School District and continues to draw its strength from partnerships among law enforcement officials, schools, parents, and communities. Under the program, specially trained police officers conduct classroom lessons designed to teach children from kindergarten through the 12th grade how to make healthy choices, overcome negative influences, avoid destructive behavior, and resist the lure of drugs, alcohol, and tobacco.

The D.A.R.E. curriculum has several components designed to meet the changing needs of students as they mature. From the visitation program for children in kindergarten and the early elementary school years to the core curriculum for highly vulnerable fifth and sixth graders to reinforcement programs for middle school, junior high, and senior high students, D.A.R.E. helps young people of all ages develop the skills and self-confidence to recognize and resist negative influences. And this year, D.A.R.E. has pledged to use a specialized curriculum to reach out to thousands of parents and help them talk to their children about drugs.

My Administration is also taking forceful measures to help our young people make the decision to reject drugs. We are continuing to expand the unprecedented National Youth Anti-Drug Media Campaign in order to change the attitudes of an entire generation of young people; a campaign that is working across all race, gender, grade level, and income lines. The campaign is already paying dividends for American families: studies show that growing numbers of parents are talking to their children about the dangers of drug use, and youth drug use is down 13 percent in just one year. We have also expanded the Safe and Drug-Free Schools program and the Drug-Free Communities program.

Through efforts like these and the commitment of programs like D.A.R.E., we can ensure that America's children have the skills, self-esteem, and guidance they need to reject substance abuse and violence and to create for themselves a bright and healthy future.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 13, 2000, as National D.A.R.E. Day. I call upon our youth, parents, educators, and all the people of the United States to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of April, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 00–10002
Filed 4–19–00; 8:45 am]
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VOL 65 ISS 77 AP 20 2000 UMI

Presidential Documents

Proclamation 7292 of April 14, 2000

National Organ and Tissue Donor Awareness Week, 2000

By the President of the United States of America

A Proclamation

Organ and tissue transplantation offers us the extraordinary opportunity to share with others one of our most precious gifts—the gift of life. By donating tissues and organs, living donors and the families who have lost loved ones are rewarded with the knowledge that they have saved and enhanced many lives. Thanks to donors' generosity and compassion, transplant recipients across our country are able to work, care for their families, and look forward to a brighter future. Thanks to donors' selflessness, many children who were not expected to see their first birthday are playing, learning to walk, and entering school.

The future of the thousands of Americans awaiting transplants, however, depends on the willingness of their fellow citizens to become organ and tissue donors. More than 68,000 patients are on the national organ transplant waiting list; each day, 13 of them will die because the organs they need have not been donated; and every 16 minutes, a new name will be added to that waiting list.

To address this critical and growing need, Vice President Gore and Secretary of Health and Human Services Shalala launched the National Organ and Tissue Donation Initiative in December of 1997. This public-private partnership was designed to raise awareness of the success of organ and tissue transplantation and to educate our citizens about the urgent need for increased donation. Working with partners such as health care organizations, estate planning attorneys, faith communities, educational organizations, the media, minority organizations, and business leaders, the Initiative is reaching out to Americans of all ages, backgrounds, and races, asking them to consider donation. In its first year alone, the Initiative made a measurable impact, as organ donation increased by 5.6 percent.

But donations are still falling short nationwide. As we observe National Organ and Tissue Donor Awareness Week, I urge all Americans to consider becoming donors. Becoming a prospective organ and tissue donor is an easy, two-step process. Potential donors need only indicate their intention on their driver's license or donor card, which is available from a number of organizations by mail or on-line, and notify their families and friends of their wish to donate. I also encourage organ and tissue recipients to tell others how their lives and health have changed because of the generosity of a donor and his or her family; and I join the friends and families of donors in remembering with pride and gratitude all those who gave of themselves so that others might live.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 16 through April 22, 2000, as National Organ and Tissue Donor Awareness Week. I urge all health care professionals, educators, the media, public and private organizations concerned with organ donation and transplantation, and all Americans to join me in promoting greater awareness and acceptance of this humanitarian action.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of April, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 00–10003
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VOL 65 ISS 77 AP 20 2000 UMI

Presidential Documents

Proclamation 7293 of April 14, 2000

National Park Week, 2000

By the President of the United States of America

A Proclamation

We are fortunate to live in an era when the explosive growth of technology has put at our fingertips an extraordinary array of information. But even during this technological revolution, one of America's richest and most fascinating educational resources is also among its oldest: our national park system. Our national parks are living libraries and laboratories, where all Americans can experience the beauty and variety of nature and learn about our Nation's history and culture.

Preserving the rare and unusual as well as the spectacular and beautiful, our national parks provide botanists, wildlife biologists, chemists, and other scientists the opportunity to conduct research into the fragile ecosystems that affect the health of people, plants, and animals around the world. Geologists and paleontologists find in our national parks the story of our continent, from the Grand Canyon's geologic formations to the ancient bones resting at Dinosaur National Monument.

The national park system also captures America's more recent history. In the National Historic Sites and along the National Historic Trails maintained by the men and women of the National Park Service, we learn about the lives and achievements of American heroes like Lewis and Clark, Sojourner Truth, Abraham Lincoln, Frederick Douglass, Elizabeth Cady Stanton, the Wright Brothers, and Thomas Edison. From Fort Necessity in Pennsylvania, where a young George Washington saw action in the French and Indian War, to the quiet acres of Gettysburg, where one of the Civil War's bloodiest battles was fought, to the Edmund Pettus Bridge in Selma, Alabama, where the modern civil rights movement reached its emotional peak 35 years ago, Americans can see and touch their history.

Today, we have 379 national parks, and each site offers a unique opportunity to experience the wonder of nature, to stand in the footprints of history, to learn about our culture and our society, to study the natural world, and to look toward the future. As we observe National Park Week, I join all Americans in thanking the men and women of the National Park Service for their dedication in caring for these special places. We are indebted to them for preserving and protecting our natural and cultural heritage, not only for our enjoyment and education today, but also for the benefit of generations to come.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 17 through April 23, 2000, as National Park Week.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of April, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 00–10004
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Presidential Documents

Proclamation 7294 of April 14, 2000

National Recall Round-Up Day, 2000

By the President of the United States of America

A Proclamation

Every year, the Consumer Product Safety Commission (CPSC) researches the safety of more than 15,000 types of products used by the American people and secures the recall of defective or potentially dangerous products. Last year alone, the CPSC negotiated almost 300 recalls involving more than 74 million individual consumer products that presented a significant risk to the public. Despite these recalls and additional safety alerts issued by the CPSC, many consumers are still using products that may seriously injure or even kill them or their children, and people are still able to purchase these products at flea markets, secondhand stores, and garage or yard sales.

The CPSC estimates that some 29 million Americans will suffer injuries involving consumer products this year, and 22,000 will lose their lives. To reduce these tragic statistics, the CPSC is working to increase public awareness of recalled products and to ensure that such potentially hazardous products are removed from people's homes. As a vital part of this effort, the CPSC is conducting the fourth annual Recall Round-Up Campaign this year in partnership with the U.S. Postal Service. With the cooperation and active involvement of State and local officials, health and safety organizations, the media, and community groups, this innovative public safety campaign will sponsor activities in communities across the Nation to publicize the products that have been recalled, to encourage Americans to repair, return, or destroy any recalled products that may still be in their homes or businesses, and to urge them to stay alert and informed about such products when purchasing secondhand items.

This year's Recall Round-Up will focus on a number of previously recalled consumer products that pose a threat to children in particular, including certain infant car seats; swimming pool dive sticks that can cause impalement injuries to young children; television carts that can tip over; tubular metal cribs that can entrap children; and old cribs, hair dryers, and children's drawstring jackets that fail to meet the most current safety standards. Last year's campaign succeeded in reaching some 55 million consumers; this year, with the assistance of the U.S. Postal Service, the CPSC hopes to reach millions more—especially parents and child care providers—with these lifesaving messages.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 18, 2000, as National Recall Round-Up Day. I call upon all Americans to observe this day by working with safety, health, and consumer agencies and other appropriate community organizations to organize and conduct local round-ups of dangerous and defective consumer products and to warn parents, child care providers, and the general public about the hazards of using recalled consumer products.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of April, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 00–10005
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Rules and Regulations

Federal Register
Vol. 65, No. 77
Thursday, April 20, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 841

RIN 3206–AI83

Retirement and Insurance—Automation and Simplification of FERS Employee Record Keeping During an Intra-Agency Transfer

AGENCY: Office of Personnel Management.

ACTION: Interim rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to allow the automated transfer of Federal Employees' Retirement System (FERS) employee payroll account information from one payroll office to another, within the same agency, eliminating the requirement of creating and forwarding a hard copy Individual Retirement Record (IRR) to OPM for each intra-agency transfer. When an employee is no longer employed by the agency or is no longer covered under FERS, a comprehensive IRR will then be forwarded to OPM.

DATES: Interim rules effective April 20, 2000; comments must be received on or before July 19, 2000.

ADDRESSES: Send comments to Mary Ellen Wilson, Retirement Policy Division, Office of Personnel Management, P.O. Box 57, Washington, DC 20044; or deliver to OPM, Room 4351, 1900 E Street, NW., Washington DC. Comments may also be submitted by electronic mail to *combox@opm.gov*.

FOR FURTHER INFORMATION CONTACT: For Part 841: John Panagakos, (202) 606–0299.

SUPPLEMENTARY INFORMATION: 5 CFR 841.504(d) directs an agency payroll office to close a FERS employee's IRR and forward it to OPM when the employee separates, transfers to another agency or to a position serviced by another payroll office, or transfers to a position in which he or she is not covered by FERS. This means that even when an employee transfers within an agency, but is subject to a different payroll office, a hard copy IRR must be created from the payroll information and forwarded to OPM. There are compelling reasons to retain the requirement to create a hard copy IRR each time an employee (1) moves from one agency to another; (2) separates from Federal service; or (3) changes retirement coverage. However, recent automated advances obviate the need to immediately create and forward an IRR to OPM for every intra-agency transfer that only involves different payroll offices under the same system of automated records.

As a result of modernization efforts in automated record keeping software, early in the year 2000 the Defense Finance and Accounting Service (DFAS) plans to implement the automated transfer of large numbers of payroll accounts from one payroll office to another within their agency. This software also has the capability to electronically transfer retirement information as well as payroll information, thus securing an accurate record of retirement information for hard copy certification and transmittal to OPM when the employee falls into one of the three retained categories listed above (e.g., separates from Federal service).

For these reasons, the Office of Personnel Management is proposing to amend 5 CFR 841.504(d) to allow agencies this flexibility in intra-agency record keeping. OPM's authority to make this amendment is in section 8461(g) of title 5, United States Code.

Waiver of General Notice of Proposed Rulemaking

Under section 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making these rules effective in less than 30 days. These regulations will affect the operation of all Federal payroll offices on and after May 1, 2000. Publication of a general notice of proposed rulemaking would be contrary to the public interest because it would delay the implementation of cost saving automated record keeping measures that are non-controversial in nature.

Regulatory Flexibility Act

I certify that this amendment to the regulation will not have a significant economic impact on a substantial number of small entities because the amendment provides a cost-saving option previously unavailable to those agencies but does not require that they obtain the necessary software to implement that option.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 841

Administrative practice and procedure, Air traffic controllers, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions.

Office of Personnel Management

Janice R. Lachance,

Director.

Accordingly, OPM amends part 841 of title 5 of the Code of Federal Regulations as follows:

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

1. The authority citation for part 841 is revised to read as follows:

Authority: 5 U.S.C. 8461; § 841.108 also issued under 5 U.S.C. 552a; subpart D also issued under 5 U.S.C. 8423; § 841.504 also issued under 5 U.S.C. 8422; § 841.507 also issued under section 505 of Pub. L. 99–335, 100 Stat. 514; subpart J also issued under 5 U.S.C. 8469; § 841.506 also issued under 5 U.S.C. 7701(b)(2); § 841.508 also issued under section 505 of Pub. L. 99–335, 100 Stat. 514.

Subpart E—Employee Deductions and Government Contributions

2. In § 841.504 paragraph (d) is revised to read as follows:

§ 841.504 Agency responsibilities.

* * * * *

(d) When an employee separates from Federal service or transfers to another agency, or transfers to a position in which he or she is not covered by FERS, the agency must close the employee's

Individual Retirement Record (IRR) and forward it to OPM within the time standards prescribed by OPM. However, if an employee transfers to another position covered under FERS—

(1) Within the same agency, and

(2) To a position serviced by another payroll office, the agency may, in lieu of forwarding an IRR to OPM at the time of the intra-agency transfer, record the transfer for future IRR certification in an internal automated system of records.

* * * * *

[FR Doc. 00–9853 Filed 4–19–00; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 96–031–2]

RIN 0579–AA82

Importation of Wood Chips From Chile

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with changes, a proposed rule to allow the importation of *Pinus radiata* wood chips from Chile if the surfaces of the wood chips are treated with a specified pesticide mixture. This change to the regulations for importing logs, lumber, and other unmanufactured wood articles will provide another alternative for persons interested in importing wood chips from Chile while continuing to protect against the introduction of dangerous plant pests.

EFFECTIVE DATE: May 22, 2000.

FOR FURTHER INFORMATION CONTACT: Donna L. West, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

Logs, lumber, and other unmanufactured wood articles imported into the United States could pose a significant hazard of introducing plant pests and pathogens detrimental to agriculture and to natural, cultivated, and urban forest resources. The regulations in 7 CFR 319.40–1 through 319.40–11 (referred to below as the regulations) contain provisions to eliminate any significant plant pest risk presented by the importation of logs, lumber, and other unmanufactured wood articles.

On July 28, 1998, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** (63 FR 40193–40200, Docket No. 96–031–1) a proposed rule to amend the regulations to allow the importation of *Pinus radiata* wood chips from Chile if the surfaces of the wood chips are treated with a specified pesticide mixture.

We solicited comments concerning our proposed rule for 60 days ending September 28, 1998. We received 10 comments by that date. The comments were from four environmental groups (with overlapping management), three State governments, two corporations, and the Government of Chile. Seven of the commenters supported the proposed rule, although several stated that there were deficiencies in the rule that should be corrected before the rule could win their full support. The remaining commenters disagreed with the proposed rule or suggested alternatives to it. All of the issues raised by the commenters are discussed below.

Comment—Control of Stain Fungi: Several commenters questioned whether the surface pesticide treatment or other requirements of the rule would prevent the introduction of stain fungi, particularly of the genus *Ophiostoma,* that may be associated with wood chips from Chile.

Response: The surface pesticide treatment contained in the rule has been proven effective against stain fungi, including stain fungi of the genus *Ophiostoma.* Research demonstrating this effectiveness has been published (see, for example, Morrell, Freitag, and Silva, "Protection of Freshly Cut Radiata Pine Chips From Fungal Attack," Forest Prod. J. 48(2):57–59).

Comment—Heat Treatment Should Be Required: Several commenters stated that the position of most experts, State regulators, and members of the public is that heat treatment of imported wood articles capable of bearing pests is the only safe and acceptable method of importation. They stated that fumigation or surface pesticide treatment are not economically feasible or effective alternatives.

Response: "Safe" and "acceptable" are terms whose meanings vary greatly depending on individual values. We are assuming that the comments refer to safety and acceptability in terms of the effectiveness of systems in preventing the introduction and dissemination in the United States of dangerous plant pests. No commenter submitted data proving that a heat treatment system is "safer" than the proposed surface pesticide treatment system. The new surface pesticide treatment would reduce the risk associated with any plant pest introduction to a negligible level.

Regarding the practicality of heat treating wood chips, heat treated wood chips are less useful than wood chips that have undergone less destructive treatments. Heat treatment decreases the quality of wood chips and renders them useless for many specific manufacturing purposes. Regarding the economic feasibility of the proposed surface pesticide treatment and fumigation, wood product companies have requested that they be able to utilize the surface pesticide alternative and, therefore, presumably find it economically feasible. Under normal business practices, it is not economically feasible for methyl bromide to effectively penetrate wood chips to more than 120 cubic feet. When penetration is inadequate, the requirements of the regulations are not met, and the wood chips cannot be imported under the fumigation treatment option. In theory, it is possible to effectively penetrate large piles of wood chips by using a specialized technique to distribute the fumigant (*e.g.,* a vacuum chamber or submerged gas tubes); however, the cost of utilizing such a technique is so exorbitant that it becomes economically infeasible. Consequently, no one has imported large shipments of wood chips, fumigated as a whole, under the fumigation treatment option. Fumigation remains in the regulations as a treatment option for wood chips because it is used for small shipments. One reason for developing the surface pesticide treatment in the proposal was to compensate for the unavailability of fumigation as a treatment method for large shipments of wood chips.

Comment—Pesticide Application Protocol and Quality Control: One commenter cited research by Dr. Jeffrey J. Morell of Oregon State University that was used to support the treatment in the proposed rule. The commenter noted that the only pathogens tracked for efficacy in the research were *Trichoderma* species and that there was no efficacy evaluation for insects. The commenter stated that Morell concluded the following modifications of the surface pesticide treatment system may be needed: An increase in biocide concentration; improved uniformity of the spray system; routine assessment of chip treatment quality; and a system for regular microbiological assessment of organisms present in imported wood chips.

Response: Trichoderma species were not the only pathogens tracked in the research. Treated and untreated wood chips were placed in plastic bags and incubated for 16 weeks. The bag interiors were sprayed with suspensions of spores and hyphal fragments of *Alternaria alternata, Ophiostoma piceae, Phialophora* spp., and *Aspergillus niger*. The wood chips were then regularly visually assessed for growth of the inoculum or other species. Various *Trichoderma* species caused the highest degree of wood chip discoloration in the tests, but they were not the sole organisms tracked.

The research cited did not evaluate efficacy against insects because it was not practical to do so in an experimental protocol addressing fungicidal efficacy. The report did note that while insect infestation of wood is always a risk, it is sharply reduced in wood chip shipments due to the fragmented nature of the wood and the near absence of bark. The report also noted that the presence of low levels of an insecticide such as chlorpyrifos should provide added insurance against incidental oviposition. The proposed treatment included, along with fungicides, an insecticide containing 44.9 percent of the active ingredient chlorpyrifos phosphorothioate. This, along with the regulatory requirement that the wood chips be produced from debarked, plantation-grown trees, should reduce the risk of introduction of dangerous insects with wood chips imported under the regulations to a negligible level.

The highest concentration of the proposed fungicide tested in the research was a 400:1 dilution. The research found that while this dilution achieved acceptable results in preventing fungal growth for 4 weeks after treatment, the growth levels increased during the period from 4 weeks to 16 weeks after treatment. The research suggested that for long-term protection, dilution levels around 200:1 would be more appropriate. When diluted in accordance with the label instructions, as proposed, the treatment solution would in fact be stronger than a 200:1 dilution. Since this standard exceeds that recommended by the researcher, we are making no change based on this comment.

Regarding the comment that the researcher recommended improvement to the uniformity of the spray system, the researcher specifically recommended improvement of the current spray system to increase the uniformity of treatment to at least 70 to 80 percent average coverage of the wood chips. The proposed rule actually required that the wood chips be sprayed so that all the chips are exposed to the chemical on all sides. This standard exceeds that recommended by the researcher; therefore, we are making no change based on this comment. We do not believe it is necessary to specify detailed engineering standards for how chip producers must achieve this degree of coverage (placement and number of spray nozzles, conveyer belt speed and configuration, etc.) because this would limit the producers' options for developing their own cost-effective solutions to the problem.

As noted by the commenter, the researcher also recommended establishment of two quality control and monitoring systems to check whether chips are being properly treated and to check whether dangerous fungi are present on wood chips imported under this system. Specifically, the researcher recommended routine assessment of chip treatment quality through dye tests and image analysis of chip samples and regular microbiological assessment of organisms present on wood chip shipments entering the United States. These activities fall under the category of monitoring and enforcement activities that APHIS may employ to ensure that regulated parties are complying with the regulations. Since these are internal agency activities that do not impose any requirement for action by an outside party, it is not necessary to include standards for these activities in the regulations. However, APHIS will monitor treatments to ensure that wood chips imported under the regulations have been properly treated and do not present a risk of introducing dangerous plant pests.

Comment—Time Periods Allowed Between Harvesting of Trees and Treatment of Wood Chips; Time Period Allowed Between Arrival in United States and Processing of Wood Chips: One commenter objected that the proposal would allow wood chips that were treated immediately after a tree was felled and chipped to sit for 45 days before export from Chile to the United States, and that the research on the treatment showed its efficacy declined after 4 weeks. Two commenters objected to allowing storage of wood chips from Chile for up to 60 days after arrival at a facility operating under a compliance agreement and prior to processing. They noted that even the 30-day limit in the current regulations allows too much time for potential pests to escape from stored wood chips.

Response: We are making two changes in response to these comments. The rule still will require that no more than 45 days may elapse between the time the trees used to make the wood chips were felled and the time the wood chips are exported; however, the wood chips must be treated with the surface pesticide treatment within 24 hours after the log is chipped, and they must be retreated with the surface pesticide treatment if more than 30 days elapses between the date of the first treatment and the date of export. We are also changing the requirement for when wood chips imported from Chile under the regulations must be processed by reducing the time from 60 days after arrival at the processing facility to 45 days. We believe this is a safe time frame, given the requirements of the regulations for safeguards during movement and storage of the wood chips in the United States.

Comment—Adequacy of Environmental Assessment: Several commenters questioned whether the environmental assessment adequately dealt with human health and ecological risks that may be posed by pesticide residues on wood chips imported under the regulations. Specific concerns were raised about ammonium chloride, carbamate, and chloropyrifos residues, including carcinogenic effects and these substances' propensity for leaching into groundwater.

Response: The environmental assessment (EA) was revised in May 1999, and a finding of no significant impact (FONSI) has been signed. The revised EA provides information on the toxicity of the pesticides and the protective measures that reduce the potential for human and nontarget wildlife exposure to those pesticides. Copies of the EA and FONSI are available from the person identified under FOR FURTHER INFORMATION CONTACT, and will also be available at the following Internet address until at least March 1, 2000: http://www.aphis.usda.gov/ppd/eachips.pdf.

The main pesticides planned for treating wood chips are a fungicide with the active ingredients 64.8 percent didecyl dimethyl ammonium chloride (DDAC) and 7.6 percent 3-iodo-2-propynyl butylcarbamate (IPBC) and an insecticide with the active ingredient 44.9 percent chlorpyrifos phosphorothioate. The U.S. Environmental Protection Agency (EPA) approved these pesticides for specific uses on wood articles. The current label instructions call for these pesticides, when used as a spray treatment, to be diluted before use in the ratios of one gallon fungicide to 25–50 gallons of water for the fungicide, and one gallon of the insecticide to 50 gallons of water. When mixed together, the amounts of fungicide, insecticide, and water must be calculated so that each of the

fungicide and insecticide achieve a dilution within the range specified on its respective label. When diluted to a 1:50 ratio, the fungicide-insecticide mixture contains no more than 1.3 percent DDAC, 0.15 percent IPBC, and 0.9 percent chlorpyrifos phosphorothioate. The label for each pesticide carries exact information with detailed directions, including any restrictions for use or special precautions, and specifies any special equipment that must be used when applying these chemicals. The label also gives special disposal instructions for pesticide waste and containers. All pesticides used to treat wood chips for export from Chile to the United States are required to be applied according to the EPA-approved pesticide label.

The pesticides do leave residues, which would maintain the pest-free status of the wood chips while they are in transit to the United States. Although the degradation of IPBC and its primary degradation products is rapid (half lives of less than a week) (Troy Corporation, 1999), the caustic nature of the ammonium chloride on the wood chips prevents any potential for fungal reinfestation. The ammonium chloride in the pesticide is relatively volatile, and residues would mostly dissipate before arrival in the United States. The chlorpyrifos residues are more persistent and would continue to eliminate insect pest risks during transit.

The physical and toxicological properties of the pesticides determine the potential for nontarget hazards. The caustic nature of ammonium chloride can be highly irritating to eyes, skin, and the respiratory system. Unlike most carbamates, IPBC has not been shown to inhibit plasma and red blood cell acetylcholinesterase *in vitro* at concentrations as high as 1×10^{-4} molar (Troy Corporation, 1999). As a result, the acute toxicity of IPBC is low by all routes of exposure. However, IPBC can be an eye and skin irritant. Chronic dietary studies of IPBC have not found any evidence of carcinogenicity in either rats or mice (Troy Corporation, 1999) and have found adverse effects only at high exposures (40 milligram IPBC per kilogram body weight per day or greater). IPBC is of slight acute toxicity to birds but is highly to very highly toxic to fish and other aquatic organisms. Chlorpyrifos phosphorothioate is an organophosphate insecticide that is moderately toxic to mammals (Smith, 1987). The toxicity occurs primarily through inhibition of acetylcholinesterase activity (Klaassen *et al.*, 1986). The studies of chlorpyrifos phosphorothioate have not found any evidence of carcinogenic effects. Chlorpyrifos phosphorothioate is moderately to severely toxic to birds and very highly toxic to fish and other aquatic invertebrates (Smith, 1987; Mayer and Ellersieck, 1986).

The potential for human exposure to pesticides used in treatment of the wood chips is minimized by adherence to label requirements for proper application and to provisions in the rule regarding handling of the wood chips. The required adherence to the pesticide label prevents excessive exposure to applicators. The EPA has determined that the potential for adverse effects on human health is minimal when pesticides are applied according to label instructions. The rapid degradation of the pesticides results in steadily decreasing residues during transit. A covered conveyor belt moves the wood chips during unloading to expedite the process and minimize potential human exposure. Workers associated with the unloading activity are required to wear protective clothing and safety glasses. The covered conveyor belt is designed to prevent wood chips from spilling, falling, or being blown from the means of conveyance.

Although the wood chips may still have some residual pesticide residues before processing, the heat treatment and bleaching associated with the pulp and paper process would eliminate any remaining residues. Therefore, the potential for exposure to pesticide residues is limited to the personnel involved in treating the wood chips in Chile and to the personnel involved in moving the treated wood chips. The required safety precautions, protective clothing, and safety glasses preclude unacceptable pesticide exposures.

Exposure of nontarget species to residues from treated wood chips is minimal. The treatment and transport procedures preclude the presence of nontarget wildlife. Although wood chips that have been unloaded may be stored on a paved surface for up to 45 days, the remaining residues would be low. Birds and other terrestrial nontarget wildlife are unlikely to bother the wood chips with the frequent human activity on the property. The remaining residues (primarily chlorpyrifos) strongly adsorb to the organic matter in the wood chips, and this adsorption minimizes movement of residues in runoff following precipitation. In addition, water runoff is collected from the paved pads where the wood chips would be stored and is treated to prevent any environmental contamination of surrounding water bodies. This prevents any potential exposure to aquatic organisms.

Comment—Fumigated Wood Chips From Brazil Allowed Importation Into Louisiana. One commenter stated that wood chips from Brazil are currently being imported through Mobile, AL, into Louisiana subject only to fumigation in the ship's hold. The commenter asked whether such importation is safe without the surface pesticide treatment in the proposed rule and, if so, why the surface pesticide treatment, instead of fumigation, would be needed for wood chips from Chile.

Response: Based on the permit issued for this importation and records obtained from the State Plant Health Director in Louisiana, we have determined that two shipments of Caribbean pine chips from Brazil were imported into Mobile, AL, in 1997, and were then trucked to a paper mill in Bogaloosa, LA, where the chips were processed. The wood chips were derived from live, healthy, tropical species of plantation-grown trees grown in tropical areas, and, therefore, were not required by APHIS to be fumigated, in accordance with § 319.40–6(c)(1)(i) of the regulations. The shipments also met all of the other requirements of § 319.40–6(c) (*e.g.*, no other regulated articles in the holds; movement to the paper mill under a compliance agreement designed to prevent spread of plant pests during and after movement to the mill; processed within 30 days after arrival at the mill). The wood chips moved in sealed trucks from the port of entry to the destination paper mill where they were processed into manufactured goods. This importation was therefore in compliance with the regulations. As discussed in the proposed rule, the surface pesticide treatment was proposed as another alternative for importing wood chips from Chile, not a replacement for the current requirements contained in § 319.40–6(c) for importing wood chips from all sources. Therefore, this importation does not affect the basis for the proposed rule for importing wood chips from Chile subject to a surface pesticide spray and other requirements.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule with the changes discussed in this document.

Executive Order 12866

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

Set forth below are the economic analysis and cost-benefit analysis prepared for this rule in accordance with Executive Order 12866, as well as the final regulatory flexibility analysis regarding the economic effects of this rule on small entities, prepared in accordance with 5 U.S.C. 604.

Discussion

Under the Federal Plant Pest Act (7 U.S.C. 150aa–150jj), the Secretary of Agriculture is authorized to promulgate regulations requiring inspection of products and articles as a condition of their movement into or through the United States and imposing other conditions upon such movement, in order to prevent the dissemination of plant pests into the United States.

This rule amends the regulations for importing wood chips to allow the importation of *Pinus radiata* wood chips from Chile if the surfaces of the wood chips are treated with a pesticide approved by the Administrator for use on wood chips from Chile. Allowing the use of a surface pesticide treatment will make it possible to effectively treat large shipments of wood chips. Wood chips are used for making pulp used in the production of paper. U.S. pulp producers want to import *Pinus radiata* wood chips from Chile because these wood chips produce a high quality pulp. However, there is no treatment in the regulations that is both practical and effective in treating large shipments of these wood chips.

APHIS regulations in place until now have called for, along with other requirements, heat treatment or fumigation of imported wood materials. While these safeguards are appropriate for most wood materials, they are less useful for wood chips. Heating of wood chips is time consuming and decreases the quality of the chips. Fumigation of large shipments of wood chips is not economically practicable. Therefore, importation of *Pinus radiata* wood chips from Chile will be allowed following their surface treatment with a specified pesticide mixture. As discussed below, the efficacy of this treatment is demonstrated by 16 trial shipments of surface-treated *Pinus radiata* wood chips from Chile that have arrived without pests since February 1995.

Approximately $40 million worth of wood chips is imported into the United States each year for use in making pulp for paper production. Coniferous wood chip imports by the United States comprise less than one percent of domestic production.[1] About 30 percent of U.S. wood chip production takes place in the Pacific Northwest.[2] Wood chip imports to the United States have been mainly to the Pacific Northwest, although there have been recent shipments of Caribbean pine from Brazil that have entered through the port at Mobile, AL.

Wood chips are used mainly in the manufacture of pulp that is then used to make paper and panel products.[3] Test shipments of *Pinus radiata* wood chips from Chile during the last 3 years have been so utilized, and it is expected that future shipments facilitated by the surface pesticide treatment in this rule will also be used to make pulp.[4]

The demand for wood chips used by pulp mills is a derived demand, depending on the market for pulp.[5] While the long-term demand for pulp in the United States and internationally is expected to continue to expand (with increasing reliance on wood from plantation forests), pulp and wood chip prices can be volatile in the short term, causing relatively abrupt market changes. The variable demand for wood chips during the few years the Chilean test shipments have taken place illustrates how rapidly market conditions can change. Coniferous wood chip imports in 1995 by the United States nearly tripled those of 1994, with imports from Canada rising more than threefold, and test shipments from Chile doubling and displacing 1994 imports from Mexico.[6] The increase in demand was reflected in a 60 percent increase in the price paid in the United States for Chilean wood chips, from $42 per ton in 1994, to $67 per ton in 1995.[7] Comparable U.S. prices for domestically produced wood chips in these 2 years were $56 per ton in 1994 and $72 per ton in 1995.[8] Since then, prices have receded due to the current abundant supply of wood chips.

Chile's coniferous wood chip exports to the United States, 1994–1996, and Chile's share of coniferous wood chip imports by the United States are as follows:[9]

	Metric tons	Percent of imports
1994	168	00.05
1995	339,665	48.29
1996	329,387	44.06

In 1994, 57 percent of coniferous wood chip imports by the United States were from Mexico and 43 percent were from Canada. In 1995, pulp prices reached record levels, with U.S. coniferous wood chip imports more than doubling from the year before, to 703,000 metric tons from 331,000 metric tons. That year, no coniferous wood chips were imported from Mexico, 48 percent of imports came from Chile, 49 percent came from Canada, and 3 percent came from Brazil. In 1996, Canada's share of U.S. coniferous wood chip imports increased to 56 percent, 44 percent came from Chile, and none was received from Brazil.

Production of *Pinus radiata* wood chips in the United States is essentially nil, due to the relatively small region in which it grows well, about 6 miles inland along the coastal fog belt of central California (hence its common name, the Monterey pine). There may be some production from sawmill residues, but the quantity, if any, is negligible. No pulp mills are currently using domestically produced *Pinus radiata* wood chips.[10]

Economic effects on the U.S. wood chip industry of potential Chilean imports, therefore, depend on the substitutability of *Pinus radiata* wood chips for other softwood or for hardwood chips. Instances in which *Pinus radiata* and hardwood chips

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[1] Robert Flynn, private wood industry consultant, personal communication, drawing in part on information from "Southern Pulpwood Production, 1996," by Tony Johnson, USDA Forest Service, Southern Research Station, Resource Bulletin SRS–21.

[2] Richard Haynes, USDA Forest Service, personal communication.

[3] Chris Twarok, Department of Commerce, personal communication. Landscaping is a secondary use.

[4] J.S. Morrell, Department of Forest Products, Oregon State University, personal communication.

[5] The pulp fiber industry has traditionally been a softwood chip market, but this has been changing in recent years in the eastern United States. Pulp mills in the southeastern United States are relying increasingly on hardwood chips, where only softwood chips were once used. Long-term rising demand for wood chips is also reflected in an increasing number of "chipping" mills producing only wood chips; at least 100 of more than 140 wood chip mills in the southeastern United States have been constructed within the past decade. (Dennis Haldeman and Doug Sloane, personal communications).

[6] U.S. wood chip import and export statistics from Department of Commerce, Bureau of the Census.

[7] FAS Global Agricultural Trade System, using data from the United Nations Statistical Office.

[8] Richard Haynes, USDA Forest Service, personal communication. Domestic prices based on export prices for the Columbia-Snake Customs District, adjusted to "green" metric tons. Without consideration of transportation costs, these quoted prices may overestimate the price realized at a Pacific Northwest pulp mill for U.S. chips and underestimate the price realized for Chilean chips. Moreover, average yearly prices conceal seasonal variations.

[9] GAS Global Agricultural Trade System, using data from the United Nations Statistical Office.

[10] Robert Rummel, American Pulpwood Association, Robert Flynn, Robert Flynn and Associates, personal communications.

might substitute for each other are relatively few. However, *Pinus radiata* wood chips can generally be used in place of other coniferous chips such as lodgepole pine and ponderosa pine, although milling adjustments may be required—and costs incurred—due to differences in resin content.[11]

The test shipments of Chilean wood chips were received by pulp mills in the Pacific Northwest. This region is expected to continue to be the destination of future shipments, given the additional transportation costs that would be incurred by pulp mills in the eastern and southeastern United States. With sales regionally concentrated, little economic effect from this rule is expected outside the Pacific Northwest.

In sum, the test shipments from Chile have shown the value to Pacific Northwest pulp mills of Chilean wood chips in supplementing domestic and Canadian wood chip supplies when the price of pulp makes such shipments economically feasible. Pulp mills able to adjust milling processes to utilize *Pinus radiata* wood chips can benefit by making profitable use of Chilean imports when other sources are insufficient or more costly. As now described, Chile has the production capacity to be a reliable source of *Pinus radiata* wood chips to the United States.

Chile's wood chip industry grew significantly during the 1980s, with production increasing more than tenfold, from 0.44 million tons in 1984, to 5.03 million tons in 1990.[12] Chile's wood chip exports during this period rose from none in 1984, to 2.23 million tons (44 percent of production) in 1990. During the first half of the 1990s, both production and export levels fluctuated, but without the dramatic increases of the 1980s. Annual production between 1990 and 1995 averaged about 5.80 million tons, and exports averaged about 3.05 million tons (about 53 percent of production).

Pinus radiata wood chips comprise a minor share of Chile's wood chip exports.[13] Of the approximately 3 million tons of wood chips exported annually between 1990 and 1996, *Pinus radiata's* share averaged 12 percent. Between January and August, 1997, 10 percent of Chile's wood chip exports were *Pinus radiata.*

Japan was, by far, the principal importer of Chilean wood chips from 1990 to 1996. (Country destinations by species are not known for these years.) From 1990 to 1994, an average of 96 percent of Chile's wood chip exports were received by Japan. With the test shipments of *Pinus radiata* to the United States in 1995 and 1996, Japan's share of Chile's wood chip exports fell to 87 percent and 83 percent, respectively, and the U.S. share for these 2 years was 9 percent and 11 percent.

From January to August, 1997, Japan's share of Chile's wood chip exports was 89 percent. The United States and Japan each received about one-half of Chile's *Pinus radiata* wood chip exports during this 8-month period.

Chile's development of its forest products sector rests to a large degree on the success of *Pinus radiata;* its share of Chile's wood chip exports is expected to increase. By 1996 there were approximately 1,387,000 hectares planted in *Pinus radiata,* representing 75 percent of plantation plantings and 15 percent of Chile's forest resources including native forest.[14] This pine species matures at 20 to 24 years in Chile (thinnings are available for use after 15 years), compared to 30 years in New Zealand and Australia, and 40 to 60 years in North America and Europe. Production and exports are expected to peak during the coming decade, when trees on most of the *Pinus radiata* plantations will be ready to be harvested.

One set of projections describing the volume of *Pinus radiata* wood chips that could be exported to the United States over the coming 4 years, assuming favorable prices, is as follows:[15]

POTENTIAL *Pinus radiata* WOOD CHIP EXPORTS

[in million tons]

Year	From Chile to the United States
1999	0.60 to 1.00.
2000	1.00 to 1.20.
2001	0.90 to 1.00.
2002	0.85 to 0.90.

Realization of these export levels will depend on the demand for *Pinus radiata* wood chips by U.S. pulp mills. As has been described, international short-term demand for pulp fibers can be volatile. When prices fell between 1995 and 1996, Chile's forestry sector exports declined by 24 percent, mainly because of reduced sales to Japan.

Chile's stock of *Pinus radiata* available for harvest will enable Pacific Northwest importers to take advantage of a ready source as wood chip prices rebound. In 1996, all coniferous wood chip imports by the United States totaled about 0.75 million tons, of which 0.33 million tons were imported from Chile.[16] Projected export levels shown above would increase U.S. wood chip imports above current levels and establish Chile as a major foreign supplier. Wood chip prices in the United States will determine whether these projections are overly optimistic.

Summary

Benefits from allowing *Pinus radiata* wood chips to be imported from Chile include lower priced wood chips for pulp mills in the Pacific Northwest and lower priced products to consumers if lower input prices are reflected in lower retail prices. Greater choice among species for wood chip raw material is another benefit. Costs associated with risks of introducing pests are negligible because the procedures required to import Chilean wood chips under this rule are designed to keep the risk of importing pests to a negligible level. Since imports will be concentrated in the Pacific Northwest, economic effects will be felt mainly by wood chip producers and purchasers in the region. Wood chip producers may bear revenue losses if they are unable to compete with lower cost imports or adjust their product mix.

Test shipments of *Pinus radiata* wood chips from Chile to the Pacific Northwest during recent years have demonstrated the effectiveness of phytosanitary safeguards in this rule, as well as the economic feasibility of chip imports from Chile for the region's pulp mills. Chile's large and expanding forestry plantations are expected to provide a reliable source for future wood chip imports when there is sufficient demand. At present, the abundant supply of wood chips in the Pacific Northwest precludes imports, a market situation that differs dramatically from that of 4 years ago when wood chip prices reached an all-time high. Pacific Northwest pulp mills depend primarily on domestic wood

[11] Chris Twarok, Department of Commerce, personal communication.

[12] Information on Chile's wood chip production and exports taken from Wood Products: International Trade and Foreign Markets, FAS Circular Series WP 3–97, August 1997, Table 15.

[13] Information on Chile's *Pinus radiata* wood chip exports from APHIS, IS.

[14] "Forest Products, Annual Report," Office of Agricultural Affairs, American Embassy, Santiago, AGR Number C17033, 1997.

[15] Fernando Hartwig, Inversiones Forestales C.C.A., personal communication.

[16] The United States is a net exporter of coniferous and nonconiferous wood chips. Compared to coniferous wood chip imports of 0.75 million tons in 1996, the United States exported 1.78 million tons. Nonconiferous wood chip imports and exports by the United States exhibit an even larger difference, with 1996 imports totaling about 55,000 tons and exports at 4.29 million tons. (Department of Commerce, Bureau of the Census).

chip suppliers but turn to overseas sources when domestic wood chip prices are high. Chilean imports can be expected to be competitively marketed when the domestic wood chip supply is low, since *Pinus radiata* wood chips can substitute for most other softwood chips. Some domestic wood chip producers may be adversely affected by Chilean imports, but the effect is not likely to be widespread; most domestic wood chip producers who cannot compete may adjust their product mix away from wood chips to other mill products.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 603, we performed an initial regulatory flexibility analysis, which was included in the proposed rule and which invited submission of comments and data to assist in a comprehensive analysis of the effects of this rule on small entities. We received one comment addressing the initial regulatory flexibility analysis. This comment stressed that the economics of domestic industries that might import wood chips are dynamic and change almost monthly; and, therefore, any prediction of import volume would be solely a guess. The comment also stated that if Chilean wood chips cost more than domestic supplies, they will be sought only if domestic supplies diminish below the amount required, and that at that point the owners of pulp mills (the major user of wood chips) will make a financial decision whether to pay higher prices for imported supplies or close mills. The comment also suggested that only a few wood chip consuming businesses located near seaports will be likely to import wood chips from Chile, but that some of these businesses do require the option of importing Chilean wood chips to stay in business.

We largely agree that these points correctly describe the current economic situation regarding importation of Chilean wood chips, and have taken the comment into account in the final regulatory flexibility analysis set out below. However, we note that if for any reason there is a significant decrease in domestic wood chip production, or a significant increase in their price, many more wood chip consumers, regardless of whether they are located near seaports, may decide to import wood chips from Chile.

The Regulatory Flexibility Act requires consideration of the potential economic effects of rules on small businesses, organizations, and governmental jurisdictions. In this instance, small entities directly affected will be U.S. wood chip producers and pulp mills in the Pacific Northwest.

Wood chip production is included in the SIC category for firms operating sawmills and planing mills. In most cases, wood chips are a byproduct of lumber production. A mill will vary its level of wood chip production (compared to other products) based on whether wood chip prices are high or low at a particular point in time. In the Pacific Northwest, about 150 mills produce wood chips (90 in Oregon and 60 in Washington), but more than one may be owned by the same firm.[17] Data on the exact number of firms is not available. Sawmills and planing mills that employ 500 people or fewer are designated by the Small Business Administration as "small." In 1994, there were 5,241 firms operating sawmills and planing mills in the United States, of which 5,149 (more than 98 percent) were small.[18] Estimated annual receipts of these 5,149 "small" firms totaled about $14.88 billion, which was 62 percent of total annual receipts of about $23.93 billion earned by all sawmills and planing mills. In the absence of information on mill firm sizes specific to Oregon and Washington, it is assumed that most sawmills in the Pacific Northwest are also small entities.

Adverse economic effects on most "small" U.S. wood chip producers due to this rule will be minor. The Chilean imports are expected to be sold in the Pacific Northwest, thereby affecting a geographical subset of all wood chip producers. Adverse economic effects on Pacific Northwest wood chip producers will depend on the ability of such producers to find lower priced raw materials to produce wood chips or otherwise reduce cost, and the extent of their reliance on wood chips for their net revenues. Producers of those wood chips that are substitutes for *Pinus radiata* chips will find their net returns reduced when import prices are low. As raw materials used for wood chip production grow increasingly scarce and expensive in the Pacific Northwest, those wood chip producers that compete with lower priced imports will face adjustment pressures. However, U.S. wood chip producers already feel competition from other international sources.

It is estimated that less than 5 percent of wood chip producers in the Pacific Northwest are "chipping" mills devoted solely to wood chip production.[19] However, during periods of high wood chip demand, such as 4 years ago, many sawmills may be converted largely to wood chip production.

Turning to the pulp mills, themselves, there were 37 firms operating pulp mills in the United States in 1994. Often more than one pulp mill is owned by a single firm. Pulp mill firms employing 750 people or fewer are designated by the Small Business Administration as "small." In 1994, between 20 and 25 of the 37 firms were small, that is, between 54 and 68 percent of the total number of firms. Estimated annual receipts of these 20 to 25 "small" firms totaled between about $383 million and about $1.12 billion, which represented between 7 percent and 21 percent of total annual receipts by all pulp mills of about $5.30 billion. About 10 percent of U.S. pulp mills are in the Pacific Northwest.

Due to resin-content differences, pulp mills cannot use various species of wood chips indiscriminately. Pulp mills designed to process wood chips of *Pinus radiata* or similar species should, therefore, be the only ones directly affected by this rule. It is estimated that less than one-half of U.S. pulp mills could use *Pinus radiata* wood chips.[20] Assuming an equal distribution of these pulp mills among all pulp mills, size-wise, "small" pulp mill firms directly affected would then number between 10 and 13, based on 1994 data. These numbers are likely to be an overestimation, since not all of the "small" firms that could utilize *Pinus radiata* wood chips are necessarily located in the Pacific Northwest. Regardless of the number of affected "small" pulp mill firms, having Chile as a source of *Pinus radiata* wood chips should be beneficial to pulp mills and their customers, to the extent lower chip prices are reflected in lower product prices.

Test shipments of *Pinus radiata* wood chips from Chile have been successfully imported by pulp mills in the Pacific Northwest. This rule will enable such shipments, using a surface pesticide treatment, to continue to take place when economically feasible. Although *Pinus radiata* wood chip production in the United States is negligible, this species can substitute for other species as a pulp fiber, given certain milling adjustments. Off-shore wood chip sources to supplement domestic supply are advantageous to pulp mills, given

[17] Richard Haynes, USDA Forest Service, personal communication.

[18] This is the latest year for which data is available from the "SBA Office of Advocacy, Statistics on Small Business" Web home page.

[19] Richard Haynes, USDA Forest Service; personal communication.

[20] Byron Lundi, Georgia-Pacific, personal communication.

the volatility of pulp prices. Chile's wood products industry has a large export component and is expected to be a reliable source when pulp prices prompt wood chip exports to the United States. Adverse economic effects for wood chip producers in the Pacific Northwest will be felt by those producers who are unable to reduce costs to meet import competition and who rely heavily on revenues from wood chips.

No figures are available concerning potential costs of pest introductions through importation of *Pinus radiata* wood chips from Chile. A pest risk assessment for the importation of *Pinus radiata* logs from Chile ("Pest Risk Assessment of the Importation of *Pinus radiata, Nothofagus dombeyi,* and *Laurelia philippiana* Logs from Chile," USDA Forest Service, Miscellaneous Publication No. 1517, September 1993) provides the phytosanitary basis for allowing the wood chips to be imported if they are treated as prescribed. The pest risk assessment supports our determination that *Pinus radiata* wood chips may be imported from Chile with negligible risk.

The pest risk assessment reported that in sharp contrast to native forests in Chile, that country's *Pinus radiata* plantations are relatively free of major insect and disease problems. Exceptions include the recently introduced European pine shoot moth (*Rhyaccionia buoliana*), *Hylurgus ligniperda* and two other species of European bark beetles, several needle disease fungi (*Dothistroma pini* and *Lophodermium* spp., among others), diplodia shoot blight (*Sphaeropsis sapinea*), and two species of blue stain fungi (*Ophiostoma picea* and *O. piliferum*). The wood wasp *Sirex noctilio* (considered to be the most important pest on *Pinus radiata* logs exported from New Zealand) and pine wood nematodes (*Bursaphelenchus* spp.) have yet to be found in Chile.

Among the insect pests of *Pinus radiata* analyzed in detail in the pest risk assessment, only the bark beetle *Hylurgus ligniperda* was considered to have a high pest risk potential. Moderate pest risk potentials were assigned to *Rhyephenes* spp., *Ernobius mollis, Urocerus gigas gigas, Neotermes chilensis, Porotermes quadricollis, Colobura alboplagiata,* and *Buprestis novemmaculata*. Among the pathogens, the stain fungi (*Ophiostoma* spp.) were found to merit a moderate to high pest risk potential, whereas the complex of needle diseases (*Dothistroma pini* and other species) and diplodia shoot blight (*Sphaeropsis sapinea*) were rated as moderate risks. Other pathogens were considered to be of low risk. One weed of concern (*Imperata condensata,* considered a variety of *I. cylindrica* or cogongrass) was identified.

Pests potentially affecting untreated *Pinus radiata* wood chips are a subset of those identified in the pest risk assessment, since wood chip production will physically remove or destroy most pests that could be present in the logs. Treatment with the surface pesticide required by this rule should prevent entry into the United States of any harmful insects or fungi that might remain.

The Pacific Northwest's coastal ranges and Cascade Mountains have some of the highest quality natural and planted conifer forests in the world, producing commodities ranging from pulp and paper, to lumber for construction, to ornamentals and Christmas trees. Introduced pests such as those described could affect forestry industries directly by causing damage or indirectly by curtailing commerce through quarantines.

Some potential costs of foreign timber pests have been estimated in other instances. For example, a pest risk assessment concerning Siberian timber imports estimated that the introduction of a single pest, larch canker, could cause direct timber losses of $129 million annually. The same study estimated that a worst-case scenario involving heavy establishment of exotic defoliators in the United States could cost $58 billion.[21]

Concerning consumer and producer effects of allowing *Pinus radiata* wood chips to be imported from Chile, data are insufficient to permit confident estimation of welfare changes. Time-series data for the estimation of elasticities of supply and demand are not available. Circumstantial evidence, however, suggests that pulp producers and pulp product consumers benefit from *Pinus radiata* wood chip imports from Chile, when their relative price is low compared to that of other wood chip species or sources. The test shipments from Chile resulted in U.S. wood chip imports worth $22.8 million and $19.3 million in 1995 and 1996, respectively. These shipments represented over 48 and 44 percent of all U.S. coniferous wood chip imports in those 2 years.[22]

The continuing reduction in timber sources in the Pacific Northwest will encourage more wood imports in the future, and Chile's expanded commercial forestry plantings promise a prominent role for that country as a wood products exporter. Effects on prices, if any, from imports for U.S. wood chip producers should be very small, since coniferous wood chip imports are less than one percent of U.S. production.

Moreover, trade statistics indicate that U.S. coniferous wood chip producers are finding overseas markets as profitable as their Chilean counterparts. U.S. coniferous wood chip exports in 1995 were valued at more than $222 million, and in 1996, at more than $181 million. As is true for Chile, the principal overseas coniferous wood chip market for the United States is Japan.[23]

This rule includes a reporting and recordkeeping requirement that wood chips imported from Chile must be accompanied by a certificate issued by the Government of Chile, stating that all the applicable requirements of the regulations have been met.

We considered taking no action as an alternative to this rule. The no action alternative was rejected because we believe that the provisions of this rule will provide more supply alternatives for wood chip consumers, and make compliance easier for regulated individuals, without increasing the risk of introducing a plant pest into the United States.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the importation of *Pinus radiata* wood chips from Chile under the conditions specified in this rule will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were

[21] "Importation of Logs, Lumber, and Other Unmanufactured Wood Articles: Final Supplemental to the Environmental Impact Statement, May 1988," USDA APHIS.

[22] FAS Global Agricultural Trade System, using data from the United Nations Statistical Office.

[23] FAS Global Trade System, using data from the United Nations Statistical Office.

prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB). The assigned OMB control number is 0579–0135.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 319.40–1, a definition of the word *fines* is added in alphabetical order to read as follows:

§ 319.40–1 Definitions.

* * * * *

Fines. Small particles or fragments of wood, slightly larger than sawdust, that result from chipping, sawing, or processing wood.

* * * * *

3. In § 319.40–6, paragraph (c) is revised to read as follows:

§ 319.40–6 Universal importation options.

* * * * *

(c) *Wood chips and bark chips.* (1) *From Chile.* Wood chips from Chile that are derived from Monterey or Radiata pine *(Pinus radiata)* logs may be imported in accordance with § 319.40–6(c)(2) or in accordance with the following requirements:

(i) The wood chips must be accompanied by a certificate stating that the wood chips meet the requirements in paragraphs (c)(1)(i)(A) through (c)(1)(i)(C) of this section.

(A) The wood chips were treated with a surface pesticide treatment in accordance with § 319.40–7(e) within 24 hours after the log was chipped and were retreated with a surface pesticide treatment in accordance with § 319.40–7(e) if more than 30 days elapsed between the date of the first treatment and the date of export to the United States.

(B) The wood chips were derived from logs from live, healthy, plantation-grown trees that were apparently free of plant pests, plant pest damage, and decay organisms, and the logs used to make the wood chips were debarked in accordance with § 319.40–7(b) before being chipped.

(C) No more than 45 days elapsed from the time the trees used to make the wood chips were felled to the time the wood chips were exported.

(ii) During shipment to the United States, no other regulated articles (other than solid wood packing materials) are permitted in the holds or sealed containers carrying the wood chips. Wood chips on the vessel's deck must be in a sealed container.

(iii) The wood chips must be consigned to a facility in the United States that operates under a compliance agreement in accordance with § 319.40–8. The following requirements apply upon arrival of the wood chips in the United States:

(A) Upon arrival in the United States, the wood chips must be unloaded by a conveyor that is covered to prevent the chips from being blown by the wind and from accidental spillage. The facility receiving the wood chips must have a procedure in place to retrieve any chips that fall during unloading.

(B) If the wood chips must be transported after arrival, the chips must be covered or safeguarded in a manner that prevents the chips from spilling or falling off the means of conveyance or from being blown off the means of conveyance by wind.

(C) The wood chips must be stored at the facility on a paved surface and must be kept segregated from other regulated articles from the time of discharge from the means of conveyance until the chips are processed. The storage area must not be adjacent to wooded areas.

(D) The wood chips must be processed within 45 days of arrival at the facility. Any fines or unusable wood chips must be disposed of by burning within 45 days of arrival at the facility.

(2) *From locations other than certain places in Asia.* Wood chips and bark chips from any place except places in Asia that are east of 60° east longitude and north of the Tropic of Cancer may be imported in accordance with this paragraph.

(i) The wood chips or bark chips must be accompanied by an importer document stating that the wood chips or bark chips were either:

(A) Derived from live, healthy, tropical species of plantation-grown trees grown in tropical areas; or

(B) Fumigated with methyl bromide in accordance with § 319.40–7(f)(3), heat treated in accordance with § 319.40–7(c), or heat treated with moisture reduction in accordance with § 319.40–7(d).

(ii) During shipment to the United States, no other regulated articles (other than solid wood packing materials) are permitted in the holds or sealed containers carrying the wood chips or bark chips. Wood chips or bark chips on the vessel's deck must be in a sealed container; *Except that:* If the wood chips or bark chips are derived from live, healthy, plantation-grown trees in tropical areas, they may be shipped on deck if no other regulated articles are present on the vessel and the wood chips or bark chips are completely covered by a tarpaulin during the entire journey directly to the United States.

(iii) The wood chips or bark chips must be free from rot at the time of importation, unless accompanied by an importer document stating that the entire lot was fumigated with methyl bromide in accordance with § 319.40–7(f)(3), heat treated in accordance with § 319.40–7(c), or heat treated with moisture reduction in accordance with § 319.40–7(d).

(iv) Wood chips or bark chips imported in accordance with this paragraph must be consigned to a facility operating under a compliance agreement in accordance with § 319.40–8. The wood chips or bark chips must be burned, heat treated in accordance with § 319.40–7(c), heat treated with moisture reduction in accordance with § 319.40–7(d), or otherwise processed in a manner that will destroy any plant pests associated with the wood chips or bark chips within 30 days of arrival at the facility. If the wood chips or bark chips are to be used for mulching or

composting, they must first be fumigated in accordance with § 319.40–7(f)(3), heat treated in accordance with § 319.40–7(c), or heat treated with moisture reduction in accordance with § 319.40–7(d).

* * * * *

4. In § 319.40–7, paragraph (e) is revised to read as follows.

§ 319.40–7 Treatments and safeguards.

* * * * *

(e) *Surface pesticide treatments.* All United States Environmental Protection Agency registered surface pesticide treatments are authorized for regulated articles imported in accordance with this subpart, except that *Pinus radiata* wood chips from Chile must be treated in accordance with § 319.40–7(e)(2). Surface pesticide treatments must be conducted in accordance with label directions approved by the United States Environmental Protection Agency. Under the following circumstances, surface pesticide treatments must also be conducted as follows:

(1) *Heat treated logs.* When used on heat treated logs, a surface pesticide treatment must be first applied within 48 hours following heat treatment. The surface pesticide treatment must be repeated at least every 30 days during storage of the regulated article, with the final treatment occurring no more than 30 days prior to departure of the means of conveyance that carries the regulated articles to the United States.

(2) *Pinus radiata wood chips from Chile.* When used on *Pinus radiata* wood chips from Chile, a surface pesticide consisting of the following must be used: A mixture of a fungicide containing 64.8percent of the active ingredient didecyl dimethyl ammonium chloride and 7.6 percent of the active ingredient 3-iodo-2-propynl butylcarbamate and an insecticide containing 44.9percent of the active ingredient chlorpyrifos phosphorothioate. The wood chips must be sprayed with the pesticide so that all the chips are exposed to the chemical on all sides. During the entire interval between treatment and export, the wood chips must be stored, handled, or safeguarded in a manner that prevents any infestation of the wood chips by plant pests.

* * * * *

Done in Washington, DC, this 17th day of April 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–9937 Filed 4–19–00; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Chapter VI

RIN 3052–AB97

Regulatory Burden

AGENCY: Farm Credit Administration (FCA).

ACTION: Statement on regulatory burden.

SUMMARY: This is the second phase of our recent initiative to reduce regulatory burden on the Farm Credit System (FCS or System). Many System institutions responded to our August 1998 request for comments by identifying regulations that they considered burdensome. We deleted several unnecessary or obsolete regulations in the first phase of this project. This document informs the public of those regulations that we will retain without amendment because they either: Implement or interpret the Farm Credit Act of 1971, as amended (Act); or protect the safety and soundness of the System. We also identify pending or future actions that will respond to remaining regulatory burden issues.

FOR FURTHER INFORMATION CONTACT:

Alan Markowitz, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4479;

or

Richard A. Katz, Senior Attorney, or Beth Salyer, Attorney-Advisor, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

On August 18, 1998, we published a document in the **Federal Register** inviting you to identify existing regulations and policies that impose unnecessary burdens on the FCS. *See* 63 FR 44176. On November 18, 1998, we extended the comment period to January 19, 1999. *See* 63 FR 64013. We specifically asked you to focus on those regulations and policies that are ineffective, duplicate other governmental requirements, or impose burdens that are greater than the benefits received. We took this action in our continuing effort to improve the regulatory environment so System institutions can more effectively serve farmers, ranchers, aquatic producers, their cooperatives, and other rural residents.

In the first phase of our effort to reduce regulatory burden on the FCS, we repealed or revised 16 regulations. *See* 64 FR 43046, Aug. 9, 1999.

The purpose of this document is to inform you of those regulations that we will retain without amendment. In most cases, these regulations are either required by statute or are necessary to ensure the safety and soundness of System institutions. For these reasons, the FCA will not make the suggested changes to the following regulations: §§ 613.3020; 613.3030; 613.3300; 614.4200(b)(1); 614.4335(c)(1)(i); 614.4359; and 614.4920. The next section explains our reasons for retaining these regulations.

II. Regulations that We Will Retain Without Revision

A. Farm-related Businesses

Seven commenters asked us to amend § 613.3020 so the FCS can finance farm-related businesses that supply only goods to farmers and ranchers. Sections 1.11(c)(1) and 2.4(a)(3) of the Act limit eligibility to businesses that furnish farm-related services to farmers and ranchers. Businesses that sell only farm-related goods to agricultural producers do not qualify for FCS financing under these provisions of the Act. Therefore, we cannot grant this request.

Two Farm Credit banks and one association asked us to amend § 613.3020(b)(2) to allow businesses that derive less than 50 percent of their income from farm-related services to obtain System financing for all of their credit needs. The FCA updated this regulation in 1997 to expand financing opportunities for farm-related businesses that offer both goods and services. At that time, the FCA Board determined that a 50-percent threshold gave appropriate effect to the Act. *See* 62 FR 4429, Jan. 30, 1997. This standard ensures that only businesses that primarily provide farm-related services receive full financing from System lenders. The United States Court of Appeals recently upheld the provisions in § 613.3020(b) that limit System financing to eligible businesses that derive less than 50 percent of their income from furnishing farm-related services to farmers and ranchers.[1] We continue to believe that the current regulation strikes the best balance for securing the credit needs of farm-related business within the limitations of the Act.

B. Rural Housing

Many System institutions assert that § 613.3030 unnecessarily restricts the System's ability to finance housing for rural residents who are not farmers,

[1] *Independent Bankers Association of America* v. *Farm Credit Administration*, 164 F.3d 661 (D.C. Cir. 1999).

ranchers, or aquatic producers. Two FCS banks, an association, and the Farm Credit Council (Council) requested relief from § 613.3030(a)(3), which allows System lenders to finance non-farm rural homes only in towns or villages with populations not exceeding 2,500 inhabitants. Changing population patterns since Congress set this limit almost 30 years ago make it increasingly difficult for the System to meet the credit needs of homebuyers in rural areas. Because this restriction is statutory, however, we cannot grant the commenters' request.

Three Farm Credit banks and the Council asked us to repeal § 613.3030(c). Under this provision, FCS banks and associations can extend credit to eligible rural homeowners only for the purposes of buying, building, remodeling, repairing or improving rural homes, or refinancing the existing indebtedness on such homes. The commenters want us to remove this restriction so eligible non-farm rural homeowners can borrow against the equity in their homes and use the loan proceeds for any purpose. We thoroughly addressed this issue when we developed § 613.3030 during an extensive rulemaking that ended in 1997. *See* 62 FR 4429, Jan. 30, 1997. We are not inclined to change our policy at this time.

C. Similar Entities

A Farm Credit bank requested changes to § 613.3300, which governs FCS participation in loans that non-System lenders make to similar entities. Under sections 3.1(11)(B) and 4.18A of the Act, similar entities are parties that are ineligible to borrow directly from System banks and associations but derive most of their income from, or have most of their assets invested in, the same activities as eligible borrowers.

The bank wants us to revise the rule so the FCS can make loans directly to similar entities. We cannot grant this request because sections 3.1(11)(B) and 4.18A of the Act do not authorize Farm Credit banks and associations to lend directly to similar entities. These statutory provisions specify that System institutions may only participate in credits that non-System lenders extend to similar entities. Further, sections 3.1(11)(B)(i)(bb) and 4.18A(b)(2) of the Act limit System participation in similar entity loans to less than 50 percent of the principal.

D. First Lien Requirement

Three Farm Credit banks, one association, and the Council asked us to repeal a provision in § 614.4200(b)(1) that requires Farm Credit banks, Federal land credit associations, and agricultural credit associations to secure their long-term mortgage loans with a first lien on the borrower's real estate. Section 1.7(a)(1) of the Act expressly requires FCS long-term mortgage lenders to take a first lien on the borrower's property in a rural area as security for the loan. Thus, this regulation cannot be repealed. Additionally, failure to secure a long-term mortgage loan with a first lien on the security property may be an unsafe and unsound practice. However, long-term mortgage lenders may still take additional collateral without a first lien, as an abundance of caution.

E. Borrower Stock for Loan Sales Within the FCS

Currently, § 614.4335(c)(1)(i) allows borrowers whose loans are sold within the FCS to decide whether to hold voting stock in the association that bought or sold their loans. Two Farm Credit banks, two associations, and the Council requested a revision that would allow System institutions involved in the transactions, rather than the borrower, to make this choice. We believe it is the right of a stockholder to elect whether to hold stock in a selling or purchasing FCS institution. This shareholder right is a basic tenant of FCS cooperative principles and this provision ensures that farmers, ranchers, and aquatic producers have the right to participate in the affairs of the FCS association of their choice when their loans are sold within the System.

F. Attribution Rules for Lending Limit Calculations

Two Farm Credit banks, one association, and the Council asked us to revise the attribution rules for calculating lending limits. These commenters claim that the current regulation, § 614.4359, is confusing. The FCA is fully committed to the plain language goals of the National Performance Review. Therefore, we plan to rewrite these regulations so they are easier to understand and apply. However, we do not plan to make substantive changes to the attribution rules at this time. We believe they protect the safety and soundness of System banks and associations by limiting their exposure to risk from any one borrower or a group of related borrowers. Additionally, our existing regulation is consistent with the approach of other Federal bank regulatory agencies.

G. Flood Insurance

Two Farm Credit banks asked us to exempt certain farm and ranch outbuildings and commercial agribusiness firms from flood insurance requirements. The National Flood Insurance Reform Act of 1994 (1994 Reform Act) requires flood insurance for all buildings that secure loans made by the FCS, commercial banks, credit unions, and savings associations if those buildings are in areas that the Federal Emergency Management Agency deems to be in special flood hazard areas. The 1994 Reform Act offers no flexibility for the FCA to make regulatory exclusions for farm and ranch outbuildings, or commercial agribusiness firms. Furthermore, we joined with five other Federal bank regulatory agencies to ensure that the same flood insurance rules apply to commercial banks, savings associations, credit unions, and the FCS. Therefore, we are unable to repeal § 614.4920(b) because it is a statutory requirement.

III. Future Efforts to Reduce Unnecessary Regulatory Burdens on FCS Institutions

We will address all remaining regulatory burden issues that System institutions raised during the comment period in separate regulatory projects. The comments indicate that some System institutions may need guidance about how some regulations mentioned in Part II of this statement apply in certain situations. We hope to clarify these regulations in the future. When we complete our efforts, the regulatory burdens on the System will be reduced. However, we will maintain those regulations that are necessary to implement the Act and are critical for the safety and soundness of the System. Our approach will enable the FCS to continue to provide much needed credit to America's farmers, ranchers, aquatic producers, their cooperatives and other rural residents.

Dated: April 13, 2000.

Vivian Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 00–9850 Filed 4–19–00; 8:45 am]

BILLING CODE 6705–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its rule pertaining to secondary capital accounts for low-income designated credit unions to conform it to the recently issued prompt corrective action rule (PCA). Under PCA, NCUA has discretionary authority, under certain circumstances, to prohibit a credit union from paying principal, dividends or interest on the credit union's secondary capital accounts established after August 7, 2000.

DATES: This rule is effective August 7, 2000.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Frank S. Kressman, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION: Federal credit unions that serve predominantly low-income members may be designated by NCUA as low-income credit unions (LICUs). LICUs play an important role in providing financial services to low-income individuals and communities for whom these services are often unavailable. LICUs often find it difficult, however, to accumulate capital due to the limited resources of their members. To enhance LICUs' ability to build capital, § 701.34 of NCUA's regulations permits LICUs to offer uninsured secondary capital accounts to nonnatural person members and nonmembers. 12 CFR § 701.34.

Section 701.34 provides that funds in the secondary capital account must be available to cover operating losses realized by the credit union that exceed its net available reserves and undivided earnings. It also provides that, to the extent secondary capital account funds are used to cover operating losses, the credit union cannot replenish those funds under any circumstances.

In 1998, Congress amended the Federal Credit Union Act to establish minimum capital standards for federally-insured credit unions. NCUA was required to adopt, by regulation, a PCA system to restore the capital level of credit unions that become inadequately capitalized. The NCUA Board has established, among other things, a comprehensive framework of mandatory and discretionary supervisory actions indexed to defined net worth categories. 65 FR 8559 (February 18, 2000).

Within that framework, PCA distinguishes "new" credit unions, those that have been in operation less than 10 years and have $10 million or less in assets, from other credit unions. 12 U.S.C. 1790d(o)(4). New credit unions are subject to an alternative system of PCA with net worth categories that differ from those applicable to other credit unions. 12 U.S.C. 1790d(b)(2)(A).

A credit union, other than a new credit union, that has a net worth ratio of less than 2% is categorized as "critically undercapitalized". Section 702.204(b)(11) of the PCA rules permits NCUA to take discretionary action against critically undercapitalized credit unions. Specifically, it provides that:

> Beginning 60 days after the effective date of classification of a credit union as "critically undercapitalized," [NCUA has the discretion to] prohibit payments of principal, dividends or interest on the credit union's uninsured secondary capital accounts established after August 7, 2000, except that unpaid dividends or interest shall continue to accrue under the terms of the account to the extent permitted by law * * *.

12 CFR 702.204(b)(11).

New credit unions with net worth ratios of less than 6% are categorized as "moderately capitalized" (3.5%–5.99%), "marginally capitalized" (2%–3.49%), "minimally capitalized" (0%–1.99%) or "uncapitalized" (less than 0%). 12 CFR 702.302(c). Sections 702.304(b) and 702.305(b) of the PCA rules permit NCUA to take discretionary actions against new credit unions that fall within these categories. Specifically, each provides that:

> [T]he NCUA Board may, by directive, take one or more of the actions prescribed in § 702.204(b) [of the PCA rules, including the prohibition of payments on secondary capital accounts] if the credit union's net worth ratio has not increased consistent with its then-present business plan, or the credit union has failed to undertake any mandatory supervisory action prescribed in paragraph (a) of this section.

12 CFR 702.304(b) and 702.305(b).

The below amendments conform the secondary capital rules to the PCA rules.

Final Rule

The NCUA Board has issued this as a final rule effective August 7, 2000. There is a strong public interest in having secondary capital rules in place that are consistent with and conform to the provisions of PCA. As part of the PCA rulemaking process, notice of and an opportunity to comment on the below amendments to the secondary capital rule were given in compliance with the Administrative Procedure Act (5 U.S.C. 551) (APA). 63 FR 57938 (October 29, 1998); 64 FR 27090 (May 18, 1999); 64 FR 44663 (August 17, 1999); 65 FR 8559 (February 18, 2000). Comments pertaining to these amendments were incorporated into PCA. Additionally, these conforming amendments are being published far in advance of the 30 days required by Section 553(d) of the APA (5 U.S.C. 553(d)) as neither PCA nor the conforming amendments are effective until August 7, 2000. Accordingly, for good cause, the Board finds that, with respect to the conforming amendments, NCUA has complied with the notice and public procedure requirements of the APA. The Board also finds that additional notice and public procedure would be duplicative and excessive and, therefore, under 5 U.S.C. 553(b)(3)(B), are impracticable, unnecessary, and contrary to the public interest.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact agency rulemaking may have on a substantial number of small credit unions. For purposes of this analysis, credit unions under $1 million in assets are considered small credit unions. As of June 30, 1999, there were 1,690 small credit unions with a total of $807.3 million in assets, having an average size of $0.5 million. Small credit unions make up 15.6% of all credit unions, but only 0.2% of all credit union assets.

It is anticipated that this final rule will effect relatively few small credit unions. It will apply only to those credit unions that establish secondary capital accounts after August 7, 2000 that then become classified as critically undercapitalized or otherwise trigger potential discretionary action under PCA. Even then, corrective action will only be taken where NCUA chooses to exercise its discretion to do so. NCUA has determined that this rule will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

NCUA has determined that these amendments to § 701.34 do not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies

with the executive order. This rule will apply to all federally-insured credit unions offering secondary capital accounts pursuant to § 701.34, but it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

Assessment of Federal Regulations and Policies on Families

NCUA has determined that this rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the APA. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 12 CFR Part 701

Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on April 13, 2000.

Becky Baker,

Secretary of the Board.

For the reasons set forth above, 12 CFR part 701 is amended as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1861 and 42 U.S.C. 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

2. Section 701.34 is amended by adding paragraphs (b)(12) and (b)(13) to read as follows:

§ 701.34 Designation of low-income status; receipt of secondary capital accounts by low-income designated credit unions.

* * * * *

(b) * * *

(12) As provided in § 702.204(b)(11) of this chapter, 60 days after the effective date of a credit union being classified as "critically undercapitalized" under NCUA's prompt corrective action rules, the NCUA Board may prohibit payments of principal, dividends or interest on the credit union's uninsured secondary capital accounts established after August 7, 2000, except that unpaid dividends or interest shall continue to accrue under the terms of the account to the extent permitted by law.

(13) As provided in §§ 702.304(b) and 702.305(b) of this chapter, the NCUA Board may prohibit payments of principal, dividends or interest on the uninsured secondary capital accounts established after August 7, 2000 of a "moderately capitalized", "marginally capitalized", "minimally capitalized" or "uncapitalized" credit union if the credit union's net worth ratio has not increased consistent with its then-present business plan, or the credit union has failed to undertake any mandatory supervisory action prescribed in §§ 702.304(a) or 702.305(a) of this chapter. If NCUA takes this action, unpaid dividends or interest shall continue to accrue under the terms of the account to the extent permitted by law.

* * * * *

3. The Appendix to § 701.34 is amended by adding a paragraph to immediately precede the signature line to read as follows:

Appendix to § 701.34 [Amended]

* * * * *

• The NCUA may prohibit payments of principal, dividends or interest on _____ (name of credit union) uninsured secondary capital accounts established after August 7, 2000, if _____ (name of credit union) has been in operation less than 10 years and has $10 million or less in assets and the provisions of § 701.34(b)(13) of NCUA's regulations are met, or, if _____ (name of credit union) has been in operation for 10 years or more or has more than $10 million in assets and the provisions of § 701.34(b)(12) of NCUA's regulations are met.

* * * * *

[FR Doc. 00–9855 Filed 4–19–00; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 707

Truth in Savings

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its regulations that implement the Truth in Savings Act (TISA). This final rule allows credit unions to deliver periodic statement disclosures required by NCUA's regulations in electronic form if the member agrees to this form of delivery.

DATES: This rule is effective May 22, 2000.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

FOR FURTHER INFORMATION CONTACT: Frank S. Kressman, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION

A. Background

Part 707 of NCUA's regulations implements TISA. 12 GFR part 707. The purpose of part 707 and TISA is to assist members in making meaningful comparisons among accounts offered by credit unions and other financial institutions. Part 707 and TISA require, among other things, disclosure of yields, fees and other terms concerning share accounts to members at account opening, upon request, when changes in terms occur and in periodic statements. Many of these disclosures must be written. Many laws requiring that information be in writing consider information in electronic form to be written. Information produced, stored, or communicated by computer is also generally considered to be a writing, where visual text is involved.

The Board of Governors of the Federal Reserve System (Federal Reserve) issued an interim rule amending its Regulation DD, which implements TISA. That rule allows depository institutions to deliver periodic statement disclosures required by Regulation DD in electronic form if the consumer agrees to that form of delivery. 64 FR 49846 (September 14, 1999). In doing so, the Federal Reserve stated that electronic delivery of these kinds of disclosures will reduce paperwork and costs for institutions and may benefit consumers by allowing them to receive their periodic account statements, including required

disclosures, more quickly and in a more convenient form.

The Federal Reserve's interim rule permits depository institutions to deliver periodic statement disclosures electronically if the consumer agrees to this method of delivery, but does not specifically discuss what constitutes a valid agreement between the consumer and depository institution. The Federal Reserve has stated that whether the parties have an agreement is to be determined by state law. It has also stated that consumers should be clearly informed when they consent to electronic delivery of periodic statements and disclosures. The Federal Reserve has further stated that the periodic statement must be provided in a form that can be displayed as visual text and must be clear and conspicuous and in a form that the consumer can retain.

The Federal Reserve's interim rule applies only to periodic statement disclosures. Other disclosures required by TISA and Regulation DD may not be delivered in electronic form, however, the Federal Reserve has issued a proposal addressing electronic delivery of these other disclosures. 64 FR 49740 (September 14, 1999). Because TISA requires NCUA to issue rules substantially similar to those issued by the Federal Reserve, NCUA will continue to follow the development of the Federal Reserve's regulation in this area. As in the past, when the Federal Reserve has issued a final or interim final rule, the NCUA will act to issue a substantially similar rule for credit unions.

TISA requires NCUA to promulgate regulations substantially similar to those promulgated by the Federal Reserve. 12 U.S.C. 4311(b). In doing so, NCUA is to take into account the unique nature of credit unions and the limitations under which they may pay dividends on member accounts. In compliance with TISA, NCUA issued an interim final rule with request for comments in November 1999 that is substantially similar to the above rule issued by the Federal Reserve. 64 FR 66355 (November 26, 1999).

B. Comments

The NCUA Board received eight comment letters regarding the interim final rule: four from credit union trade associations; two from federal credit unions; one from a state credit union; and one from an association of state credit union supervisors. The commenters unanimously supported the interim rule.

Three commenters, however, suggested the rule provide additional clarification with respect to the agreement between a credit union and its member that permits electronic delivery of periodic statement disclosures. Specifically, they wanted guidance on what constitutes a valid agreement and how a member's consent may be obtained. As articulated by the Federal Reserve, the rule purposefully does not define what constitutes a valid agreement or dictate a method of obtaining a member's consent. This is to provide maximum flexibility to credit unions and their members. Whether the parties have a valid agreement is appropriately determined by state law.

Two commenters suggested that a credit union should be permitted to deliver electronic periodic statement disclosures to an e-mail address designated by the member or to an area on a website accessible to the member. NCUA intends for credit unions to have flexibility in how they deliver these electronic disclosures. Both of these methods, among others, are permissible under the rule.

C. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact agency rulemaking may have on a substantial number of small credit unions. For purposes of this analysis, credit unions under $1 million in assets are considered small credit unions. As of June 30, 1999, there were 1,690 small credit unions with a total of $807.3 million in assets, having an average size of $0.5 million. Small credit unions make up 15.6% of all credit unions, but only 0.2% of all credit union assets.

This final rule provides credit unions with an optional and alternative method of delivering certain required disclosures. Credit unions are free to choose not to utilize this alternative. Credit unions that choose to use this alternative will likely realize a reduction in their costs of delivery as a result. The NCUA has determined and certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

NCUA has determined that these amendments to part 707 do not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule will apply to all federally-insured credit unions, but it will not have substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

Assessment of Federal Regulations and Policies on Families

NCUA has determined that this rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 12 CFR Part 707

Advertising, Consumer protection, Credit unions, Reporting and recordkeeping requirements, Truth in savings.

By the National Credit Union Administration Board on April 13, 2000.

Becky Baker,

Secretary of the Board.

PART 707—TRUTH IN SAVINGS

Accordingly, the interim final rule amending 12 CFR part 707, which was published at 64 FR 66355 on November 26, 1999, is adopted as a final rule without change.

[FR Doc. 00–9854 Filed 4–19–00; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–81–AD; Amendment 39–11686; AD 99–23–22 R2]

RIN 2120–AA64

Airworthiness Directives; Various Transport Category Airplanes Equipped with Mode "C" Transponder(s) with Single Gillham Code Altitude Input

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; rescission.

SUMMARY: This amendment rescinds Airworthiness Directive (AD) 99–23–22 R1, which is applicable to various transport category airplanes equipped with Mode "C" transponder(s) with single Gillham code altitude input. That AD requires repetitive tests to detect discrepancies of the Mode "C" transponder(s), air data computer, and certain wiring connections; and corrective actions, if necessary. The requirements of that AD were intended to prevent false advisories that direct the flightcrew to change course and either climb or descend, which could result in the flightcrew deviating the airplane from its assigned flight path, and a possible mid-air collision. Since the issuance of that AD, test data have been collected that demonstrate that the repetitive tests are unnecessary.

EFFECTIVE DATE: April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Peter Skaves, Aerospace Engineer, Airplane and Flight Crew Interface Branch, ANM–111, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2795; fax (425) 227–1320.

SUPPLEMENTARY INFORMATION: On November 4, 1999, the Federal Aviation Administration (FAA) issued AD 99–23–22, amendment 39–11418 (64 FR 61493, November 12, 1999), as revised by AD 99–23–22 R1, amendment 39–11473 (64 FR 70181, December 16, 1999), applicable to various transport category airplanes equipped with Mode "C" transponder(s) with single Gillham code altitude input. That AD requires repetitive tests to detect discrepancies of the Mode "C" transponder(s), air data computer, and certain wiring connections; and corrective actions, if necessary. That action was prompted by reports that, during level flight, the Traffic Alert Collision Avoidance System (TCAS II) issued false advisories that directed the flightcrew to change course and either climb or descend. Such false advisories, if not corrected, could result in the flightcrew deviating the airplane from its assigned flight path and a possible mid-air collision.

Actions Since Issuance of Previous AD

The compliance time for the initial test of the Mode "C" transponder(s) with single Gillham altitude code input, as required by AD 99–23–22 R1, has passed. Therefore, the FAA assumes that the test has been conducted at least once, and all applicable corrective actions have been accomplished, on all transport category airplanes affected by that AD. The following is a summary of the airplane inspections and test results:

Aircraft Test Results (AD 99–23–22 R1)
- Aircraft test results reviewed = 1,142
- Aircraft passing tests without corrective action required = 1,055
- Aircraft failing tests with corrective action required = 87
- Percent of aircraft that failed the AD test = 7.6%

Aircraft Wiring/Avionics Failures
- Mode "C" transponder failures = 49
- Air Data Computer (ADC) failures = 14
- Encoding altimeter failures = 3
- Gillham code wiring failures = 1
- Miscellaneous wiring failures = 8
- Failures sources under review = 12

The results of the transponder tests required by AD 99–23–22 R1 revealed that numerous Mode "C" transponders failed the test, and many of the Mode "C" test failures have been determined to be caused by a particular transponder type. All other test failures reported by operators appear to be random and isolated.

The FAA concludes that continued repetitive tests on the applicable airplane models listed in AD 99–23–22 R1 are unnecessary since the corrective actions have been accomplished on all transport category airplanes identified in that AD.

In addition, the FAA has determined that the repetitive performance of the tests required by AD 99–23–22 R1 may result in increased or accelerated component wear, which could contribute to reports of incorrect airplane altitude.

Future Rulemaking

Over 50 percent of the airplane test failures have been reported by operators to be caused by Mode "C" transponders. The FAA is conducting further reviews to determine whether a systematic root cause failure of that Mode "C" transponder exists. Based on the results of these reviews, the FAA may consider further rulemaking to address potential problems concerning the Mode "C" transponder.

FAA's Determination

Because the results of the tests required by AD 99–23–22 R1 have identified and corrected the causes of the identified unsafe condition, and because repetitive performance of the test may increase or accelerate component wear and contribute to reports of incorrect airplane altitude, the FAA has determined that it is necessary to rescind AD 99–23–22 R1 to prevent operators from performing unnecessary and potentially harmful repetitive tests.

Since this action rescinds a requirement to perform unnecessary actions, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary, and the rescission may be made effective upon publication in the **Federal Register**.

The Rescission

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding an airworthiness directive removing amendment 39–11473.

99–23–22 R2 Transport Category Airplanes: Amendment 39–11686. Docket No. 2000–NM–81–AD. Rescinds AD 99–23–22 R1, Amendment 39–11473.

Applicability: Transport category airplanes, as listed below, certificated in any category, equipped with any Mode "C" transponder with single Gillham code altitude input, including, but not limited to, the transponder part numbers listed below. Whether a Mode "C" transponder has a single Gillham code altitude input may be determined by reviewing the transponder installation instructions.

Airplane Models

Airbus Industrie
- A300
- A310

British Aerospace
- BAe Avro 146–RJ
- BAe ATP

Fokker
- F28 Mark 0070
- F28 Mark 0100

F28 Mark 1000–4000
Lockheed
L–1011 TriStar
L–188 Electra
CASA
CN–235
Dassault Aviation
Mystere Falcon 50
Mystere Falcon 900
Mystere Falcon 200
Fan Jet Falcon Series G
Boeing (MDC)
DC–10–30
DC–10–40
DC–9
DC–9–81
DC–9–82
DC–9–83
DC–9–87
Boeing 707
Boeing 727
Boeing 737
Boeing 747
Bombardier
CL–215–1A10
CL–215–6B11
CL–600–1A11
CL–600–2A12
CL–600–2B16
Gulfstream
G1159 (G–II)
G–1159A (G–III)
G–IV
Mode "C" Transponder Part Numbers
Rockwell Collins
622–2224–001
622–2224–003
522–2703–001
522–2703–011
787–6211–001
787–6211–002
Bendix
066–1056–00
066–1056–01
066–1123–00
2041599–6508
Wilcox
97637–201
97637–301
IFF
APX–100
APX–101

This rescission is effective April 20, 2000.

Issued in Renton, Washington, on April 7, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–9247 Filed 4–19–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–97–AD; Amendment 39–11689; AD 2000–08–03]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently requires the deactivation of the forward and center cargo control units (CCU). That amendment was prompted by a report of failure of a CCU, which produced overheating of the electrical pins inside the CCU; the subsequent release of hot gases and flames ignited an adjacent insulation blanket. This amendment expands the applicability of the existing AD to include additional airplanes. The actions specified in this AD are intended to prevent overheating of the electrical pins inside the CCU's and subsequent release of hot gases and flames, which could result in smoke and fire in the cargo compartment.

DATES: Effective May 5, 2000. Comments for inclusion in the Rules Docket must be received on or before June 19, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–97–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information pertaining to this amendment may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On February 28, 2000, the FAA issued AD 2000–05–01, amendment 39–11610 (65 FR 11459, March 3, 2000), applicable to certain McDonnell Douglas Model MD–11 series airplanes, to require the deactivation of the forward and center cargo control units (CCU). That action was prompted by a report of failure of a CCU, which produced overheating of the electrical pins inside the CCU; the subsequent release of hot gases and flames ignited an adjacent insulation blanket. The actions required by that AD are intended to prevent such conditions, which could result in smoke and fire in the cargo compartment.

The incident that prompted AD 2000–05–01 is not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This AD is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Actions Since Issuance of Previous Rule

The applicability statement of AD 2000–05–01 lists the serial numbers of the affected airplanes, which were provided by the airplane manufacturer. Since the issuance of that AD, the airplane manufacturer has informed the FAA that it inadvertently provided two incorrect airplane serial numbers (i.e., 48679 and 58563); those serial numbers do not exist. The correct serial numbers of those two airplanes are 48769 and 48563. The FAA has determined that affected airplanes having serial numbers 48769 and 48563 also are subject to the identified unsafe condition.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 2000–05–01 to continue to require the deactivation of the forward and center CCU's. This AD also expands the applicability of the existing AD to include additional airplanes.

Interim Action

This is considered to be interim action. The FAA is currently considering requiring a modification of the CCU assembly would constitute terminating action for the requirements of this AD. However, the planned compliance time for the installation of the modification is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–97–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11610 (65 FR 11459, March 3, 2000), and by adding a new airworthiness directive (AD), amendment 39–11689, to read as follows:

2000–08–03 McDonnell Douglas: Amendment 39–11689. Docket 2000–NM–97–AD. Supersedes AD 2000–05–01, Amendment 39–11610.

Applicability: Model MD–11 series airplanes, certificated in any category, having the serial numbers listed below.

Group 1 Airplanes:

48565	48566	48533	48549	48470	48406
48504	48602	48603	48571	48439	48605
48572	48471	48573	48600	48601	48633
48513	48574	48575	48542	48543	48576
48415	48631	48544	48632	48577	48545
48578	48546	48743	48744	48747	48748
48745	48746	48749	48579	48766	48768
48767	48769	48754	48623	48770	48753
48773	48774	48755	48758	48775–48779 inclusive	
48624	48756	48780	48532		

Group 2 Airplanes:

48555	48556	48581	48630	48557	48539
48558	48559	48616	48560	48617	48618
48561	48629	48562	48563	48757	48540
48564	48634	48541	48798	48781–48792 inclusive	
48794	48799	48801	48800	48802–48806 inclusive	

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the electrical pins inside the cargo control units (CCU) and subsequent release of hot gases and flames, which could result in smoke and fire in the cargo compartment, accomplish the following:

Restatement of Requirements of AD 2000–05–01:

Deactivation

(a) For Group 1 airplanes having serial numbers other than that identified in paragraph (c) of this AD: Within 15 days after March 20, 2000 (the effective date of AD 2000–05–01, amendment 39–11610), deactivate the forward and center CCU's in accordance with the following procedures:

(1) Remove the access panel to the forward cargo compartment CCU circuit breaker panel located at fuselage station 1009.300 (right side looking aft). Pull and collar the following circuit breakers:

B1–506
B1–485
B1–500
B1–489
B1–480
B1–495
B1–488
B1–481
B1–499
B1–487
B1–498
B1–490
B1–486
B1–482

(2) Remove the access panel to the center cargo compartment CCU circuit breaker panel located at fuselage station 1701.000 (right side looking aft). Pull and collar the following circuit breakers:

B1–552
B1–758
B1–753
B1–762
B1–518
B1–764
B1–761
B1–519
B1–752
B1–760
B1–751
B1–763
B1–759
B1–520

(b) For Group 2 airplanes having serial numbers other than that identified in paragraph (c) of this AD: Within 15 days after March 20, 2000, deactivate the forward and center CCU's in accordance with the following procedures:

(1) Remove the access panel to the forward cargo compartment CCU circuit breaker panel located at fuselage station 1009.300 (right side looking aft). Pull and collar the following circuit breakers:

B1–506
B1–485
B1–500
B1–489
B1–480
B1–495
B1–488
B1–481
B1–499
B1–487
B1–498
B1–490
B1–486
B1–482

(2) Remove the access panel to the center cargo compartment CCU circuit breaker panel located at fuselage station 1701.000 (right side looking aft). Pull and collar the following circuit breakers:

B1–552
B1–758
B1–753
B1–762
B1–518
B1–764
B1–761
B1–519
B1–752
B1–760
B1–751
B1–759
B1–520

New Requirements of this AD:

(c) For Group 1 airplane, serial number 48769, and for Group 2 airplane, serial number 48563: Within 15 days after the effective date of this AD, accomplish the actions specified in either paragraph (a) or (b) of this AD, as applicable.

Alternative Methods of Compliance

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–05–01, amendment 39–11610, are approved as alternative methods of compliance with paragraph (a) or (b) of this AD, as applicable.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on May 5, 2000.

Issued in Renton, Washington, on April 12, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–9674 Filed 4–19–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–69–AD; Amendment 39–11695; AD 2000–08–09]

RIN 2120–AA64

Airworthiness Directives; Robinson Helicopter Company Model R22 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Robinson Helicopter Company (RHC) Model R22 helicopters. This action requires replacing certain serial number sprag clutches with an airworthy sprag clutch as specified in this AD. This amendment is prompted by several reports of clutch assemblies with cracked or fractured sprag ends. The actions specified by this AD are intended to prevent a sprag clutch failure, loss of main rotor RPM during autorotation, and subsequent loss of control of the helicopter.

DATES: Effective May 5, 2000. Comments for inclusion in the Rules Docket must be received on or before June 19, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–69–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Elizabeth Bumann, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5265; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On April 5, 1999, the FAA issued AD 99–07–17 (64 FR 17966, April 13, 1999), Amendment 39–11126, to require inserting a Special Pilot Caution into the Rotorcraft Flight Manual (RFM) to alert pilots of the potential for the sprag clutch failing to overrun during autorotation maneuvers. The Special Pilot Caution was an interim measure until the manufacturer developed a permanent corrective action. Since the sprag clutch is such a critical component of the rotor drive system, the FAA now believes that the affected sprag clutches need to be replaced within 30 days or 50 hours time-in-service (TIS), whichever occurs first. Therefore, this AD requires replacing sprag clutch, part number (P/N) A188–2, serial numbers (S/N) 3708 through 3757 inclusive, 3808 through 3893 inclusive, and 3908 through 4207 inclusive, with sprag clutch, P/N A188–2, S/N 4208 or higher. This amendment is prompted by several reports of clutch assemblies, including one from the wreckage of a helicopter, with cracked or fractured sprag ends. The actions specified by this AD are intended to prevent a sprag clutch failure, loss of main rotor RPM during autorotation, and subsequent loss of control of the helicopter.

The FAA has reviewed RHC Service Bulletin SB–85, dated March 22, 1999, which describes procedures for replacing sprag clutch, part number (P/N) A188–2, serial numbers (S/N) 3708 through 3757 inclusive, 3808 through 3893 inclusive, and 3908 through 4207 inclusive.

Since an unsafe condition has been identified that is likely to exist or develop on other Robinson R22 helicopters of the same type design, this AD is being issued to prevent a sprag clutch failure, loss of main rotor RPM during autorotation, and subsequent loss of control of the helicopter. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter after an actual engine failure. Therefore, replacing sprag clutch, P/N A188–2, serial numbers (S/N) 3708 through 3757 inclusive, 3808 through 3893 inclusive, and 3908 through 4207 inclusive, with sprag clutch, P/N A188–2, S/N 4208 and higher, is required within 30 calendar days or 50 hours TIS after the effective date of this AD, whichever occurs first, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 200 helicopters will be affected by this proposed AD, that it will take approximately 3 work hours to replace a sprag clutch, and that the average labor rate is $60 per work hour. Required parts will cost approximately $2,500 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $536,000.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–69–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

AD 2000–08–09 Robinson Helicopter Company: Amendment 39–11695. Docket No. 99–SW–69–AD.

Applicability: Model R22 Helicopters, serial numbers (S/N) 0002 through 2862, inclusive, with sprag clutch, part number (P/N) A188–2, S/N 3708 through 3757 inclusive, 3808 through 3893 inclusive, and 3908 through 4207 inclusive, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 30 calendar days or 50 hours time-in-service, whichever occurs first, unless accomplished previously.

To prevent sprag clutch failure, loss of main rotor RPM during autorotation, and subsequent loss of control of the helicopter, accomplish the following:

(a) Replace sprag clutch, P/N A188–2, S/N 3708 through 3757 inclusive, 3808 through 3893 inclusive, and 3908 through 4207 inclusive, with sprag clutch, P/N A188–2, S/N 4208 or higher.

(b) Remove from the Rotorcraft Flight Manual the Special Pilot Caution, revised March 22, 1999, contained in Robinson Helicopter Company R22 Service Bulletin SB–85, dated March 22, 1999, or the Special Pilot Caution insert in the Normal Procedures Section of the Rotorcraft Flight Manual between pages P.4–8 and P.4–9 required by AD 99–07–17, Docket No. 99–SW–24–AD, Amendment 39–11126 (64 FR 17966, April 13, 1999), as applicable.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on May 5, 2000.

Issued in Fort Worth, Texas, on April 13, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–9897 Filed 4–19–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 00–27]

Technical Correction; Description of Gramercy, Louisiana, Boundaries

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations pertaining to the field organization of Customs by correcting the boundary description of Gramercy, Louisiana.

EFFECTIVE DATE: April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Harold Singer, Chief, Regulations Branch, U.S. Customs Service, 202–927–2268.

SUPPLEMENTARY INFORMATION:

Background

Customs established a port of entry of Gramercy, Louisiana, by a final rule document published as Treasury Decision (T.D.) 82–93 in the **Federal Register** (47 FR 21039) on May 17, 1982. A description of the port of entry was set forth in the document.

On May 31, 1984, Customs published in the **Federal Register** (49 FR 22629) T.D. 84–126, a final rule document setting forth the port limits of all the ports in the then New Orleans Customs district. One of the ports, of which the boundaries were described, was Gramercy, Louisiana. The document extended the limits of the Gramercy port from those set forth in T. D. 82–93.

In a document published in the **Federal Register** (49 FR 27142) on July 2, 1984, Customs delayed the effective date of T.D. 84–126 regarding the extension of the port boundaries of Gramercy. This document stated that "[t]he listing for Gramercy shall remain as set forth in section 101.3(b), Customs Regulations," meaning that the description of the Gramercy port would continue to be as set forth in T.D. 82–93.

The Customs Regulations correctly reflected that the port limits of Gramercy were as set forth in T.D. 82–93 until T.D. 95–77 was published in the **Federal Register** (60 FR 50008) on September 27, 1995. In that document, which included a revision of section 101.3 to reflect the reorganization of Customs, the reference to T.D. 84–126 was inadvertently inserted in the "Limits of port " column next to the listing of the port of entry of Gramercy under the State of Louisiana.

This document corrects the error by removing the reference "(Restated in T.D. 84–126)" in the "Limits of port" column adjacent to the entry of Gramercy in the "Ports of entry column" under the State of Louisiana in section 101.3(b), Customs Regulations.

Inapplicability of Public Notice and Comment and Delayed Effective Date

Because this document relates to agency organization and management and merely corrects the geographical description of a port, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Regulatory Flexibiilty Act

Because this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12866

Agency organization matters are exempt from consideration under Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Customs ports of entry, Exports, Imports, Organization and functions (Government agencies).

Amendment to the Regulations

Accordingly, Part 101 of the Customs Regulations is amended as set forth below.

PART 101—GENERAL PROVISIONS

1. The general authority citation for Part 101 and the specific authority citation for § 101.3 continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 2, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624.

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

* * * * *

§ 101.3 [Amended]

2. The list of ports in § 101.3(b)(1) is amended, under the State of Louisiana in the entry for Gramercy, by removing in the "Limits of port" column the words "(Restated in T.D. 84–126)."

Dated: April 14, 2000.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 00–9868 Filed 4–19–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 196–2000]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is exempting a Privacy Act system of records from subsections (c)(3) and (4); (d); (e)(1), (2), (3), (5), and (8); and (g) of the Privacy Act. 5 U.S.C. 552a. This system of records is maintained by the Immigration and Naturalization Service (INS) and is entitled "Attorney/Representative Complaint/Petitiion Files, JUSTICE/INS–022."

Information in this system relates to complaints filed against nonagency attorneys and/or representatives who have engaged in unethical or unprofessional activities. The exemptions are necessary to avoid interference during the conduct of criminal, civil, or administrative actions or investigations. Specifically, the exemptions are necessary to prevent subjects of investigations from frustrating the investigatory process. The exemptions are necessary to avoid interference during the conduct of civil or administrative actions or investigations.

EFFECTIVE DATE: April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Cahill—202–307–1823.

SUPPLEMENTARY INFORMATION: On December 16, 1999 (64 FR 70203) a proposed rule was published in the **Federal Register** with an invitation to comment. No comments were received.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information Act, Government in the Sunshine Act, and the Privacy Act.

Dated: April 5, 2000.

Stephen R. Colgate,

Assistant Attorney General for Administration.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, 28 CFR part 16 is amended as follows:

PART 16—[AMENDED]

1. The authority for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534, 31 U.S.C. 3717, 9701.

2. 28 CFR 16.99 is amended by adding paragraphs (k) and (l) to read as follows:

§ 16.99 Exemption of the Immigration and Naturalization Service Systems-limited access.

* * * * *

(k) The Attorney/Representative Complaint/Petition File (JUSTICE/INS–022) system of records is exempt under the provisions of 5 U.S.C. 552a (j)(2) from subsections (c)(3) and (4); (d); (e)(1), (2), (3), (5), and (8); and (g); but only to the extent that this system contains records within the scope of subsection (j)(2), and to the extent that records in this system are subject to exemption therefrom. In addition, this system of records is also exempt in part under the provisions of 5 U.S.C. 552a (k)(2) from subsections (c)(3); (d); and (e)(1), but only to the extent that this system contains records within the scope of subsection (k)(2), and to the extent that records in this system are subject to exemption therefrom.

(l) The following justifications apply to the exemptions from particular subsections:

(1) From subsection (c)(3) for reasons stated in paragraph (h)(1) of this section.

(2) From subsection (c)(4) for reasons stated in paragraph (h)(2) of this section.

(3) From the access and amendment provisions of subsection (d) for reasons stated in paragraph (h)(3) of this section.

(4) From subsection (e)(1) for reasons stated in paragraph (h)(4) of this section.

(5) From subsection (e)(2) for reasons stated in paragraph (h)(5) of this section.

(6) From subsection (e)(3) for reasons stated in paragraph (h)(6) of this section.

(7) From subsection (e)(5) for reasons stated in paragraph (h)(7) of this section.

(8) From subsection (e)(8) for reasons stated in paragraph (h)(8) of this section.

(9) From subsection (g) to the extent that the system is exempt from the access and amendment provisions of subsection (d).

[FR Doc. 00–9744 Filed 4–19–00; 8:45 am]

BILLING CODE 4410–CJ–M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 197–2000]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is exempting a Privacy Act system of records from subsections (c)(3) and (4); (d); (e)(1), (2), (3), (5), and (8); and (g) of the Privacy Act, 5 U.S.C. 552a. This system of records is maintained by the Immigration and Naturalization Service (INS) and is entitled "Worksite Enforcement Activity Record and Index (LYNX), JUSTICE/INS–025."

Information in this system relates to an enforcement inspection or investigation pursued under the Immigration and Nationality Act, Section 274A(e), involving a specific individual employer. The exemptions are necessary to avoid interference during the conduct of criminal, civil, or administrative actions or investigations. Specifically, the exemptions are necessary to prevent subjects of investigations from frustrating the investigatory process. The exemptions are necessary to avoid interference during the conduct of civil or administrative actions or investigations.

EFFECTIVE DATE: April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Cahill—202–307–1823.

SUPPLEMENTARY INFORMATION: On December 16, 1999 (64 FR 70202) a proposed rule was published in the **Federal Register** with an invitation to comment. No comments were received.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of

Information Act, Government in the Sunshine Act, and the Privacy Act.

Dated: April 5, 2000.

Stephen R. Colgate,

Assistant Attorney General for Administration.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, 28 CFR part 16 is amended as follows:

PART 16—[AMENDED]

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. 28 CFR 16.99 is amended by adding paragraphs (m) and (n) to read as follows:

§ 16.99 Exemption of the Immigration and Naturalization Service Systems limited access.

* * * * *

(m) The Worksite Enforcement Activity and Records Index (LYNX) (JUSTICE/INS–025) system of records is exempt under the provisions of 5 U.S.C. 552a (j)(2) from subsections (c)(3) and (4); (d); (e)(1), (2), (3), (5), and (8); and (g); but only to the extent that this system contains records within the scope of subsection (j)(2), and to the extent that records in this system are subject to exemption therefrom. In addition, this system of records is also exempt in part under the provisions of 5 U.S.C. 552a(k)(2) from subsections (c)(3); (d); and (e)(1), but only to the extent that this system contains records within the scope of subsection (k)(2), and to the extent that records in this system are subject to exemption therefrom.

(n) The following justifications apply to the exemptions from particular subsections:

(1) From subsection (c)(3) for reasons started in paragraph (h)(1) of this section.

(2) From subsection (c)(4) for reasons stated in paragraph (h)(2) of this section.

(3) From the access and amendment provisions of subsection (d) for reasons sated in paragraph (h)(3) of this section.

(4) From subsection (e)(1) for reasons stated in paragraph (h)(4) of this section.

(5) From subsection (e)(2) for reasons stated in paragraph (h)(5) of this section.

(6) From subsection (e)(3) for reasons stated in paragraph (h)(6) of this section.

(7) From subsection (e)(5) for reasons stated in paragraph (h)(7) of this section.

(8) From subsection (e)(8) for reasons stated in paragraph (h)(8) of this section.

(9) From subsection (g) to the extent that the system is exempt from the access and amendment provisions of subsection (d).

[FR Doc. 00–9745 Filed 4–19–00; 8:45 am]

BILLING CODE 4410–CJ–M

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 403

RIN 1215–AB29

Labor Organization Annual Financial Reports

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, Labor.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to information contained in the final rule published on December 21, 1999 (64 FR 71622). That final rule made several technical changes to the annual financial reporting forms filed by labor organizations and to the Department of Labor's regulations in which the reporting forms are prescribed.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Kay H. Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Employment Standards Administration, U.S. Department of Labor, Room N–5605, Washington, DC 20210, (202) 693–0123 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The final rule that is the subject of this correction made a number of minor and technical changes to the annual financial reporting forms filed by labor organizations under the Labor-Management Reporting and Disclosure Act of 1959, as amended (Forms LM–2, LM–3, and LM–4), and to the regulations in which the reporting forms are prescribed, 29 CFR part 403. The annual financial reports are also filed by federal sector labor organizations pursuant to the regulations implementing the standards of conduct provisions of the Civil Service Reform Act of 1978, 5 U.S.C. 7120, and the Foreign Service Act of 1980, 22 U.S.C. 1017. The purposes of the final rule were to (1) give notice that the Department has redesigned the reporting forms so that they can be optically scanned and made available on the Internet, and (2) revise the Department's regulations accordingly.

Two inadvertent errors were made in the "Supplementary Information" portion of the final rule of December 21, 1999. First, in describing the impact of the effective date of January 1, 2000 on the reporting requirements, it was incorrectly stated (on page 71623, in the first paragraph of the first column) that "labor organizations will file the new reporting forms and format for fiscal years beginning on and after January 1, 2000." However, the effective date of January 1, 2000 means that the newly redesigned reporting forms are to be used by labor organizations for fiscal years ending on and after January 1, 2000 rather than for fiscal years beginning on and after January 1, 2000. Thus, for example, for a labor organization whose fiscal year ends March 31, 2000, the annual financial report is due 90 days thereafter (June 29, 2000) using the newly redesigned reporting forms.

The second inadvertent error in the "Supplementary Information" portion of the final rule is that the number of pages in the old and the redesigned Form LM–3 were incorrectly stated (on page 71622, in the second full paragraph of the second column). Form LM–3 had been two pages (not four), and is now four pages (not eight).

There were also two errors in the text of the revised regulation, 29 CFR 403.4(b), which deals with the simplified format which a parent body may use to fulfill the reporting obligation of its subordinate local labor organizations which have no assets, liabilities, receipts, or disbursements. On page 71624, in the third line of the penultimate paragraph of the second column, the reference to "29 CFR 403.4(b)(3) (i)–(vi)" should have been to "29 CFR 403.4(b)(3) (i)–(v)". Finally, in the ninth line of that paragraph the word "and" should have been inserted before "(v)".

Need for Correction

As published, the final rule inadvertently contains incorrect information which needs to be corrected.

Publication in Final

The undersigned has determined that this rulemaking need not be published as a proposed rule, as generally required by the Administrative Procedure Act (APA), 5 U.S.C. 553. This rulemaking makes technical and nonsubstantive corrections and imposes no additional burden on the public. Consequently, there is good cause for finding that notice and public procedure is unnecessary and contrary to the public

interest, pursuant to section 553(b)(B) of the APA.

Effective Date

The undersigned has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication since this rule makes technical and minor corrections to a final rule which is already in effect. See 5 U.S.C. 553(d). Therefore, this final rule correction is effective on the same date as the final rule which is being corrected, January 1, 2000.

Administrative Requirements

A. Executive Order 12866

The Department of Labor has determined that this rule is not a significant regulatory action as defined in section 3(f) of Executive Order 12866 in that it will not (1) have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities, (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

B. Regulatory Flexibility Act

Because a notice of proposed rulemaking is not required for this rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, pertaining to regulatory flexibility analysis do not apply. See 5 U.S.C. 601(2). Therefore, a regulatory flexibility analysis is not required.

C. Paperwork Reduction Act

This rule contains no additional information collection requirements. The information collection requirements in the regulations to which this rule makes technical corrections have been approved by the Office of Management and Budget (OMB control number 1215–0188).

D. Small Business Regulatory Enforcement Fairness Act

The Department has determined that this final rule is not a "major rule" requiring prior approval by the Congress and the President pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804), because it is not likely to result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Further, since the Department has determined, for good cause, that publication of a proposed rule and solicitation of comments on this rule is not necessary, under 5 U.S.C. 808(2), this final rule is effective as of the date of the final rule which is being corrected, January 1, 2000, as stated previously in this notice.

E. Unfunded Mandates Reform Act

For purposes of Section 2 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, as well as Executive Order 12875 (58 FR 58093, October 28, 1993), this rule does not include any federal mandate that may result in increased expenditures by State, local and tribal governments, or increased expenditures by the private sector of more than $100 million.

F. Federalism

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." The rule does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

List of Subjects in 29 CFR Part 403

Labor unions, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, the publication on December 21, 1999 of the final rule which was the subject of FR Doc. 99–33044, is corrected as follows:

1. On page 71622, in the second full paragraph that begins in the second column, the phrase "eight pages instead of four for Form LM–3" is corrected to read "four pages instead of two for Form LM–3."

2. On page 71623, in the first paragraph of the first column, the phrase "labor organizations will file the new reporting forms and format for fiscal years beginning on and after January 1, 2000" is corrected to read "labor organizations will file the new reporting forms and format for fiscal years ending on and after January 1, 2000."

§ 403.4 [Corrected]

3. On page 71624, in the second column, in the third line of the paragraph which begins "Each document attached * * *", the reference to "29 CFR 403.4(b)(3) (i)–(vi)" is corrected to read "29 CFR 403.4(b)(3) (i)–(v)".

4. On page 71624, in the second column, in the ninth line of the paragraph which begins "Each document attached * * *", the word "and" is inserted after "period;" and before "(v)".

Signed in Washington, DC this 14th day of April, 2000.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

[FR Doc. 00–9911 Filed 4–19–00; 8:45 am]

BILLING CODE 4510–46–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD–00–119]

RIN 2115–AE46

Special Local Regulation: Harvard-Yale Regatta, Thames River, New London, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice puts into effect the permanent regulations for the annual Harvard-Yale Regatta, a rowing competition held on the Thames River in New London, CT. The regulation is necessary to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and anticipated congesttion at the time of the event, thus providing for the safety of life and property on the affected navigable waters.

DATE: The regulations in 33 CFR 100.101 are effective on June 10, 2000, from 2:30 p.m. to 8 p.m. If the regatta is cancelled due to weather, this section will be in effect on the following day, Sunday June 11, 2000, from 2:30 p.m. to 8 p.m.

FOR FURTHER INFORMATION CONTACT: Petty Officer William M. Anderson, Office of Search and Rescue, First Coast Guard District, (617) 223–8460.

SUPPLEMENTARY INFORMATION: This notice implements the permanent special local regulation governing the 2000 Harvard-Yale Regatta. A portion of the Thames River in New London, Connecticut will be closed during the effective period to all vessel traffic except participants, official regatta vessels, and patrol craft. The regulated area is that area of the river between the Penn Central drawbridge and Bartlett's Cove. Additional public notification will be made via the First Coast Guard District Local Notice to Mariners and marine safety broadcasts. The full text of this regulation is found in 33 CFR 100.101.

Dated: March 28, 2000.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 00–9935 Filed 4–19–00; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–00–120]

RIN 2115–AA97

Safety Zone: Sunken Vessel JESSICA ANN, Cape Elizabeth, ME

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone encompassing those waters of the Atlantic Ocean within 1,000 yards of the position 43°31′9″ N, 070°11′8″ W and from the water's surface to the seabed floor. This rule is necessary to protect the environment from a diesel fuel spill which may occur from the disturbance of the sunken vessel F/V Jessica Ann, the commercial fishery, and the general public for the hazards associated with the recovery of diesel fuel from a sunken vessel.

EFFECTIVE DATE: This section is effective on April 4, 2000 until July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Lieutenant R. V. Timme, Chief of Response and Planning, Captain of the Port, Portland at (207) 780–3251.

SUPPLEMENTARY INFORMATION:

Regulatory History

As authorized by 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Under 5 U.S.C 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less that 30 days after publication in the **Federal Register**. Due to inclement weather conditions, recovery of the diesel fuel on board the F/V Jessica Ann must be postponed. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to protect the environment from an oil spill which may occur from inadvertent or intentional disturbance of the wreckage prior to the time that the oil spill recovery operations are possible, and to protect the maritime public from the hazards associated with recovery operations.

On February 20, 2000, The F/V Jessica Ann sunk in 136 feet of water in the Atlantic Ocean. It is estimated that approximately 10,000 gallons of diesel fuel is on board the vessel. Clean Harbors, Inc. was hired for the clean up and recovery of fuel on board the F/V Jessica Ann. The fuel vents on the vessel were sealed to secure the leak. However, due to inclement weather, fuel recovery has been postponed until favorable weather conditions prevail. The safety zone will be effective on April 4, 2000 until July 1, 2000, Cape Elizabeth, Maine. This regulation establishes a safety zone encompassing those waters of the Atlantic Ocean within 1,000 yards of the position 43°31′9″ N, 070°11′8″ and from the water's surface to the seabed floor. The safety zone will be cancelled following the recovery of the oil remaining on board. This rule is necessary to protect the environment, the commercial fishery, and the general public. Innocent transit through the area within the safety zone is not affected by this regulation and does not require the authorization of the Captain of the Port.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the proposal has no significant effect on shipping, and its impact on fishing is minimal as it removes a small portion (less than one square mile) of the available fishing grounds from active fishing.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The commercial fishing community intending to fish portions of Cape Elizabeth restricted by the safety zone.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 113132 and have determined that this rule does not have sufficient federalism implications for Federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An Unfunded Mandate is a regulation that requires a state, local or tribal government or the private sector to incur costs without the Federal government's having first provided the funds to pay those costs. This rule will not impose an Unfunded Mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in section 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and an Environmental Analysis Checklist is available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add temporary section, § 165.T01–120, to read as follows:

§ 165.T01–120; Sunken Vessel JESSICA ANN, Cape Elizabeth, ME.

(a) *Location:* The following is a safety zone: encompassing those waters of the Atlantic Ocean within 1,000 yards of the position 43°31′9″ N, 070°11′8″ of the F/V Jessica Ann and from the water's surface to the seabed floor, Cape Elizabeth, ME.

(b) *Effective date:* April 4, 2000 until July 1, 2000.

(c) *Regulations:* (1) The general regulations contained in § 165.23 and the regulations specifically relating to safety zones in § 165.20 of this part apply.

(2) All vessels and persons are prohibited from anchoring, diving, dredging, dumping, fishing, trawling, laying cable, or conducting salvage operations in this zone except as authorized by the Coast Guard Captain of Port, Portland, Maine. Innocent transit through the area within the safety zone is not affected by this regulation and does not require the authorization of the Captain of the Port.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of the vessel shall proceed as directed.

Dated: April 4, 2000.

J. E. Cameron,

Lieutenant Commander, U.S. Coast Guard Acting, Captain of the Port.

[FR Doc. 00–9840 Filed 4–19–00; 8:45 am]

BILLING CODE 4910–15–P

Proposed Rules

Federal Register
Vol. 65, No. 77
Thursday, April 20, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB63

Common Crop Insurance Regulations; Small Grains Crop Insurance Provisions and Wheat Crop Insurance Winter Coverage Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Small Grains Crop Insurance Provisions and the Wheat Crop Insurance Winter Coverage Endorsement. The intended effects of this action are to add provisions for the insurance of Kamut and buckwheat, include additional insurance benefits, clarify existing policy provisions to better meet the needs of the insured, improve actuarial soundness, and restrict the effect of the current Small Grains Crop Insurance Provisions and the Wheat Crop Insurance Winter Coverage Endorsement to the 2000 and prior crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business June 19, 2000 and will be considered when the rule is to be made final. Comments on the information collection requirements must be received on or before June 19, 2000.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Comments may also be sent via the Internet to DirectorPDD@rm.fcic.usda.gov. A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CDT, Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: For further information and a copy of the Cost-Benefit Analysis to the Common Crop Insurance Regulations; Small Grains Crop Insurance Provisions, contact Rob Coultis, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, it has been reviewed by the Office of Management and Budget (OMB).

Cost-Benefit Analysis

A Cost-Benefit Analysis has been completed and is available to interested persons at the Kansas City address listed above. In summary, the analysis finds the effect of proposed changes on crop insurance payments is expected to be small. The greatest impacts are expected from: (1) Providing benefits when damaged winter wheat is planted to a spring crop other than wheat; (2) increasing the amount of replant payments for wheat and providing replant payments for crops that have not had them in the past; and (3) changes to the Wheat Winter Coverage Endorsement.

Paperwork Reduction Act of 1995

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), the information collection and record keeping requirements included in the proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send your written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for RMA, Washington, D.C. 20503. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are soliciting comments from the public concerning our proposed information collection and record keeping requirements. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission responses.)

The collections of information for this rule revise the Multiple Peril Crop Insurance Collections of Information 0563–0053 which expire April 30, 2001.

Title: Multiple Peril Crop Insurance (Small Grains).

Abstract: This rule improves the existing Small Grains Crop Provisions and the Wheat Crop Insurance Winter Coverage Endorsement. The Small Grains Crop Provisions are revised to: (1) Allow insurance for Kamut (a variety of wheat) and buckwheat; (2) allow acreage initially planted to durum wheat or club wheat to qualify as a separate insurance unit; (3) specify that only one price election is applicable for each crop unless the Special Provisions provide different price elections by crop type, and that price elections and coverage levels can be changed until the spring sales closing date if the producer does not have any fall planted acreage of the insured crop; (4) change the December 31 contract change date for spring crops to November 30; (5) change all April 15 cancellation and termination dates to March 15; (6) change the cancellation and termination dates for specific counties; (7) add cancellation and termination dates for buckwheat; (8) clarify when the premium will be reduced for insured acreage that is intentionally destroyed prior to harvest; (9) specify that a malting barley endorsement is available where the actuarial table provides premium rates for such coverage; (10) clarify that the insured must replant fall planted barley or wheat that is damaged

prior to the spring final planting date with a winter type of the crop if practical, or to spring type if it is not practical to replant a winter type; (11) specify that for wheat only, in counties that have insurance for both spring and winter wheat, producers may put damaged winter wheat acreage to another use and receive a payment; (12) clarify that producers may request insurance for fall planted barley or wheat provided they do so by the spring sales closing date in counties having only a spring final planting date; (13) change the calendar date for the end of the insurance period for all small grains from October 31 to July 31 in specified states; (14) allow replanting payments for barley, oats, flax and buckwheat; (15) allow a replanting payment when the amount of seed used is less than the amount normally used for initial seeding; (16) Specify that the replant payment will be calculated in accordance with the formula in the policy regardless of the actual cost of replanting; (17) change from 3 to 4 the number of bushels used to compute the maximum amount of a replanting payment for wheat, and specify the number of bushels used to compute payments for barley, oats, flax and buckwheat; (18) specify that replanting payments will be calculated based on the price election for the crop type that is replanted and insured; (19) allow an insurance benefit for damaged winter wheat when a producer elects not to replant spring wheat and destroys any remaining winter wheat on the acreage; (20) modify calculations of indemnities to allow for situations in which there are separate crop types and more than one price election within a unit; (21) allow production to be adjusted for low quality when certain crops grade "blighted," "thin," "light smutty," or "light garlicky;" (22) allow a late planting period for fall planted wheat except for that covered under the Wheat Winter Coverage Endorsement.

The Wheat Crop Insurance Winter Coverage Endorsement is revised to: (1) Clarify that the endorsement is available only if the actuarial table provides a premium rate for it; (2) specify that all eligible winter wheat acreage must be insured under the endorsement; (3) increase the coverage amount from 30 to 50 percent of the production guarantee under Option A; (4) clarify that if the insured elects to destroy the crop and plant the acreage to spring wheat, it will be insured under the policy provisions covering spring planted wheat; and (5) change the amount of coverage provided from 100 to 70 percent of the production guarantee under Option B.

Purpose: The purpose of this proposed rule is to add provisions for the insurance of buckwheat, include additional insurance benefits, clarify existing policy provisions to better meet the needs of the insured and the insurance company, and to improve actuarial soundness.

Burden statement: The information that FCIC collects on the specified forms will be used in offering crop insurance coverage, determining program eligibility, establishing a production guarantee, calculating losses qualifying for a payment, etc. The burden hours have increased because FCIC assumes more producers will obtain crop insurance coverage for their small grains. It is likely more producers will desire the increased coverage to help protect their investments against risk.

Estimate of Burden: We estimate that it will take insured producers, a loss adjuster, and an insurance agent an average of .8 of an hour to provide the information required by the Small Grains Crop Provisions including the wheat endorsement.

Respondents: Insureds, insurance agents, and loss adjusters.

Estimated annual number of respondents: 422,277.

Estimated annual number of responses per respondent: 2.5.

Estimated annual number of responses: 1,064,735.

Estimated total annual burden on respondents: The total public burden for this proposed rule is estimated at 347,691 hours.

Record keeping requirements: FCIC requires records of production to be kept for three years after the end of a crop year. However, these records are retained as part of the normal business practice and FCIC's requirement does not place additional burden on insured producers. Therefore, FCIC is not estimating burden related to this record keeping requirement.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising 7 CFR 457.101, "Small grains crop insurance" and 7 CFR 457.102, "Wheat crop insurance winter coverage endorsement" effective for the 2001 and succeeding crop years. The principal changes to the provisions for insuring small grains and providing winter coverage for wheat in certain counties are as follows:

7 CFR 457.101—Small Grains Crop Insurance

1. Section 1—Revise the definition of "small grains" to allow insurance for Kamut and buckwheat in response to industry request. Scientific names for specific small grain varieties that are insurable have also been added. Inclusion of these scientific names will help differentiate between small grain varieties that are insurable and those that are not. Also revise the definition of "prevented planting" to disallow a prevented planting benefit when small grains are prevented from being planted during the fall late planting period in counties that also have a spring final planting date. If the insured can plant spring wheat when he is not able to plant winter wheat, the insured is not prevented from planting wheat.

2. Section 2—Specify that initially planted durum or club wheat may qualify as a separate optional unit if the Special Provisions for the county designate durum or club wheat as a wheat type. Current provisions do not allow separate optional units for durum or club wheat. This change affords wheat producers additional flexibility in determining insurance coverage.

3. Section 3—Specify that the insured may select only one price election for each crop unless the Special Provisions provide different price elections by crop type, in which case the insured may select one price election for each crop type designated in the Special Provisions. The price election the insured selects for each crop type must have the same relationship to the maximum price offered. This simplifies administration of the program. Also, for counties with both fall and spring sales closing dates for the insured crop, this change allows the producer to change the coverage level or price election until the spring sales closing date only if the producer does not have any fall planted acreage of the insured crop.

4. Section 4—Change the December 31 contract change date for spring crops to November 30 to maintain an adequate amount of time between this date and new cancellation dates to permit the insured to make informed insurance decisions. This change is consistent with other spring crop policies.

5. Section 5—Change all April 15 cancellation and termination dates to March 15 to correspond to the change in the sales closing dates to comply with the requirement of the Federal Crop Insurance Reform Act of 1994 that spring planted crop sales closing dates be made 30 days earlier.

Change the cancellation and termination dates for Matanuska-Susitna County, Alaska from October 31 and November 30, respectively, to March 15 for wheat. Winter wheat is not adapted to the area.

Change the cancellation and termination dates from the spring (April 15) to the fall in certain counties to allow coverage for winter wheat. The cancellation date will be September 30 and the termination date will be November 30 in the following counties: Aurora, Bon Homme, Davidson, Douglas, Hanson, Harding, Hutchinson, Jerauld, Perkins, and Sanborn Counties, South Dakota; Roosevelt and Valley Counties, Montana; and Buffalo, Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown, and Kewaunee Counties, Wisconsin, and all Wisconsin counties north thereof.

Change the cancellation and termination dates for barley from April 15 to October 31 (for cancellation) and November 30 (for termination), in Humboldt and Pershing Counties, Nevada, and in Box Elder, Millard and Utah Counties, Utah. This change allows the establishment of winter barley coverage in these counties.

Add cancellation and termination date of March 15 for buckwheat in all states.

6. Section 6(b)(2)—Clarify the circumstances in which the premium will be reduced for insured acreage that is intentionally destroyed prior to harvest.

7. Section 6(d)—Provide that a malting barley endorsement is available where the actuarial table provides premium rates for such coverage.

8. Section 7(a)(1)—Revise so that insurance period provisions applicable to oats, rye and flax are also applicable to buckwheat. Buckwheat will be insurable under these crop provisions, so the insurance period provisions in this section will be amended accordingly.

9. Section 7(a)(2)(iii)—Specify that the insured must replant any fall planted barley or wheat that is damaged prior to the spring final planting date with a winter type of the crop if practical, or to spring type if it is not practical to replant a winter type. Previous provisions were not clear regarding the requirement to replant to spring wheat when it was impractical to replant a winter type. Also provide provisions for wheat only that will allow producers to put damaged winter wheat acreage to another use and receive a payment in accordance with new provisions in section 9(e). This benefit would be available only in counties with both fall and spring final planting dates. Under current provisions, if a producer elects not to replant wheat, no coverage is provided and no premium is charged (acreage is removed from the acreage report).

10. Section 7(a)(2)(v)—Clarify that in counties having only a spring final planting date, producers may request insurance for fall planted barley or wheat provided they do so by the spring sales closing date. Insurance will attach to such acreage on the date the insurer determines an adequate stand exists or on the spring final planting date if the insurer does not determine adequacy of the stand by the spring final planting date. Also clarify that after insurance begins, any such insured acreage damaged prior to the spring final planting date must be replanted if it is practical to do so.

11. Section 7(b)(4)—Change the calendar date for the end of the insurance period for all small grains from October 31 to July 31 in Alabama, Arizona, Arkansas, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, New Jersey, North Carolina, South Carolina and Tennessee. Harvest of small grains in these states generally begins in June and ends about the middle of July.

12. Section 9—Revise to allow replanting payments for all small grains. Previous provisions allowed a replanting payment for wheat only. Also remove the requirement that replanting occur not later than 25 days after the spring final planting date. This provision is unnecessary because the provisions regarding the time for replanting are contained in the definitions of "practical to replant" and "late planting period."

13. Section 9(a)(1)—Revise to make inapplicable the Basic Provisions' limit of the amount of a replant payment to the producer's actual cost. Administrative burden associated with obtaining receipts to prove cost will be eliminated with little effect on payment amounts. Insurance providers have reported that only in rare instances is the actual cost of replanting less than the maximum payment amount allowed by the crop provisions.

14. Section 9(a)(5)—Specify which fall final planting date is to be

considered when there is more than one fall final planting date for a county. Currently damage has to occur after the fall final planting date to be eligible for a replanting payment.

15. Section 9(a)(6)—Revise to allow a replanting payment when the amount of seed used is less than the amount normally used for initial seeding. The seeding rate must be sufficient to achieve a total undamaged and new seeding plant population that will produce at least the yield used to determine the production guarantee. Allowing this payment under such circumstances will provide a greater incentive to improve poor crop stands, thereby improving production levels and reducing claims.

16. Section 9(c)—Change from three to four the number of bushels used to compute the amount of a replanting payment for wheat. Two bushels is used for flax and buckwheat, and five bushels is used for barley and oats. Average costs associated with replanting have increased substantially in recent years. These changes in the replanting payment computation better reflect actual replanting costs. Current provisions prevent the payment from being based on a production amount exceeding 20% of the production guarantee. This will protect against overpayments in areas where replanting costs may be lower.

17. Section 9(e)—Specify that replanting payments generally will be calculated based on the price election for the crop type that is replanted and insured. However, the replanting payment will be based on the price election of the type initially planted for any (1) damaged winter crop type that is replanted to a spring crop type, but retains insurance based on the winter crop type guarantee and price election; or (2) acreage replanted at a reduced seeding rate into a partially damaged stand of the insured crop.

18. Section 9(f)—Allow an insurance benefit for damaged winter wheat when a producer elects not to replant spring wheat and destroys any remaining winter wheat on the acreage. The proposed benefit is equal to 15 percent of the production guarantee for the acreage. Under current provisions, if a producer elects not to replant wheat, no coverage is provided and no premium is earned (acreage is removed from the acreage report). Additional levels of winter protection will remain available under the wheat crop insurance winter coverage endorsement.

19. Section 11(b)—Revise calculations of indemnities when there are separate crop types and more than one price election within a unit. This change is necessary because separate price elections have been established for some wheat types.

20. Section 11(c)(1)(iv)—Revise for consistency with provisions used for most other crops and to specify that in the event of a disagreement about the quantity of appraised production, the insurance provider has the option to consent to put the acreage to another use. Currently the insurance provider's consent is mandatory if the insured agrees to leave intact and care for representative samples.

21. Section 11(d)—Provide that any adjustment for excess moisture will be made before any adjustment for quality deficiencies to be consistent with other crop policies which permit both moisture and quality adjustments. Provide that buckwheat may be adjusted for excess moisture and quality deficiencies.

22. Section 11(d)(1)(iv)—Add buckwheat to the crops that are adjusted for moisture content above 16 percent.

23. Sections 11(d)(2)(i)(A) through (E)—Add musty, sour, or commercially objectionable foreign odors as factors that may qualify small grains for quality adjustment. These conditions reduce the value of production and can occur due to insured causes. Add "blighted" as a grade that qualifies barley for quality adjustment. This grade identifies production that has been damaged by certain levels of fungus or mold, both of which reduce the value of production and can occur due to insured causes. Add "thin" as a grade that qualifies oats for quality adjustment. This grade identifies production with a certain percentage of small kernels. These small kernels reduce the value of production and can occur due to insured causes such as drought. Add test weight as a factor that may qualify flaxseed for quality adjustment. Low test weight reduces the value of production and can occur due to insured causes. Add "light smutty" and "light garlicky" as grades that qualify rye for quality adjustment. These grades identify production with certain levels of smut balls or spores, or garlic bulblets, both of which reduce the value of production and can occur due to insured causes. Also clarify for wheat, barley, oats and rye, heat damaged kernels will not be considered to be damaged.

24. Section 11(d)(2)(ii)—Specify the factors that may qualify buckwheat for quality adjustment.

25. Section 11(d)(2)(iii)—Specify the factors that may qualify Kamut for quality adjustment.

26. Section 11(d)(3)—Remove the requirement that the value of damaged production be less than the local market price of U.S. No. 2 production. The quality factors will be specified for certain quality deficiency levels, so the requirement is no longer necessary.

27. Section 11(d)(4)—Requires use of discount factors for quality adjustment if provided in the Special Provisions. The use of such factors assures consistent adjustment for insureds with quality related losses. Quality adjustment factors contained in the Special Provisions are currently being used; however, the crop provisions do not specifically refer to them.

28. Section 12—Revise to allow a late planting period for all small grains, except for wheat which is covered under the wheat crop insurance winter coverage endorsement. Current provisions do not provide coverage for late planted winter wheat unless the acreage is prevented from being planted.

7 CFR 457.102—Wheat Crop Insurance Winter Coverage Endorsement

1. Section (b)—Clarify that the endorsement is available only if the actuarial table provides a premium rate for it.

2. Section (c)(5)—Clarify that all eligible winter wheat acreage must be insured under the endorsement. Allowing a choice of the acres to be insured could result in adverse selection as producers could choose to insure only acreage more prone to winter damage. Current provisions do not specify this requirement.

3. Option A—Increase the coverage amount from 30 to 50 percent of the production guarantee. Comments regarding the previous 30 percent coverage level have indicated that it is inadequate and very few Option A policies have been sold. Premium rates will be increased to reflect the additional payment.

4. Option A, section (a)—Clarify that if the insured elects to destroy the crop and plant the acreage to spring wheat, it will be insured under the provisions covering spring planted wheat. Current provisions give insureds the option of insuring such acreage. This change is intended to maintain consistency in insurance requirements for spring wheat planted to replace damaged winter wheat and reduce reporting requirements associated with a decision to insure.

5. Option B—Change the amount of coverage provided from 100 to 70 percent of the production guarantee. This change is made based on the potential production and income from various spring crops, including spring wheat, and the potential income from coverage provided by Option B.

Premium rates will be reduced accordingly.

6. Option B, section (c)—Clarify that if the insured elects to destroy the crop and plant the acreage to spring wheat, it will be insured under the provisions covering spring planted wheat. Current provisions give insureds the option of insuring such acreage. This change is intended to maintain consistency in insurance requirements for spring wheat planted to replace damaged winter wheat and reduce reporting requirements associated with a decision to insure.

List of Subjects in 7 CFR Part 457

Barley, Crop insurance, Flax, Oats, Rye, Wheat.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 to read as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(p).

2. Amend the crop insurance endorsement in § 457.101 as follows:

a. Amend section 1 of the crop provisions by adding a definition for "Kamut" and revising the definitions of "prevented planting" and "small grains;"

b. Revise section 2;

c. Revise section 3;

d. Revise section 4;

e. Revise section 5;

f. Revise section 6(b)(2) and add section 6(d);

g. Revise sections 7(a)(1) introductory text, 7(a)(2)(iii), 7(a)(2)(v) and 7(b)(4);

h. Revise section 9;

i. Revise sections 11(b), 11(c)(1)(iv) and 11(d); and

j. Revise section 12, all to read as follows:

§ 457.101 Small grains crop insurance.

* * * * *

1. Definitions

* * * * *

Kamut. A variety of wheat (*Triticum polonicum*) that is commonly called "Kamut." Kamut is considered to be spring wheat for the purposes of this policy.

* * * * *

Prevented planting. In lieu of the definition contained in the Basic Provisions, failure to plant the insured crop with proper equipment by the latest final planting date designated in the Special Provisions for the insured crop in the county. You may also be eligible for a prevented planting payment if you failed to plant the insured crop with the proper equipment within the applicable late planting period following the latest final planting date. You must have been prevented from planting the insured crop due to an insured cause of loss that is general in the surrounding area and that prevents other producers from planting acreage with similar characteristics.

* * * * *

Small grains. Wheat, including only common wheat (*Triticum aestivum*), club wheat (*T. compactum*), durum wheat (*T. durum*) and Kamut (*T. polonicum*); barley (*Hordeum vulgare*), excluding hull-less and black barley; oats (*Avena sativa* and *A. byzantina*); rye (*Secale Cereale*); flax (*Linum usitatissimum*); and buckwheat (*Fagopyrum esculentum*).

* * * * *

2. Unit Division

In addition to the requirements of section 34(b) of the Basic Provisions, for wheat only, in addition to, or instead of, establishing optional units by section, section equivalent or FSA farm serial number and by irrigated and non-irrigated practices, optional units may be established if each optional unit contains only initially planted winter wheat, only initially planted spring wheat, only initially planted club wheat or only initially planted durum wheat. Separate optional units for initially planted winter wheat and initially planted spring wheat may be established only in counties having both winter and spring type final planting dates as designated in the Special Provisions. A separate optional unit for club wheat may be established only in counties for which the Special Provisions designate club wheat as a wheat type. A separate optional unit for durum wheat may be established only in counties for which the Special Provisions designate durum wheat as a wheat type.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

(a) In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for each crop in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each crop type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) In addition to the requirements of section three of the Basic Provisions, in counties with both fall and spring sales closing dates for the insured crop, you may change your coverage level or price election until the spring sales closing date only if you do not have any fall planted acreage of the insured crop.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date for counties with a March 15 cancellation date and June 30 preceding the cancellation date for all other counties.

5. Cancellation and Termination Dates

The cancellation and termination dates are:

Crop, state and county	Cancellation date	Termination date
Wheat:		
All Colorado counties except Alamosa, Archuleta, Conejos, Costilla, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Rio Grande, Routt, Saguache, and San Miguel; all Iowa counties except Plymouth, Cherokee, Buena Vista, Pocahontas, Humbolt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware, Dubuque and all Iowa counties north thereof; all Wisconsin counties except Buffalo, Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown, Kewaunee and all Wisconsin counties north thereof; all other states except Alaska, Arizona, California, Connecticut, Idaho, Maine, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New York, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Vermont, Washington, and Wyoming.	September 30	September 30.

Crop, state and county	Cancellation date	Termination date
Archuleta, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt and San Miguel Counties, Colorado; Connecticut; Idaho; Plymouth, Cherokee, Buena Vista, Pocahontas, Humbolt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware and Dubuque Counties Iowa, and all Iowa counties north thereof; Massachusetts; all Montana counties except Daniels and Sheridan; New York; Oregon; Rhode Island; all South Dakota counties except Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, Yankton and all South Dakota counties north and east thereof; Washington; Buffalo, Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown and Kewaunee Counties Wisconsin, and all Wisconsin counties north thereof; all Wyoming counties except Big Horn, Fremont, Hot Springs, Park, and Washakie.	September 30	November 30.
Arizona; California; Nevada; and Utah	October 31	November 30.
Alaska; Alamosa, Conejos, Costilla, Rio Grande and Saguache Counties, Colorado; Maine; Minnesota; Daniels and Sheridan Counties, Montana; New Hampshire; North Dakota; Corson; Walworth, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, and Yankton Counties, South Dakota, and all South Dakota counties north and east thereof; Vermont; and Big Horn, Fremont, Hot Springs, Park, and Washakie Counties, Wyoming.	March 15	March 15.
Barley:		
All New Mexico counties except Taos; Texas, Oklahoma, Missouri, Illinois, Indiana, Ohio, Pennsylvania, New Jersey and all states south and east thereof.	September 30	September 30.
Kit Carson, Lincoln, Elbert, El Paso, Pueblo and Las Animas Counties, Colorado and all Colorado counties south and east thereof; Connecticut; Kansas; Massachusetts; New York; and Rhode Island.	September 30	November 30.
Arizona; California; Clark, Humboldt, Nye and Pershing Counties, Nevada; and Box Elder, Millard and Utah Counties, Utah.	October 31	November 30.
All Colorado counties except Kit Carson, Lincoln, Elbert, El Paso, Pueblo and Las Animas, and all Colorado counties south and east thereof; all Nevada counties except Clark, Humboldt, Pershing and Nye; Taos County, New Mexico; all Utah counties except Box Elder, Millard and Utah; and all other states except Arizona, California, and (except) Texas, Oklahoma, Missouri, Illinois, Indiana, Ohio, Pennsylvania, New Jersey and all states south and east thereof.	March 15	March 15.
Oats:		
Alabama; Arkansas; Florida; Georgia; Louisiana; Mississippi; All New Mexico counties except Taos County; North Carolina; Oklahoma; South Carolina; Tennessee; Texas; and Patrick, Franklin, Pittsylvania, Campbell, Appomattox, Fluvanna, Buckingham, Louisa, Spotsylvania, Caroline, Essex, and Westmoreland Counties, Virginia, and all Virginia counties east thereof.	September 30	September 30.
Arizona; All California counties except Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity.	October 31	October 31.
Del Norte, Humbolt, Lassen, Modoc, Plumas, Shasta, Siskiyou, and Trinity Counties, California; Taos County, New Mexico; all Virginia counties except Patrick, Franklin, Pittsylvania, Campbell, Attomattox, Fluvanna, Buckingham, Louisa, Spotsylvania, Caroline, Essex, and Westmoreland, and all Virginia counties east thereof; and all other states except Alabama, Arizona, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.	March 15	March 15.
Rye:		
All states	September 30	September 30.
Flax:		
All states	March 15	March 15.
Buckwheat:		
All states	March 15	March 15.

6. Insured Crop

* * * * *

(b) * * *

(2) May report all planted acreage as insurable when you report your acreage for the crop year. Premium will be due on all the acreage except as set out herein. If the Special Provisions allow a reduced premium amount for acreage intentionally destroyed prior to harvest, you may qualify for such reduction only if you notify us in writing on or before the date designated in the Special Provisions of the intended destruction, and do not claim an indemnity on the acreage. No premium reduction will be allowed if the required notice is not given or if you claim an indemnity for the acreage. Upon receiving timely notice, insurance coverage on the acreage you do not intend to harvest will cease and we will revise your acreage report to indicate the applicable reduction in premium. If you do not destroy the crop as intended, you will be subject to the under-reporting provisions contained in section 6 of the Basic Provisions.

* * * * *

(d) In counties for which the actuarial table provides premium rates for malting barley coverage, an endorsement is available (7 CFR 457.118) that provides additional insurance protection for malting barley. This endorsement provides coverage options for producers who grow malting barley under contract and those who do not have a contract. Coverage under the endorsement is effective only if you qualify under the terms of the option selected and you execute the endorsement by the sales closing date.

7. Insurance Period

* * * * *

(a) * * *

(1) For oats, rye, flax and buckwheat, the following limitations apply:

* * * * *

(2) * * *

(iii) Whenever the Special Provisions designate both fall and spring final planting dates, any winter barley or wheat that is damaged before the spring final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a winter type of the insured crop unless we agree that replanting is not practical. If it is not practical to replant to winter barley, but is practical to plant spring barley, you must replant spring barley to keep your barley insurance in force. If it is not practical to replant to winter wheat but is practical to plant spring wheat, you must replant spring wheat to keep your wheat insurance in force. Any winter barley or wheat acreage that is replanted to a spring type of the same crop will be insured as the winter type and will maintain the guarantee, premium and price election applicable to the winter type. You may also elect to destroy any remaining wheat on the acreage and, if eligible, receive a payment in accordance with the provisions in section 9(e). If you

have elected coverage under a wheat winter coverage option (if available in the county), insurance will be in accordance with the option.

* * * * *

(v) Whenever the Special Provisions designate only a spring final planting date, any acreage of fall planted barley or wheat is not insured unless you request such coverage on or before the spring sales closing date, and we agree in writing that the acreage has an adequate stand in the spring to produce the yield used to determine your production guarantee. Insurance will attach to such acreage on the date we determine an adequate stand exists or on the spring final planting date if we do not determine adequacy of the stand by the spring final planting date. Any acreage of such fall planted barley or wheat that is damaged after it is accepted for insurance but before the spring final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a spring type of the insured crop unless we agree it is not practical to replant. If fall planted acreage is not to be insured it must be recorded on the acreage report as uninsured fall planted acreage.

(b) * * *

(4) The following applicable date of the calendar year in which the crop is normally harvested:

(i) September 25 following planting in Alaska;

(ii) July 31 in Alabama, Arizona, Arkansas, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, New Jersey, North Carolina, South Carolina and Tennessee; or

(iii) October 31 in all other states; or

* * * * *

9. Replanting Payments

(a) A replanting payment for small grains, is allowed as follows:

(1) In lieu of provisions in section 13 of the Basic Provisions that limit the amount of a replant payment to the actual cost of replanting, the amount of any replanting payment will be determined in accordance with these crop provisions.

(2) You must comply with all requirements regarding replanting payments contained in section 13 of the Basic Provisions (except as allowed in section 9(a)(1)) and in any winter coverage endorsement for which you are eligible and which you have elected;

(3) The insured crop must be damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage;

(4) The acreage must have been initially planted to a spring type of the insured crop in those counties with only a spring final planting date;

(5) The damage must occur after the fall final planting date in those counties where both a fall and spring final planting date are designated. (If the Special Provisions provide more than one fall final planting date, the fall final planting date applicable to policies with the Wheat Winter Coverage Endorsement will be used for this purpose, regardless of whether or not the endorsement is actually in effect.); and

(6) The replanted crop must be seeded at a rate sufficient to achieve a total (undamaged and new seeding) plant population that will produce at least the yield used to determine your production guarantee.

(b) No replanting payment will be made for acreage initially planted to a winter type of the insured crop (includes rye) in any county for which the Special Provisions contain only a fall final planting date (includes final planting dates in December, January and February).

(c) The maximum amount of the replanting payment per acre will be the lesser of 20.0 percent of the production guarantee or the number of bushels for the applicable crop specified below, multiplied by your price election and your share:

(1) 2 bushels for flax or buckwheat;

(2) 4 bushels for wheat; or

(3) 5 bushels for barley or oats.

(d) When a crop is replanted using a practice that is uninsurable for an original planting, the liability on the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

(e) Replanting payments will be calculated using the price election for the crop type that is replanted and insured. For example, if damaged spring wheat is replanted to Durum wheat, the price election applicable to Durum wheat will be used to calculate any replanting payment that may be due. A revised acreage report will be required to reflect the replanted type. Notwithstanding the previous two sentences, the following will have a replanting payment based on the guarantee and price election for the crop type initially planted:

(1) Any damaged winter crop type that is replanted to a spring crop type, but that retains insurance based on the winter crop type guarantee and price election; and

(2) Any acreage replanted at a reduced seeding rate into a partially damaged stand of the insured crop.

(f) When any acreage of winter wheat is eligible for a replanting payment in accordance with these crop provisions and the Basic Provisions, but you elect not to replant wheat, you may destroy any remaining wheat on the acreage and utilize it for any purpose other than the production of wheat. By doing so, you agree to accept an amount of production to count against the unit production guarantee equal to 85 percent of the production guarantee for the damaged acreage, or an appraisal determined in accordance with the provisions in section 11 if such an appraisal results in a greater amount of production. This amount will be considered production to count in determining any final indemnity on the unit and will be used to settle your claim as described in section 11.

* * * * *

11. Settlement of Claim

* * * * *

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee;

(2) Multiplying each result in section 11(b)(1) by the respective price election;

(3) Totaling the results of section 11(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable, (see sections 11(c), (d), and (e)) by the respective price election;

(5) Totaling the results of section 11(b)(4);

(6) Subtracting the result of section 11(b)(5) from the result in section 11(b)(3); and

(7) Multiplying the result of section 11(b)(6) by your share.

(c) * * *

(1) * * *

(iv) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

* * * * *

(d) Mature wheat, barley, oat, rye, and buckwheat production may be adjusted for excess moisture and quality deficiencies. Flax production may be adjusted for quality deficiencies only. If a moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Production will be reduced by .12 percent for each .1 percentage point of moisture in excess of;

(i) 13.5 percent for wheat;

(ii) 14.5 percent for barley;

(iii) 14.0 percent for oats; and

(iv) 16.0 for rye and buckwheat.

We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the Official United States Standards for Grain, result in:

(A) Wheat, except Kamut, not meeting the grade requirements for U.S. No. 4 (grades U.S. No. 5 or worse) because of test weight, total damaged kernels (heat-damaged kernels will not be considered to be damaged), shrunken or broken kernels, defects (foreign material and heat damage will not be considered to be defects), a musty, sour, or commercially objectional foreign odor (except smut odor), or grading garlicky, light smutty, smutty or ergoty;

(B) Barley not meeting the grade requirements for U.S. No. 4 (grades U.S. No.

5 or worse) because of test weight, percentage of sound barley (heat-damaged kernels will be considered to be sound barley), damaged kernels (heat-damaged kernels will not be considered to be damaged), thin barley, black barley, a musty, sour, or commercially objectional foreign odor (except smut or garlic odor), or grading blighted, smutty, garlicky, or ergoty;

(C) Oats not meeting the grade requirements for U.S. No. 4 (grade U.S. sample grade) because of test weight or percentage of sound oats (heat-damaged kernels will be considered to be sound oats), a musty, sour, or commercially objectional foreign odor (except smut or garlic odor), or grading smutty, thin, garlicky, or ergoty;

(D) Rye not meeting the grade requirements for U.S. No. 3 (grades U.S. No. 4 or worse) because of test weight, percent damaged kernels (heat-damaged kernels will not be considered to be damaged) or thin rye, a musty, sour, or commercially objectional foreign odor (except smut or garlic odor), or grading light smutty, smutty, light garlicky, garlicky, or ergoty;

(E) Flaxseed not meeting the grade requirements for U.S. No. 2 (grades U.S. sample grade) due to test weight, damaged kernels (heat-damaged kernels will not be considered to be damaged), or a musty, sour, or commercially objectional foreign odor (except smut or garlic odor);

(ii) Deficiencies in the quality of buckwheat, determined in accordance with applicable state grading standards, result in it having a test weight lower than 42 pounds per bushel, or a musty, sour or commercially objectional foreign odor (except smut or garlic odor), or grading garlicky, smutty or ergoty if such grades are provided for by the applicable state grading standards;

(iii) Quality factors for Kamut fall below the levels contained in the Official United States Standards for Grain that cause durum wheat to grade less than U.S. No. 4. For example, if durum wheat grades less than U.S. No. 4 when its test weight falls below 54.0 pounds per bushel, Kamut would be eligible for quality adjustment if its test weight falls below 54.0 pounds per bushel. The same quality factors considered for quality adjustment of durum wheat will be applicable and determination of deficiencies will be made in accordance with the Federal Grain Inspection Service directive that establishes procedures for quality factor analysis of Kamut seed; or

(iv) Substances or conditions are present, including mycotoxins, that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these crop provisions;

(ii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iii) The samples are analyzed by a grain grader licensed under the authority of the United States Grain Standards Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health. Test weight for quality adjustment purposes may be determined by our loss adjustor.

(4) Small grain production that is eligible for quality adjustment, as specified in sections 11(d)(2) and (3), will be reduced by the quality adjustment factor contained in the Special Provisions.

* * * * *

12. Late Planting

A late planting period is applicable to small grains, except, to any wheat acreage covered under the terms of the Wheat Crop Insurance Winter Coverage Endorsement. Wheat covered under the terms of the Wheat Crop Insurance Winter Coverage Endorsement must be planted on or prior to the applicable final planting date specified in the Special Provisions. In counties having a fall final planting date for acreage covered under the Wheat Winter Coverage Endorsement and a fall final planting date for acreage not covered under the endorsement, the fall late planting period will begin after the final planting date for acreage not covered under the endorsement.

* * * * *

3. Amend the crop insurance endorsement contained in § 457.102 as follows:

a. Revise section (b);

b. Add section (c)(5);

c. Amend Option A by revising the heading, the introductory paragraph and paragraph (a) introductory text; and

d. Amend Option B by revising the heading, the introductory paragraph and paragraph (c) introductory text, all to read as follows:

§ 457.102 Wheat crop insurance winter coverage endorsement.

* * * * *

(b) This endorsement is available only in counties for which the Special Provisions designate both a fall final planting date and a spring final planting date, and for which the actuarial table provides a premium rate for this coverage.

(c) * * *

(5) All eligible winter wheat acreage must be insured under this endorsement.

* * * * *

Option A (50 Percent Coverage and Acreage Release)

Whenever any winter wheat is damaged during the insurance period and at least 20 acres or 20 percent of the acreage in the unit, whichever is less, does not have an adequate stand to produce at least 90 percent of the production guarantee for the acreage, you may, at your option, take one of the following actions:

(a) Destroy the remaining crop on such acreage. By doing so, you agree to accept an amount of production to count against the unit production guarantee equal to 50 percent of the production guarantee for the damaged acreage, or an appraisal determined in accordance with section 11(c)(1) of the Small Grains Crop Provisions if such an appraisal results in a greater amount of production. This amount will be considered production to count in determining any final indemnity on the unit and will be used to settle your claim as described in section 11 (Settlement of Claim) of the Small Grains Crop Provisions. You may use such acreage for any purpose, including planting and separately insuring any other crop. If you elect to plant spring wheat, it will be insured in accordance with the policy provisions that are applicable to acreage that is initially planted to spring wheat, and you must:

* * * * *

Option B (70 Percent Coverage and Acreage Release)

Whenever any winter wheat is damaged during the insurance period and at least 20 acres or 20 percent of the acreage in the unit, whichever is less, does not have an adequate stand to produce at least 90 percent of the production guarantee for the acreage, you may, at your option, take one of the following actions:

* * * * *

(c) Destroy the remaining crop on such acreage. By doing so, you agree to accept an amount of production to count against the unit production guarantee equal to 30 percent of the production guarantee for the damaged acreage, or an appraisal determined in accordance with section 11(c)(1) of the Small Grains Crop Provisions if such an appraisal results in a greater amount of production. This amount will be considered production to count in determining any final indemnity on the unit and will be used to settle your claim as described in section 11 (Settlement of Claim) of the Small Grains Crop Provisions. You may use such acreage for any purpose, including planting and separately insuring any other crop. If you elect to plant spring wheat, it will be insured in accordance with the policy provisions that are applicable to acreage that is initially planted to spring wheat, and you must:

* * * * *

Signed in Washington, DC, on April 11, 2000.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 00–9599 Filed 4–19–00; 8:45 am]

BILLING CODE 3410–08–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 614, 615, and 618

RIN 3052–AB96

Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions; OFI Lending

AGENCY: Farm Credit Administration (FCA).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The FCA is considering whether to revise its regulations governing how Farm Credit System (System) banks lend to other financing institutions (OFIs). OFIs include commercial banks, savings institutions, credit unions, trust companies, agricultural credit corporations, and other agricultural and aquatic lenders. This ANPRM asks you to comment on the appropriate risk weighting of System bank loans to OFIs, the public availability of the identities of OFIs, cross-district funding of OFIs, and ways to improve System banks' funding of OFIs.

DATES: You may send us comments by June 19, 2000.

ADDRESSES: Send us your comments by electronic mail to "reg-com@fca.gov" or through the Pending Regulations section of our Web site at "www.fca.gov." You may also send written comments to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or by facsimile transmission to (703) 734–5784. You may review copies of all comments we receive in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Dennis K. Carpenter, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this ANPRM is to seek comment on whether we should revise FCA's regulations to improve and better promote OFI access to System funding. Through this ANPRM, we seek comment on issues related to:

- Revising System banks' capitalization requirements for loans to OFIs;
- Permitting disclosure of OFI corporate identities;
- Removing geographical impediments to OFIs' obtaining System bank funding; and
- Identifying other impediments to System bank funding of OFIs.

This ANPRM is another step in supporting the FCA Board's Philosophy Statement of July 14, 1998, in which we explained our goal to give farmers and ranchers greater access to credit.

II. Background

The Farm Credit Act of 1971, as amended (1971 Act),[1] authorizes Farm Credit Banks (FCBs) and agricultural credit banks (ACBs) (collectively, System banks) to fund and discount short- and intermediate-term loans for certain non-System lenders. The 1971 Act refers to these non-System lenders as other financing institutions, or OFIs.[2] Under the 1971 Act, OFIs include:

- National and State banks;
- Trust companies;
- Agricultural credit corporations;
- Incorporated livestock loan companies;
- Savings institutions;
- Credit unions;
- Any association of agricultural producers making loans to farmers and ranchers; and
- Any corporation making loans to producers or harvesters of aquatic products.

Section 1.7(b) of the 1971 Act[3] enables OFIs to get funding from FCBs or ACBs for any loan that a production credit association (PCA) could make under section 2.4[4] of the 1971 Act. PCA loans are short-and intermediate-term loans with maturities ranging up to 10 years (15 years to producers or harvesters of aquatic products). Only eligible farmers, ranchers, aquatic producers and harvesters, processing and marketing operators, farm-related businesses, and rural homeowners can get these loans.

The OFI discount and lending authorities of System banks help to fulfill the banks' mission to finance agriculture, aquaculture, and other named rural needs. Congress first granted OFI lending authorities to System banks in 1923 and 1930, in the predecessor legislation to the 1971 Act.

Legislative history reveals that Congress originally granted OFIs discount privileges at System banks because operating credit for farmers and ranchers was scarce. Since then, Congress has continued to respond to the changing needs of agricultural producers and other rural residents for affordable short-and intermediate-term credit. Over the decades, Congress has updated the authorities of System banks to fund and aid both System and non-System lenders. As our Philosophy Statement on competition provides and as directed by provisions of the 1971 Act, we continue to explore ways of making competitive credit available through more avenues to farmers, ranchers, and other eligible borrowers.

In the early 1980s, both the number of OFIs and the volume of business they do with System banks peaked and subsequently declined and have since remained significantly low. In 1997, to expand OFIs' access to System bank funding and discounting, we amended our regulations to remove many OFI eligibility limits not required by the 1971 Act.[5] We also required a System bank's assessment of total charges for an OFI loan to be comparable to the charges the bank imposes on its direct lender System institutions. In addition, to improve safety and soundness, those amendments also required all OFI loans to be full-recourse loans.

III. Philosophy Statement

Among other things, our 1998 Philosophy Statement on competition communicates our desire for the System to more fully serve the credit needs of agricultural producers and other rural borrowers, as Congress intended, including short-and intermediate-term credit. The System banks' relationship with OFIs is important for meeting these needs. To support the bank and OFI relationship, we continue to identify ways to improve OFIs' access to System funding. After reviewing our regulatory requirements, we have decided to consider the following changes:

(1) Revising the level of capital System banks must hold against their loans to OFIs based on certain risk characteristics;

(2) Permitting disclosure of the names of entities that have an OFI relationship with a System bank; and

(3) Removing impediments to setting up an OFI relationship outside a System bank's territorial boundaries.

We believe that revising these requirements may spur development of more OFI relationships and, thus, provide added avenues of credit available to farmers and ranchers.

We recognize that reducing the risk weighting on OFI loans could reduce capital available to support the risk in the bank's assets. However, if the risk is properly assessed, such adjustment to the risk weighting should not pose a safety and soundness concern. Furthermore, we believe an approach to capital requirements of OFIs that is more consistent with those of System associations is appropriate.

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[1] 12 U.S.C. 2001 *et seq.*
[2] 12 U.S.C. 2020(b).
[3] 12 U.S.C. 2015(b).
[4] 12 U.S.C. 2075.
[5] *See* 63 FR 36541 (July 7, 1998).

In this ANPRM, we seek comments from all interested parties to aid us in developing proposed regulations that increase opportunities for OFI lending to the extent allowed by the Act and within appropriate safety and soundness boundaries. We also ask for your help in identifying other impediments to System bank funding of OFIs.

A. Risk-Weighting Requirements of Capital

1. Current Basis for Risk-Weighting Requirements

Subparts H and K of part 615 of FCA regulations impose risk-based capital requirements on System banks. We adopted risk-weighting categories for System bank assets as part of the 1988 regulatory capital revisions required by the Agricultural Credit Act of 1987. The categories are similar to the risk-weighting categories from the 1988 International Basle Accord, whose principles the Federal banking regulators have also adopted.

Under our regulations, a System bank's loan to an OFI receives a risk weighting of 100 percent.[6] This means that, for a System bank to meet its minimum 7-percent permanent capital requirement on a loan to an OFI, it would need to hold a minimum of $7.00 in capital against each $100 of the loan to the OFI ($100 × 100 percent × 7 percent). By contrast, a loan to an affiliated System association receives a risk weighting of 20 percent.[7] This translates to the bank's holding a minimum of $1.40 in capital for each $100 of loan to the association ($100 × 20 percent × 7 percent).

The FCA's decision to risk-weight a loan to an affiliated System institution at 20 percent was based on several general characteristics that serve to lower the risk of that category of loans. They are:

- *GFA Requirements.* The association must enter a general financing agreement (GFA) with its bank, under which the association must meet the bank's lending and loan underwriting standards.[8]
- *Pledge of Collateral.* The association typically pledges all its assets as collateral for the loan from the bank, and the bank is usually the association's only source of funding.
- *Bank Supervision.* System banks, under the 1971 Act and related FCA regulations, have supervisory authority over certain aspects of System association operations.
- *FCA Examination and Regulation.* Our examination of System associations ensures that we are aware of any creditworthiness or other concerns at an early stage and can take corrective action. Under our statutory authority, we can take supervisory and enforcement actions against System associations when the need arises.[9]
- *FCA Capital Rules.* We prescribe capital standards that System associations must meet, to ensure the associations have enough capital to operate safely and soundly.[10]

2. Comparison of OFI Funding Characteristics

System bank funding relationships with OFIs have some, but not all, of the risk-reducing features of System bank loans to System associations. They are:

- *GFA Requirement.* A System bank must have the same type of GFA with an OFI that it has with a System association.[11]
- *Pledge of Collateral.* Although some OFIs use System banks as their sole source of funding and pledge all assets to the loan, more typically an OFI has multiple sources of funding and does not pledge all assets as collateral to the System bank. Nevertheless, FCA regulations require a System bank to take as collateral all notes, drafts, and other obligations it funds or discounts for an OFI, and the OFI must endorse each obligation with full recourse or an unconditional guarantee. The bank must also require the OFI to provide extra collateral or other credit enhancements when needed.[12]
- *Bank Supervision.* The 1971 Act and our regulations do not give System banks supervisory authority over OFIs.
- *FCA Examination and Regulation.* The law does not require us to examine OFIs, but the 1971 Act and regulations enable us either to examine OFIs or to have access to other regulators' examination reports. The 1971 Act allows us to examine all OFIs, except federally regulated financial institutions, and allows Federal agencies to give us all reports and other information they have on the condition of any OFI.[13] In addition, under the 1971 Act and our regulations, each OFI that is a State-chartered bank, trust company, or savings institution must authorize its State regulator to give us examination reports. Each OFI that is not a depository institution must consent in writing to be examined by us.[14] However, we do not have general authority to regulate the activities of OFIs (other than the funding relationship with the System bank) or to take supervisory or enforcement actions against OFIs.
- *FCA Capital Rules.* We do not impose capital requirements on OFIs. However, the 1971 Act does limit OFI funding and discounting to OFIs whose debt is less than 10 times their paid-in and unimpaired capital and surplus, or a lesser amount if allowed by the laws of the OFI's jurisdiction.[15] In addition, some OFIs, such as commercial banks and savings institutions, have capital requirements that are similar to our requirements for System institutions.

3. Risk-Weighting Options

We have several choices for revising the risk weighting of loans to OFIs. If we decide that OFI loans, as a class, have a lower risk than other assets in the 100-percent risk-weighting category, we can lower the risk weighting uniformly on all OFI loans.

Another alternative is to place OFI loans in different risk-weighting categories to reflect differences in the type of OFI. Loans to OFIs that are regularly examined and have capital requirements similar to our capital rules, such as commercial banks, might qualify for a lower risk weighting. Other OFIs that are unregulated and do not have capital requirements similar to our capital rules might have a higher risk weighting.

Yet another choice would be to lower the risk weighting on loans to OFIs that meet certain risk mitigation criteria. For example, a proposed June 1999 revision to the Basle Accord seeks to reassess the risk weightings currently assigned to assets.[16] The proposed revision would place a new emphasis on using risk mitigation techniques and differentiating risk exposures. To mitigate risk on an OFI loan, and thus lower the risk weighting, the OFI could pledge additional security in the form of readily marketable, highly liquid securities (such as AAA-or AA-rated securities). Another risk mitigation technique would be for a System bank to analyze an OFI's capital and financial condition and to require the OFI to meet and maintain certain capital standards, through terms of their GFA.

[6] 12 CFR 615.5210(f)(2)(iv)(C).
[7] 12 CFR 615.5210(f)(2)(ii)(I).
[8] 12 CFR 614.4120 and 614.4125.
[9] 12 U.S.C. 2261–2274.
[10] 12 U.S.C. 2154, 2154a; 12 CFR part 615, subparts H through M.
[11] 12 CFR 614.4120, 614.4130, and 614.4560(a)(1).
[12] 12 CFR 614.4570.
[13] 12 U.S.C. 2254(a), 2255, 2257.
[14] 12 U.S.C. 2256; 12 CFR 614.4560(e).
[15] 12 U.S.C. 2015(b)(3).
[16] Information about the Basle Accord proposals is at the Web site for the Bank for International Settlements, *www.bis.org.*

B. Disclosure of Names of OFIs

The FCA's regulations on releasing information [17] currently prohibit System institutions from disclosing information about borrowers and stockholders. Also, the FCA has routinely kept confidential the names of borrowers that we have obtained during examinations. However, we have never interpreted these prohibitions as preventing release of the names of PCAs (or other System associations) that, like OFIs, borrow from a System bank but are not retail borrowers. In fact, this information is widely known because each System bank issues publicly available financial statements identifying its PCAs and other affiliated associations.

The reasons for protecting the identity of retail borrowers, who are mostly individual consumers such as farmers and ranchers or rural homeowners, may not be present for OFIs.[18] Keeping the identities of retail borrowers confidential shields them from unwanted marketing solicitations or publicity involving their personal financial business. It is unlikely that publicly identifying OFIs would have these effects. On the contrary, disclosing the names of lenders with OFI relationships could benefit OFIs because it could make prospective retail borrowers aware of these added sources of credit.

In this light, we are considering a requirement to disclose the names of entities that have OFI relationships with System banks. We are interested in receiving your comments and recommendations on the conditions under which to release the information. We note that we are not considering the release of any information about OFIs except the name of the business and other identifying information such as the type of agricultural credit the OFI offers.

C. Cross-District Lending

In July 1998, we amended the regulations to authorize a System bank to lend to an OFI whose headquarters are outside of the bank's territory or a majority of whose loan volume is outside of the bank's territory.[19] The final OFI regulations specifically revised § 614.4550 to allow:

(1) FCBs and ACBs to provide funding to any OFI applicant that maintains its headquarters in the funding bank's chartered territory, or has more than 50 percent of its outstanding eligible loan volume in the funding bank's chartered territory; and

(2) OFIs to apply to any other FCB or ACB if the original FCB or ACB denies or otherwise fails to approve an OFI's funding request within 60 days of receipt of a "completed application" as defined by 12 CFR 202.2(f).

In addition, an FCB or ACB may grant its consent for an OFI to seek financing from another System bank. The regulation also provides that no OFI will be required to terminate its existing funding or discount relationship with an FCB or ACB if, at a subsequent time, an OFI relocates its headquarters to the chartered territory of another System bank or the loan volume in the relevant territory falls below 50 percent.

The 1998 amendments gave new flexibility to OFIs for choosing a System bank for establishing a funding relationship. But we retained some restrictions because, at the time, System associations were restricted in their ability to seek financing from other System banks. However, the Board's subsequent Philosophy Statement supports broader funding access for borrowers and lending institutions. Therefore, given our continued interest to explore different alternatives that provide greater access to System funding, we are seeking comment on possible ways to provide greater flexibility to OFIs setting up funding relationships with System banks in different districts.

IV. Questions

In this ANPRM, we seek your comments on the following:

1. If we lower the risk weighting of capital to be held by System banks for all types of loans to OFIs, what risk-weighting category would be appropriate? Please provide your analysis of the level of risk weighting that you recommend.

2. How should we address the variety of possible OFI types and OFI relationships:

a. Would it be more appropriate to lower the risk weighting on OFI loans on a case-by-case basis, based on underwriting criteria for various risk categories? Why or why not? What underwriting criteria should we require System banks to establish for the various levels of risk weighting?

b. Should we consider the use of risk mitigation techniques (such as a pledge of added security), or differentiate between direct retail credit risk exposure and wholesale credit risk exposure? Why or why not? Please recommend how we should address risk mitigation techniques in our regulations.

c. What is the appropriate level of risk weighting on loans to OFIs that meet risk mitigation criteria? Please provide your recommendations and analysis.

3. Should we allow or require System banks to release the names of OFIs on request? Are there any drawbacks for the System bank, the OFI, or the OFI's customers, if the identities of OFIs are released? Do you believe any limits on the release of such information are necessary? Please provide your recommendations and associated explanation.

4. Should new regulations continue the territorial limits for OFIs' funding access to System banks as addressed in existing § 614.4550? If not, what if any factors should limit an OFI's choice of System bank? Please provide your recommendations and explanation.

5. Are there other regulatory changes we could make or alternatives not addressed above that we should consider to improve a System bank's ability to serve an OFI and its agricultural customers? Please provide your recommendations and explanation for such alternatives.

Dated: April 13, 2000.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 00–9849 Filed 4–19–00; 8:45 am]

BILLING CODE 6705–01–P

[17] 12 CFR part 618, subpart G.

[18] We note that the financial privacy protections of the recently enacted Gramm-Leach-Bliley Act, Pub. L. 106–102 (Nov. 12, 1999), protect only financial institution customers that are "consumers"—that is, individuals.

[19] See 63 FR 36541 (July 7, 1998).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–240–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Industrie Model A300, A300–600, and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A300, A300–600, and A310 series airplanes, that currently requires inspections to detect cracks in the lower spar axis of the nacelle pylon between ribs 9 and 10, and repair, if necessary. The existing AD also provides for optional modification of the pylon, which terminates the inspections for Model A300 and A310

series airplanes and increases the threshold and repetitive interval of the inspections for Model A300–600 series airplanes. This action would reduce the inspection threshold and require repetitive inspections following accomplishment of the optional modification for Model A310 series airplanes. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent fatigue cracking, which could result in reduced structural integrity of the lower spar of the pylon.

DATES: Comments must be received by May 22, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–240–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–240–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–240–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 28, 1995, the FAA issued AD 95–10–03, amendment 39–9220 (60 FR 25604, May 12, 1995), applicable to certain Airbus Industrie Model A300, A300–600, and A310 series airplanes, to require inspections to detect cracks in the lower spar axis of the nacelle pylon between ribs 9 and 10, and repair, if necessary. The existing AD also provides for optional modification of the pylon, which terminates the inspections for Model A300 and A310 series airplanes and increases the threshold and repetitive interval of the inspections for Model A300–600 series airplanes. That action was prompted by reports that fatigue cracks have been found between ribs 9 and 10 on the lower spar of the pylon, initiating at the center stiffener beyond the flat area. The requirements of that AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of the lower spar of the pylon.

Actions Since Issuance of Previous Rule

Since issuance of AD 95–10–03, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has advised the FAA that additional cracks have been found in the lower spar axis of the nacelle pylon between ribs 9 and 10 on Model A310 series airplanes at a lower total number of flight cycles than had been earlier reported. Based on these findings, the FAA has determined that, for Airbus Model A310 series airplanes, it is necessary to reduce the inspection threshold and, for airplanes on which the optional modification has been accomplished, to require that the inspections be repetitively performed.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A310–54–2016, Revision 02, dated June 11, 1999 (for Model A310 series airplanes). The actions described in Revision 02 of this service bulletin are identical to those described in the original version and Revision 01 (which were cited as appropriate service information for accomplishment of the inspections). Revision 02 was issued to reduce the initial inspection threshold and, for airplanes modified in accordance with Service Bulletin A310–54–2022, Revision 1, dated March 16, 1999, to specify that the inspection be repetitively performed.

The DGAC classified Service Bulletin A310–54–2016 as mandatory and issued French airworthiness directive 1999–237–285(B), dated June 2, 1999, in order to assure the continued airworthiness of these airplanes in France. French airworthiness directive 1992–049–130(B) R4 was issued to remove Model A310 series airplanes from its applicability and to advise of the issuance of airworthiness directive 1999–237–285(B).

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 95–10–03 to continue to require inspections to detect cracks in the lower spar axis of the nacelle pylon between ribs 9 and 10, and repair, if necessary. The proposed AD would continue to provide for optional modification of the pylon; for Model A300 series airplanes, accomplishment of the modification would terminate the inspections; for Model A300–600 and A310 series airplanes, such

modification would increase the threshold and repetitive interval of the inspections.

Differences Between Proposed Rule and Service Bulletins

Operators should note that, although the service bulletins specify that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA, or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Cost Impact

The FAA estimates that 140 airplanes of U.S. registry will be affected by this AD.

It will take approximately 4 work hours per airplane to accomplish the inspection that was previously required by AD 95–10–03, and retained in this AD, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection on U.S. operators is estimated to be $240 per airplane, per inspection cycle.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the proposed optional modification, it would take approximately 104 work hours (52 work hours per pylon) to accomplish it, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $1,200 per airplane. Based on these figures, the total cost impact of the optional modification is estimated to be $7,440 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9220 (60 FR 25604, May 12, 1995), and by adding the following new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 99–NM–240–AD. Supersedes AD 95–10–03, Amendment 39–9220.

Applicability: The following airplanes, certificated in any category:

- Model A300 series airplanes, as listed in Airbus Service Bulletin A300–54–071, Revision 1, dated October 15, 1993
- Model A300–600 series airplanes, as listed in Airbus Service Bulletin A300–54–6011, Revision 1, dated October 15, 1993
- Model A310 series airplanes, as listed in Airbus Service Bulletin A310–54–2016, Revision 02, dated June 11, 1999

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking, which could result in reduced structural integrity of the lower spar of the pylon, accomplish the following:

Restatement of Certain Requirements of AD 95–10–03

Model A300 Series Airplanes

(a) For Model A300 B4–2C, B2K–3C, B2–203, B4–103, and B4–203 series airplanes: Prior to the accumulation of 9,000 total landings, or within 500 landings after June 12, 1995 (the effective date of AD 95–10–03, amendment 39–9220), whichever occurs later, perform an internal eddy current inspection to detect cracks in the lower spar axis of the pylon between ribs 9 and 10, in accordance with Airbus Industrie Service Bulletin A300–54–071, dated November 12, 1991; or Revision 1, dated October 15, 1993.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 2,500 landings.

(2) If any crack is found that is less than or equal to 30 mm: Perform subsequent inspections and repair in accordance with the methods and times specified in the service bulletin.

(3) If any crack is found that is greater than 30 mm, but less than 100 mm: Prior to the accumulation of 250 landings after crack discovery, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

(4) If any crack is found that is greater than or equal to 100 mm: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(5) Accomplishment of the modification specified in Airbus Industrie Service Bulletin A300–54–0079, dated October 15, 1993, constitutes terminating action for the inspections required by paragraph (a) of this AD.

Model A300–600 Series Airplanes

(b) For Model A300–600 B4–620, C4–620, B4–622R, and B4–622 series airplanes: Except as provided by paragraph (b)(5) of this AD, prior to the accumulation of 4,000 total landings, or within 500 landings after June 12, 1995 (the effective date of AD 95–10–03), whichever occurs later, perform an internal eddy current inspection to detect cracks in the lower spar axis of the pylon between ribs 9 and 10, in accordance with Airbus Industrie Service Bulletin A300–54–6011, dated November 12, 1991, as amended by Service Bulletin Change Notice O.A., dated July 10, 1992; or Revision 1, dated October 15, 1993.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 2,500 landings.

(2) If any crack is found that is less than or equal to 30 mm: Perform subsequent inspections and repair in accordance with

the methods and times specified in the service bulletin.

(3) If any crack is found that is greater than 30 mm, but less than 100 mm: Prior to the accumulation of 250 landings after crack discovery, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent).

(4) If any crack is found that is greater than or equal to 100 mm: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(5) Accomplishment of the modification specified in Airbus Industrie Service Bulletin A300–54–6019, dated October 15, 1993, increases the threshold and repetitive interval of the inspections required by paragraph (b) of this AD to the threshold and interval specified in paragraph 2.D. of the Accomplishment Instructions of Airbus Industrie Service Bulletin A300–54–6011, Revision 1, dated October 15, 1993.

New Requirements of This AD

Model A310 Series Airplanes

(c) For Model A310–221, –222, –322, –324, and –325 series airplanes: Perform an internal eddy current inspection to detect cracks in the lower spar axis of the pylon between ribs 9 and 10, in accordance with Airbus Industrie Service Bulletin A310–54–2016, dated November 12, 1991; or Revision 1, dated October 15, 1993; or Revision 2, dated June 11, 1999; at the time specified in paragraph (d) of this AD.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 2,500 landings.

(2) If any crack is found that is less than or equal to 30 mm: Perform subsequent inspections and repair in accordance with the methods and times specified in the service bulletin.

(3) If any crack is found that is greater than 30 mm, but less than 100 mm: Prior to the accumulation of 250 landings after crack discovery, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(4) If any crack is found that is greater than or equal to 100 mm: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

(5) Accomplishment of the modification specified in Airbus Industrie Service Bulletin A310–54–2022, dated October 15, 1993; or Revision 1, dated March 16, 1999; increases the threshold and repetitive interval of the inspections required by paragraph (c) of this AD to the threshold and interval specified in paragraph 2.D. of the Accomplishment Instructions of Airbus Industrie Service Bulletin A310–54–2016, Revision 02, dated June 11, 1999.

(d) Perform the initial inspection required by paragraph (c) of this AD at the earlier of the times specified by paragraphs (d)(1) and (d)(2) of this AD.

(1) Prior to the accumulation of 25,000 total landings, or within 500 landings after June 12, 1995, whichever occurs later.

(2) At the applicable time specified by paragraph (d)(2)(i), (d)(2)(ii), or (d)(2)(iii) of this AD.

(i) For airplanes that have accumulated fewer than 10,000 landings as of the effective date of this AD: Perform the inspection prior to the accumulation of 3,800 total landings, or within 1,500 landings after the effective date of this AD, whichever occurs later.

(ii) For airplanes that have accumulated 10,000 total landings or more, but fewer than 20,000 total landings, as of the effective date of this AD: Perform the inspection within 1,000 landings after the effective date of this AD.

(iii) For airplanes that have accumulated 20,000 total landings or more as of the effective date of this AD: Perform the inspection within 500 landings after the effective date of this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 1999–237–285(B), dated June 2, 1999.

Issued in Renton, Washington, on April 14, 2000.

Charles D. Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–9898 Filed 4–19–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–164–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A300–600 series airplanes, that currently requires repetitive ultrasonic inspections to detect cracks in the bolt holes inboard and outboard of rib 9 on the bottom booms of the front and rear wing spars, and repair, if necessary. This action would revise the compliance thresholds for the inspection and would require that the inspections be repeated at reduced intervals. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent fatigue cracks in the bolt holes of the wing spars, which could result in reduced structural integrity of a wing spar.

DATES: Comments must be received by May 22, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–164–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained

in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–164–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–164–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On March 29, 1995, the FAA issued AD 95–07–05, amendment 39–9187 (60 FR 17990, April 10, 1995), applicable to certain Airbus Model A300–600 series airplanes, to require repetitive ultrasonic inspections to detect fatigue cracks in the bolt holes inboard and outboard of rib 9 on the bottom booms of the front and rear wing spars, and repair, if necessary. That action was prompted by the discovery of fatigue cracks that emanated from the bolt holes inboard and outboard of rib 9 in the bottom booms of the front and rear wing spars. The requirements of that AD are intended to prevent cracks in the bolt holes of the wing spars, which could result in reduced structural integrity of a wing spar.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, received a report indicating that, during routine maintenance, a fatigue crack of 3.58 inches (91 millimeters) in length was discovered on the bolt holes of the wing spars on a Model A300 series airplane that had accumulated 29,919 total flight cycles. Investigation revealed that an initial inspection to detect cracks in the bolt holes of the wing spars, in accordance with that AD, had been performed on this airplane at 23,545 total flight cycles. Procedures for this inspection are described in Airbus Service Bulletin A300–57–6039, dated August 1, 1994 (which was referenced in AD 95–07–05 as the appropriate source of service information).

That service bulletin specified an interval not to exceed 9,000 flight cycles for repetitive inspections, which would have resulted in accomplishment of the next inspection on this airplane at 32,545 total flight cycles. Accomplishment of the next inspection at the scheduled compliance time would have allowed the cracking on this airplane to remain undetected for 2,626 flight cycles. Therefore, the DGAC has concluded that the existing repetitive interval for these inspections does not detect such cracking in a timely manner, and advises that the interval should be reduced.

Explanation of Relevant Service Information

Subsequent to the finding of this new cracking, Airbus issued Service Bulletin A300–57–6037, Revision 1, dated August 31, 1995. The inspection and repair procedures described in Revision 1 of the service bulletin are essentially identical to those described in the original issue of the service bulletin. However, Revision 1 of the service bulletin reduces the repetitive inspection intervals from 9,000 flight cycles, as specified in the original issue of the service bulletin, to 4,800 flight cycles.

The DGAC classified Revision 1 of this service bulletin as mandatory and issued French airworthiness directive 94–208–169(B)R2, dated October 8, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 95–07–05 to continue to require repetitive ultrasonic inspections to detect cracks in the bolt holes inboard and outboard of rib 9 on the bottom booms of the front and rear wing spars, and repair, if necessary. This proposed AD would require that the repetitive inspections be accomplished at a revised threshold and at reduced intervals. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, unlike particular provisions in the service bulletin regarding adjustment of the compliance times using an "adjustment-for-range" formula, this proposed AD would not permit formulaic adjustments of the inspection compliance times. The FAA has determined that such adjustments may present difficulties in determining if the applicable inspections and modifications have been accomplished within the appropriate time frame. Further, while such adjustable compliance times are utilized as part of the Maintenance Review Board program, they do not fit practically into the AD tracking process for operators or for Principal Maintenance Inspectors attempting to ascertain compliance with AD's. Therefore, the FAA has determined that fixed compliance times should be specified for accomplishment of the actions required by this AD.

Additionally, after discussions with the DGAC and the manufacturer, the FAA has determined that flight-hour maximums should be included as part of the compliance threshold and repetitive intervals for the inspections required by this proposed AD. Inclusion of a compliance threshold in terms of total flight hours as well as total flight cycles, and requiring inspection at the earlier of those times, will ensure that airplanes with longer-than-average flight times are inspected at a threshold and intervals necessary to maintain safety. Accordingly, the FAA has specified that the initial inspection must be accomplished at the earliest time an airplane reaches certain accumulated total flight cycles or total flight hours, and that repetitive inspections are to be accomplished at intervals not to exceed certain flight cycles or flight hours, whichever occurs first.

The FAA has determined that such revision of the inspection threshold and

reduction of the intervals of the existing AD does not adversely impact any U.S. operators, since no airplanes on the U.S. Register have yet reached those accumulated flight-cycle or flight-hour thresholds.

Cost Impact

There are approximately 75 airplanes of U.S. registry that would be affected by this proposed AD.

The inspection that is currently required by AD 95–07–05, and retained in this AD, takes approximately 1 work hour per airplane to accomplish (excluding 10 work hours for access and close-up), at an average labor rate of $60 per work hour. Based on this figure, the cost impact of the currently required inspection on U.S. operators is estimated to be $4,500, or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9187 (60 FR 17990, April 10, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 98–NM–164–AD. Supersedes AD 95–07–05, Amendment 39–9187.

Applicability: Model A300–600 series airplanes, certificated in any category, on which Airbus Modification 10161 has not been installed in production.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracks in the bolt holes of the wing spars, which could result in reduced structural integrity of a wing spar, accomplish the following:

Ultrasonic Inspections

(a) Perform an ultrasonic inspection to detect fatigue cracking of the bolt holes inboard and outboard of rib 9 on the bottom booms of the front and rear wing spars, in accordance with Airbus Service Bulletin A300–57–6037, dated August 1, 1994, or Revision 1, dated August 31, 1995, at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD. Repeat the inspection thereafter at intervals not to exceed 4,800 flight cycles or 11,000 flight hours, whichever occurs first.

(1) For airplanes on which Airbus Modification 8842 (reference Airbus Service Bulletin A300–57–6039) has not been installed: Inspect at the earlier of the times specified by paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Prior to the accumulation of 17,000 total flight cycles, or within 2,000 flight cycles after May 10, 1995 (the effective date of AD 95–07–05, amendment 39–9187), whichever occurs later.

(ii) Prior to the accumulation of 39,000 total flight hours.

(2) For airplanes on which Airbus Modification 8842 has been installed: Inspect at the earlier of the times specified by paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Within 17,000 flight cycles after accomplishment of Airbus Modification 8842, or within 2,000 flight cycles after May 10, 1995, whichever occurs later.

(ii) Within 39,000 flight hours after accomplishment of Airbus Modification 8842.

Corrective Action

(b) If any crack is found, prior to further flight, repair in accordance with Airbus Service Bulletin A300–57–6037, dated August 1, 1994, or Revision 1, dated August 31, 1995. Thereafter, perform the repetitive inspections required by paragraph (a) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 94–208–169(B)R2, dated October 8, 1997.

Issued in Renton, Washington, on April 14, 2000.

Charles D. Huber,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–9899 Filed 4–19–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–81–AD]

Airworthiness Directives; Sikorsky Aircraft-manufactured Model CH–54A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Sikorsky Aircraft-manufactured Model CH–54A helicopters, that currently requires initial and recurring inspections and rework or replacement, if necessary, of the second stage lower planetary plate (plate). This action would require the same actions as the existing AD but would add two additional type certificate (TC) holders to the applicability of the AD and change one TC holder who has transferred ownership of the affected helicopters since the issuance of the existing AD. This proposal is prompted by the discovery that the applicability section of the existing AD is incomplete. The actions specified by the proposed AD are intended to prevent failure of the plate due to fatigue cracking which could result in failure of the main gearbox, failure of the drive system, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before June 19, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–81–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov. Comments may be inspected at the Office of the Regional Counsel between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–81–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–81–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On March 25, 1999, the FAA issued AD 99–07–16, Amendment 39–11102 (64 FR 15669, April 1, 1999), to require initial and recurring inspections and rework or replacement, if necessary, of the plate. Cracks on the plate, part number 6435–20229–102, initiate at and radiate from the lightening holes in the plate web due to fatigue. That action was prompted by cracked plates that were found during overhaul and inspections. The requirements of that AD are intended to prevent failure of the plate due to fatigue cracking, which could result in failure of the main gearbox, failure of the drive system, and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA has discovered that two TC holders were inadvertently omitted from the applicability section and one TC holder has transferred the TC for an affected model helicopter.

Since an unsafe condition has been identified that is likely to exist or develop on other Sikorsky Aircraft-manufactured Model CH–54A helicopters of the same type design, the proposed AD would supersede AD 99–07–16 to require initial and recurring inspections and rework or replacement, if necessary, of the plate.

The FAA estimates that 12 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per helicopter to accomplish the proposed inspections and 56 hours to remove and replace the plate, and that the average labor rate is $60 per work hour. Required parts would cost approximately $8,000 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $142,080 to replace the plates in the entire fleet.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11102 (64 FR 15669, April 1, 1999), and by adding a new airworthiness directive (AD), to read as follows:

Siller Helicopters; Aviation International Rotors, Inc. (Air, Inc); Columbia Helicopters, Inc.; Chet Raspberry, Inc. (CRI); Silver Bay Logging, Inc.: Docket No. 99–SW–81–AD. Supersedes AD 99–07–16, Amendment 39–11102, Docket No. 97–SW–60–AD.

Applicability: Model CH–54A helicopters with lower planetary plate, part number (P/N) 6435–20229–102, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the second stage lower planetary plate (plate), P/N 6435–20229–102, due to fatigue cracking, which could lead to failure of the main gearbox, failure of the drive system, and subsequent loss of control of the helicopter, accomplish the following:

(a) On or before accumulating 1,300 hours time-in-service (TIS), conduct a fluorescent magnetic particle inspection of the plate, P/N 6435–20229–102, in the circumferential and longitudinal directions using the wet continuous method. Pay particular attention to the area around the 9 lightening holes.

(1) If any crack is discovered, replace the plate with an airworthy plate prior to further flight.

(2) If no crack is discovered, rework the plate as follows:

(i) Locate the center of each 1.750 inch-diameter lightening hole and machine holes 0.015 to 0.020 oversize on a side (0.030 to 0.040 diameter oversize). Machined surface roughness must not exceed 63 microinches AA rating (see Figure 1).

(ii) Radius each hole 0.030 to 0.050 inches on each edge as shown in Figure 1.

(iii) Mask the top and bottom surfaces of the plate to expose 3.20 inch minimum width circumferential band as shown in Figure 1.

(iv) Vapor blast or bead exposed surfaces to remove protective finish. Use 220 aluminum oxide grit at a pressure of 80 to 90 pounds per square inch.

(v) Shot peen exposed surfaces and inside and edges of lightening holes to 0.008–0.012A intensity. Use cast steel shot, size 170; 200 percent coverage is required. Use the tracer dye inspection method to ensure the required coverage. Also, visually inspect the shot peened surfaces for correct shot peen coverage. Inspect the intensity of the shot by performing an Almen strip height measurement.

(vi) Clean reworked surfaces using acetone. Touch up the reworked areas using Presto Black or an equivalent touchup solution. Ensure that the touchup solution is at a temperature between 70 °F to 120 °F during use. Keep the reworked surfaces wet with touchup solution for 3 minutes to obtain a uniform dark color. Rinse and dry the reworked areas.

(vii) Polish the reworked surfaces with a grade 00 or finer steel wool and polish with a soft cloth. Coat the reworked surfaces with preservative oil.

(viii) Identify the reworked plate by adding "TS–107" after the part number using a low-stress depth-controlled impression-stamp with a full fillet depth of not more than 0.003 inch (see Figure 1).

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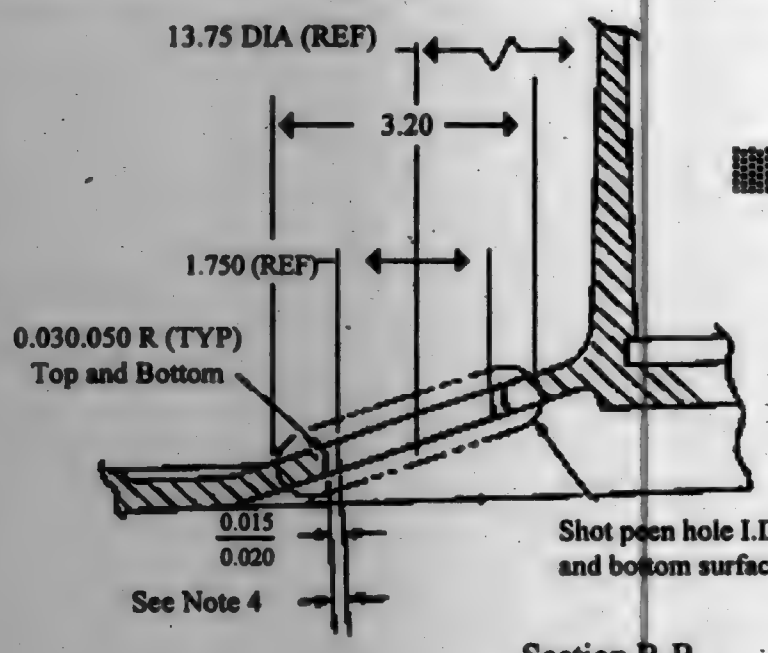

Notes:

1. Mask top and bottom areas to protect from liquid air-grit and shot peen.

2. Shaded area to be liquid air-grit blasted and shot peened includes plate top and bottom surfaces and I.D. of all lightening holes. Feather shot peened surface edges.

3. Use low-stress depth controlled impression-stamp with full fillet depth of no more than 0.003 inch.

4. Reworked machined surface roughness shall not exceed 63 microinches AA rating.

Section B-B

(Typical Nine Places)

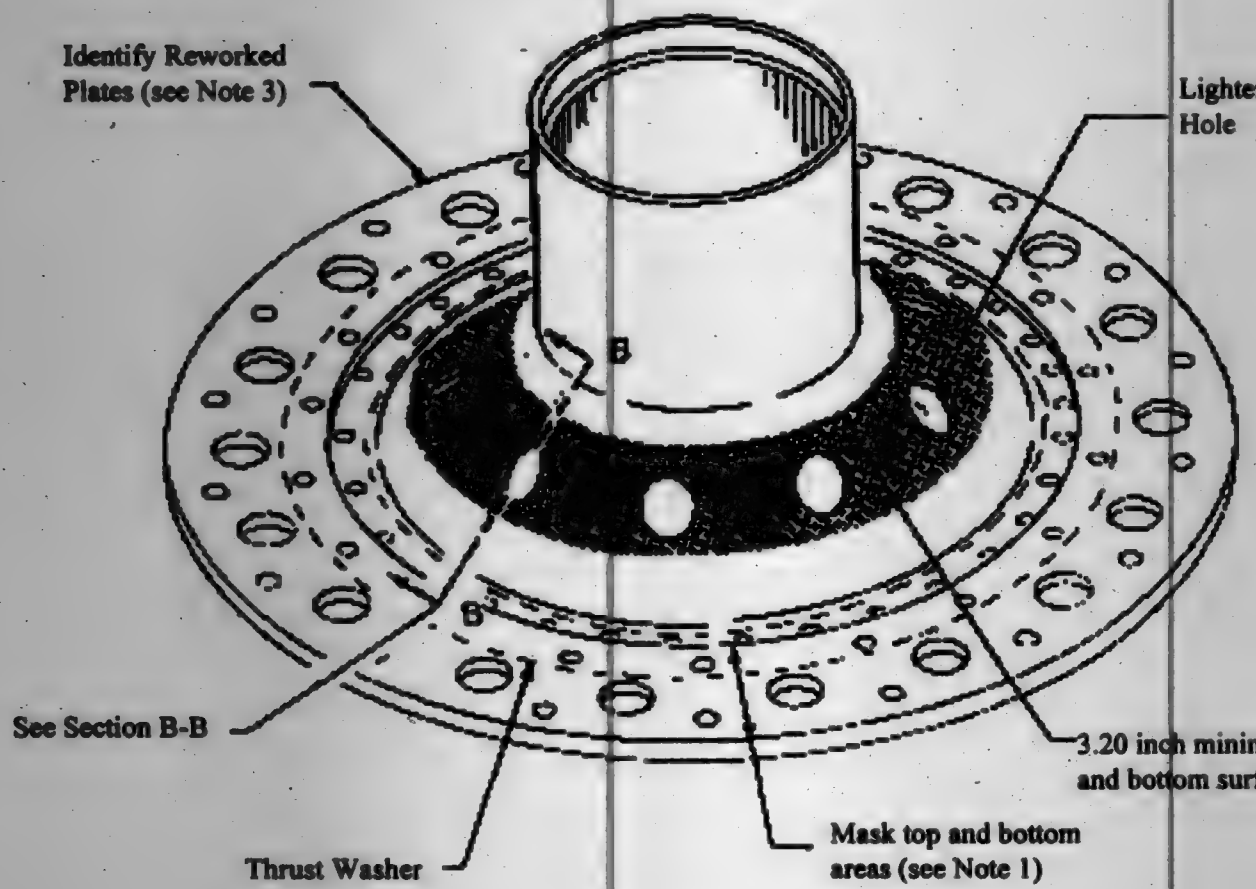

Rework of Second Stage
Lower Planetary Plate (6435-20229-102)
Figure 1

(b) For any plate, P/N 6435–20229–102, that has been reworked and identified with "TS–107," on or before the accumulation of 1,500 hours TIS and thereafter at intervals not to exceed 70 hours TIS, accomplish the following:

(1) Inspect the plate for a crack in the area around all nine lightening holes using a Borescope or equivalent inspection method (see Figure 2).

(2) If a crack is found, replace the plate with an airworthy plate prior to further flight.

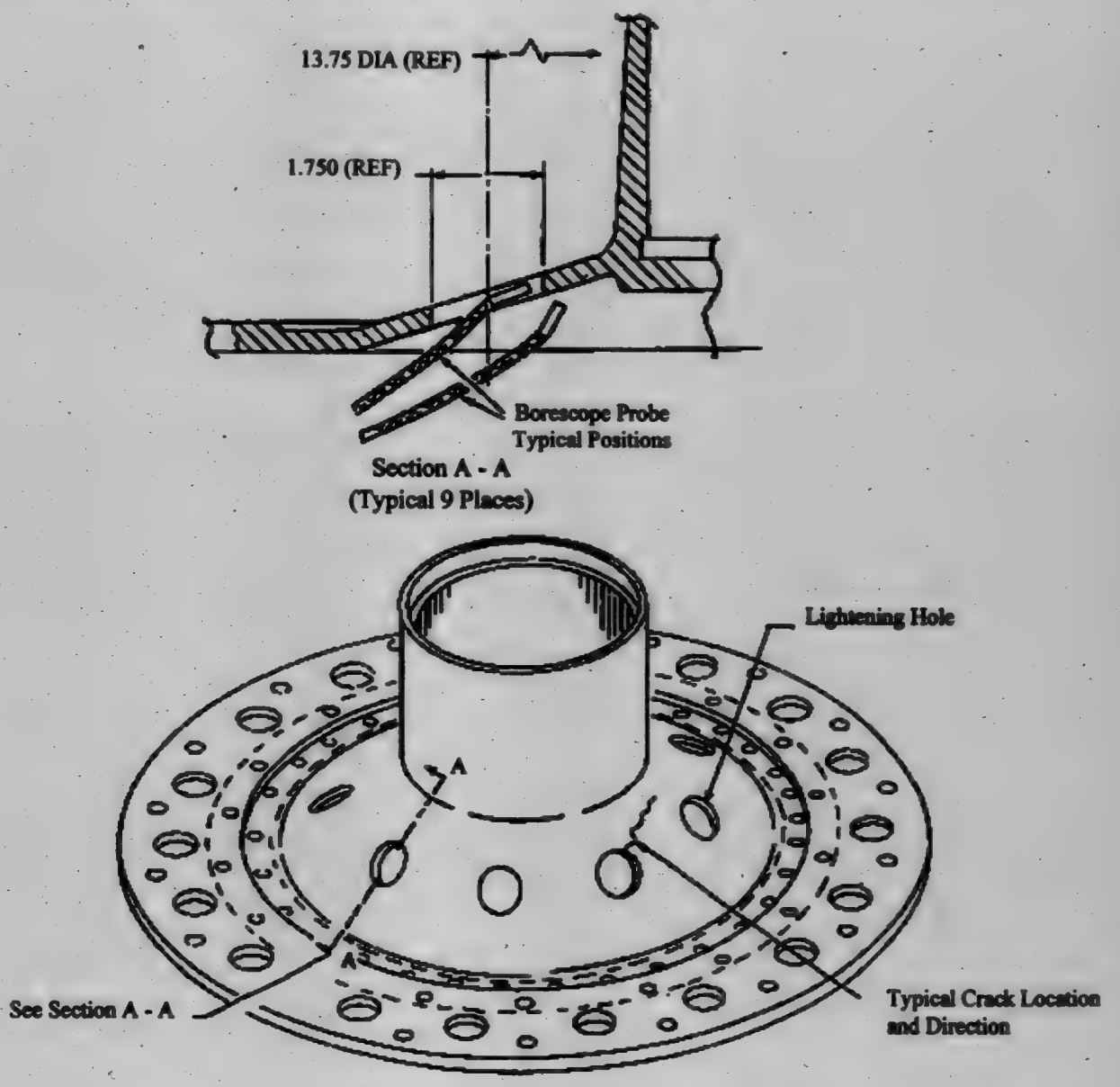

Borescope Inspection of
Second Stage Lower Planetary Plate
Figure 2

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(c) On or before the accumulation of 2,600 hours TIS, remove from service plates, P/N 6435–20229–102, reidentified as P/N 6435–20229–102–TS–107 after rework. This AD revises the airworthiness limitation section of the maintenance manual by establishing a retirement life of 2,600 hours TIS for the main gearbox assembly second stage lower planetary plate, P/N 6435–20229–102, reidentified as P/N 6435–20229–102–TS–107 after rework.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on April 13, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–9900 Filed 4–19–00; 8:45 am]

BILLING CODE 4910–13–P

RAILROAD RETIREMENT BOARD

20 CFR Part 349

RIN 3220–AB25

Finality of Decisions Regarding Unemployment and Sickness Insurance

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board proposes to adopt regulations pertaining to the finality of decisions under the Railroad Unemployment Insurance Act (Act). The present rules dealing with finality of decisions under that statute are incomplete and are contained in a Board Order which is not readily available to the public. Therefore, the Board has determined that the present rules should be revised and published as a regulation.

DATES: Submit comments on or before June 19, 2000.

ADDRESSES: Address any comments concerning this proposed rule to the Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Senior Attorney, Railroad Retirement Board, (312) 751–4945, TTD (312) 751–4701.

SUPPLEMENTARY INFORMATION: The Board's rules and procedures regarding the finality of decisions with respect to benefits under the Railroad Unemployment Insurance Act are presently contained in a Board Order, which is not readily available to the public. Also the Board Order does not contain any time limits on reopening. The proposed regulation addresses the finality of benefit decisions. This proposed rule is similar to part 261 of the Board's regulations on reopening of decisions under the Railroad Retirement Act (20 CFR 261).

Proposed § 349.1 describes who may open a final decision issued by the agency. Proposed § 349.2 describes when a final decision may be reopened. A final decision may be reopened within 12 months of the date of notice of such decision. A final decision may also be reopened within 4 years of the date of notice if new and material evidence is furnished or if the decision was not reasonably consistent with the evidence of record at the time the decision was made. A decision may be reopened at any time if the decision was obtained by fraud or similar fault, or if the decision was that the employee was not a qualified employee and is later found to be one because of a correction in his or her record of compensation, or if the decision was wholly or partially unfavorable to a claimant, but only to correct clerical error or an error that appears on the face of the evidence that was considered when the decision was made. See proposed § 349.2(c).

Proposed § 349.3 provides that a change of legal interpretation or administrative ruling upon which a decision was based is not a basis for reopening.

Proposed § 349.4 provides that a decision may be reopened after the 1 year and 4 year time limits set forth in § 349.2 if the Board had begun an investigation within those time limits. However, if the Board does not diligently pursue the investigation, the agency will not reopen the decision if the decision was favorable to the claimant.

Proposed §§ 349.5–349.7 are procedural and provide that if a decision is reopened, the claimant will be given notice and will have a right to reconsideration and/or a hearing. Any hearing shall be conducted in accordance with part 320 of the Board's regulations (20 CFR 320).

Finally, proposed § 349.8 provides that the three-member Board has the discretion to reopen or not to reopen any decision under these regulations.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 349

Railroad employees, Railroad unemployment insurance.

For the reasons set out in the preamble, the Railroad Retirement Board proposes to add a new part 349 to 20 CFR Chapter II as follows:

PART 349—FINALITY OF DECISIONS REGARDING UNEMPLOYMENT AND SICKNESS INSURANCE

Sec.

349.1 Reopening and revising decisions.
349.2 Conditions for reopening.
349.3 Change of legal interpretation or administrative ruling.
349.4 Late completion of timely investigation.
349.5 Notice of revised decision.
349.6 Effect of revised decision.
349.7 Time and place to request a review and/or hearing on revised decision.
349.8 Discretion of the three-member Board to reopen or not to reopen.

Authority: 45 U.S.C. 355 and 362(l).

§ 349.1 Reopening and revising decisions.

(a) This part sets forth the Board's rules governing finality of decisions with respect to benefits under the Railroad Unemployment Insurance Act. After the expiration of the time limits for review as set forth in part 320 of this chapter, decisions may be reopened and revised only under the conditions described in this subpart, by the bureau, office or entity that made the earlier decision or by a bureau, office, or other entity at a higher level which has the claim properly before it. Whether a final decision is reopened or not reopened is solely within the discretion of the Board.

(b) A *final decision,* as that term is used in this part, means any decision under § 320.5 of this chapter where the time limit for review, as set forth in part 320 of this chapter or in the Railroad Unemployment Insurance Act, has expired.

(c) *Reopening* a final decision under this part means a conscious determination on the part of the agency to reconsider an otherwise final

decision for purposes of revising that decision.

(d) *New and material evidence,* as that phrase is used in this part, means evidence which was unavailable to the agency at the time the decision was made, and which the claimant could not reasonably have been expected to have submitted at that time.

§ 349.2 Conditions for reopening.

A final decision may be reopened:

(a) Within 12 months of the date of the notice of such decision, for any reason;

(b) Within four years of the date of the notice of such decision:

(1) If there is new and material evidence; or

(2) If the decision was not reasonably consistent with the evidence of record at the time of adjudication.

(c) At any time if:

(1) The decision was obtained by fraud or similar fault;

(2) The decision was that the claimant was not a qualified employee, and he or she is now qualified because compensation was credited to the employee's record of compensation in accordance with part 211 of this chapter:

(i) To correct errors apparent on the face of the compensation record;

(ii) To enter items transferred by the Social Security Administration which were credited under the Social Security Act when they should have been credited to the employee's railroad retirement compensation record; or

(iii) To correct errors made in the allocation of earnings to individuals or periods which would have made him or her a qualified employee at the time of the decision if the earnings had been credited to his or her earnings record at that time;

(3) The decision is wholly or partially unfavorable to a claimant, but only to correct a clerical error or an error that appears on the face of the evidence that was considered when the decision was made.

§ 349.3 Change of legal interpretation or administrative ruling.

A change of legal interpretation or administrative ruling upon which a decision is based does not render a decision erroneous and does not provide a basis for reopening.

§ 349.4 Late completion of timely investigation.

(a) A decision may be revised after the applicable time period in §§ 349.2(a) or (b) expires if the Board begins an investigation into whether to revise the decision before the applicable time period expires and the agency diligently pursues the investigation to the conclusion. The investigation may be based on a request by a claimant or on action by the Board.

(b) *Diligently pursued* for purposes of this section means that in view of the facts and circumstances of a particular case, the necessary action was undertaken and carried out as promptly as the circumstances permitted. Diligent pursuit will be presumed to have been met if the investigation is concluded and, if necessary, the decision is revised within six months from the date the investigation began.

(c) If the investigation is not diligently pursued to its conclusion, the decision will be revised if a revision is applicable and if it is favorable to the claimant. It will not be revised if it would be unfavorable to the claimant.

§ 349.5 Notice of revised decision.

(a) When a decision is revised, notice of the revision will be mailed to the parties to the decision at their last known address. The notice will state the basis for the revised decision and the effect of the revision. The notice will also inform the parties of the right to further review.

(b) If a hearings officer or the three-member Board proposes to revise a decision, and the revision would be based only on evidence included in the record on which the prior decision was based, all parties will be notified in writing of the proposed action. If a revised decision is issued by a hearings officer, any party may request that it be reviewed by the three-member Board, or the three-member Board may review the decision on its own initiative.

§ 349.6 Effect of revised decision.

A revised decision is binding unless:

(a) The revised decision is being reconsidered or appealed in accord with part 320 of this chapter;

(b) The three-member Board reviews the revised decision; or

(c) The revised decision is further revised consistent with this part.

§ 349.7 Time and place to request a review and/or hearing on revised decision.

A party to a revised decision may request, as appropriate, further review of the decision in accordance with the rules set forth in part 320 of this chapter. Further review or a hearing will be held according to the rules set forth in part 320 of this chapter.

§ 349.8 Discretion of the three-member Board to reopen or not to reopen a final decision.

In any case in which the three-member Board may deem proper, the Board may direct that any decision, which is otherwise subject to reopening under this part, shall not be reopened or direct that any decision, which is otherwise not subject to reopening under this part, shall be reopened.

Dated: April 11, 2000.

By Authority of the Board.

For the Board,

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 00–9860 Filed 4–19–00; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 1

Internal Revenue Service; Privacy Act of 1974, Proposed Implementation

AGENCY: Office of the Secretary, Treasury.

ACTION: Proposed rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Treasury Department, Internal Revenue Service, gives notice of a proposed amendment to exempt the system of records entitled "Criminal Investigation Audit Trail Records System—Treasury/IRS 46.051" from certain provisions of the Privacy Act. The exemption is intended to comply with legal prohibitions against the disclosure of certain kinds of information and to protect certain information on individuals maintained in this system of records.

DATES: Comments must be received no later than May 22, 2000.

ADDRESSES: Comments should be sent to the Office of Governmental Liaison and Disclosure, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. Comments will be made available for inspection and copying in the Freedom of Information Reading Room upon request.

FOR FURTHER INFORMATION CONTACT: Fu-An Chao, Chief, Systems Development and Support, Criminal Investigation, (202) 622–7803.

SUPPLEMENTARY INFORMATION: The Internal Revenue Service's Criminal Investigation Division seeks to establish and maintain the proposed new system of records as a more comprehensive means of performing its responsibilities.

Criminal Investigation carries out many law enforcement related functions. Among Criminal Investigation's principal responsibilities are investigating and referring for prosecution criminal cases, centering largely on violations of tax laws,

including income tax evasion, refund fraud, and other crimes contributing to the federal tax gap. Criminal Investigation also investigates violations of certain money laundering laws.

Many of these law enforcement related functions have been automated and are available on Criminal Investigation computer systems. To ensure the integrity of the system data, audit records are maintained to identify all events that occur while users access or attempt to access the computer system.

The returns and returns information contained within this system constitute investigatory material compiled for law enforcement purposes under Title 26 of the United States Code.

Pursuant to the Privacy Act of 1974, the Department of the Treasury is publishing separately the notice of a new system of records, to be maintained by the Internal Revenue Service.

Under 5 U.S.C. 552a(j)(2) and (k)(2), the head of an agency may promulgate rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the system contains investigatory material compiled for law enforcement purposes. The Criminal Investigation Audit Trail Records System—Treasury/IRS 46.051 contains information relating to investigatory material compiled for law enforcement purposes pursuant to 26 U.S.C. 7213, 7213A and 18 U.S.C. 1030(a)(2)(B). Such investigatory material includes: identities of individuals under investigation, identities of potential witnesses, and identities of investigating agents.

The exemptions under 5 U.S.C. 552a(j)(2) and (k)(2), relating to investigatory material are hereby claimed for this system. The Department of the Treasury is hereby giving notice of a proposed rule to exempt this system of records described above from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2) and authority of 31 CFR 1.23(c). The reasons for exempting this system of records from certain provisions of 5 U.S.C. 552a are set forth below:

(1) 5 U.S.C. 552a(c)(3). This provision of the Privacy Act provides for the release of the disclosure accounting required by 5 U.S.C. 552a(c)(1) and (2) to the individual named in the record at the individual's request. The reasons for exempting the system of records from the foregoing provision are as follows:

(i) The release of disclosure accounting would put the subject of an investigation on notice of the existence of an investigation and that such person is the subject of that investigation;

(ii) Such release of the disclosure accounting would provide the subject of an investigation with an accurate accounting of the date, nature, name and address of the person or agency to whom the disclosure was made. The release of such information to the subject of an investigation would provide the subject with significant information concerning the nature of the investigation and could result in the altering or destruction of documentary evidence, the improper influencing of witnesses, and other activities that could impede or compromise the investigation.

(iii) Release to the individual of the disclosure accounting would alert the individual as to which agencies were investigating this person and the scope of the investigation, and could aid the individual in impeding or compromising investigations by those agencies.

(2) 5 U.S.C. 552a(c)(4), (d)(1), (2), (3), and (4), (e)(4)(G) and (H), (f) and (g). These provisions of the Privacy Act relate to an individual's right to notification of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; the agency procedures relating to access to records and the contents of the information contained in such records; and the civil remedies available to the individual in the event of adverse determinations by an agency concerning access to or amendment of information contained in record systems. The reasons for exempting the system of records from the foregoing provisions are as follows: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigative and enforcement proceedings; deprive co-defendants of a right to a fair trial or an impartial adjudication; constitute an unwarranted invasion of the personal privacy of others; disclose the identity of confidential sources and reveal confidential information supplied by such sources; and disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(4)(I). This provision of the Privacy Act requires the publication of the categories of sources of records in each system of records. In cases where an exemption from this provision has been claimed, the reasons are as follows:

(i) Revealing categories of sources of information could disclose investigative techniques and procedures;

(ii) Revealing categories of sources of information could cause sources who supply information to investigators to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality.

(4) 5 U.S.C. 552a(e)(1). This provision of the Privacy Act requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The reasons for exempting the system of records from the foregoing provision are as follows:

(i) The Internal Revenue Service will limit its inquiries to information which is necessary for the enforcement and administration of tax laws. However, an exemption from the foregoing provision is needed because, particularly in the early stages of an investigation, it is not possible to determine the relevance or necessity of specific information.

(ii) Relevance and necessity are questions of judgment and timing. What appear relevant and necessary when collected may subsequently be determined to be irrelevant or unnecessary. It is only after the information is evaluated that the relevance or necessity of such information can be established with certainty.

(iii) When information is received by the Internal Revenue Service relating to violations of law within the jurisdiction of other agencies, the Internal Revenue Service processes this information through Internal Revenue Service systems in order to forward the material to the appropriate agencies.

(5) 5 U.S.C. 552a(e)(2). This provision of the Privacy Act requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in an adverse determination about an individual's rights, benefits, and privileges under federal programs. The reasons for exempting the system of records from the foregoing provision are as follows:

(i) In certain instances the subject of a criminal investigation cannot be required to supply information to investigators. In those instances, information relating to a subject's criminal activities must be obtained from other sources;

(ii) In a criminal investigation it is necessary to obtain evidence from a variety of sources, other than the subject of the investigation, in order to accumulate and verify the evidence necessary for the successful prosecution of persons suspected of violating criminal laws.

(6) 5 U.S.C. 552a(e)(3). This provision of the Privacy Act requires that an agency must inform the subject of an investigation who is asked to supply information of (A) the authority under which the information is sought and whether disclosure of the information is mandatory or voluntary, (B) the purposes for which the information is intended to be used, (C) the routine uses which may be made of the information, and (D) the effects on the subject, if any, of not providing the requested information. The reasons for exempting the system of records from the foregoing provision are as follows:

(i) The disclosure to the subject of an investigation of the purposes for which the requested information is intended to be used would provide the subject with significant information concerning the nature of the investigation and could result in impeding or compromising the investigation.

(ii) Individuals may be contacted during preliminary information gathering, surveys, or compliance projects concerning the administration of the internal revenue laws before any individual is identified as the subject of an investigation. Informing the individual of the matters required by this provision could impede or compromise subsequent investigations.

(7) 5 U.S.C. 552a(e)(5). This provision of the Privacy Act requires an agency to maintain all records which are used in making any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination. The reasons for exempting the system of records from the foregoing provision are as follows: Since the law defines "maintain" to include the collection of information, compliance with the foregoing provision would prohibit the initial collection of any data not shown to be accurate, relevant, timely, and complete at the moment of its collection. In gathering information during the course of a criminal investigation, it is not always feasible or possible to determine completeness, accuracy, timeliness, or relevancy prior to collection of the information. Facts are first gathered and then placed into a cohesive order which objectively proves or disproves criminal behavior on the part of a suspect. Seemingly irrelevant, untimely, or incomplete information when gathered may acquire new significance as an investigation progresses. The restrictions of the foregoing provision could impede investigators in the preparation of a complete investigative report.

(8) 5 U.S.C. 552a(e)(8). This provision of the Privacy Act requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record. The reasons for exempting the system of records from the foregoing provision are as follows: The notice requirement of the foregoing provision could prematurely reveal the existence of criminal investigations to individuals who are the subjects of such investigations.

The Department of the Treasury has determined that this proposed rule is not a "significant regulatory action" under Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, for the reasons set forth above, it is hereby certified that this rule will not have significant economic impact on a substantial number of small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Department of the Treasury has determined that this proposed rule would not impose new recordkeeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1 of Title 31 of the Code of Federal Regulations is amended as follows:

Part 1—[Amended]

1. The authority citation for Part 1 continues to read as follows:

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552a as amended. Subpart C also issued under 5 U.S.C. 552a.

§ 1.36 [Amended]

2. Section 1.36 of Subpart C is amended by adding the following text in numerical order to the table in paragraphs (a)(1) and (b)(1) under the heading THE INTERNAL REVENUE SERVICE

* * * * *

(a) * * *

(1) * * *

Name of system	No.
* * * * *	
Criminal Investigation Audit Trail Records System	46.051
* * * * *	

* * * * *

(b) * * *

(1) * * *

Name of system	No.
* * * * *	
Criminal Investigation Audit Trail Records System	46.051
* * * * *	

* * * * *

Dated: March 7, 2000.

Shelia Y. McCann,

Deputy Assistant Secretary (Administration).

[FR Doc. 00–9869 Filed 4–19–00; 8:45 am]

BILLING CODE 4830–01–P

Notices

Federal Register
Vol. 65, No. 77
Thursday, April 20, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

[Docket No. 991206326–0326–01]

RIN 0605–XX06

Privacy Act of 1974; Altered System of Records

AGENCY: Department of Commerce.

ACTION: Notice of amendment of Privacy Act System of Records: Commerce System 14.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e) (4) and (11), the Department of Commerce is issuing notice of our intent to amend the system of records entitled Commerce Department System 14, "Litigation, Claims, and Administrative Proceeding Records," to add to this system records compiled in conjunction with a newly established complaint procedure for sexual orientation discrimination claims. We invite public comment on the proposed change in this publication.

DATES: *Effective Date:* The amendments will become effective May 22, 2000.

Comment Date: Written comments must be submitted on or before May 22, 2000.

ADDRESSES: Comments may be mailed to Kathryn E. Hawker, Chief, Compliance Division, Office of Civil Rights, U.S. Department of Commerce, Room 7840, 14th & Constitution Avenue, NW, Washington, DC 20230, 202–482–4993.

SUPPLEMENTARY INFORMATION: The amendment adds to this system files containing records of claims filed under a new complaint procedure for sexual orientation discrimination claims that will be established by Department Administrative Order. This complaint process is being established to implement Executive Order 11478, as amended by Executive Order 12106, and as further amended by Executive Order 13087 (collectively, the Executive Order). This Executive Order prohibits employment discrimination based on sexual orientation in Federal employment and provides that "this policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practices in the employment, development, advancement, and treatment of civilian employees of the Federal government, to the extent permitted by law." The new complaint process provides a mechanism for ensuring that the requirements of the Executive Order are being met throughout the Department.

The Department's sexual orientation process is modeled on the Equal Employment Opportunity (EEO) complaint process. Employees and applicants who believe they have been subject to discrimination based on sexual orientation or related retaliation must first contact an EEO Counselor, who attempts to resolve the issues informally. If the issues are not resolved through counseling, the complainant may file a formal complaint of discrimination with the Department's Office of Civil Rights, which investigates the issues. The Director, Office of Civil Rights issues a final decision on the merits. The Department's Alternative Dispute Resolution Process may be used at any time throughout the complaint process. Final agency decisions may be appealed to the Department's Chief Financial Officer/Assistant Secretary for Administration.

Classification

This notice is not subject to the notice and comment requirements of the Administrative Procedure Act. 5 U.S.C. 553(a)(2).

This notice is exempt from review under Executive Order 12866.

Brenda Dolan,

Departmental Freedom of Information Act and Privacy Act Officer.

Accordingly, the Litigation, Claims, and Administrative Proceeding Records system notice originally published at 46 FR 63517, December 31, 1981, is amended by the addition of the following information and updates:

COMMERCE/DEPT–14

SYSTEM NAME:

Litigation, Claims, and Administrative Proceeding Records.

SYSTEM LOCATION:

Insert before current paragraph i:

"For matters involving the Department's Sexual Orientation Discrimination Complaint Process: Files containing informal complaint records are maintained by the Bureau EEO Officer. Files containing records of formal complaints are maintained in the Departmental Office of Civil Rights, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 6010, Washington, DC 20230.

Change current paragraph i. to paragraph j.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:*

CATEGORIES OF RECORDS IN THE SYSTEM:*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add after "E.O. 10450;": "E.O. 11478", as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The names, social security numbers, home address and salary may be disclosed to the appropriate federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual; to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint or appeal filed by an employee; in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Add after "Paper records in file folders": "and electronic records in computer files.

RETRIEVABILITY:

Add after "Files alphabetically by name": "or numerically by complaint number.

SAFEGUARDS:

After first sentence, add: "Access to electronic files is limited to those whose official duties require access."

RETENTION AND DISPOSAL:*

SYSTEM MANAGER(S) AND ADDRESS:

Add before last paragraph:

"For records at location i.: Chief, Compliance Division, Office of Civil Rights, U.S. Department of Commerce, Washington, DC 20230."

Change last paragraph as follows: Strike "e, f and i.:" and replace with "e, f, and j.:"

NOTIFICATION PROCEDURE:

Strike "For records at location i.:" and replace with "For records at location j.:"

Prior to the above sentence, add:

For records at location i.: Information may be obtained from: Chief, Compliance Division, Office of Civil Rights, U.S. Department of Commerce, Washington, DC 20230."

RECORDS ACCESS PROCEDURES:*

CONTESTING RECORD PROCEDURES:*

RECORD SOURCE CATEGORIES:*

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:*

* No changes are being made.

[FR Doc. 00–9931 Filed 4–19–00; 8:45 am]
BILLING CODE 3510–DP–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Thane-Coat, Inc., Jerry Vernon Ford and Preston John Engebretson

In the matters of: Thane-Coat, Inc., 12725 Royal Drive, Stafford, Texas 77477, Jerry Vernon Ford, President, Thane-Coat, Inc., 12725 Royal Drive, Stafford, Texas 77477 and with an address at 7707 Augustine Drive, Houston, Texas 77036, and Preston John Engebretson, Vice-President, Thane-Coat, Inc., 12725 Royal Drive, Stafford, Texas 77477 and with an address at 8903 Bonhomme Road, Houston, Texas 77074, Respondents.

Decision and Order on Renewal of Temporary Denial Order

On October 13, 1999, I issued a Decision and Order on Renewal of Temporary Denial Order (hereinafter "Order" or "TDO"), renewing for 180 days, in a "non-standard" format, a May 5, 1997 Order naming, *inter alia*, Thane-Coat, Inc.; Jerry Vernon Ford, president, Thane-Coat, Inc.; and Preston John Engebretson, vice-president, Thane-Coat, Inc. (hereinafter referred to collectively as the "Respondents"), as persons temporarily denied all U.S. export privileges. 64 FR 56483–56485 (October 30, 1999). Unless renewed, the Order will expire on April 10, 2000.

On March 20, 2000, pursuant to Section 766.24 of the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (1999)) (hereinafter the "Regulations"), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 1999)) (hereinafter the "Act"),[1] the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (hereinafter "BXA"), requested that I renew the Order against Thane-Coat, Inc., Jerry Vernon Ford, and Preston John Engebretson for 180 days in a non-standard format, consistent with the terms agreed to by and between the parties in April 1998.

In its request, BXA stated that, as a result of an ongoing investigation, it had reason to believe that, during the period from approximately June 1994 through approximately July 1996, Thane-Coat, Inc., through Ford and Engebretson, and using its affiliated companies, TIC Ltd. and Export Materials, Inc., made approximately 100 shipments of U.S.-origin pipe coating materials, machines, and parts to the Dong Ah Consortium in Benghazi, Libya. These items were for use in coating the internal surface of prestressed concrete cylinder pipe for the Government of Libya's Great Man-Made River Project.[2] Moreover, BXA's investigation gave it reason to believe that the Respondents and the affiliated companies employed a scheme to export U.S.-origin products from the United States, through the United Kingdom, to Libya, a country subject to a comprehensive economic sanctions program, without the authorizations required under U.S. law, including the Regulations. The approximate value of the 100 shipments at issue was $35 million. In addition, the Respondents and the affiliated companies undertook several significant and affirmative actions in connection with the solicitation of business on another phase of the Great Man-Made River Project.

BXA has stated that it believes that the matters under investigation and the information obtained to date in that investigation support renewal of the TDO issued against the Respondents. In that regard, in April 1998, BXA and the Respondents reached an agreement, whereby BXA sought a renewal of the TDO in a "non-standard" format, denying all of the Respondents' U.S. export privileges to the United Kingdom, the Bahamas, Libya, Cuba, Iraq, North Korea, Iran, and any other country or countries that may be made subject in the future to a general trade embargo by proper legal authority. In return, the Respondents agreed that, among other conditions, at least 14 days in advance of any export that any of the Respondents intends to make of any item from the United States to any destination world-wide, the Respondents will provide to BXA's Dallas Field Office (i) notice of the intended export, (ii) copies of all documents reasonably related to the subject transaction, including, but not limited to, the commercial invoice and bill of lading, and (iii) the opportunity, during the 14-day notice period, to inspect physically the item at issue to ensure that the intended shipment is in compliance with the Export Administration Act, the Export Administration Regulations, or any order issued thereunder. BXA has sought renewal of the TDO in a "non-standard" format; respondents have not opposed renewal of the TDO in the "non-standard" format.

Based on BXA's showing, I find that it is appropriate to renew the order temporarily denying the export privileges to Thane-Coat, Inc., Jerry Vernon Ford, and Preston John Engebretson in a "non-standard" format, incorporating the terms agreed to by and between the parties in April 1998. I find that such renewal is necessary in the public interest to prevent an imminent violation of the Regulations and to give notice to companies in the United States and abroad to cease dealing with these persons in any commodity, software, or technology subject to the Regulations and exported or to be exported to the United Kingdom, the Bahamas, Libya, Cuba, Iraq, North Korea, Iran, and any other country or countries that may be

[1] The act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR 1996 Comp. 298 (1997)), August 13, 1997 (3 CFR, 1997 Comp. 306 (1998)), August 13, 1998 (3 CFR, 1998 Comp. 294 (1999)), and August 10, 1999 (64 *Fed. Reg.* 44101, August 13, 1999), continued the Regulations in effect under the International Emergency Economic Powers Act (currently codified at 50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 1999)).

[2] BXA understands that the ultimate goal of this project is to bring fresh water from wells drilled in southeast and southwest Libya through prestressed concrete cylinder pipe to the coastal cities of Libya. This multibillion dollar, multiphase engineering endeavor is being performed by the Dong Ah Construction Company of Seoul, South Korea.

made subject in the future to a general trade embargo by proper legal authority, or in any other activity subject to the Regulations with respect to these specific countries. Moreover, I find such renewal is in the public interest in order to reduce the substantial likelihood that Thane-Coat, Inc., Ford and Engebretson will engage in activities which are in violation of the Regulations.

Accordingly, it is Therefore Ordered:

First, that Thane-Coat, Inc., 12725 Royal Drive, Stafford, Texas 77477, and all of its successors or assigns, officers, representatives, agents, and employees when acting on its behalf, Jerry Vernon Ford, President, Thane-Coat, Inc., 12725 Royal Drive, Stafford, Texas 77477, and 7707 Augustine Drive, Houston, Texas 77036, and all of his successors, or assigns, representatives, agents and employees when acting on his behalf, and Preston John Engebretson, Vice-President, Thane-Coast, Inc., 12725 Royal Drive, Stafford, Texas 77477 and 8903 Bonhomme Road, Houston, Texas 77074, and all of his successors, or assigns, representatives, agents, and employees when acting on his behalf (all of foregoing parties hereinafter collectively referred to as the "denied persons"), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") subject to the Export Administration Regulations (hereinafter the "Regulations") and exported or to be exported from the United States to the United Kingdom, the Bahamas, Libya, Cuba, Iraq, North Korea, or Iran, or to any other country or countries that may be made subject in the future to a general trade embargo pursuant to proper legal authority (hereinafter the "Covered Countries"), or in any other activity subject to the Regulations with respect to the Covered Countries, including, but not limited to:

A. Applying for, obtaining, or using any license Exception, or export control document;

B. Carrying or negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item that is subject to the Regulations and that is exported or to be exported from the United States to any of the Covered Countries, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States to any of the Covered Countries that is subject to the Regulations, or in any activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of any of the denied persons any item subject to the Regulations to any of the Covered Countries.

B. Take any action that facilitates the acquisition, or attempted acquisition by any of the denied persons of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States to any of the Covered Countries, including financing or other support activities related to a transaction whereby any of the denied persons acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from any of the denied persons of any item subject to the Regulations that has been exported from the United States to any of the Covered Countries;

D. Obtain from any of the denied persons in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States to any of the Covered Countries; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States to any of the Covered Countries, and which is owned, possessed or controlled by any of the denied persons, or service any item, of whatever origin, that is owned, possessed or controlled by any of the denied persons if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States to any of the Covered Countries. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, at least 14 days in advance of any export that any of the denied persons intends to make of any item from the United States to any destination world-wide, the denied person will provide to BXA's Dallas Field Office (i) notice of the intended export, (ii) copies of all documents reasonably related to the subject transaction, including, but not limited to, the commercial invoice and bill of lading, and (iii) the opportunity, during the 14-day notice period, to inspect physically the item at issue to ensure that the intended shipment is in compliance with the Export Administration Act, the Export Administration Regulations, or any order issued thereunder.

Fourth, that, after notice and opportunity for comment, as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to any of the denied persons by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services, may also be made subject to the provisions of this Order.

Fifth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

Sixth, that, in accordance with the provisions of Section 766.24(e) of the Regulations, Thane-Coat, Ford, or Engebretson may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

Seventh, that this Order is effective immediately and shall remain in effect for 180 days.

Eighth, that, in accordance with the provisions of Section 766.24(d) of the Regulations, BXA may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. Any respondent may oppose a request to renew this Order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be served on each Respondent and shall be published in the **Federal Register**.

Entered this 10th day of April, 2000.

F. Amanda DeBusk,

Assistant Secretary for Export Enforcement.

[FR Doc. 00–9861 Filed 4–19–00; 8:45 am]

BILLING CODE 3510–DT–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

April 14, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port,

call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing, special shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 54872, published on October 8, 1999.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 14, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 4, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on April 20, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
237	1,891,208 dozen.
338/339	2,995,305 dozen.
342/642	758,709 dozen.
345	199,149 dozen.
347/348	3,130,726 dozen.
350	140,263 dozen.
351/651	864,309 dozen.
361	2,414,239 numbers.
369–S [2]	412,970 kilograms.
633	60,765 dozen.
638/639	2,541,167 dozen.
643	830,517 numbers.
645/646	781,263 dozen.
647/648	1,553,569 dozen.
847	348,433 dozen.
Group II 200–227, 300–326, 332, 359–O [3], 360, 362, 363, 369–O [4], 400–414, 434–438, 440, 442, 444, 448, 459pt. [5], 464, 469pt. [6], 600–607, 613–629, 644, 659–O [7], 666, 669–O [8], 670–O [9], 831, 833–838, 840–846, 850–858 and 859pt. [10], as a group.	199,230,072 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); and 6406.99.1550 (Category 359pt.).

[4] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[5] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[6] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[7] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[8] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040 (Category 669pt.).

[9] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[10] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–9876 Filed 4–19–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Thailand

April 14, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward used. The current limits are being increased in Categories 340 and 347/348/847 for the recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 68336, published on December 7, 1999.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements
April 14, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC

20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the period which began on January 1, 2000 and extends through December 31, 2000.

Effective on April 20, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Sublevels in Group II	
336/636	361,721 dozen.
338/339	2,111,579 dozen
340	322,012 dozen.
347/348/847	940,539 dozen.
638/639	2,503,210 dozen.
647/648	1,294,991 dozen

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–9875 Filed 4–19–00; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent to Grant an Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant SMJ Carbon Technology, a company doing business in Nashua, New Hampshire (NH) an exclusive license in any right, title and interest the Air Force has in U.S. Patent Application entitled "CARBON AND CERMAIC MATRIX COMPOSITES FABRICATED BY A RAPID AND LOW-COST PROCESS INCORPORATING IN-SITU POLYMERIZATION OF WETTING MONOMERS." The inventors, Phillip G. Wapner, Wesley P. Hoffman and Steven Jones were all government employees at the time of the invention. The invention was filed in the U.S. Patent and Trade Office on June 8, 1998.

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within 60 days from the date of publication of this Notice. Information concerning the application may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to Mr. Randy Heald, Associate General Counsel (Acquisition), SAF/GCQ, 1500 Wilson Blvd., Suite 304, Arlington, VA 22209–2310. Mr. Heald can be reached at 703–588–5091 or by fax at 703–588–8037.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 00–9862 Filed 4–19–00; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information collection activities: Proposed collection, comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning proposed revisions and three-year extensions to the Oil and Gas Reserves Survey Forms EIA–23, EIA–23P and EIA–64A. Titles of these forms are "Annual Survey of Domestic Oil and Gas Reserves" (EIA–23), "Oil and Gas Well Operator List Update Report" (EIA–23P), and "Annual Report of the Origin of Natural Gas Liquids Production" (EIA–64A), respectively.

DATES: Written comments must be submitted on or before June 19, 2000. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Rafi Zeinalpour, U.S. Department of Energy, Energy Information Administration, Reserves and Production Division, 1999 Bryan Street, Suite 1110, Dallas, Texas 75201–6801. Alternatively, Rafi Zeinalpour may be reached by phone at (214) 720–6191, at the e-mail address of rzeinalp@eia.doe.gov or by FAX at (214) 720–6155.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Rafi Zeinalpour at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. No. 93–275, 15 U.S.C. 761 *et seq.*) and the Department of Energy Organization Act (Pub. L. No. 95–91, 42 U.S.C. 7101 *et seq.*) require the Energy Information Administration (EIA) to carry out a centralized, comprehensive and unified energy information program. This program collects, evaluates, assembles, analyzes and disseminates information on energy resource reserves, production, demand, technology and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer-term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) of the collections under Section 3507(h) of the Paperwork Reduction Act of 1995.

Operators of crude oil and natural gas wells are the target respondents of Forms EIA–23 and EIA–23P. The amount of crude oil, associated-dissolved natural gas, non-associated natural gas and lease condensate production and reserves by individual field are requested of large and intermediate size producers on Form EIA–23. A sample of small operators are required to submit less detailed information on a different version of the form and the majority of small operators are not asked to report annually on Form EIA–23. The selected sample of small operators provide production and available reserves information for crude oil, natural gas and lease condensate at a State or geographic sub-division level on the Form EIA–23. Form EIA–23P is a postcard form used to collect information on possible oil and gas well operators that may be included in future EIA–23 surveys. Information obtained

from Form EIA–23P is used to confirm and/or update general operator information, primarily about small companies with which no contact has been made in the last few years.

Operators of natural gas plants are the target respondents of the Form EIA–64A. The amount of natural gas processed, natural gas liquids produced, resultant shrinkage of the natural gas and natural gas used in processing are requested of all natural gas plant operators.

In response to Public Law 95–91 Section 657, estimates of U.S. oil and gas reserves are to be reported annually. These estimates are essential to the development, implementation and evaluation of energy policy and legislation. Data are used directly in the EIA annual publication, U.S. Crude Oil, Natural Gas and Natural Gas Liquids Reserves, and are incorporated in a number of other publications and analyses. Secondary publications which use the data include EIA's Annual Energy Review, Annual Energy Outlook, Petroleum Supply Annual and Natural Gas Annual.

II. Current Actions

This notice is for a proposed three-year extension of Form EIA–23, "Annual Survey of Domestic Oil and Gas Reserves", Form EIA–23P, "Oil and Gas Well Operator List Update Report", and Form EIA–64A, "Annual Report of the Origin of Natural Gas Liquids Production", until December 31, 2003. Form EIA–23P will be extended without modification. Currently available reliable State sources will be used to confirm and/or update operator information thereby reducing the number of Form EIA–23P mail-outs and thus the burden on respondents.

More efficient utilization of space on Form EIA–64A is proposed by reducing the number of available lines for sources of the natural gas and increasing the number of available lines for explanatory notes and comments. This change should allow for more complete information and a reduction in paper attachments.

Modifications to the Schedule A Form (field level detailed report) and the information collected on Form EIA–23 are proposed. First, a single page will now contain information on three individual fields instead of data on four fields as shown on the current form. This will increase the readability and the ease of manually completing this form.

Second, information on two additional reserves classifications will be requested from individual large and intermediate sized operators. These additions are the gross operated volumes of reserves sold and/or acquired by these companies during the survey year. This information should be readily available, since in the majority of cases, for companies selling properties this should be the same volume of reserves as those reported on the previous year's survey as year-end reserves. For companies acquiring properties, these gross reserves volumes would be the same as those determined during the evaluation process prior to the acquisition. The reserves volumes for sold and acquired properties will also provide a more complete understanding of the sources of growths and reductions in reserves and an independent evaluation of the gross annual volumes of reserves under new operators. These modifications to Form EIA–23 are also anticipated to reduce the reporting burden time for the large and intermediate operators.

The format for Form EIA–23, Schedule A, will be revised first to include these two new classifications and also to allow the reporting of production from wells without available values of reserves in the same location on the form as production from wells with available values of reserves. Reporting all production information in the same location should increase the accuracy of the data and the efficiency of completing the form. The form location for reporting proved non-producing reserves will be moved to the location previously used for reporting production associated with wells without available values of reserves. As a result of this move, the location of the total values of reserves will now be at the end of the rows on the Form EIA–23. These changes should increase data accuracy and reduce both confusion and the time required to complete the form.

On the Form EIA–23, Summary Report, which is completed by small operators, two changes are proposed. First, the form would not have the State and/or geographic sub-divisions preprinted. Instead, the operator would identify and enter on the form all areas in which they have operated properties. This will eliminate one page of the report and increase the accuracy and readability of the information. Additionally, the lines for data entry have been expanded to allow for easier manual input. The units for reporting crude oil, natural gas and lease condensate production and reserves would also be changed from thousands of barrels and millions of cubic feet units to barrels and thousands of cubic feet, which is more routinely used by small operators. This should increase accuracy and eliminate rounding errors for the small operators.

Many U.S. government agencies have an interest in the definitions of proved oil and gas reserves and the quality, reliability and usefulness of estimates of reserves. Among these are the Energy Information Administration (EIA), Department of Energy; Minerals Management Service (MMS), Department of Interior; Internal Revenue Service (IRS), Department of the Treasury; and the Securities and Exchange Commission (SEC). Each of these organizations has specific purposes for collecting, using or estimating proved reserves. The EIA has a congressional mandate to provide accurate annual estimates of U.S. proved crude oil, natural gas and natural gas liquids reserves and publishes an annual reserves report to meet this requirement. The MMS is second only to the IRS in generating Federal revenue. The MMS maintains estimates of proved reserves to carry out their responsibilities in leasing, collecting royalty payments and regulating the activities of oil and gas companies on Federal lands and water. For the IRS, proved reserves and occasionally probable reserves are an essential component of calculating taxes for companies owning or producing oil and gas. The SEC requires publicly traded petroleum companies to annually file a reserves statement as part of their 10–K filing. The basic purpose of the 10–K filing is to give the investing public a clear and reliable financial basis to assess the relative value, as a financial asset, of a company's reserves, especially in comparison to other similar oil and gas companies.

The Society of Petroleum Engineers (SPE) adopted new oil and gas reserves definitions in March 1997 for the three categories of proved, probable and possible reserves. The SPE is an international organization of petroleum engineers with 50,000 members worldwide. The World Petroleum Congresses (WPC) ratified the same definitions in October 1996 and is a co-sponsor of the definitions. These definitions were thoroughly discussed and reviewed for several years prior to adoption by the WPC. The EIA, through its observer's position on the committee, strongly supported the adoption of the new SPE/WPC definitions. Consequently, the EIA has recently adopted the SPE/WPC definitions. This action has been somewhat delayed, however, in order to allow time for all major U.S. government agencies having a significant interest in proved oil and gas reserves to adopt the new definitions concurrently. The MMS has

adopted and currently uses the new SPE/WPC definitions and these definitions are fundamentally consistent with IRS usage. The SEC has had extensive dialogue starting in 1997 with the EIA, petroleum industry and investment community on the new SPE/WPC definitions. The SEC has yet to reach a decision to modify their definitions or to adopt the SEC definitions to be more consistent with the SPE/WPC definitions. The dialogue will continue. The EIA, SPE, WPC and the SEC all recognize that definitions of proved reserves are not static and will continue to evolve over time.

These new definitions contain at least two major changes from the previous SPE definitions adopted in 1987. First, *probabilistic* calculation techniques (i.e., a range of reserves estimates with uncertainties associated with each level of reserve estimates) were accepted as valid methods of estimating proved reserves along with the traditional *deterministic* techniques (i.e., a discrete reserve estimate with an associated level of certainty). Second, the use of an oil or gas price averaged over a longer historical period of time, typically one year, rather than the price listed on a single day was recommended in the SPE/WPC definitions to be consistent with the purpose of economic estimation of reserves.

The EIA believes that allowing and accepting probabilistic estimates of reserves is both state-of-the-art and a means for improving the understanding of proved reserves The EIA expects that most filers will continue to utilize the deterministic methodology to determine reserves but will accept probabilistic estimates when appropriate. Reserves calculated using any type of evaluation methodology rely upon the skill, integrity and judgment of the evaluator and require an ample amount of reliable data.

The EIA also believes that using an average annual price for oil and gas rather than a so called "market price" on December 31 of the reporting year as the SEC currently requires, will lead to more reliable proved reserves estimates, as well as more meaningful estimates of those reserves' economic value. Estimating reserves requires consideration of both technical and economic components. In 1998, U.S. proved reserves of crude oil registered the largest percentage decline in 53 years. The annualized oil price decline from $17.40 per barrel in 1997 to $10.88 per barrel in 1998 had a significant impact on proved reserves. Moreover, using end of year prices [$15.04 per barrel in December 1997 to $8.03 in December 1998], further exacerbated the reduction in proved reserves for most producers and for the nation. As the oil price falls, each additional dollar decline has a proportionally larger negative impact on the reported volume of proved reserves.

The adoption of these new definitions of proved reserves by the EIA will not require respondents to change the way they report information on Form EIA–23.

Respondents should use the same methods when estimating reserves for the EIA as they do for the SEC. If there is an apparent conflict in requirements and assumptions, give precedence to the methods used for the SEC.

Operators should note in the footnotes whether end of year or annual average prices were used and whether probabilistic or deterministic methods were utilized at the field level.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in Item II. The following guidelines are provided to assist in the preparation of comments. Please indicate to which form(s) your comments apply.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

B. Can the information be submitted by the due date?

C. Public reporting burden for this collection is estimated to average 4 hours for small operators, 32 hours for intermediate operators, and 160 hours for large operators on Form EIA–23. In addition, proposed Form EIA–23 modifications are anticipated to reduce these reporting burden estimates for intermediate operators by 4 hours and for large operators by 16 hours. For operators reporting on Form EIA–23P, reporting burden is estimated at 15 minutes. For natural gas plant operators reporting on Form EIA–64A, the reporting burden is estimated at 6 hours. The estimated burden includes the total time, effort or financial resources expended to generate, maintain, retain, disclose and provide the information. Please comment on the accuracy of the burden estimates.

D. The agency estimates that the only costs to the respondents are for the time it will take them to complete the collection. Please comment if respondents will incur start-up costs for reporting or any recurring annual costs for operation, maintenance and purchase of services associated with the information collection.

E. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

F. Does any other Federal, State or local agency collect similar information? If so, specify the agency, the data element(s) and the methods of collection.

As a Potential User

A. Is the information useful at the levels of detail indicated on the form?

B. For what purpose(s) would the information be used? Be specific.

C. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. These comments will also become a matter of public record.

Statutory Authority: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, April 14, 2000.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 00–9912 Filed 4–19–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1816–001]

DTE-River Rouge No. 1, L.L.C.; Notice of Filing

April 14, 2000.

Take notice that on April 12, 2000, DTE-River Route No. 1, L.L.C. tendered for filing a response to Staff's deficiency

letter issued in this docket on April 7, 2000 and a revised FERC Electric Tariff, Original Volume No. 1.

Copies of the filing were served upon parties to the above-captioned proceeding and the Michigan Public Service Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before April 24, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–9913 Filed 4–19–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–245–000]

East Tennessee Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

April 14, 2000.

Take notice that on April 12, 2000, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to be effective May 1, 2000:

East Tennessee states that, on March 14, 2000, East Tennessee was acquired from El Paso Energy (El Paso) and became a wholly owned subsidiary of Duke Energy Corporation (Duke). East Tennessee states that, pursuant to the Stock Purchase Agreement, El Paso entered into a Transition Agreement to ensure the smooth operation of the East Tennessee pipeline system for a period of up to nine months from the closing date (transition period). Among other things, the Transition Agreement requires El Paso to perform certain capacity management activities on behalf of East Tennessee for the daily operations of the system during the transition period.

East Tennessee states that, as part of El Paso's transition to interactive Internet communications in compliance with the Commission's Order No. 587-I, El Paso has undertaken a major rewrite of its pipelines' critical computer system functions (the "PASSKEY" system). El Paso has advised Duke that it intends to complete the move to the Internet by May 1, 2000. East Tennessee states that, because El Paso will be performing certain capacity management activities for East Tennessee utilizing the PASSKEY System during the transition period, East Tennessee is modifying its existing tariff and pro forma service agreements to reflect the system and tariff changes made by the El Paso pipelines.

East Tennessee states that the purpose of this filing is to obtain Commission approval for the tariff modifications in East Tennessee's tariff mirroring the El Paso pipelines' proposals in order to implement the PASSKEY System rewrite and the Service Upgrades by May 1, 2000 for the duration of the transition period and to update East Tennessee's mailing addresses and contact information as a result of the acquisition by Duke. At the end of the transition period, East Tennessee will file revised tariff sheets to reflect the end of the transition period and the implementation of the LINKr System for East Tennessee, and will make any additional changes necessary to conform the operations of the East Tennessee pipeline system with those of the other Duke pipelines.

East Tennessee states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–9865 Filed 4–19–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–25–000]

TransColorado Gas Transmission Company; Notice of Tariff Filing

April 14, 2000.

Take notice that on April 12, 2000, TransColorado Gas Transmission Company (TransColorado) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed to Appendix A to the filing, to be effective May 15, 2000.

TransColorado states that due to a change in the TransColorado partnership, changes have been proposed to modify the reference to the person to whom communications should be addressed regarding TransColorado's tariff and references to a former partner, El Paso TransColorado Company, have been removed. In addition, miscellaneous tariff "clean-up" type revisions have also been made.

TransColorado states that a copy of this filing has been served upon TransColorado's customers, the Colorado Public Utilities Commission and New Mexico Public Regulatory Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–9863 Filed 4–19–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

April 14, 2000.

Take notice that the following application has been filed with the Commission and is available for public inspection.

a. *Application Type:* Amendment of License to Change Project Boundary Approve Revised Exhibits.

b. *Project No.:* 1389–025.

c. *Date Filed:* November 24, 1999 and March 31, 2000.

d. *Applicant:* Southern California Edison Company.

e. *Name of Project:* Rush Creek.

f. *Location:* The project is located on the Rush Creek near the Town of June Lake, in Mono and Inyo Counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and 799 and 801.

h. *Applicant Contact:* Bryant C. Danner, Executive Vice President and General Council, Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, CA 91770, (626) 302–4459.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Mohamad Fayyad at (202) 219–2665, or e-mail address: mohamad.fayyad@ferc.fed.us.

j. *Deadline for filing comments and or motions:* May 18, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

Please include the project number (P–1389–025) on any comments or motions filed.

k. *Description of Request:* SCE is proposing to expand the project boundary at the southern end of Agnew Lake to include a 15-foot-wide corridor for an existing 2.4-kV project's electrical distribution line. This line was in existence but not previously mapped. This would increase the amount of federal lands within the project boundary by 0.34 acre. In addition, SCE is proposing to delete from the license a 150-foot-long, 2.3-kV transmission line, which SCE says is part of its interconnected transmission system.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,
Secretary.
[FR Doc. 00–9866 Filed 4–19–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2000–010]

New York Power Authority; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

April 14, 2000.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the New York State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR Part 800, implementing Section 106 of the National Historic Preservation Act, as amended (16 U.S.C. Section 470 f), to prepare a Programmatic Agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the St. Lawrence-FDR Power Project (Project No. 2000–010).

The Programmatic Agreement, when executed by the Commission, the SHPO, and the Council, would satisfy the Commission's section 106 responsibilities for all individual undertakings, carried out in accordance with the license until the license expires or is terminated (36 CFR 800.14). The Commission's responsibilities pursuant to Section 106 for the above project would be fulfilled through the Programmatic Agreement, which the Commission proposes to draft in consultation with certain parties listed

[1] 18 CFR 385.2010.

below. The executed Programmatic Agreement would be incorporated into any Order issuing license.

The New York Power Authority, as prospective licensee for Project No. 2000–010, is invited to participate in consultations to develop the Programmatic Agreement and to sign as a concurring party to the Programmatic Agreement.

For purposes of commenting on the Programmatic Agreement, we propose to restrict the service list for the St. Lawrence-FDR Power Project as follows:

Ms. Salli Benefict, Mohawk Nation Council, Box 35, Rooseveltown, NY 13683
Mr. David Blaha, Environmental Resources Management, 2666 Riva Road, Suite 200, Annapolis, MD 21401
Ms. Maxine Cole, Akwesasne Task Force on the Environment, P.O. Box 992, Hogansburn, NY 13655
Dr. Laura Henley Dean, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20004
Mr. Robert Dean, Dean & Barbour, P.O. Box 176, Old Route 17, Steamburg, NY 14783
Mr. Ken Jock, St. Regis Mohawk Tribal Council, RR#1, Box 8A, Hogansburn, NY 13655
Dr. Robert Kuhn, New York Office of Parks, Recreation, and Historic Preservation, Peebles Island, P.O. Box 189, Waterford, NY 12188–0189
Mr. Henry Lickers, Mohawk Council of Akwesasne, P.O. Box 579, Cornwall, Ontario K6H 5T3
Mr. William Slade, New York Power Authority, 123 Main Street, White Plains, NY 10601
Mr. Thomas Tatham, New York Power Authority, 1633 Broadway, 22–C, New York, NY 10019–6756
Mr. James Teitt, Environmental Resources Management, 355 East Campus View Blvd., Suite 250, Columbus, OH 43235

Any person on the official Service List for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date.

An original and 8 copies of any such motion must be filed with the Secretary of the Commission (888 First Street, NE, Washington, DC 20426) and must be served on each person whose name appears on the official Service list. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on the motion.

David P. Boergers,
Secretary.
[FR Doc. 00–9867 Filed 4–19–00; 8:45 am]
BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6582–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Invitation for Bids and Request for Proposals (IFBs and RFPs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Invitation for Bids and Request for Proposals (IFBs and RFPs), EPA ICR No. 1038.10, OMB Control No. 2030–0006, expires 9/30/2000. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 19, 2000.

ADDRESSES: 1200 Pennsylvania Ave NW, Ariel Rios Building, Attn 3802R, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Leigh Pomponio, (202) 564–4364, e-mail: *pomponio.leigh@epamail.epa.gov.* A hard copy of the ICR may be obtained by contacting the named individual.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those companies or organizations, large and small businesses, that want to supply the EPA with supplies or services.

Title: Invitation for Bids and Request for Proposals (IFBs and RFPs), OMB Control No. 2030–0006, EPA ICR No., 1038.10, expiring 9/30/2000.

Abstract: EPA requires contractors to submit information in order to be considered for the award of a contract. Information requested includes: prices for the supplies/services requested, information on past performance, technical and cost information, and general financial and organizational information. Information provided by vendors in response to an RFP/IFB is used to evaluate which vendor will provide the best product in terms of quality, timeliness, and price. Responses to IFBs/RFPs are required to be considered for a contract award. The legal authority for this collection is 41 U.S.C. 253. Contractor confidential business information submitted in connection with an IFB or RFP response is protected from public release in accordance with 40 CFR 2.201 *et seq.* An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: Burden estimate for responding to IFBs is 8 hours per submission. Annual collection by the Agency is estimated to be 288 bids. At an average cost of $461.30 for each submission, the annual cost to respondents is $132,854.40. Burden for responding to RFPs is estimated at 251 hours per submission. Annual receipt of proposals by the Agency is expected to be 973. At an average cost of $14,508.10 the annual cost for RFP information collection is estimated at $14,116,381. The total respondent burden for both IFBs and RFPs is 246,527 hours. Total annual cost for IFBs and RFPs is estimated at $14,249,235. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information,

processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: April 14, 2000.

Leigh Pomponio,

Acting Manager, Policy Service Center.

[FR Doc. 00–9923 Filed 4–19–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6582–5]

Meeting of the Local Government Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Local Government Advisory Committee will meet on May 11–12, 2000, in Denver, Colorado. Subcommittee sessions will take place on May 12th. The Committee will engage in a strategic planning exercise during this meeting in order to determine their agenda and structure through the end of 2001 and develop work plans to accomplish their goals.

The Committee will hear comments from the public between 2:45 p.m. and 3:00 p.m. on May 11th. Each individual or organization wishing to address the Committee will be allowed a minimum of three minutes. Please contact the Designated Federal Officer (DFO) at the number listed below to schedule agenda time. Time will be allotted on a first come, first serve basis.

This is an open meeting and all interested persons are invited to attend. Meeting minutes will be available after the meeting and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the number listed below if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible. However, seating will be on a first come, first serve basis.

DATES: The meeting will begin at 9:00 a.m. on Thursday, May 11th and conclude at 4:00 p.m. on the 12th.

ADDRESSES: The meetings will be held in Denver, Colorado at the EPA Region VIII Office located at 999 18th Street in the Rocky Mountain and Bison Conference Rooms.

Requests for Minutes and other information can be obtained by writing the DFO at 1200 Pennsylvania Avenue, NW (1306A), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The DFO for this Committee is Denise Zabinski Ney. She is the point of contact for information concerning any Committee matters and can be reached by calling (202) 564–3684 or by email at ney.denise@epa.gov.

Dated: April 12, 2000.

Denise Zabinski Ney,

Designated Federal Officer, Local Government Advisory Committee.

[FR Doc. 00–9922 Filed 4–19–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6581–9]

Notice of Proposed Administrative Cost Recovery Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; Double A Metals Site

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), notice is hereby given of a proposed administrative cost recovery settlement under Section 122(h)(1) of CERCLA concerning the Double A Metals Site at 3321 South Pulaski, Chicago, Illinois ("Site"), which was signed by the EPA Director, Superfund Division, Region 5, on March 31, 2000. The settlement resolves an EPA claim under Section 107(a) of CERCLA against V.M.S. & D. Realty, Inc. The settlement requires the settling party to pay, to the Hazardous Substances Superfund, $106,763.45 and thirty (30) percent of any settlement or judgment amount that resolves issues related to the property transfer of the Site from Jepscor Metals, Inc. to V.M.S. & D. Realty, Inc.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the Superfund Records Center, located at 77 West Jackson Boulevard, Seventh Floor, Chicago, Illinois.

DATES: Comments must be submitted on or before May 22, 2000.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at Superfund Records Center, located at 77 West Jackson Boulevard, Seventh Floor, Chicago, Illinois. A copy of the proposed settlement may be obtained from Superfund Records Center, located at 77 West Jackson Boulevard, Seventh Floor, Chicago, Illinois. Comments should reference the Double A Metals Site and EPA Docket No. V–W–00–C–587 and should be addressed to Steven J. Murawski, Assistant Regional Counsel, 77 West Jackson Boulevard (C–14J), Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Steven J. Murawski, Assistant Regional Counsel, 77 West Jackson Boulevard (C-14J), Chicago, Illinois, 60604.

Dated: March 31, 2000.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 00–9924 Filed 4–19–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–MI; FRL–6494–6]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Michigan Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On November 1, 1999, the State of Michigan submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of Michigan's application, provides a 45-day public comment period, and provides an opportunity to request a public hearing on the application. The State of Michigan has provided a certification

that its program meets the requirements for approval of a State program under section 404 of TSCA. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, EPA will disapprove the program, at which time a notice will be issued in the **Federal Register** and the Federal program will take effect in the State of Michigan.

DATES: Comments, identified by docket control number PB–402404–MI, must be received on or before June 5, 2000. In addition, a public hearing request may be submitted on or before June 5, 2000.

ADDRESSES: Comments and the public hearing request may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PB–402404–MI in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: David Turpin, Regional Lead Coordinator, Environmental Protection Agency, Region V, Pesticides and Toxics Branch, 77 West Jackson Boulevard (DT–8J), Chicago, IL 60604; telephone: (312) 886-7836; e–mail address: turpin.david@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to firms and individuals engaged in lead-based paint activities in the State of Michigan. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PB–402404–MI. The official record consists of the documents specifically referenced in this action, this notice, the State of Michigan's authorization application, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The docket is located at the EPA Region V Office, Environmental Protection Agency, Pesticides and Toxics Branch, 8th Floor, 77 West Jackson Boulevard, Chicago, IL 60604.

C. How and to Whom Do I Submit Comments and Hearing Requests?

You may submit comments and hearing requests through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PB–402404–MI in the subject line on the first page of your response.

1. *By mail.* Submit your comments and hearing requests to: Environmental Protection Agency, Region V, Pesticides and Toxics Branch, 77 West Jackson Boulevard (DT–8J), Chicago, IL 60604.

2. *In person or by courier.* Deliver your comments and hearing requests to: Environmental Protection Agency, Pesticides and Toxics Branch, 8th Floor, 77 West Jackson Boulevard, Chicago, IL 60604. The regional office is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

3. *Electronically.* You may submit your comments and hearing requests electronically by e-mail to: "turpin.david@epa.gov" or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data and hearing requests will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments and hearing requests in electronic form must be identified by docket control number PB–402404–MI. Electronic comments and hearing requests may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

II. Background

A. What Action is the Agency Taking?

The State of Michigan has provided a certification letter stating that its lead-based paint training and certification program meets the requirements for authorization of a State program under section 404 of TSCA and has requested approval of the State of Michigan's lead-based paint training and certification program. Therefore, pursuant to section 404 of TSCA, the program is deemed authorized as of the date of submission (i.e., November 1, 1999). If EPA subsequently finds that the program does not meet all the requirements for approval of a State program, EPA will work with the State to correct any deficiencies in order to approve the program. If the deficiencies are not corrected, a notice of disapproval will be issued in the **Federal Register** and a Federal program will be implemented in the State.

Pursuant to section 404(b) of TSCA (15 U.S.C. 2684(b)), EPA provides notice and an opportunity for a public hearing on a State or Tribal program application before approving the application. Therefore, by this notice EPA is soliciting public comment on whether

the State of Michigan's application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time, and place of the hearing. EPA's final decision on the application will be published in the **Federal Register**.

B. What is the Agency's Authority for Taking this Action?

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102–550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681–2692), entitled "Lead Exposure Reduction."

Section 402 of TSCA authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges, and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404 of TSCA, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA, EPA is to establish the Federal program in any State or Tribal Nation without its own authorized program in place by August 31, 1998.

States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized. This authorization becomes ineffective, however, if EPA disapproves the application or withdraws the program authorization.

III. State Program Description Summary

The following summary of the State of Michigan's proposed program has been provided by the applicant. Michigan Public Health Code, Act No. 368 of the Public Acts of 1978 assigns to the Michigan Department of Community Health (MDCH), among other responsibilities, the continuous and diligent endeavor to prevent disease, prolong life, and promote the public health through organized programs, including prevention and control of environmental health hazards; prevention and control of diseases; prevention and control of health problems of particularly vulnerable population groups. In carrying out its responsibility, the department shall:

1. Have general supervision of the interests of the health and life of the people of the state.

2. Implement and enforce laws for which responsibility is vested in the Department.

3. Make investigations and inquiries as to the causes, prevention and control of environmental health hazards, nuisances and sources of illness.

The Department may exercise authority and promulgate rules to properly safeguard the public health; to prevent the spread of diseases and the existence of sources of contamination; and to implement and carry out the powers of and duties vested by law in the Department. To assure compliance with laws enforced by the Department, the Department may inspect, investigate, or authorize inspections and investigations to be made.

The Lead Abatement Act, Public Acts 219 and 220 of 1998 enacted legislation to address lead-based paint hazards. The Michigan Department of Community Health, Community Public Health Administration's Lead Hazard Remediation Program (LHRP), is the recognized agency for the administration of the lead hazard control regulations. These regulations ensure that persons engaged in lead-based paint activities perform them in a safe manner to prevent exposure of building occupants to lead hazards. Individuals conducting lead-based paint inspections, risk assessments and abatements in target housing and child-occupied facilities are required to be properly trained and certified.

Michigan lead hazard remediation regulations also require the accreditation of training providers, establish a lead poisoning education and prevention program, establish work practice standards for lead-based paint activities, define rights and duties of regulated persons, and prescribe enforcement actions and noncompliance remedies.

All persons providing training in lead-based paint identification and abatement must be accredited. Accreditation of the training program is contingent upon the training program employing a training manager who meets the qualifications set forth in the promulgated rules. Training courses must include designated curricula for respective disciplines, and maintenance of records.

Lead professionals such as inspectors, risk assessors, supervisors and abatement workers must be certified. Individuals seeking certification or re-certification shall successfully complete an accredited training course in the appropriate discipline, pass a third party certification examination within 6 months of course completion, and meet the appropriate experience and education requirements for each discipline.

Work practice standards for conducting lead-based paint activities such as an inspection, lead-hazard screen, risk assessment or abatement have been established by statute and promulgated rules. These activities may only be performed by certified individuals in accordance with documented methodologies.

Authority for enforcement actions is established for the Michigan Department of Community Health under sections 5466(1), 5475(2) and 5476(2) of the Lead Abatement Act of 1998, being sections 333.5466, 333.5475, and 333.5476 of the Michigan Compiled Laws, and Rule 325.9925.

IV. Federal Overfiling

Section 404(b) of TSCA makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to

comply with, any requirement of an authorized State or Tribal program.

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this document in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: March 20, 2000.

Norman Niedergang,

Acting Regional Administrator, Region V.

[FR Doc. 00–9927 Filed 4–19–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

April 14, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 19, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0768.

Title: 28 GHz Band Segmentation Plan.

Type of Review: Extension of a currently approved collection.

Form Number: Not applicable.

Respondents: Businesses or other for-profit entities; not for profit institutions.

Number of Respondents: 15 respondents submitting paperwork approximately 4 times per year.

Estimated Time Per Response: 1.5 hours.

Frequency of Response: On occasion.

Total Annual Burden: 90 hours.

Total Annual Costs: $18,000.

Needs and Uses: The various collections of information accounted for in OMB# 3060–0768 are contained in C.F.R. Parts 25 and 101 of the Commission's rules. The Commission uses the information in carrying out its duties as set forth in Sections 308 and 309 of the Communications Act of 1934, as amended. Specifically, the Commission and other applicants and/or licensees in the 28 GHz band use the information to determine the technical coordination of systems that are designed to share the same band segment in the 28 GHz band.

OMB Approval Number: 3060–0769.

Title: Aeronautical Services Transition Plan.

Type of Review: Extension of a currently approved collection.

Form Number: Not applicable.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 6.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion.

Total Annual Burden: 12 hours.

Total Annual Costs: $5,400.

Needs and Uses: The information is used by engineering staff at the Commission to determine whether transition arrangements impact reliability of aeronautical communications services.

OMB Number: 3060–0611.

Title: Section 74.783 Station Identification.

Form Number: None.

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profit, State, Local or Tribal Government

Number of Respondents: 200.

Estimated Time per Response: 0.166 hours.

Total Annual Burden: 33 hours.

Total Annual Costs: $0.

Needs and Uses: On December 8, 1998, the Commission adopted a Report and Order in MM Docket No. 98–98, in the matter of Amendment of Part 73 and Part 74 Relating to Call Sign Assignments for Broadcast Stations. With this Report and Order, the Commission modified its practices and procedures with regard to the assignment of call signs to radio and television broadcast stations. Existing procedures were replaced by an on-line system for the electronic preparation and submission of requests for the reservation and authorization of new and modified call signs. Access to the call sign system is made via the Internet.

Section 74.783(e) permits any low power television (LPTV) station to request a four-letter call sign after receiving its construction permit. All initial LPTV construction permits will continue to be issued with a five-character LPTV call sign. This Report and Order requires LPTV respondents to use the on-line electronic system. To enable these respondents to use this on-line system, the Commission eliminated the requirement that holders of LPTV construction permits submit with their call sign requests a certification that the station has been constructed, that physical construction is underway at the transmitter site, or that a firm equipment order has been placed. The on-line reservation and authorization system was approved by OMB under Control Number 3060–0188. All burden associated with call sign requests are included in Control Number 3060–0188.

Section 74.783(b) requires television translator stations, whose station-

identification is made by the television station whose signals are being rebroadcast by the translator, to furnish current information with regard to the translator's call letters and location, and the name, address and telephone number of the licensee to be contacted in the event of malfunction of the translator.

The furnishing of current information is used by the primary station licensee and/or FCC staff in field investigations to contact the translator licensee in the event of malfunction of the translator.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–9901 Filed 4–19–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

April 14, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 19, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0683.

Title: Direct Broadcast Satellite Service—47 CFR Section 100.

Type of Review: Extension of a currently approved collection.

Form Number: Not applicable.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 8.

Estimated Time Per Response: 400 hours.

Frequency of Response: On occasion.

Total Annual Burden: 3,200 hours.

Total Annual Costs: $0.

Needs and Uses: The information requested under CFR Part 100 of the Commission's rules is used by the Commission to determine whether applicants are legally, technically and financially qualified to hold a DBS authorization. Without such information, the Commission could not make determinations for authorization to provide service to successful applicants and would therefore not be able to fulfill its statutory obligations in accordance with the Communications Act of 1934, as amended.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–9902 Filed 4–19–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–00–33–B (Auction No. 33); DA 00–781]

Auction of Licenses for the 700 MHz Guard Bands Scheduled for June 14, 2000; Auction Notice and Filing Requirements for 104 Licenses in the 700 MHz Guard Band Auction Scheduled for June 14, 2000 Minimum Opening Bids and Other Procedural Issues

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This public notice announces the procedures and minimum opening bids for the upcoming auction of licenses for fixed and mobile services in the 746–747/776–777 and 762–764/792–794 MHz bands ("Auction No. 33") scheduled to commence on June 14, 2000.

DATES: Auction No. 33 is scheduled for June 14, 2000.

FOR FURTHER INFORMATION CONTACT: *Auctions and Industry Analysis Division:* Howard Davenport, Attorney, Auctions Legal Branch at (202) 418–0660; Kathy Garland, Project Manager, Auctions Operations Branch at (717) 338–2888, or Craig Bomberger, Analyst, Auctions Operations Branch at (202) 418–0660. *Media Contact:* Meribeth McCarrick at (202) 418–0654. *Commercial Wireless Division:* Roger Noel, Chief, Licensing and Technical Analysis Branch, at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released April 10, 2000. The complete text of the public notice, including Attachments A through H, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC. Attachments C, D, and H where corrected in DA 00–850, released April 13, 2000 and is also available in the FCC Reference Center. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, D.C. 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov.*

List of Attachments available at the FCC:

Attachment A—Auction No. 33 Licenses to be Auctioned Revised Upfront Payments and Minimum Opening Bids

Attachment B—FCC Auction Seminar Registration Form Auction No. 33

Attachment C—Electronic Filing and Review of the FCC Form 175 (Corrected in DA 00–850 released April 13, 2000)

Attachhment D—Guidelines for Completion of FCC Form 175 and Exhibits (Corrected in DA 00–850 released April 13, 2000)

Attachment E—Auction-Specific Instructions for FCC Remittance Advice (FCC Form 159)

Attachment F—FCC Bidding Preference/ Remote Software Order Form Auction No. 33

Attachment G—Bid Increments and Exponential Smoothing

Attachment H—Accessing the FCC Network Using Windows 95/98

(Corrected in DA 00–850 released April 13, 2000)
Attachment I—Summary Listing of Documents from the Commission and the Wireless Telecommunications Bureau Addressing Application of the Anti-Collusion Rules
Attachment J—Incumbent Television Licenses on Channels 59 through 68

I. General Information

A. Introduction

1. This public notice announces the procedures and minimum opening bids for the upcoming auction of licenses for fixed and mobile services in the 746–747/776–777 and 762–764/792–794 MHz bands ("Auction No. 33"). On March 10, 2000, the Wireless Telecommunications Bureau ("Bureau") released a public notice, seeking comment on the establishment of reserve prices or minimum opening bids for Auction No. 33, in accordance with the Balanced Budget Act of 1997. *See* DA 00–559, Auction of Licenses for the 700 MHz Guard Bands Scheduled for June 14, 2000 (*Auction No. 33 Comment Public Notice*) 65 FR 14561 (March 17, 2000). In addition, the Bureau sought comment on a number of procedures to be used in Auction No. 33. The Bureau received four comments and five reply comments in response to the *Auction No. 33 Comment Public Notice.*

(i) Background of Proceeding

2. The 746–806 MHz band has historically been used exclusively by television stations (Channels 60–69). Incumbent analog television broadcasters are permitted by statute to continue operations in this band until their markets are converted to digital television ("DTV"). *See* Advanced Television Systems and Their Impact Upon Existing Television Broadcast Service (*Fifth Report and Order*) 63 FR 15774 (April 1, 1998). The Budget Act directed the Commission to reallocate this spectrum for public safety and commercial use by December 31, 1997, and to commence competitive bidding for the commercial licenses on the reallocated spectrum after January 1, 2001. In November 1999, Congress enacted a consolidated appropriations statute that revised the latter instruction. This legislation accelerated the schedule for auction of the commercial spectrum bands, and requires that the proceeds from the auction of these bands be deposited in the U.S. Treasury by September 30, 2000.

(ii) Licenses To Be Auctioned

3. The licenses available in this auction consist of one 4 megahertz license (a pair of 2 megahertz blocks) and one 2 megahertz license (a pair of 1 megahertz blocks) in each of 52 Major Economic Areas (MEAs). These licenses are listed in this public notice on Attachment A. The following table contains the Block/Frequency Band cross-references for Auction No. 33:

FREQUENCIES (MHZ)

License suffix	Frequencies
A	746–747, 776–777
B	762–764, 792–794

B. Rules and Disclaimers

(i) Relevant Authority

4. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to the 700 MHz band, contained in title 47, part 27 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1 of the Code of Federal Regulations.

5. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "Terms") contained in this public notice; the *Auction No. 33 Comment Public Notice;* Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules) (*700 MHz Second Report & Order*), FCC 00–90, 65 FR 17594 (April 4, 2000), and First Report and Order, FCC 00–5 (*700 MHz First Report & Order*), 65 FR 3139 (January 20, 2000) *recon pending;* Reallocation of Television Channels 60–69, the 746–806 MHz Band, ET Docket No. 97–157, (*Report and Order*), 63 FR 6669 (February 10, 1998), *recon.*, 63 FR 63798 (November 17, 1998) (*Reallocation Reconsideration*).

6. The terms contained in the Commission's rules, relevant orders and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp@ftp.fcc.gov or the FCC Auctions World Wide Web site at *http://www.fcc.gov/wtb/auctions.* Additionally, documents may be obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc. (ITS), at (202) 314–3070. When ordering documents from ITS, please provide the appropriate FCC number (for example, FCC 00–5 for the *700 MHz First Report & Order*).

(ii) Prohibition of Collusion

7. To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins with the filing of short-form applications, and ends on the down payment due date after the auction. Bidders competing for licenses in the same geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he/she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or consulting firm), a violation could similarly occur. At a minimum, in such a case, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

8. The Bureau, however, cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred nor will it preclude the initiation of an investigation when warranted. In Auction No. 33, for example, the rule would apply to any applicants bidding for the same MEA. Therefore, applicants that apply to bid for "all markets" would be precluded from communicating with all other applicants after filing the FCC Form 175. However, applicants may enter into bidding agreements *before* filing their FCC Form 175 short-form applications, as long as they disclose the existence of the agreement(s) in their Form 175 short-form applications. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application under § 1.2105(c), even if the agreement has not been reduced

to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for the same geographic license areas. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with § 1.2105(c). In addition, § 1.65 of the Commission's Rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, § 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders are therefore required to make such notification to the Commission immediately upon discovery.

(iii) Protection of Public Safety Operations

9. Section 337(d)(4) of the Budget Act requires that the Commission establish rules insuring that public safety services licensees using spectrum reallocated pursuant to subsection (a)(1) shall not be subject to harmful interference from television broadcast licensees. The Conference Report pertaining to that section states that the Commission should ensure that public safety service licensees in the 746–806 MHz band "continue to operate free of interference from any new commercial licensees." To achieve this end, the Commission established "Guard Bands" in the 746–747 MHz, 762–764 MHz, 776–777 MHz, and 792–794 MHz bands. The Commission required that entities operating in the Guard Bands adhere to the same out-of-band emission ("OOBE") criteria that was adopted for 700 MHz public safety users. In addition, these entities must coordinate their frequency use with public safety frequency coordinators and also comply with the adjacent channel coupled power out-of-band emission limits. In addition, operations in the Guard Bands are restricted to entities that do not use a cellular system architecture.

(iv) Protection of Television Services

10. Licensees operating on the spectrum associated with Channels 60, 62, 65, and 67 must comply with the co-channel and adjacent channel provisions of § 27.60 of our rules. For example, an entity operating on any portion of the 746–747 MHz Guard Band, which is contained in Channel 60, must provide co-channel protection to Channel 60, and adjacent channel protection to Channels 59 and 61.

a. Negotiations With Incumbent Broadcast Licensees

11. As the Commission noted in the *700 MHz First Report & Order:* "The Congressional plan set forth in sections 336 and 337 of the [Communications] Act and in the 1997 Budget Act is to transition this spectrum from its current use for broadcast services to commercial use and public safety services." Congress also has directed the Commission to auction 36 MHz of spectrum, six of which are the subject of this auction, allocated for commercial use at least six years before the relocation deadline for incumbent broadcasters in this spectrum, while adopting interference limits and other technical restrictions necessary to protect full-service analog and digital television service during the transition to DTV. In these circumstances, the Commission will consider specific regulatory requests needed to implement voluntary agreements reached between incumbent licensees and new licensees in these bands. In considering whether the public interest would be served by approving specific requests, the Commission would, for example, consider the benefits to consumers of the provision of new wireless services, such as next generation mobile services or Internet fixed access services. The Commission would also consider whether such agreements would help clear spectrum for public safety use in these bands and could result in the provision of new wireless service in rural and other relatively underserved communities. On the other hand, the Commission would also consider loss of service to the broadcast community of the licensee. For example, the Commission would consider the availability of the licensee's former analog programming within the service area, through simulcast of that programming on the licensee's DTV channel or distribution of the programming on cable or DBS, or the availability of similar broadcast services within the service area (e.g., whether the lost service is the only network service, the only source for local service, or the only source for otherwise unique broadcast service).

b. Canadian and Mexican Border Regions

12. There are currently separate agreements with Canada and Mexico covering TV broadcast use of the UHF 470–806 MHz band. Such agreements do not reflect the additional use or services adopted in the *700 MHz First Report & Order* and the *700 MHz Second Report & Order* for 746–764 and 776–794 MHz bands. While the Commission staff has been involved in discussions with both countries regarding coordination of interference criteria for the use of these bands in the border areas for the additional services, agreements have yet to be reached. Therefore, until such agreements have been finalized, the Commission found it necessary to adopt certain interim requirements for licenses in these bands along the Canada and Mexico borders. Accordingly, licenses issued for these bands within 120 km of the borders will be made subject to whatever future agreements the United States develops with those two countries. In that the existing agreements for the protection of TV stations in those countries are still in effect and must be recognized until they are replaced or modified to reflect the new uses, the Commission decided that licenses in the border areas will be granted on the condition that harmful interference may not be caused to, but must accept interference from, UHF TV transmitters in Canada and Mexico. Furthermore, the Commission pointed out that modifications may be necessary to comply with whatever provisions are ultimately specified in future agreements with Canada and Mexico regarding the use of these bands. Pending further negotiations, the Commission has adopted the protection criteria found in § 90.545 of the Commission's Rules, 47 CFR 90.545, as an interim criteria for protecting Canadian and Mexican TV and DTV stations. Potential bidders should be aware that a petition for reconsideration of the TV protection criteria has been filed. Based on future Commission action on this petition, the protection criteria and license conditions, as described, could be modified.

(v) Due Diligence

13. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

14. Potential bidders are reminded that there are a number of incumbent broadcast television licensees already

licensed and operating in the 746–764 and 776–794 MHz bands (television Channels 60–62 and 65–67), six megahertz of which will be subject to the upcoming auction. The Commission made clear that geographic area licensees operating on the spectrum associated with Channels 60, 62, 65, and 67 must comply with the co-channel and adjacent channel provision of § 90.545 of the Commission's rules. In addition, geographic area licensees operating fixed stations in the 746–764 MHz band must comply with the relevant provisions for "base stations" in §§ 90.309 and 90.545 of the Commissions rules; and licensees operating fixed stations in the 776–794 MHz band must comply with the relevant provisions for "control stations" in those sections of the rules.

15. These limitations may restrict the ability of such geographic licensees to use certain portions of the electromagnetic spectrum or provide service to certain regions in their geographic license areas. Listed in Attachment J are the facilities of incumbent television permittees and licensees on television Channels 59–68. However, prospective bidders should not rely solely on this list, but should carefully review the Commission's databases and records before formulating bidding strategies. Records relating to these stations are available for public inspection during regular business hours in the Reference Information Center at the Federal Communications Commission, 445 Twelfth Street, SW, CY–A257, Washington, DC 20554. The Commission makes no representation or guarantees regarding the accuracy or completeness of the information in Attachment J. In addition, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the databases. Potential bidders are strongly encouraged to physically inspect any sites located in or near the geographic area for which they plan to bid.

Potential bidders should also be aware of the following filings:

- QUALCOMM Incorporated, Petition for Declaratory Ruling Giving Effect to the Mandate of the District of Columbia Circuit Court of Appeals, Service Rules for the 746–764 and 776–794 MHz Bands and Revisions to Part 27 of the Commission's Rules, Petition for Declaratory Ruling (filed January 28, 2000).
- "Wireless Telecommunications Bureau Seeks Comment On QUALCOMM Incorporated's Petition for Declaratory Ruling Seeking 700 MHz Band License Pursuant to Ruling of U.S. Circuit Court of Appeals," *Public Notice*, DA 00–219 (rel. February 4, 2000); Extension of Filing Deadline for Comments to QUALCOMM Incorporated's Petition for Declaratory Ruling, *Public Notice*, DA 00–273 (rel. February 11, 2000). 65 FR 9266 (February 24, 2000)

Potential bidders should also be aware that certain applications (including those for modification), petitions for rulemaking, waiver requests, requests for special temporary authority ("STA"), petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission that relate to the facilities in Attachment J. We note that resolution of these pending matters could have an impact on the availability of spectrum for licensees in the 746–764 and 776–794 MHz bands. While the Commission will continue to act on pending matters, some of these matters may not be resolved by the time of auction. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 33 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 33 are strongly encouraged to continue such research during the auction.

(vi) Bidder Alerts

16. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

17. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 33 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of the minimum investment is less than $25,000.
- The sales representative makes verbal representations that: (a) The Internal Revenue Service ("IRS"), Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

18. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific 700 MHz proposals may also call the FCC Consumer Center at (888) CALL–FCC ((888) 225–5322).

(vii) National Environmental Policy Act (NEPA) Requirements

19. The licensee must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a 700 MHz facility is a federal action and the permitee must comply with the Commission's NEPA rules for each such facility. *See* 47 CFR 1.1305–1.1319. The Commission's NEPA rules require that, among other things, the permitee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corp of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). The permitee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The permitee must also prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

(i) Auction Date

20. The auction will begin on Wednesday, June 14, 2000. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

(ii) Auction Title

21. Auction No. 33—700 MHz Guard Band

(iii) Bidding Methodology

22. The bidding methodology for Auction No. 33 will be simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

(iv) Pre-Auction Dates and Deadlines

23. The following are important events and deadlines related to Auction No. 33:

April 27, 2000
Auction Seminar
May 9, 2000; 6 p.m. ET
Short-Form Application (FCC FORM 175)
May 26, 2000; 6 p.m. ET
Upfront Payments (via wire transfer)
May 30, 2000; 6 p.m. ET
Orders for Remote Bidding Software
June 12, 2000
Mock Auction
June 14, 2000
Auction Begins

(v) Requirements for Participation

24. Those wishing to participate in the auction must:

- Submit a short form application (FCC Form 175) electronically by 6 p.m. ET, May 9, 2000.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET May 26, 2000.
- Comply with all provisions outlined in this public notice.

(vi) General Contact Information

25. The following is a list of general contact information relating to Auction No. 33:

General Auction Information

General Auction Questions
Seminar Registration
Orders for Remote Bidding Software
FCC Auctions Hotline, (888) 225–5322, Press Option #2, or direct (717) 338–2888. Hours of service: 8 a.m.–6:00 p.m. ET

Auction Legal Information

Auction Rules, Policies, Regulations
Auctions and Industry Analysis Division, Legal Branch (202) 418–0660

Licensing Information

Rules, Policies, Regulations
Licensing Issues
Incumbency/Protection Issues
Commercial Wireless Division, (202) 418–0620

Technical Support

Electronic Filing Assistance
Software Downloading
FCC Auctions Technical Support Hotline, (202) 414–1250 (Voice), (202) 414–1255 (TTY). Hours of service: 8 a.m.–6 p.m. ET

Payment Information

Wire Transfers
Refunds
FCC Auctions Accounting Branch, (202) 418–1995, (202) 418–2843 (Fax)

Telephonic Bidding

FCC Copy Contractor

Will be furnished only to qualified bidders
Additional Copies of Commission Documents
International Transcription Services, Inc., 445 12th Street, SW Room CY–B400, Washington, DC 20554, (202) 314–3070

Press Information

Meribeth McCarrick, (202) 418–0654

FCC Forms

(800) 418–3676 (outside Washington, DC),
(202) 418–3676 (in the Washington Area)
http://www.fcc.gov/formpage

FCC Internet Sites

http://www.fcc.gov/wtb/auctions
http://www.fcc.gov
ftp://ftp.fcc.gov

II. Short-Form (FCC Form 175) Application Requirements

26. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment D to this public notice. The short-form application seeks the applicant's name and address, legal classification, status, bidding credit eligibility, identification of the authorization(s) sought, the authorized bidders and contact persons, and specific ownership information.

A. Ownership Disclosure Requirements (Form 175 Exhibit A)

27. All applicants must comply with the uniform part 1 ownership disclosure standards and provide information required by §§ 1.2105 and 1.2112 of the Commission's rules. Specifically, in completing Form 175, applicants will be required to file an Exhibit A providing a full and complete statement of the ownership of the bidding entity. The ownership disclosure standards for the short-form are set forth in § 1.2112 of the Commission's rules.

B. Consortia and Joint Bidding Arrangements (Form 175 Exhibit B)

28. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. *See* 47 CFR 1.2105(a)(2)(viii), 1.2105(c)(1). Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular construction permits on which they will or will not bid. *See* 47 CFR 1.2105(a)(2)(ix). As discussed, if an applicant has had discussions, but has not reached a joint bidding agreement by the short-form deadline, it would not include the names of parties to the discussions on its application and may not continue discussions with applicants for the same geographic license area(s) after the deadline. In cases where applicants have entered into consortia or joint bidding arrangements, applicants must submit an Exhibit B to the FCC Form 175.

29. A party holding a non-controlling, attributable interest in one applicant will be permitted to acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with other applicants for construction permits in the same geographic license area provided that (i) the attributable interest holder(s) certify that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has formed a consortium or entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants,

bidders are reminded that certain discussions or exchanges could broach on impermissible subject matters because they may convey pricing information and bidding strategies.

C. Small Business Bidding Credits (Form 175 Exhibit C)

30. In the *700 MHz Second Report & Order*, the Commission adopted small business provisions to promote and facilitate the participation of small businesses in competitive bidding for Guard Band licenses in the 700 MHz band.

(i) Eligibility

31. Bidding credits are available to small businesses and very small businesses as defined in 47 CFR 27.502(a). For purposes of determining which entities qualify as very small businesses or small businesses, the Commission will consider the gross revenues of the applicant, its controlling interests, and affiliates of the applicant and its controlling interests. The Commission does not impose specific equity requirements on controlling interests. Once principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the applicant and its affiliates will be counted in determining small business eligibility. The term "control" includes both *de facto* and *de jure* control of the applicant. Typically, *ownership of at least 50.1 percent of an entity's voting stock evidences de jure control. De facto* control is determined on a case-by-case basis. The following are some common indicia of control:

- The entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- The entity plays an integral role in management decisions.

32. A consortium of small businesses, or very small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which *individually* satisfies the definition of small or very small business in § 27.502. Thus, each consortium member must disclose its gross revenues along with those of its affiliates, controlling interests, and controlling interests' affiliates. We note that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small or very small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

(ii) Application Showing

33. Applicants must file supporting documentation as Exhibit C to their FCC Form 175 short form applications to establish that they satisfy the eligibility requirements to qualify as a small business or very small business (or consortia of small or very small businesses) for this auction. Specifically, for Auction No. 33, applicants applying to bid as small or very small businesses (or consortia of small or very small businesses) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, *separately and in the aggregate*, the gross revenues for the preceding three years of each of the following: (a) the applicant; (b) the applicant's affiliates; (c) the applicant's controlling interests; and (d) the affiliates of the applicant's controlling interests. Certification that the average gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, and its controlling interests, a schedule of gross revenues for *each* of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of very small or small businesses, this information must be provided for each consortium member.

(iii) Bidding Credits

34. Applicants that qualify under the definitions of small business and very small business (or consortia of small or very small businesses) as are set forth in 47 CFR 27.502, are eligible for a bidding credit that represents the amount by which a bidder's winning bids are discounted. The size of a bidding credit in the 700 MHz guard band auction depends on the average gross revenues for the preceding three years of the bidder and its controlling interests and affiliates:

- A bidder with average gross revenues of not more than $40 million for the preceding three years receives a 15 percent discount on its winning bids for 700 MHz Guard Band manager licenses ("small business");
- A bidder with average gross revenues of not more than $15 million for the preceding three years receives a 25 percent discount on its winning bids for 700 MHz Guard Band manager licenses ("very small business").

35. Bidding credits are not cumulative: qualifying applicants receive either the 15 percent or the 25 percent bidding credit, but not both.

36. Bidders in Auction No. 33 should note that unjust enrichment provisions apply to winning bidders that use bidding credits and subsequently assign or transfer control of their licenses to an entity not qualifying for the same level of bidding credit. Finally, bidders should also note that there are no installment payment plans in Auction No. 33.

D. Other Information (Form 175 Exhibits D and E)

37. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(b)(2), may attach an exhibit (Exhibit D) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions. Applicants wishing to submit additional information may do so in Exhibit E, Miscellaneous Information to the FCC Form 175.

E. Minor Modifications to Short-Form Applications (FCC Form 175)

38. After the short-form filing deadline (May 9, 2000), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official or change control of the applicant or change bidding credits). *See* 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these changes on-line, and submit a letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW, Suite 4-A760 Washington, DC 20554, briefly summarizing the changes. Questions about other changes should be directed to Howard Davenport of the Auctions and Industry Analysis Division at (202) 418–0660.

F. Maintaining Current Information in Short-Form Applications (FCC Form 175)

39. Applicants have an obligation under 47 CFR 1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information

contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

III. Pre-Auction Procedures

A. Auction Seminar

40. On Thursday, April 27, 2000, the FCC will sponsor a free seminar for Auction No. 33 at the Federal Communications Commission, located at 445 12th Street, S.W., Washington, D.C. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the 700 MHz Guard Band service and auction rules. The seminar will also provide an opportunity for prospective bidders to ask questions of FCC staff.

41. To register, complete the registration form that is included as Attachment B of this public notice and submit it by Tuesday, April 25, 2000. Registrations are accepted on a first-come, first-served basis.

B. Short-Form Application (FCC Form 175)—Due May 9, 2000

42. In order to be eligible to bid in this auction, applicants must first submit a FCC Form 175 application. This application must be submitted electronically and received at the Commission by 6 p.m. ET on May 9, 2000. Late applications will not be accepted.

43. There is no application fee required when filing a FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. *See* part III.D.

(i) Electronic Filing

44. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time from April 27, 2000 until 6 p.m. ET on May 9, 2000. Applicants are strongly encouraged to file early, and applicants are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on May 9, 2000.

45. Information about accessing the FCC Form 175 is included in Attachment C. Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); the hours of service are 8 a.m. to 6 p.m. ET, Monday through Friday.

(ii) Completion of the FCC Form 175

46. Applicants must carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of this public notice. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D to this public notice provide information on the required attachments and appropriate formats.

(iii) Electronic Review of FCC Form 175

47. The FCC Form 175 electronic review system may be used to review and print applicants' FCC Form 175 information. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any Exhibits to their FCC Form 175 applications. See Attachment C for details on accessing the review system.

C. Application Processing and Minor Corrections

48. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (a) those applications accepted for filing (including FCC account numbers and the licenses for which they applied); (b) those applications rejected; and (c) those applications that have minor defects that may be corrected, and the deadline for filing such corrected applications.

49. As described more fully in the Commission's rules, after the May 9, 2000, short form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (e.g., change their license selections, change the certifying official, change control of the applicant, or change bidding credit eligibility).

D. Upfront Payments—Due May 26, 2000

50. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by a FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6 p.m. ET on May 26, 2000.

Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 33 go to a lockbox number different from the ones used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the May 26, 2000 deadline will result in dismissal of the application and disqualification from participation in the auction.

(i) Auction Payments by Wire Transfer

51. Wire transfer payments must be received at Mellon Bank by 6 p.m. ET on May 26, 2000. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261,
Receiving Bank: Mellon Pittsburgh,
BNF: FCC/AC 910–1174, OBI Field:
(Skip one space between each information item)
"AUCTIONPAY"
TAXPAYER IDENTIFICATION NO.
(same as FCC Form 159, block 26),
PAYMENT TYPE CODE (enter "A33U"),
FCC CODE 1 (same as FCC Form 159, block 23A: "33"),
PAYER NAME (same as FCC Form 159, block 2),
LOCKBOX NO. #358405.

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

52. Applicants must fax a completed FCC Form 159 to Mellon Bank at (412) 236–5702 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 33."

Applicants are strongly encouraged to confirm timely transmission and receipt of their upfront payment at Mellon Bank and can do so by contacting their sending financial institution.

(ii) FCC Form 159

53. A completed FCC Remittance Advice Form (FCC Form 159) must be faxed to Mellon Bank to accompany each upfront payment wire transfer. Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment E to this public

notice. An electronic version of the FCC form 159 is available after submitting the FCC Form 175. The FCC Form 159 can be completed electronically, but must be filed with Mellon Bank via facsimile.

(iii) Amount of Upfront Payment

54. In the Part 1 Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making (*Part 1 Order*), the Commission delegated to the Bureau the authority and discretion to determine an appropriate upfront payment for each license being auctioned. *See* 62 FR 13540 (March 21, 1997). In the *Auction No. 33 Comment Public Notice*, the Bureau proposed upfront payments for Auction No. 33. Several comments were submitted regarding the amount of upfront payments proposed for this auction, and a revised list of upfront payments appears as Attachment A.

55. Comments concerning the proposed upfront payment were submitted by AMTA, and Motorola. According to Motorola, the proposed amounts for upfront payments are extremely high given the level of incumbency and restrictions required of licensees in this band. Furthermore, Motorola argues that a Guard Band Manager, where TV incumbency is an issue, may not realize any return on its license investment until December of 2006 and Guard Band Managers are unlikely to be in a position to assess the nature of adjacent commercial operations prior to bidding. Moreover, Motorola claims that the proposed upfront payments preclude participation by small business and private land mobile coordinators. To address these concerns, Motorola urges that the Bureau use the same formula employed in the 1999 220 MHz auction ("Auction No. 24") to set minimum opening bids and upfront payments. According to Motorola, applying the formula in this proceeding would result in upfront payments that total $2,108,178 for Block A and $4,209,287 for Block B licenses. AMTA raises similar concerns in recommending that the Commission reduce the upfront payments to one-third or one-quarter of their current valuations. AMTA also notes that this spectrum is affected by the existence of co-channel or adjacent channel television broadcast stations in virtually every market of significant size around the nation and that these licensees are not required to vacate the spectrum until 2006 and that some licensees may be eligible for an extension of that deadline. AMTA cites several other factors, including anticipated interference from Commercial Mobile Radio Service ("CMRS") operating in the neighboring 30 MHz and the technical requirement that must be adopted to ensure interference protection for public safety systems.

56. In its reply comments, AMTA points out that all parties who addressed this issue took the position that the proposed upfront payments are too high. AMTA cites several factors in support of its position. AMTA urges that the Commission use the upfront payments proposed by Motorola as absolute upper limits, with further reductions in markets that are encumbered. In its reply comments, ITA strongly supports Motorola's alternative formula for use in calculating upfront payments. Similarly, Mobex, in its reply comments, stated that adoption of such a standard will provide better assurance that the Guard Band licenses will be sold, in keeping with the Commission's goals to provide spectrum to the public at a reasonable price in an expeditious manner. MRFAC emphasizes on reply that if the Commission hopes to ensure true competitive bidding between and among a variety of qualified bidders, it should significantly reduce the amounts proposed for upfront payments. On reply, PCIA questions the amount of the proposed upfront payment in light of the incumbency on the channels, the fact that most of the spectrum to be auctioned will be unusable for six years, the fact that the licensing format is new and untested, the cost associated with being a Band Manager, and the level of interference protection that must be provided to adjacent channel public safety systems.

57. Upon careful consideration of the comments and reply comments, the Bureau has decided to exercise its discretion to adjust the upfront payments and has set them forth in Attachment A. The revised figures are approximately one-third of the original proposal. In making this reduction, we recognize the concerns expressed regarding incumbency and interference issues and uncertainty in when the spectrum may become unencumbered. We also respond to concerns raised concerning the opportunity for small businesses to participate in this auction.

58. Please note that upfront payments are not attributed to specific licenses, but instead will be translated to bidding units to define a bidder's maximum bidding eligibility. For Auction No. 33, the amount of the upfront payment will be translated into bidding units on a one-to-one basis, *e.g.*, a $1,000,000 upfront payment provides the bidder with 1,000,000 bidding units. The total upfront payment defines the maximum number of bidding units on which the applicant will be permitted to bid (including standing high bids) in any single round of bidding. Thus, an applicant does not have to make an upfront payment to cover all licenses that an applicant has selected on FCC Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

59. In order to be able to place a bid on a license, in addition to having specified that license on the FCC Form 175, a bidder must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on the FCC Form 175, or else the applicant will not be eligible to participate in the auction.

60. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units it may wish to bid on in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to bid in any given round. Bidders should check their calculations carefully as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

Note: An applicant may, on its FCC Form 175, apply for every license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

(iv) Applicant's Wire Transfer Information for Purposes of Refunds

61. The Commission will use wire transfers for all Auction No. 33 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC. Applicants may either submit the information electronically after filing their short-form application or fax the wire transfer instructions by May 26, 2000, to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Michelle Bennett or Gail Glasser, at (202) 418–2843. Should the payer fail to submit the requested information, the refund will be returned to the original payer. For additional information, please call (202) 418–1995.

Name of Bank, ABA Number, Contact and Phone Number, Account Number to Credit, Name of Account Holder,

Correspondent Bank (if applicable), ABA Number, Account Number.

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in part V.D.

E. Auction Registration

62. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

63. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing a portion of the confidential identification codes required to place bids. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

64. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Friday, June 9, 2000, must contact the Auctions Hotline at 717–338–2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

65. Qualified bidders should note that lost login codes, passwords or bidder identification numbers can be replaced only by appearing *in person* at the FCC Auction Headquarters located at 445 12th St., SW, Washington, DC 20554. Only an authorized representative or certifying official, as designated on the applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes. Qualified bidders requiring replacement codes must call technical support prior to arriving at the FCC to arrange preparation of new codes.

F. Remote Electronic Bidding Software

66. Qualified bidders are allowed to bid electronically or by telephone. If choosing to bid electronically, each bidder must purchase their own copy of the remote electronic bidding software. Electronic bids will only be accepted from those applicants purchasing the software. However, the software may be copied by the applicant for use by its authorized bidders at different locations. The price of the FCC's remote bidding software is $175.00 and must be ordered by Tuesday, May 30, 2000. For security purposes, the software is only mailed to the contact person at the contact address listed on the FCC Form 175. Please note that auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 33. If bidding telephonically, the telephonic bidding phone number will be supplied in the second Federal Express mailing of confidential login codes. Qualified bidders that do not purchase the software may only bid telephonically. To indicate your bidding preference, an FCC Bidding Preference/Remote Software Order Form can be accessed when submitting the FCC Form 175 and completed electronically. A copy of this form is included as Attachment F in this public notice.

G. Mock Auction

67. All qualified bidders will be eligible to participate in a mock auction scheduled for Monday, June 12, 2000. The mock auction will enable applicants to become familiar with the electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

68. The first round of bidding for Auction No. 33 will begin on Wednesday, June 14, 2000. The initial bidding schedule will be announced in the public notice listing the qualified bidders which is released approximately 10 days before the start of the auction.

A. Auction Structure

(i) Simultaneous Multiple Round Auction

69. In the *Auction No. 33 Comment Public Notice*, we proposed to award 104 Guard Band Manager licenses in the 700 MHz guard bands in a single, simultaneous multiple round auction. We received no comment on this issue. We conclude that it is operationally feasible and appropriate to auction the 700 MHz Guard Band manager licenses through a single, simultaneous multiple round auction. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach, we believe, allows bidders to take advantage of any synergies that exist among licenses and is most administratively efficient. For Auction No. 33, no applicant may be deemed the winning bidder of both the Block A and the Block B license in a single geographic service area.

(ii) Maximum Eligibility and Activity Rules

70. In the *Auction No. 33 Comment Public Notice*, we proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. We received no comments on this issue.

71. For Auction No. 33 we will adopt this proposal. The amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. Note again that upfront payments are not attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility. The total upfront payment defines the maximum number of bidding units on which the applicant will initially be permitted to bid. As there is no provision for increasing a bidder's maximum eligibility during the course of an auction (as described under "Auction Stages" as set forth in part IV.A.(iv), prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not define the total dollars a bidder may bid on any given license.

72. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on a specific percentage of their maximum eligibility during each round of the auction.

73. A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round (*see* "Minimum Accepted Bids" in part IV.B.(iii)). The minimum required activity level is expressed as a percentage of the bidder's maximum bidding eligibility, and increases by stage as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions as set forth under "Auction Stages" in part IV.A.(iv) and "Stage Transitions" in part

IV.A.(v), we adopt them for Auction No. 33.

(iii) Activity Rule Waivers and Reducing Eligibility

74. In the *Auction No. 33 Comment Public Notice*, we proposed that each bidder in the auction would be provided five activity rule waivers that may be used in any round during the course of the auction. We received no comment on this issue.

75. Based upon our experience in previous auctions, we adopt our proposal that each bidder be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. We are satisfied that our practice of providing five waivers over the course of the auction provides a sufficient number of waivers and maximum flexibility to the bidders, while safeguarding the integrity of the auction.

76. The FCC automated auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (a) There are no activity rule waivers available; or (b) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

77. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Auction Stages" (*see* part IV.A.(iv)). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

78. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

(iv) Auction Stages

79. In the *Auction No. 33 Comment Public Notice*, we proposed to conduct the auction in three stages and employ an activity rule. We further proposed that, in each round of Stage One, a bidder desiring to maintain its current eligibility would be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. In each round of Stage Two, a bidder desiring to maintain its current eligibility would be required to be active on at least 90 percent of its current bidding eligibility. Finally, we proposed that a bidder in Stage Three, in order to maintain eligibility, would be required to be active on 98 percent of its current bidding eligibility. We received no comment on these proposals.

80. We conclude that the auction will be composed of three stages, which are each defined by an increasing activity rule. We will adopt our proposals for the activity rules. Here are the activity levels for each stage of the auction. The FCC reserves the discretion to further alter the activity percentages before and/or during the auction.

Stage One: During the first stage of the auction, a bidder desiring to maintain its current eligibility will be required to be active on licenses that represent at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of the bidder's standing high bids and valid bids during the current round by five-fourths (5/4).

Stage Two: During the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of the bidder's standing high bids and valid bids during the current round by ten-ninths (10/9).

Stage Three: During the third stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). In this final stage, reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of the bidder's standing high bids and valid bids during the current round by fifty-fortyninths (50/49).

CAUTION: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders that have standing high bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required minimum activity level by using the bidding software's bidding module.

Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, we adopt them for Auction No. 33.

(v) Stage Transitions

81. In the *Auction No. 33 Comment Public Notice*, we proposed that the auction would generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below 10 percent for three consecutive rounds of bidding in each stage. However, we further proposed that the Bureau would retain the discretion to change stages unilaterally by announcement during the auction. This determination, we proposed, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We received no comments on this subject.

82. We adopt our proposal. Thus, the auction will start in Stage One. Under the FCC's general guidelines the auction will start in Stage One and will advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when, in each of three consecutive rounds of bidding, the high bid has increased on 10 percent or less of the licenses being auctioned (as measured in bidding units). However,

the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We believe that these stage transition rules, having proven successful in prior auctions, are appropriate for use in Auction No. 33.

(vi) Auction Stopping Rules

83. For Auction No. 33, the Bureau proposed to employ a simultaneous stopping rule. Under this rule, bidding will remain open on all licenses until bidding stops on every license. The auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, applies a proactive waiver, or withdraws a previous high bid. After the first such round, bidding closes simultaneously on all licenses.

84. The Bureau also proposed a modified version of the simultaneous stopping rule. This modified version will close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder will not keep the auction open under this modified stopping rule. The Bureau further sought comment on whether this modified stopping rule should be used unilaterally or only in stage three of the auction.

85. The Bureau further proposed retaining the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

86. In addition, we proposed that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. We proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage where bidders will be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day.

87. No comments were received on any of these issues therefore we adopt all of the proposals concerning the auction stopping rules. Auction No. 33 will begin under the simultaneous stopping rule, and the Bureau will retain the discretion to invoke the other versions of the stopping rule. Adoption of these rules, we believe, is most appropriate for Auction No. 33 because our experience in prior auctions demonstrates that the auction stopping rules balance the interests of administrative efficiency and maximum bidder participation. The substitutability between and among licenses in different geographic areas and the importance of preserving the ability of bidders to pursue backup strategies support the use of these stopping rules.

(vii) Auction Delay, Suspension, or Cancellation

88. In the *Auction No. 33 Comment Public Notice*, we proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding.

89. Because this approach has proven effective in resolving exigent circumstances in previous auctions, we will adopt our proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

(i) Round Structure

90. The initial bidding schedule will be announced in the public notice listing the qualified bidders which is released approximately 10 days before the start of the auction. This public notice will be included with the registration mailings. The round structure for each bidding round contains a single bidding round followed by the release of the round results. Multiple bidding rounds may be conducted in a given day. Details regarding round results formats and locations will be included in the Qualified Bidder Public Notice.

91. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The FCC may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

(ii) Reserve Price or Minimum Opening Bid

92. *Background.* The Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. *See* FCC 97–413, Amendment of Part 1 of the Commission's Rules-Competitive Bidding Procedures (*Third Report and Order*) 63 FR 770 (January 7, 1998). Among other factors, the Bureau must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on valuation of the spectrum

being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.

93. In the *Auction No. 33 Comment Public Notice*, the Bureau proposed to establish minimum opening bids for Auction No. 33 and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 33, the Commission proposed calculating the minimum opening bid based on information available in the form of a Congressional estimate of the value of the spectrum. In response to the *Auction No. 33 Comment Public Notice*, AMTA, ITA, Mobex and Motorola all filed comments concerning the proposed minimum opening bids.

94. In its comments, AMTA states that it is unlikely that its members will elect to participate unless the Commission significantly reduces the minimum opening bids proposed for the Guard Band spectrum. AMTA cites several factors in support of its position. First AMTA points out that the Guard Band spectrum will not become available until 2006 and that deadline may be further extended. Also AMTA asserts that the Guard Band spectrum is susceptible to interference from CMRS systems operating in the neighboring 30 MHz and that the economic utility of the Guard Band allocation will be affected by the technical requirements adopted to ensure interference protection for public safety systems. According to AMTA, these factors support a reduction to one-third or one-quarter of the proposed valuations in minimum opening bids in the Guard Band auction.

95. ITA claims that the Commission needs to revisit the amount set for the minimum opening bids in order to give consideration to the interference protection that must be provided public safety users. According to ITA, the protection requirements have the potential to erode the ability of the Guard Band Manager to fully maximize use of the spectrum. Further, according to ITA, the Guard Band Manager must also consider potential interference from adjacent band commercial users and avoid causing interference to incumbent broadcast operations. ITA argues that basing minimum bids upon traditional calculations, when there is the possibility that use of the spectrum cannot be fully maximized simply makes it that much more difficult to attract a wide pool of prospective Guard Band Managers. In view of these factors, ITA strongly encourages the Commission to reevaluate the methodology it used in setting the opening minimum bids. ITA did not state what minimum opening bid would be appropriate.

96. Mobex claims that the minimum opening bids: (i) Are cost prohibitive for most small businesses; (ii) contradict the requirements of the 1996 Telecommunications Act, specifically section 309(j); and (iii) will have a long term negative impact on the few remaining small businesses in the SMR industry, including Mobex. According to Mobex, the Commission's excessive minimum opening bids effectively preclude countless small businesses from realistically participating in the auction proceeding. Mobex cites to section 309(j) of the Telecommunications Act, which Mobex says requires the Commission to avoid excessive concentration of licenses by disseminating licenses among a wide variety of applicants, including small businesses. Mobex did not indicate what would be a more acceptable minimum opening bid.

97. Motorola argues that the proposed minimum opening bid amounts fail to account for: (i) The presence of incumbent broadcast stations; (ii) the possibility of interference from adjacent commercial licensees; and (iii) the barrier to entry these amounts present for small businesses and associations likely to be interested in the role of Guard Band Manager. Motorola further argues that the Commission did not explain the valuation expected for the Guard Band licenses as compared to the amount anticipated to be raised by the licenses available on the other 30 megahertz of spectrum allocated for commercial use in the 700 MHz band. Thus, Motorola says that it has no way of knowing what specific value the Bureau placed on the Guard Band spectrum. Motorola adds that because of TV incumbency issues, there are some markets where a Guard Band Manager may not be able to recognize a return on its license until December, 2006. Further, Motorola claims that the Guard Band spectrum faces potential interference from users of the remaining 30 megahertz of commercial spectrum in the 700 MHz band. Moreover, Motorola argues that the current values for upfront payments preclude small businesses and private land mobile frequency coordinators from participation in the auction. Motorola asserts that the bidding credits do not help because the credits are not applied to upfront payment amounts and the time constraints to raise the capital are extremely short due to the Congressional requirement to deposit the proceeds by September 30, 2000. Motorola recommends that the Bureau use the same formula that it used in setting the minimum opening bids for the 220 MHz spectrum in Auction No. 24 and that the Bureau maintain the 33% ratio, used in this proceeding, between minimum opening bids and upfront payments. Furthermore, Motorola claims that markets which are encumbered should be subject to a further reduction in minimum opening bids.

98. Reply comments were submitted by AMTA, ITA, Mobex , MRFAC, and PCIA.

99. On reply, AMTA notes that all of the initial comments filed in this proceeding took the position that the proposed minimum opening bids were unreasonably high. AMTA says that collectively the factors cited by commenters support a reduction in both the upfront payment and minimum opening bids in Auction No. 33. AMTA argues that those few parties that are able to participate in the auction will have to pass on unreasonably high acquisition costs to potential lessees, thus negatively impacting, if not eliminating, participation by small businesses. AMTA reiterates that the Commission should reduce the upfront payments and the minimum opening bids for the Guard Band spectrum to one-third or one-quarter of their current valuations to bring the valuations in line with the 220 MHz auction figures. AMTA concludes by stating that it supports Motorola's proposal to maintain a ratio of 33% between minimum opening bids and upfront payments and that the Commission should use Motorola's proposal as the absolute upper limits, with further reductions in markets that are encumbered.

100. In its reply comments, ITA also notes that all of those filing comments agreed that the Commission should revisit the amount of minimum opening bids. According to ITA, because the guard band manager must protect public safety users from interference, while avoiding interference to incumbent broadcast operations, it is much more difficult to attract a wide pool of prospective bidders. ITA states that it supports Motorola's proposal to apply the valuations used in the 220 MHz auction to set upfront payments and minimum opening bids.

101. In its reply comments, Mobex notes that all parties who submitted initial comments are in agreement that the Commission's proposed minimum opening bids would be cost prohibitive for many small businesses Mobex states that the Commission should reduce the valuation for the Guard Band, citing arguments of potential interference from users within the 30 megahertz block, the

lack of out-of-band limitations on the 30 megahertz block, the requirement to protect public safety users, and the existence of co-channel or adjacent channel television broadcast stations in virtually every market of significant size around the nation. Mobex also notes that a financial return on the guard band spectrum may be delayed until December, 2006 and beyond. In view of the foregoing, Mobex urges the Commission to adopt the valuations proposed by Motorola in this proceeding.

102. MRFAC states that the minimum opening bid amounts are too high, considering that the spectrum in many of these markets will be encumbered until December, 2006, or even beyond. According to MRFAC, no rational investor would risk these kind of sums for an encumbered asset. MRFAC, therefore, urges that the Commission use minimum opening bids that are in line with those for the 220 MHz auction.

103. As in the case of the amount of upfront payments, the Bureau is persuaded by the comments and reply comments that it is appropriate to make a downward adjustment in the minimum opening bids. In doing so, we recognize concerns expressed with regard to when the spectrum may become available, interference and technical issues, and other factors cited in response to the *Auction No. 33 Comment Public Notice*. Accordingly, the Bureau has lowered the proposed minimum opening bids for the licenses in the Guard Band, establishing minimum opening bids that are approximately one-third of the original proposal, as set forth in Attachment A.

(iii) Bid Increments and Minimum Accepted Bids

104. In the *Auction No. 33 Comment Public Notice*, we proposed to use a smoothing methodology to calculate minimum bid increments. We further proposed to retain the discretion to change the minimum bid increment if circumstances so dictate. We received no comment on this issue.

105. We will adopt our proposal for a smoothing formula. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum value based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity level of a license, decreasing the time it takes for active licenses to reach their final value. The formula used to calculate this increment is included as Attachment G.

106. We adopt our proposal of initial values for the maximum of 0.2, or 20 percent of the license value, and a minimum of 0.1, or 10 percent of the license value. The Bureau retains the discretion to change the minimum bid increment if it determines that circumstances so dictate. The Bureau will do so by announcement in the Automated Auction System. Under its discretion, the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice if circumstances warrant. As an alternative approach, the Bureau may, in its discretion, adjust the minimum bid increment gradually over a number of rounds as opposed to single large changes in the minimum bid increment (*e.g.*, by raising the increment floor by one percent every round over the course of ten rounds). The Bureau also retains the discretion to use alternate methodologies, such as a flat percentage increment for all licenses, for Auction No. 33 if circumstances warrant.

(iv) High Bids

107. Each bid will be date-and time-stamped when it is entered into the FCC computer system. In the event of tie bids, the Commission will identify the high bidder on the basis of the order in which the Commission receives bids. The bidding software allows bidders to make multiple submissions in a round. As each bid is individually date-and time-stamped according to when it was submitted, bids submitted by a bidder earlier in a round will have an earlier date and time stamp than bids submitted later in a round.

(v) Bidding

108. During a bidding round, a bidder may submit bids for as many licenses as it wishes, subject to its eligibility, as well as withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round, and the date-and time-stamp of that bid reflects the latest time the bid was submitted.

109. Please note that all bidding will take place remotely either through the automated bidding software or by telephonic bidding. (Telephonic bid assistants are required to use a script when entering bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round. Normally, four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 33.

110. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (a) the licenses applied for on FCC Form 175; and (b) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those licenses for which the bidder applied on its FCC Form 175. A bidder also has the option to further tailor its bid submission screens to call up specified groups of licenses.

111. The bidding software requires each bidder to login to the FCC auction system during the bidding round using the FCC account number, bidder identification number, and the confidential security codes provided in the registration materials. Bidders are strongly encouraged to download and print bid confirmations *after* they submit their bids.

112. The bid entry screen of the automated auction system software for Auction No. 33 allows bidders to place multiple increment bids, which will let bidders increase high bids from one to nine bid increments. A single bid increment is defined as the difference between the standing high bid and the minimum acceptable bid for a license. The bidding software will display the bid increment for each license.

113. To place a bid on a license, the bidder must increase the standing high bid by one to nine times the bid increment. This is done by entering a whole number between 1 and 9 in the bid increment multiplier (Bid Mult) field in the software. This value will determine the amount of the bid (Amount Bid) by multiplying the bid increment multiplier by the bid increment and adding the result to the high bid amount according to the following formula:

Amount Bid = High Bid + (Bid Mult * Bid Increment)

114. Thus, bidders may place a bid that exceeds the standing high bid by between one and nine times the bid increment. For example, to bid the minimum acceptable bid, which is equal to one bid increment, a bidder will enter "1" in the bid increment multiplier column and press submit.

115. For any license on which the FCC is designated as the high bidder (*i.e.*, a license that has not yet received a bid in the auction or where the high bid was withdrawn and a new bid has not yet been placed), bidders will be limited to bidding only the minimum acceptable bid. In both of these cases no

increment exists for the licenses, and bidders should enter "1" in the Bid Mult field. Note that in this case, any whole number between 1 and 9 entered in the multiplier column will result in a bid value at the minimum acceptable bid amount. Finally, bidders are cautioned in entering numbers in the Bid Mult field because, as explained in the following section, a high bidder that withdraws its standing high bid from a previous round, even if mistakenly or erroneously made, is subject to bid withdrawal payments.

(vi) Bid Removal and Bid Withdrawal

116. In the *Auction No. 33 Comment Public Notice*, we proposed bid removal and bid withdrawal rules. With respect to bid withdrawals, we proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are utilized, we proposed, would be at the bidder's discretion. We received no comment on this issue.

117. In previous auctions, we have detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While we continue to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various geographic area licenses in combination, we conclude that, for Auction No. 33, adoption of a limit on their use to two rounds is the most appropriate outcome. By doing so we believe we strike a reasonable compromise that will allow bidders to use withdrawals. Our decision on this issue is based upon our experience in prior auctions, particularly the PCS D, E and F block auctions, and 800 MHz SMR auction, and is in no way a reflection of our view regarding the likelihood of any speculation or "gaming" in this auction.

118. The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals during the auction will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market. If a high bid is withdrawn, the license will be offered in the next round at the second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid, without any bid increment. The Commission will serve as a "place holder" on the license until a new acceptable bid is submitted on that license.

119. *Procedures.* Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the software, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.* a bid that is subsequently removed does not count toward the bidder's activity requirement. This procedure, about which we received no comments, will enhance bidder flexibility during the auction. Therefore, we will adopt these procedures for Auction No. 33.

120. Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the "withdraw bid" function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round during the auction is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g). The procedure for withdrawing a bid and receiving a withdrawal confirmation is essentially the same as the bidding procedure described in "High Bids," part IV.B.(iv).

121. *Calculation.* Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. Specifically, a bidder ("Bidder X") that withdraws a high bid during the course of an auction is subject to a bid withdrawal payment equal to the difference between the amount withdrawn and the amount of the subsequent winning bid. If a high bid is withdrawn on a license that remains unsold at the close of the auction, Bidder X will be required to make an interim payment equal to three (3) percent of the net amount of the withdrawn bid. This payment amount is deducted from any upfront payments or down payments that Bidder X has deposited with the Commission. If, in a subsequent auction, that license receives a valid bid in an amount equal to or greater than the withdrawn bid amount, then no final bid withdrawal payment will be assessed, and Bidder X may request a refund of the interim three (3) percent payment. If, in a subsequent auction, the selling price for that license is less than Bidder X's withdrawn bid amount, then Bidder X will be required to make a final bid withdrawal payment, less the three percent interim payment, equal to either the difference between Bidder X's net withdrawn bid and the subsequent net winning bid, or the difference between Bidder X's gross withdrawn bid and the subsequent gross winning bid, whichever is less.

(vii) Round Results

122. Bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the Commission will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 33 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

(viii) Auction Announcements

123. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as on the Internet.

(ix) Maintaining the Accuracy of FCC Form 175 Information

124. As noted in part II.E., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and certain revisions to exhibits. Filers must make these changes on-line, and submit a letter summarizing these changes to: Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

A separate copy of the letter should be mailed to Howard Davenport, Auctions and Industry Analysis Division), briefly summarizing the changes. Questions about other changes should be directed to Howard Davenport, Auctions and Industry Analysis Division at (202) 418–0660.

V. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

125. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bids and bidders for each license, and listing bid withdrawal payments due.

126. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable bidding credits). *See* 47 CFR 1.2107(b). In addition, by the same deadline all bidders must pay any withdrawn bid amounts due under 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," part IV.B.(vi). (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.) In the *700 MHz Second Report and Order*, in light of the statutory deadline for depositing auction proceeds, the Commission delegated to the Bureau authority to suspend payment deadlines and require that winning bidders on all licenses in the 700 MHz bands pay the full balance of their winning bids upon submission of their long-form application. (*See* 700 MHz Second Report and Order at ¶ 105.) The Bureau will announce via Public Notice if it chooses to exercise this authority.

B. Long-Form Application

127. Within ten business days after release of the auction closing public notice, winning bidders must file: (1) FCC Form 601 and all required exhibits electronically via the Universal Licensing System ("ULS"); and (2) FCC Form 602 manually pursuant to § 1.919 of the Commission's Rules. Winning bidders may file a single application for all markets won at auction. Winning bidders that are small businesses or very small businesses must include and exhibit demonstrating their eligibility for bidding credits. *See* 47 CFR 1.2112(b). Further, more detailed filing instructions will be provided to auction winners at the close of the auction.

C. Default and Disqualification

128. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at their final bid. *See* 47 CFR 1.2109(b) and (c). In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. *See* 47 CFR 1.2109(d).

D. Refund of Remaining Upfront Payment Balance

129. All applicants that submitted upfront payments but were not winning bidders for a 700 MHz guard band license may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid.

130. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. However, bidders that reduce their eligibility and remain in the auction are not eligible for partial refunds of upfront payments until the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a refund request which includes wire transfer instructions and a Taxpayer Identification Number ("TIN"), to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Shirley Hanberry, 445 12th Street, S.W., Room 1–A824 Washington, DC 20554.

131. Bidders are encouraged to file their refund information electronically using the Refund Information portion of the FCC Form 175, but bidders can also fax their request to the Auctions Accounting Group at (202) 418–2843. Once the request has been approved, a refund will be sent to the party identified in the refund information.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Michelle Bennett or Gail Glasser at (202) 418–1995.

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions and Industry Analysis Division.

[FR Doc. 00–9905 Filed 4–19–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–00–31–E (Auction No. 31); DA 00–785]

747–762 and 777–792 MHz Band Auction Filing Dates and Changes to Attachment J

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces new dates relevant to the upcoming auction of licenses in the 747–762 and 777–792 MHz bands (Auction No. 31) scheduled to begin June 7, 2000.

DATES: Auction No. 31 will begin June 7, 2000.

FOR FURTHER INFORMATION CONTACT: Howard Davenport, Auctions and Industry Analysis Division, at (202) 418–0660 or Kathy Garland, Auctions Operations at (717) 338–2801.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released April 12, 2000. The complete text of the public notice, including corrected Attachment J (Incumbent Television Licenses on Channels 59–68) is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC 20554. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov*.

1. The upcoming auction of licenses in the 747–762 and 777–792 MHz bands has been postponed until June 7, 2000. *See* DA 00–573, 747–762 and 777–792 MHz Band Auction Postponed Until June 7, 2000 (*Postponement Public Notice*) 65 FR 16202 (March 27, 2000). In the light of the postponement, the Wireless Telecommunications Bureau ("Bureau") announces changes to related dates. The new dates and the dates already announced are as follows:

Deadline for Seminar Registration	April 21, 2000; 5:30 p.m. ET.

Start Date for Submission of FCC Form 175	April 24, 2000.
Seminar Date	April 24, 2000.
Filing Deadline for FCC Form 175	May 8, 2000; 6:00 p.m. ET.
Upfront Payments	May 22, 2000; 6:00 p.m. ET.
Deadline for Submitting (via fax) Refund Wire Transfer Instructions	May 22, 2000; 6:00 p.m. ET.
Deadline for Ordering Remote Bidding Software	May 23, 2000; 6:00 p.m. ET.
Mock Auction Begins	June 2, 2000.
Auction Begins	June 7, 2000.

2. The Bureau also makes a minor correction to Attachment J of an earlier public notice. *See* DA 00–292, Auction of Licenses in the 747–762 and 777–792 MHz Bands Scheduled for May 10, 2000 (*Announcing Public Notice*) 65 FR 12251 (March 8, 2000). Attachment J has been amended to add the digital television stations that must also be protected from interference during the transitional period. This minor change reinforces and highlights the requirement that new licensees in the 747–762 and 777–792 MHz bands must provide full protection to both analog television and digital television operations during the transitional period. *See* FCC 00–5, Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules (*First Report and Order*) 65 FR 3139 (January 20, 2000).

3. The Commission delegated to the Bureau the authority to suspend payment deadlines and require that winning bidders on *all* licenses in the 700 MHz bands pay the full balance of their winning bids upon submission of their long-form application. *See* FCC 00–90, Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules (*Second Report and Order*) 65 FR 17594 (April 4, 2000). The Bureau will announce in a *Public Notice* if it chooses to exercise this authority.

4. Finally, in light of upcoming auctions, the Bureau also reminds participants that under the anti-collusion rules, after the short-form filing deadline, applicants may not discuss the substance of their bids or bidding strategies with other bidders that have applied to bid in the same geographic license areas, with the exception of those with whom they have entered into agreements and identified on the short-form application. *See* DA 96–1460, Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E and F Block Bidders, (*Public Notice*), (released August 28, 1996). 11 FCC Rcd. 10134.

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions and Industry Analysis Division.

[FR Doc. 00–9904 Filed 4–19–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:00 a.m. on Tuesday, April 18, 2000, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10), of Title 5, United States Code, to consider matters relating to the Corporation's supervisory, corporate, and personnel activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW, Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: April 14, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–9984 Filed 4–18–00; 12:42 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

Previously announced date and time: Thursday, April 13, 2000; 10 a.m., meeting open to the public.

The following items were added to the agenda:

Final Audit Report on Michigan Republican State Committee (MRSC)
Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Financing—Proposed 2000 Edition

The following item was withdrawn from the agenda:

Revisions to Instructions for Forms 3 and 3X

DATE & TIME: *Wednesday, April 26, 2000 at 10 a.m.*

PLACE: 999 E Street, NW, Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. § 437g
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE & TIME: *Thursday, April 27, 2000 at 10 a.m.*

PLACE: 999 E Street, NW, Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes
Draft Advisory Opinion 2000–05: The Oneida Nation of New York by counsel, Markham C. Erickson
Notice of Proposed Rulemaking: Election Cycle Reporting
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 00–10023 Filed 4–18–00; 3:18 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank

holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 4, 2000.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. The Emison Investments Limited Partnership, Eden Prairie, Minnesota; to acquire voting shares of Community Bank Group, Inc., Eden Prairie, Minnesota; and thereby indirectly acquire voting shares of Community Bank Winsted, Winsted, Minnesota, and Community Bank Minnesota Valley, Jordan, Minnesota.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President), 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Randy Allan Deason, Chouteau, Oklahoma; to acquire voting shares of BOC Banshares, Inc., Chouteau, Oklahoma, and thereby indirectly acquire voting shares of Bank of Commerce, Chouteau, Oklahoma.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President), 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Robert B. Mathieu, Delhi, Louisiana; to acquire additional voting shares of Delhi Bancshares, Inc., Delhi, Louisiana, and thereby indirectly acquire additional voting shares of Guaranty Bank & Trust Company of Delhi, Delhi, Louisiana.

Board of Governors of the Federal Reserve System, April 14, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–9884 Filed 4–19–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 00–9055) published on page 19766 of the issue for Wednesday, April 12, 2000.

Under the Federal Reserve Bank of New York heading, the entry for The Dai-Ichi Kangyo Fuji Trust & Banking Co., Ltd., Tokyo, Japan, is revised to read as follows:

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President), 33 Liberty Street, New York, New York 10045–0001:

1. The Dai-Ichi Kangyo Fuji Trust & Banking Co., Ltd., Tokyo, Japan; to become a bank holding company through the ownership of 100 percent of, and by the conversion of its U.S. subsidiary, DKF Trust Company (USA), New York, New York, an insured New York state-chartered trust company, into a bank, as defined by the BHC Act.

Comments on this application must be received by May 5, 2000.

Board of Governors of the Federal Reserve System, April 14, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–9883 Filed 4–19–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 15, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President), 33 Liberty Street, New York, New York 10045–0001:

1. Troy Financial Corporation, Troy, New York; to acquire 100 percent of the voting shares of The Troy Commercial Bank, Troy, New York.

B. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President), 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Carolina First Corporation, Greenville, South Carolina; to merge with Anchor Financial Corporation, Myrtle Beach, South Carolina, and thereby indirectly acquire The Anchor Bank, Myrtle Beach, South Carolina; and shares of RHBT Financial Corporation, Rock Hill, South Carolina; and Rock Hill Bank & Trust, Rock Hill, South Carolina.

2. First Bancorp, Troy, North Carolina; to merge with First Savings Bancorp, Inc., Southern Pines, North Carolina, and thereby indirectly acquire First Savings Bank of Moore County, Inc., SSB, Southern Pines, North Carolina.

C. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer), 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Firstbank Corporation, Alma, Michigan; to acquire 100 percent of the voting shares of Firstbank-St. Johns (in organization), St. Johns, Michigan.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166–2034:

1. G.A.C., Inc., St. Louis, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Gateway National Bank of St. Louis, St. Louis, Missouri.

E. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President), 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. First Liberty Capital Corporation ESOP, Hugo, Colorado; to become a bank holding company by acquiring 25 percent of the voting shares of First Liberty Capital Corporation, Hugo, Colorado, and thereby indirectly acquire First National Bank of Hugo, Hugo, Colorado.

F. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group), 101 Market Street, San Francisco, California 94105–1579:

1. Frontier Financial Corporation, Everett, Washington; to acquire up to 100 percent of the voting shares of Liberty Bay Financial Corporation,

Poulsbo, Washington, and thereby indirectly acquire North Sound Bank, Poulsbo, Washington.

Board of Governors of the Federal Reserve System, April 14, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–9885 Filed 4–19–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[60 Day–00–33]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506 (c) (2) (A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) is providing an opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC/ATSDR Reports Clearance Officer at (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to CDC/ATSDR Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

1. Proposed Projects

National Survey of Laboratory Practices for Selected Coagulation Tests in Hospital Laboratories—New—As part of the continuing effort to support public health objectives of treatment, disease prevention and surveillance programs, the Public Health Practice Program Office (PHPPO), Division of Laboratory Systems seeks to collect information on coagulation testing practices among U.S. hospital laboratories. The purpose of this project is to define the state of testing practices in a random sample of up to 800 U.S. hospital laboratories for selected coagulation analytes by conducting a questionnaire survey of these laboratories. The objectives of this survey are to collect data to assess the variability of selected analytical and non-analytical variables, such as normal ranges, used for selected coagulation tests. There has not been a systematic and nationally based survey of coagulation testing practices among U.S. hospital laboratories. Such a surveillance is needed due to the impact that coagulation testing practices can have on the diagnosis and management of coagulation disorders.

There is ample evidence of variability in coagulation testing practices based on published literature corresponding to experiences of individual institutions that deal with analytical (e.g., impact of instrument and kit reagents on laboratory results) as well as pre-analytical (such as specimen treatment) and post-analytical (such as results presentation) issues. However, there has not been a systematic survey of national hospital laboratories that has documented the nature and extent of such variability for selected coagulation tests. Preliminary observations document substantial inter-institutional variability in coagulation testing practices, with likely effect on patient outcome.

This study will explore current practices for one or more selected coagulation tests to document the extent and nature of variability in the testing processes. It is anticipated that information from this study will be used for several purposes. First, results from this project may be used in a future study in order to surmise the potential impact of various testing practices on patient outcomes. A second anticipated use of this study's results is to implement targeted laboratory improvement efforts. Finally, this study may form the basis for a future study to assess the extent and nature of problems in diagnosis and treatment of patients caused by inaccurate laboratory results. Because hypo- and hypercoagulability disorders are prevalent in the U.S. and they are defined to a great extent by laboratory tests, a well designed laboratory practice survey is expected to be of great public health significance for the nation.

We plan to sample up to 800 laboratories that perform selected coagulation tests. The time required to complete a survey will be approximately 0.5 hours. We anticipate that, of the respondents, approximately 80 will be Coagulation Laboratory Directors (physicians) and approximately 720 will be Coagulation Laboratory Supervisors. The total burden hours to complete the survey is estimated to be 400. Based on hourly wage estimates, the cost to respondents could be approximately $9,000. Because we expect the Laboratory Directors and Supervisors to complete the survey during their usual working hours. We anticipate that there will be no actual cost to the respondents.

ESTIMATES OF ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Laboratory Director	80	1	30/60	40
Laboratory Supervisor	720	1	30/60	360
Totals	800			400

Dated: April 13, 2000.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–9886 Filed 4–19–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 79N–0113; DESI 2847]

Parenteral Multivitamin Products; Drugs for Human Use; Drug Efficacy Study Implementation; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the conditions for marketing an effective adult parenteral multivitamin drug product that published in the **Federal Register** of September 17, 1984 (49 FR 36446). The agency is notifying manufacturers of modifications in the adult formulation and certain portions of the labeling for the products.

DATES: Supplements to approved new drug applications (NDA's) and abbreviated new drug applications (ANDA's) are due on or before June 19, 2000.

ADDRESSES: Communication in response to this notice should be identified with the reference number DESI 2847 and directed to the attention of the appropriate office named below.

Supplements to full NDA's (identify with NDA number): Division of Metabolic and Endocrine Drug Products (HFD–510), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Original ANDA's: Office of Generic Drugs (HFD–600), Center for Drug Evaluation and Research, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

Requests for opinion of the applicability of this notice to a specific product: Division of Prescription Drug Compliance and Surveillance (HFD–330), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 17, 1984 (49 FR 36446), FDA announced the conditions for marketing an effective parenteral multivitamin preparation. The effective 12-vitamin formulation set forth in the notice was based on the clinical evaluation of a guideline formulation recommended in 1975 by the American Medical Association (AMA). The notice also stated that, because parenteral multivitamin products are used and evaluated in patients with a variety of disease conditions, future adjustments to the formulation may be necessary.

On August 21, 1985, FDA's Division of Metabolic and Endocrine Drug Products and the AMA's Division of Personal and Public Health Policy sponsored a public workshop on "Multivitamin Preparations for Parenteral Use." At the workshop, additional data from clinical testing of the 1975 AMA formulation and a variety of other data were presented and discussed in light of available information on parenteral vitamin therapy. After examining the data, the AMA–FDA workshop committee recommended that the dosage of vitamins B_1, B_6, C, and folic acid be increased and that vitamin K be added to the formulation. Based on a review of the committee's recommendations, the Director of the Center for Drug Evaluation and Research has concluded that the 1975 AMA formulation for parenteral multivitamins should be modified to reflect the advice of the committee.

Accordingly, this notice amends portions of the section *Conditions for Approval and Marketing* in the September 17, 1984, notice as follows (in accordance with current labeling practice, amounts previously listed in international units (IU) have been converted to weights):

Paragraph 1(a)(i) is revised as follows:

1. *Adult formulation (intended for ages 11 and older)*

Ingredient	Amount per Unit Dose
Fat Soluble Vitamins	
A (retinol)	1 milligram (mg)
D (ergocalciferol or cholecalciferol)	5 micrograms (µg)
E (alpha-tocopherol)	10 mg
K (phylloquinone)	150 µg
Water-Soluble Vitamins	
C (ascorbic acid)	200 mg
Folic acid	600 µg
Niacin	40 mg
B_2 (riboflavin)	3.6 mg
B_1 (thiamine)	6.0 mg
B_6 (pyridoxine)	6.0 mg
B_{12} (cyanocobalamin)	5 µg
Pantothenic acid	15.0 mg
Biotin	60 µg

2. *Labeling conditions.*

(a) The label must bear the statement "Rx only."

(b) *Indication.* Paragraph 2(b)(i)(a) is revised as follows (This language may be editorially adapted to a specific product's labeling, as appropriate.):

Adult. This formulation is indicated as a daily multivitamin maintenance dosage for adults and for children age 11 and above receiving parenteral

nutrition. It is also indicated in other situations where intravenous administration is required. Such situations include surgery, extensive burns, fractures and other trauma, severe infectious diseases, and comatose states, which may provoke a stress situation with profound alterations in the body's metabolic demands and consequent tissue depletion of nutrients. This product (administered in intravenous fluids under proper dilution) contributes intake of these vitamins that are necessary toward maintaining the body's normal resistance and repair processes.

The physician should not await the development of clinical signs of vitamin deficiency before initiating vitamin therapy.

Patients with multiple vitamin deficiencies or with markedly increased requirements may be given multiples of the daily dosage for 2 or more days, as indicated by the clinical status. Clinical testing indicates that some patients do not maintain adequate levels of certain vitamins when this formulation in recommended amounts is the sole source of vitamins.

(c) *Contraindications:*

Known hypersensitivity to any of the vitamins or excipients in this product or a preexisting hypervitaminosis. Allergic reaction has been known to occur following intravenous administration of thiamine and vitamin K. The formulation is contraindicated prior to blood sampling for detection of megaloblastic anemia, as the folic acid and the cyanocobalamin in the vitamin solution can mask serum deficits.

In addition, the following sections required by 21 CFR 201.57 should read as follows:

1. *Precautions:* (The following paragraph should be added and should appear in bold type.)

Caution should be exercised when administering this multivitamin formulation to patients on warfarin sodium-type anticoagulant therapy. In such patients, periodic monitoring of prothrombin time is essential in determining the appropriate dosage of anticoagulant therapy.

2. *Drug Reactions:* This section is revised to read "Drug Interactions" and to add aminophylline 125 mg and ampicillin 500 mg to this list.

Supplements to approved NDA's or ANDA's providing for appropriate revision of the labeling of drug products affected by this notice should be submitted on or before June 19, 2000.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 502, 505, 52 Stat. 1041, 1050–1053, as amended (21 U.S.C. 321(n), 352, 355)) and under the authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.70).

Dated: March 28, 2000.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 00–9848 Filed 4–19–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 8, 2000, 8 a.m. to 5 p.m.

Location: Marriott Washingtonian Center, Salons F and G, 9751 Washingtonian Blvd., Gaithersburg, MD.

Contact Person: David Krause, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090, ext. 141, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12519. Please call the Information Line or access the Internet at http://www.fda.gov/cdrh/panelmtg.html for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on two premarket approval applications for: (1) An in situ polymerizable surgical mesh intended to be used to seal air leaks following thoracic cavity surgery; and (2) an interactive wound and burn dressing intended to be used for the treatment of diabetic foot ulcers.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 1, 2000. Oral presentations from the public will be scheduled between approximately 8:15 a.m. and 8:45 a.m., 11:15 a.m. and 11:45 a.m., 1:15 p.m. and 1:45 p.m., and 4 p.m. and 4:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 1, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

FDA regrets that it was unable to publish this notice 15 days prior to the General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 14, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–9908 Filed 4–19–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Neurological Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Neurological Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 11, 2000, 8:30 a.m. to 5 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1184, ext. 176, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12513. Please call the Information Line or access the Internet address at http://www.fda.gov/cdrh/upadvmtg.html for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations and vote on a premarket approval application for an embolization device.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 24, 2000. Oral presentations from the public will be scheduled between approximately 9 a.m. and 9:30 a.m., and 3 p.m. and 3:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 24, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 14, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–9909 Filed 4–19–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities; Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

State Prevention Needs Assessments: Alcohol and Other Drugs, Cohort V

(New)—SAMHSA's Center for Substance Abuse Prevention (CSAP) has awarded contracts to three States (Cohort V) to collect data to assess the nature and extent of substance abuse prevention services needs. The data collection by these States will bring to 30 (Cohorts I–V) the number of States that have implemented a family of prevention needs assessment studies, and will constitute the third cohort to apply the core set of measures, instruments, and methodologies developed and standardized under prior State needs assessment State contracts.

Data will be collected in school surveys and community resource assessments (CRA). The information collected in this project will be combined with existing information from other sources; States may use multiple approaches to assess statewide and substate distributions of risk and protective factors for substance use, of prevention resources, and of prevention services needs. These needs assessment studies will permit cross-State comparison of risk and protection variables to assist State services planning and allocation of State Block Grant funds, and to assist Federal response to the Government Performance and Results Act (GPRA). The estimated annualized burden for the three-year project is shown below.

State/study	Estimates of number of respondents (3 year totals)	Number of responses per respondent (3 year totals)	Average burden per response (hours)	Total response burden (hours)
Alabama:				
Student Survey	6,500	1	0.75	4,875
School Survey Admin. (Contact)	60	1	0.50	30
School Survey Admin. (Teacher)	241	1	0.70	169
CRA	355	1	1.00	355
Michigan:				
Student Survey	12,000	1	0.75	9,000
Student Survey Admin. (Contact)	146	1	0.50	73
Student Survey Admin. (Teacher)	438	1	0.70	307
CRA	310	1	1.00	310
Tennessee:				
Student Survey	100,000	1	0.75	75,000
Student Survey Admin. (Contact)	250	1	0.50	125
Student Survey Admin. (Teacher)	3,333	1	0.70	2,333
CRA	1,100	1	1.00	1,100
Totals	124,733	.....	.....	93,677
3-year average	41,578	.....	.....	31,226

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Clarissa Rodrigues-Coelho, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 12, 2000.
Richard Kopanda,
Executive Officer, SAMHSA.
[FR Doc. 00–9887 Filed 4–19–00; 8:45 am]
BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–30]

Notice of Submission of Proposed Information Collection to OMB; Multifamily Housing Service Coordinator Program

AGENCY: Office of the Chief Information Officer, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 22, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0447) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission, including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Multifamily Housing Service Coordinator Program.

OMB Approval Number: 2502–0447.

Form Numbers: HUD–92456, HUD–50080–SCMF, SF–269, SF–424, SF–424–B, HUD–2880, SF–LLL.

Description of the Need for the Information and Its Proposed Use: This package revises and reinstates information collection and reporting requirements for the Service Coordinator Program. It adds three new financial and performance reports, as well as a new grant application package.

Respondents: Business or other Not-for-profit, Not-for-profit institutions.

Frequency of Submission: Quarterly Semi-annually.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Reporting	4,060		9		.85		47,400

Total Estimated Burden Hours: 47,400.
Status: Reinstate with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 14, 2000.
Wayne Eddins,
Departmental Reports Management Officer, Office of the Chief Information Officer.
[FR Doc. 00–9930 Filed 4–19–00; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.
ACTION: Notice of receipt of permit application and availability of Habitat Conservation Plan and Environmental Assessment.

SUMMARY: This notice advises the public that Magic Carpet Woods Association (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). The application has been assigned permit number TE 025433. The applicant requests a permit to authorize the incidental take associated with harassment (*i.e.*, harm) of the piping plover (*Charadrius melodus*) which is federally listed as endangered. The permit is requested for a period of 25 years. The take would occur as a result of residential construction adjacent to Lake Michigan in Leelanau Township, Leelanau County, Michigan.

The Service also announces the availability of a Habitat Conservation Plan (HCP), draft Implementing Agreement, and Draft Environmental Assessment (EA) for the incidental take application. Copies of the application package may be obtained by making a request to the Regional Office address below. Requests must be submitted in writing to be processed. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application and HCP should be received on or before May 22, 2000.

ADDRESSES: Individuals wishing copies of the permit application, HCP, Implementing Agreement, or Draft EA, may contact the Service's Regional Office, Fort Snelling, Minnesota. The documents will also be available for public inspection, by appointment, during normal business hours at the Regional Office or the East Lansing Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under TE–025433 in such comments.

U.S. Fish and Wildlife Service, 1 Federal Drive, Fort Snelling,

Minnesota 55111–4056, Telephone: 612/713–5343, Fax: 612/713–5292.
Field Supervisor, U.S. Fish and Wildlife Service, East Lansing Field Office, 2651 Coolidge Rd., Suite 101, East Lansing, Michigan 48823–6316, Telephone: 517/351–6274.

FOR FURTHER INFORMATION CONTACT: Pete Fasbender, Regional HCP Coordinator, U.S. Fish and Wildlife Service, Fort Snelling, Minnesota, telephone 612/713–5343.

SUPPLEMENTARY INFORMATION: Under Section 9 of the Act and applicable federal regulations, the "taking" of a species listed as endangered or threatened is prohibited. However, the Service, under limited circumstances, may issue permits to "take" listed species, provided such take is incidental to, and not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered species are promulgated in 50 CFR 17.22 Regulations governing permits for threatened species are promulgated in 50 CFR 17.32.

Background

Piping plovers are sensitive to human disturbance and the effects of human activity throughout the Great Lakes and Atlantic Coast breeding range lead to its listing as an endangered species in 1985. Human activity remains the primary threat to the species survival in the Great Lakes region. The proposed residential development consists of 13 single family residences located within the forested portion of a 91 acre tract at the north end of Kehl Road in Leelanau Township, Leelanau County, Michigan (SW¼SE¼, SE¼SW¼ Section 14, T32N R11W). Of the total 91 acre parcel proposed for development, a maximum of 3 acres may be potential piping plover habitat. The shoreline beach/dune area is an average of 85 feet wide (1999) and consists of equal portions of non-vegetated beach and vegetated low dunes with an abrupt edge along the forested area. The beach within the proposed development is not good nesting habitat and there are no records of piping plover nesting or other use on the property. Excellent nesting habitat occurs 0.5 mile west of the proposed development. Three and two pairs of piping plovers nested within Leelanau State Park in 1998 and 1999, respectively. Seven young plovers fledged in 1998, while seven hatched but disappeared prior to fledging in 1999. The Service believes the Applicant's property provides valuable foraging habitat for plovers nesting nearby. There is also potential for future plover nesting on the Applicant's property if an expanded plover population exhibits variation in breeding habitat characteristics or natural forces alter current beach characteristics.

The open dune portion of the Applicant's property contains several hundred individual Pitcher's thistle (*Cirsium pitcheri*), a threatened plant species. Boardwalks may be constructed through the vegetated dunes, but otherwise the project will not result in any construction on or other physical alteration of the beach portion of the property. Construction of the proposed project would result in human activity along a section of beach presently associated with undeveloped land. The HCP provides conservation or protective measures which would minimize or avoid potential negative effects to piping plovers of the proposed development. Protective measures include seasonal restriction of human use of the beach, control of domestic animals and other wild or feral predators, control of garbage, and the presence of a piping plover steward during selected periods. Unregulated trespass of the proposed development is expected to be eliminated by the presence of residence owners. No critical habitat for listed species currently occurs on the project site. However its consideration as piping plover critical habitat is expected by June 2000. The Proposed Action consists of the issuance of an incidental take permit and implementation of the HCP, which includes measures to minimize or avoid impacts of the project on the piping plover. The EA considers four alternatives to the Proposed Action. We will evaluate the permit application, the HCP, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, the Service will issue a permit to Magic Carpet Woods Association for the incidental take of the piping plover from human activity associated with residential development on the Association property. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: April 12, 2000.

T.J. Miller,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 00–9673 Filed 4–19–00; 8:45 am]
BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Environmental Assessment, Preliminary Finding of No Significant Impact, and Notice of Receipt of an Application for an Enhancement of Survival Permit by The Nature Conservancy, Virginia Chapter, To Administer a "Safe Harbor" Program in Southeast Virginia

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Nature Conservancy, Virginia Chapter, (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an enhancement of survival permit (ESP) pursuant to Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). The proposed ESP would authorize the incidental take of a federally endangered species, the red-cockaded woodpecker, *Picoides borealis* (RCW). The permit would authorize incidental take only on land that is enrolled in the proposed Safe Harbor program. (See the **SUPPLEMENTARY INFORMATION** section below.)

The Service also announces the availability of a draft environmental assessment (EA) and safe harbor plan for the ESP application. Copies of the EA and/or safe harbor plan may be obtained by making a request to the Northeast Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ESP is not a major Federal action significantly effecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (NEPA). The Finding of No Significant Impact (FONSI) is based on information contained in the EA and the safe harbor plan. The final determination will be made no sooner than 30 days from the date of this notice. An excerpt of the FONSI appears in the **SUPPLEMENTARY INFORMATION** section of this notice. This notice is provided pursuant to Section 10(c) of the Act and NEPA Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA/FONSI, and safe harbor plan should be sent to the Service's Northeast Regional Office (see **ADDRESSES**) and should be received on or before May 22, 2000.

ADDRESSES: Persons wishing to review the application, safe harbor plan, and

EA may obtain a copy by writing the Service's Northeast Regional Office, 300 Westgate Center Drive, Hadley, Massachusetts 01035. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, (Attn: Endangered Species Permits), or at the following Field Offices: Field Supervisor, Virginia Field Office, 6669 Short Lane, Gloucester, Virginia 23061; or Red-cockaded Woodpecker Recovery Coordinator, U.S. Fish and Wildlife Service, College of Forest and Recreational Resources, 261 Lehotsky Hall, Box 341003, Clemson, South Carolina 29634–1003 (telephone 864/656–2432). Written data or comments concerning the application, EA, or safe harbor plan should be submitted to the Regional Office. Requests for the documents must be in writing to be processed. Please reference permit number TE–0015147 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Lynch, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 413–253–8628; or Karen Mayne, Supervisor, Virginia Field Office, (see **ADDRESSES** above), telephone 804–693–6694 extension 103.

SUPPLEMENTARY INFORMATION: The RCW is a territorial, nonmigratory breeding bird species. RCWs live in social units called groups which generally consist of a breeding pair, the current year's offspring, and one or more helpers (normally adult male offspring of the breeding pair from previous years). Groups maintain year-round territories near their roost and nest trees. The RCW is unique among the North American woodpeckers in that it is the only woodpecker that excavates its roost and nest cavities in living pine trees. Each group member has its own cavity, although there may be multiple cavities in a single pine tree. The aggregate of cavity trees is called a cluster. RCWs forage for insects almost exclusively on pine trees and they generally prefer pines greater than 10 inches diameter at breast height. Foraging habitat is contiguous with the cluster. The number of acres required to supply adequate foraging habitat depends on the quantity and quality of the pine stems available.

The RCW is endemic to the pine forests of the Southeastern United States and was once widely distributed across 16 states. The species evolved in a fire-maintained mature pine forest ecosystem. The RCW has declined primarily due to the conversion of old stand pine forests to young pine plantations, agricultural fields, and residential and commercial developments, and to hardwood encroachment in existing pine forests due to fire suppression. The species is still widely distributed (presently occurs in 13 southeastern States), but remaining populations are highly fragmented and isolated. Presently, the largest known populations occur on federally owned lands such as military installations and national forests.

In Virginia, the majority of the known remaining RCWs (16 birds as of December, 1999), including all of the known breeding pairs, occur on The Nature Conservancy's Piney Grove Preserve in Sussex County. This is the northern most population of RCWs remaining. The Virginia Department of Game and Inland Fisheries, the U.S. Fish and Wildlife Service, and The Nature Conservancy concur that the future of the RCW in Virginia rests on management of the Piney Grove Preserve and the surrounding private lands.

The Service and several other agencies/organizations are working cooperatively to further develop an overall conservation strategy for the RCW population and the ecosystem upon which it depends. One component of this strategy is to expand the safe harbor program to other states and regions within the RCW's historic range. The Service recognizes that landowners presently have no legal or economic incentive to undertake proactive management actions, such as hardwood midstory removal, prescribed burning, or protecting future cavity trees, that will benefit and help recover the RCW. Indeed, landowners actually have a disincentive to undertake these actions because of land use limitations that could result if their management activities attract RCWs. However, some Virginia private landowners near the Piney Grove Preserve may be willing to take or permit actions that would benefit the RCW on their property if the possibility of future land use limitations could be reduced or eliminated.

Thus, the Applicant is proposing this Safe Harbor program, which is designed to encourage voluntary RCW habitat restoration or enhancement activities by relieving a landowner who enters into a cooperative agreement with the Service from any additional responsibility under the Act beyond that which exists at the time he or she enters into the agreement; *i.e.*, to provide a "safe harbor." The cooperative agreement will identify any existing RCW clusters and will describe the actions that the landowner commits to take or allows to be taken to improve RCW habitat on the property (*e.g.*, hardwood midstory removal, establishment of cavities etc.), and the time period within which those actions are to be taken and maintained. Participating landowners who enter into cooperative agreements with the applicant will be included within the scope of the ESP by Certificates of Inclusion administered by The Nature Conservancy in coordination with the Virginia Department of Game and Inland Fisheries and the Service. A participating landowner must maintain the baseline habitat requirements on his/her property (*i.e.*, any existing RCW groups and associated habitat), but will be allowed to incidentally take RCWs at some point in the future on other habitat on the property if RCWs are attracted to the site by the proactive management measures undertaken by the landowner. No incidental taking of any existing RCW group is permitted under this program. Further details about this program are found in the safe harbor plan.

The EA considers the environmental consequences of two alternatives, including the preferred alternative—to implement the Safe Harbor program. The likely effects of the no-action alternative are the continued lack of management to benefit the RCW in many of the natural pine stands that remain near the Piney Grove Preserve, and the continued absence of RCWs on those lands. The proposed action alternative is the issuance of an enhancement of survival permit and implementation of the Safe Harbor program. The Service believes that the Safe Harbor will benefit the RCW in Virginia by providing additional habitat for future growth of the population.

The Service has made a preliminary determination that the issuance of the ESP is not a major Federal action significantly effecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and safe harbor plan. An appropriate excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

1. Issuance of an ESP would not have significant effects on the human environment in the project area.

2. Implementation of the safe harbor plan will result in a net conservation benefit for the RCW.

3. The proposed take will not appreciably reduce the likelihood of

survival and recovery of the species in the wild.

4. The indirect impacts that may result from issuance of the ESP are addressed by other regulations and statutes under the jurisdiction of other government entities. The validity of the Service's ESP is contingent upon the Applicant's compliance with the terms of the permit and all other laws and regulations under the control of State, local, and other Federal governmental entities.

The Service will also evaluate whether the issuance of a Section 10(a)(1)(A) ESP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ESP.

Dated: April 12, 2000.

Mamie Parker,

Deputy Regional Director, Region 5.

[FR Doc. 00–9888 Filed 4–19–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

The Rhinoceros and Tiger Conservation Act of 1998; Request for Public Input into the Development and Execution of an Educational Outreach Program Action Plan; Announcement of Two Public Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Rhinoceros and Tiger Conservation Act of 1994 was amended in 1998 to prohibit the sale, importation, or exportation of products labeled or advertised as containing rhinoceros or tiger products, and to carry out an associated educational outreach program. Prior to developing and carrying out such an educational outreach effort, we seek input and guidance from the public on the needed components for such an effort. To guide this effort, we have developed a draft interim educational plan with the goals of a long-term plan clearly identified but action items developed only for a short time frame until we can meet with the public and solicit input for the development of future action items.

With this notice, we request your comments and input on the draft Educational Outreach Program Interim Action Plan and seek partnerships to carry out the final plan, and we announce two public meetings to discuss the draft Educational Outreach Program Interim Action Plan and suggested modifications for future activities under a long-term plan.

DATES: (1) Draft Educational Outreach Program Interim Action Plan review: If you wish to view a copy of the draft Educational Outreach Program Interim Action Plan, please submit a written request for a copy of this document to the address listed below within 30 days of the date of publication of this notice. We will consider written comments and suggestions you submit regarding the Educational Outreach Program Interim Action Plan if we receive them by June 19, 2000.

(2) Public Meetings: You are invited to participate in one or both of our Educational Outreach Action Plan public meetings, one to be held on the east coast on May 18, 2000, 1:30–4:30 p.m., and the second to be held on the west coast on June 4, 2000, 1:30–4:30 p.m.

ADDRESSES: (1) Educational Outreach Program Interim Action Plan review: Office of Management Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 700; Arlington, VA 22203. Comments on the draft Educational Outreach Program Interim Action Plan may be submitted by any one of several methods. You may mail comments to the above address. You may also comment via E-mail to r9oma__cites@fws.gov. Please submit E-mail comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include "Attn: Rhinoceros and Tiger Conservation Act of 1998" and your name and return address in your E-mail message. If you do not receive a confirmation from the system that we have received your E-mail message, contact us directly at the telephone number listed below. Finally, you may hand-deliver comments to the above address.

Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the above address.

(2) Public Meetings: The two public meetings will be held (see **DATES** above) to discuss the Educational Outreach Action Plan. The first meeting will be held in New York at The College of Insurance, 101 Murray Street, New York, NY and the second in San Francisco at The Galleria Park Hotel, 191 Sutter Street, San Francisco, CA.

Directions to either location can be obtained by contacting the Office of Management Authority (see **FOR FURTHER INFORMATION CONTACT** below). Please note that both locations are accessible to the handicapped and all persons planning to attend the meeting will be required to present photo identification when entering the building. Persons planning to attend the meeting who require interpretation for the hearing impaired should notify the Office of Management Authority as soon as possible.

FOR FURTHER INFORMATION CONTACT: Teiko Saito, Chief, Office of Management Authority, Branch of CITES Operations, phone 703/358–2095, fax 703/358–2298, E-mail: r9oma__cites@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

Congress passed the Rhinoceros and Tiger Conservation Act of 1994 (the Act) to assist in the conservation of rhinoceroses and tigers by supporting critical conservation programs in nations whose activities directly or indirectly affect rhino and tiger populations. The Act also established the Rhinoceros and Tiger Conservation Fund to provide financial resources for on-the-ground conservation programs and to promote education to increase public awareness of the plight of rhinos and tigers in the wild.

Rhinoceroses and tigers are among the most critically endangered large mammals in the world and are the focus of extensive global conservation efforts aimed at halting their decline. Consumer demand for and trade in the parts and products of these species supply luxury markets as well as markets for cultural and medicinal needs. One of the most complex and far-reaching of these demands is for use in traditional medicines.

Commercial international trade of raw rhino horn and tiger bone and their derivative products is prohibited by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), in addition to domestic legislation in the United States and China. The Act of 1994 was amended and strengthened by the Rhinoceros and Tiger Conservation Act of 1998, which (a) outlined specific trade prohibitions of rhino and tiger products and (b) mandated a national educational outreach program.

(a) The Act of 1998 "prohibits the sale, importation, exportation, or attempts to sell, import, or export, any product, item, or substance intended for human consumption or application, containing, or labeled or advertised as containing, any substance derived from any species of rhinoceros or tiger."

Further, specific criminal and civil penalties for violating this law are included, as well as enforcement strategies. This Act sets prohibitions on items labeled or advertised as containing rhino or tiger products, even if the presence of rhino and tiger ingredients cannot be verified scientifically. These new prohibitions will reduce the promotion of these ingredients in consumer products, thereby decreasing consumer demand and potentially benefitting the species in the wild.

(b) The amended Act also requires that the Secretary of the Interior develop and carry out an educational outreach program in the United States for the conservation of rhinoceros and tiger species. The contents of the Educational Outreach Program Action Plan will include:

(1) Guidelines for the National Educational Outreach Program;

(2) Active pursuit of opinions from organizations and people actively involved in the traditional medicines trade;

(3) Aggressive advertising of the laws protecting rhinoceros and tiger species, focusing on the laws prohibiting trade in products containing, or labeled or advertised as containing, their parts or products;

(4) Widespread distribution of information regarding the negative effects of the toxics and heavy metals found in some packaged traditional medicines; and

(5) Information on the status of rhinoceros and tiger species populations and the reasons for protecting the species.

Through this **Federal Register** notice and the two scheduled public meetings, we are seeking public input into the development and execution of the Educational Outreach Program Action Plan. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. In limited circumstances, we would withhold from release a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this clearly at the beginning of your comment. However, we will not consider anonymous comments. We generally make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

We hope to work closely with the nonprofit conservation community and traditional medicine communities as well as the public in creating a strong outreach plan and carrying out the contents of that plan. We recognize that a number of groups are already actively involved in educating the public about rhinoceros and tiger products and the conservation of these species, and we wish to integrate our efforts with theirs. Partnerships hold the key to successfully informing the public about the conservation needs of rhinoceros and tiger species. We are looking to identify partner organizations that we can work with in carrying out the long-term objectives and actions of a national outreach plan. The purpose of the two scheduled public meetings is to solicit additional public input into the completion of a final Educational Outreach Program Action Plan, as well as to serve as a starting point for future interactions with communities that have historically used products containing rhino horn and tiger part derivatives. After receiving public input, we will develop a long-term national educational outreach plan and program that will rely strongly on public involvement in its future implementation.

Author: This notice was prepared by Cynthia Perera and Anne St. John, Office of Management Authority, under the authority of The Rhinoceros and Tiger Conservation Act of 1998 (16 U.S.C. 5301).

Dated: April 7, 2000.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–9914 Filed 4–19–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1920–00–4032]

Environmental Statements; Notice of Intent: Walker River Basin, NV; Water and/or Water Rights From Willing Sellers

Amendment to the February 1, 2000 Notice of Intent to Prepare an Environmental Impact Statement for obtaining water and/or water rights from willing sellers in the Walker River Basin for the purposes of protecting the Walker Lake ecosystem from degradation resulting from increasing total dissolved solids (TDS) in the lake; possible use in a settlement of the United States' water rights claims in the Walker River Basin should a settlement be negotiated; and to assist in recovery of the threatened Lahontan cutthroat trout in the Walker River Basin.

AGENCY: Bureau of Land Management, Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701.

ACTION: Amendment to the February 1, 2000 notice of intent to prepare an environmental impact statement for obtaining water and/or water rights from willing sellers in the Walker River Basin, notice of scoping period. The initial public scoping period will be extended to July 31, 2000. The public review and comment period on the draft EIS will be increased to 75 days.

SUMMARY: The Bureau of Land Management (BLM), Carson City Field Office, in cooperation with the Bureau of Indian Affairs (BIA), Phoenix Area Office, The Bureau of Reclamation (BOR), Lahontan Basin Area Office and the U.S. Fish and Wildlife Service (FWS), Nevada Fish and Wildlife Office, will extend the initial public scoping period until July 31, 2000 and increase the time allowed for public review and comment on the draft EIS to 75 days. This extended initial public scoping period is necessary for the following reasons: (1) To allow potential cooperating agencies to make decisions in regards to their status in this project and participate early in the NEPA process, (2) the complex issues, to be investigated in this EIS, require additional time for consideration and refinement, and (3) additional time is needed to develop alternatives for consideration in the EIS. The increased time allowed for public review and comment on the draft EIS is necessary to allow local governments adequate time for review of the document and consideration of these matters at regularly scheduled meeting of the County Board of Commissioners.

EFFECTIVE DATES: The initial public scoping period is extended until July 31, 2000.

A Draft EIS (DEIS) is expected to be completed by November 24, 2000 and made available for public review and comment. The public review and comment period on the DEIS will be 75 days from the date the Notice of Availability (NOA) is published in the **Federal Register** which is anticipated to occur on November 24, 2000.

FOR FURTHER INFORMATION CONTACT: For additional information, write to the Field Manager of the Carson City Field Office at the address listed in the agency section of this notice, call or email Walt Devaurs (BLM Team Leader) at (775) 885–6150, wdevaurs@nv.blm.gov or

Mike McQueen (BLM NEPA Coordinator) at (775) 885–6120, mmcqueen@nv.blm.gov.

SUPPLEMENTARY INFORMATION: The proposed EIS schedule is as follows:

Begin Initial Public Comment Period.	Feb. 1, 2000.
End Initial Public Scoping Period.	July 31, 2000.
Issue Draft EIS (75 day public review).	Nov. 24, 2000.
End Draft EIS Public Review.	Feb. 7, 2000.
Issue Final EIS (30 day public review).	June 1, 2001.
Issue Record of Decision.	Aug. 5, 2001.
End 30-day Appeal Period/Implementation.	Sept. 5, 2001.

Dated: April 14, 2000.

Mike McQueen,

Field Office Manager.

[FR Doc. 00–9892 Filed 4–19–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–600 0777–XQ]

Front Range Resource Advisory Council (Colorado) Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, notice is hereby given that the next meeting of the Front Range Resource Advisory Council (Colorado) will be held on May 11, 2000 in Canon City, Colorado.

The meeting is scheduled to begin at 9:15 a.m. at the Holy Cross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado. Topics will include a discussion on the Mining Regulations and update on the Recreation Guidelines for Colorado.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council at 9:30 a.m. or written statements may be submitted for the Council's consideration. The Center Manager may limit the length of oral presentations depending on the number of people wishing to speak.

DATES: The meeting is scheduled for Thursday, May 11, 2000, from 9:15 a.m. to 4 p.m.

ADDRESSES: Bureau of Land Management (BLM), Front Range Center, 3170 East Main Street, Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: Ken Smith at (719) 269–8553.

SUPPLEMENTARY INFORMATION: Summary minutes for the Council meeting will be maintained in the Front Range Center and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: April 11, 2000.

Stuart L. Freer,

Associate Front Range Center Manager.

[FR Doc. 00–9856 Filed 4–19–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–080–1210–PG]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Upper Columbia—Salmon Clearwater District, Idaho.

ACTION: Notice of Resource Advisory Council Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, the Bureau of Land Management (BLM) announces the meeting of the Upper Columbia—Salmon Clearwater District Resource Advisory Council (RAC) on Tuesday, May 9, 2000 at the District Office, 1808 N. Third St., Coeur d'Alene, Idaho. A telephone patch will be available at the Salmon-Challis National Forest Headquarters office located on U.S. 93, one mile south of Salmon, Idaho.

Agenda items include an update from the Recreation Sub-Group on its findings concerning the potential use of funds collected through the Salmon-Challis National Forest's Salmon River fee demonstration project and identification of future issues for RAC consideration. The meeting will begin at 10:00 a.m. (PDT). The public may address the Council during the public comment period from 10:20 a.m.–10:50 a.m. (PDT). Those wishing to address the Council should contact Ted Graf, RAC Coordinator, at (208) 769–5004 at least 24 hours prior to the meeting.

SUPPLEMENTARY INFORMATION: All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the Designated Federal Official.

The Council's responsibilities include providing recommendations concerning long-range planning and establishing resource management priorities.

FOR FURTHER INFORMATION CONTACT: Ted Graf (208)769–5004.

Dated: April 13, 2000.

Ted Graf,

Acting District Manager.

[FR Doc. 00–9889 Filed 4–19–00; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–26–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting notice.

SUMMARY: This notice announces a meeting and tour of the Arizona Resource Advisory Council (RAC). The meeting will be held on May 11, 2000, at the Sierra Suites Hotel, 391 E. Fry Blvd., located in Sierra Vista, Arizona. It will begin at 9:00 a.m. and will conclude at approximately 4:00 p.m. The agenda items to be covered include the review of the March 31, 2000, meeting minutes; BLM State Director's Update on legislation, regulations, and statewide planning efforts; Update on Wild Horse and Burro Strategic Plan Comments; Video Presentation of Secretary Babbitt's Address on National Landscape Conservation System; Presentation on Wilderness Access/ Valid Existing Rights and Recent IBLA Decisions; Update Proposed Field Office Rangeland Resource Teams; Reports from BLM Field Office Managers; Reports by the Standards and Guidelines, Recreation and Public Relations, Wild Horse and Burro Working Groups; Reports from RAC members; and Discussion of future meetings. A public comment period will be provided at 11:00 a.m. on May 11, 2000, for any interested publics who wish to address the Council. On May 12, the RAC will tour the BLM San Pedro Riparian National Conservation Area. The tour will highlight some of the issues facing the San Pedro River and the riparian corridor, including

recreation, wildlife, water and border issues.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

Denise P. Meridith,

Arizona State Director.

[FR Doc. 00–9890 Filed 4–19–00; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT010–1220–DA]

Notice of Pryor Mountain Area Off-Highway Vehicle (OHV) Designation

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice is hereby given that 92,000 acres of public land will be designated as open, closed, or limited to OHV use in the Pryor Mountain area pursuant to 43 CFR, Part 8342.1 and Executive Order 11644.

SUMMARY: The area affected has been previously designated. This notice is to update and correct errors in the September 25, 1979 and August 4, 1987 designations. The area affected is located approximately 80 miles south of Billings, Montana, in Carbon County described as follows:

All OHV use on the following public lands are limited to designated open roads and authorized use.

T.7S., R.25E., all public lands in Sections 22, 23, 27–29, Section 32 SESE, 33 & 34.

T.8S., R.25E., all public land in Sections 3, 4, 9, 10, 14, 15, 22 & 23 and in Section 5 all public lands east of the Pryor Gap Road.

T.8S., R.26E., all public lands in Sections 31 & 32.

T.9S., R.26E., all public lands in Sections 1–4, 10–15, 22–27, 34, 35, and public lands north of Helt Road [1016] in Sections 5, 6, 8, 9.

T.9S., R.27E., all public land.

T.8S., R.28E., all public land.

T.9S., R.28E., all public land.

The following roads are designated open within the Pryor Mountain area:

Bear Canyon Ridge Road [1031] from East Horsehaven [1030] T.9S., R.26E., Section 2, meandering north to the Custer National Forest in Section 2.

Bear Canyon Road [1014] from the intersection of Helt Road [1016], NW, Section 9, T.9S., R.26E., meandering northeast for approximately 3 miles to within ½ mile of the National forest where it divides into two roads, [1014, 1041] both of which are open to the Custer National Forest.

Bent Springs Road [1039] from T.7S., R.25E., Section 29 meandering east for about 2½ miles to the Custer National Forest.

Burnt-Timber Ridge Road [1018] starting in Section 25, T.9S., R.27E., meandering north for approximately 10 miles becoming USFS Road 2849 through public land Section 18, T.8S., R.28E.

Crooked Creek Road [1017] from T.9S., R.27E., Section 33, meandering north to the Custer National Forest Section 3, T.9S., R.27E.

Dandy Mine Road [1034] from junction of Red Pryor Mountain Road, T.9S., R.27E., Section 9 meandering east to the junction of Crooked Creek Road [1017] T.9S., R.27E., Section 9.

Demi John Flat Road [1035] is designated as open. The road starts at Crooked Creek Road [1017] at the north boundary of Section 3, T.9S., R.27E., and southerly approximately 2 miles to the south boundary of Section 10.

East Horsehaven Road [1030] starting in T.9S., R.27E., Section 18, meandering north then northeast in Section 6, T.9S., R.27E., to the Custer National Forest.

East Petroglyph Canyon Road [1040] from T.9S., R.26E., Section 24 meandering south for approximately 1¼ miles to Montana State land, Section 36.

Gyp Spring Road [1015] starting at T.10S., R.27E., Section 4, meandering NW for approximately 6 miles to T.9S., R.26E. Section 9.

Helt Road [1016] from T.9S., R.27E., Section 33 meandering north then west, approximately 14 miles to the NWNE, Section 1, T.9S., R.25E.

Inferno Canyon Road [1050] from T.8S., R.25E., south boundary of Section 11, USFS boundary extends southwesterly approximately 1½ miles to the south boundary of Section 15. Also that portion of the road which connects Bent Spring Road, Timber Canyon Road, Water Canyon Road and Inferno Canyon Road that crosses public land is designated open.

Lower Timber Ridge Road [1048] goes north across T.8S., R.25E. Section 4, ¾ mile to Timber Ridge Road [1047].

Miller Trail Road [1046] starts in SESE of Section 32, T.7N., R.25E. and proceeds approximately 2¼ miles to the NE corner, Section 34, Custer National Forest boundary.

Red Pryor Mountain Road [1022] starting T.9S., R.27E., Section 17, at the junction of Helt Road [1016] meandering north for approximately 3 miles to the Custer National Forest.

Stockman Trail [1013] from T.9S., R.26E., Section 6, meandering north for approximately 2 miles through the Custer National Forest.

Sykes Road East Loop [1033] from the intersection of Sykes Ridge Road [1019] in the NW Section 34, T.9S., R.28E., to the point it returns to Sykes Ridge Road [1019] in the NWNE Section 28.

Sykes Ridge Road [1019] starting at T.58N., R.95W., Section 23 meandering north for approximately 12 miles to T.8S., R.28E., Section 17.

Sykes Spring Road [1052] starts at junction of Sykes Ridge Road [1019], SW Section 23, T.58N., R95W north to Montana-Wyoming line.

Timber Canyon Road [1049] from T.7S., R.25E. Section 9 meandering northeast for about 1 mile then ends.

Timber Ridge Road [1047] from USFS boundary at the east boundary of Section 3, T.8S., R.25E., and extends west approximately 2 miles to the west boundary of the SENW, Section 4.

Water Canyon Road [1051] T.8S., R.25E., Section 10 from west line of Section 10 approximately 1 mile to Custer National Forest.

West Horsehaven Road [1021] starting in T.9E., R.26E., Section 10 meandering northeast then southeast to the junction of East Horsehaven [1030].

West Petroglyph Canyon Road [1036] from T.9S., R.26E., Section 24 meandering southeast for approximately 1¼ miles to T.9S., R.26E., Section 26.

DATES: Any issues or concerns should be submitted to the BLM at the below address on or before May 22, 2000.

FOR FURTHER INFORMATION CONTACT: David Jaynes, Assistant Field Manager, BLM, PO BOX 36800, 5001 Southgate Drive, Billings, Montana 59107 or 406–896–5013.

Dated: April 14, 2000.

Sandra S Brooks,

Field Manager.

[FR Doc. 00–9891 Filed 4–19–00; 8:45 am]

BILLING CODE 4310–66–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

State of Nevada Assembly Bill 380, Newlands Project, NV

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental document (environmental assessment or environmental impact statement) and notice of public meetings.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation)

proposes to prepare an environmental document. The environmental document is for the purpose of evaluating the effects of Reclamation providing approximately $7,000,000 of Federal funds over a period of years, along with monies from other entities, to partially support the Newlands Project Water Rights fund, a program for the acquisition and retirement of 6,500 acres of surface water rights in Reclamation's Newlands Project. This action is outlined in the State of Nevada Assembly Bill Number 380 (A.B. 380).

At present it is not clear whether the scope of the action and anticipated project impacts will require preparation of an environmental impact statement (EIS) instead of an environmental assessment (EA). However, to ensure the timely and appropriate level of NEPA compliance and to limit potential future delays to the project schedule, Reclamation is proceeding as if the project impacts can be adequately analyzed through preparation of an EA. Reclamation will reevaluate the need for an EIS after obtaining written and oral comments on the project scope, alternatives and environmental impacts, and after Reclamation's evaluation of potential impacts of the proposed project. Reclamation will publish a notice of change if a decision is made to prepare an EIS rather than an EA. However, the scoping process to be conducted will suffice for either course of action.

There are no known environmental justice issues associated with the proposed action. The water acquisition program supported by Reclamation funds will avoid, where possible, any adverse impacts to Indian Trust Assets. If adverse impacts cannot be avoided, appropriate mitigation or compensation will be provided.

DATES: Four scoping meetings will be held to solicit comments from interested parties to assist in determining the scope of the environmental analysis and to identify the significant issues related to this proposed action. The meeting dates are:

- Monday, May 8, 2000, at 7:00 p.m., in Fallon, Nevada.
- Tuesday, May 9, 2000, at 7:00 p.m., in Fernley, Nevada.
- Wednesday, May 10, 2000, at 7:00 p.m., in Nixon, Nevada.
- Thursday, May 11, 2000, at 7:00 p.m., in Carson City, Nevada.

Written comments on the scope of the environmental documents should be submitted by May 25, 2000, to the address listed below.

ADDRESSES: The meeting locations are as follows:

- Fallon—Fallon Convention Center, 100 Campus Way, Fallon, NV 89406; telephone: (775) 423–4556.
- Fernley—Fernley Town Complex, 595 Silver Lace Blvd., Suite 117, Fernley, NV 89408; telephone: (775) 575–5455.
- Nixon—Pyramid Lake Paiute Tribe Council Chambers, 208 Capital Hill (Highway 447) Nixon, NV 89424; telephone: (775) 574–1000.
- Carson City—Nevada State Library, 100 N Stewart Street, Conference Room A, Carson City, NV 89701; telephone: (775) 684–3313.

Written comments on the scope of the environmental documents should be submitted to Caryn Huntt DeCarlo, Environmental Specialist, Bureau of Reclamation, Lahontan Basin Area Office, Attention: LO–450, P.O. Box 640, Carson City, NV 89702.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: Caryn Huntt DeCarlo at telephone and TDD: (775) 882–3436, Lahontan Basin Area Office, Attention: LO–450, P.O. Box 640, Carson City, NV 89702.

SUPPLEMENTARY INFORMATION: The purpose of the Newlands Project Water Rights Fund program is to provide a mechanism for meeting some of the goals outlined in A.B. 380 through acquisition and retirement of 6,500 acres of surface water rights. The goals of A.B. 380 include resolving certain administrative and judicial proceedings involving challenges to Newlands Project and Truckee Meadows water rights. These proceedings are time consuming and costly for all parties involved, and the need for resolution is the purpose of A.B. 380 and the water rights acquisition and retirement program.

Special Services

Persons requiring any special services should contact Caryn Huntt DeCarlo at (775) 882–3436. Please notify Ms. Huntt DeCarlo as far in advance of the particular meeting as possible, but no later than 3 working days prior to the meeting to enable Reclamation to secure the services. If a request cannot be honored, the requester will be notified.

Dated: April 14, 2000.

Frank Michny,

Regional Environmental Officer.

[FR Doc. 00–9894 Filed 4–19–00; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Availability of a Draft Agency Handbook on the National Environmental Policy Act

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of a draft agency handbook on the National Environmental Policy Act.

SUMMARY: Pursuant to the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA), Section 1507.3, the Bureau of Reclamation has prepared a handbook to provide basic guidance to its employees on NEPA issues. Comments on the document will be accepted.

DATES: A 60-day public review period commences with the publication of this notice. Comments must be submitted to Reclamation at the addresses provided below no later than June 19, 2000.

ADDRESSES: Written comments on the NEPA Handbook should be addressed to the Bureau of Reclamation, Office of Policy, Attention: Dr. Darrell Cauley, Manager—Environmental and Planning Coordination, D–5100, Denver Federal Center, PO Box 25007, Denver, CO 80225–0007.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves

as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

The entire document is available at http://www.usbr.gov/nepa on the Internet. Copies of the NEPA Handbook may also be requested from Theresa Taylor at the above address or via the INTERNET at nepa@do.usbr.gov or by calling (303) 445–2826.

Copies of the NEPA Handbook are available for public inspection and review at the following locations:

- Bureau of Reclamation, Reclamation Service Center Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, Colorado 80225; telephone: (303) 445–2072
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW, Main Interior Building, Washington, DC 20240–0001

FOR FURTHER INFORMATION CONTACT: Theresa Taylor, Bureau of Reclamation, Office of Policy, at (303) 445–2826.

SUPPLEMENTARY INFORMATION: The NEPA Handbook was developed to assist Reclamation employees who are required to comply with the National Environmental Policy Act and various other environmental laws as part of their daily work. The document was first published in 1991. After Reclamation was reorganized in 1994 to reflect a decentralization of decision making and authority, the NEPA Handbook needed major revisions to reflect the reorganization and to update the content. The handbook was extensively revised and has gone through various stages of reviews both internally and with the Council on Environmental Quality. At the commencement of the public review, comments received will be considered as part of a final revision of the handbook.

Dated: April 13, 2000.

Elizabeth Cordova-Harrison,

Deputy Director, Office of Policy.

[FR Doc. 00–9893 Filed 4–19–00; 8:45 am]

BILLING CODE 4310–04–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request; Submitted for Public Comment and Recommendations; Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before June 19, 2000.

ADDRESSES: Send comments to Theresa M. O'Malley, Program Analysis Officer, Office of Program Evaluation and Information Resources, 4015 Wilson Boulevard, Room 715, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to tomalley@msha.gov, along with an original printed copy. Ms. O'Malley can be reached at (703) 235–1470 (voice), or (703) 235–1563 (facsimile). Ms. O'Malley can be reached at tomalley@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

30 CFR 56/57.3203 and 75.204 address the quality of rock fixtures and their installation. Roof and rock bolts and accessories are an integral part of ground control systems and are used to prevent the fall of roof, face, and ribs. These standards require that metal and nonmetal and coal mine operators obtain a certification from the manufacturer that rock bolts and accessories are manufactured and tested in accordance with the 1995 American Society for Testing and Materials (ASTM) publication "Standard Specification for Roof and Rock Bolts and Accessories" (ASTM F432–95).

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collectin techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page (*http://www.msha.gov*) and then choosing "Statutory and Regulatory Information" and "Paperwork Reduction Act Supporting Statements (*http://www.msha.gov/regspwork.htm*)", or contacting the employee listed above in the For Further Information Contact section of this notice.

III. Current Actions

MSHA is seeking to continue the requirement for mine operators to obtain certification from the manufacturer that roof and rock bolts and accessories are manufactured and tested in accordance with the applicable American Society for Testing and Materials (ASTM) specifications and make that certification available to an authorized representative of the Secretary.

Type of Review:

Agency: Mine Safety and Health Administration.

Title: Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines (30 CFR 56.3203(a), 57.3203(a), and 75.204(a)).

OMB Number: 1219–0121.

Affected Public: Business or other for-profit.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (hours)	Burden hours*
30 CFR 56/57.3203(a)	252 M/NM Surface	On Occasion	1,008	0.05	50.4
	190 M/NM Underground	On Occasion	1,520	0.05	76.0
75.204(a)	761 Coal Underground	On Occassion	6,088	0.05	304.4
Total	1,203		8,616		430.8

*Discrepancies due to rounding.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 14, 2000.

George M. Fesak,

Director, Program Evaluation and Information Resources.

[FR Doc. 00–9910 Filed 4–19–00; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On February 9, 2000, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued on March 23, 2000 to the following applicant:

Raytheon Polar Service Company (RPSC)
- Permit No. 2001–001
- Permit No. 2001–002
- Permit No. 2001–003
- Permit No. 2001–004
- Permit No. 2001–005

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 00–9880 Filed 4–19–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit modification issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Officer, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On February 17, 2000, notice was published in the **Federal Register** of a request for modification to permit 2000WM–01 (ASA) for waste management activities at all U.S. Antarctic Program facilities in Antarctica. The requested modification transfers responsibility for waste management activities from the incumbent support contractor, Antarctic Support Associates, to Raytheon Polar Services Company. The transfer modified the permit to change the permit holder from Antarctic Support Associates to Raytheon Polar Services Company, who is the sole holder of the permit. All special conditions of the original permit remain the same except for the change in name of the permit holder. All references to Antarctic Support Associates now apply to Raytheon Polar Services Company.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 00–9881 Filed 4–19–00; 8:45 am]

BILLING CODE 7555–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Survivor Questionnaire.

(2) *Form(s) submitted:* RL–94–F.

(3) *OMB Number:* 3220–0032.

(4) *Expiration date of current OMB clearance:* 6/30/2000.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 8,000.

(8) *Total annual responses:* 8,000.

(9) *Total annual reporting hours:* 1,391.

(10) *Collection description:* Under Section 6 of the Railroad Retirement Act, benefits are payable to the survivors or the estate of deceased railroad employees. The Collection obtains information about the survivors if any, the payment of burial expenses and administration of estate when unknown to the Railroad Retirement Board. The information is used to determine whether and to whom benefits are payable.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Joe Lackey (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 00–9859 Filed 4–19–00; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27164]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

April 14, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 9, 2000, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After May 9, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Conectiv, et al. (70–9607)

Conectiv, a registered public utility holding company, and its public-utility subsidiary companies, Atlantic City Electric Company ("ACE") and Delmarva Power & Light Company ("DPL", and, together with Conectiv and ACE, "Applicants"), all located at 800 King Street, Wilmington, Delaware 19899, have filed a declaration under section 12(d) of the Act and rules 44 and 54 under the Act.

The Applicants propose the joint sale by ACE and DPL of a 7.51 percent ownership interest in the Peach Bottom Atomic Power Station Units 2 and 3 ("Peach Bottom"), located in York County, Pennsylvania, the PECO Energy Company ("PECO"), a section 3(a)(2) exempt holding company under the Act. At present, ACE and DPL jointly own a 15.02 percent interest in Peach Bottom. PECO presently owns a 42.49 percent interest in Peach Bottom.

ACE is a New Jersey corporation that distributes and sells electricity at retail in southern New Jersey. DPL is a Delaware and Virginia corporation that distributes and sells electricity at retail in Delaware, Maryland and Virginia, and gas at retail in Delaware.

The proposed sale of ACE's and DPL's interests in Peach Bottom to PECO (the "Transaction") is related to several other transactions involving the sale of Applicants' interests in various nuclear assets. In addition to this Transaction, ACE and DPL have agreed to sell all of their remaining ownership interests in several nuclear generating plants, including Peach Bottom, to PSEG Power, L.L.C. ("PSEG Power"), a wholly owned non-utility subsidiary of Public Service Enterprise Group Incorporated ("PSEG"), an exempt public utility holding company under the Act. Public Service Electric & Gas Company ("PSE&G"), a wholly owned public utility subsidiary of PSEG, owns the remaining 42.49 percent interest in Peach Bottom. [1]

According to the terms of the two Purchase Agreements between ACE and PECO and between DPL and PECO, each dated as of September 27, 1999, ACE and DPL will each receive $2,550,000 for their interests in Peach Bottom, and each will also receive 3.755 percent of the net book value of the Nuclear Fuel Supplies [2] that would qualify as "utility assets" under the Act as of the anticipated closing date of the Transaction. Applicants state that the sale of these Nuclear Fuel Supplies will result in additional proceeds of approximately $10 million to each of ACE and DPL. Therefore, Applicants estimate that the combined total proceeds to be shared by ACE and DPL from the sale of their interests in Peach Bottom to PECO will be approximately $25.1 million. In addition, PECO will assume essentially all of ACE and DPL's environmental and decommissioning liabilities for Peach Bottom, in proportion to the ownership share being transferred.

The net book value of the Applicants' interests in Peach Bottom totalled $9,394,000 as of December 31, 1999. [3] Applicants state that the prices, terms and conditions of the Transaction were based on those of recent comparable nuclear asset sales. Applicants further state that PECO and PSE&G, as co-owners of 84.98 percent of Peach Bottom, each hold the right of first refusal over any proposed sale of Applicants' interests in Peach Bottom.

ACE, consistent with New Jersey state law, will apply the proceeds it receives from the sale of Peach Bottom to partially offset stranded costs it will recover from its retail customers in New Jersey. DPL will use the proceeds for various activities consistent with its corporate strategy.

The Southern Company (70–9631)

The Southern Company ("Southern"), a registered holding company, 270 Peachtree Street, N.W., Atlanta, Georgia 30303, and its electric utility subsidiary companies ("Electric Subsidiaries"), Georgia Power Company ("Georgia"), 241 Ralph McGill Boulevard, N.E., Atlanta, Georgia 30308, Gulf Power Company ("Gulf"), One Energy Place, Pensacola, Florida 32520, Mississippi Power Company ("Mississippi"), 2992 West Beach, Gulfport, Mississippi 39501, and Savannah Electric and Power Company ("Savannah") (collectively, "Applicants"), 600 Bay Street East, Savannah, Georgia 31401, have filed an application-declaration ("Application-Declaration") under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and rules 45, 53 and 54 under the Act.

In summary, Applicants, request authority for Southern to organize and acquire all of the outstanding capital stock of a special purpose financing vehicle ("SPV"). Applicants also request authority for the SPV to issue commercial paper for the benefit of the Electric Subsidiaries and other subsidiaries of Southern. In addition, Applicants request authority for each Electric Subsidiary to borrow the proceeds from the sales of commercial paper issued for its benefit. Further,

[1] It is ACE and DPL's understanding that at or before closing, PSEG Power will designate its subsidiary, PSEG Nuclear L.L.C. ("PSEG Nuclear"), as the party that will receive the ownership interests at closing. Applicants state that PSEG Nuclear is an exempt wholesale generator under section 32 of the Act. Under that section, no Commission approval is required for these transactions.

[2] Nuclear Fuel Supplies include the nuclear fuel assemblies in the reactor core, natural uranium, converted uranium, enriched uranium and any other form of uranium, under contract or in inventory, and located at or in transit to the Peach Bottom station, as well as all nuclear fuel constituents in all stages of the fuel cycle that are in the process of production, conversion, enrichment or fabrication.

[3] The net book value of Peach Bottom and other plant-related assets including inventories were written down to their estimated fair market value (net of estimated selling costs) due to impairment. The write-down took place in the third quarter of 1999. The extraordinary charge related to impaired assets was determined in accordance with Statements of Financial Accounting Standards No. 121. The extraordinary charge was decreased by the the regulatory asset established for the amount of stranded costs expected to be recovered through regulated electricity delivery rates.

Applicants request authority for Georgia to guarantee borrowings from the SPV by Southern Electric Generating Company, a wholly owned subsidiary of Georgia and Alabama Power Company, itself an electric public utility subsidiary of Southern.[4]

Applicants propose that the SPV sell the commercial paper directly to or through a dealer or dealers from time to time prior to June 30, 2004 ("Authorization Period") in an aggregate principal amount at any one time outstanding of up to $3.5 billion. Georgia, Gulf, Mississippi, and Savannah propose to borrow the proceeds of these sales in outstanding amounts that will not during the Authorization Period exceed $1.7 billion, $300 million, $350 million, and $90 million, respectively. The commercial paper notes will be issued in denominations of not less than $50,000 and will not by their terms be prepayable prior to maturity. Maturities will be determined by market conditions, the effective interest costs, and the anticipated cash flows of the particular requesting Electric Subsidiary, including the proceeds of other borrowings, at the time of issuance.

The notes will mature in one year or less, subject to extensions; provided, however, none of the notes will mature in more than 390 days. The discount rate (or the interest rate in the case of interest-bearing notes), including any commissions, will not be in excess of the discount rate per annum (or the equivalent interest rate) prevailing at the date of issuance for commercial paper of comparable quality having the same maturity. The terms of each of these borrowings by an Electric Subsidiary will be identical to those of the related commercial paper issued for its benefit.

It is further proposed that Georgia guarantee loans by the SPV to SEGCO. The aggregate amount of these guarantees will not during the Authorization Period exceed $150 million.

The proceeds from the proposed borrowings by the Electric Subsidiaries and SEGCO will be used for general corporate purposes, including the financing in part of their respective construction programs.

[4] Applicants state that borrowings by Alabama and SEGCO will be exempt from Commission review under rule 52 under the Act.

For the Commission by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–9915 Filed 4–19–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24392; 812–11958]

Nations Fund Trust and Banc of America Advisors, Inc.; Notice of Application

April 13, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain series of a registered open-end management investment company to acquire all of the assets and assume all of the liabilities of certain other series of the investment company. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

APPLICANTS: Nations Fund Trust ("NFT") and Banc of America Advisors, Inc. ("BAAI").

FILING DATES: The application was filed on February 1, 2000. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 8, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, One Bank of America Plaza, 101 South Tryon Street, Charlotte, NC 28255.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or George J. Zornada, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. NFT, a Massachusetts business trust, is registered under the Act as an open-end management investment company. NFT presently offers 36 series, including Nations Managed Value Index Fund and Nations Managed SmallCap Value Index Fund (the "Acquired Series") and Nations Managed Index Fund and Nations Small Cap Index Fund (the "Acquiring Series"). Collectively, the Acquired Series and the Acquiring Series are referred to as the "Series."[1]

2. BAAI is the investment adviser to each of the Series. The adviser is a wholly-owned indirect subsidiary of the Bank of America Corporation and is registered as an investment adviser under the Investment Advisers Act of 1940.

3. Currently, Bank of America Corporation and entities that are under common control with BAAI (the "Bank of America Group"), hold of record, in their name and in the names of their nominees, more than 5% (and with respect to certain of the Series more than 25%) of the outstanding voting securities of the Series. All of the securities are held for the benefit of others in a fiduciary or representative capacity. None of the Bank of America Group owns an economic interest in any of the Series.

4. On December 9, 1999, the board of trustees of NFT (the "Board"), including a majority of the trustees who are not "interested persons" within the meaning of section 2(a)(19) of the Act ("Disinterested Trustees"), approved an Agreement and Plan of Reorganization (the "Reorganization Agreement," and the transaction the "Reorganization"). Under the Reorganization Agreement, on the day following the closing date (the "Closing Date"), which is currently

[1] The Acquired Series and the Acquiring Series correspond with each other as follows: Nations Managed Value Index Fund with Nations Managed Index Fund; and Nations Managed SmallCap Value Index Fund with Nations SmallCap Index Fund.

anticipated to be May 12, 2000, the Acquiring Series will acquire all the assets and liabilities of the corresponding Acquired Series in exchange for shares of the Acquiring Series that have an aggregate net asset value ("NAV") equal to the aggregate NAV of the Acquired Series determined as of 4 p.m. EST on the Closing Date ("Valuation Time"). The value of assets will be determined in the manner set forth in the Series' then-current prospectus and statement of additional information. On the day following the Closing Date or on such other date as may be mutually agreed, each Acquired Series will make a pro rata distribution of shares of the Acquiring Series to shareholders of the Acquired Series and liquidate.

5. Applicants state that the Acquired Series pursue investment objectives, follow investment strategies and present investments risks that are generally similar to those of the corresponding Acquiring Series. Applicants state that all of the Series offer identical Primary A and Investor A shares.[2] Shareholders of the Acquired Series will not incur any sales charges in connection with the Reorganization. BAAI or another entity in the Bank of America Group will be responsible for the customary expenses of the Reorganization.

6. The Board, including all the Disinterested Trustees, determined that the Reorganization is in the best interests of each of the Acquired Series and each of the Acquiring Series, and that the interests of the shareholders of the Acquired Series and Acquiring Series would not be diluted by the Reorganization. In assessing the Plan, the factors considered by the Board included, among others, (a) the terms and conditions of the Reorganization, (b) the expense ratios, fees and expenses of the Acquired Series compared to the Acquiring Series, (c) the compatibility of investment objectives, (d) the fact that BAAI or an affiliate will bear the expenses incurred in connection with the Reorganization, and (e) the tax-free nature of the Reorganization.

7. The Reorganization Agreement is subject to a number of conditions precedent, including that: (1) The shareholders of the Acquired Series approve the Reorganization Agreement, (b) definitive proxy solicitation materials shall have been filed with the Commission and distributed to shareholders of the Acquired Series, (c) the Acquiring and Acquired Series receive an opinion of tax counsel that the Reorganization will be tax-free for each Series and its shareholders, and (d) applicants receive from the Commission an exemption from section 17(a) of the Act for the Reorganization. The Reorganization Agreement may be terminated and the Reorganization abandoned at any time by consent of the Board; the Board may also terminate the Reorganization Agreement if its conditions are not satisfied. Applicants agree not to make any material changes to the Reorganization Agreement without prior Commission approval.

8. Definitive proxy solicitation materials have been filed with the Commission and were mailed to shareholders of the Acquired Series on February 4, 2000. A special meeting of shareholders is scheduled for April 21, 2000.

[2]One of the Acquiring Series, Nations Managed Index Fund, also offers Primary B Shares. Such shares will not be part of the Reorganization.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of that person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Series may be deemed affiliated persons and thus the Reorganization prohibited by section 17(a).

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions set forth in the rule are satisfied.

3. Applicants state that they may not rely on rule 17a–8 in connection with the Reorganization because each of the Series may be deemed to be affiliated for reasons other than having a common investment adviser, common directors, and/or common officers. Because the Bank of America Group holds of record more than 5% (and in some cases more than 25%) of the outstanding voting securities of each of the Series, each Acquired Series may be deemed an affiliated person of an affiliated person of each Acquiring Series.

4. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants submit that the terms of the Reorganization satisfy the standards set forth in section 17(b). Applicants note that the Board, including a majority of the Disinterested Trustees, found that participation in the Reorganization is in the best interests of each Series and that the interests of the existing shareholders of each Series will not be diluted as a result of the Reorganization. Applicants also note that the exchange of the Acquired Series' assets for shares in the Acquiring Series will be based on the Series' relative net asset values.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–9877 Filed 4–19–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24393, 812–11598]

Barclays Global Fund Advisors, et al.; Notice of Application

April 17, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit an open-end management investment company, whose portfolios will consist of the component securities of certain

foreign indices, to issue shares of limited redeemability; permit secondary market transactions in the shares of the portfolios at negotiated prices on the American Stock Exchange LLC ("AMEX"); permit affiliated persons of the portfolios to deposit securities into, and receive securities from, the portfolios in connection with the purchase and redemption of aggregations of the portfolios' shares; and permit certain portfolios to pay redemption proceeds more than seven days after the tender of shares of the portfolios for redemption under certain circumstances.

APPLICANTS: Barclay Global Fund Advisors ("Adviser"), iShares Trust ("Fund") and its current index series ("Initial Index Series") and future index series ("Future Index Series", and together with the Initial Index Series, the "Index Series"), and SEI Investments Distribution Company ("Distributor").

FILING DATES. The application was filed on April 30, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING. An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 5, 2000 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW, Washington, D.C. 20549–0609. Adviser, 45 Fremont Street, San Francisco, CA 94105; Fund, c/o Investors Bank & Trust Company, 200 Clarendon Street, Boston, MA 02116; and Distributor, 1 Freedom Valley Drive, Oaks, PA 19456.

FOR FURTHER INFORMATION CONTACT: Anu Dubey, Senior Counsel, at (202) 942–0687, or Michael Mundt, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW, Washington, D.C. 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Fund is an open-end management investment company registered under the Act and established in the state of Delaware. The Adviser, an investment adviser registered under the Investment Advisers Act of 1940, will serve as investment adviser to the Fund. The Distributor, a broker-dealer unaffiliated with the Adviser and registered under the Securities Exchange Act of 1934 ("Exchange Act"), will serve as the principal underwriter of the Fund's shares on an agency basis.

2. Each Index Series will invest in a portfolio of securities ("Portfolio Securities") generally consisting of the component securities of a specified foreign securities index ("Subject Index"),[1] There are seven Initial Index Series.[2] No entity that creates, compiles, sponsors or maintains a Subject Index will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person of the Fund, the Adviser, any subadviser to an Index Series or the Distributor.

3. The investment objective of each Index Series will be to provide investment results that correspond generally to the price and yield performance of its relevant Subject Index. Intraday values of each Subject Index will be disseminated every 15 seconds throughout the trading day. An Index Series will utilize as an investment approach either a replication strategy or a representative sampling strategy. An Index Series using a replication strategy generally will hold most of the component securities of its Subject Index, but may not hold all of the underlying securities that comprise a Subject Index in certain instances. This may be the case when, for example, a potential component security is illiquid or when there are practical difficulties or substantial costs involved in holding every security in a Subject Index. An Index Series using a representative sampling strategy seeks to hold a representative sample of the component securities of the Subject Index and will invest in some but not all of the component securities of its Subject Index.[3] Applicants anticipate that an Index Series that utilizes the representative sampling technique will not track its Subject Index with the same degree of accuracy as an investment vehicle that invested in every component security of the Subject Index with the same weighting as the Subject Index. Applicants expect that each Index Series will have a tracking error relative to the performance of its respective Subject Index of no more than 5 percent.

4. Shares of an Index Series ("Shares") will be sold in aggregations of 50,000 Shares ("Creation Units") as specified in the relevant prospectus. The price of a Creation Unit will range from $1,000,000 to $8,500,000. Creation Units may be purchased only by or through a Depository Trust Company ("DTC") participant. The DTC participant must enter into a participant agreement with the Distributor ("Authorized Participant"). Creation Units generally will be issued in exchange for an in-kind deposit of securities and cash. The Index Series also may sell Creation Units on a "cash only" basis in limited circumstances. An investor wishing to make an in-kind purchase of a Creation Unit from an Index Series will have to transfer to the Fund a "Portfolio Deposit" consisting of (i) a portfolio of securities that has been selected by the Adviser to correspond generally to the price and yield performance of the relevant Subject Index ("Deposit Securities"), and (ii) a cash payment or credit to equalize any difference between (a) the total aggregate market value per Creation Unit of the Deposit Securities and (b) the net asset value ("NAV") per Creation Unit of the Index Series (the "Balancing Amount").[4] An investor

[1] At least 90% of each Index Series' assets will be invested in the component securities of its Subject Index. An Index Series may also invest up to 10% of its assets in certain futures, option and swap contracts, cash and cash equivalents, as well as certain securities not included in the Subject Index under limited circumstances.

[2] The Subject Indices for the Initial Index Series are the Standard & Poor's ("S&P") Europe 350 Index, S&P Euro Index, S&P Global 100 Index, S&P/TSE 60 Index, Dow Jones Global Media Sector Index, Dow Jones Global Pharmaceuticals Sector Index, and Dow Jones Global Telecommunications Sector Index.

[3] The stock selected for inclusion in an Index Series by the Adviser will have aggregate investment characteristics (based on market capitalization and industry weightings), fund characteristics (such as return variability, earnings valuation and yield) and liquidity measures similar to those of the Subject Index taken in its entirety.

[4] On each business day, the Adviser will make available through the Distributor, immediately prior to the opening of trading on the AMEX, the list of the names and the required number of shares of each Deposit Security for each Index Series that offers in-kind purchases of Creation Units. The Portfolio Deposit will be applicable to purchases of Creation Units until a change in the Portfolio Deposit composition is next announced. In addition, each Index Series reserves the right to permit or require the substitution of an amount of cash to be added to the Balancing Amount to replace any Deposit Security that may be unavailable or unavailable in sufficient quantity for delivery to the Fund, or which may be ineligible for trading by an Authorized Participant or the investor

purchasing a Creation Unit from an Index Series will be charged a fee ("Transaction Fee") to prevent the dilution of the interests of the remaining shareholders resulting from the Index Series incurring costs in connection with the purchase of Creation Units.[5] Each Index Series will disclose the maximum Transaction Fees charged by the Index Series in its prospectus and the method of calculating the Transaction Fees in its statement of additional information ("SAI").

5. Orders to purchase Creation Units will be placed with the Distributor who will be responsible for transmitting the orders to the Fund. The Distributor will issue confirmations of acceptance, issue delivery instructions to the Fund to implement the delivery of Creation Units, and maintain records of the orders and confirmations. The Distributor also will be responsible for delivering prospectuses to purchasers of Creation Units.

6. Persons purchasing Creation Units from an Index Series may hold the Shares or sell some or all of them in the secondary market. Shares will be listed on the AMEX and traded in the secondary market in the same manner as other equity securities. One or more AMEX specialists will be assigned to make a market in Shares. The price of Shares traded on the AMEX will be based on a current bid/offer market, and each Share is expected to have a market value of between $20 an $170. Transactions involving the sale of Shares in the secondary market will be subject to customary brokerage commissions and charges.

7. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). The AMEX Specialist, in providing for a fair and orderly secondary market for Shares, also may purchase Shares for use in its market-making activities on the AMEX. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[6] Applicants believe that arbitrageurs and other institutional investors will purchase or redeem Creation Units to take advantage of discrepancies between the Shares' market price and the Shares' underlying NAV. Applicants expect that this arbitrage activity will provide a market "discipline" that will result in a close correspondence between the price at which the Shares trade and their NAV. In other words, applicants do not expect the Shares to trade at a significant premium or discount to their NAV.

8. Shares will not be individually redeemable. Shares will only be redeemable in Creation Unit-size aggregations through each Index Series. To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit. An investor redeeming a Creation Unit generally will receive (i) a portfolio of Portfolio Securities in effect on the date the request for redemption is made ("Redemption Securities"), which may not be identical to the Deposit Securities applicable to the purchase of Creation Units, and (ii) a "Cash Redemption Payment," consisting of an amount calculated in the same manner as the Balancing Amount, although the actual amounts may differ if the Redemption Securities are not identical to the Deposit Securities. An investor may receive the cash equivalent of a Redemption Security in certain circumstances, such as where a redeeming entity is restrained by regulation or policy from transacting in the Redemption Security. An Index Series may redeem Creation Units in cash in limited circumstances, such as when it is not possible to effect deliveries of Redemption Securities in the applicable jurisdiction.[7] A redeeming investor will pay a Transaction Fee to offset the Fund's transaction costs, whether the redemption proceeds are in-kind or cash. An additional variable charge, expressed as a percentage of the redemption proceeds, will be made for cash redemptions.

9. Because each Index Series will redeem Creation Units in-kind, an Index Series will not have to maintain cash reserves for redemptions. This will allow the assets of each Index Series to be committed as fully as possible to tracking its Subject Index. Accordingly, applicants state that each Index Series will be able to track its Subject Index more closely than certain other investment products that must allocate a greater portion of their assets for cash redemptions.

10. Applicants state that neither the Fund nor any Index Series will be marketed or otherwise held out as an "open-end investment company" or a "mutual fund." Rather, the designation of the Fund and the Index Series in all marketing materials will be limited to the terms "exchange-traded fund," "investment company," "fund," or "trust" without reference to an "open-end fund" or "mutual fund," except to contrast the Fund and the Index Series with a conventional open-end investment company. Any marketing materials that describe the purchase or sale of Creation Units, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that owners of Shares may tender Shares for redemption to the Fund in Creation Unit aggregations only. The same type of disclosure will be provided in each Index Series' prospectus, SAI, and all reports to shareholders.[8] The Fund will provide copies of its annual and semi-annual shareholder reports to DTC participants for distribution to beneficial holders of Shares.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act; and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (a)(2) of the Act. Applicants

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on whose behalf the Authorized Participant is acting. In addition, the AMEX will disseminate every 15 seconds throughout the trading day, via the facilities of the Consolidated Tape Association, an amount representing on a per Share basis, the sum of the Balancing Amount effective through and including the prior business day, plus the current value of the Deposit Securities.

[5] In situations where an Index Series permits a purchaser to substitute cash for Deposit Securities, the purchaser may be assessed an additional fee to offset the Fund's brokerage and other transaction costs associated with using cash to purchase the requisite Deposit Securities.

[6] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. Records reflecting the beneficial owners of Shares will be maintained by DTC or its participants.

[7] Applicants note that certain holders of Shares of a particular Subject Index may be subject to unfavorable tax treatment if they are entitled to receive in-kind redemption proceeds. The Fund may adopt a policy with respect to such Index Series that such holders of Shares may redeem Creation Unit Aggregations solely for cash.

[8] Applicants state that persons purchasing Creation Units will be cautioned in the prospectus or SAI that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act of 1933 ("Securities Act"). For example, a broker-dealer firm or its client may be deemed a statutory underwriter if it takes Creation Units after placing an order with the Distributor, breaks them down into the constituent Shares, and sells Shares directly to its customers; or if it chooses to couple the creation of a supply of new Shares with an active selling effort involving solicitation of secondary market demand for Shares. The prospectus or SAI will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. The prospectus or SAI also will state that broker-dealer firms should also note that dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary trading transactions), and thus dealing with Shares that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

request relief for the Initial Index Series as well as Future Index Series. Any Future Index Series relying on any order granted pursuant to this application will comply with the terms and conditions in the application.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any class of persons, securities, or transactions, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order under section 6(c) of the Act that would permit the Fund to register and operate as an open-end management investment company and issue Shares that are redeemable in Creation Units. Applicants state that investors may purchase Shares in Creation Units from each index Series and redeem Creation Units through each Index Series. Applicants further state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors generally should be able to sell Shares in the secondary market at approximately their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is being currently offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) and rule 22c–1. Applicants request an exemption under section 6(c) of the Act from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (i) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (ii) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (iii) assure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state (i) that secondary market trading in Shares would not cause dilution for owners of Shares because such transactions do not directly involve Index Series assets, and (ii) to the extent different prices exist during a given trading day, or from day to day, these variances will occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that local market delivery cycles for transferring Redemption Securities to redeeming investors, together with local market holiday schedules, will require a delivery process in excess of seven calendar days for some Index Series in certain circumstances during the calendar year. Applicants request relief under section 6(c) from section 22(e) so that certain of the Index Series may pay redemption proceeds up to twelve calendar days after the tender of Shares for redemption.[9] Except as otherwise subsequently disclosed in the prospectus or SAI for the relevant Index Series, applicants expect, however, that these Index Series will be able to deliver redemption proceeds within seven days at all other times.[10] With respect to Future Index Series, applicants seek the same relief from section 22(e) only to the extent that circumstances exist similar to those described herein.

8. The principal reasons for the requested exemption is that settlement of redemptions for the Index Series is contingent not only on the settlement cycle of the United States market but also on the currently practicable delivery cycles in the local markets for the underlying foreign securities of each Index Series. Applicants believe that the Fund will be able to comply with the delivery requirements of section 22(e) except where the holiday schedule applicable to the specific foreign market will not permit delivery of redemption proceeds within seven calendar days.

9. Applicants state that section 22(e) of the Act was designed to prevent unreasonable, undisclosed, and unforeseen delays in the payment of redemption proceeds. Applicants assert that their requested relief will not lead to the problems section 22(e) was designed to prevent. Delays in the payment of Shares redemption proceeds will occur principally due to local holidays. Applicants state that the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days and the maximum number of days needed to deliver the proceeds for each Index Series. Applicants state that the local holidays relevant to each Index Series as in effect in a given year will be listed in the series' prospectus or SAI or both, and these disclosure documents will identify instances in such year when, due to such holidays, more than

[9] Specifically, applicants request that the (i) S&P Euro Index Series, S&P Europe 350 Index Series and S&P Global 100 Index Series be permitted to make redemption payments up to ten calendar days after the tender of a Creation Unit for redemption, and (ii) Dow Jones Global Media Sector Index Series, Dow Jones Global Phamaceuticals Sector Index Series and Dow Jones Global Telecommunications Sector Index Series be permitted to make redemption payments up to twelve calendar days after the tender of a Creation Unit for redemption.

[10] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may otherwise have under rule 15c–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade date. Release No. IC–23860, 1999 WL 3621843 (S.E.C.).

seven days will be needed to deliver redemption proceeds.

Section 17(a) of the Act

10. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person, from selling any security to or purchasing any security from the company. Because purchases and redemptions of Creation Units may be "in kind" rather than cash transactions, section 17() may prohibit affiliated persons of an Index Series from purchasing or redeeming Creation Units in-kind. Because the definition of "affiliated person" of another person in section 2(a)(3)(A) of the Act includes any person owning five percent or more of an issuer's outstanding voting securities, every purchaser of a Creation Unit will be affiliated with the Index Series so long as fewer than twenty Creation Units are in existence. In addition, any person owning more than 25% of the Shares of an Index Series may be deemed an affiliated person under section 2(a)(3)(C) of the Act. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b), to permit these affiliated persons of the Index Series to purchase and redeem Creation Units.

11. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting persons with the types of affiliations described above from purchasing or redeeming Creation Units. The deposit procedure for in-kind purchases and redemptions will be the same for all purchases and redemptions, and Deposit Securities and Redemption Securities will be valued under the same objective standards applied to valuing Portfolio Securities. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for an affiliated person of an Index Series to effect a transaction detrimental to the other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the Index Series.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Applicants will not register a Future Index Series of the Fund by means of filing a post-effective amendment to the Fund's registration statement or by any other means, unless (i) applicants have requested and received with respect to such Future Index Series, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission or (ii) the Future Index Series will be listed on a national securities exchange without the need for a filing pursuant to rule 19b–4 under the Exchange Act.

2. Each Index Series' prospectus will clearly disclose that, for purposes of the Act, Shares are issued by the Index Series and that the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

3. As long as the Fund operates in reliance on the requested order, the Shares will be listed on a national securities exchange.

4. Neither the Fund nor any Index Series will be advertised or marketed as an open-end fund or mutual fund. Each Index Series' prospectus will prominently disclose that Shares are not individually redeemable shares and will disclose that the owners of Shares may acquire those Shares from the Index Series and tender those shares for redemption to the Index Series in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Index Series and tender those Shares for redemption to the Index Series in Creation Units only.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–9938 Filed 4–19–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24394, 812–11600]

Barclays Global Fund Advisors, et al.; Notice of Application

April 17, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), and 22(d) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit an open-end management investment company, whose portfolios will consist of the component securities of certain domestic indices, to issue shares of limited redeemability; permit secondary market transactions in the shares of the portfolios at negotiated prices on the American Stock Exchange LLC ("AMEX"); and permit affiliated persons of the portfolios to deposit securities into, and receive securities from, the portfolios in connection with the purchase and redemption of aggregations of the portfolios' shares.

APPLICANTS: Barclays Global Fund Advisors ("Adviser"), iShares Trust ("Fund") and its current index series ("Initial Index Series") and future index series ("Future Index Series," and together with the Initial Index Series, the "Index Series"), and SEI Investments Distribution Company ("Distributor").

FILING DATES: The application was filed on April 30, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 5, 2000 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a

hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW, Washington, D.C. 20549–0609. Adviser, 45 Fremont Street, San Francisco, CA 94105; Fund, c/o Investors Bank & Trust Company, 200 Clarendon Street, Boston, MA 02116; and Distributor, 1 Freedom Valley Drive, Oaks, PA 19456.

FOR FURTHER INFORMATION CONTACT: Anu Dubey, Senior Counsel, at (202) 942–0687, or Michael Mundt, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW, Washington, D.C. 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Fund is an open-end management investment company registered under the Act and established in the state of Delaware. The Adviser, an investment adviser registered under the Investment Advisers Act of 1940, will serve as investment adviser to the Fund. The Distributor, a broker-dealer unaffiliated with the Adviser and registered under the Securities Exchange Act of 1934 ("Exchange Act"), will serve as the principal underwriter of the Fund's shares on an agency basis.

Each Index Series will invest in a portfolio of securities ("Portfolio Securities") generally consisting of the component securities of a specified domestic securities index ("Subject Index").[1] There are 42 Initial Index Series.[2] No entity that creates, compiles, sponsors, or maintains a Subject Index will be an affiliated person, as defined in section 2(a)(3) of the Act; or an affiliated person of an affiliated person of the Fund, Adviser, any subadviser to an Index Series, or the Distributor.

3. The investment objective of each Index Series will be to provide investment results that correspond generally to the price and yield performance of its relevant Subject Index. Intra-day values of each Subject Index will be disseminated every 15 seconds throughout the trading day. An Index Series will utilize as an investment approach either a replication strategy or a representative sampling strategy. An Index Series using a replication strategy generally will hold most of the component securities of its Subject Index, but may not hold all of the underlying securities that comprise a Subject Index in certain instances. This may be the case when, for example, a potential component security is illiquid or when there are practical difficulties or substantial costs involved in holding every security in a Subject Index. An Index Series using a representative sampling strategy seeks to hold a representative sample of the component securities of the Subject Index and will invest in some but not all of the component securities of its Subject Index.[3] Applicants anticipate that an Index Series that utilizes the representative sampling technique will not track its Subject Index with the same degree of accuracy as an investment vehicle that invested in every component security of the Subject Index with the same weighting as the Subject Index. Applicants expect that each Index Series will have a tracking error relative to the performance of its respective Subject Index of no more than 5 percent.

4. Shares of an Index Series ("Shares") will be sold in aggregations of 50,000 Shares ("Creation Units") as specified in the relevant prospectus. The price of a Creation Unit will range from $1,000,000 to $8,500,000. Creation Units may be purchased only by or through a participation in the Continuous Net Settlement ("CNS") System of the National Securities Clearing Corporation ("NSCC") (such process, the "Shares Clearing Process"), or a Depository Trust Company ("DTC") participant. In either case, the participant must enter into a participant agreement with the Distributor. Creation Units generally will be issued in exchange for an in-kind deposit of securities and cash. The Index Series also may sell Creation Units on a "cash only" basis in limited circumstances. An investor wishing to make an in-kind purchase of a Creation Unit from an Index Series will have to transfer to the Fund a "Portfolio Deposit" consisting of (i) a portfolio of securities that has been selected by the Adviser to correspond generally to the price and yield performance of the relevant Subject Index ("Deposit Securities"), and (ii) a cash payment to equalize any difference between (a) the total aggregate market value per Creation Unit of the Deposit Securities and (b) the net asset value ("NAV") per Creation Unit of the Index Series (the "Balancing Amount").[4] An investor purchasing a Creation Unit from an Index Series will be charged a fee ("Transaction Fee") to prevent the dilution of the interests of the remaining shareholders resulting from the Index Series incurring costs in connection with the purchase of the Creation Units.[5] Each Index Series will disclose

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[1] At least 90% of each Index Series' assets will be invested in the component securities of its Subject Index. An Index Series may invest up to 10% of its assets in certain futures, option and swap contracts, cash and cash equivalents, as well as certain securities not included in the Subject Index under limited circumstances.

[2] The Subject Indices for the Initial Index Series are the Standard & Poor's ("S&P") 500 Index; S&P 100 Index; S&P MidCap 400 Index; S&P SmallCap 600 Index; S&P Super Composite 1500 Index; S&P 500/BARRA Value Index; S&P 500/BARRA Growth Index; S&P MidCap 400/BARRA Value Index; S&P MidCap 400/BARRA Growth Index; S&P SmallCap 600/BARRA Value Index; S&P SmallCap 600/BARRA Growth Index; S&P Super Composite 1500/BARRA Value Index; S&P Super Composite 1500/BARRA Growth Index; Dow Jones US Total Market Index; Dow Jones US SmallCap Index; Dow Jones US Mid-Cap Index; Dow Jones US Large-Cap Index; Dow Jones US Basic Materials Sector Index; Dow Jones US Consumer Cyclical Sector Index; Dow Jones US Consumer Non-Cyclical Sector Index; Dow Jones US Energy Sector Index; Dow Jones US Financial Sector Index; Dow Jones US Industrial Sector Index; Dow Jones US Technology Sector Index; Dow Jones US Utilities Sector index; Dow Jones US Telecommunications Sector Index; Dow Jones Internet Index; Dow Jones US Healthcare Sector Index; Dow Jones US Real Estate Index; Dow Jones US Financial Services Composite Index; Dow Jones US Chemicals Index; Russell 1000 Index; Russell 2000 Index; Russell Top 200 Index; Russell MidCap Index; Russell 3000 Index; Russell 3000 Growth Index; Russell 3000 Value Index; Russell 1000 Growth Index; Russell 1000 Value Index; Russell 2000 Growth Index; and Russell 2000 Value Index.

[3] The stocks selected for inclusion in an Index Series by the Adviser will have aggregate investment characteristics (based on market capitalization and industry weightings), fund characteristics (such as return variability, earnings valuation and yield) and liquidity measures similar to those of the Subject index taken in its entirety.

[4] On each business day, the Advisor will make available through NSCC, immediately prior to the opening of trading on the AMEX, the list of names and the required number of shares of each Deposit Security for each Index Series. The Portfolio Deposit will be applicable to purchases of Creation Units until the Portfolio Deposit composition is next announced. In addition, each Index Series reserves the right to permit or require the substitution of an amount of cash to be added to the Balancing Amount to replace any Deposit Security that may be unavailable or unavailable in sufficient quantity for delivery to the Fund upon the purchase of a Creation Unit, or which may be ineligible for transfer through the Shares Clearing Process or ineligible for trading by an NSCC participant or a DTC participant or the investor on whose behalf the participant is acting. In addition, the AMEX will disseminate every 15 seconds throughout the trading day via the facilities of the Consolidated Tape Association an amount representing on a per Share basis the sum of the Balancing Amount effective through and including the prior business day, plus the current value of the Deposit Securities.

[5] In situations where an Index Series permits a purchaser to substitute cash for Deposit Securities, the purchaser may be assessed an additional fee to offset the Fund's brokerage and other transaction costs associated with using cash to purchase the requisite Deposit Securities. Brokerage commissions incurred by an Index Series in connection with the acquisition of any Deposit Securities ineligible for transfer through the systems of DTC and therefore ineligible for transfer through the Shares Clearing Process will be charged to the Index Series and will

the maximum Transaction Fees charged by the Index Series in its prospectus and the method of calculating the Transaction Fees in its statement of additional information ("SAI").

5. Orders to purchase Creation Units will be placed with the Distributor who will be responsible for transmitting the orders to the Fund. The Distributor will issue confirmations of acceptance, issue delivery instructions to the Fund to implement the delivery of Creation Units, and maintain records of the orders and confirmations. The Distributor also will be responsible for delivering prospectuses to purchasers of Creation Units.

6. Persons purchasing Creation Units from an Index Series may hold the Shares or sell some or all of them in the secondary market. Shares will be listed on the AMEX and traded in the secondary market in the same manner or other equity securities. One or more AMEX specialists will be assigned to make a market in Shares. The price of Shares traded on the AMEX will be based on a current bid/offer market, and each Share is expected to have a market value of between $20 and $170. Transactions involving the sale of Shares in the secondary market will be subject to customary brokerage commissions and charges.

7. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). The AMEX Specialist, in providing for a fair and orderly secondary market for Shares, also may purchase Shares for use in its market-making activities on the AMEX. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[6] Applicants believe that arbitrageurs and other institutional investors will purchase or redeem Creation Units to take advantage of discrepancies between Shares' market price and the Shares' underlying NAV. Applicants expect that this arbitrage activity will provide a market "discipline" that will result in a close correspondence between the price at which the Shares trade and their NAV. In other words, applicants do not expect the Shares to trade a significant premium or discount to their NAV.

8. Shares will not be individually redeemable. Shares will only be redeemable in Creation Unit-size aggregations through each Index Series.[7] To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit. An investor redeeming a Creation Unit generally will receive (i) a portfolio of Portfolio Securities in effect on the date the request for redemption is made ("Redemption Securities"), which may not be identical to the Deposit Securities applicable to the purchase of Creation Units, and (ii) a "Cash Redemption Payment," consisting of an amount calculated in the same manner as the Balancing Amount, although the actual amounts may differ if the Redemption Securities are not identical to the Deposit Securities on the same day. An investor also may receive the cash equivalent of a Redemption Security in unusual circumstances, such as a case in which the investor is constrained from effecting transactions in the Portfolio Security by regulation or policy. A redeeming investor will pay a Transaction Fee to offset the Fund's transaction costs, whether the redemption proceeds are in-kind or cash.

9. Because each Index Series will redeem Creation Unites in-kind, an Index Series will not have to maintain cash reserves for redemptions. This will allow the assets of each Index Series to be committed as fully as possible to tracking its Subject Index. Accordingly, applicants state that each Index Series will be able to track its Subject Index more closely than certain other investment products that must allocate a greater portion of their assets for cash redemptions.

10. Applicants state that neither the Fund nor any Index Series will be marketed or otherwise held out as an "open-end investment company" or a "mutual fund." Rather, the designation of the Fund and the Index Series in all marketing materials will be limited to the terms "exchange-traded fund," "investment company," "fund" or "trust" without reference to an "open-end fund" or "mutual fund," except to contrast the Fund and the Index Series with a conventional open-end management investment company. Any marketing materials that describe the purchase or sale of Creation Units, or refer to redeemability, will prominently disclose that shares are not individually redeemable and that owners of Shares may tender Shares for redemption to the Fund in Creation Unit aggregations only. The same type of disclosure will be provided in each Index Series' prospectus, SAI and all reports to shareholders.[8] The Fund will provide copies of its annual and semi-annual shareholder reports to DTC participants for distribution to beneficial holders of Shares.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), and 22(d) of the Act and rule 22c–1 under the Act; and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (a)(2) of the Act. Applicants request relief for the Initial Index Series as well as Future Index Series. Any Future Index Series relying on any order granted pursuant to this application will comply with the terms and conditions stated in this application.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any class of persons, securities, or transactions, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its

affect the value of all Shares of the Fund, unless the Adviser adjusts the Transaction Fee.

[6] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. Records reflecting the beneficial owners of Shares will be maintained by DTC or its participants.

[7] Creation Unites may be redeemed through either NSCC or DTC. Investors who redeem through DTC will pay a higher Transaction Fee.

[8] Applicants state that persons purchasing Creation Units will be cautioned in the prospectus or SAI that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act of 1933 ("Securities Act"). For example, a broker-dealer firm or its client may be deemed a statutory underwriter if it takes Creation Units after placing an order with the Distributor, breaks them down into the constituent Shares, and sells Shares directly to its customers; or if it chooses to couple the purchase of a supply of new Shares with an active selling effort involving solicitation of secondary market demand for Shares. The prospectus or SAI will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. The prospectus or SAI also will state that broker-dealer firms should also note that dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary trading transactions), and thus dealing with Shares that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order under section 6(c) of the Act that would permit the Fund to register and operate as an open-end management investment company and issue Shares that are redeemable in Creation Units. Applicants state that investors may purchase Shares in Creation Units from each Index Series and redeem Creation Units through each Index Series. Applicants further state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors generally should be able to sell Shares in the secondary market at approximately their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is being currently offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the prospectus, and not at a price based on NAV. Thus, purchases, and sales of Shares in the secondary market will not comply with section 22(d) and rule 22c–1. Applicants request an exemption under section 6(c) of the Act from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (i) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (ii) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (iii) assure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state (i) that secondary market trading in Shares would not cause dilution for owners of Shares because such transactions do not directly involved Index Series assets, and (ii) to the extent different prices exist during a given trading day, or from day to day, these variances will occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 17(a) of the Act

7. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person, from selling any security to or purchasing any security from the company. Because purchases and redemptions of Creation Units may be "in-kind" rather than cash transactions, section 17(a) may prohibit affiliated persons of an Index Series from purchasing or redeeming Creation Units. Because the definition of "affiliated person" of another person in section 2(a)(3)(A) of the Act includes any person owning five percent or more of an issuer's outstanding voting securities, every purchaser of a Creation Unit will be affiliated with the Index Series so long as fewer than twenty Creation Units are in existence. In addition, any person owning more than 25% of the Shares of an Index Series may be deemed an affiliated person under section 2(a)(3)(C) of the Act. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b), to permit these affiliated persons of the Index Series to purchase and redeem Creation Units.

8. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting persons with the types of affiliations described above from purchasing or redeeming Creation Units. The deposit procedure for in-kind purchases and redemption procedures for in-kind redemptions will be the same for all purchases and redemptions, and Deposit Securities and Redemption Securities will be valued under the same objective standards applied to valuing the Portfolio Securities. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for an affiliated person of an Index Series to effect a transaction detrimental to the other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the Index Series.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Applicants will not register a Future Index Series by means of filing a post-effective amendment to the Fund's registration statement or by any other means, unless (i) applicants have requested and received with respect to such Future Index Series, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission, or (ii) the Future Index Series will be listed on a national securities exchange without the need for a filing pursuant to rule 19b–4 under the Exchange Act.

2. Each Index Series' prospectus will clearly disclose that, for purposes of the Act, Shares are issued by the Index Series and that the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

3. As long as the Fund operates in reliance on the requested order, the Shares will be listed on a national securities exchange.

4. Neither the Fund nor any Index Series will be advertised or marketed as an open-end fund or mutual fund. Each Index Series' prospectus will prominently disclose that Shares are not individually redeemable shares and will disclose that the owners of Shares may acquire those Shares from the Index Series and tender those Shares for redemption to the Index Series in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire those Shares from the Index Series and tender those Shares for

redemption to the Index Series in Creation Units only.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42675; File No. SR–Amex–00–15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Transaction, Clearance, and Floor Brokerage Fees

April 13, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 10, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On April 1, 2000, the Exchange filed Amendment No. 1 to the proposed rule change with the Commission, which amendment replaces and supersedes the original proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to eliminate transaction, clearance, and floor brokerage fees for customer equity options orders. The Exchange also proposes to increase the specialist and market maker floor brokerage fee for both equity and index options transactions.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex proposes to eliminate transaction, clearance, and floor brokerage fees for customer equity options orders. The Exchange also proposes to increase the specialist and market maker floor brokerage fee for both equity and index options transactions. The proposed fee schedule would be applicable to options transactions effected on and after April 1, 2000.[5]

The Amex currently imposes a transaction charge on options trades executed on the Exchange. The charges vary depending on whether the transaction involves an equity or index option and whether the transaction is executed for a member firm proprietary account, a specialist or market maker account, or a customer account. The Amex also imposes a charge for clearance of options trades and an options floor brokerage charge, which also depends upon the type of account for which the trade is executed. In addition, all three of charges—transaction, options clearance, and options floor brokerage—are subject to caps on the number of options contracts subject to the charges on a given day.[6]

Current, for customer equity and index options transactions, the Amex does not charge a transaction fee for market and marketable limit orders of 30 contracts or less.[7] The Amex charges a transaction fee of $0.10 for customer equity and index options transactions (per contract side) for limit orders up to 30 contracts and all orders exceeding 30 contracts.[8] These customer options transactions fees also apply to both LEAPS[9] and FLEX[10] options. The current clearance fee for customer equity options transactions is $0.04 per contract side. The floor brokerage fee for customer equity options orders is $0.02 per contract side.

Under the revised fee schedule, the Exchange proposes to eliminate all transaction, clearance, and floor brokerage fees for customer equity options orders. Fees currently charged to customers for transactions in index options will remain unchanged. To offset the Exchange's elimination of transaction, clearance, and floor brokerage fees for customer equity options transactions, the Exchange proposes to raise certain fees charged to members. Specifically the Exchange proposes to increase the equity options transaction fee from $0.07 to $0.19 per contract side for member firm proprietary orders and from $0.08 to $0.17 per contract side for specialist and market maker orders. Transaction charges for broker-dealers facilitating customer equity options orders will remain unchanged at $0.07 per contract side.

Under the Exchange's proposal, options clearance fees for member firms, specialists, and market makers will remain unchanged at $0.04 per contract side. The Exchange proposes to increase the specialist and market marker options floor brokerage fee from $0.02 to $0.03 per contract side for both equity and index transactions.[11] Options floor brokerage fees for member firms will remains unchanged at $0.03.

The Exchange represents that customers will receive actual cost savings of approximately $17.5 million, based upon third quarter, 1999 annualized option contract volume.[12] The Exchange believes that the proposed fee changes are necessary to make the Exchange's options transaction charges more competitive with other options exchanges' fees and with the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Scott Van Hatten, Legal Counsel, Derivative Securities, Nasdaq-Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 31, 2000 ("Amendment No. 1"). In response to comments from Commission staff, the Exchange submitted Amendment No. 1 to withdraw the portion of the filing that would increase the equity options transaction fees charged to non-member broker-dealers. Amendment No. 1 also: (i) makes certain technical corrections to the Amex's options fee schedule; (ii) proposes to increase the specialist and market maker floor brokerage fee from $0.02 to $0.03 per contract side for both equity and index options; (iii) states that all fee changes are effective April 1, 2000; and (iv) clarifies that the cost savings estimate to customers is based on third quarter, 1999 trading volume.

[4] *Id.*

[5] *Id.*

[6] The current caps are set at 2,000 contracts for customer trades and 3,000 contracts for member firm proprietary, non-member broker-dealer, specialist and market maker trades.

[7] *See* Securities Exchange Act Release No. 41370 (May 5, 1999), 64 FR 25931 (May 13, 1999).

[8] *Id.*

[9] LEAPs are Long Term Equity Anticipation Securities or options with durations of up to 36 months. *See* Amex Rule 903C.

[10] FLEX options are customized options with individually specified terms such as strike price, expiration date, and exercise style. *See* Amex Rule 900G.

[11] *See* Amendment No. 1, *supra* note 3.

[12] *Id.*

costs of trading other financial instruments, and to increase the number of options orders that are routed to the Exchange. While the Exchange anticipates that other options exchanges may also reduce fees charged to customers, it believes that the proposed fee changes will increase options usage among all investors and stimulate industry-wide growth in the options business.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [13] in general, and furthers the objectives of Section 6(b)(4) [14] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[15] and Rule 19b–4(f)(2) thereunder,[16] in that it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.[17]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–Amex–00–15 and should be submitted by May 11, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–9917 Filed 4–19–00; 8:45 am]

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[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFT 240.19b–4(f)(2).

[17] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42687; File No. SR–Amex–99–25]

Self-Regulatory Organizations; Order Granting Approval to Proposed Amendments to the Amex Constitution by the American Stock Exchange LLC Eliminating the Requirement That the Chairman Also Be the CEO

April 13, 2000

I. Introduction

On July 16, 1999, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 [2] thereunder, a proposed rule change. In its proposal, Amex seeks to eliminate the requirement that the Chairman also be the Chief Executive Officer ("CEO") of the Exchange. The proposed rule change was published for comments in the **Federal Register** on January 7, 2000.[3] The Commission received no comments on the filing and this order approves the proposal.

II. Description of the Proposal

Article II, Section 4(a) of the Amex Constitution currently requires that the Chairman of the Board also act as the CEO of the Exchange. The Chairman thus performs the standard functions of a Board Chairman, as well as being responsible to the Board for the management and administration of the affairs of the Exchange as CEO.

The Exchange proposes to amend Article II, Section 4(a) of the Constitution to eliminate the requirement that the Chairman also act as the CEO of the Exchange. Amex represents that the NASD's two other subsidiaries (the Nasdaq Stock Market and NASD Regulation), both have non-executive Chairmen. Amex believes that having a non-executive Chairman attend to the functions of a Chairman would allow the CEO to focus on the operations of the Exchange. Nevertheless, the proposal gives Amex the flexibility to choose to have two people fill the Chairman and CEO positions or to have the same person fill these two positions.

As a result of the amendment to Article II, Section 4(a) of the Constitution, Amex made a number of conforming changes to other provisions of the Constitution and rules. Before this proposal, Amex's rules generally did not make a distinction between whether the Chairman/CEO was serving in his capacity as the Chairman or the CEO and used the term "Chairman" for both of these functions. To allow for separate persons to serve as Chairman and CEO, Amex examined its rules and made a determination as to whether a particular function was normally handled by the Chairman or CEO. Based on this examination, Amex then changed the term "Chairman" to CEO when it determined that Chairman/CEO was acting in his capacity as the CEO. Amex had to make choices, however, when the function was properly performed by either the Chairman or the CEO. In addition, Article II, Section 3 (Chairman) and Article II, Section 4(a) (Chief Executive Officer), discussing the selection and authority of the Chairman and CEO respectively, have been appropriately rearranged. Other than splitting the Chairman and CEO roles and making the above-mentioned conforming changes, the Amex represents that there are no substantive changes being made.

III. Discussion

The Commission finds that the proposed rule change is consistent with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] *See* Securities Exchange Act Release No. 42307 (January 3, 2000), 65 FR 1206.

the requirements of the Act.[4] In particular, the Commission finds the proposal is consistent with Section 6(b)(5)[5] of the Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.

The Commission believes that the proposal is consistent with the Act. In particular, Amex represented that splitting the Chairman/CEO functions will allow the CEO to focus on the operations of the Exchange. The Commission agrees and believes that the proposal should allow the CEO to devote more time to the day-to-day operations of the Exchange.

In approving this rule change, however, the Commission notes that the proposed language now permits the Chairman to be affiliated with a member of the Exchange if separate persons hold the Chairman and CEO positions. As the Commission stated in the order approving the International Securities Exchange LLS's application for registration as a national securities exchange, the affiliation of the Chairman with one of the Exchange's members implicates certain conflicts of interest, or at least gives the appearance of such conflicts.[6] Amex represented that it made this change to make its corporate governance structure consistent with other NASD entities, such as NASD Regulation, which in 1999 had a Chairman who was affiliated with an NASD member. Amex also represented that the change, other than splitting the Chairman and CEO positions, will have no substantive effect on the operation of the Exchange. Nevertheless, if Amex chooses to split the Chairman/CEO positions and has a Chairman affiliated with a member, Amex's Chairman should avoid actual or apparent conflicts of interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Amex–99–25) is approved.

[4] In addition, purusant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] *See* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11401 (March 2, 2000) (File No. 10–127).

[7] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–9919 Filed 4–19–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42672; File No. SR–NASD–00–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to its Transaction Credit Pilot Program

April 12, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 6, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed an amendment to the proposed rule change on March 31, 2000,[3] which amendment replaces and supersedes the original proposal. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing a proposed rule change amending NASD Rule 7010 to extend Nasdaq's transaction credit pilot program for an additional six months for Tape A reports and to discontinue the pilot program for Tape B reports. Below is the text of the proposed rule change. Proposed new language is in italic; proposed deletions are in brackets.

7010 System Services

(a)–(b) No Change.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter to Katherine A. England, Assistant Director, Commission, from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, dated March 30, 2000 ("Amendment No. 1"). Amendment No. 1 makes certain technical corrections to the proposed rule change.

(c)(1) No Change.

(2) *Exchange*-Listed Securities Transaction Credit. For a pilot period, qualified NASD members that trade securities listed on the NYSE [and Amex] in over-the-counter transactions reported by the NASD to the Consolidated Tape Association may receive from the NASD transaction credits based on the number of trades so reported. To qualify for the credit with respect to Tape A reports, an NASD member must account for 500 or more average daily Tape A reports of over-the-counter transactions as reported to the Consolidated Tape during the concurrent calendar quarter. [To qualify for the credit with respect to Tape B reports, an NASD member must account for 500 or more average daily Tape B reports of over-the-counter transactions as reported to the Consolidated Tape during the concurrent calendar quarter.] If an NASD member is so qualified to earn credits based [either] on its Tape A activity, [or its Tape B activity, or both,] that member may earn credits from [one or both (as the case may be, depending on the qualification standards) pools] *the Tape A pool* maintained by the NASD, [each] *such* pool representing 40% of the revenue paid by the Consolidated Tape Association to the NASD for [each of] Tape A [and Tape B] transactions. A qualified NASD member may earn credits from [such pools] *the Tape A pool* according to the member's pro rata share of the NASD's over-the-counter trade reports in [each of] Tape A [and Tape B] for each calendar quarter starting with [July 1, 1999, and ending with the calendar quarter starting on October 1, 1999] *January 1, 2000, and ending with the calendar quarter starting on April 1, 2000.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to extend, for an additional six months, its pilot program to provide a transaction credit [4] to NASD members that exceed certain levels of over-the-counter ("OTC") trading activity in securities listed on the New York Stock Exchange ("NYSE"). In addition, Nasdaq is proposing to discontinue the pilot program for OTC trading in securities listed on the American Stock Exchange ("Amex"). The NASD established its transaction credit pilot program to assist in finding ways to lower investor costs associated with trading listed securities, and to respond to steps taken by other exchanges that compete with Nasdaq for investor order flow in those issues.

Background. Nasdaq's Third Market is a quotation, communication, and execution system that allows NASD members to trade stocks listed on the NYSE and the Amex. The Third Market competes with the regional exchanges like the Chicago Stock Exchange ("CHX") and the Cincinnati Stock Exchange ("CSE") for retail order flow in stocks listed on the NYSE and the Amex. The NASD collects quotations from broker-dealers that trade these securities OTC and provides such quotations to the Consolidated Quotation System for dissemination. Additionally, the NASD collects trade reports from broker-dealers trading these securities in the OTC market and provides the trade reports to the Consolidated Tape Association ("CTA") for inclusion in the Consolidated Tape. As a participant in the CTA, the NASD earns a share of the revenue from trades that it reports on behalf of those broker-dealers in NYSE-listed securities ("Tape A") and in Amex-listed securities ("Tape B"). Nasdaq created the credit pools for qualified pilot participants from the NASD's share of these revenues.

Nasdaq's transaction credit pilot program is intended to lower costs for Third Market Makers and their customers who execute trades in exchange-listed stocks through NASD members and Nasdaq facilities. The NASD believes that lowering the cost of trading increases competition among market centers trading listed securities. Continuation of the pilot will allow Nasdaq to continue to evaluate the efficacy of its revenue sharing model and continue to effectively compete for the retention of Third Market participants with other regional exchanges that have adopted similar revenue distribution methodologies.[5]

Pilot Program. Under the original transaction credit pilot program,[6] Nasdaq calculated two separate pools of revenue from which credits can be earned. The first represented 40% of the gross revenues received by the NASD from the CTA for providing trade reports in NYSE-listed securities executed in the Third Market for dissemination by the CTA ("Tape A"). The other represented 40% of the gross revenue received from the CTA for reporting Amex trades ("Tape B"). Under the proposal, the Tape A calculation pool will remain at the same 40% level, and the pool of revenue previously generated from gross revenue received from the CTA for reporting Amex trades will be discontinued.

Eligibility for transaction credits during the pilot's extension will be based upon concurrent quarterly trading activity in NYSE-listed securities. For example, a Third Market participant that recently entered the market for Tape A securities during the first quarter of 2000 and printed an average of 500 daily trades of Tape A securities during the time it is in the market, or that averaged 500 daily Tape A prints during the entire quarter, would be eligible to receive transaction credits based on its trades during the first quarter. As in the original pilot, only those NASD members who continue to average an appropriate daily execution level during the term of the pilot's extension would be eligible for transaction credits and thus able to receive a pro-rata portion of the 40% revenue calculation pools.[7] The NASD chose to create these thresholds to permit the NASD to recover appropriate administrative costs related to NASD members that do not exceed the threshold and to encourage NASD members to actively trade in these securities.

As before, a fully-qualifying NASD member's transaction credit will be determined by taking its percentage of total Third Market transactions during the applicable calculation period and providing an equivalent percentage from the appropriate Tape A calculation pool. Thus, for each calendar quarter commencing with the calendar quarter that began on January 1, 2000, the NASD will measure a qualified member's Tape A trade reports for that calendar and create a credit for the member based upon this activity. For example, if a qualifying NASD member's transactions represent 10% of the NASD's Tape A transactions, that member would receive a 10% share of the Tape A 40% calculation pool. Unlike the original pilot, however, the transaction credit will be available only to NASD members that trade NYSE-listed securities in the Third Market in order to focus the competitive thrust of this initiative toward the NYSE during the tme the NASD remains the sole shareholder of Nasdaq.

Nasdaq's transaction credit program is being proposed on a pilot basis only. There can be no guarantee that transaction credits will be available to qualifying NASD members beyond the term of the pilot.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] in that the proposal is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanisms of a national market system and, in general, to protect investors and the public interest. Nasdaq believes the proposed rule-change is also consistent with Section 15A(b)(5)[9] of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that the Association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[4] The transaction credit can be applied to any and all charges imposed by the NASD or its non-self-regulatory organization affiliates. Any remaining balance may be paid directly to the member.

[5] Both the CHX and the CSE have established similar programs. *See* Securities Exchange Act Release Nos. 38237 (Feb. 4, 1997), 62 FR 6592 (Feb. 12, 1997) (SR–CHX–97–01) and 39395 (Dec. 3, 1997), 62 FR 65113 (Dec. 10, 1997) (SR–CSE–97–12).

[6] *See* Securities Exchange Act Release No. 41174 (March 16, 1999), 64 FR 14034 (March 23, 1999) (SR–NASD–99–13). The original pilot was effective from October 1, 1998 through June 30, 1999. Nasdaq subsequently extended the pilot through December 31, 1999. *See* Securities Exchange Act Release No. 42095 (Nov. 3, 1999), 64 FR 61680 (Nov. 12, 1999) (SR–NASD–99–59).

[7] The qualification thresholds were selected based on Nasdaq's belief that such numbers represent clear examples of a member's commitment to operating in the Third Market and competing for order flow.

[8] 15 U.S.C. 78o-3(b)(6).

[9] 15 U.S.C. 78o-3(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become immediately effective pursuant to Section 19(b)(3)(A)(ii) of the Act [10] and Rule 19b–4(f)(2) thereunder,[11] in that it establishes or changes a due, fee or other charge imposed by the Association. At any time within 60 days [12] of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–00–10 and should be submitted by May 11, 2000.

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b-4(f)(2).

[12] Because Amendment No. 1 replaces the original proposal, the 60 day period will be calculated based on a March 31, 2000 filing date.

[13] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formationl 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [14]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–9878 Filed 4–19–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42671; File No. SR–NYSE–00–12]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the New York Stock Exchange, Inc. Relating to Original and Continued Listing Standards for Affiliated Companies

April 12, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 15, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, and II below, which Items have been prepared by the Exchange. On March 28, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On April 12, 2000, the Exchange submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the proposed rule change and Amendment Nos. 1 and 2.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Sections 102.01B, 102.01C, 103.01A, 103.01B, 802.01B and 802.01C of the *Listed Company Manual* ("Manual") of the Exchange. These sections of the Manual set forth the financial original and continued listing standards of the Exchange. The text of the proposed rule change, as amended, is as follows. New text is *italicized*.

NYSE Listed Company Manual

* * * * *

Section 1

The Listing Process

* * * * *

102.01B. A company must demonstrate an aggregate market value of publicly-held shares of $60,000,000 for companies that list either at the time of their initial public offerings ("IPOs")(C) or as a result of spin-offs *or under the Affiliated Company standard*, and $100,000,000 for other companies (D).

102.01C. A company must meet one of the following financial standards:

* * * * *

(IV) Affiliated Company Standard [5]

(1) Market capitalization of $500 million or greater (as evidenced by written representation from the underwriter, company, or its investment advisor);

(2) Minimum of 12 months of operations (although it is not required to have been a separate corporate entity for such period);

(3) Parent or affiliated company is a listed company in good standing (as evidenced by written representation from the company or its financial advisor excluding that portion of the balance sheet attributable to the new entity); and

(4) Parent/affiliated company retains control of the entity or is under common control* with the entity.*

** "Control" for these purposes will mean the ability to exercise significant influence over operating and financial policies, and will be presumed to exist when the parent involved holds directly or indirectly 20% or more of the entity's voting stock. Other idicia*

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the NYSE clarified the method of analysis of a listed company's good-standing status. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Belinda Blaine, Associate Director, Division of Market Regulation ("Division", SEC, dated March 24, 2000 ("Amendment No. 1").

[4] In Amendment No. 2, the Exchange proposed to apply the changes proposed in Amendment No. 1 to paragraph 102.01C, U.S. companies, to paragraph 103.01B, Non-U.S. companies. The Exchange also proposed to delete the proposed rule text from paragraph 802.01C which would have applied the Price Criteria standard to a situation which is the subject of a separate proposed rule change by the Exchange. Furthermore, the Exchange changed their request for accelerated approval to April 12 from April 10, 2000, and the Exchange expanded their explanation of the proposed rule change in the purpose section of the filing. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Belinda Blaine, Associate Director, Division, SEC, dated April 11, 2000 ("Amendment No. 2").

[5] The formatting of the components in the proposed Affiliated Company listing standard were changed from capital letters (A, B, C, and D) to numbers (1, 2, 3, and 4). Telephone conversation between James Duffy, Senior Vice President and Associate General Counsel, NYSE, and Heather Traeger, Attorney, Division, SEC, on April 12, 2000.

that may be taken into account for this purpose include board representation, participation in policymaking processes, material intercompany transactions, interchange of managerial personnel, and technological dependency. This test is taken from and intended to be consistent with generally accepted accounting principles regarding use of the equity method of accounting for an investment in common stock.

* * * * *

103.01A. A company must meet the following distribution and size requirements

* * * * *

Market value of publicly-held shares (A)—$100 million Worldwide(B)

or for companies listing under the Affiliated Company standard—$60 million Worldwide(B)

103.01B. A company must meet one of the following financial standards:

* * * * *

OR

(IV) Affiliated Company Standard[6]

(1) Market capitalization of $500 million or greater (as evidenced by written representation from the underwriter, company, or its investment advisor);

(2) Minimum of 12 months of operations (although it is not required to have been a separate corporate entity for such period);

(3) Parent or affiliated company is a listed company in good standing (as evidenced by written representation from the company or its financial advisor excluding that portion of the balance sheet attributable to the new entity); and

(4) parent/affiliated company retains control of the entity or is under common control* with the entity.*

** "Control" for these purposes will mean the ability to exercise significant influence over operating and financial policies, and will be presumed to exist when the parent involved holds directly or indirectly 20% or more of the entity's voting stock. Other indicia that may be taken into account for this purpose include board representation, participation in policymaking processes, material intercompany transactions, interchange of managerial personnel, and technological dependency. This test is taken from and intended to be consistent with generally accepted accounting principles regarding use of the equity method of accounting for an investment in common stock.*

* * * * *

[6] The formatting of the components in the proposed Affiliated Company listing standard were changed from capital letters (E, F, G, and H) to numbers (1, 2, 3 and 4). *Id.*

Section 8

Suspension and Delisting

802.01B Numerical Criteria for Capital or Common Stock.

* * * * *

Affiliated Companies—Will not be subject to the $50 million market capitalization and stockholders' equity test unless the parent/affiliated company no longer controls the entity or such parent/affiliated company itself falls below the continued listing standards in this section.

Funds will be subject to immediate suspension and delisting procedures if (1) the average market capitalization over 30 consecutive trading days is below $15,000,000 or (2) the Fund ceases to maintain its closed-end status. The Exchange will notify the fund if the average market capitalization falls below $25,000,000 and advise the fund of the delisting standard. Funds are not subject to the procedures outlined in Paras. 802.02 and 802.03.

* * * * *

802.01C Price Criteria

* * * * *

Notwithstanding the foregoing, if the subject security is a stock listed under the Affiliated Company standard where the parent remains in "control" as the term is used in that standard, the Exchange may determine whether to apply the Price Criteria to such security after evaluating the financial status of the company and/or the parent/affiliated company, as the case may be.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to add a new original listing standard and related continued listing standard to the Exchange's listing criteria.

According to the Exchange, companies in the current capital markets are employing strategies to "unlock value" in a portion of their business, particularly internet-related business. These include initial public offerings which spin-off or carve-out a subsidiary, as well as issuing "tracking stocks," *i.e.*, stocks of an issuer that are intended to track the value of a portion of the issuer's business. Currently, the Exchange lists tracking stocks as additional shares of a listed issuer, but requires carve-outs and spin-offs to separately qualify under the original listing standards, even when the transaction is similar in many respects to one involving a tracking stock. The Exchange represents that its issuers, given a substantial continuing interest in these new entities, would like to keep them listed on the Exchange, and the Exchange agrees that in many cases that would appear to be appropriate. Accordingly, the Exchange is proposing to adopt a new Affiliated Company original listing standard, and a related continuing listing standard, that would accommodate these companies. The Exchange notes that conventional "tracking stocks" will continue to be listed without specific separate financial standards as they qualify as additional classes of securities of the already listed company.

Currently, all domestic companies listing on the Exchange must meet the distribution and minimum public market capitalization standards set forth in Sections 102.01A and 102.01B of the Manual, and Non-U.S. companies must meet the standards set forth in Section 103.01A. The Exchange notes that the pertinent sections of the Manual to this proposed rule change are Sections 102.01C and 103.01B, which set forth the financial criteria an applicant must meet. In applying the proposed Affiliated Company standard, therefore, applicants must comply with Sections 102.01A and 102.01B for domestic companies and Section 103.01A for Non-U.S. companies. The proposed changes to Sections 102.01C and 103.01B, which are identical, set forth four components as the minimum listing criteria for Affiliate Companies, including: (a) that the company have a market capitalization of $500 million or greater; (b) that the company have been in operation for a minimum of 12 months; (c) that the parent or affiliated company is a listed company in good standing; and (d) that the parent/affiliated company retains control of the entity or is under common control with the entity.

First, the Exchange proposes that the market capitalization of the Affiliated

Company must be at least $500 million to ensure the entity is of a size for which the new standard is appropriate. With respect to this requirement, the Exchange will require written representation from the underwriter, company or its investment adviser, as applicable, in order to establish that the new entity will have a minimum market capitalization of $500 million. The Exchange notes that the public market value of the Affiliated Company, as with spin-offs and carve outs, for example, must be at least $60 million.

Second, the Exchange proposes a maturation component that would require a minimum of twelve months of operations prior to the new listing. In this regard, the Exchange seeks to ensure that the entity is an appropriate candidate for the new standard by demonstrating operations for at least one year. The Exchange notes that there is no requirement that the entity be a separate corporate entity for such period, as it believes that such a construct is often not utilized by large corporations with multiple operating units.

Third, the proposed standard would require a two-part test with regard to the parent or affiliated company. First, it must be a listed company in good standing. The Exchange represents that in determining whether the parent/affiliate is in good standing, it will take into consideration the portion of the business that is becoming the new company. Specifically, in determining the stockholders' equity of the parent, the portion applicable to the new entity not retained by the parent/affiliate would be deducted. The Exchange will require written representation from the underwriter, company or its investment advisor, as applicable, in order to establish that the parent/affiliate will remain in good standing following he severance of the new entity. In adopting this approach, the Exchange seeks to prevent any double counting of the value of the new entity during the listing process. Second, the parent/affiliate must retain a certain amount of control (or be under common control). The Exchange believes the appropriate threshold at which to set a presumption of control is 20%. The Exchange will evaluate all inter-locking elements between the parent and the new entity in making the determination of whether sufficient control is retained such that the Affiliated Company standard is appropriate.

In addition to the proposed initial listing standard, the Exchange is proposing two changes to its continued listings standards. To maintain listing on the Exchange, companies must exceed a conjunctive test of at least both $50 million in market capitalization and $50 million in shareholders' equity, and a stand-along market capitalization minimum of at least $15 million. With respect to companies listed under the proposed Affiliated Company standard, the conjunctive test in Section 802.01B of the Manual would only be applied in the event that the parent/affiliated company no longer controls the entity or the parent/affiliated company itself fell below the continued listing standard. In this regard, the Exchange believes that, so long as the parent is in good financial standing and control is maintained, the new entity should be subject only to the minimum standard of $15 million in market capitalization.

The second proposed change to the continued listing standards pertains to Section 802.01C of the Manual. This section imposes a $1 Price Criteria, so that a security for which the stock price has fallen below $1 would be considered by the Exchange to be below continued listing standards. Again, the Exchange believes that, so long as the control elements continue to be in place, the application of the Price Criteria may not necessarily be appropriate. In this regard, the Exchange will evaluate the financial status of both the new company and the parent/affiliated company.[7]

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with the requirement under Section 6(b)(5) of the Act;[8] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange solicited comments from its Legal Advisory Committee and Listed Company Advisory Committee. All comments received from the two Committees were in support of the proposed amendments.[9] The sole written comment support the proposal because transactions that result in Affiliated companies "maximize value and return to operational units of a more controllable size."[10] This commenter also stated that fees on Affiliated Company listings should be addressed at some point, and suggested that there should be a notion of a segregated operational unit, division, or management in addition to the 12 months of operating results.[11] In addition, this commenter questioned whether the 12-month benchmark is sufficient.[12]

In response to this commenter, the Exchange stated that it will address the issue of fees separately, and noted that most divisions that evolve into separate entities are segregated with a management structure in place in the particular division.[13] The Exchange further stated that it believes 12 months provides a sufficient benchmark as it would allow for an adequate gauge of credibility that the division was not formed solely to effectuate the transaction.[14]

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No.

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[7] The Exchange notes that a similar change has been proposed regarding applicability of the Price Criteria to second classes of securities. This proposed change has been filed with the Commission (SR–NYSE–00–08).

[8] 15 U.S.C. 78f(b)(5).

[9] The Exchange noted that all comments were verbal, with the exception of one written comment received via electronic mail. *See* Amendment No. 1, *supra* note 3.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

SR–NYSE–00–12 and should be submitted by May 11, 2000.

IV. Commission's Findings and Order Granting Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b)(5),[15] because the proposed rule is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.[16]

Specifically, the Commission believes that the Exchange's proposed Affiliated Company listing standard and related continuing listing standard will permit the Exchange, without compromising the effectiveness of the Exchange's listing standards, to retain the listings of its issuer's carve-outs, spin-offs or "tracking stocks" that meet the requirements of the Affiliated Company standard. The Commission further believes that the proposed rule change, as amended, is consistent with the Exchange's obligation to remove impediments to and perfect the mechanism of a free and open market by providing the NYSE with greater flexibility in determining which equity securities warrant inclusion in its market. As such, the proposal should allow the Exchange to add listings based on the prospective entity's relationship with an NYSE listed company in good standing that otherwise might not qualify under its current original listing criteria.

The NYSE has requested that the Commission find good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Exchange requested that the Commission accelerate the effective date of the proposed rule change so that issuers engaged in transactions that would result in Affiliated Companies could avail themselves of the new standard by April 12, 2000.[17] The Commission believes that it is reasonable to permit the Exchange to implement the new standard by April 12, 2000, as it would allow issuers currently engaged in such transactions to avail themselves of the new listing standards after such date. Accordingly, the Commission finds good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,[18] to approve the proposed rule change, as amended, on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–NSYE–00–12), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–9916 Filed 4–19–00; 8:45 am]

BILLING CODE 8010–01–M

[15] 15 U.S.C. 78f(b)(5).

[16] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] *See* Amendment No. 2, *supra* note 4.

[18] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42689; File No. SR–NYSE–99–30]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the New York Stock Exchange, Inc. Relating to NYSE's Procedures for Delisting a Security and Related Issuer Appeals

April 13, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 23, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change. The Exchange submitted Amendment No. 1 to its proposal on December 27, 1999,[3] Amendment No. 2 on March 9, 2000,[4] and Amendment No. 3 on March 26, 2000.[5] The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Exchange's *Listed Company Manual* ("Manual") and NYSE Rule 499 regarding the Exchange's procedures for delisting a security and the accompanying appeals process available to the issuer. The text of the proposed rule change follows. New text is *italicized* and deleted text is bracketed.

804.00 Procedure for Delisting

• If the Exchange staff should determine that a security be removed from the list, it will so notify the issuer in writing, describing the basis for such decision and the specific policy or criterion under which such action is to be taken. *The Exchange will simultaneously (1) issue a press release disclosing the company's status and basis for the Exchange's determination and (2) begin appending a suffix to the security's ticker symbol identifying the security's status.*

• *The* [Such] notice *to the issuer* shall also inform the issuer of its right to a *review of the determination by* [hearing before] a Committee of the Board of Directors of the Exchange (*comprised of a majority of public Directors*), provided a written request for such a *review* [hearing] is filed with the Secretary of the Exchange within *ten business* [twenty] days after receiving the aforementioned notice. *Such review will be conducted on the next monthly Review Day which is at least 25 business days from the date the request for review is filed with the Secretary of the Exchange. If the next Review Day is in less than 25 business days, the review will be scheduled for the following Review Day.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange withdrew its request for implementation of a pilot program on an accelerated basis, provided an opportunity for an issuer to request a hearing (which a committee could grant or deny), and added a specific day each month on which committee members would be available to conduct reviews. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 21, 1999 ("Amendment No. 1").

[4] In Amendment No. 2, the Exchange proposed the following additional changes to: (1) give issuers ten business days in which to notify the Exchange of an intent to appeal: (2) run the notice and document submission time period consecutively; (3) expand the hearing cycle period from twenty business days to twenty-five business days; and (4) clarify in its rule language that the Committee would be comprised of a majority of public directors for purposes of delisting appeals. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division, Commission, dated March 7, 2000 ("Amendment No. 2").

[5] In Amendment No. 3, the Exchange made technical changes to its proposed rule language. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE to Belinda Blaine, Associate Director, Division, Commission, dated March 23, 2000 ("Amendment").

• If the issuer does not request a *review* [hearing] within the specified period, *the Exchange shall suspend trading in the security and* an application shall be submitted by the Exchange [S]staff to the Securities and Exchange Commission to strike the security from listing and a copy of such application shall be furnished to the issuer in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder.

• If a *review* [hearing] is requested, the *review will be conducted by* [hearing will be held before] a Committee of the Board of Directors [, consisting of at least three public Directors and three industry Directors]. *A request for review will ordinarily stay the suspension of the subject security pending the review, but the Exchange staff may immediately suspend from trading any security pending review should it determine that such immediate suspension is necessary or appropriate in the public interest, for the protection of investors, or to promote just and equitable principles of trade.* [The issuer and the Exchange staff will be given at least 15 days written advance notice of the time and date of this hearing.]

• Any brief or memorandum dealing with the issuer's or the Exchange [S] staff's position as well as any other written material which the aforementioned parties want the Committee to consider *must be received by* [should be submitted to] the Office of the General Counsel of the Exchange *within 17 business days from the date the issuer receives the notice of its right to a review* [at least ten days prior to the date of the hearing] so that such material can be furnished [for review] to the members of the Committee[, the issuer, and the Exchange Staff]. *Each party must also serve such materials on its counterparty simultaneously with the submission to the Office of the General Counsel of the Exchange. The counterparty service must be made in the same manner as such material is filed with the Office of the General Counsel of the Exchange.*

• *The Committee, in its sole discretion upon written motion or either party or upon its own motion, may extend any of the time periods specified above and may permit the parties to make oral presentations on their Review Day in accordance with such procedures as the Committee may specify at the time. If the Committee denies a request by either party to make an oral presentation, its reason for doing so must be included in its written decision on the review, which decision is provided to all parties.* [At the hearing,the issuer and the Exchange [S] staff must prove their respective cases by presenting testimony, evidence, and argument to the Committee. Both parties may present any witnesses they wish and all those witnesses and parties who testify are subject to cross examination by the opposing side and questioning from the members of the Committee. The form and manner in which the actual hearing will be conducted will be established by the Committee so as to assure the orderly conduct of the proceeding. At the hearing, the Committee may require the parties to furnish additional written information which has come to its attention.]

• *If* [After the conclusion of the proceeding,] the Committee *decides* [shall make its decision. If said decision is] that the security of the issuer *should* be removed from listing, *the Exchange shall suspend trading in the security as soon as practicable and* an application shall be submitted by the Exchange to the Securities and Exchange Commission to strike the security from listing and registration and a copy of such application shall be furnished to the issuer in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder. If the *Committee decides* [decision is] that the security should not be removed from listing, the issuer will receive from the Exchange a notice to that effect.

* * * * *

807.00 Voluntary Transfer to Another Exchange by a Company that Falls Below Criteria for Continued Listing

Where a company falls below the criteria for continued listing, the Exchange will permit the company, by action of its Board of Directors, to voluntarily transfer its listing, and/or its principal market to another national securities exchange and cooperate with the company and the other exchange in order to avoid any interruption in trading. *During this transition, the Exchange will append an identifier suffix to the ticker symbols of the securities of the issuer identifying the securities/status.*

* * * * *

NYSE Constitution and Rules

* * * * *

Delisting of Securities, Suspension From Dealings or Removal From List by Action of the Exchange

* * * * *

Rule 499 Securities admitted to the list may be suspended from dealings or removed from the list at any time.

* * * Supplementary Material:

* * * * *

.70 Procedure for Delisting.—

a. If [New Listings and Corporation Liaison] *the Exchange staff* should determine that a security be delisted, it will so notify the issuer in writing, describing the basis for such decision and the specific delisting policy or criteria under which such action is to be taken. *The Exchange will simultaneously (1) issue a press release disclosing the company's status and basis for the Exchange's determination and (2) begin appending a suffix to the security's ticker symbol identifying the security's status.* [Such] *The* notice *to the issuer* shall also inform the issuer of its right of a *review of the determination by* [hearing before] a Committee of the Board of Directors of the Exchange (*comprised of a majority of public Directors*), provided a written request for such *a review* [hearing] is filed with the Secretary of the Exchange within *ten business* [twenty] days after receiving the aforementioned notice. *Such a request will ordinarily stay the suspension of the subject security pending the review, but the Exchange may immediately suspend from trading any security pending review should it determine that suspension is necessary or appropriate in the public interest, for the protection of investors, or to promote just and equitable principles of trade.*

b. If the issuer does not request a *review* [hearing] within the specified period, *the Exchange shall suspend trading in the security and* an application shall be submitted by the Exchange to the Securities and Exchange Commission to strike the security from listing and a copy of such application shall be furnished to the issuer in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder.

c. If a *review* [hearing] is requested, the [hearing will be held before] *review will be conducted by* a Committee of the Board of Directors[, consisting of at least three public Directors and three industry Directors. The issuer and New Listings and Corporate Liaison will be given at least fifteen days' written advance notice of the time and date of the aforesaid hearing]. *Such review will be conducted on the next monthly Review Day which is at least 25 business days from the date the request for review is filed with the Secretary of the Exchange. If the next Review Day is in less than 25 business days, the review will be scheduled for the following Review Day.*

d. Any brief or memorandum dealing with the issuer's or [New Listings and Corporate Liaison] *the Exchange staff*

position as well as any other written material which the aforementioned parties want the Committee to consider *must be received by* [should be submitted to] the Office of the General Counsel of the Exchange *within seventeen business days from the date the issuer receives the notice of its right to a review* [at least ten days prior to the date of the hearing] so that such material can be furnished [for review] to the members of the Committee[, the issuer, and New Listings and Corporate Liaison]. *Each party must also serve such materials on its counterparty simultaneously with the submission to the Office of the General Counsel of the Exchange. The counterparty service must be made in the same manner as such material is filed with the Office of the General Counsel of the Exchange.*

e. The Committee, in its sole discretion upon written motion of either party or upon its own motion, may extend any of the time periods specified above and may permit the parties to make oral presentations on their Review Day in accordance with such procedures as the Committee may specify at the time. If the Committee denies a request by either party to make an oral presentation, its reason for doing so must be included in its written decision on the review, which decision is provided to all parties.

[e. At the hearing, the issuer and New Listings and Corporate Liaison must prove their respective cases by presenting testimony, evidence, and argument to the Committee. Both parties may present any witnesses they wish and all those witnesses and parties who testify are subject to cross examination by the opposing side and questioning from the members of the Committee. The form and manner in which the actual hearing will be conducted will be established by the Committee so as to assure the orderly conduct of the proceeding. At the hearing, the Committee may require the parties to furnish additional written information which has come to its attention.]

f. If [After the conclusion of the proceeding,] the Committee *decides* [shall make its decision. If said decision is] that the security of the issuer be removed from listing, *the Exchange shall suspend trading in the security as soon as practicable and* and application shall be submitted by the Exchange to the Securities and Exchange Commission to strike the security from listing and a copy of such application shall be furnished to the issuer in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder. If the *Committee decides* [decision is] that the security should not be removed from listing, the issuer will receive from the Exchange a notice to that effect.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to modify the Exchange's procedures with regard to (1) delisting a security and (2) the issuer's appeal. This proposed rule change both streamlines the appeal process and ensures notification to the public when the Exchange staff determines a security warrants the implementation of suspension and delisting procedures.

The Exchange has found that too much time sometimes elapses between identification of a company as not meeting the continued listing requirements and the suspension of its securities from trading, as well as between the suspension from trading of a security and the Exchange's subsequent application to the Commission to delist the security. In addition, the Board Committee that hears appeals of companies which have been suspended, has expressed concern that the delisting decision has often already been made and their oversight is more a review of staff decisions as opposed to consideration of an appeal by the company. The Exchange believes that it has already tightened its procedures regarding monitoring and delisting of companies falling below the Exchange's continued listing criteria in a filing that was approved by the Commission on June 9, 1999.[6] In addition, to expedite the Exchange's internal review process, the Committee for Review of the Exchange's Board of Directors, which hears delisting appeals by issuers, would be streamlined to consist of its Public Directors and one of its Industry Directors and would be permitted to meet by telephone without seeking the permission of the Chairman of the Board.

The Exchange also has determined that investors should be promptly informed if a company is identified as one that warrants commencement of suspension and delisting procedures. Thus, simultaneously with providing the company with notice and an opportunity to appeal, the Exchange proposes to issue a press release disclosing the status of the company and the rationale for the determination. The Exchange also proposes to append an identifier suffix to ticker symbols of securities that have been determined by Exchange staff as warranting suspension and delisting. Finally, in a change that both addresses the timing issue and responds to the anomaly of hearing an issuer's listing appeal *after* the suspension in trading, the appeal would also generally stay the suspension of trading. Reviews would be conducted on the next monthly review day, which is at least 25 business days from the date the issuer's request for review is filed with the Exchange.[7]

Specifically, with regard to the changes to the appeal process and the implementation of a press release requirement, the Exchange proposes to amend the Manual and NYSE Rule 499 as follows:

1. Implement a press release process triggered by a staff decision to suspend and delist security;

2. Clarify that a request for appeal would stay the suspension unless the staff determines that a stay is contrary to the interest of the public and investors;

3. Specify that issuers can request before the Committee for Review and that the Committee may grant or deny such request, provided that an explicit rationale for a denial is provided.[8]

4. Shorten the time periods relating to the appeal process such that (a) the issuer must notify the Exchange of its intent to appeal within ten business days of receiving notice that the Exchange staff has determined that its security should be delisted and (b) written submissions must be served within seventeen business days from the date the issuer received notice of its right to review,[9] and

5. Clarify that counterparty service is the responsibility of each party (not the Office of the General Counsel) and that

[6] *See* Securities Exchange Act Release No. 41502, 64 FR 32588 (June 17, 1999).

[7] *See* Amendment No. 2, *supra* note 4.

[8] *See* Amendment No. 1, *supra* note 3. The Committee's denial could ultimately be grounds for an appeal to the Commission. *Id.*

[9] *See* Amendment No. 2, *supra* note 4.

such service must be made in the same manner as service on the Office of the General Counsel.

With regard to the identifier suffix, the Exchange proposes to amend the Manual in two sections. First, Para. 804 would be amended to specify that once Exchange staff determines that a security should be removed from the list, the Exchange would not only issue the current requisite press release, but also would begin appending the identifier suffix to the security's ticker symbol to indicate that is has commenced proceedings to suspend and delist the security. Second, Para. 807 would be amended to specify that during a transition to another market, the identifier suffix would be appended.

2. Statutory Basis

The Exchange believes that the basis under the Act for the proposed rule change is the requirement under section 6(b)(5) [10] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

[10] 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to SR–NYSE–99–30 and should be submitted by May 11, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [11]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–9918 Filed 4–19–00; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before June 19, 2000.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Kenneth D. Simonson, Senior Economic Advisor, Office of Advocacy, Small Business Administration, 409 3rd Street, SW, Suite 7800, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Simonson, Senior Economic Advisor, 202–205–6973 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: "Value of Worker Training Programs to Small Business".

Form No: N/A.

Description of Respondents: Small and Large Businesses.

Annual Responses: 2,400.

Annual Burden: 1,244.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 00–9852 Filed 4–19–00; 8:45 am]

BILLING CODE 8025–01–P

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–6942]

Commercial Fishing Safety Listening Sessions

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; Change of location.

SUMMARY: The location of the Coast Guard Commercial Fishing Vessel Safety Action Plan Listening Session, on Saturday, May 20, 2000, from 10 a.m. to 2 p.m. has been changed. The meeting has been moved from the Italian American Club, 1903 Cabrillo Avenue, San Pedro, California to Canetti's Seafood Grotto, 309 East 22nd Street, San Pedro, California.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Lieutenant Jennifer Williams, or Ensign Chris O'Neal, telephone 202–267–2008, fax 202–267–0506.

SUPPLEMENTARY INFORMATION: Original notice of this meeting was published in the **Federal Register**, Volume 65, Number, March 16, 2000.

Dated: April 13, 2000.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 00–9936 Filed 4–19–00; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the information collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. Described below is the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection was published in 65 FR 645, January 5, 2000. Comments were received and addressed by MARAD.

DATES: Comments must be submitted on or before May 22, 2000.

FOR FURTHER INFORMATION CONTACT: John T. Marquez, Jr., Office of the Chief Counsel, Maritime Administration, 400 Seventh Street, SW, Room 7228, Washington, DC 20590, telephone number 202–366–5320. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration.

Title of Collection: "Eligibility of U.S.-Flag Vessels of 100 Feet or Greater In Registered Length to Obtain a Fishery Endorsement to the Vessel's Documentation".

OMB Control Number: 2133–NEW.

Type of Request: Approval of a new information collection.

Affected Public: Vessel Owners, Charterers, Mortgagees, Mortgage Trustees, and Vessel Managers of vessels of 100 feet or greater in registered length for which a fishery endorsement to the vessel's documentation is being sought.

Form(s): None.

Abstract: In accordance with the American Fisheries Act of 1998 (AFA), owners of vessels of 100 feet or greater in registered length who wish to obtain a fishery endorsement to the vessel's documentation will be required to file an Affidavit of United States Citizenship demonstrating that they comply with the requirements of section 2 of the Shipping Act of 1916, 46 App. U.S.C. 802. Other documentation to be submitted with the Affidavit includes a copy of the Articles of Incorporation, Bylaws or other comparable documents, a description of any management agreements entered into with Non-Citizens, a certification that any management contracts with Non-Citizens do not convey control in a fishing vessel, fish processing vessel, or fish tender vessel to a Non-Citizen, and a copy of any time charters or voyage charters with Non-Citizens.

The information collection is necessary for MARAD to determine that a given vessel is owned and controlled by Citizens of the United States in accordance with the requirements of the AFA and, therefore, is eligible to be documented with a fishery endorsement to its documentation. The information may also be used to determine whether the vessel owner, charterer, processor or other entity has violated harvesting and processing caps imposed under section 210(e)(1) and (2) of the AFA, and whether there is a conflict with an international treaty or agreement that would result in an exemption from the requirements of the rule for a particular vessel owner or mortgagee.

Annual Estimated Burden Hours: 2950 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention MARAD Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Dated: April 17, 2000.

Edmund T. Sommer, Jr.,

Acting Secretary, Maritime Administration.

[FR Doc. 00–9933 Filed 4–19–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 10, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 22, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1672.

Regulation Project Number: REG–209135–88 NPRM and Temporary.

Type of Review: Extension.

Title: Certain Asset Transfers to Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs).

Description: The regulation applies with respect to the net built-in gain of C corporation assets that become assets of a Regulated Investment Company (RIC) or Real Estate Investment Trust (REIT) by the qualification of a C corporation as a RIC or REIT or by the transfer of assets of a C corporation to a RIC or REIT in a carryover basis transaction. The regulation generally requires the corporation to recognize gain as if it had sold the assets at fair market value and immediately liquidated. The regulations permit the transferee RIC or REIT to elect, in lieu of liquidation treatment, to be subject to the rules of section 1374 of the Internal Revenue Code and the regulations thereunder. In order to obtain the benefit of a section 1374 election, the taxpayer is required to make a statement indicating that it elects to be subject to the rules of section 1374 and the regulations thereunder.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Other (once).

Estimated Total Reporting Burden: 50 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New

Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–9871 Filed 4–19–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 11, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 22, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0887.

Form Number: IRS Form 8281.

Type of Review: Extension.

Title: Information Return for Publicly Offered Original Issue Discount Instruments.

Description: Form 8281 is filed by the issuer of a publicly offered debt instrument having Original Issue Discount (OID). The information is used to update Publication 1212, "List of Original Issue Discount Instruments.

Estimated Number of Respondents/ Recordkeepers: 500.

ESTIMATED BURDEN HOURS PER RESPONDENT/RECORDKEEPER

Recordkeeping	5 hr., 1 min.
Learning about the law or the form.	30 min.
Preparing, copying, assembling, and sending the form to the IRS.	37 min.

Frequency of Response: On occasion, Annually.

Estimated Total Reporting/ Recordkeeping Burden: 3,065 hours.

OMB Number: 1545–1518.

Form Number: IRS Form 5498–MSA.

Type of Review: Extension.

Title: MSA or Medicate+Choice MSA Information.

Description: Form 5498–MSA is used to report contributions to a medical savings account as set forth in section 220(h).

Estimated Number of Respondents: 16,442.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 6,988 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–9872 Filed 4–19–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 13, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 22, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1605.

Revenue Ruling Number: Revenue Ruling 2000–8.

Type of Review: Extension.

Title: Negative Elections in Section 401(k) Plans.

Description: Revenue Ruling 2000–8 describes certain criteria that must be met before an employee's compensation can be reduced and contributed to an employer's section 401(k) plan in the absence of an affirmative election by the employee.

Estimated Number of Respondents: 1,500.

Estimated Burden Hours Per Respondent: 1 hour, 10 minutes.

Frequency of Response: On occasion, Annually.

Estimated Total Reporting Burden: 1,750 hours.

OMB Number: 1545–1673.

Revenue Procedure Number: Revenue Procedure 2000–16.

Type of Review: Extension.

Title: Employee Plans Compliance Resolution System.

Description: The information requested in this revenue procedure is required to enable the Commissioner, Tax Exempt and Government Entities Division of the Internal Revenue Service to make determinations on the issuance of various types of closing agreements and compliance statements. The issuance of these agreements and statements allows individual plans to maintain their tax-qualified status. As a result, the favorable tax treatment of the benefits of the eligible employees is retained.

Estimated Number of Respondents/ Recordkeepers: 4,242.

Estimated Burden Hours Per Respondent/Recordkeeper: 14 hours, 32 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 61,697 hours.

OMB Number: 1545–1674.

Revenue Procedure Number: Revenue Procedure 2000–20.

Type of Review: Extension.

Title: Master and Prototype Plans.

Description: The master and prototype revenue procedure sets forth the procedures for sponsors of master and prototype pension, profit-sharing and annuity plans to request an opinion letter from the Internal Revenue Service that the form of a master or prototype plan meets the requirements of section 40(a) of the Internal Revenue Code. The information requested in sections 5.14, 9.11, 12.02, 12.03, 15.02, 17.02, 18.06, 19.02 and 19.09 of the master and prototype procedure is in addition to the information required to be submitted with Forms 4461 (Application for Approval of Master or Prototype and Regional Prototype Defined Contribution Plan); 4461–A (Application for Approval of Master or Prototype and Regional Prototype Defined Benefit Plan); and 4461–B (Application for Approval of Master or Prototype Plan (Mass Submitter Adopting Sponsor)). The information is needed in order to enable the Employee Plans function of the Service's Tax Exempt and Government Entities Division to issue an opinion letter.

Estimated Number of Respondents: 266,530.

Estimated Burden Hours Per Respondent: 1 hour, 32 minutes.

Frequency of Response: On occasion.
Estimated Total Reporting Burden: 408,563 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 00–9873 Filed 4–19–00; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service; Meeting

AGENCY: Department Offices, Treasury.
ACTION: Notice of meeting.

SUMMARY: This notice announces the date and time for the next meeting and the provisional agenda for consideration by the Committee.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on Friday, May 5, 2000 at 8:30 a.m. at the Seaport Hotel, One Seaport Lane, Boston, MA 02210, Tel.: (617) 385–4000 or 1–877–SEAPORT. The duration of the meeting will be approximately four hours.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Under Secretary (Enforcement), Room 4004, Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Washington, D.C. 20220. Tel.: (202) 622–0220. Final meeting details, including the meeting time, location, and agenda, can be confirmed by contacting the office indicated above one week prior to the meeting date.

Agenda

At the May 5, 2000 session, the regular quarterly meeting of the Advisory Committee, the Committee is expected to pursue the following agenda. The agenda may be modified prior to the meeting.

1. Reports on Subcommittee progress:
   (a) Study of Merchandise Processing Fee
   (b) Study of Compliance Assessment Team (CAT) methodology
2. Customs entry procedure revision project (ERP)
3. Update on Automation
4. Status of the "Tin Man" in-bond program and discussion of the results of the statistical sampling.

SUPPLEMENTARY INFORMATION: The meeting is open to the public; however, participation in the Committee's deliberations is limited to Committee members and Customs and Treasury Department staff. A person other than an Advisory Committee member who wishes to attend the meeting should give advance notice by contacting Theresa Manning at (202) 622–0220, no later than April 28, 2000.

Dated: April 14, 2000.
Dennis M. O'Connell,
Acting Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement).
[FR Doc. 00–9879 Filed 4–19–00; 8:45 am]
BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974, as Amended; System of Records

AGENCY: Internal Revenue Service, Treasury.
ACTION: Notice of Proposed New Privacy Act System of Records.

SUMMARY: The Treasury Department, Internal Revenue Service, gives notice of a proposed new system of records entitled "Criminal Investigation Audit Trail Records System—Treasury/IRS 46.051," which is subject to the Privacy Act of 1974, 5 U.S.C. 552a. This proposed system has been developed to enable the Criminal Investigation Division to analyze computer system usage and identify potential security violations. It is further proposed to have the system exempt from meeting certain requirements of the Privacy Act of 1974.

DATES: Comments must be received no later than May 22, 2000. This new system of records will be effective May 30, 2000, unless comments are received which result in a contrary determination.

ADDRESSES: Comments should be sent to the Office of Governmental Liaison and Disclosure, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. Comments will be made available for inspection and copying in the Freedom of Information Reading Room upon request.

FOR FURTHER INFORMATION CONTACT: Fu-An Chao, Chief, Systems Development and Support, Criminal Investigation, (202) 622–7803.

SUPPLEMENTARY INFORMATION: The Internal Revenue Service's Criminal Investigation Division seeks to establish and maintain the proposed new system of records as a more comprehensive means of performing its responsibilities.

Criminal Investigation carries out many law enforcement related functions. Among Criminal Investigation's principal responsibilities are investigating and referring for prosecution criminal cases, centering largely on violations of tax laws, including income tax evasion, refund fraud, and other crimes contributing to the federal tax gap. Criminal Investigation also investigates violations of certain money laundering laws.

Many of these law enforcement related functions have been automated and are available on Criminal Investigation computer systems. To ensure the integrity of the system data, audit records are maintained to identify all events that occur while users attempt to access or use the computer system or the applications. This system will identify the sequence of events that occurred while an individual is logged onto the system.

Due to the nature of information collected, the Criminal Investigation Audit Trail Records System will automatically identify law enforcement related information.

The Criminal Investigation Audit Trail Records System produces an output record that identifies user names, times logged into the system, and sequences of events which occurred, while logged into the system, or attempting to log onto the system, and investigatory files accessed. Once the output record is created, it is sent to the National Office for review. This enables the security staff to determine if any irregular activities or patterns are occurring. Individuals who are detected by the audit logs of irregular activities or patterns may be adversely affected up to and including prosecution for unauthorized access to government records.

The Internal Revenue Service is giving public notice of a proposed rule to exempt this system of records from certain provisions of 5 U.S.C. 552a pursuant to subsections (j)(2) and (k)(2). A proposed rule is being published separately in the **Federal Register**. The exemption is intended to comply with legal prohibitions against the disclosure of certain kinds of information and to protect certain information on individuals maintained in this system of records.

The new system of records report, as required by 5 U.S.C. 552a (r) of the Privacy Act, has been submitted to the Committee on Government Reform in the House of Representatives, the

Committee on Governmental Affairs in the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996.

The proposed IRS system of records, "Criminal Investigation Audit Trail Records System—Treasury /IRS 46.051," is published in its entirety below.

Dated: March 7, 2000.

Shelia Y. McCann,

Deputy Assistant Secretary (Administration).

Treasury /IRS 46.051

SYSTEM NAME:

Criminal Investigation Audit Trail Records System—Treasury /IRS 46.051

SYSTEM LOCATION:

Records are located at the Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. Other locations of these records are: Automated Criminal Investigation Project Office, located in Florence, Kentucky; Internal Revenue Service Areas of Investigation, Criminal Investigation District Offices, and Internal Revenue Service Posts of Duty. (See IRS Appendix A for addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who use or attempt to use the IRS Criminal Investigation computer systems; log onto the Criminal Investigation system; use the Criminal Investigation applications; use the Criminal Investigation operating system, or log off the Criminal Investigation computer are covered by this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

This is an electronic data base which captures system use information such as: date and time a user initiated or attempted to initiate a session on the system; date and time of all unsuccessful system accesses; date and time of data or system file accesses; date and time of privileged security actions on the system, and date and time of system logoff by a user.

Criminal Investigation application audit trail records may contain information regarding system or application access for any of the following Criminal Investigation files: CIMIS, 46.002; Confidential Informants, Criminal Investigation Division, 46.003; Electronic Surveillance File, 46.005; and Centralized Evaluation and Processing of Information Items, 46.009.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 6103, 7213, 7213A, 7214, 7602, 7608, 7801, and 7803; 18 U.S.C. 1030(a)(2)(B).

PURPOSE:

The Criminal Investigation Division of the Internal Revenue Service established this system to enable the division to monitor and analyze usage of its computer system. The system will provide information showing: (1) The system users; (2) the times of use for each user; (3) the areas of the system being accessed by each user; (4) unauthorized access by Criminal Investigation employees; and (5) access, or attempted access, by persons other than Criminal Investigation employees. System uses include reading, adding, deleting, and/or modifying data and system records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

Disclosure of records and information from this system may be disclosed only as provided by 26 U.S.C. 6103 and 18 U.S.C. 1030(a)(2)(B). Records other than returns and return information may be used:

(1) To disclose pertinent information to appropriate federal, state, local, or foreign agencies responsible for investigating or prosecuting the violation or potential violation of civil or criminal law or regulations.

(2) To disclose information in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear when: (a) The agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged.

(3) To provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

(4) To provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(5) To provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, the Merit Systems Protection Board, arbitrators, the Federal Labor Relations Authority, and other parties responsible for the administration of federal labor actions or grievances or conducting administrative hearings or appeals or if needed in the performance of other authorized duties.

(6) To disclose to the Department of Justice for the purpose of litigating an action or seeking legal advice.

(7) To disclose to a defendant in a criminal prosecution, the Department of Justice, or a court of competent jurisdiction where required in criminal discovery or by the Due Process Clause of the Constitution.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic and magnetic media and paper.

RETRIEVABILITY:

Records are retrievable by user name.

SAFEGUARDS:

Protection and control of any sensitive but unclassified information or records are in accordance with Department of the Treasury Security Manual, TD P 71–10 and Internal Revenue Manual, IRM 2.1.10, Automated Information System Security, and Internal Revenue Manual, IRM 1(16)00, Physical Security Handbook, as well as internal CI Policy. The Criminal Investigation Audit Trail Records System is contained in an operating system, which has been rated as C2 compliant. All system access is controlled with the use of passwords and only Criminal Investigation personnel who have been assigned a "need-to-know" can access system data. The computers that operate the System are in secure space, housed in a Federal Building with 24-hour security.

RETENTION AND DISPOSAL:

Records are maintained, administered and disposed of in accordance with Internal Revenue Manual (IRM) 1.15; 1.15.1 Records Administration Handbook, 1.15.2 Records Disposition Handbook, 1.15.3 General Records Handbook, and 1.15.4 Files Management Handbook.

SYSTEM MANAGER(S) AND ADDRESS:

The official prescribing policies and practices is the Assistant Commissioner, Criminal Investigation, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, 20224. The

organization responsible for maintaining the system is Systems Development and Support, Criminal Investigation Representative.

NOTIFICATION PROCEDURE:

This system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

This system of records may not be accessed for purposes of inspection by an individual to determine if there exists a record pertaining to him or her, and/or to view the contents of the records.

CONTESTING RECORD PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records contains investigatory material compiled for law enforcement purposes whose sources need not be reported.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), and (k)(2).

[FR Doc. 00–9870 Filed 4–19–00; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special-Disabilities Programs; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Prosthetics and Special-Disabilities Programs (Committee) will be held Monday and Tuesday, May 8–9, 2000, at VA Headquarters, Room 930, 810 Vermont Avenue, NW, Washington, D.C. The May 8 session will convene at 8:00 a.m. and adjourn at 4 p.m. and the May 9 session will convene at 8:00 a.m. and adjourn at 12:00 noon. The purpose of the Committee is to advise the Department on its prosthetic programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Committee also advises the Department on special disability programs which are defined as any program administered by the Secretary to serve veterans with spinal cord injury, blindness or vision impairment, loss of or loss of use of extremities, deafness or hearing impairment, or other serious incapacities in terms of daily life functions.

On the morning of May 8, the Committee will receive briefings by the National Program Directors of the Special-Disabilities Programs regarding the status of their activities over the last seven months. In the afternoon, a GAO representative will give a briefing on the GAO Draft Report regarding VA Health Care: Better Data and Accountability Needed For Care for Disabled Veterans. On the morning of May 9, the Committee will review the final draft report on implementation of the Veterans' Health Care Eligibility Reform Act of 1996 as it pertains to the legislative requirement to maintain capacity to meet specialized needs of disabled veterans. The Committee will have the opportunity to ask questions and provide input to the final draft report.

The meeting is open to the public. For those wishing to attend, contact Kathy Pessagno, Veterans Health Administration (113), phone (202) 273–8512, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, D.C. 20420, prior to May 5, 2000.

Dated: April 5, 2000.

Marvin Eason,

Committee Management Officer.

[FR Doc. 00–9858 Filed 4–19–00; 8:45 am]
BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group, Notice of Availability of Annual Report

Under Section 10(d) of Public Law 92–463 (Federal Advisory Committee Act), notice is hereby given that the Annual Report of the Department of Veterans Affairs Special Medical Advisory Group for Fiscal Year 1999 has been issued.

The report summarizes activities of the Group relative to the care and treatment of disabled veterans and other matters pertinent to the Department of Veterans Affairs, Veterans Health Administration. It is available for public inspection at two locations:

Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, D.C. 20540

and

Department of Veterans Affairs, Office of the Under Secretary for Health, VA Central Office, Room 805, 810 Vermont Avenue, N.W., Washington, D.C. 20420

Dated: April 3, 2000.

By Direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 00–9857 Filed 4–19–00; 8:45 am]
BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 65, No. 77
Thursday, April 20, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

5 CFR Chapter LXXIII

RIN 3209-AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of Agriculture

Correction

In rule document 00–7275 beginning on page 15825 in the issue of Friday, March 24, 2000, make the following correction:

§8301.103 [Corrected]

On page 15830, i § 8301.103(d)(2), in the first column, in the third line "(l)(1)" should read "(d)(1)".

[FR Doc. C0–7275 Filed 4–19–00; 8:45 am]
BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42516 / March 10, 2000, File No. 4-430]

Order Extending the Deadline for Compliance with Portions of the Commission's January 28, 2000, Order Directing the Exchanges and the National Association of Securities Dealers, Inc. to Submit a Decimalization Implementation Plan Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934

Correction

In notice document 00–6608, appearing on page 14637, in the issue of Friday, March 17, 2000, make the following correction:

On page 14637, in the second column, the docket number is corrected to read as set forth above.

[FR Doc. C0– 6608 Filed 4–19–00; 8:45 am]
BILLING CODE 1505-01-D

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Federal Register

Thursday,
April 20, 2000

Part II

Office of Management and Budget

North American Industry Classification System—Update for 2002; Notice

OFFICE OF MANAGEMENT AND BUDGET

North American Industry Classification System—Update for 2002

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of solicitation of comments on the Economic Classification Policy Committee's recommendations for the 2002 revision of the North American Industry Classification System.

SUMMARY: Under Title 44 U.S.C. 3504(e), the Office of Management and Budget (OMB) seeks public comment on the advisability of adopting the proposed North American Industry Classification System (NAICS) updates for 2002. OMB's Economic Classification Policy Committee (ECPC) recommends an update of the industry classification system to extend the harmonized three-country classification structure to construction and to recognize important changes in the retail trade and information sectors. In addition, as an interim measure in the United States, the ECPC recommends restructuring of the Wholesale Trade sector to reflect differences in production functions and to capture more accurately the rapidly-growing business-to-business electronic markets developing in the United States.

This notice: (1) Summarizes the background for the proposed revisions to NAICS 1997 in Part I; (2) contains a summary of public comments in Part II; (3) details the proposed structure changes agreed upon by the three countries in Part III; and (4) provides a comprehensive listing of proposed changes for national industries and their link to NAICS 1997 industries in Part IV.

OMB published a notification of intention to complete portions of NAICS in a February 25, 1999, **Federal Register** notice (64 FR 9416–9419). That notice solicited comments on the advisability of revising the NAICS 1997 structure for 2002 and solicited comments on the creation of new industries in the Construction and Wholesale Trade Sectors, modifications to the national industries for department stores and nonstore retailers, and other changes identified as necessary during the initial implementation of NAICS 1997. The deadline for submitting comments was April 26, 1999.

After considering all proposals from the public, consulting with a large number of U.S. data users and industry groups, and undertaking extensive discussions with Statistics Canada and Mexico's Instituto Nacional de Estadística, Geografía e Informática (INEGI), the ECPC, INEGI, and Statistics Canada developed a revised structure for both the Construction and Information sectors of NAICS that would apply to all three North American countries.

For Wholesale Trade, after extensive discussions with Statistics Canada and INEGI, the representatives of the three countries' statistical agencies decided to delay three-country changes to this sector and instead plan for a complete restructuring of the distribution network industries (wholesale, retail, transportation, and warehousing) in 2007. In the interim the ECPC recommends restructuring the Wholesale Trade sector to reflect differences in production functions between those wholesalers that take title to goods and those that do not, and to capture more accurately the rapidly-growing business-to-business electronic markets developing in the United States. The ECPC also developed proposed additional U.S. industry detail in the Retail Trade sector for NAICS United States. The ECPC recommends that NAICS United States 2002 incorporate these changes as shown in Parts III and IV.

Following an extensive process of development and discussions by the ECPC, with maximum possible public input, OMB seeks comment on the advisability of revising NAICS to incorporate the changes published in this notice. The modified NAICS would be employed in relevant data collections by all U.S. statistical agencies beginning with the reference year 2002. Statistics Canada and INEGI are recommending acceptance of the proposed revision of the NAICS system for industry classification in the statistical programs of their national systems and are seeking comments in their respective countries. Representatives of the three countries will hold further discussions to consider public comments that they receive.

DATES: To ensure consideration of comments on the adoption and implementation of the NAICS revisions detailed in this notice, comments must be in writing. You should submit them as soon as possible, but no later than June 19, 2000. This proposed revision to NAICS would become effective in the U.S. on January 1, 2002.

ADDRESSES: You should send correspondence about the adoption and implementation of NAICS revisions as shown in this **Federal Register** notice to: Katherine K. Wallman, Chief Statistician, Office of Management and Budget, 10201 New Executive Office Building, Washington, DC 20503, telephone number: (202) 395–3093, FAX number: (202) 395–7245.

You should address inquiries about the content of industries or requests for electronic copies of the tables to: Carole Ambler, Chair, Economic Classification Policy Committee, Bureau of the Census, Room 2633–3, Washington, DC 20233, telephone number: (301) 457–2668, FAX number: (301) 457–1343.

Electronic Availability and Comments: This document is available on the Internet from the Census Bureau via WWW browser and E-mail. To obtain this document via WWW browser, connect to http://www.census.gov/naics. This WWW page also contains previous NAICS **Federal Register** notices and related documents.

You may send comments via E-mail to pbugg@omb.eop.gov with subject NAICS02. OMB will include in the official record comments received via E-mail at this address with this subject by the date specified above.

FOR FURTHER INFORMATION CONTACT: Paul Bugg, 10201 New Executive Office Building., Washington, DC 20503, E-mail address: pbugg@omb.eop.gov, telephone number: (202) 395–3093, FAX number: (202) 395–7245.

SUPPLEMENTARY INFORMATION:

Part I: Background of NAICS 1997

NAICS is a system for classifying establishments by type of economic activity. Its purposes are: (1) To facilitate the collection, tabulation, presentation, and analysis of data relating to establishments, and (2) to promote uniformity and comparability in the presentation and analysis of statistical data describing the economy. Federal statistical agencies use NAICS to collect or publish data by industry. It also is used widely by State agencies, trade associations, private businesses, and other organizations.

INEGI of Mexico, Statistics Canada, and the United States Office of Management and Budget (OMB), through its Economic Classification Policy Committee (ECPC), collaborated on NAICS to make the industrial statistics produced in the three countries comparable. NAICS is the first industry classification system developed in accordance with a single principle of aggregation, the principle that producing units that use similar production processes should be grouped together in the classification. NAICS also reflects in a much more explicit way the enormous changes in technology and in the growth and diversification of services that have

marked recent decades. Industry statistics presented using NAICS are also comparable with statistics compiled according to the latest revision of the United Nations' International Standard Industrial Classification (ISIC, Revision 3) for some sixty high-level groupings.

For the three countries, NAICS provides a consistent framework for the collection, tabulation, presentation, and analysis of industrial statistics used by government policy analysts, by academics and researchers, by the business community, and by the public. However, because of different national economic and institutional structures as well as limited resources and time for constructing the 1997 NAICS, the NAICS structure was not made entirely comparable at the individual industry level across all three countries at that time. The completion effort represented in this notice originally focused on the construction and wholesale trade sectors. In the 1997 NAICS these two sectors were comparable at the two-digit level for all three North American countries.

Throughout its development, NAICS has been guided by four principles:

(1) NAICS is erected on a production-oriented or supply-based conceptual framework. This means that producing units that use the same or similar production processes are grouped together in NAICS.

(2) NAICS gives special attention to developing production-oriented classifications for (a) new and emerging industries, (b) service industries in general, and (c) industries engaged in the production of advanced technologies.

(3) Time series continuity is maintained to the extent possible, given the need to reflect changes in the economy and proposals from data users. Adjustments will be required for sectors where the United States, Canada, and Mexico have incompatible industry classification definitions in order to produce a common industry system for all three North American countries.

(4) The system strives for compatibility with the two-digit level of the International Standard Industrial Classification of All Economic Activities (ISIC Rev. 3) of the United Nations.

The ECPC is committed to maintaining the principles of NAICS. For example, the proposed split in the national industry for department stores will separately identify two distinct and economically significant types of operations in the United States in accordance with principle 1. The ECPC is recommending the revisions for nonstore retailers and new Internet information businesses based on NAICS principle 2. The rapid growth of Internet companies and the lack of a structural method for identifying these emerging industries justify the additional NAICS and U.S. national detail. The current round of completion activities is limited in scope based on NAICS principle 3 regarding time series continuity. The ECPC believes that the narrow focus of the completion activities and the importance of Construction and Information to the economies of all three countries justify the resulting time series breaks. Users are encouraged to implement the most current structure of NAICS as it becomes available.

Part II: Summary of Public Comments

In response to the February 25, 1999, **Federal Register** notice, the ECPC received 28 comments regarding specific industries and recommended changes to the structure of NAICS 1997. Twenty-two of the comments focused on the Construction Sector, three focused on the Wholesale Trade Sector, and three were outside the scope of revision as defined by the ECPC.

Public proposals for individual industries from all three countries were considered for acceptance if the proposed industry was based on the production-oriented concept of the system. When a proposal was not accepted, it was usually because: (a) The resulting industry would have been too small in the U.S., (b) data indicated that the specialization ratio was low (the specialization ratio indicates the extent to which the establishments in a given industry concentrate on the activities that define the industry), or (c) the proposal did not meet the production-oriented criterion for forming an industry in NAICS.

The ECPC received a number of comments that suggested changes to NAICS that were not accepted. All of these suggestions were carefully considered. Some suggestions were modified at the request of the ECPC to better meet the objectives of NAICS. Other suggestions proposed products (rather than industries); these will be considered in the future development of a product system. Still other suggestions for change could not be justified on a production basis, or could not be implemented in statistical programs, for various reasons, and thus were not accepted. The ECPC is preparing individual responses to these suggestions, carefully explaining why they were not accepted.

Many of the twenty-two comments that related to the Construction sector requested changes or structures that were contradictory. For this reason alone, the ECPC was not able to implement all of the requested changes. Other comments requested detail that was not supported by specialization studies performed using 1997 Census of Construction data. A final constraint on the acceptability of proposals was the necessity for three-country comparability. A comment that was justified on a production function basis in the United States was not always supportable by either Canada or Mexico.

The proposed structure of the Construction Sector has limited three-country comparability. In most areas, the representatives of the three countries attained comparability at the five-digit level. The Specialty Trade Contractors subsector is comparable at the four-digit level. This was the result of a desire to allow U.S. agencies to develop separate residential and nonresidential data for Specialty Trade Contractors without creating special aggregations outside of the NAICS structure. Although separate residential and nonresidential specialty trade industries were not created because of production function considerations, the structure does allow for residential and nonresidential data collection by U.S. statistical agencies. The sixth digit of the structure is reserved for this purpose. This information can be derived from Census Bureau data in Economic Census years. The Bureau of Labor Statistics will provide this information in the Covered Employment and Wages Program when the NAICS 2002 changes are implemented.

A second major proposal in the Construction sector related to project delivery methods. In recent years, Federal and State procurement laws have been changed to allow design-build as an alternative to the traditional design-bid-build process for construction projects in the public arena. This project delivery method alternative to structuring the Construction sector was not accepted in the three-country negotiations for a variety of reasons. First, the design-build terminology is used differently by various practitioners. The variation in use and meaning will cause difficulties in classification and the development of homogeneous industry groupings without extremely detailed questionnaires. Such a level of detail is not practical. Next, while of growing importance in the United States and Canada, design-build is not so prominent in Mexico. Finally, a project delivery method structure would have greatly expanded the number of industries at the lowest level of the classification. The proposed structure has 31 detailed industries for the United

States. A further split by project delivery method would further expand the number of detailed industries and reduce the size of each.

The majority of the comments received that related to Wholesale Trade requested a change in the previously agreed upon scope of the sector. After extensive discussions with Canada and Mexico, the representatives decided to recommend that the basic delineation between Wholesale Trade and Retail Trade should remain unchanged. Further, the representatives agreed to undertake a complete restructuring of the distribution network industries (wholesale, retail, transportation, and warehousing) in NAICS 2007. In the interim, the United States has restructured NAICS United States 1997, Sector 42, Wholesale Trade to more closely align with the existing treatment in Canada and Mexico. For the United States, the ECPC has created three new subsectors: 423, Merchant Wholesalers, Durable Goods; 424, Merchant Wholesalers, Nondurable Goods; and 425, Wholesale Electronic Markets and Agents and Brokers. These subsectors more clearly separate types of wholesale trade businesses and will lead to more homogeneous statistical data. The merchant wholesaler subsectors are characterized by establishments that take title to goods and play the role of principal in the buying and selling of goods. The Wholesale Electronic Markets and Agents and Brokers subsector is characterized by establishments that act on behalf of sellers or facilitate wholesale transactions but do not actually take title to the goods.

Wholesale trade is rapidly changing. Many traditional wholesale trade functions are being outsourced to storage, finance, logistics, or transportation specialists. In addition to these changes, the Internet has greatly expanded markets and supplier customer bases. In order to identify these changes to the extent possible, the ECPC recommends that subsector 425, Wholesale Electronic Markets and Agents and Brokers be split into two separate industries. The first would include the wholesale trade electronic markets while the second would include agents and brokers. The electronic markets provide guidance and assistance to both buyers and sellers. They also provide a unified, one stop, purchasing environment with common requirements across a large number of suppliers. The rapid growth of the business to business (B2B) electronic markets reflects the considerable efficiencies that can be obtained through the use of advanced technology. Separate identification of this rapidly growing activity will allow a more thorough and reflective analysis of wholesale trade in relation to the overall changes in distributive trades in 2007.

In addition to working on the sectors described in the February 25, 1999, **Federal Register** notice that were explicitly targeted for completion, the rapid growth of the Internet and electronic commerce resulted in a decision by the three countries to re-evaluate the Information sector as well. Although new in 1997, the Information sector lacked finite categories related to new Internet activities such as Internet service providers, web search portals, and Internet publishing and broadcasting. The second NAICS principle specifically targets new and emerging industries. The North American partners in NAICS agreed that the importance of statistical data related to new Internet businesses outweighed the time series continuity criterion also used in NAICS development. A full description of the recommended provisional changes to the Information sector is included in Part III.

In addition to the changes listed above, the ECPC is proposing several minor changes to titles of NAICS industries that have no impact on the content of those industries. The ECPC recommends the following title changes:

NAICS 32611, Unsupported Plastics Film, Sheet, and Bag Manufacturing, will be changed to Plastics Packaging Materials and Unlaminated Film and Sheet Manufacturing.

NAICS 326111, Unsupported Plastics Bag Manufacturing, will be changed to Plastics Bag Manufacturing.

NAICS 326112, Unsupported Plastics Packaging Film and Sheet Manufacturing, will be changed to Plastics Packaging Film and Sheet (including Laminated) Manufacturing.

NAICS 326113, Unsupported Plastics Film and Sheet (except Packaging) Manufacturing, will be changed to Unlaminated Plastics Film and Sheet (except Packaging) Manufacturing.

NAICS 32612, Plastics Pipe, Pipe Fitting, and Unsupported Profile Shape Manufacturing, will be changed to Plastics Pipe, Pipe Fitting, and Unlaminated Profile Shape Manufacturing.

NAICS 326121, Unsupported Plastics Profile Shape Manufacturing, will be changed to Unlaminated Plastics Profile Shape Manufacturing.

NAICS 326130, Laminated Plastics Plate, Sheet, and Shape Manufacturing, will be changed to Laminated Plastics Plate, Sheet (except Packaging), and Shape Manufacturing.

NAICS 444220, Nursery and Garden Centers, will be changed to Nursery, Garden Center, and Farm Supply Stores to describe more completely the content of the industry.

NAICS 452910, Warehouse Clubs and Superstores, will be changed to Warehouse Clubs and Supercenters. The term supercenter more adequately describes the content of the NAICS industry.

NAICS 561330, Employee Leasing Services, will be changed to Professional Employer Organizations to more closely reflect common industry terminology.

The United States is also taking this opportunity to create additional national level detail for department stores and nonstore retailers. These changes will create more meaningful, homogeneous industries for the United States. Department Stores, NAICS 45211, will be split into two new 6-digit industries: Department Stores (except Discount), NAICS 452111, and Discount Department Stores, NAICS 452112.

Electronic Shopping and Mail-Order Houses, NAICS 45411, will be split into three new 6-digit industries: Electronic Shopping, NAICS 454111; Electronic Auctions, NAICS 454112; and Mail-Order Houses, NAICS 454113. The proposed changes for electronic shopping acknowledge the rapid growth of these activities in the United States. The proposed industry for Electronic Shopping includes separate establishments engaged in primarily providing electronic shopping services. The structure and codes for these new industries are detailed in Part IV of this notice.

Time Series Continuity

The standard approach to preserving time series continuity after classification revisions is to create linkages where the series break. This is accomplished by producing the data series using both the old and new classifications for a given period of transition. With the dual classifications of data, analysts can assess the full impact of the revision. Data producers then may measure the reallocation of the data at aggregate industry levels and develop a concordance between the old and new series for that given point in time. The concordance creates a crosswalk between the old and new classification systems. Statistical agencies in the U.S. are planning links between the 1997 NAICS and 2002 NAICS (with U.S. national detail)

ECPC Recommendations for the Hierarchical Structure, Industries, and Coding System for the 2002 NAICS Revisions

Parts III and IV below present the ECPC's final recommendations for how United States statistical agencies would revise the affected sectors and industries in the 2002 NAICS classification system for the United States. The tables show the proposed 2002 hierarchy, including NAICS and U.S. national detail industries, and the proposed coding system in 2002 NAICS sequence, for the affected sectors and industries. Parts III and IV include all ECPC recommended changes to the structure based on public comment and discussions with INEGI and Statistics Canada.

John T. Spotila,

Administrator, Office of Information and Regulatory Affairs.

Part III—Proposed Revisions to the NAICS Structure

Section A—NAICS Structure—Construction

North American Industry Classification System (NAICS 2002) Agreement Number 32

This document represents the proposed agreement on the structure of the North American Industry Classification System (NAICS) for the construction sector. The detailed NAICS structure along with a brief description of the structure is attached (Attachments 1 and 2). Each country agrees to release a copy of the proposed NAICS structure to interested data users. Comments received will be shared among the countries and additional discussions will be held before a final decision on the structure is made. Each country may add additional detailed industries below the internationally agreed upon level of NAICS, as necessary to meet national needs, so long as this additional detail aggregates to an internationally agreed upon level in order to ensure full comparability among the three countries. This NAICS structure was presented and accepted at the NAICS Committee meeting held on November 30 through December 2, 1999, in Ottawa, Canada.

Accepted	Signature	Date
Canada	Richard Barnabe	12/2/1999
Mexico	Enrique Ordaz	12/2/1999
United States	Carole Ambler	12/2/1999

ATTACHMENT 1—NAICS STRUCTURE

23	Construction
236	Construction of Buildings
2361	Residential Building Construction
23611	Residential Building Construction
2362	Nonresidential Building Construction
23621	Industrial Building Construction
23622	Commercial and Institutional Building Construction
237	Heavy and Civil Engineering Construction
2371	Utility System Construction
23711	Water and Sewer Line and Related Structures Construction
23712	Oil and Gas Pipeline and Related Structures Construction
23713	Power and Communication Line and Related Structures Construction
2372	Land Subdivision
23721	Land Subdivision
2373	Highway, Street, and Bridge Construction
23731	Highway, Street, and Bridge Construction
2379	Other Heavy and Civil Engineering Construction
23799	Other Heavy and Civil Engineering Construction
238	Specialty Trade Contractors
2381	Foundation, Structure, and Building Exterior Contractors
2382	Building Equipment Contractors
23821	Electrical Contractors
23822	Plumbing, Heating, and Air-Conditioning Contractors
23829	Other Building Equipment Contractors
2383	Building Finishing Contractors
2389	Other Specialty Trade Contractors

Attachment 2—Description of Construction Sector

Draft Classification for Construction

Representatives of the statistical agencies of Canada, Mexico, and the United States agree to a draft industrial classification for the Construction sector. The draft classification of the construction sector is divided into subsectors covering Construction of Buildings, Heavy and Civil Engineering Construction, and Specialty Trade Contractors. These subsectors are further subdivided into 10 four-digit industry groups and 12 five-digit industries.

A General Outline

Establishments in the Construction Sector erect buildings, perform heavy and civil engineering construction, and perform specialized construction trade activities. The classification distinguishes between establishments that are responsible for an entire building or building renovation project and those that perform specific functions during the erection of a building or building renovation project. A subsector is provided for each group. The classification further distinguishes all establishments performing civil engineering and heavy construction activities, whether the complete project or a portion of the project, in a third subsector.

In Construction of Buildings, the classification distinguishes between the

erection of residential buildings and the erection of nonresidential buildings. Each of these industry groups includes establishments that are responsible for an entire building or building renovation project. These industry groups include general contractors and design-builders working for owners and operative builders who undertake the entire project on a speculative basis. Establishments in the Construction of Buildings subsector may perform specific construction activities or subcontract for specific tasks. Additionally, each industry group includes establishments that are hired to manage the project, including oversight of the design, financing, bidding, and review processes, and/or act as a liaison between the owner and a general contractor, designer, architect, or engineer.

The classification makes no distinctions in the residential buildings industry group because of differences in the organization of construction establishments among the three countries. National level detail will provide specific information based on the type of structure (single family or multi-family), type of project (new structures or alterations and renovations of existing structures), or type of establishment (general contractor or operative builder) as appropriate in each country. Consideration was given to each of these breakouts but national differences in the operating characteristics of establishments prevented three-country level comparability. Establishments erecting nonresidential buildings are segregated into establishments erecting commercial and institutional buildings and establishments erecting industrial buildings and manufacturing plants. This NAICS industry level distinction recognizes the differences inherent in erecting the various types of buildings.

Establishments performing heavy construction are separated into four industry groups: Utility System Construction; Land Subdivision; Highway, Street, and Bridge Construction; and Other Heavy and Civil Engineering Construction. Industries in these groups are engaged in large-scale projects and have related production characteristics. Heavy and Civil Engineering Construction establishments can perform the work or subcontract the work to specialized establishments.

Establishments in the Utility System Construction industry group construct lines and related structures for utility systems. For example, Water and Sewer Line and Related Structures Construction establishments that construct pipelines, distribution lines, irrigation systems, water treatment plants, sewage treatment plants, and pumping stations are grouped together. This recognizes the fact that these buildings and structures are inter-related in a network environment and are not meaningfully separated based on the particular type of structure.

Land Subdivision is included in Heavy and Civil Engineering Construction because of the similarity of activities involved with land subdivision and the other industry groups. For example, improved subdivisions often require installation of basic utilities, roads, and similar improvements that are also included elsewhere in the Heavy and Civil Engineering Construction subsector. The production similarities for construction of highways, streets, and bridges justified the third industry group.

The fourth, residual, industry group includes other heavy and civil engineering construction. Examples include marine construction, such as the building of ports and harbors, and construction of dams for retaining water, flood control, or hydroelectric power generation purposes. Heavy and Civil Engineering Construction includes general contractors, design-builders, operative builders, and those specialty trade contractors whose activities generally only apply to the Heavy and Civil Engineering Construction subsector. The activities performed by the specialty trade contractors in this subsector are rarely performed elsewhere.

In Specialty Trade Contractors, NAICS recognizes the highly specialized nature of a large number of small construction establishments. These establishments concentrate on a particular construction activity or group of activities rather than accepting responsibility and risk for an entire project. This difference separates these establishments from the first two subsectors. Establishments in the Specialty Trade Contractors subsector usually act as subcontractors for the general contractors, operative builders, design-builders, and other establishments that assume the risk for an entire construction project that takes place in the Construction of Buildings subsector. In this capacity, they can perform work as subcontractors or work directly for owners. Specialty Trade Contractors also perform repair, renovation, and maintenance on various systems that fall within their specialty. The skills and equipment used by specialty trade contractors in this subsector have more general application than skills and equipment used by the specialty trade contractors included in Heavy and Civil Engineering Construction.

Limitations and Constraints of the Classification

Climatic and geological differences within and among the three countries lead to different construction techniques and practices for various types of structures. While wood is a significant input for residential housing in the Northern United States and Canada, concrete and stone are more common in the Southwest United States and in Mexico. Concrete and stone do not require siding and various other protections that are required with wood sheathing. Geological instability results in different structural and foundation requirements. Climate conditions dictate more insulation in northern areas while less insulation is appropriate in drier and warmer climates. These conditions lead to differing size and importance of various industries throughout North America. Each subsector varies across geographic lines based on the availability of raw materials and the environmental conditions that dictate construction practices.

Relationship to ISIC

Most of the industries in the NAICS Construction Sector are contained in Division 45, Construction, of the International Standard Industrial Classification of All Economic Activities (ISIC, Revision 3) of the United Nations. There are, however, some differences between the two systems. Both NAICS and ISIC exclude preparation of oil and gas fields from Construction. NAICS includes construction management activities within each of the industries in the Construction Sector while ISIC classifies construction management activities in Division 74, Other Business Activities. NAICS includes land subdivision in Construction, while ISIC classifies land subdivision in Division 70, Real Estate Activities.

Some Changes to the National Industries

During the initial NAICS development effort, the three countries agreed to the boundary and scope of the Construction sector at the two-digit level. Each of the countries developed its own national structure at the three-, four-, five-, and six-digit levels. The changes discussed are identified as NAICS with a prefix of C for Canada, U for the United States, and M for Mexico for previous national detail and NAICS02 for the draft classification.

For Canada, CNAICS 23 was broken into two subsectors: CNAICS 231, Prime Contracting; and CNAICS 232, Trade Contracting. NAICS02 comprises three subsectors: 236, Construction of Buildings: 237, Heavy and Civil Engineering Construction; and 238, Specialty Trade Contractors.

CNAICS 23141, Construction Management, will be distributed throughout all of the new NAICS02 Construction industries.

Land Subdivision and Development, CNAICS 23111 will be moved from the subsector for Building Construction to NAICS02 23721 within the Heavy and Civil Engineering Construction subsector. This move reflects the similarity of the activities performed in the land subdivision industry and other industries in the Heavy and Civil Engineering Construction subsector.

The construction of structures, such as sewage treatment plants and water treatment plants will be moved from CNAICS 23139, Other Engineering Construction, to NAICS02 2371, Utility System Construction and distributed to the proper industries within the industry group.

For Mexico, the NAICS02 structure is very similar to the MNAICS structure developed in 1997. While there were various minor reaggregations below the industry group level, the subsector levels remained largely unchanged.

MNAICS 236 contained one industry group, 2361 Buildings. NAICS02 now contains two industry groups: 2361, Residential Buildings; and 2632, Nonresidential Buildings.

MNAICS 237 was made up of two industry groups: 2371 Construction of Structures for Water, Electricity, Telecommunications, Petroleum, and Gas; and 2372, Construction of Urban Infrastructure and Transportation Systems. NAICS02 is divided into four industry groups: 2371, Utility Systems Construction; 2372, Land Subdivision; 2373, Highway, Street, and Bridge Construction; and 2379, Other Heavy and Civil Engineering Construction.

As is the case for Canada, MNAICS 23822, Supervision and Management of Construction projects will be distributed throughout the construction industries in NAICS02.

For the United States, the subsector structures for UNAICS and NAICS02 are very similar. Most changes occurred below the subsector level. Of particular note, UNAICS 23311, Land Subdivision and Land Development moved from the subsector for construction of buildings to NAICS02 237, Heavy and Civil Engineering Construction.

UNAICS 23499, All Other Heavy Construction, included water treatment plants, sewage treatment plants and similar buildings that are now included in NAICS02 2371, Utility System Construction.

At the national level, the United States has reinstituted an industry for operative residential builders that were not separately identified in UNAICS. This industry had existed in the US SIC. The United States also created a new national industry for residential remodeling establishments. In previous classifications, residential remodelers were classified together with new residential construction.

Achievement of Objectives

The classification meets the objectives for the North American Industry Classification System (NAICS). It includes industries that group establishments with similar production processes, that is, it applies the production-oriented economic concept. In the main, the hierarchical structure of the classification also follows the production concept.

The industries are highly specialized, and they are economically significant. Disruptions to time series are minimal. The classification achieves comparability at most five-digit levels for the three participating countries. All three countries agree on the detailed definitions of the industries.

Other objectives of the NAICS project are not as relevant in this area of the classification as in others. These objectives are the delineation of new and emerging industries, service industries, and industries engaged in the production of new technologies.

Section B—NAICS Structure—Information

PROVISIONAL STRUCTURE PROPOSED FOR SECTOR 51, INFORMATION

51	Information
511	Publishing Industries (except Internet)
5111	Newspaper, Periodical, Book, and Directory Publishers
51111	Newspaper Publishers
51112	Periodical Publishers
51113	Book Publishers
51114	Directory and Mailing List Publishers
51119	Other Publishers
5112	Software Publishers
51121	Software Publishers
512	Motion Picture and Sound Recording Industries
5121	Motion Picture and Video Industries
51211	Motion Picture and Video Production
51212	Motion Picture and Video Distribution
51213	Motion Picture and Video Exhibition
51219	Postproduction Services and Other Motion Picture and Video Industries
5122	Sound Recording Industries
51221	Record Production
51222	Integrated Record Production/Distribution
51223	Music Publishers
51224	Sound Recording Studios
51229	Other Sound Recording Industries
515	Broadcasting (except Internet)
5151	Radio and Television Broadcasting
51511	Radio Broadcasting
51512	Television Broadcasting
5152	Cable and Other Subscription Programming
51521	Cable and Other Subscription Programming
516	Internet Publishing and Broadcasting
5161	Internet Publishing and Broadcasting
51611	Internet Publishing and Broadcasting

PROVISIONAL STRUCTURE PROPOSED FOR SECTOR 51, INFORMATION—Continued

517	Telecommunications
5171	Wired Telecommunications Carriers
51711	Wired Telecommunications Carriers
5172	Wireless Telecommunications Carriers (except Satellite)
51721	Wireless Telecommunications Carriers (except Satellite)
5173	Telecommunications Resellers
51731	Telecommunications Resellers
5174	Satellite Telecommunications
51741	Satellite Telecommunications
5175	Cable and Other Program Distribution
51751	Cable and Other Program Distribution
5179	Other Telecommunications
51791	Other Telecommunications
518	Internet Service Providers, Web Search Portals, and Data Processing Services
5181	Internet Service Providers and Web Search Portals
51811	Internet Service Providers and Web Search Portals
5182	Data Processing, Hosting, and Related Services
51821	Data Processing, Hosting, and Related Services
519	Other Information Services
5191	Other Information Services
51911	News Syndicates
51912	Libraries and Archives
51919	All Other Information Services

Draft Classification for Information

Representatives of the statistical agencies of Canada, Mexico, and the United States provisionally agree to a draft industrial classification for the Information sector. The draft classification of the Information sector is divided into subsectors covering Publishing Industries (except Internet); Motion Picture and Sound Recording Industries; Broadcasting (except Internet); Internet Publishing and Broadcasting; Telecommunications; Internet Service Providers, Web Search Portals and Data Processing; and Other Information Services. These subsectors are further subdivided into 16 four-digit industry groups and 30 five-digit industries.

The Information sector comprises establishments primarily engaged in (a) producing and distributing cultural information, (b) providing the means to transmit or distribute these products as well as data or communications, and (c) processing data.

Many of the industries in the NAICS Information sector are engaged in either producing and manipulating products protected by copyright law, or in distributing them (other than distribution by traditional wholesale and retail methods). Examples are traditional publishing industries, software publishing industries, and film and sound industries. Also included are broadcasting industries, telecommunication industries, and information access providers and processors that process and distribute information and provide access to facilities for transmission of information. Although many new industries have been created for this sector, most of the activities it contains have existed for some time. A new feature of the revised Information Sector is the inclusion of new industries for activities that have recently appeared in the economy due to the rapid expansion of the Internet. When NAICS was initially conceived, Internet service providers, web search portals, and other forms of Internet distribution of content were in their infancy. These activities are now separately identified in the classification.

The following paragraphs provide a brief description of the individual components of this sector.

The Publishing Industries (except Internet) subsector groups establishments engaged in the publishing of newspapers, periodicals, and books, as well as directory, mailing list, and software publishing. In general, publishers issue copies of works for which they possess copyright for sale to the general public, in one or more formats including traditional print form or in electronic copy such as diskette or CD–ROM. Publishers may publish works originally created by others for which they have obtained the rights, and/or works that they have created in-house.

In NAICS, publishing—the reporting, writing, editing, and other processes that are required to create an edition of a newspaper, for example—is treated as a major economic activity in its own right, and classified in the Information sector, whereas printing remains in the NAICS Manufacturing sector. In part, the NAICS classification reflects the fact that publishing increasingly takes place in establishments that are physically separate from the associated printing establishments. More crucially, the NAICS classification of book and newspaper publishing is intended to portray their roles in a modern economy, where they do not resemble manufacturing activities.

Software publishing is included here because the activity—creation of a copyrighted product and bringing it to market—is equivalent to the creation process for other types of intellectual products. Reproduction of pre-packaged software is treated in NAICS as a manufacturing activity and custom design of software to client specifications remains in Professional, Scientific, and Technical Services. These distinctions arise because of the different ways that software is created, reproduced, and distributed. The only change to this subsector for 2002 is the new title for Industry 51114 that has been renamed from Database and Directory Publishers to Directory and Mailing List Publishers. This new title and an updated definition better describe the activities included in this industry.

The Motion Picture and Sound Recording Industries subsector groups establishments involved in producing and distributing motion pictures and sound recordings (those involved exclusively in the wholesaling of sound recordings are classified in Wholesale Trade). While motion picture and sound recordings are also "published," the processes involved are sufficiently different from those traditional publishing industries to warrant placing them in the Motion Picture and Sound Recording Industries subsector.

The production and distribution of these products involves a complex process and several distinct industries. The Motion Picture and Video Industries industry group includes separate industries for Motion Picture and Video Production, Motion Picture and Video Distribution, Motion Picture and Video Exhibition, Postproduction Services, and Other Motion Picture and Video Industries. The distribution industry includes establishments primarily engaged in acquiring the distribution rights (major input) for films and programs, and charging such clients as movie theaters and broadcasters to show them; those engaged in wholesaling videos to retail stores and rental outlets are classified in Wholesale Trade. The Sound Recording Industries industry group contains classes for Record Production Companies, Integrated Record Production/Distribution, Music Publishers, Sound Recording Studios, and Other Sound Recording Industries.

Record production companies are primarily engaged in searching out, identifying and contracting artists for whom they arrange and finance the production of master tapes for which they hold the reproduction rights. Establishments in this industry do not own duplication facilities or have distribution capabilities, so they commercialize these rights through leasing/licensing agreements with third parties. Integrated record production companies (major record labels) integrate the production, manufacturing and/or distribution functions, commercializing reproduction rights through these vertically integrated operations. While establishments engaged in record production derive most of their revenues from leasing/licensing the reproduction rights of master recordings and from mechanical royalties, integrated record companies derive most of their revenues from the exploitation of their rights to distribute duplicate sound recordings. No changes were made to this subsector for 2002.

In NAICS 2002, Telecommunications and Broadcasting are split into separate subsectors. This structural change acknowledges that the production and distribution of information or cultural content is significantly different from the creation of the infrastructure used in distribution.

The new Broadcasting (except Internet) subsector, NAICS 515, distinguishes between radio broadcasting, television broadcasting, and cable and other subscription programming. These industry groups are based on differences in the methods of communication and in the nature of services provided. Broadcasting (except Internet) includes establishments that operate broadcasting studios and facilities for over the air, cable, or satellite delivery of audio and video programming such as music, entertainment, news, talk, and the like. These establishments are often engaged in producing and purchasing programs and generating revenues from the sale of time to advertisers, and from donations, subsidies, and/or the sale of programs. Cable and Other Subscription Programming establishments operate studios and facilities for the broadcasting of programs that are typically narrow cast in nature (limited format such as news, sports, education, and youth-oriented programming). The services of these establishments are typically sold on a subscription or fee basis.

NAICS 2002 recognizes for the first time the significant differences between traditional publishing and broadcasting and similar activities using the Internet in a new subsector for Internet Publishing and Broadcasting, NAICS 516. The unique combination of text, audio, video, and interactive features present in informational or cultural products on the Internet justifies the creation of the new subsector. NAICS separates Internet Publishing and Broadcasting in order to identify and statistically characterize this area of rapid growth in the economies of the three North American partners in NAICS.

The new Telecommunications subsector, NAICS 517, is primarily engaged in operating, maintaining, and/or providing access to facilities for transmitting voice, data, text, sound, and full motion picture video between network termination points. In contrast to the Broadcasting subsector, the Telecommunications subsector generally does not produce information or cultural content. Telecommunications includes groupings and industries based on the technologies used. As such, there are separate industry groups for Wired Telecommunications Carriers, Wireless Telecommunications Carriers (except Satellite), Telecommunications Resellers, Satellite Telecommunications, Cable and Other Program Distribution, and Other Telecommunications. All of these industry groups, except Telecommunications Resellers, operate transmission facilities that may be based on a single technology or a combination of technologies. The Cable and Other Program Distribution industry group includes establishments that operate cable systems, direct-to-home satellite systems, or other similar systems.

Another new subsector in NAICS groups establishments that provide Internet access; Internet search services; and data processing, hosting, and related services. The Internet Service Providers, Web Search Portals, and Data Processing Services subsector, NAICS 518, is subdivided into two industry groups. The Internet Service Providers and Web Search Portals industry group includes establishments that provide access to the Internet or provide the means to search for information on the Internet. The Data Processing, Hosting, and Related Services industry group includes establishments that process data for others. Mainframe computer time-share facilities and web hosting establishments are included with Data Processing, Hosting, and Related Services.

The final subsector, Other Information Services, NAICS 519, provides a classification for other information providers, such as news syndicates, as well as repositories of information products in the form of libraries and archives. Libraries and archives provide access to information products stored in their physical facilities. Museums, however, are classified in sector 71, Arts, Entertainment, and Recreation.

Section C—NAICS United States—Wholesale Trade

Representatives of the statistical agencies of Canada, Mexico, and the United States conducted extensive discussions on the content and conceptual structuring of industries for wholesale trade of goods. Due to the complexity of this dynamic sector and structural differences among the three countries, no additional three-country comparability was obtained for wholesale trade. Canada, Mexico, and the United States agree on the overall content of Wholesale Trade but will retain unique national industry detail within the sector. However, the United States has taken the insights gained from these discussions and incorporated them into a new national structure for Wholesale Trade.

As in the 1997 NAICS United States there are two main types of wholesalers included in Wholesale Trade for the 2002 NAICS United States: those that sell goods on their own account and those that arrange sales and purchases for others for a commission or fee.

(1) Establishments that sell goods on their own account are known as wholesale merchants, distributors, jobbers, drop shippers, import/export merchants, and sales branches. These establishments typically take title to the goods being sold and maintain their own warehouse, where they receive and

handle goods for their customers. Goods are generally sold without transformation, but may include integral functions, such as sorting, packaging, labeling, and other marketing services. Throughout this notice, these establishments are referred to as merchant wholesalers.

(2) Establishments arranging for the purchase or sale of goods owned by others or the purchase of goods on a commission basis are known as agents and brokers, commission merchants, import/export agents and brokers, auction companies, and manufacturer's representatives. These establishments do not take title to the goods being sold. Throughout this notice, these establishments are referred to as business to business electronic markets and agents and brokers.

Sector 42, Wholesale Trade, would be divided into three subsectors in the United States: subsector 423, Merchant Wholesalers, Durable Goods; subsector 424, Merchant Wholesalers, Nondurable Goods; and subsector 425, Wholesale Electronic Markets and Agents and Brokers. Each of these subsectors is further divided into industry groups and industries to meet the detailed needs of the U.S. statistical community.

Subsector 423, Merchant Wholesalers, Durable Goods, is split into nine industry groups that follow the structure of NAICS 1997. These industry groups are further divided into thirty-seven national level industries. The key difference between the content of subsector 421, Wholesale Trade, Durable Goods in 1997 and subsector 423, Merchant Wholesalers, Durable Goods, is the exclusion of electronic markets, and agents, brokers, and other intermediaries that do not take title to the goods being sold in subsector 423. Merchant wholesalers in NAICS 2002 are defined to include those establishments that buy or sell goods on their own account. Included are wholesale merchants, distributors, jobbers, drop shippers, import/export merchants, and manufacturer's sales branches. The key characteristic of wholesale establishments included in subsector 423 is ownership of the goods that are being sold.

Subsector 424, Merchant Wholesalers, Nondurable Goods, mirrors the structure of NAICS 1997 subsector 422, Wholesale Trade, Nondurable Goods. Again, the significant difference is the exclusion of electronic markets, and agents and brokers and other intermediaries that do not take title to the goods being sold. Subsector 424 is split into nine industry groups that are further divided into thirty-two national level industries classifying merchant wholesalers of nondurable goods.

Subsector 425, Wholesale Electronic Markets and Agents and Brokers is a new subsector for NAICS United States 2002. Establishments in the Wholesale Electronic Markets and Agents and Brokers subsector arrange for the sale of goods owned by others on a fee or commission basis. These establishments, unlike those in subsectors 423, do not take title to the goods being sold. They are acting on behalf of the buyers and sellers of goods.

This subsector is being created to classify agents and brokers as well as electronic markets that facilitate wholesale trade. Over the past two years, the explosive growth of wholesale trade on the Internet has radically changed the role of agents and brokers and greatly expanded potential markets for suppliers. While a wholesale trade business was previously constrained by geography and the cost of initiating contact with potential customers, the Internet has created inexpensive, efficient national markets for suppliers. The United States proposal for subsector 425, therefore, creates a new national industry for these electronic markets in wholesale trade, separate from the more traditional agents and brokers. The outsourcing of storage, transportation, finance, and other traditional wholesale trade functions is immensely eased with the advent of these new national electronic wholesale markets. In order to gather data to better understand these changes in the context of all distributive trade industries, they will be separately identified and categorized in NAICS United States 2002.

NAICS United States 1997 included 69 separate national industries in Wholesale Trade. NAICS United States 2002, includes 71 national industries in Wholesale Trade. With the addition of only two national industries, the restructuring of Wholesale Trade creates more homogeneous statistical data for users, eases the burden of code assignment for sales representatives and wholesale trade brokers, and separately identifies emerging trends for study and analysis. Although additional international comparability was not obtained, the changes to Sector 42, Wholesale Trade, in the United States represent a major improvement in the statistics generated for wholesale trade using NAICS. These changes also position the United States to measure and analyze more completely all distributive trade industries during future NAICS revisions.

The entire proposed structure for Wholesale Trade is detailed in Part IV of this notice.

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Part IV. 2002 NAICS United States Structure, Including Relationships to 1997 NAICS United States and 1987 Standard Industrial Classification

Table 1 - 2002 NAICS United States Matched to 1997 NAICS United States

The definition of status codes are as follows: E-existing industry, N-new industry; R-revised industry; *-part of a 1997 NAICS industry

2002 NAICS Code	2002 NAICS and U.S. Description	Status Code	1997 NAICS Code	1997 NAICS Description
236	Construction of Buildings			
2361	Residential Building Construction			
23611	Residential Building Construction			
236115	New Single-Family Housing Construction (except Operative Builders)	R	*233210	Single Family Housing Construction (except operative builders and remodeling contractors)
236116	New Multifamily Housing Construction (except Operative Builders)	R	*233220	Multifamily Housing Construction (except barrack and dormitory construction, operative builders, and remodeling contractors)
236117	New Housing Operative Builders	N	*233210	Single Family Housing Construction (operative builders)
			*233220	Multifamily Housing Construction (operative builders)
236118	Residential Remodelers	N	*233210	Single Family Housing Construction (remodeling contractors)
			*233220	Multifamily Housing Construction (remodeling contractors)
2362	Nonresidential Building Construction			
23621	Industrial Building Construction	R	*233310	Manufacturing and Industrial Building Construction (except grain elevators, dry cleaning plants, and manufacturing and industrial warehouses)
			*234930	Industrial Nonbuilding Structure Construction (process batch plants, incinerators, industrial furnaces and kilns, mining appurtenance, and construction management of these projects)
			*234990	All Other Heavy Construction (waste disposal plant construction)
23622	Commercial and Institutional Building Construction	R	*233220	Multifamily Housing Construction (barrack and dormitory construction)
			*233310	Manufacturing and Industrial Building Construction (grain elevators, dry cleaning plants, and manufacturing and industrial warehouses)
			233320	Commercial and Institutional Building Construction
			*235990	All Other Special Trade Contractors (indoor swimming pools)
237	Heavy and Civil Engineering Construction			
2371	Utility System Construction			
23711	Water and Sewer Line and Related Structures Construction	R	*234910	Water, Sewer, and Pipeline Construction (water/sewer pumping stations, sewage collection and disposal lines, storm sewers, sewer/water mains and lines, water storage tanks and towers, and construction management of these projects)
			*234990	All Other Heavy Construction (irrigation systems, sewage treatment and water treatment plants, construction management of these projects)
			235810	Water Well Drilling Contractors
23712	Oil and Gas Pipeline and Related Structures Construction	N	*213112	Support Activities for Oil and Gas Operations (construction of field gathering lines on a contract basis)
			*234910	Water, Sewer, and Pipeline Construction (gas and oil pumping stations, gas and oil pipeline construction, gas mains, gas and oil storage tank construction, and construction management of these projects)
			*234930	Industrial Nonbuilding Structure Construction (petrochemical plants, refineries, and construction management of these projects)
23713	Power and Communication Line and Related Structures Construction	R	234920	Power and Communication Transmission Line Construction
			*234930	Industrial Nonbuilding Structure Construction (power generation plants (excluding hydroelectric dams), transmission and distribution transformer stations, and construction management of these projects)

2372	Land Subdivision			
23721	Land Subdivision	E	233110	Land Subdivision and Land Development
2373	Highway, Street, and Bridge Construction			
23731	Highway, Street, and Bridge Construction	R	234110	Highway and Street Construction
			*234120	Bridge and Tunnel Construction (bridge construction)
			*235210	Painting and Wall Covering Contractors (highway and traffic line painting)
2379	Other Heavy and Civil Engineering Construction			
23799	Other Heavy and Civil Engineering Construction	R	*234120	Bridge and Tunnel Construction (tunnel construction)
			*234990	All Other Heavy Construction (except waste disposal plant construction, irrigation systems, sewage treatment and water treatment plants, right-of-way clearing and line slashing, blasting, trenching, and equipment rental with operator)
			*235990	All Other Special Trade Contractors (anchored earth retention contractors)
238	Specialty Trade Contractors			
2381	Foundation, Structure, and Building Exterior Contractors			
23811	Poured Concrete Foundation and Structure Contractors	R	*235710	Concrete Contractors (except residential and commercial asphalt, brick, and concrete paving)
23812	Structural Steel and Precast Concrete Contractors	R	*235910	Structural Steel Erection Contractors (except curtain walls, metal furring installation, and cooling tower installation)
23813	Framing Contractors	R	*235510	Carpentry Contractors (framing carpentry)
23814	Masonry Contractors	R	235410	Masonry and Stone Contractors
			*235420	Drywall, Plastering, Acoustical, and Insulation Contractors (stucco contractors)
23815	Glass and Glazing Contractors	E	235920	Glass and Glazing Contractors
23816	Roofing Contractors	R	*235610	Roofing, Siding, and Sheet Metal Contractors (roofing contractors)
23817	Siding Contractors	R	*235610	Roofing, Siding, and Sheet Metal Contractors (siding contractors)
23819	Other Foundation, Structure, and Building Exterior Contractors	R	*235910	Structural Steel Erection Contractors (curtain walls and metal furring installation)
			*235990	All Other Special Trade Contractors (forming contractors, ornamental metal work installation)
2382	Building Equipment Contractors			
23821	Electrical Contractors	R	*235110	Plumbing, Heating, and Air-Conditioning Contractors (environmental controls installation contractors)
			235310	Electrical Contractors
23822	Plumbing, Heating, and Air-Conditioning Contractors	R	*235110	Plumbing, Heating, and Air-Conditioning Contractors (except environmental controls installation contractors and septic tank, cesspool, and dry well construction)
			*235910	Structural Steel Erection Contractors (cooling tower installation)
			*235950	Building Equipment and Other Machinery Installation Contractors (scrubber, dust collection, and other industrial ventilation installation)
23829	Other Building Equipment Contractors	R	*235950	Building Equipment and Other Machinery Installation Contractors (except scrubber, dust collection, and other industrial ventilation installation)
			*235990	All Other Special Trade Contractors (service station equipment installation; boiler, duct, and pipe insulation; lightning rod installation; bowling alley installation; household-type antenna installation; church bell installation; and tower clock installation)
2383	Building Finishing Contractors			
23831	Drywall and Insulation Contractors	R	*235420	Drywall, Plastering, Acoustical, and Insulation Contractors (except stucco contractors)
23832	Painting and Wall Covering Contractors	R	*235210	Painting and Wall Covering Contractors (except highway and traffic line painting)

23833	Flooring Contractors	E	235520 Floor Laying and Other Floor Contractors
23834	Tile and Terrazzo Contractors	E	235430 Tile, Marble, Terrazzo, and Mosaic Contractors
23835	Finish Carpentry Contractors	R	*235510 Carpentry Contractors (finish carpentry)
23839	Other Building Finishing Contractors	R	*235610 Roofing, Siding, and Sheet Metal Contractors (metal ceiling, panel, and shelving installation) *235990 All Other Special Trade Contractors (weather stripping and damp-proofing, modular furniture installation, bathtub refinishing, window covering fixture installation, trade show exhibit installation and dismantling, and spectator seating installation)
2389	Other Specialty Trade Contractors		
23891	Site Preparation Contractors	R	*213112 Support Activities for Oil and Gas Operations (site preparation and related construction activities on a contract basis) *213113 Support Activities for Coal Mining (site preparation and related construction activities on a contract basis) *213114 Support Activities for Metal Mining (site preparation and related construction activities on a contract basis) *213115 Support Activities for Nonmetallic Minerals (except Fuels) (site preparation and related construction activities on a contract basis) *234990 All Other Heavy Construction (right-of-way clearing and line slashing, blasting, trenching, and equipment rental (except cranes) with operator) *235110 Plumbing, Heating, and Air-Conditioning Contractors (septic tank, cesspool, and dry well construction contractors) 235930 Excavation Contractors 235940 Wrecking and Demolition Contractors *235990 All Other Special Trade Contractors (dewatering contractors, core drilling for construction, and test drilling for construction)
23899	All Other Specialty Trade Contractors	R	*234990 All Other Heavy Construction (rental of cranes with operator) *235710 Concrete Contractors (residential and commercial asphalt, brick, and concrete paving) *235990 All Other Special Trade Contractors (except indoor swimming pools, earth retention contractors, forming contractors, ornamental metal work, building equipment contractors, building finishing contractors, dewatering contractors, core drilling for construction, and test boring for construction) *561720 Janitorial Services (cleaning buildings during and immediately after construction)
42	Wholesale Trade		
423	Merchant Wholesalers, Durable Goods		
4231	Motor Vehicle and Motor Vehicle Parts and Supplies Merchant Wholesalers		
42311	Automobile and Other Motor Vehicle Merchant Wholesalers	R	*421110 Automobile and Other Motor Vehicle Wholesalers (merchant wholesalers)
42312	Motor Vehicle Supplies and New Parts Merchant Wholesalers	R	*421120 Motor Vehicle Supplies and New Parts Wholesalers (merchant wholesalers)
42313	Tire and Tube Merchant Wholesalers	R	*421130 Tire and Tube Wholesalers (merchant wholesalers)
42314	Motor Vehicle Parts (Used) Merchant Wholesalers	R	*421140 Motor Vehicle Parts (Used) Wholesalers (merchant wholesalers)
4232	Furniture and Home Furnishing Merchant Wholesalers		
42321	Furniture Merchant Wholesalers	R	*421210 Furniture Wholesalers (merchant wholesalers)
42322	Home Furnishing Merchant Wholesalers	R	*421220 Home Furnishing Wholesalers (merchant wholesalers)
4233	Lumber and Other Construction Materials Merchant Wholesalers		
42331	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers	R	*421310 Lumber, Plywood, Millwork, and Wood Panel Wholesalers (merchant wholesalers)
42332	Brick, Stone, and Related Construction Material Merchant Wholesalers	R	*421320 Brick, Stone, and Related Construction Material Wholesalers (merchant wholesalers)

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42333	Roofing, Siding, and Insulation Material Merchant Wholesalers	R	*421330	Roofing, Siding, and Insulation Material Wholesalers (merchant wholesalers)
42339	Other Construction Material Merchant Wholesalers	R	*421390	Other Construction Material Wholesalers (merchant wholesalers)
4234	Professional and Commercial Equipment and Supplies Merchant Wholesalers			
42341	Photographic Equipment and Supplies Merchant Wholesalers	R	*421410	Photographic Equipment and Supplies Wholesalers (merchant wholesalers).
42342	Office Equipment Merchant Wholesalers	R	*421420	Office Equipment Wholesalers (merchant wholesalers)
42343	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	R	*421430	Computer and Computer Peripheral Equipment and Software Wholesalers (merchant wholesalers)
42344	Other Commercial Equipment Merchant Wholesalers	R	*421440	Other Commercial Equipment Wholesalers (merchant wholesalers)
42345	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers	R	*421450	Medical, Dental, and Hospital Equipment and Supplies Wholesalers (merchant wholesalers)
42346	Ophthalmic Goods Merchant Wholesalers	R	*421460	Ophthalmic Goods Wholesalers (merchant wholesalers)
42349	Other Professional Equipment and Supplies Merchant Wholesalers	R	*421490	Other Professional Equipment and Supplies Wholesalers (merchant wholesalers)
4235	Metal and Mineral (except Petroleum) Merchant Wholesalers			
42351	Metal Service Centers and Other Metal Merchant Wholesalers	R	*421510	Metal Service Centers and Offices (merchant wholesalers)
42352	Coal and Other Mineral and Ore Merchant Wholesalers	R	*421520	Coal and Other Mineral and Ore Wholesalers (merchant wholesalers)
4236	Electrical and Electronic Goods Merchant Wholesalers			
42361	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	R	*421610	Electrical Apparatus and Equipment, Wiring Supplies, and Construction Material Wholesalers (merchant wholesalers)
42362	Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers	R	*421620	Electrical Appliance, Television, and Radio Set Wholesalers (merchant wholesalers)
42369	Other Electronic Parts and Equipment Merchant Wholesalers	R	*421690	Other Electronic Parts and Equipment Wholesalers (merchant wholesalers)
4237	Hardware, and Plumbing and Heating Equipment and Supplies Merchant Wholesalers			
42371	Hardware Merchant Wholesalers	R	*421710	Hardware Wholesalers (merchant wholesalers)
42372	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	R	*421720	Plumbing and Heating Equipment and Supplies (Hydronics) Wholesalers (merchant wholesalers)
42373	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers	R	*421730	Warm Air Heating and Air-Conditioning Equipment and Supplies Wholesalers (merchant wholesalers)
42374	Refrigeration Equipment and Supplies Merchant Wholesalers	R	*421740	Refrigeration Equipment and Supplies Wholesalers (merchant wholesalers)
4238	Machinery, Equipment, and Supplies Merchant Wholesalers			
42381	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers	R	*421810	Construction and Mining (except Oil Well) Machinery and Equipment Wholesalers (merchant wholesalers)

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42382	Farm and Garden Machinery and Equipment Merchant Wholesalers	R	*421820 Farm and Garden Machinery and Equipment Wholesalers (merchant wholesalers)
42383	Industrial Machinery and Equipment Merchant Wholesalers	R	*421830 Industrial Machinery and Equipment Wholesalers (merchant wholesalers)
42384	Industrial Supplies Merchant Wholesalers	R	*421840 Industrial Supplies Wholesalers (merchant wholesalers)
42385	Service Establishment Equipment and Supplies Merchant Wholesalers	R	*421850 Service Establishment Equipment and Supplies Wholesalers (merchant wholesalers)
42386	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers	R	*421860 Transportation Equipment and Supplies (except Motor Vehicle) Wholesalers (merchant wholesalers)
4239	Miscellaneous Durable Goods Merchant Wholesalers		
42391	Sporting and Recreational Goods and Supplies Merchant Wholesalers	R	*421910 Sporting and Recreational Goods and Supplies Wholesalers (merchant wholesalers)
42392	Toy and Hobby Goods and Supplies Merchant Wholesalers	R	*421920 Toy and Hobby Goods and Supplies Wholesalers (merchant wholesalers)
42393	Recyclable Material Merchant Wholesalers	R	*421930 Recyclable Material Wholesalers (merchant wholesalers)
42394	Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers	R	*421940 Jewelry, Watch, Precious Stone, and Precious Metal Wholesalers (merchant wholesalers)
42399	Other Miscellaneous Durable Goods Merchant Wholesalers	R	*421990 Other Miscellaneous Durable Goods Wholesalers (merchant wholesalers)
424	Merchant Wholesalers, Nondurable Goods		
4241	Paper and Paper Product Merchant Wholesalers		
42411	Printing and Writing Paper Merchant Wholesalers	R	*422110 Printing and Writing Paper Wholesalers (merchant wholesalers)
42412	Stationary and Office Supplies Merchant Wholesalers	R	*422120 Stationary and Office Supplies Wholesalers (merchant wholesalers)
42413	Industrial and Personal Service Paper Merchant Wholesalers	R	*422130 Industrial and Personal Service Paper Wholesalers (merchant wholesalers)
4242	Drugs and Druggists' Sundries Merchant Wholesalers		
42421	Drugs and Druggists' Sundries Merchant Wholesalers	R	*422210 Drugs and Druggists' Sundries Wholesalers (merchant wholesalers)
4243	Apparel, Piece Goods, and Notions Merchant Wholesalers		
42431	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers	R	*422310 Piece Goods, Notions, and Other Dry Goods Wholesalers (merchant wholesalers)
42432	Men's and Boys' Clothing and Furnishings Merchant Wholesalers	R	*422320 Men's and Boys' Clothing and Furnishings Wholesalers (merchant wholesalers)
42433	Women's, Children's, and Infants' Clothing and Accessories Merchant Wholesalers	R	*422330 Women's, Children's, and Infants' Clothing and Accessories Wholesalers (merchant wholesalers)
42434	Footwear Merchant Wholesalers	R	*422340 Footwear Wholesalers (merchant wholesalers)
4244	Grocery and Related Product Merchant Wholesalers		
42441	General Line Grocery Merchant Wholesalers	R	*422410 General Line Grocery Wholesalers (merchant wholesalers)
42442	Packaged Frozen Food Merchant Wholesalers	R	*422420 Packaged Frozen Food Wholesalers (merchant wholesalers)
42443	Dairy Product (except Dried or Canned) Merchant Wholesalers	R	*422430 Dairy Product (except Dried or Canned) Wholesalers (merchant wholesalers)
42444	Poultry and Poultry Product Merchant Wholesalers	R	*422440 Poultry and Poultry Product Wholesalers (merchant wholesalers)
42445	Confectionery Merchant Wholesalers	R	*422450 Confectionery Wholesalers (merchant wholesalers)
42446	Fish and Seafood Merchant Wholesalers	R	*422460 Fish and Seafood Wholesalers (merchant wholesalers)
42447	Meat and Meat Product Merchant Wholesalers	R	*422470 Meat and Meat Product Wholesalers (merchant wholesalers)
42448	Fresh Fruit and Vegetable Merchant Wholesalers	R	*422480 Fresh Fruit and Vegetable Wholesalers (merchant wholesalers)
42449	Other Grocery and Related Products Merchant Wholesalers	R	*422490 Other Grocery and Related Products Wholesalers (merchant wholesalers)

4245	Farm Product Raw Material Merchant Wholesalers			
42451	Grain and Field Bean Merchant Wholesalers	R	*422510	Grain and Field Bean Wholesalers (merchant wholesalers)
42452	Livestock Merchant Wholesalers	R	*422520	Livestock Wholesalers (merchant wholesalers)
42459	Other Farm Product Raw Material Merchant Wholesalers	R	*422590	Other Farm Product Raw Material Wholesalers (merchant wholesalers)
4246	Chemical and Allied Products Merchant Wholesalers			
42461	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers	R	*422610	Plastics Materials and Basic Forms and Shapes Wholesalers (merchant wholesalers)
42469	Other Chemical and Allied Products Merchant Wholesalers	R	*422690	Other Chemical and Allied Products Wholesalers (merchant wholesalers)
4247	Petroleum and Petroleum Products Merchant Wholesalers			
42471	Petroleum Bulk Stations and Terminals	E	422710	Petroleum Bulk Stations and Terminals
42472	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	R	*422720	Petroleum and Petroleum Products Wholesalers (except Bulk Stations and Terminals) (merchant wholesalers)
4248	Beer, Wine, and Distilled Alcoholic Beverage Merchant Wholesalers			
42481	Beer and Ale Merchant Wholesalers	R	*422810	Beer and Ale Wholesalers (merchant wholesalers)
42482	Wine and Distilled Alcoholic Beverage Merchant Wholesalers	R	*422820	Wine and Distilled Alcoholic Beverage Wholesalers (merchant wholesalers)
4249	Miscellaneous Nondurable Goods Merchant Wholesalers			
42491	Farm Supplies Merchant Wholesalers	R	*422910	Farm Supplies Wholesalers (merchant wholesalers)
42492	Book, Periodical, and Newspaper Merchant Wholesalers	R	*422920	Book, Periodical, and Newspaper Wholesalers (merchant wholesalers)
42493	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers	R	*422930	Flower, Nursery Stock, and Florists' Supplies Wholesalers (merchant wholesalers)
42494	Tobacco and Tobacco Product Merchant Wholesalers	R	*422940	Tobacco and Tobacco Product Wholesalers (merchant wholesalers)
42495	Paint, Varnish, and Supplies Merchant Wholesalers	R	*422950	Paint, Varnish, and Supplies Wholesalers (merchant wholesalers)
42499	Other Miscellaneous Nondurable Goods Merchant Wholesalers	R	*422990	Other Miscellaneous Nondurable Goods Wholesalers (merchant wholesalers)
425	Wholesale Electronic Markets and Agents and Brokers			
4251	Wholesale Electronic Markets and Agents and Brokers			
42511	Business to Business Electronic Markets	N	*421110	Automobile and Other Motor Vehicle Wholesalers (electronic markets)
			*421120	Motor Vehicle Supplies and New Parts Wholesalers (electronic markets)
			*421130	Tire and Tube Wholesalers (electronic markets)
			*421140	Motor Vehicle Parts (Used) Wholesalers (electronic markets)
			*421210	Furniture Wholesalers (electronic markets)
			*421220	Home Furnishing Wholesalers (electronic markets)
			*421310	Lumber, Plywood, Millwork, and Wood Panel Wholesalers (electronic markets)
			*421320	Brick, Stone, and Related Construction Material Wholesalers (electronic markets)
			*421330	Roofing, Siding, and Insulation Material Wholesalers (electronic markets)
			*421390	Other Construction Material Wholesalers (electronic markets)
			*421410	Photographic Equipment and Supplies Wholesalers (electronic markets)
			*421420	Office Equipment Wholesalers (electronic markets)
			*421430	Computer and Computer Peripheral Equipment and Software Wholesalers (electronic markets)
			*421440	Other Commercial Equipment Wholesalers (electronic markets)
			*421450	Medical, Dental, and Hospital Equipment and Supplies Wholesalers (electronic markets)
			*421460	Ophthalmic Goods Wholesalers (electronic markets)
			*421490	Other Professional Equipment and Supplies Wholesalers (electronic markets)
			*421510	Metal Service Centers and Offices (electronic markets)
			*421520	Coal and Other Mineral and Ore Wholesalers (electronic markets)
			*421610	Electrical Apparatus and Equipment, Wiring Supplies, and Construction Material Wholesalers (electronic markets)

42511	Business to Business Electronic Markets (continued)	*421620 Electrical Appliance, Television, and Radio Set Wholesalers (electronic markets)
		*421690 Other Electronic Parts and Equipment Wholesalers (electronic markets)
		*421710 Hardware Wholesalers (electronic markets)
		*421720 Plumbing and Heating Equipment and Supplies (Hydronics) Wholesalers (electronic markets)
		*421730 Warm Air Heating and Air-Conditioning Equipment and Supplies Wholesalers (electronic markets)
		*421740 Refrigeration Equipment and Supplies Wholesalers (electronic markets)
		*421810 Construction and Mining (except Oil Well) Machinery and Equipment Wholesalers (electronic markets)
		*421820 Farm and Garden Machinery and Equipment Wholesalers (electronic markets)
		*421830 Industrial Machinery and Equipment Wholesalers (electronic markets)
		*421840 Industrial Supplies Wholesalers (electronic markets)
		*421850 Service Establishment Equipment and Supplies Wholesalers (electronic markets)
		*421860 Transportation Equipment and Supplies (except Motor Vehicle) Wholesalers (electronic markets)
		*421910 Sporting and Recreational Goods and Supplies Wholesalers (electronic markets)
		*421920 Toy and Hobby Goods and Supplies Wholesalers (electronic markets)
		*421930 Recyclable Material Wholesalers (electronic markets)
		*421940 Jewelry, Watch, Precious Stone, and Precious Metal Wholesalers (electronic markets)
		*421990 Other Miscellaneous Durable Goods Wholesalers (electronic markets)
		*422110 Printing and Writing Paper Wholesalers (electronic markets)
		*422120 Stationary and Office Supplies Wholesalers (electronic markets)
		*422130 Industrial and Personal Service Paper Wholesalers (electronic markets)
		*422210 Drugs and Druggists' Sundries Wholesalers (electronic markets)
		*422310 Piece Goods, Notions, and Other Dry Goods Wholesalers (electronic markets)
		*422320 Men's and Boys' Clothing and Furnishings Wholesalers (electronic markets)
		*422330 Women's, Children's, and Infants' Clothing and Accessories Wholesalers (electronic markets)
		*422340 Footwear Wholesalers (electronic markets)
		*422410 General Line Grocery Wholesalers (electronic markets)
		*422420 Packaged Frozen Food Wholesalers (electronic markets)
		*422430 Dairy Product (except Dried or Canned) Wholesalers (electronic markets)
		*422440 Poultry and Poultry Product Wholesalers (electronic markets)
		*422450 Confectionery Wholesalers (electronic markets)
		*422460 Fish and Seafood Wholesalers (electronic markets)
		*422470 Meat and Meat Product Wholesalers (electronic markets)
		*422480 Fresh Fruit and Vegetable Wholesalers (electronic markets)
		*422490 Other Grocery and Related Products Wholesalers (electronic markets)
		*422510 Grain and Field Bean Wholesalers (electronic markets)
		*422520 Livestock Wholesalers (electronic markets)
		*422590 Other Farm Product Raw Material Wholesalers (electronic markets)
		*422610 Plastics Materials and Basic Forms and Shapes Wholesalers (electronic markets)
		*422690 Other Chemical and Allied Products Wholesalers (electronic markets)
		*422720 Petroleum and Petroleum Products Wholesalers (except Bulk Stations and Terminals) (electronic markets)
		*422810 Beer and Ale Wholesalers (electronic markets)
		*422820 Wine and Distilled Alcoholic Beverage Wholesalers (electronic markets)
		*422910 Farm Supplies Wholesalers (electronic markets)
		*422920 Book, Periodical, and Newspaper Wholesalers (electronic markets)
		*422930 Flower, Nursery Stock, and Florists' Supplies Wholesalers (electronic markets)

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42511	Business to Business Electronic Markets (continued)		*422940	Tobacco and Tobacco Product Wholesalers (electronic markets)
			*422950	Paint, Varnish, and Supplies Wholesalers (electronic markets)
			*422990	Other Miscellaneous Nondurable Goods Wholesalers (electronic markets)
42512	Wholesale Trade Agents and Brokers			
		N	*421110	Automobile and Other Motor Vehicle Wholesalers (agents and brokers)
			*421120	Motor Vehicle Supplies and New Parts Wholesalers (agents and brokers)
			*421130	Tire and Tube Wholesalers (agents and brokers)
			*421140	Motor Vehicle Parts (Used) Wholesalers (agents and brokers)
			*421210	Furniture Wholesalers (agents and brokers)
			*421220	Home Furnishing Wholesalers (agents and brokers)
			*421310	Lumber, Plywood, Millwork, and Wood Panel Wholesalers (agents and brokers)
			*421320	Brick, Stone, and Related Construction Material Wholesalers (agents and brokers)
			*421330	Roofing, Siding, and Insulation Material Wholesalers (agents and brokers)
			*421390	Other Construction Material Wholesalers (agents and brokers)
			*421410	Photographic Equipment and Supplies Wholesalers (agents and brokers)
			*421420	Office Equipment Wholesalers (agents and brokers)
			*421430	Computer and Computer Peripheral Equipment and Software Wholesalers (agents and brokers)
			*421440	Other Commercial Equipment Wholesalers (agents and brokers)
			*421450	Medical, Dental, and Hospital Equipment and Supplies Wholesalers (agents and brokers)
			*421460	Ophthalmic Goods Wholesalers (agents and brokers)
			*421490	Other Professional Equipment and Supplies Wholesalers (agents and brokers)
			*421510	Metal Service Centers and Offices (agents and brokers)
			*421520	Coal and Other Mineral and Ore Wholesalers (agents and brokers)
			*421610	Electrical Apparatus and Equipment, Wiring Supplies, and Construction Material Wholesalers (agents and brokers)
			*421620	Electrical Appliance, Television, and Radio Set Wholesalers (agents and brokers)
			*421690	Other Electronic Parts and Equipment Wholesalers (agents and brokers)
			*421710	Hardware Wholesalers (agents and brokers)
			*421720	Plumbing and Heating Equipment and Supplies (Hydronics) Wholesalers (agents and brokers)
			*421730	Warm Air Heating and Air-Conditioning Equipment and Supplies Wholesalers (agents and brokers)
			*421740	Refrigeration Equipment and Supplies Wholesalers (agents and brokers)
			*421810	Construction and Mining (except Oil Well) Machinery and Equipment Wholesalers (agents and brokers)
			*421820	Farm and Garden Machinery and Equipment Wholesalers (agents and brokers)
			*421830	Industrial Machinery and Equipment Wholesalers (agents and brokers)
			*421840	Industrial Supplies Wholesalers (agents and brokers)
			*421850	Service Establishment Equipment and Supplies Wholesalers (agents and brokers)
			*421860	Transportation Equipment and Supplies (except Motor Vehicle) Wholesalers (agents and brokers)
			*421910	Sporting and Recreational Goods and Supplies Wholesalers (agents and brokers)
			*421920	Toy and Hobby Goods and Supplies Wholesalers (agents and brokers)
			*421930	Recyclable Material Wholesalers (agents and brokers)
			*421940	Jewelry, Watch, Precious Stone, and Precious Metal Wholesalers (agents and brokers)
			*421990	Other Miscellaneous Durable Goods Wholesalers (agents and brokers)
			*422110	Printing and Writing Paper Wholesalers (agents and brokers)
			*422120	Stationery and Office Supplies Wholesalers (agents and brokers)
			*422130	Industrial and Personal Service Paper Wholesalers (agents and brokers)

42512	Wholesale Trade Agents and Brokers (continued)		*422210 Drugs and Druggists' Sundries Wholesalers (agents and brokers) *422310 Piece Goods, Notions, and Other Dry Goods Wholesalers (agents and brokers) *422320 Men's and Boys' Clothing and Furnishings Wholesalers (agents and brokers) *422330 Women's, Children's, and Infants' Clothing and Accessories Wholesalers (agents and brokers) *422340 Footwear Wholesalers (agents and brokers) *422410 General Line Grocery Wholesalers (agents and brokers) *422420 Packaged Frozen Food Wholesalers (agents and brokers) *422430 Dairy Product (except Dried or Canned) Wholesalers (agents and brokers) *422440 Poultry and Poultry Product Wholesalers (agents and brokers) *422450 Confectionary Wholesalers (agents and brokers) *422460 Fish and Seafood Wholesalers (agents and brokers) *422470 Meat and Meat Product Wholesalers (agents and brokers) *422480 Fresh Fruit and Vegetable Wholesalers (agents and brokers) *422490 Other Grocery and Related Products Wholesalers (agents and brokers) *422510 Grain and Field Bean Wholesalers (agents and brokers) *422520 Livestock Wholesalers (agents and brokers) *422590 Other Farm Product Raw Material Wholesalers (agents and brokers) *422610 Plastics Materials and Basic Forms and Shapes Wholesalers (agents and brokers) *422690 Other Chemical and Allied Products Wholesalers (agents and brokers) *422720 Petroleum and Petroleum Products Wholesalers (except Bulk Stations and Terminals) (agents and brokers) *422810 Beer and Ale Wholesalers (agents and brokers) *422820 Wine and Distilled Alcoholic Beverage Wholesalers (agents and brokers) *422910 Farm Supplies Wholesalers (agents and brokers) *422920 Book, Periodical, and Newspaper Wholesalers (agents and brokers) *422930 Flower, Nursery Stock, and Florists' Supplies Wholesalers (agents and brokers) *422940 Tobacco and Tobacco Product Wholesalers (agents and brokers) *422950 Paint, Varnish, and Supplies Wholesalers (agents and brokers) *422990 Other Miscellaneous Nondurable Goods Wholesalers (agents and brokers)
4521	Department Stores		
45211	Department Stores		
452111	Department Stores (except Discount Department Stores)	R	*452110 Department Stores (except discount department stores)
452112	Discount Department Stores	N	*452110 Department Stores (discount department stores)
4541	Electronic Shopping and Mail-Order Houses		
45411	Electronic Shopping and Mail-Order Houses		
454111	Electronic Shopping	N	*454110 Electronic Shopping and Mail-Order Houses (electronic shopping)
454112	Electronic Auctions	N	*454110 Electronic Shopping and Mail-Order Houses (Internet auctions)
454113	Mail-Order Houses	R	*454110 Electronic Shopping and Mail-Order Houses (except electronic shopping and Internet auctions)
51	Information		
511	Publishing Industries (except Internet)		
5111	Newspaper, Periodical, Book, and Directory Publishers		
51111	Newspaper Publishers	R	*511110 Newspaper Publishers (except Internet publishing)
51112	Periodical Publishers	R	*511120 Periodical Publishers (except Internet publishing)

51113	Book Publishers	R	*511130	Book Publishers (except Internet publishing)
51114	Directory and Mailing List Publishers	R	*511140	Database and Directory Publishers (except Internet publishing)
51119	Other Publishers			
511191	Greeting Card Publishers	R	*511191	Greeting Card Publishers (except Internet publishing)
511199	All Other Publishers	R	*511199	All Other Publishers (except Internet publishing)
5112	Software Publishers			
51121	Software Publishers	E	511210	Software Publishers
512	Motion Picture and Sound Recording Industries			
5121	Motion Picture and Video Industries			
51211	Motion Picture and Video Production	E	512110	Motion Picture and Video Production
51212	Motion Picture and Video Distribution	E	512120	Motion Picture and Video Distribution
51213	Motion Picture and Video Exhibition			
512131	Motion Picture Theaters (except Drive-Ins)	E	512131	Motion Picture Theaters (except Drive-Ins)
512132	Drive-In Motion Picture Theaters	E	512132	Drive-In Motion Picture Theaters
51219	Post Production Services and Other Motion Picture and Video Industries			
512191	Teleproduction and Other Postproduction Services	E	512191	Teleproduction and Other Postproduction Services
512199	Other Motion Picture and Video Industries	E	512199	Other Motion Picture Industries
5122	Sound Recording Industries			
51221	Record Production	E	512210	Record Production
51222	Integrated Record Production/Distribution	E	512220	Integrated Record Production/Distribution
51223	Music Publishers	E	512230	Music Publishers
51224	Sound Recording Studios	E	512240	Sound Recording Studios
51229	Other Sound Recording Industries	E	512290	Other Sound Recording Industries
515	Broadcasting (except Internet)			
5151	Radio and Television Broadcasting			
51511	Radio Broadcasting			
515111	Radio Networks	E	513111	Radio Networks
515112	Radio Stations	E	513112	Radio Stations
51512	Television Broadcasting	E	513120	Television Broadcasting
5152	Cable and Other Subscription Programming			
51521	Cable and Other Subscription Programming	E	513210	Cable Networks
516	Internet Publishing and Broadcasting			
5161	Internet Publishing and Broadcasting			
51611	Internet Publishing and Broadcasting			
516110	Internet Publishing and Broadcasting	N	*511110	Newspaper Publishers (Internet newspaper publishers)
			*511120	Periodical Publishers (Internet periodical publishers)
			*511130	Book Publishers (Internet book publishers)
			*511140	Directory and Database Publishers (Internet directory publishers)
			*511191	Greeting Card Publishers (Internet greeting card publishers)
			*511199	All Other Publishers (All other Internet publishers)
			*514199	All Other Information Services (Internet broadcasting)
517	Telecommunications			
5171	Wired Telecommunications Carriers			
51711	Wired Telecommunications Carriers	E	513310	Wired Telecommunications Carriers
5172	Wireless Telecommunications Carriers (except Satellite)			
51721	Wireless Telecommunications Carriers (except Satellite)			
517211	Paging	E	513321	Paging
517212	Cellular and Other Wireless Telecommunications	E	513322	Cellular and Other Wireless Communications
5179	Telecommunications Resellers			

51731	Telecommunications Resellers	E	513330	Telecommunications Resellers
5174	Satellite Telecommunications			
51741	Satellite Telecommunications	E	513340	Satellite Telecommunications
5175	Cable and Other Program Distribution			
51751	Cable and Other Program Distribution	E	513220	Cable and Other Program Distribution
5179	Other Telecommunications			
51791	Other Telecommunications	E	513390	Other Telecommunications
518	Internet Service Providers, Web Search Portals, and Data Processing Services			
5181	Internet Service Providers and Web Search Portals			
51811	Internet Service Providers and Web Search Portals			
518111	Internet Service Providers	E	514191	On-Line Information Services
518112	Web Search Portals	N	*514199	All Other Information Services (Internet search portals)
5182	Data Processing, Hosting, and Related Services			
51821	Data Processing, Hosting, and Related Services	E	514210	Data Processing Services
519	Other Information Services			
5191	Other Information Services			
51911	News Syndicates	E	514110	News Syndicates
51912	Libraries and Archives	E	514120	Libraries and Archives
51919	All Other Information Services	R	*514199	All Other Information Services (except Internet search portals and Internet Broadcasting)

Table 2 - 1997 NAICS United States Matched to 2002 NAICS United States

1997 NAICS Code	1997 NAICS U.S. Description	2002 NAICS Code	2002 NAICS and U.S. Description
213112	Support Activities for Oil and Gas Operations		
	Construction of Field Gathering Lines On A Contract Basis	237120	Oil and Gas Pipeline and Related Structures Construction (pt)
	Site Preparation and Related Construction Activities On A Contract Basis	238910	Site Preparation Contractors (pt)
	Support Activities For Oil and Gas Operations Except Site Preparation and Related Construction Activities	213112	Support Activities for Oil and Gas Operations
213113	Support Activities for Coal Mining		
	Site Preparation and Related Construction Activities On A Contract Basis	238910	Site Preparation Contractors (pt)
	Support Activities For Coal Mining Except Site Preparation and Related Construction Activities	213113	Support Activities for Coal Mining
213114	Support Activities for Metal Mining		
	Site Preparation and Related Construction Activities On A Contract Basis	238910	Site Preparation Contractors (pt)
	Support Activities For Metal Mining Except Site Preparation and Related Construction Activities	213114	Support Activities for Metal Mining
213115	Support Activities for Nonmetallic Minerals (except Fuels)		
	Site Preparation and Related Construction Activities On A Contract Basis	238910	Site Preparation Contractors (pt)
	Support Activities For Nonmetallic Mineral (Except Fuel) Mining Except Site Preparation and Related Construction Activities	213115	Support Activities for Nonmetallic Minerals (except Fuels)
233110	Land Subdivision and Land Development	237210	Land Subdivision
233210	Single Family Housing Construction		
	General Contractors	236115	New Single-Family Housing Construction (except Operative Builders)
	Operative Builders	236117	New Housing Operative Builders (pt)
	Remodeling Contractors	236118	Residential Remodelers (pt)

233220	Multifamily Housing Construction		
	General Contractors	236116	New Multifamily Housing Construction (except Operative Builders)
	Operative Builders	236117	New Housing Operative Builders (pt)
	Remodeling Contractors	236118	Residential Remodelers (pt)
	Barrack and Dormitory Construction	236220	Commercial and Institutional Building Construction (pt)
233310	Manufacturing and Industrial Building Construction		
	Grain Elevators, Dry-Cleaning Plants, and Manufacturing and Industrial Warehouses	236220	Commercial and Institutional Building Construction (pt)
	Except Grain Elevators, Dry Cleaning Plants, and Manufacturing and Industrial Warehouses	236210	Industrial Building Construction (pt)
233320	Commercial and Institutional Building Construction	236220	Commercial and Institutional Building Construction (pt)
234110	Highway and Street Construction	237310	Highway, Street, and Bridge Construction (pt)
234120	Bridge and Tunnel Construction		
	Bridge Construction	237310	Highway, Street, and Bridge Construction (pt)
	Tunnel Construction	237990	Other Heavy and Civil Engineering Construction (pt)
234910	Water, Sewer, and Pipeline Construction		
	Water/Sewer Pumping Stations, Sewage Collection and Disposal Lines, Storm Sewers, Sewer/Water Mains and Lines, and Water Storage Tanks and Towers, and Construction Management of these Projects	237110	Water and Sewer Line and Related Structures Construction (pt)
	Gas and Oil Pumping Stations, Gas and Oil Pipeline Construction, Gas Mains, Gas and Oil Storage Tank Construction, and Construction Management of these Projects	237120	Oil and Gas Pipeline and Related Structures Construction (pt)
234920	Power and Communication Transmission Line Construction	237130	Power and Communication Line and Related Structures Construction (pt)
234930	Industrial Nonbuilding Structure Construction		
	Petrochemical Plants, Refineries, and Construction Management of these Projects	237120	Oil and Gas Pipeline and Related Structures Construction (pt)
	Power Generation Plants (excluding Hydroelectric Dams), Transmission and Distribution Transformer Stations, and Construction Management of these Projects	237130	Power and Communication Line and Related Structures Construction (pt)
	Process Batch Plants, Incinerators, Industrial Furnaces and Kilns, Mining Appurtenance, and Construction Management of these Projects	236210	Industrial Building Construction (pt)
234990	All Other Heavy Construction		
	Waste Disposal Plant Construction	236210	Industrial Building Construction (pt)
	Irrigation Systems, Sewage Treatment and Water Treatment Plants, Construction Management of these Projects	237110	Water and Sewer Line and Related Structures Construction (pt)
	Right-of-Way Clearing and Line Slashing, Blasting, Trenching, and Equipment Rental (except cranes) with Operator	238910	Site Preparation Contractors (pt)
	Crane Rental with Operator	238990	All Other Specialty Trade Contractors (pt)
	Except Waste Disposal Plant Construction, Irrigation Systems, Sewage Treatment and Water Treatment Plants, Right-of-Way Clearing and Line Slashing, Blasting, Trenching, and Equipment Rental with Operator	237990	Other Heavy and Civil Engineering Construction (pt)
235110	Plumbing, Heating, and Air-Conditioning Contractors		
	Environmental Controls Installation Contractors	238210	Electrical Contractors (pt)
	Septic Tank, Cesspool, and Dry Well Construction Contractors	238910	Site Preparation Contractors (pt)
	Except Environmental Controls Installation Contractors and Septic Tank, Cesspool, and Dry Well Construction Contractors	238220	Plumbing, Heating, and Air-Conditioning Contractors (pt)
235210	Painting and Wall Covering Contractors		
	Highway and Traffic Line Painting	237310	Highway, Street, and Bridge Construction (pt)
	Except Highway and Traffic Line Painting	238320	Painting and Wall Covering Contractors
235310	Electrical Contractors	238210	Electrical Contractors (pt)
235410	Masonry and Stone Contractors	238140	Masonry Contractors (pt)
235420	Drywall, Plastering, Acoustical, and Insulation Contractors		
	Stucco Contractors	238140	Masonry Contractors (pt)
	Except Stucco Contractors	238310	Drywall and Insulation Contractors

238430	Tile, Marble, Terrazzo, and Mosaic Contractors	238340	Tile and Terrazzo and Tile Contractors
235510	Carpentry Contractors		
	Framing Carpentry	238130	Framing Contractors
	Finish Carpentry	238350	Finish Carpentry Contractors
235520	Floor Laying and Other Floor Contractors	238330	Flooring Contractors
235610	Roofing, Siding, and Sheet Metal Contractors		
	Roofing Contractors	238160	Roofing Contractors
	Siding Contractors	238170	Siding Contractors
	Metal Ceiling, Panel, and Shelving Installation	238390	Other Building Finishing Contractors (pt)
235710	Concrete Contractors		
	Residential and Commercial Asphalt, Brick, and Concrete Paving	238990	All Other Specialty Trade Contractors (pt)
	Except Residential and Commercial Asphalt, Brick, and Concrete Paving	238110	Poured Concrete Foundation and Structure Contractors
235810	Water Well Drilling Contractors	237110	Water and Sewer Line and Related Structures Construction (pt)
235910	Structural Steel Erection Contractors		
	Curtain Walls and Metal Furring Installation	238190	Other Foundation, Structure, and Building Exterior Contractors (pt)
	Cooling Tower Installation	238220	Plumbing, Heating, and Air-Conditioning Contractors (pt)
	Except Curtain Walls, Metal Furring Installation, and Cooling Tower Installation	238120	Structural Steel and Precast Concrete Contractors
235920	Glass and Glazing Contractors	238150	Glass and Glazing Contractors
235930	Excavation Contractors	238910	Site Preparation Contractors (pt)
235940	Wrecking and Demolition Contractors	238910	Site Preparation Contractors (pt)
235950	Building Equipment and Other Machinery Installation Contractors		
	Scrubber, Dust Collection, and Other Industrial Ventilation Installation	238220	Plumbing, Heating, and Air-Conditioning Contractors (pt)
	Except Scrubber, Dust Collection, and Other Industrial Ventilation Installation	238290	Other Building Equipment Contractors (pt)
235990	All Other Special Trade Contractors		
	Indoor Swimming Pool Contractors	238220	Commercial and Institutional Building Construction (pt)
	Anchored Earth Retention Contractors	237990	Other Heavy and Civil Engineering Construction (pt)
	Forming Contractors	238190	Other Foundation, Structure, and Building Exterior Contractors (pt)
	Service Station Equipment Installation Contractors; Boiler, Duct, and Pipe Insulation; Lightning Rod Installation; Bowling Alley Installation; Household-Type Antenna Installation; Church Bell Installation; and Tower Clock Installation	238290	Other Building Equipment Contractors (pt)
	Weather Stripping and Damp-Proofing, Modular Furniture Installation, Bathtub Refinishing, Window Covering Fixture Installation, Trade Show Exhibit Installation and Dismantling, and Spectator Seating Installation	238390	Other Building Finishing Contractors (pt)
	Dewatering Contractors, Core Drilling For Construction, and Test Boring for Construction	238910	Site Preparation Contractors (pt)
	Except Indoor Swimming Pools, Earth Retention Contractors, Forming Contractors, Ornamental Metal Work, Building Equipment Contractors, Building Finishing Contractors, Dewatering Contractors, Test Boring For Construction, and Core Drilling For Construction	238990	All Other Specialty Trade Contractors (pt)
421110	Automobile and Other Motor Vehicle Wholesalers		
	Merchant Wholesalers	423110	Automobile and Other Motor Vehicle Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
421120	Motor Vehicle Supplies and New Parts Wholesalers		
	Merchant Wholesalers	423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
421130	Tire and Tube Wholesalers		
	Merchant Wholesalers	423130	Tire and Tube Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)

421140	Motor Vehicle Parts (Used) Wholesalers	
	Merchant Wholesalers	423140 Motor Vehicle Parts (Used) Merchant Wholesalers
	Business to Business Electronic Markets	425110 Business to Business Electronic Markets (pt)
	Agents and Brokers	425120 Wholesale Trade Agents and Brokers (pt)
421210	Furniture Wholesalers	
	Merchant Wholesalers	423210 Furniture Merchant Wholesalers
	Business to Business Electronic Markets	425110 Business to Business Electronic Markets (pt)
	Agents and Brokers	425120 Wholesale Trade Agents and Brokers (pt)
421220	Home Furnishing Wholesalers	
	Merchant Wholesalers	423220 Home Furnishing Merchant Wholesalers
	Business to Business Electronic Markets	425110 Business to Business Electronic Markets (pt)
	Agents and Brokers	425120 Wholesale Trade Agents and Brokers (pt)
421310	Lumber, Plywood, Millwork, and Wood Panel Wholesalers	
	Merchant Wholesalers	423310 Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers
	Business to Business Electronic Markets	425110 Business to Business Electronic Markets (pt)
	Agents and Brokers	425120 Wholesale Trade Agents and Brokers (pt)
421320	Brick, Stone, and Related Construction Material Wholesalers	
	Merchant Wholesalers	423320 Brick, Stone, and Related Construction Material Merchant Wholesalers
	Business to Business Electronic Markets	425110 Business to Business Electronic Markets (pt)
	Agents and Brokers	425120 Wholesale Trade Agents and Brokers (pt)
421330	Roofing, Siding, and Insulation Material Wholesalers	
	Merchant Wholesalers	423330 Roofing, Siding, and Insulation Material Merchant Wholesalers
	Business to Business Electronic Markets	425110 Business to Business Electronic Markets (pt)
	Agents and Brokers	425120 Wholesale Trade Agents and Brokers (pt)
421390	Other Construction Material Wholesalers	
	Merchant Wholesalers	423390 Other Construction Material Merchant Wholesalers
	Business to Business Electronic Markets	425110 Business to Business Electronic Markets (pt)
	Agents and Brokers	425120 Wholesale Trade Agents and Brokers (pt)
421410	Photographic Equipment and Supplies Wholesalers	
	Merchant Wholesalers	423410 Photographic Equipment and Supplies Merchant Wholesalers
	Business to Business Electronic Markets	425110 Business to Business Electronic Markets (pt)
	Agents and Brokers	425120 Wholesale Trade Agents and Brokers (pt)
421420	Office Equipment Wholesalers	
	Merchant Wholesalers	423420 Office Equipment Merchant Wholesalers
	Business to Business Electronic Markets	425110 Business to Business Electronic Markets (pt)
	Agents and Brokers	425120 Wholesale Trade Agents and Brokers (pt)
421430	Computer and Computer Peripheral Equipment and Software Wholesalers	
	Merchant Wholesalers	423430 Computer and Computer Peripheral Equipment and Software Merchant Wholesalers
	Business to Business Electronic Markets	425110 Business to Business Electronic Markets (pt)
	Agents and Brokers	425120 Wholesale Trade Agents and Brokers (pt)
421440	Other Commercial Equipment Wholesalers	
	Merchant Wholesalers	423440 Other Commercial Equipment Merchant Wholesalers
	Business to Business Electronic Markets	425110 Business to Business Electronic Markets (pt)
	Agents and Brokers	425120 Wholesale Trade Agents and Brokers (pt)
421450	Medical, Dental, and Hospital Equipment and Supplies Wholesalers	
	Merchant Wholesalers	423450 Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers
	Business to Business Electronic Markets	425110 Business to Business Electronic Markets (pt)
	Agents and Brokers	425120 Wholesale Trade Agents and Brokers (pt)

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421460	Ophthalmic Goods Wholesalers		
	Merchant Wholesalers	423460	Ophthalmic Goods Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
421490	Other Professional Equipment and Supplies Wholesalers		
	Merchant Wholesalers	423490	Other Professional Equipment and Supplies Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
421510	Metal Service Centers and Offices		
	Merchant Wholesalers	423510	Metal Service Centers and Other Metal Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
421520	Coal and Other Mineral and Ore Wholesalers		
	Merchant Wholesalers	423520	Coal and Other Mineral and Ore Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
421610	Electrical Apparatus and Equipment, Wiring Supplies, and Construction Material Wholesalers		
	Merchant Wholesalers	423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
421620	Electrical Appliance, Television, and Radio Set Wholesalers		
	Merchant Wholesalers	423620	Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
421690	Other Electronic Parts and Equipment Wholesalers		
	Merchant Wholesalers	423690	Other Electronic Parts and Equipment Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
421710	Hardware Wholesalers		
	Merchant Wholesalers	423710	Hardware Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
421720	Plumbing and Heating Equipment and Supplies (Hydronics) Wholesalers		
	Merchant Wholesalers	423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
421730	Warm Air Heating and Air-Conditioning Equipment and Supplies Wholesalers		
	Merchant Wholesalers	423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
421740	Refrigeration Equipment and Supplies Wholesalers		
	Merchant Wholesalers	423740	Refrigeration Equipment and Supplies Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
421810	Construction and Mining (except Oil Well) Machinery and Equipment Wholesalers		
	Merchant Wholesalers	423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)

	Agents and Brokers	
421820	Farm and Garden Machinery and Equipment Wholesalers	
	Merchant Wholesalers	423820 Farm and Garden Machinery and Equipment Merchant Wholesalers
	Business to Business Electronic Markets	425110 Business to Business Electronic Markets (pt)
	Agents and Brokers	425120 Wholesale Trade Agents and Brokers (pt)
421830	Industrial Machinery and Equipment Wholesalers	
	Merchant Wholesalers	423830 Industrial Machinery and Equipment Merchant Wholesalers
	Business to Business Electronic Markets	425110 Business to Business Electronic Markets (pt)
	Agents and Brokers	425120 Wholesale Trade Agents and Brokers (pt)
421840	Industrial Supplies Wholesalers	
	Merchant Wholesalers	423840 Industrial Supplies Merchant Wholesalers
	Business to Business Electronic Markets	425110 Business to Business Electronic Markets (pt)
	Agents and Brokers	425120 Wholesale Trade Agents and Brokers (pt)
421850	Service Establishment Equipment and Supplies Wholesalers	
	Merchant Wholesalers	423850 Service Establishment Equipment and Supplies Merchant Wholesalers
	Business to Business Electronic Markets	425110 Business to Business Electronic Markets (pt)
	Agents and Brokers	425120 Wholesale Trade Agents and Brokers (pt)
421860	Transportation Equipment and Supplies (except Motor Vehicle) Wholesalers	
	Merchant Wholesalers	423860 Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers
	Business to Business Electronic Markets	425110 Business to Business Electronic Markets (pt)
	Agents and Brokers	425120 Wholesale Trade Agents and Brokers (pt)
421910	Sporting and Recreational Goods and Supplies Wholesalers	
	Merchant Wholesalers	423910 Sporting and Recreational Goods and Supplies Merchant Wholesalers
	Business to Business Electronic Markets	425110 Business to Business Electronic Markets (pt)
	Agents and Brokers	425120 Wholesale Trade Agents and Brokers (pt)
421920	Toy and Hobby Goods and Supplies Wholesalers	
	Merchant Wholesalers	423920 Toy and Hobby Goods and Supplies Merchant Wholesalers
	Business to Business Electronic Markets	425110 Business to Business Electronic Markets (pt)
	Agents and Brokers	425120 Wholesale Trade Agents and Brokers (pt)
421930	Recyclable Material Wholesalers	
	Merchant Wholesalers	423930 Recyclable Material Merchant Wholesalers
	Business to Business Electronic Markets	425110 Business to Business Electronic Markets (pt)
	Agents and Brokers	425120 Wholesale Trade Agents and Brokers (pt)
421940	Jewelry, Watch, Precious Stone, and Precious Metal Wholesalers	
	Merchant Wholesalers	423940 Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers
	Business to Business Electronic Markets	425110 Business to Business Electronic Markets (pt)
	Agents and Brokers	425120 Wholesale Trade Agents and Brokers (pt)
421990	Other Miscellaneous Durable Goods Wholesalers	
	Merchant Wholesalers	423990 Other Miscellaneous Durable Goods Merchant Wholesalers
	Business to Business Electronic Markets	425110 Business to Business Electronic Markets (pt)
	Agents and Brokers	425120 Wholesale Trade Agents and Brokers (pt)
422110	Printing and Writing Paper Wholesalers	
	Merchant Wholesalers	424110 Printing and Writing Paper Merchant Wholesalers
	Business to Business Electronic Markets	425110 Business to Business Electronic Markets (pt)
	Agents and Brokers	425120 Wholesale Trade Agents and Brokers (pt)
422120	Stationary and Office Supplies Wholesalers	
	Merchant Wholesalers	424120 Stationary and Office Supplies Merchant Wholesalers
	Business to Business Electronic Markets	425110 Business to Business Electronic Markets (pt)
	Agents and Brokers	425120 Wholesale Trade Agents and Brokers (pt)

422130	Industrial and Personal Service Paper Wholesalers		
	Merchant Wholesalers	424130	Industrial and Personal Service Paper Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
422210	Drugs and Druggists' Sundries Wholesalers		
	Merchant Wholesalers	424210	Drugs and Druggists' Sundries Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
422310	Piece Goods, Notions, and Other Dry Goods Wholesalers		
	Merchant Wholesalers	424310	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
422320	Men's and Boys' Clothing and Furnishings Wholesalers		
	Merchant Wholesalers	424320	Men's and Boys' Clothing and Furnishings Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
422330	Women's, Children's, and Infants' Clothing and Accessories Wholesalers		
	Merchant Wholesalers	424330	Women's, Children's, and Infants' Clothing and Accessories Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
422340	Footwear Wholesalers		
	Merchant Wholesalers	424340	Footwear Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
422410	General Line Grocery Wholesalers		
	Merchant Wholesalers	424410	General Line Grocery Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
422420	Packaged Frozen Food Wholesalers		
	Merchant Wholesalers	424420	Packaged Frozen Food Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
422430	Dairy Product (except Dried or Canned) Wholesalers		
	Merchant Wholesalers	424430	Dairy Product (except Dried or Canned) Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
422440	Poultry and Poultry Product Wholesalers		
	Merchant Wholesalers	424440	Poultry and Poultry Product Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
422450	Confectionery Wholesalers		
	Merchant Wholesalers	424450	Confectionery Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
422460	Fish and Seafood Wholesalers		
	Merchant Wholesalers	424460	Fish and Seafood Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
422470	Meat and Meat Product Wholesalers		
	Merchant Wholesalers	424470	Meat and Meat Product Merchant Wholesalers

	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
422480	Fresh Fruit and Vegetable Wholesalers		
	Merchant Wholesalers	424480	Fresh Fruit and Vegetable Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
422490	Other Grocery and Related Products Wholesalers		
	Merchant Wholesalers	424490	Other Grocery and Related Products Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
422510	Grain and Field Bean Wholesalers		
	Merchant Wholesalers	424510	Grain and Field Bean Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
422520	Livestock Wholesalers		
	Merchant Wholesalers	424520	Livestock Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
422590	Other Farm Product Raw Material Wholesalers		
	Merchant Wholesalers	424590	Other Farm Product Raw Material Merchant Wholesalers
	Business to-Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
422610	Plastics Materials and Basic Forms and Shapes Wholesalers		
	Merchant Wholesalers	424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
422690	Other Chemical and Allied Products Wholesalers		
	Merchant Wholesalers	424690	Other Chemical and Allied Products Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
422710	Petroleum Bulk Stations and Terminals	424710	Petroleum Bulk Stations and Terminals
422720	Petroleum and Petroleum Products Wholesalers (except Bulk Stations and Terminals)		
	Merchant Wholesalers	424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
422810	Beer and Ale Wholesalers		
	Merchant Wholesalers	424810	Beer and Ale Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
422820	Wine and Distilled Alcoholic Beverage Wholesalers		
	Merchant Wholesalers	424820	Wine and Distilled Alcoholic Beverage Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
422910	Farm Supplies Wholesalers		
	Merchant Wholesalers	424910	Farm Supplies Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
422920	Book, Periodical, and Newspaper Wholesalers		
	Merchant Wholesalers	424920	Book, Periodical, and Newspaper Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)

	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
422930	Flower, Nursery Stock, and Florists' Supplies Wholesalers		
	Merchant Wholesalers	424930	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
422940	Tobacco and Tobacco Product Wholesalers		
	Merchant Wholesalers	424940	Tobacco and Tobacco Product Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
422950	Paint, Varnish, and Supplies Wholesalers		
	Merchant Wholesalers	424950	Paint, Varnish, and Supplies Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
422990	Other Miscellaneous Nondurable Goods Wholesalers		
	Merchant Wholesalers	424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers
	Business to Business Electronic Markets	425110	Business to Business Electronic Markets (pt)
	Agents and Brokers	425120	Wholesale Trade Agents and Brokers (pt)
452110	Department Stores		
	Department Stores (except Discount Department Stores)	452111	Department Stores (except Discount Department Stores)
	Discount Department Stores	452112	Discount Department Stores
454110	Electronic Shopping and Mail Order Houses		
	Electronic Shopping	454111	Electronic Shopping
	Electronic Auctions	454112	Electronic Auctions
	Mail-Order Houses	454113	Mail-Order Houses
511110	Newspaper Publishers		
	Newspaper Publishers (except Internet Publishers)	511110	Newspaper Publishers
	Internet Newspaper Publishers	516110	Internet Publishers (pt.)
511120	Periodical Publishers		
	Periodical Publishers (except Internet Publishers)	511120	Periodical Publishers
	Internet Periodical Publishers	516110	Internet Publishers (pt.)
511130	Book Publishers		
	Book Publishers (except Internet Publishers)	511130	Book Publishers
	Internet Book Publishers	516110	Internet Publishers (pt.)
511140	Database and Directory Publishers		
	Database and Directory Publishers (except Internet Publishers)	511140	Directory and Mailing List Publishers
	Internet Database and Directory Publishers	516110	Internet Publishers (pt.)
511191	Greeting Card Publishers		
	Greeting Card Publishers (except Internet Publishers)	511191	Greeting Card Publishers
	Internet Greeting Card Publishers	516110	Internet Publishers (pt.)
511199	All Other Publishers		
	All Other Publishers (except Internet Publishers)	511199	All Other Publishers
	All Other Internet Publishers	516110	Internet Publishers (pt.)
511210	Software Publishers	511210	Software Publishers
512110	Motion Picture and Video Production	512110	Motion Picture and Video Production
512120	Motion Picture and Video Distribution	512120	Motion Picture and Video Distribution
512131	Motion Picture Theaters (except Drive-Ins)	512131	Motion Picture Theaters (except Drive-Ins)
512132	Drive-In Motion Picture Theaters	512132	Drive-In Motion Picture Theaters

512191	Teleproduction and Other Postproduction Services	512191	Teleproduction and other Postproduction Services
512199	Other Motion Picture and Video Industries	512199	Other Motion Picture and Video Industries
512210	Record Production	512210	Record Production
512220	Integrated Record Production/Distribution	512220	Integrated Record Production/Distribution
512230	Music Publishers	512230	Music Publishers
512240	Sound Recording Studios	512240	Sound Recording Studios
512290	Other Sound Recording Industries	512290	Other Sound Recording Industries
513111	Radio Networks	515111	Radio Networks
513112	Radio Stations	515112	Radio Stations
513120	Television Broadcasting	515120	Television Broadcasting
513210	Cable Networks	515210	Cable and Other Subscription Programming
513220	Cable and Other Program Distribution	517510	Cable and Other Program Distribution
513310	Wired Telecommunications Carriers	517110	Wired Telecommunications Carriers
513321	Paging	517211	Paging
513322	Cellular and Other Wireless Telecommunications	517212	Cellular and Other Wireless Telecommunications
513330	Telecommunications Resellers	517310	Telecommunications Resellers
513340	Satellite Telecommunications	517410	Satellite Telecommunications
513390	Other Telecommunications	517910	Other Telecommunications
514110	News Syndicates	519110	News Syndicates
514120	Libraries and Archives	519120	Libraries and Archives
514191	On-Line Information Services	518111	Internet Service Providers
514199	All Other Information Services		
	Internet Broadcasting	516110	Internet Publishing and Broadcasting (pt.)
	Web Search Portals	518112	Web Search Portals
	All Other Information Services	519190	All Other Information Services
514210	Data Processing Services	518210	Data Processing, Hosting, and Related Services
561720	Janitorial Services		
	Cleaning Buildings During and Immediately After Construction	238990	All Other Specialty Trade Contractors (pt)
	Except Cleaning Building During and Immediately After Construction	561720	Janitorial Services

Table 3 - 2002 NAICS United States Matched to 1987 Standard Industrial Classification

2002 NAICS Code	2002 NAICS Description		1987 SIC Code	1987 SIC and Description
236	Construction of Buildings			
2361	Residential Building Construction			
23611	Residential Building Construction			
236115	New Single-Family Housing Construction (except Operative Builders)			
	Single-family housing general contractors	•	1521	General Contractors - Single-Family Houses (except remodeling contractors)
	Single-family housing construction management	•	8741	Management Services (single-family housing construction management)
236116	New Multifamily Housing Construction (except Operative Builders)			
	Multifamily housing general contractors	•	1522	General Contractors - Residential Buildings Other Than Single-Family (except remodeling contractors, hotel and motel construction contractors, and dormitory and barrack construction contractors)
	Multifamily housing construction management	•	8741	Management Services (multifamily housing construction management)
236117	New Housing Operative Builders	•	1531	Operative Builders (residential operative builders)
236118	Residential Remodelers			
	Single-family housing remodeling contractors	•	1521	General Contractors - Single-Family Houses (remodeling contractors)
	Multifamily housing remodeling contractors	•	1522	General Contractors - Residential Buildings Other Than Single-Family (remodeling contractors)
	Operative residential remodelers	•	1531	Operative Builders (residential operative remodelers)
	Construction management for residential remodeling projects	•	8741	Management Services (residential remodeling construction management)
2362	Nonresidential Building Construction			
23621	Industrial Building Construction			
	Operative builders of industrial buildings	•	1531	Operative Builders (Operative builders of industrial and manufacturing buildings except grain elevators, dry cleaning plants, and manufacturing and industrial warehouses)
	Industrial building general contractors	•	1541	General Contractors Industrial Buildings and Warehouses (except grain elevators; drycleaning plants; and manufacturing, public, and industrial warehouses)
	Industrial nonbuilding structures (except petrochemical plants and refineries)	•	1629	Heavy Construction, NEC (industrial nonbuilding structures (except petrochemical plants and petroleum refineries))
	Industrial building construction management	•	8741	Management Services (industrial building and nonbuilding structure construction management)
23622	Commercial and Institutional Building Construction			
	Hotel, motel, dormitory and barrack general contractors	•	1522	General Contractors - Residential Buildings Other Than Single-Family (dormitory, barrack, hotel, and motel construction contractors)
	Operative builders of commercial and institutional buildings	•	1531	Operative Builders (grain elevator, dry cleaning plant, and manufacturing and industrial warehouse operative builders)
	Grain elevator; dry cleaning plant; and public, industrial, and public warehouse general contractors	•	1541	General Contractors - Industrial Buildings and Warehouses (general contractors of grain elevators; dry cleaning plants; and manufacturing, industrial, and public warehouses)
	Nonresidential buildings, other than industrial buildings and warehouses general contractors		1542	General Contractors - Nonresidential Buildings, Other than Industrial Buildings and Warehouses
	Indoor swimming pool construction	•	1799	Special Trade Contractors, NEC (indoor swimming pool construction contractors)
	Commercial and institutional building construction management	•	8741	Management Services (Commercial and institutional building construction management)
237	Heavy and Civil Engineering Construction			
2371	Utility System Construction			
23711	Water and Sewer Line and Related Structures Construction			
	Water and sewer pipelines and related line construction	•	1623	Water, Sewer, Pipeline, and Communications and Power Line Construction (water and sewer pipelines and related construction)
	Water and sewage treatment plants and related structures	•	1629	Heavy Construction NEC (irrigation systems, sewage treatment plants, and water treatment plants)
	Water well drilling		1781	Water Well Drilling
	Construction management for water and sewer lines and related structures	•	8741	Management Services (construction management of water, sewer, and related structure construction projects)
23712	Oil and Gas Pipeline and Related Structures Construction			
	Construction of oil and gas field gathering lines on a contract basis	•	1389	Oil and Gas Field Services, NEC (construction of field gathering lines on a contract or fee basis)
	Oil and gas pipelines, mains, pumping stations, and storage tanks	•	1623	Water, Sewer, Pipeline, and Communications and Power Line Construction (gas and oil pipelines, mains, and pumping stations)

		Petrochemical plants and refineries	•	1629 Heavy Construction, NEC (petrochemical plants and refineries)
		Oil and gas pipeline and related structure construction management	•	8741 Management Services (construction management of oil and gas pipelines and related structure construction projects)
23713		Power and Communication Line and Related Structures Construction		
		Power and communication line construction	•	1623 Water, Sewer, Pipeline, and Communications and Power Line Construction (power and communications transmission lines)
		Transmission stations, distribution stations, and related structures	•	1629 Heavy Construction, NEC (power generation plants [except hydroelectric dams], transmission stations, and distribution stations)
		Power and communication line and related structure construction management	•	8741 Management Services (construction management of power generation [except hydroelectric] facilities, and transmission and distribution station construction projects)
2372		Land Subdivision		
23721		Land Subdivision		6552 Land Subdividers and Developers, Except Cemeteries
2373		Highway, Street, and Bridge Construction		
23731		Highway, Street, and Bridge Construction		
		Highway and street construction		1611 Highway and Street Construction
		Bridge and elevated highway construction	•	1622 Bridge, Tunnel, and Elevated Highway Construction (bridge and elevated highway construction)
		Traffic lane painting	•	1721 Painting and Paper Hanging (traffic lane painting)
		Highway, street, and bridge construction management	•	8741 Management Services (highway, street, and bridge construction management)
2379		Other Heavy and Civil Engineering Construction		
23799		Other Heavy and Civil Engineering Construction		
		Tunnel construction	•	1622 Bridge, Tunnel, and Elevated Highway Construction (tunnel construction)
		Transit, rail, port, dam, flood control, and other heavy and civil engineering construction	•	1629 Heavy Construction, NEC (except industrial nonbuilding structures, irrigation systems, sewage and water treatment plants, petrochemical plants and refineries, power generation plants [except hydroelectric dams] transmission and distribution stations, right-of-way clearing, line slashing, blasting, and trenching)
		Anchored earth retention wall construction contractors	•	1799 Special Trade Contractors, NEC (anchored earth retention contractors)
		Other heavy and civil engineering construction management	•	8741 Management Services (construction management for other heavy and civil engineering construction)
238		Specialty Trade Contractors		
2381		Foundation, Structure, and Building Exterior Contractors		
23811		Poured Concrete Foundation and Structure Contractors	•	1771 Concrete Work (except stucco work; and residential and commercial asphalt, brick, and paving)
23812		Structural Steel and Precast Concrete Contractors	•	1791 Structural Steel Erection (except curtain wall installation, metal furring installation, and cooling tower installation)
23813		Framing Contractors	•	1751 Carpentry Work (framing carpentry)
23814		Masonry Contractors		
		Masonry, stone setting, and other stone work		1741 Masonry, Stone Setting, and Other Stone Work
		Stucco work	•	1771 Concrete Work (stucco work)
23815		Glass and Glazing Contractors		
		Glass and glazing work		1793 Glass and Glazing Work
		Glass tinting work	•	1799 Special Trade Contractors, NEC (glass tinting work)
23816		Roofing Contractors	•	1761 Roofing, Siding, and Sheet Metal Work (roofing contractors)
23817		Siding Contractors	•	1761 Roofing, Siding, and Sheet Metal Work (siding contractors)
23819		Other Foundation, Structure, and Building Exterior Contractors		
		Curtain wall and metal furring installation	•	1791 Structural Steel Erection (curtain wall installation and metal furring installation)
		Forming and ornamental metal work contractors	•	1799 Special Trade Contractors, NEC (forming contractors and ornamental metal work contractors)
2382		Building Equipment Contractors		
23821		Electrical Contractors		
		Environmental control installation contractors	•	1711 Plumbing, Heating, and Air-Conditioning (environmental control installation contractors)
		Electrical contractors	•	1731 Electrical Work (except burglar and fire alarm installation)
23822		Plumbing, Heating, and Air-Conditioning Contractors		
		Plumbing, heating, and air-conditioning contractors	•	1711 Plumbing, Heating, and Air-Conditioning (except environmental controls installation) and septic tank, cesspool, and dry well construction)
		Cooling tower installation contractors	•	1791 Structural Steel Erection (cooling tower installation)

	Scrubber, dust collection, and other industrial ventilation equipment installation contractors	•	1796 Installation or Erection of Building Equipment, NEC (scrubber, dust collection, and other industrial ventilation installation)
	Boiler chipping, scaling, and cleaning	•	7699 Repair Shops and Related Services, NEC (boiler cleaning, chipping, and scaling)
23829	Other Building Equipment Contractors		
	Elevator, escalator, and other building equipment installation	•	1796 Installation or Erection of Building Equipment, NEC (except scrubber, dust collection, and other industrial ventilation installation)
	Installation of service station equipment, bowling alley equipment, church bells, clock towers, and similar equipment; and insulation of boilers, pipes, and ducts	•	1799 Special Trade Contractors, NEC (building equipment installation contractors for service station equipment; boiler, duct, and pipe insulation; lightning rod installation; bowling alley equipment installation; church bell installation; and clock tower installation)
	Household antenna installation	•	7622 Radio and Television Repair Shops (household antenna installation)
2383	Building Finishing Contractors		
23831	Drywall and Insulation Contractors		
	Plastering, drywall, acoustical, and insulation contractors		1742 Plastering, Drywall, Acoustical, and Insulation Work
	Fresco work	•	1743 Terrazzo, Tile, Marble, and Mosaic Work (fresco work)
23832	Paint and Wall Covering Contractors		
	Paint and wall covering contractors	•	1721 Painting and Paper Hanging (except traffic lane painting)
	Paint and wall covering removal contractors	•	1799 Special Trade Contractors, NEC (paint and wallpaper stripping and removing contractors)
23833	Flooring Contractors		1752 Floor Laying and Other Floor Work, NEC
23834	Tile and Terrazzo Contractors	•	1743 Terrazzo, Tile, Marble, and Mosaic Work (except fresco work)
23835	Finish Carpentry Contractors	•	1751 Carpentry Work (finish carpentry)
23839	Other Building Finishing Contractors		
	Sheet metal work (except roofing and siding)	•	1761 Roofing, Siding, and Sheet Metal Work (except roofing and siding work)
	Weather stripping and damp proofing, modular furniture installation, bathtub refinishing, window covering fixture installation, exhibit installation and removal, and spectator seating installation	•	1799 Special Trade Contractors, NEC (building finishing contractors for weather stripping and damp proofing, modular furniture installation, bathtub refinishing, window covering fixture installation, trade show exhibit installation and dismantling, and spectator seating installation)
2389	Other Specialty Trade Contractors		
23891	Site Preparation Contractors		
	Site preparation and related activities at metal ore mines	•	1081 Metal Mining Services (site preparation and related construction activities on a contract basis)
	Site preparation and related activities at coal mines	•	1241 Coal Mining Services (site preparation and related construction activities on a contract basis)
	Site preparation and related activities at oil and gas fields	•	1389 Oil and Gas Field Services, NEC (site preparation and related construction activities on a contract basis)
	Site preparation and related activities at nonmetallic mineral mines	•	1481 Nonmetallic Minerals Services, Except Fuels (site preparation and related construction activities on a contract basis)
	Right-of-way clearing, line slashing, blasting, and trenching	•	1629 Heavy Construction, NEC (right-of-way clearing and line slashing, blasting, and trenching)
	Septic tank, cesspool, and dry well contractors	•	1711 Plumbing, Heating, and Air-Conditioning (septic tank, cesspool, and dry well construction contractors)
	Excavation contractors		1794 Excavation Work
	Wrecking and demolition contractors		1795 Wrecking and Demolition Work
	Dewatering contractors, test boring for construction, and core drilling for construction	•	1799 Special Trade Contractors, NEC (dewatering contractors, test drilling for construction, and core drilling for construction)
	Rental of construction equipment (except cranes) with operator	•	7353 Construction Equipment Rental and Leasing (rental of construction equipment (except cranes) with operator)
23899	All Other Specialty Trade Contractors		
	Residential and commercial concrete and asphalt paving	•	1771 Concrete Work (residential and commercial asphalt, brick, and concrete paving)
	Special trade contractors not specified elsewhere	•	1799 Special Trade Contractors, NEC (except indoor swimming pool contractors, anchored earth retention contractors, glass tinting work, forming contractors, ornamental metal work contractors, service station equipment installation, pipe and duct insulation contractors, lightning rod installation contractors, bowling alley equipment installation, church bell installation, clock tower installation, paint and wall paper removal contractors, miscellaneous building finishing contractors, dewatering contractors, test drilling for construction, and core drilling for construction)
	Crane rental with operator	•	7353 Construction Equipment Rental and Leasing (crane rental with operator)
42	Wholesale Trade		
423	Merchant Wholesalers, Durable Goods		

4231	Motor Vehicle and Motor Vehicle Parts and Supplies Merchant Wholesalers		
42311	Automobile and Other Motor Vehicle Merchant Wholesalers	*	5012 Automobiles and Other Motor Vehicles (merchant wholesalers)
42312	Motor Vehicle Supplies and New Parts Merchant Wholesalers	*	5013 Motor Vehicle Supplies and New Parts (merchant wholesalers except selling via retail method)
42313	Tire and Tube Merchant Wholesalers	*	5014 Tires and Tubes (merchant wholesalers except selling via retail method)
42314	Motor Vehicle Parts (Used) Merchant Wholesalers	*	5015 Motor Vehicle Parts, Used (merchant wholesalers except selling via retail method)
4232	Furniture and Home Furnishing Merchant Wholesalers		
42321	Furniture Merchant Wholesalers	*	5021 Furniture (merchant wholesalers except selling via retail method)
42322	Home Furnishing Merchant Wholesalers	*	5023 Homefurnishings (merchant wholesalers except selling via retail method)
4233	Lumber and Other Construction Materials Merchant Wholesalers		
42331	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers		
	Lumber, plywood, millwork, and wood panels	*	5031 Lumber, Plywood, Millwork, and Wood Panels (merchant wholesalers except selling via retail method)
	Nonwood prefabricated buildings and structural assemblies	*	5039 Construction Materials, NEC (prefabricated buildings and structural assemblies, nonwood, merchant wholesalers)
42332	Brick, Stone, and Related Construction Material Merchant Wholesalers	*	5032 Brick, Stone, and Related Construction Materials (merchant wholesalers except selling via retail method)
42333	Roofing, Siding, and Insulation Material Merchant Wholesalers	*	5033 Roofing, Siding, and Insulation Materials (merchant wholesalers except selling via retail method)
42339	Other Construction Material Merchant Wholesalers	*	5039 Construction Materials, NEC (merchant wholesalers of construction materials, nec except selling via retail method)
4234	Professional and Commercial Equipment and Supplies Merchant Wholesalers		
42341	Photographic Equipment and Supplies Merchant Wholesalers	*	5043 Photographic Equipment and Supplies (merchant wholesalers)
42342	Office Equipment Merchant Wholesalers	*	5044 Office Equipment (merchant wholesalers except selling via retail method)
42343	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	*	5045 Computers and Computer Peripheral Equipment and Software (merchant wholesalers except selling via retail method)
42344	Other Commercial Equipment Merchant Wholesalers	*	5046 Commercial Equipment, NEC (merchant wholesalers)
42345	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers	*	5047 Medical, Dental, and Hospital Equipment and Supplies (merchant wholesalers except selling via retail method)
42346	Ophthalmic Goods Merchant Wholesalers	*	5048 Ophthalmic Goods (merchant wholesalers)
42349	Other Professional Equipment and Supplies Merchant Wholesalers	*	5049 Professional Equipment and Supplies, NEC (merchant wholesalers except selling via retail method)
4235	Metal and Mineral (except Petroleum) Merchant Wholesalers		
42351	Metal Service Centers and Other Metal Merchant Wholesalers	*	5051 Metals Service Centers and Offices (merchant wholesalers)
42352	Coal and Other Mineral and Ore Merchant Wholesalers	*	5052 Coal and Other Minerals and Ores (merchant wholesalers)
4236	Electrical and Electronic Goods Merchant Wholesalers		
42361	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	*	5063 Electrical Apparatus and Equipment, Wiring Supplies, and Construction Materials (merchant wholesalers except selling via retail method)
42362	Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers	*	5064 Electrical Appliances, Television and Radio Sets (merchant wholesalers except selling via retail method)
42369	Other Electronic Parts and Equipment Merchant Wholesalers	*	5065 Electronic Parts and Equipment, NEC (merchant wholesalers except selling via retail method)
4237	Hardware, and Plumbing and Heating Equipment and Supplies Merchant Wholesalers		
42371	Hardware Merchant Wholesalers	*	5072 Hardware (merchant wholesalers except selling via retail method)
42372	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers	*	5074 Plumbing and Heating Equipment and Supplies (Hydronics) (merchant wholesalers except selling via retail method)

42373	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers	•	5075 Warm Air Heating and Air-Conditioning Equipment and Supplies (merchant wholesalers)
42374	Refrigeration Equipment and Supplies Merchant Wholesalers	•	5078 Refrigeration Equipment and Supplies (merchant wholesalers)
4238	Machinery, Equipment, and Supplies Merchant Wholesalers		
42381	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers	•	5082 Construction and Mining (Except Petroleum) Machinery and Equipment (merchant wholesalers)
42382	Farm and Garden Machinery and Equipment Merchant Wholesalers	•	5083 Farm and Garden Machinery and Equipment (merchant wholesalers except lawn and garden equipment sold via retail method)
42383	Industrial Machinery and Equipment Merchant Wholesalers		
	Industrial machinery and equipment	•	5084 Industrial Machinery and Equipment (merchant wholesalers)
	Fluid power accessories	•	5085 Industrial Supplies (fluid power accessories merchant wholesalers)
42384	Industrial Supplies Merchant Wholesalers	•	5085 Industrial Supplies (merchant wholesalers - except selling via retail method and merchant wholesalers of fluid power accessories)
42385	Service Establishment Equipment and Supplies Merchant Wholesalers	•	5087 Service Establishment Equipment and Supplies (merchant wholesalers, except merchant wholesalers selling beauty and barbershop equipment and supplies via retail method)
42386	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers	•	5088 Transportation Equipment and Supplies, Except Motor Vehicles (merchant wholesalers)
4239	Miscellaneous Durable Goods Merchant Wholesalers		
42391	Sporting and Recreational Goods and Supplies Merchant Wholesalers		
	Sporting and recreational goods and supplies merchant wholesalers	•	5091 Sporting and Recreational Goods and Supplies (merchant wholesalers except selling via retail method)
	Men's and boy's athletic uniforms	•	5136 Men's and Boy's Clothing and Furnishing (athletic uniform merchant wholesalers except selling via retail method)
	Other athletic uniforms	•	5137 Women's, Children's, and Infant's Clothing and Accessories (other athletic uniform merchant wholesalers except selling via retail method)
42392	Toy and Hobby Goods and Supplies Merchant Wholesalers	•	5092 Toys and Hobby Goods and Supplies (merchant wholesalers except selling via retail method)
42393	Recyclable Material Merchant Wholesalers	•	5093 Scrap and Waste Materials (merchant wholesalers)
42394	Jewelry, Watch, Precious Stone, and Precious Metal Merchant Wholesalers	•	5094 Jewelry, Watches, Precious Stones, and Precious Metals (merchant wholesalers except selling via retail method)
42399	Other Miscellaneous Durable Goods Merchant Wholesalers		
	Durable goods, nec merchant wholesalers	•	5099 Durable Goods, NEC (merchant wholesalers except selling via retail method)
	Prerecorded video tape merchant wholesalers	•	7822 Motion Picture and Video Tape Distribution (merchant wholesalers)
424	Merchant Wholesalers, Nondurable Goods		
4241	Paper and Paper Product Merchant Wholesalers		
42411	Printing and Writing Paper Merchant Wholesalers	•	5111 Printing and Writing Paper (merchant wholesalers except selling via retail method)
42412	Stationary and Office Supplies Merchant Wholesalers	•	5112 Stationary and Office Supplies (merchant wholesalers except selling via retail method)
42413	Industrial and Personal Service Paper Merchant Wholesalers	•	5113 Industrial and Personal Service Paper (merchant wholesalers except selling via retail method)
4242	Druge and Druggists' Sundries Merchant Wholesalers		
42421	Druge and Druggists' Sundries Merchant Wholesalers	•	5122 Druge, Drug Proprietaries, and Druggists' Sundries (merchant wholesalers except selling via retail method)
4243	Apparel, Piece Goods, and Notions Merchant Wholesalers		
42431	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers	•	5131 Piece Goods, Notions, and Other Dry Goods (merchant wholesalers- except selling via retail method and piece goods converters)
42432	Men's and Boys' Clothing and Furnishings Merchant Wholesalers	•	5136 Men's and Boys' Clothing and Furnishings (merchant wholesalers [except athletic uniforms and merchant wholesalers selling via retail method])
42433	Women's, Children's, and Infants' Clothing and Accessories Merchant Wholesalers	•	5137 Women's, Children's, and Infants' Clothing and Accessories (merchant wholesalers [except athletic uniforms and merchant wholesalers selling via retail method])
42434	Footwear Merchant Wholesalers		
	Footwear merchant wholesalers	•	5139 Footwear (merchant wholesalers except selling via retail method)

	Footwear cut stock merchant wholesalers	*	5199 Nondurable Goods, NEC (footwear cut stock merchant wholesalers)
4244	Grocery and Related Product Merchant Wholesalers		
42441	General Line Grocery Merchant Wholesalers	*	5141 Groceries, General Line (merchant wholesalers except selling via retail method)
42442	Packaged Frozen Food Merchant Wholesalers	*	5142 Packaged Frozen Foods (merchant wholesalers except selling via retail method)
42443	Dairy Product (except Dried or Canned) Merchant Wholesalers	*	5143 Dairy Products, Except Dried or Canned (merchant wholesalers except selling via retail method)
42444	Poultry and Poultry Product Merchant Wholesalers	*	5144 Poultry and Poultry Products (merchant wholesalers except selling via retail method)
42445	Confectionery Merchant Wholesalers	*	5145 Confectionery (merchant wholesalers except selling via retail method)
42446	Fish and Seafood Merchant Wholesalers	*	5146 Fish and Seafoods (merchant wholesalers except selling via retail method)
42447	Meat and Meat Product Merchant Wholesalers	*	5147 Meats and Meat Products (merchant wholesalers [except boxed beef manufacturers and merchant wholesalers selling via retail method])
42448	Fresh Fruit and Vegetable Merchant Wholesalers	*	5148 Fresh Fruits and Vegetables (merchant wholesalers except selling via retail method)
42449	Other Grocery and Related Products Merchant Wholesalers	*	5149 Groceries and Related Products, NEC (merchant wholesalers [except bottled water manufacturers and merchant wholesalers selling via retail method)
4245	Farm Product Raw Material Merchant Wholesalers		
42451	Grain and Field Bean Merchant Wholesalers	*	5153 Grain and Field Beans (merchant wholesalers except selling via retail method)
42452	Livestock Merchant Wholesalers	*	5154 Livestock (merchant wholesalers)
42459	Other Farm Product Raw Material Merchant Wholesalers	*	5159 Farm-Product Raw Materials, NEC (merchant wholesalers except selling via retail method)
4246	Chemical and Allied Products Merchant Wholesalers		
42461	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers		
	Plastics materials and basic forms and shapes merchant wholesalers	*	5162 Plastics materials and Basic Forms and Shapes (merchant wholesalers except selling via retail method)
	Plastics foam merchant wholesalers	*	5198 Nondurable Goods, NEC (plastics foam merchant wholesalers)
42469	Other Chemical and Allied Products Merchant Wholesalers	*	5169 Chemicals and Allied Products, NEC (merchant wholesalers)
4247	Petroleum and Petroleum Products Merchant Wholesalers		
42471	Petroleum Bulk Stations and Terminals	*	5171 Petroleum Bulk Stations and Terminals (except petroleum sold via retail method)
42472	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	*	5172 Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (merchant wholesalers)
4248	Beer, Wine, and Distilled Alcoholic Beverage Merchant Wholesalers		
42481	Beer and Ale Merchant Wholesalers	*	5181 Beer and Ale (merchant wholesalers except selling via retail method)
42482	Wine and Distilled Alcoholic Beverage Merchant Wholesalers	*	5182 Wine and Distilled Alcoholic Beverages (merchant wholesalers except selling via retail method)
4249	Miscellaneous Nondurable Goods Merchant Wholesalers		
42491	Farm Supplies Merchant Wholesalers	*	5191 Farm Supplies (merchant wholesalers except selling lawn and garden supplies via retail method)
42492	Book, Periodical, and Newspaper Merchant Wholesalers	*	5192 Books, Periodicals, and Newspapers (merchant wholesalers except selling via retail method)
42493	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers	*	5193 Flowers, Nursery Stock, and Florists' Supplies (merchant wholesalers except selling via retail method)
42494	Tobacco and Tobacco Product Merchant Wholesalers	*	5194 Tobacco and Tobacco Products (merchant wholesalers except selling via retail method)
42495	Paint, Varnish, and Supplies Merchant Wholesalers	*	5198 Paints, Varnishes, and Supplies (merchant wholesalers)
42499	Other Miscellaneous Nondurable Goods Merchant Wholesalers	*	5199 Nondurable Goods, NEC (merchant wholesalers [except advertising specialties goods distributors, footwear cutstock, plastics foam, and merchant wholesalers selling nondurable goods, nec via retail method)

425	Wholesale Electronic Markets and Agents and Brokers		
4251	Wholesale Electronic Markets and Agents and Brokers		
42511	Business to Business Electronic Markets		
	Motor vehicle business to business electronic markets	•	5012 Automobiles and Other Motor Vehicles (business to business electronic markets)
	Motor vehicle parts and supplies business to business electronic markets	•	5013 Motor Vehicle Supplies and New Parts (business to business electronic markets)
	Tire and tube business to business electronic markets	•	5014 Tires and Tubes (business to business electronic markets)
	Used motor vehicle parts business to business electronic markets	•	5015 Motor Vehicle Parts, Used (business to business electronic markets)
	Furniture business to business electronic markets	•	5021 Furniture (business to business electronic markets)
	Homefurnishings business to business electronic markets	•	5023 Homefurnishings (business to business electronic markets)
	Lumber, plywood, and panel business to business electronic markets	•	5031 Lumber, Plywood, Millwork, and Wood Panels (business to business electronic markets)
	Brick, stone, and related products business to business electronic markets	•	5032 Brick, Stone, and Related Construction Materials (business to business electronic markets)
	Roofing, siding and insulation business to business electronic markets	•	5033 Roofing, Siding, and Insulation Materials (business to business electronic markets)
	Construction materials, nec business to business electronic markets	•	5039 Construction Materials, NEC (business to business electronic markets)
	Photographic equipment and supplies business to business electronic markets	•	5043 Photographic Equipment and Supplies (business to business electronic markets)
	Office equipment business to business electronic markets	•	5044 Office Equipment (business to business electronic markets)
	Computers and related equipment business to business electronic markets	•	5045 Computers and Computer Peripheral Equipment and Software (business to business electronic markets)
	Commercial equipment, nec business to business electronic markets	•	5046 Commercial Equipment, NEC (business to business electronic markets)
	Medical, dental, and hospital equipment and supplies business to business electronic markets	•	5047 Medical, Dental, and Hospital Equipment and Supplies (business to business electronic markets)
	Ophthalmic goods business to business electronic markets	•	5048 Ophthalmic Goods (business to business electronic markets)
	Professional equipment and supplies business to business electronic markets	•	5049 Professional Equipment and Supplies, NEC (business to business electronic markets)
	Metals business to business electronic markets	•	5051 Metals Service Centers and Offices (business to business electronic markets)
	Coal and other mineral and ore business to business electronic markets	•	5052 Coal and Other Minerals and Ores (business to business electronic markets)
	Electrical apparatus and equipment and wiring supplies business to business electronic markets	•	5063 Electrical Apparatus and Equipment, Wiring Supplies, and Construction Materials (business to business electronic markets)
	Electrical appliance business to business electronic markets	•	5064 Electrical Appliances, Television and Radio Sets (business to business electronic markets)
	Electronic parts business to business electronic markets	•	5065 Electronic Parts and Equipment, NEC (business to business electronic markets)
	Hardware business to business electronic markets	•	5072 Hardware (business to business electronic markets)
	Plumbing and hot water heating equipment business to business electronic markets	•	5074 Plumbing and Heating Equipment and Supplies (Hydronics) (business to business electronic markets)
	Warm air heating and air-conditioning equipment business to business electronic markets	•	5075 Warm Air Heating and Air-Conditioning Equipment and Supplies (business to business electronic markets)
	Refrigeration equipment and supplies business to business electronic markets	•	5078 Refrigeration Equipment and Supplies (business to business electronic markets)
	Construction and mining equipment business to business electronic markets	•	5082 Construction and Mining (Except Petroleum) Machinery and Equipment (business to business electronic markets)
	Farm and garden machinery business to business electronic markets	•	5083 Farm and Garden Machinery and Equipment (business to business electronic markets)
	Industrial machinery and equipment business to business electronic markets	•	5084 Industrial Machinery and Equipment (business to business electronic markets)
	Industrial supplies business to business electronic markets	•	5085 Industrial Supplies (business to business electronic markets)
	Service industry equipment and supplies business to business electronic markets	•	5087 Service Establishment Equipment and Supplies (business to business electronic markets)
	Transportation equipment and supplies, except motor vehicle, business to business electronic markets	•	5088 Transportation Equipment and Supplies, Except Motor Vehicles (business to business electronic markets)
	Sporting goods business to business electronic markets	•	5091 Sporting and Recreational Goods and Supplies (business to business electronic markets)
	Toys and hobby supply business to business electronic markets	•	5092 Toys and Hobby Goods and Supplies (business to business electronic markets)
	Scrap and waste material business to business electronic markets	•	5093 Scrap and Waste Materials (business to business electronic markets)
	Jewelry, watches, and related goods business to business electronic markets	•	5094 Jewelry, Watches, Precious Stones, and Precious Metals (business to business electronic markets)
	Durable goods, nec business to business electronic markets	•	5099 Durable Goods, NEC (business to business electronic markets)
	Printing and writing paper business to business electronic markets	•	5111 Printing and Writing Paper (business to business electronic markets)
	Stationery and office supplies business to business electronic markets	•	5112 Stationery and Office Supplies (business to business electronic markets)
	Other paper business to business electronic markets	•	5113 Industrial and Personal Service Paper (business to business electronic markets)
	Drugs and related products business to business electronic markets	•	5122 Drugs, Drug Proprietaries, and Druggists' Sundries (business to business electronic markets)
	Dry goods business to business electronic markets	•	5131 Piece Goods, Notions, and Other Dry Goods (business to business electronic markets)

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	Women's and children's business to business electronic markets	*	5137 Women's, Children's, and Infant's Clothing and Accessories (business to business electronic markets)
	Footwear business to business electronic markets	*	5139 Footwear (business to business electronic markets)
	General line grocery business to business electronic markets	*	5141 Groceries, General Line (business to business electronic markets)
	Frozen food business to business electronic markets	*	5142 Packaged Frozen Foods (business to business electronic markets)
	Dairy product business to business electronic markets	*	5143 Dairy Products, Except Dried or Canned (business to business electronic markets)
	Poultry and poultry product business to business electronic markets	*	5144 Poultry and Poultry Products (business to business electronic markets)
	Confectionery business to business electronic markets	*	5145 Confectionery (business to business electronic markets)
	Fish and seafood business to business electronic markets	*	5146 Fish and Seafoods (business to business electronic markets)
	Meat and meat product business to business electronic markets	*	5147 Meats and Meat Products (business to business electronic markets)
	Fresh fruit and vegetable business to business electronic markets	*	5148 Fresh Fruits and Vegetables (business to business electronic markets)
	Grocery and related product, nec business to business electronic markets	*	5149 Groceries and Related Products, NEC (business to business electronic markets)
	Grain and field bean business to business electronic markets	*	5153 Grain and Field Beans (business to business electronic markets)
	Livestock business to business electronic markets	*	5154 Livestock (business to business electronic markets)
	Farm products, nec business to business electronic markets	*	5159 Farm-Product Raw Materials, NEC (business to business electronic markets)
	Plastics business to business electronic markets	*	5162 Plastics materials and Basic Forms and Shapes (business to business electronic markets)
	Chemicals business to business electronic markets	*	5169 Chemicals and Allied Products, NEC (business to business electronic markets)
	Petroleum and petroleum product business to business electronic markets	*	5172 Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (business to business electronic markets)
	Beer and ale business to business electronic markets	*	5181 Beer and Ale (business to business electronic markets)
	Wine and distilled beverage business to business electronic markets	*	5182 Wine and Distilled Alcoholic Beverages (business to business electronic markets)
	Farm supply business to business electronic markets	*	5191 Farm Supplies (business to business electronic markets)
	Book and other published material business to business electronic markets	*	5192 Books, Periodicals, and Newspapers (business to business electronic markets)
	Flower and nursery stock business to business electronic markets	*	5193 Flowers, Nursery Stock, and Florists' Supplies (business to business electronic markets)
	Tobacco and tobacco product business to business electronic markets	*	5194 Tobacco and Tobacco Products (business to business electronic markets)
	Paint and related product business to business electronic markets	*	5198 Paints, Varnishes, and Supplies (business to business electronic markets)
	Nondurable goods, nec business to business electronic markets	*	5199 Nondurable Goods, NEC (business to business electronic markets)
42312	Wholesale Trade Agents and Brokers		
	Motor vehicle wholesale trade agents and brokers	*	5012 Automobiles and Other Motor Vehicles (wholesale trade agents and brokers)
	Motor vehicle parts and supplies wholesale trade agents and brokers	*	5013 Motor Vehicle Supplies and New Parts (wholesale trade agents and brokers)
	Tire and tube wholesale trade agents and brokers	*	5014 Tires and Tubes (wholesale trade agents and brokers)
	Used motor vehicle parts wholesale trade agents and brokers	*	5015 Motor Vehicle Parts, Used (wholesale trade agents and brokers)
	Furniture wholesale trade agents and brokers	*	5021 Furniture (wholesale trade agents and brokers)
	Homefurnishings wholesale trade agents and brokers	*	5023 Homefurnishings (wholesale trade agents and brokers)
	Lumber, plywood, and panel wholesale trade agents and brokers	*	5031 Lumber, Plywood, Millwork, and Wood Panels (wholesale trade agents and brokers)
	Brick, stone, and related products wholesale trade agents and brokers	*	5032 Brick, Stone, and Related Construction Materials (wholesale trade agents and brokers)
	Roofing, siding and insulation wholesale trade agents and brokers	*	5033 Roofing, Siding, and Insulation Materials (wholesale trade agents and brokers)
	Construction materials, nec wholesale trade agents and brokers	*	5039 Construction Materials, NEC (wholesale trade agents and brokers)
	Photographic equipment and supplies wholesale trade agents and brokers	*	5043 Photographic Equipment and Supplies (wholesale trade agents and brokers)
	Office equipment wholesale trade agents and brokers	*	5044 Office Equipment (wholesale trade agents and brokers)
	Computers and related equipment wholesale trade agents and brokers	*	5045 Computers and Computer Peripheral Equipment and Software (wholesale trade agents and brokers)
	Commercial equipment, nec wholesale trade agents and brokers	*	5046 Commercial Equipment, NEC (wholesale trade agents and brokers)
	Medical, dental, and hospital equipment and supplies wholesale trade agents and brokers	*	5047 Medical, Dental, and Hospital Equipment and Supplies (wholesale trade agents and brokers)
	Ophthalmic goods wholesale trade agents and brokers	*	5048 Ophthalmic Goods (wholesale trade agents and brokers)
	Professional equipment and supplies wholesale trade agents and brokers	*	5049 Professional Equipment and Supplies, NEC (wholesale trade agents and brokers)
	Metals wholesale trade agents and brokers	*	5051 Metals Service Centers and Offices (wholesale trade agents and brokers)
	Coal and other mineral and ore wholesale trade agents and brokers	*	5052 Coal and Other Minerals and Ores (wholesale trade agents and brokers)

Electrical apparatus and equipment and wiring supplies wholesale trade agents and brokers	•	5063 Electrical Apparatus and Equipment, Wiring Supplies, and Construction Materials (wholesale trade agents and brokers)
Electrical appliance wholesale trade agents and brokers	•	5064 Electrical Appliances, Television and Radio Sets (wholesale trade agents and brokers)
Electronic parts wholesale trade agents and brokers	•	5065 Electronic Parts and Equipment, NEC (wholesale trade agents and brokers)
Hardware wholesale trade agents and brokers	•	5072 Hardware (wholesale trade agents and brokers)
Plumbing and hot water heating equipment wholesale trade agents and brokers	•	5074 Plumbing and Heating Equipment and Supplies (Hydronics) (wholesale trade agents and brokers)
Warm air heating and air-conditioning equipment wholesale trade agents and brokers	•	5075 Warm Air Heating and Air-Conditioning Equipment and Supplies (wholesale trade agents and brokers)
Refrigeration equipment and supplies wholesale trade agents and brokers	•	5078 Refrigeration Equipment and Supplies (wholesale trade agents and brokers)
Construction and mining equipment wholesale trade agents and brokers	•	5082 Construction and Mining (Except Petroleum) Machinery and Equipment (wholesale trade agents and brokers)
Farm and garden machinery wholesale trade agents and brokers	•	5083 Farm and Garden Machinery and Equipment (wholesale trade agents and brokers)
Industrial machinery and equipment wholesale trade agents and brokers	•	5084 Industrial Machinery and Equipment (wholesale trade agents and brokers)
Industrial supplies wholesale trade agents and brokers	•	5085 Industrial Supplies (wholesale trade agents and brokers)
Service industry equipment and supplies wholesale trade agents and brokers	•	5087 Service Establishment Equipment and Supplies (wholesale trade agents and brokers)
Transportation equipment and supplies, except motor vehicle, wholesale trade agents and brokers	•	5088 Transportation Equipment and Supplies, Except Motor Vehicles (wholesale trade agents and brokers)
Sporting goods wholesale trade agents and brokers	•	5091 Sporting and Recreational Goods and Supplies (wholesale trade agents and brokers)
Toys and hobby supply wholesale trade agents and brokers	•	5092 Toys and Hobby Goods and Supplies (wholesale trade agents and brokers)
Scrap and waste material wholesale trade agents and brokers	•	5093 Scrap and Waste Materials (wholesale trade agents and brokers)
Jewelry, watches, and related goods wholesale trade agents and brokers	•	5094 Jewelry, Watches, Precious Stones, and Precious Metals (wholesale trade agents and brokers)
Durable goods, nec wholesale trade agents and brokers	•	5099 Durable Goods, NEC (wholesale trade agents and brokers)
Printing and writing paper wholesale trade agents and brokers	•	5111 Printing and Writing Paper (wholesale trade agents and brokers)
Stationary and office supplies wholesale trade agents and brokers	•	5112 Stationery and Office Supplies (wholesale trade agents and brokers)
Other paper wholesale trade agents and brokers	•	5113 Industrial and Personal Service Paper (wholesale trade agents and brokers)
Druge and related products wholesale trade agents and brokers	•	5122 Drugs, Drug Proprietaries, and Druggists' Sundries (wholesale trade agents and brokers)
Dry goods wholesale trade agents and brokers	•	5131 Piece Goods, Notions, and Other Dry Goods (wholesale trade agents and brokers)
Men's and boys' clothing wholesale trade agents and brokers	•	5136 Men's and Boy's Clothing and Furnishing (wholesale trade agents and brokers)
Women's and children's wholesale trade agents and brokers	•	5137 Women's, Children's, and Infant's Clothing and Accessories (wholesale trade agents and brokers)
Footwear wholesale trade agents and brokers	•	5139 Footwear (wholesale trade agents and brokers)
General line grocery wholesale trade agents and brokers	•	5141 Groceries, General Line (wholesale trade agents and brokers)
Frozen food wholesale trade agents and brokers	•	5142 Packaged Frozen Foods (wholesale trade agents and brokers)
Dairy product wholesale trade agents and brokers	•	5143 Dairy Products, Except Dried or Canned (wholesale trade agents and brokers)
Poultry and poultry product wholesale trade agents and brokers	•	5144 Poultry and Poultry Products (wholesale trade agents and brokers)
Confectionary wholesale trade agents and brokers	•	5145 Confectionery (wholesale trade agents and brokers)
Fish and seafood wholesale trade agents and brokers	•	5146 Fish and Seafoods (wholesale trade agents and brokers)
Meat and meat product wholesale trade agents and brokers	•	5147 Meats and Meat Products (wholesale trade agents and brokers)
Fresh fruit and vegetable wholesale trade agents and brokers	•	5148 Fresh Fruits and Vegetables (wholesale trade agents and brokers)
Grocery and related product, nec wholesale trade agents and brokers	•	5149 Groceries and Related Products, NEC (wholesale trade agents and brokers)
Grain and field bean wholesale trade agents and brokers	•	5153 Grain and Field Beans (wholesale trade agents and brokers)
Livestock wholesale trade agents and brokers	•	5154 Livestock (wholesale trade agents and brokers)
Farm products, nec wholesale trade agents and brokers	•	5159 Farm-Product Raw Materials, NEC (wholesale trade agents and brokers)
Plastics wholesale trade agents and brokers	•	5162 Plastics materials and Basic Forms and Shapes (wholesale trade agents and brokers)
Chemicals wholesale trade agents and brokers	•	5169 Chemicals and Allied Products, NEC (wholesale trade agents and brokers)
Petroleum and petroleum product wholesale trade agents and brokers	•	5172 Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals (wholesale trade agents and brokers)
Beer and ale wholesale trade agents and brokers	•	5181 Beer and Ale (wholesale trade agents and brokers)
Wine and distilled beverage wholesale trade agents and brokers	•	5182 Wine and Distilled Alcoholic Beverages (wholesale trade agents and brokers)
Farm supply wholesale trade agents and brokers	•	5191 Farm Supplies (wholesale trade agents and brokers)
Book and other published material wholesale trade agents and brokers	•	5192 Books, Periodicals, and Newspapers (wholesale trade agents and brokers)
Flower and nursery stock wholesale trade agents and brokers	•	5193 Flowers, Nursery Stock, and Florists' Supplies (wholesale trade agents and brokers)

	Tobacco and tobacco product wholesale trade agents and brokers	•	5194 Tobacco and Tobacco Products (wholesale trade agents and brokers)
	Paint and related product wholesale trade agents and brokers	•	5198 Paints, Varnishes, and Supplies (wholesale trade agents and brokers)
	Nondurable goods, nec wholesale trade agents and brokers	•	5199 Nondurable Goods, NEC (wholesale trade agents and brokers)
	Yacht brokers	•	7389 Business Services, NEC (yacht brokers)
4521	Department Stores		
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Federal Register

Thursday,
April 20, 2000

Part III

Department of Education

Office of Educational Research and Improvement; The Comprehensive School Reform Research Grant Competition; Inviting Applications for New Awards for Fiscal Year (FY) 2000; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.306S]

Office of Educational Research and Improvement; The Comprehensive School Reform Research Grant Competition; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of Program: The purpose of this program is to expand understanding of the full dimensions of school reform through rigorous investigation of the large-scale implementation of research-based comprehensive school reform models as a strategy for increasing student achievement.

For FY 2000 the competition for new awards focuses on projects designed to meet the priorities identified in the PRIORITIES section of this application notice.

Eligible Applicants: Institutions of higher education; State and local education agencies; public and private organizations, institutions, and agencies; and individuals.

Applications Available: May 12, 2000 for hardcopies. Also available by Web site (http://www.ed.gov/GrantApps/) on the date of publication of this notice.

Deadline for Transmittal of Applications: June 22, 2000.

Estimated Available Funds: Up to $5 million.

Estimated Size of Awards: The size of the awards will be commensurate with the nature and scope of the proposed work.

Note: The Department is not bound by any estimates in this notice.

Budget Period: 12-month period.

Project Period: Up to 36 months, with the exception of large-scale longitudinal field studies that may require 5 years to collect and analyze sufficient student or school outcome data.

Page Limits: The application must include six sections: title page form, research narrative, management plan, biographical sketches for principal investigators and other key personnel, budget summary form with budget narrative, and statement of equitable access (GEPA 427). The research narrative is limited to 50 pages, the management plan is limited to 5 pages, and biographical sketches are limited to 3 pages each, using 8½ x 11 inch paper with printing on only one side. Appendix materials should not be submitted. Pages in excess of these limitations will be *removed unread*. We strongly encourage applicants to use double-spacing, a 12-point font, and 1-inch margins. Reviewers are able to conduct the highest quality review when applications are concise and easy to read, with pages consecutively numbered.

Applicable Statutes and Regulations: (a) *Statutes:* This grant competition is authorized by P.L. 106–113, the Department of Education Appropriations Act, 2000 and by OERI's authorizing statute at 20 U.S.C. 6031. (b) *Regulations:* (1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 78, 80, 81, 82, 84, 86 (Part 86 applies only to Institutions of Higher Education), 97, 98 and 99; and (2) 34 CFR Part 700.

SUPPLEMENTARY INFORMATION: This research grant competition combines elements of both research and evaluation of comprehensive school reform. The Office of Educational Research and Improvement (OERI) expects that the knowledge gained from this work will provide the field with findings about specific models in promoting student achievement and enhance our understanding of how model developers and staff in schools can more effectively work together to improve student achievement. In addition, it should contribute to our overall understanding of how to increase student achievement and our continuing efforts to refine and improve education reform strategies.

Currently, very few comprehensive school reform models have been rigorously evaluated to determine their effectiveness. States, districts, schools, and the research community all would greatly benefit from additional rigorous evaluation of the various models. Equally important is additional information about how various model characteristics (*e.g.*, prescriptiveness, professional development strategy, and curriculum requirements) are likely to achieve success in schools with differing student populations, capacities, and needs.

This work should build on the growing awareness that comprehensive school reform as a strategy for improved student achievement will depend not only on the model being implemented, but also on the context and conditions that exist in classrooms, schools, and districts. What works or does not work in a classroom, school or district can be a function of a variety of factors and supporting conditions such as financial resources, teacher quality, district and school-level leadership, and collaborative strategies employed by model developers, districts, schools, and external technical assistance providers. In addition, the success or effectiveness of a model may be related to the needs of special populations including limited English proficient students or special education students.

OERI seeks rigorous research and evaluation designs that focus explicitly on comprehensive school reform's role in increasing student learning and achievement. The studies must contribute in a significant and cumulative way to extant research on comprehensive school reform; and produce findings that are sound, relevant, timely, and useful to practitioners and policymakers. Applicants should demonstrate understanding of research in progress, as well as plans for evaluations of this research. Research questions should be informed by the needs of practitioners and policymakers involved in comprehensive school reform initiatives and should be framed in ways that are likely to increase the utility of the findings ultimately produced. In addition, study designs should include mechanisms to share emerging findings with the field, as appropriate. The designs should also enable other interested researchers to conduct further data analyses, replication, verification and refinement of findings, and improvement of measurement procedures.

We encourage collaboration in the conduct of research. Proposal teams should reflect synergistic collaborations among model developers, researchers, practitioners, and others likely to produce relevant and actionable findings for educators and policymakers. We encourage research organizations to collaborate with groups and institutions historically underrepresented in education research, such as Historically Black Colleges and Universities, Hispanic-Serving Institutions, and Tribal Colleges and Universities.

OERI cautions that this research grant program is not intended to support model development or improvement efforts in individual schools or districts, but rather to support research efforts resulting in findings that apply to comprehensive school reform strategies for many schools in various communities, districts and states.

Type of Awards

OERI anticipates that research designed to address one or more of these priorities may require large studies. For some projects, such as large-scale longitudinal studies, closer relationships with grantees than those typically afforded by discretionary grants may be appropriate. OERI therefore expects that some studies will be awarded cooperative agreements

rather than discretionary grants, as provided for in EDGAR, at 34 CFR 75.200.

OERI is interested in conducting research about the capacity of already developed comprehensive school reform models to increase student achievement in large numbers of schools outside the original development and field test sites. As previously noted, we will not fund the development of models or provide support simply to implement and/or evaluate a specific program in a specific site.

Priorities

For purposes of this competition, an externally developed, research-based comprehensive school reform model is defined as follows: (1) It includes an integrated set of supportive materials, frameworks or guidelines, and the capacity to provide implementation assistance to schools. (2) It supports all systems within a school—organization, instruction, professional development, and management. (3) All of the school's classrooms are actively engaged in and accountable for the implementation of a common, articulated strategy to improve teaching and learning for all students in the school. (4) The components are grounded in research on effective practice. (5) It has been developed and tested in one set of schools and has demonstrated capacity to serve other schools. (6) There is some evidence of the effectiveness of the model in increasing student achievement.

Absolute Priority

OERI has identified three research questions as being critical to understanding the full dimensions of the large-scale implementation of externally developed research-based comprehensive school reform models as a strategy for increasing student achievement. This competition focuses on research projects designed to meet the following absolute priority:

Conduct studies that address one or more of the following research questions:

(1) How effective are specific externally developed, research-based comprehensive school reform models in improving the achievement of all students?

(2) How are model characteristics related to success of model implementation and improvement in teaching and learning in specific types of settings and with specific types of students?

(3) What supporting conditions and strategies are necessary to effectively implement and sustain comprehensive school reform models in schools and school districts?

Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

Competitive Priority

The Secretary gives competitive preference priority to applications that address research question (1) under the absolute priority, in addition to addressing one or both of the other research questions in a coherent and integrated design. OERI considers research question (1) to be central to the proposed work. OERI believes studies designed to address question (1), and one or both of the other research questions will increase the rigor and robustness of school reform research and evaluation. In addition, study designs that link elements of research questions (2) and/or (3) with research question (1) will be more useful to model developers, policymakers, and practitioners.

Under 34 CFR 75.105(c)(2)(ii), OERI will select an application that meets the competitive priority over an application of comparable merit that does not meet the priority.

A principal investigator may submit only one proposal and may collaborate in one other proposal as a co-investigator. Group and collaborative proposals involving more than one institution must be submitted as a single administrative package from one of the institutions involved. Principal investigators will be required to meet at least twice each year with agency staff, consultants, and other OERI grantees and contractors for the purpose of expanding collaborative efforts within this field of research. OERI anticipates the possibility of funding two or more proposals that address the same or similar themes, topics or issues. OERI provides opportunities for grantees to inform each other's work by discussing common challenges, methodological issues, and ways to maximize the impact of this program on student achievement for all students. Principal investigators will also be required to help identify crosscutting research issues, and to work together to better inform other researchers, practitioners, and policymakers of emerging findings.

Depending upon the type of research proposed, OERI might require some common study design elements. Investigators may be asked to develop a core of common research questions, outcome measures, instruments, or data analysis procedures so that study findings are comparable.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department to offer interested parties the opportunity to comment on proposed priorities that are not taken directly from statute. Ordinarily, this practice would have applied to the priorities in this notice. Section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1), however, exempts rules that apply to the first competition under a new or substantially revised program from this requirement.

The conference agreement for the FY 2000 appropriation for OERI's national research institutes includes $20,000,000 for "current and expanded comprehensive school reform research and development." (P.L. 106–113, the Department of Education Appropriations Act, 2000.) Of that sum, approximately $15 million will support continuation of the current activities (contracts resulting from the FY 1999 design competition for new models for comprehensive school reform at the middle and high school level). An estimated $5 million will be used for the discretionary grants or cooperative agreements that are the subject matter of this competition. This expanded program of research and development will focus on studies addressing the student achievement effects of various comprehensive school reform models.

Therefore, the Assistant Secretary of OERI, in accordance with section 437(d)(1) of GEPA, to ensure timely awards, has decided to forego public comment with respect to the priorities. The priorities will apply only to the FY 2000 grant competition.

FOR APPLICATIONS CONTACT: *Electronic Copy.* Applications will be available on the World Wide Web at the following sites:

http://www.ed.gov/offices/OERI/csrrdp.html

http://www.ed.gov/GrantApps/

Hard Copy. Hard copies will be available after May 12, 2000 from the Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site:

http://www.ed.gov/pubs/edpubs.html

or you may contact ED Pubs at its E-mail address:

edpubs@inet.ed.gov

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.306S.

FOR FURTHER INFORMATION CONTACT: Cheryl Kane, U.S. Department of Education, 555 New Jersey Avenue, NW., room 604B, Washington, DC 20202–5530. Telephone: (202) 208–2991. E-mail: cheryl kane@ed.gov or D. Hollinger Martinez, U.S. Department of Education, 555 New Jersey Ave, NW., room 610C, Washington, DC 20208–5521. Telephone: (202) 219–2239. E-mail: debra__hollinger__martinez@ed.gov. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request by contacting either of the individuals under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Program Authority: 20 U.S.C. 6031.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 00–9932 Filed 4–19–00; 8:45 am]

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Federal Register

Thursday,
April 20, 2000

Part IV

Department of Housing and Urban Development

24 CFR Part 1000
Revision to Cost Limits for Native American Housing; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1000

[Docket No. FR–4617–P–01]

RIN 2577–AC14

Revision to Cost Limits for Native American Housing

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the way construction costs are controlled in the Indian Housing Block Grant (IHBG) program administered by IHBG grantees, who are Indian Tribes or their Tribally Designated Housing Entities (TDHEs). It would replace the system of HUD-established Dwelling Construction and Equipment costs with a choice between HUD-established Total Development Costs or standards established by the TDHE based on standards in its geographic area. This rule also would provide that the construction, acquisition, or assistance of non-dwelling buildings is either subject to standards established by the TDHE or to documentation of comparability to the size, design and amenities of similar buildings constructed in the geographic area.

DATES: *Comments Due Date:* June 19, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Bruce Knott, Office of Native American Programs, at 303–675–1600, extension 3302, or email him at the following address: Bruce__A.__Knott@hud.gov. Persons with hearing or speech impairments may access the above telephone number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Reason for the Proposed Change

Under the United States Housing Act of 1937 ("1937 Act") (42 U.S.C. 1437 *et seq.*), the construction cost limits were called Total Development Cost limits, informally referred to as TDCs. These limits included the total cost of development, including both soft and hard costs of construction.

Under the Native American Housing Assistance and Self-Determination Act (NAHASDA)(25 U.S.C. 4101 *et seq.*), the new regulations provided for a new system of construction cost limits called Dwelling Construction and Equipment costs, also referred to as DC&Es (see 24 CFR 1000.156). In response to concerns expressed by tribes, the negotiated rule making (neg reg) committee designed DC&Es to begin from the same base design as TDCs, but limit only the hard costs of construction within five feet of the foundation, believing this would provide more flexibility in resolving unusual site cost issues. When tribes/TDHEs actually began utilizing DC&Es, they found them to be a barrier in providing housing as many tribes had historically used part of the soft cost allocation for the actual construction; therefore, when the cost limits included money for only the hard costs, the limits were inadequate.

In response to these new concerns, the National Office of Native American Programs (NONAP) began working with a tribal consulting group on the cost limit issue in the fall of 1998. This group was comprised of a tribal representative from each of the ONAP office jurisdictions, one HUD field staff person, and two HUD Headquarters staff. Their objective was to write language that incorporated both the self determination and affordable housing intentions of NAHASDA. This group wrote proposed changes for dwelling cost limits. This language was mailed to tribes and TDHEs for consultation in January, 1999. This group then wrote non dwelling cost limits and mailed them to tribes/TDHEs for consultation in April, 1999. The rule reflects comments received during the consultation and during HUD's clearance process.

Implications

If these proposed changes are adopted in substantially the same form as below, the Department will publish TDCs, instead of the present DC&Es. The tribes/TDHEs will choose whether to use the published TDCs, or develop their own standards, consistent with this rule.

Findings and Certifications

Public Reporting Burden

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) does not apply to the proposed information collection requirements contained in §§ 1000.158 and 1000.162 because HUD anticipates that the requirements will apply to fewer than 10 TDHEs.

Consultation With Indian Tribal Governments

In accordance with Executive Order 13084, *Consultation and Coordination With Indian Tribal Governments,* issued on May 14, 1998, the Department has consulted with representatives of tribal governments concerning the subject of this rule. As described above, the rule originated from concerns brought to our attention by tribal representatives. In accordance with that Executive Order, the docket file for this rulemaking contains copies of written communications submitted to HUD by tribal governments.

Impact on Small Entities

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires that an agency analyze the impact of a rule on small entities whenever it determines that the rule is likely to have a significant impact on a substantial number of small entities. While many TDHEs may be small entities, the effect of this rule developed in consultation with tribal representatives, will not be likely to have a significant impact on a substantial number of them. As mentioned above, it is expected that fewer than 10 TDHEs will be affected by this rule. To the extent that small entities will be affected, the impact is expected to be beneficial, as a result of the consultation that has taken place. We encourage small entities to submit comments, however, on ways that the impact of the rule on them could be minimized.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Regulations Division at the address stated above.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 13132, *Federalism,* has determined that this rule does not impose substantial direct compliance costs on States or local governments or preempt State law within the meaning of the Executive Order. As a result, the

rule is not subject to review under the order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose a Federal mandate that will result in the expenditure by State, local, or tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year.

Regulatory Review

The Office of Management and Budget (OMB) has reviewed this proposed rule under Executive Order 12866, *Regulatory Planning and Review,* issued by the President on September 30, 1993. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made in this proposed rule after its submission to OMB are identified in the docket file, which is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Catalog

The Catalog of Federal Domestic Assistance number for this program is 14.867.

List of Subjects in 24 CFR Part 1000

Aged, Community development block grants, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Low and moderate income housing, Reporting and recordkeeping requirements.

Accordingly, HUD proposes to amend part 1000 of title 24 of the Code of Federal Regulations as follows:

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

1. The authority citation for part 1000 continues to read as follows:

Authority: 25 U.S.C. 4101 *et seq.*; 42 U.S.C. 3535(d).

2. Revise § 1000.156 to read as follows:

§ 1000.156 Is affordable housing developed, acquired, or assisted under the IHBG program subject to limitations on cost or design standards?

Yes. Affordable housing must be of moderate design. For these purposes, moderate design is defined as housing that is of a size and with amenities consistent with unassisted housing offered for sale in the Indian tribe's general geographic area to buyers who are at or below the area median income. The local determination of moderate design applies to all housing assisted under an affordable housing activity, including development activities (e.g., acquisition, new construction, reconstruction, moderate or substantial rehabilitation of affordable housing and homebuyer assistance) and model activities. Acquisition includes assistance to a family to buy housing.

3. Add new §§ 1000.158, 1000.160, and 1000.162 to read as follows:

§ 1000.158 How will a NAHASDA grant recipient know that the housing assisted under the IHBG program meets the requirements of § 1000.156?

(a) A recipient must use one of the methods specified in paragraph (b) or (c) of this section to determine if an assisted housing project meets the moderate design requirements of § 1000.156. For purposes of this requirement, a project is one or more housing units, of comparable size and design, developed with assistance provided by the Act.

(b) The recipient may adopt written standards for its affordable housing programs that reflect the requirement specified in § 1000.156. The standards must describe the type of housing, explain the basis for the standards, and use similar housing in the Indian tribe's general geographic area. Units with the same number of bedrooms within a project must be comparable with respect to size, cost, and amenities. For each affordable housing project, the recipient must maintain documentation substantiating compliance with the adopted housing standards. The standards and documentation substantiating compliance for each activity must be available for review by the general public and, upon request, by HUD. Prior to awarding a contract for the construction of housing or beginning construction using its own workforce, the recipient must complete a comparison of the cost of developing or acquiring/rehabilitating the affordable housing with the limits provided by the TDC discussed in paragraph (c) of this section and may not, without prior HUD approval, exceed by more than 10 percent the TDC maximum cost for the project. In developing standards under this paragraph, the recipient must establish, maintain, and follow policies that determine a local definition of moderate design which considers:

(1) Gross area;

(2) Total cost to provide the housing;

(3) Environmental concerns and mitigations;

(4) Climate;

(5) Comparable housing in geographical area;

(6) Local codes, ordinances and standards;

(7) Cultural relevance in design;

(8) Design and construction features that are reasonable, and necessary to provide decent, safe, sanitary and affordable housing; and

(9) Design and construction features that are accessible to persons with a variety of disabilities.

(c) If the recipient has not adopted housing standards specified in paragraph (b) of this section, Total Development Cost (TDC) limits published periodically by HUD establish the maximum amount of funds (from all sources) that the recipient may use to develop or acquire/rehabilitate affordable housing. The recipient must complete a comparison of the cost of developing or acquiring/rehabilitating the affordable housing with the limits provided by the TDC and may not, without prior HUD approval, exceed the TDC maximum cost for the project.

§ 1000.160 Are non-dwelling buildings developed, acquired or assisted under the IHBG program subject to limitations on cost or design standards?

Yes. Non-dwelling buildings must be of a design, size and with features or amenities that are reasonable and necessary to accomplish the purpose intended by the buildings. The purpose of a non-dwelling building must be to support an affordable housing activity, as defined by the Act. These limits apply to buildings such as community facilities and office space; they do not apply to structures related to utilities or power supply.

§ 1000.162 How will a recipient know that non-dwelling buildings assisted under the IHBG program meet the requirements of 1000.160?

(a) The recipient must use one of the methods described in paragraph (b) or (c) of this section to determine if a non-dwelling building meets the limitation requirements of § 1000.160. If the recipient develops, acquires, or rehabilitates a non-dwelling building with combined funds (from NAHASDA and other sources), then the cost limit standard established under these regulations applies to the combined

activity. If funds are being combined from two different sources, the standards of the funding source with the more restrictive rules apply.

(b)(1) The recipient may adopt written standards for non-dwelling buildings. The standards must describe the type of building and must clearly describe the criteria to be used to guide the cost, size, design, features, amenities, performance or other factors. The standards for such buildings must be able to support the reasonableness and necessity for these factors and to clearly identify the affordable housing activity that is being provided.

(2) When the recipient applies a standard to a particular building, it must document the following:

(i) Identification of targeted population to benefit from the building;

(ii) Identification of need or problem to be solved;

(iii) Affordable housing activity provided or supported by the building;

(iv) Alternatives considered;

(v) Provision for future growth and change;

(vi) Cultural relevance of design;

(vii) Size and scope supported by population and need;

(viii) Design and construction features that are accessible to persons with a variety of disabilities;

(ix) Cost; and

(x) Compatibility with community infrastructure and services.

(c) If the recipient has not adopted building program standards specified in paragraph (b) of this section, then it must demonstrate and document that the non-dwelling building is of a cost, size, design and with amenities consistent with similarly designed and constructed buildings in the recipient's general geographic area.

Dated: March 27, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

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Federal Register

Thursday,
April 20, 2000

Part V

Department of Defense

Department of the Army, Corps of Engineers
33 CFR Part 323

Environmental Protection Agency

40 CFR Part 232
Proposed Revisions to the Clean Water Act Regulatory Definitions of "Fill Material" and "Discharge of Fill Material"; Proposed Rule

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 323

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 232

[FRL–6582–6]

Proposed Revisions to the Clean Water Act Regulatory Definitions of "Fill Material" and "Discharge of Fill Material"

AGENCIES: U.S. Army Corps of Engineers, Department of the Army, DOD; and Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Department of the Army (Army) and the Environmental Protection Agency (EPA) today are jointly proposing to revise their Clean Water Act (CWA) regulations defining the term "fill material." At present, the Army and EPA definitions of "fill material" differ from each other, and this has resulted in regulatory uncertainty and confusion. The existing Army definition defines "fill material" as any material used for the primary purpose of replacing an aquatic area with dry land or of changing the bottom elevation of a water body, and specifically excludes from that definition any material discharged into the water primarily to dispose of waste, as that activity is regulated under section 402 of the Clean Water Act. The existing EPA definition defines "fill material" as any pollutant which replaces a portion of the waters of the U.S. with dry land or which changes the bottom elevation of such waters, regardless of the purpose of the discharge. Today's proposal would amend both the Army and EPA definitions of "fill material" to provide a single definition of that term, and thus ensure proper, consistent, and more effective regulation under the CWA of materials that have the effect of replacing any portion of a water of the U.S. States with dry land or of changing the bottom elevation of any portion of a water of the U.S. Today's proposal also would make a change to the definition of the term "discharge of fill material" in order to provide further clarification of this issue.

DATES: Written comments must be submitted by June 19, 2000.

ADDRESSES: Send written comments on the proposed rule to the Office of the Chief of Engineers, ATTN CECW–OR, 20 Massachusetts Avenue, Washington, DC 20314–1000.

We request that commenters submit any references cited in their comments. We also request that commenters submit an original and 2 copies of their written comments and enclosures. Commenters that want receipt of their comments acknowledged should include a self-addressed, stamped envelope. All written comments must be postmarked or delivered by hand. No facsimiles (faxes) will be accepted.

A copy of the supporting documents for this proposed rule is available for review in Room 6225 at the U.S. Army Corps of Engineers' Pulaski Building, located at 20 Massachusetts Avenue, Washington, DC 20314–1000. For access to docket materials, call (202) 761–0199 between 9 a.m. and 3:30 p.m. for an appointment. Comments received on the proposed rule will also be available for examination in Corps District or Division offices.

FOR FURTHER INFORMATION CONTACT: For information on the proposed rule, contact either Mr. Thaddeus Rugiel, U.S. Army Corps of Engineers, ATTN CECW–OR, 20 Massachusetts Avenue, Washington, DC 20314–1000, phone: (202) 761—0199, e-mail: Thaddeus.J.Rugiel@ HQ02.USACE.ARMY.MIL, or Mr. John Lishman, U.S. Environmental Protection Agency, Office of Wetlands, Oceans and Watersheds (4502F), Ariel Rios Building, 1200 Pennsylvania Avenue NW, Washington, DC 20460, phone: (202) 260–9180, e-mail: lishman.john@ epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Plain Language

In compliance with President Clinton's June 1, 1998, Executive Memorandum on Plain Language in government writing, this preamble is written using plain language. Thus, the use of "we" in this action refers to EPA and the U.S. Army Corps of Engineers (Corps), and the use of "you" refers to the reader.

B. Potentially Regulated Entities

Persons or entities that discharge material to waters of the U.S. that has the effect of replacing any portion of a water of the U.S. with dry land or changing the bottom elevation of any portion of a water of the U.S. could be regulated by today's proposed rule. The CWA generally prohibits the discharge of pollutants into waters of the U.S. without a permit issued by EPA or a State approved by EPA under section 402 of the Act, or, in the case of dredged or fill material, by the Corps or an approved State under section 404 of the Act. Today's proposal addresses the CWA section 404 program's definitions of "fill material" and "discharge of fill material," which are important for determining whether a particular discharge is subject to regulation under CWA section 404. In developing today's proposal to reconcile the agencies differing definitions, we have carefully considered our current regulatory practice and the terms of a 1986 Memorandum of Agreement Between the Assistant Administrators for External Affairs and Water, U.S. Environmental Protection Agency, and the Assistant Secretary of the Army for Civil Works Concerning Regulation of Discharges of Solid Waste Under the Clean Water Act ("1986 Solid Waste MOA"). The 1986 Solid Waste MOA sets out a number of factors to help determine whether material is subject to the CWA under section 404 or 402. Today's proposal does not alter current practice, but rather is intended to clarify what constitutes "fill material" subject to CWA section 404. Examples of entities potentially regulated include:

Category	Examples of potentially affected entities
State/Tribal governments or instrumentalities	State/Tribal agencies or instrumentalities that discharge material that has the effect of replacing any portion of a water of the U.S. with dry land or changing the bottom elevation of a water of the U.S.
Local governments or instrumentalities	Local governments or instrumentalities that discharge material that has the effect of replacing any portion of a water of the U.S. with dry land or changing the bottom elevation of a water of the U.S.
Federal government agencies or instrumentalities	Federal government agencies or instrumentalities that discharge material that has the effect of replacing any portion of a water of the U.S. with dry land or changing the bottom elevation of a water of the U.S.

Category	Examples of potentially affected entities
Industrial, commercial, or agricultural entities	Industrial, commercial, or agricultural entities that discharge material that has the effect of replacing any portion of a water of the U.S. with dry land or changing the bottom elevation of a water of the U.S.
Land developers and landowners	Land developers and landowners that discharge material that has the effect of replacing any portion of a water of the U.S. with dry land or changing the bottom elevation of a water of the U.S.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that are likely to be regulated by this action. This table lists the types of entities that we are now aware of that could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your organization or its activities are regulated by this action, you should carefully examine the applicability criteria in § 230.2 of Title 40 of the Code of Federal Regulations, as well as the preamble discussion in section II of today's proposal. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

C. Overview of Clean Water Act

The CWA is the primary federal statute addressing the discharge of pollutants to waters of the U.S. Section 301(a) of the CWA generally prohibits such discharges except as may be authorized by a permit issued under the Act. Two different permitting regimes are created by the Act: (1) section 404 permits, primarily administered by the Corps, addressing the discharge of dredged or fill material, and (2) section 402 permits (commonly referred to as National Pollutant Discharge Elimination System, or "NPDES" permits), administered by EPA and the States, which address the discharge of all other pollutants. The CWA defines the term "pollutant" to include materials such as rock, sand, and cellar dirt that often serve as "fill material." The CWA, however, does not define the term "fill material," leaving it to the agencies to adopt a definition consistent with the statutory language and scheme. Providing a clear and consistent definition for the term "fill material" under the CWA is important in determining whether a proposed discharge of a pollutant is subject to regulation under section 404 or section 402.

In keeping with the fundamental difference in the nature and effect of the discharge that each program was intended by Congress to address, sections 404 and 402 employ different approaches to regulating the discharges to which they apply. The section 402 program is focused on (although not limited to) discharges such as wastewater discharges from industrial operations and sewage treatment plants, stormwater and the like. See, e.g., CWA sections 304 (b) and (d) and 402(p). Pollutant discharges are controlled under the section 402 program principally through the imposition of effluent limitations, which are restrictions on the "quantities, rates, and concentrations of chemical, physical, biological and other constituents which are discharged from point sources into navigable waters" (CWA section 502(11)). Section 402 permits must include effluent limitations that reflect treatment with available pollution control technology, and any more stringent limitations necessary to meet water quality standards for the receiving water (CWA section 301(b)). There are no statutory or regulatory provisions under the section 402 program designed to address discharges that convert waters of the U.S. to dry land. Moreover, the section 402 permitting process does not require an evaluation of alternatives to a proposed discharge or mitigation for unavoidable impacts.

The section 404 permitting program differs from the section 402 program in several fundamental respects. First, section 404 focuses exclusively on two materials: dredged material and fill material. The term "fill material" clearly contemplates material that fills in a water body, and thereby converts it to dry land or changes the bottom elevation. Fill material differs fundamentally from the types of pollutants covered by section 402 because the principal environmental concern is the loss of a portion of the water body itself. For this reason, the section 404 permitting process focuses on different considerations than the section 402 permitting program. Section 404(b) of the CWA directs the Corps to apply Guidelines promulgated under section 404(b)(1) of the CWA, which in turn must be based on criteria comparable to the criteria contained in section 403(c) of the CWA. Among other things, those criteria expressly require consideration of "other possible locations and methods of disposal" and "land-based alternatives."

The section 404(b)(1) Guidelines do provide for consideration of the effects of chemical contaminants on water quality in a number of ways, specifically requiring compliance with applicable State water quality standards (40 CFR 230.10(b)(1)), toxic effluent limits or standards established under CWA section 307 (40 CFR 230.10(b)(2)), and appropriate use of chemical and biological testing to evaluate contaminant effects (40 CFR 230.11(d) and (e); 230.60). However, because section 404 was intended by Congress to provide a vehicle for regulating materials whose effects include the physical conversion of waters to non-waters or other physical alterations of aquatic habitat, the section 404(b)(1) Guidelines go beyond such a water quality based approach to require numerous additional considerations before a section 404 permit may be issued. These include careful consideration of the effects of the discharge on the aquatic ecosystem as a whole, as well as evaluation of alternatives to the discharge and measures to minimize and compensate for unavoidable adverse effects.

Under the section 404(b)(1) Guidelines, discharges having significant adverse effects on aquatic ecosystems are not allowable (40 CFR 230.10(c) (2) and (3)). As a result, the Guidelines require evaluation of the effects of discharges on the aquatic ecosystem (40 CFR 230.11(e)), including cumulative impacts and secondary effects (40 CFR 230.11(g) and (h)). The Guidelines also set forth specific provisions for considering impacts on the aquatic ecosystem, including effects on aquatic organisms in the food web and other wildlife (40 CFR part 230, subpart D). In addition, the Guidelines do not allow discharges that would have significant adverse effects on human health, recreation, aesthetic, and economic values (40 CFR 230.10(c) (1) and (4)). The Guidelines set forth specific provisions for considering such impacts (40 CFR part 230, subpart F).

In addition to providing for careful assessment of the overall effects of the discharge on aquatic ecosystems and other amenities, the Guidelines do not

allow a discharge if there are practicable alternatives with less adverse effects on the aquatic ecosystem (40 CFR 230.10(a)). The Guidelines further require that if a discharge is allowed, appropriate and practicable steps must be taken to minimize potential adverse effects to the aquatic ecosystem and mitigate for unavoidable impacts (40 CFR 230.10(d)). They also identify a range of such potential measures for consideration in the permitting process (40 CFR part 230, subpart H). The Guidelines also provide for mitigation to compensate for unavoidable adverse effects. See, February 1990 Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation Under the Clean Water Act section 404(b)(1) Guidelines.

D. Discussion of the Existing Corps and EPA Definitions of Fill Material

Prior to 1977, both the Corps and EPA had defined "fill material" as "any pollutant used to create fill in the traditional sense of replacing an aquatic area with dry land or of changing the bottom elevation of a water body for any purpose. * * *" 40 FR 31325 (July 25, 1975); 40 FR 41291 (September 5, 1975).

In 1977, the Corps amended its definition of "fill material" to add a "primary purpose test," and specifically excluded from that definition material that was discharged primarily to dispose of waste. 42 FR 37130 (July 19, 1977). This change was adopted by the Corps because it recognized that some discharges of solid waste materials technically fit the definition of fill material; however, the Corps believed that such waste materials should not be subject to regulation under the CWA section 404 program. Specifically, the Corps' definition of "fill material," unchanged since 1977, currently reads as follows:

> (e) The term "fill material" means any material used *for the primary purpose* of replacing an aquatic area with dry land or of changing the bottom elevation of an [sic] water body. The term does not include any pollutant discharged into the water primarily to dispose of waste, *as that activity is regulated under section 402 of the Clean Water Act.*" 33 CFR 323.2(e) (emphasis added).

EPA did not amend its regulations to adopt a "primary purpose test" similar to that used by the Corps. Instead, the EPA regulations at 40 CFR 232.2 currently define "fill material" as "any 'pollutant' which replaces portions of the 'waters of the United States" with dry land or which changes the bottom elevation of a water body *for any purpose*" (emphasis added). EPA's definition focuses on the effect of the material, rather than allowing the purpose of the discharge to affect whether it would be regulated by section 404 or section 402.

E. Problems and Issues With the Existing Definitions

These differing definitions of the term "fill material" have resulted in inconsistencies which impede the fair and effective implementation of the CWA in a number of ways. For example, in the case of the Corps definition, use of a "primary purpose test" appears to require the Corps to make a subjective determination about the primary purpose of a prospective discharge. This subjective determination becomes even more problematic to make where the proposed discharge has multiple purposes. The "primary purpose test" also allows any prospective discharger or project proponent to seek to affect which regulatory regime would apply by simply asserting a purported purpose. This definition also lends itself to the possible exclusion of materials that are most commonly used for the very purpose of raising the elevation of an area (i.e., of filling a water of the U.S.) if the materials are a waste product of some other activity.

The confusion caused by the "primary purpose test" has also engendered extensive litigation. We are concerned that if the inconsistencies and ambiguities in the regulatory definitions of "fill material" are not corrected, further litigation would arise and future court decisions could reduce the ability of the CWA section 404 program to protect the quality of the aquatic environment, and the overall public interest.

The court decision that most clearly illustrates the serious problems caused by the "primary purpose test" is the Ninth Circuit Court of Appeals decision in *Resource Investments Incorporated* v. *U.S. Army Corps of Engineers*, 151 F.3d 1162 (9th Cir. 1998) (the RII case). This case involved a CWA section 404 permit application for a solid waste landfill proposed to be built in waters of the U.S. located in the State of Washington. The Corps' Seattle District Engineer denied the section 404 permit, on the grounds that a solid waste landfill at that location could contaminate an important "sole source" aquifer, and on the grounds that environmentally safer practicable alternatives were available to handle the region's solid waste. When the permit applicant sued, the District Court upheld the Corps' permit denial, but the Ninth Circuit Court of Appeals reversed, on a number of grounds.

One of the Ninth Circuit's conclusions in the RII decision was that the "primary purpose" test in the Corps" definition of the term "fill material" meant that the Corps could not require a CWA section 404 permit for pollutants that the applicant proposed to discharge into waters of the U.S. relating to his proposed landfill. Based on the Corps' definition of fill material, the Ninth Circuit stated that no section 404 permit was needed for the solid waste that would be disposed of in the proposed landfill. Moreover, the Ninth Circuit also determined that the layers of gravel, low permeability soil, and synthetic liner that would underlie the solid waste landfill did not constitute fill material. The Court reasoned that the "primary purpose" of these materials (*e.g.*, soil and gravel) to be placed in the waters of the U.S. to underlie the landfill was not "changing the bottom elevation of a water body" or "replacing an aquatic area with dry land." Rather, the court found that its primary purpose was the installation of a leak detection and collection system for that landfill. The court did not address the material that would be used to construct roads and berms that were part of the project.

The Ninth Circuit's decision in the RII case illustrates the inherent problems in the "primary purpose" test. In RII, the litigant was successful in excluding from regulation under the CWA section 404 traditional fill material, by alleging an alternative primary purpose. Typically fill serves some purpose other than just creating dry land or changing a water body's bottom elevation. Thus, if this approach to interpreting the Corps' "primary purpose test" were to be taken to its extreme conclusion, the unreasonable end result could be that almost any traditional fill material proposed to be placed in waters of the U.S. does not need a section 404 permit. Such an interpretation would be clearly contrary to the intent of Congress expressed in the plain words of CWA sections 404 and 301, which require that any "fill material" to be placed in any water of the U.S. must be legally authorized by a permit under CWA section 404.

These problems can be avoided by focusing on the effect of the material to be discharged rather than the purpose. For example, in the decision of the Fifth Circuit Court of Appeals in *Avoyelles Sportsmens League* v. *Marsh*, 715 F. 2d. 897 (5th Cir. 1983), the Court effectively interpreted the "primary purpose test" as an "effects based" definition of "fill material." In the words of the Fifth Circuit:

* * * the burying of the unburned material, as well as the discing, had the *effect* of filling in the sloughs on the tract and leveling the land. The landowners insist that any leveling was "incidental" to their clearing activities and therefore, the material was not deposited for the "primary purpose" of changing the character of the land. The district court found, however, that there had been significant leveling * * * Certainly, the activities were designed to "replace the aquatic area with dry land." Accordingly, we hold that the district court correctly concluded that the landowners were discharging "fill material" into the wetlands. (Id. At 924–925; emphasis added).

Thus, in the Avoyelles decision the Fifth Circuit essentially held that if the effect of material discharged into waters of the U.S. is fill, then that material properly is treated as fill material needing a CWA section 404 permit.

Other litigation which reflects the confusion caused by the ambiguities of the "primary purpose test" originated in the District Court for the Southern District of West Virginia (*Bragg* v. *Robertson,* (Civil Action No. 2:98–636, S. D. W. Va.)) and currently is the subject of an appeal to the U.S. Court of Appeals for the Fourth Circuit. The Bragg case involves the discharge of large volumes of rock, sand, and earth (*i.e.,* surface mining overburden) into waters in West Virginia as part of the process of "mountaintop removal" surface coal mining. The Corps has historically regulated this type of discharge, commonly known as "valley fills," under CWA section 404 general and individual permits (permits under the Surface Mining Control and Reclamation Act (SMCRA) are also required). Among several claims in Bragg was the assertion that this rock and soil overburden should be regulated under CWA section 402. On December 23, 1998, a settlement agreement was reached among the federal defendants, West Virginia Department of Environmental Protection and the plaintiffs to resolve all claims against the federal defendants. Under the settlement agreement, the plaintiffs agreed not to challenge Corps' authority to regulate as "fill material" under CWA Section 404 various types of material (e.g., rock, sand, and earth) generated by the coal mining industry in West Virginia and placed in waters of the U.S. On June 17, 1999, the District Court approved the agreement, finding that the agreement "accords with the law and is fair, reasonable and faithful to the objectives of SMCRA and CWA." 54 F.Supp.2d 653, 665 (S.D.W.Va. 1999). However, an October 1999 Memorandum Opinion and Order by the District Court addressing claims against the West Virginia Department of Environmental Protection under SMCRA contains obiter dicta, based upon the Corps' primary purpose test, indicating that the Corps lacked authority to regulate under CWA section 404 the placement into waters of the U.S. of rock, sand, and earth overburden from coal surface mining operations, because the "primary purpose" of the discharge was waste disposal.

In contrast to the use of a "primary purpose test," the EPA regulations currently define "fill material" as "* * * any 'pollutant' which replaces portions of the 'waters of the United States' with dry land or which changes the bottom elevation of a water body for any purpose" (emphasis added). This approach, which focuses on whether the material would have the effect of replacing portions of waters of the U.S. with dry land, or of changing the bottom elevation of such waters, is less ambiguous and subjective than use of a "primary purpose test." However, we believe that this definition needs clarification, because, read literally, it could subject to regulation under CWA section 404 certain pollutants that have been, are being, and should be regulated by the technology and water quality based standards used in the section 402 program. For example, industrial waste or sewage may contain suspended solids which ultimately will settle to the bottom following discharge. Although this would not replace waters with dry land, this could have effects on the water body's bottom elevation. Where such pollutants are covered by proposed or final effluent limitations guidelines and standards under section 301, 304, or 306 of the CWA or the discharge is covered by a NPDES permit issued under section 402 of the CWA, the proposed rule would exclude the discharge from the definition of fill.

II. Discussion of Proposed Rule

In order to ensure a clear, effective, and consistent regulatory approach, the Corps and EPA today are proposing identical definitions of the term "fill material." In particular, we believe that regardless of the purpose of a prospective discharge, the definition of "fill material" should cover material that has the effect of fill.

Accordingly, today's proposal would amend both the Corps' definition of "fill material" at 33 CFR 323.2(e) and the EPA's definition at 40 CFR 232.2 to provide that "fill material" means material that has the effect of replacing any portion of a water of the U.S. with dry land, or changing the bottom elevation of any portion of a water of the U.S. At the same time, it would specifically exclude from the definition of fill material discharges subject to EPA proposed or promulgated effluent limitation guidelines and standards under CWA sections 301, 304, and 306, or discharges covered by a NPDES permit issued under CWA section 402.

In the revised definition of "fill material" we have included examples of certain types of material that often constitute fill. We wish to emphasize that these are illustrative clarifying examples and are not intended to be an exhaustive list. As today's rule formally adopts the effects test, it also is important that we clarify our intent with respect to certain materials not specifically listed within the definition. The materials include wood chips, coal mining overburden, certain forms of solid waste, and material used to construct solid waste landfills.

With respect to "wood chips," when this material is scattered as a result of the normal use of wood cutting equipment such as chainsaws, bush hogs, and similar equipment, the wood chips would not have the effect of fill, and thus would not be covered by CWA section 404 under today's proposal. However, some operators of heavy mechanized equipment place or stockpile wood chips in wetlands to use as temporary road material, equipment pads, or surfacing to facilitate operation of equipment such as trucks, backhoes, and excavation equipment. In addition, in some cases the regular operation of chipping equipment can result in stockpiling or mounding of chips in waters of the U.S. In situations such as these, because of their quantity or distribution, the woodchips have the effect of fill and would be subject to regulation under CWA section 404.

With regard to proposed discharges of coal mining overburden, we believe that the placement of such material into waters of the U.S. has the effect of fill and therefore, should be regulated under CWA section 404. This approach is consistent with existing practice and the existing EPA definition of the term "fill material." In Appalachia in particular, such discharges typically result in the placement of rock and other material in the heads of valleys, with a sedimentation pond located downstream of this "valley fill." This has required authorization under CWA section 404 for the discharges of fill material into waters of the U.S., including the overburden and coal refuse, as well as the berms, or dams, associated with the sedimentation ponds. The effect of these discharges is to replace portions of a water body with dry land. Therefore, today's proposal makes clear that such material is to be regulated under CWA section 404. Also,

today's proposal recognizes that discharges from coal mining activities that are covered by a proposed or final EPA effluent guideline (See e.g., 40 CFR part 434) are not fill material and would remain subject to regulation under CWA section 402. Thus, the effluent discharged into waters of the U.S. from sedimentation ponds currently is regulated under CWA section 402, and would continue to be so regulated under today's proposal. This result would also be true for other types of activities that involve various discharges, some of which are subject to regulation under CWA section 404 and others of which are subject to regulation under section 402.

In proposing today's rule, it is the intent of the Corps and EPA to ensure that all activities involving discharge of pollutants into the waters of the U.S. associated with coal mining be regulated effectively to ensure protection of the aquatic environment. Consistent with the terms of the 1998 Bragg settlement agreement a Memorandum of Understanding (MOU) to coordinate coal mining permit evaluations in the state was entered into by the Office of Surface Mining, the Fish and Wildlife Service, EPA, the Corps, and the State of West Virginia. Completed in April 1999, the MOU describes those discharges that the agencies believe generally should have only a minimal effect on waters of the U.S. and thus could be eligible for general permit authorization by the Corps. Prior to that MOU, agency practice had allowed the authorization of some discharges that probably should have received individual permit review. In addition, the MOU initiated coordination procedures between CWA and Surface Mining Control and Reclamation Act permit reviews that also has resulted in the development of technical models for minimizing the size of proposed coal discharges. The settlement agreement included the initiation of a comprehensive Environmental Impact Statement (EIS) as well. The EIS is scheduled to be completed in December 2000 and will assess current federal and state authorities for regulating coal mining discharges in Appalachia and what measures may be necessary to ensure protection of human health and the environment. A draft EIS will be issued this summer for public comment.

With respect to solid waste, it is important at the outset to draw a clear distinction between solid waste discharged directly into waters of the U.S. and sanitary solid waste landfills (the latter is discussed further below). Under today's proposed rule, many forms of solid waste (including heterogeneous solid waste such as garbage) could fall within the definition of "fill material" if such waste were to be placed directly into waters of the U.S. This is because most forms of solid waste, if discharged into a water body, would have the effect of changing the bottom elevation of a portion of an aquatic area, or replacing a portion of the aquatic area with dry land.

Under today's proposal, the only exception would be for those discharges covered by proposed or final effluent limitation guidelines and standards under sections 301, 304, or section 306 of the CWA or an NPDES permit issued under section 402 of the CWA. Generally, under these provisions of the CWA, EPA regulates solid waste materials that are of a homogeneous nature normally resulting from a single-industry site or set of known processes. For example, such wastes as identified in 40 CFR part 440, subpart M (placer mining), 40 CFR part 436, subpart R (phosphate mining), 40 CFR part 440, subpart E (titanium mining), 40 CFR part 436, subpart C (sand and gravel mining), 40 CFR part 423 (steam electric power generation), and 40 CFR part 435 (oil and gas extraction). We welcome comment on all aspects of today's proposal, and especially solicit comment on whether the proposal's reference to discharges "covered by proposed or final effluent limitations guidelines and standards under sections 301, 304 or section 306 of the Clean Water Act * * * or discharges covered by an NPDES permit" fully encompasses the range of discharges properly subject to section 402 of the Act.

Notwithstanding the fact that the definition of fill could include many forms of solid waste, you should not infer from this fact that either the Corps or the EPA believes that solid waste (e.g., trash, debris, automobiles) is an appropriate or legitimate form of fill material for which CWA section 404 permits should be or will be granted. In fact, the opposite is true. As a general matter, we do not expect that CWA section 404 authorizations should be, or are likely to be, granted for proposals to discharge of fill material consisting of such solid waste into any water of the U.S.

In this regard, for many years the Corps has advised the regulated public that, as a general rule, such solid waste is not an acceptable form of fill material for which CWA section 404 permits can be issued. For example, all Corps Nationwide General Permits are subject to General Condition Number 3, which reads as follows:

3. *Suitable material.* No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, etc.) and material discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act.) (56 FR 59146, Nov. 22, 1991)

In the most recent revision of the nationwide general permit conditions, the list of "unsuitable" forms of fill material has been expanded to include "asphalt." (See 65 FR Page 12896, March 9, 2000).

This general condition reflects the policy that the waters of the U.S. should not be polluted by discharges of solid waste, which is generally not a suitable or appropriate form of "fill material," for a variety of reasons. For example, many forms of solid waste, such as heterogeneous solid waste, junked automobiles, discarded appliances, or chemically processed solid waste (e.g., heap leach piles) often contain pollutants (including toxic pollutants) that could, over time, leach into and contaminate both the surface waters and ground water. Consequently, as a general rule, members of the public should not seek CWA section 404 authorization for the discharge of such solid waste directly into the waters of the U.S., because there is no likelihood that section 404 permits would be granted.

Where there is no reasonable prospect that a Corps District Engineer would grant a section 404 permit to discharge solid waste into a water body, it would be a waste of time for both the applicant and the Corps for the Corps to have to accept and process a permit application for such a proposed discharge. Thus, the Corps is considering including in its regulation a provision that would allow the District Engineer complete discretion to refuse to process any permit application to discharge fill material that the District Engineer determines to be "unsuitable fill material." This would allow Corps District offices to avoid expending limited resources processing applications for the direct discharge into waters of the U.S. of any form of solid waste where the District Engineer determines that there is no reasonable possibility for the granting of a section 404 permit.

To accomplish this purpose, the Corps could include within its regulations at 33 CFR 323.2 a definition for a new term, "unsuitable fill material." That proposed new definition would read generally as follows:

The term "unsuitable fill material" means any material proposed to be discharged into waters of the United States that would fall under the definition of "fill material," but

which the District Engineer determines to have physical or chemical characteristics that would make the material unsuitable for a proposed discharge into waters of the United States, so that there is no reasonable possibility that a section 404 permit can be granted for the proposed discharge of that particular material. For example the District Engineer may determine that fill material is unsuitable because of the potential for the leaching of contaminants from the fill material into ground waters or surface waters, or because the proposed fill material is too light or unstable to serve reliably for its intended purpose (e.g., bank stabilization or erosion control). In most circumstances, heterogeneous solid waste, discarded appliances, and automobile or truck bodies would qualify as unsuitable fill material. In addition, material containing toxic pollutants in toxic amounts (see section 307 of the Clean Water Act) is unsuitable fill material.

The Corps recognizes the fact that special and exceptional circumstances can arise whereby material generally deemed "unsuitable" for direct discharge into water bodies can be authorized for discharge, with little or no risk to the environment, or even to enhance environmental values. For example, over the years the Corps has authorized the creation of a number of artificial reefs from various types of discarded "waste materials." Therefore, the new definition of "unsuitable fill material" would not reduce in any way the discretion of any District Engineer to authorize the discharge of any waste material for a beneficial purpose.

Accordingly, we request comment on adding a definition in the Corps regulations for the term "unsuitable fill material," and on changing Corps regulations to grant the District Engineer authority to reject, without further processing, any permit application for "fill material" that the District Engineer determines to be "unsuitable fill material."

Unfortunately, it is well known that, upon occasion and from time to time, individuals illegally "dump" solid waste into wetlands and other aquatic areas, without having sought any sort of CWA authorization for those discharges. Such illegal discharges of solid waste present an enforcement problem under the CWA. The EPA will continue to serve as the lead enforcement agency regarding such unpermitted discharges of solid waste.

With respect to solid waste landfills, our intent has been, and continues to be, that liners, berms, and other infrastructure that are constructed of materials such as rock, sand, gravel, clay, soil, plastics, and other materials that have the effect of changing the elevation of waters of the U.S. should be regulated under section 404 of the CWA. In the case of a landfill that has received an individual Department of the Army section 404 permit, the subsequent disposal of solid waste into the landfill, while subject to regulation under the Resource Conservation and Recovery Act (RCRA), would not be subject to regulation under the CWA. As with current practice, discharges of leachate from landfills into waters of the U.S. would remain subject to CWA section 402.

Our approach today is consistent with current practice and the 1986 Solid Waste MOA between the EPA and the Army that the agencies have continued to follow in implementing our current regulations. That MOA sets out a number of factors in paragraphs 4 and 5 to help determine whether material is subject to the CWA under 404 or 402, and today's proposal has been drafted to take into account factors similar to those in the 1986 Solid Waste MOA. In particular, the proposal's provision that material with the effect of fill would be subject to section 404 is similar to paragraph B.4.c of the 1986 Solid Waste MOA (providing that when the principal effect of the discharge is physical loss or modification of waters of the U.S., this is a factor indicating application of section 404). Similarly, proposed language excluding from coverage under section 404 material that is covered by proposed or promulgated EPA effluent guidelines or standards is consistent with paragraph B.5 of the 1986 Solid Waste MOA (providing that when discharges are in liquid, semi-liquid, or suspended form or the discharge is of homogeneous solid material, this is a factor indicating application of section 402). Additionally, as provided for in paragraph B.2 of the 1986 Solid Waste MOA, in cases of unpermitted discharges of solid waste into waters of the U.S., EPA will continue to serve as the lead enforcement agency.

Consistent with the above described revisions to the definition of "fill material," we also are proposing to revise the definition of the term "discharge of fill material" to further clarify the issue of section 404 applicability with regard to materials used to construct solid waste landfills and placement of coal mining overburden. In particular, we believe placement of these materials in waters of the U.S. is properly subject to regulation under section 404 of the CWA. Accordingly, we are proposing a clarification to the regulations on this point by adding these placement activities to the list of examples set out in the regulations defining the "discharge of fill material" at 33 CFR 323.2(f) and 40 CFR 232.2.

III. Administrative Requirements

A. Paperwork Reduction Act

This action does not impose any new information collection burden or alter or establish new record keeping or reporting requirements. Thus, this action is not subject to the Paperwork Reduction Act.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

C. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, we may not issue a regulation

that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Currently, under the CWA, any discharge of pollutants into waters of the U.S. requires a permit. Today's proposal relates solely to whether a particular discharge is appropriately authorized under section 402 or section 404 of the Act. Moreover, the proposed allocation of authority between these programs is consistent with existing agency practice. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

D. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

The proposed rule does not impose any new requirements. Currently, under the CWA, any discharge of pollutants into waters of the U.S. requires a permit. Today's proposal relates solely to whether a particular discharge is appropriately authorized under section 402 or section 404 of the Act. Moreover, the proposed allocation of authority between these programs is consistent with existing agency practice. After considering the economic impacts of today's proposed rule on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. The proposed rule does not impose any new requirements. Currently, under the CWA, any discharge of pollutants into waters of the U.S. requires a permit. Today's proposal relates solely to whether a particular discharge is appropriately authorized under section 402 or section 404 of the Act. Moreover, the proposed allocation of authority between these programs is consistent with existing agency practice. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reasons, we have determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of section 203 of UMRA.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs us to use voluntary consensus standards in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices etc.) that are adopted by one or more voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

As part of a larger effort, EPA is undertaking a project to cross-reference existing voluntary consensus standards in testing, sampling, and analysis, with current and future EPA test methods. When completed, EPA will use this project to assist in identifying potentially applicable voluntary consensus standards that can then be evaluated for equivalency and applicability in determining compliance with future EPA regulations.

This proposed rulemaking does not involve technical standards. Therefore, we are not considering the use of any voluntary consensus standards. We welcome comments on this aspect of the proposed rulemaking and specifically, invite the public to identify any potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

G. Executive Order 13045

Executive Order 13045, entitled Protection of Children From Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that we determine (1) is economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental

health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives that we considered.

This regulation is not subject to Executive Order 13045 because, as previously discussed, it does not constitute an economically significant regulatory action as defined by Executive Order 12866. Furthermore, it does not concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

H. Executive Order 13084

Under Executive Order 13084, we may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance cost incurred by the Tribal governments, or we consult with those governments. If we comply by consulting, Executive Order 13084 requires us to provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of our prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires us to develop an effective process permitting elected officials and other representatives of Indian Tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian Tribal governments, nor does it impose significant compliance costs on them. Today's proposal relates solely to whether a particular discharge is appropriately authorized under section 402 or section 404 of the Clean Water Act. Moreover, the proposed allocation of authority between these programs is consistent with existing agency practice. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. Environmental Documentation

As required by the National Environmental Policy Act (NEPA), the Corps prepares appropriate environmental documentation for its activities affecting the quality of the human environment. The Corps has made a preliminary determination that today's proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and thus does not require the preparation of an Environmental Impact Statement (EIS). Among the reasons for this conclusion is the fact that the Corps prepares appropriate NEPA documents, when required, covering specific permit situations. The implementation of the procedures prescribed in this proposed regulation would not authorize anyone (e.g., any landowner or permit applicant) to perform any work involving regulated activities in waters of the U.S. without first seeking and obtaining an appropriate permit authorization from the Corps. In addition, this proposed regulation merely revises and clarifies the Corps' and EPA's respective definitions of the terms "fill material" and "discharge of fill material" to allow more objective determinations, and is consistent with current practice. Accordingly, the Corps expects to prepare an environmental assessment (EA) for the rule.

List of Subjects

33 CFR Part 323

Water pollution control, Waterways.

40 CFR Part 232

Environmental protection, Intergovernmental relations, Water pollution control.

Corps of Engineers

33 CFR Chapter II

Accordingly, as set forth in the preamble 33 CFR part 323 is proposed to be amended as set forth below:

PART 323—[AMENDED]

1. The authority citation for part 323 continues to read as follows:

Authority: 33 U.S.C. 1344.

2. Amend § 323.2 as follows:

a. Paragraph (e) is revised.

b. In paragraph (f), in the second sentence, add the words "placement of *fill material* for construction or maintenance of liners, berms, and other infrastructure associated with solid waste landfills; placement of coal mining overburden;", after the words "utility lines;".

The revision reads as follows:

§ 323.2 Definitions.

* * * * *

(e)(1) Except as specified in paragraph (e)(2) of this section, the term *fill material* means material (including but not limited to rock, sand, and earth) that has the effect of:

(i) Replacing any portion of a water of the United States with dry land; or

(ii) Changing the bottom elevation of any portion of a water of the United States.

(2) The term *fill material* does not include discharges covered by proposed or final effluent limitations guidelines and standards under sections 301, 304 or section 306 of the Clean Water Act (see generally, 40 CFR part 401), or discharges covered by an NPDES permit issued under section 402 of the Clean Water Act.

* * * * *

Dated: April 17, 2000.

Joseph W. Westphal,

Assistant Secretary of the Army (Civil Works), Department of the Army.

Environmental Protection Agency

40 CFR Chapter I

Accordingly, as set forth in the preamble 40 CFR part 232 is proposed to be amended as set forth below:

PART 232—[AMENDED]

1. The authority citation for part 232 continues to read as follows:

Authority: 33 U.S.C. 1344.

2. Amend § 232.2 as follows:

a. The definition of "Fill material" is revised.

b. In the definition of "Discharge of fill material," in paragraph (1), add the words "placement of fill material for construction or maintenance of liners, berms, and other infrastructure associated with solid waste landfills; placement of coal mining overburden;", after the words "utility lines;".

The revision reads as follows;

§ 232.2 Definitions.

* * * * *

Fill material. (1) Except as specified in paragraph (2) of this definition, the terms *fill material* means material (including but not limited to rock, sand, and earth) that has the effect of:

(i) Replacing any portion of water of the United States with dry land; or

(ii) Changing the bottom elevation of any portion of a water of the United States.

(2) The term *fill material* does not include discharges covered by proposed or final effluent limitations guidelines and standards under sections 301, 304 or section 306 of the Clean Water Act (see generally, 40 CFR part 401), or discharges covered by an NPDES permit issued under section 402 of the Clean Water Act.

* * * * *

Dated: April 17, 2000.

Carol M. Browner,

Administrator, Environmental Protection Agency.

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H.R. 1374/P.L. 106–183

To designate the United States Post Office building located at 680 U.S. Highway 130 in Hamilton, New Jersey, as the "John K. Rafferty Hamilton Post Office Building". (Apr. 13, 2000; 114 Stat. 200)

H.R. 3189/P.L. 106–184

To designate the United States post office located at 14071 Peyton Drive in Chino Hills, California, as the "Joseph Ileto Post Office". (Apr. 14, 2000; 114 Stat. 201)

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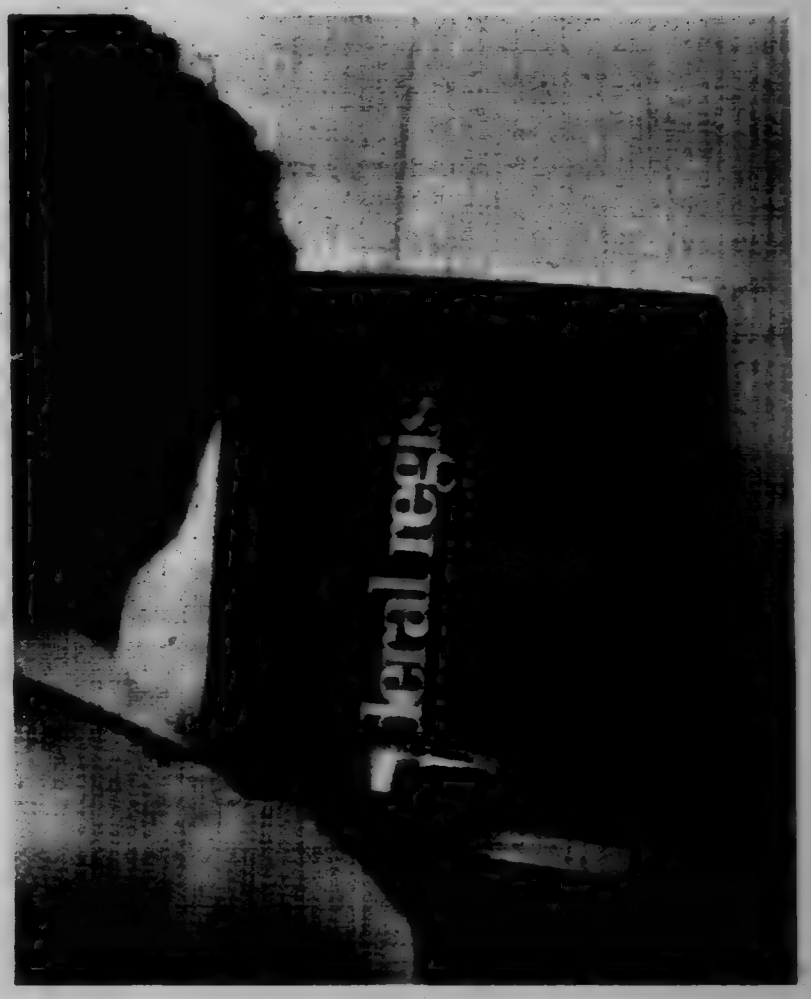

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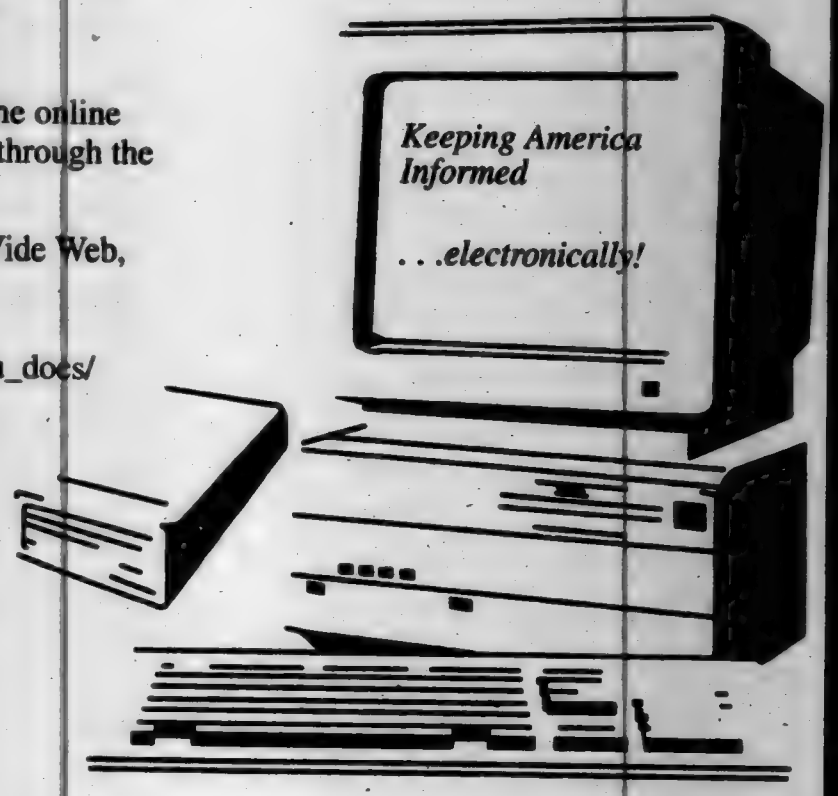

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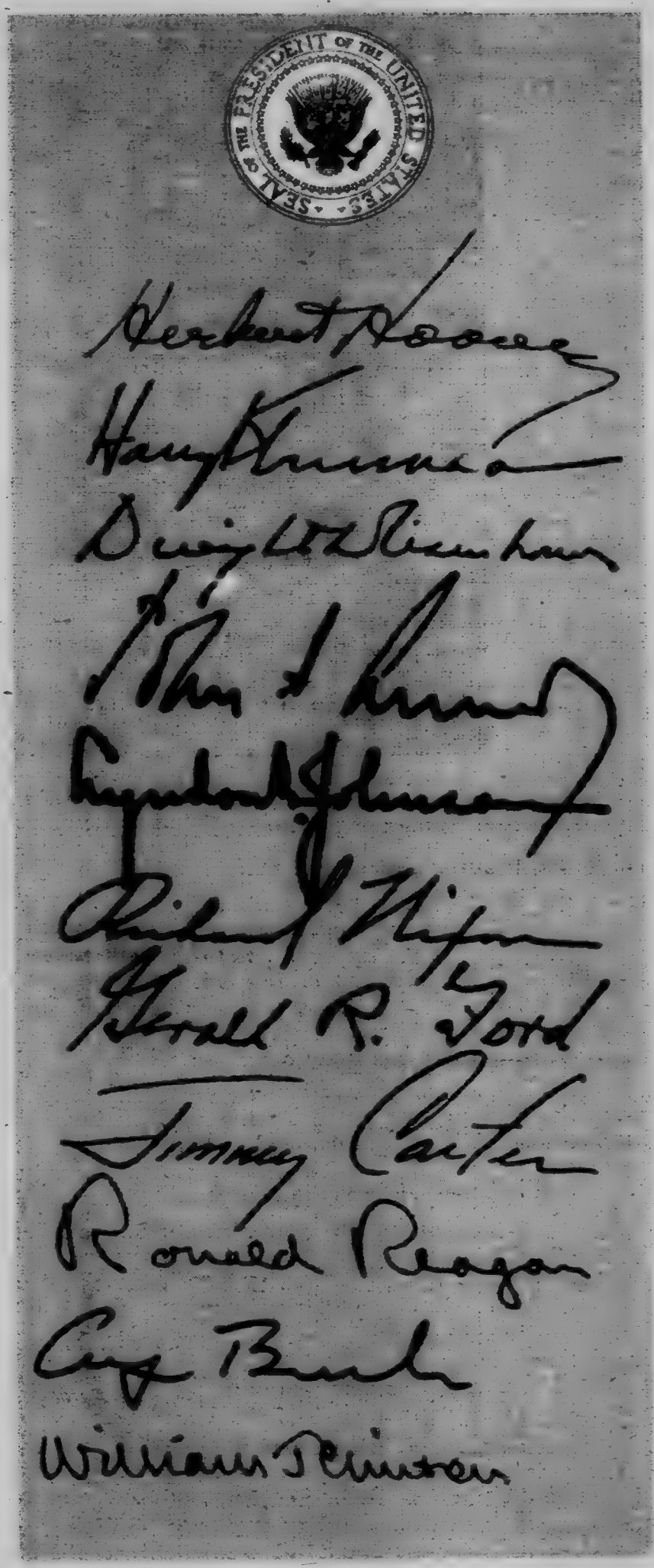

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Rules and Regulations

Federal Register
Vol. 65, No. 78
Friday, April 21, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–12]

Revision of Class E Airspace; Carrizo Springs, Glass Ranch, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Carrizo Springs, Glass Ranch, TX. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), at Indio-Faith Airport, Carrizo Springs, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Indio-Faith Airport, Carrizo Springs, TX.

DATES: Effective 0901 UTC, August 10, 2000.

Comments must be received on or before June 5, 2000.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 2000–ASW–12, Forth Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Forth Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Carrizo Springs, Glass Ranch, TX. The development of a GPS SIAP, at Indio-Faith Airport, Carrizo Springs, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for IFR operations to Indio-Faith Airport, Carrizo Springs, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–ASW–12." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule will not have federalism implications under Executive Order 13132.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and

routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Carrizo Springs, Glass Ranch Airport, TX [Revised]

Carrizo Springs, Glass Ranch Airport, TX
(Lat. 28°15′46″ N., long. 100°09′01″ W.)
Carrizo Springs, Indio-Faith Airport, TX
(Lat. 28°15′46″ N., long. 100°09′44″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Glass Ranch Airport, excluding that airspace within Restricted Area R–6316 and within a 6.5-mile radius of Indio-Faith Airport, excluding that airspace within Mexico.

* * * * *

Issued in Fort Worth, TX, on April 12, 2000.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–9838 Filed 4–20–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–11]

Revocation of Class E Airspace, Freeport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revokes the Class E Airspace at Freeport, TX. The cancellation of VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) Special Instrument Approach Procedures to heliports in the Freeport, TX area has prompted this action. The intended effect of this action is to relinquish control over airspace that is no longer needed for aircraft operating in the vicinity of Freeport, TX.

DATES: Effective 0901 UTC, August 10, 2000. Comments must be received on or before June 5, 2000.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 2000–ASW–11, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revokes the Class E Airspace at Freeport, TX. The cancellation of VOR/DME Special Instrument Approach Procedures to heliports in the Freeport, TX area has promoted this action. The intended effect of this action is to relinquish control over airspace that is no longer needed for aircraft operating in the vicinity of Freeport, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 167, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and

determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–ASW–11." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule will not have federalism implications under Executive Order 13132.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES, AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Freeport, TX [Revoked]

* * * * *

Issued in Fort Worth, TX, April 12, 2000.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–9837 Filed 4–20–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–05]

Revision of Class E Airspace; Jasper, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Jasper, TX.

EFFECTIVE DATE: The direct final rule published at 65 FR 8043 is effective 0901 UTC, June 15, 2000.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 17, 2000, (65 FR 8043). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 15, 2000. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on April 12, 2000.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–9836 Filed 4–20–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–04]

Revision of Class E Airspace; Uvalde, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Uvalde, TX

EFFECTIVE DATE: The direct final rule published at 65 FR 8044 is effective 0901 UTC, June 15, 2000.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 17, 2000, (65 FR 8044). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 15, 2000. No adverse comments

were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on April 12, 2000.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–9835 Filed 4–20–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–03]

Revision of Class E Airspace; Port Lavaca, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Port Lavaca, TX.

EFFECTIVE DATE: The direct final rule published at 65 FR 8045 is effective 0901 UTC, June 15, 2000.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 17, 2000, (65 FR 8045). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on June 15, 2000. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on April 12, 2000.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–9834 Filed 4–20–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–22]

Establishment of Class E Airspace; Holy Cross, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Holy Cross, AK. The establishment of Global Positioning System (GPS) instrument approach procedures at Holy Cross Airport made this action necessary. The Holy Cross Airport status changes from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). This rule provides adequate controlled airspace for aircraft flying IFR procedures at Holy Cross, AK.

EFFECTIVE DATE: 0901 UTC, June 15, 2000.

FOR FURTHER INFORMATION CONTACT: Bob Durand, Operations Branch, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

On December 13, 1999, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Class E airspace at Holy Cross, AK, was published in the **Federal Register** (64 FR 69431). The proposal was necessary due to the establishment of GPS instrument approach procedures to Runway 1 and Runway 19 at Holy Cross, AK. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments to the proposal were received; thus, the rule is adopted as written.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes the Class E airspace at Holy Cross, AK, through the establishment of two GPS instrument approaches. The airport status changes from VFR to IFR. The area will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide controlled airspace for IFR operations at Holy Cross, AK.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71— DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Holy Cross, AK [New]

Holy Cross Airport
(Lat. 62°11′18″ N., long. 159°46′ 30″ W.)

That airspace extending upward from 700 feet above the surface within 6.3-mile radius of the Holy Cross Airport and that airspace extending upward from 1,200 feet above the surface within a 24-mile radius of the Holy Cross Airport; excluding that airspace within the Anvik Class E airspace area.

* * * * *

Issued in Anchorage, AK, on April 14, 2000.

Anthony M. Wylie,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 00–10014 Filed 4–20–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–20]

Establishment of Class E Airspace; Kipnuk, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Kipnuk, AK. The establishment of a Global Positioning System (GPS) instrument approach procedure at Kipnuk Airport made this action necessary. The Kipnuk Airport status changes from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). This rule provides adequate controlled airspace for aircraft flying IFR procedures at Kipnuk, AK.

EFFECTIVE DATE: 0901 UTC, June 15, 2000.

FOR FURTHER INFORMATION CONTACT: Bob Durand, Operations Branch, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

On December 13, 1999, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Class E airspace at Kipnuk, AK, was published in the **Federal Register** (64 FR 69430). The proposal was necessary due to the establishment of a GPS instrument approach procedure to Runway 15 at Kipnuk, AK. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments to the proposal were received; thus, the rule is adopted as written.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes the Class E airspace at Kipnuk, AK, through the establishment of a GPS instrument approach to Runway 15. The airport status changes from VFR to IFR. The area will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide controlled airspace for IFR operations at Kipnuk, AK.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71— DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Kipnuk, AK [New]

Kipnuk Airport, AK
(Lat. 59°55′59″ N., long. 164°01′50″ W.)
Kipnuk VOR/DME
(Lat. 59°56′34″ N., long. 164°02′04″ W.)

That airspace extending upward from 700 feet above the surface within 6.2-mile radius of the Kipnuk Airport and within 3 miles each side of the Kipnuk VOR/DME 168° radial extending from the 6.2-mile radius of the airport to 9.5 miles south of the airport and within 4 miles east and 8 miles west of the Kipnuk VOR/DME 348° radial extending from the Kipnuk VOR/DME to 16 miles north of the VOR/DME; and that airspace extending upward from 1,200 feet above the surface within a 51-mile radius of the VOR/DME; excluding that airspace within the Norton Sound Low Offshore Airspace Area and the Bethel Class E airspace area.

* * * * *

Issued in Anchorage, AK, on April 14, 2000.

Anthony M. Wylie,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 00–10013 Filed 4–20–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–19]

Establishment of Class E Airspace; Scammon Bay, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Scammon Bay, AK. The establishment of Global Positioning System (GPS) instrument approach procedures at Scammon Bay Airport made this action necessary. The Scammon Bay Airport status changes from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). This rule provides adequate controlled airspace for aircraft flying IFR procedures at Scammon Bay, AK.

EFFECTIVE DATE: 0901 UTC, June 15, 2000.

FOR FURTHER INFORMATION CONTACT: Bob Durand, Operations Branch, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

On November 22, 1999, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Class E airspace at Scammon Bay, AK, was published in the **Federal Register** (64 FR 63765). The proposal was necessary due to the establishment of GPS instrument approach procedures at Scammon Bay, AK. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments to the proposal were received; thus, the rule is adopted as written.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes the Class E airspace at Scammon Bay, AK, through the establishment of GPS instrument approaches. The airport status changes from VFR to IFR. The area will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide controlled airspace for IFR operations at Scammon Bay, AK.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) Does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71— DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Scammon Bay, AK [New]

Scammon Bay Airport
(Lat. 61°50′40″ N., long. 165°34′26″ W.)
Hooper Bay VOR
(lat. 61° 30′ 52″ N., long. 166° 08′ 04″ W.)

That airspace extending upward from 700 feet above the surface within 6.3-mile radius of the Scammon Bay Airport and that airspace extending upward from 1,200 feet above the surface within a 42-mile radius of the Hooper Bay VOR extending clockwise between the 006° radial and 066° radial.

* * * * *

Issued in Anchorage, AK, on April 14, 2000.

Anthony M. Wylie,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 00–10012 Filed 4–20–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 95–ASW–6]

RIN 2120–AA66

Establishment of Restricted Areas R–5117, R–5119, R–5121 and R–5123; NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes four restricted areas in the West/Central New Mexico area (Restricted Areas R–5117, and R–5121, Fort Wingate, NM; R–5119, Socorro, NM; and R–5123, Magdalena, NM). The FAA is taking this action to provide an area for the United States Army (US Army), to conduct missile and sensor tests associated with the Theater Missile Defense (TMD) system.

EFFECTIVE DATE: 0901 UTC, June 15, 2000.

FOR FURTHER INFORMATION CONTACT: Bill Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On May 15, 1995, the US Army requested that the FAA establish four restricted areas in West/Central New Mexico to support the US Army Tactical Missile System projects.

On February 2, 1996, the FAA published in the **Federal Register** a notice proposing to establish four restricted areas in West/Central, New Mexico (61 FR 3884). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. In response to the notice, the FAA received comments from New Mexico Tech (Langmuir Laboratory for Atmospheric Research) and the Aircraft Owners and Pilots Association (AOPA). Comments received were considered before making a determination on this final rule. An analysis of the comments received and the FAA's responses are summarized below.

Discussion of Comments

New Mexico Tech commented on proposed R–5119. It stated that it currently uses R–5113 for thunderstorm research. Thus, it believes that R–5119 should not have an adverse effect on R–5113 provided (1) the US Army completes its test activity by 9:00 a.m., local time and (2) the designated altitude of R–5119 does not extend below FL 350.

The FAA finds that the restricted airspace will not adversely effect New Mexico Tech's thunderstorm research in R–5113. The operational limits of the two restricted areas are as follows: R–5113 is designated as the airspace from the surface to 45,000 feet mean sea level (MSL); and R–5119 is designated as the airspace from FL 350 to unlimited altitude. Due to the design of R–5119 a portion of R–5113 geographically overlaps R–5119's upper northwestern area. However, the high operational altitude of the test missiles transiting R–5119 make it unlikely that a trespass will occur in the upper limit of R–5113 at 45,000 feet MSL as the test missiles over-fly R–5113 in descent to the adjacent White Sands Missile Range (WSMR). After careful and thorough consideration of the facts presented by the US Army, the FAA believes this final rule has little, if any, impact on the research activities of New Mexico Tech.

The AOPA expressed concerns that the TMD program poses a significant hazard to general aviation (GA) operations and that the proposed restricted areas will require GA pilots to circumnavigate the areas. AOPA believes that increased restrictions on airspace are not an efficient use of airspace, will result in increased fuel costs and will cause unnecessary changes to planned routes of flight. Additionally, as part of its comment, AOPA asked what plan, if any, is in place to protect nonparticipating aircraft from missiles that malfunction and deviate from the planned trajectory. Further, AOPA believes that all alternatives must be explored prior to the establishment of Special Use Airspace (SUA).

The US Army Space and Strategic Defense Command and the WSMR analyst have conducted extensive research studying flight profiles of target and defense missiles. An analysis of this research data led to the development of launch hazard areas (e.g. booster drop zones, intercept debris impact zones) and intact target vehicle and defensive missile impact zones. Based on the analysis, the four restricted areas were identified to segregate these potentially hazardous activities from nonparticipating aircraft.

Prior to each test missile launch, range personnel will conduct impact area analysis based on detailed launch planning and trajectory modeling. Test missile launches will be conducted only when the impact area analysis confirms that flight vehicles and debris would be contained within the predetermined areas. However, to further reduce risk and lessen any potential impact on civil or GA aviation, the US Army has agreed to (1) schedule testing to conclude by 9:00 a.m., local time, when the volume of air traffic is normally low and, (2) limit the number of tests per year (estimated at 6 to 10 per year). Though it is anticipated to remain limited, in the interest of national security the test program number, as published in the notice, may be exceeded. Further, each test from launch to impact is designed to take less than 15 minutes.

It is important to note that, in the past, the US Army has employed successfully the boosters to be used on the test missiles and the boosters are considered highly reliable in the terms of safety and predictability. Therefore, the FAA finds that the chances of a test missile flight failure during launch through impact is considered remote. However, the US Army has established safety procedures in the event of such a failure.

The US Army categorizes termination into three potential mishap areas: (1) On the launcher; (2) flight shortly after liftoff; and (3) flight after exiting the launch site. R–5117 and R–5121 are designed to contain the first two potential mishap categories. In the event of an exceptional circumstance such as a missile malfunction, the Range Safety Officer determines the safest point to initiate missile termination. This point is determined by real time performance data collected form a variety of instruments (e.g. telemetry, radar, computer, etc.). This data provides information on missile location and the point of debris impact at points along the trajectory to the planned impact in WSMR. Due to the high altitudes at which the test missiles navigate, the FAA has found that it is unlikely that a missile malfunction and subsequent termination outside of the designated restricted area will make the airspace underlying the missile flight path unsafe.

The US Army identified the minimum required airspace to contain the theater missile defense test operations in the national airspace system. Although the US Army has attempted to mitigate the impacts on civil operations by limiting the number, time of day, and flight time of the missile, some aircraft operations may be effected when the restricted areas are activated. However, during a standard 12-hour flying day, the limits and procedures established by the US Army will allow flight through the published restricted areas over 99 percent of the time. The FAA will activate the restricted airspace through a Notice to Airman (NOTAM) and will provide 24 hours of notice prior to activation. If a NOTAM is not published, aircraft may navigate through charted restricted areas, without concern. Therefore, there should be little, if any, impact on aircraft operations.

Charting permanent restricted areas on aeronautical charts provides users of the navigable airspace important information concerning potential flight hazards. The legend on the aeronautical chart reflects these areas as active "By NOTAM, 24 Hours in Advance." Charting of the restricted airspace together with the use of the NOTAM system to publicize the effective date and activation times of restricted areas, remain the most efficient means to notify the flying public and segregate these potentially hazardous activities from GA operations.

The Rule

This amendment to 14 CFR part 73 establishes four restricted areas in West/Central New Mexico. Specifically, this action establishes four restricted areas: R–5117 and R–5121, Fort Wingate, NM; R–5119, Socorro, NM; and R–5123, Magdalena, NM. These restricted areas will provide an area for the US Army and designated joint-use agencies, to conduct tests to validate the TMD system design and operational effectiveness. Under the test program, missile launches will be conducted from Fort Wingate Army Depot, near Gallup, NM, and will terminate in the existing restricted area of the WSMR, NM. The FAA is taking this action to provide the

US Army SUA in support of the TMD testing program.

R–5117 is designated as the launch site and is located at Fort Wingate Army Depot, NM, southeast of Gallup, NM. R–5117 extends from the surface to unlimited altitude and contains the missile launch area. It overlies government-controlled land. R–5121 is designated adjacent to R–5117, and extends from FL 200 to unlimited altitude and contains missile ascent after the initial launch.

R–5123, located at Cibola National Forest, Magdalena, NM, extends from the surface to unlimited altitude and provides a booster drop zone to contain reentry and impact of missile boosters after launch from R–5117. R–5123 also overlies government-controlled land.

R–5119 is designated as a missile reentry and planned termination area in the existing R–5107 within the WSMR. R–5119 extends from FL 350 to unlimited altitude and is adjacent to the existing WSMR.

When activated, the restricted areas may impact visual flight rules (VFR) and/or instrument flight rules (IFR) aircraft operations, along the vicinity of the Gallup (GUP), Socorro (ONM) and Truth or Consequences (TCS) navigational aids because of the necessity to reroute planned flight routes due to TMD testing. However, the potential impact is significantly reduced by the limited number of planned test events (6 to 10 a year) anticipated, the short duration of activity (15 minutes total) and the notification and coordination procedures in place. Additionally, the US Army has agreed to complete test activity prior to 9:00 a.m., local time, when the volume of air traffic in the area is normally low. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 73.51 of part 73 was republished in FAA Order 7400.8G dated September 1, 1999.

This regulation is limited to an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since it has been determined that this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. /

Environmental Review

The Department of Defense, Ballistic Missile Defense Organization (BMDO), issued the Theater Missile Defense Extended Test Range Final Environmental Impact Statement (EIS) in November 1994. Cooperating agencies for the EIS included the U.S. Air Force, Navy, US Army, and the FAA.

Initially, eleven candidate test range areas were considered for TMD extended-range testing. Seven of these alternatives were eliminated from further study due to inadequate features, such as lack of required instrumentation, absence of target launch land sites, prohibitive cold weather, unacceptable schedule delays, and inadequate land area for interceptor deployment. Four alternatives were retained for further consideration. Extended range testing was considered at WSMR, NM, Eglin Air Force Base, FL, Western Range, CA, and Kwajalein Missile Range, Republic of the Marshall Islands. The Western Range alternative was rejected because of soil erosion considerations and the costs of preparing the impact area for analysis. The Eglin Air Force Base and Kwajalein alternatives were rejected because testing would be limited to ocean impacts. Additionally, testing at Kwajalein posed technical difficulties and additional costs. Thus, the US Army has determined that extended range testing at WSMR is the preferred location as described in this rule because there are no impacts to wilderness study areas, recreation areas, national monuments and nesting and breading seasons of sensitive species. The selection of WSMR included two off-range missile launch alternatives; Fort Wingate Army Depot, NM, and the Green River Launch Complex, UT. The US Army selected the Fort Wingate Army Depot as the launch site.

The No Action Alternative would consist of the continuation of ongoing activities and operations at the four locations considered. The development of ground-based TMD missile and sensor systems would continue, with missile flight tests and target intercepts being conducted utilizing existing test ranges. No construction and operations for missile launch programs at the remote launch locations or use of sea launch capabilities would be conducted to support these types of ground-based TMD system tests. Test and training area restrictions, particularly on shorter-range missile flights conducted at WSMR, prohibited full validation of system design and operational effectiveness in realistic theater environments. As a result, the no action alternative was eliminated as a prudent and feasible alternative because it did not satisfy the mandatory requirements identified by the BMDO as necessary to fulfill its TMD program needs. The BMDO issued a Record of Decision in March 1995 that adopted all practicable means to avoid or minimize harm.

In February 2000, the FAA completed a written reevaluation of the EIS. The FAA adopted the EIS as final, pursuant to 40 CFR 1506.3(c) and (b) 62 FR 43730 and 62 FR 44685. After careful and thorough consideration of the facts contained herein and following consideration of the views of those Federal agencies having jurisdiction by law and special expertise with respect to the environmental impacts described, the undersigned finds that this Federal action is consistent with existing national policies and objectives as set forth in section 101(a) of the National Environmental Policy Act of 1959, as amended.

This final rule constitutes final agency action under 49 USC 46110. Any person disclosing a substantial interest in this order may appeal the order to the United States Court of Appeals of the District of Columbia upon petition, filed within 60 days after the order is issued.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.51 [Amended]

2. § 73.51 is amended as follows:

* * * * *

R–5117 Fort Wingate, NM [New]

Boundaries. Beginning at lat. 35°25′51″N., long. 108°30′09″ W.; to lat. 35°28′46″ N., long. 108°37′14″W.; to lat. 35°28′46″ N., long. 108°37′39″ W.; to lat. 35°21′27″ N., long. 108°36′58″ W.; to the point of beginning.

Designated altitudes. Surface to unlimited.

Time of designation. Intermittent by NOTAM 24 hours in advance.

Controlling agency. FAA, Albuquerque ARTCC.

Using agency. Commanding General, White Sands Missile Range, NM.

R–5119 Socorro, NM [New]

Boundaries. Beginning at lat. 33°59′56″ N., long. 106°43′29″ W.; to lat. 33°59′51″ N., long. 106°56′27″ W.; to lat. 34°08′16″ N., long. 107°05′17″ W.; to lat. 34°00′28″ N., long. 107°12′04″ W.; to lat. 33°46′04″ N., long. 107°02′38″ W.; to lat. 33°26′49″ N., long. 107°02′25″ W.; to lat. 33°26′49″ N., long. 107°00′00″ W.; to lat. 33°32′44″ N., long. 106°58′47″ W.; to lat. 33°54′10″ N., long. 106°46′24″ W.; to lat. 33°57′16″ N., long. 106°43′58″ W.; to the point of beginning.

Designated altitudes. FL 350 to unlimited.

Time of designation. Intermittent by NOTAM 24 hours in advance.

Controlling agency. FAA, Albuquerque ARTCC.

Using agency. Commanding General, White Sands Missile Range, NM.

R–5121 Ft. Wingate, NM [New]

Boundaries. Beginning at lat. 35°25′51″ N., long. 108°30′09″ W.; to lat. 35°21′22″ N., long. 108°25′59″ W.; to lat. 35°19′18″ N., long. 108°28′10″ W.; to lat. 35°17′48″ N., long. 108°31′41″ W.; to lat. 35°21′27″ N., long. 108°36′58″ W.; to the point of beginning.

Designated altitudes. FL 200 to unlimited.

Time of designation. Intermittent by NOTAM 24 hours in advance.

Controlling agency. FAA, Albuquerque ARTCC.

Using agency. Commanding General, White Sands Missile Range, NM.

R–5123 Magdalena, NM [New]

Boundaries. Beginning at lat. 34°22′30″ N., long. 107°57′00″ W.; to lat. 34°25′00″ N., long. 107°49′00″ W.; to lat. 34°24′45″ N., long. 107°37′00″ W.; to lat. 34°18′00″ N., long. 107°30′00″ W.; to lat. 34°15′08″ N., long. 107°37′00″ W.; to lat. 34°19′00″ N., long. 107°40′00″ W.; to lat. 34°15′08″ N., long. 107°45′20″ W.; to lat. 34°14′52″ N., long. 107°44′40″ W.; to lat. 34°13′00″ N., long. 107°48′00″ W.; to the point of beginning.

Designated altitudes. Surface to unlimited.

Time of designation. Intermittent by NOTAM 24 hours in advance.

Controlling agency. FAA, Albuquerque ARTCC.

Using agency. Commanding General, White Sands Missile Range, NM.

* * * * *

Issued in Washington, DC, on April 14, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–10010 Filed 4–20–00; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AB51

Minimum Financial Requirements for Futures Commission Merchants and Introducing Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is amending Regulation 1.17, which governs the minimum financial requirements imposed upon futures commission merchants ("FCMs") and introducing brokers ("IBs"). The amendments will ease the restrictions imposed upon the withdrawal of equity capital from an FCM. The amendments also increase the percentage deduction (*i.e.*, "haircut") applied to the value of equity securities pledged as collateral for secured demand notes that are included in the adjusted net capital of an FCM or IB and delete a reference to a section of the Securities and Exchange Commission's ("SEC") capital rule that has been repealed.

EFFECTIVE DATE: May 22, 2000.

FOR FURTHER INFORMATION CONTACT: Henry J. Matecki, Financial Audit and Review Branch, Commodity Futures Trading Commission, 300 S. Riverside Plaza, Room 1600–N, Chicago, IL 60606; telephone (312) 886–3217; electronic mail *hmatecki@cftc.gov:* or Thomas J. Smith, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581; telephone (202) 418–5495; electronic mail *tsmith@cftc.gov.*

SUPPLEMENTARY INFORMATION

I. Background

On February 10, 2000, the Commission published in the **Federal Register** [1] for public comment proposed amendments to Regulation 1.17, which governs the minimum financial requirements imposed upon FCMs and IBs (the "Proposal").[2] The Proposal was to: (1) Ease the restrictions imposed upon the withdrawal of equity capital from an FCM; (2) increase the percentage deduction (*i.e.*, "haircut") applied to the value of equity securities pledged as collateral for secured demand notes that are included in the adjusted net capital of an FCM or IB; and (3) delete a reference to a section of the SEC's capital rules that has been repealed. The comment period expired on March 13, 2000. No comments were received.

After considering the issues, the Commission has determined to adopt the amendments as proposed. A discussion of the final rule amendments is provided below.

II. Rule Amendments

A. Restriction on the Withdrawal of Equity Capital From an FCM

Commission Regulation 1.17(e) prohibits the withdrawal of equity capital from an FCM [3] to redeem or to repurchase shares of stock of the FCM, to pay dividends, or to make an unsecured advance or loan to a stockholder, partner, sole proprietor or employee of the FCM if, after giving effect to the withdrawal and to certain other specified withdrawals and payments, the FCM's adjusted net capital would be less than the greatest of:

(1) $300,000 (120 percent of the $250,000 minimum adjusted net capital requirement);

(2) Seven percent of the customer funds required to be segregated or set aside pursuant to the Commodity Exchange Act ("Act") and Commission regulations,[4] (hereinafter collectively referred to as the "customer segregated and secured amount");

(3) 120 percent of the amount of adjusted net capital required by a registered futures association of which the FCM is a member; or

(4) For an FCM that is also a securities broker or dealer registered with the SEC, the amount of net capital specified in SEC Rule 15c3–1(e).[5]

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[1] 65 FR 6569 (February 10, 2000).

[2] Commission rules cited herein can be found at 17 CFR Ch. I (1999).

[3] The prohibition against withdrawal of equity capital set forth in Regulation 1.17(e) applies to both FCMs and IBs. The restriction requires consideration of both the minimum dollar amount of net capital required for both types of registrants ($250,000 for FCMs and $30,000 for IBs) and, just for FCMs, the amount of funds required to be segregated and set aside for FCMs' customers. For purposes of this final rulemaking, only the restriction on FCMs need be addressed since the amendments relate only to the percentage applied to the amount of funds required to be segregated and set aside for customers.

[4] Before applying the percentage capital factor, the amount required to be segregated or set aside is reduced by the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade for which the full premiums have been paid: provided, however, that the option premium deduction for each customer is limited to the amount of customer funds and the foreign futures and foreign options secured amounts in such customer's account(s).

[5] SEC rules cited herein can be found at 17 CFR Part 240 (1999).

The Commission is amending the restriction in (2) above to permit the withdrawal of equity capital from an FCM provided that, after giving effect to the withdrawal, the FCM's adjusted net capital is in excess of six percent of the customer segregated and secured amount. The Commission believes that easing this restriction is appropriate in light of other provisions of the Commission's regulations that provide adequate assurances against the excessive withdrawal of equity capital.

Generally, FCMs that carry customer positions are required to maintain minimum adjusted net capital of at least four percent of the customer segregated and secured amount.[6] FCMs that are members of self-regulatory organizations ("SROs"—that is, commodity exchanges and NFA) also must comply with the minimum net capital requirements of those exchanges, which are required to be at least as stringent as the Commission's.[7]

An FCM that fails to comply with the minimum net capital requirement must transfer all customer accounts and immediately cease doing business as an FCM.[8] Therefore, each FCM must ensure that a capital withdrawal does not cause the FCM's adjusted net capital to fall below four percent of the customer segregated and secured amount.

In addition, as stated in the Proposal, the Commission's "early warning" notice and financial reporting requirements deter excessive equity withdrawals. Regulation 1.12(b)(2) requires an FCM to notify in writing the Commission and its designated self-regulatory organization ("DSRO") if its adjusted net capital does not equal or exceed six percent of the customer segregated and secured amount. The early warning notices must be filed within five business days of the FCM's adjusted net capital falling below the early warning level. Moreover, Regulation 1.12(g)(2) requires an FCM to give the Commission written notice at least two business days prior to a planned withdrawal of equity capital if such withdrawal would reduce excess net capital by 30 percent or more from that most recently reported in a financial report filed with the Commission.

An FCM that hits the early warning trigger is also required to file a financial report on Form 1–FR–FCM with the Commission and its DSRO as of the close of the month during which its adjusted net capital does not exceed the early warning level and for each month thereafter until three successive months have elapsed during which its adjusted net capital is at all times equal to or in excess of the early warning level.[9] The early warning notices bring to the Commission's and DSRO's attention firms that should be subjected to closer monitoring because of their minimal regulatory capital.

Furthermore, the Commission's "debt-equity ratio" requirement also provides a limit on the amount of capital that may be withdrawn from an FCM. Regulation 1.17(d) prohibits the withdrawal of capital from an FCM if, after giving effect to the withdrawal, the FCM's equity capital would be less than 30 percent of its debt-equity total.[10] Finally, as noted in the Proposal, setting the capital withdrawal limit at the Commission's early warning level is consistent with the capital withdrawal rules adopted by the SEC for securities brokers or dealers that compute their minimum net capital requirement in accordance with the "alternative" method.[11]

B. Equity Securities Pledged as Collateral for Secured Demand Notes

The Commission is amending Regulation 1.17(h)(1)(iii) to increase from 15 percent to 30 percent the haircut that is applied to equity securities collateralizing secured demand notes that are included in an FCM's or IB's adjusted net capital computation. The amendment will provide greater uniformity between the Commission's and SEC's capital rules.

As stated in the Proposal, SEC capital rules currently require brokers and dealers to apply a 30 percent haircut to equity securities collateralizing secured demand notes included in the brokers' or dealers' adjusted net capital.[12] Uniform capital rules reduce the regulatory burden imposed upon dually-registered FCMs (*i.e.*, FCMs that are also SEC registered securities brokers or dealers) by more readily permitting such FCMs to comply with both the Commission's and SEC's capital rules.

Furthermore, as more fully discussed in the Proposal, the Commission's capital rules incorporate by reference the securities haircuts set forth in the SEC's capital rules. In 1992, the SEC adopted several amendments to its capital rules. One of the amendments had the unintended consequence of reducing from 30 percent to 15 percent the haircut that an FCM was required to apply to equity securities collateralizing a secured demand note.[13] Brokers and dealers, however, were still required to apply a 30 percent haircut to such equity securities. The amendments would restore the haircut to the 30 percent level.

C. Technical Amendment

The Commission is amending Regulation 1.17(c)(5)(v) to delete a reference to SEC Rule 15c3–1(f) which has been repealed.[14] The technical amendment has no impact on the Commission's capital rule and will not affect FCMs or IBs.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–611, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments discussed herein would affect FCMs and IBs. The Commission has previously determined that, based upon the fiduciary nature of FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of small entity.

With respect to IBs, the Commission stated that it is appropriate to evaluate within the context of a particular rule whether some or all IBs should be

[6] Regulation 1.17(a)(1)(i). FCMs that are also registered with the SEC as securities brokers or dealers are required to comply with the Commission's minimum adjusted net capital requirement or the minimum adjusted net capital requirement established by SEC Rule 15c3–1(e), whichever is greater.

[7] Regulations 1.17(a)(2)(i) and 1.52.

[8] Regulation 1.17(a)(4).

[9] Regulation 1.12(b)(4).

[10] Equity capital is defined by Regulation 1.17(d)(1) to include certain loans subject to qualifying satisfactory subordination agreements and the following: '(1) In the case of a corporation, the sum of its par or stated value of capital stock, paid in capital in excess of par, retained earnings, unrealized profit and loss, and other capital accounts;

(2) In the case of a partnership, the sum of its capital accounts of partners (inclusive of such partners' commodity interest and securities accounts subject to the provisions of Rule 1.17(e) concerning restrictions on withdrawals of equity capital), and unrealized profit and loss; and

(3) In the case of a sole proprietorship, the sum of its capital accounts and unrealized profit and loss.

"Debt-equity total" is defined by Regulation 1.17(d)(2) and encompasses equity capital as defined above plus loans subject to satisfactory subordination agreements that do not qualify as equity capital under Regulation 1.17(d)(1).

[11] *See* SEC Rule 15c3–1(a)(1)(ii).

[12] *See* Rule 15c3–1d(a)(2)(iii).

[13] *See* 57FR 56984 (December 2, 1992).

[14] *See* 57 FR 56973 (December 2, 1992).

considered to be small entities and, if so, to analyze the economic impact on such entities at that time. The technical amendment to Regulation 1.17(c)(5)(v) and the amendment to Regulation 1.17(e) easing the restriction on the withdrawal of equity capital from an FCM do not impose additional requirements on an IB. The amendment to Regulation 1.17(h)(1)(iii) increasing the haircut on equity securities submitted as collateral for a secured demand note may have a minimal economic impact on an IB's financial operations. The amendment, however, conforms the Commission's rules to those of the SEC and restores the haircut to its previous level prior to the SEC amendment of its capital rules in December 1992. Furthermore, no comments were received in response to the Commission's specific request for comments on the impact these rules, as proposed, would have on small entities. Thus, on behalf of the Commission, the Chairman certifies that the rule amendments will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, requires federal agencies (including the Commission) to review rules and rule amendments to evaluate the information collection burden that they impose on the public. The Commission believes that paragraphs (c)(5)(v), (e)(1)(ii), and (h)(1)(iii) of Rule 1.17, as amended, do not impose an information collection burden on the public.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 4f, 4g and 8a (5) thereof, 7 U.S.C. 6d, 6g and 12a(5), the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24.

2. Section 1.17 is amended by revising paragraphs (c)(5)(v), (e)(1)(ii), and (h)(1)(iii) to read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

* * * * *

(c) * * *

(5) * * *

(v) In the case of securities and obligations used by the applicant or registrant in computing net capital, and in the case of a futures commission merchant with securities in segregation pursuant to section 4d(2) of the Act and the regulations in this chapter which were not deposited by customers, the percentages specified in Rule 240.15c3–1(c)(2)(vi) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(2)(vi)) ("securities haircuts") and 100 percent of the value of "nonmarketable securities" as specified in Rule 240.15c3–1(c)(2)(vii) of the Securities and Exchange Commission (17 CFR 240.15c3–1(c)(2)(vii));

* * * * *

(e)* * *

(1)* * *

(ii) For a futures commission merchant or applicant therefor, 6 percent of the following amount: The customer funds required to be segregated pursuant to the Act and the regulations in this part and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade for which the full premiums have been paid: Provided, however, That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured amounts;

* * * * *

(h)* * *

(1)* * *

(iii) The term "collateral value" of any securities pledged to secure a secured demand note means the market value of such securities after giving effect to the percentage deductions specified in Rule 240.15c3–1d(a)(2)(iii) of the Securities and Exchange Commission (17 CFR 240.15c3–1d(a)(2)(iii)).

* * * * *

Issued in Washington D.C. on April 12, 2000 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–9647 Filed 4–20–00; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 98F–0675]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyethylenepolyamines as cross-linking agents for epoxy resins in coatings intended for use in contact with food. This action responds to a petition filed by the Dow Chemical Co.

DATES: This rule is effective April 21, 2000; submit written objections and requests for a hearing by May 22, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 24, 1998 (63 FR 45073), FDA announced that a food additive petition (FAP 8B4606) had been filed by The Dow Chemical Co., 2030 Dow Center, Midland, MI 48674. The petition proposed to amend the food additive regulations in § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) to provide for the safe use of polyethylenepolyamines (PEPA's) as cross-linking agents for epoxy resins in coatings intended for use in contact with food.

In its evaluation of the safety of PEPA's, FDA has reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although PEPA's have not been shown to cause cancer, they could contain minute amounts of unreacted starting material, ethylene dichloride (1,2-dichloroethane), a carcinogenic impurity. However, FDA concludes that 1, 2-dichloroethane is not likely to be present in the final food contact material in an amount that could present a safety concern for the

following reasons. Based on the low boiling point of 1,2-dichloroethane relative to PEPA's, residual 1,2-dichloroethane would be expected to be removed during any purification process of PEPA's. Any residual 1,2-dichloroethane in PEPA's would also be expected to be removed on curing of epoxy resins with PEPA's. In addition, because epoxy resins cured with PEPA's will be allowed only for repeat-use applications, any 1,2-dichloroethane that could be present in food would be minimized by evaporation and washing of the surface before food is added and by the large volume of food in contact with the cured resin over its service lifetime. Based on this information, the agency concludes that the proposed use of the additive is safe, and that the additive will achieve its intended technical effect. Therefore, the agency concludes that the regulations in § 175.300 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 8B4606 (63 FR 45073). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before May 22, 2000, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 175.300 is amended in paragraph (b)(3)(viii)(*b*) by alphabetically adding an entry to read as follows:

§ 175.300 Resinous and polymeric coatings.

* * * * *

(b) * * *

(3) * * *

(viii) * * *

(*b*) * * *

Polyethylenepolyamine (CAS Reg. No. 68131–73–7), for use only in coatings intended for repeated use in contact with food, at temperatures not to exceed 180 °F (82 °C).

* * * * *

Dated: April 14, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–9941 Filed 4–20–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[TD 8880]

RIN 1545–AU46

Relief From Disqualification for Plans Accepting Rollovers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 401(a)(31) of the Internal Revenue Code. These final regulations provide specific rules that grant relief from disqualification to an eligible retirement plan that inadvertently accepts an invalid rollover contribution. The final regulations also clarify that it is not necessary for a distributing plan to have a favorable IRS determination letter in order for a plan administrator of a receiving plan to reach a reasonable conclusion that a contribution is a valid rollover contribution.

DATES: These regulations are effective on April 21, 2000.

FOR FURTHER INFORMATION CONTACT: Pamela R. Kinard, (202) 622–6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 22, 1995, the Treasury Department and the IRS published in the **Federal Register** (60 FR 49199) Final Income Tax Regulations (TD 8619) under sections 401(a)(31) and 402(c). The final regulations provide guidance for complying with the Unemployment Compensation Amendments of 1992 (UCA). A proposed amendment to the regulations (REG–245562–96) under section 401(a)(31) was published in the **Federal Register** (61 FR 49279) on September 19, 1996. The 1996 proposed regulations under sections 401(a)(31) and 402(c) expand and clarify the guidance previously issued in the Final Income Tax Regulations. On December 17, 1998, an amendment to the proposed regulations (REG–245562–96) under section 401(a)(31) was published in the **Federal Register** (63 FR 69584). This amendment to the proposed regulations was issued in response to the congressional directive in section 1509 of Taxpayer Relief Act of 1997 (TRA '97), which directs the IRS to issue guidance clarifying that it is not necessary for a distributing plan to have a favorable IRS determination letter in order for a plan administrator of a

receiving plan to reasonably conclude that a contribution is a valid rollover contribution. Written comments responding to the 1996 proposed regulations were received. There were no written comments responding to the 1998 amendment to the proposed regulations. No public hearing was requested or held. After consideration of the comments, the amended proposed regulations under section 401(a)(31) are adopted by this Treasury decision.

Explanation of Provisions and Summary of Comments

A. Relief From Disqualification

The final regulations under section 401(a)(31) of the Internal Revenue Code provide that an eligible retirement plan which accepts a direct rollover from another plan will not fail to satisfy section 401(a) or 403(a) merely because the plan making the distribution is, in fact, not qualified under section 401(a) or 403(a) at the time of the distribution if, prior to accepting the rollover, the plan administrator of the receiving plan reasonably concluded that the distributing plan was qualified under section 401(a) or 403(a).

The proposed regulations clarify and expand upon this relief. Under the proposed regulations, an eligible retirement plan that accepts an invalid rollover contribution, whether as a direct rollover or as a rollover contribution other than a direct rollover, will be treated, for purposes of section 401(a) or 403(a), as accepting a valid rollover contribution, if the plan administrator of the receiving plan satisfies two conditions. First, when accepting the rollover contribution, the plan administrator of the receiving plan must reasonably conclude that the rollover contribution is a valid rollover contribution. Second, if the plan administrator of the receiving plan later determines that the rollover contribution was an invalid rollover contribution, the plan must distribute the amount of the invalid rollover contribution, plus earnings attributable thereto, to the employee within a reasonable period of time.

B. Documentation Offered as Evidence To Support a Reasonable Conclusion

The 1996 proposed regulations do not mandate any particular documentation or procedures that a plan administrator must use in order to reach a reasonable conclusion that a rollover contribution is a valid rollover contribution. The 1996 proposed regulations contain a series of examples to illustrate the types of documentation and procedures that would be sufficient to support a reasonable conclusion. In each example, the employee making the rollover contribution provides the plan administrator of the receiving plan with a letter from the plan administrator of the distributing plan stating that the distributing plan has received an IRS determination letter indicating that the distributing plan is qualified under section 401(a).

Several commentators stated that the examples in the 1996 proposed regulations appear to imply that the acknowledgment of the receipt of a favorable IRS determination letter by a distributing plan is a prerequisite to a plan administrator of a receiving plan reaching a reasonable conclusion that a rollover contribution is a valid rollover contribution. Commentators argued that the public policy goal of pension portability would be impeded if an eligible retirement plan is subject to complex administrative procedures when accepting rollover contributions. These concerns were addressed in the 1998 amendment to the proposed regulations implementing the congressional directive in section 1509 of TRA '97. That amendment clarifies that it is not necessary for a distributing plan to have a favorable IRS determination letter in order for a plan administrator of a receiving plan to reach a reasonable conclusion that a contribution is a valid rollover contribution. In addition, an example was added to the proposed regulations in which an employee does not provide a statement from the distributing plan administrator that the distributing plan has received a favorable IRS determination letter, but instead the employee provides a statement from the distributing plan administrator relating to the qualification of the distributing plan. In the preamble to the 1998 amendment to the proposed regulations, it is stressed that none of the examples in the proposed regulations are intended to describe the only types of information that a plan administrator can find to be sufficient and the examples are not intended to preclude reliance on other types of information, such as opinions or statements regarding the plan's qualification provided by appropriate professionals with expertise in plan qualification requirements.

C. Miscellaneous Comments

One commentator stated that both Examples 1 and 3 in the proposed regulations, which provide that Employee A will not have attained age 70½ by the end of the year in which the rollover contribution will occur, imply that if an employee were age 70½ or older, a rollover option would be unavailable. This implication was not intended. The fact was included merely to illustrate the more common scenario of an employee who is under age 70½ and rolls over a retirement plan distribution.

Some commentators proposed that guidance is needed regarding the procedures for correcting invalid rollover contributions. One commentator suggested that relief, similar to that provided to plans receiving invalid rollover contributions, should also be afforded to plans receiving assets and liability transfers in the event that a transferor's plan does not satisfy the qualification requirements under the Code. These comments will be taken into account in developing future guidance priorities.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Pamela R. Kinard, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 31 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.401(a)(31)–1 is amended as follows:

1. Under the heading "List of Questions," redesignating Q–14 through Q–18 as Q–15 through Q–19, respectively, and adding new Q–14.

2. Under the heading "Questions and Answers," removing the paragraph designation (a) and the paragraph heading, and removing paragraph (b) from A–13.

3. Under the heading "Questions and Answers," redesignating Q&A–14 through Q&A–18 as Q&A–15 through Q&A–19, respectively, and adding new Q&A–14.

4. Under the heading "Questions and Answers," removing the language "Q&A–15" in the fourth sentence of the newly designated A–16 and adding "Q&A–16" in its place.

5. Under the heading "Questions and Answers," removing the language "Q&A–17" in the first sentence of the newly designated A–18 and adding "Q&A–18" in its place.

The additions read as follows:

§ 1.401(a)(31)–1 Requirement to offer direct rollover of eligible rollover distributions; questions and answers.

* * * * *

List of Questions

* * * * *

Q–14. If a plan accepts an invalid rollover contribution, whether or not as a direct rollover, how will the contribution be treated for purposes of applying the qualification requirements of section 401(a) or 403(a) to the plan?

* * * * *

Questions and Answers

* * * * *

Q–14. If a plan accepts an invalid rollover contribution, whether or not as a direct rollover, how will the contribution be treated for purposes of applying the qualification requirements of section 401(a) or 403(a) to the plan?

A–14. (a) *Acceptance of invalid rollover contribution.* If a plan accepts an invalid rollover contribution, the contribution will be treated, for purposes of applying the qualification requirements of section 401(a) or 403(a) to the receiving plan, as if it were a valid rollover contribution, if the following two conditions are satisfied. First, when accepting the amount from the employee as a rollover contribution, the plan administrator of the receiving plan reasonably concludes that the contribution is a valid rollover contribution. While evidence that the distributing plan is the subject of a determination letter from the Commissioner indicating that the distributing plan is qualified would be useful to the receiving plan administrator in reasonably concluding that the contribution is a valid rollover contribution, it is not necessary for the distributing plan to have such a determination letter in order for the receiving plan administrator to reach that conclusion. Second, if the plan administrator of the receiving plan later determines that the contribution was an invalid rollover contribution, the amount of the invalid rollover contribution, plus any earnings attributable thereto, is distributed to the employee within a reasonable time after such determination.

(b) *Definitions.* For purposes of this Q&A–14:

(1) An *invalid rollover contribution* is an amount that is accepted by a plan as a rollover within the meaning of § 1.402(c)–2, Q&A–1 (or as a rollover contribution within the meaning of section 408(d)(3)(A)(ii)) but that is not an eligible rollover distribution from a qualified plan (or an amount described in section 408(d)(3)(A)(ii)) or that does not satisfy the other requirements of section 401(a)(31), 402(c), or 408(d)(3) for treatment as a rollover or a rollover contribution.

(2) A *valid rollover contribution* is a contribution that is accepted by a plan as a rollover within the meaning of § 1.402(c)–2, Q&A–1 or as a rollover contribution within the meaning of section 408(d)(3) and that satisfies the requirements of section 401(a)(31), 402(c), or 408(d)(3) for treatment as a rollover or a rollover contribution.

(c) *Examples.* The provisions of paragraph (a) of this Q&A–14 are illustrated by the following examples:

Example 1. (i) Employer X maintains for its employees Plan M, a profit sharing plan qualified under section 401(a). Plan M provides that any employee of Employer X may make a rollover contribution to Plan M. Employee A is an employee of Employer X, will not have attained age 70½ by the end of the year, and has a vested account balance in Plan O (a plan maintained by Employee A's prior employer). Employee A elects a single sum distribution from Plan O and elects that it be paid to Plan M in a direct rollover.

(ii) Employee A provides the plan administrator of Plan M with a letter from the plan administrator of Plan O stating that Plan O has received a determination letter from the Commissioner indicating that Plan O is qualified.

(iii) Based upon such a letter, absent facts to the contrary, a plan administrator may reasonably conclude that Plan O is qualified and that the amount paid as a direct rollover is an eligible rollover distribution.

Example 2. (i) The facts are the same as *Example 1*, except that, instead of the letter provided in paragraph (ii) of *Example 1*, Employee A provides the plan administrator of Plan M with a letter from the plan administrator of Plan O representing that Plan O satisfies the requirements of section 401(a) (or representing that Plan O is intended to satisfy the requirements of section 401(a) and that the administrator of Plan O is not aware of any Plan O provision or operation that would result in the disqualification of Plan O).

(ii) Based upon such a letter, absent facts to the contrary, a plan administrator may reasonably conclude that Plan O is qualified and that the amount paid as a direct rollover is an eligible rollover distribution.

Example 3. (i) Same facts as *Example 1*, except that Employee A elects to receive the distribution from Plan O and wishes to make a rollover contribution described in section 402 rather than a direct rollover.

(ii) When making the rollover contribution, Employee A certifies that, to the best of Employee A's knowledge, Employee A is entitled to the distribution as an employee and not as a beneficiary, the distribution from Plan O to be contributed to Plan M is not one of a series of periodic payments, the distribution from Plan O was received by Employee A not more than 60 days before the date of the rollover contribution, and the entire amount of the rollover contribution would be includible in gross income if it were not being rolled over.

(iii) As support for these certifications, Employee A provides the plan administrator of Plan M with two statements from Plan O. The first is a letter from the plan administrator of Plan O, as described in *Example 1*, stating that Plan O has received a determination letter from the Commissioner indicating that Plan O is qualified. The second is the distribution statement that accompanied the distribution check. The distribution statement indicates that the distribution is being made by Plan O to Employee A, indicates the gross amount of the distribution, and indicates the amount withheld as Federal income tax. The amount withheld as Federal income tax is 20 percent of the gross amount of the distribution. Employee A contributes to Plan M an amount not greater than the gross amount of the distribution stated in the letter from Plan O and the contribution is made within 60 days of the date of the distribution statement from Plan O.

(iv) Based on the certifications and documentation provided by Employee A, absent facts to the contrary, a plan administrator may reasonably conclude that Plan O is qualified and that the distribution otherwise satisfies the requirements of section 402(c) for treatment as a rollover contribution.

Example 4. (i) The facts are the same as in *Example 3*, except that, rather than contributing the distribution from Plan O to Plan M, Employee A contributes the distribution from Plan O to IRA P, an individual retirement account described in

section 408(a). After the contribution of the distribution from Plan O to IRA P, but before the year in which Employee A attains age 70½, Employee A requests a distribution from IRA P and decides to contribute it to Plan M as a rollover contribution. To make the rollover contribution, Employee A endorses the check received from IRA P as payable to Plan M.

(ii) In addition to providing the certifications described in *Example 3* with respect to the distribution from Plan O, Employee A certifies that, to the best of Employee A's knowledge, the contribution to IRA P was not made more than 60 days after the date Employee A received the distribution from Plan O, no amount other than the distribution from Plan O has been contributed to IRA P, and the distribution from IRA P was received not more than 60 days earlier than the rollover contribution to Plan M.

(iii) As support for these certifications, in addition to the two statements from Plan O described in *Example 3*, Employee A provides copies of statements from IRA P. The statements indicate that the account is identified as an IRA, the account was established within 60 days of the date of the letter from Plan O informing Employee A that an amount had been distributed, and the opening balance in the IRA does not exceed the amount of the distribution described in the letter from Plan O. There is no indication in the statements that any additional contributions have been made to IRA P since the account was opened. The date on the check from IRA P is less than 60 days before the date that Employee A makes the contribution to Plan M.

(iv) Based on the certifications and documentation provided by Employee A, absent facts to the contrary, a plan administrator may reasonably conclude that Plan O is qualified and that the contribution by Employee A is a rollover contribution described in section 408(d)(3)(A)(ii) that satisfies the other requirements of section 408(d)(3) for treatment as a rollover contribution.

* * * * *

Par. 3. Section 1.402(c)–2 is amended as follows:

1. Section 1.402(c)–2 is amended by adding a sentence to the end of A–11.

2. Under the heading "List of Questions," removing the language "§ 1.401(a)(31)–1, Q&A–17" in Q–15 and adding "§ 1.401(a)(31)–1, Q&A–18" in its place.

3. Under the heading "Questions and Answers," removing the language "§ 1.401(a)(31)–1, Q&A–15" in the third sentence of A–9(a) and adding "§ 1.401(a)(31)–1, Q&A–16" in its place.

4. Under the heading "Questions and Answers," removing the language "§ 1.401(a)(31)–1, Q&A–15" in the introductory text of A–9(c) and adding "§ 1.401(a)(31)–1, Q&A–16" in its place.

5. Under the heading "Questions and Answers," removing the language "§ 1.401(a)(31)–1, Q&A–15" in the last sentence of *Example 1*(b) of A–9(c) and adding "§ 1.401(a)(31)–1, Q&A–16" in its place.

6. Under the heading "Questions and Answers," removing the language "§ 1.401(a)(31)–1, Q&A–16" in the last sentence of A–10(b) and adding "§ 1.401(a)(31)–1, Q&A–17" in its place.

7. Under the heading "Questions and Answers," removing the language "§ 1.401(a)(31)–1, Q&A–17" in the last sentence of A–14 and adding "§ 1.401(a)(31)–1, Q&A–18" in its place.

8. Under the heading "Questions and Answers," removing the language "§ 1.401(a)(31)–1, Q&A–17" in Q–15 and adding "§ 1.401(a)(31)–1, Q&A–18" in its place.

9. Under the heading "Questions and Answers," removing the language "§ 1.401(a)(31)–1, Q&A–17" in the third sentence of A–15 and adding "§ 1.401(a)(31)–1, Q&A–18" in its place.

The addition reads as follows:

§ 1.402(c)–2 Eligible rollover distributions; questions and answers.

* * * * *

A–11. * * * See § 1.401(a)(31)–1, Q&A–14, for guidance concerning the qualification of a plan that accepts a rollover contribution.

* * * * *

§ 1.403(b)–2 [Amended]

Par. 4. Section 1.403(b)–2 is amended as follows:

1. Under the heading "Questions and Answers," removing the language "§ 1.401(a)(31)–1, Q&A–14" in the next to last sentence of A–2(a) and adding "§ 1.401(a)(31)–1, Q&A–15" in its place.

2. Under the heading "Questions and Answers," removing the language "§ 1.401(a)(31)–1, Q&A–18" in the second sentence of A–4(a)(1) and adding "§ 1.401(a)(31)–1, Q&A–19" in its place.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 5. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 31.3405(c)–1 [Amended]

Par. 6. Section 31.3405(c)–1 is amended as follows:

1. Under the heading "Questions and Answers," removing the language "Q&A–17 of § 1.401(a)(31)–1" in the next to last sentence of A–10(a) and adding "Section 1.401(a)(31)–1, Q&A–18" in its place.

2. Under the heading "Questions and Answers," removing the language "§ 1.401(a)(31)–1, Q&A–16" in the third sentence of A–13 and adding "§ 1.401(a)(31)–1, Q&A–17" in its place.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: April 6, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 00–9815 Filed 4–20–00; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA084/101–5045a; FRL–6562–9]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revised Format for Materials Being Incorporated by Reference; Approval of Recodification of the Virginia Administrative Code

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Virginia State Implementation Plan submitted on January 13, 1998 and June 7, 1999 by the Virginia Department of Environmental Quality. These submittals include a recodification of and associated administrative revisions to Virginia's air pollution control regulations. This recodification reorganizes and renumbers the Virginia SIP to match the numbering system set forth in the Virginia Administrative Code. EPA is also revising the format of regulations for materials submitted by Virginia that are incorporated by reference (IBR) into their respective State implementation plans (SIPs). These provisions include both rules and source-specific requirements which EPA has approved as part of the Virginia SIP.

DATES: This rule is effective on June 20, 2000 without further notice, unless EPA receives adverse written comment by May 22, 2000. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Marcia L. Spink, Associate Director, Office of Air Programs, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division,

U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108 or by e-mail at frankford.harold@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever "we" "us", or "our" is used, we mean EPA.

I. Revised IBR Document

The supplementary information is organized in the following order:

What a SIP Is
How EPA Enforces SIPs
How the State and EPA Updates the SIP
How EPA Compiles the SIPs
How EPA Organizes the SIP Compilation
Where You Can Find a Copy of the SIP Compilation
The Format of the New Identification of Plan Section
When a SIP Revision Become Federally Enforceable
The Historical Record of SIP Revision Approvals
What EPA Is Doing In This Action
How This Document Complies With the Federal Administrative Requirements for Rulemaking

What a SIP Is

Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring network, attainment demonstrations, and enforcement mechanisms.

How EPA Enforces SIPs

Each state must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them. They are then submitted to EPA as SIP revisions on which EPA must formally act.

Once these control measures and strategies are approved by EPA, after notice and comment, they are incorporated into the Federally approved SIP and are identified in Part 52 (Approval and Promulgation of Implementation Plans), Title 40 of the Code of Federal Regulations (40 CFR Part 52). The full text of the state regulation approved by EPA is not reproduced in its entirety in 40 CFR Part 52, but is "incorporated by reference". This means that EPA has approved a given state regulation with a specific effective date. This format allows both EPA and the public to know which measures are contained in a given SIP, and insures that the State is enforcing the regulations. It also allows EPA and the public to take enforcement action, should a State not enforce its SIP-approved regulations.

How the State and EPA Update the SIP

The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and OFR.

We began the process of developing: (1) A revised SIP document for each state that would be IBR under the provisions of 1 CFR Part 51; (2) a revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the IBR document and the CFR; and (3) a revised format of the "Identification of Plan" sections for each applicable subpart to reflect these revised IBR procedures. The description of the revised SIP document, IBR procedures, and "Identification of Plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document.

How EPA Compiles the SIPs

The Federally-approved regulations, source-specific permits, and nonregulatory provisions (entirely or portions of) submitted by each state agency have been compiled by EPA into a "SIP compilation." The SIP compilation contains the updated regulations, source-specific permits, and nonregulatory provisions approved by EPA through previous rulemaking actions in the **Federal Register**. The compilations are contained in three-ring binders and will be updated, primarily on an annual basis.

How EPA Organizes the SIP Compilation

Each compilation contains three parts. Part one contains the regulations, part two contains the source-specific requirements that have been approved as part of the SIP and part three contains nonregulatory provisions that have been EPA approved. Each part consists of a table of identifying information for each SIP-approved regulation, each SIP-approved source-specific permit, and each nonregulatory SIP provision. In this action, EPA is publishing the tables summarizing Parts one and two for each State. The table of identifying information in the compilation corresponds to the table of contents published in 40 CFR Part 52 for these states. EPA will publish the summary list of Part Three SIP provisions for Virginia in a separate action. EPA Regional Offices have the primary responsibility for ensuring accuracy and updating the compilations.

Where You Can Find a Copy of the SIP Compilation

EPA Region III developed and will maintain the compilation for Virginia. A copy of the full text of each state's regulatory and source-specific SIP compilation will also be maintained at the OFR and EPA's Air Docket and Information Center.

The Format of the New Identification of Plan Section

In order to better serve the public, EPA revised the organization of the "Identification of Plan" section and included additional information to clarify the enforceable elements of the SIP. The revised Identification of Plan section contains five subsections:

1. Purpose and scope
2. Incorporation by reference
3. EPA-approved regulations
4. EPA-approved source-specific permits
5. EPA-approved nonregulatory provisions such as transportation control measures, statutory provisions, control strategies, monitoring networks, etc.

When a SIP Revision Becomes Federally Enforceable

All revisions to the applicable SIP become Federally enforceable as of the effective date of the revisions to paragraphs (c), (d), or (e) of the applicable Identification of Plan section found in each subpart of 40 CFR Part 52.

The Historical Record of SIP Revision Approvals

To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP processing system, EPA retains the original Identification of Plan section, previously appearing in the CFR as the first or second section of Part 52 for each state subpart. After an initial two-year period, EPA will review its experience with the new system and enforceability of previously approved SIP measures and will decide whether

or not to retain the Identification of Plan appendices for some further period.

II. Recodification Submittals

On March 6, 1992, the Virginia State Assembly enacted Chapter 216—an act to amend Section 9–77.7, Code of Virginia, effective July 1, 1992. The amendment authorized reorganization of the Virginia Administrative Code (VAC), including reorganization of the air pollution control regulations. Beginning April 17, 1995, Virginia began publication of the air pollution control regulations in the new format. Virginia also announced the adoption of the new format for the Appendices, effective July 1, 1997. The final version of the Appendices were published in the May 26, 1997 *Virginia Register of Regulations.*

Public Hearings Held: December 18, 1997, in Richmond.

A. Revised Structure of Virginia's Regulations

Under the revised VAC system, Title 9 is the designated title for provisions related to the Environment, while Agency Number 5 corresponds to the Virginia Department of Enyironmental Quality (DEQ), Bureau of Air Pollution Control. Hence, Virginia's air pollution control regulations are cited as 9 VAC 5–xxx–xxx. This citation system replaces System VR–120–01, the general cite for Virginia's regulations for the Control and Abatement of Air Pollution prior to July 1, 1992. When approved, the regulation numbering format for the Federally-enforceable Virginia SIP regulations would mirror those of the State-enforceable regulations, with some exceptions.

Because Virginia's air pollution control regulations are extensive, they are arranged in subgroups such as chapters, parts, articles, and sections under the 9 VAC 5 system. The Virginia regulations under VR–120–01 also were arranged in subgroups, but with different names. Here is a comparison chart:

Group type	9 VAC 5 heading	VR–120–01 heading
Main Division	Chapter	Part.
First Subdivision	Part	
Second Subdivision	Article	Rule (Part IV) or Section (Part VIII).
Third Subdivision	Section	Section or Subsection [Part VIII rules].

Virginia Regulation 9 VAC 5 contains 10 chapters (10, 20, 30, 40, 50, 60, 70, 80, 160, and 170), as described below:

Chapter 10 General Definitions
Chapter 20 General Provisions
Chapter 30 Ambient Air Quality Standards
Chapter 40 Existing Stationary Sources
Chapter 50 New and Modified Stationary Sources
Chapter 70 Air Pollution Episode Prevention
Chapter 80 Permits for Stationary Sources
Chapter 91 Regulations for the Control of Motor Vehicle Emissions in Northern Virginia
Chapter 160 General Conformity Rules
Chapter 170 Regulation for General Administration

Within 9 VAC 5 Chapter 40, there are two major parts— Special Provisions (Part I) and Emissions Standards (Part II). Part I consists of provisions covering the following topics:

—Applicability
—Compliance (consisting of compliance schedules and methods for interpreting compliance of emissions standards based on process weight tables)
—Emissions testing
—Source monitoring
—Notification, records, and reporting

Part II consists of articles which contain general provisions governing visible emissions and fugitive dust/emissions, open burning, mobile sources, and designated source categories. These articles are listed below:

Article 1 Visible Emissions and Fugitive Dust/emissions
Article 4 General Process Operations
Article 5 Synthesized Pharmaceutical Products Manufacturing Operations
Article 6 Rubber Tire Manufacturing Operations
Article 7 Incinerators
Article 8 Fuel Burning Equipment
Article 9 Coke Ovens
Article 10 Asphalt Concrete Plants
Article 11 Petroleum Refinery Operations
Article 12 Chemical Fertilizer Manufacturing Operations
Article 13 Kraft Pulp Mills
Article 14 Sand and Gravel Processing Operations and Stone Quarrying and Processing Operations
Article 15 Coal Preparation Plants
Article 16 Portland Cement Plants
Article 17 Woodworking Operations
Article 18 Primary and Secondary Metal Operations
Article 19 Lightweight Aggregate Process Operations
Article 20 Feed Manufacturing Operations
Article 21 Sulfuric Acid Production Plants
Article 22 Sulfur Recovery Operations
Article 23 Nitric Acid Production Units
Article 24 Solvent Metal Cleaning Operations
Article 25 Volatile Organic Compound Storage and Transfer Operations
Article 26 Large Coating Application Systems
Article 27 Magnet Wire Costing Application Systems
Article 28 Automobile and Light Duty Truck Coating Application Systems
Article 29 Can Coating Application Systems
Article 30 Metal Coil Coating Application Systems
Article 31 Paper and Fabric Coating Application Systems
Article 32 Vinyl Coating Application Systems
Article 33 Metal Furniture Coating Application Systems
Article 34 Miscellaneous Metal Parts and Products Coating Application Systems
Article 35 Flatwood Paneling Coating Application Systems
Article 36 Graphic Arts Printing Processes
Article 37 Petroleum Liquid Storage and Transfer Operations
Article 38 Dry Cleaning Systems
Article 39 Asphalt Paving Operations
Article 40 Open Burning
Article 41 Mobile Sources
Article 45 Lithographic Printing Processes

Within each article, there are about 16 to 20 sections. The general section titles for the SIP-approved rules consist of the following topics:

1. Applicability and Designation of Facility
2. Definitions
3. Specific emission standards for various pollutants (generally, there is one separate section for each pollutant)
4. Control technology guidelines (whenever the article contains emission standards for volatile organic compounds)
5. Standard for visible emissions
6. Standard for fugitive dust/emissions
7. Compliance
8. Test methods and procedures

9. Monitoring

10. Notification, records, and reporting

11. Registration

12. Facility and control equipment maintenance or malfunction

13. Permits

B. Revisions to Appendices

Virginia has incorporated Appendices A through S under the old VR–120 format into the regulatory structure of the 9 VAC 5 format. The citation of the SIP-approved Appendices that are cited under the VR–120 format are redesignated as follows:

Old SIP citation (VR–120)	New SIP citation (9VAC 5)
Appendix A	5–10–30
Appendix B	5–20–200
Appendix G	5–20–202
Appendix H	5–20–203
Appendix J	5–40–41
Appendix K	5–20–204
Appendix M	5–20–21
Appendix N	5–40–21
Appendix P	5–20–206
Appendix Q	5–40–22
Appendix R	5–80–11
Appendix S	5–20–121

C. Administrative Revisions to the State Regulations Reflecting Revisions or Additions to Certain Definitions of Terms

Virginia has added or revised certain definitions to reflect: (1) A restructuring of the Virginia Administrative Code: (2) the use of the Virginia Register to officially announce proposed and adopted Commonwealth rules and regulations; and (3) the creation of the Virginia Department of the Environment. These definitions are described below:

1. Administrative Process Act

Old: Title 9, Section 1.1:1 of the Code of Virginia (1950), as amended
Revised: Chapter 1.1:1 (§ 9–6.14:1 *et seq.*) of Title 9 of the Code of Virginia

2. Department (*Added*)

Any employee or other representative of the Virginia Department of Environmental Quality, as designated by the Director

3. Director (*Revised*)

Refers to the Director of the Virginia Department of Environmental Quality, replacing the old term Executive Director [of the Virginia State Air Pollution Control Board].

4. Virginia Air Pollution Control Law

Old: Title 10, Chapter 1.2 of the Code of Virginia (1950), as amended
Revised: Chapter 13 (§ 10.1–1300 *et seq.*) of Title 9 of the Code of Virginia

5. Virginia Register Act (*Added*)

Chapter 1.2 (§ 9–6.15 *et seq.*) of Title 9 of the Code of Virginia EPA's approval of the recodified Virginia air pollution control regulations also includes revisions to the text of definitions and regulations found in Chapters 10 through 200 to reflect: (1) References to revised regulatory citations described in the current Administrative Process Act, Virginia Register Act, and Virginia Air Pollution Control Law; and (2) references to the Department [of Environmental Quality] or Department Director

D. Revised Structure of 9 VAC 5, Chapter 80

On June 7, 1999, Virginia submitted a revised and restructured numbering systems for 9 VAC 5 Chapter 80, Article 9 (permits for major sources and major modifications locating in nonattainment areas). This SIP revision submittal will restructure the following SIP-approved regulations:

State citation (9 VAC 5)	Title/subject	State effective date	Former SIP citation (120–08–03X)	Last EPA approval date (VR–120–08–03—effective 1/1/93)
Article 9	Permits for Major Stationary Sources and Major Modifications locating in Nonattainment Areas			
5–80–2000	Applicability	1/1/93	.03A	9/21/99
		4/1/99		64 FR 51047
5–80–2010	Definitions	1/1/93	.03B	9/21/99
		4/1/99		64 FR 51047
5–80–2020	General	1/1/93	.03C	9/21/99
		4/1/99		64 FR 51047
5–80–2030	Applications	1/1/93	.03D	9/21/99
		4/1/99		64 FR 51047
5–80–2040	Information required	1/1/93	.03E	9/21/99
		4/1/99		64 FR 51047
5–80–2050	Standards/conditions for granting permits	1/1/93	.03F	9/21/99 64 FR 51047
		4/1/99		
5–80–2060	Action on permit application	1/1/93	.03G	9/21/99
		4/1/99		64 FR 51047
5–80–2070	Public Participation	1/1/93	.03H	9/21/99
		4/1/99		64 FR 51047
5–80–2080	Compliance determination and verification by performance testing.	1/1/93	.03I	9/21/99
		4/1/99		64 FR 51047
5–80–2090	Application review and analysis	1/1/93	.03J	9/21/99
		4/1/99		64 FR 51047
5–80–2100	Circumvention	1/1/93	.03K	9/21/99
		4/199		64 FR 51047
5–80–2110	Interstate pollution abatement	1/1/93	.03L	9/21/99
		4/1/99		64 FR 51047
5–80–2120	Offsets	1/1/93	.03M	9/21/99
		4/1/99		64 FR 51047
5–80–2130	De minimis increases and stationary source modification alternatives for ozone nonattainment areas classified as serious or severe in 9 VAC 5–20–204.	1/1/93	.03N	9/21/99
		4/1/99		64 FR 51047
5–80–2140	Exception	1/1/93	.03O	9/21/99
		4/1/99		64 FR 51047
5–80–2150	Compliance with local zoning requirements	1/1/93	.03P	9/21/99
		4/1/99		64 FR 51047

State citation (9 VAC 5)	Title/subject	State effective date	Former SIP citation (120–08–03X)	Last EPA approval date (VR–120–08–03—effective 1/1/93)
5–80–2160	Reactivation and Permit Shutdown	1/1/93 4/1/99	.03Q	9/21/99 64 FR 51047
5–80–2170	Transfer of Permits	1/1/93 4/1/99	.03R	9/21/99 64 FR 51047
5–80–2180	Revocation of permit	1/1/93 4/1/99	.03S	9/21/99 64 FR 51047
5–80–2190	Existence of permit no defense	1/1/93 4/1/99	.03T	9/21/99 64 FR 51047

Virginia's June 7, 1999 submittal which restructures the major new source and modification permitting requirements applicable to nonattainment areas consists of administrative and format changes; there are no substantive wording changes to the current federally-enforceable provisions.

Public Hearings held: December 4, 1998, in Richmond

In a separate action, EPA will review additional revisions to Virginia's administrative provisions (9 VAC 5–20 and 9 VAC 5–170) submitted on February 18, 1998 and March 4, 1998, as well as Part II of Virginia's general conformity provisions (9 VAC 5–160), submitted by Virginia on April 20, 1998.

III. EPA Evaluation of Recodification Submittals

EPA's action will have no adverse impact on the NAAQS for the various criteria pollutants governed by Virginia's revised rules. EPA concludes that the recodification of Virginia's regulations and revised administrative provisions have no direct impact on current ambient air quality. For the most part, EPA will be able to cite the same regulatory citations used by Virginia in the event of a federal enforcement action. Differences between the Federally enforceable Virginia SIP regulatory citations and those of the Virginia's which are not Federally enforceable are noted in the chart of regulations listed in revised 40 CFR § 52.2420(c).

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity.

The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information: (1) That are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by federal law to maintain program delegation, authorization or approval," since Virginia must "enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. * * *" The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1997 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

What EPA Is Doing in This Action

EPA is approving the recodified Virginia provisions submitted on January 13, 1998 and June 7, 1999 by the Virginia Department of Environmental Quality as revisions to the Virginia SIP. EPA is also revising the format of 40 CFR part 52 for materials submitted by Virginia that are incorporated by reference (IBR) into their respective SIPs.

EPA has reviewed the submitted revisions, but has not fully reviewed the substance of recodified regulations that were approved into the SIP in previous rulemaking actions. EPA is now merely approving the renumbering system submitted by Virginia. To the extent that we have issued any SIP calls to Virginia with respect to the adequacy of any of

the rules subject to this recodification, we will continue to require Virginia to correct any such rule deficiencies despite our ap[proval of this recodification.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on June 20, 2000 without further notice unless EPA receives adverse comment by May 22, 2000. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 20, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve the recodification and associated administrative revisions of the Virginia Administrative Code into the Virginia SIP, as well as revise the format of 40 CFR part 52 for materials submitted by Virginia that are incorporated by reference may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 6, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—Virginia

2. Section 52.2420 is redesignated as § 52.2465 and the heading and paragraph (a) are revised to read as follows:

§ 52.2465 Original identification of plan section.

(a) This section identifies the original "Air Implementation Plan for the State of Virginia" and all revisions submitted by Virginia that were federally approved prior to March 1, 2000.

* * * * *

3. A new Section 52.2420 is added to read as follows:

§ 52.2420 Identification of plan.

(a) Purpose and scope. This section sets forth the applicable State implementation plan for Virginia under section 110 of the Clean Air Act, 42

U.S.C. 7410, and 1 CAR part 51 to meet national ambient air quality standards.

(b) Incorporation by reference.

(1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to March 1, 2000 was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with EPA approval dates after March 1, 2000 will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 3 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of March 1, 2000.

(3) Copies of the materials incorporated by reference may be inspected at the Region 3 EPA Office at 1650 Arch Street, Philadelphia, PA 19103; the Office of the Federal Register, 800 North Capitol Street, NW.; Suite 700, Washington, DC.; or at EPA, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, S.W., Washington, DC.

(c) EPA approved regulations.

EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [Former SIP citation]
	Chapter 10 General Definitions [Part I]			
5–10–10	General	4/17/95	[Insert publication date and **Federal Register** cite]	120–01–01.
5–10–20	Terms Defined—Definitions of Administrator, Federally Enforceable, Implementation Plan, Potential to Emit, State Enforceable, Volatile Organic Compound.	4/1/96	3/12/97 62 FR 11334	§ 52.2465(c)(113) (i)(B)(*1*).
5–10–20	Terms Defined-Added Terms-Department, Virginia Register Act Revised Terms-Administrative Process Act, Director (replaces Executive Director), Virginia Air Pollution Control Law.	4/17/95	Insert publication date and **Federal Register** cite]	
5–10–20	Terms Defined [all other SIP-approved terms not listed above].	4/17/95	[Insert publication date and **Federal Register** cite]	120–01–02.
VR120–01–02	Terms Defined-Definitions of "Person" and "Special Order".	2/1/85	2/25/93 58 FR 11373	VA DEQ has submitted revised definitions; EPA will review in a separate action.
5–10–30	Abbreviations	7/1/97	[Insert publication date and **Federal Register** cite]	Appendix A.
	Chapter 20 General Provisions			
5–20–10A.–C	Applicability	4/17/95	[Insert publication date and **Federal Register** cite]	120–02–01.
5–20–30A.–D	Enforcement of regulations, permits, and orders.	4/17/95	[insert publication date and **Federal Register** cite]	120–02–03.
5–20–60	Local ordinances	4/17/95	[insert publication date and **Federal Register** cite]	120–02–06.
5–20–70	Circumvention	4/17/95	[insert publication date and **Federal Register** cite]	120–02–07.
5–20–80	Relationship of state regulations to federal regulations.	4/17/95	[insert publication date and **Federal Register** cite]	120–02–08.
5–20–100	Right of entry	4/17/95	[insert publication date and Federal Register cite]	120–02–10.
5–20–110	Conditions on approvals	4/17/95	[insert publication date and **Federal Register** cite]	120–02–11.
5–20–121	Air Quality Program Policies and Procedures.	7/1/97	[insert publication date and **Federal Register** cite]	Appendix S.
5–20–140	Considerations for Approval Actions.	4/17/95	[insert publication date and **Federal Register** cite]	120–02–14.
5–20–150	Availability of Information	4/17/95	[insert publication date and **Federal Register** cite]	120–02–30.
5–20–160	Registration	4/17/95 7/1/97	[insert publication date and **Federal Register** cite]	120–02–31.
5–20–170	Control Programs	4/17/95 7/1/97	[insert publication date and **Federal Register** cite]	120–02–32.
5–20–180	Facility and Control Equipment Maintenance or Malfunction.	4/17/95 7/1/97	[insert publication date and **Federal Register** cite]	120–02–34.
5–20–200	Air Quality Control Regions (AQCR).	7/1/97	[insert publication date and **Federal Register** cite]	Appendix B.

EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [Former SIP citation]
5–20–202	Metropolitan Statistical Areas	7/1/97	[insert publication date and **Federal Register** cite]	Appendix G.
5–20–203	Air Quality Maintenance Areas (AQMA).	7/1/97	[insert publication date and **Federal Register** cite]	Appendix H.
5–20–204	Nonattainment Areas	7/1/97	[insert publication date and **Federal Register** cite]	Appendix K.
5–20–205	Prevention of Significant Deterioration Areas.	2/1/97	3/23/98 63 FR 13795	Former Appendix L—Effective 2/1/92.
5–20–206	Volatile Organic Compound and Nitrogen Oxides Emissions Control Areas.	7/1/97	Insert publication date and **Federal Register** cite]	Appendix P.
VR120–02–02	Establishment of Regulations and Orders.	2/1/85	2/25/93 58 FR 11373	EPA has informed VA that except for the Appeals rule, these provisions no longer need to be part of the SIP. VA has withdrawn 2/93 and 2/98 revisions to the Appeals rule from SIP review. Last substantive SIP change became State-effective on 8/6/79 [§ 52.2465 (c) (55)].
VR120–02–04	Hearings and Proceedings	2/1/85	2/25/93 58 FR 11373	
VR120–02–05A	Variances—General	2/1/85	2/25/93 58 FR 11373	
VR120–02–09	Appeals	2/1/85	2/25/93 58 FR 11373	
VR120–02–12	Procedural information and guidance.	2/1/85	2/25/93 58 FR 11373	
Appendix E	Public Participation Guidelines	2/1/85	2/25/93 58 FR 11373	
Appendix F	Delegation of Authority	2/1/85	2/25/93 58 FR 11373	
VR120–02–14B	Considerations for Approval Actions.	2/1/85	2/25/93 58 FR 11373	Codified at 52.2465(c)(74) VA has formally requested that this provision be removed from the SIP. EPA will review in a separate action.
Chapter 30 Ambient Air Quality Standards [Part III]				
5–30–10	General	4/17/95	[Insert publication date and **Federal Register** cite]	120–03–01.
5–30–20	Particulate Matter (TSP)	4/17/95	[Insert publication date and **Federal Register** cite]	120–03–02.
5–30–30	Sulfur Oxides (Sulfur Dioxide)	4/17/95	[Insert publication date and **Federal Register** cite]	120–03–03.
5–30–40	Carbon Monoxide 4/17/95	4/17/95	[Insert publication date and **Federal register** cite]	120–03–04.
5–30–50	Ozone	4/17/95	[Insert publication date and **Federal Register** cite]	120–03–05.
5–30–60	Particulate Matter (PM_{10})	4/17/95	[Insert publication date and **Federal Register** cite]	120–03–06.
5–30–70	Nitrogen Dioxide	4/17/95	[Insert publication date and **Federal Register** cite]	120–03–07.
5–30–80	Lead	4/17/95	[Insert publication date and **Federal Register** cite]	120–03–08.
Chapter 40 Existing Stationary Sources [Part IV]				
Part I Special Provisions				
5–40–10	Applicability	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–01.
5–40–20	Compliance	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–02.
5–40–21	Compliance Schedules	7/1/97	[Insert publication date and **Federal Register** cite]	Appendix N.
5–40–22	Interpretation of Emissions Standards Based on Process Weight-Rate Tables.	7/1/97	[Insert publication date and **Federal Register** cite]	Appendix Q.

EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [Former SIP citation]
5–40–30	Emission Testing	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–03.
5–40–40	Monitoring	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–04.
5–40–41	Emission Monitoring Procedures for Existing Sources.	7/1/97	[Insert publication date and **Federal Register** cite]	Appendix J.
5–40–50	Notification, Records and Reporting.	7/1/97	[Insert publication date and **Federal Register** cite]	120–04–05.
Part II Emission Standards				
Article 1 Visible Emissions and Fugitive Dust/Emissions [Rule 4–1]				
5–40–60	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–0101.
5–40–70	Definitions	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–0102.
5–40–80	Standard for Visible Emissions	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–0103.
5–40–90	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–0104.
5–40–100	Monitoring	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–0105.
5–40–110	Test Methods and Procedures	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–0106.
5–40–120	Waivers	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–0107.
Article 4 General Process Operations [Rule 4–4]				
5–40–240	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–0401.
5–40–250	Definitions	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–0402.
5–40–260	Standard for Particulate Matter(AQCR 1–6).	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–0403.
5–40–270	Standard for Particulate Matter (AQCR 7).	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–0404.
5–40–280	Standard for Sulfur Dioxide	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–0405.
5–40–300	Standard for Volatile Organic Compounds.	4/1/96	3/12/97 62 FR 11332	
5–40–310A.–E	Standard for Nitrogen Dioxide	1/1/93	4/28/99 64 FR 22792	120–04–0408.
5–40–311	Reasonably available control technology guidelines for stationary sources of nitrogen dioxide.	7/1/97	4/28/99 64 FR 22792	52.2420(c)(132); Exceptions: 311C.3.a, C.3.c, D.
5–40–320	Standard for Visible Emissions	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–0409.
5–40–330	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–0410.
5–40–360	Compliance	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–0413
5–40–370	Test Methods and Procedures	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–0414.
5–40–380	Monitoring	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–0415.
5–40–390	Notification, Records and Reporting.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–0416.
5–40–400	Registration	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–0417.
5–40–410	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–0418.
5–40–420	Permits	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–0419.
Article 5 Synthesized Pharmaceutical Products Manufacturing Operations [Rule 4–5]				
5–40–430	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–0501.

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State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [Former SIP citation]
5–40–440	Definitions	4/17/95	[Insert publication date and Federal Register cite]	120–04–0502.
4–40–450	Standard for Volatile Organic Compounds.	4/17/95	[Insert publication date and Federal Register cite]	120–04–0503.
5–40–460	Control Technology Guidelines	4/17/95	[Insert publication date and Federal Register cite]	120–04–0504.
5–40–470	Standard for Visible Emissions	4/17/95	[Insert publication date and Federal Register cite]	120–04–0505.
5–40–480	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and Federal Register cite]	120–04–0506.
5–40–510	Compliance	4/17/95	[Insert publication date and Federal Register cite]	120–04–0509.
5–40–520	Test Methods and Procedures	4/17/95	[Insert publication date and Federal Register cite]	120–04–0510.
5–40–530	Monitoring	4/17/95	[Insert publication date and Federal Register cite]	120–04–0511.
5–40–540	Notification, Records and Reporting.	4/17/95	[Insert publication date and Federal Register cite]	120–04–0512.
5–40–550	Registration	4/17/95	[Insert publication date and Federal Register cite]	120–04–0513.
5–40–560	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and Federal Register cite]	120–04–0514.
5–40–570	Permits	4/17/95	[Insert publication date and Federal Register cite]	120–04–0515.
	Article 6 Rubber Tire Manufacturing Operations [Rule 4–6]			
5–40–580	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and Federal Register cite]	120–04–0601.
5–40–590	Definitions	4/17/95	[Insert publication date and Federal Register cite]	120–04–0602.
5–40–600	Standard for Volatile Organic Compounds.	4/17/95	[Insert publication date and Federal Register cite]	120–04–0603.
5–40–610	Control Technology Guidelines	4/17/95	[Insert publication date and Federal Register cite]	120–04–0604.
5–40–620	Standard for Visible Emissions	4/17/95	[Insert publication date and Federal Register cite]	120–04–0605.
5–40–630	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and Federal Register cite]	120–04–0606.
5–40–660	Compliance	4/17/95	[Insert publication date and Federal Register cite]	120–04–0609.
5–40–670	Test Methods and Procedures	4/17/95	[Insert publication date and Federal Register cite]	120–04–0610.
5–40–680	Monitoring	4/17/95	[Insert publication date and Federal Register cite]	120–04–0611.
5–40–690	Notification, Records and Reporting.	4/17/95	[Insert publication date and Federal Register cite]	120–04–0612.
5–40–700	Registration	4/17/95	[Insert publication date and Federal Register cite]	120–04–0613.
5–40–710	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and Federal Register cite]	120–04–614.
5–40–720	Permits	4/17/95	[Insert publication date and Federal Register cite]	120–04–0613.
	Article 7 Incinerators [Rule 4–7]			
5–40–730	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and Federal Register cite]	120–04–0701.
5–40–740	Definitions	4/17/95	[Insert publication date and Federal Register cite]	120–04–0702.
5–40–750	Standard for Particulate Matter	4/17/95	[Insert publication date and Federal Register cite]	120–04–0703.
5–40–760	Standard for Visible Emissions	4/17/95	[Insert publication date and Federal Register cite]	120–04–0704.
5–40–770	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and Federal Register cite]	120–04–0705.
5–40–800	Prohibition of Flue-Fed Incinerators.	4/17/95	[Insert publication date and Federal Register cite]	120–04–0708.
5–40–810	Compliance	4/17/95	[Insert publication date and Federal Register cite]	120–04–0709.

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EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [Former SIP citation]
5–40–820	Test Methods and Procedures	4/17/95	[Insert publication date and Federal Register cite]	120–04–0710.
5–40–830	Monitoring	4/17/95	[Insert publication date and Federal Register cite]	120–04–0711.
5–40–840	Notification, Records and Reporting.	4/17/95	[Insert publication date and Federal Register cite]	120–04–0712.
5–40–850	Registration	4/17/95	[Insert publication date and Federal Register cite]	120–04–0713.
5–40–860	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and Federal Register cite]	120–04–0714.
5–40–870	Permits	4/17/95	[Insert publication date and Federal Register cite]	120–04–0715.
	Article 8 Fuel Burning Equipment [Rule 4–8]			
5–40–880	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and Federal Register cite]	120–04–0801.
5–40–890	Definitions	4/17/95	[Insert publication date and Federal Register cite]	120–04–0802.
5–40–900	Standard for Particulate Matter	4/17/95	[Insert publication date and Federal Register cite]	120–04–0803.
5–40–910	Emission Allocation System	4/17/95	[Insert publication date and Federal Register cite]	120–04–0804.
5–40–920	Determination of Collection Equipment Efficiency Factor.	4/17/95	[Insert publication date and Federal Register cite]	120–04–0805.
5–40–930	Standard for Sulfur Dioxide	4/17/95	[Insert publication date and Federal Register cite]	120–04–0806.
5–40–940	Standard for Visible Emissions	4/17/95	[Insert publication date and Federal Register cite]	120–04–0807.
5–40–950	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and Federal Register cite]	120–04–0808.
5–40–980	Compliance	4/17/95	[Insert publication date and Federal Register cite]	120–04–0811.
5–40–990	Test Methods and Procedures	4/17/95	[Insert publication date and Federal Register cite]	120–04–0812.
5–40–1000	Monitoring	4/17/95	[Insert publication date and Federal Register cite]	120–04–0813.
5–40–1010	Notification, Records and Reporting.	4/17/95	[Insert publication date and Federal Register cite]	120–04–0814.
5–40–1020	Registration	4/17/95	[Insert publication date and Federal Register cite]	120–04–0815.
5–40–1030	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and Federal Register cite]	120–04–0816.
5–40–1040	Permits	4/17/95	[Insert publication date and Federal Register cite]	120–04–0817.
	Article 9 Coke Ovens [Rule 4–9]			
5–40–1050	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and Federal Register cite]	120–04–0901.
5–40–1060	Definitions	4/17/95	[Insert publication date and Federal Register cite]	120–04–0902.
5–40–1070	Standard for Particulate Matter	4/17/95	[Insert publication date and Federal Register cite]	120–04–0903.
5–40–1080	Standard for Sulfur Dioxide	4/17/95	[Insert publication date and Federal Register cite]	120–04–0904.
5–40–1090	Standard for Visible Emissions	4/17/95	[Insert publication date and Federal Register cite]	120–04–0905.
5–40–1100	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and Federal Register cite]	120–04–0906.
5–40–1130	Compliance	4/17/95	[Insert publication date and Federal Register cite]	120–04–0909.
5–40–1140	Test Methods and Procedures	4/17/95	[Insert publication date and Federal Register cite]	120–04–0910.
5–40–1150	Monitoring	4/17/95	[Insert publication date and Federal Register cite]	120–04–0911.
5–40–1160	Notification, Records and Reporting.	4/17/95	[Insert publication date and Federal Register cite]	120–04–0912.
5–40–1170	Registration	4/17/95	[Insert publication date and Federal Register cite]	120–04–0913.

EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [Former SIP citation]
5–40–1180	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–0914.
5–40–1190	Permits	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–0915.
Article 10 Asphalt Concrete Plants [Rule 4–10]				
5–40–1200	Applicability and Designation of Affected Family.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–1001.
5–40–1210	Definitions	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–1002.
5–40–1220	Standard for Particulate Matter	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–1003.
5–40–1230	Standard for Visible Emissions	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–1004.
5–40–1240	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–1005.
5–40–1270	Compliance	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–1008.
5–40–1280	Test Methods and Procedures	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–1009.
5–40–1290	Monitoring	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–1010.
5–40–1300	Notification, Records and Reporting.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–1011.
5–40–1310	Registration	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–1012.
5–40–1320	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–1013.
5–40–1330	Permits	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–1014.
Article 11 Petroleum Refinery Operations [Rule 4–11]				
5–40–1340	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–1101.
5–40–1350	Definitions	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–1102.
5–40–1360	Standard for Particulate Matter	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–1103.
5–40–1370	Standard for Sulfur Dioxide	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–1104.
5–40–1390	Standard for Volatile Organic Compounds.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–1106.
5–40–1400	Control Technology Guidelines	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–1107.
5–40–1410	Standard for Visible Emissions	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–1108.
5–40–1420	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–1109.
5–40–1450	Compliance	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–1112.
5–40–1460	Test Methods and Procedures	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–1113.
5–40–1470	Monitoring	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–1114.
5–40–1480	Notification, Records and Reporting.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–1115.
5–40–1490	Registration	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–1116.
5–40–1500	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–1117.
5–40–1510	Permits	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–1118.
Article 12 Chemical Fertilizer Manufacturing Operations [Rule 4–12]				
5–40–1520	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–1201.

EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [Former SIP citation]
5–40–1530	Definitions	4/17/95	[Insert publication date and Federal Register cite]	120–04–1202.
5–40–1540	Standard for Particulate Matter	4/17/95	[Insert publication date and Federal Register cite]	120–04–1203.
5–40–1550	Standard for Visible Emissions	4/17/95	[Insert publication date and Federal Register cite]	120–04–1204.
5–40–1560	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and Federal Register cite]	120–04–1205.
5–40–1590	Compliance	4/17/95	[Insert publication date and Federal Register cite]	120–04–1208.
5–40–1600	Test Methods and Procedures	4/17/95	[Insert publication date and Federal Register cite]	120–04–1209.
5–40–1610	Monitoring	4/17/95	[Insert publication date and Federal Register cite]	120–04–1210.
5–40–1620	Notification, Records and Reporting.	4/17/95	[Insert publication date and Federal Register cite]	120–04–1211.
5–40–1630	Registration	4/17/95	[Insert publication date and Federal Register cite]	120–04–1212.
5–40–1640	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and Federal Register cite]	120–04–1213.
5–40–1650	Permits	4/17/95	[Insert publication date and Federal Register cite]	120–04–1214.
	Article 13 Kraft Pulp Mills [Rule 4–13]			
5–40–1660	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and Federal Register cite]	120–04–1301.
5–40–1670	Definitions of cross recovery furnance, kraft pulp mill, lime kiln, recovery furnace, smelt dissolving tank.	4/17/95	[Insert publication date and Federal Register cite]	120–04–1302. Remaining definitions are federally enforceable as part of the Section 111(d) plan for kraft pulp mills (see, § 62.11610).
5–40–1680	Standard for Particulate Matter	4/17/95	[Insert publication date and Federal Register cite]	120–04–1303.
5–40–1700	Control Technology Guidelines	4/17/95	[Insert publication date and Federal Register cite]	120–04–1305.
5–40–1710	Standard for Visible Emissions	4/17/95	[Insert publication date and Federal Register cite]	120–04–1306.
5–40–1720	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and Federal Register cite]	120–04–1307.
5–40–1750A	Compliance	4/17/95	[Insert publication date and Federal Register cite]	120–04–1310A. Note: Sections 5–40–1750B. through D. are Register enforceable as part of the Section 111(d) plan for kraft pulp mills (see, § 62.11610).
5–40–1760	Test Methods and Procedures	4/17/95	[Insert publication date and Federal Register cite]	120–04–1311.
5–40–1770A	Monitoring	4/17/95	[Insert publication date and Federal Register cite]	120–04–1312A. Note: Sections 5–40–1770B. and C. are federally enforceable as part of the Section 111(d) plan for kraft pulp mills (see, § 62.11610).
5–40–1780A	Notification, Records and Reporting.	4/17/95	[Insert publication date and Federal Register cite]	120–04–1313A. Note: Sections 5–40–1780B. through D. are federally enforceable as part of the Section 111(d) plan for kraft pulp mills (see, § 62.11610).
5–40–1790	Registration	4/17/95	[Insert publication date and Federal Register cite]	120–04–1314.
5–40–1800	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and Federal Register cite]	120–04–1315.
5–40–1810	Permits	4/17/95	[Insert publication date and Federal Register cite]	120–04–1316.
	Article 14 Sand Gravel Processing Operations and Stone Quarrying and Processing Operations [Rule 4–14]			
5–40–1820	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and Federal Register cite]	120–04–1401.
5–40–1830	Definitions	4/17/95	[Insert publication date and Federal Register cite]	120–04–1402.

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State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [Former SIP citation]
5–40–1840	Standard for Particulate Matter	4/17/95	[Insert publication date and Federal Register cite]	120–04–1403.
5–40–1850	Standard for Visible Emissions	4/17/95	[Insert publication date and Federal Register cite]	120–04–1404.
5–40–1860	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and Federal Register cite]	120–04–1405.
5–40–1890	Compliance	4/17/95	[Insert publication date and Federal Register cite]	120–04–1408.
5–40–1900	Test Methods and Procedures	4/17/95	[Insert publication date and Federal Register cite]	120–04–1409.
5–40–1910	Monitoring	4/17/95	[Insert publication date and Federal Register cite]	120–04–1410.
5–40–1920	Notification, Records and Reporting.	4/17/95	[Insert publication date and Federal Register cite]	120–04–1411.
5–40–1930	Registration	4/17/95	[Insert publication date and Federal Register cite]	120–04–1412.
5–40–1940	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and Federal Register cite]	120–04–1413.
5–40–1950	Permits	4/17/95	[Insert publication date and Federal Register cite]	120–04–1414.
	Article 15 Coal Preparation Plants [Rule 4–15]			
5–40–1960	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and Federal Register cite]	120–04–1501.
5–40–1970	Definitions	4/17/95	[Insert publication date and Federal Register cite]	120–04–1502.
5–40–1980	Standard for Particulate Matter	4/17/95	[Insert publication date and Federal Register cite]	120–04–1503.
5–40–1990	Standard for Visible Emissions	4/17/95	[Insert publication date and Federal Register cite]	120–04–1504.
5–40–2000	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and Federal Register cite]	120–04–1505.
5–40–2030	Compliance	4/17/95	[Insert publication date and Federal Register cite]	120–04–1508.
5–40–2040	Test Methods and Procedures	4/17/95	[Insert publication date and Federal Register cite]	120–04–1509.
5–40–2050	Monitoring	4/17/95	[Insert publication date and Federal Register cite]	120–04–1510.
5–40–2060	Notification, Records and Reporting.	4/17/95	[Insert publication date and Federal Register cite]	120–04–1511.
5–40–2070	Registration	4/17/95	[Insert publication date and Federal Register cite]	120–04–1512.
5–40–2080	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and Federal Register cite]	120–04–1513.
5–40–2090	Permits	4/17/95	[Insert publication date and Federal Register cite]	120–04–1514.
	Article 16 Portland cement Plants [Rule 4–16]			
5–40–2100	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and Federal Register cite]	120–04–1601.
5–40–2110	Definitions	4/17/95	[Insert publication date and Federal Register cite]	120–04–1602.
5–40–2120	Standard for Particulate Matter	4/17/95	[Insert publication date and Federal Register cite]	120–04–1603.
5–40–2130	Standard for Sulfur Dioxide	4/17/95	[Insert publication date and Federal Register cite]	120–04–1604.
5–40–2140	Standard for Visible emissions	4/17/95	[Insert publication date and Federal Register cite]	120–04–1605.
5–40–2150	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and Federal Register cite]	120–04–1606.
5–40–2180	Compliance	4/17/95	[Insert publication date and Federal Register cite]	120–04–1609.
5–40–2190	Test Methods and Procedures	4/17/95	[Insert publication date and Federal Register cite]	120–04–1610.
5–40–2200	Monitoring	4/17/95	[Insert publication date and Federal Register cite]	120–04–1611.
5–40–2210	Notification, Records and Reporting.	4/17/95	[Insert publication date and Federal Register cite]	120–04–1612.

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5–40–2220	Registration	4/17/95	[Insert publication date and Federal Register cite]	120–04–1613.
5–40–2230	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and Federal Register cite]	120–04–1614.
5–40–2240	Permits	4/17/95	[Insert publication date and Federal Register cite]	120–04–1615.
	Article 17 Woodworking Operations [Rule 4–17]			
5–40–2250	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and Federal Register cite]	120–04–1701.
5–40–2260	Definitions	4/17/95	[Insert publication date and Federal Register cite]	120–04–1702.
5–40–2270	Standard for Particulate Matter	4/17/95	[Insert publication date and Federal Register cite]	120–04–1703
5–40–2280	Standard for Visible Emissions	4/17/95	[Insert publication date and Federal Register cite]	120–04–1704.
5–40–2290	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and Federal Register cite]	120–04–1705.
5–40–2320	Compliance	4/17/95	[Insert publication date and Federal Register cite]	120–04–1708.
5–40–2330	Test Methods and Procedures	4/17/95	[Insert publication date and Federal Register cite]	120–4–1709.
5–40–2340	Monitoring	4/17/95	[Insert publication date and Federal Register cite]	120–04–1710.
5–40–2350	Notification, Records and Reporting.	4/17/95	[Insert publication date and Federal Register cite]	120–04–1711.
5–40–2360	Registration	4/17/95	[Insert publication date and Federal Register cite]	120–04–1712.
5–40–2370	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and Federal Register cite]	120–04–1713.
5–40–2380	Permits	4/17/95	[Insert publication date and Federal Register cite]	120–04–1714.
	Article 18 Primary and Secondary Metal Operations [Rule 4–18]			
5–40–2390	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and Federal Register cite]	120–04–1801.
5–40–2400	Definitions	4/17/95	[Insert publication date and Federal Register cite]	120–04–1802.
5–40–2410	Standard for Particulate Matter	4/17/95	[Insert publication date and Federal Register cite]	120–04–1803.
5–40–2420	Standard for Sulfur Oxides	4/17/95	[Insert publication date and Federal Register cite]	120–04–1804.
5–40–2430	Standard for Visible Emissions	4/17/95	[Insert publication date and Federal Register cite]	120–04–1805.
5–40–2440	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and Federal Register cite]	120–04–1806.
5–40–2470	Compliance	4/17/95	[Insert publication date and Federal Register cite]	120–04–1809.
5–40–2480	Test Methods and Procedures	4/17/95	[Insert publication date and Federal Register cite]	120–04–1810.
5–40–2490	Monitoring	4/17/95	[Insert publication date and Federal Register cite]	120–04–1811.
5–40–2500	Notification, Records and Reporting.	4/17/95	[Insert publication date and Federal Register cite]	120–04–1812.
5–40–2510	Registration	4/17/95	[Insert publication date and Federal Register cite]	120–04–1813.
5–40–2520	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and Federal Register cite]	120–04–1814.
5–40–2530	Permits	4/17/95	[Insert publication date and Federal Register cite]	120–04–1815.
	Article 19 Lightweight Aggregate Process Operations [Rule 4–19]			
5–40–2540	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and Federal Register cite]	120–04–1901.
5–40–2541	Definitions	4/17/95	[Insert publication date and Federal Register cite]	120–04–1902.
5–40–2542	Standard for Particulate Matter	4/17/95	[Insert publication date and Federal Register cite]	120–04–1903.

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State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [Former SIP citation]
5-40-2543	Standard for Sulfur Oxides	4/17/95	[Insert publication date and Federal Register cite]	120-04-1904.
5-40-2544	Standard for Visible Emissions	4/17/95	[Insert publication date and Federal Register cite]	120-04-1905.
5-40-2590	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and Federal Register cite]	120-04-1906.
5-40-2620	Compliance	4/17/95	[Insert publication date and Federal Register cite]	120-04-1909.
5-40-2630	Test Methods and Procedures	4/17/95	[Insert publication date and Federal Register cite]	120-04-1910.
5-40-2640	Monitoring	4/17/95	[Insert publication date and Federal Register cite]	120-04-1911.
5-40-2650	Notification, Records and Reporting.	4/17/95	[Insert publication date and Federal Register cite]	120-04-1912.
5-40-2660	Registration	4/17/95	[Insert publication date and Federal Register cite]	120-04-1913.
5-40-2670	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and Federal Register cite]	120-04-1914.
5-40-2680	Permits	4/17/95	[Insert publication date and Federal Register cite]	120-04-1915.
	Article 20 Feed Manufacturing Operations [Rule 4-20]			
5-40-2690	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and Federal Register cite]	120-04-2001.
5-40-2700	Definitions	4/17/95	[Insert publication date and Federal Register cite]	120-04-2002.
5-40-2710	Standard for Particulate Matter	4/17/95	[Insert publication date and Federal Register cite]	120-04-2003.
5-40-2720	Standard for Visible Emissions	4/17/95	[Insert publication date and Federal Register cite]	120-04-2004.
5-40-2730	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and Federal Register cite]	120-04-2005.
5-40-2760	Compliance	4/17/95	[Insert publication date and Federal Register cite]	120-04-2008.
5-40-2770	Test Methods and Procedures	4/17/95	[Insert publication date and Federal Register cite]	120-04-2009.
5-40-2780	Monitoring	4/17/95	[Insert publication date and Federal Register cite]	120-04-2010.
5-40-2790	Notification, Records and Reporting.	4/17/95	[Insert publication date and Federal Register cite]	120-04-2011.
5-40-2800	Registration	4/17/95	[Insert publication date and Federal Register cite]	120-04-2012.
5-40-2810	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and Federal Register cite]	120-04-2013.
5-40-2820	Permits	4/17/95	[Insert publication date and Federal Register cite]	120-04-2014.
	Article 21 Sulfuric Acid Production Plants [Rule 4-21]			
5-40-2830	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and Federal Register cite]	120-04-2101.
5-40-2840	Definitions	4/17/95	[Insert publication date and Federal Register cite]	120-04-2102.
5-40-2850	Standard for Sulfur Dioxide	4/17/95	[Insert publication date and Federal Register cite]	120-04-2103.
5-40-2870	Standard for Visible Emissions	4/17/95	[Insert publication date and Federal Register cite]	120-04-2105.
5-40-2880	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and Federal Register cite]	120-04-2106.
5-40-2910	Compliance	4/17/95	[Insert publication date and Federal Register cite]	120-04-2109.
5-40-2920	Test Methods and Procedures	4/17/95	[Insert publication date and Federal Register cite]	120-04-2110.
5-40-2930	Monitoring	4/17/95	[Insert publication date and Federal Register cite]	120-04-2111.
5-40-2940	Notification, Records and Reporting.	4/17/95	[Insert publication date and Federal Register cite]	120-04-2112.
5-40-2950	Registration	4/17/95	[Insert publication date and Federal Register cite]	120-04-2113.

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5–40–2960	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and Federal Register cite]	120–04–2114.
5–40–2970	Permits	4/17/95	[Insert publication date and Federal Register cite]	120–04–2115.
Article 22 Sulfur Recovery Operations [Rule 4–22]				
5–40–2980	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and Federal Register cite]	120–04–2201.
5–40–2990	Definitions	4/17/95	[Insert publication date and Federal Register cite]	120–04–2202.
5–40–3000	Standard for Sulfur Dioxide	4/17/95	[Insert publication date and Federal Register cite]	120–04–2203.
5–40–3010	Standard for Visible Emissions	4/17/95	[Insert publication date and Federal Register cite]	120–04–2204.
5–40–3020	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and Federal Register cite]	120–04–2205.
5–40–3050	Compliance	4/17/95	[Insert publication date and Federal Register cite]	120–04–2208.
5–40–3060	Test Methods and Procedures	4/17/95	[Insert publication date and Federal Register cite]	120–04–2209.
5–40–3070	Monitoring	4/17/95	[Insert publication date and Federal Register cite]	120–04–2210.
5–40–3080	Notification, Records and Reporting.	4/17/95	[Insert publication date and Federal Register cite]	120–04–2211.
5–40–3090	Registration	4/17/95	[Insert publication date and Federal Register cite]	120–04–2212.
5–40–3100	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and Federal Register cite]	120–04–2213.
5–40–3110	Permits	4/17/95	[Insert publication date and Federal Register cite]	120–04–2214.
Article 23 Nitric Acid Production Units [Rule 4–23]				
5–40–3120	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and Federal Register cite]	120–04–2301.
5–40–3130	Definitions	4/17/95	[Insert publication date and Federal Register cite]	120–04–2302.
5–40–3140	Standard for Nitrogen Oxides	4/17/95	[Insert publication date and Federal Register cite]	120–04–2303.
5–40–3150	Standard for Visible Emissions	4/17/95	[Insert publication date and Federal Register cite]	120–04–2304.
5–40–3160	Standard fof Fugitive Dust/Emissions.	4/17/95	[Insert publication date and Federal Register cite]	120–04–2305.
5–40–3190	Compliance	4/17/95	[Insert publication date and Federal Register cite]	120–04–2308.
5–40–3200	Test Methods and Procedures	4/17/95	[Insert publication date and Federal Register cite]	120–04–2309.
5–40–3210	Monitoring	4/17/95	[Insert publication date and Federal Register cite]	120–04–2310.
5–40–3220	Notification, Records and Reporting.	4/17/95	[Insert publication date and Federal Register cite]	120–04–2311.
5–40–3230	Registration	4/17/95	[Insert publication date and Federal Register cite]	120–04–2312.
5–40–3240	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and Federal Register cite]	120–04–2313.
5–40–3250	Permits	4/17/95	[Insert publication date and Federal Register cite]	120–04–2314.
Article 24 Solvent Metal Cleaning Operations [Rule 4–24]				
5–40–3260	Applicability and Designation of Affected Facility.	4/1/97	11/3/99 64 FR 59635	
5–40–3270	Definitions	4/1/97	11/3/99 64 FR 59635	
5–40–3280	Standard for Volatile Organic Compounds.	4/1/97	11/3/99 64 FR 59635	
5–40–3290	Control Technology Guidelines	4/1/97	11/3/99 64 FR 59635	
5–40–3300	Standard for Visible Emissions	4/1/97	11/3/99 64 FR 59635	

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5–40–3310	Standard for Fugitive Dust/Emissions.	4/1/97	11/3/99 64 FR 59635	
5–40–3340	Compliance	4/1/97	11/3/99 64 FR 59635	
5–40–3350	Test Methods and Procedures	4/1/97	11/3/99 64 FR 59635	
5–40–3360	Monitoring	4/1/97	11/3/99 64 FR 59635	
5–40–3370	Notification, Records and Reporting.	4/1/97	11/3/99 64 FR 59635	
5–40–3380	Registration	4/1/97	11/3/99 64 FR 59635	
5–40–3390	Facility and Control Equipment Maintenance or Malfunction.	4/1/97	11/3/99 64 FR 59635	
5–40–3400	Permits	4/1/97	11/3/99 64 FR 59635	
Article 25 Volatile Organic Compound Storage and Transfer Operations [Rule 4–25]				
5–40–3410	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2501.
5–40–3420	Definitions	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2502.
5–40–3430	Standard for Volatile Organic Compounds.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2503.
5–40–3440	Control Technology Guidelines	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2504.
5–40–3450	Standard for Visible Emissions	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2505.
5–40–3460	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2506.
5–40–3490	Compliance	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2509.
5–40–3500	Test Methods and Procedures	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2510.
5–40–3510	Monitoring :	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2511.
5–40–3520	Notification, Records and Reporting.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2512.
5–40–3530	Registration	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2513.
5–40–3540	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2514.
5–40–3550	Permits	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2515.
Article 26 Large Coating Application Systems [Rule 4–26]				
5–40–3560	Applicability and Desgination of Affected Facility.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2601.
5–40–3570	Definitions	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2602.
5–40–3580	Standard for Volatile Organic Compounds.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2603.
5–40–3590	Control Technology Guidelines	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2604.
5–40–3600	Standard for Visible Emissions	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2605.
5–40–3610	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2606.
5–40–3640	Compliance	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2609.
5–40–3650	Test Methods and Procedures	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2610.
5–40–3660	Monitoring	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2611.
5–40–3670	Notification, Records and Reporting.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2612.
5–40–3680	Registration	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2613.

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State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [Former SIP citation]
5–40–3690	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2614.
5–40–3700	Permits	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2615.
Article 27 Magnet Wire Coating Application Systems [Rule 4–27]				
5–40–3710	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2701.
5–40–3720	Definitions	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2702.
5–40–3730	Standard for Volatile Organic Compounds.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2703.
5–40–3740	Control Technology Guidelines	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2704.
5–40–3750	Standard for Visible Emissions	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2705.
5–40–3760	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2706.
5–40–3790	Compliance	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2709.
5–40–3800	Test Methods and Procedures	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2710.
5–40–3810	Monitoring	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2711.
5–40–3820	Notification, Records and Reporting.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2712.
5–40–3830	Registration	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2713.
5–40–3840	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2714.
5–40–3850	Permits	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2715.
Article 28 Automobile and Light Duty Truck Coating Application Systems [Rule 4–28]				
5–40–3860	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2801.
5–40–3870	Definitions	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2802.
5–40–3880	Standard for Volatile Organic Compounds.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2803.
5–40–3890	Control Technology Guidelines	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2804.
5–40–3900	Standard for Visible Emissions	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2805.
5–40–3910	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2806.
5–40–3940	Compliance	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2809.
5–40–3950	Test Methods and Procedures	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2810.
5–40–3960	Monitoring	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2811.
5–40–3970	Notification, Records and Reporting.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2812.
5–40–3980	Registration	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2813.
5–40–3990	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2814.
5–40–4000	Permits	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2815.
Article 29 Can Coating Application Systems [Rule 4–29]				
5–40–4010	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2901.
5–40–4020	Definitions	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–2902.

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State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [Former SIP citation]
5–40–4030	Standards for Volatile Organic Compounds.	4/17/95	[Insert publication date and Federal Register cite]	120–04–2903.
5–40–4040	Control Technology Guidelines	4/17/95	[Insert publication date and Federal Register cite]	120–04–2904.
5–40–4050	Standard for Visible Emissions	4/17/95	[Insert publication date and Federal Register cite]	120–04–2905.
5–40–4060	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and Federal Register cite]	120–04–2906.
5–40–4090	Compliance	4/17/95	[Insert publication date and Federal Register cite]	120–04–2909.
5–40–4100	Test Methods and Procedures	4/17/95	[Insert publication date and Federal Register cite]	120–04–2910.
5–40–4110	Monitoring	4/17/95	[Insert publication date and Federal Register cite]	120–04–2911.
5–40–4120	Notification, Records and Reporting.	4/17/95	[Insert publication date and Federal Register cite]	120–04–2912.
5–40–4130	Registration	4/17/95	[Insert publication date and Federal Register cite]	120–04–2913.
5–40–4140	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and Federal Register cite]	120–04–2914.
Article 30 Metal Coil Coating Application Systems [Rule 4–30]				
5–40–4160	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and Federal Register cite]	120–04–3001.
5–40–4170	Definitions	4/17/95	[Insert publication date and Federal Register cite]	120–04–3002.
5–40–4180	Standard for Volatile Organic Compounds.	4/17/95	[Insert publication date and Federal Register cite]	120–04–3003.
5–40–4190	Control Technology Guidelines	4/17/95	[Insert publication date and Federal Register cite]	120–04–3004.
5–40–4200	Standard for Visible Emissions	4/17/95	[Insert publication date and Federal Register cite]	120–04–3005.
5–40–4210	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and Federal Register cite]	120–04–3006.
5–40–4240	Compliance	4/17/95	[Insert publication date and Federal Register cite]	120–04–3009.
5–40–4250	Test Methods and Procedures	4/17/95	[Insert publication date and Federal Register cite]	120–04–3010.
5–40–4260	Monitoring	4/17/95	[Insert publication date and Federal Register cite]	120–04–3011.
5–40–4270	Notification, Records and Reporting.	4/17/95	[Insert publication date and Federal Register cite]	120–04–3012.
5–40–4280	Registration	4/17/95	[Insert publication date and Federal Register cite]	120–04–3013.
5–40–4290	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and Federal Register cite]	120–04–3014.
5–40–4300	Permits	4/17/95	[Insert publication date and Federal Register cite]	120–04–3015.
Article 31 Paper and Fabric Coating Application Systems [Rule 4–31]				
5–40–4310	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and Federal Register cite]	120–04–3101.
5–40–4320	Definitions	4/17/95	[Insert publication date and Federal Register cite]	120–04–3102.
5–40–4330	Standard for Volatile Organic Compounds.	4/17/95	[Insert publication date and Federal Register cite]	120–04–3103.
5–40–4340	Control Technology Guidelines	4/17/95	[Insert publication date and Federal Register cite]	120–04–3104.
5–40–4350	Standard for Visible Emissions	4/17/95	[Insert publication date and Federal Register cite]	120–04–3105.
5–40–4360	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and Federal Register cite]	120–04–3106.
5–40–4390	Compliance	4/17/95	[Insert publication date and Federal Register cite]	120–04–3109.
5–40–4400	Test Methods and Procedures	4/17/95	[Insert publication date and Federal Register cite]	120–04–3110.
5–40–4410	Monitoring	4/17/95	[Insert publication date and Federal Register cite]	120–04–3111.

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5–40–4420	Notification, Records and Reporting.	4/17/95	[Insert publication date and Federal Register cite]	120–04–3112.
5–40–4430	Registration	4/17/95	[Insert publication date and Federal Register cite]	120–04–3113.
5–40–4440	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and Federal Register cite]	120–04–3114.
5–40–4450	Permits	4/17/95	[Insert publication date and Federal Register cite]	120–04–3115.
	Article 32 Vinyl Coating Application Systems [Rule 4–32]			
5–40–4460	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and Federal Register cite]	120–04–3201.
5–40–4470	Definitions	4/17/95	[Insert publication date and Federal Register cite]	120–04–3202.
5–40–4480	Standard for Volatile Organic Compounds.	4/17/95	[Insert publication date and Federal Register cite]	120–04–3203.
5–40–4490	Control Technology Guidelines	4/17/95	[Insert publication date and Federal Register cite]	120–04–3204.
5–40–4500	Standard for Visible Emissions	4/17/95	[Insert publication date and Federal Register cite]	120–04–3205.
5–40–4510	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and Federal Register cite]	120–04–3206.
5–40–4540	Compliance	4/17/95	[Insert publication date and Federal Register cite]	120–04–3209.
5–40–4550	Test Methods and Procedures	4/17/95	[Insert publication date and Federal Register cite]	120–04–3210.
5–40–4560	Monitoring	4/17/95	[Insert publication date and Federal Register cite]	120–04–3211.
5–40–4570	Notification, Records and Reporting.	4/17/95	[Insert publication date and Federal Register cite]	120–04–3212.
5–40–4580	Registration	4/17/95	[Insert publication date and Federal Register cite]	120–04–3213.
5–40–4590	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and Federal Register cite]	120–04–3214.
5–40–4600	Permits	4/17/95	[Insert publication date and Federal Register cite]	120–04–3215.
	Article 33 Metal Furniture Coating Application Systems [Rule 4–33]			
5–40–4610	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and Federal Register cite]	120–04–3301.
5–40–4620	Definitions	4/17/95	[Insert publication date and Federal Register cite]	120–04–3302
5–40–4630	Standard for Volatile Organic Compounds.	4/17/95	[Insert publication date and Federal Register cite]	120–04–3303.
5–40–4640	Control Technology	4/17/95	[Insert publication date and Federal Register cite]	120–04–3304.
5–40–4650	Standard for Visible Emissions	4/17/95	[Insert publication date and Federal Register cite]	120–04–3305.
5–40–4660	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and Federal Register cite]	120–04–3306.
5–40–4690	Compliance	4/17/95	[Insert publication date and Federal Register cite]	120–04–3309.
5–40–4700	Test Methods and Procedures	4/17/95	[Insert publication date and Federal Register cite]	120–04–3310.
5–40–4710	Monitoring	4/17/95	[Insert publication date and Federal Register cite]	120–04–3311.
5–40–4720	Notification, Records and Reporting.	4/17/95	[Insert publication date and Federal Register cite]	120–04–3312.
5–40–4730	Registration	4/17/95	[Insert publication date and Federal Register cite]	120–04–3313.
5–40–4740	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and Federal Register cite]	120–04–3314.
5–40–4750	Permits	4/17/95	[Insert publication date and Federal Register cite]	120–04–3315.

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Article 34 Miscellaneous Metal Parts and Products Coating Application Systems [Rule 4–34]				
5–40–4760	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3401.
5–40–4770	Definitions	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3402.
5–40–4780	Standard for Volatile Organic Compounds.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3403.
5–40–4790	Control Technology Guidelines	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3404.
5–40–4800	Standard for Visible Emissions	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3405.
5–40–4810	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3406.
5–40–4840	Compliance	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3409.
5–40–4850	Test Methods and Procedures	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3410.
5–40–4860	Monitoring	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3411.
5–40–4870	Notification, Records and Reporting.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3412.
5–40–4880	Registration	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3413.
5–40–4890	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3414.
5–40–4900	Permits	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3415.
Article 35 Flatwood Paneling Coating Application Systems [Rule 4–35]				
5–40–4910	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3501.
5–40–4920	Definitions	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3502.
5–40–4930	Standard for Volatile Organic Compounds.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3503.
5–40–4940	Control Technology Guidelines	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3504.
5–40–4950	Standard for Visible Emissions	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3505.
5–40–4960	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3506.
5–40–4990	Compliance	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3509.
5–40–5000	Test Methods and Procedures	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3510.
5–40–5010	Monitoring	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3511.
5–40–5020	Notification, Records and Reporting.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3512.
5–40–5030	Registration	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3513.
5–40–5040	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3514.
5–40–5050	Permits	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3515.
Article 36 Graphic Arts Printing Process [Rule 4–36]				
5–40–5060	Applicability and Designation of Affected Facility.	4/1/96	3/12/97 62 FR 11334	§ 52.2465(c)(113)(i)(B)(*4*)
5–40–5070	Definitions	4/1/96	3/12/97 62 FR 11334	
5–40–5080	Standard for Volatile Organic Compounds.	4/1/96	3/12/97 62 FR11334	
5–40–5090	Standard for Visible Emissions	4/1/96	3/12/97 62 FR 11334	
5–40–5100	Standard for Fugitive Dust/Emissions.	4/1/96	3/12/97 62 FR 11334	

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5–40–5130	Compliance	4/1/96	3/12/97 62 FR 11334	
5–40–5140	Test Methods and Procedure	4/1/96	3/12/97 62 FR 11334	
5–40–5150	Monitoring	4/1/96	3/12/97 62 FR 11334	
5–40–5160	Notification, Records and Reporting.	4/1/96	3/12/97 62 FR 11334	
5–40–5170	Registration	4/1/96	3/12/97 62 FR 11334	
5–40–5180	Facility and Control Equipment Maintenance or Malfunction.	4/1/96	3/12/97 62 FR 11334	
5–40–5190	Permits	4/1/96	3/12/97 62 FR 11334	
Article 37 Petroleum Liquid Storage and Transfer Operations [Rule 4–37]				
5–40–5200	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3701.
5–40–5210	Definitions	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3702.
5–40–5220	Standard for Volatile Organic Compounds.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3703.
5–40–5230	Control Technology Guidelines	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3704.
5–40–5240	Standard for Visible Emissions	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3705.
5–40–5250	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3706.
5–40–5280	Compliance	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3709.
5–40–5290	Test Methods and Procedures	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3710.
5–40–5300	Monitoring	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3711.
5–40–5310	Notification, Records and Reporting.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3712.
5–40–5320	Registration	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3713.
5–40–5330	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3714.
5–40–5340	Permits	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3715.
Article 38 Dry Cleaning Systems [Rule 4–38]				
5–40–5350	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3801.
5–40–5360	Definitions	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3802.
5–40–5370	Standard for Volatile Organic Compounds.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3803.
5–40–5380	Standard for Visible Emissions	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3804.
5–40–5490	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3805.
5–40–5420	Compliance	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3808.
5–40–5430	Test Methods and Procedures	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3809.
5–40–5440	Monitoring	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3810.
5–40–5450	Notification, Records and Reporting.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3811.
5–40–5460	Registration	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3812.
5–40–5470	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3813.

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	Article 39 Asphalt Paving Operations [Rule 4–39]			
5–40–5490	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3901.
5–40–5500	Definitions	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3902.
5–40–5510	Standard for Volatile Organic Compounds.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3903.
5–40–5520	Standard for Visible Emissions	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3904.
5–40–5530	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3905.
5–40–5560	Compliance	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3908.
5–40–5570	Test Methods and Procedures	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3909.
5–40–5580	Monitoring	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3910.
5–40–5590	Notification, Records and Reporting.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–3911.
	Article 40 Open Burning [Rule 4–40]			
5–40–5600	Applicability	4/1/96	3/12/97 62 FR 11332	Provisions of Article 40 are applicable only in Northern Va and Richmond Emissions Control Areas as defined in 9 VAC 5–20–206.
5–40–5610	Definitions of "refuse", "household refuse", "clean burning waste", "landfill", "local landfill", "sanitary landfill", "special incineration device".	4/1/96	3/12/97 62 FR 11332	
5–40–5610	All definitions not listed above	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–4002.
5–40–5620	Open Burning Prohibitions	4/1/96	3/12/97 62 FR 11332	
5–40–5630	Permissible Open Burning	4/1/96	3/12/97 62 FR 11332	
5–40–5631	Forest Management and Agricultural Practices.	7/1/97	3/12/97 62 FR 11332	Former Appendix D, Effective 4/1/96.
	Article 41 Mobile Sources [Rule 4–41]			
5–40–5650	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–4101.
5–40–5660	Definitions	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–4102.
5–40–5670	Motor Vehicles	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–4103.
5–40–5680	Other Mobile Sources	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–4104.
5–40–5690	Export/Import of Motor Vehicles	4/17/95	[Insert publication date and **Federal Register** cite]	120–04–4105.
	Article 45 Lithographic Printing Processes			
5–40–7800	Applicability and Designation of Affected Facility.	4/1/96	3/12/97 62 FR 11334	
5–40–7810	Definitions of "alcohol", "cleaning solution", fountain solution", "lithographic printing", "printing", "printing process".	4/1/96	3/12/97 62 FR 11334	
5–40–7820	Standard for Volatile Organic Compounds.	4/1/96	3/12/97 62 FR 11334	
5–40–7840	Standard for Visible Emissions	4/1/96	3/12/97 62 FR 11334	
5–40–7850	Standard for Fugitive Dust Emissions.	4/1/96	3/12/97 62 FR 11334	

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5–40–7880	Compliance	4/1/96	3/12/97 62 FR 11334	
5–40–7890	Test Methods and Procedures	4/1/96	3/12/97 62 FR 11334	
5–40–7900	Monitoring	4/1/96	3/12/97 62 FR 11334	
5–40–7910	Notification, Records and Reporting.	4/1/96	3/12/97 62 FR 11334	
5–40–7920	Registration	4/1/96	3/12/97 62 FR 11334	
5–40–7930	Facility and Control Equipment Maintenance and Malfunction.	4/1/96	3/12/97 62 FR 11334	
5–40–7940	Permits	4/1/96	3/12/97 62 FR 11334	
Chapter 50 New and Modified Stationary Sources [Part V]				
Part I Special Provisions				
5–50–10	Applicability	4/17/95	[Insert publication date and **Federal Register** cite]	120–05–01.
5–50–20	Compliance	4/17/95	[Insert publication date and **Federal Register** cite]	120–05–02.
5–50–30	Performance Testing	4/17/95	[Insert publication date and **Federal Register** cite]	120–05–03.
5–50–40	Monitoring	4/17/95	[Insert publication date and **Federal Register** cite]	120–05–04.
5–50–50	Notification, Records and Reporting.	4/17/95	[Insert publication date and **Federal Register** cite]	120–05–05.
Part II Emission Standards				
Article 1 Visible Emissions and Fugitive Dust/Emissions [Rule 5–1]				
5–50–60	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and **Federal Register** cite]	120–05–0101.
5–50–70	Definitions	4/17/95	[Insert publication date and **Federal Register** cite]	120–05–0102.
5–50–80	Standard for Visible Emissions	4/17/95	[Insert publication date and **Federal Register** cite]	120–05–0103.
5–50–90	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and **Federal Register** cite]	120–05–0104.
5–50–100	Monitoring	4/17/95	[Insert publication date and **Federal Register** cite]	120–05–0105.
5–50–110	Test Methods and Procedures	4/17/95	[Insert publication date and **Federal Register** cite]	120–05–0106.
5–50–120	Waivers	4/17/95	[Insert publication date and **Federal Register** cite]	120–05–0107.
Article 4 Stationary Sources [Rule 5–4]				
5–50–240	Applicability and Designation of Affected Facility.	4/17/95	[Insert publication date and **Federal Register** cite]	120–05–0401.
5–50–250	Definitions	4/17/95	[Insert publication date and **Federal Register** cite]	120–05–0402.
5–50–260	Standard for Stationary Sources	4/17/95	[Insert publication date and **Federal Register** cite]	120–05–0403.
5–50–270	Standard for Major Stationary Sources (Nonattainment Areas).	4/17/95	[Insert publication date and **Federal Register** cite]	120–05–0404.
5–50–280	Standard for Major Stationary Sources (Prevention of significant Deterioration Areas).	4/17/95	[Insert publication date and **Federal Register** cite]	120–05–0405.
5–50–290	Standard for Visible Emissions	4/17/95	[Insert publication date and **Federal Register** cite]	120–05–0406.

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5–50–300	Standard for Fugitive Dust/Emissions.	4/17/95	[Insert publication date and Federal Register cite]	120–05–0407.
5–50–330	Compliance	4/17/95	[Insert publication date and Federal Register cite]	120–05–0410.
5–50–340	Test Methods and Procedures	4/17/95	[Insert publication date and Federal Register cite]	120–05–0411
5–50–350	Monitoring	4/17/95	[Insert publication date and Federal Register cite]	120–05–0412
5–50–360	Notification, Records and Reporting.	4/17/95	[Insert publication date and Federal Register cite]	120–05–0413
5–50–370	Registration	4/17/95	[Insert publication date and Federal Register cite]	120–05–0414
5–50–380	Facility and Control Equipment Maintenance or Malfunction.	4/17/95	[Insert publication date and Federal Register cite]	120–05–0415.
5–50–390	Permits	4/17/95	[Insert publication date and Federal Register cite]	120–05–0416.
	Chapter 70 Air Pollution Episode Prevention [Part VII]			
5–70–10	Applicability	4/17/95	[Insert publication date and Federal Register cite]	120–07–01.
5–70–20	Definitions	4/17/95	[Insert publication date and Federal Register cite]	120–07–02.
5–70–30	General	4/17/95	[Insert publication date and Federal Register cite]	120–07–03..
5–70–40	Episode Determination	4/17/95	[Insert publication date and Federal Register cite]	120–07–04.
5–70–50	Standby Emission Reduction Plans.	4/17/95	[Insert publication date and Federal Register cite]	120–07–05.
5–70–60	Control Requirements	4/17/95	[Insert publication date and Federal Register cite]	120–07–06.
5–70–70	Local Air Pollution Control Agency Participation.	4/17/95	[Insert publication date and Federal Register cite]	120–07–07.
	Chapter 80 Permits for Stationary Sources [Part VIII]			
5–80–10/Article 6	New and Modified Stationary Sources.	4/17/95	[Insert publication date and Federal Register cite]	120–08–01
10A	Applicability	4/17/95	Insert publication date and Federal Register cite]	01A.
10B	Definitions	4/17/95	Insert publication date and Federal Register cite]	01B.
10C. (Exc.C.1.b	General	4/17/95	Insert publication date and Federal Register cite]	01C. (Exec.C.1.b.
10D	Applications	4/17/95	Insert publication date and Federal Register cite]	01D.
10E	Information required	4/17/95	Insert publication date and Federal Register cite]	01E.
10F	Action on permit application	4/17/95	Insert publication date and Federal Register cite]	01F.
10G	Public participation	4/17/95	Insert publication date and Federal Register cite]	01G.; Exceptions: 10.G.1 and .01G.4.b.
VR120–08–01C.1.a; .01C.4.b through .d.	Public Participation public recodified hearing requirements for major modifications.	4/31/81; recodified 2/1/85	5/4/82 47 FR 19134; recodified 2/25/93, 58 FR 11373	See § 52.2423(o).
10H.2. and 10H.3	Standards for granting permits	4/17/95	Insert publication date and Federal Register cite]	01H.2. and 01H.3.
10I.1. and 10I.3	Application review and analysis	4/17/95	Insert publication date and Federal Register cite]	01I.1. and 01I.3.
10J	Compliance determination and verification by performance testing.	4/17/95	Insert publication date and Federal Register cite]	01J.
10K	Permit invalidation, revocation and enforcement.	4/17/95	Insert publication date and Federal Register cite]	01K.
10L	Existence of permit no defense	4/17/95	Insert publication date and Federal Register cite]	01L.
10M	Compliance with local zoning requirements.	4/17/95	Insert publication date and Federal Register cite]	01M.
10N	Reactivation and permanent shutdown.	4/17/95	Insert publication date and Federal Register cite]	N.

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State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
10O	Transfer of permits	4/17/95	Insert publication date and Federal Register cite]	O.
10P	Circumvention	4/17/95	Insert publication date and Federal Register cite]	P.
5–80–11	Stationary source permit exemption levels.	7/1/97	Insert publication date and Federal Register cite]	Appendix R.
5–80–40	Permits-operating (all sections)	4/17/95	Insert publication date and Federal Register cite]	120–08–04 (§ 52.2465(c)(94).
Article 8	*Permits-Major Stationary Sources and Major Modifications Located in Prevention of Significant Deterioration Areas*			
5–80–1700	Applicability	1/1/97	3/23/98 63 FR 13795	
5–80–1710	Definitions	1/1/97	3/23/98 63 FR 13795	
5–80–1720	General	1/1/97	3/23/98 63 FR 13795	
5–80–1730	Ambient Air Increments	1/1/97	3/23/98 63 FR 13795	
5–80–1740	Ambient Air Ceilings	1/1/97	3/23/98 63 FR 13795	
5–80–1750	Applications	1/1/97	3/23/98 63 FR 13795	
5–80–1760	Compliance with Local Zoning Requirements.	1/1/97	3/23/98 63 FR 13795	
5–80–1770	Compliance Determination and Verification by Performance Testing.	1/1/97	3/23/98 63 FR 13795	
5–80–1780	Stack Heights	1/1/97	3/23/98 63 FR 13795	
5–80–1790	Review of Major Stationary Sources and Major Modifications—Source Applicability and Exemptions.	1/1/97	3/23/98 63 FR 13795	
5–80–1800	Control Technology Review	1/1/97	3/23/98 63 FR 13795	
5–80–1810	Source Impact Analysis	1/1/97	3/23/98 63 FR 13795	
5–80–1820	Air Quality Models	1/1/97	3/23/98 63 FR 13795	
5–80–1830	Air Quality Analysis	1/1/97	3/23/98 63 FR 13795	
5–80–1840	Source Information	1/1/97	3/23/98 63 FR 13795	
5–80–1850	Additional Impact Analysis	1/1/97	3/23/98 63 FR 13795	
5–80–1860	Sources Impacting Federal Class I Areas—Additional Requirements.	1/1/97	3/23/98 63 FR 13795	
5–80–1870	Public Participation	1/1/97	3/23/98 63 FR 13795	
5–80–1880	Source Obligation	1/1/97	3/23/98 63 FR 13795	
5–80–1890	Environmental Impact Statements	1/1/97	3/23/98 63 FR 13795	
5–80–1900	Disputed Permits	1/1/97	3/23/98 63 FR 13795	
5–80–1910	Interstate Pollution Abatement	1/1/97	3/23/98 63 FR 13795	
5–80–1920	Innovative Control Technology	1/1/97	3/23/98 63 FR 13795	
5–80–1930	Reactivation and Permanent Shutdown.	1/1/97	3/23/98 63 FR 13795	
5–80–1940	Transfer of Permits	1/1/97	3/23/98 63 FR 13795	
5–80–1950	Permitt Invalidation, Revocation, and Enforcement.	1/1/97	3/23/98 63 FR 13795	
5–80–1960	Circumvention	1/1/97	3/23/98 63 FR 13795	

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5–80–1970	Review and Confirmation of this Chapter by Board.	1/1/97	3/23/98 63 FR 13795	
Article 9 Permits—Major Stationary Sources and Major Modifications Located in Nonattainment Areas 120–08–03.				
5–80–2000	Applicability	1/1/93 4/1/99	[Insert publication date and **Federal Register** cite]	03A. (9/21/99, 64 FR 51047).
5–80–2010	Definitions	1/1/93 4/1/99	[Insert publication date and **Federal Register** cite]	.03B (9/21/99, 64 FR 51047).
5–80–2020	General	1/1/93 4/1/99	[Insert publication date and **Federal Register** cite]	.03C (9/21/99, 64 FR 51047).
5–80–2030	Applications	1/1/93 4/1/99		.03D (9/21/99, 64 FR 51047).
5–80–2040	Information required	1/1/93 4/1/99	[Insert publication date and **Federal Registercite**]	.03E (9/21/99, 64 FR 51047).
5–80–2050	Standards/conditions for granting permits.	1/1/93 4/1/99	[Insert publications date and **Federal Register** cite]	.03F (9/21/99, 64 FR 51047).
5–80–2060	Action on permit application	1/1/93 4/1/99	[Insert publication date and **Federal Register** cite]	.03G (9/21/99, 64 FR 51047).
5–80–2070	Public Participation	1/1/83 4/1/99	[Insert publication date and **Federal Register** cite]	.03H (9/21/99, 64 FR 51047).
5–80–2080	Compliance determination and verification by performance testing.	1/1/93 4/1/99	[Insert publication date and **Federal Register** cite]	.03I. (9/21/99, 64 FR 51047).
5–80–2090	Application review and analysis	1/1/93 4/1/99	[Insert publication date and **Federal Register** cite]	.03J (9/21/99, 64 FR 51047).
5–80–2100	Circumvention	1/1/93 4/1/99	[Insert publication date and **Federal Register** cite]	.03K (9/21/99, 64 FR 51047).
5–80–2110	Interstate pollution abatement	1/1/93 4/1/99	[Insert publication date and **Federal Register** cite]	.03L (9/21/99, 64 FR 51047).
5–80–2120	Offsets	1/1/93 4/1/99	[Insert publication date and **Federal Register** cite]	.03M (9/21/99), 64 FR 51047).
5–80–2130	De minimis increases and stationary source modification alternatives for ozone nonattainment areas classified as serious or severe in 9 VAC 5–20–204.	1/1/93 4/1/99	[Insert publication date and **Federal Register** cite]	.03N (9/21/99, 64 FR 51047).
5–80–2140	Exception	1/1/93 4/1/99	[Insert publication date and **Federal Register** cite]	.03O (9/21/99, 64 FR 51047).
5–80–2150	Compliance with local zoning requirements.	1/1/93 4/1/99	[Insert publication date and **Federal Registercite**]	.03P (9/21/99, 64 FR 51047).
5–80–2160	Reactivation and Permit Shutdown	1/1/93 4/1/99	[Insert publication date and **Federal Register** cite]	.03Q (9/21/99, 64 FR 51047).
5–80–2170	Transfer of Permits	1/1/93 4/1/99	[Insert publication date and **Federal Register** cite]	.03R (9/21/99, 64 FR 51047).
5–80–2180	Revocation of permit	1/1/93 4/1/99	[Insert publication date and **Federal Register** cite]	.03S (9/21/99, 64 FR 51047).
5–80–2190	Existence of permit no defense	1/1/93 4/1/99	[Insert publication date and **Federal Register** cite]	.03T (9/21/99, 64 FR 51047).
Chapter 91 Regulations for the Control of Motor Vehicle Emissions in the Northern Virginia Area				
Part I Definitions				
5–91–10	General	1/24/97	9/1/99 64 FR 47670	
5–91–20	Terms Defined	1/1/98	9/1/99 64 FR 47670	Exception—"Northern Virginia program area" does not include Fauquier County.
Part II General Provisions				
5–91–30	Applicability and authority of the department.	1/24/97	9/1/99 64 FR 47670	

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5–91–50	Documents Incorporated by Reference.	1/24/97	9/1/99 64 FR 47670	
5–91–60	Hearings and Proceedings	1/24/97	9/1/99 64 FR 47670	
5–91–70	Appeal of Case Decisions	1/24/97	9/1/99 64 FR 47670	
5–91–80	Variances	1/24/97	9/1/99 64 FR 47670	
5–91–90	Right of entry	1/24/97	9/1/99 64 FR 47670	
5–91–100	Conditions on approvals	1/24/97	9/1/99 64 FR 47670	
5–91–110	Procedural information and guidance.	1/24/97	9/1/99 64 FR 47670	
5–91–120	Export and import of motor vehicles.	1/24/97	9/1/99 64 FR 47670	
5–91–130	Relationship of state regulations to federal regulations.	1/24/97	9/1/99 64 FR 47670	
5–91–140	Delegation of authority	1/24/97	9/1/99 64 FR 47670	
5–9–150	Availability of information	1/24/97	9/1/99 64 FR 47670	
Part III Emission Standards for Motor Vehicle Air Pollution				
5–91–160	Exhaust emission standards for two-speed idle testing in enhanced emissions inspection programs.	1/24/97	9/1/99 64 FR 47670	
5–91–170	Exhaust emission standards for ASM testing in enhanced emissions inspection programs.	1/24/97	9/1/99 64 FR 47670	
5–91–180	Exhaust emission standards for on-road testing through remote sensing.	1/24/97	9/1/99 64 FR 47670	
5–91–190	Emissions control systems standards.	1/24/97	9/1/99 64 FR 47670	
5–91–200	Evaporative emissions standards	1/24/97	9/1/99 64 FR 47670	
5–91–210	Visible emissions standards	1/24/97	9/1/99 64 FR 47670	
Part IV Permitting and Operation of Emissions Inspection Stations				
5–91–220	General provisions	1/24/97	9/1/99 64 FR 47670	
5–91–230	Applications	1/24/97	9/1/99 64 FR 47670	
5–91–240	Standards and conditions for permits.	1/24/97	9/1/99 64 FR 47670	
5–91–250	Action on permit application	1/24/97	9/1/99 64 FR 47670	
5–91–260	Emissions inspection station permits, categories.	1/24/97	9/1/99 64 FR 47670	
5–91–270	Permit renewals	1/24/97	9/1/99 64 FR 47670	
5–91–280	Permit revocation, surrender of materials.	1/24/97	9/1/99 64 FR 47670	
5–91–290	Emission inspection station operations.	1/24/97	9/1/99 64 FR 47670	
5–91–300	Emissions inspection station records.	1/24/97	9/1/99 64 FR 47670	
5–91–310	Sign and permit posting	1/24/97	9/1/99 64 FR 47670	
5–91–320	Equipment and facility requirements.	1/24/97	9/1/99 64 FR 47670	
5–91–330	Analyzer system operation	1/24/97	9/1/99 64 FR 47670	
5–91–340	Motor vehicle inspection report; certificate of emission inspection.	1/24/97	9/1/99 64 FR 47670	

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5–91–350	Data media	1/24/97	9/1/99 64 FR 47670	
5–91–360	Inspection number and access code usage.	1/24/97	9/1/99 64 FR 47670	
5–91–370	Fleet emissions inspection stations; mobile fleet emissions inspection stations.	1/24/97	9/1/99 64 FR 47670	
	Part V Emissions Inspector Testing and Licensing			
5–91–380	Emissions inspector licenses and renewals.	1/24/97	9/1/99 64 FR 47670	
5–91–390	Qualification requirements for emissions inspector licenses.	1/24/97	9/1/99 64 FR 47670	
5–91–400	Conduct of emissions inspectors	1/24/97	9/1/99 64 FR 47670	
	Part VI Inspection Procedures			
5–91–410	General	1/24/97	9/1/99 64 FR 47670	
5–91–420	Inspection procedure; rejection, pass, fail, waiver.	1/24/97	9/1/99 64 FR 47670	
5–91–430	ASM test procedure	1/24/97	9/1/99 64 FR 47670	
5–91–440	Two-speed idle test procedure	1/24/97	9/1/99 64 FR 47670	
4–91–450	Fuel test evaporative pressure test and gas cap pressure test procedure.	1/24/97	9/1/99 64 FR 47670	
4–91–460	Fuel system evaporative purge test procedure.	1/24/97	9/1/99 64 FR 47670	
5–91–470	Short test standards for warranty eligibility.	1/24/97	9/1/99 64 FR 47670	
5–91–480	Emissions related repairs	1/24/97	9/1/99 64 FR 47670	
5–91–490	Engine and fuel changes	1/24/97	9/1/99 64 FR 47670	
	Part VII Vehicle Emissions Repair Facility Certification			
5–91–500	Applicability and Authority	1/24/97	9/1/99 64 FR 47670	
5–91–510	Certification Qualifications	1/24/97	9/1/99 64 FR 47670	
5–91–520	Expiration, reinstatement, renewal, and requalification.	1/24/97	9/1/99 64 FR 47670	
5–91–530	Emissions repair facility operations	1/24/97	9/1/99 64 FR 47670	
5–91–540	Sign Posting	1/24/97	9/1/99 64 FR 47670	
	Part VIII Emissions Repair Technician Certification and Responsibilities			
5–91–550	Applicability and authority	1/24/97	9/1/99 64 FR 47670	
5–91–560	Certification qualifications for emissions repair technicians.	1/24/97	9/1/99 64 FR 47670	
5–91–570	Expiration, reinstatement, renewal and requalification.	1/24/97	9/1/99 64 FR 47670	
5–91–580	Certified emissions repair technician responsibilities.	1/24/97	9/1/99 64 FR 47670	

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Part IX Enforcement Procedures				
5–91–590	Enforcement of regulations, permits, licenses, certifications and orders.	4/2/97	9/1/99 64 FR 47670	
5–91–600	General enforcement process	4/2/97	9/1/99 64 FR 47670	
5–91–600	General enforcement process	4/2/97	9/1/99 64 FR 47670	
5–91–610	Consent orders and penalties for violations.	4/2/97	9/1/99 64 FR 47670	
5–91–620	Major violations	4/2/97	9/1/99 64 FR 47670	
5–91–630	Minor violations	4/2/97	9/1/99 64 FR 47670	
Part X Analyzer System Certification and Specifications for Enhanced Emissions Inspections Programs				
5–91–640	Applicability	1/24/97	9/1/99 64 FR 47670	
5–91–650	Design goals	1/24/97	9/1/99 64 FR 47670	
5–91–660	Warranty; service contract	1/24/97	9/1/99 64 FR 47670	
5–91–670	Owner provides services	1/24/97	9/1/99 64 FR 47670	
5–91–680	Certification of analyzer systems	1/24/97	9/1/99 64 FR 47670	
5–91–690	Span gases; gases for calibration purposes.	1/24/97	9/1/99 64 FR 47670	
5–91–700	Calibration of exhaust gas analyzers.	1/24/97	9/1/99 64 FR 47670	
5–91–710	Upgrade of analyzer system	1/24/97	9/1/99 64 FR 47670	
Part XI Manufacturer Recall				
5–91–720	Vehicle manufacturer recall	1/24/97	9/1/99 64 FR 47670	
5–91–730	Exemptions; temporary extensions	1/24/97	9/1/99 64 FR 47670	
Part XII On-Road Testing				
5–91–740	General Requirements	1/24/97	9/1/99 64 FR 47670	
5–91–750	Operating Procedures; violation of standards.	1/24/97	9/1/99 64 FR 47670	
5–91–760	Schedule of civil charges	1/24/97	9/1/99 64 FR 47670	
Part XIII Federal Facilities				
5–91–770	General requirements	1/24/97	9/1/99 64 FR 47670	
5–91–780	Proof of compliance	1/24/97	9/1/99 64 FR 47670	
Part XIV ASM Exhaust Emission Standards				
5–91–790	ASM start-up standards	1/24/97	9/1/99 64 FR 47670	
5–91–800	ASM final standards	1/24/97	9/1/99 64 FR 47670	

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Chapter 160 General Conformity Rules 1/24/97				
Part I General Definitions				
5–160–10	General	1/24/97	10/21/97 62 FR 54585	
5–160–20	Terms Defined	1/24/97	10/21/97 62 FR 54585	
Part II General Provisions				
5–160–30	Applicability.	1/1/97	10/21/97 62 FR 54585	
5–160–40	Authority of Board and department	1/1/97	10/21/97 62 FR 54585	
5–160–50	Establishment of regulations and orders.	1/2/97	10/21/97 62 FR 54585	
5–160–60	Enforcement of regulations and order.	1/1/97	10/21/97 62 FR 54585	
5–160–70	Hearings and proceedings	1/1/97	10/21/97 62 FR 54585	
5–160–80	Relationship of state regulations to federal regulations.	1//97	10/21/97 62 FR 54585	
5–160–90	Appeals	1/1/97	10/21/97 62 FR 54585	
5–160–100	Availability of information	1/1/97	10/21/97 62 FR 54585	
Part III Criteria and Procedures for Making Conformity Determinations				
5–160–110	General	1/1/97	10/21/97 62 FR 54585	§ 52.2465(c)(118).
5–160–120	Conformity analysis	1/1/97	10/21/97 62 FR 54585	
5–160–130	Reporting requirements	1/1/97	10/21/97 62 FR 54585	
5–160–140	Public participation	1/1/97	10/21/97 62 FR 54585	
5–160–150	Frequency of conformity determinations.	1/1/97	10/21/97 62 FR 54585	
5–160–160	Criteria for determining conformity	1/1/97	10/21/97 62 FR 54585	
5–160–170	Procedures for conformity determinations.	1/1/97	10/21/97 62 FR 54585	
5–160–180	Mitigation of air quality impacts	1/1/97	10/21/97 62 FR 54585	
5–160–190	Savings provision	1/1/97	10/21/97 62 FR 54585	
5–160–200	Review and confirmation of this chapter by board.	1/1/97	10/21/97 62 FR 54585	
Chapter 200 National Low Emission Vehicle Program				
5–200–10	Definitions	4/14/99	12/28/99 64 FR 72564	SIP Effective Date: 2/28/00.
5–200–20	Participation in national LEV	4/14/99	12/28/99 64 FR 72564	SIP Effective Date: 2/28/00.
5–200–30	Transition from national LEV requirements to a Virginia Sec. 177 program.	4/14/99	12/28/99 64 FR 72564	SIP Effective Date: 2/28/00.
2 VAC 5—Chapter 480 Regulation Governing the Oxygenation of Gasoline				
5–480–20	Applicability	11/1/96	2/17/00 65 FR	SIP Effetive Date: 4/3/00.

(d) EPA approved State Source-Specific Requirements.

EPA-APPROVED VIRGINIA SOURCE-SPECIFIC REQUIREMENTS

Source name	Permit/order or registration number	State effective date	EPA approval date	40 CFR part 52 citation
Norfolk Naval Base-Exchange Service Station	[NONE]	8/6/79	8/17/81 46 FR 41499	52.2465(c)(41).
Reynolds Metal Co.—Rolling Mill	DSE–597–87	9/30/87	8/20/90 55 FR 33904	52.2465(c)(92).
Aqualon (Hercules) Company	50363	9/26/90	11/1/91 56 FR 56159	52.2465(c)(93).
Nabisco Brands, Inc	DTE–179–91	4/24/91	3/6/92 57 FR 8080	52.2465(c)(95).
Burlington Industries	30401	11/19/91	3/18/92 57 FR 9388	52.2465(c)(96).
Reynolds Metals Co.—Bellwood	DSE–413A–86	10/31/86	6/13/96 61 FR 29963	52.2465(c)(110).
Reynolds Metals Co.—South	DSE–412A–86			
Philip Morris, Inc.—Bended Leaf Facility	50080	2/27/86	10/14/97 62 FR 53277	52.2465(c)(120).
Philip Morris, Inc.—Park 500 Facility	50722	3/26/97		
Philip Morris, Inc.—Richmond Manufacturing Center	50076	7/13/96		
Virginia Electric and Power Co.—Innsbrook Technical Center.	50396	5/30/96		
Hercules, Inc.—Aqualon Division	V–0163–96	7/12/96		
City of Hopewell—Regional Wastewater Treatment Facility.	50735	5/30/96		
Allied Signal, Inc.—Hopewell Plant	50232	3/26/97	10/14/97 62 FR 53277	52.2465(c)(121).
Allied Signal, Inc.—Chesterfield Plant	V–0114–96	5/20/96		
Bear Island Paper Co. L.P	V–135–96	7/12/96		
Stone Container Corp.—Hopewell Mill	50370	5/30/96		
E.I. duPont de Nemours and Co.—Spruance Plant	V–0117–96	5/30/96	10/14/97 62 FR 53277	52.2465(c)(121).
ICI Americas Inc.—Films Division—Hopewell Site	50418	5/30/96		
Tuscarora, Inc	71814	6/5/96	1/22/99 64 FR 3425	52.2465(c)(128).

(e) [Reserved]

[FR Doc. 00–9535 Filed 4–20–00; 8:45 am]
BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 031–0174a; FRL–6580–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Lake County Air Quality Management District and San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the following: Lake County Air Quality Management District (LCAQMD) and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD). The rules control particulate matter (PM) emissions from open burning or processes identified by a weight rate throughput. This approval action will incorporate these rules into the federally-approved SIP. The intended effect of approving these rules is to regulate emissions of PM in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA). Thus, EPA is finalizing the approval of these rules into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for attainment and nonattainment areas.

DATES: This rule is effective on June 20, 2000 without further notice, unless EPA receives relevant adverse comments by May 22, 2000. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted in writing to Andrew Steckel at the Region IX office listed below. Copies of the rules and EPA's evaluation report for the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Lake County Air Quality Management District, 883 Lakeport Boulevard, Lakeport, CA 95453.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1135.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: LCAQMD

Section (Rule) 226.5, Fire Season-Burn Ban; LCAQMD Section (Rule) 431.5, (Non-Agricultural Burning); LCAQMD Section (Rule) 433, (Exemption-Residential); Lake County Section (Rule) 1150, Wildland Vegetation Management Burning; and SJVUAPCD Rule 4202, Particulate Matter-Emission Rate. These rules were submitted by the California Air Resources Board (CARB) to EPA on July 23, 1999, March 26, 1990, March 10, 1998, February 7, 1989, and September 28, 1994, respectively.

II. Background

On March 3, 1978, EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the provisions of the 1977 Clean Air Act, that included the San Joaquin Valley Air Basin (43 FR 8964; 40 CFR 81.305). On July 1, 1987 (52 FR 24672) EPA replaced the TSP standards with new PM standards applying only to PM up to 10 microns in diameter (PM–10).[1] On November 15, 1990, amendments to the 1977 CAA were enacted (Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671*q*). On the date of enactment of the 1990 CAA Amendments, PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the Act were designated nonattainment by operation of law and classified as moderate or serious pursuant to section 188(a). Lake County was not among the areas designated nonattainment. On February 8, 1993, EPA classified four nonattainment areas as serious nonattainment, including the San Joaquin Valley Planning Area, which now comprises the SJVUAPCD.

Section 189(a) of the CAA requires moderate and above PM–10 nonattainment areas to adopt reasonably available control measures (RACM), including reasonably available control technology (RACT) for stationary sources of PM–10. Section 189(b) of the CAA requires serious nonattainment areas to adopt best available control measures (BACM) for significant sources of PM–10, including best available control technology (BACT). Therefore, SJVUAPCD must at a minimum meet the requirements of RACM. SJVUAPCD must also adopt BACM. However, EPA is deferring decision on the specific BACM requirements until EPA acts on SJVUAPCD's BACM plan [2] at a later date and will evaluate the rule by the requirements of RACM.

In response to section 110(a) and part D of the Act, the State of California submitted many PM–10 rules for incorporation into the California SIP, including the rules being acted on in this document. This document addresses EPA's direct-final action for the following:

LCAQMD Sections (Rules) 226.5, 431.5, 433, and 1150 were adopted September 13, 1988, June 13, 1989, July 15, 1997, and December 6, 1988, respectively, submitted by the State of California for incorporation into the SIP on July 23, 1999, March 26, 1990, March 10, 1998, and February 7, 1989, respectively, and found to be complete pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V [3] on August 24, 1999, June 20, 1990, May 21, 1998, and May 5, 1989, respectively.

SJVUAPCD Rule 4202, Particulate Matter-Emission Rate, was adopted December 17, 1992, submitted by the State of California for incorporation into the SIP on September 28, 1994, and found to be complete on November 22, 1994.

PM emissions can harm human health and the environment. These rules were adopted as part of LCAQMD and SJVUAPCD efforts to maintain the National Ambient Air Quality Standard (NAAQS) for PM–10. The following is EPA's evaluation and final action for these rules.

III. EPA Evaluation and Action

In determining the approvability of a PM–10 rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). EPA must also ensure that rules are enforceable and strengthen or maintain the SIP's control strategy.

The statutory provisions relating to RACM/RACT and BACM/BACT are discussed in EPA's "General Preamble," which give the Agency's preliminary views on how EPA intends to act on SIPs submitted under Title I of the CAA. See 57 FR 13498 (April 16, 1992), 57 FR 18070 (April 28, 1992) and 59 FR 41998 (August 16, 1994). In this rulemaking action, EPA is applying these policies to this submittal, taking into consideration the specific factual issues presented.

EPA previously reviewed rules from LCAQMD and SJVUAPCD and incorporated them into the federally approved SIP pursuant to section 110(k)(3) of the CAA.

There is currently no version of LCAQMD Section (Rule) 226.5, Fire Season-Burn Ban, in the SIP. This is a new rule that strengthens the SIP by prohibiting open burning from June 1 through the end of the fire season.

On October 23, 1989, EPA approved into the SIP a version of LCAQMD Section (Rule) 431.5, (Non-Agricultural Burning). Submitted Section (Rule) 431.5 replaces the SIP-approved rule and includes the following significant change that strengthens the SIP:

- Extends the prohibition against non-agricultural open burning from June 1 to the end of the fire season to include No-Burn Days designated by the APCO or by the CARB.

On October 23, 1989, EPA approved into the SIP a version of LCAQMD Section (Rule) 433, (Non-Agricultural Burning). Submitted Section (Rule) 433 replaces the SIP-approved rule and includes the following significant change that strengthens the SIP:

- Adds a prohibition against using "burn barrels" for residential open burning.

There is currently no version of LCAQMD Section (Rule) 1150, Wildland Vegetation Management Burning, in the SIP. This is a new rule that strengthens the SIP by regulating wildland vegetation management burning, including requiring a burn plan for over 20 acres.

On various dates, EPA approved into the SIP versions of Particulate Matter-Emission Rate rules for the eight counties that now comprise the SJVUAPCD. Submitted Rule 4202, Particulate Matter-Emission Rate, replaces these rules and includes no significant changes from the SIP versions from the eight counties. EPA has determined that submitted Rule 4202 meets the requirements of RACM.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA

[1] On July 18, 1997 EPA promulgated revised and new standards for PM–10 and PM–2.5 (62 FR 38651). The U.S. Court of Appeals for the D.C. Circuit in *American Trucking Assoc., Inc., et al.* v. *USEPA*, No. 97–1440 (May 14, 1999) issued an opinion that, among other things, vacated the new standards for PM–10 that were published on July 18, 1997 and became effective September 16, 1997. However, the PM–10 standards promulgated on July 1, 1987 were not an issue in this litigation, and the Court's decision does not affect the applicability of those standards in this area. Codification of those standards continue to be recorded at 40 CFR 50.6. In the notice promulgating the new PM–10 standards, the EPA Administrator decided that the previous PM–10 standards that were promulgated on July 1, 1987, and provisions associated with them, would continue to apply in areas subject to the 1987 PM–10 standards until certain conditions specified in 40 CFR 50.6(d) are met. See 62 FR at 38701. EPA has not taken any action under 40 CFR 50.6(d) for this area. Today's proposed action relates only to the CAA requirements concerning the PM–10 standards as originally promulgated in 1987.

[2] The present submittal of the SJVUAPCD PM–10 Attainment Demonstration Plan, May 15, 1997, must be revised in order to be approved by EPA.

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

regulations, and EPA policy. Therefore, the following rules are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D:

- LCAQMD Section (Rule) 226.5, Fire Season-Burn Ban (submitted July 23, 1999).
- LCAQMD Section (Rule) 431.5, (Non-Agricultural Burning) (submitted March 26, 1990).
- LCAQMD Section (Rule) 433, (Exemption-Residential) (submitted March 10, 1998).
- LCAQMD Section (Rule) 1150, Wildland Vegetation Management Burning (submitted February 7, 1989).
- SJVUAPCD Rule 4202, Particulate Matter-Emission Rate (submitted September 28, 1994).

A more detailed evaluation can be found in EPA's evaluation reports for these rules.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective June 20, 2000 without further notice unless the Agency receives relevant adverse comments by May 22, 2000.

If the EPA receives such comments, then EPA will publish a timely withdrawal informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 20, 2000 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 20, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 30, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(177)(i)(F)(*2*), (c)(179)(i)(F)(*2*), (c)(199)(i)(D)(*7*), (c)(254)(i)(J)(*2*), and (c)(268)(i)(C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(177) * * *

(i) * * *

(F) * * *

(2) Section (Rule) 1150, adopted on December 6, 1988.

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(179) * * *

(i) * * *

(F) * * *

(2) Section (Rule) 431.5, adopted on June 13, 1989.

* * * * *

(199) * * *

(i) * * *

(D) * * *

(7) Rule 4202, adopted on December 17, 1992.

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(254) * * *

(i) * * *

(J) * * *

(2) Sections (Rules) 433, adopted on July 15, 1997.

* * * * *

(268) * * *

(i) * * *

(C) Lake County Air Quality Management District.

(1) Section (Rule) 226.5, adopted on September 13, 1988.

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[FR Doc. 00–9650 Filed 4–20–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SIP NOS. MT–001–0012; MT–001–0013; MT–001–0014; MT–001–0015 FRL–6582–4]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Emergency Episode Plan, Columbia Falls, Butte and Missoula Particulate Matter State Implementation Plans, Missoula Carbon Monoxide State Implementation Plan; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction.

SUMMARY: The EPA published in the **Federal Register** on December 6, 1999, a document that, among other things, approved updates to Montana's State Implementation Plan (SIP) relating to the Emergency Episode Plan; Columbia Falls, Butte and Missoula Particulate Matter [particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10)] SIPS; and the Missoula Carbon Monoxide (CO) Plan. In the December 6, 1999, rule, EPA inadvertently referenced an incorrect citation to Missouri's SIP in the Code of Federal Regulations. EPA is correcting the citation with this document.

EFFECTIVE DATE: This rule is effective on April 21, 2000.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, EPA, Region VIII, (303) 312–6437.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," or "our" are used we mean EPA.

Our December 6, 1999 (64 FR 68034) rulemaking indicated that on November 3, 1995 (60 FR 55792) we approved revisions to Montana's prevention of significant deterioration (PSD) regulations. With the November 3, 1995 document we inadvertently codified the revisions into 40 CFR 52.1320(c)(42) in lieu of CFR 52.1370(c)(42). Our December 6, 1999 document indicated that we were removing these revisions from 40 CFR 52.1320(c)(42) and adding them to 40 CFR 52.1370(c)(42). However, when we published the December 6, 1999 rule, we did not realize that on June 29, 1999 (64 FR 34717) 40 CFR 52.1320 had been redesignated as 40 CFR 52.1322. Therefore, our December 6, 1999 document should have removed 40 CFR 52.1322(c)(42) and not 40 CFR 52.1320(c)(42).

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

Administrative Requirements

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding,

including the reasons therefore, and established an effective date of April 21, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This correction to the identification of plan for Missouri is not a "major rule" as defined by 5 U.S.C. 804(2).

April 7, 2000.

Patricia D. Hull,

Acting Regional Administrator, Region VIII.

In rule FR Doc. 99–31536, published on December 6, 1999 (64 FR 68034), make the following corrections:

PART 52—[CORRECTED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri [Corrected]

2. On page 68038, in the third column, 3 lines from the top of the column, correct "§ 52.1320" to read "§ 52.1322".

3. On page 68038, in the third column, in amendatory instruction 2, correct "52.1320(c)(42)" to read "52.1322(c)(42)".

[FR Doc. 00–9926 Filed 4–20–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN99–1a; FRL–6573–7]

Approval and Promulgation of Implementation Plan; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to particulate matter (PM) emissions regulations for Dubois County, Indiana, which the Indiana Department of Environmental Management (IDEM) submitted to EPA on February 3, 1999, as amendments to its State Implementation Plan (SIP). The revisions include relaxation of some PM limits, elimination of limits for boilers which are no longer operating, updating facility names, and changing some boiler fuel types.

DATES: This rule is effective on June 20, 2000, unless EPA receives adverse written comments by May 22, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean EPA.

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I. What Is the EPA Approving?

We are approving revised PM rules for Dubois County, Indiana, which the Indiana Department of Environmental Management (IDEM) submitted to EPA on February 3, 1999. The revisions include relaxation of some PM limits, elimination of limits for boilers which are no longer operating, updating facility names, and changing some boiler fuel types. The submitted revisions are contained in Title 326 Indiana Administrative Code, Article 6, Rule 1, Section 9 (326 IAC 6–1–9).

II. What Are the Changes From Current Rules?

A. Sources Eliminated From the Rules

IDEM eliminated Indiana Cabinet, Dolly Madison Plant No. 3, Jasper Table, Hoosier Desk, Jasper Turning boilers No. 1 and No. 2, Jasper Novelty Furniture Plant No. 1, Jasper Novelty Furniture Plant No. 2, Jasper Novelty Furniture Plant No. 3 wood boiler, Jasper Cabinet coal and wood boiler, and Jasper Veneer boiler No. 3 from rule 326 IAC 6–1–9. These sources have shut down.

B. Source Name Revisions

Indiana Chair is changed to Indiana Dimension; Indiana Desk is changed to Indiana Furniture Industries; Huntingburg Wood Products is changed to Styline Industries, Plant #8; Jasper Laminates is changed to Jasper Laminates, Plant #1—Division of Kimball; Jasper Cabinets No. 2 is changed to Jasper Cabinets Corporation; Jasper Stylemasters 15th and Cherry is changed to Artec; Jasper Office Furniture is changed to Jasper Office Furniture Co., Inc., Plant #1; Jasper Turning is changed to Artec; Jasper Novelty Furniture Plt. No. 3 is changed to Jasper Furniture 30th St.; and Jasper Cabinet is changed to Jasper Corp.-Kimball International.

C. Fuel Usage and Heat Input Changes

The fuel for Jasper Laminates, Plant #1—Division of Kimball boiler No. 1 is changed from Wood-Oil-Waste Solvent to Wood-Wood Waste, and its heat input is changed from 23 MMBTU/hr to 20.5 MMBTU/hr. The fuel for Jasper Laminates, Plant #1—Division of Kimball boiler No. 2 is changed from Oil to Natural Gas, and its heat input is changed from 16 MMBTU/hr to 16.8 MMBTU/hr. The fuel for Jasper Cabinets Corporation's boiler is changed from Coal to Wood, and the heat input is changed from 3 MMBTU/hr to 5.3 MMBTU/hr. The heat input for Jasper Wood Products' Coal-Wood Boiler No. 1 is changed from 10 MMBTU/hr to 6 MMBTU/hr. The heat input for Jasper Wood Products' Coal-Wood Boiler No. 2 is changed from 10 MMBTU/hr to 6 MMBTU/hr. The heat input for Artec's Wood Chip Boiler is changed from 24 MMBTU/hr to 14 MMBTU/hr. The fuel for Jasper Chair's boiler is changed from Coal to Wood, and its heat input is changed from 6 MMBTU/hr to 18 MMBTU/hr.

D. Revised or Added Limits

The limits for Styline Industries, Plant #8 are changed from 2.8 tons/yr to 9.0 tons/yr, and from 0.340 lbs/MMBTU to 0.60 lbs/MMBTU. The limits for Forest

Wood Products No. 1 are changed from 2.1 tons/yr to 9.0 tons/yr, and from 0.140 lbs/MMBTU to 0.60 lbs/MMBTU. For Jasper Laminates, Plant #1—Division of Kimball, the short-term limit for boiler No. 1 was changed from 0.10 lbs/MMBTU to 0.60 lbs/MMBTU and the limits for boiler #2 were changed to add limits of 0.2 tons/yr and 0.01 grains/dscf in addition to the previously-existing limit of 0.003 lbs/MMBTU. For Jasper Cabinets Corporation, a new 6.7 MMBTU/hr Wood Boiler was added to the rule. This boiler has limits of 7.6 tons/yr and 0.60 lbs/MMBTU. The limits for Coal-Wood Boiler No. 1 at Jasper Wood Products were changed from 1.04 tons/yr to 9.0 tons/yr and from 0.060 lbs/MMBTU to 0.60 lbs/MMBTU. The limits for Coal-Wood Boiler No. 2 at Jasper Wood Products were changed from 3.1 tons/yr to 9.0 tons/yr and from 0.070 lbs/MMBTU to 0.60 lbs/MMBTU. Limits for Artec's Wood Chip Boiler were changed from 2.8 tons/yr to 12.0 tons/yr and from 0.060 lbs/MMBTU to 0.60 lbs/MMBTU.

III. Air Quality Modeling Analysis

The general criteria used by the EPA to evaluate such emissions trades, or "bubbles", under the Clean Air Act and applicable regulations are set out in the EPA's Emissions Trading Policy Statement (ETPS) (see 51 FR 43814). Emissions trades such as this, which result in an overall increase in allowable emissions, require a "Level III" modeling analysis under the ETPS to ensure that the National Ambient Air Quality Standards (NAAQS) will be protected. A Level III analysis is a full dispersion modeling analysis which must consider all sources affecting the trade's area of impact.

The submitted modeling analysis includes emissions from all sources with revised SIP limits, and uses a conservative background concentration to account for other, nearby sources.

In the submitted modeling analysis, which uses 5 years of meteorological data, a violation of the 24-hour NAAQS is indicated when six exceedances of the 24-hour standard are predicted. Each receptor's predicted 6th highest 24-hour value is, therefore, compared to the standard. The 24-hour PM standard is 150 micrograms per cubic meter ($\mu g/m^3$). Indiana's modeling indicated that the highest, sixth highest predicted 24-hour PM concentration at any receptor in the Dubois County area was 132.5 $\mu g/m^3$. Thus, the modeling analysis predicts that the 24-hour NAAQS will be protected.

A modeled violation of the annual PM standard is indicated when any receptor's 5 year arithmetic mean annual PM concentration exceeds the annual PM standard of 50 $\mu g/m^3$. Indiana's modeling analysis indicated that the highest arithmetic mean annual PM concentration predicted by the modeling for the Dubois County area was 33.6 $\mu g/m^3$. Therefore, the modeling analysis predicts that the annual PM NAAQS will be met.

IV. What Are the Environmental Effects of This Action?

As stated above, the air quality modeling analysis conducted by IDEM shows that the maximum daily and annual PM concentrations in Dubois County should stay below the NAAQS.

V. EPA Rulemaking Action

We are approving, through direct final rulemaking, revisions to particulate matter (PM) emissions regulations for Dubois County, Indiana. We are publishing this action without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the SIP revision should adverse written comments be filed. This action will be effective without further notice unless we receive relevant adverse written comment by May 22. 2000. Should we receive such comments, we will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, you are advised that this action will be effective on June 20, 2000.

VI. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the

various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 20, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 28, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

2. Section 52.770 is amended by adding paragraph (c)(132) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(132) On February 3, 1999, Indiana submitted revised particulate matter emissions regulations for Dubois County, Indiana. The submitted revision amends 326 IAC 6–1–9, and includes relaxation of some PM limits, the elimination of limits for boilers which are no longer operating, updated facility names, and changes to boiler fuel types.

(i) Incorporation by reference. Indiana Administrative Code Title 326: Air Pollution Control Board, Article 6: Particulate Rules, Rule 1: Nonattainment Area Limitations, Section 9: Dubois County. Added at 22 In. Reg. 423. Effective October 18, 1998.

[FR Doc. 00–9920 Filed 4–20–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Docket No. CT–055–7214a; FRL—6577–3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Connecticut; Plan for Controlling MWC Emissions From Existing MWC Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) approves the sections 111(d)/129 State Plan submitted by the Connecticut Department of Environmental Protection (CTDEP) on October 1, 1999. This State Plan implements and enforces provisions at least as protective as the Emissions Guidelines (EGs) applicable to existing Municipal Waste Combustors (MWCs) units with capacity to combust more than 250 tons/day of municipal solid waste (MSW).

DATES: This direct final rule is effective on June 20, 2000, without further notice unless EPA receives significant, material and adverse comment by May 22, 2000. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address your written comments to: Mr. John Courcier, Acting Manager, Air Permits Unit, Office of Ecosystem Protection, U.S. EPA—New England, Region 1, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114–2023.

Documents which EPA has incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. You may examine relevant copies of materials the DEP submitted to EPA during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency—New England, Region 1, Air Permits Unit, Office of Ecosystem Protection, Suite 1100, One Congress Street, Boston, Massachusetts 02114–2023.

Connecticut Department of Environmental Protection, Bureau of Air Management, Planning and Standards Division, 79 Elm Street, Hartford, Connecticut 06106–5127, (860) 424–3026.

FOR FURTHER INFORMATION CONTACT: John Courcier at (617) 918–1659.

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I. What Action Is EPA Taking Today?

EPA is approving the above referenced State Plan. EPA is publishing this approval action without a prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Plan should anyone file relevant adverse comments. If EPA receives no significant, material, and adverse comments by May 22, 2000, this action will be effective June 20, 2000.

If EPA receives significant, material, and adverse comments by the above date, we will withdraw this action before the effective date by publishing a subsequent document in the **Federal Register** that will withdraw this final action. EPA will address all public comments received in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. EPA will not begin a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If EPA receives no comments, this action will be effective June 20, 2000.

EPA's approval of CTDEP's State Plan is based on our findings that:

(1) CTDEP provided adequate public notice of public hearings for the proposed rule-making that allows Connecticut to carry out and enforce provisions that are at least as protective as the EGs for large MWCs, and

(2) CTDEP demonstrated its legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require record keeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

II. When Did These Requirements First Become Known?

Some form of the EGs was first published in the **Federal Register** in 1989. On December 19, 1995, according to sections 111 and 129 of the Clean Air Act (Act), the EPA published the current form of the EGs applicable to existing MWCs. The EGs are at 40 CFR part 60, subpart Cb. *See* 60 FR 65387 and the Background section.

III. When Does the State Plan Become Effective?

This direct final rule is effective on June 20, 2000, without further notice unless as explained under I. above, EPA receives adverse comment by May 22, 2000.

IV. What Happens to the Federal Plan After the Effective Date of the State Plan?

The Federal Plan is an interim action. On the effective date of this action, the Federal Plan will no longer apply to MWC units covered by the State Plan.

V. Who Must Comply With the Requirements?

The State Plan affects all MWCs:

1. With a combustion capacity greater than 250 tons per day of municipal solid waste (large MWC units), and

2. Which commenced construction on or before September 20, 1994 (existing MWC units).

CTDEP submitted its Plan after the Court of Appeals vacated 40 CFR part 60, subpart Cb as it applies to small MWC units. Thus, the Connecticut State Plan, as approved by EPA, covers only large, existing MWC units. Small and new units are not subject to the requirements of subpart Cb and not subject to this approval..

VI. By What Date Must MWCs in Connecticut Achieve Compliance?

All existing large MWC units in the state of Connecticut must comply with these emission standards by December 19, 2000.

VII. MWC Operators Must Control Which Pollutants?

Subpart Cb regulates the following pollutants: particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxin and dibenzofurans.

VIII. What Emission Controls Are Necessary To Achieve Compliance?

The basis for control of each pollutant is as follows:

a. for PM, opacity, Cd, Pb, and Hg	GCP and SD/ESP/CI, or GCP and SD/FF/CI;
b. for dioxin/furan	GCP and SD/ESP, or GCP and SD/FF;
c. for SO_2 and HCl	GCP and SD/ESP, or GCP and SD/FF;
d. for NO_X	SNCR.

GCP—good combustion practice
SD—spray dryer
ESP—electrostatic precipitator
FF—fabric filter
CI—carbon injection
SNCR—selective noncatalytic reduction

IX. What Happens if an MWC Does Not/Cannot Meet the Requirements by the Final Compliance Date?

Any existing large MWC unit that fails to meet the requirements by December 19, 2000 must shut down. The unit cannot start up until the owner/operator installs the controls necessary to meet the requirements.

X. What Did the State Submit as Part of Its State Plan?

The CTDEP submitted to EPA on October 1, 1999 the following sections 111(d)/129 State Plan components for carrying out and enforcing the EGs for existing MWCs in the State: Legal Authority; Emission Standards and Limitations; Compliance Schedule; MWC Emissions and MWC Plant/Unit Inventories; Procedures for Testing and Monitoring Sources of Air Pollutants; Source Surveillance, Compliance Assurance and Enforcement; Demonstration That the Public Had Adequate Notice and Opportunity to Submit Written Comments and Public Hearing Summary; and applicable State regulations (CTDEP regulations section 22a–174–38).

The State excluded from the State Plan the provision requiring compliance with a mercury emission limit of 0.028 mg/dscm, or 85% reduction by weight. Accordingly, only the limit of 0.080 mg/dscm, or 85% reduction by weight is included in the State Plan.

Also, as part of its MWC regulations, CT included a nitrogen oxides (NO_X) emissions trading program. Basically, the program allows MWCs that commenced construction before December 20, 1989, and therefore are not subject to the NSPS, to use NO_X credits to comply with the NO_X emission limits of subsection (c) of the regulation. The regulation allows MWCs constructed after December 20, 1989 to participate in the NO_X credit trading program. However, such sources may not use credits to meet the NO_X limits but may only generate credits if emissions are below the applicable limits and lower than the source's trading baseline.

The trading program regulations define the methodology and formulas for determining, on a daily basis, the quantity of credit that a unit generates or uses, including the recordkeeping and reporting requirements. The trading program regulations define the trading baseline as well as the credit quantification procedures. The program regulations also define violations and penalty provisions for MWC sources that do not meet the NO_X emission limits or fail to acquire sufficient credits to meet the limits on a daily basis.

XI. How Did the State Show That Its Plan is Approvable?

In section II of Connecticut's Plan, CTDEP states that the Connecticut General Assembly has granted the Commissioner of the CTDEP broad general authority to carry out his duties to protect the environment. In addition, this section documents the CTDEP's authority to: (1) Adopt emission standards and compliance schedules; (2) enforce applicable laws, regulations, standards and compliance schedules; (3) seek injunctive relief; (4) obtain information necessary to determine compliance; (5) require recordkeeping; (6) conduct inspections; (7) conduct compliance tests; (8) require the use of monitors; (9) require emission reports; and (10) make emissions data available to the public.

In Section III of the State Plan, CTDEP identifies a new regulation, Regulations of Connecticut State Agencies (R.S.C.A.) section 22a–174–38 for Municipal Waste Combustors (Appendix A of the Plan) and the part 70, Title V permit as the enforceable mechanisms. EPA is approving the standards and limitations under section 22a–174–38 for being at least as protective as the Federal requirements contained in subpart Cb for existing large MWC units.

In its State Plan and MWC regulations, CTDEP established a compliance schedule and legally enforceable increments of progress for each large MWC. EPA has reviewed and approved this portion of the State Plan for being at least as protective as Federal requirements for existing large MWC units.

In Section IV of the State Plan, CTDEP listed the five Designated Facilities that make up the MWC unit inventory for Connecticut. CTDEP also included a Table 2 in its Plan that contains the emissions data for Connecticut's MWCs. EPA reviewed and approved this portion of the Plan as meeting the Federal requirements for existing large MWC units. Although section 22a–174–38 regulates both existing MWCs and MWCs constructed after September 20, 1994, this action approves the State Plan only for the purpose of regulating existing large MWC units. The provisions of section 22a–174–38 which apply to new units (constructed after September 20, 1994) are not approved as part of the State Plan.

In Section V of the State Plan, CTDEP describes the emission limits and other requirements of R.S.C.A. Section 22a–174–38. EPA has determined that the applicable requirements of Section 22a–174–38 are at least as protective as the EGs.

In section V of the State Plan, CTDEP states that section 22a–174–38(m) requires MWC owners and operators to comply with any compliance schedules.

In section VII of the State Plan, CTDEP describes its legal authority to require owners and operators of designated facilities to maintain records and report to the State the nature and amount of emissions and any other information necessary to enable the State to judge the compliance status of the affected facilities. Section 22a–174–38 differs significantly from the EGs in that the State requires quarterly, rather than semiannual, reports of instances in which an MWC exceeds emission standards. CTDEP also cites its legal

authority to provide periodic inspection and testing and provisions for making reports of MWC emissions data, correlated with applicable emission standards, available to the public. EPA reviewed and approved these State requirements for being at least as protective as the Federal requirements for existing large MWC units.

In section VIII of the State Plan, CTDEP describes the record of the public hearing process. Appendix D of the State Plan contains the pertinent information. EPA reviewed and approved this portion of the Plan as meeting the minimum Federal public hearing requirements for a State Plan.

In section IX of the State Plan, CTDEP states it commitment to provide annual progress reports to EPA. The reports will include such things as the compliance status, enforcement actions, increments of progress, identification of sources that have ceased operation or started operation, contingency plan actions, any plan revisions, emission inventory information for sources that have started operation, updated emission inventory and compliance information, and copies of technical reports on all performance testing and monitoring, including concurrent process data.

XII. What is Connecticut's Nitrogen Oxides (NO_X) Emissions Trading Program?

As part of the MWC control program regulations, CT included a nitrogen oxides (NO_X emissions trading program. Basically, the program allows MWCs that commenced construction before December 20, 1989, and therefore are not subject to the NSPS, to use NO_X credits to comply with the NO_X emission limits of subsection (c) of the regulation. The regulation allows MWCs constructed after December 20, 1989 to participate in the NO_X credit trading program. However, such sources may not use credits to meet the NO_X limits but may only generate credits if emissions are below the applicable limits and lower than the source's trading baseline.

The trading program regulations define the methodology and formulas for determining, on a daily basis, the quantity of credit that a unit generates or uses, including the recordkeeping and reporting requirements. The trading program regulations define the trading baseline as well as the credit quantification procedures. The program regulations also define violations and penalty provisions for MWC sources that do not meet the NO_X emission limits or fail to acquire sufficient credits to meet the limits on a daily basis.

XIII. Is Connecticut's NO_X Emissions Trading Program Approvable?

In EPA's guidelines, EPA allowed states to include a NO_X emission credit trading program as part of the NO_X control portion of its MWC regulations. The guideline states that such NO_X emissions trading must be approved by EPA.

EPA has reviewed subsection (d) of section 22a–174–38. EPA finds CT's NO_X emissions trading program approvable as an emissions trading program for MWCs according to the EPA's EIP rules, 40 CFR part 51, subpart 51.490 through 51.493. The regulations under section 22a–174–38(d) adequately define the applicability of the program; the state program requirements, such as the program scope; source specific requirements, such as credit calculation procedures, emissions monitoring, recordkeeping, reporting, and compliance requirements; as well as the administrative requirements, schedule, and the enforcement and penalty mechanisms. Additionally, CTDEP currently conducts annual trading program audits which include an accounting of the credits created and used by MWCs. Furthermore, EPA finds that the emissions quantification protocols for credit creation and use under subsection (d)(4) are fully approvable as generic protocols for MWC units to create or use NO_X credits. In this way, upon approval of this regulation, NO_X credits created using the creation formula in that subsection will be considered federally enforceable for other purposes under CT regulations, *e.g.*, for compliance with NO_X RACT limits under section 22a–174–22.

XIV. When Did EPA Publish the Rules?

On December 19, 1995, according to sections 111 and 129 of the Clean Air Act (Act), EPA issued new source performance standards (NSPS) applicable to new MWCs and emissions guidelines (EGs) applicable to existing MWCs. The NSPS and EGs are codified at 40 CFR part 60, subparts Eb and Cb, respectively. *See* 60 FR 65387. Subparts Cb and Eb regulate the following: particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxin and dibenzofurans.

On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated subparts Cb and Eb as they apply to MWC units with capacity to combust less than or equal to 250 tons/day of MSW (small MWCs), consistent with its opinion in *Davis County Solid Waste Management and Recovery District* v. *EPA*, 101 F.3d 1395 (D.C. Cir. 1996), *as amended*, 108 F.3d 1454 (D.C. Cir. 1997). As a result, subparts Eb and Cb apply only to MWC units with individual capacity to combust more than 250 tons/day of municipal solid waste (large MWC units).

XV. Why Does EPA Need To Approve State Plans?

Under section 129 of the Act, EGs are not federally enforceable. Section 129(b)(2) of the Act requires states to submit State Plans to EPA for approval. Each state must show that its State Plan will carry out and enforce the EGs. State Plans must be at least as protective as the EGs, and they become federally enforceable upon EPA's approval.

The procedures for adopting and submitting State Plans are in 40 CFR part 60, subpart B. EPA originally issued the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules. *See* 60 FR 65414.

XVI. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds

necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Under section 129 of the Act, EPA is required to approve State Plans that meet the criteria of the statute. Furthermore, this final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks that EPA has reason to believe may have a disproportionate effect on children.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's action does not create any new requirements on any entity affected by this State Plan. Thus, the action will not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

State Plan approvals under section 111(d) and section 129(b)(2) of the Clean Air Act do not create any new requirements on any entity affected by this rule, including small entities. They simply approve requirements that the state is already imposing. Furthermore, in developing the MWC EGs and standards, EPA prepared a written statement pursuant to the Regulatory Flexibility Act which it published in the 1995 promulgation notice (*see* 60 FR 65413). In accordance with EPA's determination in issuing the 1995 MWC EGs, this State Plan does not include any new requirements that will have a significant economic impact on a substantial number of small entities. Therefore, because the Federal 111(d) Plan approval does not impose any new requirements and pursuant to section 605(b) of the Regulatory Flexibility Act, the Regional Administrator certifies that this rule will not have a significant impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted on by the rule.

In developing the MWC EGs and standards, EPA prepared a written statement pursuant to section 202 of the Unfunded Mandates Act which it published in the 1995 promulgation notice (*see* 60 FR 65405 to 65412). The EPA has determined that this State Plan does not include any new Federal mandates above those previously considered during promulgation of the 1995 MWC guidelines. In approving the State Plan, EPA is approving pre-existing requirements under State law and imposing no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from EPA's approval of State Plan provisions, nor will EPA's approval of the State Plan significantly or uniquely affect small governments. Thus, this action is not subject to the requirements of sections 202, 203, 204, and 205 of the Unfunded Mandates Act.

G. Submission to Congress and the General Accounting Office

Under 5 U.S.C. section 801(a)(1)(A), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. section 804(2).

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. 104–

113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

In approving or disapproving state plans under section 129 of the Clean Air Act, EPA does not have the authority to revise or rewrite the State's rule, so the Agency does not have authority to require the use of particular voluntary consensus standards. Accordingly, EPA has not sought to identify or require the State to use voluntary consensus standards. Furthermore, Connecticut's Plan incorporates by reference test methods and sampling procedures for existing MWC units already established by the emissions guidelines for MWCs at 40 CFR part 60, subpart Cb, and does not establish new technical standards for MWCs. Therefore, the requirements of the NTTAA are not applicable to this final rule.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 20, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2)). EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 62

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements, sulfur oxides.

Dated: March 31, 2000.

Mindy S. Lubber,

Regional Administrator, EPA New England.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart H—Connecticut

2. Part 62 is amended by adding a new § 62.1500 and a new undesignated center heading to subpart H to read as follows:

Plan for the Control of Designated Pollutants From Existing Facilities (Section 111(d) Plan)

§ 62.1500 Identification of Plan.

(a) Identification of Plan. Connecticut Plan for the Control of Designated Pollutants from Existing Plants (section 111(d) Plan).

(b) The plan was officially submitted as follows:

(1) Plan for Implementing the Municipal Waste Combustor Guidelines and New Source Performance Standards, submitted on October 1, 1999.

(c) Designated facilities. The plan applies to existing sources, constructed on or before September 20, 1994, in the following categories of sources:

(1) Existing municipal waste combustor units greater than 250 tons per day.

3. Part 62 is amended by adding a new § 62.1501 and a new undesignated center heading to subpart H to read as follows:

Metals, Acid Gases, Organic Compounds and Nitrogen Oxide Emissions From Existing Municipal Waste Combustor Units With the Capacity To Combust Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.1501 Identification of sources.

(a) The plan applies to the following existing municipal waste combustor facilities:

(1) Bridgeport RESCO in Bridgeport.

(2) Ogden Martin Systems of Bristol.

(3) Resource Recovery Systems of Mid-Connecticut in Hartford.

(4) Riley Energy Systems of Lisbon.

(5) American Ref-Fuel Company of Southeastern Connecticut in Preston.

(b) [Reserved]

[FR Doc. 00–9652 Filed 4–20–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Docket# ID–02–0001; FRL–6580–6]

Approval and Promulgation of Hospital/Medical/Infectious Waste Incinerators State Plan for Designated Facilities and Pollutants: Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the State of Idaho's section 111(d) State Plan for controlling emissions from existing Hospital/Medical/Infectious Waste Incinerators (HMIWI). The plan was submitted on December 16, 1999, to fulfill the requirements of sections 111(d) and 129 of the Clean Air Act. The State Plan adopts and implements the Emissions Guidelines applicable to existing HMIWIs, and establishes emission limits and controls for sources constructed on or before June 20, 1996. EPA has determined that Idaho's State Plan meets CAA requirements and hereby approves this State Plan, thus making it federally enforceable.

DATES: This action will be effective on June 20, 2000, without further notice, unless EPA receives relevant adverse comments by May 22, 2000. If EPA receives such comments, then it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that this rule will not take effect.

ADDRESSES: Written comments should be addressed to: Catherine Woo, US EPA, Region X, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of materials submitted to EPA may be examined during normal business hours at the following location: US EPA, Region X, Office of Air Quality, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Catherine Woo, US EPA, Region X, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1814.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever we, us or our is used, this refers to EPA. Information regarding this action is presented in the following order:

I. EPA Action
What action is EPA taking today?
Why is EPA taking this action?
Who is affected by Idaho's State Plan?
How does this approval affect sources located in Indian Country?

How does this approval relate to the Federal Plan?
II. Background
What is a State Plan?
What is a HMIWI State Plan?
Why are we requiring Idaho to submit a HMIWI State Plan?
What are the requirements for a HMIWI State Plan?
III. Idaho's State Plan
What is contained in the Idaho State Plan?
What approval criteria did we use to evaluate Idaho's State Plan?
IV. EPA Rulemaking Action
V. Administrative Requirements

I. EPA Action

What Action Is EPA Taking Today?

We are approving the State of Idaho's section 111(d) State Plan for controlling emissions from existing Hospital/Medical/Infectious Waste Incinerators (HMIWI). Idaho submitted its State Plan on December 16, 1999, to fulfill the requirements of sections 111(d) and 129 of the Clean Air Act (CAA). The State Plan adopts and implements the Emissions Guidelines (EG) applicable to existing HMIWIs, and establishes emission limits and controls for sources constructed on or before June 20, 1996. This approval, once effective, will make the Idaho HMIWI rules included in the plan federally enforceable.

Why Is EPA Taking This Action?

We have evaluated Idaho's HMIWI State Plan for consistency with the CAA, EPA guidelines and policy. We have determined that Idaho's State Plan meets all requirements, and, therefore, we are approving Idaho's plan to implement and enforce the standards applicable to existing HMIWI.

Who Is Affected by Idaho's State Plan?

Idaho's State Plan regulates all the sources designated by EPA's EG for existing HMIWIs which commenced construction on or before June 20, 1996. If your facility meets this criteria, then you are subject to these regulations.

How Does This Approval Affect Sources Located in Indian Country?

Idaho's State Plan does not cover facilities located in Indian Country. Therefore, any sources located in Indian Country will be subject to the Federal plan, once promulgated (see below).

How Does This Approval Relate to the Federal Plan?

The EPA plans to promulgate a Federal Plan which will cover sources located in Indian Country and sources for which there is no approved State Plan. Because there is no Federal Plan yet, existing HMIWI sources are not currently subject to any federal requirements. However, upon approval of Idaho's State Plan, HMIWI facilities within Idaho's jurisdiction will be subject to Idaho's State Plan as of the effective date of this action.

II. Background

What Is a State Plan?

Section 111 of the CAA, "Standards of Performance for New Stationary Sources," authorizes us to set air emissions standards for certain categories of sources. These standards are called New Source Performance Standards (NSPS). When a NSPS is promulgated for new sources, section 111(d) also requires that we publish an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop a State Plan to adopt the EG into the State's body of regulations. States must also include in their State Plan other elements, such as inventories, legal authority, and public participation documentation, to demonstrate their ability to enforce the State Plans.

What Is a HMIWI State Plan?

An HMIWI State Plan is a State Plan (as described above) that controls air pollutant emissions from existing incinerators which burn hospital waste or medical/infectious waste.

Why Are We Requiring Idaho To Submit a HMIWI State Plan?

When we developed NSPS for HMIWIs, we simultaneously developed the EG to control air emissions from existing HMIWIs (see 62 FR 48348–48391, September 15, 1997). Under section 129 of the CAA, the EG are not federally enforceable; therefore, section 129 of the CAA also requires states to submit to EPA for approval State Plans that implement and enforce the EG. These State Plans must be at least as protective as the EG, and they become federally enforceable upon approval by EPA. The procedures for adopting and submitting State Plans are located in 40 CFR part 60, subpart B. If a State fails to have an approvable plan in place by September 15, 1999, the EPA is required to promulgate a Federal plan to establish requirements for those sources not under an EPA-approved State Plan. Even though EPA has not yet promulgated such a plan, Idaho's State Plan is still approvable since it was deemed at least as protective as the standards set in the EG. Idaho has developed and submitted a State Plan, as required by section 111(d) of the CAA, to gain federal approval to implement and enforce the HMIWI EG.

What Are the Requirements for a HMIWI State Plan?

A section 111(d) State Plan submittal must meet the requirements of 40 CFR part 60, subpart B, sections 60.23 through 60.26, and 40 CFR part 60, subpart Ce. Subpart B contains the procedures for adoption and submittal of State Plans. This subpart addresses public participation, legal authority, emission standards and other emission limitations, compliance schedules, emission inventories, source surveillance, and compliance assurance and enforcement requirements. EPA promulgated the EG as 40 CFR part 60, subpart Ce on September 15, 1997. Subpart Ce contains the technical requirements for existing HMIWI sources and applies to sources that commenced construction on or before June 20, 1996. A State will generally address the HMIWI technical requirements by adopting by reference subpart Ce. The section 111(d) state plan is required to be submitted within one year of the EG promulgation date, i.e., by September 15, 1998. Prior to submittal to us, the State must make available to the public the State Plan and provide opportunity for public comment.

III. Idaho's State Plan

What Is Contained in the Idaho State Plan?

The State of Idaho submitted its section 111(d)/129 State Plan on December 16, 1999, for implementing EPA's EG for existing HMIWIs. Idaho adopted the EG requirements into IDAPA 16.01.01.862 (effective November 19, 1999) entitled, "Emission Guidelines for HMIWI That Commenced Construction Before June 20, 1996." Idaho's section 111(d) Plan contains:

(1) A demonstration of the State's legal authority to implement the section 111(d) State Plan;

(2) State Rules adopted into 16.01.01.862 as the mechanism for implementing and enforcing the State Plan;

(3) Emission inventories of all Idaho's applicable sources, which is approximately fifteen existing HMIWIs. In these inventories, all designated pollutants have been identified and data have been provided for each;

(4) Emission limits that are as protective as the EG;

(5) Enforceable compliance schedules whereby all sources must comply with all emission standards within one year from the effective date of the State Plan. The State Plan was effective December 16, 1999; therefore, final compliance will be December 16, 2000;

(6) Testing, monitoring, reporting and recordkeeping requirements for the designated facilities;

(7) Records for the public notice and hearing; and

(8) Provisions for Idaho's progress reports to EPA.

What Approval Criteria Did We Use To Evaluate Idaho's State Plan?

We reviewed Idaho's HMIWI State Plan for approval against the following criteria: 40 CFR part 60, subpart B, sections 60.23 through 60.26; and 40 CFR part 60, subpart Ce, sections 60.30(e) through 60.39(e). A detailed discussion of our evaluation of Idaho's State Plan is included in our technical support document located in the official file for this action and available from the EPA contact listed above. We have determined that Idaho's HMIWI State Plan meets all of the applicable approval criteria.

IV. EPA Rulemaking Action

We are approving, through direct final rulemaking action, Idaho's section 111(d) and 129 State Plan for HMIWIs. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the Idaho State Plan should relevant adverse comments be filed. This action will be effective on June 20, 2000, without further notice, unless EPA receives relevant adverse comments by May 22, 2000.

If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 20, 2000, and no further action will be taken on the proposed rule.

V. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action," and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing State Plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State Plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a State Plan submission, to use VCS in place of a State Plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 20, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 4, 2000.

Chuck Clarke,

Regional Administrator, Region 10.

40 CFR Part 62 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart N—Idaho

2. Subpart N is amended by adding § 62.3110 and an undesignated center heading to read as follows:

* * * * *

Metals, Acid Gases, Organic Compounds, Particulates and Nitrogen Oxide Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

§ 62.3110 Identification of plan.

(a) The Idaho Division of Environmental Quality submitted to the Environmental Protection Agency a State Plan for the control of air emissions from Hospital/Medical/Infectious Waste Incinerators on December 16, 1999.

(b) Identification of Sources: The Idaho State Plan applies to all existing HMIWI facilities for which construction was commenced on or before June 20, 1996, as described in 40 CFR part 60, subpart Ce. (This plan does not apply to facilities on tribal lands).

(c) The effective date for the portion of the plan applicable to existing Hospital/Medical/Infectious Waste Incinerators is June 20, 2000.

[FR Doc. 00–9648 Filed 4–20–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Docket No. OR–03–0001; FRL–6580–9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Oregon; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA publishes regulations under Sections 111(d) and 129 of the Clean Air Act (CAA) requiring states to submit plans to EPA. These plans show how states intend to control the emissions of the designated pollutants from designated facilities. Federal regulations provide that when no such designated facilities exist within a state's boundaries, the affected state may submit a letter of "negative declaration" instead of a control plan. On October 20, 1998, the State of Oregon submitted a negative declaration adequately certifying that there are no hospital/medical/infectious waste incinerators (HMIWI) located within its boundaries. On November 6, 1998, Oregon submitted a clarification to their negative declaration, indicating one of their sources to be a co-combustor, and the rest to be crematories, both categories which are considered exempt from this emission guideline (EG.) EPA is approving Oregon's negative declaration.

DATES: This action will be effective on June 20, 2000 without further notice, unless EPA receives relevant adverse comments by May 22, 2000. If EPA receives such comments, then it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that this rule will not take effect.

ADDRESSES: Written comments should be addressed to: Catherine Woo, US EPA, Region X, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of materials submitted to EPA may be examined during normal business hours at the following location: US EPA, Region X, Office of Air Quality, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Catherine Woo, US EPA, Region X, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1814.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever we, us or our is used, this refers to EPA. Information regarding this action is presented in the following order:

I. What Action is EPA Taking Today?
II. Why is Oregon Required to Submit a Negative Declaration?
III. When Did the Requirements for Existing HMIWIs First Become Known?
IV. When Did Oregon Submit Its Negative Declaration?
V. How Does This Approval Affect Sources Located in Indian Country?
VI. Administrative Requirements

I. What Action is EPA Taking Today?

We are approving the State of Oregon's negative declaration of air emissions from HMIWIs. This negative declaration fulfills the requirements of Sections 111(d) and 129 of the CAA for existing HMIWIs.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the Oregon negative declaration should relevant adverse comments be filed. This action will be effective on June 20, 2000 without further notice, unless EPA receives relevant adverse comments by May 22, 2000.

If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 20, 2000 and no further action will be taken on the proposed rule.

II. Why is Oregon Required to Submit a Negative Declaration?

Section 111 of the CAA, "Standards of Performance for New Stationary Sources," authorizes us to set air emissions standards for certain categories of sources. These standards are called New Source Performance Standards (NSPS). When a NSPS is promulgated for new sources, Section 111(d) also requires that we publish an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop a State Plan to adopt the EG into the State's body of regulations. If a State does not have a particular designated facility located within its boundaries, EPA requires that a negative declaration be submitted in lieu of a State Plan for that designated facility (see 40 CFR 62.06). Oregon does not have any designated facilities within its boundaries, so it is required to submit a negative declaration.

III. When Did the Requirements for Existing HMIWIs First Become Known?

On June 26, 1996 (see 61 FR 31736), EPA proposed HMIWIs as designated facilities. EPA specified particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans as designated pollutants by proposing Emission Guidelines (EG) for existing HMIWIs. These guidelines were published in final form as 40 CFR Part 60, Subpart Ce, on September 15, 1997 (see 62 FR 48348).

IV. When Did Oregon Submit Its Negative Declaration?

On October 20, 1998, the Oregon Department of Environmental Quality submitted a letter to us certifying that there are no existing HMIWIs subject to 40 CFR Part 60, Subpart Ce. On November 8, 1998, Oregon sent a clarifying letter to indicate exempt

sources within its jurisdiction. EPA is publishing this negative declaration today, as public notification of Oregon's exemption from submitting a State Plan, as required under 40 CFR Part 60, Subpart B. However, in the unlikely event that a designated source is discovered within the State of Oregon, this source will be subject to the requirements of a Federal Plan (to be promulgated.) If the State chooses to do so, it can submit a State Plan for any newly discovered designated sources as well. At the time of submittal, the State Plan will need to be at least as protective as those requirements promulgated by the EPA.

V. How Does This Approval Affect Sources Located in Indian Country?

Oregon's jurisdiction does not cover facilities located in Indian Country. Since this action is approving Oregon's declaration that there are no HMIWI facilities within its jurisdiction, this action does not affect Indian Country. However, if there are any sources located in Indian Country, they will be subject to the Federal plan, once promulgated. The EPA plans to promulgate a Federal Plan which will cover sources located in Indian Country and sources for which there is no approved State Plan (or no approved negative declaration). Because there is no Federal Plan yet, existing HMIWI sources in Indian Country are not currently subject to any federal requirements.

VI. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action," and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing State Plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State Plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a State Plan submission, to use VCS in place of a State Plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 20, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal Solid Waste Landfills, Non-methane organic compounds, Reporting and recordkeeping requirements.

Dated: April 4, 2000.

Chuck Clarke,

Regional Administrator, Region X.

40 CFR is amended as follows:

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart MM—Oregon

2. Section 62.9350 is amended by adding paragraphs (b)(6) and (c)(6) to read as follows:

§ 62.9350 Identification of plan.

* * * * *

(b) * * *

(6) Control of metals, acid gases, organic compounds, particulates and nitrogen oxide emissions from existing Hospital/Medical/Infectious Waste Incinerators was submitted by the Oregon Department of Environmental Quality on October 20, 1998, and November 6, 1998.

(c) * * *

(6) Existing Hospital/Medical/Infectious Waste Incinerators.

* * * * *

3. Section 62.9515 and an undesignated center heading are added to Subpart MM to read as follows:

Metals, Acid Gases, Organic Compounds, Particulates and Nitrogen Oxide Emissions From Existing Hospital/Medical/Infectious Waste Incinerators

§ 62.9515 Identification of Sources—Negative Declaration.

On October 20, 1998, and November 6, 1998, the Oregon Department of Environmental Quality submitted a letter certifying that there are no existing Hospital/Medical/Infectious Waste Incinerators in the State subject to the Emission Guidelines under part 60, subpart B, of this chapter.

[FR Doc. 00–10033 Filed 4–20–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6582–3]

National Emission Standards for Hazardous Air Pollutants for Source Categories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interpretative rule.

SUMMARY: This action clarifies that all stationary combustion turbines are subject to the provisions of Subpart B—Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections 112(g) and 112(j) (i.e., case-by-case maximum achievable control technology (MACT) determinations).

DATES: Effective April 21, 2000.

FOR FURTHER INFORMATION CONTACT: For further information, contact Mr. Sims Roy, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5263, facsimile:(919) 541–5450, electronic mail address: roy.sims@epa.gov.

SUPPLEMENTARY INFORMATION: *Regulated entities.* All new stationary combustion turbines, which meet the criteria for major sources, are the regulated entities addressed by this interpretative rule. However, this interpretative rule does not subject these entities to new or additional rule requirements; it merely resolves confusion which appears to exist in some cases over whether such sources are covered under 40 CFR part 63, Subpart B—Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections 112(g) and 112(j).

I. What Is the Background for This Interpretative Rule

Subpart B requires "case-by-case" determinations of MACT for major sources constructed after June 29, 1998. It appears that there is confusion regarding the applicability of subpart B to new stationary combustion turbines in some situations. This interpretative rule resolves this confusion by clarifying that all new stationary combustion turbines, regardless of configuration, end use, or location, are subject to subpart B, provided they also meet the definition of a major source.

Stationary combustion turbines were included on the list of source categories under section 112(c)(5) of the Clean Air Act (CAA) for the development of emission standards, thus, EPA is currently developing national emission standards for hazardous air pollutants (NESHAP) for this source category. Proposal of the NESHAP is anticipated in late 2000, with promulgation in early 2002.

Electric utility steam generating units, on the other hand, are excluded from subpart B and the development of emission standards under section 112, unless or until such time as they are added to the source category list under section 112(c)(5) of the CAA. Since, among other uses, stationary gas turbines may be used to generate electricity, confusion has arisen whether stationary combustion turbines used to generate electricity are considered "electric utility steam generating units."

An "electric utility steam generating unit" is defined in subpart B as follows:

> Electric utility steam generating unit means any fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that co-generates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electric output to any utility power distribution system for sale shall be considered an electric utility steam generating unit.

The phrase "steam generating unit" in the term "electric utility steam generating unit" is critical to understanding which types of combustion units are covered by this definition and which types are not. For example, this definition clearly covers a conventional fossil fuel fired steam generating unit (e.g., coal-fired boiler) which extracts heat from the combustion of fuel and generates steam for use in a steam turbine which, in turn, provides shaft power to spin an electric generator and generate electricity.

This definition does not cover a stationary combustion turbine which extracts shaft power from the combustion of fuel and spins an electric generator to generate electricity. The combustion turbine does not extract heat to generate steam; in fact, there is no steam generating unit at all in this example. Hence, the definition "electric utility steam generating unit" does not include stationary combustion turbines, and such turbines are subject to case-by-case MACT determinations.

The confusion surrounds combined cycle systems. A combined cycle system, consistent with the meaning of the word "combined," is a combination of a stationary combustion turbine and a waste heat recovery unit.

In a combined cycle system, a combustion turbine extracts shaft power from the combustion of fuel and spins an electric generator to generate electricity. The hot exhaust gases from the combustion turbine are then routed to a separate "waste heat recovery unit." The waste heat recovery unit extracts heat from the gases and generates steam for use in a steam turbine which, in turn, provides shaft power to spin an electric generator and generate electricity.

The combustion turbine in a combined cycle system does not extract heat to generate steam. It is not a "steam generating unit," and it is not an "electric utility steam generating unit." New combustion turbines in combined cycle systems, therefore, must undergo case-by-case MACT determinations.

The waste heat recovery unit in a combined cycle system, however, does generate steam. It is an electric utility steam generating unit. New waste heat recovery units in combined cycle systems, therefore, are excluded from subpart B (i.e., case-by-case MACT determination).

While new waste heat recovery units in combined cycle systems are excluded from case-by-case MACT, in many cases this is a moot point since they are not an emission source. The sole emission source, in the type of combined cycle system outlined above, is the combustion turbine. The emissions from the combustion turbine pass through the waste heat recovery unit, but the waste heat recovery unit is not a source of additional emissions.

There is another type of combined cycle system, however, in which the waste heat recovery unit does contribute additional emissions. In these types of combined cycle systems, fuel is burned in the duct, through the use of "duct

burners," just before the gases enter the waste heat recovery unit.

These duct burners are analogous to the burners in steam generating units (i.e., boilers). Their only purpose is to burn fuel to generate more heat for extraction by the waste heat recovery unit in order for it to generate more steam. As a result, duct burners (where they are used) are considered part of the waste heat recovery unit in a combined cycle system, just as the burners in a boiler are considered part of the boiler.

As outlined above, the waste heat recovery unit in a combined cycle system is an electric utility steam generating unit. Duct burners in these types of systems, therefore, are also excluded from subpart B (i.e., case-by-case MACT determination).

II. What Additional Information Is Available?

The EPA is developing NESHAP for combustion turbines. This effort has lead to a collection of information regarding the performance, as well as the costs, associated with the use of various technologies to reduce emissions of hazardous air pollutants (HAP) from stationary combustion turbines.

With this clarification that new stationary combustion turbines are subject to subpart B, EPA is making available two memoranda, "Hazardous Air Pollutant (HAP) Emission Control Technology for New Stationary Combustion Turbines" and "Oxidation Catalyst Costs for New Stationary Combustion Turbines," which compile and summarize the information collected by EPA. These memoranda may be of assistance and as a result, help to expedite the process of case-by-case MACT determinations. These memoranda may be obtained by contacting EPA as shown under **FOR FURTHER INFORMATION CONTACT** or downloaded directly by logging on to the following EPA website: http://www.epa.gov/ttn/uatw/combust/turbine.

III. What Are the Impacts Associated With This Interpretative Rule?

Subpart B applies to all new major stationary sources for which emission standards have not been developed except electric utility steam generating units. As a result, subpart B applies to new major source stationary combustion turbines.

This interpretative rule merely clarifies this point, it does not subject new stationary combustion turbines to any new or additional regulatory requirements. As a result, there are no impacts associated with this interpretative rule.

IV. Administrative Requirements

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for issuing today's interpretative rule without prior proposal and opportunity for comment because we are merely clarifying the applicability of Subpart B—Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections 112 (g) and 112 (j). Thus, notice and public procedure are unnecessary, and we find that this constitutes good cause under 5 U.S.C. 553(b)(B).

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget. Because we have made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This interpretative rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This interpretative rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This interpretative rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This interpretative rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

In issuing this interpretative rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the interpretative rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This interpretative rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the March 29, 1996 **Federal Register** document (61 FR 14029).

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the Congressional Review Act if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)).

As stated previously, we have made such a good cause finding, including the reasons therefor, and established an effective date of April 21, 2000.

The EPA will submit a report containing this interpretative rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the interpretative rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Air emissions control, Hazardous air pollutants, Combustion turbines.

Dated: April 13, 2000.

Robert Perciasepe,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 00–9925 Filed 4–20–00; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 301–51, 301–52, 301–54, 301–70, 301–71 and 301–76

[FTR Amendment 92]

RIN 3090–AH24

Federal Travel Regulation; Mandatory Use of the Travel Charge Card

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends Federal Travel Regulation (FTR) Amendment 90 published in the **Federal Register** on Wednesday, January 19, 2000 (65 FR 3054) concerning payment by the Government of expenses connected with official Government travel. This final rule further implements the requirements of Public Law 105–264.

DATES: This final rule is effective April 21, 2000, and applies to payment of expenses in connection with official Government travel performed on or after May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Jim Harte, Office of Governmentwide Policy, Travel and Transportation Management Policy Division, at (202) 501–1538.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to Public Law 105–264, subsection 2(a), the Administrator of General Services is required to issue regulations requiring Federal employees to use the travel charge card established pursuant to the United States Travel and Transportation Payment and Expense Control System, or any Federal contractor-issued travel charge card, for all payments of expenses of official Government travel. Additionally, Public Law 105–264 requires the Administrator of General Services to issue regulations on reimbursement of travel expenses and collection of delinquent amounts upon written request of a Federal contractor.

The General Services Administration (GSA), after an analysis of additional data, has:

(1) Determined that certain relocation expenses (excluding en route travel and househunting expenses) are not technically "travel" expenses and, therefore, are not covered under the provisions of the statute.

(2) Established the date of May 1, 2002, for agencies to reach a seven-calendar day limit for reviewing travel claims.

(3) Permitted an agency to either calculate late payment fees using the Prompt Payment Act Interest Rate or a flat amount based on an agency average of travel claims, but not less than the prompt payment amount.

(4) Deleted health insurance from consideration as disposable pay.

B. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

C. Executive Order 12866

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 301–51, 301–52, 301–54, 301–70, 301–71, and 301–76

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, 41 CFR Chapter 301 is amended as follows:

PART 301–51—PAYING TRAVEL EXPENSES

1. The authority citation for 41 CFR part 301–51 continues to read as follows:

Authority: 5 U.S.C. 5707. Subpart A is issued under the authority of Sec. 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701 note); 40 U.S.C. 486(c).

2. Section 301–51.2 is amended by adding paragraph (l) to read as follows:

§ 301–51.2 What official travel expenses and/or classes of employees are exempt from the mandatory use of the Government contractor-issued travel charge card?

* * * * *

(l) Relocation allowances prescribed in chapter 302 of this title, except en-route travel and househunting trip expenses.

PART 301–52—CLAIMING REIMBURSEMENT

3. The authority citation for 41 CFR part 301–52 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 486(c); Sec. 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701 note).

4. Sections 301–52.17 and 301–52.18 are revised to read as follows:

§ 301–52.17 Within how many calendar days after I submit a proper travel claim must my agency reimburse my allowable expenses?

Your agency must reimburse you within 30 calendar days after you submit a proper travel claim to your agency's designated approving office. Your agency must ensure that it uses a satisfactory recordkeeping system to track submission of travel claims. For example, travel claims submitted by mail, in accordance with your agency's policy, could be annotated with the time and date of receipt by your agency. Your agency could consider travel claims electronically submitted to the designated approving office as submitted on the date indicated on an e-mail log, or on the next business day if submitted after normal working hours. However, claims for the following relocation allowances are exempt from this provision:

(a) Transportation and storage of household goods and professional books, papers and equipment;

(b) Transportation of mobile home;

(c) Transportation of a privately owned vehicle;

(d) Temporary quarters subsistence expense, when not paid as lump sum;

(e) Residence transaction expenses;

(f) Relocation income tax allowance;

(g) Use of a relocation services company;

(h) Home marketing incentive payments; and

(i) Allowance for property management services.

§ 301–52.18 Within how many calendar days after I submit a travel claim must my agency notify me of any error that would prevent payment within 30 calendar days after submission?

Your agency must notify you as soon as practicable after you submit your travel claim of any error that would prevent payment within 30 calendar days after submission and must provide the reason(s) why your travel claim is not proper. However, not later than May 1, 2002, agencies must achieve a maximum time period of seven working days for notifying you that your travel claim is not proper.

5. Section 301–52.20 is revised to read as follows:

§ 301–52.20 How are late payment fees calculated?

Your agency must either:

(a) Calculate late payment fees using the prevailing Prompt Payment Act Interest Rate beginning on the 31st day after submission of a proper travel claim and ending on the date on which payment is made; or

(b) Reimburse you a flat fee of not less than the prompt payment amount, based on an agencywide average of travel claim payments; and

(c) In addition to the fee required by paragraphs (a) and (b) of this section, your agency must also pay you an amount equivalent to any late payment charge that the card contractor would have been able to charge you had you not paid the bill.

PART 301–54—COLLECTION OF UNDISPUTED DELINQUENT AMOUNTS OWED TO THE CONTRACTOR ISSUING THE INDIVIDUALLY BILLED TRAVEL CHARGE CARD

6. The authority citation for 41 CFR part 301–54 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 486(c); Sec. 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701 note).

7. Section 301–54.2 is revised to read as follows:

§ 301–54.2 What is disposable pay?

Disposable pay is your compensation remaining after the deduction from your earnings of any amounts required by law to be withheld. These deductions do not include discretionary deductions such as savings bonds, charitable contributions, *etc.* Deductions may be made from any type of pay you receive from your agency, *e.g.*, basic pay, special pay, retirement pay, or incentive pay.

PART 301–70—INTERNAL POLICY AND PROCEDURE REQUIREMENTS

8. The authority citation for 41 CFR part 301–70 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 486(c); Sec. 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701 note).

9. Section 301–70.704 is amended by adding a note at the end of the section to read as follows:

§ 301–70.704 What expenses and/or classes of employees are exempt from the mandatory use of the Government contractor-issued travel charge card?

* * * * *

Note to § 301–70.704: Relocation allowances prescribed in chapter 302 of this title, except en-route travel and househunting trip expenses are not covered by this requirement.

PART 301–71—AGENCY TRAVEL ACCOUNTABILITY REQUIREMENTS

10. The authority citation for 41 CFR part 301–71 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 486(c); Sec. 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701 note).

11. Section 301–71.204 is revised to read as follows:

§ 301–71.204 Within how many calendar days after the submission of a proper travel claim must we reimburse the employee's allowable expenses?

You must reimburse the employee within 30 calendar days after the employee submits a proper travel claim to the agency's designated approving office. You must use a satisfactory recordkeeping system to track submission of travel claims. For example, travel claims submitted by mail, in accordance with agency policy, could be annotated with the time and date of receipt by the agency. You could consider travel claims electronically submitted to the designated approving office as submitted on the date indicated on an e-mail log, or on the next business day if submitted after normal working hours. However, claims for the following relocation allowances are exempt from this provision:

(a) Transportation and storage of household goods and professional books, papers and equipment;

(b) Transportation of mobile home;

(c) Transportation of a privately owned vehicle;

(d) Temporary quarters subsistence expense, when not paid as lump sum;

(e) Residence transaction expenses;

(f) Relocation income tax allowance;

(g) Use of a relocation services company;

(h) Home marketing incentive payments; and

(i) Allowance for property management services.

12. Section 301–71.208 is revised to read as follows:

§ 301–71.208 Within how many calendar days after submission of a proper travel claim must we notify the employee of any errors in the claim?

You must notify the employee as soon as practicable after the employee's submission of the travel claim of any error that would prevent payment within 30 calendar days after submission and provide the reason(s) why the claim is not proper. However, not later than May 1, 2002, you must achieve a maximum time period of seven working days for notifying an employee that his/her travel claim is not proper.

13. Section 301–71.210 is revised to read as follows:

§ 301–71.210 How do we calculate late payment fees?

Late payment fees are calculated either by:

(a) Using the prevailing Prompt Payment Act Interest Rate beginning on the 31st day after submission of a proper travel claim and ending on the date on which payment is made; or

(b) A flat fee, of not less than the prompt payment amount, based on an agencywide average of travel claim payments; and

(c) In addition to the fee required by paragraphs (a) and (b) of this section, you must also pay an amount equivalent to any late payment charge that the card contractor would have been able to charge had the employee not paid the bill. Payment of this additional fee will be based upon the effective date that a late payment charge would be allowed under the agreement between the employee and the card contractor.

PART 301–76—COLLECTION OF UNDISPUTED DELINQUENT AMOUNTS OWED TO THE CONTRACTOR ISSUING THE INDIVIDUALLY BILLED TRAVEL CHARGE CARD

14. The authority citation for 41 CFR part 301–76 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 486(c); Sec. 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701 note).

15. Section 301–76.2 is revised to read as follows:

§ 301–76.2 What is disposable pay?

Disposable pay is the part of the employee's compensation remaining after the deduction of any amounts required by law to be withheld. These deductions do not include discretionary deductions such as savings bonds, charitable contributions, etc. Deductions may be made from any type of pay, *e.g.*, basic pay, special pay, retirement pay, or incentive pay.

Dated: April 13, 2000.

David J. Barram,

Administrator of General Services.

[FR Doc. 00–9774 Filed 4–20–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF ENERGY

48 CFR Parts 919 and 952

RIN 1991–AB45

Acquisition Regulations: Mentor-Protege Program

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending its acquisition regulations to encourage DOE prime contractors to assist small disadvantaged firms certified by the Small Business Administration under Section 8(a) of the Small Business Act (8(a)), other small disadvantaged businesses, Historically Black Colleges and Universities and other minority institutions of higher learning, women-owned small businesses and small business concerns owned and controlled by service disabled veterans in enhancing their capabilities to perform contracts and subcontracts for DOE and other Federal agencies. The program seeks to foster long-term business relationships between DOE prime contractors and these small business entities and minority institutions of higher learning and to increase the overall number of these small business entities and minority institutions that receive DOE contract and subcontract awards.

EFFECTIVE DATE: This rule will take effect May 22, 2000.

FOR FURTHER INFORMATION CONTACT: Eugene Tates, Mentor-Protege Program, U.S. Department of Energy, Office of Small and Disadvantaged Business Utilization, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4556; or Robert M. Webb, U.S. Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–8264.

SUPPLEMENTARY INFORMATION:

I. Background
II. Resolution of Comments
III. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12988
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under the National Environmental Policy Act
F. Review Under Executive Order 13132
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Treasury and General Government Appropriation Act, 1999
I. Congressional Notification

I. Background

On June 9, 1995, DOE published final guidelines for its Mentor-Protege Pilot Initiative (60 FR 30529). The purpose of the Initiative was to develop a program that encouraged DOE prime contractors to help energy-related small disadvantaged, 8(a), and women-owned small businesses in enhancing their business and technical capabilities to ensure full participation in the mission of DOE. In addition, the Initiative sought to foster the establishment of long term business relationships between these small business entities and DOE prime contractors and to increase the overall number of these small business entities eligible to receive DOE contract and subcontract awards. In order to achieve the goal of the Initiative, DOE prime contractors entered into formal agreements with qualified small businesses to provide developmental assistance. In many cases, this assistance has enabled small businesses to benefit from the vast wealth of knowledge acquired by large, successful firms doing business with DOE.

The success of the DOE business mentoring relationships and the continuing need to develop small disadvantaged business, 8(a) firms and women-owned small businesses capabilities to perform contracts and subcontracts for DOE led DOE to propose the creation of a permanent DOE Mentor-Protege Program. DOE published a notice of proposed rulemaking on December 6, 1999 (64 FR 68072), which proposed a program having the same goals and objectives as the original DOE Mentor-Protege Pilot Initiative. Some refinements were proposed to provide additional incentives for prime contractor participation in the Mentor-Protege Program. After carefully considering the public comments received on the notice of proposed rulemaking, DOE today publishes a final rule.

II. Resolution of Comments

Fourteen comments were received in response to the proposed rule. The comments and DOE's responses are as follows:

Comment: It is unclear whether or not DOE would reimburse Mentors for costs incurred by providing developmental assistance to Protege firms.

Response: The Mentor-Protege rule is clear on this issue. DOE has stated throughout the rule that developmental assistance costs are allowable if they are incurred by the Mentor in the performance of a DOE contract spelled out in the Mentor-Protege Agreement and are otherwise allowable in accordance with the cost principles applicable to that contract.

Comment: Do existing Mentor-Protege Agreements developed under the DOE Mentor-Protege Pilot Initiative have to be amended when this rule becomes effective?

Response: Existing agreements do not have to be amended. The new rule applies only to new agreements.

Comment: The rule does not cover small business concerns owned and controlled by service disabled veterans.

Response: DOE has revised the rule to include small business concerns owned and controlled by service disabled veterans, as defined in the Veterans Entrepreneurship and Small Business Development Act of 1999, Pub. L. No. 106–50.

Comment: Which small disadvantaged businesses, other than 8(a) firms, are eligible to participate in the Program?

Response: All small disadvantaged businesses that meet the eligibility requirements in paragraphs (a)(2)–(4) of § 919.7007 are eligible to participate.

Comment: Why, under § 919.7008(d) of the rule, does DOE only permit protests regarding the small business size of a firm, and not a firm's status as a small disadvantaged business, etc.?

Response: Small disadvantaged business status cannot be protested under this rule because the DOE Mentor-Protege Program is not limited to small disadvantaged businesses. Even if a firm is not a small disadvantaged business, it could still qualify as a small business.

Comment: A prospective Mentor should be required under § 919.7005 to provide evidence that the business is currently performing a DOE contract which contains a subcontracting plan.

Response: DOE can identify its current contractors, so there is no need for such a requirement.

Comment: DOE should allow designees of the chief executive officers of Mentor and Protege firms to execute the Mentor-Protege Agreements.

Response: DOE agrees that delegation is appropriate for larger, Mentor firms, but it would not be necessary for smaller, Proteges. Therefore, in § 919.7009, DOE allows the Mentor firm's chief executive officer to designate another company official to execute the Mentor-Protege Agreement.

Comment: DOE should delete the procedure in proposed § 919.7010(f) for completing performance in the case of withdrawal or termination by either party to the Agreement.

Response: DOE has deleted the procedure for completing performance because the terms of awarded subcontracts will still be binding in the event of Agreement termination.

Comment: DOE's request for a description of developmental assistance to be provided to Protege firms under proposed § 919.7010(c) is duplicated by DOE's request for an explanation of how the developmental assistance will increase subcontracting opportunities for the Protege under proposed § 919.7010(j).

Response: DOE disagrees with this comment. The mere description of the planned developmental assistance required by paragraph (c) does not explain how such assistance is expected to increase subcontracting opportunities of the Protege firm. These are separate provisions that need to be discussed separately in the Agreement.

Comment: Under what specific conditions could DOE terminate its recognition of a Mentor-Protege Agreement?

Response: DOE does not attempt to specify in this rule the conditions or situations that would warrant termination of DOE's recognition of an approved DOE Mentor-Protege agreement. That is left for case-by-case decision.

Comment: Which contracting officer is responsible for oversight if the Mentor has more than one DOE contract?

Response: The contracting officer for each contract identified in the Mentor-Protege Agreement, under § 919.7010(k), is the official responsible for oversight of the contract under his/her responsibility.

Comment: DOE should delete the word "field" as used in § 919.7013 in the term "field technical program manager" because technical program managers could be located in either the field or DOE headquarters.

Response: DOE agrees and deletes the word "field" from § 919.7013 and § 919.7010(j).

Comment: The proposed rule would add an unnecessary layer of requirements, administered from DOE Headquarters, on contractors who already have programs that accomplish the goals of improving relationships with small, small disadvantaged, women-owned, and minority institutions.

Response: DOE disagrees and thinks the program established by these regulations provides additional incentives for its contractors to provide assistance to the potential Protege firms. The program's reporting requirements in § 919.7013 are necessary for proper program evaluation.

Comment: DOE should change the Protege eligibility requirement in § 919.7007(a)(3) that a firm must have been in business for at least two years to no more than one year. In today's high-tech economy, a one-year old company is considered "established."

Response: The highly technical nature of DOE's global mission requires that a Protege have at least two years of business experience.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this rule was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction.

With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the subject law's preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that this final rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment and that is likely to have significant economic impact on a substantial number of small entities. However, the analysis requirement does not apply if the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The entities to which this rulemaking would apply are large business and small business firms that receive a form of incentive for assuming the role of Mentor to 8(a) firms, other small disadvantaged businesses, small women-owned businesses, Historically Black Universities and Colleges, and other minority institutions of higher learning, and small business concerns owned and controlled by disabled veterans. It is expected that under this rule the protege entities would directly benefit from the forms of mentoring provided for in the rule. There would not be an adverse economic impact on contractors or subcontractors. Accordingly, DOE certifies that this rule would not have a significant economic impact on a substantial number of small entities, and therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

This rule would require DOE contractors serving as mentors to submit semi-annual progress reports to the DOE Mentor-Protege Program Manager at DOE Headquarters (see § 919.7013). The information in the progress reports is necessary to determine if the schedules and developmental assistance levels contained in Mentor-Protege Agreements are being met. Performance under the Agreements is the basis for

awarding incentive fees to mentor firms. DOE submitted the proposed collection of information to the Office of Management and Budget for review and approval under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The Office of Management and Budget has not yet approved the collection of information in this rule. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number (5 CFR 1320.5(b)).

E. Review Under the National Environmental Policy Act

DOE has concluded that this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the DEAR would be strictly procedural (categorical exclusion A6). Therefore, this rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have other federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a federal mandate with costs to State, local or tribal governments, or to the private sector of $100 million or more. This rulemaking would only affect private sector entities, and the impact is less than $100 million.

H. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriation, 1999 (Pub. L. 105–277) requires Federal Agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well being. Today's rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule. The report will state that it has been determined that the rule is not a "major rule," as defined by 5 U.S.C. 804.

List of Subjects in 48 CFR Parts 919 and 952

Government procurement.

Issued in Washington, DC on April 17, 2000.

Richard H. Hopf,

Director, Office of Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

PART 919—SMALL BUSINESS PROGRAMS

1. The authority citation for Parts 919 and 952 is revised to read as follows:

Authority: 40 U.S.C. 486 (c); 42 U.S.C. 7101, *et seq.*; 42 U.S.C. 2201; 50 U.S.C. 2401, *et seq.*

2. A new subpart 919.70 is added in Subchapter D to read as follows:

Subpart 919.70—The Department of Energy Mentor-Protege Program

Sec.

919.7001 Scope of subpart.
919.7002 Definitions.
919.7003 General policy.
919.7004 General prohibitions.
919.7005 Eligibility to be a Mentor.
919.7006 Incentives for DOE contractor participation.
919.7007 Eligibility to be a Protege.
919.7008 Selection of Proteges.
919.7009 Process for participation in the program.
919.7010 Contents of Mentor-Protege Agreement.
919.7011 Developmental assistance.
919.7012 Review and approval process of agreement by OSDBU.
919.7013 Reports.
919.7014 Solicitation provision.

Subpart 919.70—The Department of Energy Mentor-Protege Program

919.7001 Scope of subpart.

The Department of Energy (DOE) Mentor-Protege Program is designed to encourage DOE prime contractors to assist small disadvantaged firms certified by the Small Business Administration (SBA) under Section 8(a) of the Small Business Act (8(a)), other small disadvantaged businesses, women-owned small businesses, Historically Black Colleges and Universities, and other minority institutions of higher learning, and small business concerns owned and controlled by service disabled veterans in enhancing their capabilities to perform contracts and subcontracts for DOE and other Federal agencies. The program seeks to foster long-term business relationships between these small business entities and DOE prime contractors, and to increase the overall number of these small business entities that receive DOE contract and subcontract awards.

919.7002 Definitions.

Historically Black Colleges and Universities (HBCUs) means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2.

Other minority institutions of higher learning means an institution determined by the Secretary of Education to meet the requirements of 20 U.S.C. 1067k.

Small business concern owned and controlled by service-disabled veterans means a small business concern as defined in Public Law 106–50, Veterans Entrepreneurship and Small Business Development Act of 1999.

Small disadvantaged business means a small business concern owned and controlled by socially and economically disadvantaged individuals that meets the requirements of 13 CFR part 124, subpart B.

Women-owned small business means a small business concern that meets the requirements of 15 U.S.C. 637(d)(3)(D).

919.7003 General policy.

(a) DOE contractors eligible under 48 CFR 919.7005 may enter into agreements with businesses certified by the SBA in the 8(a) Program, other small disadvantaged businesses, women-owned small businesses, HBCUs, other minority institutions of higher learning, and small business concerns owned and controlled by service disabled veterans to provide those firms appropriate

developmental assistance to enhance the capabilities of Proteges.

(b) Costs incurred by a Mentor to provide developmental assistance, as described in 919.7011, are allowable only to the extent that they are incurred in performance of a contract identified in the Mentor-Protege Agreement and are otherwise allowable in accordance with the cost principles applicable to that contract.

(c) Headquarters Office of Small and Disadvantaged Business Utilization (OSDBU) is the DOE Program Manager for the Mentor-Protege Program.

919.7004 General prohibitions.

DOE will not reimburse the costs of a Mentor in providing any form of developmental assistance to a Protege except as provided in 919.7003(b).

919.7005 Eligibility to be a Mentor.

To be eligible for recognition by DOE as a Mentor, an entity must be performing at least one contract for DOE.

919.7006 Incentives for DOE contractor participation.

(a) Under cost-plus-award fee contracts, approved Mentor firms may earn award fees associated with their performance as a Mentor. The award fee plan may include provision for the evaluation of the contractor's utilization of 8(a) firms, other small disadvantaged businesses, women-owned small businesses, HBCUs, other minority institutions of higher learning and small business concerns owned and controlled by service disabled veterans. DOE may evaluate the Mentor's performance in the DOE Mentor-Protege Program under any Mentor-Protege Agreement(s) as a separate element of the award fee plan.

(b) Mentors shall receive credit for subcontracts awarded pursuant to their Mentor-Protege Agreements toward subcontracting goals contained in their subcontracting plan.

919.7007 Eligibility to be a Protege.

(a) To be eligible for selection as a Protege, a firm must:

(1) Be a small business certified under Section 8(a) of the Small Business Act by SBA, other small disadvantaged business, a women-owned small business, HBCU, or any other minority institution of higher learning, or a small business concern owned and controlled by service disabled veterans;

(2) Be eligible for receipt of government contracts;

(3) Have been in business for at least two (2) years prior to application for enrollment into the Mentor-Protege Program; and

(4) Be able to certify as a small business according to the Standard Industrial Code for the services or supplies to be provided by the Protege under its subcontract with the Mentor.

(b) A prospective Mentor may rely in good faith on written representations by a prospective Protege that the Protege meets the requirements in paragraph (a) of this section.

919.7008 Selection of Proteges.

(a) A Mentor firm is solely responsible for selecting one or more Protege entities from firms eligible under 48 CFR 919.7007.

(b) A Mentor may have more than one Protege; however, a Protege may have only one Mentor.

(c) The selection of Protege firms by Mentor firms may not be protested, except as provided in paragraph (d) of this section.

(d) Only protests regarding the small business size status of a firm to be a Protege will be considered and shall be submitted to the DOE Office of Small and Disadvantaged Business Utilization for resolution. If that office is unable to resolve a protest, it will refer the matter to the Small Business Administration for resolution in accordance with 13 CFR part 121.

919.7009 Process for participation in the program.

A prospective Mentor must submit the following to the DOE Mentor-Protege Program Manager.

(a) A statement that it is eligible, as of the date of application, for the award of Federal contracts;

(b) A statement that it is currently performing at least one contract for DOE;

(c) The DOE contract number, type of contract, period of performance (including options), title of technical program effort, name of DOE technical program manager (including contact information) and the DOE contracting activity; and

(d) An original and two copies of the Mentor-Protege Agreement signed by the chief executive officer or designee of the Mentor firm and the chief executive officer of the Protege firm.

919.7010 Contents of Mentor-Protege Agreement.

The proposed Mentor-Protege Agreement must contain:

(a) Names, addresses and telephone numbers of Mentor and Protege firms and a point of contact within each firm who will oversee the Agreement;

(b) Requirements for the Mentor firm or the Protege firm to notify the other entity, DOE Headquarters OSDBU, and the contracting officer in writing at least 30 days in advance of the Mentor firm's or the Protege firm's intent to voluntarily terminate or withdraw from the Mentor-Protege Agreement (such termination would not terminate any existing subcontract between the Mentor and the Protege);

(c) A description of the form of developmental assistance program that will be provided by the Mentor to the Protege firm, including a description of any subcontract work, and a schedule for providing the assistance and the criteria for evaluation of the Protege's developmental success (48 CFR 919.7011);

(d) A listing of the number and types and estimated amount of subcontracts to be awarded to the Protege firm;

(e) Term of the Agreement;

(f) Procedures to be invoked should DOE terminate its recognition of the Agreement for good cause (such termination of DOE recognition would not constitute a termination of the subcontract between the Mentor and the Protege);

(g) Provision for the Mentor firm to submit to the DOE Mentor-Protege Program Manager a "lessons learned" evaluation developed by the Mentor at the conclusion of the Mentor-Protege Agreement;

(h) Provision for the submission by the Protege firm of a "lessons learned" evaluation to the DOE Mentor-Protege Program Manager at the conclusion of the Mentor-Protege Agreement;

(i) Description of how the development assistance will potentially increase subcontracting opportunities for the Protege firm;

(j) Provision for the Mentor firm to brief the DOE Mentor-Protege Program Manager, the technical program manager(s), and the contracting officer at the conclusion of each year in the Mentor-Protege Program regarding program accomplishments as pertains to the approved Agreement (where possible, this review may be incorporated into the normal program review for the Mentor's contract);

(k) Recognition that costs incurred by a Mentor to provide developmental assistance, as described in 48 CFR 919.7011, are allowable only to the extent that they are incurred in performance of a contract identified in the Mentor-Protege Agreement and are otherwise allowable in accordance with the cost principles applicable to that contract (the DOE Mentor-Protege Program has no appropriation for paying for developmental assistance); and

(l) Other terms and conditions, as appropriate.

919.7011 Developmental assistance.

(a) The forms of developmental assistance a Mentor may provide to a Protege include, but are not limited to:

(1) Management guidance relating to:

(i) Financial management,

(ii) Organizational management,

(iii) Overall business management planning,

(iv) Business development, and

(v) Marketing assistance;

(2) Engineering and other technical assistance;

(3) Noncompetitive award of subcontracts under DOE or other Federal contracts where otherwise authorized;

(4) Award of subcontracts in the Mentor's commercial activities;

(5) Progress payments based on costs;

(6) Rent-free use of facilities and/or equipment owned or leased by Mentor; and

(7) Temporary assignment of Mentor personnel to the Protege for purposes of training.

(b) Costs incurred by a Mentor to provide developmental assistance, as described in paragraph (a) of this section, are allowable only to the extent provided at 48 CFR 919.7003(b).

919.7012 Review and approval process of agreement by OSDBU.

(a) OSDBU will review the proposed Mentor-Protege Agreement under 48 CFR 919.7010 and will complete its review and assessment no later than 30 days after receipt. OSDBU will provide a copy of its assessment to the cognizant DOE technical program manager and contracting officer for review and concurrence.

(b) If OSDBU approves the Agreement, the Mentor may implement the developmental assistance program.

(c) Upon finding deficiencies that DOE considers correctable, the OSDBU will notify the Mentor and request information to be provided within 30 days that may correct the deficiencies. The Mentor may then provide additional information for reconsideration. The review of any supplemental material will be completed within 30 days after receipt by the OSDBU and the Agreement either approved or disapproved.

919.7013 Reports.

(a) Prior to performing an evaluation of a Mentor's performance under its Mentor-Protege Agreement for use in award fee evaluations, the Mentor-Protege Program Manager must consult with the cognizant DOE technical program manager and must provide a copy of the performance evaluation comments regarding the technical effort and Mentor-Protege development to the contracting officer.

(b) The DOE Mentor-Protege Program Manager must submit semi-annual reports to the cognizant contracting officer regarding the participating Mentor's performance in the Program for use in the award fee determination process.

(c) The Mentor firm must submit progress reports to the DOE Mentor-Protege Program Manager semi-annually.

919.7014 Solicitation provision.

The cognizant contracting officer must insert the provision at 952.219–70, DOE Mentor-Protege Program, in all solicitations with an estimated value in excess of the simplified acquisition threshold.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. A new subsection 952.219–70, DOE Mentor-Protege Program is added as follows:

952.219–70 DOE Mentor-Protege program.

In accordance with 919.7014 insert the following provision in applicable solicitations.

DOE Mentor-Protege Program

(May 2000)

The Department of Energy has established a Mentor-Protege Program to encourage its prime contractors to assist firms certified under section 8(a) of the Small Business Act by SBA, other small disadvantaged businesses, women-owned small businesses, Historically Black Colleges and Universities and Minority Institutions, other minority institutions of higher learning and small business concerns owned and controlled by service disabled veterans in enhancing their business abilities. If the contract resulting from this solicitation is awarded on a cost-plus-award fee basis, the contractor's performance as a Mentor may be evaluated as part of the award fee plan. Mentor and Protege firms will develop and submit "lessons learned" evaluations to DOE at the conclusion of the contract. Any DOE contractor that is interested in becoming a Mentor should refer to the applicable regulations at 48 CFR 919.70 and should contact the Department of Energy's Office of Small and Disadvantaged Business Utilization.

[FR Doc. 00–9981 Filed 4–20–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

48 CFR Part 970

RIN 1991–AB02

Acquisition Regulation: Financial Management Clauses for Management and Operating (M&O) Contracts

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) amends its Acquisition Regulation to designate certain Department of Energy Acquisition Regulation (DEAR) M&O contract clauses and Federal Acquisition Regulation (FAR) clauses as Standard Financial Management Clauses to be included in M&O contracts unless the Chief Financial Officer (CFO) concurs in a deviation. Additionally, this final rule will revise selected existing financial management clauses and add financial management related clauses.

DATES: This final rule is effective May 22, 2000.

FOR FURTHER INFORMATION CONTACT: Michael L. Righi, Office of Policy (MA–51), Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585; 202–586–8175 (phone); 202–586–0545 (facsimile); or *michael.l.righi@pr.doe.gov* (Internet).

SUPPLEMENTARY INFORMATION

I. Background
II. Discussion of Public Comments
III. Procedural Requirements
A. Review of Executive Order 12866
B. Review Under Executive Order 12988
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under Executive Order 13132
F. Review Under the National Environmental Policy Act
G. Unfunded Mandates Reform Act of 1995
H. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

I. Background

On November 18, 1998, the Department of Energy (DOE or Department) published in the **Federal Register** (63 FR 64024) a Notice of Proposed Rulemaking to amend the DEAR to designate certain Department of Energy Acquisition Regulation (DEAR) M&O contract clauses and Federal Acquisition Regulation (FAR) clauses as Standard Financial Management Clauses to be included in M&O contracts unless the Chief Financial Officer (CFO) concurs in a deviation. Additionally, this Notice of Proposed Rulemaking proposed to revise selected existing financial

management clauses and to add financial management related clauses.

The Notice of Proposed Rulemaking solicited comments on all aspects of the proposed rulemaking. Today's final rule amends the DEAR as proposed in the Notice of Proposed Rulemaking. The contracting officer must apply the changes this rule makes to solicitations issued on or after the effective date of this rule and may apply the changes to existing solicitations. Because this rule's changes are already incorporated in the majority of the Department's management and operating contracts, the contracting officer should incorporate the changes into existing contracts as soon as practicable, but in no case later than one year from the effective date of this rule.

Since publication of the Notice of Proposed Rulemaking, the President signed the National Nuclear Security Administration Act (NNSA) Act into law (Pub.L. 106–65). The NNSA Act reorganized DOE by drawing together various national security-related components of DOE and placing them under an Administrator who is the new DOE Under Secretary for Nuclear Security. Existing procurement regulations before March 1, 2000, including 48 CFR part 970, continue in effect by operation of law with regard to NNSA (50 U.S.C. 2401, note, 2484). Consistent with the NNSA Act and various delegations of authority under the NNSA Act, including the authority to issue procurement regulations subject to approval by the Secretary, today's final regulatory amendments to part 970 revise the authority citation to include the citation for the NNSA Act.

II. Discussion of Public Comments

The Department received 11 comments from three commenters. None of the issues raised in the comments warrants extended treatment in this rulemaking. Instead, the Department prepared a comment response document that addressed each comment and sent a copy to each of the commenters. A copy of the comment response document is available upon request from Michael L. Righi, Office of Policy (MA–51), Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have a significant economic impact on a substantial number of small entities. This rule would only apply to M&O contractors, which are all large entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, are imposed by today's regulatory action.

E. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

F. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), the Department of Energy has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Pursuant to appendix A of subpart D of 10 CFR part 1021, National Environmental Policy Act Implementing Procedures (57 FR 15122, 15152, April 24, 1992) (Categorical Exclusion A6), the Department of Energy has determined that this rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 requires each Agency to assess the effects of Federal regulatory action on State, local, and tribal governments and the private sector. The Department has determined that today's regulatory action does not impose a Federal mandate on State, local, or tribal governments or on the private sector.

H. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, the Department of Energy will report to

Congress promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

List of Subjects in 48 CFR Part 970

Government procurement.

Issued in Washington, D.C. on April 7, 2000.

Richard H. Hopf,

Director, Office of Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for Part 970 is revised to read as follows:

Authority: Atomic Energy Act of 1954 (42 U.S.C. 2201); Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*); National Nuclear Security Administration Act (50 U.S.C. 2401, *et seq.*).

2. Section 970.3201 is revised to read as follows:

970.3201 General.

It is the policy of the DOE to finance management and operating contracts through advance payments and the use of special financial institution accounts.

3. Section 970.3202 is amended by revising paragraphs (b) and (c) to read as follows:

970.3202 Advance payments.

* * * * *

(b) Advance payments shall be made under a payments cleared financing arrangement for deposit in a special financial institution account or, at the option of the Government, by direct payment or other payment mechanism to the contractor.

(c) Prior to providing any advance payments, the contracting officer shall enter into an agreement with the contractor and a financial institution regarding a special financial institution account where the advanced funds will be deposited by the Government. Such agreement shall:

(1) Provide that DOE shall retain title to the unexpended balance of funds in the special financial institution account including collections, if any, deposited by the contractor;

(2) Provide that the title in paragraph (c)(1) of this section shall be superior to any claim or lien of the financial institution of deposit or others; and

(3) Incorporate all applicable requirements, as determined by the Office of Chief Financial Officer.

* * * * *

4. Section 970.3270 is revised to read as follows:

970.3270 Standard financial management clauses.

(a) The following DEAR and FAR clauses are standard financial management clauses that shall be included in all management and operating contracts: DEAR 970.5204–9, Accounts, records, and inspection; DEAR 970.5204–15, Obligation of funds; DEAR 970.5204–16, Payments and advances; DEAR 970.5204–20, Management controls; DEAR 970.5204–92, Liability with respect to Cost Accounting Standards; DEAR 970.5204–93, Work for others funding authorization; FAR 52.230–2, Cost Accounting Standards; and FAR 52.230–6, Administration of Cost Accounting Standards.

(b) The following clauses are standard financial management clauses that shall be included in management and operating contracts with integrated accounting systems: DEAR 970.5204–90, Financial management system; and DEAR 970.5204–91, Integrated accounting.

(c) Any deviations from the standard financial management clauses specified in paragraphs (a) and (b) of this section require the approval of the Head of the Contracting Activity and the written concurrence of the Department's Chief Financial Officer.

5. Section 970.3271 is removed and reserved.

970.3271 [Removed and Reserved]

6. Section 970.5204–9 is amended by revising the introductory paragraph; clause title; and paragraphs (a) (including the note), (b), (d), and (f) to read as follows:

970.5204–9 Accounts, records, and inspection.

As prescribed in 970.0407 and 970.3270, insert the following clause.

Accounts, Records, and Inspection (May 2000)

(a) *Accounts.* The contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of the contractor under this contract. The system of accounts employed by the contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.

Note: *If the contract includes the clause for "Price Reduction for Defective Cost or Pricing Data" set forth at FAR 52.215–22, paragraph (a) above should be modified by adding the words "or anticipated to be incurred" after the words "allowable costs incurred."*

(b) *Inspection and audit of accounts and records.* All books of account and records relating to this contract shall be subject to inspection and audit by DOE or its designees in accordance with the provisions of Clause ____, Access to and ownership of records, at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the contractor shall afford DOE proper facilities for such inspection and audit.

* * * * *

(d) *Disposition of records.* Except as agreed upon by the Government and the contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the progress of the work or, in any event, as the contracting officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of Clause ____, Access to and ownership of records, all other records in the possession of the contractor relating to this contract shall be preserved by the contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the contractor.

* * * * *

(f) *Inspections.* The DOE shall have the right to inspect the work and activities of the contractor under this contract at such time and in such manner as it shall deem appropriate.

* * * * *

7. Section 970.5204–13 is amended by revising the clause date and clause paragraph (d)(15) to read as follows (note following paragraph (d)(15) remains unchanged).

970.5204–13 Allowable costs and fixed-fee (management and operating contracts).

* * * * *

Allowable costs and fixed-fee (management and operating Contracts) (May 2000)

* * * * *

(d) * * *

(15) Establishment and maintenance of financial institution accounts in connection with the work hereunder, including, but not limited to, service charges, the cost of disbursing cash, necessary guards, cashiers, and paymasters. If payments to employees

are made by check, facilities and arrangements for cashing checks may be provided without expense to the employees, subject to the approval of the contracting officer.

* * * * *

8. Section 970.5204–15 is revised to read as follows:

970.5204–15 Obligation of funds.

As prescribed in 970.1508(c) and 970.3270, insert the following clause.

Obligation of Funds (May 2000)

(a) *Obligation of funds.* The amount presently obligated by the Government with respect to this contract is ____ dollars ($____). Such amount may be increased unilaterally by DOE by written notice to the contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract). Estimated collections from others for work and services to be performed under this contract are not included in the amount presently obligated. Such collections, to the extent actually received by the contractor, shall be processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract. Nothing in this paragraph is to be construed as authorizing the contractor to exceed limitations stated in financial plans established by DOE and furnished to the contractor from time to time under this contract.

(b) *Limitation on payment by the Government.* Except as otherwise provided in this contract and except for costs which may be incurred by the contractor pursuant to the clause entitled "Termination," or costs of claims allowable under the contract occurring after completion or termination and not released by the contractor at the time of financial settlement of the contract in accordance with the clause entitled "Payments and Advances," payment by the Government under this contract on account of allowable costs shall not, in the aggregate, exceed the amount obligated with respect to this contract, less the contractor's fee. Unless expressly negated in this contract, payment on account of those costs excepted in the preceding sentence which are in excess of the amount obligated with respect to this contract shall be subject to the availability of:

(1) collections accruing to the contractor in connection with the work under this contract and processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract, and

(2) other funds which DOE may legally use for such purpose, provided DOE will use its best efforts to obtain the appropriation of funds for this purpose if not otherwise available.

(c) *Notices—Contractor excused from further performance.* The contractor shall notify DOE in writing whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), plus the contractor's best estimate of collections to be received and available during the ___ day period hereinafter specified, is in the contractor's best judgment sufficient to continue contract operations at the programmed rate for only ____ days and to cover the contractor's unpaid fee, and outstanding encumbrances and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause), less the amount of the contractor's fee then earned but not paid, is in the contractor's best judgment sufficient only to liquidate outstanding encumbrances and liabilities on account of costs allowable under this contract, the contractor shall immediately notify DOE and shall make no further encumbrances or expenditures (except to liquidate existing encumbrances and liabilities), and, unless the parties otherwise agree, the contractor shall be excused from further performance (except such performance as may become necessary in connection with termination by the Government) and the performance of all work hereunder will be deemed to have been terminated for the convenience of the Government in accordance with the provisions of the clause entitled "Termination."

(d) *Financial plans; cost and encumbrance limitations.* In addition to the limitations provided for elsewhere in this contract, DOE may, through financial plans, such as Approved Funding Programs, or other directives issued to the contractor, establish controls on the costs to be incurred and encumbrances to be made in the performance of the contract work. Such plans and directives may be amended or supplemented from time to time by DOE. The contractor agrees

(1) to comply with the specific limitations (ceilings) on costs and encumbrances set forth in such plans and directives,

(2) to comply with other requirements of such plans and directives, and

(3) to notify DOE promptly, in writing, whenever it has reason to believe that any limitation on costs and encumbrances will be exceeded or substantially underrun.

Note: *This paragraph (d) may be omitted in contracts which expressly or otherwise provide a contractual basis for equivalent controls in a separate clause.*

(e) *Government's right to terminate not affected.* The giving of any notice under this clause shall not be construed to waive or impair any right of the Government to terminate the contract under the provisions of the clause entitled "Termination."

9. Section 970.5204–16 is amended by: Revising the introductory paragraph; clause title; clause paragraphs (a) (notes remain unchanged); last sentence of alternate paragraph (a) that follows note 2; paragraphs (c), (d) (including note 3), (e) (including note 4); adding alternate paragraph (e) following note 4; revising paragraphs (f) and (i) to read as follows:

970.5204–16 Payments and advances.

As prescribed in 970.3270, insert the following clause.

Payments and Advances (May 2000)

(a) *Installments of fixed-fee.* The fixed-fee payable under this contract shall become due and payable in periodic installments in accordance with a schedule determined by the contracting officer. Fixed-fee payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the contracting officer. The contracting officer may offset against any such fee payment the amounts owed to the Government by the contractor, including any amounts owed for disallowed costs under this contract. No fixed-fee payment may be withdrawn against the payments cleared financing arrangement without prior written approval of the contracting officer.

* * * * *

(a) * * * No base fee or award fee pool amount earned payment may be withdrawn against the payments cleared financing arrangement without prior written approval of the contracting officer.

* * * * *

(c) *Special financial institution account—use.* All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract as Appendix____. No part of the funds in the special financial institution account shall be commingled with any funds of the contractor or used for a purpose other than that of making payments for costs allowable and, if applicable, fees earned under this contract or payments for other items specifically approved in writing by the contracting officer. If the contracting officer determines that the balance of such special financial institution account exceeds the contractor's current needs, the contractor shall promptly make such disposition of the excess as the contracting officer may direct.

(d) *Title to funds advanced.* Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the contractor hereunder is not a loan to the contractor, and will not require the payment of interest by the contractor, and that the contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.

Note 3: *The following paragraph (e) shall be included in management and operating contracts with integrated accounting systems.*

(e) *Review and approval of costs incurred.* The contractor shall prepare and submit annually as of September 30, a "Statement of Costs Incurred and Claimed" (Cost Statement) for the total of net expenditures accrued (*i.e.*, net costs incurred) for the

period covered by the Cost Statement. The contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256), as amended. DOE, after audit and appropriate adjustment, will approve such Cost Statement. This approval by DOE will constitute an acknowledgment by DOE that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the contractor in accordance with DOE accounting policies, but will not relieve the contractor of responsibility for DOE's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to DOE.

Note 4: *The following paragraph (e) shall be included in management and operating contracts without integrated accounting systems.*

(e) *Certification and penalties.* The contractor shall prepare and submit a "Statement of Costs Incurred and Claimed" (Cost Statement) for the total of net expenditures incurred for the period covered by the Cost Statement. It is anticipated that this will be an annual submission unless otherwise agreed to by the contracting officer. The contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256), as amended.

(f) *Financial settlement.* The Government shall promptly pay to the contractor the unpaid balance of allowable costs and fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after:

(1) Compliance by the contractor with DOE's patent clearance requirements, and

(2) The furnishing by the contractor of:

(i) An assignment of the contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the contractor in connection with the work under this contract, or other credits applicable to allowable costs under the contract;

(ii) A closing financial statement;

(iii) The accounting for Government-owned property required by the clause entitled "Property"; and

(iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions:

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the contractor;

(B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the contractor on the date of the execution of the release; and provided further that the contractor gives notice of such claims in writing to the contracting officer promptly, but not more than one (1) year after the contractor's right of action first accrues. In addition, the contractor shall provide prompt notice to the contracting officer of all potential claims under this clause, whether in litigation or not (see also Contract Clause ____, DEAR 970.5204–31, "Insurance—Litigation and Claims");

(C) Claims for reimbursement of costs (other than expenses of the contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the contractor under the provisions of this contract relating to patents; and

(D) Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement.

(3) In arriving at the amount due the contractor under this clause, there shall be deducted,

(i) any claim which the Government may have against the contractor in connection with this contract, and

(ii) deductions due under the terms of this contract, and not otherwise recovered by or credited to the Government. The unliquidated balance of the special financial institution account may be applied to the amount due and any balance shall be returned to the Government forthwith.

* * * * *

(i) *Collections.* All collections accruing to the contractor in connection with the work under this contract, except for the contractor's fee and royalties or other income accruing to the contractor from technology transfer activities in accordance with this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract and, to the extent consistent with those requirements, shall be deposited in the special financial institution account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the contracting officer.

* * * * * *

10. Section 970.5204–20 is amended by revising the introductory paragraph, clause title, and paragraph (a) to read as follows:

970.5204–20 Management controls.

In accordance with 970.0901 and as prescribed in 970.3270, the following clause shall be used in management and operating contracts:

Management Controls (May 2000)

(a) The contractor shall be responsible for maintaining, as an integral part of its organization, effective systems of management controls for both administrative and programmatic functions. Management controls comprise the plan of organization, methods, and procedures adopted by management to reasonably ensure that: the mission and functions assigned to the contractor are properly executed; efficient and effective operations are promoted; resources are safeguarded against waste, loss, mismanagement, unauthorized use, or misappropriation; all encumbrances and costs that are incurred under the contract and fees that are earned are in compliance with applicable clauses and other current terms, conditions, and intended purposes; all collections accruing to the contractor in connection with the work under this contract, expenditures, and all other transactions and assets are properly recorded, managed, and reported; and financial, statistical, and other reports necessary to maintain accountability and managerial control are accurate, reliable, and timely. The systems of controls employed by the contractor shall be documented and satisfactory to DOE. Such systems shall be an integral part of the contractor's management functions, including defining specific roles and responsibilities for each level of management, and holding employees accountable for the adequacy of the management systems and controls in their areas of assigned responsibility. The contractor shall, as part of the internal audit program required elsewhere in this contract, periodically review the management systems and controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the systems are being accomplished and that these systems and controls are working effectively.

* * * * *

11. Section 970.5204–90 is added to read as follows:

970.5204–90 Financial management system.

As prescribed in 970.3270, insert the following clause.

Financial Management System (May 2000)

The contractor shall maintain and administer a financial management system that is suitable to provide proper accounting in accordance with DOE requirements for assets, liabilities, collections accruing to the contractor in connection with the work under this contract, expenditures, costs, and encumbrances; permits the preparation of accounts and accurate, reliable financial and statistical reports; and assures that accountability for the assets can be maintained. The contractor shall submit to DOE for written approval an annual plan for new financial management systems and/or subsystems and major enhancements and/or upgrades to the currently existing financial systems and/or subsystems. The contractor shall notify DOE thirty (30) days in advance of any planned implementation of any substantial deviation from this plan and, as requested by the contracting officer, shall submit any such deviation to DOE for written approval before implementation.

12. Section 970.5204–91 is added to read as follows:

970.5204–91 Integrated accounting.

As prescribed in 970.3270, insert the following clause.

Integrated Accounting (May 2000)

Integrated accounting procedures are required for use under this contract. The contractor's financial management system shall include an integrated accounting system that is linked to DOE's accounts through the use of reciprocal accounts and that has electronic capability to transmit monthly and year-end self-balancing trial balances to the Department's Primary Accounting System for reporting financial activity under this contract in accordance with requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract.

13. Section 970.5204–92 is added to read as follows:

970.5204–92 Liability With respect to cost accounting standards.

As prescribed in 970.3270, insert the following clause.

Liability with Respect to Cost Accounting Standards (May 2000)

(a) The contractor is not liable to the Government for increased costs or interest resulting from its failure to comply with the clauses of this contract entitled, "Cost Accounting Standards," and "Administration of Cost Accounting Standards," if its failure to comply with the clauses is caused by the contractor's compliance with published DOE financial management policies and procedures or other requirements established by the Department's Chief Financial Officer or Procurement Executive.

(b) The contractor is not liable to the Government for increased costs or interest resulting from its subcontractors' failure to comply with the clauses at FAR 52.230–2, "Cost Accounting Standards," and FAR 52.230–6, "Administration of Cost Accounting Standards," if the contractor includes in each covered subcontract a clause making the subcontractor liable to the Government for increased costs or interest resulting from the subcontractor's failure to comply with the clauses; and the contractor seeks the subcontract price adjustment and cooperates with the Government in the Government's attempts to recover from the subcontractor.

14. Section 970.5204–93 is added to read as follows:

970.5204–93 Work for others funding authorization.

As prescribed in 970.3270, insert the following clause.

Work for Others Funding Authorization (May 2000)

Any uncollectible receivables resulting from the contractor utilizing contractor corporate funding for reimbursable work shall be the responsibility of the contractor, and the United States Government shall have no liability to the contractor for the contractor's uncollected receivables. The contractor is permitted to provide advance payment utilizing contractor corporate funds for reimbursable work to be performed by the contractor for a non-Federal entity in instances where advance payment from that entity is required under the Laws, regulations, and DOE directives clause of this contract and such advance cannot be obtained. The contractor is also permitted to provide advance payment utilizing contractor corporate funds to continue reimbursable work to be performed by the contractor for a Federal entity when the term or the funds on a Federal interagency agreement required under the Laws, regulations, and DOE directives clause of this contract have elapsed. The contractor's utilization of contractor corporate funds does not relieve the contractor of its responsibility to comply with all requirements for Work for Others applicable to this contract.

[FR Doc. 00–9683 Filed 4–20–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF80

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 224, 226, and 424

[Docket No. 000330090–0090–01]

RIN 0648–XA51

Endangered and Threatened Wildlife and Plants; Notice of Change of Jurisdiction for Coastal Cutthroat Trout

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; Fish and Wildlife Service (FWS), Interior.

ACTION: Transfer of agency jurisdiction.

SUMMARY: The Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) have, in the past, jointly managed coastal cutthroat trout (*Oncorhynchus clarki clarki*) under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA). This document is to alert interested parties that, effective November 22, 1999, the FWS assumed all ESA regulatory jurisdiction over coastal cutthroat. The only exception is that NMFS will retain ESA jurisdiction over the endangered Umpqua River cutthroat trout Evolutionary Significant Unit (ESU) until the agencies complete a final determination on the proposed de-listing of this ESU. The change in jurisdiction results from a joint agency determination that coastal cutthroat trout spend the majority of their life cycle in fresh water habitat.

DATES: The finding announced in this document was made on November 22, 1999.

ADDRESSES: Questions concerning this document should be submitted to the Supervisor, Fish and Wildlife Service, Oregon State Office, 2600 SE 98th Avenue, Suite 100, Portland, Oregon 97266; or to, Garth Griffin, National Marine Fisheries Service, Northwest Region, Protected Resources Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737.

FOR FURTHER INFORMATION CONTACT: Rollie White, Fish and Wildlife Service, telephone 503–231–6179, fax 503–231–6195; or, Garth Griffin, National Marine Fisheries Service, telephone 503–231–2005, fax 503–230–5435.

SUPPLEMENTARY INFORMATION: In the past, ESA jurisdiction over the coastal cutthroat trout has been shared by the FWS and NMFS, although NMFS has a history of conducting status reviews on sea-run forms of cutthroat trout (61 FR 41514, August 9, 1996; 64 FR 16397, April 5, 1999). During the status review for Umpqua River sea-run cutthroat trout, both agencies agreed that NMFS would handle ESA responsibilities for this species in the Umpqua River Basin (FWS, 1994). Since that time, the matter of agency jurisdiction has arisen for the various cutthroat life forms in other west coast basins. At issue is the question of appropriate jurisdiction for a species with both diadromous (i.e., migrating between fresh-and saltwater) and resident (*i.e.*, freshwater-dwelling) life forms. Salmonid species exhibiting the former life forms have generally been managed by NMFS while the latter forms have typically been under the jurisdiction of the FWS. The change in jurisdiction announced in this Notice is based on a determination that coastal cutthroat trout spend the majority of their life cycle in fresh water habitat.

On April 5, 1999, the agencies published a joint proposal to list the southwestern Washington/Columbia River cutthroat trout ESU as a threatened species and to de-list the Umpqua River ESU under the ESA (64 FR 16397). In that proposal, we announced that a decision would be made about which agency would have sole jurisdiction over the species. On November 22, 1999, the Directors of NMFS and the FWS signed a joint letter determining that the FWS shall assume all ESA regulatory jurisdiction over coastal cutthroat trout. For the FWS, applicable ESA regulations would include those promulgated in 50 CFR

part 17. For NMFS the applicable ESA regulations would include those promulgated in 50 CFR part 222, 226 and 424.

In making this decision, the agencies recognized that certain ESA responsibilities pertaining to the Umpqua River ESU should be retained by NMFS for a short time so that pending rulemaking and consultation issues can be efficiently concluded prior to FWS assuming complete jurisdiction for the species. Because the original status review and listing decisions for this ESU were conducted by NMFS, the final de-listing assessment will continue to be conducted by NMFS. The results of this assessment have been announced in a **Federal Register** document [1] and, in accordance with section 4(a)(2)(B) of the ESA, will require FWS' concurrence on any de-listing determination for the Umpqua River ESU. Also, NMFS will continue to conduct ESA section 7 consultations for this ESU until publication of a final determination.

In addition, the agencies have determined that the FWS would conclude the final listing determination for southwestern Washington/Columbia River cutthroat trout populations in light of their proposed listing status. FWS has, therefore, assumed sole ESA regulatory responsibilities (*e.g.*, conferencing requirements) for addressing these populations. Final listing determinations for the Southwestern Washington/Columbia River and Umpqua River populations are expected to be completed by April 2000. Regardless, both agencies will continue to coordinate activities such as section 7 consultations and Habitat Conservation Plans involving watersheds shared by coastal cutthroat trout and salmonid species under NMFS jurisdiction (*e.g.*, steelhead, coho, and chinook salmon).

References Cited

A complete list of all references cited herein is available on request from the Fish and Wildlife Service (See **ADDRESSES** section).

Author

The primary author of this document is Rollie White, Fish and Wildlife Service, (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

[1] See the **Federal Register** issue of April 19, 2000 I.D. 121198A).

Dated: April 12, 2000.

Cynthia U. Barry,

Acting Regional Director, Region 1, Fish and Wildlife Service.

Dated: April 7, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–9737 Filed 4–20–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 041700B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the Commercial Red Snapper Component

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS closes the commercial fishery for red snapper in the exclusive economic zone (EEZ) of the Gulf of Mexico. NMFS has determined that the spring portion of the annual commercial quota for red snapper will be reached on May 8, 2000. This closure is necessary to protect the red snapper resource.

DATES: Closure is effective noon, local time, May 8, 2000, until noon, local time, on September 1, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Roy Crabtree, 727–570–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622. Those regulations set the commercial quota for red snapper in the Gulf of Mexico at 4.65 million lb (2.11 million kg) for the current fishing year, January 1 through December 31, 2000. The red snapper commercial fishing season is split into two time periods, the first commencing at noon on February 1 with two-thirds of the annual quota (3.06 million lb (1.39 million kg)) available, and the second commencing at noon on September 1 with the remainder of the annual quota available. During the commercial season, the red snapper commercial fishery opens at noon on the first of each month and closes at noon on the 10th of each month, until the applicable commercial quotas are reached.

Under 50 CFR 622.43(a), NMFS is required to close the commercial fishery for a species or species group when the quota for that species or species group is reached, or is projected to be reached, by publishing a notification to that effect in the **Federal Register**. Based on current statistics, NMFS has determined that the available commercial quota of 3.06 million lb (1.39 million kg) for red snapper will be reached when the fishery closes at noon on May 8, 2000. Accordingly, the commercial fishery in the EEZ in the Gulf of Mexico for red snapper will remain closed until noon, local time, on September 1, 2000. The operator of a vessel with a valid reef fish permit having red snapper aboard must have landed and bartered, traded, or sold such red snapper prior to noon, local time, May 8, 2000.

During the closure, the bag and possession limits specified in 50 CFR 622.39(b) apply to all harvest or possession of red snapper in or from the EEZ in the Gulf of Mexico, and the sale or purchase of red snapper taken from the EEZ is prohibited. In addition, the bag and possession limits for red snapper apply on board a vessel for which a commercial permit for Gulf reef fish has been issued, without regard to where such red snapper were harvested. However, the bag and possession limits for red snapper apply only when the recreational quota for red snapper has not been reached and the bag and possession limit has not been reduced to zero. The prohibition on sale or purchase does not apply to sale or purchase of red snapper that were harvested, landed ashore, and sold prior to noon, local time, May 8, 2000, and were held in cold storage by a dealer or processor.

Classification

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Dated: April 17, 2000.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–10027 Filed 4–20–00; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 78
Friday, April 21, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 10, 201, 250, 290, 310, 329, 341, 361, 369, 606, and 610

[Docket No. 00N–0066]

Amendment of Regulations Regarding Certain Label Statements on Prescription Drugs; Republication

Editorial Note: FR Doc. 00-8737 was originally published at page 18934 in the issue of Monday April 10, 2000. In that publication some text was incorrectly printed. The corrected document is republished below in its entirety.

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations to require the labels of prescription drugs to bear the statement "Rx only" instead of the statement "Caution: Federal law prohibits dispensing without prescription" and to remove the requirement that certain habit-forming drugs bear the statement "Warning—May be habit forming." The agency is also proposing to add a new section to the regulations to make clear that these habit-forming drugs must be dispensed by prescription only. The agency is taking this action to implement changes made by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Submit written comments by June 26, 2000.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: For information regarding human drugs:
Jerry Phillips, Center for Drug Evaluation and Research (HFD–400), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3246.
For information regarding biologics:
Robert A. Yetter, Center for Biologics Evaluation and Research (HFM–10), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. The Modernization Act

On November 21, 1997, President Clinton signed into law the Modernization Act (Public Law 105–115). Section 126 of the Modernization Act amended section 503(b)(4) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 353(b)(4)) to require, at a minimum, that, prior to dispensing, the label of prescription drugs bear the symbol "Rx only" instead of the statement "Caution: Federal law prohibits dispensing without prescription." The new label statement may be printed as either "Rx only" or "℞ only."[1] Section 126 of the Modernization Act also repealed section 502(d) of the act (21 U.S.C. 352(d)), which provided that a drug or device containing certain enumerated narcotic or hypnotic (habit-forming) substances or their derivatives was misbranded unless its label bore the name and quantity of the substance and the statement "Warning—May be habit forming."

II. Description of the Proposed Rule

The proposed rule would amend parts 10, 201, 250, 310, 329, 361, 606, and 610 (21 CFR parts 10, 201, 250, 310, 329, 361, 606, and 610) by removing the requirement that prescription drugs be labeled with "Caution: Federal law prohibits dispensing without prescription" and adding in its place a requirement that prescription drugs be labeled with "Rx only" or "℞ only."

The proposed rule would amend parts 201 and 369 (21 CFR part 369) by removing the requirement that certain habit-forming drugs bear the statement "Warning—May be habit forming."

The proposed rule would remove part 329. Part 329 was issued under repealed section 502(d) of the act. Section 329.1 designates as habit-forming certain derivatives of the habit-forming substances listed in section 502(d) of the act. Section 329.10 elaborates on the labeling requirement of section 502(d) of the act.

Section 329.20 exempts certain habit-forming drugs from the prescription-dispensing requirements of the act. This section has not been substantively revised in more than 30 years. It is now out of date. Except as discussed elsewhere in this section, none of the drug ingredients listed as exempt in § 329.20 are currently marketed over-the-counter (OTC) or have any legal basis to be marketed OTC.

The proposed rule would amend part 290 (21 CFR part 290), by adding new §§ 290.1 and 290.2. Section 290.1 is being added to make clear the agency's determination that a drug that is a controlled substance listed in Schedule II, III, IV, or V of the Federal Controlled Substances Act (CSA) or implementing regulations must, unless otherwise determined by the agency, be dispensed by prescription only as required by section 503(b)(1) of the act. Section 503(b)(1) provides that a drug that "because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use," or a drug which "is limited by an approved application under section 505 of the act to use under the professional supervision of a practitioner licensed by law to administer such drug," shall be dispensed only upon a prescription of a practitioner licensed by law to administer such drug. Generally, a drug that meets the criteria for control under Schedule II, III, IV, or V of the CSA (see 21 U.S.C. 812) would also meet the standard for prescription dispensing under section 503(b)(1) of the act. Drugs included in Schedule I of the CSA cannot be lawfully marketed in the United States.

Section 290.2 retains the exemption from the prescription-dispensing requirement in § 329.20 for small amounts of codeine in combination with other nonnarcotic active medicinal ingredients. Small amounts of codeine in combination with other nonnarcotic active medicinal ingredients, for example, cough syrup with codeine, may be marketed OTC under a final monograph for cold and cough products. (See § 341.14 (21 CFR 341.14)). For the reason stated above, no other exemptions are warranted at this

[1] The ℞ symbol appears in bold in this document because of type-setting limitations, however, it should not be bolded when used on the product's label.

time for the other narcotic drugs listed in § 329.20(a). Also, an exemption under § 290.2 is not needed for the chlorobutanol preparations described in § 329.20 because chlorobutanol is not a scheduled substance under the CSA. The epinephrine product described in § 329.20(c) cannot be lawfully marketed at this time.

The proposed rule would also revise § 341.14 to refer to the exemption at § 290.2, rather than § 329.20 which is being removed.

III. Implementation

A guidance for industry entitled "Implementation of Section 126 of the Food and Drug Administration Modernization Act of 1997—Elimination of Certain Labeling Requirements" (63 FR 39100, July 21, 1998) is available on the Internet at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/guidelines.htm. The guidance indicates that, for the time periods and under the circumstances stated in this section, in the exercise of its enforcement discretion, FDA does not intend to object if a sponsor does not comply with the new labeling requirements of section 126 of the Modernization Act. The guidance advises that FDA does not intend to object if a sponsor of a currently approved product implements the new requirements of section 126 of the Modernization Act at the time of the next revision of its labels, or by February 19, 2003, whichever comes first, and reports these minor changes in the next annual report. For pending (unapproved) full or abbreviated applications received by the agency prior to February 19, 1998, sponsors should comply with the new labeling requirements by the time of the next revision of their labels or by February 19, 2003, whichever comes first. The guidance also advises that full or abbreviated applications received by FDA after February 19, 1998, should provide labels and labeling in compliance with the new labeling requirements.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) through (k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. The agency's guidance document explains that FDA will exercise its enforcement discretion in a manner that will permit companies to implement the required label changes at the time of the next revision of their labels, or by February 19, 2003, whichever comes first. Because almost all labels would typically be reprinted within this timeframe, this enforcement strategy will eliminate any significant costs that would otherwise be associated with the rule. As a result, the proposed rule is not a significant action as defined by the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options to minimize any significant impact on a substantial number of small entities. The agency certifies that the proposed rule would not have a significant impact on a substantial number of small entities because the 5-year implementation period will allow companies to make the necessary label changes during the normal course of business. Therefore, under the Regulatory Flexibility Act, no further analysis is required. The Unfunded Mandates Reform Act (in section 202) requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation). Because this rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in an expenditure of $100 million or more in any one year, FDA is not required to perform a cost-benefit analysis under the Unfunded Mandates Reform Act.

VI. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Public Law 104–13) is not required. The revised labeling information is supplied by the Modernization Act (changing "Caution: Federal law prohibits dispensing without prescription" to "Rx only" or "℞ only"). According to 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not considered a collection of information.

VII. Request for Comments

Interested persons may, on or before June 26, 2000, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Proposed Effective Date

FDA proposes that any final rule that may issue based on this proposal become effective 60 days after publication of the final rule. For information on implementation, see the discussion in section III of this document.

List of Subjects

21 CFR Part 10

Administrative practice and procedure, News media.

21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 250

Drugs.

21 CFR Parts 290 and 329

Drugs, Labeling.

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 341

Labeling, Over-the-counter drugs.

21 CFR Part 361

Medical research, Prescription drugs, Radiation protection.

21 CFR Part 369

Labeling, Medical devices, Over-the-counter drugs.

21 CFR Part 606

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and the Food and Drug Administration Modernization Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that chapter I of Title 21 be amended as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

1. The authority citation for 21 CFR part 10 is revised to read as follows:

Authority: 5 U.S.C. 551–558, 701–706; 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–397, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

§ 10.50 [Amended]

2. Section 10.50 *Promulgation of regulations and orders after an opportunity for a formal evidentiary public hearing* is amended by removing and reserving paragraph (c)(7).

PART 201—LABELING

3. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg-360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

§ 201.10 [Amended]

4. Section 201.10 *Drugs; statement of ingredients* is amended in paragraph (a) by removing the phrase "as 'Warning—May be habit forming' ".

5. Section 201.16 is revised to read as follows:

§ 201.16 Drugs; Spanish-language version of certain required statements.

An increasing number of medications restricted to prescription use only are being labeled solely in Spanish for distribution in the Commonwealth of Puerto Rico where Spanish is the predominant language. Such labeling is authorized under § 201.15(c). One required warning, the wording of which is fixed by law in the English language, could be translated in various ways, from literal translation to loose interpretation. The statutory nature of this warning requires that the translation convey the meaning properly to avoid confusion and dilution of the purpose of the warning. Section 503(b)(4) of the Federal Food, Drug, and Cosmetic Act requires, at a minimum, that the label bear the statement "Rx only." The Spanish-language version of this must be "Sólamente Rx".

§ 201.100 [Amended]

6. Section 201.100 *Prescription drugs for human use* is amended in paragraph (b)(1) by removing the phrase " 'Caution: Federal law prohibits dispensing without prescription' " and adding in its place the phrase " 'Rx only' ".

§ 201.120 [Amended]

7. Section 201.120 *Prescription chemicals and other prescription components* is amended in paragraph (b)(2) by removing the phrase " 'Caution: Federal law prohibits dispensing without prescription' " and adding in its place the phrase " 'Rx only' ".

§ 201.122 [Amended]

8. Section 201.122 *Drugs for processing, repacking, or manufacturing* is amended in the introductory text, first sentence, by removing the phrase " 'Caution: Federal law prohibits dispensing without prescription' " and adding in its place the phrase " 'Rx only' ".

§ 201.306 [Amended]

9. Section 201.306 *Potassium salt preparations intended for oral ingestion by man* is amended in paragraph (b)(1) by removing the word "caution".

PART 250—SPECIAL REQUIREMENTS FOR SPECIFIC HUMAN DRUGS

10. The authority citation for 21 CFR part 250 continues to read as follows:

Authority: 21 U.S.C. 321, 336, 342, 352, 353, 355, 361(a), 362(a) and (c), 371, 375(b).

§ 250.100 [Amended]

11. Section 250.100 *Amyl nitrite inhalant as a prescription drug for human use* is amended in paragraph (b) by removing the phrase "legend 'Caution: Federal law prohibits dispensing without prescription.' " and adding in its place the phrase "statement 'Rx only.' ".

§ 250.101 [Amended]

12. Section 250.101 *Amphetamine and methamphetamine inhalers regarded as prescription drugs* is amended in paragraph (b) by removing the phrase "legend 'Caution: Federal law prohibits dispensing without prescription.' " and adding in its place the phrase "statement 'Rx only.' ".

§ 250.105 [Amended]

13. Section 250.105 *Gelsemium-containing preparations regarded as prescription drugs* is amended by removing the phrase " 'Caution: Federal law prohibits dispensing without prescription.' " from the last sentence and adding in its place the phrase " 'Rx only.' ".

§ 250.108 [Amended]

14. Section 250.108 *Potassium permanganate preparations as prescription drugs* is amended in paragraph (c)(1) by removing the phrase "legend, 'Caution: Federal law prohibits dispensing without prescription. ' " and adding in its place the phrase "statement 'Rx only.' " and in paragraph (c)(2) by removing the phrase ", 'Caution: Federal law prohibits dispensing without prescription.' " and adding in its place the phrase " 'Rx only.' ".

§ 250.201 [Amended]

15. Section 250.201 *Preparations for the treatment of pernicious anemia* is amended in paragraph (d) by removing the phrase "legend 'Caution—Federal law prohibits dispensing without prescription.' " and adding in its place the phrase "statement 'Rx only.' ".

§ 250.250 [Amended]

16. Section 250.250 *Hexachlorophene, as a component of drug and cosmetic products* is amended in the last sentence of paragraph (c)(1) by removing the phrase "legend 'Caution: Federal law prohibits dispensing without a prescription,' " and adding in its place the phrase "statement 'Rx only,' " and in paragraph (c)(4)(i) by removing the phrase "prescription legend" and adding in its place the phrase "statement 'Rx only' ".

PART 290—CONTROLLED DRUGS

17. The authority citation for 21 CFR part 290 continues to read as follows:

Authority: 21 U.S.C. 352, 353, 355, 371.

18. Section 290.1 is added to subpart A to read as follows:

§ 290.1 Controlled substances.

Any drug that is a controlled substance listed in schedule II, III, IV, or V of the Federal Controlled Substances Act or implementing regulations must be dispensed by prescription only as required by section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act unless specifically exempted in § 290.2.

19. Section 290.2 is added to subpart A to read as follows:

§ 290.2 Exemption from prescription requirements.

The prescription-dispensing requirements of section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act are not necessary for the protection of

the public health with respect to a compound, mixture, or preparation containing not more than 200 milligrams of codeine per 100 milliliters or per 100 grams that also includes one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by codeine alone.

PART 310—NEW DRUGS

20. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b-360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b-263n.

§ 310.103 [Amended]

21. Section 310.103 *New drug substances intended for hypersensitivity testing* is amended in paragraph (a)(3)(i) by removing the phrase " 'Caution: Federal law prohibits dispensing without a prescription' " and adding in its place the phrase " 'Rx only' ".

PART 329—HABIT-FORMING DRUGS

22. Part 329 is removed.

PART 341—COLD, COUGH, ALLERGY, BRONCHODILATOR, AND ANTIASTHMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

23. The authority citation for 21 CFR part 341 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

§ 341.14 [Amended]

24. Section 341.14 *Antitussive active ingredients* is amended in paragraph (a)(2) by removing "§§ 329.20(a) and 341.40" and adding in its place "§ 290.2".

PART 361—PRESCRIPTION DRUGS FOR HUMAN USE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED: DRUGS USED IN RESEARCH

25. The authority citation for 21 CFR part 361 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 371; 42 U.S.C. 262.

§ 361.1 [Amended]

26. Section 361.1 *Radioactive drugs for certain research uses* is amended in paragraph (f)(1) by removing the phrase " 'Caution: Federal law prohibits dispensing without prescription' " and adding in its place the phrase " 'Rx only' ".

PART 369—INTERPRETATIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER-THE-COUNTER SALE

27. The authority citation for 21 CFR part 369 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371.

§ 369.22 [Removed]

28. Section 369.22 is removed.

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

29. The authority citation for 21 CFR part 606 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 360, 360j, 371, 374; 42 U.S.C. 216, 262, 263a, 264.

30. Section 606.121 is amended by revising paragraph (c)(8)(i) to read as follows:

§ 606.121 Container label.

* * * * *

(c) * * *

(8) * * *

(i) "Rx only."

* * * * *

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

31. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

§ 610.60 [Amended]

32. Section 610.60 *Container label* is amended in paragraph (a)(6) by removing the phrase " 'Caution: Federal law prohibits dispensing without prescription,' " and adding in its place the phrase " 'Rx only' ".

§ 610.61 [Amended]

33. Section 610.61 *Package label* is amended in paragraph (s) by removing the phrase " 'Caution: Federal law prohibits dispensing without prescription,' " and adding in its place the phrase " 'Rx only' ".

Dated: March 31, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00-8737 Filed 4-7-00; 8:45 am]
BILLING CODE 4160-01-F

Editorial Note: FR Doc. 00-8737 which was originally published in the issue of Monday, April 10, 2000, at page 18934 is being republished in its entirety in the issue of April, 2000, because of typesetting errors.

[FR Doc. 00-8737 Filed 4-20-00; 8:45 am]
BILLING CODE 1505-01-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA084/101-5045b; FRL-6563-1]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Proposed Revised Format for Materials Being Incorporated by Reference; Proposed Approval of Recodification of the Virginia Administrative Code

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the Virginia Department of Environmental Quality. These submittals include miscellaneous revisions and recodification of Virginia's air pollution control regulations. This proposed recodification reorganizes and renumbers the Virginia SIP to match the numbering system set forth in the Virginia Administrative Code. EPA also proposes to revise the format of regulations for materials submitted by Virginia that are incorporated by reference (IBR) into their respective State implementation plans (SIPs). The regulations affected by this format change have all been previously submitted by the respective State agency and approved by EPA.

In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by May 22, 2000.

ADDRESSES: Written comments should be addressed to Marcia L. Spink, Mailcode 3AP20, U.S. Environmental

Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108 at the EPA Region III address above, or by e-mail at fankford.harold@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: March 6, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–9536 Filed 4–20–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 031–0174b; FRL–6580–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Lake County Air Quality Management District and San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is approving revisions to the California State Implementation Plan. The revisions concern rules from the following: Lake County Air Quality Management District (LCAQMD) and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD). The rules control particulate matter (PM) emissions from open burning or processes identified by a weight rate throughput.

The intended effect of this action is to regulate emissions of PM in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no relevant adverse comments are received, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will not take effect and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time.

DATES: Comments must be received in writing by May 22, 2000.

ADDRESSES: Comments should be addressed in writing to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Lake County Air Quality Management District, 883 Lakeport Boulevard, Lakeport, CA 95453.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1135.

SUPPLEMENTARY INFORMATION: This document concerns the following rules: LCAQMD Section (Rule) 226.5, Fire Season—Burn Ban; LCAQMD Section (Rule) 431.5, [Non-Agricultural Burning]; LCAQMD Section (Rule) 433, [Exemption—Residential]; Lake County Section (Rule) 1150, Wildland Vegetation Management Burning; and SJVUAPCD Rule 4202, Particulate Matter—Emission Rate. These rules were adopted on September 13, 1988, June 13, 1989, July 15, 1997, December 6, 1988, and December 17, 1992, respectively, and were submitted by the California Air Resources Board (CARB) to EPA on July 23, 1999, March 26, 1990, March 10, 1998, February 7, 1989, and September 28, 1994, respectively. For further information, see the direct final action that is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 30, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 00–9651 Filed 4–20–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN99–1b; FRL–6573–6]

Approval and Promulgation of Implementation Plan; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to particulate matter (PM) emissions regulations for Dubois County, Indiana, which the Indiana Department of Environmental Management (IDEM) submitted to EPA on February 3, 1999, as amendments to its State Implementation Plan (SIP). The revisions include relaxation of some PM limits, elimination of limits for boilers which are no longer operating, updating facility names, and changing some boiler fuel types. Air quality dispersion modeling provided by IDEM shows that this SIP revision will not have an adverse effect on PM air quality.

DATES: EPA must receive written comments on this proposed rule by May 22, 2000.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the State submittal and EPA's analysis of it at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency,

Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean EPA.

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I. What Action is EPA Taking Today?

We are proposing to approve revisions to PM emissions regulations for Dubois County, Indiana, which IDEM submitted to EPA on February 3, 1999, as amendments to its SIP. The revisions include relaxation of some PM limits, elimination of limits for boilers which are no longer operating, updating facility names, and changing some boiler fuel types.

II. Where can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: March 28, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–9921 Filed 4–20–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Docket No. CT–055–7214b; FRL–6577–2]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Connecticut; Plan for Controlling MWC Emissions From Existing MWC Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the sections 111(d)/129 State Plan submitted by the Connecticut Department of Environmental Protection (DEP) on October 1, 1999. This State Plan is for carrying out and enforcing provisions that are at least as protective as the Emissions Guidelines (EGs) applicable to existing Municipal Waste Combustors (MWCs) units with capacity to combust more than 250 tons/day of municipal solid waste (MSW).

The Connecticut DEP submitted the Plan to satisfy certain Federal Clean Air Act requirements. In the Final Rules section of the **Federal Register**, EPA is approving the Connecticut State Plan submittal as a direct final rule without a prior proposal. EPA is doing this because the Agency views this action as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule elsewhere in the **Federal Register**. If EPA does not receive any significant, material, and adverse comments to this rule, then the approval will become final without further proceedings. If EPA receives adverse comments, the direct final rule will be withdrawn and EPA will address all public comments received in a subsequent final rule based on this proposed rule. EPA will not begin a second comment period.

DATES: EPA must receive comments in writing by May 22, 2000.

ADDRESSES: You should address your written comments to: Mr. John Courcier, Acting Manager, Air Permits Unit, Office of Ecosystem Protection (CAP), U.S. EPA, One Congress Street, Suite 1100, Boston, Massachusetts 02114–2023.

Copies of documents relating to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Air Permits Unit, Office of Ecosystem Protection, Suite 1100 (CAP), One Congress Street, Boston, Massachusetts 02114–2023.

Connecticut Department of Environmental Protection, Bureau of Air Management, Planning and Standards Division, 79 Elm Street, Hartford, Connecticut 06106–5127, (860) 424–3026.

FOR FURTHER INFORMATION CONTACT: John Courcier, Office of Ecosystem Protection (CAP), EPA–New England, Region 1, Boston, Massachusetts 02203, (617) 918–1659, or by e-mail at *courcier.john@epa.gov*. While the public may forward questions to EPA via e-mail, it must submit comments on this proposed rule according to the procedures outlined above.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is found in the Rules section of this **Federal Register**.

Dated: March 31, 2000.

Mindy S. Lubber,

Regional Administrator, EPA New England.

[FR Doc. 00–9653 Filed 4–20–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Docket No. ID–02–0001; FRL–6580–5]

Approval and Promulgation of Hospital/Medical/Infectious Waste Incinerators State Plan for Designated Facilities and Pollutants: Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State of Idaho's section 111(d) State Plan for controlling emissions from existing Hospital/Medical/Infectious Waste Incinerators (HMIWI). The plan was submitted on December 16, 1999, to fulfill the requirements of sections 111(d) and 129 of the Clean Air Act. The State Plan adopts and implements the Emissions Guidelines applicable to existing HMIWIs, and establishes emission limits and controls for sources constructed on or before June 20, 1996.

In the final rules section of this **Federal Register**, the EPA is approving Idaho's State Plan as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, EPA will not take action on this proposed rule. If the EPA receives relevant adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will then address all public comments received in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action.

DATES: Written comments must be received by May 22, 2000.

ADDRESSES: Written comments should be addressed to: Catherine Woo, US EPA, Region X, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, WA 98101.

Copies of the State submittal are available for public review during normal business hours at the following locations. Persons wanting to examine these documents should make an appointment with the appropriate office

at least 24 hours before the day of the visit.

Environmental Protection Agency, Region X, Office of Air Quality, 1200 Sixth Avenue, Seattle, WA 98101.

Idaho Division of Environmental Quality, 1410 N. Hilton, Boise, ID 83720 (Contact Tim Teater at 208–373–0457 for an appointment at IDEQ).

FOR FURTHER INFORMATION CONTACT: Catherine Woo, Office of Air Quality (OAQ–107), US EPA, Region X, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–1814.

SUPPLEMENTARY INFORMATION: For additional information see the direct final action which is published in the Rules section of this **Federal Register**.

Dated: April 4, 2000.

Chuck Clarke,

Regional Administrator, Region 10.

[FR Doc. 00–9649 Filed 4–20–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Docket No. ID–03–0001; FRL–6583–7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Oregon; Negative Declaration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the Clean Air Act (CAA), Sections 111(d) and 129 negative declaration submitted by the Oregon Department of Environmental Quality on October 20, 1998, and November 6, 1998. This negative declaration adequately certifies that there are no Hospital/Medical/Infectious Waste Incinerators (HMIWI) located within its boundaries.

In the final rules section of this **Federal Register**, the EPA is approving Oregon's negative declaration as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, EPA will not take action on this rule. If the EPA receives relevant adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will then address all public comments received in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action.

DATES: Written comments must be received by May 22, 2000.

ADDRESSES: Written comments should be addressed to: Catherine Woo, US EPA, Region X, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, WA 98101.

Copies of the State negative declaration are available for public review during normal business hours at the following locations. Persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region X, Office of Air Quality, 1200 Sixth Avenue, Seattle, WA 98101.

Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, OR 97204.

Contact Kathleen Craig at 503–229–6833, for an appointment at ODEQ.

FOR FURTHER INFORMATION CONTACT: Catherine Woo, Office of Air Quality (OAQ–107), US EPA, Region X, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–1814.

SUPPLEMENTARY INFORMATION: For additional information see the direct final action which is published in the Rules Section of this **Federal Register**.

Dated: April 4, 2000.

Chuck Clarke,

Regional Administrator, Region X.

[FR Doc. 00–10034 Filed 4–20–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 222 and 229

[Docket No. FRA–1999–6439, Notice No. 5; Docket No. FRA–1999–6440]

RIN 2130–AA71

Use of Locomotive Horns at Highway-Rail Grade Crossings

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Technical conference on proposed rule.

SUMMARY: On January 13, 2000 (65 FR 2230), FRA published a Notice of Proposed Rulemaking (NPRM) on the Use of Locomotive Horns at Highway-Rail Grade Crossings (Docket No. FRA–1999–6439). On the same date FRA released a Draft Environmental Assessment (DEIS)(Docket No. FRA–1999–6440) pertaining to the proposals contained in the NPRM. A number of public hearings in these proceedings have been held throughout the country, and more have been scheduled prior to the close of the comment period on May 26, 2000. FRA has determined that, in addition to the public hearings, a technical conference addressing locomotive horn acoustics would be helpful to FRA in developing a final rule in this proceeding. Accordingly, FRA is scheduling a technical conference on locomotive horn acoustics to be held on May 10, 2000, in Washington, DC.

DATES: 1. A technical conference will be held on Wednesday, May 10, 2000 beginning at 9:00 a.m.

2. Deadline to register for participation in the technical conference is close of business on Friday, May 5, 2000. Please see Public Participation Procedures in **SUPPLEMENTARY INFORMATION** section of this document for registration details.

ADDRESSES: 1. *Technical conference:* FRA Headquarters, 7th floor conference room, 1120 Vermont Avenue, NW, Washington, DC.

2. *FRA Docket Clerk:* Federal Railroad Administration Docket Clerk, Office of Chief Counsel, Mail Stop 10, FRA, 1120 Vermont Avenue, NW, Washington, DC 20590. E-mail address for the FRA Docket Clerk is renee.bridgers@fra.dot.gov.

SUPPLEMENTARY INFORMATION:

Technical Conference

The technical conference is meant to address specific technical issues that might not be addressed in written comments or through oral comments presented at public hearings. The issues to be addressed will focus on the technical attributes of, variations to, and potential modifications of train horns. Among the issues which may be discussed are tone and decibel levels, sound dispersion and direction, horn placement and shrouding, horn sounding sequence and duration, and whistle board placement and positive train control (as it relates to horn use). Additional subjects within the scope of locomotive horn acoustics may be also be addressed. A transcript of the technical conference will be taken and placed in the public docket of this proceeding.

Public Participation Procedures

Any person wishing to participate in the technical conference should notify the FRA Docket Clerk by mail or by e-mail by close of business on May 5,

2000. The notification of intent to participate should identify the organization the person represents (if any), the names of all participants from that organization planning to participate, and a phone number at which the registrant can be reached. FRA reserves the right to limit active conference participation to those persons who have registered in advance.

Issued in Washington, DC on April 18, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–10043 Filed 4–20–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000331092–0092–01; I.D. 030100F]

RIN 0648–AM42

Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program for the Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 4 to the Fishery Management Plan for the Scallop Fishery off Alaska (FMP), which would create a license limitation program (scallop LLP) for the scallop fishery. If adopted, this program would limit the number of participants and reduce fishing capacity in the scallop fishery off Alaska. This action is proposed to achieve the conservation and management goals for the scallop fishery and is intended to further the objectives of the FMP.

DATES: Comments on the proposed rule must be submitted on or before June 5, 2000.

ADDRESSES: Comments on this proposed rule should be submitted to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Comments may also be sent via facsimile (fax) to 907–586–7465. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, Juneau, AK. Copies of Amendment 4 to the Scallop FMP, and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for the amendment are available from the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228, or gretchen.harrington@noaa.gov.

SUPPLEMENTARY INFORMATION: The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Under the FMP, management of all aspects of the scallop fishery, except limited access, is delegated to the State of Alaska (State). Federal regulations governing the scallop fishery appear at 50 CFR parts 600 and 679. State regulations governing the scallop fishery appear in the Alaska Administrative Code (AAC) at 5 AAC Chapter 38—Miscellaneous Shellfish.

State regulations establish guideline harvest levels (GHL) for different scallop registration areas, fishing seasons, open and closed fishing areas, observer coverage requirements, bycatch limits, gear restrictions, and measures to limit processing efficiency (including a ban on the use of mechanical shucking machines and a limitation on crew size). The gear regulations limit vessels to using no more than two, 15–ft (4.5 m) dredges, except in Cook Inlet (State Registration Area H) where vessels are limited to using a single 6–ft (1.8 m) scallop dredge.

The Council has submitted Amendment 4 for Secretarial review, and a Notice of Availability of the amendment was published March 8, 2000 (65 FR 12500) with comments on the FMP amendment invited through May 8, 2000. Comments may address the FMP amendment, the proposed rule, or both, but must be received by May 8, 2000, to be considered in the approval/disapproval decision on the FMP amendment.

Management Background and Need for Action

Historic Management of the Scallop Fishery

The scallop resource off Alaska has been commercially exploited for more than 30 years. Weathervane scallop stocks off Alaska were first commercially explored by a few vessels in 1967. The fishery grew rapidly over the next 2 years with about 19 vessels harvesting almost 2 million lb (907.2 metric tons (mt)) of shucked meats. Since then, vessel participation and harvests have fluctuated greatly, but have remained below the peak participation and harvests experienced in the late 1960s. Between 1969 and 1991, about 40 percent of the annual scallop harvest came from State waters. Since 1991, Alaska scallop harvests have increasingly occurred in Federal waters. Before 1990, about two-thirds of the scallop harvest was taken off Kodiak Island and about one-third from the Yakutat area, with harvests from other areas making minor contributions to overall landings. The increased harvests in the 1990s occurred with new exploitation in the Bering Sea. The fishery has occurred almost exclusively in Federal waters in recent years, but some fishing in State waters occurs off Yakutat, Dutch Harbor, and Adak.

Before the early 1990s, the Council concluded that the State's scallop management program provided sufficient conservation and management of the Alaska scallop resource and did not need to be duplicated by Federal regulation. The State concurred with this position under the premise that all vessels participating in the Alaska scallop fishery were registered under the laws of the State and fell under the State's management jurisdiction.

Initial Federal Involvement in the Fishery

By 1992, fishery participants and management agencies developed growing concerns about excessive fishing capacity and exploitation in the scallop fishery. The Council was presented with information indicating that the stocks of weathervane scallops were fully exploited and that any increase in fishing effort could be detrimental to the stocks. Information indicated that dramatic changes in age composition had occurred during the period 1980–1990, with commensurate declines in harvest. In the early 1990s, many fishermen abandoned historical fishing areas and searched for new areas to maintain catch levels. Increased numbers of small scallops were reported in the catch. These events raised conservation concerns because scallops are highly susceptible to local depletion and boom/bust cycles worldwide.

The perceived need to limit access to the fishery was the primary motivation for the Council to begin its consideration of Federal management of the scallop fishery in 1992. The Council believed that Federal action was necessary because existing State statutes precluded a State vessel moratorium

and, at that time, the State did not have authority under the Magnuson-Stevens Act to restrict access in Federal waters. The Council began analysis of a variety of options for Federal management of the scallop fishery in Federal waters off Alaska, and a vessel moratorium was proposed as an essential element of a Federal management regime to stabilize the size and capacity of the scallop fleet while the Council considered permanent limited entry alternatives for the fishery. In September 1993, the Council tentatively identified its preferred alternative for a Federal FMP for the scallop fishery—a Federal vessel moratorium and shared management authority with the State. A draft FMP and analysis were released to the public in November 1993.

In April 1994, the Council and its advisory bodies reviewed the draft FMP, received public testimony, and adopted the draft FMP for the scallop fishery, which proposed to establish a vessel moratorium and delegate most other routine management measures to the State. Under the draft FMP, non-limited access measures would be delegated to the State based on the premise that all vessels fishing for scallops in the Federal waters off Alaska also would be registered with the State. The Council recognized the potential problem of unregistered vessels fishing in Federal waters, but noted that all vessels fishing for scallops in Federal waters were registered in Alaska and that no information was available to indicate that vessels would not continue to register with the State.

Unregulated Fishing and the Closure of Federal Waters

During the time proposed regulations to implement the Council's proposed FMP were being developed, a vessel, which was presumed to have canceled its State registration, began fishing for scallops in Federal waters in the Prince William Sound Registration Area. The State previously had closed these waters to fishing by State-registered vessels because the GHL level of 50,000 lb (22.7 mt) of shucked meats had been taken. The State was unable to stop this uncontrolled fishing activity due to uncertainty whether the vessel was fishing outside State jurisdiction. The U.S. Coast Guard boarded the vessel in question and was informed that 54,000 lb (24.5 mt) of shucked scallop meats were on board. This amount, combined with the 50,000 lb (22.7 mt) of shucked meats already taken by State-registered vessels meant that the State's GHL for the Prince William Sound Registration Area was exceeded by over 100 percent.

On February 17, 1995, the Council held an emergency teleconference to address concerns about uncontrolled fishing for scallops in Federal waters by vessels fishing outside the States's jurisdiction. The Council requested that NMFS implement an emergency rule to close Federal waters to fishing for scallops to prevent overfishing of the scallop stocks. NMFS approved the Council's request and closed Federal waters off Alaska to fishing for scallops by emergency rule on February 23, 1995 (60 FR 11054, March 1, 1995).

After the unregulated fishing event that warranted the emergency rule, the Council and NMFS determined that the Council's draft FMP was no longer appropriate. As a result, the draft FMP was not submitted for review by NMFS. To respond to the need for Federal management of the scallop fishery once the emergency rule expired, the Council prepared a second draft FMP and adopted it. That FMP was subsequently approved by NMFS on July 26, 1995. The only management measure authorized and implemented under the FMP was an interim 1 year closure of Federal waters off Alaska to fishing for scallops (60 FR 42070, August 15, 1995). The interim closure prevented uncontrolled fishing for scallops in Federal waters while the Council developed a Federal scallop management program. The Council recommended this approach because the suite of alternative management measures necessary to support a controlled fishery for scallops in Federal waters could not be prepared, reviewed, and implemented before the emergency rule expired.

Amendment 1: State-Federal Management Regime

During 1995, the Council prepared Amendment 1 to the FMP to replace the interim closure with a joint State-Federal management regime. Amendment 1 was approved by NMFS on July 10, 1996 (61 FR 38099). Amendment 1 established a joint State-Federal management regime under which NMFS implemented Federal scallop regulations that duplicated most State scallop regulations, including definitions of scallop registration areas and districts, scallop fishing seasons, closed waters, gear restrictions, efficiency limits, crab bycatch limits, scallop catch limits, inseason adjustments, and observer coverage requirements. This joint State-Federal management regime was designed as a temporary measure to prevent unregulated fishing in Federal waters until changes in the Magnuson-Stevens Act would enable the Council to delegate management of the fishery to the State. Federal waters were re-opened to fishing for scallops on August 1, 1996.

Amendment 2: Vessel Moratorium

On March 5, 1997, NMFS approved Amendment 2 to the FMP, which established a temporary moratorium on the entry of new vessels into the scallop fishery in Federal waters off Alaska. NMFS published a final rule implementing the vessel moratorium on April 11, 1997 (62 FR 17749). To qualify its owner for a moratorium permit, a vessel must have made a legal landing of scallops during 1991, 1992, or 1993, or during at least 4 separate years from 1980 through 1990. The moratorium remains in effect through June 30, 2000, or until replaced by a permanent limited access system. Eighteen vessel owners qualified for moratorium permits under the Federal vessel moratorium.

Amendment 3: Delegate Management Authority to the State

While the joint State-Federal management regime established under Amendment 1 enabled NMFS to reopen the EEZ to fishing for scallops, it proved to be cumbersome in practice. Every management action, including inseason openings and closures, had to be coordinated so that State and Federal actions were simultaneously effective. State scallop managers were constrained in their ability to rapidly implement management decisions because they had to coordinate each action with NMFS and provide sufficient lead-time for publication of the action in the **Federal Register**.

The purpose of maintaining duplicate regulations at the State and at the Federal level was to prevent unregulated fishing by vessels not registered under the laws of the State. By 1997, the State-Federal management regime established under Amendment 1 no longer was necessary to prevent unregulated fishing for scallops in Federal waters because the Sustainable Fisheries Act of 1996 amended section 306 of the Magnuson-Stevens Act to provide authority for the FMP to delegate to the State management responsibility for the scallop fishery in Federal waters off Alaska.

Amendment 3 delegated to the State the authority to manage all aspects of the scallop fishery in Federal waters, except limited access, including the authority to regulate vessels not registered under the laws of the State. The final rule implementing Amendment 3 was published on July 17, 1998 (63 FR 38501). Amendment 3 simplified scallop management in the

Federal waters off Alaska by eliminating the unnecessary duplication of regulations at the State and Federal levels.

Amendment 5: Essential Fish Habitat (EFH)

Amendment 5 to the FMP responds to new EFH requirements of section 303 of the Magnuson-Stevens Act. The notice of approval of Amendment 5 was published on April 26, 1999 (64 FR 20216). This amendment describes and identifies EFH for the scallop fishery, includes provisions to minimize to the extent practicable adverse effects on such habitat caused by fishing, and identifies other actions to encourage the conservation and enhancement of such habitat.

Amendment 6: Overfishing Definitions

Amendment 6, also required by recent changes in the Magnuson-Stevens Act, amended the FMP by redefining overfishing, optimum yield (OY), and maximum sustainable yield for the scallop resource. Amendmentse 6 was approved on March 3, 1999 (64 FR 11390). This amendment improved management of the scallop fisheries by providing the tools to (1) prevent overfishing; (2) achieve OY on a continuing basis; and (3) minimize bycatch. Amendment 6 also added information to the FMP on the State's bycatch monitoring and reduction programs such as at-sea catch sampling, area closures, bycatch limits, and gear restrictions.

Amendment 4: License Limitation Program

The Council adopted Amendment 4 to the FMP in February 1999. If approved and implemented as proposed, an LLP would replace the existing Federal moratorium program on the entry of new vessels to the scallop fishery, which is scheduled to expire on June 30, 2000.

The Council designed Amendment 4 in response to extensive public testimony that the scallop fishery suffered from excessive harvesting capacity. In 1996, members of the scallop industry submitted a proposal to the Council for an LLP. Industry members proposed an LLP to limit access to the fishery because they believed that they would suffer economic hardship if latent moratorium permits were activated. "Latent" permits refer to permits for vessels that received a moratorium permit but that currently are not active in the fishery. Public testimony indicated that fishermen could not break even (i.e., their average costs of fishing for scallops would not at least equal their average gross income from scallops landed), if the number of vessels fishing for scallops increased. This conclusion is supported by the economic analysis in the EA/RIR/IRFA for Amendment 4 and is demonstrated by recent participation in the fishery of an average of nine vessels since 1995.

Beginning February 1998, the Council reviewed participation, and other data from the scallop fishery, considered public testimony, and developed a problem statement and alternatives for analysis of an LLP to replace the existing vessel moratorium.

The Council developed six alternatives and two options for the LLP. These alternatives ranged from no action to a program that would issue nine licenses, which is half the number of moratorium permits. The alternatives and options are described in the EA/RIR/IRFA (see **ADDRESSES**). Under the Council's preferred alternative the qualification criteria for initial allocation of licences, if adopted, would result in a total of nine licenses. The Council adopted the most restrictive alternative and options to create an LLP that would reduce the number of participants in the fishery and eliminate growth in harvesting capacity. The Council's intention is to reduce effort to approach a sustainable fishery with maximum net benefits to the Nation, as required by the Magnuson-Stevens Act. This proposed rule would implement the Council's preferred alternative and options.

Operational Aspects

1. General

The LLP would limit access to the commercial scallop fisheries in the exclusive economic zone (EEZ) off Alaska. A qualified person who applies as prescribed would receive a license(s) that would authorize that person to catch and retain scallops. Initial allocation of licenses would be based on the eligibility qualifications discussed here.

2. Nature of Scallop LLP Licenses and Qualification Periods

A scallop LLP license is a permit that grants the person named on the license (i.e., the license holder) the privilege of catching and retaining scallops in Federal waters off Alaska. Once initially issued using criteria discussed here, a scallop LLP license would be transferable, subject to NMFS approval, to an eligible transferee(s). Each license would specify certain endorsements and limitations, including the name and address of the license holder, the maximum length overall (MLOA) of the vessel on which the license could be used, and (as appropriate) limitations on scallop dredging gear that could be deployed from the vessel. A scallop LLP license would represent a privilege (not a property right) that could be amended or revoked at any time without compensation.

A scallop LLP license would be initially issued to an eligible applicant who held, on February 8, 1999 (the date of Council action), either a State or Federal moratorium permit and who used the permit to make legal landings of scallops in the qualifying period. The qualifying period for the scallop LLP would be from January 1, 1996, through October 9, 1998. Legal landings of scallops would have to be made in at least 2 of the 3 calendar years during this period. A legal landing is defined in regulations (§ 679.2) as a landing in compliance with Federal and State commercial fishing regulations in effect at the time of the landing.

A license would authorize the license holder to catch and retain scallops in Federal waters off Alaska. The license holder could be an individual or a corporate person consistent with the definition of "person" in the Magnuson-Stevens Act, and the license holder would not be required to be on board a vessel when it is catching and retaining scallops. An original copy of the scallop LLP license would be required to be onboard the vessel at that time. Although a scallop LLP license would not be vessel specific, the length overall of any vessel that is catching and retaining scallops under the terms of the license would be constrained by the MLOA specified on the license. In addition, the license would specify any gear limitations. The license also would be transferable, subject to NMFS review and approval of an application to transfer the license and the eligibility of the proposed transferee to receive a license by transfer.

A scallop LLP license would replace the existing scallop moratorium permit and would require possession of a moratorium permit as a criterion for a license. To qualify for a Federal scallop moratorium permit, a vessel must have made a minimum of 1 legal landing of scallops harvested from any waters off Alaska during 1991, 1992, or 1993, or during at least 4 separate years from 1980 through 1990 (§ 679.4(g)(3)).

The State moratorium qualification period was established either for a Statewide moratorium permit or a Cook Inlet moratorium permit. For the Statewide moratorium qualification period, a vessel owner must have harvested and landed at least 1,000 lb

(0.45 mt) of scallops from State waters during 1995 or 1996, and during each of at least 4 years between 1984 and 1996, inclusive. For the Cook Inlet moratorium qualification period, a person must have harvested and landed at least 1,000 lbs (0.45 mt) of scallops from Cook Inlet during 1994 or 1996, and during each of at least 3 years between 1984 and 1996, inclusive.

The scallop LLP eligibility criteria that require an applicant to have held a moratorium permit and to have made legal landings of scallops during the scallop LLP qualifying period are designed to account for past and recent participation in the scallop fishery. A key criterion for qualifying for a scallop LLP license is being named on a State or Federal moratorium permit. Hence, persons who were eligible for a vessel moratorium permit but did not apply or receive one could not now be eligible for a scallop LLP license. Also, the proposed requirement to have an original scallop LLP license on board while catching and retaining scallops would prevent a license holder from using more than one vessel at once for that purpose, unless the license holder was named on more than one license (see "ownership caps" below).

3. Gear Endorsements

Generally, the proposed scallop LLP licenses would have no area or gear endorsements. Scallop LLP licenses would authorize their holders to catch and retain scallops in all waters off Alaska that are open for scallop fishing. However, licenses premised on the legal landings of scallops harvested only from Cook Inlet (State Registration Area H) during the qualifying period would have a gear endorsement that would limit allowable gear to a single 6-foot (1.8 m) dredge when fishing for scallops in any area. Otherwise, licenses premised on the legal landings of scallops harvested from other areas outside Cook Inlet during the qualifying period would have no gear endorsement. Existing State regulations limit gear size to two 15–foot (4.5 m) dredges in all other areas. The purpose of this restriction is to prevent expansion in overall fishing capacity by not allowing relatively small operations in Cook Inlet to increase their fishing capacity. Persons who qualified from Cook Inlet scallop harvests would be allowed to operate in any area open to scallop fishing.

4. Vessel Length

The length overall (LOA) of a vessel is defined at § 679.2. Each scallop LLP license would specify the maximum LOA (MLOA) of a vessel that could be used under the authority of the license. The specified MLOA would be equal to the LOA of the longest vessel used by the applicant to make legal scallop landings during the qualifying years. The purpose of the MLOA provision is to restrict growth of harvesting capacity in the fishery, thus furthering the goals of the LLP.

5. Harvest Requirements

A legal landing is defined at § 679.2 as a landing in compliance with Federal and State commercial fishing regulations in effect at the time of the landing. Only legal landings of scallops would qualify the applicant for a scallop LLP license. To qualify for a scallop license, the applicant would be required to have used his/her moratorium permit on a qualified vessel to make one legal landing of scallops in each of any 2 calendar years from January 1, 1996, through October 9, 1998.

6. Scallop LLP License Recipients

A license would be issued only to an eligible applicant meeting the eligibility criteria described here. In addition, an eligible applicant would have to have been eligible on February 8, 1999 (the date of final Council action on the LLP), to document a fishing vessel under Chapter 121 of Title 46, U.S.C. This law establishes criteria regarding the citizenship of a person who may own a U.S. fishing vessel. The proposed regulation would require that the same citizenship standards apply to the eligibility for a scallop LLP license. Actual ownership of a fishing vessel under this statute on February 8, 1999, however, would not be required.

7. Application Process for Scallop LLP Licenses

A one-time application period of no less than 15 days would be specified by notification in the **Federal Register**. If the LLP is approved, NMFS anticipates that the application period for LLP licenses will be in May or June of 2000. All applications for licenses would have to be submitted during the time period specified for applying for a license. Applications postmarked after the ending date for the application period would be denied.

To evaluate and verify an applicant's eligibility claim, NMFS would compile an official LLP record for the scallop LLP containing information on qualified persons who hold moratorium permits and used the permits to participate in the scallop fishery during the qualifying period. The official scallop LLP record would contain only complete and verifiable information that would be used for the purpose of determining eligibility for a license, including information on vessels that participated in the scallop fishery during the relevant time periods, vessel ownership, and the dates, location, and numbers of qualifying landings of scallops made by those vessels.

If a scallop LLP application is submitted during the application period, NMFS would compare the claims on the application with the official LLP record. If the claims on the application are supported by the information in the official LLP record, the application would be approved and, following the expiration of the application period, the licence could be issued. If the claims are not verified using information in the official LLP record, the applicant would be so notified and would be provided 60 days to submit information (or evidence) to support the unverified claims. For example, an applicant could provide State fish tickets to verify legal landings not found in the official LLP record. Or, an applicant could provide a sales contract verifying vessel ownership. Unsubstantiated or incompletely verified claims would not be accepted. If an applicant demonstrates that the claims submitted in the application are correct and sufficient to qualify the applicant for a license, NMFS could issue a license to the applicant at the conclusion of the evidentiary period.

If information in the application is not substantiated or verified at the conclusion of the 60-day evidentiary period, NMFS would issue an initial administrative determination (IAD) including reasons why the application is not accepted. Applicants then would be provided with an opportunity to appeal that IAD to the NMFS Office of Administrative Appeals, under § 679.43.

During the pendency of an administrative adjudication leading to a final agency action, NMFS would issue an interim (temporary, non-transferable) licence to an applicant who was authorized to participate in the fishery in the year before the IAD is issued and who makes a credible claim to eligibility under the scallop LLP regulations. A decision to withhold an interim licence could be appealed to the Office of Administrative Appeals. An applicant who was issued a license the previous year would be eligible for a non-transferable interim license pending the final resolution of his or her claim pursuant to the license renewal provisions of 5 U.S.C. 558. The non-transferable interim license would authorize the applicant to catch and retain scallops and would be effective until final agency action. At that time, the person who appealed would receive either a transferable license, or no

license, depending on the final agency action.

8. Transfer Process for Scallop LLP Licenses

The transfer process for scallop LLP licenses would enable a license holder to request a transfer of an LLP license to any person (designated transferee) who meets the eligibility requirements. Eligibility requirements would include (1) the designated transferee being eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C., (2) the parties to the transfer having no fines, civil penalties, other payments due and outstanding, or outstanding permit sanctions resulting from Federal fishing violations, and (3) the transfer not causing the designated transferee to exceed a two-license limit contained in the Council's preferred alternative (see "Ownership Caps" below).

A complete application would have to be submitted to the Administrator, Alaska Region, NMFS (Regional Administrator) for approval before a transfer could occur. Application forms would be available on request. NMFS would return incomplete applications to the applicant and would identify specific information that is necessary to make the application complete. Information that would be required in the application includes (1) identification information for all parties to the transfer, (2) identification number of the license to be transferred, (3) declaration that the designated transferee is a U.S. Citizen, (5) a copy of the contract or sales agreement for the transfer, (6) other information the Regional Administrator may require, and (7) the notarized signatures of the parties to the transfer.

This proposed rule also would provide for transfers pursuant to requests by court order, operation of law, or the terms of a security agreement. This provision considers that some transfers might not be voluntarily requested by the license holder. Under those circumstances, the Regional Administrator would review the information in the transfer application or other document and determine whether the requested transfer would conflict with other provisions of the scallop LLP regulations.

9. Ownership Caps

A person, corporation, or entity would be prohibited from holding more than two scallop licenses at one time. A person who holds two scallop licenses could not receive an additional scallop license by transfer until the number of scallop licenses which that person holds is less than two.

The two-license ownership cap is intended to prevent, as required by national standard 4 of the Magnuson-Stevens Act, any person from obtaining an excessive share of harvest privileges in the scallop fishery. The Council determined that holding more than two scallop LLP licenses would constitute an excessive share in the context of this relatively small fishery.

Consistency With Section 303(b)(6) of the Magnuson-Stevens Act

Any FMP or FMP amendment that establishes a limited access system to achieve OY must take into account the factors listed in section 303(b)(6) of the Magnuson-Stevens Act. These factors include (1) present participation in the fishery, (2) historical fishing practices in, and dependence on, the fishery, (3) the economics of the fishery, (4) the capability of fishing vessels in the fishery to engage in other fisheries, (5) the cultural and social framework relevant to the fishery and any affected fishing communities, and (6) any other relevant considerations.

The administrative record for the scallop LLP is replete with examples of the Council considering the issues enumerated in the section 303(b)(6) guidelines. The requirement for a moratorium permit and the qualifying period requirement is an example of the Council balancing present participation in the fishery and historical practices in, and dependence on, the fishery. The Council chose legal landings in multiple years, 1996 through 1998, as the qualification for present participation.

The economics of the fishery was taken into account primarily through the breakeven analysis. The breakeven analysis in the EA/RIR/IRFA provides an estimate of the scallop harvest necessary to cover annual operating and fixed costs of typical scallop fishing vessels and indicates relative profitability of an average vessel in the scallop fishery. The analysis demonstrates that the breakeven point depends primarily on two factors, the exvessel price paid for scallops and the total landings of scallops. Based on the analysis, the Council estimated that about nine vessels would be able to operate in the fishery at the breakeven level assuming total landings of 1.3 million lb (590 mt) and an exvessel price of $6.02 per lb. More vessels would be able to participate at the breakeven level if harvest quotas or prices increased and fewer if they decreased. Recent landings (1996–97) have been less than the assumed breakeven volume although the average price has been slightly higher than the assumed breakeven exvessel price. Based on these recent data, only about six vessels could participate in the fishery at the breakeven level.

Overcapitalization in the industry and excessive harvesting capacity is an endemic condition in many fisheries that reduces the value of those fisheries to the Nation and potentially leads to other biological and efficiency problems. Authorizing more vessels to operate in the scallop fishery than could on average breakeven, arguably would be authorizing excess harvesting capacity. The Council took this matter into account in consideration of the economics of the fishery. Hence, the Council's recommended qualification criteria likely would result in more vessels qualified to operate in the scallop fishery especially in years of low scallop abundance; however, significantly fewer would be authorized under the LLP than under the current moratorium.

The concern for the capability of a vessel displaced from one fishery to enter another fishery is for the individual owner of that displaced vessel and not the fishery as a whole. Most vessels in the scallop fisheries are unique; making the necessary modifications to them so that they could enter other fisheries may be prohibitive. Some of the vessels that participate in the Alaska scallop fishery also participate in scallop fisheries in other regions of the country. Therefore, vessels that do not qualify for a license under this LLP program may qualify for licenses to fish for scallops in other regions, such as the Atlantic scallop fishery.

The Council carefully evaluated the cultural and social framework relevant to the scallop fishery, and the impacts of the scallop LLP on coastal communities. Public testimony before the Council exemplified the need for a limited access program to ensure a valuable and productive scallop fishery in the future.

Fisheries Impact Statement

Section 303(a)(9) of the Magnuson-Stevens Act requires any FMP or FMP amendment to include a fishery impact statement, which assesses, specifies, and describes the likely effects of the proposed conservation and management measures on participants in the affected fisheries, fishing communities, and participants in fisheries in adjacent areas.

The scallop LLP would place limitations on current participants in the affected fisheries. First, current participants in the Cook Inlet scallop

fishery would be limited to using a single 6–ft (1.8 m) dredge in all waters. Second, vessel replacements and upgrades would be limited by the MLOA specified on the license. Third, and most important, current participants would have to meet the specific eligibility criteria of the LLP to receive a license authorizing participation in the scallop fishery.

Although the scallop LLP would exclude some current participants who did not fish during the qualifying period, these excluded persons could gain access to the affected fisheries by obtaining a license through transfer. Likewise, new entrants into the fishery can obtain a licence through transfer.

The GHLs for the affected fisheries are not expected to change if the scallop LLP were implemented. Implementation of the scallop LLP also would not affect fishery product flow, total revenues derived from the affected fisheries, or regional distribution of vessel ownership. The scallop LLP will ameliorate, but not totally eliminate, overcapacity, overcapitalization, and vessel safety concerns perpetuated under status quo management.

Due to the geographical location of the affected fisheries, no scallop fisheries exist in adjacent areas under the authority of other regional fishery management councils. However, participants in fisheries in other areas could face increased pressures from new entrants excluded from the affected fisheries. This increased pressure is expected to be nominal, in any case, because of the increasingly small number of open access scallop fisheries available in the EEZ off the coast of the United States. In fact, the scallop LLP is intended to prevent just the opposite effect (i.e., a surge of new entrants to the scallop fisheries in the EEZ off Alaska) resulting from persons who have been excluded from fisheries in other parts of the EEZ.

Classification

At this time, NMFS has not determined that this proposed rule is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Council prepared an EA/RIR/IRFA for the scallop LLP, which describes the management background, the purpose and need for action, the management alternatives, and the socio-economic impacts of the alternatives. It estimates the total number of small entities affected by this action, and analyzes the economic impact on those small entities as required by the Regulatory Flexibility Act. The IRFA describes the economic impacts this proposed rule, if adopted, would have on small entities. A summary of the IRFA follows:

All fishing operations that would be affected by this proposed rule are considered to be small entities. The proposed rule would apply to any entity that wanted to fish for scallops after June 30, 2000. NMFS estimates this number to be 18. The two principal impacts on small fishing enterprises due to this proposal would be an exclusion of some existing scallop vessels from the fishery and a limitation on the entry of new vessels.

The LLP may restrict the ability of new, small entities to enter the fishery, although access is not denied because the licenses would be transferable. New entrants could purchase licenses, however, this would increase the entry costs into the scallop fishery. Alternatively, small fishing firms owning non-qualifying vessels may experience a decrease in value of their investment to the extent that the vessel's opportunities have been limited. The impact of license limitation is to restrict the opportunities of some vessel owners, yet offer a stabilized economic environment for affected small businesses that qualify for continued participation in the Alaska scallop fishery. The benefits would accrue to vessels remaining in the fishery by preventing a further erosion of per-vessel net returns and operating efficiency.

The scallop LLP also would impact those small entities that only fished inside of Cook Inlet during the qualifying period by limiting the size of dredge the vessel could operate in the future to a single 6–ft (1.8 m) dredge. Those small entities could use their licenses to harvest scallops statewide and would not be limited to harvesting scallops in Cook Inlet.

No known Federal rules duplicate, overlap, or conflict with the proposed rule. The LLP would supersede the existing Federal moratorium program for the scallop fisheries.

This proposed rule would impose recordkeeping and reporting requirements on affected vessels by requiring collection of information through license and transfer applications. These requirements are necessary to provide information to NMFS for the implementation and management of the scallop LLP.

The Council considered the following alternatives that could reduce economic impacts on small entities.

The Council considered alternatives ranging from complete open access to a variety of limited entry programs with ranges from 9–11 vessels. The combinations of individual vessels that would qualify under the alternatives also varies. The Council also considered different criteria for area endorsements that would have resulted in different vessels gaining access to different fishing areas. Because this proposed rule would address allocation of a limited resource, alternatives that would minimize economic impacts on any one small entity would necessarily increase economic impacts on all other small entities. The Council's preferred alternative to address the overcapitalized scallop fishery would affect small entities more negatively than the alternatives that were not preferred.

Options for vessel reconstruction and replacement include:

No restrictions on reconstruction or replacement; MLOA of 120 percent of the LOA of the vessel on January 23, 1993; and MLOA of 120 percent of the LOA of the vessel on which the permit was used in 1996 or 1997. The Council's preferred alternative would not allow increases in vessel length. The MLOA would be the LOA of the qualifying vessel on February 8, 1999, unless the moratorium permit was used on a longer vessel in the recent qualifying period, in which case the MLOA would be limited to the LOA of the longest vessel used in the recent qualifying period.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a valid Office of Management and Budget (OMB) Control Number.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the PRA. These collection-of-information requirements have been submitted to OMB for approval. Public reporting burden for this collection of information is estimated to be an average of 2 hours per response for an application for initial issuance, 1 hour per response for an application for transfer, and 4 hours per response for an appeal. These response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data

needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (see **ADDRESSES**), and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attn: NOAA Desk Officer).

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with that directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and record keeping requirements.

Dated: April 13, 2000.

Andrew A. Rosenberg,

Deputy Asst. Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.1, paragraphs (j)(3) and (j)(4) are added to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(j) * * *

(3) Regulations in this part implement the license limitation program for the commercial scallop fishery in the EEZ off Alaska.

(4) Regulations in this part govern the commercial fishing for scallops by vessels of the United States using authorized gear within the EEZ off Alaska.

3. In § 679.2, the definition for "Scallop License" is added in alphabetical order and the definitions "Eligible applicant", "License holder", "Maximum LOA (MLOA)"paragraph (1) and the first sentence in paragraph (2) introductory text, and "Official LLP record"are revised, and in the definition"Qualified Person", paragraph (2) is revised and paragraph (3) is added to read as follows:

§ 679.2 Definitions.

* * * * *

Eligible applicant means a qualified person who submitted an application during the application period announced by NMFS and:

(1) For a groundfish license or crab species license, who owned a vessel on June 17, 1995, from which the minimum number of documented harvests of license limitation groundfish or crab species were made in the relevant areas during the qualifying periods specified in § 679.4(k)(4) and (k)(5), unless the fishing history of that vessel was transferred in conformance with the provisions in paragraph (2) of this definition; or

(2) For a groundfish license or crab species license, to whom the fishing history of a vessel from which the minimum number of documented harvests of license limitation groundfish or crab species were made in the relevant areas during the qualifying periods specified in § 679.4(k)(4) and (k)(5) has been transferred or retained by the express terms of a written contract that clearly and unambiguously provides that the qualifications for a license under the LLP have been transferred or retained; or

(3) For a crab species license, who was an individual who held a State of Alaska permit for the Norton Sound king crab summer fishery in 1993 and 1994, and who made at least one harvest of red or blue king crab in the relevant area during the period specified in § 679.4(k)(5)(ii)(G), or a corporation that owned or leased a vessel on June 17, 1995, that made at least one harvest of red or blue king crab in the relevant area during the period in § 679.4(k)(5)(ii)(G), and that was operated by an individual who was an employee or a temporary contractor; or

(4) For a scallop license, who qualifies for scallop license as specified at § 679.4(g)(2) of this part; or

(5) Who is an individual that can demonstrate eligibility pursuant to the provisions of the Rehabilitation Act of 1973 at 29 U.S.C. 794 (a).

* * * * *

License holder means the person who is named on a currently valid groundfish license, crab species license, or scallop license.

* * * * *

Maximum LOA (MLOA) means:

(1) With respect to the scallop license limitation program, the MLOA is equal to the length overall on February 8, 1999, of the longest vessel used to make legal landings of scallops during the scallop LLP qualification period January 1, 1996, through October 9, 1998, specified at § 679.4(g)(2)(iii) of this part.

(2) With respect to the groundfish and crab species license limitation program, the LOA of the vessel on June 24, 1992, unless the vessel was less than 125 ft (38.1 m) on June 24, 1992, then 1.2 times the LOA of the vessel on June 24, 1992, or 125 ft (38.1 m), whichever is less. * * *

* * * * *

Official LLP record means the information prepared by the Regional Administrator about vessels that were used to participate in the groundfish or crab fisheries during qualified periods for the groundfish and crab License Limitation Program (LLP) specified at § 679.4(k) and in the scallop fisheries during the qualifying periods for the scallop LLP specified at § 679.4(g). Information in the official LLP record includes vessel ownership information, documented harvests made from vessels during the qualification periods, and vessel characteristics. The official LLP record is presumed to be correct for the purpose of determining eligibility for licenses. An applicant for a license under the LLP will have the burden of proving that information submitted in an application that is inconsistent with the official LLP record is correct.

* * * * *

Qualified Person means:

* * * * *

(2) *With respect to the groundfish and crab species license limitation program*, a person who was eligible on June 17, 1995, to document a fishing vessel under Chapter 121, Title 46, U.S.C.

(3) *With respect to the scallop license limitation program*, a person who was eligible on February 8, 1999, to document a fishing vessel under Chapter 121, Title 46, U.S.C.

* * * * *

Scallop license means a license issued by NMFS that authorizes the license holder to catch and retain scallops pursuant to the conditions specified on the license.

* * * * *

4. In § 679.4, paragraph (g) is revised to read as follows:

§ 679.4 Permits.

* * * * *

(g) *Scallop License Limitation Program (LLP).*--(1) *General requirements.* In addition to the permit and licensing requirements prescribed in this part, each vessel within the EEZ off Alaska that is catching and retaining scallops, must have an original scallop LLP license on board at all times it is catching and retaining scallops. This scallop LLP license, issued by NMFS, authorizes the person named on the license to catch and retain scallops in compliance with regulations of the State of Alaska and only with a vessel that does not exceed the MLOA specified on the license and the gear designation specified on the license.

(2) *Qualifications for a scallop LLP license.* A scallop LLP license will be issued to an eligible applicant who:

(i) Is a qualified person;

(ii) Was named on a State of Alaska scallop moratorium permit or Federal scallop moratorium permit on February 8, 1999;

(iii) Used the moratorium permit held on February 8, 1999 to make legal landings of scallops in each of any 2 calendar years from January 1, 1996, through October 9, 1998; and

(iv) Submitted a complete application for a scallop license during the application period specified pursuant to paragraph (g)(4) of this section.

(3) *Scallop license conditions and endorsements.* A scallop license authorizes the license holder to catch and retain scallops only if the vessel length and gear used do not exceed the vessel length and gear endorsements specified on the license.

(i) An MLOA will be specified on the scallop license equal to the LOA on February 8, 1999, of the longest vessel used to make legal landings of scallops during the scallop LLP qualifying period specified in paragraph (g)(2)(iii) of this section.

(ii) If the eligible applicant was a moratorium permit holder with a Scallop Registration Area H (Cook Inlet) endorsement and did not make a legal landing of scallops caught outside of Area H during the qualification period specified in paragraph (g)(2)(iii) of this section, the license will have a gear endorsement restricting gear to a single 6 ft (1.8 m) dredge in all areas.

(4) *Application for a scallop license.* (i) *General.* The Regional Administrator will issue a scallop license to an applicant if a complete application is submitted by or on behalf of the applicant during the specified application period, and if that applicant meets all the criteria for eligibility in this part. An application that is postmarked or hand delivered after the ending date for the application period for the scallop LLP specified in the **Federal Register** will be denied. An application form will be sent to the last known address of the person identified as an eligible applicant by the official LLP record. An application form may be requested from the Regional Administrator.

(ii) *Application Period.* For the scallop license, an application period of no less than 15 days will be specified by notification in the **Federal Register** and other information sources deemed appropriate by the Regional Administrator.

(iii) *Contents of application.* To be complete, an application for a scallop license must be signed and dated by the applicant, or the individual representing the applicant, and contain the following information, as applicable:

(A) Scallop Moratorium Permit number under which legal landings of scallops were made during the qualification period specified in paragraph (g)(2)(iii) of this section;

(B) Name, business address, telephone number, FAX number, and social security number or tax ID number of the applicant, and whether the applicant is a U.S. citizen or a U.S. business;

(C) Name of the managing company, if any;

(D) Evidence of legal landings in the qualifying years and registration areas;

(E) For the vessel(s) being used as basis for eligibility for a license, the name, state registration number (e.g., ADF&G number), the USCG documentation number, and valid evidence of the LOA on February 8, 1999, of the longest vessel used by the applicant during the qualification period specified in paragraph (g)(2)(iii) of this section.

(iv) *Successor-in-interest.* If an applicant is applying as the successor-in-interest to an eligible applicant, an application, to be complete, also must contain valid evidence proving the applicant's status as a successor-in-interest to that eligible applicant and:

(A) Valid evidence of the death of that eligible applicant at the time of application, if the eligible applicant was an individual; or

(B) Valid evidence that the eligible applicant is no longer in existence at the time of application, if the eligible applicant is not an individual.

(v) *Application evaluation.* The Regional Administrator will evaluate an application submitted during the specified application period and compare all claims in the application with the information in the official LLP record. Claims in the application that are consistent with information in the official LLP record will be accepted by the Regional Administrator. Inconsistent claims in the application, unless verified by evidence, will not be accepted. An applicant who submits inconsistent claims, or an applicant who fails to submit the information specified in paragraphs (g)(4)(iii) and (g)(4)(iv) of this section, will be provided a 60-day evidentiary period pursuant to paragraph (g)(4)(vii) of this section to submit the specified information, submit evidence to verify his or her inconsistent claims, or submit a revised application with claims consistent with information in the official LLP record. An applicant who submits claims that are inconsistent with information in the official LLP record has the burden of proving that the submitted claims are correct.

(vi) *Additional information or evidence.* The Regional Administrator will evaluate additional information or evidence to support an applicant's inconsistent claims submitted within the 60-day evidentiary period pursuant to paragraph (g)(4)(vii) of this section. If the Regional Administrator determines that the additional information or evidence meets the applicant's burden of proving that the inconsistent claims in his or her application are correct, the official LLP record will be amended and the information will be used in determining whether the applicant is eligible for a license. However, if the Regional Administrator determines that the additional information or evidence does not meet the applicant's burden of proving that the inconsistent claims in his or her application is correct, the applicant will be notified by an initial administrative determination, pursuant to paragraph (g)(4)(viii) of this section, that the applicant did not meet the burden of proof to change the information in the official LLP record.

(vii) *60-day evidentiary period.* The Regional Administrator will specify by letter a 60-day evidentiary period during which an applicant may provide additional information or evidence to support the claims made in his or her application, or to submit a revised application with claims consistent with information in the official LLP record, if the Regional Administrator determines that the applicant did not meet the burden of proving that the information on the application is correct through evidence provided with the application. Also, an applicant who fails to submit information as specified in paragraphs (g)(4)(iii) and (g)(4)(iv) of this section will have 60 days to provide that information. An applicant will be limited to one 60-day evidentiary period. Additional information or evidence, or a revised application,

received after the 60-day evidentiary period specified in the letter has expired will not be considered for purposes of the initial administrative determination.

(viii) *Initial administrative determinations (IAD).* The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 60-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the applicant fails to support the applicant's claims and is insufficient to rebut the presumption that the official LLP record is correct, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 60-day evidentiary period. The IAD will indicate the deficiencies in the application, including any deficiencies with the information, the evidence submitted in support of the information, or the revised application. The IAD will also indicate which claims cannot be approved based on the available information or evidence. An applicant who receives and IAD may appeal pursuant to § 679.43. An applicant who avails himself or herself of the opportunity to appeal an IAD will not receive a transferable license until after the final resolution of that appeal.

(ix) *Issuance of a non-transferable license.* The Regional Administrator will issue a non-transferable license to the applicant on issuance of an IAD if required by the license renewal provisions of 5 U.S.C. 558. A non-transferable license authorizes a person to catch and retain scallops as specified on the non-transferable license, and will have the specific endorsements and designations based on the claims in his or her application. A non-transferable license will expire upon final agency action.

(5) *Transfer of a Scallop License.* (i) *General.* The Regional Administrator will approve the transfer of a scallop license if a complete transfer application is submitted to Restricted Access Management, Alaska Region, NMFS, and if the transfer meets all the eligibility criteria as specified in paragraph (g)(5)(ii) of this section. An application form may be requested from the Regional Administrator.

(ii) *Eligibility criteria for transfers.* A scallop license can be transferred if:

(A) The designated transferee is eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C.;

(B) The parties to the transfer do not have any fines, civil penalties, other payments due and outstanding, or outstanding permit sanctions resulting from Federal fishing violations;

(C) The transfer will not cause the designated transferee to exceed the license cap in § 679.7(i); and

(D) The transfer does not violate any other provision specified in the part.

(iii) *Contents of transfer application.* To be complete, an application for a scallop license transfer must be signed by the licence holder and the designated transferee, or the individuals representing them, and contain the following information, as applicable:

(A) Name, business address, telephone number, FAX number, and social security number or tax ID number, of the license holder and of the designated transferee;

(B) License number and total price being paid for the license;

(C) Certification that the designated transferee is a U.S. Citizen, or a U.S. corporation, partnership, or other association;

(D) A legible copy of a contract or sales agreement that specifies the license to be transferred, the license holder, the designated transferee, the monetary value or the terms of the license transfer; and

(E) Other information the Regional Administrator deems necessary for measuring program performance.

(iv) *Incomplete applications.* The Regional Administrator will return an incomplete transfer application to the applicant and identify any deficiencies if the Regional Administrator determines that the application does not meet all the criteria identified in paragraph (g)(5) of this section.

(v) *Transfer by court order, operation of law, or as part of a security agreement.* The Regional Administrator will transfer a scallop license based on a court order, operation of law, or a security agreement if the Regional Administrator determines that the transfer application is complete and the transfer will not violate any of the provisions of this section.

5. In § 679.7, paragraphs (i)(3), and (i)(7) are revised, and new paragraphs (i)(1)(iv) and (i)(8) are added to read as follows:

§ 679.7 Prohibitions.

* * * * *

(i) * * *

(1) * * *

(iv) Hold more than two scallop licenses in the name of that person at any time.

* * * * *

(3) Conduct directed fishing for crab species without an original valid crab license, except as provided in § 679.4(k)(2)

* * * * *

(7) Lease a groundfish, crab species, or scallop license; or

(8) Catch and retain scallops:

(i) Without an original valid scallop license on board;

(ii) Using a vessel with a MLOA greater than that specified on the scallop license;

(iii) Using dredge gear contrary to a gear limitation specified on the scallop license.

6. In § 679.43, paragraphs (a) and (p) are revised to read as follows:

§ 679.43 Determinations and appeals.

(a) *General.* This section describes the procedure for appealing initial administrative determinations made under part 679 of this title.

* * * * * *

(p) *Issuance of a non-transferable license.* A non-transferable license will be issued to a person upon acceptance of his or her appeal of an initial administrative determination denying an application for a license for license limitation groundfish, crab species under § 679.4(k) or scallops under § 679.4(g). This non-transferable license authorizes a person to conduct directed fishing for groundfish, crab species, or catch and retain scallops and will have specific endorsements and designations based on the person's claims in his or her application for a license. This non-transferable license expires upon the resolution of the appeal.

[FR Doc. 00–9749 Filed 4–20–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 78
Friday, April 21, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 00–015N]

Codex Alimentarius Commission: Twenty-fourth Session of the Codex Committee on Fish and Fishery Products

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), are sponsoring a public meeting on May 10, 2000, to provide information and receive public comments on agenda items that will be discussed at the Twenty-fourth Session of the Codex Committee on Fish and Fishery Products (CCFFP), which will be held in Alesund, Norway, June 5–9, 2000. The Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the Twenty-fourth Session of the CCFFP and to address items on the agenda.

DATES: The public meeting is scheduled for Wednesday, May 10, 2000, from 9 a.m. to 12 noon.

ADDRESSES: The public meeting will be held in the FDA, Office of Seafood, Conference Room, 1110 Vermont Avenue, NW, Suite 1110, Washington, DC 20005. To receive copies of the documents referenced in this notice, contact the FSIS Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. The documents will also be accessible via the World Wide Web at the following address: *http://www.fao.org/waicent/faoinfo/economic/esn/codex*. Send comments, in triplicate, to the FSIS Docket Clerk and reference Docket # 00–015N. All comments submitted in response to this notice will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Associate U.S. Manager for Codex, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue SW., Washington, DC 20250–3700, Telephone (202) 205–7760, Fax (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Mr. Clerkin at the above number.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled.

The Codex Committee on Fish and Fishery Products was established to elaborate codes and standards for fish and fishery products. The Government of Norway hosts this Committee and will chair the Committee meeting.

Issues To Be Discussed at the Public Meeting

Agenda items will be described and discussed at the May 10, 2000, public meeting. Attendees will have the opportunity to pose questions and offer comments.

The provisional agenda items to be discussed during the public meeting are:

1. Matters Referred by the Codex Alimentarius Commission and other Codex committees,
2. Weight Determination of Quick Frozen Shrimps and Prawns,
3. Inclusion of Additional Species in the Standards for Fish and Fishery Products; Chilean Langostino,
4. Proposed Draft Code of Practice for Fish and Fishery Products at Step 4,
5. Draft Standard for Dried Salted Anchovies; Government Comments at Step 7,
6. Draft Standard for Crackers from Marine and Freshwater Fish, Crustacean, and Molluscan Shellfish at Step 7,
7. Proposed Draft Standard for Salted Atlantic Herring and Salted Sprats at Step 4,
8. Proposed Draft Standard for Smoked Fish at Step 4,
9. Proposed Draft Standard for Molluscan Shellfish at Step 4,
10. Model Certificate for Fish and Fishery Products,
11. Discussion Paper on the Development of a Standard for Scallops,
12. Discussion Paper on the Development of a Standard for Sturgeon Caviar,
13. Discussion Paper on the Use of Chlorinated Water.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Norway Secretariat. Members of the public may access or request copies of these documents (see **ADDRESSES**).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through

these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on: April 18, 2000.

Patrick J. Clerkin,

Associate U.S. Manager for Codex Alimentarius.

[FR Doc. 00–9987 Filed 4–20–00; 8:45 am]

BILLING CODE 3410–DM–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement Lists; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 22, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action will result in authorizing small entities to furnish the commodities and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Computer Accessories
- 6150–00–NIB–0005 (Surge Protectors)
- 6150–00–NIB–0006 (Surge Protectors)
- 7045–00–NIB–0052 (CD Jewel Cases)
- 7045–00–NIB–0053 (Computer Maintenance Products)
- 7045–00–NIB–0056 (Computer Maintenance Products)
- 7045–00–NIB–0057 (Computer Maintenance Products)
- 7045–00–NIB–0076 (Keyboard Drawers)
- 7045–00–NIB–0077 (Anti-Glare Screens)
- 7045–00–NIB–0103 (CD Jewel Cases)
- 7045–00–NIB–0104 (CD Jewel Cases)
- 7045–00–NIB–0105 (Keyboard Drawers)
- 7045–00–NIB–0106 (Keyboard Drawers)
- 7045–00–NIB–0107 (Computer Maintenance Products)
- 7045–00–NIB–0108 (Computer Maintenance Products)
- 7045–00–NIB–0111 (Anti-Glare Screens)
- 7045–00–NIB–0112 (Anti-Glare Screens)
- 7045–00–NIB–0113 (Computer Maintenance Products)
- 7045–00–NIB–0121 (Desktop Media Storage)
- 7045–00–NIB–0123 (Desktop Media Storage)
- 7045–00–NIB–0124 (Desktop Media Storage)
- 7045–00–NIB–0125 (Desktop Media Storage)
- 7045–00–NIB–0126 (Desktop Media Storage)
- 7045–00–NIB–0129 (Desktop Media Storage)
- 7045–00–NIB–0131 (Desktop Media Storage)

NPA: Wiscraft Inc.—Wisconsin Enterprises for the Blind, Milwaukee, Wisconsin

Electronic Components
- 7420–00–NIB–0014 (Palm-Sized Portfolio w/Calculator)
- 7420–00–NIB–0015 (9" x 12" Portfolio w/ Calculator)
- 7420–00–NIB–0016 (Flip-Up Calculator)
- 7420–00–NIB–0017 (10-Digit Calculator)
- 7420–00–NIB–0018 (12-Digit Calculator)
- 7420–00–NIB–0019 (Mouse Pad w/ Calculator)
- 7420–00–NIB–0020 (Mouse Pad w/ Calculator/Disk Holder)
- 7420–00–NIB–0021 (Clipboard w/ Calculator)

NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin

Protector and Sleeve Transparencies
- 7510–00–NIB–0176 (Protector, Transparency, Flip-Frame)
- 7510–00–NIB–0177 (Protector, Transparency, Flip-Frame w/Pre-View)
- 7510–00–NIB–0178 (Sleeve, Transparency)

NPA: Industries of the Blind, Inc., Greensboro, North Carolina

Services

Janitorial/Custodial, Indiana Air National Guard, Hulman International Airport, Terre Haute, Indiana

NPA: Child-Adult Resource Services, Inc., Rockville, Indiana

Janitorial/Custodial, Naval and Marine Corps Reserve Center, 1620 East Saginaw Street, Lansing, Michigan

NPA: Peckham Vocational Industries, Inc., Lansing, Michigan

Laundry Service, Veterans Affairs Medical Center, 800 Zorn Avenue, Louisville, Kentucky

NPA: C. G. M. Services, Inc., Louisville, Kentucky

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will result in authorizing small entities to furnish the commodities to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Ink, Marking Stencil, Opaque
- 7510–00–183–7697
- 7510–00–183–7698

Disinfectant-Detergent, General Purpose
- 7930–01–393–6753

Enamel
- 8010–01–331–6120

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–9998 Filed 4–20–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: May 22, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 29, 1999, January 14, March 3, and 10, 2000, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 FR 58378 and 65 FR 2373, 11548, 12969) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Paper Holder & Micro Note Holder
7510–00–NIB–0385 (Micro Note Holder)
7510–00–NIB–0386 (Paper Holder)
Tab, Hanging File Folder
7510–01–375–0502
7510–01–375–4510

Services

Base Supply Center, Key West Naval Air Station, Key West, Florida
Customization & Distribution of Navy Recruiting Promotional Merchandise, Department of the Navy, FISC Norfolk, Detachment Washington DC, Washington, DC
Grounds Maintenance, Veterans Affairs Medical Center, 800 Zorn Avenue, Louisville, Kentucky
Grounds Maintenance, National Oceanic and Atmospheric Administration, Western Regional Center (WRC), 7600 Sand Point Way N.E., Seattle, Washington
Installation Support Services, Basewide, Fort Hood, Texas
Janitorial/Custodial, U.S. Army Reserve Center, 4655 N. Lexington Avenue, Arden Hills, Minnesota,
Switchboard Operation, Department of Veterans Affairs Medical Center, 510 East Stoner Avenue, Shreveport, Louisiana

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–9999 Filed 4–20–00; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–602]

Industrial Phosphoric Acid From Belgium: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 21, 2000.

FOR FURTHER INFORMATION CONTACT: Frank Thomson at (202) 482–4793 or Nithya Nagarajan at (202) 482–5253, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the preliminary results of review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

On October 1, 1999, the Department published a notice of initiation of administrative review of the antidumping duty order on industrial phosphoric acid from Belgium, covering the period August 1, 1998 through July 31, 1999 (64 FR 53318). The preliminary results are currently due no later than May 3, 2000.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore the Department is extending the time limit for completion of the preliminary results until no later than June 17, 2000. *See* Decision Memorandum from Tom Futtner to Holly A. Kuga, dated April 13, 2000, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: April 13, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Import Administration, Group II.

[FR Doc. 00–9995 Filed 4–20–00; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

University of North Dakota; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 00–003. Applicant: University of North Dakota, Grand Forks, ND 58202–7129. Instrument: Scanning Tunneling Microscope, Model STM 25. Manufacturer: Omicron Associates, Germany. Intended Use: See notice at 65 FR 11986, March 7, 2000.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides: (1) ability to operate at temperatures as low as 25°K, (2) a vibrationally-isolated vacuum chamber capable to 10 −11 mbar and (3) conduction of electron-tunneling spectroscopy measurements using the STM. The National Institute of Standards and Technology and a university research center for advanced microstructure devices advise that (1) these capabilities are pertinent to the applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use (comparable case).

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–9996 Filed 4–20–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 00–007. Applicant: University of Wisconsin-Milwaukee, 1900 E. Kenwood Boulevard, Room B30, Milwaukee, WI 53211. Instrument: Scanning Tunneling Microscope, Model STM 25DH. Manufacturer: Omicron Vakuumphysik GmbH, Germany. Intended Use: The instrument is intended to be used for the growth of epitaxial semiconductors by molecular beam epitaxy technique and characterization in situ with variable temperature scanning tunneling microscopy, reflection high energy electron diffraction, low energy electron diffraction and Auger electron spectroscopy. The ultimate goal of this project is to investigate and understand the processes at atomic level and to control and manipulate the motion of atoms on surfaces so that the more sophisticated device structures can be made. Application accepted by Commissioner of Customs: March 24, 2000.

Docket Number: 00–008. Applicant: University of Delaware Department of Chemical Engineering, Colburn Laboratory, 150 Academy Street, Newark, DE 19716. Instrument: Electron Microscope, Model JEM–2010F. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument is intended to be used for the study of the microstructure of metals, ceramics, semiconductors, superconductors, zeolites, polymers, colloids and biomaterials to obtain structural and compositional information on the materials. In addition, the instrument will be used for the training of faculty, staff and graduate students in the graduate course Transmission Electron Microscopy in Materials Science (MASC 823). Application accepted by Commissioner of Customs: April 3, 2000.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–9997 Filed 4–20–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Revocation of Export Trade Certificate of Review No.89–00008.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to FEXCORP. Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to FEXCORP.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97–290, 15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR part 325 (1997). Pursuant to this authority, a certificate of review was issued on June 12, 1989 to FEXCORP.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (Section 308 of the Act, 15 U.S.C. 4018, Section 235.14(a) of the Regulations, 15 CFR 325.14(a)). The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (Sections 325.14(b) of the Regulations, 15 CFR 325.14 (b)). Failure to submit a complete annual report may be the basis for revocation (Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a) (3) and 325.14(c)).

On June 7, 1999, the Department of Commerce sent to FEXCORP a letter containing annual report questions with a reminder that its annual report was due on July 27, 1999. Additional reminders were sent on September 9, 1999 and on November 8, 1999. The Department has received no written response to any of these letters.

On January 11, 2000,and in accordance with Section 325.10(c)(1) of the Regulations, (15 CFR 325.10(c)(1)), the Department of Commerce sent a letter by certified mail to notify FEXCORP that the Department was

formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing FEXCORP thirty days to respond was published in the **Federal Register** on January 19, 2000 at 63 FR 42614. Pursuant to 325.10(c) (2) of the Regulations (15 CFR 325.10(c) (2)), the Department considers the failure of FEXCORP to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to FEXCORP for its failure to file an annual report. The Department has sent a letter, dated April 13, 2000, to notify FEXCORP International Inc. of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register** (325.10(c) (4) and 325.11 of the Regulations, 15 CFR 324.10(c) (4) and 325.11 of the Regulations, 15 CFR 325.10(c) (4) and 325.11).

Dated: April 18, 2000.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 00–9993 Filed 4–20–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Application.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at oetca@ita.doc.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230, or transmitted by E-mail to oetca@ita.doc.gov. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 00–00002." A summary of the application follows.

Summary of the Application

Applicant: CONSOL Energy Inc. ("CEI"), 1800 Washington Road, Pittsburgh, Pennsylvania 15241.

Contact: William G. Rieland, Vice President, Sales, Telephone: (412) 831–4032.

Application No.: 00–00002.

Date Deemed Submitted: April 7, 2000.

Member (in addition to applicant): AMCI Export Corporation, Latrobe, PA.

CEI seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

Product

Bituminous coal.

Export Markets

The Export Markets include all parts of the world except the United States, (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

The proposed Export Trade Certificate of Review would extend antitrust protection to CEI to conduct the following export trade activities:

1. Gathering and sharing market intelligence about CEI's and member's mutual international competition and the outcome of purchasing decisions in foreign bituminous coal markets;

2. Allocating market opportunities between CEI and member. As sales opportunities arise in foreign countries CEI and member would jointly determine which company is best served to bid for the business. CEI and member would not compete against each other as foreign opportunities develop;

3. Jointly determining the appropriate price that the bidding member would apply to each foreign business opportunity;

4. Predetermine which of CEI's or member's coal production sources would be offered for sale on each foreign business opportunity;

5. Jointly developing logistical arrangements in order to move the bituminous coal to predetermined markets. These activities would include jointly arranging shipment schedules with railroads, barge carriers, vessel loading terminals, unloading terminals and ocean vessel owners; and

6. CEI and member would jointly negotiate vessel rates in order to improve the transportation economics of export bituminous coal shipments to their foreign customers.

Dated: April 14, 2000.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 00–9994 Filed 4–20–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

AGENCY: National Institute of Standards and Technology Commerce, Commerce.

ACTION: Notice of government owned inventions available for licensing.

SUMMARY: The invention listed below is owned in whole or in part by the U.S. Government, as represented by the Department of Commerce. The Department of Commerce's ownership interest in the invention is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of Federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Building 820, Room 213, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement ("CRADA") with the licensee to perform further research on the inventions for purposes of commercialization. The invention available for licensing is:

NIST Docket Number: 99–016/025US.

Title: Device for Stable Speed Determination in Machining.

Abstract: The device utilizes a non-contact force actuator to drive a machine-tool with a train of impulsive forces having a known, time-varying frequency to identify the speeds least likely to produce chatter (regenerative vibrations). This can be done in real time without the need for exhaustive cutting tests. The machine-tool spindle and a non-contact magnetic force actuator are used to produce the time-varying impulse train. This impulse train has significant energy at the spindle speed and its harmonics. As the spindle speed is ramped up from zero to the maximum speed, those speeds that maximize the dynamic response of the tool are the speeds that minimize regenerative chatter. The device is suitable for integration with the machine-tool controller, and could potentially allow the optimal speeds for each tool to be downloaded and stored for later use in NC programming.

Dated: April 17, 2000.

Karen H. Brown,

Deputy Director.

[FR Doc. 00–10007 Filed 4–20–00; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institution of Standards and Technology

Announcing a Meeting of the National Conference on Weights and Measures

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Meeting.

SUMMARY: The 85th Annual Meeting of the National Conference on Weights and Measures will be held July 16 through July 20, 2000, at the Omni Richmond Hotel, 100 South Street, Richmond, VA. The meeting is open to the public. The National Conference on Weights and Measures is an organization of weights and measures enforcement officials of the states, counties, and cities of the United States, other government officials and representatives of business, industry, trade associations, and consumer organizations. Conference members meet twice a year to develop weights and measures laws and to discuss subjects that relate to the field of weights and measures technology and administration. Pursuant to (15 U.S.C. 272(B)(6)), the National Institute of Standards and Technology acts as a sponsor of the National Conference on Weights and Measures in order to promote uniformity among the states in the complex of laws, regulations, methods, and testing equipment that comprises regulatory control by the states of commercial weighing and measuring devices and practices.

DATES: The meeting will be held July 16–July 20, 2000, 8:00 a.m.–5:00 p.m.

ADDRESSES: Omni Richmond Hotel located at 100 South Street, Richmond, VA 23219.

FOR FURTHER INFORMATION CONTACT: Henry V. Oppermann, Chief, NIST, Office of Weights and Measures, 100 Bureau Drive, Stop 2350, Gaithersburg, MD 20899–2350. Telephone (301) 975–4005, or E-mail owm@nist.gov.

Dated: March 17, 2000.

Karen H. Brown,

Deputy Director, NIST.

[FR Doc. 00–10006 Filed 4–20–00; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041700C]

Bluefin Tuna Statistical Documents

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 20, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at lengelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Christopher Rogers, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 (301–713–2347).

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), NOAA is responsible for management of the nation's marine fisheries. In addition, NOAA must comply with the United States' obligations under the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 *et seq.*) to implement recommendations by the International Commission for the Conservation of Atlantic Tunas (ICCAT). In order to monitor landings and trade in bluefin tuna, the National Marine Fisheries Service (NMFS) collects information through the bluefin tuna statistical document (BSD) program recommended by ICCAT. BSDs are required for lawful import of bluefin tuna products into countries that are contracting parties to ICCAT. By exchanging information collected through the BSD program, ICCAT members can monitor catch of

Atlantic bluefin tuna in relation to applicable country quotas for contracting parties and assess the extent to which catch by non-contracting parties could undermine the effectiveness of ICCAT's stock rebuilding program for Atlantic bluefin tuna.

II. Method of Collection

Importers and commercial fish dealers who import or export bluefin tuna are required to obtain a tuna dealer permit from NMFS (approved under a separate collection: 0648–0202). Permitted dealers must obtain original BSDs from import shipments, complete the importer certification section and mail or fax the completed BSD to NMFS. Exporters must obtain numbered, non-transferable BSDs from NMFS, complete the landings information and exporter certification sections, mail or fax a copy of the completed BSD to NMFS, and attach the original BSD to the export shipment. In certain cases, the landings and export information must be validated by a government official or an accredited non-government institution. For the most part, U.S. catches of bluefin tuna are tagged upon landing (approved under a separate collection: 0648–0239) and such tagged bluefin are exempt from the BSD validation requirement. In order for a non-governmental institution to be accredited to provide validations it must submit a request for such authority.

III. Data

OMB Number: 0648–0040.
Form Number: None.
Type of Review: Regular submission.
Affected public: Businesses and other for-profit institutions.
Estimated Number of Respondents: 50.
Estimated Time Per Response: An average of 20 minutes for completing a BSD upon import, export or re-export of bluefin tuna into or from the United States (range of 5 minutes for BSDs listing tagged fish to 2 hours for BSDs requiring validation); 2 hours for a request for accreditation from a non-governmental institution.
Estimated Total Annual Burden Hours: 500.
Estimated Total Annual Cost to Public: $500.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 13, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Chief Information Officer.

[FR Doc. 00–10025 Filed 4–20–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032000E]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of cancellation of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) has cancelled the public meeting of its Research Steering and Experimental Fisheries Committee that was scheduled for Tuesday and Wednesday, April 25–26, 2000, at 9:00 and 8:30 a.m., respectively. The meetings were announced in the **Federal Register** on March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: 978–465–0492.

SUPPLEMENTARY INFORMATION: The initial notice published on March 27, 2000 (65 FR 16186). The meeting will be rescheduled at a later date and announced in the **Federal Register**.

Dated: April 17, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–10026 Filed 4–20–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041400C]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling four public meetings in May, 2000: two joint meetings of its Groundfish Committee and Advisory Panel; a meeting of the Groundfish Committee and Advisory Panel, in conjunction with the Council's Scallop Committee; and a joint Habitat Committee and Advisory Panel meeting. Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held between Monday, May 8, 2000 and Tuesday, May 23, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in York Harbor, ME and Peabody, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Times

Monday, May 8, 2000, 9:30 a.m. and Tuesday, May 9, 2000, 8:30 a.m.—Joint Groundfish Committee and Advisory Panel Meeting

Location: York Harbor Inn, Route 1A, P.O. Box 573, York Harbor, ME 03911; telephone: (207) 363–5119.

The committee and advisors will conduct a joint meeting to continue development of management options for Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP). They will continue review of current overfishing definitions and control rules for the multispecies complex, examine the assumptions and policy decisions in those rules, and develop recommendations for the biological goals of the amendment. They also will review existing management measures and identify their strengths and weaknesses. Suggestions for improvements to those measures will be

developed. They may consider options for developing an area management system, or for developing a sector allocation system. The committee and advisors also may organize into subcommittees that will be tasked to develop specific management options for consideration by the full committee. These tasks will be based on broad approaches to management selected by the committee. The subcommittees may meet individually during the meeting to begin work on these management options. The discussions at the subcommittee level will be reported back to the committee at this meeting or at future meetings.

Monday May 15, 2000, 8:30 a.m. and Tuesday, May 16, 2000, 9:30 a.m.—Joint Habitat Committee and Advisory Panel Meeting

Location: Holiday Inn, One Newbury Street, Route One, Peabody, MA 01960; telephone: (978) 535–4600.

The committee will review the 2000 Habitat Annual Review Report and develop recommendations for consideration by the Council. There also will be discussions about upcoming amendments to the Sea Scallop and Groundfish FMPs.

Monday, May 22, 2000, 9:30 a.m.—Joint Groundfish Committee and Advisory Panel Meeting

Location: Holiday Inn, One Newbury Street, Route One, Peabody, MA 01960; telephone: (978) 535–4600.

The committee and advisors will conduct a joint meeting to continue development of management options for Amendment 13 to the Northeast Multispecies FMP. If not completed at earlier meetings, they will continue their review of current overfishing definitions and control rules for the multispecies complex, examine the assumptions and policy decisions in those rules, and develop recommendations for the biological goals of the amendment. They also will review existing management measures and possibly develop alternatives. They may consider options for developing an area management system, or for developing a sector allocation management system. The committee and advisors may also organize into subcommittees that will be reported back to the Groundfish Committee at this meeting or at future meetings.

Tuesday, May 23, 2000 at 8:30 a.m.—Joint Groundfish Committee and Advisory Panel and Scallop Committee Meeting

Location: Holiday Inn, One Newbury Street, Route One, Peabody, MA 01960; telephone: (978) 535–4600.

The panel and committees will discuss Amendment 10 to the Scallop FMP. Amendment 10 considers new area rotation systems to improve scallop yield, changes to the FMP annual review process and timing, modifications to the crew size limit, and possible scallop trawl gear modifications to improve size selection. The purpose of this meeting will be to evaluate draft Amendment 10 alternatives, identify potential impacts, and recommend modifications to these conceptual alternatives so that they are recognized and managed. There is a possibility that these issues will not be fully developed for discussion, in which case the Groundfish Committee and Advisors will continue their discussion of Amendment 13 alternatives and the Scallop Oversight Committee meeting will be cancelled. If this occurs, the Council will notify interested parties through a notice mailing.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: April 17, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–10028 Filed 4–20–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040300B]

Marine Mammals; File No. 738–1454–03

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Permit No. 738–1454 issued to Ms. Carole Conway, Genomic Variation Laboratory, Department of Animal Science, Meyer Hall, University of California, Davis, CA 95616–3322, was amended to allow import and export of blue whale samples from/to Mexico and other locations [worldwide] where the species is found.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130 Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson (301/713–2289).

SUPPLEMENTARY INFORMATION: The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing endangered and threatened marine species(50 CFR parts 222–226).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: April 14, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–10024 Filed 4–20–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Notice of Intent (NOI) To Prepare a Environmental Impact Statement for the Lower Guadalupe River Flood Protection Project, San Jose and Santa Clara, CA

AGENCY: The U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE), San Francisco District, has received an application for a Department of the Army authorization from the Santa Clara Valley Water District (SCVWD) to construct portions of the Lower Guadalupe River Flood Protection Project (LGRP). The project is located on the Guadalupe River in the cities of San Jose and Santa Clara, California, between Interstate 880 and the Union Pacific Railroad (UPRR) bridge in the Community of Alviso and on Alviso Slough from the UPRR bridge to the terminus of Alviso Slough with San Francisco Bay. In accordance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the U.S. Army Corps of Engineers has determined that the proposed action may have a significant impact on the human environment and therefore requires the preparation of an environmental impact statement (EIS). A combined environmental impact report (EIR)/EIS will be prepared with the USACE as the federal lead agency and the SCVWD as the local lead agency under the California Environmental Quality Act (CEQA).

The LGRP was authorized by SCVWD to provide flood protection, environmental protection, and public access opportunities, and will be designed and constructed to ensure that the channel improvements are operated and managed to convey design floodflows in the Guadalupe River from Interstate 880 to San Francisco Bay. The LGRP is also incorporating measures to avoid existing fish and wildlife habitat, to protect special status species, and to meet conditions for water quality certification under the Clean Water Act.

1. A scoping meeting is scheduled for May 3, 2000, from 6 to 8:30 p.m.

2. Please submit any written comments by May 19, 2000.

ADDRESSES: 1. The scoping meeting will be held at the Silicon Valley Conference Center, 2161 North First Street, San Jose, California 95113,

2. Mail comments to: Robert F. Smith, U.S. Army Corps of Engineers, 333 Market Street, CESPN–OR–R, San Francisco, CA, 94105–2197, or

3. Santa Clara Valley Water District, 5750 Almaden Expressway, San Jose, CA, 95118–3686.

FOR FURTHER INFORMATION CONTACT:

1. Robert Smith, (415) 977–8450, or electronic mail: *rsmith@spd.usace.army.mil.*

2. Lower Guadalupe River Flood Protection Project, (408) 265–2607 Ext. 2724, or electronic mail: heynoah@scvwd.dst.ca.us.

SUPPLEMENTARY INFORMATION: The Lower Guadalupe River Flood Protection Project (LGRP) reach is located within the cities of San Jose and Santa Clara, California, between Interstate 880 and the UPRR bridge in Alviso and on Alviso Slough from the UPRR bridge to the terminus of Alviso Slough with San Francisco Bay. The primary project area is located along approximately 6.5 miles of the lower Guadalupe River and 4.0 miles along Alviso Slough. The LGRP reach receives runoff from a highly urbanized region comprising a steep upper watershed, an urban residential and light commercial zone (the upper Guadalupe River), and a significantly developed and encroaching downtown commercial zone. Storm drainage from these areas and from within the project area is also discharged into the lower Guadalupe River, adding to the runoff volume.

The LGRP is being implemented along the Guadalupe River from Interstate 880 to the UPRR bridge in Alviso, California. The Downtown Guadalupe River Project, located upstream of the LGRP, is scheduled to be completed by the end of 2002. Once the downtown project is completed, the result will be an increase of peak floodflows that are able to reach the lower river reach. Because the lower Guadalupe River does not currently have the ability to convey the expected design flood event, floodway modifications will be designed and constructed to ensure that the channel improvements are operated and managed to convey the design floodflow with a peak of 20,000 cubic feet per second (cfs) at Alviso.

The Guadalupe River, located primarily in the cities of San Jose and Santa Clara south of San Francisco Bay, drains an area of about 160 square miles into the Bay. The primary project area is located along approximately 4.6 miles of the lower Guadalupe River between Interstate 880 and UPRR bridge in Alviso.

Reasonable Alternataives

The following is a brief description of the range of alternatives that will be evaluated in the draft EIR/EIS. The SCVWD has not yet identified a proposed action and will evaluate the environmental impacts of each alternative at an equal level of detail to satisfy the requirements of NEPA.

Alternative 1: Dredging from Montague Expressway to UPRR. Dredging is a construction method that removes channel-bottom material. To meet the flood-protection objective of the LGRP, the excavation of all or most of the material would be required between the inboard levee toes in a depth of 2.5–5 meters (8.2–16.4feet)—from the Montague Expressway bridge to the UPRR bridge. Initial hydraulic modeling indicates this would increase the capacity of the river sufficiently to convey the design flow within the existing levees, including providing freeboard. Numerous, potentially major constraints have been identified for this alternative that will need to be evaluated more extensively, including the following:

- Impacts on approximately 16.2 hectares (40 acres) of aquatic habitat and 1.21 hectares (3 acres) of riparian forest and other habitat areas.
- Regular Dredging would be required to maintain the initially dredged cross sections.
- Structural modifications may be required to bridge piers that would become more exposed than in their current condition.
- The Hetch Hetchy Adqueduct and other utilities may need to be relocated.
- The order-of-magnitude cost to implement the initial dredging is estimated to be $41 million, which excludes any bridge modifications. Maintenance dredging would be expected to be performed on a scheduled 10-year frequency.

Alternative 2: Bypass Culvert(s). This alternative would involve the construction of a structure that will convey the flows that exceed the existing capacity of the lower Guadalupe River to a downstream discharge location. The anticipated structure would be a reinforced concrete box constructed within one of the existing levees, with an invert that follows the toe of the levee. It is expected to extend from a location immediately downstream of the U.S. 101 bridge to a location shortly downstream of the UPRR bridge. The dimensions would range from 10 to 15 meters (32.8 to 49.2 feet) wide and befween 3.5 and 5 meters (11.5 and 16.4 feet) high. A few potentially major constraints have been identified for this alternative that will be evaluated more extensively, including:

- Constructing the bypass at several bridges, which potentially would involve property acquisition at some of the bridges; and
- Interferences and the consequent relocations of existing utilities, including the Hetch Hetchy Aqueduct.

The order-of-magnitude cost to implement this alternative is estimated to be $200 million; maintenance costs have not yet been quantified.

Alternative 3: Floodwalls, Bypasses, and Aggressive Vegetation Management. This alternative would involve the construction of 1- to 7-meter-high (3.28-

to 23-foot-high) reinforced concrete walls to contain the design flows and provide freeboard. There are a number of configurations that may be appropriate for the LGRP, with the most cost-effective configuration appearing to be one that would maximize the use of the existing right-of-way (ROW) by placing the floodwalls a short distance inside the ROW, along with the removal of the existing levees to provide additional conveyance capacity and the reduction of the floodwall heights.

To allow for maintenance access from the bridge access points to the channel, ramps will be needed over the walls, which in turn will necessitate jobs in the wall and result in a conveyance constriction. This alternative is therefore expected to also include two other measures: Aggressive management of vegetation in the channel and construction of up to four bridge bypasses (Highway 237, Tasman, Montague, and Trimble). Numerous potentially major constraints have been identified for this alternative that will be evaluated more extensively, including:

- Extensive foundation systems that will be required to support free-standing floodwalls, or the use of walls considerably farther inside the ROW that are partially supported by the existing and/or improved levees;
- Effects on channel habitat, wildlife movement and escapement during flood events;
- Interferences and the consequent relocations of existing utilities;
- Modifications to the other bridges that may be required to ensure that freeboard continues across them (*i.e.*, at the floodwall's termination at each bridge); and
- Flood-fighting access would possibly be significantly limited should the entire ROW become dedicated to flood conveyance (*i.e.*, with the walls placed alongside the outside of the ROW, no room is left for access along the ROW that is also outside the flood waters).

The order-of-magnitude cost to implement this alternative is estimated to be $100 million; maintenance costs have not yet been quantified.

Alternative 4: Channel Modification, All Concrete, from Montague Expressway to UPRR. This alternative would involve the excavation of the inboard toe of the existing levees, construction of a vertical or near-vertical wall at the inside of the existing levee, and construction of a concrete apron at the resulting channel bench. This improvement would be constructed between Montague Expressway and the UPRR bridge. In places, it is expected that the wall portion would need to be extended up to provide a short-height floodwall, that a bypass would be required at Highway 237, and that the alternative would include selective removal of sediment. The work for this alternative is not expected to encroach into wetlands areas, as it is anticipated to be entirely constructed above the existing levee toe. No major constraints have been identified for this alternative at this time. The order-of-magnitude cost to implement this alternative is estimated to be $81 million; maintenance costs have not yet been quantified.

Alternative 5: Channel Modification, Alternate Materials, from Montague Expressway to UPRR. This alternative would be similar to Alternative 4 above and would also involve the excavation of the inboard toe of the existing levees and construction of a vertical or near-vertical wall with an apron at the resulting channel bench. However, the wall and apron would not be straight planes of concrete, they would be constructed of some alternate material(s), such as interlocking blocks, mechanically stabilized earth (MSE), gabions (gravity wall constructed of stacked wire baskets filled with rocks), or deep-rooting vegetation (biostabilization). These improvements would also be constructed between Montague Expressway and the UPRR bridge and would require selective removal of sediment, a short-height floodwall, and construction of a bypass at Highway 237 (as under Alternative 4). Further analysis would be performed during the next stage of the project to determine the materials and configuration that provide a balance of cost, hydraulic function, appearance, and other project objectives. Initial hydraulic and structural analyses suggest that, to provide the desired water-surface lowering, it is expected that this alternative would also include selective management of vegetation in the channel. No major constraints have been identified for this alternative at this time. The order-of-magnitude cost to implement this alternative is estimated to be $65 million; maintenance costs have not yet been quantified.

Alternative 6: No Action. District staff has performed a number of maintenance activities along the lower Guadalupe River, including sediment removal, debris removal, and vegetation control, with these activities constrained in the past 10 years because of increasing natural resources regulatory requirements and the increasing concerns over sensitive natural resources areas. Nonetheless, maintenance activities performed in the past will continue to be needed and performed on the lower Guadalupe River. Further LGRP analysis will determine the extent of this work, and the extent to which some or all of this work is appropriately considered part of the No-Action Alternative.

Alviso Baylands: Each of the action alternatives 1–5, described above, would also include an Alviso baylands flood control component that is intended to reduce the flooding potential on Alviso Slough near the community of Alviso. The focus of the LGRP in Alviso is primarily to address the Guadalupe River contribution to flood conditions in the area. Six components are currently being considered:

- Extension of improved levees adjacent to Alviso Slough to its terminus in the Bay;
- Extension of Alternative 1 dredging in Alviso Slough to its terminus in the Bay.
- Construction of setback levees west of Alviso Slough to the Bay that provides an auxiliary overflow conveyance system;
- Construction of an engineered overflow structure from Alviso Slough to flood easements in Cargill ponds for flood storage or conveyance (two components considered);
- Construction of a phased solution with an engineered overflow to Cargill ponds, flood easements in Cargill ponds west of Alviso Slough isolation of Alviso and pond A8D from LGRP design floods and improvements to the New Chicago Marsh source canal flow control mechanisms; and
- Tidal restoration of the existing salt ponds adjacent to Alviso Slough by phasing out salt production, breaching salt pond levees, and allowing tidal processes to reestablish.

Proposed Scoping Process

This NOI initiates the scoping process whereby the USACE and SCVWD will refine the scope of issues to be addressed in the draft EIR/EIS and identify potential significant environmental issues related to the proposed action.

a. Issues to be analyzed in depth: The resources for which potential adverse effects were identified include:

- River Geomorphology. Operation of the LGRP could result in changes in river geomorphology in the subreaches downstream of Interstate 880. Post-project monitoring would focus on channel incision and sediment deposition.
- Biological Resources. Construction of the LGRP could, depending on the

alternative, require removal of some shaded riverine aquatic cover and disturbance of the river channel, impacts to wildlife habitat, possible effects on escape areas for wildlife during storm events, and possible effects on wildlife movements. Such activities could result in adverse effects on fish habitat during and after construction. Anadromous fish to be evaluated are steelhead, which is listed as threatened under the Endangered Species Act, and chinook salmon.

• Water Quality. Potential construction-related effects on water quality include temperature changes, turbidity, and possible disturbance and mobilization of mercury present in the sediments.

• Air Quality. Earthmoving associated with constructing Alternative 2 could result in increased PM10 (particulate matter less than 10 microns in diameter) emissions.

• Transportation and Traffic. Project construction could result in temporary construction-related traffic congestion.

• Hazardous Materials. Potential construction-related effects on areas surrounding the river would be disturbance and mobilization of mercury and other contaminants present in the area soils and in the groundwater.

• Cultural Resources. Several cultural resource sites exist along the lower Guadalupe River and, depending on the alternative, these sites might be disturbed during LGRP construction. In addition, unknown cultural resources could be discovered and disturbed during construction operations.

b. Affected federal, state and local agencies, affected Indian tribes, and other interested private organizations and parties are invited to comment on the proposal to prepare the draft EIR/EIS and on the scope of issues to be included therein.

c. The USACE and SCVWD will consult local, state, and federal agencies with regulatory or implementation responsibility for, or expertise in, the resources in the area of investigation. These include, but are not limited to, the U.S. Fish and Wildlife Service, National Marine Fisheries Service, and U.S. Environmental Protection Agency; the State Historic Preservation Officer, California Department of Fish and Game, California Environmental Protection Agency, Regional Water Quality Control Boards, State Lands Commission, San Francisco Bay Conservation and Development Commission, and California Department of Transportation; and the City of San Jose and San Jose Redevelopment Agency. The USACE will conduct an environmental review of the project in accordance with:

- National Environmental Policy Act,
- Section 404 of Clean Water Act,
- Section 10 of Rivers & Harbors Act,
- Endangered Species Act,
- Magnuson-Stevens Act Provisions; Essential Fish Habitat,
- Clean Air Act,
- National Historic Preservation Act,
- Fish and Wildlife Coordination Act,
- Coastal Zone Management Act.

d. Meetings with interested persons will be held during the scoping period and after release of the draft EIR/EIS. Coordination with federal and state agencies, tribal governments, and local governments will take place throughout the entire process as necessary.

e. On May 3, 2000, a scoping meeting will be held in the community to describe the LGRP and solicit suggestions, recommendations, and comments to help refine the issues, measures, and alternatives to be addressed in the draft EIR/EIS. Specific locations, dates, and times of the meeting(s) will be published in local newspaper(s) or other media, and provided to those persons receiving this notice and those who call or write after seeing a published version.

f. A 45-day period will be provided for public review and comment on the draft EIR/EIS. All interested persons should respond to this notice and provide a current address if they wish to be notified of the draft EIR/EIS. A 30-day public review period will be provided for review and comment on the final EIR/EIS.

Availability

The draft EIR/EIS is expected to be available for a 45-day public review and comment period in fall 2000. The final EIR/EIS is expected to be available for a 30-day review period in March 2001.

(Authority: 40 CFR part 1501.7)

Dated: April 17, 2000.

Calvin C. Fong,

Chief, Regulatory Branch.

[FR Doc. 00–9990 Filed 4–20–00; 8:45 am]

BILLING CODE 3710–19–M

DEPARTMENT OF THE NAVY

Notice of Change in Disposal of Buildings and Land at Closed Military Installation; Former Naval Station Puget Sound (Sand Point), Seattle, WA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information on the surplus property at the former Naval Station Puget Sound (Sand Point), Seattle, Washington.

SUPPLEMENTARY INFORMATION: In 1991, Naval Station Puget Sound (Sand Point), Seattle, Washington, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. On September 20, 1995, approximately 126 acres of land and facilities, located at Sand Point were determined surplus to the needs of the federal Government and available for use by state and local governments, representatives of the homeless and other interested parties. Approximately 11 acres were designated to be a federal transfer to the National Oceanic and Atmospheric Administration (NOAA). NOAA declined the transfer and subsequently the City of Seattle requested the property for park and recreation purposes and submitted an application for the property under the Federal Lands-to-Parks Program of the National Park Service.

Surplus Property Description

The following is a listing of the additional land and facilities at the former Naval Station Puget Sound (Sand Point), Seattle, Washington, that have been declared surplus to the needs of the federal Government:

Land

Approximately 11 acres of improved and unimproved fee simple land at the former Naval Station Puget Sound (Sand Point), Seattle, Washington, located in King County, in the northeastern portion of the City of Seattle, Washington. Area is immediately available.

Buildings

The following is a summary of the facilities located on the above described land.

— Warehouse/storage facilities (1 structure). Comments: Approx. 115,000 square feet.
— Miscellaneous paved areas.
— Utility facilities. Comments: Electrical, steam, water, sewage

FOR FURTHER INFORMATION CONTACT: Richard A. Engel, Director, Department of the Navy, Real Estate Operations Division, Naval Facilities Engineering Command, 1322 Patterson Ave. SE, Suite 1000, Washington Navy Yard, DC 20374–5065, telephone (202) 685–9203 or Mike Brady, Director, Real Estate, Engineering Field Activity, Northwest, Naval Facilities Engineering Command, 19917 7th Avenue NE, Poulsbo, WA 98370–7570, telephone (360) 396–0908.

Dated: April 11, 2000.

J. L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–9949 Filed 4–20–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Chicago Operations Office, Office of Industrial Technologies, Notice of the Chemicals Industry of the Future Solicitation

AGENCY: Chicago Operations Office, DOE.

ACTION: Notice of financial assistance solicitation availability.

SUMMARY: The U.S. Department of Energy (DOE) is announcing its intention to solicit applications for financial assistance for cost shared research and development of technologies that will enhance economic competitiveness, reduce energy consumption and reduce environmental impacts of the U.S. chemical industry. The DOE Office of Industrial Technologies (OIT) seeks industry cost-shared projects involving at least two chemical industry companies per project that address research needs identified in Technology Vision 2020: The U.S. Chemical Industry "vision document" and the subsequent Vision 2020 technology roadmaps. These documents can be found on the OIT web-site located at *http://www.oit.doe.gov/chemicals/*. DOE is interested in projects that focus on applied research that lead to the development and successful completion of pilot-scale operations. Projects of most interest will be those that demonstrate broad chemical industry applicability, and which will yield large and replicable energy savings.

DATES: The complete solicitation document will be available on or about May 31, 2000. The deadline for submission of applications will be identified in the solicitation and should occur during August, 2000.

ADDRESSES: Copies of the solicitation, when issued, can be obtained from the DOE Chicago Operations Office, Acquisition and Assistance Home Page at *http://www.ch.doe.gov/business/ACQ.htm* under the heading "current solicitations," Solicitation No. DE–SC02–00CH11040. Access to this Home Page will also be possible through a hot-link from the OIT Chemicals web-site.

FOR FURTHER INFORMATION CONTACT: John Motz at (630) 252–2152; by mail at U.S. Department of Energy, 9800 South Cass Avenue, Argonne, IL 60439–4899; by facsimile at (630) 252–5045; or by electronic mail at john.motz@ch.doe.gov

SUPPLEMENTARY INFORMATION:

Background

DOE through its Office of Industrial Technologies (OIT) supports industries in their efforts to increase energy efficiency, reduce waste and increase productivity. The goal of OIT is to accelerate the development and use of advanced energy efficient, renewable and pollution prevention technologies that benefit industry, the environment, and U.S. energy security. OIT's core program is the Industries of the Future (IOF) initiative that focuses on basic materials and processing industries such as the chemical industry.

Research and Development Solicitation Topics

Responsive projects will cross-cut several technological and methodological roadmap areas including, but not limited to, catalysis, separations, new process chemistry, reaction engineering, materials of construction, computational fluid dynamics, and computational chemistry. Specific attention should be given to system integration and process operation and control development. The outcome of these projects should be pilot-scale demonstrations that will lead to full-scale demonstration and commercialization of process technology. The technology development project proposed must show a high probability of commercialization beyond a single company. For this reason, the proposers will need to describe the path to commercialization that will impact more than one company's process applications; the technology must show a broad applicability in its proposed configuration or in a similar adaptation to other chemical industry applications.

Type and Number of Anticipated Awards

Awards under this solicitation will be cooperative agreements with a term of up to three years. DOE is planning to allocate approximately $4 million in fiscal year 2001 for the selected projects, subject to the availability of funds. It is estimated that three to six projects will be selected for cost-shared cooperative agreements. Total estimated Government funding for the solicitation is approximately $12 million for the maximum three-year period, subject to the availability of funds.

Application Requirements

The projects must include teams that comprise multi-disciplinary expertise from corporate research, process engineering, technology development groups or companies, and new business development organizations within and outside chemical companies. Applications that do not propose a teaming arrangement of at least two chemical industry companies will not be evaluated. Teams shall be led by chemical companies, but may include partners from chemical product/raw material suppliers, chemical customers, equipment suppliers, engineering firms, software and consulting firms, universities, National Laboratories, and research institutes.

Applicants will be required to cost share a minimum of 50% of the total project costs to be incurred under the proposed project to be eligible for award under this solicitation.

In addition to the foregoing, other evaluation and selection criteria will be developed in accordance with 10 CFR 600.10—Form and Content of Applications and 10 CFR 600.13—Merit Review.

Issued in Argonne, Illinois on April 11, 2000.

John D. Greenwood,

Acquisition and Assistance Group Manager

[FR Doc. 00–9982 Filed 4–20–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. OA97–111–001, OA97–112–001 and OA97–124–001]

Cinergy Services, Inc.; Notice of Filing

April 14, 2000.

Take notice that on March 20, 2000, Cinergy Services, Inc. (Cinergy), as agent for and on behalf of the Cinergy Operating Companies, PSI Energy, Inc. and The Cincinnati Gas & Electric Company, submitted its compliance filing pursuant to the Commission's February 29, 2000 Order in Allegheny Power Service Company, *et al.*, 90 FERC ¶ 61,224.

Cinergy states that it has served a copy of its filing upon Hoosier Energy Rural Electric Cooperative, Inc., Southern Indiana Gas and Electric Company and Indiana Municipal Power Agency.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888

First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before April 24, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–9947 Filed 4–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–125–000, et al.]

ANP Bellingham Energy Company, et al.; Electric Rate and Corporate Regulation Filings

April 11, 2000.

Take notice that the following filings have been made with the Commission:

1. ANP Bellingham Energy Company

[Docket No. EG00–125–000]

Take notice that on April 5, 2000, ANP Bellingham Energy Company (Applicant), a Delaware corporation, whose address is 10000 Memorial Drive, Suite 500, Houston, Texas 77024, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant intends to construct an approximate 550 MW natural gas-fired combined cycle independent power production facility in Bellingham, Massachusetts (the Facility). The Facility is currently under development and will be owned by Applicant. Electric energy produced by the Facility will be sold by Applicant to the wholesale power market in the northeast United States.

Comment date: May 2, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. ANP Blackstone Energy Company

[Docket No. EG00–126–000]

Take notice that on April 5, 2000, ANP Blackstone Energy Company (Applicant), a Delaware corporation, whose address is 10000 Memorial Drive, Suite 500, Houston, Texas 77024, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant intends to construct an approximate 550 MW natural gas-fired combined cycle independent power production facility in Blackstone, Massachusetts (the Facility). The Facility is currently under development and will be owned by Applicant. Electric energy produced by the Facility will be sold by Applicant to the wholesale power market in the northeast United States

Comment date: May 2, 2000, in accordance with Standard Paragraph E at the end of this notice. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Wabash Valley Power Association and American Municipal Power Ohio, Inc. v. American Electric Power Services Corporation; Indiana Municipal Power Agency v. American Electric Power Service Corporation

[Docket Nos. EL99–66–001 and EL99–72–001]

Take notice that on April 4, 2000, American Electric Power Service Corporation (AEP), on the tendered for filing its refund report in response to the Commission's order of March 16, 2000. AEP also filed revised tariff sheets reflecting changes in its loss factors that had been inadvertently omitted from its settlement filing on December 10, 1999.

Copies of the filing were served upon all intervenors and all parties that signed the settlement agreement.

Comment date: May 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Connexus Energy

[Docket No. ER00–1900–001]

Take notice that on April 5, 2000, Connexus Energy (Connexus) submitted for filing substitute tariff sheets to replace supplements, filed on March 23, 2000, to Connexus Energy Rate Schedule FERC No. 1. Connexus states that the purpose of the filing is to change the proposed effective date of the Amendment to the All Requirements Contract, and associated revised Schedule V, between Connexus Energy and Elk River Municipal Utilities.

The substitute tariff sheets provide for an effective date of January 1, 2000. Connexus requests waiver of the prior notice requirement.

Comment date: April 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Otter Tail Power Company

[Docket No. ER00–2105–000].

Take notice that on April 4, 2000, Otter Tail Power Company (OTP) tendered for filing a Service Agreement between OTP and Public Service Company of Colorado (PSCO). The Service Agreement allows PSCO to purchase capacity and/or energy under OTP's Coordination Sales Tariff.

Comment date: April 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. PJM Interconnection, L.L.C.

[Docket No. ER00–2106–000]

Take notice that on April 4, 2000, 1999, PJM Interconnection, L.L.C. (PJM) tendered for filing a notice of cancellation of Conoco Power Marketing Inc.' (formerly DuPont Power Marketing Inc.) membership in PJM.

PJM requests a waiver and effective date of April 5, 2000 for the notice of cancellation.

PJM states that it served a copy of its filing on all of the members of PJM, including the withdrawing company, and each of the electric regulatory commissions within the PJM control area.

Comment date: April 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Entergy Services, Inc.

[Docket No. ER00–2107–000]

Take notice that on April 4, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Point-to-Point Transmission Service Agreement both between Entergy Services, Inc. as agent for the Entergy Operating Companies, and Conoco Power Marketing, Inc.

Entergy Services requests an effective date of March 28, 2000 for the Service Agreement.

Comment date: April 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Minnesota Power, Inc.

[Docket No. ER00–2108–000]

Take notice that on April 5, 2000, Minnesota Power, Inc. tendered for filing a signed Firm Point-to-Point Transmission Service Agreement with Northern States Power Company under its Firm Point-to-Point Transmission Service to satisfy its filing requirements under this tariff.

Comment date: April 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Sierra Pacific Power Company

[Docket No. ER00–2109–000]

Take notice that on April 5, 2000, Sierra Pacific Power Company tendered for filing pursuant to Section 205 of the Federal Power Act, an executed Network Integration Service Agreement (Service Agreement) between Sierra Pacific Power Company and the City of Fallon. The Service Agreement is being filed in compliance with Section 29.5 of Sierra Pacific Resources Operating Utilities Open Access Transmission Tariff.

Sierra has requested that the Commission accept the Service Agreement and permit service thereunder be effective as of March 8, 2000.

Comment date: April 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Sierra Pacific Power Company

[Docket No. ER00–2110–000]

Take notice that on April 5, 2000, Sierra Pacific Power Company tendered for filing pursuant to 18 CFR part 35 of the Commission's Rules and Regulations, a Notice of Cancellation of Agreement for Electric Service Agreement Between Sierra Pacific Power Company and City of Fallon to be effective as of March 8, 2000.

This Notice of Cancellation is filed pursuant to the notice of termination of the Electric Service Agreement given to Sierra Pacific Power Company by the City of Fallon.

Copies of the filing were served upon the City of Fallon, the Public Utilities Commission of Nevada and the Nevada Attorney General's Bureau of Consumer Protection.

Comment date: April 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–2112–000]

Take notice that on April 5, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Amendment No. 1 to Supplement No. 6 to the Market Rate Tariff to incorporate a Netting Agreement with Southern Company Energy Marketing L.P. into the tariff provisions.

Allegheny Energy Supply requests a waiver of notice requirements to make the Amendment effective as of March 14, 2000 or such other date as ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: April 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company LLC

[Docket No. ER00–2113–000]

Take notice that on April 5, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply Company) filed Amendment No. 2 to Supplement No. 23 to complete the filing requirement for one (1) new Customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Allegheny Energy requests a waiver of notice requirements to make service available as of January 7, 2000 to New York State Electric & Gas Corporation.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: April 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–2114–000]

Take notice that on April 5, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Supplement No. 35 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of March 7, 2000 to NewEnergy, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: April 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–2115–000]

Take notice that on April 5, 2000, Alliant Energy Corporate Services, Inc. tendered for filing executed Service Agreements for short-term firm point-to-point transmission service and non-firm point-to-point transmission service, establishing El Paso Merchant Energy, LP as a point-to-point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc. transmission tariff.

Alliant Energy Corporate Services, Inc. requests an effective date of March 22, 2000.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: April 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–2116–000]

Take notice that on April 5 , 2000, Alliant Energy Corporate Services, Inc. (Alliant Energy) tendered for filing executed Service Agreements for short-term firm point-to-point transmission service and non-firm point-to-point transmission service, establishing Wisconsin Public Power Inc. as a point-to-point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc. transmission tariff.

Alliant Energy Corporate Services, Inc. requests an effective date of April 1, 2000, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce

Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

18. ANP Bellingham Energy Company

[Docket No. ER00–2117–000]

Take notice that on April 5, 2000, ANP Bellingham Energy Company tendered for filing pursuant to Rules 205 and 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.205 and 385.207) a petition seeking waivers and blanket approvals under various regulations of the Commission, and an order accepting its FERC Electric Rate Schedule No. 1 for filing, to be effective on the date of the Commission's order on such petition.

FERC Electric Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: April 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. ANP Blackstone Energy Company

[Docket No. ER00–2118–000]

Take notice that on April 5, 2000, ANP Blackstone Energy Company tendered for filing pursuant to Rules 205 and 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.205 and 385.207) a petition seeking waivers and blanket approvals under various regulations of the Commission, and an order accepting its FERC Electric Rate Schedule No. 1 for filing, to be effective on the date of the Commission's order on such petition.

FERC Electric Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: April 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Duke Energy Corporation

[Docket No. ER00–2119–000]

Take notice that on April 5, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Statoil Energy Services, Inc., for Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on March 14, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: April 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Duke Energy Corporation

[Docket No. ER00–2120–000]

Take notice that on April 5, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Statoil Energy Services, Inc., for Non-Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on March 14, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: April 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Southwest Power Pool, Inc.

[Docket No. ER00–2122–000]

Take notice that on April 4, 2000, Southwest Power Pool, Inc. (SPP) filed a Notice of Cancellation. Effective March 22, 2000, Rate Schedule Nos. 65 and 135, effective date June 1, 1998 and October 15, 1998, respectively, and filed with the Federal Energy Regulatory Commission by Southwest Power Pool, Inc. are to be canceled.

Notice of the proposed cancellation has been served upon Sonat Power Marketing L.P. (Sonat), El Paso Power Services Company (EP Power Services), and El Paso Merchant Energy, L.P. (successor-in-interest to both Sonat and EP Power Services).

Comment date: April 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Central Maine Power Company

[Docket No. ER00–2123–000]

Take notice that on April 5, 2000, Central Maine Power Company (CMP) tendered for filing notice of termination of its Wholesale Market Tariff, Power Sales Tariff, and Voluntary Umbrella Service Agreements.

CMP states that the purpose of this filing is to terminate tariffs and voluntary umbrella service agreements, because CMP has sold its generation assets and is no longer in the business of providing energy.

Comment date: April 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Montana Power Company

[Docket No. ER00–2124–000]

Take notice that on April 5, 2000, Montana Power Company (Montana Power), tendered for filing Amendment #1 to the Power Purchase Agreement between Montana Power and the Department of Water and Power of the City of Los Angeles (LADWP), a long-term service agreement under Montana Power's Market-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 6 (Service Agreement). Pursuant to the terms of the Service Agreement, LADWP has assigned all of its rights and obligations under the Service Agreement to Duke Energy Trading and Marketing, L.L.C. (DETM). Thus, Amendment #1 to the Service Agreement was entered into by and between Montana Power and DETM. Amendment #1 amends the Service Agreement to allow, but not require, Montana Power to make available energy and capacity to DETM at Alternate Points of Delivery when Montana Power chooses to do so after a timely request from DETM. Except as modified in Amendment #1, all provisions of the Service Agreement remain in full force and effect.

Comment date: April 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. PJM Interconnection, L.L.C.

[Docket No. ER00–2125–000]

Take notice that on April 5, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing revised pages to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., to clarify the confidentiality provisions in Section 18.17 of that agreement.

PJM requests an effective date of June 5, 2000.

Copies of this filing were served upon all PJM Members and the state electric regulatory commissions in the PJM Control Area.

Comment date: April 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Public Service Company of New Mexico

[Docket No. ER00–2127–000]

Take notice that on April 5, 2000, Public Service Company of New Mexico (PNM), tendered for filing pursuant to Section 35.15 of the Regulations to the Federal Energy Regulatory Commission, 18 CFR 35.15, Notices of Cancellation of various Electric Power Sale, Purchase, and Tariff Service Agreements.

Pursuant to PNM's filing, the following agreements are to be canceled: Contract for Purchase of Energy between PNM and Western Area Power Administration, dated January 1, 1994; Power Sales Agreement between PNM and Imperial Irrigation District, dated March 10, 1992; Amendment Number Four to the Agreement for Electric Service between PNM and the Division

of Colorado River Resources, dated February 10, 1977; Service Agreement between PNM and Washington Water Power Company dated June 1, 1992 under Washington Water Power Company's FERC Electric Tariff Original Volume No. 4; Service Agreement between PNM and Montana Power Company dated May 1, 1982 under Montana Power Company's FERC Electric Tariff Original Volume No. 1; and Service Agreement between PNM and PacifiCorp (formerly Pacific Power and Light company, (PP&L)) dated September 27, 1984 under PP&L's FERC Electric Tariff Original volume No. 3, Service Schedule PPL–3. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: April 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Sierra Pacific Power Company

[Docket No. ER00–2128–000]

Take notice that on April 5, 2000, Sierra Pacific Power Company (Sierra) tendered for filing Service Agreements (Service Agreements) with Coral Power, L.L.C., for both Non-Firm and Short-Term Firm Point-to-Point Transmission Service under Sierra Pacific Resources Operating Companies FERC Electric Tariff Original Volume No. 1, Open Access Transmission Tariff (Tariff).

Sierra filed the executed Service Agreements with the Commission in compliance with Sections 13.4 and 14.4 of the Tariff and applicable Commission regulations. Sierra also submitted revised Sheet No. 173 (Attachment E) to the Tariff, which is an updated list of all current subscribers.

Sierra requests waiver of the Commission's notice requirements to permit an effective date of April 6, 2000 for Attachment E, and to allow the Service Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Utilities Commission of Nevada, the Public Utilities Commission of California and all interested parties.

Comment date: April 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Duke Energy Corporation

[Docket No. ER00–2130–000]

Take notice that on April 5, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with NCEMC, for Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on February 16, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: April 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Duke Energy Corporation

[Docket No. ER00–2131–000]

Take notice that on April 5, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with PECO Energy Company, for Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on February 16, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: April 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. PG&E Dispersed Generating Company, LLC

[Docket No. ER00–2134–000]

Take notice that on April 6, 2000, PG&E Dispersed Generating Company, LLC (PG&E Dispersed Gen), tendered for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, a Petition for authorization to make sales of capacity, energy, and certain Ancillary Services at market-based rates, and to reassign transmission capacity.

Comment date: April 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. Consumers Energy Company

[Docket No. ER00–2135–000]

Take notice that on April 6, 2000 Consumers Energy Company (Consumers), tendered for filing a Facilities Agreement Between Consumers and Alpena Power Generation, LLC, (Alpena), dated March 21, 2000. Under the Facilities Agreement, Consumers is to construct, operate and maintain various facilities needed in connection with the operation of four generating stations being built by Alpena.

Consumers requests that the Facilities Agreement be allowed to become effective within 60 days of filing.

Copies of the filing were served upon Alpena and upon the Michigan Public Service Commission.

Comment date: April 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. Public Service Company of Colorado

[Docket No. ER00–2138–000]

Take notice that on April 6, 2000, Public Service Company of Colorado tendered for filing a revision to Exhibit B to its Power Supply Agreement with Yampa Valley Electric Association as contained in Public Service's Rate Schedule FERC No. 54.

Public Service requests an effective date of March 10, 2000 for this filing.

Comment date: April 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. MidAmerican Energy Company

[Docket No. ER00–2139–000]

Take notice that on April 6, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission a Firm Transmission Service Agreement with Constellation Power Source, Inc. (Constellation), dated March 10, 2000, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of March 10, 2000, for the Agreement with Constellation, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Constellation, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: April 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. California Independent System Operator Corporation

[Docket No. ER00–2140–000]

Take notice that on April 6, 2000, the California Independent System Operator Corporation, tendered for filing a Scheduling Coordinator Agreement between the ISO and Cucamonga Electric Corp., for acceptance by the Commission.

The ISO states that this filing has been served on Cucamonga Electric Corp., and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Scheduling Coordinator Agreement to be made effective as of March 27, 2000.

Comment date: April 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

33. Northern Indiana Public Service Company

[Docket No. ER00–2152–000]

Take notice that on April 6, 2000, Northern Indiana Public Service Company (Northern Indiana) tendered for filing notice that it's canceling the following Service Agreement, effective on April 6, 2000:

Service Agreement between Northern Indiana Public Service Company and Stand Energy Corporation dated February 4, 1997.

For the reasons set forth in Northern Indiana's Transmittal Letter to the Commission and in an April 6, 2000 letter to Stand Energy Corporation, Northern Indiana believes that good cause is shown for such cancellation to be effective as of April 6, 2000. Northern Indiana states that the requested cancellation due to the defaults and financial incapacity of Stand Energy Corporation will not affect other purchasers under Northern Indiana's Power Sales Tariff.

Comment date: April 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–9946 Filed 4–20–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–74–000, et al.]

Statoil Energy Trading, Inc., et al.; Electric Rate and Corporate Regulation Filings

April 14, 2000.

Take notice that the following filings have been made with the Commission:

1. Statoil Energy Trading, Inc.

[Docket No. EC00–74–000]

Take notice that on April 7, 2000, pursuant to section 203 of the Federal Power Act, 16 U.S.C. 824b (1994), and Part 33 of the Commission's regulations, 18 CFR part 33, Statoil Energy Trading, Inc. (SETI) tendered for filing an application for Commission approval of the disposition of jurisdictional facilities to Constellation Power Source, Inc. The jurisdictional facilities being transferred are SETI's wholesale electric power sales agreements and associated books and records.

Comment date: May 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Duke Energy Vermillion, LLC

[Docket No. EG00–108–000]

Take notice that on April 13, 2000, Duke Energy Vermillion, LLC (Duke Vermillion) filed a modification with the Federal Energy Regulatory Commission (the Commission) to its Application for Commission Determination of Exempt Wholesale Generator Status which was filed in the above-referenced docket on March 2, 2000.

Duke Vermillion requests that the reference to "gas storage" activities be stricken from its Application. Duke Vermillion has also requested expedited consideration of its Application as modified.

Comment date: April 27, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Duke Energy Madison, LLC

[Docket No. EG00–109–000]

Take notice that on April 13, 2000, Duke Energy Madison, LLC (Duke Madison) filed a modification with the Federal Energy Regulatory Commission (the Commission) to its Application for Commission Determination of Exempt Wholesale Generator Status which was filed in the above-referenced docket on March 2, 2000.

Duke Madison requests that the reference to "gas storage" activities be stricken from its Application. Duke Madison has also requested expedited consideration of its Application as modified.

Comment date: April 27, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Hays Energy Limited Partnership

[Docket No. EG00–128–000]

Take notice that on April 12, 2000, Hays Energy Limited Partnership (Applicant), a Delaware limited partnership, whose address is 10000 Memorial Drive, Suite 500, Houston, Texas 77024, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant intends to construct an approximate 1,100 MW natural gas-fired combined cycle independent power production facility in Hays County, Texas (the Facility). The Facility is currently under development and will be owned and operated by Applicant. Electric energy produced by the Facility will be sold initially by Applicant to the Lower Colorado River Authority.

Comment date: May 5, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Meiya Electric Asia, Ltd.

[Docket No. EG00–129–000]

Take notice that on April 13, 2000, Meiya Electric Asia, Ltd. (MEA) with its principal office at 608 St. James Court, St. Dennis Street, Port Louis, Mauritius filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

MEA is a company organized under the laws of Mauritius. MEA will be engaged, directly or indirectly through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, exclusively in owning, or both owning and operating a coal-fired co-generation facility consisting of three 75 ton coal fired boilers and two 12 MW steam turbine generators and incidental facilities located within the Jiangsu Province, PRC; selling electric energy at wholesale and engaging in project development activities with respect thereto.

Comment date: May 5, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. PSEG Rongjiang Hydropower Ltd.

[Docket No. EG00–130–000]

Take notice that on April 13, 2000, PSEG Rongjiang Hydropower Ltd. (PRHP) with its principal office at 608 St. James Court, St. Denis Street, Port Louis, Mauritius filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

PRHP is a company organized under the laws of Mauritius. PRHP will be engaged, directly or indirectly through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, exclusively in owning, or both owning and operating a hydropower electric generating facility consisting of three 18 megawatt hydro-turbine generators and incidental facilities located along the Rongjiang River, Liuzhou Prefecture, Guangxi Zhuang Autonomous Region, PRC; selling electric energy at wholesale and engaging in project development activities with respect thereto.

Comment date: May 5, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. TXU Energy Trading Company

[Docket Nos. ER99–3333–003, EL00–69–000 and ER00–2178–000]

Take notice that on April 11, 2000, TXU Energy Trading Company (TXU ET) filed a notice of change in status, revision to its rate schedule, and a request for waiver of certain code of conduct requirements to reflect the advent of retail competition and electric industry restructuring in Texas.

Copies of the filing have been served on all customers under TXU ET's current rate schedule.

Comment date: May 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. ISO New England Inc.

[Docket No. ER00–749–002]

Take notice that on April 11, 2000, ISO New England Inc. tendered for filing with the Commission, information regarding Market Rule 15 corrective actions for the period from December 8, 1999 through March 21, 1999 in the above-referenced proceeding for informational purposes only.

9. ISO New England Inc.

[Docket No. ER00–2198–000]

Take notice that on April 10, 2000, ISO New England Inc. tendered for filing with the Commission for informational purposes only a revised Code of Conduct and Ethics Policy for ISO New England Inc.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–9944 Filed 4–20–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–127–000, et al.]

Trigen-Syracuse Energy Corporation , et al.; Electric Rate and Corporate Regulation Filings

April 13, 2000.

Take notice that the following filings have been made with the Commission:

1. Trigen-Syracuse Energy Corporation

[Docket No. EG00–127–000]

Take notice that on April 10, 2000, Trigen-Syracuse Energy Corporation, 56 Industrial Drive, Syracuse, New York 13204 (Applicant), filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations.

Applicant is a Delaware corporation that owns and operates a cogeneration facility in Syracuse, New York (the Facility), and is engaged exclusively in the generation of electric energy for sale at wholesale. The Facility consists of one coal-fired topping cycle cogeneration facility, with a power production capacity of approximately 80 megawatts, and associated equipment. No rate or charge for, or in connection with, the construction of the Facility, or for electric energy produced thereby (other than any portion of a rate or charge that represents recovery of the cost of a wholesale rate or charge), was in effect under the laws of any State of the United States on October 24, 1992. Copies of this application have been served upon the New York Public Service Commission and the Securities and Exchange Commission.

Comment date: May 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Gas and Electric Company

[Docket Nos. ER98–495–015, ER98–1614–006 and ER98–2145–006]

Take notice that on April 10, 2000, Pacific Gas and Electric Company (PG&E) filed a refund report in compliance with the Offer of Settlement filed in the above-referenced dockets on November 12, 1999 and approved by the Federal Energy Regulatory Commission (Commission) by letter order on January 14, 2000.

Comment date: May 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Entergy Services, Inc.

[Docket No. ER00–2132–000]

Take notice that on April 6, 2000, Entergy Services, Inc., acting as agent for Entergy Gulf States, Inc. (Entergy Gulf States), tendered for filing an unexecuted Interconnection and Operating Agreement (the Agreement), between Entergy Gulf States and Calcasieu Power, LLC.

Comment date: April 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. The Dayton Power and Light Company

[Docket No. ER00–2156–000]

Take notice that on April 10, 2000 The Dayton Power and Light Company (Dayton) submitted service agreements establishing Conectiv Energy Supply, Inc. and Delmarva Power & Light Company as customers under the terms of Dayton's Open Access Transmission Tariff.

Copies of this filing were served upon establishing Conectiv Energy Supply,

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Inc. and Delmarva Power & Light Company and the Public Utilities Commission of Ohio.

Comment date: May 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Commonwealth Edison Company

[Docket No. ER00–2157–000]

Take notice that on April 10, 2000, Commonwealth Edison Company (ComEd) submitted for filing an Interconnection Agreement with Des Plaines Green Land Development, L.L.C. (Des Plaines).

ComEd requests an effective date of April 11, 2000 and accordingly seeks waiver of the Commission's notice requirements.

Copies of the filing were served on Des Plaines and the Illinois Commerce Commission.

Comment date: May 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Public Service Corporation

[Docket No. ER00–2158–000]

Take notice that on April 10, 2000, Wisconsin Public Service Corporation (WPSC) tendered for filing an Energy Exchange Agreement between Wisconsin Public Service Corporation and Madison Gas & Electric Company. WPSC also filed a certificate of concurrence executed by Madison Gas and Electric Company (MG&E).

WPSC requests that the Agreement be made effective May 2, 2000.

Copies of the filing were served upon Madison Gas and Electric Company and the Public Service Commission of Wisconsin.

Comment date: May 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Niagara Mohawk Power Corporation

[Docket No. ER00–2163–000]

Take notice that on April 10, 2000, Niagara Mohawk Power Corporation tendered for filing notice that effective April 20, 2000, Niagara Mohawk Power Corporation's Form Transmission Service Agreement, designated as Rate Schedule FERC No. 188, effective date August 31, 1993, and any supplements thereto, and filed with the Federal Energy Regulatory Commission by Niagara Mohawk is to be canceled.

Notice of the proposed cancellation has been served upon Consolidated Edison Company of New York, Inc.

Comment date: May 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Montaup Electric Company

[Docket No. ER00–2164–000]

Take notice that on April 10, 2000, Montaup Electric Company (Montaup) tendered for filing a modification and a notice of cancellation of an October 24, 1997 agreement, as amended on July 14, 1998, (Agreement) by and between Montaup and The Pascoag Fire District (Pascoag).

Montaup states that the purpose of this filing is to reflect the recent agreement between Montaup and Pascoag to effectuate an early termination of the Agreement under which Montaup currently supplies system capacity and energy to Pascoag.

Copies of the filing were served upon Pascoag, Montaup's jurisdictional customers and upon affected state agencies.

Comment date: May 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Allegheny Energy Service Corporation, on Behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–2166–000]

Take notice that on April 10, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Amendment No. 5 to Supplement No. 9 to the Market Rate Tariff to incorporate a Netting Agreement with Williams Energy Marketing & Trading Company into the tariff provisions.

Allegheny Energy Supply Company requests a waiver of notice requirements to make the Amendment effective as of March 31, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: May 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Allegheny Energy Service Corporation, on Behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–2165–000]

Take notice that on April 10, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply Company), tendered for filing Amendment No. 6 to Supplement No. 9 to complete the filing requirement for one (1) new Customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy requests a waiver of notice requirements to make service available as of November 24, 1999, to Cinergy Services, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: May 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Allegheny Energy Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–2167–000]

Take notice that on April 10, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 76 to add Orion Power MidWest to Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreements is April 7, 2000 or a date ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: May 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–2168–000]

Take notice that on April 10, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 37 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make

service available as of March 15, 2000 to Duke Power, a division of Duke Energy Corporation.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: May 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–2169–000]

Take notice that on April 10, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 36 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of April 7, 2000 to Cinergy Capital & Trading, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: May 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. The Dayton Power and Light Company

[Docket No. ER00–2170–000]

Take notice that on April 10, 2000, The Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing British Columbia Power Exchange Corporation, Madison Gas & Electric Co., as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon British Columbia Power Exchange Corporation, Madison Gas & Electric Co. and the Public Utilities Commission of Ohio.

Comment date: May 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. The Dayton Power and Light Company

[Docket No. ER00–2171–000]

Take notice that on April 10, 2000, The Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing with Conectiv Energy Supply, Inc., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon with Conectiv Energy Supply, Inc., and the Public Utilities Commission of Ohio.

Comment date: May 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. The Dayton Power and Light Company

[Docket No. ER00–2172–000]

Take notice that on April 10, 2000, The Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing Conectiv Energy Supply, Inc., as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Conectiv Energy Supply, Inc. and the Public Utilities Commission of Ohio.

Comment date: May 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Entergy Services, Inc.

[Docket No. ER00–2133–000]

Take notice that on April 6, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., tendered for filing an Interconnection and Operating Agreement with Union Power Partners, L.P. (UPP), and a Generator Imbalance Agreement with UPP.

Comment date: April 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–9945 Filed 4–20–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

April 18, 2000.

The following notice of meeting is published pursuant to section 3(a) of the government in the sunshine act (Pub. L. No. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: April 25, 2000, 10 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda, * Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, telephone (202) 208–0400; for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro

740TH—Meeting April 25, 2000, Regular Meeting (10 a.m.)

CAH–1.
Omitted

CAH–2.
Docket#, P–10536, 007, Public Utility District No. 1 of Okanogan County, Washington

CAH–3.
Docket#, P–2496, 043, Eugene Water and Electric Board

Other#S, P–2496, 024, Eugene Water and Electric board; P–2496, 039, Eugene Water and Electric Board; P–2496, 042, Eugene Water and Electric Board

CAH–4.
Docket#, P–2609, 013, Curtis/Palmer Hydroelectric Company LP and International Paper Company

CAH–5.
Docket#, P–11243, 016, Cordova Electric Cooperative, Inc.

CAH–6.
Docket#, P–2709, 015, Monongahela Power Company, the Potomac Edison Company and West Penn Power Company

Consent Agenda—Electric

CAE–1.
Docket#, ER00–1770, 000, Conectiv Energy Supply, Inc.

CAE–2.
Docket#, ER00–1737, 000, Virginia Electric & Power Company

CAE–3.
Docket#, ER00–1641, 000, California Power Exchange Corporation
Other#S, ER00–1642, 000, California Power Exchange Corporation

CAE–4.
Docket#, ER00–1723, 000, New England Power Pool

CAE–5.
Docket#, ER00–1789, 000, Wisconsin Electric Power Company

CAE–6.
Omitted

CAE–7.
Docket#, ER00–1806, 000, Amergen Vermont, LLC

CAE–8.
Docket#, ER00–1807, 000, Pacific Gas and Electric Company
Other#S, ER97–320, 000, Pacific Gas and Electric Company

CAE–9.
Docket#, ER00–1820, 000, Commonwealth Edison Company and Commonwealth Edison Company of Indiana

CAE–10.
Docket#, ER00–1830, 000, El Segundo Power, LLC

CAE–11.
Docket#, ER00–1666, 000, North American Electric Reliabililty Council

CAE–12.
Omitted

CAE–13.
Docket#, ER99–3603, 000, Pacific Gas and Electric Company

CAE–14.
Docket#, ER99–2326, 003, Pacific Gas and Electric Company
Other#S, EL99–68, 003, Pacific Gas and Electric Company

CAE–15.
Docket#, ER00–1534, 000, Ocean State Power, II
Other#S, ER00–1535, 000, Ocean State Power

CAE–16.
Docket#, ER00–1743, 000, Entergy Services, Inc.

CAE–17.
Docket#, ER00–1638, 000, Central Maine Power Company
Other#S, ER00–1638, 001, Central Maine Power Company; ER00–26, 000, Central Maine Power Company; ER00–604, 000, Central Maine Power Company; ER00–982, 000, Central Maine Power Company; ER99–238, 000, Central Maine Power Company; ER97–1326, 000, Central Maine Power Company; EL00–44, 000, Central Maine Power Company

CAE–18.
Docket#, ER00–1717, 000, Reliant Energy Shelby County, LP
Other#S, ER00–1742, 000, Madison Windpower, LLC; ER00–1746, 000, DTE Georgetown, LLC; ER00–1779, 000, Union Power Partners, L.P.; ER00–1792, 000, Liberty Generating Company, LLC; ER00–1803, 000, South Eastern Generating Corporation; ER00–1804, 000, Panda Leesburg Power Partners, L.P.; ER00–1805, 000, Panda Midway Power Partners, L.P.; ER00–1814, 000, Avista Turbine Power, Inc.; ER00–1844, 000, Lamar Power Partners, LP; ER00–1851, 000, Pleasant Hill Marketing, LLC; ER00–1858, 000, New Hampshire Electric Cooperative, Inc.; ER00–1858, 001, New Hampshire Electric Cooperative, Inc.

CAE–19.
Omitted

CAE–20.
Docket#, ER99–4560, 001, Idaho Power Company

CAE–21.
Docket#, ER99–3092, 000, Central Maine Power Company
Other#S, ER99–3094, 000, Central Maine Power Company

CAE–22.
Omitted

CAE–23.
Docket#, RM95–9, 010, Open Access Same-Time Information System and Standards of Conduct

CAE–24.
Omitted

CAE–25. Omitted

CAE–26.
Docket#, ER00–536, 001, Southwestern Public Service Corporation

CAE–27.
Docket#, ER00–951, 002, California Power Exchange Corporation

CAE–28.
Docket#, EL00–40, 000, Dighton Power Associates Limited Partnership, FPL Energy, L.L.C., Southern Energy New England, L.L.C. and Southern Energy Kendall, L.L.C. v. ISO New England Inc.

CAE–29.
Docket#, EL00–42, 000 PJM Interconnection, L.L.C.

CAE–30.
Docket#, EL00–54, 000 UNICOM Investments, Inc.

CAE–31.
Docket#, EL00–45, 000 Wisconsin Public Power, Inc. v. Wisconsin Power & Light Company and Alliant Energy, Inc.

CAE–32.
Docket#, EL00–34, 000, Exxonmobil Chemical Company and Exxonmobil Refining & Supply Company v. Entergy Gulf States, Inc.

CAE–33.
Omitted

CAE–34.
Docket#, ER99–4400, 000, Southern Operating Companies
Other#s ER99–4400, 001, Southern Operating Companies
ER99–4450, 000, Georgia Power Company

Consent Agenda—Miscellaneous

CAM–1.
Docket#, RM00–8, 000, Revision of Public Reference Room Procedures for Records Request

Consent Agenda—Gas and Oil

CAG–1.
Docket#, RP00–223, 000, Northern Natural Gas Company

CAG–2.
Omitted

CAG–3.
Docket#, RP97–288, 003, Transwestern Pipeline Company

CAG–4.
Docket#, RP00–234, 000, CNG Transmission Corporation

CAG–5.
Docket#, RP00–237, 000, Columbia Gas Transmission Corporation

CAG–6.
Docket#, RP00–238, 000, Columbia Gulf Transmission Company

CAG–7.
Docket#, RP00–233, 000, Midwestern Gas Transmission Company

CAG–8.
Docket#, RP00–226, 000, Mississippi Canyon Gas Pipeline, LLC

CAG–9.
Docket#, RP00–239, 000, Pine Needle LNG Company, LLC

CAG–10.
Omitted

CAG–11.
Omitted

CAG–12.
Docket#, RP00–229, 000, Tennessee Gas Pipeline Company

CAG–13.
Omitted

CAG–14.
Docket#, RP00–219, 000, Northwest Pipeline Corporation

CAG–15.
Docket#, RP97–431, 000, Natural Gas Pipeline Company of America

CAG–16.
Docket#, RS92–11, 027, Texas Eastern Transmission Corporation

CAG–17.
Docket#, RP99–477, 002, North American Energy Conservation, Inc. v. CNG Transmission Corporation

CAG–18.
Omitted

CAG–19.
Omitted

CAG–20.
Docket#, PR00–5, 000, Coral-Mexico Pipeline, L.L.C.

CAG–21.
Docket#, RP99–274, 004, Kern River Gas Transmission Company

CAG–22.
Docket#, MG99–27, 001, Panhandle Eastern Pipe Line Company
Other#s, MG99–28, 001, Southwest Gas Storage Company
MG99–29, 001, Trunkline Gas Company
MG99–30, 001, Trunkline LNG Company

CAG–23.
Omitted
CAG–24.
Docket#, CP00–14, 000, Buccaneer Gas Pipeline Company, L.L.C.
Other#s, CP00–15, 000, Buccaneer Gas Pipeline Company, L.L.C.
CP00–16, 000, Buccaneer Gas Pipeline Company, L.L.C.
CAG–25.
Docket#, CP00–45, 000, Eastern Shore Natural Gas Company
CAG–26.
Docket#, CP00–6, 000, Gulfstream Natural Gas System, L.L.C.
Other#s, CP00–7, 000, Gulfstream Natural Gas System, L.L.C.
CP00–8, 000, Gulfstream Natural Gas System, L.L.C.
CAG–27.
Omitted
CAG–28.
Docket#, CP96–684, 001, Interenergy Sheffield Processing Company, Bear Paw Energy, L.L.C.
CAG–29.
Omitted
CAG–30.
Docket#, RP99–471, 001, Williams Field Services Group, Inc. v. El Paso Natural Gas Company
CAG–31.
Docket#, CP97–315, 003, Independence Pipeline Company
Other#s, CP97–319, 002, ANR Pipeline Company
CP97–320, 001, Independence Pipeline Company
CP97–321, 001, Independence Pipeline Company
CP98–200, 002, National Fuel Gas Supply Corporation
CP98–540, 002, Transcontinental Gas Pipe Line Corporation
CAG–32.
Docket#, CP96–687, 002, Iroquois Gas Transmission System

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Reserved

Oil and Gas Agenda

I.
Pipeline Rate Matters
PR–1.
Reserved
II.
Pipeline Certificate Matters
PC–1.
Reserved

David P. Boergers,
Secretary.
[FR Doc. 00–10204 Filed 4–19–00; 3:51 pm]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6582–7]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Collection Request for the National Listing of Advisories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following new Information Collection Request (ICR) to the Office of Management and Budget (OMB): Information Collection Request for the National Listing of Advisories (EPA ICR Number 1959.01). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 20, 2000.

ADDRESSES: Jeffrey Bigler, U.S. Environmental Protection Agency, Office of Science and Technology, 401 M Street SW., Maildrop 4305, Washington, DC 20460, (202) 260–1305, by e-mail at bigler.jeff@epa.gov, or download a copy off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1959.01.

FOR FURTHER INFORMATION CONTACT: Jeffrey Bigler at EPA, (202) 260–1305, by e-mail at bigler.jeff@epa.gov.

SUPPLEMENTARY INFORMATION:

Affected Entities

Entities potentially affected by this action are those which issue fish consumption advisories within their state, territory, or tribal jurisdictions.

Title

Information Collection Request for the National Listing of Advisories (EPA ICR Number 1959.01). This is a request for a new collection.

Abstract

Release of chemical contaminants into our Nation's waters from industrial pollution, sprawling urbanization, and introduction of new pesticides in agriculture poses potentially serious public health problems. Recent studies have confirmed that adverse health effects can result from consumption of chemically-contaminated fish from contaminated waters. These adverse affects have been one of EPA's long standing concerns. They are also directly related to such Clean Water Act responsibilities as water quality standards, surface water quality, and to the Agency's effort to ensure that the waters of the United States are both "fishable" and "swimmable." Based on results from the 1998 National Listing of Fish and Wildlife Advisories (NLFWA) database, fish consumption advisories have been issued by 47 states and from 100 to 200 new advisories are issued every year nationwide.

EPA believes there is a need to maintain and improve the existing quality and availability of public information concerning fish advisories, which includes but is not limited to monitoring and risk assessment activities and the issuance of advisories. Primary responsibility for these activities lies with each state, territory, or tribal jurisdiction, however, several agencies often share responsibilities for these activities. Consequently, EPA's Office of Water will conduct an annual fish advisory survey which will be sent to environmental and health officials from state, territorial, and tribal agencies specifically responsible for the issuance of fish advisories. This survey will collect information (electronically via the Internet and on paper) on the location of advisories and agencies and persons responsible for maintaining and issuing advisories for lakes and rivers, and for estuarine and coastal marine waterbodies. Responses to the questionnaire (either on paper or electronically via the Internet) are needed to assess public health risks of consuming chemically-contaminated fish, and to make this information available to the public.

The EPA will use the information to update existing advisory information in the EPA's National Listing of Fish and Wildlife Advisories (NLFWA) electronic database which has archived fish advisory data since 1994. The results of the nationwide data collection effort are shared with the states, territories, tribes, other federal agencies and the general public through access to the NLFWA database which can be queried for specific information and through distribution of the annual Fish Advisory Fact Sheet via the Internet. Results of this and past surveys will be available at EPA's NLFWA web site (http://www.epa.gov/OST/fish/). Information from these surveys has stimulated nationwide dialogue on fish consumption advisories involving agencies and the public. This information is being used to identify and clarify issues that will lead to the continued development of national guidance to assist states on sampling

and analysis, risk assessment procedures, risk management practices, and risk communication procedures that will further protect human health.

The purpose of the new collection is two-fold. First, the survey is needed to continue to collect and update quantitative information on the number of advisories issued by states, territories, and tribes annually, including detailed information on species sampled, chemical contaminants involved, waterbodies under advisory (including freshwater, estuarine, and marine waterbodies), target populations to which the advisory refers (e.g., pregnant women, nursing mothers, and young children), geographic location of each advisory, and tissue residue data supporting the states' advisories. In addition, the expanded questionnaire portion of the survey will provide information on monitoring procedures used to collect and analyze fish samples, risk assessment methodologies used to evaluate fish tissue residue data and issue advisories, and risk communication procedures used to communicate the human health risks of consuming chemically-contaminated species. From this information, EPA can determine how to most effectively provide assistance to state, territorial, and tribal fish advisory programs to improve effectiveness among jurisdictions through the use of appropriate procedures for sampling, chemical analysis, risk assessment, and risk communication. Completion of this survey is voluntary and the information requested is part of the state public record associated with issuing the advisories. Over the last few years, the states have requested guidance from EPA in their fish advisory programs and a more comprehensive questionnaire will provide the states with the opportunity to identify those advisory areas for which they most need EPA assistance.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement:

The annual public reporting and record keeping burden for this collection of information is estimated to average 36.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State, territory, and tribal environmental and health agencies (50 states, District of Columbia, 5 territories, and 36 tribal agencies).

Estimated Number of Respondents: 92.

Frequency of Response: Annually.

Estimated Total Annual Hours Burden: 3,358 hours.

Estimated Total Annualized Cost Burden (non-labor costs): $552.00.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 00–10035 Filed 4–20–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6583–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Resource Conservation and Recovery Act (RCRA) Corrective Action Information Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: RCRA Corrective Action Information Request (EPA ICR No. 1939.01). The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 22, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1939.01. For technical questions about the ICR contact Heather Harris at (703) 308–6101.

SUPPLEMENTARY INFORMATION:

Title: Resource Conservation and Recovery Act (RCRA) Corrective Action Information Request (EPA ICR No. 1939.01). This is a new collection.

Abstract: This information collection is in response to an April 15, 1999 request from Congress concerning the RCRA Corrective Action program. Included in this inquiry were certain questions which only the state offices have the information to answer. EPA intends to obtain this information from the states by means of a questionnaire. The questionnaire includes facility specific questions on all RCRA Cleanup Baseline facilities, enforcement orders, state authority, and federal funding. Responses to this request will be mandatory and all information will be used to respond to Congress and to provide an accurate picture of the current state of the program. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for

EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 12/16/99; 2 comments were received and discussed in the ICR.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 7 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State environment offices where RCRA Corrective Action is authorized (33).

Estimated Number of Respondents: 1100.

Frequency of Response: One time only.

Estimated Total Annual Hour Burden: 1068 hours.

Estimated Total Annualized Capital and Operating & Maintenance Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1939.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave, NW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: April 17, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–10036 Filed 4–20–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6253–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA Comments Prepared April 3, 2000 Through April 7, 2000 Pursuant to the Environmental Review Process (ERP), Under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as Amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 09, 1999 (63 FR 17856).

Draft EISs

ERP No. D–AFS–L65345–WA Rating NR, Deadman Creek Ecosystem Management Projects, Implementation, Kettle Falls Ranger District, Colville National Forest, Ferry County, WA.

Summary: EPA Region X used a screening tool to conduct a limited review of this action. Based upon this screen, EPA does not foresee having any environmental objections to the proposed project. Therefore, EPA will not be conducting a detailed review.

ERP No. D–BLM–K67051–NV Rating EO2, Marigold Mine Expansion Project, Implementation, COE Section 404 Permit, Special-Use-Permit, Humboldt County, NV.

Summary: EPA expressed objections with the project's potential impacts to surface and ground water quality from mine facilities, including the post-closure pit lake; and to air quality, especially from mercury emissions. Additional information was requested regarding impacts to water and air quality, ecological risks, bonding and closure, mitigation measures, and geochemical characterization.

ERP No. D–BLM–L65338–OR Rating EC2, John Day River Management Plan, Implementation, John Day River Basin, Gilliam, Grant, Wheeler, Crook, Harney, Jefferson, Morrow, Sherman, Umatilla, Union and Wasco Counties, OR.

Summary: EPA expressed concern about the degraded environmental conditions in the wild and scenic corridor and the relatively minor adjustments being proposed for land management, which may not be sufficient to protect/enhance the resource values, or comply with state water quality standards. EPA requested that the plan include both implementation and effectiveness monitoring to measure progress in meeting goals/objectives, and to enable BLM and partners to make needed adjustments.

ERP No. D–FHW–G40156–TX Rating EC2, TX–130 Construction, I–35 of Georgetown to I–10 near Seguin, Funding, COE Section 404 Permit, Williamson, Travis, Caldwell, Guadalupe Counties, TX.

Summary: EPA expressed environmental concerns regarding impacts relating to farmlands, relocation/displacement, air quality, wetlands, and cultural resources. EPA requested that additional information on these issues be included in the final document.

ERP No. D–FHW–G40157–TX Rating EC2, Tyler Loop 49 West, Construction from the TX–155 Highway to I–20 Highway, Funding, NPDES and COE Section 404 Permits, Smith County, TX.

Summary: EPA expressed environmental concerns regarding farmland impacts, air quality impacts, and noise impacts. EPA requested that additional information on these issues be incorporated in the final EIS.

ERP No. D–NPS–K65325–CA Rating LO, Merced Wild and Scenic River Comprehensive Management Plan, Implementation, Yosemite National Park and the EL Portal Administrative Site, Tuolumne, Merced, Mono, Mariposa and Madera Counties, CA.

SUMMARY: EPA had no objections to the over all management plan, future concerns might exist for specific tiered projects.

ERP No. DA–AFS–L65155–00 Rating EC2, Northern Spotted Owl Management Plan, Updated Information for Amendment to the Survey and Manage, Protection Buffer and Other Mitigating Measures, Standards and Guidelines (to the Northwest Forest Plan), Late-Successional and Old Growth Forest Related Species Within the Range of the Northern Spotted Owl, OR, WA and CA.

Summary: EPA expressed concern regarding project impacts for those species removed from protection and/or provided less protection than in the original plan. EPA also expressed concern about certain aspects of the proposed management direction for those species that will continue to be covered by these Standards and Guidelines and about the social/economic implications of the plan.

ERP No. DS–COE–H36012–MO Rating EU3, St. Johns Bayou and New Madrid Floodway, Channel Enlargement and Improvement, Flood Control, National Economic Development (NED) Mississippi River & Tributaries, MO.

Summary: EPA expressed significant objections regarding the lack of information regarding potential impacts to over 36,000 acres of wetlands in the Mississippi River floodplain. EPA requested that the Corps formally revise the Draft Supplemental EIS to include further development of alternatives, improved wetlands determinations, cumulative impact analysis, water quality impacts, and appropriate mitigation measures.

Final EISs

ERP No. F–FHW–K40216–AZ, AZ–260 Transportation Improvements, between Payson and Heber, Funding, NPDES and COE Section 404 Permits, Gila, Coconino and Navajo Counties, AZ.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–NPS–H61020–00, Missouri National Recreational River, General Management Plan, Implementation, Cedar and Dixon Counties, NB and Yakton, Clay and Union Counties, SD.

Summary: EPA has no objections with the General Management Plan described in the FEIS.

Dated: April 18, 2000.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division.

[FR Doc. 00–10029 Filed 4–20–00; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6253–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/ofa.

Weekly Receipt of Environmental Impact Statements

Filed April 10, 2000 Through April 14, 2000

Pursuant to 40 CFR 1506.9

EIS No. 200108, Draft EIS, AFS, ID, Lakeface-Lamb Fuel Reduction Project, To Reduce the Risk of Lethal Fires within a Wildland/Urban Interface, Implementation, Idaho Panhandle National Forests, Priest Lake Ranger District, Bonner County, ID, Due: June 05, 2000, Contact: David Asleson (208) 443–2512.

EIS No. 200109, Draft Supplement, AFS, UT, Rhyolite Fuel Ecosystem Rehabilitation Project to the South Spruce Ecosystem Rehabilitation Project, Implementation, Dixie National Forest, Cedar City Ranger District, Iron County, UT, Due: June 05, 2000, Contact: Philip G. Eisenhauer (435) 865–3200.

EIS No. 200110, Final EIS, BLM, WY, South Baggs Natural Gas Development Area, Proposal to Drill and Develop 50 Natural Gas Wells, Application for Permit to Drill and COE Section 404 Permit, Carbon County, WY, Due: May 22, 2000, Contact: Larry Jackson (307) 328–4231.

EIS No. 200111, Draft EIS, SFW, NV, Stillwater National Wildlife Refuge Complex Comprehensive Conservation Plan and Boundary Revision, Implementation, Churchill and Washoe Counties, NV, Due: June 12, 2000, Contact: Don Delong (916) 414–6500.

EIS No. 200112, Revised Final EIS, COE, FL, Lake Okeechobee Regulation Schedule Study, To Maintain or Improve Existing Water Storage, Revised Information, St. Lucie and Caloosahatchee River Estuaries, FL, Due: May 22, 2000, Contact: Elmar Kurzbach (904) 232–2325.

EIS No. 200113, Final EIS, BOP, SC, South Carolina—Federal Correctional Institution, Construct and Operate, Possible Sites: Andrew, Bennettsville, Oliver and Salters, SC, Due: May 22, 2000, Contact: David J. Dorworth (202) 514–6470.

EIS No. 200114, Draft EIS, AFS, PA, East Side Project, Improvements to Timber Management, Transportation System Development and Wildlife Habitat, From Existing Condition (EC) to Desired Future Condition (DFC), Allegheny National Forest, Bradford and Marienville District, Elk, Forest, McKean and Warren Counties, PA, Due: June 05, 2000, Contact: Carl Leland (814) 776–6172.

EIS No. 200115, Draft EIS, AFS, ID, Iron Honey Resource Area Project, Aquatic, Vegetative and Wildlife Habitat Improvement Activities, Implementation, Coeur d'Alene River Ranger District, Idaho Panhandle National Forests, Kootenai and Shoshone Counties, ID, Due: June 05, 2000, Contact: Kerry Arneson (208) 769–3000.

EIS No. 200116, Final EIS, FHW, HI, Puainako Street Extension and Widening, Traffic Circulation Improvements, Funding, South Hilo, Hawaii County, HI, Due: May 22, 2000, Contact: Abraham Wong (808) 541–2700.

EIS No. 200117, Final EIS, SFW, AK, Wolf Lake Area Natural Gas Pipeline Project, Construction, Approval Right-of-Way Grant and COE Section 404 Permit, Kenai National Wildlife Refuge, AK, Due: May 22, 2000, Contact: Brian Anderson (907) 786–3379.

EIS No. 200118, Final EIS, AFS, OR, WA, Pacific Northwest Region Douglas-fir Tussock Moth (orgvia pseudotsugata) Project, To Partially Control an Anticipated Outbreak of Douglas-fir tussock moth, To be Implemented in Nine National Forests in WA and OH, Due: May 22, 2000, Contact: Bill Funk (503) 808–2984.

EIS No. 200119, Draft EIS, AFS, WA, Upper Charley Subwatershed Ecosystem Restoration Projects, Implementation, Pomeroy Ranger District, Umatilla National Forest, Garfield County, WA, Due: June 12, 2000, Contact: Monte Fujishin (509) 843–1891.

EIS No. 200120, Draft EIS, AFS, ID, Brownlee Vegetation and Access Management Project, Implementation, Weiser Ranger District, Payette National Forest, Washington County, ID, Due: June 21, 2000, Contact: John Baglien (208) 549–4200.

EIS No. 200121, Draft EIS, COE, DE, Fenwick Island Feasibility Study, Storm Damage Reduction, In the Community of Fenwick Island, Sussex County, DE, Due: June 05, 2000, Contact: Robert L. Callegari (215) 656–6555.

Amended Notices

EIS No. 200003, Draft EIS, COE, WA, Lower Snake River Juvenile Salmon Migration Feasibility Study, Implementation, To Increase the Survival of Juvenile Anadromous Fish, Snake River, Walla Walla, WA, Due: May 01, 2000, Contact: Lonnie Mettler (509) 527–7268. Published FR on 1–14–2000: CEQ Comment Date has been extended from 03/31/2000 to 05/01/2000.

Dated: April 18, 2000.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–10030 Filed 4–20–00; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[SW–FRL–6583–2]

Notice Proposing To Reissue a Variance From Land Disposal Restrictions Granted to Exxon Mobil Corporation, Billings, MT

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed decision.

SUMMARY: This is a notice to interested parties that EPA is proposing to reissue a no-migration variance for land disposal of hazardous waste to Exxon Mobil Refining & Supply Company Billings Refinery ("Exxon"), a division of Exxon Mobil Corporation, formerly known as Exxon Company U.S.A. Authority for the decision has been delegated to the EPA Regional Administrator. The original July 27, 1993 variance (58 FR 40134) approved under Resource Conservation and Recovery Act regulations (40 CFR 268.6) allowed Exxon to place certain untreated hazardous wastes subject to the RCRA land disposal restrictions (42 U.S.C. 36901 et. seq.) at their Billings (Montana) refinery South Land Treatment Unit (SLTU). In the original variance, the unit was referred to as the New South Land Treatment Unit. Exxon submitted a request to EPA on March 24, 1998 for renewal of this no-migration variance in conjunction with their State of Montana hazardous waste permit reissuance. Exxon also petitioned to amend the variance by adding the newly listed hazardous waste, Petroleum Refinery Primary Oil/Water/Solids Separation Sludge (EPA hazardous waste code F037). The proposed variance reissuance includes the F037 waste stream, "Primary Sludge," generated at the Exxon Billings Refinery.

In granting the original variance, we concluded that Exxon demonstrated to a reasonable degree of certainty that hazardous constituents would not migrate out of the land treatment facility at levels exceeding no-migration criteria for as long as the wastes remain hazardous. We have reviewed the SLTU monitoring data submitted by Exxon for the period the variance was in effect along with other relevant information, and it still supports our original conclusion on Exxon's no-migration demonstration. We also concluded that Exxon adequately met the conditions of the original variance, which were included to ensure compliance with their no-migration demonstration.

The present proposal considered how the terms of the original variance were affected by certain changes in waste application techniques and closure requirements incorporated into the recently issued Montana hazardous waste permit (No. MTHWP–99–02) and one failure to correctly manage a waste stream whose hazardous status had changed during the term of the original variance. We concluded that these factors did not materially affect the overall demonstration of no-migration. The proposed variance reissuance again includes specific conditions tailored to reflect additions of a newly hazardous waste stream (F037), modifications to how no-migration standards apply to specific SLTU monitoring systems, additional monitoring requirements, and improvements to the Exxon waste application tracking system. Certain conditions of the original variance are also included. The full set of variance conditions are presented below.

RCRA regulations require that we provide for public comment on a proposed no-migration variance decision. In addition to seeking written comments through this notice, we have elected to hold a public hearing in Billings, Montana to gather comment on this proposed decision from the local citizens near Exxon's land treatment facility and other interested parties. All comments received will be entered into the public record for this decision making process. Details appear below in the DATES section of this document. A final decision will be made by EPA after considering and responding to public comments. We will then publish a notice in the **Federal Register** of our decision on the reissuance of the variance and the addition of Primary Sludge (F037). Copies of the statement of basis for the proposed decision are available in the record for today's document and can be requested from Tina Diebold at the address or telephone number listed below.

DATES: Comments on the proposed decision must be received on or before June 5, 2000. In addition to the written comments received at EPA's Montana Office, written and oral comments on the proposed decision also will be accepted by the Hearing Officer at the public hearing in Billings, Montana. The public hearing is scheduled for May 23, 2000 from 6 p.m. to 8:30 p.m.

ADDRESSES: Comments on the proposal should be sent to EPA at the following address: Tina Diebold, Mail Code 8MO, Montana Office, U.S. EPA Region VIII, 301 S. Park, Drawer 10096, Helena, Montana 59626–0096. The public hearing will be held at the Parmly Library at 510 North Broadway, Billings, Montana (large, open meeting room on third floor).

A copy of the record supporting this proposal is available to the public at the Parmly Library at 510 North Broadway, Billings, Montana, and is available for public review during regular library hours. Another copy of the record is available in Helena, Montana, at the EPA Region VIII, Montana Operations Office, Federal Building, 301 South Park. The public may make arrangements to view the documents in Helena by calling Tina Diebold at (406) 441–1130. The record is available for inspection in Helena from 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tina Diebold, Mail Code 8MO, Montana Office, U.S. EPA Region VIII, 301 S. Park, Drawer 10096, Helena, Montana 59626–0096, at (406) 441–1130.

SUPPLEMENTARY INFORMATION: Wherever "we" is used throughout this document, it refers to EPA.

A. What Conditions and Reporting Requirements Are Proposed for the Exxon No-Migration Variance Reissuance?

As part of this reissuance of the no-migration variance and addition of Primary Sludge (F037), we propose that Exxon comply with the following conditions. These conditions are in addition to those required of Exxon under 40 CFR 268.6. EPA would directly enforce these conditions, and a violation of a condition would constitute a violation of the RCRA land disposal restrictions. Unless otherwise notified by EPA, Exxon shall provide the required notices and reports to the EPA Region VIII Montana Operations Office, Federal Building, 301 South Park, Drawer 10096, Helena, MT, 59626. Exxon shall provide a separate copy to the State of Montana of any report or notice required by the variance if the information is not combined with the reports required under its Montana hazardous waste permit. Exxon shall provide copies to the State at the address specified for its Montana hazardous waste permit reporting requirements.

We interpret the no-migration standard to mean that concentrations of hazardous constituents cannot exceed EPA-approved health-based levels in any environmental medium at the boundary of the land disposal unit. Hazardous constituent levels exceeding those presented in Table 1 of this document constitute migration into ground water at the unit boundary, as measured by soil-pore liquid and below

treatment zone (BTZ) soil-core monitoring, and as measured by ground water monitoring under the Exxon Montana hazardous waste permit and as defined below. In the event that Exxon should detect other RCRA hazardous constituents (defined in 40 CFR part 261, appendix VIII) above health-based levels, this event would also be subject to the notification requirements in 40 CFR 268.6(f). Definitions of the unit boundaries (i.e., points of compliance for no-migration purposes) remain the same as in the original variance (57 FR 10478). Metals levels in the SLTU zone of incorporation (ZOI) soils (the top 23 centimeters of the treatment zone) exceeding the limits listed in item 1.a. below are also evidence of a no-migration standard exceedance.

In accordance with 40 CFR 268.6(k), the proposed variance will be valid for up to ten years from the date of EPA approval of the petition, but no longer than the term of Exxon's Montana hazardous waste permit, unless the permit is renewed or reissued.

1. Montana Hazardous Waste Permit Conditions

Exxon must comply with conditions of the Montana hazardous waste permit effective June 28, 1999 (No. MTHWP–99–02) regarding characterization of wastes disposed of at the SLTU, and monitoring of ground water, soil and soil-pore liquids at that unit. Exxon must provide the results of this characterization and monitoring to EPA on the same schedule as they are provided to the State of Montana under Exxon's Montana hazardous waste permit.

In addition, Exxon must follow the monitoring provisions below specific to this variance, which are intended to supplement the existing Montana hazardous waste permit conditions. Exxon may provide the information required as a condition of the variance to EPA in the annual reports required by its Montana hazardous waste permit. Exxon shall submit annual reports for the previous calendar year by April 30.

a. ZOI Metals Loading Limit

Exxon shall determine if any of the following risk limits have been exceeded when it evaluates the annual SLTU ZOI soil samples for the metals loading limits under its Montana hazardous waste permit: 31 mg/kg for antimony; 15 mg/kg for arsenic; 2 mg/kg for beryllium; 140 mg/kg for total chromium; 400 mg/kg for lead; and 7 mg/kg for mercury. In the event one or more of these criteria are exceeded, Exxon may only place wastes on the SLTU areas(s) for which the metals concentrations are less than or equal to the in-soil concentration limits. Exxon shall submit the analytical results and comparisons in an annual report to EPA. Exxon shall report exceedances of these limits to EPA within ten days of receiving the analytical results.

b. Soil-Pore Liquid Monitoring

Exxon shall evaluate the following metals as part of semi-annual SLTU soil-pore lysimeter monitoring requirements under the Montana hazardous waste permit: antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, nickel, selenium, vanadium, and zinc. Samples from each of the three SLTU lysimeters shall be .45-micron filtered prior to analysis for metals. SW–846 [1] or equivalent analytical methods shall be used which can provide reporting limits of .001 mg/l, except .0002 mg/l for mercury. Exxon shall attempt to collect sufficient sample volumes to meet these performance criteria, following the general analytical priority scheme in its Montana hazardous waste permit. Should sample volumes be insufficient, Exxon shall investigate collecting additional sample volumes in a reasonable time frame for metals analysis once the Montana hazardous waste permit conditions have been met. Additionally, analyses of soil-pore organic monitoring constituents shall meet the SW–846 estimated quantitation limits (EQL) specified for water samples in Exxon's Montana hazardous waste permit and as listed in Table 1, to the extent possible.

c. Soil-Pore Liquid Monitoring Evaluation and Reporting

Exxon shall compare the organic hazardous constituents and the metals results to the leachate soil-pore health-based standards identified in Table 1 below. Exxon shall submit the analytical results and comparisons including information on sample volumes collected, analytical methods used, and EQLs achieved for all sample constituents, in an annual report to EPA. Exxon shall report exceedances of these limits to EPA within ten days of receiving the analytical results. Exxon shall notify EPA and the State if sufficient sample volumes cannot be collected or EQLs cannot be achieved in any semi-annual sampling period.

d. BTZ Soil-Core Monitoring

When collecting the five (5) annual soil cores from the SLTU Below Treatment Zone (BTZ) as required by its Montana hazardous waste permit, Exxon shall also collect intermediate level treatment zone soil samples at three depth intervals of 2–2.5 feet below ground surface (bgs), 3–3.5 feet bgs, and 4–4.5 feet bgs and in the BTZ itself (5–5.5 feet bgs), sufficient for analyses of oil and grease and soil pH. Oil and grease and soil pH results shall be reported for the four depth intervals in each of the five soil core samples. Exxon shall use an oil and grease analytical method which can provide detection limits in the range of 10 to 100 mg/kg consistent with the Montana hazardous waste permit. Exxon also shall analyze any BTZ resamples required under the Montana hazardous waste permit for oil and grease and soil pH. Exxon shall submit the results of the annual BTZ sampling (including the pH and oil and grease results from the intermediate levels) in an annual report to EPA. Exxon shall submit the results of any resampling to EPA on the same schedule as provided to the State under Exxon's hazardous waste permit.

e. Evaluation of BTZ Soil-Core Monitoring

Analyses for organic monitoring constituents shall meet soil low-level required EQLs as specified in Exxon's Montana hazardous waste permit and as specified in Table 1 below. Exxon shall compare the results of BTZ soil samples with soil-core health-based standards identified in Table 1 of this document. Exxon shall submit the analytical results and comparisons in an annual report to EPA. Exxon shall report exceedances of these limits to EPA within ten days of receiving the analytical results.

[1] These methods are found in the third edition of "Test Methods for Evaluating Solid Waste Physical/Chemical Methods," EPA, SW–846, which is available from the Government Printing Office (GPO). This compendium of EPA test methods is commonly referred to as "SW–846" and we will use this term to refer to the compendium throughout this document.

TABLE 1.—PROPOSED EXXON NO-MIGRATION VARIANCE LEACHATE AND SOIL-CORE STANDARDS

Constituents	Leachate soil-pore standards (mg/l)	Soil-core standards (mg/kg)
I. Volatiles:		
Benzene	.005 (EQL)—MCL	.002 (EQL)
Ethylbenzene	.7—MCL	.65
Toluene	1—MCL	.56
Xylene(s)	10—MCL	9.8
II. Semi-Volatiles:		
Anthracene	10—Risk	620
Benzo(a)anthracene	.0001 (EQL)—Risk	.08 (EQL)
Benzo(b)fluoranthene	.0001(EQL)—Risk	.25 (EQL)
Benzo(a)pyrene	.0002(EQL)—MCL	.41
Chrysene	.0012 (EQL)—Risk	9.3
Fluoranthene	1.4—Risk	300
1-Methylnaphthalene	NS	NS
Naphthalene	1.4—Risk	5.9
Phenanthrene	NS	NS
Pyrene	1—Risk	220
2,4-Dimethyl phenol	.7—Risk	.43
Phenol	21—Risk	5.4
Cresol (o-)	1.8—Risk	.69
III. Metals:		
Antimony	.006—MCL	Not proposed
Arsenic	.05—MCL	Do.
Barium	2—MCL	Do.
Beryllium	.004—MCL	Do.
Cadmium	.005—MCL	Do.
Chromium	.1—MCL	Do.
Lead	.015—MCL	Do.
Mercury	.002—MCL	Do.
Nickel	.7—Risk	Do.
Zinc	10—Risk	Do.
Selenium	.05—MCL	Do.
Vanadium	.24—Risk	Do.

An (EQL) indicates a risk-based standard lying below the expected low-level quantification limit for the routine analytical methods assumed from Exxon's Montana hazardous waste permit. Typical quantification limits would be: SW–846 Method 8260—.005 mg/l aqueous and .005 mg/kg clean soils and Method 8270—.01 mg/l aqueous and .33 mgl/kg clean soil. NS indicates no standard.

2. Annual Benzene Loading Limit

The total amount of benzene that may be disposed of at the SLTU may not exceed a cumulative mass loading of 49 Kg per calendar year. Exxon must determine the benzene content of each wastestream, including each load of Primary Sludge (F037) prior to placement at the land treatment unit. Representative samples of each wastestream must be analyzed for benzene as they are generated during the land application season in accordance with the promulgated edition of SW–846. The term "as generated" means each time the wastes are removed from the wastewater system, created through a spill, or a tank is cleaned out, and the wastes are taken or will be taken to the land treatment unit, which may be several times a year. A tracking system must be in place which continually estimates and updates the cumulative benzene waste loading during the operating season. Exxon must submit a summary of these waste analyses demonstrating its compliance with the loading limit to EPA in an annual report. When the 49 Kg benzene limit is reached, Exxon must not dispose of any additional waste containing detectable levels of benzene at the SLTU until the next calendar year. Exxon shall notify EPA when the 49 Kg limit is reached within ten days of receiving the analytical results.

3. Waste Characterization

Exxon must identify in the annual report to EPA the following additional information for each applied waste at the SLTU: the location of waste generation (*e.g.*, Tank 17 sewer, Tank 108 contaminated soil); analytical results of waste determination for any wastes for which the hazardous status was not known when it was generated, mass of waste; application date(s); the hazardous waste code (if any); and the matrix (e.g., soil or sludge). In the report, Exxon must distinguish between the F037 waste generated from the sewer (e.g., "F037 sewer sludge") and the F037 waste generated from the Alkyllation Unit Neutralization Basins (*e.g.*, "F037 lime sludge"). In the annual report, Exxon must also include the total quantity of waste applied at the SLTU during the last operating season and a break down of the total quantity of hazardous and of non-hazardous waste.

4. Application of F037 Sewer Sludge

Exxon's application of Primary Sludge generated from the sewer system (F037 sewer sludge) to the SLTU is restricted to times when Exxon also applies API Separator Sludge (K051). Exxon must combine the F037 sewer sludge with the API Separator Sludge prior to or during application at the SLTU. Exxon shall incorporate this condition in its waste tracking system to ensure that any time F037 sewer sludge is cleared for application to the SLTU, it is accompanied by K051 waste.

5. Application of F037 Lime Sludge

Exxon's application of Primary Sludge generated from the Alkyllation Unit Neutralization Basin (F037 lime sludge) to the SLTU is limited to when it has determined pH adjustment of the ZOI

soils is needed according to the applicable criteria and methods identified in its Montana hazardous waste permit. For the years in which Exxon uses F037 lime sludge to adjust the pH of the ZOI soils at the SLTU, Exxon must submit to EPA the following information in the annual report: pH of the F037 lime sludge applied to the SLTU, and the other measurements and tests used to determine the need for pH adjustment as well as the quantity of F037 lime sludge applied and the quantity of any other substance (*e.g.*, lime) used to adjust the pH of the ZOI soil at the SLTU.

6. Waste Tracking

As part of its waste tracking process, Exxon must confirm receipt of analytical results for any wastes for which the hazardous status is not currently known prior to application of the waste at the SLTU. Exxon must comply with its Montana hazardous waste permit conditions with regard to restrictions on the application of waste to the SLTU, such as any restrictions based on the pH of the waste.

7. Information Requests

Upon request by EPA, Exxon shall provide to the EPA within a reasonable time, any relevant information requested to determine compliance with the conditions of this variance.

8. Access

Exxon shall allow EPA, or authorized representatives, upon the presentation of credentials and other documents as may be required by law to: (a) inspect at reasonable times any records, facilities, equipment (including monitoring and control equipment), practices, or operations related to the disposal of restricted hazardous wastes at the SLTU; and (b) sample or monitor at reasonable times, for the purposes of assuring compliance with the conditions of this variance or to determine migration or as otherwise authorized by RCRA, any wastes intended or proposed for disposal at the SLTU and the soil, air, soil-pore liquids or ground water in or surrounding the SLTU.

Dated: April 13, 2000.

Stephen S. Tuber,

Acting Regional Administrator, Region VIII.

[FR Doc. 00–10039 Filed 4–20–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51944; FRL–6554–5]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from February 28, 2000 to March 17, 2000, consists of the PMNs, pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51944 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management, and Evaluation, Office of Pollution Prevention and Toxics (7401), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone numbers: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at *http://www.epa.gov/*. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–51944. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51944 and the specific PMN number in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51944 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from February 28, 2000 to March 17, 2000, consists of the PMNs, pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs, pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 73 PREMANUFACTURE NOTICES RECEIVED FROM: 02/28/00 TO 03/17/00

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0557	02/28/00	05/28/00	CBI	(G) Raw material for can coatings	(G) Epoxy modified saturated polyester resin
P–00–0558	02/28/00	05/28/00	BIC USA Inc.	(G) A colorant for inks	(G) Solvent black 46
P–00–0559	02/28/00	05/28/00	BIC USA Inc.	(G) A colorant for inks	(G) Solvent blue 43
P–00–0564	02/28/00	05/28/00	CBI	(G) Raw material for coil coatings	(G) Saturated polyester resin solid
P–00–0565	02/29/00	05/29/00	Englehard Corporation	(S) A colorant for plastics	(G) Azo violet pigment
P–00–0566	02/29/00	05/29/00	Englehard Corporation	(S) A colorant for plastics	(G) Azo violet pigment
P–00–0567	02/29/00	05/29/00	CBI	(G) Component of coating with open use	(G) Melamine
P–00–0568	02/29/00	05/29/00	CBI	(G) Component of coating with open use	(G) Melamine
P–00–0569	02/29/00	05/29/00	CBI	(G) Component of coating with open use	(G) Melamine
P–00–0570	02/29/00	05/29/00	CBI	(G) Component of coating with open use	(G) Melamine
P–00–0571	02/29/00	05/29/00	CBI	(G) Component of coating with open use	(G) Melamine

I. 73 PREMANUFACTURE NOTICES RECEIVED FROM: 02/28/00 TO 03/17/00—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0572	02/29/00	05/29/00	CBI	(G) Component of coating with open use	(G) Melamine
P–00–0573	02/29/00	05/29/00	CBI	(S) A raw material to manufacture an agricultural chemical (pesticide or an intermediate to pesticide).	(G) Aryloxyalkanoic acid
P–00–0574	02/28/00	05/28/00	Choisy-Tek (USA) Ltd.	(S) Raw material surfactant for formulators	(S) Glycine, *N*-(carboxymethyl)-*N*-[3-(hexyloxy)propyl]-, branched, monosodium salts
P–00–0575	02/28/00	05/28/00	Choisy-tek (USA) Ltd.	(S) Raw material surfactant for formulators	(S) Glycine, *N*-(3-aminopropyl)-, mono (carboxymethyl) deriv., *N*-coco alkyl derivs., disodium salts
P–00–0576	02/28/00	05/28/00	Choisy-tek (USA) Ltd.	(S) Raw material surfactant for formulators	(S) β-alanine, *N*-(2-carboxyethyl)-*N*-[3-(dimethylamino)propyl]-, monosodium salt*
P–00–0577	02/28/00	05/28/00	Choisy-tek (USA) Ltd.	(S) Raw material surfactant for formulators	(S) β-alanine, *N*-(2-carboxyethyl)-*N*-[3-(1-methylethoxy)propyl]-, monosodium salt*
P–00–0578	02/29/00	05/29/00	CBI	(G) Coating of coating with open use	(G) Polyester
P–00–0579	02/29/00	05/29/00	CBI	(G) Coating of coating with open use	(G) Polyester
P–00–0580	02/29/00	05/29/00	CBI	(G) Coating of coating with open use	(G) Polyester
P–00–0581	02/29/00	05/29/00	CBI	(G) Coating of coating with open use	(G) Polyester
P–00–0582	02/29/00	05/29/00	CBI	(G) Coating of coating with open use	(G) Polyester
P–00–0583	03/01/00	05/30/00	Johnson Matthey Catalog Company, Inc.	(G) Ink additive	(S) 1-butanaminium, *N,N,N*-tributyl-, hexafluorophosphate(1-)*
P–00–0584	03/01/00	05/30/00	CBI	(G) Open non-dispersive (coatings resin)	(G) Urethane acrylate resin, blocked
P–00–0585	03/01/00	05/30/00	CBI	(S) Edible oil;industrial lubricant	(G) Sunflower triacylglycerol, triacyglyceride of sunflower oil
P–00–0586	03/01/00	05/30/00	CBI	(G) Component of a primer product	(G) Silane coupling agent
P–00–0587	03/01/00	05/30/00	3M Company	(G) Amine curative	(G) Amine terminated resin
P–00–0588	03/03/00	06/01/00	CBI	(G) Adhesive binders	(G) Ketoxime blocked ppdi/polyether prepolymers
P–00–0589	03/03/00	06/01/00	CIBA Specialty Chemicals Corporation	(S) Optical brightner in uv reacting coatings to detect voids in automotive clearcoats; component of security printing in the marking of paper currency, documents	(S) 1*h*-pyrrole-2,5-dione, 1,1′-(1,2-ethanediyl)bis[3,4-diphenyl-*
P–00–0590	03/06/00	06/04/00	Reichhold, Inc.	(S) Polyester binders for baked industrial maintenance finishings	(G) Polyester resin
P–00–0591	03/01/00	05/30/00	Exxon Mobil Chemical Company	(S) Polymerization catalyst	(G) Organometallic compound
P–00–0592	03/06/00	06/04/00	3M Company	(S) Low adhesion backside coating for paper	(G) Siloxyacrylate polymer
P–00–0593	03/06/00	06/04/00	Cognis Corporation	(S) Specialty polymers	(S) Pentadecanedioic acid*
P–00–0594	03/06/00	06/04/00	Cognis Corporation	(S) Specialty polymers	(S) Heptadecanedioic acid*
P–00–0595	03/06/00	06/04/00	Cognis Corporation	(S) Specialty polymers	(S) Octadecanedioic acid*
P–00–0596	03/06/00	06/04/00	Cognis Corporation	(S) Specialty polymers	(S) Eicosanedioic acid*
P–00–0597	03/06/00	06/04/00	Cognis Corporation	(S) Specialty polymers	(S) 5-tetradecenedioic acid, (5*z*)-*
P–00–0598	03/06/00	06/04/00	Cognis Corporation	(S) Specialty polymers	(S) 7-hexadecenedioic acid, (7*z*)-*
P–00–0599	03/06/00	06/04/00	Cognis Corporation	(S) Specialty polymers	(S) 8-heptadecenedioic acid, (8*z*)-*
P–00–0600	03/06/00	06/04/00	Cognis Corporation	(S) Specialty polymers	(S) 9-octadecenedioic acid, (9*z*)-*
P–00–0601	03/06/00	06/04/00	Cognis Corporation	(S) Specialty polymers	(S) 6,9-octadecadienedioic acid, (6*z*,9*z*)-*
P–00–0602	03/06/00	06/04/00	Cognis corporation	(S) Specialty polymers	(S) 9-eicosenedioic acid, (9*z*)-*
P–00–0603	03/06/00	06/04/00	CBI	(S) Film extrusion;tube extrusion;injection molding	(G) Polyolefin-polyamide
P–00–0604	03/06/00	06/04/00	CBI	(S) Film extrusion;tube extrusion;injection molding	(G) Polyolefin-polyamide
P–00–0605	03/06/00	06/04/00	CBI	(G) Acrylic pressure sensitive adhesive	(G) Acrylic graft polymer
P–00–0606	03/06/00	06/04/00	CBI	(G) An open non-dispersive use.	(G) Rosin modified phenolic resin
P–00–0607	03/06/00	06/04/00	CBI	(G) Semiconductor production	(G) Phenolic copolymer
P–00–0608	03/07/00	06/05/00	Choisy-tek (USA) Ltd.	(S) Raw material surfactant for formulators	(S) β-alanine, *N*-(2-carboxyethyl)-*N*-[3-[(2-carboxyethyl)amino]propyl]-n-coco alkyl derivs., monosodium salts*

I. 73 PREMANUFACTURE NOTICES RECEIVED FROM: 02/28/00 TO 03/17/00—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0609	03/07/00	06/05/00	Basf corp	(S) Plasticizer in concrete	(G) Polyglycolether - polycarboxylate
P–00–0610	03/07/00	06/05/00	3m company	(S) Fiber treatment	(G) Perfluoroalkyl substituted polyurethane
P–00–0611	03/13/00	06/11/00	Basf corp	(S) Plasticizer	(S) Hexanedioic acid, polymer with 2,2-dimethyl-1,3-propanediol and 1,2-propanediol, isononyl ester*
P–00–0612	03/13/00	06/11/00	Basf corp	(S) Plasticizer	(S) Hexanedioic acid, polymer with 2,2-dimethyl-1,3-propanediol and 3-hydroxy-2,2-dimethylpropanoic acid, isononyl ester*
P–00–0613	03/09/00	06/07/00	Lonza inc.	(G) Commercial emulsifier	(S) 1,2,3-propanetriol, homopolymer, isooctadecanoate
P–00–0614	03/10/00	06/08/00	Strem chemicals, Inc.	(G) Commercial r & d	(G) Metal derivatized tetrasubstituted alkane compound
P–00–0615	03/13/00	06/11/00	CBI	(G) Destructive use	(G) Alkylphenol polyether amine
P–00–0616	03/10/00	06/08/00	Strem chemicals, Inc.	(S) Chemical intermediate for the production of product described in pmn ts-prd406	(G) Derivatized tetrasubstituted alkane
P–00–0617	03/10/00	06/08/00	Strem chemicals, Inc.	(G) Commercial r & d	(G) Metal derivatized tetrasubstituted alkane compound
P–00–0618	03/13/00	06/11/00	CBI	(G) Processing aid	(G) Substituted hydroxy alkane ether
P–00–0619	03/13/00	06/11/00	CBI	(G) Emulsifier	(G) Salt of perfluoro fatty acids
P–00–0620	03/15/00	06/13/00	CBI	(G) Printing ink	(G) Long chain fatty acids, polymer with a polyoxyalkylene and a cyclic diacid
P–00–0621	03/15/00	06/13/00	CBI	(G) Printing ink	(G) Long chain fatty acids, polymer with a polyoxyalkylene and a cyclic diacid
P–00–0622	03/15/00	06/13/00	CBI	(G) Printing ink	(G) Long chain fatty acids, polymer with a polyoxyalkylene and a cyclic diacid
P–00–0623	03/15/00	06/13/00	CBI	(G) Printing ink	(G) Long chain fatty acids, polymer with a polyoxyalkylene and a cyclic diacid
P–00–0624	03/15/00	06/13/00	CBI	(G) Printing ink	(G) Long chain fatty acids, polymer with a polyoxyalkylene and a cyclic diacid
P–00–0625	03/15/00	06/13/00	CBI	(G) Printing ink	(G) Long chain fatty acids, polymer with a polyoxyalkylene and a cyclic diacid
P–00–0626	03/15/00	06/13/00	CBI	(G) Additive for inks and coatings	(G) Polyurethane acrylate ester
P–00–0627	03/14/00	06/12/00	CBI	(G) Semiconductor production	(G) Phenolic copolymer
P–00–0628	03/16/00	06/14/00	CBI	(G) Viscosity index improver	(G) Alkyl methacrylate copolymer
P–00–0629	03/15/00	06/13/00	Finetex, Inc.	(S) Textile fiber lubricant with high thermal stability;dispersant for titanium dioxide, zincoxide, pigments, etc.;plasticizer for selected polymer systems requiring highthermal stability	(S) Benzoic acid, isooctadecyl ester*
P–00–0630	03/16/00	06/14/00	CBI	(G)	(G) Dialkyl formamide
P–00–0631	03/16/00	06/14/00	CBI	(G) Destructive	(G) Alkyl arylaminophenylcarboxylate
P–00–0632	03/17/00	06/15/00	CBI	(G) Component of manufactured consumer article – contained use	(G) Acetamide, *N*-[[3-(dimethyloctadecylheteromonocycle) -4-hydroxyphenyl] sulfonyl] amino]phenyl]-
P–00–0644	03/17/00	06/15/00	Union carbide corporation	(G) A component of coatings, elastomers and adhesives	(G) Polycaprolactone diol

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 46 NOTICES OF COMMENCEMENT FROM: 02/28/00 TO 03/17/00

Case No.	Received Date	Commencement/Import Date	Chemical
P–00–0010	03/02/00	02/03/00	(G) Polyurethane
P–00–0018	02/29/00	01/31/00	(S) Benzene, ethenyl-, polymer with 1-butene, (2*e*)-2-butene, (2*z*)-2-butene, cyclopentene, 2-methyl-1-propene and 1,3-pentadiene*
P–00–0019	02/29/00	01/31/00	(S) 4,7-methano-1*h*-indene, 3a,4,7,7a-tetrahydro-, polymer with 1-butene, (2*e*)-2-butene, (2*z*)-2-benzene, cyclopentene, ethenylbenzene, ethenylmethylbenzene, 1*h*-indene, (1-methylethenyl)benzene, 2-methyl-1-propene, 1,3-pentadiene and 1-propenylbenzene*

II. 46 NOTICES OF COMMENCEMENT FROM: 02/28/00 TO 03/17/00—Continued

Case No.	Received Date	Commencement/Import Date	Chemical
P–00–0020	02/29/00	01/31/00	(S) 4,7-methano-1*h*-indene, 3*a*,4,7,7a-tetrahydro-, polymer with 1-butene, (2*e*)-2-butene, (2*z*)-2-butene, cyclopentene, ethenylbenzene, ethenylmethylbenzene, 1*h*-indene, 2-methyl-1,3-butadiene, (1-methylethenyl)benzene, 2-methyl-1-propene, 1,3-pentadiene and 1-propenylbenzene*
P–00–0021	02/29/00	01/31/00	(S) 2,5-furandione, polymer with 1-butene, (2*e*)-2-butene, (2*z*)-2-butene, cyclopentene, ethenylbenzene, 2-methyl-1-propene and 1,3-pentadiene*
P–00–0022	02/29/00	01/31/00	(S) Benzene, ethenyl-, polymer with 1-butene, (2*e*)-2-butene, (2*z*)-2-butene, cyclopentene, 2-methyl-1,3-butadiene, 2-methyl-1-propene and 1,3-pentadiene*
P–00–0023	02/29/00	01/31/00	(S) Benzene, ethenyl-, polymer with cyclopentene and 2-methyl-1,3-butadiene*
P–00–0052	03/14/00	02/29/00	(G) 1–(2,5-dimethoxyphenyl)-2-propane derivative
P–00–0059	03/02/00	02/17/00	(S) 2,5-furandione, polymer with 1-butene and ethene*
P–00–0060	03/02/00	02/17/00	(S) 2,5-furandione, polymer with ethene, 5-ethylidenebicyclo[2.2.1]hept-2-ene and 1-propene**
P–00–0081	03/03/00	02/25/00	(G) Acrylic copolymer
P–00–0082	02/29/00	02/11/00	(G) Silicone modified waterborne polyurethane dispersion
P–00–0103	03/15/00	02/22/00	(G) 1,4-butanediol, polymer with 2,4-diisocyanato-1-methylbenzene, 1,2-ethanediamine, polyol and 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane
P–00–0107	03/06/00	02/17/00	(G) Acrylic modified polyurethane polymer
P–00–0180	03/17/00	03/09/00	(S) 2,5-furandione, telomer with ethenylbenzene and (1-methylethyl)benzene, 3-(dimethylamino)propyl imide*
P–92–0558	03/06/00	02/07/00	(G) Ethylene interpolymer
P–92–1016	03/06/00	02/03/00	(S) Fatty acids, C_{16-18} and C_{18}-unsaturated branched and linear, sodium salts.
P–94–0963	03/08/00	02/15/00	(G) Polycondensate of aliphatic dicarboxylic acid and alkaediol. polyurethane of aliphatic polyesters
P–95–1115	03/13/00	02/09/00	(S) 1,3-bis(1-hydroxy-2,2-dimethoxyethyl)-2-imidazolidinone*
P–95–2087	02/29/00	05/19/99	(G) Sulfurized vegetable oil
P–97–0455	03/06/00	02/01/00	(S) Fatty acids, C_{4-24}-branched, 2,2-dimethyl-1,3-propanediyl ester*
P–98–0065	03/09/00	02/10/00	(S) Poly(oxy-1,2-(ethanediyl), alpha-hydro-omega-hydroxy, monoethers with stearyl alc. distn. lights*
P–98–1264	02/28/00	02/03/00	(G) Acrylated polyol
P–98–1265	02/28/00	02/03/00	(G) Acrylated urethane
P–99–0216	03/10/00	02/21/00	(G) Silica supported magnesium-titanium catalyst
P–99–0849	03/06/00	02/19/00	(G) Stryene / acrylate copolymer aqueous dispersion
P–99–0956	02/28/00	02/20/00	(G) Chromophore substituted polyoxyalkylene
P–99–1007	03/14/00	02/21/00	(G) Polyimide precursor solution
P–99–1038	03/06/00	02/09/00	(G) Acrylate ester
P–99–1039	03/06/00	02/09/00	(G) Silicone bifunctional acrylate
P–99–1049	03/13/00	02/24/00	(G) Alkyl amine
P–99–1097	03/13/00	03/06/00	(S) Benzoic acid, 2-amino-, cyclohexyl ester*
P–99–1155	03/07/00	02/10/00	(G) Fatty-sulfosuccinate
P–99–1179	03/17/00	03/15/00	(G) Dialkylphenol
P–99–1195	03/13/00	03/10/00	(G) Acrylic copolymer
P–99–1209	03/15/00	02/03/00	(G) Alkyd resin
P–99–1227	03/14/00	02/23/00	(G) Stabilized hypochlorite
P–99–1228	03/14/00	02/23/00	(G) Stabilized hypochlorite
P–99–1306	03/10/00	02/29/00	(G) Copolymer of methyl methacrylate, styrene and cyclohexyl maleimide
P–99–1341	03/01/00	02/11/00	(G) Metallic salt of 2 naphthalene carboxylic acid 4,4′ methylene bis [3-hydroxy
P–99–1342	03/01/00	02/15/00	(G) Metallic salt of 2 naphthalene carboxylic acid 4,4′ methylene bis [3-hydroxy
P–99–1348	03/01/00	02/14/00	(G) Metallic salt of b-oxynaphthoic acid
P–99–1384	02/28/00	01/31/00	(G) Lithium salt of disubstituted fluorene
P–99–1386	02/28/00	02/15/00	(G) Dimethyl bis(substituted cylopentadienyl) metallocene
P–99–1390	03/14/00	02/21/00	(G) Alanine, *n*–[3–(acetylamino)–4–[(substituted)azo]phenyl]–*n*–ethyl–, ethyl ester
P–99–1393	02/28/00	02/23/00	(G) Blocked aromatic isocyanate
P–99–1407	02/28/00	02/07/00	(G) Dilithium salt of methane bridged substituted bis cyclopentadiene

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: April 14, 2000.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 00–10040 Filed 4–20–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–937; FRL–6555–6]

Notice of Filing a Pesticide Petition to Establish Tolerances for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–937, must be received on or before May 22, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–937 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Mary L. Waller, EPA, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9354; e-mail address: waller.mary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–937. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–937 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–937. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential

will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 12, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

BASF Corporation

0F6079

EPA has received a pesticide petition 0F6079 from BASF Corporation, Agricultural Products, PO Box 13528, Research Triangle Park, NC 27709 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of vinclozolin [3-(3,5-dichlorophenyl)-5-methyl-5-vinyl-1,3-oxazolidine-2,4-dione] and metabolites containing the 3,5-dichloroanaline moiety in or on the raw agricultural commodities succulent beans and canola at 2.0, and 1.0 parts per million (ppm) respectively. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* BASF Corporation notes that metabolism in plants is understood, the residues of concern are vinclozolin [3-(3,5-dichlorophenyl)-5-methyl-5-vinyl-1,3-oxazolidine-2,4-dione] and metabolites containing the 3,5-dichloroanaline moiety.

2. *Analytical method.* The proposed analytical method involves extraction, hydrolysis, distillation, partition, and deriviatization followed by detection of residues by gas chromatography/electron capture detector (gc/ecd). An enforcement method has been published in FDA's Pesticide Analytical Methods, Volume II pg. 876–887.

3. *Magnitude of residues.* Sixteen residue trials were carried out in several major succulent bean producing states; CA, FL, MI, NY, NC, OR, and WI. Residue in the succulent beans ranged from 0.38 ppm to 2.40 ppm and averaged 0.83 ppm.

Four residues trials were carried out in three canola producing provinces of Canada (Alberta, Manitoba, and Saskatchewan) which accounts for 98% of the canola production in Canada. Residues in the canola seeds ranged from 0.044 ppm to 0.360 ppm and averaged 0.17 ppm.

B. Toxicological Profile

1. *Acute toxicity.* The acute toxicity studies place technical vinclozolin in acute toxicity category IV for acute oral (LD_{50} of greater 15,000 milligrams kilograms (mg/kg), acute inhalation LD_{50} of greater than 29.1 mg/L and dermal irritation (slight), and in category III for acute dermal LD_{50} of greater than 2,500 mg/kg and eye irritation (slight). The technical material is a positive skin sensitizer.

2. *Genotoxicty.* A modified Ames test (three studies; point mutation): Negative; Host-Mediated Assay (point mutation): Negative; Mouse Lymphoma Test (point mutation): Negative; *In Vitro* CHO cells (point mutation): Negative; *In Vitro* Cytogenetics-CHO cells (Chromosome Aberrations): Negative; *In Vivo* Dominant Lethal Test-Male NMRI Mouse (Chromosome Aberrations): Negative; Rec Assay (two test; DNA damage and repair): Negative; *In Vitro* unscheduled DNA synthesis (UDS) test using Hepatocyte (DNA damage and repair): Negative; *In Vivo* SCE using Chinese Hamster (DNA damage and repair): Negative. Based on the data present and weight of evidence, BASF concludes that vinclozolin does not pose a mutagenic hazard to humans.

3. *Developmental toxicity*—i. A combination of four developmental studies in rats via oral gavage resulted in dosages of 0, 15, 50, 100, 150, 200, 400, 600, and 1,000 highest dose tested (HDT) mg/kg/day with a developmental toxicity no observed adverse effect level (NOAEL) of 15 mg/kg/day and a maternal toxicity NOAEL equal to or greater than 400 mg/kg/day based on the following:

a. No obvious signs of maternal toxicity were observed at dose levels less than or equal to 400 mg/kg/day.

b. An increased number of fetuses with retarded ossification of thoracic vertebral bodies at dose levels greater than or equal to 200 mg/kg/day and increased number of fetuses with soft tissue variations at dose levels greater than or equal to 400 mg/kg/day, both findings are regarded as unspecific embryo/fetotoxic effects indicating transient delays in development but not indicative of a teratogenic effect.

c. A statistically significant decrease or reduction of the anogenital index (AGI) in males was observed at levels greater than or equal to 50 mg/kg/day.

In a developmental study in rats via dermal exposure for 6 hours/day on intact skin with dosages of 0, 60, 180, and 360 mg/kg/day HDT with a developmental toxicity NOAEL of 60 mg/kg/day and a maternal toxicity NOAEL of 60 mg/kg/day based on the following: Increased absolute liver weights at dose levels greater than 180 mg/kg/day, and decreased anogenital distance and index at dose levels greater than 180 mg/kg/day.

ii. A developmental study in rabbits via oral gavage was conducted with dosages of 0, 20, 80, and 300 mg/kg/day HDT with a developmental toxicity NOAEL of 300 mg/kg/day and a maternal toxicity NOAEL of 300 mg/kg/day based on no signs of maternal or meaningful fetal toxicity at any of the dose levels mentioned.

A second developmental study in rabbits via oral gavage resulted in dosages of 0, 50, 200, and 800 mg/kg/day highest dose tested (HDT) with a developmental toxicity NOAEL of 200 mg/kg/day and a maternal toxicity NOAEL of 50 mg/kg/day based on the following: Severe maternal toxicity with simultaneous change in hematological values changes and high number of abortions at the HDT, and increased absolute and/or relative weights for adrenals in the mid and high dose groups.

4. *Reproductive toxicity.* Two 2–generation reproduction studies in rats were conducted: Study A-dose levels of 0, 2.0, and 4.1 mg/kg/day: Study B-dose levels of 0, 4.9, 30, 96, and 290 mg/kg/day (males) and 0, 5.3, 31, 101, and 290 mg/kg/day (females). The results demonstrated a reproductive NOAEL of 4.9 mg/kg/day based on feminization of males and the ability not to mate at dose levels greater than 100 mg/kg/day and pup effects at 29 mg/kg/day; and with a parental NOAEL of 4.9 mg/kg/day based on general toxicity consistent with previous rat studies at levels greater than 29 mg/kg/day. Study A was performed to clarify an equivocal finding of decreased absolute and relative weight of the epididymides without any morphological correlation in the male FY and FZ generations in Study B. However, EPA stated "the effects at the 4.9 mg/kg/day dose level was minimal and considered sufficiently close to a NOAEL. The study is acceptable and 4.9 mg/kg/day dose level was considered to be the NOAEL.

5. *Chronic toxicity*—i. A 1–year feeding study in dogs fed dosages of 0, 1.1 , 2.4, 4.9, and 48.7 mg/kg/day with a NOAEL of 2.4 mg/kg/day based on the following effects:

a. Slight anemia and increased serum bilirubin in the 48.7 mg/kg/day dose group HDT.

b. Increased absolute and/or relative weights for the testes, adrenals, liver, spleen, and thyroids in either the 4.9 or 48.7 mg/kg/day dose groups.

c. A dose-related atrophy of the prostate in the 4.9 and 48.7 mg/kg/day dose groups.

d. Microscopic findings in the adrenal and testes in the 48.7 mg/kg/day dose group and liver findings for both male and female dogs in the 48.7 mg/kg/day dose groups and in the females in the 4.9 mg/kg/day dose group, only.

ii. A combination of two chronic feeding and one carcinogenicity study that were performed separately, resulted in rats being fed combined dosages of 0, 1.2, 2.4, 7.0, 23, 71, 143, and 221 mg/kg/day (males) and 0, 1.6, 3.1, 9.0, 29, 88, 180, and 257 mg/kg/day (females) with a NOAEL of 1.2 mg/kg/day (males) and 1.6 mg/kg/day (females) based on the following effects:

a. Decreased body weights in both males and females at dose levels greater than or equal to 23 mg/kg/day with a progression of severity to the upper dose levels.

b. Cataracts with associative histopathology at dose levels greater than or equal 23 mg/kg/day and lenticular changes at dose levels greater than or equal 7.0 mg/kg/day for male and female rats.

c. Hematological and clinical chemistry value changes at dose levels greater than or equal to 71 mg/kg/day with an increase of severity at the higher doses tested.

d. Increased absolute and/or relative weights for adrenals at dose levels greater than or equal 143 mg/kg/day, for the liver at dose levels greater than or equal 71 mg/kg/day, for the testes at dose levels greater than or equal 23 mg/kg/day, and for the ovaries at dose levels greater than or equal 143 mg/kg/day.

e. Microscopic findings were observed in the liver, adrenal, pancreas, testes, ovaries and uterus at dose levels of greater than or equal to 7.0 mg/kg/day with a progression of severity of histological effects in the upper dose levels.

f. An increased incidence of neoplasms occurred at dose levels greater than or equal to the maximum tolerated dose (MTD) of 23 mg/kg/day in the liver, adrenals, pituitary, prostate, uterus, and ovaries. In the testes (males), neoplasms were seen slightly below the MTD at dose levels greater than or equal 23.0 mg/kg/day due the antiandrogenic nature of vinclozolin.

6. *Oncogenicity.* An oncogenicity study in mice fed dosages of 0, 2.1, 20.6, 432, and 1,225 (HDT) mg/kg/day (males) and 0, 2.8, 28.5, 557, and 1,411 (HDT) mg/kg/day (females) with a NOAEL of 2.1 mg/kg/day (males) and 2.8 mg/kg/day (females) based on the following effects:

i. Increased mortality in the highest dose tested (HTD) as compared to controls.

ii. Decreased body weights and significant signs of clinical toxicity were observed in both males and female mice at the upper two dose levels with a progression of severity, and an equivocal body weight gain decrease at the next lower dose.

iii. Hematological and clinical chemistry value changes were observed at the highest dose tested.

iv. Increased absolute and/or relative weights for adrenals and liver were observed at the upper two dose levels, atrophic seminal vesicles and coagulation glands with reduced size of the prostate and atrophic uteri were observed at the upper two dose levels.

v. Microscopic findings were observed in the liver, adrenal, testes, ovaries and uterus, and related sexual organs were seen in the upper two dose levels.

vi. An increased incidence of neoplasms occurred at dose levels greater than the maximum tolerated dose (28.5 mg/kg/day) in the liver of female mice.

7. *Animal metabolism*—i. *Oral studies.* BASF has submitted results from a number of metabolism studies using Wistar rats. The results of these studies can be summarized as follows: vinclozolin is well absorbed (ca. 85%) and intensively metabolized, the liver playing an important role (ca. 65%) of the radioactivity administered was found in the bile and no unchanged active ingredient was excreted in the urine). Excretion is rapid by both urinary and biliary routes.

ii. *Dermal study.* In an *in vivo* dermal absorption study, male Wistar rats were dosed with ^{14}C vinclozolin. Dose levels of 0.002, 0.02, 0.2, and 2.0 mg/cm were administered to 24 rats per dose level, applied to a shaved area of approximately 13 cm_2 on the back of the rat. Groups of 4 rats were sacrificed at 0.5, 1, 2, 4, 10, or 72 hours following application of the dose. Urine and feces were collected during this period. At the end of the exposure period (10 hours in the case of the 72 hour treatment group), the skin site was washed with cotton swabs moistened with water. A blood sample was taken prior to sacrifice. The treated skin along with the gastrointestinal tract, liver, kidneys, adrenals, testes, eyes, brain and carcass were subjected to radioactive mass

balance analysis. Urine from the bladder was added to the voided samples. Results of this analysis showed recoveries of between 81.6% to 104%. The lowest dose of 0.002 mg/cm$_2$ from the 10–hour exposure period is considered to be the most appropriate dose for use in the occupational risk assessment, as this dose most closely approximates the dermal deposition results obtained in the worker exposure studies. After the 10–hour exposure, the total percent absorbed at this dose level was 29.1%.

Percutaneous absorption of ^{14}C–vinclozolin was also assessed *in vitro* using rat and human epidermis in flow-through diffusion cells. The test substance was applied at two dose levels, 200 µg/cm$_{22}$ (high) and 2 µg/cm$_2$ (low), and assessed over 24 hours. A total of 32 samples (16 rat and 16 human) were used at the high dose level, and 34 (17 rat and 17 human) at the low dose level. Samples of human skin were obtained at postmortem. Human epidermis was prepared from full thickness skin by immersion in water at 60 °C for 1 minute. Rat epidermis was prepared by soaking the skin in 2M sodium bromide for approximately 24 hours. With respect to the worker exposure relevant time of 8 hours, penetration through human skin was 16.7 times less at the high dose tested and 4.2 times less at the low dose tested than through rat skin.

8. *Endocrine disruption.* A series of mechanistic studies were performed to elucidate and define the anti-androgenic properties of vinclozolin. The following conclusions can be drawn from the *in vivo* data: The anti-androgenic effects observed are not related to an inhibition of androgen-steroid hormone synthesis. The anti-androgenic effects are not related to an inhibition of 5 alpha-reductase activity. The anti-androgenic effects are a result of a competitive binding to the androgen receptor resulting in an inactivation of this receptor. The anti-androgenic effects are mediated by the hydrolysis metabolites M1 and/or M2 and probably not by vinclozolin or the main metabolite, R8. M2 is a slightly more potent anti-androgen than M1; however, M2 concentrations are very low and the compound may not contribute much to the *in vivo* effects.

Vinclozolin is known to be an anti-androgenic agent; thus, the consequence of hormonal imbalance are two-fold; the primary anti-androgenic effect is a suppression in androgen target organs such as epidymides, prostate or seminal vesicle, whereas stimulation is seen in organs involved in steroid hormone synthesis (testes, adrenals, ovaries). Target organs for hormones must be able to respond to changes in physiological levels of hormones, which can fluctuate significantly as evidenced by the hormone changes during the female estrus cycle. It was indeed demonstrated that changes induced in these organs were reversible when hormone levels return to normal concentrations. It is only when hormone imbalance continues over a long time that irreversible changes occur.

In the case of suppression the affected organ is forced into a hypofunctional state. Progressively, the organ becomes hypotrophic and hypoplastic. With stimulation on the other hand the initial changes can be described as hyperfunction, hypertrophy and hyperplasia. As mentioned before, it is only when the hormonal imbalance continues over a long time that the ultimate reversible adaptation of the affected organ (hypoplasia or hyperplasia) is still not sufficient to handle the situation and only then an irreversible transition takes place. In the case of hormonal suppression, atrophy is the ultimate consequence, in the case of stimulation, the ultimate consequence are tumors in the affected organs. It is thus plausible that at dose levels which do not result in hypertrophy/hyperplasia or hypotrophy/hypoplasia, the ultimate consequence of these adaptive changes, i.e. tumors or-atrophy, respectively, cannot occur. For risk assessment purposes this mode of action offers the possibility to determine a threshold for both tumor formation and atrophy by histopathological examination of the hyper-or hypo-functional organ. Thus, at dose levels which do not affect these organs, a mechanistic NOAEL can be defined and risk assessment can be carried out using assessment or safety factors.

The increase in neoplasia observed in the adrenals, ovaries and uterus were only seen in female rats at the highest dose levels. As determined by BASF and EPA, the 71 mg/kg/day dose level of the rat chronic/oncogenicity toxicity study exceeded the criteria for a MTD. Therefore, the physiological status of the animals may be deteriorated in such a way that low dose extrapolation of results obtained at this dose level is not possible. Similarly, the liver tumors arising in the mouse oncogenicity study were observed only at the 1,411 mg/kg/day dose level (in which severe body weight losses and significant mortality were observed) which clearly exceeded the MTD (as determined by BASF and EPA - Cancer Peer Review Document, September 1996) and therefore are not relevant for risk assessment purposes.

Additionally, vinclozolin is not a genotoxic agent and mechanistic studies have shown the increased incidence of liver tumors in male rat and female mice is a result of liver tumor promoting properties of the test substance. Vinclozolin is not an initiator of the carcinogenic event. Based on the available data, the mechanism of promotion is the induction of liver cell proliferation of the test substance. The data available also indicate that dose levels which do not induce liver toxicity also do not induce cell proliferation nor enhance the carcinogenic process. Therefore, BASF concludes that a threshold for liver carcinogenicity can be defined to be at least 143 mg/kg/day in the rat and at least 557 mg/kg/day in the mouse.

Concerning the testicular tumors (Leydig cell tumors), results of the long-term studies with vinclozolin demonstrate that hormone-related carcinogenesis was only observed in rats, and with the exception of Leydig cell tumors only at dose levels which exceeded the MTD criteria. The relevance of Leydig cell tumors to men should be seen in the light that this is a very rare human tumor and that the precursor change (i.e. Leydig cell hyperplasia) has not been observed in patients treated with flutamide. In addition, the toxicology of cimitidine, an H2–receptor antagonist with anti-androgenic properties results in a size reduction and atrophy of the prostate and seminal vesicles in chronic rat studies. Moreover, an increase in benign Leydig cell tumors, and a decrease in pituitary and mammary tumor incidence were noted; hence a toxicity potential not unlike that of vinclozolin is evident. Despite the fact that over 30 million patients have been treated with cimitidine, this therapeutic agent has been demonstrated to be extremely safe, clearly indicating that the rat Leydig cell tumors have very little relevance for humans. A similar conclusion is drawn by other investigators "Leydig cell tumors of the rat have limited significance because of the fundamental differences in testicular control mechanisms." It is therefore concluded that the observed neoplastic changes do not pose a relevant hazard to humans. EPA in the September 1996, Cancer Peer Review Document, came to the same basic conclusion that the Leydig cell tumors are a very uncommon tumor type in humans which implies the threshold dose for humans would be greater than for rats. EPA based this conclusion on the work performed by Dr. Charles C. Capen (Professor Charles C. Capen, Leydig Cell Tumors:

Pathology, Physiology, and Mechanistic Considerations in Rats, The Toxicology Forum, 1994 Annual Summer Meeting, p. 110).

Consistent with the data and the advice of the OPP Scientific Advisory Panel and using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), EPA has classified vinclozolin as a Group C chemical-possible human carcinogen. The Agency Cancer Peer Review Committee (CPRC) chose a non-linear approach margin (MOE) based on a NOAEL of 4.9 mg/kg/day for hormone-related effects decreased epididymal weight at 30 mg/kg/day in the 2–generation oral rat reproductive toxicity study to quantify human risk. The MOE approach was chosen because the remaining tumors (Leydig cell) were benign at dose levels which were not considered to be excessive.

C. Aggregate Exposure

1. *Dietary exposure.* The established reference dose (RfD) for vinclozolin is based on a 2–year feeding study in rats with a threshold NOAEL of 1.2 mg/kg/day. Using an uncertainty factor of 100, the RfD is calculated to be 0.012 mg/kg/day.

i. *Food*—a. *Acute risk.* EPA has expressed concern for acute dietary risk in the draft RED for the subgroup population-women of childbearing age (13 years and older) due to the hormonal effects of vinclozolin. In response to this concern, BASF requested that ENVIRON, conduct an acute dietary analysis for vinclozolin that used the current consumption data and exposure models capable of calculating a real world estimates of potential exposure to residues in food.

The acute exposure analysis, utilized the principles of Tier 1 and Tier 3 analyzes presented to the FIFRA Science Advisory Panel in September 1995, and subsequently implemented by OPP/EPA. Using appropriate methodology, available residue distribution data, and percent crop treated information it was determined the margin of exposure to the most sensitive sub-population exceeded 1,000 (the value currently being used by the Agency for this compound) at the very conservative 99.9th percentile of the population; when all crops having tolerances; plus succulent beans, and canola, and cranberries were included in the analysis. The margin of exposure at the 99.9th percentile was determined to be approximately 1,100 for women of childbearing age.

b. *Chronic.* In its review granting a temporary tolerance for vinclozolin in succulent beans in October 1997, for purposes of assessing the potential chronic dietary exposure (food only) from the use of vinclozolin, EPA used the percent of crop treated/percent imported data to refine the risk estimates for selected commodities (apricots, beans, raspberries, cherries, cucumbers, lettuce, nectarines, onions, peaches, peppers, and strawberries), while other commodities were assumed to be 100% treated/imported (caneberries (other than raspberries), cranberries, endive, garlic, wine/sherry, kiwifruit, and shallots). No chronic anticipated residue refinement has been performed. Therefore, the resulting exposure (food only) estimates should be viewed as partially refined; further refinement using anticipated residues and additional percent of crop treated/percent imported data would result in lower chronic dietary exposure estimates. The Anticipated Residue Contribution (ARC) for chronic dietary exposure estimates is equivalent to 12% of the RfD for the U.S. population (48 states). The ARC for infants and children and other subgroups ranged from 7 to 15% of the RfD. The incremental risk associated with canola will not significantly change this assessment.

In addition, BASF has performed a more refined analysis of chronic dietary risk and finds that when market share and average residues are considered, no sub-population in the United States is exposed to over 1% of the RfD.

BASF concurs with the SAP and believes vinclozolin should be regulated under the margin of safety (MOS) approach for non-threshold effects. BASF has calculated the MOS for food and water using the Agency's conservative assessments discussed above. The MOS was calculated against a NOAEL of 4.9 mg/kg/day for hormone-related effects (decreased epididymal weight at 30 mg/kg/day) in the 2–generation oral rat reproductive toxicity study to quantify human risk. The resulting MOS for food is over 900,000.

ii. *Drinking water.* Exposure to vinclozolin for the general population to residues of vinclozolin are residues in drinking water and exposure from non-occupational sources. For drinking water, based on the available environmental fate data, BASF does not anticipate routine exposure to residues of vinclozolin in drinking water. There is no established maximum concentration level (MCL) or health advisory level (HAL) for vinclozolin under the Safe Drinking Water Act (SDWA).

In its 1997 assessment, EPA calculated drinking water exposure from extremely conservative models. For chronic exposure, EPA calculated a level of 1 parts per billion (ppb). Using standard EPA assumptions consumption of water containing 1 ppb would consume less than 2% of the RfD in the most exposed subgroup (children 1 to 6). BASF believes this estimate to be very conservative and is currently analyzing the available data to determine a more realistic value for drinking water exposure.

2. *Non-dietary exposure.* Vinclozolin is included in a number of formulations used for professional treatment of golf-courses (tees, greens and collars only) and turf. The turf use is limited to non-residential uses. BASF believes that these uses do not contribute significantly to the aggregates risk.

D. Cumulative Effects

BASF has considered the potential for cumulative effects of vinclozolin and other substances that have a common mechanism of toxicity. BASF is aware of two other substance active ingredients which are structurally similar, iprodione and procymidone. However, BASF believes that consideration of a common mechanism of toxicity is not appropriate at this time. This conclusion was similarly drawn by Rhone-Poulenc the manufacturer of iprodione in a recent Notice of Filing for that compound.

The Agency has previously noted both structural and toxicological similarities between iprodione, procymidone, and vinclozolin. BASF believes that there are clear differences in both the type and magnitude of effects observed after exposure to vinclozolin when contrasted with iprodione. BASF believes that there is no reliable data to indicate cumulative effects should be considered in reference to iprodione. As to procymidone, BASF is unaware of any conclusive data that would indicate a common mode of action with procymidone. It should also be noted that procymidone's tolerances are limited to grapes grown for wine production outside the United States.

EPA has expressed concern regarding a common metabolite of these three compounds, 3,5–dichloroaniline (3,5–DCA). Under FQPA, EPA is also required to estimate the risk for consumption of food and water containing 3,5–DCA across vinclozolin, iprodione, and procymidone. There is no toxicological data base; thus no RfD or Q1* for 3,5–DCA. However, EPA has used the Q1* for p-chloroaniline (PCA) to assess the carcinogenic risk for other structurally-related chloroanilines because EPA does not have any evidence that 3,5–DCA is not

carcinogenic. In 1988, the Q1* for PCA was estimated to be 0.039 (mg/kg/day)$^{-1}$. However, a revised Q1* of 0.059 (mg/kg/day)$^{-1}$ for PCA has been used for this assessment based on more recent data on male and female tumors.

At the time of the risk assessment done for vinclozolin time-limited tolerances, EPA concluded that the risk associated with 3,5–DCA was negligible. Since that time, BASF has cancelled uses in strawberries and stone fruit which will further reduce the theoretical risk. BASF does not believe it is appropriate to assume that 3,5–DCA should be regulated as an oncogen. The Agency has relied on the simple fact that PCA and DCA are structurally similar and are likely to behave similarly in animal systems for that reason alone. While both compounds are anilines and both have chlorine moieties they differ significantly in terms of electron density distribution, which is the single most important factor in the determination of how a molecule behaves in chemical and biochemical systems. BASF has presented this and other information to the Agency and awaits their response.

E. Safety Determination

1. *U.S. population.* Using the exposure assumptions described above and the completeness and the reliability of the toxicity data, BASF has estimated that aggregate exposure to vinclozolin will utilize less than 1% of the RfD for the US population. EPA generally has no concern for exposure below 100% of the RfD. Therefore, based on the completeness and reliability of the toxicity data, and the exposure assessment discussed above, BASF concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of vinclozolin.

2. *Infants and children.* Based on the completeness of vinclozolin's toxicological data base and the risk assessment information cited above BASF believes the RfD used to assess safety to children should be the same as that for the general population, 0.012 mg/kg/day. BASF concluded that the most sensitive child population group is that of children ages 1 to 6. BASF has calculated that the exposure (food and water) to this group to be less than 1% of the RfD for all uses including those proposed in this document. Therefore, based on the completeness and reliability of the toxicity data, and the exposure assessment discussed above, BASF concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to residues of vinclozolin.

F. International Tolerances

A maximum residue level for succulent beans has not been established for vinclozolin by the Codex Alimentarius Commission.

[FR Doc. 00–9928 Filed 4–20–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6483–5]

Draft General NPDES Permit for Seafood Processors in Alaska in Waters of the United States; General NPDES Permit No. AK–G52–0000

AGENCY: Environmental Protection Agency, Region 10.

ACTION: Notice of Draft General NPDES Permit.

SUMMARY: The Director, Office of Water, EPA Region 10, is proposing to reissue general National Pollutant Discharge Elimination System (NPDES) permit no. AK–G52–0000 for seafood processors in Alaska pursuant to the provisions of the Clean Water Act (CWA) 33 U.S.C. 1251 *et seq.* The proposed general NPDES permit will authorize discharges from off-shore and near-shore vessels and shore-based facilities engaged in the processing of fresh, frozen, canned, smoked, salted and pickled seafoods. The proposed permit will also authorize discharges from off-shore vessels (operating more than one nautical mile from shore at MLLW) that are engaged in the processing of seafood paste, mince or meal, as well as fresh, frozen, canned, smoked, salted and pickled seafoods. The proposed permit will authorize discharges of processing wastes, process disinfectants, sanitary wastewater and other wastewaters, including domestic wastewater, gray water, cooling water, boiler water, fresh water pressure relief water, refrigeration condensate, water used to transfer seafood to a facility, and live tank water. The proposed permit will authorize discharges to waters of the United States in and contiguous to the State of Alaska, except for receiving waters excluded from coverage as protected, special, at-risk, degraded waters, or as waters adjacent to the City of Kodiak or the Pribilof Islands (and covered by general permits specific to each of these areas).

The proposed general NPDES permit for seafood processors in Alaska will not authorize discharges from near-shore or shore-based seafood processors of mince, paste or meal (operating one nautical mile or less from shore at MLLW). The proposed permit will not authorize discharges of petroleum hydrocarbons, toxic pollutants, or other pollutants not specified in the permit.

This is the fourth reissuance of a general permit for seafood processors in Alaska. While the general permit for seafood processors issued in 1995 contained numerous substantial changes, the proposed 2000 permit contains one major change. The major new provision in the proposed general permit is a limit on the total annual load of settleable solid seafood processing waste. The total allowable residues of offal for permittees covered under the proposed permit must not exceed eight million pounds per year (based on deposition modeling using EPA's Water Quality Analysis Simulation Program).

Other minor changes in the proposed permit clarify requirements of the Notice of Intent to be covered and give specific schedules for submitting seafloor monitoring surveys. EPA anticipates that the State of Alaska Department of Environmental Conservation will certify a 100 foot mixing zone for all discharges and zone of deposit of one acre for near-shore and shore-based dischargers.

A draft NPDES permit, fact sheet and other documents of the administrative records are available upon request.

Public Notice Issuance Date: April 28, 2000

Public Notice Expiration Date: June 12, 2000

Public Comments

Persons wishing to comment on the tentative requirements and conditions contained in the proposed general permit may do so before the expiration date of the public notice. EPA appreciates both supportive and critical comments in this public review and comment period. All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director's tentative decision to prepare this draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period. Any supporting materials which are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record or are a generally available document or reference. All written comments must include the name, address, and telephone number of the commenter and must be submitted to EPA to the attention of Burney Hill

at the address below on or before the expiration date of the public notice.

After the expiration date of the public notice, the Director, Office of Water, EPA Region 10, will make a final determination with respect to reissuance of the general permit. The tentative requirements contained in the draft general permit will become final conditions if no substantive comments are received during the public comment period. The permit will become effective on August 5, 2000.

Within 120 days following the service of notice of EPA's final permit decision under 40 CFR 124.15, any person who filed comments on the draft permit or participated in the public hearing may appeal the permit in the Federal Court of Appeals in accordance with section 509(b)(1) of the CWA. Persons affected by a general permit may not challenge the conditions of the Permit as a right of further EPA proceedings.

In addition to the tentative requirements of the draft general permit, the State of Alaska will issue a Determination of Consistency with the Alaska Coastal Management Program and State Certification which may contain specific requirements which will be incorporated into the final permit. Persons wishing to comment on the State Certification should contact Judy Kitagawa of the Alaska Department of Conservation, Valdez, at (907) 835–4698.

The following project is proposed in coastal zone areas throughout Alaska and also is being reviewed for consistency with the Alaska Coastal Management Program. Comments, particularly on the proposed project's consistency with the affected local coastal district management programs, are requested. Persons wishing to comment on the State Determination of Consistency with the Alaska Coastal Zone Management Plans should contact Maureen McCrea at (907) 269–7473. To be considered, written comments must be submitted to the Office of Management and Budget, Division of Governmental Coordination, 550 West Seventh, Anchorage, Alaska 99501, Fax: 907–269–3981, and must be received by 5:00 p.m. on May 31, 2000. Comments regarding inconsistency with an affected coastal district's enforceable policy or a state standard set out in 6 AAC 80.040–6 AAC 80.150 must identify the enforceable policy or standard and explain how the project is inconsistent.

Public Hearing

A public hearing has tentatively been scheduled for June 1, 2000, from 3 p.m. to 5 p.m. to be held in Anchorage, Alaska, room 135, Federal Building. However, this public hearing will be canceled if there is no written request for a public hearing. A public workshop is planned for June 1, 2000, for all interested parties. Details of this public workshop will be sent to all interested parties.

Administrative Record

The complete administrative record for the draft permit is available for public review. Contact Florence Carroll at the address below to view the administrative record. Copies of the draft general NPDES permit and fact sheet are available upon request; call Florence Carroll at 1–800–424–4EPA (4372) (within Region 10 only) or (206) 553–1760 or email your request to "epa-seattle@epa.gov". The draft permit, the fact sheet, and the public notice will be available April 28, 2000, on Region 10's website: "www.epa.gov/r10earth/water.htm".

ADDRESSES: Public comments should be sent to: Environmental Protection Agency Region 10, NPDES Permit Unit (OW–130), Attn: Burney Hill, 1200 Sixth Avenue, Seattle, Washington, 98101.

FOR FURTHER INFORMATION CONTACT: Florence Carroll, of EPA Region 10, at the address listed above or telephone (206) 553–1760 or e-mail "carroll.florence@epa.gov" or Burney Hill, of EPA Region 10, at the address listed above or telephone (206) 553–1761 or e-mail "hill.burney@epa.gov".

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, a federal agency must prepare an initial regulatory flexibility analysis "for any proposed rule" for which the agency "is required by section 553 of [the Administrative Procedure Act (APA)], or any other law, to publish general notice of proposed rulemaking." The RFA exempts from this requirement any rule that the issuing agency certifies "will not, if promulgated, have a significant economic impact on a substantial number of small entities." EPA has concluded that NPDES general permits are permits under the APA and thus not subject to APA rulemaking requirements or the RFA. Notwithstanding that general permits are not subject to the RFA, EPA has determined that this general permit, if issued, will not have a significant economic impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: April 13, 2000.

Christine Psyk,

Acting Director, Office of Water.

[FR Doc. 00–10037 Filed 4–19–00; 8:45 am]

BILLING CODE 6213-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the Government in the Sunshine Act (5 U.S.C. 552b), notice is hereby given that at 10:02 a.m. on Tuesday, April 18, 2000, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate, supervisory, and personnel activities.

In calling the meeting, the Board determined, on motion of Director Ellen S. Seidman (Director, Office of Thrift Supervision), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no notice earlier than April 14, 2000, of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10), of the Government in the Sunshine Act (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: April 18, 2000.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 00–10077 Filed 4–19–00; 10:20 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: 10:00 a.m., Wednesday, April 26, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: April 19, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–10078 Filed 4–19–00; 10:32 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 991 0192]

BP Amoco p.l.c., et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 15, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Richard Parker or Phillip Broyles, FTC/H–374, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–2574 or 326–2805.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 13, 2000), on the World Wide Web, at "http://www.ftc.gov.ftc.formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of the Proposed Consent Order and Draft Complaint to Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted for public comment from BP Amoco p.l.c. ("BP Amoco") and Atlantic Richfield Company ("ARCO") (collectively, "Proposed Respondents") an *Agreement Containing Consent Orders* ("Proposed Consent Order"). The Proposed Respondents have also reviewed a draft complaint that the Commission contemplates issuing. The Commission and BP Amoco and ARCO have also agreed to an Order to Hold Separate and Maintain Assets ("Hold Separate Order") that requires the Proposed Respondents to hold separate and maintain certain divested assets. The Proposed Consent Order is designed to remedy the likely anticompetitive effects arising from BP Amoco's proposed acquisition of ARCO.

II. The Parties and the Transaction

BP Amoco is a United Kingdom corporation with headquarters in London, England. It is the world's third largest oil company, with total worldwide revenues of more than $91 billion in 1999. BP Amoco is engaged in exploration, development, and production of crude oil on the Alaskan North Slope ("ANS crude oil"), which it sells to refineries on the West Coast of the United States, Hawaii, and Alaska, and in markets abroad. It also owns capacity on the Trans-Alaska Pipeline System ("TAPS") and leasehold interests in Jones Act tankers. These specialized tankers are used by BP Amoco to transport ANS crude oil from the North Slope production fields to its refinery customers.

ARCO is a Delaware corporation with headquarters in Los Angeles, California. In 1999, ARCO had total revenues of more than $12 billion. ARCO is also engaged in the exploration, development, and production of ANS crude. ARCO also owns capacity on TAPS, and it owns its own Jones Act tankers, which it uses to transport ANS crude oil to the West Coast. ARCO also owns and operates two refineries on the West Coast that refine ANS crude oil.

BP Amoco and ARCO were the pioneers in developing the Alaska North Slope, and today are the two most important oil companies doing business there. They account for more than half of all ANS crude oil discovered over the last decade, and currently produce about 74% of all ANS crude oil. BP Amoco and ARCO are the only two operators of ANS crude oil fields, they each own more proven ANS crude oil reserves than any other oil company, they have the largest leaseholds of exploration and production acres, and they have drilled the largest number of exploration wells on the North Slope. Individually, each has won more exploration tracts than any other company in the last decade.

The Alaska North Slope is a major oil-producing region of the United States. ANS crude oil is used to supply refineries in Alaska, Hawaii, the West Coast of the United States, and Asia. Approximately 90% of all ANS crude oil is refined on the United States West Coast, and approximately 45% of all crude oil refined on the United States West Coast is ANS crude oil.

BP Amoco and ARCO entered into an agreement on March 31, 1999, to merge their companies. The size of the transaction, based upon the value of the deal when it was announced, was about $26 billion.

III. The Proposed Complaint and Consent Order

The proposed complaint alleges that merger of BP Amoco and ARCO would

violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45. The proposed complaint alleges that the merger will lessen competition in each of the following markets: (1) The production, sale, and delivery of ANS crude oil; (2) the production, sale, and delivery of crude oil used by targeted West Coast refiners; (3) the production, sale, and delivery of all crude oil used on the West Coast; (4) the purchase of exploration rights on the Alaskan North Slope; (5) the sale of crude oil transportation on TAPS; (6) the development for commercial sale of natural gas on the Alaskan North Slope; and (7) the supply of crude oil pipeline transportation to, and crude oil storage in, Cushing, Oklahoma. The competitive concerns underlying the allegations in the draft complaint are discussed in Part V of this analysis.

IV. The Proposed Consent Order

To remedy the alleged anticompetitive effects of the merger, the Proposed Consent Order requires Proposed Respondents to divest: (1) All of ARCO's assets and interests related to and primarily used with or in connection with ARCO's Alaska businesses; and (2) all of ARCO's assets related to its Cushing, Oklahoma crude oil business. Proposed Respondents will divest all of ARCO's Alaska assets to Phillips Petroleum Company ("Phillips"), an approved up-front buyer. The vast majority of these assets must be divested to Phillips within 30 days of the signing of the Proposed Consent Order. Some of the ARCO Alaska assets require third-party or governmental approvals and Proposed Respondents have up to six (6) months to divest those particular assets. Proposed Respondents will divest the Cushing assets to an acquirer or acquirers that receive the prior approval of the Commission and in a manner approved by the Commission. They must divest the Cushing assets within four (4) months of signing the Proposed Consent order.

For a period of ten (10) years from the date the Proposed Consent Order becomes final, the Proposed Consent Order prohibits the Proposed Respondents from acquiring, directly or indirectly, any ownership, leasehold or other interests in any of the assets they are required to divest without giving prior notice to the Commission.

The Proposed Consent Order also requires the Proposed Respondents to provide the Commission with a report of compliance with the terms of the Proposed Consent Order within thirty (30) days after the Order becomes final, and every sixty (60) days thereafter, until the Proposed Respondents have fully complied with the divestiture requirements under the Proposed Consent Order. The Proposed Respondents must also file annual compliance reports detailing their compliance with the notice provisions under the Proposed Consent Order.

Proposed Respondents have also agreed to a Hold Separate Order. The purpose of the Hold Separate Order is (a) to preserve the competitive viability of the assets required to be divested under the Proposed Consent Order, pending their actual divestiture, (b) to assure that no material confidential information is exchanged between BP Amoco and the held-separate businesses, and (c) to prevent interim harm to competition pending the divestitures. The Commission may immediately appoint an asset maintenance trustee to monitor both the ARCO Alaska businesses and the ARCO Cushing Assets which are to be divested, and, in the case of the Alaska assets, to monitor whether the necessary waivers and regulatory approvals are being expeditiously pursued.

Under the terms of the Hold Separate Order, if the Proposed Respondents have not completed the divestiture of the ARCO Alaska assets that do not require third party or regulatory approvals within thirty (30) days of consummating the merger of BP Amoco and ARCO, they must maintain the relevant ARCO Alaska businesses as separate, competitively viable businesses, and not combine them with BP Amoco's operations. A trustee may be appointed to oversee the held separate businesses.

Under the terms of Hold Separate Order, until the divestiture of the ARCO Cushing Assets has been completed, Proposed Respondents must maintain the ARCO Pipeline Company as a separate, competitively viable business, and not combine it with BP Amoco's operations. The Proposed Consent Order also requires the Proposed Respondents to maintain the assets to be divested in a manner that will preserve their viability, competitiveness and marketability, to avoid causing their wasting or deterioration. Pending divestiture, Proposed Respondents are prohibited from selling, transferring, or otherwise impairing the marketability or viability of the assets to be divested.

Under the terms of the Proposed Consent Order, in the event that BP Amoco and ARCO do not divest the assets required to be divested under the terms and time constraints of the Proposed Consent Order, the Commission may appoint a trustee to divest those assets, expeditiously, and at no minimum price. Also, in the event the assets requiring third-party or governmental regulatory approvals are not divested within the allowed time, a trustee may be appointed to oversee the divestiture of those assets to Phillips.

V. The Competitive Concerns

The merger of BP Amoco and ARCO gives rise to competitive concerns in seven relevant markets, each of which is discussed below.

A. Production and Sale of ANS Crude Oil

BP Amoco currently has about a 44% share of all ANS crude oil production and ARCO has about 30% share. BP Amoco owns no refineries that it supplies with ANS crude oil. As a consequence, all of its ANS crude oil sales are to third party customers. ARCO, on the other hand, owns two refiners that use ANS crude oil. One is located in the Los Angeles area (at Carson) and the second is in the Seattle area (at Cherry Point). Because ARCO supplies its West Coast refineries with ANS crude oil, ARCO now sells only relatively small amount of ANS crude oil to third parties.

According to the complaint the Commission intends to issue, BP Amoco already exercises market power in the sale of ANS crude oil to refineries on the West Coast. The evidence of this market power is the fact that BP Amoco engages in price discrimination on two fronts: First, BP Amoco sells ANS crude to West Coast refinery customers at different prices, net of transportation ("netbacks"). Second, BP sells ANS crude to the West Coast refineries at higher netbacks than to refineries in the Far East. The Commission's draft complaint alleges the existence of three relevant markets implicated by BP Amoco's ANS crude oil pricing: (1) The production, sale, and delivery of ANS crude oil; (2) the production, sale, and delivery of crude oil used by targeted West Coast refiners; and (3) the production, sale, and delivery of all crude oil used by refiners on the West Coast.

According to the Commission's draft complaint, for several reasons, ARCO is the firm most likely to be able to constrain BP Amoco's future exercise of market power. First, with the opening of the Alpine oil field, ARCO has new production that is about to commence. Second, with a new and increased ability to substitute away from ANS crude oil to other types of crude oil at its Los Angeles refinery, ARCO will have incentives to substitute cheaper

imports for ANS crude oil if the price of ANS crude oil becomes non-competitive. Third, ARCO is the firm best positioned and most likely to find new sources of ANS crude oil, and bring that oil to market.

Entry into the crude oil markets implicated by this merger is unlikely to occur in a timely or sufficient manner to prevent the merger from reducing competition in the relevant markets. Entry has not constrained BP Amoco's exercise of market power to date. Nor is it likely that producers of other types of crude oils will supply West Coast refineries in a manner that would constrain BP Amoco's ability to exercise market power. The most compelling evidence is that they have not already done so, even as BP Amoco has been exercising market power directed at West Coast refineries for many years.

B. Bidding for ANS Crude Oil Exploration Rights

BP Amoco and ARCO are the two most important competitors in bidding for exploration leases for oil and gas on the Alaska North Slope. They own or control all exploration, development, and production assets and won over 60% of all State of Alaska lease auctions over the last decade. During that same period the top four firms won 75%. In the most recent North Slope lease sale, BP Amoco and ARCO collectively won more than 70% of the tracts bid.

After the merger, no single firm, or combination of firms, will be both large enough and sufficiently well informed with respect to the value of individual tracts, to replace the loss of revenues to the State of Alaska and the Federal Government, from bidding revenues. Moreover, the reduced competition in the bidding for oil and gas leaseholds will eventually result in less exploration and development, and less production of ANS crude oil.

New entry will not be timely, likely or sufficient to undermine the anticompetitive effects of the merger. Firms that lack the information, infrastructure, and interest in North Slope bidding will simply be unable to fill the void created by the loss of ARCO as an independent bidder for exploration and development acreage.

C. TAPS Pipeline Competition

Seven companies jointly own the TAPS pipeline, with BP Amoco and ARCO the two largest owners. BP has about a 50% interest and ARCO has about a 22% interest. Each owner of TAPS has an exclusive right to sell space on its ownership-share of TAPS capacity and to set its own tariff, and to discount those tariffs, for carriage on that capacity. After the merger, BP Amoco would control a 72% interest in TAPS. Alyeska Pipeline Service Company operates TAPS.

The owners of TAPS are entitled to capacity on the pipeline in proportion to their ownership interests. Because not all oil producers have an interest in TAPS, or an interest in TAPS in proportion to their oil production, TAPS owners can and do discount their tariffs in an effort to attract additional shippers. According to the Commission's draft complaint, the increase in concentration in TAPS ownership may cause the TAPS tariffs to increase.

D. Natural Gas Commercialization

BP Amoco and ARCO are the two largest holders of natural gas reserves on the Alaska North Slope. ExxonMobil is the only other company that holds sufficiently large volumes of natural gas reserves to have the potential to develop those reserves for significant commercial use. The merger of BP Amoco and ARCO would reduce the potential for future competition in the sale of North Slope natural gas from three firms to two firms.

Although it is unclear at this time when the North Slope gas fields will be commercialized, it is likely that this will eventually occur. To date, over $1 billion has been spent by various firms in an effort to commercialize the North Slope's natural gas reserves. When gas commercialization does become a reality, the benefit of three firms competing for this business, rather than a market characterized by a duopoly, will result in increased competition and lower prices.

E. Crude Transportation and Storage Services in Cushing, Oklahoma

Efficient functioning of the pipeline and oil storage facilities leading into, and in, Cushing, Oklahoma, is critical to the fluid operation of both the trading activities in Cushing and the trading of crude oil futures contracts on the NYMEX. The restriction of pipeline or storage capacity can affect the deliverable supply of crude oil in Cushing, and consequently affect both WTI crude oil cash prices and NYMEX futures prices.

The proposed merger would concentrate control of over 43% of Cushing storage capacity, 49% of Cushing pipeline delivery capacity, and 95% of the trading services provided at Cushing. A firm that controls substantial crude oil storage capacity in Cushing, and crude oil pipeline capacity leading into Cushing, would be able to manipulate NYMEX futures trading markets. This threat of manipulation will cause prices to rise and, because WTI crude oil is a benchmark crude oil, have ripple effects throughout the oil industry.

VI. Resolution of the Competitive Concerns

The Proposed Consent Order alleviates the competitive concerns arising from the merger as discussed below.

A. The Proposed Order Resolves Competitive Concerns in Alaska by Requiring That All of ARCO's Alaska Assets Be Divested to Phillips

The Proposed Consent Order, if finally issued by the Commission, would settle all of the charges alleged in the Commission's complaint. Under the terms of the Proposed Consent Order, BP Amoco has agreed to divest to Phillips all of the assets, properties, businesses, and goodwill, tangible and intangible, that as of March 15, 2000, were related to and primarily used with or in connection with ARCO's Alaska businesses.

The ARCO assets and properties that BP Amoco and ARCO are required to divest to Phillips include the following: (a) ARCO Alaska, Inc.; (b) ARCO Transportation Alaska, Inc., (including any interest in Alyeska Pipeline Service Company and Prince William Sound Oil Spill Response Company; (c) ARCO Marine, Inc.; (d) ARCO Marine Spill Response Company; (e) Union Texas Alaska assets of Union Texas Petroleum Holdings, Inc.; (f) Union Texas Alaska, LLC; (g) Kuparuk Pipeline Company, (including any interests in Kuparuk Transportation Company and Kuparuk Transportation Capital Corporation); (h) Oliktok Pipeline Company; (i) Alpine Pipeline Company; (j) Cook Inlet Pipeline Company; (k) All Alaska oil and gas leases; (l) AMI Leasing Inc.; (m) ARCO Beluga, Inc. (a wholly-owned subsidiary of CH-Twenty, Inc.); (n) ARCO's office complex in Anchorage; (o) intellectual property; (p) Patents; (q) seismic data; (r) ship construction contracts; (s) customer and vendor lists; (t) ARCO records; and (u) long-term supply agreements entered between BP Amoco and several West Coast refiners.

To ensure that key ARCO employees remain with the company, and become available to work for Phillips, the Proposed Consent order also provides that (a) BP Amoco not solicit for employment any ARCO employee unless that employee was terminated by Phillips; (b) vest all current and future pension benefits; and (c) pay a bonus of not less than 35% of the base salary for certain key ARCO employees.

Phillips is headquartered in Bartlesville, Oklahoma and is the sixth largest United States oil company. In 1999 it had total revenues of about $14 billion. Phillips currently has about a one percent interest in ANS crude oil production and about a 1.4% interest in TAPS. Phillips also owns oil and gas leases in the National Petroleum Reserve area of the North Slope.

The divestiture of ARCO's Alaska Businesses is intended to preserve the level of competition that existed before the merger in the production, sale and delivery of crude oil to the West Coast, bidding for exploration rights on the Alaskan North Slope, and in pipeline transportation services for ANS crude oil.

1. The Proposed Respondents Have Thirty (30) Days To Divest Most of the ARCO Alaska Assets to Phillips

Except for those ARCO Alaska assets that require consents, waivers, or approvals by regulatory authorities or other third parties before they may be transferred to Phillips (e.g., pipelines, oil and gas leases, rights of way), the Proposed Respondents must complete the required divestitures of the Alaska assets within thirty (30) days of the acquisition. The Proposed Respondents must cooperate with Phillips and use reasonable best efforts to assist Phillips in securing the consent and waivers that may be required from private entities. The Proposed Respondents must complete all other divestitures within six (6) months of consummating their merger.

2. Transition Services

The Proposed Consent Order requires that the Proposed Respondents enter into a transition services agreement with Phillips. Under this agreement, the Proposed Respondents must provide Phillips with the transition services it may need in order to conduct the ARCO businesses as they are currently being conducted.

3. Licensing Agreements

The Proposed Consent Order requires that the Proposed Respondents enter into various licensing agreements with Phillips for intellectual property necessary or related to the ARCO Alaska Assets. These agreements are in addition to the absolute transfer of other intellectual property.

B. The Proposed Order Resolves Competitive Concerns in Cushing by Requiring That All of ARCO's Cushing Assets Be Sold Within 120 Days to an Acquirer Approved by the Commission

Under the terms of the Proposed Consent Order, BP Amoco agreed to divest ARCO's assets related to its Cushing, Oklahoma crude oil business to an acquirer to be approved by the Commission and in a manner approved by the Commission. Those assets include all of ARCO's assets, properties, businesses and goodwill, tangible and intangible, in the Seaway Crude Oil Pipeline and the Mid-Continent Crude Oil Logistics Services Businesses.

The ARCO assets and properties that BP Amoco and ARCO are required to divest include the following: (a) ARCO's crude oil interest in Seaway Pipeline Company, a partnership with subsidiaries of Phillips; (b) ARCO's crude oil terminal facilities in Cushing, Oklahoma and Midland, Texas, including the line transfer and pumpover business at each location; (c) ARCO's undivided ownership interest in the Rancho Pipeline, a 400-mile, 24-inch diameter crude oil pipeline from West Texas to Houston; (d) ARCO's undivided ownership interest in the Basin Pipeline, a 416-mile crude oil pipeline running from Jal, NM, to Wichita Falls, Texas and then on to Cushing, Oklahoma; and (e) the ARCO West Texas Trunk System of receipt and delivery pipelines, which is centered around Midland.

BP Amoco and ARCO must complete the required divestitures of the Cushing assets, within 120 days of their singing the Proposed Consent Order, to an acquirer or acquirers that receive the prior approval of the Commission.

VII. Opportunity for Public Comment

The Proposed Consent Order has been placed on the public record for thirty (30) days fro receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the Proposed Consent Order and the comments received and will decide whether it should withdraw from the Proposed Consent Order or make it final.

By accepting the Proposed Consent Order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the Proposed Consent Order, including the proposed divestitures, to aid the Commission in its determination of whether it should make final the Proposed Consent Order. This analysis is not intended to constitute an official interpretation of the Proposed Consent Order, nor is it intended to modify the terms of the Proposed Consent Order in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Chairman Robert Pitofsky and Commissioner Mozelle W. Thompson, Concurring in Part and Dissenting in Part

The Commission accepts for public comment today a consent order that requires BP Amoco plc ("BP"), as a condition of its acquisition of Atlantic Richfield Company ("ARCO"), to divest all of ARCO's crude oil exploration and production assets in Alaska and related pipeline rights, maritime assets, seismic data and technical information. In effect, BP agrees to divest "all of ARCO" in Alaska. In addition, the consent order requires BP to divest all ARCO pipeline and storage facilities in and around the crude oil marketing and trading hub at Cushing, Oklahoma to a buyer to be approved by the Commission within 120 days of the date on which BP and ARCO sign the consent order.

The consent order provides that the divested Alaska assets will be acquired by Phillips Petroleum Co. ("Phillips"). Phillips is an integrated petroleum company with oil and gas exploration and production interests in several countries and (as of 1999) assets of about $15 billion and annual revenues of about $13.9 billion. Phillips currently has some Alaska oil and gas exploration and production interests of its own, but these are tiny relative to those of BP and ARCO. Phillips is engaged in refining and gasoline marketing in several of the United States, but not on the West Coast. BP selected Phillips as the buyer of ARCO's Alaska assets, and Commission today unanimously approves Phillips as the buyer, subject to public comment.

In most respects, this consent order achieves all the Commission sought, and all the relief that would likely have been achieved if the Commission prevailed in litigation. We write separately, however, to express our concern with the majority's decision not to include in the consent order a provision prohibiting BP and Phillips from exporting ANS crude oil at a loss for the purpose of maintaining oil prices on the West Coast of the United States.[1]

[1] The provision that we would favor is explained, and its terms defined, further below.

BP currently has the largest share—about 40%—of all crude oil produced on the Alaska North Slope ("ANS"); has the largest interest—about 50%—in the Trans-Alaska Pipeline System ("TAPS") that is used to transport crude oil to port at Valdez, Alaska; and has the largest fleet that is available for transporting ANS crude oil from Alaska to refineries in the rest of the United States. ARCO is its largest rival in each of these respects, with a share of over 30% of ANS crude production; a 22% stake in TAPS; and the second largest available fleet. BP and ARCO's dominance of the market is even greater when measured in terms of exploration assets and operatorships in Alaska. BP, which does not own any West Coast refineries, currently sells all of its ANS crude in the merchant market. ARCO, which owns two of the largest refineries on the West Coast, consumers the bulk of its ANS production internally. However, ARCO also sells on the merchant market, thereby according to the Commission's complaint, serving as "the firm most likely to constrain BP's exercise of monopoly power," a constraint that "likely would increase" over time but for the merger.[2]

Because Phillips will acquire all of ARCO's assets in Alaska, the consent order is likely to restore competition on the Alaska North Slope. In the market for the supply of ANS crude oil to targeted refineries on the West Coast, Phillips will be in a different position from ARCO because, unlike ARCO, Phillips is neither a refiner nor a gasoline marketer on the West Coast. This difference should leave Phillips with more crude oil to sell on the open market than ARCO currently has after supplying its own refineries, and, if not undermined by private conduct, may actually improve upon the level of competition in that market. In Cushing, a clean sweep of ARCO's pipeline and storage assets to a buyer to be approved by the Commission should also suffice to restore competition.

Negotiations leading to this settlement have been extensive and complicated. Nevertheless, once the outline of a settlement was agreed upon—that is, divestiture of "all of ARCO" in Alaska and in and around Cushing—BP, ARCO and Commission staff worked out the details with dispatch.

In one respect, however, the Commission's action in this matter is disappointing. In its original complaint and in its memorandum supporting the complaint, the Commission alleged that BP systematically and over an extended period of time exported ANS crude at a loss in Asia and to other regions in the United States in order to curtail or tighten supply to refiners on the U.S. West Coast and to maintain crude oil prices in that market.[3] The Commission was prepared to substantiate its charge with a series of documents, cited in its memorandum supporting the complaint but currently under seal in the United States District Court.[4] The Commission alleged that the pattern of exports reflected BP's market power, and that such market power would increase as a result of the proposed merger.

When litigation was suspended for settlement negotiations, the issue of exports designed to raise price was addressed. BP and Phillips reportedly stated publicly that they would not export U.S. crude resources out of PADD V (the technical term for the U.S. West Coast market, specifically, the States of Alaska, Arizona, California, Hawaii, Nevada, Oregon and Washington).[5]

We believe that the Commission should follow the logic of its own complaint and require BP and Phillips to affirm their public statements in our consent agreement in this matter. That would require the following provision in the order:

> BP and Phillips shall not knowingly and intentionally Sell for Export[6] ANS crude oil for the purpose of increasing the Spot Price[7] of ANS crude oil in PADD V, PROVIDED, however, that a Sale for Export at a price reasonably anticipated to produce a higher profit than a contemporaneous sale in PADD V shall be presumed not to violate this Order.

This provision is narrower than the parties' public statements, thereby assuring that it would in no way affect normal, competitive business conduct, such as exporting oil abroad when the price offered abroad (net of transportation and other costs) is higher than on the West Coast. Instead, it would target the systematic export of United States' crude oil to Asia or elsewhere at a loss (relative to the profit that could have been obtained on the same crude oil within PADD V) for the purpose of raising U.S. West Coast Prices—a practice that we consider an extraordinary exercise of market power. If engaged in through coordinated action—and the Commission's memorandum alleges that BP "mop[ped] up 'excess' supplies of ANS" crude from others[8]—such conduct would be illegal *per se*. *See United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150, 190–91, 216, 218–28 (1940)(holding illegal *per se* agreements to purchase "distress gasoline" in order to raise prices or prevent price decreases). Regardless of its legality, exporting at a loss in order to raise West Coast prices plainly threatens competition in a market where this agency has a duty to ensure that competition is fully restored. *see, e.g., Ford Motor Co.* v. *United States*, 405 U.S. 562, 573 (1972); *United States* v. *E.I. du Point de Nemours & Co.*, 366 U.S. 316, 326 (1961).

Because the Commission was prepared to prove that intentional manipulation of supply on the West Coast occurred in the past, and could occur again in the future, the provision would be appropriate relief for the Commission to require. *See, e.g., FTC* v. *National Lead Co.*, 352 U.S. 419, 429, 430 (1957)(a remedy is proper if it bears a "reasonable relation to the unlawful practices found to exist" and "decrees often suppress a lawful device when it is used to carry out an unlawful purpose") (citations omitted); *cf. FTC* v. *Ruberoid Co.*, 343 U.S. 470, 473 (1952) ("[I]f the Commission is to obtain the objectives Congress envisioned, it cannot be required to confine its road block to the narrow lane the transgressor has traveled; it must be allowed effectively to close all roads to the prohibited goal, so that its order may not be by-passed with impunity.")

Notwithstanding the substantial evidence of manipulation supporting the allegations in the complaint and memorandum, a majority of the Commission declines to require this

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[2] *See FTC* v. *BP Amoco plc*, Civ. No. 00–0416–SI (N.D. Cal. filed Feb. 4, 2000), Compl. ¶ 18.

[3] *See FTC* v. *BP Amoco plc*, Compl. ¶¶ 18, 23; Points and Authorities in Support of FTC Motion for a Preliminary Injunction at 7, 9–11.

[4] *See id.* at 7, n.13, 9–10 & nn. 16–18. (The public version of the FTC's Points and Authorities, with the parties' confidential information redacted, is available at /http://www.ftc.gov/os/bpamoco/index.htm. All references in this concurrence to the memorandum supporting the complaint are to that version.)

[5] *See, e.g.*, H. Josef Hebert, "Company ties offer to halt exporting Alaska crude to merger" (Associated Press, March 24, 2000) (citing a letter from BP to U.S. Representative Don Young of Alaska); Associated Press, "BP Amoco Would End Alaska Exports" (March 24, 2000); Reuters, "BP Amoco, Phillips to halt Alaskan oil exports" (March 24, 2000) (citing a letter from BP to U.S. Representative George Miller of California).

[6] "Sell for Export" and "Sale for Export" would be defined terms referring to the sale, exchange, delivery or transfer of ANS crude oil for refining at a refinery located outside of PADD V, PROVIDED, however, that they would not include any sale, exchange, delivery or transfer of ANS crude oil in return for which ANS crude oil from another person is tendered or delivered to Respondents at a location in PADD V.

[7] "Spot Price" would be a defined term, referring to the amount paid for a single delivery of crude oil as part of an arms-length transaction as reported by Reuters, Telerate or Platts.

[8] *FTC* v. *BP Amoco plc*, Points and Authorities in Support of FTC Motion for a Preliminary Injunction at 10.

provision. In omitting any provision concerning exports, we do not understand our fellow Commissioners to condone the practices that we identified in our complaint. But we see no good reason for the omission.

First, the majority suggests that the divestitures ordered today eliminate the competitive overlap that was the central competitive concern raised by the proposed merger. While we believe that the divestiture to Phillips is effective and appropriate relief, and may even improve competition, we would also address directly the competitive concerns raised by past and potentially future exporting practices aimed at exploiting precisely the market power that the BP–ARCO merger places at issue. Today's consent permits both a realignment of operatorship interests on the Alaska North Slope and a vertical realignment, whereby BP's crude supply will now be aligned with what were ARCO's downstream assets, and ARCO's successor, Phillips, will likely replace BP as the principal supplier to the merchant (*i.e.*, non-vertically-integrated) market on the West Coast. How those realignments will affect the incentives and opportunities of BP and Phillips to continue BP's past practice of exporting to maintain West Coast prices is uncertain, as are future fluctuations in their production and reserves on the Alaska North Slope and their likely effects on those incentives and opportunities.

The majority believes that it is unnecessary to impose any restriction on exports [9] because "BP likely will need to use most of its ANS crude oil production" in the ARCO refineries it is acquiring on the West Coast, and because "Phillips will have a much smaller share of ANS crude oil production than did BP." (We understand that Phillips' initial share of ANS crude oil production will be between 30 and 35%.) Even if true today, there is no assurance that in the future either company, in an uncertain and evolving marketplace, will not find itself in a position to engage in the same conduct BP engaged in previously. Any such risk should not be borne by the consumer.

Second, as noted above, precedent establishes that conduct relief ancillary to structural relief may be appropriate in a merger case to address related competitive concerns, even when the conduct restriction may, in doing so, restrain some lawful conduct.[10] Such relief is especially appropriate where, as in this case, the merger creates uncertainties in a market already characterized by exercises of market power that may harm consumers and where the relief imposed will increase the likelihood that competition will be fully restored. *See, e.g., Ford Motor Co.*, 405 U.S. at 578 (approving district court relief aimed at "nurtur[ing]" lost competition over an objection that the forces in the marketplace might suffice to restore it).[11]

Third, we believe that a narrow export-at-a-loss restriction like the one set forth above would effectively protect, and would in no way inhibit, free and vigorous competition.[12] We recognize that in 1995, Congress repealed an export ban on ANS crude oil, and we have no intention of undermining that repeal. However, as we have noted above, a consent agreement provision that narrowly prohibits exports (1) reasonably anticipated to be at a loss and (2) made "knowingly and intentionally * * * for the purpose increasing the Spot Price of ANS crude oil in PADD V" is far removed from a general export ban, and would leave firms entirely free to engage in normal, competitive export activities both within PADD V and elsewhere. Further, although the provision that we propose would be narrow, we believe that it would be effective. The proviso requiring that sales be reasonably anticipated to be at a loss to be suspect would give both the parties and FTC enforcement staff an objective benchmark, while the intent and purpose requirements—requirements familiar to antitrust law, *see, e.g., Aspen Skiing Co.* v. *Aspen Highlands Skiing Corp.*, 472 U.S. 585, 602 (1985)—would ensure that normal competitive conduct would be unaffected.

Under normal circumstances we favor structural rather than behavioral remedies. That approach underlies the substantial structural relief that the Commission unanimously requires in this case. However, we believe that in addition, the above-described export restriction is appropriate and warranted by the facts and circumstances of this case. Accordingly, we dissent from the majority decision not to include in the consent order a provision restraining in the future the manipulation of ANS crude supply to the West Coast that we believe occurred in the past.

Statement of Commissioners Anthony, Swindle, and Leary

Alaska's North Slope is one of the largest sources of crude oil in the world. Crude oil extracted from Alaska's North Slope ("ANS crude oil") is transported through the Trans-Alaska Pipeline System ("TAPS") to the warm water port of Valdez, Alaska. From Valdez, large oil tankers transport ANS crude oil to refineries, most of which are located on the West Coast of the United States. The West Coast refineries process ANS crude oil and other crude oils to produce gasoline that ultimately is sold to consumers located on the West Coast.

The three main producers of ANS crude oil are British Petroleum/Amoco Oil Co., Inc. ("BP"), Atlantic Richfield Corporation ("ARCO"), and ExxonMobil Corporation ("Exxon"). BP produces about 45% of ANS crude oil, ARCO about 30% and Exxon about 22%. Each of these producers owns interests in TAPS and the oil tanker fleet that are roughly proportionate to its share of ANS crude oil production. Because BP currently does not own any refineries on the West Coast, it sells most of its ANS crude oil to other West Coast refiners. In contract, ARCO and Exxon use most of

[9] The provision that we advocate is not, of course, an export ban. It is, rather, a narrow restriction, targeted at exports that entail an extraordinary exercise of market power.

[10] It is well established that the Commission has a broad remedial discretion that would, where appropriate, permit substantial further relief against conduct that does not independently violate the antitrust laws. *See, e.g., Ford Motor Co.*, 405 U.S. at 575; *E.I. du Pont de Nemours*, 366 U.S. at 344. Courts have approved a variety of remedies against potentially lawful conduct as ancillary to structural relief, including future lawful participation in a market previously entered by means of unlawful merger, *Ford Motor Co.*, 405 U.S. at 575–76, an injunction against further acquisitions, *United States* v. *Grinnell Corp.*, 384 U.S. 563, 580 (1966), requirements of prior Commission approval for future joint ventures, mergers or acquisitions, *Yamaha Motor Co.* v. *FTC*, 657 F.2d 971, 984–85 (8th Cir. 1981); *Luria Bros. & Co.* v. *FTC*, 389 F.2d 847, 865–66 (3d Cir. 1968), and prohibitions of sales between joint venture partners, *United States* v. *Alcan Aluminum Ltd.*, 605 F. Supp. 619 (W.D. Ky. 1985).

[11] The majority emphasizes that "it is not the Commission's mandate to use merger enforcement as a vehicle for imposing its own notions of how competition may be 'improved.'" We of course agree that merger enforcement is not an appropriate vehicle for "improving" markets in ways unrelated to the merger. But as the precedents cited in footnote 10, above, exemplify, it is equally fundamental that mergers must be viewed, and the competitive concerns that they raise addressed, in the practical and dynamic context of the markets in which they occur. *See, e.g., Brown Shoe Co.* v. *United States*, 370 U.S. 294, 321–23 (1962).

[12] The majority expresses concern that our provision would not "apply equally to all producers" of ANS crude oil. It is true that our provision would place restrictions on the two parties before us, who will also be the two largest producers of ANS crude oil, that would not apply to smaller competitors. But our narrow restriction would not prevent them from competing vigorously—only from engaging in a practice that the Commission's complaint identified as an exercise of market power that distorted competition. Because the mandate of this agency is to protect competition, not the individual interests of particular competitors, we are not concerned about inhibiting BP and Phillips' ability to exercise market power by manipulating West Coast prices.

their ANS crude oil in their own West Coast refineries.

BP's proposed merger with ARCO would give the merged firm about a 75% share of exploration, production, and transportation of ANS crude oil. The complaint alleges that the proposed merger is likely substantially to lessen competition in the market for the sale of ANS crude oil to West Coast refineries. The basic theory is that prior to the merger BP has been able to exercise market power in sales of ANS crude oil to West Coast refineries, *i.e.*, BP has been able to profitably maintain prices above competitive levels for a significant period of time. BP's acquisition of ARCO would increase BP's ability to exercise market power, which could cause West Coast refineries to pay more for ANS crude oil. While the case raises complex market definition and other issues, we have reason to believe that the proposed merger, absent the contemplated relief, is likely substantially to lessen competition as alleged in the complaint.

Traditionally, if a merger raises competitive concerns, the Commission requires the merging parties to divest assets to eliminate the competitive overlap before allowing the merger to be consummated. Consistent with this approach, in this case the Commission has accepted a proposed order requiring BP and ARCO to divest all of ARCO's assets in Alaska to Phillips Petroleum Company ("Phillips"). We believe that this divestiture will remedy the antitrust concerns raised by the proposed merger. In fact, as the concurring statement of Chairman Pitofsky and Commissioner Thompson points out, the consent agreement has the potential to "actually improve upon the level of competition" in the West Coast market. As a result of the planned divestiture, Phillips will have about a 30% share of ANS crude oil exploration, production, and transportation, and Phillips will have even more crude oil to sell on the open market than ARCO has today. Phillips appears to have the financial resources and experience to be a vigorous competitor in the exploration, production, and transportation of ANS crude oil.

In addition to this structural relief, Chairman Pitofsky and Commissioner Thompson would favor "behavioral" relief that would require the Commission to engage in extensive monitoring of ANS crude oil exports and prices for the next decade. Specifically, they support a provision that would prohibit BP and Phillips, for 10 years, from "knowingly and intentionally" exporting ANS crude oil outside the West Coast of the United States "for the purpose of increasing the Spot Price of ANS crude oil" on the West Coast. The proposed export restriction also would include a presumptive safe harbor if an export sale were made at a "price reasonably anticipated to produce of higher profit than a contemporaneous sale" on the West Coast. We believe that this over-regulatory exportation restriction would be unnecessary, unenforceable, and otherwise inappropriate.[1]

It is unnecessary to impose the proposed export restriction on BP because BP is highly unlikely to engage in exports following the merger. There is some evidence that, prior to the merger, BP occasionally exported ANS crude oil to the Far East in order to increase spot prices for ANS crude oil on the West Coast. It is important to emphasize that BP's unilateral actions were not illegal under the antitrust laws—and, indeed, the complaint makes no allegation that the exports were illegal.[2] In any event, however, BP's incentives to export will change as a result of the proposed divestitures. Before the merger, BP sold most of its ANS crude oil to other West Coast refiners because it did not own refineries on the West Coast. BP benefitted from higher spot prices because of its status as a merchant marketer, and also because Alaska's royalty scheme for ANS production was tied to ANS spot prices on the West Coast. After the merger, BP will acquire two West Coast oil refineries that were part of ARCO, and BP likely will need to use most of its ANS crude oil production to operate these two refineries. Since BP will be consuming most of its ANS production internally, BP will now benefit from lower royalty payments to the extent that the ANS spot price drops. Therefore, as a result of the new market structure created by the proposed divestitures, BP is extremely unlikely to resume exporting ANS crude oil to the Far East (or elsewhere) to increase spot prices for ANS crude oil on the West Coast.

Nor is it necessary to impose the export restriction on Phillips. Phillips is purchasing ARCO's assets in Alaska lock-stock-and-barrel, *i.e.*, Phillips is assuming ARCO's position as an explorer, producer, and transporter of ANS crude oil. There is no evidence that ARCO ever engaged in strategic ANS exports for the purpose of increasing West Coast spot prices. Granted, it might appear that Phillips will have a greater incentive than ARCO did to increase spot prices for ANS crude oil, because Phillips, like the pre-merger BP, will sell its ANS crude oil to West Coast refineries on the merchant market (whereas ARCO consumed most of its production in its own West Coast refineries). However, Phillips will have a much smaller share of ANS crude oil production than did BP—approximately 30% for Phillips versus 45% for BP—which makes it quite unlikely that Phillips could successfully engage in exports to increase spot prices for ANS crude oil on the West Coast.

Not only is the export restriction unnecessary, it also would be extremely difficult to enforce because it would require proof of BP's or Phillips's knowledge and intent. We cannot rely on the companies to create an unambiguously inculpating "paper trail," and in the face of ambiguous evidence, the Commission's burden of proof would be very high indeed. We do not think that the public interest would be well served by including an order provision that is so obviously difficult to enforce that it would have little or no practical effect. Moreover, the proposed safe harbor would complicate enforcement proceedings even further by introducing additional factual issues that would be difficult to resolve.

We do not believe the export restriction is an appropriate measure for the Commission to impose in the context of a merger settlement, especially when the proposed structural relief fully restores, and may even improve upon, the *status quo ante*. The export restriction would address a pre-existing market condition, under which BP allegedly, unilaterally, and sporadically exported ANS crude oil with some slight effect on West Coast prices.[3] We acknowledge the public

[1] It bears noting that in 1995, Congress explicitly repealed the then-existing ban on ANS exports. If Congress were to determine that the ban should be reinstated, it could so act. In addition, the 1995 legislation lifting the export ban granted the President, in consultation with the Secretary of Energy, the power to reimpose the export ban upon a determination by the Secretary of Commerce that "exporting oil * * * has caused sustained oil prices significantly above world market levels * * *." (30 U.S.C. 185(s)(5)). Such a ban would apply equally to all producers, and would not leave some producers under the restrictions of the Commission's order while permitting other producers to export without inhibition.

[2] Rather, the exports are cited as evidence that pre-merger BP had existing market power with respect to ANS sales on the West Coast. (Complaint ¶¶ 24–26) Therefore, the Commission alleges, it would be unlawful for BP to acquire its closest competitor in this market, and thereby enhance its market power.

Of course, if two or more producers appeared to engage in such exports through coordinated or other illegal action, the Commission could initiate an investigation of such unlawful conduct and take appropriate enforcement measures.

[3] We have reason to believe that the upward price effects of these sporadic sales amounted to no more than one-half cent per gallon at the pump.

concern over the relatively high price of gasoline on the West Coast, but people will be cruelly disappointed if they are led to believe that the export restriction would have a detectable effect on the situation. Moreover, it is not the Commission's mandate to use merger enforcement as a vehicle for imposing its own notions of how competition may be "improved." Instead, Congress has directed the Commission only to prevent any harm to competition that is likely to flow from a merger. We believe that the planned divestitures already accomplish that goal.

We acknowledge that the parties are willing to sign an order with an export restriction. We need not speculate about whether they were induced to do so because of a compelling need to strike a deal promptly, or because they believe the restriction in unnecessary or unenforceable. Whatever the reason, in light of the structural relief the proposed order achieves, we see no need to bind the parties to an unnecessary behavioral provision.

For the reasons set forth above, we do not believe that the export restriction should be included in the proposed order.

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FEDERAL TRADE COMMISSION

[File No. 981 0124]

Texas Surgeons, P.A., et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 15, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Richard Feinstein or Alan Friedman, FTC/S–3115, 600 Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–3688 or 326–2742.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 13, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comment or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order by the Texas Surgeons, P.A. ("Texas Surgeons IPA") and six medical practice groups comprised of Texas Surgeons IPA members—Austin Surgeons, P.L.L.C.; Austin Surgical Clinic Association, P.A.; Bruce McDonald & Associates, P.L.L.C.; Capital Surgeons Group, P.L.L.C.; Central Texas Surgical Associates, P.A.; and Surgical Associates of Austin, P.A. The agreement settles charges by the Federal Trade Commission that the Texas Surgeons IPA and the six medical practice groups (the "respondents") violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by fixing prices and other terms of dealing with third-party payers; collectively refusing to deal with third-party payers or threatening to do so; and agreeing to deal with third-party payers only on collectively determined terms. The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make it and the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by any respondent that the law has been violated as alleged in the complaint.

The Complaint

Under the terms of the agreement, a complaint will be issued by the Commission along with the proposed consent order. The allegations in the Commission's proposed complaint are summarized below.

Respondent Texas Surgeons IPA is an association of general surgeons who practice in the Austin, Texas area. Members of the Texas Surgeons IPA are, and at all times relevant to the complaint have been, the majority of general surgeon private practitioners serving the adult population in the Austin area.

Nearly all of the members of the Texas Surgeons IPA belong to one of six general surgery practice groups, which are also respondents in this matter. At all times relevant to the complaint, the Texas Surgeons IPA has been governed by a board of directors composed of representatives from each of the respondent medical practice groups.

The Texas Surgeons IPA has served as a vehicle for the six respondent medical practice groups (and the few solo practitioner members) to engage in actual or threatened concerted refusals to deal, and to negotiate collectively, in order to obtain higher prices from Blue Cross Blue Shield of Texas ("Blue Cross") and United HealthCare of Texas ("United"). The six respondent medical practice groups actively furthered the unlawful conduct through their collective control of the Texas Surgeons IPA board of directors, and through their direct participation in collective fee negotiations between United and the Texas Surgeons IPA.

In April 1997, Blue Cross changed its reimbursement system from one based on historical charges to one based on a

Resource Based Relative Value Scale, similar to the system used by the federal government in its Medicare program. The effect of this change was to increase rates paid to primary care physicians, and to reduce rates to all physician specialists, including general surgeons. Soon thereafter, respondents, through the Texas Surgeons IPA, began collectively negotiating higher rates.

Despite multiple attempts by Blue Cross to negotiate individually with the six respondent medical practice groups, those groups insisted on negotiating only through the Texas Surgeons IPA. In September 1997, the Texas Surgeons IPA sent Blue Cross a package of identically worded contract termination notices for each general surgeon member of the Texas Surgeons IPA, with a cover letter stating that the termination notices were due to Blue Cross's "unacceptable" rate reductions. In November 1997, the Texas Surgeons IPA asked Blue Cross to waive its right to bring a private antitrust action regarding the Texas Surgeons IPA's rate negotiations with Blue Cross, but Blue Cross refused to sign the waiver. In December 1997, 26 members of the Texas Surgeons IPA, dissatisfied with Blue Cross's payment offers, collectively effected their resignations from Blue Cross, and jointly announced that action in a prominent advertisement in Austin's major daily newspaper.

In early 1998, Blue Cross experienced difficulty in securing the services of a general surgeon for an emergency room patient. At about the same time, two more general surgeons resigned from Blue Cross. These two general surgeons had been advised by one of the respondent medical practice groups that their inclusion in an arrangement with that practice group regarding back-up surgical coverage would end if they continued to deal with Blue Cross.

After these events, Blue Cross concluded that it needed to reach a rate agreement with the respondents as soon as possible to avoid inadequate general surgery coverage for Blue Cross subscribers in the Austin area. The collective rate agreement between the six respondent medical practice groups and Blue Cross that resulted in early 1998 increased Blue Cross general surgery rates nearly 30% above the April 1997 levels.

Respondents began collective price negotiations with United soon after it announced fee reductions for general surgeons and other physicians in October 1997. The new fees went into effect on January 1, 1998 for surgical procedures not usually performed by general surgeons, but comparable proposed fee reductions for general surgeons never went into effect. Instead, respondents caused general surgery fees for United's various plans to increase at least 12% to 40% above the fees that United announced in October 1997.

In early November 1997, United received a written notice from the Texas Surgeons IPA that all of its members would be terminating their contracts with United effective January 1, 1998 due to the proposed fee reductions for 1998. The Texas Surgeons IPA indicated its desire to collectively negotiate higher fees and rejected United's request to negotiate with the six respondent medical practice groups on an individual basis. United explored the possibility of creating a panel of general surgeons that did not include general surgeons from the six respondent medical practice groups, but it concluded that such a panel would not provide adequate general surgery coverage and that it had no realistic alternative to beginning collective fee negotiations with the Texas Surgeons IPA.

Prior to the start of a collective fee negotiation session in November 1997, the Texas Surgeons IPA required United to sign a waiver of its right to bring a private antitrust action against the Texas Surgeons IPA or its members stemming from those fee negotiations. At that collective fee negotiation session, respondents demanded and received an agreement from United to pay higher fees in 1998 and 1999, as described above. Representatives from the six respondent medical practice groups assembled together and collectively participated in this collective fee negotiation session through frequent telephone and fax contact with the Texas Surgeons IPA's lead negotiator.

The Texas Surgeons IPA did not engage in any activity that might justify collective agreements on the prices they would accept for their services. Respondents' actions have restrained competition among general surgeons in the Austin area and thereby have harmed, or tended to harm, consumers (including third-party payers, subscribers, and their employers) by:

- Depriving consumers of the benefits of competition;
- Increasing by over one million dollars the amount that Blue Cross, United, their individual subscribers, and employers (including the State of Texas Employees Retirement System and other self-insured employers that utilize Blue Cross or United physician network) paid for the services of surgeons during the period from January 1, 1998 to December 31, 1999;
- Fixing the payments or co-payments that individual patients, their employers, and third-party payers make for the services of surgeons;
- Fixing the terms and conditions upon which general surgeons would deal with third-party payers; and
- Raising the prices that individuals and employers pay for health plan coverage offered by third-party payers.

The Proposed Consent Order

The proposed order is designed to prevent recurrence of the illegal concerted actions alleged in the complaint, while allowing respondents to engage in legitimate joint conduct. The Commission notes that in 1999, some time after the investigation of this matter began, the State of Texas enacted legislation that permits the State Attorney General to approve, under certain conditions, joint negotiations between health plans and groups of competing physicians. Texas Senate Bill 1468, 76th Leg., R.S. ch., 1586 (1999). That conduct that gave rise to the investigation and consent agreement predated enactment of the law, and thus was not approved under its terms. Moreover, the conduct described in the complaint would not necessarily have met the conditions for approval set forth in the Act.

Enactment of the statute does not eliminate the need for an order in this matter. The statute permits only collective negotiations that are approved by the Attorney General, imposes conditions under which that approval may be granted, and by its terms expires on September 1, 2003. As is discussed below, the Commission's order does not prohibit future conduct that is approved and supervised by the State of Texas pursuant to its statute and protected from federal antitrust liability under the state action doctrine. It is necessary and appropriate, however, to provide a remedy against future conduct by the respondents that is not approved and supervised by the State of Texas.

The core operative provisions of the proposed order are contained in Section II. Section II.A prohibits respondents from entering into or facilitating any agreement: (1) To negotiate physician services on behalf of any physicians with any payer or provider; (2) to deal, refuse to deal, or threaten to refuse to deal with any payer or provider; (3) regarding any term on which any physicians deal, or are willing to deal, with any payer or provider; (4) to restrict the ability, or facilitate the refusal, of any physician to deal with any payer or provider on an individual basis or through any other arrangement; or (5) to convey to any payer or provider, through any Austin area physician, any information concerning

actual or potential dealings by any physician with any payer or provider.

The fifth provision listed above (section II.A.5 of the proposed order) ensures that communications between any respondent and any payer within a "messenger model" arrangement be conveyed by a neutral third party (someone other than a physician with an active practice in the Austin area). In a messenger model arrangement, physicians individually convey and receive, through a third party, information, offers, and responses from and to payers or providers. See Statements of Antitrust Enforcement Policy in Health Care. Issued jointly by the Federal Trade Commission and the U.S. Department of Justice (August 28, 1996) at 43–52, 89–92, 125–27, 138–40, 4 Trade Reg. Rep. (CCH) ¶ 13,153. In addition, section V.A.2 of the order ensures that any respondent intending to use a messenger model arrangement provide prior notification to the Commission.

Section II.B prohibits respondents from exchanging, transferring, or facilitating the exchange or transfer of information among Austin area physicians concerning: (1) Negotiation with any payer or provider regarding reimbursement terms; or (2) actual or contemplated intentions or decisions with respect to any terms, dealings or refusals to deal with any payer or provider. Section II.C prohibits respondents from encouraging, advising, or pressuring any person, other than the government, to engage in any action that would be prohibited if the person were subject to the order.

Section II contains three provisos. The first permits each respondent medical practice group to participate in arrangements for the provision of physician services that are limited to physicians from the same medical practice group. The second proviso, as noted above, permits respondents to engage in conduct that is approved and supervised by the State of Texas, so long as that conduct is protected from liability under the federal antitrust laws pursuant to the state action doctrine. The state action doctrine protects from federal antitrust liability any private conduct that is both: (1) in accordance with a clearly articulated and affirmatively expressed state policy to supplant competition; and (2) actively supervised by the state itself. *See, e.g., FTC* v. *Ticor Title Insurance Co.*, 504 U.S. 621 (1992); *California Retail Liquor Dealers Ass'n* v. *Midcal Aluminum, Inc.*, 445 U.S. 97, 105 (1980).

The third proviso allows respondents to engage in conduct (including collectively determining reimbursement and other terms of contracts with payers) that is reasonably necessary to operate any "qualified risk-sharing joint arrangement" or "qualified clinically-integrated joint arrangement," provided respondents comply with the prior notification requirements set forth in section V of the order. The prior notification mechanism will allow the Commission to evaluate a specific proposed arrangement and assess its likely competitive impact. This requirement will help guard against any recurrence of acts and practices that have restrained competition and injured consumers.

As defined in the order, a "qualified risk-sharing joint arrangement" must satisfy three conditions. First, all physicians participating in the arrangement must share substantial financial risk from their participation in the arrangement. The definition illustrates ways in which physicians might share financial risk, tracking the types of financial risk-sharing set forth in the 1996 FTC/DOJ Statements of Antitrust Enforcement Policy in Health Care. Second, any agreement on prices or terms of reimbursement entered into by the arrangement must be reasonably necessary to obtain significant efficiencies through the joint arrangement. Third, the arrangement must be non-exclusive—*i.e.*, it must not restrict the ability, or facilitate the refusal, of physicians participating in the arrangement to deal with payers individually or through any other arrangement.

A "qualified clinically-integrated joint arrangement" pertains to arrangements in which the physicians undertake cooperative activities to achieve efficiencies in the delivery of clinical services, without necessarily sharing substantial financial risk. As with risk-sharing arrangements, the definition of clinically integrated joint arrangements reflects the analysis contained in the 1996 FTC/DOJ Statements of Antitrust Enforcement Policy in Health Care. According to the order's definition, the participating physicians must have a high degree of interdependence and cooperation through their use of programs to evaluate and modify their clinical practice patterns, in order to control costs and assure the quality of physician services provided through the arrangement. In addition, as with risk-sharing arrangements, the arrangement must be non-exclusive and any agreement on prices or terms of reimbursement entered into by the arrangement must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

Sections III.A and III.B require respondents to distribute the order and complaint to its members and other specified persons, including payers. Sections III.C and III.D require that each respondent, for the next five years: (2) Distribute copies of the order and complaint to new members and other specified persons; (2) publish annually to members and owners a copy of the order and complaint; and (3) brief members and owners annually on the meaning and requirements of the order and the antitrust laws.

Sections IV and VI consist of standard Commission reporting and compliance procedures. Section IV specifies that Texas Surgeons IPA must include in its annual reports information identifying each payer or provider that has communicated with Texas Surgeons IPA concerning a possible contract for physician services, the proposed terms of any such contract, and Texas Surgeons IPA's response to the payer or provider.

Finally, section VII of the proposed order contains a twenty year "sunset" provision under which the order terminates twenty years after the date the order was issued.

By direction of the Commission.

Donald S. Clark,

Secretary.

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BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00037]

Cancer Prevention and Control Activities; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a sole source cooperative agreement program for Cancer Prevention and Control Activities. This program addresses the "Healthy People 2010" priority area(s) related to Cancer.

The purpose of the program is to assist with the following:

1. Developing and disseminating current national, state, and community-based comprehensive information on cancer prevention and early detection.

2. Developing and disseminating professional education programs.

3. Promoting the analysis and development of surveillance and

research data, and its translation into public health messages, practice and programs.

4. Facilitating the exchange of expertise and coordination of programmatic efforts related to cancer prevention and control among a variety of public, private, and not-for-profit agencies at the national, state, tribal, and community level.

B. Eligible Applicants

Single Source

Assistance will be provided only to the American Cancer Society (ACS). No other applications are solicited. ACS is uniquely qualified to conduct information and education development and dissemination activities under this cooperative agreement because it has—

1. An extraordinary position as the nation's only voluntary, community-based cancer prevention and control organization dedicated to eliminating cancer as a major health problem through research, education, prevention, early detection and treatment of all cancers.

2. Access to cancer research, prevention, education and treatment programs and to the populations they serve through an extensive network that includes 2 million members, a National Society, 17 Divisions covering all states, 5 metropolitan areas, the District of Columbia and Puerto Rico, and more than 3,400 community-based unit offices.

3. Collaborative relationships with a broad range of national, state, and community-based public, private and not-for-profit organizations to disseminate information related to all aspects of cancer prevention and control; coordinate access to information and services for cancer patients, their families and others; and provide guidance and consultation at the national, state, and community level for a coordinated and comprehensive system of cancer activities. Therefore, the American Cancer Society is the only organization that can perform these activities.

C. Availability of Funds

Approximately $755,000 is available in FY 2000 to fund the projects listed below. It is expected that the awards will begin June 1, 2000, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Project 1. Coordinated School Health Programs

Approximately $300,000 is available to support coordinated school health programs for cancer prevention and control for school-aged populations, parents, and relevant health and education personnel.

Project 2. Comprehensive Cancer Control Activities

Approximately $400,000 will be available to plan, implement, and evaluate cancer control activities for the public (including minority, older, and underserved populations), providers (including physicians, nurses, physician assistants, health educators, state health department personnel, and others), and decision makers (policy makers, state health department administrators, and others.)

Project 3. International Network of Women Against Tobacco (INWAT)

Approximately $35,000 is available to support activities which address the complex issues of tobacco use among women and girls internationally.

Project 4. Dissemination of Information on Oral Cancer

Approximately $20,000 is available to support the review and revision of currently available information and educational materials on oral cancer and incorporate oral cancer issues into educational outreach services and/or activities for dental and other health care providers.

Use of Funds

Cooperative agreement funds may not be expended to provide inpatient hospital or treatment services. Treatment is defined as any service recommended by a clinician, including medical and surgical intervention provided in the management of a diagnosed condition.

D. Program Requirements

Projects should emphasize activities in one or more of the following areas:

1. Development and dissemination of materials, conferences, workshops, and activities for public education on the prevention and early detection of cancer through behavior modification, including utilization of proven screening modalities for early detection (*e.g.*, fecal occult blood tests, sigmoidoscopy, mammography, Pap smears), avoidance of ultraviolet radiation exposure, prevention and cessation of tobacco use, improving nutrition and dietary practices, and increasing physical activity levels. Materials should be culturally competent, linguistically appropriate and developed for a broad audience of race/ethnic groups.

2. Coalition building, and coordination of resources and activities for adult and adolescent cancer education, promotion of prevention and early detection services, and referral to treatment and follow-up services.

3. Epidemiologic and behavioral research development and analysis of data on factors related to cancer outcomes and other diseases which may be influenced by tobacco, early detection (*e.g.*, fecal occult blood tests, sigmoidoscopy, mammography, Pap smears), avoidance of ultraviolet radiation exposure, nutrition and dietary practices, and increasing physical activity levels.

4. Development and dissemination of materials, conferences, workshops and activities for professional education in cancer prevention and early detection, and support of training opportunities in cancer epidemiology, prevention, early detection and program evaluation.

5. Development and evaluation of materials and activities to improve outreach to underserved populations for cancer prevention, early detection and follow-up services.

6. The grantee will participate in a six-month progress review meeting with appropriate representatives from CDC within 30 days of the sixth month of each budget period.

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for activities under 1. (Recipient Activities), and CDC shall be responsible for conducting activities under 2. (CDC Activities.)

1. Recipient Activities

Project 1. Coordinated School Health Programs

A. Collaborate with state and local education agencies with data collection around youth risk behavior, and school policies and programs.

B. Support Coordinated School Health Programs as a priority among American Cancer Society's constituents and the public, with a special emphasis on four risk factors: Tobacco use, excessive consumption of fat and calories, inadequate physical activity, and obesity.

C. Support local, state, and national coalitions to improve Coordinated School Health Programs.

D. Collaborate with CDC funded and other national, non-governmental organizations in support of school health programs.

E. Participate with other appropriate agencies in planning the annual

National School Health Leadership Conference.

Project 2. Comprehensive Cancer Control Activities

A. Collaborate with state health departments on comprehensive cancer control training, planning, implementation, and evaluation activities. Develop leadership models for state health departments to utilize. Assess comprehensive cancer control collaboration models.

B. Coordinate and support activities related to colorectal and prostate cancer education and awareness. Collaborate with state health departments in the replication and evaluation of prostate and colorectal cancer training for providers and health care systems that promotes informed decisions; provides current, balanced information on the benefits and limitations of screening and treatment for these cancers; and provides information that will enable participants to overcome system barriers to implementing screening. Collaborate with appropriate agencies in reaching primary care providers with written information regarding screening for colorectal cancer and messages for their patients to raise awareness of the need for colorectal cancer screening.

C. Identify the critical components of effective breast and cervical cancer screening outreach/education partnerships between state health departments and other organizations, including ACS.

D. Develop evaluation measures to determine the impact of project activities and identify effective cancer prevention and control projects for future continuation, replication and/or dissemination.

E. Develop clear cancer education materials and/or other items that accurately and effectively convey appropriate health messages and behaviors to the targeted populations regarding lung, breast, cervical, colorectal, prostate, and skin cancers.

F. Identify opportunities for cancer issues management forums; coordinate and support cancer issues management forums among a variety of public, private, and not-for-profit agencies at the national, state, tribal, and community level.

G. Develop and implement studies that explore the effects and interactions between various lifestyle factors and health services on the risk of cancer and cancer mortality.

Project 3. International Network of Women Against Tobacco (INWAT)

A. Provide contacts primarily to women, individuals, and organizations working in tobacco control; collect and distribute information regarding global women and tobacco issues; and develop strategies to counter tobacco advertising and promotion. Strategies might include maintaining a website, a member directory and newsletter.

B. Provide assistance with the organization and planning of conferences on tobacco control such as the World Tobacco Conference.

C. Collaborate with state health departments to address tobacco use and prevention among women and girls.

D. Provide presentations on women and tobacco, with a strong emphasis on tobacco company marketing tactics at state and national meetings in the United States.

E. Promote female leadership in initiating the development of tobacco control organizations internationally.

Project 4. Dissemination of Information on Oral Cancer

A. Inventory and assess existing educational materials and other forms of information on oral cancer available to the public and health care providers.

B. Based on the assessment, revise educational materials and other forms of information on oral cancer to reflect up-to-date, science-based knowledge.

C. Conduct and evaluate outreach activities to increase knowledge and awareness among dental and other health care providers of information resources that address oral cancer issues.

D. Coordinate these activities with major organizations in dental health, such as the American Dental Association and its component state associations, the National Institute of Dental and Cranial Facial Research, and the Association of State and Territorial Dental Directors.

2. CDC Activities

A. Collaborate on and provide technical assistance for program activities.

B. Assist in the conduct of epidemiologic studies, research, and analysis using existing or newly created databases.

C. Participate in the development of plans for the sharing and dissemination of research, data analysis, evaluation efforts, demonstration projects and interventions, and other cancer information. Sponsor information exchanges through workshops, conferences, and other group mechanisms as appropriate .

D. Assist in defining the scope, development, and dissemination of plans and education materials, guidelines, and standards for cancer prevention and control activities.

E. Assist in developing and evaluating professional training opportunities for cancer prevention and control, particularly in the areas of prevention, early detection, surveillance, data analysis and cost-effectiveness.

F. Give guidance on cancer issues management topics to be considered and timing of consideration.

E. Application Content

Use the information in the "Program Requirements," "Other Requirements," and "Evaluation Criteria" sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 20 (twenty) double-spaced pages, printed on one side, with one-inch margins, and unreduced font.

A separate narrative is required for each Project which contains—

1. Statement of Need.—Identify opportunities for enhancement/improvement and existing gaps in the support of comprehensive cancer control and prevention activities. Describe the extent to which the proposed programs will fill existing gaps and provide a brief description of each programmatic plan or research activity.

2. Objectives. Establish and submit short- and long-term objectives for each project proposed in Section 1 (statement of need) above. Objectives must be specific, measurable, attainable, time phased, and realistic.

3. Operational Plan.—Submit an operational plan that addresses means for achieving each of the objectives established in Section 2 (objectives) above. Provide a concise description of each component or major activity and how it will be implemented. The plan must identify and establish a time line for the completion of each component or major activity.

4. Evaluation Plan.—Submit a quantitative plan for monitoring progress toward achieving each of the objectives stated in Section 2 (objectives) above.

5. Program Management.—Describe the need, functions, and qualification for each program or research personnel requested.

6. Budget.—Submit a detailed budget and narrative justification for each of the projects that is consistent with the purpose of the program and the proposed activities.

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189).

By May 1, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

1. Deadline: Applications will be considered as meeting the deadline if they are either:

a. Received on or before the stated deadline date; or

b. Sent on or before the deadline date. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service.

Private metered postmarks shall not be acceptable proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1(a) or 1(b) above are considered late applications and will be returned to the applicant.

G. Evaluation Criteria

The application will be evaluated according to the following criteria by an independent review group appointed by CDC.

1. Need statement. The extent to which the applicant identifies specific opportunities and existing gaps related to the purpose of the program. (10 points)

2. Objectives. The degree to which short- and long-term objectives are specific, measurable, attainable, time phased, and realistic. (20 points)

3. Operational Plans. The adequacy of the applicant's plan to carry out the proposed activities, including the extent to which the applicant plans to work collaboratively with other organizations and individuals who may have an impact on cancer prevention and control objectives. (25 points)

4. Evaluation Plan. The extent to which the evaluation plan appears capable of monitoring progress toward meeting project objectives. (25 points)

5. Program Management. The extent to which proposed staff appear to be qualified and possess capacity to perform the project. (20 points)

6. Budget. The extent to which each line-item budget and narrative justification for Projects 1, 2, 3 and 4 are reasonable and consistent with the purpose and objectives of the program. (Not weighted)

7. Human Subjects. Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? (Not Weighted)

8. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans for recruitment and research for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of the following:

1. Annual written progress report must be submitted 30 days after the end of each budget period.

2. Financial status report (FSR) must be submitted 90 days after the end of each budget period.

3. Final financial and performance reports, must be submitted 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application package.

AR–1 Human Subjects Requirement
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–20 Conference Support

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a), 317(k)(2) of the Public Health Service Act [42 U.S.C. 241(a) and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance Number for this program is 93.283.

J. Where To Obtain Additional Information

To obtain additional information contact: Nealean K. Austin, Grants Management Specialist Grants Management Branch, Procurement and Grants Office Announcement 00037 Centers for Disease Control and Prevention (CDC) Room 3000, 2920 Brandywine Road, Atlanta, GA 30341, telephone (770)–488–2754, E-mail address nea1@cdc.gov

See also the CDC home page on the Internet: http://www.cdc.gov

For program technical assistance, contact: Corinne Graffunder, Chief, Section A, Program Services Branch, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–57, Atlanta, GA 30341–3724, telephone (770) 488–4880, fax (770) 488–3230.

Dated: April 17, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–9956 Filed 4–20–00; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93D–0139]

International Conference on Harmonisation; Draft Revised Guidance on Q1A(R) Stability Testing of New Drug Substances and Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a draft revised guidance entitled "Q1A(R) Stability Testing of New Drug Substances and Products." The draft revised guidance, which updates a guidance on the same topic published in the **Federal Register** of September 22, 1994 (the 1994 guidance), was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft revised guidance clarifies the 1994 guidance, adds information, and provides consistency with more recently published ICH guidances. The draft revised guidance is intended to reflect formal scientific principles for stability testing of drugs and should be useful to applicants submitting new drug applications for new molecular entities and associated drug products.

DATES: Submit written comments by June 5, 2000.

ADDRESSES: Submit written comments on the draft revised guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Copies of the draft revised guidance are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573. Single copies of the draft revised guidance may be obtained by mail from the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), or by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. Copies may be obtained from CBER's FAX Information System at 1–888–CBER–FAX or 301–827–3844.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Chi Wan Chen, Center for Drug Evaluation and Research (HFD–830), Food and Drug Administration, 9201 Corporate Blvd., Rockville, MD 20850, 301–827–2001.

Regarding the ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In October 1999, the ICH Steering Committee agreed that a draft revised guidance entitled "Q1A(R) Stability Testing of New Drug Substances and Products" should be made available for public comment. The draft revised guidance is a revision of an ICH guidance on the same topic published in the **Federal Register** of September 22, 1994 (59 FR 48754). The draft revised guidance is the product of the Quality Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the Quality Expert Working Group.

In accordance with FDA's good guidance practices (62 FR 8961, February 27, 1997), this document is now being called a guidance, rather than a guideline.

The draft revised guidance provides guidance on the information to be submitted in the stability data package for a new drug substance or drug product. The revisions add information on stability storage conditions: (1) For drug substances and products intended to be stored in a refrigerator or freezer and (2) for drug products packaged in semipermeable containers. The revisions clarify the guidance on: (1) Testing frequencies for stability studies at accelerated and intermediate conditions and (2) stability commitments.

The draft revised guidance recognizes certain regional regulatory constraints. The Preamble and Objective sections of the 1994 guidance were revised to recognize that, in some regions, guidance does not constitute a regulatory requirement. The Storage Conditions sections of the 1994 guidance were revised to recognize that, in some regions, stability amendments to pending applications are not permissable.

The draft revised guidance includes references to three recently published ICH guidances: (1) "Q1B Photostability Testing of New Drug Substances and Products," (2) "Q6A Specifications: Test Procedures and Acceptance Criteria for New Drug Substances and New Drug Products: Chemical Substances," and (3) "Q6B Specifications: Test Procedures and Acceptance Criteria for Biotechnological/Biological Products."

This draft guidance applies in general to new dosage forms and biotechnological/biological products as does the original Q1A guidance. Additional guidance specific to the stability testing of new dosage forms and biotechnological/biological products can be found in two previously published ICH guidances entitled "Q1C: Stability Testing of New Dosage Forms" and "Q5C: Quality of Biotechnological Products: Stability Testing of Biotechnological/Biological Products," respectively.

This draft revised guidance represents the agency's current thinking on stability testing of new drug substances and products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft revised guidance on or before June 5, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft revised guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guidance is available on the Internet at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/publications.htm.

The text of the draft revised guidance follows:

Q1A(R): Stability Testing of New Drug Substances and Products [1]

Preamble

The following guidance defines the stability data package for a new drug substance or drug product that is sufficient for a registration application within the three regions of the EC, Japan, and the United States. It does not seek necessarily to cover

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the testing for registration in or export to other areas of the world.

The principle that stability information generated in any one of the three regions of the EC, Japan, and the United States would be mutually acceptable in both of the other two regions has been established, provided the information is consistent with this guidance and the labeling is in accord with national/regional requirements.

The guidance seeks to exemplify the core stability data package for new drug substances and products, but leaves sufficient flexibility to encompass the variety of different practical situations that may be encountered due to specific scientific considerations and characteristics of the materials being evaluated. Alternative approaches may be used when there are scientifically justifiable reasons.

Specific details of the sampling and testing for particular dosage forms/packaging, etc., are not covered in this guidance.

Objective

The purpose of stability testing is to provide evidence on how the quality of a drug substance or drug product varies with time under the influence of a variety of environmental factors, such as temperature, humidity, and light, and enables recommended storage conditions, retest periods, and shelf lives to be established.

Scope

The guidance addresses the information to be submitted in registration applications for new molecular entities and associated drug products. This guidance does not currently seek to cover the information to be submitted for abbreviated or abridged applications, variations, clinical trial applications, etc.

The choice of test conditions defined in this guidance is based on an analysis of the effects of climatic conditions in the three areas of the EC, Japan, and the United States. The mean kinetic temperature in any region of the world can be derived from climatic data (Grimm, W., *Drugs Made in Germany*, 28:196–202, 1985 and 29:39–47, 1986).

Drug Substance

General

Information on the stability of the drug substance is an integral part of the systematic approach to stability evaluation.

Stress Testing

Stress testing helps determine the intrinsic stability of the molecule by establishing degradation pathways in order to identify the likely degradation products and to validate the stability indicating power of the analytical procedures used. Stress testing is conducted to provide data on forced decomposition products and decomposition mechanisms. The severe conditions that may be encountered during distribution can be covered by stress testing. These studies should establish the inherent stability characteristics of the molecule, such as the degradation pathways, and lead to identification of degradation products and hence support the suitability of the proposed analytical procedures. The detailed nature of the studies will depend on the individual drug substance and type of drug product.

This testing is likely to be carried out on a single batch of material and to include the effect of temperatures in 10 degrees Celsius (°C) increments (e.g., 50 °C, 60 °C) above the accelerated temperature test condition and humidity (e.g., 75 percent RH or greater) where appropriate and oxidation and photolysis on the drug substance plus its susceptibility to hydrolysis across a wide range of pH values when in solution or suspension.

Photostability testing should be an integral part of stress testing. (The standard conditions for photostability testing are defined in ICH Q1B.)

It is recognized that some degradation pathways can be complex and that, under forcing conditions, decomposition products may be observed that are unlikely to be formed under accelerated or long-term testing. This information may be useful in developing and validating suitable analytical methods, but it may not always be necessary to examine specifically for all degradation products if it has been demonstrated that in practice these are not formed.

Results from these studies will form an integral part of the information provided to regulatory authorities.

Selection of Batches

Data from formal stability studies should be provided on at least three batches of the drug substance. The batches manufactured to a minimum of pilot scale should be by the same synthetic route and use a method of manufacture and procedure that simulates the final process to be used on a manufacturing scale.

The overall quality of the batches of drug substance placed on formal stability studies should be representative of the quality of the material used in clinical studies and of the quality of material to be made on a manufacturing scale.

Supporting stability data may be provided using stability data generated from batches of drug substance made on a laboratory scale.

Packaging/Containers

The stability studies should be conducted on material stored in a container closure system that is the same as or simulates the packaging proposed for storage and distribution.

Test Attributes, Test Procedures, and Test Acceptance Criteria

Test attributes, test procedures, and acceptance criteria are defined in ICH Q6A and Q6B.

The testing should cover attributes of the drug substance susceptible to change during storage and likely to influence quality, safety, and/or efficacy. Stability information should cover, as appropriate, the physical, chemical, biological, and microbiological attributes of the drug substance. Validated stability-indicating test procedures should be applied. The need for and extent of replication will depend on the results from validation studies.

Acceptance criteria are numerical limits, ranges, and other criteria for the specific tests described and should include individual and total upper limits for impurities and degradation products. The acceptance criteria should be derived from batches of the material used in the preclinical and clinical studies.

Testing Frequency

Frequency of testing should be sufficient to establish the stability attributes of the drug substance. For drug substances with a proposed retest period of at least 12 months, the frequency of testing at the long-term storage condition will normally be every 3 months over the first year, every 6 months over the second year, and then annually.

For the accelerated storage conditions, a minimum of three test points, including the initial and end points (e.g., 0, 3, and 6 months) is recommended. Where an expectation (based on development experience) exists that results from accelerated storage are likely to approach significant change criteria, increased testing should be conducted either by testing additional samples at the final time point or by inclusion of a fourth time point in the protocol.

When testing at the intermediate storage condition is necessary as a result of failure at the accelerated storage condition, a minimum of four test points, including the initial and end points, is recommended (e.g., 0, 6, 9, and 12 months).

Storage Conditions

In general, a drug substance should be evaluated for stability as appropriate under storage conditions that test both thermal stability and stability at conditions of elevated humidity. The storage conditions and length of studies chosen should be sufficient to cover storage, shipment, and subsequent use.

The storage condition at which long-term testing is conducted will be reflected in the labeling and retest date. The long-term testing should cover a minimum of 12 months' duration at the time of submission and should be continued for a sufficient period to cover the proposed retest period. Additional data accumulated during the assessment period of the registration application should be submitted to the authorities if requested. Data from the accelerated storage condition or from the intermediate storage condition, as appropriate, may be used to evaluate the impact of short-term excursions outside the label storage conditions (such as might occur during shipping).

Significant change is defined as failure to meet the specification.

Long-term, accelerated, and, where appropriate, intermediate storage conditions for drug substances are detailed in the sections below. Alternative storage conditions are allowable if justified. If not covered by a subsequent section, a drug substance should be considered as belonging to the general case.

General Case for Drug Substances

Study	Storage Condition	Minimum Time Period at Submission
Long-term	25 °C ± 2 °C/60% RH ± 5% RH	12 months
Intermediate	30 °C ±2 °C/60% RH ± 5% RH	6 months
Accelerated	40 °C ± 2 °C/75% RH ± 5% RH	6 months

When "significant change" occurs at any time during 6 months' storage at the accelerated storage condition, additional testing at the intermediate storage condition should be conducted and evaluated against significant change criteria. The initial application should include a minimum of 6 months' data from a 12-month study at the intermediate storage condition.

Drug Substances Intended for Storage in a Refrigerator

Study	Storage Condition	Minimum Time Period at Submission
Long-term	5 °C ± 3 °C	12 months
Accelerated	25 °C ± 2 °C/60% RH ± 5% RH	6 months

Data from refrigerated storage should be assessed according to the evaluation section of this guidance, except where explicitly noted below.

If significant change occurs between 3 and 6 months' testing at the accelerated storage condition, the proposed retest period should be based on the real-time data available at the long-term storage condition.

If significant change occurs within the first 3 months' testing at the accelerated storage condition, data should be supplied to cover use of the drug substance outside of the label storage condition. It is not necessary to continue to test a product to 6 months when an obvious significant change has occurred within the first 3 months.

Drug Substances Intended for Storage in a Freezer

Study	Storage Condition	Minimum Time Period at Submission
Long-term	−20 °C ± 5 °C	12 months

For drug substances intended for storage in a freezer, the retest period should be based on the real-time data presented at the long-term storage condition. In the absence of an accelerated storage condition for drug substances intended to be stored in a freezer, testing at an elevated temperature (e.g., 5 °C ± 3 °C or 25 °C ± 2 °C) on a single batch should be conducted to support use of the drug substance outside of the proposed label storage condition.

Drug Substances Intended for Storage Below −20 °C

Drug substances intended for storage below −20 °C should be treated on a case-by-case basis.

Stability Commitment

When available long-term stability data on primary batches do not cover the proposed retest period granted at the time of approval, the studies should be continued postapproval in order to firmly establish the retest period.

Where the submission includes long-term storage data from three production batches covering the proposed retest period, no postapproval commitment is necessary. Otherwise, the appropriate alternative from those shown below should be followed:

1. If the submission includes stability data on at least three production batches, a commitment should be made to continue these studies through the proposed retest period.

2. If the submission includes stability data on fewer than three production batches, a commitment should be made to continue these studies through the proposed retest period and to place additional production batches, to a total of at least three, on long-term stability studies through the proposed retest period.

3. If the submission does not include stability data on production batches, a commitment should be made to place the first three production batches on long-term stability studies through the proposed retest period.

The stability protocol used for long-term studies for the stability commitment should be the same as that for the primary batches unless otherwise scientifically justified.

Evaluation

The design of the stability study is to establish, based on testing a minimum of three batches of the drug substance and evaluating the stability information (covering as appropriate the physical, chemical, biological, and microbiological attributes), a retest period applicable to all future batches of the drug substance manufactured under similar circumstances. The degree of variability of individual batches affects the confidence that a future production batch will remain within specification throughout the assigned retest period.

The data may show so little degradation and so little variability that it is apparent from looking at the data that the requested retest period will be granted. Under these circumstances, it is normally unnecessary to go through the formal statistical analysis; providing a full justification for the omission would be sufficient.

An acceptable approach for quantitative characteristics that are expected to change with time is to determine the time at which the 95 percent one-sided confidence limit for the mean degradation curve intersects the acceptable specification limit. If analysis shows that the batch-to-batch variability is small, it is advantageous to combine the data into one overall estimate, and this can be done by first applying appropriate statistical tests (e.g., p values for level of significance of rejection of more than 0.25) to the slopes of the regression lines and zero time intercepts for the individual batches. If it is inappropriate to combine data from several batches, the overall retest period may depend on the minimum time a batch may be expected to remain within acceptable and justified limits.

The nature of any degradation relationship will determine the need for transformation of the data for linear regression analysis. Usually the relationship can be represented by a linear, quadratic, or cubic function on an arithmetic or logarithmic scale. Statistical methods should be employed to test the goodness of fit of the data on all batches and combined batches (where appropriate) to the assumed degradation line or curve.

Limited extrapolation of the real-time data from the long-term testing storage condition beyond the observed range to extend the retest period at approval time may be undertaken, particularly where the accelerated data support this. However, this assumes that the same degradation relationship will continue to apply beyond the observed data. Hence the use of

extrapolation should be justified in each application in terms of what is known about the mechanism of degradation, the goodness of fit of any mathematical model, batch size, existence of supportive data, etc.

Any evaluation should cover not only the assay, but also the levels of degradation products and other appropriate attributes.

Statements/Labeling

A storage temperature range may be used in accordance with relevant national/regional requirements. The range should be based on the stability evaluation of the drug substance. Where applicable, specific instructions should be provided, particularly for drug substances that cannot tolerate freezing. The use of terms such as "ambient conditions" or "room temperature" is unacceptable.

A retest period should be derived from the stability information.

Drug Product

General

The design of the formal stability studies for the drug product should be based on knowledge of the behavior and properties of the drug substance and on experience gained from clinical formulation studies and from stability studies on the drug substance. The likely changes on storage and the rationale for the selection of attributes to test in the formal stability studies should be stated.

Photostability Testing

Photostability testing should be conducted on at least one primary batch of the drug product if appropriate. (The standard conditions for photostability testing are defined in ICH Q1B.)

Selection of Batches

Data from formal stability studies are to be provided on at least three batches of the drug product. Two of the three batches should be at least pilot scale. The third batch may be smaller (e.g., 25,000 to 50,000 tablets or capsules for solid oral dosage forms). The manufacturing process used for primary batches should simulate that to be applied to production batches and should provide product of the same quality and meet the same quality specification as that intended for marketing. Where possible, batches of the drug product should be manufactured using different batches of drug substance.

Laboratory scale batches are not acceptable for formal stability studies. Data on associated formulations or packaging may be submitted as supporting stability data.

Packaging/Containers

The stability testing should be conducted on the dosage form stored in the packaging proposed for marketing. Additional testing of unprotected drug product can form a useful part of stress testing and packaging evaluation, as can studies carried out on other related packaging materials in supporting the definitive package(s).

Test Attributes, Test Procedures, and Acceptance Criteria

Test attributes, test procedures, and acceptance criteria, including the concept of release and shelf life specifications, are defined in ICH Q6A and Q6B.

The testing should cover those attributes susceptible to change during storage and likely to influence quality, safety, and/or efficacy. Analytical test procedures should be fully validated, and the assays should be stability-indicating. The need for and extent of replication will depend on the results of validation studies.

The range of testing should cover, as appropriate, chemical and/or biological stability, loss of preservative, physical properties, characteristics, functionality, and microbiological attributes.

Acceptance criteria should relate to the release limits (where applicable) to be derived from consideration of all the available stability information. The shelf life specification could allow acceptable and justifiable differences from the release specification based on the stability evaluation and the changes observed on storage. It should include specific upper limits for degradation products, the justification for which should be influenced by the levels observed in material used in preclinical studies and clinical trials. The justification for the limits proposed for certain other tests, such as particle size and/or dissolution rate, should reference the results observed for batch(es) used in bioavailability and/or clinical studies. Any differences between the release and shelf life specifications for antimicrobial preservatives should be supported by preservative efficacy testing.

Testing Frequency

Frequency of testing should be sufficient to establish the stability attributes of the drug product. For products with a proposed shelf life of at least 12 months, the frequency of testing at the long-term storage condition will normally be every 3 months over the first year, every 6 months over the second year, and then annually.

For the accelerated storage conditions, a minimum of three test points, including the initial and end points (e.g., 0, 3, and 6 months), is recommended. Where an expectation (based on development experience) exists that results from accelerated storage are likely to approach significant change criteria, increased testing should be conducted either by testing additional samples at the final time point or by inclusion of a fourth time point in the protocol.

When testing at the intermediate storage condition is necessary as a result of failure at the accelerated storage condition, a minimum of four test points, including the initial and end points is recommended (e.g., 0, 6, 9, and 12 months).

Matrixing or bracketing can be applied, if justified. (See Glossary.)

Storage Conditions

In general, a drug product should be evaluated under storage conditions that test the thermal stability and, if appropriate, its sensitivity to moisture or, for liquid products in semipermeable containers, potential for solvent loss. The storage conditions and length of studies chosen should be sufficient to cover storage, shipment, and subsequent use.

Stability of the drug product after reconstituting or diluting according to labeling should be addressed to provide appropriate and supportive information.

The storage condition at which long-term testing is conducted will be reflected in the labeling and expiration date. The long-term testing should cover a minimum of 12 months' duration at the time of submission and should be continued for a sufficient period to cover the proposed shelf life. Additional data accumulated during the assessment period of the registration application should be submitted to the authorities if requested. Data from the accelerated storage condition or from the intermediate storage condition as appropriate may be used to evaluate the impact of short-term excursions outside the label storage conditions (such as might occur during shipping).

In general, significant change is defined as:

1. A 5 percent potency change from the initial assay value;
2. Any specified degradant exceeding its acceptance criteria;
3. Failure to meet acceptance criteria for appearance and physical properties (e.g., color, phase separation, resuspendibility, delivery per actuation, caking, hardness); and as appropriate to the product type;
4. The pH exceeding its acceptance criteria; and
5. Dissolution exceeding the acceptance criteria for 12 dosage units.

Long-term, accelerated, and, where appropriate, intermediate storage conditions for drug products are detailed in the sections below; alternative storage conditions are allowable if justified. If not covered by a subsequent section, a drug product should be considered as belonging to the general case.

General Case

Study	Storage Condition	Minimum Time Period at Submission
Long-term	25 °C ± 2 °C/60% RH ± 5% RH	12 months
Intermediate	30 °C ± 2 °C/60% RH ± 5% RH	6 months
Accelerated	40 °C ± 2 °C/75% RH ± 5% RH	6 months

When "significant change" occurs at any time during 6 months' storage at the accelerated storage condition, additional testing at the intermediate storage condition should be conducted and evaluated against significant change criteria. The initial application should include a minimum of 6 months' data from a 12-month study at the intermediate storage condition.

Drug Products Stored in Impermeable Containers

The sensitivity to moisture or the potential for solvent loss is not a concern for drug products packaged in impermeable containers that provide a permanent barrier to passage of moisture or solvent, e.g., semisolids in sealed aluminum tubes, solutions in sealed glass ampules. Thus, stability studies for products stored in impermeable containers may be conducted under any relative humidity.

Drug Products Packaged in Semipermeable Containers

Aqueous-based products packaged in semipermeable containers should be evaluated for potential water loss in addition to physical, chemical, biological, and microbiological stability. This evaluation can be carried out under conditions of low relative humidity as discussed below. Other comparable approaches may be developed and reported for nonaqueous, solvent-based products.

Ultimately, the shelf life for aqueous-based drug products stored in semipermeable containers should justify storage in low relative humidity environments. To accommodate this, it should be demonstrated that the drug product will remain within its approved acceptance criteria throughout the proposed shelf life if stored at a temperature of 25 °C and at the reference relative humidity of 40 percent RH.

Study	Storage Condition	Minimum Time Period at Submission
Long-term	25 °C ± 2 °C/40% RH ± 5% RH	12 months
Intermediate	30 °C ± 2 °C/60% RH ± 5% RH	6 months
Accelerated	40 °C ± 2 °C/not more than (NMT) 25% RH	6 months (water loss after 3 months)

An acceptable alternative approach to storage at the reference reduced humidity (for both long-term and accelerated storage) is to perform the stability studies under higher relative humidity and to derive the water loss at reduced relative humidity through calculation. This may be done by experimentally determining the permeation coefficient for the container and closure system or the ratio of water loss between the two humidity conditions at the same temperature as shown in the example below. The permeation coefficient for any packaging system may be experimentally determined to cover a worst case alternative relative to the proposed drug product.

A significant change in water loss for a product packaged in a semipermeable container has occurred when there has been a water loss of greater than 5 percent after 3 months' storage equivalent to 40 °C/NMT 25 percent RH. However, for small single-dose products, a water loss of greater than 5 percent after 3 months' storage equivalent to 40 °C/NMT 25 percent RH may be acceptable if justified.

A significant change in water loss alone will not necessitate testing at the intermediate storage condition.

Example Approach for Determining Percentage Water Loss

An appropriate approach for calculating an equivalent percentage water loss for a product stored at a reference relative humidity from data generated from an alternative relative humidity at the same temperature is described below. A linear rate of moisture loss over the storage period should be demonstrated.

A mean percentage weight loss at the reference relative humidity should be calculated from that measured at the alternative relative humidity at a given temperature after a specified storage period.

For example, the equivalent weight loss after 3 months' storage at NMT 25 percent RH (at 40 °C) is the product of the percentage weight loss at 75 percent RH (at 40 °C) after 3 months, multiplied by 3.0 from the table below.

Other valid calculated relative humidity ratios than those in the table below may also be used.

Alternative Humidity	Nominated Humidity	Ratio
60% RH	25% RH	2.4
60% RH	40% RH	1.5
75% RH	25% RH	3.0

Drug Products Intended for Storage in a Refrigerator

Study	Storage Condition	Minimum Time Period at Submission
Long-term	5 °C ± 3 °C	12 months
Accelerated	25 °C ± 2 °C/60% RH ± 5% RH	6 months

Data from refrigerated storage should be assessed according to the evaluation section of this guidance except where explicitly noted below.

If significant change occurs between 3 and 6 months' testing at the accelerated storage condition, the proposed shelf life should be based on the real-time data available from the long-term storage condition.

If significant change occurs within the first 3 months' testing at the accelerated storage condition, data should be supplied to cover use of the drug product outside of the label storage condition. It is not necessary to continue to test a product to 6 months when an obvious significant change has occurred within the first 3 months.

Drug Products Intended for Storage in a Freezer

Study	Storage Condition	Minimum Time Period at Submission
Long-term	−20 °C ± 5 °C	12 months

For drug products intended for storage in a freezer, the shelf life should be based on the real-time data presented at the long-term storage condition. In the absence of an accelerated storage condition for drug products intended to be stored in a freezer, data from elevated temperature (e.g., 5 °C ± 3 °C or 25 °C ± 2 °C) on a single batch should be obtained to support use of the drug product outside of the proposed label storage condition.

Drug Products Intended for Storage Below −20 °C

Drug products intended for storage below −20 °C should be treated on a case-by-case basis.

Stability Commitment

When available long-term stability data on primary batches do not cover the proposed shelf life granted at the time of approval, the studies should be continued postapproval in order to firmly establish the shelf life.

Where the submission includes long-term storage data from three production batches covering the proposed shelf life, no postapproval commitment is necessary. Otherwise, the appropriate alternative from those shown below should be followed.

1. If the submission includes stability data on at least three production batches, a commitment should be made to continue these studies through the proposed shelf life.
2. If the submission includes stability data on fewer than three production batches, a commitment should be made to continue these studies through the proposed shelf life and to place additional production batches, to a total of at least three, on long-term and accelerated stability studies through the proposed shelf life.
3. If the submission does not include stability data on production batches, a commitment should be made to place the first three production batches on long-term and accelerated stability studies through the proposed shelf life.

The stability protocol used for studies on commitment batches should be the same as that for the primary batches unless otherwise scientifically justified.

Where a significant change has occurred at the accelerated storage condition for the primary batches, testing on the commitment batches should be conducted at the intermediate storage condition instead of the accelerated storage condition. As an alternative, testing may be conducted at the accelerated storage condition for the commitment batches. However, if significant change occurs at the accelerated storage condition on the commitment batches, testing at the intermediate storage condition should also be conducted.

Evaluation

A systematic approach should be adopted in the presentation and evaluation of the stability information, which should cover, as appropriate, physical, chemical, biological, and microbiological quality attributes, including particular properties of the dosage form (for example, dissolution rate for solid oral dosage forms).

Where the data show so little degradation and so little variability that it is apparent from looking at the data that the requested shelf life will be granted, it is normally unnecessary to go through the formal statistical analysis; providing a justification for the omission should be sufficient.

The design of the stability study is to establish, based on testing a minimum of three batches of the drug product, a shelf life and label storage instructions applicable to all future batches of the drug product manufactured and packed under similar circumstances. The degree of variability of individual batches affects the confidence that a future production batch will remain within specification throughout its shelf life.

An acceptable approach for quantitative characteristics that are expected to change with time is to determine the time at which the 95 percent one-sided confidence limit for the mean degradation curve intersects the acceptance criterion. If analysis shows that the batch-to-batch variability is small, it is advantageous to combine the data into one overall estimate, and this can be done by first applying appropriate statistical tests (e.g., p values for level of significance of rejection of more than 0.25) to the slopes of the regression lines and zero time intercepts for the individual batches. If it is inappropriate to combine data from several batches, the overall shelf life may depend on the minimum time a batch may be expected to remain within acceptable and justified limits.

The nature of the degradation relationship will determine the need for transformation of the data for linear regression analysis. Usually the relationship can be represented by a linear, quadratic, or cubic function on an arithmetic or logarithmic scale. Statistical methods should be employed to test the goodness of fit on all batches and combined batches (where appropriate) to the assumed degradation line or curve.

Limited extrapolation of the real-time data presented from the long-term storage condition beyond the observed range to extend the shelf life at approval time, particularly where the accelerated data support this, may be undertaken. However, this assumes that the same degradation relationship will continue to apply beyond the observed data, and hence the use of extrapolation should be justified in each application in terms of what is known about the mechanisms of degradation, the goodness of fit of any mathematical model, batch size, existence of supportive data, etc.

Any evaluation should consider not only the assay, but the levels of degradation products and appropriate attributes. Where appropriate, attention should be paid to reviewing the adequacy of the mass balance and different stability and degradation performance.

The stability of the drug product after reconstituting or diluting according to labeling should be addressed to provide appropriate and supportive information.

Statements/Labeling

A storage temperature range may be used in accordance with relevant national/regional requirements. The range should be based on the stability evaluation of the drug product. Where applicable, specific instruction should be provided, particularly for drug products that cannot tolerate freezing.

The use of terms such as "ambient conditions" or "room temperature" is unacceptable.

There should be a direct linkage between the label statement and the demonstrated stability characteristics of the drug product.

Annex 1

Glossary and Information

The following terms have been in general use, and the following definitions are provided to facilitate interpretation of the guidance.

Accelerated testing: Studies designed to increase the rate of chemical degradation or physical change of a drug substance or drug product by using exaggerated storage conditions as part of the formal stability studies. These data, in addition to long-term stability studies, may also be used to assess longer-term chemical effects at nonaccelerated conditions and to evaluate the impact of short-term excursions outside the label storage conditions such as might occur during shipping. Results from accelerated testing studies are not always predictive of physical changes.

Bracketing: The design of a stability schedule so that at any time point only the samples on the extremes, for example, of container size and/or dosage strengths, are tested. The design assumes that the stability of the intermediate condition samples are represented by those at the extremes.

Where a range of dosage strengths is to be tested, bracketing designs may be particularly applicable if the strengths are very closely related in composition (e.g., for a tablet range made with different compression weights of a similar basic granulation, or a capsule range made by filling different plug fill weights of the same basic composition into different size capsule shells). Where a range of sizes of immediate containers is to be evaluated,

bracketing designs may be applicable if the composition of the container and the type of closure are the same throughout the range.

Climatic zones: The concept of dividing the world into four zones based on defining the prevalent annual climatic conditions.

Commitment batches: Production batches of a drug substance or drug product for which the stability studies will be initiated or completed postapproval through a commitment made in the registration application.

Dosage form: A pharmaceutical product type (for example, tablet, capsule, solution, cream) that contains a drug substance generally, but not necessarily, in association with excipients.

Drug product: The dosage form in the final immediate packaging intended for marketing.

Drug substance: The unformulated drug substance that may subsequently be formulated with excipients to produce the drug product.

Excipient: Anything other than the drug substance in the dosage form.

Expiration date: The date placed on the container/labels of a drug product designating the time during which a batch of the product is expected to remain within the approved shelf life specification if stored under defined conditions, and after which it must not be used.

Formal stability studies: Long-term and accelerated (and intermediate) studies undertaken on primary and/or commitment batches according to a prescribed stability protocol to establish or confirm the retest period of a drug substance or the shelf life of a drug product.

Impermeable containers: Containers that provide a permanent barrier to the passage of gases or solvents.

Long-term testing: Stability studies under the recommended storage condition, for the retest period or shelf life proposed (or approved) for labeling.

Mass balance: The process of adding together the assay value and levels of degradation products to see how closely these add up to 100 percent of the initial value, with due consideration of the margin of analytical error.

Matrixing: The statistical design of a stability schedule so that only a fraction of the total number of samples is tested at any specified sampling point. At a subsequent sampling point, different sets of samples of the total number would be tested. The design assumes that the stability of the samples tested represents the stability of all samples. The differences in the samples for the same drug product should be identified as, for example, covering different batches, different strengths, different sizes of the same container and closure, and, possibly, in some cases, different container/closure systems.

Matrixing can cover reduced testing when more than one variable is being evaluated. Thus the design of the matrix will be dictated by the factors being covered and evaluated. This potential complexity precludes inclusion of specific details and examples, and it may be desirable to discuss design in advance with the regulatory authority, where this is possible. In every case, it is essential that all batches are tested initially and at the end of the long-term testing.

Mean kinetic temperature: A single derived temperature that, if maintained over a defined period, affords the same thermal challenge to a drug substance or drug product as would have been experienced over a range of both higher and lower temperatures for an equivalent defined period. The mean kinetic temperature is higher than the arithmetic mean temperature and takes into account the Arrhenius equation.

When establishing the mean kinetic temperature for a defined period, the formula of J. D. Haynes (*J. Pharm. Sci.* 60:927–929, 1971) can be used.

New molecular entity: A substance that has not previously been registered as a new drug substance with the national or regional authority concerned.

Pilot scale: The manufacture of either drug substance or drug product by a procedure fully representative of and simulating that to be applied on a full manufacturing scale.

For solid oral dosage forms, this is generally taken to be at a minimum scale of one-tenth that of full production or 100,000 tablets or capsules, whichever is the larger.

Primary batch: A batch of drug substance or drug product used in a formal stability study from which stability data are submitted in a registration application for the purpose of establishing a retest period or shelf life, respectively. A primary batch should be at least a pilot scale batch (except in the case of drug product where one of the three batches can be smaller); but it may also be a production batch.

Production batch: A batch of a drug substance or drug product manufactured at production scale by using production equipment in a production facility as specified in the application.

Retest date: The date after which samples of the drug substance should be examined to ensure that the material is still suitable for use.

Retest period: The period of time during which the drug substance can be considered to remain within the specification and therefore acceptable for use in the manufacture of a given drug product, provided that it has been stored under the defined conditions. After this period, a batch destined for use in the manufacture of a drug product should be retested for compliance with specifications and then used immediately.

Semipermeable containers: Containers that allow the passage of solvent, usually water, while preventing solute loss. The mechanism for solvent transport occurs by absorption into one container surface, diffusion through the bulk of the container material, and desorption from the other surface. Transport is driven by a partial-pressure gradient. Examples of semipermeable containers include plastic bags and semirigid, low-density polyethylene (LDPE) pouches for large volume parenterals, and LDPE ampules, bottles, and vials.

Shelf life: The time interval that a drug product is expected to remain within the approved shelf life specification provided that it is stored under the conditions defined on the label in the proposed containers and closure.

Specification: See ICH Q6A and Q6B.

Specification—release: The combination of physical, chemical, biological, and microbiological tests and acceptance criteria that determine the suitability of a drug product at the time of its release.

Specification—shelf life: The combination of physical, chemical, biological, and microbiological tests and acceptance criteria that determine the suitability of a drug substance throughout its retest period or that a drug product should meet throughout its shelf life.

Storage conditions tolerances: The acceptable variation in temperature and relative humidity of storage facilities.

The equipment should be capable of controlling the storage condition within the ranges defined within the body of this document. The actual temperature and humidity should be monitored during stability storage. Short-term spikes due to opening of doors of the storage facility are accepted as unavoidable. The effect of excursions due to equipment failure should be addressed by the applicant and reported if judged to impact stability results. Excursions that exceed the defined tolerances for more than 24 hours should be described in the study report and their impact assessed.

Stress testing (Drug substance): Studies undertaken to elucidate intrinsic stability attributes. Such testing is part of the development strategy and is normally carried out under more severe conditions than those used for accelerated tests.

Stress testing (Drug product): Photostability testing should be an integral part of stress testing (see ICH Q1B).

Special test conditions for specific products (e.g., metered-dose inhalations, creams, emulsions) may need additional stress studies.

Supporting stability data: Data other than from formal stability studies, such as stability data on early synthetic route batches of drug substance, small scale batches of materials, investigational formulations not proposed for marketing, related formulations, product presented in containers and/or closures other than those proposed for marketing, information regarding test results on containers, and other scientific rationale that support the analytical procedures, the proposed retest period or shelf life and storage conditions.

Footnote

This guidance has been developed within the Quality Expert Working Group of the ICH Process. Additional topics continue to be discussed within the Expert Working Group and will be the subject of future guidance documents.

Dated: April 14, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. CFDA 93.576]

Technical Assistance to Special Programs

AGENCY: Office of Refugee Resettlement (ORR), ACF, DHHS.

ACTION: Notice of availability of FY 2000 discretionary funds for technical assistance in six categories of programs that assist refugees.

SUMMARY: ORR invites eligible entities to submit competitive applications for cooperative agreements to provide technical assistance to agencies that serve in the following program areas:

Program Area 1—Technical assistance for special programs in designated initiatives;

Program Area 2—Technical assistance for employment services;

Program Area 3—Technical assistance to English language training providers;

Program Area 4—Technical assistance to agencies with Individual Development Account (IDA) projects for refugees;

Program Area 5—Technical assistance for refugee child welfare services; and

Program Area 6—Technical assistance for refugee housing services.

Applications will be screened and evaluated as indicated in this program announcement. Awards will be contingent on the outcome of the competition and the availability of funds.

Applications will be accepted pursuant to the Director's discretionary authority under section 412(c) of the Immigration and Nationality Act (INA) (8 U.S.C. 1522), as amended.

DATES: The closing date for submission of applications is June 20, 2000. See Part IV of this announcement for more information on submitting applications.

FOR FURTHER INFORMATION CONTACT: Program Areas 1 and 5—Marta Brenden at (202) 205–3589, *MBrenden@ACF.DHHS.GOV;* Program Areas 2, 4 and 6—Henley Portner at (202) 401–5363, *HPortner@ACF.DHHS.GOV;* Program Area 3—Nguyen Kimchi at (202) 401–4556, *NKimchi@ACF.DHHS.GOV.* Application materials are also available from Marta Brenden at the Office of Refugee Resettlement, 370 L'Enfant Promenade SW, Washington DC 20447 and on the ORR website at *www.acf.dhhs.gov/program/orr.*

SUPPLEMENTARY INFORMATION: This program announcement consists of four parts:

Part I: Background, legislative authority, funding availability, CFDA Number, applicant eligibility, project and budget periods, length of application, and for each of the six program areas: purpose and scope, allowable activities, and review criteria.

Part II: General instructions for preparing a full project description.

Part III: The Review Process—Intergovernmental review, initial ACF screening, competitive review, and funding reconsideration.

Part IV: The Application—Application materials, application development, application submission information and certifications, and regulations and reporting.

Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for each collection of information is estimated to average 8 hours, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. The following information collections are included in the program announcement: OMB Approval No. 0970–0139, ACF UNIFORM PROJECT DESCRIPTION (UPD) which expires 10/31/2000. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Part I: Background

In recent years, ORR has supported the work of its grantees in various program areas through several "technical assistance" grants with organizations uniquely qualified to advance the field, improve program achievement and develop organizational capacity to improved performance. ORR has supported technical assistance for employment, English language training, microenterprise, services to the elderly, and the impact of welfare reform on refugees. Under this announcement, ORR continues its practice of providing technical assistance to the field of grantees in several new or expanded categories. ORR's intent through this support is to equip grantees with the best technical help for continuous improvement in programs, in their capacity to serve refugees, and in their impact on refugee lives and economic independence.

Legislative Authority: This program is authorized by Section 412(c)(1)(A) of the Immigration and Nationality Act (INA)(8 U.S.C. 1522 (c)(1)(A)), as amended, which authorizes the Director "to make grants to, and enter into contracts with, public or private nonprofit agencies for projects specifically designed—(i) to assist refugees in obtaining the skills which are necessary for economic self sufficiency, including projects for job training, employment services, day care, professional refresher training, and other recertification services; (ii) to provide training in English where necessary (regardless of whether the refugees are employed or receiving cash or other assistance); and (iii) to provide where specific needs have been shown and recognized by the Director, health (including mental health) services, social services, education and other services." The FY 2000 Appropriation Act for the Department of Health and Human Services (Pub. L. 106–113) appropriates funds for refugee and entrant assistance activities authorized by these provisions of the INA.

Funding Availability: ORR expects to make available approximately $2 million for up to 6 cooperative agreements one for each program area.

The Director reserves the right to award less, or more, than the funds described, in the absence of worthy applications, or under such other circumstances as may be deemed to be in the best interest of the government.

CFDA Number: 93.576.

Applicant Eligibility: Eligible applicants are public and private non-profit organizations and agencies of State governments that are responsible for the refugee program undef 45 CFR 400.5.

Project and Budget Periods: This announcement invites applications for project periods up to 3 years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for 3 years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the 3 year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

Length of Application: Applicants are encouraged to limit program narratives to 25 pages (double-spaced on standard, letter-size paper, in 12-point font) plus no more than 25 pages of appended material. This limitation of 25 pages per program area should be considered as a maximum, and not necessarily a goal.

Program Area 1

Technical Assistance for Special Programs in Designated Initiatives

Program Purpose and Scope

The Office of Refugee Resettlement (ORR) proposes to award one cooperative agreement for the purpose of providing technical assistance to designated programs of special interest to the Director. For fiscal year 2000 funds, three special programs have been designated: microenterprise development; model projects for comprehensive cash assistance and employment services; and projects for refugees who have experienced long-term difficulties in assimilation. Through this award, ORR intends to provide technical planning and assistance to grantees for multiple purposes: to strengthen organizational capacity; to share policies, procedures, and materials through a grantee network; to collaborate on performance measures; to report program performance; and to assist grantees in their efforts at continuous performance improvement and its impact on refugee economic self-sufficiency.

Approximately $500,000 has been allocated for this program area. One cooperative agreement may be awarded for one national project. Successful applicants will have demonstrated expertise in both organizational and community development as well as more specialized experience in the field of micro-finance and the development of microenterprise projects.

Through this cooperative agreement, ORR intends to review and approve (1) A technical assistance plan, including proposed site visits and technical assistance activities and schedules; (2) all written materials developed and proposed for dissemination to the field; and (3) locations of proposed workshops, proposed topics and formats, and agendas.

Allowable Activities

Applicants may propose all or some combination of the following, as well as other innovative strategies for technical assistance:

- Assessing technical assistance and training needs in agencies and communities;
- Disseminating information, materials and technical advice related to employment, subsidized employment, self-employment, effective case management, financial management systems, and micro-finance;
- Collecting and summarizing data and information on program performance;
- Facilitating the electronic exchange of information through a network website, listserve, and through the collection and reporting of program performance, performance measurement, and impact information;
- Providing on-site or group training or technical assistance meetings and workshops;
- Developing training curricula and materials;
- Conducting on-site program reviews;
- Maintenance of a database of characteristics and achievements of the programs and preparation and dissemination of reports on the program characteristics and achievements.

Program Area 1

Application Review Criteria

1. *Approach.* The technical assistance plan is clearly described and appropriate, and the proposed activities and timeframes are reasonable. The technical assistance plan describes clearly and in detail the manner in which the applicant will assess the need for technical assistance, the proposed activities, and how the proposed activities are expected to address known technical assistance needs of agencies and communities. (20 points)

2. *Results or Benefits Expected.* The results or benefits expected are clearly explained and are appropriate to the technical assistance activities proposed. (15 points)

3. *Organizational Profiles.* The capacity of the applicant to achieve the project's objectives is clearly demonstrated. Organizational expertise and experience in the provision of technical assistance and information sharing are appropriate for the proposed project. (30 points)

4. *Staff and Position Data.* Staff qualifications are clearly presented and are appropriate to achieving the project's objectives. The description of staff qualifications demonstrates experience in providing technical assistance to refugee programs and communities. (20 points)

5. *Budget and Budget Justification.* The budget is clearly presented and is detailed, reasonable, and cost effective. (15 points)

Program Area 2

Technical Assistance for Employment Services

Purpose and Scope

The primary goal of refugee resettlement is to assist refugees in becoming self-sufficient. Two factors critical to achieving this goal are attachment to the labor force and the opportunity to earn a living wage. ORR proposes to award one cooperative agreement to an agency that will provide technical assistance to ORR employment service providers.

This announcement continues ORR's longstanding support for technical assistance to refugee employment service providers for multiple purposes: to identify model and best practices and to disseminate this information broadly; to assist local programs in implementing performance measures under the Government Performance and Results Act (GPRA); to develop and conduct training and on-site peer reviews; and to perform on-site analysis of employment services in such areas as staff training, multi-agency collaboration, and employer and/or refugee involvement in the design of services.

Approximately $275,000 has been allocated for this program area. One cooperative agreement may be awarded for one national project. Through this cooperative agreement, ORR intends to review and approve (1) the technical assistance plan, including proposed site visits and technical assistance activities and schedules; (2) all written materials developed prior to the release of such documents; and (3) locations of proposed workshops, proposed topics and formats, and agendas.

Allowable Activities

Applicants may propose all or a combination of the activities described below. Applicants may also propose new or innovative approaches to providing technical assistance for employment services.

- On-site visits to assess technical assistance needs, to provide technical assistance and training directly to agencies, and to ascertain best practices in providing employment services;
- Preparation of a variety of reports to be distributed to agencies to assist them in providing employment services, including site visit reports and best practices reports;
- Organization and operation of workshops for agencies in the area of employment services, to include facilitated discussions, training, and presentations; and
- Provision of technical assistance, both in writing and by telephone, to agencies.
- Maintenance of a database of characteristics and achievements of the programs and preparation and dissemination of reports on the program characteristics and achievements.

Program Area 2

Application Review Criteria

1. *Approach.* The technical assistance plan is clearly described and appropriate; and the proposed activities and timeframes are reasonable. The technical assistance plan describes clearly and in detail the manner in which the applicant will assess the need for technical assistance, the proposed activities, and how the proposed activities are expected to address known technical assistance needs of agencies that provide employment services. (30 points)

2. *Results or Benefits Expected.* The results or benefits expected are clearly explained and are appropriate to the technical assistance activities proposed. (15 points)

3. *Organizational Profiles.* The capacity of the applicant to achieve the project's objectives is clearly demonstrated. Organizational expertise and experience in the provision of employment services and in the provision of technical assistance are described and are appropriate and adequate for the proposed project. (20 points)

4. *Staff and Position Data.* Staff qualifications are clearly presented and are appropriate to achieving the project's objectives. The description of staff qualifications demonstrates experience in providing employment services and in providing technical assistance. (20 points)

5. *Budget and Budget Justification.* The budget is clearly presented and is detailed, reasonable, and cost effective. (15 points)

Program Area 3

Technical Assistance to English Language Training Providers

Purpose and Scope

The Office of Refugee Resettlement (ORR) proposes to award one cooperative agreement in the amount of $275,000 for a project to provide technical assistance and training to providers of English language training (ELT). Technical assistance may be proposed for the following purposes:

- Design and improvement of employment-related ELT. Technical assistance and training may be provided both to teachers and to programs; the technical assistance and training may be focused on curricula, teaching strategies, and/or program development such as integrating ELT with employment-focused services, work-site ELT, and family literacy.
- Training in the areas of cultural adjustment, learning disabilities, and mental health and in the use of new or innovative classroom technologies. Training may include topics such as identifying cultural adjustment/learning disabilities/mental health issues, accommodating such issues in the classroom and/or seeking professional consultation, and developing appropriate curricula. Training may also include introducing teachers to new and/or innovative ELT technologies, such as using software programs in classroom instruction.
- Organization and facilitation of consultative and information-sharing sessions. Such sessions may include staff from similar types of agencies or from agencies serving similar groups of refugees. The purpose of the sessions would be to provide an opportunity for ELT staff to share experiences. These sessions may also provide opportunities for different types of staff—ELT teachers, case managers, employment specialists, public health professionals—to meet to develop strategies for effective working relationships.

Applicants should propose technical assistance projects that are to be implemented nationally. Under the cooperative agreement for these projects, ORR intends to review and approve: (1) The technical assistance plan, including proposed sites and participants; (2) assessment tools to be used to evaluate technical assistance needs; (3) subject areas for which technical assistance curricula will be used; and (4) materials prepared for use in the delivery of the technical assistance.

Allowable Activities

Applicants may propose all or a combination of the activities described below. Applicants may also propose additional or innovative approaches for technical assistance for ELT providers.

- Assessment of ELT technical assistance needs in agencies and communities;
- Organization and operation of training and facilitated sessions on identified ELT technical assistance needs. These sessions may include both single agency and multi-site or multi-project training and facilitated discussion;
- Provision of technical assistance, both in writing and by telephone, to ELT providers;
- Review of existing materials and recommendations on usefulness/appropriateness for use in refugee-oriented ELT; and preparation and distribution of materials relevant to identified ELT needs;
- Development of, or participation in the development of, employment-based ELT curricula;
- Facilitation of a network of providers to share information and to resolve problems.

Program Area 3

Review Criteria for Technical Assistance to Organizations Providing English Language Training

1. *Approach.* The technical assistance plan is clearly described and appropriate; and the proposed activities and timeframes are reasonable. The technical assistance plan describes clearly and in detail the manner in which the applicant will assess the need for technical assistance, the proposed activities, and how the proposed activities are expected to address known ELT technical assistance needs. (30 points)

2. *Results or Benefits Expected.* The results or benefits expected are clearly explained and are appropriate to the technical assistance activities proposed. (15 points)

3. *Organization Profiles.* The capacity of the applicant to achieve the project's objectives is clearly demonstrated. Organizational expertise and experience in the provision of ELT and/or in ELT technical assistance to ELT staff and to agencies are described and are appropriate and adequate for the proposed project. (20 points)

4. *Staff and Position Data.* Staff qualifications are clearly presented and are appropriate to achieving the project's objectives. The description of staff qualifications demonstrates experience in providing ELT services and in providing ELT and cross-cultural communication technical assistance. (20 points)

5. *Budget and Budget Justification.* The budget is clearly presented, detailed, reasonable, and cost effective. (15 points)

Program Area 4

Technical Assistance to Agencies With Individual Development Account (IDA) Refugee Projects

Purpose and Scope

ORR invites eligible entities to submit competing applications for a cooperative agreement to provide technical assistance and information sharing activities to providers of Individual Development Account (IDA) Programs for Refugees. Under the cooperative agreement, the grantee would implement various activities intended to assist ORR-funded IDA grantees in the administration of their projects.

Allowable Activities

Allowable activities could include:

- On-site visits to assess technical assistance needs, provide technical assistance and training directly to grantees, and to ascertain best practices in both administering IDA programs and addressing the specific needs of refugees participating in these programs;
- Preparation of a variety of reports to be distributed to IDA grantees to assist them in administering their IDA programs, including site visit reports and best practices reports;
- Organization and operation of workshops for IDA grantees, to include facilitated discussions, training, and presentations;
- Provision of technical assistance, both in writing and by telephone, to IDA grantees;
- Facilitation of a network of IDA grantees to share information and to resolve problems, through, for example, the maintenance of a listserve, conference calls, etc.; and
- Maintenance of a database of characteristics and achievements of IDA programs and preparation and dissemination of reports on IDA program characteristics and achievements.

Applicants may propose additional techniques for providing technical assistance and information sharing activities to IDA grantees.

Approximately $250,000 has been allocated for this program area. Under the cooperative agreement(s), ORR intends to review and approve: (1) Proposed site visits and technical assistance activities; (2) all written materials developed prior to the release of such documents; (3) locations of proposed workshops, proposed topics and formats, and agendas; and (4) database program and structure. ORR expects that applicants for the cooperative agreement(s) for technical assistance will demonstrate in their applications expertise in the areas of administering financial programs such as IDA programs, providing financial training to low-income populations, and in providing technical assistance and information-sharing activities.

Program Area 4

IDA Review Criteria

Proposed projects to provide Technical Assistance and Information-Sharing Activities to Individual Development Account Programs will be evaluated according to the following criteria:

1. *Approach.* The technical assistance plan is clearly described and appropriate; the proposed activities and timeframes are reasonable and feasible. The plan describes in detail how the proposed activities will be accomplished. (30 points)

2. *Results or Benefits Expected.* The results or benefits expected are clearly explained and are appropriate to the technical assistance activities proposed. (15 points)

3. *Staff and Position Data.* Staff qualifications are clearly presented and are appropriate to achieving the project's goals. Staff qualifications show experience in providing technical assistance and information-sharing activities in the areas of administering financial programs and providing financial training to low-income populations. (20 points)

4. *Organization Profiles.* The applicant demonstrates the capacity of the organization to achieve the project's objectives. Organizational expertise and experience in the provision of technical assistance and information-sharing activities is described. (20 points)

5. *Budget and Budget Justification.* The budget is reasonable, clearly presented, and cost-effective. (15 points)

Program Area 5

Technical Assistance for Refugee Child Welfare Services

Program Purpose and Scope

Well-being of refugee families is an important contributing factor to family self-sufficiency. ORR proposes to award one cooperative agreement to an agency that will provide technical assistance to public and private agencies in promoting collaboration among refugee communities, the network of refugee resettlement services, and the child and youth services including child protective services to promote the well-being of refugee families.

Refugee families residing in U.S. communities may encounter significant differences in child rearing practices compared to the ethnic or national customs of their country of origin. First, traditional cultures with a strong authoritarian parental role may frequently conflict with the more egalitarian American family, resulting, for example, in differences in refugee youth's desire for early independence. Second, refugee families may experience trauma as a result of the persecution or flight, the effects of which may be destabilizing to family life. Third, refugee families may need income from both parents, unlike the practice of their home country, to adequately provide for their needs. Fourth, single parent families face similar stresses that U.S. single parent families face in addition to the trauma from their refugee experiences. Finally, they may live in low income neighborhoods with high crime rates and without the benefit of an ethnic community to provide information, guidance, protection and support.

As a result of these factors, a small number of refugee families encounter and may require the assistance of child protective services and other services of the judicial system. These experiences may not be easily understood by the refugee family and the larger refugee community and serve to make the whole refugee community insecure with the U.S. child welfare and child protective systems. This may result in difficulties for refugee families to establish homes that promote the well-being of its members, where parents are secure in their role of providing a nurturing and educational environment for their children and youth. Children may also confront conflicts in meeting the expectations of their parents, fitting in with their peers or finding a sense of belonging in the schools and social groups.

Many U.S. community public services do not have the cultural expertise or language capability to work effectively with refugee families. While the Civil Rights Act of 1964 mandates equal access to public services, frequently public resources are limited, and cultural and linguistic capacity is seldom available for refugee families.

In recent years, ORR has funded initiatives for recreation for refugee youth, crime prevention among refugee youth, parenting classes, and intergenerational activities. Currently, ORR has approximately 30 grantees in these program areas, but is likely to award funds to additional grantees during this fiscal year. It has become clear over time that a productive relationship with child welfare services, child protective services, youth shelters and other youth transitional services is also needed to promote the refugee families' capacity to care for their children and youth in their new communities.

ORR is interested in supporting a national technical assistance effort to promote collaboration among refugee families, refugee service providers and the children and youth service agencies that promote the welfare of refugee families, refugee youth and children. The cooperative agreement is also intended to promote cultural and linguistic services or access to services for refugee families. ORR is interested in the grantee selecting approximately six specific communities in which to concentrate assessment and training activities with child welfare services

and refugee families. Approximately $400,000 has been allocated for this program area.

Through this cooperative agreement, ORR intends to review and approve: (1) A technical assistance plan (such as the site selection of specific communities for concentrated activities), including proposed additional site visits and technical assistance activities and schedules; (2) all written materials developed and proposed for dissemination to the field; (3) locations of proposed workshops, proposed topics, formats and agendas; and 4) other innovative activities that may be proposed by the grantee.

Allowable Activities

Applicants may propose all or some combination of the following, as well as other innovative strategies for technical assistance:

- Provision of technical assistance to refugee communities, refugee service providers, school systems, school counselors, and child welfare and youth services agencies both in writing and through telephone consultation;
- Facilitating the electronic exchange of refugee child welfare information through a network website and listserv;
- Providing on-site group training or technical assistance meetings and workshops;
- Promoting refugee families as foster parents;
- Locating or developing training curricula and materials;
- Conducting on-site reviews of refugee child welfare services.

Program Area 5

Refugee Child Welfare Services Application Review Criteria

1. *Approach.* The technical assistance plan is clearly described and appropriate, and the proposed activities and timeframes are reasonable. The technical assistance plan describes clearly and in detail the manner in which the applicant will assess the need for technical assistance, the proposed activities, and how the propose activities are expected to address known technical assistance needs of agencies and communities. (25 points)

2. *Results and Benefits Expected.* The results or benefits expected are clearly explained and are appropriate to the technical assistance activities proposed. (20 points)

3. *Organizational Capacity.* The capacity of the applicant to achieve the project's objectives is clearly demonstrated. Organizational expertise and experience in the provision of technical assistance and information sharing are appropriate for the proposed project. (25 points)

4. *Staff.* Staff qualifications are clearly presented and are appropriate to achieving the project's objectives. The description of staff qualifications demonstrates experience providing technical assistance to refugee programs and communities. (15 points)

5. *Budget.* The budget is clearly presented and is detailed, reasonable and cost effective. (15 points)

Program Area 6

Technical Assistance for Refugee Housing Services

Purpose and Scope

The primary goal of refugee resettlement is to assist refugees in becoming self-sufficient. One factor that is critical to achieving this goal is access to affordable and decent housing. ORR proposes to award one cooperative agreement to an agency that will provide technical assistance to ORR service providers in the provision of this essential service.

This program area is intended to assist both service providers and refugees in gaining access to affordable and decent housing for refugee singles and families. In locations throughout the U.S. where the majority of refugees are resettled, rent levels are being pushed to record highs; and there is a dwindling supply of affordable and decent housing. In many areas, rents are increasing faster than wages; and recent energy price hikes have exacerbated an already critical situation. There is a need to assist resettlement and service agencies in developing innovative approaches to the housing crisis so that refugees can live as well-informed consumers in safe and decent homes and communities.

A grantee in this category will provide technical planning and assistance to promote access to housing that meets acceptable standards for health, safety, affordability, good repair and maintenance.

Approximately $250,000 has been allocated for this program area. One cooperative agreement may be awarded for one national project.

Through this cooperative agreement, ORR intends to review and approve (1) The technical assistance plan, including proposed site visits and technical assistance activities and schedules; (2) all written materials developed prior to the release of such documents; and (3) locations of proposed workshops, proposed topics and formats, and agendas.

Allowable Activities

Applicants may propose all or a combination of the activities described below. Applicants may also propose new or innovative approaches to providing technical assistance in the area of housing assistance and services.

- On-site visits to assess technical assistance needs, to provide technical assistance and training directly to agencies, and to ascertain best practices in providing services for counseling refugees about housing;
- Provision of information to agencies on relevant available services and programs in the area of housing assistance, including programs designed for low-income first time home buyers;
- Preparation of a variety of reports to be distributed to agencies to assist them in providing housing services, including site visit reports and best practices reports;
- Organization and operation of workshops for agencies in the area of housing services, to include such subjects as effective use of Section 8 vouchers, energy assistance, and other local assistance programs as available;
- Assistance in developing collaborative agreements with employers, housing non-profit agencies, landlords, and other Federal and State agency programs;
- Training of case workers in orienting refugees to be responsible tenants including timely payment of rent, maintenance of apartments, building good credit and negotiating with landlords;
- Provision of technical assistance, both in writing and by telephone, to agencies.

Program Area 6

Refugee Housing Services Application Review Criteria

1. *Approach.* The technical assistance plan is clearly described and appropriate; and the proposed activities and timeframes are reasonable. The technical assistance plan describes clearly and in detail the manner in which the applicant will assess the need for technical assistance, the proposed activities, and how the proposed activities are expected to address known technical assistance needs of agencies that provide housing assistance and services. (30 points)

2. *Results and Benefits Expected.* The results or benefits expected are clearly explained and are appropriate to the technical assistance activities proposed. (20 points)

3. *Organizational Capacity.* The capacity of the applicant to achieve the project's objectives is clearly

demonstrated. Organizational expertise and experience in the provision of housing assistance and in the provision of technical assistance are described and are appropriate and adequate for the proposed project. (25 points)

4. *Staff.* Staff qualifications are clearly presented and are appropriate to achieving the project's objectives. The description of staff qualifications demonstrates experience in providing housing assistance services and in providing technical assistance. (10 points)

5. *Budget.* The budget is clearly presented and is detailed, reasonable, and cost effective. (15 points)

Part II. General Instructions for Preparing a Full Project Description

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered to be relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those that will not be used in support of the specific project for which funds are requested.

General Instructions

Cross-referencing should be used rather than repetition. ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. (Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.) Pages should be numbered and a table of contents should be included for easy reference.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived. For example, when applying for a grant to establish a neighborhood child care center, describe who will occupy the facility, who will use the facility, how the facility will be used, and how the facility will benefit the community which it will serve. For example, when applying for microenterprise development assistance, describe the prospective clients in terms of numbers, national origin, interest in microenterprise and what business opportunities are available to refugees in the community.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of microloans made. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

Identify the kinds of data to be collected, maintained, and/or disseminated. Note that clearance from the U.S. Office of Management and Budget might be needed prior to a "collection of information" that is "conducted or sponsored" by ACF. List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Geographic Location

Describe the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

Staff and Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

Organization Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Third-Party Agreements

Include written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail

scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Letters of Support

Provide statements from community, public and commercial leaders that support the project proposed for funding.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, "Federal resources" refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: Costs of tangible, non-expendable, personal property, having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, an applicant may use its own definition of equipment provided that such equipment would at least include all equipment defined above.

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgment that the applicant is accepting a lower rate than allowed.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application which contain this information.

Non-Federal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

Total Direct Charges, Total Indirect Charges, Total Project Costs

Self explanatory.

Part III: The Review Process

Intergovernmental Review: State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

Note: State/territory participation in the intergovernmental review process does not signify applicant eligibility for financial assistance under a program. A potential applicant must meet the eligibility requirements of the program for which it is applying prior to submitting an application to its SPOC, if applicable, or to ACF.

In accordance with Executive Order #12372, "Intergovernmental Review of Federal Programs," this listing represents the designated State Single Points of Contact. The jurisdictions not listed no longer participate in the process but grant applicants are still eligible to apply for the grant even if your state, territory, commonwealth, etc. does not have a "state single point of contact." Jurisdictions without "state single points of contacts" include: Alabama; Alaska; American Samoa; Colorado; Connecticut; Kansas; Hawaii; Idaho; Louisiana; Massachusetts; Minnesota; Montana; Nebraska; New Jersey; Ohio; Oklahoma; Oregon; Palau; Pennsylvania; South Dakota; Tennessee; Vermont; Virginia; and Washington.

This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to the Office of Management and Budget and the State in question. Changes to the list will only be made upon formal notification by the State. Also, this listing is published biannually in the Catalogue of Federal Domestic Assistance.

Jurisdictions that participate in the Executive Order process have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule. When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, 370 L'Enfant Promenade SW, 6th Floor, Washington DC, 20447 Attn: Ms. Daphne Weeden.

A list of the Single Points of Contact for each State and Territory follows:

OMB State Single Point of Contact Listing

Arizona

Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315, FAX: (602) 280–8144, e-mail: jonis@ep.state.az.us

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, FAX: (501) 682–5206

California

Grants Coordinator, Office of Planning and Research/State Clearinghouse, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone: (916) 323–7480, FAX: (916) 323–3018

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Office of the Budget, 540 S. du Pont Highway, Suite 5, Dover, Delaware 19901, Telephone: (302) 739–3326, FAX: (302) 739–5661

District of Columbia

Charles Nichols, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW—Suite 1200, Washington, D.C. 20005, Telephone: (202) 727–6537, FAX: (202) 727–1617, e-mail: charlesnic@yahoo.com or cnichols-ogmd@dcgov.org

Florida

Cherie L. Trainor, Coordinator, Florida State Clearinghouse, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399–2100, Telephone: (850) 922–5438 or (850) 414–5495, FAX: (850) 414–0479, e-mail: cherie.trainor@dca.state.fl.us

Georgia

Debra S. Stephens, Coordinator, Georgia State Clearinghouse, 270 Washington Street, SW.—8th Floor, Atlanta, Georgia 30334, Telephone: (404) 656–3855, FAX: (404) 656–7901, e-mail: ssda@mail.opb.state.ga.us

Illinois

Virginia Bova, State Single Point of Contact, Illinois Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, Illinois 60601, Telephone: (312) 814–6028, FAX: (312) 814–1800

Indiana

Frances Williams, State Budget Agency, 212 State House, Indianapolis, Indiana 46204–2796, Telephone: (317) 232–5619, FAX: (317) 233–3323

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, FAX: (515) 242–4809

Kentucky

Kevin J. Goldsmith, Director, John-Mark Hack, Deputy Director, Sandra Brewer, Executive Secretary, Intergovernmental Affairs, Office of the Governor 700 Capitol Avenue, Frankfort, Kentucky 40601, Telephone: (502) 564–2611, FAX: (502) 564–2849

Maine

Joyce Benson, State Planning Office, 184 State Street, 38 State House Station, Augusta, Maine 04333, Telephone: (207) 287–3261, FAX: (207) 287–6489

Maryland

Linda C. Janey, JD, Manager, Clearinghouse and Plan Review Unit, Maryland Office of Planning, 301 W. Preston Street—Room 1104, Baltimore, Maryland 21201–2305, Telephone: (410) 767–4491, FAX: (410) 767–4480 e-mail: Linda@mail.op.state.md.us

Michigan

Richard Pfaff, Southeast Michigan Council of Governments, 660 Plaza Drive—Suite 1900, Detroit, Michigan 48226, Telephone: (313) 961–4266, FAX: (313) 961–4869

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 455 North Lamar Street, Jackson, Mississippi 39202–3087, Telephone: (601) 359–6762, FAX: (601) 359–6764

Missouri

Lois Pohl/Carol Meyer, Federal Assistance Clearinghouse, Office Of Administration, P.O. Box 809, Room 915, Jefferson Building, Jefferson City, Missouri 65102, Telephone: (573) 751–4834, FAX: (573) 522–4395

Nevada

Heather Elliott, Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone: (702) 687–6367, FAX: (702) 687–3983

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, Office of State Planning, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, FAX: (603) 271–1728

New Mexico

Nick Mandell, Local Government Division, Room 201, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–4991, FAX: (505) 827–4948

New York

Marsha Roth, New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone: (518) 474–1605, FAX: (518) 486–5617

North Carolina

Chrys Baggett, Director, North Carolina State Clearinghouse, Office of the Secretary of Administration 116 West Jones Street—Suite 5106, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, FAX: (919) 733–9571

North Dakota

Jim Boyd, North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Department 105, Bismarck, North Dakota 58505–0170, Telephone: (701) 328–2094, FAX: (701) 328–2308

Rhode Island

Kevin Nelson, Review Coordinator, Department of Administration, Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 222–2656, FAX: (401) 222–2083

South Carolina

Omegia Burgess, State Single Point of Contact, Budget and Control Board, Office of State Budget, 1122 Ladies Street—12th Floor, Columbia, South Carolina 29201, Telephone: (803) 734–0494, FAX: (803) 734–0645

Texas

Tom Adams, Single Point of Contact, State of Texas, Governor's Office of Budget and Planning, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711–2428, Telephone: (512) 463–1771, FAX: (512) 936–2681, e-mail: tadams@governor.state.tx.us

Utah

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538–1535, FAX: (801) 538–1547

West Virginia

Judith Dryer, Chief Program Manager, West Virginia Development Office, Building #6, Room 645, State Capitol, Charleston, West Virginia 25305, Telephone: (304) 558–0350, FAX: (304) 558–0362

Wisconsin

Jeff Smith, Section Chief, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–0267, FAX: (608) 267–6931

Wyoming

Matthew Jones, State Single Point of Contact, Office of the Governor, 200 West 24th Street, State Capital, Room 124, Cheyenne, Wyoming 82002, FAX: (307) 632–3909

Territories

Guam

Mr. Giovanni T. Sgambelluri, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone: 011–671–472–2285, FAX: 011–671–472–2825

Puerto Rico

Norma Burgos/Jose E. Caro, Chairwoman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (809) 727–4444 or (809) 723–6190, FAX: (809) 724–3270 or (809) 724–3103

Northern Mariana Islands

Mr. Alvaro A. Santos, Executive Officer, Office of Management and Budget, Office of the Governor, Saipan, MP 96950, Telephone: (670) 664–2256, FAX: (670) 664–2272

Please direct all questions and correspondence about intergovernmental review to:

Ms. Jacoba T. Seman, Federal Programs Coordinator, Telephone: (670) 664–2289, FAX: (670) 664–2272

Virgin Islands

Nellon Bowry, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct all questions and correspondence about intergovernmental review to:

Daisey Millen, Telephone: (809) 774–0750, FAX: (809) 776–0069

Initial ACF Screening

Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date and submitted in accordance with the instructions in this announcement and (2) the applicant is eligible for funding.

Competitive Review

Applications which pass the initial ACF screening will be evaluated and rated by an independent review panel on the basis of specific evaluation criteria. The evaluation criteria are designed to assess the quality of a proposed project, and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to the evaluation criteria within the context of this program announcement.

Funding Reconsideration

After Federal funds are exhausted for this grant competition, applications which have been independently reviewed and ranked but have no final disposition (neither approved nor disapproved for funding) may again be considered for funding. Reconsideration

may occur at any time funds become available within twelve (12) months following ranking. However, ACF does not select from multiple ranking lists for a program. Therefore, should a new competition be scheduled and an application remain ranked without final disposition, applicants are informed of their opportunity to reapply for the new competition, to the extent practical.

Part IV: Application Submission

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ACF. Application materials including forms and instructions are available from the contact named under the **ADDRESSES** section in the preamble of this announcement.

Each application should include one signed original and two additional copies.

Each application narrative portion should not exceed 25 double-spaced pages in a 12-pitch font. Attachments and appendices should not exceed 25 pages and should be used only to provide supporting documentation such as maps, administration charts, position descriptions, resumes, and letters of intent for partnership agreements. Please do not include books or video tapes as they are not easily reproduced and are therefore, inaccessible to the reviewers. Each page should be numbered sequentially, including the attachments or appendices.

A. Application Materials

Applicants for financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF 424A, Budget Information—Non-construction Programs; SF 424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. An application with an original signature and two copies is required.

B. Application Submission Information and Certifications

The closing date for submission of applications is June 20, 2000. Mailed applications postmarked after the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, Attention: Ms. Daphne Weeden.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications handcarried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, the Office of Refugee Resettlement, 6th Floor, Aerospace Building, 901 D Street, SW, Washington, DC 20447 between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note "Attention: Ms. Daphne Weeden." (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mails service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

For Further Information on Application Deadlines Contact: Ms. Daphne Weeden, Administration for Children and Families, Office of Refugee Resettlement, 370 L'Enfant Promenade SW, 6th Floor, Washington, DC 20447, (202) 401–4577.

Standard Language Concerning the Certifications, Assurances, and Disclosure Required for Non Construction Programs

Applicants requesting financial assistance for non construction projects must file the Standard Form 424B, "Assurances: Non-Construction Programs." Applicants must sign and return the Standard Form 424B with their applications.

Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

Applicants must make the appropriate certification of their compliance with the Drug Free Workplace Act of 1988. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the applications. Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for an award. By signing and submitting the application, the applicant is providing the certification need not mail back the certification with the applications.

Applicable Regulations

Applicable DHHS grant administration regulations can be found in 45 CFR Part 74 or 92.

Reporting Requirements

Grantees are required to file the Financial status Report (SF–269) and Program Performance Reports on a semi-annual basis. Funds issued under these awards must be accounted for and reported upon separately from all other grant activities. Although ORR does not expect the proposed projects to include evaluation activities, it does expect grantees to maintain adequate records to track and report on project outcomes. The official receipt point for all reports and correspondence is the ORR Grants Officer, Ms. Daphne Weeden, Administration for Children and Families/Office of Refugee Resettlement, 370 L'Enfant Promenade SW, 6th Floor, Washington, DC 20447, Telephone: (202) 401–4577. An original and one copy of each report shall be submitted within 30 days of the end of each reporting period directly to the Grants

Officer. The mailing address is: Ms. Daphne Weeden, Administration for Children and Families, Office of Refugee Resettlement, 370 L'Enfant Promenade SW, 6th Floor, Washington, DC 20447. A final Financial and Program Report shall be due 90 days after the budget expiration date or termination of grant support.

Dated: April 18, 2000.

Lavinia Limón,

Director, Office of Refuge Resettlement.

[FR Doc. 00–10018 Filed 4–20–00; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB review; comment request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301)443–7978.

Drug and Alcohol Services Information System (DASIS) (OMB No. 0930–0106, Revision)—The DASIS consists of three related data systems: the National Master Facility Inventory (NMFI), the Uniform Facility Data Set (UFDS), and the Treatment Episode Data Set (TEDS). The NMFI includes all known substance abuse treatment facilities. The UFDS is an annual survey of all substance abuse treatment facilities listed in the NMFI. The TEDS is a compilation of client-level admission data and discharge data submitted by States on clients treated in facilities that receive State funds. Together, they provide information on the location, scope and characteristics of all known drug and alcohol treatment facilities in the United States, and the characteristics of clients receiving services. This information is needed to assess the nature and extent of these resources, to identify gaps in services, and to provide a database for treatment referrals.

This request is for OMB approval of proposed revisions to the annual UFDS survey. Several major changes are proposed, including: (1) The UFDS survey will be conducted by mail, rather than by telephone; (2) Non-treatment (prevention) facilities will no longer be included in the annual survey; (3) Some questions will be reinstated (*e.g.*, whether facility provides DUI/DWI services, percent of clients treated for alcohol abuse, drug abuse, or both); (4) Several questions will be added (*e.g.*, whether facility treats only incarcerated or DUI/DWI clients, whether services are provided in languages other than English, availability of fully subsidized care or a sliding fee scale, receipt of public funding); (5) Some questions will be deleted (*e.g.*, whether facility is a school, social services agency, community mental health center, community health center, or private group practice; facility accreditation; percent of clients being treated for substance abuse); (6) Several questions will be revised. Changes to the TEDS and NMFI are not planned.

Estimated annual burden for the DASIS activities is shown in the table below.

Type of respondent and activity	Number of respondents	Responses/ respondent	Hours/response	Total hours
States:				
TEDS Admission Data [1]	52	4	6	1,248
TEDS Discharge Data [1]	13	4	6	312
TEDS Discharge Crosswalks [1]	5	1	10	50
NFR Update [1, 2]				
Additions	56	17	0.08	76
Revisions	56	24	0.05	67
State Subtotal [1]	56			1,753
Facilities				
Network Update	1,000	1	.1	100
UFDS Questionnaire	19,000	1	.6	11,400
Pre-screening of newly-identified facilities	2,000	1	.08	160
Facility Subtotal	21,000			11,660
Total	21,056			13,413

[1] The burden estimates for these activities are unchanged.
[2] States forward to SAMHSA information on newly licensed/approved facilities and on changes in facility name, address, status, etc. This is done electronically by nearly all States.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Clarissa Rodrigues-Coelho, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 12, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–9957 Filed 4–20–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–16]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period for 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: COE: Ms. Shirley Middleswarth, Army Corps of Engineers, Management & Disposal Division, Pulaski Bldg., Room 4224, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000; (202) 761–0515; GSA: Mr. Brian K. Polly, Assist Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; INTERIOR: Mr. Al Barth, Property Management, Department of the Interior, 1849 C Street, NW, Mail Stop 5512–MIB, Washington, DC 20240; (202) 208–7283; NAVY: Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: April 14, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 4/21/00

Suitable/Available Properties

Building (by State)

California

Bldg. 4156
Tract 12–135
National Park Land
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200020001
Status: Unutilized
Comment: 499 sq. ft. seasonal housing, off-site use only

Mississippi

Quarters #193
Jeff Busby Park
Rt. 3
Ackerman Co: Choctaw MS 39725–
Landholding Agency: Interior
Property Number: 61200020015
Status: Unutilized
Comment: 1121 sq. ft., presence of asbestos, most recent use—residence, off-site use only

New York

Former RPH Property
Tract 273–01
E. Fishkill Town Co: Dutchess NY 10701–
Landholding Agency: Interior
Property Number: 61200020002
Status: Unutilized
Comment: garage, 748 sq. ft./concrete block, off-site use only

Pennsylvania

(F) Romig Property
Tract 367–10, Kuhn Road
Boiling Springs Co: Cumberland PA 17007–
Landholding Agency: Interior
Property Number: 61200020014
Status: Unutilized
Comment: 665 sq. ft., most recent use—residence, off-site use only

Tennessee

Naval Hospital
5720 Integrity Drive
Millington Co: Shelby TN 38054–
Location: Bldgs, 98, 100, 103, 105, 111, 114, 116, 117, 118
Landholding Agency: GSA
Property Number: 54200020005
Status: Excess
Comment: 9 bldgs., various sq. ft., need major rehab
GSA Number: 4–N–TN–648

West Virginia

Residence/Garage

109 Pine Street
Monongahela National Forest
Petersburg Co: Grant WV 26847–
Landholding Agency: GSA
Property Number: 54200020006
Status: Excess
Comment: 1800 sq. ft. residence, 365 sq. ft. garage, good condition
GSA Number: 4–A–WV–534

Suitable/Available Properties

Land (by State)

Pennsylvania

Portion of Tract 119
State Rt 969
Curwensville Co: Clearfield PA 16833–
Landholding Agency: COE
Property Number: 31200010005
Status: Unutilized
Comment: approx. 17 acres, hilly wooded terrain

Unsuitable Properties

Buildings (by State)

California

Bldg. 4159
Tract 12–135
National Park Land
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200020003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4160
Tract 12–135
National Park Land
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200020004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4161
Tract 12–135
National Park Land
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200020005
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 4091, 4092
Tract 08–136
National Park Land
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200020006
Status: Unutilized
Reason: Extensive deterioration

Vagim House/Garage/Laundry
Tract 08–155
National Park Land
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200020007
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4166
Tract 05–116
National Park Land
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200020008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4077
Tract 08–116
National Park Land
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200020009
Status: Unutilized
Reason: Extensive deterioration

"Putnam House"
Yosemite National Park
Wawona Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200020016
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 17A
Marine Corps Logistics Base
Barstow Co: San Bernardino CA 92311–
Landholding Agency: Navy
Property Number: 77200020001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Georgia

Range Rear Light
Blythe Island
Brunswick Co: Glynn GA 31525–
Landholding Agency: GSA
Property Number: 54200020001
Status: Excess
Reason: Extensive deterioration
GSA Number: 4–U–GA–863

Federal Bldg.
202 North Harris St.
Sandersville Co: GA 31082–
Landholding Agency: GSA
Property Number: 54200020002
Status: Excess
Reason: Within airport runway clear zone
GSA Number: 4–G–GA–862

Massachusetts

Petricca House
97 North Great Road
Lincoln Co: Middlesex MA 01773–
Landholding Agency: Interior
Property Number: 61200020010
Status: Unutilized
Reason: Extensive deterioration

Willow Pond Kitchen
751 Lexington Road
Concord Co: Middlesex MA 01742–
Landholding Agency: Interior
Property Number: 61200020017
Status: Unutilized
Reason: Extensive deterioration

Schlberg House
144 Virginia Road
Lincoln Co: Middlesex MA 00000–
Landholding Agency: Interior
Property Number: 61200020018
Status: Unutilized
Reason: Extensive deterioration

Nelson House
47 Virginia Road
Lincoln Co: Middlesex MA 00000–
Landholding Agency: Interior
Property Number: 61200020019
Status: Unutilized
Reason: Extensive deterioration

Michigan

Federal Bldg.
Benton Harbor
174/5 Territorial Road
Benton Harbor Co: Berrien MI 49022–
Landholding Agency: GSA
Property Number: 54200020003
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–G–MI–796

Minnesota

Nike Battery Site, MS–40
Castle Rock Township
Farmington Co: Dakota MN 00000–
Landholding Agency: GSA
Property Number: 54200020004
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–I–MN–451–B

New York

Former Baker Property
Tract 270–19
Beekman Co: Dutchess NY 12570–
Landholding Agency: Interior
Property Number: 61200020011
Status: Unutilized
Reason: Extensive deterioration

(F) Depot Hill Property
Tract 270–07
Beekman Co: Dutchess NY 12564–
Landholding Agency: Interior
Property Number: 61200020012
Status: Unutilized
Reason: Extensive deterioration

(F) Yegella Property
Tract #268–33
Pawling Co: Dutchess NY 12564–
Landholding Agency: Interior
Property Number: 61200020013
Status: Unutilized
Reason: Extensive deterioration

North Carolina

Bldg. BA114
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77200020003
Status: Unutilized
Reason: Extensive deterioration

Bldg. H16
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77200020004
Status: Unutilized
Reason: Extensive deterioration

Bldg. TC816
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77200020005
Status: Unutilized
Reason: Extensive deterioration

Bldg. TC818
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77200020006
Status: Unutilized
Reason: Extensive deterioration

Bldg. SM145
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77200020007
Status: Unutilized
Reason: Extensive deterioration

Bldg. BA113
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77200020008
Status: Unutilized
Reason: Extensive deterioration

Pennsylvania

Tract 105–03
Beach Lake Co: Wayne PA 18405–9737
Landholding Agency: Interior
Property Number: 61200020020
Status: Excess
Reason: Extensive deterioration

Virginia

Bldg. 7
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020009
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 12
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 24
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 34
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020012
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 108
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020013
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 299
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020014
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 400
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020015
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 436
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020016
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldgs. 442, 443
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020017
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 530
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020018
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 532
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020019
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldgs. 646–651
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldgs. 758, 759
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020021
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 764
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020022
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 784
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 786
Naval Weapons Station
Yorktown
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020024
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 788
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020025
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 790
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020026
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 814
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020027
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldgs. 1955–1957
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020028
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldgs. 1960, 1961, 1964
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020029
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldgs. 1980, 1981
Naval Weapons Station
Yorktown Co: VA 23691–
Landholding Agency: Navy
Property Number: 77200020030
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 160
Cheatham Annex
Williamsburg Co: VA 23185–5830
Landholding Agency: Navy
Property Number: 77200020031
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 3023
Naval Amphibious Base
Norfold Co: VA 23521–3229
Landholding Agency: Navy
Property Number: 77200020032
Status: Excess
Reason: Extensive deterioration

Facility 3068
Naval Amphibious Base
Norfold Co: VA 23521–3229
Landholding Agency: Navy
Property Number: 77200020033
Status: Unutilized
Reasons: Extensive deterioration

Land (by State)

Washington

0.7 acres
Coulee Dam/Switching Station
Nespelem Co: Okanogan WA
Landholding Agency: Interior
Property Number: 61200020021
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material

[FR Doc. 00–9775 Filed 4–20–00; 8:45 am]
BILLING CODE 4310–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Issuance of Five Permits for Incidental Take of Threatened and Endangered Species.

SUMMARY: Between October 1, 1999, and March 31, 2000, Region 2 of the Fish and Wildlife Service issued five permits for the incidental take of threatened and endangered species, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. Of the five permits issued, three are for the golden-cheeked warbler (GCW) and two are for the Houston toad (HT), and all are issued to Permittees in the greater Austin, Texas area. Copies of the five permits and associated decision documents are available upon request. In addition, between October 1, 1999 and March 31, 2000, one permit had a minor administrative amendment.

ADDRESSES: If you would like copies of any of the above documents, please contact the U.S. Fish and Wildlife Service, Ecological Services, P.O. Box 1306, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Leslie Dierauf, Regional Habitat Conservation Plan Coordinator, at the above address, 505–248–6651. Further details of these permits may also be viewed on the Internet at *http://ecos.fws.gov.*

SUPPLEMENTARY INFORMATION: Section 9 of the Act and Federal Regulation prohibits the "take" of wildlife species listed as threatened or endangered species. Under the Act, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed wildlife, or to attempt to engage in any such conduct. The Service may, under limited circumstances, issue permits to authorize incidental take, *i.e.* that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing permits for endangered species are at 50 CFR 17.22.

FIVE INCIDENTAL TAKE PERMITS ISSUED

Permittee	Permit No.	Date of Issuance
David C. Anderson (TX), GCW	TE–019709–0	02/04/00
Tamera M. Smith (TX), HT	TE–020079–0	02/22/00
Shelby D. Gregory (TX), HT	TE–020080–0	02/22/00
Brent Mayberry (TX), GCW	TE–012963–0	12/15/99
Anthony J. Franzetti (TX), GCW	TE–016491–0	01/20/00

ONE ADMINISTRATIVE AMENDMENT

Permittee	Permit No.	Date of amendment
Spicewood at Bull Creek Amendment #4	PRT–783564	03/02/00

Geoffrey L. Haskett,
Regional Director, Region 2, Albuquerque, New Mexico.
[FR Doc. 00–9958 Filed 4–20–00; 8:45 am]
BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability, Restoration Plan

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service), on behalf of the Department of the Interior and the State of New Hampshire, announces the release for public review of the draft Restoration Plan (Plan) for the South Municipal Wellfield Superfund Site (Site). The Plan describes the trustees' proposal to restore natural resources injured as a result of the release of hazardous substances from the Site.

DATES: Written comments must be submitted on or before June 1, 2000.

ADDRESSES: Requests for copies of the Plan may be made to: U.S. Fish and Wildlife Service, New England Field Office, 22 Bridge Street, Unit 1, Concord, New Hampshire 03301.

Written comments or materials regarding the Plan should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Molly B. Sperduto or Kenneth C. Carr, Environmental Contaminants Program, U.S. Fish and Wildlife Service, 22 Bridge Street, Unit 1, Concord, New Hampshire 03301.

Interested parties may also call (603) 225–1411 for further information.

SUPPLEMENTARY INFORMATION: The South Municipal Wellfield Superfund Site, is located in Peterborough, New Hampshire. Contamination from an on-Site ball bearings manufacturing facility, including volatile organic compounds, polychlorinated biphenyls and polycyclic aromatic hydrocarbons, adversely affected adjacent wetlands. These wetlands were impaired due to food web contamination or the reduction and/or loss of their biological diversity and productivity. In turn, injury to wetland-dependent wildlife, primarily migratory birds, occurred.

In 1995, the United States of America settled claims for natural resource damages associated with the South Municipal Wellfield Superfund Site under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980. The settlement proceeds will be used to compensate for injury, destruction, or loss of natural resources under trusteeship of the Department of the Interior and the State of New Hampshire. The Plan is being released in accordance with the Natural Resource Damage Assessment Regulations found at 15 CFR part 990. It is intended to describe the trustees' proposals to restore natural resources injured as a result of releases of contaminants from the Site.

The Plan describes a number of habitat restoration and protection alternatives and discusses the environmental consequences of each. The primary goal is to implement a restoration project that compensates for impacts to wetlands that provide habitat for migratory birds. Based on an evaluation of the various restoration alternatives, acquisition of equivalent resources is the preferred alternative. This alternative maximizes the benefit to wetland-dependent wildlife, preventing the imminent destruction and degradation of an extensive wetland system. The trustees believe that the proposed action will not have significant impacts on the quality of the physical, biological, and cultural environment.

Interested members of the public are invited to review and comment on the Plan. Copies of the Plan are available for review at the U.S. Fish and Wildlife Service's New England Field Office in Concord, New Hampshire (22 Bridge Street, Unit 1, Concord, New Hampshire). Additionally, the Plan will be available for review at the Peterborough Town Library. Written comments will be considered and addressed in the final Plan at the conclusion of the restoration planning process.

Authority: The authority for this action is the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C.

Dated: April 14, 2000.

Ronald E. Lambertson,
Regional Director, Region 5, U.S. Fish and Wildlife Service.
[FR Doc. 00–9948 Filed 4–20–00; 8:45 am]
BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW 147278]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

April 14, 2000.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW147278 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW147278 effective February 1, 2000, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Mary Jo Rugwell,
Acting Chief, Leasable Minerals Section.
[FR Doc. 00–9952 Filed 4–20–00; 8:45 am]
BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW140574]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

April 14, 2000.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW140574 for lands in Johnson County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of

this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW140574 effective February 1, 2000, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Mary Jo Rugwell,

Acting Chief, Leasable Minerals Section.

[FR Doc. 00–9953 Filed 4–20–00; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–040–00–1410; AA–81911]

Realty Action; Airport Lease, Near Cairn Mountain/Sparrevohn

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Lease of Public Land.

SUMMARY: Mr. and Mrs. Gary Pogany (Applicants) have submitted an application for an airport lease on public land pursuant to the Act of May 24, 1928, as amended (49 U.S.C. appendix, 211–213) and regulations at 43 CFR part 2911. The leased land would be used to increase the safety of people flying into Osprey Lodge, which is owned and operated by Mr. and Mrs. Gary Pogany. The description of the land is as follows:

T. 12 N., R. 34 W., Section 16, SE¼,
Containing approximately 3.4 acres.

SUPPLEMENTARY INFORMATION: This Notice of Realty Action proposes to lease public land that borders the Applicant's private land to extend an existing air strip for safety purposes.

The applicants have provided a letter of concurrence with the proposal from the Federal Aviation Administration.

The lease will be offered to the Applicants for a term of 20 years. Payment of rent to the United States will be required at no less than fair market value.

DATES: Interested parties may submit comments on or before June 5, 2000, to the Field Manager, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599. In the absence of a timely objection, this proposal shall become the final decision of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Karen Collie, Anchorage Field Office, Bureau of Land Management, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599; (907) 267–1244 or (800) 478–1263.

Clinton Hanson,

Acting Field Manager.

[FR Doc. 00–9950 Filed 4–20–00; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Salton Sea Restoration Project, Riverside and Imperial Counties, California, INT–DES–00–03

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of extension of public comment period for the Draft Environmental Impact Statement/Draft Environmental Impact Report (DEIS/DEIR).

SUMMARY: Notice is hereby given that the public comment period for the DEIS/DEIR for the Salton Sea Restoration Project is extended an additional 21 days to May 16, 2000.

DATES: The end of the public comment period, as noted in the **Federal Register** (65 FR 4258) on January 26, 2000, was to be April 25, 2000. The public comment period is now extended to May 16, 2000.

ADDRESSES: Written comments on the DEIS/DEIR should be addressed to Mr. Tom Kirk, Director, Salton Sea Authority, 78–401 Highway 111, Suite T, La Quinta, CA 92253; or to Mr. William Steele, Program Manager, Salton Sea Project, Bureau of Reclamation, PO Box 61470, Boulder City, NV 89006–1470.

The document is available on the Internet at http://www.lc.usbr.gov. Copies of the DEIS/DEIR may be requested from Mr. Steele at the above address or by calling (702) 293–8129.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Kirk, SSA, at (760) 564–4888; or Mr. William Steele, Reclamation, at (702) 293–8129.

Dated: April 14, 2000.

Erica Petacchi,

Federal Register Liaison.

[FR Doc. 00–9968 Filed 4–20–00; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: April 27, 2000 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–839–840 (Final)(Certain Cold-Rolled Steel Products from Turkey and Venezuela)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on May 4, 2000.)
5. Outstanding action jackets:
(1.) Document No. ER–00–001: Approval of FY 1999 Annual Report.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: April 17, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–10063 Filed 4–18–00; 4:54 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2056–00]

Announcement of District Advisory Council on Immigration Matters Ninth Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

SUMMARY: The Immigration and Naturalization Service (Service), has established a District Advisory Council on Immigration Matters (DACOIM) to provide the New York District Director of the Service with recommendations on ways to improve the response and reaction to customers in the local jurisdiction and to develop new partnerships with local officials and community organizations to build and enhance a broader understanding of immigration policies and practices. The purpose of this notice is to announce the forthcoming meeting.

DATES AND TIMES: The ninth meeting of the DACOIM is scheduled for May 25, 2000, at 1 p.m.

ADDRESSES: The meeting will be held at the Jacob Javitts Federal Building, 26 Federal Plaza, Room 537, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: Christian A. Rodriguez, Designated Federal Officer, Immigration and Naturalization Service, 26 Federal Plaza, Room 14–100, New York, New York 10278, telephone: (212) 264–0736.

SUPPLEMENTARY INFORMATION: Meetings will be held tri-annually on the fourth Thursday during the months of January, May, and September.

Summary of Agenda

The purpose of the meeting will be to conduct general business, review subcommittee reports and facilitate public participation. The DACOIM will be chaired by Jack Byrnes, Section Chief, New York District, Immigration and Naturalization Service.

Public Participation

The DACOIM meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating. Persons planning to attend should notify the contact person at least two (2) days prior to the meeting. Members of the public may submit written statements at any time before or after the meeting for consideration by the DACOIM. Written statements should be sent to Christian A. Rodriguez, Designated Federal Officer, Immigration and Naturalization Service, 26 Federal Plaza, Room 14–100, New York, New York 10278, telephone: (212) 264–0736. Only written statements received by 5 p.m. on May 22, 2000, will be considered for presentation at the meeting. Minutes of the meeting will be available upon request.

Dated: April 14, 2000.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 00–9989 Filed 4–20–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Bureau of Prisons

Notice of Availability and Publication of the Final Environmental Impact Statement

The Federal Bureau of Prisons announces the publication of a Final Environmental Impact Statement (FEIS) regarding a proposed medium-security federal correctional facility in South Carolina.

Two preferred alternative locations are named in the document: the "Salters Site" in Williamsburg County and the "Bennettsville Site" in Marlboro County.

The document is being made available to provide for timely public comment and understanding of federal plans and programs with possible environmental consequences as required by the National Environmental Policy Act of 1969, as amended.

The purpose of the document is to afford the public and local officials an opportunity to learn of the Bureau's proposed planning, construction, and operation of a federal correctional institution near the communities of Salters and/or Bennettsville, South Carolina. The document is available at local libraries or a copy of the FEIS can be obtained by contacting the Bureau of Prisons.

Interested persons are encouraged to express their views and comments on the FEIS by submitting written comments to the Bureau of Prisons.

Items addressed in the FEIS include, but are not limited to: utilities, traffic, noise, cultural resources and socio-economic impacts.

Written statements will be accepted until May 22, 2000.

Written comments may be directed to: David J. Dorworth, Chief, Site Selection and Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW, Washington, D.C. 20534, Telephone (202) 514–6470, Telefacsimile (202) 616–6024 ddorworth@bop.gov

Dated: March 29, 2000.

David J. Dorworth,

Chief, Site Selection and Environmental Review Branch.

[FR Doc. 00–8119 Filed 4–20–00; 8:45 am]

BILLING CODE 4110–05–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,328 and TA–W–37,328A]

Thaw Corporation, Snow Creek Division, Wenatchee, Washington, and Thaw Corporation, Cutting Department, Kent, Washington; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 18, 2000, applicable to workers of Thaw Corporation, Snow Creek Division, Wenatchee, Washington. The notice was published in the **Federal Register** on March 31, 2000 (65 FR 17312).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of fleece outerwear and thermal underwear. New information shows that workers separations occurred at the subject firms' Cutting Department, Kent, Washington in March, 2000. Workers perform cutting operations for all Thaw Corporation's production facilities, including Snow Creek Division, Wenatchee, Washington.

Based on these new findings, the Department is amending the certification to cover workers at the Cutting Department, Kent, Washington location.

The intent of the Department's certification is to include all workers of Thaw Corporation adversely affected by increased imports.

The amended notice applicable to TA–W–37,328 is hereby issued as follows:

All workers of Thaw Corporation, Snow Creek Division, Wenatchee, Washington (TA–W–37,328) and the Cutting Department, Kent, Washington (TA–W–37,328A) who became totally or partially separated from employment on or after January 28, 1999 through February 18, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 12th day of April, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–9969 Filed 4–20–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[T–W–37,387]

Timbergon, Redmond, Oregon; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 28, 2000 in response to a worker petition which was filed on behalf of workers at Timbergon, Redmond, Oregon.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 6th day of April, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–9975 Filed 4–20–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,208, et al.]

Tultex Corporation, South Boston, Virginia; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 13, 2000, applicable to workers of Tultex Corporation, South Boston, Virginia. The notice was published in the **Federal Register** on February 4, 2000 (65 FR 5690).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the production of fleece activewear. New findings show that California Shirt Sales, Inc., is a wholly owned subdivision of Tultex Corporation. Worker separations occurred at various locations of California Shirt Sales when Tultex Corporation closed all locations, including the South Boston, Virginia plant, in February, 2000. The workers provided distribution of finished fleece activewear manufactured by Tultex Corporation to its customers.

The intent of the Department's certification is to include all workers of Tultex Corporation who were adversely affected by increased imports.

The amended notice applicable to TA–W–37,208 is hereby issued as follows:

All workers of Tultex Corporation, South Boston, Virginia (TA–W–37,208) and California Shirt Sales, Inc., Fullerton, California (TA–W–37,208A), Honolulu, Hawaii (TA–W–37,208B), Las Vegas, Nevada (TA–W–37,208C), Oakland, California (TA–W–37,208D), Kent, Washington (TA–W–37,208F) and Tempe, Arizona (TA–W–37,208G) who became totally or partially separated from employment on or after December 16, 1998 through January 13, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 7th day of April, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–9976 Filed 4–20–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03839]

Ametek Aerospace, Wilmington, Massachusetts; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on February 18, 2000 in response to a petition filed on behalf of workers at Ametek Aerospace, Wilmington, Massachusetts.

In a letter dated April 10, 2000, the petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 13th day of April, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–9974 Filed 4–20–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3578 and TA–W–37,035; Court Metal Finishing, Inc., Flint, Michigan]

Notice of Revised Determination on Reconsideration

On March 31, 2000, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm denied eligibility to apply for North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA). The notice was published in the **Federal Register** on April 11, 2000 (65 FR 19390). The petitioners presented information regarding customer imports from Mexico of articles like or directly competitive with those produced at the workers' firm.

The January 6, 2000, denial of NAFTA–TAA for workers of Court Metal Finishing, Inc., Flint, Michigan, engaged in employment related to the production of valves was based on the finding that criteria (3) and (4) of the Group Eligibility Requirements of paragraph (a)(1) of section 250 of the Trade Act of 1974, as amended, were not met. The investigation revealed that there were no company or customer imports of valves from Mexico or Canada during the time period relevant to the investigation. Court Metal Finishing, Inc. did not shift production of valves from the Flint, Michigan plant to Mexico or Canada.

On reconsideration, the Department conducted an additional survey of the subject firm's major declining customers. The responses revealed that a major declining customer increased imports of valves from Mexico or Canada while reducing purchases from Court Metal Finishing, Inc.

The Department, on its own motion, reviewed the findings of the January 6, 2000 Trade Adjustment Assistance (TAA) negative determination applicable to workers of the subject firm, petition number TA–W–37,035. The investigation review shows that with the new customer information obtained on reconsideration of NAFTA–3578, all criteria of the Group Eligibility Requirements of section 222 of the Trade Act of 1974 are met.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers of Court Metal Finishing, Inc., Flint, Michigan,

were adversely affected by increased imports, including those from Mexico or Canada, of articles like or directly competitive with those produced at the subject firm.

All workers of Court Metal Finishing, Inc., Flint, Michigan, who became totally or partially separated from employment on or after November 1, 1998, through two years from the date of this issuance are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

All workers of Court Metal Finishing, Inc., Flint, Michigan, who became totally or partially separated from employment on or after October 15, 1998 through two years from the date of this issuance are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 13th day of April 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–9972 Filed 4–20–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,063 and NAFTA–3605]

Kellogg Company, South Operations Plant, Battle Creek, Michigan; Notice of Revised Determination on Reconsideration

On March 21, 2000, the Department issued an Affirmative Determination Regarding Application for Reconsideration with respect to the workers and former workers of the subject firm. The Department determined that the Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, Local 3–G, assertion that the effects of a transfer of production equipment to Mexico warranted further investigation. The notice was published in the **Federal Register** on March 31, 2000 (65 FR 17311).

The February 10, 2000, negative determination regarding TAA was based upon the finding that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act of 1974, as amended, was not met. The investigation revealed that sales and production of cereal remained relatively constant from 1997 through September 1999 and that company imports relative to domestic production had declined slightly in recent years. Separations at the Battle Creek, Michigan plant were attributed to a domestic shift in production.

The February 10, 2000, negative determination regarding NAFTA–TAA was based upon the finding that criteria (3) and (4) of paragraph (a)(1) of Section 250 of the Trade Act were not met. The company's reliance on imported cereal from Mexico decreased throughout the relevant period through September 1999. Layoffs were attributable to the transfer of cereal production to other domestic plants.

On reconsideration, the Department requested current information from the subject firm applicable to the time period in which significant worker separations were scheduled to occur. The information provided by Kellogg's applicable to cereal produced by workers at the South Operations Plant, Battle Creek, Michigan, show declines in sales, production, employment. Additional information reveals that, although it remains apparent that a significant portion of former production of the South Operations Plant is being transferred domestically, there has been an increase in company imports of cereal from Mexico or Canada relative to domestic production since the phase down of production at the South Operations Plant began.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers of Kellogg Company, South Operations Plant, Battle Creek, Michigan, were adversely affected by increased imports, including those from Mexico or Canada, of articles like or directly competitive with those produced at the subject firm.

All workers of Kellogg Company, South Operations Plant, Battle Creek, Michigan, engaged in employment related to the production of cereal, who became totally or partially separated from employment on or after October 29, 1998 through two years from the date of this issuance are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

All workers of Kellogg Company, South Operations Plant, Battle Creek, Michigan, engaged in employment related to the production of cereal, who became totally or partially separated from employment on or after November 23, 1998, through two years from the date of this issuance are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 11th day of April 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–9971 Filed 4–20–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of March and April, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–37,332 & A; Shelby Yarn Co. Including All Locations in Shelby, NC and Cherryville, NC

TA–W–37,331; Vesuvius Premier Refractories, Washington, PA

TA–W–37,384; FNA Acquisitions, d/b/a Superba, Mooresville, NC

TA–W–37,239; DeZurik Corp., McMinnville, TN

TA–W–37,295; Hylton House Furniture, Kenbridge, VA

TA–W–37,134; Advanced Manufacturing and Developing, Inc., Willits, CA

TA–W–37,116; Falcon Foundry Co., Lowellville, OH

TA–W–37,401; Arbor Acres, Carthage, MS

TA–W–37,327; Energy Knits, Denver, PA

TA–W–37,294; Ball Foster Glass Container Co LLC, Marion, IN

TA–W–37,382; Alaska Petroleum Contractor, Alpine Project Kenai, Kenai, AK

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–37,473; Far East International, Huntington Beach, CA
TA–W–37,464; Republic Supply Co., Sidney, MT
TA–W–37,456; General Electric Engine Services, Inc., Ontario, CA
TA–W–37,339 & A; Cominco LTD, Glenbrook Operations, Riddle, OR and Coos Bay, OR
TA–W–37,415; Parker Drilling Co., Tulsa, OK
TA–W–37,420; Western Gas Resources, Midkiff, TX
TA–W–37,400; Renfro Corp., South Pittsburg, TN
TA–W–37,371; Burlington Industries, Burlington Industries Transportation, Belmont, NC
TA–W–37,319; Furon Co., Laguna Niguel, CA
TA–W–37,489; Hasbro Manufacturing Services, El Paso, TX

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–37,462; Brandon Manufacturing, Inc., Shreveport, LA
TA–W–37,429; Bassett Furniture Industries of North Carolina, Upholstery Div., Dumas, AR
TA–W–37,379; Emerson Electric Co., Air Moving Motor Div., Rogers, AR
TA–W–37,446; Mulay Plastics, Casa Grande, AZ
TA–W–37,437; Elliott Turbomachinery, Jeannette, PA
TA–W–37,405; GCC Cutting, Inc., El Paso, TX
TA–W–37,486; Down River Forest Products, Inc., Woodland, WA
TA–W–37,284; Martin Mills Inc., Sewing Dept., St. Martinville, LA
TA–W–37,340; Alltex Laminating Corp., Mount Vernon, NY
TA–W–37,260; L.P.F. Apparel Corp., New York, NY
TA–W–37,176; Intersil Corp., Findlay, OH
TA–W–37,368; ITT Industries—Jabsco, Springfield, OH
TA–W–37,492; ISO Electronics, Inc., Indianapolis, IN

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–37,337; G & M Cutting Services of El Paso, Inc., El Paso, TX

The investigation revealed the criteria (1) and criteria (2) have not been met. A significant number of proportion of the workers did not become totally or partially separated from employment as required for certification. Sales or production did not decline during the relevant period as required for certification.

TA–W–37,152; Goss Graphics Systems, Inc., Wyomissing, PA

The investigation revealed that criteria (1) and criteria (3) have not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or an appropriate subdivision have not contributed importantly to the separations of threat thereof, and the absolute decline in sales or production.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–37,105; Weiser Lock, A Masco Subsidiary, Tucson, AZ: November 19, 1998.
TA–W–37,417; Microtek Medical, Inc., Columbus, MS: February 16, 1999.
TA–W–37,245; Pioneer Wear, Albuquerque, NM: December 30, 1998.
TA–W–37,285; R.L.F. Neckwear, Inc., Belleville, NJ: January 11, 1999.
TA–W–37,237: International Paper Co., Natchez Mill, Natchez, MS: December 13, 1998.
TA–W–37,230; E–Town Sportswear Corp., Elizabethville, KY: December 29, 1998.
TA–W–37,236; Chicago Pneumatic Tool Co., Rock Hill, SC: December 15, 1998.
TA–W–37,298; Apparel Specialists, Inc., Green Bay, WI: January 14, 1999.
TA–W–37,338 & A, B, C, D & E; Johnstown Knitting Mill Co., Glenfield Div., Glenfield, NY, Montgomery St. Div., Johnstown, NY, Conrie Ave. Div., Johnstown, NY, Fort Plain Div., Fort Plain, NY, New York City Div., NY, NY, and The Diana Knitting Corp., Johnstown, NY: February 3, 1999.
TA–W–37,375; Mitec Wireless, Inc., Tinton Falls, NJ: January 21, 1999.
TA–W–37,273; Cumberland Apparel, Monticello, KY: January 10, 1999.
TA–W–37,379; Sterling Diagnostic Imaging, Inc., Brevard, NC: January 6, 1999.
TA–W–37,385; Kryptonite Corp., Canton, MA: February 7, 1999.
TA–W–37,064; Val Originals, Inc., Providence, RI: October 30, 1998.
TA–W–37,336; ISA Cutting Room Service, El Paso, TX: February 4, 1999.
TA–W–37,411 & A; The Monet Group, Inc., West Providence, RI; and New York, New York: May 5, 2000.
TA–W–37,410; Trico Products, Lawrenceburg, TN: February 4, 1999.
TA–W–37,396; Elliott Corp., Gillett, WI: February 10, 1999.
TA–W–37,399; Tanner Companies Limited Partnership, Manufacturing Div., Rutherfordton, NC: February 16, 1999.
TA–W–37,226; Burgett Geothermal Greenhouse, Inc., Animas, NM: December 28, 2000.
TA–W–37,440; Terry Products, Inc., Kannapolis, NC: March 2, 1999.
TA–W–37,335; Calvin Klein, New York, NY: February 1, 1999.
TA–W–37,215; Item House, Inc., Tacoma, WA: December 15, 1998.
TA–W–37,353; Danskin, Inc., York, PA: February 1, 1999.
TA–W–37,219; The Boeing Co., Melbourne, AR: December 20, 1998.
TA–W–37,280; The John Plant Co., Ramseur, NC: January 13, 1999.
TA–W–37,263; Fayette Glove Co, d/b/a Best Manufacturing, Fayette, AL: January 11, 1999.
TA–W–37,386; Southside Sportswear, Inc., Florence, SC: February 15, 1999.
TA–W–37,374; T&K Manufacturing, Inc., Brownstown, PA: February 7, 1999.
TA–W–37,323; Russell T. Bundy Associates, Inc., d/b/a/ Durashield USA, Sunbury, OH: January 28, 1999.
TA–W–37,310; Boyt Harness Co LLC, Bob Allen Sportswear Div., Arlington, SD: January 18, 1999
TA–W–37,312; Florence Eiseman, Inc., Milwaukee, WI: January 18, 1999.
TA–W–37,388; Sullivan Die Castings, Inc., Kenilworth, NJ: February 9, 1999.
TA–W–37,449; New River Apparel, Fries, VA: February 28, 1999.
TA–W–37,342; Assembly USA, Inc., Macon, MO: February 3, 1999.
TA–W–37,451 & A; Cross Creek Apparel, Inc., Mt Airy, NC and Walnut Cove, NC: February 21, 1999.
TA–W–37,349; RNV Apparel, Inc., Shade Gap, PA: February 1, 2000.
TA–W–37,317; Sewell Clothing Co., Inc., Temple, GA: January 26, 1999.
TA–W–37,434 & A; Bula, Inc., Durango CO and Montezuma Creek, UT: February 24, 1999.

TA–W–37,478; Hartwell Industries, Hartwell Sports, Hartwell, GA: February 25, 1999.
TA–W–37,309; A & B; Wharton Knitting Mills, Inc., Knitting Dept., Ridgewood, NY, Sewing Dept, Ridgewood, NY and Rita Knitting Mills, Ridgewood, NY: January 20, 1999.
TA–W–37,516; Finishing 2000 LLC, El Paso, TX: March 14, 1999.
TA–W–37,467; Hartz and Co., Inc., Oakloom Plant, Baltimore, MD: March 6, 1999.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of March and April, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in ports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–03685; ASC Incorporated, Rancho Dominguez, CA
NAFTA–TAA–03709; Boyt Harness Co LLC, Bob Allen Sportswear Div., Arlington, SD
NAFTA–TAA–03702 & A; Shelby Yarn Co., Including all Locations in Shelby, NC and Cherryville, NC
NAFTA–TAA–03658; Martin Mills, Inc., Sewing Dept., St. Martinville, LA
NAFTA–TAA–03642; DeZurik Corporation, McMinnville, TN
NAFTA–TAA–03731; Renewable Energies, Inc., Slatyfork, WV
NAFTA–TAA–03765; Bassett Furniture Industries of North Carolina, Upholstery Div., Dumas, AR
NAFTA–TAA–03771 & A; Bula, Inc., Durango, CO and Montezuma Creek, UT
NAFTA–TAA–03774; Brandon Manufacturing, Inc., Shreveport, LA
NAFTA–TAA–03716; A&B; Wharton Knitting Mills, Inc., Knitting Dept., Ridgewood, NY, Sewing Dept., Ridgewood, NY and Rita Knitting Mills, Inc., Ridgewood, NY.
NAFTA–TAA–03797; Raytheon Systems Co., Microwave Div., El Sugundo, CA.
NAFTA–TAA–03788; ISO Electronics, Inc., Indianapolis, IN.
NAFTA–TAA–03650; Ball Foster Glass Container Co., LLC, Marion, IN.

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–3719; Burlington Industries, Burlington Industries Transportation, Belmont, NC.
NAFTA–TAA–03742; Target Retail Store, Mt. Carmel, IL.

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–03715; G&M Cutting Services of El Paso, Inc., El Paso, TX.

The investigation revealed that criteria (1) and criteria (2) have not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–03606; Nucor Corp., Nucor Fastener Div., Conway, AR: November 12, 1998.
NAFTA–TAA–03695; The Eureka Co., Div. of White Consolidated Industries, Inc., Bloomington, IL: January 4, 1999.
NAFTA–TAA–03726; Trico Products, Lawrenceburg, TN: January 29, 1999.
NAFTA–TAA–03779; Atessa, Inc., Philadelphia, PA: March 2, 1999.
NAFTA–TAA–03739; Southside Sportswear, Inc., Florence, SC: February 15, 1999.
NAFTA–TAA–03678; The John Plant Co., Ramseur, NC: January 13, 1999.
NAFTA–TAA–03737; Elloit Corp., Gillett, WI: February 10, 1999.
NAFTA–TAA–03734; FNA Acquisitions, d/b/a Superba, Mooresville, NC: February 18, 1999.
NAFTA–TAA–03673; Apparel Specialists, Inc., Green Bay, WI: January 14, 1999.
NAFTA–TAA–03753; GCC Cutting, El Paso, TX: January 19, 1999.
NAFTA–TAA–03783; Link Door Controls, Inc., Ronkonkoma, NY: February 4, 1999.
NAFTA–TAA–03757; A,B,C,D, & E; Conoco, Inc., Oklahoma City, OK & Operating in the Following Locations: Hennessay, OK, Cashion, OK, Tuttle, OK, Carney, OK and Washington, OK: February 23, 1999.
NAFTA–TAA–03785 & A; Cross Creek Apparel, Inc., Mt. Airy, NC and Walnut Cove, NC: February 21, 1999.
NAFTA–TAA–03760; Burnsville Apparel Co., Wadesboro, NC: February 17, 1999.
NAFTA–TAA–03749; Emerson Electric Co., Air Moving Motor Div., Rogers, AR: February 3, 1999.
NAFTA–TAA–03686; General Electric Co., Industrial Systems, Tell City, IN: August 25, 1998.
NAFTA–TAA–03800; Hartwell Industries, Hartwell Sparts, Hartwell, GA: February 25, 1999.
NAFTA–TAA–03832; Finishing 2000 LLC, El Paso, TX: March 14, 1999.
NAFTA–TAA–03759; John Clark, Inc., Denver, CO: February 23, 1999.
NAFTA–TAA–03784; Eastman Kodak Co., Color Film Mfg-Commercial/ Professional Finishing Div., Graphics Workcenter, Rochester, NY: February 25, 1999.
NAFTA–TAA–03710; United States Leather, Inc., Pfister & Vogel Leather, Milwaukee, WI: February 4, 1999.

I hereby certify that the aforementioned determinations were issued during the month of March and April, 2000. Copies of these determinations are available for inspection in Room C–4318, U.S.

Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 13, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–9970 Filed 4–20–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03705 Thaw Corporation, Snow Creek Division, Wenatchee, Washington; and NAFTA–3705A Thaw Corporation, Cutting Department, Kent, Washington]

Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with section 205(a), subchapter 2, title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on February 18, 2000, applicable to workers of Thaw Corporation, Snow Creek Division, Wenatchee, Washington. The notice was published in the **Federal Register** on March 17, 2000 (65 FR 14628).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of fleece outerwear and thermal underwear. New information shows that worker separations occurred at the subject firms' Cutting Department, Kent, Washington in March, 2000. Workers perform cutting operations for all Thaw Corporation's production facilities, including Snow Creek Division, Wenatchee, Washington.

Based on these new findings, the Department is amending the certification to cover workers at the Cutting Department, Kent, Washington location.

The intent of the Department's certification is to include all workers of Thaw Corporation who were adversely affected by a shift of production to Mexico.

The amended notice applicable to NAFTA–03705 is hereby issued as follows:

All workers of Thaw Corporation, Snow Creek Division, Wenatchee, Washington (NAFTA–03705) and the Cutting Department, Kent, Washington (NAFTA–0305A) who became totally or partially separated from employment on or after January 28, 1999 through February 18, 2002 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 12th day of April, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–9973 Filed 4–20–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Withdrawn General Wage Determination Decision

This is to advise all interest parties that the Department of Labor is withdrawing, from the date of this notice, the following General Wage Determinations:

MS000028—See MS000003
MS000030—See MS000003
MS000032—See MS000003
MS000034—See MS000003
MS000035—See MS000003
MS000050—See MS000003
IA000054—See IA000009

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effected unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

New General Wage Determination Decision

The number of the decisions added to the Government Printing Office document entitled "General Wage determinations Issued Under the Davis-Bacon and related Acts" are listed by Volume and States"

Volume V

Iowa
IA000045 (Apr. 21, 2000)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

Pennsylvania
PA000007 (Feb. 11, 2000)
PA000009 (Feb. 11, 2000)

Volume III

Mississippi
MS000003 (Feb. 11, 2000)
North Carolina
NC000033 (Feb. 11, 2000)

Volume IV

Illinois
IL000011 (Feb. 11, 2000)

Volume V

Iowa
IA000009 (Feb. 11, 2000)
IA000080 (Feb. 11, 2000)
Texas
TX000053 (Feb. 11, 2000)

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 13th day of April 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–9753 Filed 4–20–00; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "International Price Program—U.S. Import Price Indexes." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before June 20, 2000.

ADDRESSES: Send comments to Sytrina D. Toon, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, N.E., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Sytrina D. Toon, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Import Price Indexes, produced continuously by the Bureau of Labor Statistic's International Price Program (IPP) since 1971, measure price change over time for all categories of imported products, as well as many services. The Office of Management and Budget has listed the Import Price Indexes as a Principal Federal Domestic Indicator since 1982. The indexes are widely used in both the public and private sectors. The primary public sector use is the deflation of the U.S. Trade Statistics and the Gross Domestic Product; the indexes also are used in formulating U.S. trade policy and in trade negotiations with other countries. In the private sector, uses of the Import Price Indexes include market analysis, inflation forecasting, contract escalation, and replacement cost accounting.

The IPP indexes are closely followed statistics, and are viewed as a sensitive indicator of the economic environment. The U.S. Department of Commerce uses the monthly statistics to produce monthly and quarterly estimate of inflation-adjusted trade flows. Without continuation of data collection, it would be extremely difficult to construct accurate estimates of the U.S. Gross Domestic Product. In addition, Federal policymakers in the Department of Treasury, the Council of Economic Advisers, and the Federal Reserve Board utilize these statistics on a regular basis to improve these agencies' formulation and evaluation of monetary and fiscal policy and evaluation of the general business environment.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

The IPP continues to modernize data collection and processing to permit more timely release of its indexes, and to reduce reporter burden. The IPP is testing initiation techniques to reduce burden such as less frequent sampling of more stable item areas, use of broader item areas in certain cases, and retention of items initiated in previous samples that reporters still trade. In order to reduce the time required for processing new items, direct entry of initiation data from the field was recently implemented. The IPP is testing the application of new technology to repricing and the use of fax telephone lines to permit direct collection and entry into the BLS reporters' repricing database. The IPP also is considering use of the Internet for monthly repricing.

Type of Review: Revision.
Agency: Bureau of Labor Statistics.
Title: International Price Program/U.S. Import Price Indexes.
OMB Number: 1220–0026.
Affected Public: Business or other for profit.
Total Respondents: (FY 2000) 4,935.
Frequency: Quarterly/Monthly.
Total Responses: (FY 2001) 40,240.
Average Time Per Response: 36.18 minutes.
Estimated Total Burden Hours: (FY 2001) 24,246 hours.

Form	Total respondents	Frequent	Total responses	Average time per response (hours)	Estimated total burden (hours)
Initiation Visit (includes form 3008)	1,700	annually	1,700	1.00	1,700
Form 3007D	3,235	Monthly/quarterly	38,540	.585	22,546
Totals	4,935		40,240		24,246

Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budge approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 17th day of April 2000.

W. Stuart Rust, Jr.,
Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 00–9977 Filed 4–20–00; 8:45 am]
BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "International Price Program—U.S. Export Price Indexes." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before June 20, 2000.

ADDRESSES: Send comments to Sytrina D. Toon, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Sytrina D. Toon, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Export Price Indexes, produced continuously by the Bureau of Labor Statistics' International Price Program (IPP) since 1971, measure price change over time for all categories of exported products, as well as many services. The Office of Management and Budget has listed the Export Price Indexes as a Principal Federal Economic Indicator since 1982. The indexes are widely used in both the public and private sectors. The primary public sector use is the deflation of the U.S. Trade Statistics and the Gross Domestic Product; the indexes also are used in formulating U.S. trade policy and in trade negotiations with other countries. In the private sector, uses of the Export Price Indexes include market analysis, inflation forecasting, contract escalation, and replacement cost accounting.

The IPP indexes are closely followed statistics and are viewed as a sensitive indicator of the economic environment. The U.S. Department of Commerce uses the monthly statistics to produce monthly and quarterly estimates of inflation-adjusted trade flows. Without continuation of data collection, it would be extremely difficult to construct accurate estimates of the U.S. Gross Domestic Product. In addition, Federal policymakers in the Department of Treasury, the Council of Economic Advisers, and the Federal Reserve Board utilize these statistics on a regular basis to improve these agencies' formulation and evaluation of monetary and fiscal policy and evaluation of the general business environment.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

The IPP continues to modernize data collection and processing to permit more timely release of its indexes, and to reduce reporter burden. The IPP is testing initiation techniques to reduce burden such as less frequent sampling of more stable item areas, use of broader item areas in certain cases, and retention of items initiated in previous samples that reporters still trade. In order to reduce the time required for processing new items, direct entry of initiation data from the field was recently implemented. The IPP is testing the application of new technology to repricing and the use of fax telephone lines to permit direct collection and entry into the BLS reporters' repricing database. The IPP also is considering use of the Internet for monthly repricing.

Type of Review: Revision.

Agency: Bureau of Labor Statistics.

Title: International Price Program/U.S. Export Price Indexes.

OMB Number: 1220–0025.

Affected Public: Business or other for profit.

Total Respondents: (FY 2000) 4,935.

Frequency: Quarterly/Monthly.

Total Responses: (FY 2001) 40,240.

Average Time Per Response: 34.86. minutes.

Estimated Total Burden Hours: (FY 2001) 23,379 hours.

Form	Total respondents	Frequency	Total responses	Average time per response (hours)	Estimated total burden (hours)
Initiation visit (includes form 4008)	2,700	Annually	1,700	1.00	1,700
Form 3007D	3,235	Montly, Quarterly	38,540	.5625	21,679
Totals	4,935		40,240		23,379

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 17th day of April 2000.

W. Stuart Rust, Jr.,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 00–9978 Filed 4–20–00; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation programs to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the Survey of Occupational Injuries and Illnesses. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before June 20, 2000.

ADDRESSES: Send comments to Sytrina D. Toon, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Sytrina D. Toon, BLS Clearance Officer, telephone number 202–691–7628. (See Addresses section.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 24(a) of the Occupational Safety and Health Act of 1970 requires the Secretary of Labor to develop and maintain an effective program of collection, compilation, and analysis of statistics on occupational injuries and illnesses. The Commissioner of Labor Statistics has been delegated the responsibility for "Furthering the purpose of the Occupational Safety and Health Act by developing and maintaining an effective program of collection, compilation, analysis and publication of occupational safety and health statistics." The Bureau of Labor Statistics (BLS) fulfills this responsibility, in part, by conducting the Survey of Occupational Injuries and Illnesses in conjunction with participating State agencies. The BLS Survey of Occupational Injuries and Illnesses provides the nations's primary indicator of the progress towards achieving the goal of safer and healthier workplaces. The survey produces the overall rate of occurrence of work injuries and illnesses by industry, which can be compared to prior years to produce measures of the rate of change. These data are used to improve safety and health programs and measure the change in work-related injuries and illnesses.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

OMB clearance is being sought for the upcoming Survey of Occupational Injuries and Illnesses. Approximately 230,000 establishments will be surveyed annually. The clearance will include survey prenotification materials for employers who normally are exempt from the requirement to record injuries and illnesses.

Type of Review: Revision.

Agency: Bureau of Labor Statistics.

Title: Survey of Occupational Injuries and Illnesses.

OMB Number: 1220–0045.

Affected Public: Business or other for-profit; Not-for-profit institutions; Farms; State, Local or Tribal Government.

Frequency: Annually.

Form	Total respondents	Total responses	Estimated time per response (hours)	Estimated total burden (hours)
BLS 9300	230,000	230,000	.71	163,125
Prenotification Package	150,000 out of 230,000	150,000 out of 230,000	.11	16,666
Totals	230,000	230,000	.78	179,791

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 17th day of April 2000.

W. Stuart Rust, Jr.,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 00–9979 Filed 4–20–00; 8:45 am]

BILLING CODE 4510–24–M

LEGAL SERVICES CORPORATION

Notice of Availability of Calendar Year 2001 Competitive Grant Funds

AGENCY: Legal Services Corporation.

ACTION: Solicitation for Proposals for the Provision of Civil Legal Services.

SUMMARY: The Legal Services Corporation (LSC or Corporation) is the national organization charged with administering federal funds provided for civil legal services to the poor.

The Corporation hereby announces the availability of competitive grant funds and is soliciting grant proposals from interested parties who are qualified to provide effective, efficient and high quality civil legal services to eligible clients in the states and territories, by service area(s) identified below. The exact amount of congressionally appropriated funds and the date, terms and conditions of their availability for calendar year 2001 have not been determined.

DATES: See Supplementary Information section for grants competition dates.

ADDRESSES: Legal Services Corporation—Competitive Grants, 750 First Street NE, 10th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Office of Program Performance, Competitive Grants—Service Desk at (202) 336–8900, by FAX at (202) 336–7272, by e-mail at competition@lsc.gov, or visit the LSC web site at *www.ain.lsc.gov.*

SUPPLEMENTARY INFORMATION: Request for Proposals (RFP) will be available April 24, 2000. The due dates for the Notice of Intent to Compete and Grant Proposals follow.

Applicants competing for service areas in Alabama, Arizona, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Guam, Hawaii, Idaho, Illinois, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virgin Islands, Washington, Wisconsin, or Wyoming must submit the notice of intent to compete by June 2, 2000, 5:00 p.m. EDT. Grant proposals for service areas in these states must be submitted by June 19, 2000, 5:00 p.m. EDT.

Applicants competing for service areas in California, Colorado, Indiana, Kentucky, Michigan, Missouri, Nebraska, Pennsylvania, Virginia, or West Virginia must submit the notice of intent to compete by June 30, 2000, 5:00 p.m. EDT. Grant proposals for service areas in these states must be submitted by July 17, 2000, 5:00 p.m. EDT.

LSC is seeking proposals from: (1) Non-profit organizations that have as a purpose the furnishing of legal assistance to eligible clients; (2) private attorneys; (3) groups of private attorneys or law firms; (4) State or local governments; and (5) substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials.

The RFP, containing the grant application, guidelines, proposal content requirements and specific selection criteria, is available from the LSC web site at *www.ain.lsc.gov.* LSC will not FAX the solicitation package to interested parties.

Below are the service areas for which LSC is requesting grant proposals. Service area descriptions are available from Appendix A of the RFP. The RFP will be available April 24, 2000, at *www.ain.lsc.gov.*

State	Service area
Alabama	MAL
Arizona	MAZ
Arkansas	MAR

State	Service area
California	CA–2, CA–12 CA–14, CA–19, CA–26, CA–29, CA–30, CA–31, MCA
Colorado	CO–6, MCO, NCO–1
Connecticut	MMX–1
Delaware	MDE
District of Columbia	DC–1
Florida	FL–4, FL–7, FL–9, MFL, NFL–1
Georgia	MGA
Guam	GU–1
Hawaii	MHI
Idaho	MID
Illinois	IL–6, MIL
Indiana	IN–5, MIN
Iowa	IA–1, IA–2, MIA
Kansas	MKS
Kentucky	KY–2, KY–3, KY–5, KY–9, KY–8, MKY
Louisiana	MLA
Maine	MMX–1
Maryland	MMD
Massachusetts	MMX–1
Michigan	MI–1, MI–2, MI–3, MI–4, MI–5, MI–6, MI–7, MI–8, MI–9, MI–10, MI–11, MMI, NMI–1
Minnesota	MMN
Mississippi	MMS
Missouri	MO–3, MO–4, MO–5, MO–7, MMO
Montana	MMT
Nebraska	NE–4, MNE, NNE–1
Nevada	MNV
New Hampshire	MMX–1
New Jersey	MNJ
New Mexico	MNM
New York	MNY, NNY–1
North Carolina	NC–1, NC–2, NC–3, NC–4, MNC, NNC–1
North Dakota	ND–1, ND–2, MND, NND–1, NND–2
Ohio	OH–21, MOH
Oklahoma	MOK
Oregon	OR–2, OR–4, OR–5, MOR, NOR–1
Pennsylvania	PA–1, PA–5, PA–8, PA–11, PA–23, PA–24, PA–25, PA–26, MPA
Puerto Rico	PR–1, PR–2, MPR
Rhode Island	MMX–1
South Carolina	MSC
South Dakota	SD–1, SD–2, SD–3, MSD, NSD–1
Tennessee	MTN
Texas	TX–4, TX–6, TX–8, TX–9, MTX
Utah	MUT
Vermont	MMX–1
Virgin Islands	VI–1
Virginia	VA–1, VA–3, VA–15, VA–16, VA–17, VA–18, VA–19, MVA
Washington	MWA
West Virginia	WV–3, WV–4, MWV
Wisconsin	WI–1, WI–2, WI–3, WI–4, MWI, NWI–1
Wyoming	WY–4, MWY, NWY–1

Dated: April 14, 2000.

Michael A. Genz,

Director, Office of Program Performance.

[FR Doc. 00–9874 Filed 4–20–00; 8:45 am]

BILLING CODE 7060–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts

President's Committee on the Arts and the Humanities: Meeting XLVIII

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities will be held on April 28, 2000 from 9:00 a.m. to approximately 12:30 p.m. The meeting will be held at the State House Convention center, Little Rock, Arkansas.

The Committee meeting will begin at 9 a.m. with opening remarks by Chairman Dr. John Brademas and Executive Director's remarks from Harriet Mayor Fulbright. This will be followed by a special presentation on the "State of the Arts & Humanities in Arkansas." The Committee will hear presentations from John W. Roberts, Deputy Chairman of the National Endowments for the Humanities, and Lee Kessler, Director, Federal Partnerships for the National Endowment for the Arts, and Mamie Bittner, Director of Public and Legislative Affairs for the Institute of Museum & Library Services. There will also be Task Force Reports on Ethnic Diversity (presented by Peggy Cooper Cafritz), "Tutu & Franklin: A Journey Towards Peace" (presented by Renee Poussaint) and Education (presented by Rich Gurin).

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982 to advise the President, the two Endowments, and the Institute of Museum and Library Services on measures to encourage private sector support for the nation's cultural institutions and to promote public understanding of the arts and the humanities.

If, in the course of discussion, it becomes necessary for the Committee to discuss non-public commercial or financial information of intrinsic value, the Committee will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b.

Any interested persons may attend as observers, on a space available basis, but seating is limited. Therefore, for this meeting, individuals wishing to attend must contact Georgianna Paul of the President's Committee in advance at (202) 682–5409 or write to the Committee at 1100 Pennsylvania Avenue, NW, Suite 526, Washington, DC 20506. Further information with reference to this meeting can also be obtained from Ms. Paul.

If you need special accommodations due to a disability, please contact Ms. Paul through the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496.

Dated: April 18, 2000.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 00–10129 Filed 4–20–00; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–325]

Carolina Power & Light Company, et al.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–71 issued to Carolina Power & Light Company, et al., (the licensee) for operation of the Brunswick Steam Electric Plant, Unit 1, located in Brunswick County, North Carolina.

The proposed amendment would modify Surveillance Requirement (SR) 3.1.3.3 to allow partial insertion of control rod 26–47 instead of insertion of one complete notch. This revised acceptance criterion will be limited to the current Unit No. 1 operating cycle, after which the current one-notch requirement will be re-established.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no

significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Partial insertion of control rod 26–47 versus insertion of one notch does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change does not affect either the design or operation of the Control Rod Drive Mechanism (CRDM). The affected surveillance is not considered to be an initiator of any analyzed event. Revising the acceptance criterion for SR 3.1.3.3 for control rod 26–47 will not affect the ability of the control rods to shutdown the reactor if required. Allowing partial insertion of control rod 26–47 versus one notch insertion will not affect the overall intent of SR 3.1.3.3 and will provide adequate assurance that control rod 26–47 remains capable of insertion. The proposed change is only applicable to control rod 26–47; all other partially withdrawn control rods will be tested by inserting them one notch. Additionally, the insertion capability of all fully withdrawn control rods is demonstrated on a 7 day frequency. Hence, the overall intent of SR 3.1.3.3, which is to detect either random stuck control rods or identify generic concerns affecting control rod operability, is not significantly affected by the proposed change.

Therefore, the proposed amendment does not significantly increase the probability or consequences of a previously analyzed accident.

2. Partial insertion of control rod 26–47 versus insertion of one notch will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Revising the acceptance criterion of SR 3.1.3.3 for control rod 26–47 does not involve physical modification to the plant and does not introduce a new mode of operation. Therefore, there is no possibility of an accident of a new or different type.

3. Partial insertion of control rod 26–47 versus insertion of one notch does not involve a significant reduction in a margin of safety.

Revising the acceptance criterion of SR 3.1.3.3 only provides a minor reduction in the probability of finding that rod 26–47 is stuck. Partially inserting control rod 26–47 once per 31 days will provide adequate assurance that control rod 26–47 remains capable of insertion.

The proposed change is only applicable to control rod 26–47; all other partially withdrawn control rods will be tested by inserting them one full notch.

Additionally, the insertion capability of all fully withdrawn control rods is demonstrated on a 7 day frequency. Hence, the overall intent of SR 3.1.3.3, which is to detect either random stuck control rods or identify generic concerns affecting control rod operability, is not significantly affected by the proposed change. Additionally, industry experience has shown stuck control rods to be an extremely rare event. Should a stuck control rod be discovered, 100% of the remaining control rods will be tested within 24 hours per the requirements of Action A.3 of TS 3.1.3.

On March 28, 2000, it was determined that BSEP [Brunswick Steam Electric Plant], Unit No. 1 had developed a problem which has resulted in the inability to withdraw control rod 26–47. The control rod remains operable and is fully capable of being automatically or manually inserted. Performance of SR 3.1.3.3, with the current acceptance criterion, will unnecessarily impact the control rod blade by increasing the rate of depletion of its neutron absorption capability as more of the blade will be exposed to the operating core. Performance of SR 3.1.3.3 by partial insertion of control rod 26–47 versus insertion of one notch can be accomplished by observing control rod position indication in the control room. A one notch insertion represents two reed switch positions; notches are located at even numbered reed switch positions. For control rod 26–47, SR 3.1.3.3 will be performed by inserting the control rod sufficiently to cause reed switch movement, as determined by intermediate rod position indication (*i.e.*, blackout of starting rod position on the four rod display) in the control room. At that point, the control rod will be allowed to settle to its original position. This provides adequate assurance of the insertion capability of the control rod.

Based on (1) the ability of control rod 26–47 to be inserted either manually or automatically, (2) the continued demonstration of the ability of control rod 26–47 to insert on a 31 day frequency, (3) the high level of assurance of continued operability of all control rods provided by SR 3.1.3.2 and SR 3.1.3.3, and (4) the benefits derived by limiting the unnecessary depletion of the neutron absorption capability of control rod 26 47, the benefits derived from revising the acceptance criterion of SR 3.1.3.3 for control rod 26–47 outweigh any risks associated with the proposed change. Therefore, the proposed amendment will provide assurance that control rod 26–47 remains operable while avoiding the negative consequences of unnecessarily inserting control rod 26–47.

Based on the above, partial insertion of control rod 26–47 versus insertion of one notch does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 22, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW.,

Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 14, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 17th day of April, 2000.

For the Nuclear Regulatory Commission.

Allen G. Hansen,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–9965 Filed 4–20–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–22]

In the Matter of CBS Corporation (Test Reactor at Waltz Mill, PA); Order Approving Transfer of License and Conforming Amendment

I

The CBS Corporation (CBS) is the owner of the Test Reactor located near Waltz Mill in Westmoreland County, Pennsylvania, and is authorized to possess the facility as reflected in License No. TR–2. The facility is presently being decommissioned in accordance with a decommissioning plan approved by the Nuclear Regulatory Commission (NRC or the Commission). The NRC issued Operating License No. TR–2 on June 19, 1959, to the Westinghouse Electric Corporation pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50). The license was amended on March 25, 1963, to authorize the licensee to possess but not operate the reactor. The license was amended on July 31, 1998, and March 25, 1999, to reflect the change in the legal name of the licensee for the Test Reactor from the Westinghouse Electric Corporation to the CBS Corporation. The license was further amended on September 30, 1998, to approve the decommissioning of the reactor.

II

Under cover of a letter dated February 14, 2000, CBS submitted an application to transfer the TR–2 license from CBS Corporation to Viacom Inc. (Viacom). This application was supplemented on March 8 and 25, 2000 (collectively referred to herein as "the application"). According to the application, CBS has entered into an Agreement and Plan of

Merger with Viacom under which CBS will merge with and into Viacom (the "Merger"). The existing TR–2 license held by CBS will be transferred to and retained by Viacom, and Viacom will have responsibility to decommission the facility and terminate the license. The application asserts that the proposed transfer will not involve any change in the operating organization, location, facilities, equipment, or procedures related to or personnel responsible for the licensed activities. In addition, there will be no effective change in the personnel who are responsible for completion of the decommissioning effort as described in the TR–2 Decommissioning Plan.

The application also sought the approval of a conforming amendment. The conforming amendment would remove references to CBS from the facility license and replace them with references to Viacom, and make other miscellaneous administrative changes, as appropriate, to reflect the transfer of the license.

Approval of the transfer and conforming license amendment was requested pursuant to 10 CFR 50.80 and 10 CFR 50.90. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on February 29, 2000 (65 FR 10841). A supplemental notice was published on March 7, 2000 (65 FR 12040). No hearing requests or written comments were filed.

Under 10 CFR 50.80, no license for a production or utilization facility, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application and other information before the Commission, the NRC staff has determined that Viacom is qualified to hold the license, and that the transfer of the license to Viacom is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will be possessed in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The foregoing findings are supported by a Safety Evaluation dated April 13, 2000.

III

Accordingly, *It Is Hereby Ordered* that the transfer of the license as described herein to Viacom is approved, subject to the following condition:

After receipt of all required regulatory approvals of the merger between CBS and Viacom, CBS shall inform the Director, Office of Nuclear Reactor Regulation, in writing of such receipt, and of the date of the closing of the merger no later than five business days prior to the date of closing. Should the transfer of the license not be completed by March 30, 2001, this Order shall become null and void, provided, however, on written application and for good cause shown, such date may in writing be extended.

It Is Further Ordered that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the transfer is approved. The amendment shall be issued and made effective at the time the proposed license transfer is completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated February 14, 2000, and supplements thereto dated March 8 and 25, 2000, and the safety evaluation dated April 13, 2000, which are available for public inspection at the NRC's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web Site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 13th day of April 2000.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 00–0966 Filed 4–20–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–320]

GPU Nuclear, Inc., Three Mile Island Nuclear Station, Unit 2; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–73 issued to GPU Nuclear, Inc. (the licensee) for operation of the permanently shutdown Three Mile Island Nuclear Station, Unit 2 (TMI–2), located in Middletown, Pennsylvania.

The proposed amendment would reflect an administrative name change from GPU Nuclear Corporation to GPU Nuclear, Inc. Further, the proposed license amendment makes an editorial change to better describe TMI–2's use of site physical security, guard training and qualification, and safeguard contingency plans that are maintained by the Three Mile Island Nuclear Station, Unit 1, licensee, AmerGen Energy Company, LLC. In addition, the licensee requests that minor changes (mainly in titles) be made in Section 6.0 of the Technical Specifications to reflect the TMI–2 organizational and administrative controls that will exist following the sale of the Oyster Creek Nuclear Generating Station.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes to the TMI–2 License and Technical Specifications do not

involve a significant increase in the probability of occurrence or consequences of an accident or malfunction of equipment important to safety previously analyzed in the safety analysis report. The changes have no impact on plant operations or the release of radioactive materials.

2. The proposed changes to the TMI–2 License and Technical Specifications will not create the possibility for an accident or malfunction of a different type than any previously evaluated in the safety analysis report because no plant configuration or operational changes are involved.

3. The changes will not involve a significant reduction in the margin of safety as defined in the basis for any technical specification for TMI–2 because no change to operational limits will be made.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be consideration in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice Period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received.

Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide an opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 22, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board (the Board), designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specific requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's

Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ernest L. Blake, Jr., Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions, and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the presiding Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(i)-(v) and 10 CFR 2.714(d).

For further details with respect to this action, see the application for amendment dated April 6, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 14th day of April 2000.

For the Nuclear Regulatory Commission.

John L. Minns,

Project Manager, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–9964 Filed 4–20–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–336]

Northeast Nuclear Energy Company, et al.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–65 issued to Northeast Nuclear Energy Company, et al. (the licensee) for operation of the Millstone Nuclear Power Station, Unit No. 2 located in Waterford, Connecticut.

The proposed amendment would correct an administrative error in reference 6.9.1.8b.1 of the list of documents specified in Technical Specification 6.9.8b. This list of documents describes the analytical methods used to determine the core operating limits.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will revise the date in reference 6.9.1.8b.1 from "February 1995" to "January 1997." The report title and document number are correct and remain the same as identified in Amendment No. 242. This change is administrative in nature since it does not have any impact on the actual analytical methods used to determine the core operating limits, the calculations performed for Cycle 14, and the calculations for future reloads. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will revise the date in reference 6.9.1.8b.1 from "February 1995" to "January 1997." This change is administrative in nature. This change will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. It does not alter the way any structure, system, or component functions and does not alter the manner in which the plant is operated. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change will revise the date in reference 6.9.1.8b.1 from "February 1995" to "January 1997." This change is administrative in nature. Therefore, the proposed change will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m., Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 22, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be

filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 12, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 14th day of April 2000.

For the Nuclear Regulatory Commission.

Jacob I. Zimmerman,

Project Manager, Section 2, Project Directorate, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–9962 Filed 4–20–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[DOCKET NO. 50–388]

PP&L, Inc. Notice of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–22, issued to PP&L, Inc. (the licensee), for operation of the Susquehanna Steam Electric Station (SSES), Unit 2, located in Luzerne County, Pennsylvania.

The proposed amendment would revise Technical Specification (TS) surveillance requirement (SR) 3.6.1.1.1, which specifies requirements for containment leakage rate testing. Specifically, the proposed amendment would permit deferral of testing of flange o-rings on primary containment penetration spectacle flanges 2S299A and 2S299B until the Unit 2 10th refueling outage, scheduled for spring 2001 or a prior Unit 2 outage requiring entry into Mode 4.

Exigent circumstances exist which cause the Commission to act promptly upon the proposed amendment request. The licensee identified on April 7, 2000, that the previous leakage rate test of spectacle flange o-rings on 2S299A and 2S299B may not have been valid.

The licensee requested in a letter and telephone call on April 8, 2000, that the

Commission grant enforcement discretion to permit continued plant operation until a TS change request could be processed. The licensee stated that a third o-ring erroneously installed in a channel of the flange intended to facilitate leakage rate testing may restrict the ability to adequately test the pressure retaining ability of the spectacle flange to pipe flange interface. The licensee stated that the presence of the third o-ring does not affect the pressure retaining ability of the spectacle flange to pipe flange interface. During the phone call, and in a subsequent letter dated April 10, 2000, the Commission noted its intention to exercise enforcement discretion for the period of time necessary to process a license amendment to change the TSs . Guidance provided in NRC Administrative Letter 95–05, Revision 1, "Revisions to Staff Guidance for Implementing NRC Policy on Notices of Enforcement Discretion," dated February 19, 1999, states that a written request for a notice of enforcement discretion should be followed within 48 hours by a request for an exigent license amendment. Thus, the licensee's application for amendment, dated April 10, 2000, is in response to the invalid leakage rate test of the spectacle flange o-rings and to the Commission's actions in granting enforcement discretion.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This proposal does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The presence of the third o-ring does not degrade and may improve the pressure retaining capability of the pipe flange to spectacle flange interface. The leakage through the subject lines is not adversely affected by the existence of the third o-ring; therefore the probability of any accident previously evaluated is not significantly increased. The o-rings are passive components and have no active safety function. Similarly, the potential consequences of an accident previously evaluated are not significantly increased by the existence of the third o-ring, since the pressure retaining capability of the pipe flange to spectacle flange interface is not degraded.

This proposal does not create the possibility of a new or different type of accident from any previously evaluated.

Since the pressure retaining capability of the pipe flange to spectacle flange interface is not affected by the existence of the third o-ring as discussed above, the proposed change does not create a new or different type of accident from any previously evaluated.

This change does not involve a significant reduction in a margin of safety.

Since the pressure retaining capability of the pipe flange to spectacle flange interface is not affected by the existence of the third o-ring, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 5, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the

subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Bryan A. Snapp, Esquire, Assoc. General Counsel, PP&L, Inc., 2 North Ninth St., GENTW3, Allentown, PA 18101–1179, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 10, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 14th day of April 2000.

For the Nuclear Regulatory Commission.

Robert G. Schaaf,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–9963 Filed 4–20–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–20563, License No. 52–21368–01, EA 99–282]

In the Matter of Western Soil, Inc., Mayaguez, Puerto Rico 00681; Order Imposing Civil Monetary Penalty

I

Western Soil, Inc. (Licensee) is the current holder of Materials License No. 52–21368–01 originally issued by the Nuclear Regulatory Commission (NRC or Commission) on December 13, 1983, to Caribbean Soil Testing Company, Inc. On April 12, 1994, an amendment was issued transferring the license to Western Soil, Inc. The license expires on April 30, 2004. The license authorizes Western Soil, Inc. to use sealed sources contained in portable gauging devices for measuring properties of materials.

II

An inspection of the Licensee's activities was conducted on September 28–29, 1999. The results of this inspection indicated that the Licensee had not conducted its activities in compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated November 24, 1999. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee violated, and the amount of the civil penalty proposed for the violation cited in Part I of the Notice.

The Licensee responded to the Notice by letters dated December 20, 1999, and February 16, 2000. In its responses, the Licensee admits the violations in Part II of the Notice, but contests the violation in Part I of the Notice insofar as it stated that the licensee failed to maintain constant surveillance of licensed material. The Licensee also took issue with certain statements made in the cover letter forwarding the Notice. In addition, the Licensee requested that NRC consider categorizing the violation in Part I of the Notice as a first offense, rather than as a recurring one.

III

After consideration of the Licensee's responses and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violation cited in Part I of the Notice occurred as stated and that the penalty proposed for the violation designated in Part I of the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It Is Hereby Ordered That:*

The Licensee pay a civil penalty in the amount of $2,750 within 30 days of the date of this Order, in accordance with NUREG/BR–0254. In addition, at the time of making payment, the Licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Regional Administrator, NRC Region II, U.S. Nuclear Regulatory Commission, 61 Forsyth St., SW, Suite 23T85, Atlanta, GA 30303.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) whether the Licensee was in violation of the Commission's requirements as set forth in Part I of the Notice referenced in Section II above, and

(b) whether, on the basis of such violation, this Order should be sustained.

Dated this 12th day of April 2000.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Director, Office of Enforcement.

Appendix—Evaluations and Conclusions

On November 24, 1999, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. The licensee's response denies Violation I in part and provides additional information in support of mitigation of the violation, and admits Violation II.A and B. The NRC's evaluation and conclusion regarding the licensee's arguments are as follows:

Restatement of the Violation in Part I of the Notice

10 CFR 20.1801 requires the licensee to secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. 10 CFR 20.1802 requires the licensee to control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, controlled area means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee for any reason; unrestricted area means an area, access to which is neither limited nor controlled by the licensee.

Contrary to the above, on June 4, 1999, the licensee failed to secure from unauthorized removal or limit access to a moisture/density portable nuclear gauge containing approximately 10 millicuries of cesium-137 and 50 millicuries of americium-241 in a vehicle while at a temporary job site, which is an unrestricted area, nor did the licensee control and maintain constant surveillance of this licensed material. As a result, the gauge was stolen.

Summary of Licensee's Response to the Violation in Part I of the Notice

In response to the violation, the licensee stated that on June 4, 1999, the technician did not abandon or leave the gauge. The licensee further stated that after completing density tests, the technician secured the gauge to the bed of the pick up truck with only a stabilization belt. The licensee stated that the case was not secured to the vehicle with a chain and padlock because the technician was discussing work with the project manager at a distance of 300–400 feet from the gauge. The licensee admitted the technician's mistake, but indicated that it was not a typical situation during operations and that the gauge was not abandoned.

NRC Evaluation of Licensee's Response to the Violation in Part I of the Notice

Regarding the regulatory basis for the violation of 10 CFR 20.1801 and 20.1802, the technician's presence at a distance of 300–400 feet from the gauge was, in this case, unacceptable for maintaining adequate surveillance and control over unsecured licensed material because the gauge was stolen. This is a clear indication that it was not adequately surveilled or controlled.

Summary of Licensee's Request for Mitigation

The licensee took issue with the characterization of the violation as similar to a violation identified in March 1994 when the license was under the control of the previous owner, Caribbean Soil Testing Company, Inc. The licensee stated that in June 1997, Western Soil, Inc. assumed responsibility for the license and committed to the programs required by the NRC. The licensee noted inadequacies in Carribean Soil's procedures for handling gauges and implemented improvements, including use of a chain and padlock to secure gauges to vehicles. The licensee stated that it was unaware of the previous violation until NRC's letter of November 24, 1999, transmitting the Notice. Furthermore, the licensee asserts that the prior violation, as recalled by the former owner of the company, related to a case padlock, not to stolen equipment. Based on this, the licensee requested that the violation be considered a first time offense and not a recurring one.

The licensee also disagreed with the finding that the transportation case for the stolen gauge contained the gauge key, as stated in NRC's November 24, 1999, cover letter forwarding the Notice. The licensee stated that, during the inspection, the NRC inspector found keys inside an envelope in the transportation case which belonged to a gauge in storage. The licensee further explained that keys are normally stored in the transportation cases of "out of service" gauges to ensure that the keys travel with the gauges when they are shipped for service, as opposed to gauges being used in the field, which did not have keys with them. The licensee stated that on the day of the NRC inspection, the transportation case of the gauge returning from the field did not contain its key.

NRC Evaluation of Licensee's Request for Mitigation

In accordance with Section VI.B.2. of the Enforcement Policy, when activities under the license have been the subject of *any* escalated enforcement action within the last two inspections, the NRC considers whether credit is warranted for identification or corrective action in assessing the amount of the civil penalty. In this case, because the activities under the license had been the subject of escalated enforcement action within the last two inspections, the NRC applied these factors in assessing the amount of the civil penalty.

Although the licensee stated that it was unaware of the previous violation until NRC's letter of November 24, 1999, transmitting the Notice, as part of the application, the licensee submitted a letter dated August 19, 1997, which stated that the new owner agreed with all constraints, conditions requirements, representations and commitments identified in the existing

license. This letter is referenced in License Condition 21 of the NRC license which requires, in part, that the licensee maintain the corrective actions for previous enforcement actions. Corrective actions from the previous enforcement action issued on June 14, 1994, regarding security of material, were documented in a letter dated August 29, 1994, from Caribbean Soil Testing Company, Inc. which stated, "we have attached a chain to the handle of the gauge box and lock it with the open bed of the pick up truck." The NRC therefore holds the new owner responsible for the previous escalated enforcement actions and associated corrective action effectiveness. In this case, as explained in the cover letter forwarding the Notice, the licensee did not maintain effective corrective action such as would have prevented this violation from occurring.

In addition, the licensee stated that the previous violation of June 14, 1994, was not associated with a stolen gauge but rather, was associated with a case padlock. The current violation need not be a duplicate of the previous enforcement action, but these two actions are similar in that both of these violations involve the licensee's failure to control licensed material. The fact that the prior violation was not *identical* to this violation had no bearing upon the amount of the civil penalty that was assessed.

Regarding the location of the gauge keys, the inspector observed a gauge in storage with the gauge key in an envelope inside the transportation case, and questioned the licensee about the stolen gauge. The licensee's Radiation Safety Officer (RSO) stated to the inspector that the stolen gauge's transportation case also contained its key in an envelope, and that the practice of transporting gauges with their keys was not uncommon. The RSO told the inspector that the stolen gauge was found with a broken transport case lock; however, the envelope which contained the key inside the transportation case appeared to be untampered with. This finding was documented in the October 19, 1999, inspection report and was neither challenged nor questioned by Western Soil, Inc. during the November 9, 1999, predecisional enforcement conference. In its letters dated December 20, 1999, and February 16, 2000, Western Soil, Inc. provided information contrary to this finding. However, the reconciliation of this conflicting information regarding the location of the keys has no effect on the outcome of the final enforcement action including the potential civil penalty. Although the location of the keys does affect the magnitude of the safety significance; the severity level of the violation and associated civil penalty were based solely on the licensee's failure to maintain adequate security over licensed material which resulted in the gauge being stolen and in the public domain. Such a violation is categorized at Severity Level III in accordance with Supplements IV.C.9 and VI.C.I of the Enforcement Policy.

NRC Conclusion

For the above reasons, the NRC staff concludes that the violation occurred as stated and that mitigation of the civil penalty is not warranted.

[FR Doc. 00–9967 Filed 4–20–00; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–373 and 50–374]

Commonwealth Edison Company, LaSalle County Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Facility Operating Licenses Nos. NPF–11 and NPF–18, issued to Commonwealth Edison Company (ComEd, the licensee) for operation of LaSalle County Station, Units 1 and 2, located in LaSalle County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow ComEd to increase the maximum reactor core power level for facility operation from 3323 megawatts-thermal (MWt) to 3489 MWt, which is a five percent increase in rated core power.

The proposed action is in accordance with ComEd's application for amendments dated July 14, 1999, as supplemented by letters dated January 21, February 15, February 23, March 10, March 24, March 31, and April 7, 2000.

Need for the Proposed Action

The proposed action is needed to allow ComEd to increase the electrical output of each LaSalle unit and, thus, provide additional electrical power to service domestic and commercial areas of the licensee's grid. Power uprate has been widely recognized by the industry as a safe and cost-effective method to increase generating capacity. The proposed uprate will provide the licensee with additional operational flexibility.

Environmental Impacts of the Proposed Action

ComEd has submitted an environmental evaluation supporting the proposed extended power uprate action and provided a summary of its conclusions concerning both the radiological and non-radiological environmental impacts of the proposed action. Based on its independent analyses and the evaluation performed by the licensee, the staff concludes that the proposed increase in power is not expected to result in a significant environmental impact.

Radiological Environmental Assessment

Radwaste Systems

ComEd concluded that the operation of the radwaste systems that process radioactive effluents at LaSalle would not be impacted by operation at uprated power conditions and the slight increase in effluents discharged would continue to meet the requirements of 10 CFR part 20, "Standards for Protection Against Radiation," and 10 CFR part 50, appendix I, "Numerical Guides for Design Objectives and Limiting Conditions for Operation to Meet the Criterion 'As Low as is Reasonably Achievable' for Radioactive Material in Light-Water-Cooled Nuclear Power Reactor Effluents." Therefore, power uprate does not have an adverse effect on the processing of radioactive effluents and there are no significant environmental effects from radiological releases.

Dose Consideration

ComEd evaluated the effects of power uprate on the radiation sources within the plant and the radiation levels during normal and post-accident conditions. For normal operations, the licensee determined that conservatism in the analyses and the margins added to calculated doses and specific shield thickness are sufficient to accommodate any increases attributed to the five percent increase in rated thermal power. For post-accident conditions, the resulting radiation levels were determined to be within current regulatory limits. In addition, the licensee determined that there would be no effect on the plant or habitability or the control room envelope or the Technical Support Center. The licensee evaluated the whole body and thyroid doses at the exclusion area boundary that might result from the postulated design basis loss-of-coolant accident and determined the doses remain below established regulatory limits.

Summary

The proposed power uprate will not significantly increase the probability or consequences of accidents, will not involve any new radiological release pathways, will not result in a significant increase in occupational or public radiation exposure, and will not result in significant additional fuel cycle environmental impacts. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

Non-Radiological Environmental Assessment

The licensee reviewed the non-radiological environmental impacts of power uprate based on information submitted in the Environmental Report—Operating License Stage to support original licensing of LaSalle, Units 1 and 2, the Final Environmental Protection Statement (NUREG–0486), the requirements of the Environmental Protection Plan and the National Pollutant Discharge Elimination System (NPDES) Permit. The proposed power uprate will not affect compliance with NPDES requirements.

As a result of power uprate to 105 percent of current licensed core power, normal heat loads to the cooling lake will increase primarily from an increase in heat load from the condenser and from other increased heat loads rejected by the plant service water system. An increase in steam and condensate flow will result in a corresponding increase in the net heat rejection to the cooling lake. Based on a condenser backpressure of 3.5 inches Hga, a 1 degree Fahrenheit rise in circulating water temperature is expected relative to the current temperature rise value of approximately 24 degrees Fahrenheit. This, in turn, will raise cooling lake temperature, thus, increasing circulating water inlet temperature to the condenser. The lake is expected to experience a 0.4 degree increase in temperature on a long-term basis. Based on this minimal temperature rise, thermal shock to the fish population of the lake is not expected. The effect on lake evaporation, makeup, and blowdown was evaluated and found to be acceptable. The effect on cooling lake total dissolved solids was determined to remain within the licensee's administrative limit of 750 ppm.

The LaSalle cooling lake discharges into the Illinois River. ComEd evaluated the effects of power uprate on the temperature of the water in the river in the vicinity of the cooling lake blowdown and concluded that significant margin exists between the maximum expected edge of mixing zone temperature and imposed regulatory limits.

ComEd also evaluated the noise effects due to operation at uprated power and determined that, because the turbine and reactor building supply and exhaust fans will continue to operate at current speeds and noise levels at uprated conditions, the overall noise level will not increase.

With regard to potential non-radiological impacts, the proposed action does not change the method of generating electricity at LaSalle, Units 1 and 2, nor the methods of handling effluents from the environment or effluents to the environment. No changes to land use would result and the proposed action does not involve any historic sites. Therefore, no new or different types of non-radiological environmental impacts are expected. Accordingly, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no significant change in current environmental impacts and would reduce the operational flexibility. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for LaSalle County Station, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on March 23, 2000, the staff consulted with the Illinois State official, Mr. Frank Nizeolik of the Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated July 14, 1999, as supplemented on January 21, February 15, February 23, March 10, March 24, March 31, and April 7, 2000, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site *((http://www.nrc.gov)*

Dated at Rockville, Maryland this 12th day of April 2000.

For the Nuclear Regulatory Commission.

Anthony J. Mendiola,

Chief, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–9961 Filed 4–20–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on May 11–13, 2000, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, October 14, 1999 (64 FR 55787).

Thursday, May 11, 2000

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–10 A.M.: Initiatives Related to Risk-Informed Technical Specifications (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and industry groups regarding initiatives related to risk-informed technical specifications, initial industry submittals on risk-informed technical specifications, and related matters.

10:15 A.M.–11:45 A.M.: Potential Revisions to the Pressurized Thermal Shock (PTS) Acceptance Criterion (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding a draft Commission Paper that describes potential revisions to the PTS acceptance criterion.

12:45 P.M.–2:15 P.M.: Proposed Revision to Regulatory Guide 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed revisions to Regulatory Guide 1.174 and associated guidance on the use of risk information in license amendment reviews.

2:30 P.M.–4:00 P.M.: Proposed Regulatory Guide and Standard Review Plan (SRP) Section Associated with NRC Code Reviews (Open)—The Committee

will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed Regulatory Guide and SRP Section associated with the NRC staff's review of the analytical codes.

4 P.M.–5 P.M.: Break and Preparation of Draft ACRS Reports (Open)—Cognizant ACRS members will prepare draft reports for consideration by the full Committee.

5 P.M.–7 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss a proposed ACRS report on matters considered during this meeting. In addition, the Committee will discuss a proposed ACRS report on the Human Performance Program.

Friday, May 12, 2000

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–10 A.M.: SECY–00–0062, Risk-Informed Regulation Implementation Plan (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding a risk-informed regulation implementation plan described in SECY–00–0062.

10:15 A.M.–11:30 A.M.: Operating Event at E.I. Hatch Nuclear Power Plant, Unit 1 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the findings and recommendations of the Augmented Inspection Team, which investigated the January 26, 2000 reactor trip event at E.I. Hatch Nuclear Power Plant, Unit 1.

11:30 A.M.–11:45 A.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

12:45 P.M.–2:15 P.M.: Physical Security Requirements for Power Reactors (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the status of revising the physical security requirements for power reactors by incorporating insights gained from threat assessment activities being conducted by the staff in coordination with other Federal agencies.

Note: A portion of this session will be closed to discuss safeguards information.

2:30 P.M.–2:45 P.M.: Future ACRS Activities (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

2:45 P.M.–3:30 P.M.: Report of the Planning and Procedures Subcommittee (Open)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business.

3:30 P.M.–4:30 P.M.: Break and Preparation of Draft ACRS Reports (Open)—Cognizant ACRS members will prepare draft reports for consideration by the full Committee.

4:30 P.M.–7 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, May 13, 2000

8:30 A.M.–2 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

1:30 P.M.–2 P.M.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 28, 1999 (64 FR 52353). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, ACRS, five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting Mr. Sam Duraiswamy prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Mr. Sam Duraiswamy if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) P.L. 92–463, I have determined that it is necessary to close a portion of this meeting noted above to discuss safeguards information per 5 U.S.C. 552b(c)(3).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting Mr. Sam Duraiswamy (telephone 301/415–7364), between 7:30 a.m. and 4:15 p.m., EDT.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., EDT, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Date: April 17, 2000.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 00–9960 Filed 4–20–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Survey on Reciprocal Subpoena Enforcement: SEC File No. 270–479, OMB Control No. 3235–new.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a

request to approve the collection of information discussed below.

The survey is called the Securities and Exchange Commission Survey on Reciprocal Subpoena Enforcement. The staff created the survey pursuant to a Congressional directive in the Securities Litigation Uniform Standards Act of 1998 ("1998 Act"). The 1998 Act requires the Commission, in consultation with state securities commissions (or similar agencies) to "seek to encourage the adoption of State laws providing for reciprocal enforcement by State securities commissions of subpoenas issued by another State securities commission. * * *." The 1998 Act further requires the SEC to submit a report to Congress by November 2000 which identifies the states that have adopted such laws, describes the actions the Commission and the state commissions have taken to promote such laws, and identifies any further actions the Commission recommends for such purposes.

The survey seeks information regarding (1) the states' laws authorizing providing assistance to other states with subpoenas, (2) the states' experiences in seeking assistance from other states with their subpoenas, (3) the states' experiences in requesting assistance from other states with their subpoenas and (4) each state's proposals and suggestions regarding reciprocal subpoena enforcement. The Commission will use the information gathered in the survey to write the report to Congress.

The survey will be sent to all of the states, the District of Columbia and Puerto Rico. It is estimated that there will be approximately 52 respondents to the survey and that each full response will take approximately 30 minutes. Thus, the total reporting burden of the survey will be about 26 hours. The survey is voluntary and may be completed at the option of the recipient. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 11, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–9954 Filed 4–20–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of April 24, 2000.

Commissioner Carey, as duty officer, determined that no earlier notice thereof was possible.

An open meeting will held on Tuesday, April 25, 2000 at 10 a.m. in Room 1C30.

The subject matter of the open meeting scheduled for Tuesday, April 25, 2000 at 10:00 a.m. will be: The Commission will consider issuance of an interpretive release providing guidance on the application of the federal securities laws to electronic media, including updating previous guidance on the use of electronic media to deliver documents under the federal securities laws and related matters. For further information, please contact P.J. Himelfarb or Mark A. Borges at (202) 942–2900.

A closed meeting will be held on Thursday April 27, 2000 at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

The subject matter of the closed meeting scheduled Thursday, April 27, 2000 will be:

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: April 19, 2000.

Jonathan G. Katz,

Secretary.

[FR Doc. 00–10205 Filed 4–19–00; 3:52 pm]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3249]

State of Alabama

Calhoun and Jefferson Counties and the contiguous counties of Bibb, Blount, Cherokee, Cleburne, Etowah, St. Clair, Shelby, Talladega, Tuscaloosa, and Walker in the State of Alabama constitute a disaster area due to damages caused by severe storms and tornadoes that occurred on April 2–3, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on June 12, 2000 and for economic injury until the close of business on January 16, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.625
Homeowners without credit available elsewhere	3.812
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	6.750
For Economic Injury	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster are 324912 for physical damage and 9H0800 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 13, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–10021 Filed 4–20–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3251]

State of California

San Mateo County and the contiguous counties of San Francisco, Santa Clara, and Santa Cruz in the State of California constitute a disaster area as a result of severe winter storms that occurred during the month of February, 2000, and caused debris flows and landslides. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on June 12, 2000 and for economic injury until the close of business on January 16, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.625
Homeowners without credit available elsewhere	3.812
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	6.750
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster are 325111 for physical damage and 9H1000 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 13, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–10019 Filed 4–20–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3250]

State of Texas

As a result of the President's major disaster declaration on April 7, 2000, I find that Tarrant County, Texas constitutes a disaster area due to damages caused by severe storms, tornadoes, and flooding that occurred March 28–29, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on June 6, 2000, and for loans for economic injury until the close of business on January 8, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties in Texas may be filed until the specified date at the above location: Dallas, Denton, Ellis, Johnson, Parker, and Wise.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.625
Homeowners without credit available elsewhere	3.812
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	6.750
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 325012 and for economic injury the number is 9H0900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 13, 2000.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 00–10020 Filed 4–20–00; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF STATE

[Public Notice 3275]

Amendment to Culturally Significant Objects Imported for Exhibition Determinations: "Spirits of the Water: Art From Alaska and British Columbia"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, I hereby determine that the objects to be included in the exhibition "Spirits of the Water: Art from Alaska and British Columbia," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are in addition to the subject objects of a notice concerning this exhibit published under Public Notice 3268, 65 FR 16684 (March 29, 2000) and are imported pursuant to a loan agreement with Russian lenders. I also determine that the exhibition or display of the exhibit objects at the Menil Collection, Houston, Texas, from on or about May 5, 2000 to on or about August 13, 2000 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44; 301–4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: April 12, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–10022 Filed 4–20–00; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Finding of No Significant Impact

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Proposed Finding of No Significant Impact.

SUMMARY: The FAA prepared an Environmental Assessment (EA) evaluating Kistler Aerospace Corporation's proposal to construct and operate commercial launch and reentry/recovery facilities at the Nevada Test Site (NTS) on land withdrawn from the public domain for use by the U.S. Department of Energy (DOE). After reviewing and analyzing currently available data and information on existing conditions, project impacts, and measures to mitigate those impacts, the Federal Aviation Administration (FAA), office of the Associate Administrator for Commercial Space Transportation (AST) proposes to determine that licensing of

the proposed launch and reentry activities are not a major Federal action that would significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) of 1969. Therefore, the preparation of an Environmental Impact Statement (EIS) would not be required and AST is proposing to issue a Finding of No Significant Impact (FONSI).

For a copy of the Environmental Assessment or to provide comments regarding Kistler Aerospace Corporation launch/reentry operations contact: Mr. Nikos Himaras, Office of the Associate Administrator for Commercial Space Transportation, Space Systems Development Division, Suite 331/AST–100, 800 Independence Avenue, SW, Washington, D.C. 20591; phone (202) 267–7926; or refer to the following Internet address: *http://ast.faa.gov.*

DATES: There will be a thirty (30) day comment period before the FAA makes its final determination on the proposed FONSI. Interested individuals, Government agencies, and private organizations are invited to send comments on the proposed FONSI and/or the Environmental Assessment to the address set forth above by May 22, 2000 by mail.

In addition, a public meeting will be held to record verbal comments made by members of the public on May 2, 2000 in Las Vegas, Nevada. Comments received at this meeting will be responded to in a Comment Response document to be produced by the FAA. Additional information about this meeting is available at the following Internet address: http://ast.faa.gov.

Proposed Action

Kistler Aerospace Corporation (Kistler) proposes to conduct commercial launch and reentry/recovery operations at the Nevada Test Site (NTS). The operations would include pre-flight activities, launch/flight operations, and reentry/recovery operations. Kistler proposes to construct a base of operations consisting of a private launch site (including a vehicle processing facility) for its exclusive use, a payload processing facility, and a vehicle landing and recovery area. Upon receipt of a completed license application, AST must determine whether or not to issue a license to Kistler authorizing launch and reentry operations involving the K–1 vehicle. Licensing launch of a launch vehicle and reentry of a reentry vehicle are Federal actions requiring environmental analysis by the FAA in accordance with NEPA. The proposed action is the licensing by FAA of a maximum of 52 launches and reentries per year.

Kistler intends to use a fleet of five K–1 vehicles at a maximum flight rate of 52 launches per year, once the system is fully operational, to deploy payloads into low earth orbit. The K–1 vehicle is a two-stage (*i.e.*, Launch Assist Platform (LAP) and Orbital Vehicle (OV)) fully reusable launch vehicle. Liquid oxygen (LOX) and kerosene (RP–1) fuel both stages, with the LAP using start cartridges containing a small amount of solid propellant to initiate the fuel flow. The K–1 is designed to require less pre-flight and post-flight processing and to minimize electronic, hydraulic, and fuel line connections/disconnections between flights.

The Kistler facilities would be sited within the NTS, an area that is removed from public use. The NTS is primarily an industrial area that previously hosted extensive nuclear tests. The Nevada Test and Training Range (also known as the Nellis Air Force Range) and the Nellis Air Force Base borders the NTS. Both of these are sites of frequent military aircraft training flights. Therefore, the NTS and surrounding communities are accustomed to land use for flight testing purposes. The use of the NTS by Kistler for the purpose of launching and reentering commercial launch vehicles is consistent with community planning activities in the areas around the NTS.

The FAA and Department of Energy (DOE) are directly involved in the proposed action. The FAA is the lead federal agency for the NEPA process and is responsible for licensing and regulating Kistler's launch and reentry operations under 49 U.S.C. subtitle IX, ch. 701. DOE is a cooperating agency for the NEPA process and will provide land and certain infrastructure to the Nevada Test Site Development Corporation (NTSDC) which in turn created a subpermit for Kistler. The DOE prepared a Final Environmental Impact Statement for the Nevada Test Site and Off-Site Locations in the State of Nevada August 1996 (NTS EIS). The DOE issued a Record of Decision (ROD) on December 9, 1996, in which it decided to implement a combination of alternatives including expanded use, no action, and alternative uses i.e., non-defense and private endeavors, for the NTS. It specifically identified Kistler as an example of a potential private use at the NTS. In accordance with Council on Environmental Quality (CEQ) regulations, this EA incorporates by reference the Programmatic Environmental Assessment for Commercial Expendable Launch Vehicles (PEA ELV) (AST 1986), the Final Programmatic Environmental Impact Statement for Commercial Reentry Vehicles (PEIS Reentry Vehicles) (AST 1992), and the NTS EIS (DOE 1996).

Environmental Impacts

Air Quality

Air emissions would result from the construction activities, launch, flight, and reentry operations. Fugitive dust, particulate matter, and engine exhaust concentrations created during construction activities are estimated to be less than federal or state standards. Maximum concentrations of PM_{10} averaged over 24 hours should not exceed 135 micrograms/cubic meter, which is below the national and Nevada State standard of 150 micrograms/cubic meter. This maximum concentration would occur in a controlled area and thus would not pose hazards to the public or to on-site personnel. Carbon monoxide (CO), sulfur dioxide (SO_2), and nitrogen dioxide (NO_2) emissions from vehicle and equipment exhaust during construction were all estimated to be much less than federal or state standards and therefore would pose little to no impact on the environment.

Emissions from the K–1 launch vehicle would include those from the start cartridges (i.e., CO and hydrogen chloride [HCl]) and those from the K–1 engines during the launch (primarily CO_2, H_2O and CO). The 2.14 kilograms (kg) of HCl produced during one launch would be dispersed over a large area and would have little impact on air quality. CO emissions include about 3 kg from start cartridges, 8,179 kg from liftoff through the first 500 meters of the atmosphere, and 35,124 kg in the troposphere (500 meters to 20 kilometers). Those estimated emissions from the K–1 were compared to those of the Titan IIIE/Centaur. Titan IIIE/Centaur emissions are well documented. The K–1 CO emissions are estimated to be less than 50 percent of the Titan IIIE/Centaur. CO emissions are also expected to be much less than the 6 parts per million (ppm) Nevada standard for sites above 1,524 meters and less than the national standard of 9 ppm. Thus, CO emissions are not expected to adversely affect air quality.

In the upper atmosphere beginning at about 20 kilometers, H_2O and CO_2 may be considered potential pollutants due to their low natural concentration and possible influence on the Earth's heat balance. Upper atmospheric emissions of the Kistler vehicle were compared to those of the Titan IIIE/Centaur. K–1 CO_2 emissions are greater than those of the Titan IIIE/Centaur are. H_2O emissions are less than the Titan IIIE/Centaur.

Although the K–1 emits more CO_2 than the Titan IIIE/Centaur, emissions are still less than those expected to produce detectable changes in the upper atmosphere. The PEA ELV states that launch emissions of H_2O and CO_2 for the Titan IIIE/Centaur vehicle appear to be considerably lower than those expected to cause significant impacts in the upper atmosphere. Based on the comparison of emissions with the Titan IIIE/Centaur, Kistler launches are not expected to significantly impact the upper atmosphere. Landing and recovery operations and general maintenance of the vehicle processing facility and launch/reentry site are expected to generate negligible emissions in comparison to construction, pre-flight, launch, and recovery activities. Impacts to air quality from the proposed activities are expected to be insignificant.

Noise

Noise impacts would occur during construction, launch of the vehicle, and vehicle reentry. Construction activities and traffic noise would temporarily increase the ambient noise levels. Workers would wear protective hearing equipment in accordance with Occupational Safety and Health Administration (OSHA) regulations. The general public would not be in the immediate vicinity of the construction site. The closest public access is more than 32 km from the vehicle processing facility and launch site and more than 24 km from the landing and recovery area. Maximum predicted construction noise levels at 24 km would be less than 40 dBA, which would be undetectable with normal daytime ambient noise levels. Therefore, adverse impacts to the general public and construction workers as a result of construction noise are not expected.

Noise impacts during launch of operational flights consist of the reusable launch vehicle's engine noise. Predicted noise levels are well within occupational operating parameters for facility work (i.e., only during the first 18 seconds after the launch would workers in the vehicle processing facility need hearing protection with predictions of 106 dBA). Noise levels at the closest public access (about 32 km) are estimated to be below 77 dBA. Off-site locations would experience no significant launch noise impacts.

Sonic booms would be generated during the vehicle ascent and the reentry stages descent to the landing and recovery area. Sonic boom levels generated outside NTS boundaries would resemble distant thunder or fireworks and have no significant impact on surrounding communities.

Socioeconomic and Environmental Justice

The proposed action is expected to create an average of 85 direct full-time jobs and 28 direct part-time jobs during construction and 90 direct full-time and 28 direct part-time jobs during normal operation. Of the total projected increase in workers, the majority is expected to live in the Las Vegas, Clark County area. Positive impacts to the local economy are expected as a result of the proposed action. In addition, no disproportionate effects on economically disadvantaged or minority groups are anticipated as a result of the proposed action.

Visual Resources

Visual resources are analyzed with respect to intensity and context. Kistler actions are classified as either "not noticeable" or "visually subordinate." The nearest vantage point is the main highway, U.S. 95, more than 45 km from Kistler facilities. Several ridges of hills obscure the view from this route. Kistler activities would not be visible to the general public. Thus, there are no expected impacts to visual resources.

Biological Resources

Vegetation

Construction of the proposed Kistler facilities would result in surface clearing of vegetation from an area totaling 671 acres. The loss of vegetation, as a result of clearing, would represent approximately 0.008 percent of the total Artemesia Type vegetation on the NTS. Therefore, loss is not expected to adversely affect local or regional diversity of plants and plant communities.

Areas for ground based operations at the payload processing facility (8 acres) and launch site (14 acres) would be cleared as part of construction activities. Buildings or pavement would cover both operational areas. The reentry, landing, and recovery area would be impacted but would be permitted to re-vegetate naturally with herbaceous vegetation.

Launch emissions may damage or destroy vegetation due to high temperature exhaust and small amounts of corrosive HCl exhaust gas. Deposition of greater than 1.0 gram per square meter of HCl is necessary to cause vegetative damage; the K–1 launch vehicle would deposit about 0.009 grams per square meter over an area of 0.26 square kilometers. Therefore, adverse impacts to vegetation from HCl deposition are expected to be negligible.

Wildlife

Potential impacts to wildlife from construction activities would result in a permanent loss of available habitat and possible degradation of adjacent habitats due to an increase in noise and human activity. The habitat loss is not expected to adversely affect the local or regional diversity of animal species or populations.

Day-to-day operations would not extend beyond the developed areas and would not be expected to cause a disturbance to animals inhabiting the adjacent areas. Although the Kistler facilities would be located outside the known habitat of the desert tortoise, the desert tortoise does exist on the NTS. The desert tortoise is listed as threatened by the U.S. Fish and Wildlife Service. Kistler employees would receive desert tortoise protective training as mandated for all NTS employees.

Noise generated by vehicle launches inside the NTS, including sonic booms, could cause a startle response and temporary hearing impairment to birds and mammals. These impacts are not expected to affect the viability or diversity of the wildlife population at the site. Wildlife is not expected to be adversely affected by Kistler launch/reentry activities.

Water Resources

Residues from processing and launch operations would be eliminated using existing drainage systems. Evaporation exceeds precipitation in the area, so there would be little downward migration of residue contaminants into groundwater. Spills of fuel or other materials used on-site during daily operations would be contained and cleaned up and any residue properly disposed. Therefore, no adverse impacts to surface and groundwater are expected from the proposed launch/reentry operations.

Geology and Soils

Kistler facilities would be constructed on the ground surface or near the surface. Channels and berms would be constructed to minimize soil erosion. Operation of the launch facilities is not expected to affect subsurface geological media. Surface soils may show a slight increase in pH, augmenting nutrient uptake by vegetation. Thus, geology and soils are not expected to be adversely impacted.

Cultural and Native American Resources

A cultural resources reconnaissance of the proposed vehicle processing facility did not identify historic

properties; however, a reconnaissance of the proposed launch site and reentry, landing and recovery site identified two potential historic properties. The first site is a previously recorded historic property that has been the subject of two previous data recovery efforts by the DOE. The second site was previously undiscovered. A data recovery plan to avoid adverse impacts to the previously undiscovered site was approved by the Nevada State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation (ACHP). It was also determined that additional data recovery efforts on the previously discovered site would not yield new significant information (Nevada State SHPO September 23, 1997) (ACHP October 1, 1997).

To ensure that Native American concerns are considered and data recovery is conducted in a culturally sensitive manner, representatives of the Owens Valley Paiutes, Western Shoshones, and Southern Paiutes participated in the data recovery. The Rapid Cultural Assessment Team conducted an assessment and recommended measures to mitigate impacts to traditional cultural properties. Activities would be conducted in accordance with Section 106 of the National Historic Preservation Act of 1966.

Transportation

Additional on-site and off-site traffic generated by the Kistler proposed activities is expected to be minimal. Existing roads would accommodate additional traffic. The closing of two paved roads on NTS during launch and reentry activities for approximately one-hour per launch would be a temporary disruption.

Health and Safety

Worker health and safety issues arise primarily from accidents during construction, decontamination, decommissioning, and maintenance activities as well as from explosions, fires, or spills. Generally the impact would be limited to workers within the vicinity of the accident. For hazardous operations, workers would be removed to safe distances in case of a catastrophic event.

The health and safety of the general public would not be affected due to the remote location of the NTS. The potential to affect the public would be limited to actual in-flight emergencies. The flight ascent profile is designed to minimize risk to the public. Current Health and Safety programs at the NTS enhance Kistler's ability to respond to an on-site emergency. Accident scenarios would be detailed and evaluated in the Safety Review conducted by the FAA as part of its licensing and regulatory program.

At no time does the launch vehicle enter airspace controlled by the FAA for general and commercial aviation. Most proposed Kistler flights stay within NTS airspace; however, certain launch trajectories require flight outside restricted airspace and above FAA controlled airspace. On these missions, vehicle altitude remains greater than 45,720 meters (150,000 feet) in airspace not used by general or commercial aviation.

Kistler launch and reentry/recovery facilities would be located within the NTS and adjacent to the Nevada Test and Training Range. The nearest air traffic route used by civil aviation during a launch would be Jet Route 80–58 (J80–58), between Wilson Creek and Tonopah, Nevada. Upon reentry, the nearest air traffic route is J92 between Beatty and Boulder City, Nevada. Because of altitude separation distances, the nearest civil air traffic route structure would not be affected and no significant impacts are expected. Therefore, no adverse impacts to worker, public, or civil aviation health and safety are expected.

Cumulative Impacts

The proposed action has been evaluated for cumulative impacts on air quality, noise, socioeconomic, biological resources, cultural and Native American resources, transportation, and health and safety. The NTS EIS assessed foreseeable future actions, including the proposed Kistler activities. The NTS EIS concluded that no cumulative effects are expected as a result of the proposed Kistler facilities and operations.

No Action Alternative

Under the No Action Alternative, the FAA would issue a license for Kistler to conduct launch operations. The General Use Permit between DOE and the NTSDC would continue to exist but the subpermit between the NTSDC and Kistler would be void. Predicted environmental impacts of the proposed launch and reentry activities would not occur and the project area would remain in its current state.

Determination

An analysis of the proposed action has concluded that there are no significant short-term or long-term effects to the environment or surrounding populations. After careful and thorough consideration of the facts contained herein, the undersigned finds that the proposed Federal action is consistent with existing national environmental policies and objectives as set forth in Section 101(a) of NEPA and that it will not significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to Section 102 (2) (C) of NEPA. Therefore, an Environmental Impact Statement for the proposed action would not be required.

Issued in Washington, DC on April 13, 2000.

Patricia G. Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 00–9830 Filed 4–20–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–15]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 15, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9-NPRM-cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are

filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on April 18, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 2857.
Petitioner; Flight Structures.
Section of the FAR Affected: 14 CFR 25.813(b), 25.857(e), 25.785(d), 25.1447(c)(3)(ii).
Description of Relief Sought: To allow carriage of one additional supernumerary increasing the total occupants to 9 on the Airbus Model A300–B4–103, –203 series airplanes.

Docket No.: CE160.
Petitioner; Ayres Corporation.
Section of the FAR Affected: 14 CFR 23.3.
Description of Relief Sought: To permit certification of the Ayres Corporation Model LM200 as a Commuter Category airplane with a novel and unusual twin engine, single-propeller propulsion system.

Docket No.: 27802.
Petitioner; Richmor Aviation.
Section of the FAR Affected: 14 CFR 21.197(c)(2).
Description of Relief Sought: To permit the issuance of a special flight permit with continuous authorization to Richmor for aircraft that are operated and maintained in accordance with 14 CFR 135.411(a)(1) and 135.419, "Approved Aircraft Inspection Program."

Docket No.: 29937.
Petitioner; Southern California Aviation, Inc.
Section of the FAR Affected: 14 CFR 145.35 and 145.37.
Description of Relief Sought: To permit SCAI to perform aircraft storage related maintenance without meeting all the housing and facility requirements required by 145.35 and 145.37.

Dispositions of Petitions

Docket No.: 26533.
Petitioner: Parachute Laboratories, Inc., doing business as Jump Shack.
Section of the FAR Affected: 14 CFR 105.43(a).
Description of Relief Sought/ Disposition: To permit (1) Jump Shack to allow its employees, representatives, and other volunteer experimental parachute test jumpers under its direct supervision and control to make intentional tandem parachute jumps while wearing a dual-harness, dual-parachute pack having at least one main parachute and one approved auxiliary parachute packed in accordance with 105.43(a), and (2) pilots in command of aircraft involved in these operations to allow such persons to make these parachute jumps. *Grant, 03/10/2000, Exemption No. 5448D.*

Docket No.: 28797.
Petitioner: Air Tractor Inc.
Section of the FAR Affected: 14 CFR 36.1(a)(2).
Description of Relief Sought/ Disposition: To permit Air Tractor Inc.'s models AT–602, AT–802, and AT–802A airplanes, which are currently excepted from the requirements of 36.1(a)(2) as "agricultural aircraft," to be exempted from the applicable noise certification requirements of 14 CFR part 36 for the purpose of spill eradication. *Denial, 11/29/99, Exemption No. 7080.*

Docket No.: 29577.
Petitioner: Bombardier Aerospace Corporation, Bombardier Business Jet Solutions Inc.
Section of the FAR Affected: 14 CFR 47.13(g) and 49.13(d).
Description of Relief Sought/ Disposition: To permit petitioners to "use the powers of attorney now on file for the present owners * * * for a period of 6 years from the date of the grant of exemption or until such earlier date as each respective owners has terminated their interest in the concerned aircraft." Specific aircraft have been identified to whose owners any waiver would apply. *Denial, 03/29–03/2000, Exemption No. 7138.*

Docket No.: 29721.
Petitioner: LET, a.s.
Section of the FAR Affected: 14 CFR C36.9(e)(1).
Description of Relief Sought/ Disposition: To permit the 1-g stall speed used for the 14 CFR part 25 airworthiness certification to also be used for the 14 CFR part 36 noise certification for the approach reference and test limitations on the LET L–106G model airplane. *Grant, 11/30/99, Exemption No. 7081.*

Docket No.: 28457.
Petitioner: Mr. Clifford L. Hoyle.
Section of the FAR Affected: 14 CFR 21.19(b)(1).
Description of Relief Sought/ Disposition: To permit Mr. Hoyle to apply for a supplemental type certificate for a design change to his Grob 103 Twin II glider (registration N39810, Serial No. 3913) to install a Bombardier Rotax 582 engine providing self-launching and sustained flight capabilities. *Partial Grant, 03/08/2000, Exemption No. 7142.*

Docket No.: 29736.
Petitioner: Tulsa Air & Space Center Airshows, Inc.
Section of the FAR Affected: 14 CFR 91.315, 119.5(g), and 119.21(a).
Description of Relief Sought/ Disposition: To permit Tulsa Air & Space to operate its former military B–52, which is certified in the limited category, for the purpose of carrying passengers on local flights for compensation or hire, subject to certain conditions. *Grant, 02/18/2000, Exemption No. 7126.*

Docket No.: 29836.
Petitioner: Southwest Airlines, Co.
Section of the FAR Affected: 14 CFR 121.434(c) (1) (ii).
Description of Relief Sought/ Disposition: To permit Southwest to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying PIC who is completing initial or upgrade training specified in 121.424 during at least on flight leg that includes a takeoff and a landing. *Grant, 02/28/2000, Exemption No. 7132.*

Docket No.: 29867.
Petitioner: Jetstream Aviation.
Section of the FAR Affected: 14 CFR 135.143 (c)(2).
Description of Relief Sought/ Disposition: To permit Jetstream Aviation to operate its Cessna Model 310N (Registration No. N4165Q, Serial No. 310N–0065) and Piper PA–28 Cherokee 140 (Registration No. N657CA, Serial No. 28–22371) airplanes under part 135 without a TSO–C112 (Mode S) transponder installed on each airplane. *Grant, 03/01/2000, Exemption No. 7134.*

Docket No.: 29951.
Petitioner: Evergreen International Airlines, Inc.
Section of the FAR Affected: 14 CFR SFAR No. 79.
Description of Relief Sought/ Disposition: To permit Evergreen International Airlines, Inc. to operate one flight to Pyongyang, the capital city of the Democratic People's Republic of Korea DPRK, on or about March 15, 2000, subject to certain conditions and limitations. *Grant, 03/10/2000, Exemption No. 7145.*

[FR Doc. 00–10017 Filed 4–20–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket NHTSA–99–5087]

Safety Performance Standards Program Meeting.

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of NHTSA rulemaking status meeting.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's vehicle regulatory program.

DATES: The Agency's regular, quarterly public meeting relating to its vehicle regulatory program will be held on Thursday, June 15, 2000, beginning at 9:45 a.m. and ending at approximately 12:00 p.m. at the Vehicle Research and Test Center (VRTC) in East Liberty, Ohio. Questions relating to the vehicle regulatory program must be submitted in writing with a diskette (Wordperfect) by Wednesday, May 24, 2000, to the address shown below or by e-mail. If sufficient time is available, questions received after May 24, may be answered at the meeting. The individual, group or company submitting a questions(s) does not have to be present for the questions(s) to be answered. A consolidated list of the questions submitted by May 24, 2000, and the issues to be discussed, will be posted on NHTSA's web site (www.nhtsa.dot.gov) by Monday, June 12, 2000, and also will be available at the meeting. The agency will hold a second public meeting on June 15, devoted exclusively to a presentation of research and development programs. This meeting will begin at 1:30 p.m. and end at approximately 5:00 p.m.

This meeting is described more fully in a separate announcement. VRTC is gathering a list of names who will be attending the June 15, NHTSA Public Meeting, to expedite clearance into the test facility. Those of you who are attending the NHTSA Public Meeting should contact Susie Weiser at 937–666–4511 by C.O.B. June 13, 2000. The next NHTSA Public Meeting will take place on Thursday, September 14, 2000, at the Tysons Westpark Hotel, 8401 Westpark Drive, in McLean, VA.

ADDRESSES: Questions for the June 15, NHTSA Rulemaking Status Meeting, relating to the agency's vehicle regulatory program, should be submitted to Delia Lopez, NPS–01, National Highway Traffic Safety Administration, Room 5401, 400 Seventh Street, SW., Washington, DC 20590, Fax Number 202–366–4329, e-mail dlopez@nhtsa.dot.gov. The meeting will be held at the NHTSA's Research and Development, Vehicle Research and Test Center, P.O. Box 37, East Liberty, Ohio 43319. Directions to the VRTC, as well as this **Federal Register** notice will be also available on NHTSA's web site (www.nhtsa.dot.gov).

FOR FURTHER INFORMATION CONTACT: Delia Lopez, (202) 366–1810.

SUPPLEMENTARY INFORMATION: NHTSA holds a regular, quarterly meeting to answer questions from the public and the regulated industries regarding the agency's vehicle regulatory program. Questions on aspects of the agency's research and development activities that relate directly to ongoing regulatory actions should be submitted, as in the past, to the agency's Safety Performance Standards Office. The purpose of this meeting is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. Transcripts of these meetings will be available for public inspection in the DOT Docket in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at ten cents a page, (length has varied from 80 to 150 pages) upon request to DOT Docket, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. The DOT Docket is open to the public from 10:00 a.m. to 5:00 p.m. The transcript may also be accessed electronically at *http://dms.dot.gov.at* docket NHTSA–99–5087. Questions to be answered at the quarterly meeting should be organized by categories to help us process the questions into an agenda form more efficiently. Sample format:

I. RULEMAKING
  A. Crash avoidance
  B. Crashworthiness
  C. Other Rulemakings
II. CONSUMER INFORMATION
III. MISCELLANEOUS

NHTSA will provide auxiliary aids to participants as necessary. Any person desiring assistance of "auxiliary aids" (*e.g.*, sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, brailled materials, or large print materials and/or a magnifying device), please contact Delia Lopez on (202) 366–1810, by COB June 12, 2000.

Issued: April 18, 2000.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 00–9983 Filed 4–20–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 152X)]

Union Pacific Railroad Company—Abandonment Exemption—in Orange County, TX

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon a 0.75-mile portion of the Orange Industrial Lead from milepost 486.75 to milepost 487.5 near Kilowatt, in Orange County, TX. The line traverses United States Postal Service Zip Code 77630.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.— Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 23, 2000, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 1, 2000. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 11, 2000, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: James P. Gatlin, General Attorney, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by April 26, 2000. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by UP's filing of a notice of consummation by April 21, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: April 14, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–9986 Filed 4–20–00; 8:45 am]

BILLING CODE 4915–00–P

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 578X)]

CSX Transportation, Inc.—Abandonment Exemption—in Clark County, IN

CSX Transportation, Inc. (CSXT) has filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its line of railroad between milepost B–40.34 and milepost B–40.60, a distance of approximately .26 miles, at Charlestown, in Clark County, IN (line). The line traverses United States Postal Service Zip Code 47111.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or state or local government agency acting on behalf of such user) regarding cessation of service over the line is either pending with the Surface Transportation Board (Board) or any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 23, 2000, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 1, 2000. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 11, 2000, with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: Natalie S. Rosenberg, Esq., CSX Transportation, Inc., 500 Water Street, J150, Jacksonville, FL 32202. If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by April 26, 2000. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by April 21, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: April 13, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–9985 Filed 4–20–00; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–566X]

Gateway Western Railway Company—Discontinuance of Service Exemption—In Jackson County, MO

On April 3, 2000, Gateway Western Railway Company (Gateway) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to discontinue service over a 5.45-mile line of railroad, known as the Coburg Line, extending from milepost 0.0 at Sheffield Interlocking to milepost 5.45 near BV Junction, in Jackson County, MO.[1] The line traverses U.S. Postal Service Zip Codes 64125, 64126, and 64129. There are no stations on the line.

Because Gateway is not the owner of the line, it states that it does not know whether the line contains federally granted rights-of-way. Any documentation in Gateway's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by July 21, 2000.

Any offer of financial assistance to subsidize continued rail service under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

This proceeding is exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 1105.8(b).

All filings in response to this notice must refer to STB Docket No. AB–566X and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) William A. Mullins, Troutman Sanders LLP, 1300 I Street, N.W., Washington, DC 20005. Replies are due May 11, 2000.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at 1–800–877–8339.]

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: April 12, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–9311 Filed 4–20–00; 8:45 am]

BILLING CODE 4915–00–P

[1] The line is owned by The Burlington Northern and Santa Fe Railway Company (BNSF) and was operated under lease by Gateway. The lease expired on July 31, 1999, and BNSF resumed service on the line.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 151X)]

Union Pacific Railroad Company—Abandonment Exemption—In Franklin County, IA

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon a 0.44-mile line of railroad over the Sheffield Industrial Lead from milepost 184.31 to milepost 184.75 near Hampton, in Franklin County, IA. The line traverses United States Postal Service Zip Code 50441.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic moving over the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 23, 2000, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 1, 2000. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 11, 2000, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: James P. Gatlin, General Attorney, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP has filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by April 26, 2000. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned its line. If consummation has not been effected by

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

UP's filing of a notice of consummation by April 21, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: April 7, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–9244 Filed 4–20–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Chatham Reinsurance Corporation

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 19 to the Treasury Department Circular 570; 1999 Revision, published July 1, 1999, at 64 FR 35864.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6779.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was listed as an acceptable surety on Federal bonds at 64 FR on page 35870, July 1, 1999.

With respect to any bonds currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00527–6.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: March 31, 2000.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 00–10000 Filed 4–20–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Name Change—Minnesota Trust Company of Austin

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 20 to the Treasury Department Circular 570; 1999 Revision, published July 1, 1999, at 64 FR 35864.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6779.

SUPPLEMENTARY INFORMATION: Minnesota Trust Company of Austin, a Minnesota Corporation, has formally changed its name to Minnesota Surety and Trust Company, effective January 1, 2000. The Company was last listed as an acceptable surety on Federal bonds at 64 FR 35882, July 1, 1999.

A Certificate of Authority as an acceptable surety on Federal bonds, dated today, is hereby issued under Sections 9304 to 9308 of Title 31 of the United States Code, to Minnesota Surety and Trust Company, Austin, Minnesota. This new Certificate replaces the Certificate of Authority issued to the Company under its former name. The underwriting limitation of $166,000 established for the Company as of July 1, 1999, remains unchanged until June 30, 2000.

Certificates of Authority expire on June 30, each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the Company remains qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1, in the Department Circular 570, which outlines details as to underwriting limitations, areas in which licensed to transact surety business and other information. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1999 Revision, at page 35882 to reflect this change.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00527–6.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: April 13, 2000.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 00–10001 Filed 4–20–00; 8:45 am]

BILLING CODE 4810–35–M

UMI

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Corrections

Federal Register
Vol. 65, No. 78
Friday April 21, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-506][A-201-504][A-583-506]

Continuation of Antidumping Duty Orders: Porcelain-on-Steel Cooking Ware from China, Mexico, and Taiwan

Correction

In notice document 00–9374 beginning on page 20136 in the issue of Friday April 14, 2000, make the following correction:

On page 20136, in the second column, in the *EFFECTIVE DATE:* section, "May 14, 2000" should read "April 14, 2000".

[FR Doc. C0–9374 Filed 4–20–00; 8:45 am]

BILLING CODE 1505–01–D

UMI

Federal Register

Friday,
April 21, 2000

Part II

Environmental Protection Agency

40 CFR Part 51

Requirements for Preparation, Adoption, and Submittal of State Implementation Plans (Guideline on Air Quality Models); Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AH–FRL–6536–3]

RIN 2060–AF01

Requirements for Preparation, Adoption, and Submittal of State Implementation Plans (Guideline on Air Quality Models)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA's (*Guideline on Air Quality Models* (*Guideline*) addresses the regulatory application of air quality models for assessing criteria pollutants under the Clean Air Act. In today's action we propose to make several additions and changes to the Guideline. We recommend two new dispersion models, AERMOD and CALPUFF, for adoption in appendix A of the *Guideline*. AERMOD would replace the Industrial Source Complex (ISC3) model in many assessments that now use it; AERMOD also would apply to complex terrain. CALPUFF would become a recommended technique for assessing long-range transport of pollutants and their impacts on Federal Class I areas. We revise two existing models: ISC3, by incorporating a new downwash algorithm (PRIME) and renaming the model ISC–PRIME, and the Emissions Dispersion Modeling System (EDMS), by incorporating improved emissions and dispersion modules. We make various editorial changes to update and reorganize information, and remove obsolete models (CDM, RAM and UAM).

DATES: The period for comment on these proposed changes to the *Guideline* closes on July 20, 2000. We plan to hold a public hearing on the proposed changes in Summer 2000. The specific date and time will be announced in a separate document published in the **Federal Register**.

ADDRESSES: We have established an official record for this rulemaking under docket number A–99–05. You may submit comments pertinent to this proposal to docket no. A–99–05 at the following address: Air Docket (6102), Room M–1500, Waterside Mall, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC. 20460. This docket is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, at the address above. Please furnish duplicate comments to Tom Coulter, Air Quality Modeling Group (MD–14), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. You may send electronic versions of comments pertinent to this proposal to: A–AND–R–DOCKET@epamail.epa.gov. Alternatively, comments are acceptable in WordPerfect 6.1 (or higher), preferably zipped (*e.g.*, PKware) as an attachment to the e-mail message. You must include the docket identification (A–99–05) with all electronic submittals. You may file electronic comments on this proposal online at many Federal Depository Libraries.

The hearing will be the main agenda for the 7th Conference on Air Quality Modeling, and the location will be announced in a separate document published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Joseph A. Tikvart, Leader, Air Quality Modeling Group (MD–14), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541–5561 or C. Thomas Coulter, telephone (919) 541–0832.

SUPPLEMENTARY INFORMATION:

Background

The *Guideline* is used by EPA, States, and industry to prepare and review new source permits and State Implementation Plan revisions. The *Guideline* is intended to ensure consistent air quality analyses for activities regulated at 40 CFR 51.112, 51.117, 51.150, 51.160, 51.166, and 52.21. We originally published the *Guideline* in April 1978 and it was incorporated by reference in the regulations for the Prevention of Significant Deterioration (PSD) of Air Quality in June 1978. We revised the *Guideline* in 1986, and updated it with supplement A in 1987, supplement B in July 1993, and supplement C in August 1995. We published the *Guideline* as appendix W to 40 CFR part 51 when we issued supplement B. We republished the *Guideline* in August 1996 (61 FR 41838) to adopt the CFR system for labeling paragraphs.

Air Quality Modeling Conference

We held the Sixth Conference on Air Quality Modeling (6th conference) in Washington, DC on August 9–10, 1995. As required by Section 320 of the Clean Air Act, these conferences take place approximately every three years to standardize modeling procedures. The sixth conference featured presentations in several key modeling areas. One presentation, by the Interagency Workgroup on Air Quality Modeling (IWAQM [1]), covered long range transport modeling. Another presentation, by the American Meteorological Society (AMS)/EPA Regulatory Model Improvement Committee (AERMIC), covered developing an enhanced Gaussian dispersion model with boundary layer parameterization: AERMOD [2]. Also at the 6th conference, the Electric Power Research Institute (EPRI) presented recent research efforts to better define and characterize dispersion around buildings (downwash effects). These efforts were part of a program called the Plume RIse Model Enhancements (PRIME), and PRIME is proposed for integration within ISC3 (ISC–PRIME).

The presentations were followed by a critical review/discussion of the CALPUFF and AERMOD modeling systems, facilitated jointly by the Air & Waste Management Association's AB–3 Committee and the American Meteorological Society's Committee of Meteorological Aspects of Air Pollution. For the new and revised models described, we asked the public to address the following questions:

- What is the scientific merit of the models presented?
- What is their accuracy?
- What should be the regulatory use of individual models for specific applications?
- What implementation issues are apparent and what additional guidance is needed?
- What are the resource requirements of modeling systems presented?
- What additional information or analyses are needed?

We placed a transcript of the 6th conference proceedings and a copy of all written comments in Docket AQM–95–01. Answers to the above questions are reflected in the comments, which we reviewed and summarized (II–G–01). To the extent possible, we believe we have addressed the main concerns in the refinements proposed today, which focus on the two new modeling systems, as well as the enhancement of ISC3 with EPRI's PRIME downwash model (ISC–PRIME).

AERMOD

AERMOD is a state-of-the-practice Gaussian plume dispersion model whose formulation is based on planetary boundary layer principles. At the 6th conference, AERMIC members presented interim developmental and

[1] IWAQM was formed in 1991 to provide a focus for development of technically sound air quality models for regulatory assessments of long range transport of pollutant source impacts on federal Class I areas. IWAQM is an interagency collaboration that includes efforts by EPA, U.S. Forest Service, National Park Service, and Fish and Wildlife Service.

[2] AMS/EPA Regulatory MODel

evaluation results of AERMOD. AERMOD provides better characterization of plume dispersion than does the ISC3. Comprehensive comments were submitted on the AERMOD code and formulation document and on the AERMET draft User's Guide (AERMET is the meteorological preprocessor for AERMOD). The comments on the AERMET User's Guide were detailed and generally editorial in nature. Comments on AERMOD identified inconsistencies in the AERMOD code as well as among variables and recommended specific default values.

Commenters expressed concern that data bases historically used by EPA lack the variables required by AERMET and AERMOD. The deficiencies were thought to obstruct or weaken AERMOD's evaluation. We disagree that the data bases used for the AERMOD evaluations (Kincaid, Lovett, Martins Creek, Tracy, etc.) were not of the type used historically by EPA and furthermore believe that they contain the critical variables needed by AERMOD. One comment described a perceived "persistence of modeling procedures [by EPA] rather than an evolution to other techniques." This tendency, the commenter believes, has been influenced by testing candidate techniques with the deficient data bases mentioned earlier. According to the commenter, this leaves the new candidate technique no way to show its possible superiority over existing techniques. The commenter argued for a change in this pattern. We disagree with this criticism in that we believe AERMOD has been adequately tested and represents, through its formulations, a technical advancement over its predecessors.

CALPUFF

CALPUFF is a Lagrangian dispersion model that simulates pollutant releases as a continuous series of *puffs*. IWAQM carefully studied the potential regulatory application of CALPUFF in its Phase 1 report.[3] At the 6th conference, IWAQM recommended that EPA consider CALPUFF as a preferred technique for long-range air pollution transport assessments (for example, for federal Class I areas). In its Phase 2 report,[4] IWAQM has, to the extent possible, attempted to resolve the concern and criticism over applying the CALPUFF modeling system.

On the whole, comments appeared to support IWAQM's efforts to simplify and clarify the modeling methods for addressing long-range transport and dispersion. The comments endorsed IWAQM's recommendation to employ one model for all sources and distances. The comments also endorsed IWAQM's recommendation of an approach whereby a group of stakeholders is established that, through consensus, defines the modeling methods, inventories, data bases, and significance criteria to be applied in assessing impacts for a given Class I area. This activity would precede an actual regulatory assessment.

Comments suggested that the Level 1 screen described in IWAQM's Phase I interim recommendations was not working well and needed improvement. IWAQM has attempted to do this by developing a screening procedure that uses CALPUFF with ISC-type meteorological input data, and has shown the results to be conservative for the case(s) tested (see footnote 4).[5] However, the screening approach may not give conservative concentration estimates in all cases (see below).

Comments suggested that more comparisons with tracer studies were needed for transport distances of 50–200km. IWAQM sponsored four such evaluations.

Commenters also sought clearer guidance on the limits of such modeling assessments, such as cases with intervening terrain between the sources and receptors of interest. IWAQM has attempted to make the modeling community(see footnote 4) aware that conducting a long-range transport assessment requires competent individuals, expert judgement, and strong interaction and coordination with the applicable reviewing authorities.

Comments suggested that comparisons were needed to assess whether CALPUFF can provide results similar to ISC3 and CTDMPLUS for steady-state meteorological conditions. We supported this work and examined CALPUFF for equivalency to ISC3,[6] both in a steady-state mode as well as non-steady-state (that is, when meteorological conditions varied hourly). For steady state conditions, CALPUFF mimicked ISC3 to a substantial degree. In non-steady state conditions, occurrences of calms and recirculations resulted in higher source impacts with CALPUFF than for ISC3 for most comparisons made.

ISC–PRIME

The development of PRIME by EPRI featured four key components: a field effort, laboratory modeling of fluids, developing model codes, and independently evaluating models.[7] The field measurements were made at a combustion turbine site in New Jersey in February and March 1994. Wind tunnel experiments have been done at EPA's Fluid Modeling Facility and at a facility at Monash University in Australia. PRIME is modular, it explicitly takes into account stack location and all three building dimensions, and attempts to model the shape of the ellipsoid cavity and the flow of the streamline descents over the top of the cavity. Plume rise calculations are enhanced to treat plumes that are not neutrally buoyant and have no vertical velocity. Unfortunately, at the time of the 6th modeling conference, evaluation work was incomplete and the PRIME code was unavailable for beta testing.

Comments received at the 6th modeling conference commended EPRI's development of PRIME as "a significant improvement over the existing ISC algorithm" and one that could "provide accurate estimates for idealized building geometries." Based on comments, potential problems were anticipated for proper treatment of the myriad combinations of building geometry, wind approach angle, upwind roughnesses, stabilities, etc. Commenters questioned whether all these effects could be parameterized into a robust algorithm to accurately treat downwash at actual sites. Another strong concern was the extent to which the algorithm would work under stable stratification, which is difficult to simulate in a wind tunnel. One commenter even suggested the application of a simpler approach, *i.e.*, the original work by Huber and Snyder who employed a "building downwash amplification factor", as careful parameterization of this factor might

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[3] Environmental Protection Agency, 1993. Interagency Workgroup on Air Quality Modeling (IWAQM) Phase I report: Interim Recommendation for Modeling Long range Transport and Impacts on Regional Visibility; EPA Publication No. EPA–454/R–93–015.

[4] Environmental Protection Agency, 1998. Interagency Workgroup on Air Quality Modeling (IWAQM) Phase 2 Summary Report and Recommendations for Modeling Long-Range Transport Impacts. EPA Publication No. EPA–454/R–98–019.

[5] Environmental Protection Agency, 1998. Analyses of the CALMET/CALPUFF Modeling System in a Screening Mode. EPA Publication No. EPA–454/R–98–010. Office of Air Quality Planning & Standards, Research Triangle Park, NC.

[6] Environmental Protection Agency, 1998. A Comparison of CALPUFF with ISC3. EPA Publication No. EPA–454/R–98–020. Office of Air Quality Planning & Standards, Reserch Triangle Park, NC.

[7] Schulman, L.L., D.G. Strimaitis, and J.S. Scire, 1999. Development and Evaluation of the PRIME Plume Rise and Building Downwash Model. 34pp. + 10 figures (submitted to Journal of the Air & Waste Management Association) (A–99–05, II–A–13).

lead to acceptable accuracy with other benefits. The commenter also suggested that an integral plume rise model had been shown to yield good agreement with field and wind tunnel observations for treating plume trajectories. In terms of PRIME's evaluation, the commenter suggested using, as a basis for comparison, a version of ISC3 that excluded the Schulman-Scire downwash algorithm.

Since the 6th modeling conference, EPRI released a beta test version of PRIME, which was installed within ISC3 (hence, ISC–PRIME). Beta testing of ISC–PRIME shows significantly improved performance in comparison to ISC3.[8] To the extent possible, EPRI has attempted to address the comments on the PRIME algorithm and its documentation. A consequence analysis for using ISC–PRIME (versus ISC3) has also been prepared.[9]

Proposed Action

AERMOD

We propose revising section 4 of the *Guideline* to replace ISC3 by AERMOD as a state-of-the-practice technique for many air quality impact assessments. Applications for which AERMOD is suited are stated in subsequent sections of the *Guideline* and include assessment of plume impacts from traditional stationary sources in simple, intermediate, and complex terrain. In fact, since differentiation of simple versus complex terrain is unnecessary with AERMOD, we merged pertinent guidance in section 5 (Model Use in Complex Terrain) with that in section 4. You will find developmental, evaluation and peer scientific review references for AERMOD cited as appropriate. A model formulation document,[10] as well as a key evaluation reference for the AERMOD modeling system,[11] have been placed in the docket. We added a summary description of AERMOD to appendix A[12] of the *Guideline*, where you are directed to note additional evaluation references and a series of user's manuals. The essential codes, preprocessors, and test cases have been uploaded to our website (www.epa.gov/scram001; see 7th Conference).

We invite your comment on whether we have reasonably addressed technical concerns and are on sound footing to recommend AERMOD for its intended applications. AERMOD lacks a general (all-terrain) screening tool, so we invite your comment on the practicality of using SCREEN3 as an interim tool for AERMOD and ISC–PRIME screening in simple terrain.

CALPUFF

In its Phase 2 recommendations, IWAQM recommended the CALPUFF modeling system for refined use in modeling long-range transport and dispersion to characterize reasonably attributable impacts from one or a few sources for PSD Class I impacts. We endorse its recommendation and are proposing CALPUFF for addition to appendix A of the *Guideline*. We have imposed conforming revisions to section 6 to recommend CALPUFF for regulatory applications involving long-range transport and have suggested a possible screening approach. We also propose CALPUFF for use for all downwind distances for those applications involving complex wind regimes, with case-by-case justification. Studies that support the above recommendations are summarized in IWAQM's Phase II Report (*op. cit.*).

The essential codes, utilities, preprocessors and test cases have been uploaded to the developers' Internet website (www.src.com/calpuff/calpuff1.htm). The documentation for CALMET and CALPUFF have been properly cited in the *Guideline* and are available from the aforementioned website. A peer review has also been cited and has been placed in the docket.

We solicit your comments on our proposal to recommend CALPUFF for its intended applications.

ISC–PRIME

We have proposed the use of ISC–PRIME[13] in section 4 of the *Guideline*, where we emphasize that if you are interested in treating aerodynamic downwash or dry deposition, ISC–PRIME is the recommended model. We have proposed editorial revisions in sections 5–7 of the *Guideline* to make it clear when use of ISC–PRIME is appropriate instead of AERMOD.

The formulation and evaluation of the PRIME algorithm are described in open literature (*op. cit.*) The essential codes, utilities, and test cases have been uploaded to our website (www.epa.gov/scram001; see 7th Conference). We invite your comment on whether we are on sound footing to recommend use of ISC–PRIME as proposed.

We intend to consider AERMOD, ISC–PRIME, and CALPUFF as our recommended techniques for their intended applications (as specified in the *Guideline*) starting one year after we issue the final rule, and that the models be used in their regulatory default modes. The models *may* be used in the interim (*i.e.*, as soon as we issue the final rule). We invite your comment on the reasonableness of the timing of this implementation schedule.

We are aware that, where downwash is of concern, some potential users of AERMOD and ISC–PRIME might find joint application of the two models burdensome. We invite comment on this matter and seek input on alternative approaches that ensure that the latest science is used (as included in both AERMOD and PRIME) for regulatory modeling applications. One alternative considered by AERMIC is the direct inclusion of the PRIME algorithm in AERMOD. This effort, including testing, performance evaluation for the PRIME data bases, and peer scientific review, could take up to 12 months.

Proposed Editorial Changes

Editorial changes are described by affected sections. For a more detailed showing of before/after effects, you are referred to a redline/strikeout version (WordPerfect format) of appendix W that has been posted on our website (www.epa.gov/scram001; see 7th Conference).

Preface

You will note some minor revisions to reflect current EPA practice.

Section 2

In a streamlining effort, we removed section 2.2 and added a new section 2.3 to address model availability.

Section 3

We revised section 3 to more accurately reflect current EPA practice, *e.g.*, functions of the Model

[8] Paine, R.J. and F. Lew, 1997. Results of the Independent Evaluation of ISCST3 and ISC–PRIME. Prepared for the Electric Power Research Institute, Palo Alto, CA. ENSR Document Number 2460–026–440. (NTIS No. PB 98–156524)

[9] Paine, R.J. and F. Lew, 1997. Consequence Analysis for ISC–PRIME. Prepared for the Electric Power Research Institute, Palo Alto, CA. ENSR Document Number 2460–026–450. (NTIS No. PB 98–156516)

[10] Cimorelli, A.J., S.G. Perry, A. Venkatram, J.C. Weil, R.J. Paine, R.B. Wilson, R.F. Lee and W.D. Peters, 1998. AERMOD: Description of Model Formulation. (12/15/98 Draft Document) Prepared for Environmental Protection Agency, Research Triangle Park, NC. 113pp. (Docket No. A–99–05; II–A–1)

[11] Paine, R.J., R.F. Lee, R.W. Brode, R.B. Wilson, A.J. Cimorelli, S.G., Perry, J.C. Weil, A. Venkatram and W.D. Peters, 1998: Model Evaluation Results for AERMOD (12/17/98 Draft). Prepared for Environmental Protection Agency, Research Triangle Park, NC. (Docket No. A–99–05, II–A–5)

[12] Appendix A of appendix W is a repository for preferred, refined air quality models recommended for regulatory applications.

[13] Schulman, L.L., D.G. Strimaitis, and J.S. Scire, 1997. Addendum to ISC3 User's Guide, *The PRIME Plume Rise and Building Downwash Model*. Prepared for the Electric Power Research Institute, Palo Alto, CA., Earth Tech Document A287. A–99–05, II–A–12)

Clearinghouse and enhanced criteria for the use of alternative models.

Section 4

As mentioned earlier, we revised section 4 to present AERMOD, ISC-PRIME, and CALPUFF as regulatory modeling techniques for particular applications. We revised section 4.2.2 to reflect the widespread use of short-term models for all averaging periods. Hence, we no longer reference long-term models (*e.g.*, ISCLT) in the *Guideline*.[14]

Section 5

As mentioned above, we merged pertinent guidance in section 5 (Modeling in Complex Terrain) with that in section 4. With the anticipated widespread use of AERMOD for all terrain types, there is no longer any utility in the previous differentiation between simple and complex terrain for model selection. To further simplify, the list of acceptable, yet equivalent, screening techniques for complex terrain was removed. CTSCREEN and guidance for its use are retained; CTSCREEN remains acceptable for all terrain above stack top. The screening techniques whose descriptions we removed, *i.e.*, Valley (as implemented in SCREEN3), COMPLEX I (as implemented in ISC3), and RTDM remain available for use in applicable cases where established/accepted procedures are used. Consultation with the appropriate Regional Office is still advised for application of these screening models.

Section 6

We revised section 6 (renumbered to section 5) to reflect the new PM–2.5 and ozone ambient air quality standards that were issued on July 18, 1997 (62 FR 38652 & 62 FR 38856). Footnotes have been inserted to provide caveats pertaining to the recent Court decision to remand or vacate parts of these new standards. You will note that we inserted respective subsections for particulate matter and lead from section 7, so that section 5 now primarily contains modeling guidance for the criteria pollutants regulated in Part 51 (SO_2 analyses are covered in section 4).

• We enhanced the subsection on particulate matter as much as possible to reflect the Agency's current thinking on approaches for fine particulates (PM–2.5). You will note that we removed the references to the Climatological Dispersion Model (CDM 2.0) as well as to RAM from this section, and also deleted CDM and RAM from appendix A (see below).

• We enhanced the subsection on ozone to better reflect modeling approaches we currently envision, and added a reference for current guidance on ozone attainment demonstrations.[15] You will note that we removed the reference to the Urban Airshed Model (UAM–IV) from this section, and deleted UAM from appendix A. UAM–IV is no longer the recommended photochemical model for attainment demonstrations for ozone. We believe that it will frequently be necessary to consider the regional scale for such demonstrations and that, since the last revision to appendix W, newer models have become available. We invite comment on the need to integrate ozone and fine particle impacts (*i.e.*, the "one atmosphere" approach). Are modeling tools and air program policies sufficiently developed to provide guidance on an integrated approach at this time? We also invite comments on whether specific validated tools have been sufficiently developed to calculate impacts of individual point sources of ozone and PM–2.5 precursor pollutants. Are there any models that can be recommended for source-specific ozone and PM–2.5 assessments?

• We updated the subsection on carbon monoxide by removing reference to RAM. While UAM–IV is deleted from appendix A, reference to areawide analyses is retained. For refined intersection modeling, CAL3QHCR is specifically mentioned for use on a case-by-case basis.

• In the subsection on NO_2 models, we added a third tier for the screening approach that allows the use of the ozone limiting method on a case-by-case basis. You may recall that this approach was removed with the *Guideline* update promulgated on August 9, 1995 (60 FR 40465).

• In the subsection on lead, we deleted references to 40 CFR 51.83, 51.84, and 51.85, conforming to previous EPA action (51 FR 40661).

Section 7

For regional scale modeling, we removed reference to the Regional Oxidant Model (ROM) and the Regional Acid Deposition Model (RADM) from section 7 because they are outdated and replaced by a reference to Models-3[16] in section 5. We enhanced the subsection on visibility to reflect the provisions of the Clean Air Act, including those for reasonable attribution of visibility impairment and regional haze, as well as the new NAAQS for PM–2.5. For assessment of reasonably attributable haze impairment due to one or a small group of sources, CALPUFF is available for use on a case-by-case basis. We identify REMSAD and new approaches under the Models-3 umbrella for possible use to develop and evaluate national policy and assist State and local control agencies. For long range transport analyses, we present and recommend the CALPUFF modeling system. To facilitate use of a complex air quality and meteorological modeling system like CALPUFF, we stipulate that a written protocol may be considered for developing consensus in the methods and procedures to be followed. Finally, in the subsection on air pathway analyses, we identify the availability of AERMOD and removed specific reference to DEGADIS (other heavy gas models are also available on a case-by-case basis).

Section 8

We revised section 8 (renumbered to section 7) to better reflect our current regulatory practice for the general modeling considerations addressed.

• In subsection 7.2.4, we introduce the atmospheric stability characterization for AERMOD.

• In subsection 7.2.5, we describe the plume rise approaches used by AERMOD and ISC–PRIME.

• We revised subsection 7.2.6 to refer back to subsection 5.2.3 for details on chemical transformation of NO_X.

• We merged subsection 7.2.8 (Urban/Rural Classification) with subsection 7.2.3 (Dispersion Coefficients).

• We merged discussions in subsections 7.2.9 (Fumigation) and 7.2.10 (Stagnation) into one new subsection (Complex Winds), and identify the availability of CALPUFF for certain situations on a case-by-case basis.

• We removed the distinction between short-term and long-term

[14] Note that because Appendix W is designed to guide assessments for criteria pollutants, the proposed discontinuation of ISCLT for purposes herein does not preclude its use for other pollutant assessments, as applicable. For example, the ASPEN model (Assessment System for Population Exposure Nationwide) uses the capabilities of ISCLT to estimate ambient concentrations of toxic pollutants nationwide by census tract. Such applications require the abbreviated computing possible with ISCLT.

[15] Environmental Protection Agency, 1998. Use of Models and Other Analyses in Attainment Demonstrations for the 8-hr Ozone NAAQS (Draft). Office of Air Quality Planning & Standards, Research Triangle Park, NC. (Docket No. A–99–05, II–A–14) (Also available on SCRAM website, www.epa.gov/scram001, as draft8hr.pdf)

[16] Environmental Protection Agency, 1998. EPA Third-Generation Air Quality Modeling System. Models-3, Volume 9b: User Manual. EPA Publication No, EPA–600/R–98/069(b). Office of Research and Development, Washington, D.C.

models because when assessing the impacts from criteria air pollutants, long-term estimates are now practicable using hour-by-hour meteorological data.

Section 9

We renumbered section 9 as section 8 and made the following changes:

• We revised subsection 8.2.3 (recommendations for estimating background concentrations from nearby sources) to reflect a settlement reached on October 16, 1997 in a petition brought by the Utility Air Regulatory Group (UARG). This petition, *Appalachian Power Company et al.* v. *EPA* (D.C. Circuit), No. 93–1631, was filed on November 3, 1993. The plaintiffs challenged the modeling assumptions required for existing point sources and new (or modified) existing point source compliance demonstrations as set forth in tables 9–1 and 9–2 of the *Guideline*. In accordance with the settlement, we are clarifying the definition of "nearby sources." The "maximum allowable emission limit," specified in Tables 8–1 and 8–1 (formerly 9–1 and 9–2), is tied in certain circumstances [17] to the emission rate representative of a nearby source's maximum physical capacity to emit. We are also clarifying that nearby sources should be modeled only when they operate at the same time as the primary source(s) being modeled. Where a nearby source does not, by its nature, operate at the same time as the primary source being modeled, the burden is on the primary source to demonstrate to the satisfaction of the reviewing authority that this is, in fact, the case. We added footnotes to tables 8–1 and 8–2 to refer back to applicable paragraphs of subsection 8.2.3 that provide the necessary clarification.

• We enhanced section 8.3 (Meteorological Input Data) to develop concepts of meteorological data representativeness, minimum meteorological data requirements, and the use of prognostic mesoscale meteorological models in certain situations. These models (*e.g.*, the Penn State/NCAR MM4 [18, 19, 20] or MM5 [21] model) assimilate meteorological data from several surface and upper air stations in or near a domain and generate a 3-dimensional field of wind, temperature and relative humidity profiles. We revised recommendations for length of record for meteorological data (subsection 8.3.1.2) for long-range transport and complex wind situations.

• We revised subsection 8.3.2 (National Weather Service Data) to inform users that National Weather Service (NWS) surface and upper air meteorological data are available on CD–ROM from the National Climatic Data Center. Recent years of such surface data are derived from the NWS's Automated Surface Observing System (ASOS). We invite you to comment on the usefulness of ASOS meteorological data for air quality modeling. More specifically, we invite comment on whether the policy of modeling with the most recent 5 years of NWS meteorological data (section 8.3.1.2) should include ASOS data. We also invite comment on whether the period of record must be the most recent 5 years—regardless of whether it contains ASOS data. Similarly, should the policy to model with the most recent full year of meteorological data (*i.e.*, section 10.2.3.4) include ASOS data?

• We revised subsection 8.3.3.1 to clarify that, while site-specific measurements are frequently made "on-property " (*i.e.*, on the source's premises), acquisition of adequately representative site-specific data does not preclude collecting data from a location off property. Conversely, collection of meteorological data on property does not of itself guarantee adequate representativeness. The subsection was also enhanced by improving the discussion of collection of temperature difference measurements; a paragraph was developed that focuses on measurement of aloft winds for simulation of plume rise, dispersion and transport (some details for AERMOD and CTDMPLUS were moved to their respective appendix A descriptions); a paragraph was added to address collection and use of direct turbulence measurements; and the paragraph that discusses meteorological data preprocessor has been enhanced.

• We revised subsection 8.3.3.2 by removing reference to the STAR processing routine because ISCLT and CDM 2.0 (for which STAR formatted data were developed) have been removed.

• We revised subsection 8.3.4 (Treatment of Calms) to increase accuracy and to include information pertaining to AERMOD.

Section 10

We revised section 10 (renumbered section 9) to include AERMOD, ISC–PRIME, and CALPUFF.

Section 11

We propose minor revisions for section 11 (renumbered section 10) to reflect the new ambient air quality standards for fine particles and ozone. Because EPA has retreated from its emissions trading ("bubble") policy for SO_2, we have deleted subsection 11.2.3.4.

Section 12 & 13

We redesignated section 13 (Bibliography) as section 11 and retained section 12 (References). We revised them by adding some references, deleting obsolete/superseded ones, and resequencing. You will note that peer scientific reviews for AERMOD, CALPUFF and ISC–PRIME have been included.

Section 14

In a streamlining effort, we removed section 14 (Glossary). Given current familiarity with modeling terminology, we no longer consider that maintenance of such a glossary is as necessary as it once may have been. For these and other reasons relating to Office of Federal Register policy (see discussion of appendix B below), we intend to revise the glossary and place it on EPA's Internet SCRAM website.

We invite your comment on any of the changes proposed above (Proposed editorial changes) for appendix W text, including the merging of sections 4 and 5.

Appendix A

We updated the introduction to appendix A (section A.0). As mentioned before, we added AERMOD and CALPUFF to appendix A, and modified the ISC3 description (now, ISC–PRIME) to include the EPRI downwash

[17] See section 8.2.3. of the *Guideline*.

[18] Stauffer, D.R. and Seaman, N.L., 1990. Use of four-dimensional data assimilation in a limited-area mesoscale model. Part I: Experiments with synoptic-scal data. *Monthly Weather Review*, 118:1250–1277.

[19] Stauffer, D.R., Seaman, N.L., and Binkowski, F.S., 1991. Use of four-dimensional data assimilation in a limited-area mesoscale model. Part II: Effect of data assimilation within the planetary boundary layer. *Monthly Weather Review*, 119: 734–754.

[20] Hourly Modeled Sounding Data. MM4—1990 Meteorological Data, 12-volume CD–ROM. Jointly produced by NOAA's National Climatic Data Center and Atmospheric Sciences Modeling Division. August 1995. Can be ordered from NOAA National Data Center's Internet website @ WWW.NNDC.NOAA.GOV/.

[21] www.mmm.ucar.edu/mm5/mm5-home.html

algorithm. We propose removing the Climatological Dispersion Model (CDM 2.0), the Gaussian-Plume Multiple Source Air Quality Algorithm (RAM), and the Urban Airshed Model (UAM) from appendix A. These models have been superseded and are no longer considered preferred techniques.

In the mid-1980s, the Federal Aviation Administration (FAA) developed the Emissions and Dispersion Modeling System (EDMS) to assess the air quality of proposed airport development projects by. In response to the growing needs of the air quality analysis community and changes in regulations (*e.g.*, conformity requirements from the Clean Air Act Amendment of 1990), FAA updated EDMS to version 3.1. Accordingly, we included a revised summary description for EDMS in appendix A. The emissions module of EDMS 3.1 includes input and methodology enhancements. The dispersion module of EDMS 3.1 also has improved and has been refined to incorporate code from two EPA dispersion models: PAL2 and CALINE3. The dispersion module also has been revised to allow the user greater flexibility in specifying inputs such as dispersion settings and coefficients, hourly operational profiles for aircraft queues, and meteorological data. EDMS 3.1 features provide greater resolution in defining emissions and dispersion concentrations, and have the potential to increase or decrease the results, depending on the individual scenario. EDMS has never been subjected to performance evaluation, and no studies of its performance have been cited. We invite comment on whether this compromises its viability as a recommended/preferred model for assessing airport impacts on air quality. We also invite suggestions as to how this deficiency can be addressed.

Appendix B: To Be Moved to Website (www.epa.gov/scram001)

Appendix B of the *Guideline* has been a repository for over 20 alternate models to be used with case-by-case justification. These models have not necessarily been the subject of any performance evaluation, and their inclusion in appendix B does not mean the Agency sanctions their use. They are listed for convenience, and have been used in few regulatory applications. Production and maintenance of the appendix B information currently in CFR text presents a real burden to EPA. Accordingly, we propose to move the appendix B repository of alternate model summary descriptions to our Internet SCRAM website (www.epa.gov/scram001). Placement of this material on the website offers many advantages. In this format, we will be able to maintain the list and model descriptions more easily and inexpensively. We could, for example, routinely make revisions on a nominally annual basis, whereas the current system imposes a nominally 3-year cycle for such revisions. Model developers could list their own website address for users to obtain more information. We invite your comments on the proposed movement of the list of alternative model descriptions to our website.

Several model developers have submitted new dispersion models for inclusion in this website repository of alternate models:

- Second-Order Closure Integrated Puff Model (SCIPUFF);
- Open Burn/Open Detonation Dispersion Model (OBODM);
- Atmospheric Dispersion Modeling System (ADMS); and
- Comprehensive Air Quality Model with extensions (CAMx).

As described below, codes for these models, as well as applicable documentation, have been uploaded to our Internet SCRAM website for your review. We have included summary descriptions in docket no. A–99–05 for your review and comment. Finally, we propose deleting a model currently listed in appendix B, MESOPUFF II, which CALPUFF replaces.

Appendix C

We also propose removing appendix C (Example Air Quality Analysis Checklist) from the CFR. We believe this checklist is outdated, in need of revision, and would be more practical to maintain if posted on EPA's Internet SCRAM website (as is our intention for appendix B).

Availability of Related Information

Our Air Quality Modeling Group maintains an Internet website (Support Center for Regulatory Air Models—SCRAM) at: www.epa.gov/scram001. You may find codes and documentation for models proposed for adoption in today's action on the SCRAM website. In addition, we have uploaded various support documents (*e.g.*, evaluation reports) that are now available for review.

Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Order.

This rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that meets the RFA default definitions for small business (based on Small Business Administration size standards), as described in 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

We do not anticipate that today's proposal will have any impacts on small entities, because existing and new sources of air emissions that model air

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quality for State Implementation Plans and the prevention of significant deterioration are typically not small entities. The modeling techniques described today are primarily used by state air control agencies and by industry.

To the extent that any small entities would ever have to model air quality using the modeling techniques described in today's proposal, the impacts of using updated modeling techniques would be minimal, if not non-existent. The action proposed today incorporates comments received at the 6th Conference on Air Quality Modeling in August 1995 in Washington, D.C. The proposal features several new modeling systems and serves to increase efficiency and accuracy. These systems employ procedural concepts that are very similar to those currently used, changing only mathematical formulations and specific data elements. Any impact on small entities would mainly be ascribed to the proposed use of AERMOD, which will replace ISC3. Computer run times for AERMOD may be longer than those for ISC3, owing to AERMOD's increased sophistication so that more time may be involved in preparing input data using AERMOD's preprocessors (AERMET and AERMAP) relative to an ISC3 run. However, this is more than compensated by AERMOD's capability to treat simple and complex terrain problems in one model, which actually affords a timesaving advantage. Moreover, we designed AERMOD's output formats to mimic those of ISC3, thus easing interpretation of results. Therefore, we do not believe that AERMOD's use poses a significant or unreasonable burden on any small entities. The proposed action imposes no new regulatory burdens and, as such, there will be no additional impact on small entities regarding reporting, recordkeeping, compliance requirements.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism " (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. The proposal would add better, more accurate techniques for air dispersion modeling analyses and does not impose any additional requirements for any of the affected parties covered under Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. As stated above with respect to Executive Order 12875, the proposal does not impose any additional requirements for the regulated community, including Indian Tribal Governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 applies to any rule that EPA determines (1) to be "economically significant " as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both the criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks " (62 FR 19885, April 23, 1997) because it does not an economically significant regulatory action as defined by Executive Order 12866 and the action does not involve decisions on environmental health or safety risks that may disproportionately affect children.

G. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before

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promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan.

The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: February 8, 2000.

Carol M. Browner,

Administrator.

Part 51, chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7410, 7414, 7421, 7470–7479, 7491, 7492, 7601, and 7602.

2. Appendix W to Part 51 is revised to read as follows:

Appendix W to Part 51—Guideline on Air Quality Models

Preface

a. Industry and control agencies have long expressed a need for consistency in the application of air quality models for regulatory purposes. In the 1977 Clean Air Act, Congress mandated such consistency and encouraged the standardization of model applications. The Guideline on Air Quality Models (hereafter, Guideline) was first published in April 1978 to satisfy these requirements by specifying models and providing guidance for their use. The Guideline provides a common basis for estimating the air quality concentrations of criteria pollutants used in assessing control strategies and developing emission limits.

b. The continuing development of new air quality models in response to regulatory requirements and the expanded requirements for models to cover even more complex problems have emphasized the need for periodic review and update of guidance on these techniques. Three primary on-going activities provide direct input to revisions of the Guideline. The first is a series of annual EPA workshops conducted for the purpose of ensuring consistency and providing clarification in the application of models. The second activity is the solicitation and review of new models from the technical and user community. In the March 27, 1980 **Federal Register**, a procedure was outlined for the submittal to EPA of privately developed models. After extensive evaluation and scientific review, these models, as well as those made available by EPA, are considered for recognition in the Guideline. The third activity is the extensive on-going research efforts by EPA and others in air quality and meteorological modeling.

c. Based primarily on these three activities, new sections and topics are included as needed. EPA does not make changes to the guidance on a predetermined schedule, but rather on an as needed basis. EPA believes that revisions of the Guideline should be timely and responsive to user needs and should involve public participation to the greatest possible extent. All future changes to the guidance will be proposed and finalized in the **Federal Register**. Information on the current status of modeling guidance can always be obtained from EPA's Regional Offices.

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1.0 Introduction

a. The Guideline recommends air quality modeling techniques that should be applied to State Implementation Plan (SIP) revisions for existing sources and to new source reviews, including prevention of significant deterioration (PSD).[1, 2, 3] Applicable only to criteria air pollutants, it is intended for use by EPA Regional Offices in judging the adequacy of modeling analyses performed by EPA, State and local agencies and by industry. The guidance is appropriate for use by other Federal agencies and by State agencies with air quality and land management responsibilities. The Guideline serves to identify, for all interested parties, those techniques and data bases EPA considers acceptable. The Guideline is not intended to be a compendium of modeling techniques. Rather, it should serve as a common measure of acceptable technical analysis when supported by sound scientific judgement.

b. Due to limitations in the spatial and temporal coverage of air quality measurements, monitoring data normally are not sufficient as the sole basis for demonstrating the adequacy of emission limits for existing sources. Also, the impacts of new sources that do not yet exist can only be determined through modeling. Thus, models, while uniquely filling one program need, have become a primary analytical tool in most air quality assessments. Air quality measurements can be used in a complementary manner to dispersion models, with due regard for the strengths and weaknesses of both analysis techniques. Measurements are particularly useful in assessing the accuracy of model estimates. The use of air quality measurements alone however could be preferable, as detailed in a later section of this document, when models are found to be unacceptable and monitoring data with sufficient spatial and temporal coverage are available.

c. It would be advantageous to categorize the various regulatory programs and to apply a designated model to each proposed source needing analysis under a given program. However, the diversity of the nation's topography and climate, and variations in source configurations and operating characteristics dictate against a strict modeling "cookbook." There is no one model capable of properly addressing all conceivable situations even within a broad category such as point sources. Meteorological phenomena associated with threats to air quality standards are rarely amenable to a single mathematical treatment; thus, case-by-case analysis and judgement are frequently required. As modeling efforts become more complex, it is increasingly important that they be directed by highly competent individuals with a broad range of experience and knowledge in air quality meteorology. Further, they should be coordinated closely with specialists in emissions characteristics, air monitoring and data processing. The judgement of experienced meteorologists and analysts is essential.

d. The model that most accurately estimates concentrations in the area of interest is always sought. However, it is clear from the needs expressed by the States and EPA Regional Offices, by many industries and trade associations, and also by the deliberations of Congress, that consistency in the selection and application of models and data bases should also be sought, even in case-by-case analyses. Consistency ensures that air quality control agencies and the general public have a common basis for estimating pollutant concentrations, assessing control strategies and specifying emission limits. Such consistency is not, however, promoted at the expense of model and data base accuracy. The Guideline provides a consistent basis for selection of the most accurate models and data bases for use in air quality assessments.

e. Recommendations are made in the Guideline concerning air quality models, data bases, requirements for concentration estimates, the use of measured data in lieu of model estimates, and model evaluation procedures. Models are identified for some specific applications. The guidance provided here should be followed in air quality analyses relative to State Implementation Plans and in supporting analyses required by EPA, State and local agency air programs. EPA may approve the use of another technique that can be demonstrated to be more appropriate than those recommended in this guide. This is discussed at greater length in Section 3.0. In all cases, the model applied to a given situation should be the one that provides the most accurate representation of atmospheric transport, dispersion, and chemical transformations in the area of interest. However, to ensure consistency, deviations from this guide should be carefully documented and fully supported.

f. From time to time situations arise requiring clarification of the intent of the guidance on a specific topic. Periodic workshops are held with the headquarters, Regional Office, State, and local agency modeling representatives to ensure consistency in modeling guidance and to promote the use of more accurate air quality models and data bases. The workshops serve to provide further explanations of Guideline requirements to the Regional Offices and workshop reports are issued with this clarifying information. In addition, findings from on-going research programs, new model submittals, or results from model evaluations and applications are continuously evaluated. Based on this information changes in the guidance may be indicated.

g. All changes to the Guideline must follow rulemaking requirements since the Guideline is codified in Appendix W of Part 51. EPA will promulgate proposed and final rules in the **Federal Register** to amend this Appendix. Ample opportunity for public comment will be provided for each proposed change and public hearings scheduled if requested.

h. A wide range of topics on modeling and data bases are discussed in the Guideline. Chapter 2 gives an overview of models and their appropriate use. Chapter 3 provides specific guidance on the use of "preferred" air quality models and on the selection of alternative techniques. Chapters 4 through 6 provide recommendations on modeling techniques for application to simple-terrain stationary source problems, complex terrain problems, and mobile source problems. Specific modeling requirements for selected regulatory issues are also addressed. Chapter 7 discusses issues common to many modeling analyses, including acceptable model components. Chapter 8 makes recommendations for data inputs to models including source, meteorological and background air quality data. Chapter 9 covers the uncertainty in model estimates and how that information can be useful to the regulatory decision-maker. The last chapter summarizes how estimates and measurements of air quality are used in assessing source impact and in evaluating control strategies.

i. Appendix W to 40 CFR Part 51 itself contains an appendix: Appendix A. Thus, when reference is made to "Appendix A" in this document, it refers to Appendix A to Appendix W to 40 CFR Part 51. Appendix A contains summaries of refined air quality models that are "preferred" for specific applications; both EPA models and models developed by others are included.

2.0 Overview of Model Use

a. Before attempting to implement the guidance contained in this document, the reader should be aware of certain general information concerning air quality models and their use. Such information is provided in this section.

2.1 Suitability of Models

a. The extent to which a specific air quality model is suitable for the evaluation of source impact depends upon several factors. These include: (1) The meteorological and topographic complexities of the area; (2) the level of detail and accuracy needed for the analysis; (3) the technical competence of those undertaking such simulation modeling; (4) the resources available; and (5) the detail and accuracy of the data base, *i.e.*, emissions inventory, meteorological data, and air quality data. Appropriate data should be available before any attempt is made to apply a model. A model that requires detailed, precise, input data should not be used when such data are unavailable. However, assuming the data are adequate, the greater the detail with which a model considers the spatial and temporal variations in emissions and meteorological conditions, the greater the ability to evaluate the source impact and to distinguish the effects of various control strategies.

b. Air quality models have been applied with the most accuracy, or the least degree of uncertainty, to simulations of long term averages in areas with relatively simple topography. Areas subject to major topographic influences experience meteorological complexities that are extremely difficult to simulate. Although models are available for such circumstances, they are frequently site specific and resource intensive. In the absence of a model capable of simulating such complexities, only a preliminary approximation may be feasible until such time as better models and data bases become available.

c. Models are highly specialized tools. Competent and experienced personnel are an essential prerequisite to the successful application of simulation models. The need for specialists is critical when the more sophisticated models are used or the area being investigated has complicated meteorological or topographic features. A model applied improperly, or with inappropriate data, can lead to serious misjudgements regarding the source impact or the effectiveness of a control strategy.

d. The resource demands generated by use of air quality models vary widely depending on the specific application. The resources required depend on the nature of the model and its complexity, the detail of the data base, the difficulty of the application, and the amount and level of expertise required. The costs of manpower and computational facilities may also be important factors in the selection and use of a model for a specific analysis. However, it should be recognized that under some sets of physical circumstances and accuracy requirements, no present model may be appropriate. Thus, consideration of these factors should lead to selection of an appropriate model.

2.2 Levels of Sophistication of Models

a. There are two levels of sophistication of models. The first level consists of relatively simple estimation techniques that generally use preset, worst-case meteorological conditions to provide conservative estimates of the air quality impact of a specific source, or source category. These are called screening techniques or screening models. The purpose of such techniques is to eliminate the need of more detailed modeling for those sources that clearly will not cause or contribute to ambient concentrations in excess of either the National Ambient Air Quality Standards (NAAQS)[4] or the allowable prevention of significant deterioration (PSD) concentration increments.[2 3] If a screening technique indicates that the concentration contributed by the source exceeds the PSD increment or the increment remaining to just meet the NAAQS, then the second level of more sophisticated models should be applied.

b. The second level consists of those analytical techniques that provide more detailed treatment of physical and chemical atmospheric processes, require more detailed and precise input data, and provide more specialized concentration estimates. As a result they provide a more refined and, at least theoretically, a more accurate estimate of source impact and the effectiveness of control strategies. These are referred to as refined models.

c. The use of screening techniques followed, as appropriate, by a more refined analysis is always desirable, however there are situations where the screening techniques are practically and technically the only viable option for estimating source impact. In such cases, an attempt should be made to acquire or improve the necessary data bases and to develop appropriate analytical techniques.

2.3 Availability of Models

a. For most of the screening and refined models discussed in the Guideline, codes, associated documentation and other useful information are available for download from EPA's Support Center for Regulatory Air Modeling (SCRAM) Internet website at *www.epa.gov/scram001*. A list of alternate models that can be used with case-by-case justification (Section 3.2), a glossary of terms, and an example air quality analysis checklist are also posted on this website. This is a site with which modelers should become familiar.

3.0 Recommended Air Quality Models

a. This section recommends refined modeling techniques that are preferred for use in regulatory air quality programs. The status of models developed by EPA, as well as those submitted to EPA for review and possible inclusion in this guidance, is discussed. The section also addresses the selection of models for individual cases and provides recommendations for situations where the preferred models are not applicable. Two additional sources of modeling guidance are the Model Clearinghouse[5] and periodic Regional/State/Local Modelers workshops.

b. In all regulatory analyses, especially if other than preferred models are selected for use, early discussions among Regional Office staff, State and local control agencies, industry representatives, and where appropriate, the Federal Land Manager, are invaluable and are encouraged. Agreement on the data base(s) to be used, modeling techniques to be applied and the overall technical approach, prior to the actual analyses, helps avoid misunderstandings concerning the final results and may reduce the later need for additional analyses. The use of an air quality analysis checklist, such as is posted on EPA's Internet SCRAM website (Section 2.3), and the preparation of a written protocol help to keep misunderstandings at a minimum.

c. It should not be construed that the preferred models identified here are to be permanently used to the exclusion of all others or that they are the only models available for relating emissions to air quality. The model that most accurately estimates concentrations in the area of interest is always sought. However, designation of specific models is needed to promote consistency in model selection and application.

d. The 1980 solicitation of new or different models from the technical community[6] and the program whereby these models were evaluated, established a means by which new models are identified, reviewed and made available in the Guideline. There is a pressing need for the development of models for a wide range of regulatory applications. Refined models that more realistically simulate the physical and chemical process in the atmosphere and that more reliably estimate pollutant concentrations are needed. Thus, the solicitation of models is considered to be continuous.

3.1 Preferred Modeling Techniques

3.1.1 Discussion

a. EPA has developed models suitable for regulatory application. Other models have been submitted by private developers for possible inclusion in the Guideline. These refined models have undergone evaluation exercises[7 8 9 10 11 12 13 14 15 16] that include statistical measures of model performance in comparison with measured air quality data as suggested by the American Meteorological Society[17] and, where possible, peer scientific reviews.[18 19 20 21 22 23 24]

b. When a single model is found to perform better than others, it is recommended for application as a preferred model and listed in Appendix A. If no one model is found to clearly perform better through the evaluation exercise, then the preferred model listed in Appendix A is selected on the basis of other factors such as past use, public familiarity, cost or resource requirements, and availability. No further evaluation of a preferred model is required for a particular application if the EPA recommendations for regulatory use specified for the model in the Guideline are followed. Alternative models to those listed in Appendix A should generally be compared with measured air quality data when they are used for regulatory applications consistent with recommendations in Section 3.2.

c. The solicitation of new refined models which are based on sounder scientific principles and which more reliably estimate pollutant concentrations is considered by EPA to be continuous. Models that are submitted in accordance with the established provisions will be evaluated as submitted. These requirements are:

i. The model must be computerized and functioning in a common computer code suitable for use on a variety of computer systems.

ii. The model must be documented in a user's guide which identifies the mathematics of the model, data requirements and program operating characteristics at a level of detail comparable to that available for currently recommended models.

iii. The model must be accompanied by a complete test data set including input parameters and output results. The test data must be included in the user's guide as well as provided in computer-readable form.

iv. The model must be useful to typical users, e.g., State air pollution control agencies, for specific air quality control problems. Such users should be able to operate the computer program(s) from available documentation.

v. The model documentation must include a comparison with air quality data (and/or tracer measurements) or with other well-established analytical techniques.

vi. The developer must be willing to make the model available to users at reasonable cost or make it available for public access

through the Internet or National Technical Information Service: The model cannot be proprietary.

d. The evaluation process will include a determination of technical merit, in accordance with the above six items including the practicality of the model for use in ongoing regulatory programs. Each model will also be subjected to a performance evaluation for an appropriate data base and to a peer scientific review. Models for wide use (not just an isolated case) That are found to perform better will be proposed for inclusion as preferred models in future Guideline revisions.

3.1.2 Recommendations

a. Appendix A identifies refined models that are preferred for use in regulatory applications. If a model is required for a particular application, the user should select a model from that appendix. These models may be used without a formal demonstration of applicability as long as they are used as indicated in each model summary of Appendix A. Further recommendations for the application of these models to specific source problems are found in subsequent sections of the Guideline.

b. If changes are made to a preferred model without affecting the concentration estimates, the preferred status of the model is unchanged. Examples of modifications that do not affect concentrations are those made to enable use of a different computer or those that affect only the format or averaging time of the model results. However, when any changes are made, the Regional Administrator should require a test case example to demonstrate that the concentration estimates are not affected.

c. A preferred model should be operated with the options listed in Appendix A as "Recommendations for Regulatory Use." If other options are exercised, the model is no longer "preferred." Any other modification to a preferred model that would result in a change in the concentration estimates likewise alters its status as a preferred model. Use of the model must then be justified on a case-by-case basis.

3.2 Use of Alternative Models

3.2.1 Discussion

a. Selection of the best techniques for each individual air quality analysis is always encouraged, but the selection should be done in a consistent manner. A simple listing of models in this guide cannot alone achieve that consistency nor can it necessarily provide the best model for all possible situations. EPA reports [25,26] are available to assist in developing a consistent approach when justifying the use of other than the preferred modeling techniques recommended in the Guideline. Reference [27] contains advanced statistical techniques for determining which model performs better than other competing models. In many cases, this protocol should be considered preferentially to the material in Chapter 3 of reference 25. The procedures in these documents provide a general framework for objective decision-making on the acceptability of an alternative model for a given regulatory application. The documents contain procedures for conducting both the technical evaluation of the model and the field test or performance evaluation.

b. This section discusses the use of alternate modeling techniques and defines three situations when alternative models may be used.

3.2.2 Recommendations

a. Determination of acceptability of a model is a Regional Office responsibility. Where the Regional Administrator finds that an alternative model is more appropriate than a preferred model, that model may be used subject to the recommendations below. This finding will normally result from a determination that (1) a preferred air quality model is not appropriate for the particular application; or (2) a more appropriate model or analytical procedure is available and applicable.

b. An alternative model should be evaluated from both a theoretical and a performance perspective before it is selected for use. There are three separate conditions under which such a model may normally be approved for use: (1) if a demonstration can be made that the model produces concentration estimates equivalent to the estimates obtained using a preferred model; (2) if a statistical performance evaluation has been conducted using measured air quality data and the results of that evaluation indicate the alternative model performs better for the given application than a comparable model in Appendix A; or (3) if the preferred model is less appropriate for the specific application, or there is no preferred model. Any one of these three separate conditions may make use of an alternative model acceptable. Some known alternative models that are applicable for selected situations are listed on EPA's SCRAM Internet website (Section 2.3). However, inclusion there does not confer any unique status relative to other alternative models that are being or will be developed in the future.

c. Equivalency, condition (1) in paragraph 3.2.2b, is established by demonstrating that the maximum or highest, second highest concentrations are within 2 percent of the estimates obtained from the preferred model. The option to show equivalency is intended as a simple demonstration of acceptability for an alternative model that is so nearly identical (or contains options that can make it identical) to a preferred model that it can be treated for practical purposes as the preferred model. Two percent was selected as the basis for equivalency since it is a rough approximation of the fraction that PSD Class I increments are of the NAAQS for SO_2, *i.e.*, the difference in concentrations that is judged to be significant. However, notwithstanding this demonstration, models that are not equivalent may be used when one of the two other conditions identified below are satisfied.

d. For condition (2) in paragraph 3.2.2 b, the procedures and techniques for determining the acceptability of a model for an individual case based on superior performance are contained in references 25–27 and should be followed, as appropriate. Preparation and implementation of an evaluation protocol which is acceptable to both control agencies and regulated industry is an important element in such an evaluation.

e. Finally, for condition (3) in paragraph 3.2.2b, an alternative refined model may be used provided that:

i. The model has received a scientific peer review;

ii. The model can be demonstrated to be applicable to the problem on a theoretical basis;

iii. The data bases which are necessary to perform the analysis are available and adequate;

iv. Appropriate performance evaluations of the model have shown that the model is not biased toward underestimates; and

v. A protocol on methods and procedures to be followed has been established.

3.3 Availability of Supplementary Modeling Guidance

a. The Regional Administrator has the authority to select models that are appropriate for use in a given situation. However, there is a need for assistance and guidance in the selection process so that fairness and consistency in modeling decisions is fostered among the various Regional Offices and the States. To satisfy that need, EPA established the Model Clearinghouse [5] and also holds periodic workshops with headquarters, Regional Office, State, and local agency modeling representatives.

b. The Regional Office should always be consulted for information and guidance concerning modeling methods and interpretations of modeling guidance, and to ensure that the air quality model user has available the latest most up-to-date policy and procedures. As appropriate, the Regional Office may request assistance from the Model Clearinghouse after an initial evaluation and decision has been reached concerning the application of a model, analytical technique or data base in a particular regulatory action.

4.0 Traditional Stationary Source Models

4.1 Discussion

a. Guidance in this section applies to modeling analyses for which the predominant meteorological conditions that control the design concentration are steady state and for which the transport distances are nominally 50km or less. The models recommended in this section are generally used in the air quality impact analysis of stationary sources for most criteria pollutants. The averaging time of the concentration estimates produced by these models ranges from 1 hour to an annual average.

b. Simple terrain, as used here, is considered to be an area where terrain features are all lower in elevation than the top of the stack of the source(s) in question. Complex terrain is defined as terrain exceeding the height of the stack being modeled.

c. In the early 1980s, model evaluation exercises were conducted to determine the "best, most appropriate point source model" for use in simple terrain.[8,18] No one model was found to be clearly superior, and, based on past use, public familiarity, and

availability, ISC (predecessor to ISC3[28]) became the recommended model for a wide range of regulatory applications. Other refined models which also employed the basic Gaussian kernel, i.e., BLP, CALINE3, OCD, and EDMS, were developed for specialized applications (Appendix A).

d. Encouraged by the development of pragmatic methods for better characterization of plume dispersion[29 30 31 32], the AMS/EPA Regulatory Model Improvement Committee (AERMIC) developed AERMOD[33]. AERMOD employs state-of-practice parameterizations for characterizing the meteorological influences and dispersion. The model utilizes a probability density function (pdf) and the superposition of several Gaussian plumes to characterize the distinctly non-Gaussian nature of the vertical pollutant distribution for elevated plumes during convective conditions; otherwise the distribution is Gaussian. Also, nighttime urban boundary layers (and plumes within them) have the turbulence enhanced by AERMOD to simulate the influence of the urban heat island. AERMOD has been evaluated using a variety of data sets and has been found to perform better than ISC3 for many applications, and as well or better than CTDMPLUS for several complex terrain data sets (Section A.1; subsection n). Currently, AERMOD does not contain algorithms for dry deposition.

e. A new building downwash algorithm was developed and tested within the ISC3 construct, ISC–PRIME,[24] which is in Appendix A. ISC–PRIME has been evaluated using a variety of data sets and has been found to perform better than ISC3 (Section A.7; subsection n). ISC–PRIME retains the dry deposition inherent in ISC3.

4.2 Recommendations

4.2.1 Screening Techniques

4.2.1.1 Simple Terrain

a. Where a preliminary or conservative estimate is desired, point source screening techniques are an acceptable approach to air quality analyses. EPA has published guidance for screening procedures,[34] and a computerized version of the recommended screening technique, SCREEN, is available.[35]

b. All screening procedures should be adjusted to the site and problem at hand. Close attention should be paid to whether the area should be classified urban or rural in accordance with Section 7.2.3. The climatology of the area should be studied to help define the worst-case meteorological conditions. Agreement should be reached between the model user and the reviewing authority on the choice of the screening model for each analysis, and on the input data as well as the ultimate use of the results.

4.2.1.2 Complex Terrain

a. CTSCREEN[36] can be used to obtain conservative, yet realistic, worst-case estimates for receptors located on terrain above stack height. CTSCREEN accounts for the three-dimensional nature of plume and terrain interaction and requires detailed terrain data representative of the modeling domain. The model description and user's instructions are contained in the user's guide.[36] The terrain data must be digitized in the same manner as for CTDMPLUS and a terrain processor is available.[37] A discussion of the model's performance characteristics is provided in a technical paper.[38] CTSCREEN is designed to execute a fixed matrix of meteorological values for wind speed (u), standard deviation of horizontal and vertical wind speeds (σ_v, σ_w), vertical potential temperature gradient ($d\theta/dz$), friction velocity (u_*), Monin-Obukhov length (L), mixing height (z_i) as a function of terrain height, and wind directions for both neutral/stable conditions and unstable convective conditions. Table 4–1 contains the matrix of meteorological variables that is used for each CTSCREEN analysis. There are 96 combinations, including exceptions, for each wind direction for the neutral/stable case, and 108 combinations for the unstable case. The specification of wind direction, however, is handled internally, based on the source and terrain geometry. Although CTSCREEN is designed to address a single source scenario, there are a number of options that can be selected on a case-by-case basis to address multi-source situations. However, the Regional Office should be consulted, and concurrence obtained, on the protocol for modeling multiple sources with CTSCREEN to ensure that the worst case is identified and assessed. The maximum concentration output from CTSCREEN represents a worst-case 1-hour concentration. Time-scaling factors of 0.7 for 3-hour, 0.15 for 24-hour and 0.03 for annual concentration averages are applied internally by CTSCREEN to the highest 1-hour concentration calculated by the model.

b. Placement of receptors requires very careful attention when modeling in complex terrain. Often the highest concentrations are predicted to occur under very stable conditions, when the plume is near, or impinges on, the terrain. The plume under such conditions may be quite narrow in the vertical, so that even relatively small changes in a receptor's location may substantially affect the predicted concentration. Receptors within about a kilometer of the source may be even more sensitive to location. Thus, a dense array of receptors may be required in some cases. In order to avoid excessively large computer runs due to such a large array of receptors, it is often desirable to model the area twice. The first model run would use a moderate number of receptors carefully located over the area of interest. The second model run would use a more dense array of receptors in areas showing potential for high concentrations, as indicated by the results of the first model run.

c. As mentioned above, digitized contour data must be preprocessed[37] to provide hill shape parameters in suitable input format. The user then supplies receptors either through an interactive program that is part of the model or directly, by using a text editor; using both methods to select receptors will generally be necessary to assure that the maximum concentrations are estimated by either model. In cases where a terrain feature may "appear to the plume" as smaller, multiple hills, it may be necessary to model the terrain both as a single feature and as multiple hills to determine design concentrations.

d. Other screening techniques[28 35 39] may be acceptable for complex terrain cases where established procedures are used. The user is encouraged to confer with the Regional Office if any unresolvable problems are encountered, *e.g.*, applicability, meteorological data, receptor siting, or terrain contour processing issues.

4.2.2 Refined Analytical Techniques

a. A brief description of each preferred model for refined applications is found in Appendix A. Also listed in that appendix are availability, the model input requirements, the standard options that should be selected when running the program, and output options.

b. For a wide range of regulatory applications in all types of terrain, the recommended model is AERMOD. This recommendation is based on extensive developmental and performance evaluation (Section A.1; subsection n). Differentiation of simple versus complex terrain is unnecessary with AERMOD. In complex terrain, AERMOD employs the well-known dividing-streamline concept in a simplified simulation of the effects of plume-terrain interactions.

c. If dry deposition or aerodynamic building downwash is important for the modeling analysis, *e.g.*, paragraphs 5.2.2.2(e), 5.2.5(b), 6.2.2(b), and 7.2.7(b), the recommended model is ISC–PRIME. Line sources can be simulated with ISC–PRIME if point or volume sources are appropriately combined. If buoyant plume rise from line sources is important for the modeling analysis, the recommended model is BLP. For other special modeling applications, CALINE3 (or CAL3QHCR on a case-by-case basis), OCD, and EDMS are recommended as described in Sections 5 and 6.

d. If the modeling application involves a well defined hill or ridge and a detailed dispersion analysis of the spatial pattern of plume impacts is of interest, CTDMPLUS, listed in Appendix A, is available. CDTMPLUS provides greater resolution of concentrations about the contour of the hill feature than does AERMOD through a different plume-terrain interaction algorithm.

TABLE 4–1A.—NEUTRAL/STABLE METEOROLOGICAL MATRIX FOR CTSCREEN

Variable:	Specific values				
U_A(m/s)	1.0	2.0	3.0	4.0	5.0
σ_v(m/s)	0.3	0.75	.....	.....	.....
σ_w(m/s)	0.08	0.15	0.30	0.75	.....
$\Delta\theta/\Delta z$ (K/m)	0.01	0.02	0.035	.....	.....
WD	(Wind direction is optimized internally for each meteorological combination.)				

Exceptions:
(1) If U ≤ 2 m/s and σ_v ≤ 0.3 m/s, then include σ_w = 0.04 m/s.
(2) If σ_w = 0.75 m/s and U ≥ 3.0 m/s, then $\Delta\theta/\Delta z$ is limited to ≤ 0.01 K/m.
(3) If U ≥ 4 m/s, then σ_w ≥ 0.15 m/s.
(4) $\sigma_w \leq \sigma_v$

TABLE 4–1B.—UNSTABLE/CONVECTIVE METEOROLOGICAL MATRIX FOR CTSCREEN

Variable:	Specific values				
U (m/s)	1.0	2.0	3.0	4.0	5.0
U_* (m/s)	0.1	0.3	0.5	.....	.....
L (m)	−10	−50	−90	.....	.....
$\Delta\theta/\Delta z$ (K/m)	0.030	(potential temperature gradient above Z_i)			
Z_i (m)	0.5h	1.0h	1.5h	h= terrain height)	

5.0 Models for Ozone, Particulate Matter, Carbon Monoxide, Nitrogen Dioxide, and Lead

5.1 Discussion

a. This section identifies modeling approaches or models appropriate for addressing ozone (O_3),[a] carbon monoxide (CO), nitrogen dioxide (NO_2), particulates (PM–2.5 and PM–10),[b, c] and lead. These pollutants are often associated with emissions from numerous sources. Generally, mobile sources contribute significantly to emissions of these pollutants or their precursors. For cases where it is of interest to estimate concentrations of CO or NO_2 near a single or small group of stationary sources, refer to Section 4. (Modeling approaches for SO_2 are discussed in Section 4.)

b. Several of the pollutants mentioned in the preceding paragraph are closely related to each other in that they share common sources of emissions and/or are subject to chemical transformations of similar precursors.[40,41] For example, strategies designed to reduce ozone could have an effect on the secondary component of PM–2.5 and vice versa. Thus, it makes sense to use models which take into account the chemical coupling between O_3 and PM–2.5, when feasible. This should promote consistency among methods used to evaluate strategies for reducing different pollutants as well as consistency among the strategies themselves. Regulatory requirements for the different pollutants are likely to be due at different times. Thus, the following paragraphs identify appropriate modeling approaches for pollutants individually.

c. The NAAQS for ozone was revised on July 18, 1997 and is now based on an 8-hour averaging period (62 FR 38856). Models for ozone are needed primarily to guide choice of strategies to correct an observed ozone problem in an area not attaining the NAAQS for ozone. Use of photochemical grid models is the recommended means for identifying strategies needed to correct high ozone concentrations in such areas. Such models need to consider emissions of volatile organic compounds (VOC), nitrogen oxides (NO_X) and carbon monoxide (CO), as well as means for generating meteorological data governing transport and dispersion of ozone and its precursors. Other approaches, such as Lagrangian or observational models may be used to guide choice of appropriate strategies to consider with a photochemical grid model. These other approaches may be sufficient to address ozone in an area where observed concentrations are near the NAAQS or only

slightly above it. Such a decision needs to be made on a case-by-case basis in concert with the appropriate Regional Office.

d. A control agency with jurisdiction over one or more areas with significant ozone problems should review available ambient air quality data to assess whether the problem is likely to be significantly impacted by regional transport.[42] Choice of a modeling approach depends on the outcome of this review. In cases where transport is considered significant, use of a nested regional model may be the preferred approach. If the observed problem is believed to be primarily of local origin, use of a model, with a single horizontal grid resolution and geographical coverage that is less than that of a regional model, may suffice.

e. The fine particulate matter NAAQS, promulgated on July 18, 1997 (62 FR 38652), includes particles with an aerodynamic diameter nominally less than or equal to 2.5 micrometers (PM–2.5). Models for PM–2.5 are needed to assess adequacy of a proposed strategy for meeting annual and/or 24-hour NAAQS for PM–2.5. PM–2.5 is a mixture consisting of several diverse components. Because chemical/physical properties and origins of each component differ, it may be appropriate to use either a single model capable of addressing several of the important components or to model primary and secondary components using different models. Effects of a control strategy on PM–2.5 is estimated from the sum of the effects on the components composing PM–2.5. Model users may refer to guidance[43] for further details concerning appropriate modeling approaches.

f. A control agency with jurisdiction over one or more areas with PM–2.5 problems should review available ambient air quality data to assess which components of PM–2.5 are likely to be major contributors to the problem. If it is determined that regional transport of secondary particulates, such as sulfates or nitrates, is likely to contribute significantly to the problem, use of a regional model may be the preferred approach. Otherwise, coverage may be limited to a domain that is urban scale or less. Special care should be taken to select appropriate geographical coverage for a modeling application.[43]

g. The NAAQS for PM–10 was promulgated in July 1987 (40 CFR 50.6). A SIP development guide[44] is available to assist in PM–10 analyses and control strategy development. EPA promulgated regulations for PSD increments measured as PM–10 in a document published on June 3, 1993 (§ 51.166(c)). As an aid to assessing the impact on ambient air quality of particulate matter generated from prescribed burning activities, a reference[45] is available.

h. Models for assessing the impact of CO emissions are needed for a number of different purposes. Examples include evaluating effects of point sources, congested intersections and highways, as well as the cumulative effect of numerous sources of CO in an urban area.

i. Models for assessing the impact of sources on ambient NO_2 concentrations are primarily needed to meet new source review requirements, such as addressing the effect of a proposed source on PSD increments for annual concentrations of NO_2. Impact of an individual source on ambient NO_2 depends, in part, on the chemical environment into which the source's plume is to be emitted. There are several approaches for estimating effects of an individual source on ambient NO_2. One approach is through use of a plume-in-grid algorithm imbedded within a photochemical grid model. However, because of the rigor and complexity involved, and because this approach may not be capable of defining sub-grid concentration gradients, the plume-in-grid approach may be impractical for estimating effects on an annual PSD increment. A second approach is to develop site-specific conversion factors based on measurements. If it is not possible to develop site-specific conversion factors and use of the plume-in-grid algorithm is also not feasible, other screening procedures may be considered.

j. In January 1999 (40 CFR Part 58, Appendix D), EPA gave notice that concern about ambient lead impacts was being shifted away from roadways and toward a focus on stationary point sources. EPA has also issued guidance on siting ambient monitors in the vicinity of such sources.[46] For lead, the SIP should contain an air quality analysis to determine the maximum quarterly lead concentration resulting from major lead point sources, such as smelters, gasoline additive plants, etc. General guidance for lead SIP development is also available.[47]

5.2 Recommendations

5.2.1 Models for Ozone

a. *Choice of Models for Multi-source Applications.* Simulation of ozone formation and transport is a highly complex and resource intensive exercise. Control agencies with jurisdiction over areas with ozone problems are encouraged to use photochemical grid models, such as the Models-3/Community Multi-scale Air Quality (CMAQ) modeling system,[48] to evaluate the relationship between precursor species and ozone. Judgement on the suitability of a model for a given application should consider factors that include use of the model in an attainment test, development of emissions and meteorological inputs to the model and choice of episodes to model.[42] Similar models for the 8-hour NAAQS and for the 1-hour NAAQS are appropriate.

b. *Choice of Models to Complement Photochemical Grid Models.* As previously noted, observational models, Lagrangian models, or the Empirical Kinetics Modeling Approach (EKMA)[49, 50] may be used to help guide choice of strategies to simulate with a photochemical grid model and to corroborate results obtained with a grid model. EPA has issued guidance[42] in selecting appropriate techniques.

c. *Estimating the Impact of Individual Sources.* Choice of methods used to assess the impact of an individual source depends on the nature of the source and its emissions. Thus, model users should consult with the appropriate Regional Office to determine the most suitable approach on a case-by-case basis (Section 3.2.2).

5.2.2 Models for Particulate Matter

5.2.2.1 PM–2.5

a. *Choice of Models for Multi-source Applications.* Simulation of phenomena resulting in high ambient PM–2.5 can be a multi-faceted and complex problem resulting from PM–2.5's existence as an aerosol mixture. Treating secondary components of PM–2.5, such as sulfates and nitrates, can be a highly complex and resource-intensive exercise. Control agencies with jurisdiction over areas with secondary PM–2.5 problems are encouraged to use models which integrate chemical and physical processes important in the formation, decay and transport of these species (*e.g.*, Models-3/CMAQ[48] or REMSAD[51]). Primary components can be simulated using less resource-intensive techniques. Suitability of a modeling approach or mix of modeling approaches for a given application requires technical judgement[43], as well as professional experience in choice of models, use of the model(s) in an attainment test, development of emissions and meteorological inputs to the model and selection of days to model.

b. *Choice of Analysis Techniques to Complement Air Quality Simulation Models.* Observational models may be used to corroborate predictions obtained with one or more air quality simulation models. They may also be potentially useful in helping to define specific source categories contributing to major components of PM–2.5.[43]

c. *Estimating the Impact of Individual Sources.* Choice of methods used to assess the impact of an individual source depends on the nature of the source and its emissions. Thus, model users should consult with the appropriate Regional Office to determine the most suitable approach on a case-by-case basis (Section 3.2.2).

5.2.2.2 PM–10

a. Screening techniques like those identified in Section 4 are applicable to PM–10. Conservative assumptions which do not allow removal or transformation are suggested for screening. Thus, it is recommended that subjectively determined values for "half-life" or pollutant decay not be used as a surrogate for particle removal. Proportional models (rollback/forward) may not be applied for screening analysis, unless such techniques are used in conjunction with receptor modeling.[44]

b. Refined models such as those discussed in Section 4 are recommended for PM–10. However, where possible, particle size, gas-to-particle formation, and their effect on ambient concentrations may be considered. For point sources of small particles and for source-specific analyses of complicated sources, use the appropriate recommended steady-state plume dispersion model (Section 4.2.2). For guidance on determination of design concentrations, see paragraph 7.2.1.1(e).

c. Receptor models[52, 53, 54] have proven useful for helping validate emission inventories and for corroborating source-specific impacts estimated by dispersion models. In regulatory applications, dispersion models have been used in conjunction with receptor models to attribute source (or source category)

contributions. Guidance is available for PM–10 sampling and analysis applicable to receptor modeling.[55]

d. Under certain conditions, recommended dispersion models may not be reliable. In such circumstances, the modeling approach should be approved by the appropriate Regional Office on a case-by-case basis. Analyses involving model calculations for stagnation conditions should also be justified on a case-by-case basis (Section 7.2.8).

e. Fugitive dust usually refers to dust put into the atmosphere by the wind blowing over plowed fields, dirt roads or desert or sandy areas with little or no vegetation. Reentrained dust is that which is put into the air by reason of vehicles driving over dirt roads (or dirty roads) and dusty areas. Such sources can be characterized as line, area or volume sources. Emission rates may be based on site-specific data or values from the general literature. Fugitive emissions include the emissions resulting from the industrial process that are not captured and vented through a stack but may be released from various locations within the complex. Where such fugitive emissions can be properly specified, use the recommended steady-state dispersion model (Section 4.2.2) that handles gravitational settling and dry deposition. In some unique cases a model developed specifically for the situation may be needed. Due to the difficult nature of characterizing and modeling fugitive dust and fugitive emissions, it is recommended that the proposed procedure be cleared by the appropriate Regional Office for each specific situation before the modeling exercise is begun.

5.2.3 Models for Carbon Monoxide

a. Guidance is available for analyzing CO impacts at roadway intersections.[56] The recommended screening model for such analyses is CAL3QHC.[57 58] This model combines CALINE3 (listed in Appendix A) with a traffic model to calculate delays and queues that occur at signalized intersections. The screening approach is described in reference 56; a refined approach may be considered on a case-by-case basis with CAL3QHCR.[59] The latest version of the MOBILE (mobile source emission factor) model should be used for emissions input to intersection models.

b. For analyses of highways characterized by uninterrupted traffic flows, CALINE3 is recommended, with emissions input from the latest version of the MOBILE model.

c. For urban area wide analyses of CO, an Eulerian grid model should be used. Information on SIP development and requirements for using such models can be found in several references.[56 60 61 62]

d. Where point sources of CO are of concern, they should be treated using the screening and refined techniques described in Section 4 of the Guideline.

5.2.4 Models for Nitrogen Dioxide (Annual Average)

a. A tiered screening approach is recommended to obtain annual average estimates of NO_2 from point sources for New Source Review analysis, including PSD, and for SIP planning purposes. This multi-tiered approach is conceptually shown in Figure 5–1 and described in paragraphs 5.2.4 b through d:

b. For Tier 1 (the initial screen), use an appropriate model from Appendix A to estimate the maximum annual average concentration and assume a total conversion of NO to NO_2. If the concentration exceeds the NAAQS and/or PSD increments for NO_2, proceed to the 2nd level screen.

c. For Tier 2 (2nd level) screening analysis, multiply the Tier 1 estimate(s) by an empirically derived NO_2 / NO_x value of 0.75 (annual national default).[63] The reviewing agency may establish an alternative default NO_2 / NO_x ratio based on ambient annual average NO_2 and annual average NO_x data representative of area wide quasi-equilibrium conditions Alternative default NO_2/NO_x ratios should be based on data satisfying quality assurance procedures that ensure data accuracy for both NO_2 and NO_x within the typical range of measured values. In areas with relatively low NO_x concentrations, the quality assurance procedures used to determine compliance with the NO_2 national ambient air quality standard may not be adequate. In addition, default NO_2/NO_x ratios, including the 0.75 national default value, can underestimate long range NO2 impacts and should be used with caution in long range transport scenarios.

d. For Tier 3 (3rd level) analysis, a detailed screening method may be selected on a case-by-case basis. For point source modeling, other refined screening methods, such as the ozone limiting method[64], may also be considered. Also, a site-specific NO_2/NO_x ratio may be used as a detailed screening method if it meets the same restrictions as described for alternative default NO_2/NO_x ratios. Ambient NO_{2x} monitors used to develop a site-specific ratio should be sited to obtain the NO_2 and NO_x concentrations under quasi-equilibrium conditions. Data obtained from monitors sited at the maximum NO_x impact site, as may be required in a PSD pre-construction monitoring program, likely reflect transitional NO_x conditions. Therefore, NO_x data from maximum impact sites may not be suitable for determining a site-specific NO_2/NO_x ratio that is applicable for the entire modeling analysis. A site-specific ratio derived from maximum impact data can only be used to estimate NO_2 impacts at receptors located within the same distance of the source as the source-to-monitor distance.

e. In urban areas (Section 7.2.3), a proportional model may be used as a preliminary assessment to evaluate control strategies to meet the NAAQS for multiple minor sources, i.e., minor point, area and mobile sources of NO_x; concentrations resulting from major point sources should be estimated separately as discussed above, then added to the impact of the minor sources. An acceptable screening technique for urban complexes is to assume that all NO_x is emitted in the form of NO_2 and to use a model from Appendix A for nonreactive pollutants to estimate NO_2 concentrations. A more accurate estimate can be obtained by: (1) calculating the annual average concentrations of NO_x with an urban model, and (2) converting these estimates to NO_2 concentrations using an empirically derived annual NO_2 / NO_x ratio. A value of 0.75 is recommended for this ratio. However, a spatially averaged alternative default annual NO_2 / NO_x ratio may be determined from an existing air quality monitoring network and used in lieu of the 0.75 value if it is determined to be representative of prevailing ratios in the urban area by the reviewing agency. To ensure use of appropriate locally derived annual average NO_2 / NO_x ratios, monitoring data under consideration should be limited to those collected at monitors meeting siting criteria defined in 40 CFR Part 58, Appendix D as representative of "neighborhood", "urban", or "regional" scales. Furthermore, the highest annual spatially averaged NO_2 / NO_x ratio from the most recent 3 years of complete data should be used to foster conservatism in estimated impacts.

f. To demonstrate compliance with NO_2 PSD increments in urban areas, emissions from major and minor sources should be included in the modeling analysis. Point and area source emissions should be modeled as discussed above. If mobile source emissions do not contribute to localized areas of high ambient NO_2 concentrations, they should be modeled as area sources. When modeled as area sources, mobile source emissions should be assumed uniform over the entire highway link and allocated to each area source grid square based on the portion of highway link within each grid square. If localized areas of high concentrations are likely, then mobile sources should be modeled as line sources using an appropriate steady-state plume dispersion model (e.g., CAL3QHCR; Section 5.2.3).

g. More refined techniques to handle special circumstances may be considered on a case-by-case basis and agreement with the reviewing authority should be obtained. Such techniques should consider individual quantities of NO and NO_2 emissions, atmospheric transport and dispersion, and atmospheric transformation of NO to NO_2. Where they are available, site-specific data on the conversion of NO to NO_2 may be used. Photochemical dispersion models, if used for other pollutants in the area, may also be applied to the NO_x problem.

5.2.5 Models for Lead

a. For major lead point sources, such as smelters, which contribute fugitive emissions and for which deposition is important, use the appropriate recommended steady-state plume dispersion model (Section 4.2.2). To model an entire major urban area or to model areas without significant sources of lead emissions, as a minimum a proportional (rollback) model may be used for air quality analysis. The rollback philosophy assumes that measured pollutant concentrations are proportional to emissions. However, urban or other dispersion models are encouraged in these circumstances where the use of such models is feasible.

b. In modeling the effect of traditional line sources (such as a specific roadway or highway) on lead air quality, dispersion models applied for other pollutants can be used. Dispersion models such as CALINE3 and CAL3QHCR have been used for modeling

carbon monoxide emissions from highways and intersections (Section 5.2.3). However, where deposition is of concern, ISC-PRIME may be used. Also, where there is a point source in the middle of a substantial road network, the lead concentrations that result from the road network should be treated as background (Section 8.2); the point source and any nearby major roadways should be modeled separately using the appropriate recommended steady-state plume dispersion model (Section 4.2.2).

6.0 Other Model Requirements

6.1 Discussion

a. This section covers those cases where specific techniques have been developed for special regulatory programs. Most of the programs have, or will have when fully developed, separate guidance documents that cover the program and a discussion of the tools that are needed. The following paragraphs reference those guidance documents, when they are available. No attempt has been made to provide a comprehensive discussion of each topic since the reference documents were designed to do that. This section will undergo periodic revision as new programs are added and new techniques are developed.

b. Other Federal agencies have also developed specific modeling approaches for their own regulatory or other requirements.[65] Although such regulatory requirements and manuals may have come about because of EPA rules or standards, the implementation of such regulations and the use of the modeling techniques is under the jurisdiction of the agency issuing the manual or directive.

c. The need to estimate impacts at distances greater than 50km (the nominal distance to which EPA considers most steady-state Gaussian plume models are applicable) is an important one especially when considering the effects from secondary pollutants. Unfortunately, models originally available to EPA had not undergone sufficient field evaluation to be recommended for general use. Data bases from field studies at mesoscale and long range transport distances were limited in detail. This limitation was a result of the expense to perform the field studies required to verify and improve mesoscale and long range transport models. Meteorological data adequate for generating three-dimensional wind fields were particularly sparse. Application of models to complicated terrain compounds the difficulty of making good assessments of long range transport impacts. EPA completed limited evaluation of several long range transport (LRT) models against two sets of field data and evaluated results.[13] Based on the results, EPA concluded that long range and mesoscale transport models were limited for regulatory use to a case-by-case basis. However a more recent series of comparisons has been completed for a new model, CALPUFF (Section A.4). Several of these field studies involved three-to-four hour releases of tracer gas sampled along arcs of receptors at distances greater than 50km downwind. In some cases, short-term concentration sampling was available, such that the transport of the tracer puff as it passed the arc could be monitored. Differences on the order of 10 to 20 degrees were found between the location of the simulated and observed center of mass of the tracer puff. Most of the simulated centerline concentration maxima along each arc were within a factor of two of those observed. It was concluded from these case studies that the CALPUFF dispersion model had performed in a reasonable manner, and had no apparent bias toward over or under prediction, so long as the transport distance was limited to less than 300km.[66]

6.2 Recommendations

6.2.1 Visibility

a. Visibility in important natural areas (*e.g.*, Federal Class I areas) is protected under a number of provisions of the Clean Air Act, including Sections 169A and 169B (addressing impacts primarily from existing sources) and Section 165 (new source review). Visibility impairment is caused by light scattering and light absorption associated with particles and gases in the atmosphere. In most areas of the country, light scattering by PM–2.5 is the most significant component of visibility impairment. The key components of PM–2.5 contributing to visibility impairment include sulfates, nitrates, organic carbon, elemental carbon, and crustal material.

b. The visibility regulations as promulgated in December 1980 (40 CFR 51.300—51.307) require States to mitigate visibility impairment, in any of the 156 mandatory Federal Class I areas, that is found to be "reasonably attributable" to a single source or a small group of sources. In 1985, EPA promulgated Federal Implementation Plans (FIPs) for several States without approved visibility provisions in their SIPs. The IMPROVE (Interagency Monitoring for Protected Visual Environments) monitoring network, a cooperative effort between EPA, the States, and Federal land management agencies, was established to implement the monitoring requirements in these FIPs. Data has been collected by the IMPROVE network since 1988.

c. In 1999, EPA issued revisions to the 1980 regulations to address visibility impairment in the form of regional haze, which is caused by numerous, diverse sources (*e.g.*, stationary, mobile, and area sources) located across a broad region (40 CFR 51.308—51.309). The state of relevant scientific knowledge has expanded significantly since the Clean Air Act Amendments of 1977. A number of studies and reports[67 68] have concluded that long range transport (*e.g.*, up to hundreds of kilometers) of fine particulate matter plays a significant role in visibility impairment across the country. Section 169A of the Act requires states to develop SIPs containing long-term strategies for remedying existing and preventing future visibility impairment in 156 mandatory Class I federal areas. In order to develop long-term strategies to address regional haze, many States will need to conduct regional-scale modeling of fine particulate concentrations and associated visibility impairment (*e.g.*, light extinction and deciview metrics).

d. Guidance and a screening model, VISCREEN, are available.[69] VISCREEN can be used to calculate the potential impact of a plume of specified emissions for specific transport and dispersion conditions. If a more comprehensive analysis is required, any refined model should be selected in consultation with the EPA Regional Office and the appropriate Federal Land Manager who is responsible for determining whether there is an adverse effect by a plume on a Class I area. PLUVUE II, an alternative model listed on EPA's Internet SCRAM website (Section 2.3), may be applied on a case-by-case basis when refined plume visibility evaluations are needed.

e. CALPUFF (Section A.4) may be applied on a case-by-case basis when assessment is needed of reasonably attributable haze impairment due to one or a small group of sources. The procedures and analyses should be determined in consultation with the appropriate Regional Office, the appropriate regulatory permitting authority, and the appropriate Federal Land Manager (FLM).

f. Regional scale models are used by EPA to develop and evaluate national policy and assist State and local control agencies. Two such models which can be used to assess visibility impacts from source emissions are Models-3[48] and REMSAD[51]. Model users should consult with the appropriate Regional Office to determine the most suitable approach on a case-by-case basis (Section 3.2.2).

6.2.2 Good Engineering Practice Stack Height

a. The use of stack height credit in excess of Good Engineering Practice (GEP) stack height or credit resulting from any other dispersion technique is prohibited in the development of emission limitations by 40 CFR 51.118 and 40 CFR 51.164. The definitions of GEP stack height and dispersion technique are contained in 40 CFR 51.100. Methods and procedures for making the appropriate stack height calculations, determining stack height credits and an example of applying those techniques are found in several references[70, 71 72 73] which provide a great deal of additional information for evaluating and describing building cavity and wake effects.

b. If stacks for new or existing major sources are found to be less than the height defined by EPA's refined formula for determining GEP height, then air quality impacts associated with cavity or wake effects due to the nearby building structures should be determined. The EPA refined formula height is defined as H + 1.5L (see reference 72). Detailed downwash screening procedures[34] for both the cavity and wake regions should be followed. If more refined concentration estimates are required, the recommended steady-state plume dispersion model in Section 4.2.2 contains algorithms for building wake calculations and should be used.

6.2.3 Long Range Transport (LRT) (*i.e.*, beyond 50km)

a. Section 165(e) of the Clean Air Act requires that suspected adverse impacts on PSD Class I areas be determined. However, 50km is the useful distance to which most steady-state Gaussian plume models are considered accurate for setting emission

limits. Since in many cases PSD analyses show that Class I areas may be threatened at distances greater than 50km from new sources, some procedure is needed to (1) determine if an adverse impact will occur, and (2) identify the model to be used in setting an emission limit if the Class I increments are threatened. In addition to the situations just described, there are certain applications containing a mixture of both long range and short range source-receptor relationships in a large modeled domain (*e.g.*, several industrialized areas located along a river or valley). Historically, these applications have presented considerable difficulty to an analyst if impacts from sources having transport distances greater than 50km significantly contributed to the design concentrations. To properly analyze applications of this type, a modeling approach is needed which has the capability of combining, in a consistent manner, impacts involving both short and long range transport. The CALPUFF modeling system, listed in Appendix A, has been designed to accommodate both the Class I area LRT situation and the large modeling domain situation. Given the judgement and refinement involved, conducting a LRT modeling assessment will require significant consultation with the EPA Regional Office, the appropriate regulatory permitting authority and, for Class I area analyses, the appropriate Federal Land Manager (FLM). While the ultimate decision on whether a Class I area is adversely affected is the responsibility of the permitting authority, the FLM has an affirmative responsibility to protect air quality related values that may be affected, and to provide the appropriate procedures and analysis techniques.

b. If LRT is determined to be important, then refined estimates utilizing the CALPUFF modeling system should be obtained. A screening approach [66] is also available for use on a case-by-case basis that generally provides concentrations that are higher than those obtained using refined characterizations of the meteorological conditions. The meteorological input data requirements for developing the time and space varying three-dimensional winds and dispersion meteorology for refined analyses are discussed in paragraph 8.3.1.2(d). Additional information on applying this model is contained in Appendix A. To facilitate use of complex air quality and meteorological modeling systems, a written protocol may be considered for developing consensus in the methods and procedures to be followed.

6.2.4 Modeling Guidance for Other Governmental Programs

a. When using the models recommended or discussed in the Guideline in support of programmatic requirements not specifically covered by EPA regulations, the model user should consult the appropriate Federal or State agency to ensure the proper application and use of the models. For modeling associated with PSD permit applications that involve a Class I area, the appropriate Federal Land Manager should be consulted on all modeling questions.

b. The Offshore and Coastal Dispersion (OCD) model, described in Appendix A, was developed by the Minerals Management Service and is recommended for estimating air quality impact from offshore sources on onshore, flat terrain areas. The OCD model is not recommended for use in air quality impact assessments for onshore sources. Sources located on or just inland of a shoreline where fumigation is expected should be treated in accordance with Section 7.2.8.

c. The Emissions and Dispersion Modeling System (EDMS), described in Appendix A, was developed by the Federal Aviation Administration and the United States Air Force and is recommended for air quality assessment of primary pollutant impacts at airports or air bases. Regulatory application of EDMS is intended for estimating the cumulative effect of changes in aircraft operations, point source, and mobile source emissions on pollutant concentrations. It is not intended for PSD, SIP, or other regulatory air quality analyses of point or mobile sources at or peripheral to airport property that are independent of changes in aircraft operations. If changes in other than aircraft operations are associated with analyses, a model recommended in Chapter 4 or 5 should be used.

7.0 General Modeling Considerations

7.1 Discussion

a. This section contains recommendations concerning a number of different issues not explicitly covered in other sections of this guide. The topics covered here are not specific to any one program or modeling area but are common to nearly all modeling analyses for criteria pollutants.

7.2 Recommendations

7.2.1 Design Concentrations (see also Section 10.2.3.1)

7.2.1.1 Design Concentrations for SO_2, PM–10, CO, Pb, and NO_2

a. An air quality analysis for SO_2, PM–10, CO, Pb, and NO_2 is required to determine if the source will (1) cause a violation of the NAAQS, or (2) cause or contribute to air quality deterioration greater than the specified allowable PSD increment. For the former, background concentration (Section 8.2) should be added to the estimated impact of the source to determine the design concentration. For the latter, the design concentration includes impact from all increment consuming sources.

b. If the air quality analyses are conducted using the period of meteorological input data recommended in Section 8.3.1.2 (*e.g.*, 5 years of National Weather Service (NWS) data or 1 year of site-specific data; Section 8.3.3), then the design concentration based on the highest, second-highest short term concentration or long term average, whichever is controlling, should be used to determine emission limitations to assess compliance with the NAAQS and PSD increments.

c. When sufficient and representative data exist for less than a 5-year period from a nearby NWS site, or when site-specific data have been collected for less than a full continuous year, or when it has been determined that the site-specific data may not be temporally representative (Section 8.3.3), then the highest concentration estimate should be considered the design value. This is because the length of the data record may be too short to assure that the conditions producing worst-case estimates have been adequately sampled. The highest value is then a surrogate for the concentration that is not to be exceeded more than once per year (the wording of the deterministic standards). Also, the highest concentration should be used whenever selected worst-case conditions are input to a screening technique, as described in EPA guidance.

d. If the controlling concentration is an annual average value and multiple years of data (site-specific or NWS) are used, then the design value is the highest of the annual averages calculated for the individual years. If the controlling concentration is a quarterly average and multiple years are used, then the highest individual quarterly average should be considered the design value.

e. As long a period of record as possible should be used in making estimates to determine design values and PSD increments. If more than 1 year of site-specific data is available, it should be used.

7.2.1.2 Design Concentrations for O_3 and PM–2.5

a. Guidance and specific instructions for the determination of the 1-hr and 8-hr design concentrations for ozone are provided in Appendix H and I (respectively) of reference 4. No definitive guidance for determining design concentrations for PM–2.5 has been issued. For all SIP revisions the user should check with the Regional Office to obtain the most recent guidance documents and policy memoranda concerning the pollutant in question. There are currently no PSD increments for O_3 and PM–2.5.

7.2.2 Critical Receptor Sites

a. Receptor sites for refined modeling should be utilized in sufficient detail to estimate the highest concentrations and possible violations of a NAAQS or a PSD increment. In designing a receptor network, the emphasis should be placed on receptor resolution and location, not total number of receptors. The selection of receptor sites should be a case-by-case determination taking into consideration the topography, the climatology, monitor sites, and the results of the initial screening procedure. For large sources (those equivalent to a 500MW power plant) and where violations of the NAAQS or PSD increment are likely, 360 receptors for a polar coordinate grid system and 400 receptors for a rectangular grid system, where the distance from the source to the farthest receptor is 10km, are usually adequate to identify areas of high concentration. Additional receptors may be needed in the high concentration location if greater

resolution is indicated by terrain or source factors.

7.2.3 Dispersion Coefficients

a. Steady-state Gaussian plume models used in most applications should employ dispersion coefficients consistent with those contained in the preferred models in Appendix A. Factors such as averaging time, urban/rural surroundings (see paragraphs 7.2.3 b through f), and type of source (point vs. line) may dictate the selection of specific coefficients. Coefficients used in some Appendix A models are identical to, or at least based on, Pasquill-Gifford coefficients [74] in rural areas and McElroy-Pooler [75] coefficients in urban areas. A key feature of AERMOD's formulation is the use of directly observed variables of the boundary layer to parameterize dispersion.[33] Research is continuing toward the development of methods to determine dispersion coefficients directly from measured or observed variables.[76 77]

b. The selection of either rural or urban dispersion coefficients in a specific application should follow one of the procedures suggested by Irwin [78] and briefly described below. These include a land use classification procedure or a population based procedure to determine whether the character of an area is primarily urban or rural.

c. Land Use Procedure: (1) Classify the land use within the total area, A_o, circumscribed by a 3km radius circle about the source using the meteorological land use typing scheme proposed by Auer [79]; (2) if land use types I1, I2, C1, R2, and R3 account for 50 percent or more of A_o, use urban dispersion coefficients; otherwise, use appropriate rural dispersion coefficients.

d. Population Density Procedure: (1) Compute the average population density, $\bar{p}$ per square kilometer with A_o as defined above; (2) If $\bar{p}$ is greater than 750 people/km^2, use urban dispersion coefficients; otherwise use appropriate rural dispersion coefficients.

e. Of the two methods, the land use procedure is considered more definitive. Population density should be used with caution and should not be applied to highly industrialized areas where the population density may be low and thus a rural classification would be indicated, but the area is sufficiently built-up so that the urban land use criteria would be satisfied. In this case, the classification should already be "urban" and urban dispersion parameters should be used.

f. Sources located in an area defined as urban should be modeled using urban dispersion parameters. Sources located in areas defined as rural should be modeled using the rural dispersion parameters. For analyses of whole urban complexes, the entire area should be modeled as an urban region if most of the sources are located in areas classified as urban.

g. Buoyancy-induced dispersion (BID), as identified by Pasquill, [80] is included in the preferred models and should be used where buoyant sources, *e.g.*, those involving fuel combustion, are involved.

7.2.4 Stability Categories

a. The Pasquill approach to classifying stability is commonly used in preferred models (Appendix A). The Pasquill method, as modified by Turner,[81] was developed for use with commonly observed meteorological data from the National Weather Service and is based on cloud cover, insolation and wind speed.

b. Procedures to determine Pasquill stability categories from other than NWS data are found in Section 8.3. Any other method to determine Pasquill stability categories must be justified on a case-by-case basis.

c. For a given model application where stability categories are the basis for selecting dispersion coefficients, both σ_y and σ_z should be determined from the same stability category. "Split sigmas" in that instance are not recommended. Sector averaging, which eliminates the σ_y term, is commonly acceptable in complex terrain screening methods.

d. AERMOD, also a preferred model in Appendix A, uses a planetary boundary layer scaling parameter to characterize stability.[33] This approach represents a departure from the discrete, hourly stability categories estimated under the Pasquill-Gifford-Turner scheme.

7.2.5 Plume Rise

a. The plume rise methods of Briggs [82, 83] are incorporated in many of the preferred models and are recommended for use in many modeling applications. In AERMOD,[33] for the stable boundary layer, plume rise is estimated using an iterative approach, similar to that in the CTDMPLUS model. In the convective boundary layer, plume rise is superposed on the displacements by random convective velocities. [84] In ISC-PRIME, plume rise is computed using the methods of Briggs excepting cases involving building downwash, in which a numerical solution of the mass, energy, and momentum conservation laws is performed.[24] No explicit provisions in these models are made for multistack plume rise enhancement or the handling of such special plumes as flares; these problems should be considered on a case-by-case basis.

b. Since there is insufficient information to identify and quantify dispersion during the transitional plume rise period, gradual plume rise is not generally recommended for use. There are two exceptions where the use of gradual plume rise is appropriate: (1) In complex terrain screening procedures to determine close-in impacts; (2) when calculating the effects of building wakes. The building wake algorithm in ISC–PRIME incorporates and automatically (*i.e.*, internally) exercises the thermodynamically based gradual plume rise calculations as described in paragraph 7.2.5 a . If the building wake is calculated to affect the plume for any hour, gradual plume rise is also used in downwind dispersion calculations to the distance of final plume rise, after which final plume rise is used. Plumes captured by the near wake are re-emitted to the far wake as a ground-level volume source.

c. Stack tip downwash generally occurs with poorly constructed stacks and when the ratio of the stack exit velocity to wind speed is small. An algorithm developed by Briggs [83] is the recommended technique for this situation and is found in the point source preferred models.

7.2.6 Chemical Transformation

a. The chemical transformation of SO_2 emitted from point sources or single industrial plants in rural areas is generally assumed to be relatively unimportant to the estimation of maximum concentrations when travel time is limited to a few hours. However, in urban areas, where synergistic effects among pollutants are of considerable consequence, chemical transformation rates may be of concern. In urban area applications, a half-life of 4 hours [81] may be applied to the analysis of SO_2 emissions. Calculations of transformation coefficients from site-specific studies can be used to define a "half-life" to be used in a steady-state Gaussian plume model with any travel time, or in any application, if appropriate documentation is provided. Such conversion factors for pollutant half-life should not be used with screening analyses.

b. Use of models incorporating complex chemical mechanisms should be considered only on a case-by-case basis with proper demonstration of applicability. These are generally regional models not designed for the evaluation of individual sources but used primarily for region-wide evaluations. Visibility models also incorporate chemical transformation mechanisms which are an integral part of the visibility model itself and should be used in visibility assessments.

7.2.7 Gravitational Settling and Deposition

a. An "infinite half-life" should be used for estimates of particle concentrations when steady-state Gaussian plume models containing only exponential decay terms for treating settling and deposition are used.

b. Gravitational settling and deposition may be directly included in a model if either is a significant factor. When particulate matter sources can be quantified and settling and dry deposition are problems, use the recommended steady-state plume dispersion model (Section 4.2.2).

7.2.8 Complex Winds

a. *Inhomogeneous Local Winds.* In many parts of the United States, the ground is neither flat nor is the ground cover (or land use) uniform. These geographical variations can generate local winds and circulations, and modify the prevailing ambient winds and circulations. Geographic effects are most apparent when the ambient winds are light or calm.[85] In general these geographically induced wind circulation effects are named after the source location of the winds, *e.g.*, lake and sea breezes, and mountain and valley winds. In very rugged hilly or mountainous terrain, along coastlines, or near large land use variations, the characterization of the winds is a balance of various forces, such that the assumptions of steady-state straight-line transport both in time and space are inappropriate. In the special cases described, the CALPUFF modeling system (described in Appendix A) may be applied on a case-by-case basis for air quality estimates in such complex non-steady-state meteorological conditions. The purpose of choosing a modeling system like CALPUFF is to fully treat the time and space

variations of meteorology effects on transport and dispersion. The setup and application of the model should be determined in consultation with the Regional Office and the appropriate regulatory permitting authority consistent with limitations of paragraph 3.2.2(e). The meteorological input data requirements for developing the time and space varying three-dimensional winds and dispersion meteorology for these situations are discussed in paragraph 8.3.1.2(e).

b. *Inversion Breakup Fumigation.* Inversion breakup fumigation occurs when a plume (or multiple plumes) is emitted into a stable layer of air and that layer is subsequently mixed to the ground through convective transfer of heat from the surface or because of advection to less stable surroundings. Fumigation may cause excessively high concentrations but is usually rather short-lived at a given receptor. There are no recommended refined techniques to model this phenomenon. There are, however, screening procedures [54] that may be used to approximate the concentrations. Considerable care should be exercised in using the results obtained from the screening techniques.

c. *Shoreline Fumigation.* Fumigation can be an important phenomenon on and near the shoreline of bodies of water. This can affect both individual plumes and area-wide emissions. When fumigation conditions are expected to occur from a source or sources with tall stacks located on or just inland of a shoreline, this should be addressed in the air quality modeling analysis. The Shoreline Dispersion Model (SDM) listed on EPA's Internet SCRAM website (Section 2.3) may be applied on a case-by-case basis when air quality estimates under shoreline fumigation conditions are needed.[55] Information on the results of EPA's evaluation of this model together with other coastal fumigation models is available.[57] Selection of the appropriate model for applications where shoreline fumigation is of concern should be determined in consultation with the Regional Office.

d. *Stagnation.* Stagnation conditions are characterized by calm or very low wind speeds, and variable wind directions. These stagnant meteorological conditions may persist for several hours to several days. During stagnation conditions, the dispersion of air pollutants, especially those from low-level emissions sources, tends to be minimized, potentially leading to relatively high ground-level concentrations. When stagnation periods such as these are found to occur, they should be addressed in the air quality modeling analysis. WYNDvalley, listed on EPA's Internet SCRAM website (Section 2.3), may be applied on a case-by-case basis for stagnation periods of 24 hours or longer in valley-type situations. Caution should be exercised when applying WYNDvalley to elevated point sources. If point sources are of interest, users should note the guidance provided for CALPUFF in paragraph 7.2.8 a. Users should consult with the appropriate Regional Office prior to regulatory application of WYNDvalley.

7.2.9 Calibration of Models

a. Calibration of models is not common practice and is subject to much error and misunderstanding. There have been attempts by some to compare model estimates and measurements on an event-by-event basis and then to calibrate a model with results of that comparison. This approach is severely limited by uncertainties in both source and meteorological data and therefore it is difficult to precisely estimate the concentration at an exact location for a specific increment of time. Such uncertainties make calibration of models of questionable benefit. Therefore, model calibration is unacceptable.

8.0 Model Input Data

a. Data bases and related procedures for estimating input parameters are an integral part of the modeling procedure. The most appropriate data available should always be selected for use in modeling analyses. Concentrations can vary widely depending on the source data or meteorological data used. Input data are a major source of uncertainties in any modeling analysis. This section attempts to minimize the uncertainty associated with data base selection and use by identifying requirements for data used in modeling. A checklist of input data requirements for modeling analyses is posted on EPA's Internet SCRAM website (Section 2.3). More specific data requirements and the format required for the individual models are described in detail in the users' guide for each model.

8.1 Source Data

8.1.1 Discussion

a. Sources of pollutants can be classified as point, line and area/volume sources. Point sources are defined in terms of size and may vary between regulatory programs. The line sources most frequently considered are roadways and streets along which there are well-defined movements of motor vehicles, but they may be lines of roof vents or stacks such as in aluminum refineries. Area and volume sources are often collections of a multitude of minor sources with individually small emissions that are impractical to consider as separate point or line sources. Large area sources are typically treated as a grid network of square areas, with pollutant emissions distributed uniformly within each grid square.

b. Emission factors are compiled in an EPA publication commonly known as AP–42 [58]; an indication of the quality and amount of data on which many of the factors are based is also provided. Other information concerning emissions is available in EPA publications relating to specific source categories. The Regional Office should be consulted to determine appropriate source definitions and for guidance concerning the determination of emissions from and techniques for modeling the various source types.

8.1.2 Recommendations

a. For point source applications the load or operating condition that causes maximum ground-level concentrations should be established. As a minimum, the source should be modeled using the design capacity (100 percent load). If a source operates at greater than design capacity for periods that could result in violations of the standards or PSD increments, this load [4] should be modeled. Where the source operates at substantially less than design capacity, and the changes in the stack parameters associated with the operating conditions could lead to higher ground level concentrations, loads such as 50 percent and 75 percent of capacity should also be modeled. A range of operating conditions should be considered in screening analyses; the load causing the highest concentration, in addition to the design load, should be included in refined modeling. For a power plant, the following (b–h) is typical of the kind of data on source characteristics and operating conditions that may be needed. Generally, input data requirements for air quality models necessitate the use of metric units; where English units are common for engineering usage, a conversion to metric is required.

b. *Plant layout.* The connection scheme between boilers and stacks, and the distance and direction between stacks, building parameters (length, width, height, location and orientation relative to stacks) for plant structures which house boilers, control equipment, and surrounding buildings within a distance of approximately five stack heights.

c. *Stack parameters.* For all stacks, the stack height and inside diameter (meters), and the temperature (K) and volume flow rate (actual cubic meters per second) or exit gas velocity (meters per second) for operation at 100 percent, 75 percent and 50 percent load.

d. *Boiler size.* For all boilers, the associated megawatts, 10^6 BTU/hr, and pounds of steam per hour, and the design and/or actual fuel consumption rate for 100 percent load for coal (tons/hour), oil (barrels/hour), and natural gas (thousand cubic feet/hour).

e. *Boiler parameters.* For all boilers, the percent excess air used, the boiler type (*e.g.*, wet bottom, cyclone, etc.), and the type of firing (*e.g.*, pulverized coal, front firing, etc.).

f. *Operating conditions.* For all boilers, the type, amount and pollutant contents of fuel, the total hours of boiler operation and the boiler capacity factor during the year, and the percent load for peak conditions.

g. *Pollution control equipment parameters.* For each boiler served and each pollutant affected, the type of emission control equipment, the year of its installation, its design efficiency and mass emission rate, the date of the last test and the tested efficiency, the number of hours of operation during the latest year, and the best engineering estimate of its projected efficiency if used in conjunction with coal combustion; data for any anticipated modifications or additions.

h. *Data for new boilers or stacks.* For all new boilers and stacks under construction and for all planned modifications to existing boilers or stacks, the scheduled date of completion, and the data or best estimates

[4] Malfunctions which may result in excess emissions are not considered to be a normal operating condition. They generally should not be considered in determining allowable emissions. However, if the excess emissions are the result of poor maintenance, careless operation, or other preventable conditions, it may be necessary to consider them in determining source impact.

available for paragraphs 8.1.2b through g following completion of construction or modification.

i. In stationary point source applications for compliance with short term ambient standards, SIP control strategies should be tested using the emission input shown on Table 8–1. When using a refined model, sources should be modeled sequentially with these loads for every hour of the year. To evaluate SIPs for compliance with quarterly and annual standards, emission input data shown in Table 8–1 should again be used. Emissions from area sources should generally be based on annual average conditions. The source input information in each model user's guide should be carefully consulted and the checklist (paragraph 8.0(a)) should also be consulted for other possible emission data that could be helpful. PSD and NAAQS compliance demonstrations should follow the emission input data shown in Table 8–2. For purposes of emissions trading, new source review and demonstrations, refer to current EPA policy and guidance to establish input data.

j. Line source modeling of streets and highways requires data on the width of the roadway and the median strip, the types and amounts of pollutant emissions, the number of lanes, the emissions from each lane and the height of emissions. The location of the ends of the straight roadway segments should be specified by appropriate grid coordinates. Detailed information and data requirements for modeling mobile sources of pollution are provided in the user's manuals for each of the models applicable to mobile sources.

k. The impact of growth on emissions should be considered in all modeling analyses covering existing sources. Increases in emissions due to planned expansion or planned fuel switches should be identified. Increases in emissions at individual sources that may be associated with a general industrial/commercial/residential expansion in multi-source urban areas should also be treated. For new sources the impact of growth on emissions should generally be considered for the period prior to the start-up date for the source. Such changes in emissions should treat increased area source emissions, changes in existing point source emissions which were not subject to preconstruction review, and emissions due to sources with permits to construct that have not yet started operation.

TABLE 8–1.—MODEL EMISSION INPUT DATA FOR POINT SOURCES [1]

Averaging time	Emission limit (#/MMBtu) [2]	×	Operating level (MMBtu/hr) [2]	×	Operating factor (*e.g.*, hr/yr,hr/day)
Stationary Point Source(s) Subject to SIP Emission Limit(s) Evaluation for Compliance with Ambient Standards (including Areawide Demonstrations)					
Annual & quarterly	Maximum allowable emission limit or federally enforceable permit limit.		Actual or design capacity (whichever is greater), or federally enforceable permit condition.		Actual operating factor averaged over most recent 2 years.[3]
Short term	Maximum allowable emission limit or federally enforceable permit limit.		Actual or design capacity (whichever is greater), or federally enforceable permit condition [4].		Continuous operation, *i.e.*, all hours of each time period under consideration (for all hours of the meteorological data base).[5]
Nearby Source(s) [6, 7]—Same input requirements as for stationary point source(s) above					
Other Source(s) [7]—If modeled (Section 8.2.3), input data requirements are defined below					
Annual & quarterly	Maximum allowable emission limit or federally enforceable permit limit [6].		Annual level when actually operating, averaged over the most recent 2 years [3].		Actual operating factor averaged over the most recent 2 years.[3]
Short term	Maximum allowable emission limit or federally enforceable permit limit [6].		Annual level when actually operating, averaged over the most recent 2 years [3].		Continuous operation, *i.e.*, all hours of each time period under consideration (for all hours of the meteorological data base).[5]

[1] The model input data requirements shown on this table apply to stationary source control strategies for STATE IMPLEMENTATION PLANS. For purposes of emissions trading, new source review, or prevention of significant deterioration, other model input criteria may apply. Refer to the policy and guidance for these programs to establish the input data.

[2] Terminology applicable to fuel burning sources; analogous terminology (*e.g.*, #/throughput) may be used for other types of sources.

[3] Unless it is determined that this period is not representative.

[4] Operating levels such as 50 percent and 75 percent of capacity should also be modeled to determine the load causing the highest concentration.

[5] If operation does not occur for all hours of the time period of consideration (*e.g.*, 3 or 24 hours) and the source operation is constrained by a federally enforceable permit condition, an appropriate adjustment to the modeled emission rate may be made (*e.g.*, if operation is only 8 a.m. to 4 p.m. each day, only these hours will be modeled with emissions from the source. Modeled emissions should not be averaged across non-operating time periods.)

[6] See paragraph 8.2.3(c).

[7] See paragraph 8.2.3(d).

TABLE 8–2.—POINT SOURCE MODEL INPUT DATA (EMISSIONS) FOR PSD NAAQS COMPLIANCE DEMONSTRATIONS

Averaging time	Emission limit (#/MMBtu) [1]	×	Operating level (MMBtu/hr) [1]	×	Operating factor (e.g., hr/yr,hr/day)
Proposed Major New or Modified Source					
Annual & quarterly	Maximum allowable emission limit or federally enforceable permit limit.		Design capacity or federally enforceable permit condition.		Continuous operation (i.e., 8760 hours).[2]

TABLE 8–2.—POINT SOURCE MODEL INPUT DATA (EMISSIONS) FOR PSD NAAQS COMPLIANCE DEMONSTRATIONS—Continued

Averaging time	Emission limit (#/MMBtu) [1]	×	Operating level (MMBtu/hr) [1]	×	Operating factor (e.g., hr/yr,hr/day)
Short term: (≤24 hours)	Maximum allowable emis sion limit or federally enforceable permit limit.		Design capacity or federally enforceable permit condition [3].		Continuous operation (i.e., all hours of each time period un der consideration) (for all hours of the meteorological data base).[2]
Nearby Source(s) [4, 6]					
Annual & quarterly	Maximum allowable emission limit or federally enforceable permit limit [5].		Actual or design capacity (whichever is greater), or federally enforceable permit condition.		Actual operating factor averaged over the most recent 2 years.[7, 8]
Short term: (≤24 hours)	Maximum allowable emission limit or federally enforceable permit limit [5].		Actual or design capacity (whichever is greater), or federally enforceable permit condition [3].		Continuous operation (i.e., all hours of each time period un der consideration) (for all hours of the meteorological data base).[2]
Other Source(s) [6, 9]					
Annual & quarterly	Maximum allowable emission limit or federally enforceable permit limit [5].		Annual level when actually operating, averaged over the most recent 2 years [7].		Actual operating factor averaged over the most recent 2 years.[7, 8]
Short term (≤24 hours)	Maximum allowable emission limit or federally enforceable permit limit [5].		Annual level when actually operating, averaged over the most recent 2 years [7].		Continuous operation (*i.e.*, all hours of each time period under consideration) (for all hours of the meteorological data base).[2]

[1] Terminology applicable to fuel burning sources; analogous terminology (*e.g.*, #/throughput) may be used for other types of sources.
[2] If operation does not occur for all hours of the time period of consideration (e.g., 3 or 24 hours) and the source operation is constrained by a federally enforceable permit condition, an appropriate adjustment to the modeled emission rate may be made (e.g., if operation is only 8:00 a.m. to 4:00 p.m. each day, only these hours will be modeled with emissions from the source. Modeled emissions should not be averaged across non-operating time periods.
[3] Operating levels such as 50 percent and 75 percent of capacity should also be modeled to determine the load causing the highest concentration.
[4] Includes existing facility to which modification is proposed if the emissions from the existing facility will not be affected by the modification. Otherwise use the same parameters as for major modification.
[5] See paragraph 8.2.3(c).
[6] See paragraph 8.2.3(d).
[7] Unless it is determined that this period is not representative.
[8] For those permitted sources not in operation or that have not established an appropriate factor, continuous operation (i.e., 8760) should be used.
[9] Generally, the ambient inpacts from non-nearby (background) sources can be represented by air quality data unless adequate data do not exist.

8.2 Background Concentrations

8.2.1 Discussion

a. Background concentrations are an essential part of the total air quality concentration to be considered in determining source impacts. Background air quality includes pollutant concentrations due to: (1) natural sources; (2) nearby sources other than the one(s) currently under consideration; and (3) unidentified sources.

b. Typically, air quality data should be used to establish background concentrations in the vicinity of the source(s) under consideration. The monitoring network used for background determinations should conform to the same quality assurance and other requirements as those networks established for PSD purposes.[89] An appropriate data validation procedure should be applied to the data prior to use.

c. If the source is not isolated, it may be necessary to use a multi-source model to establish the impact of nearby sources. Since sources don't typically operate at their maximum allowable capacity (which may include the use of "dirtier" fuels), modeling is necessary to express the potential contribution of background sources, and this impact would not be captured via monitoring. Background concentrations should be determined for each critical (concentration) averaging time.

8.2.2 Recommendations (Isolated Single Source)

a. Two options (paragraph 8.2.2b or c) are available to determine the background concentration near isolated sources.

b. Use air quality data collected in the vicinity of the source to determine the background concentration for the averaging times of concern. Determine the mean background concentration at each monitor by excluding values when the source in question is impacting the monitor. The mean annual background is the average of the annual concentrations so determined at each monitor. For shorter averaging periods, the meteorological conditions accompanying the concentrations of concern should be identified. Concentrations for meteorological conditions of concern, at monitors not impacted by the source in question, should be averaged for each separate averaging time to determine the average background value. Monitoring sites inside a 90° sector downwind of the source may be used to determine the area of impact. One hour concentrations may be added and averaged to determine longer averaging periods.

c. If there are no monitors located in the vicinity of the source, a "regional site" may be used to determine background. A "regional site" is one that is located away from the area of interest but is impacted by similar natural and distant man-made sources.

8.2.3 Recommendations (Multi-Source Areas)

a. In multi-source areas, two components of background should be determined: contributions from nearby sources and contributions from other sources.

b. *Nearby Sources:* All sources expected to cause a significant concentration gradient in the vicinity of the source or sources under consideration for emission limit(s) should be explicitly modeled. The number of such sources is expected to be small except in unusual situations. Owing to both the uniqueness of each modeling situation and the large number of variables involved in identifying nearby sources, no attempt is made here to comprehensively define this term. Rather, identification of nearby sources calls for the exercise of professional judgement by the reviewing authority. This guidance is not intended to alter the exercise of that judgement or to comprehensively define which sources are nearby sources.

c. For compliance with the short-term and annual ambient standards, the nearby sources as well as the primary source(s) should be evaluated using an appropriate Appendix A model with the emission input data shown in Table 8–1 or 8–2. When modeling a nearby source that does not have a permit and the emission limit contained in the SIP for a particular source category is greater than the emissions possible given the source's maximum physical capacity to emit, the "maximum allowable emission limit" for such a nearby source may be calculated as the emission rate representative of the nearby source's maximum physical capacity to emit, considering its design specifications and allowable fuels and process materials. However, the burden is on the permit applicant to sufficiently document what the maximum physical capacity to emit is for such a nearby source.

d. It is appropriate to model nearby sources only during those times when they, by their nature, operate at the same time as the primary source(s) being modeled. Where a primary source believes that a nearby source does not, by its nature, operate at the same time as the primary source being modeled, the burden is on the primary source to demonstrate to the satisfaction of the reviewing authority that this is, in fact, the case. Whether or not the primary source has adequately demonstrated that fact is a matter of professional judgement left to the discretion of the reviewing authority. The following examples illustrate two cases in which a nearby source may be shown not to operate at the same time as the primary source(s) being modeled. Some sources are only used during certain seasons of the year. Those sources would not be modeled as nearby sources during times in which they do not operate. Similarly, emergency backup generators that never operate simultaneously with the sources that they back up would not be modeled as nearby sources. To reiterate, in these examples and other appropriate cases, the burden is on the primary source being modeled to make the appropriate demonstration to the satisfaction of the reviewing authority.

e. The impact of the nearby sources should be examined at locations where interactions between the plume of the point source under consideration and those of nearby sources (plus natural background) can occur. Significant locations include: (1) The area of maximum impact of the point source; (2) the area of maximum impact of nearby sources; and (3) the area where all sources combine to cause maximum impact. These locations may be identified through trial and error analyses.

f. *Other Sources:* That portion of the background attributable to all other sources (*e.g.*, natural sources, minor sources and distant major sources) should be determined by the procedures found in Section 8.2.2 or by application of a model using Table 8–1 or 8–2.

8.3 Meteorological Input Data

a. The meteorological data used as input to a dispersion model should be selected on the basis of spatial and climatological (temporal) representativeness as well as the ability of the individual parameters selected to characterize the transport and dispersion conditions in the area of concern. The representativeness of the data is dependent on: (1) The proximity of the meteorological monitoring site to the area under consideration; (2) the complexity of the terrain; (3) the exposure of the meteorological monitoring site; and (4) the period of time during which data are collected. The spatial representativeness of the data can be adversely affected by large distances between the source and receptors of interest and the complex topographic characteristics of the area. Temporal representativeness is a function of the year-to-year variations in weather conditions. Where appropriate, data representativeness should be viewed in terms of the appropriateness of the data for constructing realistic boundary layer profiles and three dimensional meteorological fields, as described in paragraphs 8.3c and d.

b. Model input data are normally obtained either from the National Weather Service or as part of an site-specific measurement program. Local universities, Federal Aviation Administration (FAA), military stations, industry and pollution control agencies may also be sources of such data. Some recommendations for the use of each type of data are included in this subsection.

c. Regulatory application of AERMOD requires careful consideration of minimum data for input to AERMET. Data representativeness, in the case of AERMOD, means utilizing data of an appropriate type for constructing realistic boundary layer profiles. Of paramount importance is the requirement that all meteorological data used as input to AERMOD must be both laterally and vertically representative of the transport and dispersion within the analysis domain. The representativeness of data that were collected off-site should be judged, in part, by comparing the surface characteristics in the vicinity of the meteorological monitoring site with the surface characteristics that generally describe the analysis domain. Furthermore, since the spatial scope of each variable could be different, representativeness should be judged for each variable separately. For example, for a variable such as wind direction, the data may need to be collected very near plume height to be adequately representative, whereas, for a variable such as temperature, data from a station several kilometers away from the source may in some cases be considered to be adequately representative.

d. For long range transport modeling assessments (as discussed in Section 6.2.3) or in assessments where the transport winds are complex and the application involves a non-steady-state dispersion model (as discussed in Section 7.2.8), use of output from prognostic mesoscale meteorological models is encouraged.[90 91 92] Some diagnostic meteorological processors are designed to appropriately blend available NWS comparable meteorological observations, local site-specific meteorological observations, and prognostic mesoscale meteorological data, using empirical relationships, to diagnostically adjust the wind field for mesoscale and local-scale effects. These diagnostic adjustments can sometimes be improved through the use of strategically placed site-specific meteorological observations. The placement of these special meteorological observations (often more than one location is needed) involves expert judgement, and is specific to the terrain and land use of the modeling domain.

8.3.1 Length of Record of Meteorological Data

8.3.1.1 Discussion

a. The model user should acquire enough meteorological data to ensure that worst-case meteorological conditions are adequately represented in the model results. The trend toward statistically based standards suggests a need for all meteorological conditions to be adequately represented in the data set selected for model input. The number of years of record needed to obtain a stable distribution of conditions depends on the variable being measured and has been estimated by Landsberg and Jacobs[93] for various parameters. Although that study indicates in excess of 10 years may be required to achieve stability in the frequency distributions of some meteorological variables, such long periods are not reasonable for model input data. This is due in part to the fact that hourly data in model input format are frequently not available for such periods and that hourly calculations of concentration for long periods may be prohibitively expensive. Another study[94] compared various periods from a 17-year data set to determine the minimum number of years of data needed to approximate the concentrations modeled with a 17-year period of meteorological data from one station. This study indicated that the variability of model estimates due to the meteorological data input was adequately reduced if a 5-year period of record of meteorological input was used.

8.3.1.2 Recommendations

a. Five years of representative meteorological data should be used when estimating concentrations with an air quality model. Consecutive years from the most recent, readily available 5-year period are preferred. The meteorological data should be adequately representative, and may be site specific or from a nearby NWS station.

b. The use of 5 years of NWS meteorological data or at least 1 year of site-specific data is required. If one year or more (including partial years), up to five years, of

site-specific data is available, these data are preferred for use in air quality analyses. Such data should have been subjected to quality assurance procedures as described in Section 8.3.3.2.

c. For permitted sources whose emission limitations are based on a specific year of meteorological data, that year should be added to any longer period being used (*e.g.*, 5 years of NWS data) when modeling the facility at a later time.

d. For LRT situations (as discussed in Section 6.2.3) and for complex wind situations (as discussed in paragraph 7.2.8(a)), if only NWS or comparable standard meteorological observations are employed, five years of meteorological data (within and near the modeling domain) should be used. Consecutive years from the most recent, readily available 5-year period are preferred. Less than five years of meteorological data may be used if mesoscale meteorological fields are available, as discussed in paragraph 8.3(d). These mesoscale meteorological fields should be used in conjunction with available standard NWS or comparable meteorological observations within and near the modeling domain. If site-specific meteorological data are available, these data may be especially helpful for local-scale complex wind situations, when appropriately blended together with standard NWS or comparable observations and mesoscale meteorological fields.

8.3.2 National Weather Service Data

8.3.2.1 Discussion

a. The NWS meteorological data are routinely available and familiar to most model users. Although the NWS does not provide direct measurements of all the needed dispersion model input variables, methods have been developed and successfully used to translate the basic NWS data to the needed model input. Direct measurements of model input parameters have been made for limited model studies and those methods and techniques are becoming more widely applied; however, many model applications still rely heavily on the NWS data.

b. Many models use the standard hourly weather observations available from the National Climatic Data Center (NCDC). These observations are then "preprocessed" before they can be used in the models.

8.3.2.2 Recommendations

a. The preferred models listed in Appendix A all accept as input the NWS meteorological data preprocessed into model compatible form. If NWS sata are judged to be adequately representative for a particular modeling application, they may be used. NCDC makes available surface[95 96] and upper air[97] meteorological data in CD–ROM format.

b. Although most NWS measurements are made at a standard height of 10 meters, the actual anemometer height should be used as input to the preferred model. Note that AERMOD at a minimum requires wind observations at a height above ground between seven times the local surface roughness height and 100 meters.

c. Wind directions observed by the National Weather Service are reported to the nearest 10 degrees. A specific set of randomly generated numbers has been developed for use with the preferred EPA models and should be used to ensure a lack of bias in wind direction assignments within the models.

d. Data from universities, FAA, military stations, industry and pollution control agencies may be used if such data are equivalent in accuracy and detail to the NWS data, and they are judged to be adequately representative for the particular application.

8.3.3 Site-Specific Data

8.3.3.1 Discussion

a. Spatial or geographical representativeness is best achieved by collection of all of the needed model input data in close proximity to the actual site of the source(s). Site-specific measured data are therefore preferred as model input, provided that appropriate instrumentation and quality assurance procedures are followed and that the data collected are adequately representative (free from undue local or "micro" influences) and compatible with the input requirements of the model to be used. It should be noted that, while site-specific measurements are frequently made "on-property" (*i.e.*, on the source's premises), acquisition of adequately representative site-specific data does not preclude collection of data from a location off property. Conversely, collection of meteorological data on property does not of itself guarantee adequate representativeness. For help in determining representativeness of site-specific measurements, technical guidance[98] is available. Site-specific data should always be reviewed for consistency by a qualified meteorologist.

8.3.3.2 Recommendations

a. EPA guidance[98] provides recommendations on the collection and use of site-specific meteorological data. Recommendations on characteristics, siting, and exposure of meteorological instruments and on data recording, processing, completeness requirements, reporting, and archiving are also included. This publication should be used as a supplement to other limited guidance on these subjects.[89] Detailed information on quality assurance is also available.[99] As a minimum, site-specific measurements of ambient air temperature, transport wind speed and direction, and the variables necessary to estimate atmospheric dispersion should be available in meteorological data sets to be used in modeling. Care should be taken to ensure that meteorological instruments are located to provide representative characterization of pollutant transport between sources and receptors of interest. The Regional Office will determine the appropriateness of the measurement locations.

b. All site-specific data should be reduced to hourly averages. Table 8–3 lists the wind related parameters and the averaging time requirements.

c. *Missing Data Substitution.* After valid data retrieval requirements have been met, hours in the record having missing data should be treated according to an established data substitution protocol provided that data from an adequately representative alternative site are available. Such protocols are usually part of the approved monitoring program plan. Data substitution guidance is provided in Section 5.3 of reference 98. If no representative alternative data are available for substitution, the absent data should be coded as missing using missing data codes appropriate to the applicable meteorological pre-processor. Appropriate model options for treating missing data, if available in the model, should be employed.

d. *Solar Radiation Measurements.* Total solar radiation or net radiation should be measured with a reliable pyranometer or net radiometer, sited and operated in accordance with established site-specific meteorological guidance.[98 99]

e. *Temperature Measurements.* Temperature measurements should be made at standard shelter height (2m) in accordance with established site-specific meteorological guidance.[98]

f. *Temperature Difference Measurements.* Temperature difference (ΔT) measurements should be obtained using matched thermometers or a reliable thermocouple system to achieve adequate accuracy. Siting, probe placement, and operation of ΔT systems should be based on guidance found in Chapter 3 of reference 98, and such guidance should be followed when obtaining vertical temperature gradient data for use in plume rise estimates or in determining the critical dividing streamline height.

g. *Winds Aloft.* For simulation of plume rise and dispersion of a plume emitted from a stack, characterization of the wind profile up through the layer in which the plume disperses is required. This is especially important in complex terrain and/or complex wind situations. For tall stacks when site specific data are needed, these winds have been obtained traditionally using meteorological sensors mounted on tall towers. A feasible alternative to tall towers is the use of meteorological remote sensing instruments (*e.g.*, acoustic sounders or radar wind profilers) to provide winds aloft, coupled with 10-meter towers to provide the near-surface winds. (For specific requirements for AERMOD and CTDMPLUS, see Appendix A.) Specifications for wind measuring instruments and systems are contained in reference 98.

h. *Turbulence.* There are several dispersion models that are capable of using direct measurements of turbulence (wind fluctuation) in the characterization of the vertical and lateral dispersion (*e.g.*, CTDMPLUS, AERMOD, CALPUFF). For specific requirements for CTDMPLUS, AERMOD and CALPUFF, see Appendix A. For technical guidance on measurement and processing of turbulence parameters, see reference 98. When turbulence data are used in this manner to directly characterize the vertical and lateral dispersion, the averaging time for the turbulence measurements should be one hour (Table 8–3). There are other dispersion models (*e.g.*, ISC-PRIME, BLP, and CALINE3) that employ P–G stability categories for the characterization of the vertical and lateral dispersion. Methods for using site-specific turbulence data for the characterization of P–G stability categories

are discussed in reference 98. When turbulence data are used in this manner to determine the P–G stability category, the averaging time for the turbulence measurements should be 15-minutes.

i. *Stability Categories.* For dispersion models that employ P–G stability categories for the characterization of the vertical and lateral dispersion (*e.g.*, ISC-PRIME), the P–G stability categories, as originally defined, couple near-surface measurements of wind speed with subjectively determined insolation assessments based on hourly cloud cover and ceiling height observations. The wind speed measurements are made at or near 10m. The insolation rate is typically assessed using observations of cloud cover and ceiling height based on criteria outlined by Turner.[74] It is recommended that the P–G stability category be estimated using the Turner method with site-specific wind speed measured at or near 10m and representative cloud cover and ceiling height. Implementation of the Turner method, as well as considerations in determining representativeness of cloud cover and ceiling height in cases for which site-specific cloud observations are unavailable, may be found in Section 6 of reference 98. In the absence of requisite data to implement the Turner method, the SRDT method or wind fluctuation statistics (*i.e.*, the σ_E and σ_A methods) may be used.

j. The SRDT method, described in Section 6.4.4.2 of reference 98, is modified slightly from that published from earlier work [100] and has been evaluated with three site-specific data bases.[101] The two methods of stability classification which use wind fluctuation statistics, the σ_E and σ_A methods, are also described in detail in Section 6.4.4 of reference 106 (note applicable tables in Section 6). For additional information on the wind fluctuation methods, several references are available.[102] [103] [104] [105]

k. *Meteorological Data Preprocessors.* The following meteorological preprocessors are recommended by EPA: AERMET,[106] PCRAMMET,[107] MPRM,[108] METPRO,[109] and CALMET.[110] AERMET, which is patterned after MPRM, should be used to preprocess all data for use with AERMOD. Except for applications that employ AERMOD, PCRAMMET is the recommended meteorological preprocessor for use in applications employing hourly NWS data. MPRM is a general purpose meteorological data preprocessor which supports regulatory models requiring PCRAMMET formatted (NWS) data. MPRM is available for use in applications employing site-specific meteorological data. The latest version (MPRM 1.3) has been configured to implement the SRDT method for estimating P–G stability categories. METPRO is the required meteorological data preprocessor for use with CTDMPLUS. CALMET is available for use with applications of CALPUFF. All of the above mentioned data preprocessors are available for downloading from EPA's Internet SCRAM website (Section 2.3).

TABLE 8–3.—AVERAGING TIMES FOR SITE-SPECIFIC WIND AND TURBULENCE MEASUREMENTS

Parameter	Averaging time (hours)
Surface wind speed (for use in stability determinations)	1
Transport direction	1
Dilution wind speed	1
Turbulence measurements (σ_E and σ_A) for use in stability determinations	(1)
Turbulence Measurements for direct input to dispersion models	1

[1] To minimize meander effects in σ_A when wind conditions are light and/or variable, determine the hourly average σ value from four sequential 15-minute σ's according to the following formula:

$$\sigma_{1\text{-hr}} = \sqrt{\frac{\sigma_{15}^2 + \sigma_{15}^2 + \sigma_{15}^2 + \sigma_{15}^2}{4}}$$

8.3.4 Treatment of Calms

8.3.4.1 Discussion

a. Treatment of calm or light and variable wind poses a special problem in model applications since steady-state Gaussian plume models assume that concentration is inversely proportional to wind speed. Furthermore, concentrations may become unrealistically large when wind speeds less than 1 m/s are input to the model. Procedures have been developed to prevent the occurrence of overly conservative concentration estimates during periods of calms. These procedures acknowledge that a steady-state Gaussian plume model does not apply during calm conditions, and that our knowledge of wind patterns and plume behavior during these conditions does not, at present, permit the development of a better technique. Therefore, the procedures disregard hours which are identified as calm. The hour is treated as missing and a convention for handling missing hours is recommended.

b. NWS meteorological data preprocessed by PCRAMMET for input to ISC–PRIME may take one of two formats: ASCII or binary (unformatted). If the format is ASCII, PCRAMMET does not modify wind speeds having a value of zero. If the format is binary and PCRAMMET detects the occurrence of a calm, it sets the wind speed value of zero to 1.00 m/s and repeats the wind direction from the previous non-calm hour. Models such as ISC–PRIME identify the original calm cases by checking for the occurrence of a 1.00 m/s wind speed coincident with a wind direction equal to that for the previous hour. ISC–PRIME then treats these calm hours as missing, and no concentration is calculated.

c. AERMOD, while fundamentally a steady-state Gaussian plume model, contains improved algorithms for dealing with low wind speed (near calm) conditions. As a result, AERMOD can produce model estimates for conditions when the wind speed may be less than 1 m/s, but still greater than the instrument threshold. Required input to AERMET, the meteorological processor for AERMOD, includes a threshold wind speed and a reference wind speed. The threshold wind speed is typically the threshold of the instrument used to collect the wind speed data. The reference wind speed is selected by the model as the lowest level of non-missing wind speed and direction data where the speed is greater than the wind speed threshold, and the height of the measurement is between seven times the local surface roughness and 100 meters. If the only valid observation of the reference wind speed between these heights is less than the threshold, the hour is considered calm, and no concentration is calculated. None of the observed wind speeds in a measured wind profile that are less than the threshold speed are used in construction of the modeled wind speed profile in AERMOD.

8.3.4.2 Recommendations

a. Hourly concentrations calculated with steady-state Gaussian plume models using calms should not be considered valid; the wind and concentration estimates for these hours should be disregarded and considered to be missing. Critical concentrations for 3-, 8-, and 24-hour averages should be calculated by dividing the sum of the hourly concentrations for the period by the number of valid or non-missing hours. If the total number of valid hours is less than 18 for 24-hour averages, less than 6 for 8-hour averages or less than 3 for 3-hour averages, the total concentration should be divided by 18 for the 24-hour average, 6 for the 8-hour average and 3 for the 3-hour average. For annual averages, the sum of all valid hourly concentrations is divided by the number of non-calm hours during the year. ISC–PRIME and AERMOD have been coded to implement these instructions. For other models listed in Appendix A, a post-processor computer program, CALMPRO [111] has been prepared, is available on the SCRAM Internet website (Section 2.3), and should be used.

b. Stagnant conditions that include extended periods of calms often produce high concentrations over wide areas for relatively long averaging periods. The standard steady-state Gaussian plume models are often not applicable to such situations. When stagnation conditions are of concern, other modeling techniques should be considered on a case-by-case basis (see also Section 7.2.8).

c. When used in steady-state Gaussian plume models except AERMOD, measured site-specific wind speeds of less than 1 m/s but higher than the response threshold of the instrument should be input as 1 m/s; the corresponding wind direction should also be input. Wind observations below the response threshold of the instrument should be set to zero, with the input file in ASCII format. For input to AERMOD, no adjustment should be made to the site-specific wind data. In all cases involving steady-state Gaussian plume models, calm hours should be treated as missing, and concentrations should be calculated as in paragraph 8.3.4.2a.

9.0 Accuracy and Uncertainty of Models

9.1 Discussion

a. Increasing reliance has been placed on concentration estimates from models as the primary basis for regulatory decisions concerning source permits and emission control requirements. In many situations, such as review of a proposed source, no practical alternative exists. Therefore, there is an obvious need to know how accurate models really are and how any uncertainty in the estimates affects regulatory decisions. EPA recognizes the need for incorporating such information and has sponsored workshops [112] on model accuracy, the possible ways to quantify accuracy, and on considerations in the incorporation of model accuracy and uncertainty in the regulatory process. The Second (EPA) Conference on Air Quality Modeling, August 1982,[113] was devoted to that subject.

9.1.1 Overview of Model Uncertainty

a. Dispersion models generally attempt to estimate concentrations at specific sites that really represent an ensemble average of numerous repetitions of the same event. The event is characterized by measured or "known" conditions that are input to the models, *e.g.*, wind speed, mixed layer height, surface heat flux, emission characteristics, etc. However, in addition to the known conditions, there are unmeasured or unknown variations in the conditions of this event, *e.g.*, unresolved details of the atmospheric flow such as the turbulent velocity field. These unknown conditions, may vary among repetitions of the event. As a result, deviations in observed concentrations from their ensemble average, and from the concentrations estimated by the model, are likely to occur even though the known conditions are fixed. Even with a perfect model that predicts the correct ensemble average, there are likely to be deviations from the observed concentrations in individual repetitions of the event, due to variations in the unknown conditions. The statistics of these concentration residuals are termed "inherent" uncertainty. Available evidence suggests that this source of uncertainty alone may be responsible for a typical range of variation in concentrations of as much as ±50 percent.[114]

b. Moreover, there is "reducible" uncertainty [115] associated with the model and its input conditions; neither models nor data bases are perfect. Reducible uncertainties are caused by: (1) Uncertainties in the input values of the known conditions (*i.e.*, emission characteristics and meteorological data); (2) errors in the measured concentrations which are used to compute the concentration residuals; and (3) inadequate model physics and formulation. The "reducible" uncertainties can be minimized through better (more accurate and more representative) measurements and better model physics.

c. To use the terminology correctly, reference to model accuracy should be limited to that portion of reducible uncertainty which deals with the physics and the formulation of the model. The accuracy of the model is normally determined by an evaluation procedure which involves the comparison of model concentration estimates with measured air quality data.[116] The statement of accuracy is based on statistical tests or performance measures such as bias, noise, correlation, *etc.*[17] However, information that allows a distinction between contributions of the various elements of inherent and reducible uncertainty is only now beginning to emerge. As a result most discussions of the accuracy of models make no quantitative distinction between (1) limitations of the model versus (2) limitations of the data base and of knowledge concerning atmospheric variability. The reader should be aware that statements on model accuracy and uncertainty may imply the need for improvements in model performance that even the "perfect" model could not satisfy.

9.1.2 Studies of Model Accuracy

a. A number of studies [117 118] have been conducted to examine model accuracy, particularly with respect to the reliability of short-term concentrations required for ambient standard and increment evaluations. The results of these studies are not surprising. Basically, they confirm what leading atmospheric scientists have said for some time: (1) models are more reliable for estimating longer time-averaged concentrations than for estimating short-term concentrations at specific locations; and (2) the models are reasonably reliable in estimating the magnitude of highest concentrations occurring sometime, somewhere within an area. For example, errors in highest estimated concentrations of ±10 to 40 percent are found to be typical,[119] *i.e.*, certainly well within the often quoted factor-of-two accuracy that has long been recognized for these models. However, estimates of concentrations that occur at a specific time and site, are poorly correlated with actually observed concentrations and are much less reliable.

b. As noted in paragraph 9.1.2 a, poor correlations between paired concentrations at fixed stations may be due to "reducible" uncertainties in knowledge of the precise plume location and to unquantified inherent uncertainties. For example, Pasquill [120] estimates that, apart from data input errors, maximum ground-level concentrations at a given hour for a point source in flat terrain could be in error by 50 percent due to these uncertainties. Uncertainty of five to 10 degrees in the measured wind direction, which transports the plume, can result in concentration errors of 20 to 70 percent for a particular time and location, depending on stability and station location. Such uncertainties do not indicate that an estimated concentration does not occur, only that the precise time and locations are in doubt.

9.1.3 Use of Uncertainty in Decision-Making

a. The accuracy of model estimates varies with the model used, the type of application, and site-specific characteristics. Thus, it is desirable to quantify the accuracy or uncertainty associated with concentration estimates used in decision-making. Communications between modelers and decision-makers must be fostered and further developed. Communications concerning concentration estimates currently exist in most cases, but the communications dealing with the accuracy of models and its meaning to the decision-maker are limited by the lack of a technical basis for quantifying and directly including uncertainty in decisions. Procedures for quantifying and interpreting uncertainty in the practical application of such concepts are only beginning to evolve; much study is still required.[112 113 115]

b. In all applications of models an effort is encouraged to identify the reliability of the model estimates for that particular area and to determine the magnitude and sources of error associated with the use of the model. The analyst is responsible for recognizing and quantifying limitations in the accuracy, precision and sensitivity of the procedure. Information that might be useful to the decision-maker in recognizing the seriousness of potential air quality violations includes such model accuracy estimates as accuracy of peak predictions, bias, noise, correlation, frequency distribution, spatial extent of high concentration, *etc.* Both space/time pairing of estimates and measurements and unpaired comparisons are recommended. Emphasis should be on the highest concentrations and the averaging times of the standards or increments of concern. Where possible, confidence intervals about the statistical values should be provided. However, while such information can be provided by the modeler to the decision-maker, it is unclear how this information should be used to make an air pollution control decision. Given a range of possible outcomes, it is easiest and tends to ensure consistency if the decision-maker confines his judgement to use of the "best estimate" provided by the modeler (*i.e.*, the design concentration estimated by a model recommended in the Guideline or an alternate model of known accuracy). This is an indication of the practical limitations

imposed by current abilities of the technical community.

c. To improve the basis for decision-making, EPA has developed and is continuing to study procedures for determining the accuracy of models, quantifying the uncertainty, and expressing confidence levels in decisions that are made concerning emissions controls.[121 122] However, work in this area involves "breaking new ground" with slow and sporadic progress likely. As a result, it may be necessary to continue using the "best estimate" until sufficient technical progress has been made to meaningfully implement such concepts dealing with uncertainty.

9.1.4 Evaluation of Models

a. A number of actions have been taken to ensure that the best model is used correctly for each regulatory application and that a model is not arbitrarily imposed. First, the Guideline clearly recommends the most appropriate model be used in each case. Preferred models, based on a number of factors, are identified for many uses. General guidance on using alternatives to the preferred models is also provided. Second, the models have been subjected to a systematic performance evaluation and a peer scientific review. Statistical performance measures, including measures of difference (or residuals) such as bias, variance of difference and gross variability of the difference, and measures of correlation such as time, space, and time and space combined as recommended by the AMS Woods Hole Workshop,[17] were generally followed. Third, more specific information has been provided for justifying the site specific use of alternative models in previously cited EPA guidance.[25 27] Together these documents provide methods that allow a judgement to be made as to what models are most appropriate for a specific application. For the present, performance and the theoretical evaluation of models are being used as an indirect means to quantify one element of uncertainty in air pollution regulatory decisions.

b. In addition to performance evaluation of models, sensitivity analyses are encouraged since they can provide additional information on the effect of inaccuracies in the data bases and on the uncertainty in model estimates. Sensitivity analyses can aid in determining the effect of inaccuracies of variations or uncertainties in the data bases on the range of likely concentrations. Such information may be used to determine source impact and to evaluate control strategies. Where possible, information from such sensitivity analyses should be made available to the decision-maker with an appropriate interpretation of the effect on the critical concentrations.

9.2 Recommendations

a. No specific guidance on the quantification of model uncertainty for use in decision-making is being given at this time. As procedures for considering uncertainty develop and become implementable, this guidance will be changed and expanded. For the present, continued use of the "best estimate" is acceptable; however, in specific circumstances for O_3, PM–2.5 and regional haze, additional information and/or procedures may be appropriate.[42 43]

10.0 Regulatory Application of Models

10.1 Discussion

a. Procedures with respect to the review and analysis of air quality modeling and data analyses in support of SIP revisions, PSD permitting or other regulatory requirements need a certain amount of standardization to ensure consistency in the depth and comprehensiveness of both the review and the analysis itself. This section recommends procedures that permit some degree of standardization while at the same time allowing the flexibility needed to assure the technically best analysis for each regulatory application.

b. Dispersion model estimates, especially with the support of measured air quality data, are the preferred basis for air quality demonstrations. Nevertheless, there are instances where the performance of recommended dispersion modeling techniques, by comparison with observed air quality data, may be shown to be less than acceptable. Also, there may be no recommended modeling procedure suitable for the situation. In these instances, emission limitations may be established solely on the basis of observed air quality data as would be applied to a modeling analysis. The same care should be given to the analyses of the air quality data as would be applied to a modeling analysis.

c. The current NAAQS for SO_2 and CO are both stated in terms of a concentration not to be exceeded more than once a year. There is only an annual standard for NO_2 and a quarterly standard for Pb. Standards for fine particulate matter (PM–2.5) are expressed in terms of both long-term (annual) and short-term (daily) averages. The long-term standard is calculated using the three year average of the annual averages while the short-term standard is calculated using the three year average of the 98th percentile of the daily average concentration. For PM–10, the convention is to compare the arithmetic mean, averaged over 3 consecutive years, with the concentration specified in the NAAQS (50 $\mu g/m^3$). The 24-hour NAAQS (150 $\mu g/m^3$) is met if, over a 3-year period, there is (on average) no more than one exceedance per year. For ozone the short term 1-hour standard is expressed in terms of an expected exceedance limit while the short term 8-hour standard is expressed in terms of a three year average of the annual fourth highest daily maximum 8-hour value. The NAAQS are subjected to extensive review and possible revision every 5 years.

d. This section discusses general requirements for concentration estimates and identifies the relationship to emission limits. The following recommendations apply to: (1) Revisions of State Implementation Plans and (2) the review of new sources and the prevention of significant deterioration (PSD).

10.2 Recommendations

10.2.1 Analysis Requirements

a. Every effort should be made by the Regional Office to meet with all parties involved in either a SIP revision or a PSD permit application prior to the start of any work on such a project. During this meeting, a protocol should be established between the preparing and reviewing parties to define the procedures to be followed, the data to be collected, the model to be used, and the analysis of the source and concentration data. An example of requirements for such an effort is contained in the Air Quality Analysis Checklist posted on EPA's Internet SCRAM website (Section 2.3). This checklist suggests the level of detail required to assess the air quality resulting from the proposed action. Special cases may require additional data collection or analysis and this should be determined and agreed upon at this preapplication meeting. The protocol should be written and agreed upon by the parties concerned, although a formal legal document is not intended. Changes in such a protocol are often required as the data collection and analysis progresses. However, the protocol establishes a common understanding of the requirements.

b. An air quality analysis should begin with a screening model to determine the potential of the proposed source or control strategy to violate the PSD increment or NAAQS. For traditional stationary sources, EPA guidance should be followed.[34] Guidance is also available for mobile sources.[56]

c. If the concentration estimates from screening techniques indicate that the PSD increment or NAAQS may be approached or exceeded, then a more refined modeling analysis is appropriate and the model user should select a model according to recommendations in Sections 4–7. In some instances, no refined technique may be specified in this guide for the situation. The model user is then encouraged to submit a model developed specifically for the case at hand. If that is not possible, a screening technique may supply the needed results.

d. Regional Offices should require permit applicants to incorporate the pollutant contributions of all sources into their analysis. Where necessary this may include emissions associated with growth in the area of impact of the new or modified source. PSD air quality assessments should consider the amount of the allowable air quality increment that has already been granted to any other sources. Therefore, the most recent source applicant should model the existing or permitted sources in addition to the one currently under consideration. This would permit the use of newly acquired data or improved modeling techniques if such have become available since the last source was permitted. When remodeling, the worst case used in the previous modeling analysis should be one set of conditions modeled in the new analysis. All sources should be modeled for each set of meteorological conditions selected and for all receptor sites used in the previous applications as well as new sites specific to the new source.

10.2.2 Use of Measured Data in Lieu of Model Estimates

a. Modeling is the preferred method for determining emission limitations for both new and existing sources. When a preferred model is available, model results alone (including background) are sufficient. Monitoring will normally not be accepted as

the sole basis for emission limitation. In some instances when the modeling technique available is only a screening technique, the addition of air quality data to the analysis may lend credence to model results.

b. There are circumstances where there is no applicable model, and measured data may need to be used. However, only in the case of an existing source should monitoring data alone be a basis for emission limits. In addition, the following in paragraphs 10.2.2 b.i through iv should be considered prior to the acceptance of the measured data:

i. Does a monitoring network exist for the pollutants and averaging times of concern?

ii. Has the monitoring network been designed to locate points of maximum concentration?

iii. Do the monitoring network and the data reduction and storage procedures meet EPA monitoring and quality assurance requirements?

iv. Do the data set and the analysis allow impact of the most important individual sources to be identified if more than one source or emission point is involved?

v. Is at least one full year of valid ambient data available?

vi. Can it be demonstrated through the comparison of monitored data with model results that available models are not applicable?

c. The number of monitors required is a function of the problem being considered. The source configuration, terrain configuration, and meteorological variations all have an impact on number and placement of monitors. Decisions can only be made on a case-by-case basis. Guidance is available for establishing criteria for demonstrating that a model is not applicable.[25]

d. Sources should obtain approval from the Regional Office or reviewing authority for the monitoring network prior to the start of monitoring. A monitoring protocol agreed to by all concerned parties is highly desirable. The design of the network, the number, type and location of the monitors, the sampling period, averaging time as well as the need for meteorological monitoring or the use of mobile sampling or plume tracking techniques, should all be specified in the protocol and agreed upon prior to start-up of the network.

10.2.3 Emission Limits

10.2.3.1 Design Concentrations

a. Emission limits should be based on concentration estimates for the averaging time that results in the most stringent control requirements. The concentration used in specifying emission limits is called the design value or design concentration and is a sum of the concentration contributed by the source and the background concentration.

b. To determine the averaging time for the design value, the most restrictive NAAQS should be identified by calculating, for each averaging time, the ratio of the difference between the applicable NAAQS (S) and the background concentration (B) to the (model) predicted concentration (P) (*i.e.*, (S − B)/P). The averaging time with the lowest ratio identifies the most restrictive standard. If the annual average is the most restrictive, the highest estimated annual average concentration from one or a number of years of data is the design value. When short term standards are most restrictive, it may be necessary to consider a broader range of concentrations than the highest value. For example, for pollutants such as SO_2, the highest, second-highest concentration is the design value. For pollutants with statistically based NAAQS, the design value is found by determining the more restrictive of: (1) The short-term concentration over the period specified in the standard, or (2) the long-term concentration that is not expected to exceed the long-term NAAQS. Determination of design values for PM–10 is presented in more detail in EPA guidance.[44]

10.2.3.2 NAAQS Analyses for New or Modified Sources

a. For new or modified sources predicted to have a significant ambient impact[89] and to be located in areas designated attainment or unclassifiable for the SO_2, Pb, NO_2, or CO NAAQS, the demonstration as to whether the source will cause or contribute to an air quality violation should be based on: (1) The highest estimated annual average concentration determined from annual averages of individual years; or (2) the highest, second-highest estimated concentration for averaging times of 24-hours or less; and (3) the significance of the spatial and temporal contribution to any modeled violation. For Pb, the highest estimated concentration based on an individual calendar quarter averaging period should be used. Background concentrations should be added to the estimated impact of the source. The most restrictive standard should be used in all cases to assess the threat of an air quality violation. For new or modified sources predicted to have a significant ambient impact[89] in areas designated attainment or unclassifiable for the PM–10 NAAQS, the demonstration of whether or not the source will cause or contribute to an air quality violation should be based on sufficient data to show whether: (1) The projected 24-hour average concentrations will exceed the 24-hour NAAQS more than 1 percent of the time, on average ; (2) the expected (*i.e.*, average) annual mean concentration will exceed the annual NAAQS; and (3) the source contributes significantly, in a temporal and spatial sense, to any modeled violation.

10.2.3.3 PSD Air Quality Increments and Impacts

a. The allowable PSD increments for criteria pollutants are established by regulation and cited in 40 CFR 51.166. These maximum allowable increases in pollutant concentrations may be exceeded once per year at each site, except for the annual increment that may not be exceeded. The highest, second-highest increase in estimated concentrations for the short term averages as determined by a model should be less than or equal to the permitted increment. The modeled annual averages should not exceed the increment.

b. Screening techniques defined in Section 4 can sometimes be used to estimate short term incremental concentrations for the first new source that triggers the baseline in a given area. However, when multiple increment-consuming sources are involved in the calculation, the use of a refined model with at least 1 year of on-site or 5 years of off-site NWS data is normally required. In such cases, sequential modeling must demonstrate that the allowable increments are not exceeded temporally and spatially, *i.e.*, for all receptors for each time period throughout the year(s) (time period means the appropriate PSD averaging time, *e.g.*, 3-hour, 24-hour, etc.).

c. The PSD regulations require an estimation of the SO_2, particulate matter (PM–10), and NO_2 impact on any Class I area. Normally, steady-state Gaussian plume models should not be applied at distances greater than can be accommodated by the steady state assumptions inherent in such models. The maximum distance for refined steady-state Gaussian plume model application for regulatory purposes is generally considered to be 50km. Beyond the 50km range, screening techniques may be used to determine if more refined modeling is needed. If refined models are needed, long range transport models should be considered in accordance with Section 6.2.4. As previously noted in Sections 3 and 6, the need to involve the Federal Land Manager in decisions on potential air quality impacts, particularly in relation to PSD Class I areas, cannot be overemphasized.

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Appendix A to Appendix W of Part 51—Summaries of Preferred Air Quality Models

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A.0 Introduction and Availability

(1) This appendix summarizes key features of refined air quality models preferred for specific regulatory applications. For each model, information is provided on availability, approximate cost (where applicable), regulatory use, data input, output format and options, simulation of atmospheric physics, and accuracy. These models may be used without a formal demonstration of applicability provided they satisfy the recommendations for regulatory use; not all options in the models are necessarily recommended for regulatory use.

(2) Many of these models have been subjected to a performance evaluation using comparisons with observed air quality data. Where possible, several of the models contained herein have been subjected to evaluation exercises, including (1) statistical performance tests recommended by the American Meteorological Society and (2) peer scientific reviews. The models in this appendix have been selected on the basis of the results of the model evaluations, experience with previous use, familiarity of the model to various air quality programs, and the costs and resource requirements for use.

(3) With the exception of EDMS, codes and documentation for all models listed in this appendix are available from EPA's Support Center for Regulatory Air Models (SCRAM) website at *www.epa.gov/scram001*. Documentation is also available from the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161; phone: (800) 553–6847. Where possible, accession numbers are provided.

A.1 AMS/EPA Regulatory Model—AERMOD

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Environmental Protection Agency, 1998. User's Guide for the AERMOD Meteorological Preprocessor (AERMET). (November 1998 Draft) Office of Air Quality Planning and Standards, Research Triangle Park, NC. (Docket No. A–99–05, II–A–3)

Environmental Protection Agency, 1998. User's Guide for the AERMOD Terrain Preprocessor (AERMAP). (11/30/98 Draft) Office of Air Quality Planning and Standards, Research Triangle Park, NC. (Docket No. A–99–05, II–A–4)

Availability

The model codes and associated documentation are available on EPA's Internet SCRAM website (Section A.0).

Abstract

AERMOD is a steady-state plume dispersion model for assessment of pollutant concentrations from a variety of sources. AERMOD simulates transport and dispersion from multiple point, area, or volume sources based on an up-to-date characterization of the atmospheric boundary layer. Sources may be located in rural or urban areas, and receptors may be located in simple or complex terrain. AERMOD accounts for building wake effects (*i.e.*, plume downwash). The model employs hourly sequential preprocessed meteorological data to estimate concentrations for averaging times from one hour to one year. AERMOD is designed to operate in concert with two pre-processor codes: AERMET processes meteorological data for input to AERMOD, and AERMAP processes terrain elevation data and generates receptor information for input to AERMOD.

a. Recommendations for Regulatory Use

(1) AERMOD is appropriate for the following applications:

- Point, volume, and area sources;
- Surface, near-surface, and elevated releases;
- Rural or urban areas;
- Simple and complex terrain;
- Transport distances over which steady-state assumptions are appropriate, up to 50 km;
- 1-hour to annual averaging times; and
- Continuous toxic air emissions.

(2) For regulatory applications of AERMOD, the regulatory default option should be set, *i.e.*, the parameter DFAULT should be employed in the MODELOPT record in the COntrol Pathway. The DFAULT option requires the use of terrain elevation data, stack-tip downwash, sequential date checking, and does not permit the use of the model in the SCREEN mode. In the regulatory default mode, pollutant half life or decay options are not employed, except in the case of an urban source of sulfur dioxide where a four-hour half life is applied. Terrain elevation data from the U.S. Geological Survey 7.5-Minute Digital Elevation Model (edcwww.cr.usgs.gov/doc/edchome/ndcdb/ndcdb.html) or equivalent (approx. 30-meter resolution) should be used in all applications. In some cases, exceptions of the terrain data requirement may be made in consultation with the permit/SIP reviewing authority.

b. Input Requirements

(1) Source data: Required input includes source type, location, emission rate, stack height, stack inside diameter, stack gas exit velocity, stack gas temperature, area and volume source dimensions, and source elevation. Building dimensions and variable emission rates are optional.

(2) Meteorological data: The AERMET meteorological preprocessor requires input of surface characteristics, including surface roughness (z_o), Bowen ratio, and albedo by sector and season or month, as well as, hourly observations of wind speed between $7z_o$ and 100m (reference wind speed measurement from which a vertical profile can be developed), wind direction, cloud cover, and temperature between z_o and 100m (reference temperature measurement from which a vertical profile can be developed). A morning sounding (in National Weather Service format) from a representative upper air station, latitude, longitude, time zone, and wind speed threshold are also required in AERMET. Additionally, measured profiles of wind, temperature, vertical and lateral turbulence may be required in certain applications (*e.g.*, in complex terrain) to adequately represent the meteorology affecting plume transport and dispersion. Optionally, measurements of solar, or net radiation may be input to AERMET. Two files are produced by the AERMET meteorological preprocessor for input to the AERMOD dispersion model. The surface file contains observed and calculated surface variables, one record per hour. The profile file contains the observations made at each level of a meteorological tower (or remote sensor), or the one-level observations taken from other representative data (*e.g.*, National Weather Service surface observations), one record per level per hour.

(i) Data used as input to AERMET should possess an adequate degree of representativeness to insure that the wind, temperature and turbulence profiles derived by AERMOD are both laterally and vertically representative of the source area. The adequacy of input data should be judged independently for each variable. The values for surface roughness, Bowen ratio, and albedo should reflect the surface characteristics in the vicinity of the meteorological tower, and should be adequately representative of the modeling domain. Finally, the primary atmospheric input variables including wind speed and direction, ambient temperature, cloud cover, and a morning upper air sounding should also be adequately representative of the source area.

(ii) For recommendations regarding the length of meteorological record needed to perform a regulatory analysis with AERMOD, see Section 8.3.1.

(3) Receptor data: Receptor coordinates, elevations, height above ground, and height scales are produced by the AERMAP terrain preprocessor for input to AERMOD. Discrete receptors and/or multiple receptor grids, Cartesian and/or polar, may be employed in AERMOD. AERMAP requires input of Digital Elevation Model (DEM) terrain data produced by the U.S. Geological Survey (USGS), or other equivalent data. AERMAP can be used optionally to estimate source elevations.

c. Output

Printed output options include input information, high concentration summary tables by receptor for user-specified averaging periods, maximum concentration summary tables, and concurrent values summarized by receptor for each day processed. Optional output files can be generated for: A listing of occurrences of exceedances of user-specified threshold value; a listing of concurrent (raw) results at each receptor for each hour modeled, suitable for post-processing; a listing of design values that can be imported into graphics software for plotting contours; an unformatted listing of raw results above a threshold value with a special structure for use with the TOXX model component of TOXST; a listing of concentrations by rank (*e.g.*, for use in quantile-quantile plots); and, a listing of concentrations, including arc-maximum normalized concentrations, suitable for model evaluation studies.

d. Type of Model

AERMOD is a steady-state plume model, using Gaussian distributions in the vertical and horizontal for stable conditions, and in the horizontal for convective conditions. The vertical concentration distribution for convective conditions results from an assumed bi-Gaussian probability density function of the vertical velocity.

e. Pollutant Types

AERMOD is applicable to primary pollutants and continuous releases of toxic and hazardous waste pollutants. Chemical transformation is treated by simple exponential decay. Settling and deposition are not yet simulated by AERMOD.

f. Source-Receptor Relationships

AERMOD applies user-specified locations for sources and receptors. Actual separation between each source-receptor pair is used. Source and receptor elevations are user input or are determined by AERMAP using USGS DEM terrain data. Receptors may be located at user-specified heights above ground level.

g. Plume Behavior

(1) In the convective boundary layer (CBL), the transport and dispersion of a plume is characterized as the superposition of three modeled plumes: The direct plume (from the stack), the indirect plume, and the penetrated plume, where the indirect plume accounts for the lofting of a buoyant plume near the top of the boundary layer, and the penetrated plume accounts for the portion of a plume that, due to its buoyancy, penetrates above the mixed layer, but can disperse downward and re-enter the mixed layer. In the CBL, plume rise is superposed on the displacements by random convective velocities (Weil *et al.*, 1997).

(2) In the stable boundary layer, plume rise is estimated using an iterative approach, similar to that in the CTDMPLUS model (Perry, 1992; Section 11.0, ref. 33).

(3) Stack-tip downwash and buoyancy induced dispersion effects are modeled. Building wake effects are simulated for stacks less than good engineering practice height using the methods contained in ISCST (Section 11.0, ref. 60). For stacks higher than building height plus one-half the lesser of the building height or building width, the building wake algorithm of Huber and Snyder (1976) is used. For lower stacks, the building wake algorithm of Schulman and Scire (Schulman and Hanna, 1986) is used, but stack-tip downwash and buoyancy-induced dispersion are not used.

(4) For elevated terrain, AERMOD incorporates the concept of the critical dividing streamline height, in which flow below this height remains horizontal, and flow above this height tends to rise up and over terrain (Snyder *et al.*, 1985). Plume

concentration estimates are the weighted sum of these two limiting plume states. However, consistent with the steady-state assumption of uniform horizontal wind direction over the modeling domain, straight-line plume trajectories are assumed, with adjustment in the plume/receptor geometry used to account for the terrain effects.

h. Horizontal Winds

Vertical profiles of wind are calculated for each hour based on measurements and surface-layer similarity (scaling) relationships. At a given height above ground, for a given hour, winds are assumed constant over the modeling domain. The effect of the vertical variation in horizontal wind speed on dispersion is accounted for through simple averaging over the plume depth.

i. Vertical Wind Speed

In convective conditions, the effects of random vertical updraft and downdraft velocities are simulated with a bi-Gaussian probability density function. In both convective and stable conditions, the mean vertical wind speed is assumed equal to zero.

j. Horizontal Dispersion

Gaussian horizontal dispersion coefficients are estimated as continuous functions of the parameterized (or measured) ambient lateral turbulence and also account for buoyancy-induced and building wake-induced turbulence. Vertical profiles of lateral turbulence are developed from measurements and similarity (scaling) relationships. Effective turbulence values are determined from the portion of the vertical profile of lateral turbulence between the plume height and the receptor height. The effective lateral turbulence is then used to estimate horizontal dispersion.

k. Vertical Dispersion

In the stable boundary layer, Gaussian vertical dispersion coefficients are estimated as continuous functions of parameterized vertical turbulence. In the convective boundary layer, vertical dispersion is characterized by a bi-Gaussian probability density function, and is also estimated as a continuous function of parameterized vertical turbulence. Vertical turbulence profiles are developed from measurements and similarity (scaling) relationships. These turbulence profiles account for both convective and mechanical turbulence. Effective turbulence values are determined from the portion of the vertical profile of vertical turbulence between the plume height and the receptor height. The effective vertical turbulence is then used to estimate vertical dispersion.

l. Chemical Transformation

Chemical transformations are generally not treated by AERMOD. However, AERMOD does contain an option to treat chemical transformation using simple exponential decay, although this option is typically not used in regulatory applications, except for sources of sulfur dioxide in urban areas. Either a decay coefficient or a half life is input by the user.

m. Physical Removal

Neither wet or dry deposition of particulate or gaseous pollutants is currently simulated by AERMOD.

n. Evaluation Studies

API, 1998: Evaluation of State of the Science of Air Quality Dispersion Model, Scientific Evaluation, prepared by Woodward-Clyde Consultants, Lexington, Massachusetts, for American Petroleum Institute, Washington, D.C., 20005–4070.

Paine, R.J., R.F. Lee, R.W. Brode, R.B. Wilson, A.J Cimorelli, S.G. Perry, J.C. Weil, A. Venkatram and W.D. Peters, 1998: Model Evaluation Results for AERMOD (12/17/98 Draft). Prepared for Environmental Protection Agency, Research Triangle Park, NC. (Docket No. A–99–05, II–A–5)

A.2 Buoyant Line and Point Source Dispersion Model (BLP)

Reference

Schulman, Lloyd L. and Joseph S. Scire, 1980. Buoyant Line and Point Source (BLP) Dispersion Model User's Guide. Document P–7304B. Environmental Research and Technology, Inc., Concord, MA. (NTIS No. PB 81–164642)

Availability

The computer code is available on EPA's Internet SCRAM website and also on diskette (as PB 90–500281) from the National Technical Information Service (see Section A.0).

Abstract

BLP is a Gaussian plume dispersion model designed to handle unique modeling problems associated with aluminum reduction plants, and other industrial sources where plume rise and downwash effects from stationary line sources are important.

a. Recommendations for Regulatory Use

(1) The BLP model is appropriate for the following applications:

- Aluminum reduction plants which contain buoyant, elevated line sources;
- Rural areas;
- Transport distances less than 50 kilometers;
- Simple terrain; and
- One hour to one year averaging times.

(2) The following options should be selected for regulatory applications:

(i) Rural (IRU=1) mixing height option;

(ii) Default (no selection) for plume rise wind shear (LSHEAR), transitional point source plume rise (LTRANS), vertical potential temperature gradient (DTHTA), vertical wind speed power law profile exponents (PEXP), maximum variation in number of stability classes per hour (IDELS), pollutant decay (DECFAC), the constant in Briggs' stable plume rise equation (CONST2), constant in Briggs' neutral plume rise equation (CONST3), convergence criterion for the line source calculations (CRIT), and maximum iterations allowed for line source calculations (MAXIT); and

(iii) Terrain option (TERAN) set equal to 0.0, 0.0, 0.0, 0.0, 0.0, 0.0

(3) For other applications, BLP can be used if it can be demonstrated to give the same estimates as a recommended model for the same application, and will subsequently be executed in that mode.

(4) BLP can be used on a case-by-case basis with specific options not available in a recommended model if it can be demonstrated, using the criteria in Section 3.2, that the model is more appropriate for a specific application.

b. Input Requirements

(1) Source data: Point sources require stack location, elevation of stack base, physical stack height, stack inside diameter, stack gas exit velocity, stack gas exit temperature, and pollutant emission rate. Line sources require coordinates of the end points of the line, release height, emission rate, average line source width, average building width, average spacing between buildings, and average line source buoyancy parameter.

(2) Meteorological data: Hourly surface weather data from punched cards or from the preprocessor program PCRAMMET which provides hourly stability class, wind direction, wind speed, temperature, and mixing height.

(3) Receptor data: locations and elevations of receptors, or location and size of receptor grid or request automatically generated receptor grid.

c. Output

(1) Printed output (from a separate post-processor program) includes:

(2) Total concentration or, optionally, source contribution analysis; monthly and annual frequency distributions for 1-, 3-, and 24-hour average concentrations; tables of 1-, 3-, and 24-hour average concentrations at each receptor; table of the annual (or length of run) average concentrations at each receptor;

(3) Five highest 1-, 3-, and 24-hour average concentrations at each receptor; and

(4) Fifty highest 1-, 3-, and 24-hour concentrations over the receptor field.

d. Type of Model

BLP is a gaussian plume model.

e. Pollutant Types

BLP may be used to model primary pollutants. This model does not treat settling and deposition.

f. Source-Receptor Relationship

(1) BLP treats up to 50 point sources, 10 parallel line sources, and 100 receptors arbitrarily located.

(2) User-input topographic elevation is applied for each stack and each receptor.

g. Plume Behavior

(1) BLP uses plume rise formulas of Schulman and Scire (1980).

(2) Vertical potential temperature gradients of 0.02 Kelvin per meter for E stability and 0.035 Kelvin per meter are used for stable plume rise calculations. An option for user input values is included.

(3) Transitional rise is used for line sources.

(4) Option to suppress the use of transitional plume rise for point sources is included.

(5) The building downwash algorithm of Schulman and Scire (1980) is used.

h. Horizontal Winds

(1) Constant, uniform (steady-state) wind is assumed for an hour.

(2) Straight line plume transport is assumed to all downwind distances.

(3) Wind speeds profile exponents of 0.10, 0.15, 0.20, 0.25, 0.30, and 0.30 are used for stability classes A through F, respectively. An option for user-defined values and an option to suppress the use of the wind speed profile feature are included.

i. Vertical Wind Speed

Vertical wind speed is assumed equal to zero.

j. Horizontal Dispersion

(1) Rural dispersion coefficients are from Turner (1969), with no adjustment made for variations in surface roughness or averaging time.

(2) Six stability classes are used.

k. Vertical Dispersion

(1) Rural dispersion coefficients are from Turner (1969), with no adjustment made for variations in surface roughness.

(2) Six stability classes are used.

(3) Mixing height is accounted for with multiple reflections until the vertical plume standard deviation equals 1.6 times the mixing height; uniform mixing is assumed beyond that point.

(4) Perfect reflection at the ground is assumed.

l. Chemical Transformation

Chemical transformations are treated using linear decay. Decay rate is input by the user.

m. Physical Removal

Physical removal is not explicitly treated.

n. Evaluation Studies

Schulman, L.L. and J.S. Scire, 1980. Buoyant Line and Point Source (BLP) Dispersion Model User's Guide, P–7304B. Environmental Research and Technology, Inc., Concord, MA.

Scire, J.S. and L.L. Schulman, 1981. Evaluation of the BLP and ISC Models with SF_6 Tracer Data and SO_2 Measurements at Aluminum Reduction Plants. APCA Specialty Conference on Dispersion Modeling for Complex Sources, St. Louis, MO.

A.3 CALINE3

Reference

Benson, Paul E, 1979. CALINE3—A Versatile Dispersion Model for Predicting Air Pollutant Levels Near Highways and Arterial Streets. Interim Report, Report Number FHWA/CA/TL–79/23. Federal Highway Administration, Washington, D.C. (NTIS No. PB 80–220841)

Availability

The CALINE3 model is available on diskette (as PB 95–502712) from NTIS. The source code and user's guide are also available on EPA's Internet SCRAM website (Section A.0).

Abstract

CALINE3 can be used to estimate the concentrations of nonreactive pollutants from highway traffic. This steady-state Gaussian model can be applied to determine air pollution concentrations at receptor locations downwind of "at-grade," "fill," "bridge," and "cut section" highways located in relatively uncomplicated terrain. The model is applicable for any wind direction, highway orientation, and receptor location. The model has adjustments for averaging time and surface roughness, and can handle up to 20 links and 20 receptors. It also contains an algorithm for deposition and settling velocity so that particulate concentrations can be predicted.

a. Recommendations for Regulatory Use

CALINE–3 is appropriate for the following applications:

- Highway (line) sources;
- Urban or rural areas;
- Simple terrain;
- Transport distances less than 50 kilometers; and
- One-hour to 24-hour averaging times.

b. Input Requirements

(1) Source data: up to 20 highway links classed as "at-grade," "fill" "bridge," or "depressed"; coordinates of link end points; traffic volume; emission factor; source height; and mixing zone width.

(2) Meteorological data: wind speed, wind angle (measured in degrees clockwise from the Y axis), stability class, mixing height, ambient (background to the highway) concentration of pollutant.

(3) Receptor data: coordinates and height above ground for each receptor.

c. Output

Printed output includes concentration at each receptor for the specified meteorological condition.

d. Type of Model

CALINE–3 is a Gaussian plume model.

e. Pollutant Types

CALINE–3 may be used to model primary pollutants.

f. Source-Receptor Relationship

(1) Up to 20 highway links are treated.

(2) CALINE–3 applies user input location and emission rate for each link. User-input receptor locations are applied.

g. Plume Behavior

Plume rise is not treated.

h. Horizontal Winds

(1) User-input hourly wind speed and direction are applied.

(2) Constant, uniform (steady-state) wind is assumed for an hour.

i. Vertical Wind Speed

Vertical wind speed is assumed equal to zero.

j. Horizontal Dispersion

(1) Six stability classes are used.

(2) Rural dispersion coefficients from Turner (1969) are used, with adjustment for roughness length and averaging time.

(3) Initial traffic-induced dispersion is handled implicitly by plume size parameters.

k. Vertical Dispersion

(1) Six stability classes are used.

(2) Empirical dispersion coefficients from Benson (1979) are used including an adjustment for roughness length.

(3) Initial traffic-induced dispersion is handled implicitly by plume size parameters.

(4) Adjustment for averaging time is included.

l. Chemical Transformation

Not treated.

m. Physical Removal

Optional deposition calculations are included.

n. Evaluation Studies

Bemis, G.R. *et al.*, 1977. Air Pollution and Roadway Location, Design, and Operation—Project Overview. FHWA–CA–TL–7080–77–25, Federal Highway Administration, Washington, D.C.

Cadle, S.H. *et al.*, 1976. Results of the General Motors Sulfate Dispersion Experiment, GMR–2107. General Motors Research Laboratories, Warren, MI.

Dabberdt, W.F., 1975. Studies of Air Quality on and Near Highways, Project 2761. Stanford Research Institute, Menlo Park, CA.

A.4 CALPUFF

References

Scire, J.S., D.G. Strimaitis, and R.J. Yamartino, 1998. A User's Guide for the CALPUFF Dispersion Model (Version 5.0). Earth Tech, Inc., Concord, MA.

Scire J.S., F. R. Robe, M.E. Fernau, and R.J. Yamartino, 1998. A User's Guide for the CALMET Meteorological Model (Version 5.0). Earth Tech, Inc., Concord, MA.

Availability

The model code and its documentation are available for download from the model developers' Internet website: www.src.com/calpuff/calpuff1.htm. You may also contact Joseph Scire, Earth Tech, Inc., 196 Baker Avenue, Concord, MA 01742; Telephone: (978) 371–4200, Fax: (978) 371–2468, e-mail: jss@src.com.

Abstract

CALPUFF is a multi-layer, multi-species non-steady-state puff dispersion modeling that simulates the effects of time-and space-varying meteorological conditions on pollutant transport, transformation, and removal. CALPUFF is intended for use on scales from tens of meters from a source to hundreds of kilometers. It includes algorithms for near-field effects such as building downwash, transitional buoyant and momentum plume rise, partial plume penetration, subgrid scale terrain and coastal interactions effects, and terrain impingement as well as longer range effects such as pollutant removal due to wet scavenging and dry deposition, chemical transformation, vertical wind shear, overwater transport, plume fumigation, and visibility effects of particulate matter concentrations.

a. Recommendations for Regulatory Use

(1) CALPUFF is appropriate for long range transport (source-receptor distances of 50km to 200km) of emissions from point, volume, area, and line sources. The meteorological input data should be fully characterized with

time-and-space-varying three dimensional wind and meteorological conditions using CALMET, as discussed in paragraphs 8.3(d) and 8.3.1.2(d) of Appendix W.

(2) CALPUFF may also be used on a case-by-case basis if it can be demonstrated using the criteria in Section 3.2 that the model is more appropriate for the specific application. The purpose of choosing a modeling system like CALPUFF is to fully treat stagnation, wind reversals, and time and space variations of meteorology effects on transport and dispersion, as discussed in paragraph 7.2.9(a).

(3) For regulatory applications of CALMET and CALPUFF, the regulatory default option should be used. Inevitably, some of the model control options will have to be set specific for the application using expert judgement and in consultation with the relevant reviewing authorities.

b. Input Requirements

Source Data:

1. Point sources: source location, stack height, diameter, exit velocity, exit temperature, base elevation, wind direction specific building dimensions (for building downwash calculations), and emission rates for each pollutant. Particle size distributions may be entered for particulate matter. Temporal emission factors (diurnal cycle, monthly cycle, hour/season, wind speed/stability class, or temperature-dependent emission factors) may also be entered. Arbitrarily-varying point source parameters may be entered from an external file.

2. Area sources: source location and shape, release height, base elevation, initial vertical distribution (σ_z) and emission rates for each pollutant. Particle size distributions may be entered for particulate matter. Temporal emission factors (diurnal cycle, monthly cycle, hour/season, wind speed/stability class, or temperature-dependent emission factors) may also be entered. Arbitrarily-varying area source parameters may be entered from an external file. Area sources specified in the external file are allowed to be buoyant and their location, size, shape, and other source characteristics are allowed to change in time.

3. Volume sources: source location, release height, base elevation, initial horizontal and vertical distributions (σ_y, σ_z) and emission rates for each pollutant. Particle size distributions may be entered for particulate matter. Temporal emission factors (diurnal cycle, monthly cycle, hour/season, wind speed/stability class, or temperature-dependent emission factors) may also be entered. Arbitrarily-varying volume source parameters may be entered from an external file.

4. Line sources: source location, release height, base elevation, average buoyancy parameter, and emission rates for each pollutant.

Particle size distributions may be entered for particulate matter. Temporal emission factors (diurnal cycle, monthly cycle, hour/season, wind speed/stability class, or temperature-dependent emission factors) may also be entered. Arbitrarily-varying line source parameters may be entered from an external file.

Meteorological Data (different forms of meteorological input can be used by CALPUFF):

1. Time-dependent three-dimensional meteorological fields generated by CALMET. This is the preferred mode for running CALPUFF. Inputs into CALMET include surface observations of wind speed, wind direction, temperature, cloud cover, ceiling height, relative humidity, surface pressure, and precipitation (type and amount), and upper air sounding data (wind speed, wind direction, temperature, and height). Optional large-scale model output (*e.g.*, from MM5) can be used by CALMET as well.

2. Single station surface and upper air meteorological data in CTDMPLUS data file formats (SURFACE.DAT and PROFILE.DAT files). This allows a vertical variation in the meteorological parameters but no spatial variability.

3. Single station meteorological data in ISCST3 data file format. This option does not account for variability of the meteorological parameters in the horizontal or vertical, except as provided for by the use of stability-dependent wind shear exponents and average temperature lapse rates.

Gridded terrain and land use data are required as input into CALMET when Option 1 is used. Geophysical processor programs are provided that interface the modeling system to standard terrain and land use data bases provided by the U.S. Geological Survey (USGS).

Receptor Data:

CALPUFF includes options for gridded and non-gridded (discrete) receptors. Special subgrid-scale receptors are used with the subgrid-scale complex terrain option.

Other Input:

CALPUFF accepts hourly observations of ozone concentrations for use in its chemical transformation algorithm. Subgrid-scale coastlines can be specified in its coastal boundary file. Optional, user-specified deposition velocities and chemical transformation rates can also be entered. CALPUFF accepts the CTDMPLUS terrain and receptor files for use in its subgrid-scale terrain algorithm.

c. Output

CALPUFF produces files of hourly concentrations of ambient concentrations for each modeled species, wet deposition fluxes, dry deposition fluxes, and for visibility applications, extinction coefficients. Postprocessing programs (PRTMET and CALPOST) provide options for analysis and display of the modeling results.

d. Type of Model

(1) CALPUFF is a non-steady-state time- and space-dependent Gaussian puff model. CALPUFF includes parameterized gas phase chemical transformation of SO_2, $SO_4^=$, NO, $NO_2^=$, HNO_3, NO_3-, and organic aerosols. A model for aqueous phase chemical transformation of SO_2 to $SO_4^=$ is included. CALPUFF can treat primary pollutants such as PM–10, toxic pollutants, ammonia, and other passive pollutants. The model includes a resistance-based dry deposition model for both gaseous pollutants and particulate matter. Wet deposition is treated using a scavenging coefficient approach. The model has detailed parameterizations of complex terrain effects, including terrain impingement, side-wall scrapping, and steep-walled terrain influences on lateral plume growth. A subgrid-scale complex terrain module based on a dividing streamline concept divides the flow into a lift component traveling over the obstacle and a wrap component deflected around the obstacle.

(2) The meteorological fields used by CALPUFF are produced by the CALMET meteorological model. CALMET includes a diagnostic wind field model containing objective analysis and parameterized treatments of slope flows, valley flows, terrain blocking effects, and kinematic terrain effects, lake and sea breeze circulations, and a divergence minimization procedure. An energy-balance scheme is used to compute sensible and latent heat fluxes and turbulence parameters over land surfaces. A profile method is used over water. CALMET contains interfaces to prognostic meteorological models such as the Penn State/NCAR Mesoscale Model (MM4, MM5; Section 11.0, ref. 100).

e. Pollutant Types

CALPUFF may be used to model gaseous pollutants or particulate matter that are inert or undergo linear chemical reactions, such as SO_2, $SO_4^=$, NO, NO_2, HNO_3, NO_3-, NH_3, PM–10, and toxic pollutants. For regional haze analyses, sulfate and nitrate particulate components are explicitly treated.

f. Source-Receptor Relationships

CALPUFF contains no fundamental limitations on the number of sources or receptors. Parameter files are provided that allow the user to specify the maximum number of sources, receptors, puffs, species, grid cells, vertical layers, and other model parameters. Its algorithms are designed to be suitable for source-receptor distances from tens of meters to hundreds of kilometers.

g. Plume Behavior

Momentum and buoyant plume rise is treated according to the plume rise equations of Briggs (1974, 1975) for non-downwashing point sources, Schulman and Scire (1980) for line sources and point sources subject to building downwash effects, and Zhang (1993) for buoyant area sources. Stack tip downwash effects and partial plume penetration into elevated temperature inversions are included.

h. Horizontal Winds

A three-dimensional wind field is computed by the CALMET meteorological model. CALMET combines an objective analysis procedure using wind observations with parameterized treatments of slope flows, valley flows, terrain kinematic effects, terrain blocking effects, and sea/lake breeze circulations. CALPUFF may optionally use single station (horizontally-constant) wind fields in the CTDMPLUS or ISC–PRIME data formats.

i. Vertical Wind Speed

Vertical wind speeds are not used explicitly by CALPUFF. Vertical winds are used in the development of the horizontal wind components by CALMET.

j. Horizontal Dispersion

Turbulence-based dispersion coefficients provide estimates of horizontal plume dispersion based on measured or computed values of σ_v. The effects of building downwash and buoyancy-induced dispersion are included. The effects of vertical wind shear are included through the puff splitting algorithm. Options are provided to use Pasquill-Gifford (rural) and McElroy-Pooler (urban) dispersion coefficients. Initial plume size from area or volume sources is allowed.

k. Vertical Dispersion

Turbulence-based dispersion coefficients provide estimates of vertical plume dispersion based on measured or computed values of σ_w. The effects of building downwash and buoyancy-induced dispersion are included. Vertical dispersion during convective conditions is simulated with a probability density function (pdf) model based on Weil *et al.* (1997). Options are provided to use Pasquill-Gifford (rural) and McElroy-Pooler (urban) dispersion coefficients. Initial plume size from area or volume sources is allowed.

l. Chemical Transformation

Gas phase chemical transformations are treated using parameterized models of SO_2 conversion to SO_4= and NO conversion to NO_2, HNO_3, and SO_4=. Aqueous phase oxidation of SO_2 to SO_4= by precipitating and non-precipitating clouds is included. Organic aerosol formation is treated.

m. Physical Removal

Dry deposition of gaseous pollutants and particulate matter is parameterized in terms of a resistance-based deposition model. Gravitational settling, inertial impaction, and Brownian motion effects on deposition of particulate matter is included. Wet deposition of gases and particulate matter is parameterized in terms of a scavenging coefficient approach.

n. Evaluation Studies

Berman, S., J.Y. Ku, J. Zhang, and S.T. Rao, 1977: Uncertainties in estimating the mixing depth—Comparing three mixing depth models with profiler measurements, Atmospheric Environment, 31: 3023–3039.

Environmental Protection Agency, 1998. Interagency Workgroup on Air Quality Modeling (IWAQM) Phase 2 Summary Report and Recommendations for Modeling Long-Range Transport Impacts. EPA publication No. EPA–454/R–98–019. U.S. Environmental Protection Agency, Research Triangle Park, NC.

Irwin, J.S. 1997. A Comparison of CALPUFF Modeling Results with 1997 INEL Field Data Results. In *Air Pollution Modeling and its Application, XII.* Edited by S.E. Gyrning and N. Chaumerliac. Plenum Press, New York, NY.

Irwin, J.S., J.S. Scire, and D.G. Strimaitis, 1996. A Comparison of CALPUFF Modeling Results with CAPTEX Field Data Results. In *Air Pollution Modeling and its Application, XI.* Edited by S.E. Gyrning and F.A. Schiermeier. Plenum Press, New York, NY.

Strimaitis, D.G., J.S. Scire and J.C. Chang. 1998. Evaluation of the CALPUFF Dispersion Model with Two Power Plant Data Sets. Tenth Joint Conference on the Application of Air Pollution Meteorology, Phoenix, Arizona. American Meteorological Society, Boston, MA. January 11–16, 1998.

A.5 Complex Terrain Dispersion Model Plus Algorithms for Unstable Situations (CTDMPLUS)

Reference

Perry, S.G., D.J. Burns, L.H. Adams, R.J. Paine, M.G. Dennis, M.T. Mills, D.G. Strimaitis, R.J. Yamartino and E.M. Insley, 1989. User's Guide to the Complex Terrain Dispersion Model Plus Algorithms for Unstable Situations (CTDMPLUS). Volume 1: Model Descriptions and User Instructions. EPA Publication No. EPA–600/8–89–041. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 89–181424)

Perry, S.G., 1992. CTDMPLUS: A Dispersion Model for Sources near Complex Topography. Part I: Technical Formulations. Journal of Applied Meteorology, 31(7): 633–645.

Availability

This model code is available on EPA's Internet SCRAM website and also on diskette (as PB 90–504119) from the National Technical Information Service (Section A.0).

Abstract

CTDMPLUS is a refined point source Gaussian air quality model for use in all stability conditions for complex terrain applications. The model contains, in its entirety, the technology of CTDM for stable and neutral conditions. However, CTDMPLUS can also simulate daytime, unstable conditions, and has a number of additional capabilities for improved user friendliness. Its use of meteorological data and terrain information is different from other EPA models; considerable detail for both types of input data is required and is supplied by preprocessors specifically designed for CTDMPLUS. CTDMPLUS requires the parameterization of individual hill shapes using the terrain preprocessor and the association of each model receptor with a particular hill.

a. Recommendation for Regulatory Use

CTDMPLUS is appropriate for the following applications:

- Elevated point sources;
- Terrain elevations above stack top;
- Rural or urban areas;
- Transport distances less than 50 kilometers; and
- One hour to annual averaging times when used with a post-processor program such as CHAVG.

b. Input Requirements

(1) Source data: For each source, user supplies source location, height, stack diameter, stack exit velocity, stack exit temperature, and emission rate; if variable emissions are appropriate, the user supplies hourly values for emission rate, stack exit velocity, and stack exit temperature.

(2) Meteorological data: For applications of CTDMPLUS, multiple level (typically three or more) measurements of wind speed and direction, temperature and turbulence (wind fluctuation statistics) are required to create the basic meteorological data file ("PROFILE"). Such measurements should be obtained up to the representative plume height(s) of interest (*i.e.*, the plume height(s) under those conditions important to the determination of the design concentration). The representative plume height(s) of interest should be determined using an appropriate complex terrain screening procedure (*e.g.*, CTSCREEN) and should be documented in the monitoring/modeling protocol. The necessary meteorological measurements should be obtained from an appropriately sited meteorological tower augmented by SODAR and/or RASS if the representative plume height(s) of interest is above the levels represented by the tower measurements. Meteorological preprocessors then create a SURFACE data file (hourly values of mixed layer heights, surface friction velocity, Monin-Obukhov length and surface roughness length) and a RAWINsonde data file (upper air measurements of pressure, temperature, wind direction, and wind speed).

(3) Receptor data: receptor names (up to 400) and coordinates, and hill number (each receptor must have a hill number assigned).

(4) Terrain data: user inputs digitized contour information to the terrain preprocessor which creates the TERRAIN data file (for up to 25 hills).

c. Output

(1) When CTDMPLUS is run, it produces a concentration file, in either binary or text format (user's choice), and a list file containing a verification of model inputs, *i.e.*,

- Input meteorological data from "SURFACE" and "PROFILE"
- Stack data for each source
- Terrain information
- Receptor information
- Source-receptor location (line printer map).

(2) In addition, if the case-study option is selected, the listing includes:

- Meteorological variables at plume height
- Geometrical relationships between the source and the hill
- Plume characteristics at each receptor, *i.e.*,

—distance in along-flow and cross flow direction
—effective plume-receptor height difference
—effective σ_y & σ_z values, both flat terrain and hill induced (the difference shows the effect of the hill)
—concentration components due to WRAP, LIFT and FLAT.

(3) If the user selects the TOPN option, a summary table of the top 4 concentrations at each receptor is given. If the ISOR option is selected, a source contribution table for every hour will be printed.

(4) A separate disk file of predicted (1-hour only) concentrations ("CONC") is written if the user chooses this option. Three forms of output are possible:

(i) A binary file of concentrations, one value for each receptor in the hourly sequence as run;

(ii) A text file of concentrations, one value for each receptor in the hourly sequence as run; or

(iii) A text file as described above, but with a listing of receptor information (names,

positions, hill number) at the beginning of the file.

(5) Hourly information provided to these files besides the concentrations themselves includes the year, month, day, and hour information as well as the receptor number with the highest concentration.

d. Type of Model

CTDMPLUS is a refined steady-state, point source plume model for use in all stability conditions for complex terrain applications.

e. Pollutant Types

CTDMPLUS may be used to model non-reactive, primary pollutants.

f. Source-Receptor Relationship

Up to 40 point sources, 400 receptors and 25 hills may be used. Receptors and sources are allowed at any location. Hill slopes are assumed not to exceed 15°, so that the linearized equation of motion for Boussinesq flow are applicable. Receptors upwind of the impingement point, or those associated with any of the hills in the modeling domain, require separate treatment.

g. Plume Behavior

(1) As in CTDM, the basic plume rise algorithms are based on Briggs' (1975) recommendations.

(2) A central feature of CTDMPLUS for neutral/stable conditions is its use of a critical dividing-streamline height (H_c) to separate the flow in the vicinity of a hill into two separate layers. The plume component in the upper layer has sufficient kinetic energy to pass over the top of the hill while streamlines in the lower portion are constrained to flow in a horizontal plane around the hill. Two separate components of CTDMPLUS compute ground-level concentrations resulting from plume material in each of these flows.

(3) The model calculates on an hourly (or appropriate steady averaging period) basis how the plume trajectory (and, in stable/neutral conditions, the shape) is deformed by each hill. Hourly profiles of wind and temperature measurements are used by CTDMPLUS to compute plume rise, plume penetration (a formulation is included to handle penetration into elevated stable layers, based on Briggs (1984)), convective scaling parameters, the value of H_c, and the Froude number above H_c.

h. Horizontal Winds

CTDMPLUS does not simulate calm meteorological conditions. Both scalar and vector wind speed observations can be read by the model. If vector wind speed is unavailable, it is calculated from the scalar wind speed. The assignment of wind speed (either vector or scalar) at plume height is done by either:

- Interpolating between observations above and below the plume height, or
- Extrapolating (within the surface layer) from the nearest measurement height to the plume height.

i. Vertical Wind Speed

Vertical flow is treated for the plume component above the critical dividing streamline height (H_c); see "Plume Behavior".

j. Horizontal Dispersion

Horizontal dispersion for stable/neutral conditions is related to the turbulence velocity scale for lateral fluctuations, σ_v, for which a minimum value of 0.2 m/s is used. Convective scaling formulations are used to estimate horizontal dispersion for unstable conditions.

k. Vertical Dispersion

Direct estimates of vertical dispersion for stable/neutral conditions are based on observed vertical turbulence intensity, *e.g.*, σ_w (standard deviation of the vertical velocity fluctuation). In simulating unstable (convective) conditions, CTDMPLUS relies on a skewed, bi-Gaussian probability density function (pdf) description of the vertical velocities to estimate the vertical distribution of pollutant concentration.

l. Chemical Transformation

Chemical transformation is not treated by CTDMPLUS.

m. Physical Removal

Physical removal is not treated by CTDMPLUS (complete reflection at the ground/hill surface is assumed).

n. Evaluation Studies

Burns, D.J., L.H. Adams and S.G. Perry, 1990. Testing and Evaluation of the CTDMPLUS Dispersion Model: Daytime Convective Conditions. Environmental Protection Agency, Research Triangle Park, NC.

Paumier, J.O., S.G. Perry and D.J. Burns, 1990. An Analysis of CTDMPLUS Model Predictions with the Lovett Power Plant Data Base. Environmental Protection Agency, Research Triangle Park, NC.

Paumier, J.O., S.G. Perry and D.J. Burns, 1992. CTDMPLUS: A Dispersion Model for Sources near Complex Topography. Part II: Performance Characteristics. Journal of Applied Meteorology, 31(7): 646–660.

A.6 Emissions and Dispersion Modeling System (EDMS) 3.1

Reference

Benson, Paul E., 1979. CALINE3—A Versatile Dispersion Model for Predicting Air Pollutant Levels Near Highways and Arterial Streets. Interim Report, Report Number FHWA/CA/TL–79/23. Federal Highway Administration, Washington, D.C. (NTIS No. PB 80–220841)

Federal Aviation Administration, 1997. Emissions and Dispersion Modeling System (EDMS) Reference Manual. FAA Report No. FAA–AEE–97–01, USAF Report No. AL/EQ–TR–1997–0010, Federal Aviation Administration, Washington, D.C. 20591. See Availability below. (Note: this manual includes supplements that are available on the EDMS Internet website: http://www.aee.faa.gov/aee-100/aee-120/edms/banner.htm)

Petersen, W.B. and E.D. Rumsey, 1987. User's Guide for PAL 2.0—A Gaussian-Plume Algorithm for Point, Area, and Line Sources. EPA Publication No. EPA–600/8–87–009. Office of Research and Development, Research Triangle Park, NC. (NTIS No. PB 87–168 787/AS)

Availability

EDMS is available for $200 from: Federal Aviation Administration, Attn: Ms. Julie Ann Draper, AEE, 800 Independence Avenue, S.W., Washington, D.C. 20591, Phone: (202) 267–3494.

Abstract

EDMS is a combined emissions/dispersion model for assessing pollution at civilian airports and military air bases. This model, which was jointly developed by the Federal Aviation Administration (FAA) and the United States Air Force (USAF), produces an emission inventory of all airport sources and calculates concentrations produced by these sources at specified receptors. The system stores emission factors for fixed sources such as fuel storage tanks and incinerators and also for mobile sources such as aircraft or automobiles. The EDMS emissions inventory module incorporates methodologies described in AP–42 for calculating aircraft emissions, on-road and off-road vehicle emissions, and stationary source emissions. The dispersion modeling module incorporates PAL2 and CALINE3 (Section A.3) for the various emission source types. Both of these components interact with the database to retrieve and store data. The dispersion module, which processes point, area, and line sources, also incorporates a special meteorological preprocessor for processing up to one year of National Climatic Data Center (NCDC) hourly data.

a. Recommendations for Regulatory Use

EDMS is appropriate for the following applications:

- Cumulative effect of changes in aircraft operations, point source and mobile source emissions at airports or air bases;
- Simple terrain;
- Non-reactive pollutants;
- Transport distances less than 50 kilometers; and
- 1-hour to annual averaging times.

b. Input Requirements

(1) All data are entered through the EDMS graphical user interface. Typical entry items are annual and hourly source activity, source and receptor coordinates, etc. Some point sources, such as heating plants, require stack height, stack diameter, and effluent temperature inputs.

(2) Wind speed, wind direction, hourly temperature, and Pasquill-Gifford stability category (P–G) are the meteorological inputs. They can be entered manually through the EDMS data entry screens or automatically through the processing of previously loaded NCDC hourly data.

c. Output

Printed outputs consist of:

- A summary emission inventory report with pollutant totals by source category and detailed emission inventory reports for each source category; and
- A concentration summary report for up to 8760 hours (one year) of meteorological data that lists the number of sources, receptors, and the five highest concentrations for applicable averaging periods for the respective primary NAAQS.

d. Type of Model

For its emissions inventory calculations, EDMS uses algorithms consistent with the EPA Compilation of Air Pollutant Emission Factors, AP–42 (Section 11.0, ref. 96). For its dispersion calculations, EDMS uses the Point Area & Line (PAL2) model and the CALifornia LINE source (CALINE3) model, both of which use Gaussian algorithms.

e. Pollutant Types

EDMS includes emission factors for carbon monoxide, nitrogen oxides, sulfur oxides, hydrocarbons, and suspended particles and calculates the dispersion for all except hydrocarbons.

f. Source-Receptor Relationship

(1) Within hardware and memory constraints, there is no upper limit to the number of sources and receptors that can be modeled simultaneously.

(2) The Gaussian point source equation estimates concentrations from point sources after determining the effective height of emission and the upwind and crosswind distance of the source from the receptor. Numerical integration of the Gaussian point source equation is used to determine concentrations from line sources (runways). Integration over area sources (parking lots), which includes edge effects from the source region, is done by considering finite line sources perpendicular to the wind at intervals upwind from the receptor. The crosswind integration is done analytically; integration upwind is done numerically by successive approximations. Terrain elevation differences between sources and receptors are neglected.

(3) A reasonable height above ground level may be specified for each receptor.

g. Plume Behavior

(1) Briggs final plume rise equations are used. If plume height exceeds mixing height, concentrations are assumed equal to zero. Surface concentrations are set to zero when the plume centerline exceeds mixing height.

(2) For roadways, plume rise is not treated.

(3) Building and stack tip downwash effects are not treated.

h. Horizontal Winds

(1) Steady state winds are assumed for each hour. Winds are assumed to be constant with altitude.

(2) Winds are entered manually by the user or automatically by reading previously loaded NCDC annual data files.

i. Vertical Wind Speed

Vertical wind speed is assumed to be zero.

j. Horizontal Dispersion

(1) Six stability classes are used (P–G classes A through F).

(2) Aircraft runways, vehicle parking lots, stationary sources, and training fires are modeled using PAL2. Either rural (Pasquill-Gifford) or urban (Briggs) dispersion settings may be specified globally for these sources.

(3) Vehicle roadways, aircraft taxiways, and aircraft queues are modeled using CALINE3. CALINE3 assumes urban dispersion curves. The user specifies terrain roughness.

k. Vertical Dispersion

(1) Six stability classes are used (P–G classes A through F).

(2) Aircraft runways, vehicle parking lots, stationary sources, and training fires are modeled using PAL2. Either rural (Pasquill-Gifford) or urban (Briggs) dispersion settings may be specified globally for these sources.

(3) Vehicle roadways, aircraft taxiways, and aircraft queues are modeled using CALINE3. CALINE3 assumes urban dispersion curves. The user specifies terrain roughness.

l. Chemical Transformation

Chemical transformations are not accounted for.

m. Physical Removal

Deposition is not treated.

n. Evaluation Studies

None cited.

A.7 Industrial Source Complex Model With Prime Downwash Algorithm (ISC–PRIME)

Reference

Environmental Protection Agency, 1995. User's Guide for the Industrial Source Complex (ISC3) Dispersion Models, Volumes 1 and 2. EPA Publication Nos. EPA–454/B–95–003a & b. Environmental Protection Agency, Research Triangle Park, NC. (NTIS Nos. PB 95–222741 and PB 95–222758, respectively)

Schulman, L.L., D.G. Strimaitis, and J.S. Scire, 1997. Addendum to ISC3 User's Guide, *The PRIME Plume Rise and Building Downwash Model*. Prepared for the Electric Power Research Institute, Palo Alto, CA., Earth Tech Document A287. A–99–05, II–A–12)

Schulman, L.L., D.G. Strimaitis, and J.S. Scire, 1998. Development and Evaluation of the PRIME Plume Rise and Building Downwash Model. (submitted to Journal of the Air & Waste Management Association) 34pp. + 10 figures (A–99–05, II–A–13)

Availability

The model code and its documentation are available for download from EPA's SCRAM Internet website (Section A.0).

Abstract

The ISC–PRIME model is a steady-state Gaussian plume model which can be used to assess pollutant concentrations from a wide variety of sources associated with an industrial source complex. The model is based on ISC3, with the PRIME (Plume RIse Model Enhancements) algorithm added for improved treatment of building downwash. This model can account for the following: settling and dry deposition of particles; building downwash; area, line, and volume sources; plume rise as a function of downwind distance, building dimensions and stack placement with respect to a building; separation of point sources; and limited terrain adjustment.

a. Recommendations for Regulatory Use

(1) ISC–PRIME is appropriate for the following applications:

- Industrial source complexes where aerodynamic downwash or deposition is important;
- Rural or urban areas;
- Flat or rolling terrain;
- Transport distances less than 50 kilometers;
- 1-hour to annual averaging times; and
- Continuous toxic air emissions.

(2) The following options should be selected for regulatory applications: For short term or long term modeling, set the regulatory "default option"; *i.e.*, use the keyword DFAULT, which automatically selects stack tip downwash, final plume rise, buoyancy induced dispersion (BID), the vertical potential temperature gradient, a treatment for calms, the appropriate wind profile exponents, and the appropriate value for pollutant half-life; set the "rural option" (use the keyword RURAL) or "urban option" (use the keyword URBAN); and set the "concentration option" (use the keyword CONC).

b. Input Requirements

(1) Source data: location, emission rate, physical stack height, stack gas exit velocity, stack inside diameter, and stack gas temperature. Optional inputs include source elevation, building dimensions, particle size distribution with corresponding settling velocities, and surface reflection coefficients.

(2) Meteorological data: ISC–PRIME requires hourly surface weather data from the preprocessor program PCRAMMET, which provides hourly stability class, wind direction, wind speed, temperature, and mixing height.

(3) Receptor data: coordinates and optional ground elevation for each receptor.

c. Output

Printed output options include:

- Program control parameters, source data, and receptor data;
- Tables of hourly meteorological data for each specified day;
- "N"-day average concentration or total deposition calculated at each receptor for any desired source combinations;
- Concentration or deposition values calculated for any desired source combinations at all receptors for any specified day or time period within the day;
- Tables of highest and second highest concentration or deposition values calculated at each receptor for each specified time period during a(n) "N"-day period for any desired source combinations, and tables of the maximum 50 concentration or deposition values calculated for any desired source combinations for each specified time period.

d. Type of Model

ISC–PRIME is a Gaussian plume model. It has been revised to perform a double integration of the Gaussian plume kernel for area sources. The PRIME algorithm modifies plume rise and dispersion during downwash conditions.

e. Pollutant Types

ISC–PRIME may be used to model primary pollutants and continuous releases of toxic and hazardous waste pollutants. Settling and deposition are treated.

f. Source-Receptor Relationships

(1) ISC–PRIME applies user-specified locations for point, line, area and volume

sources, and user-specified receptor locations or receptor rings.

(2) User input topographic evaluation for each receptor is used. Elevations above stack top are reduced to the stack top elevation, *i.e.*, "terrain chopping".

(3) User input height above ground level may be used when necessary to simulate impact at elevated or "flag pole" receptors, *e.g.*, on buildings.

(4) Actual separation between each source-receptor pair is used.

g. Plume Behavior

(1) ISC–PRIME uses Briggs (1969, 1971, 1975) plume rise equations for final rise.

(2) Stack tip downwash equation from Briggs (1974) is used.

(3) For plume rise affected by the presence of a building, the PRIME downwash algorithm is used. Plume rise is computed using a numerical solution of the mass, energy and momentum conservation laws (Zhang and Ghoniem, 1993). Streamline deflection and the position of the stack relative to the building affect plume trajectory and dispersion. Enhanced dispersion is based on the approach of Weil (1996). Plume mass captured by the cavity is well-mixed within the cavity. The captured plume mass is re-emitted to the far wake as a volume source. For GEP height stacks, buildings downwash is not used.

(4) For rolling terrain (terrain not above stack height), plume centerline is horizontal at height of final rise above source.

(5) Fumigation is not treated.

h. Horizontal Winds

(1) For each source, a constant, uniform (steady-state) stack-top wind is assumed for each hour except for PRIME downwash calculations, which use a power-law speed profile with height and account for velocity deficits in building wakes.

(2) Straight line plume transport is assumed to all downwind distances.

(3) Separate wind speed profile exponents (Irwin, 1979; EPA, 1980) for both rural and urban cases are used.

(4) An optional treatment for calm winds is included for short term modeling.

i. Vertical Wind Speed

Vertical wind speed is assumed equal to zero.

j. Horizontal Dispersion

(1) Rural dispersion coefficients from Turner (1969) are used, with no adjustments for surface roughness or averaging time.

(2) Urban dispersion coefficients from Briggs (Gifford, 1976) are used.

(3) Buoyancy induced dispersion (Pasquill, 1976) is included.

(4) Six stability classes are used.

(5) Dispersion is enhanced by the presence of a building.

k. Vertical Dispersion

(1) Rural dispersion coefficients from Turner (1969) are used, with no adjustments for surface roughness.

(2) Urban dispersion coefficients from Briggs (Gifford, 1976) are used.

(3) Buoyancy induced dispersion (Pasquill, 1976) is included.

(4) Six stability classes are used.

(5) Mixing height is accounted for with multiple reflections until the vertical plume standard deviation equals 1.6 times the mixing height; uniform vertical mixing is assumed beyond that point.

(6) Perfect reflection is assumed at the ground.

(7) Dispersion is enhanced by the presence of a building.

l. Chemical Transformation

Chemical transformations are treated using exponential decay. Time constant is input by the user.

m. Physical Removal

Dry deposition effects for particles are treated using a resistance formulation in which the deposition velocity is the sum of the resistances to pollutant transfer within the surface layer of the atmosphere, plus a gravitational settling term (EPA, 1994), based on the modified surface depletion scheme of Horst (1983).

n. Evaluation Studies

Bowers, J.F. and A.J. Anderson, 1981. An Evaluation Study for the Industrial Source Complex (ISC) Dispersion Model, EPA Publication No. EPA–450/4–81–002. U.S. Environmental Protection Agency, Research Triangle Park, NC.

Environmental Protection Agency, 1992. Comparison of a Revised Area Source Algorithm for the Industrial Source Complex Short Term Model and Wind Tunnel Data. EPA Publication No. EPA–454/R–92–014. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 93–226751)

Environmental Protection Agency, 1992. Sensitivity Analysis of a Revised Area Source Algorithm for the Industrial Source Complex Short Term Model. EPA Publication No. EPA–454/R–92–015. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 93–226769)

Environmental Protection Agency, 1992. Development and Evaluation of a Revised Area Source Algorithm for the Industrial Source Complex Long Term Model. EPA Publication No. EPA–454/R–92–016. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 93–226777)

Environmental Protection Agency, 1994. Development and Testing of a Dry Deposition Algorithm (Revised). EPA Publication No. EPA–454/R–94–015. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 94–183100)

Paine, R.J. and F. Lew, 1997. Results of the Independent Evaluation of ISCST3 and ISC–PRIME. Prepared for the Electric Power Research Institute, Palo Alto, CA. ENSR Document Number 2460–026–440. (NTIS No. PB 98–156524)

Paine, R.J. and F. Lew, 1997. Consequence Analysis for ISC–PRIME. Prepared for the Electric Power Research Institute, Palo Alto, CA. ENSR Document Number 2460–026–450. (NTIS No. PB 98–156516)

Schulman, L.L., D.G. Strimaitis, and J.S. Scire, 1998. Development and Evaluation of the PRIME Plume Rise and Building Downwash Model. {submitted to Journal of the Air & Waste Management Association} 34pp. + figures (A–99–05, II–A–13)

Scire, J.S. and L.L. Schulman, 1981. Evaluation of the BLP and ISC Models with SF_6 Tracer Data and SO_2 Measurements at Aluminum Reduction Plants. Air Pollution Control Association Specialty Conference on Dispersion Modeling for Complex Sources, St. Louis, MO.

Scire, J.S., L.L. Schulman and D.G. Strimaitis, 1995. Observations of Plume Descent Downwind of Buildings. 88th Annual Meeting of the Air & Waste Management Association, Paper 95-WP75B.01, AWMA, Pittsburgh, PA.

A.8 Offshore and Coastal Dispersion Model (OCD)

Reference

DiCristofaro, D.C. and S.R. Hanna, 1989. OCD: The Offshore and Coastal Dispersion Model, Version 4. Volume I: User's Guide, and Volume II: Appendices. Sigma Research Corporation, Westford, MA. (NTIS Nos. PB 93–144384 and PB 93–144392)

Availability

This model code is available on the Support Center for Regulatory Air Models Bulletin Board System and also on diskette (as PB 91–505230) from the National Technical Information Service (see Section A.0).

Technical Contact

Minerals Management Service, Attn: Mr. Dirk Herkhof, Parkway Atrium Building, 381 Elden Street, Herndon, VA 22070–4817, Phone: (703) 787–1735.

Abstract

(1) OCD is a straight-line Gaussian model developed to determine the impact of offshore emissions from point, area or line sources on the air quality of coastal regions. OCD incorporates overwater plume transport and dispersion as well as changes that occur as the plume crosses the shoreline. Hourly meteorological data are needed from both offshore and onshore locations. These include water surface temperature, overwater air temperature, mixing height, and relative humidity.

(2) Some of the key features include platform building downwash, partial plume penetration into elevated inversions, direct use of turbulence intensities for plume dispersion, interaction with the overland internal boundary layer, and continuous shoreline fumigation.

a. Recommendations for Regulatory Use

OCD has been recommended for use by the Minerals Management Service for emissions located on the Outer Continental Shelf (50 FR 12248; 28 March 1985). OCD is applicable for overwater sources where onshore receptors are below the lowest source height. Where onshore receptors are above the lowest source height, offshore plume transport and dispersion may be modeled on a case-by-case basis in consultation with the EPA Regional Office.

b. Input Requirements

(1) Source data: point, area or line source location, pollutant emission rate, building height, stack height, stack gas temperature, stack inside diameter, stack gas exit velocity,

stack angle from vertical, elevation of stack base above water surface and gridded specification of the land/water surfaces. As an option, emission rate, stack gas exit velocity and temperature can be varied hourly.

(2) Meteorological data (over water): wind direction, wind speed, mixing height, relative humidity, air temperature, water surface temperature, vertical wind direction shear (optional), vertical temperature gradient (optional), turbulence intensities (optional).

(3) Meteorological data (over land): wind direction, wind speed, temperature, stability class, mixing height.

(4) Receptor data: location, height above local ground-level, ground-level elevation above the water surface.

c. Output

(1) All input options, specification of sources, receptors and land/water map including locations of sources and receptors.

(2) Summary tables of five highest concentrations at each receptor for each averaging period, and average concentration for entire run period at each receptor.

(3) Optional case study printout with hourly plume and receptor characteristics. Optional table of annual impact assessment from non-permanent activities.

(4) Concentration files written to disk or tape can be used by ANALYSIS postprocessor to produce the highest concentrations for each receptor, the cumulative frequency distributions for each receptor, the tabulation of all concentrations exceeding a given threshold, and the manipulation of hourly concentration files.

d. Type of Model

OCD is a Gaussian plume model constructed on the framework of the MPTER model.

e. Pollutant Types

OCD may be used to model primary pollutants. Settling and deposition are not treated.

f. Source-Receptor Relationship

(1) Up to 250 point sources, 5 area sources, or 1 line source and 180 receptors may be used.

(2) Receptors and sources are allowed at any location.

(3) The coastal configuration is determined by a grid of up to 3600 rectangles. Each element of the grid is designated as either land or water to identify the coastline.

g. Plume Behavior

(1) As in ISC, the basic plume rise algorithms are based on Briggs' recommendations.

(2) Momentum rise includes consideration of the stack angle from the vertical.

(3) The effect of drilling platforms, ships, or any overwater obstructions near the source are used to decrease plume rise using a revised platform downwash algorithm based on laboratory experiments.

(4) Partial plume penetration of elevated inversions is included using the suggestions of Briggs (1975) and Weil and Brower (1984).

(5) Continuous shoreline fumigation is parameterized using the Turner method where complete vertical mixing through the thermal internal boundary layer (TIBL) occurs as soon as the plume intercepts the TIBL.

h. Horizontal Winds

(1) Constant, uniform wind is assumed for each hour.

(2) Overwater wind speed can be estimated from overland wind speed using relationship of Hsu (1981).

(3) Wind speed profiles are estimated using similarity theory (Businger, 1973). Surface layer fluxes for these formulas are calculated from bulk aerodynamic methods.

i. Vertical Wind Speed

Vertical wind speed is assumed equal to zero.

j. Horizontal Dispersion

(1) Lateral turbulence intensity is recommended as a direct estimate of horizontal dispersion. If lateral turbulence intensity is not available, it is estimated from boundary layer theory. For wind speeds less than 8 m/s, lateral turbulence intensity is assumed inversely proportional to wind speed.

(2) Horizontal dispersion may be enhanced because of obstructions near the source. A virtual source technique is used to simulate the initial plume dilution due to downwash.

(3) Formulas recommended by Pasquill (1976) are used to calculate buoyant plume enhancement and wind direction shear enhancement.

(4) At the water/land interface, the change to overland dispersion rates is modeled using a virtual source. The overland dispersion rates can be calculated from either lateral turbulence intensity or Pasquill-Gifford curves. The change is implemented where the plume intercepts the rising internal boundary layer.

k. Vertical Dispersion

(1) Observed vertical turbulence intensity is not recommended as a direct estimate of vertical dispersion. Turbulence intensity should be estimated from boundary layer theory as default in the model. For very stable conditions, vertical dispersion is also a function of lapse rate.

(2) Vertical dispersion may be enhanced because of obstructions near the source. A virtual source technique is used to simulate the initial plume dilution due to downwash.

(3) Formulas recommended by Pasquill (1976) are used to calculate buoyant plume enhancement.

(4) At the water/land interface, the change to overland dispersion rates is modeled using a virtual source. The overland dispersion rates can be calculated from either vertical turbulence intensity or the Pasquill-Gifford coefficients. The change is implemented where the plume intercepts the rising internal boundary layer.

l. Chemical Transformation

Chemical transformations are treated using exponential decay. Different rates can be specified by month and by day or night.

m. Physical Removal

Physical removal is also treated using exponential decay.

n. Evaluation Studies

DiCristofaro, D.C. and S.R. Hanna, 1989. OCD: The Offshore and Coastal Dispersion Model. Volume I: User's Guide. Sigma Research Corporation, Westford, MA.

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Pasquill, F., 1976. Atmospheric Dispersion Parameters in Gaussian Plume Modeling Part II. Possible Requirements for Change in the Turner Workbook Values. EPA Publication No. EPA–600/4–76–030b. U.S. Environmental Protection Agency, Research Triangle Park, NC.

Petersen, W.B., 1980. User's Guide for HIWAY–2 A Highway Air Pollution Model. EPA Publication No. EPA–600/8–80–018. U.S. Environmental Protection Agency, Research Triangle Park, NC. (NTIS PB 80–227556)

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Friday,
April 21, 2000

Part III

Environmental Protection Agency

40 CFR Part 435
Effluent Limitations Guidelines for the Oil and Gas Extraction Point Source Category; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 435

[FRL–6581–4]

Effluent Limitations Guidelines for the Oil and Gas Extraction Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule; Supplemental information and notice of meeting.

SUMMARY: On February 3, 1999 (64 FR 5488), EPA proposed technology-based effluent limitations guidelines and standards under the Clean Water Act (CWA) for the discharge of pollutants from oil and gas drilling operations associated with the use of synthetic-based drilling fluids (SBFs) and other non-aqueous drilling fluids into waters of the United States. This proposed rule would apply to certain existing and new facilities in the offshore subcategory beyond three miles from shore and offshore of Alaska, and the Cook Inlet, Alaska, portion of the coastal subcategory of the oil and gas extraction point source category.

This document presents a summary of all data received and collected by EPA since publication of the proposal; an assessment of the usefulness of the data in EPA's analyses; summary descriptions of revised engineering and economic models; and updated modeling results incorporating the new data. This notice also discusses "best management practices" (BMPs) as potential alternative requirements to reduce the discharges of toxic and hazardous pollutants.

DATES: Submit your comments by June 20, 2000. A public meeting will be held on Tuesday, April 25, 2000, from 1:00 p.m. to 5:30 p.m. Central Standard Time.

ADDRESSES: Submit comments by mail to Mr. Carey A. Johnston at the following address: U.S. Environmental Protection Agency; Engineering and Analysis Division (4303); 1200 Pennsylvania Avenue, NW; Washington, DC 20460. Please submit any references cited in your comments. EPA would appreciate an original and two copies of your comments and enclosures (including references). Hand delivered comments may be submitted at the EPA Headquarters Water Docket (address below). Comments may also be filed electronically to "johnston.carey@epa.gov." Electronic comments sent to the above e-mail address will be treated like all other submitted comments.

The data and analyses being announced today are available for review in the EPA Water Docket at EPA Headquarters at Waterside Mall, Room EB–57, 401 M. St. SW, Washington, DC 20460. For access to the docket materials, call (202) 260–3027 between 9:00 a.m. and 4:00 p.m. for an appointment. A reasonable fee may be charged for copying.

The public meeting will be held at the Minerals Management Service (MMS), Gulf of Mexico OCS Region Office, Room 111, 1201 Elmwood Park Boulevard, New Orleans, LA, 70123–2394.

FOR FURTHER INFORMATION CONTACT: For additional technical information, contact Mr. Carey A. Johnston at (202) 260–7186 or at the following e-mail address: johnston.carey@epa.gov. For additional economic information contact Mr. James Covington at (202) 260–5132 or at the following e-mail address: covington.james@epa.gov.

SUPPLEMENTARY INFORMATION: Visitors attending the New Orleans public meeting (*see* **ADDRESSES**) will need to sign in at the MMS guard booth and obtain a visitors badge. If you wish to present formal comments at the public meeting you should have a written copy for submittal. No meeting materials will be distributed in advance of the public meeting; all materials will be distributed at the meeting. Limited teleconferencing capability will be available for the meeting. Persons wishing to participate via telephone or who have special audio-visual needs should contact Mr. Carey A. Johnston, (202) 260–7186.

The Agency invites all parties to coordinate their data collection activities with EPA to facilitate mutually beneficial and cost-effective data submissions. Please refer to the **FOR FURTHER INFORMATION CONTACT** for technical contacts at EPA.

To ensure that EPA can properly respond to comments, the Agency prefers that commenters cite, where possible, the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Please submit an original and two copies of your comments and enclosures (including references).

Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments and data will also be accepted on disks in Wordperfect, ASCII, or Adobe Acrobat (*.pdf) format.

All comments will be organized by EPA's Engineering and Analysis Division (EAD) and submitted by EAD to the record supporting this rulemaking (Docket No. W–98–26) in the EPA Water Docket. Electronic comments must be submitted as a Wordperfect, ASCII, or Adobe Acrobat (*.pdf) format file avoiding the use of any form of encryption. Electronic comments must be identified by the docket number W–98–26 and may be filed online at many Federal Depository Libraries. No confidential business information (CBI) should be sent via e-mail. EPA's information technology services (e.g., e-mail, website) were temporarily shut down, beginning Thursday, February 17, in order to review and improve security measures. EPA's e-mail services are now operational. However, EPA recommends that persons submitting comments electronically call Mr. Carey A. Johnston, (202) 260–7186, to confirm EPA receipt.

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II. Overview of Proposal and Data Acquired Since the Proposal
III. Revised Models
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I. Purpose of This Notice

On February 3, 1999 (64 FR 5488), EPA proposed technology-based effluent limitations guidelines and standards under the Clean Water Act (CWA) for the discharge of pollutants from oil and gas drilling operations associated with the use of synthetic-based drilling fluids (SBFs) and other non-aqueous drilling fluids into waters of the United States. This proposed rule would apply to certain existing and new facilities in the offshore subcategory (i.e., facilities seaward of the inner territorial boundary) and the Cook Inlet, Alaska, portion of the coastal subcategory of the oil and gas extraction point source category.

In this notice, EPA is making new data submissions available for comment. Additionally, EPA is providing descriptions of revised economic and engineering models incorporating the new data. Summary descriptions of updated modeling results are also given in this notice. This notice also discusses "best management practices" (BMPs) as potential alternative requirements to reduce the discharges of toxic and hazardous pollutants. Finally, this notice announces that EPA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for these BMP alternatives to numeric effluent limitations and standards. EPA solicits public comment on any of the

issues or information presented in this notice of data availability and in the administrative record supporting this notice.

II. Overview of Proposal and Data Acquired Since the Proposal

Since about 1990, the oil and gas extraction industry developed SBFs with synthetic and non-synthetic oleaginous (oil-like) materials as the base fluid to provide the drilling performance characteristics of traditional oil-based fluids (OBFs) based on diesel and mineral oil, but with lower environmental impact and greater worker safety through lower toxicity, elimination of polynuclear aromatic hydrocarbons (PAHs), faster biodegradability, lower bioaccumulation potential, and, in some drilling situations, less drilling waste volume.

EPA's information to date, including limited seabed surveys in the Gulf of Mexico, indicate that the effect zone of the discharge of certain SBFs is within a few hundred meters of the discharge point. These surveys also indicate that the sea floor may significantly recover in one to two years. EPA believes that impacts are primarily due to smothering by the drill cuttings, changes in sediment grain size and composition (physical alteration of habitat), and anoxia (absence of oxygen) caused by the decomposition of the base fluid. The benthic smothering and changes in grain size and composition from the cuttings are effects that are also associated with the discharge of water-based drilling fluids (WBFs) and associated cuttings. Based on the record to date, EPA finds that these impacts, which are believed to be of limited duration, are less harmful to the environment than the non-water quality environmental impacts associated with the option of prohibiting the discharge of all SBF-wastes. Moreover, EPA prefers SBFs over OBFs as there are operational accidents that lead to spills and loss of drilling fluid to the environment.

The proposed rule, published on February 3, 1999 (64 FR 5488), identified possible methods to control SBF discharges associated with cuttings (SBF-cuttings) in a way that reflects the appropriate level of technology. EPA proposed using stock limitations and standards on the base fluids from which the drilling fluids are formulated. This would ensure that substitution of synthetic and other oleaginous base fluids for traditional mineral oil and diesel oil reflects the appropriate level of technology. In other words, EPA wants to ensure that only the SBFs formulated from the "best" base fluids are allowed for discharge. Parameters that distinguish the various base fluids are the PAH content, sediment toxicity, rate of biodegradation, and potential for bioaccumulation.

EPA also proposed that SBF-cuttings should be controlled with discharge limitations and standards, such as a limitation on the toxicity of the SBF at the point of discharge, and a limitation on the mass (as volume) or concentration of SBFs discharged. The latter type of limitation would take advantage of the solids separation efficiencies achievable with SBFs, and consequently minimize the discharge of organic and toxic components. Additionally, EPA proposed that SBF discharges not associated with cuttings (e.g., incidental spills, accumulated solids, deck drainage) should meet zero discharge requirements, as this is the current industry practice due to the value of these drilling fluids.

Since proposal, EPA has obtained additional data and information from the industry and the Agency's continued data collection activities. The Agency has included these data, information, and the preliminary results of EPA's evaluation in sections III.A through III.H of the supporting record of this notice, available for review in the Water Docket (see **ADDRESSES** section at the beginning of this notice).

The industry data submittals are related to stock limitations and standards on base fluid (e.g., PAH content, sediment toxicity, biodegradation, bioaccumulation), discharge limitations and standards (e.g., free oil, formation oil contamination, retention of SBF on cuttings), technical performance of ester-based drilling fluids, subsea pumping systems, cuttings microencapsulation systems, best management practices (BMPs), and health and safety considerations. The specific data, information, and comments provided to EPA are discussed below in detail.

The Agency's collected data are related to stock limitations and standards (e.g., sediment toxicity and biodegradation); non-water quality environmental impacts (NWQI) including on-shore disposal capacity of exploration and production wastes and monetization of air emissions; economic costs related to deepwater projects; discharge limitations and standards; and projected environmental outcomes such as sediment pore water quality.

EPA will evaluate all analytical data in the rulemaking record to set limitations and standards that represent the appropriate level of technology using a combination of methods referenced below. Specifically, for sediment toxicity and biodegradation limitations and standards, EPA will evaluate each of the various sediment toxicity and biodegradation method test data for the various synthetic base fluids against known standards such as diesel. Moreover, EPA will use all sediment toxicity and biodegradation data to assess the ability of each sediment toxicity and biodegradation method identified below to discriminate between different types of synthetic base fluids and produce consistent results.

In addition, a list of SBF rulemaking stakeholder meetings and the respective minutes can be found in section III.A.(c) of the rulemaking record.

A. Industry Data Submissions Since Proposal Publication

1. Sediment Toxicity Test Results and Revised Methods

In the February 1999 proposal, EPA set the Best Available Technology Economically Achievable (BAT) and New Source Performance Standards (NSPS) stock limitation for sediment toxicity as: "10-day LC_{50} of stock base fluid minus 10-day LC_{50} of C_{16}–C_{18} internal olefin shall not be less than zero." [The term "LC_{50}" is used to identify how much of a substance is needed to kill half of a group of experimental organisms in a given time; a higher LC_{50} value means the material is less toxic]. EPA also proposed a compliance method, American Society for Testing and Material (ASTM) method E1367–92, and sediment preparation procedures for this stock limitation (Appendix 3 to Subpart A of Part 435).

In addition to sediment toxicity tests using ASTM method E1367–92, industry has recently conducted several studies using alternative sediment toxicity test methods including a method based on determining toxicity to the mysid shrimp, *Mysidopsis bahia*, in a sediment-water interface system. As a result of this effort, industry has supplied information on the use of formulated sediments and the shortening of the exposure period of synthetic base fluids to marine amphipods. EPA proposes to use one of these methods (i.e., ASTM method E1367–92 or alternative industry mysid shrimp sediment toxicity test method) for: (1) the establishment of an appropriate sediment toxicity rate stock limitation in the final rule; and (2) use as a compliance tool.

Several papers published by M–I Drilling Fuids, L.L.C. (MIDF) provided data on the toxicity of the synthetic base fluid C_{16}–C_{18} internal olefin (IO) and

diesel in formulated sediments as well as data on the results of tests conducted with a 96-hour exposure period as compared to the standard 10-day exposure as specified in ASTM E1367–92 (Rabke and Candler, 1998; Rabke and Candler, 1999; Still, et al., 1999).

This work conducted by MIDF was done in an effort to increase the discriminatory power of the test between the toxicity of synthetic base fluids and diesel, as well as between the different synthetic base fluids. MIDF believes that the longer exposure time reduces discriminatory power because the test sediment toxicity becomes a greater factor relative to the test base fluid toxicity over time. Therefore, the test sediment's toxicity would tend to normalize and obscure the differences in toxicities of the test base fluids as test duration increases. Table II.A.1.1 summarizes the LC_{50} industry sediment toxicity data with various drilling fluids [i.e., diesel, internal olefin (IO), linear alpha olefin (LAO), poly alpha olefin (PAO), and ester]. A more complete review of these procedures and data can be found in section III.B.(b) of the rulemaking record.

TABLE II.A.1.1: INDUSTRY LC_{50} SEDIMENT TOXICITY DATA FOR VARIOUS DRILLING BASE FLUIDS AT TWO DIFFERENT TIME PERIODS

	Drilling base fluid	LC_{50} (mg/Kg)	95% Confidence interval
Baker Hughes INTEQ-Generated Data			
96-Hour Test	C14/16/18 IO	4020	2926–8219
	C14/16/18/20 IO	>5111	NA
	C16/18 IO	3515	2726–5215
	C14/15/16/17/18 LAO/IO	1497	1299–1725
10-Day Test	Diesel	343	297–391
	C14/16/18 IO	646	625–1250
	C14/16/18/20 IO	1218	1070–1453
	C16/18 IO	1464	1172–1681
	C14 LAO	205	187–223
	C16 LAO	407	353–473
	C14/15/16/17/18 LAO/IO	854	696–1018
	C30+PAO	2359	1478–5156
	Enhanced Mineral Oil	79	37–117
	Linear Paraffin	1047	846–1257
	Paraffin	111	101–122
Baroid-Generated Data			
96-Hour Test	Diesel	453	416–493
	IO	876	442–1663
	LAO	490	291–924
	Ester	>20000	NA
	Ester (Low viscosity)	>20000	NA
10-Day Test	Diesel	230	209–251
	IO	564	447–639
	LAO	338	294–378
	Ester	>10000	NA
	Ester (Low viscosity)	2447	2197–2701
MIDF Drilling-Generated Data			
96-Hour Test	Diesel	566	510–629
	IO	3686	2890–4893

Method Reference: EPA February 1999 Proposal (64 FR 5488).

Finally, one commenter on the February 1999 proposal, Baroid Drilling Fluids, provided preliminary sediment toxicity data for two of its ester-based drilling fluids. The data provided in the comments indicate that both esters may have lower toxicities than other base fluids (e.g., C_{16}–C_{18} IO, paraffin, mineral oil, diesel oil). However, EPA data presented in Table II.B.1.1 indicate that the sediment toxicity of IO and ester are significantly better than other alternative base fluids.

2. Biodegradation Test Results and Revised Methods

In the February 1999 proposal, EPA set the BAT and NSPS stock limitation for biodegradation rate as: "percent stock base fluid degraded at 120 days minus percent C_{16}–C_{18} internal olefin degraded at 120 days shall not be less than zero." EPA also proposed a compliance method for this stock limitation (Appendix 4 to Subpart A of Part 435).

Industry stakeholders conducted a series of biodegradation tests for determining biodegradation of SBFs and OBFs using the method proposed by EPA (Appendix 4). Industry stakeholders also identified alternative analytical biodegradation methods and used these alternative methods to generate data. EPA solicits comment in this notice on use of these alternative methods and corresponding data to set biodegradation limitations and standards and compliance methods. EPA proposes to use one of these methods for: (1) The establishment of an appropriate biodegradation rate stock limitation in the final rule; and (2) use as a compliance tool. The first analytical test method is the solid-phase degradation test as EPA proposed in February 1999 (Appendix 4). This method consists of spiking "clean" marine or estuarine sediment with a base fluid and placing these test samples in exposure tanks filled with seawater. The concentration of base fluid is measured at regular intervals during the test to monitor the degradation of the base fluid.

Industry-supplied data using the solid phase test are summarized in Table II.A.2.1.

TABLE II.A.2.1: INDUSTRY SOLID PHASE BIODEGRADATION TEST RESULTS

Elapsed time of test	Percent loss relative to day 0				
	Olive oil (percent)	Finagreen ester (percent)	Diesel (percent)	C16–C18 Internal olefin	Neodene 1518 (percent)
Day 10	84	56	*	*	*
Day 20	88	59	*	*	*
Day 45	96	90	−2	39	2
Day 110	99	95	22	73	58
Day 186	99	99	55	93	83

Method Reference: EPA February 1999 Proposal (64 FR 5488).
*Not tested.

The second biodegradation method evaluated by industry is the marine anaerobic closed bottle test. This test procedure places a mixture of SBFs or OBFs, marine sediment, and sea water into a tightly capped clean serum bottle. The conditions within the closed bottle result in the anaerobic degradation of SBFs or OBFs. The anaerobic processes degrading the base fluids produce gas. This gas production is monitored as a measure of the degradation process. Industry-supplied data using the closed bottle test are summarized in Table II.A.2.2.

TABLE II.A.2.2: INDUSTRY MARINE ANAEROBIC CLOSED BOTTLE BIODEGRADATION TEST RESULTS

Elapsed time of test	Cumulative gas production over time (ml)					
	Olive oil	C_{16}–C_{18} internal olefin	C_{14}–C_{16} linear alpha olefin	Synthetic paraffin	C_{30}	Blank control
Day 0	0.00	0.00	0.00	0.00	0.00	0.00
Day 5	9.29	2.77	3.67	3.32	3.32	3.88
Day 25	50.00	8.59	10.00	7.05	6.62	5.99
Day 33	103.50	12.50	15.00	10.00	8.00	8.30
Day 67	150.41	18.38	22.15	13.67	10.45	11.12
Day 77	152.50	22.21	26.46	15.83	12.42	12.28
Day 95	160.61	24.60	32.74	18.16	12.18	12.98
Day 113	162.88	29.71	42.91	21.14	12.80	13.30
Day 132	164.78	39.74	55.50	23.17	13.38	14.01
Day 155	169.18	59.00	88.16	27.19	15.42	16.07
Day 194	167.74	92.36	114.50	25.82	13.97	14.57
Day 231	171.57	104.50	138.22	29.49	17.47	17.63
Day 271	175.58	119.88	151.20	33.33	21.63	22.11

Method Reference: ISO 11734: "Water quality—Evaluation of the 'ultimate' anaerobic biodegradability of organic compounds in digested sludge—Method by measurement of the biogas production" (1995 edition).

The third biodegradation test method is the respirometry test. This analytical method determines biodegradation by measuring the carbon dioxide production and/or oxygen consumption due to microbial oxidation of the test fluid in sediment. Industry-supplied data using the respirometry test are summarized in Table II.A.2.3.

TABLE II.A.2.3: INDUSTRY RESPIROMETRY BIODEGRADATION TEST RESULTS

Elapsed time of test	Cumulative oxygen consumption over time (mg)		
	Blank control	Rapeseed oil control	Amodrill 1000 SBF
Day 1	3.38	4.57	4.46
Day 2	6.26	8.26	6.62
Day 3	6.52	9.03	10.49
Day 4	12.68	22.29	14.13
Day 5	16.42	34.29	18.43
Day 6	18.50	41.33	21.02
Day 7	21.40	50.02	24.67
Day 8	24.02	58.42	27.96
Day 9	26.66	66.12	31.19
Day 10	29.10	72.88	34.36
Day 11	31.48	78.86	37.25
Day 12	33.88	84.26	39.96
Day 13	36.27	89.00	42.67
Day 14	38.80	93.33	45.48
Day 15	41.28	97.26	48.24
Day 16	43.31	100.76	50.96
Day 17	45.19	103.86	53.47

TABLE II.A.2.3: INDUSTRY RESPIROMETRY BIODEGRADATION TEST RESULTS—Continued

Elapsed time of test	Cumulative oxygen consumption over time (mg)		
	Blank control	Rapeseed oil control	Amodrill 1000 SBF
Day 19	49.29	110.34	58.86
Day 20	50.80	112.69	60.76
Day 21	52.53	115.34	62.78
Day 22	54.23	117.98	64.83
Day 23	55.73	120.38	66.57
Day 26	60.94	127.73	72.97
Day 27	62.32	129.64	74.76
Day 28	64.00	131.77	76.66
Day 29	65.60	133.81	78.81
Day 30	67.14	135.75	81.04
Day 31	68.59	137.53	82.97
Day 32	70.10	139.32	84.96
Day 33	71.66	141.13	86.98
Day 34	73.09	143.45	88.84
Day 35	74.82	144.51	91.08
Day 36	76.29	146.15	93.17
Day 37	77.47	147.59	94.68
Day 38	79.11	149.22	96.82
Day 39	80.64	150.80	98.87
Day 40	82.31	152.51	101.26
Day 41	83.44	153.83	102.68

Note: data were not collected on Days 18, 24, and 25.
Method Reference: Modification of OPPTS 835.3110: "Fate, Transport and Transformation Test Guidelines: Ready Biodegradability," EPA 712–C–98–076, January 1998.

A more complete review of these procedures and data can be found in section III.B.(b) of the rulemaking record.

Finally, one commenter on the February 1999 proposal, American Petroleum Institute/National Ocean Industries Association (API/NOIA), stated, without any supporting data, that esters biodegrade more quickly than the alternative non-aqueous fluid systems. EPA agrees with this statement based on recent EPA biodegradation test results (*see* section II.B.2).

3. Formation Oil Contamination (Offshore and On-shore Tests)

In the February 1999 proposal, EPA proposed the BAT limitation and NSPS for formation oil as zero discharge. EPA also proposed a screening method [Reverse Phase Extraction (RPE) method given in Appendix 6 to Subpart A of Part 435] and an assurance method [Gas Chromatograph/Mass Spectrometer (GC/MS) method given in Appendix 5 to Subpart A of Part 435] for determining compliance. These methods continue to be EPA's preferred option for the final rule.

Industry has sponsored research regarding both of these analytical methods for determining formation oil contamination. The RPE procedure is to be used offshore. It measures ultraviolet (UV) fluorescence to detect the presence of aromatic compounds. Since proposal, refinements have been made in the test to minimize interference from emulsifiers. A more complete review of this procedure can be found in section III.B.(b) of the rulemaking record.

The GC/MS method is expected to be performed in a land-based laboratory. This procedure, which measures the area under GC peaks and target aromatics, is a dependable laboratory technique proposed by EPA to supplement the RPE test for verification purposes. A more complete review of this procedure can be found in section III.B.(b) of the rulemaking record.

4. SBF on Cuttings Retention Data

In this section, EPA summarizes the relationship of the industry supplied data to EPA's proposal, the relationship of these data to reductions in discharges to the environment, and the SBF on cuttings data submitted by industry.

a. SBF on Cuttings Data in Relation to EPA's Proposal. In February 1999, EPA proposed a BAT limitation and NSPS for base fluid retained on cuttings as a maximum value of 10.2 percent, not to be exceeded by the weighted average for retention over the course of drilling a well. EPA also proposed a method for demonstrating compliance with this discharge limitation (Appendix 7 to Subpart A of Part 435). In today's notice EPA, with input from industry, presents the proposed option along with several alternatives utilizing Best Management Practices (BMPs). EPA is considering three options for the final rule for the BAT limitation and NSPS controlling SBF retained on discharged cuttings: (1) a single numeric discharge limitation with an accompanying compliance test method; (2) allowing operators to choose either a single numeric discharge limitation with an accompanying compliance test method, or as an alternative, a set of BMPs that employs limited cuttings monitoring; or (3) allowing operators to choose either a single numeric discharge limitation with an accompanying compliance test method or an alternative set of BMPs that employ no cuttings monitoring.

Further EPA corrected technical errors in the proposed rule based on the statistical analysis of the SBF on cuttings data obtained from the Gulf of Mexico (GOM). The average percent SBF on cuttings was corrected from 11.5 to 11.4 for current practice and from 7.11 to 7.09 for the BAT/NSPS technology. The proposed well averaged maximum limitation and standard were corrected from 10.2 to 9.42. Cost and loading calculations presented in the February 1999 SBF technical support documents were not affected by these changes because these calculations were based on the rounded values of 11 for current practice and 7 for the BAT/NSPS technology. The technical errors requiring these changes were related to EPA's calculation of drilling intervals.

EPA calculates drilling intervals as the depth drilled since the last measurement for retention on cuttings.

EPA uses this measurement in conjunction with pipe diameter to estimate the volume of cuttings associated with a particular retention on cuttings measurement. EPA then uses this volume in the weighted summary statistics for the retention on cuttings data. Some data used at proposal were submitted with drilling intervals already calculated and other data were submitted with depth measurements calculated from the ocean floor. In the proposed rule as published in the **Federal Register**, EPA used both sets of measurements as if they all represented drilling intervals. However, in the record for the proposed rule, EPA calculated and used drilling intervals for those data submitted with depth measurements calculated from the ocean floor. More information on these errors and the corrections is given in section I.C(d)(59) of the rulemaking record.

Several comments received on the February 1999 proposal related to the use of cuttings retention data from the North Sea to set the GOM numeric guidelines and standards for percent retention. As discussed below, EPA has subsequently obtained sufficient data from the GOM to set limitations and standards without use of the North Sea data.

b. Relationship of SBF on Cuttings Retention Data to Protection of the Environment. Cuttings retention data measure the amount of residual drilling fluid retained on cuttings. A higher cuttings retention value indicates that more drilling fluid is adhering to the cuttings. EPA is interested in the cuttings retention measurement not only as an indicator of the amount drilling fluid discharged into the ocean but also as an indicator of the ability of cuttings to biodegrade and disperse and not form deleterious cuttings piles and mats. Moreover, understanding the fate and transport of discharged cuttings is an important step in modeling and monitoring potential environmental and human health impacts.

SBFs are a subcategory of non-aqueous drilling fluids (NAFs) which do not easily disperse in the water column. The effects of NAF-cuttings on benthic fauna may be categorized as being caused by: (1) physical smothering; (2) the presence of potential toxic and hazardous pollutants and biodegradation by-products (*e.g.*, heavy metals, aromatics, hydrocarbons, sulfides); and (3) the organic enrichment of sediment which may produce anoxic conditions (Limia and Peresich, 1992). Field studies indicate that the responses shown by benthic communities to cuttings discharges are the result of a combination of these effects. Numerous field studies show that the most harmful benthic effects are generally within 500 meters of development drilling operations and within 250 meters of single well sites (Davies et al., 1989).

Reducing the amount of initial base fluid on cuttings is beneficial in promoting biodegradation of SBFs in the benthic environment. Literature data make clear that the biodegradation of SBFs in the environment is not simply an exponential decay (Getliff et al., 1997). The half-life of the base fluid decreases as the initial concentration of base fluid on cuttings decreases. Therefore, it is vital to minimize the initial concentration of base fluid on cuttings discharged to maximize the rates of biodegradation and seabed recovery.

Reducing the amount of initial base fluid on cuttings is also beneficial in preventing the build-up of deleterious cuttings piles and mats. A decrease in benthic individuals within the zone of maximum cuttings deposition (*i.e.*, cuttings piles and mats) is a result of physical smothering and organic enrichment which produces anoxic conditions and toxic sulfide biodegradation by-products (Daan et al., 1996; Limia, 1996). A reduction of benthic individuals beyond the immediate area of physical impact may be indicative of a toxic effect (Davies and Kingston, 1992). The build-up of these harmful cuttings piles and mats is controlled by several factors including the conditions of the receiving waters (*e.g.*, currents, distance from discharge to seabed) and the retention of SBF on cuttings. A study of cuttings piles in the North Sea found that piles of cuttings are found predominantly at particular sites in the central and northern North Sea, where water depths are greater, and currents less than, the southern North Sea (Bell et al., 1998).

Results from laboratory experiments modeling typical ocean conditions show that high NAF content on cuttings (i.e., high cuttings retention values) lead to "lumps" of material, rather than separate particles, which rapidly settle out (i.e., have high fall velocities) to the benthic environment (Delvigne, 1996). Moreover, field results show that cuttings are dispersed during transit to the seabed and no cuttings piles are formed when SBF concentrations on cuttings are held below 5% (Getliff et al., 1997; Hanni et al., 1998). Additionally, cuttings discharged from cuttings dryers (with SBF retention values under 5%) in combination with a sea water flush, hydrate very quickly and disperse like water-based cuttings (Hanni et al., 1998).

Overall, lowering the percentage of residual drilling fluid retained on cuttings increases the recovery rate of the seabed receiving the cuttings (Getliff et al., 1997; Vik et al., 1996). Therefore, limiting the amount of NAF content in discharged cuttings controls: (1) The amount of NAF discharged to the ocean; (2) the biodegradation rate of discharged NAF; and (3) the potential for NAF-cuttings to develop cuttings piles and mats which are detrimental to the benthic environment.

c. SBF on Cuttings Data Submitted by Industry. Subsequent to proposal, SBF on cuttings data from various formations within the GOM have been submitted by an industry workgroup, individual operators, and by equipment vendors. These data characterize performance for a variety of cuttings treatment technologies, including existing shaker technologies and add-on equipment. Several comments on the February 1999 proposal also provided cursory information and data related to the performance of new and existing solids control equipment and drilling fluids. For example, one comment by Derrick Equipment Company described SBF cuttings retention values in the range of 6 to 9% by weight for a GOM well using a new shale shaker design. A comment by Baroid Drilling Fluids stated that the lower viscosity of its new ester-based drilling fluid will lead to greater recovery of its ester-based fluid from cuttings.

Based on these data and other GOM data presented at proposal, EPA has modeled and analyzed the cuttings retention performance of several technologies. A summary of the revised models is presented in section III.D. A summary of the analyses developed by EPA, including the development of numeric guidelines and standards, is presented in section IV.D. Detailed descriptions of the statistical methods, summary statistics, overall averages, and percentiles associated with each technology can be found in section III.C.(a) of the rulemaking record.

5. Industry Seabed Survey

Permits authorizing the discharge of SBF-cuttings are required to meet (a) technology-based requirements, and (b) CWA section 403(c) Ocean Discharge Criteria, or, in State waters of Cook Inlet, Alaska, State water quality criteria. The February 1999 proposal described the CWA 403(c) requirements and the seabed surveys EPA thinks would be occurring, based on information available at that time to satisfy these permit requirements. Today's notice updates the description

of the seabed survey efforts that industry is currently planning.

EPA understands that the industry is planning a cooperative effort to address the CWA section 403(c) requirements in the GOM. Industry representatives have told EPA that their cooperative seafloor study would include a review of historical data on SBF usage on the shelf and slope, and these data would be analyzed to select a representative series of platforms.

The overall objective of the study is to assess the fate and effects (physical, chemical, and biological) of discharged SBF-cuttings at continental shelf (40 m to 300 m water depth) and deepwater (>300 m water depth) GOM sites. Specific sub-objectives include determining the thickness and areal extent of cuttings accumulations, determining the temporal behavior of SBF concentrations in sediments, documenting the physical-chemical sediment conditions, and determining whether a zone of biological effect exists.

The study will include four cruises: a scouting cruise, a screening cruise, and two sampling cruises. The purpose of the scouting cruise, which is intended to take place in late spring of 2000, is to conduct a preliminary physical survey of ten continental shelf sites to: (1) assess the extent of cuttings accumulations; (2) assess the suitability of each site for further sampling; and (3) guide further sampling operations. The results of this cruise will be used to select five continental shelf sites where the subsequent screening cruise will be conducted.

During the screening cruise, five continental shelf sites and three deepwater sites will be surveyed. The purpose of this cruise is to: (1) Assess SBF concentrations and other sediment physical-chemical conditions (*e.g.*, oxidation-reduction profile, grain size, mineralogy, metals, total organic carbon) at all eight sites; (2) test and refine the proposed field and laboratory methods; and (3) make preliminary benthic infaunal and sediment toxicity assessments at the five continental shelf sites. Based on data acquired during this cruise, sampling strata will be designated and platform sites will be designated as primary or secondary. The three deepwater sites and three of the five continental shelf sites will be primary sites, and the remaining two continental shelf platforms will be secondary sites.

The sampling cruise will be similar to the screening cruise in terms of physical-chemical analyses, but will include an increased number of samples. Infaunal and sediment toxicity analyses will be included at the three primary continental shelf sites. Sampling at the two secondary continental shelf sites will be similar to that at the primary sites, but the suite of analyses will not be as extensive (e.g., it will not include metals, infaunal, or sediment toxicity analyses).

EPA plans on using the data from the first survey to identify any negative environmental effects from SBF discharges. If this data becomes available in time, EPA might use that information in its assessment of a controlled discharge option as compared to the NWQIs of a zero discharge option. The current work plan for the seabed survey can be found in section III.F (a) of the rulemaking record.

6. Bioaccumulation

Several comments related to bioaccumulation were submitted to EPA in response to the February 1999 proposal. In particular, one industry commenter stated, without supporting data, that there is currently sufficient data available amongst the various companies to show that synthetic base fluids are not believed to bioaccumulate; further, that most members of the industry groups maintain operations in the European sector where bioaccumulation testing of base fluids has already been conducted in compliance with the Harmonized Offshore Chemical Notification Format (HOCNF) requirements. However, another commenter stated, also without supporting data, that marine organisms higher in the food chain are at significant risk due to bioaccumulation of SBF. EPA is again requesting any data related to the potential of SBF to bioaccumulate and the related chronic or toxic effects on higher level organisms.

7. Technical Performance of Ester-based Drilling Fluids

In the proposed rule, EPA proposed its sediment toxicity and biodegradation BAT limitations and NSPS based on product substitution with C_{16}–C_{18} Internal Olefins. Several commenters on the February 1999 proposal and other industry stakeholders offered data related to the technical and environmental performance of SBFs (e.g., Limia and Peresich, 1992). Specifically, three commenters provided data on the dynamic or kinematic viscosity of several SBFs (e.g., isomerized olefins, esters). Baroid Drilling Fluids provided data on its "new ester" with a dynamic viscosity comparable to a C_{16}–C_{18} IO. This drilling fluid manufacturer claims that the new ester allows formulation of fluids which have cold water performance comparable to, if not better than, some IOs (*e.g.*, C_{16}–C_{18} IO). Moreover, Baroid Drilling Fluids noted that the price of esters-based drilling fluids in the GOM have been reduced in half since their introduction and use in the GOM. EPA has also received information that indicates that esters still remain 40–90% more expensive than IOs (Johnston, 2000a). EPA has also received information that original and new ester technology continues to exhibit higher viscosity that could result in higher downhole losses of whole drilling fluids and higher cutting retention values (Friedheim and Conn, 1996; Johnston, 2000a). Finally, EPA has received information on the technical limitations (e.g., stability, elastomer swelling, sediment toxicity, lack of field experience) of original and new esters (Daan et al., 1996; Johnston, 2000a; Patel, 1998; Schaanning et al., 1996).

Due to the potential for better environmental performance of ester-based drilling fluids, EPA is considering basing the sediment toxicity and biodegradation stock limitations and standards on original esters instead of the proposed C_{16}–C_{18} IO. EPA is also considering sub-categorizing the regulation, based on the use of esters. The different sub-categorization options under consideration by EPA include: (1) limiting SBF discharges by setting numeric limitations and standards based on ester-based drilling fluids when water temperatures are above the practical limitations of esters; and (2) limiting SBF discharges by setting numeric limitations and standards based on C_{16}–C_{18} IOs, thus allowing the discharge of SBFs other than ester-based drilling fluids, when water temperatures are below the practical limitations of esters.

EPA solicits comment on this subcategory approach, and again is requesting any information and data related to the cost, technical performance, potential environmental impacts (e.g., sediment and aquatic toxicity, biodegradation), and frequency of industry use of ester-based drilling fluids.

8. Subsea Pumping Systems

In the February 1999 proposal (64 FR 5495), EPA outlined an innovative technology, generally referred to as "subsea pumping," that may potentially outperform conventional drilling techniques in very deepwater conditions (generally greater than 3,000 feet of water). Subsea pumping is claimed by the developer to contribute

to a number of environmental, technical, and economic benefits.

The technology involves pumping the drilling fluid up a separate riser by means of pumps at or near the seafloor. Rotary drilling methods in a system using subsea pumping are generally similar to conventional drilling methods, with the exception that the drilling fluid and small cuttings (i.e., < one-quarter inch) are boosted by one or more pumps near the seafloor. By boosting the drilling fluid, the adverse effects on the wellbore caused by the drilling fluid pressure from the seafloor to the surface are eliminated, thereby allowing wells to be drilled with as much as 50 percent reduction in the number of casing strings generally required to line the well wall. Wells are drilled in less time, including less trouble time.

The developer of this technology claims that subsea pumping can significantly improve drilling efficiencies and thereby reduce the volume of drilling fluid discharged, as well as reduce the non-water quality effects of fuel use and air emissions. Because fewer casing strings are needed, the hole diameter in the upper sections of the well can be smaller, which reduces the amount of cuttings produced. Also, the well bore will require fewer casing strings of smaller diameter, resulting in a reduction in steel consumption. An additional benefit of subsea pumping systems is the potential to extend the use of ester-based fluids in the cooler, deeper waters of the GOM. Finally, subsea system drilling may double or triple the reach of horizontal or directional deepwater delineation sidetrack wells. Accordingly, this may reduce the number of delineation wells needed to characterize a oil and gas formation.

To enable the pumping of drilling fluids and cuttings to the surface, about half of the drill cuttings, comprising the cuttings larger than approximately one-quarter inch, are separated from the drilling fluid and discharged at the seafloor since these cuttings cannot reliably be pumped to the surface. With a currently reported design, the drill cuttings that are separated at the seafloor are discharged through an eductor hose at the seafloor within a 150-foot radius of the well site. The drilling fluid, which is boosted at the seafloor and transports the remainder of the drill cuttings back to the surface, is conventionally processed.

Since the February 1999 proposal, the subsea pumping system developer has reviewed the technology with staff from Minerals Management Service (MMS) GOM Office, EPA Region 6, and EPA Headquarters. In a letter dated May 24, 1999, MMS provided conditional approval to the developer for using its subsea system for exploratory and development wells in Outer Continental Shelf (OCS) waters. In a letter dated July 30, 1999, EPA Region 6 concluded that discharges from the developers subsea system are generally authorized by the general permit for the western GOM (Permit No. GMG290000) provided that the subsea discharges are monitored.

EPA Headquarters staff met with the developers of the subsea pumping system on January 18, 2000, to discuss the technical and environmental performance of the new technology. As part of the meeting, the technology developers submitted a technical basis for supporting their improved environmental, technical, and economic performance. The developers also discussed with EPA Headquarters staff their current plans to field test their subsea pump system solids removal equipment offshore under atmospheric, not subsea, conditions. The tests are scheduled to begin in May 2000 with data becoming available in July 2000. The developers are planning to collect SBF retention data as well as other data to determine the fractions and concentrations of SBF discharged subsea. Notes from the January 18, 2000, meeting (including the technology developer technical report), anticipated subsea pumping field test plans, and the two previously mentioned letters are given in section III.B.(b) of the rulemaking record.

The subsea system developer commented on the February 1999 proposal and suggested that a definition for "subsea pumping" and a clarification of subsea pumping discharge sampling and monitoring requirements be added to this notice. In the supporting documentation for the proposed rule, Development Document for Proposed Effluent Limitations Guidelines and Standards for Synthetic-Based Drilling Fluids and other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category (EPA–821–B–98–021), EPA stated that for purposes of monitoring, samples of the subsea discharge can be transported to the surface for analysis.

Based on the potential for reducing discharges to the environment and as previously stated in the SBF Development Document, EPA is considering different technology options for this subsea discharge. These options include limiting the type of drilling fluids available for use in subsea pumping systems; different monitoring and sampling requirements for subsea discharges; subsea cuttings discharge dispersal techniques; and cuttings retention requirements that are different from surface discharges. EPA is requesting comments on the most appropriate limitations and combination of limitations for these subsea discharges. EPA is also requesting more information about the anticipated percentage of future deepwater drilling operations that will employ subsea pumping systems.

9. Cuttings Micro-encapsulation Systems

EPA Headquarters staff met with the developers of a new cuttings management system, silica micro-encapsulation, on September 23, 1999, to discuss the technical and environmental performance of the new technology. Silica micro-encapsulation is a process by which the NAF attached to the cuttings is physically encapsulated in an insoluble matrix of amorphous silicate. More information on this technology is given in section III.B.(b) of the rulemaking record.

The technology developer claims that the encapsulated oils do not leach and do not biodegrade. The stated benefit of the micro-encapsulation process is the ability to convert non-aqueous fluid cuttings into water wet particles. Consequently, the non-aqueous fluid cuttings behave in the water column similarly to water-based fluid cuttings. The developer claims that this allows for maximum dispersion of non-aqueous fluid cuttings. Finally, the developer claims that the dispersion of the cuttings into a much greater area substantially reduces the potential for benthic smothering and other toxic and chronic environmental effects.

One issue related to this technology is the incompatibility of the micro-encapsulation technology with the February 1999 proposal method for determining the amount of drilling fluid that adheres to drill cuttings. This method, Appendix 7 to Subpart A of Part 435–API Recommended Practice 13B–2 (64 FR 5547), is designed to measure the relative weights of liquid and solid components in a sample of wet drill cuttings. The method uses a known weight of wet cuttings that is heated in a retort chamber to vaporize the liquids contained in the sample. The high heat of the retort analysis (approximately 930 °F) can break down the micro-encapsulation coating and release the previously sequestered oil droplet. Therefore EPA's proposed requirements for minimizing oil on cuttings and use of the retort method may eliminate the incentive to use the micro-encapsulation technology.

EPA may consider different technology options for these micro-encapsulated cuttings discharges. These options include product substitution of only certain types of drilling fluids available for use in micro-encapsulating systems; different monitoring and sampling requirements for micro-encapsulated discharges; different toxicity tests; and different cuttings retention requirements. Specifically, EPA is proposing that this technology may be more beneficial in combination with other technologies (e.g., product substitution, add-on solids removal equipment) to assist operators in meeting site specific CWA section 403 NPDES permit requirements. As stated previously, switching to less toxic and more biodegradable drilling fluids, reducing the oil on cuttings, and increasing the dispersion of the cuttings is instrumental in preventing build-up of cuttings piles and reducing impacts to the benthic environment. Use of this micro-encapsulation technology to promote cuttings dispersion and further sequester the oil on cuttings, after use of new solids control equipment, may provide addition environmental protection. EPA is requesting comments and information related to the environmental, technical, and economic performance of this and similar micro-encapsulation technologies and the incentive/disincentive issue with respect to the proposed retention limitation and standard using the retort method as the compliance test method.

B. EPA Data Collection Since Proposal Publication

1. Sediment Toxicity Test Results

Because of the limited data available for the proposal on the sediment toxicity of both the base fluids and whole drilling fluid systems, EPA has begun a study using sediment toxicity test methods to: (1) determine the toxicity of various base fluids and whole synthetic fluid drilling systems on amphipods for purposes of selecting fluids that represent the appropriate level of technology; and (2) evaluate possible sediment toxicity compliance method options. The initial tests conducted in December 1999 at the EPA Gulf Breeze Laboratory evaluated the sediment toxicity of three synthetic base fluids compared to diesel and have consisted of 96-hour and 10-day exposure tests with an IO, a LAO, and an ester as the base fluids as compared to No. 2 diesel oil. At the same time, EPA's contract laboratory, Battelle, also conducted initial sediment toxicity tests on mineral oil and paraffin in addition to the same three synthetic base fluids evaluated by the EPA Gulf Breeze Laboratory.

EPA is currently conducting tests to determine influences of whole fluid compositions and crude oil contamination on the sediment toxicity of an internal olefin (IO), linear alpha olefin (LAO), and ester. Current and previous sediment toxicity tests conducted by EPA have used the ASTM E1367–92 sediment toxicity method supplemented with a sediment preparation procedure (*see* 64 FR 5536: Appendix 3 to Subpart A of Part 435). Table II.B.1.1 summarizes the sediment toxicity data that EPA has collected since proposal.

TABLE II.B.1.1: EPA-COLLECTED LC_{50} SEDIMENT TOXICITY DATA WITH VARIOUS DRILLING BASE FLUIDS FOR TWO DIFFERENT TIME PERIODS

	Drilling base fluid	LC50 (mg/Kg)	95% Confidence interval
EPA Gulf Breeze Laboratory—Generated Data			
96-Hour Test	Internal Olefin	ND	NA
	Linear Alpha Olefin	750	677–930
	Ester	10812	9138–12793
	Diesel	463	426–505
10-Day Test	Internal Olefin	660	423–1029
	Linear Alpha Olefin	419	350–502
	Ester	ND	NA
	Diesel	199	171–232
EPA Contract Laboratory (Battelle)—Generated Data			
96-Hour Test	Internal Olefin	>8000	NA
	Linear Alpha Olefin	2921	2260—3775
	Ester	7686	7158—8253
	Mineral Oil	436	485—391
	Paraffin	2263	1936—2644
10-Day Test	Internal Olefin	2530	2225—2876
	Linear Alpha Olefin	1208	1089—1339
	Ester	4275	3921—4662
	Mineral Oil	176	163—190
	Paraffin	1151	1038—1276

Method Reference: EPA February 1999 Proposal (64 FR 5488).
ND—Not determined; NA—Not applicable.

In addition, EPA is assessing the toxicity potential for degradation by-products. EPA has some information related to SBF by-products (Candler et al., 1995; Getliff et al., 1997; Johnston, 2000a). These data show that aerobic and anaerobic degradation mechanisms for many SBFs (especially linear hydrocarbons) produce by-products that include biodegradable alcohols and fatty acids. Some SBFs, such as linear paraffins, are still the subject of some debate as to their exact mode of biodegradation and associated by-products under anaerobic conditions. In addition, ester-based drilling fluids by-products (e.g., alcohols) may exhibit toxic effects in the water column (Johnston, 2000a). EPA solicits comments and data on whether there are any known persistent or toxic by-products created by the biodegradation of synthetic base fluids. This information will allow EPA to assess the

overall environmental impact of using synthetic base fluids.

Finally, as originally stated in the February 1999 proposal (64 FR 5491), EPA may require additional or alternative controls as part of the BAT/NSPS discharge options based on method development and data gathering subsequent to today's notice: (1) Maximum sediment toxicity of drilling fluid at point of discharge (minimum LC_{50}, mL drilling fluid/kg dry sediment by 10-day sediment toxicity test or amended test); (2) maximum aqueous phase toxicity of drilling fluid at point of discharge (minimum LC_{50} by Suspended Particulate Phase (SPP) test (*see* Appendix 2 of Subpart A of Part 435) or amended SPP test); and (3) maximum potential for bioaccumulation of stock base fluid (maximum concentration in sediment-eating organisms). In particular, EPA is interested in controlling the toxicity of SBFs in the sediment and the water column and may require both a sediment toxicity test and an aqueous phase toxicity test to assess overall toxicity.

A more complete review of the sediment toxicity procedures and data can be found in section III.B.(a) of the rulemaking record.

2. Biodegradation Test Results

Because of the limited data available for the proposal on the biodegradation of SBFs, EPA has begun a study using the solid phase biodegradation test, proposed in February 1999, to: (1) determine the biodegradation of various synthetic base fluids for purposes of selecting fluids that represent the appropriate level of technology; and (2) evaluate possible biodegradation compliance options. This project began in January 2000 and results are anticipated to be finalized in March 2000. Table II.B.2.1 summarizes the data collected to date. A more complete review of these procedures and data can be found in section III.B.(a) of the rulemaking record.

TABLE II.B.2.1: EPA SOLID PHASE BIODEGRADATION TEST

	Percent loss relative to day 0					
	Ester (percent)	Paraffin (percent)	Poly (alpha) olefin (percent)	Mineral oil (percent)	Internal olefin (percent)	Linear alpha olefin (percent)
Day 0	0	0	0	0	0	0
Day 14	53	21	22	20	9	8
Day 28	60	19	25	21	18	16

Method Reference: EPA February 1999 Proposal (64 FR 5488).

3. EPA Engineering Data Collection Activities

During the week of October 25, 1999, EPA staff traveled to Texas and Louisiana to observe onshore and offshore equipment used for treating and disposing of SBF and SBF-cuttings. Highlights of the onshore portion of the field trip include visits to an operating cuttings dryer unit, a fracture slurry injection facility, and a barge facility on the GOM intercoastal waterway.

Offshore highlights included visits to two oil and gas drilling operations to observe waste management and pollution prevention practices. EPA staff also observed working solids control equipment including cuttings dryers. These cuttings dryers are designed to recover more SBF from cuttings generated by primary and secondary shale shakers. This field trip also included an all day meeting with cuttings dryer equipment vendor representatives and members of industry. Field notes from the site visit and minutes of the all day meeting can be found in section III.B.(a) of the rulemaking record.

EPA also obtained information from the industry primarily related to the per-well aspects of drilling with SBF in three subject areas: (1) Drilling operations; (2) solids control equipment and systems; and (3) costs, in order to better understand current and emerging SBF and SBF-waste management practices.

Finally, EPA collected information from MMS regarding accidental spills of OBFs and SBFs. Spills can release small and large quantities of drilling fluid. In particular, undetected leaking lines can release several hundred barrels of drilling fluid while accidental riser disconnects can release several thousand barrels of whole drilling fluid into the environment. Specifically, EPA is interested in: (1) the occurrences of accidents and events that can cause the release of OBF and SBF whole drilling fluid (e.g., riser disconnects, blow-outs, shallow water flow problems); (2) the number of these accidents and events over the past five years for each MMS region (Alaska, California, GOM); (3) the location of these events (i.e., shallow or deepwater); and (4) the volumes associated with these accidents and events. Preliminary information is that there have been several spills of OBFs over the past five years, but most were small volumes. In addition, MMS data identifies three events, including two riser disconnects, that resulted in significant releases of SBFs into the environment for the months of January and February 2000. Under the zero discharge option EPA assumes that all operators requiring NAF will switch to OBFs. As the toxicity of OBFs is greater than SBFs, EPA will use this spill data as a factor in supporting the selection of a controlled discharge option in the final rule.

A more complete review of the EPA collected engineering data can be found in section III.B.(a) of the rulemaking record.

4. Non-Water Quality Environmental Impacts (NWQI)

The additional cuttings retention data submitted to EPA (*see* section II.A.4) were used in the revision of the engineering models that form the basis for all per-well numeric compliance analyses. Based on changes in the engineering models described below in section III.A, EPA revised the numeric NWQIs of fuel usage, air emissions, and solid waste generation.

The U.S. Department of Energy (DOE) collected information about currently operating onshore commercial disposal facilities that are permitted to receive offshore drilling wastes. The Argonne National Laboratory (DOE) contacted State officials in Louisiana, Texas, California, and Alaska to obtain this information. EPA also identified a list of Louisiana commercial non-hazardous oilfield wastes (NOW) facilities from the Louisiana Department of Natural Resources.

EPA also contacted Alaska, Texas, and Louisiana regulatory agencies to obtain current information concerning

management of offshore and coastal exploration and production wastes. The Texas Natural Resource Conservation Commission (TNRCC) provided permit information and waste disposal limitations for the Texas fracture slurry injection facility visited by EPA staff (*see* section II.B.3). The Alaska Oil and Gas Conservation Commission (AOGCC) provided information related to Cook Inlet formation disposal of drilling fluids and cuttings.

EPA also reviewed two papers that detail operations of a large Louisiana onshore fracture slurry injection facility operated by Chevron for Naturally Occurring Radioactive Materials/Non-Hazardous Oilfield Wastes (NORM/NOW) (Baker et al., 1999a; Baker et al., 1999b). Currently, this Chevron facility is limited by its permit to only handle exploration and production wastes from Chevron GOM operations.

EPA also contacted Cook Inlet, Alaska, operators to identify the current and projected use of SBF and the most current waste management options for drill cuttings and fluids. Operators noted that few wells were being drilled with SBF due to NPDES general permit prohibition of SBF discharges. Furthermore, Cook Inlet operators noted that the only drill cuttings and fluid management options available to them are land disposal of cuttings or grinding and injection of the cuttings back into the formation. Land disposal of OBF- and SBF-cuttings was identified as cost prohibitive.

In considering all options for management of non-aqueous fluids (NAF) and NAF-cuttings, EPA is also identifying possible scenarios for cross-media contamination. In particular, EPA is trying to identify former NOW treatment, storage, or disposal facilities that are now CERCLA (or "Superfund"), RCRA Corrective Action, or State lead cleanup sites. An initial search by EPA identified several such sites including several sites around Abbeville, Louisiana. Accordingly, EPA is requesting additional information related to other sites (Superfund, RCRA Corrective Action, or State lead) that have been contaminated with NOW from offshore operations.

The findings of current onshore waste management options and former NOW facilities that are now cleanup sites outlined in this section are presented in section III.B.(a) of the rulemaking record.

Also subsequent to the proposal, EPA has monetized the human health benefits associated with volatile organic compound (VOC), particulate matter (PM), and sulfur dioxide (SO_2) emission reductions for the two controlled discharge options. The valuation methodology is presented in section III. The results of these revisions are presented in section IV below.

5. Economic Data (including Deep Water Model Wells)

EPA collected information from industry regarding model deepwater project costs for the Gulf of Mexico, produced water treatment costs, wellhead oil and gas prices, and drilling activity forecasts. A summary of the data is provided in section III.G of the rulemaking record.

EPA is developing a methodology to examine the economic and financial impacts of the SBF guidelines on both existing and new deepwater oil and gas projects in response to comments from industry that these projects are vastly different from the projects analyzed as part of the Offshore Oil and Gas Effluent Guidelines economic analysis. At proposal, EPA relied on the results of that latter analysis showing Gulf of Mexico projects to be only minimally affected by even the most stringent drilling waste option (the zero discharge option). Because of the unique nature of deepwater projects and because of their greater distance from shore, industry believes deepwater projects need to be evaluated for economic impacts resulting from options considered for the rule.

EPA is thus developing a computer model similar to the one used for the Offshore rule, and also nearly identical to the one developed for the Main Pass operations in the Gulf of Mexico investigated during the Coastal Oil and Gas Effluent Guidelines rule. The general structure of the model is based on the Main Pass Model with a few minor variations [for example, severance tax is not an issue, so this line item is not used (*see* Economic Impact Analysis of Final Effluent Limitations Guidelines and Standards for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category, Appendices A and B, EPA–821–R–96–022)].

The major differences of this model compared to the Main Pass model are the inputs. EPA investigated a number of deepwater projects for use as model projects. These projects included all currently operating projects, as well as a number that should come on line shortly. Over 30 projects fit this description. From these initial projects, EPA selected as many as possible to use in modeling deepwater projects. Data availability was the primary criterion used in selecting the model projects. EPA selected all deepwater projects for analysis that operated in 1998 and that had original proved reserves data available in public documents. The most recent publicly available documents on proved reserves are those provided by MMS on its website and these documents are current through December 31, 1996. Proved reserves are used to distinguish the relative size of projects, since the indication of the ultimate size of a project is reserves, not necessarily the current production (new projects that have not completed the maximum number of wells that would be productive at any one time would end up classified as smaller than they will eventually become). Size of project is important, since results will be reported over a group of projects (i.e, results for small, medium, and large projects) rather than project-by-project. Size of reserves also allows EPA to determine how many wells might be drilled at a project over time.

Using the data availability criterion, EPA reduced the number of projects that can be modeled to twenty. One project did not operate in 1998, and the others either have not yet started producing, or are so new that original proved reserves had not been calculated for them in December 1996. The twenty projects include four small projects (original proved reserves of 10 million barrels of oil equivalent (BOE) or less, eight medium-size projects (original proved reserves approximately between 10 million and 100 million BOE), and eight large projects (original proved reserves over 100 million BOE). BOE for each project is the sum of the oil (42 gal. oil = 1 BOE) and natural gas (1,000 scf = 0.178 BOE). To model new projects, however, five of the twenty projects were dropped from the analysis as being too old or as using construction technologies unlikely to be used in the future. The remaining 15 projects generally had been producing less than 5 years in 1998.

Other information was obtained either from industry contacts or was based on data developed by EPA and used either in analyzing the economic impacts of the Offshore or Coastal Subcategory Oil and Gas Effluent Guidelines. Section III.G of the rulemaking record provides data on projects used to model deepwater projects as well as assumptions and sources of data for the oil and gas financial model.

6. Environmental Assessment Data

a. Water and Sediment Quality Criteria. Subsequent to conducting water quality analyses for the Environmental Assessment (EA) for the proposed rule, EPA published its revised recommended water quality criteria for arsenic (deletion of human

health criterion); copper (increased from 2.4 µg/l to 4.8 µg/l and 3.1 µg/l for acute and chronic aquatic community criteria, respectively); mercury (increased from 0.025 µg/l to 0.94 µg/l for chronic aquatic community criterion), and phenol (deletion of human health criterion) in the **Federal Register** (December 10, 1998; 63 FR 68354). In addition Alaska promulgated new State water quality standards for toxic pollutants on May 27, 1999 (*see* Alaska Administrative Code, Title 18, Chapter 70 or section III.F.(a).2 of the rulemaking record). These deletions and corrections are incorporated in revisions to the analyses of water column, pore water, and sediment guidelines quality outlined in the February 1999 Environmental Assessment Document (EPA–821–B–98–019).

b. *Dilution Data.* The same model used in the February 1999 proposal, Brandsma (1996), was used in this notice to estimate the concentration of synthetic fluids within the water column for assessment of attainment with recommended water quality criteria. These revised dilution calculations are used for the water column water quality analyses and for the calculations of exposure concentrations for the health benefits analyses.

c. *Review of the Seabed Surveys.* In response to comments and new data received, EPA revised the Seabed Survey portion of the Environmental Assessment. All of the studies presented in the original EA were re-analyzed to correct omissions and errors identified by commenters. One additional study was submitted by a commenter, BP Amoco, entitled Deepwater Sampling at a Synthetic Drilling Mud Discharge Site on the Outer Continental Shelf, Northern Gulf of Mexico (Fechhelm et al., 1999). EPA reviewed this study which investigated the deepwater benthic effects of a SBF (90% linear-alpha olefins and 10% esters) discharge and added relevant data to the EPA EA analyses.

EPA EA models use a mean of SBF sediment concentrations from various seabed surveys found in the literature. EPA updated the mean SBF sediment concentration (at 100m from the modeled discharge) from 13,892 mg/kg to 14,741 mg/kg to incorporate new data identified in the BP Amoco benthic study.

d. *Receipt of the United Kingdom Offshore Operators Association (UKOOA) Research Reports.* In June 1998, UKOOA, supported by the Oil Industry International Exploration and Production Forum (E & P Forum) and in co-operation with the Norwegian oil association (OLF), launched an initiative to tackle the historical legacy of accumulated drill cuttings beneath offshore installations in the North Sea. Many of these North Sea cuttings piles were generated from the practice of discharging cuttings from multiple wells into a single deposition point. These drilling operations also used OBFs which contain a high PAH content. The ultimate goal of the UKOOA research is to identify the best environmental practice and the best techniques available for managing these accumulations.

Immediately prior to publication of this notice, EPA acquired several reports related to the UKOOA industry research activities in the North Sea. These UKOOA reports are based on literature review and field studies. Specifically, EPA received UKOOA reports related to cuttings pile toxicity, faunal colonization of cuttings piles, contaminant leaching from drill cuttings piles, and natural degradation and estimated recovery time-scale.

EPA plans to incorporate the relevant major findings and conclusions into the final EPA SBF Environmental Assessment document and analyses. Specifically, EPA plans on using relevant North Sea data in assessing its method alternatives for determining sediment toxicity, biodegradation, and bioaccumulation. Moreover, EPA plans to incorporate relevant data from North Sea field studies into assessing the various discharge and zero discharge options for SBF-wastes. Section III.B.(a) of the rulemaking record gives summary of the data collected to support the EPA SBF Environmental Assessment.

III. Revised Models

A. Revised Engineering Models

1. Large Volume Discharges

Through discussions with stakeholders and the October 1999 site visits to offshore drilling operations, EPA has obtained more information about current and emerging solids control practices. Regarding current practices, EPA has re-evaluated its model of the "standard" or "baseline" solids control system. The baseline model presented in the February 1999 proposal consisted of a primary shale shaker that discharges cuttings and a secondary shale shaker that discharges fine-particle cuttings (referred to as "fines").

Since proposal, EPA learned that cuttings are discharged from both primary and secondary shale shakers, and that fines are generated from additional equipment such as high-speed shale shakers (called "mud cleaners") and centrifuges whose purpose is to treat the drilling fluid by removing undesirable fine solids. These fines were reported by one industry commenter on the February 1999 proposal to have SBF cuttings retention values as high as 20 percent by weight.

Therefore, the revised baseline model consists of primary and secondary shale shakers, plus a "fines removal unit" that may be either a mud cleaner or a centrifuge. Discharges from the baseline model system consist of cuttings from the primary shale shaker, cuttings from the secondary shale shaker, and fines from the fines removal unit. Based on data provided in the spreadsheets submitted by industry representatives, the baseline model volume fractions of the three discharges, expressed as percentages of the total volume of all cuttings discharged from the baseline model well, are 78.5% for the primary shakers, 18.5% for the secondary shakers, and 3% for the fines removal unit.

EPA received sufficient additional cuttings retention data from GOM sources to re-evaluate the discharges of these three units and to calculate a revised baseline long-term average retention value of 11.4% by weight of SBF on cuttings. Despite the revision of the retention data and the model baseline system, the revised long-term average retention value is only slightly higher than the 11% originally calculated for the proposal, providing further confidence in the accuracy of the baseline model and associated data.

Since the February 1999 proposal, the GOM offshore drilling industry has increased its use of "add-on" cuttings drying equipment, "cuttings dryers," to reduce the amount of SBF adhering to the cuttings prior to discharge. Specifically, over twenty GOM SBF well projects utilized these cuttings dryers in the recent past to reduce the amount of SBF discharged (Johnston, 2000a). Current data available to EPA indicates that these cuttings dryers can operate consistently and efficiently when properly installed and maintained. Specifically, vendor supplied data associated with these cuttings dryer deployments suggest that the overall cuttings dryer downtime (i.e., time when cuttings dryer equipment is not operable) is approximately one percent of the overall operating time (Johnston, 2000a).

At the time of the February 1999 proposal, EPA had obtained retention data from only one such add-on technology, namely the Mud-10 vibrating centrifugal dryer. Since then, EPA has observed the operation of another drying technology, generally

referred to as a vertical centrifuge dryer. The vertical centrifuge dryer unit serves the same purpose and occupies the same location in the treatment train as the Mud-10 unit. EPA generically refers to the Mud-10 unit and the vertical centrifuge dryer as the "cuttings dryer."

Immediately prior to publication of this notice, EPA also received limited cuttings retention data from a third type of add-on equipment referred to as a "squeeze press" mud recovery unit. When installed, the squeeze press mud recovery unit occupies the same location as the above-mentioned cuttings dryers and serves to reduce the amount of SBF adhering to the cuttings prior to discharge. The specific data for the squeeze press were received too late to include in the statistical determination of retention values for today's notice. However, these data are included in the public record for the rule and EPA solicits comments on them (Johnston, 2000b). These data, along with additional retention data received from other industry sources, will be evaluated and included in the appropriate engineering and statistical analyses used to support the cuttings retention limitation in the final rule.

Most cuttings dryer applications include a centrifuge or mud cleaner in the treatment train, to serve the same purpose as the fines removal unit in the baseline system (i.e., to remove undesirable fine solids from the drilling fluid recovered by the cuttings dryer). Therefore, EPA's revised model of BAT/NSPS-level solids control includes primary and secondary shale shakers that send all their cuttings to a cuttings dryer, followed by a fines removal unit. There are two discharges from the BAT/NSPS-level model solids control system: one from the cuttings dryer and one from the fines removal unit. The BAT/NSPS-model volume fractions of the two discharges, expressed as percentages of the total volume of all cuttings discharged from the BAT/NSPS-model well, are 97% for the cuttings dryer and 3% from the fines removal unit. EPA, however, solicits more volume fraction data to further refine its baseline and BAT/NSPS discharge models.

For today's notice, EPA evaluated two different scenarios based on the above BAT/NSPS-model solids control system. The first scenario assumes that both the cuttings from the cuttings dryer and the fines from the fines removal unit are discharged. This first BAT/NSPS-model scenario is essentially unchanged from the BAT/NSPS-model presented at the February 1999 proposal. The long-term average SBF cuttings retention value for this first BAT/NSPS-model scenario is 2.68% by weight. This new long-term average cuttings retention value is lower than the February 1999 proposal BAT/NSPS-model long-term average cuttings retention value of 7% by weight. The difference is attributable to the replacement of the North Sea data with data from recent GOM drilling projects. The second BAT/NSPS-model scenario assumes that only the cuttings are discharged, and the fines, which represent a comparably smaller volume of waste, are retained for zero discharge via hauling to shore for land-based disposal. Therefore, the long-term average cuttings retention value for this second BAT/NSPS-model scenario is equal to the retention value for the cuttings dryer, 2.45% by weight.

At this time, EPA thinks that data from the GOM are adequate to represent field conditions throughout the United States. These data include variations in geological formations, drilling conditions, and rates of penetration. However, EPA is still requesting cuttings retention data from offshore and coastal drilling operations that use SBFs. In particular, EPA is requesting SBF cuttings retention data from United States offshore or coastal oil and gas exploration and production facilities operating outside of the GOM. If EPA does not receive additional non-GOM data, EPA is comfortable with applying the GOM data to other offshore and coastal regions in the United States.

The analyses for compliance costs, pollutant loadings, and numeric non-water quality environmental impacts are based on the volumes of waste solids and adhering drilling fluid estimated to be discharged from each of four model wells. The model wells are defined in terms of four categories: deep water (i.e., ≥1000 ft) development, deep water exploratory, shallow water (i.e., <1000 ft) development and shallow water exploratory. While the model well sizes are unchanged, the volumes of adhering drilling fluid were revised based on the revised retention values. Based on further communication since the February 1999 proposal with industry about current and future drilling plans in the GOM, California, Alaska, and North Carolina, the numbers of each type of model well drilled annually are also unchanged. EPA is, however, requesting more data detailing the annual number of shallow water and deep water SBF-wells. EPA is also requesting data on the conditions and frequency when SBFs are chosen over water-based drilling fluids, when both drilling fluids are technically acceptable for drilling (i.e., some shallow water wells).

EPA also re-evaluated the zero-discharge option using the updated baseline retention data. The only notable change in the approach to the zero-discharge analysis is the distribution of wells using land-based disposal versus wells using onsite injection. The original analysis assumed that 80% of the affected wells would use land-based disposal and 20% would use onsite injection. While this assumption remains applicable to shallow water wells, EPA learned from industry sources that onsite injection is currently less applicable to deep water wells, due to limitations of mechanical equipment, geology, and well placement. Therefore, the zero discharge analysis now assumes that all deep water wells will haul cuttings to shore for land-based disposal. As zero discharge remains a proposed management option, EPA is requesting additional data and information related to what drilling fluids and waste management practices operators will likely use and the overall impact on the annual number of drilling projects if EPA selects the zero discharge management option for SBFs.

The current engineering cost analysis also assigns the installation and downtime costs to every well. However, EPA recognizes that it is likely that multiple wells would be drilled from a single installation, thereby reducing the effect of the installation cost on each well's total compliance cost. It is also likely that some drilling rigs will purchase and permanently install cuttings dryers and fines removal units, further reducing the effect of installation costs on any one well. The data EPA has gathered to date are limited in this regard. Therefore, EPA requests additional information pertaining to the average number of wells drilled annually with SBF per platform, and the number of platforms capable of permanently installing cuttings dryers and fines removal units.

Details of the revised engineering models are provided in a technical support document in section III.C.(b) of the rulemaking record.

2. Small Volume Discharges

In its study of current solids control practices, EPA learned that SBF is controlled with zero discharge practices at the drill floor, in the form of vacuums and sumps to retrieve spilled fluid. EPA also learned that approximately 75 barrels of solids coated with SBF can accumulate in the dead spaces of the mud pit, sand trap, and other equipment in the drilling fluid circulation system. Current practice is to either wash these solids out with water for overboard

discharge, or to retain the waste solids for disposal.

Since zero discharge practices at the drill floor during drilling are the current practice, no additional costs were considered for controlling spills of SBF at this location. However, EPA did investigate options for controlling the discharges of accumulated solids generated by equipment cleaning procedures at the end of a drilling project. Assuming that every drilling project generates approximately 75 barrels of these small-volume waste accumulated solids, the costs vary only by: (1) geographic region; and (2) the numbers of wells in each regulatory scenario. EPA used the line-item costs developed for the zero discharge compliance cost analysis to calculate per-well and total costs for existing and new sources to dispose of accumulated solids via hauling to land based disposal facilities. The industry-wide costs resulting from this analysis are given below in section IV, Table IV.A.2.1.

B. Revised Economic Models

EPA plans to use the same methodologies in analyzing firm-level impacts used at proposal, but will update information to include at a minimum 1998 financial data as well as 1997 financial data. The year 1998 was not a good year for the oil and gas industry, whereas 1997 was a good year, so these two years should provide some sense of the volatility of the industry. EPA still expects that the impact on firms will be minimal, even given the difficult year the industry had in 1998. Additionally, EPA will use the same methodology for the small business analysis that was used at proposal. EPA does not expect the analysis to change significantly from proposal because: (1) Costs have not changed substantially; (2) only a few small operators are believed to be using SBFs; and (3) very few wells are drilled by small operators in a year.

Instead of relying on the Offshore Oil and Gas Effluent Guidelines EIA to provide a sense of financial impact at the facility level, however, EPA is changing the approach to allow deepwater projects to be modeled financially, as discussed in section II.

At the time of this notice, EPA believes that economic impacts from even the most stringent option (*i.e.*, zero discharge of SBFs) will have only minimal influence on most deepwater projects. However, as zero discharge remains a proposed management option, EPA is requesting additional data and information related to whether or not the selection of the zero discharge management option for SBFs will affect the overall annual number of drilling projects in deep and shallow waters in the United States. Further technical details are presented in supporting documentation in section III.G of the rulemaking record, which discusses potential impacts on typical, or average, deepwater projects.

However, because averages can obscure the effects at the most vulnerable projects, EPA will be looking closely at the potential for option costs to cause any measurable impacts at projects that do not conform to the parameters of the average project using the financial model. Although model outputs will be reported in the aggregate by project size, each individual project will be represented in the model inputs to allow EPA to identify impacts more precisely.

The projects likeliest to show some potential for impact are the smallest projects (both existing and new, if the existing projects continue to drill), the oldest existing projects (such as Lena and Cognac, which have produced over 80 percent of their original proved reserves as of 1996), or very marginal projects. Because any project could be marginal when all the factors are accounted for, even the relatively small cost of the SBF rule could have an impact on one or more projects, although, at this time, EPA believes this possibility is small.

C. Revised Environmental Assessment (EA) Models

Revisions to the regulatory options such as the revised retention on cuttings values and the addition of another controlled discharge option has resulted in changes in the SBF environmental assessment. The retention on cuttings affects both the pollutant loadings and the volume of waste discharged, thereby affecting the water quality, sediment quality and human health impacts. EPA has therefore re-iterated the various EA analyses and the results are presented in section IV below. There are, however, no changes in the EA models as outlined in the February 1999 proposal and the Environmental Assessment Document (EPA–821–B–98–019).

The models developed to calculate the NWQIs of air emissions, fuel usage, and solid waste generation have been revised parallel to the revisions in the engineering models described in section III.A. The revised waste volumes that resulted from new retention data required adjustments of such NWQI model elements as numbers of boat trips, cuttings boxes, and crane lifts. An additional NWQI model was developed for the BAT/NSPS discharge scenario based on 2.45% retention on cuttings. For both of the discharge scenarios, the energy requirements for the cuttings dryer and fines removal units were revised to reflect the newer technologies now accounted for in the engineering models. Finally, the zero discharge model was changed according to the new finding that deep water wells cannot readily utilize onsite injection and, rather, haul cuttings to shore-based disposal facilities.

Also subsequent to the February 1999 proposal, EPA monetized the human health benefits for the two controlled discharge options associated with reducing volatile organic compound (VOC), particulate matter (PM), and sulfur dioxide (SO_2) emissions. The valuation methodology used to conduct the monetized benefits analysis is presented in Environmental Assessment of the Final Effluent Limitations Guidelines and Standards for the Pharmaceutical Manufacturing Industry (EPA–821–B–98–008). The results of these revisions are presented in section IV below.

D. Revised Models for the Performance of Cuttings Treatment Technologies

As stated in the February 1999 proposal, EPA is considering setting limitations and standards for the percent retention of synthetic-based drilling fluids on cuttings that may be discharged from the cuttings dryer and fines removal technologies. EPA received cuttings retention data after the February 1999 proposal (see section II.A.4). This section of the notice outlines the revisions made to the statistical models for the performance of cuttings treatment technologies. A summary of the output of these revised models with new data is given in section IV.D.

EPA analyzed cuttings treatment data presented at proposal using well averages where each cuttings retention value is weighted by an associated hole volume. Since publication of the proposed statistical support document in February 1999, EPA incorporated four changes into the statistical methods used to estimate summary statistics which support the development of numeric limitations and standards for the retention of synthetic-based drilling fluids on cuttings. These changes are: (1) Imputation of volume-weighted factors for zero and negative drilling intervals; (2) correction to the estimator for volume-weighted variances; (3) the addition of uniformly-weighted summary statistics; and (4) consideration of the 99th percentile rather than the 95th percentile for the development of numeric limitations and standards for the maximum well

averaged percent retention of SBF on cuttings.

EPA generally estimated the volume of cuttings using the drilling interval and the pipe diameter immediately preceding a retention measurement. However, at times, the drilling intervals are reported as zero or negative. A negative drilling interval indicates that the drill pipe has been pulled up to facilitate drilling in a new direction. EPA excluded negative interval data from the proposal. In this report, negative drilling intervals are treated in the same fashion as zero drilling intervals.

At proposal, EPA estimated weighted variances as if the weights could only take on a small number of possible values. However, those weights are based on the volume of cuttings associated with a particular drilling interval and that volume may take on infinitely many values. In this report, EPA estimated weighted variances as if the weights could only take on infinitely many values.

Under the assumption that the retention on cuttings increased with the depth drilled, EPA proposed numeric guidelines and standards using retention values weighted by the volume drilled. However, the graphics showing percent retention versus depth drilled do not indicate that this is true (EPA, 2000). Therefore, EPA has added the use of uniformly-weighted summary statistics as part of EPA's statistical models. With no apparent relationship between depth drilled and percent retention, the uniformly-weighted summary statistics are more appropriate. Basing numeric guidelines and standards on a single type of measurement, as opposed to a combination of multiple types of measurements, will reduce the measurement variability associated with the guidelines and standards. Additional benefits of setting numeric guidelines and standards based on uniformly-weighted summary statistics include eliminating the need to: (1) Calculate the length of interval drilled; (2) impute volumes where zero or negative intervals exist; and (3) use unusual variance estimation procedures. EPA prefers to set numeric guidelines and standards for percent retention based on uniformly-weighted summary statistics as opposed to volume weighted summary statistics.

EPA proposed numeric limitations and standards under the assumption that, on a long-term average basis, good engineering practice would allow appropriately designed and well operated solids control equipment systems to perform at least as well as approximately 95% of the systems whose data were used to develop the limitations and standards. Operationally, cuttings retention values are averaged over the course of drilling an individual well and EPA's candidate BAT limitation or NSPS is the estimated 95th percentile for the available well averages.

The CWA confers considerable discretion in determining what constitutes best available technology and best available demonstrated technology. In exercising this discretion, the Agency has proposed and promulgated limitations and standards that provide for the variability observed in application of these technologies. This allowance provides for variation in the performance of the recommended treatment technologies and establishes a standard that EPA expects well operated treatment systems to be capable of achieving at all times.

Given that there is less experience to date with the application of the cuttings dryer technology than many other candidate BAT and NSPS technologies generally, the Agency is also considering setting numeric limitations and standards based on the 99th percentile. This would provide a larger allowance for treatment variability than is provided by the proposed limitations and standards based on the 95th percentile.

Detailed descriptions of the statistical methods, summary statistics, overall averages, and percentiles associated with each technology can be found in section III.C.(a) of the rulemaking record.

IV. Revised Analyses

A. Revised Compliance Costs Results

1. Large Volume Discharges

Based on the revised engineering models described in section III.A above, EPA revised its calculations of baseline, compliance option, and incremental compliance costs. The industry profile and the methodology for estimating costs that were presented with the proposed rule have not changed for today's notice. The results of the revised compliance cost analyses are presented in Table IV.A.1.1 for existing sources and in Table IV.A.1.2 for new sources.

TABLE IV.A.1.1: SUMMARY ANNUAL COST/SAVINGS, EXISTING SOURCES (1998$/YEAR)

Technology basis	Costs (savings) in 1998$/year [wells/year]			
	Gulf of Mexico [wells/yr]	Offshore California [wells/yr]	Cook Inlet, Alaska [wells/yr]	Total [wells/yr]
Baseline/Current Practice Technology Costs:				
Discharge with 11.4% retention of SBF on cuttings	20,032,850 [94 wells/yr]	NA[a]	NA[a]	20,032,850 [94 wells/yr]
Zero Discharge via land disposal or onsite injection (current OBF-drilled wells only).	3,494,062 [23 wells/yr]	2,287,281 [12 wells/yr]	214,237 [1 well/yr]	5,995,580 [36 wells/yr]
Total Baseline Costs per Area	23,526,912 [117 wells/yr]	2,287,281 [12 wells/yr]	214,237 [1 well/yr]	26,028,430 [130 wells/yr]
Technology Option Costs:				
Discharge with 2.68% retention of SBF on cuttings	20,257,350 [117 wells/yr]	2,463,440 [12 wells/yr]	211,350 [1 well/yr]	22,932,140 [130 wells/yr]
Discharge with 2.45% retention of SBF on cuttings	20,365,837 [117 wells/yr]	2,472,517 [12 wells/yr]	214,672 [1 well/yr]	23,053,026 [130 wells/yr]
Zero Discharge of SBF-wastes via land disposal or onsite injection.	31,666,153[b] [94 wells/yr]	NA[a]	NA[a]	31,666,153 [94 wells/yr]
Incremental Tech. Option Costs (Savings):				
Discharge with 2.68% retention of SBF on cuttings	(3,269,562) [117 wells/yr]	176,159 [12 wells/yr]	(2,887) [1 well/yr]	(3,096,290) [130 wells/yr]
Discharge with 2.45% retention of SBF on cuttings	(3,161,075) [117 wells/yr]	185,236 [12 wells/yr]	435 [1 well/yr]	(2,975,404) [130 wells/yr]

TABLE IV.A.1.1: SUMMARY ANNUAL COST/SAVINGS, EXISTING SOURCES (1998$/YEAR)—Continued

Technology basis	Costs (savings) in 1998$/year [wells/year]			
	Gulf of Mexico [wells/yr]	Offshore California [wells/yr]	Cook Inlet, Alaska [wells/yr]	Total [wells/yr]
Zero Discharge of SBF-wastes via land disposal or on-site injection.	11,633,303[c] ..... [94 wells/yr]	NA[a]	NA[a]	11,633,303 [94 wells/yr]

[a] NA: Not applicable since currently there are no discharges of SBF-cuttings in these waters.
[b] This technology option cost estimates zero discharge costs associated with the 94 GOM wells that are currently allowed to discharge SBF.
[c] This incremental technology option cost only covers the 94 GOM wells that are currently allowed to discharge SBF and does not include baseline compliance costs of zero discharge for the 23 GOM OBF wells (i.e., $3,494,062).

TABLE IV.A.1.2: SUMMARY ANNUAL COST/SAVINGS, NEW SOURCES (1998$/YEAR)

Technology basis	Gulf of Mexico
Baseline/Current Practice Technology Costs:	
Discharge with 11.4% retention of SBF on cuttings	2,306,325
Technology Option Costs:	
Discharge with 2.68% retention of SBF on cuttings	1,388,250
Discharge with 2.45% retention of SBF on cuttings	1,395,913
Zero Discharge of SBF-wastes via land disposal or onsite injection	4,581,838
Incremental Technology Option Costs (Savings):	
Discharge with 2.68% retention of SBF on cuttings	(918,075)
Discharge with 2.45% retention of SBF on cuttings	(910,412)
Zero Discharge of SBF-wastes via land disposal or onsite injection	2,275,513

Note: All cost estimates in this table are based on an assumption of 19 new source wells per year.

Details of the revised compliance cost data and analyses are available in a technical support document in section III.C.(b) of the rulemaking record.

2. Small Volume Discharges

As stated in section III.A.2 of this notice, EPA learned that SBF is controlled with zero discharge practices at the drill floor, in the form of vacuums and sumps to retrieve spilled fluid. Industry estimated that essentially all of the SBF that spills on the rig floor is recovered using the controls described above. The amount of SBF spilled on the rig floor that is not captured by current practices is estimated at less than 1 gallon SBF per 100 feet drilled.

Industry representatives have stated that industry is split on the practice of discharging accumulated solids with some discharging accumulated solids provided permit limitations and standards are met and others opting to haul this material to shore for disposal (*see* section II.B.3). Approximately 75 barrels per well of fine solids and barite, of which up to 25% is SBF, accumulate in the rig mud pits, sand traps, and other equipment. Several hundred barrels (approximately 200 to 400 barrels) of water are used to wash out the mud pits. Industry representatives also indicated to EPA that those oil and gas extraction operations that discharge wash water and accumulated solids first recover free SBF.

EPA used the line-item costs developed for the zero discharge compliance cost analysis to calculate per-well and total costs for existing and new sources to dispose of accumulated solids via hauling to land based disposal facilities. Section III.A.2 outlines the assumptions used to calculate the annual zero discharge costs for small volume wastes given below in Table IV.A.2.1. Overall, the estimated per-well costs (1998$) were $1,221 for GOM wells, $2,186 for Offshore California wells, and $10,638 for Cook Inlet wells.

TABLE IV.A.2.1: ANNUAL ZERO DISCHARGE COSTS FOR SMALL-VOLUME SBF WASTES (1998$/YEAR)

Technology Basis	Gulf of Mexico	California	Cook Inlet, AK	Total
Existing Sources:				
Baseline and BAT/NSPS Discharge Scenarios[a]	$142,857	$26,235	$10,638	$179,730
Zero Discharge[b]	114,774	[d]NA	[d]NA	114,774
New Sources:				
All Scenarios (Baseline, BAT/NSPS Discharge, and Zero Discharge)[c] ..	23,199	[d]NA	[d]NA	23,199

[a] Costs are the same for baseline and two discharge scenarios because each analysis is based on 117 wells.
[b] Zero discharge costs for existing sources are based on 94 wells.
[c] Costs are the same for all new-source scenarios because each analysis is based on 19 wells.
[d] NA: Not Applicable.

B. Revised Pollutant Loadings Results

EPA reviewed additional information regarding drilling fluid additives provided by the industry representatives in response and subsequent to the February 1999 proposal, and found no information prompting changes to the concentrations or list of pollutants presented at the time of proposal. EPA revised the pollutant loadings analysis according to the changes in the engineering and statistical models described in section III.A and III.D of this notice.

The loadings analysis depends on the estimated volumes of cuttings and SBF discharged per model well for each discharge scenario. Other than adjusting the loadings to the revised waste volumes and revised discharge scenarios, the analysis remains unchanged from the February 1999 analyses. Tables IV.B.1 and IV.B.2 present the revised loadings for existing and new sources, respectively. EPA assumes that operators will switch from OBFs in the current baseline model to SBFs under both SBF controlled discharge options. These tables present the loadings associated with discharges of SBF and entrained fines [e.g., <5 microns (10^{-6} meters)]. EPA also calculated the loadings associated with SBF solids that can be removed by solids control equipment (e.g., >5 microns).

TABLE IV.B.1: SUMMARY ANNUAL SBF POLLUTANT LOADINGS FOR EXISTING SOURCES (LBS/YEAR) [a]

Technology basis	SBF pollutant loadings (reductions) in pounds/year [a] [wells/year]			
	Gulf of Mexico	Offshore California	Cook Inlet, Alaska	Total
Baseline/Current Practice Tech. Loadings:				
Discharge with 11.4% retention of SBF on cuttings	34,364,661 [94 wells/yr]	[b] NA	[b] NA	34,364,661 [94 wells/yr]
Zero Discharge via land disposal or onsite injection (current OBF-drilled wells only).	0 [23 wells/yr]	0 [12 wells/yr]	0 [1 well/yr]	0 [36 wells/yr]
Total Baseline Loadings per Area	34,364,661 [117 wells/yr]	0 [12 wells/yr]	0 [1 well/yr]	34,364,661 [130 wells/yr]
Technology Option Loadings:				
Discharge with 2.68% retention of base fluid on cuttings	7,328,175 [117 wells/yr]	466,072 [12 wells/yr]	26,413 [1 well/yr]	7,820,660 [130 wells/yr]
Discharge with 2.45% retention of base fluid on cuttings	6,464,827 [117 wells/yr]	411,167 [12 wells/yr]	23,302 [1 well/yr]	6,889,295 [130 wells/yr]
Zero Discharge of SBF-wastes via land disposal or on-site injection.	0 [94 wells/yr]	[b] NA	[b] NA	0 [94 wells/yr]
Increm. Tech. Opt. Loadings (Reductions):				
Discharge with 2.68% retention of base fluid on cuttings	(27,036,486) [117 wells/yr]	466,072 [12 wells/yr]	26,413 [1 well/yr]	(26,544,001) [130 wells/yr]
Discharge with 2.45% retention of base fluid on cuttings	(27,899,834) [117 wells/yr]	411,167 [12 wells/yr]	23,302 [1 well/yr]	(27,465,365) [130 wells/yr]
Zero Discharge of SBF-wastes via land disposal or on-site injection.	(34,364,661) [94 wells/yr]	[b] NA	[b] NA	(34,364,661) [94 wells/yr]

[a] SBF pollutant loadings only includes loadings associated with discharges of SBF and entrained fines (e.g., < 5 microns)
[b] NA Not Applicable

TABLE IV.B.2: SUMMARY ANNUAL POLLUTANT LOADINGS FOR NEW SOURCES (LBS/YEAR) [a]

Technology basis	Gulf of Mexico
Baseline/Current Practice Technology Loadings:	
Discharge with 11.4% retention of SBF on cuttings	3,949,786
Technology Option Loadings:	
Discharge with 2.68% retention of SBF on cuttings	745,855
Discharge with 2.45% retention of SBF on cuttings.	657,981
Zero Discharge of SBF-wastes via land disposal or onsite injection	0
Incremental Technology Option Loadings (Reductions):	
Discharge with 2.68% retention of SBF on cuttings	(3,203,931)
Discharge with 2.45% retention of SBF on cuttings.	(3,291,805)
Zero Discharge of SBF-wastes via land disposal or onsite injection	(3,949,786)

Note: All loading (reduction) estimates in this table are based on an assumption of 19 new source wells/yr.
[a] Only includes loadings associated with discharges of SBF and entrained fines (e.g., <5 microns)

The zero discharge option also reduces the amount of SBF-solids [i.e., solids that can be removed by solids control equipment (e.g., >5 microns)] from the current baseline. The estimated annual baseline discharges of SBF-solids from existing sources is 126,321,650 lbs./year. The estimated annual loadings (in lbs./year) of SBF-solids for existing sources are: 152,240,270 (2.68% retention controlled discharge option); 147,673,062 (2.45% retention controlled discharge option); and 0 (zero discharge option). The estimated annual baseline discharge of SBF-solids from new sources is 14,519,050 lbs./year. The estimated annual loadings (in lbs./year) of SBF-solids for new sources are: 14,519,050 (2.68% retention controlled discharge option); 14,083,488 (2.45% retention controlled discharge option); and 0 (zero discharge option). Complete details of the loadings analysis are available in a technical support document in the rulemaking record for this notice.

C. Revised Non-Water Quality Environmental Impacts (NWQI) Results

1. Air Emissions and Fuel Usage

EPA revised the analysis of the numeric NWQIs of air emissions and fuel usage pursuant to the changes in the engineering models described in section III.A of today's notice. Changes to the numeric NWQI analysis derive from the revised waste volumes, as well as changes in the BAT/NSPS discharge scenarios.

In both the first and second BAT/NSPS discharge scenarios, additional air

emissions and fuel usage result from the addition of the fines removal unit. Both scenarios also incorporate the average energy and fuel requirements of the two types of cuttings dryer that EPA observed in October 1999 (*see* section II.B.3). In the second BAT/NSPS discharge scenario in which the fines waste stream is retained for shipping to land-based disposal, additional air emissions and fuel usage are incurred for a portion of the supply boat trip, and for trucks and other equipment involved in the land disposal zero discharge scenario.

As described in section III.A, EPA learned from industry representatives that onsite injection is not generally technologically practicable for deep water drilling projects. Therefore, NWQIs attributable to hauling and land disposing drilling wastes were assigned to all deep water wells in the zero discharge analysis. Tables IV.C.1 and IV.C.2 present the revised air emissions (tons/yr) and fuel (BOE/yr) usage for existing and new sources, respectively.

Other than the specific changes described above, the methodology for the numeric NWQI analysis is unchanged since the February 1999 proposal. Details of this analysis are available in a technical support document located in the rulemaking record for this notice.

TABLE IV.C.1: SUMMARY ANNUAL NON-WATER QUALITY ENVIRONMENTAL IMPACTS, EXISTING SOURCES

Technology basis	Non-water quality environmental impacts reductions (increases) [wells/year—wpr]							
	Gulf of Mexico		Offshore California		Cook Inlet, AK		Total	
	Air emissions (tons/yr)	Fuel usage (BOE/yr)	Air emissions (tons/yr)	Fuel usage (BOE/yr)	Air emissions (tons/yr)	Fuel usage (BOE/yr)	Air emissions (tons/yr)	Fuel usage (BOE/yr)
Baseline/Current Practice NWQIs:								
Discharge with 11.4% retention of base fluid on cuttings.	42 ..... [94 wpy] ...	4,512 ..... [94 wpy] ...	[a]NA	[a]NA	[a]NA	[a]NA	42 ..... [94 wpy] ...	4,512 [94 wpy]
Zero Discharge (current OBF-wells only).	65 ..... [23 wpy] ...	4,811 ..... [23 wpy] ...	47 ..... [12 wpy] ...	2,940 ..... [12 wpy] ...	2.5 ..... [1 wpy]	338 ..... [1 wpy]	115 ..... [36 wpy] ...	8,089 [36 wpy]
Total Baseline NWQIs per Area.	107 ..... [117 wpy]	9,323 ..... [117 wpy]	47 ..... [12 wpy] ...	2,940 ..... [12 wpy] ...	2.5 ..... [1 wpy]	338 ..... [1 wpy]	157 ..... [130 wpy]	12,601 [36 wpy]
Technology Option NWQIs:								
Discharge with 2.68% retention of SBF on cuttings.	127 ..... [117 wpy]	10,422 ..... [117 wpy]	7.6 ..... [12 wpy] ...	673 ..... [12 wpy] ...	0.06 ..... [1 wpy]	40 ..... [1 wpy]	135 ..... [130 wpy]	11,135 [130 wpy]
Discharge with 2.45% retention of SBF on cuttings.	191 ..... [117 wpy]	15,685 ..... [117 wpy]	52 ..... [12 wpy] ...	853 ..... [12 wpy] ...	0.20 ..... [1 wpy]	67 ..... [1 wpy]	243 ..... [130 wpy]	16,605 [130 wpy]
Zero Discharge of SBF-wastes via land disposal or onsite injection.	561 ..... [94 wpy] ...	39,702 ..... [94 wpy] ...	[a]NA	[a]NA	[a]NA	[a]NA	561	39,702 [94 wpy]
Incr. Tech. Opt. NWQI Red. (Incr.):								
Discharge with 2.68% retention of SBF on cuttings.	20 ..... [117 wpy]	(1,099) ..... [117 wpy]	40 ..... [12 wpy] ...	2,267 ..... [12 wpy] ...	2.45 ..... [1 wpy]	298 ..... [1 wpy]	22 ..... [130 wpy]	1,466 [130 wpy]
Discharge with 2.45% retention of SBF on cuttings.	(84) ..... [117 wpy]	(6,362) ..... [117 wpy]	(4.8) ..... [12 wpy] ...	2,087 ..... [12 wpy] ...	2.31 ..... [1 wpy]	271 ..... [1 wpy]	(87) ..... [130 wpy]	(4,004) [130 wpy]
Zero Discharge of SBF-wastes via land disposal or onsite injection.	(519) ..... [94 wpy] ...	(35,191) ... [94 wpy] ...	[a]NA	[a]NA	[a]NA	[a]NA	(519) ..... [94 wpy] ...	(35,191) [94 wpy]

Note: 1 ton = 2000 lbs; BOE = barrels of oil equivalent
[a]NA: Not Applicable

TABLE IV.C.2: SUMMARY ANNUAL NON-WATER QUALITY ENVIRONMENTAL IMPACTS, NEW SOURCES

Technology basis	Gulf of Mexico	
	Air emissions (tons/yr)	Fuel usage (BOE/yr)
Baseline/Current Practice Technology NWQIs:		
Discharge with 11.4% retention of SBF on cuttings	4.8	515
Technology Option NWQIs:		
Discharge with 2.68% retention of SBF on cuttings	13	1,073
Discharge with 2.45% retention of SBF on cuttings.	23	1,923
Zero Discharge of SBF-wastes via land disposal or onsite injection	68	4,784
Incremental Technology Option NWQIs Reductions (Increases):		
Discharge with 2.68% retention of SBF on cuttings	(8.2)	(558)
Discharge with 2.45% retention of SBF on cuttings.	(18)	(1,408)
Zero Discharge of SBF-wastes via land disposal or onsite injection	(63)	(4,269)

Note: All NWQI reductions (increases) in this table are based on an assumption of 19 new source wells/yr
Note: 1 ton = 2000 lbs; BOE = barrels of oil equivalent

2. Solid Waste Generation and Management

EPA assumes that based on the relative cheaper cost of OBF (approximately 5 times less expensive per barrel than SBFs), operators will use OBFs rather than SBFs if EPA selects the zero discharge option for all SBF-wastes. Consequently, operators will be land disposing or injecting OBFs if EPA selects the zero discharge option for all SBF-wastes.

As stated in the February 1999 proposal, the regulatory options considered for this rule will not cause generation of additional solids. However, EPA calculated the amount of waste cuttings that would be land disposed and injected onsite in each regulatory scenario, and determined that there would be a considerable reduction in the amount of mineral-oil or diesel oil-contaminated cuttings land disposed and injected with the implementation of either of the controlled discharge options.

Applying the revised waste volumes and discharge scenarios described above, the accounting of disposed waste is revised as follows. In the baseline analysis, wells that currently drill using OBFs generate 27 million (MM) pounds of waste cuttings that are land disposed, and 6.8 MM pounds that are injected onsite, for a total of 34 MM pounds of waste cuttings disposed. This amount of disposed waste would be reduced to zero under the BAT/NSPS options allowing discharge at 2.68% retention, and would be reduced to 6.4 MM pounds under the BAT/NSPS option allowing discharge at 2.45%. The 6.4 MM pounds disposed in the second discharge scenario is the fine particle waste retained for hauling to land based disposal. Under the zero discharge option, the baseline amount of waste disposed is increased to 152 MM pounds.

3. Safety Issues

The impact of the effluent limitation guidelines (ELG) on safety is one factor considered in the non-water quality environmental impact analysis. EPA has identified two safety issues related to drilling fluids: (1) deleterious vapors generated by organic materials in drilling fluids; and (2) waste hauling activities that increase the risk of injury to workers. EPA is requesting comments and data related to these two safety issues as well as other safety issues related to drilling fluid selection and waste management.

a. *Vapors Generated by Organic Materials in Drilling Fluids.* One of the key concerns in exploration and production projects is the exposure of wellsite personnel to vapors generated by organic materials in drilling fluids (Candler et al., 1995). Areas on the drilling location with the highest exposure potentials are sites near solids control and open pits. These areas are often enclosed in rooms and ventilated to prevent unhealthy levels of vapors from accumulating. If the total volume of organic vapors can be reduced then any potential health effects will also be reduced regardless of the nature of the vapors.

Generally speaking the aromatic fraction of the vapors is the most toxic to the mammalian system. The high volatility and absorbability through the lungs combined with their high lipid solubility serve to increase their toxicity. OBFs have a high aromatic content and vapors generated from using these drilling fluids include aromatics (e.g., alkybenzenes, naphthalenes, and alkyl-naphthalenes), alkanes (e.g., C_7–C_{18} straight chained and branched), and alkenes. Some minerals oils also generate vapors that contain the same types of chemical compounds, but generally at lower concentrations, as those found in the diesel vapors (e.g, aromatics, alkanes, cyclic alkanes, and alkenes). Because SBF are manufactured from compounds with specifically defined compositions, the subsequent compound can exclude toxic aromatics. Consequently, toxic aromatics can be excluded from the vapors generated by using SBFs.

In general, SBFs (e.g., esters, LAOs, PAOs, IOs) generate much lower concentrations of vapors than do OBFs (Candler et al., 1995). Moreover, the vapors generated by these SBFs are less toxic than traditional OBFs because they do not contain aromatics.

b. *Waste Hauling Activities.* Industry has commented in previous effluent guidelines, such as the Coastal Subcategory Oil and Gas Extraction and Development ELG, that a zero discharge requirement would increase the risk of injury to workers due to increased waste hauling activities. These activities include vessel trips to and from the drilling platform to haul waste, transfer of waste from the platform onto a service vessel, and transfer in port onto a barge or dock.

EPA has identified and reviewed additional data sources to determine the likelihood that imposition of a zero discharge limitation on cuttings contaminated with SBF could increase risk of injury due to additional waste hauling demands. The sources of safety data are the U.S. Coast Guard (USCG), the Minerals Management Service (MMS), the American Petroleum Institute (API), and the Offshore Marine Service Association (OMSA). The following is a summary of the findings from this review.

The data indicate that there are reported incidents that are associated with the collection, hauling, and onshore disposal of wastes from offshore. However, the data do not distinguish whether any of these incidents can be attributed to specific waste management activities.

Most offshore incidents are due to human error or equipment failure. The rate at which these incidents occur will not be changed significantly by increased waste management activities. However, if the number of man hours and/or equipment hours are increased, there will be more reportable incidents given an unchanged incident rate. These potential increases may be offset by reduced incident rates through increased training or equipment maintenance and inspection; but these changes cannot be predicted. One indication that training and maintenance can reduce incident rates is a 1998 API report entitled "1997 Summary of U.S. Occupational Injuries, Illnesses, and Fatalities in the Petroleum Industry," which established that injury incident rates have been decreasing over the last 14 years. If this decrease continues, there should be no increase in the number of safety incidents due to a requirement to haul SBF-contaminated cuttings to shore for disposal. The details of this analysis are available in a technical support document in the rulemaking record for today's notice.

4. Monetized Health Benefits

EPA estimated emissions associated with each of the regulatory options as part of the NWQI analyses. The pollutants considered in the NWQI analyses are nitrogen oxides (NO_X), volatile organic carbon (VOC), particulate matter (PM), sulfur dioxide (SO_2), and carbon monoxide (CO). Of these pollutants, EPA has monetized the human health benefits or impacts associated with VOC, PM, and SO_2 emissions using the methodology presented in the Environmental Assessment of the Final Effluent Limitations Guidelines and Standards for the Pharmaceutical Manufacturing Industry (EPA–821–B–98–008). Each of these pollutants have human health impacts and reducing these emissions can reduce these impacts.

Several VOCs exhibit carcinogenic and systemic effects and VOCs, in general, are precursors to ground-level ozone, which negatively affects human health and the environment. PM impacts include aggravation of

respiratory and cardiovascular disease and altered respiratory tract defense mechanisms. SO_2 impacts include nasal irritation and breathing difficulties in humans and acid deposition in aquatic and terrestrial ecosystems.

The unit values (in 1990 dollars) are $489 to $2,212 per megagram (Mg) of VOC; $10,823 per Mg of PM; and $3,516 to $4,194 per Mg of SO_2. Using the Engineering News Record Construction Cost Index (*see* www.enr.com/cost/costcci.asp) these conversion factors are scaled up using the ratio of 5920:4732 (1998$:1990$). EPA currently does not have unit values for CO and NO_x and is soliciting information regarding their valuation. Following is a summary of the monetized benefits for each of the regulatory options for both existing and new sources.

TABLE IV.C.3: SUMMARY OF MONETIZED HUMAN HEALTH BENEFITS OR IMPACTS ASSOCIATED WITH VOC, PM, AND SO_2 EMISSIONS, EXISTING SOURCES (1998$/YR)

	Criteria air pollutant		
	VOC	PM	SO_2
Baseline/Current Practice Air Emissions, Mg/yr:			
Discharge with 11.4% retention of SBF on cuttings	2.15	1.87	1.74
Zero Discharge (current OBF wells only)	9.57	1.93	1.68
Total Baseline Air Emissions, Mg/yr	11.72	3.80	3.42
Compliance Air Emissions, Mg/yr:			
(1) Discharge with 2.68% retention of SBF on cuttings	6.90	5.98	5.57
(2) Discharge with 2.45% retention of SBF on cuttings	25.68	9.65	8.45
(3) Zero Discharge[a]	113.84	20.96	18.42
Incremental Compliance Emission Reductions (Increases), Mg/yr:			
(1) Discharge with 2.68% retention of SBF on cuttings	4.82	(2.18)	(2.15)
(2) Discharge with 2.45% retention of SBF on cuttings	(13.96)	(5.85)	(5.03)
(3) Zero Discharge[a]	(11.69)	(19.09)	(16.68)
Unit Value of Poll. Reductions, 1990$/Mg:[b]	489 to 2,212	10,823	3,516 to 4,194
Unit Value of Poll. Reductions, 1998$/Mg:[c]	612 to 2,767	13, 540	4,399 to 5,247
Incremental Compliance Benefits (Costs), 1998$/yr:			
(1) Discharge with 2.68% retention of SBF on cuttings	2,950 to 13,337.	(29,517)	(9,458) to (11,281)
(2) Discharge with 2.45% retention of SBF on cuttings	(8,544) to (38,627).	(79,209)	(22,127) to (26,392)
(3) Zero Discharge[a]	(68,354) to (309,046).	(258,479)	73,375) to (87,520)

[a] Via land disposal or on-site offshore injection

[b] Conversion factors from Environmental Assessment of the Final Effluent Limitations Guidelines and Standards for the Pharmaceutical Manufacturing Industry¢ (EPA–821–B–98–008).

[c] Scaled from 1990$ using the Engineering News Record Construction Cost Index.

TABLE IV.C.4: SUMMARY OF MONETIZED HUMAN HEALTH BENEFITS OR IMPACTS ASSOCIATED WITH VOC, PM, AND SO_2 EMISSIONS, NEW SOURCES (1998$/YR)

	Criteria air pollutant		
	VOC	PM	SO2
Baseline/Current Industry Practice Air Emissions, Mg/yr:			
Discharge with 11.4% retention of SBF on cuttings.	0.25	0.21	0.20
Compliance Air Emissions, Mg/yr:			
(1) Discharge with 2.68% retention of SBF on cuttings	0.66	0.57	0.53
(2) Discharge with 2.45% retention of SBF on cuttings	2.73	0.91	0.88
(3) Zero Discharge[a]	14.62	2.67	2.32
Incremental Compliance Emission Reductions (Increases), Mg/yr:			
(1) Discharge with 2.68% retention of SBF on cuttings	(0.41)	(0.36)	(0.33)
(2) Discharge with 2.45% retention of SBF on cuttings	(2.48)	(0.70)	(0.68)
(3) Zero Discharge[a]	(14.37)	(2.45)	(2.13)
Unit Value of Poll. Reductions, 1990$/Mg:[b]	489 to 2,212	10,823	3,516 to 4,194
Unit Value of Poll. Reductions, 1998$/Mg:[c]	612 to 2,767	13,540	4,399 to 5,247
Incremental Compliance Benefits (Costs), 1998$/yr:			
(1) Discharge with 2.68% retention of SBF on cuttings	(251) to (1,134)	(4,874)	(1,452) to (1,731)
(2) Discharge with 2.45% retention of SBF on cuttings	(1,518) to (6,862)	(9,478)	(2,991) to (3,568)
(3) Zero Discharge[a]	(8,794) to (39,762)	(33,173)	(9,370) to (11,176)

[a] Via land disposal or on-site offshore injection.

[b] Conversion factors from Environmental Assessment of the Final Effluent Limitations Guidelines and Standards for the Pharmaceutical Manufacturing Industry (EPA–821–B–98–008).
[c] Scaled from 1990$ using the Engineering News Record Construction Cost Index.

D. Revised Cuttings Retention Limitations and Standards

As stated in the February 1999 proposal, EPA is considering setting limitations and standards for the percent retention of synthetic-based drilling fluids on cuttings that may be discharged from the cuttings dryer and fines removal technologies. EPA received cuttings retention data after the February 1999 proposal (*see* section II.A.4) and revised its statistical models (*see* section III.D).

As demonstrated by oil drilling operations in various geologic formations within the Gulf of Mexico (*see* section II.A.4), the average of the individual well averages for percent SBF retention on cuttings from the cuttings dryer is 2.45, the estimated 95th percentile is 3.11, and the estimated 99th percentile is 3.38. The observed individual well averaged SBF cuttings retention values are all less than the 95th percentile. For fines removal equipment, the average of the individual well averages for percent SBF retention on cuttings is 10.0, the estimated 95th percentile is 13.1, and the estimated 99th percentile is 14.4. Only one of the observed individual well SBF cuttings retention values for fines removal equipment exceeds the 95th percentile and none exceed the 99th percentile.

Based on these summary statistics, EPA has revised the proposed limitations and standards for percent retention of drilling fluids on cuttings. Assuming that: (a) 97% of the volume of cuttings discharged come from the cuttings dryer and 3% from fines removal; and (b) the limit will be based on a 95th percentile; the new discharge limitation of base fluid retained on cuttings is 3.41% [i.e., (0.97)(3.11%) + (0.03)(13.1%) = 3.41%]. Assuming that: (a) 97% of the volume of cuttings discharged come from the cuttings dryer and 3% from fines removal; and (b) the limit will be based on a 99th percentile; the new discharge limitation of base fluid retained on cuttings is 3.71% [i.e., (0.97)(3.38%) + (0.03)(14.4%) = 3.71%].

EPA is also considering basing percent retention limitations and standards on the cuttings dryer alone, in conjunction with zero discharge for all other cuttings. In that case, the discharge limitation of base fluid retained on cuttings would be 3.11% when using the 95th percentile or 3.38% when established using the 99th percentile.

If EPA selects numeric maximum well averaged cuttings retention discharge limitations and standards as the only method for controlling SBF discharges associated with cuttings in the final rule, then all operators would be expected to either: (1) meet the numeric maximum well averaged cuttings retention limitations and standards; or (2) dispose of their waste through on-site formation injection or ship their cuttings to shore for land disposal. In addition, EPA may elect in the final rule to allow operators the flexibility of choosing either numeric limitations and standards or BMPs to control SBF discharges associated with cuttings (*see* section V). A detailed description of the statistical analyses used to develop the proposed limitations and standards for percent retention of drilling fluids on cuttings is given in section III.C.(a) of the rulemaking record.

E. Revised Environmental Assessment Results

The complete results of the revised EA analyses are given in section III.F.(b) of the rulemaking record.

1. Water Column Water Quality Analyses

In the February 1999 proposal EA analyses, there were no exceedances of water quality criteria in the water column. Based on the revised EA analyses using updated dilution values and Federal water quality criteria, there are still no water quality criteria exceedances in the water column for any of the regulatory options being considered.

2. Pore Water Quality Analyses

The revised EA analyses estimate that baseline-model (or BPT) pore water pollutant concentrations at 100 m from the discharge exceed water-quality criteria for: (1) three pollutants (Cr, Pb, Ni) for the deep water exploratory well; (2) one pollutant (Cr) for the shallow exploratory well; and one pollutant (Cr) for the deepwater development well. Barite is used as a weighting agent in the drilling fluid and is also the primary source of heavy metals (e.g., Cr, Pb, Ni) in SBF. Therefore, the baseline-model pore water exceedances are not due to the synthetic material in the SBF but rather the SBF weighting agents.

The revised EA analyses estimate that both BAT/NSPS-model controlled discharge options result in no pore water pollutant concentrations that exceed water-quality criterion.

3. Sediment Guidelines Analyses

In the February 1999 proposal, the BAT/NSPS-model controlled discharge option resulted in sediment guidelines exceedances for the deep water and shallow water exploratory wells. EPA proposed sediment guidelines can be found in section I.D.(a).13 of the rulemaking record. The revised EA sediment guidelines analyses, based on updated water quality criteria, loadings, and dilution data, result in exceedances under the baseline model (or BPT) scenario only. There are no sediment guidelines exceedances for any of the BAT/NSPS-models.

V. Best Management Practices (BMPs) Alternatives to Numeric Limitations and Standards

A. General

EPA is considering three options for the final rule for the BAT limitation and NSPS controlling SBF retained on discharged cuttings: (1) a single numeric discharge limitation with an accompanying compliance test method; (2) allowing operators to choose either a single numeric discharge limitation with an accompanying compliance test method, or as an alternative, a set of BMPs that employs limited cuttings monitoring; or (3) allowing operators to choose either a single numeric discharge limitation with an accompanying compliance test method or an alternative set of BMPs that employ no cuttings monitoring. Additionally, EPA is considering two options in the final rule for BAT limitation and NSPS for controlling SBFs not associated with SBF drill cuttings: (1) zero discharge; or (2) allowing operators to choose either zero discharge or an alternative set of BMPs with an accompanying compliance method.

EPA has initial data on the effectiveness of BMPs for controlling SBF-discharges (Farmer, 2000; Hanni et al, 1998). The initial data on BMP effectiveness was generated from over 12 deepwater projects in the North Sea and 11 deepwater projects in the GOM. Data from Farmer (2000) was received by EPA just before publication of this notice and was unable to be fully analyzed. This data set represented North Sea and GOM wells that did not employ a cuttings dryer, however, certain drilling projects in the data set did use an extra technician ("mud cop") to assist in improving the efficiency of the existing solids control equipment through use of BMPs.

EPA is requesting additional data on the use of BMPs to reduce or prevent SBF-discharges. In particular, EPA would like to see BMP documentation associated with cuttings retention spreadsheets similar to those submitted to support the development of the numeric guidelines and standards for the retention of SBF on cuttings. EPA will be using these data sets to determine the effectiveness of BMPs and their use as alternatives to numeric limitations and standards. EPA may select any of these BMP alternative options or any combination of these BMP alternative options in the final rule.

Sections 304(e), 308(a), 402(a), and 501(a) of the Clean Water Act authorize the Administrator to prescribe BMPs as part of effluent limitations guidelines and standards or as part of a permit. EPA's BMP regulations are found at 40 CFR 122.44(k). Section 304(e) of the CWA authorizes EPA to include BMPs in effluent limitation guidelines for certain toxic or hazardous pollutants for the purpose of controlling "plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage." Section 402(a)(1) and NPDES regulations [40 CFR 122.44(k)] also provide for best management practices to control or abate the discharge of pollutants when numeric limitations and standards are infeasible. In addition, section 402(a)(2), read in concert with section 501(a), authorizes EPA to prescribe as wide a range of permit conditions as the Administrator deems appropriate in order to ensure compliance with applicable effluent limitations and standards and such other requirements as the Administrator deems appropriate.

SBFs adhered to discharged cuttings may contain barite (used as a weighting agent in the drilling fluid system), and can also be contaminated with formation crude oil. Barite is a mineral principally composed of barium sulfate, however, barite ore is generally known to have trace contaminants of several heavy metals such as mercury, cadmium, arsenic, chromium, copper, lead, nickel, and zinc. Formation oil is an "indicator" pollutant for the many toxic and hazardous pollutant components present in the formation (crude) oil, such as aromatic and polynuclear aromatic hydrocarbons. These formation oil pollutants include benzene, toluene, ethylbenzene, naphthalene, phenanthrene, and phenol. For a complete listing of pollutants associated with SBF readers should turn to Table VII–1 in the EPA February 1999 proposal SBF Development Document (EPA–821–B–98–021). Many of these SBF pollutants are designated as hazardous pollutants under CWA section 307(a)(1), see 40 CFR. 410.15, and oil is a hazardous substance under section 311 of the CWA.

It should also be noted that many of these same pollutants can also be found in SBF discharges not associated with cuttings (e.g., incidental spills, accumulated solids, deck drainage). Also, the drilling fluid (SBF based) can contain barite and trace contaminants of several heavy metals. Incidental spills of SBF can release these toxic and hazardous pollutants into the environment. In addition, approximately 75 barrels per well of solids, of which up to 25% is SBF, accumulate in the rig mud pits, sand traps, and other equipment. These accumulated solids may be discharged during equipment cleaning operations.

SBF discharges such as spills and leaks and accumulated solids may also be co-mingled with deck drainage which may also contain other toxic and hazardous pollutants. Deck drainage includes all water resulting from spills, platform washings, deck washings, tank cleaning operations and run-off from curbs, gutters, and drains including drip pans and work areas. Lists of pollutants and pollutant concentrations, including toxic and hazardous pollutants, in untreated deck drainage are contained in Tables X–17, X–18, and X–19 of the Final Offshore Development Document (EPA–821–R–93–003).

Therefore, the BMP alternatives to numeric limitations and standards in this notice are directed, among other things, at preventing or otherwise controlling leaks, spills, and discharges of toxic and hazardous pollutants in SBF cuttings and non-cuttings wastes.

B. BMP Alternatives for SBF Discharges Associated with Cuttings

As previously stated, EPA is considering three options for the final rule for the BAT limitation and NSPS controlling SBF retained on discharged cuttings: (1) A single numeric discharge limitation with an accompanying compliance test method; (2) allowing operators to choose either a single numeric discharge limitation with an accompanying compliance test method, or as an alternative, a set of BMPs that employs limited cuttings monitoring; or (3) allowing operators to choose either a single numeric discharge limitation with an accompanying compliance test method or an alternative set of BMPs that employ no cuttings monitoring. The BMP alternatives were developed with input from EPA Regional permit writers and industry. Under the third alternative cuttings discharge, BMPs option (i.e., cuttings not monitored), EPA is also considering whether to require as a BMP the use of a cuttings dryer discussed above as representative of BAT/NSPS or to make the use of a cuttings dryer optional.

Some industry representatives have expressed an interest in using BMPs that are not demonstrated through limited cuttings monitoring as equivalent to a numeric cuttings retention limit to control discharges of SBF associated with cuttings. Two issues were identified by the industry representatives as a basis for their support of using BMPs as an alternative discharge limitation: (1) Low gravity solids (or "fines") build-up in an active mud system; and (2) engineering limitations in the installation of cuttings dryers and supporting equipment on certain rigs. If operators are correct in their assertion that setting a numeric cuttings retention limit is infeasible, EPA may use BMPs to control SBF-wastes.

As discussed in the Development Document for the February 1999 Proposal (EPA–821–B–98–021), solids control equipment generally increases the mechanical degradation of drill solids (i.e., larger particles are broken into smaller particles). An undesirable increase in drilling fluid weight and viscosity can occur when drill solids degrade into fines that cannot be removed by solids control equipment [i.e., generally classified as < 5 microns (10^{-6} meters) in length]. An unacceptable high fines content (i.e., generally > 5% of total drilling fluid weight) may consequently lead to drilling problems (e.g., undesirable rheological properties, stuck pipe). Therefore, it is possible that the increased recovery of SBF from cuttings for re-use in the active mud system, often achieved through use of the cuttings dryer in solids control systems, may lead to a build-up in fines for certain formation characteristics (e.g., high reactivity of formation cuttings, limited loss of drilling fluid into the formation).

In order to meet EPA's proposed numeric cuttings retention value where there are unfavorable formation characteristics, operators may be limited to: (1) Diluting the fines in the active mud system through the addition of "fresh" SBF; and/or (2) capturing a portion of the fines in a container and sending the fines to shore for disposal. One SBF manufacturer stated in a verbal conversation with EPA that over the course of the past year (1999), a Canadian operator generated 12,000 barrels of SBF which had a fines content

that rendered it unusable and untreatable for future drilling applications.

Currently, however, EPA does not have documentation that the build-up of fines in SBF drilling is a widespread problem in the United States or one that cannot be handled by operators in the United States. The absence of documented fines build-up problems in the GOM may be due to a sufficient loss of SBF drilling fluid with fines down-hole. This loss of fluid into the formation would require the addition of fresh SBF drilling fluid and minimize the build-up of fines. In addition, drilling rigs are now being designed and constructed to incorporate cuttings dryer and fines removal equipment into the solids control system. EPA is requesting data and comments on the expected frequency and conditions where operators are not able to meet EPA's new proposed SBF numeric cuttings retention numbers (*see* section IV.C.5) based on fines build-up in the active mud system.

Some industry representatives have also suggested that some rigs are incapable of installing the equipment needed to meet EPA's proposed numeric cuttings retention limit (*e.g.*, cuttings dryers, fines removal equipment). EPA staff visited two offshore GOM rigs where cuttings dryer and fines removal equipment was and was not able to be installed successfully into the existing solids control equipment system. The cuttings dryer that was able to be installed into the existing solids control system was smaller than the other cuttings dryer system on the other visited rig. Moreover, the successful installation also relied on an auger transport system for moving cuttings from the existing solids control system to the new cuttings dryer and fines removal equipment. The key cuttings dryer and fines removal equipment installation limitations appear to be whether rigs can install cuttings dryers and fines removal equipment near the existing solids control units and whether an auger cuttings transport system can be used to move cuttings from the existing solids control units to the new equipment. EPA's site visit and statements by industry representatives give differing viewpoints on how many rigs cannot incorporate new equipment to meet EPA's proposed cuttings retention number. Therefore, EPA requests further information and data to identify the name and number of rigs that cannot incorporate new equipment to meet EPA's cuttings retention number.

C. BMP Alternatives for SBF Discharges Not Associated with Cuttings

As previously stated, EPA is considering two options in the final rule for BAT limitation and NSPS for controlling SBFs not associated with SBF drill cuttings: (1) zero discharge; or (2) allowing operators to choose either zero discharge or an alternative set of BMPs with an accompanying compliance method. The follow sections describe several types of SBF discharges not associated with cuttings that can be controlled through either zero discharge or a set of BMPs. At this time, EPA's preferred option for these SBF non-cuttings wastes is to give operators the choice of selecting either zero discharge or using a set of BMPs to control these discharges (Option 2 identified above). This approach would give operators the flexibility of selecting a single numeric effluent limitation or a set of BMPs designed for their respective facility.

1. Accumulated Solids

Accumulated solids is one example of a non-cuttings SBF discharge. Industry representatives have stated that industry is split on the practice of discharging accumulated solids with some discharging accumulated solids provided permit limitations and standards are met and others opting to haul this material to shore for disposal (*see* section II.B.3). Approximately 75 barrels per well of fine solids and barite, of which up to 25% is SBF, accumulate in the rig mud pits, sand traps, and other equipment. Several hundred barrels (approximately 200 to 400 barrels) of water are used to wash out the mud pits. Industry representatives also indicated that those oil and gas extraction operations that discharge wash water and accumulated solids first recover free SBF.

Industry has submitted to EPA Region 6 and EPA Headquarters a list of BMPs that can minimize these discharges. Accordingly, Industry may wish to select BMPs as the method for controlling these discharges instead of zero discharge.

2. SBF Spills During Drilling Operations

Industry also noted that BMPs are already in place on most rigs to prevent spills during connections and disconnections of the drill string. Typical waste minimizing techniques include slugging the pipe (a small volume of heavy mud is pumped into the drill pipe to create a hydrostatic differential inside the drill pipe) with heavy mud. Rubber wipers may also be used on the inside and outside of the drill pipe to remove any residual mud before racking the pipe in the derrick (*i.e.*, storing the pipe on the rig). In some cases, the mud is captured with mud buckets and returned to the active mud system. Any spills on the rig floor can also be squeegeed back through the rotary into the mud system. A mud vacuum is also sometimes used. Pipe racks and the rig floor may also be designed with drip pans underneath to capture any remaining spillage. Captured fluid may go to the rig's oil/water sump for treatment and possible recovery. Industry estimated that essentially all of the SBF that spills on the rig floor is recovered using the controls described above. The amount of SBF spilled on the rig floor that is not captured by current practices is estimated by industry to be less than 1 gallon SBF per 100 feet drilled.

Industry may wish to select BMPs as the method for controlling these discharges instead of zero discharge.

D. Implementation of BMP Alternative (the BMP Plan)

BMPs are inherently pollution prevention practices. BMPs may include the universe of pollution prevention encompassing production modifications, operational changes, material substitution, materials and water conservation, and other such measures. BMPs include methods to prevent toxic and hazardous pollutants from reaching receiving waters. Because BMPs are most effective when organized into a comprehensive facility BMP Plan, EPA solicits comments on a BMP Plan requirement as a component of BMPs as an alternative to a numeric limitation or standard.

A BMP Plan would not be required if operators did not use BMPs to control SBF discharges. Moreover, EPA is proposing that operators be allowed to choose whether one or both of the two SBF wastestream (*i.e.*, SBF discharges associated with cuttings, SBF discharges not associated with cuttings) be managed through the BMP alternatives.

Accordingly, EPA is also proposing that operators only be required to develop and implement a BMP Plan for those SBF wastestreams it elects to manage through the BMP alternatives. Moreover, EPA is proposing that operators only be required to develop one BMP Plan if it elects to manage both SBF wastestreams (*e.g.*, discharges associated with cuttings and SBF discharges not associated with cuttings) through use of the BMP alternatives. As there are common elements in BMP Plans that cover both SBF wastestreams, EPA has grouped common elements together and identified specific elements for specific SBF wastestreams

in separate sections. Table V.D.1 is a guide on what BMP Plan elements are required for the different BMP alternatives.

The SBF BMP common elements were compiled from several Regional permits, an EPA guidance document [*i.e.*, Guidance Document for Developing Best Management Practices (BMP)" (EPA 833–B–93–004, U.S. EPA, 1993)], and draft industry BMPs. EPA feels that these common elements represent the appropriate mix of broad directions needed to complete a BMP Plan along with specific tasks common to all drilling operations.

TABLE V.D.1: BMP PLAN ELEMENTS REQUIRED FOR THE DIFFERENT BMP ALTERNATIVES TO SBF NUMERIC EFFLUENT LIMITATIONS GUIDELINES AND STANDARDS

BMP plan alternatives [a]	SBF wastestreams operator elects to manage with BMP alternatives			BMP plan elements [e] (listed by section of this notice)
	SBF discharges not associated with cuttings [b]	SBF discharges associated with cuttings (no monitoring) [c]	SBF discharges associated with cuttings (monitoring) [d]	
1	X			Sec. V.D.1 to 5,6.
2	X	X		Sec. V.D.1 to 5,6,7.
3	X		X	Sec. V.D.1 to 5,6,8.
4		X		Sec. V.D.1 to 5,7.
5			X	Sec. V.D.1 to 5,8.

[a] Operators that elect to meet numeric limitations and standards are not required to develop BMPs or a BMP Plan.
[b] This includes incidental SBF spills, accumulated solids, and deck drainage (*see* section V.C).
[c] This includes SBF discharges associated with cuttings with no equivalency determination through monitoring (*see* section V.B).
[d] This includes SBF discharges associated with cuttings with an equivalency determination through monitoring (*see* section V.B).
[e] Operators are only required to develop one BMP Plan if the operator elects to manage both SBF wastestreams (*e.g.*, discharges associated with cuttings and SBF discharges not associated with cuttings) through use of the BMP alternatives.

1. SBF BMP Plan Purpose and Objectives

The BMP Plan must be designed to prevent or minimize the generation and the potential for the discharge of SBF from the facility to the waters of the United States through normal operations and ancillary activities. The Permittee must establish specific objectives for the control of SBF by conducting the following evaluations:

a. The Permittee should identify which SBF wastestreams (i.e., cuttings related or non-cuttings related) are to be controlled through use of the BMP alternatives and which SBF wastestreams are to be controlled through use of numeric effluent limitation guidelines and standards.

b. Each facility component or system controlled through use of BMP alternatives must be examined for its SBF-waste minimization opportunities and its potential for causing a discharge of SBF to waters of the United States due to equipment failure, improper operation, natural phenomena (e.g., rain, snowfall).

c. For each SBF wastestream controlled through BMP alternatives where experience indicates a reasonable potential for equipment failure (e.g., a tank overflow or leakage), natural condition (e.g., precipitation), or other circumstances to result in SBF reaching surface waters, the BMP Plan should include a prediction of the direction, rate of flow and total quantity of SBF which could be discharged from the facility as a result of each condition or circumstance.

2. Requirements

The BMP Plan must be consistent with the objectives in section V.D.1. The BMP Plan may reflect requirements within spill response plans required by the Minerals Management Service (*see* 30 CFR 254) or other Federal or State requirements and incorporate any part of such plans into the BMP Plan by reference.

The Permittee must certify that its BMP Plan is complete, on-site, and available upon request to EPA or the NPDES Permit controlling authority. This certification should identify the NPDES permit number and be signed by an authorized representative of the Permittee. For new exploratory operations, the certification should be submitted no later than the written notice of intent to commence discharge. For existing dischargers, the certification should be submitted within one year of permit issuance. The BMP Plan must:

a. Be documented in narrative form, and must include any necessary plot plans, drawings or maps, and must be developed in accordance with good engineering practices. At a minimum, the BMP Plan must contain the planning, development and implementation, and evaluation/reevaluation components. Examples of these components are contained in "Guidance Document for Developing Best Management Practices (BMP)" (EPA 833–B–93–004, U.S. EPA, 1993).

b. Include the following provisions concerning BMP Plan review:

(i) Be reviewed by plant engineering staff and the plant manager as warranted by changes in the operation or at the facility which are covered by the BMP.

(ii) Be reviewed and endorsed by the individuals responsible for development and implementation of the BMP Plan. Such review and endorsement may be performed by the establishment of a program of documented initial and annual refresher training of drilling equipment operators, maintenance personnel, and other technical and supervisory personnel who have responsibility for operating, maintaining, or supervising the operation and maintenance of drilling equipment.

(iii) Include a statement that the above reviews have been completed and that the BMP Plan fulfills the requirements set forth in this section of the notice. The statement must be certified by the dated signatures of the individuals responsible for development and implementation of the BMP Plan.

c. Establish specific best management practices to meet the objectives identified in section V.D.1, addressing each component or system capable of generating or causing a release of significant amounts of SBF, and identifying specific preventative or remedial measures to be implemented.

3. Documentation

The Permittee must maintain a copy of the BMP Plan and related documentation (e.g., training certifications, summary of the monitoring results, records of SBF-equipment spills, repairs, and maintenance) at the facility and must make the BMP Plan and related

documentation available to EPA or the NPDES Permit controlling authority upon request. Submission of the BMP Plan and related documentation shall be at the frequency established by the NPDES permit control authority (i.e., Permit monitoring reports), but in no case less than once per five years.

4. BMP Plan Modification

For those SBF wastestreams controlled through BMP alternatives, the Permittee must amend the BMP Plan whenever there is a change in the facility or in the operation of the facility which materially increases the generation of those SBF-wastes or their release or potential release to the receiving waters. At a minimum the BMP Plan must be reviewed once every five years and amended within three months if warranted. Any such changes to the BMP Plan must be consistent with the objectives and specific requirements listed above. All changes in the BMP Plan must be reviewed by the plant engineering staff and plant manager.

5. Modification for Ineffectiveness

At any time, if the BMP Plan proves to be ineffective in achieving the general objective of preventing and minimizing the generation of SBF-wastes and their release and potential release to the receiving waters and/or the specific requirements above, the permit and/or the BMP Plan must be subject to modification to incorporate revised BMP requirements.

6. Specific Pollution Prevention Activities for SBF Discharges Not Associated With Cuttings

An approved BMP Plan may include the following examples of specific pollution prevention activities for controlling SBF discharges not associated with cuttings.

a. Establishing programs for identifying, documenting, and repairing leaking SBF equipment, tracking SBF equipment repairs, and training personnel to report and evaluate SBF spills, as detailed in section V.E.2.c and V.E.2.d below.

b. Establishing programs for identifying, documenting, and repairing malfunctioning SBF equipment, tracking SBF equipment repairs, and training personnel to report and evaluate malfunctioning SBF equipment.

c. Recovering and returning to the process or an appropriate storage container to the maximum extent practicable spilled or leaked drilling fluids to prevent their discharge.

d. Immediately recovering spills of drilling fluid on the drill floor using a vacuum, grated trough, or comparable system.

e. Providing adequate containment for SBF spills on the drill deck to minimize potential spills.

f. Establishing mud pit and equipment cleaning methods in such a way as to minimize the potential for drilling fluids discharges, including but not limited to the following:

(i) Ensuring proper operation and efficiency of mud pit agitation equipment.

(ii) Using mud gun lines during mixing to provide agitation in dead spaces to minimize solids accumulation.

(iii) Pumping drilling fluids off for use, recycle, or disposal before using wash water to dislodge solids.

(iv) Limiting the volume of wash water used to the minimum needed to dislodge and slurry solids for overboard discharge.

(v) Using water-minimizing techniques (e.g., steam or compressed air) where possible to clean the sides of the mud pit.

g. The Permittee must also include the number and dates of non-cuttings SBF-discharges managed by BMPs in their NPDES permit reports. The description of these discharges must also include estimated volume of SBF discharged and any corrective actions taken to respond to such non-cuttings SBF-discharges.

7. Specific Pollution Prevention Activities for SBF Discharges Associated With Cuttings (No-Verification Cuttings Monitoring)

The following specific pollution prevention activities are required in a BMP Plan when operators elect to control SBF discharges associated with cuttings by a set of BMPs where no equivalency determination is made through limited cuttings monitoring.

a. Establishing programs for identifying, documenting, and repairing malfunctioning SBF equipment, tracking SBF equipment repairs, and training personnel to report and evaluate malfunctioning SBF equipment.

b. Establishing operating and maintenance procedures for each component in the solids control system in a manner consistent with the manufacturer's design criteria for flow, fluid type, density, and rheological properties, which may include, but are not limited to, the following:

(i) Maintaining shale shakers such that units have adequate capacity for circulating the active drilling fluid volume, have screens of such mesh size that no more than 75% of screen area is wet, and maintain the manufacturer's design screen tension, maximum "G" force, maximum positive screen deck angle, and maximum vibrator assembly angle to screen deck;

(ii) Maintaining centrifuges such that units have sufficient capacity for active drilling fluid volume (note: for most situations where 8.5" or larger hole sizes are drilled, multiple units may be required), have bowl revolutions per minute (RPM) adjusted as high as practical to maximize "G" force, have bowl/conveyor RPM differential minimized to subject cuttings to "G" Force for the maximum time period before leaving the unit, have feed tube adjusted to introduce cuttings to the maximum bowl diameter as they enter the unit, and have processing rates closely monitored to maximize cuttings discharge with minimum SBF retention.

c. Using gel pills or other applicable measures in order to minimize contamination of drilling fluids when changing from water-based to non-aqueous based drilling fluids and vice versa.

d. Sending interface muds through the mud recovery system prior to discharge or disposal.

8. Specific Pollution Prevention Activities for SBF Discharges Associated With Cuttings (Verification Cuttings Monitoring)

The following specific pollution prevention activities are required in a BMP Plan when operators elect to control SBF discharges associated with cuttings by a set of BMPs that are demonstrated, through limited cuttings monitoring, to meet the same level of control as the BAT/NSPS cuttings retention limit.

a. All the specific pollution prevention activities in section V.D.7

b. A daily retort analysis must be performed (in accordance with Appendix 7 to Subpart A of Part 435) during the first 0.33 X days where X is the anticipated total time (in days) to drill that particular well. The retorts analyses will be documented in the well retort log.

(i) When the arithmetic average of the cuttings retort analyses is less than the numeric cuttings retention limitation and standard, monitoring of cuttings may cease for that individual well.

(ii) When the arithmetic average of the cuttings retort analyses is greater than the numeric cuttings retention limitation and standard, monitoring will continue for the second 0.33X days where X is the anticipated total time (in days) to drill that particular well. If after the second 0.33X, the arithmetic average of the cuttings retort analyses is still greater than numeric cuttings retention

limitation and standard then monitoring will continue for the remainder of the well operation. Moreover, this incident will be reported within one week to EPA or the NPDES Permit controlling authority for review and recommendations.

c. The Permittee must also include the cuttings monitoring data and dates of monitored and non-monitored SBF-cuttings discharges managed by BMPs in their NPDES permit reports.

E. Paperwork Reduction Act Requirements Related to BMPs Alternatives

The information collection requirements related to the BMP alternatives in this notice have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1953.01) and a copy may be obtained from Sandy Farmer by mail at Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460; by e-mail at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy may be downloaded from the Internet at http://www.epa.gov/icr.

The BMP alternatives identified in this notice include information collection requirements that are intended to control the discharges of SBF in place of numeric effluent limitations and standards. These information collection requirements include, for example: (1) Training personnel; (2) analyzing spills that occur; (3) identifying equipment items that might need to be maintained, upgraded, or repaired; (4) identifying procedures for waste minimization; (4) performing monitoring (including the operation of monitoring systems) to establish equivalence with a numeric cuttings retention limitation and to detect leaks, spills, and intentional diversion; and (5) generally to periodically evaluate the effectiveness of the BMP alternatives.

The BMP alternatives also require operators to develop and, when appropriate, amend plans specifying how operators will implement the specified BMP alternatives, and to certify to the permitting authority that they have done so in accordance with good engineering practices and the requirements of the regulation. The purpose of those provisions is, respectively, to facilitate the implementation of BMP alternatives on a site-specific basis and to help the regulating authorities to ensure compliance without requiring the submission of actual BMP Plans. Finally, the recordkeeping provisions are intended to facilitate training, to signal the need for different or more vigorously implemented BMP alternatives, and to facilitate compliance assessment.

EPA has structured the BMP alternatives to provide maximum flexibility to the regulated community and to minimize administrative burdens on National Pollutant Discharge Elimination System (NPDES) permit authorities that regulate oil and gas extraction facilities. Although EPA does not anticipate that operators will be required to submit any confidential business information or trade secrets as part of this ICR, all data claimed as confidential business information will be handled by EPA pursuant to 40 CFR Part 2.

For the five SBF BMP alternatives (*see* Table V.D.1), the public reporting burdens range from an estimated 515 hours per respondent per year [i.e., (12,500 initial hours/3 years + 21,604 annual hours/year)/50 SBF well operators] to 1,363 hours per respondent per year [i.e., (17,500 initial hours/3 years + 62,334 annual hours/year)/50 SBF well operators]. EPA also estimated the annual burden for EPA Regions, the NPDES permit controlling authorities, to review BMPs and ensure compliance. EPA estimates that essentially all of the SBF discharges will occur in Federal offshore waters or in Cook Inlet, Alaska, where EPA Region X retains NPDES permit controlling authority. The EPA Regional burden for reviewing BMP Plans is estimated at 5.7 hours per year [i.e., (8 initial hours/3 years + 3 annual hours/year)/50 SBF well operators].

For new exploratory operations, the certification of BMP Plan completion should be submitted to the permit control authority no later than the written notice of intent to commence discharge. For existing dischargers, the certification should be submitted within one year of permit issuance. In addition, a copy of the completed BMP Plan may be requested by the NPDES permit control authority at any time. Submission of records to the permit control authority demonstrating periodic review of the BMP Plan are due at a minimum once every five years. Monitoring reports demonstrating compliance with the BMP Plan are due to the permit control authority at the frequency set by the permit control authority (e.g., monthly or annually) and may be requested by the permit control authority on demand. Re-fresher training certifications demonstrating compliance with the BMP Plan are due to the permit control authority at the frequency set by the permit control authority (e.g., semi-annually) and may be requested by the permit control authority on demand.

For the five SBF BMP alternatives (*see* Table V.D.1), the public reporting costs range from approximately $18,600 per respondent per year [i.e., ($921,875 initial costs/3 years + $623,625 annual costs/year)/50 SBF well operators] to $38,000 hours per respondent per year [i.e., ($1,290,625 initial costs/3 years + $1,465,100 annual costs/year)/50 SBF well operators]. The EPA Regional costs for reviewing BMP Plans is estimated at approximately $180 per year [i.e., ($12,800 initial costs/3 years + $4,800 annual costs/year) / 50 SBF well operators].

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes time needed to: review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with previously applicable instructions and requirements; train personnel to be able to respond to the collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after April 21, 2000, a comment to OMB is best assured of having its full effect if OMB receives it by May 22, 2000. The final rule will respond to any OMB or public comments on the information collection requirements contained in this notice.

Dated: April 12, 2000.

J. Charles Fox,

Assistant Administrator for Water.

[FR Doc. 00–9655 Filed 4–20–00; 8:45 am]

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Friday,
April 21, 2000

Part IV

Environmental Protection Agency

40 CFR Parts 141 and 142
National Primary Drinking Water Regulations; Radionuclides; Notice of Data Availability; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–6580–6]

RIN–2040–AC98

National Primary Drinking Water Regulations; Radionuclides; Notice of Data Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability for proposed rules with request for comments.

SUMMARY: The Environmental Protection Agency (EPA) proposed regulations to limit the amount of radionuclides found in drinking water on July 18, 1991. In general, the proposal revised current National Primary Drinking Water regulations (NPDWR); a NPDWR was proposed for uranium which is unregulated. Since that time, new information has become available which the Agency is considering in finalizing these proposed regulations. In addition, the 1996 Amendments to the Safe Drinking Water Act (SDWA) contained provisions which directly affect the 1991 proposed rule.

This document presents additional information relevant to the Maximum Contaminant Level Goals (MCLGs), the Maximum Contaminant Levels (MCLs), and monitoring requirements contained in the 1991 proposal. EPA is seeking public review and comment on these new data. The Agency is also soliciting comments on several implementation options that are being evaluated for inclusion in the final regulations.

DATES: Written comments should be postmarked or delivered by hand by June 20, 2000.

ADDRESSES: Send written comments to the W–00–12 Radionuclides Rule Comment Clerk, Water Docket (MC–4101), 1200 Pennsylvania Ave., NW, Washington, DC 20460 or by sending electronic mail (e-mail) to ow-docket@epa.gov. Hand deliveries should be delivered to: EPA's Drinking Water Docket at 401 M Street, SW, East Basement (Room EB 57), Washington, DC 20460. Please submit an original and three copies of your comments and enclosures (including references). If you wish to hand-deliver your comments, please call (202) 260–3027 between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Federal holidays, to obtain the room number for the Docket. Please see Supplementary Information under the heading "Additional Information for Commenters" for detailed filing instructions, including electronic submissions.

The record for the proposal has been established under the docket name: National Primary Drinking Water Regulations for Radionuclides (W–00–12). The record includes supporting documentation as well as printed, paper versions of electronic comments. The record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays at the Water Docket, 401 M Street SW, East Basement (Room EB 57), Washington, DC 20460. For access to the Docket materials, please call (202) 260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact David Huber, Standards and Risk Management Division, Office of Ground Water and Drinking Water, EPA (MC–4607), 401 M Street SW, Washington, DC 20460; telephone (202) 260–9566. In addition, the Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Standard Time. The Safe Drinking Water Hotline, toll free 1–800–426–4791.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by the Radionuclides Rule are public water systems that are classified as either community water systems (CWSs) or non-transient non-community water systems (NTNCWSs). Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Privately-owned CWSs and NTNCWSs.
State, Tribal, and Local Governments.	Publicly-owned CWSs and NTNCWSs.

This table lists the types of entities, currently known to EPA, that could potentially be regulated by the Radionuclides Rule. It is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the Radionuclides Rule. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by the Radionuclides Rule, you should carefully examine the applicability criteria in §§ 141.15 and 141.26 of title 40 of the Code of Federal Regulations, and the definitions of Community Water systems and Non-Transient, Non-Community water systems in § 141.2 If you have questions regarding the applicability of the Radionuclides Rule to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Additional Information for Commenters

To ensure that EPA can read, understand and therefore properly respond to your comments, the Agency requests that commenters follow the following format: type or print comments in ink, and cite, where possible, the paragraph(s) in this document to which each comment refers. Please use a separate paragraph for each issue discussed and limit your comments to the issues addressed in today's Document.

If you want EPA to acknowledge receipt of your comments, enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments also may be submitted electronically to ow-docket@epamail.epa.gov. Electronic comments must be submitted as a WordPerfect 8.0 or ASCII file avoiding the use of special characters and forms of encryption and must be transmitted by midnight June 20, 2000. Electronic comments must be identified by the docket name, number, or title of the **Federal Register**. Comments and data also will be accepted on disks in WordPerfect 8.0 or in ASCII file format. Electronic comments on this document may be filed online at many Federal Depository Libraries.

Abbreviations and Acronyms Used in This Notice

Organizations

APHA—American Public Health Association
ASTM—American Society for Testing and Materials
AWWA—American Water Works Association
ICRP—International Commission on Radiological Protection
NBS—National Bureau of Standards
NSF—National Sanitation Foundation
ANPRM—Advanced Notices of Proposed Rulemaking
ATSDR—Agency for Toxic Substances and Disease Registry
BNL—Brookhaven National Laboratory
CFR—Code of Federal Regulations
EML—Environmental Measurements Laboratory
ERAMS—Environmental Radiation Ambient Monitoring System
ERD—Environmental Radiation Data
ERIC—Educational Resources Information Center
FGR–13—Federal Guidance Report 13
FR—Federal Register
FRC—Federal Radiation Council
NAS—National Academy of Sciences
NCHS—National Center for Health Statistics
NESHAP—National Emissions Standards for Hazardous Air Pollutants
NIRS—National Inorganic and Radionuclide Survey

NIST—National Institute of Standards and Technology
NODA—Notice of Data Availability
NPDES—National Pollutant Discharge Elimination System
NPDWRs—National Primary Drinking Water Regulations
NRC—National Research Council
NRC—Nuclear Regulatory Commission
NTIS—National Technical Information Service
ORNL—Oak Ridge National Laboratory
SAB—Science Advisory Board
RADRISK—a computer code for radiation risk estimation
SWTR—Surface Water Treatment Rule
T&C—Technologies and Cost document
UCMR—Unregulated Contaminant Monitoring Rule
USDOE—United States Department of Energy
USDW—underground source of drinking water
USEPA—United States Environmental Protection Agency
USGS—United States Geological Survey
USSCEAR—United Nations Scientific Committee on the Effects of Atomic Radiation

Units of Measurement

Bq—Becquerel
Ci—Curie
EDE/yr—effective dose equivalent per year
kBq—kiloBecquerels
kBq/m ^{3}—kiloBecquerels per cubic meter
kg—kilogram
kgpd—kilogram per day
Mgkd—milligram per kilogram per day
L—liter
L/day—liter per day
mg—milligram
mg/L—milligram per liter
mg/kg—milligram per kilogram
mg UN/L—milligram uranyl nitrate per liter
mg/kg/day—milligram per kilogram per day
mg U/kg/day—milligram uranium per kilogram per day
mgd—million gallons per day
mL—milliliter
mrem—millirem
mrem/yr—millirem per year
Sv—Sievert
µCi—microCurie
µCi/kg—microCurie per kilogram
µg or ug—microgram
µg/g or ug/g—microgram per gram
µg/L or ug/L—microgram per liter
µg uranium/L—microgram uranium per liter
µg uranium/kg/day—microgram uranium per kilogram per day
µR/hr—micro Roentgen per hour
µSv/cm—micro Sievert per centimeter
NTU—Nephelometric Turbidity Unit
pCi—picoCurie
pCi/day—picoCurie per day
pCi/g—picoCurie per gram
pCi/L—picoCurie per liter
pCi/µg—picoCurie per microgram

Other Terms

ACA—anticentromere antigen
ALP—alkaline phosphatase
AS—alpha spectrometry
BAT—best available treatment
BEIR—biological effects of ionizing radiation
BMG—β_2-microglobulin
CWS—community water systems
DL—detection limit
EDE—effective dose equivalent
FSH—follicle stimulating hormone
GGT—gamma glutamyl transferase
GI—gastrointestinal
IE—ion exchange
LDH—lactate dehydrogenase
LET—low energy transfer
LOAEL—lowest observed adverse effect level
LP—Laser phosphorimetry
MCL—maximum contaminant levels
MCLG—maximum contaminant level goals
MDL—method detection limit
n—number
NAG—N-acetyl-β-D-glucosaminidas
NTNC—non-transient, non-community
NTNCWS—non-transient, non-community water systems
PBMS—performance based measurement system
PE—performance evaluation
POE—point-of-entry
POU—point-of-use
PQL—practical quantitatiofi level
PT—performance testing
PWS—public water systems
RF—risk coefficient
RfD—reference dose
RO—reverse osmosis
RSC—relative source contribution
SM—standard methods
SMF—standardized monitoring framework
SPAARC—Spreadsheet Program to Ascertain Residual Radionuclide Concentration
SSCTL—"Small Systems Compliance Technology List"
Stnd. Dev.—standard deviation
TR—target risk level
UIC—underground injection control

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I. Purpose and Organization of This Document

In 1976, EPA promulgated drinking water regulations for several radionuclides. In 1991 (56 FR 33050, July 18, 1991), EPA proposed revisions to the current radionuclides (i.e. beta and photon emitters, radium-226 and radium-228, and gross alpha radiation) and proposed regulations for uranium which is not currently regulated. EPA is publishing this Notice of Data Availability (NODA) to inform the public and the regulated community of new information concerning radionuclides in drinking water. EPA is evaluating these additional data to determine how they will affect the Agency's decisions relative to final regulations to control radionuclides in public water systems. The Agency is under a court agreement to publish these final regulations by November 2000. Information in today's Document includes data about the occurrence, health effects, and treatment options for radionuclides in drinking water, as well as analytical methods, and monitoring requirements. This Document also presents data concerning the costs and benefits of several regulatory options. EPA is soliciting public comment on a number of issues raised by this new information. This introduction provides an overview of the document, and some of the information available to EPA and to highlight the risk management decisions the Agency is contemplating. Subsequent sections will contain more specific information, with a focus on what is new, relative to each of the topics listed previously. Finally, to further assist the public, the Agency has compiled seven appendices, included with this NODA, with more detailed information on each of these topics in addition to the public docket of reference materials. EPA seeks comment on the data and information presented in today's NODA, particularly where regulatory options or alternatives are discussed. Commenters are asked to provide their rationale and any supporting data or information they wish to submit in support of comments offered.

Table I–1 summarizes the major elements of the 1976 rule, the 1991 proposal and the issues being considered in today's NODA.

TABLE I–1.—COMPARISON OF THE 1976 RULE, 1991 PROPOSAL, AND 2000 NODA

Provision	1976 Rule (Current Rule)	1991 Proposal	2000 NODA
Affected Systems	CWS	CWS + NTNC	CWS + several NTNC options based on the 1991 proposal.
MCLG	no MCLG	MCLG of zero	MCLG of zero.
Radium MCL	Combined Ra-226 + Ra-228 MCL of 5 pCi/L.	Ra-226 MCL of 20 pCi/L; Ra-228 MCL of 20 pCi/L.	Maintain current MCL based on corrected estimates of risk of current MCL.
Beta/Photon Emitters MCL.	4 mrem: Methodology for deriving individual concentration limits incorporated by reference; MCL = sum of the fractions of dose from one or more contaminants; risks estimated not to exceed 5.6×10^{-5}.	4 mrem ede (Effective Dose Equivalent). Derived concentration limits changed to reflect new dose limit; Current estimate of associated risks for these concentration limits are between 10^{-4} and 10^{-3} for most.	Maintain current MCL based on corrected estimates of risk of current MCL.
Gross alpha MCL	15 pCi/L excluding U and Rn, but including Ra-226.	"Adjusted" gross alpha MCL of 15 pCi/L, excluding Ra-226, radon, and uranium.	Maintain current MCL based on unacceptable risk level of 1991 proposed MCL.
Polonium-210	Included in gross alpha	Included in gross alpha	No changes to current rule. Monitoring required under the UCMR rule. Future action may be proposed at a later date.
Lead-210	Not Regulated	Included in beta particle and photon radioactivity; concentration limit proposed at 1 pCi/L.	No changes to current rule. Monitoring required under the UCMR rule. Future action may be proposed at a later date
Uranium MCL	Not Regulated	20 µg/L or 30 pCi/L w/ option for 5–80 µg/L.	Three options being considered: 20, 40, 80 µg/L and pCi/L
Ra-224	Part of gross alpha, but sample holding time too long to capture Ra-224.	Part of gross alpha, but sample holding time too long to capture Ra-224.	Same as current rule, but Ra-224 may be addressed in a future proposal.
Radium monitoring	Ra-226 linked to Ra-228; measure Ra-228 if Ra-226>3 pCi/L and sum.	Measure Ra-226 and -228 separately.	Measure Ra-226 and -228 separately
Monitoring baseline.	4 quarterly measurements. Monitoring reduction based on results: >50% of MCL required 4 samples every 4 yrs; <50% of MCL required 1 sample every 4 yrs.	Annual samples for 3 years; Std Monitoring Framework: >50% of MCL required 1 sample every 3 years; <50% of MCL enabled system to apply for waiver to 1 sample every 9 years.	Implement Std Monitoring Framework as proposed in 1991. Four initial consecutive quarterly samples in first cycle. If initial average level >50% of MCL: 1 sample every 3 years; <50% of MCL: 1 sample every 6 years; Non-detect: 1 sample every 9 years. (beta particle and photon radioactivity has a unique schedule—see Section III, part K).
Beta monitoring	Surface water systems >100,000 population Screen at 50 pCi/L/; vulnerable systems screen at 15 pCi/L.	Ground and surface water systems within 15 miles of source screen at 30 or 50 pCi/L. Those drawing water from a contaminated source screen at 15 pCi/L.	Same as 1991 proposal with clarifications.
Gross alpha monitoring.	Analyze up to one year later	Six month holding time for gross alpha samples; Annual compositing of samples allowed.	As proposed in 1991. Recommendation to analyze within 48–72 hours to capture Ra-224.
Analytical Methods	Provide methods	Method updates proposed in 1991; Current methods were updated in 1997.	Current methods with clarifications.

II. Statutory Authority and Regulatory Background

A. Safe Drinking Water Act of 1974 and Amendments of 1986 and 1996

Regulations for radionuclides in drinking water were first promulgated in 1976 as interim regulations under the authority of the Safe Drinking Water Act (SDWA) of 1974. The standards were set for three groups of radionuclides: beta and photon emitters, radium (radium-226 and radium-228), and gross alpha radiation. These standards became effective in 1977.

The SDWA Amendments of 1986 required EPA to establish health-based regulatory targets, called Maximum Contaminant Level Goals (MCLGs), for every contaminant "at the level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety." The enforceable standard, the Maximum Contaminant Level (MCL), was required to be established "as close to the health-based goal as feasible using the best available technology, taking costs into consideration." EPA proposed an MCLG of zero for the radionuclides in 1991.

In 1983 and 1986, EPA published an Advanced Notice of Proposed Rulemaking (ANPRM) requesting additional information and comments on radionuclides and numerous organic and inorganic contaminants in drinking water. The 1986 SDWA Amendments identified 83 contaminants for EPA to regulate, including the currently regulated radionuclides, which lacked an MCLG, and two additional radionuclides, uranium and radon. The Amendments also declared the 1976 interim standards to be final National Primary Drinking Water Regulations.

In 1996, Congress again amended the SDWA. These amendments included new and revised provisions that must be considered when revising drinking water regulations. Among these are the

health protection clause (section 1412(b)(9)) which requires that "any revision of a national primary drinking water regulation (NPDWR) shall be promulgated in accordance with this section, except that each revision shall maintain, or provide for greater protection of the health of persons."

The 1996 Amendments also provide for a cost-benefit analysis when publishing a proposal for new NPDWRs pursuant to section 1412 (b)(6). While the EPA had proposed the radionuclides rule prior to these Amendments, the Agency nevertheless conducted an analysis of the costs and associated benefits of all of the options described in today's Document. These analyses serve to update and revise the costs and benefits estimated for the 1991 proposed rule. For the uranium standard, the Agency solicits comment on the possible use of its new discretionary authority at section 1412(b)(6) of the SDWA, which allow for a proposed regulatory level to be set higher than the feasible level, after the Agency has made a determination that the benefits do not justify the costs at the feasible level. Note that section 1412(b)(6) applies to new standards (uranium), not to the revision of existing standards (combined radium-226 and -228, gross alpha, and beta particle and photon radioactivity). Where we expect to maintain current standards at their existing levels, no additional analysis was undertaken because the rule is already in effect.

B. The 1991 Proposal

In 1991, EPA proposed new regulations for uranium and radon, as well as revisions to the existing regulations. The proposal included the following features: (1) an MCLG of zero for all ionizing radiation; (2) revised MCLs for beta particle and photon radioactivity, radium-226, radium-228, and gross alpha emitters; (3) proposed MCLs for uranium and radon; and (4) revisions to the categories of systems required to monitor, the monitoring frequencies, and the appropriate screening levels. EPA received comments on the new data and regulatory options presented in the 1991 proposal. However, the proposal was never promulgated as a final rule in large part because of controversy surrounding the proposed MCL for radon. The 1996 Amendments to the SDWA directed the Agency to withdraw the proposed MCL for radon, which was subsequently done on August 6, 1997 (62 FR 42221).

Most of the comments EPA received on the proposal related to radon. Approximately 120 comments related to non-radon radionuclides were valuable and most are still germane to the Agency's rulemaking efforts. Those comments are addressed, as appropriate, in today's document.

C. Court Agreement

The SDWA (as amended in 1986) provided a statutory deadline to promulgate a revised radionuclide rule of June 1989, but EPA failed to meet this deadline. An Oregon plaintiff brought suit to require EPA to issue the regulations and EPA entered into a series of consent agreements setting schedules to issue regulations for the radionuclides. EPA issued a proposal in 1991. After the SDWA Amendments in 1996, EPA agreed to publish a final action with respect to the proposed regulation for uranium by November 21, 2000. EPA also agreed to either take final action by the same date with respect to radium, beta/photon emitters, and alpha emitters or publish a notice stating its reasons for not taking final action on the proposal. This latter scenario would leave the current rule in effect.

D. Statutory Requirements for Revisions to Regulations

Both the 1986 and the 1996 Amendments to the SDWA state that revisions be made to existing drinking water regulations periodically. Section 1412(b)(9) of the 1986 SDWA Amendments directed that "national primary drinking water regulations be amended whenever changes in technology, treatment techniques, and other means permit greater protection of the health of persons, but in any event, such regulations shall be revised at least once every 3 years." The 1996 SDWA Amendments provide that EPA " * * * not less than every 6 years review and revise, as appropriate, each national primary drinking water regulation," and that "any revision shall maintain, or provide for greater, protection of the health of persons."

The radionuclides emit ionizing radiation and, absent data indicating that there is a threshold level at which exposure does not present a risk, EPA uses a linear, non-threshold model to set a zero MCLG for radionuclides. This means that any exposure can potentially cause harm and that risk associated with the exposure increases proportionally to the concentration of the radionculide.

EPA's current estimate of the unit risks posed by many of the radionuclides covered by today's document has generally increased relative to the 1991 estimate. In fact, based on the newest science (Federal Guidance Report 13), the fatal cancer risks associated with the 1991 proposed MCL changes for combined radium, gross alpha, and beta particle and photon radioactivity generally exceed the Agency's risk range of 10^{-6} to 10^{-4}. This document discusses and requests comment on the issues EPA has addressed in determining how to best meet applicable SDWA provisions for each of the radionuclide categories covered by today's document.

III. Overview of Today's Document

Additional data since the 1991 proposal suggest a need to retain some portions of the proposal, while retaining much of the current rule. Any changes that are finalized must meet the provisions for public health protection in accordance with the 1996 Amendments. EPA has presented its approach for finalizing the non-radon portions of the 1991 radionuclides proposal at several public meetings.

In December 1997 EPA held a public forum (stakeholder meeting) to discuss the requirements and limitations of the new Amendments pertaining to revisions to the radionuclide regulation. The Agency discussed most of the concepts presented in this document and received valuable feedback from the public, the regulated community, and other Federal Agencies. In this Document, EPA is presenting the current information and options upon which the Agency will make its decisions regarding revisions to the existing standards. At the same time, the Agency is requesting additional data and comments on the approach EPA expects to take in formulating the final rule.

The most significant new information concerns the occurrence, monitoring, and health effects of radionuclides in drinking water. Recent data suggest a more widespread occurrence of certain radionuclides which may point to a need for improved monitoring for these radionuclides in certain areas of the country. Conversely, a better understanding of the occurrence patterns may also indicate the need for less frequent monitoring. The newest health effects models, which are based on improved age-dependent biokinetic and dosimetric models of the effects of ionizing radiation on the body and more recent epidemiological information, reveal that radionuclides generally present a somewhat greater risk than the estimates of previous models, including the 1991 RADRISK model. EPA's publication "Federal Guidance Report 13" (FGR–13, EPA 1999b) discusses the newest risk modeling. The resulting risk estimates based on of the new health effects models are largely the reason for the publication of this document. The

following are some aspects of the NODA which the Agency would like to highlight.

A. Health Risk Consistency With Chemical Carcinogens

The risks associated with exposure to chemical carcinogens are usually expressed as the risks of illness. It is EPA policy to issue standards that maintain a risk ceiling in the target risk range of 10^{-6} (one in one million) up to 10^{-4} (one in ten thousand). For consistency between the level of protection between chemical and radiological drinking water contaminants, EPA is considering utilizing whichever risk provides the greater protection for MCL changes, a 1×10^{-4} risk of cancer incidence, or a mortality risk at half the incidence, 5×10^{-5}. The risk of death at 5×10^{-5} is the more protective if the mortality rate from a particular radionuclide is more than 50%, which is true for most of the radionuclides. However, for the thyroid, the mortality rate from thyroid cancer is at 10%. Protecting at 1×10^{-4} incidence corresponds to a mortality at 1×10^{-5}. Conversely, protecting at 5×10^{-5} mortality with only a 10% mortality rate allows an incidence, of 5×10^{-4}, a less protective number.

B. Drinking Water Consumption

EPA received comments in 1991 from the American Water Works Association (AWWA), the Colorado Water Quality Commission, the Atlantic Richfield Co., and the Rio Algom Mining Corp. suggesting that consumption of drinking water was actually 1.2 liters per day, thus EPA was being too conservative in using two liters per day.

When establishing an MCL for a carcinogen, the risk which the MCL would represent is considered as well as treatability and costs. Radionuclides will have an MCLG of zero, with MCLs based on standard assumptions of two liters intake per person per day (2 L/day), an average individual weight of 70 kg, and a 70 year life span. EPA now has data to indicate that the average consumption of tap water is 1.1 liters per day per person and that a consumption rate of 2.2 L/day represents the 90th percentile consumption level.[1] Basing the MCL on a consumption rate higher than the average value is justified since MCLs are intended to be protective of the persons that comprise the population and not just "typical individuals". Since a consumption value of 2 L/day is less than the 90th percentile consumption rate, EPA believes that its assumption of 2 L/day for MCL determinations is not overly conservative and is justifiable.

When computing the national benefits of a regulation and the estimate of cancer mortality risks or risk reductions, EPA is now using 1.1 liters per person per day (L/day) of water as the estimate of the average daily consumption rate for individuals. In effect, this reduces population risk estimates by approximately one half and reduces the estimate of risk reductions by approximately one half. Since benefits calculations are based on risk reductions, this reduces monetized benefits by approximately one half. It should be noted that it is consistent to set health protection levels based on a subset of individuals that face the highest risks (sensitive subpopulations and/or the substantial minority of the population have higher water consumption levels), while estimating benefits based on average individuals (average consumption and sensitivity). EPA believes this approach leads to protective MCLs and realistic benefits calculations.

C. Risk Modeling and the MCL

The Agency's current radionuclides health effects model is based on Federal Guidance Report 13 (FGR–13, EPA 1999b). The Agency's new health effects model uses state-of-the-art methods, models and data that are based on the most recent scientific knowledge. Compared with the approaches used in 1976 and 1991, the revised methodology includes substantial refinements (described in appendix II, "Health Effects"). While commenters have pointed out the MCLs in the current rule are based on "old science", the newest science indicates that many of the MCLs proposed in 1991 have corresponding risks that are much greater than the upper limit of the Agency's acceptable lifetime excess risk range of approximately 10^{-6} to 10^{-4} (one in one million to one in ten thousand lifetime excess risk of cancer). The risks associated with each existing and proposed MCL are described in sections that follow. The risk models are described in detail in appendix II (Health Effects) and in the Technical Support Document for the Radionuclides Notice of Data Availability (EPA 2000a).

Between 1976 and the present, different scientific models have been used to calculate risks from radiation exposure. Each model derives a different concentration of a particular nuclide for a given level of risk. For example, in 1991, the RADRISK model indicated that consuming drinking water with radium-228 at 26 pCi/L would lead to an excess lifetime cancer risk of 1×10^{-4}. However, using today's model (based on Federal Guidance Report 13), the best estimate of lifetime risk of Ra-228 at 26 pCi/L is 1×10^{-3}, a risk value ten times greater than thought in 1991.

Likewise, the 1991 proposed MCL for Ra-228 at 20 pCi/L was thought to correspond to lifetime excess cancer risk of 7.7×10^{-5}. The most current risk estimate for Ra-228 at 20 pCi/L 7.7×10^{-4}, again ten-fold greater and much higher than the Agency's target risk ceiling of 10^{-4}. For individuals consuming water with 20 pCi/L of both Ra-228 and Ra-226, the risk was thought to be 1.7×10^{-4} in 1991. However, based on the newest science, these individuals would be exposed to lifetime excess risks of 1×10^{-3} risk (one in a thousand), a risk level 10-fold higher than the Agency's target risk ceiling for drinking water MCLs. EPA requests comments on these issues.

D. Sensitive Sub-Population: Children

The age-specific, sex-specific models used by EPA for estimating risk from ionizing radiation implicitly provide for risk differentiation by gender and age. The computer program suite, DCAL (FGR–13), uses age-specific metabolic models to calculate the dose from a unit intake of a radioisotope during each year of life from birth to 120 years of age. Age-specific organ masses are used for all ages up to adult, and for adult males and adult females. Risk coefficients are given by age and sex for each year of life from birth to 120 years of age. The risk is then calculated by combining calculated doses and age-sex-specific risk coefficients with age-sex-specific intake data and age-sex-specific survival data.

A separate risk analysis for children was performed and is described in appendix II (Health Effects), part C. Risks to children are explicitly considered when setting MCLs for radionuclides. In the case of the regulated water systems (currently, community water systems), children are fully protected. In the case of the unregulated systems of potential concern (non-transient non-community water systems, NTNCWSs), the analysis is more complicated. Risks to children served by NTNCWSs are discussed in appendix II, part C, number 3.

[1] If one ranked, from lowest to highest, the average daily water consumption levels for every CWS customer in the U.S., the "90th percentile" value of 2.2 L/day is the best estimate of the value for which 90 percent of the population would drink that much or less on an typical day.

E. MCL for Beta Particle and Photon Radioactivity

1. EPA's Plans for Finalizing the 1991 Proposed MCL for Beta and Photon Radioactivity

This section presents the important considerations that have led EPA to consider retaining the current MCL for beta particle and photon radioactivity when the 1991 proposal is finalized in November of 2000. EPA is, however, also considering finalizing the 1991 proposed changes to the monitoring requirements for beta particle and photon radioactivity, as described later in this section. The current MCL is (40 CFR 141.16):

(a) The average annual concentration of beta particle and photon radioactivity from man-made radionuclides in drinking water shall not produce an annual dose equivalent to the total body or any internal organ greater than 4 millirem/year.

(b) Except for the radionuclides listed in Table A, the concentration of man-made radionuclides causing 4 mrem total body or organ dose equivalents shall be calculated on the basis of a 2 liter per day drinking water intake using the 168 hour data listed in "Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air or Water for Occupational Exposure," NBS Handbook 69 as amended August 1963, U.S. Department of Commerce. If two or more radionuclides are present, the sum of their annual equivalent to the total body or to any organ shall not exceed 4 millirem/year.

TABLE A.—AVERAGE ANNUAL CONCENTRATIONS ASSUMED TO PRODUCE A TOTAL BODY OR ORGAN DOSE OF 4 MREM/YEAR.

Radionuclide	Critical organ	pCi per liter
Tritium	Total body	20,000
Strontium-90	Bone marrow ..	8

Following these instructions leads to a unique list of concentration limits for 168 other man-made radionuclides. This list is included in today's document in appendix II, "Health Effects."

The 1991 proposed MCL for beta emitter and photon radioactivity was 4 mrem-ede (effective dose equivalents), with the footnote:

"NOTE. —The unit mrem-ede/yr refers to the dose committed over a period of 50 years to reference man (ICRP 1975) from an annual intake at the rate of 2 liters of drinking water per day."

Following these instructions leads to a unique list of concentration limits for 230 radionuclides. EPA has determined that there is no way to update the 4 mrem dose basis (1976) for the beta particle and photon radioactivity MCL without the extensive process of a new proposal. While some stakeholders have suggested that reverting to the existing rule for beta particle and photon radioactivity ("beta emitters") is relying on "old science," it should be pointed out the newest risk estimates, based on the peer-reviewed Federal Guidance Report 13, indicates that the risks associated with the 1991 proposed MCL of 4 mrem-ede (effective dose equivalents) are above the 10^{-4} risk level (10^{-3} to 10^{-4}) for many of the beta emitters. Figure 1 shows the most current risk estimates for the beta emitter concentration limits derived under both the current and proposed MCLs. As the figure shows, the current MCL results in concentration limits with risks that fall within the Agency's risk range goal of 10^{-6} to 10^{-4} (while some are slightly above and some slightly below, all round to values within these orders of magnitude).

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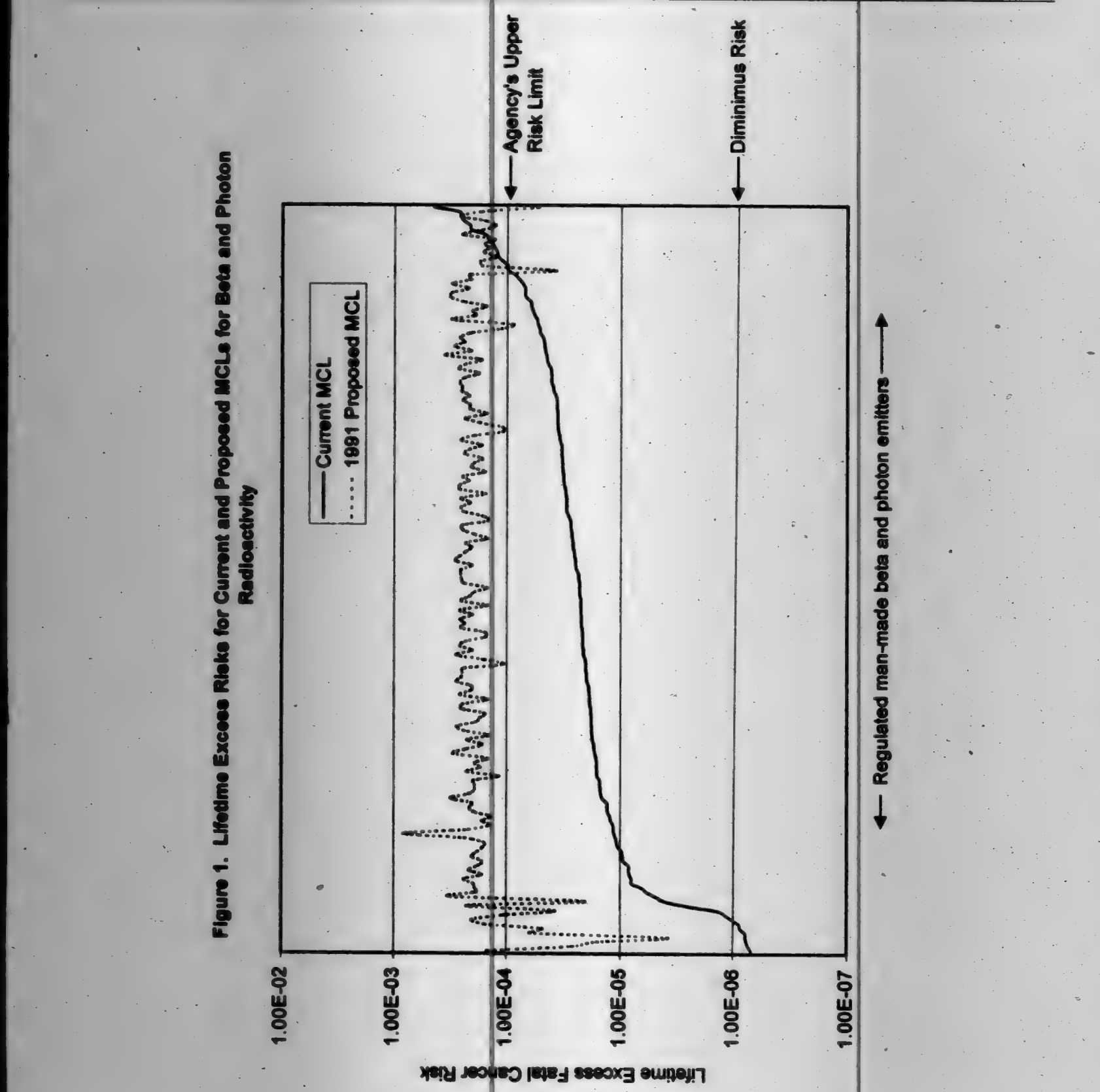

Figure 1. Lifetime Excess Risks for Current and Proposed MCLs for Beta and Photon Radioactivity

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In summary, the Agency fully recognizes that the dose-based MCL of 4 mrem/year is based on older scientific models. However, the Agency has decided to retain the current MCL given that:

- Federal Guidance Report 13 (FGR–13, EPA 1999b) demonstrates that the 1991 proposed MCL of 4 mrem-ede/year results in concentration limits that are outside the 10^{-6} to 10^{-4} range;
- FGR–13 demonstrates that the current MCL of 4 mrem/year results in concentration limits that are within the 10^{-6} to 10^{-4} range;
- the fact that there is no evidence of appreciable occurrence of man-made beta emitters in drinking water;
- the 1996 Safe Drinking Water Act requires EPA to evaluate all NPDWRs every six years ("Six Year Review").

EPA believes that Six Year Review is the appropriate vehicle for updating the beta particle and photon radioactivity MCL.

2. Beta Particle and Photon Radioactivity Monitoring

Currently, surface water systems serving more than 100,000 persons are required to monitor for beta particle and photon radioactivity using a screening level of 50 pCi/L, while systems that are determined to be vulnerable by the State are required to monitor using a screening level of 15 pCi/L. In 1991, EPA proposed that all ground water and surface water systems within 15 miles of a potential source, as determined by the State, be required to monitor using a screening level of 30 or 50 pCi/L. EPA is considering retaining the current monitoring requirement of a 15 pCi/L screen for water systems drawing water from contaminated sources. EPA solicits comment on these issues. EPA is taking comment on screening levels of 30 or 50 pCi/L for systems within 15 miles of a potential source.

3. Lead-210 and Radium-228

The 1991 proposal included lead-210 (Pb-210) and radium-228 (Ra-228) in the list of regulated beta and photon emitters, both of which are naturally occurring. An 1991 the Agency was considering raising the Ra-228 MCL to 20 pCi/L, which is high enough to significantly contribute to gross beta levels. However, since the Agency is retaining the current combined Ra-226 and Ra-228 standard of 5 pCi/L, Ra-228 will no longer be a significant contributor to gross beta. For the reason, the Agency sees no value in including Ra-228 in the list of beta/photon emitters.

New risk analyses indicate that Pb-210 is of concern well below the current and proposed screening levels for beta and photon emitters. In order to assess the occurrence of Pb-210 to determine if it is present at levels high enough to warrant separate monitoring, EPA has included it on the list published in the Unregulated Contaminant Monitoring Rule (UCMR) (64 FR 50556, Friday, September 14, 1999). USGS also monitored for Pb-210 in its study with EPA of 100 locations. The reader is referred to appendix I and the Technical Support Document (EPA 2000a) for further information regarding this study. Since Pb-210 specific monitoring was not proposed in 1991, EPA cannot address this concern without a new proposal. After occurrence data has been reviewed from the UCMR, EPA may propose appropriate actions.

F. Combined Ra-226 and Ra-228

1. MCL Considerations

The combined radium-226 and -228 NPDWR has long been a contentious issue. A number of water systems believe the current MCL is too stringent and have not installed treatment or taken other measures to comply. EPA first proposed the possibility of increasing the current 5 pCi/L limit for combined radium-226 and -228 in 1991. The proposal suggested a new level of 20 pCi/L for Ra-226 and Ra-228 separately along with a proposed limit of 300 pCi/L for radon-222 . This combination was proposed in part due to the disproportionate costs of removing radium compared to radon. The proposal was met with opposition, largely due to the controversy surrounding the radon component. In the ensuing deliberations, debates regarding the radon component of the proposal interfered with promulgation of the proposal. In the 1996 Amendments to the SDWA, Congress directed EPA to remove the radon component from the proposal. Consequently, the Agency has once again considered the issues surrounding the allowable concentration of radium-226 plus radium-228 in drinking water.

EPA is considering retaining the current MCL for combined radium-226 and -228 at 5 pCi/L for the following reasons. First, the unit risks for Ra-226 and Ra-228 are believed to be much greater than estimated in 1991, such that raising the combined Ra-226 and Ra-228 MCL up to 20 pCi/L for each radionuclide would result in a lifetime excess cancer risks that are ten-fold higher than the Agency's acceptable risk range of 10^{-6} to 10^{-4}. And second, EPA is required to consider the MCL for Ra-226 and Ra-228 apart from any NPDWR for radon, both by the 1996 SDWA Amendments and the later court stipulated agreement. Both points are discussed further here.

First, in 1976 the estimate of risk from either Ra-226 or Ra-228 at 5 pCi/L was between 5×10^{-5} and 2×10^{-4}, averaging 1×10^{-4}. In 1991 the RADRISK model calculated that a 1×10^{-4} risk corresponded to Ra-228 at 26 pCi/L and Ra-226 at 22 pCi/L.

Table III–1 shows the change in estimated risks from 1976 until the present. "Current Risk Estimates" are calculated using the 1999 model, FGR–13 (EPA 1999b). The table allows a comparison between the calculated risk during each phase of the evolution of the radionuclides NPDWRs, including the current best estimate of risk based upon FGR–13 (EPA 1999b). Details of why the models have changed and the additional data taken into consideration are found in the appendix II and the Technical Support Document (EPA 2000a).

TABLE III–1.—CHANGES IN ESTIMATED RISKS FOR VARIOUS RA-226 AND RA-228 LEVELS

Year model used	Radium-228			Radium-226		
	Concentration pCi/L	Previous risk estimate	Current risk estimate	Concentration pCi/L	Previous risk estimate	Current risk estimate
2000 FGR–13	5	2×10^{-4}	2×10^{-4}	5	7.3×10^{-5}	7.3×10^{-5}
2000 FGR–13	2.5	1×10^{-4}	1×10^{-4}	6.85	1×10^{-4}	1×10^{-4}
1994 FGR–11	11	1×10^{-4}	4.5×10^{-4}	10	1×10^{-4}	1.5×10^{-4}
1991 RADRISK	26	1×10^{-4}	1×10^{-3}	22	1×10^{-4}	3.3×10^{-4}
1991 RADRISK proposed MCL	20	7.7×10^{-5}	7.7×10^{-4}	20	9.1×10^{-5}	2.9×10^{-4}
1991 RADRISK	5	1.9×10^{-5}	2×10^{-4}	5	2.3×10^{-5}	7.3×10^{-5}

TABLE III–1.—CHANGES IN ESTIMATED RISKS FOR VARIOUS RA-226 AND RA-228 LEVELS—Continued

Year model used	Radium-228			Radium-226		
	Concentration pCi/L	Previous risk estimate	Current risk estimate	Concentration pCi/L	Previous risk estimate	Current risk estimate
1976*	5	1×10^{-4}	2×10^{-5}	5	1×10^{-4}	7.3×10^{-5}

*The risk of either radium-226 or radium-228 at 5 pCi/L was believed to be between 5×10^{-5} and 2×10^{-4} in 1976. The average would have been 1×10^{-4}.

The 1991 estimated risk corresponding to 20 pCi/l of Ra-226 in addition to 20 pCi/l of Ra-228 was thought to be 1.7×10^{-4}. However, the current risk estimate based on FGR–13 (EPA 1999b) for 20 pCi/l of Ra-226 in addition to 20 pCi/l of Ra-228 is 1×10^{-3} (one in a thousand), an order of magnitude (ten times) above the acceptable risk of 1×10^{-4}.

In contrast, maintaining the current standard would allow a maximum lifetime risk of 2×10^{-4} (within the original risk range of the 1976 regulation). This represents a one in 5,000 lifetime mortality risk and would only be present if 5 pCi/L in the drinking water were all radium-228, a relatively rare occurrence situation. If the radium present were all radium-226, the risk would be 7×10^{-5}, just below EPA's risk ceiling. Since:

- the risks associated with the current MCL of 5 pCi/L are already at the upper end of the Agency's allowable risk range of 10^{-4}; and
- the 1991 proposed MCLs for Ra-226 and Ra-228 have risks as high as 1×10^{-3}, ten-fold higher than the Agency's allowable risk, the Agency believes that maintaining the current MCL for combined Ra-226 and Ra-228 is the appropriate action.

Regarding treatment feasibility, EPA's determination that water systems can feasibility treat and quantify combined radium at 5 pCi/L is supported by case studies of systems that had combined radium levels in excess of the MCL and that later came into compliance through treatment. In addition, EPA has case studies of systems that have come into compliance through purchasing water, blending, and developing new wells (EPA 2000a).

Since risk estimates for Ra-228 are significantly higher than thought in 1991, EPA has evaluated the risk reductions, costs, and benefits of decreasing the allowable level of radium-228 to 3 pCi/L and has discussed the results in the Technical Support Document (EPA 2000a). The concern is that a system with 5 pCi/L of Ra-228 with insignificant levels of Ra-226 would be in compliance with the combined radium MCL, but would have an associated lifetime excess cancer morbidity risk of 2×10^{-4}, which exceeds the risk ceiling on 1×10^{-4}. While this is true, the occurrence data reported in appendix I suggest that this situation should be rare. Since EPA did not propose this action in the 1991 proposal, EPA cannot address this concern in the finalization of this proposal. However, EPA will consider this situation further and will later determine if a regulatory action is appropriate.

An unintended effect in the 1991 proposal was that the costs and benefits were not evenly distributed to all affected persons (individuals). In the 1991 proposal, an MCL was proposed for radon at 300 pCi/L and a revised MCL for radium from 5 pCi/L combined for both radium-226 and radium-228 to 20 pCi/L each. Benefits and costs were considered together for both radon and radium on a national basis. Compared to radium, radon is easier and cheaper to remove from water due to its air strippability. Since the risks avoided were higher and the treatment costs lower for the radon MCL, it was reasoned that the radon rule was much more cost-effective than the combined radium rule. However, since radium and radon do not tend to co-occur, individuals that would have benefitted from the radon rule were not the same individuals that would have faced higher risks under the proposed radium MCLs. EPA believes that such a trade-off is no longer appropriate. Among other considerations, the 1996 Amendments to SDWA explicitly separated the radon rule from the rule for the other radionuclides.

In summary, EPA based its proposed increase in the radium standard on the risk models that existed at that time and on a population risk trade-off with radon. The models in use in 1991 indicated that radium posed less of a risk than originally believed in 1976. However, current risk models (FGR–13, EPA 1999b) suggest that the combined radium standard of 5 pCi/L presents an even greater health risk than thought in 1976. Given the much higher current estimate of risks associated with the proposed Ra-226 and Ra-228 MCLs of 20 pCi/L and the statutorily required withdrawal of radon-222 from the proposal, the Agency believes that the MCLs for radium proposed in 1991 are no longer appropriate. EPA requests public comment on retaining the current radium standard of 5 pCi/L for combined Ra-226 and Ra-228.

2. Separate Radium Analysis

The 1991 proposal recommended decoupling the monitoring of radium-228 from radium-226. The current radionuclides rule requires analysis of Ra-228 only when Ra-226 levels are above 3 pCi/L. The rule recommends analysis of Ra-226 and/or Ra-228 when gross alpha exceeds 2 pCi/L where Ra-228 may be present, and requires analysis of Ra-226 when gross alpha exceeds 3pCi.L.

Ra-228 may be present with minor amounts of Ra-226 or in the absence of Ra-226. In general, the mobility of a parent radionuclide may be very different from that of a daughter element, depending on the geochemistry of the elements involved. However, the occurrence of a radionuclide may still be governed by the occurrence and distribution of its parent (see EPA 2000a). Since radium-226 arises from the uranium decay series and radium-228 arises from the thorium series, it is logical to expect them to occur independently of one another. Also, the parents of Ra-226 (uranium isotopes) and Ra-228 (thorium isotopes) have very different geochemical behaviors. Uranium is fairly mobile in oxidizing ground waters, while thorium is rather insoluble. In contrast, the daughter radium isotopes are more mobile in reducing waters and are relatively immobile in oxidizing waters. Since Ra-226 is part of the uranium series (relatively mobile parent) and Ra-228 is part of the thorium series (immobile parent), Ra-226 can and does mobilize in waters containing Ra-228 more frequently than the reverse situation. These observations indicate that Ra-226 and Ra-228 may be expected to significantly co-occur, but that the correlation will not be strong enough to use the occurrence of one to predict the other with acceptable certainty. Recent

studies support this conclusion (EPA 2000a).

This conclusion indicates that the current monitoring screen for Ra-228 based on Ra-226 is not reliable. Therefore as proposed in 1991, EPA is considering requiring separate monitoring and analysis of both radium-226 and radium-228 in the final rule. The Ra-228 and Ra-226 results would be summed to determine compliance with the radium MCL. This will provide a more accurate assessment of systems containing little or no radium-226, but possessing a significant enough concentration of radium-228 to exceed the standard.

G. Gross Alpha MCL

The gross alpha standard promulgated in 1976 considered natural and man-made alpha emitters as a group rather than individually. At the time, the analytical costs made it impractical to identify each alpha-emitting nuclide in a given water sample. The existing gross alpha MCL includes radium-226, but excludes radon-222 and uranium (because these latter nuclides were to be regulated at a later date). The 1991 risk estimates indicated that the inclusion of Ra-226 was not warranted. However, today's risk estimates, based on FGR–13 (EPA 1999b), suggest that the Ra-226 unit risk is large enough to warrant to include it in gross alpha, as in the current standard. In today's Document, the Agency is considering maintaining the current MCL for gross alpha, believing it to be protective. EPA will consider proposing changes to the rule in the future.

EPA believes that the term "gross alpha" may be confusing. "Gross alpha" implies counting the total alpha emissions and is the appropriate name for that particular analytical method. The standard excludes uranium and radon from the total or gross count. Just as the proposal suggested the term "adjusted gross alpha" with the exclusion of radium-226, EPA believes the term "net alpha" or "the alpha standard" might better describes the current standard which excludes such alpha emitters as radon, uranium. EPA requests public comment on the name change.

The gross alpha MCL was originally established at 15 pCi/L to account for the risk from radium-226 at 5 pCi/L (the radium regulatory limit) plus the risk from polonium-210, the next most radiotoxic element in the uranium decay chain. In 1976, the risk resulting from exposure to 10 pCi/L of polonium-210 was thought to be equivalent to the risk resulting from exposure to 1 pCi/L of radium-226. Looked at another way, the 1976 gross alpha standard equated to 6 pCi/L of radium-226 (5 pCi/L of radium-226, plus the10 pCi/L of polonium-210 which itself was equal to 1 pCi/L of radium-226). Since the risk associated with the combined radium standard was believed to be in the range of 5×10^{-5} to 2×10^{-4} this assumption placed the gross alpha standard reasonably within that range as well.

The gross alpha standard proposed in 1991 remained at 15 pCi/L, but excluded radium-226 (because it was proposed at 20 pCi/L). The new limit was termed "adjusted gross alpha." In effect, it allowed an increase of 5 pCi/L of non-radium alpha emitters in drinking water from 10 to 15 pCi/L by occupying the 5 pCi/L originally represented by the radium. In the 1991 proposal, the allowable non-radium gross alpha contribution in that same water sample i.e. Po-210, would be 15 pCi/L. Because this latter scenario represents more risk than the scenario evaluated for the current regulation, EPA no longer supports an "adjusted gross alpha" limit of 15 pCi/L.

In the future, EPA may consider a proposal to exclude radium-226 from the gross alpha MCL as proposed in 1991 (because of the existence of a separate standard for radium-226), but to maintain protection, limiting the gross alpha standard to 10 pCi/L. Reducing the limit has the advantage of effectively reducing exposure to polonium-210 and radium-224. In addition, excluding radium-226 from being in both the gross alpha and radium standards may avoid confusion. EPA examined the possibility of this change in the context of the potential for added treatment costs versus the marginal benefits to be derived. However it appears that retaining the standard at 15 pCi/L is protective of public health at a reasonable cost. A picoCurie cap of 15 represents different risks for various nuclides, but this is not unlike other regulated carcinogens or the other radionuclides. The risks represented by two components, namely radium-224 and Polonium-210, are discussed next.

1. Polonium-210

Current risk estimates suggest that the risk resulting from exposure to polonium-210 is ten times greater than originally believed in 1976 compared to radium. However, existing occurrence data indicates that its presence in drinking water is relatively rare. To gain a better understanding of the public health risk posed by polonium-210 in drinking water, EPA included this radionuclide in the Agency's Unregulated Contaminants Monitoring Rule (64 FR 50556, Friday, September 17, 1999). The Agency may consider a future proposal to develop a separate limit for polonium-210 within (or separate from) a potentially revised gross alpha standard.

EPA believes that current technology can limit polonium-210 to 4 pCi/L or below, although precise quantification at this level may present a challenge. Because of its energetic alpha emissions, a gross alpha measurement may overestimate the actual concentration of polonium-210 in the sample by a factor of two. With current gross alpha measurement, if the total alpha were 15 pCi/l contributed by polonium, the actual concentration of polonium could be much less, depending on the calibration standard. At present, since there is no specific drinking water regulation for polonium-210, there is no EPA-approved method for measuring polonium to determine compliance with a drinking water standard. Should EPA decide to develop a separate limit for polonium-210, the Agency will ensure that the approved analytical method for demonstrating compliance is in place and includes a calibration standard appropriate for polonium's energetic alpha, thereby reducing the possibility of overestimating its presence. EPA requests information relative to any known occurrence of polonium and the need for a proposal of a separate limit. Recently, USGS co-operated with EPA and the American Water Works Association in monitoring for radionuclides, including Po-210 (103 wells in 27 States). The study and findings are described in EPA 2000a). USGS will publish the study in the near future. In this study, Po-210 levels were found above 1 pCi/L in less than two percent of the wells. Since the wells were targeted for high radium occurrence, this may not be typical. The reader is referred to appendix I (Occurrence) and the Technical Support Document (EPA 2000a) for further information.

2. The Occurrence of Radium-224 and its Impact on Alpha

Recently, the short lived isotope of radium has been found in some drinking water supplies. Extensive monitoring in the State of New Jersey over the past several years and follow-on survey by EPA and the USGS has demonstrated that radium-224 may be present in significant quantities in ground water, especially where its decay chain ancestor radium-228 is present. Although it is included in the (gross) alpha MCL, it was not targeted specifically for several reasons: (1) It was not believed to be a health risk, (2)

it was not known to be prevalent and (3) sampling it at a representative point within the distribution system rather than the entry point to the system allowed decay. However, newer FGR–13 risk estimates (EPA 1999b), coupled with the greater occurrence, and the 1991 proposal to sample at the entry point to the distribution system, now make radium-224 a concern.

Radium-224 is a naturally occurring radioisotope, which is part of the thorium decay chain. It emits alpha particles and has a half-life of 3.66 days. The decay of its progeny via alpha and beta decay also happens very quickly. In approximately 4.1 days, an original radium-224 atom has decayed to stable lead-208 by emission of an equivalent of 4 alpha and 2 beta particles. A gross alpha analysis will detect 3 alpha particle emissions including daughters in equilibrium with the parent Ra-224. If a sample analysis is done within 72 hours, preferably 48 hours, an appropriate back-calculation can be performed of the gross alpha count of the sample water. Otherwise the laboratory will significantly underestimate the radium-224 and other alpha emitters that may have been originally present in the sample.

Under the current rule, utilities are allowed to collect quarterly samples, composite and analyze at the end of the year. In 1991, EPA proposed a holding time of 6 months for gross alpha. However, neither the annual composite under the current rule or the proposed holding time of 6 months can appropriately capture the presence of alpha-emitting radium-224, or its progeny in a gross alpha analysis. The Agency intends therefore, to issue a separate proposal to change the holding time for gross alpha analysis to account for the presence of radium-224 in the sample.

At this point in time, the Agency strongly recommends to States and utilities that an alpha analysis be performed within 48 to 72 hour after sample collection to capture the contribution of the alpha particles arising from radium-224. In this NODA, the Agency is reiterating and underscoring its recommendation to that effect as outlined in a memorandum of January 27, 1999 from Cynthia Dougherty, Director of the Office of Ground Water and Drinking Water (EPA 1999a). For systems to whom a rapid analysis might be a burden, a reasonable screening tool for the presence of Ra-224 under many geochemical circumstances is the presence of its radiological ancestor, Ra-228. Since systems will monitor for Ra-228, the result can serve as a general proxy for the presence or Ra-224 for the purposes of prioritization. It is not definitive and would not be an acceptable substitute for a rapid analysis of gross alpha or Ra-224. In the absence of Ra-228, a system may not need to place as high a priority on rapid gross alpha or specific Ra-224 analysis. Since, as explained earlier, each Ra-224 atom contributes approximately three daughter alpha particles to the gross alpha count, a simple first approximation of Ra-224's contribution to gross alpha would be three times the Ra-228 concentration in pCi/L. For the purposes of prioritizing monitoring for Ra-224, grandfathered gross alpha data added to three times the result of the Ra-228 measurement would be a reasonable first approximation of the gross alpha including Ra-224 and its daughters available from a rapid gross alpha test. However, EPA reiterates that this approximation is not a substitute for rapid analysis of gross alpha or Ra-224.

EPA is not considering requiring a separate MCL or analysis for radium-224 when the rule is finalized in November of 2000. The definition of gross alpha will continue to include Ra-224. EPA is willing to consider comments on the need to apply sub-limits to Po-210 or Ra-224 within the MCL of 15 or as separate standards. Proposing a separate limit for radium-224 at 10 pCi/L within the alpha MCL of 15 pCi/L is a future possibility, as is a separate MCL for radium-224. The latter would require a separate, specific, rapid analysis specifically for radium-224, rather than relying on the gross alpha test and alpha MCL. Such actions would require a new proposal or proposals.

As part of the alpha standard, the Agency does not consider Ra-224 a significant risk. The lifetime mortality risk associated with exposure to 10 pCi/L of radium-224 is approximately 5×10^{-5} or one in 20,000. Because radium-224 and its progeny have very short half-lives, the total alpha count represents the radium-224 and its progeny. Consequently, there are effectively three alpha particle counts for every atom of radium-224 present. The health risk of radium-224 already includes the impact of these progeny in the body (the committed dose). Therefore while the gross alpha count may be at 15, the impact of the emissions is approximately related to Ra-224 at 5 pCi/L and the risk of 2.5×10^{-5} or excess mortality of one in 40,000.

H. Uranium

Uranium is not currently regulated by the 1976 radionuclides drinking water standards. The 1986 SDWA Amendments included uranium as one of the 83 contaminants listed to be regulated in drinking water. Two health effects are associated with exposure to uranium: cancer, resulting from the radioactive emissions, and kidney toxicity, resulting from the exposure to the uranium itself. The mass of the uranium is measured in micrograms (µg) while the radiation activity is measured in picoCuries. In 1991, EPA proposed a limit on uranium of 20 µg per liter (µg/L) to protect against kidney toxicity. The corresponding radioactivity limit was assumed to be 30 pCi/L. At that time, the Agency also proposed an MCLG of zero, based on absence of an identifiable dose-response threshold. EPA has reevaluated both the health impact level for kidney toxicity and the cancer risks from radiation and costs of regulation. As discussed briefly next, the best estimate of the cost per cancer case or cancer death avoided at 20 µg/L is relatively large. However, it should also be noted that this cost per case avoided excludes the reduction in kidney toxicity risk. At the present time, kidney toxicity for uranium must be treated as a non-quantifiable benefit (see appendix II, "Health Effects" and the Technical Support Document, EPA 2000a).

Today's NODA presents new information which supports a regulatory level of 20 µg/L, based upon protection from kidney toxicity. The derivation of this number is based on newer, more complete studies which have also resulted in a lower uncertainty factor, now 100-fold. In addition, the contribution to ingestion from drinking water relative to food or inhalation, the relative source contribution (RSC), has been recalculated. Drinking water is now considered to contribute 80 percent of a person's total daily uranium intake. This has the effect of permitting 80% of the reference dose (RfD) to be occupied by the drinking water component of diet. Both a lower uncertainty factor coupled with a lower food intake and higher proportional contribution from drinking water to total intake, might suggest the allowance of a higher regulatory limit; however, the more recent studies have offset this by revealing a lower observed effect level for kidney toxicity. The recalculated "safe level" for kidney toxicity remains 20 ug/L. The derivation of the uncertainty factor is based on the types of uranium health data available. EPA's policy for uncertainty factors for estimating LOAELs is summarized in 63 *FR* 43756 (August 14, 1998, "Draft Water Quality Criteria Methodology Revisions: Human Health"). The derivation is described in appendix II.

Uranium is also classified as a carcinogen because of its radioactivity, and resulting emissions of ionizing radiation. The two most prevalent isotopes of uranium, uranium-234 and uranium-238, have very different half-lives which result in different amounts of radiation emitted per unit mass. Uranium-234 emits far more radioactivity than U–238, but is much less abundant in aquifer materials. Uranium-238 emits less radioactivity, but is far more prevalent than U–234. The average ratio of uranium activity to mass in rock is 0.68 picoCuries per µg. Issues involving the activity to mass ration follow later in this section.

Complicating the Agency's decision making about a uranium standard is the fact that the monetized benefit of kidney toxicity cannot be calculated at low concentrations because data are lacking in terms of the level at which kidney disease is actually manifested. The calculated 20 µg/L level represents an intake which would result in no effect over 70 years by drinking two liters per day. Conclusions based on the toxicity of uranium to the kidney are based primarily on observed adverse effects at the cellular level, but which have not necessarily resulted in a recognized disease. It is difficult to monetize the benefits derived in such a situation, and EPA does not currently have a methodology for estimating benefits for kidney toxicity from uranium. In the case of reducing the risk of non-fatal cancer resulting from uranium, EPA can monetize these benefits based on avoided "cost of illness." This methodology is discussed in some detail in the Technical Support Document (EPA 2000a) and elsewhere (EPA 2000b).

Thus, for kidney toxicity, the benefit to society are considered as "non-quantifiable benefits." Kidney toxicity avoidance benefits can be expressed in terms of "avoidance of exposure," but cannot be quantified in terms of avoidance of a specified number of cases of disease or fatalities (and the associated monetized benefits), as with cancer. In addition, it appears that excess uranium concentrations tend to be found in small water systems. This suggests that while many systems will be impacted, the affected populations will be small. In terms of cancer risk, the number of statistical cases avoided for MCLs of 20 and 40 µg/L are low (0.2 to 2 cases for 20 µg/L and 0.04 to 1.5 cases for 40 µg/L). In terms of exposure avoided for kidney toxicity, around 500 thousand to two million persons are exposed above 20 µg/L and 50 thousand to 900 thousand persons are exposed above 40 µg/L. See appendix V and the Technical Support Document (EPA 2000a) for details.

Although uranium is treatable to levels well below the 1991 proposed MCL of 20 µg/L (5 pCi/L was evaluated), EPA determined that levels below 20 pCi/l were not feasible under the SDWA, after taking the costs of treatment into consideration. Section 1412(b)(6) of the 1996 SDWA permits the Agency to evaluate whether the benefits of regulating at various MCLs justify the costs. Possible exercise of this authority is discussed in more detail later in this section.

The MCLG that was proposed for uranium in 1991 was zero because of concerns about the lack of a known threshold for the carcinogenicity of ionizing radiation. The MCL that was proposed in 1991 (20 µg/L) was based on uranium kidney toxicity, as previously described. The corresponding risk of cancer at a concentration of 20 µg/l is now estimated to be approximately 5×10^{-5}. In terms of the cost per cancer case avoided and kidney toxicity reduced, the cost of regulation is still relatively high (see Table V–2 in appendix V).

In its current benefit-cost analysis, EPA also evaluated regulatory options of uranium MCLs of 40 µg/L and 80 µg/L. EPA estimates that a level of 40 µg/L would correspond to a cancer risk of approximately a 1×10^{-4}, thus providing cancer risk protection within the Agency's traditional risk range. A level of 40 µg/L would represent a slightly higher risk of kidney toxicity. At a level of 80 µg/L, the cancer mortality risk is approximately 2×10^{-4}, which is above the Agency's acceptable risk range. At 80 µg/L, the projected total national costs decrease significantly, but the estimates of cancer cases avoided drops to values close to zero (*i.e.*, benefits diminish considerably), indicating that the cost per cancer case avoided may not be signficantly lower at an MCL of 80 µg/L than at an MCL of 40 µg/L. From a health effects perspective, the toxic health effects on the kidneys or other organs or systems in the body at exposure levels of 80 µg/L is unknown and is four times EPA's best estimate of the "safe level" with respect to kidney toxicity.

In terms of benefits and costs, Table V–2 (appendix V) shows the range of compliance costs and net benefits for the uranium MCL options of 20 µg/L, 40 µg/L, and 80 µg/L. While annual compliance costs drop significantly as the MCL increases from 20 up to 80, the estimate of cancer cases avoided drops considerably also. In fact, it is not clear whether the cost per case avoided increases or decreases with increasing MCL because of the uncertainties involved. The corresponding estimate of cases avoided for MCLs of 20, 40, and 80 pCi/L are 2.1, 1.5, and 1.0 cases annually. Based solely on cancer incidence, it may be appropriate for EPA to consider using an MCL higher than 20 µg/L for uranium, since it is arguable that the benefits do not justify the costs at this level. However, in terms of kidney toxicity, 20 µg/L may be justified. EPA solicits comment on this issue.

Health effects from uranium also need to be evaluated in the context of the effects of various uranium species and their activity levels. A mortality risk level of 5×10^{-5} translates to 23 pCi/L of U–238, 22 pCi/L of U–235, and 21 pCi/L of U–234 in drinking water. An "alpha spec" analysis of the water would determine the fractions of each present and a sum of the fractions below 100% would meet the MCL. However, this level is costly to obtain. Doubling the radioactivity limit to 46, 44 and 42 pCi/L for U–238, U–235, and U–234 respectively corresponds to a mortality risk level of 1×10^{-4}, which may be more acceptable, considering the costs. Likewise, a doubling of risk to 2×10^{-4} would again double the picoCurie limits of each isotope to 92, 88, and 84 pCi/L respectively. However, at these higher risk levels, the calculated protective limit for toxicity to the kidney may be exceeded, depending upon the uncertainty factor used.

By contrast, the relative dissolved concentration of the various isotopes of uranium will differ markedly from one locale to another. The 1991 proposal utilized a conversion factor of 1.3 picoCuries per microgram of uranium to convert a 20 µg/L proposed MCL in mass units to activity units in picoCuries (however, 1991 cost estimates were based on the more accurate conversion ratio of 0.9). Analysis of NIRS data suggest that it would have been more appropriate to use the 1.3 pCi/µg conversion factor for total uranium where concentrations are less than 3.5 pCi/L and a 0.9 conversion factor for concentrations above 3.5 pCi/L (Telofsky 1999). Converting the derived MCL option of 20 µg/L from mass to activity using a ratio of 0.9 for levels above 3.5 µg/L yields approximately 18 pCi/L . A statistical evaluation of uranium data reveals that, based on a linear regression of the data, the appropriate activity based MCL for 20 µg/L would be 17.3 pCi/L rounded to 17 pCi/L. Coupled with the knowledge that the concentration of uranium isotopes varies from place to place, the Agency is led to consider an MCL that

is protective in any location against both toxicity (µg/L) and cancer (pCi/L), whichever presents the greatest risk. This can be determined by conducting isotopic analysis to determine the relative amounts of each isotope in any one water system. Once the concentration ratio is known, a regulated entity may choose to measure mass or activity and select whichever analytical method or methods is most cost effective.

For example, if the uranium standard were 20 µg/L or pCi/L, a gross alpha measurement screen for uranium could be used in the following way (EPA 2000c and 2000d). The analysis breaks out as follows: if the result is below the detection limit for gross alpha, neither uranium measurements by mass or activity would be necessary since neither 20 pCi/L nor 20 µg/L could be exceeded. If the gross alpha test is between 3 and 5.5 pCi/L, the mass of 20 µg/L could be exceeded if all the activity were coming from uranium-238. Therefore a fluroimetric test for uranium mass concentration (µg/L) or an alpha spectrometry test for the activities (pCi/L, converted to µg/L using standard isotopic conversion factors) of the various isotopes present would be necessary to determine the uranium concentration in µg/L. Because gross alpha tests may underestimate uranium by a factor of as much as 3.62, if the gross alpha test exceeded 5.5 pCi/L (20÷3.62), it is indicative that the 20 pCi/L limit may be exceeded, and an isotopic analysis must be done. EPA solicits comment on these issues.

EPA is soliciting information and comment on the data and the appropriate course of action the Agency should pursue, given the factors of risk levels, national cost, number of cancers avoided, cost per case, cost per death, and kidney toxicity. EPA is currently evaluating three regulatory options:

- Regulate at 20 µg/L and 20 pCi/L (protective of kidney toxicity using the Agency standard 100-fold uncertainty factor for this type of LOAEL with an associated cancer risk of approximately 5×10^{-5} or five in one hundred thousand);
- Regulate at 40 µg/L and 40 pCi/L (this is twice the safe level with respect to kidney toxicity and would reduce the margin of exposure between the effect level and the proposed regulatory standard; with an associated cancer risk level of 1×10^{-4} or one in ten thousand, which is the Agency's usual upper cancer risk target);
- Regulate at 80 µg/L and 80 pCi/L (this is four times the safe level with respect to kidney toxicity and would further reduce the margin of exposure between the effect level and the proposed regulatory standard; with an associated cancer risk level of 2×10^{-4} or two in ten thousand, which is above the Agency's usual upper cancer risk target).

In summary, EPA believes that 20 µg/L is feasible and is the Agency's preferred option, but may not have benefits that justify the costs. Were a higher level to be chosen, EPA would be exercising its discretionary authority under section 1412(b)(6) to select a level above the feasible level. It should be noted, however, that there may be considerable non-quantifiable benefits of avoiding exposure to cancer and kidney toxicity. Also, as discussed previously, there is little available data or information about the effects of kidney toxicity at relatively high exposures and thus, the benefits attributable to avoided illness cannot be quantified. Thus, the costs may be justified at a more stringent level than would be suggested in light of the currently quantifiable benefits alone. In addition, the Agency generally does not establish regulatory levels outside of its target risk range and, in fact, prefers to set levels at the more protective end of that range (1×10^{-6}), wherever possible. Further, we usually follow Agency guidelines on use of uncertainty factors. For these reasons, the Agency does not favor an MCL option of 80 µg/L, but solicits comment on this and the previously-described regulatory options, together with any supporting rationale or data commenters wish to provide.

I. Inclusion of Non-Transient Non-Community Water Systems

Today's document is soliciting comment on several approaches for covering Non-Transient Non-Community (NTNC) water systems. Although current radionuclide regulations do not apply to NTNC water systems, in 1991 EPA proposed extending the radionuclides NPDWRs to include them. Several approaches representing varying degrees of control are being currently considered for finalization because, although much more has been learned about NTNC water systems and their customers since 1991, there is still very little known about the distribution of the highest levels of radionuclides in their water supplies. Based on the Agency's occurrence estimates, control of some radionuclides in NTNC water systems may not present a meaningful opportunity for health risk reduction. This issue arises as a consequence of the 1996 Amendments to SDWA which allow the Agency to consider whether the benefits of extending coverage to this category of water systems would justify the costs (section 1412(b)(6)(A)) and whether such regulation would provide a meaningful opportunity for health risk reduction (section 1412(b)(1)(A)(iii)). The Technical Support Document (EPA 2000a) presents a "what if" analysis for costs and benefits for NTNCWSs.

While it is feasible to control radionuclides in NTNC water systems, extending regulation to these systems needs to be considered in light of the new SDWA requirements. This analysis requires a balancing of both quantitative and non-quantitative factors. Based on the risk modeling discussed in the Technical Support Document (EPA 2000a), the ninetieth (90th) percentile lifetime risk of cancer incidence in an individual consuming water from a NTNC water system in the absence of a regulation is not expected to exceed three in 100,000[2]. The cost per cancer case avoided to achieve reductions in these risks would considerably exceed the hundred million dollar mark if coverage of the rule were extended to NTNCs. The associated cost per case avoided ranges are well above the range of historical environmental risk management decisions.

Relative to community water systems, NTNC systems have much lower associated risk levels because most individuals served by these systems are expected to receive only a small portion of their lifetime drinking water exposure from this source[3]. This conclusion holds even using very conservative assumptions for modeling the NTNC exposure scenarios. For example, in the case of school children exposure, the Agency has conservatively assumed all impacted children would attend only schools served by NTNC water systems, have twelve years of perfect attendance, and get half of their daily water consumption at school. For the average thirteen year old, this scenario implies half of a liter (over sixteen ounces) every school day. Even under this very conservative set of assumptions, the water consumed by an individual student is estimated to represent less

[2] Throughout this discussion, exposures and risks were only considered for populations potentially addressable by regulation, i.e. systems with radionuclides present in excess of the proposed MCLs for community water systems.

[3] It is important to remember that the risk assessment for NTNC water systems does not consider exposure risk from private wells which may serve some customers at home. EPA recognizes that the radionuclide levels in some private wells may exceed the MCLs for CWSs, but this is a non-controllable factor since private wells are not regulated by the Safe Drinking Water Act.

than five percent of lifetime consumption [4].

On the other hand, much remains to be learned about the NTNC water systems. Little is known about the extent to which users of the different NTNC water systems use other water systems. It is conceivable that some areas in the country exist where individuals are subjected to exposure at a number of different non-community systems (e.g., day care center plus school plus factory, etc.). In such circumstances, individuals would be exposed to proportionately higher risks if the water systems all had elevated levels. For some individuals, the exposures could approach levels observed in corresponding community water systems.

This concern is somewhat alleviated by the fact that NTNC systems generally serve only a very small portion of the total population. For example, over ninety-five percent (95%) of all school children are served by community water systems, not NTNC systems. Only a small percentage of children are served by NTNC water systems and, of that group, less than one percent (or less than one in 2000 of the overall student population) would be expected to have individual radionuclides in their water above the proposed regulatory levels. Likewise, less than 0.1 percent of the work force population receive water from an NTNC water system. With such low portions of the total population exposed to any particular type of NTNC system, the overall likelihood of multiple exposure cases in the NTNC population should also be small.

Nevertheless, because children are more sensitive to radionuclides exposure [5], multiple water system exposure scenarios were considered in the modeling effort [6]. Tables III–2 and III–3 present individual risk estimates for average and most sensitive populations among the NTNC water systems. All of these factors contributed to the Agency's evaluation of whether or not to extend regulation to NTNC water systems and are discussed further in the appendix.

Review of Table III–3 shows that 90th percentile individual risk patterns for NTNC water system users exposed to uranium or radium-226 are relatively low. These 90th percentile figures represent risks estimated using the previously described conservative exposure scenarios, maximum water consumption patterns, and what are effectively 99.9th percentile occurrence estimates [7] from the NIRS data. Even with these conservative factors, lifetime cancer risks do not exceed the one in 10,000 level which has traditionally formed the upper bound of allowable risk in Agency decision-making.

TABLE III–2.—SELECTED SECTOR AND OVERALL NTNC, INDIVIDUAL RISK PATTERNS

[Lifetime cancer risk for individuals using average consumption levels]

Sector	Alpha	Radium 226	Radium 228	Uranium
School Students	2×10^{-5}	$0.9–1.1\times10^{-5}$	$2–3\times10^{-5}$	$0.7–0.9\times10^{-5}$
Day Care Children	$2–3\times10^{-5}$	$0.6–0.7\times10^{-5}$	$2–3\times10^{-5}$	$0.8–1\times10^{-5}$
Factory Worker	$1–2\times10^{-5}$	1×10^{-5}	$2–3\times10^{-5}$	1×10^{-5}
All NTNC Water Systems	$0.3–0.4\times10^{-5}$	$0.2–0.3\times10^{-5}$	$0.5–0.7\times10^{-5}$	0.2×10^{-5}

Note that Radium 224 is being used as a surrogate for alpha emitters.

TABLE III–3.—SELECTED SECTOR AND OVERALL NTNC, INDIVIDUAL RISK PATTERNS

[Lifetime cancer risk for individuals using 90th percentile consumption levels]

Sector	Alpha	Radium 226	Radium 228	Uranium
School Students	$0.5–0.6\times10^{-4}$	0.3×10^{-4}	$0.6–0.7\times10^{-4}$	0.3×10^{-4}
Day Care Children	$0.7–0.8\times10^{-4}$	0.2×10^{-4}	0.6×10^{-4}	$0.3–0.4\times10^{-4}$
Factory Worker	$0.5–0.6\times10^{-4}$	$0.3–0.4\times10^{-4}$	$0.7–0.8\times10^{-4}$	$0.5–0.6\times10^{-4}$
All NTNC Water Systems	0.2×10^{-4}	0.1×10^{-4}	$0.2–0.3\times10^{-4}$	$0.1–0.2\times10^{-4}$

Radium-228 and gross alpha pose approximately twice the threat of the other two radionuclides. While sensitive individual estimates still fall below the one in ten thousand range, they may not in a scenario in which other drinking water sources are similarly high. However, as stated previously, the Agency views it as somewhat improbable that this system overlap occurs to a significant extent. Nevertheless, it could be an issue in some rural communities. While such infrequent and highly site-specific conditions are very difficult to address efficiently in a National-level regulation, the Agency believes that exempting NTNC water systems from the radionuclide NPDWRs, given the degree uncertainty about the occurrence levels and extent of system customer overlap, may be inappropriate. For these reasons, the Agency believes it may be appropriate to take a somewhat different approach with respect to NTNC water systems than previously practiced.

EPA is considering extending partial coverage of the radionuclide NPDWRs to NTNC water systems under several possible scenarios. Under the first three options, NTNC systems would be subject to targeted radionuclide monitoring requirements, in which selected NTNC systems would follow the radionuclides monitoring requirements for community water systems. The targeting strategy would be based on small community water system occurrence for the same radionuclides.

[4] Day care exposure is similarly conservatively estimated by assuming five years of perfect attendance, fifty weeks per year and five days per week. Factory workers are assumed to perfectly attend and work at the same facility for forty-five years. All of these assumptions are under continuing investigation and will likely be revised downward in the future as the Agency is able to gather further information.

[5] As an example, the lifetime risk per pCi/L of Ra–228 to a child whose exposure begins under the age of five is more than ten times greater than the lifetime risk of an individual whose exposure begins between the ages of 25 and 30.

[6] For example, the possibility that a child spent five years in a day care center, then twelve years in schools, and then forty-five years working in a factory served only by NTNC water systems with high radionuclide levels.

[7] In other words, the expected number of NTNC systems nationwide would be less than twenty. It is because these levels are so rare that the level is fairly speculative. As discussed in the appendix, the Agency believes its estimates of occurrence are reasonable, based on levels observed in small ground water community water systems.

The States (or primacy agency) would determine which NTNC systems are likely to be using contaminated water systems, based on CWS monitoring results. These systems may then be required to monitor and meet CWS MCLs for gross alpha and combined radium and other relevant radionuclides. EPA is considering:

- Requiring targeted NTNC systems to monitor and meet the CWS MCLs for all or selected radionuclides, where targeting is determined by the State based on whether the NTNC system is using source water for which CWSs have reported MCL violations for radionuclide in question;
- Requiring targeted NTNC systems to monitor and post notice if the system exceeds the CWS MCL, using the same definition of targeting as in the first option;
- Issuing guidance that recommends that targeted NTNC systems monitor and meet the CWS MCLs, using the same definition of targeting as in the first option.

The Agency requests comments on these options and any supporting rationale for such a decision. The Agency is also interested in receiving comments on other options such as extending full coverage of the rule to NTNCs and not extending any aspect of the radionuclides NPDWRs to NTNC systems. The Agency will decide, as part of the upcoming finalization of the 1991 proposal, to incorporate what it considers to be the most appropriate option in view of available the data and information.

J. Analytical Methods

Today's NODA provides a brief update of the methods-related items which have occurred since the 1991 proposed rule. For a more thorough discussion of the analytical methods updates, the public is referred to appendix III of this NODA and to the Analytical Methods section of the Technical Support Document for the Radionuclides Notice of Data Availability (EPA 2000a).

1. Radionuclides Methods Updates

On July 18, 1991 (56 FR 33050; EPA 1991), the Agency proposed to approve fifty-six methods for the measurement of radionuclides in drinking water (excluding radon). Fifty-four of the fifty-six were actually approved in the March 5, 1997 final methods rule (62 FR 10168; EPA 1997a). In addition to these fifty-four, EPA also approved 12 radiochemical methods, which were submitted by commenters after the 1991 proposed rule. Currently, an overall total of 89 radiochemical methods are approved for compliance monitoring of radionuclides in drinking water. These methods are currently listed in 40 CFR 141.25.

The March 5, 1997 **Federal Register** also approved suitable calibration standards for the analysis of gross alpha-emitting particles and gross beta-emitting particles. These specific methods-related items are addressed in some detail in the Technical Support Document for the Radionuclides Notice of Data Availability (EPA 2000a) and in even greater detail in the 1997 final methods rule (62 FR 10168, EPA 1997a) and the 1991 proposed rule (56 FR 33050; EPA 1991).

This NODA also notifies the public about the use of the gross beta method for the screening of radium-228. In the 1991 proposed rule (56 FR 33050; EPA 1991), the Agency would have allowed the use of the gross beta-particle activity method to screen for the presence of radium-228 at the proposed radium-228 MCL of 20 pCi/L. For the combined radium-226 and 228 standard of 5 pCi/L (the current standard), the Agency can not recommend the use of the gross beta-particle activity method for screening of radium-228. Instead, a specific analysis for radium-228 would be necessary. Although several methods are currently approved for the analysis of radium-228 in drinking water, the Agency requests comments from the public and supporting documentation regarding other radium-228 methods or method variations which may be able to reach greater sensitivity at the 2 pCi/L level.

2. The Updated 1997 Laboratory Certification Manual

In the 1991 proposed rule (56 FR 33050; EPA 1991), EPA cited the 1990 laboratory certification manual's guidance for sample handling, preservation, holding time and instrumentation. In response to the 1991 proposed rule, a commenter questioned why the holding time for radioactive iodine was six months, when the half-life of iodine-131 is eight days. The Agency recognized this typographical error and changed the holding time to eight days in the updated 1997 certification manual (EPA 815–B–97–001; EPA 1997d). Table III–2 in the appendix shows the updated guidance for sample handling, preservation, holding times, and instrumentation that appeared in this manual. Table III–2 in the appendix also includes additional recommendations for radiochemical instrumentation (footnoted by the number 6). The Agency is seeking comment about the additional recommendations found in Table III–2.

3. Recommendations for Determining the Presence of Radium-224

To determine the presence of the short-lived radium-224 isotope (half life ~3.66 days), the Agency recommends using one of the several options discussed in the appendix III. Although these measurement options are only recommendations, the Agency strongly urges water systems to check for the presence of radium-224 in their drinking water supplies. Comments are solicited from the public about the options listed in appendix III or any other appropriate methods of detection.

4. Cost for Radiochemical Analysis

Revised Cost Estimates for Radiochemical Analysis.

In the 1991 proposed rule (56 FR 33050; EPA 1991), EPA cited cost estimates for radiochemical analyses. The Agency updated these costs estimates by surveying a small number of radiochemical laboratories (no more than 9 laboratories) (EPA 2000a). The revised cost estimates are shown in Table III–3 (appendix III). Because this information is based on a limited number of laboratories, the slight increase in costs from 1991 to 1999 may be due to either statistical uncertainty or possibly others factors such as inflation.

After the 1991 proposed rule, there were several comments regarding analytical costs. One commenter stated the costs of analysis for radium-226, radium-228, radioactive strontium and total strontium were unrealistically low. The Agency can neither agree nor disagree. As noted earlier, EPA revised the cost estimates for radiochemical analysis. Both the 1991 costs estimates and the revised cost estimates were from small surveys and may not be truly representative of the actual costs for some radiochemical analyses. Comparison of the estimated costs from 1991 with the revised cost estimates indicate the costs for some analyses to similar, while for other analyses, cost do appear to be higher. The Agency solicits comments and factual data that would clarify this matter.

Several commenters stated that small systems, which are likely to need only a few analyses, cannot take advantage of rates for volume sample analyses. The Agency agrees that individual small systems may not be able to take advantage of lower bulk analysis costs. To alleviate cost burdens, small systems may want to consider pooling their analytical needs with other small systems to negotiate for bulk rates.

5. Externalization of the Performance Evaluation Program

Due to resource limitations, on July 18, 1996 (61 FR 37464; EPA 1996b), EPA proposed options for the externalization of the PE studies program (now referred to as the Proficiency Testing or PT program). After evaluating public comment, in the June 12, 1997 final notice EPA (62 FR 32112; EPA 1997b):

decided on a program where EPA would issue standards for the operation of the program, the National Institute of Standards and Technology (NIST) would develop standards for private sector PE (PT) suppliers and would evaluate and accredit PE suppliers, and the private sector would develop and manufacture PE (PT) materials and conduct PE (PT) studies. In addition, as part of the program, the PE (PT) providers would report the results of the studies to the study participants and to those organizations that have responsibility for administering programs supported by the studies.

EPA has addressed this topic in public stakeholders meetings and in some recent publications. For more information, readers are referred to the aforementioned Federal Register notices. More information about laboratory certification and PT (PE) externalization can be accessed at the OGWDW laboratory certification website under the drinking water standards heading (www.epa.gov/safewater). At this time, it is difficult to ascertain how and if externalization of the PT program will affect radiochemical laboratory capacity and the cost of radiochemical analyses. In the absence of definitive cost estimates, the Agency solicits public comments on this subject.

6. The Detection Limits as the Required Measures of Sensitivity

In 1976, the National Primary Drinking Water Regulations defined the detection limit (DL) as "the concentration which can be counted with a precision of plus or minus 100 percent at the 95 percent confidence level (1.96 σ, where σ is the standard deviation of the net counting rate of the sample)." Table III–4 in the appendix cites the detection limits or the required sensitivity for the specific radioanalyses that were listed in the 1976 rule and are also cited in 40 CFR 141.25. In the 1991 proposal (56 FR 33050; EPA 1991), EPA proposed using the method detection limit (MDL) and the practical quantitation level (PQL) as measures of performance for specific radioanalytical methods. Acceptance limits based on the PQLs, which were derived from performance evaluation studies, were also proposed in the 1991 rule. Some commenters found the use of acceptance limits confusing and the relationship to the actual method performance was not clear. With perhaps the exception of uranium, the Agency will not go forward with the proposed acceptance limits, PQL, or MDL. Because uranium has never been regulated, it did not have a detection limit in the CFR and one has never been proposed. In 1991, EPA did propose a PQL of 5 pCi/L with an acceptance limit of +/− 30%. Although it is believed that a detection limit for uranium would be very similar to the PQL, because a detection limit has never been proposed, the Agency may have to adopt the PQL for uranium until a detection limit is proposed. For the other radionuclides, which are regulated, the Agency believes the current 1976 detection limit requirements are most appropriate. The existing definition of the detection limit takes into account the influence of various factors (efficiency, volume, recovery yield, background, counting time) that typically vary from sample to sample. Furthermore, the detection limit is computed for each individual sample and does not represent an idealized set of measurement parameters. Therefore, the detection limit reflects the expected random uncertainty for a given sample analysis.

7. Performance Based Measurement System

On October 6, 1997, EPA published a Notice of the Agency's intent to implement a Performance Based Measurement System (PBMS) in all of its programs to the extent feasible (62 FR 52098; EPA 1997c). EPA is currently determining how to adopt PBMS into its drinking water program, but has not yet made final decisions. When PBMS is adopted into the drinking water program, its intended purpose will be to increase flexibility in laboratories in selecting suitable analytical methods for compliance monitoring, significantly reducing the need for prior EPA approval of drinking water analytical methods. Under PBMS, EPA will modify the regulations that require exclusive use of Agency-approved methods for compliance monitoring of regulated contaminants in drinking water regulatory programs. EPA will probably specify "performance standards" for methods, which the Agency would derive from the existing approved methods and supporting documentation. A laboratory would be free to use any method or method variant for compliance monitoring that performed acceptably according to these criteria. EPA is currently evaluating which relevant performance characteristics under PBMS should be specified to ensure adequate data quality for drinking water compliance purposes. After PBMS is implemented, EPA may continue to approve and publish compliance methods for laboratories that choose not to use PBMS. After EPA makes final determinations about the implementation of PBMS in programs under the Safe Drinking Water Act, the Agency would then provide specific instruction on the specified performance criteria and how these criteria would be used by laboratories for compliance monitoring of SDWA analytes.

K. Monitoring

1. Features of Today's NODAA

EPA's 1976 regulations for radionuclides in drinking water contained separate monitoring requirements for radiums, alpha emitters, and man-made beta and photon emitters. In 1991, EPA proposed to make modifications to the 1976 regulations to expand the scope of coverage to include non-transient non-community water systems, to change the monitoring location and monitoring frequencies, and to incorporate monitoring requirements for radon and uranium. A summary of the 1976 requirements and proposed changes in 1991 are presented in this section.

In today's document EPA is suggesting merging the current requirements and the 1991 proposed requirements into a unified system which is consistent with the Standardized Monitoring Framework (SMF), the current rule, and the proposed changes which are still germane. EPA is soliciting comment on monitoring at the entry points to the distribution system, as proposed in 1991, to ensure equal protection for all customers, under the sampling schedule of the SMF. EPA believes that this will increase consistency between monitoring requirements for radionuclides and the other regulated contaminants. As described in section III, part I ("Inclusion of Non-Transient Non-Community Water Systems"), EPA is considering several options for NTNC water systems, some of which would require monitoring. Because some monitoring provisions of the 1991 proposal were based on the proposed MCLs and not the current MCLs, their application to the current levels may entail a slightly different construct than in 1991. To the extent comments reveal aspects of the framework which need to be addressed separately from the 1976 rule or 1991 proposal, EPA will return

to the current rule's framework and propose to correct deficiencies via a proposal which will address analytical method issues as well, such as methods for Ra-224, Po-210 and Pb-210.

2. Standardized Monitoring Framework

Per the current rule, once the contaminant concentration in the water is established by the average results for four consecutive quarterly samples or by suitable grandfathered data, a system would be categorized as to whether it was above or below 50% of the MCL for that contaminant. In accordance with the SMF, as proposed in 1991, EPA is suggesting a tiered frequency for alpha emitters, combined radium, and uranium. This would entail one sample every three years for compliant systems with annual average contaminant levels above 50% of the MCL. For compliant systems with annual average levels below 50% of the MCL for these contaminants, one sample would be required every 6 years; non-detects, one sample every 9 years. EPA believes this system would align with the standardized monitoring framework, and would provide regulatory relief for systems with low to very low levels (without needing a waiver as called for in 1991). It would also provide more careful screening for systems with multiple sources of water entering the distribution system, by requiring a sample at each of these points to be protective of all of the customers within each water system. For beta particle and photon radioactivity, EPA is considering requiring four consecutive quarters every four years, the requirement under the current rule, for vulnerable systems because of their proximity to contamination sources.

EPA believes this monitoring scheme is less burdensome on systems in the long term than either the existing or proposed regulations. It provides slightly more protection than the current rules by more frequent monitoring for contaminants above half the MCL, and less frequent monitoring for the vast majority of systems below half the MCL. EPA believes this is more realistic and less burdensome, while recognizing the potential for variability of naturally occurring radionuclide levels in ground water over time. Such variability (*e.g.*, a change in pH by nitrogen fertilizer application leading to a higher solubility of radium) was seen in New Jersey and is further discussed in appendix I.

Small ground water systems comprise the vast majority of systems with radionuclide contamination problems. Since most small systems have only one entry point, an entry point monitoring requirement will not have an impact. For systems with radium above 50% of the MCL, with three or fewer entry points to the distribution system, monitoring at each entry point once every three years would have an equal or smaller impact (in terms of the number of samples analyzed) than the 1976 requirement of monitoring four times every four years.

3. Entry Point Monitoring

EPA recognizes that sampling conducted at the monitoring location specified in the current rule may under-represent the risk to some consumers. Results can vary depending on the usage of each water source and changes in the monitoring location within the distribution systems. For systems with more than one water source, monitoring within the distribution system may yield different results. In the current rule, sampling is conducted "at a free flowing tap" within the distribution system. The current rule also recognizes the potential problems by providing that systems with two or more sources of water with different concentrations of radionuclides monitor the source water, as well as water from a free flowing tap, when ordered by the State. Entry point monitoring, a feature of more recent NPDWRs, provides a better measure of water quality for residents near the start of the distribution system than monitoring within the distribution system (e.g., the middle of the system) where water is subject to blending if there are other sources. Therefore, EPA proposed in 1991 to change the location for compliance monitoring to the entry points to the distribution system, consistent with other NPDWRs.

4. Grandfathering Data

In the implementation guidance, which will be available on OGWDW's home page (http://www.epa.gov/ogwdw), EPA is suggesting that samples within the latest compliance period, beginning June, 1996, be eligible for use in determining the baseline for monitoring frequency. While EPA prefers this approach, others may be possible. Please provide data and supporting rationale if you comment on this issue. The application of this provision would extend to all classes of radionuclides for which data are available.

The Agency solicits comment on two different approaches for the beta monitoring requirements. The first option is to not allow any reduced monitoring and the second would be to allow reduced monitoring similar to the alpha emitters. If systems must collect samples on a quarterly basis (no reduced monitoring) then grandfathering of data is not necessary. If the Agency decides to allow reduced monitoring, the Agency believes that States may use historical data to supplement their vulnerability assessments but should not use grandfathered data to satisfy the initial monitoring requirements because a sufficient baseline needs to be established in those systems considered vulnerable to man-made radioactivity.

Grandfathered data would be used to comply with the initial monitoring requirements for gross alpha, radium-226/228, and uranium, under some circumstances. Data collected after June 1996, during the most recent compliance period, would be considered for grandfathering. It would be the State's responsibility to determine if grandfathered data is sufficient to satisfy the initial monitoring requirements established by this rule. At the State's discretion, systems with one entry point to the distribution system (EPTDS) could use grandfathered data to satisfy the initial monitoring requirements. Systems that have multiple entry points to the distribution system could use grandfathered data collected after June 1996 to satisfy the initial monitoring requirements, provided that the data were collected at the EPTDS.

EPA is also considering that, at the State's discretion, systems with up to three entry points to the distribution system could also use grandfathered data to satisfy initial monitoring requirements, even if not collected from EPTDS, if the State makes a written finding that the circumstances of the system and their review of historic data justify such action. While the Agency cannot prescribe every possible scenario that a State may encounter, an example of circumstances that might support such a finding could be: a system that has three wells (and EPTDS), that are simply from different parts of a well-field, using the same aquifer, with good historical data showing uniform, low to no radionuclide occurrence from all wells, perhaps from the raw water as well as distribution system samples.

5. Sample Compositing

In general, compositing of samples is an effective means of decreasing analytical costs to systems. Compositing is permitted for alpha emitters and beta and photon emitters in the current rule. It is also allowed for radium-226 and -228 to the extent gross alpha was used as a screen for Ra-226 and, in turn, Ra-228. In the 1991 proposal, gross beta compositing was prohibited. Compositing for other nuclides was

allowed for up to five sampling points within one system; if the result for the composite was more than 3 pCi/l for any nuclide, individual non-composited samples were to be analyzed. This provision stemmed from the lowest MCL in the 1991 proposal, adjusted gross alpha at 15 pCi/l. Because of the possibility that one of the five samples taken might be at 15 pCi/L even if the other four were at zero, the rule envisioned one fifth (3 pCi/L) of the MCL as the maximum allowed result to assure no single well could exceed the MCL. The principle of limiting the result of five composited samples from separate entry points to one fifth of the MCL (or four composites to one fourth the MCL etc.) is still valid as a general matter, and should be followed whenever compositing is done.

A 3 picoCurie limit in the proposal would have been conservatively protective for a five sample composited for the proposed separate MCLs radium-226 and radium-228 at 20 pCi/L each, since ⅕ of each MCL is greater than 3 pCi/L. However, because EPA is considering retaining the current radium standard at 5 pCi/L combined, adding the results of five composited entry points samples for Ra-228 to the results of 5 composited entry point samples of Ra-226 must yield a result of one tenth (1/10) of the MCL to be assured that the combined Ra-226 and Ra-228 concentration could not exceed the MCL at any one entry point. Because one tenth of the MCL (0.5 pCi/L) is below the detection limit for Ra-226 and Ra-228, compositing of separate entry points cannot apply in case of Ra-226 or Ra228. However, annual compositing of samples from the same entry point may apply.

EPA requests comment on the feasibility and practical utility of compositing separate entry points (spatial compositing) versus compositing samples over time from the same entry point (temporal compositing). EPA believes that the use of one or the other (but never both simultaneously) may be appropriate under some circumstances. Greater certainty in the analytical result is obtained by taking the average of four separate (non-composited) results from one sampling location than by using a single result of composited samples. However, where an MCL is sufficiently above the detection limit such that analytical results are not subject to significant error near the MCL, compositing may be a cost saving measure. Additionally, when historical data indicate that contaminant levels are negligible (e.g., non-detects) for a water system, compositing among wells in a system or between systems having one point of entry may be advisable at State discretion. However, because of the costs of re-sampling and re-analysis of all points to confirm an MCL violation, or to qualify for decreased monitoring, it may not be in the systems best interest to initially composite in the absence of historical data.

6. Increased and Decreased Monitoring

Additionally, the Agency is considering having the final rule allow systems that are currently on a reduced monitoring schedule to remain on that reduced schedule as long as the system qualifies for reduced monitoring based on the most current analytical result. Systems for which the most current analytical result indicates a higher level than allowed for that monitoring schedule would resume monitoring at a frequency consistent with the most recent result. For example, a system with an annual average below half of the MCL could reduce monitoring to one sample every 6 years. If, while on this reduced frequency, the system collects a sample with an analytical result above half the MCL, the system would have to increase monitoring again to once every 3 years. It could revert to its previous reduced frequency of once every six years if the subsequent analytical result (of the sample taken three years later) was less than half the MCL. EPA also believes it is prudent to require quarterly samples to be collected at least 60 days apart, to capture seasonal variations. EPA solicits comment on this and other monitoring provisions.

7. Compliance Determinations

Compliance would be determined based on the annual average of quarterly samples collected at each entry point for all classes of radionuclides. If the annual average of any entry point exceeds an MCL, the CWS would be in violation. If NTNC systems are subject to MCLs, the same situation would apply to them. An immediate violation would occur for any sample analytical result or combination of sample analytical results that would place the system in violation before four quarters of data are collected (e.g., the first sample is greater than 4 times the MCL or the average of the first two samples is greater than twice the MCL). If a system has a sample that exceeds the MCL while on reduced monitoring, it would need to begin quarterly monitoring the following quarter. Compliance would be based on the average of the four consecutive quarters of data beginning with the initial result that exceeded the MCL. If a system fails to collect all samples required during any year, compliance would be calculated based on available data. Under the current rule, quarterly monitoring is continued until the annual average concentration no longer exceeds the MCL or until a monitoring schedule as a condition to a variance, exemption, or enforcement action becomes effective.

The following is a summary of certain features of the monitoring requirements for each regulated radionuclide or radionuclide group.

8. Combined Radium-226 and -228

Standardized monitoring: EPA contemplates application of the standardized 3, 6, 9 year cycles to the combined radium standard depending on whether analytical results for compliant systems are greater than (3) or less than (6) half the MCL or are a non-detect (9), as previously discussed. Decreased and increased monitoring would be based on the result of the analysis of the most recent required sample(s).

Entry point monitoring: Monitoring at entry points to the distribution system would be a requirement per the 1991 proposal unless EPA receives comments with compelling reasons for not doing so.

Sample Compositing: To decrease the burden of monitoring at distribution entry points, EPA is contemplating allowance of sample compositing for radium-226 or radium-228, but only when results will be indicative of the true level at a single entry point (temporal compositing). According to the proposal, systems would be required to analyze for Ra-228 separately from gross alpha or Ra-226. The Agency sees no reason why four separate samples from a single entry point (collected 60 days apart) could not be either analyzed and averaged or composited in the laboratory and analyzed, to determine future monitoring frequency. Therefore, EPA is suggesting for public comment that systems take the average analytical results from four individual samples, or the composite of four samples from each entry point, in order to determine future frequency.

As discussed previously, EPA does not contemplate allowing compositing of multiple entry points for derivation of combined radium results. EPA requests comment on any element of the foregoing discussion.

9. Alpha Emitters

Standardized monitoring: Same as for combined radium (see previous discussion).

Decreased and increased monitoring: Same as for combined radium (see previous discussion).

Entry point monitoring: Same as for combined radium (see previous discussion).

Sample Compositing: The current rule allows compositing of four samples in a laboratory or the averaging of four separate analyses. Under the 1991 proposal and the current rule, systems would be allowed to composite annually for samples taken from single entry points (temporal compositing) and, under the 1991 proposal, to composite samples representing up to five entry points with a six month holding time (spatial compositing).

10. Uranium

Standardized monitoring, monitoring frequency, and entry point monitoring: Same as for combined radium (see previous discussion).

Sample Compositing: For systems with gross alpha levels that are high enough to warrant uranium monitoring, annual composites for a single entry point would be allowed. Compositing of five samples representing five entry points would be permitted. If the result was greater than one fifth of the MCL, the individual samples would have to be analyzed or re-sampling and analysis of the new individual samples would have to occur.

11. Beta and Photon Emitters

Standardized monitoring framework, decreased monitoring: Monitoring for beta and photon emitters would follow the same schedule as in the current rule. Decreased monitoring is not envisioned for beta and photon emitters since only vulnerable systems would monitor, although EPA is taking comment on the possibility of decreased monitoring according to the standardized monitoring framework as outlined previously.

Screening levels: EPA recognizes certain problems with the current and proposed system. The proposed requirement of a 30 pCi/L screen for gross beta and photon emitters had the effect of no longer requiring Sr-90 monitoring because the proposed limit was above the screen of 30 pCi/L. Under the current MCL, there is only one contaminant that has a concentration limit near the 50 pCi/L screening level (Ni-63). There are five contaminants with concentration limits at or near 30 pCi/L and seven with limits below thirty. A screen level of 50 pCi/L would potentially miss the 12 contaminants with concentration limits below 50 pCi/L and a screening level of 30 pCi/L would potentially miss the 7 contaminants with concentration limits below 30 pCi/L. Systems that are drawing water from sources with known beta particle and photon radioactivity are required to use a screening level of 15 pCi/L under the current rule. The 1991 proposal retained this feature.

EPA thinks it is advisable to retain the proposed monitoring for sites within 15 miles of a source of beta photon emitters. The screening level in the original rule only affected surface water systems serving over 100,000, or other systems at State discretion, and the screening level for gross beta reflected this limited regulation. However, a known source of particular beta and photon emitters should be monitored for the specific radionuclides present at that source which may be a health concern below the screen, but would not be triggered by the screen. EPA would give States discretion on requiring specific monitoring for contaminants from specific sources.

In addition, a 15 pCi/l screening level is currently required for systems using water contaminated by effluents from nuclear facilities. These systems may also be required by the State to monitor for individual nuclides on a case by case basis. Since both screens may miss radionuclides of concern, EPA believes this issue is important and may need to be addressed in a future proposal. In addition, since many beta particle and photon emitters have half-lives that are too short to be detected under the current holding time, the issue of sample holding time may have to be re-visited in a future proposal.

Holding time: Another issue has a bearing on the screening level for which EPA is requesting comment. There are a significant number of beta and photon emitting radionuclides with short half lives, including those 13 nuclides of concern below the screening levels being considered. Because annual sample compositing is allowed under the current rule for beta and photon emitters, a screen above 30 pCi/L would detect a greater number of nuclides which (due to decay) may have been above a screen of 50 at the time of sampling, but are now between 30 and 50 pCi/L by the time of analysis. A screen level at 30 pCi/L would be more sensitive a screen for beta particle and photon radioactivity. The Agency requests comment on the selection of screening levels.

Sample Compositing: Annual compositing is permitted for beta and photon emitters in the current rule. In addition, for systems utilizing water contaminated by effluents from nuclear facilities, a quarterly compositing of five consecutive daily samples was to be analyzed for iodine-131, with more frequent monitoring at State discretion if it was detected in the finished water. EPA believes this compositing for single nuclide determinations is still valid. However, the 1991 proposed rule excluded compositing for beta and photon emitter samples. It also limited holding times to 6 months for single samples or 12 months for composites per the lab cert manual. A screen above 50 pCi/L , but with a sample holding time of 6 months without compositing may be a reasonable approach, considering screening options, holding times, and compositing issues. EPA solicits comment on these beta and photon emitter monitoring issues.

Entry point monitoring: EPA solicits opinion on requiring beta photon monitoring at entry points to the distribution system for vulnerable systems. EPA believes this is appropriate as it is for other nuclides, especially as an early warning of contamination from a localized source of man-made beta photon emitters.

12. Monitoring for Non-Transient Non-Community (NTNC) Systems

If EPA finalizes an option that requires monitoring for some or all NTNC systems, EPA wishes to make the monitoring requirements consistent between CWSs and those NTNC systems required to monitor. See the previous discussion for CWS monitoring for details. As with CWSs, monitoring under the SMF would be required at entry points to the distribution system, based on a nine-year cycle, consisting of three, 3-year monitoring periods, with provisions for reduced monitoring as appropriate. If the radionuclides NPDWRs for CWSs are fully extended to NTNCWSs, the monitoring frameworks would be the same.

Table III–4 summarizes the monitoring frequencies for CWSs and NTNC systems, under the options that require monitoring:

TABLE III–4. COMPARISON OF THE MONITORING FRAMEWORKS: THE EXISTING RULE, THE 1991 PROPOSAL, AND THE APPROACH DESCRIBED IN THE NODA

Current rule (1976)	1991 proposal	2000 NODA
Radium Alpha Emitters and Uranium		
Initial baseline: 4 consecutive quarterly samples	Initial baseline: one sample per year for 3 years.	Initial baseline: 4 consecutive quarterly samples taken within 3 years from effective date or grandfathered data in previous compliance period.
If average > MCL=treat, etc	Same as 1976	Same as 1976.
If one or more samples >MCL, do quarterly sampling until average < MCL.	Same as 1976	Same as 1976.
If >50% of MCL, 4 Quarters every 4 years	If >50% of MCL, one sample every 3 yrs or waiver to every 9 yrs.	Same as 1991 with no waiver.
If < 50% of MCL, 1 sample every 4 years	If <50% of MCL, one sample every 3 yrs or waiver to every 9 years.	If < 50% of MCL, one sample every 6 years.
If no detect, 1 sample every 4 years	If no detect, one sample every 3 yrs or waiver to every 9 yrs.	If no detect, one sample every 9 years.
Beta and Photon Emitters		
Quarterly gross beta monitoring. Vulnerable systems and surface water systems > 100,000 pop. Screen of 50; screen of 15 for contaminated water I–131 quarterly, Sr–90 and H–3 annual Sr–89 and Cs134 if above 15.	Vulnerable systems (surface and ground water) within 15 miles of source of man made emitters do gross beta screen proposed at 30.	Same as 1991:Vulnerable systems within 15 miles of source of man made emitters will monitor with screen of 50 or 30. Same as 1976: Screen of 15pCi/L for systems using contaminated waters. Same contaminants as 1976 with corrections per NBS HB–69.

13. Polonium-210 and Lead-210

Risk estimates based on Federal Guidance Report No. 13 indicate that current screening levels for gross alpha and gross beta may not be adequate to capture all contaminants of concern. Specifically, based on the new health-effects information contained in FGR–13 (EPA 1999b), EPA believes it may be appropriate to require systems to perform isotopic analyses for additional radionuclides that may present a significant threat to human health. As a result of this information, EPA is requiring some systems to do analyses for polonium-210 (a naturally occurring alpha emitter) and lead-210 (a naturally occurring beta emitter) under the Revisions to the Unregulated Contaminant Monitoring Regulation (UCMR) (64 FR 50556, Friday, September 17, 1999), to be implemented after analytical methods for these contaminants have been approved.

14. Reporting Requirements

On May 13, 1999, EPA proposed subpart Q (64 FR 25964) to revise the minimum requirements public water systems must meet for public notification of violations of NPDWRs and other situations that pose a risk to public health from the drinking water. EPA anticipates the final Public Notification Rule (PNR), under part 141, subpart Q to be published in early 2000. After the final PNR is published, subsequent EPA drinking water regulations that affect public notification requirements will amend the PNR as part of each individual rulemaking.

The proposed PNR divides the public notice requirements into three (3) tiers, based on the type of violation. "Tier 1" applies to violations and situations with significant potential to have serious adverse effects on human health as a result of short-term exposure. Notice is required within 24 hours of the violation. "Tier 2" applies to other violations and situations with potential to have serious adverse effects on human health. Notice is required within 30 days, with extensions up to three months at the discretion of the State or primacy agency. "Tier 3" applies to all other violations and situations requiring a public notice not included in Tier 1 and Tier 2. Notice is required within 12 months of the violation, and may be included in the consumer confidence report at the option of the water system.

Today's NODA requests comment on whether community water systems (CWS) should provide a Tier 2 public notice for MCL violations under the radionuclide NPDWRs and to provide a tier 3 public notice for violations of the monitoring and testing procedure requirements. If NTNC water systems are required to monitor and notify, then they would be required to provide a Tier 2 notice if the systems exceed the MCLs. EPA requests comment on the implementation of public notification requirements by the effective date of the MCL and on the Tier 2 public notice requirement for quarterly repeat notices for NTNC systems that continue to exceed the CWS MCL(s) under the "monitoring and notification-only" option. EPA believes States will phase in monitoring of NTNC systems based on results of CWS systems in the same proximity. The agency requests comment on whether or not the same increase or decreased monitoring requirements which pertain to CWSs should apply to NTNC water systems i.e. the 3, 6 and 9 year monitoring based on being above 50% of the MCL, below 50%, or non-detect.

As in the current rules, an analytical result that exceeds the MCL would trigger additional confirmation samples, which in turn could trigger quarterly monitoring. For man-made beta and photon emitters, EPA is suggesting to finalize the proposal regarding a screening level of 30 or 50 pCi/L for "vulnerable systems," which are defined as being within a 15 mile radius of a source of this class of radionuclides. For Pb-210, EPA will be collecting data to make a future determination regarding additional monitoring for this natural beta emitter.

Tables III–5 and III–6 summarize the current and proposed monitoring requirements and those suggested by today's document.

TABLE III–5.—INITIAL (ROUTINE) MONITORING REQUIREMENTS

1976	1991 proposal	2000 NODA
GROSS ALPHA		
CWSs: Four consecutive quarters at representative point(s) within the distribution system every four years.	CWSs and NTNCWSs: Annual monitoring at each entry point for first three years.	CWSs and NTNCWSs [1]: Four consecutive quarters of monitoring at each entry point, anytime during first 3 years.
RADIUM		
CWSs: Four consecutive quarters at representative point(s) within the distribution system every four years. Initial monitoring is for radium-226. If radium-226 exceeds 3 pCi/L, analysis for radium-228 is required. A gross alpha measurement can be substituted for radium 226 and/or uranium monitoring if the gross alpha measurement is below the applicable MCL(s).	CWSs and NTNCWSs: Annual monitoring for each radium isotope (radium-226 and radium-228) at each entry point, for three years.	CWSs and NTNCWSs: Four consecutive quarters of monitoring for each radium isotope (radium-226 and radium-228) at each entry point, any time during first 3 years.[2]
URANIUM		
None	CWSs and NTNCWSs: Annual monitoring at each entry point for three years.	CWSs and NTNCWSs: Four consecutive quarters of monitoring for uranium to determine compliance with both mass and activity either by gross alpha or specific mass or activity analysis at each entry point, every three years.[2]
BETA AND PHOTON EMITTERS		
CWSs serving > 100,000 persons and using surface water (and other systems designated by the State): Four consecutive quarters for gross beta, tritium and strontium-90 at representative point(s) within the distribution system. Determine major constituents if exceed screen of 50pCi/L Systems using water contaminated with effluent from nuclear facilities: Quarterly monitoring [1] for gross beta and iodine-131, strontium-90 and tritium. If gross beta level is above 15 pCi/L, the same or equivalent samples must be analyzed for strontium-89 and cesium-134.	Vulnerable systems only CWSs and NTNCWSs: (as designated by State): Two gross beta screening levels were discussed in the 1991 Proposal. Using a screen of 30 pCi/L, quarterly monitoring for gross beta is required, along with annual tritium monitoring. Using a screen of 50 pCi/L, quarterly monitoring for gross beta is required, along with annual tritium and strontium-90 monitoring.	Vulnerable systems only CWSs and NTNCWSs: (as designated by the State): Two gross beta [14] screening levels are being considered. Using a screen of 50 or 30 pCi/L, quarterly monitoring for gross beta is required, along with annual monitoring for tritium and strontium-90 as in 1976. Vulnerability based on proximity (15 miles) to source per 1991. Screen of 15 for contaminated waters as in 1976.[3]

NOTE: [1] This assumes that monitoring will be required at NTNC systems. If this is not the case, these requirements would not apply to NTNC systems.

[2] A gross alpha measurement can be substituted for radium-226 and/or uranium monitoring if the gross alpha measurement is below the applicable MCL(s).

[3] Quarterly monitoring for gross beta would be based on the analysis of monthly samples or the analysis of a composite of three monthly samples. For iodine 131, a composite of five consecutive daily samples shall be analyzed once per quarter. Additional monitoring may be required to identify specific isotopes if gross beta measurement exceeds the screening level.

TABLE III–6.—REDUCED MONITORING REQUIREMENTS

1976	1991 proposal	2000 NODA
GROSS ALPHA		
CWSs: One sample every four years if annual average from previous results (four consecutive quarterly samples) is less than ½ MCL.	CWSs and NTNCWSs: One sample every three years, if previous monitoring results (from three years of annual monitoring) are below MCL. If system is reliably and consistently below MCL, the system could receive a waiver, and monitor once every nine years.	CWSs and NTNCWSs: One sample every three years if previous monitoring results ("previous results") are reliably and consistently at or below MCL; one sample every six years if previous results are reliably and consistently at or below ½ MCL; or one sample every nine years if previous results are reliably and consistently at or below the MDL.

TABLE III–6.—REDUCED MONITORING REQUIREMENTS—Continued

1976	1991 proposal	2000 NODA
RADIUM		
CWSs: One sample every four years if annual average from previous results (four consecutive quarterly samples) is less than ½ MCL.	CWSs and NTNCWSs using ground water: One sample every three years, if previous monitoring results (from three years of annual monitoring) are below MCL. If system is reliably and consistently below MCL, the system could receive a waiver, and monitor once every nine years.	CWSs and NTNCWSs: One sample every three years if previous results are reliably and consistently at or below MCL; one sample every six years if previous results are reliably and consistently at or below ½ MCL; or one sample every nine years if previous results are reliably and consistently at or below the MDL.
URANIUM		
None	CWSs and NTNCWSs: One sample every three years, if previous monitoring results (from three years of annual monitoring) are below MCL. If system is reliably and consistently below MCL, the system could receive a waiver, and monitor once every nine years.	CWSs and NTNCWSs: One sample every three years if previous results average below MCL; one sample every six years if previous results average at or below ½ MCL; or one sample every nine years if previous results average below the MDL.
BETA AND PHOTON EMITTERS		
CWSs serving > 100,000 persons and using surface water (and other systems designated by the State): Every four years, systems must collect samples from four consecutive quarters for gross beta at representative point(s) within the distribution system. Systems using water contaminated with effluent from nuclear facilities: No reduced monitoring is allowed.	Vulnerable systems only (as designated by State): Since only vulnerable systems are required to monitor, no reduced monitoring is allowed.	Vulnerable systems only (as designated by the State): Since only vulnerable systems are required to monitor, no reduced monitoring is allowed.

15. Laboratory Capacity Issue " Possible Extension of Initial Monitoring Period

As discussed earlier in the analytical methods section (III.J), the Performance Evaluation Program (now known as the Proficiency Testing Program) has been externalized. Although the Agency is unsure at this time how externalization may affect laboratory capacity, EPA recognizes that it may be an implementation issue for at least three reasons:

- The recent externalization of the radionuclides Performance Evaluation (PE) studies program may cause short-term disruption in laboratory accreditation;
- Requiring NTNCWSs to monitor under the Standard Monitoring Framework will add approximately 20,000 systems to the universe of systems that are already required to monitor;
- And the radon rule will be implemented simultaneously with the radionuclides rule.

NIST is in the process of approving a provider for PT samples for radionuclides. States also have the option of approving their own PT sample providers. Should laboratory capacity issues related to externalization present implementation problems for the initial monitoring period (three years), EPA will consider allowing an additional year (four years total) for the initial monitoring period. During the specified time period, systems would be required to analyze four consecutive quarterly samples to determine compliance. If the final rule is promulgated in November of 2000, the new monitoring requirements would begin to be enforced in November of 2003. If EPA implements a one year extension, water systems would have until December 31 of 2007 to complete the required initial monitoring. This scenario would allow the "one third of systems per year" strategy inherent in the Standard Monitoring Framework to be applied, while allowing one additional year, if necessary, to address any laboratory capacity issues. EPA solicits public comment on this matter.

L. Effective Dates

Much of the rule that will be finalized in November will involve retaining current elements of the radionuclides NPDWR. Those portions of the final rule that are unaffected by the upcoming regulatory changes are already in effect. MCLs for gross alpha, beta particle and photon radioactivity, and combined radium-226 and -228 will be unchanged and are already in effect. Regarding water systems that are currently out of compliance with the existing NPDWRs for gross alpha, combined radium-226 and -228, and/or beta particle and photon radioactivity, States with primacy and EPA will renegotiate enforcement actions that put systems on compliance schedules as expeditiously as possible.

Under the Safe Drinking Water Act, final rules become effective three years after promulgation (November of 2003, assuming that the rule becomes final in November of 2000). The following discussion assumes a promulgation date of November 2000. For reasons described in the monitoring section of the NODA (section III, part K) and the Appendices (appendix V), initial monitoring will be required to completed by December 31, 2007. Under the Standard Monitoring Framework, systems have three years to complete the initial monitoring cycle of four consecutive quarterly samples. However, for reasons described in the monitoring section of the NODA (section III, part K) , systems will have an additional year to complete the initial monitoring cycle, which will correspond to an end date of December

31, 2007. This includes initial monitoring for uranium, the new monitoring requirements for radium-228, and new initial monitoring under the requirements for entry points. Compliance determinations and future monitoring cycle schedules are also discussed in the monitoring sections cited. MCL violations resulting from the new requirement for separate Ra-228 monitoring will be treated as "new violations" and will be on the same schedule as other new violations (e.g. uranium).

M. Costs and Benefits

The Safe Drinking Water Act provides for EPA to consider both public health and the feasibility (taking costs into consideration) in establishing drinking water MCLs. In addition the new Amendments require EPA to evaluate the costs and benefits of potential revisions to the current standards. As noted earlier, the Agency conducted an analysis of the costs and associated benefits of each of the options described in today's document. These analyses were performed consistent with the requirements for a Health Risk Reduction and Cost Analysis set forth in the 1996 Amendments to the SDWA (section 1412(b)(3)(C)).

First, all public water systems that are currently treating and are in compliance with the 1976 standards will have no additional cost if the rule remains the same as it is now. At the same time, EPA recognizes that it may be costly to systems which have delayed compliance. However, to the extent the rule remains the same, costs necessary to comply with the existing rule, as well as public health benefits associated with it, have accrued to that 1976 rule. If EPA changes nothing, the existing 1976 requirements must be met. EPA considers only those costs associated with accommodating revisions to the current regulations to be new costs. Costs incurred, or those that should have been incurred to comply with a previous regulation, are not factored into current considerations.

Second, EPA has reexamined the costs of the 1991 proposal regarding monitoring for any changes which may be warranted based on new data. EPA is contemplating several changes which were part of the 1991 proposed regulation and which may increase costs. These include: (1) Promulgating an NPDWR for uranium; (2) applying the radionuclide NPDWRs to non-transient, non-community (NTNC) systems; (3) requiring monitoring at the point of entry to distribution systems; and ; (4) requiring separate monitoring for radium-226 and radium-228.

EPA is also recommending rapid sample analysis for alpha emitters to detect the presence of short lived radionuclides such as radium-224, but is not contemplating requiring it as part of the revision to the radionuclides rule. The Agency will pursue the issue of a timely analysis of gross alpha to reflect short half lived Ra-224 in a separate proposal.

Costs and benefits for the various options are presented in appendix V of today's document, in the Technical Support Document (EPA 2000a), and in the draft Health Risk Reduction and Cost Analysis (EPA 2000b). Today's NODA solicits comment on whether the incremental risk reduction may justify the costs for certain of the revisions described in the NODA. EPA requests public comment on such questions and on the extent to which its discretionary authority provided by section 1412(b)(6) of the SDWA should be used. This NODA also requests public input regarding the need for further adjustments to the limits based on the cost and risk data presented in today's NODA.

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Appendix I—Occurrence

In order to estimate the total national costs and benefits of revising the MCLs it is necessary to develop updated national estimates of the occurrence and exposure to these radionuclide contaminants in drinking water. Occurrence data and associated analyses provide indications of the number of public water supply systems with concentration of radionuclides above the revised MCL as well as the population served by these systems. Monitoring and treatment costs can be estimated from the occurrence data.

A. Background

EPA conducted a nationwide occurrence study of naturally occurring radionuclides in

public water supplies called the National Inorganic and Radionuclides Survey (NIRS) (see EPA 1991, proposed rule). The objective of NIRS was to characterize the occurrence of a variety of constituents, including radium-226, radium-228, uranium (mass analysis), gross alpha-particle activity, and gross beta-particle activity, present in community ground-water supplies (finished water) in the United States, and its territories. The survey included a random sample from 990 collection sites. The public water supplies were stratified into four size categories, and the samples were chosen to best represent the same stratification present in the total population of community water supply in existence at the time, as shown in ———Table I–1.

TABLE I–1.—COMPARISON OF NIRS TARGET SAMPLE WITH FEDERAL REPORTING DATA SYSTEM (FRDS) INVENTORY

Population category (population range)	Number of FRDS sites*	Percentage of FRDS sites	Number of NIRS sites	Percentage of NIRS sites
Very small (25–500)	34,040	71.4	716	71.6
Small (501–3,300)	10,155	21.3	211	21.1
Medium (3,301–10,000)	2,278	4.8	47	4.7
Large and very large (10,001–>100,000)	1,227	2.6	26	2.5
Total	47,700	100.1	1,000	100.0

*Based in FRDS inventory for fiscal year 1985 from Longtin, 1988.

Results of NIRS were used to develop the proposed radionuclide rule in 1991 (56 FR 33050; EPA 1991). There has not been a comparable national survey for radionuclides since. Since the publication of the proposed 1991 revision to the MCLs, the United States Geological Survey has collected additional data on various radionuclides in groundwater to augment the data of the NIRS. These studies are summarized subsequently, and in greater detail in the Technical Support Document (EPA 2000a).

Szabo and Zapecza (1991) detail the differences in the occurrence of uranium and radium-226 in oxygen-rich and oxygen-poor areas of aquifers. Because the chemical behavior of uranium and radium are vastly different, the degree of mobilization of the parent and product are different in most chemical environments.

Recently, high concentrations of radium were found to be associated with ground water that was geochemically affected by agricultural practices in the recharge areas by strongly enriching the water with competing ions such as hydrogen, calcium, and magnesium (Szabo and dePaul, 1998). Radium-228 was detected in about equivalent concentrations as radium-226 in the aquifer study in New Jersey (Szabo and dePaul, 1998).

B. USGS Radium Survey

A 1998 USGS survey (see EPA 2000a) was designed to target areas of known, or suspected, high concentrations of radium-224 as inferred by associated radium occurrence data, geologic maps, and other geochemical considerations. Thus, the survey is likely biased toward the extreme high end of the occurrence distribution for radium-224 and co-occurring contaminants such as radium-228. Approximately half of the samples were below the minimum detectable concentration of radium-226 and radium-228 in spite of the fact that public water systems were targeted in areas where high concentrations of radium were expected. Table I–2 shows that, of the 104 samples, 21 exceeded the MCL for combined radium, and about 5 percent exceeded 10 pCi/L of radium-224, though several of these samples with pH less than 4.0 also contained detectable concentrations of thorium isotopes as well. Concentrations exceeded 1 pCi/L in about 10 percent of the samples analyzed for lead-210 and 3 percent for polonium-210.

TABLE I–2.—PERCENT OF SAMPLES EXCEEDING SPECIFIED CONCENTRATION

Radionuclide	Total number of samples	Percent of samples exceeding given concentration (pCi/L)					
		1	2	3	5	7	10
Ra-224	104	30	26	20	15	9	5
Ra-226	104	33	22	17	10	5	2
Po-210	95	3	1	1	1	0	0
Pb-210	96	10	3	1	1	0	0

Radium-224 occurs in many of the wells sampled at concentrations that highlight the limitations of the present monitoring scheme for the gross alpha-particle standard. In addition, the contribution of radium-224 and its short-lived daughter products to gross alpha emissions was estimated with data from a concurrent study of ground-water supplies by the USGS in cooperation with the state of New Jersey (Szabo et al., 1998). In that study, gross alpha emissions were measured before the decay of radium-224 and after sufficient time had elapsed for radium-224 decay (about 18–22 days). In this way, the difference between the initial gross-alpha measurement and the final measurement is indicative of the contribution of radium-224 and all other alpha emitting isotopes that would decay within this time frame. The results indicate that the contribution of radium-224 and its short-lived daughter products is approximately three times the concentration of radium-224. While this analysis was developed with a small data set in a restricted geographic range, it is based on a physical process and has important implications for such things as projections of radium-224 occurrence in association with gross-alpha concentrations. These results are also important in light of both the costliness and difficulty of the radium-224 analysis.

Concentrations of radium-228 were highly correlated with radium-224. Although this correlation was based on a limited number of data points, there is a physical basis to the correlation since both nuclides originate from the same decay chain. Therefore, there is potential for using radium-228 as a proxy indicator for the much shorter lived and infrequently sampled radium-224. In addition, the isotopic ratios of radium-226 to radium-228 were below 3:2 in many samples indicating that the gross alpha-particle screen that is currently used for combined radium (radium-226 + radium-228) compliance would be inadequate in many situations.

Polonium-210 and lead-210 are derived from the uranium-238 decay series; the decay series that produces radium-226. However, the survey was designed to assess radium-224; therefore results are possibly biased to areas that would more likely have isotopes in the thorium-232 decay series. In addition, the correlations of radium-226 with radium-224 and radium-228 are only 0.51 and 0.61 respectively; consequently, the wells that were sampled may not be located in areas expected to have polonium-210 or lead-210. Within these constraints, the new data help to fill the gap in occurrence information that existed for these isotopes. Polonium-210 was found in concentrations exceeding 1 pCi/L in only two wells. At this time, these

observations could not be associated with unique geochemical controls (as has been accomplished in a previous study in Florida; Harada et al., 1989) and further investigations would be necessary to infer anything more about the national distribution and occurrence of polonium-210.

Approximately 12 percent of the samples exceeded a lead-210 concentration of 1 pCi/L; however only one sample was greater than 3 pCi/L. The greatest frequency of detection was in the Appalachian Physiographic Province of the northeastern United States, especially in of Connecticut and Pennsylvania. The geochemical mechanism that controls lead-210 dissolution is also not well established and needs further study, though lead is less soluble than radium. In addition, lead-210, like polonium-210, is derived from a different decay chain than radium-224 and it was therefore not considered in designing the study. One possible explanation for the frequent detection of lead-210 in concentrations greater than 1 pCi/L in the Appalachian region may be the high concentrations of radon-222 in ground water in this region (Zapecza and Szabo, 1986). As the radon in solution decays through a series of very short half-lived products to Lead-210, a small fraction of the lead-210 may not be sorbed onto the aquifer matrix; thus, the higher the initial radon-222 concentration, the more likely measurable amounts of lead-210 would be found in the ground water. This hypothesis could not be tested however because radon-222 was not analyzed in this study.

C. USGS Beta/Photon Data Collection Effort

The major source of data for man-made radionuclides is the Environmental Radiation Ambient Monitoring System (ERAMS) which is published quarterly in the Environmental Radiation Data (ERD) reports. The ERD reports provide concentration data on gross beta-particle activity, tritium, strontium-90, and iodine-131 for 78 surface-water sites that are either near major population centers or near selected nuclear facility environs.

An additional data collection effort was completed by the U.S. Geological Survey in the summer of 1999 (see EPA 2000a) to analyze targeted beta-particle emitting radionuclides from a small number of public water systems that had shown relatively high levels of beta/photon emitters during the original NIRS survey. Of the 26 public water systems contacted for this effort none could ascertain which wells in their systems were originally sampled as part of NIRS. Consequently, although all efforts were made to include as many of the original systems as possible, it is presently unknown if the wells sampled match those in NIRS. The radionuclide analyses for this data collection effort included; short-term (48 hour) gross beta-particle and gross alpha-particle activities, long-term (30 days) gross beta-particle and gross alpha-particle activities, tritium, strontium-89, strontium-90, cesium-134, cesium-137, iodine-131, uranium-234, uranium-235, uranium-238, radium-228, radium-226, lead-210, and cobalt-60.

Gross beta-particle activities were all below 50 pCi/L in water collected from public water systems that were sampled previously during the National Inorganics and Radionuclide Survey (NIRS) and had been found to contain gross beta-particle activity in excess of 20 pCi/L. To the extent possible, all samples were collected from the original public water systems surveyed for NIRS where gross beta-particle activities were 20 pCi/L or greater. However due to the amount of time that had elapsed since the NIRS samples were collected, correlation with the original sampling point could not be verified for every water supply sampled.

Though the number of samples was limited (26 samples), a few conclusions can be reached. Concentrations of gross beta-particle activities will rarely exceed 50 pCi/L in water collected from public water systems (and did not do so in this study). A significant percentage (15% or 4 samples) of the 26 samples analyzed, however, contained gross alpha-particle activities at or in excess of the 15 pCi/L MCL indicating that concern over the presence of elevated concentration of gross alpha-particle activity in ground water is justified. Long-term (30-day) gross beta-particle activity analyses did not indicate significant ingrowth of beta-particles in any of the samples, though this result is qualified by the absence of significant quantities of uranium-238 in any of the samples collected. Naturally occurring potassium-40 and radium-228 are a significant source of gross beta-particle activity to many of the samples in agreement with results of Welch et al., 1995., Minor concentrations of naturally-occurring lead-210 are also detected occasionally. No manmade radionuclide was detected in concentration above the maximum detectible concentration (MDC) in any of the samples. The presence of naturally occurring beta-particle emitting radionuclides must be taken into account when evaluating the source of high gross beta-particle activity in ground water as first suggested by Welch et al., 1995.

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Appendix II—Health Effects

The following information summarizes the salient changes in risk assessment information and risk characterization methodology during the past two decades. The Technical Support Document (EPA 2000a) also provides additional information.

A. Use of Linear Non-Threshold Assumption

In estimating the health effects from radionuclides in drinking water, EPA subscribes to the linear, non-threshold model which assumes that any exposure to ionizing radiation has a potential to produce deleterious effects on human health, and that the magnitude of the effects are directly proportional to the exposure level. The Agency further believes that the extent of such harm can be estimated by extrapolating effects on human health that have been observed at higher doses and dose rates to those likely to be encountered from environmental sources of radiation. The risks associated with radiation exposure are extrapolated from a large base of human data. EPA recognizes the inherent uncertainties that exist in estimating health impact at the low levels of exposure and exposure rates expected to be present in the environment. EPA also recognizes that, at these levels, the actual health impact from ingested radionuclides will be difficult, if not impossible, to distinguish from natural disease incidences, even using very large epidemiological studies employing sophisticated statistical analyses. However, in the absence of other data, the Agency continues to support the use of the linear, non-threshold model in assessing risks associated with all carcinogens.

B. Continuous Improvements in Models, Data Base

As various scientific institutions have continued to collect data on the observed effects of radiation from the cohort of bomb survivors, patients with medical exposure, and workers with occupational exposure; continuous improvements have been possible in models to extrapolate effects and to estimate the risks of small exposures to radiation from the natural environment or man-made sources. The data have led to

changes in risk estimates as summarized here.

1. Basis of 1976 Estimates of Risk

- Risk of bone cancer from radium dial painters.
- Autopsy radioassay (see EPA 2000a). Body burden from natural intake or radium, about 1 pCi/day.
- Estimate annual dose rate in several organs from natural radium in rad/year.
- BEIR I risk numbers for radium dial painters yields risk/year per rad/year.
- Calculate risk over lifetime.

a. 1976 Estimates of the Risks from Radium-226 and Radium-228. In general, EPA followed the Federal Radiation Council (FRC) recommendation that radium ingestion limits for the general population should be based on environmental studies and not the models used to establish occupational dose limits (see EPA 2000a). In setting the MCL, EPA considered bone cancer and other soft tissue cancers to be the principal health effects associated with radium ingestion. To calculate body burdens, doses, and risks from ingestion of radium-226 and radium-228, in 1976, EPA relied on data from the 1972 report of the United Nations Scientific Committee on the Effects of Atomic Radiation (see EPA 2000a) and the 1972 the National Academy of Sciences (NAS) Committee on the Biological Effects of Ionizing Radiation, BEIR I Report (see EPA 1991, proposed rule). Additional information and support were found in the International Commission on Radiological Protection, Publication 20 (see EPA 2000a). The literature suggests that radium-228 was as toxic as radium-226, and possibly twice as toxic for bone cancers in dogs. Given this, EPA believed that it was prudent to assume that the adverse health effects due to chronically ingested radium-228 were at least as great as those from radium-226.

Assuming equal toxicity with radium-226, EPA reasoned that lifetime ingestion of only radium-228 at 5 pCi/L would yield lifetime total cancer risks equal to those for a lifetime ingestion of only radium-226 at the same concentration, i.e., between 0.5 to 2×10^{-4}. By setting the MCL at 5 pCi/L for radium-226 and radium-228 combined, rather than individually, EPA sought to limit the lifetime total cancer risk from the ingestion of both isotopes in drinking water to 2×10^{-4} or less.

b. Basis for the 1976 MCL for Gross Alpha Particle Activity. One of the main intentions of the 15 pCi/L MCL for gross alpha particle activity, which includes radium-226 but excludes uranium and radon, was to limit the concentration of other naturally-occurring and man-made alpha emitters relative to radium-226. Specifically, this limit was based on the fact that EPA estimated that continuous consumption of drinking water containing polonium-210, the next most radiotoxic alpha particle emitter in the radium-226 decay chain, at a concentration of 10 pCi/L might cause the total dose to bone to be equivalent to less than 6 pCi/L of radium-226.

The 15 pCi/L limit, which includes radium-226 but excludes uranium and radon, was based on the conservative assumption that if the radium concentration is limited to 5 pCi/L and the balance of the alpha particle activity (i.e., 10 pCi/L) is due to polonium-210, the total dose to bone would be less than that dose associated with an intake of 6 pCi/L of radium-226.

c. Basis for the 1976 MCL for Beta Particle and Photon Radioactivity. In 1976, EPA estimated that continuous consumption of drinking water containing beta and photon emitting radioactivity yielding a 4 mrem/yr total body dose may cause an individual fatal cancer risk of 0.8×10^{-6} per year, or a lifetime cancer risk of 5.6×10^{-5}, assuming a 70-year lifetime. In setting the MCL for man-made beta and photon emitters, EPA used cancer risk estimates from the BEIR I report for the U.S. population in the year 1967 (see EPA 1991, proposed rule). For an exposed group having the same age distribution as the U.S. 1967 population, the BEIR I report indicated that the individual risk of a fatal cancer from a lifetime total body dose rate of 4 mrem per year ranged from about 0.4 to 2×10^{-6} per year depending on whether an absolute or relative risk model was used. Using best estimates from both models for fatal cancer, EPA believed that an individual risk of 0.8×10^{-6} per year resulting from a 4 mrem annual total body dose was a reasonable estimate of the annual risk from a lifetime ingestion of drinking water. Over a 70-year period, the corresponding lifetime fatal cancer risk would be 5.6×10^{-5}, with the risk from the ingestion of water containing less amounts of radioactivity being proportionately smaller.

Based on 1967 U.S. Vital Statistics (see EPA 1991 and EPA 2000a), the probability that an individual would die of cancer was about 0.19, and was thought to be increased by 0.1 percent from a lifetime dose equivalent rate of 15 mrem per year. Therefore, EPA calculated that the 4 mrem/yr MCL for man-made beta and photon emitters corresponded to a lifetime risk increase of 0.025 percent to exposed groups.

EPA knew that partial body irradiation was common for ingested radionuclides since they are, like radium, largely deposited in a particular organ, or in a few organs. In such cases, EPA acknowledged that the risk per millirem varies depending on the radiosensitivity of the organs at risk. For example, EPA estimated that cancers due to the thyroid gland receiving 4 mrem per year continuously ranged from about 0.2 to 0.5 per year per million exposed persons (averaged over all age groups). Considering the sum of the deposited fallout radioactivity and the additional amounts due to releases from other sources existing at that time, EPA believed that the total dose equivalent from man-made radioactivity was not likely to result in a total body or organ dose to any individual that exceeded 4 mrem/yr. Consequently, EPA did not believe that the 4 mrem/yr standard would affect many public water systems, if any. At the same time, the Agency believed that an MCL set at this level would provide adequate public health protection.

2. 1991 Proposal: Basis of Health Risk Estimates

During the years since the publication of the 1976 regulations, the Agency obtained a great deal of additional data and a better understanding of the risks posed to human health by ingested radionuclides. Many of these new studies were presented and discussed in the Advance Notice of Proposed Rulemaking announcing EPA's intent to revise the MCLs (51 FR 34836, Sept. 20, 1986) and the supporting health criteria documents (see EPA 2000a and EPA 1991, the proposed rule).

Among the most important changes made by EPA in developing the 1991 revisions was the adoption of a common calculational framework, the RADRISK computer code (see EPA 1991, proposed rule), to estimate the risks posed by ingestion of radionuclides in drinking water. The RADRISK code consisted of intake, metabolic, dosimetric, and risk models that integrated the results of a large number of studies on a variety of radioactive compounds and radiation exposure situations into an overall model to estimate risks for many different radionuclides. Radionuclide-specific parameters were based on the results of individual scientific studies of a specific radionuclide, such as radium; human epidemiological studies; or experimental animal studies of groups of chemically-similar radionuclides. To summarize, the following are some of the salient changes.

- Used RADRISK metabolic model instead of natural uptake equilibrium model. Based on known intakes.
- Used ICRP report 20 (see EPA 2000a) on alkaline earth elements with Oak Ridge modeled exponential fit to that model.
- BEIR IV risks for alpha emitters.
- Ra–224 data from ankylosing spondylitis, tuberculosis.
- Change in results from Ra–228 calculations (Oak Ridge model of '84) and ICRP 30 (see EPA 2000a) yielded different results based on retention and distribution of each member of decay chain.

a. Basis for the 1991 MCL for Radium-226 and Radium-228. In 1991, EPA proposed revised MCLs for radium-226 and radium-228 individually at 20 pCi/L each. The Agency thought at that time that the limit for each of these radium isotopes was within the Agency's acceptable risk range of 10^{-6} to 10^{-4}. The Agency no longer believes the MCLs proposed in 1991 for radium-226 and radium-228 are within the Agency's acceptable risk range.

i. Human and Animal Health Effects Data Considered. In 1991, EPA based its risk estimates for radium using information from two epidemiological study groups. The first group consisted of radium dial painters who had ingested considerable amounts of radium paint (containing various proportions of radium-226 and radium-228) by sharpening the point of their paint brush with the lips. The second group consisted of patients in Europe injected with a short-lived isotope of radium, radium-224, for treatment of spinal arthritis and tuberculous infection of the bone (see EPA 2000a). The results of these studies are described briefly next.

At high levels of exposure to radium, several non-cancer health effects were observed in radium dial painters, such as benign bone growths, osteoporosis, severe growth retardation, tooth breakage, kidney disease, liver disease, tissue necrosis, cataracts, anemia, immunological suppression and death (see EPA 2000a).

Exposed radium dial painters also exhibited significantly elevated rates of two rare types of cancer, bone sarcomas (osteosarcomas, fibrosarcomas and chondrosarcomas) and carcinomas of head sinuses and mastoids (see EPA 2000a and EPA 1991, the proposed rule). The incidence of head carcinomas was associated with exposure to radium-226, but not radium-228 (see EPA 2000a). This is because these latter cancers were due to an accumulation of radon gas (radon-222) in the mastoid air cells and paranasal sinuses caused by the escape of radon-222 into the air spaces.

ii. Body Burden, Dose, and Risk Calculations. Risk calculations for ingested radium were made using RADRISK (see EPA 1991, proposed rule) based on annual dose rates. For this purpose, EPA computed dose rates for specific organs and tissues at specific ages for an annual unit intake of each radium isotope (see EPA 2000a). Calculation of body burdens was based on metabolic models derived from the radium dial painter studies. Calculations of absorbed doses in specific organs or tissues included cross irradiation from radium in all other organs. RADRISK included lifetime cancer risk estimates for high- and low-LET (linear energy transfer) radiation separately for leukemia, osteosarcomas, sinus tumors, and other solid tumors. These estimates were taken from the BEIR III and BEIR IV (see EPA 1991, proposed rule) reports.

Table II–1 compares the methods used by EPA in 1976 and 1991 to calculate organ burdens, doses, and risks from radium ingestion. Bone doses calculated for radium-226 in 1991 were about 33 percent lower than those assumed in 1976, and the soft tissue doses were about 40 percent lower. Risk estimates for bone per unit dose were about 65 percent lower in 1991 than in 1976, and the soft tissue risk estimates were about 9 percent lower.

TABLE II–1.—COMPARISON OF DERIVATION OF 1976 AND 1991 MCLS FOR RADIUM

Model	1976	1991
Organ and Tissue Burdens	Calculation of body burdens based on environmental studies and ratio of intakes.	Calculation of body burdens based on toxicokinetic models derived from studies of patients injected with radium.
Dosimetry	Calculation of absorbed dose based on organ and tissue burden.	Calculation of absorbed dose based on organ or tissue burden and cross irradiation terms from all other organs.
Risk Coefficients	Risk estimated using the geometric mean of the absolute and relative risk coefficients from the 1972 BEIR I report.	Risk estimated using the absolute risk coefficient from the 1980 BEIR III report.

b. Basis for the 1991 MCL for Gross Alpha Particle Activity. In 1991, EPA proposed to retain the 15 pCi/L MCL for gross alpha particle activity, but modify it by excluding radium-226, as well as uranium and radon. The exclusion of uranium and radon was based on the fact that the Agency anticipated setting separate NPDWRs for these contaminants with the finalization of the 1991 proposal. The proposed exclusion of Ra–226 was based on the 1991 risk estimate which suggested that its unit risk was small enough not to warrant regulation within gross alpha. The 1991 limit was intended to limit the lifetime cancer risk due to ingestion of naturally-occurring and man-made alpha particle emitters in drinking water to between 10^{-6} and 10^{-4}, the Agency's target risk range for carcinogens. Specifically, this limit was based on the following considerations:

Using RADRISK modeling, EPA estimated that continuous consumption of 15 pCi/L of most alpha particle emitters in drinking water at 2 L/day would pose a lifetime cancer risk between 10^{-6} and 10^{-4}.

EPA performed the risk assessment for the alpha emitters using RADRISK (EPA 1991, proposed rule). The model was used to estimate radiation dose to organs, the dose was used to calculate risk to organs, and the risks to organs were summed to estimate overall risk. EPA used RADRISK to calculate concentrations of alpha emitters corresponding to lifetime mortality and incidence risks of 10^{-4}, assuming ingestion of two liters of drinking water daily, and presented those values in appendix C of the 1991 proposed rule.

In determining the risks from ingestion of alpha emitters in drinking water, EPA was particularly interested in polonium-210 and isotopes of thorium and plutonium, because these radionuclides had been observed in water and may cause health effects at relatively low concentrations.

However, the BEIR IV report concluded that there was no direct measure of risk for most polonium isotopes based on the human data, and suggested several possible means of estimating risk. EPA, as discussed, relied on RADRISK in assessing polonium risk. The model estimated that continuous ingestion of two liters per day of drinking water containing 14 pCi/L would pose a lifetime fatal cancer risk of 1×10^{-4}.

EPA also consulted the BEIR IV report for available information on the adverse effects of thorium. Epidemiological studies of patients injected with Thorotrast, a contrast agent consisting of ThO_2 and used in medical radiology from the 1920s to 1955, showed clear increases in liver cancer, as well as possible increases in leukemia and other cancers. However, the BEIR IV report discussed the limitations of these data for assessing the risk due to other forms of thorium that might have different metabolic behaviors and effects. Using RADRISK, EPA estimated that, at a lifetime fatal cancer risk level of 1×10^{-4}, derived drinking water concentrations for thorium isotopes ranged from 50 to 125 pCi/L, and noted that thorium concentrations in drinking water were generally near one pCi/L (EPA, 1991f).

EPA relied on the BEIR IV report for information on the health effects of plutonium isotopes and other transuranic radionuclides that were widely distributed in the environment in very low concentrations due to atmospheric testing of nuclear weapons from 1945 to 1963. The BEIR IV report concluded that plutonium exposures caused clear increases in cancers of the bone, liver, and lungs in animals, but not in humans. At that time, the limited available epidemiological studies had not demonstrated a clear association between plutonium exposure and the development of cancer in human exposure cases. The report recommended that assessing the risks of plutonium exposure should be based on analogy with other radionuclides and high-LET radiation exposure risks. Using RADRISK, EPA estimated that, at a lifetime fatal cancer risk level of 1×10^{-4}, derived drinking water concentrations for plutonium isotopes ranged from about 7 to 68 pCi/L, and noted that plutonium concentrations in drinking water were generally less than 0.1 pCi/L (EPA, 1991f).

c. Basis for the 1991 MCL for Beta Particle and Photon Radioactivity. In 1991, EPA proposed to alter the 4 mrem/yr MCL for beta particle and photon radioactivity. The Agency modified the standard by basing the limit on the committed effective dose equivalent (EDE). (An effective dose equivalent approach adjusts the dose that an individual organ may receive based on its radiosensitivity. The less radiosensitive an organ is, the greater the allowable radiation dose.) The MCL was also modified to include naturally-occurring beta/photon emitters. The 1991 proposed standard was intended to limit the lifetime cancer risk due to ingestion of naturally-occurring and man-made beta particle and photon emitters in drinking water to between 10^{-6} and 10^{-4}, the Agency's target risk range for carcinogens.

Using RADRISK modeling, EPA estimated that continuous consumption of two liters per day of drinking water containing a concentration of beta particle or photon emitting radiation corresponding to 4 mrem EDE/yr would pose a lifetime cancer risk of about 10^{-4}.

Comparison of the 1976 Regulation and 1991 Proposed Regulation. In 1976, EPA based the MCL for beta particle and photon emitters on a target dose rate of 4 mrem/yr. The annual average activity concentration of

individual radionuclides and mixtures of radionuclides resulting in a 4 mrem/yr dose to the total body or any internal organ was then calculated. This "critical organ dose" radiation protection philosophy was based on the recommendations of ICRP Publication 2 (see EPA 2000a).

The Agency was aware that in 1976, when exposed to equal doses of radiation, different organs and tissues in the human will exhibit different cancer induction rates. Consequently, EPA knew that the lifetime cancer risks for individual radionuclides would vary widely (from near 10^{-7} to 5.6×10^{-5} because the same dose equivalent would be applied to different critical organs, resulting in different cancer risks. However, at that time, EPA did not have an accepted method for equalizing risks. In addition, since no dose could be greater than 4 mrem to every organ, the associated risk was the ceiling for the risk of beta/photon emitters in drinking water.

This was addressed in 1991 when EPA proposed to adopt the effective dose equivalent, or EDE, radiation protection philosophy recommended by ICRP (1977) (see EPA 1991, proposed rule). The effective dose equivalent normalizes radiation doses and effects on a whole body basis for regulation of occupational exposures. The EDE is computed as the sum of the weighted organ-specific dose equivalent values, using weighting factors specified by the ICRP (1977, 1979; see EPA 1991, proposed rule). By changing to a limit of 4 mrem EDE/yr, EPA was able to derive activity concentrations for individual beta/photon emitters that corresponded to a more uniform level of risk. Using 4 mrem EDE and the metabolically-based dose calculations, the derived concentrations for most beta particle and photon emitters increased in 1991 as compared to the values calculated in 1976 (shown in Table II–3). As a result of derived concentrations increasing in 1991, the corresponding risks increased as well. EPA estimated that, for most of these radionuclides, the corresponding lifetime fatal cancer risk would be 1×10^{-4}, about twice as high as the risk level estimated in 1976.

d. Basis for the 1991 Proposed MCL for Uranium. In 1991, EPA proposed an MCL of 20 µg/L for uranium based on kidney toxicity and a corresponding limit of 30 pCi/L based on cancer risk. The MCLG was proposed at zero because of the carcinogenicity of uranium, and the MCL was proposed at the most sensitive endpoint, kidney toxicity. The MCL was based on kidney effects seen in the 30 day study in rats (see EPA 1991, proposed rule).

Using RADRISK modeling, EPA estimated that uranium in water posed a cancer risk of 5.9×10^{-7} per picoCurie per liter, assuming continuous intake of water of two liters per day. Concentrations in water of 1.7 pCi/L, 17 pCi/L and 170 pCi/L corresponded to lifetime mortality risks of approximately 1×10^{-6}, 1×10^{-5} and 1×10^{-4}, respectively. A concentration of 30 pCi/L of uranium-238 was thought to be equivalent to about 20 micrograms/L, the level considered to be protective against kidney toxicity (the corresponding mortality was 5×10^{-5}.

In determining the MCL for uranium in 1991, EPA proposed to regulate uranium at a level that would be protective of both kidney toxicity, resulting from the element's chemical properties, and carcinogenic potential due to radioactivity. The carcinogenic effects of uranium were based on the effects of ionizing radiation generally, the similarity of uranium to isotopes of radium, and on the effects of high activity uranium.

C. Today's Methodology for Assessing Risks From Radionuclides in Drinking Water

1. Background

Since 1991, EPA has refined the way in which it estimates potential adverse health effects associated with ingestion of radionuclides in drinking water. The Agency's new approach uses state-of-the-art methods, models and data that are based on more recent scientific knowledge. Compared with the approaches used in 1976 and 1991, the revised methodology includes several substantial refinements. Specifically, the new risk-assessment methodology:

- Accounts for age- and gender-specific water-consumption rates and radionuclide intakes, and for physiological and anatomical changes with age in quantifying costs and benefits;
- Uses Blue Book (see EPA 2000a) for estimating radiogenic risk: ICRP dosimetry model, 1990 vital statistics instead of 1980;
- Uses the most recent age-dependent biokinetic and dosimetric models recommended by the ICRP; Federal Guidance Report-13 dynamic input-output metabolic model;
- Incorporates the latest information on radiogenic human health effects summarized by the National Academy of Sciences and other national and international radiation-protection advisory committees;
- Includes updated life tables based on data from the National Center for Health Statistics that are used to adjust radionuclide risk estimates for competing causes of death; and
- Uses an improved computer program to handle the complex calculations of radiation doses and risks.

Overall, EPA believes that these refinements significantly strengthen the scientific and technical bases for estimating risks, and consequently, for deriving MCLs for radionuclides. A brief overview of this new methodology is summarized later in this section. Interested individuals are referred to two EPA publications Estimating Radiogenic Cancer Risks (EPA, 1994) and Federal Guidance Report No. 13 (EPA, 1999) for detailed discussions on the revised risk assessment methodology for radionuclides. Electronic copies of both documents are available for downloading at EPA's web site (http://www.epa.gov/radiation/rpdpubs.htm).

Federal Guidance Report No. 13: (EPA, 1999) presents the current methods, models, and calculational framework EPA uses to estimate the lifetime excess risk of cancer induction following intake or external exposure to radionuclides in environmental media. The report presents compilations of risk coefficients that may be used to estimate excess cancer morbidity (cancer incidence) and mortality (fatal cancer) risks resulting from exposure to radionuclides through various pathways.

The risk coefficients for internal exposure represent the incremental probability of radiogenic cancer morbidity or mortality occurring per unit of radioactivity inhaled or ingested. For most radionuclides, Federal Guidance Report No. 13 presents risk coefficients for seven exposure pathways: inhalation, ingestion of food, ingestion of tap water, ingestion of milk, external exposure from submersion in air, external exposure from the ground surface, and external exposure from soil contaminated to an infinite depth. For some radionuclides, however, only external exposure pathways are considered; these include noble gases and the short-lived decay products of radionuclides addressed in the internal exposure scenarios.

a. Radium. EPA set the current MCL of 5 pCi/L for radium-226 and radium-228, combined, based on limiting the lifetime excess total cancer risk to between 5×10^{-5} and 2×10^{-4}. In 1991, EPA proposed separate, and revised, MCLs for radium-226 and radium-228 of 20 pCi/L for each. At that time, EPA believed that the revised MCLs corresponded to lifetime excess fatal cancer risks of 1×10^{-4} each, or 2×10^{-4} combined, assuming lifetime ingestion. The more sophisticated model used today calculates a risk for Ra-228 at 5 pCi/l to be 2×10^{-4}, and the risk for 5 pCi/l of Ra-226 to be about 7.3×10^{-5}. Retaining a combined MCL at 5 pCi/L would produce the following risks shown in Table II–2.

TABLE II–2.—MORTALITY RISK OF RADIUMS FOR CONCENTRATION COMBINATIONS AT THE MCL

Radium-226		Radium-228		Ra-226 + Ra-228	
pCi/L	Risk	pCi/L	Risk	pCi/L	Risk at 5 pCi/L
0	0	5	2.0×10^{-4}	5	2.0×10^{-4}
1	1.5×10^{-5}	4	1.6×10^{-4}	5	1.8×10^{-4}
2	2.9×10^{-5}	3	1.2×10^{-4}	5	1.5×10^{-4}
3	4.4×10^{-5}	2	8.1×10^{-5}	5	1.3×10^{-4}
4	5.8×10^{-5}	1	4.1×10^{-5}	5	9.9×10^{-5}

TABLE II–2.—MORTALITY RISK OF RADIUMS FOR CONCENTRATION COMBINATIONS AT THE MCL—Continued

Radium-226		Radium-228		Ra-226 + Ra-228	
pCi/L	Risk	pCi/L	Risk	pCi/L	Risk at 5 pCi/L
5	7.3×10^{-5}	0	0	5	7.3×10^{-5}

b. Alpha Emitters. Both the current and 1991 proposed MCLs for alpha-emitting radionuclides permit up to 15 pCi/L of alpha particle radioactivity in drinking water from individual and multiple alpha emitters. EPA established the current gross alpha MCL of 15 pCi/L (including radium-226 and excluding radon and uranium) to account for the risk from radium-226 at 5 pCi/L (the radium regulatory limit) plus the risk from polonium-210, which the Agency believed was the next most radiotoxic element in the uranium decay chain. The current risk estimated (FGR–13) indicates that the unit risk for Ra-226 is large enough to warrant its inclusion in gross alpha, as thought in 1976.

In 1991, EPA thought that exposure to 10 pCi/L of polonium-210 posed a lifetime fatal cancer risk comparable to that from continuous lifetime ingestion of about 1 pCi/L of radium-226, that is, between 0.5 and 2×10^{-4}. In 1991, EPA based the revised, adjusted gross alpha MCL on revised dose and risk calculations which indicated that the 15 pCi/L limit posed a lifetime cancer risk for most alpha emitters that fell within EPA's acceptable risk range of between 10^{-6} and 10^{-4}.

The current estimate of risk from polonium-210 at 7.0 pCi/L is 1×10^{-4}. The risk for radium-226 at 6.8 p/L is also 1×10^{-4}. When the current rule was written, 10 pCi/L of polonium-210 was believed to be equivalent to 1 pCi/L of radium-226; however, the risks are now equivalent. Thus polonium is ten times the risk it was thought to be relative to radium-226. Retaining a 15 pCi/L standard including radium-226 ensures that the risk of 15 pCi/L will not increase by allowing greater polonium (up to 15 pCi/L) in addition to the radium-226 in the radium standard. As expected, a uniform picoCurie limit results in widely differing risks (EPA 2000a).

c. Beta/Photon Emitters. As discussed elsewhere in this document, EPA is able to calculate the risks from individual beta/photon emitters using the FGR–13 methodology. It is now possible to calculate a risk equivalent to the current picoCurie limit for each beta/photon emitter. Appropriate adjustments are then possible in keeping with the original risk maximum of 5.6×10^{-5}. The derived concentration values for the beta particle and photon emitters from 1976 rule and 1991 proposal in comparison to today's newest risk model using 5.6×10^{-5} mortality are found in Table II–3.

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Table II-3. Comparison of derived values of Beta and Photon Emitters from 1976 and 1991

Nuclide (*half-life of 24 hours or less)	1976 limits based on critical organ at 4 mrem/yr	1976 Risks	1991 proposed limits at 4 ede mrem/yr	1991 risks	Comments (HB69 means National Bureauof Standards Handbook-69)	Corrected limits based on 4 mrem/yr critical organ dose limit	Risk at corrected limits
H-3 (HTO)	20,000	3.57e-05	60,900	1.09e-04			
Be-7	6,000	1.60e-05	43,500	1.16e-04			
C-11	NC		99,200	1.75e-04			
N-13			152,000				
C-14	2,000	1.09e-04	3,200	1.75e-04			
C-15			6,690,000				
O-15			495,000				
F-18 *	2,000	8.32e-06	39,500	1.64e-04			
Na-22	400	1.36e-04	466	1.59e-04			
Na-24			3,350	1.60e-04	Not in 1976, but in HB69	60	2.87e-06
Si-31 *	3,000	5.96e-05	10,200	2.02e-04			
P-33			1,870				
P-32	30	9.53e-06	641	2.04e-04			
S-35 (Inorg)	500	8.39e-06	12,900	2.16e-04			
Cl-36	700	7.86e-05	1,850	2.08e-04			
Cl-38 *	1,000	8.41e-06	21,200	1.78e-04			
K-42 *	900	4.08e-05	3,900	1.77e-04			
Ca-45	10	8.96e-07	1,730	1.55e-04			
Ca-47	80	1.80e-05	846	1.90e-04			
Sc-46	1,000	1.95e-05	863	1.68e-04	Error in 1976 Calculation	100	1.95e-05
Sc-47	300	2.97e-05	2,440	2.42e-04			
Sc-48	80	1.71e-05	766	1.64e-04			
V-48	90	2.16e-05	644	1.55e-04			
Cr-51	6,000	3.26e-05	38,000	2.06e-04			

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Nuclide (*half-life of 24 hours or less)	1976 limits based on critical organ at 4 mrem/yr	1976 Risks	1991 proposed limits at 4 ede mrem/yr	1991 risks	Comments (HB69 means National Bureauof Standards Handbook-69)	Corrected limits based on 4 mrem/yr critical organ dose limit	Risk at corrected limits
Mn-52	90	1.77e-05	733	1.44e-04			
Mn-54	300	2.23e-05	2,010	1.50e-04			
Mn-56 *	300	9.64e-06	5,640	1.81e-04			
Fe-55	2,000	6.84e-05	9,250	3.17e-04			
Fe-59	200	5.14e-05	844	2.17e-04			
Co-57	1,000	3.21e-05	4,870	1.57e-04			
Co-58	9,000	8.80e-04	1,590	1.57e-04	MCL switched with Co-58m	300	2.96e-05
Co-58m	300	1.18e-06	64,900	2.56e-04	MCL switched with Co-58	9000	3.55e-05
Co-60	100	5.20e-05	218	1.13e-04			
Ni-59	300	2.52e-06	27,000	2.27e-04			
Ni-63	50	1.02e-06	9,910	2.02e-04			
Ni-65 *	300	6.52e-06	8,810	1.92e-04			
Cu-64 *	900	1.70e-05	11,900	2.25e-04			
Zn-65	300	1.23e-04	396	1.62e-04			
Zn-69 *	6,000	1.62e-05	63,100	1.71e-04			
Zn-69m *	200	1.09e-05	4,220	2.30e-04			
Ga-67	NC		7,020	2.10e-04			
Ga-72 *	100	1.62e-05	1,190	1.93e-04			
Ge-71	6,000	1.13e-05	436,000	8.19e-04			
As-73	1,000	4.52e-05	7,850	3.55e-04			
As-74	100	1.97e-05	1,410	2.77e-04			
As-76	60	1.67e-05	1,060	2.95e-04			
As-77	200	1.44e-05	4,330	3.11e-04			
Se-75	900	2.65e-04	574	1.69e-04			
Br-82	100	5.86e-06	3,150	1.85e-04			
Rb-82			436,000				

Nuclide (*half-life of 24 hours or less)	1976 limits based on critical organ at 4 mrem/yr	1976 Risks	1991 proposed limits at 4 ede mrem/yr	1991 risks	Comments (HB69 means National Bureauof Standards Handbook-69)	Corrected limits based on 4 mrem/yr critical organ dose limit	Risk at corrected limits
Rb-86	600	2.06e-04	485	1.67e-04			
Rb-87	300	5.41e-05	501	9.04e-05			
Rb-88	NC		29,100	1.83e-04			
Rb-89	NC		52,700	1.81e-04			
Sr-82	NC		241	2.29e-04			
Sr-85	21,000	1.75e-03	2,830	2.36e-04	Wrong critical organ selected	900	7.49e-05
Sr-85m	900	5.66e-07	237,000	1.49e-04	Wrong critical organ selected	21000	1.32e-05
Sr-89	20	1.66e-06	599	2.38e-04			
Sr-90	8	2.03e-05	42	1.06e-04			
Sr-91 *	200	1.90e-05	2,160	2.05e-04			
Sr-92	200	1.31e-05	3,100	2.03e-04			
Y-90	60	3.06e-05	510	2.60e-04			
Y-91	90	4.07e-05	576	2.60e-04			
Y-91m *	9,000	1.07e-05	132,000	1.57e-04			
Y-92 *	200	1.48e-05	2,870	2.13e-04			
Y-93	90	1.85e-05	1,200	2.47e-04			
Zr-93	2,000	8.55e-05	5,090	2.17e-04			
Zr-95	200	2.68e-05	1,460	1.96e-04			
Zr-97 *	60	2.14e-05	650	2.32e-04			
Nb-93m	1,000	2.29e-05	10,500	2.40e-04			
Nb-94	NC		707	1.63e-04			
Nb-95	300	2.16e-05	2,150	1.55e-04			
Nb-95m	NC		2,390	2.48e-04			
Nb-97 *	3,000	2.04e-05	23,500	1.60e-04			
Nb-97m			1,370,000				
Mo-99	600	3.54e-05	1,830	1.08e-04			

Nuclide (*half-life of 24 hours or less)	1976 limits based on critical organ at 4 mrem/yr	1976 Risks	1991 proposed limits at 4 edc mrem/yr	1991 risks	Comments (HB69 means National Bureauof Standards Handbook-69)	Corrected limits based on 4 mrem/yr critical organ dose limit	Risk at corrected limits
Tc-95	NC		69,700	1.22e-03			
Tc-95m	NC		3,120	1.75e-04			
Tc-96	300	3.17e-05	2,050	2.17e-04			
Tc-96m *	30,000	3.44e-05	176,000	2.02e-04			
Tc-97	6,000	4.82e-05	32,500	2.61e-04			
Tc-97m	1,000	6.94e-05	4,450	3.09e-04			
Tc-99	900	7.28e-05	3,790	3.07e-04			
Tc-99m	20,000	4.61e-05	89,600	2.07e-04			
Ru-97	1,000	1.86e-05	7,960	1.48e-04			
Ru-103	200	2.22e-05	1,810	2.01e-04			
Ru-105 *	NC		4,990	2.13e-04	Error in 1976, listed as Rh-105	300	1.28e-05
Rh-105m			5,551,000				
Ru-106	30	3.66e-05	203	2.48e-04			
Rh-103m *	30,000	1.03e-05	471,000	1.62e-04			
Rh-105 *	300	2.00e-05	3,720	2.48e-04	Error: should be listed as Ru-105		
Rh-106	NC		1,240,000	1.97e-04			
Pd-100	NC		1,300	1.53e-04			
Pd-101	NC		13,400	1.67e-04			
Pd-103	900	3.18e-05	6,940	2.45e-04			
Pd-107	NC		36,600	2.59e-04			
Pd-109	300	2.99e-05	2,120	2.12e-04			
Ag-105	300	1.63e-05	2,700	1.47e-04			
Ag-108			626,000				
Ag-108m	NC		723	1.94e-04			
Ag-109m			16,700,000				
Ag-110			1,840,000				

Nuclide (*half-life of 24 hours or less)	1976 limits based on critical organ at 4 mrem/yr	1976 Risks	1991 proposed limits at 4 ede mrem/yr	1991 risks	Comments (HB69 means National Bureauof Standards Handbook-69)	Corrected limits based on 4 mrem/yr critical organ dose limit	Risk at corrected limits
Ag-110m	90	2.86e-05	512	1.63e-04			
Ag-111	100	2.34e-05	1,080	2.53e-04			
Cd-109	600	9.81e-05	227	3.71e-05			
Cd-115	90	2.21e-05	958	2.35e-04			
Cd-115m	90	4.46e-05	339	1.68e-04			
In-113m *	3,000	9.36e-06	52,400	1.63e-04			
In-114			976,000				
In-114m *	60	4.37e-05	323	2.35e-04			
In-115	300	4.46e-04	35	5.22e-05			
In-115m *	1,000	1.30e-05	16,400	2.14e-04			
Sn-113	300	3.72e-05	1,740	2.16e-04			
Sn-121	NC		6,060	2.58e-04			
Sn-121m	NC		2,260	1.53e-04			
Sn-125	60	3.41e-05	446	2.54e-04			
Sn-126	NC		293	2.19e-04			
Sb-122	90	2.72e-05	810	2.45e-04			
Sb-124	60	2.27e-05	563	2.13e-04			
Sb-125	300	4.12e-05	1,940	2.67e-04			
Sb-126	NC		544	1.77e-04			
Sb-126m	NC		58,500	1.61e-04			
Sb-127	NC		818	2.35e-04			
Sb-129	NC		3,090	1.99e-04			
Te-125m	600	6.15e-05	1,490	1.53e-04			
Te-127	900	2.62e-05	7,920	2.31e-04			
Te-127m	200	5.71e-05	663	1.89e-04			
Te-129	2,000	1.21e-05	27,200	1.65e-04			

Nuclide (*half-life of 24 hours or less)	1976 limits based on critical organ at 4 mrem/yr	1976 Risks	1991 proposed limits at 4 ede mrem/yr	1991 risks	Comments (HB69 means National Bureauof Standards Handbook-69)	Corrected limits based on 4 mrem/yr critical organ dose limit	Risk at corrected limits
Te-129m	90	4.07e-05	524	2.37e-04			
Te-131m	NC		26,800	4.58e-03			
Te-131	200	7.87e-07	971	3.82e-06			
Te-132	90	3.30e-05	580	2.13e-04			
I-122			211,000				
I-123	NC		10,700	2.13e-04			
I-125			151	1.10e-04	Not in 1976 list,but in HB69		
I-126	3	7.50e-06	81	2.02e-04			
I-129	1	4.22e-06	21	8.87e-05			
I-130	NC		1,190	2.17e-04			
I-131	3	3.91e-06	108	1.41e-04			
I-132 *	90	2.17e-06	8,190	1.98e-04			
I-133 *	10	4.13e-06	549	2.27e-04			
I-134 *	100	7.16e-07	21,400	1.53e-04			
I-135 *	30	2.62e-06	2,340	2.04e-04			
Cs-131	20,000	1.29e-04	22,800	1.47e-04			
Cs-134	20,000	3.22e-02	81	1.22e-04	Wrong critical organ selected	80	1.29e-04
Cs-134m *	80	1.41e-07	101,000	1.78e-04	Wrong critical organ selected	20,000	3.52e-05
Cs-135	900	1.48e-04	794	1.31e-04			
Cs-136	800	2.42e-04	518	1.57e-04			
Cs-137	200	2.14e-04	119	1.27e-04			
Cs-138	NC		25,600	1.75e-04			
Ba-131	600	3.57e-05	2,950	1.76e-04			
Ba-133			1,520				
Ba-133m			2,620				
Ba-137m			2,150,000				

Nuclide (*half-life of 24 hours or less)	1976 limits based on critical organ at 4 mrem/yr	1976 Risks	1991 proposed limits at 4 ede mrem/yr	1991 risks	Comments (HB69 means National Bureauof Standards Handbook-69)	Corrected limits based on 4 mrem/yr critical organ dose limit	Risk at corrected limits
Ba-139	NC		13,800	1.74e-04			
Ba-140	90	3.91e-05	582	2.53e-04			
La-140	60	1.89e-05	652	2.06e-04			
Ce-141	300	3.93e-05	1,890	2.48e-04			
Ce-143	100	2.02e-05	1,210	2.45e-04			
Ce-144	NC		261	2.60e-04	Not in 1976 list, but in HB69	30	3.22e-05
Pr-142 *	90	2.20e-05	1,040	2.54e-04			
Pr-143	100	2.23e-05	1,170	2.61e-04			
Pr-144	NC		47,000	1.67e-04			
Pr-144m			112,000				
Nd-147 *	NC		1,250	2.64e-04	Not in 1976 list	200	4.23e-05
Nd-149 *	900	1.51e-05	11,700	1.97e-04			
Pm-147	NC		5,240	2.71e-04	Not in 1976 list, but in HB69		
Pm-148	NC		605	2.95e-04			
Pm-148m	NC		575	1.34e-04			
Pm-149	100	1.88e-05	1,380	2.60e-04			
Sm-151	1,000	1.60e-05	14,100	2.26e-04			
Sm-153	200	2.74e-05	1,830	2.51e-04			
Eu-152 *	60	1.16e-05	841	1.62e-04	Reclassified as Eu-154m	200	1.84e-05
Eu-154	200	6.46e-05	573	1.85e-04	MCL switched with Eu-152	60	1.94e-05
Eu-155	600	3.27e-05	3,590	1.95e-04			
Eu-156	NC		600	2.17e-04			
Gd-153	600	2.62e-05	4,680	2.04e-04			
Gd-159 *	200	1.82e-05	2,760	2.50e-04			
Tb-158	NC		1,250	1.81e-04			
Tb-160	100	2.50e-05	815	2.03e-04			

Nuclide (*half-life of 24 hours or less)	1976 limits based on critical organ at 4 mrem/yr	1976 Risks	1991 proposed limits at 4 ede mrem/yr	1991 risks	Comments (HB69 means National Bureauof Standards Handbook-69)	Corrected limits based on 4 mrem/yr critical organ dose limit	Risk at corrected limits
Dy-165 *	1,000	1.29e-05	15,100	1.95e-04			
Dy-166	100	3.14e-05	830	2.61e-04			
Ho-166	90	2.35e-05	981	2.56e-04			
Er-169	300	2.14e-05	3,640	2.60e-04			
Er-171 *	300	1.76e-05	3,800	2.23e-04			
Tm-170	100	2.53e-05	1,030	2.61e-04			
Tm-171	1,000	1.99e-05	12,700	2.52e-04			
Yb-169	NC		1,830	2.09e-04			
Yb-175	300	2.44e-05	3,110	2.53e-04			
Lu-177	300	2.99e-05	2,550	2.54e-04			
Hf-181	200	3.64e-05	1,170	2.13e-04			
Ta-182	100	2.29e-05	842	1.93e-04			
W-181	1,000	1.15e-05	19,000	2.18e-04			
W-185	300	2.50e-05	3,440	2.86e-04			
W-187 *	200	2.11e-05	2,660	2.80e-04			
Re-183	2,000		5,400		Unknown risk		
Re-186	300	4.69e-05	1,880	2.94e-04			
Re-187	9,000	4.83e-06	582,000	3.13e-04			
Re-188 *	200	2.56e-05	1,790	2.29e-04			
Os-185	200	1.15e-05	2,460	1.42e-04			
Os-191	600	6.19e-05	2,380	2.46e-04			
Os-191m *	9,000	1.57e-04	14,300	2.49e-04			
Os-193	200	3.00e-05	1,690	2.54e-04			
Ir-190	600	9.88e-05	1,010	1.66e-04			
Ir-192	100	2.12e-05	957	2.03e-04			
Ir-194 *	90	2.21e-05	1,040	2.56e-04			

Nuclide (*half-life of 24 hours or less)	1976 limits based on critical organ at 4 mrem/yr	1976 Risks	1991 proposed limits at 4 edc mrem/yr	1991 risks	Comments (HB69 means National Bureauof Standards Handbook-69)	Corrected limits based on 4 mrem/yr critical organ dose limit	Risk at corrected limits
Pt-191	300	1.51e-05	3,810	1.92e-04			
Pt-193	3,000	1.79e-05	46,100	2.75e-04			
Pt-193m	3,000	2.58e-04	3,020	2.59e-04			
Pt-197	300	2.23e-05	3,400	2.53e-04			
Pt-197m *	3,000	3.63e-05	17,500	2.12e-04			
Au-196	600		3,660		Unknown risk		
Au-198	100	1.79e-05	1,310	2.35e-04			
Au-199	NC				Not in 1976 list, but in HB69	600	5.10e-05
Hg-197	NC		5,760	2.52e-04	Not in 1976 list, but in HB69	880	3.85e-05
Hg-197m	NC					600	5.51e-05
Hg-198							
Hg-203	NC		2,390	2.27e-03	Not in 1976 list, but in HB69	60	5.7e-04
Tl-200	NC				Not in 1976 list, but in HB69	1200	2.7e+00
Tl-201	NC				Not in 1976 list, but in HB69	880	1.11e-05
Tl-202	300	1.50e-05	3,840	1.92e-04			
Tl-204	300	5.43e-05	1,680	3.04e-04			
Tl-207			400,000				
Tl-208			283,000				
Tl-209			358,000				
Pb-203	1,000	3.04e-05	5,060	1.54e-04			
Pb-209	NC		25,300	1.88e-04			
Pb-210	NC		1	3.34e-05			
Pb-211	NC		12,800	2.03e-04			
Pb-212	NC		123	9.81e-05			
Pb-214	NC		11,800	1.52e-04			
Bi-206	100	2.29e-05	656	1.50e-04			

Nuclide (*half-life of 24 hours or less)	1976 limits based on critical organ at 4 mrem/yr	1976 Risks	1991 proposed limits at 4 ede mrem/yr	1991 risks	Comments (HB69 means National Bureauof Standards Handbook-69)	Corrected limits based on 4 mrem/yr critical organ dose limit	Risk at corrected limits
Bi-207	200	3.31e-05	1,010	1.67e-04			
Bi-212			5,200				
Bi-213	NC		15,000	2.79e-04			
Bi-214	NC		18,900	1.55e-04			
Fr-223	NC		3,410	8.51e-04			
Ra-225	NC		9	3.80e-05			
Ra-228			7.85				
Ac-227	NC		1	1.06e-05			
Ac-228	NC		3,270	1.92e-04			
Th-231	NC		4,070	2.55e-04			
Th-234	NC		401	2.62e-04			
Pa-233	300	4.73e-05	1,510	2.38e-04			
Pa-234	NC		2,560	1.94e-04			
Pa-234m			930,000				
U-237	NC		1,780	2.46e-04			
U-240	NC		1,540	3.09e-04			
Np-236			5,960				
Np-238	NC		1,390	2.14e-04			
Np-239	NC		1,680	2.45e-04			
Np-240	NC		23,100	1.83e-04			
Np-240m			174,000				
Pu-241	NC		63	4.66e-06			
Pu-243	NC		16,400	2.27e-04			
Am-242m	NC		1	3.53e-06			
Bk-249					Not in 1976 list, but in HB69	1800	6.67e-05

d. Uncertainties. There are a number of uncertainties in the data in peer-reviewed literature that was considered in the comparison between the Integrated Risk Information Database (IRIS) and the MEDLINE database. Some of the uncertainties in the IRIS and MEDLINE results are discussed in the IRIS and ATSDR documents and articles that were peer reviewed. For example, the Toxicological Profile for Uranium was published in September 1990.

i. Health effects. The chemical toxic effects of uranium from exposure to uranium compounds in animal studies and human range-finding studies are discussed. Sprague-Dawley rats were administered 0, 10, 20, 40, 80, 24, 124, 250, or 500 mg/L uranium in drinking water for 6 months. Results indicated a statistically significant dose-related decrease in mean daily food intake in male rats at 124 mg/L and above. Female rats showed signs, of decreased food intake at animals exposed to 250 mg/L and above. no statistically significant increase in incidence of tumors was observed in the 600 mg/L uranium exposed group compared to the control group. However, the number of rats affected by tumors in the 600 mg/L group was observed to be significantly greater than the control group.

As discussed in the IRIS, Documentation for Uranium, Soluble Salts, of exposure to uranium in drinking water. Female rats were exposed to 0, 10, 100, or 1000 mg/L uranium as uranyl nitrate for 6 months. Results indicated a statistically significant dose-related decrease in mean daily food intake in female rats at 100 mg/L and above. Female rats exposed to 1000 mg/L uranium showed significant decreases in mean absolute kidney and spleens weights. Male rats were not affected. Histopathological examination of kidneys did not reveal any significant differences between exposed and control rats.

ii. Health effects. The chemical toxic effects of uranium from exposure to uranium compounds in animal studies and human epidemiological studies are discussed. Studies on the chemical toxic effects of uranium in animals exposed to uranium via drinking water (Gilman et al. 1998a, 2000a; Kathren et al. 1998; Wrenn et al. 1985) are discussed. Gilman et al. (1998a, 2000a) conducted a 13-week drinking water study in which male rats were exposed to uranium in drinking water at concentrations of 0, 0.71, 1.9, 3.8, 7.1, 19, 38, 71, 190, 380, 710, and 1900 mg/L. Rats exposed to 380 mg/L and above exhibited significantly decreased water consumption. Rats exposed to 710 mg/L and above exhibited significantly decreased body weight gain. Rats exposed to 1900 mg/L exhibited significantly decreased food consumption. Rats exposed to 380 mg/L and above exhibited significantly increased kidney weights. Rats exposed to 710 mg/L and above exhibited significantly increased liver weights. Rats exposed to 1900 mg/L exhibited significantly increased spleen weights. Rats exposed to 380 mg/L and above exhibited significantly increased urinary glucose, urinary protein, urinary volume, and urinary osmolality. Rats exposed to 710 mg/L and above exhibited significantly increased urinary sodium, urinary potassium, urinary chloride, urinary calcium, urinary phosphorus, urinary creatinine, and urinary urea nitrogen. Rats exposed to 1900 mg/L exhibited significantly increased urinary pH. Rats exposed to 380 mg/L and above exhibited significantly decreased serum glucose, serum sodium, serum potassium, serum chloride, serum calcium, serum phosphorus, serum creatinine, and serum urea nitrogen. Rats exposed to 710 mg/L and above exhibited significantly decreased serum osmolality. Rats exposed to 1900 mg/L exhibited significantly decreased serum pH

d. Uranium. Since the 1991 proposal, a number of new studies have been published in peer-reviewed journals. A literature search was conducted and covered the time period between January 1991 to July, 1998. Databases searched were TOXLINE, MEDLINE, EMBASE, BIOSIS, TSCATS and Current Contents (see EPA 2000a). The results of the literature search were reviewed and articles were identified, retrieved and reviewed and analyzed. Subsequently, the Toxicological Profile for URANIUM (Update) was published extending the database to September 1999 (see EPA 2000a).

i. Health Effects in Animals. The potential toxic effects of uranium following oral exposures have been evaluated in recent animal studies (see EPA 2000a). In a 28-day range-finding study, male and female Sprague-Dawley rats (15/sex/group) were administered concentrations of 0, 0.96, 4.8, 24, 124, or 600 mg uranyl nitrate/L (UN/L) in drinking water for a period of 28 days. Results of the study showed no significant dose-related effects on body weight gain, food intake, fluid consumption, clinical signs, or hematological parameters of treated animals when compared with control animals. Histologic examinations indicated no statistically significant differences in the incidence of a particular lesion in animals in the 600 mg UN/L treatment group when compared with animals in the control group. However, a slight increase in the number of affected animals in the 600 mg UN/L group was observed, when compared with the control group.

As discussed in the Technical Support Document (EPA 2000a), the long-term effects of exposure to low-levels of uranium in drinking water has been demonstrated. Female rabbits and male albino rats were exposed to 0, 0.02, 0.2, and 1 mg/kg uranyl nitrate for 12 months or 0.05, 0.6, 6, and 60 mg/L uranyl nitrate for 11 months, respectively. Results of the study indicated a decrease in acid phosphatase activity in the spleens of rabbits in the 1 mg/kg group, but not in rats, when compared to controls. A statistically-significant ($p<0.05$) increase in serum alkaline phosphatase activity was observed by the eleventh month of exposure in rats in the 6 and 60 mg/L groups, when compared with controls. A statistically-significant decrease in the content of nucleic acids in the renal and hepatic tissues was observed in rats in the 60 mg/L group and in rabbits in the 1 mg/kg group, when compared with controls.

ii. Health Effects in Humans. Recent epidemiological studies have evaluated the effects observed in humans exposed to uranium in the drinking water (see EPA 2000a). These studies demonstrate the relationship between uranium levels in the drinking water and urine albumin, an indicator of renal dysfunction, was evaluated. Three sites were selected for the controls (site 1) and the exposed groups (sites 2 and 3), with mean uranium water levels of 0.71, 19.6 and 14.7 µg/L reported for sites 1, 2 and 3, respectively. An index of uranium exposure was estimated for each study participant by multiplying the uranium concentration in the water supply by the average number of cups consumed at each residence and the total number of years at that residence. Based on the results of a linear regression analysis, which included terms for age, diabetes, sex, smoking, and the use of water filters and softeners, a statistically-significant association was reported for cumulative exposure to uranium and urine albumin levels. However, the authors noted that for most of the study participants, the urine albumin levels were within the range of normal values.

A recent study of a village in Nova Scotia (see EPA 2000a) demonstrated the renal effects following chronic exposure to uranium in the drinking water. Two groups were evaluated, a low exposure group (uranium levels < 1/L) and a high exposure group (uranium levels > 1µg/L). Twenty-four hour and 8-hour urine samples were collected and evaluated for uranium, creatinine, glucose, protein, b_2-microglobulin (BMG), alkaline phosphatase (ALP), gamma glutamyl transferase (GGT), lactate dehydrogenase (LDH), and N-acetyl-b-D-glucosaminidase (NAG). Statistically significant positive correlations were reported with uranium intake for glucose (males, females and pooled data), ALP (pooled data) and BMG (pooled data). No other statistically significant differences were reported. Based on these results, the authors concluded that the proximal tubule was the site of uranium nephrotoxicity.

In June 1998, a workshop was held by the USEPA to discuss issues associated with assessing the risk associated with uranium exposure and updating the RfD and MCLG for uranium. The numerous technical issues associated with the development of a risk assessment for uranium in drinking water were discussed. Based on these discussions, it was apparent that there is a range of values for each factor used in the development of the RfD and MCL for uranium. However, based upon the input received at the workshop and the most current information, EPA believes that the LOAEL for renal effects in male rats of 0.06 mg U/kg/day reported could be used for the development of an RfD for uranium (see EPA 2000a). The relative source contribution (RSC) was revised to 80 percent (0.8). The total uncertainty factor was determined to be about 100 (about 3 for animal to human extrapolation, about 10 for intraspecies differences, about 1 for a less than lifetime study, and about 3 for the use of a LOAEL), with the body weight of 70 kilograms (kg) and daily water consumption of two liters used in the calculation. These assumptions are consistent with the data presented at the workshop and appear to be reasonable and justifiable. EPA believes these factors allow for the calculation of a safe level of uranium in drinking water (in terms of chemical toxicity).

The application of the total uncertainty factor of 100 to the LOAEL of 0.06 mg/kg/day results in an RfD of 0.6 ug uranium/kg/day. The RfD can be used to determine the MCL by multiplying the RfD by body weight (70 kg) and RSC (0.8) and dividing by water consumption (2 L), resulting in a value of 17 ug uranium/L, which can be rounded off to 20 /L.

2. Consideration of Sensitive Subpopulations: Children's Environmental Health

In compliance with Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), risks to children from radionuclides have been considered. There is evidence that children are more sensitive to radiation than adults, the risk per unit exposure in children being greater than in adults.

Risk coefficients used by the Agency for radiation risk assessment explicitly account for these factors. The age-specific, organ-specific risk per unit dose coefficients used in the lifetime risk model apply the appropriate age-specific sensitivities throughout the model. The model also includes age-specific changes in organ mass and metabolism. The risk estimate at any age is the best estimate for that age. In developing the lifetime risks, the model uses the life table for a stationary population. Use of the life table allows the model to account for competing causes of death and age-specific survival. These adjustments make the lifetime risk estimate more realistic.

At the same time, consumption rates of food, water and air are different between adults and children. The lifetime risk estimates for radionuclides in water use age-specific water intake rates derived from average national consumption rates when calculating the risk per unit intake. Since the intake by children is usually less than the intake by adults, it tends to partially mitigate the greater risk in children compared to adults when evaluating lifetime risk.

D. References

EPA, 1999. Cancer Risk Coefficients for Environmental Exposure to Radionuclides, Federal Guidance Report No. 13. US Environmental Protection Agency, Washington, DC, 1999. Uranium Issues Workshop—Sponsored by United States Environmental Protection Agency, Washington, DC ; June 23–24, 1998.

USEPA. "Technical Support Document for the Radionuclides Notice of Data Availability." Draft. March, 2000. (EPA 2000a)

Appendix III—Analytical Methods

Table III–1 briefly summarizes the regulatory events associated with:

- The testing procedures for regulated radionuclides approved in 1976;
- Major analytical additions or changes proposed or discussed in the 1991 radionuclides rule;
- Testing procedures and protocols approved in the March 5, 1997—radionuclides methods rule (62 FR 10168, cited in 40 CFR 141.25); and
- Items discussed in today's NODA.

TABLE III–1.—BRIEF SUMMARY OF THE REGULATORY EVENTS ASSOCIATED WITH RADIOCHEMICAL METHODS

1976 National primary drinking water regulations	July 18, 1991—Radionuclides proposed rule	March 5, 1997-Radionuclide methods final rule	Today's notice of data availability
The 1976 NPDWR approved: *Radiochemical methods to analyze for gross alpha-particle activity, radium-226, total radium, gross beta-particle activity, strontium-89 and -90, cesium-134 and uranium *Defined the detection limit (DL) as the required measure of sensitivity and listed the required DL for each regulated radionuclide	The July 18, 1991—radionuclides rule proposed: *Fifty-six additional methods for compliance monitoring of radionuclides *Guidance for the sample handling, preservation and holding times that were cited in the 1990 U.S.EPA "Manual for the Certification of Laboratories Analyzing Drinking Water" *The use of practical quantitation limits (PQLs) and acceptance limits as the measures of sensitivity for radiochemical analysis	The March 5, 1997 final rule for radionuclide methods: *Approved 66 additional radionuclide techniques for gross alpha-particle activity, radium-226, radium-228, uranium, cesium-134, iodine-131, and strontium-90 Responded to comments regarding the analytical methods (excluding radon) received from the July 18, 1991 proposed radionuclides rule	Updates the public on changes that have occurred regarding radiochemical methods of analysis since the 1991 proposed rule. The updates discussed in today's NODA include: *A brief discussion of the analytical methods updates which were promulgated by the Agency on July 18, 1997 final rule. *Guidance for the sample handling, preservation and holding times listed in the 1997 U.S.EPA "Manual for the Certification of Laboratories Analyzing Drinking Water." *Recommendations for the analysis of short-lived, alpha-emitting radioisotopes (i.e., radium-224). *Revised cost estimates for radiochemical analysis. *The Agency's intent to continue to use the detection limits defined in the 1976 rule as the required measures of sensitivity. *Response to some of the comments on the 1991 proposed radionuclides. *The externalization of the Performance Evaluation Program. The Agency's plans to implement a Performance Based Measurement System.

A. The Updated 1997 Laboratory Certification Manual

A revised version of the certification manual was published in 1997 (EPA 815–B–97–001, EPA 1997b). Table III–2 lists the guidance for sample handling, preservation, holding times, and instrumentation which appeared in this manual. Table III–2 also includes additional recommendations for radiochemical instrumentation (footnoted by the number 6), which the Agency is requesting comment on.

TABLE III–2.—SAMPLE HANDLING, PRESERVATION, HOLDING TIMES AND INSTRUMENTATION

Parameter	Preservative [1]	Container [2]	Maximum holding time [3]	Instrumentation [4]
Gross Alpha	Concentrated HCl or HNO_3 to pH <2 [5]	P or G	6 months	A, B or G
Gross Beta	Concentrated HCl or HNO_3 to pH <2 [5]	P or G	6 months	A or G
Radium-226	Concentrated HCl or HNO_3 to pH <2 ..	P or G	6 months	A, B, C [6], D or G
Radium-228	Concentrated HCl or HNO_3 to pH <2 ..	P or G	6 months	A, B [6], C [6] or G
Uranium natural	Concentrated HCl or HNO_3 to pH <2 ..	P or G	6 months	A [6], F, G [6], or O
Cesium-134	Concentrated HCl to pH <2	P or G	6 months	A, C or G
Strontium-89 and -90	Concentrated HCl or HNO_3 to pH <2 ..	P or G	6 months	A or G
Radioactive Iodine-131	None	P or G	8 days	A, C or G
Tritium	None	G	6 months	E
Gamma/Photon Emitters	Concentrated HCl or HNO_3 to pH <2 ..	P or G	6 months	C

[1] It is recommended that the preservative be added to the sample at the time of collection. It is recommended that samples be filtered if suspended or settleable solids are present at any level observable to the eye prior to adding preservative. This should be done at the time of collection. If the sample has to be shipped to a laboratory or storage area, however, acidification of the sample (in its original container) may be delayed for a period not to exceed 5 days. A minimum of 16 hours must elapse between acidification and start of analysis.

[2] P = Plastic, hard or soft; G = Glass, hard or soft.

[3] Holding time is defined as the period from time of sampling to time of analysis. In all cases, samples should be analyzed as soon after collection as possible. If a composite sample is prepared, a holding time cannot exceed 12 months.

[4] A = Low background proportional system; B = Alpha and beta scintillation system; C = Gamma spectrometer [Ge(Hp) or Ge (Li)]; D = Scintillation cell system; E = Liquid scintillation system; F = Fluorometer; G = Low background alpha and beta counting system other than gas-flow proportional; O = Other approved methods (e.g., laser phosphorimetry and alpha spectrometry for uranium).

[5] If HCl is used to acidify samples which are to be analyzed for gross alpha or gross beta activities, the acid salts must be converted to nitrate salts before transfer of the samples to planchets.

[6] Additional instrumentation that was not listed in the USEPA 1997 "Manual for the Certification of Laboratories Analyzing Drinking Water."

B. Recommendations for Determining the Presence of Radium-224

To determine the presence of the short-lived radium-224 isotope (half life ~3.66 days), the Agency recommends using one of the following several options.

1. Radium-224 by Gamma Spectrometry and Alpha Spectrometry

(a) Gamma Spectrometry. Radium-224 can be specifically determined by gamma spectrometry using a suitably prepared sample. In this method a precipitate in which the radium isotopes are concentrated is gamma counted. The primary advantage of this technique is specificity for radium gamma rays, radium-224 included. Other advantages of this method include:

- a simple sample preparation were radium isotopes are concentrated from samples 1 liter or larger;
- specificity for the radium-224 isotope based on a unique gamma energy;
- optimal accuracy and precision if the sample is counted within 72 hours of collection (40 hours is recommended);
- and is cost competitive with the gross methods because a single count rather that three counts (see the gross alpha methods discussion) is necessary to measure the radium-224 in a routine sample.

A gamma spectrometry method by Standard Methods is currently pending but for now the reader is referred to the method used by Parsa. (Parsa, 1998).

(b) Alpha Spectrometry. The alpha spectrometry method measures alphas emitted by radium-224 and its alpha emitting daughters. The alpha spectrometry method, used for the USGS occurrence survey (see appendix I and EPA 2000a), was a slight modification of an existing method (see EPA 2000a). Using an appropriate tracer (e.g. Ba-133), barium and radium isotopes are separated from other radionuclides and interferences using cation ion exchange chromatography. A prepared sample, counted for approximately 100 minutes using alpha spectrometry, can be used to measure the radium-224 in the sample and is capable of good accuracy and precision. Other alpha spectrometry techniques, similar to the modified method used for the USGS occurrence survey, should be sufficient for the detection of radium-224. It is cost competitive with the gross methods (discussed next) because a single count rather than three (for gross methods) is sufficient to for measurement of radium-224.

2. Gross Radium Alpha (Co-precipitation) Within 72 Hours

The presence of radium-224 can be determined indirectly using the radium-224 half-life decay and the gross radium alpha technique. Gross radium co-precipitation methods, like EPA 903.0, concentrate radium isotopes by co-precipitation, separating radium and radium-like isotopes from potential interferences. Relative to evaporative methods, the co-precipitation technique can be used for larger (> 1 L) sample sizes with a resulting increase in the method sensitivity. Initial analysis within 72 hours after sample collection (40 hours recommended for optimal data quality) using the co-precipitation methods yield results, reflecting both alpha-emitting radium isotopes (radium-224 and radium-226). For these to produce unambiguous results, radium-224 must be the dominant isotope present, i. e. the ratio of radium-224 to radium-226 must be three or greater. If this is the prevailing composition, the estimated contribution of radium-224 to the overall value can be ascertained by recounting the sample at 4 or 8 days intervals and calculating the change in the measured activity. The noted change will show a decrease with a 4 day half-life indicative of Ra-224. Formulas are available to calculate the initial radium-224 concentration present in the sample when collected. The advantages of this technique include:

- enhanced sensitivity (≥1 L samples);
- it does not require additional analyst training;
- it is specific for radium isotopes; and
- the resulting precipitate can be measured by a number of techniques, including proportional counting, alpha scintillation counting, or gamma counting.

3. Evaporative Gross Alpha-Particle Analysis Within 72 Hours

The radium-224 isotope, when in equilibrium with its decay progeny, emits four alpha particles. Three of these alpha particles equilibrate almost immediately (within 5 minutes) after sample preparation and add to or amplify the sample count rate. This count rate amplification can be exploited for the measurement of radium-224 in a sample at low concentration (<15 pCi/L). The presence of the radium-224 radioisotope in drinking water may be ascertained by performing an initial evaporative gross alpha-particle analysis within 72 hours (40 hours recommended) after sample collection. In the absence of any other alpha-emitting nuclide (e.g., uranium or radium-226) and if the gross alpha-particle value is above the MCL, the sample may be re-counted at 4- and 8-day intervals to determine if the observed decrease in activity follows the 3.66 day half-life of radium-224. A decrease in the gross alpha value with a 4-day decay rate indicates the likely presence of radium-224. Formulas are available to calculate the concentration of radium-224 in the initial sample. The advantages of this option include:

- the method is similar to the general method for evaporative gross alpha;
- it requires no special training of the analyst; and
- it can be a definitive test if other alpha-emitting nuclides are known to be absent.

The Agency recognizes that analysis within the 72-hour time frame creates difficulties in shipping and handling and may increase the price of the analysis.

C. Revised Cost Estimates for Radiochemical Analysis

The cost estimates for radiochemical analysis from the 1991 proposed rule and the revised cost estimates are shown in Table III–3.

TABLE III–3.—THE 1991 AND 1999 ESTIMATED COSTS OF ANALYSES FOR RADIONUCLIDES

Radionuclides	Approximate cost $ (1991)[1]	Approximate cost $ (1999)[2]
Gross Alpha and beta	35	45
Gross alpha—coprecip.	35	45
Radium-226	85	90
Radium-228	100	110
Uranium (total)	45	48 (LP)
Uranium (isotopic)	125	128 (AS)
Radioactive Cesium (-134)	100	125
Radioactive Strontium	105	144
Total Strontium (-89 and -90)	.....	153
Radioactive Iodine -131	100	131
Tritium	50	80
Gamma/Photon Emitters	110	142

Source:
[1] 56 FR 33050; July 18, 1991.
[2] USEPA, 2000a.
Abbreviations: LP = laser phosphorimetry; AS = alpha spectrometry.
Note: Estimated costs are on a per-sample basis; analysis of multiple samples may have a lower cost.

D. The Detection Limits as the Required Measures of Sensitivity

Table III–4 cites the detection limits or the required sensitivity for the specific radioanalyses that were listed in the 1976 rule and are also cited in 40 CFR 141.25.

TABLE III–4.—REQUIRED REGULATORY DETECTION LIMITS FOR THE VARIOUS RADIOCHEMICAL CONTAMINANTS (40 CFR 141.25)

Contaminant	Detection limit (pCi/L)
Gross Alpha	3
Gross Beta	4
Radium-226	1
Radium-228	1
Cesium-134	10
Strontium-89	10
Strontium-90	2
Iodine-131	1
Tritium	1,000
Other Radionuclides and Photon/ Gamma Emitters.	1/10th of the rule NIPDWR 1976 table IV–2A and 2B

E. References

Parsa, B., 1998. Contribution of Short-lived Radionuclides to Alpha-Particle Radioactivity in Drinking Water and Their Impact on the Safe Drinking Water Act Regulations, Radioactivity and Radiochemistry, Vol. 9, No. 4, pp. 41–50, 1998. USEPA, 1991. National Primary Drinking Water Regulations; Radionuclides; Proposed Rule. **Federal Register**. Vol. 56, No. 138, p. 33050. July 18, 1991.

USEPA, 1997a. National Primary Drinking Water Regulations; Analytical Methods for Radionuclides; Final Rule and Proposed Rule. Vol. 62, No. 43, p. 10168. March 5, 1997.

USEPA, 1997b. "Manual for the Certification of Laboratories Analyzing Drinking Water." EPA 815–B–97–001. 1997.

USEPA, 2000a. "Technical Support Document for the Radionuclides Notice of Data Availability." 2000.

Appendix IV—Treatment Technologies and Costs

A. Introduction

This section describes updates to EPA's previous evaluations of the feasibility and costs of treatment technologies for the removal of radionuclides from drinking water. Prior to this update, the latest evaluation was the 1992 "Technologies and Costs document" for radionuclides in drinking water (EPA 1992). The updates to the 1992 radionuclides Technologies and Costs document comprise an updated Technologies and Costs Document (EPA 1999a) and a radium compliance cost study (EPA 1998a), which are described later in this section. This section also describes other relevant documents, including the1998 **Federal Register** notice of the "Small Systems Compliance Technology List" (SSCTLs) for the currently regulated radionuclides (63 FR 42032) and its supporting guidance document (EPA 1998b). Both of the documents supporting the SSCTs can be obtained on-line at "http://www.epa.gov/OGWDW/standard/tretech.html".

The SSCTLs for the meeting the MCLs for combined radium-226 and radium-228, gross alpha emitters, and combined beta and photon emitters are included in "Announcement of Small System Compliance Technology Lists for Existing National Primary Drinking Water Regulations and Findings Concerning Variance Technologies," published in the **Federal Register** on August 6, 1998 (63 FR 42032). The supporting guidance document cited previously includes information regarding small systems treatment and waste disposal concerns relevant to radionuclide contaminants and was made publicly available on September 15, 1998. Further evaluations of small systems treatment technology applicability and affordability have been done since the SSCTLs for radionuclides were published, including an analysis of SSCTs for uranium (EPA 1999b). These evaluations are summarized later in this section.

B. Treatment Technologies Update

1. Updates on Performance of Technologies for Removal of Regulated Radionuclides and Uranium

One of the purposes of the update to the radionuclides Technologies and Costs (T&C) document (EPA 1999a) was to update the treatment technology performance sections of the 1992 radionuclides T&C document. The peer-reviewed literature revealed no new significant sources of information regarding performance for the previously described technologies, nor did it reveal literature regarding any new treatment technologies for radionuclides in drinking water. Both the 1992 and 1999 radionuclides T&C documents include performance evaluations of the BATs proposed in 1991 for the regulated radionuclides and uranium (56 FR 33050, Jul. 18, 1991) and additional technologies that were reviewed as potential BATs for the 1991 proposed rule, but that were not proposed as BAT for various reasons.

Although the 1999 T&C document concludes that the peer-reviewed literature describes no new technologies since the 1992 T&C document was completed, there have been some developments that are significant. In particular, both package plant [1] technologies, including those equipped with remote control/communication capabilities, and point-of-entry (POE)/point-of-use (POU) versions [2] of existing technologies have become more widely applicable for use for compliance. This is true both because of improvements in these technologies themselves (NRC 1997) and since the 1996 SDWA explicitly allows package plants and POE/POU devices to be used as compliance technologies for small systems (section 1412.b.4.E). Package plant technologies and POE/U technologies are discussed in more detail in the Technical Support Document (EPA 2000a).

2. Treatment Technologies Evaluated as Compliance Technologies for Radionuclides

The following technologies are reviewed in the 1999 radionuclides T&C document: (1) for radium, the 1991 proposed Best Available Technologies (BATs), which are lime softening, ion exchange, and reverse osmosis; and two other applicable technologies with significant radium removal data, electrodialysis reversal and greensand filtration; (2) for uranium, the 1991 proposed BATs; which are coagulation/filtration, ion exchange, lime softening, and reverse osmosis; and two other applicable technologies, electrodialysis reversal and activated alumina; (3) for gross alpha particle activity, the 1991 proposed BAT, which is reverse osmosis; and one other applicable technology, ion exchange; and (4) for beta particle activity and photon radioactivity, the 1991 proposed BATs, which are ion exchange and reverse osmosis. No other technology studies pertinent to total beta and photon activity were found, but this is largely due to the fact that treatment applicability depends on what specific beta and photon emitters are present and so should be evaluated on a case-by-case basis. This consideration also applies to gross alpha activity. It is likely that reverse osmosis, being applicable to a broad range of inorganic contaminants, including radionuclide contaminants, is the best alternative for situations where multiple radionuclides occur.

3. Data on Additional Treatment Technologies

The 1999 radionuclides T&C document does not identify any new treatment technologies for radionuclides, but does provide information on two additional variants of coagulation/filtration for uranium removal: direct filtration and in-line filtration.

4. Small Systems Compliance Technology List and Guidance Manual for the Regulated Radionuclides and Uranium

The 1996 SDWA identifies three categories of small drinking water systems, those serving populations between 25 and 500, 501 and 3,300, and 3,301 and 10,000. In addition to BAT determinations, the SDWA directs EPA to make technology assessments for each of the three small system size categories in all future regulations establishing an MCL or

[1] Package plants are skid mounted factory assembled centralized treatment units that arrive on site "virtually ready to use". Package plants offer several advantages. First, since they combine elements of the treatment process into a compact assembly (such as chemical feeders, mixers, flocculators, basins, and filters), they tend to require lesser construction and engineering costs. Another advantage is that many package plant technologies are becoming more automated and thus can be less demanding of operators than their fully engineered counter-parts (EPA 1998b).

[2] Point-of-entry (POE) treatment units treat all of the water entering a household or other building, with the result being treated water from any tap. Point-of-use (POU) treatment units treat only the water at a particular tap or faucet, with the result being treated water that one tap, with the other taps serving untreated water. POE and POU treatment units often use the same technological concepts employed in the analogous central treatment processes, the main difference being the much smaller scale of the device itself and the flows being treated (EPA 1998b).

treatment technique. Two classes of small systems technologies are identified for future National Primary Drinking Water Regulations (NPDWRs): compliance technologies and variance technologies.

Compliance technologies may be listed for NPDWRs that promulgate MCLs or treatment techniques. In the case of an MCL, "compliance technology" refers to a technology or other means that is affordable (if applicable) and that achieves compliance. Possible compliance technologies include packaged or modular systems and point-of-entry (POE) or point-of-use (POU) treatment units, as described previously.

Variance technologies are only specified for those system size/source water quality combinations for which no technology meets all of the criteria for listing as a compliance technology (section 1412(b)(15)(A)). Thus, the listing of a compliance technology for a size category/source water combination prohibits the listing of variance technologies for that combination. While variance technologies may not achieve compliance with the MCL or treatment technique requirement, they must achieve the maximum reduction that is affordable considering the size of the system and the quality of the source water. Variance technologies must also achieve a level of contaminant reduction that is "protective of public health" (section 1412(b)(15)(B)).

In the case of the currently regulated radionuclides, *i.e.*, combined radium-226 and -228, gross alpha activity, and total beta and photon activity, there are no variance technologies allowable since the SDWA (section 1415(e)(6)(A)) specifically prohibits small system variances for any MCL or treatment technique which was promulgated prior to January 1, 1986. The Variance and Exemption Rule describes EPA's interpretation of this section in more detail (see 63 FR 19442; April 20, 1998).

Small systems compliance technologies for the currently regulated radionuclides, combined radium-226 and -228, gross alpha emitters, and total beta and photon activity, were listed and described in the **Federal Register** on August 6, 1998 (EPA 1998a) and in an accompanying guidance manual (EPA 1998b). Small systems compliance technologies for uranium were also evaluated (EPA 1999a). Small systems compliance technologies (SSCTs) for uranium were evaluated in terms of each technology's removal capabilities, contaminant concentration applicability ranges, other water quality concerns, treatment costs, and operational/maintenance requirements. The SSCT list for uranium is technology specific, but not product (manufacturer) specific. Product specific lists were determined to be inappropriate due to the potential resource intensiveness involved. Information on specific products will be available through another mechanism. EPA's Office of Research and Development has a pilot project under the Environmental Technology Verification (ETV) Program to provide treatment system purchasers with performance data from independent third parties.

Tables IV–1 and IV–2 summarize the small systems compliance technologies listed in the 1998 SSCTL for combined radium-226, and -228, gross alpha emitters, total beta and photon activity. Table IV–1 is shown as it will be updated when uranium is regulated. Table IV–1 describes limitations for each of the listed technologies and Table IV–2 lists SSCTs for each contaminant.

TABLE IV–1.—LIST OF SMALL SYSTEMS COMPLIANCE TECHNOLOGIES FOR RADIONUCLIDES AND LIMITATIONS TO USE

Unit technologies	Limitations (see footnotes)	Operator skill level required[1]	Raw water quality range and considerations[1]
1. Ion Exchange (IE)	(a)	Intermediate	All ground waters.
2. Point of Use (POU) IE	(b)	Basic	All ground waters
3. Reverse Osmosis (RO)	(c)	Advanced	Surface waters usually require pre-filtration.
4. POU RO	(b)	Basic	Surface waters usually require pre-filtration.
5. Lime Softening	(d)	Advanced	All waters.
6. Green Sand Filtration	(e)	Basic	
7. Co-precipitation with Barium Sulfate	(f)	Intermediate to Advanced	Ground waters with suitable water quality.
8. Electrodialysis/Electrodialysis Reversal		Basic to Intermediate	All ground waters.
9. Pre-formed Hydrous Manganese Oxide Filtration.	(g)	Intermediate	All ground waters.
10. Activated alumina	(a), (h)	Advanced	All ground waters; competing anion concentrations may affect regeneration frequency.
11. Enhanced coagulation/filtration	(i)	Advanced	Can treat a wide range of water qualities.

[1] National Research Council (NRC). Safe Water from Every Tap: Improving Water Service to Small Communities. National Academy Press. Washington, D.C. 1997.

Limitations Footnotes to Table IV–2: Technologies for Radionuclides:

[a] The regeneration solution contains high concentrations of the contaminant ions. Disposal options should be carefully considered before choosing this technology.

[b] When POU devices are used for compliance, programs for long-term operation, maintenance, and monitoring must be provided by water utility to ensure proper performance).

[c] Reject water disposal options should be carefully considered before choosing this technology. See other RO limitations described in the SWTR Compliance Technologies Table.

[d] The combination of variable source water quality and the complexity of the water chemistry involved may make this technology too complex for small surface water systems.

[e] Removal efficiencies can vary depending on water quality.

[f] This technology may be very limited in application to small systems. Since the process requires static mixing, detention basins, and filtration, it is most applicable to systems with sufficiently high sulfate levels that already have a suitable filtration treatment train in place.

[g] This technology is most applicable to small systems that already have filtration in place.

[h] Handling of chemicals required during regeneration and pH adjustment may be too difficult for small systems without an adequately trained operator.

[i] Assumes modification to a coagulation/filtration process already in place.

Table IV–2 lists the Small Systems Compliance Technologies for the currently regulated radionuclides. Technology numbers refer to the technologies listed in Table IV–1.

TABLE IV–2.—COMPLIANCE TECHNOLOGIES BY SYSTEM SIZE CATEGORY FOR RADIONUCLIDE NPDWRS (AFFORDABILITY NOT CONSIDERED, EXCEPT FOR URANIUM, DUE TO STATUTORY LIMITATIONS)

Contaminant	Compliance technologies[1] for system size categories (population served)		
	25–500	501–3,300	3,300–10,000
Combined radium-226 and radium-228	1, 2, 3, 4, 5, 6, 7, 8, 9	1, 2, 3, 4, 5, 6, 7, 8, 9	1, 2, 3, 4, 5, 6, 7, 8, 9
Gross alpha particle activity	3, 4	3, 4	3, 4
Total beta particle activity and photon activity, average annual concentration	1, 2, 3, 4	1, 2, 3, 4	1, 2, 3, 4
Uranium	1, 2, 4, 10, 11	1, 2, 3, 4, 5, 10, 11	1, 2, 3, 4, 5, 10, 11

Note: [1] Numbers correspond to those assigned to technologies found in the table "List of Small Systems Compliance Technologies for the Currently Regulated Radionuclides."

C. Waste Treatment, Handling and Disposal Guidance

In the proposed radionuclides rule of July 1991, EPA referenced a 1990 EPA draft report entitled "Suggested Guidelines for Disposal of Drinking Water Treatment Wastes Containing Naturally-Occurring Radionuclides" (EPA 1990). That 1990 report offered guidance to system managers, engineers, and State agencies responsible for the safe handling and disposal of treatment wastes that, in many cases, were not specifically addressed by any statute. That guidance report was later updated in 1994 (EPA 1994).

The guidance provided information on the following: (1) Background on water treatment processes and characteristics of wastes generated; (2) rationale for radiation protection, including citation of programs and regulations affecting other sources of such waste; (3) guidelines for several methods of disposal of solid and liquid type wastes containing the subject radionuclides; and, (4) the specification of practical guidance to protect workers and others who may handle or be exposed to water-treatment wastes containing radiation above background levels.

The Technical Support Document (EPA 2000a) discusses disposal methods and issues, including comments received in reference to the 1990 "Suggested Guidelines for Disposal of Drinking Water Treatment Wastes Containing Naturally-Occurring Radionuclides," and the 1994 update to this report.

D. Unit Treatment Cost Updates

Treatment costs for coagulation/filtration (including direct filtration and in-line filtration), lime softening, ion exchange, reverse osmosis, electrodialysis reversal, greensand filtration, point-of-use (POU) reverse osmosis, POU ion exchange, and point-of-entry cation exchange were updated in the appendix to the 1999 radionuclides T&C document. This update includes land-cost considerations and waste-disposal cost estimates. Cost estimates were made using standard EPA treatment technology costing models. Outputs were updated to current dollars using standard engineering costing indices, e.g., the Bureau of Labor's Chemical and Allied Products Index. Costs for individual technologies were analyzed in terms of water usage, removal efficiency, interest rate, and other variables.

In addition to cost model updates, EPA has performed a study of the actual costs of treatment and other compliance measures for the radium standard (EPA 1998c), which provided a "snapshot" of the costs incurred by water systems in complying with the existing combined radium-226 and radium-228 MCL. Studies of this nature allow EPA to compare modeled costs used in regulatory impact assessments with real-world data for the purposes of model validation and cost estimate amendments. They also allow EPA to check assumptions about the prevalence of use of particular water-treatment technologies.

The study comprises data compiled from contacts with water-treatment personnel, State representatives, and EPA Regional representatives within EPA Regions 5 (IL, IN, MI, MN, OH, and WI) and 8 (CO, MT, ND, SD, UT, and WY). Specifically, data were obtained regarding water systems in California, Florida, Idaho, Illinois, Indiana, Ohio, Wisconsin, and Wyoming. State Agencies and EPA Regional offices identified 136 systems as having water sources with combined radium-226 and radium-228 above the MCL of 5 pCi/L. Of these, 55 of the systems were contacted, of which 29 were either treating for radium or were in the process of selecting a treatment method. The remaining systems were either further behind in treatment selection plans or pursuing other compliance measures. All of the systems that were currently treating for radium were in compliance with the MCL. Twenty-six of these systems responded with cost data, of which 17 were small systems (design flow < 1 mgd). Thirty-five percent of the small systems reported were using reverse osmosis which, at an average total treatment cost of $3.02 per thousand gallons, was the most expensive treatment technology identified. Other treatment options used were lime softening and ion exchange. These had average total treatment costs of $2.36 and $0.73 per thousand gallons, respectively. Unit costs are discussed in more detail in the Technical Support Document (EPA 2000a).

EPA requests comments on its analysis of treatment technologies, costs, and treatment residuals disposal.

E. References

National Research Council (NRC). Safe Water From Every Tap: Improving Water Service to Small Communities. National Academy Press. Washington, DC. 1997.

USEPA. Office of Drinking Water. Suggested Guidelines for Disposal of Drinking Water Treatment Wastes Containing Naturally-Occurring Radionuclides (July 1990 draft).

USEPA. National Primary Drinking Water Regulations; Radionuclides; Proposed Rule. Federal Register. Vol. 56, No. 138, p. 33050. July 18, 1991.

USEPA. Technologies and Costs for the Removal of Radionuclides from Potable Water Supplies. Prepared by Malcolm Pirnie, Inc. July 1992.

USEPA. Office of Ground Water and Drinking Water. Suggested Guidelines for Disposal of Drinking Water Treatment Wastes Containing Radioactivity (June 1994 draft).

USEPA. Announcement of Small Systems Compliance Technology Lists for Existing National Primary Drinking Water Regulations and Findings Concerning Variance Technologies. Federal Register. Vol. 63, No. 151, p. 42032. August 6, 1998. (EPA 1998a).

USEPA. "Small System Compliance Technology List for the Non-Microbial Contaminants Regulated Before 1996." EPA–815–R–98–002. September 1998. (EPA 1998b).

USEPA. "Actual Cost for Compliance with the Safe Drinking Water Act Standard for Radium-226 and Radium-228." Final Report. Prepared by International Consultants, Inc. July 1998. (EPA 1998c).

USEPA Technologies and Costs for the Removal of Radionuclides from Potable Water Supplies. Draft. Prepared by International Consultants, Inc. April, 1999. (EPA 1999a).

USEPA. "Small System Compliance Technology List for the Radionuclides Rule." Prepared by International Consultants, Inc. Draft. April 1999. (EPA 1999b).

USEPA. "Technical Support Document for the Radionuclides Notice of Data Availability." Draft. March, 2000. (EPA 2000a)

Appendix V—Economics and Impacts Analysis

A. Overview of the Economic Analysis

1. Background

Analysis of the costs, benefits, and other impacts of regulations is required under the Safe Drinking Water Act Amendments of 1996, Executive Order 12866 (Regulatory Planning and Review), and EPA's internal guidance for regulatory development. These

requirements are new relative to the 1991 proposal for revisions to the existing National Primary Drinking Water Regulations (NPDWRs) for radionuclides.

The actions that are anticipated to have regulatory impacts are evaluated in this section. These actions are: (1) the correction the monitoring deficiency for combined radium-226 and radium-228; and (2) the establishment of a uranium NPDWR with an MCL of 20 µg/L; or (3) the establishment of a uranium NPDWR with an MCL of 40 µg/L; or (4) the establishment of a uranium NPDWR with an MCL of 80 µg/L. See "Combined Ra-226 and Ra-228" in the today's NODA (section III, part F) for a discussion of the monitoring corrections that will be finalized for the combined radium-226 and radium-228 ("combined radium") NPDWR. See "Uranium" in the NODA (section III, part H) for a discussion of the options being considered for finalization for the uranium NPDWR.

2. Economic Analysis of the Regulatory Actions Being Considered for Radionuclides in Drinking Water

The economic analysis summarized here supports the finalization of the 1991 Radionuclides proposal. The more detailed economic analysis (the Health Risk Reduction and Cost Analysis, EPA 2000b) may be obtained from the Water Docket, as described in the Introduction to today's NODA (see **ADDRESSES**). It provides central-tendency estimates of national costs and benefits and presents information on the data sources and analytic approaches used, including a qualitative discussion of the analytical limitations and uncertainties involved. Further uncertainty analyses will be performed to support the analyses summarized here and will be reported in the preamble to the final rule. It should be noted that these additional uncertainty analyses are not expected to alter regulatory decisions.

The basic steps in a comprehensive economic analysis include: (1) Estimating baseline conditions in the absence of revisions to the regulations; (2) predicting actions that water systems will use to meet each regulatory option (the "decision tree"); (3) estimating national costs resulting from compliance actions; (4) estimating national benefits resulting from compliance; and (5) assessing distributional impacts and equity concerns. In today's NODA, we present preliminary estimates of national costs and benefits for the options evaluated, focusing on monitoring and compliance costs and reductions in cancer risks. Other national costs and benefits (e.g., state administrative costs and risk reductions from incidental treatment of co-occurring contaminants) and potential distributional impacts are described qualitatively (see EPA 2000a and EPA 2000b).

The first step in the economic analysis, defining the analytical baseline, requires that water systems be apportioned into several groups based on their predicted levels of radionuclides and the current monitoring scheme. In the case of the radionuclides NPDWRs, this provides unusual challenges. This is partly due to the fact that several community water systems are not complying with the existing regulations, which is reflected in the occurrence database used for this work (the National Inorganics and Radionuclides Survey, "NIRS"; see EPA 1991, proposed rule and EPA 2000a). Also, as discussed in the Introduction to today's NODA, there are weaknesses in the current monitoring requirements that has lead to a situation in which some water systems having combined radium levels greater than the MCL of 5 pCi/L will not have knowledge of this fact (and hence are not presently in violation of the combined radium NPDWR). Both of these influences, the existing unresolved radionuclides NPDWR violations and the monitoring deficiencies, must be accounted for in the analytical baseline.

The regulatory baseline and other analytical baselines are benchmarks to measure regulatory impacts against. Generating a national-level contaminant occurrence profile is an important part of this benchmarking process. The database used as the basis for this model, NIRS, is described in appendix I of today's NODA (Occurrence). The analysis of regulatory impacts uses this system-size stratified baseline occurrence model [1] to estimate the percentages of water systems with contaminant levels within specified values (e.g., 30 to 50% above the MCL). This information is then combined with other models to estimate the compliance costs and benefits associated with each option. Examples of models relevant to national costs estimation include "model systems [2]," compliance cost equations [3], and the compliance action prediction model or "decision trees [4]." Examples of models relevant to risk reduction and benefits estimation include the risk models described in appendix II and the risk reduction valuation models described in the Technical Support Document (EPA 2000a).

The analytical baseline for combined radium reflects full compliance with the existing regulations as written, which have been fully enforceable since the 1986 reauthorization of the SDWA. This approach assumes that, in the absence of any changes to the radionuclides NPDWRs, EPA and the States will eventually ensure that all systems fully comply with the existing regulations. This approach allows us to separate out the predicted number of systems with combined radium levels in excess of the MCL that have knowledge of the violation ("systems in violation") from the predicted number of systems that have levels in excess of the MCL, but that would not have knowledge of this under the current monitoring requirements. Since uranium is not currently regulated, no such corrections are necessary. It was also determined that treatment installed to remove the other radionuclides should not significantly impact the uranium analytical baseline.[5]

B. Approach for Assessing Occurrence, Risks and Costs for Community Water Systems

1. Assessing Occurrence

To develop estimates of the baseline radionuclides occurrence profile for community water systems, we began by extrapolating from data obtained through EPA's National Inorganics and Radionuclides Survey (NIRS). This survey measured radionuclide concentrations at 990 community ground water systems between 1984 and 1986. For detailed information on the design of NIRS, see Longtin 1988. For detailed information on how NIRS was used in this work, see the background documents (EPA 2000a and 2000b).

We made adjustments to the NIRS data to address certain limitations, including (1) the small size of the sample of systems serving populations greater than 3,300 persons; (2) the decay of radium-224 prior to analysis of the NIRS water samples; (3) the need to convert mass measurements of uranium to activity levels; and, (4) the lack of information on surface water systems. The analyses and discussions that follow concentrate on CWSs serving retail populations of less than one million persons. Discussions of preliminary and future economic impacts analyses of Non-Transient Non-Community Water Systems (NTSC systems) and the largest CWSs follow later in this section. The two occurrence approaches we examined are described next. For a discussion of the relative strengths and weaknesses of the two approaches to estimating occurrence, see the Technical Support Document (EPA 2000a).

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[1] The NIRS database is stratified into four categories: systems serving between 25–500 persons, 501—3,300 persons, 3,301–10,000 persons, and 10,001–1,000,000 persons. Because of the small sample size used to describe the larger systems, our model uses only three categories: we combine the two categories for systems serving greater than 3,301 persons into a single category.

[2] Model systems describe the universe of drinking water systems by breaking it down into discrete "system size categories" by population served. There are nine size categories: 25–100 persons served; 101–500; 501–1,000; 1,001–3,300; 3,301–10,000; 10,001–50,000; 50,001–100,000; 100,000–1,000,000; > 1,000,000. Within each size category, the systems are described by a single set of "typical characteristics" by source water type (ground versus surface water) and ownership type (public versus private ownership). These characteristics include the average and design flows and the distribution of numbers of entry points per system.

[3] Unit compliance costs models include water treatment cost models (e.g., W/W Cost and the WATER model) and models for other compliance options, like alternate water well sources and purchasing water. For a discussion of the standard EPA water treatment cost models, see EPA 1999d.

[4] Decision trees are models of the relative probabilities that water systems will choose particular compliance actions when in violation. The probabilities are estimated based on considerations of source water type, system size, water quality, required removal efficiency, unit costs, treatment issues (e.g., co-treatment and pre-/post-treatment requirements), and residuals disposal costs and issues.

[5] While the treatments installed to eliminate gross alpha and combined radium may also reduce uranium levels, we do not quantify these impacts in this analysis. We make no adjustment for three reasons. First, the NIRS data suggest that systems with elevated levels of gross alpha or combined radium rarely report uranium concentrations above levels of concern. Second, some types of treatment used to remove gross alpha or radium are less effective in removing uranium. Lastly, radium and uranium occur at higher levels under very different aquifer conditions: radium tends to occur at high levels in water with low dissolved oxygen and high total dissolved solids, while uranium occurs at higher levels in oxygen-rich waters with low total dissolved solids (see the Technical Support Document, EPA2000a).

2. "Direct Proportions Approach" to Estimating Occurrence

Because of uncertainties related to extrapolating from the NIRS database to national-level estimates, we applied two approaches for estimating the national-level central-tendency occurrence estimate. First, we assumed that national occurrence is directly proportional to the occurrence levels measured in NIRS. For example, if the radionuclide concentration in one percent of the samples from NIRS representing a particular water system size category are greater than the MCL, we assumed that one percent of all systems in that size class would be out of compliance at the national level (It is worth noting that using NIRS to extrapolate to the State or regional level is not valid, since NIRS was designed to be representative at the national-level, but not at these other levels). In cases where this approach predicts "zero probability" of non-compliance for a system size category (i.e., no samples in NIRS were above the MCL being considered), this approach is flawed, since the expectation is that this finding actually reflects a small probability, not "zero probability." In other words, in situations where "zero impact" is predicted, it is much more likely that a very small number of water systems will be impacted compared to true "zero impact." For this reason, we also used a mathematical model to simulate the occurrence distribution, in which these "zero probabilities" are replaced by estimated small probabilities.

3. "Lognormal Model Approach" to Estimating Occurrence

The second approach recognizes that "true" radionuclides occurrence will most likely be spread over a range wider than that observed in the survey. This approach assumes that "probability plots" of the NIRS data are lognormally distributed. A probability plot compares the radionuclide concentration for the various samples to the probability of a given sample having that level or less, where this probability is estimated from the actual occurrence data from NIRS. An assumption of lognormality means that a probability plot for the logarithms of the radionuclide levels would be expected to be linear (fall on a straight line).

Inspection of the NIRS data suggests that it is distributed in a roughly lognormal pattern, with most systems reporting concentration levels well below the MCLs of concern. Several other studies also suggest that the distribution of radionuclide occurrence in drinking water systems is likely to follow a lognormal distribution[6], so this assumption should be robust in most cases. If the NIRS data were perfectly lognormally distributed, both approaches would lead to similar estimates of occurrence. This is usually the case. However, it should be noted that there instances of significant deviations between the two approaches. For example, the direct proportions approach predicts that 0.4 % of the systems serving more than 500 persons will be impacted (61 systems) by an MCL of 20 pCi pCi/L for uranium, whereas the lognormal model approach predicts that 1.8% of systems will be impacted (255 systems), amounting to a difference in prediction of almost 200 impacted water systems in this size category. There are several possible explanations for this deviation, but the important point is that the use of both approaches allows the data gap to be recognized and fully considered.

A statistical software package ("Stata") was used to estimate a lognormal distribution that best fits the data for systems in each size class. We then used the fitted log means and log standard deviations of the resulting distributions to estimate the number of systems out of compliance with each regulatory option using standard statistical equations. More detail regarding the occurrence models and the estimation of the numbers of impacted systems can be found elsewhere (EPA 2000a and 2000b).

4. Assessing Risk

After determining the number of systems out of compliance with each regulatory option under consideration, we assessed the risk reductions that would result from these systems taking actions to come into compliance. The approach for the risk analysis begins with the development of intrinsic "risk factors" for each group of radionuclides. These risk factors are composites that involve multiplying EPA's best estimates of unit mortality and morbidity cancer risk coefficients (risk per pCi) for each group of radionuclides by standard assumptions regarding drinking water ingestion to determine the risk factors associated with drinking water exposure (risk per pCi/L). We then applied the individual risk factors[7] to the estimates of the reduction in exposure associated with each regulatory change under consideration, taking into account the population exposed. The calculation of risk factors from risk coefficients and a discussion of exposure assumptions are detailed elsewhere (EPA 2000a). The risk factors (per pCi/L in drinking water) used in the risk reduction analyses are summarized in Table V–1.

The unit[8] risk factors applied in this analysis refer to the aggregated small changes in the probability of incurring cancer over a large population. These unit probabilities can be interpreted in two ways: as the unit lifetime excess probability of cancer induction averaged over age and gender for all individuals in a population or as the risk for a statistically "averaged individual." It should be noted that no one individual is truly average, since the averaging also occurs over gender. Given a model of radionuclide occurrence, the population risks of excess cancer incidence can be estimated before and after a given regulatory option for the individuals comprising the population, with the difference being equal to the reduced risk. These reductions in individual cancer incidence probabilities may then be summed over the population to indicate the central-tendency number of "statistical cancer cases avoided" annually. However, it should be kept in mind that for many reasons, including the large variance associated with such risk factors, it is impossible to "check this prediction" in any meaningful way. In interpreting reduced risks for given options, it is arguably best to think of them in terms of reduced average "individual excess risk," rather than "cases avoided," for the reasons just described. For example, it is much easier to understand the idea that an individual's average lifetime risk of developing cancer due to exposure to radionuclides in drinking water has been reduced from three in ten thousand to one in ten thousand for a number of water systems under a given option then to understand that an average of 0.5 cancer cases are avoided annually at the national level for that option. The use of "individual excess risk" avoids much the confusion about "statistical cases," which are conceptually difficult to understand.

TABLE V–1.—AVERAGE INDIVIDUAL RISK FACTORS, AVERAGE WATER CONSUMPTION (1.1 L/PERSON/DAY) (PER PCI/L)

Regulatory option	Morbidity		Mortality	
	Lifetime ingestion	Annual ingestion	Lifetime ingestion	Annual ingestion
Gross Alpha: changes in monitoring requirements (weighted average of Ra-224 and Ra–226)	5.24E–06	7.48E–08	3.26E–06	4.65E–08
Gross Alpha: changes in MCL (Ra–224 only)	4.77E–06	6.81E–08	2.90E–06	4.15E–08

[6] See the Technical Support Document (EPA 2000a) and the HRRCA (EPA 2000b).

[7] This analysis focuses on changes in cancer risks from tap water ingestion. Individuals may be exposed to radionuclides in drinking water through other pathways (e.g., inhalation while showering), and uranium may have toxic effects on the kidneys; however, we expect that any changes in these types of risks will be, while not insignificant, much smaller than the changes in cancer risks from ingestion, and hence discuss them only qualitatively in this analysis.

[8] "Unit risk factors and "unit risks" refer to the risk per pCi/L in drinking water. They are not estimates of cancer incidence per se, but rather are indicators of the "potency" of a radionuclide. To get estimates of the risks of cancer incidence for an exposed population, the unit risk factors must be used in conjunction with a radionuclide drinking water occurrence model. These population risks refer to the estimated numbers of excess statistical cases of cancer that a population will face under a given set of exposure assumptions.

TABLE V–1.—AVERAGE INDIVIDUAL RISK FACTORS, AVERAGE WATER CONSUMPTION (1.1 L/PERSON/DAY) (PER PCI/L)—Continued

Regulatory option	Morbidity		Mortality	
	Lifetime ingestion	Annual ingestion	Lifetime ingestion	Annual ingestion
Combined Radium: changes in monitoring requirements (weighted average of Ra–226 and Ra–228)	2.30E–05	3.28E–07	1.63E–05	2.32E–07
Combined Radium: changes in MCL (Ra–228 only)	2.98E–05	4.26E–07	2.12E–05	3.03E–07
Uranium: establish MCL (simple average of U–234, U–235, and U–238)	1.95E–06	2.79E–08	1.26E–06	1.81E–08

5. Estimating Monetized Benefits

In this section, we summarize the information used in estimating monetized benefits. A description of the methodology used for these estimates is found in the Technical Support Document (EPA 2000a), which provides background information on: (1) The economic concepts that provide the foundation for benefits valuation; (2) the methods that are typically used by economists to value risk reductions, such as wage-risk, cost of illness, and contingent valuation studies; (3) the approach for valuing the reductions in fatal cancer risks and nonfatal cancer risks; (4) the use of these techniques to estimate the value of the risk reductions attributable to the regulatory options for radionuclides in drinking water; and (5) the limitations and uncertainties involved in the estimation. For more detail on the methodology employed, see the Health Risk Reduction and Cost Analysis (HRRCA, EPA 2000b).

This benefits analysis is based on two basic types of valuation: fatal cancer risk reductions and non-fatal cancer risk reductions. Fatal cancer risk reductions are valued in terms of the "value of a statistical life" (VSL), which does not refer to the value of an identifiable individual, but rather refers to the value of small reductions in mortality risks over a large population. For example, let us assume that a regulatory option results in a risk reduction of "one statistical fatal cancer case." This refers to the summation of small risk reductions over a large number of persons such that the summation equals "one case" (say, one hundred thousand persons each face a risk reduction of 1/100,000). Using our methodology, the resulting benefits would be equal to "one statistical life." Continuing the example, if each person were willing to pay $20 for such a risk reduction (1/100,000), the resulting VSL would be $2 million ($20 times 100,000 persons). However, since there is no direct information on what persons are willing to pay for the risks we are interested in, we must use indirect methods for estimating the VSL. The currently accepted methodology involves transferring the VSL from studies of the wage increases that persons "demand" in exchange for accepting jobs with slightly higher chances of accidental fatality ("wage-risk studies"). There are a number of assumptions involved in making this transfer, which are discussed in more detail in the background documentation (EPA 2000a and 2000b).

Valuing nonfatal cancer risk reductions is often done with "cost of illness studies," which examine the actual direct (*e.g.*, medical expenses) and indirect (*e.g.*, lost work or leisure time) costs incurred by affected individuals. Unfortunately, this valuation does not measure the "willingness to pay" to avoid nonfatal cancers, but rather assumes that benefits are equal to the avoided costs. The studies used and assumptions involved are discussed elsewhere (EPA 2000a and 2000b).

Because of the uncertainties involved in valuations, we used an estimate of the range of values of reductions in fatal and non-fatal risks attributable to the radionuclides regulations using the following estimates (1998 dollars):

Fatal Risk Reduction Valuations ("Value of a Statistical Life", VSL):

Best Estimate: Value of fatal risk reductions = Statistical lives saved * $5.9 million per statistical life.

Low End Estimate: Value of fatal risk reductions = Statistical lives saved * $1.5 million per statistical life.

High End Estimate: Value of fatal risk reductions = Statistical lives saved * $11.5 million per statistical life.

Non-Fatal Risk Reduction Valuations

Best Estimate: Value of nonfatal risk reductions (medical costs only) = Statistical cases averted * $0.10 million.

Low End Estimate: Value of nonfatal risk reductions (medical costs only) = Statistical cases averted * $0.09 million.

High End Estimate: Value of nonfatal risk reductions (medical costs only) = Statistical cases averted * $0.11 million.

6. Estimating the Costs of Compliance

The last component of the analysis involves estimating the costs of compliance for each regulatory option. The options under consideration will increase the costs of monitoring for all regulated systems, as well as require a small fraction of the systems to take action to reduce the contaminant levels in their finished water to achieve compliance. Examples of compliance actions include installing treatment, purchasing water from another system, changing the water source used (*e.g.*, installing a new well), blending the contaminated water with other source water that is below the MCL, and, in cases where the contaminated well is not essential to meet capacity, stopping production from the contaminated well. The cost analysis models both new capital costs and, and when appropriate, incremental operations and maintenance costs for this variety of compliance options. The inputs used in the cost analysis and a comparison of the modeled costs for treatment, alternate source, purchased water to case studies can be found in the Technical Support Document (EPA 2000a) and elsewhere (EPA 1998a).

C. Summary of Annual Costs and Benefits

1. Estimates of Costs and Benefits for Community Water Systems

The following results reflect the regulatory options that are currently being considered. Results for the other options that were analyzed (correction of monitoring deficiencies for gross alpha and changes to MCLs for gross alpha and Ra-228), but that EPA does not plan to adopt, are located in the Technical Support Document (EPA 2000a). In addition to EPA's preferred options, we have included all results in the Technical Support Document to allow interested stakeholders to comment on these other options, if desired.

Table V–2 shows the summarized results for EPA's analysis of risk reductions, benefits valuations, and costs of compliance (see EPA 2000b for a break-down of the summary by water system size). The risk reductions and cost estimates are based on the estimated range of numbers of community water systems predicted to be out of compliance with each of the regulatory options assessed. The ranges shown reflect the two occurrence model methodologies previously described, the "direct proportions" and "lognormal model" approaches. The ranges in occurrence predictions necessarily result in ranges of estimates for risk reductions, benefits valuations, and compliance costs. There are two ranges shown for values of cancer cases avoided, the "best-estimate range," based on the best-estimate of risk reduction valuations, and the "low/high-estimate range," which reflects the use of the two occurrence models and the uncertainty in the risk reduction valuations ("low-end" versus "high-end" estimates). These ranges do not reflect uncertainty in other model inputs, like risk factors in the case of risk reduction estimates and treatment unit costs in the case of compliance costs. Quantitative uncertainty analyses for risk reductions, benefits, and compliance costs will be conducted and reported in the preamble to the final rule. EPA expects that these uncertainty analyses will not impact final decisions.

Eliminating the combined radium-226/-228 monitoring deficiency [9] is predicted to lead to 210 to 250 systems out of compliance with an MCL of 5 μg/L, affecting 33,000 to 460,000

[9] The monitoring deficiency will be corrected by requiring the separate analysis of Ra-228 for systems with gross alpha levels below 5 pCi/L.

persons. Implementing an MCL of 20 µg/L for uranium is predicted to impact 830 to 970 systems, affecting 470,000 to 2,100,000 persons. An MCL for uranium of 40 µg/L is predicted to impact 300 to 430 systems, affecting 47,000 to 850,000 persons; 80 µg/L is predicted to impact 40 to 170 systems, affecting 7,000 to 170,000 persons. These estimates for uranium are based on the assumption that the activity-to-mass ratio in drinking water is 1:1. EPA's current best-estimate for the average activity-to-mass ratio for the various uranium isotopes in drinking water is 0.9. EPA will update this assumption for the uranium options in the Regulatory Impact Assessment supporting the rule finalization. However, the impact is expected to be small. For example, using the lognormal occurrence distribution model for the 40 µg/L option, an assumption of an activity-to-mass ratio of 0.9 results in an estimated number of impacted systems of 370, a decrease of only 12–13%.

The estimated risk reduction range for the option addressing the combined radium monitoring deficiency is 0.3 to 0.5 cancer cases avoided annually, with an associated annual monetized benefits range of one to two million dollars. The risk reductions estimated for the uranium options range from 0.2 to 2 cases avoided annually for an MCL of 20 mg/L, 0.04 to 1.5 cases avoided annually for an MCL of 40 µg/L, and 0.01 to 1 case avoided annually for an MCL of 80 µg/L. The associated annual monetized benefits for the uranium options range from 0.6 to 8 million dollars (20 mg/L), 0.1 to 6 million dollars (40 µg/L), and less than 0.1 to 4 million dollars (80 µg/L).

Annual compliance costs range from 20 to 30 million dollars for the option addressing the combined radium monitoring deficiencies. Annual compliance costs for the uranium options range from 30 to 140 million dollars for an MCL of 20 mg/L, 6 to 60 million dollars for an MCL of 40 µg/L, and 5 to 30 million dollars for an MCL of 80 µg/L.

As demonstrated by this analysis the estimated range of central-tendency annual compliance costs exceed the ranges of central-tendency annual monetized benefits for all options. This is not surprising given that most of the systems impacted are small water systems, which tend to have much higher per customer compliance costs relative to large systems, while the per customer risk reduction is independent of water system size. Except in cases where risk reductions are quite large, it is predictable that estimated annual costs will outweigh estimated annual benefits for small water systems (given the current methodologies for estimating benefits). However, it should be pointed out that all of the regulatory options being considered have associated lifetime morbidity risks near or in excess of one in ten thousand, which is the upper bound on the preferred risk range according to EPA's policies on regulating drinking water contaminants. In the case of uranium, it is also important to recognize that there may be considerable non-quantified (not monetizable) benefits associated with reductions in kidney toxicity risks. If such benefits were quantified, it is likely that the net benefits would be more favorable for all uranium options.

Some commenters may argue that costs and benefits considerations should lead to the conclusion that the finalization of the correction of the combined radium monitoring deficiencies and/or the establishment of a NPDWR for uranium are not warranted. However, this conclusion would lead to a situation where customers of many ground water systems face lifetime morbidity risks greatly in excess of the acceptable risk upper limit of one in ten thousand. According to EPA's policies, the proper use of this flexibility should lead to regulatory decisions that have associated risks that are within or acceptably close to EPA's longstanding goals of limiting excess lifetime morbidity risks to the range of one in a million to one in ten thousand, except under unusual circumstances. EPA solicits comment on this interpretation of costs and benefits for the finalization of the 1991 radionuclides proposal.

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Table V-2

SUMMARY OF COSTS AND BENEFITS FOR COMMUNITY WATER SYSTEMS PREDICTED TO BE IMPACTED BY THE REGULATORY OPTIONS BEING CONSIDERED FOR FINALIZATION

Options	Numbers of Systems Impacted[1] (Population Exposed Above MCL)	Estimated Lifetime Excess Cancer Morbidity Risk at MCL[2,3,4]	Ranges of Total Cancer Cases Avoided Annually (fatal cases)	Best-Estimate Values of Avoided Cases, in millions of $ / year) (low-end/high-end[4,5] estimate)	Ranges of Compliance Costs, in millions of $ / year)
Systems predicted to be impacted by corrections to the monitoring deficiencies for combined radium-226 and -228:					
Eliminate combined radium monitoring deficiency	270 - 320 systems (380 - 460 K persons)	1×10^{-4}	0.3 - 0.5 (0.2 - 0.4)	1 - 2 (0.3 - 4)	20 - 30
Systems predicted to be out of compliance with proposed options for uranium MCL:					
Uranium at 20 pCi/L (20 Ug/L)	830 - 970 systems (470 - 2,100 K persons)	5×10^{-5}	0.2 - 2 (0.1 - 1.5)	0.6 - 8 (0.2 - 16)	30 - 140
Uranium at 40 pCi/L (40 Ug/L)	300 - 430 systems (47 - 850 K persons)	1×10^{-4}	0.04 - 1.5 (0.02 - 1)	0.1 - 6 (< 0.1 - 12)	6 - 60
Uranium at 80 pCi/L (80 Ug/L)	40 - 170 systems (7 - 170 K persons)	2×10^{-4}	0.01 - 1 (< 0.01 - 0.7)	< 0.1 - 4 (< 0.1 - 8)	5 - 30

Notes:

Ranges based on directly proportional versus lognormal distribution approach.

1. Compared to the initial baseline (i.e., occurrence data are adjusted to eliminate existing MCL violations) for combined radium. Occurrence data is unadjusted for uranium options.

2. 1×10^{-4} is equivalent to "one in ten thousand", EPA's usual upper limit of acceptable cancer incidence (morbidity) risk for contaminants in drinking water.

3. These risk estimates are based on several simplifying assumptions and are only meant to be illustrative. The reported combined radium risk is based on an "occurrence weighted average" for Ra-226 and Ra-228 (2.3×10^{-3} per pCi/L). The "best-estimate"for a particular situation would depend on the actual levels of Ra-226 and Ra-228 that comprise the combined level of 5 pCi/L. Regarding uranium risks, since the individual uranium isotopes that make up naturally-occurring uranium have cancer morbidity risks that are similar in magnitude (6.4 to 7.1×10^{-11} per pCi), the assumptions about isotopic prevalence are not important. Here, we assumed that the simple average applied (3.83×10^{-4} per pCi/L).

4. Kidney toxicity is not considered in this estimate of risk or monetized benefits.

5.. Ranges in parentheses reflect low and high estimates of values of cases avoided. The low-end estimate is based on the cases avoided estimate from the "direct proportions" occurrence model and the low-end risk reduction valuations estimates. The high-end estimate is based on the "lognormal model" for occurrence and the high-end risk reduction valuations estimates. All estimates (best, low, and high) include valuations for both fatal and non-fatal risk reductions.

2. Uncertainties in the Estimates of Benefits and Costs

The models used to estimate costs and benefits related to regulatory measures have uncertainty associated with the model inputs. The types and uncertainties of the various inputs and the uncertainty analyses for risks, benefits, and costs are qualitatively discussed later in this section.

a. Uncertainties in Risk Reduction Estimates. For each individual radionuclide, EPA developed a central-tendency risk coefficient that expresses the estimated probability that cancer will result in an exposed individual per unit of radionuclide activity (e.g., per pCi/L) over the individual's lifetime (assumed to be 70 years). Two types of risks are considered, cancer morbidity, which refers to any incidence of cancer (fatal or non-fatal), and cancer mortality, which refers to a fatal cancer illness. For this analysis, we used the draft September 1999 risk coefficients developed as part of EPA's revisions to Federal Guidance Report 13 (FGR–13, EPA 1999e). FGR–13 compiled the results of several models predicting the cancer risks associated with radioactivity. The cancer sites considered in these models include the esophagus, stomach, colon, liver, lung, bone, skin, breast, ovary, bladder, kidney, thyroid, red marrow (leukemia), as well as residual impacts on all remaining cancer sites combined.

There are substantial uncertainties associated with the risk coefficients in FGR–13 (EPA 1999e): researchers estimate that some of the coefficients may change by a factor of more than 10 if plausible alternative models are used to predict risks. While the report does not bound the uncertainty for all radionuclides, it estimates that the central-tendency risk coefficients for uranium-234 and radium-226 may change by a factor of seven depending on the models employed to estimate risk.[10] Ranges that reflect uncertainty and variability in the risk coefficients will be used in a Monte Carlo analysis of risk reductions and benefits, the results of which will be reported in the preamble to the final rule.

In addition, as previously described in appendix I, "Occurrence," the available occurrence data do not provide information on the contribution of individual radionuclides or isotopes to the total concentrations of gross alpha or uranium. Therefore, there is uncertainty involved in the assumptions about which radionuclides comprise the reported gross alpha or uranium activity. These and other uncertainties related to occurrence information (e.g., uncertainty in extending the NIRS database results to the national level) will also be incorporated in a Monte Carlo analysis of benefits to estimate the range of uncertainty surrounding the central-tendency estimates. Other inputs that will be used in the Monte Carlo analysis of benefits are the age- and gender-dependent distributions of water ingestion, which are used in estimating lifetime exposure, and the credible range for the "value of a statistical life." This uncertainty analysis is not expected to alter the regulatory options discussed in today's NODA.

b. Effects of the Inclusion of a Latency Period and Other Factors on the Estimate of Benefits. The expected analytical impacts of the inclusion of other factors, *e.g.*, a cancer-latency period, cancer premiums, and non-quantifiable benefits have been discussed in the recent radon proposed NPDWR (64 FR 59295). The relevant points are summarized briefly here and in more detail in the Technical Support Document for the Radionuclides NODA (USEPA 2000a).

There are several potentially important sources of uncertainty related to the valuations of risk reductions for the regulatory options examined. Since the mortality valuations dominate the estimated benefits, factors that affect the VSL are most important. Factors that may affect the VSL include discounting due to cancer latency periods,[11] cancer-related premiums that may raise the value of statistical life, and other currently non-quantifiable benefits. Cancer latency-related discounting would be expected to decrease the present VSL, while cancer premiums would tend to increase the present VSL. It is not clear whether an inclusion of all of these factors would be expected to result in a lower or higher present VSL. However, EPA is currently working with the Science Advisory Board (SAB) to determine how to best include these factors, whether the inclusion is quantitative or qualitative.

c. Uncertainty in Compliance Cost Estimates. Regarding uncertainty in the compliance cost estimates, these estimates assume that most systems will install treatment to comply with the MCLs, while recent research suggests that water systems usually select compliance options like blending (combining water from multiple sources), developing new ground water wells, and purchasing water (EPA 1998a and c, EPA 2000a). Preliminary data (202 compliance actions from 14 States) on nitrate violations suggest that only around a quarter (25%) of those systems talking action in response to a nitrate violation installed treatment, while roughly a third developed a new well or wells. The remainder either modified the existing operations (10–15%), blended (15%), or purchased water (15–20%). Similar data for radium violations from the State of Illinois (77 compliance actions) indicate that around a quarter of systems taking action installed treatment, while the majority (50–55%) purchased water, with the remainder (20–25%) either installing a new well, blending, or stopping production from the contaminated well or wells. The prevalence of the use of these non-treatment options is a cross-cutting issue for future Regulatory Impact Assessments and probably will not be resolved before the radionuclides NPDWR is finalized. EPA is following up with this study and will report the results at a later date.

While these "other than treatment" options may cost as much as or more than treatment in some cases, they are expected to be less expensive on average, which largely explains their prevalence as compliance options. For example, EPA has recently estimated the costs associated with developing municipal wells to range from $0.08/kgal to $0.46/kgal, depending on system size, geologic setting, and other site specific parameters (EPA 1999b), with an average of $0.23/kgal for systems serving between 501 and 1,000 persons and $0.17/kgal for systems serving between 10,001 and 50,000 persons.[12] These costs include testing and drilling, steel casings with cement lining, pumps, including electrical connections and controls, and a pump shelter. For smaller, non-municipal PWS systems, we estimate that wells could cost from 10 to 80 percent of the costs presented for municipal systems. As shown in the Technical Support Document (EPA 2000a), these production costs are much lower than those for typical treatment, especially for small systems. When feasible, selection of such options may reduce compliance costs significantly. The Technical Support Document includes data on other non-treatment options like purchasing water and blending.

Preliminary uncertainty analyses suggest that variability in the unit compliance costs and decision tree assumptions dominate the over-all cost variability. To evaluate the potential variability in the compliance cost estimates, a Monte Carlo analysis will support the Regulatory Impact Assessment for the final rule. Inputs that influence cost variability include:

- Numbers of total systems in the various system size categories.
- Distributions of entry points per system in the various system size categories.
- Distributions of populations served by size category.
- Flow sizes as a function of population served.
- Daily household water consumption.
- Proportions of systems and sources exceeding regulatory limits.
- Unit costs (capital and O&M) of treatment technologies and annual costs of alternate source and regionalization.
- Proportions of non-compliant systems choosing between treatment, alternate source, and regionalization.

Since per system costs are much higher for very large systems, the assumptions used in the larger water system size categories can be expected to dominate the variability in national costs. Each of these inputs will be modeled using probability distributions that

[10] Table 2.4, Uncertainty Categories for Selected Risk Coefficients. Federal Guidance Report 13 (1999).

[11] A latency period refers to the average amount of time that passes between the beginning of exposure to a carcinogen or multiple carcinogens and the on-set of fatal cancer. There is considerable uncertainty in estimating a "typical latency period" for the options studies here for many reasons, including the large ranges in estimated latency periods for given cancer types and the large uncertainty involved in predicting which type or types of cancer will result from exposure to a given radionuclide in drinking water. It is also uncertain what discounting rate would be appropriate in this situation. Some may argue that discounting is entirely inappropriate (a rate of zero) and others may argue that typical financial discount rates are appropriate (3 to 7%).

[12] This estimate is based on total capital costs ranging from approximately $135,000 to $550,000 per MGD of flow. The estimate assumes typical relationships between design and average daily flows and a capital discount rate of 3 or 7%.

reflect the state of the available data. In some cases, input variability will be estimated from SDWIS, the CWSS, or other sources (e.g., distributions of populations served, daily household water consumption, unit costs) . In other cases, input variability will have to be based on best professional judgement. Again, this uncertainty study is expected to provide useful information, but is not expected to result in changes to the regulatory decisions described in today's NODA.

D. Estimates of Costs and Benefits for Non-Transient Non-Community Water Systems

The available data are not sufficient to allow EPA to predict a central-tendency impact of the regulatory options on non-transient non-community water systems (NTSC systems). Instead, EPA conducted a "what-if" analysis of potential costs and benefits based on reasonable assumptions of the percentage of NTSC systems impacted by the various options (EPA 2000b). A "what-if" analysis allows us to pose hypothetical occurrence scenarios and to estimate costs and benefits for these scenarios. If the scenarios are chosen properly, they should bound the reasonable set of potential costs and benefits for NTSC systems. However, the estimates should not be interpreted as representing "best estimates," which would be based on an occurrence survey of radionuclides occurring at NTSC systems. The Technical Support Document (EPA 2000a) provides details on the inputs and assumptions used for estimating regulatory impacts for NTSC systems. The resulting estimates of the percentage of systems out of compliance are provided in Table V–3.

TABLE V–3.—ASSUMPTIONS FOR HYPOTHETICAL "WHAT-IF" ANALYSIS FOR NON-TRANSIENT NON-COMMUNITY WATER SYSTEMS (APPROXIMATELY 19,300 SYSTEMS NATIONWIDE)

Regulatory option	Percent of national systems in states with elevated levels (1) (percent)	Upper bound: 10% of col. (1) (percent)	Lower bound: 1% of col. (1) (percent)
Gross Alpha at 15 pCi/L	60	6	1
Combined Radium at 5 pCi/L	79	8	1
Uranium at 20 pCi/L:			
Ground water	54	5	1
Surface water	29	3	0

We calculated risk reductions associated with each set of assumptions using the same analytic approach as outlined for the community water systems. However, we use lower water intake assumptions because the population affected generally is not at the location served full-time or year-round. The risk factors were estimated using the same risk coefficients as a starting point (risk per pCi), but use different water consumption assumptions to calculate lifetime excess risk factors (risk per pCi/L). A cost model is used to predict the annual compliance costs for these systems based on their size classes (EPA 2000); in general, non-transient non-community systems tend to use ground water and serve small populations.

The results of the analysis are summarized in Table V–4. If EPA requires non-transient non-community systems to comply with the gross alpha standard of 15 pCi/L, under the assumptions used in the analysis the number of systems out of compliance could range from 110 to 1,100 systems. The associated annual costs range from $1 million to $4 million and the statistical cancer cases (fatal and nonfatal) avoided annually range from 0.01 cases to 0.1 cases. For combined radium, the resulting number of impacted systems ranges from 150 to 1,500 systems with annual costs ranging from $1 million to $6 million and an associated number of annual statistical cancer cases avoided ranging from 0.02 cases to 0.2 cases. For a uranium MCL of 20 μg/L, the results suggest a range of impacted ground water systems from 100 up to 1,000 systems with annual costs ranging from $1 million to $4 million and an associated number of annual statistical cancer cases avoided ranging from less than 0.01 cases up to 0.04 cases. The resulting number of surface water systems impacted by a uranium MCL of 20 μg/L ranges from less than 10 to less than 20 systems. The associated national annual costs for surface water systems is less than $0.1 million up to 0.1 million with annual risk reductions of less than 0.01 statistical cancer cases.

TABLE V–4.—HYPOTHETICAL "WHAT-IF" RESULTS FOR NON-TRANSIENT NON-COMMUNITY WATER SYSTEMS

Regulatory option	Lower Bound Estimate			Upper Bound Estimate		
	Number of systems out of compliance	Annual costs (million dollars)	Statistical cancer cases avoided (cases)	Number of systems out of compliance	Annual costs (million dollars)	Statistical cancer cases avoided
Gross Alpha at 15 pCi/L	110	1	0.01	1,100	4	0.1
Combined Radium at 5 pCi/L	150	1	0.02	1,500	6	0.2
Uranium at 20 pCi/L:						
Ground water	100	1	<0.01	1,000	4	0.04
Surface water	< 10	0.03	<0.01	< 20	0.1	<0.01

Note: These results are based on hypothetical assumptions regarding the percent of systems likely to be out of compliance with each regulatory option as discussed in the preceding text. These are not estimates of actual compliance costs or risk reductions, and are provided for illustrative purposes only.

E. Impacts for Systems Serving Greater Than One Million Persons

Based on an Internet search of the available water quality information for water systems serving greater than one million persons (very large systems), there is no direct evidence that closing the monitoring deficiencies for radium will impact these systems. However, the internet search was not conclusive in ruling out the possibility that one or more systems serving greater than one million persons would be impacted by these options. For this reason, EPA has followed up with the few systems in question to determine the likelihood of impact. The follow-up confirmed that there were no impacts expected for these systems. Uranium occurrence data for these systems was collected to the extent feasible and there is no evidence of an impact at 20 or 40 μg/L.

F. References

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Dated: April 7, 2000.

Charles J. Fox,

Assistant Administrator, Office of Water.

[FR Doc. 00–9654 Filed 4–20–00; 8:45 am]

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Federal Register

Friday,
April 21, 2000

Part V

Department of Agriculture

Cooperative State Research, Education, and Extension Service

7 CFR Part 3419

Matching Funds Requirement for Formula Funds for Agricultural Research and Extension Activities at 1890 Land-Grant Institutions, Including Tuskegee University, and at the 1862 Land-Grant Institutions in Insular Areas; Final Rule

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Part 3419

RIN 0524–AA24

Matching Funds Requirement for Formula Funds for Agricultural Research and Extension Activities at 1890 Land-Grant Institutions, Including Tuskegee University, and at the 1862 Land-Grant Institutions in Insular Areas

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Final Rule.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) adds a new part 3419 to Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations, for the purpose of implementing new statutory matching requirements applicable to Federal agricultural research and extension formula funds for 1890 land-grant institutions, including Tuskegee University, and to the 1862 land-grant institutions in the Commonwealth of Puerto Rico and the insular areas of American Samoa, Guam, Micronesia, Northern Marianas, and the Virgin Islands.

EFFECTIVE DATE: April 21, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Edward M. Wilson, Deputy Administrator; Plant and Animal Systems; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Mail Stop 2220; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2220; at 202–401–4329, 202–401–4888 (fax) or via electronic mail at ewilson@reeusda.gov.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Cooperative State Research, Education, and Extension Service (CSREES) adds a new part 3419 to Title 7, Subtitle B, Chapter XXXIV of the Code of Federal Regulations, for the purpose of implementing the new matching requirements for agricultural research and extension formula funds authorized for the 1890 land-grant institutions and Tuskegee University. Section 226 of the Agricultural Research, Extension, and Education Reform Act of 1998 (AREERA), Pub. L. 105–185, amends Subtitle G of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA) by adding a new section 1449. This section requires matching funds from non-Federal sources for formula funds authorized under sections 1444 and 1445 of NARETPA for research and extension activities at the 1890 land-grant institutions and Tuskegee University.

This rule will also implement the new matching requirements for the 1862 land-grant institutions in the Commonwealth of Puerto Rico and the insular areas of American Samoa, Guam, Micronesia, Northern Marianas, and the Virgin Islands. Section 753(d) and (e) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, enacted in Division A, section 101(a) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681–33 (1999 Agriculture Appropriations Act), amended section 3(d) of the Hatch Act of 1887 and section 3(e) of the Smith-Lever Act to subject the 1862 land-grant institutions in the Commonwealth of Puerto Rico, the Virgin Islands, and Guam to the same matching requirements as those applicable to an eligible institution under section 1449 of NARETPA. The amendments made by section 753 apply by operation of law to American Samoa, Micronesia, and Northern Marianas by virtue of section 1361(a) of Pub. L. 96–374, as amended by 9(c) of Pub. L. 99–396, which provides that any provision of law related to land-grant institutions in the Virgin Islands or Guam applies to the land-grant institutions in American Samoa, the Northern Marianas, and the former Trust Territory of the Pacific Islands, the land-grant institution of which is the College of Micronesia.

Section 1449 requires that the State make available matching funds to an 1890 institution out of non-Federal funds. CSREES has determined that this does not necessarily limit the source of matching funds to those directly provided by the State as a part of its direct budget or appropriations process. Accordingly, CSREES has defined "non-Federal sources" to include direct State appropriations and any funds generated by the 1890 institution or by the 1862 institution in the Commonwealth of Puerto Rico or in an insular area and made available to the institution under other authority (other than authority to charge tuition and fees paid by students) provided by the State. This would include, for example, gift acceptance or user fee authority.

Public Comments and Changes to the Final Rule

One comment was received from an 1862 land-grant institution in an insular area requesting clarification on three issues: (1) Whether an institution is eligible for any agricultural research and extension formula funds if the institution fails to provide the full matching requirement, (2) whether the institution must certify that the required matching funds are available prior to the actual distribution of funds, and (3) whether the definition of matching funds, which indicates that they are not only from non-Federal sources but also funds made available by the State government, precludes other sources of non-Federal funds that are not from the State government.

Each 1890 land-grant institution and each 1862 land-grant institution in insular areas and the Commonwealth of Puerto Rico will be entitled to their allocation of Federal agricultural research and extension formula funds less an amount equal to any required matching amount that the institution fails to provide. For example, the matching requirement in fiscal year (FY) 2000 shall equal not less than 30 percent of the formula funds to be distributed. If an institution was entitled to $1,000,000 for extension but only matches 15 percent, then the $1,000,000 would be reduced by 15 percent and the institution would receive only $850,000. However, the maximum awarded by CSREES will be the amounts of the annual allocations as indicated on the CSREES–OD–1088's, Distributions of Hatch Act Funds and Smith-Lever Act Funds.

Each 1890 land-grant institution and each 1862 land-grant institution in insular areas and the Commonwealth of Puerto Rico must certify that the required matching funds are available prior to the actual distribution of any funds. CSREES has added section 3419.5, Certification of Matching Funds, to clarify that the annual certification of matching funds must be provided to CSREES prior to the distribution of formula funds. This section also provides that the eligible institutions may submit through July 1 of the fiscal year in which funds are appropriated any revisions to their annual certification of matching funds.

As mentioned in the "Background and Purpose" section, CSREES has determined that the definition of matching funds does not necessarily limit the source of matching funds to those directly provided by the State as part of its direct budget or appropriations process. Accordingly,

CSREES has defined "non-Federal sources" to include direct State appropriations and any funds generated by the 1890 land-grant institution or by the 1862 institution in the Commonwealth of Puerto Rico or in the insular areas and made available to the institution under other authority (other than authority to charge tuition and fees paid by students) provided by the State. This would include, for example, gift acceptance and user fee authority.

Classification

This rule was reviewed under Executive Order 12866 and was determined to be nonsignificant as it will not create a serious inconsistency or otherwise interfere with an action planned by another agency; will not materially alter the budgetary impact of entitlement, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; and will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in this executive order. This rule will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

Regulatory Flexibility Act

The Department certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. No. 96–534 (5 U.S.C. 601 *et seq.*). Accordingly, a regulatory flexibility analysis is not required for this rule.

Catalog of Federal Domestic Assistance

The programs affected by this rule are listed in the Catalog of Federal Domestic Assistance under No. 10.205, Payments to 1890 Land-Grant Institutions and Tuskegee University, No. 10.500, Cooperative Extension Service, and No. 10.203, Payments to Agricultural Experiment Stations Under the Hatch Act.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that will be imposed in the implementation of this rule have been approved under OMB Document No. 0524–0038.

Report to Congress

As required by 5 U.S.C. 801(a), CSREES submitted a report on this final rule to both Houses of Congress and the Comptroller General prior to publication.

List of Subjects in 7 CFR Part 3419

Agricultural extension, Agricultural research, Colleges and universities.

For reasons set forth in the preamble, Title 7, Subtitle B, Chapter XXXIV, of the Code of Federal Regulations is amnded by adding part 3419 to read as follows:

PART 3419—MATCHING FUNDS REQUIREMENT FOR AGRICULTURAL RESEARCH AND EXTENSION FORMULA FUNDS AT 1890 LAND-GRANT INSTITUTIONS, INCLUDING TUSKEGEE UNIVERSITY, AND AT 1862 LAND-GRANT INSTITUTIONS IN INSULAR AREAS

Sec.

3419.1 Definitions.
3419.2 Matching funds.
3419.3 Determination of non-Federal sources of funds.
3419.4 Limited waiver authority.
3419.5 Certification of matching funds.
3419.6 Use of matching funds.
3419.7 Redistribution of funds.

Authority: 5 U.S.C. 301, 7 U.S.C. 3222d; Sec. 753, Pub. L. No. 105–277, 112 Stat. 2681–33.

§ 3419.1 Definitions.

As used in this part:

Eligible institution means a college or university eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321 *et seq.*) (commonly known as the Second Morrill Act), including Tuskegee University, or a college or university designated under the Act of July 2, 1862 (7 U.S.C. 301, *et seq.*) (commonly known as the First Morrill Act) and located in the Commonwealth of Puerto Rico and the insular areas of American Samoa, Guam, Micronesia, Northern Marianas, and the Virgin Islands.

Formula funds means agricultural research funds provided to the eligible institutions under section 1445 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA), as amended, or under section 3 of the Hatch Act of 1887, 7 U.S.C. 361c, and agricultural extension funds provided to the eligible institutions under section 1444 of NARETPA or under sections 3(b) and (c) of the Smith-Lever Act, 7 U.S.C. 343(b) and (c).

Matching funds means funds from non-Federal sources made available by the State to the eligible institutions:

(a) For programs or activities that fall within the purposes of agricultural research and cooperative extension under sections 1444 and 1445 of NARETPA, the Hatch Act of 1887, and the Smith-Lever Act; or

(b) For qualifying educational activities. Matching funds means cash contributions and excludes in-kind matching contributions.

Non-Federal sources means funds made available by the State to the eligible institution either through direct appropriation or under any authority (other than authority to charge tuition and fees paid by students) provided by a State to an eligible institution to raise revenue, such as gift acceptance authority or user fees.

Qualifying educational activities means programs that address food and agricultural sciences components of an eligible institution.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

State means the government of any one of the fifty States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of Northern Marianas, the Virgin Islands of the United States, the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia.

§ 3419.2 Matching funds.

The distribution of formula funds shall be subject to the following matching requirements: (a) For fiscal year 2000, matching funds shall equal not less than 30 percent of the formula funds to be distributed to the eligible institution;

(b) For fiscal year 2001, matching funds shall equal not less than 45 percent of the formula funds to be distributed to the eligible institution; and

(c) For fiscal year 2002 and each fiscal year thereafter, the matching funds shall equal not less than 50 percent of the formula funds to be distributed to the eligible institution.

§ 3419.3 Determination of non-federal sources of funds.

Each eligible institution shall submit by September 30, 1999, a report describing for fiscal year 1999:

(a) The sources of non-Federal funds made available to the eligible institutions for agricultural research, extension, and qualified educational activity to meet the matching requirements of section 1449 of NARETPA, as amended; and

(b) The amount of funds generally available from each source. This report

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for the fiscal year ending September 30, 1999, may also include a request for a waiver of the matching funds requirement for fiscal year 2000.

§ 3419.4 Limited waiver authority.

The Secretary may waive the matching funds requirement for fiscal year 2000 for an eligible institution of a State if the Secretary determines that, based on the report received under § 3419.3, the State will be unlikely to satisfy the matching requirement. The criteria to waive the match in fiscal year 2000 may include:

(a) Natural disaster, flood, fire, tornado, hurricane, or drought;

(b) State and/or institution facing a financial crisis; or

(c) Demonstration of a good faith effort to obtain funds. Approval or disapproval of the request for a waiver will be based on the report submitted under § 3419.3. The Secretary may not waive the matching requirement for any fiscal year other than fiscal year 2000.

§ 3419.5 Certification of matching funds.

Prior to the distribution of formula funds each fiscal year, each eligible institution must certify as to the availability of matching funds. Eligible institutions may revise their certification of matching funds through July 1 of the fiscal year in which funds are appropriated.

§ 3419.6 Use of matching funds.

The required matching funds for the formula programs shall be used by an eligible institution for agricultural research and extension activities that have been approved in the plan of work required under sections 1444(d) and 1445(c) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, section 7 of the Hatch Act of 1887, section 4 of the Smith-Lever Act, or for approved qualifying education activities.

§ 3419.7 Redistribution of funds.

All formula funds not matched and reported under § 3419.5 by July 1 of each fiscal year will be reapportioned to the other eligible institutions who have satisfied their current fiscal year requirement for matching funds for the formula funds. Unmatched research and extension funds will be reapportioned in accordance with the research and extension statutory distribution formulas applicable to the 1890 and 1862 land-grant institutions, respectively. Any redistribution of funds shall be subject to the same matching requirement under § 3419.2.

Done at Washington, D.C., this 13th day of April 2000.

Eileen Kennedy,

Deputy Under Secretary, Research, Education, and Economics.

[FR Doc. 00–9793 Filed 4–20–00; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 1374/P.L. 106–183

To designate the United States Post Office building located at 680 U.S. Highway 130 in Hamilton, New Jersey, as the "John K. Rafferty Hamilton Post Office Building". (Apr. 13, 2000; 114 Stat. 200)

H.R. 3169/P.L. 106–184

To designate the United States post office located at 14071 Peyton Drive in Chino Hills, California, as the "Joseph Ileto Post Office". (Apr. 14, 2000; 114 Stat. 201)

Last List April 11, 2000

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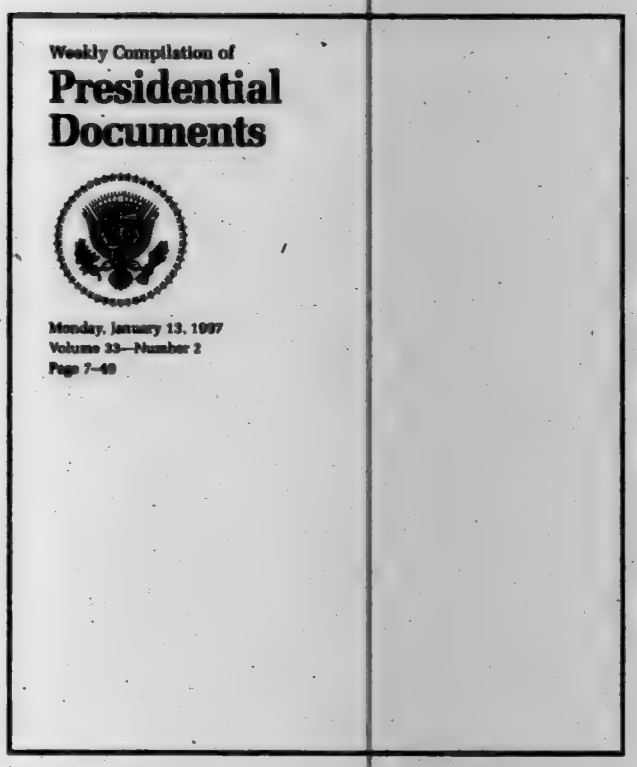

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Public Laws

106th Congress, 2nd Session, 2000

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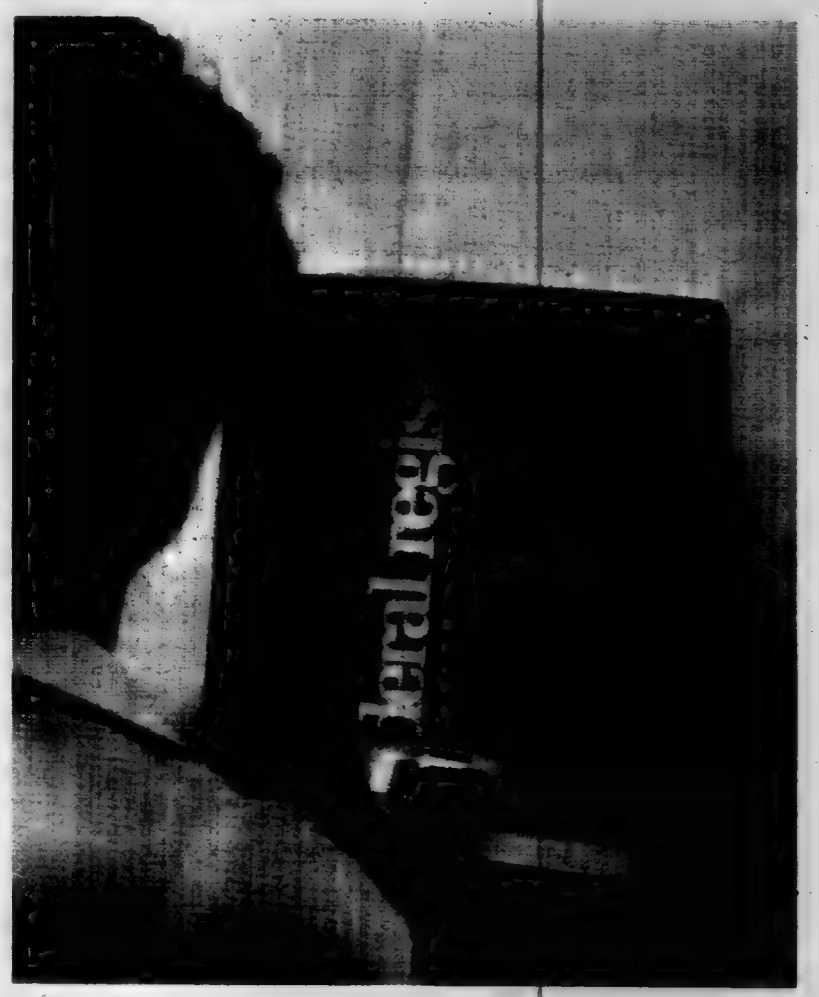

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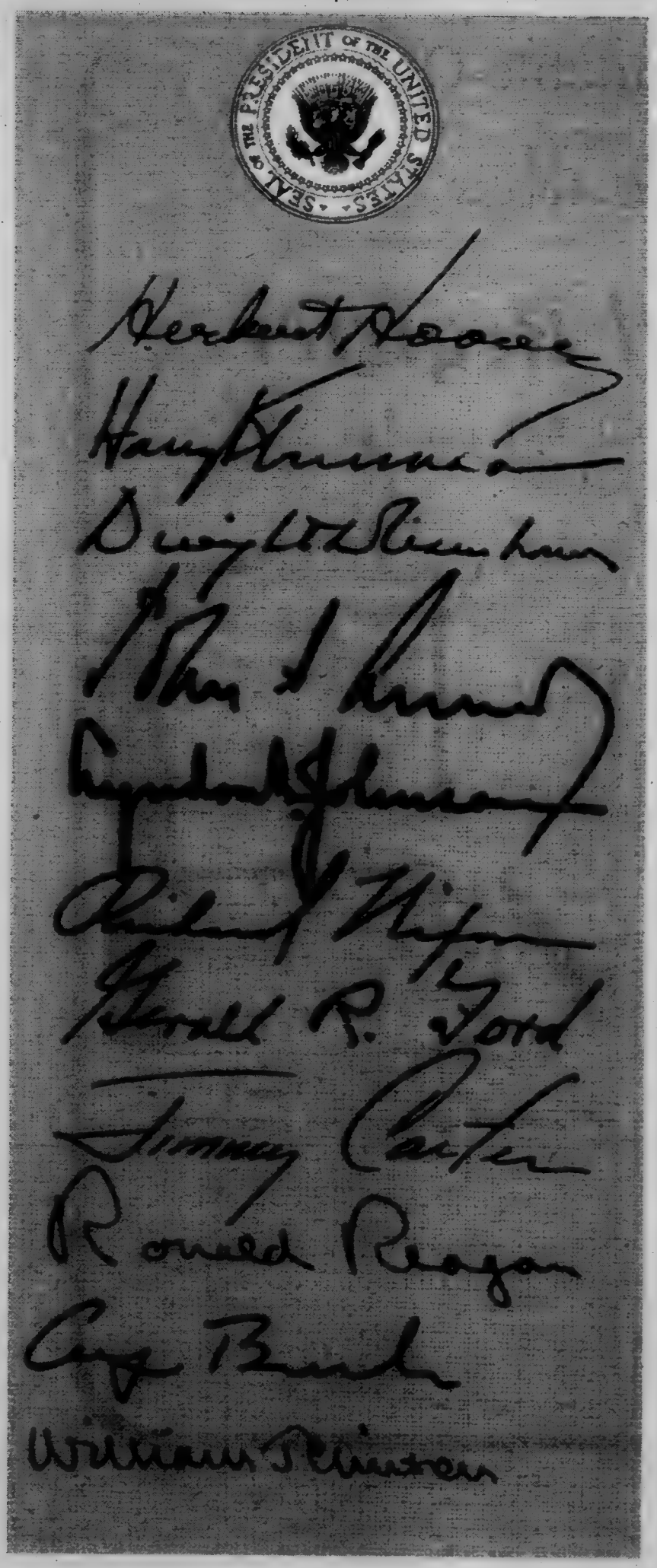

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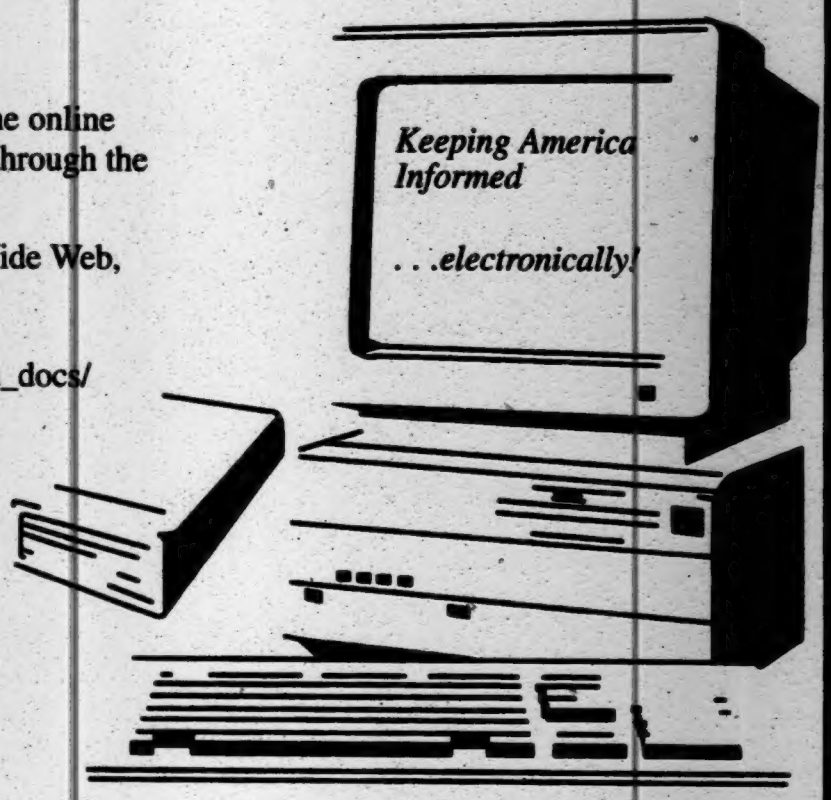

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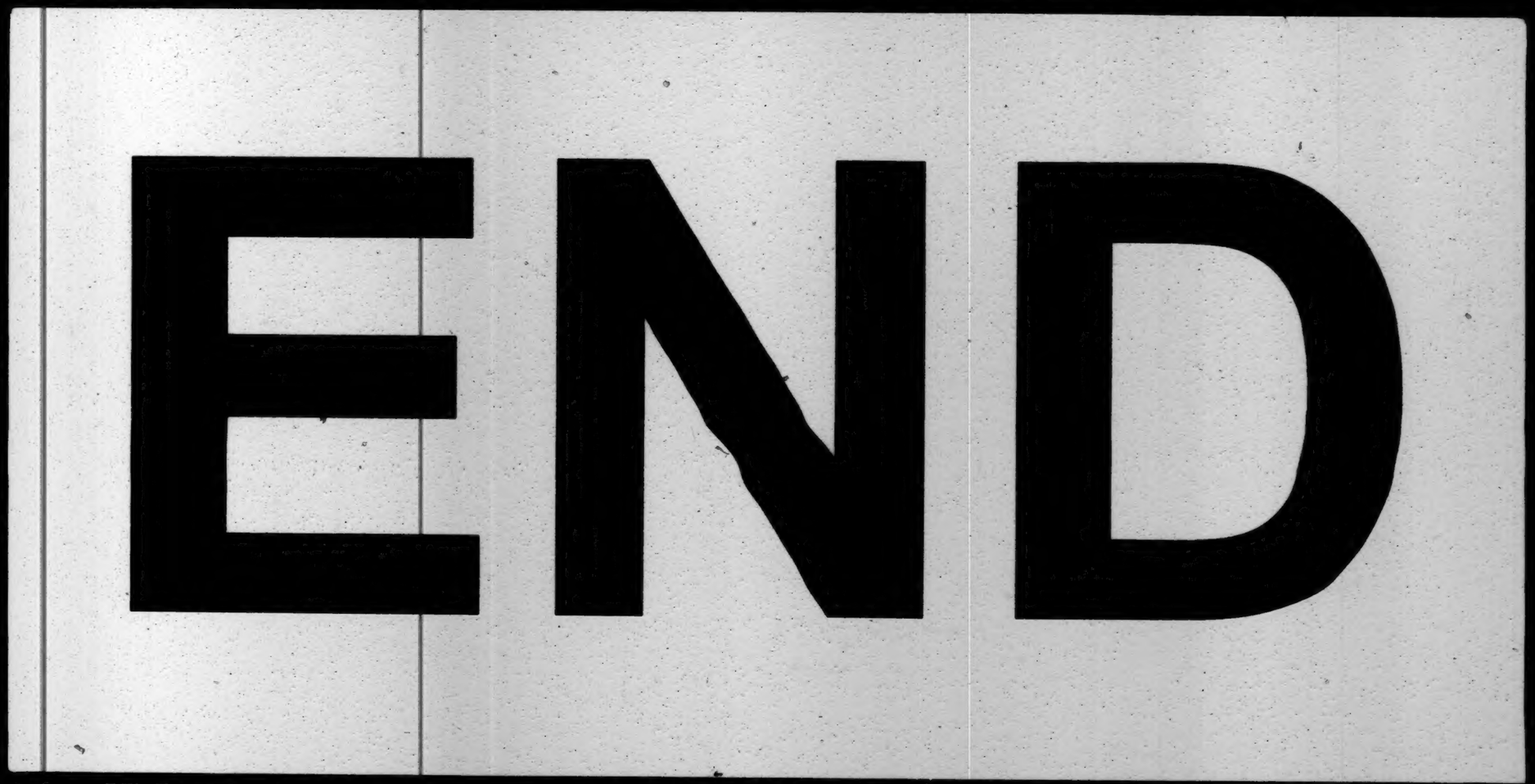
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